

## Outside Counsel

# Attorneys in Hot Water: When Prosecutors Turn Up the Heat

Headlines in the legal press have been dominated recently by high-profile prosecutions of lawyers in New York. Most notably of late, Cyrus Vance and his team at the Manhattan District Attorney's Office have been prosecuting former leaders of the Dewey & LeBoeuf LLP law firm for allegedly defrauding insurance companies and financial institutions out of hundreds of millions of dollars. With pre-trial motions to dismiss the Dewey indictment denied, the Dewey case has been cleared for trial in 2015.

These criminal cases have had a profound impact on everyone they have touched, most immediately the lawyers who have been convicted and, with greater frequency, incarcerated, and the victims of their criminal conduct. These cases have also affected the attorneys' former clients, their former law partners, and their malpractice insurance carriers, who have frequently shouldered much of the economic fallout from these prosecutions, convictions, and related civil litigation.

In an effort to better understand this spate of prosecutions, the authors conducted an informal survey into the criminal convictions that have been obtained over the past few years against lawyers in New York's federal and state courts, and against New York lawyers who have run afoul of the law outside of New York State. This article discusses the results of this survey.

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courts in other jurisdictions.

To gather this data, the survey relied principally on decisions issued by the New York State Appellate Division over the past five years. These decisions, which relate to disciplinary proceedings instituted by the Department Disciplinary Committees, identify attorneys who have been convicted of crimes and are referred for disciplinary proceedings. The survey also reviewed press releases issued by federal prosecutors in New York and the Manhattan District Attorney's Office, and general reports in the media.

The survey revealed that, over the last five years, 244 New York-licensed attorneys have been convicted of a variety of federal and state criminal offenses. By a slim majority, more of these criminal convictions were obtained by state prosecutors than their federal counterparts. Indeed, 137 convictions occurred in state court, 106 convictions in federal court. One conviction of a New York-licensed attorney in the survey was obtained in the United Kingdom.

The authors separated the convictions by state and federal court, and then used an informal classification of the offenses to gain more visibility into the types of trouble lawyers have been getting into. The table accompanying this article shows these findings.

The principal result of this survey was to confirm that lawyers who get in trouble are typically involved in fraud and theft-related misconduct. Thus, 86 of the 137 state court convictions involved larceny and theft-related crimes. Similarly, 82 of the 107 federal convictions were fraud-based crimes.

These fraud and theft-related convictions

State Court Convictions <sup>1</sup> 2009-2014	
Conviction category	Number of convictions (137)
Larceny/theft-related convictions	<b>86</b>
Misappropriation of funds	43
Mortgage-related	22
Securities	2
Insurance	2
Identity theft/forgery	11
Other	6
DUI/drug-related convictions	<b>12</b>
Tax-related convictions	<b>11</b>
Sexual offense convictions	<b>9</b>
Assault-related convictions	<b>5</b>
Other convictions	<b>14</b>

### Survey Results

The survey focused on criminal convictions of lawyers in New York between January 2009 and November 2014, including convictions of both lawyers in New York State and New York-licensed attorneys in

fall into two rough categories.

There are the crimes that, at least anecdotally, appear to be as old as the practice of law. Indeed, half of the lawyers convicted in state court were found to have engaged in the misappropriation of funds, primarily from their clients. Similarly, attorneys are also convicted with some regularity in both federal and state court for engaging in tax fraud, often based on the lawyer's failure to file tax returns or report all income.

Then there are the crimes that appear to be a sign of the times, and often reflect shifting prosecutorial priorities. For example, over the last five years, prosecutors have placed a high priority on bringing cases based on allegations of mortgage fraud—and many lawyers have been caught up in this net. Mortgage fraud accounts for 26 out of 82 fraud-related convictions in federal court, and 22 out of 86 larceny-related convictions in state court. Similarly, federal court convictions also included 16 convictions for securities fraud and 15 for immigration fraud.

#### Other Findings

Other findings that derived from the survey include the following.

First, state convictions outpaced federal convictions in every year except for 2014.

