

Proposed *Curcio* Examination
United States v. Reza Zarrab, S3 15 Cr. 867 (RMB)

A) Introductory Questions To Establish Competence

1. Age
2. Education
3. Current medications
4. Alcohol, drugs, medications within past 24 hours
5. Is anything interfering with your ability to understand what is happening here today?

B) Potential Conflict Of Interest Posed By Greenberg Traurig and Debevoise and Plimpton's Representation of Banks

1. Are you satisfied with the services of your attorneys thus far in the case?
2. Do you understand that your lawyers are employed by several different law firms, and that they have different obligations to the other clients of those law firms?
3. Have any of your attorneys from the law firm of Greenberg Traurig, including Mr. Giuliani, informed you that their law firm currently represents several banks that the Government alleges are victims of the conspiracies charged in the Indictment against you in this case?
4. Have any of your attorneys from the law firm of Greenberg Traurig, including Mr. Giuliani, informed you that even though they personally may not participate in the representations of those banks, that they nevertheless have ethical obligations to those banks because they are clients of the law firm that your lawyers also work for?
5. How long have you been aware of this issue? How much time have you spent discussing this issue with them?
6. Do you understand that the fact that your lawyers from Greenberg Traurig represent you and simultaneously represent banks alleged to be victims in this case may lead them to have loyalties divided between yourself and those banks?
7. Do you understand that in some cases your lawyers from Greenberg Traurig might have an incentive to put the interests of those banks before yours?
8. Do you understand that none of the bank clients of Greenberg Traurig that the Government alleges are victims of the crimes charged in the Indictment against you have waived the conflict of interest presented by Greenberg Traurig's representation of you?

9. Have any of your attorneys from the law firm of Debevoise and Plimpton, including Mr. Mukasey, informed you that their law firm also currently represents several banks that the Government alleges are victims of the conspiracies charged in the Indictment against you in this case?
10. Have any of your attorneys from the law firm of Debevoise and Plimpton, including Mr. Mukasey, informed you that even though they personally may not participate in the representations of those banks, that they nevertheless have ethical obligations to those banks because they are clients of the law firm that your lawyers also work for?
11. How long have you been aware of this issue? How much time have you spent discussing this issue with them?
12. Do you understand that the fact that your lawyers from Debevoise and Plimpton represent you and simultaneously represent banks alleged to be victims in this case may lead them to have loyalties divided between yourself and those banks?
13. Do you understand that in some cases your lawyers from Debevoise and Plimpton might have an incentive to put the interests of those banks before yours?
14. Do you understand that none of the bank clients of Debevoise and Plimpton that the Government alleges are victims of the crimes charged in the Indictment against you have waived the conflict of interest presented by Debevoise and Plimpton's representation of you?
15. Let me give you some examples of the ways in which the allegiance of your lawyers from Greenberg Traurig and Debevoise and Plimpton could adversely affect their representation of you in this case. This representation could affect the way that your lawyers consider and advise you:
 - a. Whether, and when, you should plead guilty;
 - b. Whether you should seek to cooperate with the Government;
 - c. What defenses you should raise;
 - d. Whether you should testify at trial;
 - e. Which witnesses should be cross examined, and what questions they should be asked;
 - f. Which witnesses should be called, and what other evidence to offer on your behalf;
 - g. What arguments to make on your behalf to the jury;
 - h. What arguments to make to the Court, and what facts to bring to the Court's attention, before trial, during trial, or at your sentencing.
16. Let me expand on some of those examples.

