

Richard Marx: A Crook's Best Friend Is His Lawyer

"All thieves who could my fees afford
relied on my orations
And many the burglar I've restored
to his friends and his relations." —*Trial By Jury*

By PAUL BLUSTEIN

IT'S SAD but true. Our criminal justice system all too often lets smooth-talking, white-collar criminals walk free for one reason or another: highly placed connections; or bribes; or judges' reluctance to condemn someone of middle-class sensibilities to a prison term; or fancy-priced lawyers who know all the tricks.

Speaking of the latter, meet Richard B. Marx, 45 (average fee for criminal cases: between \$35,000 and \$50,000). Curly-haired. Athletic. Dignified-mod clothing (the gold bracelet on his right wrist is expensive, almost elegant). His line—to paraphrase W.S. Gilbert in *Trial By Jury*—is restoring high-class swindlers to their friends and their relations.

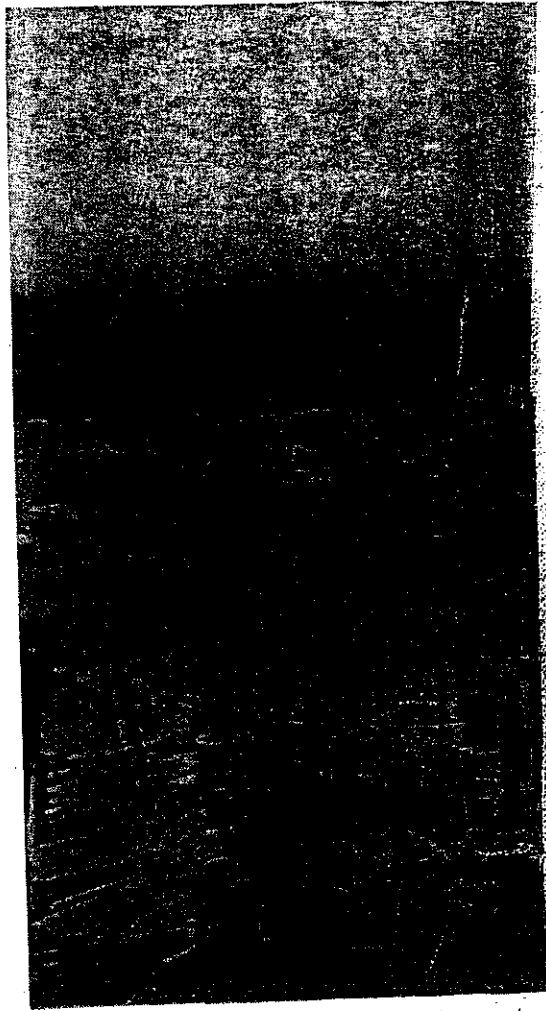
The morning view of Biscayne Bay is splendid in Marx' modern office in Coconut Grove, Fla., an artsy Miami community. A tall, shimmering blond secretary enters solicitously, and Marx gives some instructions; then settles down at his desk surrounded by diplomas and certificates, including a law degree from New York University Law School.

A defense lawyer handling white-collar cases rarely wins in the clear-cut classic sense of getting his client acquitted by a jury, he says. If the Justice Department decides to indict and prosecute a white-collar crook, it almost always obtains a conviction. "The criminals leave a paper trail," Marx explains. "The books and records are all there, so when the government comes in, the case is almost laid out for them.

"In federal prosecution cases, a win is not getting somebody off," he continues. "You may take a case that has 40 counts to it and reduce it to one—that's a win. Or a case when you expect a man to go to jail for ten years and he goes only for one year—that's a win."

Indeed, some of the fanciest legal footwork comes in staving off an indictment—not in keeping an indicted man from being convicted or a convicted man from being given a long sentence. Marx cites as an example a commodities option firm he represented called Brokers International, a spinoff of the infamous Goldstein-Samuels commodities option bucket shop (*FORBES*, Aug. 15, 1973). "You can come into a situation after the crime has been committed and give proper advice," he says—advice which may give the criminal a partial out. In the Brokers International case, Marx says, "I insisted that they tell the truth to people they were doing business with. So they put out a piece of sales literature which said something like, 'Our ability to pay depends on our ability to keep selling. And we can't guarantee that at the time you collect we'll have the funds.'" That candid disclosure didn't hurt Brokers' business much, Marx says with a shrug. But it presumably helped the firm's legal standing in a grand jury proceeding that has produced no indictments to date. "It's one thing to say, 'We sent out false and misleading advertising,'" says Marx. "It's another to say, 'Well, it may have been incorrect, but the minute we realized it, we corrected it.' A jury is going to look at that totally differently."

