

Trial Aces: BuckleySandler's David Krakoff

By **Natalie Rodriguez**

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Intense, persistent and tireless are adjectives that tend to pepper colleagues' descriptions of BuckleySandler LLP partner David Krakoff when he prepares for trial.

These personality traits have been honed over more than 30 years of practice and have served Krakoff well, helping the Law360 Trial Ace win 55 of the 60 trials he's worked on in his career. More importantly to his team members, those traits have been key in helping their clients — many of whom tend to be individuals fending off serious charges from the U.S. Department of Justice and other federal agencies

“David is always amicable and a good guy to work with, but those are periods you expect him to be intense. There is a lot at stake,” said Chris Regan, a BuckleySandler attorney that has worked with Krakoff for more than two decades at three law firms.



David Krakoff

Much of what steers the hard-working Krakoff — a former federal prosecutor himself — when he is on a case is knowing how much clients are putting on the line to proceed in highly complex, formidable cases brought on by the federal government that can take years to work through.

“I've had the good fortune of having a number of clients who maintained their innocence and wanted to take the substantial risk of going to trial,” said Krakoff. “The stakes are high in terms of their livelihood, their families and their health because these cases are really demanding of everything in the individual.”

Among the recent wins exemplifying the high-stakes litigation that has become Krakoff's signature is his successful representation of Noble Corp.'s former CEO and Chief Financial Officer Mark Jackson against a Foreign Corrupt Practices Act enforcement action brought by the U.S. Securities and Exchange Commission. Jackson was accused of participating in a scheme to bribe Nigerian officials.

Few individuals tend to fight the SEC toward trial on these kinds of FCPA actions. But convinced of their client's innocence, Krakoff and his team held steady, mounting a case on cutting-edge issues involving

requisite intent under FCPA.

“Convincing the SEC that they have the wrong idea about what my client’s state of mind was was challenging,” Krakoff said. Ultimately, though, after lengthy depositions the case settled on the eve of trial with an extremely favorable settlement for the client, which involved no payments to the SEC and no bar to his future employment.

That settlement and many of the other favorable outcomes Krakoff has notched for clients over the years can be in large part attributed to the litigator's penchant for diving deep into the facts.

“He is probably the most persistent and prepared lawyer I have ever seen. He is constantly working to be as prepared as humanly possible,” said Benjamin B. Klubes, BuckleySandler's co-managing partner.

The deeper Krakoff goes into a case, the more colorful his notes become — with layers of blue, red and green ink building on one another, and lines and circles interspersed. “It's his way of taking our work product and making it his own and internalizing it,” said Regan.

That methodical preparation, and the ability to recall a document studied three weeks ago during a critical juncture in the courtroom, helps Krakoff bring across his passionate commitment to the client in court, said Klubes.

“You can't fake that kind of preparation and it comes across to a jury ... That kind of credibility is hard to create. And it's easy to lose if you go in one time unprepared,” said Klubes.

Intense preparation has been part of Krakoff's litigation style for decades and was vital in helping a former executive of the mining company W.R. Grace & Co. defend himself in the sprawling web of environmental criminal prosecution that the government mounted in 2005, alleging the mining company had operated an asbestos mine knowing that it was contaminating Libby, Montana.

Government prosecutors brought the case nearly a quarter of a century after the mine had closed, requiring Krakoff and his team to dig into memos and letters from a time before computers were prevalent in order to piece together the story of what had happened to defend their client.

“It required painstakingly working with the client, spending weeks and months over the years just listening and learning,” said Krakoff. “ You're only as good in court as you are willing to listen and to learn.”

Work on the case lasted five years and after a three-month trial, the jury found Krakoff's client and the other defendants not guilty.

The W.R. Grace case and many other cases that land on Krakoff's table swing in large part on the narrative that he is able to paint for a judge or jury, according to colleagues. In 2011 and 2012, for example, he first-chaired a team defending an individual in the landmark Africa Sting Trials, which was the DOJ's largest FCPA criminal prosecution ever.

In that case, Krakoff had to make sure his client's side of the story could overtake the federal prosecutor's side, which relied on undercover informants and tape recordings. After securing the dismissal of several counts, including conspiracy to violate the FCPA, a jury failed to reach a unanimous verdict. That led to a mistrial, after which the DOJ dismissed all charges.

“It was great to see that even in the face of tape recordings, the jury could understand that what the government was trying to say my client meant on those tapes, they were just wrong and he did not intend to bribe a foreign official,” Krakoff noted.

Krakoff learned the importance of telling a good story early in his career, when he was a young prosecutor and a case he lost was used as an example by a trial lawyer heading a training session on what could be done differently with the opening statement.

“He said, 'You've got to tell the jury a story. You've got to take them out to where this really happened and make them feel what it was like on that particular night on that corner'... I have often thought about that. It was a good lesson to learn,” Krakoff said.

The story-telling strength is bolstered by Krakoff's natural interest in people's lives. It is an interest that bleeds into both his personal reading list, which tends to lean towards history and biographies on figures like Lyndon B. Johnson and Albert Einstein, and his work with clients.

With a practice that's often centered on individuals facing litigation crises, Krakoff frequently has to weigh not only the legal issues, but what a client or potential client is going through personally as a result of an action.

“Whether it's the company paying the bills or its the individual, it's [the client's] life on hold. In particular when the DOJ has aimed its crosshairs on you, this is not just getting sued, it's life interrupted,” said Regan.

And it can take a whole chapter of a client's life to work everything out. For example, it took the team eight years to win the dismissals or settlement of seven legal actions — ranging from government investigation to class actions — that were lodged against Fannie Mae's former controller over his role in alleged accounting errors.

It takes finesse to counsel a client through such an ordeal, Krakoff's colleagues note

“I think it's a real skill to be able to keep a client's confidence that you are both going to be a zealous advocate in the courtroom ... but also be able to talk to the client about the realities and risk of trial without having the client lose faith,” said Klubes.

Krakoff has been developing that skill since he was first struck by the personal toll that litigation can have on a client in the late 1980s while second-chairing a team defending Recognition Equipment's vice president of marketing against federal bribery charges. Krakoff and his team successfully got the executive acquitted of all charges, but seeing the impact the case had on the client — as well as subsequent cases — molded how he tries to delicately balance his treatment of clients.

“You've got to work with the facts, and you have to challenge your client where the facts are problematic,” said Krakoff. “What you have to do is build trust and your client has to understand you're going to be there with them come hell or high water. The critical thing in the early stages is to build that bond of trust and it only comes from being straightforward, supportive — but challenging — and listening.”

That support starts from the beginning, according to Regan, who noted that Krakoff has instilled in him

the importance of responding to a new call for business within an hour — no matter where you are — with a “Hey, I've looked into it and here's how I can help,” response.

It's one of many habits that exemplify the laser focus of Krakoff, who earned his stripes as an assistant U.S. attorney in the U.S. Attorney's Office for the District of Columbia, where he served for a decade after being hired by legendary Watergate prosecutor Earl Silbert.

Klubes, a former summer associate for Krakoff, has known the litigator for almost 30 years and says he works just as hard today as he did in the beginning. It's a sentiment echoed by Regan, who joked that he may retire before his mentor.

“He's very regimented and scheduled. He's tireless,” said Regan.

--Editing by John Quinn and Patricia K. Cole.

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