UNITED STATES COURT OF APPEALS
FOR THE
SECOND CIRCUIT

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 9th day of August, two thousand nineteen.

Julie Brown, Miami Herald Media Company,

Intervenors - Appellants.

v.

Ghislaine Maxwell,

Defendant - Appellee,

v.

Virginia L. Giuffre,

Plaintiff - Appellee.

ORDER

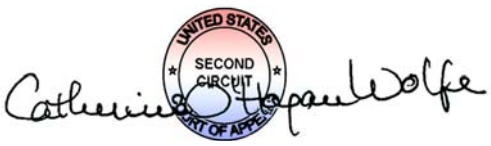
Docket No: 18-2868

Appellee, Ghislaine Maxwell, filed a petition for panel rehearing, or, in the alternative, for rehearing *en banc*. The panel that determined the appeal has considered the request for panel rehearing, and the active members of the Court have considered the request for rehearing *en banc*.

IT IS HEREBY ORDERED that the petition is denied.

FOR THE COURT:

Catherine O'Hagan Wolfe, Clerk



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UNITED STATES COURT OF APPEALS
FOR THE
SECOND CIRCUIT

At a Stated Term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 9th day of August, two thousand nineteen.

Before: José A. Cabranes,
Rosemary S. Pooler,
Christopher F. Droney,
Circuit Judges.

Julie Brown, Miami Herald Media Company,

Intervenors - Appellants,

v.

Ghislaine Maxwell,

Defendant - Appellee,

v.

Virginia L. Giuffre,

Plaintiff - Appellee.

ORDER

18-2868

Alan M. Dershowitz, Michael Cernovich,
DBA Cernovich Media,

Intervenors - Appellants,

v.

Virginia L. Giuffre,

Plaintiff - Appellee,

v.

Ghislaine Maxwell,

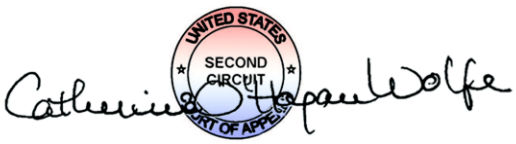
Defendant-Appellee.

16-3945(L)
17-1625(Con)
17-1722(Con)

IT IS HEREBY ORDERED that the Clerk is directed to issue the mandate forthwith.

For the Court:

Catherine O'Hagan Wolfe,
Clerk of Court



UNITED STATES COURT OF APPEALS
FOR THE
SECOND CIRCUIT

At a Stated Term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 3rd day of July, two thousand and nineteen.

Before: José A. Cabranes,
Rosemary S. Pooler,
Christopher F. Droney,
Circuit Judges.

Julie Brown, Miami Herald Media Company,

Intervenors - Appellants.

v.

Ghislaine Maxwell,

Defendant - Appellee,

v.

Virginia L. Giuffre,

Plaintiff - Appellee.

JUDGMENT
Docket Nos. 18-2868

The appeal in the above captioned case from a judgment of the United States District Court for the Southern District of New York was argued on the district court's record and the parties' briefs. Upon consideration thereof,

IT IS HEREBY ORDERED, ADJUDGED and DECREED that the orders of the District Court entered on November 2, 2016, May 3, 2017, and August 27, 2018 are VACATED. The Court further ORDERS the unsealing of the summary judgment record as described in its opinion. The case is REMANDED to the District Court for a particularized review of the remaining materials.

For the Court:

Catherine O'Hagan Wolfe,
Clerk of Court

A True Copy
Catherine O'Hagan Wolfe, Clerk
United States Court of Appeals, Second Circuit

In the
United States Court of Appeals
for the Second Circuit

AUGUST TERM 2018

No. 18-2868-cv

JULIE BROWN, MIAMI HERALD COMPANY,
Intervenors-Appellants,

v.

GHISLAINE MAXWELL,
Defendant-Appellee,

v.

VIRGINIA L. GIUFFRE,
Plaintiff-Appellee.

No. 16-3945-cv(L)
No. 17-1625 (CON)
No. 17-1722(CON)

ALAN M. DERSHOWITZ, MICHAEL CERNOVICH, DBA CERNOVICH MEDIA,
Intervenors-Appellants,

v.

VIRGINIA L. GIUFFRE,
Plaintiff-Appellee,

v.

GHISLAINE MAXWELL,
Defendant-Appellee.[*]

On Appeal from the United States District Court
for the Southern District of New York

ARGUED: MARCH 6, 2019
DECIDED: JULY 3, 2019

Before: CABRANES, POOLER, and DRONEY, *Circuit Judges*.

Intervenors-Appellants Alan Dershowitz, Michael Cernovich, and the Miami Herald Company (with reporter Julie Brown) appeal from certain orders of the United States District Court for the Southern District of New York (Robert W. Sweet, *Judge*) denying their respective motions to unseal filings in a defamation suit. We conclude that the

[*] The Clerk of Court is directed to amend the captions as set out above.

District Court failed to conduct the requisite particularized review when ordering the sealing of the materials at issue. At the same time, we recognize the potential damage to privacy and reputation that may accompany public disclosure of hard-fought, sensitive litigation. We therefore clarify the legal tools that district courts should use in safeguarding the integrity of their dockets. Accordingly, we **VACATE** the District Court's orders entered on November 2, 2016, May 3, 2017, and August 27, 2018, **ORDER** the unsealing of the summary judgment record as described further herein, and **REMAND** the cause to the District Court for particularized review of the remaining sealed materials.

Judge Pooler concurs in this opinion except insofar as it orders the immediate unsealing of the summary judgment record without a remand.

SANFORD L. BOHRER (Christine N. Walz, Madelaine J. Harrington, New York, NY, *on the brief*), Holland & Knight LLP, Miami, FL, *for Intervenors-Appellants Julie Brown and Miami Herald.*

TY GEE (Adam Mueller, *on the brief*), Haddon, Morgan and Foreman, P.C., Denver, CO, *for Defendant-Appellee Ghislaine Maxwell.*

PAUL G. CASSELL (Sigrid S. McCawley, Boies Schiller Flexner LLP, Ft. Lauderdale, FL, *on the brief*), S.J Quinney College of Law, University of Utah, Salt Lake City, UT, *for Plaintiff-Appellee Virginia L. Giuffre.*

ANDREW G. CELLI JR. (David A. Lebowitz, *on the brief*), Emery, Celli, Brinckerhoff & Abady LLP, New York, NY, *for Intervenor-Appellant Alan M. Dershowitz.*

MARC RANDAZZA (Jay Marshall Wolman, Las Vegas, NV, *on the brief*), Randazza Legal Group, PLLC, Hartford, CT, *for Intervenor-Appellant Michael Cernovich.*

JOSÉ A. CABRANES, *Circuit Judge*:

Intervenors-Appellants Alan M. Dershowitz ("Dershowitz"), Michael Cernovich ("Cernovich"), and the Miami Herald Company (with reporter Julie Brown, jointly the "*Herald*") appeal from certain orders of the United States District Court for the Southern District of New York (Robert W. Sweet, *Judge*) denying their respective motions to unseal filings in a defamation suit. We conclude that the District Court failed to conduct the requisite particularized review when ordering the sealing of the materials at issue. At the same time, we

recognize the potential damage to privacy and reputation that may accompany public disclosure of hard-fought, sensitive litigation. We therefore clarify the legal tools that district courts should use in safeguarding the integrity of their dockets. Accordingly, we **VACATE** the District Court's orders entered on November 2, 2016, May 3, 2017, and August 27, 2018, **ORDER** the unsealing of the summary judgment record as described further herein, and **REMAND** the cause to the District Court for particularized review of the remaining sealed materials.

