

PROSECUTING SEX TRAFFICKING: HOW THE INDICTMENT OF GHISLAINE MAXWELL IN THE CASE AGAINST JEFFERY EPSTEIN HIGHLIGHTS THE DIFFICULTIES IN SEX TRAFFICKING CRIMES PROSECUTION¹

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Introduction and Background: The Jeffrey Epstein Sex Trafficking Ring

March 2005 marked the beginning of dozens of accusations against New York finance giant Jeffrey Epstein for sexual abuse.² After a 14-year old girl accused Epstein of sexual molestation at his home in Palm Beach, Florida, an investigation into Epstein uncovered years of sex trafficking and sexual exploitation of dozens of underage women.³ In July 2019, Epstein was arrested in New Jersey and pleaded not guilty to the accusations of abuse.⁴ Epstein is one of the many public figures who has recently been prosecuted for their sexual abuse. Since the start of the #MeToo movement in 2017, the prosecutions of high profile cases such as with Harvey Weinstein, Larry Nassar, and R. Kelly, highlight some of the difficulties survivors of sex trafficking face in recovering from their abusers.⁵ However, Epstein's case is unique because his ex-girlfriend, British socialite Ghislaine Maxwell, was also prosecuted and charged with assisting Epstein for transporting underage girls to his homes in New York, New Mexico, and her home in London, and also engaging in the sexual abuse.⁶

The survivors of Jeffrey Epstein's abuse accuse him of inviting them to his homes in Florida, New York, and other locations, where he would ask them to give him nude massages in exchange for money, and sometimes engage in sexual intercourse with the women.⁷ As for Maxwell, survivors testified that she helped

¹ For purposes of this article, "sex trafficking" is used to refer to the recruitment, transportation, or solicitation of a person for purposes of "engaging in a commercial sex act" or where the person has not reached 18 years of age and has engaged in the commercial sex act by "threats of force, fraud coercion" in exchange for something of benefit. Additionally, the term "survivor" will be used to describe the men or women who accused or brought charges against a perpetrator of sexual abuse or exploitation.

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² Kelly McLaughlin & Lauren Frias, *A timeline of the sexual abuse cases against Jeffrey Epstein*, INSIDER (Aug. 29, 2019, 2:29 PM), <https://www.insider.com/timeline-jeffery-epstein-sexual-abuse-cases-2019-7>.

³ *Id.*

⁴ William Rashbaum et al., *Jeffrey Epstein Dead in Suicide at Jail, Spurring Inquiries*, N.Y. TIMES (Aug. 10, 2019),

https://cdn.muckrock.com/outbound_composer_attachments/LXHZZTVENTLKU/75219/Jeffrey20Epstein20Dead20in20Suicide20at20Jail20C20Spurring20Inquiries20-20The20New20.pdf.

⁵ CHI. TRIB., *#MeToo: A timeline of events*, (Feb. 4, 2021 at 1:52 PM),

<https://www.chicagotribune.com/lifestyles/ct-me-too-timeline-20171208-htmlstory.html>.

⁶ Rachel Olding, *Powrful Friends, Fake Photos, and a Mystery Company: Who is Epstein 'Madam' Ghislaine Maxwell? Ghislaine Maxwell has no shortage of skeletons in her closet*, DAILY BEAST (Jul 2, 2020).

⁷ Brian Pascus, *Who is Jeffrey Epstein? Facts about the wealthy financier facing child sex trafficking charges*, CBS NEWS (July 11, 2019, 2:55 PM) <https://www.cbsnews.com/news/jeffrey->

to facilitate the abuse and sometimes participated herself.⁸ Over 100 survivors have come forward, the youngest being just fourteen years old.⁹ New York federal prosecutors charged Epstein with one count of sex trafficking conspiracy and one count of sex trafficking with underage women, to which he pled not guilty.¹⁰ These charges were similar to those he had avoided in Florida years prior.¹¹ However, on August 10, 2019, while awaiting his trial for the federal sex-trafficking charges, Jeffrey Epstein was found dead in his New York jail cell, ripping away the possibility for his survivors to confront their abuser in court and have justice be served.¹²

