

A Bazooka Is Better Than a Shotgun Blast: The Power of a Rare United Front in a Multidefendant White Collar Case

Six defendants saw their indictments dismissed just a month before a scheduled trial in the Central District of California.

By Ross Todd
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It's rare to see federal prosecutors completely drop all charges against any white collar defendant just a month before a scheduled trial date.

But to see indictments dismissed under such circumstances against *six* defendants accused of being on either side of an alleged kickback scheme ... now we're talking about something on par with a unicorn sighting.

That was our thinking last month when we handed out runners-up honors for Litigator of the Week to lawyers for six remaining defendants in an alleged Medicare-related kickback scheme. In the run-up to a planned two-month trial, federal prosecutors in the Central District of California dropped all remaining charges against four doctors based in Virginia and two officials at Irvine, California genetic testing company Proove Biosciences. The move marked the end of a case where Proove officials had been accused of fraudulently characterizing \$150-per-test payments for screening for susceptibility to opioid addiction as clinical research fees and doctors were accused of falsifying time sheets to conceal kickbacks.



(L-R) Dwight Bostwick, with Zuckerman Spaeder and Jake Ryan of Latham & Watkins.

Courtesy photos

Yesterday the Litigation Daily had the opportunity to catch up with two members of the joint defense team Dwight Bostwick of Zuckerman Spaeder and **Jake Ryan** of **Latham & Watkins** to discuss the delicate dance that white collar defense lawyers face when keeping their own client's interests at heart while harnessing the power of a united front mounting common arguments. (Given the nature of the team effort, they wanted us to make sure

we highlight the efforts of everyone involved, which we've done below.)

Bostwick said there's a saying among defense attorneys that if you don't hang together, you hang separately, and that usually holds true. "But it's also true that you have your own responsibility to zealously represent your personal client's interests," said Bostwick, who represented defendant Lester Alan Zuckerman, a member of the board of the National Spine & Pain Center as well as its chief medical officer. "That dynamic will necessarily bump up against the defenses of another client and can cause difficulty," he said.

Ryan, who represented defendant Daniel Kendall, a physician and member of a medical group affiliated with the Center, said many of the defense counsel had prior experience working as federal prosecutors, so they spoke the same language and were conversant in DOJ policies. He said that helped foster an atmosphere where defense counsel communicated with each other early and often.

"You certainly can't share everything, but you develop trust when you get to know people, and we did communicate frequently," Ryan said. "I think that created an ideal environment for that type of cooperation [and] collaboration."

The communication led to joint defense motions raising issues including a potential conflict involving the U.S. attorney's office, potential violations of Proove's privilege, and failures by prosecutors to provide the defense with material the defendants argued was exculpatory. Those motions were pending without the government's full response when charges were dropped.

"That seemed to burst the dam," Ryan said. "It's not rocket science. We just communicated a lot and that's what I would recommend if other lawyers find themselves in a similar situation."

Bostwick said the collaboration between defense counsel—particularly between the doctors and the Proove officials—put the government on its heels both in terms of the substantive legal issues and its own conduct.

"We can't focus on all the things that we don't have in common," said Bostwick of the approach. "We have to really focus on the things that we have in common and highlight them and expand them and really explore them so that we are presenting not just some shotgun pellets, but a bazooka that's going right at the center of the government's case."

Aside from Bostwick, defense counsel for Zuckerman also included Zuckerman Spaeder associate Dan Amzallag and Kendall Brill & Kelly partner Janet Levine. Aside from Ryan, Kendall was represented by **Latham & Watkins partner Steven Bauer, counsel Katherine Sawyer and associate Rachel Suhr**. Physician Assaf Tzur Gordon was represented by Bienert Katzman Littrell Williams partners Tom Bienert, John Littrell and associate Alexis Federico. Sanjay Bhandari of Buchalter represented physician Abraham Cherick.

Proove founder and CEO Brian Meshkin was represented by Stradling Yocca Carlson & Rauth shareholders Jason de Bretteville, Shawn Collins and associate Sean Lobb. Joseph McMullen of the Law Offices of Joseph M. McMullen represented Ossama Antoine Jawhar, a Proove sales representative.