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A P P E A R A N C E S: (Continued)

For the Defendant
Luis Martinelli Linares

HOGAN LOVELLS US, LLP
390 Madison Avenue
New York, New York 10017
BY: JAMES G. McGOVERN, ESQ.
SAMUEL RACKEAR, ESQ.

For the Defendant
Ricardo Martinelli Linares

KAPLAN HECKER & FINK, LLP
350 Fifth Avenue
Suite 7110
New York, New York 10118
BY: SEAN HECKER, ESQ.
JUSTIN HORTON, ESQ.

Court Reporter: Stacy A. Mace, RMR, CRR, RPR, CCR
Official Court Reporter
E-mail: SMaceRPR@gmail.com

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1 (In open court.)

2 THE COURTROOM DEPUTY: All rise.

3 (Judge RAYMOND J. DEARIE entered the courtroom.)

4 THE COURT: Good afternoon, everyone. Have a seat,
5 please.

6 THE COURTROOM DEPUTY: Good afternoon.

7 This is a criminal cause for a sentencing, in the
8 matter of USA versus Luis Enrique Martinelli Linares and
9 Ricardo Martinelli Linares, docket number 21-CR-65.

10 Can counsel please state their appearance for the
11 record, starting with the Government.

12 MS. SMITH: Good afternoon, Your Honor.

13 Alixandra Smith, Michael Harper and Michael Redmann
14 for the United States.

15 And with us at counsel table is Special Agent
16 Garrett Twombly.

17 THE COURT: Good afternoon, folks.

18 MR. HECKER: Good afternoon, Your Honor.

19 Sean Hecker and Justin Horton from Kaplan Hecker &
20 Fink for Mr. Ricardo Alberto Martinelli Linares, who is seated
21 to my right.

22 THE COURT: Thank you.

23 Good afternoon, gentlemen. Mr. Martinelli Linares,
24 good afternoon.

25 MR. McGOVERN: And good afternoon, Your Honor.

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James McGovern and Sam Rackear from Hogan Lovells on behalf of Luis Enrique Martinelli Linares, who is sitting here to my right.

THE COURT: All right, gentlemen, good afternoon and welcome.

All right, well, I will leave it to you to proceed in whatever order you choose.

I have received, for the record, a number of submissions from counsel, including, of course, counsel's sentencing memoranda, with any number of accompanying exhibits and letters of support for both these gentlemen, which I've had occasion to read and, again, more recently reread.

We have a stipulated guidelines range that is somewhat at variance with what Probation calculated. I will abide by the parties' stipulated agreement, which puts us at an advisory guidelines range of between 108 and 135 months, each gentleman having a criminal history category of 1 and a Level 31 advisory total offense level.

And with those preliminaries out of the way, who is going to lead us off?

MR. HECKER: Your Honor, if I may?

THE COURT: Mr. Hecker, sure.

MR. HECKER: And what is your pleasure, Your Honor? Would you like me to stay here, standing, sitting?

THE COURT: Whatever you are more comfortable with,



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1 and I would invite you to remove your mask, if you feel
2 comfortable doing it.

3 MR. HECKER: Thank you, Judge.

4 Your Honor, I know you've carefully considered the
5 voluminous submissions in this case, so I want to focus my
6 comments on just a few core points relating to ways that this
7 case is really atypical and why, both in the case of my
8 client, who goes by the name Rica, you've seen in letters of
9 family and friends --

10 THE COURT: Right.

11 MR. HECKER: -- and his brother Luis have served
12 enough time and have incurred enough punishment, and that a
13 sentence of time served in the unusual circumstances of this
14 case would be more than sufficient to achieve all the purposes
15 of sentencing.

16 And the first thing I would point to Your Honor, and
17 there's no dispute about this, our client Rica and his brother
18 Luis were roped into this money laundering conspiracy well
19 over a decade ago back in 2009 by their father, who was then
20 the president of Panama, who was the recipient of the
21 Odebrecht bribes. This is one of the very rare cases in my
22 experience when the sins of the father are quite literally
23 being laid upon the sons.

24 I don't want to be misunderstood. Our client Rica
25 was a young man, but a grown man. And he is accepting full

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1 responsibility for his involvement in this offense. He's
2 highly intelligent. He's thoughtful. He was well educated,
3 and he was successful in his own right. After graduating from
4 Georgetown, he went out and studied at the London School of
5 Economics. He had a great job at McKinsey working in London,
6 and he later relocated to San Francisco and then back to
7 Panama working for Citibank. He made his own decisions, and
8 you've seen clearly in the letters from folks all throughout
9 his life that he was widely regarded as someone who was kind,
10 who was generous, who was thoughtful, and who gave back to his
11 community. And you will see also in those letters the genuine
12 remorse that he shared with these friends and family members
13 from across the points of his life.

14 And I know the same is true for his brother Luis,
15 but when you're thinking about the nature and circumstances of
16 this offense and in the case of both brothers, this is true.

17 This was not someone who was looking to participate
18 in a criminal scheme. He was in a good place in his life. He
19 wouldn't even have been back in Panama, but for the fact that
20 his father assumed the presidency there. And to put this very
21 bluntly, he committed this crime because his father asked him
22 to. That is highly, highly unusual.

23 It was during a period of his life that we've
24 described in some detail in our letter when our -- when our
25 client was desperately seeking his father's affection, which

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1 he felt had been withheld from him for much of his life for
2 reasons we've outlined.

3 Once he and his brother -- when they were initially
4 roped into this offense, they were led to believe falsely that
5 their father had actually done work for Odebrecht that would
6 have justified the receipt of funds. That wasn't true, but
7 they quickly understood that this was bribe money. They
8 opened these accounts. They maintained these accounts. They
9 engaged in transactions involving the accounts over a period
10 of time, but they weren't otherwise core members of any
11 corruption scheme. Those facts are highly unusual.

12 The second thing I would raise as highly unusual is
13 that these two men walked into the U.S. Attorney's office to
14 describe their involvement in this offense, to identify the
15 accounts in which the monies were held, mostly in Switzerland.
16 Some of these monies the Government was certainly
17 investigating, maybe they would have gotten at some of this,
18 but not all of it. And they implicated themselves in the
19 scheme as part of an effort to cooperate.

20 As a result of all of that --

21 THE COURT: But, Mr. Hecker, they were with counsel,
22 were they not?

23 MR. HECKER: Not this counsel, but yes.

24 THE COURT: Okay. Sorry, go ahead.

25 MR. HECKER: And to be -- and to be very clear, I

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1 mean, look, the concept of coming in was to get out from under
2 this. That is usually the circumstance in which someone walks
3 in to describe a crime of this nature. But the reality is
4 that they handed this case to the Government. And the upshot
5 was that they identified the funds, which were ill-gotten by
6 their father, and they've repatriated \$19 million, all of
7 which should go back to Panama because, of course, it's the
8 people of Panama who suffered as a result of this offense.

9 Now, there's been much back and forth in the letters
10 between the parties about how to think about their
11 cooperation. And I'll say more about their leaving before it
12 was complete, but it defies all logic and the law after Booker
13 to think that these gentlemen don't deserve meaningful credit
14 for having brought this offense to the authorities' attention,
15 no matter their motive. Of course, they were trying to avoid
16 prison, to maintain their liberty. That's why people
17 cooperate. There's nothing unusual about that.

18 The third thing that makes this case exceedingly
19 unusual is that this is a U.S. crime because of U.S. dollar
20 transactions relating to these accounts. But I think if we
21 all step back we can agree, this is really a case about a
22 Brazilian construction company paying bribes all around the
23 world, including in Panama. Our clients are charged with
24 money laundering because of the impact on the U.S. financial
25 system of this U.S. dollar clearing, but because the U.S.

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1 government and the Panamanian government haven't been able to
2 coordinate their activities, the upshot is our clients still
3 face justice of uncertain nature in Panama.

4 And I want to be very clear about this because we
5 consulted with Panamanian counsel before we walked in today,
6 arguments around double jeopardy, which one would think would
7 be helpful to them back in Panama, have thus far been
8 unsuccessful.

9 Mr. McGovern and I traveled down to Panama, we met
10 with the Attorney General down there. Our hope was to get the
11 United States government, the Justice Department, and the
12 Panamanian government to come together and come to a joint
13 resolution. I happen to have been involved in a number of
14 corporate FCPA resolutions over the last many years where the
15 U.S. government, the DOJ, coordinates with authorities all
16 over the world when companies are trying to figure out how to
17 divvy up the money they're going to pay.

18 This case involves two men's liberty and because the
19 governments can't get their act together, no matter what the
20 Court does, our clients are facing the potential for more real
21 consequences in Panama. That, in my experience, I have never
22 seen it before. It's unprecedented in my own experience. And
23 that's still hanging out there, as far as we understand it.

24 So, given all of those highly unusual circumstances,
25 we think that a sentence of time served would be more than

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1 sufficient. It would be the equivalent with good time credit
2 of a sentence of over two years. And if you look, and we've
3 spent much time on this in our sentencing submission, I won't
4 repeat it here, but I'm quite familiar with the history of
5 corruption cases in this circuit and these districts, it is
6 difficult to find a case where someone gets more than two
7 years.

