



Mark A. Rush

Partner

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OVERVIEW

Mark Rush is a partner with the firm and concentrates his practice on internal investigations, corporate criminal defense, domestic and international internal investigations, corporate criminal defense, False Claims Act defense, and complex commercial litigation. Mark has defended public and private corporations, energy companies, financial institutions, public officials, government contractors, hospitals, and healthcare systems who are subjects of federal and state grand jury investigations and investigations by various federal and state agencies. His representations also include defending and counseling corporations and individuals charged with violations of various federal and state statutes such as: BSA, Foreign Corrupt Practices Act, False Claims Act, securities laws, tax statutes, mail and wire fraud, healthcare fraud, environmental violations, and money laundering. Mark has represented clients in matters investigated by the DOJ (including AFMLS/MLARS), FBI, IRS, FinCEN, FTC, DEA, FDA, DHS, USPIA, EPA, FRB, IG offices, and corresponding foreign and state agencies. Additionally, Mark has coordinated and conducted internal and special committee investigations and due diligence projects within the United States and in numerous foreign countries.

Mark represented a Presidential Advisor in the Independent Counsel Investigation of President Clinton. He served as special counsel to a bipartisan Pennsylvania Senate Committee on the removal of the Attorney General. He also represents the Pennsylvania House and Senate Republican Caucuses.

PROFESSIONAL BACKGROUND

From 1991-1995, Mark served as an assistant United States attorney for the Western District of Pennsylvania, where he conducted numerous grand jury investigations across a broad spectrum of federal statutes, sought the return of indictments, and prosecuted the defendants, both individuals and corporations, by jury trial or plea.

Mark has previously served as a United States Army judge advocate assigned to the U.S. Army, Japan. He was also appointed as a Japan trial court U.S. representative by the U.S. Ambassador to Japan.

Mark is listed in *Chambers, USA*, *The Best Lawyers in America*® (Woodward/White, Inc.), and *Corporate Counsel Magazine* Top Lawyers for criminal defense-white collar. He is also a Recommended Attorney by Legal 500. He has received an AV® rating from Martindale-Hubbell, its highest rating. He is also listed in *PA Super Lawyers*. He is also listed as an *Acritas Star* as selected by in-house counsel.

ACHIEVEMENTS

- Recognized in 2021 Chambers USA Guide

PROFESSIONAL / CIVIC ACTIVITIES

- Allegheny County Bar Association (Civil and Federal Criminal Practice Section)
- American Bar Association (Civil and Criminal Litigation Sections)
- Board Member, Western PA Chapter, National Pancreas Foundation
- Coordinator, pro bono prisoner civil rights cases, Western District of PA

SPEAKING ENGAGEMENTS

- "Operation Brace Yourself: Lessons Learned from the Trenches and Best Practices to Avoid Investigations Predicated on Third-Party Malfeasance," Medtrade Advisory Board, Atlanta, GA, October 22, 2018
- "State and Federal Grand Jury Practice in the Era of Mueller and PA Grand Jury Reform Efforts," 2018 White Collar Practice Seminar, November 15-16, 2018
- "Privileged or Not Privileged: The Attorney-Client Doctrine Under Attack," Washington & Jefferson College Homecoming and Reunion Weekend 2018, Washington, PA, October 13, 2018
- "What You Don't Know Can't Hurt You, Right? Resolving the Inherent Tension between the Yates Memo and the Collective Knowledge Doctrine in Environmental Criminal Enforcement Actions," EMLF Annual Institute, Nashville, TN, June 18, 2018
- "View From a Federal Prosecutor," 2018 Medtrade Spring Conference, Las Vegas, NV, March 27-29, 2018
- Moderator, "Mock Breach Exercise and Dealing with Law Enforcement," Cracking the Code: Cybersecurity for Tomorrow, November 10, 2016
- "Judicial Ethics: When Ego and Entitlement Transcend the Law," The W&J Annual Legal Lecture, October 10, 2015
- "A Guide to the Development of a Cyber Data Breach Action Plan," K&L Gates CLE Program: Cybersecurity: Minimizing Risk and Managing Consequences, Mark A. Rush and Thomas C. Ryan, Pittsburgh, PA, December 9, 2014.
- "DOJ's Enforcement Trends, Investigative Strategies and Corporate Internal Investigations," The Audit Committee Forum, Philadelphia, Pennsylvania, November 29, 2012
- "From the Boardroom to the Courtroom: The Evolving Legal Status of Corporate Crime," Miami Law Review Symposium, University of Miami School of Law, February 18-19, 2011.

- “Corporate Responses to Investigative Requests by the Federal Government,” presented at *Government & Internal Corporate Investigations: Responding to Concerns About Alleged Wrongdoing*, Association of Corporate Counsel, October 20, 2005.

