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INFILTRATING THE EAST

WHITE AND CASE WENT INTO EASTERN EUROPE SOON AFTER THE IRON CURTAIN LIFTED, AND--GALVANIZED BY TWO ENTREPRENEURIAL ASSOCIATES--HAS BUILT A SUBSTANTIAL PRACTICE BASED ON ITS EARLY-BIRD ADVANTAGE

Karen Dillon

In many ways White & Case's Prague office is a perfect metaphor for the firm's presence in Eastern Europe. On the one hand, Karel Dyba, minister of economic policy and development for the Czech Republic, says he thinks that the 10,000-square-foot office overlooking Prague's historic Old Town Square is symbolic of the fact that “they are right in the middle of the whole process.” On the other hand, the firm's critics will argue that the spanking new offices are typical of White & Case's reputation in the region--expensive and flashy, but lacking in subtlety and substance.

But what matters most to White & Case is that people talk about the firm's work in Eastern Europe. In an environment that seems to foster a near frontier mind-set, White & Case has been extraordinarily aggressive in developing its practice in Czechoslovakia, Poland, and, to a lesser extent, Hungary. Building on the eagerness and entrepreneurship of young associates--most notably 31-year-old Daniel Arbess in Prague and 35-year-old Stephen Harder in Warsaw-- White & Case developed a high profile soon after the Iron Curtain was lifted, and is now working hard at keeping it. By more or less abandoning its traditional New York white-shoe culture in favor of all-out self-promotion and hyper-aggressive dealmaking, the firm has parlayed its early visibility into a substantial Eastern European practice.

In a part of the world where, as Zdenek Bakala, a banker in Prague working for Credit Suisse First Boston Limited (CSFB), says, “every two weeks another firm shows up and says they are the best in the world and are willing to do it for free to get their foot in the door,” White & Case has managed to hold onto the turf it staked out in the beginning. No other well-known international firm has more lawyers based full time in Eastern Europe and the former Soviet Union than White & Case.

With offices in Prague, Warsaw, Budapest, and Moscow, White & Case has been involved in some of the most significant Eastern European transactions to date. Most notably, in 1991 the firm represented Skoda Automobilovy Koncern S.P. and the government of the Czech Republic in a $6.4 billion joint venture with Wolfsburg, Germany-based Volkwagen AG, by far the largest deal to date in Eastern Europe. In Poland the firm beat out four other finalists last August to win a beauty contest for the coveted representation of the Polish government in its Mass Privatization Program (MPP). With more than 400 state-owned enterprises scheduled to go private, the MPP could be considered one of the most ambitious privatization transactions ever attempted.

Currently White & Case has 51 people devoted exclusively to work in Eastern Europe and the former Soviet Union--27 lawyers (including two partners and one of counsel) and 24 other staffers. Twenty-one of the lawyers are based full time in Prague, Warsaw, and Budapest. Partner Carl “Hank” Amon III oversees the operations in Czechoslovakia, Poland, and Hungary from his outpost in Brussels.” I think [the offices are] over the risk hurdles now,” Amon says confidently, noting that he expects between 35 and 40 of the firm's lawyers to be based in Eastern Europe by the end of the year.

“When we decided to see what might exist in terms of a market, there was no sense in New York that this could have been as successful as it has been,” he says. “For those of us involved initially, it would have been very hard to determine where it might all lead. Now I'm fully prepared to spend the rest of my career in Europe.”

The longevity in Eastern Europe of Amon and his team, however, will depend on whether the firm can continue to build on its early success in an increasingly crowded and competitive environment.

DEFENDING THE TURF

While White & Case may have enjoyed the early bird's advantage, it is clear that the competition now is more intense than ever. Some firms in the area are suspected of overpromoting a cubbyhole office with an answering machine or a single associate of the right ethnic background. Many others can legitimately claim to have developed substantial Eastern European practices.

Cleveland's 383-lawyer Squire, Sanders & Dempsey has a respected 20-lawyer office in Prague run by Milan Ganik, a partner of Czechoslovakian origin. Chicago's 166-lawyer Altheimer & Gray has a successful ten-lawyer Warsaw office, which it is now trying to replicate in Prague. And New York's 340-lawyer Stroock & Stroock & Lavan has had a visible Hungarian practice for the past two years.