8 Mr. Grubisich, this investigation, same prosecutors,
9 same court, got two years. These men were intermediaries for
10 their father, brought into it by their father. And,
11 respectfully, in those circumstances, we think a sentence of
12 even two years is on the extreme end of what people see in
13 this district.

14 And I think there's something really important here.
15 And even Marcella Odebrecht, by the way, got about two years,
16 the guy at the center of the Odebrecht scandal with seventy
17 some-odd defendants who have been prosecuted.

18 THE COURT: You know, I can't help but wonder as you
19 read about these cases and consider it and consider this sort
20 of pay-to-play system, who is, and I don't suggest this is an
21 either or, but where does the larger measure of culpability
22 lie, the party making payments so that they can get business
23 for a company or the party receiving business so that they can
24 corrupt their offices to the detriment of the people they
25 serve and at the same time enrich themselves?

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1 Granted, the way I posed the question is, perhaps, a
2 little unfair, but do you see where I am?

3 MR. HECKER: I absolutely do, Your Honor. And when
4 we've looked at the cases, we've tried to focus both on the
5 bribe payors and the bribe recipients, and you still don't
6 find folks getting substantially more than two years in this
7 circuit.

8 And I think there's something really important here
9 about how this ended up playing out.

10 So, let's -- let's deal with the elephant in the
11 room, what seems to have animated much animosity towards my
12 client and his brother, which is that they left. They were
13 mid cooperation, they were talking to the Government, they
14 hadn't yet finalized an agreement, they hadn't been charged,
15 so they weren't actually committing a separate crime, but who
16 cares. I understand why that was frustrating. The
17 frustration jumps off the Government's pages, including their
18 sur-reply pages, but the upshot of that is that decision cost
19 them dearly. They have been punished very severely for that
20 decision.

21 And let's talk about this case compared to other
22 white collar cases, including the Grubisich case. The typical
23 case, the defendant, let's assume he's arrested, not even
24 walking in, he's just arrested, typically gets bail. People
25 with funds are often able to post bail. Mr. Grubisich was

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1 able to post a substantial bail package. Usually the case
2 results in a guilty plea. Usually the defendant is out on
3 bail pending sentencing.

4 Contrast that with these circumstances. This Court,
5 understandably, denied bail back in December, over five months
6 ago, because of the circumstances of their flight. And the
7 upshot is that these two men have spent the last almost half-
8 a-year at the MDC.

9 Respectfully, the MDC is an awful place to be held
10 in the best of times, and these are probably the worst of
11 times. They were held locked down in their cells often for
12 days on end without getting out at all. Today is the first
13 time they've been outside since they were pleading guilty and
14 this case began here. The conditions at the MDC are unlike
15 the conditions in most prisons in Latin America, and they've
16 been there, locked down for weeks on end with terrible food,
17 with no meaningful healthcare, with no exercise, with nothing.
18 And the Government's reaction to that argument is, well, you
19 know, everybody has that same circumstance right now.

20 Well, guess what, that's not okay. Mr. Grubisich is
21 going to do his two years at a minimum security institution in
22 Allenwood. If it were me, you could give me a year at
23 Allenwood before I would do six months at the MDC. That
24 wouldn't even be a difficult decision, it would be an easy
25 decision.

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1 So, these guys have suffered immeasurably for their
2 stupid decision to try to get down to Panama to deal with that
3 case instead of this one, without talking to them. And I
4 understand why they're angry about it, but let's keep this in
5 perspective. The notion that they deserve a multiple of years
6 over what Mr. Grubisich got is, frankly, a little nutty under
7 the circumstances.

8 So, I've probably gone on longer than I should, but
9 we think under these circumstances a sentence of time served,
10 where they're still facing an additional -- an additional case
11 in Panama, is more than enough to achieve all of the purposes
12 of sentencing; general deterrence, specific deterrence.
13 They're going to be in immigration custody before they go
14 anywhere if the Court imposes a sentence of time served. This
15 isn't over for them by any stretch of the imagination.

16 And I'll leave it there, Your Honor.

17 THE COURT: Well, before I go any further, let me
18 address your client, Mr. Hecker, if I may.

19 Sir, have you had an adequate opportunity to
20 carefully review your pre-sentence report?

21 DEFENDANT R. MARTINELLI LINARES: Yes, Your Honor.

22 THE COURT: Have you had sufficient time to review
23 the other submissions filed not only by your counsel, but by
24 the Government as well?

25 DEFENDANT R. MARTINELLI LINARES: Yes, Your Honor.

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1 THE COURT: Have you had sufficient time to confer
2 with your attorney in preparation for today's proceedings.

3 DEFENDANT R. MARTINELLI LINARES: Yes, Your Honor.

4 THE COURT: You feel prepared to proceed to
5 sentence?

6 DEFENDANT R. MARTINELLI LINARES: I do.

7 THE COURT: We'll hear from the Government.

8 MR. HARPER: Good afternoon, Your Honor.

9 THE COURT: Good afternoon, sir.

10 Your Honor, the defendant's role in the bribery and
11 money laundering scheme was active, central, and essential.
12 The defendant, himself, along with his brother and
13 co-defendant, helped design and implement the corrupt plan
14 with Odebrecht's country head in Panama to receive and hide
15 \$28 million of bribes to benefit their close relative, a
16 Panama government official, and help that government official
17 violate the public trust and steal from the Panamanian people.

18 Beginning in approximately 2009, the defendant,
19 along with Luis Martinelli Linares, opened and managed secret
20 bank accounts held in the names of shell companies in
21 Switzerland for the sole purpose of receiving, transferring,
22 concealing, and spending the bribe payments that Odebrecht
23 made to benefit the Panama government official.

24 The defendant opened those accounts, served as a
25 signatory on those accounts, authorized wire transfers through

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1 those accounts and, ultimately, in part, spent those bribe
2 proceeds.

3 As Your Honor knows, in total the shell companies
4 received over \$28 million, most of which went through the
5 United States.

6 Your Honor, as defense counsel noted, the defendant
7 is a well-educated and well-credentialed professional. Having
8 graduated from Georgetown University, the defendant took a job
9 in finance working at Citibank in Panama for two years.
10 Following that, he obtained an MBA in the London School of
11 Economics, and worked for McKinsey for the two years
12 immediately preceding his entering into the bribery and money
13 laundering scheme. I mention these impressive credentials
14 because they should be taken into account when looking at the
15 defendant's own conduct. It was the defendant who tracked
16 down shell companies and opened up Swiss bank accounts, hiding
17 the fact that these accounts were to benefit a politically
18 exposed person, something a finance professional certainly
19 would know violated -- would violate AML 101.

20 It was the defendant who personally provided the
21 bank account information to Odebrecht, so that Odebrecht could
22 turn on the spigot of bribes to flow into these accounts. And
23 when those bribes were flowing, it was the defendant, the
24 former finance professional, who when the Swiss banks began
25 asking questions about these payments, provided those bankers

1 with fake contracts to try to assuage bankers' concerns. And
2 when that did not work, it was the defendant, along with his
3 brother, who opened up more bank accounts in the names of more
4 shell companies to further funnel and conceal this illicit
5 funds and to receive additional bribes through Odebrecht.

6 And at the end of the day, the defendant, himself,
7 dipped his hand into the honey pot of corrupt funds to pay off
8 hundred of thousands of dollars of personal expenses.

9 Your Honor, when and after Odebrecht had paid the
10 \$20 million in bribes into the defendant's accounts, it was
11 the defendant, along with his brother, who helped the Panama
12 government official identify new intermediaries to whom the
13 defendant passed the corrupt baton in order for them to open
14 new accounts, so that Odebrecht could continue paying bribes
15 to the Panama government official to the tune of an additional
16 \$30 million.

17 The defendant would make it out to believe that he
18 played a role on the periphery, as a simple pass-through.
19 That position is simply belied by the facts. The role the
20 defendant played was central to this scheme. The defendant's
21 involvement was essential, and the actions taken by the
22 defendant were as brazen as they were sophisticated. And at
23 the end of the day, the defendant personally benefited from
24 the scheme.

25 Your Honor, as it relates to the defendant's

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1 supposed cooperation, the defendant leans heavily on the fact
2 that there was a point in time where he walked into the
3 Government in a supposed cooperative posture, providing
4 information to the Government. And while the Government does
5 not discount the fact that some of the information provided
6 was helpful to the Government's investigation at the time, it
7 is important that the Court understand how the value of that
8 cooperation was greatly diminished when the defendant fled.

9 The defendant sat with the Government --

10 THE COURT: How so?

11 MR. HARPER: The defendant sat with the Government
12 multiple times and provided information about other
13 individuals, his mental state, and the conversations he had
14 incriminating others. By fleeing, in an attempt to avoid
15 prosecution, there were about -- those conversations that
16 could have led to the prosecution against others, basically,
17 lost all of their value.

