

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

-against-

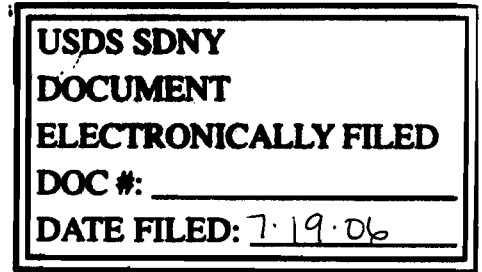
S1 05 Crim. 0888 (LAK)

JEFFREY STEIN, et al.,

Defendants.

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MEMORANDUM AND ORDER



LEWIS A. KAPLAN, *District Judge.*

Defendant Ritchie, joined by others, moves for a four month continuance of the September 11, 2006 trial date. Among the factors supporting relief are these:

1. First, despite the fact that the government was obliged to complete discovery by October 5, 2005, it has produced a vast quantity of documents to the defense since that date, including most recently a production on July 5, 2006. In some part, the failure to meet the discovery deadline was a product of failures to produce documents that were in the hands of the government before October 5. In larger part, the failure has been attributable to the government's receipt after October 5, partly as a result of ongoing related investigations and partly apparently as a result of tardy production of documents by KPMG, of documents that the government believes must be produced here. Moreover, there frequently have been extensive delays between the government's receipt of documents that it eventually concluded that it was obliged to turn over and the production of those documents to the defense.

Quite apart from the question whether some of the government's failures are culpable and deserving of sanctions, defendants justifiably argue that the extent of the belated production has been so large that they simply need more time to make sense out of it.

2. Second, there have been problems with the government's production above and beyond its tardiness. To the extent the production has been made in electronic form, there have been material difficulties with such matters as making the databases work properly, the quality of electronic document images, and the coding. To the extent that it has been made in paper form, the conditions and responsiveness in the Maspeth warehouse in which the government has made the documents available have been considerably less than satisfactory.

3. Third, sixteen of the remaining defendants are former partners and employees of KPMG. As the Court held in an opinion dated June 26, 2006, the government improperly caused KPMG to depart from its uniform prior practice by cutting of its payment of these defendants' legal fees, thus subjecting the defense to a resource constraint in violation of their constitutional rights. Rather than dismiss the indictment as against these defendants out of hand, the Court has sought to afford these

defendants the possibility of a remedy short of dismissal by entertaining under its ancillary jurisdiction claims against KPMG to require it to pay the fees. If they succeed in that regard, dismissal or other sanctions against the government may be less appropriate than otherwise may be the case. But it will take some time to resolve that matter, one way or the other. In addition, if these defendants prevail against KPMG, it will take them some time to make effective use of the resources thus made available.

In all the circumstances, the Court has concluded that the trial should be continued and other discovery related relief granted in order to ensure that defendants are given a fair opportunity to prepare for trial notwithstanding the government's improper interference with the payment of legal fees and its failure to comply with the discovery deadline. Accordingly,

a. The trial is adjourned from September 11, 2006 until January 15, 2007 with the jury panel to be called and the questionnaires to be completed on January 10 and distributed to counsel on or as soon after January 11, 2007 as possible, all as outlined in the Court's prior orders.

b. On or before July 27, 2006, the government shall disclose to the defendants all requests for documents and other information it has made to KPMG since October 5, 2006 and, with respect to each such request, shall advise the defendants when KPMG completed its response to the request, if it has done so. If KPMG has not completed its response, the government is to take such action as may be within its power to require KPMG to complete its response within 21 days of the date of this order.

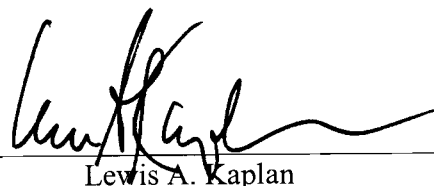
c. On or before August 20, 2006, the government shall serve defendants with designations, by page and line numbers, indicating the precise portions of all deposition and other transcripts on its witness or exhibit list that it proposes to offer in evidence on its case in chief.

d. The government and the defendants shall meet and confer promptly with a view to formulating an agreed plan for the performance of the Maspeth document depository that shall ensure that any documents located there that are requested by defense counsel are made available to them within 48 hours of request. In the event the parties cannot agree on such a plan, they shall submit their respective proposed orders to the Court on or before July 31, 2006 with one letter from each side explaining their respective positions. The Court thereafter will enter an appropriate order.

e. In the event the government does not agree, on or before July 31, 2006, to produce to the defense all *Jencks* material on or before November 15, 2006, the Court will entertain a motion by the defendants for sanctions against the government based on its alleged failure to comply with the discovery deadline and for such other relief as may be appropriate.

SO ORDERED.

Dated: July 19, 2006



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Lewis A. Kaplan  
United States District Judge