

employing policies and procedures that served the sole purpose of increasing the amount of time required on large discovery tasks. The oft critical web blog [Above The Law](http://www.google.com/url?sa=t&source=web&cd=1&ved=0CBYQFjAA&url=http%3A%2F%2Fabove-thelaw.com%2F2011%2F08%2Fin-defense-of-gregory-berry-plus-a-few-more-funny-stories%2F&rct=j&q=above%20the%20law%20berry&ei=KtxmTsPEKYnagQf3mvHxDA&usg=AFQjCNEJzoJmwK0XN2tvU2GQHVANKkEtsQ&cad=rja) seemed to completely miss the significance of *Berry v. Kasowitz* at the same time that they engaged in relentless, irrelevant and anonymous *ad hominem* attacks against Mr. Berry including stories of emails from college days, photographs wearing stupid looking glasses, and Karaoke song choices from a summer intern party. Just as we started to doubt *AboveTheLaw*'s genuine independence from the legal profession, we read their report that another former employee confirmed the Kasowitz scheme:

They are horribly inefficient at doc review on purpose

But you can imagine our "surprise" that [Lauren Russell](https://www.potteranderson.com/people/Lauren-Russell) (*nee* Moak), under the air of presumed professionalism on an official *Young Conaway Stargatt & Taylor* website (now seemingly less loquacious at [Potter Anderson](https://www.potteranderson.com/diversity/diversity-committee)), displayed her dubious diligence whilst quoting extensively from Mr. Berry's filing. In particular, Lauren berates Mr. Berry that he "**had been expressly warned not to 'be so arrogant'**". How ironic that [Ms. Moak - Russell](http://www.delawareemploymentlawblog.com/2011/08/dont_hate_me_because_im_brilla.html?utm_source=feedburner&utm_medium=feed&utm_campaign=Feed%3A+delawareemploymentlawblog%2FUagR+%28Delaware+Employment+Law+Blog%29) was able to troll through the lawsuit to find snippets to cast Mr. Berry in as poor a light as she is able, yet Ms. Moak was either unable or unwilling to recognize the context and significance of this "warning". *Earth to Moak*: **Greg Berry was complaining about fee padding activities when he was 'warned'**. Here is the relevant paragraph:

171. During Mr. Berry's first meeting with Mr. Marks, Mr. Berry explained that he had shown the team-leaders of the document review project he was assigned to and the rest of the team how to increase their efficiency 600%, and that everyone on the team, the members and the leaders alike, refused to make the changes, leading to the client being significantly over-billed. John Doe at that meeting replied that Mr. Berry should not be so arrogant.

So now let us pose some questions as to the responsibilities and obligations of three different groups of lawyers in the aftermath of the *Kasowitz Fee Padding* *Ignominy*. Our prior analysis of current and forward looking [issues confronting Dewey & Leboeuf](https://www.potteranderson.com/organizations/dewey-leboeuf/bruce-bennetts-bankruptcy-team-qin-playq.html) parallels in some respects the questions that we will pose below.

Within the Kasowitz Benson Torres & Friedman firm

- Is there a duty to inform insurance carriers?
- Is there a duty to inform former clients who may have suffered from inflated discovery fees?
- Are there *non-private* clients, such as debtors under Federal bankruptcy protection, where lawyers are burdened with a greater imperative as to the duty to disclose fee aberrations?
- Can this firm gain safe harbor in relying upon their own internal investigation, or must outside assistance be sought?
- Don't the resulting issues transcend civil consequence and include criminal?

At Firms opposing

Kasowitz, or with a fiduciary obligation to protect against Kasowitz fees

- Is it safe to continue operating under the presumption that the Kasowitz firm has been an opponent operating in good faith?
- Can your fiduciary obligation to any estate survive a failure to pursue Kasowitz fee padding issues?

Lawyers subject to the New York Lawyer's Code of Professional Responsibility or the Judicial Cannons

- Upon hearing of the Greg Berry claims, are you thus burdened under [DR 1-102 \[1200.3\] Misconduct](http://www.law.cornell.edu/ethics/ny/code/NY_CODE.HTM#1-102)?
- Are you compelled to act by [DR 1-103 \[1200.4\] Disclosure of Information to Authorities](http://www.law.cornell.edu/ethics/ny/code/NY_CODE.HTM#1-103)?

