
Cops, Counsel, and Entrepreneurs: Constructing the Role of Inside Counsel in Large Corporations

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Inside counsel to major corporations have accrued more power and status within the legal profession, but continue to struggle for influence and legitimacy within the corporation. In-depth interviews with lawyers and managers in large businesses reveal that inside counsel construct different professional roles for themselves depending on circumstances. We identify three ideal types of such roles: they act as cops (limiting their advice to legal mandates), counsel (combining legal and business advice), or entrepreneurs (giving priority to business objectives rather than legal analysis). The entrepreneurial role and its associated discourse seem to mark a departure from earlier studies of inside counsel. We argue that entrepreneurial tendencies reflect the efforts of corporate counsel to adapt their images and lawyering styles to the prerogatives of contemporary management. Accordingly, inside lawyers limit their gatekeeping functions, emphasize their dedication to managerial objectives, and defer to management's judgments about legal risk. Nonetheless, inside counsel retain their professional identities as lawyers and rarely express an interest in moving into corporate management. Inside counsel are "professionals" who present themselves as enthusiastically committed to corporate objectives.

I. Introduction

Lawyers who are employed in major business corporations play an important role in the legal affairs of business. Although inside counsel once were relegated to routine tasks and were the clear status inferiors of partners in corporate law firms (Smigel 1969; Slovak 1979; Spangler 1986), they have assumed new power and status within the legal profession.¹ Inside counsel now make

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¹ On the growing power of corporate counsel in the organized bar, see Schneyer (1992, p.126). There are several recent examples of partners in major firms who simulta-

decisions about allocating legal work to outside law firms (Nelson 1988; Galanter & Palay 1991), with the result that outside law firms largely have lost the function of general counsel and instead focus increasingly on the provision of specialized services on a case-by-case, transaction-by-transaction basis. Inside counsel typically are the first lawyers contacted concerning a potential legal problem; they are the lawyers who monitor the legality of myriad corporate operations (Chayes & Chayes 1985; Rosen 1989); and even in cases in which outside lawyers are retained, they often are crucial participants in developing legal strategies and acting as intermediaries to the corporation (Suchman 1998).

Theoretical debates about corporate lawyers, both those working in law firms and in the legal departments of corporations, have focused on the question of their professional autonomy from business. Structural analyses of the legal profession have asserted that inside lawyers lack independence to act as agents of social control within the corporation (see, e.g., Heinz & Laumann 1982; Nelson 1988). Scholars who study the decision-making of corporate lawyers in particular organizational and historical contexts have suggested that corporate lawyers have considerable room for maneuver in how they interpret law for corporate management (see, e.g., Macaulay 1979; Gordon 1988; Simon 1988; Flood 1991; Gordon & Simon 1992; Edelman et al. 1992; and Nielsen 1999).

The two studies that probe most deeply into the roles of inside counsel in corporate decisionmaking portray corporate counsel as potentially influential actors, even though they face considerable complexity in how they perform their roles. Donnell, reporting results of a case study of three midwestern manufacturing firms in the early 1960s, found considerable "role strain" and "role ambiguity" among his informants (1970). Inside lawyers ranged between "policemen" and "advisors," although neither Donnell nor his informants could explain why certain individuals fell into these roles, or why individual lawyers would assume the policeman's role in one context, and the advisor role in another.

Rosen's (1984) analysis of six manufacturing firms conducted some 20 years later offered some observations that were surprisingly similar to those offered by Donnell. Rosen also argued that inside counsel confronted choices about whether they should venture to use knowledge beyond legal expertise, how much they should try to influence the business decisions of the corporation,

neously assumed the title of Vice President for Legal Affairs in major corporations: Howard Treinens at Sidley & Austin/A.T.& T.; Elmer Johnson at Kirkland & Ellis/General Motors; Theodore Tetzlaff at Jenner & Block/Tenneco. Other examples of notable lawyers in general counsel positions are Nicholas Katzenbach (former Attorney General) at IBM and Ben Heineman, Jr., at General Electric. The percentage of lawyers in inside counsel positions has declined slightly, from 11.3% in 1970 to 8.3% in 1995 (Sikes et al. 1972:10–12; Carson 1999:24).

and how to resolve conflicts over their allegiance to particular managers, allegiance to the corporation as a whole, and allegiance to general legal and social norms (1984:95–103). After examining instances in which corporate decisionmaking went awry, even with the involvement of corporate lawyers, he distinguished between two roles that inside counsel might play in the corporation: legal risk analysis or decision consulting (1984:164–273). He detailed the numerous difficulties that confront lawyers as legal risk analysts, including their relative lack of power in the ultimate decision on what constitutes acceptable risks (1984:204). Citing a trend toward the loosening and flattening of corporate bureaucracies and the ascendance of consultants in corporate management, Rosen argued that inside lawyers should embrace a consulting model, mix business and legal advice, and become “decision consultants” (1984:217).

Since Donnell’s and Rosen’s studies, there have been dramatic changes in the management of major corporations and in the legal environment of corporations, which may well have altered the role of law and lawyers in corporations. Donnell’s research preceded the era of what Fligstein (1990) calls the financial conception of control in the corporation, in which corporations came to be seen as a bundle of potentially diversified investments and in which corporate functions of all forms were subject to rigorous financial analysis for their impact on profit and loss.² More recently, this conception of the corporation has fueled the trend toward downsizing and reorganization that has swept major corporations in the 1980s and 1990s and fundamentally altered previous understandings between corporations and their managers (see, e.g., Hirsch 1986, 1987; Newman 1988). The law has become a more salient feature of the corporate environment in the past three decades. Large corporations confront sweeping regulation of personnel, environmental, and financial practices (Heinz et al. 1993; Kagan & Axelrad, forthcoming) and more frequently are involved in major litigation (see, e.g., Galanter 1983; Dunworth & Rogers 1998). As a result of these and other changes, the legal expenditures of business have grown dramatically (U.S. Bureau of Census 1976, 1992).

It is unclear *a priori* how these changes might affect inside counsel. Corporate downsizing might put additional pressures on corporate lawyers to tailor their legal advice to support managerial efforts at short-term profit maximization. But the pervasiveness of legal issues in corporate operations might afford inside lawyers greater power and status in the corporation, and thus make them more professionally autonomous from their business peers.

² Fligstein suggests that the finance conception of control began in the mid-1950s and achieved dominance among the largest corporations by the mid-1960s (1990:238–58).

This article reassesses the role of inside counsel in major American corporations in light of these changes. We analyze in-depth interviews with corporate counsel and a case study of the relationships between inside lawyers and non-lawyer executives in one large corporation conducted in the mid-1990s. We frame our analysis in terms of how inside lawyers construct their roles in the corporation. This constructionist approach allows us to address many of the questions conventionally posed about the professional autonomy of corporate lawyers, while also allowing us to move beyond those questions. As Sarat and Felstiner (1995) pointed out in their study of lawyers and clients in divorce cases, it is not enough to ask who has power in the relationship. Instead, it is important to begin to analyze how power is constructed, resisted, and subverted in their relationships, and what the implications are for law as a cultural and institutional force in society. We not only are interested in whether inside lawyers have power in the corporation but also of what kind, under what circumstances, and with what implications for the role of law in corporate governance. Lawyer-client relationships in the corporate context presumably will present a sharp contrast to lawyer-client relationships in divorce. Unlike the clients of divorce lawyers, the corporate executives who are the clients of inside lawyers are the ultimate repeat players. Businesspeople are in continuing relationships with inside counsel and can mobilize for or against lawyers on a range of organizational policies.

After discussing our methods, we present the three ideal types of lawyers' roles in the corporation—cops, counsel, and entrepreneurs. We then analyze four dimensions of the work, professional ideologies, and careers of inside counsel, which are fundamental to how they construct their roles: (1) the gatekeeping functions of corporate counsel; (2) how lawyers and executives view each other within the corporation; (3) the blending of legal and business advice; and (4) the distinctiveness of lawyers' identities. Finally, we examine the relationships between inside counsel and corporate executives in one large financial corporation to better understand how the roles of inside counsel are constructed out of the interactions of lawyers with their organizational environment.

II. Data Collection and Analysis

In a study of corporate professionals, we interviewed 86 informants from 46 large corporations and financial institutions (virtually all are listed in the Fortune 1,000) located in the Bay Area of northern California, metropolitan Chicago, and New York City. Informants included inside counsel, legally trained executives, and non-lawyer executives. In this article we focus primarily on interviews with 54 informants, 42 of whom are corporate

counsel from 22 corporations and 12 of whom are non-lawyer managers in a large financial corporation in which we did more intensive research.³ Corporations and individual participants within corporations were selected by a combination of random sampling procedures and systematic approaches.⁴ Given the difficulty of gaining access to busy business elites (see, e.g., Jackall 1988), it was necessary to rely on personal referrals to obtain some of the interviews. We sought to cross-check our results by comparing randomly and non-randomly selected informants. Extensive analysis revealed no major differences between the two groups of interviewees. We coded the interviews both qualitatively and quantitatively. That is, we constructed measures that we could systematically tabulate across respondents. Yet the main thrust of our approach in both data collection and analysis was qualitative in character. We pursued various topics with respondents in open-ended fashion and coded the interview transcripts by topic. Much of the evidence we offer here is in the form of direct quotations from respondents. The combination of analytic strategies allows us to systematically compare informants, while also attending to insights offered by responses to open-ended questions.

