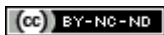


NOTE

CAN LOCKSTEP FIND ITS FOOTING AGAIN? WHY THE LOCKSTEP COMPENSATION MODEL CREATES A CULTURE FOR PROVIDING BETTER LEGAL SERVICES

Jacob Dougherty

ISSN 0041-9915 (print) 1942-8405 (online) • DOI 10.5195/lawreview.2022.911
<http://lawreview.law.pitt.edu>



This work is licensed under a Creative Commons Attribution-Noncommercial-No Derivative Works 3.0 United States License.



This journal is published by [Pitt Open Library Publishing](http://pittopenlibrarypublishing.com).

NOTE

CAN LOCKSTEP FIND ITS FOOTING AGAIN? WHY THE LOCKSTEP COMPENSATION MODEL CREATES A CULTURE FOR PROVIDING BETTER LEGAL SERVICES

Jacob Dougherty*

Table of Contents

Introduction:	315
I. The American Law Firm Was the Gold Standard of Professional Organizations Before Coming to Icarian End.....	316
A. The Invention of the Modern Law Firm with Its Lockstep Culture Came as a Response to Industrialization and Instability in the Bar	316
B. In the Late Twentieth Century, Much of the Elite Bar Moved Away from the Lockstep Model Toward the Eat-What-You-Kill Compensation Culture, Changing the Culture of Law Firms and the Legal Profession.....	320
II. The Lockstep Compensation Culture Is Preferable to the Eat-What-You-Kill Culture Because It Can Foster the Essential Qualities of Trust and Collaboration	324

* J.D., 2022, University of Pittsburgh School of Law. I would like to thank my wife, Samantha Amberg, for her support. I would also like to thank Haider Hamoudi and Peter Oh for their mentorship and Bernard Hibbitts and Michael Madison for their dedication to the history and future of the legal profession and for making me think about what it means to be a lawyer.

- A. Trust Is A Critical Firm Goal And Value; Lockstep Culture Is More Likely To Foster Trust, While Eat-What-You-Kill Undermines Trust..... 324
- B. Collaboration Is Critical to Success in Firms; Lockstep Culture Is More Likely to Foster Intrafirm Collaboration, While Eat-What-You-Kill Culture Undermines It 328
- C. The Analogue to Lockstep Law Firm Culture Is Kaiser Permanente’s Medical System 332
- III. Lockstep Firms Are More Likely than Eat-What-You-Kill Firms to Be Successful in Attracting and Retaining Talent and Clients..... 333
 - A. Lockstep Firms Are More Likely to Attract Young Lawyers Because of Their Culture..... 334
 - B. The Lockstep Culture Is a Better Model for Building the Attorney-Client Relationships Necessary to Face the Clients’ Complex Problems 339
 - C. Can Lockstep Firms Retain Their Highest Performing Partners? 343
- Conclusion..... 345

INTRODUCTION:**

In September of 2020, the venerable law firm Davis Polk & Wardwell announced that it would be abandoning the “pure lockstep” model that compensates lawyers based on seniority.¹ The lockstep model was an iconic attribute of elite Wall Street law firms throughout most of the twentieth century. However, when Davis Polk made the announcement, it was one of only a handful of elite law firms still using the model.² The change dealt a blow to the remaining institutions, indicating that even one of the most respected and profitable law firms in the world could not resist the pressure to move toward an “eat-what-you-kill” compensation model—a model that compensates a lawyer based on their individual performance-related factors.

The eat-what-you-kill model is popular because it is used to recruit other firms’ profitable lawyers—*i.e.*, “rainmakers”—to attract new clients and increase the firm’s profitability. The recruited lawyers, notably partners, are often provided a guaranteed base salary that is multiples above their compensation at their predecessor firm. While these moves can provide big payouts for individual lawyers, they can erode important parts of the legal profession, including firm culture, professional norms, and third parties’ perception of the profession.

It is important to say that many lawyers—especially solo practitioners—use the eat-what-you-kill model every day.³ This Note is not about those lawyers. This Note is about elite big law firms that provide mostly transactional services to corporate

** Between writing this Note and its publication, events occurred related to the topic of this Note. Namely, Cravath, Swaine & Moore, a law firm discussed throughout this Note, abandoned the pure lockstep model. Debra Cassens Weiss, *Cravath abandons strict lockstep compensation for partners*, ABA J. (Dec. 7, 2021, 8:57 AM CST), <https://www.abajournal.com/news/article/cravath-abandons-strict-lockstep-compensation-for-partners/>. Additionally, reports suggest that Cleary Gottlieb has also abandoned its pure lockstep model. *See id.* These changes support the trends and themes in this Note. And while some of the information in Parts II.B. and III.A. will be outdated, the concepts discussed herein are still relevant and the examples are still relevant.

¹ Joe Patrice, *Davis Polk Confirms That We’re in the Twilight of the Lockstep Firm*, ABOVE THE LAW (Sept. 11, 2020, 10:47 AM), <https://abovethelaw.com/2020/09/davis-polk-confirms-that-were-in-the-twilight-of-the-lockstep-firm/> [https://perma.cc/LJR3-NPZE].

² Caroline Spiezio, *As Lockstep’s Lure Fades, Defenders Still See Value for Law Firm Culture and Clients*, WESTLAW TODAY (Sept. 15, 2020, 9:43:07 PM), [https://today.westlaw.com/Document/I4d2ef2b0f79d11ea9452925e1b8d48e0/View/FullText.html?transitionType=SearchItem&contextData=\(sc.Search\)](https://today.westlaw.com/Document/I4d2ef2b0f79d11ea9452925e1b8d48e0/View/FullText.html?transitionType=SearchItem&contextData=(sc.Search)) [https://perma.cc/Y5DJ-8K7Z].

³ Paul C. Saunders, *When Compensation Creates Culture*, 19 GEO. J. LEGAL ETHICS 295, 296 (2006) (book review).

clients and how these compensation models may affect their firm culture and future success. This Note argues that, despite the trend toward the eat-what-you-kill model, the lockstep compensation model is more likely to foster critical qualities of the modern (and future) law firm and attract and retain both talent and clients.

I. THE AMERICAN LAW FIRM WAS THE GOLD STANDARD OF PROFESSIONAL ORGANIZATIONS BEFORE COMING TO ICARIAN END

Though many see the legal profession as “rigid and hidebound[,] [t]he narrative of the profession from the nineteenth to the twenty-first centuries is one of constant change and response to state and commercial interventions.”⁴ While today’s legal profession is threatened by external providers, the profession itself is responsible for its deficiencies.

A. *The Invention of the Modern Law Firm with Its Lockstep Culture Came as a Response to Industrialization and Instability in the Bar*

In an industrializing post-Civil War America, the practice of law took a new shape: Solo general practitioners started serving corporate clients. Law schools formalized under the Langdellian model to prepare students to serve corporate clients rather than individuals and society generally. Industrialization resulted in more complex law outside of the “branch of life” that most people lived.⁵ This complexity changed the practice of law in ways that remain relevant to the contemporary American lawyer.

In the late 1800s, the most elaborate law firms comprised of two lawyers.⁶ “Partners,” if they could be called that, worked independently; they “shar[ed] space and overhead expenses but not clients or profits.”⁷ But as technology and reference libraries increased overhead costs, lawyers began associating in somewhat larger

⁴ John Flood, *The Re-Organization and Re-Professionalization of Large Law Firms in the 21st Century: From Patriarchy to Democracy*, 36 J. LEGAL PRO. 415, 438 (2012).

⁵ Karl N. Llewellyn, *Restoration of Our Legal Tradition*, 16 ALB. L. REV. 1, 5 (1952).

⁶ MILTON C. REGAN JR., *EAT WHAT YOU KILL: THE FALL OF A WALL STREET LAWYER* 16 (2004).

⁷ JOHN OLLER, *WHITE SHOE: HOW A NEW BREED OF WALL STREET LAWYERS CHANGED BIG BUSINESS AND THE AMERICAN CENTURY* 57 (2019); see also Scott A. Westfahl & David B. Wilkins, *The Leadership Imperative: A Collaborative Approach to Professional Development in the Global Age of More for Less*, 69 STAN. L. REV. 1667, 1674–75 (2017).

quantities.⁸ Many named partners of these small firms did not care if the firms endured past their death.⁹ They were inclined to jockey for position in the dynamic new age:

The result was that law firm affiliations in the early industrial period were fluid and unstable. Powerful lawyers moved from one firm to another, taking their clients with them. Firms provided no systematic legal training, providing casual apprenticeships for aspiring young lawyers, many of whom were hired because of family connections. To some degree this was a mirror of the tumultuous economic era, in which many enterprises were extensions of forceful individuals who battled fiercely among themselves for the spoils of industry.¹⁰

But things changed in 1899 when Paul Cravath joined the firm now known as Cravath, Swaine & Moore:¹¹ the modern law firm was born. Within a few years, Cravath implemented several changes that he thought necessary to bring his law firm into the young century.¹² First, he hired top talent straight out of prestigious law schools to ensure they had not developed any bad habits.¹³ Second, associates were paid a salary, rather than sharing in part of the firm's profits.¹⁴ Third, unlike the preceding model of law firms where an individual lawyer's work was theirs alone, Cravath required that "all business in the office must be firm business."¹⁵ Fourth, associates were given a few years to demonstrate that they were worthy of entering the partners' ranks.¹⁶ Fifth, Cravath dissuaded competition among partners by instituting the "lockstep" compensation system in which seniority was the primary

⁸ REGAN, *supra* note 6, at 17.