New York's 975-lawyer Skadden, Arps, Slate, Meagher & Flom has developed a highly regarded Eastern European practice--with just a two-lawyer outpost in Prague, a three-lawyer Budapest office, and a two-lawyer Moscow office--largely through the efforts of partners based elsewhere (most notably, London partner Scott Simpson). Skadden has won prime roles in dozens of transactions, among them the representation of Polish automobile manufacturer Fabryka Samochodow Malolitrazowych (FSM) in deals with several multinational automobile companies, including Fiat Auto s.p.a. (even though Skadden does not have a presence in Poland).

But few of these firms demonstrated a commitment to Eastern Europe as quickly as White & Case did. The firm recognized early on that even though the privatization process in each Eastern European country is distinctly different, the region could be approached as a single marketplace. Officials in one country are interested in learning from the experience--and mistakes--of their neighbors.

Thus, White & Case has been able to utilize its work in Czechoslovakia and, to a lesser extent, in Hungary in winning business in Poland--most notably, the MPP work. “We were so convinced that White & Case was better than anyone else,” observes Ewa Gorska, chief of staff for the Polish Mass Privatization Department. “They had very serious experience in Czechoslovakia and Hungary.”

And while it is still too soon for any Western firm to be sure that Eastern Europe will pay off in financial terms, White & Case generated revenue in the low seven figures for its work in Czechoslovakia, Poland, and Hungary for the period from the beginning of 1990 through the end of 1991, according to partner Amon. That work first became profitable in the fall of last year, Amon says, taking into account all operating expenses (including his remuneration) for the offices in those three countries.

WHEN THE WALL CAME DOWN

Like many firms, White & Case had some curiosity about the new opportunities created by the lifting of the Iron Curtain in the autumn of 1989. That the firm actually moved--and so quickly--to capitalize on the political developments in the area was largely attributable to two of its associates--Dan Arbess and Steve Harder. As Amon puts it, “To a large extent, I've been up on the stagecoach with the reins, and they've been the horses up front.”

Arbess, in particular, was instrumental in the early stages. In the days just after the so-called Velvet Revolution in Czechoslovakia, he made several personal trips to that country, and brought home to the firm's partners his enthusiasm about the possibilities he saw. Bright, arrogant, and ambitious, Arbess has thrived on the opportunity. “This is way beyond what lawyers do in New York,” he boasts of the complexity of his current work load in Czechoslovakia. “We're talking about major political consensus-building.”

A 1984 graduate of Osgoode Hall Law School in Toronto, Arbess received an LL.M. from Harvard Law School in 1987 and was affiliated with Harvard's John F. Kennedy School of Government while in law school. Between Osgoode and Harvard, he spent two years as a fellow at the New York-based World Policy Institute. He joined White & Case as an associate in the corporate department in 1987. For him, the opportunity to develop the Czechoslovakian work was his escape from the fairly routine life of an associate to an exciting new terrain where he would have to count on his own ability. “We're working on privatization [deals] that will affect the lives of, I don't think it's an exaggeration to say, one million people,” he says. “You can wait a long time for a career opportunity like that.”

His involvement with Eastern Europe began in earnest in the fall of 1989, after the Berlin Wall came down and Czechoslovakia's dissident community was gaining ground. White & Case partner Sandra Schecter passed on to Arbess an inquiry from a friend in the printing business in New York. The friend, Kristian Cee, was Czechoslovakian by birth and interested in developing castles in his homeland for use as hotels. Together, Arbess, Cee, and another Czechoslovakian native named Ivan Chadima scheduled a preliminary trip to Prague in November 1989. Chadima, who had lived in Canada but at that time was residing in the U.S., was well connected in Czech dissident circles. But the trip had to be postponed because Arbess became enmeshed in another deal.

By the time Arbess, Cee, and Chadima got to Prague in January 1990, a new government was in place and Arbess was eager to use his relationship with Cee and Chadima to build a practice in Czechoslovakia. The three formed an investment company called EuroInvest in February. Arbess's relationship with the company is somewhat unusual. EuroInvest is not a White & Case client, Arbess says, but his personal client. He declines to detail the nature of his relationship with EuroInvest, except to say that he helped found the company. But according to two lawyers familiar with the arrangement, Arbess has a business relationship with EuroInvest. Forming EuroInvest “was a very shrewd move,” one of these lawyers says. “In effect, he rode [to Prague] on the coattails of well-known men.”

