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Law Firm Dynamics: Don't Hate the Player, Hate the Game

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LAW FIRM DYNAMICS: DON'T HATE THE PLAYER, HATE THE GAME

*Tom Kimbrough**

ABSTRACT

This paper concerns the business of law, a subject ignored by legal academia and sugarcoated by the organized bar. If law professors express little or no interest in this subject, their students most certainly do. Indeed, I have found that students are desperately hungry for information on the day-to-day realities of working in a law firm. Students are especially keen to learn about possible paths for career advancement within firms, across them, or across the organizations served by the firms.

Paths for career advancement do exist, but they are not easy to find or pursue. Law firms are hardly going to assist their younger lawyers in this endeavor, as the interests of senior lawyers do not align with the interests of the associates. In fact, senior lawyers are engaged in competition with each other. As a result, younger lawyers may experience significant uncertainty and frustration in determining how to promote their careers.

This paper is my attempt to shed light on the hidden law firm dynamics likely to shape the career success or failure of junior lawyers working in law firms. Such knowledge may empower associates to think strategically about their careers, as their senior colleagues already do. The ideas presented here are based on my fourteen years of teaching in a law school and my eleven years working as an associate attorney or foreign legal consultant at four law firms in three countries.

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I. INTRODUCTION

Most students attend law school to prepare to work in a law firm. The law school curriculum educates students to meet the intellectual demands of such work. But success in a law firm also requires a degree of savvy about how law firms operate. Armed with such knowledge, new associates can consider the various possible strategies to maximize their chances for career success and deploy the particular strategy that best fits the particular circumstances that the associates find themselves in. Unfortunately, U.S. law schools have neglected this critical aspect of legal education.

The harsh reality is that many new associates will find law firm life to be Hobbesian—nasty, brutish, and short.¹ Most of those successful enough to advance to the senior associate level after years of devotion and sacrifice to their firm will find the door to equity partnership shut. And the few, the proud, the new law firm equity partners, will find the fierce competition to keep and expand their client base to be an ongoing struggle.

Of course, some individuals will relish the law firm challenge and thrive in its competitive atmosphere. And the legal services industry is not necessarily harsher than other industries in our capitalist society. But it is far from a cakewalk, and U.S. law schools disserve their students by not making greater efforts to prepare them for life after graduation. The purpose of this article is to highlight some of the key law firm dynamics that make the legal services industry a more difficult environment than law schools typically present to their students, and to inform law students of some possible strategies they might beneficially pursue in that environment.²

A. LES MISÉRABLES

Lawyer misery is so widespread and well-documented that there is little need for elaboration. A recent law journal article put it best: “The poor mental health of people in the legal profession is a long-standing open secret, both within and beyond its members.”³ Relatively recent estimates of U.S. attorneys

1. The NALP Foundation for Law Career Research and Education publishes an annual Update on Associate Attrition that attempts to track relevant data. In 2020, the NALP reported that, based on a study of more than 800 law firms during the period 2012–2018, of every 20 law firm associates hired, 15 left within six years. See Debra Cassens Weiss, *Law Firms Lost 15 Associates for Every 20 They Hire, NALP Foundation Study Finds*, ABA JOURNAL (Oct. 1, 2020, 2:43 PM), <https://www.abajournal.com/news/article/law-firms-lost-15-associates-for-every-20-they-hired-study-finds> [<https://perma.cc/6WNP-MB4V>].

2. At the outset, I must acknowledge that this paper naively fails to address non-economic factors such as corruption, nepotism, elitism, racism, and sexism. While beyond the scope of this discussion, in real life, a new lawyer must also take these unpleasant factors into account in strategic decision-making.

3. Kathryn M. Young, *Understanding the Social and Cognitive Processes in Law School that Create Unhealthy Lawyers*, 89 FORDHAM L. REV. 2575, 2576 (2021).

experiencing symptoms of depression range from 28%⁴ to 45%⁵. Similar such older estimates are plentiful.⁶ Although the reliability of data in this area is questionable for a variety of reasons, as has been pointed out by some commentators (problems of survey methodology, difficulty defining terms such as “depression” or “unhappiness”),⁷ sufficient evidence indicates that a problem with the mental health of a significant percentage of lawyers does exist even if some reported survey data may be unreliable.

Why are so many lawyers in this country so unhappy? An unhappy lawyer is likely to blame other individuals (such as supervisors, colleagues, clients, or competitors) for his or her misery. And while one finds bad-natured as well as good-natured people in the law business, as in every other field, blaming one’s unhappiness on individuals misses the larger dynamics at play that can turn “good” people overall into situationally “bad” people within the law firm context. The core issue is not individual personality but rather institutional and market structure, as I will explain in this paper.

B. FRIENDSHIP VERSUS REALPOLITIK

My colleague and friend Martin Camp, Assistant Dean and Professor of Practice at the SMU Law School, co-wrote a book with Barbara Miller⁸ in 2009 that grabbed my attention as soon as I saw it. Camp and Miller’s book focuses on effective face-to-face communication techniques and relationship-building methods for new law firm associates. Appendix 1 of this paper is a list of the statements in this book that I wholeheartedly agree with. Moreover, I believe that heeding the book’s advice is essential if new associates hope to survive their first few years in a law firm, and for that purpose I recommend the book. And Camp and Miller are certainly correct that being adept at interpersonal relationships is a tremendous asset in all areas of life.

But Dean Camp and I perceive law firm culture in very different ways, and I believe that the advice in his book is of limited value in achieving career success beyond simply keeping your associate-level job for a few years. More specifically, I believe that Dean Camp’s focus on building strong interpersonal

4. Patrick R. Krill, Ryan Johnson & Linda Albert, *The Prevalence of Substance Abuse and Other Mental Health Concerns Among American Attorneys*, 10 J. ADDICTION MED. 46 (2016).

5. Priscilla Henson, *Addiction & Substance Abuse in Lawyers: Stats You Should Know*, AMERICAN ADDICTION CENTERS (Feb. 19, 2020), <https://americanaddictioncenters.org/rehab-guide/workforce/white-collar/lawyers> [<https://perma.cc/8CH9-T2SG>].

6. See, e.g., Patrick J. Schiltz, *On Being a Happy, Healthy, and Ethical Member of an Unhappy, Unhealthy, and Unethical Profession*, 52 VAND. L. REV. 871, 874–75 (1999).

