UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
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VIRGINIA L. GIUFFRE,

Plaintiff,

v. 15 CV 7433 (RWS)

GHISLAINE MAXWELL, et al.,

Defendants.

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New York, N.Y.
May 9, 2018
12:10 p.m.

Before:

HON. ROBERT W. SWEET,

District Judge

APPEARANCES

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THE COURT: I'll hear the movant in Giuffre.

MR. BOHRER: Your Honor, may I deal with one preliminary thing first?

THE COURT: Sure.

MR. BOHRER: My assistant working with me, Ms. Harrington -- she's done everything to get admitted. She has an admission date in July, but she's not actually admitted to the court.

Is it okay if she sits here with me?

THE COURT: Of course. Delighted to have you.

MR. BOHRER: Are you allowed to admit her?

THE COURT: Certainly I'll admit her pro hac vice.

MR. BOHRER: Thank you, your Honor.

Your Honor, my name is Sandy Bohrer with the law firm of Holland & Knight. We represent the *Miami Herald*. We're seeking to intervene. We're the third party that's sought to intervene.

The *Miami Herald* does investigative reporting. My reporter is an award-winning investigative reporter. We're seeking access to the entire file. I realize that before us, two people came in and sought access to different portions of the file. But I think the circumstances have changed now and the situation has changed now such that the Court should be in a position where it should look favorably on our motion.

First, your Honor, one of the things that's changed is

there is no impending trial. If the Court recalls, in your order --

THE COURT: I do recall.

MR. BOHRER: The case has been settled.

The second one is the Court was concerned about the revelation of embarrassing information or, worse perhaps I suppose, private information, about the plaintiff. But the plaintiff now, with regard to my motion -- and obviously her counsel can speak for herself -- has agreed to our motion if it results in opening the whole file. So I think that the underpinnings for the last order are not there anymore and we have to find another way, if this motion to unseal is to be denied.

My clients aren't here for prurient interest, and of course we would agree to things like redacting names and substituting initials and things like that. They don't identify the names of victims of sexual assaults.

But the law is such that we have to decide what standard applies. But in any event, a standard applies. In the Court's original order, the confidentiality order, it gave the parties a lot of latitude to determine something to be confidential, and then it could be challenged later.

And then subsequently after, it looked to us from an incomplete view of the record, 35 motions, the Court said that basically the parties no longer have to send a letter to the

Court, and that left to the parties the discretion to determine --

THE COURT: No. I don't think that's quite right. I think the order said you could proceed by letter rather than my motion. That's all.

MR. BOHRER: Yes.

THE COURT: But the same provisions applied. It was, in effect, a you-had-to-be-there. The motions, to say the least, were multitudinous.

MR. BOHRER: We got a taste of that, your Honor. There are two ways of looking at judicial access in our federal court system. One is the common law right of access to documents, and the other is the First Amendment.

I'll go into it in a minute. Either way, there was to be a showing by the party seeking to seal that a particular test has been met with regard to the document at issue.

The courts have held pretty strictly, according to our appellate courts, that it's a document-by-document basis. I understand from what the Court just said that a document-by-document basis is kind of a problem in this file, but that is the law.

So if it is a judicial document, then the common law right applies and we have a certain standard. If it's a document recognized by the First Amendment as a judicial document, then we have a different test. So, if it's not a

judicial document, for example, you still have to show a good cause, "you" being the party seeking to seal, not the party in my position.

And in the *Fournier* case which we cite in our papers -- that case says you can't just simply do it. You're going to have to show on a case-by-case, document-by-document basis to the trial court that there is a basis for it. So what's a judicial document, and everybody seems to have their idea about what it is.

In *Lugosch*, if I'm pronouncing that correctly, the Second Circuit says it's "a document relevant to performance of judicial function and useful in judicial process." I want to stress, your Honor, that I understand that documents can be filed for purposes that lawyers shouldn't file them.

Someone could file a complaint making a bunch of allegations just to get it in a newspaper and the allegations aren't true and they take a dismissal after the newspaper humiliates a defendant. But that's not where we are, and that's not what we're looking for.

We're looking for papers, for example, relating to summary judgment, after we've gotten past the what's frivolous/what's meritless basis, what is an issue of fact for trial or not. So relevant to performance judicial function and useful in judicial process is a good standard, and it's a Second Circuit standard.

