

20-2413

**UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT**

VIRGINIA L. GIUFFRE,

Plaintiff-Appellee,

v.

GHISLAINE MAXWELL,

Defendant-Appellant,

SHARON CHURCHER, JEFFREY EPSTEIN,

Respondents,

JULIE BROWN, MIAMI HERALD MEDIA COMPANY, ALAN M.
DERSHOWITZ, MICHAEL CERNOVICH, DBA CERNOVICH MEDIA

Intervenors.

On Appeal from the United States District Court
for the Southern District of New York, 15-cv-7433 (LAP)

**CORRECTED BRIEF OF AMICI CURIAE
THE REPORTERS COMMITTEE FOR FREEDOM OF THE PRESS
AND 34 MEDIA ORGANIZATIONS IN SUPPORT OF
INTERVENORS JULIE BROWN AND MIAMI HERALD**

Katie Townsend

Counsel of Record

Bruce D. Brown

THE REPORTERS COMMITTEE FOR
FREEDOM OF THE PRESS

1156 15th St. NW, Suite 1020

Washington, DC 20005

Telephone: (202) 795-9300

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IDENTITY AND INTEREST OF AMICI CURIAE

Amici curiae are the Reporters Committee for Freedom of the Press, ALM Media, LLC, American Broadcasting Companies, Inc., d/b/a ABC News, The Atlantic Monthly Group LLC, Boston Globe Media Partners, LLC, BuzzFeed, The Center for Investigative Reporting (d/b/a Reveal), The E.W. Scripps Company, First Amendment Coalition, Gannett Co., Inc., Inter American Press Association, International Documentary Assn., Investigative Reporting Workshop at American University, MediaNews Group Inc., MPA - The Association of Magazine Media, National Journal Group LLC, National Newspaper Association, National Press Club Journalism Institute, The National Press Club, National Press Photographers Association, New York News Publishers Association, New York Public Radio, The New York Times Company, The News Leaders Association, The Philadelphia Inquirer, POLITICO LLC, Pulitzer Center on Crisis Reporting, Radio Television Digital News Association, The Seattle Times Company, Society of Environmental Journalists, Society of Professional Journalists, TIME USA, LLC, Tully Center for Free Speech, Vox Media, LLC, and The Washington Post.¹

¹ Pursuant to Fed. R. App. P. 29(a)(4)(E) and 2d Cir. R. 29.1(b), amici state as follows: (1) no party's counsel authored this brief in whole or in part; (2) no party or party's counsel contributed money that was intended to fund preparing or submitting this brief; and (3) no person—other than the amici curiae, their

Lead amicus the Reporters Committee for Freedom of the Press is an unincorporated nonprofit association. The Reporters Committee was founded by leading journalists and media lawyers in 1970 when the nation’s news media faced an unprecedented wave of government subpoenas forcing reporters to name confidential sources. Today, its attorneys provide pro bono legal representation, amicus curiae support, and other legal resources to protect First Amendment freedoms and the newsgathering rights of journalists.²

As representatives and members of the news media, amici have a strong interest in protecting the public’s First Amendment and common law rights of access to court documents. Members of the press regularly rely upon court documents to inform the public about specific cases of public interest, as well as to facilitate public monitoring of the judicial system as whole. Amici write in support of the Intervenors-Appellants Julie Brown and the *Miami Herald* (collectively, the “*Herald*”) because the records at issue in this appeal will inform the public about litigation of significant public interest and concern.

members, or their counsel—contributed money that was intended to fund preparing or submitting this brief.

² Descriptions of each of the amici are included below as Appendix A.

SOURCE OF AUTHORITY TO FILE

Counsel for Plaintiff-Appellee, Defendant-Appellant, and Intervenors Julie Brown, Miami Herald Media Company, and Michael Cernovich, dba Cernovich Media, have consented to the filing of this brief. *See* Fed. R. App. P. 29(a)(2).

INTRODUCTION

This case concerns the public’s right of access to sealed judicial records in a settled defamation lawsuit brought by Virginia L. Giuffre against Ghislaine Maxwell. The underlying subject matter of the defamation lawsuit is one of undeniable, legitimate interest to the public: Ms. Giuffre’s sexual abuse and trafficking by the now-deceased financier and convicted sex offender Jeffrey Epstein, and her allegations concerning Maxwell’s participation in that abuse.

