

In-House Counsel

 Expert Analysis

Those Were the Days

BY ALAN BEHR

You did it. You are free! All those years of working in a law firm, and you have turned the corner at last, securing a hard-to-get in-house job.

Gone is that frustration as you stared at the computer screen that forced you to account for each minute of your professional life with an exactitude that everyone knew was nonsense but all had to pretend to believe. Gone is the up-or-out partner track, the next phase of which was not really to be a partner in the sense of a business owner but a non-equity partner, in the sense of a salaried employee who has to pay an accountant to mine the veins of the firm's K-1 during each tax season. Gone as well is the recognition that, if you do not eventually shift your career focus from the practice of law to the marketing and sale of legal services largely performed by others, you will be in a delicate and vulnerable position. Three years of law school and a decade or two of practice, only to

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end up in sales and business administration? That's a career path for someone with a professional degree and license?

So good-bye to all that and welcome to the corporate world. First, a word about corporate organization:

That law firm you left behind was

structured something like a teaching hospital, with a large division between the staff and the professionals in terms of both income and responsibility.

In between within law firms stands a small cadre of middle managers (human resources, business development, accounting, etc.), but basically, you are either a bright star (lawyer) or the planet orbiting the star (assistant, paralegal), often not fully aware of what the lawyers, who are ever in such a blazing hurry, really need or why. And all of those stars do essentially the same thing.



Of course, attorneys concentrate in different fields of practice, and transactional lawyers tend to behave differently than do litigators, but in the end, it is all about rights, remedies and legal results, and at the core is everything taught in law school. And those equity partners: Did you really head straight from law school, fresh with the sea-breeze enthusiasm of youth—and perhaps burdened by debt—only to go work in a business (for that is what law firms truly are) where an owner sat in every third office, ruminating over your job performance with each memorandum you wrote?

What made you so special in the law firm and that made those partners take a chance on you fresh from school (if it was your first job) was not your self-evident brilliance, your good looks, your boulevardier style, or your Shavian wit. It was that you could quickly be turned into a profit center. The work you did was the very thing that the organization needed to deliver in order to make money. As an associate, if you did enough work—selling your labor to the firm wholesale so that it could mark it up to retail for its clients—you were profitable; as long as you stayed above the mean on the learning curve, all goodness and reward flowed pretty much from that fact alone. As you saw first-hand, there is nothing better liked and more appreciated in a commercial enterprise than its profit center.

Now that you are in-house, guess what? Counselor, you are still a member of the bar, but from a business

point of view, you are now overhead, and there is nothing appreciated less in a commercial enterprise—indeed, nothing resented more—than overhead. You are going to have to justify your presence in the organization in a very different way from now on.

To do that, you have to be aware of another fundamental difference: In-house attorneys practice law within an organization that does something altogether different from the practice of law. What lawyers do is likely not well-understood, sometimes not appreciated, and occasionally viewed as an annoyance. Those intermediate grades of managers who were all but

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non-existent in the law firm? They are everywhere now, and many of them are your “clients” within the company. The fun part is that you finally get to expand your sphere of work contacts and can regularly associate with people whose skills and contributions are different from your own: There are marketers, financial people, researchers, production people, vendor support people, building and grounds administration people, and many more holders of non-legal jobs and specialties within jobs. It makes for a much more interesting work environment to be with co-workers who do so many different things than to have lunch and

meetings with attorney after attorney who has little more to talk about on the topic of work than what it is that you are already doing.

In the layered and diverse corporate environment, you have to learn as well to deal with people with different levels of education and different career tracks. You have to extend yourself to understand what they do in order to serve them. You have to learn quickly, in short, how to talk to important people who may not have advanced degrees and to those others who simply do not know or perhaps do not care to know why your counsel should be followed.

That, in turn, adds up to something else that a lean organization such as a law firm, where all the professionals are contributing directly to the bottom line, does not produce much of relative to its revenues: politics. The devil does find work for idle hands, and he does as well find mischief to occupy nimble minds not obsessed over delivering boatloads of billable hours.

I have practiced in several law firms and in several in-house positions—in two of the latter as general counsel. My law firm stories you have probably already heard because they are surely not much different from yours. In-house, there was much politics and there was much maneuvering around the rules. Each case was unique and specific to the particular corporate culture in which it occurred. Just a few examples of what was floated over the years as confirmed corporate gossip:

- There was the staff lawyer who convinced the general counsel that an attorney was needed on the scene daily during the workout of a troubled loan in Latin America. The lawyer went south and pretty much stayed there, coming back at intervals, trying not to show how much he was enjoying himself, never all that clear about what he was doing there.

- Every few years, an executive newly arrived at the level of senior management at the company would immediately stir things up by conceiving of a new and original business strategy for submission to the lawyers—who had already been asked those very same questions several times before, from the last inductees to senior management. On each occasion, an old memorandum on point (fondly called the “stupid memo”) would be brought up, refreshed and submitted as if for the first time. No one ever caught on.

- In exchange for shielding his staff lawyers from the unpopular leader of a team in the legal department, the second-in-command dropped most of the team’s work onto them. Fit and relaxed, he spent much time at the gym, interceding, when called upon, whenever the boss got out of hand. At the appropriate moment, one of the put-upon staffers gathered others together to pull an Ides of March on the problem team leader, who eventually pushed upstairs—to a very private job watching over the company’s privacy policy.