In the Appendix, we report the characteristics of the corporate counsel in the sample. Overall, there is considerable variation by locale, gender, position in organization, seniority in organization, nature of prior experience, and status of law school attended. The elite attributes of the sample are quite striking. Over half come from elite or prestigious law schools, compared to some 26% of lawyers in Chicago in 1995 (personal correspondence, Chicago Lawyers Project, June 25, 1999) and 14% of the graduates of law schools in 1990 (Nelson 1994:397). One-quarter occupy positions that place them in the top management groups of their firms. (Top management groups carry such labels as the executive committee or the management committee, and contain from 6 to 12 top officers of the corporation, including the CEO and CFO.) Another 45% head the law department of their employer. Our sample consists of a group of lawyers of exceptionally high status both within their own corporations and within the legal profession.

³ All but three interviews were conducted in person; three were done by telephone. The interviews were tape recorded, transcribed, and coded. The focus of this article is inside counsel. Except for Alphacorp, the organization in which we observed relationships between executives and inside lawyers, we do not directly examine the remaining interviews with executives.

⁴ For all Fortune 1,000 firms in these locales, we obtained listings of top officers in the *Standard and Poor's Directory*. We randomly selected inside counsel according to position. The other participants were obtained through referrals made by prominent legal or business academics, lawyers with corporate practices, and respondents themselves. One-third of the interviews with corporate counsel (two-thirds of the counsel interviewed outside Alphacorp) were selected through a random process.

Given the character of our sample, our results should be seen as preliminary but theoretically suggestive. Although the number of informants and corporations in our study compares favorably to prior research on corporate counsel (Donnell 1970; Slovak 1979; Rosen 1984; Spangler 1986), the importance of our data does not rest primarily on the size of our sample. Our informants constitute an elite subgroup of lawyers working for some of the largest business corporations in the world. The in-depth reflections of such a sample provide rare and potentially significant insights into the role that law plays in business. These data are worthy of analysis in their own right and may suggest directions for future research.

III. Three Ideal Types of Corporate Counsel: Cops, Counsel, and Entrepreneurs

It is useful in beginning to examine the roles of inside counsel to construct a set of categories that captures the range of lawyering styles in corporations. Our analysis of the interviews suggested that lawyers played three ideal typical roles: some spoke of their role as narrowly legal, some spoke of mixing legal and business advice, and some emphasized entrepreneurial or profit-generating uses of law.⁵ Bearing in mind that the ways lawyers describe their tasks are complex and sometimes contested by others in the organization, we attempted to devise a conceptual scheme that would allow us to classify individual lawyers by role type. As summarized in Table 1, we defined three ideal types based on (a) the extent to which their work is limited to gatekeeping functions; (b) the scope of advice they offer; and (c) the nature of the knowledge claims they employ in their work (i.e., do they claim authority solely on the basis of knowing the law, or on other grounds as well, such as worldly experience, knowledge of the company, “good judgment”).

Table 1. Ideal Typical Roles of Corporate Counsel by Conceptual Dimensions

Ideal Type	Gatekeeping Functions	Scope of Advice	Knowledge Claims
Cop Counsel	defines role major/not sole	rule-based/legal risk mixed law/business ethics	primarily legal legal/situational
Entrepreneur	beyond law avoidance	mixed law/business strategy	economic/managerial/legal

⁵ The term “role” has a complex history in the social sciences generally and in the literature on the professions in particular. (See, e.g., Carr-Saunders & Wilson 1933; Parsons 1954, 1962; Merton 1957; and Ben-David 1958). We employ the term without theoretical pretense, similar to one offered in *Webster’s Third Edition*: “a socially prescribed pattern of behavior corresponding to an individual’s status in a particular society.”

The scheme is useful analytically. Some individuals vividly represented the cop, the counsel, and the entrepreneur. And with some decision rules, it is possible to categorize cases. Yet the interviews also made clear that inside counsel play different roles in different circumstances. The interviews are full of seemingly contradictory statements, until one realizes that the lawyers are describing a repertoire of responses to different situations. In this section we describe the key dimensions of the ideal types, present respondents who exemplify each type, and discuss the results of our attempt to classify lawyers by type.

Cops

When corporate counsel are playing the “cop” role, they are primarily concerned with policing the conduct of their business clients. (In many interviews, the corporate counsel refer to various businesspeople and business units within their corporation as their “clients,” even though technically both lawyers and the business personnel are employees of the same organization.) They interact with business people almost exclusively through legal gatekeeping functions, such as approving contracts, imposing and implementing compliance programs, and responding to legal questions. Cops are less willing to offer non-legal advice, even when they have the opportunity.

The vice president for legal affairs for a major chemical firm exemplified the role of lawyer as cop. He was hired for the position from outside the corporation after a distinguished career in government and private practice. He interpreted his hiring as an effort by the corporation to bring in someone who would be independent within the corporate environment.

I think that the thought is when you get somebody who has an independent stature, apart from his or her position in the corporation, that the person is also more likely to be independent and give you that independent professional judgment that is so essential.⁶

Even though he was a member of the corporation’s Board of Directors and the corporation’s Executive Committee, he characterized his work “principally as a lawyer.” We asked whether he took a managerial approach to the legal function:

Q. Do you see the management of legal costs and legal risks as your major job?

A. I think it is a *major* job and increasingly important . . . but I think that that can’t be subordinated to the need to provide independent legal judgment and counsel to the company.

⁶ All of the quotations of corporate lawyers and executives are taken from the personal interviews conducted by the researchers. In order to preserve the confidentiality of our subjects, all identifying references have been eliminated.

A theme that consistently emerged in this interview, despite some discussion of lawyers attempting to act as part of the management team in the various subsidiaries of the corporation, was the need for lawyers to say no.

I mean there are [business] people who want to do something and they just simply can't do it, they can't understand why, and then I say, "Well, that's just the way the law is."

And later, after recounting such an incident, he said,

So, the businessmen had quite a lot of trouble with that, and I don't blame them; I do too. I have to say, "That's the law. You can't do it"; I would never say they can't do anything. I can't forbid it. I can say, "If you do it, you run the risk and you're going to go to prison; you don't have any defense. You've been advised you are in violation of the law."

Our exemplar of the cop was unusual also in his lack of commitment to, indeed his disdain for, certain aspects of his employer. When asked how strongly he identified with Bigchem (a pseudonym), he said, "My identity was pre-Bigchem; and I'm identified some with Bigchem, but I am that person who works with Bigchem and not the Bigchem person who does these things." In response to a question about what he found frustrating about his work, he answered:

The frustration is in a corporate culture where they speak in sort of a code or certain agreed words. We're going through a big thing now called continuous quality improvement. It's patterned after all these gurus of [management]. . . . They talk about . . . employee empowerment. But you're giving [employees] an impression I think, a false one at that, that people, that someone . . . is going to be playing greater roles in running the organization. And that's not it! So I have a lot of problems with that kind of corporate stuff we have . . . American companies are running hard and all scared to death. . . . [T]he only thing under their control is cost, so it just scares everybody.

Counsel

The role that corporate lawyers most often play is the counsel. Legal gatekeeping plays an important part in inserting these lawyers into business activities, but it is not the only basis on which they relate to management. Counsel most often confine their advice to legal questions and legitimate their suggestions or demands based on legal knowledge. Yet the counsel role implies a broader relationship with business actors that affords counsel an opportunity to make suggestions based on business, ethical, and situational concerns.

Our exemplar of this type, a general counsel in a bank, described this mixture of legal and business functions.

Forty percent of my time is spent managing the legal position, . . . 20% of my time is as the bank's chief compliance officer: dealing with regulators, overseeing the auditing process within the bank, [overseeing] training done by the legal division . . . Another 30% of my time is as consigliere of executive and senior management: I am the counselor; I am the guy who is asked to draft letters; to advise on particular issues, which can overlap with the first two primarily because it relates to the regulators. . . . The remaining 10% of my time I practice law.

Q. The consigliere role, you distinguish that from the law practice?

A. Yes, because when I think of practicing law . . . it's more taking a particular legal problem and finding out what the law is, and then applying the law to the facts. . . . That's not what I do most of the time when I am dealing with senior management. . . . The law has very little to do with it. An example would be, the regulators have found what they believe to be a regulatory violation. Well, I've got either a member of my staff or outside counsel who confer with me on whether it is or isn't. That's practicing law. My consigliere role is how I am going to interface between the executive management and the regulators to convince the regulators that it's not [a violation]. And that has nothing really to do with the law. It's negotiating; it's common sense; . . . it's how it's communicated.

