

THE  
AMERICAN LAWYER

July 2004

Too GOOD  
to be TRUE?

Judged by the standards of a society wedding, the Hale and Dorr–Wilmer Cutler union looks ideal. But when it's measured by the cold, hard standards of business, uncomfortable questions arise.

By Vivia Chen

IT WAS A MARRIAGE OF LOVE, NOT convenience; an attraction built on similarities, not differences. Successful, pedigreed, and dapper, each was considered a fetching prospect. Neither needed to get hitched to advance in the world.

As law firm mergers go, the May union of Boston's Hale and Dorr and Washington, D.C.'s Wilmer Cutler Pickering ranks as a royal wedding. Both blue bloods, the firms share striking similarities: illustrious histories (Hale and Dorr lawyers played a leading role in challenging Joseph McCarthy during the Army-McCarthy hearings, and Wilmer Cutler helped create the Lawyers' Committee for Civil Rights Under Law); stellar reputations (both members of *The American Lawyer's* "A-List," Hale is known for its technology practice, while Wilmer is famed for securities regulation and litigation work); and dazzling resumes. ("They have a hell of a lot more Supreme Court clerks, but we have more Ph.D.s," says one Hale-side associate.) Each has about 500 lawyers and recorded about \$800,000 in profits per partner last year. What's more, both share something that goes to the core of their identities—cultures known for openness and collegiality that seem to run deeper than recruiting hype.

Despite all the right stuff for a picture-perfect union, the jury is out as to whether this merger will actually succeed on a business level. It's been touted as that rare merger of equals in which both sides will share in the governance of the combined firm. "The hardest kinds of mergers are mergers of equals," says consultant Ward Bower of Altman Weil, which was not involved in brokering the union. "It's a big deal and a bold venture. If it works, it's a home run."

And if it doesn't work, the skeptics will be patting themselves on the back. To some veterans of law firm consolidations, the concept of a merger of equals just spells trouble. "It's not our strategy," says a partner at an East Coast firm who's orchestrated several law firm acquisitions. "If the ground rules aren't clear about which firm is in charge, there will be upheaval."

But William Lee and William Perlstein, the co-managing partners of the newly minted Wilmer Cutler Pickering Hale and Dorr, make the logistics of shared management sound pretty easy. Lee, who was Hale and Dorr's managing partner, says that key committees, such as those for management, compensation, and policy, will be represented in equal



The Bills: Perlstein (left) and Lee, near the former Hale and Dorr's offices in Boston

numbers by members of both firms. As for their own roles, both Bills refute the notion that there might be a power struggle: “I don’t think either firm will dominate,” says Perlstein, while Lee says, “Bill Perlstein and I work well together; we have good chemistry.” Lee stresses that the co-managing partner idea is “not a transitional structure.” Lee and Perlstein have committed to hold those posts for the next three years; after that, Lee expects the power split to be a moot issue: “Three years from now, if partners still view themselves as Hale and Dorr or Wilmer partners, we would have failed.”

So far, the partners from both firms are falling in line. Not only did they vote unanimously for the merger, but Lee reports there was no acrimony about usual sticking points like power and money. “It took us one hour to discuss the name [of the firm], management, compensation, and the executive and management committee structure,” boasts Lee. He says significantly more time was devoted to getting people to meet each other

allowed senior associates to stay on indefinitely. Though the exact policy is still in flux, Perlstein assured folks that “[their jobs] were not at risk.” On that same issue, Lee says, “We’re not adverse to [Wilmer’s policy],” adding that it “won’t be a big issue.”

If the associates are sweating about these details, they don’t show it. Fact is, they sound downright effusive about the merger: “There’s overwhelming excitement . . . not a word of disparagement,” says a Hale-side associate. That point is echoed by a Wilmer-side midlevel: “Most associates are sold on the strategic reasons for the merger. Management has done well in articulating its goals.”

