

# CORPORATE LEGAL DEPARTMENTS: A NEW PROFESSIONAL GOLDMINE?

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In her article Professor Weldon provides a striking depiction of the constantly-evolving legal and regulatory labyrinth corporations must navigate.<sup>2</sup> From her presentation I have chosen to comment on one area that hits close to home for law students and young attorneys: the rise of the corporate legal department.<sup>3</sup> In response to the legal costs associated with regulatory compliance and corporate decision-making, companies have dramatically increased the size and scope of in-house legal departments in an effort to cut the historically indeterminate costs of outside counsel. This shift has altered the economics of the private law firm, which has in turn affected the job opportunities for law students and young lawyers.

As a result, I argue that law students, young attorneys, and those considering joining the legal profession should begin to seriously consider the corporate legal department as an entry-level alternative to employment in a private firm. First, this comment will summarize the economic shift in the provision of legal services. Second, this comment will address the growing allure of the in-house counsel position for entry-level candidates. Finally, this comment will provide recommendations for law students interested in an in-house position.

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<sup>2</sup> See Marcia Narine Weldon, *Corporate Governance, Compliance, Social Responsibility, and Enterprise Risk Management in the Trump/Pence Era*, 19 TENN. J. BUS. L. 275 (2017).

<sup>3</sup> In this article, I use the terms "corporate legal department," "in-house counsel," and "in-house legal department" interchangeably. By doing so, I recognize I may be guilty of elegant variation.

## I. THE CHANGING ECONOMY OF LEGAL SERVICES: A BRIEF OVERVIEW

“Large law firms’ value derives from their function of ameliorating the inherent asymmetry of information between lawyers and clients.”<sup>4</sup> Legal services are considered to be a “credence good” because it is difficult for consumers to evaluate the quality of the service before or after consumption.<sup>5</sup> As a result, the inability to accurately gauge the *quality* of the services provided has historically benefitted law firms by preventing clients from efficiently gauging the *value* of the services rendered.<sup>6</sup> In lieu of a more accurate measuring stick, clients—both individuals and companies—have historically relied upon firm reputation as a barometer of quality.<sup>7</sup> Some scholars refer to this process as “reputational bonding,” whereby clients “seek out large corporate firms because these firms have presumably done the work to select the most able lawyers for the most complicated work.”<sup>8</sup> In turn, the firm essentially “rents” its reputation to its lawyers just as a roadside franchise restaurant uses the franchisor’s reputation to draw customers.<sup>9</sup> In part, this reputational capital model depends upon the ongoing development of junior attorneys, which creates additional—and from the client’s perspective, unnecessary—costs.<sup>10</sup>

This business model has become increasingly fragile in the age of decreasing information asymmetry.<sup>11</sup> Incentivized by the dynamic de-

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<sup>4</sup> Larry E. Ribstein, *The Death of Big Law*, 2010 WISC. L. REV. 749, 753 (2010).

<sup>5</sup> See BENJAMIN H. BARTON, GLASS HALF FULL: THE DECLINE AND REBIRTH OF THE LEGAL PROFESSION 55 n.5 (2015); see also Ribstein, *supra* note 4.

<sup>6</sup> See Ribstein, *supra* note 4.

<sup>7</sup> BARTON, *supra* note 5, at 55.

<sup>8</sup> *Id.*

<sup>9</sup> Ribstein, *supra* note 4, at 754.

<sup>10</sup> Elizabeth Olson, *Microsoft Shifts From Paying Outside Lawyers by the Hour*, N.Y. TIMES (Aug. 3, 2017), [https://www.nytimes.com/2017/08/03/business/dealbook/paying-lawyers-by-hour-microsoft.html?\\_r=1](https://www.nytimes.com/2017/08/03/business/dealbook/paying-lawyers-by-hour-microsoft.html?_r=1) (“Most corporations have remained willing to pay for seasoned lawyers to resolve high-stakes legal matters, but they have been increasingly reluctant to subsidize additional costs like training entry-level lawyers.”).

