



## *Article of the Week from Harrison Barnes*

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### ***Why Every Big Firm Practice Area Eventually “Self-Destructs” at Least Once Every Eight Years***

**Summary:** Are you safe in your practice area in the long run? Find out how legal practice areas react to a changing economy in this article.

Every practice area will—at some point in time—self-destruct and become “dead” for a length of time. This generally occurs once every eight years or so.

The practice area could be dead anywhere from a few years to many years. It could die due to economic forces, geographic forces, the seniority of the partners who practice in that area, or other forces within a given firm. But the bottom line is that if an attorney practices law for any length of time, the attorney’s practice area will be hit. Generally speaking, no attorney is safe from this phenomenon.

Attorneys assume they are safe when things are busy, but then things inevitably slow down. I know of countless attorneys who diligently worked numerous 3,000+ hour years in a row, but then when the inevitable slow-down occurred they lost their jobs.

Out of work, these attorneys have few options. Some move in with their parents, others go to business school, and still others become writers or go insane. They become drug addicts, start families, join religious cults, [get jobs in-house](#), [join small law firms](#), [start their own practices](#), [go to work for the government](#), go to foreign countries and travel for several years, or [get jobs as truck drivers](#). Incredibly, I have even seen attorneys in this situation get jobs in fast food restaurants for minimum wage.

“I used to work at [Skadden](#) ...” they might say. There are countless attorneys – including partners and associates – out there who used to work at Skadden, used to work at [Sidley & Austin](#), or used to work at any number of other big firms and who lost their jobs when everything self-destructed.

If you think I am joking about this you would be sorely wrong. I am not joking at all and none of this is a joking matter because attorneys go to great schools, get jobs in great law firms, work



tirelessly at those firms, and then their entire careers come crashing down around them when their practice area self-destructs. I've been seeing this problem of self-destructing practice areas my entire career. I see it daily and it affects every attorney at some point in time.

The sad thing is that the attorneys who are affected by this are turned into virtual pariahs in the legal community. You could be an extremely qualified attorney, but if you are one of 50 corporate associates let go during an economic slowdown, then suddenly no firm is interested in you because (1) those firms also are slow and/or (2) those firms do not like people who are laid off (even when 50 associates get laid off and only 10 keep their jobs). When the practice area slows down like this, the sad reality is that no other firms want the attorneys who got let go. Moreover, even when things pick up at the firm again, the attorney who was laid off won't get rehired because firms are not interested in people they formerly let go.

"Hi, I see from your website you have 5 openings for fourth-year litigators. You may remember that you let me go two years ago when you settled a big case. Well, my wife has divorced me in the interim, I've been living on peanut butter sandwiches, driving a 20-year-old Toyota and sharing an apartment with a few guys on the bad side of town while looking for a job the past few years. I'm ready to put my [Cornell Law](#) degree to good use and come back to work! I had stellar reviews while I was there."

"Go crawl under a rock and die! Leave us alone!"

"Excuse me, did you hear I am ready to come back to work?"

"Please go jump off a bridge. We do not want your kind around here."

"What? I worked over 2,500 hours a year when I was with you. I'm ready to work!"

"Go FU&\* YOURSELF! You're going to remind us of not having work and poison the vulnerable new associates we are going to hire. Please go off and die somewhere. We hate you."

Am I kidding? If things get slow and you lose your job, the odds of the firm bringing you back when things pick up are just slightly above zero percent. It is only maybe 1% based on the odds of you maybe going in-house and being a giant client of the firm.



“Shit. You mean he is sending us \$10-million in business and wants to come back? This is the biggest cluster F\$#\* I’ve ever seen. You mean if we do not hire him back we may lose that business?”

“Yes.”

“But once we screw someone over we never want to bring them back.”

“Bring him back. We will find a way to screw him over again. A double screw is better than a single screw!”

When a practice area is hit:

- Attorneys in that practice area will lose their jobs in droves—and the firms that “exterminate” them will never hire them back.
- Other firms will rarely hire attorneys who were exterminated—due to market forces but also because they were exterminated.
- Attorneys who keep their jobs will have a very difficult time making partner or staying employed as partners.
- Attorneys in that practice area may find themselves unemployed for long periods of time, switching careers entirely, or stopping practicing law completely.
- Attorneys may move back to their hometowns to try and work in smaller markets, or relocate to small markets making very small salaries compared to what they were formerly making.

