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ASKED AND ANSWERED

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Ashish Joshi, a shareholder attorney in the Ann Arbor litigation boutique Lorandos Joshi, focuses on white-collar defense, complex commercial litigation, and cross-border litigation. He talked to Jo Mathis about fighting blue-collar tactics in a white-collar world.

MATHIS: How did a lawyer from Ahmedabad, India end up being a trial lawyer in Ann Arbor, Michigan?

JOSHI: After being involved in international litigation matters as an advocate in India, I was interested in developing a niche practice in cross-border litigation. I applied to and was accepted for a LLM program at the University of Michigan Law School and arrived in Ann Arbor in 2001. While I was studying for the New York bar exam I met my current law partner, Dr. Demosthenes Lorandos — a clinical psychologist and an attorney — who at that time was looking for a legal researcher to update one of his treatises on evidence law. We hit it off instantly and here we are today litigating cases around the country as a part of an aggressive litigation boutique comprising of seven lawyers — and growing fast. The best part: I have loved every moment of it!

MATHIS: How did you find your transition from the Indian legal system to the American one?

JOSHI: Not difficult at all. Both legal systems have their foundations in the English Common Law and much of India's laws dealing with criminal law, torts, contracts, property, and evidence have a lot in common with their English and American counterparts. The major difference, however, is in the American jury system. India does not have jury trials, so trying a case in

front of a jury was a novel experience for me. The difference in the two countries' judicial culture had its lighter moments. For example, during my early years in American courts, I would address a judge as — what would have been my usual manner of addressing a judge in India — “Your Lordship.” I remember a federal judge in the southern district of New York quipping: “You better be careful, Mr. Joshi. I could get used to this.”

MATHIS: Your practice focuses in part on defending white-collar criminal cases. Have you ever declined to take on a case because of the nature of the charge?

JOSHI: Never. I may have declined to take on a case because of a conflict or other reasons but never because of the nature of the charged offense.

MATHIS: Which famous white-collar cases do you wish you had defended?

Joshi: The case of Bernard Ebbers comes to mind. Ebbers was accused of covering up the losses at WorldCom by cooking the books and artificially inflating stock prices. To make matters worse, Ebbers had “borrowed” \$400 million from WorldCom to finance his other businesses. Nevertheless, Ebbers maintained that he knew nothing about WorldCom's illegal

dealings. His lawyers argued that he never acted with criminal intent — that he may be a bad CEO but not a criminal. The jury

disagreed and convicted Ebbers on charges of conspiracy, securities fraud and filing false reports with regulators. Ever since, the doctrine of willful blindness has found a firm footing amongst the prosecutors in prosecuting white-collar crimes. Litigating intent is the most fascinating part of any white-collar criminal prosecution.

MATHIS: Does the public automatically believe that those accused of white-collar crimes are guilty?

JOSHI: The surge in white-collar prosecutions coupled with the downward spiraling of the economy has made it a scary time for executives sitting at the defense table. Recent polls show that the public holds corporate executives and other white-collar professionals in lower esteem than politicians. This bias is further compounded by often-produced lifestyle evidence by the government in the white collar prosecutions. Remember the former CEO of Tyco who had the company pick up the tab for the \$6,000 shower curtains and \$15,000 dog umbrella stands?

MATHIS: Recently we have seen an upsurge in the government's aggressive prosecution of white-collar cases. Do you sense that this is part of an overall strategy by the Obama administration?

JOSHI: The Enron debacle was the tipping point that led to an avalanche of white-collar prosecutions, parallel civil prosecutions, and related legislation. But what we defense lawyers have recently been observing is an increase in what's called

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blue-collar tactics in prosecuting white-collar cases.

MATHIS: Such as?

