Harvard Business Review

DECISION MAKING

Balancing Competing Loyalties

by Maxim Sytch, Jose Uribe and Yong H. Kim

FEBRUARY 03, 2020

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Can you recall a time when you competed against a former colleague for a deal, or faced a tricky hiring decision with a former co-worker among the candidates? Or, maybe you've advised clients on an acquisition or a lawsuit while former collaborators were advising the counterparty?

These scenarios have a common thread: they may raise questions about your loyalty to current clients and stakeholders. Will you negotiate a deal that helps the former colleague at the expense of current stakeholders? Will you favor a former co-worker in a hiring decision at the expense of your current employer's interests? Will you be an uncompromising advocate for your client when a former partner is advising the opposing party? Having your loyalty questioned is not only enervating but can threaten your reputation.

How do professionals behave when trying to quell such concerns? What are the consequences of such behaviors? These questions motivated our research, forthcoming in *Administrative Science Quarterly*. We found that to restore the perception of uncompromising loyalty to their current role, professionals often become contentious and aggressive toward former collaborators. Thus, they can demonstrate their loyalty to current stakeholders by being combative negotiators, belligerent interviewers, or hostile advisors. The problem is, such behaviors can hurt the same stakeholders they're trying to win over.

The Paradox

When faced with an important decision or the need for professional representation in a situation involving a competitor, organizations are savvy enough to seek well-connected individuals to provide advice and negotiate or transact on their behalf. They look for an "in" with the competing party—a relationship that provides the inside scoop on the competitor and the familiarity to execute smooth deals. By tapping into existing relationships, the organization may reach better deals and even gain an advantage over the competition.

The paradox of pursuing such well-connected individuals with rich professional networks is that organizations also want such individuals to be exclusively loyal. When people compete against former colleagues, however, these two desires are inherently in tension. The same relationships that offer inside information and facilitate collaborative resolutions can compromise perceptions of loyalty.

Consider this example: two lawyers from different law firms collaborate to file a lawsuit on behalf of Amazon. Later, they litigate against each other when separately representing Apple and Samsung. If not managed properly, the collaborative history of these lawyers could call into question their loyalty to their current clients. They could try to take it easy on each other, given their familiarity, versus fighting hard for their clients' best interests.

The Liability of Past Collaboration

Using data from the Public Access to Court Electronic Records and LexisNexis's Lex Machina databases, we tracked the professional histories of more than 20,000 external legal counsel. These were lawyers from U.S.-based offices of law firms that represented companies in lawsuits over infringement of patents, copyrights, or trademarks in U.S. federal district courts. Some of these lawyers had collaborated with one another on prior cases (as co-plaintiffs or co-defendants) only to face one another across the aisle when representing counterparties in a different lawsuit. This dynamic appeared frequently in intellectual property lawsuits—we observed that one in three lawsuits featured lawyers on opposite sides who were former collaborators.

We examined how these lawyers behaved toward one another across the aisle when faced with loyalty concerns from their clients, as well as how these behaviors affected the outcomes they secured for their clients in litigation. We found that lawyers responded to loyalty concerns by distancing themselves from their former collaborators through excessive conflict. Rather than leveraging past familiarity to pursue rapprochement, lawyers on opposite sides who were former collaborators were contentious and aggressive in the courtroom. This behavior dominated when the clients themselves were fiercely competitive.

We uncovered this dynamic by examining the details of nearly 5,000 intellectual property lawsuits. Even the most trivial situations, such as rescheduling hearings due to sickness or delaying filings because someone's daughter had a recital, were met with vigorous opposition. Lawyers concerned with demonstrating loyalty were less likely to reach agreements about these issues on their own and consistently required the judge's intervention. With increased acrimony in the courtroom, litigation was prolonged, and lawsuits were significantly more likely to go to trial rather than be settled out of court. This conflict escalation, on average, ended up hurting clients' pocketbooks. Furthermore, the clients' stock prices declined upon the completion of such lawsuits.

We dub this the "liability of past collaboration." Instead of promoting faster and smoother dispute resolution, past collaboration can systematically increase conflict and destroy value. It is difficult to pinpoint exactly what motivates this behavior, but our research provides a clue. Hostility toward former collaborators rears its head when the respective stakeholders are strong rivals themselves. Examples in our data include companies such as Wyeth and Watson Laboratories or Medtronic and Boston Scientific, which have frequently litigated against one another, or NVIDIA and Samsung Electronics, which ended up competing for the same customers and technology.