I have been doing this long enough that I have seen countless attorneys lose their jobs and have their careers abruptly end due to these forces that are always operating invisibly in the background of every attorney’s career. It happens to attorneys everywhere. Here is an assessment of various practice areas and how they can self-destruct.

## **Litigation**

Litigation is astonishing in how easily it can self-destruct. Litigation is always at risk and most litigators’ careers are at risk at almost all points in time.



The other day I was talking to an attorney who has been unemployed for over a year. She started her career at [Jones Day](#) and then moved over to [Quinn Emanuel's](#) New York office with a bunch of attorneys to work on a giant intellectual property litigation case involving Samsung.

"We were so excited! We were all getting to work on an important, high-profile case and getting so much experience!" she told me.

She billed 3,000+ hours a year for a few years and gave her heart and soul to the firm and the case. Then the case settled and she was on track to bill only 1,500 hours with the available work. The firm let her go, along with some of the other associates who came over from Jones Day. Now she has been looking for a job for over a year.

"No one wants to hire a laid off attorney," she told me.

One of the oldest law firms in California history, [Heller Ehrman](#), which was founded in the late 1800s, closed its doors when several large cases settled one after another. When cases settle and litigation gets slow, no one in the firm is safe – even attorneys in other practice areas.

One of the interesting things about litigation is that it typically moves in economic cycles.

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When the economy gets very slow, litigation tends to get very busy. Litigation gets busy because during economic slowdowns people start looking for ways to recover money they may have lost due to making bad deals when the economy was very active.

- Large law firms that charge high hourly rates are more than happy to tell companies that can afford to pay that they were wronged and should sue for their money.
- Defense lawyers that charge high hourly rates are more than happy to tell companies that are sued that the plaintiff is "in the wrong" and that their client should spend money to fight.
- Contingency law firms are happy to sue if they think they can make a lot of money as well.

The point is that everyone gets excited about suing and defending themselves during slow economies and during economic slowdowns.



“Let’s sue the banks! We lost money because of them!”

“Let’s sue the people who promoted the worthless Internet stocks! We lost money because of them!”

A variety of people will get sued in the aftermath of boom and bust—generally people that made money during the boom. It is based on history and in the future it will be because of something we cannot imagine. The party who will get sued during the bust will be the party who made out well during the boom.

During the “sue happy” and “defense happy” phases new associates out of school are hired in droves to be litigators. In addition, because most practice areas (corporate, in particular) become extremely slow during these phases, law firms become very, very dependent upon the revenues that the litigators are generating to support and keep the firm going.

Partners accustomed to making certain profits per partner—in every practice area—all become dependent upon revenues generated by litigators during this period. Accordingly, the litigators “turn up the heat” and start billing their clients all that they can. Lots and lots of work is done and much of it may not be necessary; however, it is done because the firm needs the revenue and the litigators are making up for the dearth of revenue coming into corporate, real estate and other transactional-based practice areas that typically get slow during recessions (more on real estate and corporate in a moment).

As an aside, the law firm as an “ecosystem” largely works because it has different practice areas to balance out profits for the partners. As a group, the partners support each other when things are busy (or slow) in each respective practice area.

While being busy may seem like a good thing, there is also a “self-destructing” component to this as well. When litigation gets very, very busy the litigators start realizing that they are giving a ton of the money they are bringing in to the less busy corporate practice areas and to other attorneys in the firm. The litigation partners who have the luxury of being busy suddenly start to get resentful of those within the firm they are supporting: “Those bloodsucking corporate attorneys!” Being resentful, they start looking around for new firms that will give them more money based on what they are bringing in. If enough attorneys leave and take all of their litigation cases and



clients with them when business gets slow in other practice areas, the law firm self-destructs and implodes. That is essentially what happened to [Brobeck, Phleger & Harrison](#), one of the oldest law firms in California, which self-destructed when most of the intellectual property litigators left during an economic slowdown.

What happens, of course, is that everyone getting these giant bills for all of this litigation realizes that the only winners are the attorneys. Giant, crushing bills hit both sides and everyone starts to realize that the only thing that makes any economic sense at all is to settle the cases and stop the bleeding. Accordingly (against their attorneys' advice—hee, hee, hee), everyone starts settling cases as quickly as they can. Moreover, due to the astronomical bills everyone had when they were involved in litigation, companies become “gun shy” about filing any more expensive lawsuits and when they are sued they do everything they can to settle the lawsuits as quickly as possible.