But all hope was not lost for bringing justice to the survivors of Epstein's abuse. A year following Epstein's death in July 2020, Ghislaine Maxwell was charged with six counts relating to Epstein's sex trafficking ring.¹³ Specifically, Maxwell was charged with one count of enticement of a minor to travel to engage in illegal sex acts; one count of transportation of a minor with intent to engage in illegal sex acts; one count of sex trafficking of a minor; and three counts of conspiracy involving Epstein's accusations.¹⁴ The case against Maxwell largely consisted of the testimony and experience of four survivors of the abuse: "Jane," "Kate," Carolyn, and Annie Farmer.¹⁵ "Jane" testified that she met Epstein and Maxwell when she was fourteen years old, and that she was abused by the couple in Florida and Manhattan until she was sixteen.¹⁶ She explained that sometimes Maxwell would be involved while Epstein was abusing her, one time "instructing her" on how to massage Epstein.¹⁷ "Kate" testified that she met Maxwell when she was seventeen years old, and that Maxwell reached out to her to see if she would be interested in giving Epstein a massage, even though she had no massage experience.¹⁸ Maxwell continued to call "Kate" for this favor, invite her on trips

epstein-billionaire-accused-of-child-sex-trafficking-what-we-know-facts-about-new-york-florida-financier/.

⁸ Laudren del Valle & Eric Levenson, *4 women testified at Ghislaine Maxwell's trial that they were sexually abused. Here's what they said*, CNN (Dec. 29, 2021 8:19 PM), <https://www.cnn.com/2021/12/15/us/ghislaine-maxwell-trial-accusers/index.html> (trial testimony from four survivors indicated that Ghislaine would set up the sexualized massages, join in them, and touch the girls inappropriately).

⁹ Pascus, *supra* note 7.

¹⁰ Brian Pascus, *Jeffrey Epstein charged with operating sex trafficking ring involving dozens of underage girls, pleads not guilty*, CBS NEWS (July 8 2019, 3:19 PM), <https://www.cbsnews.com/news/jeffrey-epstein-charged-two-counts-of-sex-trafficking-underaged-girls-pleads-not-guilty-today-live-updates-2019-07-08/>.

¹¹ *Id.*

¹² James C. McKinley Jr., *What is known about Jeffrey Epstein's suicide*, N.Y. TIMES (Dec 7 2021), <https://www.nytimes.com/2021/12/01/nyregion/jeffrey-epstein-suicide.html>.

¹³ De Valle, *supra* note 8.

¹⁴ Rebecca Davis O'Brien, *Here are the charges Ghislaine Maxwell faces*, N.Y. TIMES (Dec. 21, 2021), <https://www.nytimes.com/article/what-is-ghislaine-maxwell-charged-with.html>.

¹⁵ De Valle, *supra* note 8.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

with them, or speak to “Kate” about sexual topics.¹⁹ Carolyn had testified that Maxwell had physically touched her.²⁰ Finally, Annie Farmer testified that she was flown to one of Epstein’s properties where Maxwell was waiting to tell Farmer to get undressed and to give Epstein a massage.²¹ After the trial, Maxwell was found guilty on five of the six charges on December 29, 2021.²² She now faces up to sixty-five years in prison at sentencing.²³

Although Epstein’s sudden death before he could be tried denied survivors their opportunity to confront their abuser in court, the charges against Jeffrey Epstein for his crimes still indicate a major step forward for survivors of sex trafficking to bring a case against their abusers. Additionally, the guilty verdict for Ghislaine Maxwell takes this message a step further—those assisting in the sexual exploitation and trafficking of minors will be held equally as accountable as the main perpetrator of the physical abuse.

Prosecuting Sex Trafficking

The creation of the Trafficking Victims Protection Act (TVPA) of 2000 marked a major step in the United States Department of Justice’s (DOJ) commitment to charging perpetrators of abuse with sex trafficking violations.²⁴ In a study conducted by the Bureau of Justice Statistics on Human Trafficking in 2021, the Bureau determined that from the years 2011 to 2019, there was a 79% increase in defendants charged with human trafficking in United States district courts, an 80% increase in convictions, and an 82% increase in perpetrators who were sentenced.²⁵ However, although reporting, arrests, and convictions for sex trafficking have increased in the United States, the prosecution of these crimes remains a challenge for state and federal prosecutors.²⁶ While the enactment of the TVPA and state legislation to combat human trafficking is a step in the right direction, *enactment* of this legislation does not correlate to the *enforcement* of the legislation.²⁷

¹⁹ *Id.*

²⁰ Laudren del Valle & Eric Levenson, *4 women testified at Ghislaine Maxwell’s trial that they were sexually abused. Here’s what they said*, CNN (Dec. 29, 2021 8:19 PM), <https://www.cnn.com/2021/12/15/us/ghislaine-maxwell-trial-accusers/index.html>.

