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Q&A With Kelley Drye's Julian Solotorovsky


Julian Solotorovsky

Law360, New York (November 04, 2010) -- Julian Solotorovsky is a partner in Kelley Drye & Warren LLP's Chicago office and chair of the firm's white collar crime and investigations practice group. With a focus on litigation, he has tried more than 40 jury trials and also has represented clients at U.S. Securities and Exchange Commission hearings. Solotorovsky is a former assistant U.S. attorney for the Northern District of Illinois, who served as deputy chief of special prosecutions and deputy chief of criminal receiving and appeals.

Q: What is the most challenging case you've worked on, and why?

A: The most challenging case was probably U.S. v. David Brown, et al., which is better known as the Caremark case. It was a health care fraud case and I represented an executive of Caremark LLC.

This was one of the first big health care fraud cases to go to trial. This was in 1995, and there was a great deal at stake. My client was a great guy who knew he had not done anything illegal. Caremark had also been indicted, had pled guilty and paid $161 million. Lots of pressure. The trial was in federal court in Minneapolis. I had never taken a health care fraud case to trial. We filed about 35 motions in limine and we lost almost all of them.

Early on, the judge, David Doty, did not give us many favorable rulings, but as the case went on — it lasted about nine weeks — he started seeing what we had to say. The prosecution repeatedly changed its theory of prosecution so we were constantly dealing with a moving target. Judge Doty gave the defendants leave to file lengthy Rule 29 motions for judgment of acquittal and he set aside a full day to argue the motions. The following day, as we came in to start our defense and call our first witness, Judge Doty granted the Rule 29 motions for four of the five defendants including my client.

Q: What accomplishment as an attorney are you most proud of?

A: My work as an assistant U.S. attorney in Chicago, and most particularly, my involvement in Operation Greylord and the prosecution of Judge Reginald Holzer. Operation Greylord was the undercover investigation and prosecution of judges in the Circuit Court of Cook County in the 1980s. Not part of Operation Greylord, Judge Holzer was a chancery judge whom we prosecuted and a jury convicted for extorting money from lawyers and receivers who appeared in his courtroom. He received a lengthy prison term. In Operation Greylord, 92 people, including 17 judges and 48 lawyers were prosecuted and nearly all were convicted.

I have been a lawyer in Chicago for 32 years. During that time I have seen an endless stream of Chicago aldermen, Illinois governors, and city and state officials convicted and incarcerated for public corruption. It does not seem that these prosecutions have had an impact as new prosecutions are regularly occurring for strikingly similar offenses to those which officials have been convicted of time and time again.

Except for Operation Greylord. From what I have observed since the prosecution occurred, almost 25 years ago now, the judicial system in the Circuit Court of Cook County appears to have been scared straight and the allegations and complaints of cases being fixed have largely ended.

Q: What aspects of law in your practice area are in need of reform, and why?

A: Two areas of the law in my practice area are in need of reform:

1) The debarment and suspension provisions of the False Claims Act need to be reviewed and modified. Companies that are indicted under the False Claims Act are not able to risk going to trial because of exclusion and debarment should they be convicted. If they are convicted of a small violation of the False Claims Act, multibillion-dollar health care companies will quickly be faced with bankruptcy if they can no longer do business with Medicare and Medicaid. TAP Pharmaceuticals, Caremark and Novartis are three examples of companies that could not risk going to trial in False Claims Act cases and were forced to pay enormous fines, $875 million for TAP. In each of those cases, company employees were indicted for the same conduct, and in each case the individual defendants were acquitted of all the charges.

2) Electronic discovery is out of control. I have seen cases recently in which companies that are not targets of a grand jury investigation have received subpoenas calling for the production of years of e-mails for dozens of employees. The cost of producing these electronic documents have been enormous and extremely time consuming. The Rules of Criminal Procedure need to be reviewed to figure out how to improve the situation. In addition, more companies that receive burdensome subpoenas will need to litigate the subpoenas and the courts will need to start handing down decisions that give some relief.

Q: Where do you see the next wave of cases in your practice area coming from?

A: The next wave of cases will be an increase in prosecutions for securities fraud and financial fraud. The wave is already underway and a fire has been lit under the SEC. The question is how big will this wave be?

Q: Outside your own firm, name one lawyer who's impressed you and tell us why.

A: I have been blessed to work with many lawyers who have impressed me. If I have to pick one lawyer it is Kevin O'Malley [Greensfelder Hemker & Gale PC] in St. Louis. Kevin is a very experienced lawyer who started his career as a strike force prosecutor in the 1970s. In 2005, we tried a health care fraud case together in the Southern District of Illinois. Kevin was spectacular in the courtroom. He quickly gained the respect and attention of the judge and the jury while doing so in a low-keyed fashion. His crosses were totally effective. Kevin and I argued our Rule 29 motions for acquittal at the close of the government's case and Judge Patrick Murphy granted the motions and dismissed all charges against both defendants.

I would also need to point out that Joe Duffy [Stetler Duffy & Rotert Ltd.] in Chicago and Mitch Ettinger [Skadden Arps Slate Meagher & Flom LLP] in Washington, D.C., have also greatly impressed me.

Q: What advice would you give to a young lawyer interested in getting into your practice area?

A: If you want to be a trial lawyer, and in particular, a white collar crime trial lawyer, I recommend working as an assistant U.S. attorney, preferably in a large city where they are prosecuting complex cases. If you are a young lawyer, it is extremely difficult to get the experience you need to become a first-rate trial lawyer. Today, litigation associates in big firms are able to become partners without having ever tried a case to verdict.

Twenty-five years ago, big firms were willing to handle small cases for lower hourly rates to get their young attorneys into the courtroom to get them valuable experience. Today, very few big firms are willing to do this because of the impact these small cases with low hourly rates will have on their American Lawyer published financial numbers. Big firms now only want to try big cases for high hourly rates. So much is at stake in the few cases that do go to trial that it is almost impossible for young attorneys to play a substantive role. The best way for a young lawyer to get around this to become a prosecutor, preferably at the most challenging level possible.