



# Simon A. Gaugush

SHAREHOLDER

TAMPA

813.229.4227

813.229.4133

CONNECT

sgaugush@carltonfields.com

LinkedIn

## Overview

With more than a decade of experience as a federal prosecutor and over 22 years in practice, Simon Gaugush represents companies, lawyers, and individuals in white collar criminal investigations and prosecutions, SEC investigations and enforcement actions, health care-related matters, professional liability claims against attorneys, False Claims Act (qui tam) suits, class actions, and complex business disputes. Simon's practice is broad with a unique depth of experience. Simon has enjoyed particular success as a lawyer's lawyer, defending attorneys accused of unlawful activity or other forms of misconduct. As one of the firm's leaders in conducting internal investigations, Simon and his team have the capacity and wherewithal to investigate and assess potential civil, regulatory, or criminal liability for a company and its executives, and propose courses of action to achieve the best outcome possible for the client.

Many of Simon's clients have multifaceted issues to resolve — from criminal to civil to administrative and regulatory. Having a seasoned litigator, like Simon, with substantial experience in all of these areas is essential to identifying interrelated issues and successfully navigating complex areas of the law.

## Experience as a Federal Prosecutor

One of the benefits of hiring a former federal prosecutor who served as both a trial attorney and a supervisor is that you hire someone with experience and knowledge of how government agencies function, and how government agents and prosecutors think. It's this behind-the-scenes

knowledge and depth of experience that enables Simon to provide insight into how the government conducts investigations, values certain defenses, and might respond to a particular matter. From January 2008 through September 2019, Simon served as a federal prosecutor for the U.S. Attorney's Office in the Middle District of Florida. Simon concluded his tenure at the U.S. attorney's office as the deputy chief of the Criminal Division, where he oversaw the prosecution activities of more than 85 federal prosecutors throughout the district. Prior to that, Simon served as the chief of the Economic Crimes Section, Major Crimes Section, and the General Crimes Section. During the first half of Simon's career at the U.S. attorney's office, he served as a federal prosecutor in the Organized Crime Section, Economic Crimes Section, and Asset Forfeiture Division in Tampa. During his tenure at the U.S. attorney's office, Simon personally prosecuted and oversaw investigations and prosecutions of crimes related to all types of white collar offenses (including health care, tax, mortgage, bankruptcy, wire, mail, securities, access device, and program fraud), kickback offenses, complex opioid cases, money laundering, cybercrime, export violations, obstruction of justice, environmental crimes, international and domestic drug trafficking, large-scale immigration fraud, child exploitation, public corruption, and civil rights matters. As a federal prosecutor, Simon was involved in 18 jury trials and litigated a dozen more up to trial. Simon has extensive experience conducting grand jury investigations and handling countless evidentiary hearings. In his supervisory role, Simon monitored investigations of public officials, physicians, pharmacists, attorneys, and business owners. Additionally, he trained federal prosecutors and law enforcement officers in a variety of practice areas. As deputy chief of the Criminal Division, Simon held top secret security clearance with access to sensitive compartmented information.

## White Collar Criminal Matters

Simon represents companies, professionals, and other individuals at every stage of white collar criminal matters. Every case begins at the allegation stage. Whether it's a threat of government action, informal or formal allegations of misconduct, or service of a grand jury subpoena, Simon and his team work to conclude a matter before it begins in earnest. Getting in front of an investigation is essential to understanding where it might go and directing where it might end up. Simon draws on his experience of over 22 years, more than half of which was spent as a federal prosecutor, to represent his clients in every facet of a white collar criminal case. Simon has been involved in hundreds of complex criminal cases, as a federal prosecutor and defense attorney. He has handled a wide variety of white collar matters including financial crimes, health care fraud, tax offenses, securities fraud, obstruction offenses, and money laundering. Responding to grand jury subpoenas and representing clients as targets, subjects, and witnesses is a core component of his practice. If a client is charged, Simon and his team will mount a powerful defense based on a clear understanding of the government's evidence and the evidence the government either doesn't know or has imprudently disregarded. A forceful response to the government's case is the only

appropriate response. Wherever the path leads in a white collar case, Simon knows the road because he has traveled it before.