18 The ability for defendant to take the stand and
19 testify against others, the value of that is greatly
20 diminished as a result of the defendant not being truthful to
21 the Government when they were putting together a plan to flee
22 from the United States and the actions the defendant took to
23 execute that scheme.

24 Your Honor, it is also clear here sitting today that
25 the defendants --

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1 THE COURT: Were they not truthful by omission? I
2 mean I get that impression from your submissions.

3 MR. HARPER: Yes.

4 THE COURT: Not so much about boldfaced lies, more
5 about sins of omission.

6 MR. HARPER: Your Honor, that is accurate. It took
7 the defendant several times sitting down with the Government
8 to admit his full scope of conduct related to this scheme.

9 THE COURT: Well, that's not unusual.

10 MR. HARPER: It took multiple sit-downs.

11 Your Honor, he also provided information only
12 against certain individuals and not others. And at the time,
13 the Government was having difficulty understanding what the
14 reasoning for that was, but given the conduct and actions by
15 the defendant, it seems clear that at -- at the initiation of
16 the cooperation there was never a true intent to truly
17 cooperate with the Government.

18 To that point, Your Honor, when the defendant was
19 meeting with the Government, unbeknownst to us, he was seeking
20 to obtain diplomatic immunity. He paid an intermediary
21 \$2 million in an attempt to make the investigation go away.

22 THE COURT: Can you tell me a little bit more about
23 that?

24 I mean you both touch on it, but was he ripped off?

25 MR. HECKER: Yes.

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1 THE COURT: Was that what it was?

2 MR. HECKER: Yes.

3 THE COURT: But he thought that he was making a
4 major investment, or maybe not major in his mind, but major in
5 my mind, major investment that would somehow affect the
6 decision-making of the U.S. authorities?

7 MR. HARPER: That's our understanding, Your Honor.

8 Your Honor, and when that failed, the defendant paid
9 millions of dollars in bail in Panama, unbeknownst to the
10 Government, so that they wouldn't be arrested upon arriving in
11 Panama after they had embarked in the dark of the night, in a
12 country hopping, land, sea and air escape plan where the
13 defendant leaned on his wealth, his political privileges, all
14 in an effort to pull the rip cord of that parachute of
15 privilege and wealth and try to safely land back on Panamanian
16 soil.

17 Your Honor, the defense also argued that the
18 sentence here should be viewed in comparison to that sentence
19 received by Mr. Grubisich. We do think Mr. Grubisich's case
20 is an important one, but we believe that comparison to that
21 particular sentence, the defense has it backwards.

22 As Your Honor knows, Mr. Grubisich pleaded guilty to
23 two conspiracy counts each with a maximum sentence of five
24 years set to run concurrently. Here, the defendant has
25 pleaded to one count with a statutory maximum of twenty years.

1 More importantly, however, the defendant's own
2 actions to feign cooperation and attempt to flee, then fight
3 extradition for a year-and-a-half, are complete opposite of
4 what Mr. Grubisich did. Mr. Grubisich, once arrested, took
5 responsibility for his actions.

6 Also a critical difference, Your Honor, the
7 defendants used millions of dollars of the bribe proceeds to
8 benefit themselves and their family. Mr. Grubisich took those
9 corrupt actions as a corporate officer trying to maximize
10 profits of a company, which certainly is very wrong, but the
11 defendant took corrupt actions as a citizen of Panama,
12 derogating public functions to himself for his personal status
13 and luxury while selling out his country and undermining the
14 integrity and resources of his government.

15 The defendant's contention that he merely passed on
16 money to enrich someone else is belied by his own use of
17 bribe -- bribe proceeds to pay off hundreds of thousands of
18 dollars of personal expenses and the manner in which those
19 proceeds were used to benefit his family.

20 Your Honor, the defendant, who is privileged,
21 politically connected and calculating, appears to act as if he
22 is above the law. His crimes were very serious. A
23 sentence -- a sentence squarely within the guidelines of 108
24 to 135 months would demonstrate to the defendant, others
25 contemplating this type of corrosive criminal conduct, and to

1 the people of Panama who are closely watching these just
2 proceedings play out in the United States that the defendant
3 is not above the law and that in the United States, no one is
4 above the law.

5 THE COURT: Well, it would certainly demonstrate
6 that.

7 Would it be a reasonable sentence?

8 MR. HARPER: The Government believes it would be a
9 reasonable sentence based on the conduct and the defendant's
10 actions.

11 THE COURT: All right, your client would like to
12 address the Court, I assume, Mr. Hecker.

13 MR. HECKER: Yes, Your Honor, thank you very much.

14 THE COURT: Before he does, just so you know what
15 I'm thinking. And by the way, I conferred, as is our custom,
16 with two of my colleagues on this case because it is a very
17 typical struggle between what might be perceived as justice
18 and mercy, and that's not easy.

19 But the word that surfaces when I look at this file
20 and look at the full story, including his escapade, attempt to
21 flee, his surreptitious posting of bond in Panama and all of
22 that, is arrogance. I think you should know that. And it's
23 not so much he's a man of privilege, a lot of people are of
24 privilege, it just seems like two arrogant young men.

25 And by the way, we have to give, as you all know,

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1 individual judgments to each of these fellows, but I've never
2 had a case where I can, for the most part, with some
3 differences, but not necessarily speak to the question of
4 appropriate sentence, flip their names. Young, educated,
5 well-to-do, successful, bright, well thought of, each of them.

6 So, I will do it. It's almost impossible to give
7 them individual treatment, but you understand what I'm saying?

8 MR. HECKER: I do, Your Honor.

9 If I may just make two points before you hear from
10 my client, Rica.

11 THE COURT: Sure.

12 MR. HECKER: The first is, and this is important
13 because it's a little bit lost in that narrative, but our
14 clients got some bad advice clearly multiple times before they
15 ended up in prison in Guatemala.

16 When Mr. McGovern and I got involved in the case, it
17 was actually very smooth sailing. They gave up extradition
18 fights. They voluntarily came here. We negotiated an
19 agreement with the Government, and the Government even at that
20 point was still contemplating using them as potential
21 cooperators. So, the notion that they thought they weren't
22 being truthful... Your Honor, you know, hit the nail on the
23 head, there were some omissions. And, of course, there were
24 omissions relating to the decision to go to Panama, we get
25 that, but they credited the information. It's how they found

1 the money. It's how they got the money back.

2 And I've been working for Rica now for a significant
3 period of time, and he's not arrogant. He's smart. He's
4 thoughtful. He's handled this case unbelievably well, even in
5 extraordinarily terrible circumstances in the MDC. He asks me
6 how I'm doing, what's going on with me when we see him at the
7 MDC when we talk to him. He's a -- he's a good guy. And I
8 think that says a lot.

9 The other thing I'd say is they've already been hit
10 much worse than Grubisich. The circumstances under which
11 they've done their time, far worse, not even close. So, to
12 the extent there's some notion that -- that intermediaries for
13 their father are worse than the bribe payor, they've been hit
14 hard, very hard.

15 THE COURT: I hear you.

16 DEFENDANT R. MARTINELLI LINARES: Good afternoon,
17 Judge Dearie.

18 THE COURT: Good afternoon.

19 DEFENDANT R. MARTINELLI LINARES: My name is Ricardo
20 Martinelli Linares.

21 To be clear, I have committed a crime and I would
22 like to take whatever responsibility -- whatever sentence the
23 Court imposes on me. I want to say that I am wholeheartedly
24 and unreservedly take full responsibility for my actions.

25 I realized long before my twenty-two months of

1 incarceration the gravity of my conduct and its consequences
2 and what effect this would have on my family, my friends, my
3 loved ones, and the wider community. I will carry this deep
4 sense of remorse for the rest of my life, however long or
5 short it may be.

6 Growing up as a gay man in a patriarchal society
7 with a close-minded and strong-willed father, I am well
8 acquainted with the feeling of shame. I carried it for
9 decades for who I was. It is sort of poetic justice that
10 after I, ultimately, overcame the shame of who I was, I now
11 have to live with the shame of what I have done. This will be
12 my cross to bear.

13 But the people who have suffered most from this
14 entirely avoidable and regrettable affair are my compatriots,
15 the people of Panama. It pains me to think how my actions
16 could have contributed to erode public trust and good
17 governance, institutions, and the rule of law in my home
18 country. I hope that a fortuitous consequence of my actions
19 today is to establish accountability in my home country.

20 I would like to apologize to those members of my
21 family who have suffered during -- tremendously during this
22 ordeal. I want to apologize to my mother, who raised me
23 better than this, and has suffered this incarceration as if it
24 happened to her. Mum, I am really sorry.

25 I want to apologize to my sister, who always looked

1 up to me, for letting her down. Two weeks ago she had her
2 firstborn child, my future godson, and I wasn't there for that
3 special occasion. Carolina, I am so sorry.

4 I want to apologize to my partner, who experienced
5 with me firsthand the prelude to this ordeal, and who quite
6 literally saw my sanity disappear before his eyes. Ed, I am
7 so sorry I put you through this.

