

Order Suppressing Evidence in Benjamin Wey Case is Talk of New York Bar

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PRACTICES Litigation

The *New York Law Journal* described the ruling by U.S. District Judge Alison Nathan as part of a “small revolution inside the Southern District” and the latest addition to a “mini tidal wave” of pushback by the federal judiciary against law enforcement’s overly broad use of search warrants.

On June 13, Judge Nathan issued a 92-page order granting the suppression motion filed by the defense team led by Haynes Boone Partner David Siegal. Wey, a high-profile private equity executive, had been indicted in 2015 for alleged securities fraud and other charges. Judge Nathan said that U.S. government searches of Wey’s apartment and offices were broadly indiscriminate, based on warrants that weren’t properly specific. She also said officials improperly mined Wey’s electronic devices for evidence unrelated to the fraud charges.

That conduct, Judge Nathan wrote, “reflects, at least, grossly negligent or reckless disregard of the strictures of the Fourth Amendment, and that is sufficient to infer a lack of good faith.”

The Supreme Court has given authorities leeway to conduct searches that don’t strictly comply with Fourth Amendment requirements if officers can show they acted in good faith. But defense attorneys have long argued that good faith exceptions go too far. Several white-collar defense experts told the *New York Law Journal* that Judge Nathan’s order extends a recent trend of judges requiring law enforcement to take more care in drafting and executing search warrants.

Shearman & Sterling partner Stephen Fishbein told the *Journal* the decision sent a message that fundamentals matter: officers must attend to “basic blocking and tackling” in drafting and carrying out warrants.

Experts also said the decision addresses government seizure and handling of digital data, an area of growing concern.

Writing in *The New York Times*, Wayne State University law professor Peter J. Henning said Judge Nathan had issued “a stern warning” to prosecutors against seemingly limitless searches, even in white-collar investigations whose parameters make it difficult to draft warrants that are neither too broad to be legal nor too narrow to be useful.

Henning noted that Judge Nathan seemed especially bothered by some of the materials agents seized — including Wey family members’ X-rays, his living will, children’s PSAT test scores and passports, recreation schedules and photos — that appeared unrelated to the alleged crimes.

A trial is scheduled for October, and prosecutors must decide whether to appeal Nathan’s ruling or dismiss the charges.

Siegel has been assisted in the matter by a Haynes Boone team of Dallas Senior Counsel [Barry McNeil](#), New York Associates Sarah Jacobson and [Joseph Lawlor](#) and Dallas Associate [Phong Tran](#).

[View the ruling.](#)

[New York Law Journal](#)

[Henning/New York Times](#)

Case no: U.S. v. Wey, 15-cr-00611