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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA, : 23-CR-146 (DG)

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:
:
-against- : United States Courthouse
: Brooklyn, New York

:
: October 25, 2023
RACHEL CHERWITZ and NICOLE : 10:30 a.m.
DAEDON, :
:
Defendants. :

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TRANSCRIPT OF CRIMINAL CAUSE FOR CURCIO HEARING
BEFORE THE HONORABLE DIANE GUJARATI
UNITED STATES DISTRICT COURT JUDGE

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Proceedings

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1 (In open court.)

2 THE COURTROOM DEPUTY: All rise. The Honorable
3 Diane Gujarati is now presiding. Please be seated.

4 United States of America versus Rachel Cherwitz and
5 Nicole Daedon.

6 Is the Government ready?

7 MS. KASSNER: Good morning, Your Honor. Gillian
8 Kassner and Lauren Elbert for the Government, joined by
9 Paralegal Specialist Anna November.

10 THE COURT: Good morning to all of you.

11 THE COURTROOM DEPUTY: Are the defendants ready?

12 MS. KRAMER: Yes.

13 Good morning, Your Honor.

14 Jenny Kramer with the firm of Alston & Bird here on
15 behalf of Rachel Cherwitz. Also at counsel table with me
16 today is Ms. Celia Cohen.

17 MS. COHEN: Good morning. I'm here on behalf -- as
18 *Curcio* counsel from Ballard Spahr.

19 THE COURT: Good morning to all of you and to Ms.
20 Cherwitz included.

21 MR. WEINGARTEN: Good morning, Your Honor. Reid
22 Weingarten and Julia Gatto from Steptoe & Johnson, here with
23 Ms. Daedon. And we have independent counsel Aaron -- I don't
24 want to mess up his pronunciation -- Mysliwicz.

25 MR. MYSLIWIEC: Correct.

Proceedings

4

1 THE COURT: Maybe you can spell that for us.

2 MR. MYSLIWIEC: M-Y-S-L-I-W-I-E-C, and I am from the
3 firm of Miedel & Mysliwiec.

4 THE COURT: Good morning to all of you.

5 We are convened today for a *Curcio* hearing as to
6 defendants Cherwitz and Daedon. We last convened on October
7 3rd, at which time I informed the parties that a *Curcio*
8 hearing would be held, and I directed the parties to confer
9 and jointly propose questions to be asked of the defendants at
10 the *Curcio* hearing. I also informed Defendant Cherwitz that
11 she would need to disclose fee-arrangement information.

12 During the status conference, I also noted that
13 defendants might want to arrange for conflict-free counsel to
14 consult before the *Curcio* hearing and that they would be given
15 the opportunity also to consult with conflict-free counsel
16 after they allocuted with respect to any potential conflicts.

17 The potential conflicts of interest arise from the
18 following circumstances: First, that a third-party affiliated
19 with OneTaste is paying Defendant Cherwitz's legal fees;
20 second, that Steptoe & Johnson simultaneously represents
21 Defendant Daedon and the Institute of OM, a
22 OneTaste-affiliated entity owned by the OneTaste owners, and
23 that a Steptoe & Johnson partner previously represented
24 OneTaste when employed at his previous law firm, between 2018
25 and 2021.

Proceedings

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1 On October 11, 2023, the parties submitted joint
2 proposed Curcio colloquies for Defendants Cherwitz and Daedon.
3 I found the joint proposed colloquies to be quite helpful and
4 I thank the parties for working together on those colloquies.

5 Is there anything the parties would like to raise
6 before I turn to the defendants? The Government?

7 MS. KASSNER: No, Your Honor. Thank you.

8 THE COURT: Counsel for Ms. Cherwitz?

9 MS. KRAMER: No, Your Honor. Thank you.

10 THE COURT: And counsel for Ms. Daedon?

11 MR. WEINGARTEN: No, Your Honor.

12 THE COURT: I'm going to first turn to Ms. Cherwitz.
13 And although I could probably have done this in two separate
14 proceedings, for now, Ms. Daedon will just be waiting until
15 I'm done with Ms. Cherwitz.