²¹ *Id.*

²² *Id.*

²³ Steve Almasy, *Ghislaine Maxwell, found guilty of sex trafficking, could spend the rest of her life in prison*, CNN (Dec. 30, 2021 5:55 AM), <https://www.cnn.com/2021/12/30/us/ghislaine-maxwell-thursday/index.html>.

²⁴ Tiffany Dupree, *You Sell Molly, I’ll Sell Holly: Prosecuting Sex Trafficking in the United States Comments*, 78 LA. L. REV. 1025, 1036 (2017-2018) (Prior to the TVPA, prosecutors were forced to charge perpetrators with lesser crimes such as rape, kidnapping, or fraud).

²⁵ Amy D. Lauger and Matthew R. Durose, *Human Trafficking Data Collection Activities, 2021*, BUREAU OF JUST. STAT. (Oct. 2021), <https://bjs.ojp.gov/library/publications/human-trafficking-data-collection-activities-2021>.

²⁶ Amy Farrell et. al., *New laws but few cases: understanding the challenges to the investigation and prosecution of human trafficking cases*, CRIME, LAW, AND SOC. CHANGE, 139 (2013).

²⁷ *Id.* at 141, *see also* Dupree, *supra* note 24, at 1028.

Prosecution in criminal cases requires proof of a crime “beyond a reasonable doubt,” an extremely high burden to meet.²⁸ This is true for both state and federal prosecutions of sex trafficking. Under the TVPA, sex trafficking is defined as performing a commercial sex act by “force, fraud, or coercion.”²⁹ Most sex trafficking charges are prosecuted at the state level, with federal agencies prosecuting only seven percent of sex trafficking charges.³⁰ At the federal level, issues with the prosecution of sex trafficking crimes include “local investigation error, time constraints, lack of victim-centered protocols, and lack of organizational support.”³¹

All fifty states have adopted sex trafficking legislation, although the adequacy and enforcement of such laws vary from state to state.³² For example, many prosecutors are uncertain about whether all three elements of the statute—force, fraud, and coercion—must be proven to prosecute a case, thereby dissuading prosecutors from bringing cases under new trafficking legislation.³³ Although most prosecutors agree the law does not require all three elements to be proven, the presence of force, fraud, *and* coercion creates a much stronger basis for the case, and lack of any one of the three may impact a prosecutor’s decision to bring the case.³⁴

Survivor testimony in any sexual abuse case presents a myriad of complications including survivor’s willingness to testify against their trafficker due to fear, the fact that their willingness to testify may diminish over time, or that their testimony may change as time progresses given the lengthy nature of sex trafficking prosecution.³⁵ The need for survivor testimony and survivor identification present an immense barrier to prosecuting sex trafficking.³⁶ At the arrest level, many law enforcement agencies struggle to actually identify sex trafficking crimes because many survivors do not identify themselves as sex trafficking survivors—whether for fear of their trafficker or due to manipulation.³⁷ Additionally, survivor testimony of their abuse is a highly traumatic experience, often resulting in the re-victimization or re-traumatization

²⁸ Interview by Christian Mysliwiec with Zack Smith, legal fellow, The Heritage Foundation and former assistant U.S. Attorney for the Northern District of Florida, in Miami, FL (Dec 16 2021).

²⁹ Victims of Trafficking and Violence Protection Act of 2000 (TVPA), Pub. L. No. 106-386, 114 Stat. 1464 (2000).

³⁰ Dupree, *supra* note 24, at 1038.

³¹ Andrea J. Nichols & Erin C. Heil, *Challenges to Identifying and Prosecuting Sex Trafficking Cases in the Midwest United States*, 10 FEMINIST CRIMINOLOGY 7, 13 (2015).

³² Dupree, *supra* note 24 at 1039-1040 (Shared Hope International grades the state sex trafficking laws. As of 2015 Louisiana had the most effective sex trafficking laws, earning an “A”, while 11 states scored a D, 13 states scored a C, 21 states scored a B, and only 6 states scored an A. New York and California were among those scoring a D).

³³ Farrell, *supra* note 26 at 142.

³⁴ Nichols, *supra* note 21, at 13.

³⁵ *Id.* at 12.

³⁶ Dupree *supra* note 24, at 1053.

