



Maxwell Appeals to Second Circuit for Bail; Disputes Strength of Case, Honesty of Accusers, and Conditions at MDC

Frank Parlato April 21, 2021

Editor's Note: Largely as an exercise in monitoring due process, Frank Report continues to report on the prosecution of Ghislaine Maxwell. Other than that she is presumptively innocent, Frank Report makes no comment on her alleged crimes or the veracity of her accusers. It is, of course, nonsense to say that all accusers, if of a certain gender, must be believed. Accusations must go through the same due process that is required in the US Constitution regardless of gender. It is, therefore, in that spirit — the spirit that Ghislaine Maxwell may be innocent or guilty — that these reports are written. All other reports I have observed in any media are written with the absolute assumption that she is guilty. Of course, the entire universe of media may be right and she is guilty, but I see no harm in writing stories about her case that presume she might be innocent and that the government might be guilty of lying and so should be held to strict account.

Even if she is guilty, it won't hurt for one website to write about the case without the omniscient knowledge that the rest of the media possesses – they know she is guilty before she goes to trial – and let due process take its course. This is not about Ghislaine Maxwell, it is about due process. It is not about the need for her to be punished before she goes to trial, it is about the conditions of her detention and whether she can have due process in detention and the way detention is devised by our American system of justice. I know a lot of people will be outraged that anyone would even dare consider allotting to Maxwell even the slightest presumption of innocence. That too is an object of my study and reporting.

As she approaches her 300th day in solitary confinement at the Brooklyn Metropolitan Detention Center, Ghislaine Maxwell is appealing US District Court Judge Alison Nathan's denial of bail to the US Court of Appeals for the Second Circuit.

At a minimum, Maxwell is requesting the case be remanded to the district court for a bail

hearing to test the strength of the government's case.

The government opposes Maxwell's bail, arguing she's a flight risk, partly because, they claim, their case is strong enough that Maxwell will have an incentive to flee.

Maxwell proposed a bail package – \$28.5 million in cash and securities, which included electronic tagging and being watched by armed guards while under house arrest in the NY area. She has also offered to renounce her French and U.K. citizenships. She is also a US citizen.

The appeal of her bail denial, filed by Maxwell's attorney, David Oscar Markus, is based on an original indictment which contained allegations of three anonymous women who claim Maxwell groomed and trafficked them to Jeffrey Epstein sometime between 1994 to 1997, when they were under the age of consent.

Epstein died under curious circumstances in August 2019 while in federal custody at the Manhattan Correctional Center (MCC), a near-twin sister to the MDC facility. There is a lingering question of whether he committed suicide or was assassinated. Though the government assures the public it was suicide, a majority of Americans surveyed think he was murdered. Evidence suggests their suspicions may not be misplaced.

Maxwell was not charged until 11 months after Epstein died. A new Maxwell indictment contains allegations from a fourth anonymous alleged victim, who claims she was 14 when Maxwell trafficked her to Epstein beginning in 2001.

In her appeal, Maxwell's attorney argues:

- "...the "additional charges" do not "strengthen the evidence against Maxwell" and do not "further support Judge Nathan's detention orders." The new charges are allegations, nothing more. Piling allegation on allegation and then calling it proof does not make it so. Allegations are not evidence. Moreover, these charges will require Ms. Maxwell to spend more time with her lawyers, not less, and further illustrate why bail is necessary."

Brave Women or Money-Driven Liars?

The government says the case is essentially four "brave women who are victims of serious crimes," whose "recollections ... bear striking resemblances that corroborate each other and provide compelling proof of [Maxwell's] active participation in a disturbing scheme to groom and sexually abuse minor girls."

Maxwell's appeal disputes this:

Contrary to the Government's assertion, "[e]ach witness's testimony" is not "corroborated by that of other victim-witnesses." The Government continues to press the false point that the mere number of accusers provides corroboration for the accusers. To the contrary, not a single one of the anonymous accusers saw or heard what purportedly happened to the other accusers. Not a single one of the anonymous accusers will be able to corroborate the 25-year old stories of the other accusers. Indeed, their stories are contradictory, not corroborating. At a real hearing, the defense will demonstrate that each of the witness' stories has dramatically changed over the years. At first, none of the anonymous accusers even mentioned Ms. Maxwell. As they hired the same law firm, sought money and fame, joined a movement, and only after Epstein died, did the accusers start to point the finger at Ms. Maxwell. Far from corroboration, this is fabrication. The district judge erred in relying on the Indictment as proof that the Government's case is strong."

