



→ David L. Douglass

Partner

2099 Pennsylvania Avenue, N.W.
Suite 100
Washington, DC 20006-6801

T: +1.202.747.1904

F: +1.202.747.3804

ddouglass@sheppardmullin.com

David Douglass is Managing Partner of the firm's 100-lawyer Washington, D.C. office and a partner in its Government Contracts, Investigations and International Trade Practice Group. He defends companies in criminal and civil investigations and litigation. David is a leader of the firm's Organizational Integrity Group.

Areas of Practice

For more than three decades, David has drawn on his criminal and civil trial experience to advise and represent healthcare and life sciences companies, government contractors and other highly regulated business in government investigations, litigation and, of course, trial. David is often lead trial counsel in federal courts, including Washington, D.C., Maryland, Virginia and New York. He defends companies and individuals in criminal and civil, False Claims Act (whistleblower), investigations and litigation.

Highly regulated companies face special challenges when confronted with a government investigation. The regulatory flexibility that characterizes administrative law clashes sharply with the rigid standards of civil and criminal laws, especially fraud laws. A practice that is well understood and recognized in the regulatory arena can become challenging to recreate and prove in response to a whistleblower action or a grand jury subpoena. David is experienced in developing the evidence companies need to demonstrate their legal compliance, in intent and in fact.

David draws upon his experience to partner with his clients to develop and implement cost-effective and practical compliance and risk management programs. When investigations or litigation arise, however, his prosecutorial and trial experience enables him to diagnose the nature of the investigation, triage the immediate needs, and develop a sound litigation plan based on the company's resources, needs and business objectives.

David is a Fellow of the American College of Trial Lawyers. The College is composed of the best of the trial bar from the U.S. and Canada. Fellowship is extended by invitation only and only after careful investigation to those experienced trial lawyers who have mastered the art of advocacy and whose professional careers have been marked by the highest standards of ethical conduct, professionalism, civility and collegiality. Membership in the College cannot exceed one percent of the total lawyer population of any state or province.

David also leads complex, high-profile government investigations. In 2013, David was appointed by the U.S. District Court for the Eastern District of Louisiana as deputy federal monitor over the New Orleans Police Department to guide and monitor the department's compliance with a Consent Decree obligating the department to transform its policing practices. In 1994, he served as executive director of the White House Security Review, which resulted in the closing of Pennsylvania Avenue in front of the White House. In 1993, he served as assistant director of the Treasury Department's investigation of the raid on the David Koresh

compound in Waco, Texas. David also served as a DOJ Trial Attorney in the Criminal Section of the Civil Rights Division. Prior to that, he was an Assistant U.S. Attorney for the District of Massachusetts.

David taught Advanced Evidence as an adjunct professor at the George Washington University Law School and Trial Advocacy at Harvard Law School. He has written and lectured on government enforcement issues as they affect healthcare providers, pharmaceutical companies and medical device manufacturers.

David serves on the Board of the Washington Lawyer's Committee for Civil Rights and Urban Affairs, which deploys the best legal talent to fight discrimination, repair the damage of racial inequity and break down barriers to opportunity. He also serves on the Advisory Board of the Institute for Inclusion in the Legal Profession, a organization comprised of corporations, law firms and attorneys devoted to driving real progress toward creating a more inclusive legal profession through comprehensive outreach and original programming to replace barriers with bridges between legal, judicial, professional, educational and governmental institutions. He previously served on the Board of Appleseed Foundation, a nonprofit network of 17 public interest justice centers in the U.S. and Mexico dedicated to building a society in which opportunities are genuine, access to the law is universal and equal, and government advances the public interest.

Honors

Recipient, Inaugural ABA Healthcare Section's Champion of Diversity and Inclusion Award, 2015

Super Lawyers, 2007, 2010, 2014-2021

Experience

Representative Matters

- Counsel for Boston Scientific in defense of False Claims Act litigation against predecessor company.
- Successful defense of corporate executive who was a target in investigation of alleged export control violations.
- 2006: Successful trial defense of defendant in the first qui tam trial arising from contracting in Iraq. (Federal Court, Eastern District of Virginia)
- 2005: Jury verdict on behalf of Health Care Services Corporation in the first indirect-purchaser antitrust case to proceed to trial. (Federal Court, District of Columbia)
- 2003: Successful defense of a national healthcare provider against allegations of violations of the Medicaid Rebate Statute. (No indictment sought)
- 2002: Trial defense of individual charged with violation of the Arms Export Control Act. (Federal Court, District of Maryland, Baltimore Division)

