Corporate Law Departments & Organizational Methods

Corporate law departments have been a growing sector of the legal profession, but the number of lawyers employed in this segment of the profession appears currently to be stable. There are two principal methods of organization in corporate law departments, decentralized and centralized. The organizational style of the law department often reflects the management concepts prevalent throughout the corporation.

Patent departments are also organized in several ways. Some companies employ more patent attorneys than general legal personnel while others require more legal counsel, depending on the business of the corporation. Manufacturing companies have greater patent needs than do service or financial corporations. The patent function may report directly to the general counsel or to another corporate official such as the vice president for research.

The internal corporate law department has become commonplace in the business corporation for many reasons. Among the most common are (1) economy, (2) more responsive service, and (3) integration with management.

In many corporations, the law department is a relatively newcomer. Typically, some years ago, there was a "general counsel and secretary" who was more corporate secretary than general counsel. He functioned with little staff and possibly coordinated a few legal activities among outside law firms which provided various services to the several departments of the corporation. Then, either as a deliberate management policy, or in consequence of hiring a new lawyer, the law department began to build a staff and to take over an increasing share of the legal work of the enterprise.

In a corporation with a weak law department, or with none, it is common for various management functions to employ their own counsel. The sales manager may need an expert on franchising. The chief personnel officer needs a labor specialist. The vice president for finance needs legal services to secure loans, and the chief engineer needs help with patents. The board of directors and the chief executive desire outstanding advice and a prestigious name to steer them clear of anti-trust involvements and through securities issues. In some companies it is a historical fact that the securing of counsel is the responsibility of each management function.

In other situations, the corporation may have designated one general business law firm for most of its
needs. In fact, however, the various management functions would deal directly with the departments or senior specialists of the law firm. To the extent that the general firm could not provide certain services, such as patent or labor work, multiple law firms would be used.

Change may come slowly once a decision is made to build an internal legal capacity. The traditional functions under the care of the corporate secretary, and those relating to the president and board of directors almost always find their way into the enlarged legal function. However, the previously decentralized legal activities may or may not come within the jurisdiction of the enlarged law department and the general counsel. In some companies there may be good reason to maintain separate legal capabilities in various corporate functions.

Jurisdiction Survey


Respondents were asked to provide information on who held jurisdiction with regard to specific legal and law-related functions--the general counsel or another executive. Provision was made on the questionnaire to indicate that such a function was not in existence (e.g., patent law in a hotel chain). In computing percentages, companies that reported the absence of a function were omitted from the calculation.

The head of the legal function (or general counsel) does not, in many organizations, have direct responsibility or control of all the legal and law-related functions of the corporation. Jurisdiction over the tax function has experienced a steady decline from the 45% figure of ten years ago.

Law department size seems to correlate with the jurisdiction of the general counsel. (Size was determined by the number of non-patent lawyers.) The general counsel is more likely to be responsible for the patent activity in smaller law departments than in larger ones, but he is less likely to have jurisdiction over tax law and labor law.

Activities

The surveyed law departments were asked: "How much of the corporation’s legal work is handled by the internal staff?" A majority reported 75% or more of the legal work is done internally, and over eight percent reported doing all legal work with house counsel.

Forms of Organization

There are two major modes of organization of corporate law departments, centralized and decentralized. Most are centralized. That is, they are located in a corporate headquarters and provide legal services for the company in all of its enterprises and locations. In the decentralized law department, the headquarters contains only a general counsel and a few legal specialists. Operating divisions or regional organizations contain other groups of lawyers who function relatively independently of the general counsel, and who provide services to the various entities which make up the corporation.

The decentralized category is subdivided between those decentralized groups in which attorneys are assigned to and report to individuals in subsidiaries or divisions of the corporation, and in the alternative to a few corporations which have established regional counsel covering geographic areas which report to a central general counsel. Within the centralized law departments, the most common internal structure is that organized along the lines of the corporation, rather than along regional lines.

Generally, the legal function closely parallels and is based upon the management organization and managerial philosophy of the corporation of which it is a part. Corporations with strong central management will have a centralized legal function. Corporations which place a great deal of emphasis upon decentralization, such as General Electric, will have decentralized legal responsibilities.

