

Review of the Office of the General Counsel
University of Iowa
2004

**Final Report of Committee to Review the University of Iowa,
Office of General Counsel (OGC)**

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Executive Summary

President Hunter Rawlings created the Office of General Counsel (OGC) in 1992. Since then it has grown to a staff of five and one-half (FTE) attorneys, including General Counsel Mark Schantz.

1. OGC Roles and Missions

a. The OGC has a number of roles and missions. First, it serves as legal and policy advisor to the President through the general counsel. In this capacity, the general counsel has served admirably.

This role of the general counsel highlights three levels of accountability within the university's system of governance that are relevant to the delivery of legal services. First, the President is accountable to the Board of Regents for the overall well-being of the university, which includes its legal health. Second, the general counsel is accountable to the President for the university's legal well-being. The proper exercise of this responsibility by the general counsel requires a full understanding of the university's legal issues and problems. This in turn depends upon a third level of accountability running from the lawyers practicing within the university to the general counsel.

b. The second role of the OGC is to support the Office of the Attorney General in litigation involving the university. In this role, the office has also performed admirably.

c. The third role of the office is to represent and protect the interests and reputation of the University of Iowa as a legal and communal entity by providing legal representation and advice to administrators, faculty, and staff acting in their official capacities as agents of the university. A major goal of the office is to raise the legal and preventive awareness of middle and upper management.

(1) To increase the effectiveness of the OGC in this regard, we recommend that the President encourage university administrators, especially at the dean and vice presidential levels, to deepen the OGC's understanding of the needs of their clients by routinely including OGC staff in their group deliberations.

(2) We believe that the sources of authority and responsibility within the university for monitoring university compliance with external legal regulations should be identified and clarified. We recommend that the President consider the creation of a more centralized structure within the university, involving the participation of the OGC.

(3) To assess the perceived satisfaction of the clients served by the OGC, we interviewed the President, the Provost, and the university Vice Presidents. In addition, one hundred administrators, faculty, and staff responded to a client satisfaction survey

concerning the quality of the representation and advice provided by the OGC. The results documented a high level of satisfaction with OGC services.

(4) Our client satisfaction survey and mass email identified two sources of dissatisfaction with OGC legal services. The first involves such matters as the timeliness of responses and the difficulty of getting in touch with an attorney in the office. On the basis of these results and the results of a survey of OGC staffing levels at ten peer institutions, we believe that the source of these problems may be a staffing shortfall in the OGC.

(5) The second source of dissatisfaction is found in a handful of cases. In each, a faculty or staff member, who brought a problem to the OGC, mistakenly believed that the OGC represented him or her or should have represented him or her in the underlying dispute, or that the office would protect him or her from any untoward consequences of the dispute. The result was a feeling of neglect or betrayal by the office. These cases lead us to recommend that the office develop a protocol to advise, up front, faculty and staff who contact the office for assistance, so as to avoid the creation of mistaken expectations as to what individual university employees may expect from the OGC.

d. The fourth role of the office is to provide legal advice and information to the university community through periodic meetings, workshops, and entries on the OGC's webpage. Our survey respondents were less satisfied with the performance of the office on this dimension. We recommend greater effort in this area, both in meetings and workshops and in an enhancement of the office's webpage. For the webpage, we recommend particular emphasis on what individual faculty and staff should and should not expect from the OGC.

e. The fifth role of the office is to represent the university in grievances and other internal litigation (e.g., tenure and ethics disputes) conducted under the authority of the university Operations Manual. We believe that the office performs very well in this role.

f. The sixth role of the office, which has gradually evolved since 1992, is to provide, upon request, information and advice to 23 attorneys employed by the university outside the OGC. Because most of these individuals devote a significant proportion of their time to non-legal responsibilities, they only constitute approximately seven and one-half (FTE) attorneys. These lawyers do not report to the general counsel and the principal sources of oversight and support for their work are the administrators to whom they report.

Our research on this issue involved the administration of a survey to all of the attorneys known to us outside the OGC and interviews with three of the respondents who requested to meet with the committee. The twenty-one attorneys who responded to the survey generally believed that the information provided them by the office was "useful." However, a majority of the respondents expressed dissatisfaction with the level of educational outreach provided by the OGC. We believe such outreach will increase as the authority of the general counsel vis a vis these attorneys is enhanced over time.

g. No other campus units report to the OGC, as is the case at peer institutions. We recommend a continuation of this policy.

2. Organization and Staffing of the OGC

a. The OGC employs competent, well-trained attorneys whose morale appears to be high. The office follows a large-firm model of encouraging specialization and the development of personal relations between the staff attorneys and the principal client administrators they serve, which appears to work well.

b. The office would be strengthened with the addition of more attorneys and non-legal staff, which would allow staff attorneys to focus on substantive legal matters and spend less time on tasks such as finalizing legal documents. The number of both attorneys and non-legal staff at Iowa is quite low compared to peer OGCs. We recommend authorization for two additional attorneys and one additional secretary.

c. The process of day to day staff evaluation, while informal, appears to be effective. Nevertheless, we recommend that this process be supplemented with more formal, systematic, written methods for the annual evaluation of staff attorneys and support staff at all levels of experience.

d. The office has sufficient resources to support routine continuing legal education for its attorneys. However, there appears to be a shortfall in terms of resources available to support more extensive specialized training in new areas of the law as they become important. We recommend an increase in resources for this purpose.

e. There appear to be concerns in the office about equity issues in regard to compensation for OGC attorneys vis a vis administrators and attorneys with similar levels of experience and responsibility in other parts of the university. Our research suggests that the principal source of possible inequities is in pay grade levels. We recommend that Mr. Schantz or his successor invite university Human Resources to conduct a more systematic review of this issue on a regular basis with recommendations to the President and the Vice President for Finance.