⁹ OLLER, *supra* note 7.

¹⁰ REGAN, *supra* note 6, at 18.

¹¹ OLLER, *supra* note 7, at 48.

¹² *Id.*

¹³ *Id.* at 49.

¹⁴ REGAN, *supra* note 6, at 20; OLLER, *supra* note 7, at 50.

¹⁵ REGAN, *supra* note 6, at 22 (citing ROBERT T. SWAINE, *THE CRAVATH FIRM AND ITS PREDECESSORS, 1819–1948*, at 10 (1948)).

¹⁶ OLLER, *supra* note 7, at 51.

basis for compensation.¹⁷ Cravath redefined the law firm as an enduring institution that could last beyond its partners, rather than merely a confederation of lawyers.¹⁸

Fundamental to the Cravath system was fostering (or requiring) a culture of cooperation.¹⁹ Cravath's focus on cooperation extended beyond partner-to-partner interactions to associate-to-associate interactions as well. The senior associates at the firm broke down complex legal issues and gave small components of the project to the younger associates;²⁰ young lawyers at Cravath were "taken into shallow water and carefully taught strokes."²¹ Cravath believed his structure promoted meritocracy by emphasizing legal skills over social connections.²²

Cravath's system created relatively stable lives for its lawyers.²³ Lawyers' services were in demand as corporations grew and new regulatory regimes developed.²⁴ Additionally, corporate clients were unlikely to leave or search for alternative firms.²⁵ There was an implicit promise between firms that they would not recruit or poach other firms' partners—it would not have resulted in much benefit as clients were usually tied to the firm, not the partner.²⁶ Lawyers were personally and socially bound, as many of them would be at the firm for their entire careers.²⁷ This lack of attrition among partners created a stable culture among Cravath and the other white shoe firms that adopted the lockstep system.²⁸

As for associates, the Cravath "promotion to partner tournament" relied on transparency to mitigate the reality that fewer than 10% of them would become

¹⁷ REGAN, *supra* note 6, at 25.

¹⁸ *See id.* at 23.

¹⁹ *Id.* at 22 (citing SWAINE, *supra* note 15).

²⁰ OLLER, *supra* note 7, at 50.

²¹ *Id.*

²² *Id.* at 52.

²³ REGAN, *supra* note 6, at 24.

²⁴ *Id.*

²⁵ *Id.* at 24–25.

²⁶ OLLER, *supra* note 7, at 51.

²⁷ *Id.*

²⁸ *Id.*

partners.²⁹ If an associate was not accepted into the partnership, the firm found a place for them elsewhere.³⁰ This “up or out” structure meant that all lawyers in firms were either partners or aspiring partners.³¹ The transparency of the system permitted associates to confirm that the partnership was making good on its commitment to the preceding classes.³²

The Cravath model dominated professional organizations for much of the twentieth century and ushered in a “golden age of professions and professionalism.”³³ As railways, steel companies, oil companies, and technologists generated an abundance of work for lawyers,³⁴ law firms grew and developed specialized practices to serve these clients.³⁵ As John W. Davis put it, “[t]he main aim is not to have the largest law firm, but simply to answer the problems brought to you.”³⁶ To meet the increasing needs of their clients, law firms had to grow not only in size and specialization but also geographically—some firms expanded nationally for proximity to their clients and globally as means of carrying the liberalization of American law to other parts of the world.³⁷

Unlike today’s firms that measure their success by economic metrics, firms in the early twentieth century used more intrinsic metrics.³⁸ In fact, law firms were hesitant to discuss their economic aspects because the older law firm leaders thought of themselves as “small-town general practitioners.”³⁹ These lawyers were able to resist adopting business management principles because of their economic and social context: “Economically, the prosperity of the firm and its long-standing relationship with clients created incentives to cooperate for the welfare of the

²⁹ See Marc Galanter & William Henderson, *The Elastic Tournament: A Second Transformation of the Big Law Firm*, 60 STAN. L. REV. 1867, 1883 (2008); see also OLLER, *supra* note 7, at 51.

³⁰ OLLER, *supra* note 7, at 51.

³¹ REGAN, *supra* note 6, at 21.

³² Galanter & Henderson, *supra* note 29.

³³ Flood, *supra* note 4, at 416.

³⁴ *Id.*

³⁵ *Id.* at 416, 421; see also OLLER, *supra* note 7, at 50.

³⁶ OLLER, *supra* note 7, at 54.

³⁷ See Eric L. Martin, Note, *Liberalization and Cravathism: How Liberalization Triggered the Reorganization of the Legal Profession in Germany and Japan*, 43 STAN. J. INT’L L. 169, 174–75 (2007).

³⁸ REGAN, *supra* note 6, at 27.

³⁹ ERWIN SMIGEL, THE WALL STREET LAWYER: PROFESSIONAL ORGANIZATION MAN? 59 (1964).

organization. . . . All partners knew one another and moved in the same narrow social circles, which made concern for reputation a powerful influence on behavior.”⁴⁰

B. In the Late Twentieth Century, Much of the Elite Bar Moved Away from the Lockstep Model Toward the Eat-What-You-Kill Compensation Culture, Changing the Culture of Law Firms and the Legal Profession

The Cravath system toppled from dominance in the latter part of the twentieth century. First, beginning in the 1970s, corporate clients began developing substantial internal legal departments with the primary goal of reducing prices paid to law firms.⁴¹ Internal legal departments performed the routine legal work that was otherwise provided by outside counsel and quit subsidizing associate training.⁴² Second, the development of the legal press, which highlighted firms’ economic attributes had a “seismic” impact on the profession.⁴³ Third, firms from outside New York such as Kirkland & Ellis, Latham & Watkins, and Sidley Austin saw opportunities to make a place for themselves among the elite New York firms through lateral hiring and more “merit-based” (eat-what-you-kill) systems.⁴⁴ These changes reduced the information asymmetries between law firms, clients, and talent and increased client and lawyer mobility.⁴⁵ The twenty-first century, particularly the Great Recession, accelerated the pressure on law firm structures:⁴⁶ “The job for life—partnership as marriage—had declined, but the [financial] crisis ensured it would be no longer available. Large law firms culled staff with draconian vigour and brutality.”⁴⁷

⁴⁰ REGAN, *supra* note 6, at 27–28.

⁴¹ Westfahl & Wilkins, *supra* note 7, at 1684.

⁴² *Id.*

⁴³ Peter Hoey, *The AmLaw 100: Introducing Our New Profits Metric*, AM. LAW. (Apr. 27, 2015, 12:00 AM), <https://www.law.com/americanlawyer/almID/1202724024060/the-am-law-100-introducing-our-new-profits-metric/> [<https://perma.cc/Y2PJ-E3MG>].

⁴⁴ See Meghan Tribe & Roy Strom, *Wall Street ‘Nightmare’ Alive as Kirkland Poaches from Wachtell*, BLOOMBERG L. (May 7, 2020, 12:51 PM), <https://news.bloomberglaw.com/us-law-week/wall-street-nightmare-alive-as-kirkland-poaches-from-wachtell> [<https://perma.cc/YMQ4-JWX9>].

⁴⁵ Galanter & Henderson, *supra* note 29, at 1875.

⁴⁶ Flood, *supra* note 4, at 433.

⁴⁷ *Id.*

These downward pressures forced law firms to move from the formal conception of partnerships to a more corporate, bureaucratic form of governance.⁴⁸ The goal of the bureaucratic form of governance “has always been its purely *technical* superiority.”⁴⁹ Law firms required “associates to specialize immediately so as to make themselves productive as early as possible, further eroding the Cravath system’s promise of generalist training.”⁵⁰ The shift to a more bureaucratic system also eroded the classic promotion to partner tournament.⁵¹ As non-equity partnerships and other non-equity positions were created to meet this more corporate model of governance, equity partnership became “an exceptional boon occasionally endowed” rather than the anticipated reward for completing the tournament.⁵²

The changes at the turn of the twenty-first century were as transformative as those that came at the turn of the twentieth century.⁵³ These changes included the increase in non-equity partners and non-tournament lawyers; abandonment of lockstep in favor of differentials in compensation; “acceptance of lateral inward movement” but “fear [of] the departure of rainmakers and stars”; and “softening of the commitment of partnership as a permanent achieved status.”⁵⁴ Galanter and Henderson call this evolution from the 1970s to today “a story of transition from the ‘classic’ to an ‘elastic’ promotion-to-partnership tournament.”⁵⁵ They call this the “elastic tournament” because “it involves a stretching of the tournament so that it does not end with the promotion to partnership, but instead becomes ‘perpetual’ or unending as partners work longer hours, accept differential rewards, and fear de-equalization or early, forced retirement.”⁵⁶ While the classic tournament teamed associates (with large amounts of human capital but no clients) with partners (whose clients created more work than the partners could individually handle), the elastic model required non-rainmaking partners to develop relationships with the

⁴⁸ *Id.* at 427.

⁴⁹ *Id.* at 432 (quoting MAX WEBER, *ECONOMY AND SOCIETY: AN OUTLINE OF AN INTERPRETIVE SOCIOLOGY* 973 (Guenther Roth & Claus Wittich eds., 1978)).

