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The "Dark Side" of Going In-House

By A. Harrison Barnes, Esq.

Introduction

The purpose of this article is to provide you with insight as to whether or not you should go in-house. Many attorneys claim that going in-house was their best career move. Conversely, some attorneys claim it was their biggest career mistake. In the end, going in-house is entirely up to you. You need to understand, however, that the decision to go in-house is one of the most significant career decisions you will ever make as an attorney.

On the plus side, many attorneys go in-house for more interesting work, shorter hours, potentially lucrative stock options, and the opportunity to be on the business side in a corporate environment. Depending upon the in-house environment, these reasons for going in-house may be entirely justified in all respects, and you may find yourself in an ideal situation. Yet, there are several little-known facts about going in-house that may not necessarily make it the best career decision for you:

- It is extremely difficult to get another law firm job once you have gone in-house;
- The overwhelming majority of attorneys do not reap an economic windfall when they go in-house;
- It is very difficult to move to another in-house job once you have gone in-house;

- Your legal skills are likely to deteriorate once you go in-house, and
- You may have to work as hard in-house as you did in a law firm.

A. It is extremely difficult to get another law firm job once you have gone in-house

A significant portion of the attorneys contacting us are attorneys whose most recent experience is in an in-house legal department. We rarely are able to help these attorneys transition into a law firm because law firms simply do not want them, regardless of how good of a law school they went to or how stellar their last law firm was. The market tells the story: Once you go in-house, you had better understand that you will be very unlikely to ever practice law with a large law firm again.

During the late 1990s and the first part of 2000, thousands of attorneys left the law firm world and went in-house at a rate that is unrivaled by any other time in history. In major markets, such as California and New York City, we estimate that at least 65-70% of the attorneys who left law firms became unemployed within 18 months of starting their in-house jobs.

We also estimate that at least 60% of these same attorneys attempted to return to law firms after losing their jobs inside corporations. Out of this 60%, we estimate that less than 20% landed at law firms even arguably approaching the prestige level of the law firms they left to go in-house and that less than 50% were successful in getting another job with a law firm at all. A majority of these attorneys were graduates of top law schools coming from America's best law firms. The thought that they would ever be unemployed or have a difficult time locating a position was something that was incomprehensible to them and their families when they went in-house. Additionally, most of these same attorneys

probably never comprehended that the companies they joined would be anything other than the next eBay, Yahoo!, or Amazon.com when they signed on.

While the above discussion illustrates a historical aberration, to a lesser extent, this pattern has been repeated throughout America every year for the past several decades as accomplished attorneys leave large law firms to go in-house and then for whatever reason attempt to return to law firms. Even in the best of times, companies may cut back their legal departments, go out of business, merge, or relocate. Or the in-house attorney may reach the decision that he/she wants to return to a law firm. Even if the economy is not in dire straits, most of these in-house attorneys will have a very difficult time returning to a significant law firm ever again. The reasons for this are related to the way law firms function as institutions and the expectations attorneys have for other attorneys in the law firm environment.

Law firms have a traditional set of expectations for attorneys. Lawyers inside large law firms are expected to go to a law firm and specialize quickly. Associates are expected to work hard and impress partners for 7 to 11 years; develop skills in relating with clients; and then make partner, take a counsel position, or move to a smaller firm. Throughout your time in a law firm, it is expected that:

- you will become increasingly competent in your work;
- you will be given increased responsibility;
- because of your developing skills and efficiency, your billing rate will increase each year;
- the firm's clients will rely upon and trust you to an increasing degree;
- you will develop more and more contacts, which you will be able to

leverage into portable business.

- you will develop management skills and be able to supervise younger attorneys and paralegals.

Each step of the way, you are growing in a law firm's eyes.

It is especially problematic for an attorney to go in-house before getting at least four to five years of experience in a law firm. In a law firm, attorneys are trained and developed to become the best at what they do. As a young associate, you will typically work for mid-level or senior associates who will supervise you as you become increasingly competent. In most large law firms, the work you do is funneled up the chain of command and reviewed by partners to ensure the best possible work product. Every step of the way, a system of checks and balances is in place inside law firms to ensure that each lawyer inside a law firm produces outstanding work product. This, in turn, creates very good lawyers over time. Once an attorney goes in-house, he/she is unlikely to be supervised with this chain of command. Incredibly, in-house attorneys may even find poor work they do praised by outside law firms representing the company. Very few law firms ever criticize the work product of the in-house counsel of their clients. In-house attorneys represent revenue for the law firm that works for them, and law firms praise these in-house attorneys in the hopes of making these same attorneys feel good about themselves.

