

Q2AFHEPC

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
-----x

3 UNITED STATES OF AMERICA,

4 v.

25 Cr. 503 (JSR)

5 BRADLEY HEPPNER,

Conference

6 Defendant.

7 -----x

New York, N.Y.
February 10, 2026
9:00 a.m.

11 Before:

12 HON. JED S. RAKOFF,

13 District Judge

14 APPEARANCES

15 JAY CLAYTON
United States Attorney for the
16 Southern District of New York
BY: DANIEL G. NESSIM
17 ALEXANDRA ROTHMAN
Assistant United States Attorneys

18 QUINN EMANUEL URQUHART & SULLIVAN LLP
Attorneys for Defendant
19 BY: BENJAMIN O'NEIL
20 CHRISTOPHER CLORE
21 ROBERT ZINK
CLARE REARDON

Q2AFHEPC

1 (Case called)

2 MR. NESSIM: Good morning, your Honor.

3 Daniel Nessim and Alexandra Rothman for the
4 government.

5 THE COURT: Good morning.

6 MS. ROTHMAN: Good morning.

7 MR. O'NEIL: Good morning, your Honor.

8 It's Ben O'Neil, Rob Zink, Christopher Clore and Clare
9 Reardon for the defendant, Mr. Heppner.

10 THE COURT: Good morning.

11 MR. O'NEIL: Good morning.

12 THE COURT: Please be seated.

13 So, the government filed a motion to overrule the
14 alleged claims of privilege and work product on certain
15 documents that were submitted by the defendant to AI.

16 I've read the papers, but I'll hear anything further
17 defense counsel wants to say on this.

18 MR. O'NEIL: Thank you, your Honor.

19 Just from here?

20 THE COURT: Whatever you'd like.

21 MR. O'NEIL: Thanks.

22 So, I think, based on reading the government's
23 brief, that the government just has a fundamental misconception
24 of what constitutes work product.

25 THE COURT: Well, first of all, I don't see any basis

Q2AFHEPC

1 for a claim of attorney-client privilege.

2 Did you want to say anything further on that?

3 MR. O'NEIL: I think what those reports reflect -- and
4 I'm happy to submit the reports for your review *in camera*.

5 THE COURT: No. I'm not saying, remotely, any basis
6 for any claim of attorney-client privilege. If you wanted to
7 say anything further, say it now, but I'm happy to hear you on
8 work product.

9 MR. O'NEIL: All I would say is that those reports
10 incorporated information that we had conveyed to Mr. Heppner
11 over the course of our representation after learning things
12 from the government.

13 THE COURT: And he disclosed it to a third-party, in
14 effect, AI, which had an express provision that what was
15 submitted was not confidential.

16 What do you want to say about work product?

17 MR. O'NEIL: I think both the rule and cases
18 interpreting it indicate that it doesn't matter whether a party
19 created the work product, whether the party did that at the
20 direction of counsel, or whether it was counsel, themselves.

21 If an individual, the defendant here, created a report
22 during -- and in anticipation of litigation, that report is
23 subject to work product protection, whether it was, as I said,
24 created by Mr. Heppner or us, and whether it was done at our
25 direction.

Q2AFHEPC

1 I guess the case I would point you to is *Shih v. Petal*
2 *Card*, which is 565 F. Supp. 3d 557 at 57172. That case says,
3 explicitly, that it doesn't matter whether an attorney directed
4 a client.

5 THE COURT: What court is that?

6 MR. O'NEIL: This is Southern District of New York.

7 THE COURT: Who is the judge?

8 MR. O'NEIL: That's Magistrate Judge Moses.

9 I think the context of these reports was that in
10 2025, after Mr. Heppner had received a grand jury subpoena,
11 after it was clear with discussions with the government that
12 Mr. Heppner was the target of this investigation and after the
13 government had asked us to come in and present on the
14 facts, Mr. Heppner -- using an AI tool -- prepared reports that
15 outlined defense strategy, that outlined what he might argue
16 with respect to the facts and the law that we anticipated that
17 the government might be charging.