In the face of sworn allegations, including many not denied by the accused lawyers themselves, how could your obligations to the Judicial Cannons be satisfied if you fail to act?

And to be clear, we are talking about lawyers and judges who are hearing the Berry v. Kasowitz dispute having responsibilities to adjudicate and refer the "fee padding" related issues under as appropriate under ethical and criminal standards.

- "But these are only allegations".** Duh. Every criminal or ethical case begins with one or more allegation. But these are not ordinary allegations. An attorney swore in a document to the court that the allegations were true. This attorney was fired by Kasowitz, but upon information and belief the senior lawyers at Kasowitz never performed any of the duties they were required to perform if, al arguendo, Berry was ever known to have made false sworn allegations. In short: Kasowitz et al never even accused Berry as being a liar, nor did they deny the **fee padding allegations**. We, and judges hearing the matter, are obligated to take this sworn attorneys allegations as true. As **Elin** is reported to have told **Tiger**: "Yeah, this shit is teed up".
- "But there is attorney client privilege"**. Maybe there was. First, while dirty attorneys will often hide behind privilege when it suits them, the reality is that privilege is held only by the client, and its purpose is solely to protect the client. A lawyer makes a frivolous argument if he claims that his fee padding is protected by attorney client privilege. But once the slightest detail of a privileged matter has been disclosed, all privilege is lost. And in this mad rush of seemingly coordinated ad hominem attacks against Berry, in addition to **AboveTheLaw.com** we have read multiple "revelations" regarding Mr. Berry on multiple legal industry blogs claiming to have [sources](http://viewfromll2.com/2011/08/18/five-things-every-new-lawYer-should-know/). Just as **Justice Ruth Bader Ginsburg** often reminds lawyers appearing before her: "You can not retract a fart". Trying your case, or attempting to score some positive P.R. spin, in the media is a two edged sword.

Big Picture - The Decline of Western Neo-Legal Oligopoly Power

Let's try to translate what all this means for the good people of Des Moines. The legal industry has evolved, with the help of generations of lawyers in Congress and the Judiciary, into an ugly monster. Ugly for citizens, the economy, and perhaps ugliest of all for the junior lawyers.

At the same time the legal services bubble inflates, it presses precariously up against our

poor nation's economic collapse. The pervasive participation by our legal industry in every major scheme which helped cause our financial crisis (real estate, banking, credit, securities, and derivatives) leads some to argue that the retrenchment approaching the U.S. legal industry is a well deserved punishment. However, this notion unfairly paints the junior lawyers, new to the industry, with the same brush as the long influential senior lawyers. It is the senior lawyers in the industry who molded and protected the corrupt business entities which lead to the financial collapse. On the other hand, it will be the associates who suffer. The senior partners have always planned that their careers and financial positions would be well insulated from foreseeable adverse consequences. It will be a shame for the junior lawyers to suffer when it is the senior lawyers at the root of the evil.

At the end of the day, lawyers get their fees by billing per hour. BigLaw learned that in order to make incredible amounts of money, you need to run a big law firm and funnel the flow of money to the top, just like any other pyramid scheme. That is, you have lots of junior lawyers billing out at hourly rates as high as the client will suffer, but you don't pay those lawyers anywhere near their billed hourly rates. The huge difference between the junior lawyers' billing rates and their pay is funneled up the pyramid as profits for the more senior partners. This way, you can rake in enormous profits as long as you are a senior partner at such a fee pyramid. The junior lawyers are willing to work crazy hours, bill crazy amounts of money, and sometimes even skate close to the edge, all with the dream of someday becoming partners themselves. But of course such a business model only works under the assumption that the junior lawyers believe in [the impossible dream](https://youtu.be/7Jkkmb6jEAU?t=47 "Marine sings The Impossible Dream"). Unfortunately for the junior worker bees, the top dogs can't get filthy richer if everyone makes partner. Actually, most can't make partner if this model is to succeed. Thus, the dominant business model of today's BigLaw firms is predicated upon futile hopes planted in the minds of the junior associates.