<sup>11</sup> In his article, Ribstein notes that the law firm’s reputational capital model “depends both on the firms sustaining it and the clients needing it.” Ribstein, *supra* note 4, at 759.

scribed above, corporate clients have become more judicious consumers of legal services by developing their in-house legal departments.<sup>12</sup> At the same time, the historic inducements for attorneys to invest in their firm have largely devolved into partners developing their own books of business, available to whichever firm is willing to pay the most for it.<sup>13</sup> Though corporate legal departments will never fully supplant the role of outside counsel, the role of in-house counsel has left a much smaller universe of services to be performed by private firms.<sup>14</sup> A growing number of chief legal officers scrutinize outside counsel's billing statements and demonstrate a greater willingness to discount reputational costs by switching firms if the same service can be procured for a lower price.<sup>15</sup> Moreover, corporate legal departments have sought to increase the downward pressure on legal costs by "band[ing] together [and] shar[ing] information" in an effort "to reconnect the value and the cost of legal services."<sup>16</sup>

As a result of these economic changes, many law firms that previously offered summer programs have ceased altogether, and those that continue such programs have significantly decreased the number of positions available each year.<sup>17</sup> By contrast, the market for lateral hires has

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<sup>12</sup> *Id.* at 760.

<sup>13</sup> *See id.* at 759.

<sup>14</sup> *See id.* at 761. In particular, Ribstein notes that peak load periods as well as matters requiring specialization will continue to be handled by outside counsel. *Id.*; *see also* Jennifer Williams-Alvarez, *Legal Departments Keep Huge Percentage of Work In-House. Here's Why*, CORPORATE COUNSEL (June 26, 2017), <http://www.law.com/corpcounsel/almID/1202791393461/?sreturn=20170922145638> (citing a joint ALM Intelligence/Morrison & Foerster survey that indicated nearly 75% of work for legal departments is handled internally).

<sup>15</sup> Ribstein, *supra* note 4, at 761.

<sup>16</sup> BARTON, *supra* note 5, at 71 (citing the Association of Corporate Counsel's ACC Value Challenge).

<sup>17</sup> Prior to the Great Recession, most medium- and large-sized law firms had summer classes that began in the teens and went up from there, depending on the office size and other variables. Since the Great Recession, firms have continued to shrink their summer classes down into the mid-to-low single digits. *See* Press Release, NALP, Law Firm Recruiting Mostly Flat After Tumbling During Recession (Feb. 11, 2013) (availa-

sharply increased since the Great Recession. Consequently, if a law student does not receive a job offer from their 2L summer employer, they often find themselves closing out their final year of law school in a precarious position. It is against this backdrop that I argue law students and other job-seekers should train their sights on the corporate legal department as an alternative to entry-level employment in a private firm.

## II. THE GROWING ALLURE OF THE CORPORATE LEGAL DEPARTMENT

For the reasons stated above, entry-level opportunities in private firms have become scarcer. By contrast, in-house legal departments continue to grow and have become a mainstay of mid- and large-sized companies. Historically, these departments have been staffed by attorneys with industry experience who were lured away from a firm with the promise of better hours or, perhaps, the end of client development. In recent times, this trend has begun to change as companies and corporate officers have recognized the value of cultivating the in-house counsel culture from the outset. To put it in perspective, in 1992, 59% of all law graduates started at a law firm and only 8.9% started in business.<sup>18</sup> By 2012, only 49% of law graduates started at a law firm and 18.1% started in business.<sup>19</sup> As one commentator put it, law firm “training emphasis is on putting out fires, whereas in-house counsel focus on preventing them.”<sup>20</sup> Increasingly, when companies are faced with determining whether it is better to build the lawyer it wants or change the lawyer it gets, company officers are choosing to develop entry-level programs.<sup>21</sup>

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ble at <https://www.nalp.org/uploads/PressReleases/2013PerspectivesonFall2012PressRelease.pdf>.

<sup>18</sup> BARTON, *supra* note 5, at 71 (citing NALP, JOBS & JDS, CLASS OF 2011 15 (2012)).

