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Frank M. Rapoport is a senior partner in Peckar & Abramson's New York, Washington, D.C., and Pennsylvania offices. He is a leader in the firm's public-private partnerships practice group. Rapoport concentrates his practice on construction, government contracts, infrastructure development and public-private partnerships. He represents project sponsors, equity investors, lenders and contractors in connection with transportation, social infrastructure, energy, water and parking projects in the United States.

Q: What is the most challenging case you have worked on and what made it challenging?

A: I am no Chevy Chase, but I was challenged while at the U.S. Department of Justice to defend the Federal Witness Protection Program against lawsuits by dissatisfied informants. The litigation was brought in the United States Court of Claims by various underworld characters who sought damages for breach of contract based on allegedly unfulfilled promises of the good life made by assistant U.S. attorneys in exchange for cooperation and testimony against their families. The captions were styled "John Doe v. USA" to conceal their true identities. My new wife wondered why a nice Jewish boy would be assigned such risky matters and of course my then-boss explained "because you are from Philadelphia!"

I developed a theory which led to all the cases being dismissed for lack of subject matter jurisdiction. An understanding between a witness and a government lawyer, I advanced, did not rise to the definition of a "contract" as that was embraced by the Tucker Act's jurisdiction over breaches of contract. At oral argument before the three-judge panel, the plaintiff's attorney countered, "if it walks and talks like a duck it must be a duck." In his dramatic conclusion (I am sure his style had jury appeal), he told the judges he was "leaving all of his ducks in a row." In a unanimous written decision, the court found his canard totally unconvincing. Of course, winning the case made my already fretful wife even more anxious.

Q: What aspects of your practice area are in need of reform and why?

A: Public-private partnership law is so nascent a practice in the U.S. that there is not so much to reform, as to define and expand. It's a blend of project finance, government contracts, construction law and government affairs. It means teaming contractors with private equity and convincing financially strapped mayors and governors that their infrastructure can be rebuilt in record time using private capital, rather than muni-bond financing. Also, claims litigation is virtually nonexistent as the contractor's team, called a special purpose vehicle (SPV), absorbs the design and construction risk. Even better, since the SPV is on the hook for decades of operation and maintenance, the SPV delivers a superior asset, as opposed to where the award is to the low bidder who bolts after completion, and after the asset is returned to the owner years later it should be nearly as pristine as the day it was delivered.

Q: What is an important issue or case relevant to your practice area and why?

A: A key issue in P3 law now is getting agencies to understand that short listing means just that. If 12 companies respond to the request for proposals in a two-step proposal, then the short listing should be no more than three or four. Why? It costs big money to prepare material to go through the second stage of the procurement and the stipends the agencies offer to the losing bidders are de minimis. While we are seeing longer directories of short lists these days, I sense discussions are underway to better educate the agencies.

Q: Outside your own firm, name an attorney in your field who has impressed you and explain why.

A: My friend Doug Buchanan is a leader in the law of public-private partnerships. He spent his career closing P3 deals in Canada as a partner with Davis LLP but now has relocated to New York to join Debevoise & Plimpton LLP as head of global infrastructure. We agree that if he teaches me more about best practices in P3, I will try to school him on the silent P in P3, which is local politics!

Q: What is a mistake you made early in your career and what did you learn from it?

A: I have tried a lot of cases, especially when I was with the Department of Justice, but I somehow missed getting more jury trials. This is due to the fact that the forums where contractors sue the government provide for no jury trials and all the False Claims Act cases before the district courts settle as the companies are more worried about the possibility of the corporate death sentence (aka debarment and suspension). I would have enjoyed a stint in the U.S. Attorney's Office trying jury cases.

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