16 Ms. Cherwitz, I am advised -- you don't need to
17 stand, but thank you. I am advised, per the joint proposed
18 colloquy, that your attorneys are being paid by Anjuli Ayer.

19 And am I pronouncing that right?

20 DEFENDANT CHERWITZ: Yes.

21 THE COURT: Okay.

22 So I am advised that your attorneys are being paid
23 by Anjuli Ayer, an owner of OneTaste, who, according to the
24 joint proposed colloquy, has at least some connection with the
25 facts of your case and may even be a subject of the

Proceedings

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1 Government's investigation.

2 Before we can proceed with your case, I need to
3 conduct a hearing to determine whether you fully understand
4 the potential conflict and your right to be represented by
5 conflict-free counsel and to ensure that if the conflict is
6 waivable and you waive the potential conflict, that you do so
7 knowing and understanding the risks.

8 Government, is it your position that the conflict,
9 the potential conflict is waivable?

10 MS. KASSNER: Yes, Your Honor.

11 THE COURT: And Ms. Kramer, is it your position that
12 the potential conflict is waivable?

13 MS. KRAMER: Yes, Your Honor.

14 THE COURT: The Court agrees that the potential
15 conflict appears to be waivable.

16 Ms. Cherwitz, what is your full name?

17 DEFENDANT CHERWITZ: Rachel Mindy Cherwitz.

18 THE COURT: And how old are you?

19 DEFENDANT CHERWITZ: 42.

20 THE COURT: How far did you go in school?

21 DEFENDANT CHERWITZ: I have a master's degree.

22 THE COURT: Have you taken any drugs, medicine, or
23 pills, or had any alcoholic beverages in the past two days?

24 DEFENDANT CHERWITZ: No.

25 THE COURT: Is your mind clear today?

Proceedings

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1 DEFENDANT CHERWITZ: Yes.

2 THE COURT: Do you understand what's happening here
3 today?

4 DEFENDANT CHERWITZ: Yes.

5 THE COURT: Are you satisfied with the service of
6 your attorneys thus far in this case?

7 DEFENDANT CHERWITZ: Yes.

8 THE COURT: Has anyone induced, threatened, or made
9 promises to you concerning your choice of counsel in this
10 case?

11 DEFENDANT CHERWITZ: No.

12 THE COURT: Is it correct that Ms. Ayer is paying
13 your attorneys?

14 DEFENDANT CHERWITZ: Yes.

15 THE COURT: How long has that been the case?

16 DEFENDANT CHERWITZ: Since the start of this case.

17 THE COURT: Can you give me a timeframe, or how
18 you're defining the start of this case?

19 DEFENDANT CHERWITZ: Since the indictment.

20 THE COURT: Is anybody else paying your attorneys to
21 represent you?

22 DEFENDANT CHERWITZ: No.

23 THE COURT: Do you have an understanding whether, in
24 the future, Ms. Ayer will continue to pay, indemnify, or
25 reimburse your legal fees in this case?

Proceedings

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1 DEFENDANT CHERWITZ: Yes.

2 THE COURT: Again, what is your understanding?

3 DEFENDANT CHERWITZ: It will continue for as long as
4 I need counsel.

5 THE COURT: To your understanding, are there any
6 explicit or implicit conditions on Ms. Ayer's agreement to pay
7 your legal fees regarding actions you and your attorneys must
8 or may not take or arguments you or your attorneys must or may
9 not take?

10 DEFENDANT CHERWITZ: No.

11 THE COURT: I'm going to describe to you some
12 potential risks raised by this payment arrangement. By
13 describing these potential risks, in no way am I suggesting
14 that your lawyers are conflicted or that their defense of you
15 has or will be impacted in the ways I'm about to describe.
16 Instead, I am pointing out to you a series of ways this
17 arrangement can potentially raise conflicts of interest for
18 counsel.

19 When an attorney is paid by a third-party like Ms.
20 Ayer, an attorney could be influenced by the third-party, even
21 subconsciously, in connection with their representation of
22 you, that is, they could be influenced to advise you to do
23 things that are in the third-party's best interests and not in
24 your best interests.

