

What's On Tap For Public Corruption Prosecutions In 2024

By **Kenneth Notter** (January 17, 2024)

Few cases capture the popular imagination more than public corruption prosecutions.

That certainly proved true in 2023, which saw former Tallahassee, Florida, Mayor Andrew Gillum defeat charges of lying to the FBI, former Ohio House Speaker Larry Householder sentenced to 20 years in prison for a racketeering conspiracy, and a former FBI director of counterintelligence plead guilty to laundering money from a Russian oligarch.



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All signs point toward another year of blockbuster public corruption cases in 2024, with trials already scheduled against former President Donald Trump; Sen. Bob Menendez, D-N.J.; and other high-profile current and former public officials.

These cases, beyond capturing headlines, reveal larger trends in public corruption prosecutions and hold valuable lessons for defense counsel.

Cases to Watch

Trump Federal Election Interference Case

Though the federal election interference case against Trump may lack the classic quid pro quo that defines many public corruption cases, the allegations that Trump pressured then-Vice President Mike Pence and other elected officials to overturn the 2020 election certainly brings the case within the "public corruption" heading.[1]

For that alleged scheme, Trump faces a March trial on four felony counts, including conspiracy to defraud the U.S. and obstruction of an official proceeding.

Menendez

Like Trump, Menendez is set to face trial in the first half of 2024. He is charged with conspiring to commit bribery, honest services wire fraud and extortion, as well as conspiring to act as a foreign agent for Egypt.[2]

The charges arise from allegations that Menendez accepted gold bars, cash and a luxury car in exchange for influencing U.S. policy to benefit Egypt and attempting to intervene in pending criminal cases against associates.

Former Illinois House Speaker

With his former chief of staff already awaiting sentencing, Michael Madigan, the former speaker of the Illinois House of Representatives, will go to trial on racketeering, bribery, conspiracy, wire fraud and other charges in October.[3]

The government alleges that Madigan ran a decadelong criminal enterprise to funnel payments from AT&T Illinois, Commonwealth Edison Co. and other companies to Madigan's political allies.

Associates of NYC Mayor

Manhattan District Attorney Alvin Bragg has indicted six defendants, including a former New York Police Department inspector, for allegedly running a straw-donor scheme — using one person's name to disguise a donation by someone else — that pumped tens of thousands of dollars into New York City Mayor Eric Adams' 2021 campaign.[4]

And federal prosecutors are reportedly investigating potential illegal donations by the Turkish government to Adams' 2021 campaign.

Former Rep. George Santos

George Santos recently became just the sixth member of the U.S. House of Representatives in history to be expelled from Congress. And he will head to trial in September on 23 counts, including conspiracy and wire fraud, for alleged schemes to steal money from campaign donors, obtain fraudulent unemployment benefits and falsify congressional financial disclosures.[5]

Former U.S. Ambassador

The allegations against the former U.S. ambassador to Bolivia, Manuel Rocha, seem straight from a spy novel.[6] Accused of spying for the Cuban government for over 40 years, Rocha was arrested after meeting with an undercover FBI agent posing as a member of the Cuban intelligence community.

He is charged with acting as an illegal agent of a foreign government, wire fraud, lying to investigators and other crimes.

Trends and Implications

It is no surprise that three of the six cases highlighted above involve allegations of foreign influence in the U.S. political system. Those cases have been an enforcement priority for the U.S. Department of Justice since 2016.

In just the past few years, the government has prosecuted dozens of schemes by agents of foreign powers to interfere in U.S. elections or influence elected officials.[7] That trend shows no sign of stopping in 2024.

The coming year is poised to continue another trend — the U.S. Supreme Court's growing involvement in public corruption cases. Already, the court has agreed to hear a case about the proper interpretation of the obstruction of justice statute at the center of the federal election interference case against Trump.[8]

The court also granted certiorari to decide whether a federal bribery statute applies to so-called gratuities — payments in recognition of acts that a public official has already taken.[9]

And the court may eventually decide whether former presidents have absolute immunity from federal prosecution for crimes committed while in office.