EDUCATION

- J.D., Duquesne University School of Law, 1987
- B.A., Washington and Jefferson College, 1984 (*Deans List*)

ADMISSIONS

- Bar of District of Columbia
- Bar of Pennsylvania
- United States Court of Appeals for the Third Circuit
- United States District Court for the Eastern District of Michigan
- United States District Court for the Western District of Pennsylvania

THOUGHT LEADERSHIP POWERED BY HUB

- 22 February 2021, The False Claims Act and Health Care: 2020 Recoveries and 2021 Outlook (*Alerts/Updates*)
- 30 December 2020, Qui Tam Quarterly (*Alerts/Updates*)
- 15 October 2020, COVID-19: New DOJ Guidance on Inability-to-Pay Claims: What Companies Affected by COVID-19 Need to Know When Seeking Reduced Civil and Criminal Penalties from DOJ (*Alerts/Updates*)
- 9 June 2020, COVID-19: K&L Gates Triage: Responding to the Unimaginable: Legal Challenges for Nursing Homes & Long-Term Care Facilities in a COVID-19 Enforcement Environment (*Podcast*)
- 9 April 2020, COVID-19: Looming False Claims Act Liability for Paycheck Protection Program Loans (*Alerts/Updates*)
- 25 March 2020, COVID-19: Government Enforcement in the Time of a Pandemic (*Alerts/Updates*)
- 27 February 2020, The False Claims Act & Health Care: 2019 Recoveries and 2020 Outlook (*Alerts/Updates*)
- March 2019, Qui Tam Quarterly (*Alerts/Updates*)
- 20 February 2019, The False Claims Act & Health Care: 2018 Recoveries and 2019 Outlook (*Alerts/Updates*)
- 26 November 2018, K&L Gates Triage: Internal & External Health Care Investigations Part 3 (*Podcast*)
- 26 November 2018, K&L Gates Triage: Internal & External Health Care Investigations Part 2 (*Podcast*)

- 25 October 2018, K&L Gates Triage: Internal & External Health Care Investigations (*Podcast*)
- 19 July 2018, K&L Gates Triage: 2018 Health Care Fraud Takedown (*Podcast*)
- 3 July 2018, What You Don't Know Can't Hurt You, Right? Resolving the Inherent Tension between the Yates Memo and the Collective Knowledge Doctrine in Environmental Criminal Enforcement Actions (*Presentations*)
- 30 April 2018, Boots on the Ground: PIL Task Force Targeting Opioid Providers in the War on Drugs (*Alerts/Updates*)
- 24 April 2018, Obstructing Bank Examinations Is a Costly Crime (*Alerts/Updates*)
- 28 March 2018, View from a Federal Prosecutor: Legal Pitfalls to Avoid (*Presentations*)
- 27 February 2018, Granston Guidance: Leaked Memorandum Encourages DOJ Attorneys to Seek Dismissal of Meritless FCA Qui Tam Suits (*Alerts/Updates*)
- 27 June 2017, The Circuits are Split: The Ambiguity of a Regulation May Not 'Foreclose a Finding of Scienter' in False Claims Act Cases (*Alerts/Updates*)
- 20 January 2017, Lifting the Veil on the MLAT Process: A Guide to Understanding and Responding to MLA Requests (*Alerts/Updates*)
- 29 November 2016, International AML Enforcement in 2017 Expected to Target Consumer-Due-Diligence Programs, Gaming Entities, Prepaid Cards, Digital Currencies, and High-Risk Nested Accounts (*Alerts/Updates*)
- 4 November 2016, FinCEN Looks to Financial Institutions to File SARs Regarding Cyber-Events (*Alerts/Updates*)
- 1 November 2016, Corporate Responses to Investigative Requests by the Federal Government (*Presentations*)
- 27 October 2016, Tax Evasion - Nowhere Left to Hide (*Alerts/Updates*)
- 22 April 2016, Sixth Circuit's Rejection of Taint Damages Theory in False Claims Act Case Reinforces that Value-Received May Substantially Offset Damages (*Alerts/Updates*)
- 22 April 2016, FINRA Targets AML Programs and "Culture of Compliance" as 2016 Enforcement Priority, Particularly for High-Risk Broker/Dealers (*Alerts/Updates*)
- 12 April 2016, Pennsylvania's Proposed False Claims Act: Why Further Incentivizing Whistleblowers Is Unnecessary, Counterproductive, and Could Decrease State Recovery of Tax Dollars (*Alerts/Updates*)
- 8 April 2016, Are Your Company's Legal, Due-Diligence, De-risking, or Compliance Obligations Impacted by the "Panama Papers"? (*Alerts/Updates*)
- 11 February 2016, Government Investigations Into Cybersecurity Breaches In Healthcare (*Alerts/Updates*)
- 14 December 2015, Treasury Department Issues Cybersecurity Checklist for Financial Institutions: What Might Apply to Your Financial Services Company? (*Alerts/Updates*)