## Representing Attorneys Accused of Unlawful Activity

If a lawyer is accused of misconduct — whether criminal or civil in nature — the stakes are incredibly high. A lawyer's license is their livelihood. Reputation means everything; even the hint of a criminal investigation or sanctionable conduct can have devastating consequences for an attorney's standing in the legal community. These cases present their own special challenges and they require an attorney, with a steady hand, to overcome them. Simon has experience on both sides of these cases. As a federal prosecutor, Simon has investigated and criminally prosecuted attorneys, and as defense counsel, he has successfully defended them in criminal investigations, SEC inquiries, and civil litigation. These cases require a defense counsel who knows what they are doing and has been there before. Being under criminal investigation is a lawyer's worst nightmare. Even a prosecutor's unsupported claim of criminal conduct against an attorney is an alarming matter. Simon and his team are here to help bring that distressing situation to an end.

Representative matters:

- Represented a criminal defense attorney who was under federal criminal investigation for obstruction and suborning perjury. After a presentation to the U.S. Attorney's Office, the U.S. Attorney decided to close the investigation.
- Defended a shareholder-level attorney at a national law firm who was accused of witness tampering and obstruction by opposing counsel in a civil case. After extensive litigation, the court issued an order clearing the attorney of witness tampering and obstruction allegations, and declined to refer the matter to the state bar.
- Representing an attorney who formerly served in a shareholder-level capacity at an AmLaw 100 law firm in proceedings before the SEC, a federal receiver action, a federal securities-related class action, and two malpractice actions alleging various securities violations and civil causes of action arising out of conduct by the attorney's former client.

## Securities Investigations and Enforcement Matters

Simon's practice includes representing companies, executives, attorneys, promoters, and other individuals in SEC investigations, enforcement actions, securities fraud class actions and derivative lawsuits. Areas of representation include the promotion and sale of unregistered securities, private placements, Reg D safe harbor, Reg FD, finder's fees and transaction-based compensation, general solicitation rules for private offerings, and licensing of sales agents. Many SEC investigations involve parallel criminal investigations, requiring defense counsel to wear two hats. With his background as a former federal prosecutor and chief of the white collar section, Simon is uniquely suited to handle both the SEC and DOJ sides of a matter.

## Internal Investigations

Companies, executives, audit committees, and boards of directors regularly turn to Simon and his team to conduct complex internal investigations. The reasons to conduct an internal investigation vary as widely as the clients that need them. Often, internal investigations arise out of criminal investigations, regulatory inquiries, employee complaints, whistleblower claims, and media-driven allegations of corporate misconduct. The one constant is that internal investigations must be handled by experienced counsel. Simon and his team of trial-ready attorneys operate under the premise that the best decisions are informed decisions. With a team of former federal prosecutors and former regulatory enforcement attorneys beside him, Simon draws from their notable experience handling investigations and inside knowledge of how government actors think to deliver sound and strategic legal advice to clients. Each investigation is handled with sensitivity and the protection of confidentiality, privilege, and the client's data in mind. By efficiently conducting investigations, Simon and his team are able to identify potential areas of exposure for clients, develop courses of action to help deter government intervention, and send a positive message to shareholders, employees, and other stakeholders. These efforts help to minimize the potential reputational harm that may come from government enforcement actions or allegations of corporate misconduct. Simon's practice extends to defending executives, board members, and other individuals in these investigations.

## Health Care / Kickbacks

As a federal prosecutor in Florida and chief of the white collar section in one of the largest U.S. Attorney's Offices in the nation, Simon investigated, prosecuted, and supervised countless health care fraud cases. In particular, Simon and his team concentrated on business owners who were suspected of committing health care fraud, kickback offenses, and billing Medicare notwithstanding their exclusion from federal programs. Simon's cases included a long term investigation of a Fortune 500 company and medical device manufacturer for off-label promotion, adulteration, and misbranding of a medical device, resolving the case with a monetary penalty, and deferred prosecution agreement. In private practice, Simon's extensive work in the health care space has continued. He routinely represents medical practitioners, DME companies, business owners, and hospitals in administrative, civil, and criminal health care investigations and prosecutions. Simon has represented numerous clients accused of kickback (AKS) violations and health care fraud; the "medical necessity" of products sold by clients, especially DME companies, is an issue Simon commonly addresses. Simon and his team guide clients through resolving Medicare suspensions by CMS, responding to Civil Investigative Demands and grand jury subpoenas, and, in the most severe cases, criminal charges. There is no such thing as a routine or friendly visit from an HHS-OIG special agent. If CMS or HHS-OIG has taken an interest in a medical practitioner, health care provider, or business owner, then experienced representation is essential.

Simon and his team work to achieve the best outcome possible for their clients by addressing issues early and handling it right at inception.

