

The Biggest White Collar Cases Of 2019

By **Jody Godoy**

Law360 (December 19, 2019, 11:02 AM EST) -- From men on the periphery of a presidential scandal to rich parents bribing their kids' way into college, 2019 was rife with headline-grabbing white collar cases, even while prosecutors suffered defeat in some of their most complicated fraud trials.

Here, Law360 looks back at a few of the biggest white collar rulings of 2019.

In With a Bang, Out With a Whimper

Several complex, high-profile financial fraud cases ended in acquittals by judges or juries in 2019, raising questions about fraud cases dealing with sophisticated markets and transactions. While some defense attorneys think the losses indicate a rejection of prosecutorial overreach, others view the rare losing streak as an indicator prosecutors aren't playing it safe.

Just this month, a team of prosecutors from across the U.S. Department of Justice had a jury **reject their theories** at the \$1 billion securities fraud trial of Jean Boustani. The complex case theory was that investors in Mozambican sovereign debt were defrauded by not being told that Credit Suisse and Russian bank VTB won the country's loan business through bribes. Boustani, an executive at shipping services firm Privinvest, took the stand and admitted to bribery but denied defrauding investors.

In October, a Brooklyn federal jury acquitted three former executives at hedge fund Platinum Partners on charges of defrauding investors by concealing cash flow problems at their funds. A judge **also overturned** a guilty verdict on other charges for chief investment officer David Levy and granted Platinum founder Mark Nordlicht a new trial, saying evidence of criminal intent was lacking.

In March, a California federal judge **made a bold move** to acquit former Barclays trader Robert Bogucki at trial without sending the case to the jury. Prosecutors from the DOJ's Fraud Section had sought to convict Bogucki of frontrunning a foreign currency options transaction for Barclays' client HP in order to make more money for the bank at HP's expense. The judge found that such conduct "violated no clear rule or regulation."

And the long-running, heavily litigated Fraud Section case against former Libor derivatives traders Matthew Connolly and Gavin Black ended in **no jail time** for either defendant. Along the way, the judge criticized the government and admonished prosecutors for using Deutsche Bank's lawyers at Paul Weiss Rifkind Wharton & Garrison LLP as government investigators.

The Connolly and Platinum cases are still subject to appeal.

Considered together, they show courts reacting where cases are more gray than black and white, said Sean Hecker of Kaplan Hecker & Fink LLP, who defended Bogucki.

"They are cases where I think judges and juries are finding the government overreached," Hecker said. "Either in terms of how they conducted the investigations or in the conduct they are attempting to police where the markets involved were unregulated or the rules weren't clear, or at the end of the day it doesn't feel like it should be the U.S. government that is the one pursuing enforcement actions."

On the other hand, Peter W. Baldwin, a partner at Drinker Biddle & Reath LLP who left the Brooklyn U.S. attorney's office last year after a decade as a prosecutor, sees them as evidence that prosecutors are not balking at difficult cases.

"If you are going to do the tough cases, you are not going to win them all. They are tough for a reason," Baldwin said.

The cases are U.S. v. Boustani et al., case number 1:18-cr-00681 and U.S. v. Nordlicht et al., case number 1:16-cr-00640, in the U.S. District Court for the Eastern District of New York, U.S. v. Bogucki, case number 3:18-cr-00021, in the U.S. District Court for the Northern District of California and U.S. v. Connolly et al., case number 1:16-cr-00370, in the U.S. District Court for the Southern District of New York.

Prosecuting the Rich and Powerful

One of the biggest cases of 2019 was one nobody expected: the March indictment of dozens of parents and university coaches for their parts in a national scheme to trick colleges into admitting students on false pretenses.

Dubbed Operation Varsity Blues, **the case** took aim at a scheme orchestrated by admitted mastermind William "Rick" Singer involving cheating on tests and creating fake athletic achievements. The well-heeled parents who allegedly paid Singer to help their kids get admitted to top schools included former Willkie Farr & Gallagher LLP co-chair Gordon Caplan, Hollywood actresses, private equity investors and executives. Some, including Caplan and Singer, have pled guilty, while others are fighting the charges.

The case put the world of higher education on notice and prompted universities to consider whether their own admissions processes, sports programs and donor policies are airtight, said Ilene Jaroslaw of Phillips Nizer LLP.

"If universities are wise, they will find this stuff before the government does," Jaroslaw said. "The smart thing to do in terms of minimizing reputation risk, is to bring in people to do an independent investigation, see if there is a problem and fix it."

The case was one of several that seemed to illustrate the maxim that nobody is above the law.

