



Are You About to Be Laid Off?

[Jamie Barnes]

Layoffs are often sudden, sometimes unexpected, and always unpleasant -- noticing the signs that you may be on the chopping block at your firm can help ensure that you are prepared for the worst.

You need to keep the unpleasant possibility of lay-offs in the back of your mind, for it has become a very relevant possibility whether you are a partner or an associate. In fact, the larger your firm and the more practice areas it offers, the greater the lay-off danger, especially if each practice specialty is considered its own profit center. We'll tell you how to spot the signs of pending lay-offs in a moment, but first, a little legal cultural history is in order, as it will place the specter of law firm lay-offs in context for you.

Law as a Gentleman's Club

Still in the memories of lawyers now in their sixties lives a magical era when big law firms did not lay off attorneys. Instead, their bonuses might be discretely cut, their clients shared or gently expropriated (while accompanied by some seemingly plausible explanation), and their salaries secretly frozen. These middle-aged and older lawyers would be silently acknowledged as dead wood 'carried' by other more productive partners and associates until eventually made 'of counsel' or given a dinner and gracefully retired. Unless there was moral turpitude involved, a lawyer, with few exceptions, was almost guaranteed lifetime employment.

Sleepy Giants Transformed

Changes to this gentlemanly environment came in the 1970s and have intensified since. The first shock to what once approximated a 19th-century-men's club-atmosphere began with the start of Yellow Pages legal services advertising in the 1970s, a move fought vigorously but unsuccessfully by the American Bar

Association. Next came the scrutiny of law firms by M.B.A. consultants in the early 1980s, followed by the multiple crashes of dot.com firms in the late 1990s and early 21st Century.

Thus, in the final three decades of the 20th Century, the law profession saw itself transformed from an inbred, sleepy, self-regulating subculture into an intensely competitive service business vying both for the highest paying clients and for the best cognitive resources (Law Review and Federal Clerkship graduates of the top law schools). These competitive pressures have driven up associate salaries and opened up competition for clients, even at discrete white-shoe firms.

Cultural Change Number One: 'Decultured' by the Yellow Pages

Yellow Pages advertising, other than listings, was (and still is) generally avoided by major American national and international law firms. However, such advertising has become a boon for small law firms who use the Yellow Pages, television and radio to attract small clients in volume, which had previously been next to impossible due to the legal subculture's unwritten prohibitions. Big law firms seldom if ever solicited business off the street but preferred and still prefer stable relationships with large, deep-pocketed clients who are wooed not in a mass retail environment but through discrete professional associations, referrals and private clubs. Part of this abhorrence of advertising can be traced to the influence of the Protestant Ethic, especially in big, old-line firms. In this Ethic, calling attention to one's self in any way was frowned on. The use of the Yellow Pages by lawyers acted as an open

challenge to such prevailing Protestant-dominated orthodoxy. Attorneys advertising in the Yellow Pages destroyed whatever façade the law had built over the previous centuries as a discrete, almost priestly profession that distained mass solicitations. In turn came a change in the public's perception. Lawyers' emergence in the Yellow Pages helped create the impression of law as a service industry like any other.

Cultural Change Number Two: The Withering Scrutiny of M.B.A.'s

The use of consultants by law firms can be partly linked to the effect that the Yellow Pages had democratizing the law and changing its public perception. Once you accept that running a law firm is not analogous to managing a men's club and is not demonstrably different than running any other business, hiring business consultants becomes the logical next step.

Business professors and consultants quickly introduced into imbedded law firm cultures a revolutionary new form of disciplined economic and structural analysis. They compared law firms' existing organizational structures and financial management practices with modern business structures and practices. Most law firms were found to be inefficient and operating economically in counter-intuitive ways.

In the July/August 1984 issue of the American Lawyer, David Maister, then of the Harvard Business School, produced a landmark article on law firms. He created terms such as:

NIPP (Average partner income) L (Ratio of

associates to partners)
 BR (Blended hourly rate) U (Client hours recorded)
 R (Revenues divided by time recorded) M (Partners' profits divided by revenues)

Maister uncovered much that is today accepted as a truism. For instance, he observed that a practice area produces more 'net' revenue if a partner spends an hour generating three hours of associate work than if (s)he works one hour billed out at \$400. Maister produced charts identifying the most economically efficient ratio of partners to associates based on a varying set of general assumptions. He identified high-margin clients and high-margin practice areas. He detailed profit per partner, support-staff and associate turnover rates. He charted partner equity growth rates, the share of fees from high-margin clients. He examined ratios of support staff to associates and partners, all of this in a search for a maximum leverage and mix of resources to produce the highest possible year-end profit. As a result, lawyers, support staff and partners became conceptualized as work units and modules in an economic engine designed and constructed to generate sufficient profit to perpetuate itself. These work units were not in stasis but always in movement either towards greater or lesser firm profit. Such figures did not lie. They isolated and detailed each individual's contribution and made it relative both to a norm and to a proposed target level. It also placed every economic unit within the firm in competition with every other. This scientific and Darwinian business approach has made the lay-off merely one more business tool useful in protecting a law firm's profit margins. The ancient idea of Christian charity and Protestant noblesse oblige that once served to protect even unproductive members of a law firm had vanished.

