

those of seven peer firms in New York (Cravath, Swaine & Moore; Davis Polk & Wardwell; Debevoise & Plimpton; Paul, Weiss, Rifkind, Wharton & Garrison; Simpson Thacher and Bartlett; Sullivan & Cromwell; and Willkie Farr & Gallagher.) By each of ALI's measures, Milbank beat the averages of the other firms. Gross revenue increased 243 percent (average: 202 percent); profits jumped 250 percent (average: 138 percent); revenue per lawyer rose 84 percent (average: 64 percent). "Part of the fun for me has been making the firm more profitable," says Immergut.

In Immergut's view, "the firm is beyond belief different" from when he took over. Part of the difference is personnel. Among the small circle of elite New York firms ALI compared to Milbank, it has been the most aggressive recruiter of lateral talent. Three of the four executive committee members transferred from other firms—including Edelman, who had stints at Wachtell, Lipton, Rosen & Katz and the U.S. attorney's office in Manhattan before

joining Milbank. Part of the difference is reach: Twenty percent of its lawyers are now based overseas, and Immergut says that "50 cents of every dollar" in revenue has an international aspect.

Another difference is the firm's practice mix, particularly the reinvigoration of its longtime creditor-side bankruptcy practice and litigation. According to Immergut, the bankruptcy and litigation groups now account for one-third of the firm's revenue. "We're much better balanced now," says Immergut. "Once we didn't have much of a litigation practice. Now we have 30 litigation and 13 restructuring partners." The firm has also weaned itself from its dependence on Chase. Still a major client, the bank accounts for a little more than 3 percent of firm revenue. Last year's biggest client at 5 percent of revenue was The Goldman Sachs Group Inc., according to Immergut.

But for all the success, there have been rough spots. The most embarrassing was the prosecution of former partner John Gellene for failing to disclose conflicts in

a bankruptcy proceeding. Gellene was convicted on three counts and sentenced to 15 months imprisonment in 1998.

And there have also been some lateral losses. Ted Burke and three other partners decamped for Freshfields Bruckhaus Deringer in 1998. Burke, whose loss Immergut still regrets, is now the global managing partner for the London-headquartered global giant. Two years ago, Milbank lost Michael Fitzgerald and a small group of Latin America-focused corporate partners to Dewey & LeBoeuf. (He's now a partner at Paul Hastings.) According to the firm, Milbank had 138 equity partners in 2012, down from its peak of 149 in 2009.

At 49, Edelman is the same age Immergut was when he became chair. He came to the firm in 1994, after being recruited by Larry Lederman, a business-generating partner at Wachtell who left after an internal struggle and joined Milbank in December 1991.

Edelman's first matter was a takeover battle that involved Tyson Foods Inc. Lederman led the

team; Tyson was Immergut's client. "I worked with Larry and Mel, and it was fun," he says. Edelman says he noticed a change in the firm when Immergut took over two years after he joined. "We had a bunch of high-energy people who were focused on business development," he says. "That only increased with time."

Edelman's practice expanded into white-collar and commercial matters, and he became increasingly interested in firm management. In 1999 he ran for Milbank's executive committee and lost. He tried again three years later and this time was elected. Milbank's executive committee has a two-term limit, and as his first three-year term was drawing to a close, the firm created a vice-chairman role for him in 2009 to keep him in management. Since then, Edelman has been directly involved in running the firm, recruiting laterals, and planning for the future.

Still, Edelman faces some obvious challenges in his new job. He wants to keep practicing. "Part of my DNA is being a lawyer," he says. "I think I'll be more effective

ANTHONY CORREIA/SHUTTERSTOCK (CLINTON)

EX POST FACTO

In late January the U.S. Court of Appeals for the District of Columbia invalidated President Barack Obama's controversial recess appointments in 2012 which filled three vacancies on the National Labor Relations Board. The court didn't just find Obama's use of the recess appointment power in defiance of the Senate to be unconstitutional, it defined "recess appointment" so narrowly that almost every recess appointment made in modern times would have been invalid. The Congressional Research Service compiled a list of recess appointments made since Ronald Reagan's presidency. Here are some of the notable Am Law lawyer-appointees whose promotions likely would have been found unconstitutional under the court's narrow definition. —VICTOR LI



Appointments by Bill Clinton

MICKEY KANTOR

Position: U.S. Secretary of Commerce

Recess appointment made: April 12, 1996

Clinton rewarded his former campaign chair and lead trade representative on negotiations that created the World Trade Organization and the North American Free Trade Agreement by naming him secretary of Commerce. Kantor resigned before the Senate could vote on his nomination. He joined Mayer Brown after he left the White House and is currently a partner in the corporate practice.

SARAH WILSON

Position: U.S. Court of Federal Claims, judge

Recess appointment made: January 19, 2001

Wilson held several jobs at the U.S. Department of Justice and the White House before Clinton appointed her to a judgeship. The Senate, however, refused to act on the nomination, and Wilson headed to Covington & Burling, where she is currently a litigation partner.

Illustration by William Rieser

with clients and partners that way.” Immergut was a full-time chairman. “Mel was more of a businessman,” he says. “I’m different.”

Edelman wants the firm to get bigger. Like Immergut, he wants Milbank to remain a “small big firm.” But with roughly 600 lawyers, he sees gaps and opportunities in antitrust, corporate, and real estate among other areas and wants to fill them.

