

LB1TMAX1

1 precluding the term "victim" is both unnecessary and
2 impractical. *United States v. Dupigny*, 18 CR 528, transcript
3 of October 17, 2019, Docket No. 198 at 50. It is appropriate
4 for the government to use the terms as representative of its
5 litigating position. If the government does this in any way
6 that is atypical or unduly prejudicial, I will revisit.

7 Defense only cites out-of-circuit or state court
8 decisions for the proposition that those terms are inherently
9 prejudicial and harm the presumption of innocence. Numerous
10 courts of appeal disagree with that argument, particularly when
11 the presentation of evidence and the court's instructions
12 "taken as a whole clarify the government's burden of proving
13 all elements of the crime." *United States v. Washburn*, 444
14 F.3d, 1007, 1113 (8th Cir. 2006); *see also, Server v. Mizell*,
15 902 F.2d 611, 615, (7th Cir. 1990); *United States v. Granbois*,
16 119 F.App'x 35, 38-39 (9th Cir. 2004).

17 Defendant's lone district court opinion does not tip
18 the balance of this authority. I will, of course, instruct the
19 jury repeatedly that the defendant is presumed innocent and
20 that it is the government's burden and the government's burden
21 alone to prove guilt beyond a reasonable doubt. Those
22 instructions will eliminate any potential prejudice. See again
23 Judge Furman's decision in *Dupigny*, Docket No. 198 at 49

24 That matter resolved, I will turn to the government's
25 first motion. This goes to pseudonyms. The government moves

SOUTHERN DISTRICT REPORTERS, P.C.
(212) 805-0300

LB1TMAX1

1 pursuant to the Crime Victims Rights Act, 18 USC Section 3771,
2 to permit certain witnesses and certain non-testifying
3 witnesses to be referred to by pseudonyms. And there is also
4 the issue of redacting related exhibits that contain the names
5 or specifically identifying information. Specifically, the
6 government requests that eight individuals be referred to by
7 pseudonyms or their first name.

8 The defense is already aware of the identities of all
9 of these individuals, and as the government proposes it, the
10 jury will also be aware of the individuals' real identities.
11 The request only implicates how those individuals are referred
12 to in open court.

13 This is well-tread territory, and I will grant the
14 request for the following reasons:

15 The burden to justify this type of request, of course,
16 starts with the government. It "must provide a reason for the
17 limitation." *United States v. Marcus*, which is 2007 WL 330388
18 at *1, an Eastern District decision citing *United States v.*
19 *Marti*, 421 F.2d 1283 (2d Cir. 1970).

20 I agree with the government that limiting disclosure
21 here would protect the alleged victims from potential
22 harassment from the media and others, undue embarrassment and
23 other adverse consequences. The Court has an obligation under
24 the Crime Victims Rights Act to take certain measures at trial
25 to protect the dignity and privacy of alleged victims. 18 USC

SOUTHERN DISTRICT REPORTERS, P.C.
(212) 805-0300

EFTA00023370

LB1TMAX1

1 Section 3771(a)(8).

2 It is quite common for alleged victims, both in cases
3 that have garnered media attention and those involving
4 allegations of sex abuse, to testify or be referred to by
5 pseudonyms or first names. Courts have allowed this whether or
6 not the alleged victims are minors or adults or adults
7 testifying about abuse that allegedly occurred when they were
8 minors.

9 Let me give a bit of a string cite here. See, for
10 example, *United States v. Kelly*, No. 19 CR 286, which is a high
11 publicity trial involving adults testifying about sex abuse as
12 minors, and that's in the Eastern District of New York; *United*
13 *States v. Raniere*, No. 18 CR 204, a high-publicity trial
14 involving at least one adult testifying about sex abuse as
15 minor; *United States v. Dupigny*, No. 18 CR 528, involving sex
16 trafficking, *United States v. Kelly*, No. 7 CR 374, and that
17 could be found at 2008 WL 5068820, which is an Eastern District
18 case involving an adult testifying about sex abuse as a minor;
19 *United States v. Graham*, No. 14 CR 500, found at 2015 WL
20 6161292 (S.D.N.Y., October 2015), that involved adults
21 testifying about sex trafficking as minors; *United States v.*
22 *Gardner*, No. 16 CR 20135, found at 2016 WL 5404207, an Eastern
23 District case from 2016 involving adults and adults testifying
24 about sex abuse as a minor, and collecting similar cases.

