

TAKEOVER ARTIST

BY John E. Morris

Rejected by Wall Street's blue bloods, Joe Flom got his revenge by building, from scratch, his own—larger—firm on the strength of the M & A tactics that he invented.

High tech may be the business story of the decade. But when historians look back on this century, they may see something else as the dominant economic theme of the last 50 years: the conversion of the corporation into a commodity that was bought, sold, rebought, spun off, taken private, leveraged, and then deleveraged and taken public again. Joe Flom was instrumental in that reinvention of American business, helping to engineer many of the biggest proxy fights of the sixties and the hostile tender offers of the seventies and eighties. At the same time, he had a vision for his law firm that turned Skadden, Arps, Slate, Meagher & Flom—an upstart even in the 1960s—into the largest legal business in the world, with revenues approaching \$1 billion.

With his perennial foil, Martin Lipton of Wachtell, Lipton, Rosen & Katz, Flom defined the takeover field and saw it through to its climax in the 1980s. Simpson Thacher & Bartlett partner John Finley says that both men had the kind of effect on their field that Babe Ruth had on baseball: “Not only were they great, but they defined the practice; they defined M&A advising.... They were a brand name.”

Flom isn't associated with any particular strategy or doctrine in the way that Lipton is credited with inventing the poison pill defense for target companies. Instead, over several decades, in one hard-fought deal after another, Flom, through his scrappiness and ingenuity, has built up a repertoire of tactics and legal maneuvers that are now standard practice in takeovers.

In the process, he legitimized takeover work for the white-shoe Wall Street bar. The turning point was a hostile bid launched by International Nickel Company of Canada for ESB Incorporated in 1973. International Nickel “was a blue-chip company with a blue-chip board,” as Flom puts it, and it was advised by Morgan Stanley & Co., Incorporated, then the most staid of the Wall Street institutions. When Morgan Stanley's Robert Greenhill advised his client to make the hostile bid, he recommended that the company hire Flom rather than Davis Polk & Wardwell, its regular counsel. Before that bid, it was virtually unheard of for such an establishment company to take over another company without its consent.

“[Flom] made the mergers and acquisitions practice a mainstream practice,” says Cravath, Swaine & Moore's Allen Finkelson. “Hostile takeovers were viewed by major law firms as something you didn't touch.... We were all representing blue-chip America and viewed it as dirty business.... [Now] there are thousands of lawyers making hundreds of millions of dollars because of the practice Joe made respectable.”

Many millions of those dollars now flow to Skadden partners each year. Not bad for a firm largely propelled by the son of a union organizer who was initially denied job offers by several New York firms because he was Jewish.

When Flom was brought on board in 1948 as the first associate of three-month-old Skadden, Arps & Slate, its founders had determined to hire people solely on merit.

By 1978, the firm had grown to 160 lawyers, with two-thirds of its revenue from the M&A practice. Without foresight, Skadden might have remained an M&A boutique. But in the 1980s Flom shrewdly leveraged that franchise into a full-service operation. Because the firm had such cachet in M&A, clients would pay retainers to have Flom and Skadden on call—sometimes just to preempt the firm from being hired by any adversary. Rather than pocketing the retainers if the client didn't need M&A advice, Flom encouraged them to “spend” the credits in other firm departments, such as tax or environmental. The move allowed Skadden to diversify and grow, though Flom says it cost the firm money: “We had to turn down a lot of major transactions because we were [already] standing by for someone.”

Another crucial element of the firm's success, say Skadden partners, was Flom's ability to share the center stage.

He simply didn't need to hog the limelight, and he let the lawyers under him develop and grow. At the peak of his career 20 years ago, he ceded the day-to-day management of the firm to his partner Peter Mullen. And though at 75 Flom no longer carries a full workload, he still worked through most of three consecutive nights last year representing Digital Equipment Corporation when it was bought by Compaq.

Skadden became a symbol, fairly or not, of the law firm as sweatshop in the 1970s and 1980s. Flom has helped temper that reputation in recent years by promoting pro bono work. With one partner devoted almost exclusively to coordinating the firm's pro bono activities, Skadden's commitment is significant. Its most notable effort is the Skadden Fellowship Foundation, created in 1988. Each year the firm awards 25 fellowships to graduating law students and outgoing judicial clerks to support them in public interest endeavors. Since its inception, 279 fellowships have been granted. “That's the thing I'm really proudest of,” he says.

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