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THE CORPORATE COUNSEL AND HIS "CLIENT": USE OF ROLE ANALYSIS TO ILLUMINE STRAINS IN THE LAWYER-CLIENT RELATIONSHIP

JOHN D. DONNELL*

Something of a spate of books reporting major research studies of members of the legal profession has been published in recent years. They include broad studies of the profession in the United States and England¹ and narrower but deeply probing studies of particular segments of the profession including the so-called "Wall Street Lawyers,"² the individual practitioners in a large city,³ and the bar of a small Midwestern city.⁴ In the same genre, utilizing sociological techniques, have been several other books and numerous scholarly articles.⁵ Although, of course, no study of lawyers would fail to consider the nature of the lawyer's clients and how he relates to them, research has primarily relied upon interviews with lawyers, not with their clients. On the other hand, two extensive surveys of lawyers, the Missouri bar survey⁶ and a study by Harrop A. Freeman of Cornell Law School,⁷ obtained the views of very large random samples of both laymen and lawyers about lawyers and the way they practiced law. The research reported here concentrated on corporate counsel—the salaried lawyer for the business firm. This has recently been the fastest growing segment of legal practice.⁷ As in the

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1. Q. JOHNSTONE & D. HOPSON, JR., *LAWYERS AND THEIR WORK: AN ANALYSIS OF THE LEGAL PROFESSION IN THE UNITED STATES AND ENGLAND* (1967); A. BLAUSTEIN & C. PORTER, *THE AMERICAN LAWYER* (1954), summarizing a very extensive survey of the legal profession undertaken by American Bar Association.

2. E. SMIGEL, *THE WALL STREET LAWYER: PROFESSIONAL ORGANIZATION MAN?* (1964; 1969).

3. J. CARLIN, *LAWYERS ON THEIR OWN: A STUDY OF INDIVIDUAL PRACTITIONERS IN CHICAGO* (1962).

4. J. HANDLER, *THE LAWYER AND HIS COMMUNITY: THE PRACTICING BAR IN A MIDDLE-SIZED CITY* (1967).

5. J. CARLIN, *LAWYERS' ETHICS: A SURVEY OF THE NEW YORK CITY BAR* (1966); H. O'GORMAN, *LAWYERS AND MATRIMONIAL CASES* (1963); A. WOOD, *THE CRIMINAL LAWYER* (1967); See also special issue on *Lawyers in Developing Countries*, 3 *LAW & Soc'y REV.* 195-468 (1969); Donnell, *Reflections of Corporate Counsel in a Two-Way Mirror*, 22 *BUS. LAWYER* 991 (1967); Hall, *Professionalization and Bureaucratization*, 33 *AM. SOC. REV.* 92 (1968); Ladinsky, *Careers of Lawyers, Law Practice and Legal Institutions*, 28 *AM. SOC. REV.* 47 (1963).

6. *MISSOURI BAR & PRENTICE-HALL SURVEY* (1963); *THE LEGAL PROFESSION—WHAT LAWYERS AND LAYMEN THINK ABOUT IT*, 35 *N.Y.S. B.J.* 374 (1963); *Missouri Bar—Prentice-Hall Survey*, 36 *WIS. B. BULL.*, Aug. 1963, at 21.

7. H. FREEMAN, *COUNSELING IN THE UNITED STATES* (1967).

8. AMERICAN BAR FOUNDATION, *THE 1967 LAWYER STATISTICAL REPORT* 18-21 (1967).

Missouri survey, clients as well as the lawyers were interviewed and given questionnaires to complete. Unlike the Missouri survey and Freeman's study, the subjects of this study were a few lawyers and their particular clients. The referent, therefore, was a specific lawyer or client in contrast to the broad, generalized view of legal practice sought in the Missouri study. To obtain this reciprocal viewpoint a technique developed by sociologists called "role analysis" was utilized.

THE CONCEPT ROLE

Role is an ancient although somewhat imprecise concept. It came into broad usage in the social sciences through early use by a psychologist and a cultural anthropologist.⁹ Erving Goffman¹⁰ later gave color and vitality to the concept, but its age, is revealed by the fact that the Romans used the same word for an actor's mask, for a character portrayed and for a personage or being.

Sociologists, social psychologists and cultural anthropologists have used the concept as a device for relating the individual and his personality to his society. They have postulated that it is through the system of patterns of behavior called roles which guide individuals in their activities and interrelations that a society is given structure and cohesion. They have not always defined the term, and usage is not entirely consistent.¹¹ However, most of the authors using the term have been generally concerned with the same phenomenon and included in their conception, if not in their definition, the basic ideas that individuals (1) in social locations (positions in society) (2) behave (3) with reference to expectations.¹² The view has been that the position of lawyer in a society, for an example, is defined by the expectations assumed to be relatively uniform, of the members of the society for his activities and characteristics. Any individual lawyer's behavior, if not determined by, is at least heavily influenced by the expectations of those with whom he interacts as a lawyer. Those expectations, of course, greatly affect his own concept of appropriate behavior in his position as lawyer.

The most salient expectations for the behavior of any individual depend upon the position he holds. For a lawyer in individual private practice, the most salient expectations are likely to be those of his clients,

9. G. MEAD, *MIND, SELF AND SOCIETY* (1934); R. LINTON, *THE STUDY OF MAN* (1936).

10. E. GOFFMAN, *THE PRESENTATION OF SELF IN EVERYDAY LIFE* (1959).

11. Neiman & Hughes, *The Problem of the Concept of Role: A Resurvey of the Literature*, 30 *SOCIAL FORCES* 141, 149 (1951).

12. N. GROSS, W. MASON & A. MCEACHERN, *EXPLORATIONS IN ROLE ANALYSIS: STUDIES OF THE SCHOOL SUPERINTENDENCY ROLE* 17 (1958).

of his brother lawyers in the community, of the judges before whom he practices and his own and perhaps his family's expectations for his behavior. The bar associations to which he belongs, the law school which he attended and his previous experience with lawyers and as a lawyer himself will also, of course, influence his own expectations for his behavior.¹³ The expectations for his behavior of the judges and his brother lawyers will also be similarly affected. For a corporate counsel or any other salaried attorney, the expectations of his hierarchical superior—the general counsel or attorney general or whatever—become highly salient, as would those of his partners if he were a member of a law firm.

Although most of the early writing using the role concept assumed a high degree of consensus among the expectations of these "significant others," or "role senders,"¹⁴ research has demonstrated that they actually vary considerably.¹⁵ This state of disagreement or inconsistency between expectations is referred to as "role conflict." There are several kinds of role conflict. Incompatible expectations may be held by any one role sender. Among any class of role senders, such as clients, there are likely to be conflicting expectations for a person's behavior in any particular position. Likewise, as might be expected, there is usually substantial disagreement between the average or typical expectations of two classes of role senders, for example, between the typical expectations of clients and judges or between clients and brother lawyers. There is also, of course, the conflict of expectations which occurs because all people occupy multiple positions in society—for example, father, husband, citizen, church member, club president, and many others—simultaneously.

Another important concept related to role is that of "role ambiguity". This exists when expectations for behavior in a position are unclear. Insofar as the individual in the position is concerned this situation may occur because he has no information as to what the expectations of his role senders are, or it may be a result of contradictory messages as to expectations sent by his role senders and therefore closely related to role conflict.¹⁶

13. Cf. Gullahorn, *Measuring Role Conflict*, 61 AM. J. SOC. 299 (1956).

14. See, N. GROSS *et al.*, *supra*, note 12, ch. 3, Jacobson; Charters & Lieberman, *The Use of the Role Concept in the Study of Complex Organizations*, 7 J. SOC. ISSUES, #3, 1951, at 18.

15. See, N. GROSS *et al.*, *supra*, note 12, especially ch. 7-9; Stauffer, *An Analysis of Conflicting Social Norms*, 14 AM. SOC. REV. 707, 717 (1949).

16. R. KAHN, D. WOLF, R. QUINN, J. SNOEK & R. ROSENTHAL, *ORGANIZATIONAL STRESS: STUDIES IN ROLE CONFLICT AND AMBIGUITY* 25, 89 (1964). This lack of sharp differentiation between the concepts of role ambiguity and role conflict may be seen in Wispe & Thayer, *Role Ambiguity and Anxiety in an Occupational Group*, 46 J. SOC. PSYCH. 41 (1957).

