22-1836

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

VIRGINIA L. GUIFFRE,
Plaintiff,

- v. -

GHISLAINE MAXWELL,
Defendant,

- and -

TGP COMMUNICATIONS, LLC d/b/a
THE GATEWAY PUNDIT,
Intervenor-Appellant.

- and -

JOHN DOE,
Appellee.

On Appeal from the United States District Court for the Southern District of New York, Case No. 15-cv-7433 (LAP)

OPENING BRIEF OF APPELLANT TGP COMMUNICATIONS, LLC d/b/a THE GATEWAY PUNDIT

Marc J. Randazza
Jay M. Wolman
Randazza Legal Group, PLLC
30 Western Avenue
Gloucester, MA 01930
(702) 420-2001
ecf@randazza.com

John C. Burns
BURNS LAW FIRM
P.O. Box 191250
St. Louis, Missouri 63119
(314) 329-5040
john@burns-law-firm.com

Counsel for Intervenor-Appellant

Intervenor-Appellant Requests Oral Argument

CORPORATE DISCLOSURE STATEMENT

Intervenor-Appellant TGP Communications, LLC d/b/a The Gateway Pundit ("Appellant" or "TGP") hereby states, pursuant to Fed. R. App. P. 26.1, that it has no parent corporation and there is no publicly held corporation that owns 10% or more of its stock.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES

RULES

STATEMENT OF JURISDICTION

This appeal arises from TGP's efforts to intervene in the underlying litigation for the limited purpose of seeking to unseal documents identifying the individuals who abused girls trafficked by Jeffrey Epstein and Ghislaine Maxwell ("Epstein Client List"). TGP moved to intervene and unseal. AA-260. A non-party John Doe objected (AA-281) and the District Court, ignoring the opportunity TGP had to reply, denied both intervention and unsealing (AA-282). This appeal follows.

A. The District Court's Subject-Matter Jurisdiction

In the underlying litigation, Plaintiff Virginia Giuffre ("Plaintiff" or "Giuffre") pleaded that the District Court had subject-matter jurisdiction pursuant to 28 U.S.C. § 1332. AA-086, p. 2, ¶ 2. Plaintiff asserted that she and the Defendant, Ghislaine Maxwell ("Defendant" or "Maxwell") were citizens of different states and the amount in controversy exceeded seventy-five thousand dollars. Appellant is aware of no facts that controvert the jurisdictional basis.

B. The Court of Appeals' Jurisdiction

This Court has jurisdiction pursuant to 28 U.S.C. § 1291, as the order denying the motion to intervene and unseal is final as to TGP. *See*

Bridgeport Guardians, Inc. v. Delmonte, 602 F.3d 469, 473 (2d Cir. 2010); *Martindell v. Int'l Tel. & Tel. Corp.*, 594 F.2d 291, 293-94 (2d Cir. 1979).

Alternately, this Court has appellate jurisdiction over TGP's appeal under the collateral order doctrine. *See United States v. HSBC Bank USA, N.A.,* 863 F.3d 125, 133-34 (2d Cir. 2017). It is an appeal of an order denying a motion to intervene and unseal. That order conclusively determined the question. The issue is an important one completely separate from the merits. And, it is unreviewable on appeal from the final judgment, which was a judgment of dismissal with prejudice by stipulation of the Plaintiff and the Defendant. *See SEC v. TheStreet.com*, 273 F.3d 222, 228 (2d Cir. 2001).

Therefore, Appellant asserts that the appeal is from a final order disposing of all claims or, alternately, that the Court otherwise has jurisdiction under the collateral order doctrine.

C. Timeliness of the Appeal

On August 9, 2022, the District Court denied TGP's motion to intervene and unseal the Epstein Client List. AA-282. Appellant filed its Notice of Appeal on August 19, 2022. AA-286. Such notice was within 30 days of the order being appealed. Thus, the appeal is timely.

STATEMENT OF THE ISSUES

1. Whether the District Court erred when it denied TGP the ability to intervene?

2. Whether the District Court violated TGP's First Amendment and Common Law right of access to judicial documents by not acting to specifically unseal the Epstein Client List?

