



## Aviva J.B. Gilbert

Partner

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Aviva Gilbert represents individuals and companies in federal and state government enforcement, investigation, and criminal justice matters. She co-chairs the firm's white-collar defense and corporate investigations practice and is a leader of its healthcare industry work. Aviva has extensive experience appearing before and negotiating with agencies like the United States Department of Justice, the Securities and Exchange Commission, the Department of Health and Human Services, FINRA, and the California Attorney General's office. Aviva shepherds witnesses and defendants through all stages of government proceedings, and focuses primarily on the healthcare and technology sectors.

Aviva also represents public and private company board directors, trustees, and committees both in conducting internal investigations and in managing challenging cultural and corporate governance issues. She has led multiple corporate culture reviews, and often counsels board members, committees, and apex executives as an advisor. Her exposure to varied companies and a broad range of corporate dynamics helps her serve as counsel, strategist, and sounding board to her director and executive clients.

Her internal investigation experience involves high-profile technology, healthcare, biotech, and consumer goods companies, as well as financial services entities, educational institutions, and large public organizations. She has twice (2019 and 2022) served as temporary in-house counsel for her clients, once to a Fortune 10 technology company and once to a public life sciences company. In each of those roles she conducted internal investigations and addressed challenges in laboratory, sales, and engineering aspects of the companies. Aviva also has experience as "pool counsel," working with groups of employees in the internal investigation stage and then in any follow-on governmental investigations and proceedings. This role allows her to learn the details of a particular issue under investigation, and then apply this knowledge efficiently to the needs of corporate and individual clients.

Aviva also focuses on emergent issues in the securities and healthcare arenas. She has clients in the cryptocurrency wing of the financial sector, and clients facing government inquiries relating to novel bio- and medical technologies. Aviva also works with colleagues in the firm's cannabis industry practice, where she focuses on risk analysis for companies in or interested in entering the cannabis industry.

Aviva is a skillful advocate and counselor to people who find themselves in challenging, unfamiliar situations and is an expert in demystifying the often-complex landscape of litigation, governmental proceedings, or corporate investigations. Her practice requires balancing complex factual learning, negotiation expertise, and careful attention to the difficulties inherent in high-stakes inquiries into professional or personal conduct. Aviva is uncommonly effective at managing this balance.

Between law school and joining Farella, Aviva clerked for the Hon. Wilma A. Lewis, Chief Judge of the U.S. District Court for the Virgin Islands. She was a founding member and global chair of the Women's White Collar Defense Association Young Lawyers Committee and currently serves on the association's Alumni Committee. Aviva is a member of the Board of Trustees of The Contemporary Jewish Museum in San Francisco and a Commissioner for the City of Berkeley.

Prior to becoming a lawyer, she worked in Google's Public Affairs division, where she handled government and education sector issues, and was a J. William Fulbright Fellow from 2007-2008 in Mexico City and

### Services

- White Collar Criminal Defense and Internal Corporate Investigations
- Privacy and Cybersecurity
- Private Client
- Technology
- Healthcare
- Ultra-High Net Worth

### Education

- Stanford Law School (J.D.)
  - . Editor, member of the Review Committee, *Stanford Technology Law Review*; Director, Stanford Latino Law Students' Association
- Stanford Graduate School of Education (M.A.)
  - . Education Policy
- Harvard University (A.B.)
  - . *Cum laude*

### Bar Admissions

- California

### Clerkships

- U. S. District Court Virgin Islands (D.V.I.), Wilma A. Lewis

Cuernavaca, Mexico, working at the Mexican National Institute of Public Health (INSP).

