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Fifteen Years 1979-1994
Looking Back

1987: BYE, BYE, FINLEY, KUMBLE

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To celebrate the fifteenth anniversary of The American Lawyer, this year we are publishing excerpts from some of our more important features, along with updates of those stories. This article, from September 1987, presaged the now-notorious demise of Finley, Kumble, Wagner, Heine, Underberg, Manley, Myerson & Casey, which went bankrupt in 1988. The firm, we revealed, had fooled its partners and banks with fantasy accounting and was close to collapse.

15 YEARS

It was a grand experiment. Take 198 restless, disgruntled, money-conscious, hard-driving partners from around the country. Free them from stuffy old firms that insist on paying for seniority or pedigree rather than productivity. Give them 450 associates, 17 offices, huge bounties for bringing in business, and ceaseless harangues from on high about billing and realization. And see what happens.

What happened for the last half decade was the fastest-growing, most lavishly paying, most reviled (especially by those at firms whose partners or clients had been raided), most talked about law firm ever. What's happening now is $76 million of debt that's growing, name partners not talking to each other, at least one key client afraid to send new business, and partner and associate resumes flooding the mails from Beverly Hills to Park Avenue.

Three years ago, name partner and just-anointed co-managing partner Marshall Manley of the firm currently called Finley, Kumble, Wagner, Heine, Underberg, Manley, Myerson & Casey told me, “Come back in a few years and see if this system isn't working. If it doesn't work ... we'll all be gone. Our partners came here by voting with their feet, and they'll leave the same way.”

Co-managing partner Steven Kumble added, in an interview for the same 1984 article, that the firm would have 700 lawyers in a year or two, and be an entirely new kind of legal institution: “a total meritocracy.”

The total meritocracy, it turned out, was at its core not much more than a commission-for-fees operation, soon to fall under the weight of that commission structure. Lawyers got paid for bringing in business, not for legal work, and certainly not for their contribution to building any kind of long-term institution.

And when some of these rainmakers didn't bring in the business they promised-- or when the business declined or evaporated because of the firm's aggressive billing practices--their incomes were nonetheless not cut. For their support was too important to either Kumble or Manley or others in what by 1985 had become an incessant power struggle that made the firm letterhead more a fight card than a law partnership.

Today Manley, who no longer talks to Kumble, is gone, though he is still officially a partner at the firm. In 1985 he became president of The Home Group Inc., an insurance and financial services company. By his own account, he “has nothing much to say” about what is now his 650-lawyer firm because “I haven't spent a minute of time on firm work for more than a year.”

Manley, who is largely credited with turning Home around in the last year, earned nearly $2 million from Home in 1986, counting the interest value of a $2.9 million interest-free loan the company gave him to buy a Manhattan co-op but not counting stock options and a long-term incentive plan. But such is Finley, Kumble's commitment to pay lawyers for business, pure and simple, that he was also paid $1,249,000 by Finley, Kumble in the firm's fiscal year that ended on January 31, 1987, according to the firm's financial statements. That year he was responsible for originating or generating about $14 million in business, say three senior partners. That includes between $3 million and $4 million from the company he runs, according to two senior partners.

In the year ending January 31, 1988, Manley is slated to receive $1,550,000, according to the same partners, in return for generating slightly more than $15 million in billings, none of which, again, includes a single hour of his own time. These partners say that although Manley's take seems to be about 10 percent of billings credited to him, the payout is more serendipitous than that. “Manley negotiates with us,” one partner explains. “He asks for x and we offer y in return for his delivering that business and not taking it elsewhere. And then we arrive at a deal.”

(Manley and all other Finley, Kumble partners, citing a partnership resolution supposedly adopted last spring that no one talk to the press, declined all public comment for this article. However, more than 20 partners agreed to be interviewed as long as they were not quoted by name. Many were interviewed extensively, and three made the firm's financial records available.)

As for Kumble, he is all but gone, too. He's been stripped of management power and spends most of his time on a fledgling leveraged buyout fund he has organized and on other investments, including race-horse syndications, according to one of his partners. By all accounts, he spends no time practicing law, yet earned $904,000 in fiscal 1987--second only to Manley--according to the firm's year-end financial statements.

In short, the firm's two highest earners in the most recently completed fiscal year practiced not a day of law.

And their institutional loyalty is such that one, Manley, is gone altogether, and the other, Kumble, recently threatened, according to two senior partners, to imperil the firm's lines of credit if he wasn't renamed the partner in charge of the New York office. Kumble wasn't given back the key New York job, but in a compromise that makes no sense to anyone but seemed to assuage Kumble's ego enough to keep him from running to the banks, name partner Andrew Heine, a Kumble archenemy, was defrocked as head of the corporate department. Whereupon Heine announced plans to leave.

Heine had been in a bitter fight with Kumble in 1985 over whether Kumble should have filed a 13D disclosure form with the SEC when Kumble, Heine, and other partners accumulated more than 5 percent of the stock in one of the firm's clients without the client CEO's knowing about it. (Heine wrote Kumble a memo saying he was embarrassed. Kumble wrote Heine back saying he'd never known Heine to be embarrassed about anything.)

