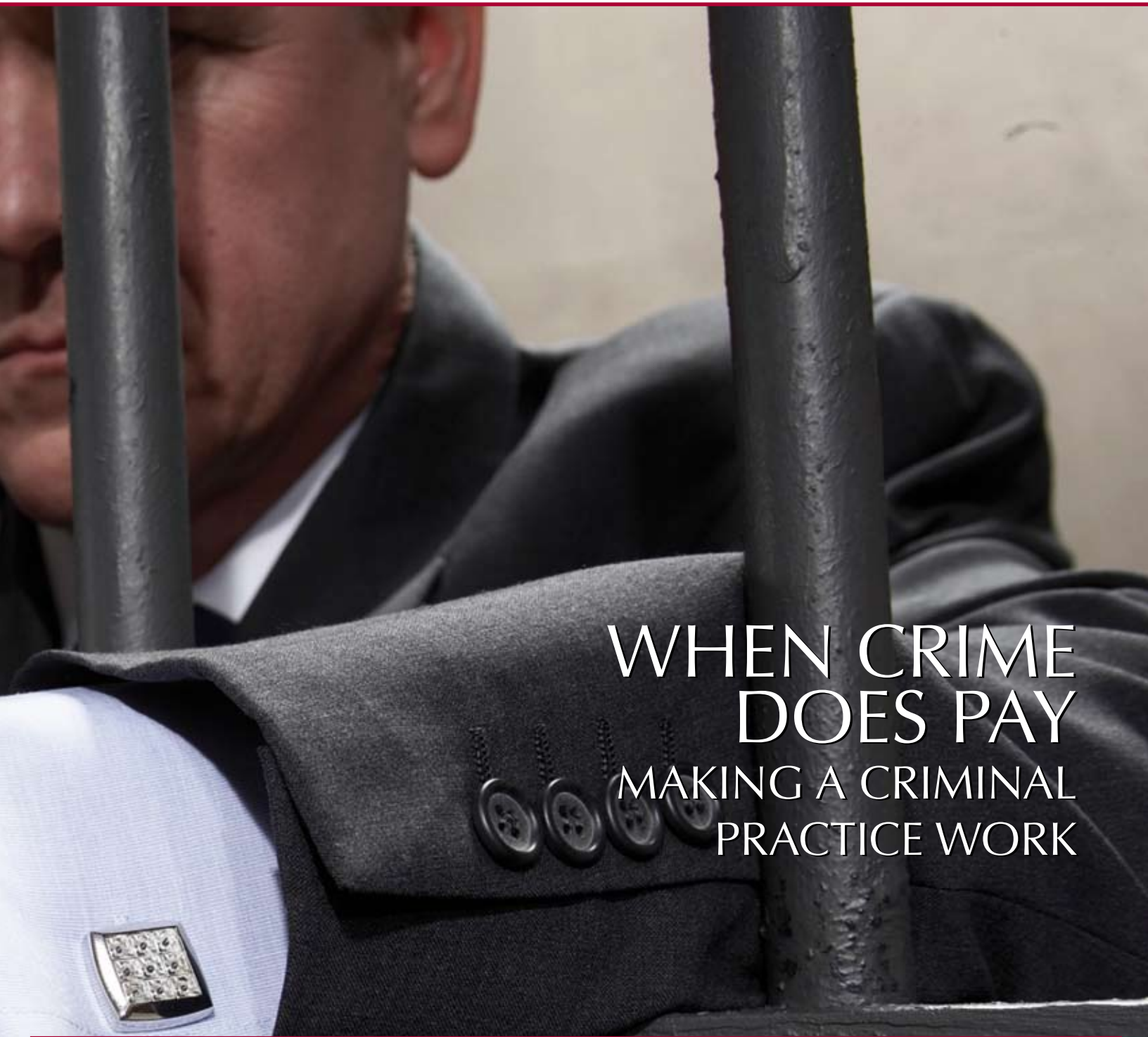


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A close-up photograph of a man in a dark suit and white shirt, looking down. He is positioned behind two vertical, dark metal bars, suggesting a prison or a secure facility. The lighting is dramatic, with strong highlights and deep shadows.

