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## THE NLJ 250

# Big firms growing, but by a thin 1.5%

Top 250 firms grew at lowest rate in 10 years; associate numbers fall.

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STAFF REPORTER

IS THIS WHAT THEY mean by a jobless recovery?

The nation's 250 largest law firms continued to grow last year, but just barely. The attorney headcount inched up by 1.5%, compared with last year's

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1.6%—the lowest since 1994. Even more revealing, the number of associates dipped by 3.5%. It was only the third time in 27 years that associate staffing dropped in consecutive years.

Those are two findings of *The Nation-*

*al Law Journal's* survey, which has ranked firms by total number of attorneys every year since 1978.

Baker & McKenzie finished first, as it has each year, but for the first time, it lost attorneys in consecutive years. It still employs 3,194 lawyers, almost 1,000 more than Jones Day, which remained in second place.

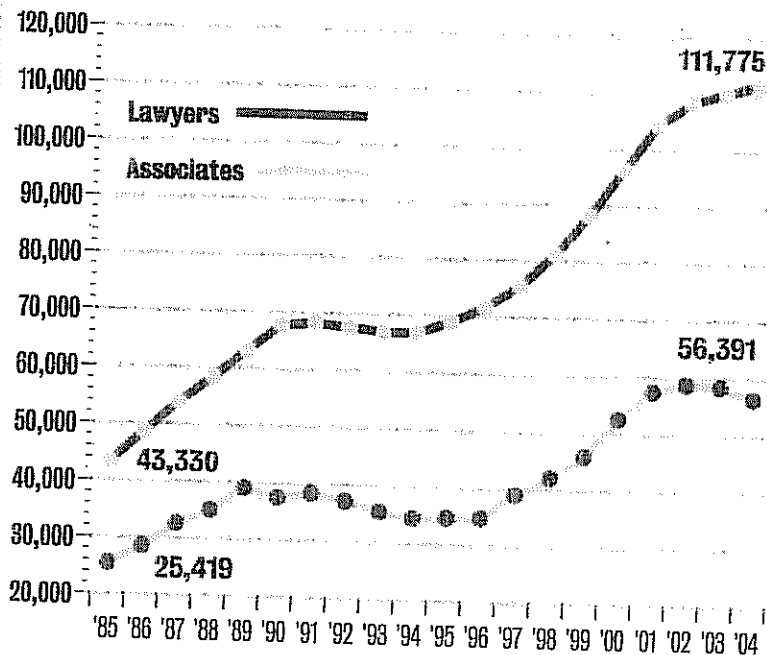
There was some reshuffling in the next eight slots. Skadden, Arps, Slate, Meagher & Flom of New York, which was passed by Jones Day last year, was leapfrogged again. It trimmed 96 attorneys while White & Case added 176, moving to No. 3.

Another growth leader burst for the first time into the top 10. Greenberg Traurig, which added 261 lawyers (for a total of 1,284), moved from No. 12 to No. 8.

The one new entry in the thousand-lawyer club resulted from the year's only splashy merger. Wilmer, Cutler & Pickering of Washington, last year's No. 55, tied the knot with No. 71 Hale and Dorr of Boston. Wilmer Cutler Pickering Hale and Dorr, which boasts 1,100 lawyers, entered at No. 12. (The recently announced merger between Piper Rudnick and Gray Cary Ware & Freidenrich—with the planned addition of the British firm DLA afterward—was outside the

## DIVERGING POPULATIONS

Total number of lawyers and total number of associates at NLJ 250 firms, 1985 to 2004



survey year, which ran from Oct. 1, 2003, to Sept. 30, 2004.)

### Managing carefully

Consultants said that the broad message they read from the survey is that law firms are managing their businesses carefully. It's not so much a jobless

recovery, they suggested, as it is a recovery requiring a skillful deployment of lawyers to handle the work—and keep up profits.

Economic growth has outpaced headcount growth, according to Bradford Hildebrandt, founder of the consulting firm Hildebrandt International. Many of