CONCISE STATEMENT OF THE CASE

A. Nature of the Case

Jeffrey Epstein was indicted for 1) Sex Trafficking Conspiracy, 18 U.S.C. § 371, and 2) Sex Trafficking, 18 U.S.C. §§ 1591 (a)(b)(2), and 2. *See United States v. Epstein,* Case No. 1:19-cr-00490 (S.D.N.Y. filed July 2, 2019). Following his death a month later,[1] twenty-three women testified that Jeffrey Epstein abused and trafficked them.[2] Previously, "[o]n June 30, 2008, Epstein pleaded guilty to Florida state charges of soliciting, and procuring a person under the age of eighteen for,

---

[1] Curiously, he died the very day after the District Court's summary judgment record was unsealed by this Court.

[2] Reinstein, Julia, *23 Women Stood in Court and Said Jeffrey Epstein Abused Them*, Buzzfeed News (Aug. 27, 2019), available at <https://www.buzzfeednews.com/article/juliareinstein/jeffrey-epstein-women-victims-testify-court-quotes>.

prostitution. The charges stemmed from sexual activity with privately hired 'masseuses,' some of whom were under eighteen, Florida's age of consent. Pursuant to an agreement with state and federal prosecutors, Epstein pleaded to the state charges." *Brown v. Maxwell*, 929 F.3d 41, 45 (2d Cir. 2019).

Ghislaine Maxwell was convicted of 1) Conspiracy to Entice Minors to Travel to Engage in Illegal Sex Acts, 18 U.S.C. § 371; 2) Enticement of a Minor to Travel to Engage in Illegal Sex Acts, 18 U.S.C. §§ 2422 and 2; 3) Conspiracy to Transport Minors with Intent to Engage in Criminal Sexual Activity, 18 U.S.C. § 371; 4) Transportation of a Minor with Intent to Engage in Criminal Sexual Activity, 18 U.S.C. §§ 2423 (a) and 2; 5) Sex Trafficking Conspiracy, 18 U.S.C. § 371; and 6) Sex Trafficking of a Minor, 18 U.S.C. §§ 1591 (a), (b)(2), and 2. *See United States v. Maxwell,* Case No. 1:20-cr-00330 (S.D.N.Y. Dec. 29, 2021)[3]. Four women testified

[3] On June 29, 2022, judgment was entered, noting that counts 1 & 5 were multiplicitous. She was thereupon sentenced to a term of 240 months. *United States v. Maxwell,* Case No. 1:20-cr-00330 (S.D.N.Y. Jun. 29, 2022).

to abuse they suffered at the hands of Ghislaine Maxwell.[4] Here, the plaintiff sued Maxwell over her denial of "allegations of sexual abuse by several other prominent individuals, 'including numerous prominent American politicians, powerful business executives, foreign presidents, a well-known Prime Minister, and other world leaders,' as well as Dershowitz (a long-time member of the Harvard Law School faculty who had worked on Epstein's legal defense)" and Maxwell herself. *Brown*, *supra* at 45. Ms. Giuffre's allegations received considerable media attention; the allegedly defamatory statements at issue were themselves published in the media. Complaint, AA-090 – AA-091, ¶¶ 28-37.

TGP Communications d/b/a The Gateway Pundit is a news publication consisting of news, commentary, punditry, and analysis.[5] As many Americans continue to lose trust in the purportedly unbiased nature of older newspapers and networks, TGP highlights that it is addressing this gap as a trusted news source for the stories and views

---

[4] Del Valle, Lauren, and Levenson, Eric, *4 Women Testified at Ghislaine Maxwell's Trial that They were Sexually Abused*, CNN (Dec. 15, 2021) available at <https://www.cnn.com/2021/12/15/us/ghislaine-maxwell-trial-accusers/index.html>.

