

## The Open Kimono: What Drives the Rising Success of Midsize Firms?

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Back in the 1980s, the “death of the midsize firm” was a constant refrain among consultants and other pundits. Of course, those reports were, like Mark Twain’s premature obituary, greatly exaggerated. By definition, the midsize firm cannot altogether die, since any firm on its way to join the AmLaw 250 has to at least pass through a stage when it is, by whatever numerical standards apply, “midsize.” Sure enough, 30 years later, the marketplace remains populated with many varied midsize firms, including both multi-office “regional” firms as well as single-office firms in major markets.

Yet—as most readers of this publication know too well—the relentless growth and consolidation of Big Law has underscored the challenges facing midsize firms. In 2019, the economies of scale are all the more daunting, the demand for global “platform” all the more importunate. Presumably, to succeed today, midsize firms need fresh arguments to wean legal service buyers away from the brand-name behemoths.

addressing a large audience of general counsel from diverse companies and industries, what one message regarding the legal marketplace would you want to send them?”

To get a sense of what those arguments are, I asked leaders at three midsize firms that seem to be thriving in the current environment to answer a simple but critical question: “If you were

I was interested to see if any of their answers would include ideas that could not have been part of such answers three decades ago. Here’s what I got from John P. Langan, managing partner of Barclay Damon, which has grown via merger to become the dominant regional presence in upstate New York.

“Give us regional firms a shot. We know the pressure you’re under to reduce costs while assuring reliable legal services are delivered. Firms like ours are often nimbler in proposing alternative fee structures ... We’re built from a cost structure that does not carry with it the national or global law firm expense tax you are paying to many of the AmLaw firms. We won’t be suited for all of your work but there is a lot more of it we can handle, with equal to better service and for a lot less money.”

For some corporate buyers, “alternative fee structures” are the key words in Langan’s response. They did not exist in their current form in the 1980s. Sure, there were fixed fees as well as premiums and discounts but there was not, as in recent years, a watershed trend such that alternatives to hourly rates are often beauty contest qualifiers. While midsize firms in the past would typically highlight lower rates, clients were often averse to overt rate-shopping as it had a bargain basement feel that made them uncomfortable. By contrast, AFAs are more strategic and show a firm’s inclination to partner with the client in broader ways that meet the needs of both buyer and seller.

Yet no one ingredient in the mix can account for what Reber (Mitch) Boulton, an executive committee member at Adams and Reese, sees as conspicuously increased opportunity in the current market for midsize firms to successfully compete with AmLaw 50 firms. As an example, Boulton says that Adams and Reese, originally a New Orleans firm that grew to be a regional force in the South, was just selected over “a raft of AmLaw 50 firms” to represent one of the world’s largest manufacturing concerns.

According to Boulton, his firm’s success isn’t anomalous. Greater competitive viability among midsize firms in general constitutes “a recent trend ... I’m not sure what’s behind it. Everyone says it’s the cost difference—if you accept that lawyers at midsize firms have the same talent as their big firm peers, while charging vastly lower fees, the value proposition is irresistible. But I’m not convinced that explains it. When we compete for work, we see the AmLaw 50 firms come down to our cost level or even below [emphasis added]. Maybe it’s demographic shifts out of New York and L.A., the ubiquity of information on firms of all sizes, or the initiatives of major corporations to become smarter consumers of legal services. Maybe midsize firms are hungrier and try harder.”

Boult would tell our audience of GCs:

“There’s a lot of sophistication in midsize firms that many large companies have not yet tapped into. There is objective evidence for this. [AdvanceLaw’s Thought Leaders Experiment](#) has taken an in-depth look into the performance of midsize firms compared to ‘top-tier’ firms, and found the work quality and client service are the same or a little better in midsize firms.”

It seems as if a certain transparency, more typical of midsize firms than Big Law, is often an important part of that client service. Here’s what [Roger E. Barton](#), managing partner of the 37-lawyer Barton LLP in New York—which has attracted a number of Big Law alumni and actively markets the fact that it has—would tell our GCs:

“Just as GCs ask firms about their commitment to diversity and inclusion and assess these factors at the working group level, *GC’s should ask their firms detailed questions about their internal financial organization and structure. A lot can be learned about a firm and whether its interests are aligned with their clients if items such as partner and associate compensation and performance metrics are understood* [emphasis added]. Many Big Law firms are managing themselves in such a way as to outperform their peers on league tables rather than delivering value around conference room tables for their clients. As a prominent GC once said to me, *‘It takes a strong law firm partner to have more loyalty to the client than to their partners.’*

At a time in our society when transparency is so highly valued, the level of disclosure that Barton advises—be it to formulate a practicable AFA or simply share information with clients as a matter of policy—can only serve the self-interest of midsize law firms.

To a greater extent than in the past, the tide has begun to turn in their favor—even if clients themselves aren’t necessarily aware of this sea change. Mitch Boult recalls sitting at a bar with a friend of his who works in-house in New York. “Your firm will never represent us,” his friend told Boult, and named three large New York firms that do.

“I said to him, ‘Carlos, your company paid us \$2 million last year,’ which it did. He fell off his barstool. My message to him: The world is changing.”

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