Last year, the Court reversed the district court’s denial of a motion to unseal filed by the *Herald* that sought public access to the sealed filings in Ms. Giuffre’s defamation case. *Brown v. Maxwell*, 929 F.3d 41, 45–46 (2d Cir. 2019). The Court remanded, instructing the district court to unseal the parties’ summary judgment filings and to conduct an individualized review of the remaining sealed materials. *Id.* at 46–47. Among those remaining sealed materials were the records at issue in this appeal: (i) the transcripts of an April 2016 deposition given by Maxwell and that of a non-party “Doe 1,” and (ii) “court submissions excerpting from, quoting from, or summarizing the contents of the transcripts” (collectively, the “Deposition Records”). *Giuffre v. Maxwell*, No. 15 CIV. 7433 (LAP), 2020 WL 4362257, at *1 (S.D.N.Y. July 29, 2020). The Court found it unclear whether the district court had denied the *Herald*’s motion to unseal the Deposition Records and other sealed materials because the district court concluded that they were not

judicial documents or because it found that “privacy interests outweighed a limited right of public access.” *Brown*, 929 F.3d at 50–51. Regardless of the basis for the district court’s decision, the Court held that the district court erred:

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. . . . 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.

Id.

Following remand, at a hearing conducted on July 23, 2020, the district court enumerated the particulars of the individualized review it had conducted:

To remind us where we are in the process of unsealing materials from *Giuffre v Maxwell*, the Court is to:

One, evaluate the weight of the presumption of public access to the materials;

Two, identify and evaluate the weight of any countervailing interests; and

Three, determine whether the countervailing interests rebut the presumption.

Ghislaine Maxwell’s Opening Br. (“Maxwell Br.”), Attach. 1 at 2:12–19, ECF No. 40 (“July 23 Tr.”). Applying this framework, the district court held that the Deposition Records should be unsealed, *id.* at 6:17–14:16, as “the countervailing interests identified failed to rebut the presumption of public access,” *id.* at 5:12–16.

The district court later denied Maxwell's motion to reconsider. *Giuffre v. Maxwell*, 2020 WL 4362257, at *1.

In doing so, the district court noted that because the July 23 hearing took place three weeks after Maxwell's arrest on July 2, 2020, it had considered and rejected "any role that criminal charges against Ms. Maxwell might play in rebutting the presumption of public access to the sealed materials." *Id.* The July 23 hearing also came more than two weeks after the government filed a superseding indictment against Maxwell on July 8, charging her with four counts related to the conspiracy or act of transporting or enticing minors to travel to engage in sexual activity and two counts of perjury, one of which was for statements made in her April 2016 deposition in the above-captioned case. Superseding Indictment, *United States v. Maxwell*, 20-cr-330 (S.D.N.Y. July 8, 2020) (the "Maxwell Indictment").

Maxwell now appeals to this Court seeking reversal of the district court's order unsealing the Deposition Records.

SUMMARY OF THE ARGUMENT

Amici agree with the *Herald* that the district court properly conducted an individualized review of the materials at issue in this appeal, including Maxwell's deposition, and correctly concluded that the presumption of public access to the Deposition Records heavily outweighs any countervailing interests in favor of

sealing. Amici write to address a line of argument asserted by Maxwell in her motion to stay the district court's unsealing order pending appellate review, (Ghislaine Maxwell's Emergency Mot. to Stay Pending Appeal or, in the Alternative, Mot. for a Temporary Administrative Stay Pending Full Consideration of the Mot. to Stay at 29–30, ECF No. 10-1), and alluded to in Maxwell's briefing on the merits of her appeal.³ Specifically, Maxwell invoked a “cautionary note” offered by this Court in its earlier *Brown v. Maxwell* decision to argue that “[u]nless this Court stays the unsealing of the deposition material, there will be nothing to protect against uncritical reporting of the deposition material's contents, reporting that will only undermine the ability to secure a fair trial for Ms. Maxwell.” *Id.* at 30. Maxwell echoes this line of argument in her appellate brief, though without explicit reference to the cautionary dicta in the Court's prior decision. Maxwell Br. at 1, 43 (arguing that the “media have all but convicted her[,]” and that “the unsealing of the deposition material would result in substantial negative media publicity . . . affecting [her] right to a fair trial.”).

Amici take seriously the Court's concern, stated in its earlier *Brown* decision, that some members of the public may misapprehend reporting about the contents of court filings generated by adverse parties in litigation, and may not

³ This Court granted the motion to stay. *See* Order, ECF No. 30.

fully appreciate the distinction between allegations in court documents and proven factual findings. This is not, however, as the Court itself recognized, a basis to deny the press and public access to judicial records. And, indeed, greater transparency in cases like this one can help the public better understand the adversarial nature of litigation; more access, not less, is the key to enabling an informed public to understand and oversee parties' use of the judicial system.

In any event the risk identified by the Court in *Brown*, that the public will be misled by fraudulent allegations in court filings, is not implicated by the Deposition Records at issue here, which include Maxwell's own testimony. Unsealing those records will not prevent her from receiving a fair criminal trial.