The Second Circuit's decision in the *Under Seal* case -- these are all cases cited in our papers -- says there is a presumption of access to all filed documents, and I understand that lawyers, although not necessarily in this case, can file documents for inappropriate purposes, not to be judicially resolved. But clearly dispositive motions have a presumption of access and are judicial documents.

There's *Logosch* and a bunch of other cases we cited, including the Second Circuit's decision *Joy*. The *Lytle* case we cite makes it a point that there is no question that those are judicial documents.

We've also asked for, because we don't know exactly what else is in the record, for things like motions to compel or motions for a protective order, the other side of that. Not knowing what's in them, we can't be sure that there is not a basis in a particular paper for sealing or redacting a portion of that paper. We don't know because none of it is public.

But there are cased that cited -- *Alexander Interactive* is one of them -- that say there is a presumption of access to those papers too because there is a judicial function associated with every one of those motions, every single one of them.

Again, we assume -- and *Logosch* made a point of this -- that lawyers, when they file papers, know that Rule 11 means you don't file papers that are irrelevant to the issue

before the court for some improper purpose.

So we're assuming everything in this file was filed --

THE COURT: My mentor in this business was J. Edward Lumbard. When I was an assistant United States attorney, Lumbard would have meetings of the office and try to educate us on appropriate conduct and rules and whatever. One of J. Edward's rules was never assume a God damn thing. I make that comment because of your assumptions.

MR. BOHRER: Well, I'm trying to --

THE COURT: I understand your problem. Because of the record here, clearly I do understand. But I couldn't resist. I apologize.

MR. BOHRER: I accept, your Honor.

The only opposition at this point at this stage is by Defendant Maxwell. Defendant Maxwell has a slim set of papers in opposition, and they don't really dispute any of the basic principles I've just gone over.

If you find that a document is a judicial record, according to *Logosch*, you can only seal those records based on findings made in the public record demonstrating that closure is essential to preserve higher values and is narrowly tailored to that interest. That comes from Supreme Court decisions.

So we're at a point where, had my client been looking at this issue earlier, it would be easier to do. But the fact is all of the records that were sealed in this file were sealed

without a determination by the Court that met the standard in *Logosch* or met the standard I noted in *Fournier*, the good-cause standard where the Court has to make a finding.

Ms. Maxwell's lawyers do point out that there are documents in the file that won't qualify for access or won't require redaction. For example, it could be an attorney-client privilege document. It could be something that's embarrassing that's irrelevant to the proceedings.

Again, I can't assume whether that's right or wrong, but I noted that of the two examples she gave, one of them had to do with plaintiff and plaintiff's passport information, and plaintiff has agreed to open the whole file up.

Now, maybe they'll have some things they'll want to redact -- we don't have a problem with those -- Social Security numbers, that sort of thing. My client and my reporter write about those things all the time. She writes about children. She writes about public officials whose information needs to be redacted for safety purposes.

But the bottom line, your Honor, is without on-the-record findings meeting one test or the other, good cause if it's not a judicial document or the higher standard if it is, the record must be open. The and truth is that Ms. Maxwell has not asserted that there is anything in the record to support that.

The truth also is that something, for example, the

motion for summary judgment -- and I have read the redacted order granting the motion for summary judgment -- without such a showing all has to be opened up. The motions to compel would have to be opened up. Yes, there might be redactions, and my client is willing to cooperate in all regards to that. We do this all the time. I do other public records and judicial records access. But the bottom line is that this has to be done, or the records have to be open entirely.

Now, there are a couple little points, whether our motion is timely. The law is pretty clear that it was timely. We cited a whole series of decisions. One of them is the *Pineapple Antitrust* case. There is no deadline for filing a motion such as my client's.

The second one is there is the argument that, well, there may be some people who relied on the order, provided information with a confidentiality notation of some kind, and what about them.

I think there are a few things to say about that: First, if the confidentiality order was not entered and the confidentiality determination not made in accordance with the law, the order is not valid. And it's unfortunate, but it still gets opened up.

The second thing is -- and *Logosch* makes this point -- with even the confidentiality the Court entered, which seemed to me, the initial one, the standard one that lawyers use all

over the United States, it provides for people coming back in and saying, I challenge it. I want to open it up. I want to unseal it.

