

Training the Modern In-House Lawyer

by Lori L. Lorenzo and Mark Roellig

Most lawyers in private practice are not well trained for a transition to an in-house career. An innovative training institute points toward ways law schools and law firms can become involved — and suggests why training in-house lawyers helps law firms, clients, and the legal profession.

Today's general counsel position and related in-house legal positions are coveted roles within the legal profession. Often the most competitive candidates for these in-house roles come from the nation's largest law firms, and often these lawyers come from the most prestigious law schools. There is a common assumption that academic credentials in combination with the exceptional training a large law firm offers produces a lawyer well suited to the demands of in-house practice. Notwithstanding the argument that the most competitive candidates for in-house positions are well educated and well trained, it is a mistake to think that these markers of success for private practice lawyers necessarily translate into success for in-house lawyers. In fact, most lawyers in private practice are most certainly not well trained for the specific demands of an in-house legal career, which requires notably different skills. Corporations are recognizing this challenge and less than 14% of the general counsels in the Fortune 500 appointed last year came directly from law firms. Despite this skill gap, there is currently neither an academic track in most law schools nor a law firm-based transition training program designed to hone the essential skills of an in-house lawyer.

The skills required of an in-house lawyer in many ways mirror those of the general counsel. The in-house lawyer must have a deep and thorough understanding of business principles and the company's business so that he or she may understand how a particular legal matter impacts the company. As described later in this article, with the rise of the in-house legal department over the last several decades, outside counsel have been less incentivized to know their clients' business well, instead favoring a specialized practice of law. Thus, a lawyer from private practice may know relatively little about a company's business (even if that lawyer has done work for the company

in the past) — or about the overall industry within which the company operates. These lawyers, upon transitioning to an in-house practice, must quickly get up to speed on the business of the company. Without a foundation of knowledge relevant to the industry or the company, and without educational or professional training in business essentials such as accounting and finance, the new in-house lawyer is at a disadvantage when trying to quickly learn a company's business.

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The in-house lawyer also needs to be able to nimbly shift his or her issue analysis perspective from problem finder to strategic, creative, open-minded problem solver. Stated differently, in-house lawyers must be performance-driven and results-oriented with the ultimate goal of adding value, not accumulating hours. To achieve this, in-house lawyers are expected to work closely with their business unit colleagues. As noted in research comparing the academic and work environments of law school and business school, business school graduates expect to work in teams; they openly share ideas and strategies that push their limits in the name of growth and innovation. Law students, on the other hand, are taught to stick with precedent, identify problems before they occur, and work independently — often with a focus on searching for and identifying risk.

In addition, law firm lawyers are taught to operate in a world of

zero errors — to make a mistake on a legal issue is malpractice. The opposite is true of business leaders who, with an understanding of the options and potential outcomes, are looking for opportunities and are willing to take risks and make mistakes. Business is all about taking reasonable risks; without the potential for financial gain that reasonable risk represents, investors and shareholders would simply put their money under a mattress for safekeeping. To illustrate, imagine that with respect to a \$10,000 contract the lawyer is 80% certain on a risk factor in the contract; astute business leaders and their in-house counsel will have no interest in having the additional legal work done on that issue, with attendant cost and delay, to achieve 100% certainty.

Some in-house lawyers complain that they aren't brought into business decisions early enough in the process, thereby allowing a situation to develop where the business is in trouble and the lawyer's job is to fix it. Generally when this criticism exists, it is well founded according to the business executives. What they are really saying is that the lawyers, when brought into the conversation early, kill innovation by constantly referencing risk and throwing up legal roadblocks. In this situation, savvy executives will either wait until late in the process to bring in the lawyers or provide a shaded presentation of the facts, with the hope of obtaining legal approval.

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Thus, in-house lawyers who have newly transitioned from law firms must learn an entirely different language — one of being part of the team advancing the business objectives through collaboration and innovation, which allows them to discuss tolerable risk with their business partners in ways that don't impede the very innovation that drives business results (i.e., profits). A critical aspect of this skill is the ability to concisely communicate complex matters and legal principles in plain English. As any first-year law student can attest, legal writing is a skill unto itself. In fact, the first-year legal writing curriculum in most law

schools is designed to teach law students how to write in terms that only other lawyers or judges can understand. Adherence to this form of written (or oral) communication is sure to earn the in-house lawyer a very negative reputation once in house; the days of writing legal memoranda are over. It is not uncommon to hear an experienced general counsel ask for legal matters and recommendations to be simplified, often into bullets. This form of brief, concise communication is highly valued in house, but can be very difficult for the new in-house lawyer to master.

