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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA,

New York, N.Y.

4 v.

19 Cr. 490 (RMB)

5 JEFFREY EPSTEIN,

6 Defendant.

7 -----x

Conference

8 July 31, 2019

9 11:05 a.m.

10 Before:

11 HON. RICHARD M. BERMAN,

12 District Judge

13
14 APPEARANCES

15 GEOFFREY S. BERMAN

16 United States Attorney for the
Southern District of New York

17 BY: ALISON J. MOE

ALEXANDER ROSSMILLER

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20 MARTIN G. WEINBERG

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Attorneys for Defendant

23 BY: MICHAEL C. MILLER

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1 THE COURT: So, today's conference was scheduled at
2 the end of the July 18 court conference hearing on that date.
3 I thought that we would devote at least the -- well, probably
4 most of today's proceeding to talking about the schedule in
5 this case, and I asked the lawyers to get together and see if
6 they could come up with a mutually agreeable schedule, which
7 would include trial date, motion practice, discovery, etc.

8 Does anybody want to let me know how you made out?

9 MS. MOE: Yes, your Honor.

10 We have conferred with defense counsel and talked
11 about a proposed schedule for this case. So we are prepared to
12 propose to the court today a schedule for discovery, for
13 discovery-related motions, for pretrial motions, and we are
14 also prepared to talk about setting a possible trial date.

15 THE COURT: Okay. What have you got in mind?

16 MS. MOE: So, with respect to discovery, we would
17 propose a discovery deadline of October 31 to complete
18 discovery, with one exception. There are materials from
19 devices seized from the defendant's residence in New York, and
20 the F.B.I. is beginning the process of reviewing that data.

21 In discussing that with defense counsel, we have begun
22 to discuss a process for a privilege-review protocol. It's
23 possible that process may take longer than October 31. But
24 aside from that universe of documents, we would propose setting
25 a schedule of October 31 as a deadline for discovery.

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1 For discovery-related motions, we would propose that
2 the defense file any motions that they are aware of relating to
3 discovery, to include motions relating to the nonprosecution
4 agreement, by September 13 --

5 THE COURT: By when?

6 MS. MOE: September 13, your Honor.

7 -- that the government be permitted to respond by
8 October 4; with any reply due on October 11, as necessary.

9 Of course we understand that if the defense comes to
10 have additional motions related to discovery based on the
11 ongoing discovery process that we will confer and propose an
12 additional briefing schedule beyond that, as necessary. But
13 with respect to motions that the defense is already aware of,
14 including the NPA, that is the schedule that we would propose
15 at this time.

16 Regarding pretrial motions, your Honor, we would
17 propose that the defense file their motions by January 10, that
18 the government be permitted to respond by February 10, and that
19 any replies be due on or before February 24.

20 THE COURT: Got it.

21 MS. MOE: And finally, your Honor, we are prepared to
22 discuss a trial date in this case. The government is asking
23 the court to set a trial date in this matter. We would propose
24 that the court schedule this matter for trial in June of next
25 year, and we estimate that the trial would take approximately

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1 four to six weeks, and so that trial date would carry into
2 July. And I understand that the defense has some comments
3 about that proposal, but that's the government's proposal with
4 respect to a trial date.

5 THE COURT: Okay. Let me hear from the defense.

6 Do I understand it correctly that, with the exception
7 of the trial date, those dates are agreeable?

8 MR. WEINBERG: Those dates are agreeable, your Honor.

9 THE COURT: Counsel, whatever you wish to add, that
10 would be fine.

11 MR. WEINBERG: We would ask the court to set a
12 preliminary trial date immediately after Labor Day. I say
13 preliminary because we want time to assess Mr. Epstein's --

14 THE COURT: This year?

15 MR. WEINBERG: Yes.

16 THE COURT: This Labor Day. Okay.

17 MR. WEINBERG: We want time to assess Mr. Epstein's
18 ability to . . .

19 (Counsel confer)

20 MR. WEINBERG: I'm sorry. I am being told that your
21 Honor was inquiring as to the year. Let me --

22 THE COURT: Yes. I thought you wanted a speedy trial,
23 and so --

24 MR. WEINBERG: Not with a four- to six-week trial with
25 discovery coming in October, Judge. I apologize for being

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1 imprecise. Labor Day 2020 or immediately thereafter. And I
2 make that recommendation -- we haven't received the discovery
3 yet. Understandably, it is coming, and I'm not in any way
4 contesting that there has been a delay, but we haven't had an
5 opportunity to start reviewing what the government has
6 predicted to be over a million pages of discovery with
7 Mr. Epstein and to assess Mr. Epstein's ability to exercise his
8 constitutional right, while at MCC, in assisting counsel
9 prepare for a very difficult case that addresses events that it
10 is alleged occurred 14 to 17 years ago.

11 THE COURT: Okay.

12 MR. WEINBERG: So, we need time to receive a million
13 pages of discovery and to prepare to defend a four- to six-week
14 trial, when a lot of the immediate attention is going to be on
15 the very unique and complex constitutional issues connected to
16 the nonprosecution agreement, our contention that the
17 government's allegations are inextricably intertwined and
18 constitutionally barred by the NPA. There are double jeopardy
19 issues both connected to the conspiracy count, which looks to
20 be an overlap with one of the charges that was expressly within
21 the immunity provisions in the NPA. We are going to be
22 spending a lot of time, and that's why I agreed with the
23 government that we should make early discovery motions on the
24 NPA-related issues, on double-jeopardy-related issues, so that
25 we could not only facially brief the motion to dismiss, but

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1 have the discovery, the subfacial discovery, if you will, so
2 that we could make a comprehensive briefing along the lines of
3 the schedule for motions.

