

GOODWIN Q+A

WITH DAVE CALLAWAY



Dave Callaway, a partner in Goodwin's Securities + White Collar Litigation Group, joined the firm in May 2019. He spent nearly two decades as a federal prosecutor, including serving as Chief of the Criminal Division for the Northern District of California, as well as a California deputy district attorney, before turning to private practice. He recently sat down to discuss some of the trends he's been seeing in the white collar area along with his passion for reading, tennis, and Spain.

Are there any trends in the white collar space that are of particular interest to you right now?

One thing I've been following lately is the impact of news-chasing government investigations on the question of what constitutes "materiality." Agencies frequently open investigations following news reports—often racing one another to be first out of the gate—and one of the factors they consider, of course, is how significant—how "material"—was the issue a company failed to disclose, fully investigate, or what-have-you. What I find interesting is how the government can take something that might not have seemed particularly important at the time and turn it into A Very Big Deal, simply because they are now investigating it.

I analogize it to the "observer effect" in quantum physics—the principle that you cannot measure something without changing it. A government investigation retroactively amplifies the significance of the conduct being investigated, arguably affecting the calculus of whether it was or was not "material" at the time. There are a number of very public ongoing investigations to which this "observer effect" might be applied.

How have you seen the Trump administration affect the level of enforcement actions?

There has certainly been a downturn in enforcement activity nationwide. It has been particularly noticeable with the SEC, and the DOJ's early focus under Attorney General Sessions was obviously more on immigration and drug cases than on white-collar crimes. I fully expect, however, that my district will soon be bucking that trend: the newly installed United States Attorney for the Northern District of California has created a Corporate Fraud Strike Force whose clear mandate is to

bring more "impact" white collar prosecutions. I don't know about nationwide, but I will be very surprised if we do not see a significant bump in financial cases charged here.

Does any change in regulation or enforcement activity affect the advice you give your clients?

It certainly does if something that was previously allowed is now prohibited, or vice versa—you obviously want to advise your client accordingly. But I don't think we should spend too much time reading tea leaves: "I foresee less regulatory focus in this area, so if you want to play a little fast here or a little loose there, you'll probably be okay." A lawyer's advice should preferably be based on what the statutes and regulations actually say and not on some vague sense of enforcement "trends" or "priorities," as those can change on a dime. On the other hand, our clients are innovators, many of them operating in areas where the rules are not particularly clear, or have yet to be written, and in those cases we will reach out to warn clients of risks that might lie just beyond the bend.

How has your experience as a prosecutor informed your practice as a white-collar defense attorney?

I was a federal prosecutor for 18 years, a deputy district attorney for three, and also spent time as a trial counsel in the U.S. Army JAG Corps in Panama. This experience gives me valuable insight into how prosecutors evaluate corporate and individual liability. For example, having served as a prosecutor helps me gauge how a company's compliance efforts will resonate with the government, even if the company stumbles. That's certainly true in the FCPA context, where companies that have made a real effort to develop and implement strong compliance policies, train people on

them, correct and discipline employees who fail to live up to those standards, and self-report to DOJ in appropriate circumstances when things do go awry—those companies generally end up doing just fine. It's the ones who cut corners, who don't have good policies or whose "policies" are just pieces of paper tucked away in a file cabinet—when those companies screw up, DOJ is unlikely to be impressed by after-the-fact efforts to clean house, which is why our White Collar group takes such a proactive approach to advising clients before there is a specific problem to be addressed.

Did you handle any particularly memorable cases in the tech sphere as a prosecutor?

There were several, but one that stands out was the prosecution of McDowell & Company and its President, Rusty McDowell, for misappropriating part drawings from Applied Materials and using them to manufacture and sell spare parts in competition with Applied. That case went to trial—part of our preparation was to visit one of Applied's "clean rooms" and experience the company's manufacturing processes first hand, which gave me my first opportunity to see how seriously companies in the Silicon Valley take their intellectual property and how hard they must fight to protect it.

What is the best day you ever had as a lawyer?

The day I joined Goodwin, of course! Thankfully, and seriously, there have been many good days; that is why I love this job and I'm not sure I can pick out any particular one. But since I just mentioned the McDowell trial, there was a very gratifying moment at the end of it, after the jury had returned guilty verdicts. Mr. McDowell, whom I had cross-examined rather effectively (if I don't say so myself), came up to me, shook my hand, and congratulated me for doing such "a good and fair" job. That was a classy move on his part. I prided myself as a prosecutor on being prepared and effective, but also on not misusing that prosecutorial power, or being a jerk, and I appreciated receiving that compliment from a defendant whom I had just helped to convict.

What drew you to Goodwin as opposed to other firms?

Goodwin's focus on representing emerging companies was very attractive to me. I enjoy representing emerging companies and individuals, and that is a particular focus of Goodwin's white collar practice, unlike many firms that shy away, especially from individuals, in the hope that they may someday get to represent the company. The strength of Goodwin's white collar practice was also a draw; there is an excellent group already in place and the firm is clearly committed to growing it. Finally, the opportunity to team up

with Grant Fondo, a good friend and former colleague from the U.S. Attorney's office, and help build on the great things he's already doing on the West Coast, was simply too good to pass up.

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

I like to travel, play tennis, cook on the grill, and I'm a pretty devoted reader. I've just started David Foster Wallace's *Infinite Jest*. Before that I read *Rules of Civility*, by Amor Towles, and then his second book, *A Gentleman in Moscow*, which are both fantastic. I am dabbling in a book of essays by William Kittredge and a book about fishing by Tom McGuane called *The Longest Silence*, and am almost done with *The First Global Village: How Portugal Changed the World*. I guess you could say my tastes are eclectic. I used to spend most weekends watching my daughter's softball games—she played from age seven through college—but those days are behind us both.

Favorite vacation spot?

Definitely Spain. I lived in Madrid for a year in college and got to see most of the country, including channeling my inner Hemingway and running with the bulls in Pamplona. I already spoke fluent Spanish when I got there, so I didn't pick up the Spanish "lisp," which was a great relief to my mom's side of the family (she is from El Salvador).

Favorite movie?

The movies I quote from most often are "Fast Times at Ridgemont High," the first "Zoolander," and "Talladega Nights." (Wait, did I just say that out loud?)

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