8 I want to apologize to my friends and loved ones,
9 some of whom wrote kind letters to this Court asking for mercy
10 and vouching for my good character. I hope, like a good
11 Samaritan, I can be welcomed back to your hearts and homes.

12 Lastly, I want to apologize to this Court and the
13 U.S. government for the time and resources spent on this
14 prosecution.

15 Self-reflection is not easy. This month is my
16 twentieth anniversary of my college graduation. I would have
17 been in my college reunion, not far from here, with my friends
18 sharing stories of days gone and catching up on what's new.
19 Instead, I realize now that I am a cautionary tale of what not
20 to do and how not to do it. I hope that today can be the
21 first day of trying to do the right thing for the right
22 reasons all of the time.

23 This experience has taught me that life is not
24 determined by what you want. Life is determined by the
25 choices you make. And I made the wrong choices. I should

1 have known better. I brought it upon myself. In engaging in
2 this conduct, I also let myself down. And for this, I am also
3 sorry.

4 The hardest part of the last nearly two years have
5 been unequivocally being away from my family and loved ones.
6 As I started this incarceration, both of my grandmothers were
7 still alive. My paternal grandmother passed away last year in
8 August 2021. I couldn't be there to say good-bye for her last
9 days or attend her funeral. My maternal grandmother just
10 turned on 103 years old this past February. She is,
11 thankfully, in good health, but at 103 years old I am not sure
12 how much more time together we have on this earth.

13 If it pleases the Court, I would like a second
14 chance to see my family and start the long and arduous process
15 of making the next version of myself a much better version
16 than the one that stands before you here today.

17 I am confident this story has an arc of redemption,
18 and I promise to work diligently to achieve it.

19 Again, I am very, very sorry for what I have done.
20 Please forgive me.

21 Thank you, Your Honor.

22 THE COURT: Well, thank you. Thank you very much.
23 Very appropriate words. I can't argue with that.

24 Mr. McGovern.

25 MR. McGOVERN: Good afternoon, Your Honor. I think

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1 I'd like to start by answering the Court's question about
2 who's worse.

3 I think we --

4 THE COURT: The judge or the lawyers?

5 MR. McGOVERN: Yes, exactly.

6 I think everybody has come to know quite a bit about
7 the Odebrecht scandal during the course of the last several
8 years, and I don't think that the facts are that Odebrecht was
9 being shaken down by country leaders to get business. In
10 other words, it wasn't the leaders of the countries that were
11 saying, like: You want to build a big oil refinery in my --
12 in my country, you're gonna have to pony up some cash. I
13 don't think that that's what -- and I would defer, of course,
14 to the Government on this, but I think this story when
15 Odebrecht developed an 800-million-dollar slush fund solely
16 for the purpose of paying bribes that had a special name
17 assigned to it for this purpose, it was a business decision by
18 Odebrecht to go around and bribe everybody in Latin America.
19 And that's what happened.

20 And so, when we look at the Grubisich situation
21 where we see the CEO of Braskem, one of the subsidiaries of
22 Odebrecht who oversaw this for ten years, to us it seems
23 rather plain that the person who was behind this whole idea of
24 paying the bribes, and did so for twelve years, that that
25 would be something that some might view as being more

1 egregious than being the middlemen or the sons of one of the
2 recipients of the bribes.

3 But, again, that's my opinion for what it's worth,
4 and it may be worth very little.

5 THE COURT: Well, it's a very valid observation, but
6 perhaps there's a middle ground here.

7 When these practices become so ingrained in a
8 particular business community, that doesn't have to
9 necessarily be someone who is the hard-charger soliciting the
10 bribe or someone who is desperate to get money offering the
11 bribe. It becomes so commonplace, it seems to me, and I don't
12 mean to single these chaps out, but these cases that I've had,
13 many of them from South America, it just seems to be the way
14 of doing business. And when it becomes ingrained like that,
15 it's not easy to identify who the driving force or the
16 originator of it was. And I have a very real sense that with
17 Odebrecht, and I'm not carrying any grief for Odebrecht, that
18 was probably sort of what it was. This is the way we do
19 business.

20 That's the impression I get. I've said this before.
21 But in any event, I'll turn it back to you.

22 MR. McGOVERN: And I suspect that that was probably
23 one of the challenges of being an FCPA prosecutor where you
24 are trying to -- you are trying to address what you see to be
25 as criminal activity all around the world; where in certain

1 areas of the world, unfortunately, the types of things that
2 Your Honor is talking about are endemic and are part of an
3 ongoing problem.

4 So, getting to what I want to say here about Luis
5 this afternoon, we have tried in our submissions, Your Honor,
6 to introduce you to Luis, and I'll say it for Rica. You have
7 had very little time to spend with him. Mr. Hecker and I have
8 had a great deal of time to spend with these gentlemen, and we
9 certainly have our views. But you only saw them once. And
10 the reason you only saw them once was because the minute he
11 came to the United States back from Guatemala, he was going to
12 plead guilty. And he didn't have any motions. He didn't have
13 any discovery. He didn't have a trial or any of these things
14 like all these other cases that were cited as precedent for
15 immense sentences. He came in. He pled guilty. I think he
16 acted like a gentleman when he was here and he went about his
17 business.

18 And then you, understandably, sent him to the MDC
19 for, I would say, for fairly reasonable reasons. And he then
20 spent the next six months at the MDC under conditions that are
21 deplorable, far worse than I've seen in my time dealing with
22 the MDC. He spent 75 percent of the first three months there
23 in lockdown. Essentially, twenty-four hours a day in solitary
24 confinement. That is inhumane treatment.

25 He then spent another 54 days in lockdown, whereas

1 we set out in our papers, because of the Omicron variant.

2 He's currently in lockdown because of a stabbing
3 that happened on the floor above him earlier, I guess, this
4 week.

5 So, they're in lockdown 24/7 right now, and
6 that's -- that's where he's been for the last six months.
7 Which I am not going to repeat anything that Mr. Hecker said,
8 there's a way that people get sentenced for certain types of
9 crimes, that doesn't appear to be consistent with that.

10 But to introduce you to him is why we put together
11 that lengthy sentencing submission where we got letters from
12 every aspect of his life. We wanted you to see who he was.
13 We got you letters from when he was child. We got you letters
14 from when he was a businessman in Panama. We had letters from
15 when he lived in Miami, his friends from college. We had
16 letters from the jail, the chaplain from the jail. I don't
17 think I've ever seen a letter from the chaplain of the jail
18 saying that an inmate has accepted responsibility.

19 I'm quite sure you would be much more likely to see
20 those things, I haven't seen one. But maybe they're much more
21 prolific writers than I ever got to see.

22 But, look, he -- all of those, all of those letters
23 and everything we've presented, I think, presents a pretty
24 strong picture of a guy who's made a mistake, no question
25 about it, a very serious mistake. And I agree with everything

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1 that Mr. Harper said, as far as like how serious the mistake
2 was and how the crime was, but he's otherwise conducted
3 himself throughout his life as a decent, kind, law-abiding,
4 humble guy. And that's what I see. And I could say, for my
5 part, that I haven't seen anything in dealing with this
6 gentleman that in any way departs from any of those letters
7 that were submitted by any of his friends or relatives or
8 co-workers.

9 But I do think, I do think something is happening
10 here and, Your Honor captured it. You said what jumps off the
11 page to you is arrogance, and that kind of struck me because
12 that's not the experience I've had at all with these guys.
13 This doesn't -- this -- this is not -- believe me, I've seen
14 arrogant, this is not arrogant, all right.

15 They're scared. That's what was going on. They
16 were scared. They're in the United States. They don't
17 understand the system. They have means, but they're scared.
18 And that's who you're looking at. You're looking at two
19 scared little boys of a very, very domineering father. And
20 that's what I see, that's what jumps out to me because I don't
21 see this other picture.

22 I know how some might. Maybe if some just read the
23 Government's submission a couple of times or listened to the
24 last presentation. How many times can you say *privileged* in a
25 submission? I saw five or six in the first one. *Politically*

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1 *connected*, that must have been in there five or six times.

2 The sur-reply trotted it out again.

3 It's all to create an image here that I just don't
4 think matches reality. I don't see these as arrogant, nasty
5 guys running around doing their thing. I see these as guys
6 who were very, very concerned about what they had done and
7 came to the Government with it.

8 Now, the Government criticizes us. They say, look,
9 you didn't spend enough time talking about the crimes. You
10 didn't -- in your sentence submission you blush over the
11 crime.

12 Well, there's really not that much to it. Thirteen
13 years ago their father got elected as president of Panama. Up
14 until 2010, he, apparently, had an agreement with somebody at
15 Odebrecht, where he was going to be receiving money from them.
16 He instructed them to set up accounts. This guy (indicating)
17 was the head of the -- of a grocery store chain in Panama, the
18 biggest grocery store chain in the country. He just lent his
19 name to -- to accounts.

