

Making It Without Merging...

Who Says Midsized Firms Can't Surge Ahead While Staying Independent?–

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Over the past decade, with merger-mania spreading throughout the country, the legal industry has witnessed a spate of articles bemoaning the fate of the so-called “midsize firm.” These articles, which sport titles such as “Whither the Midsize Firm?” and “Can the Midsize Firm Survive?,” all pose essentially the same question: What role will midsize firms play in a market dominated on the one end by sprawling behemoths with vast resources and legal horsepower, and on the other by smaller boutiques with competitive pricing, attentive client service, and family-like cultures?

There is no question that many midsize law firms do seem as if they are stuck in neutral. Throughout the country, hundreds of midsize firms exhibit a host of worrisome signs: flat growth, low profitability, inability to attract the best laterals and retain the most promising associates, increasing difficulty winning the best clients and the best work, increasing rate pressure, and growing commoditization. This scenario was perhaps best characterized by the managing partner of a midsize New England firm that eventually merged: “What worried us most was the specter of a gradually eroding relevance in the legal marketplace.”

Many midsize firms speak of survival. But is survival a sufficient aspiration? Shouldn't the ambition of midsize firms be not only to survive – but to *thrive*? In search of lessons and best practices, we took a look at a handful of firms around the country that can be classified as “midsize” in their respective markets, but have found a formula that not only got the train on track, but hurled it forward as well.

Choate, Hall & Stewart, Boston

One of Boston's oldest and most respected firms, Choate has been eclipsed in size over the past decade by a handful of other top-tier Boston firms that became large, national firms via merger. Bucking this trend despite countless offers to merge, Choate has remained an independent, single office firm. Despite its smaller size and narrower footprint, Choate is today among Boston's strongest, fastest-growing, and most profitable firms without benefit of merger or acquisition.

“Our transition from what we were to what we are today really began around 1996,” explains John Nadas, co-managing partner who, with co-managing partner Bill Gelnow, spearheaded the firm's strategic transformation. “It was the mid-nineties and we were sensing some fundamental changes in both the regional and national legal markets, and we wanted to better understand them.

“The first thing we did was to undertake a strategic planning process, which we did with the help of an outside consultant. During this process we asked ourselves a host of fundamental questions: What are our longer-term expectations for the firm? What kind of firm do we want to be – and not be? What kind of business do we want – and not want? How can we raise the bar? How can we do a better job of organizing and managing ourselves?

“In the end, we concluded that we wanted the best of both worlds: to remain independent and to practice at the top of the market, focusing on the most interesting and most important work for our clients. To remain independent and still be successful, we decided to make a number of changes that would enable us to move ahead, without adding many hundreds of lawyers and multiple offices. The plan we came up with set the stage for the next ten years.

“Our plan, which we updated in 2004, committed us to a number of important initiatives. For one thing, we didn't want to be ‘all things to all people,’ so we decided to focus on a limited number of practices: complex corporate transactions and litigation, technology and intellectual property, private equity, life sciences, and

private wealth. The idea was to advance select practices to national prominence with enough depth and bench strength that clients around the country would engage us, regardless of geographic locale.

“Other initiatives included enhancing our practice management structure and getting our internal house in order, [with initiatives] like stricter client intake standards, more disciplined financial management practices, and higher partner productivity standards.

“Our practice strategy has worked, and clients have responded enthusiastically. But this strategy also meant having to make some hard choices. It meant focusing resources in certain areas, which meant having to deemphasize others that weren’t consistent with our strategy. It also meant having to change some of our people – a process that took a number of years.

“Another key part of our strategy was focused and strategic lateral hiring. Our platform offers laterals the chance to significantly grow their practices and to play a meaningful role in our strategic direction, all in a firm where culture and the word ‘partnership’ matter. Since 1996 we have attracted 27 of the best and brightest to join us as lateral partners.

“Last year, consistent with our strategy, we hired a group of more than 25 lawyers from Testa Hurwitz when it dissolved, including some of the leading private equity, venture capital and technology lawyers, not just in Boston, but in the country. I have no doubt that the changes we undertook in our strategic planning were instrumental in our ability to attract these individuals.”

“The results speak for themselves. In 2004, we ranked 175th nationally in terms of size, with fewer than 200 attorneys. However, in the same year we ranked 65th in profitability, at \$850,000 per partner, double what it was five years earlier. Our revenue per lawyer, at \$735,000, ranked 35th nationally. In 2005, we posted profits per partner of \$965,000 and revenue per lawyer of \$770,000.

