

Defendant Mehmet Hakan Atilla's Proposed *Curcio* Examination

Currently Scheduled for May 18, 2017

United States v. Reza Zarrab, et al., S3 15 Cr. 867 (RMB)

A) General Introductory Questions

1. Do you understand what this proceeding is all about? [See Transcript of Jan. 5, 2017, Reza Zarrab *Curcio* hearing ("Curcio Tr."), regarding his representation by Kirkland & Ellis, LLP, page 5, lines 15-16]
2. The purpose of my asking these questions is to complete the written record. You should be aware that I have not yet determined whether Herrick, Feinstein LLP ("Herrick") should continue to represent you as counsel in this case. Do you understand that? (Curcio Tr., 5:18-22)

B) Introductory Questions To Establish Competence

1. Age (*Curcio* Tr., 5: 24-25)
2. Education (*Curcio* Tr., 6:2-3)
3. Current medications (*Curcio* Tr., 6: 7-8)
4. Alcohol, drugs, medications within past 24 hours (*Curcio* Tr., 6: 18-19)
5. Is there anything, including language differences, interfering with your ability to understand what is happening here today? (*Curcio* Tr., 6: 22-27)

C) Potential Conflict Of Interest Posed By Herrick's Representation

1. Are you satisfied with the services of your attorneys thus far in the case? (*Curcio* Tr., 7: 2-4)
2. Are you satisfied with the legal advice they have given you? (*Curcio* Tr., 7: 6-7)

3. Have your attorneys from Herrick informed you that their law firm currently represents, in matters unrelated to this case, seven banks (the “Bank Clients”) that the Government alleges are victims of the conspiracies charged in the Indictment against you in this case, and that those Bank Clients are Bank of America, N.A.; Bank of New York Mellon; Citibank, N.A.; Deutsche Bank; HSBC; JP Morgan Chase Bank, N.A.; and Wells Fargo Bank, N.A.? (*Curcio* Tr., 8: 17-25)
4. Have your Herrick attorneys advised you that their law firm currently also represents, in matters unrelated to this case, the Republic of Turkey, although the Government has not alleged that the Republic of Turkey is a victim of the conspiracies charged in the indictment against you in this case?
5. Have your Herrick attorneys informed you that even though they personally may not participate in the representations of the Bank Clients or the Republic of Turkey, they nevertheless have ethical obligations to the Bank Clients and to the Republic of Turkey because they are clients of the law firm that your lawyers work for, namely Herrick? (*Curcio* Tr., 9: 18-22)
6. How long have you been aware of these issues? How much time have you spent discussing these issues with your Herrick attorneys?
7. Do you understand that the fact that your Herrick lawyers represent you and simultaneously represent the Bank Clients may lead them to have loyalties divided between yourself and the Bank Clients? (*Curcio* Tr., 10: 3-7)

8. Do you understand that, while your Herrick attorneys may have these divided loyalties, you nevertheless are entitled to have counsel who have no divided loyalties, who are loyal only to you? (*Curcio* Tr., 10: 9-12)
9. Do you understand that, because of these divided loyalties, your Herrick lawyers might have an incentive, in some instances, to put the interests of the Bank Clients before yours? (*Curcio* Tr., 10: 14-17)
10. Let me give you some examples of the ways in which the loyalties of your Herrick lawyers could adversely affect their representation of you in this case. This dual representation could affect the way that your Herrick lawyers consider and advise you (*Curcio*, Tr., 10: 19-25):
 - a. Whether, and when, you should plead guilty (*Curcio* Tr., 11: 1-2);
 - b. Whether you should seek to cooperate with the Government (*Curcio* Tr., 11: 4-5);
 - c. What defenses you should raise (*Curcio* Tr., 11: 7-8);
 - d. Whether you should proceed to trial, including any interest on the part of the Republic of Turkey or the Bank Clients to avoid a public trial; (Govt's. April 18, 2017 letter to Court at 2)
 - e. Whether you should testify at trial (*Curcio* Tr., 11:10-11);
 - f. Which, if any, Bank Client witnesses should be cross-examined, and what questions they should be asked (*Curcio* Tr., 11: 13-15);

- g. Which, if any, Bank Client witnesses should be subpoenaed and called to testify, and what other evidence, if any, concerning the Bank Clients should be offered on your behalf (*Curcio* Tr. 11: 17-19);
- h. What arguments to make on your behalf to the jury (*Curcio* Tr., 11: 21-23);
- i. 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, if you are convicted. (*Curcio* Tr., 11: 25-12:3)

