

 [Click to Print](#) or Select 'Print' in your browser menu to print this document.

Page printed from: [Litigation Daily](#)

White Collar Titan Reid Weingarten on Juries, Clients and the Scariest Federal Prosecutors

Jenna Greene, The Litigation Daily

September 4, 2015

Hope you never have to call Reid Weingarten. Because if you do, it means you're in a world of trouble.

The Steptoe & Johnson LLP partner is one of the country's preeminent white collar defense lawyers. His clients have included former WorldCom CEO Bernard Ebbers, former Enron chief accounting officer Richard Causey, former Tyco general counsel Mark Belnick and film director Roman Polanski, as well as Goldman Sachs CEO Lloyd Blankfein.



But if you do have to call him, here's a bonus: he's one of the most interesting, engaging lawyers you'll ever meet.

Weingarten spoke at length with the Litigation Daily about his practice—what it means when he wants the “smart jurors,” what he says to prosecutors in their offices to convince them not to bring a case, how he and close friend Eric Holder Jr. years ago started a foundation that has helped thousands of juvenile offenders and at-risk teens.

The interview has been edited for clarity and length.

Lit Daily: A corporate executive recently told me he thought the best lawyers are as much psychologists as legal experts. Do you agree?

Reid Weingarten: Yes, yes, yes. The ratio is probably two-thirds lawyer, one-third shrink.

There are two distinct parts to my practice—the New York piece, largely CEOs and CFOs, Wall Street guys, hedge fund guys—and the D.C. piece, largely but not exclusively public official types and people who deal with public officials.

These are all big-ego, extraordinarily successful people who find themselves dramatically at odds with Uncle Sam, because typically people don't come to me unless the Justice Department wants to put them in prison for a long time and take all their money.

Sometimes their reaction is denial, sometimes shock and horror, sometimes anger, but it's always dramatic. The mission at a minimum is to get the client to understand what's happening so that he can be effective for me, in terms of my defending him.

LD: Have you ever declined to represent someone because you were so appalled by what they did?

RW: At this point, I'm in the fortunate position of turning down more cases than I take. I turn down cases for many reasons, though it's not so much that I'm appalled by the behavior.

The way I look at it is, do I bring value? Is there something about me representing the individual that adds something, as opposed to every other lawyer in town? I think if I halted, or I was so shocked or appalled or dismayed by the conduct that I'd pull my punches, I'd know that.

I break bread with the would-be client. If there's a visceral feel, either overtly or covertly, that I'm not going to want to spend time with him or her, it all factors in. There are often a variety of factors that cause me to take seriously the potential of the representation, and then I turn it down.

LD: Are conflicts much of an issue?

RW: Steptoe & Johnson is a big firm, but it's not one of the megafirms. There have probably been a dozen significant matters I got conflicted out of because of Steptoe's other representations. But I have colleagues who work at much bigger firms who are constantly getting conflicted out of representations.

I represented the CEO of Goldman Sachs, and Goldman intersects with everyone in the world. If I had nothing but Goldman-like representations, that would be an issue. But if you represent Jesse Jackson Jr. or [other] public officials, as I do, the potential for conflicts is significantly less.

LD: What agency is most likely to strike fear in the heart of defendants?

RW: The Southern District of New York is the elite prosecutor's office in the country. I don't think you'd get much dispute there. They're aggressive, they're smart, they have this enormous home court advantage. Right after them, there are several very fine, very aggressive, very talented U.S. attorneys offices like Chicago, Boston, EDVA and certainly the District of Columbia. And you can go to Topeka, Kansas, or Burlington, Vermont, and find a federal prosecutor who is very smart, has a good case and is talented in court.

In the Justice Department itself, there's the Criminal Division, and the two litigating sections—the public integrity section, where I was for 10 years, and the fraud section. They've had their ups and downs. As a defense attorney dealing with both sections regularly, you can have your hands full with either.

LD: Some of the people you've represented have been so high-profile. How much of a challenge is jury selection, and how do you handle it?

RW: By way of example, in my most recent trial I went down to New Orleans. I represented the former head of exploration for BP, who was accused of lying to Congress about how

much oil was coming out of the hole after the explosion. BP had pleaded guilty to the very same conduct and paid \$4 billion. That was not a positive piece.

I was told by everybody that BP was loathed in New Orleans. So now I have to pick a jury in New Orleans for the very same conduct the company pleaded guilty to. And BP had paid a zillion dollars to every fisherman and stripper in New Orleans who claimed the spill prevented them from earning a living. But now, BP was getting pissed off that they were getting ripped off, and were pulling back. In addition to being hated for killing all the pelicans and ruining tourism and fishing, now they're pulling back on their largesse.

So I have to pick a jury. We had all the consultants you can imagine. The common wisdom was, don't pick anybody close to the gulf, because anyone close to the explosion will hate BP, and don't take African-Americans because they hate fancy white lawyers from Washington, blah blah blah.

I picked a jury and I did exactly the opposite, because my gut was that a sophisticated person near the water who is familiar with the industry will appreciate how difficult it is to drill these wells. If you have 100 deep sea wells in the gulf, every once in a while, you're going to have an accident.

And there's no reason to assume that the rest of the population, no matter what their background or color, wouldn't strive to be fair. I also thought I had the upper hand in that I didn't think my client was guilty of anything, so I went against the grain.

You have standard thinking among most defense counsel on jury selection, and this is an instance where I threw it out, and the jury came back in about two seconds and acquitted. I was lucky and right.

It's interesting to see who wants the smart jurors. Sometimes prosecutors want the smart jurors, sometimes I want the smart jurors. That is an indication of who thinks they have the righteous case. When prosecutors are striking all the lawyers and accountants and college-educated people, and—in New York City this happens—they want doormen and bus drivers, what they want is to rely on visceral hatred for the target and also a visceral reliance on Uncle Sam, as opposed to the facts.

