

FILED
U.S. DISTRICT COURT
EASTERN DISTRICT OF LA

2001 MAR -8 AM 10: 07

LORETTA G. WHYTE
CLERK

TM

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

UNITED STATES OF AMERICA * CRIMINAL DOCKET NO. 01-010
v. * SECTION: "C"(4)
ROBERT BRUNET, ET AL *

**RULE 48(a) MOTION TO DISMISS WITHOUT
PREJUDICE INDICTMENT IN CRIMINAL NO. 01-010**

NOW INTO COURT comes the United States of America, appearing herein through the undersigned Assistant United States Attorneys who with respect represent:

On August 26, 2000, court-authorized search warrants were executed on the State Palace Theater, 1108 Canal Street, New Orleans, Louisiana and the business office of Robert and Brian Brunet, 7735 Earhart Boulevard, New Orleans, Louisiana. These search warrants were executed before a "rave" concert which occurred that night. The following week, the Government issued several grand jury subpoenas for witnesses to appear on September 15, 2000. The Government was contacted by Frank DeSalvo, who represented and still represents Robert Brunet, and Milton Masinter who formerly represented James D. Estopinal. Both Mr. Masinter and Mr. DeSalvo asked

DATE OF ENTRY
MAR - 9 2001

1

FILED
SEARCHED
SERIALIZED
INDEXED
MAR 9 2001
FBI - NEW ORLEANS
pp
24

that the Government not conduct any grand jury proceedings because they intended to negotiate a plea agreement. The Government attorneys told Mr. DeSalvo and Mr. Masinter that they were going to conduct the grand jury session scheduled but that they would stop any further grand jury investigation. A short time later, Assistant United States Attorney Albert J. Winters, Jr. was contacted by Franz Ziblich and informed that Mr. Ziblich represented Brian Brunet. Mr. Ziblich also indicated that he wished to try to resolve this matter by a guilty plea. As of this date, based on the requests and representations of the attorneys representing the defendants at that time, the Government conducted only one grand jury investigatory session.

In the ensuing weeks, there were several meetings with the defense attorneys and the defendants and some preliminary pre-indictment discovery was given to both defendants and their attorneys. This consisted of brief discussions concerning the evidence against each defendant, including the existence and the contents of consensual tape recordings and the playing of a compilation video tape taken by undercover agents during the investigation, showing activities during the rave concerts at the State Palace Theater. Shortly thereafter, during the month of October, Patrick Fanning became involved as co-counsel with Milton Masinter representing James D. Estopinal. Mr. Fanning was also shown the video tape and given the same informal discovery as the other attorneys. During the second week of October another meeting was held with the defendants Robert Brunet and James D. Estopinal and all attorneys involved in the case and the father of Robert and Brian Brunet. At this meeting the Government discussed possible plea agreements and put a deadline of October 25, 2000, as the date it must be informed if the defendants were going to plea. On or a few days before October 25, 2000, the Government was informed by their attorneys at that time, that all defendants would accept the Government's offers and plea guilty.

In addition, Provino Mosca became co-counsel for Robert Brunet.

On November 29, 2000, Robert Brunet and his two attorneys did in fact sign a plea agreement to plead guilty to Count 1 of the pending indictment. On December 5, 2000, James D. Estopinal did in fact sign a plea agreement to plead guilty to Count 2 of the pending indictment. Franz Ziblich, the attorney for Brian Brunet asked that the Government forward a plea agreement for Mr. Brunet to plea to the pending count in the indictment against him, and that he (Mr. Ziblich) would see that he signed it. The Government forwarded to Mr. Ziblich the plea agreement for Brian Brunet dated November 15, 2000. Mr. Brunet is not from the New Orleans area and lives in Tampa, Florida.

