

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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THE UNITED STATES OF AMERICA,

Plaintiff,

vs.

Criminal Action No.
1:21-cr-00582-CRC-1
Wednesday, September 22, 2021
11:02 a.m.

MICHAEL A. SUSSMANN,

Defendant.

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TRANSCRIPT OF STATUS CONFERENCE
HELD BEFORE THE HONORABLE CHRISTOPHER R. COOPER
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the United States:

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P R O C E E D I N G S

1
2 THE COURTROOM DEPUTY: Your Honor, we're on the
3 record for Criminal Case 21-582, *United States of America*
4 *vs. Michael A. Sussmann.*

5 Counsel, please identify yourselves for the
6 record.

7 MR. DeFILIPPIS: Good morning, Your Honor;
8 Assistant Special Counsel Andrew DeFilippis and Assistant
9 Special Counsel Michael Keilty for the United States.

10 THE COURT: Good morning, gentlemen. Pleasure to
11 meet you.

12 MR. BERKOWITZ: Good morning, Your Honor; Sean
13 Berkowitz, Michael Bosworth, and Natalie Rao, representing
14 Michael Sussmann, who is also present on Zoom.

15 THE COURT: Okay. Good morning, Mr. Berkowitz.
16 Good to meet you folks as well. This is our initial
17 appearance.

18 Mr. Sussmann, I can see you. Can you see and hear
19 me fine?

20 THE DEFENDANT: Yes, Your Honor, I can. Thank
21 you.

22 THE COURT: Okay. Just a few housekeeping matters
23 at the outset.

24 Obviously we would normally conduct this
25 proceeding in person, but because of COVID and the fact that

1 several counsel are from out of town we are proceeding
2 remotely by video this morning. Mr. Sussmann, do we have
3 your consent to proceed?

4 THE DEFENDANT: Yes, Your Honor.

5 THE COURT: And you've spoken to Mr. Berkowitz
6 about that?

7 THE DEFENDANT: Yes, Your Honor.

8 THE COURT: Okay.

9 The second thing is the Court should note at the
10 outset that I worked as a junior lawyer at the Justice
11 Department for two years in the mid-1990s in the Deputy
12 Attorney General's Office, the two years following law
13 school. Mr. Sussmann also worked at the building at the
14 same time, I believe in the criminal division. We did not
15 work together or socialize personally, but I think it's fair
16 to say that we were professional acquaintances.

17 I don't believe that this creates a conflict, but
18 my regular practice is to disclose those sorts of
19 relationships with lawyers or with parties on the record.
20 And I would advise you that I would be happy to entertain a
21 motion if either side believes that there is a conflict on
22 that basis or any other, but I would ask that you simply do
23 so sooner rather than later so that I don't invest too much
24 time in the case.

25 All right. With that, I know that some of you

1 practice in other jurisdictions. The Court does not have a
2 standing order in criminal cases, but just a few ground
3 rules.

4 First, with respect to contacting the Court, the
5 parties should communicate to the Court only by motion or
6 notice, except with respect to, you know, routine scheduling
7 or logistics or other routine matters like that. In that
8 case, the parties should communicate with Ms. Jenkins,
9 Lauren Jenkins, who is our courtroom deputy. I will ask her
10 to provide everyone with her email address and other contact
11 information. She will also provide you with contact
12 information for the law clerk who is assigned to the case,
13 and you should feel free to copy the law clerk on any
14 routine correspondence with the Court.

15 Other than that, no particular ground rules. You
16 all are pros, and I'm sure we will get along just fine.

17 So with that, Mr. DeFilippis, where are we with
18 respect to discovery? Any wrinkles I should know about?
19 Anything you want to let me know off the bat?

20 MR. DeFILIPPIS: No, Your Honor. We are working
21 expeditiously to prepare discovery in this case. We have
22 spoken to defense counsel and scheduled a meeting about
23 discovery matters, which will take place tomorrow, and our
24 hope is there that we can try to agree on a schedule for
25 discovery and flag for the defense the nature of the

1 discovery, hear from them any requests or particular issues
2 or concerns they have, and try to make this as cooperative a
3 process as possible.