⁵⁰ Westfahl & Wilkins, *supra* note 7, at 1685.

⁵¹ Flood, *supra* note 4, at 431–32.

⁵² *Id.* at 432.

⁵³ Galanter & Henderson, *supra* note 29, at 1875.

⁵⁴ *Id.* at 1875–76.

⁵⁵ *Id.* at 1882.

⁵⁶ *Id.* at 1877.

rainmaking partners.⁵⁷ Under this structure, the “tournament can now be expected to last one’s entire career. . . . [T]he only finish line is death or retirement.”⁵⁸ The rewards of reaching partnership—financial stability and relaxation—were gutted.⁵⁹

These changes have impacted the legal profession, causing the decline of loyalty and of “the concept of the firm—all for one and one for all.”⁶⁰ Associates are leaving law firms earlier because of the pressure to specialize early in their careers. Partners are willing to leave their firm for another higher-paying firm. Firms are aggressively expanding into new markets to find additional work,⁶¹ but “the sheer size and dispersion of most firms reduces the potential of pervasive firm-wide cultural norms.”⁶² Moreover, if the real focus of the law firm is boiled down to its bottom line and the rewards flow to the partners with the biggest books of business, the noneconomic responsibilities of the firm like hiring, training, pro bono service, and professional association work—which have been “valued and celebrated about law as a learned and committed profession”—play a declining role in the profession.⁶³ This shift in focus resulted in “unthinkable” effects on the legal profession, whereby successful partners are willing to take their book of business to a cross-town rival and lagging partners are eased out of their firms.⁶⁴

In his scathing essay *The End of Partnership*, Lawrence Fox said that focus on economic metrics has increased “the pressure on the ‘lucky’ few [partners], not only to keep up the feverish pace, but to become business gatherers, client collectors, fee generators, to keep the economic engine that is [the law firm] improving its revenues-per-lawyer and profits-per-partner each and every month.”⁶⁵ He characterized the

⁵⁷ REGAN, *supra* note 6, at 7.

⁵⁸ Galanter & Henderson, *supra* note 29, at 1871–72.

⁵⁹ *Id.* at 1872.

⁶⁰ Lawrence J. Fox, *The End of Partnership*, 33 FORDHAM URB. L.J. 245, 248 (2005). Please note that the pagination for this article differs on Fordham’s website and legal databases such as WestLaw. Given that the Fordham website lists this pagination as the recommended version (despite the pagination subsequently beginning from 101, not 245) and that the WestLaw version adopts and adheres to the recommended pagination, all references to his piece refer to the WestLaw version’s pagination.

⁶¹ Galanter & Henderson, *supra* note 29, at 1887.

⁶² *Id.* at 1914.

⁶³ Fox, *supra* note 60, at 248.

⁶⁴ *Id.*

⁶⁵ *Id.* at 247.

profession as “being collectively embarrassed by the fact that the career path to ‘partnership’ today provides neither a path nor anything that resembles real partnership.”⁶⁶ In fact, many associates are being promoted to non-equity partners rather than equity partners.⁶⁷ By moving the vast majority of promoted associates into non-equity partner ranks, firms are able to manipulate the metrics reported for profits-per-partner (“PPP”) by excluding non-equity partners from the denominator of the equation, “thereby permitting PPP to soar compared with how that calculation might come out if [non-equity] partners were included on both sides of the calculation.”⁶⁸

However, while today’s law firms might not be like the law firms operating between 1900 and 1970, they are like those found at the end of the nineteenth century:

The net result of these culls, restructurings, and re-inventions has been to scale back the growth of the late 20th century. Equity partnerships have shrunk, largely in order to bolster declining revenues; salaried partners found they were no longer on a track to equity; and associates found that they were welcome for a shorter number of years than before and only if they were prepared to abandon the partner track. *The resemblance between the 21st century law firm and that of the 19th century is striking. Power and wealth accrue to a small number of people while the roster of employees, with no hope of partnership, grows in inverse proportion to the shrinking partnerships.*⁶⁹

The modern American law firm has flown too close to the sun and its wax wings are melting. Since the 1970s, the American legal industry has been manipulated—through the structure of firms—into a money-making engine rather than the profession that it once was. The resulting resentment both inside and outside law firms has provided external actors with the opportunity to enter the market. However, by recognizing the value of the lockstep culture, law firms can re-emerge as a phoenix from the ashes (or puddle of wax).

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ Flood, *supra* note 4, at 433 (emphasis added).

II. THE LOCKSTEP COMPENSATION CULTURE IS PREFERABLE TO THE EAT-WHAT-YOU-KILL CULTURE BECAUSE IT CAN FOSTER THE ESSENTIAL QUALITIES OF TRUST AND COLLABORATION

Though the legal industry is currently focused on being an economic engine for a few of its top producers, there is an important role for non-economic attributes. The lockstep model is better at focusing lawyers on essential qualities of being a lawyer—trust and cooperation. Another professional setting, medical services, demonstrates that a model like the lockstep model fosters these qualities more than its alternatives.

A. *Trust Is a Critical Firm Goal and Value; Lockstep Culture Is More Likely to Foster Trust, While Eat-What-You-Kill Undermines Trust*

Trust is defined as a “belief that someone or something is reliable, good, honest, effective, etc.”⁷⁰ Inherently, trust exists in a space of imperfect knowledge, “for perfect knowledge would negate the need to trust.”⁷¹ In their paper, *Norms & Corporate Law*, Blair and Stout outlined three reasons why a person might trust another despite imperfect knowledge. First, legal sanctions may punish the person that violates the trust.⁷² Second, market (or external) sanctions, which include fear of retaliation, reputational loss, and social sanctions, may incentivize the person from abusing the other’s trust.⁷³ Third is what Blair and Stout refer to as “internalized trust,” the idea that a person may have a “taste or preference for behaving trustworthily toward [another], even if untrustworthy behavior would not trigger an external sanction.”⁷⁴ This Note uses the concept of trust as defined by Blair and Stout’s second reason, market or external sanctions, because it is the most relevant to the discussion of the impact of compensation on law firm culture.

⁷⁰ *Trust*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/trust> [<https://perma.cc/UZY7-FEKR>] (last visited Nov. 6, 2021).

⁷¹ Robert K. Vischer, *Big Law and the Marginalization of Trust*, 25 GEO. J. LEGAL ETHICS 165, 170 (2012).

⁷² Margaret M. Blair & Lynn A. Stout, *Norms & Corporate Law: Trust, Trustworthiness, and the Behavioral Foundations of Corporate Law*, 149 U. PA. L. REV. 1735, 1747 (2001).

⁷³ *Id.* at 1747–49.

⁷⁴ *Id.* at 1750.

“Trust is contagious.”⁷⁵ Research has shown that a person’s trustworthiness is correlated to whether that person believes that others are trustworthy.⁷⁶ In other words, “the best way to determine whether or not a person is trustworthy is to ask him whether or not he trusts others.”⁷⁷ Additionally, trust can be shaped by the culture of the organization in which people work.⁷⁸ Organizations are “repositories of a legacy of values” in which people’s “concepts of duties and obligations are influenced” by the way they are bound together.⁷⁹ For example, in law firms where the structure is hierarchical, “[d]eference to organizational leaders is influenced by the perception that the leaders share the organization’s values.”⁸⁰ While this is a patriarchal perspective, it was found in the “classic” tournament and fosters a much deeper sense of personal loyalty than the bureaucratic model that the “elastic” model adopted.⁸¹

Trust is a foundational attribute of being a lawyer in two ways: in the attorney-client relationship and in intrafirm relationships. At the time the “classic” model permeated law firms, the attorney-client relationship was based on the idea of trusteeship, in which there was a sense that the client and attorney were co-equals.⁸² Within a firm—a unit of people organized together to serve clients—trust is “contingent, in significant part, on the culture, . . . the priorities and values embodied in, and reflected by, the day-to-day interactions of the firm’s constituents.”⁸³

However, the attorney-client relationship and intrafirm relationships shifted as the market changed. Lawyers moved away from the trustee-based model of professionalism to the expert-based model, which has had three consequences: “First, professional success is related to profitability and serving those who pay, not to serving clients in need. Second, clients are paymasters and therefore should have

⁷⁵ Vischer, *supra* note 71, at 187.

⁷⁶ *Id.* n.96; see also Raymond H. Brescia, *Trust in the Shadows: Law, Behavior, and Financial Re-Regulation*, 57 *BUFF. L. REV.* 1361, 1380 (2009) (citing Edward L. Glaeser et al., *Measuring Trust*, 115 *Q.J. ECON.* 811, 833 (2000)).

⁷⁷ Vischer, *supra* note 71, at 187.

⁷⁸ *Id.* at 183.

⁷⁹ *Id.* at 184 (quoting BARBARA A. MISZTAL, *TRUST IN MODERN SOCIETIES* 50 (1996)).

⁸⁰ See *id.* at 183–84.

⁸¹ Flood, *supra* note 4, at 421 (2012) (citing WEBER, *supra* note 49, at 1007).

⁸² Flood, *supra* note 4, at 428.