Moreover, there is a significant public interest in the Deposition Records. The criminal allegations now pending against Maxwell—which include sexual assault and trafficking of minors, as well as a perjury charge arising out of her April 2016 deposition testimony—are matters of the utmost public concern, and the public will better understand those charges if the Deposition Records are unsealed.

ARGUMENT

I. The Court’s note of caution in its earlier *Brown* decision does not require the continued sealing of the Deposition Records.

The Court’s cautionary note in *Brown* consisted of several parts. *First*, the Court noted that because materials submitted by parties in litigation “seek[] to advance their own interests in an adversarial process,” and because parties are rarely prosecuted for perjury in a civil proceeding, the documents can be “misleading,” and may “draw dubious inferences from already questionable material or present ambiguous material as definitive.” *Brown*, 929 F.3d at 52.

Second, the Court noted that court filings are in some respects “particularly susceptible to fraud” because, under New York law, the litigation privilege provides parties with “absolute immunity for defamation [] for oral or written statements made . . . in connection with a proceeding before a court.” *Id.* at 52 & n.46 (citing *Front, Inc. v. Khalil*, 24 N.Y.3d 713, 718 (2015); Restatement (Second) of Torts § 587 (1977)). As a proposed solution to the parties’ incentive to file fraudulent documents, this Court suggested that courts charged with applying the litigation privilege “revitalize” a qualification to the privilege recognized in *Youmans v. Smith*, 153 N.Y. 214, 219–20 (1897), requiring

statements to be “material and pertinent to the questions involved” in order for the privilege to apply. *Brown*, 929 F.3d at 52 n.47.⁴

Third and lastly, the Court admonished the press. While the Court acknowledged “that the press plays a vital role in ensuring the public right of access,” *id.* at 53, it wrote that “the media does the public a profound disservice when it reports on parties’ allegations uncritically,” *id.*, because the public may mistakenly take references to “court records” or “court papers” as “some sort of marker of reliability.” *Id.*

This admonition appears to have been motivated by a sequence of events described by the Court earlier in its decision, in which Giuffre and another victim of the charges to which Jeffrey Epstein pleaded guilty in 2008 petitioned to join an ongoing suit under the Crime Victims’ Rights Act (“CVRA”). As the Court described:

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

⁴ The Court stated that this qualification to the litigation privilege is appropriate because “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.” *Id.*

well as [Alan] Dershowitz (a long-time member of the Harvard Law School faculty who had worked on Epstein’s legal defense) and . . . Maxwell.

Id. The court in the CVRA case struck the allegations against these other individuals, including Maxwell, from the pleadings *sua sponte* as impertinent and immaterial under Fed. R. Civ. P. 12(f). *Id.* Nevertheless, “several media outlets published articles repeating Giuffre’s [stricken] accusations.” *Id.* Notably, some of Giuffre’s stricken allegations now form the basis of the criminal charges against Maxwell. *See* Maxwell Indictment.

As an initial matter, amici respectfully disagree that uncritical news reporting on court records and proceedings is commonplace. Truth, accuracy, and the preservation of context are central ethical precepts of journalism. *See* Society of Professional Journalists, *SPJ Code of Ethics* (Sept. 6, 2014).⁵ In particular, critical reporting about the justice system’s treatment of Epstein and his victims—especially that done by the *Herald*—has already helped the public hold prosecutors accountable for their handling of the criminal charges to which Epstein pled guilty in 2008. *E.g.* Julie K. Brown, *Federal Prosecutors Broke Law in Jeffrey Epstein Case, Judge Rules*, *Miami Herald* (Feb. 21, 2019);⁶ Julie K. Brown & Jay Weaver,

⁵ Available at <https://www.spj.org/ethicscode.asp>.

⁶ Available at <https://hrlld.us/2EOyy6r>.

Lead U.S. Prosecutor in '08 Epstein Case—Who Sources Say Wanted to Charge Him—Resigns, Miami Herald (Aug. 8, 2019).⁷

In any event, however, the concerns the Court identified in its earlier cautionary note do not militate in favor of the continued sealing of the Deposition Records. The Deposition Records may indeed contain falsehoods, as suggested by the perjury charges against Maxwell. *See* Maxwell Indictment at 15–16 (charging Maxwell with perjury for the following exchange in her April 2016 deposition: “Q: Did Jeffrey Epstein have a scheme to recruit underage girls for sexual massages? If you know. A. *I don’t know what you’re talking about.* Q. List all the people under the age of 18 that you interacted with at any of Jeffrey’s properties? A. *I’m not aware of anybody that I interacted with, other than obviously (the plaintiff) who was 17 at this point.*”) (emphasis in original). But there is no danger that press and public access to the Deposition Records would mislead the public. Rather, the allegedly false statements in question are Maxwell’s own sworn testimony, and it has been widely reported that the government has accused Maxwell of perjuring herself in this testimony, a charge for which she is currently being prosecuted. *E.g.* Adam Klasfeld, *Judge Roasts*

⁷ Available at <https://hrlid.us/2EHPWdr>.