While there are certainly exceptions, once you go in-house, you are likely to become more of a generalist than a specialist. While the idea of being a generalist may be something that appeals to you, you also need to understand that the skills of a generalist will certainly not serve you well if you ever choose to go back to a law firm. Most law firms demand their attorneys specialize very early in their careers and continue as specialists in one practice group or

another throughout their careers. As a generalist, you will be an expert in nothing. While you may find it more interesting to participate in several different types of work, over time, you will simply be making yourself increasingly unmarketable to law firms.

Going in-house is something that jeopardizes the type of growth law firms expect attorneys to demonstrate throughout their careers. In short, law firms want attorneys to be committed to their methods of practicing law. Going in-house is not an action that law firms consider something that demonstrates your commitment to their method of practicing law. When you decided to go in-house, you radically put yourself off the track of training, growth, and development from a law firm's perspective. More significantly, you have sent the message to future potential law firm employers that you are not committed to their way of practicing law.

None of this is to say that you will never work in a law firm again if you go in-house. Many patent prosecutors, real estate attorneys, and other types of attorneys can become extremely specialized and receive excellent training in an in-house environment. There are, in fact, some very well respected in-house legal departments throughout the United States. In addition, if you reach the role of a General Counsel in an important corporation (like Disney or General Motors), you may actually become an extremely hot commodity among law firms because of your connections and the fact that you will likely be able to parlay this into significant business for the law firm once you join it. Many attorneys have successfully moved from important in-house legal environments to partner roles within the most significant international law firms after several decades in-house.

B. You Are Unlikely to Reap an Economic Windfall if You Go In-House

Many attorneys who went in-house during the tech boom were under the impression that they were invincible. Some were. It was not uncommon for third- or fourth-year associates in the Bay Area who went in-house from 1997-1999 to have cashed out stock options worth \$1,000,000 or several times more after less than two years in an in-house environment. In fact, this happened enough times that many attorneys were under the impression that if they went in-house, this result was all but inevitable. The results these attorneys were able to achieve with their careers in such a short period of time are nothing less than remarkable. These results were also unparalleled at any other time in the history of the legal profession.

Corporate attorneys, in particular, were in massive demand, and these attorneys were receiving calls-often several times per day-from recruiters seeking to place them in both corporations and law firms. Wanting fewer hours and stock options and having a certain vision of what going in-house meant, attorneys flocked to start-up companies (often companies with no revenue model) in the belief that they would quickly be rich. The fact is, however, that these success stories were (and continue to be) less common than believed.

We would estimate that fewer than 1 in 50 attorneys who left prestigious law firms ever ended up making more in their time in-house (through a combination of stock options and salary) than they would have made had they remained in their respective law firms and not gone in-house. None of this even takes into account that a substantial number of these attorneys who did not experience fortune after going in-house left the practice of law completely after being unable to successfully find alternative legal employment after losing their in-

house positions. In terms of a cost-benefit analysis, if you were to analyze the potential incomes these attorneys gave up over the courses of their legal careers by going in-house, the differential between the numbers would likely be staggering.

If you stay in the law firm environment for an extended period of time, there is a strong likelihood that you will be in a position to be financially independent after a couple of decades. Very few attorneys in this world achieve significant wealth in a short time span through "IPO lottery" or the equivalent. While some people reason that lawyers in private practice have a ceiling in terms of compensation, the average salary for a lawyer in private practice still far exceeds the salaries of most Americans. At some of the biggest firms, associate- and partner-level paychecks can be enormous. The fact is that none of this occurs within even a year or two for most attorneys and you should not treat your legal career like a lottery ticket.

The below story illustrates one memorable meeting we attended for a start-up company that wanted us to assist it in locating a General Counsel. At the outset, it is important to note that this particular story was atypical. The story nevertheless demonstrates the tremendous amount of greed and naiveté that characterized the rush of attorneys to the in-house legal market at that time. I also believe this story illustrates the shortsightedness of many attorneys who continue to go in-house to this day without realizing the potential consequences of doing so.

The Next H&R Block? In 2000, I was invited by a very important Bay Area law firm to come to a meeting being held by one of its clients. The Company was seeking a General Counsel and had invited me to the meeting because it wanted me to learn more about it in order to conduct the search. This Internet

Company dealt with the accounting industry and had been started by a foreigner with no knowledge whatsoever of the accounting industry (he was a nuclear engineer). The Company had recently received approximately \$10,000,000 in seed funding from a venture capital firm. Despite the fact that the Company had never brought in a single dollar in revenue, people were excited about it.