- A business unit head whose legal work was done by a skilled staff lawyer delivered spurious charges

to the CEO about both her and the general counsel who protected her. The GC discovered his true reason: The unit lead wanted to control legal support from within his own branch office. Seeing a good lawyer’s career potentially compromised and his own power base threatened, the GC dutifully presented a promising candidate for the job, knowing full well from the ever-reliable GC gossip underground that the unit head

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and the prospective hire could never possibly get along. They didn’t, the staff lawyer kept her job and kept doing good work—and all was well, except that the new face in the legal department, competent as she also proved to be, often did not have all that much to do.

For propriety, I have left out stories of intra-office marital infidelities, blatant come-ons to vulnerable young women, cougar attacks on beefy young men, good advice gone unheeded, the mail-fraud conviction, and those rare examples of bad advice that was followed by business managers who did not understand what went wrong until it was too late.

The key point is this: As a lawyer in a legal department, you are part of

a larger organization with a unique culture and informal rules of governance. To prosper, you have to learn what those are—and keep in mind that they can vary considerably from organization to organization in the same line of business. There are, however, some universal constants:

In business, business comes first. Back in the firm, you could consider, write about, and engage in discussions about legal questions worthy of a law review note or Supreme Court brief. You could urge that client first and foremost accept the imperative of respecting the legal consequences of his or her actions—and otherwise prosper, as so many lawyers do, by taking yourself far too seriously. In-house, you are considered a member of the business team. Written commentary full of anticipated legalisms and case citations will likely be seen as a negative. Say what you have to say as simply and clearly as you can, and be practical. Always write for an informed lay reader. As I alerted my staff lawyers when I was GC, anyone submitting a memo with *and/or* or *document(s)* would be held after work to write 50 times, “Herewith and as aforesaid, I swear and declare that I shall never author another document(s) so obtuse and/or ponderous.” I never needed to make good on the threat; the secondary point here is that sometimes the boss is right.

In-house legal reasoning is a bit reverse in its thinking from law-firm practice. Back at the firm, you typically started with the legal proposition and drove toward the conclusion the

law would provide and then applied that to what your client wanted to do—seeking, if you could, a way to bridge from legal conclusion to business expectation. In-house, it is often best to start with the business objective and work backward from there. Practice that as a mental exercise, if need be; the approach will show even in how you talk and write about the problem, and you will gain more respect and trust as a result.

That does not mean you must say *no* when the answer should be *yes*. I saw a company lose an enormous sum and much public trust due to the *yes* an in-house lawyer gave in an effort to accommodate a profitable but rogue salesman when his answer should have been a resolute *no*. His career did not fare well after that episode. If there is one overriding challenge of in-house practice, it is making sure that the game is played by the rules of the law without sounding officious or appearing to be an obstruction. The skills required to do that are as much interpersonal as they are intellectual—and law schools and law firms do little to teach how to master them.

One simple and always-effective way to start is easy: Learn your company's business. You would think that an in-house lawyer would naturally do that, but too many come into a company thinking about keeping its legal house in order and not to the big picture: the markets, the products and services, the competitors, the vendors, the customers, earnings, plans and forecasts—and all the other elements that, in application,

are particular to each business. Study with care the roles played by your in-house “clients.” Get to know them personally and understand how you can help them, which is almost the same as getting to understand how they can help you, because your job performance rating will depend in large measure on how they evaluate your assistance.

Expect, just the same, a lack of understanding about what goes into performing your own job. There will be those who hand you a 20-page contract the day before (or the day after) signing, asking if you see any problem with it. Somehow, you will have to find a way to make those coworkers happy and at the same time get them to understand that you need enough lead time to be effective.

Proving your economic worth in-house can be tough. Because you can no longer simply prove how much money you brought in, as was essential in a firm, about the most you can do is try to show how efficient you are and demonstrate how much you saved, whether by avoiding a legal danger or simply getting something done that might otherwise have required engaging outside counsel.

One of your hardest moments may come when you give valuable counsel, only to find that the company asks you to bring in an outside lawyer for a second opinion. That is the downside of being a member of the team: You are one of the guys, but you are not the authority—since everyone in business knows that authorities (a) are expensive, and

(b) work somewhere other than here. There is no point reminding everyone that Clarence Darrow worked in-house too. You hire a law firm; the typical result: Someone over there who earns a good bit more than you charges a small fortune to tell management the same thing you did—and everyone goes happy in a backhanded win-win kind of way.

The outside lawyers you hire must understand one thing: They need to have your back. They must be sympathetic and supportive of your position, with full understanding that you serve non-lawyers who must be made satisfied with the results of what you and outside counsel will do together. The outside lawyer needs to know your budget limitations and needs to understand your company's business enough to ask you the right questions before spending your money. Successful outside attorneys partner closely with in-house counsel, never forgetting that outside counsel looks its best when the in-house counterpart looks his or her best. Find those outside lawyers who can help you that way, whether in a pinch or on an ongoing basis, and you will have turned a for-hire vendor into an effective resource—for your company and especially for you.