⁸³ Vischer, *supra* note 71, at 185.

a powerful voice. Third, technical competence is downgraded because other attributes, that is managerial and entrepreneurial skills are given equal status.”⁸⁴ The move from the partnership archetype to the more bureaucratic form of governance had significant effects.⁸⁵ The partnership archetype “is integrative, replete with peer control, decentralized and based on trust,” while the more bureaucratic archetype “is centralized, focused on targets, rule-based with less reliance on trust.”⁸⁶ The oft-told story of John Gellene’s fall from the elite lawyer ladder occurred when Milbank Tweed “changed its structure to one approximating the [bureaucratic] form and it switched its remuneration form from lockstep to a merit-based system (‘eat what you kill’)[,] . . . where traditional values seemed less relevant to a modern, dynamic style of practice.”⁸⁷

The “dynamic style of practice” associated with the eat-what-you-kill model included aggressive growth in number and geographic scope.⁸⁸ Firms placed “greater emphasis on lateral hiring[,] exacerbat[ing] the trust-diminishing effects of rapid growth, as attorneys are less likely to have been enculturated in the firm’s non-economic values.”⁸⁹ The firm value became profits per partner.⁹⁰ This process of growth is similar to shoveling coal into the locomotive’s engine to keep it running. The “traditional values” of the classic law firm were usurped as firms became mere economic engines, where “building a culture that incorporates [v]alues beyond the lowest common denominator of market performance becomes increasingly difficult.”⁹¹

Under these conditions, firms develop a “climate of insecurity” rather than a “climate of trust.”⁹² “The insecurity is fomented by several factors beyond the firm’s

⁸⁴ Flood, *supra* note 4, at 427–28 (citing STEVEN BRINT, IN AN AGE OF EXPERTS: THE CHANGING ROLE OF PROFESSIONALS IN POLITICS AND PUBLIC 18 (1994) and Royston Greenwood, *Your Ethics: Redefining Professionalism? The Impact of Management Change*, in MANAGING THE MODERN LAW FIRM: NEW CHALLENGES, NEW PERSPECTIVES 192 (Laura Empson ed., 2007)).

⁸⁵ *See id.* at 427.

⁸⁶ *Id.*

⁸⁷ *Id.* (citing REGAN, *supra* note 6).

⁸⁸ Vischer, *supra* note 71, at 185.

⁸⁹ *Id.*

⁹⁰ *Id.*

⁹¹ *Id.*

⁹² *Id.* at 185–86.

sheer size, including the move away from lockstep compensation to embrace competition over partnership shares (with accompanying specter of de-equitization).⁹³ These competitive conditions make rainmaking the highest priority;⁹⁴ firms pay less attention to mentoring new attorneys, reducing associates' loyalty to the firm.⁹⁵ Eat-what-you-kill firms incentivize "the most single-minded pursuers of the bottom line."⁹⁶ Succinctly, "[i]f law firm culture has become an atomized pursuit of the bottom line, we have a trust problem."⁹⁷

The eat-what-you-kill model has turned law firm culture on its head. It "has bred a lawyer culture that values self-reliance over cooperation, competition over collegiality, short-term profit over the client's long-term good, and the avoidance of vulnerability over the espousal of trust."⁹⁸ The culture has changed so dramatically that some question whether lawyers "still traffic in relationships of trusts."⁹⁹ As discussed above, trust is contagious, so when a lawyer learns to be trusting, that lawyer is more likely to be trusted.¹⁰⁰ However, when a lawyer is unable to trust other members of their firm, that lawyer is less likely to build trust with clients.¹⁰¹ Moreover, people become more trusting as they develop an on-going relationship.¹⁰² The eat-what-you-kill model has damaged the relationship lawyers have with their clients and within their firms. As client relationships become more transactional, clients are no longer "trusting in" lawyers, they are "trusting that" a lawyer can provide a specific task.¹⁰³

Because eat-what-you-kill firms have *eroded* trust in law firms and between attorneys and clients, it is implied that law firms once had trust. This implication is

⁹³ *Id.* at 186.

⁹⁴ Saunders, *supra* note 3, at 296–97.

⁹⁵ Vischer, *supra* note 71, at 186.

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ *Id.* at 187.

⁹⁹ *Id.* at 186.

¹⁰⁰ See *supra* notes 75–77 and accompanying text.

¹⁰¹ Vischer, *supra* note 71, at 187.

¹⁰² See *id.* at 172.

¹⁰³ *Id.* at 187.

supported by clients' actions during a period when most firms were lockstep.¹⁰⁴ Lockstep firms still function as single-tier partnerships, which are based on trust and result in loyalty.¹⁰⁵ Lockstep firms provide broad and equitable profit-sharing, which results in intrafirm trust.¹⁰⁶ Additionally, lockstep firms are generally smaller in number than their peers and have grown their geographic scope organically (rather than through mergers), which allows them to retain a distinctive culture.¹⁰⁷ Their deliberate growth also means that the firms need to provide a distinctive service, one that provides "a 'thickness' of relationship that allow[s] clients to trust 'in' the lawyer."¹⁰⁸

As Flood wrote, "21st century [law firms] are showing a regression to an earlier time."¹⁰⁹ That "earlier time" was followed by the innovation that led to the "golden age of professions and professionalism,"¹¹⁰ which was built on trust. Trust is out-of-fashion in society today, but law firms using the lockstep model are better able to foster it than eat-what-you-kill firms.

B. Collaboration Is Critical to Success in Firms; Lockstep Culture Is More Likely to Foster Intrafirm Collaboration, While Eat-What-You-Kill Culture Undermines It

Fostering environments of trust can cultivate cooperation within a firm. Researchers found that "[i]ndividuals in social dilemmas decide to cooperate or defect not primarily by calculating their individual payoffs but instead by looking at and trying to decipher others' beliefs, likely behaviors, and social relationships with themselves."¹¹¹ In fact, trust was dramatically enhanced when researchers merely hinted that participants ought to cooperate.¹¹² This finding was particularly

¹⁰⁴ See, e.g., REGAN, *supra* note 6, at 24 ("Board survey of almost three hundred manufacturing companies, for instance, reported that companies generally indicated that they were happy with their law firm and 'have never given any thought to hiring another.'").

¹⁰⁵ Flood, *supra* note 4, at 421, 427.

¹⁰⁶ Vischer, *supra* note 71, at 196.

¹⁰⁷ *Id.* at 185.

¹⁰⁸ *Id.* at 187.

¹⁰⁹ Flood, *supra* note 4, at 416.

¹¹⁰ *Id.*

¹¹¹ Blair & Stout, *supra* note 72, at 1742.

¹¹² *Id.*

surprising because defecting would have been the optimal strategy for a self-interested participant.¹¹³ Moreover, based on the social nature of cooperation, a person is more likely to believe that cooperating with another will facilitate one's own well-being when they are involved in an on-going relationship.¹¹⁴ It is no wonder that the Cravath model, a system in which participants were forced to cooperate and remained partners for life, created a trusting and cooperative environment.

Even though Cravath is most known for its prestige and the elite pedigree of its lawyers, likely the most important innovation in the Cravath system was its relentless focus on collaboration.¹¹⁵ In his history of the firm, Robert Swaine highlighted the weight given to this feature of the system:

Probably the most rigid feature of the "Cravath system" has been insistence that for every man in the office, from the senior partner to the neophyte law clerk, the practice of law must be the primary interest and that that practice shall be solely as a member of the Cravath team. . . . All the business in the office must be firm business. Every partner is expected to cooperate with every other in the firm's business, through whichever partner originating, and to contribute to all the work of the firm to the maximum of his ability.¹¹⁶

The focus on collaboration was largely in the client's interest.¹¹⁷ The goal was to create efficient, effective, and high-quality work product—it did just that.¹¹⁸ The results "engendered the abiding loyalty of clients and more demand for the firm's services."¹¹⁹

¹¹³ *Id.*

¹¹⁴ Vischer, *supra* note 71, at 172.

¹¹⁵ William Henderson, *Are We Selling Results or Résumés?: The Underexplored Linkage Between Human Resource Strategies and Firm-Specific Capital* (Apr. 2008) (unpublished manuscript) (on file with author).

¹¹⁶ 2 SWAINE, *supra* note 15, at 9–10.

¹¹⁷ William Henderson, *Part II: How Most Law Firms Misapply the "Cravath System,"* EMPIRICAL LEGAL STUD. (July 29, 2008), https://elsblog.org/the_empirical_legal_studi/2008/07/how-most-law-fi.html.

¹¹⁸ *Id.*

¹¹⁹ *Id.*

Not only did Cravath direct collaboration, but it also structured incentives around collaboration, namely the lockstep compensation system. The lockstep system does not give individual actors additional incentives to defect. Rather, actors are paid to perform, and as the firm does better, so do all the participants in the firm. As Paul Saunders, a partner at Cravath, said:

A lockstep system has benefits far beyond equality of compensation. It promotes collegiality and partnership. It enables a group of lawyers to practice together as a firm or partnership, not just as individual lawyers sharing office space. In a lockstep system, the only way one partner can do better is if everyone does better, so the incentives are in the right place. It doesn't matter who gets the credit; all share in it. Fully equal partners look out for each other and consult with each other easily.¹²⁰

A few other firms still use the lockstep system, including Wachtell, Lipton, Rosen & Katz; Debevoise & Plimpton; and Cleary Gottlieb.¹²¹ At the time of this writing, Davis Polk had announced its transition away from the lockstep model, but its most recent economic metrics came from a year in which Davis Polk was still lockstep.¹²² As a rule, these five firms can demand significant rates from their clients.¹²³ Assuming that profits per equity partner can act as a stand-in for hourly rates, these firms are consistently generating top-of-the-market work in top-of-the-market sectors. In order to generate high billing rates, firms need to have loyal clients performing difficult or “untemplated” transactions.¹²⁴ According to AmLaw 100's most recent list, four of the five lockstep firms were in the top ten for profits per equity partner: Wachtell Lipton was first with \$7.5 million per equity partner, Davis Polk was second with more than \$6.3 million per equity partner, Cravath was eighth

¹²⁰ Saunders, *supra* note 3, at 297.

