



# Lunch With Lloyd

Antitrust specialist Lloyd Constantine has wealth and connections beyond his dreams. And a best friend with a secret life that Constantine can't explain.

By David Hechler

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LOYD CONSTANTINE was at loose ends, but he didn't look it. He was seated in Esca, Mario Batali's entry into New York's theater district, casually hip in a sports jacket and slacks, with a tasteful gold chain peeking out from his open collar. He blended with the business-lunch crowd—but he wasn't one of them. For the first time in four decades, Constantine was unemployed.

The stress he'd been under justified something strong, but he ordered iced tea. Monogrammed initials flashed from his shirt cuff as he reached for the glass. His troubles had nothing to do with money. Constantine was a victim not of the economic downturn but of his best friend and boss, Eliot Spitzer.

Six weeks before this lunch, on the night of Sunday, March 9, he got a phone call. "It was one of those moments," Constantine recalled, "when you knew there is a before and after. You knew that the world would not be the same."

By 7:00 the next morning, Constantine was huddled in his boss's Upper East Side apartment. Three days later, Spitzer resigned and Constantine followed suit, leaving his job as senior adviser in the governor's short-lived administration.

Constantine is best known as the lawyer who wrested a \$3.4 billion antitrust settlement from Visa U.S.A. Inc. and MasterCard International Inc.—and collected one of the largest legal fees in history in the process. He first made a name for himself in the New York attorney general's office, where he ran the antitrust bureau. After 11 years he moved to McDermott Will & Emery in 1991, and three years later he started the litigation boutique that bears his name.

Losing his job, along with the emotional blow of the revelations and the implosion of the administration's ambitions, has left Constantine feeling untethered. For now,

he's taking time off to "clear my head" and "figure out what I want to do when I grow up." But the 61-year-old lawyer—whose trim good looks make him appear a decade younger—sounds like a man ready to move on.

He met Spitzer in 1982 when, as a Harvard Law School student, Spitzer interned in the AG's office. Constantine became Spitzer's mentor and, though Constantine is a dozen years older, Spitzer became his best friend. Both are avid athletes and ferocious competitors. They face off regularly (well, somewhat less regularly in recent weeks) on a tennis or squash court at 6 A.M. Constantine wins the majority, he claims, not because he's better, but because he's "wily." Both are married, both have three children. The families are close.

When the waiter returned, Constantine waved away the bread basket and ordered Caprese salad and the fritto misto. Then he talked about Spitzer's revelation, which was, aside from the deaths of loved ones, "the worst personal event in my life," he said.

In the weeks following the resignation, he was essentially numb. "I didn't think at all," he said. "I was just reacting."

Now that some time has passed, he has started to consider his future. But he doesn't trust his judgment. "I question almost anything I do right now," he said. Any decision made now, he ex-

trosped.

So why did Spitzer do it? He wishes he knew. Constantine will not discuss his conversations with the former governor (they still talk nearly every day), but he never suspected that Spitzer harbored a secret life. "This is a Greek tragedy," he said, complete with a flawed hero brought down by

estate mogul Howard Milstein approached him about bringing an antitrust suit against Time Warner Inc. But his law firm objected, citing client conflicts. So Milstein suggested that Constantine start his own firm. Constantine was worried about costs and financial risks, and that's when Milstein came up

Wal-Mart Stores, Inc., and other merchants against Visa/MasterCard settled. Plaintiffs' lawyers were awarded \$226 million in fees. At the time, it was the largest award in history. Constantine won't specify his cut, but he no longer worries about money.

Will he return to the firm at the end of his travels? Though he's not in the deciding mode, he has all but closed that door. He was the firm's manager, lead litigator, and rainmaker. When he left to join the Spitzer administration, the lawyers at Constantine Cannon (as it's now called) had to take over, "and they did it very well," he said. It wouldn't be fair to reclaim his position, nor can he imagine going to another firm. "I would never compete with them," he said.

On the other hand, he continued, "I'm too young to pack it in." If not law, maybe something in education. He was a driving force behind Spitzer's Commission on Higher Education, charged with improving New York's colleges and universities. He'd like to continue that work in some way.

The waiter comes back with the dessert menu, but Constan-

tine doesn't even peek. There's one more topic to discuss: Fortune magazine writer Peter Elkind and filmmaker Alex Gribney (they collaborated on the documentary Enron: The Smartest Guys in the Room) have just signed to write a Spitzer biography and will simultaneously release a film. Constantine has been contacted by Elkind, but he said it's too soon to talk. "Eliot's legal situation would have to clarify," he said. So would his personal life.

Well, then, who should play Constantine in the movie? He hesitated only briefly before naming Gabriel Byrne, the Irish actor who starred in the HBO series In Treatment. He's talented and close enough to the right age, Constantine noted: "And a lot of women tell me they find him very attractive."

What about Spitzer? He took longer before settling on Ralph Fiennes. The British actor could bring to the role the complexity he demonstrated when portraying Charles Van Doren in the film Quiz Show, he said. Constantine himself is waiting for some answers.

