Work Trends at New Economy Firms

Res Ipsa Loquitur: An Insider's Reflections on Work Trends at "New Economy" BigLaw Firms

You may have heard the story of my **job search** already in some detail. It has been featured in the *Wall Street Journal*, was a topic of great discussion on the Greedy Associates Boards, and even led to a story in L magazine (an American Lawyer affiliate) and a write-up in the *Los Angeles Daily Journal* (where I had placed an ad in March 2002 seeking employment after dealing with a frozen job market in January and February 2002). You may have even visited my website at www.peterthottam.com where I widely publicized my job search. I am one of the few New Economy victims who has chosen to give what has happened to the careers of many former associates a voice. I graduated from Yale College with honors and a high GPA. I later attended the University of California-Berkeley for law school and then worked for all the right Silicon Valley law firms. Indeed, my record would appear stellar in most respects to many attorneys. However, as this article will demonstrate, the New Economy is not something that has spoken well for the legal profession, and it has not been kind to me.

I want to relate to you an insider associate's view of what has happened in the last five years and is continuing to happen in working environments at many large **law firms**. I also will offer a mix of practice insights and general advice.

I'm the first to acknowledge that I've only practiced for a couple of years. Accordingly, some of my observations should be taken with a grain of salt. Most of the insights and advice in this article, however, are precisely the type that I, along with dozens of attorneys that I know, wish someone had offered us before we graduated from our respective law schools in the late 1990s.

My First Legal Job

It was a bright, sunny Monday morning in August 1999, the outside air was crisp, and there was a palpable excitement in the room. I found myself ensconced in a large room at Wilson Sonsini Goodrich and Rosati's ("WSGR") new-hire orientation at the gleaming 650 Page Mill Road headquarters in Palo Alto-"650" was colloquially referred to as the Death Star (i.e., the one from Star Wars) by attorneys at nearby Cooley Godward, LLP; Fenwick & West, LLP; and Brobeck Phleger & Harrison, LLP. The term was even used in a tongue-in-cheek and self-deprecating sort of way at WSGR.

I was about to start what I had hoped would be a promising legal career at WSGR, a dynamic and fast-paced place to work in the fall of 1999 and early 2000. The culture was positive and bubbling with possibilities. I had graduated from law school with more business experience than many of my colleagues (see my resume, viewable at www.peterthottam.com). My first job after Yale College was working as an analyst in New York with Goldman, Sachs & Co., and later, I worked as a banking and healthcare consultant with the Advisory Board Company in Washington, DC. I also worked on a Chapter 11 real estate bankruptcy and reorganization in Los Angeles. I knew the meaning of risk and that businesses were not always winners.

I was at WSGR for a total of approximately 21 months, from August 1999 until May 2001. I worked in the Larry Sonsini/Marty Korman Corporate Securities Practice Group, arguably one of the most demanding practice groups at the firm, which was staffed with several excellent attorneys. My group was generally known within the firm as the M&A "swat team." I worked with three WSGR partners who were all ex-Fried Frankers (i.e., they were all former associates who had come to Wilson Sonsini together in a joint exodus from Fried Frank's New York office). These guys were charged with building a New York-style machismo at WSGR with a take-no-prisoners culture. It was a tough but-at least at times-dynamic, fun, and challenging group in which to work.

My experience at WSGR included participation in several high-profile M&A transactions; two public offerings; and a range of venture capital financings, contract reviews, foreign acquisition agreements, and other legal projects. I had the opportunity to work with Bank of America, Sun Microsystems Inc., Hewlett-Packard, Tibco Software Inc., GoTo.com, NetFlix.com, Cypress Semiconductor, 3Com, Palm Computing, Homestore.com, Healtheon/WebMD, ScanSoft, Rambus, Brocade Communications, Excite@Home, and a range of private company clients.

Spiking and Drinking the Kool-Aid

I spent my first eight months at WSGR working intensely; more often than not, I worked at least six days a week and 12-14 hours a day during the weekdays. I enjoyed being a corporate securities attorney at WSGR and generally looked forward to Larry Sonsini's periodic voice mails to the 800-plus attorneys at the firm, articulating his vision of the firm's place in the emerging "New Economy." I was passionate about the firm's potential and had a work ethic that was galvanized by the firm's vision of the future.

