



Christian R. Everdell



September 21, 2020

BY EMAIL



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

Dear [REDACTED]

We write to address three issues. *First*, we write to express once again our dissatisfaction with the incomplete and inadequate production of discovery to Ms. Maxwell in the MDC, and to demand that the government find an immediate solution that will permit Ms. Maxwell to review all of the discovery materials produced to date. *Second*, we write to request that the government set up a time at the earliest convenience when Ms. Maxwell and defense counsel can review the documents marked as “Highly Confidential” in the discovery materials. *Third*, we write to register our objection to the onerous conditions of confinement to which Ms. Maxwell is subjected, which are entirely unique to Ms. Maxwell. We request that the government intercede directly with the BOP to improve these conditions, as set forth below.

1. Ms. Maxwell Still Cannot Access All of the Discovery

One full month has now passed since August 21, 2020, the date the government represented to the Court that it would complete production of the initial group of discovery materials, and Ms. Maxwell still cannot read a substantial portion of the discovery produced to date. The government further represented to the Court at the initial appearance on July 14, 2020 that this initial group of discovery materials represents “the core of the case” against Ms. Maxwell. (Tr. at 12, line 11). Ms. Maxwell has therefore been denied full access to the most critical evidence in this case for a month. This is unacceptable and inconsistent with the government’s obligations and its representations to Judge Nathan; this must be fixed immediately.

The government represented to the Court at the initial appearance that it was “prepared to make a substantial production of discovery” as soon as the protective order was entered. (Tr. 12-13). However, the government was clearly not prepared to produce discovery, as each of the three

subsequent productions contained numerous unreadable documents and were delivered to Ms. Maxwell in the MDC well after the dates on the cover letters. Ms. Maxwell did not receive the government's August 5th production until August 11th and did not receive the August 13th production until August 17th. As you recall, Ms. Maxwell did not receive the hard drive with the government's third and final production in this first phase of discovery until August 25, 2020, several days after the August 21, 2020 deadline imposed by the Court.

On a conference call on August 27, 2020, we advised you of the substantial number of documents in all three productions that Ms. Maxwell was unable to access, and even proposed possible technological solutions that we thought might alleviate the problem – namely, shortening the file paths to the documents and producing the documents on a hard drive with onboard encryption, as opposed to McAfee encryption. Later that same day, we sent you a follow-up letter listing the unreadable documents and requesting that the government immediately reproduce to Ms. Maxwell a new set of all of the discovery materials produced to date in a format that she could access on her computer at the MDC, and provide the appropriate software tools that will allow her to review all of the discovery files. That same day we also shipped to you two separate hard drives – one with onboard encryption and one without – to use to load the replacement production.

The new hard drive was not made available to Ms. Maxwell at the MDC until the late afternoon of September 9, 2020, almost two weeks later. While some of the previously unreadable documents are now readable, Ms. Maxwell still cannot access a substantial portion of the discovery materials, including certain file types and extensions. For example, Ms. Maxwell cannot read any documents that have .XLS or .EML file extensions. Ms. Maxwell also still cannot access the following documents:

Production Number	Bates Numbers
Production 1	967
	969
	971
	973-974
	976
	1014
	3699
	3700
	4511
	5417
	5431-5433
	5487-5491
	6007-6101
	6130-6132
	7087-7089

	7521-7580
	7620-7641
	7660
	7676-7677
	9087-9088
	11489-11490
	12217
	12305
	12359
	12376
	12382
	12405
Production 2	20147
	20169
	20171
	20182
	20184
	20199
	20205
	20223
	20231
	20242
	20254
	20262
	20269
	20277
	20284
	20306
	20333
	20335
	20337
	20355
	20397
	65958-65960
	76863-76876
	76877-76884
	78667-78668
	78670-78671
	78710-78747
	87383

	87407-87688
	89471-89642
	90052
	90409
	90486
	91249
	91540-92418
	92994-93060
	93432-94279
	98846-101563
	101564-101631
	102101-102121
	105689-105866
	107072-107272
	110210-110266
	118735-118750
	164886-164887
	164920-165517
Production 3	167914-168477
	169184-169504
	169505-169749
	169760-170396
	170398-170613
	170624-170635
	171442
	171447
	171449
	171455
	172140