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### TOP 10 GROWTH LEADERS

| Firm (rank)                                          | Attorneys<br>in 2004 | Attorneys<br>in 2003 | Percent<br>growth |
|------------------------------------------------------|----------------------|----------------------|-------------------|
| Wilmer Cutler Pickering Hale and Dorr (12)           | 1100                 | 576                  | 91%               |
| Polsinelli Shalton Wolfe Suetthaus (198)             | 200                  | 139                  | 44%               |
| Ogletree, Deakins, Nash, Smoak & Stewart (159)       | 253                  | 178                  | 42%               |
| Greenberg Traurig (8)                                | 1284                 | 1023                 | 26%               |
| Dykema Gossett (122)                                 | 345                  | 275                  | 25%               |
| Sutherland Asbill & Brennan (92)                     | 414                  | 333                  | 24%               |
| McCarter & English (119)                             | 348                  | 291                  | 20%               |
| Lathrop & Gage (151)                                 | 275                  | 230                  | 20%               |
| Stephoe & Johnson LLP (95)                           | 405                  | 344                  | 18%               |
| Baker, Donelson, Bearman, Caldwell & Berkowitz (100) | 391                  | 339                  | 15%               |

the top firms showed profits and revenues up by nearly 10%, he said. The slower hiring is a reflection of consolidation in recent years, which has created "such large firms that a lot of firms are still digesting that growth," he said.

These statistics were particularly significant, according to the consultants:

■ Nonequity partners are up. Though some firms refused to disclose their numbers, they rose by 9.2%, on top of last year's 10.5% jump. By comparison, all partners grew by 4.2%.

■ The number of "other attorneys," which includes of counsel, grew by 21%.

■ Though temporary and contract lawyers aren't included in the headcount, use of them jumped by a whopping 55%.

■ The number of lawyers working abroad continued to grow, but at a slower pace. What was a 12.8% increase in 2002 and 6.1% last year slipped to 3.3%.

The drop in associates doesn't indicate a problem, said Peter Zeughauser of The Zeughauser Group. Many firms are well staffed and aren't overwhelmed with work. They don't need to hire as many associates. As a result of the dot-com bubble, some still have too many coming up for partner.

"That's where the nonequity tier comes in handy," he said. "Clearly the nonequity trend is going to continue." The trick for firms, he added, is to manage the expectations of the associates, and to build flexibility into the nonequity tier so that compensation is commensurate with contributions.

Becoming an equity partner is more closely tied to economics than ever, said Ward Bower, a principal at consultant Altman Weil.

"Being a good lawyer is not enough anymore," Bower said. A lawyer must also demonstrate good client relation-

### 10 FIRMS THAT SHRANK THE MOST

| Firm (rank)                                         | Attorneys<br>in 2004 | Attorneys<br>in 2003 | Percent<br>down |
|-----------------------------------------------------|----------------------|----------------------|-----------------|
| Testa, Hurwitz & Thibault (150)                     | 280                  | 334                  | 16%             |
| Sullivan & Cromwell (47)                            | 653                  | 745                  | 12%             |
| Swidler Berlin Shereff Friedman (170)               | 239                  | 271                  | 12%             |
| Shaw Pittman (126)                                  | 335                  | 378                  | 11%             |
| Shook, Hardy & Bacon (65)                           | 539                  | 601                  | 10%             |
| Michael Best & Friedrich (131)                      | 322                  | 357                  | 10%             |
| Dinsmore & Shohi (166)                              | 244                  | 270                  | 10%             |
| Mintz, Levin, Cohn, Ferris, Glovsky and Popeo (101) | 383                  | 422                  | 9%              |
| Vinson & Elkins (34)                                | 745                  | 819                  | 8%              |
| McKenna Long & Aldridge (135)                       | 314                  | 343                  | 8%              |

ships and generate more work than one person can handle. The partner has to delegate the balance to associates, and manage them to ensure they deliver efficiency and value to the client.

There were other explanations for the dip in associates. Some of New York's white-shoe firms dropped a surprising number. Sullivan & Cromwell showed a net loss of 92; Cravath, Swaine & Moore, 36. These firms don't have nonequity tiers and neither added many partners. But the decline in associates was not an indication that work has dried up, according to the firms' managing partners.

"Our numbers had built up during the economic downturn," explained Cravath's Robert Joffe. Neither firm believes in pushing associates out when no jobs are available, said Joffe and Sullivan & Cromwell's Rodgin Cohen. But this year, when the economy picked up, the associates who had been biding their time took

flight. In fact, Joffe said, his firm is a little shorthanded. "For next year, we're looking to have a bumper crop."

#### Temps: two thumbs way up

The big jump in temporary and contract lawyers seems especially significant to consultant Lynn Mestel of Mestel & Co. But when she speaks on this subject, she wears two hats. She also runs a company that hires out lawyers and paralegals, mainly for litigation support. Her business grew not by the 55% the survey found, but by 100%, she said.

"Legal work is getting commoditized," said Mestel. It's hard to keep associates interested enough even to want to make partner. A lot of the drudgery can be siphoned to temps. And they can also be a profit center for law firms, which can bill clients a higher rate than they pay agencies, she added.

