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Sullivan & Cromwell Co-Chair Bob Giuffra Strikes a Balance Between Leading the Firm and Litigating Crisis-Level Cases

By Ross Todd
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It seems handling some of the snarliest pieces of litigation around wasn't job enough for **Bob Giuffra** of **Sullivan & Cromwell**.

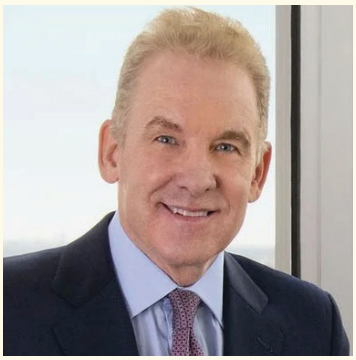
Giuffra, who in the past few years has helped Volkswagen navigate the legal aftermath of its clean diesel crisis and Allianz deal with the collapse of its "Structured Alpha" funds, this past January took on the role of co-chair of his storied law firm alongside dealmaker **Scott Miller**. On Friday, the Litigation Daily connected with Giuffra via Zoom to talk shop about his dual role, a report produced by the Rand Corporation about what the VW case could mean for global litigation going forward, and a number of topics that we'll save for a later date.

The following has been edited for length and clarity.

Litigation Daily: How are you balancing your co-chair duties with your client work?

Bob Giuffra: I think it's really worked out extremely well. I really strongly recommend the co-chair model for law firms. Law firms are not top-down organizations, at least the successful ones, particularly one like Sullivan & Cromwell, where we have a really collaborative culture.

I have more than 170 partners. Each is a highly skilled lawyer. The last thing that they need is to have people who are running the firm micromanaging their practices. **Scott Miller** and I have been on the management committee for a long time. We both know the firm intimately. We know our partners intimately. **Joe Shenker** and **Rodge Cohen** obviously left the firm in excellent shape. So it's not a firm where we need to make a lot of big changes. It's a firm where we're making changes around the edges for opportunities, trying to continually get better. So I probably spend more than 80% of my time on litigation—the same cases that I was handling before and then new litigation. I might be working a little bit harder than I was before, although I was working pretty hard before. But if someone said, "Well, what is your job?" I would say it's 80% full-time litigator and then 20% coach for the partners and trying to figure out what sort of incremental changes we should make to improve.



Courtesy photo

Bob Giuffra of Sullivan & Cromwell

I wouldn't have taken the job on if it had been something that would have prevented me from doing litigation largely full-time, because that's what I love. That's what I've done my whole career. The management role is important since I care about the firm, and the partners, and the associates. But we're a firm where the leaders are in the trenches, as opposed to the leaders being in a corner office dictating policy. And there's a lot of leading by example. So I help to run some of the biggest cases in the office, for example, and interact with some of our most important clients. I'm appearing in court in some of the more important cases. That was my job five years ago. It's still my job. And it'll probably be my job in five years.

Well, you're not only a litigator, you're a trial lawyer. But have you been to trial since you've taken on this new role?

That's actually one of the benefits of having co-chairs. It hasn't happened yet. We have a number of trials that have been set for next year. I think COVID kind of slowed down the trial docket for everyone, and judges are setting those trials. I have a number of cases where potentially we'll go to trial. They may take me out of the office for a month, two months. And so we'll have to try to figure out how to balance that.

Your firm is pretty proud of training up its lawyers as generalists. That's part of the culture. Has that approach helped you develop tools you need to handle this dual role?

Very much. I've never been a specialist in any single area of law. From the first moment anyone comes to our firm we encourage them to be a generalist in multiple areas of law. If you do litigation obviously there's securities, white-collar, we now do products liability, appellate, trial work, commercial litigation, Delaware litigation—it's the whole gamut.

I think being able to juggle a lot of things is very helpful in terms of managing a law firm because of the ability to learn quickly, process information, and make decisions. There are very few decisions that you make in a litigation that are permanent. And I think sometimes one of the biggest mistakes people make, whether it's litigating a case or running a law firm, is not making decisions. You have to accept that there are no perfect decisions. And if you make a decision, and you want to change the decision or adjust, you can do that.

When you litigate a case, you make a motion or you make an argument, it may work. It may not. And then you have to come up with a new motion or a new argument, or take a new deposition or adopt a new strategy.

Same with a law firm. There's no book you can look at to figure out how to run a 143-year-old law firm, particularly when you have more than 170 strong partners, and you've got offices around the world and clients all around the world. You have to continually evaluate facts and then make judgments and then see how the decisions that are made are being executed. And then if you want to tweak the decision, you go on a slightly different path. It's very similar to what you do when you litigate.

At the same time, you're a generalist, you're at times forced to become a specialist. You probably are as much a Clean Air Act litigator as anybody in the country at this point. I think Litigation Daily readers will know that you headed up the defense of Volkswagen in the wake of the company's clean diesel scandal.

What's interesting about that, Ross, is until 2015 I barely knew what the Clean Air Act was. I'd never done a Clean Air Act case or environmental case. In fact, I think that the reason why the client ultimately selected me to help run the Volkswagen emissions case was that I wasn't looking at the case with any preconceived notions. It was an example of where the generalist model worked extremely well because we were originally retained to do the securities piece of the Volkswagen diesel crisis. And we had previously successfully represented the Porsche SE entity, which had a majority ownership in VW, in a big litigation that was brought by hedge funds over the so-called Volkswagen short squeeze.