3. Attorneys Employed Outside the OGC and Their Relationship with the OGC

a. We have investigated the role of the attorneys employed outside the OGC and their relationship with the OGC. As noted above, they represent the equivalent of approximately seven and one-half (FTE) attorneys. Our research indicates that these lawyers fall into two categories. First, are the attorneys whose positions clearly involve legal responsibilities requiring a J.D. and whose legal judgments routinely affect decisions of administrators who speak for the university. Throughout this report, we consider such attorneys to be engaged in “the practice of law.” They include the legal staff of the UIHC (University of Iowa Hospital and Clinics) and the Office of Equal Opportunity and Diversity, and legal advisors to the Vice President for Student Affairs

and the Oakdale Research Park. The second group of attorneys outside the OGC are “J.D. administrators,” whose responsibilities and judgments are informed by their legal knowledge, but whose principal responsibilities are administrative in nature and do not involve the delivery of legal advice to administrators speaking for the university. Administrators in this category include those employed in Human Resources, the School of Fine Arts, and Sponsored Programs.

b. Formally, attorneys employed outside the OGC have no different relationship to that office than university administrators with no legal training have. Nevertheless, nearly all of the attorneys outside the OGC believe they have an obligation to keep OGC informed of developments in the legal aspects of their jobs. However, nearly one-third of these attorneys perceive themselves as operating independently of the OGC with no duty to report and consult with the OGC in connection with non-routine legal aspects of their jobs.

c. Our investigation reveals that the organizational structure for the delivery of legal services within the university has been in a state of evolution since the 1970s. We believe that the occasion of this year’s search for Mr. Schantz’s successor may be a propitious moment to continue that evolution in the direction of closer relationships between the OGC and the attorneys employed outside the OGC.

d. The current relationship between the general counsel and attorneys outside the OGC stands in sharp contrast to the relationships that exist in peer institutions between practicing attorneys and the OGC. No university contacted in our survey of peer OGCs maintains a system comparable to ours. The prevailing rule elsewhere is that, with few exceptions, the only individuals authorized to deliver legal services, especially legal advice, are attorneys hired by the general counsel and operating under his or her supervision and control. An OGC model along these lines has several virtues.

First, it assures that practicing attorneys outside the OGC are sufficiently accountable to the general counsel to permit the President to hold the general counsel accountable for the actions of those attorneys. Second, it ameliorates our concern that changes of legal personnel may have deleterious effects on the operation of our system. Third, we believe that the current level of autonomy of some practicing lawyers outside the OGC may introduce inefficiencies in the delivery of legal services, which come at a price in terms of scarce resources. Fourth, bringing all practicing attorneys within the jurisdiction of the OGC will ensure the university protections in litigation that arise from a clearly recognized attorney-client relationship.

e. For these reasons, we believe that the general counsel's role as chief legal officer within the university should be more clearly defined. Toward that end, we recommend that the job description of our general counsel explicitly include the following:

The general counsel is the chief legal officer of the university. As such, all practicing attorneys within the university report to the general counsel, who has jurisdiction and authority over the hiring, firing, compensation, promotion, and evaluation of all such attorneys.

f. We believe that this change in the role of the general counsel can be effected by (a) the President's adoption of this recommendation, (b) its dissemination throughout the university, and (c) its inclusion in the job description used in the search for Mr. Schantz's successor. We do not recommend an abrupt change in the relationship between the general counsel and the attorneys practicing outside the OGC. Rather, we recommend gradual change to a more centralized legal services system within the university guided by the general counsel. We recognize the strong tradition of administrative decentralization within the university.

(1) Accordingly, we recommend that stronger ties to the general counsel evolve first in the form of direct or dual reporting obligations to the general counsel among attorneys outside the OGC whose legal judgments routinely affect the decisions of administrators who speak for the university. For all such attorneys, we recommend that general counsel's authority embrace hiring,¹ firing, evaluation, compensation, and promotion. However, we recommend that the general counsel's relationship with attorneys practicing within the UIHC evolve more slowly, in recognition of their long-term tradition of autonomy and their strong relationship with the UIHC leadership. Also, the general counsel's relationship with the Office of Equal Opportunity and Diversity should reflect its direct reporting relationship to the President.

(2) Second, we expect that most J.D. administrators outside the OGC will continue in that capacity. They might benefit, however, from the networking activities of the OGC. The principal responsibility of J.D. administrators should be to ensure (a) that the OGC is kept informed of the legal issues with which they deal, and (b) that legal judgments in non-routine matters related to their responsibilities are exercised by the OGC.

(3) We believe that the pace and emphasis of the general counsel's evolving relationship with attorneys currently outside the OGC should be within the discretion of the general counsel.

(4) As the general counsel adopts changes over time, they should be communicated by the President to administrators and counsel through the usual chain of

¹ Hiring also contemplates the assignment of job titles, such as assistant and associate OGC counsel that communicates their relationship with the OGC.

command. Periodic meetings of the general counsel with attorneys employed outside the OGC, and the administrators to whom they report, can also enhance detailed understanding. In addition, for new administrators joining the university, training sessions for them should embrace this subject.

h. To provide a foundation for the changing relationships that we propose, we recommend that Mr. Schantz initiate a systematic inventory of the practice of all attorneys outside the OGC to identify those whose legal judgments routinely affect the decisions of administrators who speak for the university.

I. Introduction

A. Background

President David Skorton appointed our committee in June 2004 to conduct a review of the Office of the General Counsel (OGC) as is periodically required to occur by the university Operations Manual. Our mission was (a) to review and evaluate the OGC and the role played by university attorneys employed outside the OGC, and (b) to present the President with findings and recommendations on or about November 1, 2004.² Our assignment did not include a separate review of Mark Schantz's performance as General Counsel, a position he has held since 1992.

B. Questions

On the basis of our briefing by President Skorton, we have focused our review on the following questions:

1. What is the relationship between the OGC and the Attorney General's office and how well do university attorneys, both within and outside the OGC, provide support for the Attorney General when it is needed?
2. How well does the OGC deliver legal service within the University of Iowa?
3. How is the OGC organized, how well does it function, and does it have adequate personnel and other resources?
4. How well does the OGC provide evaluation, training, and support for its staff members?

² This is the first formal review of the OGC since its creation in 1992.

5. Is the system adequate (a) to ensure regulatory compliance with state and federal laws that apply to various areas, e.g., basic research, clinical trials, the preparation of contracts, and (b) more generally, to maintain tolerable levels of legal exposure and risk to the university from all sources?
6. Does the system keep the President apprised of important legal questions?
7. What is the relationship between the OGC and attorneys employed outside the OGC in terms of communication, oversight, accountability, and support?
8. Are there ways the system could be improved? If so, how and by whom?

C. Methodology

1. The committee commenced its assignment with a review of the literature on the organization, structure, and function of OGCs at other universities,³ and a review of the self-study prepared by the OGC, which is at Appendix A of this report.

