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LITIGATION

Boutique
of the Year

Litigation Boutique of the Year

Keker & Van Nest, a 49-lawyer firm based in San Francisco, won The American Lawyer's first Litigation Boutique of the Year contest. The firm edged out four other finalists: Susman Godfrey of Houston, the runner-up; Chicago's Bartlit Beck Herman Palenchar & Scott; Houston's Beck, Redden & Secrest; and Washington, D.C.'s Zuckerman Spaeder.

Keker & Van Nest was cited for a series of litigation successes, including major cases in intellectual property, legal malpractice, and white-collar defense. In his report on the firm, senior reporter Paul Braverman wrote that "Keker & Van Nest lawyers handle cases of national importance... Not only do they win consistently, they do so while working in an environment that is a model for the legal industry in the areas of diversity and pro bono. Also, the partners like each other, or do a great job of disguising any animosity beneath a shower of banter and playful teasing."

This competition was open to litigation specialty shops outside The Am Law 200. The magazine's editors invited some firms to participate; others nominated themselves. The contest was extremely close. The final decision, made by a panel of American Lawyer staffers, was based on the firms' written submissions and oral presentations, supplemented by reporting with firm clients, opponents, and observers. The contest covered the period between January 2003 through June 2004, which the finalists could augment during the final round of judging. All manner of litigation was covered, from pretrial

settlements through appellate work.

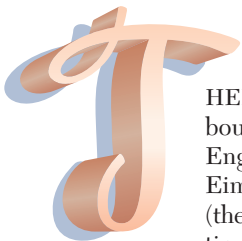
The Keker firm won despite a high-profile defeat in the federal government's prosecution of Frank Quattrone, the former high-flying investment banker at Credit Suisse First Boston. John Keker, the firm's founder and marquee attraction, represented Quattrone and lost at trial (the first trial ended in a mistrial).

Also in the special report are profiles of three really small firms that the magazine deemed worthy of watching. Robbins, Russell, Englert, Orseck & Untereiner is a Washington, D.C., appellate specialty firm. It opened in 2001 as a spin-off from Mayer Brown & Platt, and now fields 12 lawyers. The firm has argued six cases in the U.S. Supreme Court. Yetter & Warden is a 15-lawyer Houston trial shop that opened in 1997 as a spin-off from Baker Botts. The firm specializes in high-stakes corporate plaintiff and defense work, relies on referrals for new business, and seems to adore going to trial. Eimer Stahl Klevorn & Solberg is a four-year-old, 25-lawyer spin-off from Sidley & Austin in Chicago. The firm has big-name clients—Hollinger, Inc., and Union Carbide—and its seven partners are free of most big-firm conflict or policy hindrances.

As the introduction to this package in the January issue of The American Lawyer concludes: "We can't say these firms are sharper or more loyal or harder-working than the average Am Law 200 outfit. But after a month's worth of interviews, we've never met a group of litigators who seem happier."

Little Shops of Power

BY HEATHER SMITH



HERE ARE BOUTIQUES, and then there are boutiques. These three firms—Robbins, Russell, Englert, Orseck & Untereiner; Yetter & Warden; and Eimer Stahl Klevorn & Solberg—are not only young (the oldest, Yetter & Warden, opened in 1997), they're tiny. Really tiny. Both Robbins, Russell and Eimer

Stahl have just seven partners. Yetter & Warden has four.

The three share more than youth and short rosters. The founders all fled Am Law 200 firms for the freedom to pick and choose their cases and specialties. They don't try to meet a client's

Small even by boutique standards, these *firms* still manage to win *big-ticket cases*.

cases for big-name clients.

These firms can't handle cases with mountains of documents without help from other firms. They rely heavily on technology to handle their work and minimize overhead costs, like libraries and support staff. As a result, they offer laser focus, lower bills, and, perhaps best of all, personal attention. "When you hire Yetter & Warden, you're going to get either Yetter or Warden," says Paul Yetter.

"We get phenomenal service at a price less than if they were still at Mayer, Brown, Rowe & Maw, with even more service and attention," says client Barbara Taylor, general counsel of BDO Seidman, LLP. Taylor has turned to Robbins, Russell five times since it opened in 2001. Currently it's fighting class certification in a \$400 million securities fraud case after devising a creative way to steer it away from the late Judge Milton Pollack. "I couldn't be happier," Taylor says.

Microboutiques offer clients more than cheap service. They offer reliable service. They're less likely to bow out over conflicts because, very simply, they have fewer clients and handle fewer types of matters for them. So other firms are happy to send conflicts their way because once the job is done, the microboutique sends them right back for corporate, tax, or employment matters.