[5] *See* <https://www.thegatewaypundit.com/about/>.

that are largely untold or ignored by traditional news outlets.[6] One of its core values is that it "must have courage in order expose the truth about powerful interests that may be angered by our coverage."[7] TGP wishes to report on the Epstein Client List (TGP has no interest in the victim list). Although the District Court has been engaged in a process to unseal select records that never should have been denied public access in the first place, that process has been much taking too long, the public has no meaningful input into that process, and the records of the proceedings are replete with pseudonymous parties and some documents (or portions thereof), likely containing the Epstein Client List, remain under seal.

B. Relevant Procedural History

Briefly, on March 18, 2016, the District Court (the late Hon. Robert Sweet) issued a protective order permitting the parties to designate material as confidential, but nonetheless required them to seek leave to file such materials under seal. AA-097. Subsequently, after the District Court repeatedly granted leave to file materials under seal, it issued an order on August 8, 2016, permitting the *parties* to decide, at their

---

[6] *See id.*

[7] *Id.*

discretion, what may be under seal and to make such filings at will. AA-104. The parties used this privilege with great alacrity, and thousands of pages of documents were sealed. "In total, 167 documents — nearly one-fifth of the docket — were filed under seal. These sealed documents include, inter alia, motions to compel discovery, motions for sanctions and adverse inferences, motions in limine, and similar material." *Brown, supra* at 46. Thus, this Court, in the *Brown* appeal issued the following ruling: "we VACATE the orders of the District Court entered on November 2, 2016, May 3, 2017, and August 27, 2018, ORDER the unsealing of the summary judgment record as described herein, and REMAND the cause to the District Court for particularized review of the remaining materials." *Id.* at 54.

That was more than three years ago. Documents remain under seal, and the public has yet to see the Epstein Client List. Thus, on July 28, 2022, TGP filed a motion to intervene and to unseal the Epstein Client List. AA-260 – AA-279. The District Court set a briefing schedule that permitted "*any party*" to respond by August 8, 2022, with a reply by TGP to follow on August 12, 2022. (AA-280) (emphasis added). No *party* responded. Instead, a non-party John Doe filed a letter response in

opposition on August 8, 2022 (AA-281). The following day, *three days before* TGP's court-imposed deadline to file a reply, the District Court (ignoring its own briefing schedule) denied TGP the right to intervene and, necessarily, the motion to unseal. (AA-282).

C. Identification of the Judge who Rendered the Decision being Appealed

Hon. Loretta A. Preska, U.S.D.J.[8]

D. Disposition Below

On August 9, 2022, the District Court issued an order denying TGP's motion to intervene and unseal. AA-282. Appellant appeals from the denial of that motion.

E. Citation of the Decision or Supporting Opinion

The order from which this appeal is taken is cited: *Giuffre v. Maxwell*, 2022 U.S. Dist. LEXIS 141974 (S.D.N.Y. Aug. 9, 2022).

SUMMARY OF THE ARGUMENT

The District Court made fundamental errors and abused its discretion in denying the motion to intervene and unseal. TGP meets the qualifications of a media entity seeking to intervene and unseal the

[8] This matter was reassigned to Judge Preska on July 9, 2019, following the *Brown* decision, as Judge Sweet passed away in the interim.

Epstein Client List. Such intervention is presumptive, and the District Court had no basis to suggest it would be redundant or dilatory. Rather, the intervention is sought because the District Court has ignored this Court's express commands and the current parties have failed to ensure that newsworthy information is unsealed. The District Court violated TGP's, and the public's First Amendment and common law right of access to judicial documents. The District Court has, on multiple occasions, countermanded the express holding of this Court that all sealed documents below are judicial documents with a presumption of access. And, it has created a secretive process with further sealed and pseudonymous submissions. There is no compelling rebuttal to the presumption of access to the Epstein Client List. The privacy interest of abusers is outweighed by the public right to access. The order denying the motion to intervene and unseal should be reversed, and the Epstein Client List should be published.

