



## GARY S. LINCENBERG

### PRINCIPAL

**T** 310.201.2100

**F** 310.201.2110

**E** [glincenberg@birdmarella.com](mailto:glincenberg@birdmarella.com)

### EDUCATION

Harvard Law School, J.D., 1985

University of Illinois, B.A., Bronze Tablet Award for top 1%, *summa cum laude*, 1982

## OVERVIEW

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In 2020, Gary Lincenberg received *Benchmark Litigation's* award for being the Best White Collar/Government Investigations Attorney in the State of California.

Mr. Lincenberg defends businesses and executives facing government investigations in need of a trial-savvy attorney to handle complex civil and white collar criminal litigation. He is considered among the most experienced and skilled trial attorneys in the country. He has handled a wide variety of cases, including False Claims Act, FCPA, securities, investment, tax, real estate, banking, money laundering, money remitting, government contractor, economic espionage, export, health care, environmental, public corruption, program fraud, and intellectual property cases. Prior to joining Bird Marella over 25 years ago, he served over six years as an Assistant United States Attorney.

Here is a sample of Mr. Lincenberg's most recent accomplishments:

- (i) June 2022: Won mid-trial dismissal of all charges against advertising industry executive in federal fraud prosecution brought by DOJ and the SDCal USAO.
- (ii) September 2021: Won mid-trial mistrial motion of prosecution brought by DOJ and Arizona USAO of former owner of Backpage.com executive criminally responsible for the publication of content on its website.
- (iii) August 2021: Won civil trial against notorious developer Mohamed Hadid for illegal construction of \$50 million Bel Air mega-mansion, including a multi-million dollar judgment and an order for total demolition of the illegal mansion.
- (iv) 2019-2021: Successfully avoided criminal charges for three sets of parents in the Varsity Blues prosecutions.
- (v) 2020: Worked on behalf of the United States House of Representatives in the impeachment trial of former President Trump for abuse of power and obstruction;
- (vi) 2020: Completed a trifecta of victories on behalf a government contractor and its principal executive: first, won dismissal of criminal charges that had been filed against the executive; second, at trial, won a multimillion-dollar judgment for breach of contract against a company that was adverse during the government investigation; third, following litigation through summary judgment, won a multi-million dollar settlement from another company that was adverse during the government investigation.

Mr. Lincenberg is a Fellow of the American College of Trial Lawyers. He served as the National Co-Chairman of the ABA's White Collar Crime Committee; Co-Chair of the CJS ABA Liaison Committee to the Department of Justice; Lawyer Representative to the Ninth Circuit Judicial Conference; President of the Los Angeles County Chapter of the Federal Bar

Association; and Chairman of the ABA Southern California Regional White Collar Crime Committee. Mr. Lincenberg is an instructor at Harvard Law School's Trial Advocacy Class. He regularly participates in professional activities integral to his success – presenting lectures, writing, and volunteering in the community – along with continually improving his skills in counseling, negotiating and arguing in court.

Mr. Lincenberg is regularly recognized among the top white collar defense attorneys in all of the leading publications. *Chambers and Partners USA* ranks Mr. Lincenberg in the selective Band 1 group. *Chambers* describes him as “marvelous,” and “quick to adapt to changing circumstances in the courtroom.” The *Daily Journal* again recognized him as one of the Top 100 Lawyers in California – one of only five true white collar crime specialists to be so honored.

Mr. Lincenberg is best known for his strategic approach to avoiding charges against his clients and for his superior skills at trial. Many white collar defense attorneys rarely try a criminal case, and have never defeated the government at trial. Mr. Lincenberg has an extraordinary record of success at trial, including complete victories, or hung juries resulting in dismissals, in five of his last six criminal trials. He has been retained by a host of large companies such as Plains, Providence, Epson, Yahoo, KB Homes, Unocal, Marathon Oil, Raytheon, Meggitt, Woodward, Sunrider, HP, Las Vegas Sands Corporation as well as scores of companies and their executives.

## EXPERIENCE

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Lead counsel in a four month trial for Plains All American Pipeline, a Fortune 150 company, arising out of an oil spill in Santa Barbara. Obtained dismissal of charges against the three individuals, dismissal or acquittal on the knowing felony counts, and on 80% of all counts against the company, and a fine 1/400<sup>th</sup> of that requested by the State.