¹²¹ Spiezio, *supra* note 2.

¹²² Meghan Tribe, *Elite Wall Street Firm Davis Polk Moves to Modified Lockstep Pay*, BLOOMBERG L. (Sept. 10, 2020, 2:01 PM), <https://news.bloomberglaw.com/business-and-practice/elite-wall-street-firm-davis-polk-moves-to-modified-lockstep-pay> [https://perma.cc/528N-UQ9Q].

¹²³ *See id.*

¹²⁴ *See* David Marcus, *Drinks with the Deal: Debevoise's Paul Bird*, DEAL (Jan. 22, 2021), <https://www.thedeal.com/podcasts/drinks-with-the-deal-debevoises-paul-bird/> [https://perma.cc/DQJ4-DZ59].

and Debevoise was tenth with more than \$4.5 million per equity partner.¹²⁵ Cleary was seventeenth with nearly \$3.7 million per equity partner.¹²⁶ It is also important to note that these firms are not necessarily legacy institutions. For example, Wachtell Lipton is a relative newcomer because it was established in the 1960s,¹²⁷ and Debevoise had fallen out of the top rankings in recent years only to see itself rise again after reaffirming its commitment to the lockstep model.¹²⁸

On the other hand, the eat-what-you-kill system places the incentives in the wrong places. Rather than fostering collegiality, this system “encourage[s] individuality and ‘entrepreneurship,’ which may be nothing more than a euphemism for risk-taking.”¹²⁹ It also creates “a false sense of meritocracy and entitlement for those who ‘win’ and leaves so many other very worthy and highly capable people to dog-paddle back to shore.”¹³⁰ In this sense, the eat-what-you-kill model begins to rot the core of the firm—collaboration.

Trust and collaboration are intertwined, and each is an important attribute of a lawyer and a law firm. Cravath incentivized these attributes by employing a lockstep compensation system to address clients’ increasingly complex legal issues. The firms still using this model are seeing great results and performing at the highest levels of the profession.¹³¹ While eat-what-you-kill firms have been able to prop up their revenues through aggressive growth into new markets and tiered partnership structures, the question remains whether these firms will be able to continue to meet the needs of their corporate clients when collaboration is disincentivized by the compensation structure.

¹²⁵ David Lat, *A Deep Dive Into the 2021 Am Law 100 Rankings*, ABOVE THE L. (Apr. 30, 2021, 12:12 PM), <https://abovethelaw.com/2021/04/a-deep-dive-into-the-2021-am-law-100-rankings/> [https://perma.cc/D9UP-Y6F4].

¹²⁶ *Id.*

¹²⁷ *About the Firm*, WACHTELL, LIPTON, ROSEN & KATZ, <https://www.wlrk.com/firm/> [https://perma.cc/ZQ2C-LL4L] (last visited Nov. 10, 2021).

¹²⁸ Dylan Jackson, *Debevoise Faced a Demand Crisis. Its Solution Required Change from the Ground Up*, AM. LAW. (July 1, 2021, 3:40 PM), <https://www.law.com/americanlawyer/2021/07/01/debevoise-faced-a-demand-crisis-its-solution-required-change-from-the-ground-up/> [https://perma.cc/BXU4-JMVC].

¹²⁹ Saunders, *supra* note 3, at 297.

¹³⁰ Westfahl & Wilkins, *supra* note 7, at 1704.

¹³¹ See Lat, *supra* note 125.

C. *The Analogue to Lockstep Law Firm Culture Is Kaiser Permanente's Medical System*

The medical system suffers from many of the same ailments as the legal system: clients are seeking a system that is more accountable for quality and costs, and talent is choosing larger, more organized settings over solo or small practices.¹³² Within the medical sector, these changes are likely to result in more systems looking like integrated health systems, “network[s] of organizations that provide . . . a coordinated continuum of services to a defined population and [that are] willing to be held accountable for the outcomes and the health status of the population served,”¹³³ which are similar to the way big law firms are organized. Also similar to the legal field, “many studies have described physicians’ dysfunctional relationships with their care settings, including accounts of systemic distrust between physicians, administrators, . . . other providers[, and] physician burnout.”¹³⁴ Predicting that these integrated systems are likely to become more prevalent, researchers set out to learn more about physicians experiences in one specific integrated delivery system—Kaiser Permanente, the United States’ largest integrated delivery system.¹³⁵

Kaiser Permanente is structured differently than the typical physician’s office in a hospital. First, Kaiser Permanente physicians are paid a salary rather than compensation based on their billing.¹³⁶ Second, physicians are part of team—a larger organization responsible for a patient’s care—with organizational goals.¹³⁷ Third, the integrated system is a data-rich and highly collaborative environment, where the physicians, not the clients, are incentivized to coordinate with specialists on behalf of the patient.¹³⁸

¹³² See Benjamin Chesluk et al., *Physician Voices: What Skill and Supports Are Needed for Effective Practice in an Integrated Delivery System? A Case Study of Kaiser Permanente*, 54 J. HEALTH CARE ORG., PROVISION, & FIN. 1, 1 (2017).

¹³³ *Id.* (quoting S.M. Shortell et al., *The New World of Managed Care: Creating Organized Delivery Systems*, 13 HEALTH AFF. 5, 47 (1994)).

¹³⁴ *Id.* at 2.

¹³⁵ *Id.*

¹³⁶ *Id.* at 5.

¹³⁷ *Id.* at 3.

¹³⁸ *Id.* at 4.

The researchers found that the system “earned physicians’ trust, making them more amenable to developing these new competencies.”¹³⁹ Moreover, the physicians’ trust in the integrated system contrasted with the research done on non-integrated systems, “where physicians often view the ‘systems’ as something they must work *around* to provide good patient care and where attempts to influence what physicians do are rare and unwelcome when they occur.”¹⁴⁰ In fact, surveyed participants found that the integrated system “supported them to provide a different, better kind of care.”¹⁴¹

The legal system can learn from the research around Kaiser Permanente’s integrated system. By creating a salary-based system, the physicians’ financial incentives were aligned with the common goal to “‘take good care of the patient.’ Financial motivation is out of the picture.”¹⁴² The structures of information-sharing that supported collaboration and learning engendered trust in the system and encouraged the physicians to continue to learn.¹⁴³ The physicians’ placement in and acknowledgment that they were an integral part, but only a part, of a bigger system to deliver high-quality care to a patient encouraged the physicians to think more broadly about the patient’s care.¹⁴⁴

Kaiser Permanente’s system helps demonstrate that the lockstep culture fosters more trust and collaboration than its alternative. When lawyers’ incentive structures are aligned with delivering care, collaboration is encouraged, and trust is built in the system. The fact that more partners are working on various deals creates more information sharing and cooperation, which will increase the quality of service provided to the client.

III. LOCKSTEP FIRMS ARE MORE LIKELY THAN EAT-WHAT-YOU-KILL FIRMS TO BE SUCCESSFUL IN ATTRACTING AND RETAINING TALENT AND CLIENTS

Law firms are in the business of providing legal services to clients. To do this effectively, law firms must have two things: talent to perform the legal services and

¹³⁹ *Id.* at 5.

¹⁴⁰ *Id.*

¹⁴¹ *Id.*

¹⁴² *Id.*

¹⁴³ *Id.* at 4.

¹⁴⁴ *See id.* at 3–4.

clients to deliver those legal services to. The landscape for attracting and retaining talent and clients is competitive. While law firms continue to grow, the number of law students, especially from the top law schools in which big law firms typically recruit, has not.¹⁴⁵ Additionally, market forces are creating a situation in which too many lawyers are chasing too few clients.¹⁴⁶ This Note argues that adopting the lockstep model will help attract and retain associates and clients. It also argues that lockstep firms create a more hospitable work environment that makes it difficult for partners to leave despite attractive compensation from competition.

A. *Lockstep Firms Are More Likely to Attract Young Lawyers Because of Their Culture*

Lockstep firms offer a culture that is more attractive to talent than eat-what-you-kill firms. While research suggests that Millennials and Gen Z weigh compensation, prestige, and options more heavily than quality of life,¹⁴⁷ activities in the industry suggest that other factors enter the equation.¹⁴⁸ In recent years law firm rankings have increased the number of factors considered as a means of providing more information to associates, including financial and cultural factors like revenue per lawyer, pro bono commitment, associate satisfaction, racial diversity, and gender diversity.¹⁴⁹ Lockstep firms are better suited for associates because of their increased focus on training, diversity, and broader practice (including pro bono).