This corporate counsel clearly goes beyond merely giving legal advice, although it appears that it is the law and potential legal problems that bring him into business decisions.

I believe that it's my role to make the decision and to make sure the business person goes along with it. Now that's contrary to everything I'd say on the outside or any general counsel would say, because we'd say, "It's not our role to make business decisions." We lay out the risks and the alternatives to our clients and then they make an informed business decision. Well, if they are making an informed business decision, in my mind there is only one decision they can make, the one I want them to make or I think they ought to make—because that's my job. I don't conceive it to be just laying out the risks, but I have to know enough about the company and enough about the situations and circumstances to weigh those risks. . . . [I]f I think they are doing something that is legal, that is stupid, it's my job to say to them, "That's stupid," or to convince them in such a way that they come around to my point of view, thinking it's their point of view. So there are some people that I've had to use that deceptive type of process on more than others.

Our ideal typical counsel appears to be quite broadly involved in important managerial decisions; he draws on both legal and other forms of knowledge, and, according to his own account, he is highly influential. He is remarkable within our sample for his suggestion that he is willing to deceive non-lawyers about the law in order to get them to make what he terms a cor-

rect decision. Several other informants indicated directly and indirectly that there are often grey areas in the advice they give, but virtually no one else admitted that they actually deceived clients about legal issues.

Entrepreneurs

Although the ideal typical “counsel” is still primarily concerned with the legal aspects of business, entrepreneurs emphasize business values in their work. Entrepreneurial lawyers say law is not merely a necessary complement to corporate functions, law can itself be a source of profits, an instrument to be used aggressively in the marketplace, or the mechanism through which major transactions are executed. Our exemplar of the entrepreneur is the general counsel of a holding company, not yet 40 years old at the time of the interview, with a law degree from Harvard. He had been a securities specialist in a large corporate law firm before moving to his corporate employer, where he had worked his way up from being an inside transactional lawyer to general counsel of several subsidiaries, until reaching one of the top two law positions in the corporation. He became most animated in the interview when talking about the size of the “deals” he had put together, such as taking various subsidiaries public, the “phenomenal multiple” they had achieved in an especially large public offering, and the major acquisitions he had worked on for the corporation. His role, and that of many of the lawyers in the corporation, went well beyond giving legal advice.

The chairman and the chief financial officer consult me, as part of the strategic planning process that we go on. On matters outside of the legal function, I think probably because of the credibility I’ve gained in representing them over the last ten years in a variety of contexts, they’ve never expected, and we don’t expect, our attorneys to limit their advice and input to pure legal advice. The client here has never found that to be the most valuable type of relationship. There are some clients that certainly expect the lawyers to limit their input to legal advice, but those folks have not succeeded well and don’t represent the mainstream of our business management.

This informant, and at least some of the other lawyers in his corporation, present themselves as offering advice “beyond the legal function,” in large part because the executives of the corporation expect him to do so. These comments demonstrate that lawyers’ roles in the corporation are not fixed choices among discrete categories, but evolve according to the needs of business.

Our entrepreneurial general counsel offered a telling contrast between his approach to his job and that of another general counsel in the corporation, a lawyer who was more senior than our informant, whom our informant had reported to prior to assuming a parallel position in the corporation. Our informant

described why he thought he would eventually rise above his former superior.

I knew his background; his background was litigation and anti-trust. I never believed he was an effective business counselor to the Board of Directors. That wasn't his style, his style was to manage contentious issues. That probably is why he and I succeeded so well together, because that's what I like to do the least. Anything that's negative, the criminal investigations that we've had, anti-trust litigation . . . If I never had to deal with them, the better. I was more interested in what I consider the positive side: raising money, buying companies, selling companies. I mean, at the end of the day your client was happy, or at least knew why the deal wasn't done . . . And Bill's background also was that he was personally kind of the conscience of the company in its formative years, when it was going from mom's and dad's and entrepreneurs into [a] professionally managed [firm]. And it's a role he was personally suited for, but it made him quite unpopular. . . . He was the guy who had always played the devil's advocate. . . . As the company's evolved and gotten older and become more professionally managed at the operating level, that role hasn't been that necessary; it wasn't one that I desired. [A senior executive] told me that Bill was never considered a candidate for corporate secretary . . . [even though] it was natural for that position to have gone to Bill . . . I was always very positive in my outlook, in my ability to succeed . . . [A]nd frankly I expect . . . who could possibly run this company in perhaps 15 or 20 years if it [isn't] me?

From these comments, it appears that Bill is a "cop" who was more influential in the corporation in an earlier era, when it "needed" a corporate conscience. According to our informant, the need for that role has diminished as the management of the corporation has become more professionalized. He attributes his own rise to influence to his ability to be a business counselor. Indeed, he expects to run the company some day in the future.

What is the motivating force in our informant's career?—his interest in making money and growing the company. He describes himself as part of the second-generation management of the corporation.

I think the [senior management] group is extremely motivated by financial returns. Certainly the professional challenges are there too. The ability to take the business the next step, to take it from 10 [billion in revenues] to 20 [billion], which is very doable given the marketplace opportunities . . . It's a huge challenge. It's very exciting.

When we asked him how strongly he identified with the corporation, he made it clear that what he loved about it was the financial opportunities that it presented, rather than the functions it served.

What was so attractive to me about [the corporation] was, it was a fabulous venture capital firm, or a fabulous merchant banking firm. We had access, in fact we still do have access, to tremendous amounts of capital. We could stop growing the basic X business today, stop investing in X facilities, and the cash flow would be so tremendous that we would have to either go buy some other business . . . or buy our own stock back, in which case I'll make a fortune because the stock price will go up. What excites me about any of these opportunities . . . is the financial dynamic.

This entrepreneur derives great personal meaning from the contemporary managerial conception of the corporation: it is, above all, a financial institution. Our informant used his legal expertise to gain entrée to the world of corporate finance. He continues to hold the title of General Counsel, which denotes continuing legal responsibilities. Yet it is clear that business objectives, rather than legal accomplishments, motivate his work.

Distribution of Respondents by Ideal Type

One way to view the ideal types is as a set of roles that the same lawyer may play at different times, in different contexts. Another way to think of these types is as a dominant tendency or role pattern for given individuals. To gain some preliminary sense of the relative frequency of these roles, it is necessary to classify and count individuals by role. We did so by operationalizing the dimensions set out in Table 1. We measured the scope of advice and the nature of knowledge claims, respectively, by involvement in business decisions and the invocation of economic values to legitimate the decisions of lawyers (what we call marketing the legal function). We treated counsel as the default category; that is, to be classified as a cop or an entrepreneur, a respondent's interview had to clearly meet certain criteria. If it did not, the respondent was coded as a counsel. A respondent was classified as a cop if he or she indicated that (a) they offered only legal advice and avoided giving business advice, (b) they played an active gatekeeping role (marked by an affirmative obligation to monitor compliance, the ability to say no to business clients, and the ability to go over the head of management), and that (c) they did not market the legal function within the corporation. A respondent was coded as an entrepreneur if he or she (a) offered non-legal advice on business decisions, and (b) marketed the legal function. Though the classification of respondents was based on specific criteria, our decisions were confirmed by our overall assessment of the interview.

Only a relatively small proportion of our sample, some 17%, approximate the role of the cop within their organization. Twice as many (33%) meet our definition of the entrepreneurial role. Half of the lawyers we interviewed fall into the counsel category.

The numerical predominance of the counsel role to a certain extent is a product of our coding scheme. It was the default category. We do not possess a random sample of corporate counsel. Although our sample was purposive in part, it contains a variety of corporations and a variety of inside lawyers within the corporate hierarchy. Hence, we think this distribution of cases is a plausible, if preliminary, portrait of the prevalence of different kinds of lawyerly roles among corporate counsel. The majority of corporate counsel hew to a traditional role in which they primarily are called on for legal advice, rather than for business judgments. Relatively few corporate counsel totally avoid involvement in business decisions and primarily are engaged in cop-like functions. A significant minority of corporate counsel are deeply involved in business decisions and in marketing their own lawyerly role in terms they hope their business peers will understand. Not only do entrepreneurs outnumber cops by two to one, but also the center of gravity within the counsel category is closer to entrepreneurs than to cops.

Thus we detect what may be a significant difference in the orientations of inside counsel from that reported in earlier research. Donnell and Rosen found the close equivalent of our "cops" and "counsel" among the corporate attorneys they studied in the 1960s and 1970s. Lawyer-entrepreneurs, in contrast, seem to represent a different breed. Although we lack direct data on change over time, if we compare the discourse of our informants to that reported by Donnell and Rosen, we see a much more explicitly entrepreneurial discourse in many interviews. This entrepreneurial discourse reflects the efforts of corporate counsel to use their legal knowledge to serve the ideology and prerogatives of corporate management.