With the unprecedented ascent of the Nasdaq, I continued to be concerned that things were moving too rapidly. While I think very highly of the attorneys I practiced with at WSGR, unfortunately, many of them-including to some degree even I-were "drinking the Kool-Aid." Just by going to WSGR, we acknowledged to one degree or another that we thought that the party could continue indefinitely. The venture capitalists on Sand Hill Road in Menlo Park were even worse, arguably spiking everyone's Kool-Aid with generous doses of Ketel-One.

Popping the Dot-Com Bubble

Everything changed with a series of sharp declines in the Nasdaq during a two-week period in April 2000. In an instant, it seemed, the markets crashed; and the caviar, extravagant meals, and massage sessions at Donnelly and at Bowne (i.e., "the Printers") came to an end. I continued working for some time on an IPO that was eventually shelved. Coming to Donnelly was like entering a ghost town. Instead of calling WSGR's office the Death Star, many of us until then had insisted on referring to it as the Enterprise. Increasingly, we realized that the Death Star moniker was becoming more appropriate as the ambience at the firm became truly moribund. A decision was made to shut off secretarial support services at late hours, and evening cafeteria services were halted. By the beginning of fall 2000, 650 Page Mill, which had previously always been alive and busy at night, was generally deserted.

According to the Venture Economics and the National Venture Capital Association (http://www.nvca.org/nvca05_13_02.html), there were 81 IPOs taken to market in the first quarter of 2000, 9 IPOs taken to market in the first quarter of 2001, and 4 IPOs taken to market in the first quarter of 2002. I think the data is meaningful, and the graph that follows is a powerful illustration of what happened between 1995 and 2002.

According to Dealogic LLC, the number of tech IPOs swung from about 250 in 1999 to just 20 last year!

Most of the firms in the Bay Area had rainmaker-geared compensation systems and a culture driven by the opportunity for riches through growth of private equity stakes in clients. This equity-focused culture finally came back to haunt many law firms throughout the Bay Area. According to the Bay Area legal press, in 1999, WSGR participated in slightly fewer than 170 IPOs. In 2000, that number decreased to about 40. By 2001, the number was less than 10, with high-margin M&A activity similarly drying up.

By the end of the ensuing summer, law firms throughout the Bay Area began to ramp up what were, at least ostensibly, performance-based dismissals of junior and mid-level associates. Throughout the remainder of 2000 and during the course of 2001, the accounts receivable at tech-based law firms (which had financed much of their expansion through reaping rich IPO proceeds, making short-term debt issuances, taking advantage of escalating dot-com series financings, and encouraging general partner paid-in-capital contributions) went through the roof.

As the work left many firms, hundreds of bright and hardworking attorneys throughout Palo Alto, Menlo Park, and San Francisco abruptly learned just how completely fungible associates were to the partners running their firms and how closely the culture in the legal profession had come to mirror corporate America in its day-to-day profit concerns.

Finally Being Bitten

In March 2001, WSGR unexpectedly announced the opening of New York and Salt Lake City offices. The following week, I requested a meeting with my group's head partner. At the meeting, I asked for a transfer to the New York office. Why? I had just married during the preceding New Year's Eve, and my wife was working in New York. A transfer to the newly announced New York office seemed, at the time, like the ideal solution to the geographic dilemma we were facing due to the hiring slowdown in the Bay Area banking sector. Furthermore, work was just unbearably slow in Palo Alto. Senior associates and junior partners were keeping work to themselves in their efforts to keep up their billable hours. Day-to-day life and office politics had become truly surreal.

Admittedly, I took a risk in asking for a transfer. With work slow, and people dropping out of the firm for unexplained reasons, there was a sense of doom in the air. I really didn't know whether the New York office had enough work to need an associate from the Palo Alto office when I made the request. Furthermore, I was making it clear by asking for a transfer to New York and stating my reason for the request that I would probably be moving to New York eventually anyway.

