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One-on-One with Michael J. Engle Chair, White-Collar Defense, Internal Investigations & Corporate Compliance

Michael Engle focuses his practice on white-collar criminal defense, internal investigations and corporate compliance. He represents clients in state and federal criminal cases, complex white-collar defense matters, internal or parallel investigations, select civil litigation matters, as well as the representation of attorneys and other professionals in disciplinary/licensing matters. His clients include individuals, professionals, public officials, corporations, closely held companies and other organizations.

How did you get started in criminal law and ultimately representing white-collar defendants?

Well, I came from a family that was very law enforcement-oriented. However, at the end of my college career, an unusual event made me realize how important it is for attorneys to defend the constitutional rights of our citizens. This became something I was acutely aware of after serving an internship with the FBI, where I was unknowingly placed with an agent who was under investigation for espionage. To make a very long story short, I learned from that experience that at times our government and its various agencies will use citizens for their own ends, and that there must be lawyers who serve to ensure that our government does not trample on the rights of its citizens. That experience led me to explore criminal defense work, and over the years I have transitioned from a traditional state court “blue-collar” criminal practice to a far more heavily weighted federal and white-collar practice. Engaging in white-collar criminal defense has just been part of a natural progression from my early days as a state court criminal defense lawyer. I have enjoyed taking on the role of a white-collar defense attorney along with all the complex investigations and intricate defense cases that naturally flow from such a practice.

Can you talk a little about your experience with securities litigation and investigations?

I have handled numerous investigations and white-collar defense matters that have been tied to the securities industry over the years. I have participated in internal investigations for businesses in the securities industry in order to ascertain whether fraud, stock manipulation, insider trading, or other criminal and/or securities violations have occurred. I’ve also defended individuals accused of insider trading, participation in “pump and dump” schemes, options backdating, market manipulation schemes, misappropriation of client funds and Ponzi schemes. Over the years, investigations and prosecutions in securities-related matters have grown because of the proliferation of government enforcement actions related to the securities and financial services industries. I have had experience with matters involving the SEC, FINRA, CFTC and, of course, the DOJ. However, now I am in an even better

position to service the needs of clients in the securities industry by partnering with the many talented securities litigation and enforcement attorneys at Stradley Ronon.

What are the most significant or recurrent securities-related issues/problems in the white-collar practice area?

Obviously, there can be significant overlap between the securities enforcement world and the white-collar defense community. Government enforcement actions, if not handled properly and with an eye toward the potential criminal implications, can develop into full-scale criminal investigations by either the DOJ or various state attorneys general. Regulatory subpoenas can eventually lead to grand jury subpoenas. The inability of enforcement defense counsel and white-collar defense counsel to work together as a team during the regulatory investigation phase can be fatal to the client's interests in avoiding the professional taint of a criminal investigation or, worse yet, a criminal prosecution. One of the reasons I viewed Stradley Ronon as a perfect fit for my practice was the existence of a top-flight securities litigation and enforcement team that I could partner with on government enforcement matters. Together we can provide clients with a full spectrum of services in response to securities-related enforcement matters and investigations.

How has white-collar litigation changed over the years you've been in practice, and what are the most pressing concerns in recent years?

The most significant change came when the U.S. Supreme Court eventually ruled that the Federal Sentencing Guidelines were not mandatory. That changed everything about federal sentencing practice and the exposure faced by clients in white-collar matters. Since then, white-collar defense attorneys have sought greater reform in how financial fraud loss is calculated and how the sentencing guidelines ascribe punishment for such conduct. The American Bar Association even promulgated what have become known as the "shadow guidelines" in an effort to demonstrate how sentencing penalties are inflated, especially in cases involving no actual financial loss. Sentencing considerations are always a pressing concern for a white-collar defense attorney given that the loss of liberty, reputation and professional licensing are at issue in any sentencing proceeding.

What are the most challenging aspects of this type of litigation?