20 I don't know what else there is to tell to the
21 story. It's certainly a lot of money. \$28 million is a lot
22 of money, absolutely. But we can't overlook the fact that the
23 vast majority of it has been returned. The money's come back.
24 These guys have actually brought the money back. All the
25 things that you hear about, and you'll hear about yachts and

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1 condos, all that money's come back and much of it's come back
2 with interest.

3 So, they've actually done quite a bit and I don't
4 know what else there is to talk about with the crime. The
5 crime is that they set up bank accounts in Switzerland. They
6 really shouldn't have done that. If they had called me, I
7 would have told them not to do that, but they did it and
8 they've accepted responsibility for it now.

9 Now, they point to the detailed proffer because
10 that's what we said, we'd give them a detailed proffer. It
11 must have been painful to even sit through reading it, but the
12 reason it was detailed was what Mr. Hecker just touched upon,
13 they're being prosecuted in two countries for the exact same
14 thing. So, it made sense to put in a detailed proffer based
15 on all the information that they provided to the Government so
16 that they wouldn't face double prosecution or, at least, have
17 a hope of it.

18 Now, there's nothing more to the story as far as I
19 can tell and as far as, you know, there may be some other
20 suggestions that they -- that they took steps after to
21 disguise the fact that after they figured out -- in 2010, they
22 figured out that the money was dirty. They were like, wow,
23 that's way too much money. I don't know what this is for.
24 This isn't what dad told us this money was going to be for.
25 And so, they then stopped doing anything with the money. And

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1 maybe over the next couple of years, they sent some documents
2 here or there to say that, you know, to hide the fact that
3 they think the money is dirty. But that's really the entire
4 story.

5 So --

6 THE COURT: Well, do you have to see any money if
7 you're setting up, essentially, phony bank accounts --

8 MR. McGOVERN: No.

9 THE COURT: -- for a nonexistent entity?

10 MR. McGOVERN: No.

11 THE COURT: You don't have to see any money to
12 realize something is wrong?

13 MR. McGOVERN: No, Judge, I think you are absolutely
14 right. I don't think that you have to see money, and it's a
15 lot of money, and we can see that it's a lot of money.

16 But I'm just saying, if you're going to criticize us
17 for not having talked enough about the transaction, I just
18 don't understand, like, as if they're not taking
19 responsibility because they haven't sat down again and spelled
20 out to the Court what they were doing. They set up --

21 THE COURT: You mean about in your brief?

22 MR. McGOVERN: Yeah, in my brief.

23 THE COURT: I'm not concerned about it.

24 MR. McGOVERN: All right. So, I think the Court has
25 a challenging question before it, which is the one that I've

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1 wrestled with, which is what's the -- what's the right
2 sentence here for someone who engaged in serious criminal
3 activity a dozen years ago?

4 And I -- actually, I was here when Grubisich got
5 sentenced. I sat in the -- in the public there (indicating)
6 and I thought you started the sentencing off rather well and
7 it was: Hey, I don't know that much about the Odebrecht
8 scandal at this point, can you enlighten me? And by the way,
9 can you tell me what everybody else got?

10 And you -- the prosecutor at the time was Lorinda
11 Laryea. She explained there were 71 people prosecuted and
12 that the majority of them ended up with home confinement and
13 Marcelo Odebrecht got the most time, which was about two
14 years.

15 And then you went on to sentence Grubisich to twenty
16 months, which sounded like the right sentence, right, because
17 if all the other leaders of the scheme are getting two years
18 or less, it seemed just to give Mr. Grubisich a similar
19 sentence.

20 And -- but here the Government says, no, no, no, no,
21 these guys should get more time than Grubisich because, and I
22 was just writing down some of the things that Mr. Harper said.
23 He said that -- he said that Mr. Grubisich immediately took
24 responsibility for his actions and he didn't flee. True.

25 Mr. Grubisich, just to remind everyone, was arrested

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1 at the airport when he landed in the United States on a sealed
2 indictment. Mr. Grubisich, therefore, had no opportunity to
3 flee. Certainly, the Government believed that he was going to
4 flee because they kept him at the MDC for four months until he
5 was able to post a bail package north of \$30 million, which,
6 of course, they objected to, but Judge Gold gave -- granted
7 him in the end. So, the suggestion that they didn't think he
8 was going to flee doesn't seem all that -- that reasonable to
9 me.

10 Also, these guys cooperated. They gave the entire
11 case against themselves. Grubisich didn't cooperate.
12 Grubisich actually didn't plead guilty until six months after
13 he was arrested.

14 So, the attempts to make them seem worse, it seems a
15 little weird. I don't want to say nutty as Mr. Hecker likes
16 to say, but it seemed a little weird to me.

17 And the suggestion that well, Grubisich was a
18 corporate officer. So, I know he's the CEO of the company and
19 I know they're running the entire scheme, but I think that
20 these guys are worse. And does anybody remember from the
21 Grubisich deal that they assessed a \$2.2 million assessment
22 against Grubisich as money that the DOJ decided would
23 amount -- amounted to the amount of money that he benefited
24 from, from the scheme? And that was a negotiated number with
25 the Government.

SAM

OCR

RMR

CRR

RPR

1 So, the suggestion that these guys personally
2 benefited seems to be a little bit hollow, too, because they
3 assessed 2.2 million against Grubisich because he benefited
4 from it as well.

5 And so those things --

6 THE COURT: You're not suggesting that your client
7 didn't personally benefit?

8 MR. McGOVERN: No, I'm not suggesting that at all.
9 I'm saying the guy that got twenty months had a negotiated
10 benefit of 2.2, which to my ear sounds like that he probably
11 benefited a lot more than 2.2, but that's what they were
12 allowed to settle on.

13 And I have my client who, I'll explain to you in a
14 second how he invested money in a condominium and -- and
15 bought a boat.

16 So, just looking at this whole situation where the
17 Grubisiches of the world, who have guidelines of 235 to 293,
18 get twenty months; and we have a situation here where our guys
19 did not get the benefit of the bargain that they would have
20 gotten before they -- they left for Guatemala.

21 Remember, Mr. Harper says, Well, look Grubisich is
22 different because he was actually only facing sixty months in
23 jail. Well, that was because of the deal they gave him. Our
24 guys weren't offered that deal. Our guys got the deal of a
25 twenty-year cap. That's -- that's -- this is all part of the

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1 punishment for having -- for having gone to -- back to Panama.

2 So, those are empty comparisons as well.

3 So, that I wonder what's going on here, such that
4 their recommending a sentence that five-and-a-half to seven
5 times longer for him? Is that really justice? Is that
6 sufficient, but not greater than necessary?

7 I've struggled with it. I've read their
8 submissions, like yourself, over and over again and they drip
9 with vitriol. All the time, I am going to repeat myself with
10 this, they seem to really, really dislike these guys. And so,
11 they say that this monster sentence is necessary because it's
12 for general deterrence, that people respect the law and they
13 don't do these sorts of things. But they really dig their
14 heels in on the argument that there needs to be some specific
15 deterrence, that these two gentlemen, in particular, really
16 need to be heavily sentenced because of their privilege and
17 all of these other sorts of things.

18 They're wealthy, there's no question about it. They
19 also -- their family owns the largest or one of the largest
20 supermarket chains in -- in Panama. So, the money, everybody
21 knows where the money is coming from.

22 So, on top of being rich, they say, Okay, well,
23 look, they haven't fully accepted responsibility. And that's
24 also at the heart of the Government's argument for why this
25 is -- why a huge sentence is appropriate here.

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1 I won't comment on why the Government should be the
2 arbiter of who accepts responsibility, I'll leave it with the
3 Court, but if we just consider the sort of noncontroversial
4 facts. They think -- the Odebrecht case broke in 2016. In
5 2018 they came in, they brought in -- they sent lawyers in to
6 talk to the DOJ because they were scared and, basically, said,
7 Look, we want to cooperate. They met four or five times, at
8 least. Luis met four or five times with the prosecutors.

9 Mr. Harper points out that the cooperation was less
10 than perfect because it took a while for things to be
11 admitted. Well, here's why:

12 Can anyone even imagine the thought of coming in to
13 cooperating against your own father?

14 I mean I feel like that gets blushed over here.
15 This is a big, big act of, I won't use the word. But -- and
16 also, there was a difference of opinion. The DOJ was of the
17 view that these guys knew these were bribes from the outset,
18 and the truth was they weren't. And so, that also prolonged
19 the conversation. And they, ultimately, agreed upon the idea
20 that sometime, a year into this, the receipt of the money,
21 they realized that the money was -- was -- was illicit, but
22 they tell the truth about everything.

23 I don't know about this whole idea of lies by
24 omission. I haven't heard any of that until today. I know
25 that Luis wore a wire for the FBI on two occasions and was in

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1 regular contact with an FBI agent who was constantly
2 collecting information from him.

3 The Government credits everything that they say or,
4 at least, I can't -- the only level of transparency I have.
5 They offer them cooperation agreements. Right, if you're
6 offered a cooperation agreement that means that you're willing
7 to sponsor the testimony, you must believe it. And then, you
8 know, and during the course of this, the Martinelli brothers
9 are not being treated all that well. They're in and out of
10 ICE custody and other things.