## BEAR MARKET

### MISS THE MAULING

FOR DECADES, Bear, Stearns & Co. Inc. was a steady source of revenue for many firms. Those days are over, and some firms are wondering what will happen next:

	THEN	NOW
CADWALADER, WICKERSHAM & TAFT	A client since the 1980s. When New York partner Dennis Block joined in 1998, he brought more Bear work with him. It was a cornerstone of his business.	Block represented Bear during its final deal, its sale to JPMorgan Chase & Co. in March. In a statement, Block says he expects to pick up business from scattered former Bear executives.
KRAMER LEVIN NAFTALIS & FRANKEL	A major litigation client. Kramer Levin represented Bear in creditor suits spilling out of Enron Corp.'s collapse.	Partners Eric Tirschwell, Stephen Sinaiko, and Barry Berke are defending Bear in a class action arising out of the collapse of two hedge funds last summer, which helped spur the credit crisis.
LATHAM & WATKINS	One of Latham's top clients for both restructuring and corporate work.	Latham could benefit from some spillover: JPMorgan is also a client.

—NATE RAYMOND AND DAVID BARIO

## APPEARANCES



EMBATTLED DETROIT MAYOR Kwame Kilpatrick's legal defense team acquired a southern twang last month with the addition of James Parkman III, 58, of Alabama, who successfully defended HealthSouth CEO Richard Scrushy. He joins Dan Webb of Winston & Strawn and local attorney James Thomas. Kilpatrick is accused of perjury and obstruction of justice. Does Parkman, known for his folksy demeanor and courtroom theatrics, worry that he'll have trouble connecting with a Detroit jury? "Heck no," he says. "Everyone I meet up here has a cousin or uncle in Birmingham. We're going to be just fine."  
—BEN HALLMAN

### BAD BAD TIMES

Bankruptcies are up, but bankruptcy lawyers aren't feeling the rush.

LET US HARK BACK TO the end of 2006: The Dow is soaring, credit is flowing freely, and default rates are at historic lows. Far from cursing its luck, the corporate restructuring group at Skadden, Arps, Slate, Meagher & Flom is running at full tilt. Partners juggle at least four multibillion-dollar bankruptcies between them—including Delphi Corporation and Refco Inc.—requiring them to deploy battalions of lawyers simultaneously in several states. Over 14 months, Refco alone had 20 partners billing more than 200 hours and generating \$43 million in fees for the firm.

Eighteen months later, the economy is in the tank, business bankruptcies are up nearly 50 percent, and Skadden's bankrupt-

cy lawyers are talking about the good old days. "We've been lucky enough to generate some smaller matters," says partner D.J. "Jan" Baker. "But you can't just replace a Refco or a Winn-Dixie with a couple of smaller cases in terms of keeping people busy."

Many firms bulked up their bankruptcy departments in 2007, in anticipation of a flood of filings. But so far, the prototypical "countercyclical" practice has not paid off as advertised. Partners at top bankruptcy and restructuring firms say that, unlike some previous recessions, the current downturn just hasn't produced the kind of massive, complex Chapter 11 cases that generate the most work. The firms claim that they're finding ways to keep busy, and some say they're seeing a small uptick in recent months.

But unlike the years following the LBO flame-out of the nineties and the dot-com die-off of 2000, and without major frauds like Enron Corp. and Adelphia Communications Corporation, times remain frustratingly lean.

Only 13 large public companies filed for bankruptcy protection in 2007, the fewest in ten years, according to data compiled by Lynn LoPucki, a law professor at the University of California, Los Angeles. Many of the companies that are filing—including mortgage originators like American Home Mortgage Investment Corp. and HomeBanc Corp.—are quickly sold off. There's nothing left to reorganize, and they simply disappear.

More substantial companies that might have otherwise used Chapter 11 to reorganize and

stay in business are winding up on the auction block because of the tight credit markets. "There's no liquidity, so there's nothing to fund reorganizations," says Cooley Godward Kronish's Lawrence Gottlieb. Despite a number of new representations tied to major retail bankruptcies, Cooley's bankruptcy practice has been surprisingly flat, Gottlieb says: "There are lots of cases, but they're not as meaty."

Representing a single debtor in a complex reorganization can keep a team of partners and associates busy for years, but those cases aren't materializing. Older cases that wrapped up in 2007 lasted an average of 737 days, according to LoPucki's data, while many of those filed in 2007 and 2008 were either "prepackaged" (i.e., with unopposed reorganization plans) or



destined for liquidation. "Where it always used to be more lucrative to represent the debtor than to represent creditor committees, that probably evens out now," says Weil, Gotshal & Manges's Harvey Miller. "Unless you have a Rust Belt client with union problems or an asbestos or environmental problem, most Chapter 11 cases are much shorter."

Good news for firms that represent creditors, right? Not according to Daniel Golden of Akin Gump Strauss Hauer & Feld, who says 75 percent of his firm's bankruptcy and restructuring work is devoted to representing creditors committees in active Chapter 11 cases. "The shops traditionally representing committees are hurting now," says Golden (though Akin Gump is busy, he is quick to add). "The problem with representing creditors committees is that you need a debtor to go after." And these days, the debtors just aren't hanging around for lengthy Chapter 11 proceedings.

Martin Bienenstock, who left Weil last year to start Dewey &

LeBoeuf's new business solutions and governance group, and who frequently represents creditors, agrees that individual Chapter 11 cases just aren't the lucrative workhorses they once were. Bienenstock now spends much of his time out of bankruptcy court, either restructuring a company's preexisting debt or trying to make matches between distressed businesses and bargain-hunting private equity firms.

As they wait for the blood-letting in the economy to offer up more filling fare, bankruptcy lawyers remain optimistic that the good bad times must be right around the corner. Until then, says Skadden's Jan Baker, it's not impossible to stay busy with the smaller cases: "It just takes more of them."  
—DAVID BARIO

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