11. Let me expand on some of those examples and ask you some additional questions related to the ones we have just gone over. (*Curcio* Tr., 12: 5-7)

- a. Do you understand that your Herrick attorneys may not wish to take positions in this case before trial, during trial, at sentencing, or on appeal, that are critical of the Bank Clients, even if criticizing them might help your defense? (*Curcio* Tr., 12: 8-15)
- b. Are you aware that certain attorneys at Herrick who are not members of your defense team may have access to or may have learned confidential information from the Bank Clients they represent, but that they are absolutely prohibited from providing this information to the members of your defense team for use in your defense, even if the information could be useful in your defense, because of the attorney-client privilege that applies to the communications between the Herrick attorneys and their Bank Clients? (*Curcio* Tr., 12: 22-13:7)
- c. Do you understand that your attorneys from Herrick may be limited in making arguments about your level of involvement in the offense or the crimes which are

alleged in this case to have occurred or of your role in those offenses or concerning your culpability? (*Curcio* Tr., 13: 9-13)

- d. Are you comfortable that stand-by counsel representing you, and not your Herrick attorneys, if necessary, will decide whether or not to engage in the following activities on your behalf, and will actually engage in the activities if appropriate (*Curcio* Tr., 23: 11-16):
 - i. Use or advise on the use of court process to compel the production of documents from the Bank Clients, or to compel the attendance of witnesses who are employees or agents of the Bank Clients (*Curcio* Tr., 23: 5-8);
 - ii. Cross-examine witnesses who are employees of the Bank Clients should they testify at your trial (*Curcio* Tr., 12: 17-20); or
 - iii. Accuse the Bank Clients of knowing about, being complicit in, or otherwise not being a victim of the allegedly illegal transactions. (*Curcio* Tr., 22:21-23:3)
- e. Do you understand each of the examples that I have given you? (*Curcio* Tr., 13: 22-14:1)

12. Tell me in your own words what your understanding is of the potential conflicts of interest arising in this situation. (*Curcio* Tr., 14: 3-8)

13. Do you understand that the greatest danger to you is the inability to foresee all of the possible conflicts that might arise because of Herrick's simultaneous representation of the Bank Clients, in other unrelated matters, on the one hand, and the firm's representation of you, on the other? (*Curcio* Tr., 15:3-9)

14. Are you also aware that *[to be inserted on date of hearing]* of the seven Bank Clients have issued written waivers of the dual representation? (*Curcio* Tr., 15: 11-12)

15. And you are aware that Citibank refused to enter into such a waiver. (*Curcio* Tr., 15: 15-16)

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? (*Curcio* Tr., 14: 23-25; 15: 18-16:2)

2. Have you received any inducements, promises or threats with regard to your choice of counsel in this case? (*Curcio* Tr. 16: 8-10)

3. Are you the one who selected Herrick to represent you in this case? (*Curcio* Tr., 16: 12-13)

4. Do you understand that you have a right to consult with an attorney free from any conflict of interest about this issue? (*Curcio* Tr., 16: 15-17)

5. And for that purpose, that is, the right to consult with an attorney who is conflict free, the Court appointed *[to be inserted]* as your independent counsel, and has given you the opportunity to consult with him/her with respect to any aspect of the information that I have been discussing with you today, correct? (*Curcio* Tr., 16: 19-22)

6. Have you consulted with [to be inserted] about the potential conflict of interest that I have described to you today? Has [to be inserted] fully advised you about the issue? Do you wish to receive additional time to consult with [to be inserted]? (*Curcio* Tr., 16: 24-17:8)
7. After considering all that I have said today about the ways in which Herrick's representation of the Bank Clients alleged to be victims in your case may adversely affect your defense, do you nevertheless believe that it is in your best interest to continue with Herrick as the law firm representing you? Is that your wish? (*Curcio* Tr., 17: 13-20)
8. Do you understand that by choosing to continue with Herrick as the law firm representing you, you are waiving your right to be represented solely by attorneys who have no potential conflict of interest? (*Curcio* Tr., 17: 22-25)
9. Are you knowingly and voluntarily waiving your right to conflict-free representation? (*Curcio* Tr., 18: 2-4)
10. And, if, you are convicted in this case, do you waive any post-conviction argument, on appeal or otherwise, that, by virtue of Herrick's representation of the Bank Clients, you were denied effective assistance of counsel? (*Curcio* Tr., 18: 6-11)

E) Conclusion

1. Is there anything that I have said that you wish to have explained further? (*Curcio* Tr., 18: 17-19)