

David Spears | Partner
White Collar Defense &
Investigations

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David Spears concentrates his practice in complex civil, criminal, and regulatory litigation. In all three areas, he has had extensive trial and appellate experience and achieved notable successes.

David spent the early years of his career working in government, including at the Federal Trade Commission in Washington, D.C., focusing on antitrust matters; as a Deputy Chief Trial Attorney in the Enforcement Division of the Securities and Exchange Commission (“SEC”) in Washington, D.C.; and as an Assistant U.S. Attorney in the Criminal Division of the U.S. Attorney’s Office for the Southern District of New York. During his years at the SEC and the U.S. Attorney’s Office, David tried a large number of cases involving a wide variety of charges.

In his more than three decades in private practice, David has tried many criminal and civil cases in federal and state courts and before the SEC, the Financial Industry Regulatory Authority (“FINRA”), and arbitration panels. David has also argued many cases in the U.S. Courts of Appeals and New York State appellate courts.

While at Columbia University School of Law, David was on the Board of Editors of the *Columbia Law Review*.

Select Engagements

Civil Matters

David has represented clients in large civil cases involving complex factual and legal issues. Many of those cases have involved hundreds of millions, or billions, of

dollars in claimed damages.

Notable matters include:

- A hedge fund and its principals as defendants in a securities fraud case in a jury trial in the U.S. District Court in Portland, Maine. The jury returned a verdict for the firm's clients on all claims against them.
- A group of financial institutions in a six-week jury trial in the Southern District of New York against a major investment bank to recover large losses related to the sale of asset-backed securities. The jury returned a verdict for the firm's clients resulting in a judgment of \$144 million, which was one of the largest jury awards in the United States that year. The defendant appealed that judgment, and David argued the appeal before the U.S. Court of Appeals for the Second Circuit, which affirmed the trial judgment.
- A senior executive at an insurance company in lawsuits in the Southern District of New York alleging fraud in the sale of residential mortgage-backed securities ("RMBS"). Those cases were thrown out on motions to dismiss.
- A large international bank as a defendant in a variety of RMBS cases involving billions of dollars in claimed damages, including cases brought by the Federal Housing Finance Agency, the National Credit Union Association Board, the Federal Home Loan Bank, and a monoline insurer.
- A financial compliance firm as plaintiff in a copyright infringement case against a licensee in the Southern District of New York. The Court issued a lengthy ruling entering a default judgment against defendants for destruction of e-mails. That ruling is one of the most significant judicial decisions to date on the subject of spoliation of evidence by a party.
- A U.K. citizen in connection with a lawsuit brought against him by a multinational energy corporation in one country relating to the client's involvement in a lawsuit against that corporation in another country for environmental damage caused by the energy company.
- A large German bank as plaintiff in a lawsuit in the Southern District of New York against the portfolio manager for a collateralized debt obligation ("CDO"), alleging that the bank lost all of its large investment in the CDO as a result of the portfolio manager's gross negligence and willful misconduct in managing the CDO's investment portfolio. After the District Court dismissed the bank's case, we appealed the dismissal to the U.S. Court of Appeals for the Second Circuit and argued the appeal. The Second Circuit reversed the dismissal and reinstated the bank's case. The Second Circuit's decision addressed important issues of diversity jurisdiction, standing, and contract and tort law as they apply to complex financial products and has been cited extensively.
- A multinational technology company as a defendant in an intellectual property case brought against it in the Southern District of New York. The case was dismissed by the court.
- The owner of a Spanish website devoted to international sports coverage as a defendant in a civil forfeiture action brought by the U.S. Attorney's Office for the Southern District of New York for copyright infringement of materials of major league sports organizations in the United States. The U.S.

Attorney's Office dropped its forfeiture claim.

- A sovereign wealth fund in a civil litigation arising out of that fund's involvement in an effort to acquire a *Fortune* 100 Company.
- A major monoline insurer of asset-backed securities in multiple litigations commenced by the insurer seeking to recoup over one billion dollars in potential insurance losses. As a result of the firm's efforts, the insurer suffered no loss.
- A university in a *qui tam* proceeding commenced against it in the Southern District of New York relating to Medicaid charges by a university hospital.
- A biotechnology company in a products liability case in New York State Court relating to a patented drug. The firm succeeded in having the case dismissed.
- A public company as a defendant in a class action securities fraud case in a jury trial in the Eastern District of New York. The jury returned a verdict for the firm's client on all claims against it.

Criminal Matters

David has vast experience with criminal cases involving sophisticated business and financial dealings and complex legal issues. David was named by *Chambers & Partners* as a "Leading Individual" in White-Collar Crime & Government Investigations. *Chambers* noted that David "enjoys an excellent reputation in the market for his strong white-collar expertise" and reported praise from sources that he is "tenacious with an amazing success rate" and has the "ability to anticipate problems and come up with solutions for his clients."

