“Clients are not as loyal as they used to be.”

“Partners are not as loyal as they used to be.”

We’ve said these things, but are they true? Yes and no. Our relationships with our clients and our partners have changed. But these changes may be for the better, and what we call disloyalty may be something else.

Law firm relationships with clients and partners used to be fairly one-sided, favoring the law firm’s self-interest, which really means favoring the interests of the founding members of the law firm and their heirs apparent. These arrangements have become more mutual, whether we like it or not. When we lament the death of client or partner loyalty, the truth of the matter is we are lamenting the fact that we have been shaken out of our comfort zones.

We can either pine for the old days, or we can face facts and embrace the future. Because there’s not much point in the former, we need to work toward a new understanding of loyalty—one that is more authentic and mutually rewarding. Law firms cannot genuinely ask for the loyalty of their clients and their partners or criticize its demise unless they first extend loyalty to their clients and partners.

The nature of the relationship we used to enjoy with our clients was too good to be true. Thirty years ago, clients did not have the tools they have today to learn about lawyers and law firms and to make well-informed selections of outside counsel. The Internet was not well developed, and clients could not conduct Google searches. There were no websites. Courtroom performances were not taped and archived in online courthouse databases. Briefs were not available online. Corporate counsel tended to work with one principal law firm to which they had been “loyal” for years. Not surprisingly, therefore, clients had little basis for comparison and tended to change outside counsel or use multiple outside counsel very seldom, whether they were being well represented or not. They tended to go with safe choices because they were, well, safe. And they tended to recommend their long-time outside counsel to others, whether outside counsel deserved it or not.

Also, 30 years ago, geography was more significant than it is today. We did not have networks that enabled us to work across offices and territorial borders. We had to have books to conduct legal research, and we could not afford to house and maintain case reporters, digests, and treatises for every jurisdiction. This tended to limit competition.

We knew what was best for our clients, and we could paternalistically (yes, most partners who controlled business were men) ask them to trust us about how we handled and staffed their matters and how we charged for our legal services. We rarely charged more in those days than the amount in...
controversy, and so we rarely forced our clients to ask whether we were really worth all the money we charged.

Then (as now) clients liked to say “we hire lawyers, not law firms,” and who among us has not taken some prideful satisfaction in this when we were on the receiving end of such adulation? Of course, when partners leave and take clients with them, we are quick to say clients are not as loyal as they used to be, and we attribute this to increased lateral movement.

We have built up the belief over the past few decades that partner loyalty has declined just as much as client loyalty has declined, and we often tie these two trends together. It is difficult and perhaps impossible, however, to make a true apples-to-apples comparison between partner loyalty of yesteryear and partner loyalty of today. This is because law firms are structured and organized so differently today, and the very definition of partner and the rights and responsibilities that attach to this status have changed in the process.

Are Today’s Partners Really More Disloyal?

Thirty years ago, every partner really used to own his law firm. They all had life tenure, they all voted on most issues of substance, and they all knew one another because there were fewer than 100 partners, or even 50, in the largest firms. Today partnerships can have many tiers of widely varying rights and responsibilities. Partners vote on very little in most firms, tenure has virtually gone out the window, and it is not uncommon for partners to know only a small fraction of their counterparts throughout their firm. But has partner loyalty actually declined?

We do see a great deal of lateral movement across law firms today at the partner level. Some of us have blamed American Lawyer for this, arguing that when that publication started reporting what lawyers earned at firms around the country, this started a feeding frenzy and stampeded partners into a search from firm to firm for the highest compensation attainable. But the real question is whether American Lawyer started lateral migration or merely started documenting it. The latter may be closer to the truth. American Lawyer itself has never caused a single partner to leave his or her law firm.

The dirty secret in our profession is that partners have always left law firms for greener pastures. Every city is dotted with law firms founded by alumni of other older firms in town. This occurred long before American Lawyer or modern partner incomes saw the light of day. Until the advent of legal trade publications, however, these departures were rarely discussed in the open, let alone published widely.