But I'm getting ahead of myself here. Let's go back to the basics of the firm's troubles. To wit:

1. Declining Revenue

For all its lavish spending ($11.5 million for remodeled offices in New York and a $500,000 art collection) and lavish, much-heralded bidding for rainmakers and pseudo-rainmakers ($800,000 for former senator Paul Laxalt, who reportedly is doing about as well so far as a client-getter as a presidental candidate), Finley, Kumble's revenue per lawyer actually dropped from $226,000 in fiscal 1985 to $219,000 in fiscal 1987.

And that declining revenue-per-lawyer calculation generously takes into account the addition of new lawyers by calculating a weighted average number of lawyer-years each year.

Meantime, expenses are skyrocketing. For example, rent jumped to $11.6 million from $8.2 million in fiscal 1987 over fiscal 1986. That's a 41 percent increase at a time when the number of lawyers increased about 10 percent. And “promotion expense,” as the firm's profit and loss statement describes it, reached $5.3 million, up from an already incredible $4.1 million in fiscal 1986. Insurance costs, apparently because of an escalating number of seemingly insignificant but persistent malpractice suits in a firm that perhaps cares too much about taking in business and suing to collect on it rather than doing quality work, went from $2.9 million to $5.4 million. This, despite a deductible of $1 million per case.

2. Opaque Financial Statements

The revenue numbers I've just used may come as a surprise to most of the firm's partners, let alone those now being recruited to sign on. That's because the firm's financial statements, prepared annually by KPMG Peat Marwick, show much higher revenue numbers. And that's because of “Footnote 5,” which refers rather clinically to some nifty off-balance-sheet financing that uses bank loans to make revenue seem higher than it is, or has been. Here's how it works.

3. Cash-Basis Expenses, Accrual-Basis Revenue

Footnote 5 of the firm's January 31, 1987, financial statement says: "At January 31, 1987 and 1986, the partnership sold accounts receivable from clients to a corporation owned by one of its partners and recorded this amount as professional fee income. Under terms of the agreement, the partnership retains title as owner of record and is liable for all expenses arising in defense or settlement of the accounts receivable sold. The corporation financed the purchase of the accounts receivable ... with a bank loan for which the partnership is guarantor. The partnership will repay the loan on behalf of the corporation directly to the lending bank."

Finley, Kumble, like most firms, does its accounting on a cash basis. But what Footnote 5 says, in essence, is that in order to record a large chunk of accounts receivable as "cash received," the firm "sold" the receivables to a dummy corporation, which bought them with a loan guaranteed by the firm and which the firm will pay back directly.

If this seems unusual, it is. Law firm management consultants Bradford Hildebrandt of Hildebrandt Inc. and Ward Bower of Altman & Weil say they've never head of any firm doing this. (A spokesman for Peat Marwick says the accounting firm will not comment on any aspect of its work for Finley, Kumble.)

"Selling the receivables was initially an innocent, logical idea that Steve [Kumble] had," says one partner who by Finley, Kumble standards is a relatively good friend of Kumble's. "Steve figured that with the firm expanding so rapidly and with all the lag time between investment and revenue, why should the partners in 1984 be penalized on their draw for expenses they were incurring to make things worth more in 1985 that would help the new partners in 1985?" (One answer: That's what making investments and commitments to the future is all about, especially in a law partnership trying to build an institution.)

"Here was a way to borrow the money but show it as cash received, not money borrowed," this partner explains, "so that the 1984 partners would split it. The problem," this partner concludes, "is that the whole thing got out of hand and became a substitute for the money that didn't come in."

Thus, in fiscal 1985, $1.8 million in receivables was "sold" to the dummy corporation, according to one senior partner. But in fiscal 1986, a time when the firm expanded only about half as rapidly as in fiscal 1985 (from an increase in lawyers of about 40 percent to an increase of about 20 percent), $10 million was "sold." And in fiscal 1987, when expansion slowed down still more (to an increase in lawyers of about 10 percent), the number jumped to $27 million. The reason: revenue shortfalls.

"As we fell short in revenue," says another senior partner, "Steve just extended the borrowing to make up for it. You know, it's very hard in a law firm like this to tell when the cash isn't there because of expansion expenses that will come back or because of real shortfalls. And Steve kept talking about expansion expenses. Everything was explained by expansion."

Judging as best one can from the financial statements and from the interviews with partners willing to talk, it seems that the real shortfall should have been clear, and it had to do with revenue, not costs. According to two seemingly knowledgeable partners, projected cash revenue for the year ending January 31, 1987, was $174 million when Kumble did his projections in January 1986. But even with $27 million in "sales" of accounts receivable (as shown on the fiscal 1987 P&L), revenue came in at just $149 million. Deducting that $27 million means that the real cash number was $122 million. That's $52 million, or 29.8 percent, below the projection--a shortfall equal to more than the firm's entire distribution to partners.

The $27 million sale to the dummy corporation propped up revenue in a way that made the all-important revenue per lawyer numbers look like $223,000 in fiscal 1986 when it was really $204,000, and a whopping $268,000 in 1987 when it was really $219,000. (This calculation uses my admittedly imprecise--but, I think, fair--weighted averages of lawyers per fiscal year.)

