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The ins and outs of switching sides of the fence



PHOTO BY MAIKE SABOLICH

Bill Price, counsel with Phillips Murrah.

BY MARIE PRICE
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OKLAHOMA CITY – It would be a major plus for a defense attorney to be able to watch the other side prepare a case – not just evidence and witnesses, but finer points such as strategy and how a prosecutor thinks.

Some Oklahoma attorneys don't have to wonder. They know, having worked both sides of the criminal-law fence.

Phillips Murrah's Bill Price spent about 15 years as a federal prosecutor, the last half of them as U.S. attorney in Oklahoma City.

"It was an invaluable experience for private practice," Price said Friday. He said there's nothing quite like "knowing what's going on in the mind of the prosecutor."

Price said he has been able to employ former FBI and IRS agents he knows from his prosecution days to help him prepare to defend the white-collar-crime cases that now make up part of his practice. He said such investigators tend to have more credibility when prosecutors and judges are weighing cases.

Those years of prosecutorial experience also taught Price how to evaluate a case and help a client decide whether to go to trial or work something out with prosecutors.

"You know the system well enough to know that it is much worse for your client under the guidelines if you wait for an indictment," he said. "What's good for the client is to sit down real early, figure out

whether this is one you want to fight all the way or it's one that you should figure out to cooperate."

It's preferable, Price said, to persuade prosecutors to let a client plead to a lesser charge, build up enough evidence from his own investigation and witness interviews to convince the government not to prosecute, or put together a sentencing memorandum with sufficient mitigating factors to minimize a client's sentence.

Price said the workload in the U.S. attorney's office taught him how to try cases well. He said his private-practice experience has given him opportunities to work in many different jurisdictions, while his U.S. attorney background adds credibility to a client's case when he deals with prosecutors in other states.

In some ways the two sides of a criminal case do not differ that much, as both are on a truth-finding mission, he said. Some techniques and thought processes are similar as well, he added.

Price said his investigative skills, as well as those of former federal agents, often come into play when companies ask him to determine whether there is fraud or some other crime occurring within their business.

In addition to uncovering wrongdoing, Price said, an investigation demonstrates that a company is trying to clean itself up.

"It's a great strategy for the company," he said.

Oklahoma City criminal defense attorney Irven Box is a former police officer and also served as an assistant district attorney from 1969 to 1974.

"I thought it was going to be difficult," Box said of making the transition from law enforcement and prosecution to private practice. "But then I got to the realization that being a criminal defense attorney is just one part of the criminal justice system, and I could be just as aggressive and as eager to do that as I was in the other job."

Box said that his background on the other side of the legal arena has been beneficial in his current practice.

"I know the ins and outs of how arrests should be made, and procedures and prosecutions, what you're supposed to do and not to do," he said. "It also helps to have friends within law enforcement that trust me and I trust them. I don't think I could be even close to being as effective as I think I am right now, had I not had the law enforcement and prosecutorial background that I've had."

Box said that experience also helps him determine when the prosecution has not tied up the loose ends of a case – whether they have missed some evidence or some steps in an investigation while preparing their case.

"If law enforcement is taking some shortcuts, I can make those known and take advantage as far as is beneficial to my client," he said.

Attorney Susanna Gattoni switched from private practice to working with the Oklahoma City U.S. attorney's office and is now back with the Hall Estill law firm in its Oklahoma City office.

Gattoni said she gained a lot from making both transitions.

She said she had some federal court civil experience from her previous private practice that helped her in the federal prosecutor's office.

"Of course, it was different when you work for the government as opposed to work for yourself," Gattoni said. "But I learned a lot working there."

She is also glad that she returned to private practice.

"I missed being my own boss," Gattoni said. "I work for a firm. Still, when you're in private practice as a lawyer, you're still driving the bus, so to speak."

Gattoni said her civil experience taught her to look at issues differently than someone with a criminal law-focused background, which helped in her prosecutorial work.

"You have a different base of knowledge that you're coming from," she said.

Gattoni described her dual legal work as a form of cross-training, job-wise.

"You always learn something," she said. "You have no idea how it's going to be applied later, and then it helps you," she said.

Gattoni said she came back to private practice in 2008 with a new expertise.

"It's allowed me to work in the area of criminal defense that I know I would not have likely had the opportunity to do, had I not been working at the U.S. attorney's office," she said. "Plus, it gives you a better working knowledge of the U.S. government and its federal agencies, its investigation of things and more insight as to how they make their decisions."