ARGUMENT

A. Standard of Review

This Court reviews denial of a motion for intervention as of right under Fed. R. Civ. P. 24(a) and a motion for permissive intervention

under Fed. R. Civ. P. 24(b) for abuse of discretion. *See N.Y. News, Inc. v. Kheel*, 972 F.2d 482, 485 (2d Cir. 1992). A district court abuses its discretion if it (1) "based its ruling on an erroneous view of the law," (2) made a "clearly erroneous assessment of the evidence," or (3) "rendered a decision that cannot be located within the range of permissible decisions." *Sims v. Blot*, 534 F.3d 117, 132 (2d Cir. 2008) (internal quotation marks omitted). Errors of law or fact may constitute such abuse. *SG Cowen Sec. Corp. v. Messih*, 224 F.3d 79, 81 (2d Cir. 2000).

The standard of review for the unsealing issues in this appeal is in *United States v. Doe*, 356 F. App'x 488, 489 (2d Cir. 2009) as follows:

> In reviewing a district court's decision on a motion to seal judicial proceedings or records, we examine findings of fact for clear error, legal determinations *de novo*, and the decision to grant or deny sealing for abuse of discretion. *See United States v. Doe*, 63 F.3d 121, 125 (2d Cir. 1995). Where First Amendment rights are implicated, our abuse-of-discretion review of a decision granting sealing is "more rigorous" than usual. *Id*.

Thus, the deprivation of common law right of access is reviewed for abuse of discretion, while deprivation of First Amendment right of access is reviewed through the "more rigorous" abuse of discretion prism.

B. The Motion to Intervene Should Have Been Granted

The District Court abused its discretion when it failed to permit TGP to intervene. The motion was timely and the interests of TGP are not adequately protected by others. Intervention would cause no prejudice.

The District Court assessed the motion to intervene under Rule 24(b). *Giuffre v. Maxwell*, 2022 U.S. Dist. LEXIS 141974, at *3 (S.D.N.Y. Aug. 9, 2022). "Whether deemed an intervention as of right under Rule 24(a) or a permissive intervention under Rule 24(b), intervention by the press -- a step preliminary to determining whether any sealed documents should be disclosed -- should be granted absent some compelling justification for a contrary result." *In re Pineapple Antitrust Litig.*, 2015 U.S. Dist. LEXIS 122438, at *4-5 (S.D.N.Y. Aug. 7, 2015). No compelling reason to deny intervention existed.

In abusing its discretion and denying intervention, the District Court held as follows:

> The Court does not consider TGP's motion to be "timely" and, relatedly, TGP's interests are already adequately represented by the existing parties and intervenors. … The Court, the parties, and the existing intervenors have made significant headway into the unsealing protocol, and intervention by TGP at this time likely would disrupt that progress. Thus, although the merits of this litigation were resolved years ago

> via settlement, TGP's intervention at this time would unduly delay the adjudication of the rights of the original parties with respect to the protective order, at least by requiring the parties and the Court to respond to an additional set of papers, likely to be redundant of other parties' and intervenors' papers.

Giuffre v. Maxwell, 2022 U.S. Dist. LEXIS 141974, at *4-5 (S.D.N.Y. Aug. 9, 2022).

First, there was nothing *untimely* about TGP's request under Rule 24(b). *See, e.g., Blum v. Merrill Lynch Pierce Fenner & Smith Inc.*, 712 F.3d 1349, 1353 (9th Cir. 2013) ("[M]otions to intervene for the purpose of seeking modification of a protective order in long-concluded litigation are not untimely."); *E.E.O.C. v. National Childrens Center, Inc.*, 146 F.3d 1042, 1047 (D.C. Cir. 1998) ("[T]here is a 'growing consensus among the courts of appeals that intervention to challenge confidentiality orders may take place long after a case has been terminated.'") (quoting *Pansy v. Borough of Stroudsburg*, 23 F.3d 772, 779 (3d Cir. 1994)). Permissive intervention is permitted where, as here, a member of the public seeks intervention to modify a protective order and inspect court documents. *AT&T Corp. v. Sprint Corp.*, 407 F.3d 560, 562 (2d Cir. 2005) ("[P]ermissive intervention is the proper method for a nonparty to seek a modification of a protective order.").

