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Q&A With Crowell's Phil Inglima

Law360, New York (April 19, 2013, 1:51 PM ET) -- Philip T. Inglima is a partner in Crowell & Moring LLP's white collar and regulatory enforcement group in Washington, D.C. His practice focuses on criminal frauds and parallel civil and regulatory enforcement proceedings. He frequently conducts internal and special committee investigations, and defends congressional investigations and federal enforcement actions. His counseling practice includes the development and implementation of compliance programs, and he has guided clients through disclosures under the Foreign Corrupt Practices Act and the False Claims Act. His clients include public corporations, individuals, nonprofit organizations and closely held entities. Inglima served for two years as a senior associate independent counsel in the investigation of a cabinet secretary and White House officials concerning allegations of perjury, bribery, improper influence peddling, and campaign finance fraud.

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

A: For more than four years, we defended a national energy company in federal regulatory, congressional and criminal investigations relating to a massive fatal accident at one of its sites. The stakes were extremely high for the client, and the political and emotional influences on the ultimate decision-making of the investigators and prosecutors were enormous. We prepared for every potential eventuality and were fortunate to encounter prosecutors who truly learned and understood the case. They engaged in candid and robust discussion of a just result. We succeeded in resolving the matter on very favorable terms that avoided any impairment of the client's operations, and kept the fines and penalties in the low seven figures. It was very gratifying and resulted from a terrific team effort.

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

A: Our system of justice depends on rules and processes that give meaning to the Sixth Amendment right to trial. It is simply unacceptable that criminal discovery currently depends so greatly on the nearly unreviewable discretion of prosecutors. Our criminal discovery rules need substantial revision. Once charged, defendants need adequate and timely discovery so they can make intelligent decisions about trial risks versus plea bargaining, and decide their best course of action with open eyes. Discovery reforms might promote increased resort to trials, but that is a good thing in itself, since it provides a greater check and balance on the enormous power of the executive branch in the criminal justice system. That effect, in turn, increases public confidence in the reliability and fairness of the system. And in all likelihood, greater discovery still will result in a very high percentage of plea dispositions, while potentially decreasing the level of post-conviction litigation, by airing facts and evidence that today often emerges post-sentencing, and now simply promotes endless efforts to revisit plea and trial convictions, alike.

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

A: I'm very concerned about the shrinking pardon power of the president — shrinking from atrophy, that is. This is an essential constitutional power with ancient roots which was established to address the reality that injustices sanctioned by law do occur and must be undone, and that prisoners who have been fully rehabilitated should be released. It is both a singular power and duty of presidents to exercise it. Yet, we just experienced one of the longest intervals in modern history without a single pardon or commutation of sentence — despite an overcrowded federal prison system that conservatives and liberals alike acknowledge to be the consequence of draconian mandatory sentences that ignore many mitigating and compelling circumstances of the sentenced individuals. Fair and effective use of the pardon power does not undermine any valid law enforcement purpose, and is fully consistent with our pursuit of real justice. Exercise of this power in worthy cases does not require some extraordinary level of political courage; just prudence and diligence. But if it's abandoned or neglected for too long, it just might vanish from the political and legal landscape.

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

A: My mentor and former partner, Plato Cacheris of Trout Cacheris, taught me the importance and value of being a fierce advocate, but also a compassionate and decent person, all at once. He is truly a "lawyer's lawyer," who gave me opportunities that shaped my development as a lawyer and a person.

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

A: One of my earliest cases, and perhaps my first federal sentencing, involved the former (expelled) comptroller general of a large federal agency. Plato and I negotiated a pre-Sentencing Guidelines misdemeanor gratuities plea (yes, we once had no Sentencing Guidelines and did have some good federal misdemeanors to draw on!) and briefed it for sentencing.

At the last minute, Plato had to travel on another case, and the client agreed that we'd go forward on schedule with me allocating for our client. The hearing got off to a bumpy start, though, with the government aggressively arguing for incarceration and implying that it was truly a bribery case, notwithstanding the misdemeanor deal. Perhaps the veteran prosecutor thought he could exploit Plato's absence. I then stepped before the court and explained to a disappointed Judge Harold Green that Plato had to travel and "sends his regrets, wishing he could be here." Without missing a beat, Judge Green intoned, "Oh, and I regret he's not here, too." Not the words of encouragement I was hoping to hear!

I then launched into a blistering rebuke of the government's allocution, not really pausing to see how the court might be feeling about the government's — much less the defendant's — position. At one point, Judge Green interrupted and asked if I were thinking of withdrawing the plea! I decided at that point to pull off the accelerator a bit, and punctuate our bottom line position, before sitting down. When the Court then slammed the government's attempted rebuttal, I knew where we stood with the judge, and held my tongue. We got the minimum probation and fine possible, and went home happy, with a lesson learned: listen to the court and read the signs before you, rather than wasting words or time on points already won. I've tried since then to ensure that I take measure of where the court may be as I argue a matter, rather than simply rambling on and risking the outcome of an issue our team may already have won on the brief or otherwise in the court's own sense of the merits. In other words: Listen! The court usually sends signals, even before you speak, and certainly as you go.