In-house attorneys are expected to “see around corners.” Unlike at a law firm, where the call often comes in to address a specific legal issue or need after an issue has been identified, high-quality in-house attorneys should see the legal issues before they arise and takes steps to eliminate them or best position the company to address the issues effectively and efficiently. The facts for legal issues are being developed each and every day in a company — and it may be years or decades before any external counsel are called in. The in-house team must help the business to ensure that these facts are being generated in the most advantageous way for the company.

A valuable in-house team is also proactive. It develops legal strategies to advance the business: if a law is problematic for a company, they change it. If a new or existing law or regulation is onerous — but more onerous to competitors — it may be valuable to work to keep it. In this way the in-house lawyers are using the law and the legal process as a competitive advantage. Brainstorming on how to use law as a sword and not a shield is foreign to the thinking of many private practice lawyers.

Although not unique to the in-house practice, but critical to the success of any enterprise, the in-house attorney must have irreproachable integrity. At times the in-house lawyer must remember that just because a decision is legal, doesn't mean it is the right thing to do. Creating a culture with this ethical compass within any law department and with the lawyers is an imperative. Some have argued, however, that in-house attorneys have a unique role in being the conscience of the company. We would argue that every executive has a role in upholding

the conscience of the enterprise. All must act with ethics and integrity. And to the extent this is delegated just to “Legal,” an unhealthy environment is created.

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In-house lawyers must become a trusted member of the business team and avoid relational conflict. It is essential for the in-house lawyer to be close to the business. Whether the in-house legal department is centralized or decentralized, the lawyers, if they’ve mastered the language and synergy of their business colleagues, will find themselves often interacting with those colleagues. The tremendous value of these interactions to being proactive and strategic has caused many in-house lawyers to be embedded or aligned with the business. However structured, as these relationships grow, the lawyer is faced with the same challenges the general counsel faces — to support the decisions of business colleagues, even when it may compromise legal or ethical standards, or to enforce the legal and ethical standards at the risk of losing one’s position of trust with the business unit. The best way to solve for this conflict is to be a trusted and respected member of the business team. There are exceptions, but almost universally, business leaders want to do the right thing for the business and its owners, and are aligned with the legal team in the desire to do what is right and comply with the law.

It is indeed human nature to seek the approval of those with whom one works closely, and where a lawyer has been involved from the early stages of formulating a business strategy that lawyer may be inclined to defend that strategy, even in the face of evidence that the strategy won’t or shouldn’t work. Here, and in almost all they do, in-house lawyers will need one skill that can be sufficiently developed in private practice — judgment. It can be argued that judgment may be the most important attribute for any attorney, including the in-house attorney — although Will Rogers said, “Good judgment comes

from experience, and a lot of that comes from bad judgment.” In the corporate setting, “good” judgment is making effective, productive decisions in multidimensional settings — decisions that are aligned with business objectives. It is this application of decision-making to business objectives that differs somewhat from the way in which judgment is developed and exercised in private practice.

Finally, the in-house lawyer must be a skilled quarterback, able to effectively manage resource allocation. This requires the ability to determine how to staff any particular matter (according to principles of value, which will be discussed later) and when and to what extent to draw upon external resources. There is no expectation that the in-house attorney have expertise in all areas of law, but finding the correct resources and assembling, directing, and motivating the right team is a critical skill. As part of this, in order to build the best teams, ensure exceptional results, and get the most out of the team members, the team that is put together needs to be diverse and inclusive. So in-house attorneys need to understand the benefits of diversity and how to leverage it. To the extent external resources are used the in-house attorney will be expected to select law firms and manage them in cases where the cost is millions of dollars.

Before examining how in-house lawyers can gain the preparation they need to master each of these skills, it is first important to understand how the in-house counsel role has evolved into what it is today.

Evolution of the Role of In-House Counsel

The existence of the in-house counsel is relatively new. Its origins date back only slightly more than 100 years. Over even this brief period of time, the role has evolved and experienced times of both high and low regard. Today’s general counsel and the in-house team are prominent and well-respected figures, and the history of the change in the esteem and responsibilities of the roles is relevant to understanding the training requirements of today’s in-house counsel.

