



Outsourcing's Legal Technology Trailblazer

Before it was even known as “outsourcing,” Gregg Kirchoefer worked for a computer services provider where he handled what was then the largest litigation support services outsourcing deal. That early experience motivated him in law school to focus on technology and the larger future impact it would have on the law.

Over 30 years and hundreds of outsourcing deals later, Kirchoefer, a partner at Kirkland & Ellis, has earned a reputation for his legal and IT skills. He has handled some of the largest, most comprehensive outsourcing contracts in history and is credited by his peers for contributing to the advancement and evolution of the outsourcing business model.

“Gregg’s experiences as an outsourcing service provider, as a customer, and as an advisor has helped shape his understanding of outsourcing transactions; informed his analysis of outsourcing; and brought empathy, perspective and the ability to see the multiple facets of the outsourcing relationship,” says partner Neil Hirshman, COP.

P: Tell me about your role as a partner heading Kirkland & Ellis’s outsourcing practice?

G: If a practice group leader does a great job of recruiting, retaining, and training the best and brightest lawyers, providing opportunities to work on, and to play an important role in, critical matters for significant clients, and focusing like a laser on client service, the job of managing goes a long way to taking care of itself.

While I created and built the firm’s outsourcing practice group, at this stage much of the management of the group falls to my partner and colleague Neil Hirshman (who is also an IAOP Advisory Board member and Chapter Chair). Neil was able to leverage the experience we gained in helping legacy Price Waterhouse (and later PricewaterhouseCoopers) enter the BPO market and to build on that to handle some of the most significant outsourcing transactions done to date.

P: What types of services do clients seek related to outsourcing?

G: First and foremost, clients seek our advice and services in connection with contract matters. We bring our knowledge and experience not just of the law but also of the industry, outsourcing business model, counterparties, and terms to the table in providing representation to the client. From there we look to be the best

contract lawyers, the best IP and technology lawyers, and the best project managers in order to optimize the value we add to the client and engagement. Clients also seek our help with respect to counseling about outsourcing, contract drafting and negotiations, contract renegotiations, disputes, and implications on outsourcing contracts occasioned by changes of circumstance (e.g., change of law, a merger or acquisition of one of the parties, a restructuring of one of the parties).

P: Tell me about your journey in outsourcing?

G: I got involved in outsourcing before the term was coined. In the first instance I worked for a service provider in what was then termed timesharing (large-scale computing resources accessed via a network) /service bureau business. This business was a precursor to IT outsourcing, SaaS, and certain aspects of BPO. One of the projects I handled was for what was at the time the largest litigation support services outsourcing extant. From that I learned that the lawyers were very smart and able but did not yet appreciate the totality of the impact that technology would have on the law – both on the substantive law and on the practice of law. I went to law school with that focus in mind. I was selected as the liaison to the American Bar Association Section on Science and Technology. In that capacity, I met with the lawyers spearheading the effort to make the new wine of technology mature in the old bottle of the law.

Then, serendipity played a role in my journey. As a relatively junior lawyer I was tasked with leading the Firm’s due diligence effort on EDS’s customer contracts when GM was acquiring EDS. In that role, I was able to review (and to learn from) all of the material contracts into which EDS (as the leading provider of “facilities management” services) had entered. I was then tasked with preparing the initial draft of what came to be known as the “Basic Agreement” governing all aspects of the provision by EDS of all IT functions to GM. The Basic Agreement had myriad sub-agreements and multiple versions over the course of the relationship between GM and EDS, the purported value of which still dwarfs other outsourcing contracts.

I was able to leverage that knowledge and experience to apply them first to “facilities management” and then “outsourcing”

“Gregg has led our outsourcing practice since its formation and his contributions have been critical to the outstanding international reputation of our practice. With respect to the world of outsourcing lawyers, I consider him to have no peer.”

– Neil Hirshman, COP



“Neil is among the best examples of the application of what is perhaps my best leadership trait: the ability to hire people smarter than I am and to nurture their ability and talent.”