So no one, as the Second Circuit said, should assume it's closed forever once it gets in a court record. We're not seeking things that were never filed. We're not seeking records that could have been filed but weren't filed. We're just seeking access to this court file.

My client is doing a report, which unfortunately is all too timely today, about a sexual predator and a sexual trafficking scheme, and this case relates very much to it.

We have a lot of information in Florida where Mr. Epstein committed his crimes, but when she learned about this case, we realized that there is more there.

Our purpose is not prurient. It is to inform the public. It is to prevent things like this from happening and to prevent such abuses. This is the purpose of the press in America.

We're the watchdogs. We make sure things don't slip by. We make sure things are done right. We make sure that people like Mr. Epstein and people associated with him, allegedly including Ms. Maxwell, are held up to public scrutiny such that other people won't do it in the future and the right gets done.

So, your Honor, we ask that the motion be granted;

that the file be unsealed. Thank you.

MS. McCAWLEY: Your Honor, may I be heard on behalf of the plaintiff? Just briefly. Our position is very simple here with respect to Virginia.

Our position is if one docket entry is opened, all must be opened. There can be nothing in between because what would happen is if, for example, as what was presented to the Court previously, only a few documents were unsealed, only a partial piece of testimony was unsealed, that would create an incomplete record.

Virginia is prepared to stand up to her abusers, but she can't do so with her hands tied behind her back. She has to have the entire record available. It's either all or nothing. Anything less than that would be inherently unfair to her because obviously we have operated under the confines of this protective order throughout the case. So while we do oppose a selective disclosure, we don't contest, as long as there is an entire disclosure.

What that means, your Honor, is with respect to all of the record entries -- so, for example, the summary judgment, while that had certain information that was presented to the Court, it didn't have everything.

So after the summary judgment, your Honor will remember there was other witness testimony that was presented and put in the court record. There were designations for trial

that were put in the court record that tell the story of the abuse.

So in order for her to be able to respond to public attacks on her, she has to have the information available to her. If it's sealed, she has to abide by that seal. So she would be in a terrible position if she wasn't able to defend and support her own position with the testimony of those others who echoed her position.

So, your Honor, that's where we stand on this. We firmly believe that in order for the complete story to be told and to be public, if that's what's going to happen, it has to be the entire record. Anything less than that would be inherently unfair to the plaintiff. Thank you.

MR. PAGLIUCA: Good afternoon, your Honor.

THE COURT: Welcome back.

MR. PAGLIUCA: Thank you. It's good to see you again.

Your Honor, as unpleasant as this may be, I think it's important to go back over the history of the protective order in this case and some of the many squabbles and disputes -- and I emphasize the word "many" -- that the parties had in connection with the discovery in this case.

The Court may recall that about two years ago, March 17, 2016, Ms. McCawley, Ms. Menninger, and I were in the courtroom. At that point in time, Ms. McCawley was very anxious to depose my client in a very short period of time.

The position of the parties then was we'll sit for a deposition, but we need a protection order in place before we do that, and it has to be agreed upon and ordered by the Court.

I mention this, your Honor, because throughout the history of this case, the protection order has played a central part and has been relied on by the parties, the Court, and the witnesses and relied on in a way that I believe, frankly, that Ms. McCawley's position is not well-founded here because indeed there are many judicial admissions by the parties to this case during the course of the case where they relied on and asked the Court to endorse and protect the parties and the witnesses under the protection order.

So the first example of this, your Honor, which I think is important with regard to the reliance issue is that March 17, 2016, hearing before your Honor.

Ms. McCawley was pressing hard for a deposition date, and we hadn't gotten all of the documents, and we hadn't had a protective order. And Ms. McCawley says -- and this is at page 9 of that transcript, your Honor, dated March 17, 2016 -- "Your Honor, if I can have the deposition of the defendant in this case and move this case forward, I will agree to their protective order. I just want that deposition."

And the Court says: "Yes."

Then Ms. McCawley says: "It is that important to me." Then she says: "Your Honor, you can today enter the protective

order that they submit. I will disregard my objections if I get the deposition."

The Court: "You will agree now to the protective order?"

Ms. McCawley: "Yes. If it means I can get her deposition, yes, I will do that."

