

Structuring Your Law Department

Law Department Management



I have been asked at many conferences or by colleagues who have become general counsel: “What is the correct structure for my in-house law department?” Some GCs have strong preconceived views on this issue. Additionally, some general counsel who become responsible for a new team structure the department around what they did in the past or based on the performance or skills of current team members. My answer to the correct structure, whether law, technology, or any support function always is: “It depends.” So, what does it depend on? Simplistically, the way to organize any corporate department is to follow the formula of company strategy and structure, stakeholder expectations, and then, lastly, populate it with individual team members.

The most significant structural differences you will see in law departments are whether they are centralized or decentralized. A centralized department is usually structured in a way where all the areas of legal responsibility are at one location, under one budget, and all reporting directly to one general counsel. A totally decentralized department will likely have legal staff at different locations, housed within different subsidiaries or business units, with multiple GCs who report to business leaders. Of course, there are hybrids of these two extremes. And in even the most decentralized organizations there needs to be some relationship to the parent general counsel. The decision on whether to be centralized or decentralized, and to what degree, is driven by the company strategy, and how the business and your team can best implement that strategy.

When I was general counsel of US WEST our strategy was to provide integrated telephone/data services to our customers. Our different customer-facing business units were structured in a way to offer all these services, whether wireline, wireless, or DSL (digital subscriber line). In addition, the leaders of all of these business units were located in Denver, CO. Therefore, a centralized legal department, primarily located in Denver, made sense. Deviations from this approach were driven by different jurisdictional strategies. Because we were significantly regulated at the federal and state

levels, regulatory attorneys were located within these jurisdictions. Similarly, since we operated in 14 states, litigation attorneys were located and licensed to practice in those states.

As general counsel of MassMutual, our business strategies are more decentralized. MassMutual's protection businesses run autonomously from our major asset manager subsidiaries of OppenheimerFunds and Barings. And these entities have very different legal needs with their primary locations in Springfield, MA, Charlotte, New York, and London. To support the business strategy and structure, we have designed the legal group to be very decentralized, with each major subsidiary having general counsel who are members of the subsidiary CEO's team at the subsidiary's headquarter location.

Regardless of the structure, in order to be strategic, in-house lawyers need to understand not only business but their clients' business. To achieve this, it is beneficial to co-locate business attorneys with their clients. If they are unable to co-locate, it is valuable to have attorneys with specific client relationships and responsibilities, such as a compensation specialist aligned with the HR department. In a well-run legal organization, the attorneys are viewed by their clients as part of the business team.

The degree of centralization within a legal team is also based on the business and legal expertise needed to support headquarters operations or, on the other extreme, the daily tailored advice to a particular line of business. The functions most often aligned with headquarters are often the corporate secretary, and tax, intellectual property, and benefits specialists. Legal functions that are more in the middle of the continuum, but can also be centralized, include litigation, employment, mergers and acquisitions, real estate, and antitrust. Business lawyers who learn to understand in detail the specific strategies and legal issues of their clients are on the far end of the decentralization spectrum. For these attorneys, whether a subsidiary general counsel or an "account partner" for a business unit, their value is being aligned with the business.

After company strategy and business structure, the next most important factor to consider is who are your key stakeholders, and what are their issues and concerns. The board of directors and regulators will likely only want to rely on one person for their legal advice and input. It simply will not work if the board of directors, or a regulator, asks about a certain legal issue and the response from the general counsel is: "Don't ask me, that isn't our structure. That is the responsibility of a subsidiary general counsel." To them, it is comforting to know that the overall responsibility for compliance and doing what is right legally is associated with one person. In addition, the CEO and the leadership team may also have their views or desires on the proper structure. Much of this may be based upon what has worked well for them in the past. Finally, to the extent the enterprise wants to avoid duplication and waste, often at the direction of the CFO, there may be a desire to centralize activities in the legal department to reduce overlap and waste and maximize purchasing power with outside vendors.

Keep in mind that one of the most significant benefits of having a structure that reports into or has a close relationship with one general counsel is lawyer attraction, retention, and development. Simplistically, attorneys will be attracted by the different ways to grow their careers. Having the ability to provide these challenges and opportunities has a significant impact on retention. The ability to move attorneys throughout the enterprise and company locations can be significant for individual development. All this focus on attraction, retention, and development makes the enterprise's legal function much stronger and drives better results.

Whether it is a second direct line or a dotted line, the relationship of the general counsel to all of the enterprise's lawyers must be clearly understood and agreed to by the board of directors, CEO, and all subsidiary general counsel. At MassMutual, where the structure is very decentralized, with "dotted-

line" reporting by the subsidiary general counsel to the general counsel, and direct line reporting to the subsidiary CEOs, we created a charter for the structure of the legal functions. The charter is approved by our board of directors and establishes the standards for all attorneys, and the responsibilities and reporting obligations of the subsidiary GCs and their teams. It requires the visibility and input of the parent general counsel in hiring, objectives, performance reviews, compensation, and termination of the nonparent general counsel (with this transparency, significant disagreements can be escalated to the CEO). Furthermore, the subsidiary general counsel must promptly report all significant legal, regulatory, or reputational issues to the parent general counsel. To ensure that their direct supervisor, the subsidiary CEO, does not request a different action or nonaction be taken, the MassMutual board has required that the subsidiaries' boards adopt the charter. Thus, even if the subsidiary CEO were to ask their GC not to disclose a certain item to the MassMutual parent general counsel, that instruction — or following it — would violate the directives of the board of directors.

Once the optimal structure is designed to address the foregoing factors, specific roles and responsibilities can be established. Elements to consider are the outcomes that must be attained by each team or person and their accountability. And whether internal or external resources will be used for each. For each area, there needs to be an understanding of the volume of work and makeup, as well as the number and type of legal professionals necessary to accomplish these tasks. There are often obvious groupings of work that necessitate bringing activities together.

Finally, an organizational chart can be designed with appropriate spans of control (generally eight to 10 individuals reporting into another) and the skills, including leadership skills, necessary to perform each function. At this point, consider the appropriate person to fit each role. Only after creating the detailed structure can you populate the positions with the legal professionals that have the necessary and appropriate skills and abilities to assume each responsibility.

So, to answer the question what is the correct structure for your law department remains: "It depends." And then when pressed for details I say it depends on:

- Company strategy;
- Company structure;
- Ability to be strategic;
- Stakeholder expectations;
- Talent attraction, retention, and development;
- Appropriate organization structure to effectuate the above; and
- Individual skills and subject matter expertise.

There is no one-size-fits-all structure for law departments. You need to figure out what is best for your strategy, company, and team.

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