Another major variant is the placement of the patent function. In most corporations, the patent law organization reports directly to the general counsel and through him to higher management. In a few organizations, the patent counsel reports directly to higher management. The more common alternative is for the patent counsel to report directly to the vice president in charge of research and development, or the vice president for engineering. In technologically oriented corporations, it is quite common for the number of patent attorneys to exceed substantially the number of attorneys employed in other work.

No valid generalizations can be made with regard to a preferred mode of organization for law departments.
The legal groups of a corporation must function within the general organizational pattern of the corporation itself. Their philosophy of organization reflects the philosophy of the corporation. Since, in our competitive economy, both centralized and decentralized management organizations have survived well, even among the larger corporations, there are proponents and detractors from both alternatives. The law department is the tail which cannot wag the general organizational dog.

**Patent Function**

A more specific case can be made with regard to the reporting relationship of the patent function. The acquisition, preservation, and safeguarding of intellectual knowledge is becoming ever more important in our technological economy.

The initial procurement of patents requires engineering or other technologically related skills, and almost all patent attorneys are trained in some aspect of scientific technology. However, defense against infringement, the licensing of patents, the preservation of trade secrets, the sale of general technology, and like matters with which patent departments are generally involved, are clearly lawyer-like activities based upon law and legal knowledge, rather than upon a research or engineering background. These activities relate closely to other legal activities carried on within the corporate law department. There are several aspects of antitrust law and problems of restraint of trade which can become very much a part of the activities of patent lawyers, and which require close coordination between general legal and patent groups. In those corporations where patent activities are organizationally separated from law and report to higher management through a technical executive, a lack of coordination and rivalry may develop between the two legal functions, or at best, there may be difficulties in communications between the two groups of lawyers. A good case can therefore be made for consolidation of responsibility for all legal activities under the general counsel of the corporation.

Another dichotomy which can cause rivalries occurs when the tax law function reports to someone other than the general counsel, such as the Vice President of Finance. Since many legal issues today, such as acquisitions, divestitures and opening of new plants, have tax implications, the splitting of these functions can cause jurisdictional disputes and intra-corporate tensions.

**Relationship with Other Corporate Components**

In the majority of larger corporations, the general counsel reports directly to the chief executive officer, and he is generally designated a vice president. A typical organizational chart illustrating such a placement of the legal function is that of the Tennessee Valley Authority (TVA).

At TVA, the law division is on a par with the other staff functions of personnel, finance, purchasing, and property. In this rather typical organizational chart, operational components are shown staff components. This indicates that each of the staff components will carry on a relationship with the operating units and with each other.

The inclusion of the functions of corporate secretary as subordinate to those of the general counsel is common in publicly held corporations. The organizational chart of the law department of Continental Oil Company, illustrates a simply organized decentralized law department, in which legal functions are grouped by geographic needs. The corporate manual describes the division and responsibilities of these major components of the law department as follows:

The vice president and general counsel, as the senior manager of the Legal Department, provides overall direction for the company’s legal activities. He is responsible for maintaining professional competence in all of the company’s legal staffs so that effective legal counsel and services are available to support each segment of the company. He is directly assisted in these efforts by the associate general counsel who has all the authority of the vice president and general counsel except where it is specifically stated that ”only” the vice president and general counsel’s approval is authorized.

Also reporting to the vice president and general counsel is the secretary who is responsible for the corporate secretarial and stock transfer activities of the corporation.

Reporting to the associate general counsel are two assistant general counsels. The assistant general counsel located in Stamford is primarily responsible for providing legal advice and counsel to those executive officers and managers concerned with Eastern Hemisphere Petroleum, Conoco Chemicals and coal activities. The assistant general counsel located in Houston is primarily responsible for providing legal advice and counsel to those executive officers and managers concerned with Western Hemisphere Petroleum activities. The assistant general counsels provide functional guidance for those legal offices in subsidiaries
and affiliates associated with their area of responsibility.

Illustrative of a centralized legal function in a diversified corporation is General Mills. At General Mills, the chief legal officer supervises the patent and trademark function, and also has the responsibilities of the corporate secretary. The law department is divided into four principal activities: (1) patent and trademark, (2) general corporate legal affairs, (3) corporate secretary functions and stockholder matters, and (4) corporate records.