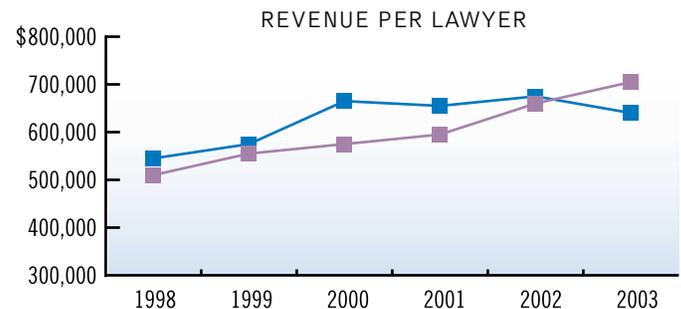
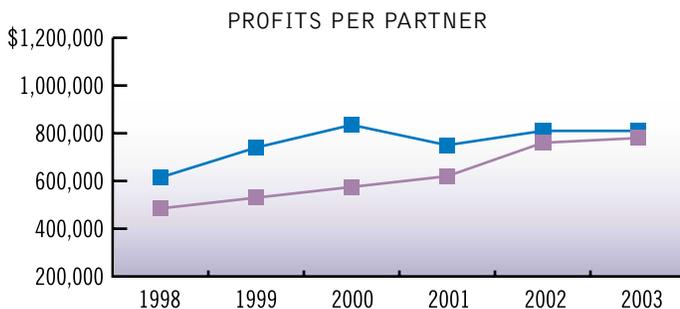
What was articulated, says Lee, was a business case for the merger with three key components. First, he says the merger creates a firm with ten to 12 of the “best practice areas in the country”—including antitrust, bankruptcy, trade, securities enforcement, litigation (IP, securities, white-collar, and appellate), and technology. Second, he stresses that the combined firm

bafflement as to why such expensive goodwill would be thrown away. (Neither Zeughauer, who is also an *American Lawyer* contributing editor, nor his consulting firm were involved in brokering the merger.)

There’s also speculation that Wilmer stood to gain more from Hale and Dorr’s strengths than vice versa. One former Hale associate notes that the firm had “a dynamic high-tech corporate practice,” while Wilmer Cutler had a much more run-of-the-mill—albeit Fortune 500-based—corporate department. Perlstein doesn’t deny that Hale and Dorr had a stronger transactional practice. (“It’s difficult to develop a top corporate practice in Washington, D.C.,” he says.) He also admits that Hale and Dorr’s strength in intellectual property was a big lure for his firm. But he insists that Wilmer’s antitrust, securities, and regulatory practices will complement the high-tech practice, arguing that there’s increasing overlap between those areas. “IP will bind the firm,” Perlstein says. “The combined firm will be much more focused on IP.”

## Moving Toward a Merger

After trailing for years, **Wilmer Cutler’s** profits per partner approached **Hale and Dorr’s** last year, and Wilmer’s revenue per lawyer surpassed Hale’s.



rather than in hammering out details: “People think we spent eight months haggling. Not true; we spent eight months having people meet each other.” What’s more, Lee adds that the resulting merger agreement is only eight pages long.

The combination is billed as a union in which no one is left holding the short stick. No partners have been forced out or deequitized as a result of the merger. “It’s one partner, one vote,” says Perlstein. “We truly pooled everything—assets, clients.” Luckily, adds Perlstein, there were “only one or two” conflicts of interests among their clients. (Shortly after the merger, a Hale-side partner departed; Lee says it was for conflicts reasons.) As for policy differences, Perlstein says, “[We] are committed to adopting the best policy regardless of what either firm had done in the past.” For instance, Hale and Dorr had an up-or-out policy regarding those who are passed over for partnership, while Wilmer

will have a superb reputation that builds on the individual quality of the two legacy firms, and that this will attract new business. Third, he says the combined firm will have a “great hiring platform” to draw top candidates for the future. It’s a vision that Lee says he and Perlstein share.