4 The discovery in this case will be more
5 voluminous, we think, than in the average case. It will be
6 a combination of government records and records obtained
7 from parties in the private sector by grand jury subpoena
8 and otherwise, and so we will work very quickly to get
9 everything that the defense is entitled to as quickly as
10 possible.

11 There are classification issues with regard to
12 some of the discovery. We have already made arrangements
13 for both defense counsel to receive security clearances.
14 That is in process, and we hope that that will move along
15 quickly.

16 So there may be some classified discovery, and
17 there may also be -- we're not certain, but there could be
18 motion practice under the Classified Information Procedures
19 Act.

20 But all of that's to say we are working as quickly
21 as possible to get a handle on these issues and get
22 everything to the defense that they're entitled to.

23 THE COURT: Okay. Mr. Berkowitz, have you been
24 cleared previously? Same for Mr. Bosworth and Ms. Rao?

25 MR. BERKOWITZ: So I'm the only one who has not

1 previously been cleared on our team, Judge. Mr. DeFilippis
2 is absolutely correct that Special Counsel Durham and his
3 team expeditiously have gotten us the paperwork, which we'll
4 be submitting today, to get that clearance, and so we have
5 full expectations that we should be able to get the
6 appropriate clearance in a timely manner.

7 THE COURT: Okay. So Mr. DeFilippis, is there a
8 CISO who has been identified to coordinate this process?

9 MR. DeFILIPPIS: There is, Your Honor. We're
10 dealing with our normal contact. Whether they will assign
11 someone else or instead take it going forward, we'll apprise
12 the Court and the defense. But our hope, too, is that as
13 soon as particular levels of clearance are authorized we can
14 start providing materials at that level. In other words, we
15 won't wait for the process to be completed if we can push
16 things out in the meantime.

17 But we will advise the Court and the defense of
18 who the point of contact will be.

19 THE COURT: Okay. Mr. Berkowitz, I was going to
20 ask you your position on speedy trial, but given the
21 classification issues and the volume of discovery that the
22 government has described, I take it that that won't be an
23 issue, at least not at this point?

24 MR. BERKOWITZ: Yes, with the caveat, Judge, we
25 certainly won't be looking to exercise our rights under the

1 speedy trial in the next 75 days, but we do want a trial as
2 expeditiously as we're able. Mr. Sussmann is not working
3 currently, and this obviously -- it takes a toll on
4 everyone, and I think it's in everyone's interest to get
5 this done as quickly as we can while obviously availing
6 ourselves of our rights for pretrial motions and getting
7 access to the discovery.

8 So that's a long answer to a short question.

9 THE COURT: Okay. I won't hold you to this, but
10 should I expect any nonroutine pretrial motions pending
11 discovery in the case? Any legal motions?

12 MR. BERKOWITZ: So I would expect that one of the
13 issues that we want to speak with the government about is a
14 request for a bill of particulars as to certain allegations
15 in the indictment. We would typically have 14 days from his
16 arraignment last Friday under Rule 7. We probably would ask
17 for 14 days from today to file any motion for a bill of
18 particulars.

19 As to the other types of --

20 THE COURT: I think you just cut out,
21 Mr. Berkowitz.

22 (Zoom feed is lost)

23 THE COURT: Mr. Berkowitz, I apologize. Our feed
24 got cut off about 45 seconds ago. You had just mentioned
25 that you may need a little more time for your motion for

1 bill of particulars. Unfortunately I need to hit rewind.

2 MR. BERKOWITZ: Okay. Well, the good news is I
3 think I remember I didn't say a ton.

4 We may have a couple of legal motions -- I don't
5 know yet -- including on materiality, potentially, and a
6 motion to strike for surplusage. Other than those three, we
7 can't think of any right now.

8 We, of course, do believe that there could be
9 motions on discovery practice. That will become apparent
10 after we speak with the government and have a sense of
11 whether we have agreement on what Mr. Sussmann is entitled
12 to, including on Brady material where we believe there's,
13 you know, significant exculpatory material and witness
14 statements from grand jury. But that is something we would
15 come to you with after we've had an opportunity to speak to
16 the government about it.

