

THE 126-YEAR-OLD FIRM HAS BEEN ROCKED BY DEFECTIONS AND PLUNGING PROFITS. CAN IT SURVIVE?

By Vera Titunik, October 1995

Donald Zoeller was a picture of composure.

Sitting in a stiff-backed chair in his thirty-sixth-floor office overlooking the East River and Brooklyn beyond, Zoeller, then the executive partner of New York's Mudge Rose Guthrie Alexander & Ferdon, looked crisp on a mid-August morning in a starched white shirt, pressed houndstooth suit, and highly polished black lace-up shoes, his gray hair neatly trimmed and combed. As he described his then-215-lawyer firm's financial situation, his words were as unruffled as his appearance. Yes, profits sank unacceptably in 1994. Yes, some 28 partners have departed since January 1994, taking with them nearly \$25 million in revenue. Yes, the firm lost several important business producers in the last few months, as well as most of its bankruptcy and trusts and estates practices. But this was not a crisis.

We've gone through a time of adjustment, Zoeller said, but the firm was on the rebound. Key revenue producers—firm chairman and top rainmaker John Kirby, Jr., municipal finance partner Robert Ferdon; former federal judge Kenneth Conboy; and litigators James Kearney and Malcolm Schade—had signed on to a program to reconfigure ourselves, he said. It may take another year or two to get profits back up to the \$400,000 per partner range from 1994's dismal \$255,000, but, Zoeller said confidently, it would happen.

What made him so certain?

The rainmakers, I know, are in for the long haul, Zoeller said. If I wasn't sure about them, I'd be nervous.

Two weeks later, however, the very rainmakers on whom Zoeller had pinned the future of the firm abruptly started abandoning ship. Kirby, who ran the firm for four years and last year had \$10-12 million in litigation business, told the New York Law Journal in an article that appeared August 28 that he intended to leave Mudge Rose, reportedly with his old law school roommate and litigation partner Conboy, who controls another \$5-6 million in business. Kirby resigned as chairman the day the Law Journal article appeared, and Zoeller, who is 65 and plans to retire in four months, replaced him.

Despite Kirby's bombshell, Zoeller remains—perhaps naively, perhaps valiantly-hopeful about Mudge's future. Kirby may have decided to leave, but, Zoeller says with a wry laugh, I still have the remaining rainmakers.

As that list of rainmakers gets shorter and shorter, Mudge Rose is faced with three options: merge quickly with another firm; scale back considerably and focus on its renowned \$18 million public finance practice; or die. At press time Zoeller, who has spent 36 years at Mudge Rose, was trying to make one of the first two options work. But the odds are against him. Merger talks

with Coudert Brothers, San Francisco's Graham & James, and other firms have already failed, although discussions continue with New York's Kelley Drye & Warren.

At the same time, the atmosphere at Mudge grows more desperate. Equity partners did not receive draws in July or August. (At press time in mid-September, Zoeller expected partial August draws to be distributed shortly.) Three more partners left in August and September, and the legal rumor mill churns with gossip of other partners circulating resumes. A deal to reduce rent at Mudge Rose's offices on Maiden Lane by \$2 million fell through the day Kirby's decision to leave hit the press. As Mudge's fortunes falter, even the tabloids have put their spin on the troubles of the late President Richard Nixon's firm. A September 8 New York Post headline—Floria May Flee Fallen Law Firm—not only shouted the most recent gossip—in this case about partner and former New Jersey governor James Florio—it also seemed to place Mudge in an early grave.

How did this venerable firm with talented lawyers, a brand name in the public finance arena, and litigation clients like Nintendo of America Inc. and Liggett Group Inc. come to this point? It's a firm with a long and varied history: an old-line Wall Street firm that rose to prominence in the municipal bond field by absorbing the lucrative practice established by a pioneer in the field, former U.S. attorney general John Mitchell. It's a firm that saw its name burnished—and then tarnished—by association with Nixon. Just last year, as Mudge celebrated its 125th anniversary, its official firm history touted it as a firm for the future, which, despite changes in the business of law that sank other firms, was able to adapt and prosper.