11 And then in the summer of 2020 they make that stupid
12 decision. They make that stupid decision to go back to
13 Panama. Importantly, to Panama; not to Guatemala, to Panama,
14 that's where they were going, where they were going to face
15 the case down there. They didn't tell the prosecutors that
16 they posted bail down there. Okay, I understand that, and I
17 understand that they did not tell other things about -- other
18 things going on with their lives, but these meetings were four
19 or five meetings over a space of two years.

20 So, they get locked up in Guatemala after the
21 country-hopping escapade, which is, basically, they tried
22 flying into Panama, Panama says no. They go to Costa Rica,
23 Costa Rica says no. They go to El Salvador, El Salvador says
24 yes. El Salvador then -- they're in El Salvador and they
25 realize they can't stay there, so they go to Guatemala and

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1 they get arrested in Guatemala.

2 In April of 2021 we called them. We, Mr. Hecker and
3 I, called the Government and said, Look, we'd really like to
4 re-initiate this cooperation. Right? Because just like Your
5 Honor questioned, you said, Well, why couldn't you use them as
6 a cooperator, what was the damage? Hadn't they told you the
7 truth?

8 And that was the thing, she was like, Look, they
9 left. They shouldn't have left. They got really bad advice.
10 There was some charlatan operating in the background who was
11 giving them advice about, like, how to -- how to resolve a
12 case short of a -- of a plea agreement. And they took that
13 advice and then they made this stupid decision.

14 So, the -- thankfully, the orders of extradition for
15 Luis came down, you know, afterwards, but we had started this
16 conversation about cooperating with them as of April of last
17 year. So, he was fully intending to come back. And what he
18 was told was this -- they said, Look, you know, it's kind of
19 like the idea of we don't negotiate with terrorists, right?
20 You're on the run. You're a fugitive. We don't offer you
21 cooperation agreements from afar. But they said this, they
22 said this: Look, if you come back and you plead guilty
23 immediately, if you come back and you accept responsibility,
24 then we can have a conversation.

25 And I'm not talking about one conversation, Judge,

1 I'm talking about multiple conversations where -- where --
2 where this -- this idea was floated.

3 And so, they would exchange draft plea agreements,
4 all of that type of stuff, statements of facts. We come back,
5 we go to a hearing in front of Magistrate Henry, we say *not*
6 *guilty*. We put on the record, that's just a procedural
7 matter, Judge, because really we're pleading guilty. We have
8 a plea agreement we're planning on taking. He pleads guilty
9 within a couple of days, and he goes off to the MDC.

10 As I mentioned, the chaplain, apparently, thinks
11 he's accepted responsibility. He's repatriated all this
12 money. He wires in \$670,000. He sells the condo in the
13 timeframe. He also hands over the bond for the INS. He hands
14 over the interest. He hands over the rent for the -- for
15 the -- for the condo. And here we are, our third -- third
16 court appearance in the United States, after 23 months in
17 custody under some of the worst conditions, and the Government
18 is saying that he -- he hasn't accepted responsibility. That,
19 to me, sounds absurd. Given that, the entire case against him
20 he gave them. He went through all of this. He's done
21 everything that he was supposed to do, and they say he hasn't
22 accepted responsibility. Thankfully, the old version of them
23 in the plea agreement gave him three levels off for acceptance
24 of responsibility, and the Probation Department agreed with
25 that, but they say: No, no, no, no, no, right now, Judge, we

1 do not want to give this gentleman any credit for all of the
2 cooperation that he gave us, that involved the current
3 situation and, apparently, some others. We don't want to give
4 him post Booker cooperation, right, like the Court can
5 consider that.

6 And not only that, they are saying because he was
7 operating in bad faith, that not only should he not get the
8 benefit of the cooperation, he should get more harshly treated
9 because there was this aura of bad faith going on.

10 I am not going to repeat Mr. Hecker, these guys
11 would be the only cooperators in the world who didn't try
12 and -- and cooperate and get -- and get out of it, if you were
13 to believe that that was fair. All right. There are many
14 ways to cooperate, I wasn't there with the -- with the
15 consultant who -- and the 2 million wasn't like it sounds like
16 2 million up front, get me out of this. No, it's over a
17 period of years he's paying these consultants this money.

18 And so, they -- there are plenty of ways to
19 cooperate. You can cooperate and get a non-pros. You can
20 cooperate and get immunity. These guys were in the middle of
21 one of the highest profile cases in the world at the time. I
22 think there may have been a path to immunity for them. I
23 don't know, I wasn't part of those decisions. So, it wasn't
24 completely outrageous for someone to think that you might be
25 able to work out a deal short of pleading guilty. That's not

1 bad faith. That's just scared people trying to figure out a
2 way to -- to navigate a very, very challenging situation in a
3 country from which they're not from. But the most important
4 thing is they told the truth through the entire process.

5 They also said: Well, they lied about being afraid
6 to go back to Panama, and then they went back to Panama.

7 Well, they were afraid to go back to Panama because the guy
8 who was the president of Panama at the time was trying to lock
9 up their entire family. This guy's father-in-law spent three
10 years in prison in Panama during the same period of time. So,
11 anyone related to the Martinellis was getting locked up in
12 this period of time.

13 And then this thing that we've beaten the heck out
14 of this, the Central American Congress election. In the same
15 election that replaced their president, these guys
16 were elected to the Central American Congress. The suggestion
17 that there was no documents or that none of this was valid, it
18 was all valid. It was all out there for everyone to see. We
19 submitted all of the -- all of the paper work.

20 THE COURT: Valid, are you talking about the
21 diplomatic credentials?

22 MR. McGOVERN: Yes, the diplomatic credentials.
23 They -- they -- were on an election ballot. They got elected.
24 We provided all of the documents showing that they were
25 elected. They were issued credentials. The only thing that

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1 didn't happen was they didn't get sworn in, in Guatemala.
2 That's the only thing that didn't happen. That's the only
3 thing that makes them invalid. These are valid credentials.
4 This is a valid thing. I don't know that much about the
5 Central American Parliament, but they are valid.

6 You'll notice the --

7 (Court reporter seeks clarification.)

8 MR. McGOVERN: I apologize. I may believe too much
9 of this.

10 THE COURT: Go ahead.

11 I am somewhat curious about this whole question of
12 credentials. I realize there was not a meeting of the minds
13 in the papers. I saw it as a different, what's the word, not
14 spin, I don't mean to trivialize it, but a different
15 interpretation on specific events, and I'd like to know a
16 little bit more about it.

17 Go ahead.

18 MR. McGOVERN: In May of 2019 these two gentlemen
19 were on the ballot to join the Central American Parliament.
20 They were elected. They were issued credentials, as
21 diplomatic credentials as being members of this Central
22 American Parliament. We have provided the documents from the
23 election. We have provided documents from the results. We
24 have provided a letter from the -- a member of the Parliament
25 who might be the head of -- Minister of Justice, I can't

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1 remember what his role is, that said that these guys were
2 validly elected. The only thing that had not occurred was
3 that they were not sworn in. And they were not sworn in
4 between 2019 and the time that they were apprehended in
5 Guatemala, a year later.

6 So, they're valid. In Guatemala, they used the fact
7 that they had never been sworn in to say that: Oh, well,
8 you're not valid, so we're just going to send you back to the
9 United States.

10 THE COURT: So, they were elected, but not sworn in,
11 and yet they had credentials?

12 MR. McGOVERN: Yes. And we've provided copies of
13 this to everybody.

14 That's why I had such a sort of reaction at the bail
15 hearing where everyone said: This is phony, you can't be
16 trusted, you're manufacturing credentials. And then when we
17 get to sentencing it's now: We never heard about this
18 election. They never told us about being elected, and they're
19 saying that this is now a part of a grand plan to flee.

20 Which makes no sense that he would, unless you're a
21 mastermind and would have foresaw COVID and the need to get
22 into Guatemala at some point in the future. There's really
23 no -- there's no real good reason to say that this was
24 anything other than being elected to office in a country that
25 you're from.

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1 Anyway, Judge, my point on all of this, and I know
2 it's gotten a little bit in the weeds, is that the idea that
3 these guys should be treated worse because they cooperated
4 is -- is, frankly, not -- not reasonable. They cooperated.
5 The Government wanted them. They wanted them when they were
6 in -- in Guatemala to cooperate, and they -- and they -- and
7 now they're saying that these -- all these differences that
8 they knew all about makes them, you know, unbelievable
9 cooperators.

10 So, our position is that they should receive full
11 credit for all of the cooperation that they've provided, both
12 in their cases and other cases.

13 And also, as far as the money that was spent, I'll
14 just tell you in two sentences. The Martinellis own the
15 fishing boat. The only person who fished in the Martinelli
16 family was Luis. Luis -- unfortunately, the boat sank. He
17 discussed it with his father.

