

# Bill Cosby is free; Ghislaine Maxwell should be, too

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The Pennsylvania Supreme Court did the right thing when it threw out Bill Cosby's convictions because prosecutors cheated: They promised Cosby that they would not prosecute him if he would testify in the civil cases against him; based on that promise, Cosby testified and did not invoke his Fifth Amendment right to remain silent. Prosecutors then broke their promise and used Cosby's statements in those depositions to win a conviction against him.



Socialite Ghislane Maxwell with an unidentified male companion attends the Opening of the Asprey Flagship Store on 5th Avenue December 8, 2003 in New York City. (Mark Mainz/Getty Images)

The state Supreme Court not only acquitted him but barred the prosecutors from retrying him.

The court framed the issue as whether the prosecutor's "decision not to prosecute Cosby in exchange for his testimony must be enforced against the Commonwealth." That seems pretty straightforward, right? Even prosecutors should have to live up to their end of a bargain. If a prosecutor promises something, he should be bound by his word — just like the rest of us.

And for 79 pages, the court detailed why prosecutors are no different than any other actor in the justice system. When they make a promise, they have to stick to it.

This opinion and reasoning applies directly to Ghislaine Maxwell's case.

In her case, Jeffrey Epstein pleaded guilty and struck a bargain with the prosecutors in Miami: In exchange for pleading guilty in state court, the U.S. Attorney's office agreed that it would not prosecute any of his alleged co-conspirators.

There has been quite a bit of criticism of this deal. But it is a contract that Epstein and the government entered into knowingly and voluntarily. And certainly, the government was in the better bargaining position as it is with any criminal defendant.

Maxwell is accused of being one of Epstein's co-conspirators from 25 years ago. She has declared her innocence and is set to fight the case at trial in November. But she should not have to fight her case at trial and her case should be thrown out, just like Cosby's has been, because prosecutors promised Epstein when he pleaded guilty that they would not prosecute her.

When Epstein agreed to plead guilty and go to state jail, the United States agreed not to prosecute him or his alleged co-conspirators. This is in black and white: "the United States . . . will not institute any criminal charges against any potential co-conspirators of Epstein."

Despite its promise not to go after Maxwell, federal prosecutors in New York brought a federal case against her after Epstein died, arguing that it does not need to live up to the deal struck by federal prosecutors in Miami.

But that reasoning makes no sense. We have one federal government, and the agreement says clearly that the United States would not prosecute Maxwell.

And just like in Cosby's case, the New York prosecutors want to use Maxwell's depositions against her even though the government had said there would be no charges. The trial court, just like the trial court and intermediate appellate court in Cosby's case, has agreed to let the government out of its deal.

The case against Ghislaine Maxwell is extremely weak — based on 25-year-old, uncorroborated allegations made only after Epstein died. A jury should reject those flimsy and stale charges. But in the event of a conviction, she should get relief on appeal for the same reason Cosby did — prosecutors should have to live up to the deals they make. As that court explained: “A contrary result would be patently untenable. It would violate long-cherished principles of fundamental fairness. It would be antithetical to, and corrosive of, the integrity and functionality of the criminal justice system that we strive to maintain.”

The Cosby case reaffirms that a prosecutor is bound to act with integrity and the public must be able to rely on his word. What a concept.

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