It did prosper, but it didn't always adapt. In 1994 Mudge was hit with a double whammy. It suddenly lost one of its largest clients, CIGNA Corporation, which had provided 14 percent of its revenue in 1993, while in the same year its public finance revenue sank with the dramatic downturn in bond issues. By the time December rolled around, it was clear there would be no last-minute Christmas miracle; net profit dropped by 37.5 percent to \$15 million. And partners had taken out more in draws over the year than profits supported.

These blows were bad enough, but management seemed incapable of facing them squarely. Kirby, who had run Mudge Rose since 1991, inherited a firm that for some years had been factionalized along—and sometimes within—practice group lines. The firm remained splintered under his leadership. Nor did Kirby seem to have the skill to inspire others with his vision. The 55-year-old litigator had aspirations of making Mudge Rose into one of the ten great law firms in the country, says partner Leonard Garment. But by pursuing public figures with business-making potential, but little or no business, he antagonized those who felt Mudge needed laterals with solid business who could give the firm a quick jolt. He could not convince them that his long-term strategy would pay off.

Kirby is a brilliant man, but not a dynamic leader, says one former partner. He's not the kind of guy to move around the firm patting backs and trying to hold a consensus together.

Moreover, management seemed almost paralyzed when faced with faltering profits. Although the seven-member executive committee developed what Zoeller called the program to reconfigure ourselves in early 1995, the cuts called for under the drastic plan—some 40 lawyers, including 11

partners-were, in large part, delayed, according to two former partners. Management slashed deeply only after more partners with business threw up their hands and walked away. Each departure had the effect of bringing home to people in all parts of the firm that there were things that needed to be done, acknowledges Kirby.

One of the problems with the management at Mudge, says former partner Carl Lyon, Jr., now with the New York office of San Francisco's Orrick, Herrington & Sutcliffe, is that it was always willing to do what-if done previously-would have prevented the last disaster, but not what would prevent the next.

Kirby rose to power during another tumultuous period of the firm's history. Six years ago, Kirby had allied himself with the Gang of 12, a group of partners who were dissatisfied with then-chairman Ferdon's management. The group met after hours in the firm's midtown Manhattan office in November 1989 to discuss pushing for improved training for associates, a reform of the compensation system that would take points from older, nonproductive partners, and a greater emphasis on practices outside Ferdon's municipal finance domain, including litigation and project finance, according to three former partners. Among those attending the meeting were Lawrence Gannon, now 49; Mitchell Menaker, 46; and 21-year Mudge veteran J. D. Clayton, 61.

But Ferdon-who did not return calls to his office and home-and his allies, such as Nicholas Capozzoli, Jr., and Judah Gribetz, appeared unwilling to budge on the group's demands, according to two former partners. A skillful bond lawyer who charms clients with, as Garment calls them, his snapping blue eyes, Ferdon had controlled the executive committee and, perhaps more significantly, partner compensation, throughout the 1980s. Critics resented the power he had amassed within his tight-knit bond group and over the firm as a whole. About eight months after the Gang of 12 meeting, Clayton, Menaker, and Gannon took their \$8 million project finance practice to White & Case. The move came just weeks after the partnership voted to expand to Parsippany, New Jersey in part to support the bond practice, but Clayton says he had already decided to leave.

Everyone in a management role was totally blind to the nature of the business and anything happening outside their little sphere, says Clayton, who is still at White & Case, explaining why he left. They had no concept of the firm, where it was going, or how it was going to get there.

The departure of Clayton, Menaker, and Gannon was not the only one that year-four other partners who had attended the midtown office meeting left in 1990-but it was the most significant. The firm lost not only a vigorous practice, but also core corporate partners with potential money-making ability for years to come. And their departure spread fear that other critics and rainmakers, like Kirby, might be spooked to follow their lead, says Kirby.