The Court: "oh, okay. Good. Well, that's solved then."

Well, that solved it for the course of this case, your Honor, and it should solve it now.

The Court may then recall that we sat for that deposition, and we disagreed about many of the questions that were asked to our client because of her privacy concerns.

Ms. Maxwell has and had a constitutional right of privacy and, on my advice, refused to answer a number of questions related to what I will loosely characterize as her "adult sexual conduct."

We were back in front of the Court on a plaintiff's motion to compel answers to those questions where we asserted Ms. Maxwell's privacy interest in not responding to those questions.

We cited to the Court a number of cases, including *Doe v. Bolton*, a U.S. Supreme Court case, which holds: "Personal sexual conduct is a fundamental right protected by the right to privacy."

In response to that, the plaintiffs said to the Court: "well, your Honor, we have a protective order in place, and that assures Ms. Maxwell's right to privacy in answering those kinds of questions." And that was their response in docket number 152 which was filed with the Court on May 11, 2016.

And the Court accepted that response and held, in compelling Ms. Maxwell to answer those questions, her private questions about her own life -- the Court ruled that: "The privacy concerns are alleviated by the protection order in this case drafted by the defendant."

So we lived with the protection order, and we answered those questions. And that order was entered by the Court on June 20, 2016.

I don't agree with the movant's counsel, and I don't assume, your Honor, that the documents in this case were filed for a good purpose. I complained early and often to this Court about statements made by opposing counsel and documents filed with the Court which I viewed to be not judicial documents, not necessary for the determination of any issue in this case, but simply filed in some effort to try to get the story that they were promoting out to the Court.

There is virtually no document that was presented to this Court that, in my view, throughout the majority of this case, had a legitimate function other than to advance the agenda of the plaintiff in this case.

I move on to the witnesses in this case who relied on this protection order, your Honor. There were 29 depositions taken in connection with this case. Many of these witnesses were represented by lawyers. Many of these witnesses did not want to be deposed, and the Court may recall that the Court had to issue a number of orders compelling the deposition testimony of many of the witnesses.

The Court's protection order was a significant factor in securing the testimony of these witnesses. Counsel for both parties would get contacted by either the deponent or the lawyer for the deponent. And they would raise concerns about what's going to happen to my testimony? Who is going to get access to it? You are asking me about many private issues.

And this would include alleged victims of Mr. Epstein who did not want to testify in deposition who were represented by lawyers. It would include other people who were accused by plaintiff's counsel as participants with Mr. Epstein.

I will give one example to the Court. I will refer to this witness only as Nadia. She was deposed, compelled to be deposed, after much litigation. She was represented by a lawyer here, Erica Dubno.

We start the record in that deposition with Ms. Dubno saying: "We believe this deposition is pursuant to a protective order. We want to ensure the confidentiality of everything that occurs during this deposition and that all

parties agree to a protective order for confidentiality of this deposition." That's at page 6 of Nadia's transcript.

Mr. Edwards was in attendance at that deposition, your Honor, and assured the witness and her lawyer: "This and the other depositions that are designated as confidential are being treated as confidential by the Court." That's what Mr. Edwards, plaintiff's counsel, tells the witness and her lawyer.

I indicated: "I have no objection to this deposition being deemed confidential and subject to the protection order," And Mr. Edwards agree, "No objection." That occurred a number of times during the course of this case.

So we have these third parties who, through no fault of their own, are being questioned about extremely sensitive personal matters and are doing so under compulsion and with the understanding that they are protected by this Court's protective order.

So the fact that the plaintiff is somewhat flip-flopping here on this issue I think is really of no consequence because it is the Court's order. It is not Ms. McCawley's order. It's not my order. It's the Court's order.

It was stipulated to by the plaintiff, and the plaintiff relied on it. And in my view, these are judicial admissions that can't be taken back at this point because they

were relied on to advance their position during the course of the litigation, and you can't change that now because there is some other agenda here.

The other thing that I think is interesting, if you read carefully the plaintiff's papers, is they're not really agreeing to really anything. What they're agreeing to is maybe it's okay if the entire record gets unsealed, but, gee. There are things in there that we think probably shouldn't be unsealed anyway, and we're going to need to talk about that down the road, which I think leads to then a discussion of kind of what we're talking about in the universe of documents here that the Court has to consider.