"I swear to you," says one executive committee member who joined the firm in the mid-1980s, "I didn't know what the [accounts receivable] borrowings were all about until six months ago. And I know most of the other partners don't, except for maybe four or five." Of 26 partners interviewed for this article, six seemed to be aware, vaguely, of the existence of the borrowings; two seemed to understand their significance.[FNa1] That, of course, doesn't mean anyone was deliberately deceived; Footnote 5, after all, is right there for everyone to see and, presumably, ask about. But most of the partners I interviewed did not express an awareness of the revenue shortfalls or the borrowings.

Worse, this accrual-basis-revenue, cash-basis-expense accounting method made partnership profits--which the firm lists on its books as "excess of revenue collected over expenses paid"--look like $47,466,973 in 1987 and $36,496,082 in 1986, when the numbers would have been $20,466,973 in 1987 and $26,496,082 in 1986 without the borrowings.

Yet the firm paid out all but $47,466,973 to its partners as distributions in fiscal 1987 and almost all $36,496,082 in 1986. In short, Finley, Kumble was borrowing money simply to pay its partners the draw the managers--by then fighting for power--had projected they'd make if all went well.

The law of partnership seems to be that all partners are on the hook equally-- jointly and severally--for all of the borrowing. But at Finley, Kumble the highest earners--who were also the people who ran the firm and therefore controlled the borrowing--benefited the most from it. This is because Finley, Kumble has a draw system, which its leaders brag about, that ostensibly puts the high earners at most risk for shortfalls in year-end results. Under this two-tier system, lower-tier partners draw 70 percent of their projected income during the year and take just 30 percent out when year-end results are tabulated. But the higher-tier people draw just 55 percent during the year and take out 45 percent at year end. That way, one high earner told me in 1984, the higher-tier people are more at risk if the results are bad and have more to gain if there's an upside.

That would, indeed, be true--except if, as happened, the high-tier people decide to “borrow” to make their projections by “selling” the receivables to their own company. Even without what may be the impending defections of key partners, the current year seems likely to compound the firm's problems. The firm collected just $37 million in the first quarter ending April 30, 1987, against projections of $42 million.

4. $76 Million In Debt

Thus, the firm's daily printout of bank balances as of July 31, 1987 (halfway through the current fiscal year) showed an overdraft on the books of $3,926,016 at Bankers Trust Company in New York, which, with other positive balances and an overdraft of $291,392 at Chemical Bank, yielded a total overdraft on the books of $1,799,790. (No checks bounced, because “the firm plays the float masterfully,” says one partner.)

More important, the printout showed $53.8 million in outstanding loans. This includes $35.3 million in loans from Citibank, Manufacturers Hanover, and the National Bank of Washington, plus $18.5 million of the original $27 million in guarantees to Bankers Trust and Manufacturers for the dummy corporation's bank loans. (If all $27 million was for fully billed and fully collectible accounts receivable, why wouldn't more than $8.5 million have been collected 90 days later?) On top of that, there's $21,179,703 in contingent liabilities in the form of loans guaranteed for partners so that they could make capital contributions. The grand total including bank overdrafts: $76,778,000 in debt against $310,000 in cash or securities.

This represents an awesome jump since January 31, 1987. At that time, all bank debt, including the guarantee to the dummy corporation, was listed on the balance sheet at $36.1 million, and guarantees of partner's capitalization loans were just $14.8 million--a total of $50.9 million.

Of course, any firm this size has a great deal of real equity. Leasehold improvements, for example, are listed on the books at $16.4 million and furniture and office equipment at $20.5 million.

And assuming, generously, a four to six months' lag between a lawyer-hour worked and money collected for that hour, the firm would probably pull in $50-60 million in billings if it shut its doors tomorrow--assuming that some of the fleeing partners didn't try to collect those bills at their new firms. But even in this regard the books seem to be puffed a bit. The January 31, 1987, balance sheet values work-in-progress at $39 million after a discount of $9.8 million from a total of $48.9 million. But that's a discount of just 20 percent, or a projected realization rate of 80 percent. Every partner I interviewed guessed that real realization is between 68 percent and 75 percent. (The balance sheet also valued accounts receivable--that is, work that had already been billed as compared to work-in-progress that had not been billed--at a 20 percent discount, which also seems optimistic but less so than the work-in-progress projection, since many partners write off time before preparing a bill.)

My guess is that as of today, Finley, Kumble's assets in a liquidation would just about equal its debt, assuming it could unload all of its leases (it has about $54 million in rent commitments through 1992) and, again, that partners didn't try to collect bills on their own, which assumes a dispute-free breakup.

Why, then, do the banks keep lending? The three lead lenders are Citibank, Manufacturers Hanover, and Bankers Trust, in that order. None would comment publicly on Finley. Kumble or the loans. But another banker, who had tried to do business with Finley, Kumble, says, “They aren't showing any financials that show them falling short of any projections.... And their explanation of the need to borrow to finance expansion seems perfectly logical. ... We're just learning about the law firm business,” he adds. “It's new to us. We perceive law firms as very good, responsible risks. Most are so damned conservative and have such legitimate needs that we're very anxious to lend, but we're not terribly sophisticated about it.... Maybe one of us will learn the hard way.”