- 14 December 2015, Treasury Department Issues Cybersecurity Checklist for Financial Institutions: What Might Apply to Your Financial Services Company? (*BlogPost*)
- 13 November 2015, Accepting Daily Fantasy Sports Payments and Proceeds May Be Unlawful: New York AG Accuses DFS Sites of Leading “Massive . . . Scheme [to] Fleece Sports Fans” (*Alerts/Updates*)
- 4 November 2015, DOJ Sharpens Focus on Corporate Compliance in Deciding Whether to Prosecute Companies (*Alerts/Updates*)
- 29 October 2015, Is Money Being Laundered Through Your Financial Institution Using Daily Fantasy Sports Sites? (*Alerts/Updates*)
- 10 September 2015, New DOJ Guidance Sharpens the Focus on Prosecuting and Suing Individuals in Corporate Criminal Investigations (*Alerts/Updates*)

OTHER PUBLICATIONS

- “Qui Tam Quarterly: COVID-19 and the Big-Data Revolution of False Claims Act Legislation,” *Health Law Journal*- Vol. 26 No. 2, *New York Bar Association*, 25 May 2021
- “How Tax Authorities Are Responding To Cryptocurrency,” *Law360*, 2 May 2018
- “The False Claims Act in 2017: The Year in Review and What to Watch in 2018,” *Bloomberg Law*, 25 April 2018
- “What You Don't Know Can't Hurt You, Right? Resolving the Inherent Tension Between the Yates Memo and the Collective Knowledge Doctrine in Environmental Criminal Enforcement Actions,” 39 *Energy & Min. L. Inst.* 255 (2018).
- “MLATs: The Bridge to Cross-Border Enforcement,” *Corporate Counsel*, 6 February 2017
- “BNA Insights: Imbalance of Power: Federal Prosecutors' Nearly Unilateral Discretion to Resolve Allegations of Corporate Misconduct After D.C. Circuit Panel Overrules District Court's Rejection of Deferred Prosecution Agreement in *U.S. v. Fokker*,” *Securities Regulation & Law Report*, 2016
- “What Companies Can Learn from Cybersecurity Resources in Pittsburgh,” *The Cybersecurity Law Report*, Volume 1, Number 16, 11 November 2015
- “U.S. District Court Judge Rejects Deferred Prosecution Agreement with Non-U.S. Company: Lessons for Companies Considering Similar Agreements,” *Bloomberg BNA*, *World Securities Law Report*, Volume 21, Number 5, May 2015
- “Forensic Experts in Criminal Trials,” by Mark A. Rush, *Expert Witness Answer Book 2012*, Practising Law Institute 2012.
- “Foreign Corrupt Practices Act (FCPA): New Trends in Compliance & Enforcement,” presented at the Greater Dallas Chamber, November 6, 2007

- “End Game: The Ex Parte Seizure Process and the Battle Against Bootleggers,” by Mark A. Rush, *Vanderbilt Journal of Entertainment Law & Practice*, Winter 2002.
- “Medicare Fraud Investigations and Records Privacy: What Every Health Care Organization Needs To Know Now,” presented at Medicare Fraud Investigations and Records Privacy: What Every Health Care Organization Needs To Know Now seminar, November 1, 2002.
- “Combating Counterfeits,” by Mark A. Rush and Lucas G. Paglia, *Pharmaceutical Executive*, June 2002.
- “Preventing, Investigating and Prosecuting Computer Attacks and E-Commerce Crimes: Public/Private Initiatives and Other Federal Resources,” by Mark A. Rush and Lucas G. Paglia, *e-Business Law Bulletin*, September/October 2001 and *White-Collar Crime Reporter*, July/August 2001.
- “Protecting Trade Secrets from Dumpster Divers and Other Snoops: The Law Protects Those that Protect Themselves,” by Mark A. Rush, Mark D. Feczko, and Thomas D. Manganello, *Mealey's Litigation Report: Intellectual Property*, August 7, 2000.
- “Recording Conversations in Pennsylvania: Criminal and Civil Penalties for the Unwary,” by Mark A. Rush and Mark D. Feczko, *Pennsylvania Association of Criminal Defense Lawyers Forum*, Volume 12, Number 1, 2000.
- “Protecting the Open Seas: Fighting Cyberpiracy,” by Mark A. Rush, Jeffrey M. Gitchel and Wade J. Savoy, *Cyberspace Lawyer*, March 2000.
- “Protecting Your Computer Systems: The Federal Response,” by Mark A. Rush and Lucas G. Paglia, *Cyberspace Lawyer*, September 1999.
- “Federal Resources to Protect Your Computer Systems From Economic Espionage,” by Mark A. Rush and Lucas G. Paglia, published by Kirkpatrick & Lockhart Nicholson Graham, February 1999.
- “DOJ and OIG Issue New False Claims Act Guidelines,” by Mark A. Rush and Elisa A. Long, *Health Law Update*, July 1998.
- “How To Protect Your Internal Corporate Investigations From Discovery” by Michael A. Agresti and Mark A. Rush, published by Kirkpatrick & Lockhart Nicholson Graham, May 1998.
- “An Inside Look at False Claims Act Investigations,” by Mark A. Rush, *Health Law Alert*, December 1997.
- “The FBI Is at Your Reception Desk - Now What?” by Mark A. Rush, *Health Law Alert*, March 1997.