Fried, Frank, Harris, Shriver & Jacobson partner Richard Sauber has served as co-counsel to Robbins, Russell several times. "Lawyers are awful about competition and stature," Sauber says. But, he adds, it's different working with Lawrence Robbins: "I get hired for people who need me to be able to send 15 lawyers to devote to a matter. He gets hired to write a cert petition. I'd never get hired to do that."

And therein lies a business model.

[C]lients, co-counsel, and even opposing counsel rate them as the best at what they do...

Yetter & Warden wins over judges and juries by breaking complex issues into *bite-size* portions.

every need. But clients, co-counsel, and even opposing counsel rate them as the best at what they do: Robbins, Russell spins courtroom losses into U.S. Supreme Court wins; Yetter & Warden wins over judges and juries by breaking complex issues into bite-size portions; and Eimer Stahl resolves sticky



Trial *Seekers*

Honorable Mentions

YETTER & WARDEN

SIZE 4 partners, 6 associates, 2 of counsel,
2 senior counsel, 1 academic counsel

FOUNDED 1997

FIRM ORIGIN Spun off from Baker Botts.

DAVID WARDEN AND PAUL YETTER

love arguing before a judge and jury. They don't like arguing with their partners. So it was only a matter of time before the two left Baker Botts and struck out on their own. Warden left in 1994 to pursue contingency work. Yetter followed in 1997 after an issue conflict forced a choice between the firm and his clients, investors in Bre-X Minerals Ltd., a failed Canadian gold mining company. "We'd decided we'd had enough," says Warden.

Since joining forces, their business model is simply to do their own thing. This applies to Yetter and Warden and also the other lawyers at the firm. "We offer the freedom to choose the cases you take. You can turn down cases you're not interested in or don't feel like doing," says Yetter.

The model has become a magnet, luring, for example, two other Baker Botts alumni: Finis Cowan, Jr., a former federal judge and Baker Botts senior partner, and Autry Ross, a Baker Botts associate who left in 1992 to become an assistant U.S. attorney in the fraud division. The firm also hires graduates from elite law schools like Harvard, Yale, and Virginia.

Yetter & Warden gives lawyers wide discretion in how to charge for their time. Contingency cases make up a quarter of the firm's docket. Warden in particular bulks up, devoting about three-quarters of his time to contingency cases. He often likes

DAVID WARDEN (LEFT)
AND PAUL YETTER



PHOTOGRAPH BY DANIEL LINCOLN

to work on a case directly rather than rely on associates to handle research and first drafts. "Here we have the luxury," he says.

Warden has two big contingency cases, representing patients suing Tenet Healthcare Corporation for unnecessary heart surgery and shareholders in an arbitration against Citigroup Inc. The allegations in the latter case concern positive statements analyst Jack Grubman made about WorldCom, Inc., before its bankruptcy.

Yetter loves to argue in court. He urges clients to pay a blend of hourly fees and success fees to reward jury wins. Depending on the year, 25–75 percent of his cases follow this model. In July 2003 Yetter had his biggest jury

Most of the firm's clients...
come through *referrals* from
clients or other lawyers...

win: \$137 million in damages for Australia's Equatorial Mining Limited from an engineering company, the second largest ever awarded by a Nevada jury. Former Equatorial chairman Stephen Gerlach interviewed firms from Los Angeles, New York, and Houston. Other firms "wouldn't put together a plan to go to trial, only to settle," Gerlach says.

Yetter wrote a 50-page memo laying out his court strategy. Gerlach was persuaded that Yetter & Warden could handle the case. "Size was not an issue," Gerlach says. "The fundamental issue was the quality and the presentation of the principal who was going to be involved."

Some clients, like the Bre-X shareholders and AMR Corporation, parent to American Airlines, have been with



Honorable Mentions

Yetter since Baker Botts. In March 2003 Yetter won an injunction for American blocking discount-ticket search engine FareChase, Inc., from using fare information posted on American's Web site for travel agents, prompting a settlement with FareChase.

Most of the firm's clients, however, come through referrals from clients or other lawyers rather than Baker Botts ties. Southwest Airlines contacted American's associate general counsel for intellectual property, Kathleen Soled (now general counsel for American Eagle Airlines), about its own problems with online search engines. One thing led to another, and Southwest retained the firm too. (FareChase settled; the suit against Outtask, Inc., is set to go to trial later this year.)

Warden admits that he and Yetter are not great at the art of the schmooze. "We talk about it every six months about how we have to do that, but then we get so busy we forget." Fortunately, clients have filled that role, leaving their lawyers more time to spend in front of juries.

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