<sup>19</sup> *Id.* To be sure, some of those individuals were hired into non-JD-required jobs, but many were hired directly into legal departments. *Id.*

<sup>20</sup> *Id.* at 72 (quoting Mary Swanton, *Some Law School Grads Head Directly In-House*, INSIDE COUNSEL (Mar. 1, 2012), <http://web1.beta.insidecounsel.com/2012/03/01/some-law-school-grads-head-directly-in-house?&slreturn=1508781648>).

<sup>21</sup> Mary Swanton, *Some Law School Grads Head Directly In-House*, INSIDE COUNSEL (Mar. 1, 2012), <http://web1.beta.insidecounsel.com/2012/03/01/some-law-school-grads-head-directly-in-house?&slreturn=1508781648>.

For entry-level job-seekers the corporate legal department can offer more of the stability of a “normal,” nine-to-five job while still providing opportunities for career advancement. For individuals who chose a legal career in an effort to avoid salesmanship and client development, the legal department can offer protection from the “eat what you kill” private firm model. Alternatively, the philosophical difference present in legal departments will appeal to those individuals more interested in “preventing fires” than putting them out. Finally, the in-house legal department will expose entry-level job-seekers to more of the business-side of the company in the context of their legal analysis. After all, the legal department exists to minimize costs.<sup>22</sup>

One major advantage of working for a company (rather than a law firm) is that JD graduates have multiple options outside of the legal department where law school training is still valuable. In the next few paragraphs, I aim to highlight some of the non-JD-required positions and which students they might attract.

Estimates vary but it is widely accepted that a majority of all lawyering in the United States falls within the scope of a transactional practice or regulatory compliance.<sup>23</sup> With that in mind, students looking to enter those areas should give strong consideration to the transactional advisory services offered by the so-called “Big Four” accounting firms and other similar consulting firms. These firms have steadily increased the scope of their transactional advisory services, with particular emphasis on the tax, labor/employment, and corporate governance consequences of mergers and acquisitions.<sup>24</sup> Students interested in a multidisciplinary approach to business consulting—i.e., including legal and non-legal advice—should strongly consider the vocational trajectory found in the Big Four. Similarly, law students interested in an international law practice should also look to the Big Four as each has been expanding

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<sup>22</sup> See generally Steven L. Schwarcz, *To Make or to Buy: In-House Lawyering and Value Creation*, 33 IOWA J. CORP. L. 497, 505–06 (2008).

<sup>23</sup> George W. Kunej, *Opening Statement*, TENN. L. MAG., Summer 2017, at 5.

<sup>24</sup> Nicholas Bruch et al., *Taking on the World: The Big Four in the Global Legal Market*, AM. LAW. (Oct. 18, 2017), <http://www.law.com/sites/americanlawyer/2017/10/18/taking-on-the-world-the-big-four-in-the-global-legal-market/>.

their legal arms in a growing number of countries.<sup>25</sup> Finally, students should not discount the future role the Big Four (and others) will play in the offering of legal services in the United States. For example, PricewaterhouseCoopers recently announced it is launching a new service that will temporarily provide lawyers to large in-house corporations.<sup>26</sup> Choosing to take your JD and work inside the Big Four may turn out to be a very prudent long-term play.

Similar to the Big Four, many other companies have found the value of law degrees in non-JD-required departments such as compliance and risk management. Regulatory compliance is a major facet of most large companies. Similarly, risk management departments continue to grow in response to threats such as cybersecurity issues and financial volatility. These are two areas where legal training is an advantage and may offer more variety than one might find in a traditional law firm. However, it is likely that entry-level opportunities in these types of positions will be more difficult to find through traditional law school job-postings.

### III. SETTING YOURSELF UP FOR SUCCESS: HOW TO BREAK INTO IN-HOUSE LEGAL DEPARTMENTS

Students take different approaches to law school electives and those decisions are obviously informed by the variety of courses regularly offered. As a result, each student will have to take into account a range of factors for which this article cannot fully account. Instead, I hope to offer some ideas based on the curricular opportunities offered at the University of Tennessee College of Law (“UT Law”).