The general counsel of the first three decades of the 20th century was well regarded and intimately involved in both the business and legal ventures of a company, often working side by side with the company CEO, who during this period was likely to have also been trained as a lawyer. This turn-of-the-century general counsel was well paid and held in high esteem. The general counsel may have also acted as the company secretary and one or two additional lawyers might have been on the general counsel's team, but large in-house departments did not exist.

With the rise of the large law firm in the early 1940s, however, came a decline in the general counsel's status and that of the in-house legal team. Firms successfully argued to company CEOs that professional independence was a valuable attribute only firms could deliver. The CEOs of this era — largely businessmen with backgrounds in marketing and finance — agreed, and turned over the majority of their high-stakes legal work to outside counsel. This transition had two consequences.

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First, the role of general counsel became well suited to partners from big firms who weren't making the grade at their firms or were on their way to retirement — thus diminishing the prestige associated with the role. The revised responsibilities of the general counsel now included supervision of only mundane or routine company business and being a liaison (not supervisor) in regard to the relationship between the CEO and outside counsel, and business leaders often would directly retain outside counsel. Firms, on the other hand, were growing in size (this era was marked by the birth of the mega-firm) and had developed recruiting systems that allowed them to hire the brightest young talent in droves. The size of these associate classes and their impressive résumés allowed law firm partners to assure companies that their matters were being handled by the very best.

Second, partners at outside firms became well versed in the business of the company, often attending board meetings and other meetings of executives. These partners, today sometimes called “relationship partners,” became so well versed in the matters of the company that moving matters to another firm was prohibitively costly for companies. Well aware of this dynamic, law firms continued to raise their rates until ultimately companies could (or would) no longer bear the costs. In fact, even today, in-house billing rates (the amount necessary to cover the in-house budget, excluding external resources) generally run at less than a half to a third of the rates of the external counsel retained. Thus, in the face of these rising costs, general counsel began building in-house law firms that looked and functioned like large law firms and pulling back work from their outside counsel. This did result in significant cost savings and allowed the position of general counsel to once again take on a level of importance in the company as the leader of a large team and the go-to authority on all legal matters.

Over time, this large in-house law firm model lost some of its luster, since corporations still found value in going to outside law firms for portions of their work where specialized, in-depth legal expertise was needed. Not only could companies not employ lawyers possessing every possible area of legal expertise, but they also could not have attorneys in all jurisdictions in which they were needed. At the same time, it became clear that with their multiple clients, law firms simply had perspectives on certain issues that an in-house attorney (or department) could not have.

Thus, to efficiently and effectively add the maximum benefit to their clients, today's in-house legal department has developed a balance whereby value is added by in-house lawyers when an understanding of the enterprise business and strategy is required and the business-minded in-house lawyer can bring that specific expertise and value to the table. Also, where a particular area of practice becomes routine for the company, an in-house lawyer can often handle it more efficiently than outside counsel (often relying on the contributions of in-house non-attorney paraprofessionals). A well-run in-house department relies on a mix of resources with 60% or more of their

legal spend generally being internal. Assuming external costs are double internal cost on an hourly basis, this means that more than 75% of the legal work is generally being done internally. But value is also added by outside counsel on matters that require in-depth legal expertise and a level of expertise that can only be developed by outside counsel's work with many clients.

As the most senior leader of a large in-house team, manager of larger numbers of outside counsel relationships, active practitioner, and creative strategic partner, today's general counsel and in-house attorneys are highly qualified and competent. They also enjoy a position of prestige and authority within the company. The legal department has grown, as has the range of issues it handles and the control it exercises over relationships with outside counsel. Today's general counsel also has a wide range of additional responsibilities and is often considered a "C-suite" executive, working side by side with a company's most senior executives. Notably, today's general counsel often has responsibilities for non-legal functions, sometimes including government relations, compliance, public relations, human resources, diversity, and other staff functions. While the role of general counsel is financially rewarding, it is not without significant challenges, many of which trickle down to the in-house lawyers.