The meeting started early in the morning, and throughout the day, none other than a former United States Senator, the Managing Partner of a major international accounting firm, and several important partners in this particular law firm (the "Board") enthusiastically endorsed the company and exchanged ideas about how it was going to take over the world. The law firm (who was also charging the client by the hour) had received significant stock options in the company, and just about everyone else in the room had too. In fact, my payment for finding the General Counsel was going to be in stock options as well. Everyone had options, even the guy who had been hired to write the business plan!

About six hours into the meeting, I realized that something was terribly wrong:

"If I understand you correctly," I interrupted, "this company is going to allow the average Americans to post the fact that they need their tax returns done on your website, and accountants are going to bid on the right to do each individual's tax return until the lowest price is reached?"

"Yes, exactly!" Everyone in the room nodded in unison and enthusiastically. "People will put in their credit card numbers and be charged for the tax return immediately once the auction is over. We will take 5% as a fee for brokering the

transaction and forward the other 95% to the accountant within 90 days and in the interim make money off the 'float.' The float alone will represent millions of dollars per year. Our projections indicate that over 5% of Americans with access with a computer will be using the service within a two years."

"The people will not have the right to choose their accountant?" I asked.

"No, of course not. It's a free market. The lowest-priced accountant will be the one who does the work. People will also have the ability to set the highest price they are willing to pay for the tax return, a 'reserve.' This website will make accounting more efficient and enable centralization in the industry. It's a win-win situation for everyone."

"What if the accountant does a bad job?" I asked.

"Well, if the person is unhappy with his/her tax return, we will kick the accountant out of our membership and not pay the accountant for the work. The accountant has every incentive to do a good job."

I was not invited back after I explained to the Board that I believed the business made absolutely no sense. The idea of paying the cheapest possible accountant to do your tax return was not something I believed would ever work. I was not invited back, nor was I asked to do the search for their General Counsel, nor was I ever given stock options. Instead, a naive fourth-year attorney inside the law firm where the meeting was held begged for the job and was offered it.

He worked as General Counsel with the promise of stock options for \$60,000 a

year (less than the \$150,000 he was earning at the law firm at the time). Four months after taking the job, the Company reduced his salary to \$30,000 a year because they told him they did not have the money to pay him more. Within nine months of starting work, he was let go when the Company went out of business. Stock options? Tax returns? If memory serves me correctly, I do not think a single person ever had his/her tax return performed on the reverse auction site despite millions of dollars in development costs.

This same attorney then tried to go back and get a position with a law firm. He was entirely unsuccessful. Six months after getting laid off, he accepted a part-time contract position with a small publishing company doing in-house legal work for \$35.00 an hour. This story is not unique. In fact, this story is the norm for a large proportion of attorneys who went in-house during the economic boom. What makes this story so sad is that this attorney, like many before and after him who have had the same results with their careers after going in-house, was among the more accomplished attorneys in his law firm with some of the highest prospects before he went in-house.

While the tech boom is now over, a fair number of attorneys continue to express a desire to get into a company for stock options or in the hopes of a windfall at the IPO stage. Incredibly, many attorneys' desires to get rich quick are so strong that even in the face of what has been an economic meltdown in the in-house market, some attorneys are now expressing the idea that now is a good time to get in because stock prices are so low, they can only go higher.

Within the past few years, that dream came crashing down for many lawyers who left their prestigious law firms in an attempt to make it big. Many of these attorneys have now been looking for a job-any legal job-for more than a year

now. The Cinderella stories of massive economic gain have all but dried up, and lawyers from in-house environments continue to attempt to return to private practice in droves.

Most large law firms have been around for decades, sometimes more than a century. For the most part, these firms are not going anywhere, even in a bad economy. The economic stability of law firms is unmatched by many other institutions, including most companies where you would like to go in-house. Although law firms occasionally go under, law firms are, in general, much more stable than companies in any other industry.

This is especially true of the full-service firm. When the economy is good, the real estate and corporate lawyers are busy. When it turns sour, the bankruptcy and litigation lawyers can pick up the slack in terms of billing and profitability. Most law firms diversify their client base to such an extent that the failure of any one or two clients will not compromise the bottom line. Law firms are built for survival in even the toughest economy.

