

How 3 Firms Cleared 2 Ex-Autonomy Execs In HP Fraud Case

By **Bonnie Eslinger**

Law360 (June 13, 2024, 2:20 PM EDT) -- A California federal jury's rejection last week of fraud charges against the founder and former finance vice president of British software company Autonomy validated an approach by the defendants' three law firms — Steptoe, Clifford Chance and Bird Marella — to form a "seamless" collaboration throughout the trial, from jury selection to closing arguments.

Autonomy founder Michael Lynch and ex-VP Stephen Chamberlain faced formidable odds when their federal criminal fraud trial kicked off three months ago on allegations that they conned HP into overpaying billions for Autonomy.

Lynch's right-hand man and Chamberlain's boss, ex-Autonomy Chief Financial Officer Sushovan Hussain, had already been convicted in 2018 by a San Francisco federal jury of fraud and securities charges. And in England, where HP brought a civil case against Autonomy, a London judge ruled in 2022 that Lynch fraudulently inflated the value of his company ahead of its 2011 sale to the Silicon Valley tech giant for \$11.7 billion.

Conviction rates for defendants in U.S. federal criminal cases also didn't lean in their favor. Only 290 of some 70,000 defendants in federal criminal cases — about 0.4% — were acquitted at trial in fiscal year 2022, according to a Pew Research Center analysis.

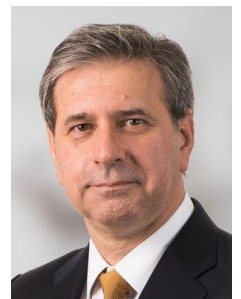
Brian Heberlig, a white collar partner with Steptoe LLP, which represented Lynch alongside Clifford Chance LLP, told Law360 that prior to the trial's March kickoff he printed out news articles that included such "scary statistics" and pinned them to his wall so he'd see them daily as he prepared for court. It was powerful motivation, he said.

"I'm used to long odds, that comes with the territory in our line of work," Heberlig said. "It certainly kept me going."

Eleven weeks after the trial's start, following two days of deliberations, the 12-member jury arrived at a unanimous verdict, clearing both men of conspiracy and wire fraud counts that had threatened to put them behind bars for years.

Focusing on the Common Mission

A key to success was the working relationship between counsel for the defendants, which Heberlig



Christopher J. Morvillo



Brian M. Heberlig



Gary S. Lincenberg

called "seamless."

Lynch hired British multinational law firm Clifford Chance and partner Chris Morvillo to represent him in 2012, after HP reported **billions in losses** that it attributed to its acquisition of Autonomy. As U.S. investigators began looking into the matter, Steptoe was also brought on board to help lead that piece of it, Morvillo explained to Law360.

Chamberlain's lead lawyer, Gary Lincenberg of Bird Marella Rhow Lincenberg Dooks & Nessim LLP, also touted the cooperative spirit between counsel as a winning move.

"My co-counsel were phenomenal; we worked together very well in a joint defense arrangement for many years," Lincenberg said, adding that it also helped his client "because they had a lot of firepower, a lot more resources."

Aligning to Choose Jurors

Among the areas on which the defense worked closely together was the process of selecting jurors.

"It was part of our strategy," Lincenberg said. "The Lynch team in particular, I think, wanted people with an understanding of tech companies."

The jury that was selected, including the alternates, included a few people who worked in technology, like engineers, as well as an oncologist, a person who worked in investment banking and an **aspiring attorney** about to go to law school, Morvillo said.

"We did our best to try to get people on the jury who were college-educated and seemed like they would be an intelligent bunch who would follow the evidence," Heberlig said. "And we succeeded. It was a great jury."

Distinguishing Their Client's Role

When the trial started, Morvillo said, it was important for the jury to understand how Lynch had a role distinct from others at Autonomy — and also how far away he was from the allegations brought by the government.

"The theme that emerged from the crucible of this ordeal was the role that he played in the company, which was really focusing on the strategy, the big picture, the technology, and not really on things like the accounting and the day-to-day sales practices and business practices," Morvillo said.

Lynch deferred to the executives he appointed to oversee different areas of Autonomy's business, the Clifford Chance partner said.

While the government tried to convince the jury that Chamberlain participated in a plot to defraud HP, his attorney Lincenberg said, he was not part of Autonomy's top circle as Lynch and others were.

"They were also acting in good faith, but they were making the big decisions for the company," the Bird Marella partner said. "I wanted the jury to know there was a big difference."

Learning From Prior Proceedings

The government's case against Hussain, Autonomy's former CFO, added a layer of difficulty for Lynch, Heberlig said.

"It was an enormous challenge," the Steptoe lawyer said. "The government spent the better part of 10 years investigating this case. They'd already tried it once successfully with the CFO, and we knew we were facing much of the same evidence, the same witnesses."

In addition, there was a lengthy civil trial in the United Kingdom, which concluded in January 2022 with a London judge ruling that Lynch had artificially bolstered the value of his company.