Lead counsel for KST Data, Inc. and its chief principal. Obtained a dismissal of criminal charges relating to false claims in connection with the Small Business Act, then a declination of parallel civil charges. Next, Bird Marella sued two companies that breached their agreements with KST based on the investigation, winning the first case on summary judgment and the second at trial.

Successfully defended a public company, Woodward Inc., its subsidiary, and the subsidiary's prior owners, in a defective pricing/FCA criminal and civil prosecution by the USAO for the Northern District of Illinois. Obtained declinations against former owners, and achieved global monetary settlement for company of ten cents on the alleged dollar.

Numerous internal investigations for public companies of false claims allegations where we avoided charges.

As an AUSA in the Government Fraud section, investigated and prosecuted several large FCA cases.

Obtained dismissal with prejudice for Chicago attorney/NFL sports agent in investment fraud case.

Won motion to vacate SEC award involving high profile insider trading case, *United States v. Newman*, and related case *SEC v Dosti*.

Won dismissal of all charges against the executive of a Chinese public company charged with theft of trade secrets. Mr. Lincenberg's cross-examination in Iowa of FBI agents, which led to the dismissal of the charges, is highlighted in Mara Hvistendahl's book *The Scientist and the Spy*.

Successfully defended a UCLA professor against felony conflict of interest charge and then prevailed on appeal.

Successfully defended a health care provider against mandatory reporting charges, resulting in dismissal at trial.

Successfully defended a CFO against revenue recognition and options backdating criminal and SEC prosecutions in New York. Mr. Lincenberg hung the jury in two successive trials leading to dismissal of all charges followed by settlement on a lesser charge with probation.

Obtained defense verdict for a prominent broker-dealer at trial on civil investment fraud charges.

Got charges dismissed against an attorney/sports agent charged in San Diego with investment fraud.

Successfully defended companies and executives of public companies in several pending FCPA investigations.

Defended the CEO and owner of a prominent garment industry company charged in a \$15 million workers' compensation fraud case, resulting in a probationary sentence.

Successfully represented public telecom company in patent, breach of contract, and internal investigation matters.

Defended a high-profile financial services client in pending criminal and SEC prosecutions involving alleged affinity investment fraud.

Successfully defended religious institutions in a tax, money laundering, and money remitting prosecution that shook a global charitable network. After winning a motion to suppress a search, Mr. Lincenberg settled on the eve of trial with the dismissal of all counts against four of the five organizations, and a small fine against the fifth.

Successfully defended a physician in a seven-week, four-defendant health care fraud trial. After the jury hung 10-2 in favor of acquittal, Mr. Lincenberg persuaded the U.S. Attorney's office to drop the criminal case and settled the civil case on a non-fraud basis for a tiny percentage of the alleged dollar amount.

Represented the former president of a bank considered by the media to be a poster child for the national mortgage crisis in an SEC case and grand jury investigation. All charges were avoided.

Defended a public company under investigation in Southern California for export crimes. After the Assistant U.S. Attorney announced his intention to indict, Mr. Lincenberg persuaded the AUSA's supervisors to overrule this decision and entered into a Non-Prosecution Agreement with zero penalty, believed to be the first of its kind in this area.

Defended a large real estate company in a civil prosecution by the Los Angeles City Attorney as part of the highly publicized "billboard wars."

Defended the former CEO of an optical communications company in a shareholder derivative action, resulting in no liability for the executive, following a declination by the SEC.

Defended a founder of a high tech company in an investment fraud/tax prosecution.

Represented a major real estate developer of one of the largest undeveloped land parcels remaining in Los Angeles County. Mr. Lincenberg defended the client against environment crime charges and, on the eve of trial, reached a favorable civil settlement with the district attorney's office.

Forced a civil settlement for payment in full on behalf of a fiber distribution company.

Defended dairymen throughout the Chino Valley in Clean Water Act investigations related to the release of runoff water. Through creative and aggressive defense strategies, Mr. Lincenberg has resolved each of these cases with no prison sentences for any clients.

Serve as lead counsel for a highly successful, private investor in connection with a current, high-profile insider trading case under investigation by the SEC and USAO.

Obtained a non-fraud settlement for stock broker clients and a declination of criminal prosecution. Mr. Lincenberg achieved this against the backdrop of numerous others being charged by the DOJ and SEC with fraud and criminal convictions.