Most likely, these rival companies are watching the process carefully and may, perhaps inadvertently, apply undue pressure on their advisors to be loyal. In our data, when rival clients were involved closely in litigation, their lawyers' aggressive behaviors across the aisle spiked.

It is also conceivable that by being aggressive toward past collaborators, lawyers attempt to convince *themselves* that they will maintain the highest levels of professional conduct and integrity, regardless of the pressure for loyalty. Fearing that they could be playing favorites, lawyers may overcompensate, despite the risk of compromising past relationships.

This dynamic extends beyond the legal context. When faced with situations that divide our loyalties, we strive to avoid playing favorites or even giving the impression that we may do so. These situations are ever-present in business. For example, in recent years, multiple executives have moved between Amazon and Microsoft. As competition in the cloud-computing market between these two companies heats up, one might wonder how these executives will behave toward former colleagues.

Intense competition and antagonism between two sides can incite dramatic demonstrations of loyalty from those caught in between. For example, after Japan attacked Pearl Harbor in December 1941, Japanese–Americans living in Hawaii volunteered in large numbers for U.S. military service.

Our research shows that a powerful way to establish where current loyalties lie is to create distance from former collaborators using visible, salient, and aggressive interactions. Sadly, we seem likely to take this behavior too far, potentially hurting the relationships and the bottom line.

Mitigating the Liability of Past Collaboration

Our findings suggest several solutions for managers. First, when it comes to competing against your fiercest rivals, don't get carried away by the promise of an "in" via consultants, bankers, lawyers, or ex-employees who can potentially offer insight. The same relationships that allow these advisors to strike collaborative deals may raise loyalty concerns. If you do opt to engage someone connected to your rivals, beware of the steep costs of suspicion and excessive monitoring. This is where selecting advisors you know directly or come from trusted referrals could be critical.

Furthermore, recall that the liability of past collaboration was greater when former collaborators represented clients who were antagonistic toward each other. When engaging former collaborators as agents, it is thus important for competing clients to step back and focus on the matter at hand, without letting their rivalry block possible mutual gains in a specific transaction. Without this awareness, loyalty concerns could drive their agents into value-destroying behaviors.

Second, as an advisor, recognize the situations in which your previous relationships can cast a shadow of doubt over your loyalty to current clients and stakeholders. Seek less conflictual ways to affirm your loyalty. It's possible that being extra thorough and diligent in exercising your duties on behalf of your client can help ease loyalty suspicions. Make that effort visible, for example, by producing detailed analyses and factually supported recommendations.

More experienced advisors can try to address the situation head on with a client, by referencing the ubiquity of such occurrences and their prior experience in handling them. Keep in mind that such conversations require preparation and tact. If not handled well, raising the issue could result in clients' fixating on the problem rather than moving on from it.

Third, a useful psychological intervention involves separating the situation from the people involved. Think counterfactually: how would you behave if the interaction involved a different counterpart? For example, say you're interviewing a former colleague. Actively visualize a different person sitting in front of you. Would you still ask the same follow-up questions and exhibit the same demeanor if you had no previous connections?

Paulo Coelho once famously quipped, "Where there is loyalty, weapons are of no use." Our research suggests that this quote rings true in multiple ways. Loyalty can indeed eliminate the need for coercion with power. Yet in situations of divided loyalties, the quest to be and appear loyal can itself lead to unintended consequences. Loyalty can be a double-edged sword – don't overlook its downsides.

Maxim Sytch is an associate professor of management and organizations at the University of Michigan's Stephen M. Ross School of Business. His research focuses on networks of social relationships and the dynamics of influence within and between organizations.

Jose Uribe is an assistant professor of management and organizations at the University of Michigan's Stephen M. Ross School of Business. His research examines social dynamics and network structures affecting strategic outcomes for teams and organizations.

Yong H. Kim is an assistant professor of management at Hong Kong University of Science and Technology's School of Business and Management. His research interests include social networks, sustainability, social movements, and "big data" applications to organizational research.