Ferdon, apparently recognizing how dire the situation had become, asked Kirby and Jed Rakoff, a white-collar criminal defense lawyer who was a widely respected firm rainmaker, to join the executive committee, says Kirby. Ferdon also agreed to hire an outside consultant, who recommended appointing an executive partner to deal with the day-to-day running of the firm, according to Zoeller. That partner was meant to relieve the committee of its obsession with minutiae. (One former partner recalls a Ferdonera meeting during which committee members

agonized over how to pay for bookshelves for a partner who already had spent his budget. They eventually took the money out of the library fund.) Don Zoeller, a litigator who had served on the executive committee, filled that administrative role, although he did so reluctantly, he says. A gently spoken, genial man, Zoeller was the consensus choice because, as one former partner says, he was a guy everybody liked and no one had a problem with.

In the decade before joining the executive committee, Kirby's practice had exploded into a \$5-million-a-year powerhouse thanks to his courtroom successes for the computer game maker Nintendo. The lawyer with an impish smile and an aggressive litigation style had earned the loyalty of the Redmond, Washington-based company by beating a claim filed in 1982 that its fabulously profitable Donkey Kong game had infringed MCA Inc.'s rights to the name King Kong [Godzilla in Toyland, April 1990]. Polite and gentlemanly, the former Rhodes scholar is not known to be chummy, say two former Mudge lawyers. The closest he comes to that is on the rare occasions that he relates amusing tidbits about his three children. He'll tell funny stories about his kids, says one former litigation lawyer. When he does that he's very charming, almost.

But if Kirby didn't spend much time cultivating his partners, it was partly because he was too busy. By all accounts a brilliant lawyer, Kirby, who joined Mudge in 1968, argues Nintendo cases himself. He commands top-notch work and accepts no excuses, according to two former lawyers who worked with him. Kirby does not have patience for mediocrity, says former partner Lyon.

As Kirby's billings rose with work from his litigious client, so did his stature in the firm. In 1990 Rakoff left Mudge for Fried, Frank, Harris, Shriver & Jacobson. (He has since been recommended by Senator Daniel Patrick Moynihan for a federal judgeship.) Soon after, Ferdon stepped down as chairman, and Kirby took his place. Jed left, and it was John's firm, says one former Mudge litigator. It was really John's firm.

The First Body Blow

Kirby may have held power, but he wasn't the only moneymaker. Ferdon, whose clients include the New Jersey Sports & Exposition Authority and Nebraska Public Power District, raked in about \$9 million a year in the mid-1980s, according to one former partner. Over the last four years, he's controlled some \$5 million a year in billings. (The New York public finance department brought in about \$23 million, or 21 percent of Mudge Rose's \$109.5 million revenue, in 1993, and 19 percent of revenue in 1994.)

Moreover, another profit center emerged in the early 1990s: a litigation group led by partner Paul Koepff that worked exclusively on environmental coverage cases for Philadelphia-based CIGNA Corporation.

Kirby had recruited Koepff in 1988 from Davis Polk & Wardwell, where he had about \$1 million in CIGNA business, Kirby says. Within five years Koepff's group had expanded to include two other partners and 30 associates handling literally hundreds of pollution cases and hauling in barrels of money-\$14-15 million a year.

Koepff worked six-day weeks, coming in at dawn and working late into the night, say Zoeller and two former associates. In 1993 Koepff billed 3,500 hours, Zoeller says, and drove his associates just as hard. He was just a ferocious worker, says Zoeller.

Koepff kept a tight rein on his CIGNA territory and seemed to take little interest in firm politics, rarely showing up at partnership meetings. He communicated to the rest of the firm largely through John Altieri, Jr., his second-in-command, according to two former partners. He was the mystery man, says one former partner. He was so completely removed from the firm that for all I knew he came to work every day in his underwear.

When the compensation schedule was readjusted for 1994, Koepff's name jumped to the top tier—the only other partner to share that spot with Kirby, say Zoeller and two former partners. (Ferdon, 62, was in the top tier until 1994, when both Koepff and Kirby's points surpassed his, according to one former partner.) But Koepff never cashed in on those points, because the year had barely begun when, suddenly, he was gone.