Despite the good vibes between the two shops, those on the outside wonder how long this love-fest can last. Already, there’s speculation over which firm is really on top. That Wilmer Cutler’s name appears first, says a partner of a Boston firm, shows that “Wilmer is stronger and has more cachet.” Lee says the name was not a big deal, that Wilmer Cutler appears first because two of its name partners (Lloyd Cutler and John Pickering) are still alive and that the “and” that joins Hale and Dorr sounds better at the end. Still, the new name stirs some talk. “Hale and Dorr spent a lot of money branding itself,” notes law firm consultant Peter Zeughauer, who expresses

That plan may run into snags if the firm plans to go after the IP work of Wilmer’s Fortune 500 clients, says management consultant Ralph Savarese, the former managing partner and chair of Washington, D.C.’s Howrey Simon Arnold & White. “It won’t be easy, because those clients probably have IP lawyers,” says Savarese. Nonetheless, Lee calls the merger an “even trade”; he says the focus shouldn’t just be on how specific practice areas fit, but on the overall picture.

Which brings up the real question: Does this merger make plain business sense? Will there be enough of the proverbial synergy to justify the expense and trouble of the merger? “It will give them a chance to compete for big litigations on a national scale,” predicts Jeffrey Jones, managing partner of Boston’s Palmer & Dodge. But on the business side, Jones adds, “the upside is less apparent. . . . Boston is not home to Fortune 100 or 500 companies”—the type of companies that Jones says could make

better use of Wilmer's securities and regulatory practices. Besides, Jones says, if high-tech clients need regulatory work, "it can be done quite well from Boston; it's not necessary to do it in Washington." Jones's take on the deal: "It's the tail wagging the dog."

Lee readily admits that business considerations were not the first priority in this merger. That has something to do with history: In 1995 Hale and Dorr bailed out of a joint venture in New York with Brobeck, Phleger & Harrison, the now defunct technology powerhouse. Before the breakup, both firms toyed with the idea of merger ["Tech Twins," September 1999]. Though there was a solid business rationale for joining forces (it would create the first bicoastal technology firm), the two firms had vastly different approaches to expansion and culture. To Lee, that near-miss was instructive: "We took away the lesson that cultural fit was key. This time we got to cultural fit first."

It's also not clear how this merger will propel the combined firm onto the national stage. Though neither Hale and Dorr nor Wilmer Cutler cited the quest for national prominence as a reason for the union, few doubt that that's a goal behind the formation of this 1,000-plus-lawyer firm. Lee coyly says that the merger will "clearly make [the firm] even more nationally prominent." But consultant Zeughauser says he can't see how that goal is achievable, "when the bulk of your lawyers are in D.C. and Boston." Going into the merger, neither firm had a significant practice in New York; the combined firm has about 100 lawyers there. Moreover, neither firm brought over a California office, though both have offices in Europe, and plans are under way to establish a Beijing office.

"They very seriously need to establish themselves in New York and the West Coast," says Jay Zimmerman, chairman of 850-lawyer Bingham McCutchen. "They will eventually have to do acquisitions, as we have done." (Zimmerman quadrupled the size of Boston-based Bingham in the last ten years by swallowing up firms, primarily in New York and California.) But that kind of aggressive strategy is anathema to the new firm: "We will not do more mergers just to get bigger," Perlstein says emphatically.

So does the merged firm have a better chance of acquiring a quality firm in a tough market like New York than either Hale and Dorr or Wilmer Cutler would have? Altman Weil's Bower thinks so. He says the firm now has a "greater platform" to acquire a medium-size New York firm. Whether that will translate into results at a time when a dozen firms are trolling for an area code 212 acquisition remains to be seen.

What is clear is that the merger unites two well-tended reputations. The big reason they merged, suggests a Boston-based partner at another firm, is that each "sought comfort in finding another firm of similar quality." They

couldn't have engineered this deal, says this partner, "without appealing to the pride and snobbery of the partners."

Lee and Perlstein don't deny that both firms traveled in the same rarefied circle. "We knew each other quite well; the reputation was a given," says Lee. Moreover, "neither set of partners felt they needed to do a merger to be competitive," says Perlstein. "When you have two firms at the top of their practices with strong firm histories . . . the only way partners would take this step is to do merger of equals."

