

Judge Acquits Menendez On Some Charges; Prosecution Drops the Others

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The prosecution of U.S. Senator Bob Menendez and Dr. Salomon Melgen, which ended in a deadlocked jury last November, was resolved by Judge William H. Walls, who granted a defense motion for acquittal of seven of the eighteen counts of the indictment on January 24, 2018. Those seven counts involved political contributions of \$660,000 made by Melgen to benefit Sen. Menendez, in return for Sen. Menendez helping Melgen with Melgen's investments in the Dominican Republic and a Medicare dispute, according to the government. Judge Walls found no quid-pro-quo bribery, and acquitted defendants of those charges. Unfortunately for the government, bribery in the form of money is the most common form of corruption, and the most familiar to the public, including potential jurors. The only remaining counts for the trial would essentially have been non-monetary gifts such as flights and hotel stays, which may appear less as bribes and more as gifts and courtesies between friends. Moreover, the value of those "gifts" was a small fraction of the monetary payments. Accordingly, on January 31, the prosecution decided to drop the case altogether, despite announcing on January 19 that it would retry both Sen. Menendez and Melgen.

The prosecution of Menendez is illustrative of most white collar crimes, which involve a significant paper trail, including documentation, billing, and correspondence. These cases turn on circumstantial evidence and inferences. Unlike non-financial cases that may involve fingerprints, eyewitnesses or DNA, the direct evidence is generally not in dispute. The prosecution and the defense are cooking with the same ingredients, and each is trying to make something that smells different to the jury. However, when Judge Wall removed \$660,000 as a potential ingredient, there was little chance the prosecution could create a recipe that smelled like a crime.