BY DAVID HECHLER

The Trial of St. Mark

Jurors thought Hollinger's Mark Kipnis was a nice guy. But that didn't stop them from convicting him for helping flamboyant press boss Conrad Black fleece the company.

THE JURY CALLED HIM ST. MARK—AN ODD NAME FOR MARK KIPNIS, THE former vice president, corporate counsel, and secretary of Hollinger International Inc., considering the fact that these same jurors convicted him of a felony. But saint or sinner, no one disputes that the 60-year-old lawyer is a genuinely nice guy. After his conviction in Chicago federal court last summer (following a four-month trial), neighbors, coworkers, and clients sent letters to the judge praising a man who helped them do everything from sell a business to fix household disasters. Even the prosecutor, arguing for a three-year prison term at Kipnis's December sentencing hearing, felt obliged to remind the judge: "Mr. Kipnis was not indicted because he was a bad person."

Kipnis certainly looked like a nice guy compared to the executives he worked for—and who were tried along with him. They paid themselves millions of dollars in bonuses that they—and Kipnis, as the chief in-house lawyer—failed to disclose properly to shareholders. Former Securities and Exchange Commission chairman Richard Breeden, hired in 2003 by a special committee of the board to conduct an internal investigation, called Hollinger's culture a "corporate kleptocracy."

Yet, as the one defendant who made no money on these transactions—who had his hands full heading a tiny, overworked law department (total head count: three)—Kipnis was no more than a bit player. He wasn't one of the bigs who called the shots and pocketed the cash. That role chiefly went to Conrad Black, the company's founder and CEO, whose outsize ego dominated the courtroom and the media circus that surrounded it. Black was the high roller who recruited fellow celebrities like Henry Kissinger to join Hollinger's board, and later cashed in his Canadian citizenship to become a British peer. At the company's peak, after a decade of acquiring newspapers around the globe, Hollinger owned about 400 papers, including London's *Daily Telegraph*, the *Chicago Sun-Times*, *The Jerusalem Post*, and scores of community papers across the United States and Canada. Kipnis, his lawyers say, simply signed off on Black's deals.

In fact, Kipnis's first-year base salary at Hollinger merely matched what he'd been making at Holleb & Coff, the law firm where he'd worked before his in-house misadventure: $225,000.

Despite testimonials from clients, former colleagues, and family members, Hollinger ex–GC Mark Kipnis was convicted and will lose his law license.

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Hollinger president F. David Radler flipped and testified about his former colleagues.

It rose to $275,000 in 2003, the year he resigned. On top of that, he was paid bonuses that ranged from 30 to 40 percent; and twice he was paid special bonuses for his work on the newspaper sales: $100,000 in 2000 and $50,000 in 2003. Prosecutors tried to paint these as payoffs for Kipnis's cooperation in facilitating the fraud. "His price was just a little bit lower," a prosecutor said in his opening statement. But Hollinger president F. David Radler (who flipped and pleaded guilty) testified that the bonuses were legitimate, and the prosecution's argument failed to convince the judge or the jury.

KIPNIS ALSO DIFFERS from many of the other corporate counsel who have been indicted in recent years. Most attorneys swept up in accounting scandals or stock option schemes profited personally. William Sorin, former GC of Comverse Technology, Inc., pleaded guilty to criminal conspiracy in backdating company stock options that netted him more than $1 million. The ex–GC of Symbol Technologies, Inc., Leonard Goldner, pleaded guilty to stealing twice as much when he helped executives cook his company's books. And Hollinger executive VP Peter Atkinson, a lawyer based in Toronto who actually hired Kipnis, was also convicted of sharing the loot.

In the end, Mark Kipnis was convicted for failing to challenge his bosses, who disguised some bonuses as noncompete agreements, and for failing, as corporate secretary, to ensure that the full nature of the payments was disclosed to Hollinger's audit committee and shareholders.

Was he put on trial just because he's a lawyer? "All of us have choices," says prosecutor Julie Ruder, sitting in a conference room in the downtown Chicago federal building where the trial was held. "None of this would have happened," Ruder says, referring to the fraud, "if Mark Kipnis had made different choices." Sitting next to her is Eric Sussman, another member of the four-attorney prosecution team. "All Mark Kipnis had to do," he says, picking up the thread, "was say: 'No, I don't feel comfortable with this. I'm not doing it.' " He doesn't think in-house lawyers are at greater risk these days, Sussman adds, but he has seen one change: "There's more awareness that you have to take your fiduciary duty seriously and protect the shareholders."

