

Q2AFHEPC

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

4 UNITED STATES OF AMERICA,

5 v.

25 Cr. 503 (JSR)

6 BRADLEY HEPPNER,

7 Defendant.

8 Conference

9 New York, N.Y.  
10 February 10, 2026  
11 9:00 a.m.

12 Before:

13 HON. JED S. RAKOFF,

14 District Judge

15 APPEARANCES

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

22 QUINN EMANUEL URQUHART & SULLIVAN LLP  
23 Attorneys for Defendant  
24 BY: BENJAMIN O'NEIL  
25 CHRISTOPHER CLORE  
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' 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 them 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