

Vice President and General Counsel

This is the first annual Report to the President from the Office of the General Counsel (OGC) of MIT. OGC came into existence in spring 2007 after MIT hired its first general counsel in January 2007. OGC consists of the lawyers formerly designated as the Office of Senior Counsel or the Office of Intellectual Property Counsel, along with the practicing lawyers who were previously on the staffs of the Technology Licensing Office (TLO), the Office of Sponsored Programs (OSP), the Treasurer's Office, or the MIT Investment Management Company (MITIMCo). The Office of Senior Counsel and Office of Intellectual Property Counsel no longer exist. The practicing lawyers previously on staff in the TLO, OSP, the Treasurer's Office, and MITIMCo continue to serve those offices but now do so as lawyers in OGC, reporting to the general counsel.

Several considerations prompted the consolidation of lawyers into one office. The arrival of MIT's general counsel and the consolidation of MIT's lawyers into OGC allow them to work cooperatively and more efficiently, provides a means for consistency in legal advice and broader scope in risk management, and provides one central office for those at MIT seeking legal services to call.

The goal of OGC now is to create a culture, practice, and reputation for legal advice and service distinguished by high intelligence, high energy, and a deep understanding of MIT. Our responsibility is to provide effective and timely legal advice, counseling, and service to MIT and to represent the Institute on all legal matters arising from the activities of MIT. Our mission is to educate our MIT clients about the laws applicable to MIT's operations, to solve legal problems and facilitate transactions, and to provide advice and representation to help our MIT clients fulfill their goals in teaching, research, and service.

The OGC is overseen by the vice president and general counsel (Gregory Morgan) with the assistance of the deputy general counsel (Mark DiVincenzo). The office also has five counsel (Margaret Brill, David Chused, Ann Hammersla, Tena Herlihy, and Jay Wilcoxson) and four associate counsel (Elizabeth Carlson, Regina Dugan, Michael Jung, and Richelle Nessralla).

Highlights of the Past Academic Year

Supporting MIT's Senior Officers

MIT's general counsel and deputy general counsel devoted substantial portions of their time to supporting MIT's president, provost, chancellor, and other senior officers in their work addressing MIT's most pressing challenges. Those challenges included several highly publicized matters involving MIT's faculty, students, alumni, and community. In all such circumstances, the role of the general counsel and OGC is twofold: to help MIT's senior officers understand and weigh the legal and risk management implications of MIT's actions and decisions and, more broadly and as importantly, to offer impartial judgment and advice to MIT's senior officers as they seek to discern, articulate, and pursue the overall best interests of MIT.

Supporting MITIMCo and the Treasurer

The establishment of the Office of the Executive Vice President and Treasurer in fall 2006, together with the emergence of MITIMCo, resulted in the division of MIT's investment management and financial oversight functions, both of which were previously within the former Office of the Treasurer. OGC provides legal support across the wide range of financial and business matters within both of those offices as well as support on legal and policy issues related to MIT's fundraising activities.

Counsel advising MITIMCo and the treasurer reviewed and negotiated documents and worked with outside counsel in connection with all investment-related activity. This counsel also worked with MIT's Washington office to monitor proposed federal legislation that would extend the reach of the unrelated business income tax, counseled senior MIT officials in establishing policy on the use of MIT bond-financed facilities, and worked to amend the MITIMCo bylaws and develop a MITIMCo conflict-of-interest policy.

The planned giving investment program was significantly revamped, with the receipt of Internal Revenue Service private letter rulings, to allow MIT an option of investing charitable remainder trust assets alongside MIT's endowment. Counsel provided guidance, oversight, and negotiation assistance in connection with that effort as well as major gifts and fundraising programs.

Assisting with Institute Real Estate Development

OGC counsel worked on numerous design and construction projects, including major capital projects such as the Sloan School expansion, the Media Lab and the School of Architecture and Planning project, Vassar Streetscape and NW35, the new graduate residence hall, and the Broad Institute headquarters. This also involved contracting with various private and public entities to enable projects to proceed and providing advice and assistance on potential disputes; title requirements; local, state, and federal permitting matters; and updating form agreements. Counsel also negotiated several agreements relating to expanded utility services for campus facilities and for improved campus Internet and cell phone service.

In addition, counsel provided advice and assistance on matters addressing MIT's real estate needs, including leases and collaboration agreements for research and other academic uses and related construction issues, as well as agreements for the commissioning of major new works of art. This included work on agreements with the city of Cambridge in connection with new public works projects affecting MIT's campus development and with other landowners affecting ongoing and future campus development projects. Counsel also advised on relevant state and local requirements affecting the Lincoln Laboratory.

Supporting Student Life

Associate counsel and counsel assisted in initiatives to improve the management and operations affecting student life and advised on legal compliance of various programs, such as student housing at Fraternities, Sororities, and Independent Living Groups

(FSILG) facilities and the FSILG lending program. In addition, counsel and associate counsel worked on international collaborations affecting students, such as the Legatum Center, and international study abroad programs. Associate counsel prepared model agreements for the MIT International Science and Technology Initiatives internships and programs. OGC lawyers also worked with the chancellor and student life deans on numerous student life issues, serving as a resource on legal and policy issues including matters involving MIT medical and the Committee on Discipline.