In fact, Kipnis's own lead attorney has a cautionary lesson from his client's conviction. Problems like the ones that overtook his client "do not come with lights and sirens," says Ronald Safer of Schiff Hardin. They come disguised as ordinary events. And any in-house lawyer, says Safer, after consulting auditors and outside counsel, as Kipnis did, would have felt safe: "And they would have been dead wrong."

MARK KIPNIS LOVED being a lawyer. After earning a law degree at Northwestern University, he joined Holleb & Coff, a now defunct Chicago firm. He spent 24 years there, mainly handling real estate closings and corporate transactions, and by the time he left, he was a member of its management committee. "Despite all the lawyer jokes," he said in December at his sentencing hearing, "I view it as the most honorable, collegial profession."

He's been married for nearly 30 years, and one of Kipnis's four grown children spoke eloquently at his sentencing. His son Blair still plans to attend law school, he told the judge. "But if there's one thing I learned from this trial," young Kipnis added, "it's that bad things happen to good people."

After Kipnis was convicted, about 100 friends, neighbors, relatives, and former colleagues wrote letters attesting to his character. That in itself was not unusual. But these letters were extraordinary. Many were personal accounts of a man never too busy to help someone in need—whether it was a neighbor with a flooded basement or a secretary at odds with one of Kipnis's law partners.

Other testimonials brought up issues more relevant to the judge. Bruce Clinton wrote about a complex real estate transaction Kipnis handled in 2005, after the lawyer had left Hollinger and started a small real estate practice. "Because it was likely my last major deal," Clinton wrote—he was essentially selling his business—"I wanted to give Mark a bonus for so many years of highly competent representation." He sent him a check for $150,000: three times the amount Kipnis had billed. But

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Kipnis refused the bonus, saying that the amount he'd charged was fair.

Former clients praised his impeccable ethical standards. Howard Hoffman, a former Holleb partner who once headed the criminal division of the office that prosecuted Kipnis, wrote simply: "I know Kip well enough to know that he is constitutionally incapable of forming mens rea."

So how did this lawyer with a common touch come to work for a company like Hollinger, which (at least in its highest ranks) aspired to royalty?

In short, it fell into his lap. His predecessor in the job, Kenneth Serota, had once been a partner at Holleb & Coff. When Serota decided to leave in 1997, management asked him to find a successor, and he called Kipnis. Though Kipnis hadn't been looking for a change, he found the opportunity attractive. The appeal was simple, says defense lawyer Patricia Brown Holmes of Schiff Hardin: "It was something new." While his base salary matched his draw at Holleb & Coff, there was the prospect of more—which doesn't hurt when you have four kids going to college, Holmes points out. And the job was an opportunity to learn a new business and run a law department—even one as small as Hollinger's, with just a couple of attorneys on hand.

Kipnis apparently didn't take long to decide, but he did have some doubts about the job. Serota, who did not respond to requests for an interview, spoke of them when he testified at the trial. Kipnis "expressed a concern that he didn't have familiarity with the nuances of a public reporting company," Serota noted. "I didn't think that that would be a significant issue." Neither Serota nor Kipnis was a securities lawyer, but Serota told his former partner that outside counsel could fill the void.

The passing of the baton from Serota to Kipnis was just one change that affected Hollinger's law department. When Kipnis took over in the beginning of 1998, the company had only been listed in the United States for about a year. The acquisition phase hadn't presented many legal challenges. But the company found itself $2 billion in debt, and began a massive sell-off to raise cash. (In fact, the first deal was the unbundling of Liberty Group Publishing, Inc., and Serota himself left Hollinger to take over as Liberty's CEO.) Suddenly the company had a flood of revenue with which to pay down debt. The money also brought opportunities for executives who were looking for a cut, and it was the law department's responsibility to make sure that whatever they did was legal.

That was where Kipnis came in. But his task was complicated by an absence of supervision and support. Kipnis may have been hired by Atkinson, but they had little contact after that. Atkinson was based in Toronto and presided over the company's Canadian operations, with his involvement in the U.S. operations unclear even to those in Chicago who theoretically worked under him. But two things are clear: Like Kipnis, Atkinson was not a securities lawyer, and he had no experience working for a company listed in the U.S.

The man Kipnis reported to wasn't Atkinson, but Hollinger's president, Radler. And Radler lived in Vancouver, where he spent "at least" half of each month, according to Angela Way, who served as Kipnis's executive assistant. Radler was also a relentless cost cutter. He was legendary for permanently turning off the escalator in the old *Sun-Times* building to save money, recalls Ted Rilea, who has been VP for human resources and/or labor relations for Hollinger and now its successor company, the much smaller Sun-Times Media Group, Inc., since 1992.