18 His father said: Well, why don't you buy a new
19 boat?

20 And he said: I don't have money to buy a new boat.

21 And he says: Well, why don't you use some of that
22 money from those Swiss Bank accounts.

23 He told him to use the money and he bought the boat
24 with it. He returned all the money to the Government that he
25 was able to return on the boat. On the condo, in 2015 he's

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1 living in Miami. He finds out from the Swiss Bank that the
2 bank wants to send the money back and they don't want the
3 money in the account. He goes to his father because it's his
4 money and he says: What do you want me to do with this money?

5 He says: I don't care. Why don't you invest it?

6 So, he took a million dollars of his own money and a
7 couple hundred-thousand dollars of money from the Swiss Bank
8 and bought a condo in Miami, which importantly has now all
9 gone back to the Government. The condo went for far more than
10 it was bought, and everything else.

11 So, look, Judge, I'm wrapping. I don't really have
12 anything else to say on this, other than, you know, the last
13 time you took a look at this guy you said -- you said
14 something that I thought was very, very poignant, which is:
15 Look, I sit up here as a judge all day and I have to look a
16 man in the eye and decide whether this is the sort of man that
17 I'll trust. And it's a very difficult job and sometimes I
18 have to make decisions based on, you know, issues where maybe
19 I don't have so much trust.

20 But if you take a look at this man that's sitting
21 here today, who has fully accepted responsibility for all of
22 his actions, I think the right sentence is time served. He's
23 suffered enough. He needs to get back to his family, and he
24 needs to get back to his wife and his kids and be the father
25 that he's supposed to be for them.

1 And that's why we, respectfully, ask for a sentence
2 of time served.

3 THE COURT: All right, Mr. McGovern, before I direct
4 your client, the Government, do I see you jumping, chomping at
5 the bit?

6 MS. SMITH: Your Honor, I just don't want to repeat
7 anything that Mr. Harper said, and I just want to respond to a
8 couple of points that were raised and answer any additional
9 questions that Your Honor has.

10 I know you mentioned the Parlacen, and there were a
11 couple of points related to Mr. Grubisich, which, obviously,
12 Your Honor is very familiar with the case, but just to put a
13 clarifying point.

14 I believe Mr. McGovern said that Mr. Grubisich ran
15 Braskem for twelve years during the period of the bribery
16 scheme. And I actually think that during the sentencing, the
17 fact that Mr. Grubisich was the CEO of Braskem only between
18 2006 and 2008 while the bribery scheme was ongoing was
19 actually a significant factor in Your Honor's discussion
20 because the full bribe amount, the 250 million misstated on
21 the financials went through 2014 and he had left Braskem in
22 2008. So, I did sort of want to flag that point.

23 The \$2.2 million forfeiture in that case represented
24 bonus and salary attributable to Mr. Grubisich during that --
25 that 2006 to 2008 time period. So, it wasn't a bribe that he

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1 received, but it was, in fact, the financial benefit he got
2 from running the company while the bribe scheme was ongoing.
3 So, just to sort of make those distinctions clear.

4 THE COURT: I understand.

5 Anything more than you can tell me about this
6 credential question?

7 MS. SMITH: Your Honor, so, our understanding,
8 again, so I just want to make sure that the time period of our
9 understanding of when they obtained the credentials is clear.

10 While they were allegedly cooperating in 2019, the
11 Government was not aware of them being on a ballot to be
12 elected as delegates. It's not a popular election. My
13 understanding is it's an election among your own party. So,
14 the slate must have been, or my understanding is, the party of
15 the defendant's father, the former president of Panama put
16 them up for delegates at whatever time, which the Government
17 was completely unaware of.

18 The defendants' father also used or attempted to use
19 the fact that he was a member of Parlacen to fight sort of
20 certain charges of his in Panama. Which also, I think, lends
21 additional credence to the argument that this was part of a
22 plan to get out from under charges in Panama and to,
23 otherwise, use diplomatic immunity to their advantage.

24 And so, the Government wasn't aware that they,
25 apparently, had been elected. That's the first time I've

1 heard that they put themselves on the slate in May of 2019.
2 We weren't aware that they allegedly had been made part of
3 Parlacen. Whether or not they were or not, we have seen that
4 document, but -- and so the document, itself, it's almost like
5 having, you know -- I mean you have a driver's license. It's
6 legitimate in the fact that it's a real license, but they
7 were -- never actually did the things they needed to do to
8 become members.

9 So, they were not, in fact, sworn in. They did not
10 tell the Government. And then they tried to use the
11 credentials when they were fleeing in the manner, as the
12 Government argued that they were intended to get them out from
13 under any restrictions they might face as they were fleeing,
14 but also potentially out from under charges in Panama.

15 It didn't work for them in Guatemala. Guatemala
16 refused to sort of recognize that. And I think, as you put
17 it, there have been public statements that they are not, in
18 fact, members; they will not become members.

19 And so, I don't want to get lost in that
20 distinction. I think for the Government the important part
21 was that we were not told, and that it seemed part of a clear
22 plan, premeditated plan, to both flee the country and get out
23 from under charges here, but also when they arrived in Panama
24 to potentially use that diplomatic immunity there as well.
25 And certainly, they did as they fled.

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1 THE COURT: Would it be fair, Ms. Smith, to say that
2 what's really informing your rather tough stance in this
3 sentence is the fact that you felt that the defendants were
4 dissembling, although they were providing information, they
5 weren't being completely open about it and forthcoming, and
6 you feel, to say the least, understandably feel like they
7 tried to play you?

8 MS. SMITH: Well, I think it is unfortunate that
9 both in their submissions and in their statements today the
10 defense counsel have sort of personalized this. I don't think
11 that it is personal. I think --

12 THE COURT: I'm not suggesting it's personal.

13 MS. SMITH: So, I think the significance of the
14 failed cooperation and the flight, and they go together
15 because really what a lot of the omissions were, were these
16 plans to leave and the intention not to, in fact, follow
17 through and to plead guilty.

18 And so, I think what the significance of that really
19 is, is it goes to the defendants' character. This idea that
20 this was a one-time mistake, they were overridden by their
21 father, I think, is belied by the facts and circumstances of
22 the underlying crime, which took place over many years. They
23 personally benefited. And they did not just lend their names
24 to accounts, but, in fact, worked with Odebrecht in a number
25 of different ways, as laid out in our submissions, to ensure

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1 that those bribes would get paid. And when they were
2 problems, we talked about the euro-denominated accounts, there
3 was an additional 30 million that flowed through those. So, I
4 don't think they were passive from the beginning.

5 But what I think that the cooperation plus the
6 flight shows is that they -- again, a lack of respect for the
7 law, and a belief that you are above the law. And I don't
8 believe, in fact, that they got bad advice or I disagree with
9 that characterization because I think that they believed that
10 the United States operated the same way that Panama operated
11 when their father was president, which is if you have the
12 right connections and you can pull the right levers, you don't
13 have to take responsibility. And this power is going to
14 protect you and you can benefit personally, and it doesn't
15 matter if that money is taken away from the people of your
16 country, and it doesn't matter if it lends to an air of
17 corruption that makes people not trust their government.

18 And I think that what it shows is it wasn't just the
19 underlying crime where they behaved that way, but they behaved
20 that way all the way through the attempted cooperation, all
21 the way through the flight. It wasn't just fleeing, they went
22 to a number of different places. They used these credentials
23 to slip past borders. They contacted someone in the
24 Government in Panama in the Ministry of Health to get them a
25 waiver at the height of the COVID crisis in June of 2020 when

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1 nobody else could get into Panama to be able to take this
2 private plane in. And they continued that fight through the
3 extradition period where they were using the credentials to
4 try and get out from being extradited.

5 THE COURT: So --

6 MS. SMITH: So, to me it's a character point that
7 the Court can consider. And it really goes to show that,
8 again, given any opportunity, the defendants will use whatever
9 lever is available to get themselves out from under what's in
10 front of them.

11 I do think we've reached the end of the line here,
12 but that is why the specific deterrence point is the one that
13 we've hammered home, and I -- I do think it's really
14 significant.

15 THE COURT: All right. Well, we haven't heard from
16 Mr. McGovern's client. So, let's turn to Luis Enrique
17 Martinelli Linares.

18 Sir, is there something you would like to say?

19 DEFENDANT L. MARTINELLI LINARES: Yes, Your Honor.
20 Good afternoon.

21 THE COURT: Good afternoon.

22 MR. L. MARTINELLI LINARES: My name is Luis Enrique
23 Martinelli Linares, and I have committed a crime.

24 I take full responsibility for my actions, and I
25 will accept any sentence --

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1 THE COURT: Hold on just a second, sir. Your voice,
2 perhaps get a little closer to the microphone. And if you
3 would, speak a little bit more slowly.

4 DEFENDANT L. MARTINELLI LINARES: Okay, I'm sorry
5 Your Honor.

6 My name is Luis Enrique Martinelli Linares, and I
7 have committed a crime.

8 I take full responsibility for my actions and I will
9 accept any sentence this court imposes on me. And I think it
10 will be helpful to tell you a little bit about myself and how
11 I ended up here.