It is the responsibility of the government, not the defense, to ensure that Ms. Maxwell has a complete set of the discovery that she can review in the MDC. Defense counsel should not be in the position of having to suggest technological fixes to help the government satisfy its own Rule 16 obligations, which have not been met. Without access to the full discovery materials, Ms. Maxwell cannot participate in the preparation of her defense. Accordingly, we demand that the

government immediately fix all of the issues with Ms. Maxwell's discovery so that she can review all of the discovery materials produced to date.¹

Ms. Maxwell also does not have access to a table or a writing surface on which to take notes when she is reviewing the discovery. The desktop computer she uses to review discovery sits on a table that is only wide enough to accommodate the computer, leaving no room to take notes. Ms. Maxwell must attempt to write while the paper is on her lap or rest the paper sideways on the little available space next to the computer. Furthermore, the computer screen uses to view the discovery faces the prison guard station and the doorway to the rec room, where the phone is located. As a result, any time a guard answers the phone or enters or exits the rec room, which occurs as much as 40 times a day or more, Ms. Maxwell has to turn off the computer screen to prevent the guards from seeing what she is reviewing.

These conditions severely impact Ms. Maxwell's ability to prepare her defense and provide written instructions to her legal team. We therefore request that you speak to the warden about providing Ms. Maxwell with a desk and reorienting the computer screen so that it is not visible to the prison guards.

2. Ms. Maxwell and Defense Counsel Request Access to All Documents Designated as "Highly Confidential"

According to the Protective Order in this case, Ms. Maxwell may only review the documents marked by the government as "Highly Confidential" in the presence of defense counsel and "under the protection of law enforcement officers or employees." (Dkt. 36 ¶ 14). Accordingly, we request that the government schedule a time at the earliest possible convenience for Ms. Maxwell and defense counsel to review all of the "Highly Confidential" documents produced to date, pursuant to the terms of the Protective Order.

3. Ms. Maxwell's Conditions of Confinement Must Be Improved

Ms. Maxwell's conditions of confinement are extraordinarily onerous and unlike those of any other inmate at the MDC (or in BOP custody, to our knowledge). In fact, in the time that Ms. Maxwell has been at the MDC, she has met with four separate wardens and interim wardens, and each has told her that they have never seen in their collective years of experience anything like her current regime. We have written to the current warden twice in the last three weeks – on August 28, 2020 and September 9, 2020 – making specific requests to improve the conditions of her

¹ We exclude from this any discovery materials marked "Highly Confidential" that she is not permitted to review in the MDC under the terms of the Protective Order in this case. The "Highly Confidential" documents are the subject of the defense's second request.

confinement, but have received no response. Accordingly, we now ask the government to intercede with the BOP to make the following improvements.

a. Living Conditions, Surveillance, and Searches

Despite being housed on an entire floor by herself, Ms. Maxwell is forced to sleep and spend half of her time in a confined space ominously referred to as the “isolation cell,” which is roughly 7x9 feet. While she is inside the isolation cell, Ms. Maxwell is constantly watched by 2-3 prison guards and has two cameras trained on her every second – one in the ceiling and a supplemental handheld camera that is usually positioned only about four feet away from her. She gets very little sleep, as she is woken up by flashing lights, loud discussions among the guards, and adjustments of the supplemental camera. Ms. Maxwell is effectively being kept in solitary confinement (she has now been housed alone for over 80 days) and treated as if she were on suicide watch even though she is not, and has never been suicidal. Moreover, she is being treated like a laboratory rat, with her every movement is recorded by the prison guards every 15 minutes.