“I bridle at the term ‘midsize firm’ because it has a pejorative connotation. To us, ‘midsize’ does not mean ‘middling.’ We have national practices in our chosen specialties. To us, the terms ‘national’ and ‘top-tier’ don’t have to equate with ‘big.’ We are unique in the market for clients, laterals, and law students.

“What lessons would I offer to other so-called midsize firms? For one thing, abandon notions of being ‘all things to all people.’ Focus your firm on the attainable practices that offer the greatest upside potential. It’s the choice of depth over breadth. Develop a plan and stick with it as it will take several years to implement. Change within a law firm generates plenty of resistance. In this regard, the process is important. Get input. Hold lots of meetings. Circulate questionnaires. Make sure the partners are on board and supportive.”

Morris, Manning & Martin, Atlanta

Founded in 1976 by eight lawyers from a larger Atlanta firm, Morris, Manning & Martin has since expanded to 175 lawyers. Over the past ten years, the firm's revenues have grown an average of 17 percent per year, faster than any of Atlanta’s dozen largest firms. During this same period, revenue per lawyer has doubled from \$300,000 to \$600,000. The firm’s profit margins average around 45 percent, higher than any of Atlanta’s megafirms, with profits per equity partner in 2005 topping \$800,000, which is also higher than most of the Atlanta firms that are two and three times its size.

We spoke with Robert Saudek, the firm’s managing partner for the past ten years, “Over our thirty-year history, the firm has never merged or made an acquisition; the largest group of laterals we ever brought in was four. We do get approached fairly often about merging and have had some informal merger discussions, but we have not even come close to merging as we are happy with our firm’s success path and, frankly, we like calling our own shots.

“We are recognized as an entrepreneurial firm that targets growth industries and that is probably more nimble than the bigger, older firms. We’ve tried not to be all things to all people. Historically, we were best known for our strengths in technology and real estate. As those industries grew and evolved, we have developed large practices in related areas such as real estate capital markets, intellectual property litigation, public securities, and brownfield redevelopment. During the technology bubble in the late 1990s, when a lot of newer companies went public, we handled more IPOs than any other law firm in the Southeast.

“Our strategy has always been to focus on selected practice strengths and to cross-sell these practices as much as possible. For example, in litigation, we focus particularly on products liability, insurance/reinsurance disputes, environmental, and intellectual property litigation. We believe that you either do something seriously or you don’t do it at all. That means having a critical mass of at least a half dozen attorneys with at least \$2million to \$3 million in billings in any given area. It also means that, at 175 lawyers, we can’t offer certain things. While we offer most of what the larger law firms offer, we do not try to offer everything.

“We seek to ‘play big’ in those areas in which we choose to focus. For example, in the environmental area, one of our areas of focus, we handled the brownfield cleanup for the Atlantic Station Project, which Atlanta’s mayor characterized as the city’s most significant real estate project in 50 years. In the products liability area, another priority practice area, we have achieved sufficient critical mass...where we are now representing some of the largest drug manufacturing, retail, and tire companies in the country in defending against products liability suits. More recently, we have developed a practice representing Chinese companies in intellectual property for which the firm employs six professionals, including four Chinese-American PhDs.”

“In addition to focusing on certain practice areas, an equally important aspect of our strategy is knowing when *not* to get into certain practices. We avoid commodity practices that do not support the billing rates for work we seek. If you’re going for high-end work, you have to resist the temptation to get involved in high-volume, low-profit work. Occasionally, we will phase out of an area that is not proving to be a growth area or a profitable practice for us.

“We believe profitability is important. You won’t succeed if you’re not profitable. Profitability is both a means and an end. High profitability helps the firm in lateral recruiting and retention. It allows you to invest and to be entrepreneurial. Profitability does not just happen. It results from steering the firm into high-end growth industries and sophisticated work, attracting talented lawyers who bring strong client relationships, and aggressively managing both the revenue and expense side of the firm's business.

“At the end of the day, we are convinced that midsize firms can and do flourish. A firm our size can often be more nimble and efficient than some of the largest firms.”

Patterson, Belknap, Webb & Tyler, New York

With 190 attorneys in New York City, Patterson Belknap's size is dwarfed by more than 30 larger firms. Despite this smaller size and single-office footprint, the firm boasts one of the faster growth rates in New York, having grown more than 50 percent since 1995 – all from lateral or recent graduate hires. During the same period, revenue per lawyer has surged 92 percent from \$439,000 to \$842,000, and profits per partner have tripled, from \$356,000 to more than \$1.1 million. In 2005, Patterson Belknap ranked #2 on the *American Lawyer's* "A List." In addition, the firm maintains its historical commitment to pro bono as 100 percent of attorneys have participated in pro bono activities in each of the last two years.