WHEN CRIME
DOES PAY
MAKING A CRIMINAL
PRACTICE WORK

Mexico law firms ramp up competition • Strong corporate governance procedures • NAFTA at 15 • Antitrust in Argentina



THE PERFECT STORM

In Mexico, the crisis has cut right across an epochal shift in the legal market, in which clients, driving for efficiency, are increasingly pitting firms against each other – and happily swapping between them. This has created the ideal setting for ferocious competition, the senior partners of Mexico's leading firms told us at a round table

PARTICIPANTS:

RAYMUNDO ENRIQUEZ – Baker & McKenzie
 EDUARDO SIQUEIROS – Barrera Siqueiros y Torres Landa SC
 DANIEL DEL RIO – Basham Ringe y Correa SC
 BORIS OTTO – Chadbourne & Parke LLP
 ANTONIO PRIDA – Curtis Mallet-Prevost Colt & Mosle LLP
 CARLOS CREEL – Creel García-Cuellar Aiza y Enríquez
 MANUEL GALICIA – Galicia y Robles SC
 JORGE SANCHEZ – Goodrich Riquelme y Asociados
 JOSÉ VICTOR TORRES – González Calvillo SC
 ANTONIO FRANCK – Haynes and Boone LLP
 JULIAN GARZA – Jauregui Navarrete y Nader SC
 IGNACIO GOMEZ – Jones Day
 JOSE ESTANDIA – Jones Day
 JORGE JIMENEZ – Lopez Velarde Heftye y Soria
 CARLOS GALVAN-DUQUE – Martínez Algaba De Haro, Curiel
 y Galvan-Duque
 FRANCISCO FUENTES – Mijares Angoitia Cortes y Fuentes SC
 CARLOS MÜGGENBURG – Mügggenburg Gorches Peñalosa y
 Sepúlveda SC
 AGUSTIN GUTIERREZ – Santamarina y Steta SC
 CLAUD VON WOBESER – Von Wobeser y Sierra

Jorge Jimenez concurred, suggesting that more E&P work should be forthcoming as Mexico starts trying to break long-standing taboos with respect to its oil industry. Oil was one area where there could have been a lot of work today, agreed Eduardo Siqueiros, concluding that in general Mexico's situation was very similar to that of most other countries in the region – except Brazil, “which marches to a different rhythm.” In an emblematic anecdote, Siqueiros mentioned that a client had recently decided to consolidate all its work with his firm – but the mandate came with a formal request to do no work until 2010 ‘unless absolutely necessary’ because of cost cuts. Antonio Franck, casting himself as one of the veterans at the table, pointed out that heretofore Mexican law firms tended to have to deal with crises that were local in nature. “What’s different for us, compared to previous crises here, is that this is a global crisis and some of us are being affected not locally, but internationally. In our firm, for instance, corporate work has been going down the drain.” José Victor Torres then sounded an optimistic note: “We worry and complain that our margins are down, but we’re doing spectacularly well considering the overall economic context. It’s time to invest in talent, to go out and get new clients – not to batten down the hatches.”

Adaptability is key

Many felt that, compared to law firms across the border in the United States, Mexican law firms were better suited to weather a recession because of their agility. “In this market we can be less specialised,” argued Boris Otto, “so we can adapt better.” “If you’re not adaptable in this profession in Mexico, you’re dead,” continued Claus von Wobeser, “except for maybe the tax guys. If a corporate lawyer tells you he’s been doing the same thing for the last 20 years, he’s lying – our economy just doesn’t allow that. And that’s, I think, one of the main reasons why we don’t end up laying off people here in the same way they have in the US.”

But there was also a sense that the era of the generalist lawyer is coming to an end. “We need to be adaptable,” says Carlos Creel, “and we have been for a long time – but that’s changing as the demands of clients change. They need the sophisticated work, the knowledge, the experience that only doing the same kind of work over and over again can bring, and I feel we’ll see the emergence of more specialists, more along the US/European model.” In transactional work, noted Manuel Galicia, clients have long looked for lawyers with expertise and experience in a particular kind of transaction. Agustin Gutierrez,

Latin America’s second-biggest economy is having a tough 2009. Not having seen the same booming growth as much of the rest of the region during the good years, its economy is likely to contract by 7.5 per cent this year as the US recession dampens demand for its exported goods. As the seat of the global swine flu pandemic, much-needed resources were thrown at the problem while tourism was badly hit.

Drug-related violence is the scourge of the north of the country, while PEMEX – which funds more than a third of Mexico’s budget – is fighting to offset declining production at a time when oil prices feel low after the peaks of recent years.

But at law firms, business is not as bleak as the general picture suggests. While in the US firms have been surprised in this crisis by how cyclical their industry in fact was, in Mexico the traditional wisdom – that the business of law is both cyclical and counter-cyclical – seems to be prevailing. Claus von Wobeser spoke for many when he saw an increase in litigation and restructuring work and a sharp decline in M&A, while Raymundo Enriquez noted that his firm’s labour law department was being kept busy as numerous companies scale back their operations. Antonio Prida detected an upsurge in arbitration and signs of movement in the energy sector;

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meanwhile, pointed out that while some practice areas waxed and waned, new areas had emerged that hadn’t really existed before – for instance, in real estate. Not long ago it would have made little sense

to talk about someone being a real estate lawyer, but now there were many who dedicated most of their time to the sector.