I. BACKGROUND

A. Jeffrey Epstein's Conviction and the CVRA Suit

The origins of this case lie in a decade-old criminal proceeding against financier Jeffrey Epstein ("Epstein"). On June 30, 2008, Epstein pleaded guilty to Florida state charges of soliciting, and procuring a person under the age of eighteen for, 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. He received limited jail-time, registered as a sex offender, and agreed to pay compensation to his victims. In return, prosecutors declined to bring federal charges.

Shortly after Epstein entered his plea, two of his victims, proceeding as "Jane Doe 1" and "Jane Doe 2," filed suit against the Government in the Southern District of Florida under the Crime Victims' Rights Act ("CVRA"). The victims sought to nullify the plea

agreement, alleging that the Government failed to fulfill its legal obligations to inform and consult with them in the process leading up to Epstein's plea deal.[1]

On December 30, 2014, two additional unnamed victims—one of whom has now self-identified as Plaintiff-Appellee Virginia Giuffre ("Giuffre")—petitioned to join in the CVRA case. These petitioners included in their filings not only descriptions of sexual abuse by Epstein, but also new 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 Defendant-Appellee Ghislaine Maxwell ("Maxwell").[2]

Dershowitz moved to intervene, seeking to "strike the outrageous and impertinent allegations made against him and to request a show cause order to the attorneys that have made them."[3] Exercising its authority to "strike from a pleading an insufficient

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[1] On February 21, 2019, the Florida District Court ruled that federal prosecutors had violated the CVRA by failing to adequately notify the two victims-plaintiffs of the plea deal. The District Court has not yet determined the appropriate remedy. *See Doe 1 v. United States*, 359 F. Supp. 3d 1201, 1204–17 (S.D. Fla. 2019).

[2] *Doe 1 v. United States*, No. 08-CV-80736-KAM, 2015 WL 11254692, at *2 (S.D. Fla. Apr. 7, 2015) (internal quotation marks omitted).

[3] *Id.* (internal quotation marks and brackets omitted).

defense or any redundant, immaterial, impertinent, or scandalous matter . . . on its own,"[4] the Florida District Court (Kenneth A. Marra, *Judge*) *sua sponte* struck all allegations against additional parties from the pleadings, including those against Dershowitz, and therefore denied Dershowitz's motion as moot.[5]

The stricken allegations, however, quickly found their way into the press, and several media outlets published articles repeating Giuffre's accusations. In response to the allegations, on January 3, 2015, Maxwell's publicist issued a press statement declaring that Giuffre's allegations "against Ghislaine Maxwell are untrue" and that her "claims are obvious lies."[6]

B. Giuffre Sues Maxwell

On September 21, 2015, Giuffre filed the underlying action against Maxwell in the Southern District of New York. Giuffre alleged that Maxwell had defamed her through this and other public statements. Extensive and hard-fought discovery followed. Due to the volume of sealing requests filed during discovery, on August 9, 2016, the District Court entered a Sealing Order that effectively ceded control of the sealing process to the parties themselves. The Sealing Order disposed of the requirement that the parties file individual letter briefs to request sealing and prospectively granted all of the parties'

[4] Fed. R. Civ. P. 12(f).

[5] *Doe 1*, 2015 WL 11254692, at *2–3.

[6] *See Giuffre v. Maxwell*, 325 F. Supp. 3d 428, 434 (S.D.N.Y. 2018).

future sealing requests. 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.

On January 6, 2017, Maxwell filed a motion for summary judgment. The parties submitted their memoranda of law and supporting exhibits contesting this motion under seal. On March 22, 2017, the District Court denied the motion in a heavily redacted 76-page opinion. Once again, the entire summary judgment record, including the unredacted version of the District Court opinion denying summary judgment, remained under seal. On May 24, 2017, Maxwell and Giuffre executed a settlement agreement, and the case was closed the next day.

C. Motions to Intervene and Unseal

Over the course of the litigation before Judge Sweet, three outside parties attempted to unseal some or all of the sealed material. On August 11, 2016, Dershowitz moved to intervene, seeking to unseal three documents that, he argues, demonstrate that Giuffre invented the accusations against him. On January 19, 2017, Cernovich, an independent blogger and self-described "popular political journalist,"[7] moved to intervene, seeking to unseal the summary judgment record, and Dershowitz joined his motion. On April 6, 2018, after the case had settled, the *Herald* moved to intervene and unseal

[7] Br. Appellant (Cernovich) 4.

the entire docket. The District Court granted each of these motions to intervene, but denied the related requests to unseal in orders entered November 2, 2016, May 3, 2017, and August 27, 2018, respectively.

The Appellants timely appealed from each of the orders denying their respective motions to unseal. Although each Appellant seeks the release of a different set of documents, all argue that the District Court failed to analyze the documents individually or properly apply the presumption of public access to court documents. We therefore ordered that the appeals be heard in tandem and held argument on March 6, 2019.

On March 11, 2019, we issued an order to show cause why we "should not unseal the summary judgment motion, including any materials filed in connection with this motion, and the District Court's summary judgment decision."[8] The parties timely filed their responses.

II. DISCUSSION

There are two categories of sealed material at issue in these appeals: (1) the summary judgment record, which includes the parties' summary judgment briefs, their statements of undisputed facts, and incorporated exhibits; and (2) court filings made in the course of the discovery process and with respect to motions *in limine*. In this Opinion, we explain that our law requires the unsealing of the

[8] *Giuffre v. Maxwell*, No. 18-2868-cv, Docket No. 138.

summary judgment materials and individualized review of the remaining sealed materials.

While the law governing public access to these materials is largely settled, we have not yet adequately addressed the potential harms that often accompany such access. These harms are apparent. Over forty years ago, the Supreme Court observed that, without vigilance, courts' files might "become a vehicle for improper purposes."[9] Our legal process is already susceptible to abuse. Unscrupulous litigants can weaponize the discovery process to humiliate and embarrass their adversaries. Shielded by the "litigation privilege,"[10] bad actors can defame opponents in court pleadings or depositions without fear of lawsuit and liability. Unfortunately, the presumption of public access to court documents has the potential to exacerbate these harms to privacy and reputation by ensuring that damaging material irrevocably enters the public record.

We therefore take the opportunity to describe the tools available to district courts in protecting the integrity of the judicial process, and emphasize the courts' responsibility to exercise these powerful tools. We also caution the public to critically assess allegations contained in judicial pleadings.

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[9] *Nixon v. Warner Commc'ns, Inc.*, 435 U.S. 589, 598 (1978).

[10] *See* notes 46–47 and accompanying text, *post*.

A. Standard of Review

When reviewing a district court's decision to seal a filing or maintain such a seal, "we examine the court's factual findings for clear error, its legal determinations de novo, and its ultimate decision to seal or unseal for abuse of discretion."[11]

B. The Summary Judgment Materials

With respect to the first category of materials, it is well-settled that "documents submitted to a court for its consideration in a summary judgment motion are—as a matter of law—judicial documents to which a strong presumption of access attaches, under both the common law and the First Amendment."[12] In light of this strong First Amendment presumption, "continued sealing of the documents may be justified only with specific, on-the-record findings that sealing is necessary to preserve higher values and only if the sealing order is narrowly tailored to achieve that aim."[13]

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[11] *Bernstein v. Bernstein Litowitz Berger & Grossmann LLP*, 814 F.3d 132, 139 (2d Cir. 2016).