Why did partners leave 30 years ago? They left for much the same reason they leave today—mostly to seek greater opportunity. For the most part, firms were run less like meritocracies in the 1980s than they are today. Seniority was king. Up-and-comers had little choice but to strike out on their own because they could not loosen the death grip on their law firm—and its coffers—held by the old guard then running such firms. If a lawyer stuck around long enough, his or her compensation might increase incrementally. No matter how good or productive a more junior lawyer was, however, there was simply no way he or she was ever going to leapfrog a senior lawyer’s pay package. Any assault on this fortress, or resulting departure, was dubbed disloyal even in that day—or maybe especially in that day.

To the extent trade publications like American Lawyer caused or contributed to partner departures at all, they did so not by encouraging greed but by exposing it. Partners have always left law firms either because they were encouraged to leave (subtly or not so subtly); they felt they were being treated unfairly; their law firm ceased to support the growth of their practice; they wanted to make a true career change (teaching, public service, an in-house position, and the like); or they had personal or family reasons apart from anything going on at the firm. But very few partners have ever left law firms because they lacked character or “loyalty.”

We can all think of situations, of course, where we are quite convinced that a partner made a mistake in moving for a higher offer because the offer was illusory or not sustainable. But there is so much transparency now in the legal marketplace, and the value of strong practices is so well understood and recognized by all larger firms today that partners who are truly being treated fairly will almost never leave their current firm just for a larger paycheck, and we discourage any lateral who approaches our firm from talking with us only for that reason. There is almost always something else going on beyond greed or disloyalty that prompts a partner to leave, and labeling departures or lateral migration as “disloyal” simply obfuscates analysis of the true issues.

The fact is clients and partners are very loyal. They always have been, and they probably always will be. They practically have to be pushed out the door. Why is that? It’s a matter of human nature and common sense. It takes years to build any relationship worth having. This is certainly true for the attorney-client relationships and relationships within our law firms. And none of us wants to throw that away lightly.

Time and time again, clients say they deeply value their strongest relationships with outside counsel, and they are loath to shop around. Most clients eschew using requests for proposals, except perhaps to test the market to gather the information they need to make responsible decisions about the use of their scarce resources. We can’t blame them for that. But they really don’t want to terminate relationships that are working well for them. They would be foolish to do so.
When all is said and done, if we stop to think about it, most of us would say that the number of clients who have been “loyal” far exceeds the number of clients who have been “disloyal.” And what about the clients we deem disloyal? How does that come about?

In some cases, these are relationships that never gelled in the first place. There are many individuals and companies who are disreputable, incapable of enjoying mutually productive relationships, or impaired beyond redemption, and law firms should never accept these clients in the first place. If we mistakenly take them in, their departure or refusal or failure to pay our bills is not really a matter of disloyalty.

In our current business climate, we all have clients whose economic fortunes have taken a nosedive, and then they misbehave toward our firms by failing or refusing to pay invoices, sometimes based on trumped-up justifications. This is also not a matter of disloyalty—it is the behavior of a wounded animal.

We see this same behavior at times when a law firm loses a litigated case for a client or when a transaction ends up badly for the client, and the client blames outside counsel and changes law firms in a visceral rather than thoughtful and cerebral reaction to the outcome. This may reflect a frantic attempt to do something, anything, to bring about a different and better outcome; it may be a decision driven by upper management who had no real relationship with outside counsel; or it may amount to an effort by inside counsel to deflect blame for his or her strategic choices. This is not a modern development. It has always happened and always will, and it grows out of desperation.

We should put in the same category the selection of a different and “safer” outside law firm in a bet-the-company case or transaction without regard necessarily to the actual quality of representation. Again, this is not a matter of loyalty or disloyalty. It is inside counsel acting under great pressure, and it is also not a recent phenomenon.

In most other instances, however, a client who changes law firms does so due to some actual or perceived shortcoming on the part of the law firm, not the client. A client may be forced to seek different counsel, for example, if the client’s regular outside counsel does not have the requisite expertise or depth on the bench in a particular area. This is not an act of disloyalty. It is a choice about which reasonable people might differ, but it is one driven by the perceived business needs of the client.

Sometimes, a law firm gives a client no reasonable alternative. Any law firm may lose a client if the firm takes the client for granted or treats it shabbily. Many years ago, clients were less demanding or knowledgeable about relationships with outside counsel, and law firms were more high-handed about how they dealt with them. But the fact that clients are now insisting on better service and developing more sophisticated systems to monitor this is not an act of disloyalty.