7. See, e.g., Kathleen E. Hull, *Cross-Examining the Myth of Lawyers’ Misery*, 52 VAND. L. REV. 971, 972 (1999). For a detailed critique of prior studies, and with contrary data based on the National Health Interview Survey (NHIS) administered by the U.S. Centers for Disease Control, see Yair Listokin & Ray Noonan, *Measuring Lawyer Well-Being Systematically: Evidence from the National Health Interview Survey*, J. EMPIRICAL LEGAL STUD. (forthcoming) (Public Law Research Paper, Yale Law School), <https://ssrn.com/abstract=3667322> [<https://perma.cc/VQJ9-5X3W>].

8. BARBARA MILLER & MARTIN CAMP, *THE LAW FIRM ASSOCIATE’S GUIDE TO CONNECTING WITH YOUR COLLEAGUES* (2009). Barbara Miller is an independent consultant working with law firms, the National Association of Trial Advocacy, and the National Practice Institute, teaching effective communication and presentation skills to lawyers.

relationships as a tool for law firm advancement misses the mark. Some of the most misanthropic individuals that I have had the displeasure to know were successful law firm lawyers. And some of the kindest, most unselfish, nurturing, and mentoring senior associates (who also worked hard and turned out high-quality work) that I knew as a junior associate never made partner at the law firm where we worked. All other factors being equal, a nice person is more likely to receive promotion over a nasty person, but the law firm dynamics that I describe in this paper are more significant than social skills of the non-Machiavellian sort.

Despite my disagreements with Dean Camp regarding law firm culture and the keys to long-term success in law firms, I admire Dean Camp for showing concern for associates' development within law firms, which, I believe, is more than can be said for many of the people who profit from the legal education industry in this country.

To put this another way, consider an analogy to political science theory. Ludwig von Rochau coined the term *realpolitik* in 1853 to explain the behavior of nations in terms of practical considerations rather than ethical premises.⁹ Later political scientists, such as Kenneth Waltz, applied von Rochau's concept to the theory of "political realism," which basically posits that war is a natural consequence of the very system (or lack thereof) of international relations, not simply the byproduct of the character flaws or evil behavior of political leaders.¹⁰ In this paper I will explain the systemic causes of conflict between lawyers in law firms and how a young lawyer needs to take these sources of conflict into account in planning his or her career path.

To set the stage for the "success strategies" (Section IV) in the "law firm game" (Section III) that I would propose, let me now introduce "the players" (Section II) in that game.

II. THE PLAYERS

A. THE MANAGING PARTNER

The term "Managing Partner" refers to the individual, group, or committee that manages the law firm.

Overestimating one's own value to an organization while underestimating the value that others bring to it is a tragic and universal feature of human nature. This prevalent character flaw is what makes the law firm Managing Partner's job difficult. That job, in significant part, is to assuage the competing egos of the law firm's key revenue-generators (i.e., the best project managers or "rainmakers") to preserve the firm's long-term stability and create the conditions for sustainable growth. For an interesting case study of the dire consequences that arise when the Managing Partner fails to control key project managers, read

9. LUDWIG VON ROCHAU, *GRUNDSÄTZE DER REALPOLITIK, ANGEWENDET AUF DIE STAATLICHEN ZUSTÄNDE DEUTSCHLANDS* (PRACTICAL POLITICS: AN APPLICATION OF ITS PRINCIPLES TO THE SITUATION OF THE GERMAN STATES) (1853).

10. See generally KENNETH WALTZ, *MAN, THE STATE, AND WAR* (1959).

about the growth and implosion of the once-powerful Finley Kumble law firm in the 1980s.¹¹

B. THE PROJECT MANAGER

The term “Project Manager” refers to the individual lawyer tasked with the supervisory role in executing a particular client project.

In contrast to the Managing Partner, the Project Manager views the law firm as the umbrella under which the Project Manager will develop his or her own career. As time passes, successful Project Managers will grow increasingly resentful over having to share the revenues they believe that they are principally responsible for generating with their less productive colleagues. Thus, the interests of the Managing Partner (the law firm’s success) and the Project Manager (personal success) are fundamentally in conflict—it has nothing to do with personality or social skills.

The Project Manager may be designated by the law firm as a partner or associate, labels which are often misleading. “Partner” may be a term used by the firm either to market a lawyer’s services to clients or to market the desirability of continuing to work at the firm to the lawyer who works there.¹² For this reason, this paper will use the term “partner” only in the context of the Managing Partner and “associate” only in the context of the Worker Bee, but will avoid using those terms when describing the mid-level Project Manager.

C. THE WORKER BEE

The Worker Bee is the associate attorney who assists the Project Manager in executing client projects. If the Worker Bee consistently produces high-quality work in sufficient volume, then the law firm will continue to employ the Worker Bee as long as doing so continues to be profitable for the firm.

D. THE CLIENT

Clients can come in many forms. They can be individuals or entities of widely varying levels of sophistication. For the purposes of this paper, I will assume the Client to be a large, well-established company with a Chief Executive Officer (CEO), a General Counsel (GC), and possibly one or more in-house staff lawyers working under the GC’s supervision.

11. STEVEN J. KUMBLE & KEVIN J. LAHART, CONDUCT UNBECOMING: THE RISE AND RUIN OF FINLEY, KUMBLE (1990). To summarize, the aggressive recruitment of new “rainmakers” into the firm ultimately tore the firm apart as uncontrolled egotism, greed, and jealousy ran rampant.

12. For example, Baker McKenzie presents its partners to the outside world as simply “partners” but within Baker McKenzie there is a crucial distinction between “international” and “domestic” partners. Only the international partners, fewer in number, play a significant role in management decisions and profit sharing. Other law firms have similar such distinctions between equity and non-equity partners, which the “lesser” partners tend not to be eager to bring up in conversations with those outside of the law firm.