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**Role of the Legal Function**

The organizational and reporting relationship of the legal functions of a corporation must be related to the general corporate management structure. The reporting relationship will also be a reflection of the corporation’s attitude towards the legal department, and the exact place of the legal department within the corporation.

The philosophy of some company lawyers is that the lawyer on salary functions precisely like the lawyer who works for a fee. He is an advisor only, and does not interfere with management, nor intrude into management’s deliberations, except when he is invited to do so.

A different philosophy is that the law department is the corporate policeman, insuring that various parts and components of the company remain fully within the law, and that legal risks are properly evaluated before a major course of action is undertaken. This requires the law department to keep abreast of current operational developments in order to determine possible violations of law that may exist, and then to take internal action as needed to prevent the occurrence of possible difficulties.

Still another philosophy, but one more rarely encountered, is to have members of the law department directly involved in operating management positions and decisions. In such law departments it is common for lawyers to be promoted to management functions and then to return to the law department.

The mode of operation will depend, of course, upon the people involved, and also to a large degree upon the extent to which the particular industry is regulated. Lawyers tend to be more completely involved in daily management in highly regulated enterprises than they do in those fields of endeavor with which government is less concerned.

Lawyers employed by corporations regulated by the Securities and Exchange Commission (SEC) have a particularly heavy burden, and a somewhat confusing one. In recent years the SEC has been pushing lawyers into roles in which they may be obliged to report not only to the board of directors, but also to the stockholders when illegal or injurious behavior on the part of corporate management is discovered by them and the board refuses to correct the situation.

Taken to the extreme, this responsibility to persons outside the corporate payroll will mean that corporate lawyers may have to choose between losing their jobs and a breach of professional responsibility. Recently the SEC announced that it will not attempt to regulate attorney behavior directly, but will permit the profession to be self-regulating.

These increasing burdens require that internal counsel develop plans for meeting new roles. Procedures which will provide regular reporting from the legal department to the board of directors are a possible solution. Corporate counsel will also have to increase their roles in educating management at all levels as to what constitutes legal or illegal behavior.

Some corporations have set up regular departmental meetings at plant locations where members of the legal department instruct middle and lower management in such topics as anti-trust law, SEC, Occupational Safety and Health Administration (OSHA) and Environmental Protection Agency (EPA) requirements. One corporation precedes these meetings with written materials sent 60 days before the meeting. The written materials provide background for the discussions between the legal department staff and management. In this latter corporation, those persons who have attended the course and, in the opinion of the instructor, have learned the materials are given a certificate of compliance. If the instructor does not feel that the person attending has learned the materials, this is reported to the chief executive officer of the corporation. Still another corporation’s legal department has prepared film strips which are shown regularly to management at all offices of the company.

**Corporate Legal Department Manuals**
In order for the administrator of a corporate legal department to function in the most efficient way, he must have a statement of the policies and procedures of his department. Although most corporations have company manuals, they often do not touch on the specific work of the legal staff. The work of a corporate legal department is largely preventive. The department may protect the corporation from federal action against it. Cases, if lost, can establish precedents with far-reaching application. The sums of money at stake are enormous. Sometimes the entire future of a company hangs on the work of the legal department. Yet, it is not uncommon to find clerical personnel who produce the final work product of the legal staff, who really do not understand the function of their positions, and who have only a limited knowledge of the methods and standards required in their work.

As a method of formalizing the training and information required to be given to such personnel, and even to younger attorneys, the corporate legal or patent department should have a manual of operations available to all personnel. The Corporate, Banking and Business Law Committee of the Young Lawyers Division of the American Bar Association in 1980 published a loose-leaf booklet on Guidelines for Corporate Law Department Manual.