25 For instance, if Ms. Ayer or OneTaste or other

Proceedings

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1 members of OneTaste leadership are involved in the alleged
2 crime, Ms. Ayer may have an interest in having your lawyers
3 advise you to accept sole responsibility for the unlawful
4 scheme or to minimize her and OneTaste's involvement with or
5 knowledge of the scheme.

6 Do you understand that?

7 DEFENDANT CHERWITZ: I do.

8 THE COURT: Similarly, if a trial in this case could
9 cast a negative light on Ms. Ayer or OneTaste, or,
10 alternatively, if a guilty plea in this case could cast a
11 negative light on Ms. Ayer or OneTaste, or if certain
12 arguments in this case could help or hurt Ms. Ayer or
13 OneTaste, Ms. Ayer may have an interest in having your lawyers
14 advise you to make your decision about what to do and what
15 arguments to make to best serve Ms. Ayer's or OneTaste's
16 interests, rather than your own.

17 Do you understand that?

18 DEFENDANT CHERWITZ: I do.

19 THE COURT: Ms. Ayer or OneTaste may have an
20 interest in having your lawyers advise you not to seek to
21 cooperate with the Government, even if that might be in your
22 interest, where your cooperation might directly or indirectly
23 affect or implicate Ms. Ayer or OneTaste. Do you understand
24 that?

25 DEFENDANT CHERWITZ: I do.

Proceedings

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1 THE COURT: There maybe other issues, to the ones I
2 have just described, that can arise in which your attorneys'
3 ability to represent you might be affected by the fact that
4 they have been paid by Ms. Ayer. No one can foresee every
5 possible conflict of interest. Do you understand that?

6 DEFENDANT CHERWITZ: I do.

7 THE COURT: Do you have any questions about what I
8 have explained so far?

9 DEFENDANT CHERWITZ: No, I do not.

10 THE COURT: Okay. I'm going to need you now to tell
11 me in your own words what you understand the potential
12 conflicts of interests to be.

13 DEFENDANT CHERWITZ: I understand that the risk here
14 is because my attorneys' fees are paid by a third-party in
15 this case, Anjuli Ayer, who could potentially have interest in
16 the case, that my attorney could make a decision based on
17 behalf of who is paying for the fees rather than in the best
18 interest for me.

19 THE COURT: Okay. And you understand it's not just
20 the attorney could make a decision; they could also advise you
21 to make certain decisions based on that potential conflict?

22 DEFENDANT CHERWITZ: Yes, I understand that.

23 THE COURT: Let me ask your counsel, is there
24 anything you'd like me to ask additionally based on what your
25 client has just said?

Proceedings

11

1 MS. KRAMER: No, Your Honor. Thank you.

2 THE COURT: Thank you.

3 Government?

4 MS. KASSNER: No, Your Honor. Thank you.

5 THE COURT: Ms. Cherwitz, you have the right to be
6 represented by counsel during plea negotiations, at trial, and
7 at every other stage of the proceeding and, if necessary, to
8 have the Court appoint counsel at no cost to you. Do you
9 understand that?

10 DEFENDANT CHERWITZ: I do.

11 THE COURT: You have the right to be represented by
12 an attorney who does not have any potential conflict of
13 interest in representing you at all stages of this case,
14 including any plea negotiations. You have the right to an
15 your attorney who only has your interest in mind and not the
16 interest of anyone else. In other words, you are entitled to
17 be represented by an attorney whose loyalty to you is
18 undivided and who is not subject to any factor that might in
19 any way intrude upon your attorney's loyalty to your
20 interests. If you proceed with your attorneys, you will be
21 giving up that right. Do you understand all of this?

22 DEFENDANT CHERWITZ: Yes, I do.

23 THE COURT: Have you discussed all of these issues
24 with your attorneys?

25 DEFENDANT CHERWITZ: Yes, I have.

Proceedings

12

1 THE COURT: Without discussing the substance of any
2 written communications between you and your attorneys, can you
3 please confirm whether you have signed any documents
4 memorializing your understanding of the potential conflicts of
5 interests and your desire nonetheless to proceed with your
6 current attorneys as your counsel?