25 The practice has been widely permitted because

LB1TMAX1

1 requiring alleged victims to publicly provide their names could
2 chill their willingness to testify for fear of having their
3 personal histories publicized. *Raniere*, Docket No. 622 at 32.

4 Given the sensitive and inflammatory nature of the
5 conduct alleged, such publicity may cause further harassment or
6 embarrassment, and other alleged victims of sex crimes may be
7 deterred from coming forward. See, *Martinez*, 17 CR 281,
8 (E.D.N.Y. 2017), Docket No. 34.

9 Limiting the disclosure of alleged victims' identities
10 in this case furthers these important interests. The same is
11 true with the identities of certain witnesses, although not
12 alleged victims themselves, because the disclosure of their
13 identities would necessarily reveal the identities of the
14 alleged victims.

15 I'm not persuaded by defense counsel's arguments to
16 the contrary. First, the defense notes that Ms. Maxwell does
17 not pose a threat to any of the witnesses. That is plainly
18 true, and the government does not argue or suggest or allege
19 otherwise, but just because that reason for limiting
20 disclosures is absent in this case does not eliminate the
21 possibility of other justifications. And again, there is a
22 need here to prevent undue embarrassment, harassment from the
23 press and third parties, and any resistance of others to come
24 forward and report alleged abuse. Cases establish that this is
25 sufficient

LB1TMAX1

1 Moreover, any potential prejudice in this regard can
2 be cured with an appropriate instruction explaining that the
3 reason for the precaution is regard for the witnesses' and
4 alleged victims' privacy, and that no inference can or should
5 be drawn against the defendant because of these precautions

6 My colleagues in this district and elsewhere have used
7 such an instruction in similar cases. The defense's concern
8 that this sort of instruction affords "Court-sanctioned
9 sympathy and credibility" is unfounded. My instructions on the
10 law will clearly and repeatedly instruct the jury on the
11 presumption of innocence and their sole role in assessing
12 witness credibility

13 Nor am I persuaded by the defense's arguments that the
14 fact that some alleged victims have previously publicly
15 disclosed some of their allegations obviates the need to limit
16 disclosure. As another district court has held, "just because
17 some victims' names are publicly available does not mean that
18 the details of their experience are already available."

19 *Raniere*, Docket No. 662 at 34, n. 17

20 As I acknowledged in my protective order for this
21 case, "Not all accusations and public statements are equal.
22 Deciding to participate in or contribute to a criminal
23 investigation or prosecution is a far different matter than
24 simply making a public statement relating to Ms. Maxwell or
25 Jeffrey Epstein." Docket No. 37 in this case at 2.

SOUTHERN DISTRICT REPORTERS, P.C.
(212) 805-0300

EFTA00023373

LB1TMAX1

1 The government anticipates that the alleged victims
2 will "testify in explicit detail and/or be the subject of
3 highly sensitive and personal testimony concerning illegal
4 sexual abuse. Thus, there's good reasons to limit public
5 disclosure of their names and specifically identifying
6 information during trial in this highly publicized case
7 involving highly sensitive issues."

8 Since there is a valid reason to limit disclosure in
9 this case, the defense must proffer a particularized need for
10 the disclosure of the relevant information, which is weighed
11 against the risks to the witnesses. I'll cite here, for
12 example, *United States v. Marcus*, again citing the Second
13 Circuit case in *United States v. Marti*.

14 As both parties acknowledge, the government's request
15 potentially implicates the defendant's right under the Sixth
16 Amendment's confrontation clause which guarantees defendants
17 the right to cross-examine adverse witnesses. The Second
18 Circuit has identified two central interests defendants have in
19 the public airing of identifying information about witnesses.
20 Again referencing the *Marti* case, 421 F.2d 1263.

21 The first is not relevant here because, as I have
22 noted, the defense is aware of the alleged victims' and
23 witnesses' identities.

