

Trial-Watchers Expect Just a Few More Days of Deliberations for Menendez Jury

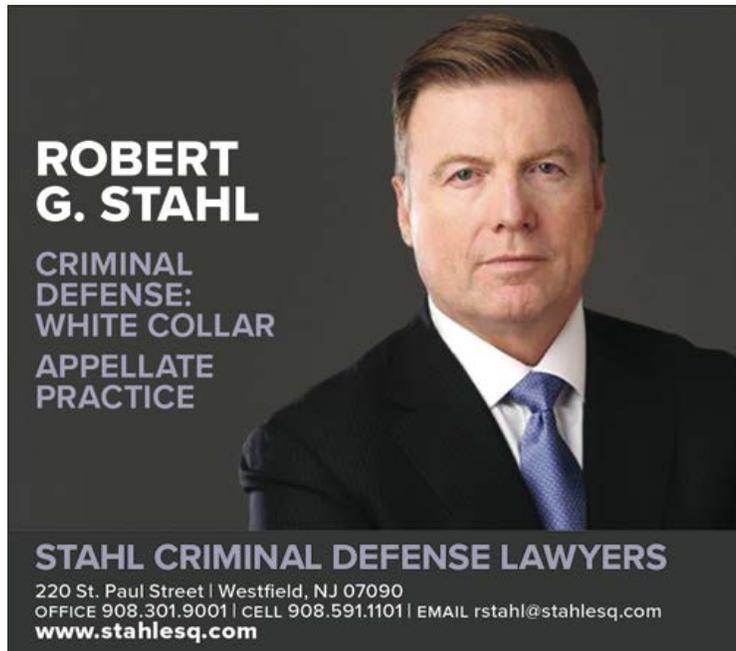
By [Charles Toutant](http://author/profile/Charles%20Toutant/) | November 10, 2017



U.S. Sen. Bob Menendez

Seasoned trial-watchers who spoke to the New Jersey Law Journal said they expect to see a verdict in the corruption trial of U.S. Sen. Bob Menendez, D-New Jersey, within a few days of its scheduled restart on Nov. 13.

Most of the lawyers who are monitoring the trial federal court in Newark, New Jersey, said three to five days of deliberation should yield a decision. Jurors, some former federal prosecutors said, won't likely go longer than a week because even though they take their duties seriously, they will be keen to end the disruption of their regular routines that serving on the jury has brought.



The Menendez jury is set to restart deliberations Monday after an alternate juror is seated to replace a panelist **who was excused** (<https://www.law.com/njlawjournal/sites/njlawjournal/2017/11/09/deliberations-set-to-restart-monday-after-menendez-juror-is-excused/?back=law>) because of vacation plans. No verdict was returned after the first three full days of deliberation came to an end on Friday.

The jury faces a formidable task: weighing two months' worth of testimony and 18 criminal counts in the indictment against Menendez, who is New Jersey's senior senator, and his fellow defendant, Florida eye doctor Salomon Melgen. Coming to a consensus will be made easier, though, because they should be well-acquainted with each other after spending the past nine weeks together, some observers said.

"I think, probably, within a week," said former Department of Justice attorney Michael Weinstein, when asked how long it would take for the Menendez jury to return a verdict. "Jurors don't spend weeks and weeks deliberating. They're highly motivated to get to the point," said Weinstein, a white-collar defense lawyer at Cole Schotz in Hackensack.

"It's likely to happen in the next week," said Robert Stahl, a white-collar defense lawyer and former federal prosecutor, when asked how long a verdict will take. Although disagreements are not uncommon in the initial stages of deliberations, jurors in criminal trials usually work together and reach a consensus, said Stahl.

That's likely to mean an initial polling of jurors by the foreperson, followed by an airing of viewpoints, with the more forceful jurors going first, followed by those who are more reserved.

One potential holdup is Friday's departure of juror Evelyn Arroyo-Maultsby, who was widely quoted in media reports **expressing her views** (<http://www.northjersey.com/story/news/columnists/mike->

[kelly/2017/11/10/juror-leaves-menendez-trial-and-possible-nightmare-](#)

[begins/850240001/](#) that Menendez is not guilty and was “railroaded” by the prosecution. She also said she believes the trial will end in a hung jury and described the atmosphere in the jury room as “very stressful.”

Another former federal prosecutor, Lee Vartan, feels the outcome of the jury’s deliberations will become known by Wednesday or Thursday. But if the excused juror is to be believed, he says, the chance of a mistrial is high.

“I would think this week there’s either going to be a verdict or a note saying ‘we’re deadlocked,’” said Vartan, of Chiesa Shahinian & Giantomasi in West Orange.

While it’s impossible to know if the excused juror is accurately describing the state of the jury, her comments are bad news for the government, Vartan said.

“If I were the prosecution, I would be panicked,” he said.

Vartan said he also feels the prosecution should be concerned because the evidence at trial was weak on links between the gifts Menendez received and his alleged official acts on Melgen’s behalf.

U.S. District Judge William Walls, who is presiding at the Menendez trial, is likely to ask jurors if they saw media reports of the excused juror’s comments about the trial, and would have to replace any jurors who felt the comments would hamper their ability to proceed, Weinstein said.

The excused juror’s description of the jury room’s atmosphere as stressful is not surprising, Stahl said. But he was more optimistic that a verdict can be reached.

“There can be raised emotions—your regular lives are disrupted; you’re thrust into a room where you’re basically locked in. You take an initial show of hands and people think, my goodness, did you sit through the same thing? People have to get through it and it can get tense.

“Hung juries are not very common so people seem to work through it. Once you’ve been sworn in as a juror, there’s a formality and majesty about being in federal court and being the deciders of fact, and they work together,” Stahl said.

Although the panel will be restarting their deliberations on Monday, the time they have spent together over the course of the trial will aid their deliberations, Weinstein said. “They have developed relationships and appreciation of each other’s personalities. As a result of that they have an internal flow.”

And the seating of an alternate on the jury could change the dynamic of the panel, Vartan said.

Lawyers said the strongly competing narratives put forth at the trial, those of the corrupt politician versus two longtime friends, make the jurors’ task particularly hard. The high caliber of the lawyers involved makes it even harder for the jury to render a verdict, said Stahl, of Stahl Criminal Defense Lawyers in Westfield.

Remarks by Abbe Lowell.

<https://www.law.com/njlawjournal/sites/njlawjournal/2017/11/06/jury-begins-deliberations-in-menendez-trial-after-being-told-of-narrower-standard-for-bribery/?back=law> Menendez’s lawyer, referring to the U.S. Supreme Court’s recent ruling in *McDonnell v. United States*, will further complicate the jurors’ task, Stahl said. In his closing statement on Nov. 6, Lowell made an apparent reference to

the *McDonnell* case when he cited the jury charge's requirement in the present case that "a matter must be more specific in focus than a broad policy objective" to be considered an official act in a bribery context.

The Supreme Court's 2016 ruling in *McDonnell*, which overturned a bribery conviction of the former Virginia Gov. Bob McDonnell, created a narrower definition of official acts that are an element of bribery. The decision was seen by some as hampering the government's efforts to gain a conviction.

Vartan said the reference to the jury instructions and the indirect reference to *McDonnell* would not confuse the jury and were a smart move by Lowell. The remarks would help jurors wade through the lengthy jury instructions, he said.

"Absolutely, it was a smart thing to do," Vartan said. Lowell was telling the jury "when you read this line, you'll understand Sen. Menendez is not guilty. You're almost co-opting the court in some ways. You want to use the jury instructions to your advantage."