

Q&A With Sheppard Mullin's Chuck Kreindler

Law360, New York (April 22, 2013, 1:56 PM ET) -- Charles L. Kreindler is a partner in Sheppard Mullin Richter & Hampton LLP's Los Angeles office and leader of the firm's white collar crime team. Kreindler spent eight years as an assistant United States attorney in Los Angeles, where he became a supervisor in the Criminal Division. He has been in private practice for the past 14 years, during which time he has represented and defended companies and individuals in a variety of federal and state investigations and prosecutions, including health care fraud, wire fraud, money laundering, smuggling, economic espionage and tax evasion.

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

A: A fair percentage of my practice is representing individuals. While it may seem cliché, virtually all of those cases are extremely challenging given the enormous stakes involved. For example, I recently completed a case involving the alleged smuggling of over \$50 million in mislabeled fish. My client was a 65-year-old businessman who had lived a very law-abiding life and had a wife, children and grandchildren as well as a thriving business with dozens of employees. After a five-year battle, we ended up negotiating a misdemeanor plea and capped his prison exposure to two years. The court ended up sentencing him to probation. Like most criminal cases, any mistakes could have resulted in a disastrous ending. That is both challenging and taxing.

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

A: One of the key advantages given to criminal defendants is the right to invoke the protections of the Fifth Amendment and not being compelled to give any potentially incriminating statements. Unfortunately, there are certain consequences to taking the Fifth, including having an adverse inference drawn against you in parallel civil proceedings. Many times this adverse inference makes it very difficult or impossible to defend against civil claims raised by “noncriminal” federal agencies such as the U.S. Securities and Exchange Commission and the Federal Trade Commission. The penalties that can be imposed in those civil cases can be devastating. It creates a Hobson’s choice — protect yourself on the criminal side, but expose yourself on the civil side, or defend the civil actions and expose yourself criminally. The invocation of a constitutional right should be honored and protected in both criminal and civil venues.

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

A: The recent suicide of 26-year-old Aaron Swartz, who was being federally prosecuted for illegally downloading academic journals through an open connection at MIT, was hopefully a stark reminder to prosecutors to be fair and measured when using their enormous prosecutorial power. It is an unfortunate reality that many prosecutors (including supervisors) just don't appear to be aware of how harsh and onerous federal investigations and the sentencing guidelines can be and how destructive those penalties are to both the defendant and his or her loved ones.

The prosecutor in that case was attempting to put Swartz away for more than 10 years — even though Swartz gained absolutely nothing from his activity and the victim did not want the case prosecuted at all. This is not an isolated incident. Many times, white collar targets are investigated and prosecuted for victimless offenses that carry draconian penalties.

I am currently defending an 80-year-old, first-time offender who worked with a company that was purchasing honey. The honey was allegedly transshipped from China to avoid “anti-dumping” duties. My client made \$5,000 per month as a consultant for the company and never purchased any honey that wasn't already released by both Customs and the U.S. Food and Drug Administration. No matter, he is being held responsible for over \$30 million in duty avoidance, a guidelines sentence of six to seven years, and the loss of all the money he and his wife have carefully saved over the past 60 years.

I understand that prosecutors have a job to do, but they should be careful to exercise their discretion when called for. There is no question in my mind that such a case, if prosecuted at all, should be treated with measure and compassion, not a meat cleaver.

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

A: One of the great benefits of working white collar cases is getting to work with the best trial lawyers in the country. Richie Marmaro (Skadden) and Brian Hennigan (Irell) come immediately to mind. Both are former federal prosecutors who have a keen and early sense of where the prosecution is heading with a case and prepare their defenses accordingly. In trial, they both have a tremendous ability to connect with juries — Richie with his absolute command of the courtroom, and Brian with his easygoing charm.

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

A: My first trial as a federal prosecutor was a theft of mail case. The defendant was literally caught with his hand inside a mailbox holding various letters being sent to financial institutions. I thought it was a slam dunk. The defense however came up with a theory that the defendant had changed his mind about mailing a certain letter so he was trying to find it inside of the mailbox. Although we were able to show that no such letter was contained in the mailbox, the jury acquitted him. It was at that point that I realized what an enormous burden it is to prove someone guilty beyond a reasonable doubt and how doubt can be created in almost any circumstance. That experience has made me sharpen my focus on the evidence that can both convict and acquit a criminal defendant.

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