- a. Do you understand that your attorneys from Greenberg Traurig and Debevoise and Plimpton may advise you not to take positions in this case before trial, during trial, or at sentencing that are critical of banks that are clients of their law firms, even if criticizing them might help your defense?
- b. Do you understand that your attorneys from Greenberg Traurig and Debevoise and Plimpton may advise you and your other lawyers not to vigorously cross examine witnesses who are employees of those banks, should they testify at your trial, if your lawyers from Greenberg Traurig and Debevoise and Plimpton believe that such cross examination may be harmful to their client banks' interests?
- c. Are you aware that your attorneys from Greenberg Traurig and Debevoise and Plimpton may have access to or may have learned information from the banks they represent that may be helpful in defending you, but that they are absolutely prohibited from using it to defend you because of the attorney-client privilege that applies to the communications between your attorneys from Greenberg Traurig and Debevoise and Plimpton and their bank clients?
- d. Do you understand that your attorneys from Greenberg Traurig and Debevoise and Plimpton cannot negotiate on your behalf in a manner that would be adverse to the interests of their firms' bank clients, including by using any confidential information they may have learned from those banks?
- e. Do you understand that your attorneys from Greenberg Traurig and Debevoise and Plimpton may be limited in making arguments about your level of involvement in the offense, role in the offense, and culpability?
- f. Do you understand that your attorneys from Greenberg Traurig and Debevoise and Plimpton cannot counsel or advise you to accept a disposition of the case that harms or is adverse to the interests of their firms' bank clients?
- g. Do you understand each of the examples that I have given you?

17. Do you understand that Mr. Giuliani and Mr. Mukasey intend to limit their representation of you and do not intend to appear before this Court as part of these proceedings?

18. Tell me in your own words what your understanding is of the potential conflicts of interest arising in this situation.

19. Do you understand that the greatest danger to you is in the inability to foresee all of the possible conflicts that might arise because of Greenberg Traurig and Debevoise and Plimpton's simultaneous representation of some of the banks alleged to be victims in this case, on the one hand, and the firm's representation of you, on the other?

C) **Potential Conflict Of Interest Posed By Greenberg Traurig's Representation of the Republic of Turkey**

1. Have any of your attorneys from the law firm of Greenberg Traurig, including Mr. Giuliani, informed you that their law firm has registered with the United States Government as an agent of Government of the Republic of Turkey?
2. Have any of your attorneys from the law firm of Greenberg Traurig, including Mr. Giuliani, informed you that even though they personally may not participate in the representations of the Government of the Republic of Turkey, that they nevertheless have ethical obligations to the Government of the Republic of Turkey because it is a client of the law firm that your lawyers also work for?
3. How long have you been aware of this issue? How much time have you spent discussing this issue with them?
4. Do you understand that the fact that your lawyers from Greenberg Traurig represent you and simultaneously represent the Government of the Republic of Turkey case may lead them to have loyalties divided between yourself and the Government of the Republic of Turkey?
5. Do you understand that in some cases your lawyers from Greenberg Traurig might have an incentive to put the interests of the Government of the Republic of Turkey before yours?
6. Let me give you some examples of the ways in which the allegiance to the Government of the Republic of Turkey of your lawyers from Greenberg Traurig could adversely affect their representation of you in this case. This representation could affect the way that your lawyers consider and advise you:
 - a. Whether, and when, you should plead guilty;
 - b. Whether you should seek to cooperate with the Government;
 - c. What defenses you should raise;
 - d. Whether you should testify at trial;
 - e. Which witnesses should be cross examined, and what questions they should be asked;
 - f. Which witnesses should be called, and what other evidence to offer on your behalf;
 - g. What arguments to make on your behalf to the jury;
 - h. What arguments to make to the Court, and what facts to bring to the Court's attention, before trial, during trial, or at your sentencing.
7. Let me expand on some of those examples.

