

## 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.

### 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 MIT's transactions
- To provide advice and representation

We put education first in our sense of mission because experience has repeatedly shown that thoughtfully informed and advised MIT decision makers make good decisions. We comment more below on the difference between *advising* and *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, creative problem solving, and a deep understanding of MIT. Intelligence and energy are prerequisites to excellent 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 other qualities—creativity as to solutions and deeply understanding the client—that distinguishes an in-house law office, because effective legal advice requires more than legal knowledge. It requires the intelligent application of legal knowledge *to MIT*. When such knowledge is applied intelligently from within—with MIT's unique facts, culture, and values in mind—with creativity as to solutions and a sense of urgency, problems are prevented, not skirted; they 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. Being trained in client service, we think of the individual or office we speak to as our "client." Although this report refers to "our MIT clients" above, we in fact serve only one client: MIT. Of course, being an institution, not a person, MIT can only speak through the people who comprise it. Most of the time, the interests and ambitions of the MIT faculty, researchers, students, and staff who comprise MIT align entirely with the interests and imperatives of MIT, but not always. We are mindful that we answer to the Institute, not the individuals.

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

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

### **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 or compliance is not one consideration among several, but is clearly the predominant question: the one that dictates (or comes very near to dictating) the answer.

### **Who We Are, Who We Are Not**

MIT is a big place. We are a small office consisting of 11 lawyers and five staff members (with slightly fewer full-time equivalents in each category). Among the 11 lawyers are vice president and general counsel Gregory Morgan, who is MIT's chief legal officer, and deputy general counsel Mark DiVincenzo, who oversees the office and is MIT's senior litigation and dispute-resolution lawyer. Our other lawyers are Margaret Brill, David Chused, Regina Dugan, Suzanne Glassburn, Michael Jung, Tena Herlihy, Richelle Nessralla, Allison Romantz, and Jaren Wilcoxson. Each of these lawyers specializes in one or more areas of law, but we all seek to work broadly with colleagues across areas to provide MIT with the range of advice and service it needs. 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 have no ambition to grow in numbers, only in impact and in the value of our service to MIT.

We are not the only office at MIT whose staff includes lawyers. The Office of Sponsored Programs, Technology Licensing Office, Procurement Office, Human Resources, and Lincoln Laboratories all include personnel who are lawyers, who negotiate contracts that have legal effect, and who perform other valuable services for MIT. Those lawyers do not report to the General Counsel. 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 the law. Responsibility for compliance rests in many MIT offices, which 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 2009–2010 academic year to numerous important MIT endeavors, some of which are highlighted below. In addition, we advised an uncounted number of people, answered an uncounted number of questions, drafted and negotiated a heavy volume of agreements large and small, and managed the resolution of numerous disagreements. Among other things, we devoted many hours, as we do in most years, to advising MIT personnel engaged in student life, to assist them in providing an effective support system for one of MIT's greatest assets: its students.

## **Advising Academic Initiatives**

We take great satisfaction in advising on important academic initiatives. Over the past year, OGC lawyers assisted two faculty committees appointed by the provost—the Committee on Managing Potential Conflicts of Interest in Research, chaired by professor Sheila Widnall, and the Committee on MIT Technology Transfer for the 21st Century, chaired by professor Charles Cooney—and an ad hoc faculty committee chaired by professors Robert Silbey and Thomas Kochan to examine tenure and promotion processes. We participated in the drafting of committee reports and related revisions to MIT policies and procedures. OGC also assisted in an important online compilation of MIT policies and procedures concerning responsible and ethical behavior at MIT. We hope to infuse a large dose of plain English into MIT's policies and procedures in order to increase guidance and reduce ambiguity. This is a long-term goal, but we made progress over the past year.

## **Providing Employment Counseling**

We annually devote a substantial portion of our time and effort to counseling on employment matters. Of particular note last year, we estimate that more than 600 MIT employees participated in tailored education sessions that OGC developed or conducted on employment and anti-harassment topics. These programs were well received and we plan to continue providing them.

## **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, contracts, construction, and numerous other matters. We handled all subpoenas, complaints filed in court, and other forms of legal process served on MIT. Consistent with our mission, we devoted great energy and a significant fraction

of our 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 are prepared to defend the Institute in litigation. We don't mind a fight.