Ghislaine Maxwell’s ‘Eleventh Hour’ Bid to Block Deposition, Courthouse News Service (July 29, 2020).⁸

In addition, while amici recognize the Court’s concern that the public may misunderstand news reports about unproven—or even false—allegations made by one party to a civil lawsuit, more access to court records and proceedings, not less, is the antidote to such misunderstanding. Selective sealing of certain documents only makes it more difficult for the press and public to obtain a full understanding of what is happening in the courts. *See Press-Enter. Co. v Superior Court*, 464 U.S. 501, 508 (1984) (noting that public access to judicial documents “enhances both the basic fairness of” the judicial system “and the appearance of fairness so essential to public confidence in the system”); *United States v. Erie Cty.*, 763 F.3d 235, 238–39 (2d Cir. 2014) (“The notion that the public should have access to the proceedings and documents of courts is integral to our system of government.”). This includes access to adverse filings, which—when both parties are represented by competent counsel, as they were in this case—can counterbalance a mistaken understanding that would attend the disclosure of just one party’s filings. *See Schlaifer Nance & Co. v. Estate of Warhol*, 194 F.3d 323, 341 (2d Cir. 1999) (“On the one hand, a court should discipline those who harass their opponents and waste

⁸ Available at <https://perma.cc/LVA8-S6KB>.

judicial resources by abusing the legal process. On the other hand, in our adversarial system, we expect a litigant and his or her attorney to pursue a claim zealously within the boundaries of the law and ethical rules.”); *cf. Ziglar v. United States*, 201 F. Supp. 3d 1315, 1328 (M.D. Ala. 2016) (“Our adversarial system, in order to be properly balanced, requires adversaries propounding adversarial positions, i.e., dogs with bite, not lap dogs.”); Monroe H. Freedman, *Judge Frankel’s Search for Truth*, 123 U. Pa. L. Rev. 1060, 1065 (1975) (“[T]ruth is a basic value and the adversary system is one of the most efficient and fair methods designed for finding it. That system proceeds on the assumption that the best way to ascertain the truth is to present to an impartial judge or jury a confrontation between the proponents of conflicting views, assigning to each the task of marshalling and presenting the evidence for its side in as thorough and persuasive a way as possible.”). In this case, which was settled in 2017, and from which many records are already available to the public, the risk of public misperception is higher if Maxwell succeeds in her appeal than if she fails.

Finally, Maxwell is incorrect that maintaining the Deposition Records under seal is the only way to safeguard her fair trial rights. *See Maxwell Br.* at 35–39. The district court engaged in an “exercise of judgment” as to “whether there is a substantial probability that the defendants’ right to a fair trial will be prejudiced.” *United States v. Gotti*, 771 F. Supp. 567, 569 (E.D.N.Y. 1991) (granting media

request to unseal); *see also United States v. Huntley*, 943 F. Supp. 2d 383, 387 (E.D.N.Y. 2013) (denying request to seal). And it correctly found no substantial probability that Maxwell’s fair trial rights would be endangered. July 23 Tr. 5:4–17; *Giuffre v. Maxwell*, 2020 WL 4362257, at *1.

“[P]retrial publicity—even pervasive, adverse publicity—does not inevitably lead to an unfair trial.” *Nebraska Press Ass’n v. Stuart*, 427 U.S. 539, 554 (1976). As the Supreme Court has made clear, the criminal justice system both anticipates and tolerates jurors who have been exposed to pretrial publicity—indeed, that exposure is an inevitable consequence of an informed citizenry. *See Reynolds v. United States*, 98 U.S. 145, 155–56 (1878) (“[E]very case of public interest is almost, as matter of necessity, brought to the attention of all the intelligent people in the vicinity, and scarcely any one can be found among those best fitted for jurors who has not read or heard of it, and who has not some impression or some opinion in respect to its merits.”). The Supreme Court has identified a number of ways to protect a defendant’s right to a fair trial without foreclosing public access to criminal proceedings. These mechanisms include thorough and searching *voir dire* to screen out jurors who cannot remain impartial, the grant of additional peremptory challenges to the parties, and the use of “emphatic and clear instructions on the sworn duty of each juror to decide the issues only on evidence presented in open court.” *Skilling v. United States*, 561 U.S. 358, 387–88 & n.21

(2010) (quoting *Nebraska Press Ass’n*, 427 U.S. at 565). Only if publicity is extremely inflammatory will the Court presume that these methods are insufficient to select a jury that can render an impartial verdict. *See id.* at 382–83.