[12] *Lugosch v. Pyramid Co. of Onondaga*, 435 F.3d 110, 121 (2d Cir. 2006). We observe that our holding in *Lugosch* relies on the general principle that parties may "be assumed to have supported their papers with admissible evidence and non-frivolous arguments." *Id.* at 122. Insofar as a district court has, through striking a filing, specifically found that assumption inapplicable, the categorical rule in *Lugosch* may not apply. *See* notes 42–43 and accompanying text, *post.*

[13] *Id.* at 124. Examples of such countervailing values may include, depending on the circumstances, preserving "the right of an accused to fundamental fairness in the jury selection process," *Press-Enter. Co. v. Superior Court*

In this case, the District Court erred in several respects.[14] First, it failed to give proper weight to the presumption of access that attaches to documents filed in connection with summary judgment motions. The District Court reasoned that the summary judgment materials were "entitled to a lesser presumption of access" because "summary judgment was denied by the Court."[15] In assigning a "lesser presumption" to such materials, the District Court relied on a single sentence of dicta from our decision in *United States v. Amodeo*.[16] We have since clarified, however, that this sentence was based on a "quotation from a partial concurrence and partial dissent in the D.C. Circuit . . . [and] is thus not the considered decision of either this court or the D.C. Circuit."[17] In fact, we have expressly rejected the proposition that "different types of documents might receive different

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of California, Riverside Cty., 464 U.S. 501, 510 (1984); the protection of attorney-client privilege, *Lugosch*, 435 F.3d at 125; "the danger of impairing law enforcement or judicial efficiency," *SEC. v. TheStreet.Com*, 273 F.3d 222, 232 (2d Cir. 2001); and "the privacy interest of those who resist disclosure," *id.*

[14] Our discussion here focuses specifically on the District Court's denial of the *Herald's* motion to unseal the entire record. Because this decision grants relief to all Appellants, we need not discuss any separate, additional error in the District Court's denial of the earlier motions to unseal.

[15] *Giuffre,* 325 F. Supp. 3d at 444.

[16] 71 F.3d 1044, 1049 (2d Cir. 1995) ("*Amodeo II*") ("One judge [in the District of Columbia Circuit] has pointed out, for example, that where a district court *denied* the summary judgment motion, essentially postponing a final determination of substantive legal rights, the public interest in access is not as pressing." (internal quotation marks omitted; emphasis in original)).

[17] *Lugosch*, 435 F.3d at 121.

weights of presumption based on the extent to which they were relied upon in resolving [a] motion [for summary judgment]."[18]

Second, in contravention of our precedent, the District Court failed to review the documents individually and produce "specific, on-the-record findings that sealing is necessary to preserve higher values."[19] Instead, the District Court made generalized statements about the record as a whole.[20] This too was legal error.

Finally, upon reviewing the summary judgment materials in connection with this appeal, we find that there is no countervailing privacy interest sufficient to justify their continued sealing. Remand with respect to these documents is thus unnecessary. Accordingly, and to avoid any further delay,[21] we order that the summary judgment documents (with minimal redactions) be unsealed upon issuance of our mandate.[22]

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[18] *Id.* at 123.

[19] *Id.* at 124.

[20] *See, e.g.*, *Giuffre*, 325 F. Supp. 3d at 445 (summarily concluding that all "[t]he Summary Judgment Judicial Documents openly refer to and discuss these allegations [of sexual assault and sexual trafficking] in comprehensive detail, and that those allegations "establish[] a strong privacy interest here").

[21] *Cf. Lugosch*, 435 F.3d at 127 (ordering that "the mandate shall issue forthwith" to expedite the unsealing process).

[22] Upon issuance of our mandate, a minimally redacted version of the summary judgment record will be made accessible on the Court of Appeals docket. We have implemented minimal redactions to protect personally identifying information such as personal phone numbers, contact lists, birth dates, and social

C. The Remaining Sealed Materials

The law governing disclosure of the remaining sealed material in this case is only slightly more complex. The Supreme Court has recognized a qualified right "to inspect and copy judicial records and documents."[23] In defining "judicial records and documents," we have emphasized that "the mere filing of a paper or document with the court is insufficient to render that paper a judicial document subject to the right of public access."[24] Instead, "the item filed must be relevant to the performance of the judicial function and useful in the judicial process in order for it to be designated a judicial document."[25]

As our precedent makes clear, a court "perform[s] the judicial function" not only when it rules on motions currently before it, but also when properly exercising its inherent "supervisory powers."[26] A

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security numbers. We have also redacted the names of alleged minor victims of sexual abuse from deposition testimony and police reports, as well as deposition responses concerning intimate matters where the questions were likely only permitted—and the responses only compelled—because of a strong expectation of continued confidentiality. *See* Fed. R. Civ. P. 5.2. While we appreciate the views expressed in Judge Pooler's separate opinion, the panel majority believes that the efforts invested by three former district judges in reviewing these materials adequately address those concerns.

[23] *Nixon*, 435 U.S. at 597–98.

[24] *United States v. Amodeo*, 44 F.3d 141, 145 (2d Cir. 1995) ("*Amodeo I*").

[25] *Id.*

[26] *Cf. United States v. HSBC Bank USA, N.A.*, 863 F.3d 125, 135 (2d Cir. 2017) (explaining that, in considering whether the report of a monitor charged with assessing compliance with a deferred prosecution agreement is a judicial

document is thus "relevant to the performance of the judicial function" if it would reasonably have the *tendency* to influence a district court's ruling on a motion or in the exercise of its supervisory powers, without regard to which way the court ultimately rules or whether the document ultimately in fact influences the court's decision.[27] Accordingly, if in applying these standards, a court determines that documents filed by a party are *not* relevant to the performance of a judicial function, no presumption of public access attaches.[28]

Once an item is deemed relevant to the exercise of judicial power, "the weight to be given the presumption of access must be governed by the role of the material at issue in the exercise of Article III judicial power and the resultant value of such information to those

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document, "[i]f the district court's conception of its supervisory power in this context were correct, the Monitor's Report would quite obviously be relevant to the performance of the judicial function and useful in the judicial process" (internal quotation marks omitted)). Whether a specific judicial decision constitutes a "performance of the judicial function" is a question of law. Accordingly, we review such determinations *de novo*. *Id.* at 134.

[27] *Amodeo I*, 44 F.3d at 145–46 (concluding that documents were relevant to the performance of a judicial function because they would have "informed" the district court's decision whether to discharge or retain a Receiver); *see also FTC. v. Standard Fin. Mgmt. Corp.*, 830 F.2d 404, 409 (1st Cir. 1987) (citing Federal Rule of Evidence 401's "having any tendency" definition of relevance in determining whether documents were "judicial documents").

[28] As we explain below, there are several (often preferable) tools beyond sealing that district courts can use to protect their dockets from becoming a vehicle for irrelevant—and potentially defamatory—accusations. *See* Section D, *post*.

monitoring the federal courts."[29] Thus, while evidence introduced at trial or in connection with summary judgment enjoys a strong presumption of public access, documents that "play only a negligible role in the performance of Article III duties" are accorded only a low presumption that "amounts to little more than a prediction of public access absent a countervailing reason."[30] Documents that are never filed with the court, but simply "passed between the parties in discovery, lie entirely beyond the presumption's reach."[31]

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."[32] Thus, all documents submitted in connection with, and relevant to, such judicial decision-making are subject to at least some presumption of public access.[33]

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[29] *Amodeo II*, 71 F.3d at 1049.

[30] *Id.* at 1050.

[31] *Id.*

[32] *Id.* at 1049.

[33] In previous decisions, we have identified an important exception to this general rule: the presumption of public access does *not* apply to material that is submitted to the court solely so that the court may decide whether that same

Although a court's authority to oversee discovery and control the evidence introduced at trial surely constitutes an exercise of judicial power, we note that this authority is ancillary to the court's core role in adjudicating a case. Accordingly, the presumption of public access in filings submitted in connection with discovery disputes or motions *in limine* is generally somewhat lower than the presumption applied to material introduced at trial, or in connection with dispositive motions such as motions for dismissal or summary judgment.[34] Thus, while a court must still articulate specific and substantial reasons for sealing such material, the reasons usually need not be as compelling as those required to seal summary judgment filings.