When we talk about deteriorating client loyalty, however, what most often comes to mind is clients who leave the firm to follow partners who are moving to another firm. This is a tough issue to address, but law firms must share much or most of the responsibility for this.

In the first place, law firms run the risk of defections by key partners and clients whenever they indulge or actively support the idea that any client belongs to an individual partner instead of the firm. To be sure, there is an element of the attorney-client relationship that can be intensely personal, and this must be respected and nurtured. But once any of us makes the decision to practice in a law firm rather than to operate as a sole practitioner, we need to be prepared to support the institution of the law firm in the service of our own self-interest, most broadly understood. And we have necessarily made the decision, albeit implicitly, that the law firm as an institution can do a better job of supporting our key client relationships than we can on our own. The most successful law firms and partners get this and understand the importance of institutionalizing all key client relationships. This starts with introducing more than the originating partner into the relationship and building strong ties between the client and others in the firm. This limits the ability of rainmakers to bolt to another firm and to take their book of business with them, but it is a risk they should willingly take because operating in a silo presents an even greater risk to the proper representation and cultivation of clients and to the attorneys’ opportunities to grow their practice to its full potential.

Clients want these institutional ties. They don’t like the idea that they might have only one or two key contacts inside a law firm. Sophisticated clients like redundancy and have seen fit to build it into their own businesses or even other aspects of their lives. They want to know they have a team at their disposal, and, equally important, they want to know they have the full commitment of the law firm and access to all of its resources. In fact, the most sophisticated clients want to know not only about other partners who can help them, but also that the firm is cultivating strong associates to help them. Clients want assurances that they can build relationships with these attorneys and invest in them over time, and they want to know that they can count on the law firm as an institution to grow with their businesses over time.

Law Firm Dynamics

A lawyer will be most successful in today’s law firm, of course, if he or she can build a book of business. The real issue is how can a partner build a book of business to its greatest potential? The Holy Grail is the ability to cross sell services inside the law firm. This is where everybody’s best interests overlap. The law firm
wins because it weaves key client relationships into the fabric of the firm, across practice groups and offices. The client benefits because it develops rich and deep resources in a law firm that becomes increasingly knowledgeable about the client’s needs and preferences and increasingly adept at servicing them. And all the attorneys involved in the relationship win because they gain access to great client relationships and challenging work, and those who play the greatest role in developing these client relationships are able to use all the resources of the firm to grow their books of business.

To succeed at institutionalizing client relationships, a law firm must reward joint efforts in developing client relationships, not merely the ownership interest of a sole originating lawyer. Thus law firms must encourage teamwork and the sharing of credit. Law firms that do not do this take a big risk that partners may get wanderlust at any time. When partners are actually a collection of sole practitioners sharing office space and a receptionist, it is meaningless to speak of loyalty. By the same token, a law firm that does not take the trouble to know and institutionalize key client relationships should not complain about a lack of loyalty when a client follows a defecting partner to another firm—because the client is in fact being loyal to the only relationship it knows.

Problems occur most often when a law firm clings to the past and fails to make room for attorneys who are working hard to grow their success and compensation. This is not unique to law firms; it resides in the DNA of many organizations. In “Why Our Best Officers Are Leaving,” published in the January/February 2011 issue of The Atlantic, Tim Kane argues that the American military is driving away some of its top talent due to its stubborn adherence to seniority as a basis for advancement. Kane describes this as a “deeply anti-entrepreneurial personnel structure.” He concludes, based on surveys of veterans, that “many of the best officers would stay if the military was more of a meritocracy.”

Likewise, Martin Fackler, in his article titled “In Japan, Young Face Generational Roadblocks,” in the January 27, 2011, issue of the New York Times, reports that as Japan fades as an economic superpower, “it desperately needs to increase productivity and unleash the entrepreneurial energies of its shrinking number of younger people,” but “Japan seems to be doing just the opposite” by protecting those entrenched in power and by making “an already hierarchical society even more rigid and conservative.”

These lessons are universal because they reflect the temptation by those in power to protect what they have, frustrating the need of others to grow. Law firms must continue to create opportunities for strong up-and-comers at all stages of their careers to improve their lot and to share in the success of the firm, without harping on how those who have “made it” had to pay their dues. Ironically, in many cases law firms apply this notion to hold back partners who have been laboring in the vineyards for decades themselves.