NEWS & EVENTS

- 19 August 2021, Nearly 300 K&L Gates Lawyers Named Among 2022 Best Lawyers in America, Ones to Watch (*Rankings & Recognitions*)
- 21 May 2021, K&L Gates Policy and Regulatory Practice, Lawyers Ranked Among Leaders in 2021 Chambers USA Guide (*Rankings & Recognitions*)
- 24 August 2020, K&L Gates Hosts Town Hall Featuring DOJ's Fraud Initiatives as a Result of COVID-19 and How Health Care Providers Should Prepare (*Practice & Regional News*)

- 23 April 2020, K&L Gates, Lawyers Recognized in 2020 Chambers USA Guide (*Rankings & Recognitions*)
- 26 April 2019, Chambers USA 2019 Guide Ranks K&L Gates, Lawyers Among Leaders (*Press Release*)

AREAS OF FOCUS

- Investigations, Enforcement, and White Collar
- Anti-Bribery and Anti-Corruption
- Anti-Money Laundering (AML)
- Complex Commercial Litigation and Disputes
- Environment, Land, and Natural Resources
- Federal, State, and Local False Claims Act
- Health Care and FDA
- Health Care Fraud and Abuse (U.S.)
- Internal Investigations
- K&L Gates Trial Academy
- Oil and Gas
- Securities Enforcement / Financial Regulatory Enforcement
- White Collar Crime

REPRESENTATIVE EXPERIENCE

- Represented a publicly traded midstream company in the Marcellus and Utica Shale plays, in a two year investigation of alleged violations of the Clean Air Act. The investigation commenced with the execution of a dawn raid pursuant to a search warrant. The grand jury subpoenaed numerous records both hard copy and ESI. Employees were interviewed. A parallel civil investigation was undertaken along with an OSHA inspection. Following an internal investigation which involved the retention of experts, presentations were made to the government. Although a draft indictment was presented to the company, the U.S. Attorney ultimately declined to prosecute the matter
- Represented a large university medical center in a FCA investigation and lawsuit alleging resident-attending supervision issues. The Government declined to intervene. The matter was ultimately resolved through a settlement agreement
- Represented an applied scientific research and development company for the defense industry in a four year grand jury investigation which involved corruption allegations at the highest ranks of the military and

Congress. Two search warrants were executed and vast volumes of hard copy documents and ESI were produced. Ultimately the U.S. Attorney declined prosecution

- Represented a financial services company in a five-year-long AML cross-border investigation conducted by the DOJ (specifically, the Asset Forfeiture and Money Laundering Section / Money Laundering and Asset Recovery Section), the Financial Crimes Enforcement Network, four U.S. Attorney Offices, the Federal Trade Commission, and a Multi-State Attorneys General Executive Committee. Federal and state allegations against the client included money laundering, consumer fraud, and compliance issues that involved over ten foreign countries and hundreds of independent client locations and contractors. Ultimately, all federal claims were settled under a Deferred Prosecution Agreement for \$586 million, and all state claims were settled under a separate \$5 million agreement
- Represented a publically traded specialty metal manufacturer in a federal criminal investigation alleging violations of DOT regulations related to the shipment of hazardous materials. After an internal investigation and presentation to the environmental crime section at DOJ, the government declined prosecution
- Represented a publically traded telecommunications company involving government contracts and allegations of bribery during a 2+ year federal grand jury investigation. Allegations involved the Veteran's Administration and NYPD. Issues included an internal investigation, forensic accounting, corporate accounting controls, compliance and employee terminations. Although individuals were indicted, the SDNY declined prosecution of the company