If executives offered Kipnis little guidance, neither did they help him assemble a legal team. Quite the contrary. Rilea remembers that Radler sought to downsize even there. "We have two lawyers," Radler told Serota, thinking of the labor lawyer who handled all the employment work. "We don't need two lawyers." So he fired the other one. (Radler's lawyer did not respond to requests for comment.)

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Throughout the Chicago trial, press baron Conrad Black kept up his regal demeanor.

Radler had forgotten Linda Loye, who had been at Hollinger since 1994. According to Way, Loye did the contracts and "sweated the small stuff." Sometimes she seemed more of a paralegal than a lawyer. "Linda's desk was never clear," says Way. There was simply too much to do—even after Radler relented and allowed Kipnis to hire another labor lawyer. (Loye declined to be interviewed.) Given the complexity of the company, and the volume of work, the

Ex–GC Mark Kipnis was the only defendant who didn't personally benefit from the payments.

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size of the department made no sense, says Way: "It was absolutely nuts."

HOLLINGER'S—AND KIPNIS'S—fall came after some things changed. First, the company, which was born in Canada, came under the purview of U.S. regulators in 1996, when it was listed on the New York Stock Exchange. Then came the selling spree, which commenced in 1997 and ran through 2001. As Black and fellow Canadian execs Atkinson, Radler, and CFO John Boultbee unloaded a half-dozen bundled properties, they defrauded the company by paying themselves $60 million in management and noncompetition fees siphoned from payments that rightfully belonged to the shareholders, prosecutors charged. Kipnis was indicted for mail and wire fraud. Days after the indictments were handed up in August 2005, Radler pleaded guilty, and he testified in court against his former colleagues.

The chaotic legal department didn't make wrongdoing inevitable—and didn't figure in the trial—but it was part of the environment that apparently permitted fraud to thrive. One more crucial factor contributed: In 1996 a Canadian tax court held that noncompetition fees were not subject to tax, and three years later, an appeals court affirmed the decision. Prosecutors charged that Hollinger executives seized on this loophole as a way to pay themselves—Canadian residents—tax-free bonuses.

Noncompete agreements are commonly included in media transactions. Buyers seek protection because they usually purchase not just publications but subscriber lists and advertiser rosters. There's nothing wrong with the agreements per se, but the way Hollinger used them, prosecutors argued, crossed several lines.

The details varied from transaction to transaction, but the government charged that the basic scheme was the same. The requests for noncompetition payments came not from the buyers but from Hollinger executives, who falsely claimed that these were insisted upon by the new owners. Also unusual: The Hollinger execs sometimes requested that the buyers send money directly to them rather than to the company. To be aboveboard, related-party transactions like these should have been cleared with Hollinger's audit committee and then accurately disclosed in the company's public filings. Not all of them were, prosecutors charged.

The payment on which Kipnis was nailed was probably the most egregious. It occurred in February 2001 and unlike all the other noncompetition agreements, this one didn't even involve a sale. It was an agreement between Hollinger International and its own subsidiary—American Publishing Company. As federal district court judge Amy St. Eve described it in a posttrial ruling, the executives "labeled these payments as noncompetition payments—instead of bonuses—in order to take advantage of potential tax benefits." They were never disclosed to the board, and checks that totaled $5.5 million were backdated to December 31, 2000. "In essence," she wrote, "defendants paid themselves not to compete with themselves."

St. Eve went on at the sentencing to cite an admission that Kipnis made during the company's internal investigation. Jonathan Rosenberg, an O'Melveny & Myers lawyer who was investigating under the direction of a special committee of Hollinger's board, testified during the trial about a conversation he had with Kipnis in 2003. The payments were unnecessary, Kipnis had acknowledged to the lawyer, because "there'd be no reason for any of the individuals to compete with American Publishing Company," said Rosenberg.

IN COURT LAST YEAR, Kipnis and Black made an odd couple. Kipnis, the son of a truck driver who died when Kipnis was still in his teens, looked slightly rumpled throughout the trial. By contrast, Conrad Black's father was the president of Canadian Breweries, Limited, and Black dressed and acted every inch the aristocrat. He was smooth and imperious, and his prodigious talent (while building his media empire, he wrote books in his spare time) was nearly matched by his grand appetites. And he expected the company to help pay for them. During the trial, the government introduced evidence of the many expenses Black passed along to "his" company: from vacation jaunts on company planes to the sixtieth birthday party he threw for his wife and 80 of their friends at New York's La Grenouille, charging two-thirds of the $63,000 tab to Hollinger.