Conducted a wide-ranging investigation focused on the export practices of the Orange County unit of a global aerospace consortium. In the course of the international inquiry, Mr. Lincenberg managed the joint defense team for several individuals facing criminal allegations, and led negotiations with the FBI, DOJ, NCIS, IRS, the State Department and other government agencies. Following the issuing of his report and lengthy meetings with the U.S. Attorney's office and government representatives, he persuaded the government to reverse its intent to indict his client.

Earned trial acquittal for a doctor accused of Medicare billing fraud. His client was one of several doctors charged in connection with mobile respiratory therapy. While the other physicians pled guilty, Mr. Lincenberg took the matter to trial and achieved his client's complete acquittal on all counts.

Represented numerous providers in connection with threatened criminal charges arising from alleged violations of standards of care. These include conditions in skilled nursing facilities, care provided at cosmetic surgery centers improper supervision of medical staff, and others. Mr. Lincenberg has successfully convinced numerous agencies to decline to charge such cases and/or even to dismiss those already charged.

Represented a duck farm in a criminal investigation of a workplace death. Mr. Lincenberg eventually persuaded government regulators that his client had not violated any statutes.

Defended a corporation and individual clients in a state occupational safety investigation connected to an explosion at a toy factory, and convinced state prosecutors to decline to bring charges.

Cleared nursing home worker of responsibility, and set new law, in his defense of one of several nursing home employees charged by the state with violating certain nursing home regulations. Mr. Lincenberg achieved a ruling from the appellate court establishing new law that individual employees cannot be charged with violating these regulations. This caused the entire case to be dismissed.

Successfully defended hospital employees in skid row/patient dumping claims.

Defeated nursing home patient death claims and kickback investigations. In his representation of several nursing homes, Mr. Lincenberg has defended administrators and facilities in various claims. These include defeating claims in connection with patient deaths and investigations into claims of kickbacks from vendors.

Providing continuing counsel to an international government contractor connected to inquiries made by Homeland Security and other agencies concerning vendor sales to sanctioned parties, FCPA violations, fraud and other allegations of wrongdoing.

Conducted dozens of confidential internal investigations for companies in response to whistleblower allegations, private complaints, and government investigations.

Successfully defended Presidential Appointee in public corruption investigation.

Defended the City of Los Angeles in a lawsuit by the estate of rap star Biggie Smalls claiming that city police officers conspired with rap executive Suge Knight in his murder. Won the case on summary judgment.

## Sample Appellate Decisions

*People of the State of California v. Michael Lofchie*, (2014) 229 Cal.App.4th 240

*United States v. Louis Tomasetta*, et al., Case No. 10 Crim 1205 (PAC) (S.D.N.Y. June 2012)  
(opinion granting Rule 29 motion)

*In re McClatchy Newspapers, Inc.*, 288 F.3d 369 (9th Cir. 2002)  
(defense against a press request for confidential information)

*Crystal v. United States*, 172 F.3d 1141 (9th Cir. 1999)  
(attack on IRS summons procedures)

*United States v. Chen*, 99 F.3d 1495 (9th Cir. 1996)  
(r.e., attorney-client privilege issues)

*Alvarez-Machain v. United States*, 107 F.3d 696 (9th Cir. 1996)  
(defense of a government operative)

*United States v. Speech*, 968 F.2d 795 (9th Cir. 1992)  
(r.e., intent requirements in environmental prosecutions)

## HONORS & AWARDS

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Ranked, Band 1, *Chambers and Partners USA*, Litigation: White Collar Crime & Government Investigations

Leaders of Influence: Litigators & Trial Attorneys, *Los Angeles Business Journal*

Top White Collar Lawyers in California, *Daily Journal*

Top 20 Lawyers in California, *Benchmark Litigation*

2020 California White-Collar Crime Litigation Attorney of the Year Award, *Benchmark Litigation*

Impact Case of the Year: *People v. Plains All American Pipeline*, *Benchmark Litigation*

Top 100 Lawyers in California, *Daily Journal*

American Bar Association Criminal Justice Section Award for Outstanding National Leadership

Top 50 Litigators, *Los Angeles Business Journal*

500 Leading Lawyers in America, *Lawdragon*

The Best Lawyers in America

America's Top 100 Bet-the-Company Litigators

America's Leading Lawyers for Business

Top 100 Trial Lawyers in America, *Benchmark Litigation*

California Litigation Star, *Benchmark Litigation*

Local Litigation Star, *Benchmark Litigation*

## PUBLICATIONS

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Mr. Lincenberg has authored treatises on environmental crimes, election crimes, and conflicts of interest. He has authored more than 25 articles on criminal law topics in the areas of securities enforcement, money laundering and bank fraud. He regularly lectures at the ABA National Convention, the ABA White Collar Crimes Conference and professional forums. Mr. Lincenberg has lectured on criminal law aspects of securities, tax, public corruption, election, environmental, money laundering, investment and government contract laws, as well as criminal procedure and ethics topics.