Several days later, the partner called me into a meeting in his office, stared at me, and without batting an eyelid, said, "Peter, I'm afraid that we have decided that it's in our mutual interests for you to leave WSGR." That was it. I was totally floored. I had received a glowing performance review, positive feedback from him on several deals, and a full bonus, plus a merit addition from him several months earlier; now, I hear this. There was no warning-absolutely none. When I pressed for an explanation, he said that there was nothing further to say and that a decision had been made. I was given three months to secure other employment.

Having learned a great deal, I left WSGR in mid May 2001 and immediately started work for another top Bay Area law firm, O'Melveny & Myers ("OMM"), in its San Francisco office. I had received four other offers (two in the Bay Area and two in New York) in May 2001. I chose OMM's San Francisco office because my feeling was that it, among the firms where I had offers, was in the best position to withstand the downturn in the market. Within several weeks of arriving at OMM, though, I realized that virtually every Bay area firm's corporate practice was affected. None of the firms I had received offers from months earlier was in a position to re-extend the offer that it had made several months earlier-presumably because of a similar slowdown at its own firm.

I started looking for other opportunities, but market conditions, already terrible by that summer, began to deteriorate further in July, and by the end of August, firms had begun laying off attorneys en masse and publicly. Cooley was first, Gunderson, Shearman, and Brobeck soon followed. September 11, 2001, was the final clincher. Corporate work came to a virtual standstill over the next three weeks at most firms in the Bay Area, and I found myself daily knocking on partners' doors looking for work. There just was not enough work to go around. Some more senior attorneys at OMM and other firms around town were able to retool and transfer to other divisions.

I certainly cannot blame OMM for the decline in work that affected not just it but the entire business sector.

Work may have been slow at O'Melveny, but I can say that I did receive some terrific mentoring there during the times when I was busy (particularly from one outstanding senior associate in the Los Angeles office). Law is a business, and the law firms I was working at are businesses too. If the work is not coming in for an extended period of time, there is certainly no reason for a firm to keep you employed. Nevertheless, this is certainly not something I expected when I entered the working world.

"New Economy" Associates

In late 1999, an attorney in my practice group at WSGR walked into my office and told me about the firm's decision to match Gunderson Dettmer Stough Villeneuve Franklin & Hachigian's recently announced substantial pay raise for its junior associates. We were giddy with delight and relatively clueless about the longer-term implications of the economic model that the pay raise was trapping law firms throughout the United States into.

Tech-focused BigLaw firms today pay premium *base* salaries to *first* year associates of $125,000 to $140,000. This doesn't include signing bonuses and year-end bonuses which, respectively, can be as high as $10,000 and $25,000. They fully expect their attorneys to work at least 80 to 100 hours per week which translates to 2,300 to 3,200 billable hours per year (I billed 2,700 my first year, 2,200 my second year, and was on track to bill 1,800 my third year).

It's my opinion that law school graduates generally don't appreciate that even large law firms are not insulated from economic declines. Junior corporate associates are expected to be able to make conforming changes to financings and other types of deals, to pay a great deal of attention to detail during deal closings, and to be masters at form document tailoring and management. The political and client-management skills all become more important once the associate's drafting and general work product-management skills are comfortably established. However, if there is no work to be done, then there simply is no work to be done. Even a mega law firm with more than 800 attorneys has to make cuts in such an environment.

A law firm associate is completely responsible for his/her own career and has to hedge his/her prospects. The reality of law firm associate life is that an associate's primary asset at a law firm is his/her time, i.e., the billable hours that he/she generates. It is only much later in an associate's career that a book of business becomes a significant asset. It is my opinion that, for many large firms at least, the system's incentive structure is lopsided and rewards inefficiency in contrast to efficiency. I further believe some larger law firms feed off risk-aversion and dangling "Sword of Damocles" threats of performance-based layoffs in order to get the maximum number of billable hours out of their associates.