If Finley, Kumble were a determined, going concern, the banks would have little to worry about. It has a broad base of business, and its steady cash flow could easily pay down the debt if the firm's management simply forced partners to take cuts for a year or two. But not only has the firm fallen short of projections while continuing to pay out as if it's on target, it's also been rocked by the kind of management turmoil and buffeted by new marketplace forces that could, indeed, give the banks pause.

Here's a recap of what has become Finley, Kumble's version of Dallas.

VOTING WITH THEIR FEET

Finley. Kumble began in 1968 with a group of five partners, led by Kumble. They had a vision that they could build a bigger, richer firm by being more aggressive, more merit-oriented, and just plain more businesslike than any firm had ever been. By 1979 they were 70 lawyers, all in New York and all there lot one thing: money. They had come because they could make more of it there than anywhere else.

Some tried too hard to make it: one partner got nailed for stock fraud, another was cited by the court for conflict of interest in a bankruptcy fee-splitting arrangement.

In 1978 Marshall Manley signed on. A brash New Yorker then transplanted to Los Angeles, Manley had been bounced from Manatt, Phelps, Rothenberg, Manley & Tunney, which he'd helped build, because he'd given what was then thought to be an intemperate, self-puffing interview to me in Esquire magazine. Now he was ready to build a second firm.

Manley is a brilliant businessman and an indescribably alluring business-getter. And by 1984 he'd built the Finley, Kumble California operation from nothing to 150 prospering lawyers, many with glittering credentials that far outshone their New York partners.

By 1984 the Washington, D.C., office, under the leadership of Robert Washington, Jr., had also grown dramatically. What had been the product of a merger with a small-time firm had blossomed into an 80-lawyer powerhouse specializing in municipal finance and international trade, among other areas. Florida, too, was flourishing, having been built after several false starts by the ever-persistent, ever-focused Kumble, a charming, articulate business-getter whose style and business acumen matched or beat the Wall Street partners he was now challenging.

New Yorkers Andrew Heine, a sophisticated, Yale-educated corporate lawyer, and Neil Underberg, a well-respected real estate specialist, rounded out the Finley, Kumble leadership group--five tough, cocky partners on the make.

It was an exciting place to be in 1984. As Jerold Miles, a former managing partner at Los Angeles's Agnew, Miller & Carlson, said at the time in explaining his 1981 decision to join Manley's new team: “When I decided to leave ... I had eighteen offers. One night I went home and started describing all of them to my wife, and after I went through them, I told her I thought I was going to take Finley, Kumble. And she said she knew I was going to, because when I had described that opportunity to her it was the only time my eyes sparkled. Here was the chance to leave a top-heavy firm and go to the only pure meritocracy anywhere, where whatever I did, and whatever I built. I would benefit from.”

The competition saw it differently. The firm became a hated symbol of all the new market forces that were making the profession so much less comfortable.

Manley, Washington, and Kumble traveled the country, not practicing law but making pitches to new clients, exhorting partners and associates to keep their billings up, and signing on new lawyers whom they judged to be “charismatic” enough (a favorite word for client-getters) to keep the steamroller going.

It all seemed to be working, for the firm had indeed found a market niche among up-and-coming midsize businesses eager to make it to the Fortune 500 and just as eager to sign on with a group of lawyers who were also challenging those at the top. These clients were less likely to have large in-house departments and less likely to be wedded already to any large firm. They were, therefore, more susceptible than others with large legal budgets to Finley, Kumble's we'll-win-for-you, we'll-handle-your-work-everywhere pitches.

Yet clouds were also visible. The firm's only culture was money. Even the youngest associate learned that a “bulls--t” partner was one who perhaps did good legal work but wasn't charismatic enough to attract new business. Thus, the ratio between highest-earning and lowest-earning partners was as much as 10:1. For the short term, Manley, Kumble, and the others at the top did fabulously with this setup; by paying partners who simply did client work no more and sometimes less than senior associates were paid at other firms, the top partners were leveraging these partners the way other firms leverage associates.

But how could the most talented lawyers who lacked “charisma” be attracted to such a firm? And how, then, could clients be served well in that environment?

And if associates were exhorted to bill at least 2,000 hours a year--and given bonuses for doing more--wouldn't realization rates go down and client dissatisfaction rise? Similarly, with the firm paying such a premium for work brought in, wouldn't bills be higher than they'd be at other firms? For example, if Manley got a cut of 10 percent and didn't bill a dime's worth of time, the client was, in effect, paying a percent finder's fee on top of the cost and profit conventionally attached to the partners and associates who did his work. With the firm employing lots of high-priced partners like Manley, and also making straight referral deals with many of the three dozen people it calls “counsel” but who similarly do little or no legal work, wouldn't those costs start to turn off clients?

Worse, with other firms awakening to what Kumble and his partners had been the first to see--that in the modern age of law as a business, partners need to be paid for their productivity and not their seniority or they'll leave--wouldn't the firm's recruiting advantage be dissipated? Wouldn't those partners who were prone to vote with their feet now be satisfied at home or find other eager firms with whom to cast their votes?

There was another problem, too. It didn't have to do with money but rather with the only factor that often overrides money in business deals gone sour: clashing egos.

The conflict had been obvious in 1984, when many lead partners, especially those from outside New York, took every opportunity with me to dump on Kumble, either because they were jealous of him (his explanation at the time) or because his management style and abilities no longer measured up to the needs of such a large, complex enterprise (their explanation). A clash was in the offing.

