

LEAD BY EXAMPLE



Photo by Xiang Xing Zhou

John Keker and Robert Van Nest have bet the company on a business model that includes leaving egos at the door and donating ample time to pro bono cases. While their innovative strategy is miles apart from the behemoths, this 53-lawyer litigation boutique boasts a client list resembling a who's who of the Fortune 500.

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‘A Mouse Among Elephants’



By Amy K. Spees

Keker & Van Nest is on a roll. Since its founding as Keker & Brockett 27 years ago, the San Francisco firm has grown steadily on an appetite for winning and a diet of white-collar criminal defense, high-stakes intellectual property and general litigation cases. It has become an unlikely household name with Fortune 500 companies facing bet-the-company litigation nationwide.

In March, the firm will travel to the U.S. Supreme Court to defend Grokster Ltd., which was sued with fellow file-sharing software companies Morpheus and Kazaa, accused of infringing the products of dozens of old-line entertainment companies.

Already, the firm helped convince the 9th Circuit that its client should not be held liable for the bootleg copying of movies and music that its products allow. *Metro Goldwyn-Mayer Studios Inc. v. Grokster* 259 F. Supp. 2d 1029 (C.D. Cal. 2003).

In November, partners Robert Van Nest and Stacey Wexler secured a rare legal victory against Oakland Raiders owner Al Davis, providing their clients recognition as full limited partners as well as an opportunity to review the team's books. The heirs of one of Davis' partners value their victory as worth \$300 million. *Reicher v. Davis*, RG031121434 (Alameda Super. Ct., summary judgment Nov. 9, 2004).

And just last month, the firm settled a six-year patent battle for client Taiwan Semiconductor Manufacturing Co., which secured a \$175 million payment and future cross-licensing with Shanghai-based Semiconductor Manufacturing International Corp.

Shanghai was sued for eliciting trade secrets from former Taiwan employees to rip off its

Keker & Van Nest may not be the biggest firm in San Francisco, but that doesn't keep the 53-lawyer litigation boutique from reeling in Fortune 500 clients. With a firmwide commitment to pro bono and an emphasis on teamwork, founding partner John Kecker says the vision for the future is more of the same.

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microchips. Keker & Van Nest partners Jeff Chanin and Brian Ferrall negotiated a settlement. *Taiwan Semiconductor Manufacturing Co. Ltd. v. Semiconductor Manufacturing International Corp.*, C-035761 (N.D. Cal., settled Jan. 31, 2005).

The undisputed leader of the operation, though, is John Keker, a 61-year-old retired U.S. Marine Corps First Lieutenant known for his ardent defenses and aggressive cross-examinations. While other firms have dissolved or merged into larger firms, 53-attorney Keker & Van Nest has resisted even talking about merging.

"Why in the world would we want to?" Keker asks. "We certainly won't merge with anybody if I have anything to say about it."

That contrarian streak has served the firm well in a world in which litigation and intellectual-property boutiques have been swept up like so many Valentine roses. Among those who have surrendered to the incursion of the world's megafirms are O'Neill, Lysaght & Sun; Fogel Feldman Ostrove Ringler & Klevens; Lyon & Lyon; and Fish & Neave.

"It was easier to buy a 20-lawyer firm with a client pipeline and expertise and market that as your intellectual-property practice," partner Ragesh Tangri says.

And though the suitors hunger for the firm's diversified mix of civil and criminal matters, it's not selling.

Another lure is the firm's extreme profitability, which it won't discuss, according to partner Christopher Kearney.

"Consistent with the types of high-stakes cases we handle, our rates and profitability are on par with the most successful Bay Area firms," Kearney says.

But for all today's headlines, the firm's reputation wasn't built overnight, Keker says. He remembers exquisitely being a nervous 34-year-old when he hung out a shingle with fellow federal public defender, Yale law grad and Vietnam veteran Bill Brockett.

"We didn't have any business; that was a problem," Keker says. "To be successful, we were hoping to make \$20,000 a year, and we did. I had two kids; my wife and I made it work. It was fine."

Originally, the firm was Keker, Brockett, two administrative staff and a punk-rock receptionist.