Despite the downsides, those proceedings also provided some advantages to defense counsel for Lynch and Chamberlain in the U.S. trial because there was a record of what the witnesses had said in the various proceedings, Heberlig said.

Morvillo agreed, saying a lot of the documents the government used in the case against his client were also produced in the Hussain case, and also in the civil trial in England.

"One of the benefits of having had several prior proceedings is that you start to learn the main corpus of evidence that the government thought was relevant," the Clifford Chance partner said.

Attacking a Whistleblower's Credibility

One person who didn't testify in the Hussain trial was Brent Hogenson, the former chief financial officer of Autonomy Americas. Jurors in the 2018 trial saw evidence that Hogenson was fired in 2010 after approaching Lynch and Autonomy's auditors at Deloitte with concerns about the company's accounting, but they never heard his testimony.

Morvillo said attorneys for Lynch and Chamberlain made the right decision in calling Hogenson to the stand to question that account.

"I think the specter of Brent Hogenson hovering out there as this whistleblower who was allegedly retaliated against was far more powerful than actually turning on the lights and seeing Brent Hogenson and being able to cross-examine him," Morvillo said.

During his direct examination, Hogenson seemed credible and sympathetic, but that all fell apart when the defense began its cross-examination, Lynch's lawyer said.

"The guy dissembles, and he stops answering questions the way he spoke with the government, and he starts getting cornered, and either doesn't remember anything anymore, or he's equivocating," Morvillo said. "And his credibility fell apart."

The government built its case around Hogenson and that was a mistake, Heberlig said.

"We did decide we had to attack his credibility," Heberlig said. "When his story fell aside, I think it revealed a real gap in the government's case."

Knowing When to Put Your Client on the Stand

Prior to going to trial, federal prosecutors told the judge overseeing the case that they expected to take about six weeks to present their case; Lynch and Chamberlain said they'd take four combined. So the jurors sworn into service were told that the trial was expected to take about 10 weeks, ending in early June.

But once the trial got going, the government's case stretched to over nine weeks, putting time pressure on the defense. With only one alternate juror remaining and a juror with mid-June travel plans, counsel for Lynch and Chamberlain chose their witnesses carefully.

"We were very conscious of the fact that the trial had run long," Heberlig said. "So we tried to be very selective in the witnesses we called."

The star witness, of course, was Lynch, who spent a week on the stand.

Having Lynch testify "was maybe the most important tactical decision that we made," Heberlig said.

"Mike is just a really brilliant man, but I think he was portrayed in the trial as sort of a caricature of himself, as this domineering boss who ran Autonomy with an iron fist, and that's not just the Mike that we knew," the Steptoe partner said. "I think he was able to humanize himself and was able to make a real connection with the jury, and I found that to be incredibly important."

In the end, Chamberlain's legal team decided it was not in their client's best interest to take the stand, Lincenberg said.

"Had my client testified, you know, we would have pushed into another couple of days," the Bird Marella partner said. "But as it worked out, we made our decision not to have Steve testify just based on the fact that we felt really good where the case was at."

That decision was nonetheless complicated by the fact that Lynch had testified.

"You always wonder, how's the jury going to react when one defendant testifies and the other doesn't?" Lincenberg said.

Fortunately for the defense, the jury came back on June 6 with a decision clearing both men of all charges.

With their big win notched, attorneys Heberlig, Morvillo and Lincenberg said they're looking forward to a little time off.

Heberlig said the case has been one of the most challenging he's tackled in terms of complexity, the witnesses and the length of trial.

"It was the hardest case I've ever had, and the most satisfying win by far," the Steptoe partner said.

Morvillo said he's been practicing law for 32 years, and he's represented Lynch for one-third of his career.

"I don't think, in 12 years, there's been a month of my life where I didn't spend some amount of time on this case, and for many, many, many, many months it was all I did," Morvillo said. "And so for me, this is

a career case. It is something that really, in many ways, defines my experience as a lawyer."

The government is represented by Robert S. Leach, Adam A. Reeves and Kristina N. Green of the U.S. Attorney's Office for the Northern District of California and Zachary Abrahamson of the U.S. Department of Justice's Antitrust Division.

Michael Lynch is represented by Christopher J. Morvillo, Celeste Koeleveld and Daniel S. Silver of Clifford Chance LLP and Reid H. Weingarten, Brian M. Heberlig, Jonathan M. Baum, Michelle L. Levin, Nicholas P. Silverman and Drew C. Harris of Steptoe LLP.

Stephen Chamberlain is represented by Gary S. Lincenberg, Ray S. Seilie and Michael C. Landman of Bird Marella Rhow Lincenberg Dooks & Nessim LLP.

The case is U.S. v. Lynch, case number 3:18-cr-00577, in the U.S. District Court for the Northern District of California.

--Additional reporting by Dorothy Atkins and Max Stendahl. Editing by Marygrace Anderson.