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First Thing We Do, Let’s Exclude All the Lawyers

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The independence and role of the legal department within regulated banking organizations has come under pressure in recent years. This pressure has been exacerbated by a clash of professional silos among legal, risk, and compliance with a thumb on the scale inserted into the mix by the banking supervisors’ mistrust of lawyers and the in-house legal function. It is far beyond the business-as-usual, healthy tension over legal costs. The result is a push by some to contain in-house lawyers and the legal function away from a trusted advisor role into a smaller role and to exclude them from supervisory meetings and management committees. The main drivers of this push have been bank examiners, senior supervisory staff, and economists at the banking agencies, as well as risk-management professionals consisting largely of former examiners, supervisory staff, and economists from banking agencies.

Part I of this article explains how the federal banking supervisors have, by focusing on risk management and separating compliance from the legal department, both accidentally and deliberately contributed to the diminishment of the in-house legal function at banking organizations. Part II argues that this situation has become dangerous for banking organizations and the rule of law, and Part III offers some suggestions to improve the situation.