## False Claims Act (Qui Tam)

In private practice, Simon defended False Claims Act (qui tam) suits. In particular, Simon defended the former manager of a mail-order pharmacy for a *Fortune* 500 company regarding their prescription-filling practices. In another case, Simon defended the owners of a company that conducted background checks for the government. Through these experiences, Simon became adept at defending clients against allegations of filing false claims with the government.

## Class Actions / Toxic Torts

While in private practice, Simon represented the former owner of an industrial plant in a mass tort action and separate class action involving more than 1,000 plaintiffs. This case required coordination between the current and former owners of the plant to contest the plaintiffs' claims. The plant owners defeated the plaintiffs' attempts to obtain class certification.

## Cybercrime / Data Security

Simon spearheaded the creation of a unit to handle cybercrime matters at the U.S. attorney's office. From 2016 to 2019, Simon supervised and was intimately involved in the investigation and prosecution of xDedic, an online marketplace that sold access to compromised computer credentials and personal information stolen from individuals and businesses worldwide. Simon and a team of federal prosecutors worked with a variety of federal agencies and law enforcement partners around the world to seize and dismantle the marketplace. Simon has handled matters involving business email compromises and has lectured in public forums on fraud prevention and protecting personal data.

## Opioid and Pharmaceutical Matters

Simon is known for his experience investigating and prosecuting medical personnel for overprescribing opioids and other controlled substances. Simon authored a manual for the U.S. Department of Justice, *Investigating and Prosecuting Physicians and Pharmacists for Dispensing and Distributing Controlled Substances Outside the Course of Professional Practice*, which is commonly referred to in the DOJ as the bible for opioid prosecutions and introduced the concept of "red flags" for identifying pill mills. Simon conducted formal training sessions and regularly advised federal prosecutors and agents around the country in how to investigate and prosecute opioid offenses. During his time as the chief of the Economic Crimes Section, Simon supervised the federal prosecutors in the Opioid Fraud and Abuse Detection Unit at the U.S. attorney's office.

## Immigration

From 2000 to 2003, Simon served as an assistant chief counsel for the U.S. Department of Homeland Security's Office of the Chief Counsel, and its predecessor agency. In this role, Simon litigated hundreds of cases in U.S. immigration court. These cases involved, among other things, claims for asylum, withholding of removal, cancellation of removal, adjustment of status, and withholding under Article 3 of the United Nations Convention Against Torture. Simon served as a special interest attorney, handling cases involving national security risks and suspected persecutors. In 2002, Simon served as a refugee processor in Kenya, and in 2001 he earned the award for new attorney of the year. In private practice, Simon has counseled clients on the immigration consequences of criminal convictions and waivers of inadmissibility for particular offenses. When Simon served as a federal prosecutor, he trained immigration officers and advised on worksite enforcement.

## Areas of Focus

### Practices

- White Collar Crime & Government Investigations
- Internal Investigations
- Health Care
- Litigation and Trials
- Environmental Regulation & Litigation
- Cannabis Law
- Cybersecurity and Privacy
- Technology
- Pharmaceuticals and Medical Devices
- SEC Enforcement
- False Claims Act, Qui Tam, and Whistleblower Defense
- Immigration Planning and Compliance
- Global Anti-Corruption
- Criminal Tax
- Class Actions

### Industries

- Health Care
- Technology

# Insights

09.27.2022

DOJ Issues New Guidance on the Investigation and Prosecution of Corporations and Corporate Officers

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09.19.2022

The Florida Security of Communications Act – Basics 101

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08.15.2022

ABA Sound Advice: Conducting Civil Rights Audits: Benefits and Best Practices

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06.12.2020

Flynn's False Statement Charge Reveals Failed Investigation

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06.10.2020

CARES Act Provider Relief Funding: Think Before You Deposit

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03.31.2020

Federal and State Officials Launch Joint Efforts to Investigate and Prosecute Fraud Related to the Coronavirus

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# News

12.22.2023

Simon Gaugush Quoted in Bloomberg Law: "OpenAI Probe Is WilmerHale Test After College President Debacle"

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07.01.2022

Carlton Fields Named Top Firm and Attorneys Named Legal Leaders in Florida Trend's 2022 "Legal Elite"

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06.01.2022

'Predictable': Sussmann Verdict Leaves Durham Probe In Bind

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05.16.2022

Trial Looms For Ex-Perkins Coie Atty Accused Of Lying To FBI

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03.02.2022

Six Carlton Fields Attorneys Elected to Shareholder

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06.12.2020

Simon Gaugush Authors Law360 Article on FBI's Investigation into Michael Flynn

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10.23.2019

Carlton Fields Adds Former Deputy Chief of the Criminal Division at the U.S. Attorney's Office for the Middle District of Florida