2. We conducted a series of interviews commencing with President Skorton. We interviewed the Provost and all administrators at the Vice Presidential level as well as General Counsel Mark Schantz and all the members of his office. We also met with three attorneys employed outside the OGC who requested an interview with the committee, and two respondents to the client satisfaction survey who requested an interview.

Finally, we interviewed Iowa Attorney General Tom Miller concerning the quality and quantity of the support provided by university attorneys in litigation and related matters within the direct jurisdiction of the office of the Attorney General. The names of University of Iowa employees interviewed are at Appendix B.

3. We administered three surveys. The first, in Appendix C: Part I, was a client satisfaction survey, sent to recipients of legal services provided by the OGC and local attorneys who frequently represent parties bringing cases against the university. The list of recipients, which we developed in consultation with the OGC, is at Appendix C: Part

³ In addition to this review, we conducted a survey of general counsel offices at a sample of peer institutions. *See* para. 5 below.

II. We had a 65% (100/154) response rate. The quantitative results from the survey are presented in Appendix D (Part I: Figures, Part II: Tables).

4. We sent our second survey, at Appendix E, to 23 attorneys employed by the University of Iowa outside the OGC (their names and affiliations are at Appendix E-1). The response rate was 87% (20/23) and the quantitative results are at Appendix F.

5. We sent our third survey, at Appendix G: Part I, to the OGC offices at 15 peer public research universities. The response rate was 67 % (10/15). These respondents are identified in Appendix G: Part II. Our survey instrument addressed issues that we considered relevant to the University of Iowa OGC. Appendix H summarizes the results.

6. We sent a mass email to all University of Iowa faculty, staff, and students to solicit opinions about the OGC. We received a number of useful replies.

7. As required by the University Operations Manual, we also published in the university publication “FYI” a request for comments about the office. We received one reply.

8. We have been assisted in this review by an external consultant, Pamela Bernard, General Counsel for the University of Florida, Gainesville, Florida. She provided counsel from afar and consulted with us in Iowa City October 18-19, 2004, while we were considering our conclusions and recommendations. Her insight and advice were of great assistance to the committee.

9. The committee met numerous times from June through November, 2004 to conduct interviews, draft questionnaires, and review findings and recommendations.

10. In late October, 2004, as required by the University Operations Manual, we met with President Skorton and Mr. Schantz to review a draft of this report.

11. Nancy Jones, Ph.D., Director, College of Law Writing Center, provided a helpful review of the report for style and clarity.

II. Legal Work and Legal Services at the University of Iowa: an Overview

A. Law and the University of Iowa

It is commonly recognized that law impinges in many ways on the operations of major research universities in this country. At the University of Iowa, the sources of such law include the United States and Iowa constitutions, federal and state civil and criminal laws and regulations, local ordinances, Regential rules and regulations, and the university's Operations Manual, which regulates a wide variety of university activities. The following list summarizes the most important university activities affected by law:

- a. University governance and financial management,
- b. Protection and expansion of the university's physical infrastructure,
- c. Knowledge creation and protection, e.g., research grants, the conduct of research, the protection of intellectual property flowing from research,
- d. Student admissions, teaching, and evaluation, as well as the protection of students and the regulation of their behavior,
- e. Faculty, staff and student employment, promotion and tenure decisions; providing for employee protection and the regulation of employee behavior, and
- f. Delivery of services, for example:
 - (1) medical and dental services,
 - (2) cultural services - the art museum, Hancher Center for the Performing Arts, and related performances, and
 - (3) entertainment - the planning, organization, and conduct of sporting events.

B. Legal Activity

As background for our review and evaluation, we present in this section a brief description of the principal types of legal activity performed on the University of Iowa campus.

1. Routine legal work

Given the pervasive reach of the law in our professional lives, a substantial amount of activity is conducted in its shadow. Much of this legal activity involves the routine application of fairly straightforward laws and regulations by administrators without legal training. Such work is informed by the administrator's general understanding of the applicable legal background and rules but does not involve the practice of law even if the administrator holds a J.D. degree. A good example in the university setting is the application by lay administrators in the international program of federal regulations limiting the activities of international students and faculty. This work is analogous to that of laypersons employed by H&R Block who apply the federal income tax laws each year for thousands of customers.⁴

2. More complex legal work

For the purposes of this report, we view "more complex" legal work as involving the drafting of complex legal documents with potentially high risk to the university in the event of error, especially if prepared against a background of complex legislation and case law. We also view as "complex" the delivery of legal advice to university administrators involved in actual and potential legal problems, with substantial legal

⁴ So long as such administrators are alert to issues beyond their legal expertise, they appear quite capable of making the legal applications they currently handle. However, it is important for the OGC to be aware of the extent to which such legal work is occurring and to develop good working relationships with such administrators to minimize the risk of error with legal implications.

ramifications. The understanding and management of such issues requires, on the part of the counseling attorney, substantial legal knowledge, practical experience in complex legal settings, seasoned judgment, and a full understanding of the potential impact of legal questions on the university, its administrators, faculty, staff, and students.

Examples of complex legal work of this type include (a) handling complicated legal disputes between the university and governmental regulators, such as the United States government; (b) negotiating and adjudicating within the university ethical and performance disputes involving faculty, staff, and students; (c) complex transactional work on such matters as taxation, intellectual property, and university governance, and (d) advising multiple administrative and academic units on process issues related to student recruitment and promotion. The principal source of complex legal work and advice in the university is the OGC, yet a number of the lawyers employed outside the OGC also handle such issues.⁵

⁵ Most attorneys outside the OGC perform complex legal work which in other contexts would be characterized as the practice of law as that phrase is conservatively defined. See App. E, Questionnaire for Attorneys Outside the OGC, Q. 7a – 7h for a description of such legal work. However, as we explain in the text below, for the purposes of this report, we describe the “practice of law” within the University of Iowa as the exercise of legal judgments that routinely affect the decisions of administrators who speak for the university.

Of the twenty-one lawyers outside the OGC who responded to the committee's survey, twelve report that a law degree was not required at the time they were hired for the position they currently hold, and only two of those opined that a J.D. would be required for the position were it vacant now. Yet of those twelve who state that no law degree is required, all but one perform legal work and six of them describe performing at least some legal tasks which appear to require the sophisticated exercise of legal judgment. Five, according to their own assessment, perform relatively routine legal tasks and one performs no legal work at all.