The district court correctly determined that Maxwell has not and cannot demonstrate that the unsealing of the Deposition Records would preclude a fair trial on the criminal charges against her, and this Court should reject Maxwell’s argument that “unfair” news media coverage will irreparably prejudice her fair trial rights if the Deposition Records are unsealed. *See Maxwell Br.* at 37. The press has reported court filings and statements made by counsel for Maxwell in a similarly evenhanded manner as it has the allegations against her, giving lie to Maxwell’s accusations that “the media have all but convicted her,” *Maxwell Br.* at 6. *See Nicole Hong & Benjamin Weisser, ‘Ghislaine Maxwell is Not Jeffrey Epstein’: Maxwell Asks for Release*, N.Y. Times (July 10, 2020) (“Lawyers for Ghislaine Maxwell, the longtime companion of Jeffrey Epstein, sought to distance her from the disgraced financier on Thursday, saying in a new court filing that the two had no contact for more than a decade before his death in August 2019. . . . Ms. Maxwell’s lawyers also argued that she was protected by a 2007 plea agreement reached between Mr. Epstein and federal prosecutors in Miami, which contained a provision that shielded ‘any potential co-conspirators’ of Mr. Epstein

from criminal charges.”);⁹ Shyna Jacobs, *Ghislaine Maxwell’s Siblings Willing to Endorse \$5 Million Bond, Lawyer Says*, Wash. Post (July 10, 2020) (“Attorney Mark S. Cohen wrote that she has been wrongly targeted, that attention erroneously shifted from Epstein to Maxwell after his death in federal custody. . . . ‘Ghislaine Maxwell is not Jeffrey Epstein, Cohen wrote. He noted that she has no arrest history and was never found liable in a lawsuit.’”).¹⁰

II. The public has a significant interest in the Deposition Records.

Maxwell has been criminally charged for engaging in behavior that she directly denied undertaking during the course of her April 2016 deposition. *Compare* Maxwell Indictment at Count 1 (alleging that “Maxwell assisted, facilitated, and contributed to Jeffrey Epstein’s abuse of minor girls by, among other things, helping Epstein to recruit, groom, and ultimately abuse victims known to Maxwell and to Epstein to be under the age of 18. The victims were as young as 14 years old when they were groomed and abused by Maxwell and Epstein, both of whom knew that certain victims were in fact under the age of 18.”) *with id.* at Count 4. Alleged sexual assault and trafficking of minors, including the judicial system’s handling of these issues, are matters of the utmost public concern.

⁹ Available at <https://perma.cc/D2R7-MC8F>.

¹⁰ Available at <https://perma.cc/8L4W-UDAJ?type=image>.

This is especially so given that the Department of Justice estimates that in 2018, fewer than 25% (of over 250,000 incidences) of rapes and sexual assaults were reported to the police. U.S. Dep't of Justice Bureau of Justice Statistics, *Criminal Victimization*, 2018 8, 18 (Sept. 2019).¹¹ Educating news consumers about claims made by Maxwell prior to her arrest provides knowledge that will inform the public about risks in their own communities and how law enforcement and the judicial system respond in cases involving accusations of sexual assault and abuse.

The public has a legitimate interest in examining how litigants and courts handle both criminal and civil cases related to sexual assault. When comedian Bill Cosby was tried and convicted of three counts of aggravated indecent assault, the news media used court records to report arguments presented in the case, as well as how the judge ruled on various motions. Eric Levenson, *Bill Cosby's maximum sentence now 10 years after charges merged*, CNN (Sept. 24, 2018);¹² see also Eric Levenson, *Bill Cosby sentenced to 3 to 10 years in prison for sexual assault*, CNN (Sept. 26, 2018).¹³ Some advocates for reform of sexual violence laws pointed to Cosby's sentencing as inspiring confidence in the judicial system. *Id.*

¹¹ Available at <https://perma.cc/4LTT-EN3C>.

¹² Available at <https://perma.cc/A7JY-J9Q6>.

¹³ Available at <https://perma.cc/WQ82-7SBZ>.

In numerous cases in recent years, the news media's reporting on such accusations has led to the filing of criminal charges and criminal convictions. In 2016, *The Indianapolis Star* published a report that detailed the allegations of two former gymnasts who accused Larry Nassar, a team physician for USA Gymnastics, of sexual abuse. Tim Evans, Mark Alesia & Marisa Kwiatkowski, *Former USA Gymnastics Doctor Accused of Abuse*, *Indianapolis Star* (Sept. 12, 2016).¹⁴ At the time the article was published, one of the women had filed a civil lawsuit that was less than a week old; the other had filed a police complaint shortly before that. *Id.* A later update at the top of that news story makes clear its immense impact: "Since this article published, at least 150 people have come forward with allegations of sexual abuse against Dr. Larry Nassar. He was sentenced Jan. 24, 2018, to 175 years in prison after pleading guilty to sexually abusing seven girls." *Id.*; see also Jen Kirby, *The Sex Abuse Scandal Surrounding Gymnastics Team Doctor Larry Nassar, Explained*, *Vox* (May 16, 2018).¹⁵

This year, the actor Danny Masterson was charged with raping three women in the early 2000s. See Julia Jacobs, 'That '70s Show' Actor Danny Masterson Charged With Raping 3 Women, *N.Y. Times* (June 17, 2020).¹⁶ The charges

¹⁴ Available at <https://perma.cc/G8JZ-HMZL>.