"We have never merged with or acquired another firm", explains Rochelle Korman, the firm's managing partner since 2002. "Our motto has been `just say no' when people call us about merging.–

"In the late 90s we embarked on an ambitious plan for the firm. The plan envisioned a number of initiatives, including focusing on selected practices in which we excel; emphasizing a high standard of excellence and old-fashioned quality control; reinforcing our sense of community and our culture of cooperation both vertically and horizontally; and strengthening our financial performance.

“We have followed this basic plan for most of the past decade. Looking back, I am convinced that we could not have stayed on plan had we been a firm of hundreds of lawyers or if we had multiple offices around the country with different cultures and standards to deal with. The bigger and more spread out you are, the more difficult it is to manage quality and growth.

"Our practice strategy is based on our commitment to quality. While breadth is important, we are more interested in providing our clients with a host of ‘go to’ national practices that offer unique capability and expertise. For us, this [strategy] centers on our litigation practice, which has always been our firm's core strength, supplemented by specialty practices such as patent litigation, white collar criminal investigations, law firm defense, false advertising, complex commercial litigation, and a handful of industry practices such as pharmaceutical, media and entertainment, and tax-exempt organizations.

"Clients are looking for deep pockets of expertise. As in-house counsel handle more and more routine commodity work, which they can do more cost-effectively than outside counsel, corporate counsel are turning to outside firms to provide value-added expertise for the unique, more complex transactions and disputes.

“One example of where we are providing this type of added-value is our work in cross-border American Depository Receipts financing. This type of specialized practice knows no borders or time zones. We do it 24-7 from our single office in midtown Manhattan. Another example of deep expertise is our Tax-Exempt Organizations practice. With 12 attorneys, we have one of the largest such practices in the country. The group [includes] attorneys recognized nationally for their particular expertise such as museum law and international health-related public-private partnerships, to name two.

"An important element of our success has been our recruiting, especially our ability to attract young lawyers completing judicial clerkships. We also place a lot of emphasis on lateral hiring and were pleased when the former attorney general of New Jersey recently joined our growing white collar criminal and investigations practice.

"Midsize firms will not be successful without effective management. We maintain tight financial controls and hold partners accountable for the basic time and billing discipline. In terms of leadership style, we try to strike a

balance between strong central management and participatory democracy. We encourage input and discussion, but then we make a decision.

“Our firm is [empowered] by substantial freedom and autonomy at the practice level. To encourage open and frequent communication, we hold two partnership meetings a month, a weekly management committee meeting, and regular firm-wide retreats. For effective management, we find it helps to have a strong and well respected Executive Director. We also find it useful to have an outside consultant on retainer for regular input and idea testing.

"What we have achieved has taken a long time. We continue to evolve by, for example, developing new market niches in corporate, real estate, and other areas. My advice to other midsize firms wanting to undergo this kind of strategic transformation: focus, discipline, and patience."

Beirne, Maynard & Parsons, Houston

Founded in 1987 by eight litigation attorneys from a large Houston firm, Beirne, Maynard & Parsons today is the largest litigation-only firm in Texas, with 100 attorneys. In the ten years since 1996, the number of attorneys has grown 2 ½ times, from 40 to 100 attorneys; revenue per lawyer has expanded from \$350,000 to \$650,000; and profits per partner have increased from around \$500,000 to \$850,000. The firm regularly handles national litigation for clients such as Pfizer, Conoco Phillips, Circuit City, Toyota, Procter & Gamble, and Bausch & Lomb.

The firm's growth has been obtained as a result of organic growth combined with bringing on laterals. The firm has never undertaken a merger nor has it acquired another firm. On several occasions the firm has brought in groups of laterals – one group of 11 attorneys and two smaller groups of 3 and 4 lawyers from three different firms. When the firm recently opened its Dallas office, it did so *de novo* by moving a partner from Houston and by hiring a Houston attorney who had previously worked with Beirne Maynard.

“Our strategy has always been and continues to be to remain a litigation firm,” explains Marty Beirne, the firm's long-time managing partner. “We're the firm that companies turn to for serious litigation. We like taking on high-impact cases for big companies.

“Unfortunately, the days of a client permitting its trial lawyers to try [any kind of a case] are over. Increasingly, we are finding that corporate litigation counsel are looking for outside law firms that have deep specialization. In particular, clients want to work with attorneys who have experience in their industry. We are specialized on two levels. Because we are a litigation-only firm, we feel we understand litigation – the litigation process – as well as anybody. And, even though we are relatively small by large firm standards, we actually have more litigators than most large firms do.