Thinking back over some of the cases he has handled, Marx notes that there are two kinds of white-collar criminals. "There's the guy who starts out with reasonably pure intentions," he says, "but who gets himself into a situation where either business booms, and he doesn't pay attention to details—or business gets a little bad, so he rationalizes his activities as necessary to 'save the business.' As opposed to that, there's the type who sets out to defraud. He's out to

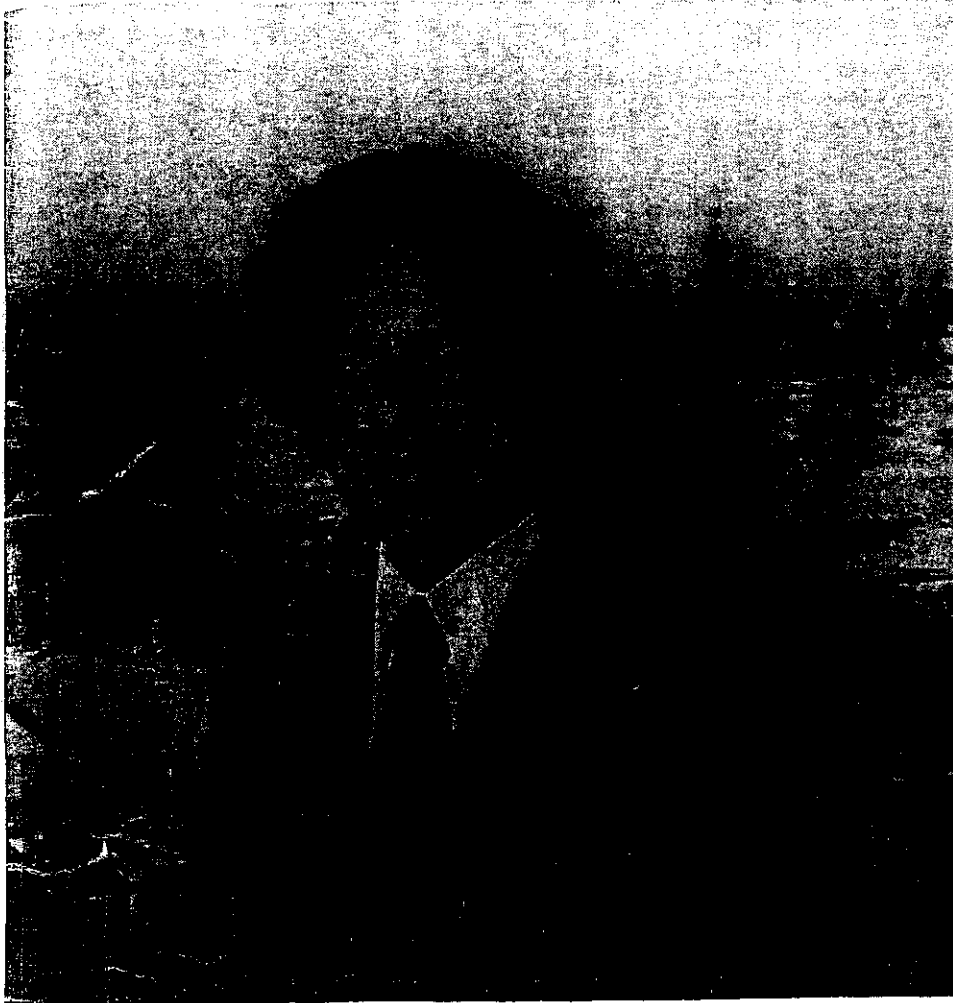


Nolo Contendere: Obviously enjoying the good

steal as much as he can."