At the same time, however, a law firm must be careful not to jump too fast to embrace new hires or rapidly ascending partners as a messiah, turning away from proven performers. More often than not, spectacular spikes in performance are deceiving. Law firms have to balance the need to integrate new lateral hires where they fairly belong and to encourage and reward performance by rising stars with the need for reasonable stability, sustainable growth, and appreciation for long-term contributors.

Finally, we must consider why occasionally even the most successful and well-compensated lawyers leave their law firms. In a 2010 study called “Big But Brittle: Economic Perspectives on the Future of the Law Firm in the New Economy,” authors Bernard Burk (Stanford University) and David McGowan (University of San Diego School of Law) explain that big law firms have risen and flourished due primarily to opportunities that the strongest producers provide to each other through their successful collaboration. By the same token, the most successful law partners may be tempted or even compelled to leave a law firm when they outgrow the opportunities provided by their current firm.

What can we draw from all of this? Put simply, good relationships must be reciprocal. This leads us to what law firms, clients, and partners should expect from and provide to one another.

**When partners are actually a collection of sole practitioners, it is meaningless to speak of loyalty.**

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What Clients Should Expect of Us

First, let’s consider what clients should rightfully expect from their outside law firms. The Rules of Professional Responsibility prescribe minimum standards of loyalty, candor, care, and other obligations. But these should establish the floor for a mutually successful attorney-client relationship. Most lawyers might say
what clients really want is great results. We can agree on this, but this only begs the question, what kind of results?

Most fundamentally, clients expect law firms to be genuinely committed to helping them succeed. Michael Rynowecer, the president of BTI Consulting Group, Inc., has determined through numerous interviews with Fortune 1000 clients that this is what clients value most. Most important, success must be measured from the client’s point of view. Litigators should not presume that success means winning a lawsuit. It could mean, instead, helping the client’s law department understand and explain to management or the board the nature and extent of the risks; assisting in damage control with the media, customers, or investors; getting out of the lawsuit at the earliest possible date; preventing recurrences; staying within budget; avoiding impairment of business relations; minimizing disruption to the business; anticipating or preventing enforcement actions; or achieving many other important business objectives.

Also, we should have a frank discussion with our clients at the commencement of each engagement about everything truly important to the client, including the client’s business goals, legal goals, what the engagement is likely to cost, what the matter is worth to the client, how best to manage and discuss costs, how best to communicate about other aspects of the engagement, how to bill and collect fees and costs, whether and how to engage experts and consultants, outsourcing, staffing, timelines, and any other matters of significance to the client.

Further, we owe it to the client to manage every matter with the client’s best interests foremost in mind and in the most cost-effective manner. It is incredibly short-sighted, not to mention unethical, to over-lawyer or prolong any engagement because it fattens the fee. Too often, lawyers think case management consists of charting a legal strategy, dispatching lawyers to advance it, and then reviewing the bill at the end of the month. That’s only part of the job. It is equally important to develop a work plan and to oversee that work plan during the month to ensure that the entire team is working effectively and efficiently.

We should discuss with our client whether to turn over every stone rather than just do it, presuming that either the client wants us to do it or that we need to do it to protect our firm from criticism. It is far better to give clients choices of strategies and attendant costs than to recommend only one course of action and then negotiate hourly rates for achieving it. There is never just one way to do things.

We also owe our clients honest and frank advice. This means we should not sugarcoat risks or costs to land an engagement or to keep the client happy during the engagement. When our clients ask for our advice, we should tell them what we think, not what we believe they want to hear. We should give our clients a heads-up as circumstances change and certainly if we are likely to exceed anticipated costs. Most important, we need to come clean with a client when we make mistakes. Mistakes are inevitable. Clients understand this and are generally forgiving—unless we cover them up or offer disingenuous excuses. Fess up, apologize, and work constructively with the client to rectify the situation.

It should go without saying that we must avoid conflicts of interest and manage waivers prudently. As law firms grow and as companies concentrate their legal work in fewer firms, conflicts will be inevitable. Most clients get this and freely grant waivers on matters substantially unrelated to those we are handling for them, sometimes with an understanding that discrete matters will be handled by different teams. This is a privilege that law firms should not abuse. We need to work hard to see conflicts from our client’s point of view.