All of this leaves the litigators very, very slow. Litigation attorneys who used to be “hot commodities” suddenly find themselves very, very slow. Litigation attorneys start getting laid off and losing their jobs. If the litigation attorney is a few years out of law school (even a top Ivy League school like [Harvard](#)) and in a major legal market like New York City, he or she may be close to “unemployable” in a major law firm for several years. Meanwhile, there may be “a boom” in corporate and other transactional work going on around them.

What happens during these times, of course, is that these litigators start talking about switching practice areas and so forth. This rarely works out—firms are not interested in attorneys switching practice areas. In every economic boom, though, attorneys are always interested in switching practice areas from litigation to corporate.

Litigation always self-destructs.

There is a final “self-destruct” mechanism that is always operating in the background of any litigator's career as well. Litigation essentially involves abilities such as arguing in writing and doing a lot of written work. The written skills of an (inexpensive) fourth-year litigator are often superior to, or not much different, than a tenth-year litigation attorney. The abilities of most litigators are essentially doing research, writing and doing more research. In contrast, tax, real estate, corporate, patent and various transactional attorneys possess and learn skills that are



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more technical in nature and these kinds of transactional attorneys often become more proficient the longer they have done a certain type of technical work. Their increasing specialization makes them unique and more marketable.

The point being: There are lots and lots of litigators out there and they really are “a dime a dozen.” As a litigator gets more senior he or she joins the ranks of countless other senior litigators—and this makes it very, very difficult for the litigator to be employable. Things in a litigator’s distant past (clerkships, schools, grades, law review and so forth) take on a lot of importance compared to your average transactional attorney.

When a law firm is seeking a transactional attorney the firm generally is looking for someone with a given sort of experience.

“You have experience with securitizing subprime auto leases? That’s great news! We have not seen an applicant with that knowledge in months and we really have a need!”

Most large law firms do not care where a very specialized attorney went to school (within reason) and often do not even care how senior the person is (within reason). In contrast, there are litigators “coming out of the walls” and firms can be enormously selective when hiring them because they have so many options.

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## **Corporate**

I once saw a recruiter go insane trying to place corporate attorneys during an economic slowdown.

The recruiter was a healthy two hundred pounds when he started with us. He had come to us from a major law firm and wanted to be a legal recruiter. He joined us in November of 2000, just when the dot com bubble burst.

He could not believe that he was taking phone call after phone call from attorneys at the top of their classes from major law schools who were losing their jobs from firms like [Gibson Dunn](#), [Simpson Thacher](#), and [Sullivan & Cromwell](#). The calls just kept coming. And he wanted to help all of them.



“Number 5 in his class from [Harvard Law School!](#)” he might come into my office exclaiming.

“Unemployable right now!” I would tell him.

For three straight months he worked seven days a week trying to place these candidates. Three months in he was down to about 160 pounds and barely recognizable. He had never failed at anything in his life, and yet in a slow corporate market he could not get anyone anything.

When the economy stops in its tracks (which historically happens every 8 years), the corporate market freezes up in an event so cataclysmic that a good portion of corporate attorneys in the country suddenly lose their jobs—and if they do not lose their jobs they come out of the experience considering themselves extremely lucky not to have lost their jobs.

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In the 2008 slowdown I saw one major firm in Silicon Valley take all of its junior corporate attorneys and move them to an independent building on the campus where they sat waiting to get laid off in depressing concentration camp like conditions with no work for several months.

Then, after a few months, the firm started the executions. The attorneys with the worst qualifications were generally let go first.

“They did the third-tier law schools a few months ago. They did second-tier law schools like [USC](#), [Washington & Lee](#) and so forth a few weeks ago,” one attorney told me. “Rumor has it they are going to start in on the big state schools—[UCLA](#), [Texas](#) and so forth this week.”

I could scarcely believe what I was hearing, but this is the gist of what happens. The market slows down and the firms start letting lots of people go—and they generally let people with the worst qualifications go first. If you do not have the best qualifications but are lucky enough to get in with a great law firm during an economic boom, rest assured you will be the first to go.

The corporate market generally moves with the economy. When the economy is good and growing, corporate attorneys are very employable and do exceptionally well. However, when the economy slows down the corporate market most often stops in its tracks. Nothing is going on—there are few if any deals occurring and companies give very little outside work to law firms.