An example of the first kind of crime is that perpetrated by a group of bond salesmen Marx defended in a 1974 Securities & Exchange Commission case. "One of the salesmen got a bright idea," Marx explains. "He said, 'These prisoners of war coming back from Vietnam will all have big back pay coming after being locked up for six or seven years.' So he puts out a letter whi tarded, 'Weinvtoo, was a POW in Korea—which was pure bull. glo and behold, these guys start sending in money—30, 40, 50 grand at a shot."

Trouble was, the bondmen got carried away with their promises and didn't bother disclosing the riskiness of some of the bonds they were peddling to the POWs or the huge markup they were taking. "I think they found themselves in a position where they got a little too far into it to back out," Marx says, adding that it wasn't long before the SEC stepped in. "I'll never forget walking into the courtroom the first day of the proceedings and seeing all those military uniforms. People turned around and hooded as we walked in." The salesmen were imprisoned in a subsequent crimi-



life, Richard Marx admits that dilatory tactics and obfuscation are his stock-in-trade.

nal case brought by the Justice Department. But the salesman whom Marx represented in that criminal case received an 18-month sentence while his non-clients got from three to six years—so Marx calls it a “victory.”

Then there's Marx' second kind of criminal—the kind who from the very beginning has larceny in mind. A perfect example is Philip Wilson, one of the masterminds behind the notorious Bank of Sark fraud of the 1960s. The Bank of Sark, situated on a British-controlled island in the English Channel, took millions of dollars in exchange for impressive-looking drafts that had virtually no monetary assets whatsoever to back them. Indeed, its only major assets were a small office over a hairdressing salon and a Telex machine which was used to reassure nervous businessmen overseas. Among Sark's victims were Braniff International Airways and Mercantile National Bank in Dallas.

“Wilson is totally different in one respect from the typical white-collar criminal,” says Marx, who defended him in 1976 against charges of defrauding an insurance premium finance company. “The typical white-collar criminal is a

gregarious, social guy. Phil is kind of introverted. He doesn't even drink. He's short, on the homely side, has a very bad skin condition. But he has the mind of a genius. Phil Wilson can do more with a credit card than you can do with an atomic bomb.”

There are risks involved in defending people like Wilson. “The majority of legal fees that I got from him were in checks that bounced,” Marx says ruefully. On top of that, Marx nearly got thrown in jail for contempt of court because, he says, Wilson called shortly before his trial in Virginia to say that he would be hospitalized and couldn't show up. Since Wilson's checks had bounced, Marx figured the cost of going up to Virginia to ask for a postponement would come out of his own pocket; accordingly, he tried phoning the judge to explain why he wouldn't be present. The judge, furious, set a hearing date to bring Marx up on contempt charges. This time, Marx appeared. “He found me in contempt, and said, ‘Marshal, take Mr. Marx into custody . . . until he agrees to pay a \$100 fine’—which I was very happy to pay,” Marx says. Wilson never was hospitalized. “I think that was what got

the judge crazy,” Marx adds.

Another risk of Marx' trade is the possibility of being charged along with a client for his crime. This sometimes causes Marx to turn down a case for the safety of his own hide. “For instance, two and a half years ago we were retained to do the legal work on a private placement,” Marx says. “We received a retainer with a fairly substantial fee involved. But this situation, it turned out, had an undisclosed principal with very high criminal connections. Knowing that they wanted to hide him, we withdrew. Now, ten years ago, we might have taken such cases. I don't know.”

It is time for Marx to make a quick trip downtown to get a postponement on one of his clients' cases. He rattles off some more instructions to his dazzling secretary and heads for “the love of my life”—his black convertible, a Porsche Targa—and zooms with top down to Miami's State Criminal Court Building.

The elevator stops at the third floor. Marx straightens his tie and ducks into the courtroom.

Fifteen minutes later he emerges a few steps behind a group of four disgruntled-looking men, one of whom is muttering, “How does he keep a straight face?” Marx appears pleased but a little chastened, and says softly as the men saunter off, “Well, that was tougher than I thought it would be. But I did what I'm best at: I got the continuance.”