The idea was that they would be a small, high-quality firm, targeting "criminals who could pay," Keker says. The only rules: no divorces, no family law matters.

For the sake of versatility and flexibility, Keker insisted they be generalists in an age of specialists. The firm's first clients included former Black Panther leader Eldridge Cleaver, facing parole violations, and a Lutheran minister who blocked traffic in a 1982 anti-nuclear protest at Livermore Laboratories.

As cases piled up, Keker and Brockett looked to hire additional help. Van Nest joined not long

after the firm opened.

"Very early on, we took on a young law clerk, Bob Van Nest," Keker says. "He negotiated his salary from \$19,000 up to \$21,000, which was more than we could afford, but we paid him."

U.S. District Court Judge Charles Renfrew made the referral for Van Nest, who was looking for a small firm where he could get experience trying cases. Renfrew's courtroom was next door to Judge William Orrick's, where Van Nest clerked.

"Charlie Renfrew thought the world of them," Van Nest says. "But Bill Orrick thought I was making a huge mistake going to a place where I would get no training."

Van Nest's wife also weighed in because she didn't want to return to his hometown, Chicago. His leap landed Van Nest in the right place.

"We tried cases like crazy," Van Nest says.

In the '80s, the firm expanded, taking on fraud and securities cases for civil clients. In 1982, Keker and Chanin represented an employee of Hitachi Ltd. who was accused of stealing trade secrets from IBM. Though Hitachi lost the case, it helped define the boundaries for competition between the United States and Japan in high-tech electronics.

Joel Boxer of Bird, Marella, Boxer, Wolpert, Nessim, Drooks & Lincenberg realized the firm had staying power when he saw Keker take control of a courtroom 20 years ago.

Keker, Boxer and Dorothy Wolpert were defending Star Wars director George Lucas, Joseph Johnson, Lucasfilm and 20th Century Fox in a copyright infringement suit. Lee Seiler accused the film company of stealing his idea for giant attack vehicles that walked through the snow in the opening scene of "The Empire Strikes Back." *Seiler v. Lucasfilm* 613 F. Supp. 1253 (N.D. Cal. 1984).

"John Keker was in a pretrial hearing. Judge [William] Orrick was trying to understand the case, and he said something like, 'This is a complex copyright case we have here today,'" Boxer says. "John Keker answered, 'No, Your Honor, this is a case of fraud,' and the entire room went silent."

In that one moment, Keker shifted the focus



Photo by Xiang Xing Zhou

"Women are doing exactly what the guys are, and there are the same kinds of pressure. There's a lot of juggling all the time, especially if you have the primary responsibility for taking care of the kids."

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Keker & Van Nest

of the case from the technical aspects of copyright infringement to whether or not Seiler was a fraud, Boxer says.

"It changed the judge's entire outlook on the case," he says.

Later on, Keker questioned Seiler during an evidentiary exam before Orrick. When asked about drawings of the creatures, Seiler explained he was the only human that could speak Garthian, the language the war machines used to communicate.

"The judge looked at him incredibly, and the case was lost," Boxer says.

Orrick threw out the case on the eve of trial, securing a defense win for Lucas and 20th Century Fox.

Such early wins brought Keker the national attention that led to his selection for Lawrence

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Walsh's 1987 Iran-Contra prosecution team. Kecker made a splash as the lead attorney examining retired Lt. Col. Oliver North, the case's most memorable witness.

North was accused of coordinating covert sales of weapons to Iran's government, then funneling those profits to buy weapons for the Contra army in Nicaragua.

The firm became Kecker, Brockett & Van Nest in 1992, two years before Brockett left to form Legal Strategies Group. The boutique resembled Kecker & Brockett's early days and merged with Townsend and Townsend and Crew last year. (Brockett died in 1996.)

Though Kecker & Van Nest numbered just 24 lawyers in the mid-1990s, its patent work took off. The firm's civil docket grew, too, and companies like Google Inc., Comcast Corp., Intel Corp. and Chevron Texaco Corp. began turning to Kecker & Van Nest for their highest-stakes cases.

Throughout its history, the firm has been committed to pro bono — an accomplishment considered more impressive by many because of the firm's smaller size.