Was She Hiding?

Maxwell was arrested in July 2020 in an FBI raid of her secluded New Hampshire estate. The defense claims she was not hiding from the government during the almost one year between Epstein's death and her arrest. She was retreating from public life to protect her family from a "lynch mob" mentality in the media.

The government admits it knew where she was and could have arrested her whenever it chose. Her arrest coincided with a press conference where an FBI agent said the government had been "discreetly keeping tabs" on her whereabouts throughout their year-long investigation.

Her attorney wrote in her appeal: Ms. Maxwell's intention to evade the media does not even marginally amount to risk of flight. The Government does not dispute that the media placed a bounty on Ms. Maxwell or that she was being stalked by them before her arrest. Of course, she took measures to protect herself and her family, just as government lawyers and judges do when their safety is at issue. Ms. Maxwell was at her home in the United States. The Government admits that it knew where she was. It had such confidence that it could arrest her whenever it chose that it orchestrated her arrest to coincide with a press conference replete with incendiary demonstrative aids."



Can She Prepare for Trial at MDC?

The

main issue of the appeal is whether Maxwell can prepare for trial effectively at MDC.

She is in *de facto* solitary confinement, the only prisoner on her floor. She is managed by a team of guards and surveilled by multiple cameras 24 hours per day.

The government contends Maxwell is provided with

1. A “day room”
2. two computers,
3. recreation
4. eye masks
5. she receives more time than other inmates to “review her discovery”
6. and “communicate with her attorneys”
7. she is not abused by guards
8. she has a comfortable cell
9. gets decent food
10. her health is monitored

Her attorney wrote in the appeal:

- **The District Court accepted, without any real inquiry, the self-serving Government letters. These letters describe a “prison paradise,” not one of the most notorious prisons in America. A “day room.” Two computers. Recreation. Eye masks. But the Government’s description of Ms. Maxwell’s conditions is not true. For example, she has no eye mask. The guards flash lights in her cell every 15 minutes for no reason so she tries as best as she can to shield her eyes with a towel that is not secured and not effective against the unwelcome beams.**

Prosecutors, however, stated in court filings that the flashlight searches are “required to confirm that the defendant is not in distress every fifteen minutes. To do so, staff point a flashlight to the ceiling of the defendant’s cell to illuminate the cell sufficiently to confirm that the defendant is breathing.”

1. She lives in a 6×9 foot cell with a concrete bed and toilet.
2. She is not permitted into the corners of the cell and must remain a minimum of 2.5ft from the cell door.
3. There is no flat surface in her cell for her to work on legal documents for the long hours she is confined there.
4. The drinking water is full of contaminants
5. The food is inedible. Food has been fed to her on plastic trays that have melted when exposed to microwaved heating, making the food inedible and unsafe. **Food is served with mold on it at times.**
6. There is no natural light in the cell, only fluorescent lights so bright that they hurt her eyes.
7. Two walls of the cell are external masonry block walls with no insulation. Depending on the temperature it can lead to condensation on the walls by the bed.
 - **Guards rotate every two weeks and each shift has different expectations and practices that conflict with other teams.**

The government says she gets to leave her cell and go to a special “day room” designed to accommodate her need to prepare for her case and that there is a special room for attorneys and her to meet privately.

The defense claims: At times the stench in Maxwell’s cell has been overwhelming due to the overflowing of toilets in the cellblock above. Maxwell refrains from using the toilet in her cell because she is being watched by guards and filmed at all times. As directed by the guards, she flushes the toilet frequently to avoid plumbing problems even though she rarely uses the toilet.

In her cell, she has no flat surface to write on.

Day Room

The defense describes the day room:

There are three drains, and when the plumbing system goes unused, gases escape from the drains and cause a pervasive stench of sewage. At times, the stench is apparent upon entering the visiting area where attorneys come to meet her. Guards flush pipes by pouring water down open drains in an effort to trap and disperse gaseous emissions.

The drinking water is cloudy, and seemingly unsanitary. The guards drink bottled water.

Glue tracks have been placed in Maxwell's day area to help remediate the problem of cockroaches and rodents.