Ultimately, it was pretty clear that while Volkswagen had a lot of lawyers and a lot of experts, there was no overall strategy. And we were brought in to provide that overall strategy and to execute on it. And it was a situation where we made the judgment that settling the case fast—doing a global settlement quickly—would be in the company's best interest. And that turned out in fact to be the case.

The RAND Corporation used Volkswagen as a case study to explore whether U.S.-style mass civil litigation might take root in other venues. What are your takeaways from the report they put together from that study last year?

It used to be that we exported Coca-Cola and Pepsi to Europe and the rest of the world. I think now our litigation system is probably being exported to the rest of the world. And my sense is that the Volkswagen case was an important inflection point in getting European companies, European countries, and the EU to focus on what's the best way to resolve mass tort litigation. While we're now in a period of some nationalism, I think it's inexorable that there's going to be more globalization. So if you have products that are being sold around the world, if you have companies that are operating around the world, the idea of having a resolution that's just country-specific makes less sense.

Now, obviously, we in the U.S. tend to think our litigation system is the best in the world. I'm not sure that's right in every circumstance. Our litigation system is very expensive. It's time-consuming. I'm not sure it's in the interest of either the companies or the people who are bringing lawsuits against companies. But there's no question that the fact that American consumers were compensated put a lot of pressure on Europe and elsewhere to figure out a way to provide compensation for consumers. There were differences—important ones—with respect to the emissions laws in Europe and in the U.S., and those differences obviously impacted the amounts of compensation.

More than half of our clients are headquartered outside the United States. And we've always been very international and some of our biggest clients are international. We have a lot of familiarity with different legal systems and can coordinate with lawyers from around the world in terms of resolving disputes. So in Volkswagen, for example, we interfaced with lawyers everywhere—from Germany, to Latin America, to Asia, to Canada–trying to figure out what was the best resolution and be mindful of the fact that an action taken in the United States would reverberate around the world. So you couldn't just have a purely U.S.-centric view in resolving a big case like this.

You participated in the roundtable with judges and lawyers and enforcement officials from around the world that Rand and Stanford Law School brought together in 2019 as part of that case study. I'm curious what you, as primarily defense lawyer, got out of that experience.

I think what was interesting was a lot of the judges and certainly the plaintiff's lawyers and some of the government officials from outside the United States are open to—and almost encourage—the adoption of U.S.-style litigation procedures in their countries. I recall that during that session, I was identifying some of the costs of our system. There might be more efficient ways of resolving disputes.

For example, we have a civil litigation system, and then we have a governmental litigation system. The governmental litigation system is often engaged in providing compensation to injured parties. But then you still have the civil litigation system, which is where the lawyers are able to provide peace in the form of a release. Essentially they can sell *res judicata*. But they obviously charge a substantial fee for selling *res judicata* to companies.

In certain types of situations, it might make sense to have a regime where the government is doing the investigating, and the government uncovers the wrongdoing, and then the government does the settlement. Well, then the government ought to be able to secure a peace for the parties that they're investigating. In the U.S. system, it hasn't quite worked that way. You still have the dual system of a government enforcement mechanism and then a civil litigation system. So if you use the example of the securities space, the SEC can conduct an investigation that can require disgorgement. It can require payments to be made to injured investors. But the SEC can't sell peace. You'll still have private plaintiffs lawyers who will bring lawsuits and they'll have to be compensated. I'm not sure that's ultimately in the best interest of society. There may be better ways to actually design litigation systems, depending on the facts and circumstances.

The other big lesson in the VW case is the importance of doing what I call global resolutions. I've always believed that when you look at cases you have to look at them on a continuum. There's the case that you should fight and fight to the death because it's just a weak case. Then there are cases in the middle of that continuum, where a good lawyer can get you a really good result if you litigate the case. And there are cases on the end where the facts are not good, the law is not good, and the question is what do you do?

Often in the big cases like that, government regulators will be investigating, private plaintiffs lawyers will be suing, and if you're the defense lawyer it becomes almost a Rubik's cube problem of trying to figure out: "How do I get the best possible overall global settlement for my client?"

Some lawyers will just look at the battle of the moment: "I have this case. I'm going to try to fight it to the death." And they don't really consider sufficiently the interaction of different types of government investigations. In VW, you had the EPA, you had state attorneys general, the Department of Justice, the Department of Homeland Security, plus you had class action litigation and, ultimately, opt-out litigation. Then we had dealer litigation. And then we had salesperson litigation. We had securities litigation.

Where you have this multiplicity of actors, the challenge when you're on the defense side is figuring out what's the best structure to resolve the case. In the past two years, I worked on the Allianz "Structured Alpha" litigation, which was a very big resolution involving the Southern District of New York U.S. attorney's office, the SEC, and a lot of plaintiffs lawyers. We were able to structure the resolution in a way that provided for prompt compensation and fast resolution, which the government obviously is focused on. Being able to bring all the different parts together and not having it linger for a company is very important.

Well, what are the keys to getting private plaintiffs and regulators on board with your goal of a global settlement?

I think communication and trust are very important. I think you need to talk to each of the various actors and try to understand what their objectives are. Explain to them what the client's objectives are and try to see if there's a way where the objectives of the regulators, the plaintiffs lawyers and the client can overlap.

But you also need to sort of see the big picture. That's where the generalist model comes into play. If someone is just a DOJ white-collar lawyer or if someone is just an SEC expert or maybe a class action or civil litigation expert, in that model there's a real risk of the left hand not knowing what the right hand is doing. You have a lot more credibility when you interact with the government if they know that you're the same person who's interacting with the private plaintiffs. You have more credibility with the private plaintiffs if you're the same person who's interacting with the government.