24 The defendant argues that the second interest,
25 however, is implicated. Namely, defense may need the witness

SOUTHERN DISTRICT REPORTERS, P.C.
(212) 805-0300

EFTA00023374

LB1TMAX1

1 to reveal identifying information because knowledge of that
2 information by the jury might be important to its deliberations
3 as to the witness's credibility or knowledgability. That's
4 quoting the *Marti* case again. In particular, the defense
5 argues that revealing the alleged victims' and witnesses'
6 identities is necessary to probe the nature of the alleged
7 victims' occupations as relevant to the credibility and elicit
8 certain impeachment evidence.

9 I agree that such cross-examination cannot be unduly
10 limited and the government concedes the same. The government's
11 motions in limine 15, n. 6; government reply at 17 to 18. And
12 I will ensure that it is not.

13 My decision today grants the government's request to
14 limit the public disclosure of the alleged victims and some
15 witnesses' names and other specifically identifying
16 information, such as the specific names of current and past
17 employers, names of family members and addresses.

18 Limiting disclosure of the specifically identifying
19 information does not limit the anticipated cross-examination
20 that the defense described in its papers. All lines of inquiry
21 the defense outlined in its response are available without
22 disclosing specific names of employers or other specifically
23 identifying information. For example, the defense can probe
24 the genre, nature, and trajectories of witnesses' careers
25 without eliciting the specific employer name, but the defense's

SOUTHERN DISTRICT REPORTERS, P.C.
(212) 805-0300

LB1TMAX1

1 cross-examination should not include specifically identifying
2 information, and counsel must act responsibly doing so. If,
3 after good faith effort in that regard is made and the defense
4 at some point feels they have hit a wall and can articulate a
5 specific need with respect to a particular line of questioning,
6 they can reraise the issue with opposing counsel and with me.

7 So that's my ruling on that motion. That said, I do
8 strongly encourage the government to speak candidly with the
9 anticipated witnesses so that they're clear eyed about what
10 this process will entail, the fact that cross-examination will
11 not be curtailed beyond the specific identifying information
12 that form the basis of the government's request, and the
13 possibility that despite these measures their identities may
14 become known and revealed to the public.

15 Should any of those witnesses or the government choose
16 not to proceed by pseudonym, the government shall let defense
17 counsel and the Court know. In the meantime, the government
18 and defense counsel shall confer about names that will be used
19 and any additional process for facilitating the clear
20 presentation of evidence. The Court will adopt a clear and
21 straightforward approach and the parties are admonished to come
22 to agreement on the use of pseudonyms and/or first names.

23 First assignment, there will be others, by November 10
24 the parties shall submit a joint letter to the Court under seal
25 explaining the nomenclature that they propose be employed with

SOUTHERN DISTRICT REPORTERS, P.C.
(212) 805-0300

LB1TMAX1

1 respect to the actual identity of each witness.

2 As I mentioned, I do agree with the government that a
3 limiting instruction explaining the reasons for the precautions
4 is appropriate. In light of my ruling, I expect the parties to
5 confer and jointly propose such a limiting instruction.

6 Homework No. 2. This shall also be filed jointly by
7 November 10, and that can be filed on ECF.

8 There are some logistics of voir dire related to this.
9 Some of my colleagues have used the list method that the
10 government proposes on page 15, footnote 5 of their motion, and
11 I agree that this proposal makes sense. Once again, the
12 parties shall confer and submit on ECF by November 10 a joint
13 proposal for any logistical issues related to this for voir
14 dire.

15 That leaves the issue of sealing unredacted exhibits
16 and the limited redacting of exhibits containing specific
17 personal identifying information. The government shall manage
18 the logistics of this process throughout trial. So think
19 through and include in your November 10 submission on ECF the
20 specifics of this part of the process so that the trial
21 exhibits can be contemporaneously marked with the appropriate
22 limited redactions, and the government will need to manage this
23 on an ongoing basis throughout trial.

24 Government's motion 2, the alleged victims' prior
25 consistent statements. So this goes to the admissibility of

SOUTHERN DISTRICT REPORTERS, P.C.
(212) 805-0300