Obviously, it is not accurate to state that law firms do not go out of business. However, when a law firm such as Brobeck, Phleger & Harrison goes out of business, it is considered a monumental event in the legal community because it is so exceedingly rare for law firms to go out of business in the first place. Conversely, companies the size of even the largest law firms go out of business every day of the week. Most of these companies have in-house attorneys.

There is a saying: "If it looks too good to be true, it probably is." While most attorneys out there have heard this saying, it bears repeating. Anything that produces strong economic results generally produces these results because it

is providing value and doing so over an extended period of time. It is important to realize that whatever path you choose with your legal career, you will only be highly compensated if both you and your organization are providing value in the marketplace.

C. It is Very Difficult to Get Another In-House Job Once You Go In-House

The difficulty of getting a job in another law firm once you have gone in-house may be surpassed only by the difficulty of getting another in-house counsel position. Typically, some of the most attractive candidates to in-house employers are the attorneys inside the law firms that handle their legal work. These attorneys are already familiar with the Company, have established relationships with key players inside the Company, and are trusted legal advisors who cost the Company a great deal of money. The idea of bringing these already trusted attorneys inside the Company and saving the Company money is something that is certainly an attractive prospect to many companies. In our experience, most attorneys who go in-house are hired by their former clients.

In theory, it would be excellent if everyone could go to work for one employer and remain there until retirement. Nevertheless, this is not a socialistic or communist country, and companies go out of business, legal departments are downsized, and companies decide they no longer want an in-house legal department. The fact is that you will be extremely unlikely to remain in the same in-house job throughout your career and will in all probability need to seek alternative in-house employment at some point in time. In searching for your next in-house legal job, you will not have the luxury of being a bright-eyed attorney being wooed by your client. Instead, you will need to hit the street and

start tracking down these jobs on your own. When you have a family, friends in the area, kids in a local school, and a mortgage, this may not be something that appeals to you all that much.

Many attorneys who left law firms to go in-house (and did not go in-house with their clients) spent years searching for in-house positions before they found one. These same attorneys, who are most often at the associate level, are often quite eager and convey a surprising level of enthusiasm for working in-house to potential employers. When you attempt to find another in-house position, you are entering a market that is tremendously competitive, where there are likely to be numerous people competing for the same position. As an attorney inside a law firm, you are arguably more attractive to in-house employers. If the search for an in-house position can take years when you are inside a law firm, can you imagine how long it will take when coming from an in-house position?

If you search job boards, legal recruiter ads, or other sources where in-house jobs are typically listed, it should be no surprise that there are far more law firm than in-house positions listed. For example, if you go to most cities in the United States of between 100,000 and 200,000 people, there are likely to be more than 100 law firms of more than 10 attorneys. In this same market, there may be fewer than 10 companies that even employ in-house attorneys, and the number of attorneys these companies hire is likely to be quite low.

D. Once You Go In-House, Your Skills Are Likely to Deteriorate

Very few attorneys realize just how much their skills are likely to deteriorate once they go in-house. A large portion of the responsibility of many in-house attorneys is to farm out challenging work to the appropriate law firms. Therefore,

once you go in-house, you will often cease doing sophisticated legal work and instead merely hand off work to law firms. For some attorneys, this is the ideal job. For other attorneys, this is not an ideal job because they no longer work directly on challenging legal work.

If you are at a company doing an IPO, an outside law firm-and not you-will likely be responsible for the IPO. If your company is involved in significant litigation, almost always an outside law firm-and not you-will be the one drafting the motions, doing discovery, and going to court. All of this should make it obvious that a great deal of the learning and refinement of your legal skills that occurs inside a law firm stops once you go in-house. It is unlikely you will stay abreast of the law once you are in-house because you will have no reason to. Because you will be doing less hands-on work and will be exposed to fewer nuts and bolts of practicing law, your skills will gradually deteriorate.

E. You May Have to Work as Hard In-House as in a Law Firm

With some exceptions, in-house attorneys most often do not have to work as hard as their counterparts at firms. This is one of the better reasons for going in-house. It is your life, and being in-house can release you from much of the pressure of the billable hour requirement and other stresses of being in a law firm. In addition, being in-house typically has more predictable hours. We have no doubt that working in a law firm can often be incredibly stressful. In large law firms, many attorneys are plagued by divorce or substance abuse and spend little time with their children. Indeed, many attorneys in large law firms consider anything that does not relate directly to the practice of law as something that is a distraction, even if it is spending time with family. An in-house environment can often give you your life back.