7 DEFENDANT CHERWITZ: Yes, I have.

8 THE COURT: If you proceed with your current counsel
9 and there is a conviction, you will not be able to argue on
10 appeal or otherwise that you were prejudiced in this case
11 based on your representation by a lawyer who has the potential
12 conflicts I have described today. You will not be able to
13 make any argument on appeal or otherwise attack the conviction
14 based on the potential conflicts we have discussed today. You
15 will be waiving the right to do so. Do you understand?

16 DEFENDANT CHERWITZ: I do, yes.

17 THE COURT: Let me ask the relevant parties, is
18 there anything else you think I should inform Ms. Cherwitz of
19 at this time before I inform her again of the right to consult
20 with an independent attorney? Is there anything you think I
21 have missed or misstated?

22 Government?

23 MS. KASSNER: No, Your Honor. Thank you.

24 THE COURT: For Ms. Cherwitz?

25 MS. KRAMER: No, Your Honor. Thank you.

Proceedings

13

1 THE COURT: Ms. Cherwitz, before you make a decision
2 as to whether or not to proceed with your current attorneys,
3 you have the right to consult with an independent attorney who
4 can advise you about the possible conflicts of interest that
5 might arise if you proceed with your attorneys. Do you
6 understand that?

7 DEFENDANT CHERWITZ: I do, yes.

8 THE COURT: And at the October 3rd status
9 conference, I noted you might want to arrange for
10 conflict-free counsel to consult before the *Curcio* hearing and
11 have you, in fact, consulted with independent counsel?

12 DEFENDANT CHERWITZ: Yes, I have.

13 THE COURT: And is that the counsel who is here with
14 you today?

15 DEFENDANT CHERWITZ: Yes.

16 THE COURT: Tell me again the name.

17 MS. COHEN: Cecilia Cohen, Your Honor.

18 THE COURT: Thank you.

19 Ms. Cherwitz, you are not under any pressure to make
20 a decision about this now. In light of everything I have
21 informed you of today, I'm going to give you time to think
22 about these matters, and to consult further with your
23 attorneys and/or with independent counsel before letting me
24 know how you wish to proceed.

25 Do you, though, at this time, Ms. Cherwitz, have any

Proceedings

14

1 questions for me?

2 DEFENDANT CHERWITZ: I do not.

3 THE COURT: I am going to schedule our next
4 proceeding for November 17, 2023 at 11 o'clock a.m., and at
5 that time, you can inform me how you'd like to proceed in this
6 case. And if there is a waiver, we will then proceed right to
7 a status conference.

8 DEFENDANT CHERWITZ: Okay. Thank you.

9 THE COURT: Is there anything else the Government or
10 counsel for Ms. Cherwitz believes I should ask or inform Ms.
11 Cherwitz of before I move on to Ms. Daedon?

12 Government?

13 MS. KASSNER: No, Your Honor. Thank you.

14 THE COURT: Counsel for Ms. Cherwitz?

15 MS. KRAMER: No, Your Honor. Thank you.

16 THE COURT: Okay. So now it will be Ms. Cherwitz's
17 turn to wait while I address Ms. Daedon.

18 Ms. Daedon, I am advised, per the joint proposed
19 colloquy, that your attorneys, in addition to representing
20 you, represent the Institute of OM, an organization that,
21 according to the joint proposed colloquy, has at least some
22 connection with the facts of your case and may even be a
23 subject of the Government's investigation.

24 The Government also has argued that the Institute of
25 OM's brand and business prospects could potentially be

1 implicated based on certain defense strategies that you may or
2 may not pursue.

3 I'm also advised, per the joint proposed colloquy,
4 that Steptoe & Johnson partner Jonathan Baum, when employed at
5 his previous law firm, between 2018 and 2021, represented
6 OneTaste, an organization that, according to the joint
7 proposed colloquy, has connection with the facts of your case
8 and may be the subject of the Government's investigation.

9 Before we can proceed with your case, I need to
10 conduct a hearing to determine whether you fully understand
11 the potential conflicts and your right to be represented by
12 conflict-free counsel and to ensure that if the conflicts are
13 waivable and you waive the potential conflicts, that you do so
14 knowingly and understanding the risks.