Arbess's forays in connection with EuroInvest were not paid for by the firm and were taken on his vacation time. But it was EuroInvest that provided him with his entrée into Czechoslovakia. On his first trip with the EuroInvest team, Arbess met an acquaintance of Chadima's, Olga Havel, who is married to playwright-cum-president Vaclav Havel. The next month Chadima, who was at the time the general manager of a New York hotel, was asked to help play host to a Czechoslovakian economic delegation accompanying Havel on his trip to North America. Chadima asked Arbess to help organize events for the delegation, and so White & Case conducted a breakfast meeting for the group of economic advisers.

During the next few months Arbess tried to squeeze in as many trips to Prague as possible. He tried to use his acquaintance with the Havel advisers he had met in New York to make contact with officials who would be important in the burgeoning privatization process.

RIPE WITH OPPORTUNITIES

As long as he continued handling his normal work load in New York, Arbess recalls, “the firm was at first indifferent” to his feverish excitement about Czechoslovakia--even after the meeting with the economic delegation. But by April 1990 Arbess had managed to pass on some of his enthusiasm to his New York colleagues, and Marion “Jay” Epley III, a heavyweight corporate partner with years of international experience, decided to assess the situation with his own eyes. That month he accompanied Arbess to Czechoslovakia. (Robert Hormats, a vice-chairman of Goldman, Sachs & Co. International and former assistant secretary of State for economic and business affairs under President Reagan, came along too.)

Epley reported back to his partners in New York that Eastern Europe--in varying degrees--was ripe with business opportunities, and the firm began to look at the Eastern European market seriously. In particular, firm chairman James Hurloch--an ardent internationalist who has been involved in advising the governments of Poland, Bulgaria, and Croatia in their respective debt restructurings--was behind the idea of building a substantial practice in the former East Bloc. “We started by spending a little bit of money and letting Arbess go over to see what he could develop,” says Hurloch. “And then we decided that [the] people with whom we were dealing have to see us on the ground.”

But it wasn't until June 1990, six months after Arbess's first trip with the EuroInvest team, that White & Case got its first significant piece of Czechoslovakian business. Partner Epley was hired by the Municipality of Prague, ultimately to work alongside the EuroInvest team and longtime White & Case client Bankers Trust Company in conducting a controlled auction for investors interested in managing and helping expand the Hotel Praha, a massive edifice in Prague that before the revolution had been a resort for high-ranking Communist Party members. The hotel development project will involve investment by Western companies (notably the Hyatt Hotels Corporation) of more than $100 million. Although Arbess had developed the relationship with EuroInvest, the investment company was not a White & Case client in this matter. Firm partner Epley was the main White & Case lawyer on the transaction. He represented the municipality of Prague; Arbess was not involved.

Arbess was still based in New York, but he had worked out an arrangement to take a room in a converted apartment that EuroInvest was using as its Prague base. He began to establish a public profile in Czechoslovakia during the summer of 1990 when Dyba, the Czech Republic's minister of economic policy and development, appointed Arbess to be his personal legal adviser.

Arbess had been courting Dyba since the two men had met in New York when White & Case was host to Havel and the economic delegation. Arbess had worked at keeping up the relationship. “I was interested in [Arbess] because he was here before it all happened,” notes Dyba. “He had a very good sense for what was going on here.”
In reality, the adviser job was little more than a title with vaguely defined responsibilities--and no pay--but Arbess saw it as nothing short of a coup. “It was a title no one else had,” he recalls with glee. “It was a recognition of our role here.”

BATTLING BATA

Even with the coveted appointment, Arbess still hadn't found a high-profile role for himself in the developing Czechoslovakian practice. In August 1990 he got it.
That month Dyba sent Arbess (who was still based in New York) a draft agreement in principle between the government of the Czech Republic and Bata Limited, a Toronto-based shoe manufacturer. The document, which had already been negotiated between the parties without lawyers, was scheduled to be signed within the next 48 hours, but Dyba

wanted Arbess to cast his eye on the deal first.

In what Arbess now describes as “the beginning of what has since been a controversial career for me and our firm in Czechoslovakia,” he offered his assessment of the deal--that the government should consider the transaction carefully before signing on the dotted line. Dyba says Arbess's advice articulated some things that had been bothering the Czech side anyway, but also “reinforced some of the points we saw in the transaction”--although Dyba will not comment on what those points were. In any case, Dyba and the representatives from the Ministry of Industry postponed signing.

Arbess went to Prague, where, he claims, he was greeted at his hotel by Bata's chief representative for Central and Eastern Europe, Georgina Wyman, who made it clear, he says, that his efforts were not appreciated and told him that Bata did not want to get involved in renegotiating at that point. (Wyman declines to comment.)