Ms. Maxwell is supposed to be allowed out of the isolation cell from 7am to 8pm each day and taken to a separate rec room on the same floor, where a desktop computer and a shower are located, so that she can review the discovery and maintain her personal hygiene. However, she is frequently picked up late and returned to the isolation cell early. For example, this past Friday, September 18, 2020, Ms. Maxwell had an in-person counsel visit that was supposed to begin at 11:00 a.m. Ms. Maxwell was not picked up from the isolation cell until after 8am and was not delivered to the visiting room until approximately 45 minutes after the meeting was supposed to begin. When Ms. Maxwell finally arrived, she then needed to be strip-searched before the meeting could begin, which meant that the visit was cut short by almost an hour.²

Ms. Maxwell is also searched more frequently and extensively than any other pretrial detainee of which we are aware. Each time Ms. Maxwell is moved from the isolation cell, she is searched and her cell is searched, and she is often searched again when she arrives at the rec room, all of which takes up time she could be using to review the discovery. Then process is repeated when Ms. Maxwell is brought back to the isolation cell. This past Friday, Ms. Maxwell was searched at least five separate times and strip-searched twice. Each time, Ms. Maxwell had her mouth searched by prison guards who put their hands inside her mouth, which exposes her to heightened risk of COVID-19 transmission.

Given the disruption caused by moving Ms. Maxwell each day, we do not see why Ms. Maxwell could not be housed in the rec room where the computer and shower are located, instead of the isolation cell. In fact, Ms. Maxwell was told on several occasions by previous wardens and

² Ms. Maxwell was also not given approved legal calls with counsel on August 25, 2020 and August 27, 2020.

interim wardens that this was the plan. We ask that the government talk to the current warden about implementing this change.

b. Body Scans

Ms. Maxwell is subjected to a body scan each week, and until recently, she received approximately three per week. We assume these are to see if Ms. Maxwell has secreted anything inside her body. We do not understand why it is necessary for the BOP to administer body scans on such a regular and frequent basis – and thereby repeatedly expose Ms. Maxwell to radiation – especially when she is already under constant surveillance and the scans have all come up negative. We ask that these body scans be curtailed significantly or eliminated, if possible.

c. Access to the Commissary

Although the MDC nominally approved Ms. Maxwell's request for permission to purchase from the full prison commissary list in August 2020, in fact, her access to the commissary is still extremely limited. To name just one example, she has not been able to purchase sports bras that fit since she arrived at the MDC. Ms. Maxwell cannot be denied such a basic article of clothing. Among other things, it means that she cannot engage in aerobic exercise necessary to stay healthy. We are more than happy to send Ms. Maxwell whatever brand of underwear is approved by the MDC, but we cannot do so without the permission of the warden. We therefore ask the government to speak to the warden about granting defense counsel permission to send Ms. Maxwell approved commissary items, including underwear, and to give her access to the full commissary list.

d. Food/Care Packages

Ms. Maxwell's meals have been a persistent problem and are entirely inadequate. She has been given non-vegetarian meals and has been denied food on the prison menu. For example, she often receives meals with no protein and was recently given only bread and butter for several meals with no additional food. It was not until Ms. Maxwell was given access to the menu for the first time on September 1, after she complained that she had been given a non-vegetarian meal, that she realized that she had not been receiving full meals with all of the nutritional components since arriving at MDC.

Moreover, she has often has been given inedible food, such as frozen black bananas, and has not been fed at all for long stretches of time. For example, this past weekend she was not fed anything for a period of more than 20 hours from Saturday late afternoon until Sunday at midday. As a result of this inadequate nutrition, she has lost a great deal of weight since arriving at MDC. The MDC's response to this problem was to remove the scale from the rec room so that she can no longer weigh herself and keep track of how much weight she is losing. This is unconscionable

and unacceptable. This lack of food also severely affects her ability to concentrate and review discovery to prepare her defense.