Of those twenty-one respondents, nineteen reported spending some of their work time performing legal tasks. Nine reported spending at least one quarter of their time so engaged, and six reported spending the majority of their time doing legal work. One of the two respondents who denied doing any legal work reports that she sometimes interprets and/or applies statutory or regulatory language, reviews the writing of others to determine its compliance with applicable law, drafts written materials with legal issues, and drafts written materials to advance or reflect resolutions of legal disputes.

When asked whom they considered to be their clients, five of the twenty respondents listed UIHC as the client, six listed a person or entity other than the University of Iowa or UIHC, and three claimed not to have any client(s). Eight reported that their legal work is supervised by either the OGC or Legal Counsel at UIHC, while six replied that no one supervises their legal work and two claimed that a non-lawyer supervises their legal work.

In spite of the involvement of many of these attorneys in legal matters, it is useful to distinguish between two groups of attorneys working outside the OGC. First, are the attorneys whose positions clearly involve legal responsibilities requiring a J.D. and whose legal judgments routinely affect the decisions of administrators who speak for the university. Throughout this report, we consider such attorneys to be engaged in the “practice of law.” Counselors in this category include the legal staff of the UIHC and the Office of Equal Opportunity and Diversity, and legal advisors to the Vice President for Student Affairs and the Oakdale Research Park. The second group of attorneys outside the OGC are “J.D. administrators,” whose responsibilities and judgments are informed by their legal knowledge, but whose principal responsibilities are administrative in nature and do not involve the delivery of legal advice to administrators speaking for the university. Administrators in this category are employed in Human Resources, the Museum of Fine Arts, and Sponsored Programs.

Most of the administrators and faculty who responded to our client satisfaction survey receive their legal advice from, or otherwise interact with, attorneys in the OGC. Of the 100 respondents, seventy-one never consult attorneys outside the OGC, or do so fewer than five times per year. Only fourteen consult non-OGC attorneys more frequently than twelve times per year. Further, many of those who report interactions with attorneys outside the OGC also report that the attorneys with whom they interact work in areas of the university where lines of communication with the OGC are well established. Such counsel include the attorneys who work in UIHC under the supervision

These data reveal inconsistencies as to which tasks are viewed as legal across the university, and draw into question which supervisory relationships and attorney-client relationships are appropriate. In order to avoid confusion and to clarify the source of authoritative legal advice within the university, we believe it is desirable to vest in the OGC the power to further centralize the university's legal work.

of Bill Hesson, the attorneys who work in Sponsored Programs and are in frequent contact with OGC attorney Grainne Martin, and the attorneys who work in the Office of Equal Opportunity and Diversity under the supervision of Charlotte Westerhaus.

Some of the lawyers employed outside the OGC view themselves as operating independently of the OGC, while others perceive themselves as part of the university's broader legal community⁶ and as such, they look to the OGC for guidance and defer to the OGC when they encounter non-routine legal issues in their work.

3. Attorney-client relationships

The foregoing overview of law and the University of Iowa reveals a variety of perceptions concerning the "attorney-client" relationship.⁷ The OGC's web page states that the OGC "represents" the "University of Iowa" through "legal advice and representation" to university administrators, faculty, and staff acting "in their official capacities" (as agents of the university). In this capacity, OGC counsel help administrators, faculty, and staff members promote the best interests of the university.⁸

This formulation suggests a straightforward relationship comparable to what exists between a private individual and a personal attorney (the "private" client model). The problem with this model is that as a client the university is not an individual but an "entity," which acts through a variety of agents/actors.

Normally, there is a broad consensus among these actors on what is in the university's best interest. These perceptions are often informed by strategic plans

⁶ See *infra* note 70 and accompanying text.

⁷ We focus here strictly on perceptions of the actors in the University legal system, without regard to the validity of those perceptions and the "legal" duties and obligations that actually run between between counsel and their "clients."

⁸ The office makes it clear, however, that it does not represent university employees in private legal matters regardless of their position in the University.

operating at different levels of the university. However, situations arise in which perceptions of the best interests of the university diverge among these actors and when they do, the roles of the attorneys who become involved and their relationships to the administrators, faculty, and staff who are implicated in the dispute become more complicated.

There are three distinct but related situations in which such divergence occurs. The first arises from conflicts between operating units (e.g., colleges A and B differ on an employment law interpretation). The second arises when the actors within a given unit (e.g., faculty members in college A) disagree over the legality of hiring practices within the unit. When this occurs, each actor perceives a need for his or her own legal advocate. The available alternatives may include representation by private outside counsel, attorneys on the staff of individual administrators, and the OGC. When the attorney client relationships in such a situation are sorted out, each administrator naturally considers the attorney acting on her behalf as her “counsel.”⁹

The third situation in which diverging perceptions arise are conflicts between individual units of the university and the central administration. When this occurs, line administrators with attorneys on their staffs rely on them to fend for their interests vis a vis the OGC and administrators in the central administration. In this situation, line administrators with staff attorneys clearly perceive an attorney-client relationship with these lawyers.¹⁰

⁹ Faculty and staff, operating without the benefit of counsel, may have difficulty knowing when the time has come to retain outside counsel. This choice is not confronted, of course, by administrators with attorneys on their staffs, unless outside counsel is needed for representation of the administrator in a private legal matter.

¹⁰ The relationship between attorneys outside the OGC and the OGC is quite different than the relationship between outside independent counsel representing administrators, faculty or staff members. The difference is that attorneys outside the OGC are in a subordinate position vis a vis the OGC, in the same way that

III . Office of the General Counsel

A. History

1. Pre-OGC

Before the late 1960s and 1970s, most legal matters involving public universities were considered within the jurisdiction of the Office of the Attorney General (AG) of the state. This was also true in Iowa until it became clear in the 1970s that the number of legal issues arising within the university and the distance between Iowa City and Des Moines (the location of the AG’s office) made the original AG model impractical. Thus, during the 1970s, President Willard Boyd engaged the services of a variety of attorneys to provide him with legal advice and counsel. This began the “Legal Assistant to the President” model, which continued until the creation of the OGC in 1992.

During the 1970s and 1980s, a number of upper level university administrators also perceived a need for legal assistance and hired attorneys onto their staffs to serve both as administrators and legal advisors. The emergence of legal staffs in the university hospital, and in the office of the Dean of Students (now also Vice-President for Student Affairs) during this period are prime examples of this trend. Thus, by the time the OGC was established in 1992, there was already in place a cadre of attorneys across the campus who viewed the delivery of legal services to their immediate employers as an important part of their official responsibilities. A significant proportion of these attorneys remained outside the formal jurisdiction of the OGC when it was created in 1992.

general counsel for a wholly owned subsidiary is considered subordinate to general counsel for the parent company when the interests of the parent and subsidiary diverge.

