

MVP: Kramer Levin's Barry Berke

By Kelly Lienhard

Law360 (November 1, 2023, 1:08 PM EDT) -- Barry Berke of Kramer Levin Naftalis & Frankel LLP successfully defended a former New York lieutenant governor against bribery charges and secured a win in a seven-year-old insider trading suit, earning him a spot as one of Law360's 2023 White Collar MVPs.

His biggest accomplishment in the past year:

Berke, who has found success defending several high-profile clients, told Law360 his biggest accomplishment was securing a win for former New York Lt. Gov. Brian Benjamin against bribery charges in *U.S. v. Migdol et al.*

The case was set to go to trial in January, but a month before, U.S. District Judge J. Paul Oetken found that the government had failed to allege an explicit quid pro quo, and thus was unable to sustain the bribery charges against the formal official.

Benjamin had been accused of accepting campaign contributions from real estate developer and attorney Gerald Migdol of Migdol & Migdol LLP and the Migdol Organization in exchange for steering a \$50,000 state grant to Migdol's education-focused nonprofit, while Benjamin was considering a run for New York City comptroller.

Berke said he believed from the outset that Benjamin was innocent and that the charges should have never been brought.

"We thought that [the win] was a vindication not only of our client, but also of principles that are very important and really at the foundation of our democracy, because the bribery charges were based on campaign contributions, as opposed to cash or jewelry or other things that are typically behind such bribes," Berke said.

According to Berke, if the government starts trying to criminalize campaign contributions, like in Benjamin's case, it would contradict the basic principle of representative democracy in the United States.

"We felt great about the judge's ruling, the importance of it to our clients, the importance of it to the



criminal justice system, but also the importance to our democratic system of government," Berke added.

His proudest moment in the past year:

Berke said he always feels great pride when one of his clients is vindicated, whether its pretrial or post-trial.

"I will say that what makes me so proud this year is that we were able to play our role, as we've all taken the oath to do, and represent our clients as zealously as possible against the prosecution of the government and have achieved such success this year," Berke said.

For example, in December, the Second Circuit dismissed fraud and theft charges, as well as reversed conspiracy convictions, for Berke's client Theodore Huber, who was accused of using confidential government information relating to Medicare reimbursement for health care services to inform trades at a hedge fund.

Huber was initially convicted of wrongdoing, but when the U.S. Supreme Court granted certiorari and sent the case, *U.S. v. Blaszcak et al.*, back to the Second Circuit for reconsideration, the government admitted it erred when applying property-based statutes.

Berke said he was involved with the case for seven years and believed the government could not prove insider trading occurred. Finally acquitting Huber of all charges, Berke said, without the analyst having to spend even one day in jail, was vindicating.

"It's those successes that I feel are not only so important for our clients, but also help to make sure that the criminal justice system is a little more fair for everyone," he added.

Why he's a white collar attorney:

Berke said he has wanted to be a criminal defense lawyer since his early days in law school, adding that he has a personal desire to fight for the underdog.

"I believe anyone who's up against the full resources of the government and prosecution is always the underdog," Berke told Law360. "So that drew me to criminal justice, as well as my desire to be a trial lawyer."

While he enjoys being a trial lawyer in criminal cases, Berke said he also takes an interest in noncriminal cases as they often have important stakes and issues involved as well.

In September 2022, Kramer Levin announced it would be launching a congressional investigations practice headed by Berke. According to the firm, this helped solidify Kramer Levin as one of the top firms in the U.S. for representing those accused of complex crimes and regulatory violations by the U.S. government.

"For me, it was a combination of wanting to stand up for issues that I believe in, but also being able to engage in the sort of practice that I wanted to as a trial lawyer, and I've been doing that since law school," Berke said. "I've never had a moment's doubt that that was the right decision for me."

On what motivates him:

According to Berke, the highest calling a lawyer can have is to stand between an individual and the government.

He also pointed to his recent leave of absence, when he went to Washington, D.C., to serve as impeachment counsel to the U.S. House of Representatives in connection with the U.S. Senate impeachment trial of former President Donald Trump.

This experience helped motivate him by giving him the opportunity to defend the U.S. Constitution, he said.

"I feel like my work as a defense lawyer is a continuation of the defense of the Constitution and its work that I deeply believe in, both for the importance for our clients, but also for the criminal justice system as a whole," Berke added.

His advice for junior attorneys:

Berke said the best thing younger attorneys hoping to find success as defense trial lawyers can do is try cases.

"The best way to try cases is to try cases," Berke said. "It's very hard to get a lot of experience trying cases until you have had some."

According to him, he encourages any opportunities to experience litigating a trial, whether it be through pro bono work, pro se panels or government offices.

"The most important decision you make is how to get that experience," Berke said. "I encourage lawyers at all stages to try to get as much action as they can in court, which is really indispensable to having a career as a trial lawyer."

In addition to gaining courtroom experience, Berke said it's important for junior attorneys to do work they are passionate about and not be afraid to take unconventional routes in their career path.

-- As told to Kelly Lienhard

Law360's MVPs of the Year are attorneys who have distinguished themselves from their peers over the past year through high-stakes litigation, record-breaking deals, and complex global matters. A team of Law360 editors selected the 2023 MVP winners after reviewing more than 900 submissions.
