

REPORTERS COMMITTEE

FOR FREEDOM OF THE PRESS

1156 15th St. NW, Suite 1020
Washington, D.C. 20005
(202) 795-9300 • www.rcfp.org

Bruce D. Brown, Executive Director
bbrown@rcfp.org • (202) 795-9301

STEERING COMMITTEE CHAIRMAN

STEPHEN J. ADLER

STEERING COMMITTEE MEMBERS

WOLF BLITZER

CNN

DAVID BOARDMAN

Temple University

THEODORE J. BOUTROUS, JR.

Gibson, Dunn & Crutcher LLP

MASSIMO CALABRESI

Time Magazine

MANNY GARCIA

Austin American-Statesman

EMILIO GARCIA-RUIZ

San Francisco Chronicle

JOSH GERSTEIN

POLITICO

ALEX GIBNEY

Jigsaw Productions

SUSAN GOLDBERG

National Geographic

JAMES GRIMALDI

The Wall Street Journal

LAURA HANDMAN

Davis Wright Tremaine

DIEGO IBARGÜEN

Hearst

JEREMY JOJOLA

9NEWS Colorado

KAREN KAISER

Associated Press

DAVID LAUTER

The Los Angeles Times

MARGARET LOW

WBUR

COLLEEN MCCAIN NELSON

The McClatchy Company

MAGGIE MULVIHILL

Boston University

JAMES NEFF

The Philadelphia Inquirer

NORMAN PEARLSTINE

New York, New York

THOMAS C. RUBIN

Stanford Law School

BRUCE W. SANFORD

BakerHostetler, ret.

CHARLIE SAVAGE

The New York Times

JENNIFER SONDAG

Bloomberg News

NABIHA SYED

The Markup

ADAM SYMSON

The E.W. Scripps Company

PIERRE THOMAS

ABC News

MATT THOMPSON

The New York Times

VICKIE WALTON-JAMES

NPR

JUDY WOODRUFF

PBS/The NewsHour

SUSAN ZIRINSKY

CBS News

HONORARY LEADERSHIP COUNCIL

J. SCOTT APPLEWHITE, *Associated Press*

CHIP BOK, *Creators Syndicate*

DAHLIA LITHWICK, *Slate*

TONY MAURO, *American Lawyer Media, ret*

JANE MAYER, *The New Yorker*

ANDREA MITCHELL, *NBC News*

CAROL ROSENBERG, *The New York Times*

PAUL STEIGER, *ProPublica*

SAUNDRA TORRY, *Freelance*

*Affiliations appear only
for purposes of identification.*

October 20, 2021

BY ECF

The Honorable Alison J. Nathan
United States District Court
Southern District of New York
United States Courthouse
40 Foley Square
New York, New York 10007

Re: *United States v. Ghislaine Maxwell*, 20 Cr. 330 (AJN)

Dear Judge Nathan,

With the government’s consent, the defendant has requested to file the parties’ joint proposed juror questionnaire and joint proposed voir dire under seal. Letter of U.S. Att’y, October 12, 2021 (Dkt. No. 339) (“Letter”). The Reporters Committee for Freedom of the Press and the 17 undersigned news media organizations respectfully urge the Court to deny the defendant’s request. *Globe Newspaper Co. v. Superior Ct. for Norfolk Cty.*, 457 U.S. 596, 609 n.25 (1982) (stating that “representatives of the press and general public must be given an opportunity to be heard on the question of their exclusion” (cleaned up)).¹

Both the common law and the First Amendment afford the public a qualified right of access to criminal proceedings. Indeed, the Supreme Court has long recognized that public access to criminal proceedings assures both the fairness and legitimacy of the criminal justice system. *Id.* at 606 (“Public scrutiny of a criminal trial enhances the quality and safeguards the integrity of the factfinding process,

¹ The defendant also has requested that the Court order “individual sequestered juror voir dire and limited counsel-conducted voir dire.” ECF No. 341. The government opposes both requests. ECF No. 355. To the extent that the defendant seeks to limit press and public access to any aspect of voir dire in this case, the same constitutional and common law presumptions of public access discussed herein apply.

with benefits to both the defendant and to society as a whole.”).

