

## Tom Melsheimer Featured in *Texas Lawbook* Following Roundtable Event

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Winston & Strawn Dallas Managing Partner Tom Melsheimer was quoted in a *Texas Lawbook* article featuring coverage of his [recent roundtable](#), “Bad Case/Good Outcome: Defending (and Winning) When the Government Comes for Your Client.” At the event, the Honorable Ada Brown of the United States District Court for the Northern District of Texas moderated the discussion between Tom and co-presenter David Gerger where they explored insights on the challenges of trying a high-profile white-collar case.

Tom shared insights as lead of the trial defense team for Kent Thiry in [United States v. DaVita, Inc.](#), the first criminal trial alleging an illegal antitrust conspiracy arising out of a “non-solicitation” agreement between health care companies which ended in a rare individual acquittal. Evidentiary obstacles for the defense team included emails between DaVita and other dialysis providers showing they had agreed not to poach each other’s top employees, further agreeing to notify one another of any violations.

“We told the jury up front, ‘You’re going to see emails that you probably won’t like, that to the average person look pretty bad,’” Tom said.

“We had to contextualize [the emails] and, without saying the agreement was a good idea, explain why my client thought it was. His position, simply, was, ‘Look, I want to be able to make a counteroffer, so I want them to tell me if they’re out looking. I don’t want people to feel trapped in their jobs. So go interview. But then come back and we’ll talk. Maybe I’ll give you a promotion or a raise.’ And in fact, there was evidence this had happened—and no evidence, by the way, that anyone had been fired or anything bad had happened to them as a result of this arrangement.”

In addition to discussing cases, they discussed lessons learned throughout their careers. On whether jurors should be allowed to question witnesses Tom stated, “I think it’s great. In the DaVita trial, Judge Jackson allowed jurors to submit written questions to him. Subject to his review and that of the lawyers, he would then read the appropriate ones to the witnesses. More than 100 questions in that trial came from the jury. It was very, very useful to us because it was a window into what the jurors were thinking. And sometimes they ask questions I wish I’d thought of.”

[Read the full article](#) (subscription required).

[Watch the presentation here](#) (Vimeo login required).

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Thomas M. Melsheimer