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Pre-trial Papers

People v. Maynard, 80 Misc. 2d 279 - NY:  
Supreme Court, New York 1974

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1-25-1973

## Application for Bail Pending Appeal

Lewis M. Steel '63

SUPREME COURT OF THE STATE OF NEW YORK  
APPELLATE DIVISION: FIRST DEPARTMENT

- - - - -X

THE PEOPLE OF THE STATE OF NEW YORK,

Respondent,

APPLICATION FOR BAIL  
PENDING APPEAL

- against -

WILLIAM A. MAYNARD, JR.,

. Defendant-Appellant.

- - - - -X

S I R S:

PLEASE TAKE NOTICE that the undersigned, upon the affidavit of Lewis M. Steel, sworn to the 25th day of January, 1973 and all the proceedings had heretofore will move this Court, before the Hon. Francis Murphy, Jr., on the 7th day of February, 1973 at 10:30 O'clock in the forenoon or as soon thereafter as Counsel may be heard, for an order pursuant to § 460.60 of the CPL setting reasonable bail pending appeal.

Dated: New York, New York  
January 25, 1973

Yours, etc.,

LEWIS M. STEEL,  
DANIEL L. MEYERS  
351 Broadway  
New York, N. Y. 10013  
966-7110  
Atty. for Defendant-  
Appellant

To: Frank S. Hogan  
District Attorney  
New York County

SUPREME COURT OF THE STATE OF NEW YORK  
APPELLATE DIVISION: FIRST DEPARTMENT  
-----X

THE PEOPLE OF THE STATE OF NEW YORK,

Respondent,

- against -

WILLIAM A. MAYNARD, JR.,

Defendant-Appellant.

AFFIDAVIT IN SUPPORT  
OF APPLICATION FOR  
BAIL PENDING APPEAL.

-----X  
STATE OF NEW YORK )  
                                  ss.:  
COUNTY OF NEW YORK)

LEWIS M. STEEL, being duly sworn, deposes and says:

1. I am one of the attorneys for the defendant-appellant,  
having been his trial counsel and his attorney on appeal.

2. The defendant has been in custody since November, 1967,  
when he was arrested in Germany on a charge of murder in the  
1st degree. His first trial in May and June, 1969, ended in a  
hung jury. After a mistrial in 1970, he was retried in the fall  
of 1970, and convicted of the lesser included charge of manslaughter  
in the 1st degree under the old penal law. He was sentenced to a  
term of 10-20 years imprisonment on February 4, 1971 by Mr.  
Justice Irwin Davidson.

3. The Appellate Division, First Department affirmed his  
conviction on November 9, 1972, Stevens, P.J. and Murphy, J,  
dissenting in a memorandum by Murphy, J. Permission to appeal  
to the Court of Appeals was granted by the Hon. Francis T. Murphy,  
Jr., on November 17, 1972. Notice of Appeal to the Court of  
Appeals was filed on November 22, 1972. On December 28, 1972,

the Court of Appeals appointed Lewis M. Steel and Daniel L. Meyers to represent Maynard on appeal.

4. The defendant is presently incarcerated in Clinton Prison, in Dannemora, New York, after having previously been confined in Ossining Prison, Attica Prison and Greenhaven Prison.

5. Prior to the trial in which he was convicted, and while charged with murder in the first degree, bail was set at \$50,000. The defendant, who is indigent as a result of being incarcerated, was unable to make bail.

6. On June 29, 1972, Mr. Justice Sutton set bail at \$50,000 pending appeal to the Appellate Division. On September 11, 1972, bail was posted for the defendant by Stuyvesant Insurance Co. as surety. On September 14, 1972, after initially seeking to challenge the sufficiency of the bond (but ultimately conceding this fact) before Mr. Justice Burns in Part 30 of the New York Supreme Court, the District Attorney reargued the bail application before Mr. Justice Sutton. After reargument, Judge Sutton ordered that Maynard be produced before him on September 19, 1972, so that he could establish travel restrictions. On September 15, 1972, the District Attorney filed an Article 78 against Mr. Justice Sutton in this Court, and obtained a stay of his release. This action, Scotti v. Sutton, was dismissed as moot on November 9, 1972.

7. The bail fund in the amount of cash and securities totalling \$50,000 is still available in the event this Court fixes bail. The fund has been raised from many persons, including distinguished members of the New York bar.

8. This application is directed to Mr. Justice Murphy under CPL 460.60 as he granted the defendant permission to appeal.

9. With regard to the criteria set forth in CPL 510.30 with regard to bail on appeal, counsel sets forth the following facts:

(i) Mental condition, character and reputation: Counsel has visited the defendant many times since his incarceration, and has always found him to be an exceptional person with great strength of character, insight and integrity. He appears to have deeply suffered from his incarceration, but has maintained his dignity and composure throughout.

