

## Going In House? It Might Be a Wise Move

Corporate scandals and an increased emphasis on ethics have raised the profile of top legal officers.

BY JANICE K. MANDEL

**E**arlier this year, Judge J. Michael Luttig of the U.S. Court of Appeals for the 4th Circuit stunned the legal world by surrendering his lifetime appointment to the bench in favor of the top legal job at Boeing Co. In his letter of resignation, Luttig called the job a “singular opportunity,” one that he could not pass up. Luttig’s move did not come as a surprise, however, to the in-house bar, which has noted that the career door that used to swing between government and law firms now revolves with a corporate stop as well for many top lawyers.

The demand for top legal talent in in-house departments has been growing as increased regulation and an increasing emphasis on corporate accountability have put greater emphasis on the attorney’s role in helping to foster an ethical corporate culture.

### Corporate Counsel

A Special Report

In the current environment it is not enough for companies to be ethical and compliant; they have to be seen as such. As a result, companies are evaluating candidates for top in-house positions on the strength of their reputation for scrupulous ethics, judgment, and objective decision-making beyond narrowly defined legal issues. In addition, law firms are seeing the benefits of seeking out new partners from in-house ranks because of the perspective on client service (and potential clients) that these lawyers can bring.

The increased demand has brought with it a rise in the stock of in-house counsel. Top lawyers are increasingly interested in exploring in-house careers because of their greater visibility and significance, combined with more competitive compensation. They also know that today, going in-house does not necessarily preclude them from returning to top jobs in private practice or public service. For instance, Deval Patrick, who was general

counsel of the Coca-Cola Co. from 1999 to 2004, is now the Democratic candidate for Massachusetts governor.

#### THE PLAYERS

In the past 18 months, the legal profession has noted the career moves of several other prominent lawyers from noteworthy private-practice and public service positions to in-house positions at some of the nation’s most prominent corporations, including the following:

- Larry D. Thompson, former deputy attorney general of the United States, became senior vice president, government affairs, and general counsel and secretary at PepsiCo Inc. in early 2005.
- David G. Leitch, former deputy counsel to the president, became general counsel and senior vice president of Ford Motor Co. in April 2005.
- James B. Comey, also former deputy attorney general, was appointed senior vice president and general counsel for Bethesda, Md.-based Lockheed Martin Corp. in August 2005.
- Beth Wilkinson was appointed in February as the new executive vice president, general counsel, and corporate secretary for Fannie Mae after serving as a partner in Latham & Watkins’ D.C. office and as a Justice Department prosecutor.

“Although many major companies had in-house lawyers and legal functions of high stature for years, we’ve certainly seen the prominence of the legal function increase in a lot of companies post-Sarbanes, post-Enron,” notes James Wilber, a principal with Altman Weil, a management-consulting firm.

At the same time that corporations are demanding more of their in-house lawyers in terms of managing the company’s compliance, regulators and others are also expecting more. For example, the Sarbanes-Oxley Act required, for the first time, that the Securities and Exchange Commission establish formal standards of professional conduct for attorneys representing public companies. And the behavior of in-house lawyers faces scrutiny similar to that placed on other business executives. For example, in the recent scandal involving Hewlett-Packard’s use of private investigators to determine the source of boardroom leaks to the press, former general counsel Ann Baskins was called before a congressional sub-

committee, and Kevin Hunsaker, former HP chief ethics director and senior legal counsel, was charged with fraud and conspiracy in California earlier this month.

“Typically, lawyers have always had an enhanced concern and recognition of their responsibilities to be vigilant,” says Martha Ann Sisson, a former in-house counsel at Mobil Oil Corp. and co-founder of Garrison & Sisson, an attorney-search firm that fills many in-house positions. “There is now external pressure—board pressure and shareholder pressure and regulator pressure—in order for that to be accomplished. It’s always been a duty, but now it’s a business imperative; it’s a legal requirement.”

### **MAKING 50 DECISIONS A DAY**

From the attorney’s point of view, in-house work offers significant attractions and challenges.

When Beth Wilkinson was hired, for example, Fannie Mae was fighting its way back from a major accounting scandal and criticism of what some characterized as an arrogant corporate culture. The offer to join Fannie Mae “kind of landed in my lap,” Wilkinson says. “I wasn’t sure I would like in-house work because I love trial work and making decisions.” Wilkinson was one of the lead Justice Department prosecutors in the case against Oklahoma City bomber Timothy McVeigh. “Ironically, when I got here, I found I make 50 decisions every day. That, I love.”

It falls to in-house lawyers to be proactive in helping corporate clients understand what needs to be done to ensure that the company is aware of its obligations and the pitfalls it should avoid.

“On a day-to-day basis, often it falls upon the law department to help steer the company through those tricky waters encountered when running any major business,” says Walfrido “Wally” Martinez. He just returned to Hunton & Williams as worldwide managing partner of the firm after serving as senior vice president and general counsel of Diageo North America, a producer of alcoholic beverages.