The Court is well aware that there are over 900 filings in this case, and I would group those into largely two categories. The first would be discovery squabbles by the parties, and then the second would be the flurry of pretrial motions that the Court was deluged with shortly before trial a year ago and then the summary judgment motion.

The Court did not rule on, I would say, the vast majority of the pretrial motions that were pending when the parties settled the case. I don't recall, frankly, how many of those that there were, but I know that there were banker's boxes of papers that the Court had that were under consideration for those motions.

I break these categories out because indeed the

overwhelming record in this case is that these are not judicial documents, and in fact, the Court didn't rule on a huge number of the filings that were before the Court. So I don't see how anyone could consider these to be judicial documents because I don't believe that they were considered by the Court, given the settlement of the parties. So that's the universe of what we're talking about here.

The *Lugosch* case -- the subject matter of that is a motion to intervene with regard to a summary judgment motion. Here we have a different situation. The intervenor, late to the party by three years at this point, asks to unseal 900 filings with this Court.

So I don't understand how you can sit on your hands for three years and then come in and say, well, there's this enormous public interest in this case which, by the way, the *Miami Herald* has not published one article about this case, your Honor. Not one. So there is no interest in this case. They may be interested in Mr. Epstein, but I'm not here representing Mr. Epstein.

We know -- and the Court knows this -- that just because something gets filed, it's not a judicial document, and it's not entitled to any sort of access presumptively.

So let's assume for a moment that there is something that the Court considers a judicial document in this pile. We first to have to look at has the movant established that this

is a judicial document.

I don't have the burden of establishing whether these are judicial documents or not, and the Court is in a position of determining whether these are judicial documents, not me and not the movant.

Then we talk about the weight of presumption of access. And, again, the vast majority of all of the papers before the Court were not germane, in my view, to any of the Court's determinations here. They were, in my view, simply added for effect and had really no purpose in connection with the pleadings.

The Court has to do a balancing test. This is a nonexclusive list of factors, but two of the factors that are discussed in *Lugosch* are the privacy interests of those resisting discovery, judicial efficiency, and then there is a discussion about reliance on the protection order. The Court can use any of those factors to find that any of these documents should not be disclosed or not accessible by the public or the media.

Judicial economy was in fact advanced, your Honor, by the way that these documents were handled and should be handled. The Court addressed this issue in its opinion I think issued on June 20 -- let me find the date. Sorry. November 2, 2016, your Honor.

I think sort of presaging some of these issues, I

quote the Court to the Court: "By the very nature of this action, issues of credibility and reputation abound concerning sensitive personal conduct."

The parties and the Court recognized early on the good cause for the protective order which was entered "to protect the discovery and dissemination of confidential information or information which improperly annoy, embarrass, or oppress any party, witness, or person providing discovery in this case."

The Court went on to say that there is no dispute that the documents, at least with regard to this order, were confidential and that they were, the Court found, properly designated as such.

All of the documents that have been submitted in connection with this case are highly sensitive confidential documents that relate to very private matters of many individuals.

Everyone associated with this case relied heavily on this protection order throughout the conduct of this case, and that includes the Court, the witnesses, and the parties.

I think that the Court has, at least twice now, found that this protection order should remain in effect. And it should continue the protection order because the privacy interests and the reliance, certainly of Ms. Maxwell, on the protection order outweigh any need or presumption of disclosure.

Thank you, your Honor.

MR. WOLMAN: Your Honor, my name is Jay Wolman. I represent Intervenor Michael Cernovich.

May I be heard for a minute?

THE COURT: Sure.

MR. WOLMAN: My brother at the bar mentioned the changing positions of plaintiff in this matter, but let's first focus on the changing position of the defendant.

We moved for unsealing the summary judgment motion, all the attachments, all the opposition, the order that would be forthcoming. At that time Ms. Maxwell did not oppose, but now, only after settlement, only after a year, do we have her finally coming in to say, well, now it should be remaining sealed.

Similarly, as your Honor is probably aware, we have appealed your Honor's order to the Second Circuit. Ms. Giuffre has appeared to argue against it, but Ms. Maxwell hasn't.