15 Government, is it your position that the potential
16 conflicts, with respect to Ms. Daedon, are waivable?

17 MS. KASSNER: Yes, Your Honor.

18 THE COURT: Mr. Weingarten?

19 MR. WEINGARTEN: Ms. Gatto.

20 THE COURT: Ms. Gatto, is it your position that the
21 potential conflicts are waivable?

22 MS. GATTO: Yes, Your Honor.

23 THE COURT: The Court agrees that the potential
24 conflicts appear to be waivable.

25 Ms. Daedon, what is your full name?

Proceedings

16

1 DEFENDANT DAEDON: Nicole Anne Daedone.

2 THE COURT: And how old are you?

3 DEFENDANT DAEDON: 56.

4 THE COURT: How far did you go in school?

5 DEFENDANT DAEDON: The first year -- first-year
6 master's.

7 THE COURT: Have you taken any drugs, medicine, or
8 pills, or had any alcoholic beverages in the past two days?

9 DEFENDANT DAEDON: Yes, I had a glass of wine.

10 THE COURT: How long ago?

11 DEFENDANT DAEDON: Last night.

12 THE COURT: Is your mind clear today?

13 DEFENDANT DAEDON: Yes.

14 THE COURT: Do you know what is happening here
15 today?

16 DEFENDANT DAEDON: Yes.

17 THE COURT: Are you satisfied with the services of
18 your attorneys thus far in the case?

19 DEFENDANT DAEDON: Yes.

20 THE COURT: Has anyone induced, threatened, or made
21 promises to you concerning your choice of counsel in this
22 case?

23 DEFENDANT DAEDON: No.

24 THE COURT: Because your attorneys also represent
25 the Institute of OM, they owe a duty of loyalty to the

1 Institute of OM, as well as a duty of loyalty to you.

2 Dual representations, like your lawyer's dual
3 representations of both you and the Institute of OM, can
4 create a risk of a potential conflict of interest for your
5 attorneys.

6 I'm going to describe to you some potential risks
7 raised by your attorneys' dual representations. By describing
8 these potential risks, in no way am I suggesting that your
9 lawyers are conflicted or that their defense of you has or
10 will be impacted in the ways I am about to describe. Instead,
11 I am pointing out to you a series of ways dual representations
12 can potentially raise conflicts of interest for counsel.

13 Those risks include that your lawyer's advice to you
14 potentially could be colored by how that advice might affect
15 the Institute of OM, including their advice to you regarding
16 potential plea and cooperation agreements with the Government
17 and their advice to you regarding the pursuit of certain
18 defensive strategies at trial or at other stages of these
19 proceedings. Do you understand that?

20 DEFENDANT DAEDON: I do.

21 THE COURT: For example, Steptoe & Johnson's joint
22 representation, or I should say dual representation, might
23 preclude them from advising either you or the Institute of OM
24 to consider strategies that might negatively impact the other,
25 including advising you or the Institute of OM to cooperate

Proceedings

18

1 against the other in order to assist the Government and to try
2 to receive a reduced sentence. Do you understand that?

3 DEFENDANT DAEDON: Yes.

4 THE COURT: In particular, if the Institute of OM or
5 people affiliated with the Institute of OM are potentially
6 involved in the alleged crime, your lawyers may have an
7 interest in advising you to accept sole responsibility for the
8 unlawful scheme or to minimize the Institute of OM's and
9 affiliated persons' involvement with or knowledge of the
10 scheme. Do you understand that?

11 DEFENDANT DAEDON: Yes.

12 THE COURT: Similarly, if a trial in this case could
13 cast a negative light on the Institute of OM or affiliated
14 persons, or, alternatively, if a guilty plea in this case
15 could cast a negative light on the Institute of OM or
16 affiliated persons, or if certain arguments in this case could
17 help or hurt the Institute of OM or affiliated persons, your
18 lawyers may have an interest in advising you to make your
19 decision about what to do and what arguments to make to best
20 serve the Institute of OM's or affiliated persons interests
21 rather than your own. Do you understand that?

22 DEFENDANT DAEDON: Yes.

23 THE COURT: Additionally, dual representations can
24 create conflicting duties of confidentiality. For example, if
25 you and the Institute of OM have not explicitly permitted

1 Steptoe & Johnson to share information, your lawyers may be
2 prohibited from using information advantageous to your defense
3 that they learned about from confidential communications with
4 the Institute of OM. Do you understand that?