Also, we should communicate meaningfully and intelligently with our client during the engagement about the progress of our work and the content of our invoices. Clients should not have to decipher detailed time entries on our computer printouts or electronic time entries to glean what we are doing for them and to ascertain the value.

Finally, we should debrief clients after every engagement and meet with them periodically to talk about our relationship. Very few businesses have the chance to learn as they go, getting constant feedback from clients or customers about the quality of their services. We have that opportunity and need to use it more often. We also need to say “thank you” much more than we do.

What We Should Expect of Clients

As outside counsel, what should we reasonably expect of our clients? This question may sound audacious, and some of you may be thinking, “Take what they dish out, and shut up.” But when we are honest about this, we know we don’t really feel that way. As professionals who work very hard to do our best for our clients, we deeply resent unfair and discourteous behavior by our clients, and, in the long run, this can damage the relationship profoundly. The fact is most clients really do understand this and work hard to support valued outside counsel relationships.

What are their best practices?

The best clients demonstrate common courtesy and professionalism in their dealings with outside counsel. Yes, they can get away with being rude, curt, dismissive, and overly critical, but this is rare and self-defeating.

Astute clients understand the fundamentals of law firm economics. They get that law firms are in business like them, and they want their outside counsel to succeed. We will be of little use to them in the long run if we do not. They also know full well that succeeding means more than keeping the lights on. It means attracting and retaining the top talent that they hired.
their law firms for in the first place. They also understand that outside counsel are not a necessary evil. In a free market economy, the very existence of our clients’ businesses and their ability to engage profitably in transactions depend on the rule of law. Law firms help ensure the perpetuation and effective functioning of that rule of law, including the peaceable and enforceable resolution of significant business disputes. This is not a bad thing; rather, it is a good thing, and the most sophisticated clients value it greatly.

Astute clients understand the fundamentals of law firm economics.

Largely for the reasons just discussed, savvy clients look at the value of their overall relationship with outside counsel and don’t nickel-and-dime law firms about hourly rates. Ultimately, bargaining hard over hourly rates misses the forest for the trees: the total cost and value of the engagement.

Great clients also establish good channels of communication, return calls, and engage with outside counsel in making decisions as needed. They also do not seek to shift responsibility or blame for decisions they make or ask their law firms to make.

Clients truly supportive of great relationships with their outside counsel do not use law firms as “banks,” purposely delaying the payment of invoices to take advantage of the float. They also do not delay reviewing and paying invoices. They should treat outside counsel as they do any other valued business relationship, just as our work for our clients takes priority over our own internal routines.

Further, great clients do not use conflicts as a sword, defining a “conflict” more broadly than the ethical rules require, using the concept to demand industry exclusivity or otherwise to prevent outside counsel from pursuing legitimate and important opportunities for their own growth and success. They don’t exercise a veto over the use of their outside counsel by a business rival to inflict injury on a competitor.

Clients interested in a reciprocal relationship do not recruit outside counsel’s attorneys for their own legal departments without notice or discussion with the law firm’s client relationship manager.

In addition, outside counsel should be able to rely on the terms of engagement negotiated with the client. It is bad form for a client to “renegotiate” the engagement, after substantial services are performed, by demanding a reduction in rates or a write-off, particularly when the client has accepted our services all along without complaint and sometimes with effusive praise.

This is a sensitive but key issue: Clients should not introduce other outside counsel into the relationship lightly. Obviously, any law firm that has built a great relationship with a client and has the requisite expertise to provide needed legal services would appreciate the opportunity to be engaged for those services. Creating and nurturing a great relationship takes great time, talent, and resources. Clients have legitimate reasons to turn to other firms all the time, but they should pause to consider whether this is truly necessary and in their best interests in the long run.

Finally, clients should also say “thank you” for courtesies extended and services provided by outside counsel. Yes, we do these things because we value their business, and they pay us well for our services. But, ultimately, we are all human, and there is a whole range of behaviors that may satisfy what we are strictly required to provide. The most astute clients understand this and show their gratitude to valued outside counsel as often as we extend ours to them.