Role conflict and role ambiguity have been viewed as undesirable both for the individual and for society. A number of researchers have found support for various hypotheses suggesting that anxiety, job dissatisfaction and reduced individual and organizational effectiveness result from role conflict.¹⁷ A few have come to similar conclusions with respect to role ambiguity.¹⁸ One very extensive research effort in this area, which was supported by the National Institute of Mental Health, explored the consequences of role conflict and ambiguity and found through a carefully constructed national sample of job holders that forty-eight per cent reported that they are from time to time caught in the middle between two sets of people who want different things from them, with fifteen per cent indicating that this is a frequent and serious problem.¹⁹ In another part of that study the research team from the University of Michigan found statistically significant differences between those working under high as compared to low role conflict conditions. Those in high conflict conditions not only experienced conflict subjectively but suffered more job related tensions and showed less job satisfaction.²⁰

While the University of Michigan group studied persons in a variety of jobs in many different industrial companies, another very extensive study focused on the school superintendent and his school board. These researchers found that there was far from a consensus of expectations for the behavior of their superintendents among school boards or between the expectations of a school board and its superintendent. Nor was there consensus between different school board or between superintendents even in the same state and operating under the same statute.²¹

METHODOLOGY

The research upon which this report is based was a two-phase field investigation involving interviews with forty-two corporate counsel and thirty-seven top and middle level executives from a total of thirty-nine widely scattered and diverse companies. Interviews were held in the

17. N. GROSS *et al.*, *supra*, note 12, at 213-21; R. KAHN *et al.*, *supra*, note 16, at 66; Bidwell, *Some Effects of Administrative Behavior: A Study of Role Theory*, 2 ADMIN. SC. Q. 162 (1957); Getzels & Guba, *Role, Role Conflict and Effectiveness: An Empirical Study*, 19 AM. SOC. REV. 164 (1954); Goode, *A Theory of Role Strain*, 25 AM. SOC. REV. 483 (1960); Mitchell, *Occupational Role Strains: The American Public Official*, 3 ADMIN. SC. Q. 210 (1958); Sykes, *The Effect of a Supervisory Training Course in Changing Supervisors' Perceptions and Expectations of the Role of Management*, 15 HUMAN REL. 227 (1962).

18. R. KAHN *et al.*, *supra*, note 16, at 94; Wispe & Thayer, *supra*, note 16.

19. R. KAHN *et al.*, *supra*, note 16, ch. 4 & 5.

20. R. KAHN *et al.*, *supra*, note 16, at 66, 94, 380.

21. N. GROSS *et al.*, *supra*, note 12, ch. 8 & 9.

Middle West, metropolitan New York and in New England. Others, as well as some of the same men, participated in small group discussions held with counsel at the Harvard Law School and the University of Wisconsin Corporate Counsel Institute and with executives at the Harvard Business School. A rather thorough study was made of the operation of the law department in three industrial corporations, each in a different industry but each having from four to six headquarters staff lawyers including the general counsel. In these companies each of the counsel was intensively interviewed at least once and most of them two or three times. At least six executives in each company, chosen from different functional areas, were also interviewed, most of them twice. In two of the companies the president was also interviewed with respect to the legal function within the company. The interviews, especially those in the three companies on which the study chiefly focused, were designed to elicit the kind of data relevant for role analysis.²² They emphasized how the person being interviewed conceived of the role of the corporate counsel and the interrelationships between corporate counsel in the company and the executives with whom he worked. If the interviewee were a corporate counsel or the general counsel, attention was given to the relationship between those holding these two positions.

In addition, a questionnaire in several variations was completed by each man interviewed in the three companies. These questionnaires utilized role analysis techniques to probe more deeply and with somewhat greater rigor the relationship between the corporate counsel in the company and the members of his "role set." Most questions were designed to obtain data on role expectations with respect to the corporate counsel's "performances,"²³ that is his activities or what he actual does. A few, however, probed expectations with respect to counsel's attributes or personal characteristics. A few others inquired into expectations for the behavior of the other members of his role set. An understanding of the reciprocal expectations within the role set could, therefore, be obtained by comparing responses of occupants of the various positions in the role set—corporate counsel, "clients"²⁴ (executives in the firm), the general counsel and the company president.

The questionnaires also probed differences between expectations for behavior and perceptions of actual behavior. For this purpose, clients

22. Many of the questions were the same as used by R. KAHN *et al.*, *supra*, note 16.

23. T. PARSONS, *THE SOCIAL SYSTEM* 88 (1951); N. GROSS *et al.*, *supra*, note 12 at 113, 330-31.

24. Although all corporate counsel interviewed recognized that the actual client was the corporation, most tended to think of and relate to the executives of the corporation whom they served as clients.

were asked to indicate how frequently a particular corporate counsel (usually the one with whom the respondent had the most contact) acted in a certain way when faced with a described situation and how frequently the client would prefer²⁵ that he act as described. Counsel were asked to indicate how they would prefer to act, how they actually did act and how they perceived certain clients would prefer them to act in the same situations presented to the clients. These situations were ones on which interviews is an earlier pilot survey suggested there was either disagreement or uncertainty as to how counsel should act.

A presentation here of various forms of one of the questions,²⁶ Question #9, may clarify both the nature of the questionnaires and the variety of data which could be elicited from the responses. The questionnaire form given to corporate counsel after the first interview, here designated Form A, asked the respondent to "place a checkmark under one of six responses indicating: (1) approximately how frequently you presently act as outlined in the question and (2) how you would ideally prefer to act." The questions were presented in the following form:

FORM A

9. On matters of importance or novelty, about how often do you give your opinion in writing?

	Never	Rarely	Occasionally	Often	Very often	Always
You actually do:	—	—	—	—	—	—
You ideally prefer:	—	—	—	—	—	—

This form of the questionnaire not only permitted comparison between the counsel's expectations for or conception of his role and what he perceived to be his actual behavior—an indication of one form of role strain—but permitted comparison with other counsel in his company and the three companies.

After the second interview, those counsel whose role sets were to be studied were asked to complete the second questionnaire. It stated:

25. The choice of this word stems from R. KAHN *et al.*, *supra*, note 16, at 14: "The role expectations held for a certain person by some member of his role set will reflect that member's conception of the person's office and of his abilities. The content of these expectations may include preferences with respect to specific acts and personal characteristics or styles; they may deal with what the person should do, what kind of person he should be, what he should think or believe, and how he should relate to others."

26. Space does not permit reproducing the forms or even suggesting all of the forms, of which there were actually nine. A few corporate counsel were asked to complete three separate forms, no one else more than two. Common to all forms were 42 basic questions concerning corporate counsel activities although the instructions and the phraseology of the questions varied on different forms. Some forms included seven questions on activities of clients and eleven questions on activities of the head of the law department.

"We are interested in how you think the following five individuals would prefer that you act in each situation." Then the surnames of the company president, the general counsel and the three clients who had been selected by him and the researcher were listed. He was then asked to make a checkmark at the appropriate place for each person and he was instructed, "If you are quite unsure for any individual, check the unknown response at the right of that line, but *if you think your guess may be good, make the guess.*" The following form was then used for the questions:

FORM B

9. On matters of importance or novelty, about how often do you think each individual would prefer that you give your opinion in writing?

	Never	Rarely	Occasionally	Often	Very often	Always	???
A. <i>Gen. C.</i>	—	—	—	—	—	—	—
B. <i>Client A</i>	—	—	—	—	—	—	—
C. <i>Client B</i>	—	—	—	—	—	—	—
D. <i>Client C</i>	—	—	—	—	—	—	—
E. <i>Co. Pres.</i>	—	—	—	—	—	—	—

This form of the questionnaire permitted a comparison of the corporate counsel's perceptions of the expectations of his principal role senders, thus indicating the amount of subjective role conflict he experienced. The last column was designed to indicate situations in which he perceived ambiguity in the expectations of his role senders.

After the final interview the questions were presented a third time, in the following form with the instruction, "Please choose the response which most nearly approaches what you would *ideally prefer* to have corporate counsel do in the given situation."

FORM C

9. On matters of importance or novelty, about how often would you prefer that the corporate counsel give his opinion in writing?

Never	Rarely	Occasionally	Often	Very often	Always
—	—	—	—	—	—

This form of the questionnaire permitted a comparison with the preference part of the first questionnaire and provided an indication of change in the expectations of corporate counsel during the period of the study.

The role senders—the general counsel and the clients—were given exactly the same form as the counsel for the final questionnaire (their second) and for the same purpose. Their first questionnaire, however, was different. Its instructions included the following:

For each of the following questions please place a checkmark indicating: (1) approximately *how frequently you think each of the corporate counsel* specified below *actually acts as outlined in the question*; and (2) *how you would ideally prefer that they act*.

The general counsel was asked to respond with respect to the two corporate counsel who had been chosen as special subjects. The clients were asked to respond with respect to the counsel in whose role set they were. A few clients who were served by both counsel were asked to respond for both. The form of the questions was as follows:

FORM D

9. On matters of importance or novelty, about how often does he give his opinion in writing?

	Never	Rarely	Occasionally	Often	Very often	Always
A. _____	—	—	—	—	—	—
B. _____	—	—	—	—	—	—
C. _____	—	—	—	—	—	—
You ideally prefer:	—	—	—	—	—	—

This form of the questionnaire provided not only a comparison between the expectation of the role sender and his perception of actual behavior of the counsel, thus a measure of Role Pressure (an index of dissatisfaction with counsel), but also allowed a comparison of expectations among role senders and between role senders and the person in the focal position, thus a measure of objective role conflict. Also it was possible to compare perception of counsel's behavior by different role senders with the perception of the corporate counsel himself.