In mid-January 1994 Koepff and Altieri came into Zoeller's office to tell him that CIGNA had decided to consolidate its environmental coverage work with one firm: its longtime outside counsel, Los Angeles's O'Melveny & Myers. CIGNA had offered to move Koepff and a chunk of his lawyers to O'Melveny, and they had accepted. It came out of the blue, says Zoeller. There was absolutely no prelude to it. No complaints, nothing seemed to be wrong.

In interviews with 23 partners, former partners, and associates, one common belief about the firm's troubles emerged: Mudge Rose never recovered from losing CIGNA's business. The loss of 14 percent of the firm's revenue was so bizarre and unexpected that it provoked a great deal of speculation, most of which centered around the recent arrival of former New Jersey governor Jim Florio. As governor, Florio had antagonized insurers by leading a populist reform of auto insurance practices, and as a U.S. congressman he had been a principal author of the federal Superfund law for cleaning up environmental disasters. Mudge announced Florio's move in December, and less than a month later, CIGNA pulled its business. In interviews, ten lawyers speculated—although none can cite a reliable source—that CIGNA moved its business in retaliation against a perceived enemy of the industry. Another oft-repeated spin on the dramatic event has it that Koepff had cleared the Florio hire with CIGNA, but that his midlevel contacts didn't have the final say. It was a miscalculation, at the least, to bring in Florio, says Garment, who subscribes to the retaliation theory. (Koepff declined to comment for this article. Florio did not return calls.)

But Zoeller says he met with CIGNA's general counsel, Thomas Wagner, in Philadelphia, and was told that CIGNA simply had decided to economize by consolidating the work. Michael Monroe, CIGNA's vice-president-corporate relations, who returned a call placed to Wagner, denies that Florio's presence at Mudge had anything to do with the decision. He says a study of its five national coverage firms conducted nine months prior to CIGNA's decision to move the work concluded that the company could save money by merging Mudge Rose's work with O'Melveny's. None of the other national coverage firms' work was consolidated. Asked why the move did not occur earlier, Monroe replies: That's when it got done.

Whatever the reason, CIGNA's yanking the business sent a worried buzz around the firm. But calling together the partners, Zoeller, in what would become a standard response to bad news, emphasized the upbeat without presenting a game plan to address the loss. Sure the firm would take a beating, he told the partners, but CIGNA still owed Mudge about \$5 million. Because management had decided to fire the CIGNA team associates-even those who had not been hired to work exclusively on the environmental coverage litigation-Zoeller explained, the firm would hardly feel the loss in 1994. (All CIGNA associates were initially told to leave in two weeks, according to three former associates. O'Melveny took 23 associates; the rest, in the end, were given two months to look for other jobs.)

I thought it was a significant problem the firm could recover from, says one former partner. But other Mudge lawyers had their doubts. You'd leave those meetings wondering if they're lying to you or lying to themselves, says one former mid-level associate.

Field Of Dreams Strategy

Kirby's growth strategy of burnishing the firm's reputation with the resumes of out-of-office politicians and public figures such as Florio, Conboy, and on-again-off-again Mudge partner Garment, former counsel to President Nixon, showed no signs of abating following the CIGNA loss. But the attempt to create a more diverse litigation practice and bolster the Washington office was dependent on a lose-now-gain-later gamble that one former partner calls Kirby's Field of Dreams fantasy.

He thought, if you bring in the lawyers, says that lawyer, [clients] will come.

One high-profile recruit who received widespread praise from Mudge partners was Kirby's old Fordham University and University of Virginia law school friend Kenneth Conboy. The former federal judge arrived just weeks before Koepff left, and, over the course of the next year, his former Southern District colleagues appointed him to serve in various quasi-judicial capacities, including as a director and ombudsman for Prudential Securities Incorporated and election appeals master for the International Brotherhood of Teamsters. By mid-1995 Conboy's practice was valued by Zoeller and one former partner at \$5-6 million.

But among Kirby critics, praise for Conboy's success pales next to the scorn they heap on him for expanding the Washington office, which then consisted of a ten-lawyer international trade practice. Kirby turned the office over to Garment in what one former associate ironically describes as an attempt to bring back Camelot.