However, a job in-house is often not the utopian environment described above. We often encounter lawyers whose primary goal in a career change is to reduce the pressure of billable hour requirements that seem to be only associated with private practice. Depending on your career and life goals, it is often perfectly reasonable to seek situations that will require something less than the typical billable hour requirements of an associate at a busy law firm. However, we do not agree that private practice necessarily means an unreasonable grind, nor should one expect a laid-back lifestyle in every in-house position.

General Counsel and Associate General Counsel of large corporations often work the same hours as lawyers in private practice, which sometimes includes late-night and weekend work. Many in-house departments of corporations are set up like law firms, where different departments within the company are considered clients, and in-house counsel are required to bill and record how they spend their time with the internal clientele. For the companies that do not require their lawyers to bill their time, a lawyer working long hours has no record for the purpose of year-end productivity bonuses, as law firms do.

Additionally, the typical in-house work environment is changing and may no longer be everything an attorney fleeing firm life is seeking. The most recent annual survey of in-house attorneys by *Corporate Counsel* shows that despite myths to the contrary, the in-house environment is slowly morphing into somewhat of a friendlier law firm grind over the last few years. Everything from the Sarbanes-Oxley Act to the recessionary economy has contributed to a more stressful work environment for in-house attorneys.

With corporate budgets going down, more pressure is being put on in-house

attorneys to bring work in-house rather than farm it out to law firms. When that work comes in, though, fewer attorneys are being asked to handle it. In-house downsizing is one way that corporations are choosing to trim the budget fat, meaning in-house attorneys are among the casualties of the economy. Those in-house attorneys surveyed by *Corporate Counsel* say that this piling on of work has led to the late nights and weekends that many seek to avoid by making the in-house decision.

While the work is increasing and the perks are decreasing, in-house attorneys surveyed in the article overwhelmingly still enjoy their positions. Many who are currently employed are not looking for new positions and/or feel that the layoffs have passed. Also, the work is able to hold the interest of the majority of employees, and the client contact and increased sense of camaraderie among colleagues still remains.

On the other hand, law firms are increasingly amenable to flextime, reduced hours, or telecommuting situations for valued lawyers. In the end, it is impossible to generalize what the time and billable hour requirements are for either law firms or corporations, and it is simply incorrect to assume that the grass is greener on the other side. At the end of the day, the fact of the matter is that most lawyers with sophisticated practices work hard, whether in private practice or in-house. There are as many distinctions to be made between lawyers practicing with law firms as there are differences in the day-to-day lives of prosecutors, general counsel, and large-firm associates.

Conclusions

One of our recruiters was recently corresponding with one of his friends, who

had just received an in-house position. This attorney was three years out of a top Ivy League law school and working for arguably one of the top two or three law firms in the United States:

Are you sure about the in-house thing?

In short, I do not think that in-house positions are usually a good idea for a good lawyer at your level. You will be making a decision to be an employee rather than a business owner; to turn over control of your destiny to a board of directors and stockholders, rather than controlling it yourself; and to limit your financial upside drastically. Your chances of coming back to a law firm after leaving for an in-house job are miniscule as well, so you should look at the option with the same sort of circumspection that you might view a vasectomy: It may be reversible, but you'd better be darned sure about it anyway.

On that note, I just got a call earlier from a guy who left a big-time firm as a fourth-year to go in-house at a major corporation. The corporation had a change of GC five months later, and he was out of a job. The new GC wanted to farm the work out. His firm won't take him back, and I had to tell him that I can't get him a job.

There are a lot of good law firms out there that might solve your problems without the negatives of the in-house world. I would recommend looking at those options first. Keep your option to go in-house until you learn you can't go further in a law firm. If you can make partner in a good one, you might be a general counsel when you make that switch. As a seventh- or eighth-year, you could be an assistant GC reporting to a named executive officer (rather than another lawyer only). That's a much better position.

We encourage any lawyers considering a career change to avoid generalizations and preconceived notions of what it means to be practicing with a law firm and instead to focus on what jobs are best suited to their particular credentials and abilities. We've heard the success stories for in-house positions; they do happen. However, we also believe that law firms get an undeserved bad rap among lawyers.

You need to carefully weigh your options before going in-house. There is a chance that going in-house could be the perfect career decision for you. Like everything in life, you need to maximize your long-term self-interest. If, when all is said and done, going in-house is likely to maximize your self-interest, then it is probably the right thing to do.