As was expected, there was some resistance from the respondents, especially the lawyers, to the completion of the questionnaires. Making guesses on the one form seemed frivolous to the lawyers. It is unlikely that data could have been obtained in this manner without first developing a personal relationship through the interview. However, as will be seen later, most of the respondents were much interested in the data obtained and were surprised at the number of misunderstandings and problems exposed.

An important part of the research design was the holding of a "feedback" meeting in each of the companies in which data from the research would be discussed with some of the participants and in which they would be asked to help interpret the data. It was intended that one "role set"—that is one corporate counsel and three of the executives whom

he served plus the general counsel—plus another corporate counsel who had participated in all phases of the research in the company would attend the feedback meeting. The second corporate counsel was to be asked to attend so that the corporate counsel in the “focal position” would not feel isolated and so that the numbers of lawyers and non-lawyers would be balanced, while keeping the size of the group small enough so that all would be likely to participate actively. Actually, participation in the meetings did not exactly conform to this plan in any of the three companies.²⁷ The principal purpose of the meetings was to determine the utility of such a meeting for clarifying and changing expectations and, therefore, for bringing about a greater consensus within a role set.²⁸

FINDINGS: CONSENSUS ON CORPORATE COUNSEL CHARACTERISTICS

One question asked in the interviews of both corporate counsel and clients was how the respondent would distinguish a more effective from a less effective corporate counsel. The lawyers willingly responded to this question but some of the clients would not. No checklist was provided the respondent nor was he asked to prepare such a list, though from one to six items were mentioned by most respondents. However, other questions asked in the interviews frequently elicited comments which were pertinent to this question. These comments were sometimes in the form of complaints or commendations of corporate counsel in general or rarely, specific lawyers. An effort was made to get the respondents to describe specific behaviors, but they found this difficult to do.

In order to develop a rank order of the criteria for effective corporate counsel mentioned in the interviews, a system of weights was applied to the comments which appeared to be relevant to the identification of these criteria. Those first mentioned in response to the direct question were weighted most heavily. Specifically, the first criterion mentioned by clients (or by corporate counsel for the list showing their viewpoint) in response to the question, “What would you say is different about the behavior of an effective corporate counsel and that of one who isn’t so effective?” was given a weight of three. The second criterion mentioned in response to this question was given a weight of two. Every other criterion

27. In Company 1 there was only a minor, technical variation from plan. However, as will be discussed *infra*, clients and corporate counsel met separately in Company 2. In Company 3 one of the corporate counsel was unable to attend.

28. The Survey Research Center of the University of Michigan has used feedback meetings as a device aimed at changing behavior for a number of years; Mann & Baumgartel, *The Survey Feedback Experiment: An Evaluation of a Program for the Utilization of Survey Findings*, Institute for Social Research, Ann Arbor, Mich. (1954) (unpublished). Its use in role analysis is discussed by Kahn & Wolfe, *Role Conflict in an Organization*, in E. BOULDING, ed., *CONFLICT MANAGEMENT IN ORGANIZATION* (1961).

mentioned throughout the interviews was given a weight of one.

Table I shows the results of this weighting process except for item 1. The criterion of "professional competence" was not actually mentioned most frequently. However, it appeared clear from other comments that both the corporate counsel and the clients took this for granted if they did not mention it, and those who did mention it put it first.

TABLE I
CRITERIA FOR EFFECTIVE CORPORATE COUNSEL
(In Order of Importance)

<i>Clients' View</i>	<i>Corporate Counsel's View</i>
1. Professional competence	1. Professional competence
2. Understands the business	2. Positive attitude, imagination
3. Positive attitude, imagination	3. Understands the business
4. Prompt service	4. Easy to talk with, good listener
5. Clear-cut advice	5. Clear-cut advice
6. Accessible	6. Prompt service
7. Doesn't try to dominate client	7. Comprehensible language
8. Easy to talk with, good listener	8. Doesn't try to dominate client
9. Comprehensible language	9. Accessible.
10. Not a "nit-picker"	10. Takes initiative
11. Takes initiative	11. Not a "nit-picker"

It will be noticed immediately that the first eleven items on the list ordering the criteria mentioned by the corporate counsel are identical to the eleven mentioned by clients and that, in general, the order is the same. Only on the relative importance of the counseling skills—listening ability, etc.—and on the accessibility of the counsel did the two groups differ much. The four additional items mentioned by corporate counsel were each mentioned by only one person and thus were given only one point, although they were consistent with comments made by other counsel in informal conversations with the researcher. Only on two items on the corporate counsel list did there appear to be a real difference of opinion among corporate counsel as to desirability. These were items #5—clear-cut advice—and #14—keeper of the corporate conscience. It will be noted that these items are more directly related to what the counsel does and less to how he does it than most of the other items.

Only two of the items on the questionnaire specifically probed matters related to the criteria on the lists in Table I. They dealt with items #9 and #11 on the clients' list. However, a number of the other questions in the questionnaire dealt with these items indirectly, usually concerning a more specific illustration of behavior which might fall within the more general criterion. When the difference in level of abstraction is taken into account, it appears that, on the whole, the questionnaire and the interviews yielded consistent or reconcilable data on these criteria.

The criteria themselves are discussed in some detail elsewhere.²⁹ Suffice it to say here that there was a high degree of consensus on these generalized behavior patterns or traits, both among the corporate counsel and clients studied and between these two groups.

FINDINGS: CONFLICT ON BEHAVIORAL EXPECTATIONS

The questionnaires primarily were designed to probe behaviors of corporate counsel rather than traits or characteristics, that is the questions usually asked what the respondent thought the corporate counsel should do in a specified situation. As exhibited above, Form A and Form D of the questionnaire also asked the respondent what he perceived that the corporate counsel actually did. When the focus was thus placed upon expectations for specific behavior, in contrast to traits and characteristics, the findings was not consensus but role conflict. This is true not only between clients and counsel but also among members of each group. This lack of consensus is consistent with the findings of Gross in his study of the school superintendent.³⁰

A simple but indicative measure of the amount of role conflict is the spread of the responses to the items in the questionnaire. The choices offered to the respondent formed a scale of six, with responses #1 and #6 representing opposite poles of a continuum. On such a scale a difference in responses of three or more represented a difference in the direction of response rather than just a difference of degree. The spread in the responses of corporate counsel to forty-one items³¹ on the questionnaire, indicating their preferences for their own behavior, is shown graphically in Table II. On only eight out of the forty-one questions did the responses exhibit a spread of less than three.

Question #16³² was alone in bringing complete agreement. Questions #1³³ and #25³⁴ brought agreement except for one corporate

29. Donnell, *Reflections of Corporate Counsel in a Two-Way Mirror*, 22 BUS. LAWYER 991 (1967).

30. N. Gross, *et al.*, *supra*, note 12, especially ch. 8 & 9.

31. There were actually forty-two questions on corporate counsel behavior in the questionnaire. However, the responses requested in Question #40 could not be tabulated in the same manner as the others.

32. This question asked, "When a client who is of much higher rank in the organization proposes action which corporate counsel believes is legally hazardous but he knows the client is determined to proceed anyway, about how often would you prefer that the corporate counsel clearly and forcefully give his true opinion to the client? Choices offered were the same as in the example in Form A, *supra*."

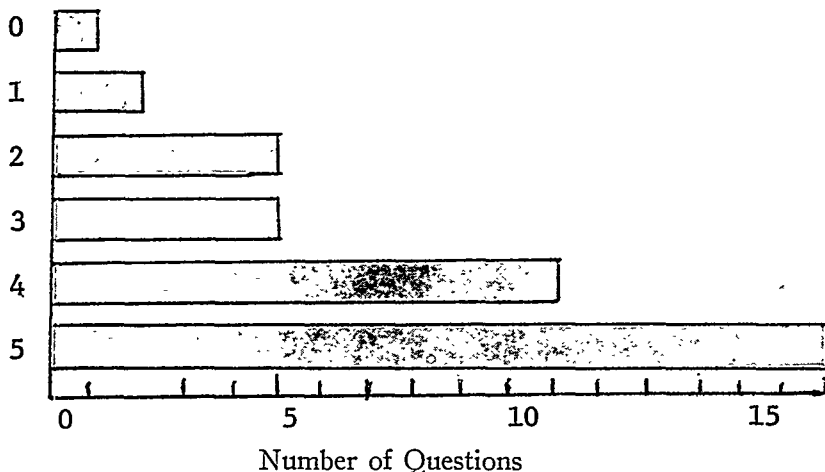
33. This question asked, "When the corporate counsel learns through the 'grapevine' of impending action which he believes will make the company vulnerable to criminal penalties, about how often would you prefer that he seek out the responsible person to give him his legal opinion on the matter?" Choices offered were the same as in the example in Form A, *supra*.

counsel. Responses to twenty-seven of the questions showed a tendency toward a uni-modal distribution—that is the responses tended to concentrate at one point on the scale, but eighteen of these exhibited a spread of three or more points. A bi-modal distribution appeared in eight questions, and the other six exhibited a tendency toward a flat distribution.