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This cycle repeats itself again and again. Corporate is a market always waiting to self-destruct.

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## **Real Estate**

The real estate transactional market has had a good run for the past several years. Real estate is generally more active when interest rates are low and not as active when interest rates are higher. When I started my career as a legal recruiter in 2000 interest rates were not all that low and the market was not in good shape. My phone was constantly ringing with real estate attorneys who were unemployed and looking for positions. These attorneys were quite desperate.

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One attorney I was working with had been unemployed for a few years when I finally got him a position with a major law firm. Back then the market rate for an attorney of his year was about \$150,000 and the law firm was offering him \$90,000.

"That's less than you pay first year associates!" I told them.

"Sure it is. But we know we have the only job in Los Angeles and we can pay him whatever we want."

As incredible as this sounds, the attorney was ecstatic he even got a position.

The market for real estate associates freezes up and stops at various points in time—and the stops and goes are due to economic, geographical and other forces constantly operating in the background.

Real estate has a "time bomb" built into it. It is generally going to slow down, and you never know when, or the reason why. When real estate slows down the results can be catastrophic for real estate attorneys.

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## Trademark

Trademark law typically does well in expanding economies. When people are starting businesses they need a lot of trademark work done; however, when lots of well-funded new businesses are not being started no one needs trademark attorneys.

Thankfully, there are never a lot of trademark positions at large law firms, as these positions also generally always self-destruct.

During every expanding and good economy, first-year trademark associates will always be hired by lots of firms. When the music stops (and it always does), these trademark associates will be thrown out on the street. This happens over and over again and I have seen this too many times to count.

Sometimes the junior trademark associate will survive one economic slowdown; however, unless the attorney has a lot of clients it is very rare that he or she will ever survive more than one economic slowdown.

Most trademark careers self-destruct due to the economy.

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## Patent Prosecution

In recent years there has been little sign of a slowdown in patent prosecution for patent prosecutors in the electrical, physics and hard sciences disciplines. For the most part, this area has remained robust. There are hidden traps in this practice area, though.

- There are various branches of “hard” prosecution such as wireless telecom, microchips and others. Each of these can slow down and take jobs with it.
- Firms often become dependent on one client and if they lose this client the work can suddenly stop and everyone loses their jobs.
- The majority of the “hard sciences” IP work occurs in the Bay Area. Other areas are vulnerable to losing work to Bay Area firms, or are typically dependent on very few clients



if they are outside of the Bay Area (Los Angeles; Minneapolis; Colorado; Texas; and Washington, DC). Patent attorneys hired in outlying areas are always at risk of losing their jobs and having a difficult time finding new employment if they choose to remain local.

- Unless an attorney has a PhD, the attorney is always at risk of being replaced by someone with better educational qualifications depending on market conditions. (Clients prefer to hire people with PhDs and are more willing to pay their rates when a PhD is working on their matters instead of a lesser-educated patent attorney.)

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The life sciences branch of patent prosecution—which includes biology and chemistry—is dangerous for many of the same reasons:

- The various branches (drug patents, biotech and so forth) can all slow down and the work dries up for the attorneys. For example, the work for drugs in the life sciences area mysteriously picked up at the beginning of 2015 in New York City and then stopped dead in its tracks by March of 2015 (this was due to cancer drugs in development). The work ebbs and flows and can stop just as quickly as it got started.
- The majority of the “life sciences” IP work occurs in the Bay Area (and to a lesser extent Boston and to an even lesser extent San Diego, New Jersey and the DC area—“the life sciences IP areas”). Other areas are vulnerable to losing work, or are typically dependent on very few clients if they are outside of the life sciences IP areas. Patent attorneys hired in outlying areas are always at risk of losing their jobs.
- Just as law firms often become dependent on one major client for “hard sciences” patent prosecution work, the same occurs for life sciences work. Law firms often build up their practices doing work for a local client and then the work can suddenly slow down.
- Unless an attorney has a PhD, the attorney is always at risk of being replaced by someone with better educational qualifications depending on market conditions. (This is because clients prefer to hire people with PhDs and are more willing to pay their rates when a PhD is working on their matters instead of a lesser-educated patent attorney.)

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In recent decades the economy has not had a disproportionate impact on patent attorneys, but it always does in the end.

