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But that just isn't true."**

by Tom McCann

Fighting the urge to merge: Small- and mid-size firms thrive in a world of giants

**Bower: "It seems the mid-size firms are
more vital than ever."**

Fred H. Bartlit Jr. is a military man. He went to West Point, served as an Army Ranger and sprinkles his everyday conversations with references to Sun Tzu and General Patton.

So it's not surprising that when it comes to his law firm — Bartlit Beck Herman Palenchar & Scott — he wants it to run like a small, tight-knit fighting unit.

"An Army company is kept at about 120 people, the perfect size to control the quality and effectiveness of your force. That's the same size as our law firm when you count lawyers, paralegals and staff," Bartlit said. "I wouldn't want to be any bigger than this. We're lean, efficient. We know the strengths and weaknesses of everybody here and work seamlessly together. We could never merge with a bigger firm — we'd lose our edge."

Bartlit is not alone in singing the praises of being small. In the era of thousand-lawyer megafirms where bigger is always better, many small- and mid-size law firms are equally adamant that they can survive and thrive without joining the merger bandwagon.

They cite the needless bureaucracy at larger firms, the conflicts of interest, the extra costs of keeping global offices and herds of first-year associates when their clients are demanding senior

partners at reasonable prices. They have more than enough clients as it is, they say, and they don't want to muck it all up by growing too fast.

Most of the small- and mid-size firms interviewed said a merger would not be completely out of the question, but they insisted it would be a really tough sell.

"I worked at a big firm once, and I don't want to go back. We don't need securities lawyers or international law attorneys. We don't want to charge clients \$700 an hour just to pay for our overhead," said Albert L. Grasso, chairman and managing partner of Chuhak & Tecson. "You take our 53 lawyers and put them in a 500-lawyer firm, and suddenly we're insignificant. We lose our independence. We'd need to prove ourselves all over again to a whole bunch of new people. At this stage in my career, I don't need to prove I'm a good lawyer to anybody."

Expansion continues to preoccupy a few of the very biggest



Howard J. Kirschbaum (left) and Peter J. Barack, founding partners of Barack Ferrazzano Kirschbaum Perlman & Nagelberg, acknowledge that their mid-size firm faces some competitive disadvantages, but they say they can also be more responsive to their clients than many larger firms.

firms in the city, according to the *Chicago Lawyer* 2005 Survey of the Largest Law Firms in Illinois. When the magazine's first survey was taken in 2001, the state's largest 10 firms had an average size firmwide of 654 lawyers. In 2005, the average size was 1,045 lawyers, an increase of 60 percent.

But despite the growth trend at the top of the list, the majority of Illinois firms aren't playing along, according to survey results. More than 66 percent of the firms surveyed employ 150 lawyers or fewer, a ratio that has gone almost unchanged since 2001.

The fifth annual largest law firm survey was mailed to 167 firms with 20 or more lawyers as listed in Sullivan's Law Directory. Of those, 127 firms responded to the survey, reporting their statistics through Jan. 1, 2005.

DLA Piper Rudick Gray Cary had the largest overall growth since 2001, according to the survey, going from 832 lawyers to 2,868 lawyers in 2005, an increase of 245 percent. After a series of high-profile mergers, it is now the third-largest law firm in the world. Sidley Austin Brown & Wood grew 68 percent in that time, going from 924 to 1,551 lawyers. Mayer, Brown, Rowe & Maw grew 47 percent and Sonnenschein Nath & Rosthenal grew 42 percent, adding 430 and 204 attorneys, respectively.

But more typical has been the growth of a firm like Freeborn & Peters, which has added about 10 lawyers since 2001 and doesn't intend to grow any faster in the future.

"There's been a lot of talk over the years about how law firms must grow non-stop to survive, and that the mid-size firms are dying out. But that just isn't true," said Freeborn partner Randall Vickery, chairman of the 120-lawyer firm. "If you have focused practices, solid management and good service to your clients, you can do well at any size. The mid-size firms that have dissolved had a lot more problems than their number of lawyers.

They died out because they were badly managed. We don't have that problem here."

Competitive advantages

Ward Bower, a principal at legal consulting firm Altman Weil Inc., said there's an especially healthy and growing market for mid-size firms these days despite predictions a few years ago that they wouldn't be able to compete in the 21st century marketplace.

While some practices like litigation fit naturally in a smaller firm environment, Chicago also has many successful small- and mid-size firms focusing in real estate, intellectual property and labor and employment law, as well as traditional large-firm staples like mergers and acquisitions and corporate finance. Chuhak & Tecson, for example, has 24 practice areas ranging from aviation law to secured lending and estate planning.