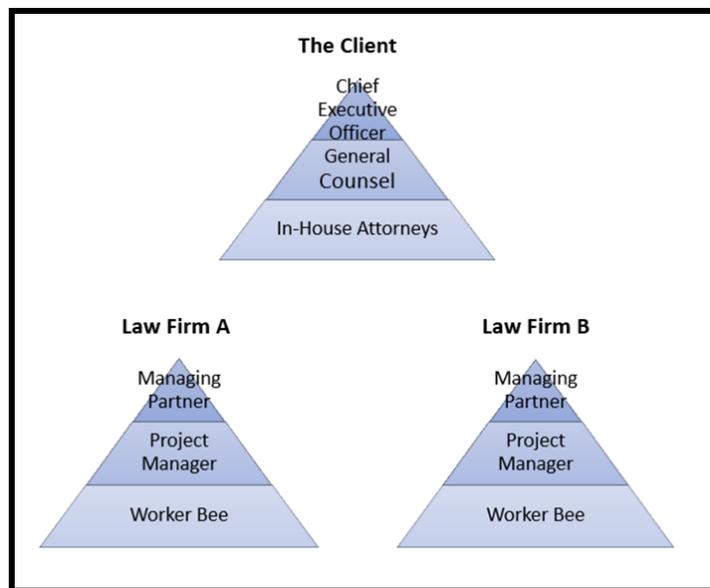
E. THE RIVAL LAW FIRM

For the purposes of this paper, the Rival Law Firm (or Law Firm B) signifies any law firm that is a viable alternative for the Client to hire if it decides to fire Law Firm A. The Rival Law Firm is also a potential new employer for the Project Manager or Worker Bee if either decides to leave Law Firm A and possesses either a portable “book” of client business or technical skills of value to the Rival Law Firm.

Now that we have identified the players,¹³ let’s analyze the game.

III. THE GAME

A. THE THREE PYRAMIDS



The three pyramids (see above) comprise the “field” or “game board” on which the real game of law firm life is played. These pyramids are Client, Law Firm A, and Law Firm B. They are presented as pyramids because, like a pyramid, each is “bottom-heavy” with a larger number of employees at the bottom of the hierarchy and a smaller number at the top.

Each pyramid has three levels. In the case of Law Firm A and Law Firm B, the top level is that of the Managing Partner, the middle level is that of the Project Manager, and the bottom level is that of the Worker Bee. In the case of

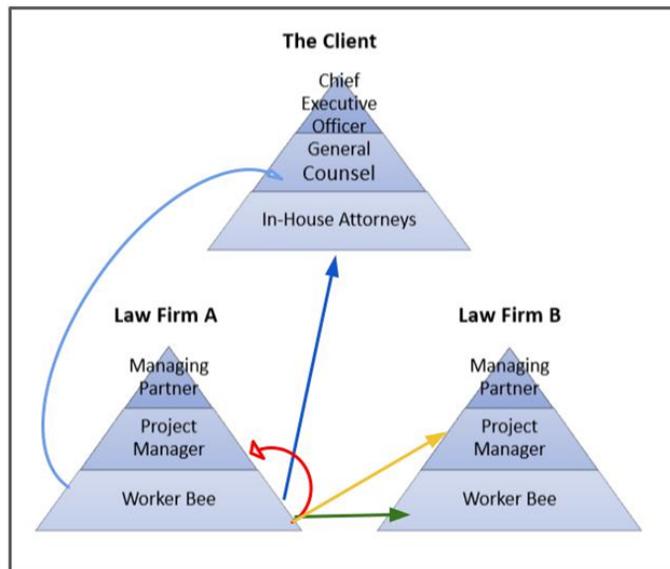
13. Law firms vary in the titles they may use to describe a lawyer’s role or status within the firm: “staff attorney,” “counsel,” “of counsel,” etc. But I believe that the designations are less significant than the economic realities behind the “worker bee,” “project manager,” and “managing partner” functions.

the Client, the top level is that of the CEO, the middle level is that of the GC, and the bottom level is that of the in-house attorney staff.

The key dynamic of the game is the potential for fluidity of movement for certain players at Law Firm A, both within and across the pyramids, as follows:

B. WORKER BEE PATHS

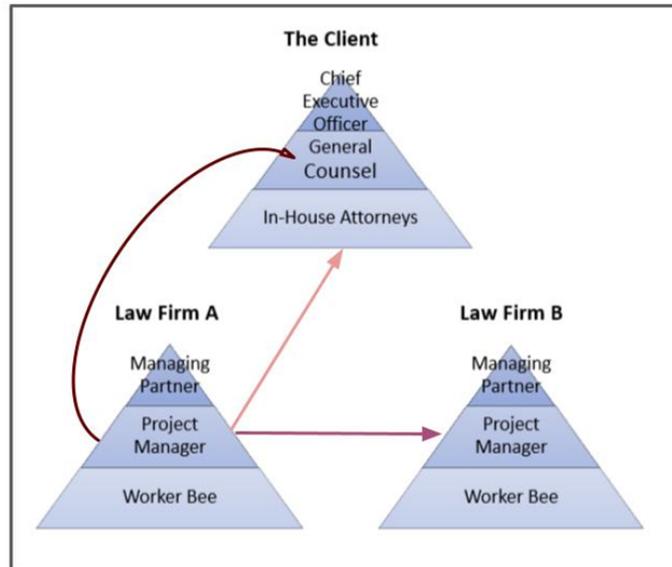
- Within Law Firm A, Worker Bee can become a Project Manager by one of two possible routes: (a) replacing a current Project Manager with respect to existing clients of the law firm, or (b) becoming an additional Project Manager by developing his or her own new clients.
- Worker Bee can leave Law Firm A and move to (existing or new) Law Firm B either (a) together with Project Manager, in which case Worker Bee will continue to work with the same clients at the new law firm under the same Project Manager, or (b) without Project Manager, in which case Worker Bee can assume the role at Law Firm B of either a Project Manager or a Worker Bee depending on whether he or she brings clients or merely technical skills to Law Firm B.
- Worker Bee can leave Law Firm A and move to Client either as GC or as an in-house staff attorney working under an existing GC (depending on how much confidence the Client's CEO has in Worker Bee compared to the existing GC and in-house lawyers).



- Become Project Manager at Law Firm A.
- Become Project Manager at Law Firm B.
- Become Worker Bee at Law Firm B.
- Become General Counsel at Client.
- Become In-House Attorney at Client.

C. PROJECT MANAGER PATHS

- Project Manager can leave Law Firm A and move to Law Firm B (presumably for more money) bringing along clients, whereupon he or she will be a Project Manager at Law Firm B.
- Project Manager can leave Law Firm A and move to Client either as GC or as an in-house staff attorney working under an existing GC.



