It might not go over well among the proud Texans of Houston, but it was a lawyer in Manhattan who sparked sweeping changes in the city’s legal market.

Vinson & Elkins New York corporate partner Charles Carpenter, a lawyer who started his career in Texas, received a call in 2007 from a headhunter trying to recruit him for a rival firm. (Carpenter won’t name the firm.) Carpenter wasn’t interested in taking his practice, which focuses on energy transactions, to the headhunter’s client firm. But he did mention to the recruiter that he would be interested in Latham & Watkins, if an opportunity ever developed there. Carpenter had been impressed by Latham’s lawyers when he worked across the table from them on deals in New York, and as someone who had tried to recruit laterals to V&E’s New York office, he respected Latham’s success in building its New York office into the firm’s largest. The recruiter helped broker an initial meeting between Carpenter and Latham leaders, including now vice-chair David Gordon. After an on-again, off-again courtship that lasted nearly three years, Carpenter joined Latham in New York in March 2010 as part of the firm’s expansion into the domestic oil and gas sector.

But Carpenter didn’t come alone. He had brought some of his V&E partners from Houston into his discussions with Latham. And the V&E lawyers, in turn, helped convince Latham’s leaders that if they were going to come to Houston, they should seek out top-tier partners from multiple leading firms in the market. Ultimately, Latham opened its first Texas office in Houston in early 2010 by hiring Carpenter’s V&E partners William Finnegan IV, Brett Braden and C. Timothy Fenn, Baker Botts partners Michael Darden and Sean Wheeler, and Akin Gump Strauss Hauer & Feld energy and global transactions practice head Michael Dillard and partner Michael Chambers. The move was a shock to the market, where lateral moves—especially of the size and scale of this one—aren’t as commonplace as they are in other markets of comparable size.

“I’ve seen a lot of national firms try [to enter the market],” says Gregory Roden, a former Akin Gump colleague of Dillard’s who is now the general counsel of Houston-based oil and gas operating company Quantum Resources and a Latham client. “I’ve not seen one pull it off with any foothold or impact until Latham.”

Houston may be the nation’s fourth-largest city by population and rank third in terms of Fortune 500 headquarters, but at the beginning of this decade, the market for high-end legal services was still dominated by the city’s so-called Big Three—Vinson & Elkins, Baker Botts and Fulbright & Jaworski. Andrews Kurth, Bracewell & Giuliani and other Texas firms such as Haynes and Boone and Locke Lord also had sizable presences in the market. But when it came to core transactional work serving Houston’s oil and gas industry, no national firm had been able to rival the Big Three.

That’s not the case anymore. Any vestiges of Big Three dominance faded with Fulbright’s absorption into the Norton Rose verein in the summer of 2013. But even before that, Latham had steadily been expanding its Houston office to 75 lawyers, including 14 lateral partners and three partners transplanted from other Latham offices. Latham now regularly competes with indigenous firms for transactional work,
LATHAM LATERALS MICHAEL CHAMBERS, C. TIMOTHY FENN, BRETT BRADEN, MICHAEL DILLARD, SEAN WHEELER, MICHAEL DARDEN, AND WILLIAM FINNEGAN IV.
particularly lucrative matters related to master limited partnerships—publicly traded partnerships that are central to the oil and gas business. MLPs by their very business structure create robust legal needs, and Latham has represented either the issuer or underwriters in more than half of the 64 MLPs that have filed to go public since its Houston office opened.

Other national firms have taken note of Latham’s success and entered Houston with expansion plans of their own, many drawing elements from Latham’s playbook [see “The Newcomers,” below]. Leaders of Houston’s native firms point out that they still have the largest collections of legal talent in the market, as well as long-standing client ties and more than a century’s worth of experience working in the oil and gas business. [For a list of Houston’s largest offices by head count and a timeline of their expansion into the market, go to americanlawyer.com.] Competitors, consultants and local recruiters also note that the latest wave of Houston newcomers have yet to weather a downturn in the oil and gas cycle: Finding success in the boom times is easier than making things work when the pace of transactions slows, they warn.

Still, no one can deny that things are different than they were before Latham’s arrival. “Before we came into the market, I think the market was viewed to be impenetrable, at least in the core transactional practices,” says Michael Dillard, now the managing partner of Latham’s Houston office. “The opportunities in the market are different now. They’re different than they were four years ago.”