After outcry over a decade-old non-prosecution deal for Jeffrey Epstein, federal prosecutors in Manhattan **charged the wealthy financier** with trafficking underage girls. Epstein died by suicide in federal detention, leading to charges against guards who allegedly failed to check on him, and federal prosecutors **continue investigating** others who may have been a part of the alleged trafficking.

Varsity Blues' Caplan wasn't the only big legal name caught up in a criminal scandal this year. Legal provocateur and celebrity lawyer Michael Avenatti was slapped with three separate cases variously alleging he stole money from multiple clients and used another client's intel to try to extort millions from Nike. He **pled not guilty** in each case.

For their part, some courts renounced better treatment for wealthy defendants this year. In a significant ruling, the Second Circuit **put the kibosh** on rich defendants remaining at home instead of in pretrial detention simply because they can afford to pay for private security.

The cases are U.S. v. Sidoo et al., case number 1:19-cr-10080, in U.S. District Court for the District of Massachusetts, U.S. v. Epstein, case number 1:19-cr-00490 and U.S. v. Avenatti, case number 1:19-cr-00373, in the U.S. District Court for the Southern District of New York and U.S. v. Boustani, case number 19-1018, in the U.S. Court of Appeals for the Second Circuit.

FCPA Enforcement Hits High Watermark

This year set a new high watermark for Foreign Corrupt Practices Act enforcement. Corporate FCPA settlements brought in a record \$1.6 billion dollars, and the DOJ's FCPA Unit charged 34 individuals, more than in any previous year.

The record in penalties can largely be attributed to high dollar settlements with Ericsson and Mobile TeleSystems PJSC over separate allegations they bribed foreign officials to win government contracts. Ericsson paid a **\$1 billion settlement** and MTS paid **\$850 million**.

This year also saw the **resolution** of the long-outstanding Walmart Inc. investigation, in which the retailer admitted failing to ensure subsidiaries in Brazil, China, India and Mexico had adequate anti-corruption programs.

Derek Cohen, a partner at Goodwin Procter LLP, said that continued enforcement in the FCPA area was an exception to the sharp decline in white collar cases reported by Syracuse University.

"They sort of buck the trend of what the DOJ has been doing with white collar cases in general," Cohen said. "So the fact that you are seeing a more robust enforcement in the FCPA area is noteworthy in and of itself."

Perhaps the most highly anticipated FCPA trial was that of former Alstom SA executive Lawrence Hoskins. After years of litigation over whether Hoskins could be an "agent" of one of the parent company's subsidiaries, a jury ultimately decided that he was one when hiring consultants to bribe Indonesian officials and **convicted him** on 11 counts. The trial judge is now considering post-trial motions.

The case is U.S. v. Hoskins, case number 3:12-cr-00238, in the U.S. District Court for the District of Connecticut, among others.

Cracking Down on Foreign Influence

Foreign interference in U.S. politics and elections has been a focus area for the DOJ over the past few years. While there were previously high-profile guilty pleas, 2019 saw two connected individuals face trial for alleged failures to register work for foreign governments as required by the Foreign Agents Registration Act.

Prosecutors' efforts met with skepticism in the courts. Former Skadden Arps Slate Meagher & Flom LLP partner Gregory Craig saw a FARA-related charge thrown out ahead of a trial where he was **ultimately acquitted**. And Bijan Rafiekian, a former business partner of ex-national security adviser Michael Flynn, was convicted but saw those **convictions vacated** by the trial judge. The government has appealed the ruling.

Tessa Capeloto of Wiley Rein LLP said that while mixed trial results may give prosecutors temporary pause, they are still "just the start" of an effort begun a couple years ago to aggressively enforce FARA.

"I think we are going to continue to see criminal prosecutions for willful violations. I don't think this is going to die down anytime soon," Capeloto said.

This year also saw multiple cases alleging campaign finance violations, some of them involving straw donors who allegedly funneled foreign cash into U.S. elections.

On that front, the biggest ongoing case is in Manhattan against Lev Parnas and Igor Fruman, associates of President Donald Trump's personal lawyer Rudy Giuliani. The pair have **denied allegations** of funneling Russian money into U.S. elections.

Another case brought in D.C. illustrated how foreign corruption can have effects in the U.S. Prosecutors allege that Malaysian financier Jho Low **channeled cash** embezzled from the country's sovereign wealth fund into President Barack Obama's 2012 reelection campaign via former Fugees member Pras Michel.

The cases are U.S. v. Parnas et al., case number 1:19-cr-00725, in U.S. District Court for the Southern District of New York, U.S. v. Craig, case number 1:19-cr-00125, U.S. v. Rafiekian et al., case number 1:18-cr-00457, and U.S. v. Michel et al., case number 1:19-cr-00148, in U.S. District Court for the District of Columbia.

--Editing by Michael Watanabe.