- a. For example, do you understand that your interest in a public trial of the charges in this case may be different from the interest of the Government of Turkey, and that your attorneys from Greenberg Traurig cannot advise you to proceed to trial in a manner that would be adverse to the interests of the Government of Turkey?
- b. Do you understand that as part of its work as an agent of the Government of Turkey, Greenberg Traurig is obligated to “propos[e] and pursu[e] passage of legislation and other U.S. government action that promotes Turkey’s interests and provides a positive image of the Turks, Turkey, and the United States-Turkey relationship?”
- c. Do you understand that to the extent your right to a public trial conflicts with Greenberg Traurig’s duties to promote a positive image of the Republic of Turkey, your attorneys from Greenberg Traurig cannot advise you to proceed to a public trial?
- d. Do you understand that your attorneys from Greenberg Traurig may advise you not to take positions in this case before trial, during trial, or at sentencing that are critical of the Government of Turkey, even if criticizing it might help your defense?
- e. Do you understand that your attorneys from Greenberg Traurig may advise you not to seek to admit evidence that they view as adverse to the interests of the Government of Turkey, even if admitting that evidence might help your defense?
- f. Do you understand that your attorneys from Greenberg Traurig, including Mr. Giuliani, cannot negotiate on your behalf in a manner that would be adverse to the interests of the Government of Turkey, including by using any confidential information they may have learned pursuant to their agency relationship with the Government of Turkey?
- g. Do you understand that your attorneys from Greenberg Traurig cannot counsel or advise you to accept a disposition of the case that harms or is adverse to the interests of the Government of Turkey?
- h. Do you understand each of the examples that I have given you?

8. Tell me in your own words what your understanding is of the potential conflicts of interest arising in this situation.
9. Do you understand that the greatest danger to you is in the inability to foresee all of the possible conflicts that might arise because of Greenberg Traurig’s simultaneous representation of the Government of Turkey, on the one hand, and the firm’s representation of you, on the other?

D) The Right To Conflict-Free Representation

1. Do you understand that, in every criminal case, including this one, the defendant is entitled to assistance of counsel whose loyalty to him is undivided, who is not subject to any factor that might in any way intrude upon an attorney's loyalty to his interests? In other words, do you understand that you are entitled to attorneys who have only your interests in mind, and not the interests of any other client?
2. Have you received any inducements, promises or threats with regard to your choice of counsel in this case?
3. Have you consulted with any attorneys other than Mr. Giuliani or Mr. Mukasey about the dangers to you of this potential conflict of interest?
4. Do you understand that you have a right to consult with an attorney free from any conflict of interest about this issue, and that the Court will give you an opportunity to do that if there is any aspect of the information that I have conveyed to you today that you wish to discuss with a conflict-free attorney?
5. Have you consulted with independent counsel about the conflict or potential conflict of interest that I have described to you today? Has counsel fully advised you about the situation? Do you wish to receive additional time to consult with independent counsel?
6. After considering all that I have said today about the ways in which Greenberg Traurig's representation of the banks alleged to be victims in your case may adversely affect your defense, do you believe that it is in your best interest to continue with Greenberg Traurig as one of the law firms representing you? Is that your wish?
7. After considering all that I have said today about the ways in which Greenberg Traurig's representation of the Government of Turkey may adversely affect your defense, do you believe that it is in your best interest to continue with Greenberg Traurig as one of the law firms representing you? Is that your wish?
8. After considering all that I have said today about the ways in which Debevoise and Plimpton's representation of the banks alleged to be victims in your case may adversely affect your defense, do you believe that it is in your best interest to continue with Debevoise and Plimpton as one of the law firms representing you? Is that your wish?
9. Do you understand that by choosing to continue with Greenberg Traurig and Debevoise and Plimpton as two of the law firms representing you, you are waiving your right to be represented solely by attorneys who have no potential conflict of interest?
10. Are you knowingly and voluntarily waiving your right to conflict-free representation?
11. Do you waive any post-conviction argument, on appeal or otherwise, that by virtue of Greenberg Traurig's representation of banks alleged to be victims in this case, you were denied effective assistance of counsel?

12. Do you waive any post-conviction argument, on appeal or otherwise, that by virtue of Greenberg Traurig's representation of the Government of Turkey, you were denied effective assistance of counsel?
13. Do you waive any post-conviction argument, on appeal or otherwise, that by virtue of Debevoise and Plimpton's representation of banks alleged to be victims in this case, you were denied effective assistance of counsel?

E) Conclusion

1. Is there anything that I have said that you wish to have explained further?