Second, criminal convictions of lawyers seem to vary significantly from year to year—the total number of attorney convictions has ranged from a high of 56 in 2009 to a low of 36 in 2011. In 2013, the survey reflected a total of 48 attorney convictions. Because of the lag time between convictions and Appellate Division decisions regarding the ensuing disciplinary process, the survey's 2014 numbers are not complete at this time.

Third, the vast majority of the attorneys convicted of crimes and identified in our survey are men.

Fourth, the significant number of criminal convictions of attorneys for theft, failing to file tax returns, sexual assault, other acts of violence, and drug or alcohol-related crimes supports the view that attorneys who get in trouble with the criminal justice system are often "at risk" individuals. They may be struggling with issues that include drug and alcohol abuse, and personal financial troubles.

Finally, in the vast majority of the

Federal Court Convictions <sup>2</sup> 2009-2014	
Conviction category	Number of convictions (107)
Fraud-related convictions	<b>82</b>
Mortgage fraud	26
Securities fraud	16
Immigration fraud	15
Misappropriation of funds	8
Defrauding the federal government	5
Other	12
Tax-related convictions	<b>12</b>
Bribery/obstruction of justice-related convictions	<b>7</b>
Sexual offense convictions	<b>4</b>
Other convictions	<b>2</b>

survey cases, the attorney's unlawful conduct related to his work as an attorney. For example, many of the convicted attorneys were accused of using their legal skills to commit the crime, e.g., by drafting false legal documents in schemes to commit either mortgage fraud or immigration fraud. Others used their unique access to information or funds to carry out their crimes.

This marriage of skill set/access and criminal conduct has not gone unnoticed by the courts. For example, in upholding a 12-year insider trading sentence imposed on a New York lawyer, the Third Circuit Court of Appeals found "good reason" to impose a longer sentence because the defendant was the longtime source of corporate secrets from his firms' clients and, as an attorney, he "took an oath to uphold the law."<sup>3</sup>

#### Landmark Criminal Cases

Buried in this data is the fact that the scale of criminal cases brought against attorneys has become staggering. Here are some of the landmark criminal convictions observed during the survey:

- The longest sentence handed down in an insider trading case—12 years—was against an attorney who worked for a number of prominent Manhattan law firms.<sup>4</sup>

- An attorney used his law firm to run a \$700 million lending scam and to misappropriate over \$400 million in client funds.<sup>5</sup>

- A federal insider trading probe resulted in the convictions of four attorneys.<sup>6</sup>

- An associate fled to Hong Kong where he was extradited back to the United States and pleaded guilty in New York state court to charges of larceny based on his misappropriation of more than \$10 million in client funds.<sup>7</sup>

- An attorney, who was convicted of stealing client funds, was reported to have had more bar complaints filed against him in Manhattan and the Bronx over the last 40 years than any other attorney or law firm.<sup>8</sup>

- An attorney was convicted in the first fraud-related case referred to federal prosecutors by the newly minted Consumer Financial Protection Bureau.<sup>9</sup>

- A former general counsel pleaded guilty to bribing foreign officials to secure a \$39 million contract, in violation of the Foreign Corrupt Practices Act.<sup>10</sup>

- The harshest sentence in the survey—40 years meted out by a Texas state court—was against an attorney for misappropriating over \$9 million from his employer.<sup>11</sup>

#### Conclusion

As evidenced by this survey, a number of New York-licensed attorneys have landed themselves in hot water over the last five years, some for particularly egregious abuses of their position as an attorney. There is much to be learned from this raw data by law firms, clients, bar associations, malpractice insurance companies and law enforcement—principally about how to improve efforts to prevent, detect and address criminal misconduct by attorneys. But one more statistic is worth noting—the attorneys featured in this survey truly do appear to be the exception to the rule. To put it in perspective, in 2013, 288,965 attorneys were licensed in the State of New York,<sup>12</sup> but the survey here revealed just 48 convictions—or .02 percent—of New York-licensed attorneys.