2. The Office of General Counsel (OGC)

The OGC was established in 1992 by President Hunter Rawlings in response to perceived limitations in the “Legal Assistant to the President” model that had been in place since the 1970s.¹¹

The creation of the OGC was based on an understanding between the office of the AG and President Rawlings concerning the independent authority that the university would have over its legal affairs.¹² The resulting delegation of authority was broad, but the AG retained control of litigation brought against the university.¹³ The further understanding was that university attorneys would provide assistance to AG counsel in the conduct of such litigation.

As is the case in many state universities, the allocation of legal authority within the University of Iowa is a presidential prerogative. When the OGC was established in 1992, the matter was delegated by President Rawlings to the new general counsel. Commencing a new organization with a modest beginning, the general counsel focused primarily on the key issues affecting top university officials.

Mark Schantz was the first General Counsel and has served in that capacity since 1992. His plan was to start with a total of four attorneys (including himself) and over

¹¹ Among our sample of ten peer institutions (“our peer institutions”), OGCs were generally established in the 1960s through the early 1990s. *See* App. H, Q. 1, pp. 1-2.

¹² Both the source of our authority and the informal nature of the President Rawlings’ understanding with the AG are common among peer OGCs. *See* App. H, Q. 2, pp. 2-3. So also is the division of labor between the OGC and the AG. *See* App. H, Questions. 5-6, pp. 4-5

¹³ However, over time the university has been authorized to engage outside counsel to handle specialized matters such as medical malpractice and intellectual property litigation. This is also a common practice among peer institutions. *See* App. H, Q. 25, p. 18. In addition, OGC counsel now defends the university in the local magistrates court in which small claims are brought.

time move to six. The office now has five and one-half (FTE) attorneys, including Mr. Schantz.¹⁴ It also has a two person support staff.¹⁵

For perspective on the OGC's staffing levels, we compared the levels at Iowa with those reported for the OGC at ten peer research universities.¹⁶ In terms of full-time equivalent (FTE) individuals employed in the OGC, Iowa, with 7.5 such persons ranked last. The range among the ten peer institutions was from 35 to 7.8 with an average of 15 and a median of 12. The three schools just above Iowa on this measure were Wisconsin, with 7.8, North Carolina, with 8, and Virginia with 9. At the top of the list was Texas A & M with 34 people and Minnesota with 30.

In terms of the number of "attorneys" in the office,¹⁷ Iowa, with 5.5, ties with the bottom three institutions, each of whom has five attorneys (NC, WI, and KS).¹⁸ The average for the ten peer schools is 8.9 and the median is 8.¹⁹

For paralegals and non-legal support staff, Iowa, with two such staffers, is lowest in the peer group, which averages 6.4 and has a median of 5.²⁰ The three lowest peer schools are WI with 2.5, and NC and IN, each with 3. Iowa is also lowest in terms of the ratio of support staff to the number of attorneys in the office. The range is from a low of

¹⁴ In addition to the General Counsel, the office currently has a staff of four and one-half FTE attorneys: Marc Mills, Grainne Martin, Gay Pelzer, Maria Lukas and Josephine Bathke. Mr. Mills, Ms. Martin and Ms. Pelzer are Senior Associate Counsel. Ms. Lukas, who has a 50% temporary appointment, is Associate Counsel. Ms. Bathke, an entry-level Assistant Counsel, joined the office in January, 2004.

¹⁵ Nancy Dooley, administrative assistant/officer manager, and Mary Cross, secretary.

¹⁶ See App. H, pp. 8-9.

¹⁷ See App. H, p. 9.

¹⁸ Our general counsel advises us that North Carolina is in the process of adding two additional attorneys to its OGC.

¹⁹ We also computed a measure based on the ratio of attorneys in the OGC to the number of university students. The range on this measure was from 3.8 (UT) to .70 (IN). On this measure, Iowa was slightly above the median, with 1.9 (5.5/29,000) placing it close to KS, NC, and OH, with 1.7 and AZ, with 2.4. The highest ratio, 3.8, is reported from UT. The principal limitation of this measure is the absence of controls for the presence of a hospital, extensive transactional work, and graduate schools, which are important sources of legal business for a university.

²⁰ See App. H, p. 9.

.43 (IN: 3/7) to a high of 1.0 at three schools (KS, MN, and Texas A & M; at KS, for example, the ratio is 5/5).

At the time of the creation of the OGC, the university employed approximately a dozen attorneys who provided legal services at varying levels of sophistication to a variety of administrators in whose offices they were employed. The number of such attorneys²¹ employed outside the OGC is now 23.²² It is important to note that most of these attorneys devote a large portion of their time to non-legal administrative matters. The UIHC employs three and one-half (FTE) attorneys, including their lead lawyer Bill Hesson. Among the other units outside the OGC, we have identified the equivalent of approximately four (FTE) attorneys. Thus, while the OGC employs five and one-half (FTE) attorneys, there are a total of approximately seven and one-half (FTE) attorneys outside the OGC.

The pervasiveness of legal practice outside the OGC is important because all administrators in the university have a right to receive legal services from the OGC. That many university administrators continue to use the services of attorneys outside the OGC has at least two possible explanations.²³ The first is familiarity, comfort, and satisfaction

²¹ The role of these attorneys is similar to that of lawyers who work directly and exclusively for a single client and are co-located with the client, e.g., as in many private corporations with substantial staffs of attorneys. In contrast, “outside” counsel normally refers to attorneys in a law firm who represent multiple clients, which aptly describes the role of OGC attorneys within the university.

²² Their affiliation and names are as follows: Athletics (Mark Abbott); Finance and Operations (Andrew Ives, Jr., Ted Yanecek, Gerhild Krapf, Michael Valde, and Randall Ney); Human Resources (David Bergeon); Museum (Pam Trimpe); Oakdale (Brenda Akins and Dan Happe); Office of Equal Opportunity & Diversity (Charlotte Westerhaus and Jan Waterhouse); Ombudsperson (Lon Moeller); President’s Office (Randall Ney); Provost; HIPAA Privacy Officer (Ann Rhodes); Sponsored Programs (Wendy Beaver and Lisa Fisher); Student Services (Tom Baker); Performing Arts (Jan Wessels); University of Iowa Hospitals and Clinics (Bill Hesson, Jolene Sobotka, Lance Van Houten, Sonja Rajki, and Cynthia Geyer). We are not entirely certain that we have located all of the attorneys employed outside the OGC.

