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Master and Commander

Lessons from an Am Law 100 partner who set up his own shop and lived (well) to tell about it.

By Mark P. Zimmett

MANY PARTNERS IN LARGE FIRMS dream of chucking it all and setting up their own practice. However, many also fear that without their firm's name recognition and resources, they will miss out on major matters. A seat at the table is no big deal in a penny-ante game.

But you can leave a big firm and keep a big practice. Today, one can handle sophisticated high-stakes legal work in a small firm. Add profits that can rival those at top-ten Am Law firms and control over your professional (and personal) life, and striking out on your own becomes an appealing alternative.

Getting started is relatively easy. As a friend described it: "Starting your own firm is only slightly more complicated than setting up the corner newsstand." True enough, but the real risks are realized along the way; like bungee-jumping with a family on your back, strapping on the harness is the easy part.

I HUNG OUT MY SHINGLE on November 1, 1990, and hung out everything else with it. Shearman & Sterling, where I was a young partner, had grown exponentially and reorganized. The ten-lawyer litigation team in which I grew up was merged with other litigation teams into a much larger single department. My cog did not mesh in the new configuration; the increased size did not suit me. Neither did the new emphasis, then prevalent at many large firms, on each partner specializing in a single type of litigation. Nor did the trend away from trying cases to managing projects. But my name wasn't "Shearman" or "Sterling" and there wasn't a thing I could do about it . . . except leave. As I was going, the late Robert Knight, a former head of the firm, called: "You may be feeling a bit apprehensive. I want you to know that my cousin opened his own firm in the depths of the Depression, and it worked out for him."

"Thanks, Bob. Who's your cousin?"

"Eli Whitney Debevoise."

My father-in-law called, too. He added these words of encouragement: "Do you know what you're doing?"

After all the calculation and careful consideration, there comes a time when you just must do it. On day one I leased two furnished offices down the hall from the Ninja Turtle producers. On day two I began a week-long trial, courtesy of a supportive client and my former partners.

Eight months into this adventure, I returned to the office after July 4 and went through the morning rituals: hung up my jacket, sat down, unlocked my desk drawer. Then I discovered I had nothing to do. *Nothing. No thing. Not one thing.*

Before the holiday, we had finished two projects and there was nothing left to do but straighten the paper clips. So I called my mentor at Shearman & Sterling: "It's over. I lasted eight months, but now it's over." His answer: "You've just learned a very valuable lesson: Never get so involved in doing what you're doing that you stop looking for more to do."

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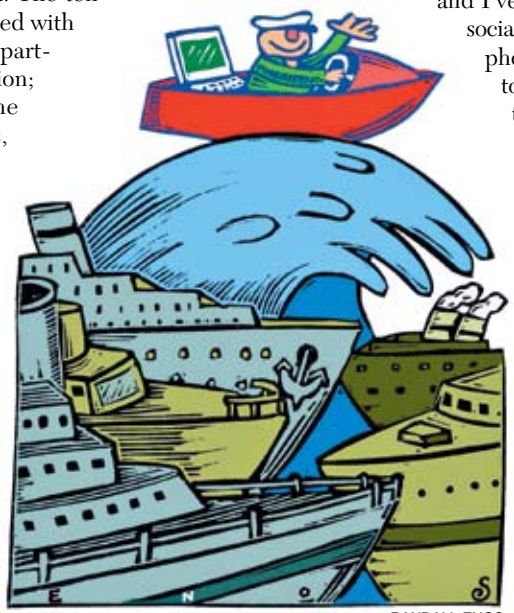
Okay, but couldn't someone have just told me?

MY FIRM IS SMALL. We max out at four associates, a law-student clerk, and two secretaries. There are obvious—and not so obvious—differences from a large firm. One is administration. I do all of it: hiring professional and non-legal staff, evaluating health care and pension plans, purchasing computer equipment, arranging for DSL service, and reviewing every invoice to be paid. I also do less of it. I have few—virtually no—administrative meetings. I have few computer runs and spreadsheets. QuickBooks provides me and my accountant with most of what we need. I don't require nearly the amount of data that a large firm needs to manage lawyers in different cities and countries or even on different floors. My practice fits in 2,193 square feet; it's all in my head and in front of my face.