- Become Project Manager at Law Firm B.
- Become General Counsel at Client.
- Become In-House Attorney at Client.

Before moving on to discuss game strategies for new associates in Section IV below, it is necessary to explain the dynamics related to (i) the relationship between Law Firm A's Managing Partner and Project Manager(s), (ii) the zero-sum game of servicing existing firm clients, and (iii) the realities confronting the law firm associate's efforts to develop his or her own new clients in order to break out of the zero-sum game.

D. NATURAL RIVALS: PROJECT MANAGER VERSUS MANAGING PARTNER

The inherent (but usually well-hidden) conflict between the interests of the Project Manager and the Managing Partner described above is the key to the Worker Bee's strategic choices described in Section IV below. New associates tend to be blissfully unaware of this conflict since it plays out behind closed doors in tense, angry, private discussions.

The source of this conflict lies in the Project Manager's desire to make the Client personally loyal to the lawyer and less so to the law firm, while the Managing Partner's desire is the opposite. Managing Partners will deploy

various tactics to keep the Client from becoming too close to a particular Project Manager, such as:

- pressuring the Project Manager to introduce other experienced lawyers at Law Firm A who work in different practice areas to the relevant personnel of the Client to broaden the scope of ties between Law Firm A and Client beyond the Project Manager's own ties;
- excluding the Project Manager, to the extent possible, from the initial discussions regarding the terms of engagement of the Client to Law Firm A and from the negotiation of the fee cap amount for a new project (in Appendix 2, I discuss the pricing of legal work using a fee cap that is the normal practice in negotiations between a sophisticated client and a major law firm);
- closely monitoring the billing statements that the Project Manager prepares for the Client to ensure that the Project Manager is not secretly under-billing the Client to the detriment of Law Firm A but to the benefit of the Client, and thus to the long-term benefit of the Project Manager, who will accrue good will from the Client for such under-billing without necessarily having his own income reduced; and
- closely monitoring the collection of legal fees from the Client to ensure that the Project Manager cannot suddenly leave Law Firm A for Law Firm B with the Client while sticking Law Firm A with a mountain of unpaid legal fees.

In contrast, the Project Manager will seek to exclude the Managing Partner from his or her relationship with the Client to the greatest extent possible. If the Project Manager and the Client's GC (or other outside-counsel-hiring personnel such as the CEO) can forge an alliance to provide the Client with top-quality legal work at a temporarily "below market" price because the Managing Partner is not paying attention, the Project Manager's career will receive a boost by switching law firms (with happy Client) and the GC will rise in esteem within the Client's organization for doing so well in hiring outside counsel.

E. THE EXISTING CLIENT TRAP

Law firms hire new associates to work on projects of existing clients. New associates are relieved that they can concentrate on developing their skills as lawyers without having to chase their own clients. Thus, the beginning of a new associate's career should be mutually satisfactory for both the law firm and the associate as long as the quality and quantity of the associate's work keep up to par.

But if an associate/Worker Bee is lulled into assuming that this happy synergy is going to last forever, then in a few years the Worker Bee will experience a rude awakening. As the associate's level of competency increases, so too will the law firm's expectations for improvements in the quality and efficiency of the associate's work performance (in Appendix 3, I discuss the metrics used by a major law firm to evaluate associate performance). If the associate cannot keep up with rising expectations, then the associate will experience "burnout" and be asked to leave the firm to make way for an eager new associate.

If, on the other hand, the associate continues to meet or exceed the law firm's expectations, and do so in the service of the firm's existing client base, then the associate will present a threat to the Project Manager's career, or at least to the Project Manager's leverage vis-à-vis the Managing Partner, as the rising associate's success has made the Project Manager expendable. Anticipating this development, the savvy mid-level associate/Worker Bee will have laid the groundwork with the Managing Partner or other influential lawyers at the law firm to replace the expendable former Project Manager at the proper time.

F. THE PARADOX OF NEW CLIENT DEVELOPMENT TO ESCAPE THE EXISTING CLIENT TRAP

In the course of recruitment, law firms may tell interviewing candidates that they encourage and support associates' client development efforts. But the reality is that firms hire new graduates from law schools to assist with their existing clients, not to find new ones.

At first it may seem counterintuitive that law firms would not want their younger lawyers to find new clients. After all, why would a firm not want more clients? But there are several reasons for this:

- law firms want their associates' time and energy focused on developing their skills and executing work projects; client development is a time-consuming endeavor with unpredictable results;
- finding people who seek legal services is relatively easy, but finding *clients* with the ability and willingness to pay their legal bills on time and in full is another matter entirely; since associates are paid a fixed salary in the major law firm context, they are not sufficiently focused on the law firm itself being paid to be trusted to initiate projects for new clients on their own;¹⁴
- even if the associate is successful in landing a reliably-paying client, that client is likely to be of limited value to the law firm (relative to the time-cost of subsidizing the associate's client development efforts) because the associate will be in a strong position to take the client when leaving the firm.¹⁵

But despite the resistance that the Worker Bee/associate will encounter from the law firm, new client development is the associate's best opportunity to break out of the "zero-sum game" described previously and advance her own career without stepping on the toes of colleagues. The associate's relative youthfulness may actually be an asset in developing new clients, who are likely to be start-up companies run by younger individuals who may not yet have established deep

14. Equity partners' income, on the other hand, is usually tied to firm revenues, perhaps even the revenues that each partner individually is credited with generating, so this issue is of less concern for partners than for associates.

15. Although this is, of course, a risk with regard to partners too, associates are normally being paid by the law firm exclusively for the purpose of doing work on the projects assigned to them, unlike partners, so this scenario would result in a "double-loss" for the law firm (losing the client and losing potential billable hours of associate work that the associate had spent developing that lost client).

relationships with other lawyers or law firms. The paradox of new client development for associates is that it will likely have to be done “on the sly” without the help of the associate’s law firm, and yet it is crucial if the associate hopes to launch a successful long-term career by escaping the existing-client trap.