Thomas Bata, the company's 78-year-old chairman, was such an important figure in Czechoslovakia that when he returned to his homeland at the end of 1989 after more than half a century in exile, he was greeted at the airport by President Havel. Bata's father had almost singlehandedly developed the European shoe industry before World War II. The son had fled the country in 1939, going to Canada with the shoe company's management team and much of its equipment.

In the original transaction proposal Bata was going to assume control of a large share (at that point yet to be determined) of the assets of the country's shoe industry (which were yet to be defined) without any cash contribution. Instead, the Czechoslovakian assets would be transferred to a newly formed company in which Bata would be majority owner, and Bata would run the new company. To many Czech observers the deal represented rightful retribution for Bata's lost inheritance and the triumphant return of the son of one of the country's great industrial heroes. Perhaps even more importantly, from the government's standpoint, the local press reported Bata's return as a resounding vote of confidence in the government's plans to restructure the economy.

But Arbess saw things a little differently. “The essence of our analysis was to suggest that either Mr. Bata's [management] contribution was extremely valuable or the assets of the footwear industry were lacking in value--or that this was not a commercial proposal,” Arbess recalls.

Arbess convinced Dyba and Minister of Industry Jan Vrba, who was overseeing the deal, to halt any plans to finalize the transaction and to commission the U.S. consulting firm Arthur D. Little, Inc., to do an independent study of the footwear industry. At the end of 1990, before the study was completed, negotiations with an increasingly unhappy Bata and his representatives broke off, and Vrba came under intense public criticism for driving Bata away.

When Bata finally agreed to reopen negotiations in the spring of 1991, it was with the request that White & Case be absent from the government's roster of advisers, according to three people involved in the deal. Arbess acknowledges that White & Case was asked to bow out, but asserts that “we didn't think it was necessary. We had a perfectly civil relationship [with the Bata people]. We just didn't have a meeting of the minds.” Bata's Wyman declines all comment on the transaction, except to say, “It was a very early period for all parties involved.”

In the end White & Case did not participate in the deal. Instead, Squire, Sanders & Dempsey, which had set up an office in Prague by this point, was retained by the Ministry of Industry after the Little study had been commissioned and White & Case had dropped out of the picture. Squire, Sanders partner Ganik helped negotiate a $40 million investment by Bata Limited, in return for 70 percent of a newly founded venture called BATA CSFR. (The Czech Republic National Property Fund, the government body set up to collect proceeds from the sale of companies' equity, will own the remaining 30 percent.)

Arbess's short-lived involvement in that transaction--for which he would ultimately be paid by the Czech government--helped establish his reputation in Czechoslovakia as a headstrong, combative lawyer. In an environment where some advisers believe that the most successful among their number are subtle and diplomatic, Arbess--who is widely known for his self-promotion and his desire to dominate transactions--is viewed by many of his critics as just too overpowering. “Because of Dan, [White & Case] really kind of departed here from the typical white-shoe culture one expects from them in New York,” observes Credit Suisse First Boston's Bakala, who has worked closely with Arbess on other transactions.

But while Arbess's attitude has rubbed some people the wrong way, it has also helped him in bringing some choice work in the door. For example, in November 1990 Arbess sought and won for White & Case the title of official adviser to the Czech Ministry of Privatization, soon after that body was first established. With this assignment the firm--which at that point was given an office in the ministry--was perceived to have the ear of the most important government officials in the privatization process: those who could approve or deny a Western investor's deal.

Once Arbess had established himself in Czechoslovakia, he says, he chose to focus on representing Czech companies--as opposed to merely Czech government bodies or Western investors. This strategy offered several potential benefits. With thousands of Czechoslovakian companies scheduled by the government for privatization, there were thousands of prospective clients for White & Case. In addition, the payment of Western rates for lawyers--partner Amon claims the firm has never cut its hourly rates for Eastern European work--might prove less painful for a newly private company that has just received an influx of Western cash than it might for a debt-ridden government. Amon concedes that the firm has had to be creative about its billing and collection--accepting fees on completion of an assignment, for example, or seeking outside sources of funding, such as World Bank loan money.

THE CZECH FRONTIER

With so many parties on the Czech side having an interest in any privatization transaction [see sidebar, page 68], so many Western advisers trying to get their hooks into deals, and only sketchy guidelines for basic issues such as conflicts of interest and proper procedures for dealing with the various Czech government bodies, the legal and business community in Czechoslovakia has developed a kind of Wild West mentality.