TABLE II

SPREAD IN CORPORATE COUNSEL RESPONSES—
PREFERENCES FOR OWN BEHAVIOR
(41 QUESTIONS; N = 13)

Spread



When the responses of the corporate counsel within each company were examined, the spread was narrower, but conflict rather than consensus was shown even in Company 3, where the law department appeared to be unusually close knit. The appearance of somewhat greater consensus within departments was, to a large degree, a result of the smaller number of respondents (N).

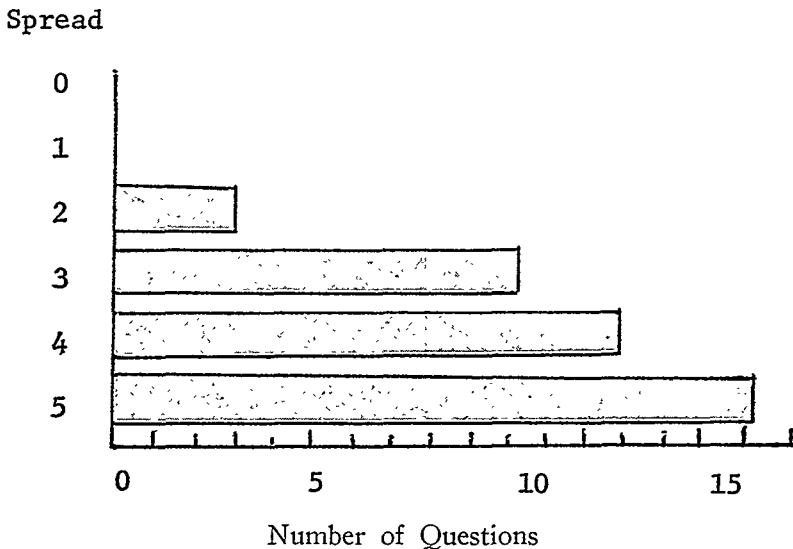
Lack of consensus was even more pronounced in the responses to the same questions by clients, as is shown by Table III. No single

34. This question asked, "When a proposed action is likely to be very profitable for the company and he expects no criminal or monetary civil penalty, although he thinks it is clearly illegal, about how often would you prefer that the corporate counsel forcefully state his opinion that it is illegal?" Choices offered were the same as in the example in Form A, *supra*.

question brought agreement or even a spread of only one. Responses of the clients to thirty of the questions fell into unimodal distributions, while eight presented bi-modal distributions. The remaining three tended towards a flat distribution.

TABLE III

SPREAD IN CLIENT RESPONSES—
PREFERENCE FOR CORPORATE COUNSEL BEHAVIOR
(41 QUESTIONS; N = 17) (



Since the responses to a majority of the questions did show a unimodal distribution, averages were computed for the responses to each question for the corporate counsel of the three companies as a group and by company. This was also done for the clients who participated in the study.

When the average response of clients as a group was compared with that of the counsel in the three companies as the other group, distinct differences appeared on a number of questions, although these differences were naturally much smaller than the variations within each group.³⁵ Those questions where the contrast was greatest follow:

35. A similar phenomenon is observed when human biological characteristics, such as head shape, are compared within and between ethnic groups. See also, N. Gross, *et al.*, *supra*, note 12, at 167.

CC CL Diff.

4.5	2.9	1.6	(26) About how frequently would you prefer that the corporate counsel initiate general discussions with clients regarding their work and business problems when they have no specific legal problems?		
1	2	3	4	5	6
Not at all	Very infrequently	Infrequently	Sometimes	Frequently	Very Frequently
2.8	4.3	1.5	(2) About how often would you prefer that the corporate counsel use his own informal sources of information within the company to supplement or contradict what a client who comes to him for advice tells him?		
1	2	3	4	5	6
Never	Rarely	Occasionally	Often	Very often	Always
2.8	4.2	1.4	(5) Approximately how often would you prefer that the corporate counsel seek to get the company to live up to a higher standard of commercial morality than it might otherwise be inclined to do?		
1	2	3	4	5	6
Never	Rarely	Occasionally	Often	Very often	Always
3.5	4.6	1.1	(42) To about what extent would you prefer that corporate counsel aspire to become a voting member of a policy making committee so that his legal opinions will be given greater weight?		
1	2	3	4	5	6
Not at all	Very little	Little	Some	Great	Very great
2.4	3.5	1.1	(35) When the corporate counsel meets with clients, about what percentage of these discussions would you prefer that he hold: In lawyer's office or dept.:		
1	2	3	4	5	6
100%	80%	60%	40%	20%	0%
In the client's office or elsewhere:					
1	2	3	4	5	6
0%	20%	40%	60%	80%	100%
4.1	5.1	1.0	(22) When a client persists in a course of action which the corporate counsel has advised against because of a risk of civil penalties, about how often would you prefer that he inform higher management?		
1	2	3	4	5	6
Never	Rarely	Occasionally	Often	Very often	Always
2.4	3.4	1.0	(20)* Approximately how often would you prefer that the corporate counsel base his legal advice principally on what he believes will result in the greatest profitability for the company?		
* The direction of difference of the average response was not consistent in all three companies. The averages were as follows:					
		Co. 1	Co. 2	Co. 3	
		CC	2.7	2.5	2.2
		CL	2.3	3.7	3.7

However, on only seven of the forty-one questions did the difference between the average response of the counsel and the clients amount to 1.0 or more.³⁶ Because of the small number of respondents, no statistical

36. In one of these, Question #20, the average response of the clients in Company 1 was 2.3 cf. to 2.7 for corporate counsel in that company, a reversal of the direction of difference in the other two companies.

measure can reliably indicate whether such differences might occur purely by chance. Furthermore, a difference of 1.0, of course, may represent only the difference between an average choice of the "occasionally" response rather than the "often" response.

Although in general both clients and corporate counsel favored assumption of initiative by counsel, discussion with clients indicated that a number of clients feared that counsel might try to dominate the business executive in making business decisions. This fear appeared to account for the difference between counsel and clients on Question #26. Counsel could use information obtained from the company "grapevine" and personal friends to dominate and embarrass a client, but apparently clients were less sensitive to this problem than the counsel and indicated in Question #2 that they welcomed the possible saving of time to them that resulted when counsel used his own informal sources of information to supplement information from the advice-seeking client. That clients expect counsel to be a watchdog for the company to a greater extent than counsel preferred appears from the difference in average responses to Questions #5 and #22. The contrasting attitudes of counsel and clients toward this function are brought out below in the discussion of the feedback meeting in Company 1. The greater apparent preference of clients that counsel aspire to serve on a corporate policy-making committee seemed from the interviews to reflect the clients' desire that the lawyers accept the businessman's goals. The difference in response to Question #35 probably merely reflects relative convenience, each party preferring to have lawyer-client meetings take place on home ground.

CORPORATE COUNSEL PREFERENCES AND SELF REPORT OF ACTUAL BEHAVIOR

Form A of the questionnaire provided a comparison between what counsel said he would prefer to do and what he reported as his actual behavior. Since the two responses were made on the same instrument any difference would clearly be intentional and presumably would indicate where the counsel was not meeting his own standards in his work. When the responses of thirteen corporate counsel to this form were tabulated the following eight questions showed the greatest contrast in average response as indicated:

Counsel Pref. Act. Diff.						
3.8	1.2	2.6	(27)	About how often would you prefer that he write articles for legal journals?		
1	2	3	4	5	6	
Not at all	Very infrequently	Infrequently	Sometimes	Frequently	Very Frequently	