“In addition to being specialized at the firm level, we are also specialized at the practice level. We have depth in selected legal areas and industries, including products liability, employment, intellectual property, and environmental. In addition, we have built strong industry practices in pharmaceutical, transportation, banking, chemicals, and energy. You might also say that we offer specialization on a third dimension: in the dispute resolution process itself by having strong capability in arbitration, mediation, appellate, and courtroom procedure.

“It's tempting to consider broadening our scope. We know we're leaving money on the table. We have to turn a lot of business away because we don't offer things like corporate, real estate, and tax – and God, do I hate turning business away!

“We get approached from time to time by full-service firms about merging. We recently did a survey of our clients [and] several of them said they would like us to offer a broader range of services. And every so often a client will tell us that, if we offered a full range of services, we would get all of their outside legal work. It's nice to salivate about that, but if we did it, we'd completely change our character. We'd go from being a unique

litigation powerhouse – a nice place to be – to just another midsize full-service firm, [which is] not a nice place to be.

“I don’t believe midsize law firms can move forward without effective leadership and management. While it’s important for partners to have a voice, a law firm is a partnership, not a Swiss canton democracy. It’s a business and has to be run like one. A lot of our clients are large Fortune 250 corporations. Because they are efficient and well managed, they naturally expect their outside law firms to also be efficient and well managed.

“Over the years, we have operated with a series of five-year plans. The plans are pretty basic and focus on our opportunities in terms of practices, industries, clients, and geographies. I spend a lot of time reminding everyone of who we are and what we are. In this sense, my job is to reinforce the clarity and consistency of our mission. Since our course has been pretty well set, my job is to see that we stick to it.

“What advice would I give to other midsize firms? First, stick to your knitting, whatever it is. Second, be selective about the laterals you hire. Get people with good industry experience and good people skills, not eggheads. Third, turn business away that isn’t consistent with your skills or your strategy. You’re better off referring it to another firm that can handle it well. The worst thing you can do is to take on something that you don’t do well. You do that and there goes your credibility and your reputation.”

Munger, Tolles & Olson, Los Angeles

Founded in 1962 by seven lawyers who broke off from a large California firm, Munger, Tolles today has 190 lawyers. The firm enjoys a high profile nationally. In 2005, despite being 134th in size, the firm ranked an impressive 10th nationally in revenue per lawyer, at \$935,000. Its per partner profitability, at \$1,045,000, ranked 45th. The firm was a finalist in the *American Lawyer’s* “2005 Litigation Firm of the Year” and the same year was cited as one of the *National Law Journal’s* “Hot Defense Firms”.

Much of the firm’s growth has occurred during the past decade, when it doubled in size. Munger, Tolles has never merged with or acquired another firm or practice group with the exception of its acquisition 15 years ago of four environmental lawyers to start its San Francisco office, now 30 lawyers.

The author spoke with the firm’s co-managing partner, Mark Helm. “Our strategy has been simple: hire the best lawyers and find the best way to use them in the firm. Our focus is on quality over quantity. We try to keep hiring down and have never hired large classes of young attorneys. We’ve been successful at recruiting good associates from clerkships.

“We have no set partnership track. We let people develop at their own pace and tailor their partnership track accordingly. A couple of associates have made partner after only three years here and five years out of law school; others after five to six years with us. We also encourage our young lawyers to get involved in the community by doing pro bono work and serving on boards. Besides giving back, we believe these activities help cultivate the skills of our young lawyers and make them more outward-focused.

“Our mission is to fill the narrow space for high-end work. We avoid repetitious, high-volume, commodity work. We think of ourselves as ‘lawyers’ lawyers,, which also happens to be literally true since we have a large practice representing law firms in litigation. We believe we’re the firm to go to when other firms can’t get the job done. We want the unique, complex, difficult, one-of-a-kind, and ‘bet the company’ cases. As an example, we represent the Getty trust in the high-profile controversy over its acquisition of certain art in its collection.

“Because we are smaller, we have tried to focus our expertise in certain niche areas. Litigation is our largest practice area, but we also offer deep capability in corporate, tax, real estate, environmental, bankruptcy, and employment. In addition, we have developed particular expertise in selected industries: aerospace, electric utilities, entertainment, securities, and insurance. In each industry practice, we try to work at the highest level. We have represented Berkshire Hathaway for many years. In utilities we represent Southern California Edison and in entertainment our clients include Universal, NBC, and ABC – all clients one would normally associate with a much larger firm.