³⁷ *Id.* at 1042.

of survivors.³⁸ Further, survivors of sex trafficking may not want to testify against their abusers because they have romantic feelings for them.³⁹ These challenges are heightened even further when testimony involves abused children or minors.⁴⁰

Additionally, the lack of familiarity many state prosecutors have in dealing with sex trafficking cases, especially given the extremely high stakes of the case, cause prosecutors to hesitate in trying these cases.⁴¹ Often, without overwhelming evidence or numerous witnesses to be called, prosecutors weigh the likelihood of conviction against the time, resources, and difficulties of prosecuting the crimes and choose to not prosecute under sex trafficking laws—or to not prosecute at all.⁴² Thus, the lack of clarity in state legislation for elements of trafficking, lack of experience in handling such cases, and minimal resources available to prosecutors and law enforcement agents, many state prosecutors do not accept such cases or turn them over to federal agencies.⁴³

A better understanding of prosecuting sex trafficking crimes is imperative given the high rates of trafficking in the United States and across the world. The cases of sex trafficking range significantly throughout the United States. For instance, another public figure, Harvey Weinstein, was charged with sex trafficking in August 2018 for luring actress Kadian Noble to his hotel room in France with the promises of a movie role, but instead sexually assaulting her.⁴⁴ The sex trafficking charges were allowed to proceed under an expansive reading of the sex trafficking statute, where the judge interpreted the promise of a potential movie role to be an exchange of “something of value” for an aspiring actress that permitted the suit to be brought where the promise was made in exchange for sexual acts.⁴⁵ Jeffrey Epstein and Harvey Weinstein are examples of public figures who engaged in sex trafficking and used their positions of power and authority to help them perpetuate abuse.

However, sex trafficking crimes often occur in the hidden shadows of our society. In November 2015, Michael Maynes was indicted for conspiracy to commit sex trafficking, five counts of sex trafficking by force, fraud, or coercion and one count of kidnapping/aiding and abetting kidnapping.⁴⁶ Maynes ran a prostitution

³⁸ Kate Crowe, *Sexual Assault and Testimony: Articulation of/as Violence*, 15(2) L., CULTURE, & THE HUM. 401, 403 (2019).

³⁹ See e.g., *United States v. Williams*, 714 Fed. Appx. 917, 919 (11th Cir. 2017)(ninth grade girl who was sex trafficked did not want to testify at trial because she was in a sexual relationship with her abuser and “really cared about Williams”).

⁴⁰ Nicholas, *supra* note 21, at 13.

⁴¹ Farrell, *supra* note 31, at 152.

⁴² *Id.*, see also Dupree *supra* note 24, at 1044.

⁴³ *Id.* at 151-153.

⁴⁴ Jan Ransom, *Is Harvey Weinstein a Sex Trafficker? Judge Says It's O.K. to Ask*, N.Y. TIMES, (Aug. 14 2018), <https://www.nytimes.com/2018/08/14/nyregion/harvey-weinstein-sex-trafficking-lawsuit.html>.

⁴⁵ *Id.*

⁴⁶ *United States v. Maynes*, 880 F.3d 110, 112 (4th Cir. 2018).

business with his girlfriend and two male relatives and was indicted relating to four women he prostituted.⁴⁷ Maynes made a series of promises to these women, such as offering to take care of their children or provide them with homes or cars in return for becoming a commercial sex worker, but kept none of his promises.⁴⁸ Even more recently, the United States Attorney’s Office for the District of Maryland issued a press release on February 4, 2022, regarding the conviction of Aaron Crawford for sex trafficking two minor females.⁴⁹ Crawford lured both girls—one at age fifteen and one who was thirteen when she met Crawford and sixteen when he was convicted—to engage in commercial sex work for profit.⁵⁰ Further investigation revealed Crawford had contacted multiple women in an attempt to recruit them for sex work, with some of the women identifying themselves as minors.⁵¹

The Prosecution of Jeffrey Epstein and Ghislaine Maxwell

The complexities in prosecuting Jeffrey Epstein for his sex trafficking ring, compounded by his status as a public figure and connections to high-powered authority figures, illustrates many of the difficulties in prosecuting sex trafficking—even with willing and able prosecutors and the cooperation of survivors. After being charged in Florida, Epstein cut a deal with the DOJ, admitting to only state charges and spending a year in jail with work-release privileges.⁵² In pleading guilty to only state charges, Epstein entered into a non-prosecution agreement with the DOJ to the federal charges.⁵³ However, federal prosecutors did not disclose the agreement to Epstein’s survivors, stripping them of their legal right under the 2004 Crime Victim Rights Act to be involved in a hearing for negotiations of a plea.⁵⁴ The deal was heavily scrutinized as a failure to give Epstein’s survivors the justice they deserved—but in 2019, these survivors were given their chance at justice when federal prosecutors in New York City brought sex trafficking charges against Epstein.⁵⁵ However, this opportunity for justice was taken from survivors again when Epstein was found dead in his jail cell later that year.