- 4.1 2.8 1.3 (33) To about what extent would you prefer that the corporate counsel be active on committees of local or state bar associations?
- 1 2 3 4 5 6
Not at all Very little Little Some Great Very great
- 3.8 2.8 1.0 (12) When corporate counsel learns of a meeting which he has not been requested to attend, but which, he learns, will consider a matter having legal implications, about how often would you prefer that he ask to be invited?
- 1 2 3 4 5 6
Never Rarely Occasionally Often Very often Always
- 3.8 2.9 0.9 (11) About how often would you prefer that the corporate counsel *make* and accept responsibility for decisions as to whether the company should file suit, defend or settle claims?
- 1 2 3 4 5 6
Never Rarely Occasionally Often Very often Always
- 1.2 2.1 0.9 (24) Approximately how often would you prefer that the corporate counsel use language with the client which the client does not understand?
- 1 2 3 4 5 6
Never Rarely Occasionally Often Very often Always
- 4.5 3.6 0.9 (26) About how frequently would you prefer that the corporate counsel initiate general discussions with clients regarding their work and business problems when they have no specific legal problems?
- 1 2 3 4 5 6
Not at all Very infrequently Infrequently Sometimes Frequently Very Frequently
- 5.5 4.7 0.8 (31) To about what extent would you prefer that the corporate counsel furnish legal advice on or before the time requested by or expected by the client?
- 1 2 3 4 5 6
Not at all Very little Little Some Great Very great
- 4.5 3.8 0.7 (13) Approximately how frequently would you prefer that corporate counsel inform managers on his own initiative of recent legal decisions and changes in the law which might affect their activities?
- 1 2 3 4 5 6
Never Rarely Occasionally Often Very often Always

Although the corporate counsel were more active in bar association committee work than in writing for legal journals and appeared to believe that more time should be spent in bar association work than in scholarly writing, their performance fell short of their ideal by a much greater amount with respect to legal writing. They were aware of client criticism of using incomprehensible terms and for being dilatory, and the majority of them was dissatisfied with their own performance in these respects as well as with what they conceived to be the desirable educational service of informing clients of changes in the law. The responses to Questions #12 and #26 suggest that corporate counsel believe they should assume more initiative and perhaps be more aggressive with clients than they actually are. The responses to Question #11 suggest

that counsel would like a freer hand in making company decisions on filing and disposing of law suits.

CLIENT PREFERENCES AND REPORTS OF
ACTUAL COUNSEL BEHAVIOR

Form D, it will be recalled, provided a comparison between what a business executive reported that one or more of the lawyers serving him actually did and what he would prefer that counsel do. Here the responses being compared were made to the same instrument. A difference between responses on the same question would indicate that the counsel was not meeting the expectations of the client. The questions which showed the greatest difference in average response were as follows :

			Client						
			<i>Pref. Act. Diff.</i>						
3.1	1.7	1.4	(27)	About how often would you prefer that he write articles for legal journals?					
	1	2		3	4	5	6		
	Not at all	Very infrequently		Infrequently	Sometimes	Frequently	Very Frequently		
5.2	3.9	1.3	(31)	To about what extent would you prefer that the corporate counsel furnish legal advice on or before the time requested by or expected by the client?					
	1	2		3	4	5	6		
	Not at all	Very little		Little	Some	Great	Very great		
3.4	2.2	1.2	(20)	Approximately how often would you prefer that the corporate counsel base his legal advice principally on what he believes will result in the greatest profitability for the company?					
	1	2		3	4	5	6		
	Never	Rarely		Occasionally	Often	Very often	Always		
3.6	2.5	1.1	(12)	When corporate counsel learns of a meeting which he has not been requested to attend, but which, he learns, will consider a matter having legal implications, about how often would you prefer that he ask to be invited?					
	1	2		3	4	5	6		
	Never	Rarely		Occasionally	Often	Very often	Always		
4.3	3.3	1.0	(2)	About how often would you prefer that the corporate counsel use his own informal sources of information within the company to supplement or contradict what a client who comes to him for advice tells him?					
	1	2		3	4	5	6		
	Never	Rarely		Occasionally	Often	Very often	Always		
4.9	4.1	0.8	(19)	When corporate counsel foresees recurring legal problems in a certain kind of business action, about how often would you prefer that he propose the establishment of formal procedures which would require that these matters have law department approval before action is taken?					
	1	2		3	4	5	6		
	Never	Rarely		Occasionally	Often	Very often	Always		
2.8	3.5	0.7	(3)	When it is requested, about how often would you prefer that the					

corporate counsel furnish legal advice to management personnel with respect to their private affairs?

1	2	3	4	5	6
Never	Rarely	Occasionally	Often	Very often	Always

4.9 4.2 0.7 (9) On matters of importance or novelty, about how often would you prefer that the corporate counsel give his opinion in writing?

1	2	3	4	5	6
Never	Rarely	Occasionally	Often	Very often	Always

4.9 4.2 0.7 (13) Approximately how frequently would you prefer that corporate counsel inform managers on his own initiative of recent legal decisions and changes in the law which might affect their activities?

1	2	3	4	5	6
Never	Rarely	Occasionally	Often	Very often	Always

3.5 2.8 0.7 (33) To about what extent would you prefer that the corporate counsel be active on committees of local or state bar associations?

1	2	3	4	5	6
Not at all	Very little	Little	Some	Great	Very great

As might be expected, and consistent with the interview data discussed above, clients did not find counsel as prompt as they wished with their service. It was surprising, however, that clients would think corporate counsel should do more writing for legal journals, especially because a realistic assumption would be that this would take some of counsel time that might otherwise be devoted to company business. There was no interview data which might explain this, but perhaps clients viewed such activity by counsel as indications of or perhaps a means of acquiring competence. The responses to Question #20 were not consistently in the same direction among the clients in all three companies,³⁷ but they appear to indicate a belief that counsel are not sensitive enough to the pressures on the client to produce profit for the company.³⁸

In responding to Question #12, clients agreed with the corporate counsel that counsel should be more aggressive in inviting himself into meetings. They also agreed with counsel on #26, although the difference between their preference and what they perceived counsel as doing was somewhat less.³⁹ Likewise, clients thought counsel should use his own sources of information more frequently than he does, and they agreed with counsel that counsel should more frequently take the initiative in informing clients of new legal developments. Clients also wanted counsel to propose formal procedures for gaining law department approval of

37. The average client preference in Company 1 was 2.3 cf. to 3.0 average perception of the actual behavior of counsel. It is interesting to note that corporate counsel in Company 1 themselves reported that they based their advice more often principally on profitability than they would prefer: 3.0 cf. to 2.7.

38. This was especially strong in Company 2; see discussion of meeting in Company 2, *infra*.

39. See Corporate Counsel Preferences and Self-Report of Actual Behavior, *supra*.

proposed action more frequently. With this a number of counsel agreed except in Company 3, which had such a procedure that counsel found to be dissatisfying to them.

Of interest is the fact that the clients indicated a preference that counsel furnish legal advice on private matters less frequently than they thought was the practice. The practice, however, did not appear to be extensive in any of the three companies. Clients preferred that counsel put more of their advice in writing. The difference between preference and self report on Question #9 for counsel was consistent with this, but the amount of difference was very small.

ROLE PRESSURE INDEX

In a crude way Form D also lent itself to measuring the relative satisfaction of clients in each of the three companies with their corporate counsel. An index called the "Role Pressure from Clients" index was constructed by determining the average difference between the "you ideally prefer" response and the "he actually does" response of all the participating clients in each company. The scores of the three companies on this index were as follows :

Company 1	.35
Company 2	.70
Company 3	.41

The index demonstrated clearly that the clients in Company 2 were less satisfied with their corporate counsel than clients in the other two companies. This conclusion was amply supported by the interview data. The clients appeared not to rate corporate counsel in Company 2 very high on the two most important criteria presented in Table I. They tended to have a rather low opinion of their professional competence. This was expressed both in the interviews and the meeting of the group of subject clients winding up the research in the company. Second, even stronger negative opinions were expressed with respect to the knowledge and interest of the corporate counsel concerning the company's business and operations. The latter attitudes came out clearly in responses by clients to certain items in the questionnaire. Clients in Company 2 believed that counsel did not give their business advice as often as they should (Question #10), did not express business judgments as often as clients would prefer (#14), did not weigh profitability heavily enough in their legal opinions (#20), did not read business periodicals frequently enough (#32), and did not aspire to a sufficiently high degree to line manage-

ment or membership in policy committees (Questions #41 and #42).

"FEEDBACK" MEETINGS

An important part of the research plan was a "feedback" meeting to be held in each company after a preliminary analysis of the data, primarily that obtained from the questionnaires. It was planned that these tentative findings would be discussed with a group of the corporate counsel and clients as well as the general counsel of each company. Not only was it hoped that the discussion would aid in further analysis and interpretation of the data but it was also believed that such a meeting had potential for clarifying and changing expectations, that is in bringing greater role consensus within a role set. At the very least, it was believed, the meeting would help clients and corporate counsel to understand how each perceived the other and that greater understanding, if not consensus, would result.⁴⁰

The plan was to include one of the two "role sets"—that is a corporate counsel and the three of his clients who had participated in the study—plus one other corporate counsel in the company and the general counsel. This would balance the number of lawyers and business executives and keep the group small enough so that it might be expected that each person would actively participate in the discussion. In fact, for various reasons, the feedback meeting group did not precisely fit the plan in any of the companies. In Company 2 after considerable ambivalence and some changes of mind the general counsel insisted on having the lawyers and the clients meet separately. This was a result of the rather strained relationship between the law department and the corporate executives reflected in the Role Pressure from Clients Index.

