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Those Very Public Arrests of Executives: [Interview]

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▣ Abstract (summary)

The well-publicized early-morning arrests of the Rigases came even after they offered to turn themselves in, their lawyers said. Mary Jo White, the former United States attorney in Manhattan who now heads the litigation department of the New York firm Debevoise & Plimpton, spoke on Friday about the reasoning behind such arrests. JONATHAN D. GLATER

If you don't know the day and you've been told that you're going to be charged imminently, and you've said you would surrender voluntarily, then the executive's lawyer should consider -- if it is absolutely certain that charges are imminent -- making a public announcement that you have been informed that the executive will be charged, and that your client has agreed to voluntarily surrender. You might also say that you hope, though you have been given no assurance, that the government would not make a spectacle of your client by arresting him. You would also, of course, say that your client is innocent and will be exonerated if charges are brought. Such an announcement could give the government pause, because then it will be clear that they are carrying out the arrest for the spectacle.

▣ Full Text

AT 6 a.m. on Wednesday, federal agents arrested John J. Rigas, 78, the founder and former chief of Adelphia Communications, the cable television company in bankruptcy, and two of his sons, Timothy and Michael, at their apartment on Manhattan's Upper East Side. The three face charges that they used the company's money for personal gain, taking out personal loans from Adelphia and using its money to buy stock -- even using its funds to build a golf course and travel on a safari.

The well-publicized early-morning arrests of the Rigases came even after they offered to turn themselves in, their lawyers said. Mary Jo White, the former United States attorney in Manhattan who now heads the litigation department of the New York firm Debevoise & Plimpton, spoke on Friday about the reasoning behind such arrests. JONATHAN D. GLATER

Q. Why make a public spectacle of the arrest of a nonviolent executive?

A. It's obviously to send a strong message that the government is serious and acting vigorously, to deter other corporate executives. It's done dramatically in part to restore investor confidence. It certainly catches people's attention in the right places, from the prosecutor's point of view.

Q. The early hour of the arrests seems gratuitous. Is there a reason for the timing?

A. Most arrests, of whatever kind, that are not done just on the spot are actually done early in the morning, because the F.B.I. or prosecutors want to catch the suspect at home before the day begins. If you do it later in the day, you have to figure out where they are, you don't know their schedules typically, so you may not be able to find them.

Q. What practical advice would you give executives who have reason to believe they will be arrested, to avoid such a spectacle?

A. It depends exactly where it sits and what the executive and his lawyer know. First, I would do what seemingly happened in the Rigas case, which is inform the prosecutors that if there is to be an arrest, your client will voluntarily surrender.

If you know that an arrest is to occur on a specific day, I would even consider not only making the statement that you will voluntarily surrender, but also perhaps going with your lawyer on that day to the prosecutors' office or the F.B.I., if that's the agency that's involved, and wait there to surrender.

If you don't know the day and you've been told that you're going to be charged imminently, and you've said you would surrender voluntarily, then the executive's lawyer should consider -- if it is absolutely certain that charges are imminent -- making a public announcement that you have been informed that the executive will be charged, and that your client has agreed to voluntarily surrender. You might also say that you hope, though you have been given no assurance, that the government would not make a spectacle of your client by arresting him. You would also, of course, say that your client is innocent and will be exonerated if charges are brought. Such an announcement could give the government pause, because then it will be clear that they are carrying out the arrest for the spectacle.

Q. Is the current prosecutorial climate similar to that of the prosecution of Ivan Boesky, Michael Milken and savings and loan officers in the 1980's?

A. It's unprecedented, at least in some ways. Fifteen years ago, the focus was on the S. & L.'s and insider trading, two brands of financial fraud. Today it's really across the board. Prosecutors everywhere -- federal, state and local -- are targeting corporate fraud of all kinds at every level, and including executives, accountants, bankers, analysts and others.

Q. Should we expect more arrests and prosecutions of corporate executives?

A. Given the president's, Congress's and the Department of Justice's strong statements, I would expect to see more. Arresting executives is a way that the government tries to prove it means what it says in terms of cracking down. The danger, of course -- and it's a significant one -- is overkill, sweeping into the prosecutorial frenzy people who should not be charged.

Photograph

Mary Jo White