Voir dire is a critical stage of criminal proceedings, and the public interest in favor of access to voir dire is correspondingly weighty. *United States v. Shkreli*, 260 F. Supp. 3d 257, 259–60 (E.D.N.Y. 2017) (“Press coverage of voir dire, no less than coverage of opening statements or the cross examination of a key witness, contributes to the fairness of trials.”); accord *United States v. Avenatti*, 2021 WL 1819679, at *1 (S.D.N.Y. May 6, 2021). Recognizing that interest, the Supreme Court has held that the First Amendment requires the voir dire process be presumptively open to the press and public. *Press-Enter. Co. v. Superior Ct. of California, Riverside Cty.*, 464 U.S. 501, 510 (1984).

Juror questionnaires, which are used to facilitate and expedite the jury selection process, are subject to the same presumption of openness as that which attaches to voir dire generally. See *United States v. King*, 140 F.3d 76, 82 (2d Cir. 1998) (including juror questionnaires when analyzing whether limited closure of voir dire violated public’s right of access); see also Order, *In re The Washington Post*, No. 15-1293 (4th Cir. Apr. 27, 2015) (stating that “the public enjoys a presumptive right of access to *voir dire* proceedings, including *voir dire* questionnaires”); *In re Access to Jury Questionnaires*, 37 A.3d 879, 886 (D.C. 2012) (“Every court that has decided the issue has treated jury questionnaires as part of the voir dire process and thus subject to the presumption of public access.” (citing *In re South Carolina Press Ass’n*, 946 F.2d 1037, 1041 (4th Cir. 1991), and collecting other cases)); *Stephens Media, LLC v. Eighth Judicial District Court*, 221 P.3d 1240, 1245 (Nev. 2009); *Forum Commc’ns Co. v. Paulson*, 752 N.W.2d 177, 182–83 (N.D. 2008); *Ohio ex rel. Beacon Journal Publ’g Co. v. Bond*, 781 N.E.2d 180, 187–89 (Ohio 2002); *United States v. Bonds*, No. C 07-00732 SI, 2011 WL 902207, at *3 (N.D. Cal. Mar. 14, 2011); *United States v. McDade*, 929 F. Supp. 815, 817 n.4 (E.D. Pa. 1996); *In re Washington*

Post, No. 92-301, 1992 WL 233354, at *2 (D.D.C. July 23, 1992); *Copley Press, Inc. v. Superior Court*, 228 Cal. App. 3d 77, 89 (1991).

The presumption of openness that attaches to voir dire—including juror questionnaires—“may be overcome only by an overriding interest based on findings that closure is essential to preserve higher values and is narrowly tailored to serve that interest.” *Shkreli*, 260 F. Supp. 3d at 260 (quoting *Press-Enter. Co.*, 464 U.S. at 510). “Where the overriding interest to be protected is the defendant’s right to a fair trial, the court must make specific findings that ‘there is a substantial probability that the defendant’s right to a fair trial will be prejudiced by publicity that closure would prevent and, second, reasonable alternatives to closure cannot adequately protect the defendant’s fair trial rights.’” *Id.* (quoting *ABC, Inc. v. Stewart*, 360 F.3d 90, 98–99 (2d Cir. 2004)). “The Second Circuit has explained that the party seeking to restrict press access bears a ‘heavy’ burden.” *Id.* (quoting *Stewart*, 360 F.3d at 106).

Here, the defense manifestly fails to carry its “heavy burden.” *Id.* The defendant’s request to seal provides the Court with no basis on which to make the specific factual findings required to conceal voir dire, including the parties’ joint juror questionnaire, from the public. *Stewart*, 360 F.3d at 98. In an effort to justify the defendant’s request, the Letter speculates that “media coverage *may* prejudice the jury selection process.” Letter 1. Such conclusory speculation cannot overcome the deeply rooted presumption of openness applicable to voir dire. Accordingly, the Court should order the parties to file the proposed juror questionnaire and proposed voir dire on the public docket.

Respectfully submitted,

/s/Katie Townsend

Katie Townsend
REPORTERS COMMITTEE FOR
FREEDOM OF THE PRESS
1156 15th St. NW, Suite 1020

Washington, DC 20005
(202) 795-9300
ktownsend@rcfp.org

The Miami Herald
American Broadcasting Companies, Inc.
The Center for Investigative Reporting
The Daily Beast Company LLC
Daily News, LP
The Media Institute
MPA—The Association of Magazine Media
National Newspaper Association
Society of Environmental Journalists

The National Press Club
The National Press Club Journalism Institute
NBCUniversal Media, LLC
The New York Times Company
Radio Television Digital News Association
Reuters News & Media Inc.
Society of Professional Journalists
The WNET Group