The format of the presentation of data was approximately the same in each company. Responses to certain questions were shown on a screen by means of transparencies and an overhead projector. First were shown the questions on which there had been agreement between counsel and clients in the company in which the presentation was being made. Next were shown those questions on which there had been the greatest disagreement between the average preferences of the corporate counsel and the clients in that company. Following were the questions on which the differences in average response of corporate counsel in the three different companies had been the greatest. Then some contrasting average responses of counsel and clients in that company to the section of the

40. Full consensus is probably not desirable. The existence of role conflict or role ambiguity provides scope for corporate counsel to develop new ways of meeting the legal, or perhaps other, needs of the clients. See R. KAHN *et al.*, *supra*, note 16, at 54.

questionnaire dealing with the behavior of the clients was discussed. Finally, a table similar to Table I was shown. The meetings were tape recorded, as were most of the interviews with both the corporate counsel and the executives.

MEETING IN COMPANY 1

The composition of the group meeting for this purpose in Company 1 came quite close to the plan. The group demonstrated greatest interest in the questions which showed conflict in preferences between counsel and clients within Company 1. Relatively little interest was shown in differences in preferences between counsel in Company 1 and counsel in the other two companies. Perhaps the most lively and thorough discussion between counsel and clients occurred on Question #15. This question asked, "About how often would you prefer that the corporate counsel send a copy of his written opinion to his client's immediate superior without the superior's request?" The average response of five clients in Company 1 was 1.6 (between "never" and "rarely") while the responses of the three corporate counsel averaged 3.7, which would be closer to "often" than "occasionally." The discussion following the showing of this data, as shown by the transcript, started as follows:

CL3:⁴¹ It's surprising to me.

CC1: You wouldn't mind if I "rat" on you?

CL3: I couldn't care less.

Researcher: I am really curious about what this does mean.

CC1: I think the key word is "opinion" here. Let's say, (1CL2), you asked me a question. It is a question generally affecting the (ABC) division and probably (the treasurer) has asked you to consider this area, and you have asked me a specific question. If I think it is an important enough opinion, I might send (the treasurer) a copy of it, assuming that *he* has asked you to handle it.

CL2: That is not a valid assumption. I may be investigating something on my own.

The discussion was then interrupted by the arrival of the treasurer, who had participated in the study as one of the clients. After the researcher briefly explained what was going on, CC1 commented to the treasurer,

41. The symbol or abbreviation refers to a client. CC is used as a symbol for corporate counsel, and Gen. C. for general counsel. For purposes of disguise of respondents each individual was assigned a number such as 1CL3.

"I have just decided I am not going to send you any more copies of the stuff I do for (1CL1)!", and this was followed by laughter.

After another interruption when the third corporate counsel joined the group, during which time CC1 appeared to be mulling over the significance of the difference between counsel and clients on Question #15, 1CL3 stated that when he works on a project he may prefer to involve no one else until a later time and that circulating copies of the legal opinion will precipitate questions from a higher echelon which he may not be ready to answer. To this 1CC1 replied, "I think in a case like that the lawyer would not send it to the superior if he knew that—this doesn't say anything about—against the wishes of the client." Several voices chimed in with agreement, whereupon 1CC1 declared, "I suppose normally the lawyer would ask, 'Should I send a copy to X?'"

Although discussion of the other questions did not show such clear movement toward consensus, there was usually an attempt by members of each group, both clients and counsel, to explain its position to the other group. This sometimes, and especially in Question #2, exposed the fact that they had read the question somewhat differently. Question #2 asked, "About how often would you prefer that the corporate counsel use his own informal sources of information within the company to supplement or contradict what a client who comes to him for advice tells him?" The average counsel preference was 3.3 (more frequently than "occasionally") while the average client preference was 5.3 (more frequently than "very often"). The conflict in responses was discovered to be in part the result of a difference in emphasis. Some respondents apparently ignored the word, "contradict," in interpreting the question, but both counsel and clients agreed that counsel should not go to other executives in the corporation to check the accuracy of the facts given by the client. However, a rather fundamental difference of viewpoint did remain. Counsel seek to get the company to live up to a higher standard of facts while the clients preferred to have counsel rely heavily on his own knowledge.

A rather sharp difference in role conception between counsel and general counsel appeared with respect to Question #5. This question asked, "Approximately how often would you prefer that the corporate counsel seek to get the company to live up to a higher standard of commercial morality than it might otherwise be inclined to do?" Counsel gave an average preference response of 2.0 ("rarely") while clients averaged 3.8 (close to "often"). A sense of the discussion can be gained from the following excerpts from the transcript.

CC1: Now there is a question I could say “never” to, and maybe I did. Maybe that is why the corporate counsel is so low.

Gen C: I would say “always.”

CL3: Yes, I could go that way.

CC1: But if company morality is excellent—

Gen. C: There is no such thing as perfection.

CC1: This would be intimating that the company would be inclined not to have a very high standard of—

Gen. C: Oh, I don’t read it that way.

CL3: I didn’t either.

CC2: No, it didn’t say that at all.

CL3: No wonder I am having so much trouble with the department! (laughter)

* * * * *

CC1: We were trying to avoid a “holier than thou”—

CL3: It is just the opposite of what I would expect.

CL2: This point about “holier than thou”—

CC1: Now wait a minute. Doesn’t this mean that the businessmen are looking on the legal department as a watchdog of morality, not as giving legal advice on questions?

CL3: But the question says, how often would you prefer that *you* people do something about it?

Researcher: . . . Maybe the clients were thinking that it is a good thing to have somebody in the company who has his eye on what is right.

CC1: Well, I’m not going to do it!

Gen C: I’m really surprised at those answers.

CL3: So am I.

Question #7 inquired how frequently the corporate counsel should pass on information learned from clients in which he thinks higher management would be interested. Clients gave an average response of 3.8 (slightly less frequently than “Often”) but the average for counsel was 5.7 (almost “always”). The discussion on this question reverted back to the comments on Question #15, the clients emphasizing that they preferred to control the timing of the flow of information to their superiors. No one raised the issue as to what counsel should do with information of which he thinks higher management should be aware but

which he thinks the client is unlikely to communicate upward himself at any time.

MEETING IN COMPANY 2

The client group in Company 2 evidenced considerable interest in the report on the data from the study. All but one arrived ahead of the hour for the meeting, and the vice president who was slightly late had been engaged in a telephone conversation. There was a long discussion of the first question presented on which there had been substantial disagreement between corporate counsel and clients. This was Question #2, which was one of those also discussed in Company 1. The average counsel response was 2.6 (between "rarely" and "occasionally") while the client average was 4.8 (nearly "very often"). Since counsel were not present, there could be no mutual explanations of the different positions. Instead it appeared to the researcher that the clients were rather quick to criticize counsel and, in effect, blame them for the difference in preference. After the question and the average responses appeared on the screen, the following exchange took place :

Researcher : I don't know just how to interpret this ; it sort of surprised me.

CL2 : Which part of it surprised you?

Researcher : The fact that there is that much difference and that it runs in the direction it does.

CL5 : Looks as if counsel is a little hesitant or perhaps misunderstands what the client wants.

CL4 : Or is just downright lazy.

CL6 : Either hesitant or—

CL5 : Or not very profound.

CL6 : Yeah, maybe some of both. Maybe he mistakenly thinks the client comes and has all the answers and all the facts.

CL2 : In fact he doesn't.

CL6 : The client obviously wants a check on his judgment.

???: That's right.

* * * * *

CL6 : I would tend to agree that this big spread is due to the lack of information on properties and in (subsidiary's) case, law and customs of another country. There is not enough identification with the properties by the junior counsel.

- CL3: Or the senior counsel.
- CL6: Yes, unfortunately I think it is true. They are not enough identified.
- CL3: That's right; they don't know enough about the business.
- CL6: They look at it on a strictly legal basis but without enough of the old know-how we had in counsel of former days who were very closely identified with the problems and properties.

The next question presented was #26, which asked: "About how frequently would you prefer that the corporate counsel initiate general discussions with clients regarding their work and business problems when they have no specific legal problems?" The average response for corporate counsel on this question was 5.0 ("very often") while clients averaged 2.8 (less frequently than "occasionally"). The researcher in formulating the question had assumed that it was through such "general discussions" that corporate counsel obtained much of their background information. Therefore, it appeared that Company 2 clients were condemning their counsel for lack of interest in and knowledge about the company's business but at the same time were resisting one of the means counsel had of exhibiting interest and gaining the desired knowledge. This apparent inconsistency was immediately recognized by the clients, as shown in the following excerpt from the transcript:

Researcher: Now this one is interesting, and again I am a little puzzled by it. Here the clients indicate that they really don't want counsel to initiate general discussions. Now there may be some ambiguity in the question. The clients may have interpreted the question one way and the counsel another as to what a general discussion is, but in view of what you folks have just said, I'm a little surprised that the clients rated so low here—
(chuckles)

CL4: How can you find out if you don't discuss it?