Representative Clients

- MedImmune
- Guidant Corporation
- Kaiser Foundation Health Plans
- Health Care Services Corporation (formerly Blue Cross Blue Shield Texas)

- Blue Cross Blue Shield Plans
- Aetna
- Cigna

Articles

- 11th Circ. Ruling Misinterprets FCA Materiality Standard
Law360, 10.08.2020
- Government oversight in the age of Covid-19
Off the Shelf Podcast, 08.05.2020
- PPP Data Could Lead To Trouble For Loan Recipients
Law360, 07.17.2020
- Let's Create an Ethical Obligation for Attys to Fight Racism
Law360, 07.10.2020
- Another COVID-19 Enforcement Tool: Money Laundering Law
Law360, 06.09.2020
- The ethics argument for promoting equality in the profession
ABA Journal, 11.01.2019
- Conducting Corporate Investigations in the Fish Bowl of Public Scrutiny
Corporate Counsel, 10.24.2019
- INSIGHT: SWAT Team Training, Tactics Offer Lessons for Attorneys
Bloomberg Law, 08.05.2019
- A Lawyer's Special Weapons and Tactics
Sheppard Mullin's Government Contracts & Investigations Blog, 07.31.2019
- UHS' stock price up more than 10% after \$127M DOJ settlement news
07.25.2019
- Co-Author, "Signposts In The Road: The Lawyer's Ethical Obligation to Promote Diversity In the Legal Profession," *Institute for Inclusion in the Legal Profession*, 2019
- Co-Author with J. Aronie, "Walking The Walk: What 5 Years Reforming The New Orleans Police Department Has Taught Us," *Summer 2019 Diversity & the Bar Magazine*, 45-51, August 2019.
- Co-Author, "From the Big Easy to the Big Ten, and Beyond," *University Business*, March 14, 2019
- Author, "The False Claims Act Litigation Landscape 2019," January 2019
- Co-Author, "From The Big Easy to The Big Ten, And Beyond," October 2018
- Co-Author, "Feature Comment: Lessons Learned On The Second Anniversary Of *Universal Health Servs., Inc. v. U.S. ex rel. Escobar*," *The Government Contractor*, Vol. 60, No. 21, June 6, 2018
- Author, "Department of Justice Consent Decrees as the Foundation for Community-Initiated Collaborative Police Reform," *Police Quarterly*, July 2017
- Co-Author, "A letter from 10 former Chairs of the American Bar Association Health Law Section to the President concerning Health Care Reform Legislation," *LinkedIn*, March 13, 2017

- Author, "The Scientific Basis for the Ethical Obligation to Require Action to Eliminate Bias and Promote Diversity in the Legal Profession," *IILP Review 2017: The State of Diversity and Inclusion in the Legal Profession*, Institute for Inclusion in the Legal Profession, January 2017
- Author, "Defending FCA Claims: Making the FCA Plaintiff Walk the Talk," *The Federal Lawyer*, December 2016
- Co-Author, "When It Comes To Crop Insurance, The FCA Bears Fruit," *Law360*, June 1, 2015
- Co-Author, "When the Government Is Your Customer: What Commercial Companies Need to Know About the False Claims Act," *ABA Environmental, Mass Torts & Products Liability Litigation Committees' Joint CLE Seminar*, January 2015
- Co-Author, "What Is a General Counsel to Do?" *In-House Defense Quarterly*, Winter 2013
- Author, "*Qui Tam* Litigation Defense: Three Dimensional Chess," *American Bar Association's Litigating FCA Cases Teleconference*, February 2011
- Author, "The (Ir)Responsible Corporate Officer Doctrine and Contemporary Corporate Compliance: Protecting Responsible Corporate Officers from Irresponsible Prosecution," *American Conference Institute's 15th Anniversary Drug & Medical Device Litigation*, December 2010
- Author, "Litigating Civil Cases in the Shadow of a Criminal Investigation," *DRI Business Litigation and Intellectual Property Seminar*, April 2010
- Co-Author, "The Corporate Attorney-Client Privilege: Preserving Privacy in the Age of Transparency," *The Joan Fullam Irick Privacy Project III (IADC)*, 2007
- Author, "U.S. Supreme Court Issues Important Ruling on the 'Original Source' Requirement," *Qui Tam Litigation Alert*, March 28, 2007
- Co-Author, "Healthcare Fraud Enforcement Trends & Developments," *Andrews White-Collar Crime Reporter*, February 27, 2007
- Co-Author, "Exceptions to the McNulty Memo: Do They Render the Revisions Illusory?" *Andrews White-Collar Crime Reporter*, February 27, 2007