JOSHI: Expanded and aggressive use of undercover operatives, cooperating witnesses, confidential informants, wire tapping, and electronic eavesdropping. Also, we have seen aggressive search and seizure operations wherein the federal agents have seized computer equipment, cell phones and other electronic paraphernalia at the outset of a criminal indictment. Not only does this contribute to the "shock and awe" strategy of the government, but it also brings a business to a grinding halt from conducting its day-to-day operations. Imagine your computers with all the client / customer information, billing software and data, business data being seized and gone all of a sudden. The DOJ, SEC, and IRS have demonstrated that they will use these tactics — which traditionally were utilized to fight blue-collar offenses such as organized crime and drug trafficking — to assist their investigation of white-collar crimes. And the prosecutorial successes — the recent conviction of the hedge fund billionaire Raj Rajaratnam — achieved through the use of these tactics guarantee that they are here to stay. This has been a major shift in how the government has traditionally prosecuted white-collar crimes such as securities fraud, tax fraud, insider trading and other traditional white-collar crimes.

MATHIS: Have you found use of these tactics in Michigan?

JOSHI: Absolutely. Apart from other white-collar prosecutions, Michigan has seen a surge of health care fraud prosecutions. Detroit — along with Miami, Denver, Los Angeles, and Houston — has been on the radar of the Obama Administration's Strike Force on Medicaid Fraud. The recent indictments on health care/Medicare fraud cases reveal an aggressive use of wire tapping and electronic eavesdropping by

the federal prosecutors. Apart from that, there is also an increase in the government's use of confidential informants, which pose a special problem for the defense attorneys because the informants' identities may never be revealed and have frequently been protected from disclosure by the courts around the country especially in cases where the informants are not testifying as witnesses at trial.

MATHIS: Does any of this affect civil practitioners?

JOSHI: In a way, it does. With the recent passage of the Dodd-Frank legislation, eligible whistleblowers who provide the SEC with original information that leads to a successful enforcement action get monetary rewards. This whistleblower legislation is in addition to other existing rewards that have been traditionally offered by the government to people who have blown the whistle on corporate fraud or wrongdoing. The important thing about the whistleblower programs is that it does not require that employees report through their companies' internal compliance system prior to reporting to an outside agency or the government. This has led to the companies scrambling to strengthen their compliance programs and create incentives for their employees in a hope that the employees would engage in internal, rather than external, reporting.

MATHIS: Given your firm's nationwide litigation practice, do you find it difficult to be based out of Ann Arbor?

JOSHI: Not at all. I love Ann Arbor. It is a wonderful city to work in and to raise a family. Also, we are 30 minutes away from a world-class airport that takes me wherever my practice requires. We have worked on cases in Hawaii, California, Utah, New York, Florida, Texas, Georgia, the Caribbean, and India — all out of our downtown Ann Arbor office. We do maintain offices in New York and Washington, D.C., and we work out of these offices as needed, but truly

in this day and age of modern communications and video conferencing, it's feasible to build a top-notch international litigation practice while living in a small but cosmopolitan city such as Ann Arbor.

MATHIS: In what other areas do you see your practice growing?

JOSHI: Cross-border litigation and doing business in India. A lot of Michigan businesses have expanded globally in terms of acquiring businesses abroad or entering into joint ventures in foreign markets. Breaking into the Indian and Chinese markets is on top of the list of every business with global ambitions. We have seen a huge surge in these practice areas.

Another practice area that has seen an increase in the recent years is the government's investigation and prosecution of American businesses and individuals under the Foreign Corrupt Practices Act. FCPA was enacted for the purpose of making it unlawful for certain classes of persons and entities to make payments to foreign government officials to assist in obtaining or retaining business. With a surge in American businesses' desire to expand globally and a crackdown on bribery and corruption worldwide, the situation has lent itself to create a perfect storm in FCPA investigations and prosecutions. Interestingly, the blue-collar tactics that we talked about have also been recently used in FCPA prosecutions.

I have also seen an increase in collecting evidence in foreign jurisdictions. Recently, in a civil case involving theft of trade secrets, I had to take several depositions in New Delhi, India with both the Indian law enforcement and the U.S. law enforcement scrutinizing the case for a potential for criminal prosecution. Collecting evidence abroad is an exciting and fast-changing field that requires the attorneys to pay a close attention to not only the ever-changing laws in this area but also to the culture of the host country.