Another difference—less conspicuous, but more significant—is my proprietary feeling for my practice. Late at night I have walked cartons of documents on a luggage carrier to the post office down the street, and I've spent early morning hours at Kinko's with an associate and a secretary (or, in a pinch, my wife) when our photocopier went on the blink and there was no time to arrange for our duplicating service to pick up. Not that this does not occasionally happen at a large firm. In the early eighties, the late Walter Wriston, then the chairman of Citicorp, worked the photocopier one night during the Iran litigation. But that was a rare (and memorable) occurrence. Here it happens a bit more frequently, and when it does, it's my job to see that the job gets done. My name is on the door.



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Perhaps more surprising than the differences are the similarities, particularly in the work we do. Securities and financial litigation is a mainstay of our practice, including broker-dealer and shareholder derivative cases, claims for underwriter due diligence, and litigation of such esoterica as credit derivatives and cross-currency interest rate swaps. And our small size has not deterred us from handling big cases, such as:

- A $115 million international aerospace

arbitration with 37 witnesses and a warehouse full of documents;
- Four related hedge fund cases in New York and Delaware, one of which was a three-week jury trial;
- A six-year, 40-party state court lien law litigation, related AAA construction arbitration, and bankruptcy; and
- A civil RICO trial in which we won a multimillion-dollar judgment for treble damages, attorneys' fees, and 40 acres of East Hampton, title to which had been concealed through a Panamanian corporation and an offshore trust in Bermuda.

These are the same cases handled by large firms. I know that because they are my adversaries: Baker & McKenzie; Cleary Gottlieb Steen & Hamilton; Debevoise & Plimpton; Dewey Ballantine; Hogan & Hartson; LeBoeuf, Lamb, Greene & MacRae; McDermott Will & Emery; Morgan, Lewis & Bockius; Simpson Thacher & Bartlett; Weil, Gotshal & Manges; and Williams & Connolly.

How can a small firm compete? Experience, flexible staffing, close supervision, and technology are all important. My experience at Shearman & Sterling was invaluable. I trained on forged check, landlord-tenant, and other cases that gave me a lot of trial experience, and later graduated to larger and more complex matters, such as the collapse of Banco Ambrosiano (the Vatican bank scandal) and seizing assets from Nicaragua's deposed president, General Anastasio Somoza.

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At my new firm, I initially hired law students and part-time lawyers. I could hire several for what I would later pay in salary to each full-time associate. And by having several at once, I could field a team when required.

The associates have been relatively young, generally two to four years out of school. Smart as they are, they are inexperienced. But that can be managed. Before assigning them a research question, I make sure I know something about the law at issue so I can guide them and evaluate their work. If it is an area of law new to me, I identify the major treatises, look for PLI and ALI–ABA materials, and speak to colleagues in other firms. I ask the associate to come back to me in three to five hours to help avoid wasted time researching dead ends. I map out the discovery to be taken. And when it's time to draft an affidavit or brief, I often prepare the first draft or a detailed outline and ask the associate to edit and critique it. This can be far more efficient than having the associate try to guess at the argument I see outlined in my mind's eye.

With today's technology, we have reviewed, digested, and organized thousands of warehoused documents and electronically stored images. In a recent case, we processed 200,000 documents in a warehouse as part of our discovery. To handle the workload, two of my associates worked with an associate from a local law firm based near the warehouse and a few contract attorneys were retained on a temporary basis. The team created a database that enabled us to locate and access documents.

Pleadings that would have required a battery of typists in the mid-eighties now can be prepared by an assistant or two using advanced computer software. And a whole law library is available on a laptop.

