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Q&A With Morgan Lewis' Eric Sitarchuk

Law360, New York (February 28, 2013, 12:25 PM ET) -- Eric Sitarchuk is a partner in Morgan Lewis & Bockius LLP's Philadelphia office. He co-chairs the firm's white collar litigation and government investigations practice. He has more than 25 years of experience in white collar litigation, including defense of federal criminal and civil cases alleging health care fraud, defense contract fraud, antitrust and securities violations, import/export violations, theft of trade secrets, and a variety of other offenses. He is a fellow of the American College of Trial Lawyers. Previously, Sitarchuk was assistant U.S. Attorney in the Criminal Division of the U.S. Attorney's office in Philadelphia. He also served as special assistant U.S. attorney in the U.S. Attorney's office in Washington, D.C.

Q: What is the most challenging case you have worked on and what made it challenging?

A: It was one I worked on as a prosecutor, the investigation into the conduct of federal law enforcement during and in the aftermath of a deadly incident at Ruby Ridge, Idaho. There, an attempt to affect the arrest of separatist Randy Weaver on gun charges led to the death of a decorated deputy U.S. marshal and of Weaver's wife and young son. The investigation led to the obstruction of justice conviction of an FBI executive.

The case was challenging on multiple levels — the magnitude of the tragedy for both sides; the unavoidable impact the investigation had on the careers of its subjects; disappointment in seeing flaws in law enforcement agencies for which I have such great respect; and the logistical difficulties of conducting an investigation in a politically charged atmosphere, with virtually daily press coverage and a parallel congressional investigation.

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

A: Criminal discovery is in need of reform in white collar and other nonviolent criminal cases. The federal criminal discovery rules are grossly one-sided. The prosecution has virtually unfettered access to fact gathering pre-indictment, as it should. However, the defense's ability to discover and prepare to confront the prosecution's evidence post-indictment is strictly limited. In white collar cases, where the issue is often whether a crime even occurred — which often turns on a careful analysis of what the circumstantial says about criminal intent — the result is a dramatically unfair imbalance in pretrial access to information between the prosecutor and the defense. Such an imbalance is antithetical to the adversary system. Among reforms that should be considered are: giving judges discretion to order pretrial production of Jencks material, liberalizing the Rule 17(c) process for obtaining documentary evidence, and permitting, at the judge's discretion, defense depositions of third-party witnesses.

Q: What is an important issue or case relevant to your practice area and why?

A: An important issue in the field is what I perceive as a growing lack of appreciation of the fact that a rigorous defense is not antithetical to, but is in fact consistent with, both a commitment to internal compliance and full cooperation with a government investigation. Too often, as the result of a variety of pressure points, internal investigations are conducted as a rush to prosecutorial judgment, rather than as a dispassionate and balanced gathering and assessment of evidence. It is not only consistent with, but important to, cooperation with the government: not just to help the government access the information it needs, but also to demonstrate to the government the weaknesses in its evidence and flaws in its theories. Seasoned prosecutors appreciate and understand this. When defense attorneys prosecute without defending, too often the results for their clients are unfortunate, unnecessary, and more severe than they need to be.

Q: Outside your own firm, name an attorney in your field who has impressed you and explain why.

A: Philadelphia lawyer Donald J. Goldberg, who passed away this past year. Don was the consummate white collar defense attorney. He was as strong on the facts as he was on the law, and as brilliant on his feet as he was on the papers. Over his career, he tried literally hundreds of criminal jury trials to verdict. He knew how to put the government through its paces in front of a jury. But he also knew how to make deals better than any lawyer I have ever seen and how to draw out the best of his clients at sentencing. Don also understood that, any time he stood with a client in a federal criminal courtroom, he had already lost 95 percent of the battle for the client's reputation and peace of mind. He was thus a devoted master of the art of obtaining declinations.

Q: What is a mistake you made early in your career and what did you learn from it?

A: As an associate, I second-chaired the defense of a three-and-one-half month long federal criminal fraud trial against a major defense contractor. In cross-examining my first unfriendly witness, at the close of what was up until them a productive cross-examination, I got full of myself and dramatically asked the "and therefore" concluding question. The answer was so bad that the prosecution on redirect stood up, repeated the answer, and sat back down. At that moment, I received a career long lesson not only in cross-examination, but also in the dangers of hubris in the practice of law.

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