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10.21.2019

Carlton Fields Hires Former Top-Level Federal White-Collar Prosecutor

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## Recognition

- *The Best Lawyers in America*, Criminal Defense: White-Collar (2022–2024)
- Florida Legal Elite, *Florida Trend Magazine* (2022)

## Speaking Engagements

- "Plea Bargaining," 28th Annual National Seminar on Federal Sentencing, St. Pete Beach, FL (August 30, 2019)
- "Protecting Places of Worship," Presentation to faith-based organizations, law enforcement, government officials and community leaders to discuss strategies for preventing and responding to violent incidents targeting places of worship, College of Central Florida, Ocala, FL (July 23, 2019)
- "Popular Scams, Identity Theft, and Protecting Yourself from Fraud," Fraud Prevention Day, Senior Community of Lake and Sumter Counties, Lady Lake, FL (May 16, 2019)

- "Civil Rights Criminal Prosecutions," Presentation to International Delegation from Ukraine, Papua New Guinea, Ghana, and Malawi, Orlando, FL (March 25, 2019)
- "Popular Scams, Identity Theft, and Protecting Yourself From Fraud," Fraud Prevention Day, Sun City Center Men's Club, Sun City Center, FL (March 4, 2019)
- "The Opioid Epidemic, Fentanyl, Analogues, and the Law," Central America Precursor Chemical and Fentanyl Seminar, Panama City, Panama (November 15, 2018)
- "Immigration Fraud and Working with the United States Attorney's Office," U.S. Citizenship and Immigration Services Fraud Detection and National Security Officer Training, Federal Law Enforcement Training Center, Charleston, SC (November 2, 2018; March 30, 2018; July 20–21, 2017; December 18, 2015)
- "Jamaican Lottery Scams, Impersonation Scams, and Romance Schemes," Fraud Prevention Day, Valencia Lakes Community (425 attendees), Wimauma, FL (October 24, 2018)
- "Testifying in Federal Court," Courtroom Testimony Training Seminar for Federal and State Law Enforcement Officers, Naples, FL (October 16, 2018)
- "Pill Mill Investigations and Prosecutions in the Middle District of Florida (A Review of the Last 10 Years)," Meeting with former U.S. Attorney General Jefferson B. Sessions III, Acting Attorney General Matthew G. Whitaker (then chief of staff), Florida Attorney General Pam Bondi, and heads of federal law enforcement agencies (February 7, 2018)
- "Conducting Accelerated Pill Mill Investigations," U.S. Department of Justice Opioid Fraud and Abuse Detection Training Webinar (August 28, 2017)
- "Obstruction of Justice," White Collar Training Seminar for Federal Prosecutors and Federal Law Enforcement Officers, Tampa, FL (August 23, 2017)
- "Investigating, Prosecuting, and Sentencing in Immigration Fraud Cases: The Case of *United States v. Rosa and Domenico Cingari*," U.S. Department of Justice Immigration Fraud Training Webinar (July 2017)
- "Drafting Search Warrant and Criminal Complaint Affidavits," Homeland Security Investigations Special Agent Training, Tampa, FL (September 2016)
- "Criminal, Civil, and Administrative Forfeiture," Bureau of Alcohol, Tobacco, Firearms, and Explosives Annual Training Seminar, Vero Beach, FL (February 23, 2010)

## Credentials

### Education

- Vanderbilt University School of Law (J.D., 2000)
- American University (B.A., 1997)

### Bar Admissions

### Court Admissions

- U.S. Court of Appeals, Eleventh Circuit
- U.S. District Court, Middle District of Florida
- U.S. District Court, Northern District of Florida

- Florida

- U.S. District Court, Southern District of Florida

## Background

- U.S. Attorney's Office for the Middle District of Florida (2008-2019)
  - Deputy Chief, Criminal Division (2018-2019)
  - Chief, Economic Crimes Section (2016-2018)
  - Chief, Major Crimes Section (2015-2016)
  - Chief, General Crimes Section (2013-2015)
  - Assistant U.S. Attorney, Criminal and Asset Forfeiture, Tampa and Fort Myers Divisions (2008-2013)
- Senior Associate, Zuckerman Spaeder, Tampa, FL (2003-2008)
- Assistant Chief Counsel, Office of the Chief Counsel, Immigration and Customs Enforcement, U.S. Department of Homeland Security, Arlington, VA and Miami (2000-2003)