Special counsel Jack Smith recently took the unusual step of petitioning the Supreme Court to decide that question before the U.S. Court of Appeals for the District of Columbia

Circuit reviewed the U.S. District Court for the District of Columbia's decision rejecting Trump's claims of absolute immunity.[10]

Though the court denied the request to review the issue before the lower appeals court weighed in, it is likely that the Supreme Court will consider it down the line.

The trials set for 2024 are likely to test the boundaries of the Supreme Court's recent decisions. Last term, the court rejected the government's theory that a private citizen who had recently served in government could be prosecuted for honest services fraud.[11]

The court also held that a scheme that merely deprives another person of potentially valuable information is not punishable under the federal property fraud statutes, which require a deprivation of property.[12]

Though the cases to watch in 2024 do not necessarily implicate those decisions, the courts overseeing the cases will surely take note of the Supreme Court's repeated instruction to narrowly interpret federal criminal statutes and to be skeptical of overbroad prosecution theories.

That may influence the legal instructions that the courts give jurors on the elements of the crimes, particularly in the Menendez, Madigan, Santos and Rocha cases where the government has charged fraud.

For defense counsel, the upcoming trials will offer invaluable lessons. Nearly all the trials feature dramatic and, at least superficially, damning evidence, like gold bars in safes in the Menendez case, recorded conversations with informants in the Madigan and Rocha cases, and seemingly blatant lies in the Santos case.

The trials may turn on how effectively the defense grapples with or counters those "bad facts" and tells the defendant's story.

Defense counsel tracking the cases can borrow strategies that work and learn from the strategies that do not. Even where the facts differ, overarching strategies for confronting bad facts, advancing a defendant's narrative through cross-examination, and exploiting holes in the prosecution's evidence or investigation will apply in any case.

And the upcoming public corruption trials will be prime opportunities to vicariously test different strategies.

Conclusion

Whatever else 2024 may hold, it is sure to feature headline-grabbing public corruption cases filled with invaluable lessons for defense counsel.

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Disclosure: Notter represented the National Association of Criminal Defense Lawyers as amicus curiae in support of petitioners in Ciminelli and Percoco.

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[1] Indictment, *United States v. Trump*, No. 1:23-cr-257 (D.D.C. Aug. 1, 2023), Dkt. 1.

[2] Superseding Indictment, *United States v. Menendez*, No. 1:23-cr-490 (S.D.N.Y. Oct. 12, 2023), Dkt. 65.

[3] Superseding Indictment, *United States v. Madigan*, No. 1:22-cr-115 (N.D. Ill. Oct. 12, 2022), Dkt. 37.

[4] Indictment, *New York v. Montgomery*, IND-72232-23 (N.Y. Sup. Ct. N.Y. Cnty. July 7, 2023).

[5] Superseding Indictment, *United States v. Santos*, 2:23-cr-197 (E.D.N.Y. Oct. 10, 2023), Dkt. 50.

[6] Indictment, *United States v. Rocha*, No. 1:23-cr-20464 (S.D. Fla. Dec. 5, 2023), Dkt. 6.

[7] See, e.g., Dep't of Justice, Recent Cases, <https://www.justice.gov/nsd-fara/recent-cases>.

[8] 18 U.S.C. §1512(c); *Fischer v. United States*, No. 23-5572 (U.S.).

[9] 18 U.S.C. § 666; *Snyder v. United States*, No. 23-108 (U.S.).

[10] Gov't Pet. for Certiorari, *United States v. Trump*, No. 23-624 (U.S. Dec. 11, 2023).

[11] *Percoco v. United States*, 143 S. Ct. 1130 (2023).

[12] *Ciminelli v. United States*, 143 S. Ct. 1121 (2023).