When that happens, I want to blow my brains out, because that's not how prosecutors should behave. Prosecutors always should have the righteous case, and it should only be crafty defense attorneys who want to obscure the facts. When I want the smart jurors because I think I have a righteous case, that case never should have been brought.

These days I find that to be the case many times.

LD: How do you prepare for court? Do you rehearse what you're going to say?

RW: I can't prepare that way. There are clients who say, "I want to hear your opening before you make it." I say, "Get another lawyer."

This is not good or bad, it's just Reid. I can't say the same thing twice, and I cannot read a speech. It's not how I work with information.

If I think there's a real likelihood there's going to be a trial, I'll make a file for opening, a file for closing, a file for putting the client on, and I'll make a cross-examination file for the snitch or snitches. If I'm taking a walk or kayaking in the North Atlantic or sleeping and have a thought, I'll throw notes in there. Two days before the opening, I'll go through the notes.

I'll have it largely in my head. I used to have a chocolate Lab I'd walk in the woods behind my house. I'd talk to myself, and I'd talk to Emma the chocolate Lab, and we'd try things and I'd practice my opening with her, but only with her.

The notes I toss in those files end up being what I do in court.

LD: You've been described as "almost constitutionally incapable of settling a case." Do you think that's true?

RW: No. I've had a lot of trials, but the great majority of my advocacy is done in prosecutors' offices. I'll say one or two things. One is that 'this is not a righteous case, and here's why,' and/or 'If you bring it, I'll kick your ass.' I find sometimes No. 2 is more effective, especially if it's a high-profile matter. In that sense, the case doesn't go to trial.

But Jesse Jackson Jr., for example, pleaded guilty and went to prison for couple of years. I didn't do it because I am a snitch lawyer or because I'm a rollover guy. I did it because the evidence was overwhelming, and there was no choice about it, and it was in his interest. And of course it was what he wanted to do.

I settle cases. But the people who come to me generally are people who have thought through the issues and decided there's a real chance of a scrap, and someone recommends me. Those are the people with whom I have the initial conversation, not people who are looking for an old-timer who routinely gets the best deals. Those are not the people who come to me.

LD: How do you handle losses?

RW: Do I want to throw myself off a bridge? Yeah. It's interesting psychologically—I just had this very nice win in New Orleans. I expected it, I was gratified, I'm very fond of my client, I was pleased—and three minutes later I'm done, on to the next one. When I lose, I replay the spool and second-guess myself constantly. It's hard to shake. The pain of a defeat is much greater than the joy of victory. I don't know why that is—I wish it were otherwise.

LD: Is there one win that stands out as particularly satisfying?

RW: It would be hard to separate them out. A couple come immediately to mind.

I represented a kid named Lamar Owens. He was a black Navy quarterback accused of rape by a white young woman who was his classmate. He actually moved into my house and became close friends with my son. He was acquitted of the rape charge.

I represented Ron Carey, the president of the Teamsters, during 9/11. I actually saw the second plane go into the tower. And we came back two weeks later when the court was put back together and got an acquittal. That was a huge experience.

Ted Wells [at Paul, Weiss, Rifkind, Wharton & Garrison] and I did Mike Espy together. That was probably the first huge national trial I had as a defense lawyer. Espy was a very promising former congressman from Mississippi who [Bill] Clinton made secretary of Agriculture. It was very controversial because traditional, white hidebound farmers were not crazy about Mike Espy being secretary, and he was charged with taking bribes from Don Tyson. It was a huge trial, and I think there were 35 counts of not guilty on everything. That put me in a different place. I'm friends with Espy to this day, and very close friends with Ted Wells.

LD: Do you wind up being friends with many of your clients?

RW: Some, certainly not all. For many, even when there's an acquittal, the experience is so harrowing that they want to close that chapter. To maintain a relationship with me would hamper that closure for them.

With opposing counsel—these days, that's prosecutors—one of two things happens. We become close friends or we never speak again. There's no middle ground.

LD: Tell me a little about the See Forever Foundation and how it came into existence.

RW: By accident of history, [former Attorney General] Eric Holder and I are extremely close. We grew up together in the Justice Department and had offices next to each other for many years in the public integrity section. We're like family. We used to go to Oak Hill, which was then this dreadful juvenile justice facility in Maryland, and teach and tutor in the jail.

We came to the conclusion that one-third of these kids are hopelessly gone, we can't fix them no matter what, too much damage. One-third who knows, but one-third we could fix. These were the kids with the bright eyes and quick wit, usually drug runners. We made a commitment and we started the foundation. David Domenici, the son of the senator from New Mexico, and James Forman Jr., son of the famous civil rights leader, they deserve the credit. Reid Weingarten does not. I started it. Eric had to drop by the wayside when he became the U.S. attorney [for the District of Columbia], because he had to prosecute these kids. It was an obvious conflict. He's been a supporter in his heart since then.

But David Domenici and James Forman are phenomenally gifted lawyers who for 20 years threw their lives at this. They brought Maya Angelou in. Bob Strauss of Akin Gump gave us a million bucks, and we bought a building on Ninth Street in the Shaw neighborhood. That was a huge turning point.

We took over the education at Oak Hill, turned it around, and right now it's a model for the country. We are also a large public charter school. Frankly, it's had its ups and downs. But when I put my head down for the last time and think about what I've done and not done, the See Forever experience will be one of the things that gives me the most satisfaction.

Contact Jenna Greene at [REDACTED] or on Twitter @jgreenejenna.

Copyright 2015. ALM Media Properties, LLC. All rights reserved.