Put another way, this merger of equals is also about finding a mate that mirrors the other's self-image—one that is so reassuringly familiar and flattering that each is willing to share its identity. So was there a streak of narcissism driving the merger? Perhaps. "They love their own reflection, which is very Hale Dorr-ian," says the unnamed former Hale and Dorr lawyer.

For all the talk about shared cultures and values, the merger ultimately will be judged by the bottom line. To justify the merger, the combined firm will need to pull in bigger numbers. "If one plus one equals two, then we would have failed," says Lee, adding that financial results should be apparent in less than a year's time. But both Lee and Perlstein refuse to quantify what makes a successful result. They say that financial projections weren't made during the merger talks. "There's no number out there," says Perlstein, because "a lot depends on matters in the pipeline." Adds Lee: "When you're in a service organization, it's hard to project." That approach might seem surprising for a business with more than \$700 million in gross revenue, but it's hardly unusual, says Zeughauser, noting that firms seldom do projections prior to mergers. "The way [firms] tend to measure success is less in dollars but more in expanded client relationships," he says. "It's more about how they are going to sell rather than how much."

The two Bills agree that it's all about processes. To facilitate the task of integrating people and systems, Lee says, "scores of people, over a hundred" from both firms, have been teaming up on issues, ranging from business development hiring to computer systems. As for practice management, coheads will run departments—such as litigation, securities, and corporate—where both firms have active practices, for at least the first 18 months. And how will partners share associates? "Each department will have its own workload system," says Lee. "We're not forcing anything too quickly . . . we are melding them over time." Certain groups will mix quicker than others, he suggests; for example, litigation, which is strong in both legacy firms, will take longer to integrate, while trade—a Wilmer Cutler forte—is already operating as one unit under the Wilmer Cutler helm. For now, there are also no plans to relocate partners from the Boston

or Washington hubs. But Lee adds, "I think it would be healthy if partners would move."

That the integration process is so decentralized on the department level is surprising—particularly since Perlstein warns that the biggest risk is that the two firms would fail to integrate quickly enough: "If people's ways of practicing don't change in 12 to 18 months from now, we would have missed an opportunity." But, he adds, "[integrating] is within our control."

Control? Perhaps that's a bit hopeful. Although there's plenty of enthusiasm for cooperation right now, integrating these two extraordinarily proud firms is not a sure thing. Lee says that firm loyalty has always been Hale and Dorr's biggest strength—and weakness. He says that the "single concern" raised by his partners during the merger was, "Why can't we remain Hale and Dorr?" Even the former Hale and Dorr lawyer counts himself as one of the folks "who are regretful about losing the secret sauce and the brand name."

But Lee and Perlstein have been steadfastly confident that the merger makes sense—so confident that neither sought clients' blessings before deciding on the union. Lee says a week before the merger was announced, the two firms called about a half-dozen clients, including Citigroup Inc., General Electric Company, Boston Scientific Corporation, RSA Security Inc., and Wyeth. Those calls were intended to appraise clients' willingness to speak to the media about the merger, he adds. Lee says that the reaction was overwhelmingly positive, especially from clients, such as General Electric, who had worked with both firms. Before the merger papers were signed, Perlstein says, both firms teamed to pitch matters that were unlikely to be awarded to either alone.

Despite the skepticism about the hype surrounding this merger, no one is predicting that it will fall flat on its face. Even those who question the business rationale for the merger say it might succeed. "If there's a chance of a true merger of equals, it would be this merger," says Jones of Palmer & Dodge, who adds that he has great respect for both firms. "These are two white-shoe firms, with wicked-smart people working for it," says an associate from the Wilmer Cutler side, adding, "There's a lot of hope on the associate level that the firm will work."

So the prediction is that the lawyers at Wilmer Cutler Pickering Hale and Dorr are much too brilliant to screw this up, too savvy to get seduced by their reflected glory. Certainly, Narcissus can't compete with their resume.

---

This article is reprinted with permission from the July 2004 edition of THE AMERICAN LAWYER. © 2004 ALM Properties, Inc. All rights reserved. Further duplication without permission is prohibited. For information, contact American Lawyer Media, Reprint Department at 800-888-8300 x6111. #001-07-04-0002