Keeping Partners Loyal

How should law firms earn the loyalty of their partners? Retaining highly marketable lawyers can’t be just about throwing dollars at them. So what does it take?

First we must take pains to let our partners know that we value them and care about them as people, not just as producers. I know this is a huge challenge as law firms grow larger and more geographically dispersed. But it is essential.

We must also be honest and transparent with our partners. This should not be hard to do, no matter how large our firms become. It is a matter of principle and habit, not merely policy or procedure.

By the same token, we must be fair and even-handed, especially in the setting of partner compensation and in the creation of opportunities for career advancement within our law firms. This is a tough one because fairness in these matters often exists in the eye of the beholder, and no matter how hard we try, no firm will make the “right” decisions or take the “right” courses of action all the time. Further, we inevitably must rely to a significant degree on “objective” indicators of performance in making these decisions because they are, well, most likely to be accepted as objective. This opens the firm to the criticism that it cares mostly about numbers. Numbers don’t tell the whole story, and we must take into account a host of subjective factors to do a good job in rewarding all the behaviors that law firms need to succeed. But the fact is that numbers can be markers of many important subjective talents and behaviors. Most of all, however,
What Should We Expect from Partners

What should law firms expect from their partners? Many might reflexively say loyalty, really meaning blind allegiance, which firms should not expect or demand. But law firms should be able to expect many important behaviors that help create and strengthen a more powerful and mutual kind of loyalty between the firm and all of its members.

Certainly, law firms should expect and demand the highest professional and ethical conduct at all times. This is non-negotiable. Again, we all make mistakes. But an innocent mistake can rapidly evolve into unethical misconduct if we seek to conceal it from our partners or our clients. Come clean, and you will feel better and usually eliminate any real risk to yourself or the firm.

Beyond this, law firms should be able to expect a partner’s full commitment to the law firm’s success. This means having an owner mentality and wanting what is best for the law firm, even if at the expense of the partner’s short-term best interests.

Related to this, partners should not seek first and foremost to grow their own books of business. It does not take too much imagination to understand how the relentless pursuit of this goal can and often does lead to destructive internal competition, resentment, and back-biting; a temptation to give away the farm to induce clients to send their work to the rainmaker; and a misplaced emphasis on growing revenues at all costs, whether the work is consistent with the firm’s brand, strategic direction, or long-term best interests.

Partners should also be open and honest with firm management, with one another, and with themselves. Hidden agendas, half-truths, and insincere claims or excuses inevitably foster an atmosphere of distrust and can irreparably damage relationships.

Partners should be willing to institutionalize their most-valued client relationships. This means introducing others in the firm to these relationships in a meaningful way. Is there risk in this? Of course, but it is a risk that every successful partner must take to grow his or her client relationships to their full potential and to gain the most out of the “platform” the law firm provides.

Partners should not seek to work to the rule. Instead, they should strive to exceed whatever minimum standards the firm establishes. If you disagree with the firm’s standards, policies, or requirements, say so, and try to change them. But if, at the end of the day, the firm stands its ground, being a good partner means understanding the purpose of the law firm’s requirements, playing by the rules, and exceeding expectations.

By the same token, partners should not seek to game the system regarding compensation, taking advantage of one number or an accident of timing or a flash in the pan. Also, partners should be wary about demanding abrupt increases in compensation based on a recent spike or trend in performance unless they are prepared to accept an abrupt downward adjustment when that trend runs its course. If you live by the sword, you may die by the sword. Compensation systems should reward sustained and sustainable performance most strongly with appropriate recognition, say, in bonuses, for more temporal successes.

Partners should treat all persons inside and outside the law firm with respect and courtesy. Partners represent the firm. Being abusive to staff or third parties suggests that you and your firm care only about relationships you can exploit to your own advantage.

Finally, partners should care about the future of their firms and help the firm build relationships for the long haul with up-and-coming talent inside the firm, clients, and many others crucial to the firm’s long-term success.

Our relationships with our clients and our partners have changed and evolved in very important ways over the past 30 years, but largely for the better. Although in many ways these relationships have become more complex and demanding, the fundamentals have remained the same. Managing these relationships successfully comes down to a timeless and simple edict: Follow the Golden Rule.