²³ Our client survey results indicate that a number of administrators avail themselves of both OGC service and the services of attorneys outside the OGC.

with existing arrangements and the personal relationships that go with them.²⁴ A second explanation is that administrators may perceive such attorneys as their own counsel who will promote their legal interests vis a vis the central administration and help them maintain their autonomy within the university.²⁵ A downside of these relationships, however, is that there is no oversight of the legal work product by legally trained supervisors and no guarantee of consistency in terms of reporting to the OGC.

This brief history supports our view that the organization and authority over the delivery of legal services at the University of Iowa is very much a work in progress.

B. Missions and Roles of the OGC and General Counsel

1. Serve as liaison with and support for the Office of the Attorney General.
2. Serve as legal and policy advisor to University of Iowa President with core responsibility for keeping the president informed of legal issues and risks to the university.
3. Provide legal advice and representation to university administrators, faculty, and staff in their official capacity as agents of the university.
4. Provide legal advice and information to the university community through periodic meetings, workshops, and entries on the OGC's webpage.
5. Represent the university in grievances and other internal litigation (e.g., tenure and ethics disputes) conducted under the authority of the University Operations Manual.
6. Provide, when requested information and advice for attorneys employed outside the OGC.

C. Performance of Missions and Roles: An Evaluation

1. Serve as liaison with and support for the Iowa Attorney General's office

As noted above, the role and authority of the general counsel and the OGC are the subject of an understanding with the Attorney General, who under state law is ultimately

²⁴ In this regard, direct access to counsel without having to join a queue for services at the OGC can be an important convenience.

²⁵ From this perspective, OGC attorneys are sometimes viewed as "counsel for the President and the University".

responsible for the legal well-being of the regential institutions. In this capacity, assistant Attorneys General conduct litigation arising from claims brought against the university. Such litigation typically requires substantial support, which is provided by the attorneys associated with the University of Iowa Hospitals and Clinics (UIHC) in cases arising from the delivery of patient-care services and other claims arising from hospital operations, such as employment and slip and fall cases. For all other cases, the support is provided by the OGC. Our interviews with Attorney General Tom Miller and with university attorneys in both the OGC and the UIHC indicate that university attorneys fulfill these functions very well.

2. Serve as legal and policy advisor to the President

The general counsel provides monthly briefings to President Skorton on the state of the law and legal issues affecting the university.²⁶ The general counsel, whose office is positioned at the Vice Presidential level, is also a member of the President's cabinet of advisors consisting of the Provost and the university vice presidents.²⁷ In this capacity, Mr. Schantz has served not only as the chief legal advisor but also as a policy advisor on a par with the other members of the President's cabinet.²⁸

²⁶ President Skorton expressed an interest in knowing how well the system keeps him apprised of important legal issues and risks within the University, as well as of the level of university compliance with external law. *Supra* pp. 6-7 (Items 5-6). Given the limitations of our data, we can only say that the President knows what Mr. Schantz tells him in this regard and we believe that, in the main, Mr. Schantz is well informed about the state of legal affairs within the university. However, given the lack of accountability of attorneys outside the OGC to that office, we have no way of knowing the scope and depth of his understanding of the issues and legal risks within the institution.

On the issue of university compliance with external legal regulations, there is no clear source of authority and responsibility within the University for monitoring this issue. We recommend that the President consider the creation of a more centralized structure within the university, involving the participation of the OGC, to maintain better control over this issue.

²⁷ Our survey of peer institutions indicates that virtually all General Counsel are positioned at the Vice Presidential level and serve on the President's cabinet.

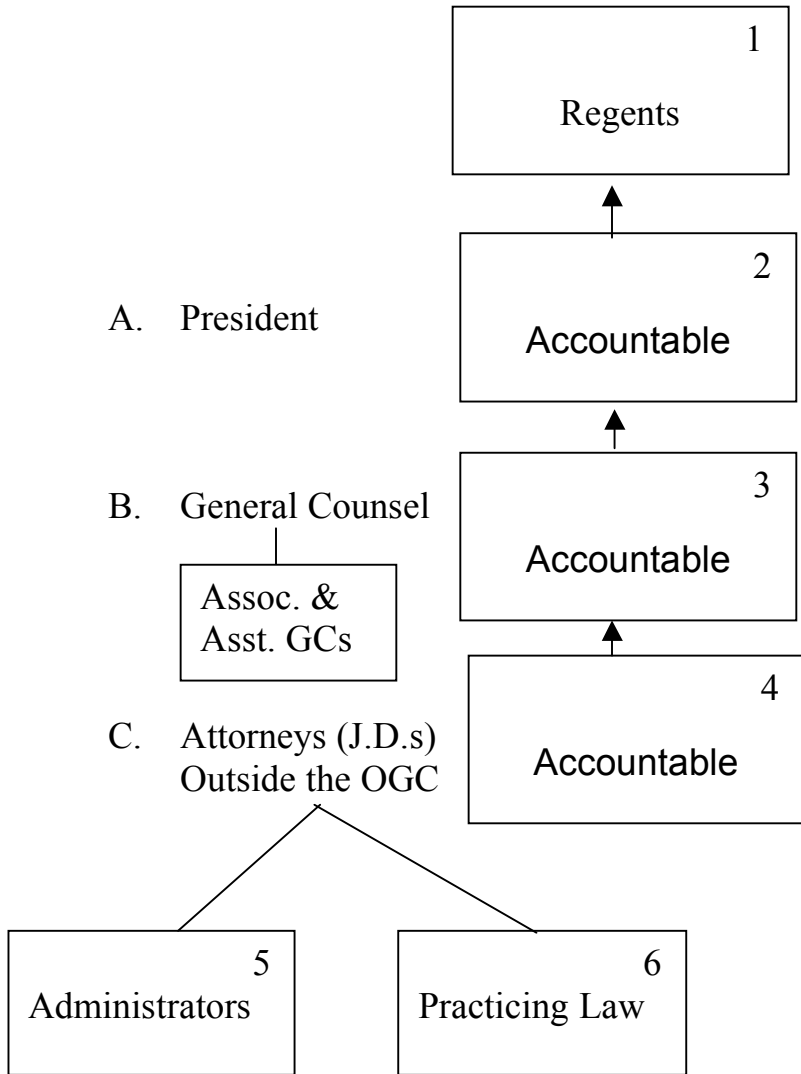
²⁸ It is generally perceived that the effectiveness of General Counsel as policy advisor depends very much on the global presence on campus of the OGC.