¹⁵ Available at <https://bit.ly/2Er6w1d>.

¹⁶ Available at <https://perma.cc/9VLH-7252>.

followed reporting that “at least three of the women claimed they were pressured to keep quiet by the Church of Scientology[,]” *id.*, as well as “a lawsuit filed last year against Masterson and the church by four women who have accused Masterson of rape.” *Id.*; see Julia Jacobs, *In the Danny Masterson Rape Case, Echoes of a 2019 Lawsuit*, N.Y. Times (June 18, 2020).¹⁷ And the criminal conviction of Harvey Weinstein was preceded by extensive reporting on allegations made by women whom he had victimized, much of which was published before his arrest in May 2018. See Jodi Kantor & Megan Twohey, *Harvey Weinstein Paid off Sexual Harassment Accusers for Decades*, N.Y. Times (Oct. 5, 2017);¹⁸ Ronan Farrow, *From Aggressive Overtures to Sexual Assault: Harvey Weinstein’s Accusers Tell Their Stories*, New Yorker (Oct. 10, 2017).¹⁹

In other instances, the news media’s reporting on allegations made by victims of sexual assault have preceded additional victims coming forward with similar or corroborating accounts. For example, in late 2017 and early 2018, press accounts of a civil lawsuit in which the plaintiff alleged that the filmmaker Paul Haggis had raped her, see generally Complaint, *Breest v. Haggis*, No. 0161137/2017 (N.Y. Sup. Ct. Dec. 15, 2017), “prompted three additional women

¹⁷ Available at <https://perma.cc/EA64-C85M>.

¹⁸ Available at <https://perma.cc/AQ9E-FSPK>.

¹⁹ Available at <https://perma.cc/G3Y4-KX5T>.

to come forward with their own sexual misconduct accusations, including another publicist who says he forced her to perform oral sex, then raped her.” Michael Balsamo & Lindsey Bahr, *Oscar-winning Filmmaker Haggis Accused of Rape, Sex Assault*, AP News (Jan. 5, 2018).²⁰

In short, the press regularly uses civil court records or other allegations without the imprimatur of a judicial factfinder to report on allegations of sexual assault, and such reporting allows “the public to participate in and serve as a check upon the judicial process.” *Globe Newspaper Co. v. Superior Court*, 457 U.S. 596, 606 (1982). Access to the Deposition Records will serve this important public interest.

²⁰ Available at <https://bit.ly/3j1xUkL>.

CONCLUSION

For the foregoing reasons and those set forth in the *Herald's* brief, amici curiae urge this Court to affirm the district court's order unsealing the documents at issue.

Respectfully submitted,

/s/ Katie Townsend

Katie Townsend

Counsel of Record

Bruce D. Brown

THE REPORTERS COMMITTEE FOR

FREEDOM OF THE PRESS

1156 15th St. NW, Suite 1020

Washington, DC 20005

Telephone: (202) 795-9300

Facsimile: (202) 795-9310

Dated: September 10, 2020
Washington, D.C.

APPENDIX A

Descriptions of amici:

The Reporters Committee for Freedom of the Press is a voluntary, unincorporated association of reporters and editors that works to defend the First Amendment rights and freedom of information interests of the news media. The Reporters Committee has provided representation, guidance and research in First Amendment and Freedom of Information Act litigation since 1970.

ALM Media, LLC publishes over 30 national and regional magazines and newspapers, including *The American Lawyer*, *The National Law Journal*, *New York Law Journal* and *Corporate Counsel*, as well as the website Law.com. Many of ALM's publications have long histories reporting on legal issues and serving their local legal communities. ALM's *The Recorder*, for example, has been published in northern California since 1877; *New York Law Journal* was begun a few years later, in 1888. ALM's publications have won numerous awards for their coverage of critical national and local legal stories, including many stories that have been later picked up by other national media.

American Broadcasting Companies, Inc., d/b/a ABC News, produces the television programs *World News with David Muir*, *Good Morning America*, *Nightline*, *20/20*, and *This Week*, among others.

The Atlantic Monthly Group LLC is the publisher of *The Atlantic* and TheAtlantic.com. Founded in 1857 by Oliver Wendell Holmes, Ralph Waldo Emerson, Henry Wadsworth Longfellow and others, *The Atlantic* continues its 160-year tradition of publishing award-winning journalism that challenges assumptions and pursues truth, covering national and international affairs, politics and public policy, business, culture, technology and related areas.

