



## Dismissal of FCPA Cases Represents Cautionary Tale for DOJ

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A dramatic, headline-grabbing white-collar crime sting in January 2010 involved the arrest of 22 executives and employees of companies in the military and law enforcement products industry – and ultimately led only to a series of acquittals and mistrials, causing many to wonder whether the case should have been brought at all. After two trials for a total of 10 defendants that failed to result in any convictions, the U.S. Department of Justice dropped its case against all remaining defendants last month.

The Foreign Corrupt Practices Act prohibits people in the United States from bribing foreign officials for the purposes of obtaining or retaining business. The DOJ press release announcing the sting said that it was the single largest investigation and prosecution against individuals in the 32-year history of the DOJ's enforcement of the FCPA. The defendants were charged with violating the Act for allegedly agreeing to pay kickbacks to a Gabon minister of defense in exchange for contracts to supply the country's presidential guard. The deal, however, was a ruse, with FBI agents posing as Gabonese defense officials.

When the DOJ announced the arrests, Assistant Attorney General Lanny A. Breuer promoted these undercover actions as “a turning point,” saying that the indictments “reflect the Department's commitment to aggressively investigate and prosecute those who try to advance their businesses through foreign bribery.”

While three defendants pleaded guilty immediately, the remaining 19 were to be tried in four separate trials in federal court in Washington, D.C. In the end, the DOJ's aggressive tactics did not impress the judge or jury.

In the first trial in the summer of 2011, four defendants received a mistrial due to a hung jury. In the second trial of six defendants, defense lawyers argued that the DOJ and the FBI led their clients to believe what they were doing was lawful and disregarded their own DOJ guidance on sting operations. U.S. District Judge Richard Leon dismissed



conspiracy charges against the defendants, which ended the case for one defendant, who was only charged with conspiracy.

For the remaining defendants, only the substantive FCPA violation charges were left for the jury's consideration. In January 2012, jurors acquitted two defendants before becoming deadlocked on the remaining three, resulting in another mistrial. Recognizing that further prosecution would likely be futile, on February 21, 2012, the DOJ requested that the court dismiss the pending charges against all remaining defendants, and stated that it would not seek to retry the defendants who received mistrials.

In dismissing the case, Judge Leon voiced concern regarding the government's "very aggressive conspiracy theory." While the judge ultimately applauded the DOJ for "the wisdom, the courage, the conviction to face up to the limitations of this case," we do not believe that the DOJ should be praised for dropping the remaining cases only after unsuccessfully trying two cases using evidence derived from dubious investigative techniques. We hope that the DOJ will see this entire costly venture as a cautionary tale and will proceed in future cases with justice, rather than headlines, in mind.

tags: [Bribery](#), [Entrapment](#), [FCPA](#)



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