Scholars of the American legal profession long have observed the entrepreneurial orientations of some lawyers (Gordon 1988; Nelson & Trubek 1992:6). Several analysts have written about the increasing entrepreneurialism of contemporary lawyers, both in the personal and corporate sectors of the profession (Seron 1996:104; Van Hoy 1997; Galanter & Palay 1991). Although there may be some similarities in the entrepreneurial tendencies of lawyers throughout the profession, different factors may drive entrepreneurialism in the personal client sector, large law firms, and corporate counsel offices. The solo and small firm practitioners who Seron (1996) and Van Hoy (1997) write about are driven in part by economic need and in part by their own ideology that better service for consumers requires the adoption of new business techniques. The increasing entrepreneurialism of large law firms reflects new competitive conditions in the corporate sector of legal services, as well as the new strategic orientations of law firm leaders in a dynamic marketplace (Galanter & Palay 1991; Nelson 1988). The entrepreneurialism of corporate

counsel appears to reflect the new managerial culture of major corporations.

IV. Constructing the Role of Inside Counsel

Our typology of roles maps variation in how individual attorneys approach their work, but does not fully capture the challenges lawyers confront as they attempt to define their roles in corporations. In this section of the article, we examine four salient axes around which lawyers construct their roles, as well as the organizational forces that shape these constructions. First, how do inside lawyers manage their gatekeeping functions? Second, how do inside counsel attempt to shape their images within corporations, taking into account the attitudes of executives toward law and lawyers? Third, what is the relationship between the legal expertise and the business objectives of corporate lawyers? Fourth, what happens to the professional identities of inside counsel in the corporate milieu?

A. The Gatekeeping Function: Pervasive but Circumscribed

When the corporate attorney acts as a gatekeeper, he or she monitors legal compliance and serves as a final hurdle or “gate” through which business ideas must pass prior to implementation. The ability to “trump” a business decision has been identified by researchers as a source of contention and confusion for both lawyers and their business clients from the earliest studies of Donnell (1970) and Rosen (1984). Cops and counsel continue to confront such tensions.

One lawyer put it this way:

[W]hen individuals in the organization come to me and say, “will you help me execute my deal?” if I come across to them or the lawyers on my staff come across to them as cops, they are not going to come to us. They are . . . either going to go elsewhere or operate in the dark without lawyers.

This lawyer identifies two possible negative outcomes of behaving too much like a cop. The business people will simply go without legal advice, or they will engage in an intra-organizational version of “forum shopping,” bringing their problems to the lawyer in the company who is least likely to challenge the business-person’s project. A number of lawyers identified forum-shopping as a problem resulting from active gatekeeping:

There are some [business]people who try and play games with the lawyers . . . they run between us and do forum shopping . . . They know some people have a reputation as stricter or more liberal. . . . I have a reputation for being a strict constructionist.

Lawyers and business executives recognize that without some level of autonomy, counsel would not be able to guard the corpo-

ration from unwise legal risks. The interviews have a somewhat schizophrenic character in this respect. Lawyers indicated that they have the autonomy required to act independently and to be “deal-stoppers,” but several claimed that their companies are “very ethical.” When they observed clear cases of legal problems, informants were sure that their company would do everything required to ensure legal compliance. When questioned, almost every attorney could imagine a situation in which he or she would go over the head of management to become a deal-stopper, but few could recall situations in which they had actually done so. It seemed to us that if our respondents found themselves in a John Grisham-like tale of corporate intrigue, they would know how to get help. Most day-to-day business activity does not rise to this level, however.

Yet some attorneys acknowledged that their autonomy is constrained by the need to “get the deal done.” Although their “official” role is to advise on legal risks, the business-people would prefer it if the lawyers gave only business-friendly legal advice. One lawyer explained, “[E]very business manager says they want honesty. They don’t mean it, none of them mean it.” In fact, this lawyer said that in his corporation, “it’s a no-no to say no.” According to this informant, inside lawyers are caught between their obligation to the law and their obligation to the company. This struggle for autonomy can have implications for lawyers’ careers. The same lawyer said, “I will be honest, to the best of my ability . . . if my boss doesn’t like it then let him get rid of me. Which almost happened a few years ago.”

Another general counsel indicated that to whom lawyers report was very significant to him. He said that

lawyers . . . report to the General Counsel, they do not report to business. That was a deliberate decision. I mean, that might even become, for me, a “resignation” kind of decision, but I don’t think there’s any prospect of it turning into that kind of issue. But I feel strongly about that—it’s my job to protect their independence.

Apparently this general counsel would oppose decentralizing the legal function by placing lawyers under the authority of business units. Attorneys in centralized departments sometimes have difficulty learning what is happening throughout the corporation. An attorney who practiced in a centralized legal department complained that sometimes he had to “hunt down and chase and spy on [the business executives] in order to try to keep them in line.”

Deploying lawyers in a decentralized structure, by housing them in functional units such as Human Resources or Engineering, allows lawyers to “stop [legally questionable] things earlier and know about those things earlier.” Yet, as Rosen observed (1984:148–52), nesting attorneys in functional divisions exposes

them to more intense pressure to agree with their business colleagues rather than offer objective legal advice.

No matter how much a lawyer may wish to be the moral compass of the organization and provide expert legal advice all the time, there are practical constraints on his or her ability to do so. The practical constraints most often mentioned by our respondents were lack of resources and profit pressures. One lawyer spoke of the bind between providing quality legal advice and keeping the costs associated with the legal department within a range that is acceptable to the businesspeople. She said,

[T]here simply aren't enough lawyers. There's enormous pressure to control costs and yet there's an inconsistent pressure . . . They have simultaneously said, "You've got to control expenses and you can't hire and in fact, you have to cut . . ." So you know that you're not doing the job all that well. You know you don't have enough people; you know you can't get any more.

Inside counsel, like their business peers, are under intense pressure to meet business objectives. The lawyers working in these conditions are, like the business professionals with whom they work, held responsible for the bottom line of their division. One attorney explained that the "bottom line results are really what make or break [a career] . . . the bottom line—success—is how everybody is judged." Another lawyer conceded that his responsibility is to the stockholder and that his job is first and foremost "to make sure that investment grows." These constraints and pressures affect all three types of inside counsel. They render the gatekeeping functions, and indeed other advisory functions, more difficult to perform. Although the external legal environment may impose more legal obligations on corporations, lawyers are not exempt from the resource and profit pressures with which other corporate managers and professionals must deal.

Obviously some of our respondents interpose legal opinions that frustrate the plans of the business executives. Even the attorneys who claim to have the power to be deal-stoppers admit that they must use this power judiciously, however. Half of the lawyers in our sample acknowledge that, most of the time, the businesspeople in the company make the final determination regarding whether to assume a legal risk. The lawyer's role is reduced to informing business executives about the legal risks associated with different actions.

The blending of law and business makes it sometimes difficult for one to establish exactly who is making final decisions regarding business matters. Who makes the final decision is a function of the nature of the issue at hand, the personalities of the people involved, and the complexity of the legal matter involved. One lawyer explained it this way:

Our job is to assess risks, and it's the businessperson's job to make decisions about risks, what risks they are willing to assume. Now, having said that, I also think of it as my job to make sure that the decision about what risks to assume is being made at the appropriate level. So, if somebody was prepared to assume a risk which I felt was inappropriate, I would say, "I don't think this is a decision for you to make. I need to talk to your boss."

In these comments the lawyer reveals a recognition of the distinction between business decisions and legal decisions, a preference to make only "legal" decisions, and a desire for the businessperson to make the "business" decision. Nonetheless, the lawyer retains the power to ensure that the business decisions are being handled appropriately.

Corporate counsel who participate in the top management of their companies are different in this respect, however. Ten of 11 respondents who were part of the corporate or divisional management (91%) indicated that they made the final decision about whether to incur a legal risk, whereas only 35% of other lawyers claimed to make the final decision about legal risk. If all questions of legal risk percolated to a legal officer in top management, lawyers would be making such judgments. The clear impression from the interviews, however, is that not all questions go up the legal chain of command. Moreover, corporate counsel in top management contain the same proportions of cops, counsel, and entrepreneurs as the entire sample. They appear, therefore, to confront the same tensions as other lawyers in balancing gatekeeping and entrepreneurial roles.

B. Views Across the Law/Business Divide: A Mixture of Suspicion and Appreciation

Lawyers' attitudes about the businesspeople in their organization may affect how these lawyers approach their work. Several informants reported altering the legal advice they provide according to how they think business executives view them, as well as how they assess business executives' knowledge of the law and business ethics. Inside counsel often noted the legal sophistication of higher levels of management.

Yet a substantial minority of informants criticized businesspeople for poor business judgment and for failing to understand basic legal principles. For example, one inside counsel complained that "[t]he low-I.Q. club is well-represented" among the businesspeople in his department. More substantively, he said that certain businesspeople are "so in love with [a particular] project, [that they] would do anything to get the deal done. They would compromise the integrity of the bank." Another lawyer expressed a similar sentiment when he said that at least some of the businesspeople "just want to get their deal done and get their

bonus,” without regard to “basic integrity, documentation, follow-through, responsibility, and accountability.” Less insidious, but no less problematic, a number of lawyers indicated that the businesspeople were simply ignorant regarding the importance of the law and lawyers within the organization. One lawyer complained of businesspeople who are “bumpkins . . . who literally tell you they want to violate the law.” Inside counsel also occasionally were critical of the way management works. They complained that the corporate culture was little more than nonsense, that businesspeople were often slow to make decisions and to take action.