"I view pro bono as an ethical obligation," partner Jon Streeter, co-chair of the firm's pro bono committee, says. "I think lawyers have a duty to provide representation to indigent clients. Our code of ethics simply codifies the bargain you make to give back to the community."

As a young attorney at Orrick, Herrington & Sutcliffe, Streeter grew up with the idea that pro bono should be an integral part of his regular legal work. And, he adds, a successful pro bono practice needs to begin with a law firm's partners.

"If pro bono is mostly only junior lawyers filling up their spare time, it's just never going to take hold," says Streeter, the immediate past president of the Bar Association of San Francisco.

Kecker & Van Nest spent 8 percent of its billable time on pro bono work in 2003 and 7 percent, 8,000 hours, in 2004.

Esther Lardent, president of the Pro Bono Institute at Georgetown University Law Center says that number definitely puts Kecker & Van Nest among the pro bono elite.

"That's a strong showing," Lardent says. "Per lawyer, that's about 150 hours. Assuming that the definition tracks American Bar Association ethical rules or the law firm pro bono challenge, in which pro bono is defined as legal work for low-income people or community nonprofit groups, ... that would be one of the very highest per-lawyer pro bono contributions in the country."

High pro bono contributions typically fall in the 90-to-140 pro bono hours per lawyer annually, she says.

Among others posting those marks are Latham & Watkins' 1,400 lawyers, who average 110-to-120 hours per lawyer; Washington, D.C.'s Wilmer Cutler Pickering Hale and Dorr's 1,000 lawyers, who average 100-to-130 hours; and

Munger, Tolles and Olson's 163 lawyers, who average 90-to-95 hours.

In one high-profile pro bono case in 2003, partners Elliot Peters and Ethan Balogh helped free John Tension, who was wrongly convicted of shooting a gang rival and had served 13 years of a life sentence in Mule Creek state prison.

The firm also paired with the American Civil Liberties Union to prove the California Highway Patrol engaged in racial profiling. The case settled in 2003 when the highway patrol agreed to stop using minor traffic violations as grounds to search vehicles for drugs. *Rodriguez v. California Highway Patrol*, 99-20895 035761 (N.D. Cal., settled Feb. 28, 2003).

And, in April, the firm won dismissal of a challenge to the voluntary desegregation program adopted by the Berkeley Unified School District. The plaintiffs claimed Berkeley's race-based student assignment policy violated Proposition 209, the state's anti-affirmative-action initiative. *Avila v. Berkeley Unified School District*, RG03110397 (Alameda Super. Ct., judgment April 13, 2004).

"Every partner except one billed time on a pro bono matter last year, including John Kecker himself and Bob Van Nest," Streeter says. "That gives the green light to every person that is junior to do it, as well."

The 8 percent goal came from a pledge the Bar Association of San Francisco sponsored seven years ago, Streeter says. For firms not involved in pro bono work, the bar asked that 3 percent of their billable time be spent on pro bono; 5 percent was asked of firms doing pro bono work.

While the firm generally does not collect fees for pro bono cases, it does petition the court for costs in impact litigation.

"When we say pro bono, we mean it," says Streeter, who co-chairs the pro bono committee with Peters. An associate also serves on a rotating basis.

The firm also has carved out a substantial niche defending attorneys and other firms in legal-malpractice cases. Tangri says working on such cases can teach lawyers valuable lessons on conduct that spelled trouble for colleagues while gaining their appreciation.

Partners at the firm decline to talk about their legal-malpractice work, but according to news reports, the firm helped settle MP3.com's lawsuit against Cooley Godward in 2002. MP3.com accused San Diego-based Cooley Godward partner Michael Rhodes of providing bad advice that led to a slew of copyright-infringement lawsuits.

The firm also reportedly settled a suit against Heller Ehrman brought by E-Compare Corp., which claimed that a first-year Heller Ehrman attorney made errors in its corporate governance records that caused investors to back out and the company to fail.

Brobeck, Phleger & Harrison also reportedly turned to the firm on more than one occasion. In one instance, Jordache Enterprises claimed

Brobeck failed to tell the jeans manufacturer its insurance carrier could fund its legal defense in a separate lawsuit.