Second, the District Court improperly invoke Rule 24(a)(2), finding that TGP's interest are already adequately represented. Whether or not TGP's interests are "adequately represented" is not a consideration under Rule 24(b), which governs press interventions to unseal. Moreover, TGP's interests are not at all adequately represented. As this Court is aware, in the *Brown* proceedings, Giuffre originally opposed unsealing at the District Court, but changed her mind and supported it here,[9] and Maxwell supported unsealing at the District Court, but changed *her* mind and opposed it here. Inspection of the docket shows prior intervenors Dershowitz and Cernovich have not been actively involved in the unsealing process. And, while Intervenors Brown and the Miami Herald have been involved in the process, they have yet to succeed in obtaining the key information that the public desires and has a right to know: the Epstein Client List. Neither have they seemingly endeavored to prod the District Court to act—more than seven months elapsed between the final

[9] And, while Giuffre has been supporting unsealing in the District Court, she may have less an interest in doing so, as her claims against those she has, at times, alleged to be Epstein Clients, Prince Andrew (*Giuffre v. Prince Andrew. Duke of York,* Case No. 1:21-cv-06702-LAK (S.D.N.Y. filed August 9, 2021)) and Prof. Dershowitz (*Giuffre v. Dershowitz*, Case No. 1:19-cv-03377-LAP (S.D.N.Y. filed April 16, 2019)), are now closed.

submission (AA-234 – April 1, 2022) as to certain Doe objections to unsealing and a ruling thereon (AA-289 – setting ruling for November 18, 2022). Why is the "legacy media" so lackadaisical about the sole bit of information that the public wants to know? Nobody knows that but them – but they have not appeared to find this information as vital as TGP and the American public. The Miami Herald may have some interests here, but given that TGP wants to report on something that the Herald has not apparently seen as a key element of its reporting, TGP has its own interests, and the Miami Herald is not representing them.

Third, there is nothing to suggest another media entity, TGP, weighing in on non-party Does' objections will delay anyone's rights or be redundant. The entire purpose of the intervention is because the District Court has not acted quickly enough. There is no prejudice to the original parties—they are responsible for the overly generous sealing order in the first place. There is no prejudice to the abusers; that TGP may effect quicker unsealing over their objections is not a cognizable prejudice. There is no prejudice to Ms. Brown or the Herald—ostensibly, they, too, seek to shed light on the Epstein Client List. And, there is no prejudice to the process—the District is not giving this matter the attention it

deserves, where every day documents are improperly sealed due to judicial inaction is an injury to TGP and the public. Moreover, so long as TGP has the same deadline to respond, there would be no possible delay. TGP trusts that the District Court can review a few extra pages without undue delay—by way of comparison, the Herald's last submission (AA-234) contained only *three pages* of substantive argument.

In fact, the Herald routinely laments that it has not been afforded the opportunity to see the Does' objections. (AA-235 at n. 1). This is part of the problem. The District Court created a process, ostensibly in furtherance of this Court's decision in *Brown,* that has resulted in many more sealed and pseudonymous filings. Notably, the John Doe who objected to TGP's intervention never sought nor obtained specific permission to litigate pseudonymously—this has been a blanket permission granted to all who happen to have been named in the improperly sealed documents. And, **unless that Doe is an Epstein**

Client,[10] all the more reason he should not be permitted to litigate pseudonymously, that Doe lacked standing to object, yet the District Court considered his objection in denying the motion to intervene.[11]

---

[10] In determining whether to permit pseudonymity, the Second Circuit uses the following factors:

> (1) whether the litigation involves matters that are highly sensitive and of a personal nature; (2) whether identification poses a risk of retaliatory physical or mental harm to the ... party seeking to proceed anonymously ...; (3) whether identification presents other harms and the likely severity of those harms ...; (4) whether the plaintiff is particularly vulnerable to the possible harms of disclosure ... particularly in light of their age; (5) whether the suit is challenging the actions of the government or that of private parties; (6) whether the defendant is prejudiced by allowing the plaintiff to press their claims anonymously, whether the nature of that prejudice (if any) differs at any particular stage of the litigation, and whether any prejudice can be mitigated by the district court; (7) whether the plaintiff's identify has thus far been kept confidential; (8) whether the public's interest in the litigation is furthered by requiring the plaintiff to disclose their identity; (9) whether, because of the purely legal nature of the issues presented or otherwise, there is an atypically weak public interest in knowing the litigants' identifies; and (10) whether there are any alternative mechanisms for protecting the confidentiality of the plaintiff.

