

1 especially be the case here where obviously the evidence upon
2 which the hung counts are based are going to be the subject of
3 the appeal.

4 MR. SREBNICK: We object to the finding that the
5 government is suggesting. And if the government is proposing
6 to retry Mr. Esformes on the hung counts, we believe that's
7 time barred at this point, but it's a request they are making
8 of you without anything pending.

9 THE COURT: What do you mean it's time barred?

10 MR. SREBNICK: Time barred meaning --

11 THE COURT: If I said, okay, we are going to pick a
12 jury Monday, how is it time barred?

13 MR. SREBNICK: The mistrial occurred, I think, six
14 months ago or more.

15 THE COURT: Okay.

16 MR. SREBNICK: And I happen to disagree with
17 government counsel about the excludable delay. I assumed the
18 government wasn't proceeding with the hung count given the
19 Court's sentence. But if now they are suggesting they are
20 contemplating a retrial, we think that --

21 THE COURT: I think I announced at the time of
22 sentencing that, in imposing that sentence, I'm considering
23 that conduct since he was found guilty as a theory of money
24 laundering. So I don't know what more you are going to get out
25 of the case if you try those additional counts.

1 MS. YOUNG: Certainly, Your Honor, if the case comes
2 back on appeal, we would ask the hung counts to run with the
3 appeal so the whole thing could be retried.

4 We have entered into agreements to dismiss the hung
5 counts if the defendant's appeal is dismissed, and we would
6 agree to do so here.

7 MR. SREBNICK: Forgive me, I'm not sure what agreement
8 you are referring to.

9 MS. YOUNG: The government could agree to dismiss --

10 THE COURT: Oh, you mean have in other cases?

11 MS. YOUNG: Correct. We have done things in other
12 cases. We have made agreements that we would dismiss the hung
13 counts in the event that the appeal was denied.

14 MR. SREBNICK: We haven't been presented any such
15 proposal. Why don't I do this. I hereby move to dismiss the
16 hung counts at this time as violative of the Speedy Trial Act
17 and the speedy trial grounds, constitutional grounds.

18 THE COURT: Okay. So I will give the government ten
19 days to file a written response. That will give you all time
20 consult with each other and see if you can come up with an
21 agreed resolution. And if not, then you can file a written
22 reply and we will figure out where we are going to go from
23 there.

24 MS. YOUNG: Thank you, Your Honor.

25 MR. GROVE: Your Honor, just a housekeeping matter.