Conversely, lawyers recognize that businesspeople do not always think highly of lawyers’ roles within the company. Inside counsel report that businesspeople “do not really want to have them around,” think of them as a “necessary evil,” “don’t associate lawyers with creative solutions,” and do not view them as “team players.” More than one-third of inside counsel suggested that they encountered a negative view of lawyers in the corporation. Despite these negative images, many attorneys believe that their work is appreciated by at least some of their clients.

All three types of inside counsel must deal with tensions between lawyers and non-lawyers, although they appear to use different strategies with respect to such tensions. Attorneys as cops are less likely than counsels or entrepreneurs to soft-pedal their advice. They risk being characterized as inflexible, or worse. In at least one instance a “cop” was characterized by a manager as “not very smart . . . in a meeting this guy is like two pages behind, metaphorically.” Counsel attempt to minimize conflicts with business people. Entrepreneurs market the law to nonlawyers.

C. Blending Law and Business

In a sense, all the lawyer roles we identify blend legal and business objectives. When a lawyer acts as a cop, he or she serves business by ensuring that the company meets its legal obligations. When a lawyer acts as a counsel, he or she tries to find legal means for doing business. When a lawyer acts as entrepreneur, his or her service to business is more obvious because the lawyer’s goals and the businessperson’s goals are the same—only the expertise is different. Here we discuss two ways in which inside lawyers explicitly pay deference to business objectives in practice: in their substantive legal advice and in the marketing of law to business.

1. Substantive Advice

Although much of the discussion here and elsewhere concerns the social control functions of law within corporations, much of what corporate lawyers do as they ply their substantive

expertise is to invent ways to make (or save) money for corporations. This function may be more apparent in certain substantive fields or activities than others. The tax lawyers among our respondents, for example, although they also spoke about their role in tax compliance, thought their duties were very much appreciated by business executives because they directly contributed to profits. When we asked whether the businesspeople she worked with had a negative view of lawyers, one tax lawyer commented:

[A]s a tax lawyer I look less like a lawyer than a lot of . . . those do-nothing regulatory lawyers, and I don't say that facetiously. Because potentially in this corporation the business managers are measured on an after-tax basis: they look at their tax line . . . Last year we . . . had one very specific objective in mind for the corporation. We had to lower our effective tax rates; they had just gotten too high. We had a lot of pressure and we brought [them] way down. The numbers were very significant. . . . These guys knew about it and acknowledged it. . . . So tax lawyers sometimes do good things.

Indeed, inside lawyers themselves often have a direct financial interest in legally governed transactions that have a significant bearing on the financial outlook of their corporate employers. One dramatic case was an informant who had been the principal legal officer of his corporation before stepping down to head the Tax Department of the corporation. When asked why he accepted what appeared to be a major step down, he indicated that one reason was his financial stake in the outcome of a pending tax matter.

We had this tax litigation coming up, which I would have had to spend a tremendous amount of time on in any event, because it involved potentially hundreds of millions of dollars. . . . I guess [one] thing was pure selfishness in terms of this tax case. I got a lot of stock options in this company and this company has to do well, and if we had lost that case we would have been in deep trouble. So I wanted to spend all my time on it.

This is one lawyer who will be serving as a zealous advocate.

Informants in other legal fields discussed highly creative applications of legal expertise to advance the economic interests of their employers. A lawyer in a bank described his success in establishing an insurance subsidiary in another state, even though banking regulations largely prohibit the entry of banks into insurance. After detailing his accomplishments in getting legislation passed in a state legislature and winning an appellate court case to protect various state banking operations from federal regulations, he described how his blend of legal and business expertise was essential to giving his employer the "powers" needed to enter such a venture.

I guess . . . every lawyer has a different role in every different business. In this particular business it's so complex from a legal and regulatory perspective in that we have two regulated industries, banking and insurance. We are trying to meld them together, coupled with all the various nuances that go with it, and the fact that the powers came not directly, but indirectly, that I can't think of many more businesses that really need the lawyer to give the road map and the guide to getting it done. Certainly new businesses, like telecommunications, they suffer from the same thing, but you would never think two old businesses, banking and insurance, to still be muddling around trying to figure out who can do what. Yet what happened when we passed the law, and with some of the court cases, is 100 years of history were thrown out the window and it is a whole new ball game now.

This informant used his knowledge of insurance and banking law, combined with the lobbying capacity and litigation capacity of his corporate employer, to invent "a whole new ball game." Other informants offered similar stories. One lawyer at a large corporation that developed highly sophisticated information systems for its own operations took the lead in developing intellectual property claims over the corporation's business systems. His work laid the basis for the sale of the business system to other corporations. Another corporate counsel led a quiet campaign to subsidize litigation filed by third parties against a leading competitor of his corporation, in which the third parties charged that the competitor had engaged in unfair trade practices.

Lawyers for corporations constantly use their legal expertise to advance the corporation's financial interests. Much of this activity involves the rather mundane application of existing law. But in large corporations that command huge resources and sophisticated legal talent, inside lawyers are constantly pushing to expand law and legal practices to generate new sources of corporate growth or to gain a new edge in economic competition. This brand of lawyering, which some scholars have referred to as "penumbra lawyering" (Piciotto 1991) or "professional innovation" (Powell 1993), goes far beyond the Brandeisian ideal of counsel-for-the-situation. In many of these instances lawyers are developing creative institutional devices. But in intent and effect, these are not the sorts of devices that Brandeis would have seen as progressive. Their primary purpose is to generate profits and competitive advantages for particular corporations. Although at least some informants suggested that gains for particular corporations brought general benefits to society by generating new wealth, such beliefs are only part of a general ideology and quite clearly did not inspire the actions of these lawyers in these specific instances.

2. *Marketing Law to Business*

Of the 42 attorneys interviewed, 18 (43%) indicated that they market the law and lawyers to others in the corporation. Of those 18, 13 (31%) also acknowledged that such marketing affects the way they give legal advice. In other words, in order to ensure that business professionals will continue to consult them, lawyers try to make their advice more palatable to businesspeople. This marketing of the legal function is a response to a perceived threat. Many respondents indicated that there is a danger that the Legal Department may come to be viewed as expendable. The very existence of the Legal Department depends on lawyers' ability to change their image in the corporation.

As one lawyer-entrepreneur explained, "We need to make [the business executives] feel as though, by and large, our overall outlook is to try to help them accomplish the things they are trying to do, and, by and large, that's true and it's fine." Another informant cited with pride the fact that the lawyers of his division "have the best reputation in [the company] because we are so close to the businesspeople in getting the deal done." Another lawyer, who told us he convinces managers in his functional department to use his expertise, said, "I just want to be value-added; I want to be helpful. Mostly that's a pretty easy sell." This attorney indicated that he not only has to convince the business executives to use his services but also accomplishes this goal by using the business language of "value added." Other general counsel related that they were trying to change how their departments were perceived in their respective corporations. "I think there was a sense a couple of years ago that the lawyers . . . just weren't players. I'm trying to make it players." Another said,

[A] significant part of our department was conceived, or seen, by the business people as a barrier to getting the job done, something to be gotten around, or past, or through, or whatever, and . . . we really needed to do some work to reestablish ourselves as counselors or partners.

Lawyers are now eager to be seen as part of the company, rather than as obstacles to getting things done. To do so, it appears that inside counsel are themselves interested in discounting their gatekeeping function in corporate affairs.

D. Maintaining Professional Identity

The foregoing does not mean that lawyers have completely abandoned their professional identities. Indeed, inside counsel still strongly identify themselves as lawyers and are reluctant to consider changing to a non-legal executive position, for various reasons. When we asked if they would be interested in moving from the law to the business operations within the company,

most of the lawyers said they would be willing to listen to an offer; but only 12 (29%) said they would consider moving to the business side, and only two of these respondents expressed an explicit desire to move from law to a suitable business position. Thus, even though they see themselves as performing a business-oriented role, they do not want to leave the law to become businesspeople.

One reason that lawyers do not want to become businesspeople is their perceived inability to do the job. Some lawyers say they do not have the skills required to be businesspeople; they think they are “not good with the numbers,” or are “too risk averse” to be effective businesspeople. Still others are reluctant to move to the business side of the corporation because they recognize that their status as attorneys affords them some benefits. For example, one lawyer pointed out that businesspeople are more likely than lawyers to lose their jobs.