Confusion often finds its way into transactions in an arena in which clients have never had to deal with lawyers before--never mind paying lawyers' fees. For example, in the fall of 1990, when the Ministry of Privatization asked White & Case to become involved in representing Czechoslovakian brewery Budweiser Budvar in its long-running trademark dispute with St. Louis-based Anheuser-Busch Companies, Inc., as well as in its discussions about a possible joint venture with the U.S. brewery giant, it was at first unclear to the parties involved who White & Case's client actually was.

“The management of Budvar kept telling us [White & Case] didn't represent them,” says Anheuser senior associate general counsel Arch Ahern. Budvar's Josef Tolar, a member of the management team negotiating the deal, confirms that originally the brewery wasn't sure whom White & Case was supposed to be representing. The Ministry of Privatization had made the recommendation to the Ministry of Agriculture, which in turn suggested White & Case to Budvar. Amon, who handled the negotiations, says the firm became involved at the request of Dyba, the minister of economic policy and development, who “asked us to look over the shoulder of Budvar.” The Ministry of Privatization made the first payment of White & Case's fees, but the bulk was ultimately paid by Budvar, according to Amon and Budvar's Tolar.

Says Anheuser-Busch's Ahern: “It was hard to separate what was going on.” While he says he was pleased to have American lawyers on the other side, he thought it was difficult to work with them when Budvar's team didn't seem to want White & Case there. White & Case hung in, but never concluded the negotiations. A subsequent change in Budvar's management led to the talks' being disbanded. Since then White & Case has been uninvolved with the company--and the two brewing companies have yet to sign an agreement. The Ministry of Privatization's newly formed department in charge of foreign advisers, led by an American of Czech origin named Charles Jelinek-Francis, will try to handle any future negotiations itself, with pro bono assistance from Western law firms, according to Jelinek-Francis.

The Budvar negotations were the last time White & Case received any fees from the Ministry of Privatization. By the spring of 1991 the ministry had decided to expand its adviser pool, according to Jelinek-Francis, who is now a key adviser to Minister of Privatization Tomás Jezek.

Jelinek-Francis says that White & Case lost its exclusive agreement with the ministry about a year later. He says he informed White & Case that the ministry would be seeking advice from a number of firms on a competitive basis. He insists that the change was not a negative reflection on White & Case's work, however. “The [exclusive arrangement] was revoked because I came in and set up an independent department," he explains. (In late March a White & Case associate from the Prague office went to work in the ministry on a pro bono basis, at the ministry's request.)

A CAREER-MAKING DEAL

A plum piece of Czechoslovakian work came White & Case's way in October 1990. The firm was selected by Credit Suisse First Boston to represent Czech automobile manufacturer Skoda in the largest cross-border transaction in Czech history, a $6.4 billion joint venture with Volkswagen. "It was a career-making deal," Arbess comments. "I wanted [the work] more badly than anything I've ever wanted in my life."

CSFB, which as financial adviser to Skoda chose the law firm on behalf of the company selected White & Case over Skadden, Arps, which was also a serious contender for the work. "More than anything else," explains CSFB's Bakala, "[White & Case] had demonstrated a proven commitment to Central European business. Judging from personal contact with them, they had a very thorough understanding of the system . . . and they understood that possibly this was forever the most important deal in Eastern Europe."

Arbess was completely engulfed by the deal from November 1990 through April 1991. It was an amazingly complicated transaction--made more so by the fact that at the time Czechoslovakia had not yet established a legal framework for assuring land ownership. In addition, neither side knew whether Skoda, the Ministry of Industry, or the Czech government should be the one to actually sign a binding agreement with Volkswagen.

After hours of agonizing both sides finally agreed that the Czech Ministry of Industry was the proper party. Volkswagen, understandably skittish about making such a large capital commitment without the benefit of sophisticated foreign investor regulations, wanted--and got--promises from the Czech government on certain macroeconomic conditions (such as an agreement that the government would maintain particular tariffs on imported cars so that the joint venture's prices would not be undercut).

The deal was of enormous significance. Not only did it help establish a legal structure for future deals, but it showed that Czechoslovakia was ready to do business.

For all that ground-breaking experience, though, Arbess says that when he was through with the Skoda deal, he realized that he had made a key tactical mistake--allowing himself to be consumed by one transaction and thereby giving his competitors room to move. After Skoda, he says, he emerged to find that Squire, Sanders's Ganik had been appointed the official adviser to the Ministry of Industry--with which Arbess had previously worked closely. While Arbess claims he wouldn't change anything about his role in the Skoda transaction, he also recognizes that he can't allow himself to be completely enmeshed in a single deal. "It's a mistake I'll never make again," he declares.