Increasing competition

“The hourly fee is on the way out,” said Antonio Franck as the discussion switched to how the recession was affecting relations with clients. “You have to be much more flexible with your budget

“One change I have definitely seen over the last 30 years is that clients want us to compete not on quality but on cost, and that’s very difficult”

proposals to clients.” “We’re looking at a complete change,” agreed Daniel del Rio. “People want to know exactly how much things are going to cost. On the other hand, in Mexico we’ve never charged by the hour for litigation cases, so that’s different from the US experience.” Von Wobeser suggested that a move away from hourly fees might not necessarily be bad news for firms: “You have to be smart, but sometimes you can end up making more money with the fixed fee if you are efficient.”

Von Wobeser then noted that more and more corporate work was being put out to tender, and while competition with firms offering similar expertise was healthy, clients were now looking to leading firms to match the fees offered by smaller and less experienced outfits – including those that he thought resorted to dumping in order to gain market share. And this wasn’t necessarily happening because clients were facing sharp financial constraints, but rather because they were trying to take advantage of the economic situation. “It’s a fact of life,” retorted Manuel Galicia, “and it’s not going to go away. It didn’t start with the crisis – in some areas, like in project finance, it’s been common for a long time. And I would agree that when companies are looking for cuts in legal fees it doesn’t necessarily mean that they’re in financial trouble – they just want to reduce their costs.” Taking a long-term view, Carlos Galvan-Duque agreed that the rules of the game had changed. “We live in a dynamic society, and we have to accommodate the trends that shape that society. And one change I have definitely seen over the last 30 years is that clients want us to compete not on quality but on cost. Clients definitely look more carefully at the budget than they used to.”

But some were not inclined to take these changes lying down. “Forcing law firms to compete aggressively for business is not the way to go,” suggested Boris Otto. “In the long term it doesn’t help anyone, and there are other ways of achieving the levels of efficiency that clients are legitimately looking for.” Claus von Wobeser’s conclusion was more forthright: “I believe that law firms shouldn’t abuse clients – but clients shouldn’t abuse law firms either, and perhaps the pendulum has now swung too far; law firms have to be



Carlos Muggenburg



Claus von Wobeser



smart.” And being smart, argued José Victor Torres, means recognising that there are a lot of clients out there. “At our mid-year partners’ meeting, we looked at a chart of our 20 largest clients. Compared to last year, we saw three repeats and one ‘three-peat’. We need to replace our clients constantly – we can’t dance the dance that our

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clients are demanding. We’ve decided as a policy not to participate in aggressive RFPs – sure, we’ll lose a few deals, but we’ll keep the quality.”

Levels of loyalty

Eduardo Siqueiros saw an epochal shift in relations between law firms and their clients. “Clients relied on law firms for every small need while they had no legal departments, but now they have sophisticated in-house teams – often staffed by lawyers who used to work at our firms. Much of the work that we did can be adequately handled in-house, so it has been commoditised.” And that works against long-term, exclusive relations between law firms and their clients – although Carlos Müggenburg felt that Mexican companies had shown more loyalty to their external advisers than international clients. “Mexican clients are not looking much to hourly rates, but my experience has been that American clients look at the numbers first and at the quality second, while Mexicans – and I don’t know if they do this consciously – are just looking for the best quality.” Jorge Jimenez argued that a level of loyalty in client-law firm relationships was important in making those relationships work. “The client has to understand that there’s an institutional memory there, that the external lawyer knows how the company works. So I think on the side of the corporate counsel they have to be more efficient in managing and directing their requirements from a law firm, to make sure they get the added-value services that they need. But I think it’s important that both sides understand that there are many aspects of what we do that really are not commoditised.” But few were under the illusion that they could expect an important client to bring all their work to one firm. “If I was a general counsel today,” retorted Manuel Galicia, “I would have two or three of the firms sitting around this table working for me, not just one.”

Daniel del Rio offered a suggestion that he said had worked well for his firm: “I think that when a client tells us they have to cut their budget by 20 per cent, it’s important to work with them – to sit down with them to work out how we can help them make the savings they require, without impacting the integrity of the work we do for them.” Eduardo Siqueiros, meanwhile, offered another

Eduardo Siqueiros



perspective on client loyalty: “Several of our clients request lawyers from our firm to be assigned temporarily to them – and a number of those lawyers have been with those clients ‘temporarily’ for several years now. And when a client asks one of our lawyers to stay with them, we have concluded that it’s better to have someone who knows us (and knows how we work) inside the company than trying to fight that, forcing the company to go and look for the lawyer they need at another firm.”