IV. WINNING THE GAME: STRATEGIC PATHS AND EXIT STRATEGIES FOR THE NEW ASSOCIATE

The new associate’s closest and most important work relationships will be with those attorneys in the firm who directly supervise the associate’s work projects. A Project Manager can provide a Worker Bee with crucial training and mentoring to develop the Worker Bee’s skills. Quickly becoming a competent attorney is a prerequisite to surviving more than a year or two in a law firm, so at the beginning of his or her career, the new associate must focus on that goal above all others. To foster a strong relationship with one or more Project Managers, a Worker Bee must be skillful, hard-working, flexible, and outwardly deferential.

Once a new associate/Worker Bee is confident that they have gained sufficient respect in the law firm to enjoy a reasonably secure position for at least the medium-term, they should begin to think strategically about a path to even greater success. Before making any strategic plans, it is vital that the Worker Bee accurately gauge the nature of the relationships of the key individuals in the law firm with each other and with their key clients, as well as the Worker Bee’s own relationships and standing within the firm. Below I describe different possible paths for the Worker Bee’s career advancement.

A. FORM AN ALLIANCE WITH YOUR PROJECT MANAGER AGAINST THE MANAGING PARTNER

From the point of view of the Project Manager, the ideal Worker Bee produces consistently excellent work that pleases the Client but does not pose a threat to the Project Manager’s career by making the Project Manager expendable to either the Client or the Managing Partner. Over the long term that will become an increasingly narrow needle to thread unless the Project Manager and Worker Bee can find complementary, synergistic roles to play in their shared work projects that do not overlap too much.

If the Project Manager and the Worker Bee do manage to cultivate such a synergistic relationship, when the Project Manager leaves Law Firm A with his or her clients for more money or better conditions at Law Firm B, Project Manager will likely want to bring along the Worker Bee. This scenario can provide an interesting opportunity for the Worker Bee, but it can also be dangerous in that Worker Bee has become more dependent on the Project Manager and to the detriment of the respect and good will that the Worker Bee had built up over the years with the Managing Partner and others at Law Firm A. Because no one else at Law Firm B will be familiar with the Worker Bee’s

positive attributes, the Worker Bee will have lost the leverage vis-à-vis the Project Manager that the Worker Bee had previously held at Law Firm A.

B. FORM AN ALLIANCE WITH YOUR MANAGING PARTNER AGAINST THE PROJECT MANAGER

Another possibility is that at some point it may dawn on a Worker Bee that they are actually a better lawyer than the Project Manager under whom they work. This is an extremely volatile situation, because if the Project Manager also realizes this, then the Project Manager will be incentivized to sabotage the Worker Bee's career to preserve the Project Manager's own career.

As soon as the Worker Bee notices that he or she is no longer dependent upon the Project Manager for training and mentoring because the Worker Bee's own skills now equal or exceed those of the Project Manager, the Worker Bee must ensure that the Managing Partner and other powerful individuals at Law Firm A are aware of this fact. But such outreach by the Worker Bee to the Managing Partner must be accomplished in a smooth, subtle manner to avoid antagonizing the Project Manager. If, as is usually the case, significant underlying tension exists between the Managing Partner and the Project Manager, the Managing Partner will appreciate the Worker Bee's potential to replace the Project Manager in leading the projects of the firm's existing clients as a means to reduce the Project Manager's leverage within the law firm.

If you (Worker Bee) are successful in raising your status at your law firm at the expense of the Project Manager, it goes without saying that the Project Manager is not going to be happy about your accomplishment. But you should be mentally prepared for that; you are at the law firm to develop your career, not to make friends.¹⁶ If you want a friend in a law firm, buy a goldfish.¹⁷

C. FORM AN ALLIANCE WITH YOUR CLIENT AGAINST YOUR LAW FIRM

A Project Manager generally takes care to limit direct contact between the Worker Bee and the Client. This is particularly the case if the Client is important to the Project Manager. From the Project Manager's perspective, while an inexperienced Worker Bee might embarrass the law firm, a highly competent Worker Bee is even more dangerous—the Client might prefer the Worker Bee over the Project Manager.

Nevertheless, over time some opportunities for a Worker Bee to demonstrate his or her superior skill to the Client will likely emerge. If the Worker Bee

16. Are true friendships within law firms and career development goals incompatible? I suspect that I am in the minority in considering them incompatible. But what does one normally do with true friends as opposed to superficial acquaintances? I would maintain that having honest, heartfelt, deep, meaningful discussions is the hallmark of a true friendship. But nothing will get you in trouble in your law firm job faster than making your genuine feelings known to others within your law firm. Dean Camp puts it very well in his book: "And above all, do not gossip, ever. Anything you say can and will be used against you. Don't say anything to anyone at the firm about anyone else that you would not say to that person's face." MILLER & CAMP, *supra* note 8, at 111.

17. But make sure that there aren't any hidden recording devices near the goldfish bowl when you talk to your fish.

manages to “flip” the Client from the Project Manager without the tacit consent of the Managing Partner, then the Worker Bee will probably need to leave Law Firm A with the Client. Naturally, the reaction of Law Firm A (both Managing Partner and Project Manager) will likely be as described in the last paragraph of Section IV.B above.

1. Switch Law Firms or Start Your Own Law Firm

With a sufficient base of portable clients (or even one major Client), the former Worker Bee at Law Firm A will be in a strong position to earn more money at a competing Law Firm B as a Project Manager. Or, if a Worker Bee has confidence in their entrepreneurial abilities, they can opt to “cut out the middle-man” by starting a new Law Firm B and perhaps hire other lawyers to execute projects that the former Worker Bee now brings in.

2. Go In-House for the Client

Another option may be to work directly for the Client as an “in-house” attorney. Possible benefits may include an improvement in lifestyle conditions and a potentially more stable employment situation. But the possible costs are salary decrease, less intellectually-stimulating work environment, expectations by the Client that you will be a legal expert even in areas outside of your expertise, and, perhaps, most concerning of all, a loss of independence and job security when you must deliver some bad news to the Client (e.g., the Client’s dream project that the CEO wants you to approve immediately is actually illegal). This latter point is often a problem for in-house compliance officers with investment banks and securities firms, and it has occasionally landed some unfortunate in-house lawyers who decided to “please the boss” at all costs in a very sticky legal mess. Fortunately for you, though, lawyers who are accomplices to corporate crime rarely go to prison in this country.¹⁸

Depending on the Client’s size, you may report to a GC along with other in-house attorneys or you may be the only in-house attorney and report directly to the senior business executives. Naturally, you need to determine during the interview process that you have good personal chemistry with the individuals to whom you will report so that you will be comfortable working with them in much closer quarters than you did as their outside counsel.

