

Vice President and General Counsel

The Office of the General Counsel (OGC) is MIT's law office. We provide legal advice, counseling, and service to MIT and represent the Institute in its legal matters.

OGC's Mission, Responsibility, and Goal

Our *mission* is

- To educate our MIT clients about the laws, regulations, and policies that apply to MIT's operations
- To prevent legal problems and to solve those that occur
- To facilitate transactions
- To provide advice and representation

We put education first in our sense of mission because experience repeatedly shows that thoughtfully informed and advised MIT decision makers make good decisions. We comment more below on advising versus deciding.

Our *responsibility* is to be effective, timely, and independent minded. By effective and timely, we mean rendering advice and representation that help our MIT clients fulfill their goals in teaching, research, and service, expeditiously and consistent with the values and policies that MIT articulates to govern itself. By independent minded, we mean advice and representation that is grounded in fact and law and free of considerations other than the interests of MIT as an enduring institution. Our advice is mostly legal advice, but if we have thoughtful advice on other matters, we offer it.

Our *goal* is to create an OGC culture, practice, and reputation distinguished for intelligence, energy, and a deep understanding of MIT. Intelligence and energy are prerequisites to premiere lawyering, but MIT could rent those qualities by the hour from outside law firms, although at a dramatically higher price than the cost of the OGC. It is the third quality—deeply understanding the client—that distinguishes an in-house law office, because effective legal advice requires more than legal knowledge. Effective advice requires the intelligent application of legal knowledge to MIT's facts. When legal knowledge is applied intelligently from within, with the Institute's unique facts in mind, and with a sense of urgency, problems are solved, not prolonged.

Our Client and Our Ambition

We pursue our mission on behalf of our one client, which is MIT, the Institute itself, not any individual or segment of the Institute. As lawyers trained in client service, we think of the person or office we speak to in the flesh as our "client." This report speaks of "our MIT clients" above, but in fact we serve only one client: MIT. Of course, being an institution, not a person, MIT can only speak through the people who represent it. Most of the time, the interests and ambitions of the MIT faculty, researchers, students, and

staff who speak to us align entirely with the interests and imperatives of MIT, but not always. We are mindful that we answer to the latter.

Sometimes individuals need legal advice or representation for their outside professional activities, personal affairs, or commercial interests, separate from their functions of behalf of MIT. We are happy to guide them on how they may find appropriate counsel of their own. We are not that counsel.

Beyond a mission, responsibility, and goal, we have an *ambition*. We are eager to be constructive, trusted partners in MIT's work—partners who can help find simplicity in complex problems, who help convene stakeholders and decision makers, and who can articulate options but can get to a “yes” or “no” when it is needed. With that ambition, we regularly receive calls from every part of the Institute and we frequently tackle questions that have no right answer or clear process for getting to an answer. We hope that keeping things calm amid uncertainty is one of the values we can bring to those situations.

What We Don't Do: Deciding versus Advising

Implicit in all the above is that we *do not*, for the most part, *make decisions* for MIT. We are advisers. On every problem, we try to be sure that the right person or people are making the decision, that they have the right information, and that their decision comes to rest somewhere within what is usually a very broad range of reasonable decisions for MIT. It is our responsibility to say what the law and the legal risks are, but others at MIT can weigh the benefits of a proposal against its costs and risks as well as we can. We reserve decision-making prerogative for relatively rare questions, when a judgment of law is not one consideration among several, but dictates the answer.

Who We Are, Who We Are Not

MIT is a big place. We are a small office. OGC consists of 11 lawyers and six staff (but fewer full-time equivalents in each category). Among the 11 are vice president and general counsel Greg Morgan, who is MIT's chief legal officer, and deputy general counsel Mark DiVincenzo, who oversees the office. Our other lawyers are Margaret Brill, David Chused, Regina Dugan, Suzanne Glassburn, Michael Jung, Tena Herlihy, Richelle Nessralla, Allison Romantz, and Jay Wilcoxson. All OGC lawyers report to the general counsel. Regina Dugan also serves as MIT's insurance manager, reporting to the vice president for finance.

While each of these lawyers specializes in one or more areas of law, we all seek to work broadly with colleagues across areas to provide MIT with the range of advice and service it requires. We represent MIT in legal proceedings, render legal advice to MIT, and reach legal judgments for MIT. The OGC is also the office through which MIT engages outside legal counsel.

We are not the only office at MIT whose staff includes lawyers. The Office of Sponsored Programs, Technology Licensing Office, Procurement Office, and Lincoln Laboratories all include personnel who are lawyers, who negotiate contracts that have legal effect, and who perform other valuable services for MIT. We often work closely with them

and we value our relationships with them. But our job and theirs are different. We are the lawyers responsible for shaping MIT's approach to legal and regulatory affairs. We are the final voice at MIT for saying what the law and legal risks applicable to MIT are and for articulating MIT's legal positions. We or outside counsel whom we approve are the only lawyers who stand up in court or other legal proceedings and say, "I represent MIT." But we are too small an office to perform every task at MIT that uses lawyerly skills. We do not negotiate and draft every MIT contract that has legal effect. We rely on the offices mentioned above, and others, to do much of that work. Nor do we take every action required for MIT to comply with law. Responsibility for compliance rests in many MIT offices, whom we counsel as to compliance requirements. Our job is to shape MIT's approach to legal and regulatory affairs, not to conduct all MIT affairs with legal or regulatory effect.