TO POLAND FROM PRAGUE

By the summer of 1990 White & Case had decided to make a substantial commitment to developing the Eastern European practice beyond Czechoslovakia. Chairman Hurloch asked Amon, whose leveraged buyout practice had been slowing down, if he would consider moving to Europe to oversee the practice. Amon had spent his early years at the firm at overseas offices, before settling back in New York in 1984. Amon and Arbess, who was at that point formally released from his New York duties, moved their base into a small office in Brussels in September 1990, although from then on Arbess has spent almost all of his time in Czechoslovakia.

In December of that year the firm hired Stephen Fuzesi, Jr., the former general counsel of a small Connecticut investment group, as of counsel. Fuzesi, a Hungarian native, was brought in to start the firm's Budapest office, which opened last summer. (Fuzesi spends three fourths of his time in Hungary.) The firm subsequently won a beauty contest to do the legal work for the Hungarian State Property Agency, which is handling much of Hungary's privatization. Also at the end of 1990, the firm set up its Moscow office (with one full-time partner), at the time mainly to handle advice for Western clients, such as Sprint Corporation and Mobil Corporation.

White & Case's biggest success outside Czechoslovakia, however, has been in Poland, where the work took off after Harder, then a sixth-year associate, was brought over to the Brussels office in January 1991. Harder, then 34, was older than the average associate White & Case sends to its foreign branches. Enthusiastic and likable, he had spent six years in industry (including four years in China working for SmithKline Beecham) before graduating from Columbia University with a joint degree in law and business in 1986.

Ever since he had watched the Tiananmen Square protests and later the fall of the Berlin Wall on television in 1989, Harder says, he had been trying to find a way to get involved in the dramatic, world-changing activity taking place around him. “I used to lie awake at night, thinking, ‘This is all going on--how can I have something to do with this?’” When Harder heard that Amon was moving to Brussels to focus on Central and Eastern Europe, he approached the partner and asked to be taken along, even though moving a mid-level associate out of the mainstream and into a risky development project would obviously be an expensive decision. But Amon agreed, and Harder got his ticket to Europe.

On only his third day in Europe, Harder got a lucky break. He had traveled to Poland to speak for White & Case at a conference on privatization sponsored by the American Bar Association. At the last minute Harder asked a Polish law professor to join him on the podium. The professor, Grzegorz Domanski, is considered by many to be one of the fathers of Polish privatization, having drafted Poland's 1990 privatization law. At the end of the conference, Harder recalls, “I said, ‘Gee, I'd like to look you up.’”

A month later Harder and New York partner Epley met Domanski again at the Polish Ministry of Privatization, and from then on Harder traveled to Poland from Brussels every two to three weeks. Domanski would help Harder by ushering him through important doors in the ministry.

Originally Harder thought that he would have an easy entrée, considering that firm chairman Hurloch had been retained by the Ministry of Finance in October 1990 to represent it in some of its sovereign debt restructuring. “The Ministry of Finance reference didn't really sell a lot in the Ministry of Privatization,” Harder recalls ruefully. “It was sort of, ‘Oh, that's nice. Now what did you come to talk to us about?”’

Even with Domanski's aid, Harder's early days in Warsaw were difficult. “It would be like, ‘I've called two people today, and I've been at it six hours,”’ he recalls of the period when he worked out of a room at the Marriott Hotel. “It felt like playing a game of Battleship. You're feeling in the dark, and you can't see what you're hitting.”

As the months went on without significant progress, Harder says, the tension mounted. As much as he had tried to use Arbess's earlier success in Prague as both a selling point and an inspiration, it also hovered over him. “The anxiety level on my side was enormous,” Harder recalls. “Dan had been very successful in developing business in Czechoslovakia. Were people going to say, ‘Steve couldn't do it’?”

SO CLOSE THEY COULD SMELL IT

It was actually one of Harder's failures that gave him the will to keep at it. In late spring 1991 he picked up from the handful of contacts he had made at the Ministry of Privatization the information that the Polish automobile manufacturer FSM was sending out requests for tender to half a dozen major investment banks as well as other Western advisers. Harder got a copy of the list of banks, and then placed cold calls to every name on that list.

The Boston Consulting Group, which was on the list, turned out to be interested in White & Case's pitch. BCG vice-president John Lindquist says that he received information from White & Case--combined with a subsequent follow-up visit from Harder and Amon--at exactly the right time. Together, White & Case, BCG, and Goldman, Sachs formulated a joint proposal for the project.