“Our franchise is our people and our quality. If we were larger and had lots of offices, it would be hard for us to be what we are. To maintain our standards of excellence, we encourage a lot of interaction among our attorneys. We have lunch as a firm every Monday. We regularly invite outside speakers to address the firm. We hold several partnership meetings each year and we have a weekend-long, all- firm retreat annually.

“We involve associates on committees and share with them, from Day One, all the firm’s financial and performance information. It’s hard to imagine how we would maintain this kind of operating environment if we were a huge, multi-office firm.

“We also have an unusual compensation model that has worked well for our culture. We ask the partners to vote on the compensation of every other partner. A rotating committee determines the final allocation after considering the consensus that emerges from [a] grid showing every partner’s votes, and from interviewing every partner. [We find] this kind of peer review healthy. It is so completely honest and open that it legitimizes the whole process, and no one can complain about bias or unfairness. Forcing ourselves each year to discuss what we value in partners [also] helps us to teach and reinforce our shared firm values. It’s hard to imagine such a system in a large multi-office firm.

“We do get inquiries from time to time about merging. Twenty years ago we came close to doing a deal with another firm, but it didn’t work out. Today, we’re committed to remaining independent.”

“Our firm is built on strong values and high ideals. In this sense, we don’t feel we need a formal ‘strategic plan.’ Our strategic plan is inculcated into the very culture of the firm, ingrained in everybody’s heads. As such, we don’t have to ask ourselves what are values and ideals are: everyone knows. The only question we need to ask is whether we’re living up to them.

“What advice would I give to other midsize firms? Know what you want to be and stick with it. Do what you do best – and figure out how to add value.”

Lessons Learned

What are some of the more salient “takeaways” to be gleaned from these five midsize firm success stories? While each of the firms is different, with its own strategic agenda and pathway to the future, there are a number of common themes:

- **Adopt a strategy and stick to it.** Each of the firms profiled above has some kind of ‘strategic plan’, however informal it might be, and they are steering the firm by it. The plan provides the framework for decisions and initiatives that get made every day.
- **Avoid being all things to all people.** The bane of many midsize law firms is the ‘mile wide, inch deep’ syndrome: having 40 lawyers and 25 practice areas. Doing the math, that’s 1.5 lawyers per practice.
- **The importance of specialization.** All five firms profiled above have built strong, deep practices in selected areas. Not only do clients want specialization by legal area, they are increasingly seeking specialists by industry.
- **Just say no.** The success of the five profiled firms is as much a function of what they did as what they did NOT do. The practices they did not get into. The clients they did not take on. The matters they turned away. The people they did not hire. Saying no to such ‘opportunities’ requires strong leadership.
- **People first.** Each of the firms interviewed placed great emphasis on hiring the right people and then investing seriously in them. The strategy of hiring people rather than positions is a good one if one can afford to do it.
- **Be profitable.** In one way or another, each of the managing partners attested to the importance of profitability. Being profitable allows choices and flexibility. Being profitable also attracts better people. It is doubtful whether a midsize firm could reposition itself, or take itself to the next level, without enjoying a healthy level of profitability.

- **Management counts.** Firms that are managed in an ad hoc manner, and that lack strong central leadership, are unlikely to move forward. In this regard, disciplined financial management and enforcement of partner ‘citizenship’ are related to profitability. Having a strong, effective non-lawyer administrator can be a big help.
- **Think big.** Each of the firms interviewed had high ambitions and high standards. They also had a vision, a concept of the firm’s future. Getting a law firm to get off the dime and move forward takes inspiration and motivation. Firms with weak, revolving-door leadership are destined for the status quo.
- **Change.** Someone once quipped, “There are two kinds of lawyers: those who dislike change and those who absolutely hate it.” Moving your firm from here to there will involve change. For this reason, the job of identifying, inspiring, and managing change could become the single biggest challenge for the leaders of today’s midsize firms.

To what extent do these lessons apply to the broad spectrum of midsize firms? The term “midsize” is relative: a 200-lawyer firm in New York, a 100-lawyer firm in Houston, and a 25-lawyer firm in Des Moines are all midsize firms in their respective markets. But, wherever they may be located, all midsize firms have the potential to adopt many of the approaches used by the firms profiled in this article to redefine and reposition themselves for competitive success.

Law firm mergers are transforming the legal landscape, and many have proven successful. But the examples shown by these five firms give new hope to midsize law firms throughout the country wondering if merging or being acquired is their only option to get out of neutral and into overdrive. Judging from the example of these five firms, there is another option.

--Jeff Coburn

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