At the beginning of this decade Latham had a significant energy practice—mostly run out of its New York, London, Washington, D.C., California and Asia offices—working on power deals and representing lenders in high-profile liquefied natural gas developments around the globe. But the firm had a significant hole in the domestic oil and gas subsector. “We didn’t wake up one day and say ‘How about energy?’” says Latham vice chair David Gordon, whose own finance practice has involved working on power plant and alternative energy projects. “We were already there, but not in Houston.” Gordon says Houston was a potential growth target for the firm starting as far back as 2000 as the city’s reputation as the capital of the global oil and gas market cemented.

So when the recruiter who’d spoken to Carpenter called, Latham was ready to listen. In their initial meeting, Carpenter told Latham’s leaders in New York how key a Houston presence was to his own practice, and he invited his Houston V&E partner Finnegan to come to New York for a later meeting. But Carpenter failed to tell Finnegan that he had been the one to approach Latham. Says Finnegan, a life-long Houstonian: “I’m flying up there thinking they really want to do a Houston thing, and they’re thinking I’m knocking on their door for a job.”

As a young partner in 2000, Finnegan was part of a lateral move that made waves in the Houston market as he joined a group of 26 other lawyers from Andrews Kurth’s capital markets practice in a move to V&E. (Carpenter was an associate in the group.) Finnegan was convinced that Latham would be a good place for him because of the firm’s transactional depth and its success in building a capital markets practice in New York. But he and Carpenter encouraged Gordon and the Latham leaders to get lawyers from other Houston firms involved. They thought it was important that it didn’t appear to be a disgruntled group of serial movers opening Latham’s Houston office.

Latham hired Houston recruiter Clint Johnson of Johnson/Downie to help pull together the rest of the initial team. Although lateral recruits say that compensation didn’t come up until late in the courtship process, Latham clearly had the advantage of being able to pay above the market rate for partner talent in Houston. In fiscal year 2010,
Latham’s profits per equity partner were already rebounding from the recession to $1.995 million. The PPP of Akin, Baker Botts and V&E were $1.605 million, $1.37 million and $1.345 million respectively. In the years since, that profit gap has grown. According to the most recent Am Law 100 data, Latham’s PPP landed at $2.44 million in FY 2012, while PPP for Akin Gump, Baker Botts, and V&E came in at $1.54 million, $1.36 million and $1.47 million, respectively.

FROM THE BEGINNING, ONE KEY FOR LATHAM IN HOUSTON, says Gordon, was penetrating the market for work related to master limited partnerships. MLPs are publicly traded and, as partnerships, are exempt from a corporate-level tax. The first MLP went public in 1981 when the Apache Petroleum Company offered small investors a chance to take stock in 33 of Apache Corporation’s consolidated oil and gas partnerships. More than 100 MLPs went public in the years after Apache, with assets as diverse as Sahara Casinos and the Boston Celtics trading as MLPs. In 1987 Congress put the brakes on MLP expansion by limiting the types of eligible businesses, but—wanting to preserve an incentive for investment in domestic energy infrastructure—Congress left the MLP structure and its entity-level tax exemption available to companies focused on energy.

Much like real estate investment trusts, MLPs distribute all their available cash to investors periodically. With the cash flow going to investors, MLPs have to sell more equity or issue debt to fund growth. “If you represent an MLP,” says Latham’s Finnegan, “you get to represent them in raising equity, raising public debt, raising bank debt, buying new companies and refinancing all this stuff.”

Although initial public offerings account for just a portion of the work MLPs provide, they’re a telling measure of the market. Latham has been involved in 35 of the 64 MLP IPOs filed since the Houston office opened—16 as issuer’s counsel and 19 representing the underwriters. (By way of comparison, Vinson & Elkins has been involved in a total of 37—27 for issuers and 10 for underwriters. Baker Botts has been involved in 24—seven for issuers and 17 for underwriters. Andrews Kurth has handled 19—five for issuers and 14 for underwriters.)