"We've represented most of the big firms in town," Tangri says. "Nonlegal types don't know how challenging it is to dispose of a three-year-long, \$2 million bullshit case. It gives you sort of a 'There but for the grace of God go I' feeling."

One of the keys to its success is the firm's ability to boil down complicated issues to simple themes and directed arguments, Van Nest says. And the firm holds fast to its original model: cases, not clients, according to Kearney.

"We're not focusing on repeat business," Kearney says. "We do have some, from significant clients, but we don't look to do all of the litigation for everybody."

The firm also attracts celebrity clients. According to news reports, Kecker represents Vanessa Bryant, the wife of NBA superstar Kobe Bryant.

Lawyers from the firm declined to comment on their relationship with the Bryants.

Even the firm's opponents like Kecker & Van Nest.

"There's a tradition in San Francisco, and other places, that even when there's a ferocious trial battle, what happens in the courtroom stays in the courtroom," says James Brosnahan, a veteran trial lawyer at Morrison & Foerster in San Francisco. "When there's respect and courtesy outside, some of those opponents become very good friends. Those traditions are part of doing it right."

Brosnahan says the two firms have had an amicable rivalry for years.

"Sometimes, they get hired because we're on the other side, and sometimes, we get hired because they're on the other side," Brosnahan says. "There's a mutual admiration warriors get about their opponents."

But that doesn't mean Kecker & Van Nest take on every case that comes its way, according to Kearney.

"Some cases just aren't right for us," Kearney says. "If we were asked to put 20 attorneys on an IBM antitrust case, we couldn't do it, and we wouldn't do it without pairing with another firm."

According to Kearney, having more than three lawyers working on a case is unusual. The strategy is smart, efficient litigation, not throwing people at a problem, he says.

Being called into cases at the eleventh hour, after settlement talks have failed and a case is headed to trial, is something Kecker & Van Nest lawyers are doing more of these days, Van Nest says.

Two weeks ago, he was given a case that will go to trial in April.

Still, "no panic sets in," he says.

"We know what it takes to get ready for a trial," he says. "You need to figure out the main themes, evaluate the evidence and see what you have."

Litigation boutiques that try cases rather than

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just settle them are many a lawyer's dream. Still, being able to have a successful one has eluded many who tried.

Since founding their firm in 1981, Bird Marella's Terry Bird and Vince Marella have built themselves an impressive litigation boutique operating under the model used by Keker & Van Nest.

The firm affords partners every lawyer's dream, Bird says: the opportunity to practice law the way they want to.

"If I had to go work for a firm that wasn't my own, I'd want to go work for them," Bird says. "They're old-fashioned, honorable lawyers who represent their clients with passion, respect, creativity and intelligence. It's an extraordinary place."

To be put in the same category of Keker & Van Nest, Marella thinks, would be "the highest compliment."

"It's a terrific firm, and that goes down to the individual-lawyer level," he says. "Small firms that specialize in litigation, some people think, are a vanishing breed; they fit that role, and they do it superbly. We always look forward to an opportunity to work with them."

Recently, Marella brought Keker & Van Nest into a recent case that was centered in San Francisco.

"They're exactly the kind of team you want. They bring in a real sense of the big picture," Marella says. "So many lawyers go through the motions and do things because they are there to do. They're not stepping back and asking, 'How will this play out at trial?'"

But even a firm as well-established as Keker & Van Nest can't be perfect. Twice, Keker has gone to trial for embattled investment banker Frank Quattrone, an architect of the dot-com boom.

In the first suit, which ended in October 2003, he won a hung jury on obstruction-of-justice charges for allegedly interfering with an investigation into improper allocation of shares in an initial public offering.

But in May, a jury found Quattrone guilty of trying to block a 2000 federal investigation into Credit Suisse First Boston's practices. With Keker's help, Quattrone is appealing his conviction.

Keker & Van Nest also represented Enron Corp.'s chief financial officer, Andrew Fastow, in his January 2004 guilty plea in conjunction with off-the-books partnerships that allowed Enron to hide billions of dollars in debt and artificially boost the company's profits.