On the issue of his character and reputation, I attach hereto 3 letters from persons who have known the defendant over the years.

The first is from the distinguished writer, William Styron: He says:

I am writing you in behalf of William A. Maynard, hoping that you might find it reasonable and appropriate to grant him bail. I appeared as a character witness at his trial, believing him then as now innocent of the crime of which he was accused, and further convinced that his conviction was a miscarriage of justice.

I first became acquainted with Maynard ten years ago when he was introduced to me by another writer and mutual friend, James Baldwin. I got to know Maynard well and came to regard him as a young man of exceptional intelligence, poise and decency. Such was my respect for his gentleness and integrity that I found it (and still find it) inconceivable that he should be accused of committing the ruthless and brutal crime for which he was ultimately sent to prison.

It is my understanding that Maynard has been dreadfully brutalized during his time in prison so far, and has suffered perhaps more than the ordinary anguish that attends incarceration. Knowing the nature of Maynard's sensibility,



I cannot help but feel that further time behind walls might totally mutilate or even destroy the personality of a man who I know from first-hand evidence has much still to contribute to society. In his struggle toward vindication -- a vindication I somehow am convinced he will eventually win -- the granting of bail would be a crucial first step toward allowing him to regain his equilibrium. Those of us who have a stake in his future have shown our faith in Maynard by unhesitatingly responding to secure his bond. I think I am speaking for all of us when, I say that your favorable decision might be instrumental in saving the very life of a valuable, decent man whose spirit must otherwise be crushed and ruined.

The second letter is from Arthur L. Liman, former General Counsel of the Mc Kay Commission, who describes his contacts with Maynard in the aftermath of the Attica uprising. In his letter, Mr. Liman indicates that Maynard was a reluctant bystander to the Attica events (the defendant received two gunshot wounds in the recapture of the prison and a manuscript he was working on was destroyed by the take-over force). Mr Liman<sup>\*</sup> assesses Maynard as follows:

I found Mr. Maynard to be intelligent, cooperative and candid. He is by nature extremely sensitive and almost obsessed with a concern for privacy. Obviously, the communal aspects of prison life and regimentation had a corrosive effect upon him. When I met him he was in segregation because he preferred solitude, where he could write, to the din of normal cell life.

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\*

Mr. Liman suggests that his letter be sealed as Maynard may be endangered by other prisoners because he talked to representatives of the Mc Kay Commission. It was common knowledge, however, in the prison that Maynard did this. Nor, from what I've been able to gather from attorneys who have been working in behalf of the Attica prisoners charged with crimes as a result of the uprising, was there any resentment. As Maynard was in segregation when the uprising began and was only released after the take-over was completed, he knew nothing about its origins. Being a solitary

The third letter is from Mrs. Gitta Bauer, the assistant bureau chief of the Springer Foreign News Service of West Germany. Mrs. Bauer won the Theodore Wolff Prize in 1970 (the German equivalent of the Pulitzer Prize) for her reporting from the United States and served as President of the Foreign Press Association in 1971. Mrs. Bauer says:

I have known Mr. William A. Maynard, Jr., since his third trial in fall 1970, which I covered as a reporter. I was shocked by the verdict, since the proceedings had raised serious doubts in my mind, the same kind of doubts that are reflected in your and Justice Harold Stevens' dissenting opinion. Since then I have sought the acquaintance of Mr. Maynard and have seen him several times at the Correctional Facility of Green Haven and at the Bronx House of Detention.

Mr. Maynard appeared to me to be a man of great discipline and as one having the ability of selfmastering and self-restraint. I was amazed by his serenity of mind, the sanity of his judgement and the strength with which he is bearing his fate. Putting myself in his shoes I seriously doubt whether I could have maintained his confidence, that justice will ultimately prevail. I am absolutely sure, that Mr. Maynard, if set free on bail, would continue to comport himself in the same manner, and that he would in no way be a threat to society, but rather an example in fortitude.

I am saying this not lightly, Sir. Being a skeptic by education, profession and the experience of life I am not

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individual, he was associated with no groups in prison. Thus, he talked to the Mc Kay personnel only about prison conditions generally and the brutality of the prison's recapture. By so doing, he did a service to his fellow prisoners and to the public generally. Far from causing him problems with other prisoners, his cooperation placed him in jeopardy from only one segment of the prison population he comes in daily contact with -- the guards. Counsel therefore is content to have the Liman letter appear openly on the record, as the guards already know that Maynard spoke to the McKay investigators.

easily taken in by pleasant manners or appearances. Rather I would say that my assignments as a foreign correspondent all over the world - including the Nuremberg trials, the trial of Adolf Eichmann in Jerusalem and lately the Angela Davis trial - and the opportunity to meet people from all walks of life have taught me to see through surface varnish and recognize the working of people's minds.