The Government was also asked by several defense attorneys involved in the case to postpone presenting the indictment until after the Christmas holidays. On January 12, 2001, an indictment was returned limited in counts and charges by the defendants' plea agreements.¹

On January 25, 2001, with all defense attorneys' permission, the Government attorneys met with this Court and informed the Court of the plea agreements and that if any defendant did not honor his agreement the Government intended to move the Court to dismiss the indictment against that defendant without prejudice. The Government further related that it intended to then conduct a full grand jury investigation, which had been truncated by the requests and representations of the defense attorneys and to present a new indictment with all applicable charges after a full and

¹ The Court should note that Patrick Fanning is the only attorney for James D. Estopinal and, as of February 8, 2001, Arthur A. Lemann, III became the attorney for Brian Brunet. Mr. Lemann was given the same informal discovery as the other attorneys.

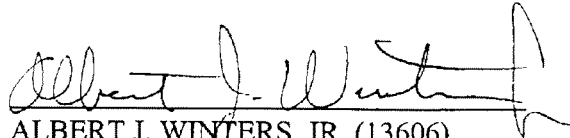
appropriate investigation process into any federal criminal activity. The Government informed all defense attorneys of the meeting and its contents pursuant to a letter dated January 25, 2001. The re-arraignment was originally scheduled by the Court on February 14, 2001 and later continued until March 7, 2001. Instead, unrelated to any Government conduct, all defendant have now informed the Government that they have withdrawn from their plea agreements and intend to contest criminal charges.

The above chronology demonstrates that there has been absolutely no misuse of charging power by the Government. The opposite is true. The Government gave pre-indictment discovery liberally to inquiring defense attorneys and then freely engaged in pre-indictment guilty plea negotiations; thereafter, the Government deliberately did not protract the investigative stage (which remains at the earliest stage of either statute of limitations or Speedy Trial Act concerns). There has been no second or superseding indictment. The defendants have complained of no specific or coercive or "harassing" conduct, or improper negotiating positions or offers, or animus or improper motive. See United States v. Welborn, 849 F.2d 980, 983 (5th Cir.1988). And, they have not suggested any prejudice to themselves that might arise from early stage dismissal. To the knowledge of the undersigned, the defendants also have not disputed the aforementioned good faith chronology and basis for the instant dismissal request, namely that, for whatever reason, they now have elected not to resolve federal government inquiry into their activities in the manner which they previously requested and negotiated for, all the way, inter alia, to signed plea agreements.

For the foregoing reasons, and as previously explained orally to the Court, the Government respectfully requests, pursuant to Rule 48(a) of the Federal Rules of Criminal Procedure, that Indictment No. 01-010 be dismissed without prejudice.

Respectfully submitted,

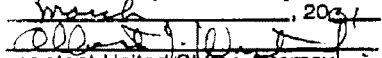
EDDIE J. JORDAN, JR.
UNITED STATES ATTORNEY

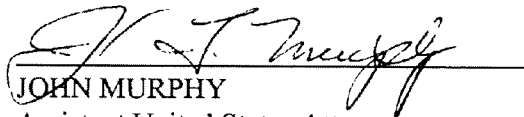


ALBERT J. WINTERS, JR. (13606)
Assistant United States Attorney
Senior Litigation Counsel
Hale Boggs Federal Building
501 Magazine Street
New Orleans, Louisiana 70130
Telephone: (504) 680-3006

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing has been served upon counsel for all parties by mailing the same to each, properly addressed and postage prepaid this 5th day of

March, 2001.

Assistant United States Attorney



JOHN MURPHY
Assistant United States Attorney
Hale Boggs Federal Building
501 Magazine Street
New Orleans, Louisiana 70130
Telephone: (504) 680-3126

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

UNITED STATES OF AMERICA * CRIMINAL DOCKET NO. 01-010
 * SECTION: "C"(4)
 *
ROBERT BRUNET, ET AL

ORDER

Considering the foregoing;

IT IS HEREBY ORDERED that pursuant to Rule 48(a) of the Federal Rules of Criminal Procedure that Indictment No. 01-010 is hereby dismisses without prejudice.

New Orleans, Louisiana this 8 day of March, 2001.


UNITED STATES DISTRICT JUDGE