12 When I was growing up, my father was never around.
13 My mom did everything she could to raise me the best way
14 possible. We all knew dad was the man of the house and he
15 demanded respect. I always questioned how much he truly loved
16 me. Nevertheless, he was my role model and the person who I
17 wanted to become. His success in business and everything he
18 put his mind to made me admire him. I wanted to become him so
19 dearly that I never thought this path would ultimately lead me
20 to this courtroom today.

21 My father's rule was for me to start working outside
22 the family first, at least two years. After gaining some
23 experience working for somebody else, then I could aspire to
24 work in the family business of supermarkets. I rapidly rose
25 up the ranks, and pretty soon I became its top executive.

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1 When my father won the elections, he just seemed natural for
2 me to take his place in the company and do my best. I didn't
3 know back then that the promotion came with strings attached.
4 He made it hard for me to say no whenever he needed my help.
5 I could not have imagined then that this would become the
6 biggest mistake of my life. I really wanted to please him,
7 keep him happy, make him proud.

8 It was too late when I realized what he really put
9 me through. He directed me in harm's way and there was no
10 turning back. By then I was a young adult and very naive, but
11 that's not to say that I'm not responsible for my actions. I
12 know now that I could have stood my ground and just say no,
13 but I didn't and for that I am so regretful. I was weak when
14 I should have been strong. Nothing good ever came from
15 getting into this mess. Nothing but stress, anxiety, shame,
16 humiliation and bad choices.

17 My wife and two daughters have been the worst
18 victims thanks to my actions. My oldest daughter is suffering
19 the most. As a result of this ordeal, she's suffering from
20 emotional disorders. Every time -- every time my wife, her
21 mother, leaves the house, either to do some errands or go to
22 the grocery store, my daughter always calls her constantly and
23 desperately. She fears her mother will suffer the same fate
24 as me and never return home. One day I left and I never
25 returned because I was arrested.

1 There is nothing in the world that I could want more
2 than to be reunited with my family. Try to pick up the ball
3 wherever I left it. My imprisonment has hurt my family and
4 loved ones more than it hurt me. When I speak to my
5 daughters, it feels like my heart is being ripped out. I will
6 never get back the time I have lost with my wife and my
7 daughters. I dread the thought of missing more birthdays or
8 spending more Christmases apart.

9 In all of these 23 months I have spent incarcerated,
10 I had a lot of time to think thoroughly and reflect profoundly
11 upon my mistakes. I have never felt so sorry in my life. And
12 I want to atone by apologizing for my mistakes.

13 I want to apologize to the Panamanian people and the
14 U.S. government, who have been affected by my actions. I also
15 want to apologize to my mother, who raised me better than
16 this, and my conduct broke her heart. Good people sometimes
17 do bad things. And I am fully responsible for my actions and
18 mistakes. I just want a second chance to do what is right, to
19 be a law-abiding citizen. I will not put myself, my family,
20 and friends, nor country, through any more wrongdoing.

21 Your Honor, the sad fact is that I have no words
22 that sufficiently convey how sorry I am for the crime I
23 committed. If you afford me this act of mercy, I can assure
24 you beyond any doubt that you will never hear the name Luis
25 Enrique Martinelli Linares in ever, ever again.

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1 Thank you, Your Honor.

2 THE COURT: Thank you.

3 Well, let me just state that I have before me
4 preliminary orders of forfeiture consistent with the
5 defendants' plea agreements, which was supplied to my by
6 letter earlier today. And somehow I have managed to misplace
7 them. They will be appended to the judgment in the case, in
8 each case. And absent objection, I will add my --

9 MR. HECKER: No objection, Your Honor.

10 THE COURT: -- signature to these at this moment.
11 What's today's date?

12 THE COURTROOM DEPUTY: The 20th.

13 THE COURT: The 20th. I'm sorry for the delay.
14 (Pause.)

15 THE COURT: Well, as I said earlier in the
16 proceeding, I spent a lot of time on this case and these two
17 sentences, conferred with colleagues. You know, I have no
18 doubt that they are, in many respects, they are exactly as
19 they present themselves and as their letters in support
20 present themselves. These letters seem quite genuine and
21 heartfelt, family. As you point out the warden at MDC,
22 schoolmates and so forth. Obviously, they think very highly
23 of these gentlemen. And as Luis said just a moment ago, good
24 people do commit crimes. It's one of the sad lessons in life.

25 Yes, I can understand the influence of the father.

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1 I'm not quite sure roped in, Mr. Hecker, is the way I would
2 characterize it, but they were acting at the behest of their
3 father, and they did so dutifully, for an extended period of
4 time.

5 They weren't just pass-throughs, that's quite
6 obvious. They were savvy guys with great education, in
7 business and otherwise. They knew how to set up accounts,
8 knew how to create records, and they did it for quite some
9 period of time as the numbers clearly indicate.

10 The issue of cooperation is troubling because they
11 did voluntarily appear, present themselves, not with current
12 counsel. And when things didn't quite go the way they went,
13 maybe they panicked, whatever they did, they certainly made a
14 mistake. And in this struggling, finally they were
15 cooperating with the Government, they were negotiating on the
16 one hand and planning on the other. It's distressing. It's
17 distressing.

18 I don't think there's a strong argument that could
19 be made, with all due respect, on specific deterrence. If
20 this experience for this period of incarceration, separation
21 from family and loved ones, if this doesn't do it, nothing
22 short of thumb screws is going to do it for these two.

23 But that said, there is something else at stake, and
24 that is the reaction of the federal court in New York to this
25 kind of corrupt commercialism that, while it's none of our

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1 business when it's offshore, once it involves our domestic
2 banking institutions, as this clearly did, it very much
3 becomes part of our business and invites strong sanction.

4 We know that the guidelines range is, as I said
5 initially, 108 to 135 months. That's advisory. It is not
6 presumptively reasonable, and with due respect to the
7 Government's position, I don't think it is reasonable, but I
8 think an appropriate sentence requires some additional
9 incarceration.

10 And I am going to impose a sentence on each of these
11 gentlemen of 36 months' incarceration, two years' supervised
12 release, one-hundred-dollar special assessment, \$250,000 fine
13 payable within sixty days.

14 Do we have anything on the question of restitution?
15 I don't see it in the papers.

16 MS. SMITH: I'm going to let Mr. Redmann address
17 restitution.

18 THE COURT: Mr. Redmann.

19 MR. REDMANN: Good afternoon, Your Honor.

20 THE COURT: Good afternoon.

21 MR. REDMANN: On restitution, we did receive a
22 letter from Panamanian authorities about restitution. We've
23 talked with them and clarified that they -- that their
24 intention is to request what we call remission, which is a
25 post-sentencing procedure to share in the forfeiture that's on

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1 the grounds of the -- of law enforcement sharing and upon the
2 grounds that Panama was a victim. And they understand, and we
3 are not going to be requesting a restitution hearing in this
4 case.

5 THE COURT: I see. Panama was a victim. Well,
6 certainly the Panamanian people were.

7 Anything else from the Government?

8 MS. SMITH: No, Your Honor.

9 THE COURT: Are there open charges?

10 MS. SMITH: Yes, Your Honor.

11 The Government moves to dismiss, there were a number
12 of counts, I believe, an additional four counts against
13 Mr. Luis Martinelli; and an additional two counts against
14 Mr. Ricardo Martinelli the Government dismisses.

15 THE COURT: The application is granted.

16 Messrs. Linares, you been very well represented.

17 I'm sorry I have to disappoint you, but my judgment, you've
18 heard.

19 Mr. McGovern, Mr. Hecker, have presented you to the
20 Court in the light as favorable as one could imagine, and I
21 hope that you live up to their fair characterizations.

22 You have the right to appeal subject to the terms of
23 your plea agreement, gentlemen. If you think the Court has
24 imposed an unreasonable sentence, you may seek to appeal the
25 Court's judgment to a higher court. I assume it's safe to say

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1 you would be able to afford the fees and expenses of such an
2 appeal, but, if not, you may apply to the Court for the
3 appointment of counsel, in which case the fees and expenses,
4 including counsel fees, will be paid by the Court.

5 Mr. Hecker, anything further?

6 MR. HECKER: No, Your Honor. Thank you.

7 THE COURT: Mr. McGovern?

8 MR. McGOVERN: Yes, Your Honor.

9 I know that the Court has no control over such
10 issues, but, perhaps, if a recommendation could be made for
11 designation to BOP, Allenwood or somewhere close.

12 THE COURT: I am happy to make the recommendation.

13 MR. McGOVERN: Thank you.

14 THE COURT: Sometimes I think it's
15 counterproductive, but if you like it, I'll make it.

16 MR. McGOVERN: We'll take whatever we can get. The
17 MDC is a grim place.

18 THE COURT: Thank you. Good night.

19 MS. SMITH: Thank you, Your Honor.

20 THE COURTROOM DEPUTY: All rise.

21 (Judge RAYMOND J. DEARIE exited the courtroom.)

22 (The defendants exited the courtroom.)

23 (Matter adjourned.)

24

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