Contributor, "California: An Introduction to Litigation: White-Collar Crime & Government Investigations," *Chambers and Partners USA*, May 2021

Co-Author, "Here Comes a Wave of Data Privacy Litigation," *Daily Journal*, November 2020 (with Steven Zipperstein and Darren Patrick)

Co-Author, "United States: White-Collar Criminal Defence," *Global Investigations Review*, October 2015

Author, "A Secret No More – The Rise of Economic Espionage Prosecutions and How to Litigate Them," *Criminal Justice Magazine*, November 2014

Author, "United States: White-Collar Criminal Defence," *Global Investigations Review*, October 2014

Interviewee, "Rainmaker Q&A: Bird Marella's Gary Lincenberg," *Law360*, July 2013

Absolute Activist Master Fund v. Todd Ficeto, et al., Case No. 11-0221 (2nd Cir. 2012)

Co-Author, "Dodd-Frank's Impact on Securities Law Enforcement At-A-Glance," ABA Securities Fraud Seminar, 2011

Author, "Recent Environmental Prosecutions in California," White Collar Crime Institute, 2009

Author, "Vagueness and Intent Issues in Criminal Export Cases," White Collar Crime Institute, 2008

Author, "Advising Individuals on When and How to Self-Report Wrongdoing," *26 Los Angeles Lawyer*, No. 7, October 2003

Author, "The Art of Killing a Case, The Criminal Environment," June 2002

Co-Author, "A Patriotic Critique of the PATRIOT Act," *Los Angeles Lawyer*, No. 11, February 2002

Author, "Recent Developments in Money Laundering," *ABA-CLE Publication on White Collar Crime*, 2001

Co-Editor, "Environmental Crimes Treatise," *American Bar Association Press*, 1999

Author, "Criminal Law Aspects of Campaign Finance Regulation," *Political Activity, Lobbying Laws, and Gift Rules Guide*, Glasser LegalWorks, 1999

Author, "Criminal Developments in International Tax," Annual Meeting of the California Tax Bars, State Bar of California, November 1997

Author, "Conflicts and Multiple Representation at the Pre-Indictment Stage," *Criminal Defense Techniques*, Matthew Bender, 1995

Author, "False Financial Application Investigations," *Business Crimes Bulletin*, January 1995

Author, "Critique of the Proposed Federal Sentencing Guidelines for Corporations Convicted of Environmental Crimes," *California Environmental Law Reporter*, No. 4, April 1994

Author, "Issues and Strategies in Defending Criminal Environmental Cases," Third Annual Environmental Litigation Institute, San Francisco, 1994

Author, "Hazardous Wastes of Time When the Crime Is Environmental," *9 American Bar Association Criminal Justice Magazine*, No. 1, Spring 1994

Author, "Rough Remedial Justice: Implications of Halper and Austin in Civil Forfeiture Actions," The 10th National Institute on Criminal Tax & Money Laundering, American Bar Association, December 1993



Author, "Recent Developments in Federal Prosecution of Environmental Crimes," *Los Angeles County Bar Environmental Law Section Newsletter*, Fall 1993

Author, "Sentencing Environmental Crimes," *4 American Criminal Law Review* 29, Summer 1992

Author, "Lowered Intent Requirements in Environmental Crimes Cases," *7 American Bar Association Criminal Justice Magazine* 2, Summer 1992

## EVENTS

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Moderator and Speaker at over 100 conferences and seminars on white collar crime topics, including regular speaker at ABA National White Collar Crime Conference attended by over 1,000 attorneys every year.

## FORMER POSITIONS

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Deputy Chief, Assistant United States Attorney, 1987-1993

Associate, Paul Hastings, 1985-1987

## ADMISSIONS

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United States Supreme Court; United States Court of Appeals, Second, Fourth and Ninth Circuits; Supreme Court of California; United States District Court, Central, Southern, Northern and Eastern Districts of California; and Northern District of Illinois