Our Year in Review

Consistent with our mission, responsibility, goal, and ambition, OGC lawyers contributed during the 2008–2009 academic year to numerous important MIT endeavors, some of which are highlighted below. In addition, we advised more people and answered more questions than we did the prior year, drafted and negotiated a heavy volume of agreements large and small, and mostly prevailed for MIT but always protected it when we managed the resolution of disagreements. Among other things, we devoted many hours, as we do in most years, to advising MIT personnel engaged in student life, to assist in providing an effective support system for one of MIT's greatest assets, its students. We also made progress in organizing the internal systems and processes of our office, which has now been in existence for two years.

Advising Academic Initiatives

The provost and faculty initiated several faculty committees during the year to advance MIT's interests. OGC lawyers advised each of these committees:

- Committee on Managing Potential Conflicts of Interest in Research, chaired by professor Sheila Widnall
- Committee on MIT Technology Transfer for the 21st Century, chaired by professor Charles Cooney
- Ad Hoc Committee on Open Access Publishing, chaired by professor Harold (Hal) Abelson and director of libraries Ann Wolpert
- Ad hoc faculty committee to examine tenure and promotion processes, chaired by professors Robert Silbey and Thomas Kochan

In addition, the deputy general counsel served on one of the Institute-wide Planning Task Forces established by the provost, chancellor, and executive vice president in response to MIT's declining revenue sources due to the declining national economy. Another OGC lawyer supported an advisory task force appointed by the associate provost and vice president for research to evaluate important equipment issues for MIT's Plasma Science and Fusion Center. We provided various education and training opportunities to human resource officers, student life officers, and others.

Representing MIT in Legal Proceedings

OGC lawyers managed a significant caseload of litigation and regulatory matters for MIT. We represented MIT in matters related to employees, students, research, environmental sites, patents, construction, and numerous other matters that arose from MIT's widespread activities. We handle all subpoenas, complaints filed in court, and other forms of legal process served on MIT. Consistent with our mission, we devote great energy and a significant fraction of our staff and time to active risk management and dispute resolution *before* litigation ensues. We prefer preventing problems to solving them. But if MIT's interests require it, we don't mind a fight.

One highly publicized lawsuit during the year was brought by the Massachusetts Bay Transit Authority against MIT and three MIT students concerning work on computer-system security. (The lawsuit was resolved.) However, most of our litigation and pre-litigation activity is inherently confidential. Indeed, our success in this area is measured in part by how little publicity such matters generate.

Structuring and Negotiating Multi-institutional Research Collaborations

OGC lawyers played significant roles in the structuring, negotiating, and documenting of multi-institutional research collaborations. We worked closely with MIT's senior officers and numerous MIT offices to complete the reorganization of the Broad Institute from a constituent unit within MIT to a separate entity governed by MIT, Harvard University, and the Broad Foundation. We also contributed to establishing the Philip T. and Susan M. Ragon Institute with Massachusetts General Hospital, Harvard University, and the Philip T. and Susan M. Ragon Institute Foundation.

Advising, as to Law and Otherwise

During the past academic year, Congress passed the Higher Education Opportunity Act, the Department of Education revised its interpretations of FERPA (Family Educational Record Privacy Act), and the Massachusetts legislature adopted a new statute to govern endowments (the Uniform Prudent Management of Institutional Funds Act). These are just three of many developments in the law directly applicable to MIT. We advised the MIT units affected by the changes. Apart from changes in law, we routinely counsel MIT offices as to their ongoing legal compliance. Apart from advice strictly as to law, we serve as a thought-partner and objective set of fresh eyes for various MIT offices.

Responding to the Economic Downturn

We fielded many questions last year arising from the economic downturn and MIT's efforts to reduce its budget. Among other efforts, we participated with the executive vice president, vice president for finance, Sloan School of Management, and Student Financial Services to rapidly establish a student loan program for Sloan students after the private-sector bank that had previously provided such loans withdrew from the market. We also took steps, which we are continuing, to control MIT's legal costs, including in particular the costs of outside legal counsel whom we engage.

Other Institute-wide Projects

We participate in many annual Institute-wide projects. Last year OGC lawyers also participated in preparing MIT's self-study report in anticipation of its reaccreditation by the New England Association of Schools and Colleges, and participated in preparing for MIT's first response to the Internal Revenue Service's newly revised Form 990, which is effectively MIT's "tax return."

The History of the OGC

The OGC came into existence in spring 2007 after MIT hired its first general counsel, in January 2007. Before the OGC, MIT employed lawyers in an office designated the Office of Senior Counsel and in a separate Office of Intellectual Property Counsel, along with lawyers on the staffs of the Technology Licensing Office, Office of Sponsored Programs, and Treasurer's Office (or the successor to its investment functions, the MIT Investment Management Company). The Office of Senior Counsel and Office of Intellectual Property Counsel ceased to exist when the OGC was created. The lawyers in those offices, along with lawyers from the other offices, consolidated into the OGC.

Several considerations prompted the consolidation into one office. The consolidation allows the Institute's lawyers to work cooperatively and more efficiently, provides for consistency in legal advice and broader scope in risk management, and identifies one central office for those at MIT seeking legal services to call. Importantly, the consolidation also enabled the OGC to coalesce into one mind on our mission, responsibility, goal, and ambition.

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