MANLEY VERSUS KUMBLE

Actually, the fight had begun a year before, in 1983. Kumble, according to a broad consensus of partners, had always relished the glory of having built the firm and the power that controlling such an enterprise and having sole watch on its books now gave him. But by then Manley, too, was getting the credit. And he was vying for a share of the power. He didn't want to get Kumble's approval when he wanted to offer a deal to a new recruit, and he certainly didn't want to account to Kumble for the California operation's finances or performance. According to several partners, he simply began to ignore Kumble.

But Manley was also going through a difficult divorce, and he was using Finley, Kumble lawyers to fight it. Here, according to several partners, Kumble saw his opening. In mid-1983, Kumble--who had become famous for trips across the country toting a black loose-leaf book full of printouts listing unpaid bills that he'd tell his partners they'd better collect on--wrote Manley a memo saying that if Manley didn't pay the several hundred thousand dollars that the computer said Manley owed the firm in lawyer time for his divorce, all work on the case would be stopped.

“Marshall's a tough, cynical guy,” says one partner, who claims to recall that the divorce “bill” was for $600,000. “But this really rocked him.”

Within a month, Manley let it be known through a partner in the Washington office that he was considering a million-dollar-a-year offer to start a Los Angeles office for New York's Shea & Gould. Kumble, Heine, and Underberg quickly flew to L.A. for a tense meeting. (Some of Manley's terrified partners tried to lip-read the yelling and screaming through a window across the courtyard of the Beverly Hills office tower that housed the firm.) Manley won. He would be co-managing partner with Kumble--and the fees for the divorce work would be written off.

But through 1985, there were bitter fights between Manley and Kumble, and for that matter between Kumble and top partners from all the other offices (usually except Florida), over decisions in general and especially over partnership distributions. The firm had never used an explicit formula for dividing up the pie, but had relied on what Kumble in 1984 called a “subjective meritocracy.” Which meant that those with the power--the top five and then about two dozen other heavy hitters on an executive management committee--dealt out the money according to what it took to keep all those voters-with-their-feet happy.

By now there was a key new player in the power struggle: Harvey Myerson. A high-profile New York litigator, Myerson had arrived from Webster & Sheffield in 1984 with a blue-chip client portfolio. By 1985 he commanded as much business as Manley. He had been recruited by Manley and Heine and, thus, was seen by Kumble as a threat to Kumble on Kumble's own turf. It was a situation that Myerson, a man who gives new meaning to the word abrasive, did little to ease. In fact, he seemed eager for the fight, according to several partners.

Manley and Myerson became blood-brother allies against Kumble, who meanwhile derived much of his support from the Florida office that he had sponsored and from some of the New Yorkers. Robert Washington and his D.C. partners were also Manley-Myerson allies.

But by 1985, Manley, perhaps seeing the numbers starting to lag and certainly seeing greener pastures elsewhere, left to take the presidency of The Home Group. In August 1986 Manley announced that he was resigning his position as co-managing partner. Kumble, by all accounts, was ecstatic--until Manley led a group that proposed that Washington of the D.C. office and Myerson replace Manley as co-managing partners with Kumble.

After what more than a dozen partners describe as a series of bitter meetings and caucuses among factions. Kumble acceded. But he then refused to give Washington or Myerson any real power.

Washington, Myerson, Manley, and their allies fought back by bad-mouthing Kumble and the original New York group (except Heine) to their partners and to the press. Kumble just wasn't able to lead Finley, Kumble into becoming a truly great firm, they groused. Myerson openly told people that Kumble had to be thrown out, even soliciting a reporter for ideas on new partners to recruit to replace Kumble in New York.

As the infighting continued, finances weakened. The forces that had clouded things as early as 1984 were now taking hold.

Realization was lower. “They worked hard to service me, but their bills became outrageous,” says one client. “I found myself cutting every bill twenty or thirty percent.”

Cross-marketing between offices--the key to the firm's entire business plan-- slowed as various branches took sides in the fights and subfights. There was no way Florida, loyal to Kumble, would send a litigation matter to Myerson's forces in New York or Manley's in Beverly Hills. These people weren't just not close. They were bitter enemies.

Recruiting of real rainmakers was slowing, too. Other firms were now playing the same game. And the former victims of the raids were now playing a better defensive game. In place of truly valuable catches, Kumble was taking on expensive names who were not bringing in the projected business.

Still, Kumble could not afford to cut partners or partner draws. He was, after all, in the midst of a battle for their loyalty. His opponents, too, weren't about to suggest cuts, either because, as they claim, they didn't understand the true state of the firm's finances, or because they, too, wanted the partners' support.

Joining the get-Kumble group by then was Heine. He had come to the firm early on, in 1973, and had once been Kumble's closest friend and cohort.

In January 1987 someone using a blank envelope mailed to The American Lawyer an April 1985 exchange of memos between Heine and Kumble. The memos concerned Kumble's having bought a large block of stock in American Bakeries Company, a client on whose board sat Heine and Finley, Kumble counsel Leonard Toboroff.

