

Litigator of the Week: When the Feds Went Too Far, This Willkie Lawyer Hit Back

By Colby Hamilton

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For a criminal defense lawyer, there's no better feeling than winning exoneration for a deserving client.

Just ask Willkie Farr & Gallagher partner Michael Schachter.

On Thursday, the U.S. Court of Appeals for the Second Circuit handed him a huge victory over the Justice Department. The panel tossed the entire case against his client on Fifth Amendment grounds in the first criminal appeal stemming from manipulation of the benchmark London Interbank Offered Rate, or LIBOR.

Schachter represented Anthony Allen, a U.K.-based trader convicted in 2015 on fraud and conspiracy charges for his role in the scandal. He also argued on appeal for co-defendant Anthony Conti, another U.K. trader.

Speaking on the phone from London, struggling with a delay and a bad connection, Schachter stressed how important the decision is—not just in legal terms, but in professional and human terms as well.

After the order came down from the appellate court, he said a colleague in the bar reached out to him—someone who had also seen his client ultimately exonerated, who knew what it was like to live through the experience as an attorney.

“He just expressed how happy and relieved he was sure our client was, and that we are,” he said. That, for Schachter, is what was most important for him about the decision.



Michael S. Schachter.

“I think that there is no greater achievement for a criminal defense lawyer than to remove the stress that a government investigation and charges places on the shoulders of a client and his family,” he said. “It’s hard to imagine, for me, ever having a greater professional experience than to be able to deliver that news.”

It was a stress that Schachter, who served in the U.S. Attorney’s Office for the Southern District of New York before joining Willkie in 2005, said he tried from the outset to keep from ever being realized. He “implored” the government not to bring charges, and not just because the evidence was weak. He argued it was wrong to bring charges against U.K. nationals involved in a U.K.-based event, working for Dutch-based Rabobank, in the midst of an active investigation by U.K. regulators.

“There may be circumstances where there’s a crime that carries a global harm and there’s no other

governmental authority that's addressing the problem, and the Justice Department may feel it necessary to step into the breach," he said. "That wasn't this case."

Currently the co-chair of the firm's white collar defense practice group, Schachter's track record handling high-profile white collar cases goes back to his days as a federal prosecutor. There, he was part of the team that secured a guilty verdict against Martha Stewart and her broker. Later, as a defense attorney, Schachter battled his former office in the criminal and Securities and Exchange Commission pursuits of SAC Capital and its CEO Steven Cohen, and represented the co-defendant in the federal fraud case against the media mogul Conrad Black, which eventually went to the U.S. Supreme Court.

Even with his own experience, it was "unbelievably exciting" (not to mention validating) to have Second Circuit panel member Judge José Cabranes throw what amounted to judicial shade at the government at the start of oral arguments. Before Schachter could begin his presentation, Cabranes said he needed background on the "human and prosecutorial context" of a case he found "unusual and complex." Cabranes essentially echoed what Schachter says he tried to get the Justice Department to consider from the onset: What, exactly, was going on with the government's decision to prosecute?

"May it please the Courts, this is a topic which I am very pleased to begin with, and the answer to your Honor's question is I have not the slightest idea," Schachter said, according to a court transcript.

The opinion by Cabranes affirms that the Fifth Amendment extends to defendants in the U.S. who've been compelled to testify in foreign jurisdictions, while including a tougher standard for the government when using witnesses who may have been influenced by defendants' testimony. For Schachter, Cabranes' statements at the outset, while unusual, suggested the panel was tuned-in to the same deeper concerns he harbored over the life of the case.

This was a far cry from the unexpected disappointment during the initial trial, which Schachter also handled for Allen. Despite presenting evidence he believed showed that his client really had no impact on the benchmark rate, the jury came back with guilty verdicts.

Allen faced two years in prison; Conti was sentenced to a year and a day.

"There's a lot of understandable outrage that comes in the wake of the financial crisis," he said. "It can be hard to overcome that level of outrage."

Throughout the trial and appeals process, Schachter said the underlying concerns that he first presented to the Justice Department remained ever-present. Regardless of the verdict, he believed the Constitutional issues still loomed.

"It was a great relief to see, and very exciting to see, that that unfairness was recognized by the court of appeals as well," he said.

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