"Consultants like myself were saying that mid-size firms were being squeezed out," Bower said. "They were too small to challenge the megafirms for big ticket clients wanting one-stop shopping, yet too big and unwieldy to go up against the boutiques. There was a lot of talk like that just prior to the dot-com bust. Now it seems the mid-size firms are more vital than ever."

Bower said mid-size firms enjoy several competitive advantages to the larger firms. For one, they have the decreasing cost of technology on their side. The advent of global legal networks has also lessened the advantages of the larger firms' global offices.

"Historically, only the larger firms were able to afford the latest technologies and research resources, which was why the bigger clients paid so much," Bower said. "That advantage is largely gone. Smaller firms have just as much access to cutting-

edge technology. It's a more even playing field now."

Bower said the pace of change in the corporate world is quickening, placing an ever greater emphasis on speed and agility in legal services.

"Small and mid-size firms are much more agile and adaptable than larger firms and are able to identify and exploit opportunities for competitive advantage well ahead of larger, less agile firms," Bower said.

The larger firms also must charge higher hourly rates than mid-size firms, and many companies are balking.

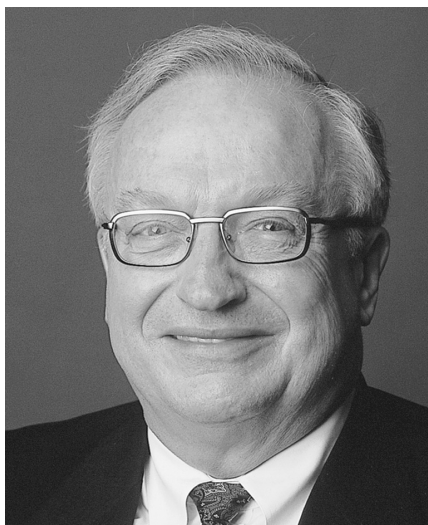
"The legal profession has no economies of scale, so larger firms have higher per-lawyer overhead and must charge higher rates to make a profit," Bower said. "But since the latest recession, many corporate clients have gotten more cost conscious, even hiring bill auditors to cut down on legal fees. More businesses today are looking beyond the brand name firms or hiring more firms for targeted tasks to improve their bottom line. Mid-size firms have become much more attractive."

Jeffrey Bunn, a member of the management committee at 33-lawyer firm Weinberg Richmond, said mid-size firms are successful when keeping three things in mind: Maintaining a tight, focused practice; paying attention at all times to quality and profitability; and making sure your lawyers stay happy working for your firm.

"If you do that, you're going to have a thriving, growing law firm," Bunn said. "If you grow too fast, overextend your practices, try to offer one-stop shopping, or make your lawyers feel alienated and unhappy, you're going to get into real trouble."

Weinberg Richmond started out as a real estate boutique and has added business litigation and a small corporate practice to the fold. Bunn said the firm is moving slowly, making sure the added practices fit the needs of their existing client base and that the new directions don't overshadow their core strength in real estate.

"To be a successful mid-size firm, you must have depth. You can't spread yourself too thin. That's the way you



George P. McAndrews

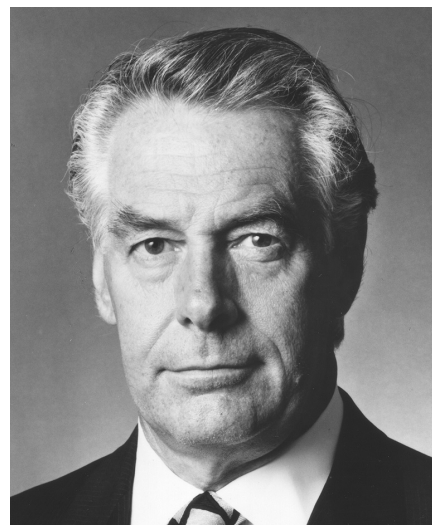
compete against the larger firms," Bunn said. "We might be small, but we are certainly among the 10 largest firms in the city in terms of dedicated real estate attorneys. In large commercial transactions, we can go head-to-head with a firm 10 times our size. A giant firm is still just made up of several smaller practices."

Bunn said his firm is happy serving

Bartlit: "All big firms are wedded to the billable hour. But if marathon runners were paid by the hour, the race would take six weeks."

the middle market, not the Fortune 500 crowd. The firm's lawyers also appreciate working in a smaller environment where conflicts don't limit their client base.

"Real estate lawyers actually benefit from being in a smaller firm. The more sophisticated your practice gets, you start dealing with a broad range of clients, from owners and developers to banks and corporations. That increases your exposure to conflicts in a large firm. In my experience, when a merger starts causing problems, the real estate lawyers are among the first to leave," Bunn said. "We have a very simple message. We've been doing real estate for 60 years. We



Fred H. Bartlit, Jr.

do it well and efficiently. Our billing rates are lower than the big firms. Your project is not going to be handed off to another lawyer. The senior lawyer is working on your deal, and our clients appreciate that.