Kirby had approached Garment, who was then a partner at Washington's Dickstein, Shapiro & Morin, back in 1993. Over breakfast at the Westbury Hotel on Madison Avenue where Garment was staying on a visit from Washington, Kirby outlined his plan to make Mudge Rose into a great firm. He could not accomplish this, he told his old friend, without a strong Washington practice, and he wanted the then-69-year-old litigator to return to the firm after a 13-year absence and build him one, says Garment.

Garment was pleased to do so, because it gave him a sense of closure, he says: [There was] a circularity to it instead of just floating off into space. A charming, irrepressible raconteur and name-dropper, Garment demanded a free hand in expanding the office and eagerly set about recruiting partners from his Rolodex of Washington contacts.

Garment, who was given a guarantee of \$300,000 a year, recruited what he calls the scaffolding on which he intended to attach 40 or 50 lawyers. The scaffolding included Washington insiders like former aides to Senators Edward Kennedy and Daniel Moynihan, and top government specialists such as the former register of copyrights and the former general counsel of the Federal Trade Commission. In April 1994 he brought aboard former U.S. trade representative Carla Hills and her husband, Roderick Hills, refugees from New York's failed Shea & Gould, with guarantees of \$240,000 each, say Rod Hills and two former partners. In all, Garment lured six partners and five of counsel, all of whom were guaranteed salaries between \$160,000 and \$275,000, say three former partners, for a total cost-not including office space and other expenses-of about \$2 million.

It took time, but Garment's litigation and public policy group did attract business, including Federal National Mortgage Association bond work and Broadway producer David Merrick's divorce, which Garment himself brought in. Garment's group is on target to collect \$4 million by the end of 1995 from a potpourri of matters, including litigation and public finance work for Dillon, Read & Co. Inc., lobbying for pharmaceutical companies, and litigation on behalf of the state of Alaska, says Zoeller. About a third of that \$4 million comes from work brought by Rod and Carla Hills, who bowed out of the firm on June 30, says Rod Hills, citing the firm's burgeoning difficulties. (In Washington, a two-partner energy group is expected to bring in another \$1.5 million, and the trade practice another \$5 million.)

Kirby says that 1994 proved to be precisely the right time [to continue to expand the Washington office], because of the difficulties Mudge Rose was confronting when a \$15 million revenue source [CIGNA] abruptly leaves. But others considered it precisely the wrong time. Garment's group is making money now, but it wasn't in 1994, when partners were nervously reading monthly financial statements following CIGNA's departure. These partners saw the immediate cost of hiring laterals and considered it too great a gamble.

Every week there would be a new announcement that this person is of counsel, this person is now partner, says former labor partner Joel Cohen, now of McDermott, Will & Emery, who left earlier this year. I said, I don't get it, why are we bringing in another person with no business and who is making a salary? We have people sitting around doing nothing.

Because such laterals as former FTC general counsel James Spears and former register of copyrights Ralph Oman came straight from government, they had no client base to plug into for an instant jolt of much-needed revenue. (Both Spears and Oman say they have since developed business, but decline to say how much.) The Hillses brought business-such as Rod Hills's overseas investment funds work-but it was essentially an international law and consulting practice, and Mudge has only small outposts in Paris and Tokyo. Even Rod Hills acknowledges that their practices weren't much of a match.

When you just lost a \$15 million client, says one former New York partner, you'd better be replacing that with comparable hard-nosed, hard-working lawyers. Not with figureheads.

Those people didn't want Washington to begin with, snaps Garment at his critics. It was a combination of stupidity and malice on the part of half a dozen people who could never get it through their heads that Washington was something other than an island, like Bermuda, off the coast. It's the stupidity of those people that brought the firm to its knees.

Over The Edge

The tight money situation resurrected an old, divisive issue: what to do about unproductive partners and of counsel. (In early 1995 Mudge Rose had 21 of counsel with salaries totaling \$3.8 million, or 4 percent of 1994 revenue.) Some partners urged a ruthless course of quickly dumping those partners. The senior managers felt it was business as usual and they could weed out less productive people over a two-to-four-year time period, says one former partner. We told them that wasn't going to work anymore.

