

WHITE-COLLAR CRIME

D.A. Alvin Bragg Sets Out White-Collar Crime Priorities

U.S. Attorney's Offices in Manhattan and Brooklyn and the state's Attorney General are not alone in prosecuting fraud in the Big Apple. Last week we sat down with Manhattan's new District Attorney, Alvin Bragg, to discuss his Office's priorities with respect to white-collar crime. Mr. Bragg—who previously served as a prosecutor both in the U.S. Attorney's Office for the Southern District of New York and as the Chief Deputy in the New York State Attorney General's Office, as well as the Chief of Litigation and Investigations with the New York City Council—emphasized that violent crime and street crime are top priorities in his office, but he displayed an acute awareness of the important role of the Manhattan D.A.'s office with respect to white-collar crime and the tools at his disposal.

While cognizant of the mandates of his federal and state colleagues, Mr. Bragg noted the



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need for his office to pursue significant white-collar cases when such cases most aptly would be brought by a local prosecutor, particularly where the city's consumers and businesses are victims. Throughout the discussion, District Attorney Bragg emphasized the work of the Office's Financial Frauds Bureau, the Construction Fraud Task Force, and what he referred to as his Office's unique "connection with the public." An area that D.A. Bragg sees as a particular strength of his office is combatting cybercrime. He discussed the exceptional cyber lab in the D.A.'s office and praised his predecessor's building up of the lab (it is no coincidence that the previous D.A., Cy Vance, recently announced he was joining Baker McKenzie to chair the firm's cyber and data security practice).

Mr. Bragg highlighted that white-collar crime often can be used to underwrite violent crime, and that the Office can leverage white-collar prosecutions to support the Office's other work, including violent crime investigations and prosecutions. The D.A. described a recent, compelling example of this during our interview, described below.

During our discussions, Alvin Bragg was highly complimentary of the Office he has inherited, his predecessor, and the team members he has brought into the Office. He consistently commended D.A. Vance's efforts in various areas—including Vance's work with other D.A. offices and his strengthening of the Office's cyber unit—and he made a conscious effort to applaud individual team members, their roles, and accomplishments. He also gave special mention to Chris Conroy, the acting head of the investigation division, whom he described as being essential to the transition.

Below is a summary of how Manhattan's newly-elected prosecutor described his vision for

addressing white-collar crime, largely in his own words:

To start, what do you think New York lawyers should know about your focus on white-collar issues?

Before becoming D.A., I had gotten to know the Office from afar, going back to my time working at Morvillo Abramowitz Grand Iason & Anello, and then while I was working in SDNY and NYAG. But I have now gotten to know the Office up-close. The cyber practice here is phenomenal and second-to-none. The head of our practice, Elizabeth Roper, just received an award from the D.A.'s Association on Friday. We're leaders in that field on everything from phone encryptions to the work we're doing supporting our own cases and those around the state. I think our Construction Fraud Task Force is doing some really great work as well.

The Office also has at its disposal important state tools, like the Martin Act, which we can deploy to complement other regulators in the space. We're actually in a bit of a reset right now, with new U.S. Attorneys in SDNY and EDNY, and there's frankly so much fraud going around, and we need to think about the complementary tools and statutes we have. For the Manhattan D.A.'s Office, in addition to the Martin Act for securities fraud, we have the Donnelly Act for antitrust issues, and other laws geared towards organized crime that can be used in connection with our Construction Fraud Task

Force and the work of our rackets team, which also looks at public corruption/public employee misconduct.

And lastly, something that's been different here than in the other stops I've had in my career, is the work of our Financial Fraud Bureau, which has a hotline, and people call us about \$20,000 or \$30,000 or \$50,000 frauds that we then pursue. Others in the space might not be doing this work and it might not attract the attention of the white-collar bar, but it's so important to that small business that was the victim of embezzlement or that person who had his or her identity stolen. While those cases don't have the eye-popping numbers that we do in other cases or that other offices do, it's very important work.

Some of what you mentioned is a sweet spot for the D.A.'s Office that SDNY and EDNY might not necessarily cover. I think people might say that SDNY and EDNY in particular are highly-skilled at bringing major white-collar fraud cases that affect banks and financial institutions—do you see your Office as being more focused on addressing white-collar fraud that affects individuals?

I think we can and will continue to pursue both types of white-collar cases. Having worked as a federal prosecutor, I think that those offices might not be bringing cases with the dollar amounts that we are, and so it is important for us to be in that space. Our financial fraud team—which



Photo: Ryland West/ALM

Manhattan District Attorney Alvin Bragg.

is doing the nuts-and-bolts, consumer-oriented commercial fraud—is doing important work, even though it might not get a lot of attention. The people of Manhattan, however, know about that work, since we receive calls on the hotline. It's definitely a space that is important for us to be in, since others might not be. This is not to the exclusion of our cyber work or our Construction Fraud Task Force; there, you'll see significant cases with dollar amounts similar to cases brought by the NYAG, or SDNY or EDNY.

Related to the strength of the cyber work you mentioned, it was recently reported that Cy Vance is going to Baker McKenzie to be the chair of its cyber and data security practice. Could you discuss that cyber work a little more?

In addition to our great chief, Elizabeth Roper, we have about 10 excellent lawyers in the unit. We also have a phenomenal cyber lab that is second-to-none in terms of helping us process e-data and bring cases; credit to D.A. Vance for building that lab into a leader that provides technological

support across the Office. I've been telling folks in the Office that almost all cases are really cyber cases in some way; they all involve phones and/or emails.