In exchange for cooperating with federal prosecutors, Fastow was sentenced to 10 years in prison and a \$20 million fine. Though Fastow was originally charged with 98 counts of insider trading, money laundering, tax violations and others, he pleaded guilty to just two counts: conspiracy to commit wire fraud and conspiracy to commit securities fraud.



"We've represented most of the big firms in town," Keker & Van Nest partner Ragesh Tangri says. "Nonlegal types don't know how challenging it is to dispose of a three-year-long, \$2 million bullshit case. It gives you sort of a 'There but for the grace of God go I' feeling."

And in plaintiffs' work, according to an attorney who has litigated against them many times but wished to remain anonymous, they have a bit to learn.

"Where they get screwed up is when they take a plaintiff's case and don't always understand the speed at which you have to move," the attorney says. "Some of the lawyers over there are young and, rather than act, they react."

In addition, having such a large schedule of pro bono work, though undoubtedly a good thing, can detract from some of their other business, the attorney says.

Jeff Bleich of Munger, Tolles & Olson's San Francisco office says Keker & Van Nest is among the best.

"They're a high-caliber firm, and when we're involved in high-caliber litigation, we expect to see them there, if not on our side, then on the other," says Bleich, who refers cases to them. "If we have conflict issues, we will normally mention Keker as being a very good firm that they should consider."

Nearly all Keker & Van Nest attorneys — 24 partners, 27 associates and two of-counsel — joined the firm for two reasons: They wanted to try cases, and they liked the people.

"We win as a firm, and we lose as a firm," Kearney says. "There's no internal competition.

We really are different in that regard. If one of my partners is doing well, that's a good thing for me, not a bad thing."

The teamwork mantra has not gone unnoticed. "Lawyers there seem to toil in the same field without stepping on each other's toes," Robert Feldman with Palo Alto's Wilson Sonsini Goodrich & Rosati says. "They focus their competitive energies on the rest of [the] world and not each other, and they should be congratulated for that."

The refusal to compete internally is an established part of the firm's atmosphere, Chanin says. Lawyers don't get special compensation for bringing a client in. Often, more-senior partners pass on their clients to junior attorneys, and no credit is taken for the referrals.

"Clients identify with the firm more than any one individual," he says. "We never hire anyone for their book of business. We don't even talk in those terms."

Chanin also enjoys the firm's nonhierarchical nature, in which ideas can come from anywhere.

"If you're young and somebody else does the thinking, you're not challenged to contribute," he says.

Ferrall has been in charge of lawyer hiring for the past four years, during which time the firm has added 13 attorneys. He says attorneys

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continue to join for the same reasons he did: the partners' passion for the practice of law and the model of not asking associates to specialize.

The firm consciously works against the monotony that various types of cases produce, Ferrall explains. For example, pre-Sarbanes Oxley, lawyers in Securities and Exchange Commission cases spent lifetimes drafting motions to dismiss. The firm tries to ensure that lawyers get more of a mix and that they are meeting their personal goals.

"We ask, 'What do you want to do that you haven't,' and if it fits in, we give them the opportunity to do that," he says.

The firm's traditional hiring model was to take

Keker & Van Nest lawyers share not only their victories but also their techniques, Streeter says.

"It's like a group of brain surgeons sharing their individual secrets on how to do the most difficult operations," he says. And the teaching comes from the top.

"Watching [Keker] operate from the very beginning made it clear to me that, in order to be really effective as an advocate, you have to understand your strengths and how you as an individual connect with other people," Streeter says. "It's a very human thing."

He likens developing skills as a trial lawyer to a vocalist nurturing a wide tonal range.

"When people talk about [Keker], you expect

to find a guy with a larger-than-life personality and a loud voice that squeezes everybody else out of the room," Streeter says. "He can be

the luxury to screw off," she says. "There is so much value placed on just getting home."

Jan Little, a white-collar criminal-defense partner and mother of three, has been on a reduced schedule at Keker & Van Nest for 13 years.

Little says the firm "genuinely believes women are a force in the courtroom."

"I love my job. How many people can say that?" she asks. "How many lawyers can say that?"

"We have great cases. There's nobody here that, if you see them in the hall, you want to turn and run the other way."