Management did make efforts to reduce costs in 1994, but one of those backfired. The executive committee decided to close its midtown offices, but the decision came as a surprise to the trusts and estates group working there. Zoeller says now that he didn't intend to present the closing as a *fait accompli*, but it was apparently perceived that way. As a result of this discourtesy, according to two former partners, the three-partner, \$3 million group headed by longtime Mudge Rose partner Arthur Mahon moved to Donovan Leisure Newton & Irvine in September.

Despite weak monthly collections throughout 1994, Kirby and Zoeller say they believed the firm would do just fine. Partners were inclined to have faith because 1993, too, had looked grim until December, when collections began pouring in, says one partner, who adds that about 70 percent of a record \$109.5 million in revenue arrived in the last weeks of that year. But no one in management anticipated the dramatic falloff in bond issues. The total amount of the issues Mudge Rose handled collapsed to \$7.5 billion in 1994 from \$21 billion in 1993. The municipal finance practice—including New York, Los Angeles, New Jersey, and Florida—accounts for about a quarter of total firm revenue, says Zoeller, so the downturn had disastrous consequences. Collections for bond work, he says, fell \$7 million short of expectations firmwide.

That entire year, the firm management sat back and said the year will be okay, says one partner. We sat there and sat there. We had a bad six months, but [they said] things will get better. We sat there nine months, things will get better. Then finally it's December and things did not get better. That really put people over the edge.

Partner draws that had been based on anticipated profits of \$25 million had to be readjusted, and some partners had to dip into their capital to boost the earnings of bottom-rung partners to make sure that no one earned less than \$175,000, say two former equity partners.

One former partner, who earned in 1994 only 60 percent of what had been projected, recalls Zoeller asking him why he looked so blue when they ran into each other on the subway last December. I said, Don, I'm worried about my bills. I'll have to borrow money from my in-laws to

pay my taxes. D He recalls Zoeller replying with equanimity, You know, I've been blessed. I never worry.

Zoeller endorses this characterization, saying: I have almost no capacity to worry. But as the firm entered the new year, the Mudge profit pie, at \$15 million, looked very small indeed-even to Zoeller.

Project finance partners, including Carl Lyon, Robert Gillispie, John Hawkins, Jr., and Eugene Harper, Jr., began urging the executive committee to cut expenses while moving to build a more substantial corporate department by either acquiring a strong group or merging with a firm that had a strong corporate practice. The firm handles little traditional corporate securities work, not to mention derivatives or international project finance, say Kirby and two former partners.

There were busy pockets and busy times in the corporate section, says one former senior associate. But they were always falling short of expectations [for revenue], and after a while people stopped having expectations.

Kirby agreed that the corporate section was an Achilles' heel and began looking for a merger partner. The first talks took place in the spring with Coudert Brothers. Kirby, Zoeller, Ferdon, and other partners met with Coudert people over the course of a few months, exchanging financial information, and, according to one partner involved, they drew up a model compensation chart for a merged firm. But the talks fell through. Zoeller says that Coudert Brothers management may have gotten cold feet when partners in branch offices howled after reading press accounts that exaggerated the progress of the talks. But Thomas Brislin, a partner in Coudert's New York office who participated in the discussions, says that Coudert had no synergy with Mudge's bond practice. Kirby says that Mudge Rose's fat may have helped kill the deal: At the very end of the discussions, they said, We've done a lot to trim ourselves, and we realized we had trimming to do, too.

The executive committee had approved a plan to slim down in early 1995. According to two former partners, however, the cuts were postponed and postponed. Partners with business simply got fed up. I agree that these processes are often discouragingly slow, says Kirby, conceding that even by July the plan had not been fully implemented. Says former executive committee member Lyon, who left in June: Firm tightening was [an item] on interminable agendas. And you never got to it.

Race For The Door

Following the failure of the Coudert talks, Lyon, 52, decided to take his \$5 million project finance business to Orrick. Gillispie had left six months earlier, taking his \$3-4 million practice to Chadbourne & Parke and asserting at the time that the litigators running the firm didn't appreciate the needs of a corporate practice [Mudge Rose Loses Chunk of Corporate Practice, Bar Talk, April]. (Gillispie did not return phone calls for this article.)