Kirkland & Ellis partners
Gregg Kirchoefer and Neil Hirshman, both COPs

contracts. The first transaction I handled with an Indian service provider was in 1988 for applications development. I advised Arthur Andersen and what was then called Andersen Consulting (now known as Accenture) in their entry into BPO, helping them create the legal infrastructure and contract documentation necessary for the entry. We did the same thing for Price Waterhouse. From that start, we were able to grow, expand, and evolve the practice to meet the needs of both customer and service provider participants in the growth, expansion, and evolution of the outsourcing business model. I always strive to reflect my experience as a service provider, customer, and advisor in advising clients.

P: How have you seen outsourcing evolve?

G: Outsourcing as a mercantile system has been used since the earliest days of bilateral commerce involving services. This model was predicated on what economists much later termed the principle of comparative advantage. The modern incarnation of outsourcing was reflected in EDS’s facilities management arrangements (including the rebadging of personnel). In addition to the principle of comparative advantage, the EDS model applied Moore’s Law (i.e., the power of computing doubles, and the cost of computing halves, every 18 months) to derive profit from long-term, and in many cases de jure, or at least de facto exclusive arrangements. Then, the availability of global telecommunications and networks of computers enabled the use of the labor arbitrage characteristic of outsourcing through offshoring where the use of human labor – like water – seeks the lowest level, in this case of costs. This was further enhanced by the creation and subsequent ubiquity of the Internet. The application of the principle of comparative advantage and IT-enabled services led to the movement of the types of functions along the so-called value chain of higher content and complexity functions that may be appropriately outsourced. This enabled the use of the outsourcing model in ever-expanding ways. Automation, Artificial Intelligence, and robotics are knocking at the door and will continue the evolution.

These characteristics have been reflected in outsourcing contracts. From very long-term arrangements outsourcing contracts now typically have a shorter term. From monolithic, exclusive arrangements, outsourcing now is more typically

non-exclusive and best of breed. From the human capital perspective, offshoring has made the rebadging of customer personnel much less common. From the evolution and expansion of outsourcing, growth of the professional class of people knowledgeable about outsourcing certification (e.g., IAOP and its Certified Outsourcing Professional certification) has taken hold and accelerated the expansion and evolution.

P: What is the future of Legal Services Outsourcing?

G: I wear an additional hat at the Firm in that I chair the group that has strategic and supervisory oversight of the Firm’s own use of technology. Legal services outsourcing (as opposed to legal process outsourcing or LPO) is a misnomer. The essence of delivery of legal services by a law firm is by definition outsourcing in the broadest sense of the word. On the other hand LPO may refer to certain (always expanding list of) functions performed by in-house counsel and outside firms. Some of these functions are properly viewed as support, while others are more properly thought of as functions traditionally performed by lawyers admitted to practice under the laws of a certain jurisdiction. Outsourcing, offshoring, and AI-based automation will likely continue to drive the expansion of LPO.

P: How have outsourcing contracts evolved over time?

G: In some regards they have become more complex, detailed, and definitive. Further, since the early days when there were very few lawyers and fewer outsourcing advisors familiar with outsourcing, outsourcing contracts tended to be service-provider form contracts that did not receive the level of review, scrutiny, and negotiation that later contracts did. With the shift to smaller, shorter-term, best of breed contracts, there is an increasing desire to simplify the contract process.

P: What is the best advice you’ve received?

G: I have been the beneficiary of a wealth of advice over the years – some freely given, some hard learned. Much of the foundation of advice was laid by my parents, teachers, and coaches and were often expressed as the aphorisms we learned in kindergarten: tell the truth; move to where the ball will be; do your homework first, then play; play nice with everyone; and take your nap.