Doe 1 v. Branca USA, Inc., No. 22-CV-03806, 2022 U.S. Dist. LEXIS 124177, at *2 (S.D.N.Y. July 13, 2022) (citing *Sealed Plaintiff v. Sealed Defendant*, 537 F.3d 185, 190 (2d Cir. 2008)). Few, if any, of the factors warrant an Epstein Client's ability to proceed here pseudonymously, and the public interest far outweighs that of John Doe's.

In light of the foregoing, the District Court's order denying intervention to TGP should be reversed.

C. The District Court Has Failed to Expeditiously Unseal Documents Likely Comprising the Epstein Client List

It has been over *three years* since this Court ordered the District Court to undertake the unsealing process. By way of comparison, the first document sealed by the District Court was on August 6, 2016 (AA-103) and the last document sealed was on April 25, 2017. (Dkt. No. 868). In the ordinary course of events, the District Court would have made particularize sealing decisions over that same course of 8.5 months. There is no understandable reason why the District Court has taken four times as long and still the task of righting the prior wrongs is incomplete.

With respect to the First Amendment right of access, this Court has already determined that there is "at least some presumption of public access" in every document remaining under seal. *Brown, supra* at 50. The Court made that determination because:

---

[11] This Doe has been an active litigant, despite no evidence of his standing (let alone identity), having made 17 filings since September 3, 2019 (AA-113). Presumably, documents identifying this Doe (which is not even cross-referenced with any Doe number assigned by the Court nor any documents in which his name appears) have yet to be release.

> The remaining sealed materials at issue here include filings related to, inter alia, motions to compel testimony, to quash trial subpoenae, and to exclude certain deposition testimony. All such motions, at least on their face, call upon the court to exercise its Article III powers. Moreover, erroneous judicial decision-making with respect to such evidentiary and discovery matters can cause substantial harm. Such materials are therefore of value to those monitoring the federal courts.

Id. (internal citations and quotation marks omitted). This Court specifically held that they are all "judicial documents". *Id.* ("Insofar as the District Court held that these materials are not judicial documents because it did not rely on them in adjudicating a motion, this was legal error.") The District Court was, thereupon, ordered to conduct "a particularized review and unseal all documents for which the presumption of public access outweighs any countervailing privacy interests." *Id.* at 51. For every document, or portion thereof, not unsealed, the District Court must "articulate specific and substantial reasons for sealing such material". *Id.* at 50.

As this Court noted, 167 documents were originally sealed. The District Court, on January 13, 2020, appears to have ignored this Court's holding that the sealed documents were all "judicial documents", concluding that "motions that were not decided by Judge Sweet and the

papers associated with those motions are not judicial documents subject to the presumption of public access." (AA-123). The District Court wrongly denied reconsideration on February 26, 2020 (AA-134). The District Court had no authority to countermand the express holding of this Court and refuse to undertake the particularized review commanded by this Court. To the extent the Epstein Client List appears in those documents (or where there are insufficient privacy interests outweighing the right of public access), they must be unsealed.

Thereafter, on March 31, 2020, the District Court created a "Protocol for Unsealing Decided Motions" (AA-138). That protocol is that "[a]ll submissions by Non-Parties to the Court shall be under seal" and pseudonyms were to be used. (AA-141 at §§ 3(d) & (e)). Despite the command that these Doe filings were to be filed as redacted via ECF (AA-141 at § 3(e)), the District Court has maintained a secret docket of Doe filings as recently as November 19, 2022 (Order at AA-290, discussing a non-docketed *ex parte* request for stay of release pending appeal).