"New Economy" Partners

The system is, ultimately, a managed flow of legal labor with misaligned incentives in place. It portends to offer fantastic compensation rewards to tracked attorneys with what smart attorneys realize is an increasingly unlikely and remote chance at a starting partner salary in the neighborhood of $350,000 to $500,000 around the age of 35 to 45 in return for billing 2,500 to 3,200 hours a year. Ultimately, law firms sell their time, and junior attorneys offer little in the way of client relationships built on trust and past work relationships, potential billing bases, or real substantive expertise in specific areas of law to make them anything but fungible, especially during significant economic downturns.

However, most associates rarely ever have a chance in making partner at BigLaw firms. According to a survey by the *Recorder* (a Bay Area legal journal), the odds are in fact less than 15%. The odds are probably significantly less than 10% these days. Partners at many of the top tech firms got in on the action early on. They boarded the private equity trains to partnership and to vast riches long before the trains had even left the station.

Lessons Learned

From 1996 to 1999, there was a shortage of young legal talent, i.e., attorneys in their late 20s to late 30s, especially in major metropolitan areas like the Bay Area or New York City. This shortage was coupled with an unprecedented start-up and equity boom that detracted from the supply of available attorneys and that resulted in ballooning salary structures across the legal spectrum. At the same time, something fundamental was changing in the nature of law firm management dynamics.

Partners at some law firms are outstanding mentors. Others are generally looking out for their own self-interests only. Sadly, especially because of the economic downturn of the last two years, increasingly gone are the traditional loyalty and apprenticeship codes and norms of law firm practice management. Associates have become, in some respects, as interchangeable as their clients, working within an increasingly common and ruthless anonymity in their day-to-day lives.

A tectonic shift unfolded in the nature of associate-partner relationships during the late 1990s. The real implications of that shift only became clear to me after the 2000 market downturn. What happened to many of the attorneys I attended law school with and knew in the Bay Area and New York was not what we had anticipated. What is the plain truth? Many associates have become fungible commodities. Estimates are that between 4,000 and 6,000 associates have been laid off over the last two years. *Res Ipsa Loquitur* is Latin for "the thing speaks for itself." I think that at many firms-albeit not all-associates are now entirely expendable. At these firms, absolutely no one is indispensable. The truth is that YOU may not be indispensable.

A recent Reuters business report put Bay Area office vacancy rates at a stunning 24 percent. The commercial vacancy rate in San Francisco's SoMa district (south of Market Street) is now at an incredible 50 percent! The California unemployment rate as of April 2002 stood officially at 6.4 percent, in stark contrast to the near 2 percent unemployment rate that prevailed two years ago. According to the American Bar Foundation, there are now more than a million-and-a-half lawyers in the United States. Put simply, the profession has a supply and demand problem, compounded by the economic downturn and the remarkable 1999-2000 changes in associate salary structures.

Here is some final-albeit qualified-advice I'll offer to New Economy Associates: (1) Pick a firm that has a well-diversified practice, not one that is largely dependent on one particular area of the economy, such as technology; (2) Select a firm that has a reputation for decency and honesty (relatively speaking); many of us now know why Wilson is called the Death Star; an attorney who wants to be treated humanely in bad times probably shouldn't join a firm with such a nickname; (3) Consider going to a firm where you can rotate through several practice areas during your first year or two; yes, this will put you at a slight disadvantage versus colleagues who focus exclusively on, say, corporate work their first two years, but in a serious downturn, you as an associate will be better able to transition to another area of the law; it also really never hurts for a corporate associate to understand courtroom dynamics, litigation, and IP either; (4) Finally, remember that the practice of law is becoming more and more of a business; the partners at BigLaw firms are not, in most cases, your friends, and they will not hesitate to lay you off if their compensation is at stake; work hard, do the best work possible, learn as much as possible, always keep your ears and eyes open for political and economic realities at the firm; and perhaps most important, network whenever possible. It's always easier to find work when times are good. However, downturns can be fast, furious, and unforgiving, making it difficult to get out in time; there is, regrettably, very little loyalty in this business; therefore, if the right opportunity comes along, one should not hesitate to take it.

Due to the current global economic and geopolitical malaise I-along with now thousands of other junior associates throughout the country-have reached a crossroads in our **legal careers** where we may have to pursue opportunities available outside the traditional boundaries of the legal profession. Perhaps doing so will be a good thing in the long run.

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