So right now with Ms. Giuffre's position, if she's saying you can release summary judgment materials but we want other things released as well, then really there is no barrier to the Second Circuit reversing your Honor's order at this point and at least, at a minimum, releasing the summary judgment materials because Ms. Maxwell certainly hasn't argued that that should be prohibited. Only now has she changed her position.

As to Ms. Giuffre, when we were here previously, your Honor, the plaintiff was arguing that there were privacy interests and reasons why it should not be released. She's not arguing that anymore. All she's saying now is that there is secondary gain. She wants a secondary use to be able to release the rest. And certainly we don't object to releasing the rest of the materials.

But at least as to the summary judgment materials, there is no basis to keep X under seal because Y is also kept under seal. That is not a rule. That's not a thing under the law. There is not a single precedence cited for that proposition because every document is considered in its individuality.

I want to address one other point here that seems to get conflated. It was conflated in the prior arguments. It's conflated here. It was conflated, unfortunately, I believe in your Honor's prior order.

There is the protective order issued under Rule 26(c) that provided for confidentiality designations. We're not here about that. We are here about the sealing order under Rule 5.2, and that has its own separate standard for sealing, documents that may or may not have been designated confidential under a Rule 26(c) order, but findings as to 5.2 individually need to be made, and they were not made here.

There may be grounds why something that's designated

confidential may need to be sealed under 5.2, but it's not automatic. And in fact, your Honor started out by saying that the parties still had to submit letters at one point.

Your Honor changed that requirement and allowed the parties to just submit filings under seal. They had to publish redacted versions, but they were able to submit unredacted under seal with public redactions, which is why even last night Professor Dershowitz's counsel was still filing something automatically with redactions, because that order is still in place.

So we need to bifurcate the issues of what is proper to be sealed under 5.2, and certainly the summary judgment materials should not have been sealed and should be unsealed right now.

It is not too late for the news to be interested. It was not late a year ago when we were interested, and certainly we would have that access, should the Second Circuit grant it to us anyhow.

So now under 5.2, we need to look at it. And even to the summary judgment materials Ms. Maxwell argued in her papers that there are some documents that may need certain redactions or were irrelevant.

If they were irrelevant in her motion for summary judgment, why was she attaching them to her summary judgment motion. They certainly need to be relevant to the judicial

function of this Court.

The Court may consider *Alexander Interactive* for why everything else are judicial documents and should be unsealed. Thank you, your Honor.

MR. CELLI: Your Honor, may I be heard? I'm Andrew Celli for Alan Dershowitz. Good afternoon.

Very briefly, your Honor, as your Honor is aware, Alan Dershowitz is an intervenor in this case. We have been litigating for nearly two years to unseal portions of this record. And our appeal, along with Mr. Cernovich's appeal, is pending in the Second Circuit as we speak.

We just want to say that we generally support the application of the *Miami Herald*. We filed a letter along these lines last night, and that letter directs the Court's attention to document number 902 on the docket which was a letter that we wrote to your Honor in June of 2017 more or less predicting this exact turn of events and calling for -- this may be the only time we agree with Ms. Giuffre's counsel on virtually anything -- a fulsome release of information if there is going to be any release at all.

So I just wanted to make that point orally. It's in our letter, and we appreciate the Court's consideration.

THE COURT: I've read it.

MR. CELLI: Thank you, sir.

MR. BOHRER: Your Honor, might I be heard briefly in

reply?

THE COURT: Of course.

MR. BOHRER: Thank you.

Your Honor, I don't think I need to add anything to what the plaintiff said.

Defendants' counsel -- they filed a response, but nothing he said today was in the response. Basically he's saying, take my word for it. Everything should stay sealed, and that's exactly what the courts say you cannot do.

So he talks about reliance on the order and reliance by witnesses. We don't have anything in the record to indicate what witnesses relied on what, but I will say this: Depositions are not judicial records. Filed depositions, if filed for a proper purpose, are.

I don't know what was told to these witnesses or not told to them. I do know that we can protect them by eliminating their names and substituting some kind of initialing system that doesn't identify them. This is just the point. They need to come in and show you.

It struck me that when they talk about reliance on the order, your order, it says: "This protective order may be modified by the Court at any time for good cause."