False Claims Act Defense Blog Posts

- "In Case Alleging Nationwide Pharmacy Fraud, Kmart Scores Narrow Settlement," April 17, 2018
- "FCA Materiality: It's One thing to Proclaim but It's Another Thing to Prove," January 17, 2018
- "Fifth Circuit: No Anti-Kickback Violation When Defendant Merely Hopes or Expects Referrals from Benefits Designed for Other Purposes," November 18, 2016
- "DOJ Seeks Rehearing in D.C. Circuit Case, Hoping to Resurrect Liability for a Contractor's "Objectively Reasonable" Interpretation of an Ambiguous Contract Provision," February 18, 2016
- "Managed Care Plans: New Targets for Whistleblowers," October 20, 2015
- "Kane et al., v. Healthfirst, Inc., et al. Is There Now a Judicially Created Return of Over-Payment Safe Harbor?" September 10, 2015

Government Contracts, Investigations & International Trade Blog Posts

- "When it Comes to Crop Insurance, the FCA Bears Fruit," April 30, 2015

Healthcare Law Blog Posts

- "Compliance Risk Alert: Opioid Warning Letters issued by the U.S. Department of Justice Target Prescribers," February 6, 2019
- "Escobar's Demanding Materiality Standard Nixes \$350 Million Verdict Against Florida Nursing Facility," February 5, 2018
- "Supreme Court Preserves But Significantly Changes 'Implied Certification' Theory of False Claims Act Liability," June 17, 2016
- "New Guidance on Contractor Self-Disclosure," August 21, 2014
- "Lessons From A Cautionary Tale of Electronic Discovery Pitfalls in Health Care Litigation," July 2, 2014
- "Ninth Circuit Off-Label Marketing Decision Suggests More Prosecutions Will Be Coming," March 7, 2013

Organizational Integrity Group Blog Posts

- "Leading with Values in Times of Crisis," April 15, 2020

Media Mentions

More antitrust probes of government procurement likely, thanks to new task force
Federal Computer Week, 01.08.2020

Inclusion illusion: Diversity's pain point
ABA Journal, 11.01.2019

'Remarkable' Reforms Made at NOPD, But Work on Consent Decree Remains, Judge Says
NOLA.com, The Times-Picayune, 01.25.2019

Judge and Watchdogs Offer Verdict on NOPD Progress: 'Remarkable,' But 'Not Done Yet'
The Advocate, 01.25.2019

Attorney Finds Rewards and Challenges as a Federal Monitor
ABA Journal, 10.17.2018

Singing in the Rain
What's the Secret to Developing Great Client Relationships
The American Lawyer, 04.01.2017

Lawyers Take Pride in Ancestry
ABA Journal, 02.2017

NOPD Reforms Moving Forward, Feds Say
But Many at Public Forum Say They're Too Little, Too Late
The Times-Picayune, 01.28.2015

3 Tips For Workable FCA Release Programs
Law360, 07.25.2014

Speaking Engagements

Speaker, "The Ethical Case for Diversity," Embracing Diversity and Strengthening Communities for a Better Kentucky - Governor's LEAD Conference, November 18-20, 2020

Speaker, "Procurement Collusion Strike Force Webinar," The Coalition for Government Procurement Webinar, January 8, 2020

Moderator, "The Impact of DOJ's New Corporate Healthcare Fraud Enforcement Strategies on Providers and Defense Counsel," American Bar Association Washington Health Law Summit, Washington D.C., December 13, 2016

Moderator, Implementation of Police Department Consent Decrees: Working Together Toward Institutional Change Conference, Tarleton State University, Texas, November 4-5, 2016

Speaker, "Diversity as an Ethical Obligation for Lawyers," Institute for Inclusion in the Legal Profession's International Program, Lausanne, Switzerland, March 29, 2016

Speaker, "Emerging Trends in False Claims Act (FCA) Damages Settlements," ABA Health Law Section's "Emerging Issues" conference, San Diego, California, March 2-5, 2016

Moderator, "Women and Minorities: Willing Partners or Reluctant Allies?" Institute for Inclusion in the Legal Profession and the National Association of Women Lawyers, Washington, D.C., July 15, 2014

Panelist, "A Step-by-Step Guide to Conducting an Internal Investigation of a False Claims Allegation: Scoping Your Action Plan from A to Z," American Conference Institute Inaugural Executive Forum on False Claims and *Qui Tam* Enforcement, New York, New York, January 29, 2014