4 THE COURT: That's what I was going to suggest, if
5 there is a time period when you could put it all together, as
6 it were, and there is a lot of flexibility. So I will leave
7 these dates, you know, for now.

8 With respect to the trial date, I could accommodate
9 either June or September of 2020. The issue is not so much as,
10 from my point of view, when you are all ready, but what part of
11 the calendar I block out. So is it realistic to block out time
12 in June?

13 MR. WEINBERG: I think it is -- I don't want to have
14 the court block out a six-week time and then come to the court
15 in March and say we need a continuance and risk a September
16 date.

17 THE COURT: Got it. Okay. So a September date, you
18 are saying, sounds like it certainly is realistic.

19 MR. WEINBERG: Thirteen months sounds like the amount
20 of time that we would ordinarily need to prepare a case of this
21 magnitude and scope.

22 THE COURT: All right. That is fine for me.

23 Just while we are taking care of details, a speedy
24 trial issue or application? Why don't we extend it to
25 September of 2020?

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1 MR. WEINBERG: This case certainly meets all of the
2 statutory criteria for complexity and we would agree to that
3 extension, Judge.

4 MS. MOE: Your Honor, may I briefly be heard with
5 respect to the trial date?

6 THE COURT: Oh, sure. You know, it does sound like it
7 is kind of premature, but I'm happy to hear you. It is often
8 the defense that is ahead of the government, or not often, but
9 equally, but here it is the other way around. So if the
10 defense is not ready, it would be my practice to defer to the
11 defense, but I don't know that it is fixed in stone either way.
12 But, sure, I am happy to hear you.

13 MS. MOE: Your Honor, by way of background, we had
14 initially proposed to the defense a May trial date. We think
15 that there is a public interest in bringing this case to trial
16 as swiftly as manageable. We understand, given their concerns
17 in wanting to have more time, we proposed a date in June as a
18 compromise position. We understand if the defense has
19 indicated that they need additional time. We are sensitive to
20 those concerns. But we do have a concern about the notion of
21 setting a September trial date and that that trial would be
22 preliminary or as a placeholder. Thirteen months is a
23 considerable amount of time for a case of this nature to go to
24 trial; and, again, given the time period of the charged conduct
25 and the length of time that's passed, we do think that there is

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1 a public interest in scheduling a fixed trial date in this
2 case. Of course we understand if issues arise in the interim,
3 we will address that as it occurs, but we do think it makes
4 sense at this juncture to set a firm trial date. We don't
5 think that any delay in this case is in the public interest.

6 THE COURT: Counsel.

7 MR. WEINBERG: We think that the delay in bringing
8 this charge, your Honor, the natural corollary of that is to
9 make it more difficult, not easier, for us to defend
10 Mr. Epstein. For instance, there are certain sealed files for
11 potential witnesses that we would have to go to other courts to
12 seek to unseal. There is an NPA to litigate. This case is not
13 your ordinary 1591 case. A case of four to six weeks is not
14 the ordinary amount of time the government takes to prosecute,
15 whether it is old or new cases. We need 13 months. I'm trying
16 to make a principled argument, Judge, that that would be a
17 schedule that we would try our best to meet, conditioned on our
18 ability to work with Mr. Epstein under the current conditions.

19 Thank you, sir.

20 THE COURT: Okay.

21 So, we are going to monitor the case from now until
22 then anyway, so I think everybody will be in a better position
23 to know what is realistic with respect to a trial date. I will
24 exclude time from today through, let's say, June 8, but that,
25 of course, is without prejudice to hearing from the defense and

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1 the government as to actually where things stand. Long before
2 then we will know. So we will have a conference, or several,
3 between now and then. Let's see where everybody is as the
4 months go by, and then we will know when we can effectively
5 hold the trial.

6 So I am going to find, under 18 United States Code §
7 3161, that the request for adjournment, joined in by both
8 sides, is appropriate and warrants exclusion of the adjourned
9 time from Speedy Trial calculations. I further find that the
10 exclusion is designed to prevent any possible miscarriage of
11 justice, to facilitate these proceedings, including extensive
12 pretrial preparation, and to guarantee effective representation
13 of and preparation by counsel for both sides, and thus the need
14 for exclusion and the ends of justice outweigh the interests of
15 the public and the defendant in a speedy trial pursuant to 18
16 United States Code § 3161(h)(7)(A) and (B). So that exclusion
17 goes to June 8, 2020 preliminarily.

18 Counsel, is it your thought that these motions would
19 be on submission or did you want to have oral argument with
20 respect to any aspect of them?

21 MR. WEINBERG: We would seek oral argument, your
22 Honor.

23 THE COURT: So let's set October 28, 2019 for oral
24 argument, and I am tentatively reserving some time on my
25 calendar, as I said before, on June 8, 2020, but I will have a

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1 much better feel for where things are long before that and
2 certainly I would say on October 28 we would have a much
3 clearer picture of how things stand.

4 So there you have it. Did you have -- go ahead.

5 MS. MOE: Just to clarify, your Honor, what time would
6 the court like the parties to appear on October 28?

7 THE COURT: 10 a.m.

8 MS. MOE: Thank you, your Honor.

9 THE COURT: And the June 8 date is 9 a.m. Okay?

10 MR. WEINBERG: Would your Honor want to schedule an
11 argument on the substantive motions that will be fully briefed
12 before the court on February 24?

13 THE COURT: Yup.

14 So let's schedule that oral argument for March 12,
15 2020, at 10 a.m.

16 Great. So anything anybody else has to talk about?

17 MR. WEINBERG: Not from the defense, your Honor.

18 MS. MOE: Not from the government, your Honor. Thank
19 you.

20 THE COURT: Okay.

21 MR. WEINBERG: Thank you very much, sir.

22 THE COURT: Nice to see you all.

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