In the viciously worded memos, Heine and Kumble fought over who deserved credit for the client, and whether Kumble should have had to file a 13D disclosure statement with the SEC because with his just-purchased stake in the company, combined with his partner's smaller holdings, the partnership had gone over the 5 percent threshold. Heine also said that because two people at his firm were on the American Bakeries board, Kumble might be seen as having been privy to inside information prior to his stock purchases--purchases that Heine said Kumble had kept secret from his client and his partners.

(American Bakeries CEO E. Garrett Bewkes, Jr., declines comment on what one American Bakeries executive calls “the lawyers' fight over our carcass,” but he is known by close associates to have been shocked by Kumble's stock purchase. “How would you feel if your lawyer became a potential raider?” this executive explains. “You'd be pretty upset, but you wouldn't comment on it.”)

The memos, detailed in The American Lawyer in April 1987, were a humiliation to a firm trying to cut it as a big-time player in the big-time legal scene. Most established firms don't let their lawyers buy any stock in clients, let alone block positions, let alone block positions apparently unknown to the client.

Convinced that it was Heine who had leaked the 21-month-old memos, Kumble urged at a stormy management committee meeting in February 1987 that his long-time partner and once close friend be thrown out of the firm. Replying that they were embarrassed by the disclosure and fed up with the firm's poor financial performance, Myerson, Manley, Heine, and others reportedly urged that Kumble be stripped of his key job running the New York office, or that he be kicked out altogether.

The result of all the fighting was a decisive defeat for Kumble. Myerson was installed as head of the New York office. Kumble, Myerson, and Washington remained as co-national managing partners, but Kumble, given liaison responsibility just for the Florida office, was left with little power and little to do.

KUMBLE TAKES THE OFFENSIVE

This spring Kumble struck back. Pointing to the firm's debt, he began, according to five seemingly knowledgeable partners, to tell partners at a series of meetings in May and June that if he didn't get back some of the power he deserved, he would withdraw from the firm, perhaps taking the growing Florida office with him. And according to these five partners, he added this warning: That kind of turmoil, he reportedly said, might cause the banks to call in their lines of credit.

At the same time, explicit reports surfaced in a New York Post gossip column that Kumble had given his resume to the Russell Reynolds headhunting firm and was exploring a host of options. His warring partners were sure that Kumble was the source of the unusual leak.

“Steve threatened his partners with the banks none too subtly,” says one client who has a relationship with one of the creditor banks. “And they were concerned.... And they expressed concern, even though they didn't quite know what to make of the situation.”

Some partners were scared by Kumble's threat, according to five of them. Others, like Myerson, urged the firm to let Kumble go. Finally a group sympathetic to Kumble--led by former New York governor Hugh Carey (who had seen his draw jump, at Kumble's behest, from $177,000 to $365,000 in the dismal 1987 fiscal year)--forged a compromise of sorts. Kumble did not get his New York managing partnership back, but archenemy Heine was forced to give up the chairmanship of the corporate department, a slap that has now caused Heine to begin actively seeking a place at another firm.

On the basis of that “compromise,” a press release was issued in Carey's name on June 23, scotching rumors that the firm was in danger of breaking up and announcing its “expression of confidence” in Kumble as a co-managing partner.

In a follow-up interview with The New York Times, Carey emphasized the firm's expression of confidence in the powerless Kumble and asserted that the firm “had no more internal power struggles than any other large law firm,” that Heine had “voluntarily” relinquished his managerial duties, and that 1987 would be the firm's "best [year] in terms of growth and profits."

Since the day of the press release, Myerson, who is now the real power at the firm but who by most accounts had no idea that the release was to be issued, seems to have been looking to leave. He claims to command as much business as Manley--$15 million. His departure would probably be devastating, and certainly a shocker to the banks--with whom he recently met (with Carey and Kumble accompanying him) to give assurances of the firm's health and stability, according to three sources in a position to know.

In July, while Myerson was meeting with the banks, a headhunter named Alan Roberts approached Alexander Forger, the chairman of Wall Street's Milbank, Tweed, Hadley & McCloy, about taking on Myerson, according to Forger.

Asked about that, and "outraged," he says, that "Forger would tell that kind of lie," Myerson broke the firm's no public comment rule long enough to say, "Forger is a goddamn liar. He approached me about running the firm with him as cochairman. And we talked." Forger maintains that Roberts approached him. Either way, Myerson concedes that there was a discussion about his going to Milbank and he concedes exploring "other options that will come to a head soon."

Headhunter Roberts says that Myerson is also talking to Stroock & Stroock & Lavan "through a client," and to "several other firms."

Myerson says he has not retained Roberts or authorized him to speak on his behalf. Roberts would neither confirm nor deny that Myerson had authorized him to seek new offers: he would only say that "Harvey knows I'm out there on his behalf, and he doesn't seem to mind."

According to two sources at Willkie Farr & Gallagher, Myerson has also approached that firm through common client Shearson Lehman Brothers. Myerson is also known to be talking to Coudert Brothers.

For Myerson, leaving may be more than a matter of pique, or what he tells friends is his frustration at the firm's "lousy reputation." In fact, Myerson may have to leave to help, or save, his business.

Myerson's clients seem to love him. But at least two major accounts don't love his current set-up, and they're wary, even resentful, of his promising their business to any firm he might now join. Says Peter Cohen, chairman of Shearson Lehman, Myerson's biggest client: "Our cases with Harvey are winding down until we see what happens at his firm or until he goes to a better firm.

