

# Giving In-House Legal Departments More Responsibilities

I think they should, so let me explain the roles beyond that of traditional general counsel “ of which there are three “ and tackle both the objections to this broader concept of what a general counsel can manage and the advantages it brings.

Think of the roles as four rings of increasing responsibility for a general counsel.

1. The inner and most common ring includes reporting to the CEO and having most of the practicing lawyers in the company reporting to you as part of the traditional portfolio. GCs are comfortable in that familiar zone.

We are all familiar with the customary accoutrement of general counselship: legal advisor to the business and staff units, manager of litigation, mentor of lawyers, guardian of the legal budget. But I am still surprised to find as I did in a manufacturing company that products liability fell to another corporate executive, or in a retail products company that human resources had its own lawyers, or in an energy company the business lawyers reported to the heads of the several business divisions. Likewise, although well more than 80 percent of all general counsel report to the company's (or agency or partnership's) top executive, many report to the CFO or a Chief Administrative Officer. The first ring, therefore, has cracks in it. Not every general counsel has all the trappings of control over the company's legal functions and future.

2. Moving up to the second ring, the general counsel with broader career goals takes on responsibility for the corporate secretary function and a handful of what I'll call broader-legal functions.

The broader legal functions that characterize the second ring often come with the title of general counsel, but nothing can be taken for granted. For general counsel, being the corporate secretary is not automatic. Surveys show that one in five do not manage that function. Patent and trademark lawyers are similar in that most general counsel oversee them, but in many companies they report to the research and development group or to marketing. Claims functions are amphibious; sometimes in the legal water and sometimes on the land of finance. A government entity has its labor lawyers report to the head of human resources. Collections work has the same characteristic of sometimes being part of the legal department and sometimes not.

Perhaps the most common example of a broader legal function that can be under the general counsel, but often is not, is compliance. With the onslaught of corporate governance concerns in recent years, compliance has swung between being a stand-alone function “ reporting to the

CEO and Audit Committee as well as being part of another function, most commonly the legal function. Housed with legal, it enjoys some protections of attorney-client privilege.

3. More ambitiously, a general counsel can expand into the third ring by taking on the management of any of several quasi-legal responsibilities, such as security, internal investigations, and government affairs.

Breaking the law barrier means taking charge of functions that have some relation to the law and that share a fundamental theme: they involve risk to the company and compliance with risk reduction practices. For instance, loss prevention, the function that tries to minimize inventory shrinkage and cash leakage in retail operations, illustrates the overlapping concerns of risk of loss and actions to minimize that risk. Certainly wrong-doing can lead to legal action, or terminations that trigger law suits, and just as certainly it is crucial that the company institute procedures so that employees comply with proper practices. Another example is overseeing a company's corporate aircraft, which is the responsibility of the general counsel of Pfizer.

Many more quasi-legal functions swirl around law. Procurement, mostly an administrative activity but with omnipresent contracts and disputes, shows this Janus-like quality of looking at law as well as risk and compliance. As interesting are those general counsel charged with responsibility for corporate security or internal audit or government relations or environmental health and safety or ethics or the list goes on and on. The newly-appointed general counsel of Medtronic, Terry Carlson, is also responsible for the Government Affairs function. I know an insurance company general counsel who runs Human Resources and a retail general counsel in charge of insurance risk management (buying insurance policies)! The general counsel of Pharmacia, before Pfizer acquired that company, ran the company's PAC. All these functions fall into the category of third-ring, quasi-legal functions.

4. The bursting of the law barrier completely pushes a general counsel into the fourth ring, the ring of the chief risk officer. I foresee in the future more general counsel serving their company in the realm where management of compliance, risks, and legal exposure come together.

In ancient Ireland, a criminal could be banished beyond the town's fortifications. The fortifications were stout sticks called "œpales," and it was harsh indeed to be forced "œbeyond the pale." Many general counsel may object that handling the traditional portfolio of legal responsibilities -- the first ring -- is quite challenging enough, thank you, and breaching the law barrier of the third and fourth rings is, well, beyond the pale. Let me address some of the protests and risks, but then make the case for this career progression toward breaking the law barrier.

Everyone knows the Peter Principle, and that many capable lawyers are less capable managers. Moving through the rings could be putting your head in a career noose if your management skills choke others. But for some general counsel, they have the management ability but simply haven't considered the broader roles they could play.

Even oozing management prowess, should a general counsel who is ignorant of the inner workings of a cognate area “ who, say, has no idea how to create a risk assessment map “ back off supervising internal audit? No, because many people manage others who can do functional tasks far beyond the manager. It's the strategic integration of legal exposure, risk management, and procedural compliance that justify the new role.

Second, companies and colleagues abhor power vacuums, and a general counsel who embarks on an ambitious program to take over neighboring functions will set off political wars. No function wants to be annexed and empire-building has a bad name; for example, the CFO will resist yielding her tax lawyers. But, I would say in response, that power should accumulate for those who are most capable. The company will benefit from adept management of complementary functions.

Third, the rewards of ring hopping and barrier breaking may be fame, fortune, and the gratitude of your company and its stockholders, but its dark side may be pressure, long hours, and stomach-churning decisions. Right again. No one said that professional advancement and a wider cope came free of cost.

If a general counsel explores the possibility of taking charge of more functions, will that cause confusion in the company over the person's “œproper” role? Possibly, but this fourth objection fails. No best practice defines the optimal role of a general counsel. The needs of the company and the capabilities of the person set the only limits. Companies ought to be flexible and creative, assigning employees to their highest and best use. Moving a general counsel up a ring or two could be a pivotal, creative, and much-commended decision. Besides, the process of thinking about the relationships between law and other functions as well as who should captain those functions beats trundling along in the accustomed ruts.

Why, then, should changing rings be pursued? Why should a general counsel even give thought to breaking the law barrier? Consider four reasons. Your company will be better served if someone has a comprehensive oversight of risk functions “ those that seek to identify and minimize liabilities through legal advice and sound compliance practices. Perhaps the analogy could be made to the new Homeland Security Department at least as far as it is an attempt to rationalize and improve our country's efforts to reduce risk. So the first reason is that you will benefit your company. If the common theme in the beyond-the-barrier functions is that of risk, law, and compliance, an integrated approach to managing them will benefit everyone.

A second reason for stepping beyond the well-trod path of legal responsibility is simple: a broader scope of work is more interesting. True, the law is a jealous mistress, but challenging management problems, new opportunities to learn, and broader perspectives reward the

professional polygamist. To some lawyers, the headwinds of management will stop them from ring-hopping. For others, the new-found range brings its own professional rewards.

The third reason for barrier breaking recognizes that the senior lawyers in your department, those who report directly to you, have no promotions in prospect while you are in the position they may covet. If you expand your responsibilities, you make room for deputies or other promotions.

Rick Collier, the former general counsel of Pharmacia and now with Morgan Lewis & Bockius offers another reason for role expansion by a general counsel: “CEO’s sometimes want to narrow their span of control, so the general counsel ends up being assigned responsibilities in addition to law.” The logic behind those extra assignments may or may not follow the shared themes of risk, legal exposure, and compliance practices.

Fourth, more responsibility usually means more money, a chair closer to the end of the executive committee table, and a stronger resume. Little more need be said.

I admire general counsel. They have the brains and ambition to take on broader responsibilities. A larger conception of responsibilities beyond the traditional legal might propel some general counsel to stretch beyond. In fact, in this world of intertwined law, risk and compliance monsters, someone holding the sword against it might make all the difference.