

YEVGENIY PRIGOZHIN WINS HIS ASYMMETRIC LEGAL WAR AGAINST DOJ

DOJ just moved to dismiss the indictment against Concord Management, the Yevgeniy Prigozhin company that funded his IRA troll effort; but they're only moving to dismiss one charge, not the charges against human beings who can be made to show up in court.

The motion cites what I pointed out from the start: Prigozhin was just engaged in lawfare to collect information without having to share any of its own.

As this case has proceeded, however, it has become increasingly apparent to the government that Concord seeks to selectively enjoy the benefits of the American criminal process without subjecting itself to the concomitant obligations.

Concord has been eager and aggressive in using the judicial system to gather information about how the United States detects and prevents foreign election interference. Concord filed numerous motions to dismiss, motions for bills of particulars, motions to conduct discovery of prosecutorial decision-making, motions seeking grand jury materials, and motions to compel other discovery. See, e.g., ECF Nos. 11, 36, 46, 78, 93, 104, 181, 229, 241, 251, 256, 257, 264. Concord also received substantial discovery and engaged in extensive litigation aimed at housing that discovery in Russia. See, e.g., ECF Nos. 27, 37, 39, 77, 121, 187. But Concord has failed to protect at least some of that discovery from improper

use. See ECF No. 94, at 8-11; Classified Addendum. And Concord has been reticent, to say the least, to comply with obligations that cannot simply be handled by American counsel. Thus, when the government sought to serve trial subpoenas on Concord through its counsel in this case, Concord claimed that service was a legal impossibility and argued that because it is a foreign corporation, the Court lacks jurisdiction to require Concord to produce records located abroad. See ECF Nos. 287, 311; 12/12/2019 Tr. 50- 55. Concord even asserted that to serve a subpoena on its counsel created an unconstitutional conflict of interest because Concord would be better off if the attorneys never transmit the subpoenas to Concord. See ECF Nos. 287, 311; 1/24/2020 Tr. 22-23. When Concord ultimately produced records, the government believes that it concealed responsive documents pertinent to the upcoming trial. See, e.g., ECF Nos. 361, 362, 377, 378. Indeed, the Court ordered Concord to show cause regarding its compliance and to produce a corporate representative. 2/27/20 Minute Order. In response, Concord initially did not even so much as assert that it had complied with the Court's order, and Concord made no effort to make available a representative. See ECF Nos. 364, 367. Throughout this case, although Concord has "appeared" through counsel, counsel has always been explicit that they were not a representative of the company. See, e.g., ECF Nos. 287; 3/2/2020 Tr. 5-6. Ultimately, when the Court required that Concord submit an affidavit regarding its response to the subpoena, Prigozhin, the thrice-sanctioned Russian oligarch who has declined to subject himself to the Court's jurisdiction, filed a purportedly "sworn" declaration.

See ECF No. 376-1. That declaration, the government has reason to believe, contains false and misleading statements—it is evidently calculated to conceal facts that are relevant to this case and that a typical defendant would be required to reveal or else face sanctions. See ECF Nos. 377, 378; Classified Addendum.

In addition, a classification determination has been made on the proof needed for the case, which would weaken their case.

Upon careful consideration of all of the circumstances, and particularly in light of recent events and a change in the balance of the government's proof due to a classification determination, as well as other facts described in more detail in a classified addendum to this motion, the government has concluded that further proceedings as to Concord, a Russian company with no presence in the United States and no exposure to meaningful punishment in the event of a conviction, promotes neither the interests of justice nor the nation's security.

[snip]

Moreover, as described in greater detail in the classified addendum to this motion, a classification determination bearing on the evidence the government properly gathered during the investigation, limits the unclassified proof now available to the government at trial.

There's a subtext here about Dabney Friedrich's willingness to let Prigozhin dick with the courts by defying a subpoena from her court. But whatever the underlying classified facts, Prigozhin played chicken with the US court

system and won.

This will likely serve as a key lesson for DOJ going forward about the potential blowback when indicting foreign companies along with the foreign officers deemed responsible for a hack. And Russia – and certain Russian troll apologists I know – will certainly crow about this decision.

Update: Friedrich has dismissed the indictment (again, just the one charge against Concord), presumably without even reading the classified supplement.

MINUTE ORDER. Before the Court is the government's [381] Motion to Dismiss Count One of the Indictment with prejudice as to Concord Management and Consulting LLC and Concord Catering (the "Concord Defendants") pursuant to Federal Rule of Criminal Procedure 48(a). The government's motion is GRANTED. Accordingly, Count One of the [1] Indictment and [247] Superseding Indictment is dismissed with prejudice as to the Concord Defendants. So Ordered by Judge Dabney L. Friedrich on March 16, 2020. (lcdlf2)