D. FIND YOUR OWN NEW CLIENTS

Opportunities often appear at unexpected times. The first step in developing your own clients is to be aware that client development is something that you must do if you want to stay in private law practice over the long term and to prepare yourself to be ready to seize an opportunity when it arises.

18. See, e.g., Ankush Khardori, *There’s Never Been a Better Time to be a White-Collar Criminal*, THE NEW REPUBLIC (July 23, 2020), <https://newrepublic.com/article/158582/theres-never-better-time-white-collar-criminal> [<https://perma.cc/B3DH-ZWM2>].

Countless books and articles have been written on this subject,¹⁹ so I will keep my own recommendations brief. First, establish credentials as an expert in your practice area by publishing and presenting. Second, identify prospects for your pitch and then pursue them. Third, develop a thick skin so that being rejected or encountering skepticism does not deter you from pursuing your goals.

E. FIND A NEW CAREER IN A NEW TOWN

Finally, recognize that when you no longer enjoy what you are doing, then you should quit doing it. As hard as it may seem to acknowledge at the time, there is more to life than success as a law firm lawyer. One day you will even look back at the day that you left the industry as the turning point toward a better future in your life. There are many excellent jobs out there!

Here is a list, in descending order of preference, of the alternative careers that I considered when, after eleven years and four months toiling in law firms, I decided that I was finally done with them forever: (1) librarian; (2) shopkeeper of used records and other music media—I still want to do that someday; (3) salesman of offshore incorporation systems for high net-worth individuals looking to shelter income and limit tax liability (a potentially high-paying opportunity had I accepted the offer made to me in Hong Kong, but I opted for a new career in academic law librarianship instead); and (4) my ultimate fallback work option so as not to starve but still enjoy working in a reasonably fun but modestly compensated job—English language teacher in various countries around the world.

So you can see that there is a *lot* of interesting work out there just waiting for someone to do it! What color is *your* parachute?

V. CONCLUSION: BREAKING THE CONSPIRACY OF SILENCE

Most of the observations made in this paper regarding law firm dynamics may seem rather obvious to anyone who has spent significant time working in a law firm.²⁰ Why then do law students regularly tell me that they have neither heard nor considered these observations before? Why did I never hear about or consider them when I was in law school preparing to launch my own legal career? Why has my recent literature search of topically-related books and articles turned up nothing even remotely similar to many of the observations I make in this paper? Is it because I am a raving lunatic with bizarre ideas or is it because my ideas are so obvious and pedestrian that no one saw any reason to waste time writing about them? I believe that the answer is simply that no one

19. But I have yet to encounter one that seemed worth the paper it was printed on. You can obtain better instruction on effective client development techniques by studying the methods employed by the successful rainmakers depicted in *The Rise and Ruin of Finley Kumble*. See KUMBLE & LAHART, *supra* note 11.

20. In Appendix 4, I address the impact of differences in law firm business models, sizes, cultures, and practice areas on the law firm dynamics discussed in this paper.

with the requisite knowledge of these law firm dynamics saw it as being in their interest to bother explaining the dynamics to those not already aware of them.

The majority of full-time, tenure-track law professors at U.S. law schools have limited knowledge, experience, or even interest in the harsh realities that their students will encounter upon graduation. Rather, their focus is on producing cutting-edge scholarship in their fields of expertise, which is understandable since that is the path of their own career advancement. While most professors do have a sincere desire to help their students by teaching important legal concepts, they also tend to have a blind spot when it comes to associate life in a law firm.

Adjunct law professors, who are usually successful partners in their own law firms, do, of course, possess the requisite knowledge. But they will, naturally, seek to portray their law firms in the best possible light, and thus they will steer clear of any frank discussion of unpleasant truths that could damage their firm's reputation among the students they teach,²¹ the best of whom they might wish to recruit. Like full-time faculty, adjunct law professors may sincerely wish to help their students, but after already establishing their own careers they may lack sensitivity to the position that new associates will find themselves in.

Law school placement offices are hyper-focused on securing jobs for their students, but they are not as focused on helping students thrive in those jobs once obtained beyond dispensing the sort of bromides and platitudes easily found in the "self-improvement" section of any bookstore. That is unlikely to change unless the kingpins at U.S. News & World Report decide to integrate measures of graduates' success in law firms into their law school rankings criteria.

As a result, law students are left with no one who will advise them about what they really need to know after accepting that shiny new law firm job offer, unless they are fortunate enough to have a close relative or friend "on the inside." This article is my attempt to help those students who, like myself many years ago, did not have such a relative or friend on the inside.

21. The rap artist, Ice-T, who apparently coined the phrase borrowed for the title of this article, also warned on his 1989 album: "Freedom of Speech . . . Just Watch What You Say!" ICE-T, FREEDOM OF SPEECH. . . JUST WATCH WHAT YOU SAY! (Sire Records 1989).

APPENDIX 1 - EXCERPTS FROM "THE LAW FIRM ASSOCIATE'S GUIDE TO CONNECTING WITH YOUR COLLEAGUES"

Page 1 - "... [W]hat is required for success in law school involves a much narrower skill set than what is required to succeed in the law firm and in the practice of law. Unfortunately this broader skill set is seldom taught or even discussed in academically focused law schools."

Page 2 - "... [I]f you are like most lawyers, you have invested thousands of dollars in your law school education and may have significant student loans to repay. This investment is on top of the three or more years of your life that were devoted to the study of law and postponement of work and income. While your law school may have done a good job of preparing you to do legal research and write a brief or memo, we suspect that little, if anything, taught in your law school prepared you to succeed in the high stakes, high pressure social environment that is a law firm."

Page 3 - "Today in most law firms, senior attorneys would say that there is no time and little inclination to individually focus on educating and supporting younger lawyers; the clock ticks faster and faster; and for the most part, the brightest and best the law schools produce just have to "figure out" how to actually practice law. Sophisticated legal clients are demanding and the competition is fierce. Modern productivity tools, rather than giving lawyers more time, actually discourage reflection in the race to get the work done quickly and out the door."

