

PANEL: A VIEW FROM THE FRONT LINES[†]

PROFESSOR DANIEL C. RICHMAN¹: It is my absolute privilege to welcome a panel that is focused on “A View from the Front Lines.” I think it used to be called “A View from the Trenches,” but the point is that having spent so much time focusing on the theme of the development of insider trading law, now this is our chance to hear from people who have actually seen it play out in front of a jury, and have tried to get a jury to wrap its mind around this law. I cannot think of a better panel, which presided over the Raj Rajaratnam case,² with Judge [Richard J.] Holwell,³ who is on my left; next to him is John Dowd,⁴ who was the defense attorney in the case for Rajaratnam; and Jonathan Streeter,⁵ who was an Assistant United States Attorney, and was one of the prosecutors in this case. As I said, the way I would like to start is just to get your recollections on how to get a bunch of lay people to wrap their minds around insider trading law as we understand it. Jonathan, why don’t you start?

JONATHAN R. STREETER: It is the government that has to go first in the trial and try to explain the insider trading law to the jury, and I think it is actually surprisingly easier than you would think in an insider trading case. I tried accounting fraud cases, and it was much tougher to explain those and why what was happening was illegal than in an insider trading case. I think that is because what you are explaining to the jury is that the defendant had an unfair advantage over ordinary investors, because the defendant had access to some information that had been stolen or had been given to the defendant in a way that was not supposed to be done. So that sort of basic unfairness and secret access that the defendant had is a pretty easy thing to describe to the jury, and it is easy to convince them that this is something that they should care about.

As I said, I think it is a lot easier than explaining an accounting fraud case, where you are trying to explain what was wrong with the reported numbers, and why they mattered, and why anybody cares. I think the basic notion of someone having an advantage over ordinary investors is pretty easy to convey. Also, I think it was easier in the insider trading cases because the fact patterns were often really interesting. We used to joke in the U.S. Attorney’s Office that these were the “drug cases” of the Securities Fraud Unit because they always had sexy, interesting fact patterns, and this case was no different. We had Swiss bank accounts, all kinds of interesting players, interesting [activities], and interesting wiretaps. So it was easy to keep the jury engaged, unlike—again—a dry accounting fraud case.

In terms of managing the elements, you really get to them in the closing. The jury has heard your opening statement and weeks and weeks of evidence, but it is not until you get to the closing that you really have to marry up the evidence with the elements. By that point, I found it was

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² *United States v. Rajaratnam*, 802 F. Supp. 2d 491 (S.D.N.Y. 2012) (order denying judgment of acquittal). The defendant, the Galleon Group hedge fund manager who ran an elaborate insider trading scheme, was convicted by a jury on May 11, 2011 of nine counts of securities fraud and five counts of conspiracy to commit securities fraud. During the trial the prosecution introduced wiretapped recordings of the defendant’s phone calls, the first time it had ever been done in an insider trading case. Rajaratnam was ultimately fined \$10 million, forced to disgorge \$53.8 million in profits, and sentenced to eleven years imprisonment—the longest sentence ever imposed for insider trading. Anna Driggers, Note, *Raj Rajaratnam’s Historic Insider Trading Sentence*, 49 AM. CRIM. L. REV. 2021 (2012).

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doable. But Judge Holwell mentioned this at lunch, and I think he is right: you wonder how much the jury really understands the instructions, but by the time they have been there listening to the evidence for eight weeks, you at least have a shot at marrying the evidence to the elements.