5 DEFENDANT DAEDON: Yes.

6 THE COURT: In addition, it is possible that your
7 attorneys may learn information from their representation of
8 the Institute of OM that could undermine your defense and
9 could prevent them from making favorable arguments on your
10 behalf that they might otherwise have been able to make. Do
11 you understand that?

12 DEFENDANT DAEDON: Yes.

13 THE COURT: And conflicts can arise if the Institute
14 of OM has information or testimony relevant to your defense.
15 For example, if you need to subpoena documents or witnesses
16 from the Institute of OM, attorneys' duty of loyalty to the
17 entity may create a barrier in obtaining those materials. Or
18 if a witness from the Institute of OM testifies at your trial,
19 your attorney's cross-examination of that witness may be
20 impacted by the dual representation. Do you understand that?

21 DEFENDANT DAEDON: Yes.

22 THE COURT: Because Jonathan Baum, a partner at
23 Steptoe & Johnson, previously represented OneTaste, he owes a
24 duty of loyalty to OneTaste. And he also owes a duty of
25 loyalty to you. In similar ways as we just discussed, Mr.

Proceedings

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1 Baum's prior representation of OneTaste could potentially
2 create a risk of a potential conflict of interest for Steptoe
3 & Johnson. Do you understand that?

4 DEFENDANT DAEDON: Yes.

5 THE COURT: Again, those risks include that your
6 lawyers' advice to you potentially could be colored by how
7 that advice might affect OneTaste. For example, Steptoe &
8 Johnson might be precluded from advising you to consider
9 strategies that might negatively impact OneTaste, including
10 advising you to cooperate against the entity in order to
11 assist the Government and to try to receive a reduced
12 sentence. Do you understand that?

13 DEFENDANT DAEDON: Yes.

14 THE COURT: Mr. Baum and Steptoe & Johnson may also
15 have conflicting duties of confidentiality. Again, if you and
16 OneTaste have not explicitly permitted Mr. Baum to share
17 information, Steptoe & Johnson may be prohibited from using
18 information advantageous to your defense that Mr. Baum
19 previously learned about from his confidential communications
20 with OneTaste. Or Steptoe & Johnson may be aware of
21 information from Mr. Baum's representation of OneTaste that
22 could prevent your attorneys from potentially making favorable
23 arguments on your behalf. Do you understand that?

24 DEFENDANT DAEDON: Yes.

25 THE COURT: And conflicts can arise if OneTaste has

1 information or testimony relevant to your defense. For
2 example, if a witness from OneTaste testifies at your trial,
3 your attorney's cross-examination of that witness may be
4 impacted by Mr. Baum's continued loyalty to the company. Do
5 you understand?

6 DEFENDANT DAEDON: Yes.

7 THE COURT: There may be other issues, in addition
8 to the ones that I have just described, that could arise in
9 which your attorneys' ability to represent you might be
10 affected by the fact that they represent the Institute of OM
11 and by the fact that Mr. Baum previously represented OneTaste.
12 No one can foresee every possible conflict of interest. Do
13 you understand that?

14 DEFENDANT DAEDON: Yes.

15 THE COURT: Do you have any questions about what I
16 have explained to you so far?

17 DEFENDANT DAEDON: No.

18 THE COURT: I'm going to ask you now to tell me in
19 your own words what you understand the potential conflicts of
20 interest to be. And, again, there are a couple of different
21 potential conflicts. So, we are not in a rush, take your
22 time, but I would like to hear in your own words what you
23 understand the potential conflicts of interest to be.

24 DEFENDANT DAEDON: I think there's two that I
25 understand, that I have discussed with my attorneys and heard

1 today. The first is that there may come a point in the future
2 when there is a conflict of interest between IOM and myself.

3 THE COURT: What's the word you just used?

4 MS. ELBERT: IOM and myself. I'm sorry. Institute
5 of OM.

6 THE COURT: You call it IOM. I hadn't heard that
7 before.

8 Go ahead.

9 DEFENDANT DAEDON: When the Institute of OM and my
10 interests diverged, and I feel confident that that hasn't been
11 the case and will not be the case.

