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THE TOP TRIALS OF 2005

THE FATES OF FORMER CORPORATE TITANS and the impact their deeds had on their companies rested in the hands of some of the most experienced government and defense counsel in the country. Other hard-fought legal battles that tapped the talents of top attorneys in private practice, public interest agencies and government involved same-sex marriage, racial profiling, statewide gambling, and the professional conduct of lawyers and judges. The following articles highlight the legal principles and the people who made the news in 2005.

Photograph by Rick Kopstein

THE TOP TRIALS OF 2005

“THE FACTUAL RECORD WAS PRETTY CLEAR,” said C. Evan Stewart of the case against Bank of America broker, Theodore Siphol. “The question was: did Mr. Siphol think this was wrong.”

Mr. Siphol's defense team, led by Mr. Stewart, who recently left Brown Raysman Millstein Felder & Steiner for Zuckerman Spaeder, and Paul Shechtman of Stillman & Friedman, made this question the foundation of their strategy.

The first prong of their defense focused on Mr. Siphol's belief that he was not acting illegally.

For one thing, Mr. Stewart said, his client was the first person ever criminally charged with late-trading. Mr. Siphol had no notice that late-trading, which was frequently used in the mutual fund world, was a crime, Mr. Stewart said.

In fact, he added, Mr. Siphol's superiors signed off on the transactions that Attorney General Eliot Spitzer called illegal.

During opening statements, Mr. Stewart showed the jury a list of more than 30 people at Bank of America who were involved in the questionable transactions.

The late-trading scheme Mr. Siphol was alleged to have been involved in also included the participation of other



C. Evan Stewart

departments at his company, the hedge fund Canary Capital Partners, along with a handful of mutual funds.

When witnesses from these institutions took the stand on behalf of the government, they testified that they did not think they were acting illegally.

The defense did not call a single witness; instead, through cross-examination of the government's witnesses, they were able to show that Mr. Siphol lacked the intent necessary to be convicted of fraud and larceny and related crimes.

“They gave very favorable testimony

for us,” Mr. Stewart said of the government's witnesses. For example, Mr. Stewart said, his client's former assistant testified on cross-examination that Mr. Siphol had not tried to hide documents attesting to late-trading.

“The issue of intent is wrapped up with Ted's conduct,” Mr. Stewart continued, “which was wholly inconsistent with someone who is trying to hide wrongdoing.”

Prior to joining Zuckerman Spaeder, Mr. Stewart, 53, a Cornell Law School graduate, was general counsel of Nikko Securities and an in-house counsel at E.F. Hutton.

—MICHAEL BOBELIAN

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