

# WHITE COLLAR SPOTLIGHT WITH JAMES REHNQUIST



Jim Rehnquist, a partner in Goodwin's Securities Litigation and White Collar Defense group, is a trial lawyer and former federal prosecutor. He recently sat down to discuss some trends he's seeing in the white collar space along with his most memorable case, his interest in history and how his time as a prosecutor helped him in private practice.

**What cases are you watching and why are you paying attention to them?**

I watch pretty much everything that is publicly available. I have clients involved in health care fraud investigations, particularly in the pharmacy space, so I am watching that area with special interest these days.

**Do you have a sense of what will draw you to trial in the white collar space?**

You go to trial when you can't keep your client from getting indicted and if your client is indicted there's not a reasonable plea option. Going to trial is very case-specific. It's not as though there's an overarching thing happening out there in the white collar world that results in trials. It's just the specifics of the case.

**Are you seeing an increase or decrease in whether cases go to trial?**

Maybe a slight increase due to the government's increased use of heavy artillery such as the RICO statute, which can increase exposure under the guidelines and make negotiating a palatable plea deal more difficult. There are so many factors that go into whether a trial occurs. It's the strength of the government's case, the particular facts about your client. Of course, it depends on whether

you're representing a corporation or an individual. Corporations almost never go to trial. With individuals it's a whole different calculus, including the individual's appetite for risk. But the main thing is the strength of the government's case.

**Are there any trends or legal issues that are of particular interest to you right now?**

One somewhat recent trend is the government's increased use of search warrants in white collar cases. I have clients whose business premises were raided in what I would call garden-variety healthcare fraud investigations. That's changed since I was a prosecutor. It was not unheard of but it was unusual for the government to proceed by search warrant in a white collar case, say 20 years ago. One of the reasons the government loves to do search warrants is the ability to get a lot of interviews at the outset of an investigation before defense attorneys get involved. When you raid a company's premises, and scare the company's employees, you are able to conduct interviews of unrepresented, frightened employees the day of the raid in an inherently coercive environment. If the government initiates an investigation by subpoena, on the other hand, the government will typically end up interviewing employees who are less intimidated and prepared: represented by counsel who are often

in a joint defense arrangement with company counsel. Naturally, the government would prefer the former scenario.

### **What other prosecutorial trends are affecting the white collar industry?**

As noted above, the government has been increasingly using the RICO statute in conventional white collar contexts. RICO used to be reserved primarily for organized crime prosecutions and now you see it used in health care fraud cases and even – to note a topical example – in the Varsity Blues cases. One of the ironies of white collar defense generally is that it's difficult to get rid of overreaching indictment charges, such as RICO, by motion practice. In a civil case a plaintiff has to plead sufficient facts that support the claims in the complaint, whereas in a criminal indictment the government doesn't have a similar obligation to plead specific facts. And while a RICO violation is not easy to prove, as a purely legal matter, don't believe it doesn't affect juries in making that assessment that defendants have been indicted not just for, say, wire or mail fraud but also for "racketeering."

### **Any observations about whether the Trump administration has affected the government's approach to white collar cases?**

I think the statistics show the number of white collar cases are down. There's fewer False Claims Act cases. The DOJ recently put out some allegedly new guidelines about how a corporation can get credit or leniency for cooperating in a criminal case. But these guidelines are not much different from various iterations of similar guidelines that have been around for 20 years or so. Similarly, the Trump DOJ early on essentially endorsed the "Yates Memo" principles of its predecessor, emphasizing the importance of charging not just companies but also senior executives.

### **If there's a drop-off or perceived drop-off, has it affected any of the advice you give clients?**

No, you can't tell a client, "Well, this administration is not focusing on X, so take your chances." Everything's going to wind up being case-specific, and while different administrations may have different priorities, much of the way the Department of Justice operates

is not based on an overarching national plan but on the practices in 94 U.S. Attorney's offices around the country.

### **How did your experience as a prosecutor inform the way you approach your private practice?**

Having been a prosecutor you have a better understanding—or you think you do—of how the government approaches an investigation, a trial, a request for immunity, a plea negotiation, etc. That is a big advantage in giving your client advice. That experience also allows you to talk candidly to the prosecutor, in the right case, about a case's strengths and weaknesses. It is also an advantage for your client that the prosecutor knows you are not afraid to go to trial, which most former prosecutors are not.

### **What is your most memorable case?**

A public corruption RICO case that I tried in federal court in Springfield, Massachusetts. It involved allegations of public corruption in the Springfield Housing Authority against 13 defendants, all of whom were charged in a far-flung RICO conspiracy. Twelve of the 13 pleaded guilty. We went to trial with a defense—that our client withdrew from the conspiracy—that the government completely did not anticipate. After six weeks of trial, the government rested and we moved for a judgment of acquittal on the withdrawal argument. The judge granted our motion, and didn't even let the case go to the jury, which would have been typical.

### **What was your best day as a lawyer?**

I led a team of associates and Harvard law students in preparing amnesty petitions for incarcerated prisoners. We got 12 amnesty petitions granted by President Obama. I told the young associates who got their clients out of jail, that their careers were going to be downhill from there.

### **How do you spend your time when you're not working at Goodwin?**

I have five kids who live all over the country and I like to visit them. Luckily they live in good places like Austin and Berkeley and New York City. So I do that type of traveling. I also enjoy history and sometimes I am able to combine history and travel. This past

spring after the white collar conference in New Orleans, I rented a car for five days and drove through Mississippi and Alabama visiting civil rights movement sites. Birmingham, Oxford, the Emmet Till museum, Montgomery, the Edmund Pettus bridge in Selma,etc. The highlight was probably Selma, notwithstanding that I got pulled over on the bridge by a cop who cited me for texting while driving (I was actually just taking a picture of the famous bridge sign).

#### Favorite movie?

One you have probably never heard of—"Breaker Morant." It's a 1980 Australian film about a prisoner massacre and subsequent court martial during the

Boer War. Many parallels to Vietnam and the My Lai massacre. I used to be a high school history teacher and I showed this movie in a class I taught about the Vietnam War.

#### Favorite vacation spot?

I went to Greece a couple times in my comparative youth and I don't think you can find a better combination of beauty, weather, and history. My single favorite trip though has to be a six-week cross-country car trip with my wife and kids in 2001. Drove all the way out to California, and all the way back, put 13,000 miles on our Suburban. Six baseball stadiums and eight national parks were among the highlights.

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