Boston Globe Media Partners, LLC publishes The Boston Globe, the largest daily newspaper in New England.

BuzzFeed is a social news and entertainment company that provides shareable breaking news, original reporting, entertainment, and video across the social web to its global audience of more than 200 million.

The Center for Investigative Reporting (d/b/a Reveal), founded in 1977, is the nation's oldest nonprofit investigative newsroom. Reveal produces investigative journalism for its website <https://www.revealnews.org/>, the Reveal national public radio show and podcast, and various documentary projects. Reveal often works in collaboration with other newsrooms across the country.

The E.W. Scripps Company serves audiences and businesses through local television, with 60 television stations in 42 markets. Scripps also owns Newsy, the next-generation national news network; national broadcast networks Bounce, Grit, Escape, Laff and Court TV; and Triton, the global leader in digital audio

technology and measurement services. Scripps serves as the long-time steward of the nation's largest, most successful and longest-running educational program, the Scripps National Spelling Bee.

First Amendment Coalition is a nonprofit public interest organization dedicated to defending free speech, free press and open government rights in order to make government, at all levels, more accountable to the people. The Coalition's mission assumes that government transparency and an informed electorate are essential to a self-governing democracy. To that end, we resist excessive government secrecy (while recognizing the need to protect legitimate state secrets) and censorship of all kinds.

Gannett is the largest local newspaper company in the United States. Our 260 local daily brands in 46 states and Guam — together with the iconic USA TODAY — reach an estimated digital audience of 140 million each month.

The Inter American Press Association (IAPA) is a not-for-profit organization dedicated to the defense and promotion of freedom of the press and of expression in the Americas. It is made up of more than 1,300 publications from throughout the Western Hemisphere and is based in Miami, Florida.

The International Documentary Association (IDA) is dedicated to building and serving the needs of a thriving documentary culture. Through its

programs, the IDA provides resources, creates community, and defends rights and freedoms for documentary artists, activists, and journalists.

The Investigative Reporting Workshop, based at the School of communication (SOC) at American University, is a nonprofit, professional newsroom. The Workshop publishes in-depth stories at investigativereportingworkshop.org about government and corporate accountability, ranging widely from the environment and health to national security and the economy.

MediaNews Group is a leader in local, multi-platform news and information, distinguished by its award-winning original content and high quality local media. It is one of the largest news organizations in the United States, with print and online publications across the country.

MPA – The Association of Magazine Media, (“MPA”) is the industry association for magazine media publishers. The MPA, established in 1919, represents the interests of close to 100 magazine media companies with more than 500 individual magazine brands. MPA’s membership creates professionally researched and edited content across all print and digital media on topics that include news, culture, sports, lifestyle and virtually every other interest, avocation or pastime enjoyed by Americans. The MPA has a long history of advocating on First Amendment issues.

National Journal Group LLC is the privately-held publisher of *National Journal*. Founded in 1969, National Journal's award-winning journalism covers political and public policy issues at the federal, state, and local levels, and its government affairs, advocacy communications, and policy research specialists serve government affairs professionals with the intelligence and tools they need to navigate the world of policy and politics.

National Newspaper Association is a 2,000 member organization of community newspapers founded in 1885. Its members include weekly and small daily newspapers across the United States. It is based in Pensacola, FL.

The National Press Club Journalism Institute is the non-profit affiliate of the National Press Club, founded to advance journalistic excellence for a transparent society. A free and independent press is the cornerstone of public life, empowering engaged citizens to shape democracy. The Institute promotes and defends press freedom worldwide, while training journalists in best practices, professional standards and ethical conduct to foster credibility and integrity.

The National Press Club is the world's leading professional organization for journalists. Founded in 1908, the Club has 3,100 members representing most major news organizations. The Club defends a free press worldwide. Each year, the Club holds over 2,000 events, including news conferences, luncheons and panels, and more than 250,000 guests come through its doors.

The National Press Photographers Association (“NPPA”) is a 501(c)(6) non-profit organization dedicated to the advancement of visual journalism in its creation, editing and distribution. NPPA’s members include television and still photographers, editors, students and representatives of businesses that serve the visual journalism industry. Since its founding in 1946, the NPPA has vigorously promoted the constitutional rights of journalists as well as freedom of the press in all its forms, especially as it relates to visual journalism. The submission of this brief was duly authorized by Mickey H. Osterreicher, its General Counsel.

The New York News Publishers Association is a trade association which represents daily, weekly and online newspapers throughout New York State. It was formed in 1927 to advance the freedom of the press and to represent the interests of the newspaper industry.