Here, the precise basis for the District Court's decision to deny the motion to unseal these remaining materials is unclear. In the three paragraphs devoted to the issue, the District Court emphasized the potential for embarrassment "given the highly sensitive nature of the underlying allegations," and concluded that "the documents sealed in the course of discovery were neither relied upon by [the District] Court in the rendering of an adjudication, nor necessary to or helpful in resolving a motion."[35] It is therefore unclear whether the District Court held that these materials were not judicial documents (and thus are

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material must be disclosed in the discovery process or shielded by a Protective Order. *See TheStreet.Com*, 273 F.3d at 233.

[34] *Amodeo II*, 71 F.3d at 1049–50.

[35] *Giuffre*, 325 F. Supp. 3d. at 442 (internal quotation marks and brackets omitted).

not subject to a presumption of public access), or found that privacy interests outweighed a limited right of public access.

On either interpretation, however, the District Court's holding was error. 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. As explained above, the proper inquiry is whether the documents are relevant to the performance of the judicial function, not whether they were relied upon.[36] Indeed, decision-makers often find that a great deal of relevant material does not ultimately sway their decision. And insofar as the District Court held that privacy interests outweigh the presumption of public access in each of the thousands of pages at issue, that decision—which appears to have been made without particularized review—amounts to an abuse of discretion.[37]

In light of the District Court's failure to conduct an individualized review of the sealed materials, it is necessary to do so now. We believe the District Court is best situated to conduct this review. The District Court can directly communicate with the parties, and can therefore more swiftly and thoroughly consider particular objections to unsealing specific materials. Relatedly, the District Court can obtain the parties' assistance in effecting any necessary redactions, and in notifying any outside parties whose privacy interests might be

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[36] *See* text accompanying notes 12–18 and 26–28, *ante.*

[37] *See In re City of New York*, 607 F.3d 923, 943 n.21 (2d Cir. 2010) (explaining that "abuse of discretion" is a nonpejorative, legal "term of art").

implicated by the unsealing. Accordingly, we remand the cause to the District Court to conduct such a particularized review and unseal all documents for which the presumption of public access outweighs any countervailing privacy interests.

D. Protecting the Integrity of Judicial Proceedings

While we disagree with the District Court's disposition of the motions to unseal, we share its concern that court files might be used to "promote scandal arising out of unproven potentially libelous statements."[38] We therefore describe certain methods courts can employ to protect the judicial process from being coopted for such purposes.

The Supreme Court has explained that "[e]very court has supervisory power over its own records and files" to ensure they "are not used to gratify private spite or promote public scandal" or "serve as reservoirs of libelous statements for press consumption."[39] This supervisory function is not only within a district court's power, but also among its responsibilities.

In practice, district courts may employ several methods to fulfill this function. They may, for instance, issue protective orders forbidding dissemination of certain material "to protect a party or person from annoyance, embarrassment, oppression, or undue

[38] *Giuffre*, 325 F. Supp. 3d at 447.

[39] *Nixon*, 435 U.S. at 598 (internal quotation marks).

burden" and require that filings containing such material be submitted under seal.[40] If parties then seek to file such materials, the court may deny them leave to do so.[41] District courts may also seek to counteract the effect of defamatory statements by explaining on the record that the statements appear to lack credibility. Moreover, under Federal Rule of Civil Procedure 12(f), the district court may strike such material from the filings on the grounds that it is "redundant, immaterial, impertinent, or scandalous."[42] Because such rejected or stricken material is not "relevant to the performance of the judicial function" it would not be considered a "judicial document" and would enjoy no presumption of public access.[43] Finally, in appropriate

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[40] Fed. R. Civ. P. 26(c); *see also TheStreet.Com*, 273 F.3d at 229–30.

[41] *See, e.g.*, S.D.N.Y. Electronic Case Filing Rules & Instructions, February 1, 2019 Edition, Rule 6.1, http://nysd.uscourts.gov/ecf/ECF%20Rules%20020119%20Final.pdf.

[42] Fed. R. Civ. P. 12(f). Courts may strike material from the pleadings either "on its own" or "on motion made by a party." *Id.* Although motions to strike material *solely* "on the ground that the matter is impertinent and immaterial" are disfavored, when material is also "scandalous," no such presumption applies. *Cf. Lipsky v. Commonwealth United Corp.*, 551 F.2d 887, 893 (2d Cir. 1976); *see also Talbot v. Robert Matthews Distrib. Co.*, 961 F.2d 654, 664 (7th Cir. 1992) ("Allegations may be stricken as scandalous if the matter bears no possible relation to the controversy or may cause the objecting party prejudice."); *Wine Markets Int'l, Inc. v. Bass*, 177 F.R.D. 128, 133 (E.D.N.Y. 1998) ("Motions to strike are not generally favored, except in relation to scandalous matters."); *Alvarado-Morales v. Digital Equip. Corp.*, 843 F.2d 613, 617–18 (1st Cir. 1988) (categorizing as scandalous "matter which impugned the character of defendants").

[43] *Amodeo I*, 44 F.3d at 145.

circumstances, district courts may impose sanctions on attorneys and parties under Federal Rule of Civil Procedure 11(c).[44]

E. A Cautionary Note

We conclude with a note of caution to the public regarding the reliability of court filings such as those unsealed today.

Materials submitted by parties to a court should be understood for what they are. They do not reflect the court's own findings. Rather, they are prepared by parties seeking to advance their own interests in an adversarial process. Although affidavits and depositions are offered "under penalty of perjury," it is in fact exceedingly rare for anyone to be prosecuted for perjury in a civil proceeding.[45] Similarly,

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[44] In relevant part, Rule 11 provides:

> By presenting to the court a pleading, written motion, or other paper . . . an attorney or unrepresented party certifies that . . . it is not being presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation . . . . [T]he court may impose an appropriate sanction on any attorney, law firm, or party that violated the rule or is responsible for the violation . . . . The sanction may include nonmonetary directives; an order to pay a penalty into court; or, if imposed on motion and warranted for effective deterrence, an order directing payment to the movant of part or all of the reasonable attorney's fees and other expenses directly resulting from the violation.

Fed. R. Civ. P. 11. *See also Amodeo II*, 71 F.3d at 1049 (describing sanctions available to the court).

[45] Sonia Sotomayor & Nicole A. Gordon, *Returning Majesty to the Law and Politics: A Modern Approach*, 30 Suffolk U. L. Rev. 35, 47 n.52 (1996) ("Perjury cases are not often pursued . . . .").

pleadings, complaints, and briefs—while supposedly based on underlying evidentiary material—can be misleading. Such documents sometimes draw dubious inferences from already questionable material or present ambiguous material as definitive.

Moreover, court filings are, in some respects, particularly susceptible to fraud. For while the threat of defamation actions may deter malicious falsehoods in standard publications, this threat is non-existent with respect to certain court filings. This is so because, under New York law (which governs the underlying defamation claim here), "absolute immunity from liability for defamation exists for oral or written statements made . . . in connection with a proceeding before a court."[46] Thus, although the act of filing a document with a court might be thought to lend that document additional credibility, in fact, allegations appearing in such documents might be less credible than those published elsewhere.[47]

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[46] *Front, Inc. v. Khalil*, 24 N.Y.3d 713, 718 (2015); *see also Kelly v. Albarino*, 485 F.3d 664, 666 (2d Cir. 2007) (adopting the reasoning of the District Court explaining that this privilege is "the broadest of possible privileges"); Restatement (Second) of Torts § 587 (1977) ("A party to a private litigation or a private prosecutor or defendant in a criminal prosecution is absolutely privileged to publish defamatory matter concerning another in communications preliminary to a proposed judicial proceeding, or in the institution of or during the course and as a part of, a judicial proceeding in which he participates, if the matter has some relation to the proceeding."). *But see* note 47, *post.*

[47] While common law courts have generally interpreted the litigation privilege broadly, they nevertheless maintain an important (if rarely implemented) limitation on its scope: to qualify for the privilege, a statement must be "material and pertinent to the questions involved." *Front*, 24 N.Y.3d at 718 (quoting *Youmans*

We have long noted that the press plays a vital role in ensuring the public right of access and in enhancing "the quality and safeguards the integrity of the factfinding process."[48] When faithfully observing its best traditions, the print and electronic media "contributes to public understanding of the rule of law" and "validates [its] claim of functioning as surrogates for the public."[49]

At the same time, the media does the public a profound disservice when it reports on parties' allegations uncritically. We have previously observed that courts cannot possibly "discredit every statement or document turned up in the course of litigation," and we have criticized "the use by the media of the somewhat misleading term 'court records' in referring to such items."[50] Even ordinarily critical

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v. Smith, 153 N.Y. 214, 219–20 (1897)). It follows, then, that immaterial and impertinent statements are (at least nominally) actionable, particularly when they are "so needlessly defamatory as to warrant the inference of express malice." *Id.* (same). It seems to us that when a district court strikes statements from the record pursuant to Fed. R. Civ. P. 12(f) on the ground that the matter is "impertinent" and "immaterial," it makes the very same determination that permits a defamation action under the common law. We think the judicial system would be well served were our common law courts to revitalize this crucial qualification to the litigation privilege.