"There is a business segment in which a big name matters, and we are not going to be servicing their business," Bunn said. "There are plenty of other fish in the sea, and we have been really successful fishing other waters."

Spinning off

Bartlit, a former Kirkland & Ellis partner who started Bartlit Beck with several other Kirkland alumni in 1993, said a smaller firm can be just as profitable as a giant one, maybe more so.

"We started this firm because we wanted to practice law the way we envisioned it coming out of law school. We never thought for a second about money. But that being said, within a couple of years our partners were making more money here than we ever did at Kirkland," Bartlit said. "We're doing elite work around the country, giving our clients more value and having much more fun ourselves."

Bartlit said he wanted a firm where good associates are promoted and become permanent, and where revenue is based on results instead of billable hours. The firm charges most of its clients flat fees with substantial bonuses for the firm if they win.

"I floated that idea when I was at Kirkland, but they didn't want to do it. It

wasn't Kirkland's fault. All big firms are wedded to the billable hour. But if marathon runners were paid by the hour, the race would take six weeks. We thought flat fees were the wave of the future, so we left," Bartlit said. "We also thought it was silly for a firm to get rid of its associates at the time they had the most knowledge. Why not keep them and gain from their experience? We thought a smaller firm could do a much better job. Having too many lawyers on a case causes inefficiencies, redundancies; it messes the whole thing up."

Bartlit Beck's River North offices are a far cry from their old Kirkland digs. The walls are covered in Theodore Roosevelt quotes. Golf clubs and sports equipment litter the hallways. The office's atrium is a basketball court. "We use three-point contests to negotiate some of our settlements," joked managing partner Sidney Herman. "We wanted the place to be low-key and approachable, not large or intimidating."

On a recent morning, several lawyers were using the basketball court to brainstorm for a trial. First-year associates stood alongside senior partners, hashing out ideas on how to craft their opening statement.

Bartlit said he likes the lack of hierarchy at the firm. The partners and associates often go out for drinks after work or go to sports games or golfing together.

"I've never been a big company guy. Kirkland as it grew became less suited to me," Bartlit said. "You had to be on all these committees, even a committee on committees. It kept you away from your work. Then you had no time for your associates. Associates would have to make appointments to meet their partner. One partner wouldn't let associates turn their back on him in his office. They'd literally have to back out. We have none of that here. We don't hire laterals. We grow our young attorneys and get the best out of them, and they don't want to leave."

Being substantially smaller doesn't scare clients away, Herman said.

"The clients seek us out. We handle cases with nothing less than \$5 million at stake," Herman said. "In litigation, we



Randall Vickery

don't need branch offices, we don't need multiple practice groups. We just hop on a plane and rent out a floor of hotel space for a case anywhere in the country."

Lean and mean

Gary Elden, a founding partner of 40-lawyer litigation and corporate firm Grippo & Elden, said his firm usually has three or

McAndrews: "We have our lawyers'

kids running up and down the hallways.

Most of our artwork is Crayola....

We like our culture the way it is."

four lawyers on a case when the other side sometimes has 15 or 20 lawyers.

"Most of the time that's to our benefit. Too many cooks can spoil the broth," Elden said. "In one two-month trial a few years ago, the other side had triple our staffing, flying people in and out every week, and we won on every issue. For weeks I was trying to get some debatable evidence included, and each time the judge said no. Then in the fourth week, a new opposing lawyer flew in for the case and brought up the topic in court himself, allowing me to get in everything I wanted. If they had kept the number of attorneys down, that never would have



Bryan Schwartz

happened."

Elden said even major corporations can't afford to throw endless money at a case.

"Pricing counts," he said. "We tried a big antitrust case against a large East Coast firm recently, and a newspaper article gave out their legal fees. It was 10 times our amount, and we charged in the millions, and they lost."

Elden discovered he liked the smaller firm format when he left Kirkland & Ellis with some other lawyers to form Reuben & Proctor in the 1980s.

"We actually found there were companies who didn't like big firms. They were dissatisfied with the work product. Reuben & Proctor was a complete no-name firm, and we were so swamped at first we had to turn down work."

Reuben & Proctor succumbed to pressure for a merger in the late 1980s, giving Elden firsthand experience of what an ill-advised combination can do to a thriving smaller firm.