#### A. *Dual Degrees*

Students pursuing positions in corporate legal departments or non-JD-required positions should seriously consider dual degrees, particularly the JD/MBA. A blend of business and law courses will provide students with a broad foundation in both and will allow students to bet-

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<sup>25</sup> *Id.*

<sup>26</sup> Debra Cassens Weiss, *PwC Launches Temporary Lawyer Service*, A.B.A. JOURNAL ONLINE (Oct. 16, 2017), [http://www.abajournal.com/news/article/pwc\\_launches\\_temporary\\_lawyer\\_service/](http://www.abajournal.com/news/article/pwc_launches_temporary_lawyer_service/).

ter understand the relationship each has to the other. In addition to the JD/MBA, students should consider dual degrees that combine a JD with industry-specific knowledge such as a JD/MPH or a JD/M.Eng. Alternatively, UT Law also offers graduate certificate programs in health policy and contractual and legal affairs in engineering and construction. Both the dual degrees and graduate certificate programs are good opportunities to gain additional knowledge and network with industry professionals.

### B. *Concentrations & Functional Concentrations*

Many law schools, including UT Law, offer concentrations where students can demonstrate a specialization by taking coursework in a given area. Students can use this in résumés, cover letters, and interviews to indicate an interest in working inside the company. More to the point, students gain a valuable, foundational understanding of the work of “business lawyers”—which they can display to potential employers—by taking so-called “business law” courses that cover such areas as antitrust law, commercial law, tax law, corporate governance, corporate finance, real estate law, mergers and acquisitions, labor and employment, and intellectual property. For students who find themselves at law schools without these concentrations, identifying ways to highlight they have taken such courses can serve an identical purpose.

### C. *Externships/Field Placement Opportunities*

Another threshold issue that law schools are confronting is the amount of time it takes a law school graduate to become a net profit-generator for their employer. In an effort to close the gap between graduation and profitability, many law schools are encouraging students to gain practical experience during their time in law school. Some students will do this by finding paid jobs in corporate legal departments with local companies. For example, the headquarters of both the Tennessee Valley Authority and Scripps Networks Interactive are located in Knoxville. As a result, several UT Law students find work opportunities in both companies’ legal departments. Where those positions are difficult to come by, law schools are working with students to find externships (sometimes referred to as field placement opportunities) with companies and governmental agencies so that they can gain valuable experience. For example, UT Law students benefit from the geographic proximity and close

relationship the university has to the Oak Ridge National Laboratory and Y-12 National Security Complex. Each semester, UT Law students work in their legal departments and gain exposure to legal issues involving intellectual property, export controls, and labor and employment. Experiential opportunities in law school, whether for credit or for compensation, demonstrate to employers that the student has some idea of what they would be doing as entry-level attorneys and that it would probably take less time (and money) to train this person.

### CONCLUSION

A 2016 study showed that the salaries for corporate in-house attorneys with less than four years' experience ranged between \$82,250 and \$112,750.<sup>27</sup> While those figures are less than the salaries offered by Big Law, a starting salary in this range will still be attractive to many. Given the cultural differences between in-house and outside counsel (e.g., billable hours, client development, and partnership track, to name a few), the salary decrease will be seen by many as a sensible compromise. One thing remains clear: the future provision of business law services will continue to change, even as the need for such services will continue to increase. Naturally, students interested in business law need to consider from where those services will come in the future and choose the optimal path for employment accordingly. Professor Weldon's depiction of the current range of legal issues companies must now navigate poses necessary questions about the burdens and costs to business growth. On the other hand—and however crass it may be—lawyers can look at that picture and recognize, like the opportunistic pioneers of the nineteenth century, “there's gold in them 'thar hills.” Now, we merely need to find a way to extract it.

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<sup>27</sup> Karen Anderson, *In-House Counsel Salaries for 2016*, ESQUIRE RECRUITING (Oct. 27, 2015), [http://esquirerecruiting.com/inhouse-counsel-salaries-for-2016/?lipi=urn%3Ali%3Apage%3Ad\\_flagship3\\_pulse\\_read%3B4GjNjcDiRL2fd5mHVx5Kcw%3D%3D](http://esquirerecruiting.com/inhouse-counsel-salaries-for-2016/?lipi=urn%3Ali%3Apage%3Ad_flagship3_pulse_read%3B4GjNjcDiRL2fd5mHVx5Kcw%3D%3D).