[48] *Westmoreland v. Columbia Broad. Sys., Inc.*, 752 F.2d 16, 23 (2d Cir. 1984) (quoting *Globe Newspaper Co. v. Superior Court for Norfolk Cty.*, 457 U.S. 596, 606 (1982)).

[49] *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 572–73 (1980) (plurality opinion) (internal quotation marks omitted).

[50] *Amodeo II*, 71 F.3d at 1049.

readers may take the reference to "court papers" as some sort of marker of reliability. This would be a mistake.

We therefore urge the media to exercise restraint in covering potentially defamatory allegations, and we caution the public to read such accounts with discernment.

III. CONCLUSION

To summarize, we hold as follows:

(1) Materials submitted in connection with a motion for summary judgment are subject to a strong presumption of public access.

(2) The summary judgment record at issue will be unsealed upon issuance of our mandate, subject to minimal redactions.[51]

(3) Materials submitted in connection with, and relevant to, discovery motions, motions *in limine*, and other non-dispositive motions are subject to a lesser—but still substantial— presumption of public access.

(4) The District Court is directed to review the remaining sealed materials individually and unseal those materials as appropriate.

[51] *See* note 22, *ante.*

(5) District courts should exercise the full range of their substantial powers to ensure their files do not become vehicles for defamation.

For the foregoing reasons, 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.

In undertaking this task, the District Court may be well-served by ordering the parties to submit to the Court unredacted, electronic copies of the remaining sealed materials, as well as specific, proposed redactions. The District Court may also order the parties to identify and notify additional parties whose privacy interests would likely be implicated by disclosure of these materials.

In the interests of judicial economy, any future appeal in this matter shall be referred to this panel.

POOLER, *Circuit Judge, dissenting in part*:

I join the Court's opinion in every respect but one: the decision to unseal the summary judgment record ourselves. I agree that all or most of the material must be unsealed. Nevertheless, in my view, the district court is better suited to the task. As the Court's opinion recognizes in connection with the remaining sealed materials, the district court is better positioned to communicate with the parties and any nonparties whose privacy interests might be affected by unsealing. On that score, it is worth clarifying here the breadth of the Court's unsealing order: it unseals nearly 2000 pages of material. The task of identifying and making specific redactions in such a substantial volume is perilous; the consequences of even a seemingly minor error may be grave and are irrevocable. Moreover, although I share the majority's concern about avoiding delay, I would alleviate that concern through other means—perhaps with an order directing the district court to act expeditiously and by making clear what types of limited redactions are and are not appropriate. In sum, I would unseal the district court's summary judgment decision only and leave the remainder of the materials for the district court to review, redact, and unseal on remand.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------X

VIRGINIA L. GIUFFRE,

Plaintiff,

v.

GHISLAINE MAXWELL,

Defendant.

----------X

15-cv-07433-RWS

DEFENDANT'S STATEMENT OF MATERIAL UNDISPUTED FACTS PURSUANT TO LOCAL CIVIL RULE 56.1

Laura A. Menninger
Jeffrey S. Pagliuca
HADDON, MORGAN, AND FOREMAN, P.C.
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Pursuant to Rule 56.1 of the Local Civil Rules of this Court, defendant Ghislaine Maxwell submits this statement of the material facts as to which she contends there is no genuine issues to be tried. Ms. Maxwell expressly preserves all of her objections to the admissibility of the evidence cited herein and in the accompanying memoranda of law and does not waive any objections by making this submission.

numbered.

1. **Ms. Maxwell's response to publications of plaintiff's false allegations: the March 2011 statement.** In early 2011 plaintiff in two British tabloid interviews made numerous false and defamatory allegations against Ms. Maxwell. In the articles, plaintiff made no direct allegations that Ms. Maxwell was involved in any improper conduct with Jeffrey Epstein, who had pleaded guilty in 2007 to procuring a minor for prostitution. Nonetheless, plaintiff suggested that Ms. Maxwell worked with Epstein and may have known about the crime for which he was convicted.

2. In the articles, plaintiff alleged she had sex with Prince Andrew, "a well-known businessman," a "world-renowned scientist," a "respected liberal politician," and a "foreign head of state."

3. In response to the allegations Ms. Maxwell's British attorney, working with Mr. Gow, issued a statement on March 9, 2011, denying "the various allegations about [Ms. Maxwell] that have appeared recently in the media. These allegations are all entirely false."

4. The statement read in full:

> <u>Statement on Behalf of Ghislaine Maxwell</u>
>
> By Devonshires Solicitors, PRNE
> Wednesday, March 9, 2011
>
> London, March 10, 2011 - Ghislaine Maxwell denies the various allegations about her that have appeared recently in the media. *These allegations are all entirely false.*

> It is unacceptable that letters sent by Ms Maxwell's legal representatives to certain newspapers pointing out the truth and asking for the allegations to be withdrawn have simply been ignored.
>
> In the circumstances, *Ms Maxwell is now proceeding to take legal action against those newspapers*.
>
> "I understand newspapers need stories to sell copies. It is well known that certain newspapers live by the adage, "why let the truth get in the way of a good story." However, *the allegations made against me are abhorrent and entirely untrue* and I ask that they stop," said Ghislaine Maxwell.
>
> "A number of newspapers have shown a complete lack of accuracy in their reporting of this story and a failure to carry out the most elementary investigation or any real due diligence. I am now taking action to clear my name," she said.
>
> Media contact:
>
> Ross Gow
> Acuity Reputation
> Tel: +44-203-008-7790
> Mob: +44-7778-755-251
> Email: ross@acuityreputation.com
>
> Media contact: Ross Gow, Acuity Reputation, Tel: +44-203-008-7790, Mob: +44-7778-755-251, Email: ross at acuityreputation.com

5. **Plaintiff's gratuitous and "lurid" accusations in an unrelated action.** In 2008 two alleged victims of Epstein brought an action under the Crime Victims' Rights Act against the United States government purporting to challenge Epstein's plea agreement. They alleged the government violated their CVRA rights by entering into the agreement.

6. Seven years later, on December 30, 2014, Ms. Giuffre moved to join the CVRA action, claiming she, too, had her CVRA rights violated by the government. On January 1, 2015, Ms. Giuffre filed a "corrected" joinder motion.

7. The issue presented in her joinder motion was narrow: whether she should be permitted to join the CVRA action as a party under Federal Rule of Civil Procedure 21, specifically, whether she was a "known victim[] of Mr. Epstein and the Government owed them CVRA duties." Yet, "the bulk of the [motion] consists of copious factual details that [plaintiff] and [her co-movant] 'would prove . . . if allowed to join.'" Ms. Giuffre gratuitously included

provocative and "lurid details" of her alleged sexual activities as an alleged victim of sexual trafficking.