From my experience in business and the law, I have learned the advice of the value of humility by listening rather than speaking. It is better to ask open-ended questions and to elicit or invite a response than it is to deliver a lengthy polemic. And, when you do ask a question or make a statement, shut up and listen hard. It is rarely the case that trying to show you are the smartest person in the room will serve to advance your interests.

I have learned much from those with whom I have dealt – my partners, clients, counterparties, and other counsel. I try to act like a selective sponge, absorbing the good and wringing out the bad. From a management perspective I learned the advice of: getting good people and empowering and trusting them to do the right thing; not overshadowing them so that they have the sunlight to grow; and knowing when to give them a pat on the back, a kick in the rear, and benign neglect.

The best advice has been and remains the Golden Rule of “Do unto others as you would have them do unto you.” That bit of common sense Kantian morality carries this day and every day.

P: Who are your role models?

G: My first and foremost role model is my wife Mary. I strive mightily to pattern myself after her love, grace, strength, wit, mental agility, intuitive reasoning, and just plain character, common sense, and straight talk. In what may appear to be a reversal of roles, my other primary role model is my son John who has the eminent good sense to possess many of his mother’s qualities and few of his father’s many flaws. From him, I can attempt to see the world through the eyes of the future rather than the past.

My earliest role model was, of course, my dad who was a teacher and coach at high school and college levels, and an inductee into the Soccer Hall of Fame. To him (and to my mom) it was all about character – character will out. My dad taught me perseverance with a pithy “fall down five times, get up six.” Character counts. I have tried to make mine live up to his.

I have had many role models at Kirkland. I have been blessed by having the opportunity to stand on the shoulders of giants. Their individual and collective advice, large and small, systemic and particular, have I hope, made me a better counselor and lawyer.

P: What do you like to read?

G: Notwithstanding the fact that I read for a living, I still love to read – everything. From classics to spy novels to cereal boxes, if it is the written word – I will read it. In my role of chair of the Firm’s technology group I have been giving a lot of thought to, and have been reading about, future technology (including IP, AI, machine learning, data analytics, and robotics and automation). These include Digital to the Core by Raskind and Waller, A Guide to Intellectual Property by Stephen Johnson, and Future Smart by James Canton.



GREGG KIRCHHOEFER, COP,
AT A GLANCE:

ROLE: Partner, Kirkland & Ellis LLP. Responsible for the Firm’s intellectual property/technology transactions and outsourcing practice groups

COMMUNITY SERVICE: Provides pro bono legal work and charitable work educating children. Long-time member of the International Board of Directors of Boys Hope Girls Hope, awarded with Heart of Gold honor

AWARDS: Listed in the top tiers by Chambers every year since 2003; selected by peers as one of The Best Lawyers in America; and profiled by Corporate Board Member Magazine as one of “America’s Best Corporate Lawyers” in its article, In the Eye of the Outsourcing Storm

MEMBERSHIPS AND AFFILIATIONS: On the Board of Editors for E-Commerce Law Report. Member of the International Technology Law, Federal Communications Bar, International Bar and American Bar Associations. Admitted to the Illinois Bar

HEAR HIM SPEAK AT OWS16: Kirchhofer and colleagues will speak on “Do as I Do, Not Just Do as I Say: The Outsourcing Contracting Process from the Perspective of a Customer that is also an Advisor” in Track 5

More than 30 Years of Exceptional Results in Outsourcing

Kirkland & Ellis is an international law firm with 12 offices and 1,600 attorneys worldwide who form one team with a primary goal of helping you successfully achieve your objectives. Kirkland lawyers have long-standing experience in complex outsourcing transactions (including business process and information technology), representing both customers and providers in onshore, nearshore and offshore outsourcing transactions. The Firm’s principal goals are: to provide the highest quality, most cost-effective legal services available anywhere; to be instrumental to each client’s success; and to recruit, retain and advance the best legal talent. Kirkland stresses — and clients rightfully expect — great results.

IAOP has named Kirkland to the World’s Best Outsourcing Advisors list each year since the list’s inception.