Like Gillispie, Lyon, an executive committee member, says he felt frustrated at Mudge's inability to change in ways he thought necessary to survival. He had never before thought of leaving; a

Mudge lifer, Lyon came to the firm from Duke University law school as a summer associate in 1967. He had built up a successful practice straddling the corporate and public finance departments and representing clients such as the Tennessee Valley Authority and utilities in Minnesota, Florida, Massachusetts, and other states in bond offerings and complex project financings.

Lyon, his South Carolinian accent husky from the pack-and-a-half of Carltons he smokes daily, says he, Gillispie, and Harper all wanted changes in the organization of the finance practices. They wanted to merge Mudge Rose's public finance and corporate practices to build versatility among associates. And of course, project finance, a blend of corporate and public finance work, would have benefited from such a merger.

Lyon also felt that the firm could learn from the loss of CIGNA, which had had contact with only one practice group-Koepff's. Lyon and others thought that the firm needed to institutionalize its clients, ensuring that at least two partners, from different groups, work on any given client matter in order to build stronger relationships. I think that had there been a relationship between senior management at Mudge Rose and senior management at CIGNA, says Lyon, somebody would have had a better idea of their likes and dislikes and would have been able to anticipate problems.

To build stronger client relationships, in mid-1994 Zoeller went so far as to draw up a list of the firm's major clients, complete with an analysis of which partners handled which matters-and the executive committee let the matter drop, Lyon says. Still, Zoeller says that over the years he did contact clients where the partner in charge feels it's helpful, he says. I know that how client relationships go is a sticky thing. As for CIGNA, Zoeller says: If a business is going well, and the CIGNA business was going well, you almost have to go with the guidance of the partner, because you could go blundering in and hurt that business. He says he talked to Koepff about making contact with CIGNA people, but nothing ever came of it.

The idea of merging the corporate and public finance departments never got off the ground, says Lyon. Kirby hints that the idea failed because of the long-standing tensions between the partners in the two areas. I believe people in the transactional side of the firm had not solved the issues of working together to build their practices, Kirby says, adding: The formality [of a merged finance group] would not have done anything unless the underlying substance included everybody working together.

Did Kirby, as firm chairman, try to resolve those differences? I did my best, he says. Obviously I didn't succeed. Says one former partner: Kirby saw the problems, but he didn't have the answers or the time to deal with them.

For Lyon the frustrations mounted, and on June 1 he told Zoeller he would probably go to Orrick, and would have to give his answer by the end of the day. Zoeller had disagreed with Lyon over particular partner cuts, and he received Lyon's announcement with a shrug. Long experience has told me there is no sense in cajoling people to stay, Zoeller says. I doubt I said much more than Sorry to see you go.D'

But later that day, two partners, including Harper, insisted that Zoeller call a gathering of firm rainmakers-Kirby, litigator Kearney, Harper, Ferdon, and Conboy. Over the course of a several-hour meeting, the partners tried to convince Lyon to stick it out. They assured him that cuts would be made and unproductive practices examined. But while Lyon allowed himself to be wooed, he ultimately stuck to his decision to leave with four other partners.

After Lyon's departure, says one former partner, management bit the bullet and told 25 partners and of counsel they would have to leave. It was typical of Mudge Rose that they didn't want to [make cuts] because some were very hard decisions, says this partner. When Carl Lyon left, they realized they had to do it.

Zoeller, who would not confirm the dismissals, claims that cuts took place throughout the year, and that they were not influenced by Lyon's departure.

Whenever they took place, it was too little, too late. The rest of the project finance partners and several tax partners followed Lyon's lead. Harper and tax partner Jeffrey Piemont went to New York's 75-lawyer Haythe & Curley on July 31 with \$3 million in business. On August 7 corporate partners Jonathan Birenbaum and John Hawkins and tax partner Clayton Reynolds took about \$3 million to the Stamford office of Los Angeles's Paul, [Hastings, Janofsky & Walker](#). In corporate, it seemed like every day somebody was leaving, says one summer associate. I was supposed to do something with Birenbaum, but then he was gone.