8. At the time they filed the motion, Ms. Giuffre and her lawyers knew that the media had been following the Epstein criminal case and the CVRA action. While they deliberately filed the motion without disclosing Ms. Giuffre's name, claiming the need for privacy and secrecy, they made no attempt to file the motion under seal. Quite the contrary, they filed the motion publicly.

9. As the district court noted in ruling on the joinder motion, Ms. Giuffre "name[d] several individuals, and she offers details about the type of sex acts performed and where they took place." The court ruled that "these lurid details are unnecessary": "The factual details regarding whom and where the Jane Does engaged in sexual activities are immaterial and impertinent . . ., especially considering that these details involve *non-parties* who are not related to the respondent Government." Accordingly, "[t]hese unnecessary details shall be stricken." *Id.* The court then struck all Ms. Giuffre's factual allegations relating to her alleged sexual activities and her allegations of misconduct by non-parties. The court said the striking of the "lurid details" was a sanction for Ms. Giuffre's improper inclusion of them in the motion.

10. The district court found not only that the "lurid details" were unnecessary but also that the entire joinder motion was "entirely unnecessary." Ms. Giuffre and her lawyers knew the motion with all its "lurid details" was unnecessary because the motion itself recognized that she would be able to participate as a fact witness to achieve the same result she sought as a party. The court denied plaintiff's joinder motion.

11. One of the non-parties Ms. Giuffre "named" repeatedly in the joinder motion was Ms. Maxwell. According to the "lurid details" of Ms. Giuffre included in the motion,

Ms. Maxwell personally was involved in a "sexual abuse and sex trafficking scheme" created by Epstein:

- Ms. Maxwell "approached" plaintiff in 1999 when plaintiff was "fifteen years old" to recruit her into the scheme.
- Ms. Maxwell was "one of the main women" Epstein used to "procure under-aged girls for sexual activities."
- Ms. Maxwell was a "primary co-conspirator" with Epstein in his scheme.
- She "persuaded" plaintiff to go to Epstein's mansion "in a fashion very similar to the manner in which Epstein and his other co-conspirators coerced dozens of other children."
- At the mansion, when plaintiff began giving Epstein a massage, he and Ms. Maxwell "turned it into a sexual encounter."
- Epstein "with the assistance of" Ms. Maxwell "converted [plaintiff] into . . . a 'sex slave.'" *Id.* Plaintiff was a "sex slave" from "about 1999 through 2002."
- Ms. Maxwell also was a "co-conspirator in Epstein's sexual abuse."
- Ms. Maxwell "appreciated the immunity" she acquired under Epstein's plea agreement, because the immunity protected her from prosecution "for the crimes she committed in Florida."
- Ms. Maxwell "participat[ed] in the sexual abuse of [plaintiff] and others."
- Ms. Maxwell "took numerous sexually explicit pictures of underage girls involved in sexual activities, including [plaintiff]." *Id.* She shared the photos with Epstein.
- As part of her "role in Epstein's sexual abuse ring," Ms. Maxwell "connect[ed]" Epstein with "powerful individuals" so that Epstein could traffick plaintiff to these persons.
- Plaintiff was "forced to have sexual relations" with Prince Andrew in "[Ms. Maxwell's] apartment" in London. Ms. Maxwell "facilitated" plaintiff's sex with Prince Andrew "by acting as a 'madame' for Epstein."
- Ms. Maxwell "assist[ed] in internationally trafficking" plaintiff and "numerous other young girls for sexual purposes."
- Plaintiff was "forced" to watch Epstein, Ms. Maxwell and others "engage in illegal sexual acts with dozens of underage girls."

12. In the joinder motion, plaintiff also alleged she was "forced" to have sex with Harvard law professor Alan Dershowitz, "model scout" Jean Luc Brunel, and "many other powerful men, including numerous prominent American politicians, powerful business executives, foreign presidents, a well-known Prime Minister, and other world leaders."

13. Plaintiff said after serving for four years as a "sex slave," she "managed to escape to a foreign country and hide out from Epstein and his co-conspirators for years."

14. Plaintiff suggested the government was part of Epstein's "conspiracy" when it "secretly" negotiated a non-prosecution agreement with Eptstein precluding federal prosecution of Epstein and his "co-conspirators." The government's secrecy, plaintiff alleged, was motivated by its fear that plaintiff would raise "powerful objections" to the agreement that would have "shed tremendous public light on Epstein and other powerful individuals.

15. Notably, the other "Jane Doe" who joined plaintiff's motion who alleged she was sexually abused "many occasions" by Epstein was unable to corroborate any of plaintiff's allegations.

16. Also notably, in her multiple and lengthy consensual interviews with Ms. Churcher three years earlier, plaintiff told Ms. Churcher of virtually *none* of the details she described in the joinder motion.

17. **Ms. Maxwell's response to plaintiff's "lurid" accusations: the January 2015 statement.** As plaintiff and her lawyers expected, before District Judge Marra in the CVRA action could strike the "lurid details" of plaintiff's allegations in the joinder motion, members of the media obtained copies of the motion.

18. At Mr. Barden's direction, on January 3, 2015, Mr. Gow sent to numerous representatives of British media organizations an email containing "a quotable statement on

behalf of Ms Maxwell." The email was sent to more than 6 and probably less than 30 media representatives. It was not sent to non-media representatives.

19. Among the media representatives were Martin Robinson of the Daily Mail; P. Peachey of The Independent; Nick Sommerlad of The Mirror; David Brown of The Times; and Nick Always and Jo-Anne Pugh of the BBC; and David Mercer of the Press Association. These representatives were selected based on their request—after the joinder motion was filed—for a response from Ms. Maxwell to plaintiff's allegations in the motion.

20. The email to the media members read:

> To Whom It May Concern,
> Please find attached a quotable statement on behalf of Ms Maxwell.
>
> No further communication will be provided by her on this matter.
> Thanks for your understanding.
> Best
> Ross
>
> Ross Gow
> ACUITY Reputation
>
> Jane Doe 3 is Virginia Roberts—so not a new individual. The allegations made by Victoria Roberts against Ghislaine Maxwell are untrue. The original allegations are not new and have been fully responded to and shown to be untrue.
>
> Each time the story is re told [sic] it changes with new salacious details about public figures and world leaders and now it is alleged by Ms Roberts [sic] that Alan Derschowitz [sic] is involved in having sexual relations with her, which he denies.
>
> Ms Roberts claims are obvious lies and should be treated as such and not publicised as news, as they are defamatory.
>
> Ghislaine Maxwell's original response to the lies and defamatory claims remains the same. Maxwell strongly denies allegations of an unsavoury nature, which have appeared in the British press and elsewhere and reserves her right to seek redress at the repetition of such old defamatory claims.

21. Mr. Barden, who prepared the January 2015 statement, did not intend it as a traditional press release solely to disseminate information to the media. So he intentionally did not pass it through a public relations firm, such as Mr. Gow's firm, Acuity Reputation.

22. The January 2015 statement served two purposes. First, Mr. Barden intended that it mitigate the harm to Ms. Maxwell's reputation from the press's republication of plaintiff's false allegations. He believed these ends could be accomplished by suggesting to the media that, among other things, they should subject plaintiff's allegations to inquiry and scrutiny. For example, he noted in the statement that plaintiff's allegations changed dramatically over time, suggesting that they are "obvious lies" and therefore should not be "publicised as news."

23. Second, Mr. Barden intended the January 2015 statement to be "a shot across the bow" of the media, which he believed had been unduly eager to publish plaintiff's allegations without conducting any inquiry of their own. Accordingly, in the statement he repeatedly noted that plaintiff's allegations were "defamatory." In this sense, the statement was intended as a cease and desist letter to the media-recipients, letting the media-recipients understand the seriousness with which Ms. Maxwell considered the publication of plaintiff's obviously false allegations and the legal indefensibility of their own conduct.