The effect on the market

While there seems to be plenty of work around at the moment, there was little confidence that law firms would be safe if the recession continues. “None of our firms have fired anyone in the way we have seen in the US, but I think that, unfortunately, in a few months we may be facing that circumstance,” said Manuel Galicia. “When that happens, we will be looking to find the right levels of leverage to provide the services our clients need, and I’m not sure a high level of leverage will be efficient.” Carlos Creel also worried about longer-term effects: “The crisis has a direct impact on our growth strategies – we’ll have fewer partnership slots and more candidates for them, which means we’ll probably have to take a close look both at our recruiting policy and at the career plans of our associates.” And while in the current climate many associates felt lucky to have a job, Eduardo Siqueiros didn’t see this as a long-term state of affairs. “People no longer join a firm for life – for instance, many of our firms continue to subsidise their associates to go and study abroad, and when these associates return to Mexico they feel no commitment to their firms whatsoever. So I think we’ll see more lateral changes.”

The discussion turned to why local firms seem to have a strong resistance to consolidation. The largest firm in Mexico wouldn’t break into the top ten in Brazil – a larger market, to be sure, but not by the margin that statistics suggest. “I think the market is not ready for huge law firms because we don’t really have a legal service culture,” suggested Jorge Jimenez. “People in Mexico still don’t have the image of a lawyer as someone you consult with in the course

“I think the market is not ready for huge law firms because we don’t really have a legal service culture”

of doing business, but someone you call when there is a problem.” Eduardo Siqueiros, meanwhile, rejected the suggestion that Mexican firms weren’t growing, stating that they were just growing more slowly than in some other countries in the region. “In our case we’ve doubled in size over the past 12 years, and fully expect to do so again.” Claus von Wobeser was doubtful about the benefits of growth, arguing that the Mexican market wouldn’t support firms much bigger than those in existence today – and pointing out that



Jorge Jimenez



Boris Otto



Raymundo Enriquez

even in the United States there were plenty of firms now wishing they hadn't grown quite so much. Carlos Müggenburg took a similar line: "I don't see anything changing soon – or ever. In the short term we'll see more small firms emerging. It's also a question of quality – I

"A lot of us have faced a lot of crises in our careers in Mexico, but this one is different, and it's forcing us to look at how our firms work"

wouldn't feel comfortable sending a client to a partner I don't even know, which is a risk when a law firm gets too big."

Alongside these practical considerations, cultural issues were seen to play a strong role. "It's because we're Mexican," opined Antonio Franck. "We have a culture that doesn't favour institutionalisation and consolidation – we don't want to lose control. But the flu crisis is the first time I have seen Mexicans taking something seriously and working together to do something about it, so it is possible." Carlos Creel echoed that sentiment, suggesting that this cultural brake on expansion was evolving. "Our culture strongly favours the idea of one individual being in control, whether of the country, an industrial group or a law firm. But if you create a system and make people believe in that system, you will have an institution that stands by itself." Manuel Galicia concurred: "We shouldn't get confused between big and institutionalised. What you need to survive this crisis – and to take advantage of it – is an institutionalised firm with a solid decision-making process that allows you to be flexible."

What the discussion didn't cover in detail was the impact of partner pay structures and the distribution of equity on the process of institutionalisation in Mexico. Many firms here tend to employ 'eat-what-you-kill' compensation mechanisms and to concentrate power among a firm's upper echelons, both reasons cited in discussions outside this round table for the smaller size of firms – the argument being that such a structure encourages break-ups and spin-offs, thus further increasing competition. While 'eat-what-you-kill' unarguably promotes hard work and ambition, in a market in which corporate work is at its lowest in years, and which has not shown itself averse to low-balling, it might affect partner income and thus play against the institutionalisation process. While law firms in Mexico are proving sufficiently adaptable to the rigours of this crisis (by adapting their work profiles and so on) to be in less trouble than their US cousins right now, the credit crunch could yet prove to have long-lasting effects on the legal market as a whole – as Raymundo Enriquez concluded when he called the crisis unique. "A lot of us have faced a lot of crises in our careers in Mexico, but this one is different, and it's forcing us to look at how our firms work," he said. "We need to learn how to cost our services in a better way; how to allocate our resources in a better way. And we need to look at new compensation systems for our partners and our associates in reaction to this crisis."



Manuel Galicia