Unfortunately for Harder, the work ultimately went to a CSFB-Skadden team instead. “It was very disappointing because we'd really hustled,” Harder recalls. “But we were getting close and we could sort of smell it.”

Three months later White & Case finally got its foot in the door. The World Bank had agreed to lend Poland more than $280 million for its privatization program--including money for legal fees--but required a beauty contest for the legal work. White & Case was one of five firms--including London's Allen & Overy, Richards Butler, and Linklaters & Paines, and Washington, D.C.'s Hogan & Hartson--that was invited to compete.
The importance of this work was enormous, and Harder didn't want to make any mistakes. Under the Mass Privatization Program, more than 400 state-owned enterprises, such as furniture-making and glass-manufacturing companies, are scheduled to become commercial enterprises--and whoever was selected would be the primary legal adviser for the entire project, coordinating all Polish and international legal issues and

documentation.

For the beauty contest, the ministry insisted that each proposed team have Polish members. So Harder recruited Domanski--the professor he had invited to speak on the podium with him months before--and one of Domanski's protégés, Janusz Fisczer, an energetic young tax expert, as “senior Polish advisers,” or exclusive consultants, to the firm. Domanski's reputation in itself could have been enough to put White & Case over the top, but Harder wanted to stack the deck further. On a hunch, Harder also recruited Stanislaw Soltysinski, a highly regarded professor of law at Poznan University, and his colleague Andrzej Kawecki, a former Drinker Biddle & Reath associate.

Harder and Amon prepared the technical proposal together, but Amon decided to let Harder lead the presentation team--consisting of the four Polish lawyers, Amon, New York partner Epley, and Harder. “This is a risky game,” says Amon of the move to allow the associate member of the White & Case team to handle the crucial task of leading the group. Amon says he conveyed to government officials his belief that they should feel most comfortable with Harder, since he was the firm's primary representative in Poland. The faith in Harder paid off. According to the ministry's Ewa Gorska, who was one of the judges for the beauty contest, White & Case was the clear favorite for a number of reasons: The firm had a superior Polish team; it had good experience in other parts of Eastern Europe, notably Czechoslovakia; and it had put together the best technical proposal.

White & Case was a controversial choice for the ministry, however. Allen & Overy had been involved in the early stages of the privatization project, and bringing in a new adviser would require time for that adviser to get up to speed. In addition, Hogan & Hartson had one major advantage over its competitors: Its services would cost the ministry nothing, because the firm had previously received a grant from the U.S. Agency for International Development for its work in Poland. But the ministry didn't hesitate to pick White & Case, Gorska says, because she and her colleagues were so sure the firm was the right choice. The White & Case team was awarded the contract--which Gorska says is worth a bit less than $500,000--within a week after the firm had made its presentation. White & Case was on the map in Poland.

PERSONA NON GRATA?

Because of its early start and the speed of the Czech privatization program, the Prague practice has developed more rapidly than the other White & Case offices in the region, including Poland. The Prague office is now handling more than 30 active matters. The firm advised the Czech government and Rakona Rakovnik S.P., a state-owned laundry and household detergents company, on the sale of Rakona to Cincinnati's Procter & Gamble Company. White & Case is also advising Skoda Koncern, Plzen, an industrial manufacturer, on two joint ventures with Siemens A.G. of Germany. In March the firm closed a transaction with Sara Lee D.E./NV for Balirny Praha, a state-owned coffee company.

The work has been coming in so quickly that associates have been moved from New York with just a few days' advance warning. Third-year associate Audrey Baker, for example, left for Prague on ten days' notice in November for what was supposed to be a three-to-six-month assignment. Six months later there's no indication that she'll be moving back. “Nobody's left yet,” she observes of the other associates who rotated in from New York. “We're really swamped.”

But the Eastern European team has also learned that the heady scent of success can be followed by a sour aftertaste. For example, Arbess has been unable to shake his early reputation as something of a maverick. “Frankly speaking, I think they had a little better image when they entered Czechoslovakia than they have now,” suggests one local Czech lawyer.