With an urban vibrancy and a global perspective, **New York Public Radio** produces innovative public radio programs, podcasts, and live events that touch a passionate community of 23.4 million people monthly on air, online and in person. From its state-of-the-art studios in New York City, NYPR is reshaping radio for a new generation of listeners with groundbreaking, award-winning programs including Radiolab, On the Media, The Takeaway, and Carnegie Hall Live, among many others. New York Public Radio includes WNYC, WQXR, WNYC Studios, Gothamist, The Jerome L. Greene Performance Space, and New Jersey Public

Radio. Further information about programs, podcasts, and stations may be found at www.nypublicradio.org.

The New York Times Company is the publisher of *The New York Times* and *The International Times*, and operates the news website nytimes.com.

The News Leaders Association was formed via the merger of the American Society of News Editors and the Associated Press Media Editors in September 2019. It aims to foster and develop the highest standards of trustworthy, truth-seeking journalism; to advocate for open, honest and transparent government; to fight for free speech and an independent press; and to nurture the next generation of news leaders committed to spreading knowledge that informs democracy.

The Philadelphia Inquirer, owned by the Lenfest Institute for Journalism, is the largest newspaper in the United States operated as a public-benefit corporation. It publishes *The Inquirer* as well as the *Philadelphia Daily News* in print, and online at www.inquirer.com. *The Inquirer* has won 20 Pulitzer Prizes. Under the non-profit ownership of the Institute, which is dedicated solely to the mission of preserving local journalism, the *Inquirer* is dedicated to public service journalism and news innovation.

POLITICO is a global news and information company at the intersection of politics and policy. Since its launch in 2007, POLITICO has grown to nearly 300 reporters, editors and producers. It distributes 30,000 copies of its Washington

newspaper on each publishing day and attracts an influential global audience of more than 35 million monthly unique visitors across its various platforms.

Pulitzer Center on Crisis Reporting, based in Washington, DC, was founded in 2006 as a non-profit journalism center dedicated to supporting in-depth engagement with underreported global affairs through sponsorship of quality international journalism across all media platforms and a unique program of outreach and education to schools and universities. The Center supports over 150 international reporting projects each year, working in tandem with major international news outlets.

Radio Television Digital News Association (“RTDNA”) is the world’s largest and only professional organization devoted exclusively to electronic journalism. RTDNA is made up of news directors, news associates, educators and students in radio, television, cable and electronic media in more than 30 countries. RTDNA is committed to encouraging excellence in the electronic journalism industry and upholding First Amendment freedoms.

The Seattle Times Company, locally owned since 1896, publishes the daily newspaper *The Seattle Times*, together with the *Yakima Herald-Republic* and *Walla Walla Union-Bulletin*, all in Washington state.

The Society of Environmental Journalists is the only North-American membership association of professional journalists dedicated to more and better coverage of environment-related issues.

Society of Professional Journalists (“SPJ”) is dedicated to improving and protecting journalism. It is the nation’s largest and most broad-based journalism organization, dedicated to encouraging the free practice of journalism and stimulating high standards of ethical behavior. Founded in 1909 as Sigma Delta Chi, SPJ promotes the free flow of information vital to a well-informed citizenry, works to inspire and educate the next generation of journalists and protects First Amendment guarantees of freedom of speech and press.

TIME is a global multimedia brand that reaches a combined audience of more than 100 million around the world. TIME’s major franchises include the TIME 100 Most Influential People, Person of the Year, Firsts, Best Inventions, Genius Companies, World’s Greatest Places and more. With 45 million digital visitors each month and 40 million social media followers, TIME is one of the most trusted and recognized sources of news and information in the world.

The Tully Center for Free Speech began in Fall, 2006, at Syracuse University’s S.I. Newhouse School of Public Communications, one of the nation’s premier schools of mass communications.

Vox Media, LLC owns New York Magazine and several web sites, including Vox, The Verge, The Cut, Vulture, SB Nation, and Eater, with 170 million unique monthly visitors.

The Washington Post (formally, WP Company LLC d/b/a The Washington Post) is a news organization based in Washington, D.C. It publishes The Washington Post newspaper and the website www.washingtonpost.com, and produces a variety of digital and mobile news applications. The Post has won Pulitzer Prizes for its journalism, including the award in 2020 for explanatory reporting.

CERTIFICATE OF COMPLIANCE

I, Katie Townsend, do hereby certify that the foregoing brief of amici curiae:

- 1) Complies with the type-volume limitation of Fed. R. App. P. 29(a)(5) because it contains 6,348 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f), as calculated by the word-processing system used to prepare the brief; and
- 2) Complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Office Word in 14-point, Times New Roman font.

/s/ Katie Townsend

Katie Townsend

Counsel of Record

THE REPORTERS COMMITTEE FOR
FREEDOM OF THE PRESS

Dated: September 10, 2020
Washington, D.C.