???: Yeah, that's right.

Researcher: I wonder if the counsel were indicating a desire to know more about the business.

CL3: The key word in that question is "initiate," because when the client initiates the inquiry, whether it is a

general discussion or a specific legal problem, the discussion can go to a general discussion. But as Mr. (CL5) just said under his breath, (chuckles) "Keep out of our business."

He then talked of the ambivalence of the executive who may turn to the lawyer for his judgment on a business problem as a kind of crutch but with guilt feelings which prompt him to claim that he alone makes the decision and the lawyer is only a technician.

CL6 then offered his explanation of the dislike for such initiation expressed by clients :

This may have particular reference to the fact that these counsel on the junior level may not have enough "rub off," enough experience, enough knowledge of what's going on to make them contributors. . . . I would certainly rate the old (group of lawyers) on a much better basis. Somebody like (former counsel)—I would certainly welcome him initiating at any time because he was so knowledgeable about what went on.

This was followed by further statements by others in the same vein as expressed in discussing Question #2.

Company 2 corporate counsel average preference on Question #19⁴² was 5.8. There was, it is obvious, almost complete agreement on the "always" response by the corporate counsel in Company 2, a great contrast with Company 3 in which counsel averaged 2.8 (less than "occasionally"). Client reactions to the screening of this transparency in the meeting included the following ;

CL3: Well, again that shows a hesitancy with respect to the clients.

CL5: On the other hand, it seems to me we lean over backwards to get legal review or legal approval on every goddamn kind of a—

CL3: But this says that he, the counsel, proposes; he initiates. Again this is his initiative.

* * * * *

It seems to me that "propose" here is about like "initiate" in that other question.

Researcher : It may well be—who takes the lead?

42. See tabulation under Client Preferences and Reports of Actual Counsel Behavior, *supra*.

CL3: Yeah, and I think the reason why they (other companies) are to the left (lower) and we are to the right (high) fits with the other (#26).

On Question #41⁴³ the clients once again expressed their dissatisfaction with the counsel's lack of knowledge and apparent interest in the business. Following are excerpts from the transcript of the meeting:

CL5: You know, there is a great inconsistency in that in the case of Company 2. You've heard a lot of discussion about their lack of knowledge of the business and their lack of interest in the business, and yet they aspire to high line management. Those two things are not consistent at all.

CL6: It may be that this represents an aspiration—the opportunity for travel or training has not been provided.

* * * * *

Researcher: There seems to be some desire represented in the questionnaire to get into these business things. Maybe it is a problem as to how they do it.

CL6: It takes more than aspiration.

CL5: Definitely; that's the point.

CL6: Somebody has to dig.

CL5: You make your own opportunities.

The tone of the meeting with the lawyers, on the other hand, was much more a seeking to understand what the complaints of clients were and an exploration of possible changes in their behavior which might improve the relationship. Great interest was shown in the preference response of the clients to the questions and also in the clients' perceptions of the counsel behavior.

Interpreting the response of clients to Question #2, in which the clients, to a much higher degree than counsel, had indicated a desire for counsel to use their own sources of information, the following exchange took place:

43. This question asked, "To about what degree would you prefer that corporate counsel aspire to a high position in line management?" Choices offered were: 1) Not at all; 2) Very little; 3) Little; 4) Some; 5) Great; 6) Very great. Client preference in Company 2 averaged 4.0; client perception of counsels' aspirations was 3.1.

Gen C: Well, they're saying they want much more extensive involvement in the total problem. . . . In other words, they are saying, 'Now that I've come in, take hold of this problem and help me solve it.' . . . They're saying, 'Don't give me a legal answer on the basis of what I've come in here and told you.'

Researcher: Bring in anything you can get on it.

CC5: Then what we do on some of the major things is correct.

Gen C: Yes, because on the major ones that is precisely what we do.

CC5: Like that recent acquisition study.

Gen C: Yet there is a very distinct gap between that 5 (average preference of clients was 4.8 or approximately "very often") and the structural organization of the company. The structural organization of the company is so established as to do the maximum to impede precisely this.

Researcher: There isn't a free flow of information at the lower levels?

CC1: Or responsibility.

Gen C: It is decentralized and departmentalized.

An extended discussion also occurred on the responses to Question #26, which asked how frequently the corporate counsel should initiate general discussions with clients when they have no specific legal problem. First the effort was to interpret the response of the clients and then the general counsel turned to consider what he might do to satisfy the apparent desires of clients while continuing to recognize what he viewed as contrary role pressures from the president. Following are excerpts from the transcript:

CC1: . . . This one is an initiation of a general discussion on the work without any reference to either existing or prospective legal problems.

Gen C: And the client doesn't want that to happen.

* * * * *

CC1: Yet you say that the clients say they want the lawyers to know more about the business?

Researcher: Uh huh.

CC1: How?

Researcher: I think that is the question.

CC5: It sounds as if they only want you to get into that when they bring something up. Then they want you to look at everything, but they don't want you to go in and ask a lot of questions when there is no legal problem.

Researcher: One thing I think I could say is that several clients made quite a point of the few times counsel had been out and seen any of the operations in the field. It seems to these people, and they weren't 100 per cent of them, this indicates lack of interest.

CC1: Lack of interest? Hell!

CC3: Jesus, I'll go out anytime!

(laughter)

Gen C: Of course, that is precisely the result of the structural organization of the company and the wishes of the president.

CC5: I've gotten that kind of feedback personally. . . . They objected to the fact that home office lawyers never got out to see the operations of the company and know what is going on out there, meet the people in the field and that sort of thing.

Gen C: I might be able to do something with this, but I have to justify every time anybody goes away. (The president) has made it very clear that he is not interested in my gallivanting around. (The former president) was *very* strong on this. He said, "What the hell do you need to see a mine for. You're not here to dig." . . . There are two problems here. One is the attitude of the top management itself—be available here. The people that I report to are not happy when we are not present when they want us. That's very clear. The other part of the problem, as to other people in the company, arises from the fact that the very minute a lawyer appears on the premises everybody gets nervous. It's like the aide to the corps commander turning up on the battalion premises. . . . But one thing I think I will do is to push the people out a little more until somebody objects. (pause) Certainly in (subsidiary) there

has been just an incredible resistance to the idea. My God, the president of (the subsidiary) made it very clear that he didn't want our lawyers around there talking to his people.

Researcher: I got the impression in the other two companies that there was more of this going out to the plants and the field offices.

Gen C: This has to do with the write up of the function too. The write up supports the narrow—

CC3: Plus the structure. Since you have counsel at the (a division) there isn't always the necessity for someone to go out.

Gen C: The theory is that there is no necessity.

CC4: But that's not true. I'm doing some work now where that would help me; for instance the ————. I don't know what it is all about.

Gen C: Well, I think I'm going to start pushing people out until I get backlash. See what happens.

The discussion returned to the same theme again later after the responses to Question #B-5 were presented, and the same tone of seeking to understand and satisfy the clients was maintained. This question asked the extent to which clients should ask counsel for advice on the commercial aspects of a proposed action. Counsel preferences had been higher than the clients (average of 5.0 cf. to an average of 3.7) and also higher than the preference of counsel in the other two companies.

Gen C: It may well be that we ask a lot of collateral information for the purpose of making a legal decision without making it clear that is what we are doing, and they interpret that as an intrusion, as an initiation into the business area where they have not requested that we intrude.

CC4: But did not management criticize legal because we were not interested in the commercial aspect?

Gen C: No, not being interested in the *business*.

CC4: But part of the business is the commercial aspects.

Gen C: Well, that's in a different framework. In a particular problem they are saying, in effect, 'You are asking too much about the commercial aspects, and we think you are taking the initiative to comment on the commercial aspects. If you are going to ask that you

have to tell us very clearly that it is for the purpose of making a legal decision.' That's how I read it.

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- CC5: They don't want you intruding and saying, 'why are you taking such and such action?' when there is no legal problem. But they want you to look at the (production facility) when you get a chance because they feel then you are more integrated into the organization. They always think that lawyers tend to hold themselves kind of above everybody else and run their own little law office. I've heard that kind of criticism many times—not here but elsewhere.
- CC4: Here isn't it true that they do not wish us to do this?
- CC5: They don't want you to go in and start talking about some business thing that they are doing, but when they get you into something, then they want you to go ahead and find out all you can about the business.
- CC4: But they don't want us to go out and go through a mine.
- CC5: If you go out for some valid reason, then they want you to go look at the mine.
- CC4: Uh—— (laughs a little).
- CC5: They are not necessarily inconsistent. There is a line between. They don't want you intruding in things when they haven't asked your advice or where they don't think there is a legal problem, but once you're in it they want you to take an interest in the business.