For lawyers rushing to put their résumés in Keker & Van Nest's in-box, you'll have fierce competition. Van Nest says the firm likely won't take on more than three or four new lawyers a year.

"Growth is not a goal, but to continue to get exciting, cutting-edge cases, we'll need more people," Van Nest says.

Though the firm is much larger and the punk rock receptionist is no longer there, little else has changed at the firm in the past quarter-century.

"The only thing I can think of that is different today is not being able to have the entire firm decide who to hire," Chanin, who joined the firm in 1982, says.

Still, new candidates meet with between 20 and 30 people. Growth also has brought more structure and infrastructure and improved the firm's use of information technology.

The firm also has taken on more national litigation. Van Nest recently tried cases in New York, Maine, Baltimore, Los Angeles and the Eastern District Court in Texas. As many as half of Keker's partners are licensed in states outside of California, Kearney says.

Keker & Van Nest attorneys also expect to be handling more health care work, from both an intellectual-property and criminal vantage.

Beyond that, the future is anyone's guess.

"Maybe people predicted the boom in IP, but I doubt they predicted the corporate scandals of the late 1990s and 2000," Ferrall says. "No one knows what sort of practice areas will be hot or even exist five years from now."

One thing likely will remain the same. To the outside world, Keker will remain a sometimes-gruff and stoic warrior, who shows another side when talking about his law firm, a sweetness almost.

"We're a mouse among elephants, doing one thing very well, and it doesn't surprise me that it's worked," Keker says. "Being a firm with cutting-edge work, attracting really good young people and watching them grow into accomplished lawyers, that, if anything, makes me proud."

"We win as a firm, and we lose as a firm. There's no internal competition. We really are different in that regard. If one of my partners is doing well, that's a good thing for me, not a bad thing."

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Keker & Van Nest

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on law students after federal clerkships. While that model no longer is followed with the same rigor, all of the firm's partners have a federal clerkship under their belts, including Keker, who clerked for U.S. Supreme Court Chief Justice Earl Warren.

"Originally, the judges themselves were cherry-picking law students," Chanin says. "The idea was that a year behind the scenes in a courthouse would impart some value."

Lateral partners are also rare; Streeter is one of only two in the firm's history. He joined the firm in 1997 from Orrick Herrington, where he'd been a partner for eight years. The other lateral was Henry Bunsow, now the managing partner of the Northern California offices of Howrey Simon Arnold & White. Bunsow could not be reached for comment.

"I started to think about where I wanted to be in 20 years," Streeter says. "I wanted to try cases and to be able to learn from the best of the best."

He says that leaving a 125-year-old institution like Orrick Herrington for a firm that was tiny by comparison and had existed only 20 years was a risky move, but the risk was worth it.

"It was absolutely the best decision I ever made," Streeter says. "I am happier than a clam."

In joining Keker & Van Nest, he says he's been given "more opportunities to try cases than I ever could have found in business litigation anywhere else."

"We're as good as we are, purely and simply because we do it more," Streeter says.

He recently secured a \$40 million jury verdict for the owners of a Milpitas office building for breach of contract against a mortgage company. *1601 McCarthy Boulevard v. GMAC Commercial Mortgage Corp.*, 425848 (San Francisco Super. Ct. Jan. 26, 2005).

that, but some of his techniques are very subtle and quiet."

Susan Harriman says that, through working with Keker & Van Nest, she's found ease in the courtroom.

"It would have been impossible to reach the comfort level I have in the courtroom had I not been here," says Harriman, who joined the firm in 1985.

Working as an assistant district attorney or public defender could offer lawyers as much trial time, but it wouldn't match the depth or quality working for Keker & Van Nest affords, she says.

By the end of her second year at Keker & Van Nest, Harriman had taken depositions in London and Australia.

She is among the woman who has excelled at the firm. Harriman says the firm has done a lot to attract and keep good women.

There are part-time partners, three women and no men, but there is no "women's work" Harriman says.

"Women are doing exactly what the guys are, and there are the same kinds of pressures," she says. "There's a lot of juggling all the time, especially if you have the primary responsibility for taking care of the kids."

Harriman doesn't have children and thinks it's easier for her than other women in the firm.

"The result of [having children] is women being more efficient during the day. They don't have