Our investigation of the Iowa system reveals the central role of legal accountability, which we outline in Figure 1, p. 22. It represents a three tier set of relationships. At the highest level, the President is accountable to the Board of Regents for the well-being of the university, which includes its legal health. His capacity to fulfill that responsibility depends on how well he is kept informed of legal issues and problems by his general counsel (GC). Similarly, general counsel's ability to fulfill his obligation to the President depends on the extent to which all practicing attorneys in the system are accountable to the GC. In this context, accountability embraces the obligation of all practicing attorneys in the system to view the GC as the principal legal officer in the system and to keep him or her informed of all legal matters with actual or potential significance for the university. In our judgment, a core issue in Iowa's system concerns the extent to which attorneys practicing law outside the OGC (Box 6 in Figure 1) view themselves as accountable to the GC and act accordingly. As we explain in detail in Section IV. B., our concern about the current level of accountability of attorneys outside the OGC to the GC is the principal motivation for our recommendation that the President enhance the authority of the GC over these attorneys.

The OGC currently does not issue a formal annual or bi-annual reports to the President or for the public. We recommend that our OGC issue such a report.

Figure 1

LINES OF LEGAL ACCOUNTABILITY
UNIVERSITY OF IOWA: 2004



3. Provide legal services delivered to administrators, faculty, and staff

A major focus of the OGC is the prevention of legal problems. As stated in the OGC Self Study, the office places high priority on raising “the legal and preventive awareness of middle and upper management.”²⁹ Preventive awareness requires continuing effort on the part of university administrators to keep the OGC informed of their needs. Currently, OGC attorneys participate in the regular meetings of deans and vice presidential senior staffers sporadically, at the discretion of these administrators. We believe that the participation of OGC attorneys in such meetings can help identify and prevent emerging problems. We recommend, therefore, that the President encourage the regular participation of the OGC in such meetings.

In the absence of an audit of OGC files by legal professionals (which has not been conducted) a judgment about the “quality” of OGC legal services and their success in preventing legal problems is necessarily impressionistic.³⁰ What we know is that, since 1992, the number of successful lawsuits filed against the university has been low.³¹ The outcome of federal audits has also been favorable.³²

We do have, however, good information on the extent to which university administrators and staff have been satisfied with the legal services they have received from the OGC. The results of our “client satisfaction” survey indicate that with a few

²⁹ See Appendix A, Office of the General Counsel, University of Iowa, Self Study, (May 28, 2004) (hereinafter “Self Study”) p. 28; (“provide need specific and preventive legal services); (emphasizing the importance of developing “trust and confidence” with “line administrators” as “critical to identifying issues in sufficient time to exercise the preventive role in an effective manner”) p. 7.

³⁰ The absence of audit-based data limits our capacity to address one matter of interest to President Skorton, (*supra* p. 6, Item 5) – the capacity of the system to ensure regulatory compliance and maintain tolerable levels of legal exposure and risk to the University. We assume that the apparent high quality of legal advice that we documented generally applies also to these questions as well.

³¹ Self Study, *supra* note 29, pp. 8-9.

³² *Id.*, pp. 9-10.

exceptions the administrator and faculty “clients” of the OGC are quite satisfied with the quality of legal services. The office received generally high marks from all sources.

Our client satisfaction questionnaire asked respondent clients to indicate the extent to which they agreed or disagreed (on a five point scale)³³ with twenty-two descriptions of the legal services they received from the OGC.³⁴ For 73% (16/22) of the 22 questions asked, over 70% of the respondents “agreed” or “strongly agreed” with the question’s positive characterization of the legal services they had received from the OGC.³⁵ For all twenty-two of the questions, the positive approval ratings were over 50%; also, the average proportion of “disagree” or “strongly disagree” ratings across the twenty-two questions was 3%. A statistical analysis for each question³⁶ is in App. D: Part I, pp. 7- 18 and App. D: Part II, pp. 2-7.

These results were consistent across all categories of respondents, such as faculty, university-wide administrators, and collegiate administrators. There were also no significant differences in the answers from clients who disclosed their names and those who chose to remain anonymous.³⁷

The narrative comments on the survey reflect these sentiments, with such statements as “excellent,” “very positive experience,” and “great office.” A number

³³ The five point scale is: Strongly Disagree, Disagree, Neutral, Agree, Strongly Agree, NA (not applicable)

³⁴ Examples of the descriptors are:

1. “The OGC helped me decide if I had a legal issue.”
2. “The attorneys exercised satisfactory judgment.”
3. “I felt comfortable sharing sensitive information.”

The full list of descriptor questions is in App. C: Part I, Question 6, pp. 2-3.

³⁵ For 55% (12/22) of the questions, over 80% of the respondents “strongly agreed” with the positive characterization of the services received.

³⁶ Questions 6a. - 6v. in the Questionnaire at App. C: Part I, pp. 2-3.

³⁷ 45% of the respondents disclosed their names.

complimented the office for being timely and responsive and treating them with a high level of respect.³⁸

The positive response reflected in the client survey was also apparent in our interviews with university administrators, including President Skorton and, with a few exceptions, in the responses to our mass email request for opinions about the office.

There were also negative comments in the client satisfaction survey. For example, some respondents complained of a lack of timeliness and slow response time, that OGC attorneys are too conservative or too concerned with avoiding court, that it is difficult to get in touch with an actual attorney (especially by phone), and that the office lacks coordination and efficiency.³⁹

³⁸ The following is a sample of other complimentary narrative comments:

- (a) OGC services are of extremely high quality. (This and similar comments were made by many respondents.) For example, it is important to realize that legal assistance/advice is not as readily available at some universities.
- (b) I have very positive comments about one or more attorneys. Interactions have been very positive and we have great confidence in their judgment and competence.
- (c) We rely a great deal on this office and are very impressed with the outstanding services provided. It is certainly one of the best organizations on campus.
- (d) The respect I get from the OGC on my knowledge of certain subjects is appreciated. Likewise, I applaud the attorneys for requesting my input before they comment on my questions.
- (e) The accessibility and clarity of OGC presentations have been commendable.
- (f) The OGC has been fair in dealing with faculty disputes and potential grievances. Discussions have been professional.