So I can field a team to staff a case and use technology to do much the same work as a large firm. Admittedly, a small firm handles fewer engagements, and a trial is all-consuming. But so too is a trial all-consuming for a partner in a large firm. I know, I have done both.

Yet many people are surprised, if not skeptical. How can a small firm handle a large case? One might turn the question around. Since technology has made it possible to generate a large volume of sophisticated work product, conduct thorough research, and locate, retrieve, and organize massive amounts of data without large staffs, why must large firms be so large?

Two years ago, a conference of major firms listed as a topic for discussion: "David vs. Goliath . . . Bigger Is Not Always Better." The large law firms of the eighties had a few hundred lawyers. At that size, they fought epic hostile takeovers, workouts, antitrust cases, and other multijurisdictional battles. Today those firms have well over 1,000 lawyers. Is bigger better? If so, for whom?

AS WITH ANY PRACTICE—no matter the size—there are cycles: Some periods are leaner than others. These have occurred with biblical regularity every seven years; happily not more often. How do they turn around? I'm not sure, but my experience has convinced me that if you pay attention to business development, you will develop business. You might target prospective clients A, B, and C. You never hear from A. B hires you right away, and eventually C has a case for you, too. But in the meantime, you also were engaged by D and E. You never marketed yourself to them. Where did they come from? Well, somehow they heard about you. Marvelous!

Not that it's magic. Clients are referred by other clients and by other lawyers—including my former partners—lawyers at other firms with conflicts, lawyers in search of cocounsel or counsel for an additional party, and out-of-town lawyers who need a litigator in New York.

Over the years I have developed certain views about law firm marketing. The more marketing you do, the more comfortable you become doing it until you risk becoming the object of your former contempt. Not all marketing requires, or even involves, a "hire me" solicitation. Some does, but it is not always necessary and can be quite off-putting. Don't do what you are not comfortable doing; you will be awkward at it and do it poorly. Instead—or in addition—publish, speak, participate in bar programs and activities, and even host your own programs. In this way, others get a sense of you and perhaps also your work, and you get to know your colleagues at the bar. All of which is helpful when they or you need to recommend—or hire—counsel.

WHAT'S THE PAYOFF? I have earned a comfortable living. Frequently profits have ranged within those at top-25 and sometimes top-ten firms on The Am Law 100 partner compensation charts. In other years, well . . . not so much.

But profits are only one measure and surely not the most important. No one will—or should—remember how much money lawyers make practicing law. Lawyers don't earn the Big Bucks, only lawyers' bucks.

An important benefit is having control over my professional and personal life. I decide what types of cases to work on. Someone suggested early on that I handle a certain volume of commodity-type work, such as bills and notes cases, to cover the overhead. I don't want to do that. So I don't. I handle a wide variety of cases, and the diversity makes the practice interesting. In addition to the cases already mentioned, my associates and I have litigated and arbitrated executive employment disputes, unfair competition, franchise, and product liability cases; we advised a public company on a libel claim and defended a best-selling author and a television producer in an action alleging invasion of privacy. What they all have in common is that they were important to the clients and, therefore, to me. I'm their lawyer.

I decide which clients to represent, and which not to. There were clients who thought they did not have to tell me all the facts. I got rid of them. And there was a foul-mouthed young trader who spoke abusively to an associate; I got rid of him too.

I choose the young associates with whom I work. I enjoy teaching them and believe they enjoy their work and value their training. They stay for three or four years, then move on with their careers, often with my help.

Is practice in a small firm better than in a large one? I wouldn't say that. Which one is better, a Rolls or a Ferrari? Chocolate or vanilla? It's largely a matter of personal preference; what suits one's personality and taste. The point is that one does not have to sacrifice sophisticated work in a small practice.

Did I know what I was doing, as my father-in-law asked? Not really. One does not know until one does it. But with luck and pluck one makes one's way, and, as Bob Knight said, it can work out.

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