David has represented defendants in criminal cases in federal courts around the United States and in New York State court, and he has obtained dismissals and acquittals for many clients.

Notable matters include:

- An individual defendant charged with conspiracy and fraud based on his actions as an employee of a national proxy solicitation firm in a jury trial in federal court in Boston. After a month-long trial, the jury was reduced to only 11 members, and the government refused to proceed with fewer than 12 jurors. In a case of first impression, the U.S. District Court dismissed the indictment against the firm's client with prejudice based on a violation of the Double Jeopardy Clause of the Fifth Amendment. The U.S. Court of Appeals for the First Circuit reversed the District Court's ruling, but the government agreed to give the firm's client a deferred prosecution, and all charges against him ultimately were dismissed.
- The lead defendant in a case in the Southern District of New York in which 19 accountants and lawyers from an audit, tax, and advisory services firm were charged with federal tax crimes based on their involvement with tax shelters that the government alleged to be fraudulent. In a groundbreaking ruling, the District Court threw out the indictment because the government had forced the accounting firm to terminate the payment of legal fees for the

defendants.

- An investment banker charged with fraud for his involvement in a complex financial transaction entered into between two parties shortly before one of the parties' demise, in a criminal jury trial in Houston. Following trial, the indictment against the David's client was thrown out on the ground that there was insufficient evidence to support a conviction.
- A corporate lawyer from a large New York City law firm who was charged with money laundering based on his handling of escrow funds from a client who was subsequently charged with running a Ponzi scheme in a criminal jury trial in Dallas. The jury found the firm's client not guilty on all the charges against him.
- A graduate student who was charged with multiple felonies for fleeing in her car from two undercover police officers who sought to detain her without identifying themselves as police officers in a criminal jury trial in New York County Supreme Court. The firm's client was found not guilty on all of the charges against her.
- The former vice-president of Honduras as a defendant in a criminal proceeding in the Southern District of New York, in which the defendant was charged with money laundering for a drug cartel.
- A Houston businessman as a defendant in a criminal proceeding in the Southern District of New York, in which the defendant was charged with crimes relating to the unauthorized access of a competitor's electronic data.
- In addition to defending clients who have been indicted, David has been very successful at persuading prosecutors not to bring criminal charges against other clients. In particular, in recent years David has represented many residents of European, Asian, and Middle Eastern countries who came under criminal investigation in the United States in connection with conduct those clients engaged in abroad that had effects in the United States, and in those representations David successfully argued that no criminal charges should be brought against the firm's clients.

Regulatory Matters

David has represented scores of individuals and entities in investigations before, and proceedings by, the SEC, the New York Stock Exchange, the National Association of Securities Dealers, FINRA, the New York State Department of Banking, the New York State Department of Insurance, the U.S. Treasury, and the Federal Reserve Bank. While many of these representations have resulted in no charges being filed against the firm's clients, David has also tried numerous cases against the SEC in federal and administrative courts and against FINRA before its own hearing panels.

- An executive from a large investment bank against charges by FINRA alleging wrongdoing in the purchase and sale of auction-rate securities for corporate cash management clients. Following a two-week trial, the FINRA Hearing Officer overseeing the case issued a lengthy decision rejecting all of FINRA's charges and exonerating the firm's client of all charges against him.

- An individual who had been in charge of due diligence for a European investment fund that had more than two billion dollars invested with Bernard Madoff at the time when Madoff's fraud was revealed to the public, in an investigation by FINRA and a civil proceeding in London.

Admissions

- Supreme Court of the United States
- District of Columbia
- New York
- U.S. District Court - Eastern District of New York
- U.S. District Court - Southern District of New York
- United States Court of Appeals for the Second Circuit

Memberships

- American Bar Association
- Association of the Bar of the City of New York
- National Association of Criminal Defense Attorneys
- New York Council of Criminal Defense Lawyers

Education

- Northwestern University, BA
- Columbia University School of Law, JD

Recognitions

- 2010–2023, Litigation: White-Collar Crime & Government Investigations, listed in *Chambers USA*
- 2023, Business Crime Defence – Individuals and Who's Who Legal – Business Crime Defence – Corporates, listed in *Who's Who Legal*
- 2023, USA and GIR Thought Leader in Business Crime Defence – Individuals, listed in *Who's Who Legal*

Professional Activities

David is a member of the Criminal Justice Section of the American Bar Association, the New York Council of Defense Lawyers, the National Association of Criminal Defense Lawyers, and the Association of the Bar of the City of New York.