Throughout the summer, partners quietly packed up, leaving behind lawyers on empty floors that felt like a morgue, said one partner in mid-August. I could probably walk eight offices in one direction before coming to anybody, and four offices in the other. One summer associate was assigned successive associate advisers who both left within the first two weeks of his stint, and, on his last day, he and the ten other summer associates were told they should try to get offers from other firms.

Half Empty Or Half Full?

Kirby and Zoeller insist that the firm is not in such dire straits, and that, in fact, it has been profitable every month since March. That is literally true, but, admits Zoeller, the firm made only a \$135,000 profit in July.

As the corporate department shriveled, the firm became less and less attractive to potential lateral hires, says Kirby, who, after the Fourth of July holiday, intensified his search for a corporate group. We were not attractive enough in terms of profits and other issues, Kirby says. What was already not a very broad-based [corporate department] had been eroded by departures.

Moreover, he says, his searches-and the experience with Coudert-led him to the conclusion that a full firm merger was impracticable. At the same time, he says, I was not surprised, I was gratified to find there were many, many areas of Mudge Rose that were very attractive to and highly demanded by other firms. In other words, Kirby says, Mudge Rose's parts were more valuable than the firm as a whole.

Once he had concluded in mid-August that the firm should split up and market itself in pieces, Kirby began trying to persuade others of the wisdom of his idea. Other partners, notably Ferdon, argued that the firm could thrive on a small scale. Kirby says he agreed that such a course was possible, but he wanted no part of such a firm. I wanted to be with a traditional Wall Street law firm, he says, able to provide a full range of client services at the highest level of practice with a significant corporate presence.

Kirby says he offered to step down as chairman, but the executive committee asked him not to—apparently, though Kirby does not say so, for fear of spreading panic. He had to resign in late August, he says, after speaking to a reporter at the New York Law Journal. He claims he had been attempting merely to squelch false rumors about Mudge, but by publicly announcing his intention to leave the firm he may in fact have signed the firm's death warrant.

The legal community, however, had already been churning with rumors about Kirby abandoning the firm. Lawrence Blume, managing partner of the New York office of San Francisco's Graham & James, surmised as much when he began talking to Zoeller about a possible merger in August. The idea, at first blush, seemed to him ripe with possibility, but his initial meeting with Zoeller left him perplexed about the composition of the firm. He suggested an introduction to Kirby, but at the next gathering at Mudge, he met Ferdon and was told that Kirby was unavailable. By the time of his third meeting with Zoeller, on August 25, the word on the street was that Kirby would be the next to leave.

We didn't believe the firm would hold together long enough to pursue a merger following Kirby's departure, says Blume. Don convinced me that he was committed to trying to hold together as many people as possible. I simply doubted that was possible.

Zoeller, optimistic as ever, expresses no doubts about keeping the remaining Mudge Rose pieces glued together. On September 11, having come from a regular partner luncheon, he reports that the partners want to keep pulling together, but asked about reports that they all have resumes circulating, he admits: The truth is, I don't know. And on September 8, Mudge retained Arthur Olick of Anderson Kill Olick & Oshinsky for advice on merger discussions, reorganizing the firm, and anything else happening with the firm, Zoeller says.

Ferdon's primary interest is keeping the public finance group alive with the Mudge Rose name attached, either in a smaller version of Mudge or in a merged firm, says Zoeller. He spent years developing that practice, Zoeller says, and in the bond world, Mudge Rose is a brand name and has market power. One former partner agrees, noting that the bond group is terribly, terribly unified, and to their credit, they may stick it out.

As for Kirby, he says he expects to bail out of Mudge this fall, but he will not say with which firms he is negotiating. He says he still investigates possible mergers for practices other than his own. What of his aspiration to remake Mudge Rose as one of the ten greatest firms in the country? He seems to have washed his hands of it. I think that's still possible, he says. Different people and a different road. There's no reason why people who are in public finance can't, if they choose to do so, work on a very stripped-down basis and then seek to expand later. I certainly wish them well.