24. Consistent with those two purposes, Mr. Gow's emails prefaced the statement with the following language: "Please find attached a *quotable statement* on behalf of Ms Maxwell" (emphasis supplied). The statement was intended to be a single, one-time-only, comprehensive response—quoted in full—to plaintiff's December 30, 2014, allegations that would give the media Ms. Maxwell's response. The purpose of the prefatory statement was to inform the media-recipients of this intent.

25. **Plaintiff's activities to bring light to the rights of victims of sexual abuse.** Plaintiff has engaged in numerous activities to bring attention to herself, to the prosecution and punishment of wealthy individuals such as Epstein, and to her claimed interest of bringing light to the rights of victims of sexual abuse.

26. Plaintiff created an organization, Victims Refuse Silence, Inc., a Florida corporation, directly related to her alleged experience as a victim of sexual abuse.

27. The "goal" of Victims Refuse Silence "was, and continues to be, to help survivors surmount the shame, silence, and intimidation typically experienced by victims of sexual abuse." Toward this end, plaintiff has "dedicated her professional life to helping victims of sex trafficking."

28. Plaintiff repeatedly has sought out media organizations to discuss her alleged experience as a victim of sexual abuse.

29. On December 30, 2014, plaintiff publicly filed an "entirely unnecessary" joinder motion laden with "unnecessary," "lurid details" about being "sexually abused" as a "minor victim[]" by wealthy and famous men and being "trafficked" all around the world as a "sex slave."

30. The plaintiff's alleged purpose in filing the joinder motion was to "vindicate" her rights under the CVRA, expose the government's "secretly negotiated" "non-prosecution agreement" with Epstein, "*shed tremendous public light*" on Epstein and "other powerful individuals" that would undermine the agreement, and support the CVRA plaintiffs' request for documents that would show how Epstein "used his powerful political and social connections to secure a favorable plea deal" and the government's "motive" to aid Epstein and his "co-conspirators."

31. Plaintiff has written the manuscript of a book she has been trying to publish detailing her alleged experience as a victim of sexual abuse and of sex trafficking in Epstein's alleged "sex scheme."

32. **Republication alleged by plaintiff.** Plaintiff was required by Interrogatory No. 6 to identify any false statements attributed to Ms. Maxwell that were "'published globally, including within the Southern District of New York,'" as plaintiff alleged in Paragraph 9 of Count I of her complaint. In response, plaintiff identified the January 2015 statement and nine instances in which various news media published portions of the January 2015 statement in news articles or broadcast stories.

33. In none of the nine instances was there any publication of the entire January 2015 statement.

34. Ms. Maxwell and her agents exercised no control or authority over any media organization, including the media identified in plaintiff's response to Interrogatory No. 6, in connection with the media's publication of portions of the January 2015 statement.

35. **Plaintiff's defamation action against Ms. Maxwell.** Eight years after Epstein's guilty plea, plaintiff brought this action, repeating many of the allegations she made in her CVRA joinder motion.

36. The complaint alleged that the January 2015 statement "contained the following deliberate falsehoods":

(a) That Giuffre's sworn allegations "against Ghislaine Maxwell are untrue."

(b) That the allegations have been "shown to be untrue."

(c) That Giuffre's "claims are obvious lies."

37. **Plaintiff lived independently from her parents with her fiancé long before meeting Epstein or Ms. Maxwell.** After leaving the Growing Together drug rehabilitation facility in 1999, plaintiff moved in with the family of a fellow patient. There she met, and became engaged to, her friend's brother, James Michael Austrich. She and Austrich thereafter

rented an apartment in the Ft. Lauderdale area with another friend and both worked at various jobs in that area. Later, they stayed briefly with plaintiff's parents in the Palm Beach/ Loxahatchee, Florida area before Austrich rented an apartment for the couple on Bent Oak Drive in Royal Palm Beach. Although plaintiff agreed to marry Austrich, she never had any intention of doing so.

38. **Plaintiff re-enrolled in high school from June 21, 2000 until March 7, 2002**. After finishing the 9th grade school year at Forest Hills High School on June 9, 1999, plaintiff re-enrolled at Wellington Adult High School on June 21, 2000, again on August 16, 2000 and on August 14, 2001. On September 20, 2001, Plaintiff then enrolled at Royal Palm Beach High School. A few weeks later, on October 12, 2001, she matriculated at Survivors Charter School. *Id.* Survivor's Charter School was an alternative school designed to assist students who had been unsuccessful at more traditional schools. Plaintiff remained enrolled at Survivor's Charter School until March 7, 2002. She was present 56 days and absent 13 days during her time there. *Id.* Plaintiff never received her high school diploma or GED. Plaintiff and Figueroa went "back to school" together at Survivor's Charter School. The school day there lasted from morning until early afternoon.

39. During the year 2000, plaintiff worked at numerous jobs. In 2000, while living with her fiancé, plaintiff held five different jobs: at Aviculture Breeding and Research Center, Southeast Employee Management Company, The Club at Mar-a-Lago, Oasis Outsourcing, and Neiman Marcus. Her taxable earnings that year totaled nearly $9,000. Plaintiff cannot now recall either the Southeast Employee Management Company or the Oasis Outsourcing jobs.

40. Plaintiff's employment at the Mar-a-Lago spa began in fall 2000. Plaintiff's father, Sky Roberts, was hired as a maintenance worker at the The Mar-a-Lago Club in Palm

Beach, Florida, beginning on April 11, 2000. Mr. Roberts worked there year-round for approximately 3 years. After working there for a period of time, Mr. Roberts became acquainted with the head of the spa area and recommended plaintiff for a job there. Mar-a-Lago closes every Mother's Day and reopens on November 1. Most of employees Mar-a-Lago, including all employees of the spa area such as "spa attendants," are "seasonal" and work only when the club is open, i.e., between November 1 and Mother's Day. Plaintiff was hired as a "seasonal" spa attendant to work at the Mar-a-Lago Club in the fall of 2000 after she had turned 17.

41. **Plaintiff represented herself as a masseuse for Jeffrey Epstein.** While working at the Mar-a-Lago spa and reading a library book about massage, plaintiff met Ms. Maxwell. Plaintiff thereafter told her father that she got a job working for Jeffrey Epstein as a masseuse. Plaintiff's father took her to Epstein's house on one occasion around that time, and Epstein came outside and introduced himself to Mr. Roberts. Plaintiff commenced employment as a traveling masseuse for Mr. Epstein. Plaintiff was excited about her job as a masseuse, about traveling with him and about meeting famous people. Plaintiff represented that she was employed as a masseuse beginning in January 2001. Plaintiff never mentioned Ms. Maxwell to her then-fiancé, Austrich. Plaintiff's father never met Ms. Maxwell.

42. **Plaintiff resumed her relationship with convicted felon Anthony Figueroa.** In spring 2001, while living with Austich, plaintiff lied to and cheated on him with her high school boyfriend, Anthony Figueroa. Plaintiff and Austrich thereafter broke up, and Figueroa moved into the Bent Oak apartment with plaintiff. When Austrich returned to the Bent Oak apartment to check on his pets and retrieve his belongings, Figueroa in Plaintiff's presence punched Austrich in the face. Figueroa and plaintiff fled the scene before police arrived. Figueroa was then a convicted felon and a drug abuser on probation for possession of a controlled substance.

43. **Plaintiff freely and voluntarily contacted the police to come to her aid in 2001 and 2002 but never reported to them that she was Epstein's "sex slave."** In August 2001 at age 17, while living in the same apartment, plaintiff and Figueroa hosted a party with a number of guests. During the party, according to plaintiff, someone entered plaintiff's room and stole $500 from her shirt pocket. Plaintiff contacted the police. She met and spoke with police officers regarding the incident and filed a report. She did not disclose to the officer that she was a "sex slave." A second time, in June 2002, plaintiff contacted the police to report that her former landlord had left her belongings by the roadside and had lit her mattress on fire. Again, plaintiff met and spoke with the law enforcement officers but did not complain that she was the victim of any sexual trafficking or abuse or that she was then being held as a "sex slave."