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ Press Release, United States Attorney’s Office for the District of Maryland, *Sex Trafficker Sentenced to 20 Years in Federal Prison for the Trafficking of Two Minors*, DEP’T OF JUST. (Feb. 4 2022), <https://www.justice.gov/usao-md/pr/sex-trafficker-sentenced-20-years-federal-prison-trafficking-two-minors>.

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² Matt Zapotosky & Beth Reinhard, *Justice Dept. faults former Epstein prosecutor for ‘poor judgment’ but finds no misconduct: The case was overseen by Alex Acosta, former U.S. attorney in Florida who later served as President Trump’s labor secretary*, WASH. POST, (Nov. 12 2020)link?.

⁵³ Tung Yin, *Learning from the Jeffrey Epstein Mess: It’s Time to Add a Cause of Action for Damages to the Crime Victims’ Rights Act*, 69 U. KAN. L. REV. 447, 448 (2020).

⁵⁴ *Id.*, see also 18 U.S.C. §3771.

⁵⁵ Zapotosky, *supra* note 52.

The arrest and indictment of Epstein’s right-hand woman Ghislaine Maxwell, therefore, offered the opportunity for these survivors to acquire the recourse they had been seeking for so many years. Still, the prosecution of Maxwell was complicated—while a guilty verdict for Maxwell would be a step in the right direction for justice in this case, prosecutors had to be careful not to prosecute Maxwell for Epstein’s crimes.⁵⁶ Former prosecutors observed that Maxwell’s defense may try to raise the argument that Maxwell herself was a victim of Epstein’s.⁵⁷ Even in sex trafficking cases where a female co-conspirator is herself a victim of trafficking, she still may face prosecution, though prosecutors in Maxwell’s case argued this defense was baseless.⁵⁸ Instead, the prosecution painted a picture of Maxwell as Epstein’s “right-hand woman,” assisting him in grooming the girls by befriending them and trying to offer comfort by having a woman’s presence when much of the abuse took place.⁵⁹ The prosecution faced many of the other issues outlined above—the number of witnesses was cut back, the defense attacked the witnesses’ motives and inconsistencies with prior testimony given the time which had passed since the investigation and the prosecution, and the traumatization of the survivors testifying.⁶⁰

Conclusion

While the guilty verdict of Ghislaine Maxwell provided the dozens of survivors who endured sexual abuse at the hands of Jeffrey Epstein some of the justice they were deprived of for so many years, this is often not the case for survivors of sex trafficking. The multitude of hurdles prosecutors face in trying sex trafficking cases—from law enforcement’s difficulties in identifying rings and making arrests, to proving the elements of the crime and maintaining witnesses—are just some of the many factors that perpetuate sex trafficking in the United States today. Although state legislatures and the federal government have enacted some laws to try and combat sex trafficking, the effectiveness of these laws is still in question. Cases like Jeffrey Epstein’s are not unusual across the nation, but it does shed light on the importance of comprehensive state and federal laws surrounding sex trafficking and the imperative need for survivor-supportive trials and investigations so that women such as the Epstein survivors can safely seek the justice they deserve.

⁵⁶ Benjamin Weiser & Rebecca Davis O’Brien, *As Maxwell’s Sex Trafficking Trial Begins, Epstein’s Shadows Looms Large*, N.Y. TIMES (Nov. 29 2021)

<https://www.nytimes.com/2021/11/29/nyregion/ghislaine-maxwell-trial.html>.

⁵⁷ *Id.*

⁵⁸ Alexandra F. Levy, *Innocent Traffickers, Guilty Victims: The case for prosecuting so-called ‘bottom girls’ in the United States*, 6 ANTI-TRAFFICKING REV; BANGKOK 130-133 (2016) (arguing that prosecution of women traffickers as co-defendants when they themselves have been victims is fair where the court is in the best place to weigh these women’s victimization with their guilt.)

⁵⁹ Interview by Christian Mysliwiec with Zack Smith, *supra* note 28.

⁶⁰ *Id.*, see also TORONTO STAR, *Ghislaine Maxwell trial set to begin: Prosecution in sex crimes case face several obstacles in proving guilt*, (Nov. 20 2021) <https://www.proquest.com/docview/2603918730?accountid=36339&parentSessionId=hsYALpuI X4LJXe%2FUGyFHuZQJOVWkKAgNE%2BpIboJFvT0%3D&pq-origsite=primo>.