Perhaps most crucially, Arbess seems to have developed a strained relationship with one powerful individual in the Ministry of Privatization--Jelinek-Francis, who is an important gatekeeper to Minister Jezek. When asked to comment on the suggestion of a Prague-based Western adviser that Arbess had become persona non grata in the ministry, Jelinek-Francis declines to comment--although he later goes out of his way to note that Amon is “definitely persona grata” in the ministry. “Dan Arbess resents not being official counsel to the ministry,” Jelinek-Francis states bluntly. Arbess responds: “We have always considered ourselves to be advisers [to the ministry]. Whether we have an official title is not important.”

Two Western advisers who know both men well assert that while the difficulties can, in large measure, be attributed to ego clashes, Jelinek-Francis has gone out of his way to make things unnecessarily difficult for Arbess. But as long as Jelinek-Francis continues in his current role, his opinion will matter very much to Arbess. The Czech business environment is so political that even if a Western adviser is representing a Czech company in a privatization, that adviser will need the support--implicit or explicit--of key government bodies in order to get the deal done.

What's galling to Arbess is the way his early dominance of the market seems to have paved the way for other lawyers. For example, it was difficult for him to watch newcomer Jeffrey Smith, an Altheimer & Gray partner, breeze into a three-month pro bono post at the Ministry of Privatization, a position that will undoubtedly stand Smith in good stead for building a practice. For Arbess, even getting into the ministry in the early days was a major accomplishment. As one adviser who has worked with Arbess puts it, “He was the first one here, and I think that is part of the problem.”

At the beginning of this year Arbess backed away from his original declaration that he would only represent Czech interests in transactions--and not those of Westerners--as a means of avoiding any possible suggestion of conflicts. Once he saw that Skadden and Squire, Sanders, among others, seemed to have no qualms about representing both Western and Czech companies, he says, he decided to change White & Case's stance. Skadden partner Isaac Shapiro, who oversees the firm's international practice, says, “We've never had a policy to represent one side or the other exclusively. We deal with conflicts there the same way we do [in New York]--on a case-by-case basis."

White & Case has since accepted at least two assignments from Western clients, which Amon declines to identify.

TWISTING IN THE POLITICAL WIND

For the White & Case lawyers, the work in Eastern Europe has been exciting, but the difficulties attached to their involvement in such a political process can also be enormously frustrating. For example, when the local Polish newspapers recently quoted president Lech Walesa as saying he loved particular aspects of the Czechoslovakian privatization program, Harder received a frantic phone call from the ministry. Was the Polish system like the Czech system? No. Could he make it look that way? No. But when Walesa returned from his trip, it was reported that his remarks had been misquoted and that he didn't like certain aspects of the Czech program--and suddenly the Polish program was okay again.

When the Polish government changed leadership in November 1991, Harder's work for the MPP slowed to a virtual crawl--that is, until it recently became clear that the new prime minister would still support the project White & Case had originally planned to complete the work by last November, and the firm's initial $500,000 fee was based on that time frame. Although the firm made its deadline, final approval has been held up by the political changes and still has not been granted. In March White & Case received approval from the government to extend its billing period to include additional time spent on the project.

Meanwhile, the firm has spread itself out a bit more in Poland, having been retained by several Polish companies in privatization projects that are not included in the MPP. (Only a select number of companies have been chosen for the MPP; several key industries, such as the truck manufacturing industry, are not included in the program.) In April, for example, the firm was selected to handle the legal work for the privatization of Poland's chemical sector, and that same month the firm was also retained by London-based Dumas West, an affiliate of U.S. West, for a major Warsaw real estate development.

In Hungary the firm has found that the State Property Agency has been slow to utilize White & Case's services, even though the firm's fees will be paid by a grant from PHARE, a European Community aid program. Amon hopes that a recent change in the property agency's management will mean that it will take greater advantage of White & Case, although he is not entirely hopeful on this point.

The risk of political upheaval--or stagnation--still hovers menacingly in the background in each of the Eastern European countries. Any developing law practice could be derailed by a new leader who disapproves of the current system.

Even amid the frustrating political slowdowns and the heat of increasing competition, White & Case is optimistic that its early presence will pay off in the long run. And there's no denying the firm's quick success.

Amon says the firm is disregarding potshot criticism and “trying to keep our head down to march ahead.” Amon recognizes that the firm has to plan for work beyond the privatization process. He says he hopes to beef up and market the firm's intellectual property, financial services, real estate, and environmental capabilities.
The experience has been intoxicating for both Arbess and Harder, according to Hurloch, who declines to comment on whether the two could receive early partnership consideration. In the meantime, both associates say they can't imagine returning to a more routine practice. Observes Harder: “I sometimes think I'll have to stop being a lawyer after this. What can you do that's more exciting?”

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