44. **From August 2001 until September 2002, Epstein and Maxwell were almost entirely absent from Florida on documented travel unaccompanied by Plaintiff.** Flight logs maintained by Epstein's private pilot Dave Rodgers evidence the substantial number of trips away from Florida that Epstein and Maxwell took, unaccompanied by Plaintiff, between August 2001 and September 2002. Rodgers maintained a log of all flights on which Epstein and Maxwell traveled with him. Epstein additionally traveled with another pilot who did not keep such logs and he also occasionally traveled via commercial flights. For substantially all of thirteen months of the twenty-two months (from November 2000 until September 2002) that Plaintiff lived in Palm Beach and knew Epstein, Epstein was traveling outside of Florida unaccompanied by Plaintiff. During this same period of time, Plaintiff was employed at various jobs, enrolled in school, and living with her boyfriend.

45. **Plaintiff and Figueroa shared a vehicle during 2001 and 2002.** Plaintiff and Figueroa shared a '93 white Pontiac in 2001 and 2002. Plaintiff freely traveled around the Palm

Beach area in that vehicle. In August 2002, Plaintiff acquired a Dodge Dakota pickup truck from her father. Figueroa used that vehicle in a series of crimes before and after Plaintiff left for Thailand.

46. **Plaintiff held a number of jobs in 2001 and 2002**. During 2001 and 2002, plaintiff was gainfully employed at several jobs. She worked as a waitress at Mannino's Restaurant, at TGIFriday's restaurant (aka CCI of Royal Palm Inc.), and at Roadhouse Grill. She also was employed at Courtyard Animal Hospital (aka Marc Pinkwasser DVM).

47. **In September 2002, Plaintiff traveled to Thailand to receive massage training and while there, met her future husband and eloped with him.** Plaintiff traveled to Thailand in September 2002 to receive formal training as a masseuse. Figueroa drove her to the airport. While there, she initially contacted Figueroa frequently, incurring a phone bill of $4,000. She met Robert Giuffre while in Thailand and decided to marry him. She thereafter ceased all contact with Figueroa from October 2002 until two days before Mr. Figueroa's deposition in this matter in May 2016.

48. **Detective Recarey's investigation of Epstein failed to uncover any evidence that Ms. Maxwell was involved in sexual abuse of minors, sexual trafficking or production or possession of child pornography.** Joseph Recarey served as the lead detective from the Palm Beach Police Department charged with investigating Jeffrey Epstein. That investigation commenced in 2005. Recarey worked only on the Epstein case for an entire year. He reviewed previous officers' reports and interviews, conducted numerous interviews of witnesses and alleged victims himself, reviewed surveillance footage of the Epstein home, participated in and had knowledge of the search warrant executed on the Epstein home, and testified regarding the case before the Florida state grand jury against Epstein. Detective Recarey's investigation

revealed that not one of the alleged Epstein victims ever mentioned Ms. Maxwell's name and she was never considered a suspect by the government. None of Epstein's alleged victims said they had seen Ms. Maxwell at Epstein's house, nor said they had been "recruited by her," nor paid any money by her, nor told what to wear or how to act by her. Indeed, none of Epstein's alleged victims ever reported to the government they had met or spoken to Ms. Maxwell. Maxwell was not seen coming or going from the house during the law enforcement surveillance of Epstein's home. The arrest warrant did not mention Ms. Maxwell and her name was never mentioned before the grand jury. No property belonging to Maxwell, including "sex toys" or "child pornography," was seized from Epstein's home during execution of the search warrant. Detective Recarey, when asked to describe "everything that you believe you know about Ghislaine Maxwell's sexual trafficking conduct," replied, "I don't." He confirmed he has no knowledge about Ms. Maxwell sexually trafficking anybody. Detective Recarey also has no knowledge of Plaintiff's conduct that is subject of this lawsuit.

49. **No nude photograph of Plaintiff was displayed in Epstein's home.** Epstein's housekeeper, Juan Alessi, "never saw any photographs of Virginia Roberts in Mr. Epstein's house." Detective Recarey entered Epstein's home in 2002 to install security cameras to catch a thief and did not observe any "child pornography" within the home, including on Epstein's desk in his office.

50. **Plaintiff intentionally destroyed her "journal" and "dream journal" regarding her "memories" of this case in 2013 while represented by counsel.** Plaintiff drafted a "journal" describing individuals to whom she claims she was sexually trafficked as well as her memories and thoughts about her experiences with Epstein. In 2013, she and her husband created a bonfire in her backyard in Florida and burned the journal together with other documents in her

possession. *Id.* Plaintiff also kept a "dream journal" regarding her thoughts and memories that she possessed in January 2016. To date, Plaintiff cannot locate the "dream journal."

51. **Plaintiff publicly peddled her story beginning in 2011.** Plaintiff granted journalist Sharon Churcher extensive interviews that resulted in seven (7) widely distributed articles from March 2011 through January 2015. Churcher regularly communicated with plaintiff and her "attorneys or other agents" from "early 2011" to "the present day." Plaintiff received approximately $160,000 for her stories and pictures that were published by many news organizations.

52. **Plaintiff drafted a 144-page purportedly autobiographical book manuscript in 2011 which she actively sought to publish.** In 2011, contemporaneous with her Churcher interviews, plaintiff drafted a book manuscript which purported to document plaintiff's experiences as a teenager in Florida, including her interactions with Epstein and Maxwell. Plaintiff communicated with literary agents, ghost writers and potential independent publishers in an effort to get her book published. She generated marketing materials and circulated those along with book chapters to numerous individuals associated with publishing and the media.

53. **Plaintiff's publicly filed "lurid" CVRA pleadings initiated a media frenzy and generated highly publicized litigation between her lawyers and Alan Dershowitz.** On December 30, 2014, plaintiff, through counsel, publicly filed a joinder motion that contained her "lurid allegations" about Ms. Maxwell and many others, including Alan Dershowitz, Prince Andrew, Jean-Luc Brunel. The joinder motion was followed by a "corrected" motion and two further declarations in January and February 2015, which repeated many of plaintiff's claims. These CVRA pleadings generated a media maelstrom and spawned highly publicized litigation between plaintiff's lawyers, Edwards and Cassell, and Alan Dershowitz. After plaintiff publicly

alleged Mr. Dershowitz of sexual misconduct, Mr. Dershowitz vigorously defended himself in the media. He called plaintiff a liar and accused her lawyers of unethical conduct. In response, attorneys Edwards and Cassell sued Dershowitz who counterclaimed. This litigation, in turn, caused additional media attention by national and international media organizations.

54. **Plaintiff formed non-profit Victims Refuse Silence to attract publicity and speak out on a public controversy.** In 2014, plaintiff, with the assistance of the same counsel, formed a non-profit organization, Victims Refuse Silence. According to plaintiff, the purpose of the organization is to promote plaintiff's professed cause against sex slavery. The stated goal of her organization is to help survivors surmount the shame, silence, and intimidation typically experienced by victims of sexual abuse. Plaintiff attempts to promote Victims Refuse Silence at every opportunity. For example, plaintiff participated in an interview in New York with ABC to promote the charity and to get her mission out to the public.

Dated: January 6, 2017

Respectfully submitted,

/s/ Laura A. Menninger

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CERTIFICATE OF SERVICE

I certify that on January 6, 2017, I electronically served this *Defendant's Statement of Material Undisputed Facts Pursuant to Local Civil Rule 56.1* via ECF on the following:

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------X

VIRGINIA L. GIUFFRE,

Plaintiff,

v.

GHISLAINE MAXWELL,

Defendant.

----------X

15-cv-07433-RWS

Memorandum of Law in Support of Defendant's Motion for Summary Judgment

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