"We like Harvey but don't like the situation at Finley, Kumble," explains Cohen, who emphasizes that "in any event our major firm is and will be Willkie Farr & Galfagher. We don't like what we've heard about Harvey promising people around town that he controls our litigation business.... Harvey can't promise Finley, Kumble or anyone else our business. If he's at a good firm that Jack Nusbaum [of Willkie Farr], who is really the lawyer who controls our business, approves of, he'll get some portion of our business in the future."

Donald Trump's Trump Organization is probably Myerson's second-largest client. (Myerson represented the United States Football League, one of whose teams was owned by Trump, in its unsuccessful antitrust suit against the National Football League.) According to two sources at the Trump Organization, Myerson could get some or all of the firm's corporate business, as well as continue to be its lead litigator, if he were to go to a different firm. "That firm," says one of the sources, "just hasn't become what we, or Harvey, anticipated it would be."

What the firm has become is a place where the pressure on billing and the override to nonlawyers like Manley is such that even satisfied clients like Trump routinely cut 20 to 40 percent from their bills, according to the two knowledgeable Trump sources.

It has become a place where lavish new quarters in New York and Florida (plus a New York art collection complete with a waiting room catalog entitled "The Art of Finley, Kumble, Wagner, Heine, Underberg, Manley, Myerson & Casey") seems to have been the way the firm sought respectability instead of doing it the hard way by recruiting and paying stellar "grinders" of legal work rather than simply rewarding the "minders" and "finders" of clients.

It has become a place whose only corporate culture is money, where things like pro bono or collegiality are sissy stuff--which means that when the money dries up, even temporarily, there's no other glue there, no shared values, to hold the place together.

It has become a place that was once the market leader in paying well for rainmakers but is now so beset by competition for real rainmakers that headline-generating but money-losing substitutes are taking their place in order to sustain the sense of momentum. (Example: $800,000-a-year former Nevada senator Paul Laxalt, who has yet to generate any significant business, according to several partners, and is now off running for president while his draw continues.)

And Finley, Kumble has become a place that, because of struggles by its selfish nonleader leaders at the top to win loyalty, didn't make the tough decisions to cut expenses and partnership draws or even cut partners when the money didn't come in. That, of course, is the ultimate irony: The law firm that came to symbolize the law as a business couldn't react like a business when the going got tough.

Myerson has told friends at the firm that if he decides to stay, he'll cut the borrowings on accounts receivable by year end to $18 million from $27 million. That's a curious promise from the man who had more power than Kumble last January when it came time to make the decision to increase the borrowings from $10 million to $27 million. But he asserts he'll do it, even if he has to eliminate 40 partners. He also promises that if he stays, he'll push to pay for more quality lawyers at the expense of the nonlawyer rainmakers.

That might work, but Myerson is a difficult, breast-beater of a man with a giant ego--not the type to inspire trust and self-sacrifice in a time of crisis. And it's hard to tell if partners (many of whose resumes are now all over the street, according to three reputable headhunters) will trust him enough at a place where few partners trust anyone and few are trusted. And it's even more difficult to bet on whether Myerson, or Washington, or Underberg can force the self-discipline necessary for the firm to pull together and rebuild around quality practice rather than quality salesmanship.

Myerson's leaving is only one of the events that could now trigger the firm's collapse. The key Florida partners--intoxicated by their outpost's current success while most of the other offices are stagnating or declining and scared by Kumble's loss of power--are said to be contemplating a split-off. Much of the California group, many partners there say, would jump ship if Myerson left, or if Manley gave the word. Other key partners--the $500,000 to $1 million billers, who are typically excellent lawyers who now see themselves caught in the crossfire of forces and financial wranglings they probably don't really understand--have their resumes out, anxious to leave, they say, before the next management group fight or a major defection that might cause a run on the place. One or two of them out the door could trigger a stampede. Remember, this is a thrown-together group linked only by their demonstrated “they vote with their feet” devotion to self-interest. And although they are on the hook for current borrowings, some are already talking about wanting to be out before the debt grows.

RAINMAKING ALONE ISN'T ENOUGH

But this is also a firm with dozens, even hundreds, of fine lawyers, a firm that would have made it big if these lawyers' talents had been seen as the firm's key asset--if the salesmanship had been used first and foremost to sell clients on quality legal work rather than to sell more renegade salesman-lawyers on the rewards of quality salesmanship. The firm should have allowed the quality of its work to have fueled growth once the pump was primed by the leaders' initial recruiting. Instead, the leaders simply kept on recruiting, using the opaque P&L statement to reel in more and more supposed rainmakers, always paying more for them than for lawyers. There is nothing wrong with rainmaking as long as the product that ultimately drives the enterprise is legal work, not more rain.

Unfortunately, the very existence of an article like this could also trigger the stampede. Then again, it could have the opposite effect, uniting everyone by shared anger and/or embarrassment and coalescing everyone around a tough, belt-tightening business plan and a reorientation toward real quality.

If Finley, Kumble does not pull itself together, there will be joy in partners' suites across the country. For if Finley, Kumble fails, as I think it will, the wrong people will be gloating for the wrong reasons. The firm's failure will, wrongly, give a bad name to the sound, overdue idea that the law business should, indeed, be a business.

