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# The Aftermath of the Senator Menendez Trial and Implications for Bribery Cases: **What Comes Next?**



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## *Who is Robert Menendez?*

Robert “Bob” Menendez is a United States Senator from New Jersey. He was appointed to the Senate in 2006, and is the senior Democrat on the Senate Foreign Relations Committee, having been [reinstated after his recent criminal trial](#). He is also a member of the [Senate Banking, Housing, and Urban Affairs Committee](#) and the Finance Committee. Between 1993 and 2006, Menendez represented New Jersey’s 13<sup>th</sup> district in the United States House of Representatives.

## *What were the allegations against him?*

Senator Menendez faced an [indictment](#) in federal court in New Jersey on [18 bribery and public corruption charges](#) for an alleged quid pro quo relationship where political favors were traded for undisclosed gifts and campaign donations from long-time donor and friend Dr. Salomon E. Melgen, a Florida ophthalmologist. Over the course of [seven years](#), Melgen made gifts and directed contributions to Menendez worth nearly \$1 million. Luxury gifts included [19 free rides on a private jet](#), a [vacation at Melgen’s villa](#) in the Dominican Republic, and stays at a [five-star hotel in Paris](#). Through his company, Vitreo-Retinal Consultants, Melgen also directed over [\\$700,000 in corporate contributions to Majority PAC](#) which, in turn, used that money to support Menendez’s 2012 re-election campaign.

It was alleged that in return, Menendez repeatedly interceded on behalf of Melgen’s personal and business interests. Menendez and his staff appealed to the Health and Human Services Administration in an ultimately unsuccessful attempt to settle an administrative enforcement action against Melgen’s practice stemming from a [\\$8.9 million Medicare billing dispute](#). Menendez, moreover, allegedly tried to [pressure the Obama administration](#) to alter Medicare reimbursement policies in a way that would generate the surgeon more income. Separately, Menendez attempted to involve the [State Department](#) in a business dispute between the government of the Dominican Republic (DR) and a company owned by Melgen, threatening to hold a congressional hearing on the larger issue of security and corruption in the [DR](#) should it not intervene. Moreover, the Senator secured travel visas for three of Melgen’s foreign girlfriends.

## *What happened at the trial?*

The trial ended with a hung jury, and media sources indicate that [10 jurors favored acquittal](#) and only 2 jurors supported a conviction. The Department of Justice announced its intention to retry the case but [dropped all charges](#) shortly after the presiding judge dismissed a number of the counts against Senator Menendez.

## *What are the implications of this case for bribery through campaign donations?*

For one thing, the Menendez case illustrates the challenges prosecutors face in securing a conviction on the theory that campaign donations were used to bribe a politician. Because political donations are protected speech under the First Amendment, prosecutors must prove an [“explicit quid pro quo”](#) agreement existed. But as [summarized](#) by Judge Walls, the prosecution only showed that the campaign contributions were received shortly before Menendez advocated on Melgen’s behalf, that there were contemporaneous communications between the staffs of both men, and a statement by one of Menendez’s staffers that he/she had to “drag [information] out of” Melgen, and that Melgen’s staff may have used a straw donor.

This collection of circumstantial evidence did not meet the “explicit quid pro quo” standard for bribery through campaign donations and led Judge Walls to grant the defense’s motion and dismiss the 7 charges based upon it. The judge did list a number of illustrative cases where prosecutors successfully obtained convictions by showing [factual evidence](#) connecting the bribe and official acts.

## *How plausible is friendship as an alternative motive for apparently corrupt gifts?*

The jury also hung on the bribery counts that concerned gifts, as opposed to campaign donations, even though the legal standard to prove bribery by gifts is easier to meet. It appears that the close friendship between Senator Menendez and

Melgen formed a crucial alternative explanation for the valuable gifts and favors exchanged between the two men. Lavish vacations were characterized by Senator Menendez’s defense counsel as [“spending time with friends,”](#) rather than evidence of a corrupt partnership. This explanation—fraternal generosity instead of corruption—may have persuaded some jurors in the trial. However, as a matter of law it is possible for friends to be involved in a [corrupt exchange](#), but the prosecution must show that corrupt motives underlay the exchanges, at least in part.

*Why did the charges based on false disclosures fail?*

Many observers wondered why, despite strong proof on the false filing count, the jury failed to convict there too. On count 18, Senator Menendez was charged with falsifying his annual senatorial disclosure statements in violation of [18 U.S.C. § 1001\(a\)\(1\)](#). Specifically, Menendez failed to include any of the gifts he received from Melgen between 2006 and 2011, even though their value was clearly above the mandatory reporting threshold. As noted by the prosecution, [Menendez alone](#) was legally responsible for filing accurate disclosure statements.

However, during the trial the staffer who principally prepared the returns said that he only [“scanned”](#) the disclosure instructions and did not understand the rules. The staffer also testified to belief in a non-existent “friendship exemption” which allowed Melgen’s gifts to be unreported. While we can only speculate about the jury’s decision making process, it is possible this straightforward charge got [lost](#) amidst the more challenging bribery charges. Alternatively, the jury may have credited the staffer’s explanation, since the statute requires conscious deception for a false statement to be criminal. Menendez may have shifted the responsibility for filing accurate disclosures from himself onto his staffer in the minds of the jury.

*What are the trial’s implications for the “Stream of Benefits” argument as proof of corruption?*

During the trial, Judge Walls issued a ruling on the prosecution’s stream of benefits theory. The [stream of benefits theory](#) is that instead of the bribe as a onetime transaction, the briber essentially keeps the public servant on retainer by giving numerous bribes or “gifts” over time. Judge Walls questioned whether this prosecutorial argument was still viable after the *McDonnell* Supreme Court decision, asking: [“What’s the quid for those quos?”](#) However, after considering the arguments Judge Walls [concluded](#) that:

“*McDonnell* neither abolished the stream of benefits theory nor held that an official act that is the object of an illegal quid pro quo agreement must be identified at the time the agreement is made. It merely narrowed the definition of ‘official act.’”

Referring to Menendez’s case in particular, Judge Walls concluded that a rational juror could find that Senator Menendez exchanged official acts for Melgen’s many gifts. In conclusion, the stream of benefits theory remains a viable proof of corruption.

*What comes next?*

Senator Menendez has returned to his committee positions and leadership role in the Senate and is [running for reelection](#) in 2018. Dr. Melgen has been sentenced to 17 years in prison for defrauding Medicare of over [\\$42 million](#) in a separate case. As concluded by the [Senate Select Committee on Ethics](#), Senator Menendez’s actions on behalf of Melgen “created, at a minimum, the appearance of impropriety” and were a “discredit upon the Senate.” But in the absence of explicit evidence, the Menendez case is a reminder of how challenging it is to show that unethical behavior amounts to quid pro quo bribery.