One Innovative Training Solution

Based upon the current best structure for providing legal support for an enterprise and the individual skills necessary to be effective in this structure, the responsibilities of a general counsel — and resulting responsibilities of in-house counsel generally — can be broken into the following categories:

- A thorough understanding of general business principles and their relationship to legal issues;
- A deep understanding of the company's business and strategy and their relationship to legal issues;
- The ability to think and function as a part of a team composed of non-lawyers;
- The ability to understand and be comfortable with risk, and

the ability to communicate in writing and orally effectively in plain English;

- Strategic thinking in areas of law or changes in the law that may have an impact on the company;
- The use of the law creatively to advance the company's business objectives or proactively changing the law to better position the company competitively;
- Objectivity and judgment;
- Ability to recruit, hire, motivate, and develop a first-class diverse legal team that is engaged and embodies a culture of ethics and integrity; and
- Efficient resource selection, allocation, and management.

Unfortunately, as stated previously, no formal training for these skills is widely available in either law school or private practice. Thus, most of the skills required to be effective in-house tend to be learned on the job — from the general counsel or legal department — through interaction with the client or industry groups, or through formal MBA programs. The challenge with the on-the-job training approach is that an in-house attorney who does not have the opportunity to interact with other high-performing in-house teams or have access to best practice approaches and recommendations may be limited in the development of critical skills, especially where the general counsel has limited proficiency in training their team. There is no "general counsel school," so most general counsel have learned what they know thorough experience, possibly augmented by interactions with peers, various organizations, programs, or readings. And, a non-legal astute board or CEO may have hired as their general counsel the account partner at a law firm on the mistaken belief that based upon their prior interactions, the general counsel will have the requisite skills and expertise to train their in-house team.

There is, however, now one innovative program that is attempting to address this training deficiency and that offers to attendees — both law students and junior in-house lawyers — the opportunity to understand and begin to develop these key in-house lawyer skill sets.

Under the innovative leadership of Dean Phil Weiser, the University of Colorado Law School began offering the Corporate Counsel Intensive Institute in 2013. When first developed, it was a class offered to law students with a focus on business strategy, creating legal strategies, leadership skills, elements of judgment, work allocation, outside counsel management generally, and team structure. Now heading into its fourth year, the program is open both to law students at the University of Colorado and to in-house practitioners.

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The program runs the first full week of January, five days, three hours a day, with extensive reading and preparation for each class required (approximately two to three hours for each hour in the classroom) and a graded final exam. The final exam uses fact scenarios faced by in-house attorneys based upon the learning in the class.

The first two years the program was taught by one general counsel, with guest general counsel coming in for a day. In order to ensure the students were not just hearing one point of view, the faculty was augmented last year and now consists entirely of general counsels chosen for their thought leadership on how best to add value as in-house attorneys. In the most recent year, the program featured general counsels from Prudential, Verizon, DaVita, Clorox, Cisco, and MassMutual.

The teaching approach is designed to emulate the daily issues and challenges faced by in-house counsel. Case studies, not the cases used in law school but business school-type case studies, are used to cover each area of focus. In addition to case studies, the reading material for each day is selected by the general counsels to create a foundation for what they plan to cover. Over the years, each of the general counsel has identified material that they have found beneficial to share with their in-house

teams; they now share this material with attendees in a rather extensive overall syllabus.

Interspersed within the cases discussed are more traditional lectures. But these are really not as much traditional lectures as the general counsel providing examples (“war stories” of victories and defeats) and their insights and experience. All sessions are highly interactive. This teaching approach not only delivers substantive learning but also allows attendees to work together to exercise their judgment. Some may argue judgment cannot be taught, but the factors that go into a good decision can be taught, and then practiced. This decision-making practice is emphasized in the daily classes. The program is not like the typical CLE where attendees can sit in the back row and attend to email. It requires active preparation and participation.

Conclusion

The position of in-house counsel is an attractive career path for lawyers who have an entrepreneurial spirit and value collaborative, diverse, and inclusive work environments. The position offers opportunities to exercise one’s legal skills while simultaneously being immersed in decisions on business strategy and creativity. For some, the absence of a billable hour requirement and the opportunity to be more deeply involved in a particular industry is a draw.

Whatever the draw, as general counsel roles become more expansive, encompassing responsibility for functions beyond the legal realm, the opportunities for lawyers to explore legal and non-legal career paths within corporations grow. No longer are the in-house roles relegated to attorneys who could not make it in law firms or those looking to retire on the job. They are now demanding and difficult positions that require skills different from their external counsel. However, as these opportunities and challenges grow, so do the requirements for entry, and lawyers interested in these career paths must be ready to master new and evolving skills.

