

Taking a Chance on More

General counsel who expand the rings of responsibility can benefit their companies and spice up their own careers at the same time.

BY REES W. MORRISON

For an in-house lawyer, doesn't promotion to general counsel mean you have reached the pinnacle? You're the top lawyer, reporting to the CEO. You oversee the law department as it protects the legal well-being of your company. That's been your career goal—but should you consider climbing higher and taking on even more? Shouldn't general counsel break the law barrier?

General counsel should realize there are real advantages to moving beyond the traditional responsibilities. First, though, let's examine the various roles. It's helpful to think of them as a series of rings of increasing responsibility.

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. GCs are comfortable in that familiar zone.

This is the customary work of general counselship: legal adviser to the business and staff units, manager of litigation, mentor of lawyers, guardian of the legal budget.

But not even that simple definition is followed in every situation. We take for granted that general counsel have the normal panoply of responsibilities, but quite a few of them lack one or more. I am still surprised to find, as I did in one manufacturing company, that products liability fell to another corporate executive, or that in a retail products company, human resources had its own set of lawyers, or that in an energy company, the business lawyers reported to the heads of the several business divisions.

Likewise, although more than 80 percent of all general counsel report to the company's (or agency's or partnership's) top executive, many others report to the chief financial officer or a chief administrative officer. The first ring, therefore, has cracks in it. Not every general counsel has full control over the company's legal functions and future.

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

The broader legal functions in the second ring often come with the title of general counsel, but nothing can be taken for granted. For instance, being the corporate secretary is not automatic. In my research, I've found that about one-fifth of general counsel do not manage that function.

Although most general counsel oversee the company's patent and trademark lawyers, in many companies they report to the research and development group or even to marketing. Claims functions are also a mixed bag, sometimes reporting to the legal department and sometimes to finance. One government entity requires its labor lawyers to report to the head of human resources. And 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 the responsibility of 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 department—reporting to the chief executive officer and audit committee—and being part of another function, most commonly the legal department. Housed with legal, it enjoys some protections of attorney-client privilege.

3. More ambitiously, 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 jobs 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, wrongdoing can lead to legal action or to terminations that trigger lawsuits, and just as certainly it is crucial that the company institute procedures so that employees comply with proper practices. Another example might be 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 job but with omnipresent contracts and disputes, shows this Janus-like quality of including both law and risk and compliance.

As interesting are those general counsel charged with responsibility for corporate security, internal audits, government relations, environmental health and safety, or ethics and so on. For instance, the newly appointed general counsel of Medtronic, Terry Carlson, is also responsible for government affairs.

I know an insurance company general counsel who runs human resources and even a general counsel for a retail company in charge of insurance risk management (in other words, buying insurance policies). The general counsel of Pharmacia, before Pfizer acquired it, ran the company's political action committee.

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

BEYOND THE PALE

Let's consider some challenges to breaking the barrier. In ancient Ireland, a criminal could be banished beyond the town's fortifications. The fortifications were stout sticks called "pales," and it was harsh indeed to be forced "beyond the pale." Many general counsel may contend 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. While that might be true, let's consider breaking the law barrier.

In truth, not every capable lawyer is a capable manager. Moving through the rings could be putting your head in a career noose if your management skills aren't very good. But some general counsel have the management ability, but simply haven't considered the broader roles they could play.

Even with great management prowess, should a general counsel who is ignorant of the inner workings of a specific 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 integration of legal exposure, risk management, and procedural compliance that justifies 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 department wants to be annexed and empire building has a bad name.

For example, the chief financial officer will probably resist yielding her tax lawyers. But I would argue 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 scope comes 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 "proper" role? Possibly, but keep in mind that there is no ideal definition of 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 run those functions beats trundling along in the accustomed ruts.

Why, then, should general counsel move through the rings? Why should a general counsel even give thought to breaking the law barrier?

First, your company will be better served if someone has a comprehensive oversight of risk and compliance responsibilities. An integrated approach to managing them will benefit everyone.

In addition, 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 risk-taker. To some, the headaches of management will stop them from ring-hopping. For others, the newfound range brings its own professional rewards.

Also, 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 explanation: "CEOs sometimes want to narrow their span of control, so the general counsel ends up being assigned responsibilities in addition to law."

Finally, more responsibility usually means more money, a chair closer to the end of the executive committee table, and a stronger résumé. 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 work might propel some general counsel to stretch. In fact, in this world of intertwined law, risk, and compliance monsters, someone holding the sword against them might make all the difference.

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