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Q&A With Molo Lamken's Justin Shur

Law360, New York (June 11, 2013, 1:08 PM ET) -- Justin Shur is a partner in Molo Lamken LLP's Washington, D.C., and New York offices. He specializes in representing companies and individuals in white collar criminal and regulatory enforcement matters, complex civil litigation, and internal corporate investigations. Shur previously was deputy chief of the U.S. Department of Justice's Public Integrity Section of the Criminal Division, where he oversaw and handled fraud and corruption investigations and prosecutions across the country. Earlier in his career, Shur served as an assistant district attorney in Manhattan.

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

A: I have had several challenging cases as a defense lawyer, but there are a series of cases from my time at the Justice Department that were particularly difficult. I investigated and prosecuted a number of public corruption cases relating to the activities of former lobbyist Jack Abramoff. While corruption cases in general can pose significant challenges as they are often complex and high-profile, these cases posed a unique evidentiary obstacle as they involved allegations of bribery on Capitol Hill and thus often triggered the Constitution's Speech or Debate Clause. Under the clause, the prosecution is essentially forbidden from introducing evidence of "legislative acts" in a case against a member of Congress.

For instance, in a bribery case where a congressman is alleged to have accepted a bribe in exchange for a vote on a bill, prosecutors cannot introduce at trial evidence of how the member voted because it is a legislative act and thus protected "speech or debate." This evidentiary rule can make these cases extremely challenging. It's an additional hurdle that prosecutors don't face in other white collar cases, one that required me, and my former colleagues, to be resourceful and think outside the box.

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

A: I believe the government should provide additional guidance regarding the benefits a company may receive if it voluntary discloses a Foreign Corrupt Practices Act violation. The government has repeatedly encouraged companies to self-report based on assurances that it will take a more lenient approach to prosecutions of violations that are voluntarily disclosed. Indeed, the FCPA Resource Guide issued by the DOJ and the U.S. Securities and Exchange Commission last year states that the government places a "high premium on self-reporting." But the government has stopped short of quantifying the benefits of voluntary disclosure.

The reality is that there may be real benefits to a company that self-reports — whether it's obtaining a nonprosecution or deferred prosecution agreement, a lower fine, or a declination. The dilemma, however, is that when deciding whether to disclose, the potential benefit a company can expect is not entirely clear and thus it is an extremely difficult decision.

If the government, however, were to provide more concrete standards regarding these benefits it could be a "win-win" for companies and the government. Companies would be able to make better informed decisions and more than likely would be willing to come forward more often. In exchange, the government would learn and discover violations that might otherwise not come to its attention.

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

A: One case that I have been following closely is the ongoing litigation between the SEC and Deloitte. The SEC sued Deloitte in federal court seeking to compel the company to produce documents relating to audit services it provided to a Chinese technology company suspected of fraud. Deloitte, however, has argued that it cannot comply with the SEC subpoena because removing the requested documents from China would violate Chinese laws, which place stringent controls on the disclosure and production of documents to foreign countries.

The outcome of this case could have significant implications for clients that conduct business or have operations overseas as many foreign countries have similar laws. As a result, companies, like Deloitte, that receive a government subpoena directed at records located abroad find themselves in a "catch-22" with real legal and practical problems. They must decide whether to produce the requested documents, while facing the risk of penalties under foreign law, or to withhold the requested documents, while facing possible contempt liability in the U.S.

Although courts have generally found the assertion of foreign law to be an insufficient justification for subpoena noncompliance, there is still uncertainty in this area of the law. As it has become increasingly common for U.S. enforcement investigations to have a cross-border element, I anticipate this issue will continue to evolve beginning with the court's anticipated ruling in the case against Deloitte.

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

A: Lanny Breuer, former assistant attorney general for the Criminal Division of DOJ and current partner at Covington & Burling LLP. I was fortunate to have the opportunity to work under Lanny while at the Justice Department. What impressed me most about Lanny was his tireless, infectious enthusiasm for the Criminal Division and its mission and his commitment to the highest ethical standards. While he demanded that his prosecutors follow the evidence no matter where it led, he always placed the highest value on doing what was right and fair in every case.

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

A: One mistake I made early in my career was failing to appreciate the vital role storytelling plays at trial. I learned this lesson as a rookie prosecutor while preparing an opening statement for my first jury trial. I drafted what I thought was a comprehensive witness-by-witness summary of the evidence. But when I showed my draft opening to a senior prosecutor in the office, he looked at me and said: Don't tell me details. Tell me a story. From this one experience, I learned that effective advocacy requires more than just mastering the facts. You need to convey those facts through a compelling story. We all connect with stories. Stories have a unique power to move people's hearts and minds. A well-told story allows you to convey facts in a way that makes them more memorable and meaningful. Learning early on how to find a compelling story in your case and effectively tell it was a valuable lesson, one that I have carried with me ever since.

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