Cultural Change Number Three: The Dot.Com Crash

There are retrograde moments or contra-historical blips that in their contrariness

affirm the enduring force of cultural change. One 19th-century example is Napoleon and the brief return of the French monarchy that momentarily interrupted what turned out to be lasting democratic tradition in France. Another example of a retrograde moment was the late-20th-century Dot.com explosion of business start-ups in the Palo Alto and Silicon Valley areas during the technology boom of that era. Suddenly, law firms threw economic caution to the wind. Lessons taught them by business consultants were forgotten. Firms could not hire enough associates fast enough to get the work done. At many firms, clients had to be turned away. Even second- and third-tier law school graduates found big and prestigious firms begging for them. Then, with dazzling quickness, it all came to an end. This is when law-firm lay-offs recommenced in earnest.

So What Are The Signs A Lay-off Is Coming?

You now have some insight into how business consultants dissect the economic functioning of a law firm. Basically, the business consultant drill is to always look for extraneous operations that somehow have grafted themselves on to the operation but are of questionable economically productive value. The business consultant seeks maximum use and efficiency of all available resources. This mindset is on-going, because opportunities to cut, trim and thereby improve are almost always available.

With this background in mind, you might try to pretend you are an outside observer who suddenly has the kind of insight into your firm that you have gained by working there. The problem is, how are you to know which clients produce the highest profits and which generate the lowest? Low-margin clients usually get such a designation because they require a lot of face time, like to haggle, can't make up their mind, etc. Or, the partner causes all of this. Chances are, you will never gain the kind of insight to ascertain such facts. Therefore, you have to make external observations

because that is all you have. Scrutinized carefully, such external observations may be sufficient.

The first alert is the loss of a client or a reduction in business by a major client. When this happens, a firm's managing committee almost automatically starts thinking about which partners and which associates might be expendable. If the dip in profits is seen as temporary because, say, a new client is on the horizon, or, a re-organization is about to take place following an anticipated partner retirement, then probably this drop in net profit can be tolerated for the short term and no action will be taken.

The problem is ascertaining a management committee's tolerance for loss. How long is 'short term' for this committee? Three months? Six months? Also, how deep is the drop in net profit? If profitability does not just decline, but plunges into the red, concern for the firm's long-term viability heightens. Lay-offs are triggered when a management committee concludes that it can no longer tolerate a seemingly diminished and possibly terminal financial future.

Your first task is to figure out whether you are among a core of elite partners and associates who are to be saved from lay-off, or whether you are potential prey. If you are not lucky or resourceful enough to have a spy within the management committee, you will have to deduct what's about to happen from what you observe. We enter a subjective area here. One can watch body language and listen carefully for hints from certain key keepers of secrets; but even the managing partner may not know in advance when his or her tolerance for the situation will collapse.

Also, how one deals with a financial crisis can differ from firm to firm. The management committee can decide to forestall lay-offs by cutting year-end bonuses and partner distributions, temporarily eliminating its summer-intern program, freezing salaries, or reducing

or eliminating certain perks, such as paying a smaller percentage of health insurance coverage, etc. Much of this is done in the ancient spirit of offering sacrifices to the Profit God. The hope is that by reducing expenses in the short term, something miraculous in the long term will reward such faith -a new client or an old client suddenly generating more work. When and if this doesn't happen, the next step, unfortunately, is human sacrifice(s).

Sudden large-scale efforts at expense containment may not necessarily mean lay-offs are the next step. The firm may be instituting these measures merely to increase already-healthy net profits. On the other hand, let's assume that your firm is healthy yet hires a business consultant anyways. Rest assured that this consultant, to justify his or her fee, will recommend many or all of the above cost-cutting tactics as well as others not mentioned, whether or not the firm is financially strapped. You can also anticipate that this consultant may recommend leaner staffing. This can relate just to partners, just to associates, or just to support staff. Or, the recommendation can include some or all of these categories. *So, the hiring of a consultant serves as another red flag.*

The Importance of Secrets

Key piece of advice: Identify the keepers of secrets in your firm and keep an eye on them. These secrets have to do with deleterious changes in revenues and in the firm's ranked assessments of both partners and associates. These secret keepers may reveal information without thinking.