**The model manual suggests that a manual of a corporate law department should set forth the framework of the department’s operations and should cover the following areas:**

1. **Organization.** The organization of the department should be explained and an organizational chart, such as those presented in this chapter, should be included.
2. **Scope of departmental authority and activities.** This should include a definition of the department’s goals and objectives, and the specific legal activities for which it is responsible.
3. **Procedures and individual responsibilities.** This should include the general orientation of lawyers in the structure of the company and the internal procedures of the department in initiating actions, consulting with senior attorneys, keeping intra-departmental channels of communications clear, filing procedures, and time-keeping.
4. **Areas of responsibility.** Specific areas of law for which the department is responsible and ways of letting others in the company know what the department does in specific areas.
5. **Procedures for handling litigation matters.** When and how service of process is made, how cases are prepared; retaining outside counsel, and performing discovery proceedings.
6. **Security: How to handle security and criminal matters within the company.**
7. **Maintaining good relationships with other departments and others.** This section should explore such issues as the relationship with the company auditors, conducting seminars for other departments, and offering or not offering legal assistance to employees of the company.
8. **Dealing with outside counsel.** This section should address the various roles of outside and in-house counsel in the handling of a legal matter, internal record-keeping, and selection and appraisal of outside counsel’s performance.
9. **Correspondence: Correspondence coming into and going out of the department.** Who gets copies of what and how mail is processed.
10. **Professional activities outside the company.** Departmental policy should be explained with regard to joining and payment of dues in bar organizations, attendance at meetings, service on committees, and CLE attendance.
11. **Citations.** A uniform system may be desired, especially for decentralized departments. (International companies may have special problems.)
12. **Office rules and personnel policies.** This section should cover such things as preparation of expense reports, vacation policies, office security and housekeeping. Separate sections should be prepared for the legal staff and non-legal support personnel.
13. **Other office systems:** These could include how to keep time records, how filing is handled, what is in the library and where it is, handling confidential materials, and calendar reminders.

**Attorney Moonlighting**

In response to a client’s request, the authors devised and circulated a questionnaire on the issue of moonlighting by corporate patent attorneys. One hundred and forty-two patent departments responded. The questionnaire produced the following responses:

**Q Do you have a formal company or departmental policy which prohibits salaried patent attorneys . . .**

-------------------------------------------------------------------------- Yes--------No

1. .... from doing patent work for other companies? 47% 53%
2. ........ from doing patent work for private persons? 36 64
In answer to another question, 99.5% of the respondents indicated that they had no formal employment agreement setting forth a policy against doing legal work for others, even when they had a policy against it.

Some of the respondents included general comments on the issue. Selections follow:

I think it is important that the professional work of the corporate lawyers be confined strictly to the affairs of the corporation and not include work for employees, stockholders or customers of the corporation. To be sure, we should advise employees about matters in which the Company also has a direct interest, such as his pension plan and group insurance rights, or the handling of a garnishment, but we should avoid acting professionally in the purely personal matters of the employee. That is our present policy and I believe any other would run the danger of conflict with the bar and a possible change of unlawful corporate practice of law.

Similar considerations apply to the corporate lawyer doing outside work as a general practitioner. We have no objection to a lawyer undertaking an occasional legal task for a member of his family or a friend, but he should not do so as a general practice and never should he hold himself out as a general practitioner.

Some of our attorneys have done general legal work on a very limited basis—e.g., for relatives or friends—but we discourage this because of the difficulty in drawing the line.

Private legal work for close relatives is allowed and legal work for nonprofit groups is allowed if the lawyer clears the time involvement with the General Counsel.

We have no formal prohibitions against these things, but, informally, they exist. We do, however, have a formal policy against conflicts of interest, and this could be interpreted as making the informal prohibitions almost explicit.

Our Intellectual Property Agreement contains the clause, "Employee agrees that she/he has not accepted, nor will assume during employment, any obligations that will be inconsistent with those of this Agreement, without written notification to Employer."

We have an informal policy which tends to discourage the above. A real need exists for clarifying this subject.

Starting Salaries

The 1987 Survey of Law Department Salaries, prepared by Altman & Weil, Inc., contains information on salaries paid to recent graduates newly hired by corporations across the country. The average compensation offered was $29,115 and the median was $30,000. The middle half of the salaries paid ranged from $22,000 to $33,500. Financial institutions, insurance companies and banks were in the low range, while manufacturing and petroleum companies were near the higher limit. Between October 1985 and October 1986, salaries paid to new graduates by corporations did not rise, while in the private firm sphere there were some increases in the offers made to new graduates.

The survey further indicated that fewer than 10 percent of all corporations surveyed hired recent law school graduates at all, and some of these hires represented persons who already worked for the corporation and attended law school while employed. A corporate law department is, therefore, not a likely place for a new graduate to find employment. It is more often a place where a lawyer with several years of experience in the private sector can seek employment.

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