So everyone looking at it knows just what the Court in *Lugosch* was saying. You can't rely on a confidentiality order to be forever. Once a document gets filed, it's at risk of

being disclosed, even if it was filed under seal and even if the sealing was appropriate in the circumstances but later becomes inappropriate.

So the *Lugosch* case again at 126 makes it quite clear that you can't just rely on a confidentiality order which actually isn't designed for this purpose.

The Court will recall your initial order said if you want to seal something, confidential is one category. If you want to seal something, as counsel just said, you have to file a motion under seal. There is a local rule on sealing.

Counsel for Ms. Maxwell suggested that there are documents that were filed that were relevant. I won't assume what he said was correct because I can't assume one way or the other, but basically he said over and over again, take my word for it. Everything should stay sealed.

And I say over and over again that's not what the Second Circuit and, indeed, the Supreme Court of the United States will permit. It has to be done on a document-by-document basis.

Whatever he said, there is a way to do that on the record. Whatever he said should be sealed. There is a way to handle that on the record. I'm not asking this Court to do that, but in Florida where I practice more, most of the time, judges routinely allow me to participate in in-camera examinations -- videos, documents, hearings, testimony -- to

help the Court determine whether something should be kept out of the public eye.

I do that with an agreement to never reveal to my client anything that I saw, observed, heard, learned during that process. The reason for that is it speeds it up. It speeds it up because it helps keep the lawyers honest.

Counsel said there are 900 filings. Okay. We aren't even able to see what a bunch of these documents are by name. More importantly, Ms. Maxwell does not say anything about how the law actually applies here.

And I want to just stress that on judicial documents, recognizing that this case is settled and it's not pending for a jury trial anymore. In *Lugosch* they talk about how access should be generally speaking, always permitted when it's a case-dispositive motion.

When I get to the conclusion -- I don't know how there is any way to read *Lugosch* as anything but supporting our position -- the court says, the Second Circuit, the United States Court of Appeals says: "We hold that documents submitted to a court in support of or in opposition to a motion for a summary judgment are judicial documents to which a presumption of immediate public access attaches under both the common law and the First Amendment."

And they talk about the higher burden. If it's a First Amendment covered document, it can only be overcome by a

specific on-the-record finding that higher values necessitate a narrowly tailored sealing. None of that was done here, and they're not urging it.

They're continuing to urge wholesale sealing. That's wrong. The Second Circuit actually said it could go back to the district court, and if these folks want to push the issue on what should be sealed and what shouldn't, they should do it.

But then the Second Circuit said: "We take this opportunity to emphasize that the district court must make its findings quickly."

And they go into, word after word and sentence after sentence, about how important it is that public access, if it's to be there, not be delayed any further. The decision in the case is inescapable. Their ruling, at least as it goes to anything that's case dispositive, is inescapable.

The authorities we cited for other acts of the judiciary, judicial acts that relate to documents, are unrebutted. Ms. Maxwell's lawyers, neither here today orally nor in their papers, said anything that we said about that is wrong. So where we are is very clear.

To determine whether docket entry 781 is a judicial record, I can't do that. I'm happy to participate in an in-camera process. I'm happy to participate if a magistrate judge or a special master is appointed in a way where I have to maintain the secrecy until the Court orders it.

But the fact is if 781 is a judicial document or not has never been determined. Is 684. I don't know what's in these documents. So, your Honor, we're left with what the Second Circuit said we need to do.

We need to go, if Ms. Maxwell's lawyers really want to do it, document-by-document. But first I think the Second Circuit is quite clear. All of the papers relating to summary judgment have to be opened. I don't think there is a way of escaping that.

We are always open, on behalf of my client, in this proceeding or others, to talking about what might be private and needs to be protected or redacted. But Ms. Maxwell has turned everything on its head. The rule is we have access unless they can show it shouldn't be done, and they haven't done it.

And talking about things that I have no knowledge about and suggesting to the Court that you should make a ruling, again, based on something where no showing is made, is just wrong.

I should have the opportunity -- everyone in the public should have the opportunity if they want to -- to come in and say, no. No. We think that should be public.

And the burden is on the party, in this case, Ms. Maxwell, to show you why it shouldn't be public, and they haven't done that. And just saying it doesn't make it true.

We believe the motion should be granted and the file opened to the public. Thank you.

THE COURT: Thank you very much. I will reserve decision.

(Adjourned)