A bee larvae will develop into a queen bee if it is fed a rich nutrient called “Royal Jelly,” otherwise it develops into a worker bee.¹⁵⁰ “Training is the Royal Jelly of elite law firms.”¹⁵¹ Lockstep firms’ and eat-what-you-kill firms’ training opportunities diverge—whereas lockstep firms have a structured training program,

¹⁴⁵ Westfahl & Wilkins, *supra* note 7, at 1681.

¹⁴⁶ Saunders, *supra* note 3, at 296.

¹⁴⁷ Galanter & Henderson, *supra* note 29, at 1925; Roy Strom, *Prestige Still Beats ‘Quality of Life’ in Big Law Talent War*, BLOOMBERG L. (July 29, 2021, 6:01 AM), <https://news.bloomberglaw.com/business-and-practice/prestige-still-beats-quality-of-life-in-big-law-talent-war> [<https://perma.cc/33DZ-SK9C>].

¹⁴⁸ See generally *Summer Associate Survey: On-Campus Interviews, Most Desired Firms and Virtual Program Challenges*, LAW360 PULSE 1, 5 (May 2021) (showing many exemplary quotes about the importance of firm culture, pro bono, and diversity).

¹⁴⁹ See Aric Press, *The A-List*, AM. LAW. (Sept. 1, 2004); see also Drew Combs, *Perfect Attendance*, AM. LAW. (July 2013); Galanter & Henderson, *supra* note 29, at 1923.

¹⁵⁰ Galanter & Henderson, *supra* note 29, at 1914.

¹⁵¹ *Id.*

eat-what-you-kill firms are often called “sink-or-swim” firms.¹⁵² By comparing the two flag-bearers for their respective models—Cravath (lockstep) and Kirkland & Ellis (eat-what-you-kill)—the different opportunities for associates become clear.¹⁵³

First, Cravath rotates their associates before placing them in a practice area.¹⁵⁴ Cravath emphasizes that rotations are the “linchpin” of their system.¹⁵⁵ In their rotation:

[associates] are assigned to work with a partner or small group of partners for a period of time. At the end of that period, each associate switches—or “rotates”—to work with a different partner or group of partners within their department of choice. Associates continue to rotate throughout their tenure with the Firm.”¹⁵⁶

Additionally, Cravath’s assignment system relies on the rotation system to ensure that assignments are being divvied out to associates in a more egalitarian way.¹⁵⁷ Because Cravath (and most other lockstep firms) rarely hire laterally, “partners come almost exclusively from the ranks of our own associates, and it is therefore a shared

¹⁵² See, e.g., Westfahl & Wilkins, *supra* note 7, at 1704.

¹⁵³ After writing this Note, both Cravath and Kirkland & Ellis have altered their internal partnership structures. See David Thomas & Karen Sloan, *Cravath Abandons Strict Pay Model, Joining Most Law Firm Peers*, REUTERS (Dec. 7, 2021, 6:26 PM), <https://www.reuters.com/legal/transactional/cravath-abandons-strict-pay-model-joining-most-law-firm-peers-2021-12-06/> [<https://perma.cc/XYK4-G5DX>] (detailing Cravath’s departure from a pure lockstep pay scheme); Roy Strom, *The World’s Largest Law Firm Thinks You’ve Got it All Wrong*, BLOOMBERG L. (Feb. 22, 2022, 5:30 AM), <https://news.bloomberglaw.com/business-and-practice/the-worlds-largest-law-firm-thinks-youve-got-it-all-wrong> [<https://perma.cc/5DEF-R9JU>] (“The description of its so-called ‘eat-what-you kill’ compensation system, which has bred part of its reputation, is a mischaracterization.”). Despite the efforts of both firms to make internal adjustments, both still function as the symbolic flag-bearers for these two different systems.

¹⁵⁴ *Professional Development, Cravath, Swaine & Moore LLP—Multi-Office*, NALP DIRECTORY OF LEGAL EMP., https://www.nalpdirectory.com/employer_profile?FormID=13866&QuestionTabID=42&SearchCondJSON=%7B%22SearchEmployerName%22%3A%22cravath%22%7D [<https://perma.cc/9P7C-DKW8>] (last visited Oct. 4, 2021).

¹⁵⁵ *The Rotation System*, CRAVATH, SWAINE & MOORE LLP, <https://www.cravath.com/careers/legal-hiring/professional-development/the-rotation-system.html> [<https://perma.cc/4C8C-NC5R>] (last visited Nov. 9, 2021).

¹⁵⁶ *Id.*

¹⁵⁷ *Id.*

priority among the partnership to provide direct, hands-on training to the next generation of our Firm.”¹⁵⁸

On the other hand, Kirkland does not have a rotation system¹⁵⁹ or an assignment system.¹⁶⁰ Associates are hired into a practice group, and that’s where they remain unless the firm needs their services elsewhere.¹⁶¹ Kirkland says that they have a free-market system “that exemplifies [their] emphasis on individual initiative,”¹⁶² but in essence, it’s not a program at all. Kirkland has turned the absence of a system into a Bat-Signal for “entrepreneurial associates.”¹⁶³

These two firms make it clear how they intend to invest in associate training. One is going to provide a structured rotation system that incentivizes partners to be involved in the associate’s development, while the other lacks a program and places the burden on the associate. As Westfahl and Wilkins said, “law schools, law firms, and corporate clients have a mutual interest in ensuring that the next generation of lawyers will have the skills and disposition necessary to be competent and ethical corporate lawyers in the increasingly challenging legal market of the middle-decades of the twenty-first century.”¹⁶⁴ One model prepares for this, and the other does not.

Training initiatives and firm culture also play an important role in creating a diverse firm population. Lockstep firms have attributes that make them more likely to promote diversity than their alternatives. In the individualistic, eat-what-you-kill culture, partners who continue to compete in the elastic tournament have an incentive

¹⁵⁸ *Id.*

¹⁵⁹ *Professional Development, Kirkland & Ellis LLP—Chicago, Illinois*, NALP DIRECTORY OF LEGAL EMP., https://www.nalpdirectory.com/employer_profile?FormID=13982&QuestionTabID=42&SearchCondJSON=%7B%22SearchEmployerName%22%3A%22kirkland%22%7D [https://perma.cc/8RH5-QFKE] (last visited Oct. 4, 2021).

¹⁶⁰ *See Summer Associate Program*, KIRKLAND & ELLIS, <https://www.kirkland.com/careers/summer-associate-program> (last visited Nov. 9, 2021); *see also Dear Kirkland & Ellis Candidate*, KIRKLAND & ELLIS, <https://www.kirkland.com/siteFiles/FCD3F8AB14C33D6BEB4B971A8E378C2B.pdf> [https://perma.cc/BA6G-BXD8] (last visited Nov. 9, 2021).

¹⁶¹ *Professional Development, Kirkland & Ellis*, *supra* note 159 (“Associates are not assigned to particular clients or partners and do not cycle through a rotation system.”).

¹⁶² *Id.*

¹⁶³ *Money Can’t Buy Commitment*, KIRKLAND & ELLIS (Nov. 15, 2000), <https://www.kirkland.com/news/in-the-news/2000/11/money-cant-buy-commitment> [https://perma.cc/AQ25-D732].

¹⁶⁴ Westfahl & Wilkins, *supra* note 7, at 1671.

to favor certain associates who will help them.¹⁶⁵ When this occurs, non-white students tend to be disfavored for a variety of reasons: “(i) lower law school grades, (ii) a higher probability that the minority lawyer will leave (a historical reality at most firms), or (iii) a perception that mentorship will be more labor-intensive because of awkward cultural barriers.”¹⁶⁶ This means, that in addition to essentially eliminating formal training programs, informal training and mentorship exists only insofar as it optimizes partners’ practices.¹⁶⁷ Galanter and Henderson found that “[t]his is a strong impediment to diverse partnership.”¹⁶⁸

However, lockstep firms use a single-tier partnership model that better promotes diversity in leadership roles than the common two-tier system.¹⁶⁹ While white lawyers are more likely to be equity partners than nonequity partners, “minority lawyers disproportionately occupy the nonequity partnership tier.”¹⁷⁰ This means minority lawyers do not have a seat at the decision-making table.¹⁷¹ The impact of the single-tier structure becomes clearer when analyzing female lawyers’ career trajectory. Female lawyers are more likely to reach equity partnership in a single-tier model than they are in a two-tier model.¹⁷² Reasons for this include that “[w]omen thrive in more collegial single[-]tier partnerships because they tend to be less cutthroat than two-tier firms,” and “[b]ringing in business, a criterion that historically favored men, is not the *sine qua non* for admission to equity partnership at one-tier firms, where homegrown talent who have proven their worth over the years (rather than laterals with books of business) get promoted.”¹⁷³ This shows that the single-tier system used by all lockstep firms is a better system for creating gender diversity at the equity partnership level, and more work should be done to understand

¹⁶⁵ Galanter & Henderson, *supra* note 29, at 1918.

¹⁶⁶ *Id.*

¹⁶⁷ *Id.*

¹⁶⁸ *Id.*

¹⁶⁹ Vivia Chen, *The Power of One: Why Do Women Partners Fare So Much Better at One-Tier Firms?*, AM. LAW. (Dec. 28, 2012, 12:00 AM), <https://www.law.com/americanlawyer/almID/1202582210260/> [<https://perma.cc/8HYT-WWDT>].

