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FROM BIGLAW TO BOUTIQUE: JOB SECURITY

by Tom Wallerstein, Colt Wallerstein LLP

When I graduated from law school, one of the perceived benefits of working in Biglaw was job security. This manifested itself in various ways.

First, firms rarely, if ever, conducted true “layoffs;” i.e., reductions in force based more on outside economic factors than qualitative assessments of the affected employees. The rate of hiring either accelerated or slowed, but rarely reversed.

The “no layoff” tradition was to some extent rooted in a genteel culture, but more directly based on pure economics. Most Biglaw firms had more available work than they could handle at any given time. If work slowed, partners nonetheless were confident that it would pick back up ...

For Biglaw associates, this meant never having to worry about having enough work to do. To the contrary, associates always had an infinite amount of work and their only worry was how to carve out any free time to enjoy the fruits of their labor.

Second, even under-performing attorneys, or senior attorneys who did not make partner, were unlikely to be outright fired. Instead, those attorneys were told that they did not have a long-term future with the firm and that they should move on. The firms generally gave as much time as needed for the associate to find a new job.

Third, in those days, job security began in law school. Firms that were competing for top talent boasted about their “100% offer rates,” meaning that they offered full-time employment to 100% of their summer associates. If a firm declined to extend an offer to even one summer associate, the firm worried that its recruiting efforts would suffer. Even the worst-performing summer associate could look forward to a “cold offer,” a disingenuous artifice by which the student was told that he was not welcome as a permanent

associate, but was nonetheless permitted to tell prospective employers that he had received an offer, and the firm continued to claim a 100% offer rate.

Fourth, the concept of “mentors” and “protégés” still resonated. Associates assumed that if they performed loyally for a powerful partner, their efforts would be awarded. They expected that their partner mentor would support their candidacy for partnership when the time came. They reasonably thought that the partner might allow them to form client relationships and encourage and assist them with developing their own independent book of business. Associates hoped that, should their mentor retire or slow down, he would approve their “inheriting” his clients.

For all these reasons, a Biglaw job had something in common with the top law schools: the hardest part was getting in. Once in, it was rather difficult to publicly fail. The inherent job security obviously had great appeal for associates who had the credentials to get hired. If you could bill hours, you knew you were likely to keep your job for at least seven years or so, regardless what subjective skills or efforts you brought to the firm.

By contrast, opening your own practice was deemed to be a high-risk endeavor that offered no job security. You don’t earn a paycheck so you’re never sure how much money you will make. Your main fear is running out of billable work and not being able to find more.

The Great Recession brought dramatic changes which flipped the job security stereotype on its head. Layoffs, “stealth” and otherwise, are increasingly common and no longer taboo. Firms routinely “no offer” summer associates without fear of repercussion. Work slowdowns cease to be a cause for associate rejoicing about new-found personal time. Instead, you can hear the silence call; it’s a certain sort of sound that foretells the Grim Reaper, causing associates to scurry for face-time, and causing associates and partners alike to hoard work lest they be perceived as expendable.

The increase in lateral partner mobility has had a major effect as well. No longer can an associate confidently ride the coattails of a successful partner. I know one senior associate, for example, whose partner mentor transferred to another Biglaw firm, leaving her without significant support for her own partnership candidacy and at risk of being laid off. Another friend was brought along when his partner mentor made a lateral move, but found himself at his mercy when the partner elected to move again one year later. I’m not sure how exactly my friend will fare at the new firm, but I suspect that he did not have

much choice whether or not to follow the partner to whose coattails he had attached.

Even making partner in Biglaw no longer offers the security it once did. This blog has covered the growing trend of de-equitization and even forced retirement of partners. Moreover, every silver lining's got a touch of grey and making partner in Biglaw can actually handcuff you. In some ways, junior partners without a book of business may be less marketable than a mid-level associate. Even some firms that are actively hiring mid-level associates would not think of bringing in a junior lateral partner without business.

More generally, in Biglaw or small, being an associate has always entailed the risk that your supervisor would not treat you fairly or would not reward your loyalty. Being an associate always has and always will mean that you ultimately are beholden to the business-generator. Ten years ago, that didn't seem so bad. In today's economy, that is the polar opposite of job security.

Working for yourself, on the other hand, at least offers security of a different sort. True, you don't know the source of your future business. True, you alone are responsible not only for managing your workload, but also managing a successful business. Without a doubt, that can be scary.

But at least when you're running your own firm, your destiny is in your own hands. If the market demands it, you can adjust your rates. If business slows, you can pursue whatever business development plans you think will be most fruitful. For a Biglaw associate, firm finances and overall performance are often a mysterious black box. When you run your own shop, you always know exactly where you stand, how good are your prospects for future business, when a slowdown is likely, etc.

I probably underestimated the pressure inherent in running a business, especially as it grows and you take on the responsibility of worrying about your employees' fates as well as your own. But whenever I feel overwhelmed, I remember how illusory job security has become in Biglaw, and how controlling my own destiny offers its own unique security that would be hard to replace.

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