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In 2003, firms said they used 1,412 of these lawyers. This year, they reported 2,190. To demonstrate the magnitude of this slice of the industry, Mestel did the math. Assuming these lawyers billed 1,800 hours at \$45 an hour, temps already represent a business that pulls in \$177 million annually.

Zeughhauser has seen the jump, but he isn't convinced it's a major development.

"I don't know if I would call it a trend yet," he said, "but there are clearly some firms that have seen how they can improve profits and management flexibility by using temps."

Bower, on the other hand, said he's convinced. "I think she's on to something," he said of Mestel. "I think this is going to be a permanent part of the legal industry in the United States for the foreseeable future."

So does Hildebrandt. "It's a pretty accepted way of practicing now," he said. "I think the stigma of that is pretty much gone." The next step, he predicted, will be outsourcing, which is already happening in litigation support. "There's not much difference in hiring a temporary lawyer in New York and a temporary lawyer in India—as long as you control it."

As for the growth abroad, the slowdown reflects one thing, said Bower: "The global economy has not come back the way we had hoped it would." But it's still growing, and particularly in Asia, Bower and others noted.

"Asian business is characterized by long-term personal relationships," Bower said, "and the sooner you get there, the sooner you're going to achieve that."

**Pennie Edmonds goes bust**

One large firm failed in the past year. Intellectual property boutique Pennie Edmonds shuttered its doors on Dec. 31, 2003. It was ranked No. 205 last year, with 190 lawyers. Many were scooped up after the failure by Jones Day.

"Some of the IP firms are still shaky—ones that have too heavy a reliance on patent prosecution," observed Zeughhauser. "They're susceptible to having their litigators picked off, which is what happened to Pennie. If you're an IP boutique, then you need to protect litigators by increasing the compensation ratio."

Last year, three large firms went out of business: Brobeck, Phleger & Harrison; Altheimer & Gray; and Arter & Hadden. The consultants mentioned several firms that may face challenges during the coming year, but Hildebrandt said: "I don't think there's anyone in serious trouble. We do have a couple of firms in what we like to call our intensive care unit," he said, but declined to name them.

One firm that had a particularly bumpy road is the New York IP firm Fish & Neave, which dropped from No. 196 to No. 245, losing 31 of its 196 lawyers, including nine partners. Last week, it was announced that the firm is merging with Boston's Ropes & Gray. (See Page 13.)

Fish & Neave Chairman Jesse Jenner said his partners' decision to merge came after serious debate about the future of intellectual property firms. The trend, Jenner and his colleagues felt, is to develop large, general-practice firms that can build stronger relations with with general counsel by working on a wide variety of matters.

"There is pressure to be part of a platform that looks a lot like the platforms that are trying to cherry pick you," he said.

Most of his partners are expected to join the merged firm, though some may not, Jenner added.

**Hostile towards mergers**

Another firm that had a difficult year was Boston's Testa, Hurwitz & Thibault. But its attitude toward merger is very different from Fish & Neave's, which was very open to talks with other firms. On the other hand, George Davitt, Testa's new managing partner, is actively hostile.

"We are in a very financially sound position," he insisted. "Unlike many firms, we have no debt." And their financial numbers, which were down in 2003, according to *The American Lawyer* (the NLJ's sister publication), have rebounded in 2004, he said. Still, the firm lost more than 100 lawyers over the past three years, dropping from No. 91 to No. 123 to No. 150.

"Like all firms that concentrated on the technology and venture capital market—most based in California—the post-bubble period was a challenging time," Davitt acknowledged. "It forced us as a partnership to re-examine ourselves."

**Growth in niches**

One firm that experienced remarkable growth was Kansas City, Mo.-based Polsinelli Shalton Welte Suelthaus, which gained 61 lawyers (44%) and leaped from off the list to No. 198.

Managing partner Russell Welsh said he'd expected movement, but not this much. When an opportunity came knocking in St. Louis, however, the firm opened the door. It already had a substantial presence there, and acquired a firm with 34 lawyers.

The economic recovery in the Midwest was partly responsible for the strong showing, but it was also a matter of niche, Welsh said.

"We can offer better rates and value because our cost structure is different," he said. Financial services, real estate and litigation are the targeted areas where their rate structure has made them especially competitive, he said.

Another big winner was employment specialist Ogletree, Deakins, Nash, Smoak & Stewart, which gained 75 lawyers (a 42% rise), moving from No. 223 to No. 159.

Nine firms on the list last year dropped off. Luce, Forward, Hamilton & Scripps of San Diego suffered the most precipitous decline, dropping from No. 216. **NEW**