### **Distinctions**

- *Chambers USA*, Up-and-Coming Individual, California: Litigation - White Collar Crime & Government Investigations (2023)
- Northern California *Super Lawyers Rising Stars*, White Collar Crime (2022-2023)
- 2020 Catherine M. O'Neil Mentoring Award, Women's White Collar Defense Association (WWCDA)
- J. William Fulbright Fellow (2007-2008) - Mexico

### **Memberships and Affiliations**

- Leadership Council on Legal Diversity, Fellow (2023)
- Women's White Collar Defense Association, Alumni Committee (2023)
- Women's White Collar Defense Association, Young Lawyers Committee Global Chair (2017-2022)
- Trustee, The Contemporary Jewish Museum
- Leadership Council on Legal Diversity, Pathfinder (2019)
- Edward J. McFetridge American Inn of Court Barrister
- American Health Law Association, Member
- American Bar Association White Collar Crime Young Lawyers Subcommittee
- Bar Association of San Francisco Cybersecurity and Criminal Justice sections

## **Experience**

### **Insurance and Pharmaceutical Benefits Aggregator and Union Employer**

Counsel to company president and union employer in formal disciplinary proceedings regarding union contracts and health insurance. Represented company president and employee witnesses in adversarial hearing. Prevailed before a decision-making panel that cleared client of wrongdoing in post-hearing decision. Ultimately negotiated settlement favorable for client and company.

### **DOJ Sales Practice Investigation**

Represented a pool of individual former director-level sales professionals of a major pharmaceutical company in Department of Justice civil investigation into marketing and sales practices for a psychosis drug.

### **Medicaid Fraud**

Representing physician in two federal criminal investigations into Medicare fraud and Anti-Kickback Statute violations in the Skilled Nursing Facility and Home Health Agency industries. The representation has focused on the legal framework around allowable versus illegal referrals and medical directorships.

### **Payment Processor for Crypto-currency Business**

Representing principal and founder of payment processor company in investigation by Securities and Exchange Commission and U.S. Department of Justice Tax division regarding crypto-currency business and tax activities.

### **Molecular Diagnostic Test Company individuals**

Represented former medical insurance reimbursement director and current Chief Medical Officer of company which markets a molecular diagnostic test in the cardiology and heart disease space. Parallel criminal and civil federal investigations, and state insurance investigation, occurring 2016-2017 (criminal probe complete)

as of April 2017, remainder ongoing). Investigations relate to Medicare and private payor reimbursement and health insurance issues, as well as the clinical data supporting the diagnostic test.

#### **Electronic Health Record Startup Civil and Criminal Investigations**

Counsel to software engineer witnesses in connection with Department of Justice and Department of Health and Human Services parallel civil and criminal investigations into electronic health record certification testing. Company ultimately agreed to \$145M civil settlement and criminal fine to resolve related allegations.

#### **Biotech False Claims Act Litigation**

Counsel to C-suite executives in False Claims Act litigation related to a biotech company's product efficacy and alleged fraud, as well as employment-related claims.

#### **Yahoo Cyber Breach Investigation**

Representing several key executives and numerous employees in the Yahoo Cyber Breach investigation (client identities confidential) and follow-on regulatory and criminal investigations. This investigation involves possibly the most significant data breach in history. In addition to a recently concluded internal investigation by a special committee of Yahoo's Board, Yahoo and its individuals are under investigation by the SEC, DOJ, and FTC, and are subject to dozens of civil lawsuits, as a result of allegations that some employees at the company knew about the data breach in 2014 and failed to escalate that information appropriately. As lead counsel for the Yahoo individuals in this high profile white collar matter, the Farella team is addressing some of the most complex and evolving white collar defense issues of the present day.

#### **Wells Fargo Bank**

Serve as counsel for eighteen Wells Fargo current and former employees ranging from senior executives to a member of the Wells Fargo litigation department to private financial advisers in internal (Audit Committee) and multiple federal government (DOJ, SEC, OCC, and state attorneys general) investigations and civil suits regarding allegations of improper retail and wealth management sales practices and improper consumer lending practices.

#### **FINRA Representation**

Represented large-scale privately held broker-dealer in a Financial Industry Regulatory Authority (FINRA) investigation regarding business development and cost sharing activities.

#### **Pegastaff v. Corestaff**

Counsel for former PG&E executive and subject/target of parallel federal and state investigations, as a key trial witness in state court action alleging discrimination by PG&E in awarding contracts. Successful motion for protective order in May 2017, followed by further law-and-motion activities during jury selection in June 2017.

#### **Certification Testing Investigation**

Counsel software engineer witnesses in parallel civil and criminal investigations into an electronic health record company's certification testing; obtained full fee coverage for representation.