We therefore ask the government to speak to the warden about ensuring that Ms. Maxwell is given full access to the prison menu, that she be given complete meals on a timely basis, and that her food is, at the very least, edible and provides her with enough nutrition to stop her weight loss. We also ask that Ms. Maxwell, like other detainees, be given permission to receive care packages of approved food items to supplement her diet.

e. Non-Delivery of Mail and Other Items

Delivery of mail to Ms. Maxwell has also been a problem. Ms. Maxwell's friends and family members have mailed her numerous letters since she arrived at the MDC. However, as of yesterday, she has only received a handful of these letters, despite being correctly addressed. Several of these letters appear to have been rejected because they were written on colored paper, as opposed to white paper, even this prohibition appears nowhere in the prison regulations. It took six weeks for these letters to be rejected. And even though these letters were all resent on white paper, only one of the nine letters has been delivered to Ms. Maxwell thus far. At the same time, Ms. Maxwell has received hundreds of letters from people she does not know. We do not know why most of the letters that she cares about have not been delivered, while there seems to be no limit whatsoever on the number of letters she can receive from complete strangers.

Ms. Maxwell has also not received shipments of approved items from Amazon. For example, on August 13, 2020, her counsel placed an Amazon order for a package of five BOP-approved flexible pens and eight BOP-approved legal pads. The legal pads were delivered to the MDC on August 18, 2020, and the pens were delivered on August 19, 2020. Both deliveries were rejected as undeliverable without reason. Similarly, the delivery of a book was rejected and returned for no apparent reason. And to our knowledge, none of the copies of *The New York Times*, which are approved and have been paid for since August 1, 2020, have been delivered to Ms. Maxwell. We do not understand why these items were rejected or have not been delivered.

We were also not permitted to deliver a new pair of reading glasses to Ms. Maxwell to replace the ones that BOP personnel broke in a search of her cell shortly after she arrived at the MDC. Instead, we had to wait until Ms. Maxwell received approval to receive the glasses and then had to mail them to her. As a result, Ms. Maxwell was without her reading glasses for over two months from early July 2020 until September 16, 2020, when they finally were provided to her at the MDC. It therefore has been extremely difficult for Ms. Maxwell to review the discovery until now.

We therefore ask the government to speak to the warden about ensuring that Ms. Maxwell's personal mail is delivered in a timely fashion, and that future deliveries of approved items are not rejected and are delivered to Ms. Maxwell.

* * *

In her August 25, 2020 Opinion and Order, Judge Nathan stated that if Ms. Maxwell is not being provided sufficient access to the discovery materials “so that she can meaningfully participate in the preparation of her defense,” defense counsel may seek intervention by the Court. (Dkt. 49 at 2). Judge Nathan further stated that while she had not been presented any evidence that Ms. Maxwell’s conditions of confinement were punitive or motivated by an improper purpose, she nevertheless ordered the government “to provide written status updates every 90 days detailing any material changes to conditions of Ms. Maxwell’s confinement, with particular emphasis on her access to legal materials and ability to communicate with defense counsel.” (*Id.*).

For the reasons set forth above, the government and the BOP are not providing adequate conditions that allow Ms. Maxwell access to the discovery materials so that she can meaningfully participate in the preparation of her defense. Ms. Maxwell has been provided hard drives containing a substantial number of unreadable files and therefore still cannot review the entire discovery production, even though it is now one month after the discovery deadline has passed.

Furthermore, the conditions of Ms. Maxwell’s confinement have deteriorated since our last application to the Court for relief. She is not being fed a sufficient amount of food and is losing a great deal of weight, which makes it very difficult for her to review the discovery and prepare her defense. Ms. Maxwell is also subjected to a level of surveillance that is intrusive, aggressive, constant, unnecessary and unjustifiable on the grounds of safety and security. These measures are akin to punishment, which is inappropriate for any pretrial detainee, especially one who, like Ms. Maxwell, has never once received a disciplinary infraction.

We seek your urgent intervention on these issues now, well before the November 25, 2020 deadline for the government’s first written status update to the Court, because these matters simply cannot wait until then to be remedied. We further reserve all of our rights with regard to these issues, including the right to seek intervention from the Court, if these matters are not addressed expeditiously.

[REDACTED]
September 21, 2020
Page 10

Thank you in advance for your attention to these matters.

Sincerely,

/s/ Christian Everdell
Christian R. Everdell
COHEN & GRESSER LLP
[REDACTED]

cc: [REDACTED]
[REDACTED]
[REDACTED]