"Before we merged with Isham, Lincoln & Beale, a powerhouse Chicago firm, the consultants kept telling us it was a sure winner. We had to grow to survive. We would be unstoppable if we merged," Elden said. "The merger ended up lasting only 18 months. It fell apart, and we all lost our jobs. I've had a skeptical view of mergers and consultants ever since. I'll never go near another merger again."

One recent example of a merger that hasn't worked out well is that of Wisconsin-based Michael Best &

Friedrich, which has lost more than 40 lawyers in its Chicago office from January 2004 to April 2005, according to the survey. Daniel Kaufman, the managing partner of Michael Best's Chicago office, has said the defections have come in part because of the failure of a merger four years ago with Chicago firm Schwartz & Freeman.

"It's complete misery seeing your firm fall apart," Elden said. "There's a reason why we're 43 lawyers now."

Just fine, thank you

Bryan Schwartz, managing partner of 55-lawyer firm Levenfeld Pearlstein, said he wouldn't want his firm to enter the rat race of a larger firm trying to boost profits.

"I call them lawyer factories. They have to keep acquiring new firms in order to survive. To pay their own partners, they have to buy law firms and lawyers — thus buying their clients — and get new lines of business at lower rates and increase those rates," Schwartz said. "Our lawyers don't want to put up with that. Our clients don't want the rate increase. The larger firms can leave us alone."

Grasso of Chuhak & Tecson said he and his fellow lawyers like the size they're at and would find little motivation to combine with a suitor.

"How much money will they pay me? I already make enough money. Do I need the ego gratification of being a duck in a bigger pond? Not if I have to give up my independence and control over my own destiny," Grasso said. "I like my odds at Chuhak & Tecson."

Firms in litigation and other specific practice areas can compete toe-to-toe with major firms, but other firms have more daunting disadvantages. Still, some of these smaller firms manage to find a robust market.

Barack, Ferrazzano, Kirschbaum,

Perlman & Nagelberg is a 79-attorney corporate firm, working on deals like mergers and acquisitions and corporate finance. They compete directly with big-name, national firms. The firm's smaller size can allow it to provide more hands-on service, he said, but it also has its downsides.

"I would have a lot more business if I were at a big firm. We do have market realities here that a small litigation firm would not face," Kirschbaum said. "We are shooting for the same corporate clients the megafirms are looking for, and we are going to lose some."

"We represent one prominent Chicago real estate person on a wide variety of deals, and recently we lost one of those deals because his business partner wanted a big, brand-name firm to represent them," he continued. "Our client was not going to fight for us with one of his financial partners, so we just had to let it go."

"If a big institutional client hires Skadden Arps and a deal goes bad, they say, 'What more could we have done? We hired Skadden.' If that same client hired Barack Ferrazzano and the deal went bad, their board would say, 'Who on earth did you hire? We never heard of them; it must be their fault,'" Kirschbaum said. "As a smaller firm, you have to deal with that every day. But we think a client doesn't hire a firm: He or she hires a lawyer. And we can do a better job than the big firms any day."

Kirschbaum said his firm can staff just as many high-quality lawyers on a deal as the major firms. "We've done mergers as high as \$2.5 billion because we're concentrated," he said. "When we need another lawyer on an ERISA matter or something, we get another firm. This one-stop shopping idea isn't that important. The client has no idea who

that ERISA guy is, anyway."

George P. McAndrews, a founding partner of 86-lawyer intellectual property firm McAndrews, Held & Malloy, said he gets merger offers all the time. Recently he sat down to dinner with one suitor:

"It was this venerable 140-year-old firm. They laid out their pitch, and I told them I couldn't believe their senior partners would agree to renaming the firm McAndrews, Held & Malloy. They didn't like the joke and got up and left. My Irish wit got the better of me."

McAndrews said his firm has developed a top-notch reputation and an easy-going culture, and he doesn't want to lose that.

"We have our lawyers' kids running up and down the hallways. Most of our artwork is Crayola... We're all on a first-name basis, and we like our culture the way it is," McAndrews said. "All of our board meetings are open, everybody has a voice. We have good hourly rates. Our lease rate is great; we have unbelievably low overhead; our office is in a train station, so we just hop on a train to our client. A large firm has nothing to offer us."

Thomas Fahey, managing partner of 101-lawyer firm Ungaretti & Harris, said it's perfectly fine for a firm to grow, but it shouldn't rush to do so without a strategic reason.

"If you rush, you lose control over your career and your firm's direction," Fahey said. "Your lawyers need to be happy, and a merger can make all sorts of people mad. If you have a mid-size firm with a great culture, good profits and clients that wouldn't benefit from expansion, it's best to just stay the course. At Ungaretti, we've fought the urge to merge. It just doesn't make sense for us. We have not much to gain and everything to lose."★

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