



## Aviva J. Gilbert

Senior Associate

[agilbert@fbm.com](mailto:agilbert@fbm.com)

San Francisco: 415.954.4478

Aviva Gilbert represents individuals and companies in both federal and state civil enforcement, investigation, and criminal justice matters, and has extensive experience appearing before and negotiating with agencies like the United States Department of Justice, the Securities and Exchange Commission, the Department of Labor, the Department of Health and Human Services, and the California Attorney General's office. She also maintains an active litigation practice focusing on healthcare-related litigation and technology sector business disputes. Aviva is co-chair of Farella's White Collar Defense and Internal Corporate Investigations Group.

Aviva shepherds witnesses through all stages of government proceedings, and has broad experience with internal investigations into compliance and financial issues as well. Her investigation experience involves high-profile technology and biotech companies under significant pressure, as well as financial services entities and public organizations. Her representations run the gamut from apex executives to entry-level salesforce employees. Aviva also has experience as "pool counsel," working with groups of employees in the internal investigation stage and then in any follow-on government proceedings. This allows her to learn the details of a particular issue under investigation, and then apply this knowledge efficiently to the needs of varied individual employee clients.

In addition to her individual client representation, Aviva focuses on emergent issues in the securities and criminal defense spaces. She has done a significant amount of work on cybersecurity and associated compliance issues, and has clients in the cryptocurrency wing of the financial sector. Aviva also works with colleagues in the firm's cannabis practice where she focuses on risk analysis for companies in or interested in 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 investigations. The key to this is uncommonly strong, well-honed soft skills coupled with a great deal of emotional intelligence, which comes into play when negotiating, listening, and working to resolve or diffuse a difficult or adversarial situation. The white collar defense and investigations practice requires balancing complex factual learning and synthesis and careful attention to the difficulties inherent in high-stakes inquiries into professional or personal conduct. Aviva is highly effective at managing this balance.

### Distinctions

- 2020 Catherine M. O'Neil Mentoring Award, Women's White Collar Defense Association (WWCDA)
- J. William Fulbright Fellow (2007-2008) - Mexico

### Memberships and Affiliations

- Global Chair, Women's White Collar Defense Association Young Lawyers Committee
- Bay Area City Lead, Leadership Council on Legal Diversity (2020)
- Leadership Council on Legal Diversity Pathfinder (2019)
- American Bar Association White Collar Crime Young Lawyers Subcommittee
- Bar Association of San Francisco Cybersecurity and Criminal Justice sections

### Services

- White Collar Criminal Defense and Internal Corporate Investigations
- Business Litigation
- Privacy and Cybersecurity
- Private Client
- Technology
- Healthcare

### Education

- Stanford Law School (J.D., 2013)
  - . editor, member of the Review Committee, *Stanford Technology Law Review*; director, Stanford Latino Law Students' Association
- Stanford Graduate School of Education (M.A., 2013)
  - . Education Policy
- Harvard University (A.B., 2007)
  - . *cum laude*

### Bar Admissions

- California

### Clerkships

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

- San Francisco La Raza Lawyers Association

## Experience

### **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.

### **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.

### **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.

### **FINRA Representation**

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

### **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.

### **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.

### **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.

### **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.

### **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.

### **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.

### **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.

### **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.

## **Publications**

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.