On the other hand, its failure will redeem the idea that there's more to law practice than an aggressive business plan--that quality work, and real professionalism, and liking one's partner aren't sissy stuff after all, but are essential to building a truly solid, truly prosperous law business.

• UPDATE •

By the end of 1987--three months after this article ran--Finley, Kumble disbanded. In early 1988 the firm was placed into bankruptcy; a liquidation plan took effect in March 1992. The dissolution of the firm--at the time the fourth-largest in the country, with 19 offices both here and abroad--left over 1,600 lawyers and support staff looking for jobs.

The firm initially tried to devise an out-of-court settlement and hoped to split up into a number of smaller firms, according to the former bankruptcy trustee, Francis Musselman--then a partner at New York's Milbank, Tweed, Hadley & McCloy and now an independent consultant. But a number of partners from the Los Angeles office dissented, leading the bank creditors to place the firm into involuntary Chapter 7. (The bankruptcy was later converted to a voluntary Chapter 11 proceeding.)

It took more than three years to devise a plan that met the approval of partners and creditors. Finally, in December 1991, Judge Prudence Abram of the U.S. Bankruptcy Court for the Southern District of New York approved a plan that it was hoped would pay creditors about 35 cents on the dollar, and that required partners to make personal contributions.

Except for about 20 former Finley, Kumble partners--who either never signed on to the plan or have defaulted--the others have paid their contributions, says Albert Togut, the current bankruptcy trustee. But at this point, he notes, the anticipated 35 percent return "can't be realized."

Myerson, now 55, left Finley, Kumble only after it disbanded. He did not join another large firm, however, but founded the short-lived Myerson & Kuhn with former baseball commissioner Bowie Kuhn. But by December 1989, that firm also filed for bankruptcy and disbanded.

In March 1991 Myerson was indicted on federal charges in the Eastern District of New York that he defrauded former clients and former Myerson & Kuhn partners of $3.5 million. Myerson faced 14 counts of criminal racketeering, conspiracy, fraud, and obstruction of justice.

A year later Myerson was tried on the fraud charges. He represented himself, and, as was then widely reported, proclaimed to the court that prosecutors were after him because he was, as he put it, "too uppity, flamboyant; a big, cigar-smoking Jewish lawyer."

On April 29, 1992, a jury convicted Myerson of defrauding four of six former clients--Shearson, Home Insurance Co. of New York, ICN Pharmaceuticals, and the United Food and Commercial Workers Union in Washington, D.C. He was acquitted of fraud with respect to two other clients and his former partners.

Then, after a separate trial in late July 1992, a jury convicted Myerson on three counts of conspiracy and income tax fraud. Prosecutors claimed Myerson had failed to report approximately $1.2 million he received from clients after sending out fraudulent bills.

On November 13, 1992, Myerson was sentenced to a 70-month prison term plus three years' supervised release. He has served approximately a year and a half of his sentence, first at the Pensacola Federal Prison Camp in Florida, and now at a higher security prison, the Milan Federal Correction Institute in Michigan, where he was transferred this February. In March a federal appeals court upheld the convictions.

As for Myerson's erstwhile ally Marshall Manley, now 54, he finally stopped receiving his $1 million--plus yearly draw by February 1988, shortly after the firm filed for bankruptcy and three years after Manley abandoned his practice. He continued, however, as president and chief executive officer of The Home Group Inc. (now AmBase Corporation of Greenwich, Connecticut) until March 1990, when AmBase's board asked him to step down. According to press reports at the time, the company was retreating from Manley's strategy to convert the insurance company into a financial services giant, and was planning a restructuring.

Manley is now chairman of Lincoln Terrace Capital Corp., a New York investment firm.

As anticipated, Andrew Heine left Finley, Kumble in the early fall of 1987 and joined New York's Curtis, Mallet-Prevost, Colt & Mosle as counsel until January 1990. Since then, Heine, 65, has worked as an investor and solo practitioner in New York. He also holds a number of directorships, including at Citizens Utilities Company and The Olsten Corp.

Heine's former nemesis, Steven Kumble, 61, is now chairman of New York's Lincolnshire Management, Inc., the leveraged buyout firm he founded before leaving the firm. For approximately three-and-a-half years after the firm's demise, Kumble also held a counsel position with New York's Summit Rovins & Feldesman, a small general practice firm that later changed its name to Summit Solomon & Feldesman and ultimately disbanded in March 1993.

The remaining, surviving name partners are all practicing law (Robert Wagner died in 1991): Leon Finley, 86, is of counsel at New York's Baer Marks & Upham, which he joined after Finley, Kumble disbanded; Neil Underberg, 66, is a real estate partner at New York's Whitman Breed Abbott & Morgan; and Robert Casey, 75, has been a tax partner at Washington, D.C.'s Long Law Firm since 1990.

--Dimitra Kessenides

FN a1. Partners and others looking at The American Lawyer's annual surveys of law firm finances covering fiscal 1986 and 1987 (“The Am Law 75” and “The Am Law 100,” respectively) would have been still less aware. Not only were the borrowings counted as revenue in the data given to us by a key senior partner, but a large portion of the money *received as reimbursement for client disbursements seems also to have been counted.*

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