It was not until July 23, 2020, *more than a year after* the *Brown* decision, that the District Court unsealed a mere 47 documents. (Written

Order dated July 28, 2020, AA-151).[12] Approximately one week later, the District Court then directed the filing of three heavily redacted documents. (AA-152 – AA-153). Then, on August 4, 2020, the District Court invited Does to submit comments via e-mail, not on the docket. (AA-154). And, on August 27, 2020, the District Court reaffirmed its protocol of having *pseudonymous Does* submit objections off-docket (and, effectively, under seal) (AA-160). It was not until October 22, 2020, that a more lightly redacted iteration of previously sealed documents ordered unsealed on July 23, 2020, were published. (AA-165 – AA-167).

Various additional sealed documents of unknown nature were filed. (*See, e.g.*, Dkt. Nos. 1139-1142, 1145-1147 & 1170-1178). Two documents were ordered unsealed on November 20, 2020 (AA-168). On January 19, 2021, an additional 112 documents were unsealed, published on January 27, 2021 (AA-173 & AA-205 – AA-209). On July 1, 2021, the District Court unsealed an additional 99 documents. (AA210 – AA-228).[13] At this

[12] No transcript of that hearing explaining the Court's reasoning or actions was filed on the docket. The only place it can be found is attached to Maxwell's opening brief in her appeal in this Court, *Giuffre v. Maxwell,* 20-2413-cv (2d Cir. Oct. 19, 2020).

[13] The District Court again made a determination, in direct contravention of this Court's holding, that a certain motion (AA-105) and

point, it is clear that this Court's counting of 167 documents does not align with the District Court's, as it appears that sub-parts or exhibits are treated as documents in the count. Thus, it is impossible for the public or the press to ascertain what actually remains sealed.

On September 28, 2021, the District Court adopted a "streamline[d] unsealing process," considering the documents first regarding the Does who objected and then those who did not. (AA-229). This process included sealed briefing that intervenor Herald would not be permitted to see. (Order of Nov. 15, 2021, AA-232). Thereafter, on April 19, 2022, the District Court ordered the unsealing of an additional 54 documents, which were published on May 3, 2022 (AA-240, AA-258 – AA-259).

No other documents were ordered unsealed until November 19, 2022 (*see* AA-290), but neither that order nor the unsealed documents have been published. At most, it appears that, for the first time, in a case involving at least 183 Does, three of the Does have been identified—one a victim who previously went public, one an assistant to Maxwell, and the other, "Thomas Pritzker, the billionaire executive chairman of Hyatt

---

materials filed in connection with that motion were not judicial documents. (AA-214 at 10-11).

Hotels who is listed in Epstein's little black book of contacts" (who may or may not be an Epstein client).[14] Thus, more than three years after the District Court was ordered to unseal documents, the client list remains a matter of the utmost secrecy.[15]

As judicial documents, the Epstein Client List (and other improperly sealed documents) must be unsealed. As the identities of the Epstein clients would appear in judicial documents, there must be compelling reasons to seal them. "Since such a document is the basis for the adjudication, only the most compelling reasons can justify sealing." *Bernstein v. Bernstein Litowitz Berger & Grossmann LLP*, 814 F.3d 132, 136 (2d Cir. 2016). The claimed compelling reasons must be supported by specific factual findings. *United States v. Erie Cty.*, 763 F.3d 235, 236 (2d Cir. 2014). The compelling reason and facts must show more than

---

[14] Briquelet, Kate, "More Revelations Coming on Jeffrey Epstein's Powerful Pals in Soon-Unsealed Docs", THE DAILY BEAST (Nov. 18, 2022), available at <https://www.thedailybeast.com/jeffrey-epsteins-powerful-pals-will-face-new-revelations-in-soon-to-be-unsealed-docs>.

[15] The fact that Pritzker was in Epstein's contacts is all that has been revealed. Thus, intervenor does not wish to take the position that he was one of Epstein's clients, unless and until this information is unsealed. It is just as likely that Pritzker was never involved in anything untoward. Accordingly, if he has nothing to hide, presumably he too would like more information revealed, as the shadows over this case are hiding something – and sunshine would be the best disinfectant.

mere conjecture, and more than embarrassment, incrimination, or wider exposure of the facts to the public. *Bernstein*, 814 F.3d at 144 (finding that information that was embarrassing or suggested the party was complicit in a kickback scheme fell, "woefully short of the kind of showing which raises even an arguable issue as to whether it may be kept under seal") (internal citation omitted). The "privacy concerns" of sex traffickers and rapists cannot be a compelling reason to hide these documents from the public – even if they might be very wealthy or very politically connected. Anything that Maxwell or those who abused these girls might consider to be embarrassing or raise a concern of incrimination cannot be held back from the public for those reasons, as the press has the right to report on the happenings of the judiciary. A party must present specific factual findings sufficient to overcome the presumption that court records will be open to the public if they want that record sealed.