Unfortunately, today's big law firms need the sort of mindless, yet profitable, "make work" that can be leveraged from discovery matters. This is because the actual work genuinely required in representing most client matters is just not complex enough to generate enormous revenues. Thus, the sort of bogus fee inflation schemes as described in the Berry v. Kasowitz lawsuit is employed by firms whose controlling partners seek profits commensurate with their 'peers'. Bankruptcy Misconduct is not averse to calling such self interested abuse of the client by its proper name: **greed**. The kind of greed which is inflamed in the morally weak who developed their concepts of relativistic morality whilst experiencing modern cultural through art such as *Lifestyles of the Rich and Famous*, *MTV Cribs*, and *Survivor*.

Law Firm Partnership Pursuit Has Always Been Just Another Ponzi Scheme

Even more so now than in the past few decades: Current associates and junior partners at BigLaw firms are facing inevitable disappointment in their personal career prospects. While the legal industry is recognizing their own bubble, and will suffer retrenchment from their own excesses, junior associates eventually realize that the law firm **partnership lottery** **game** has always been just another Ponzi Scheme. The pyramid game only works when you have many more worker bees and only a few queens of the hive at the top end of the pyramid. The declining economic prosperity of our nation merely exacerbates the lopsided earnings disparity between lawyer *haves* and *have-a-dreams*.

Truth is that whether by blood, marriage, or some other unnamed perversion ... a particular

lawyer's inclusion or exclusion from the "**partnership track**" begins before you even receive your login ID.

Law School Lawyer Machines Feed Big Law Pyramids

In the face of this industry retraction, new lawyers are being minted by the law school industry at a rate never before witnessed. We have too many lawyers as it is, but still there are new fresh 70 hour per week pawns rolling out of the gates every year. These lemming soldiers for hire are only happy to take jobs away from the loyal slobs trying vainly to make partner. **You're never going to make partner**. Put things into perspective. Anyone can work **for** the mob, and take the risk of getting arrested or killed. But crime families are very selective as to who they make a "**made man**". Crime families make up the rules. The Neo-Mafia will employ you as a tool, for as long as it suits them. If and when they sense you are a threat, you are gone.

Globalism Eats Away at the Law Industry's Monopoly

Worse still, global forces are now starting to affect legal industry profits. A broad range of professional tasks from Computer Programming, Customer Service, Technical Support, Manufacturing, and even Medical Services have already been farmed out to less expensive parts of the globe for decades. Corporations have employed arbitrage to seek lower cost supply of traditionally domestic service since even before the telephone, fax, eMail, FedEx, and eMail. Bean counters seeking ever higher corporate profits argue that farming out legal work to the far east should have started long ago. Certain legal matters, such as the "make work" discovery billings divulged by Berry, is just the sort of work which can be handled easily by an off shore firm. Why pay \$300 an hour for someone to read 10,000 pages of mostly irrelevant paper when a company in India or the Ukraine would happily do so for \$10? Think I'm making this up? **It is** [already happening](http://www.getabstract.com/en/summary/industries/the-end-of-lawyers/16352/). Only a fool bets his student loan liabilities and family's health care and happiness upon the false premise that traditional law firm employment will return. Only an idiot will believe that the greedy senior partners won't milk the old cow for all she's worth without regard for the bulk of the next generation.

Between A Rock and a Hard Place

So, you've spent a fortune and are now burdened by great debt from having to get your **JD** and that other degree. And **now** you're realizing that you don't have a chance to become a partner in your law firm. As if your social caste was not enough of a burden, your senior partners **now** want **you** to stick your neck out on a number of issues. You are expected to play along with their gaming of the rules, ethics, and duties as a members of the bar. Your ass at risk for **their** golden goose. No upside for you, but you're at risk on the full downside. And if you think for a moment about those people in charge, you'll realize that your risk is even higher. A pawn is just a pawn after all.

It is you, the junior lawyer, who is going to get [covered in steamy mud when the **Volcano Blow**](http://www.youtube.com/watch?v=ndm41EpJ4Oo&feature=related).

Who do you think is going to get fined, disbarred, and incarcerated on the discovery fee abuse, conflict of interest disclosure fraud, and related fraud on the court revelations? **Do you believe that Bill Clinton can be impeached, but little old you are somehow untouchable?** Do you really think the big dogs are going to set **themselves** up to take the fall?

You should be in a better position than Bankruptcy Misconduct to predict the downward loyalty living in the hearts and minds of the senior dogs at your particular law firm as things eventually hit the fan.