Panelist, "Lessons from the Trenches: Trial of a Healthcare Case," 31st Annual National CLE Conference, Vail, Colorado, January 9, 2014

Panelist, "The Evolution of the OIG," American Bar Association 2013 Washington Health Law Summit, Washington, D.C., December 10, 2013

Panelist, "Obtaining and Using Discovery from the Government," American Bar Association National False Claims Act and *Qui Tam* Trial Institute, June 5-7, 2013

Panelist, "*Qui Tam* Actions: Managing Whistleblower Suits for Class Action Counsel," Strafford Webinars, February 7, 2013

"Fraud and Abuse Enforcement Update," American Bar Association Health Law Section's 12th Annual Conference on Emerging Issues in Healthcare Law, February 2011

"*Qui Tam* Litigation Defense: Three Dimensional Chess," American Bar Association's Litigating FCA Cases Teleconference, February 2011

"Healthcare Reform in Practice: Federal and State Health Care Fraud Prosecutions," Law Education Institute's 28th Annual National CLE Conference, January 2011

"Managing the New Threat that Individual Corporate Officer Liability Poses to Pharmaceutical Companies," American Conference Institute's 15th Anniversary Drug & Medical Device Litigation Program, December 2010

"Litigating Civil Cases in the Shadow of a Criminal Investigation," DRI's Business Litigation and Intellectual Property Seminar, April 2010

"Key issues in establishing compliance protocols to manage risk in volatile environments," IPOA EuroConference 2010: Risk Management in Conflict and Post-Conflict Zones, April 2010

Panelist, "Mediating Health Care Fraud Cases," ABA National Institute on Health Care Fraud, May 2009

Panelist, National Institute on Internal Corporate Investigations and In-House Counsel, May 2009

Panelist, "Aftermath of the Financial Meltdown: - Analyzing Future Litigation and Compliance Issues," ABA Business Law Section, April 2009

"Representing Medical Device and Other Supplier Companies," Law Education Institute, Health Law Program, January 2009

Events

PPP Loan Forgiveness – We accepted the PPP Cash, please forgive us. Roundtable on PPP Loan Forgiveness Process Tips and Tactics. C suite only.
Webinar, 06.02.2020

The Future Is Now 2.019
Illinois Supreme Court Commission on Professionalism
05.16.2019

28th Annual National Institute on Health Care Fraud
San Francisco, May 2-4

False Claims Act Trial Institute
Third Annual Mock Trial Hosted in Washington, D.C.

ABA Health Law 17th Annual Conference on Emerging Issues in Healthcare Law
Winter 2016

National False Claims Act and Qui Tam Trial Institute
Hosted by the American Bar Association
Ritz Carlton Denver, CO, 06.03.2015

The American Bar Association 12th Annual Washington Health Law Summit
Ritz Carlton Washington, D.C., 12.09.2014

Women and Minorities: Willing Partners or Reluctant Allies?
07.15.2014

Memberships

Vice Chair, Fraud and Abuse Interest Group, Health Law Section, American Bar Association

Member and Former Co-Chair, Criminal Process Committee, Administrative Law Section, American Bar Association

Member, Commission on Racial and Ethnic Diversity, American Bar Association

Foundation Fellow, American Bar Association

Chair, Government Enforcement and Corporate Compliance Committee, DRI - The Voice of the Defense Bar

Member, The Bar Association of the District of Columbia

Member, Advisory Board, Institute for Inclusion in the Legal Profession

Member, National Bar Association

Member, Litigation Counsel of America

Podcasts & Webinars

Nota Bene Episode 103: The Diversity and Inclusion Imperative: Codifying Equality into the Lawyer's Professional Code with David Douglass
10.28.2020

PPP Loan Forgiveness – We accepted the PPP Cash, please forgive us.
06.02.2020

Nota Bene Episode 59: Organizational Integrity and Solving Reputational Threat with Jonathan Aronie, David Douglass, and Joseph Jay
11.20.2019

Practices

Government Contracts, Investigations & International Trade

False Claims Act

Organizational Integrity Group

Public Policy and Government Affairs

Litigation

White Collar Defense and Corporate Investigations

Healthcare

Industries

Healthcare

Life Sciences

Education

J.D., Harvard Law School, 1985, *cum laude*

B.A., Yale University, 1981

Admissions

District of Columbia

Massachusetts

U.S. Court of Federal Claims