Martinez’s move from Diageo to Hunton points out another notable change in the perceptions of the in-house career path. Now, more than before, attorneys have the chance to move between private practice and in-house practice, with law firms increasingly interested in hiring in-house counsel. Lawyers who return to law firms say their in-house experience has given them valuable insight into what their clients need from them. It is that insight that makes them particularly attractive to law firms.

Marc Martin, a partner in Kirkpatrick & Lockhart Nicholson Graham’s D.C. office, has been able to tap into his experience as founding chief legal officer of three communications companies. “An in-house lawyer has a lot to juggle,” he says. “In addition to being at the top of your game substantively, you have to gain and maintain the trust of your internal clients—who are not obligated to let you in the inner circle merely because you are on the payroll—and manage both the internal legal team and outside counsel.

“My stint as a general counsel was an invaluable opportunity to view the world from the client’s perspective, and from the in-

house lawyer’s perspective,” says Martin. This insight, he believes, makes him more effective in collaborating with in-house clients.

Steven Fabrizio agrees. He started out at top-tier firms in New York and Washington before he moved on to start and head the litigation department for the Recording Industry Association of America. There, he gained industry expertise and contacts that he then parlayed into a successful entertainment and new-media practice at Jenner & Block. Fabrizio emphasizes the value the in-house experience brings to his work as outside counsel.

“When I was in-house litigation counsel purchasing legal services, it became clear to me that even the best and most skilled outside counsel fell into two categories: those that internalized the pressures I faced and the interests of my constituents, and those that did not or could not,” says Fabrizio. “I only wanted to work with the former. As simple as it sounds, that experience has made me a better private-practice lawyer.”

### **ON THE MONEY**

The increased significance of the role of in-house counsel is accompanied by an upward trend in compensation. According to the newly released 2006 Law Department Survey by the management-consulting firm Hildebrandt International, the chief legal officers from the 164 companies nationwide that participated in the survey had a median total cash compensation (salary and bonus) of more than \$700,000, with bonuses making up about half of the total.

In the Washington region, chief legal officers at the largest public companies have a median total cash compensation of \$1 million or more, according to data gathered from the companies’ SEC filings. On top of that, most receive stock awards and stock options that can boost their total direct compensation by several million dollars. General counsel at midsize public companies may have total cash compensation of at least a half-million dollars, as well as significant stock awards and options.

Hildebrandt’s data also show median total compensation for chief legal officers increasing by 8.9 percent from 2004 to 2005 and by 6.4 percent from 2005 to 2006.

More than ever before, companies are putting greater emphasis on merit bonuses, consistent with the pay-for-performance corporate model. Lauren Chung, a consultant and law-department-survey editor with Hildebrandt, expects that bonus and noncash incentives will continue to make up a greater portion of total compensation, particularly at the more senior levels of the law department. “While base salaries will rise steadily, the significant earning potential lies with bonuses and noncash or long-term incentives,” she says. “Participation in long-term incentives will only increase as many more companies seek methods to retain talent and pay for performance.”

No one maintains statistics on the number of in-house counsel, so it is unclear whether the raw number, or the number of companies with in-house counsel, is increasing. Martindale-Hubbell lists some 5,100 in-house lawyers and more than 1,400 organizations with in-house staff in Maryland, Virginia, and the District. The Washington Metropolitan Area Corporate

Counsel Association, the professional association for in-house counsel in the area, has tripled its membership in the past eight years, from 500 to almost 1,500. At the same time, WMACCA has seen an increased demand for services to meet the needs of both former law firm experts now practicing in-house for large legal departments and the general counsel of small companies.

“The current corporate environment requires sophisticated counsel who possess deep organizational knowledge. Expectations regarding corporate culture have changed, and so have the expectations for in-house counsel,” says Eric Reicin, president of WMACCA and vice president and associate general counsel at Sallie Mae Inc. “More than ever before, in-house counsel need to act as business partners who bring to the table the legal perspective on potential risks.”

In the post-Sarbanes-Oxley world, increased emphasis on

compliance and corporate accountability has opened doors for lawyers to move among law firms, the government, and business. And the professional challenges associated with meeting those requirements help ensure that corporate America will have a high-quality pool of attorneys to draw on for in-house leadership.

Steven Fabrizio notes that in-house counsel work “puts every skill you have as a lawyer to the test every day. You get to—in fact, you have to—see individual legal issues as part of a broader constellation of organizational issues in ways that outside lawyers just don’t. For people who like to challenge themselves, that is an attractive environment in which to practice law.”

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*Janice K. Mandel is a North Bethesda, Md.-based feature writer who frequently explores business trends. This article was commissioned by the Washington Metropolitan Area Corporate Counsel Association.*