



## Judge Dismisses Lindsey FCPA Case, Finding Prosecutorial Misconduct

December 12, 2011

In May 2011, a federal jury in Los Angeles convicted Lindsey Manufacturing Co., its president Keith Lindsey, and CFO Steve Lee, on foreign bribery charges for their dealings with Mexico's state-owned electricity utility, Comision Federal de Electricidad. The prosecutors claimed that Lindsey Manufacturing retained Enrique Aguilar, a Mexican company representative, after repeatedly failing to win contracts legitimately – and that the defendants knew that the sales commission they paid to Aguilar was used to cover more than \$5 million in bribes to officials at the Comision.

The defendants faced as long as five years in prison for each of five counts of bribing a foreign official, as well as five years for a conspiracy count. However on December 1, 2011, U.S. District Judge A. Howard Matz, who oversaw the jury trial, dismissed those convictions with prejudice due to government misconduct after ruling [on the defense's Motion to Dismiss](#) and [Supplemental Brief in Support of Motion to Dismiss](#).

In his [remarkable order dismissing the charges](#), Judge Matz acknowledged that “most district judges are reluctant to find that the prosecutors’ actions were flagrant, willful, or in bad faith,” but he concluded that “it is with deep regret that this Court is compelled to find that the Government team allowed a key FBI agent to testify untruthfully before the grand jury, inserted material falsehoods into affidavits submitted to magistrate judges in support of applications for search warrants and seizure warrants, improperly reviewed e-mail communications between one Defendant and her lawyer, recklessly failed to comply with its discovery obligations, posed questions to certain witnesses in violation of the Court’s rulings, engaged in questionable behavior during closing argument and even made misrepresentations to the Court.”

This is an extensive laundry list of serious allegations against government prosecutors. Over the summer, we wrote about some of the most significant misconduct by the prosecution, such as its failure to produce the transcript of some of FBI Special Agent Susan Guernsey's October 2010 grand jury testimony until seven weeks after the jury entered its verdict in 2011. Agent Guernsey testified before the grand jury a total of four times, and her testimony contained a number of material misrepresentations and outright falsehoods that led to the indictment. The prosecution's failure to turn over testimony from one of those sessions until after the conclusion of the trial hindered the defense's ability to fully cross-examine her during the trial.

Although it was the prosecution's continuous misrepresentations and misconduct which are ultimately at fault for these wrongful convictions, Judge Matz admirably took responsibility for not recognizing the misconduct sooner. He said,

“[W]hen a trial judge managing a large docket is required to devote a great deal of time and effort to a fast-moving case that requires numerous rulings, often the judge will miss the proverbial forest for the trees. That is what occurred here. This Court was confronted with so many motions challenging the Government's conduct that it was difficult to step back and look into whether what was going on reflected not isolated acts but a pattern of invidious conduct. ... The Government has acknowledged making many “mistakes,” as it characterizes them. “Many” indeed. So many in fact, and so varied, and occurring over so lengthy a period (between 2008 and 2011) that they add up to an unusual and extreme picture of a prosecution gone badly awry.”





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While it is somewhat heartening that a federal judge would both straightforwardly reprimand federal prosecutors for an egregious series of acts of misconduct and take the blame for his own role in not stopping it sooner, it nonetheless remains an incredible injustice that that defendants were brought to trial, convicted, and faced jail time before this misconduct was adequately addressed. The government has already appealed the case to the Ninth Circuit. We can only hope that the appeals court agrees with Judge Matz and takes a firm stance against prosecutorial misconduct.

*Crime in the Suites is authored by the Ifrah Law Firm, a Washington DC-based law firm specializing in the defense of government investigations and litigation. Our client base spans many regulated industries, particularly e-business, e-commerce, government contracts, gaming and healthcare.*

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