Despite the fact that they frequently are involved in business decisions, that they must promote their role based on business values, and that they often report deriving great satisfaction from seeing business projects through from start to finish, lawyers recognize that their professional status carries certain rewards. Our interpretation differs from that of Flood, who believes that transactional lawyers—who specialize in “doing deals”—have become indistinguishable from businesspersons (1987:2, 417; 1991). Even an inside counsel, the lawyer most directly embedded in business, retains a self-image as a legal professional. Like accountants, engineers, or human resources professionals who are employed in corporations, inside lawyers retain a dual identity—as employees of a corporation and members of a professional (or at least expert) group.

V. Alphacorp: A Case Study of Inside Lawyering

We can gain a better appreciation of the role of inside counsel in business through an in-depth investigation of relationships between lawyers and managers in a particular organization. Here we report on a case study of a major financial corporation, Alphacorp, in which we conducted multiple interviews in the course of ten days of fieldwork.

Alphacorp is a major financial institution that enjoys a powerful, if not dominant, position in some aspects of consumer financial markets in the United States. The corporation as a whole employs well over 50,000 employees, has billions in assets, and over \$100 million a year in net income. Its position in the industry makes it a highly influential actor in government policies affecting financial markets. In 1993, the year of our interviews, Alphacorp was still struggling to overcome setbacks it had sustained in various components of its business in the 1980s, as well as the

effects of the recession of the early 1990s. The effects of corporate downsizing were obvious. As we wandered the corridors of the corporate complex, we walked past numerous empty reception areas, which we imagined were once bustling business centers but now seemed like deserted outposts in a shrinking empire. Informants told us of 40% cuts in some staff areas. The cuts had weakened employee morale. According to one source, an annual survey of employee attitudes had recorded a drop in the percentage of employees who believed Alphacorp cared about their well-being from 56% in 1990 to 27% in 1993.

We conducted interviews with 34 informants in Alphacorp. We concentrated the interviews in one of the major business divisions, where we interviewed the entire divisional legal staff and several non-lawyer managers just below the small top strata of divisional management. We also spoke to some non-lawyer staff and inside lawyers scattered throughout the entire corporation; these included informants in human resources, tax, litigation, government affairs, and various business units. In all, we talked to ten non-lawyers, a paralegal, a lawyer who had moved to a non-legal position, and 21 practicing attorneys. We arranged the interviews through a key informant, with whom we consulted about the types of individuals with whom we wanted to speak.

The interviews revealed that within one large corporation it is possible to find the full range of lawyering roles presented above. Although these roles sometimes are identified with certain fields and functions, they again appear to reflect individual and situational variations that cannot be summarized simply. It also is obvious that executives are aware of variations in lawyering style, and that they choose different kinds of lawyers for different kinds of problems. Our comparisons of non-lawyers and lawyers working in Alphacorp underscore the fact that important differences remain between business lawyers and business managers.

A. Structure of the Law Department

The legal function in Alphacorp is largely decentralized. Most lawyers work in operating divisions or in corporate-wide functional groups (such as Human Resources). The Litigation Division is the one exception; there is one litigation unit for the corporation overall. Although it appears that entrepreneurial lawyering is prevalent in Alphacorp, that does not mean the corporation has forsaken traditional ties to outside law firms. A telling indication of this fact is that the General Counsel of Alphacorp, who had assumed the position just a few years before, previously was a partner in the outside law firm that historically was strongly associated with the corporation. The General Counsel was not necessarily a professional traditionalist, however. An informant who had observed the General Counsel's handling of

personnel matters described him as a tough manager. This informant was pleasantly surprised at his observation, given that most Alphacorp lawyers were not good personnel managers and that the General Counsel had come from a law firm context.

Below the General Counsel, the leading lawyers in this division had a distinctly entrepreneurial orientation. The General Counsel of the corporate subsidiary that contained the division we studied had started in Alphacorp on the business side and had gone to night law school. He saw himself as a bridge between law and business and ran seminars to help the lawyers in the corporation “understand the business guys.” He thought management had an essentially negative view of lawyers. The division General Counsel fit our ideal type of an entrepreneurial lawyer, although, like many informants, how he characterized his role defied easy classification. Our respondent is circumspect about the proper role of lawyers vis-à-vis businesspeople.

[T]he most common debate I have with the staff here . . . is you folks [staff] have to understand what is a business decision and a legal decision. You [as counsel] constantly have to resist the idea that your business judgment is better than theirs. . . . You may think that their judgment stinks on it, but at the end of the day, they are going to make a zillion dollars in this business and pay your salary. And if you are running the business, it would be in bankruptcy.

Yet, in virtually the same breath, this respondent pointed out how he and his lawyers were “a steady rock in this business” because they dealt with every facet of the division’s operations. The lawyers are a “repository of everything that’s happening in the business,” have a “historical continuity,” and are seen as having “good judgment.” The result is that their business judgments are consulted.

You’re asked from time to time . . . ‘What do you think we ought to do with this?’ You don’t stand there and say, “I’m not going to tell you what I think, that’s a legal decision.” It doesn’t happen as cleanly as I said because you’re just part of the flow and you’re there. I have been involved in deals where it’s right before we’re going to decide whether we’re going to do the deal. And they’ll go around the room and say, ‘What do you think, what do you think?’ Everybody will raise their hand, you know [and say], ‘I think it’s solid.’ Come to me and I’ll say you shouldn’t do the deal. It’s purely business. This is my comment, “It’s not going to make money.” Now, should I keep my mouth shut?

At least two of the attorneys under this informant’s immediate supervision fit our characterization of lawyers acting as cops. The divisional legal staff as a whole, however, quite clearly functioned in entrepreneurial fashion, because the divisional General Counsel exercised control over staffing, and he could make the final decisions on legal strategy when conflicts emerged between law-

yers and non-lawyers. The hierarchical positioning of entrepreneurs over other lawyers at Alphacorp also appeared in the litigation and the tax units and one of the other business units in which we did more than one interview. Thus it appears that in Alphacorp the higher-ranked lawyers are more entrepreneurial than their subordinates.

B. Managerial Strategies for Using Inside Counsel.

Alphacorp's executives are sophisticated in how they use lawyers to accomplish transactions with other corporations and shape decisions in the corporation. One manager spoke of how she chose between a "hard-line" lawyer in the department and another "management-oriented" attorney for different transactions. In one instance she was involved in contract negotiations with another large corporation, which turned difficult.

They would be like arguing about this stuff to the point where I really felt like I had to protect my back. The lawyer that I had working on it, as it happens, is a very hard-line guy, and it was exactly the right thing for him to be doing.

She continued that this "hard-line guy" would not have been right for a different deal, with a different company. For that transaction, she brought in an attorney who she knew had a different style.

Meanwhile . . . we did a renewal of . . . a good, solid, successful business. . . [W]e just needed to sort of clean it up and renew it. It would have been wrong to have that guy work on this; because this was a noncontentious, friendly situation. I had a very soft attorney working on it . . . somebody who is much more relationship, management oriented, much more low key in her approach to things and stuff.

Note that this manager had the ability to select the attorney she preferred. Although the interviewee suggested there was an element of chance in which lawyers got assigned a certain matter, when it is particularly important to an executive at Alphacorp, he or she can influence the assignment process.

Another manager revealed that he used a particular division counsel to find "empowering" solutions. He said that he called on Attorney X when

I really want to do something different. . . It's not that the others don't do things differently, but Attorney X truly spearheads creative solutions. I call them empowering versus limiting. So if I want empowerment I go to see Attorney X, if I want limiting, I can find lots of people who will give me a reason why I can't do things.

When we asked for a concrete example, the manager described an instance in which he wanted to create a subsidiary that could take a more aggressive commercial posture than the par-

ent corporation. In his words, the parent corporation evoked a “Walt Disney”-like image. He wanted a subsidiary that could appear more like the “John Gotti Collection Agency.” Previous legal advice had suggested that such an arrangement was not legally possible. Attorney X figured out a way to establish the subsidiary.

Another manager also spoke of Attorney X as different.

He is different from some of the other lawyers I have dealt with in our organization. . . . He is much more proactive in trying to change law and apply it so that it fits with what he thinks is fair for our business and that we obviously support and is probably favorable for our business. A lot of other lawyers I’ve worked with tend to quote law as opposed to try[ing] to manage legislation and things like that.

This manager cited Attorney X’s willingness to argue against various regulatory limitations on accessing a customer’s financial information for purposes unrelated to the original reason it was collected.

One set of lawyers would argue, and argued in fact, . . . ‘[Y]ou can’t, so don’t even bother [to try to change the regulations].’ Attorney X and his folks challenge it and go back to the [government regulator] and ask for a different interpretation.

These lawyers are attractive to divisional management because they are willing to push the envelope in grey areas of the law. This is creative lawyering with a morally ambiguous edge—creating subsidiaries with “Gotti-like” images or moving to broader corporate access to putatively private consumer information. The “creative” or entrepreneurial role for lawyers in this corporation is a construction by lawyers in response to the needs of business. When they pick and choose the lawyers more likely to engage in this kind of lawyering, business executives ensure the prominence of entrepreneurial lawyers. Lawyers who tend to act as cops must change or be left behind. They may eventually be forced out of the corporation.