Page 3 - "The law firms we know are keenly aware that competition for clients and the lawyers to serve them brilliantly is intense. Younger lawyers, reflecting the diversity of today's workforce and cultural values, often have very different expectations and aspirations than the more senior, often predominantly male generation of senior partners who began their practice in a different era. So it is not so ironic that the failure rate of associates who are recruited to law firms and subsequently leave on their own or at the request of the firms is very high. And this failure rate occurs notwithstanding the fact that most of these associates had unblemished tract [*sic*] records of academic success prior to joining the law firms."

Page 4 - "Burnout is endemic in the practice of law. Too many attorneys turn to drink, drugs, or risky behavior to deal with the stress of unmet expectations of themselves and their lives. Even those who avoid these serious social problems often wonder what happened to the passion that propelled them to go to law school in the first place. They want and demand more from their career than just a paycheck, a nice car, a big house, and expensive toys they often have no time to enjoy."

Page 25 - "The need for autonomy and the need for connection are opposite needs, but can coexist depending on the degree of the need in any one person. It is important for you to realize that because many lawyers need autonomy you may not find that you develop close personal relationships with many of the lawyers you work with."

Page 43 - "What we hope you will realize ... is that in the practice of law consistent production of high quality work is the bare minimum expectation for

associates. So if you want to succeed in the law firm, you need to be proactive in your relationships with others and in accessing the resources that are available to you in the firm.”

Page 43 - “The care and feeding of relationships in your firm is a major factor in surrounding yourself with allies to help you succeed.”

Page 43 - “It is important to understand the hand that’s feeding you; getting to know your supervising attorney first, but also introducing yourself to the managing partner and other partners at firm gatherings. You never know if this supervising attorney, whom you have invested so much time in, may be leaving the firm. If you have not developed other relationships, if no one else knows about you and your work, you could find yourself having to start over again.”

Page 46 - “Facing the challenges of your professional choices will build character, create learning experiences, and communicate the question that high achievers ask: “What am I going to do about it?” That question reflects the attitude that leads to progress and success. We are each master of our own fate. Trying to control events or the actions of others will constantly frustrate you and win few friends. What you *can* do is to choose your response to your circumstances and your own actions. Life is not fair.”

Page 76 - “Be proactive. Study the firm. Find out who does what and with which clients. Ask other lawyers frequently what they are doing and with whom they are working and what it is like to work with this or that lawyer. Read the firm profiles of all the lawyers, not just the ones you are currently working for. You may discover common ground and interests that could lead you to want to work with other lawyers.”

Page 87 - “There’s no challenge when everyone agrees with everyone else and when there are no urgencies or special considerations or requests. Remember, problems create your job. If there were no problems to be solved there would be no need for lawyers. Those who become effective and successful problem solvers advance in law firms.”

Page 93 - “In the final analysis, all that matters is what you do in the face of adversity. Blaming the firm, the practice group section head, the demanding clients or whoever you feel needs scolding, won’t work.

Page 111 - “You need to be sensitive to the law firm dynamics that surround why you were hired and the impact that may have on other lawyers in the firm. Law firms are competitive places. Making partner is often thought of as a numbers game. Your entrance into the mix of associates may be perceived as negatively impacting other lawyers who are competing for work and advancement. If you are brought on board as part of a “package deal” with a partner who is bringing work and clients, some associates may feel threatened by your close relationship with this new power in the firm.”

Page 112 - “Being successful is about alliances and garnering resources to help you succeed.”

Page 112 - “Your reputation in the firm and the community is your ticket to job flexibility. Employers look to reputation and references in making hiring decisions as do firm clients. Develop a reputation of excellence.”

APPENDIX 2 - THE PRICING OF LEGAL WORK: THE FEE CAP

Law is a service industry. As is the case with all services-for-fees arrangements, the client expects the highest quality of service for a reasonable and foreseeable price. However, price negotiation can be a tricky matter in the legal industry for both legal and practical reasons. Legally, state bar professional conduct rules do not prohibit fixed fee arrangements but they tend to be wary of them and often impose various conditions, limitations, or requirements on their use.²² Practically, it may be difficult at the outset to ascertain the amount of work that will ultimately be required of the lawyer to handle the client's legal issues since the project may terminate early due to a certain event or perhaps become more prolonged than initially expected.

In spite of these difficulties, a sophisticated business client will strongly insist upon knowing in advance the potential amount of the law firm's charges for handling a particular legal matter in order to avoid an unwanted surprise later. Referring to the "Client Pyramid" (on page 247) it is the client's General Counsel who will typically hire and fire the client's outside counsel, negotiate the price of legal services with outside counsel, and report to the CEO on these arrangements. Referring to the "Law Firm A Pyramid," it may be either the law firm's Managing Partner or the Project Manager who negotiates the legal services fee with the client, depending upon the size of the legal matter at hand and the amount of control that the Managing Partner is able to exercise over the Project Manager.

So how can the client and the law firm negotiate and set a fee in view of the legal and practical difficulties discussed above? The answer is the *fee cap*. This is the amount that the law firm agrees not to exceed for work on a particular legal matter unless it receives further explicit authorization from the client. The General Counsel's job is to know what would be the (lowest possible) reasonable fee for the proposed legal services; the Managing Partner or Project Manager's job is to know what would be the (highest possible without annoying the client) reasonable fee for those same services. The two sides will then negotiate and agree upon a fee cap.²³ But in typical practice it is really more than just a "cap"; barring unforeseen circumstances, such as the early termination of the project, the "cap" will become the tacit agreement on the price of the relevant legal work, and the law firm's billing statements will be generated to hit, but not exceed, the fee cap.²⁴ Assuming the law firm's work product is of high quality, then both the client and the law firm will be satisfied with the deal and be open to doing further business with each other on future projects.

22. Most U.S. states have adopted the ABA Model Rules of Professional Conduct. ABA Model Rule 1.5 (Fees) applies, but there is variation from state-to-state in interpretation and implementation of this rule.

23. For most types of legal matters, it is unusual in the "Biglaw" context for the fee cap arrangement to be contractually formalized. Rather, the formal arrangement will continue to be the traditional "billable hours" model but with the client and lawyer sharing an informal understanding (perhaps in an e-mail exchange or phone conversation) that there will be a fee cap at a certain agreed amount.