NALP data indicate that a small but rising number of law

graduates are going directly into business (as opposed to legal practice) and anecdotal evidence suggests that a small number of recent law graduates are going directly into in-house practice. For example, companies such as Hewlett Packard, Procter & Gamble, DaVita, DISH Networks, and Intrawest now hire in-house attorneys directly out of law school. Leadership Council on Legal Diversity (LCLD) data suggest that among mid-career lawyers, a move to in-house practice is the most common transition lawyers in private practice make. This — in combination with the growth of in-house legal departments and data that indicate that these roles are more family-friendly and more attractive to diverse lawyers — is evidence that the unique training needs of in-house roles should no longer be ignored by the legal academy or law firms.

Law schools might consider adding courses to their curricula that focus on business school topics or partnering with their business schools to offer business courses to law students. The University of Colorado has a Tech Lawyer Accelerator program where students go through a month-long boot camp learning business and technology industry fundamentals before working in-house for a summer. These in-house positions range from ten weeks to seven months with a few tech companies, including Cisco. In addition, some might also consider a curriculum that includes something similar to the Colorado institute. Schools might also expand their clinical offerings to encompass practical work opportunities that mirror in-house legal department training needs. Schools and corporations could and should also grow the internship and externship opportunities available to students to include in-house legal positions or true business-oriented positions (perhaps in collaboration with business school career services offices).

Law firms can clearly anticipate that a notable number of their lawyers will make the transition to in-house practice. It is no secret that attrition is built into the law firm model, but law firms have yet to widely embrace the opportunity that this transition presents. As noted previously, large law firms are the prime recruiting ground for in-house legal departments, and in anticipation of these transitions law firms could do

more both to prepare their lawyers for in-house practice and to subsequently capitalize on the relationships with their alumni. Accounting firms for years have leveraged this approach to “embed” accountants into their clients with the view they will provide opportunities back to the firm. Law firms should not lament the loss of lawyers to in-house practice; rather, if they have developed the lawyers well and the lawyers have valued those with whom they worked at the firm, these departures should be viewed as one of the best ways to conduct business development. Thus, law firms might consider offering in-house lawyer training programs, possibly in conjunction with their clients, for associates who are interested in pursuing this career track.

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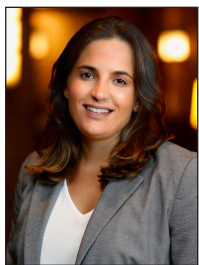
At most firms today, associates who are interested in pursuing this career path believe that disclosing their intent may doom their relationship with their firm — or at the least cause their relationships within the firm to become very strained. But firms stand to gain significantly through the move of a lawyer, whether partner or associate, to an in-house position. Creating an environment that allows lawyers to express an interest in in-house practice and then properly training these lawyers for the transition creates goodwill for the firm both in the mind of the individual lawyer and with the company to which that lawyer moves. Partnerships with schools to offer this training could be a viable model. In the alternative, firms might look to partner directly with general counsel from client organizations to create a training pipeline. Not only would this help to build strong firm alumni relationships (and loyalty), but it could have positive implications for firm/client relationships.

There is no question that everything about the legal profession is being called into question — including the efficacy of our legal academy and the model of career progression. At the same time, the new generation of lawyers in the workplace is

more apt to demand a better work/life balance, more flexibility in their academic choices, and a more transparent conversation about career trajectory. The millennial generation is accustomed to helicopter parents and clearly outlined “rules of engagement” for advancement in academics and extracurricular environments — possibly creating the perfect opportunity for law firms to rethink their existing harsh up-or-out models of advancement and their somewhat mystical (if only non-transparent) requirements for success within their firms. Meanwhile, these same millennials, born to parents who emphasize flexibility, sharing, collaboration, and inclusion, are increasingly disenchanted with the isolation they experience in the legal education system and in private practice, making now an ideal time to implement more collegial, team-oriented training systems.

In the turmoil of these changes lies a perfect opportunity to innovate — if only lawyers were trained to do that! Perhaps PD professionals can lead the way.

About the Authors



Lori L. Lorenzo is responsible for supporting the Leadership Council on Legal Diversity in its efforts to create a more diverse legal profession by facilitating collaborative, action-oriented partnerships between general counsel and managing partners. Her primary focus is on innovative talent development initiatives relevant both to law firms and in-house legal departments. She is also responsible for the organization’s innovative program growth, design, and implementation, as well as all data metrics strategy, development, collection, and analysis. Lori has published several articles and she is a frequent speaker

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