There are no such reasons to seal the Epstein Client List, to the extent clients are identified in the records that remain sealed. Maxwell did not have standing to raise privacy concerns for third parties. More importantly, even if she did, the concerns raised are insufficient when

contrasted with the rights of the people to have open courts. The Does have litigated in secret and their actual objections are unknown. If the Doe Epstein Clients are public figures, and it is highly likely they are, then this would be a matter of great public interest. Mere privacy concerns are insufficient to warrant sealing of records – especially when the privacy interest presumably asserted would be to hide awful wrongdoing. This is not a case involving merely spurious and defamatory allegations—Maxwell and Epstein were criminally convicted for their participation in the sex trafficking at issue. Had Epstein not suddenly died upon the release of this Court's summary judgment records, while jailed on a federal indictment for sex trafficking, this information would have been revealed at his trial, based on the number of victims that testified following his death.

If the Epstein Client List is in the District Court's file, it must be unsealed. If it is being hidden from the public, there should be a shockingly compelling reason – and that reason should not include "protecting the ruling class from its misdeeds being known."

CONCLUSION

When Sextus Tarquinius raped Lucretia, she publicly named the criminal. That it was the son of the King had major political repercussions, leading to the end of the Roman monarchy. Had Lucretia been raped in the Southern District of New York, there might never have been a Roman Republic, as it seems that it would have protected Tarquin's privacy.

Are Epstein and Maxwell's clients so powerful, so well-connected, so rich, that they rival kings of antiquity? Have they bent justice to serve their wills? If not, then what is happening here?

Epstein and Maxwell were convicted of sex trafficking. Based on the information the public now has, they are the first people in history to traffic victims to … nobody. The public has a right to know who these people are and how and why their influence has protected them thus far.

The District Court's actions are unacceptable and an affront to this Court's authority. Numerous documents remain unsealed—including documents where even the Does *did not object*. And, others have been published, but redacted, in a clandestine process that suggests impropriety and insufficient unsealing. Whatever role the Herald has

played, it has been less than fully effective, not appealing orders of the District Court, including ones expressly disregarding this Court's holding in the decision bearing Ms. Brown's name that *all* of the documents under seal were judicial documents. In light of the foregoing, Appellant requests this Court reverse the order of the District Court denying the motion to intervene and unseal and direct the District Court to publish documents setting forth the Epstein Client List on the public docket.

Dated: November 28, 2022.

Respectfully Submitted,

/s/ Marc J. Randazza
Marc J. Randazza
Jay M. Wolman
Randazza Legal Group, PLLC
30 Western Avenue
Gloucester, MA 01930
Tel: 702-420-2001
Email: ecf@randazza.com

John C. Burns
BURNS LAW FIRM
P.O. Box 191250
St. Louis, Missouri 63119
Tel: 314-329-5040
Email: john@burns-law-firm.com

Attorneys for Appellant/Putative Intervenor, TGP Communications, LLC d/b/a The Gateway Pundit

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on November 28, 2022, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I further certify that a true and correct copy of the foregoing document being served via transmission of Notices of Electronic Filing generated by CM/ECF.

/s/ Marc J. Randazza
Marc J. Randazza

CERTIFICATE OF COMPLIANCE

This brief complies with the word limit of Local Rule 32.1(a)(4)(A) because, excluding the portions exempted by Fed. R. App. R. 32(f), this brief contains 5,272 words.

This brief also complies with the typeface requirements of Fed. R. App. P. 32 (a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point Century Schoolbook font.

/s/ Marc J. Randazza
Marc J. Randazza