Please accept my statement as an objective reflection of what I concluded from careful observation.

(ii) The defendant's ability to support himself: Prior to his incarceration in this case, Maynard had been a principal in a small personally held business corporation. Through this corporation, he acted as an agent for well-known jazz musicians in Europe, where he made regular trips. Maynard also was in partnership with his brother-in-law in a clothing business in New York City prior to his arrest. Additionally, the appellant was attempting to develop a career as an actor. Some two months before the homicide for which he now stands convicted, Maynard was offered a leading role in a motion picture which was to be filmed in New York. This acting assignment was announced in the trade newspaper, Variety, and I personally verified this fact directly with the film's producer.

(iii) Family ties: The defendant's family ties in New York City are excellent. His sister, Valerie Maynard, is a well-known sculptor in New York City, and works with the Studio Museum in Harlem. Another sister, Barbara Fraser, has lived in Richmond Hills, Queens for many years. Mrs. Fraser's husband is a public employee and works for the City of New York. Maynard has lived in New York City most of his adult life. He was raised as a child by his grandmother, Dr. Irene Pratt, in Florida, and has visited her on a regular basis all his adult life (Appellant's Brief, p. 22).



(iv) Prior record: Prior to his conviction for manslaughter, the appellant, who is 36 years old, had been convicted of the following:

a. Assault in the 3rd degree; 12/17/63; New York City, \$50/10 days, Malzhin, J.

The defendant testified at trial that this conviction resulted from his participation in a civil rights demonstration involving discrimination in the building trades unions.

b. Section 975 Policy; 7/23/64; New York City; sentence 10/21/64; \$100/10 days; Rao and Babock, J. (sentence).

c. Attempted Bail Jumping; 3/21/66; New York City; sentence time served.

The sentencing minutes on this matter, Indictment No. 3226, 1964, March 21, 1966 Special and Trial Term, Part 38, Schweitzer, J., reveal that the appellant voluntarily surrendered after returning from a trip to Egypt to face another charge.

d. Possession of a weapon, November 15, 1965; Tangiers, Morocco; sentence: 1 year suspended.

e. Possession of a weapon (misdemeanor); 4/19/66; San Diego, California; sentence - 1 year probation.

After being sentenced in the instant case, the appellant was sentenced on the following two charges:

f. Bail jumping as a misdemeanor, March 1, 1971, Supreme Court, New York County, Birns, J., 1 year concurrent with manslaughter sentence.

This charge of bail jumping arose when the defendant stayed in Europe on a business trip, and did not appear on a motor vehicle charge. The record reveals, however, that before going to Europe, the appellant did attend court when required (Appellant's

Brief, p. 112(4)). The appellant thereafter travelled to Europe on business using a valid passport, which he replaced in Germany because it was dirty. When the appellant sought a new passport, which he did not have to do as the old passport had not yet expired, and was clearly readable, he gave the American Embassy his correct European and American addresses (see, Appellant's Brief, p. 120).

g. Unauthorized use of a motor vehicle as a misdemeanor, March 1, 1971. Supreme Court, New York County, Birns, J., 1 year concurrent with the manslaughter and bail jumping sentence.

(v) As indicated, the appellant does have two convictions relating to missed court appearances. However, in the first case, the appellant voluntarily surrendered himself upon returning from overseas. In the second matter, the appellant was travelling openly in Europe on business, and actually made his whereabouts known to American authorities. This is hardly the conduct of a man who did not intend to return and dispose of outstanding charges. Moreover, the testimony in the record, given by a police officer, was that the appellant's lawyer told the authorities that the appellant had gone to Europe, (Appellant's Brief, p. 11), again indicating the appellant's intent to resolve his problems with the law rather than flee.

In further consideration of this application, counsel calls the Court's attention to the following facts:

Appellant's prior counsel, Gussie Kleinman, Esq., informed me when I undertook Mr. Maynard's defense, that he had been offered time served by the district attorney's office if he would plead guilty to a lesser crime under the indictment. She further

informed me that Mr. Maynard refused to accept the offer on the basis that he was innocent of the crime, and looked forward to being vindicated at the conclusion of his trial.

Recently another of Maynard's former attorneys, Selig Ianevsky, Esq., verified to me that this offer had been made. The author, James Baldwin, who attended many court sessions in behalf of the defendant has also verified that he was present when this offer was made.

Additionally, Mr. Maynard has for the entire period of his incarceration sought a lie detector test and/or a sodium pentothal test in order to establish his innocence. I personally requested that the district attorney administer such tests when I became counsel. The district attorney refused. As with the refusal to accept time served, these requests of the appellant are consistent with the conduct of a person seeking vindication through the judicial process.