#### **Fraud Investigation**

Represented former medical insurance reimbursement director and chief medical officer of a molecular diagnostic test company in fraud investigation, avoiding both criminal and civil federal liability for clients in proceeding involving the Department of Justice, Health and Human Services, and California Department of Insurance.

#### **Wrongful Termination Litigation**

Obtained complete dismissal with prejudice of claims against national sales director in False Claims Act and wrongful termination litigation regarding diagnostic test product efficacy, test data, marketing, and reimbursement.

**USA v. Aston et al.**

Represented UK national indicted for U.S. antitrust Sherman Act Section 1 violations and sentenced to just ten days supervised release. This case involved international extradition and INTERPOL issues. U.S. District Court for the Northern District of California (San Francisco Division); Case No. 3:15-cr-00419-WHO.

**United States v. Burrill, Berger**

Acted as counsel for key defense witness who testified in July 2018 in a tax-fraud jury trial against a senior partner of a Bay Area accounting firm. U.S. District Court for the N.D. of Calif. (San Francisco Division), Case No. CR 17-00491 RS.

**DEA Licensing Lapse**

Represented a Northern California multi-facility medical center by conducting an internal investigation related to an inadvertent lapse in DEA licensing and thereafter negotiated a favorable civil settlement with the relevant US Attorney's Office.

**Formal Disciplinary Hearing**

Counseled pharmaceutical benefits aggregator company in formal disciplinary proceedings regarding union contracts and health insurance. Represented company president and employees in adversarial hearing, and ultimately negotiated settlement favorable for all clients.

**National Public Entity Investigation**

Conducted internal investigation into materials security and property theft allegations for large-scale national public entity. Conducted dozens of employee interviews and navigated complex legal and union requirements for public entity.

**Federal and State Criminal Investigations of Alleged Misconduct and Public Corruption**

In *USA v Pacific Gas & Electric Company*, represented former vice-president at the public utility company who is target of federal and state criminal investigations into two matters: (1) a gas pipeline explosion; and (2) alleged public corruption issues involving utility and regulator.

## Publications

October 2, 2023

**What Nonprofit Board Leadership Needs To Know About Internal Investigations**

*EO Radio Show – Your Nonprofit Legal Resource*

December 8, 2022

**A Primer for Corporate Directors: Maximizing Internal Investigation Effectiveness and Efficiency**

November 21, 2022

**Maximizing Internal Investigation Effectiveness & Efficiency**

*Bloomberg Law*

August 29, 2022

**Nonprofit Basics: Document Retention Policies and Subpoenas, and a Conversation With Aviva Gilbert on Why Good Policies Matter**

*EO Radio Show – Your Nonprofit Legal Resource*

June 7, 2022

**Internal Investigations for Nonprofits: A Means of Identifying and Addressing Misconduct Before the Regulators Come Calling**

*Board & Administrator*

June 2, 2022

**Internal Investigations for Nonprofits: A Means of Identifying and Addressing Misconduct Before the Regulators Come Calling**

*EO Radio Show*

October 28, 2021

**Investigations, Audits, Subpoenas, Oh My!**

*Nonprofit Education Series*

March 13, 2020

**Going it Alone: How to Manage Cybercrime Response With Less Government Help**

*Law360*

10/9/2018

**Branding Concerns Rise Amid Cryptocurrency Proliferation**

12/14/2017

**FCPA in the Trump DOJ: Continuing Down the Same Path, with a Little More Heft**

5/17/2017

**Bond Fraud Trial Shows Need to Scrutinize Municipal Revenue Generation**

April 20, 2017

**Municipal Bond Securities Fraud Case Heads to Trial**

7/25/2016

**Kickback Prosecutions Expanding Beyond Drugs and Devices to Care Networks**

4/8/2016

**SEC Spotlight Hits Emissions Issues**

4/7/2016

**DOJ Amping Up FCPA Prosecution Efforts While Offering New Cooperation Benefits**

10/26/2015

**'Coworking' With a Search Warrant Target**

## Outside the Office

When not practicing law, Aviva can be found working on her house, her garden, or her neighborhood. She is an East Bay native, but as a committed international traveler she's also one of the firm's resident global travel experts.