18 I think it's very clear he was preparing these reports
19 in anticipation of a potential indictment, which, ultimately,
20 came in November.

21 The purpose of his preparing these reports was to
22 share them with us so that he could discuss defense strategy
23 with us, we could create his defense strategy. It's not as if
24 these were documents created during the course of the alleged
25 scheme in which he is --

Q2AFHEPC

1 THE COURT: No, I understand.

2 The core purpose of Work Product Doctrine is to
3 protect the mental strategies of counsel in anticipation of
4 litigation.

5 How did that relate to this? This was not something
6 that reflected your strategy, as I understand what you're
7 saying.

8 MR. O'NEIL: No, I think it did affect our
9 strategy, your Honor.

10 THE COURT: No. Did it reflect your strategy.

11 MR. O'NEIL: No. As we acknowledge, these were
12 prepared by the defendant on his own volition.

13 But again, I would also point to the Rule of Federal
14 Criminal Procedure 16(b)(2)(A), which says 16(b)(1) does not
15 authorize discovery or inspection of reports, memoranda, or
16 other documents made by the defendant or the defendant's
17 attorney or agent during the case's investigation or defense.

18 So, I don't think --

19 THE COURT: Okay. I get your point. Let me hear from
20 the government.

21 MS. ROTHMAN: Your Honor, I think by Mr. O'Neil's own
22 concessions, these materials are not attorney work product
23 because they don't reflect the legal strategy of Quinn Emmanuel
24 or Mr. Heppner's attorneys; they reflect Mr. Heppner's own
25 actions, which are simply not covered by the purpose or the

Q2AFHEPC

1 policy behind this rule.

2 And we cited in our brief, I think, the Second
3 Circuit's decision in *Re: Grand Jury Subpoenas* 318 F.3d 379 --
4 it's from 2003 -- really controls here, where the Court was
5 explicit -- and this is on page 11 of our brief -- that if the
6 rule does not shield materials in an attorney's possession that
7 were prepared neither by the attorney nor his agents.

8 And I haven't heard any proffer from defense counsel
9 that these were prepared by attorneys or his agents. And so
10 both by the clear law of the Second Circuit and the underlying
11 policy reasons, there's no basis to find that the attorney work
12 product protection to apply to these documents.

13 THE COURT: Isn't it also true that the AI tool that
14 Mr. Heppner used expressly provided that users have no
15 expectation of privacy in their inputs?

16 MS. ROTHMAN: That's correct, your Honor, as well.

17 So there are sort of multiple hurdles why we don't
18 think defense can establish their burden -- and it is their
19 burden -- to claim privilege.

20 THE COURT: All right. The government's motion is
21 granted.

22 Now let's turn to Mr. Heppner's motions. The first
23 motion is to strike various paragraphs from the indictment as
24 prejudicial or irrelevant. I just want to be clear that I
25 never, ever submit the indictment to the jury. I have not done

Q2AFHEPC

1 sew in any case in 30 years, and I don't intend to change that
2 policy now.

3 That doesn't mean you don't technically have a right
4 to have things stricken, but I really wonder whether you
5 care, given that the jury is never going to see this
6 indictment.

7 MR. O'NEIL: So, if it is the case that the jury is
8 not going to see the indictment, I think our arguments
9 are, with respect to surplusage, are probably better framed as
10 motions *in limine*.

11 I think we anticipate making motions with respect to
12 the bankruptcy, with respect to other victims, and with respect
13 to the paragraph in the securities fraud section regarding one
14 transaction that was a loan.

15 THE COURT: Yeah. I agree. I think that most of this
16 is going to come up as motions *in limine*. Some of them seem to
17 be worthy of having a written response from the government
18 because they've not frivolous at all, but I think that's the
19 right time to bring it up.

20 There may be one or two that need to be decided
21 sooner. I'm particularly intrigued by the motion to dismiss
22 Count Four as time-barred.