12 And then the second is with Jonathan Baum, and my
13 experience is, after many years, that that has definitely not
14 been the case. And should anything ever happen, I would be
15 informed immediately.

16 THE COURT: Okay. So I've told you about the fact
17 that these potential conflicts could affect, for instance, the
18 advice that your attorneys give you about how you might want
19 to proceed or what they can and cannot do.

20 Could you tell me sort of your understanding of what
21 I have explained to you about that?

22 DEFENDANT DAEDON: My understanding is the conflict
23 of interest both with Jonathan Baum having information prior
24 and with the Institute of OM being -- there being a conflict,
25 that it may be that the advice given to me is skewed toward

1 the Institute of OM or that confidential information is not
2 shared, and I have no qualms whatsoever.

3 THE COURT: Let me ask your counsel whether there is
4 anything you'd like to have your client elicit about her
5 understanding further to what she said?

6 MS. GATTO: No, Your Honor. I think she articulated
7 it.

8 THE COURT: I couldn't hear you. Could you please
9 speak into the microphone.

10 MS. GATTO: No, Your Honor. I think she's
11 articulated it.

12 THE COURT: Let me ask the Government if there is
13 anything they would like me to raise additionally?

14 MS. KASSNER: No, Your Honor.

15 THE COURT: One moment, please.

16 Again, I would just say what I said earlier, Ms.
17 Daedon, and what I also said to Ms. Cherwitz, no one can
18 foresee all of the possible conflicts, so I need you to
19 understand that. You do understand that?

20 DEFENDANT DAEDON: I do.

21 THE COURT: Okay. You have the right to be
22 represented by counsel during plea negotiations, at trial, and
23 at every other stage of the proceeding and, if necessary, to
24 have the Court appoint counsel at no cost to you. Do you
25 understand that?

Proceedings

24

1 DEFENDANT DAEDON: I do.

2 THE COURT: You have the right to be represented by
3 an attorney who does not have any potential conflict of
4 interest in representing you at all stages of the case,
5 including any plea negotiations.

6 You have the right to an attorney who only has your
7 interest in mind and not the interest of anyone else or any
8 entity. In other words, you are entitled to be represented by
9 an attorney whose loyalty to you is undivided and who is not
10 subject to any factor that might in any way intrude upon your
11 attorney's loyalty to your interest. If you proceed with your
12 attorneys, you will be giving up that right. Do you
13 understand all of this?

14 DEFENDANT DAEDON: Yes.

15 THE COURT: Have you discussed all of these issues
16 with your attorneys?

17 DEFENDANT DAEDON: I have.

18 THE COURT: And without discussing the substance of
19 any written communications between you and your attorneys, can
20 you please confirm whether you have signed any documents
21 memorializing your understanding of the potential conflicts of
22 interest and your desire nonetheless to proceed with Steptoe &
23 Johnson as your counsel?

24 DEFENDANT DAEDON: Yes, I have.

25 THE COURT: If you proceed with your current counsel

Proceedings

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1 and there is a conviction, you will not be able to argue on
2 appeal or otherwise that you were prejudiced in this case
3 based on your representation by a lawyer who has the potential
4 conflicts I have described today. You will not be able to
5 make any argument on appeal or otherwise attack the conviction
6 based on the potential conflicts we have discussed today. You
7 will be waiving the right to do so. Do you understand?

8 DEFENDANT DAEDON: I do.

9 THE COURT: Let me ask the relevant parties, is
10 there anything else you think I should inform Ms. Daedon at
11 this time before I inform her again of her right to consult
12 with an independent attorney or is there anything that you
13 think I may have missed or misstated?

14 The Government?

15 MS. KASSNER: No, Your Honor.

16 THE COURT: Counsel for Ms. Daedon?

17 MS. GATTO: No, Your Honor.

18 THE COURT: Ms. Daedon, before you make a decision
19 as to whether or not to proceed with your current attorneys,
20 you have the right to consult with an independent attorney who
21 can advise you about the possible conflicts of interest that
22 might arise if you proceed with your attorneys. Do you
23 understand?

