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THE END OF PARTNERSHIP

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Cover Page Footnote

B.A., LLB University of Pennsylvania. The author is a partner at Drinker Biddle & Reath, LLP where, of course, none of these observations apply. These remarks were inspired by the author's participation in the conference "Professional Challenges in Large Firm Practices," held on April 15, 2005, at Fordham University School of Law. Special thanks to Professor Bruce Green and the Stein Center for Law and Ethics at Fordham for their dedication to the ethics arena and thoughtful consideration of the important issues facing our profession.

THE END OF PARTNERSHIP

*Lawrence J. Fox**

Is it time to be honest? Haven't law firms gotten away for far too long with far too much fraud in the inducement to let it go unremedied? Don't we owe everyone honest disclosure of what we are doing?

Let us look at the myths, myths that once had a basis in reality, but now may only have a basis in our rose-colored memories. What are they? First, there is the myth that we perpetuate when we interview young, impressionable, newly-minted second year law students. We go to the very best schools and seek to recruit the very best law students, to become the very best summer associates. We tell them how wonderful Caldwell & Moore¹ is, how our firm is collegial, easy-going, friendly, values pro-bono service, gives young associates meaningful client contact and educational mentoring. We tell them how Caldwell & Moore provides outstanding career opportunities, challenging work assignments, and ever increasing responsibility culminating in the holy grail—Caldwell & Moore partnership, with its magnificent income and great prestige, a package that should convince you, young man or woman, now that you have completed one year of law school, to join Caldwell & Moore for a twelve week summer for which you will be paid the amazing sum of \$2,500 or more per week!

Second is the myth we perpetuate once the young law graduates sign on. Put in your 2,000 or 2,200 or, egad, 2,400 billable hours, give up your nights, your weekends, your four-week vacations, your family, and make yourself available at all times for our big deals and our big suits, check your Blackberry at least once every ten minutes, keep your cell phone on at all times, install a fax machine in your bedroom, reach out for ever-increasing responsibility and go from reading thousands of documents to

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1. "Caldwell & Moore" is intended to represent a fictional firm.

supervising others doing the same thing. At the end of eight, nine, or ten years, you too can join the exalted group of Caldwell & Moore partners, who by virtue of our wonderful leverage can earn splendid profits on the backs of the four, five, or six overpaid associates per Caldwell & Moore partner.

Third is the myth we perpetuate when these lawyers become partners, joining the inner sanctum, learning the secret handshake, gaining entrance to the holy of holies guaranteed financial security for life, able to put the rat-race behind them, earning prestige and tenure in the great professional partnership that is Caldwell & Moore. We tell them they will be given time to join boards and engage in bar activities, and be privy to the financial information about the firm and what each of its partners make.

Before we skewer these myths, let me make two critical points. First, there was never a time when the myths were entirely true. Most firms came close, but the myths crowded out a more harsh reality even in the good old days. Second, the myths have always been and even today are likely to reflect the reality at some firms more than others. The divergence of reality from the myths, however, has accelerated over time, and the process continues, with each passing year reflecting a greater departure than the last, until the perpetuation of the myths gets harder and harder to justify.

The truth is, when we interview law students we shouldn't mention partnership at all. The chances of any given law school recruit, sitting across from an exalted hiring partner in a cramped interview room in West Philadelphia, Greenwich Village, or Morningside Heights actually becoming a partner at Caldwell & Moore are so remote and so impossible to predict that discussions of career paths that include partnership should not even be mentioned. Rather, we should tell these young lawyers-to-be the truth: if you come to Caldwell & Moore we will pay you a lot of money but to justify that hiring decision and salary, particularly given the fact you will stay with Caldwell & Moore such a short time, we expect you to work outrageous hours undertaking often mind-numbing work at a high pressure pace—for as short as our courtship shall last.

Even once these young lawyers join the firm, references to partnership should only be in the context of how unlikely it is to occur. Indeed, the modern American law firm's economics are premised on the proposition that many will start the marathon and that very few, if any, will be left running at partnership's finish line. Though the low odds are now so obvious it seems they need not be candidly addressed, the real issue that can no longer go unmentioned is that the holy grail of partnership in fact is way too glorified, too romanticized, too exalted by the perpetuation of the

myths. Yet, at the same time the truth goes largely unstated, the profession undoubtedly being collectively embarrassed by the fact that the career path to “partnership” today provides neither a path nor anything that resembles real partnership.

This is true in at least four respects. First, while partnership may bring better financial rewards than those earned by associates, any sense that partnership brings a chance to pause, a chance to relax, a chance to diminish one’s time commitment to firm business is totally wrong. If anything, the entry into partnership increases the pressure on the “lucky” few, not only to keep up the feverish pace, but to become business gatherers, client collectors, fee generators, to keep the economic engine that is Caldwell & Moore improving its revenues per lawyer and profits per partner each and every month.

Second, fewer and fewer of those now called partners really occupy that status. What started as assignment of a few who were perhaps less worthy, to a way-station called dollar partner or non-equity partner, has now become a tidal wave as the designation dollar partner—a true oxymoron—provided a splendid solution to a multitude of sins. It postponed difficult decisions about those on the cusp. It retained those whose special skills were deemed essential, but who were not viewed as being true partnership material under the law firm’s old “up or out” policy. It improved the statistics of the dismal percentage of associates who were made partner. And, most important, it permitted the firm to show much better profits per partner (“PPP”). This bit of accounting manipulation was possible because for purposes of reporting a firm’s PPP to *The American Lawyer*, the firms excluded dollar partner income from partner profits and likewise excluded dollar partners from the number by which partner profits were divided, thereby permitting PPP to soar compared with how that calculation might come out if dollar partners were included on both sides of the calculation.

Third, elevation to partnership no longer comes with any sense of tenure. While the out-placement process might not be as speedy as it would be with lawyers who were mere associates, law firms are now free, with little, if any, guilt, to ease out partners who are viewed as less than productive (productive being defined by criteria that were far different from the standards that were applied when these folks were admitted to the partnership, which at the time was assumed to carry with it real tenure, not some pale approximation thereof).

Fourth, the future model of the law firm that emerges from what seems a now inevitable path is that law firms will include as partners only those whose books of business exceed a very significant number—say a million, two million, or three, depending on the firm and the city. Everyone else,

no matter what name they are given, will be mere employees. The only new real partners at these firms will be the few homegrown lawyers whose originations reach these levels years after they are dollar partners for a significant period of time, and, of course, those worthies who are brought into the firm as laterals.

It is really with the latter—the so-called lateral partner—where the action will be found. Just as at one time it was unthinkable that a law firm partner would ever be eased out, it was equally unthinkable that a successful partner would leave his original firm (they were virtually all men back then) and move across town to a rival firm. Unthinkable, and yet today law firms operate in a free-agency world where a combination of the rules of professional conduct—that prohibit virtually any restrictions on lawyer mobility—and the transparency that *The American Lawyer* brought to law firm profitability—anybody can “look up” what each major firm’s “reported” profits per partner were—have resulted in lawyers with books of business looking longingly at other firms as places where they finally can be truly “appreciated” for their “excellence” as lawyers, the euphemism for maximizing their take home pay.

The casualties from this process are real. Loyalty is an early victim, as is the concept of the firm, all for one and one for all. Further, if the real rewards go to those with the biggest books of business, what happens to other firm responsibilities such as hiring, training, running a summer program, pro bono services, bar association work and a myriad of other areas of endeavor? They still might get done but they will be done by individuals who will be under-rewarded for their efforts, sadly reflecting the reality that law as business has driven out so much of what we valued and celebrated about law as a learned and committed profession.