17 THE COURT: Okay. So have you all talked about
18 proposed dates or time frames to come back?

19 MR. BERKOWITZ: We have not, Judge. I would think
20 that if we could get a date before you in three or four
21 weeks, we would probably at that time have a much better
22 sense of our positions on discovery and have a better sense
23 on all of the issues that I mentioned.

24 THE COURT: Mr. DeFilippis, 30 days?

25 MR. DeFILIPPIS: Yes, that's fine with the

1 government, Your Honor.

2 THE COURT: Okay. Ms. Jenkins?

3 THE COURTROOM DEPUTY: October 26th at 11:00 a.m.?

4 THE COURT: October 26th at 11:00 a.m., Counsel?

5 MR. BERKOWITZ: I'm taking a quick look. That
6 should work.

7 MR. DeFILIPPIS: That's fine for the government,
8 Your Honor.

9 THE COURT: Okay.

10 All right. The Court will continue this matter
11 for a further status conference on October 26th at 11:00
12 a.m. Hearing no objections from the defense, the Court will
13 exclude the time between now and then from the otherwise
14 applicable speedy trial calculations both in the interest of
15 justice to enable the parties to work through the discovery
16 issues that have been noted in open court as well as due to
17 the recent standing order by the chief judge excluding time
18 between now and October 31st from the speedy trial
19 calculations due to the limitations on courtrooms and other
20 court facilities for trials as a result of the ongoing
21 pandemic.

22 Anything else, Counsel?

23 MR. DeFILIPPIS: No --

24 MR. BERKOWITZ: I'm sorry, Mr. DeFilippis. Go
25 ahead.

1 MR. DeFILIPPIS: No, nothing from the government.

2 MR. BERKOWITZ: And just briefly, Judge, could we
3 confirm that we have 14 days from today to file any bill of
4 particulars motion?

5 THE COURT: So ordered.

6 MR. BERKOWITZ: Thank you. And one other item, a
7 housekeeping item to note.

8 We were before Judge Faruqui on Friday, and he set
9 conditions of bond. There were two inadvertent errors in
10 the bond that was formally entered: the amount and **to whom**
11 **Mr. Sussmann will surrender his passport.**

12 We've been in touch with the government on that
13 issue, and we've been in touch with Judge Faruqui's clerk,
14 and we believe that will get corrected, but we just wanted
15 to alert you to that fact, Judge.

16 THE COURT: Very well. If there's anything that
17 you need me to do, just let me know.

18 MR. BERKOWITZ: Of course.

19 THE COURT: All right. Finally, I'm required
20 under the Due Process Protection Act, which was passed last
21 year, to advise the government to review and comply with its
22 *Brady* disclosure obligations. The failure to comply could
23 result in dismissal of the indictment or individual charges,
24 exclusion of evidence, and any other remedy that is just
25 under the circumstances.

1 All right. If there's nothing else, we will see
2 you back here in October.

3 MR. DeFILIPPIS: Thank you, Your Honor.

4 MR. BERKOWITZ: Thank you.

5 THE COURT: All right. Have a good day.

6 (Whereupon the hearing was
7 concluded at 11:15 a.m.)

8
9 **CERTIFICATE OF OFFICIAL COURT REPORTER**

10
11 I, LISA A. MOREIRA, RDR, CRR, do hereby
12 certify that the above and foregoing constitutes a true and
13 accurate transcript of my stenographic notes and is a full,
14 true and complete transcript of the proceedings to the best
15 of my ability.

16 **NOTE:** This hearing was held during the COVID-19
17 pandemic stay-at-home restrictions and is subject to the
18 technological limitations of court reporting remotely.

19 Dated this 22nd day of September, 2021.

20
21 /s/Lisa A. Moreira, RDR, CRR
22 Official Court Reporter
23 United States Courthouse
24 Room 6718
25 333 Constitution Avenue, NW
Washington, DC 20001