In terms of focus, ransomware is an area which obviously gets a lot of attention. But we also do business email compromise fraud in all its permutations. We have long-term ID theft investigations—we've all experienced phishing emails and similar things that can really hamper business operations. Holding people accountable in those areas and deterring that conduct is a specific goal on which we're focusing. It's challenging work. People can register dozens of different domains and use each one only once. Those domains could be outside of the country, which leads to jurisdictional issues. But the cost to commerce of these disruptions to business and governments makes this an important piece of our work.

One thing we're seeing more of, and I think there is significant opportunity here, is financial fraud being used to underwrite more traditional violent street crime. We see actors participating in "traditional" white-collar crime like credit card fraud and then using the proceeds to buy guns. We're seeing more of that, which allows cross-filtration between our white-collar and street crime groups. We really want to be active here because, obviously, white-collar crime is bad for those defrauded and for the economy, but it gets compounded when the

ill-gotten gains are used to finance street crimes.

Is there any particular case that you'd like to highlight in this area?

Yes, there's a recent one that predates me, but I want to trumpet the work of the Office. There's a case where we worked with another D.A. office, and it's actually a great example of what I'm talking about. We actually started with a single \$750 theft from a Lyft driver, and then uncovered a high-tech scheme targeting

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drivers to steal their identities and take their money and funnel it—and the evidence trail led us to link this to significant violence. This can be compared to more old-school organized crime groups, which were not just doing street crime, but financial fraud as well. We're definitely keeping an eye on this trend. People often think of white-collar fraud as limited and esoteric but it isn't. We are looking at things like fraud in connection pandemic-related funds and people cross-financing illegal activities with such types of funds.

You've also mentioned the Construction Fraud Task Force, which has been active for many years. Is that something on which you think you will continue to focus?

Definitely. We want to leverage our Office's strengths, and this is one. When a lot of people think of the Task Force's work, they think of the fraud aspect of it—core fraud like defrauding the New York State Insurance Fund, often by hiring undocumented workers and paying them off the books. That's one focus, but other focuses are about expanding worker safety and looking at different industries beyond just construction. One thing I know from my work with the NYAG's Labor Bureau is that these kinds of fraudulent schemes are being conducted across industries. In terms of our technological capabilities, in addition to calling our hotlines, workers who see unsafe conditions on work sites can send us photos or videos via WhatsApp.

You mentioned your work at the NYAG. You also worked in SDNY and with the New York City Council. How does your time serving in these capacities affect your view of what role your Office should play with respect to white-collar cases?

One thing I learned from my experience is that there's plenty of fraud going around and all the offices are doing great work. I know that the white-collar bar complains about it, and we'll be judicious in our application of it, but we can use the Martin Act for cases that can't be brought federally because of the nature of the law.

Another thing I have been talking about is that small cases

become big cases, and it's important to really work cases up. The case I talked about earlier is a good example of that. The Office already has been doing that. Cases that come—not from an agent necessarily—but from a call where a person describes what just happened to them—pursuing those cases is so important not just for that individual, but also because we can look at patterns that could lead us to other conduct. So, in addition to our legal tools, I think we've got this real connection with the public that we can leverage.

I also should mention that we have Susan Hoffinger joining us. She's a Manhattan D.A. alum, and she's been practicing as a leading defense lawyer. She knows the Office well and knows this space well. She's going to be the chief of our investigation division, which contains the cyber, financial fraud (which has the robust hotline), rackets (home of the Construction Fraud Task Force and labor rackets work), and major economic crimes bureau.

You also brought in Meg Reiss as Chief Assistant D.A., and I believe you highlighted her white-collar experience.

Meg is probably known best for the programmatic work she's done in Brooklyn. Before that she was in Nassau, and, in a small world moment, she was on the monitoring team in the Marsh investigation when I was a line assistant prosecutor on that investigation. That was one of the reasons I selected her. She

obviously has street crime experience, but also white-collar experience, which is so important for our Office's work.

On your campaign website, you talked about some of the tension between the prosecutorial offices in New York (like with SDNY) and the Manhattan D.A.'s failed white-collar prosecutions in the past, like the one involving Dewey & LeBoeuf. How would you do things differently on those issues?

I think it's important for the local D.A. to be in this space. I think it's true that we have to be judicious with our resources because, unlike SDNY, which can be selective in the violent crime cases it takes, we have to prioritize things like the current uptick in violent crimes. But that's also why I flagged the interplay between white-collar crime and violent crime. Sometimes it will be easier to crack the white-collar crime because it's documented, and that will allow us to disrupt these systems which help fund violent crime.

I don't want to look back at cases from when I wasn't in the Office, but we've got great trial lawyers—Susan has been in a lot of these matters from the defense side, so she brings a certain perspective to these matters. We also have the skills of Peter Pope, who will be focused on guns, but he will be helping us on white-collar matters given his experience. I think we will bring cases that are not historically brought by others—whether it's through

the Construction Fraud Task Force, or using the Martin Act. Another important area is public corruption. I read the latest SCOTUS Bridgegate decision [*Kelly v. United States*, 140 S. Ct. 1565 (2020)] as basically a call to local prosecutors to take on corruption cases that may not be a federal crime. I think this all needs to be balanced, however, against the urgent need to battle street crime. That's why I am so interested in cases that straddle both areas.

Any last thoughts?

I'm excited. Naturally, our Office and I have wanted to focus on guns over the last few weeks. I am also excited about the intellectual challenge of white-collar cases. When we talk about "getting back to normal" post-COVID, integrity of commerce is important as well. We can't have people out there stealing PPE money and stealing people's identities. That's all part of the equation.