Kipnis's defense was disarmingly candid. From their opening statement, his lawyers—Safer and Holmes of Schiff Hardin and Michael Swartz of Schulte Roth & Zabel—admitted that their client had made mistakes. He wasn't a securities lawyer, he'd never worked for a public company; in short, he was in over his head. Some of his errors might have been negligent, his lawyers conceded. But they weren't fraudulent. They were the same mistakes made by the company's outside lawyers and auditors—which may appear easy to spot under the microscope of a courtroom, but weren't in the bustle of a real-time job.

All of this was to no avail. Did the simple fact that Kipnis was the company's lawyer influence the jury in convicting him? "It was huge," says juror Tina Kadisak, a 34-year-old hairdresser. "He's an attorney. His job is to make sure things are done properly and legally." Moreover, she says, "he did sign those documents. His name was right there in the middle of everything." And, as the corporate secretary, he was management's liaison to the audit committee, she adds.

The defense had the additional challenge of trying to convince the jury that their client was skilled in some areas of the law but ignorant of others. It didn't work, recalls James Kirby, a 48-year-old technical editor at an engineering company. Sometimes his lawyers tried to portray him as "poor old inexperienced Mark," Kirby says. But at other times he was "sharp-as-a-tack Mark."

Whatever their feelings about a lawyer's duty, jurors didn't exactly throw the book at Kipnis. In fact, they cut all the defendants lots of slack. They convicted Black of four out of 13 counts he faced; Atkinson, three of seven counts; and Boultbee and Kipnis three of 11 counts each (the judge acquitted Kipnis of one count herself, in response to his posttrial motion). Of the $60 million in management fees they were charged with stealing, the jury convicted them of defrauding the company out of little more than $6 million. Jean Kelly, a 52-year-old letter carrier, says she was one of two jurors who were sometimes the last to agree on verdicts. "[Those] of us who had doubt had a hard time thinking there was criminal intent," she says.

The big issue for the jury was whether the noncompete payments were disclosed in some manner—or any manner, even if the board's audit committee wasn't informed directly, says Kelly. As long as there was disclosure in a financial filing, the jury gave the defendants a pass.

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The defendants' sentences diverged sharply. On December 10 Black was sentenced to six-and-a-half years in prison; Boultbee to 27 months; Atkinson to 24. Radler's plea landed him 29 months. Only Kipnis was spared prison. Calling him "clearly the least culpable person in this scheme," St. Eve gave him five years' probation, six months' home detention, and 275 hours of community service. Some observers suggested that the challenges Kipnis faced may have resonated with St. Eve, who early in her career had been an in-house lawyer herself at Abbott Laboratories.

Whatever the impetus, there was elation in the courtroom from Kipnis's supporters when St. Eve announced her decision. But Kipnis's relief didn't cancel his dismay at the verdict—he joined the other defendants in appealing their convictions.

FOR A TIME AFTER HE resigned from Hollinger and was indicted, Kipnis practiced real estate law. As his trial approached, he stopped practicing altogether. In January 2006 he, his wife, and son Blair bought a struggling sign shop in suburban Chicago called Sign-a-Rama. At his sentencing hearing, he told the judge that the sign business, like the law, was "an honorable, hardworking service business." But it was also physically demanding—at age 60, he said, he wasn't sure it was something he could sustain.

The sentencing hearing was the first and only time Kipnis publicly addressed the charges. Speaking to a packed courthouse after a full day of hearings that ended with his own, he rejected the way he was portrayed by prosecutors during the trial. Nor would he accept the "St. Mark" tag jurors had hung on him. "That's not me either," he said. "I'm just Mark Kipnis." He continued: "Ninety-nine percent of my time, Judge, I believe I was competent. I believe I did do a good job. It was that 1 percent—the compliance aspect—that should have taken much more of my time. I admit," he added, "I did not fully understand the magnitude of those responsibilities."

A few weeks later, his attorneys drew their own lessons from the trial. "As fine a lawyer as Mark was in real estate and private company transactions," says Michael Swartz, "he didn't have the appropriate background and experience to fully appreciate what was expected of him." Nor was he completely familiar with all the documents he signed, some of which were mostly drafted by outside lawyers. "You don't get a pass," Swartz observes, "just because you're not intimately familiar with the document that your name is on."

The most poignant lesson might have been the loss of a beloved career. "I love being a lawyer," Kipnis told the judge, knowing that, no matter how favorable her sentence, he would soon be surrendering his law license. "I miss it terribly." ■