Lawyer Visiting Room

The in-person lawyer visits with Maxwell occur in a room where chairs abut glass walls and a table, with no room in between. Because of the tight space, Maxwell and counsel are required to wedge their bodies into chairs.

There is no opportunity to view electronic discovery or exchange documents.

They must wear face masks, while crammed on either side of a plexiglass divider, under surveillance of three guards and a handheld camera. The free exchange of confidential information is said to be inhibited.

Since the entire area is permeated with mold, HEPA filters were installed to filter out harmful particles in the legal visiting room so that lawyers are not exposed to the same risk of airborne disease and infection that Maxwell faces.

Computers

Maxwell was provided with two computers. However, apparently due to their age, they are unable to search documents, mark, save, or print. She has no access to a printer.

The defense claims MDC improperly deleted Maxwell's legal emails. A Federal Express envelope from the government was not given to Maxwell until two weeks after it was sent, containing a discovery disc that was unreadable.

Recreation

Maxwell has not experienced sunshine and fresh air for eight months. There is, however, an interior gated pen where Maxwell can exercise which is referred to as "outside." Barely a breeze permeates that area. When she avails herself of this opportunity she is subject to searches.

Was She Abused by a Guard?

An incident of physical abuse was reported when Maxwell claims she was shoved into her isolation cell by a guard to be searched. It was reported to MDC Legal and the Court.

According to her defense, Maxwell was facing forward in front of an officer whose back was in front of a handheld camera. It is not known if the camera was recording. The government claims it was and the Bureau of Prisons said they reviewed the video of the

incident and concluded there was no abuse. The prosecutors did not mention if they watched the video.

The defense has requested that the Court direct the government to provide them with the video, which they suggest may not exist.

HIPAA?

The government, arguing about the safe, sanitary and satisfactory conditions at MDC, revealed that Maxwell was vaccinated. The release of that information is, the defense argues, in violation of HIPAA.

Health

Her lawyers and family say her eyesight is failing, and her hair is thinning. She lost 20 pounds and cannot sleep properly because of the lights and the guards.

O'Hara Has Something to Say



Joe O'Hara- Joe Ohara, who spent time as an inmate at MDC wrote, “I know the area where Ghislaine Maxwell is being held — and it is, unfortunately, just like most of the other areas in the East Tower at MDC. Many of the complaints that her family members have raised sound quite familiar — and are likely 100% accurate.

“Example: The overhead fluorescent lights are still so bright after the 10:00 PM ‘Lights Out’ that many inmates find it difficult to sleep (One of my first ‘side hustles’ at MDC was making ‘sleep shades’ out of old sweatshirts and pillow stuffing for other inmates).

“The fact that Ghislaine has been isolated from other inmates for so long is probably the thing that is most affecting her ability to prepare for trial. It’s hard to explain to anyone who has never experienced any level of solitary confinement just how much long-term isolation can affect a person — both physically and mentally.

“MDC is definitely not for the faint of heart — nor the faint of anything. And adding isolation on top of everything else there does seem to border on ‘cruel and unusual’.

“It would be one thing if she asked to be isolated for her own safety (That’s not all that rare at a place like MDC). But to impose that on her under the guise of protecting her from herself strikes me as a self-serving way for the Feds to push her towards a plea deal.”



David Oscar Markus
Maxwell's lawyer agrees.

"The real reason she's not being granted bail is not because of any real risk of flight. No one's afraid she's going to really run," Markus said. "The government wants to keep her in custody to torture her, to break her down."

It remains to be seen how the appeal plays out. But an evidentiary hearing on the true conditions of MDC might be well worth the effort and perhaps astoundingly revelatory.

By the way, Markus may be one of the premier lawyers in the USA, a man unafraid of the government and willing to fight for due process even in unpopular cases, such as Maxwell, where everyone has already decided she is guilty and where few see a need for the trial phase of the process, seeking instead the expediency of moving right to the sentencing phase.

Markus has written pieces in the Washington Post, USA Today, Miami Herald, New York Daily News, law.com Newsmax, and others. In one op-ed, he explains how the government frequently and unjustly prosecutes doctors. In another, he argues that cameras should be permitted in federal courtrooms as a check on prosecutors and judges. He is also a contributor for The Hill:

If you look at some of the unpopular causes he espouses, you may understand why he is taking on the most unpopular cause of all – providing defense to a woman who everyone knows is guilty and opposes her being allowed to mount a defense.

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