Yet, as Rosen (1984) and Donnell (1970) reported, inside lawyers can be deployed by managers to produce corporate decisions that are more socially responsible even if not strictly dictated by the law. A midlevel executive in a major subsidiary of Alphacorp reported a situation in which he thought as a matter of business ethics that they should disclose to a third party corporation that they were negotiating a deal with another corporation. He brought the issue to the President of the subsidiary. When the executive proposed disclosing this information, the President

slapped me right down and said no! It was very much a hierarchical thing of—[I] made the recommendation [and] got told no. But I still felt like this was . . . I really felt he was wrong. So then what do you do? . . . So I went to [Attorney Y]. He wrote a memo and then eventually we did tell them. And he wrote it as

a sidebar, not as a . . . it's not a legal opinion, it's more like these things are happening. I don't know; he sort of insinuated it into some process that he was working on. And it worked out great and it was really very useful to me.

These examples reveal some of the complexities in how different managers use law and lawyers in their work. Several of the "creative" lawyering solutions described here have a hard instrumental edge—lawyers are seen as pushing the boundaries of business taste, if not legal regulations. The last example, however, serves at least one manager's view of a higher form of business ethics. The lawyer he involved advanced this manager's approach, not by creating a legal opinion to support it, but by reshaping how the decision was made. Rosen referred to this kind of corporate lawyering as "decision consulting" and wrote of a similar case in which a lawyer effectively intervened in a corporate decision by citing corporate principles rather than legal mandates (1984:282–87).

C. Professional Autonomy in the Corporate Context

The foregoing suggests that both lawyers and non-lawyers frequently engage in strategic calculations about the roles they play in a corporate structure. For the reasons we already have elaborated, inside lawyers probably more often experience a tension between fidelity to a formal body of rules and norms (the law and the complex of professional obligations it imposes on lawyers) and allegiance to corporation objectives than to other businesspersons. Yet there are variations in how these tensions are resolved both within the category of inside counsel and across the categories of non-law jobs (especially other professional groups).

We have already noted that many of the inside lawyers who are most popular with executives at Alphacorp are "can do" types who champion aggressive legal approaches to management projects. A human resources (or employment) lawyer, practicing in a centralized Human Resources Department, had a different orientation. She described the inherent tension between lawyers and non-lawyers within Human Resources. Non-lawyer Human Resource staff

want employees to believe . . . that this is a good place to work and that the policies are there to assist and protect and encourage [employees]. And we on the other hand want to make sure that they are not written in a way that guarantees anybody a bonus, that guarantees them a job for any time certain.

As a result of the lawyers' role in manuals and contracts, there are provisions where "it's obvious that the lawyers have insisted that that language be in there." Here the lawyer is guarding the corporation from a potential risk. Lawyer and non-lawyer

may disagree over specific language, but they share an overall objective.

In other situations, however, the Human Resources lawyer may be in the position of telling management that employees have certain rights. The same Human Resources lawyer had practiced in a public interest organization before moving to Alphacorp. When she discussed how she was recruited, she described how she reconciled a move from public interest to employment law for management.

I would not have accepted a position if I had to only be what I would call a corporate mouthpiece. The department head was also very amenable to allowing the position to be one that ensured that employees' rights were not being trampled on, and gave the position enough autonomy that I was able to ensure that the right thing was done by the employee if a wrong had occurred.

Q. I assume that's still the case, you still very much feel that way.

A. Oh, absolutely, absolutely.

This informant explicitly recognized that she had "switched sides" in her career. Though she insisted she was still very autonomous in terms of professional decisions, she also acknowledged that her values had changed during the course of her time at Alphacorp.

I wouldn't have stayed if I didn't feel comfortable with the values of the company and all of that. I do think your values somewhat change as you grow older and your view on the world somewhat changes. I mean you take with you all of your prior experiences.

Lawyers are not unique in occasionally finding themselves at odds with management. A non-lawyer Human Resources staff person provided a graphic account of how she had intervened to prevent a manager from firing an employee who had become disabled.

This was before the days of ADA laws. His manager was very upset because he was being held accountable for the productivity of his staff, that this guy was . . . bringing down his numbers. He needed assistance getting into and out of the building. . . . So he put forth a decree that nobody was any longer allowed to help this person to come and go, because then he would be forced to leave. . . . We did not allow it. We told him that we . . . overruled his order and that [that] was unacceptable.

Some of the tensions inside lawyers experience in the corporation result from their position as "staff." An accounting officer in Alphacorp reported experiencing many of the same difficulties in dealing with business managers that our lawyer informants had reported. Accountants also struggle with the image among executives of being "obstructionist" because occasionally they

must deliver the “bad news” that structuring a deal a certain way may lead “to [the corporation] losing a favorable accounting treatment.” Indeed, this informant thought lawyers were more powerful than accountants in business decisions because executives tend to back off if a lawyer says there is a legal problem, but will argue with an accountant’s interpretation. This informant’s approach to the tension between accounting concerns and business concerns sounded quite similar to the approach of many inside counsel: get closer to business.

Why I moved into this particular job recently was to get closer to the business and to . . . you know, it was sort of a bridge to move somewhat out of accounting policy and into business. It served a purpose here because they needed someone closer in the organization, to be closer to transactions that were occurring from the inception, so that there would not be any sort of accounting blowups or at least fewer accounting blowups. So it served a need for me to move here. And at the same time I have a desire to move from the accounting policy, accounting theory, accounting practice, more into the business transactions.

Inside lawyers are not the only professionals in corporations who are actively pursuing more involvement in, and alignment with, business goals.

D. A Difference Between Lawyers and Non-Lawyers

The Alphacorp interviews provide an opportunity to compare lawyers and non-lawyers within the same organization. One distinction between the two groups that comes through very clearly is that all the non-lawyer executives we interviewed were interested in moving up the corporate ladder to division-wide, indeed corporate-wide, positions. When we asked the inside counsel about their career desires, some mentioned moving up inside the legal function at Alphacorp or elsewhere. But only a few seemed to seriously entertain the possibility of shifting to a business job. The Human Resources staff person for the legal function confirmed this pattern. She indicated that even though the corporation left it to individuals and had no policy to encourage or discourage these moves, very few inside lawyers sought a job change to the business side.

* * *

The Alphacorp interviews deepen our understanding of how lawyers and managers interact within a given corporate structure. Although individual lawyers can be classified as cops, counsel, or entrepreneurs, it is valuable to see how these roles are arranged and negotiated in an organizational setting. Alphacorp is a corporate environment that encourages aggressive entrepreneurialism on both the business and the legal side. In the division we studied most closely, power and prestige rested with the en-

trepreneurial lawyers. The hard-line guys were seen as useful for a delimited set of problematic negotiations, and, occasionally were denigrated by business executives as “not very smart.” Staff lawyers in Human Resources and other technical specialties were accorded autonomy and deference to their expertise. Yet the Divisional Counsel and the General Counsel for the larger subsidiary were seen as lawyers who came up with “empowering” solutions to management’s problems. The lawyer-entrepreneurs were in turn “empowered” by management.

VI. Conclusion

Our interviews with inside counsel and the corporate management with whom they work yield several important substantive findings and suggest avenues for future research. The first set of findings are relevant within the longstanding debates about the autonomy of corporate lawyers. The second set of findings imply a need to move beyond the debates on lawyer autonomy.

Within the Debate on Lawyer Autonomy

First, it is clear that inside counsel are subservient to managerial prerogatives. We find that inside lawyers work hard to avoid conflicts with business executives; they typically leave the final call on acceptable levels of legal risk to the businesspersons involved; and managers can exercise control over which lawyers work on their matters and thus influence the very style of lawyering employed inside the corporation.

In some sense this is an unsurprising, commonplace observation. All lawyers are obliged to be zealous advocates for clients within the bounds of professional ethics. Despite claims of professional autonomy, corporate lawyers—whether in law firms or in corporate counsel’s offices—have been reported to be closely aligned with client interests throughout the twentieth century (Auerbach 1976; Gordon 1984; Nelson 1988). Donnell (1970) and Rosen (1984), though arguing that inside counsel possessed considerable autonomy within the corporate structure, also tended to document the strong identification of corporate counsel with their employers and the rather severe tensions they experienced when their legal advice contradicted an executive’s proposed course of action.

In another sense our finding is significant because subordination to management continues in the contemporary period, despite profound changes in the structural position of inside counsel, in the presence of law in the corporate environment and the ideology of management itself. Inside counsel have gained power relative to their peers in outside law firms, but this apparently has

not resulted in a fundamentally different role within the corporation. Law almost certainly has become a more salient concern for American business as a result of increased exposure to litigation, the rise of regulatory structures in the 1970s, and the increasing reliance on legal expertise in corporate governance, financing, and transactions. It appears that lawyers are indeed involved in many corporate functions, yet they report similar sorts of pressure to conform to executives' preferences as the lawyers that Donnell and Rosen described from the 1960s and late 1970s. One significant reason may be the changed ideology of corporate management and a general corporate climate that devalues legal regulation. The inside counsel we interviewed reported dealing with extremely aggressive business executives who are interested in maximizing short-term results and cutting corporate costs. This managerial style is the hallmark of contemporary conceptions of the corporation. Staff functions such as the law are under pressure to reduce costs and reduce the drag on the velocity of business transactions. Hence our lawyer informants have attempted to craft a new image within the corporation in which lawyers are team players, rather than cops. Inside counsel have not abandoned their roles as monitors of corporate legality and analysts of legal risk, but they have adopted the current idiom of corporate management as they play those roles. Corporate lawyers, like the management they serve, attempt to be lean and mean.