¹⁷⁰ Dylan Jackson, *Minority Partners Disproportionately Placed in Nonequity Partnership Tier*, AM. LAW. (Oct. 8, 2019, 5:00 AM), <https://www.law.com/americanlawyer/2019/10/08/minority-partners-disproportionately-placed-in-nonequity-partnership-tier/> [<https://perma.cc/8CKJ-RLV4>].

¹⁷¹ *See id.*

¹⁷² Chen, *supra* note 169.

¹⁷³ *Id.*

if it is also better at creating opportunities for minority lawyers for the same or similar reasons.

Female and minority lawyers and law students have more doubts than their white male peers that they can build a successful career in big law firms.¹⁷⁴ These doubts are supported by their lagging presence in entering classes, mid-level associate positions, and partnership.¹⁷⁵ Westfahl and Wilkins say that “the fact that these groups no longer believe in the efficacy of the Cravath system’s professional development model poses a significant threat to the future of large law firms.”¹⁷⁶ However, their charge against the Cravath model may be misguided. They conflate “big law” with the Cravath system, but big law is not a monolith. Many firms, even though they abide by the “Cravath Scale” for associate pay, misapply the Cravath model.¹⁷⁷ As discussed above, the foundational elements of the Cravath system support training and diversity in the firm. Rather, the eat-what-you-kill model has continued to manipulate the system, making it harder for diverse populations to find footing in big law firms.

In addition to lack of training and diversity, associates are leaving law firms earlier due to narrow specializations.¹⁷⁸ Associates are doing this for two reasons: (1) “to avoid being pigeonholed so as to render themselves unemployable by anyone other than another large law firm”; and (2) “to find other jobs where they believe they will have broader and more satisfying experiences.”¹⁷⁹ The broader practices that permeated the profession before 1970, were eliminated in order to form revenue generating specialists as soon as possible.¹⁸⁰ Increased specialization and the dwindling networks that accompany it are a by-product of the move toward the eat-what-you-kill model.¹⁸¹ In comparison, lockstep firms place greater value on developing lawyers with a broad practice area. Lockstep firms demonstrate this by

¹⁷⁴ Westfahl & Wilkins, *supra* note 7, at 1688.

¹⁷⁵ *Id.*

¹⁷⁶ *Id.*

¹⁷⁷ See Henderson, *supra* note 117.

¹⁷⁸ Westfahl & Wilkins, *supra* note 7, at 1685.

¹⁷⁹ *Id.*

¹⁸⁰ See *id.*

¹⁸¹ *Id.* at 1692.

using rotation systems, which allow associates to get experience working with different lawyers and different areas of the law.¹⁸²

Lawyers often use their legal skills to advance outside interests through their pro bono work. Lockstep firms are better able to focus on these non-economic activities because their attributes allow them to foster a greater collective culture and utilize the corporate treasury to support those efforts.¹⁸³ As rule of law and public interest initiatives gain momentum, law firms should heed the call to do more and stand for more than profits.¹⁸⁴ As Westfahl and Wilkins warn, unless the legal profession realigns its values, “brilliant, analytic, creative, hardworking, and ethically oriented people” will choose another career “where professional development is thoughtful, supportive, transparent, and well aligned toward helping them accelerate their learning and their impact on the world.”¹⁸⁵ These activities permit law firms to enhance their trustworthiness and distinctiveness.¹⁸⁶

Lockstep law firms still maintain many of the original attributes of the Cravath system’s associate program. This structure not only trained lawyers to be highly technical practitioners, but also acted as a sort of finishing school. Lockstep firms are more likely to focus on values other than the bottom-line, creating a richer, more cohesive cultural environment for associates.

B. The Lockstep Culture Is a Better Model for Building the Attorney-Client Relationships Necessary to Face the Clients’ Complex Problems

Though corporate clients are less likely to have the ongoing relationship with their outside counsel that they might have had in the mid-twentieth century, research shows that “current relationships between corporate clients and their preferred legal providers may be ‘stickier’ than th[e] narrative suggests.”¹⁸⁷ As discussed above, trust is more likely to develop when there is an ongoing relationship between the

¹⁸² See *supra* notes 154–63 and accompanying text.

¹⁸³ See, e.g., Staci Zaretsky, *Biglaw Associate Gets His Protest-Related Charges Dropped, Hopes His Case Will Help Other Peaceful Protestors*, ABOVE THE LAW (Sept. 28, 2020, 12:46 PM), <https://abovethelaw.com/2020/09/biglaw-associate-gets-his-protest-related-charges-dropped-hopes-his-case-will-help-other-peaceful-protesters/> [<https://perma.cc/4Z6W-JE6G>].

¹⁸⁴ Vischer, *supra* note 71, at 204.

¹⁸⁵ Westfahl & Wilkins, *supra* note 7, at 1728.

¹⁸⁶ Vischer, *supra* note 71, at 204.

¹⁸⁷ *Id.* at 179.

parties.¹⁸⁸ Lockstep firms are more likely to support these ongoing relationships because a partner is more likely to maintain the relationship with the client while managing a collaborative relationship with specialists, associates, and paraprofessionals. This type of structure, in which various parts of the firm are incentivized to support the various needs of the client can support a meaningful relationship of trust.¹⁸⁹

Fostering trust between the firm and the clients is important to long-term success because clients' problems are only becoming more complex. In the early 1900s, Louis Brandeis compared the role of a corporate lawyer in the industrializing world to, among other things, that of a statesman managing the relations of neighboring kingdoms.¹⁹⁰ Surely to Brandeis's dismay, his statement has become truer as corporations have gotten bigger and more global. As a client's issues develop, the client must have sufficient trust to bring the outside counsel into business conversations;¹⁹¹ the attorney must start to take on the role of a true advisor or counselor. If the attorney is not brought into the conversation on an on-going basis, they "will not be in a position to counsel the client about the business's overall direction and how that direction implicates the interest of other constituents, including the interests of the surrounding community."¹⁹² It is these types of questions where a lawyer should be able to deliver the most value to their clients.¹⁹³ This is troublesome, however, because lawyers are not in a position to manage their clients' relations.¹⁹⁴ As Vischer notes, "[e]conomic considerations already give attorneys the incentive to defer to management, and the limitations inherent in their piecemeal, episodic knowledge of the company gives them ample justification for doing so."¹⁹⁵ If lawyers are unable to *add* value to transactions, they merely become

¹⁸⁸ See Vischer, *supra* note 71, at 172.

¹⁸⁹ *Id.* at 177–78.

¹⁹⁰ Louis D. Brandeis, *The Opportunity in the Law*, 39 AM. L. REV. 555, 558–59 (1905).

¹⁹¹ Vischer, *supra* note 71, at 189.

¹⁹² *Id.*

¹⁹³ Andrew Arruda, *The Human Side of Lawyering #LegalTechLives with Duc Trang, Managing Director of Landon Advisory Services*, ROSS (May 28, 2018), <https://blog.rossintelligence.com/post/the-human-side-of-lawyering> [<https://perma.cc/66GW-D9JZ>].

¹⁹⁴ Vischer, *supra* note 71, at 189.

¹⁹⁵ *Id.*

transactional costs—something corporate clients are quick to reduce or eliminate.¹⁹⁶ Law firms that build trust with their clients through ongoing relationships are more likely to add value, resulting in long-term success for themselves and their clients.

The need for trust becomes even more important in an international setting. As clients begin working in various jurisdictions, lawyers have an opportunity to add value to their corporate clients.¹⁹⁷ Corporations believe that cross-border transactions are particularly complicated, and rely on their lawyers to guide the process.¹⁹⁸ Under these conditions, confidence in the lawyer must surpass the lack of confidence in the legal system.¹⁹⁹ Trust in the lawyer is intensified because as corporate clients act outside their cultural and social norms—creating what Vischer calls a “lack of system trust”—they become more reliant on lawyers to navigate the situations.²⁰⁰

While most elite law firms have foreign offices, the way in which firm culture is exported and the type of work chosen can create disparate outcomes. Some firms found their way into or maintained their position among elite law firms by following a “mega-firm” model, which requires aggressive geographic expansion.²⁰¹ One such firm is Skadden Arps.²⁰² Despite some partners’ objections, Skadden aggressively expanded into various markets, causing U.S. partners to subsidize the fledgling branch offices.²⁰³ However, Skadden came to rely on the work generated by the foreign offices, calling it “‘but-for business’—the firm would not have attracted it but for one of its foreign offices.”²⁰⁴ But lockstep firms have generally had a different perspective on international work. For instance, what Skadden called “but-for business,” Cleary Gottlieb called “‘throwaway work’ because the process of identifying and quantifying its value was ‘so difficult it wasn’t done.’”²⁰⁵ As law

¹⁹⁶ Ronald J. Gilson, *Value Creation by Business Lawyers: Legal Skills and Asset Pricing*, 94 YALE L.J. 239, 241–42 (1984).

¹⁹⁷ Vischer, *supra* note 71, at 166.

¹⁹⁸ *Id.* at 191 (quoting John Flood & Fabian Sosa, *Lawyers, Law Firms, and the Stabilization of Transactional Business*, 28 NW. J. INT’L L. & BUS. 489, 494 (2008)).

¹⁹⁹ *Id.*

²⁰⁰ *See id.*

²⁰¹ Galanter & Henderson, *supra* note 29, at 1887.

²⁰² *Id.*

²⁰³ *Id.* at 1887–88.

