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GONE GLOBAL: Alexis Haller, left, August Gugelmann, Mary McNamara and Edward Swanson aren't opening more offices. But their firm is building a niche with an international flavor.

SHELLEY EADES

Beyond Borders

San Francisco's Swanson, McNamara & Haller, rooted in criminal defense, is crossing into international law

By Petra Pasternak
RECORDER STAFF WRITER

When Berkeley attorney Jeffrey Lena needed help some years ago with defense work, he acted on a referral from another lawyer and retained San Francisco civil and criminal defense boutique Swanson, McNamara & Haller.

Lena, among other things, handles U.S.-based civil insurance fraud, sex abuse and World War II assets-related cases for the Holy See and the Vatican Bank. So, he said, at that point in 2000 he was looking for lawyers who understood that the civil cases he worked on were unusual matters that required more than technical know-how.

"I was looking for 'range' — the ability to look at a problem from a variety of angles — angles that would include the cultural

and the historical," he said. "These are cases involving issues where there are no well-worn paths in the jurisprudence."

In the Bay Area, the four-lawyer Swanson firm, founded in the late 1990s, is best known for its headline-grabbing criminal defense work. But with the Holy See as a start, partners Edward Swanson, Mary McNamara and French-born Alexis Haller have in the past year been further building up a niche centered on questions of international law, sovereign immunity and jurisdiction.

As a foreign sovereign, for example, the Vatican is immune from suit in the United States unless the plaintiff can plead an exception.

"The main draw for us," said McNamara, a native of Ireland, "is that these [international] cases involve cutting-edge legal issues that are hotly contested in court."

McNamara says that international work now makes up between 25 and 40 percent of their practice, and she expects these cases — which come in mostly through referrals — to be as lucrative as the firm's other matters. (The three partners, however, refused to discuss firm financials.) "We charge hourly rates and these clients are usually an institution or in general people with litigation budgets," McNamara said.

This summer, the trio represented an editor from The Economist who was being pulled into a U.S.-based dispute between Oracle Corp. and Nursing Home Pension Fund, among others. The editor allegedly held tape-recorded conversations with Oracle CEO Larry Ellison, which the plaintiffs wanted to use in testimony in the Northern District of California.

"We were up against a phalanx of big

law firms,” McNamara said, with William Lerach’s firm among the plaintiffs’ lawyers. “We beat them.” Latham & Watkins was representing Ellison.

Documents show that the judge ruled in their favor at the end of June, saying that their client, a British subject, was entitled under a Hague Convention to assert his privilege against self-incrimination during depositions abroad.

Late in the summer, the firm was tapped by a U.S. subsidiary of a foreign medical journal in a class action involving pharmaceuticals.

WHERE DEFENSE FIRMS HATCH

The San Francisco boutique is one in a long line of firms to launch from the federal public defender’s office in the Northern District. That line has also included well-known litigators John Kecker, Marcus Topel and William Goodman, and more recently Cristina Arguedas, Nanci Clarence and Karen Snell.

Swanson and McNamara left the federal public defender’s office in late 1998, just as the U.S. attorney’s office turned its attention to sophisticated white-collar criminal investigations. Haller joined them from the federal public defender’s office in the spring of 1999 as an associate. The firm’s fourth lawyer, August Gugelmann, joined them in 2005.

That same year, their firm struck a deal with federal prosecutors in the BALCO steroid

case, in which it represented Victor Conte, who pleaded guilty to conspiracy to distribute steroids and money laundering. The founder of Bay Area Laboratory Co-Operative got four months in a low security facility.

Swanson, McNamara also represented V. Reginald Howard II, one of four traders in the Reliant Energy price-gouging case. In that case, charges that the company and its traders conspired to jack up electricity prices during the California 2001 power crisis were dropped on the eve of trial.

Much of Swanson, McNamara’s business is built on its involvement in the federal court system, and referrals from other criminal defense boutiques, such as four-attorney Clarence & Dyer, which also worked on Reliant.

“We’ll get a new matter. We’ll realize there’s somebody else that needs to be represented who can’t be represented by our firm,” Clarence said. “Ed and Mary are on the speed-dial in that situation.”

McNamara said she anticipates a wane in the kind of industry-wide government scrutiny of public company practices that has fed stock option backdating investigations and other governance probes. She added that boutiques like hers are in a better position than large firms to adapt to that shift.

“It’s not clear to us that that kind of focus is going to keep going,” McNamara said. “We may be back to the case of the individual

executive with the hand in the till or some other impropriety.”

“I think we’ll always do well in that field,” she added, “because we’re not limited to the large internal investigations that for the large firms are the bread and butter.”

Looking back, McNamara and Swanson say they developed their style under Chief Public Defender Barry Portman, whose office has acted as a sort of incubator for the city’s small criminal defense bar.

“He’s given us all our start,” McNamara said. “He hired us with the intention that we’d be there three to five years.”

Under Portman, they also developed a taste for independence. Joining their better-established colleagues’ practices was never in the plan.

“The office taught us how to defend cases the way we thought was best,” Swanson said. “That’s a habit that once you develop is very hard to drop,” so going to work for somebody didn’t appeal to either one of them.

Staying small and autonomous has worked well for them so far, and they intend to keep it that way.

Asked what the firm will look like five years down the road, McNamara said: “I hope it looks the same — maybe a little bigger — maybe one or two more lawyers.”

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