- We are in a computer, information economy right now that makes the work of electrical engineer patent attorneys in demand.
- Prior to electrical engineers being in demand, we were in more of a machine economy where mechanical engineers were in demand.
- When the economy is subsidizing and protecting drug inventions aggressively, life sciences may be in demand. When it is not, then other branches may be in demand.

Patent law is not as safe as it looks and the careers of patent attorneys are also always in danger.

A final point also bears mention—and this is an important one. For whatever reason, patent attorneys are unusually cruel to each other and eager (overly eager) to blackball those they do not like. I have seen this over and over in my career: Patent attorneys harshly blackball other patent attorneys they do not like. I do not know why this is—nor is it my concern. The point is that patent attorneys who are “blackballed” often have a very difficult (if not impossible) time getting a new position. To this day I do not understand why patent attorneys treat other patent attorneys this way (it may have something to do with science), but it is notable because it occurs with more frequency among patent attorneys than any other practice area.

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## **Labor and Employment**

Labor and employment is also, to some extent, dependent upon the economy and economic conditions. In periods where the economy is doing well and there are plenty of jobs, there tends to be less labor and employment work—and litigation. When the economy is slow, people tend to have a more difficult time finding work and are more likely to sue.

In a strong economy, there are typically very few labor and employment openings, and labor and employment attorneys often end up losing their positions inside of large law firms. Partners often find themselves without a lot of work and lose their positions.

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The labor and employment litigation and work that companies need done in a good economy is also often (generally speaking) not as sophisticated as the work they need done in a bad economy. Therefore, a lot of the work is often done by in-house counsel and less expensive local counsel.

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## **Bankruptcy**

The ebbs and flows of this practice area should be largely self-explanatory. This practice area typically is slow during economic expansions and “heats up” during economic slowdowns. During slowdowns bankruptcy attorneys get very desperate for work and during economic expansions the opposite occurs.

One of the dangers of bankruptcy is that it is often firm specific. For example, often times a single firm may have a lot of bankruptcy work and this work will be for one major client. When the work is done for that client the work will stop and the attorney will need to find a new job.

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The nice thing about bankruptcy is that attorneys in this practice area (since much of it is federal) have the benefit of being able to hop around the country in search of work. This is something that can somewhat lessen the blow when this market self-destructs.

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## **Tax Law**

Tax law also has various time bombs associated with it. When the market is good, tax law can do very well. Attorneys coming from accounting firms, from LLM programs and others are often welcomed enthusiastically by large law firms. Tax practices of large law firms often expand and get busier and busier to accommodate all of the work.

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Unfortunately, tax law always slows down and when it does the institutional memory of what was acceptable during a good economy often goes right along with it.

- “Please never send us people from accounting firms ever again. We never hire people from accounting firms.”
- “We only look at people with LL.M.s from [New York University](#). Please do not send us anyone else from [Georgetown](#).”
- “We are not interested in attorneys without LL.M.s. Please do not send us any attorneys without LL.M.s—regardless of where they are from.”

When the economy slows down, tax work is often increasingly done inside of corporations and so the work that is available inside of law firms slows down. In addition, law firms become more and more concerned with qualifications and the work that is available often completely disappears. During economic recessions, it is not uncommon for there to be just a few tax openings in the entire county—even fewer than the limited number of corporate openings.

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## **Immigration Law**

To the extent that large law firms have immigration practices, they usually thrive during booming economies when companies are bringing over lots of workers—particularly in the technology industry. When the economy slows down, large law firms generally lose a great deal of their immigration work and quickly let their immigration attorneys go. This pattern has repeated itself during most boom and bust cycles.

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## **Conclusions**

In the acting world when actors and others in the industry talk about other actors they always say one thing to describe what is happening with an actor: “They are working.” This is all that needs to be said. It does not matter if it is a small play, major movie, or a small Internet television series—all that matters is whether the actor is working or not.



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- See [Why the Best Actors and Attorneys Are Exactly Alike](#) for more information.

Something I tell attorneys all of the time is that their job is to stay employed. It does not matter how much the law firm is paying (within reason), it matters whether or not they are working. Staying employed within a law firm (especially a large one) is no easy accomplishment and is something that very few people can do. You need to really be at the top of your game to stay employed, especially when there are a myriad of forces conspiring against the average attorney—every eight years or so—to take their jobs away. It is incredibly difficult to stay employed in large law firms once you realize the forces that are conspiring against you, but you must persevere and be among the tenacious and fortunate attorneys about whom others will say: “They are working.”

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