²⁰⁴ *Id.* at 1888.

²⁰⁵ *Id.* at 1867 n.72.

firms grow in number of attorneys and foreign offices to achieve certain economic results, they “may strain the ability to maintain the personal relationships that are essential to interpersonal trust.”²⁰⁶ This strain can contort law firms into more hierarchical structures with standard, more commodified practices.²⁰⁷ Under these conditions, attorney-client relationships become more transactional, and the lack of an on-going relationship reduces trust in the attorney and the value of their legal services.

However, firms that can maintain intrafirm trust and collaboration in multi-jurisdictional and multi-disciplinary teams are likely to see significant economic gains.²⁰⁸ Research has shown that client projects involving multi-jurisdictional officers are more lucrative than single-office projects.²⁰⁹ Similarly, law firms that utilize more practice groups to service a client generate more revenue from that client.²¹⁰ In fact, one firm studied tripled its revenue from a client by moving from one to two practice groups.²¹¹ These gains occur not merely because there is more work from the client, but because the work is more sophisticated, making it less likely to be subjected to price-based competition.²¹² Additionally, as legal matters become more complex, clients are expecting firms to provide more strategic direction,²¹³ which often means using multi-disciplinary teams consisting of IT specialists, data scientists, statisticians, and other non-lawyer professionals to deliver the legal services.²¹⁴ In order to provide services in these multi-jurisdictional, cross-practice, and multi-disciplinary ways, lawyers must be capable of collaborating. Fortunately, research shows that as people learn to collaborate and experience

²⁰⁶ Vischer, *supra* note 71, at 194–95.

²⁰⁷ *Id.* at 194–95.

²⁰⁸ See Heidi K. Gardner, *Collaboration in Law Firms: The New Wave of Client Service*, PRACTICE (Sept./Oct. 2015), <https://thepractice.law.harvard.edu/article/collaboration-in-law-firms/> [<https://perma.cc/V6NZ-VSTE>].

²⁰⁹ *Id.*

²¹⁰ *Id.*

²¹¹ *Id.*

²¹² *Id.*

²¹³ *Id.*; see also Karen Miller-Kuwana, *Analysis: Formalizing MDTs is a Big-Law Move That All Should Try*, BLOOMBERG L. (May 10, 2021, 5:00 AM), <https://news.bloomberglaw.com/bloomberg-law-analysis/analysis-formalizing-mdts-is-a-big-law-move-that-all-should-try?context=article-related> [<https://perma.cc/QQ8N-DPM7>].

²¹⁴ See Miller-Kuwana, *supra* note 213.

interdependence they grow to accept and even prefer it to working alone.²¹⁵ Accordingly, because lockstep firms have a culture and history of collaboration, they are likely to be better equipped to collaborate throughout the firm, both across practice groups and jurisdictions, as well as with multi-disciplinary teams.

As discussed above, trust is contagious and important to both intrafirm relationships and attorney-client relationships.²¹⁶ As an antidote to the erosion of trust associated with growth, firms should permit broader profit-sharing,²¹⁷ the hallmark of lockstep firm culture. As more clients begin to navigate difficult problems, clients will recognize the value of having a reliable, well-trained law firm that they can trust.²¹⁸ Lockstep firms are best suited to provide the services these clients want.

C. *Can Lockstep Firms Retain Their Highest Performing Partners?*

Lockstep firms face the challenging obstacle of retaining their high-performing partners when competitors are willing to lure them away at a premium. Research shows that the classic promotion-to-partner model still bonds midlevel associates to the firm,²¹⁹ but what about partners? Historically, partners rarely left the firm in which they were first promoted to partner.²²⁰ For lockstep firms, law firm news coverage will still call partner departures to other firms exceedingly rare, but this rarity may become more common as the price-tag of departure increases.²²¹

One such departure was that of Ralph C. Ferrara, a former securities lawyer at Debevoise & Plimpton. An excerpt from the *New York Times* about his departure is worth quoting at length:

²¹⁵ Gardner, *supra* note 208.

²¹⁶ See *supra* Part II, § A.

²¹⁷ Vischer, *supra* note 71, at 196.

²¹⁸ See *id.* at 191; see also Westfahl & Wilkins, *supra* note 7, at 1727.

²¹⁹ Galanter & Henderson, *supra* note 29, at 1921.

²²⁰ See *id.* at 1873; see also Westfahl & Wilkins, *supra* note 7, at 1682.

²²¹ See Cara Lombardo, *Freshfields Poaches Top Deal Lawyer from Cravath*, WALL ST. J. (Sept. 28, 2021, 7:26 PM), <https://www.wsj.com/articles/freshfields-poaches-top-deal-lawyer-from-cravath-11632870000> [<https://perma.cc/X5EY-HGSS>]; Patrick Smith, *In Rare Departure, Cravath Tax Partner Moves to Davis Polk*, AM. LAW. (Nov. 8, 2021, 11:00 AM), <https://www.law.com/americanlawyer/2021/11/08/in-a-rare-departure-cravath-tax-partner-moves-to-davis-polk/> [<https://perma.cc/DH3T-KLP2>]; Tribe & Strom, *supra* note 44.

And it is rare for partners at Cravath, Debevoise or Cleary to leave for competitors. But in 2005, Ralph C. Ferrara of Debevoise turned heads by moving to another firm. Mr. Ferrara, a securities litigator who brought in big, lucrative cases, frequently complained about the lock-step system. He bristled that some partners earned as much as he did[,] yet had no clients of their own. He also was frustrated that he couldn't expand his business by hiring partners from other firms.

Realizing he would not change the ways of such a hidebound institution, Mr. Ferrara left Debevoise after 23 years to join LeBoeuf Lamb. After Dewey and LeBoeuf merged, he became one of Dewey's highest-paid partners, earning about \$6 million annually. Mr. Ferrara recently agreed to return \$3.4 million of his compensation to help pay Dewey's creditors.

"As things have turned out, leaving Debevoise ended up being an imprudent decision," said Mr. Ferrara, who now works at [another law firm]. "In my heart, I never left Debevoise; it is a place that I still love to this day."²²²

In that same article, Mark Leddy, then-managing partner of Cleary Gottlieb said, lawyers "who want to be a star and make \$10 million a year don't fit in here. . . . Some of these lawyers are extremely talented and they go on to make \$10 million a year. But breaking the lock step system for them would be an unacceptable cost to our culture."²²³ But what about defections? Then-managing partner of Cravath dismissed this rare occurrence: "Planets occasionally spin out."²²⁴

Lawyers who come up through this model generally see it as the proper model. Lawyers are "famously discontented with their professional lives,"²²⁵ and corporate lawyers' job satisfaction is "notoriously low."²²⁶ But partners at lockstep firms "proclaim love for their jobs," and, like Ferrara, speak affectionately about their lockstep firms even after they have left.²²⁷

While some might ask why a high-performing partner would stay at a lockstep firm, it might be better to ask why such a partner would leave. Understanding the mindset of partners who continue to choose to stay in a lockstep firm is impossible. The evidence suggests that the work experience is better, the work more closely

²²² Peter Lattman, *Culture Keeps Firms Together in Trying Times*, N.Y. TIMES (Sept. 24, 2012, 4:36 PM), <https://dealbook.nytimes.com/2012/09/24/culture-keeps-firms-together-in-trying-times/> [https://perma.cc/3X62-SE7G].

²²³ *Id.*

²²⁴ *Id.*

²²⁵ Vischer, *supra* note 71, at 189.

²²⁶ Lattman, *supra* note 222.

²²⁷ *Id.*

resembles the work that many imagine a lawyer doing, and the firms remain very successful. Perhaps the lawyers who end up reaching partnership in a lockstep firm are built differently, maybe they have developed different traits, or maybe they have a greater sense of internalized trust. There is more to be explored about the reasons why high-performing partners decide to stay in lockstep firms when they could have higher compensation elsewhere.

CONCLUSION

At this moment in time, we face a sort of “chicken or egg” problem: “[W]hat came first, lockstep then success, or success then lockstep?” Some say that the few lockstep firms can retain their system because they are successful, and that they would change if they were not successful.²²⁸ But that is not the case. Debevoise faced hard times a few years ago but rejected changing its compensation model for fear of corrupting the firm’s culture.²²⁹ Instead, Debevoise reaffirmed its commitment to lockstep, identified it as an advantage to create cross-practice group opportunities, and grew revenue by 78% between 2014 and 2020.²³⁰ It would be imprudent for law firms to dismiss the lockstep model as old-fashioned or its cultural impact as reserved only for a few select firms.

Throughout this Note, I have made the case that the lockstep culture incentivizes intrafirm trust and collaboration and fosters an environment that will better attract and retain attorneys and clients. This model and its qualities are the lifeblood of firms using it today. They see the lockstep model as a defining attribute that has helped them navigate through better and worse times. When Paul Cravath invented the modern American law firm, he did so in reaction to an individualistic and unstable bar trying to deliver legal services to corporate clients in an increasingly complex industrial world. Today, the lockstep culture can bring the same success that it generated at the turn of the twentieth century. An increased adoption of the lockstep model could bring about increased firm trust and collaboration, strengthened attorney-client trust, and better, more fulfilling lives for lawyers—it could bring about a second golden age of professionalism.

²²⁸ *Id.*

²²⁹ Jackson, *supra* note 128.

²³⁰ *Id.*