24. See Appendix 3 for an explanation of how this is done.

APPENDIX 3 - THE MEASUREMENT OF ASSOCIATE PERFORMANCE: BILLABLE HOURS VERSUS REALIZATION RATIO

Once the fee cap has been set, Managing Partner and Project Manager will decide how to staff Client's project. Big projects will often involve several lawyers, but for the purpose of illustration, I will use a straightforward example with just two lawyers: Project Manager and Worker Bee.

Let's suppose that the project at hand for Law Firm A is to review and comment on a draft license agreement and a draft lease that Client's counterparty has provided to Client. Let's further assume that Client and Project Manager have agreed on a \$1,000 fee cap for this rather small project (see Table 3 below). Project Manager has assigned this project to Worker Bee, in this case a first-year associate, as a good "beginner" project that will train the associate in addition to servicing the Client. Let's assume that Project Manager's hourly billing rate is \$200 per hour, and Worker Bee's hourly billing rate is \$100 per hour. Let's also assume that Worker Bee is aware that Law Firm A's billable hour expectation for associates is 2,000 hours per year. Now assume that (perhaps in a parallel universe) the same project for the same Client is taking place at Law Firm B.

Next, let's suppose that Worker Bee at Law Firm A and Worker Bee at Law Firm B produce work of equally high quality, but Worker Bee at Law Firm A takes only 5 hours to do this job (see Table 1) while Worker Bee at Law Firm B takes 20 hours to do it (see Table 2). Now which Worker Bee has performed better and how will that difference in performance be reflected quantitatively during the Worker Bees' respective annual performance reviews? Before answering this question, I illustrate the scenario described above in table form below:

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Law Firm Dynamics

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Table 1

LAW FIRM A ASSOCIATE: TIME SHEET

5 hours (x \$100 = \$500)

Table 2

LAW FIRM B ASSOCIATE: TIME SHEET

20 hours (x \$100 = \$2,000)

Table 3

BOTH LAW FIRMS: CLIENT BILL CALCULATION

Associate Hours: 5 (x \$100 = \$500) +

Supervisor Hours: 2.5 (x \$200 = \$500)

= Total Amount Billed to Client = Agreed Fee Cap: \$1,000

Table 4

LAW FIRM A ASSOCIATE: REALIZATION RATIO

Hours Billed to (or Collected from) Client: 5Hours Reported Worked by Associate: 5 = **100%***Table 5*

LAW FIRM B ASSOCIATE: REALIZATION RATIO

Hours Billed to (or Collected from) Client: 5Hours Reported Worked by Associate: 20 = **25%**

Based on my experience, law students are generally familiar with the “billable hours” concept but not the “realization ratio” concept. But if “billable hours” is the only performance measure on this project, then it would appear that, by being less efficient, Law Firm B Associate (20/2,000 billable hours) has performed better than Law Firm A Associate (5/2,000 billable hours) because Law Firm B Associate has made more progress toward satisfying the annual billable hours requirement (2,000). Of course this notion is absurd, and it is the “realization ratio,” taken into account with the “billable hours” total, provides the law firm with the ability to measure an associate’s efficiency as well as total work output.

Law firms generally do not share the importance of the “realization ratio” metric with their associates, particularly junior associates. Why? The reason is that law firms do not want their Worker Bees to take shortcuts to try to improve their “realization ratio” since doing so may detract from the quality of the work product. The law firm would much prefer a Worker Bee spend as much time as necessary to do the highest quality work possible since the Worker Bee will be paid the same salary regardless of the number of hours the associate works. But an expectation of improved efficiency will emerge as the Worker Bee gains experience and seniority and is thus assigned more-challenging projects, often with greater time pressure. And if a senior associate is up for a partnership decision, then the “realization ratio” will likely be a crucial metric.

APPENDIX 4 - ACCOUNTING FOR DIFFERENCES IN LAW FIRM BUSINESS
MODELS, SIZES, CULTURES, AND PRACTICE AREAS

Although law firms vary from each other in many respects, I believe that the principles described in this paper apply to each of them because the underlying law firm-lawyer-client relationship dynamics are basically the same.

Business Models

Some law firms are centrally managed with a relatively strong hierarchy that maintains the firm's policies, procedures, and compensation structures across the globe (e.g., Skadden Arps). Other law firms operate more like a "franchise" where each office is a separate profit center and the head office only involves itself in serious matters, such as deciding which office must withdraw from representation if two offices seek to be on opposite sides of the same transaction (e.g., Baker McKenzie). But, regardless of business model, the competition for clients remains the same as does the junior associate's need to strategize a path of career advancement either by promoting within the same law firm, moving to or forming a new law firm, or working directly with a major client in-house.

Sizes

When it comes to law firm dynamics, does size matter? It might matter. If personal relationships are closer, as is likely to be the case in smaller-sized firms, then the strength of those relationships may assume relatively greater importance vis-à-vis economic factors compared to larger law firms. But even the smallest of firms, with five or fewer lawyers, are prone either to break apart as "project managers" and "worker bees" seek greener pastures elsewhere or to expand into becoming bigger firms as new clients are retained and additional junior associates must be hired to help service them.

Cultures

Beware of any law firm that claims that its culture is more collegial, harmonious, or work/life balance-oriented than that of its competitors. In my experience, those are the firms likely to be the least transparent while, in reality, featuring a vibrant culture of deceit, backstabbing, and passive-aggressive behavior. Regardless of the image that a firm seeks to project to its employees or to the outside world, the fundamental business dynamics of law practice will remain.

Practice Areas

Although my own background is in transactional practice, I have observed enough litigation attorneys and departments to know that the law firm dynamics described in this paper apply to that area as well. For example, in my first law firm job at Cole, Corette & Abrutyn (Washington, D.C.) there existed three tiers

of litigation associates—“permanent” senior associates that helped to manage pending cases under the supervision of a partner, “permanent” junior associates that executed discrete work assignments (research memoranda on various points of law and procedure, drafting of motions and briefs, etc.) related to those cases, and “contract” junior associates that were hired on an “as-needed” basis for various tasks such as document review and discovery compliance (and, if found to be highly-competent at those tasks, perhaps rewarded with higher-level tasks and conversion to “permanent” associate status). Partners and senior associates subtly vied with each other for client esteem, or at least attention, while the junior associates (“permanent” or “contract”) rarely even met the clients. In summary, nothing in my years of practice has led me to believe that the law firm dynamics described in this paper are inapplicable to any particular types of law practice, particularly litigation practice.