23 But why don't we give the government a chance to
24 respond, so -- and I think you should respond to all the
25 motions, even if some of term turn out to be things we'll take

Q2AFHEPC

1 up in a motion *in limine* stage.

2 But how long do you want to respond?

3 MR. NESSIM: Two weeks, your Honor.

4 THE COURT: Yeah, that's fine.

5 Today is the 10th, so that would be the 24th.

6 And does defense counsel want an opportunity to put in
7 a reply paper?

8 MR. O'NEIL: Yes.

9 THE COURT: How long do you want for that? I'll give
10 you either a week or a week, but --

11 MR. O'NEIL: We'll take a week.

12 THE COURT: Seems reasonable.

13 Okay. So that's March 3. And given that we have the
14 trial in April, I will decide that motion no later than
15 March 10.

16 I may decide, on some of them, that they should only
17 be raised as motions *in limine*, and the timing for that is set
18 forth by the individual rules. But to the extent that they
19 affect things that go beyond motions *in limine*, we'll decide it
20 by March 10.

21 Anything else we need to take up today?

22 MR. NESSIM: No, your Honor. Thank you.

23 MR. O'NEIL: Your Honor, I would just flag -- and I'm
24 not exactly sure how this will develop, but -- with respect to
25 the AI reports, should they be presented by the government as

Q2AFHEPC

1 evidence, the primary witness with respect to the purpose of
2 the reports, the use of the reports would probably be us, would
3 be Quinn Emmanuel. And it could create significant
4 conflict, you know, witness-advocate conflict. So, I think
5 it's just something to flag.

6 THE COURT: Well, that's an interesting point. And
7 you put the government on notice.

8 You know, if that were the situation -- and it may not
9 be the situation; I mean, how you can choose to present them; I
10 don't know.

11 MR. O'NEIL: Yup.

12 THE COURT: And I'm not sure that any testimony would
13 have to be before the jury -- but maybe it would -- and in that
14 case, the government, if foreseeing that in advance or, at the
15 time, still persisted, we could -- we might have to, at that
16 point, declare a mistrial, in which case I would try the case
17 in -- oh, certainly no later than 2030. But I just put the
18 government on notice of that.

19 So, anything else we need to discuss?

20 MR. NESSIM: Your Honor, just on length, the defense
21 had, I think, 15 extra pages. We would just request the same
22 for our opposition. We may not need it, but just in case we
23 do.

24 THE COURT: I'm sorry?

25 MR. NESSIM: The defense had requested 15 extra pages

Q2AFHEPC

1 in their opening motion. We would just request the same.

2 THE COURT: Yeah. You can have a full 15 extra.

3 MR. NESSIM: Thank you.

4 THE COURT: Okay. Anything else?

5 Very good.

6 If there are motions *in limine* -- not just the things
7 we discussed today, but there may be others -- remind me of the
8 exact trial date.

9 MR. NESSIM: April 6, your Honor.

10 THE COURT: April 6.

11 MR. NESSIM: Yes.

12 THE COURT: All right, we might need to have -- I'm
13 not going to schedule it yet, but we might need to have a
14 pretrial conference on April 3, the Friday before, to go over
15 those motions *in limine*.

16 Actually, why don't we? We might as well schedule
17 that now, because it will give me a good opportunity to discuss
18 with you my trial procedures, such as the fact that I never
19 allow speaking objections on objections. But we'll deal with
20 that then.

21 But all right. What do we have, Linda?

22 THE DEPUTY CLERK: Thursday, April 2.

23 THE COURT: No. Friday, April 3.

24 THE LAW CLERK: It's Good Friday, Judge.

25 THE COURT: Oh, it's Good Friday.

Q2AFHEPC

1 Okay. April 2.

2 THE DEPUTY CLERK: Thursday, April 2, any time you
3 like. You just have to leave at 3:45.

4 THE COURT: Okay. Why don't we do 10 a.m. on April 2,
5 tempted though I am by April 1, but April 2.

6 Very good.

7 Thanks very much.

8 (Adjourned)

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25