Supporting the Technology Licensing Office

OGC's counsel serving MIT's TLO assisted the TLO in a variety of legal issues, including advice on various contract issues in TLO's technology licensing agreements and counseling the TLO officers on equity issues critical to closing deals funded by venture capitalists and others. Counsel continued to manage outside counsel in several major intellectual property litigations in which MIT was either sole plaintiff or coplaintiff with its licensee and/or other educational institutions with joint ownership interests. Counsel handled numerous document production requests and responded to various other discovery requests. Through bimonthly reports, counsel kept the vice president for research aware of key developments in MIT's intellectual property litigation.

This was the first complete fiscal year in which the TLO handled all of MIT's "use of name" issues. Counsel assisted in this effort by helping to develop a working draft of a new, greatly expanded use-of-name policy and advising on legal issues with respect to use-of-name requests.

As part of a diligent program to protect MIT's trademarks, one of its most valuable assets, counsel helped the TLO succeed in causing numerous companies to cease and desist from using the MIT mark and attempting to unfairly capitalize on the MIT trademark and reputation.

Supporting OSP and Others in Intellectual Property Matters

Lawyers in OGC worked with OSP on numerous sponsored research agreements, collaboration agreements, and other sponsored programs, including significant contracts with the Stanley Foundation, the Knight Foundation, Ford Motor Company, Eni, ENEL, the Multiple Myeloma Research Consortium, Novartis, and the TRC2 Consortium. OGC counsel also worked directly with principal investigators in negotiating nonsponsored collaboration agreements with both academic and commercial collaborators, most notably a relationship with IBM that was essential for MIT to fully utilize a cutting edge IBM supercomputer (BlueGene) purchased by MIT.

OGC negotiated an agreement with Apple to allow OpenCourseWare (OCW) to pilot Apple's iTunes University Program, allowing anyone with access to iTunes to view or listen to OCW and other MIT content via any handheld device that supports iTunes software. OGC also worked with OSP and the Controller's Accounting Office on major research service and facility use agreements for Battelle, Affymetrix, genotyping facility, and SNIP testing facility.

Counsel participated in negotiating MIT Sloan's professional education program with Accenture LLP; supported OSP by leading the negotiation of intellectual property issues for a project proposal to the MacArthur Foundation for MIT Comparative Media Studies, Professor Henry Jenkins; negotiated two agreements with commercial sponsors for the Broad Institute's genotyping services; and assisted with an international research collaboration and data license issues for MIT Sloan's research collaboration with Tsinghua University.

Supporting MIT Sloan Management Review and MIT Libraries with Publication

OGC worked with the *Sloan Management Review* to negotiate significant contracts with the *Wall Street Journal* for its periodic business reports. The office worked with the MIT Libraries to draft and finalize the MIT publication addendum and negotiated publication agreements with publishers using MIT's publication addendum for MIT faculty and students.

Managing Dispute Resolution, Litigation, and Risk Management

OGC's deputy general counsel, along with other OGC counsel, worked with senior officers and outside litigation counsel to resolve several major lawsuits and counseled the MIT community on lessons learned. The deputy general counsel, in addition to his new duties assisting in the administration of OGC, continued to manage outside counsel and worked closely with MIT's officers and representatives on litigation matters in the areas of employee relations, faculty issues, student life issues, campus police, construction and facilities, and intellectual property. He prepared deponents for deposition and guided outside counsel in strategy during litigation to ensure protection of MIT's primary mission and goals. He led OGC's response on all legal processes, including subpoenas, court orders, and other demands. Working with OGC's associate counsel for insurance and risk management, the deputy general counsel led the review of insurance policies and development of strategies for ensuring coverage and payment of claims. He continued to collaborate with the Institute auditor; the directors of various departments, labs, and centers; and others to identify and devise workable approaches to compliance issues and to manage MIT's principal reputational, financial, operational, and legal risks.

Supporting Human Resources

The deputy general counsel served as the primary legal resource for employment issues at the Institute, including providing extensive counseling to the vice president for human resources, director of employee relations, Disability Services Office, and various human resource officers and administrative officers on employee relations issues to manage risks appropriately. He also developed and participated in training and other educational sessions for MIT employees on employment topics, including sexual harassment.

Supporting Procurement

OGC worked with procurement on reviewing more than 200 purchasing, licensing, independent contractor, and consulting agreements in connection with both administrative and research purchases. This work included the purchase of research-

related equipment designed to MIT specifications; development of a variety of enterprise systems at both the Institute and departmental levels, such as MIT's online admissions system; various enterprise systems used by MIT medical; database and data services agreement to provide research materials for faculty and students; and a master agreement with Microsoft Corporation to allow Institute-wide licensing of Microsoft applications.

Supporting Research and Education Generally

As part of supporting research and education generally, OGC counsel negotiated numerous research collaboration and data license agreements with companies to support MIT research programs, assisted MIT faculty with visiting scientist agreements, supported MIT faculty and students on intellectual property issues for thesis and other publications, and negotiated with companies for MIT executive education and lecture series programs.

R. Gregory Morgan
Vice President and General Counsel

More information about the Office of the General Counsel can be found at <http://web.mit.edu/ogc/>.