Second, in the contemporary period corporate counsel have taken on an explicitly entrepreneurial orientation. In our sample of inside counsel (which is not a random sample, but was chosen in an effort to avoid bias), "cops" are significantly outnumbered by "entrepreneurs." More importantly perhaps, even "counsel" often speak in entrepreneurial terms. A sizeable minority of inside counsel are engaged in attempting to use the law to generate new sources of revenue for the corporation, by taking advantage of loopholes in regulations to enter new fields of business, by creating new forms of intellectual property, by creating new business entities. Others "market" the law to business executives, attempting to portray the law as adding value to the business, rather than only cost.

Although we lack direct data on change over time, the apparent rise of entrepreneurialism among inside counsel appears to be part of a general movement toward marketization within the legal profession, as well as a product of changes specific to corporate management. Several commentators have noted the shift toward increased entrepreneurialism in various precincts of the legal profession, beginning with the Supreme Court's decisions in the mid-1970s to strike down restraints on lawyer advertising and minimum fee schedules (see Seron 1996; Van Hoy 1997; Nelson & Trubek 1992; Galanter & Palay 1991). At the same time, law

and economics began to reach prominence in legal education, which taught new generations of law students to explicitly incorporate economic analysis into legal decisionmaking (Donohue 1988). In the 1980s, the Reagan administration narrowed anti-trust regulation, creating new opportunities for corporate mergers and acquisitions. This shift, in conjunction with deregulation in the financial markets, spurred a new wave of corporate restructuring and downsizing, as management began to emphasize short-term stock price and performance (Espland & Hirsch 1990). In the marketplace for corporate legal services, the rapid increase in the cost of legal services led corporations to move away from a model of relying on one law firm to a model of parceling legal work to various law firms. Moreover, they began to closely monitor the costs of legal services and to demand highly detailed accountings of services rendered. Law firms reacted by developing self-conscious strategies for increasing profits in a more uncertain and competitive market.

It is no wonder that inside counsel were deeply affected by these changes. As inside counsel began to insist that outside law firms become accountable for the value of the legal services they rendered, they must have begun to think of their own role in corporate affairs in similar, economic terms. But the entrepreneurialism of corporate counsel is also in part unique to the corporate context itself. As corporate management turned from relying on fixed institutional arrangements for conducting business to frequently reorganized, project based teams, which were evaluated for economic return, inside lawyers appear to have done the same (generally, see Leicht 1998). There is at least the suggestion in several interviews that in an earlier era corporate management asked for something different from their lawyers (both inside counsel and outside law firms). Management expected their lawyers to more often function as cops to protect the corporation from legal risks in a regulated corporate environment. The new generation of management began to ask their lawyers to be more entrepreneurial, in line with the loosening of regulation in corporate governance and business transactions. The “cops” declined in influence within the corporation; the “entrepreneurs” rose to take their place.

Third, despite the embrace of entrepreneurialism by inside counsel, we find that inside lawyers overwhelmingly cling to a self-image as lawyers. Most inside counsel for major corporations are *business lawyers*. One could neither drop the term “business” nor “law” from their job description without doing violence to an understanding of their work. They eat, breathe, and sleep business, in the sense that they work at corporate headquarters, ride the elevators and eat in the cafeteria with other corporate employees, and they work exclusively on the concerns of their business client. Indeed, when we asked corporate counsel whether

they would be interested in moving to the business side of the corporation, the reaction of most was that they already were deeply involved in business functions. Yet the salience of business concerns did not detract from their self-identification as lawyers. Even the most entrepreneurial amongst our respondents could not ignore the significance of their professional status for what they did. Many of our informants were happy to offer non-legal advice, but none would deny that the reason they were at the management table in the first place was their function as a legal advisor. And many of these informants admitted that they were not sure they wanted to be, or would be good at, making business decisions.

The finding that both law and business are inextricably combined in the role of inside counsel serves as an important counter to the strand of theorizing in the professions literature that presumes a conflict between business and the professions (Parsons 1954; but see Larson 1977). Inside counsel embody a joint identification with business and legal knowledge. They are an example of corporate professionals who combine technical expertise and a kind of portable or commodified commitment to their work. We were struck over the course of our interviews that inside counsel seemed to very quickly develop loyalty to their employer. Just as a star athlete who is traded to a new team develops instant commitment to make his or her new team win, corporate professionals have been socialized in dedicated service to clients. Indeed, part of their professionalism lies in the practiced art of embracing their new clients' objectives as their own. In the corporate context, professionalism reinforces dedication to the profitmaking objectives of business. The lawyers we interviewed, for the most part, were not alienated from their business peers, but were enthusiastic partners in their profit-generating enterprise.

Beyond the Debate on Lawyer Autonomy

Fourth, insofar as our data explore the constructed aspects of lawyers' roles, it transcends the autonomy debate as it has been conducted within much of the professions literature. Just as Sarat and Felstiner (1995) found that in divorce practice lawyer-client relationships were contingent, shifting, complex, and constantly negotiated, we find similar complex dynamics in the interactions between inside counsel and their corporate clients. The lawyers in our study negotiate multiple tensions and questions. Should I be involved in a particular business decision? What should my role be? Should I act as cop, counsel, or entrepreneur? These relationships are undergoing constant transformation and recreation, not only because of the choices the lawyers make, but as a result of the ongoing decisions of businesspersons concerning

law and lawyers. A lawyer's behavior is shaped by past experiences in the corporation. When lawyers are criticized by businesspeople or when businesspeople resist legal advice in various ways (by not going to lawyers at all, or by choosing to go to a different lawyer within the corporation, or by complaining to higher ups that the lawyers are not "team players") it affects how the lawyer will behave the next time. Although we have emphasized the ways corporate counsel "construct" their roles, it is important to recognize that this is a reciprocal process among the lawyers, their "clients," and other members of top management. These roles are not fixed either historically or organizationally by field or by individual (i.e., they can vary across and within each of the above). Lawyers and their business clients can exercise individual choice within structural constraints.

It is this realm of discretion that Gordon and Simon (1992) hail as providing corporate lawyers with an opportunity to act according to a higher ethical and civic code. We are less sanguine about how corporate lawyers in fact choose to use their discretion. With a few notable exceptions, the lawyers we interviewed (like their non-lawyer peers) were literally absorbed in a high-pressure corporate environment. They appeared far more concerned with pursuing corporate profits than with pursuing the public good. But we agree that corporate lawyers retain a zone of discretion that allows them to shape the role of law and lawyers within the corporation.

Finally, we hope our results stimulate research that will more comprehensively examine some of the questions we have broached here. Our results suggest that there has been a historical shift in the ideology and practices of inside counsel that maps onto historical changes in the ideology and practices of corporate management, the influence of the legal environment on the corporation, the prevalence of different schools of economic and regulatory theory within the legal academy, and the changes in market and organizational forms in the corporate sector of the legal profession. The relationships among these historical patterns deserve sustained historical analysis. In a more contemporary vein, we would benefit both from broader surveys of corporate law departments, which would provide an overview of the social organization of inside counsel, and in-depth inquiries into the particular contexts of corporate law practice, such as case studies of law departments or of particular kinds of corporate specialties (see, e.g. Macaulay 1979; Edelman et al. 1992). If we refine our understanding of how and why corporate lawyers construct their role in business, we will gain a better understanding of an enduring concern in the sociology of law—the relationship between law and economic power.

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Appendix. Characteristics of Respondents (Inside Counsel only)

	<i>N</i>	Percentage
Location		
Bay Area	11	26.2
Chicago	9	21.4
New York	22	52.4
Gender		
Male	31	73.8
Female	11	26.2
Industry-Type		
Finance	25	59.5
Manufacturing	13	31.0
Service	4	9.5
Position in Organization		
Top Management	11	26.2
Head of Law Department	19	45.2
Staff Lawyer/Specialist	12	28.5
Years in Organization		
1–5	14	33.3
6–10	10	23.8
11–15	8	19.0
16+	9	21.5
Missing	1	2.4
Prior Experience*		
Other Business	23	54.8
Law Firms	27	64.3
Government	13	31.0
Missing	2	4.8
Law School Attended		
Elite	13	31.0
Prestige	9	21.4
Regional	10	23.8
Local	9	21.4
Missing	1	2.4
Total	42	100.0

*NOTE: Does not equal 100% because these characteristics are not mutually exclusive.