24 DEFENDANT DAEDON: Yes.

25 THE COURT: And at the October 3rd status

1 conference, I noted that you might want to arrange for
2 conflict-free counsel to consult before the *Curcio* hearing and
3 have you, in fact, consulted with independent counsel?

4 DEFENDANT DAEDON: I have.

5 THE COURT: And that is the person who is here
6 today. And we took his name. And he very helpfully spelled
7 it for us today.

8 Ms. Daedon, you are not under any pressure to make a
9 decision about this now. In light of everything I have
10 informed you of today, I am going to give you time to think
11 about these matters and to consult further with your attorneys
12 and/or with independent counsel before letting me know how you
13 wish to proceed. But let me ask you now, do you have any
14 questions for me?

15 DEFENDANT DAEDON: No, I don't.

16 THE COURT: And as I mentioned earlier, our next
17 proceeding will be held on November 17, 2023 at 11:00 a.m. At
18 that time, you can inform me of how you'd like to proceed in
19 this case. And if there is a waiver, again, we will proceed
20 right to a status conference.

21 Is there anything else, though, the Government or
22 counsel for Ms. Daedon believes I should ask or inform Ms.
23 Daedon of?

24 MS. KASSNER: No, Your Honor.

25 MS. GATTO: No, Your Honor. Thank you.

Proceedings

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1 THE COURT: Thank you.

2 Again, we are going to reconvene on November 17th at
3 11:00 a.m.

4 Is there an application to exclude time, under the
5 Speedy Trial Act, the time from today until November 17th?

6 MS. KASSNER: Yes, Your Honor. The Government would
7 move for an order of excludable delay between today and
8 November 17th to permit the parties to continue exchanging
9 discovery and discussing the case to see if there is a
10 possibility of resolving the case or at least some issues in
11 the case short of trial.

12 THE COURT: You said exchanging discovery. Is it
13 going both ways?

14 MS. KASSNER: As of right now, it's a one-way
15 process, but you never know, Your Honor. Yes. Right now it's
16 just the Government producing.

17 THE COURT: Do counsel for the defendants join in
18 the application for the exclusion of time?

19 Ms. Cherwitz's counsel?

20 MS. KRAMER: We do, Your Honor.

21 THE COURT: Ms. Daedon's counsel?

22 MS. GATTO: As do we.

23 THE COURT: I will exclude time, for Speedy Trial
24 Act purposes, the time from today until November 17, 2023. I
25 do so under Title 18, United States Code, Section

1 3161(h)(7)(A). I find that the ends of justice served by
2 excluding the time from today until November 17th outweigh the
3 best interest of the public and the defendants in a speedy
4 trial for a number of reasons: Because that time will allow
5 for the Government to continue to produce discovery and for
6 the defense to review that discovery; it will allow for the
7 parties to continue their discussions, and, importantly, it
8 will allow for both defendants to consult with their own
9 attorneys, to consult with independent counsel, and to
10 consider what we have discussed today, and to consider whether
11 they wish to proceed with their current attorneys or not. So,
12 for all of those reasons, I find that the time is properly
13 excludable, and I exclude the time from today until November
14 17, 2023.

15 As I think I said at the last conference, I don't
16 think there is much that we could, can, or should do absent
17 on-the-record waivers if there are going to be waivers, but I
18 will ask if there is anything urgent that anyone thinks that
19 we need to take up today before we adjourn.

20 Government?

21 MS. KASSNER: Nothing for the Government. Thank
22 you, Your Honor.

23 THE COURT: Counsel for Ms. Cherwitz?

24 MS. KRAMER: Nothing, Your Honor. Thank you.

25 MR. WEINGARTEN: No, Your Honor.

Proceedings

1 THE COURT: And with that, we will adjourn until
2 November 17th. Thank you all. And, again, thank you for
3 collaborating with each other so well on the proposed
4 colloquy. That was helpful to the Court.

5 We are adjourned.

6 MS. KASSNER: Thank you.

7 THE COURTROOM DEPUTY: All rise.

8 (Matter adjourned.)

9 * * * * *

10 I certify that the foregoing is a correct transcript from the
11 record of the proceedings in the above-entitled matter.

12 /s/ Michele Lucchese

October 25, 2023

13 Michele Lucchese

DATE

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