The Employment Partner's Secrets In law firms, the partner with employment responsibility has personal knowledge of individual medical conditions, substance-abuse problems, marital discord, divorce, and other personal matters which cannot be shared. (S)he will be privy to hiring needs and their lack, potential retirements, plans for re-organization plus whichever aspects of the firm's

financial situation others more senior in the know choose to share. Eventually, (s)he gets involved in helping to determine who gets laid off.

The Business Manager's Secrets

The business manager of a big law firm, or the lawyer responsible for this function in a smaller firm, possesses different secrets. These concern the profitability of specific practice areas as well as an overview of the firm's overall financial performance. In smaller firms, there may not be sophisticated on-going financial analysis in place, creating the likelihood that the partners literally wake up one morning to find that they are hemorrhaging money. When such a panic ensues, lay-offs can come quickly and without warning. Still, if a lawyer watches what goes on, there can be clues that potential problems exist.

Has your work load tailed off and stayed that way?

Are partners suddenly leaving your firm without plausible explanation?

Are satellite offices being closed?

Are partners having a lot of closed-door meetings?

Have outside consultants suddenly taken up residence in the conference room?

Are these same partners suddenly walking around looking upset/worried?

Has the summer associates program been canceled?

Has the annual Christmas party or some other traditional firm fete been scaled down or eliminated?

Has employee medical coverage been reduced or eliminated?

Have practice areas been merged or eliminated?

Have already-hired associates been told not to report in August but instead in January? Are there rumors of partner bonuses being reduced or eliminated?

Have salaries suddenly been frozen?

Three or more of these signs should place you on notice. Four or more should, at least in your mind, send up a lay-off alert.

There's more...

Ongoing rancorous disputes with clients over bills can predispose this client to bolt to take its business elsewhere. Visits by I.R.S. auditors are generally not a good sign. Finally, how quickly such problems are addressed and dealt with can be a predictor of how expeditiously a firm is likely to deal with threats to a healthy bottom line. If the firm's management has a tendency to look the other way or procrastinate, then you can assume that this tendency probably extends to other matters, such as careful daily monitoring of the firm's financial health.

How much time do you have?

Hard to say. There are two timetables to consider -yours and the firm's. As we mentioned earlier, how long a firm takes before sacrificing to the profit god what it sees as its weakest and therefore most expendable employees differs with each firm. Generally, there will be an attempt to approach the problem logically. Here are possible time tables:

The Firm's Time Table

Problem Detection and Deciding What To do Once it is determined that a firm has a financial problem, the management committee must decide how to fix the problem. Two to three meetings required.



Two to six weeks

Implementation of Preliminary Measures

If the hemorrhaging can be contained by cutting back on non-personnel expenses, you have nothing to worry about. [WARNING: Don't be misled if there are a series of cuts and then a lull. The plan may be designed to take place in steps, with a pause after each step to determine if it is necessary to proceed to the next step, each new step being more severe than the previous one. By the time you and your cohorts figure this out, it may be too late.

Two months

Preliminary Measures Don't Work

Panic sets in slowly and then crests.

Beginning of Third Month

Emergency Meetings. Lay-offs Approved.
'Need-to-know' Partners notified of plans.

Fourth Month

Lay-offs Begin

Fifth Month or soon After.

Your Time Table

Whatever you do, do not take the above chart literally. It is provided to give you a general idea of how the process works and identify the steps that must be taken before lay-offs commence. Remember there are all sorts of factors which must be considered. Certain procedures must be followed to assure that the lay-off process is conducted equitably. There are age discrimination, sex discrimination and racial discrimination laws to consider and negotiate. There is the matter of how laid-off employees are to be treated in terms of severance and other matters. As a result, big firms in particular proceed slowly and with caution even after their minds are made up. But note: Small firms, especially if there is only one senior partner, can operate more quickly than large firms which must deal with a multiplicity of departments and fiefdoms, each of which must be brought on board and coordinated.

Unless you have a source within the inner sanctum of a firm, you will likely not be aware of a problem until economic measures are suddenly put in place. A general rule is to go into pro-active attack mode the minute you perceive trouble. Start looking for a job so that you can be prepared when the moment finally arrives.

Conclusion

Few lawyers during their working lives are likely to escape either the threat of a lay-off or its actuality. In the end, of course, all careers end and all of us, in effect, eventually get laid off. The job of every lawyer is to guard his livelihood and future for as long as possible. Avoiding lay-offs is one part of this job - keep an eye out.