

1 P R O C E E D I N G S

2 THE DEPUTY CLERK: Calling the case of United
3 States of America versus Amaro Goncalves, John Mushriqui,
4 Jeana Mushriqui, Ofer Paz, Israel Weisler, Michael Sacks and
5 Marc Morales. Counsel, please come forward and identify
6 yourself for the record.

7 MR. LIPTON: Joey Lipton, Laura Perkins and
8 Matthew Solomon for the government.

9 THE COURT: Well, Mr. Lipton, I received your
10 motion. Couple of questions for you. This motion appears
11 as I read it to address the remaining defendants who have
12 not had a trial yet. And I believe it addresses the seven
13 defendants against whom there have been hung jury verdicts;
14 is that right?

15 MR. LIPTON: That's correct, Your Honor.

16 THE COURT: Okay. So your motion will be as to
17 all of those defendants; is that right?

18 MR. LIPTON: Correct.

19 THE COURT: Now it kind of begs the question,
20 where are we with regard to Mr. Alvarez, Mr. Spiller and
21 Mr. Geri. They've entered guilty pleas. Only two of them,
22 however, entered guilty pleas as to a count in this case as
23 I recall it. I think Mr. Alvarez and Mr. Spiller pled
24 guilty to a conspiracy count.

25 MR. LIPTON: All three of those pled guilty to the

1 conspiracy count and the charged conduct. The only
2 exception is Alvarez pled guilty to real word charges.

3 THE COURT: So as to those three defendants is it
4 the government's position the Court should set a status
5 hearing in the near future to address where we go from there
6 as to them?

7 MR. LIPTON: I think that that would be
8 appropriate, Your Honor. We have reached out to defense
9 counsel for those defendants. And in fairness to those
10 defendants we wanted to give them an opportunity to be heard
11 on those issues. And so we are going to be meeting with
12 them in the near future to do so. We hope it won't take too
13 long both coordinating schedules with them and the two
14 offices; the U.S. Attorney's office and the Fraud Section.
15 We hope to have that accomplished shortly and then we can
16 report back to Your Honor as to where we stand with those
17 three defendants.

18 THE COURT: As to Mr. Bistrong, of course, he
19 didn't plead to any of the counts in this indictment?

20 MR. LIPTON: That's correct.

21 THE COURT: And I guess it was only Mr. Spiller.
22 Mr. Spiller and Mr. Geri only pled to counts in this one?

23 MR. LIPTON: Correct, they both pled guilty to
24 Count one, the conspiracy charge.

25 THE COURT: Very well. So with regard to them the

1 Court will need to have further proceedings in the not too
2 distant future to address those issues. Very good. And
3 then as to Mr. Bistrong, of course, I will set a sentencing
4 date at some point down the road.

5 Is there anything else from the government's
6 prospective other than the Court ruling on this motion that
7 the Court needs to do at this point?

8 MR. LIPTON: Not from the government, your Honor,
9 no.

10 THE COURT: Very good. Thank you, Mr. Lipton?

11 MR. LIPTON: Thank you, Judge.

12 THE COURT: Do any of the defense counsel have any
13 questions or issues they'd like to raise as to this?

14 MR. ANDALMAN: Your Honor, only this is obviously
15 ministerial, but the order that the government presented
16 didn't name the defendants. Obviously, we'd like to make
17 sure that whatever order issues from the Court has
18 Mr. Gonzalez's name on it. And also that the Court perhaps
19 provide for return of his passport.

20 THE COURT: Obviously if I grant the motion any
21 and all conditions of their release will be vitiated. They
22 will be entitled to the return of any funds they posted and
23 any documents they turned over or anything like that. So
24 that will be taken care of in due course.

25 MR. ANDALMAN: Thank you, Your Honor.

1 THE COURT: Anyone else? Okay. Then let me make
2 a few brief remarks. This appears to be the end of a long
3 and sad chapter in the annals of white collar criminal
4 enforcement. Unlike takedown day in Las Vegas, however,
5 there will be no front page story in the New York Times or
6 the Post for that matter tomorrow reflecting the
7 government's decision today to move to dismiss the charges
8 against the remaining defendants in this case. Funny isn't
9 it what sells newspapers.

10 The good news, however, is that for these
11 defendants, agents, prosecutors, defense counsel and the
12 Court we can get on with our professional and personal lives
13 without the constant strain and burden of three to four more
14 eight week trials hanging over our heads.

15 I for one hope this very long, and I'm sure very
16 expensive, ordeal will be a true learning experience for
17 both the Department and the FBI as they regroup to
18 investigate and prosecute FCPA cases against individuals in
19 the future.

20 Two years ago, at the very outset of this case I
21 expressed more than my fair share of concerns on the record
22 regarding the way this case had been charged and was being
23 prosecuted. Later, during the two trials that I presided
24 over I specifically commented again on the record regarding
25 the government's very, very aggressive conspiracy theory

1 that was pushing its already generous elasticity to its
2 outer limits. Of course, in the second trial that elastic
3 snapped in the absence of the necessary evidence to sustain
4 it.

5 In addition, in that same trial, I expressed on a
6 number of occasions my concerns regarding the way this case
7 had been investigated and was conducted especially vis-a-vis
8 the handling of Mr. Bistrong. I even had an occasion,
9 sadly, to chastise the government in a situation where the
10 government's handling of the discovery process constituted
11 sharp practices that have no place in a federal courtroom.

12 Notwithstanding all of this water over the dam,
13 and there has been a lot of water, I'm happy to see and I
14 applaud the Department for having the wisdom and the courage
15 of its convictions to face up to the limitations of its case
16 as revealed in the past 26 weeks of trial and the courage to
17 do the right thing under the circumstances.

18 Having served at the higher levels of the
19 Department, I know that that was not an easy decision. They
20 never are, when so much has been invested, and the agents
21 and the prosecutors are so convinced of the righteousness of
22 their position. I for one however am confident this will be
23 in the end a positive, if not painful, lesson that results
24 in better prosecutions of individuals in the future under
25 the FCPA. As for the defendants, I hope the healing process

1 is a swift one and that they get back to their normal lives
2 in the very near future.

3 Finally, I would be remiss if I did not comment on
4 the tireless and spirited effort by the defense counsel from
5 all over the country who came here to try these very lengthy
6 and complicated cases under difficult circumstances and some
7 even pro bono. Their hard work and effective advocacy are a
8 testament to how strong our criminal defense Bar is
9 nationwide.

10 And so without further adieu I grant the
11 government's motion to dismiss. The defendants are excused.
12 And I will set hearings in the near future to determine the
13 status of those cases where guilty pleas have already been
14 entered. The Court stands in recess.

15 [Thereupon, the proceedings adjourned at]
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