Shortly thereafter the researcher put back on the screen the transparency showing the average responses of counsel and clients to Question #26, which related to the frequency with which counsel should initiate general discussions with clients when there were no legal problems. This showed that although the preference of the clients was much lower than counsel, the perception of the clients as to the actual behavior of counsel was even lower or less frequent than their preference (1.4 cf. 2.8).

CC1: Now this is important. They think we do it "very infrequently." They would prefer that we do it slightly more or "infrequently." So we haven't pushed over the margin of tolerance yet.

Researcher: Right, and I think you can compare the 1.4 and

2.8 better than you can the 2.8 and 5.0 because those are the same people talking at the same moment. Those two questions were on the same questionnaire—what do you want them to do? And what do they do? . . .

CC5: Which suggests that it would pay to push a little bit more.

CC1: That's consistent with their comment that the lawyers aren't interested in the business. In their minds we have not inquired quite enough. Therefore, we are not interested in the business. Maybe the conclusion is that we have been reluctant to make the necessary inquiries and discussions of general business although we have felt that we should have but that such inquiries would not be welcomed. I think that's the conclusion.

Gen C: I think that's been a correct apprehension, in general.

CC1: If it is tied with the gaining of knowledge for legal purposes, then, apparently, it is acceptable.

Gen C: That may be. The fact that it is slightly more acceptable on the questionnaire than they perceive it to have been doesn't persuade me that you can go too much further. . . .

CC5: It suggests that you shouldn't shy away from—

Gen C: Yes, I think I would go that far.

CC1: I don't think it suggests that you take a lot of initiative.

Gen C: I think once they bring a matter up, I think we can probably go further in the general review of the matter, including its commercial aspects, on the business information side of it, than we may have been inclined to do. But we have to be careful that it occurs on those occasions that they initiate. That's the way I would read this.

Interest was also shown in the responses to Question # 32, which asked, "To about what extent would you prefer that the corporate counsel read general business papers and periodicals such as the *Wall Street Journal*, *Business Week*, *Fortune* and the *Harvard Business Review*?" Client average preference was 5.0 ("great"), which exactly coincided with the counsels' average report of their actual behavior and was almost the same as their preference (5.2). However, the clients' average perception of what they thought counsel actually did was 3.6 (between "little" and "some"). The general counsel's reaction to this information

showed some evidence of frustration and perhaps a little of resignation when he said,

There is a lot more interest in the business, a lot more eagerness to get around, and a lot more familiarity with the business than the client is aware of. That is a real educational problem, and I'll be damned if I can see how to cope with it. But it is definitely there.

The lawyer also showed great interest in the researcher's presentation of the clients' view of the effective corporate counsel, which was an earlier version of a part of Table I. The meeting then ended with expressions of enthusiasm and appreciation by most of the participants, including the following:

CC5: Very interesting!

CC1: This is very good, *very* good. I wouldn't have thought you could have gotten so much out of it (the study).

* * * * *

Gen C: Well, I think this has been very, very constructive, and I know that we are all very grateful to you for the effort you've made. Whatever good it does your thesis is your problem, but it has been a tremendous benefit to us, I think, and I'm very grateful for what you've done.

As a parting comment 2CC5 expressed a sobering thought which brought no response from the others when he said, "Well, I hope none of us will be excused from the company as a result of this."

THE EFFECT OF FEEDBACK ON CONSENSUS

In planning the research it had been hypothesized that a feedback meeting would increase consensus on role expectations between the corporate counsel and the clients. Form C of the questionnaire was used to test the hypothesis with the corporate counsel, and a similar form was given to clients. It was administered to those who had participated in the feedback meetings. Of course, the number involved is so small that no conclusion can be drawn which would apply beyond those persons tested.

However, the data, skimpy as they are, suggest that where there is dissatisfaction and perhaps anxiety, as there was in the case of the corporate counsel in Company 2, such a meeting may increase consensus. Table IV demonstrates that the corporate counsel in Company 2 did tend

to change their preferences from the first to the last questionnaire more than counsel of the other companies and that to a greater extent the movement was in the direction of the clients' average position on the four questions which were most discussed in the feedback meeting in which they participated and away from the earlier held counsels' average position.

TABLE IV

CORPORATE COUNSEL CHANGES IN PREFERENCES ON COUNSEL BEHAVIOR (FIRST TO LAST QUESTIONNAIRE)

	<i>Average change per question</i>	
	Co.'s* 1 & 3	Co.**2
The four questions given most discussion in feedback meeting.	.72	1.13
All those questions discussed in feedback meeting.	.45	1.00
Those questions not discussed in feedback meeting.	.73	.76

Direction of Movement When Change Occurred on Questions Discussed in Feedback Meetings (Average percentage)

	<i>Co.'s 1 & 3</i>		<i>Co. 2</i>	
	All disc.	4 most disc.	All	Four
Toward Counsel Average	8%	11%	20%	38%
Toward Clients' Average	21%	39%	30%	50%
Away from Counsel Average	33%	61%	30%	25%
Away from Clients' Average	20%	42%	10%	0%

*N is 3 corporate counsel.

**N is 2 corporate counsel.

This finding appears to be consistent with previous research. Role conflict reduction is essentially a behavioral change process. Students of behavioral change, of individuals in their personal life and in organizations, seem to be in agreement that before behavioral change occurs, the candidate for change—whether he be a neurotic,⁴⁴ an American who is held a prisoner of war by the Chinese,⁴⁵ or a large industrial or commercial organization⁴⁶—must be dissatisfied with his or its present state. There must be felt dis-equilibrium.

Here there was no evidence of dis-equilibrium involving the law department of any of the companies except Company 2. In Company 2, however, not only the statements of a number of counsel and clients who were interviewed but also the role Pressure from Clients Index support the conclusion that both counsel and clients felt that there was dis-equilibrium in the relationship between counsel and clients.

44. J. FRANK, *PERSUASION AND HEALING* (1961).

45. E. SCHEIN, *COERCIVE PERSUASION* (1961).

46. Greiner, *Patterns of Organizational Change*, 45 HARV. BUS. REV. 119 (May/June, 1967).

CONCLUSION

A conceptual scheme tends to direct attention to certain things. It is a commonplace that to understand another one must see the world through his eyes. Role theory expresses this folk wisdom; role analysis provides empirical support for it and a technique for utilizing its insight. Thus role theory directs attention to expectations—the expectations of the incumbent of a position and significant others—for the incumbent's behavior in that position and declares that these expectations are important factors in understanding behavior in that position. It focuses on the interrelationships between the expectations of different people—particularly the degree of consensus or conflict and the clarity or ambiguity with which they are held.

Role theory suggests that problems of articulation or cooperation between persons occupying different positions which relate to each other, such as lawyer and client, may occur because of role conflict or ambiguity. It also suggests that for members of an organization, such as corporate counsel, prescriptions and proscriptions for the behavior of the incumbent, which may be promulgated by the hierarchy of an organization, will be relevant to the incumbent's actual behavior primarily as they may affect his own expectations for his behavior and his perception of the expectations of his significant others—the members of his role set.

From the research effort reported here it appears that role analysis can very quickly, through a questionnaire similar to the one used in this study, identify actual and potential problems in the relations between the person in the focal position and members of his role set. Areas of dissatisfaction with and erroneous perceptions of the behavior of members of the role set are exposed. For example, responses to several items on the questionnaire by counsel and clients in Company 2 indicated that clients were dissatisfied with corporate counsel, believing that they were not interested in the business and operations of the company nor in the need for the company to make a profit. However, in fact counsel wanted to increase his knowledge of the business but clients did not welcome one of the best means counsel had to increase that knowledge.

Although administration of a written questionnaire is not essential to this process, an objective third party to conduct the investigation is indispensable. The preparation of a questionnaire or line of questioning obviously is a time consuming process; the application of it is less so. Further, it would appear that the value of a feedback meeting is largely dependent upon the availability of objective data as the basis of discussion. Resolution by the participants to try to "see the world through the eyes

of another" is probably a necessary but not a sufficient condition.

The potential of the feedback meeting for dealing with strains appearing in the lawyer-client relationship appears considerable from this research. Both corporate counsel and clients, especially in Company 2, said after the feedback meetings and in the final interviews that they thought they had gained a better understanding of the lawyer-client relationship from looking at it through role analysis. Such an approach will not, in itself, solve problems that are present in the lawyer-client relationship. However, some sort of role analysis—as indicated above, not necessarily using a battery of questionnaires—appears to be a very useful device for identifying and illuminating these problems. This is a prerequisite to resolving or ameliorating them.

Such an approach could also be applied to the relationship between an individual practitioner and his clients or the more similar situation of the attorney in a large firm who deals with several executives of a client firm. However, complications caused by billing arrangements and the greater sensitivity of the non-salaried lawyer to threats to the confidentiality of the lawyer-client relationship and perhaps less confidence that the relationship would survive the effort, might stymie even an experimental application of this approach.