Back in the Porsche, Marx explains the disturbingly simple secret of a defense lawyer's success. “You do everything to make the job tough for the guy on the other side,” he says unhesitatingly. “You don't agree to anything, you don't stipulate to anything, and you fight him on everything there is. And sometimes the government gets to a position where it says, ‘Hey. It's not worth it.’”

For instance, Marx defended a securities investigator for the state of Florida who was in trouble with the SEC for allegedly using his position to get special favors from brokers. “He had been terminated, and all the SEC wanted was a consent decree that said my client will not become a broker-dealer,” Marx says. “My client never was a broker-dealer; nor did he have any intention of becoming one. But we wouldn't agree to that. We fought the case for almost four years. He wants his back pay [which he would be entitled to if he successfully fought the consent decree]. Eventually the SEC started to realize that tons of man-hours and money were going into this relatively meaningless, aborted prosecution, so the government dismissed charges.” Marx parks his Porsche and heads back to his office.

One way to throw a monkey wrench into the prosecution's case, Marx says, is to hide the evidence, such as books and records. “If a client comes to you before

any subpoena has been issued, and has wind of a pending investigation, you can, within certain defined limitations, do anything you want with those documents," Marx explains. "The first thing I always tell people is, get them out of your office. Get them out of your house."

Just recently, a client of Marx' was subpoenaed before a federal grand jury with orders to bring his books and records. "The first question the prosecutor asks is, 'Did you bring the records?'" Marx says. "The answer: 'No.' Question: 'Why not?' Answer: 'I don't have them.' Question: 'Where are they?' Answer: 'I refuse to answer on the grounds that it may incriminate me.' That answer is 100% legitimate. You can't refuse to produce it if you have it, but they can't make you say where it is."

How does Marx justify engaging in what amounts to obstruction of justice—in the moral, if not legal, sense? "It's a stock answer, but it's our system of justice," Marx replies. "You've got an adversary system, where the state and federal governments prosecute, and on the other side, you have the defense, whose job it is to defend and protect the rights of the individual. Those rights are for the most part trampled on by prosecutors. If you think they play fair, you're being naïve. The absolute willingness to go to any lengths to prosecute is a scary thing. I've seen prosecutors condone perjury,

lie to potential defendants and browbeat witnesses before a grand jury. Without good defense counsel, you wouldn't have a true system of law."

Okay, but does a man who is guilty of violating the law have a "right" to every delay, every trick that falls within the canons of legal ethics? Marx skillfully works around the question: "The only way you can understand this is to put it

"... 'You don't agree to anything, you don't stipulate to anything and you fight on everything' ..."

in this frame of reference: A guy defrauds an insurance company, let's say. The federal mail fraud statutes are incredibly vague. So what the government does is to hit the defendant with an indictment that is so overpowering, and so massive in its scope, that when you read it, your first instinct is to skip the country, commit suicide or plead guilty. You add up each count of the indictment—and they run 20, 30, 50 counts, with two to five years per count, so you're looking at 125 years in jail. That's for a typical white-collar crime. Many defendants say, 'I may as well go in and make a deal.' " Faced with such over-

whelming punishment, Marx feels, the defendant can't be blamed for pulling every trick in the book.

Later over a lunch of white wine and salad, the midday sun glistening off the bay across the street, Marx reminisces about how he got into his line of work: He had been a lawyer with a Miami firm and had done the usual corporate law routine—registrations, mergers, reorganizations. But he had practiced criminal law on the side, taking on street crime cases because he was fascinated by them. Then all kinds of securities scandals shook southern Florida in the Sixties. So widespread were the scams that a Ft. Lauderdale address became a distinct disadvantage for legitimate financial firms. Combining his interest in criminal law with experience in securities, Marx struck out on his own in 1972.

"I think I picked the right area of law at the right time," he chuckles.

Marx can chuckle but it is no laughing matter that a man like C. Arnholt Smith, ex-President Nixon's pal, paid only token fines after having defrauded his U.S. National Bank in San Diego of tens of millions of dollars, or that Robert Trippet, mastermind of the brazen \$100-million Home-Stake oil swindle spent a grand total of one *night* in jail. They were not Richard Marx' clients, but both benefited from the type of tactics at which this smooth Florida attorney is so adept. ■