Unlike some other types of criminal cases, white-collar matters require the attorney to always remain focused on the damage to reputation for the business or professional being represented. The ability to help the client avoid charges in



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the first place is probably the most challenging aspect of this work. Defending a white-collar matter at trial involves the same fundamental process as does any other criminal defense trial; however, for white-collar clients, especially those in the financial and securities industries, the ability to obtain a declination of prosecution or deferred prosecution agreement is where the real battle is won and lost. This reality only serves to highlight the importance of a solid internal investigation, which is absolutely critical to the success of the representation. Pre-indictment investigation and coordination with counsel on the enforcement side of an issue is typically a key to obtaining the desired result for the client.

What types of internal investigations have you been involved in, and what are the biggest challenges?

Internal investigations are a large part of any white-collar practice, and I have been fortunate to participate in a variety of such investigations touching on many industries, including securities and finance, health care, public corruption and others. Investigations can be complex and challenging for a variety of reasons, especially in the securities area. A good white-collar investigator needs to conduct a swift yet thorough review of volumes of critical documents, email correspondence, and company policies and procedures. The investigation team also must conduct delicate interviews of employees, officers, directors and even in-house counsel in an effort to ascertain what transpired, if there is a problem, how to approach fixing said problem and guiding the company in developing a compliance program to avoid any such problem in the future. All of this must be done in a timely and cost-effective manner, which also makes certain to avoid substantial disruption to the client's normal business activities. Ultimately, internal investigations pose the challenge of counseling a client faced with a criminal or regulatory violation on how to approach disclosure concerns and, in many instances, how to create an effective strategy for simultaneously confronting allegations of wrongdoing that can be fatal to the client's reputation in its given industry.

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

I was once tasked by a court with defending a young man who was charged in a conspiracy to defraud the IRS in an amount exceeding \$10 million dollars. The client was the son of the CEO and founder of a company that the government claimed was marketing abusive tax shelters across the United States. My client lived in Southern California and the case was being prosecuted in federal district court in Philadelphia. It was a complex fraud case, and one where there was seemingly little hope of success at trial for the co-defendants. Finding a way to separate the client from his father and the other defendants was a big challenge. It is always frightening to defend a client one believes to be innocent, and in this case I was certain that my 26-year-old client with no prior criminal contacts was just that: innocent. In addition to having my young client's freedom in my hands, I also had him living in my home throughout the month-long trial. While it is unusual to represent an indigent client in a white-collar fraud case, this client's father decided to spend his money on multiple lawyers for himself and none for his child. Having no place to reside in Philadelphia and insufficient financial resources to pay for a hotel, the young man spent every hour of every day for about a month with me. This only made the representation more challenging. Fortunately, in the end the jury saw things our way and acquitted my client, who was the only person associated with this alleged conspiracy to be found not guilty.

What are some of the trends you see in this practice area?

I believe that government regulatory enforcement will continue to be a catalyst for most white-collar investigations,

particularly in the financial and securities industries. Despite the change in administration in Washington, D.C., the various regulatory agencies and the DOJ will continue to pursue avenues of enforcement and investigation designed to ferret out fraud, especially when it is directed at the government itself. Most people in government who monitor the financial markets want to make sure that we don't see another Great Recession. Therefore, government oversight and regulation will persist, which naturally gives rise to enforcement actions and, in some cases, criminal prosecutions.

Can you talk a little about your role at Stradley Ronon?

I am a member of the firm's securities litigation and enforcement practice group, and I am working to develop an expanded white-collar defense practice here as well. I was recently designated as the chair of Stradley's growing white-collar defense, internal investigations & corporate compliance group. My goal is to broaden our team so that we can continue to work in tandem with the many talented attorneys we have across a variety of industries and practices areas, including environmental law, health care, life sciences, banking, tax, financial services litigation, investment management and, of course, securities. There is significant crossover between a white-collar practice and many of the other services we provide our clients at Stradley Ronon. Our ability to serve our clients' needs when a government enforcement or criminal investigation is looming makes Stradley a stronger firm. I look forward to building relationships both inside and outside our firm that will lead to our enhanced presence in the white-collar arena.

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