Latham quickly inserted itself into the small world of firms that regularly do MLP work, says Freeport-McMoRan Oil & Gas general counsel John Wombwell, an Andrews Kurth partner before he went in-house a decade and a half ago. “It was Baker Botts, Andrews Kurth and Vinson & Elkins,” Wombwell says. “Now Latham & Watkins is in that conversation.” Of particular significance, he says, was Latham’s hire of former V&E tax partner C. Timothy “Tim” Fenn, a former banker who handles partnership tax matters on MLP deals. “The MLP tax attorney—there’s a small fraternity of those guys,” says Wombwell, noting that structuring deals to preserve the tax advantages of the MLP is critical.

After the first wave of hires helped Latham break into the MLP market, the firm continued to add laterals to bolster its energy-centered transactional practice in Houston. In August 2010 the firm added V&E partner Craig Kornreich, who now heads a group of about 10 Latham finance lawyers in Houston. In April 2011 the firm picked up Baker Botts corporate partner Ryan Maierson. (Latham office managing partner Michael Dillard had attempted unsuccessfully to recruit Maierson and then–Baker Botts colleague Sean Wheeler while Dillard was still at Akin.) The following October, Latham added finance partner M. Catherine Ozdogan from Bracewell. In April 2012 Latham brought on Morgan, Lewis & Bockius oil and gas transactional partner Michael King. A month later Latham further expanded the oil and gas practice by luring two more V&E partners, Robin Fredrickson and Jeffrey Muñoz.

Besides the lateral partners, Joel Mack, the chair of Latham’s global environmental transactional support practice, relocated from San Diego to help open the office in 2010. Mack has remained, and corporate partners Keith Benson and Divakar Gupta have transferred to Houston from the firm’s San Francisco and San Diego offices, respectively.

LEADERS OF THE TRADITIONAL HOUSTON POWERHOUSES ARE quick to say that their firms have not stood idly by watching Latham grow. Baker Botts managing partner Andrew Baker points out that his firm had a successful year in 2013 bringing on lateral partners around the globe from firms including DLA Piper, Akin Gump, Covington & Burling, Weil, Gotshal & Manges and Shearman & Sterling, as well as a group of eight former Fulbright & Jaworski partners in Abu Dhabi, Dubai and Riyadh. Besides expanding the firm’s presence in the Middle East, Baker says his firm has formed a task force headed by partner Carlos Solé III, a lateral from DLA, tracking the changing energy landscape in Mexico. In the past two years Baker Botts has also opened offices in Brussels and Rio de Janeiro. As for Houston, Baker says, “I would love to have this expanding pie and no additional competitors, but I would rather have [growth] and some additional competitors than a shrinking pie with no one interested in being around.”

V&E chair T. Mark Kelly says that other firms have recognized that “there are enormous opportunities in the energy business, and Houston is at the center of the energy industry.” While other firms have been flooding into its market over the past couple of years, V&E has added lateral partners of its own around the globe
Taking Texas

When Latham & Watkins decided to beef up its presence in the oil and gas industry, it brought in a series of laterals from the city’s biggest firms.

in M&A/private equity, energy transactions/projects, complex commercial litigation, international arbitration, environmental, tax, IP and finance. Says Kelly: “We continue to lead the U.S. and the world in energy M&A transactions, and you don’t get there by taking your competition lightly.” Indeed, according to Mergermarket, V&E tops the league tables for the number of energy M&A deals, with 214 globally and 196 in the United States from January 2010, when Latham arrived in Houston, through the end of 2013. During that same period, Latham ranks third in global deals with 149—behind Norton Rose Fullbright with 156—and second in the U.S. with 128 deals. Baker Botts ranks sixth in global deals with 94 (falling behind Linklaters and Clifford Chance with 120 and 98 respectively), and third in the U.S. with 86.

In the end, the native firms’ biggest advantage may turn out to be the harshly cyclical nature of the oil and gas industry itself. Leaders at both V&E and Baker Botts say that their firms are built to last, having had their commitment to Houston fully tested not just during boom times, but during long dry spells as well. “We’re not in Houston for just one thing,” says Andrew Baker. “How successful firms are able to grow in today’s market,” says Mark Kelly, “only time will tell.”

But Latham’s Gordon says his firm is in Houston for the long haul too: “In Houston, we are comfortable [that] our office is nicely constructed with a size and market position to address our clients’ needs in a variety of market conditions.” That’s why, he says, Latham “worked so hard at making sure the office was truly built around market-leading partners.”

In the meantime, let the MLPs roll.

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