Among the formal disputes that we resolved or caused to be dismissed last year were two lawsuits that had attracted publicity: MIT's lawsuit regarding the Stata Center and a lawsuit against MIT arising from a fire and death in 2006 in a Cambridge office building owned by MIT. We often find that news reporting and public commentary about MIT litigation is incomplete and misinformed, sometimes wildly so. Nonetheless, we almost never respond to news inquiries and we usually don't correct misstatements because we are governed by facts and law, which we advocate in court, not in newspaper headlines. Also, much of our litigation and pre-litigation activity involves inherently confidential information. Our success in this part of our work is measured in part by how little publicity it generates.

Last year we significantly increased our attention to litigation involving MIT patents. MIT's patent licensees, not MIT itself, control much of that litigation, but they litigate to enforce their licenses using MIT's name. MIT's patent license is designed to keep MIT's interests and its licensees' interests aligned, but we sometimes need to intervene when the alignment warps in the heat of litigation. We, the Office of the Vice President for Research and Associate Provost, and the Technology Licensing Office, are partners in many of these matters.

### **Structuring and Negotiating Multi-institutional and International Collaborations**

OGC lawyers played significant roles in the structuring, negotiating, and documenting of multi-institutional collaborations for research and education. One such matter is the Green High Performance Computing Consortium, a collaboration to provide low-cost, high-efficiency power for high-energy-demanding scientific computing. This consortium of several Massachusetts universities, industry, and the Commonwealth presents uniquely challenging questions on how to collaborate while producing timely results. In addition, we are addressing the challenges posed by MIT's increasingly international scope. This year, we worked closely with MIT's Energy Initiative to help establish the Low Carbon Energy University Alliance with Tsinghua University and the University of Cambridge; with the Office of the Provost and the Schools of Engineering and Architecture and Planning to establish a collaboration with the Singapore University of Design and Technology; and with other schools, departments, and labs to establish a variety of research and educational engagements abroad. These collaborations raise hard questions of governance, administration, finance, law, and dispute resolution, all of which need to be answered and memorialized.

### **Advising and Education**

During the past year, Congress passed the Dodd-Frank financial reform legislation and the Massachusetts legislature adopted a new statute to govern data security and several new or amended laws that apply to MIT as an employer. These are just several of many developments in the law requiring attention, education, and change at MIT. We advised the MIT units affected by the changes. We also advised MIT offices that

are implementing last year's Higher Education Opportunity Act as it became effective over this year. Apart from changes in law, we routinely counsel MIT offices as to their ongoing legal compliance.

### **Having an Impact Beyond MIT**

We seized two opportunities last year to serve MIT in a manner that we hoped would have an important impact beyond MIT. As Congress debated amendments to the US Patent Act, we participated with the law offices of the University of California and the Wisconsin Alumni Research Foundation to articulate the legislative interests of research-intensive, patent-producing, start-up-company-generating universities. We partnered with MIT's Washington DC Office and the Technology Licensing Office in this important effort. Also, when Stanford University sought US Supreme Court review of an important question under the Bayh-Dole Act, we filed an amicus brief to support Stanford's position by spotlighting the transformative effect that Bayh-Dole has had on university technology transfer over its 30-year life.

### **Other Institute-wide Projects**

We participate in many annually recurring Institute-wide projects, such as the preparation of MIT's Form 990 filing with the IRS.

### **History**

The Office of the General Counsel came into existence in spring 2007 after MIT hired its first general counsel in January 2007. Before our office existed, 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. All OGC lawyers report to the general counsel. OGC lawyer Regina Dugan also serves as MIT's insurance manager, reporting to the vice president for finance.

Several considerations prompted this consolidation into one office. It allowed the Institute's lawyers to work cooperatively and more efficiently, provided for consistency in legal advice and broader scope in risk management, and identified one central office for those at MIT seeking legal assistance. Importantly, the consolidation also enabled the OGC to coalesce into one mind on our mission, responsibility, goal, and ambition.

**R. Gregory Morgan**  
Vice President and General Counsel

**Mark DiVincenzo**  
Deputy General Counsel

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