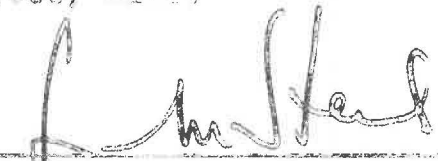
10. The Likelyhood of Reversal: This Court is aware of the majority and minority opinions which have been filed in this case, and which are attached hereto and made a part hereof. I can only add that I know of few cases which have ever had greater number of serious issues to be decided by an Appellate Court.

11. The defendant has not previously sought the relief requested herein from any other court.

12. In conclusion, counsel calls to the attention of this Court the fact that the defendant has already been incarcerated since he was arrested in Germany in November, 1967, that he has been wounded through no fault of his own while in custody, that

he has served a significant part of his sentence -- years which cannot be given back to him if he is eventually found guilty. If he would have already been free if he would have only accepted a plea bargaining deal, that 2 judges, having all the facts before them, have set bail at \$50,000.00, and that the issues on appeal are substantial.

WHEREFORE, this Court should set reasonable, but in no event in an amount more than \$50,000, bail.



LEWIS M. STELL

Sworn to before me this 25th day of January, 1973.



NOTARY PUBLIC

State of New York  
County of New York  
Notary Public  
Commission Expires March 31, 1974

December 4, 1972

Hon. Francis T. Murphy, Jr.  
Justice of the Appellate Division  
New York, N.Y.

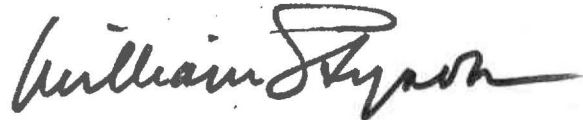
Dear Justice Murphy:

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Very sincerely yours,





ARTHUR L. LIMAN

32nd Floor  
345 Park Avenue  
New York, N.Y. 10022

November 28, 1972

Lewis M. Steel, Esq.  
diSuvero, Meyers, Oberman, Steel  
351 Broadway  
New York, N.Y. 10013

People v. William A. Maynard, Jr.

Dear Mr. Steel:

You have asked me to describe my contact, as general counsel of the New York State Special Commission on Attica, (the "McKay Commission") with William Maynard.

I and members of my staff met with Mr. Maynard on several occasions in the course of our investigation, and questioned him about conditions at Attica, and the events preceding, during and after the uprising in which Mr. Maynard was a reluctant bystander.

I found Mr. Maynard to be intelligent, cooperative and candid. He is by nature extremely sensitive and almost obsessed with a concern for privacy. Obviously, the communal aspects of prison life and regimentation had had a corrosive effect upon him. When I met him he was in segregation because he preferred solitude, where he could write, to the din of normal cell life.

At all times he was courteous, and I thought insightful. While I am not familiar with the facts relating to his conviction, and it would be inappropriate for me to make recommendations on his bail application, I have no objection to your reporting to the court the fact of his full cooperation with the Commission (including exhibiting a copy of this letter to the court). I suggest that, to avoid the possibility of inmate reprisals for cooperation, the letter and the fact of his cooperation be sealed.

Sincerely yours,



Arthur L. Liman

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SPRINGER FOREIGN NEWS SERVICE

Gitta Bauer

November 27, 1972

Justice Francis Murphy  
c/o Mr. Lewis Steel  
Attorney at Law  
351 Broadway  
New York, N.Y. 10013

Dear Judge Murphy:

I have known Mr. William A. Maynard, Jr. since his third trial in fall 1970, which I covered as a reporter. I was shocked by the verdict, since the proceedings had raised serious doubts in my mind, the same kind of doubts that are reflected in your and Justice Harold Stevens' dissenting opinion. Since then I have sought the acquaintance of Mr. Maynard and have seen him several times at the Correctional Facility of Green Haven and at the Bronx House of Detention.

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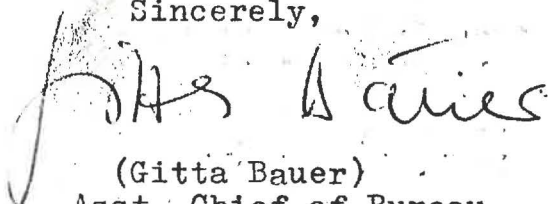
over

Axel Springer, Chairman of the Board · Peter Tamm, President

Please accept my statement as an objective reflection  
of what I concluded from careful observation.

I remain, Sir,

Sincerely,

A handwritten signature in cursive script, appearing to read "Gitta Bauer".

(Gitta Bauer)  
Asst. Chief of Bureau