He wants the firm to maintain its financial position. “Like other top firms in New York, our rates are set at the top of the market,” Edelman says. “We’ve tried to maintain our prices as much as possible. But all firms are dealing with this issue now.” (According to fee requests in bankruptcy filings, senior Milbank partners rates last year were \$1,125–\$1,140.)

Milbank, Edelman says, isn’t a firm for every client to turn to for every job. “Clients come to us because they want us for the particular work. They come here with high-impact matters, looking for value-added performance and fair pricing. We have to provide it. That was Mel’s strat-

egy, and I certainly endorse it.”

Immergut, meanwhile, says he’s ready to go. His immaculate office reflects his varied passions: There’s a muted television monitor tuned to a news channel; a set of photos from trips he’s taken on U.S. Navy craft to exotic locales, and above his couch, a stunning, mounted 104-pound silver Wahoo he caught in February 2000 off San Salvador in the eastern Bahamas.

He’ll teach a course in law firm management at Columbia Law School. He’ll continue to serve on the 21-member Defense Business Board, a group that advises the U.S. secretary of Defense, and on the board of the Legal Aid Society of New York. He’s mulling over some corporate and private equity board opportunities. “I’m a little worried that I’m going to get overcommitted,” he says.

His worries, however, don’t extend to Edelman’s transition into the top spot at the firm, or his ability to guide Milbank in the future. “This has worked exactly as we planned,” Immergut says.

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A Reasonable Despot?

Despite calling capitalism “the way of the devil,” the late Hugo Chavez sometimes followed the letter of the law when it came to expropriations. The former Venezuelan president paid foreign investors whose companies he nationalized more than \$7.25 billion in settlements over the past five years. Argentinian investors, some of whom are fighting for similar settlements, should be so lucky.

—MICHAEL D. GOLDBERGER

CLAIMANT	SETTLEMENT	DATE	CLAIMANT’S LAW FIRM
Total S.A. and Statoil ASA	\$1.1 billion	Feb 08	Shearman
Eni SpA	\$700 million	Feb 08	Freshfields
Ternium S.A.	\$1.97 billion	May 09	Freshfields
Lafarge S.A.	\$267 million	Sep 09	Squire Sanders
Casino Guichard Perrachon S.A.	\$690 million	Sep 10	Freshfields
Holcim Ltd.	\$650 million	Sep 10	Debevoise
Cemex SAB	\$600 million	Dec 11	Skadden
Exxon Mobil Corporation	\$747 million*	Feb 12	Covington
Williams Cos. Inc.	\$308 million	Mar 12	Weil
Exterran Holdings Inc.	\$112 million	Mar 12	King & Spalding; Norton Rose
Ternium S.A.	\$130 million	Nov 12	Freshfields

SOURCE: *The American Lawyer* reporting

*In Dec. 2011 an Exxon affiliate won \$907.5 million in an ICC arbitration against Venezuelan state oil company PDVSA, with a net award of \$747 million after the counterclaim. Venezuela fully paid the \$747 million in Feb. 2012. A parallel ICSID claim against Venezuela is still pending.

Appointments by George W. Bush

EUGENE SCALIA

Position: U.S. Department of Labor, solicitor

Recess appointment made: January 11, 2002

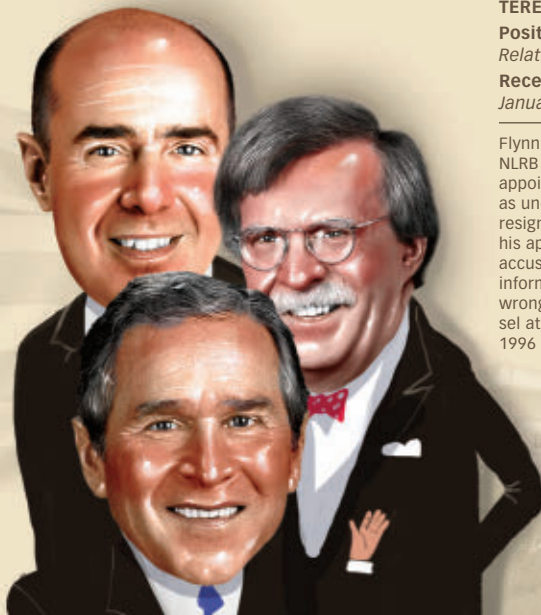
Scalia was a prominent labor attorney at Gibson, Dunn & Crutcher when he was given a recess appointment to be the Department of Labor’s top lawyer. Senate Democrats refused to allow a vote on his nomination, so Scalia resigned and rejoined Gibson Dunn, where he is cochair of the firm’s labor and employment group.

JOHN BOLTON

Position: Ambassador to the United Nations

Recess appointment made: August 1, 2005

Bolton faced vociferous opposition from Senate Democrats, and even some Republicans, who refused to confirm him. Bolton resigned in December 2006 as his recess appointment was about to expire. In 2008 he joined Kirkland & Ellis as of counsel in the corporate and litigation practice groups.



Appointment by President Obama

TERENCE FLYNN

Position: National Labor Relations Board, member

Recess appointment made: January 4, 2012

Flynn was one of the three NLRB members whose appointments were challenged as unconstitutional. (He resigned a few months after his appointment after he was accused of leaking confidential information. Flynn denied any wrongdoing.) Flynn was counsel at Crowell & Moring from 1996 to 2003.