³⁹ The following is a sample of negative comments in the narrative responses:

- (a) Response on some issues is rapid, but not in all cases.
- (b) Proactive updates to individuals are needed. Resources of current office not well-known. Respondent would like the OGC to communicate as “an office.”
- (c) Coordination is sometimes lacking. The client has noted that an OGC attorney not known to be on the case gave questionable advice that was never communicated to the person thought to be the coordinator of the case.
- (d) The responsiveness of the office needs to be improved.
- (e) More sharing of information in laymen’s terms would be beneficial to university supervisors and administrators.
- (f) It is difficult to reach an attorney directly. The wait for a return call may be lengthy. Most reasons for contacting the OGC are too sensitive to write in an e-mail, so phone contacts with lawyers are essential. The OGC office should call back within 24 hours, even if the message is that everyone is busy.
- (g) It is difficult sometimes to get someone to call back. Several times no one returned my call.
- (h) It often appeared that the goal was to avoid court rather than to reach an honorable decision.
- (i) The OGC is too conservative and does not take a firm stand with some issues.
- (j) A hotline or URL for in-house referrals on issues that arise suddenly would be a good idea.

We heard some of these comments in our interviews. One that concerns us is the difficulty getting through by phone to an attorney. One respondent noted that sometimes email is not an acceptable substitute because the matter may be too sensitive to place in an email message. Client concerns of this type may also lead administrators and faculty to seek alternative advice from attorneys who are closer at hand but may be unable to provide the most authoritative advice.

As a result of our mass email, we learned of three members of the university community who believe they were mistreated by the OGC with harmful professional consequences. These individuals have strong feelings about their alleged mistreatment. We investigated their cases with them and the OGC and believe that none of the cases involves a breach of trust or other misconduct by the OGC. However, we perceived in these cases a common theme of misunderstanding on the part of the faculty and staff members involved. In each case, the individual came to the OGC with a problem. Either from the outset or over the course of their contact with the office, the individuals came to believe that the OGC represented or should have represented them in a dispute with a colleague at Iowa, or elsewhere, or that the OGC would protect them from any untoward consequences of the underlying dispute. In each case, this was an incorrect perception, which the individuals only later realized. The result was a feeling of neglect or betrayal by the office.⁴⁰

These cases lead us to recommend that the office develop a protocol to advise up front, both verbally and in writing, faculty and staff who may not grasp the obligations

⁴⁰ This sort of problem does not appear to occur with experienced administrators who understand the terms of their relationship with the office. But for inexperienced faculty and staff, with little or no understanding of the complexity of attorney-client relationships within the university, misunderstandings can arise and disappointments may follow, especially when the legal issues are part of a bitter political dispute within the individual's unit.

and loyalties of the office to the university and to them as individuals, including explicit disclaimers on the extent to which the office can protect individuals in legal and political disputes within their units and with outside parties. We believe that such a protocol should assume less rather than more understanding on this issue for all staff and faculty members who have not had extensive experience with the office.

To date the OGC has conducted no client surveys.⁴¹ We believe they are useful and recommend that one be conducted by the office every third or fourth year.

4. Provide legal advice and information to the university community through periodic meetings, workshops, and information provided on the OGC's webpage

As explained above, persons responding to the client satisfaction survey were generally satisfied with the quality of the advice and information they received from the OGC. However, many respondents would welcome additional information from the office. Of the approximately one hundred “clients” who responded, twenty-two indicated that they would like to see more briefing or training sessions conducted by the OGC, or that they felt the need for additional information on particular topics.

The largest single area of interest was information about the OGC itself, the range of available services and when to seek legal advice. Other areas in which significant numbers of those responding sought information include developments in employment law, issues relating to students such as privacy and access to student records, and the law relating to affirmative action and diversity. Intellectual property issues and compliance with the Americans With Disabilities Act requirements were also suggested as useful topics. Most of those who sought such training hope to see informational sessions

⁴¹ Our survey of peer institutions indicates that only three of the 10 peer OGCs in our survey routinely conduct such surveys. *See* App. H, Q. 34 , p. 23.

offered to administrators (though that may reflect the population to which the survey was directed); faculty members and student groups and organizations were also mentioned as possible audiences.⁴²

On this issue, we believe it is important to distinguish between workshops and seminars on general legal issues and “legal alerts,” which focus on recent developments

⁴² The following are additional suggestions from the narrative comments:

- (a) Consider the implication of new legislation and current court rulings to cover changes in employment law and LF; conflict of interest issues in employment and LF; and the intersection of academic freedom and discrimination and prejudice. This should be made available to senior human resource leaders and relevant associate deans across campus.
- (b) A general introduction to the office of the OGC for DEO’s would be a great start. A “know your rights/know your responsibilities” session would be useful for the U of I community.
- (c) Helping DEO’s deal with non-renewal and non-tenure issues Do’s and Don’ts.
- (d) One suggestion was to “get the OGC and risk management office on the same page.” Whose word is final?
- (e) A primer on available resources for administrators and DEO’s and above as needed.
- (f) One administrator would like to see a continuation of a joint effort between offices to offer sessions devoted to issues involving immigration, disability discrimination, employment of foreign nationals, and negotiation leading to resolution of conflicts. The sessions would be of interest to administrators, DEO’s, and deans.
- (g) Training sessions for student organizations/student leaders would be helpful. Sessions covered could be as simple as basic ethics, copyright laws, human relations, or censorship issues. Most organizations do not know their rights and responsibilities.
- (h) The responsibilities of the university to students who may be suicidal and LF should be covered. Also, ways to deal with outsiders who harass employees at work. DEO’s and directors need this guidance.
- (i) Public records and freedom of information are important issues to consider.
- (j) Sessions on how to work with OGC and LF are needed. Also, how to read and work with contracts. All who may be impacted need such guidance.
- (k) A briefing on what needs to be brought to the OGC and why it is needed. This could be done at one of the Provost’s or Office of Vice-President for Research DEO meetings for DEO’s or others they may select.
- (l) Sessions that discuss documentation and the preservation of records for potential use in faculty/staff disciplinary cases. Audience should include DEO’s, deans, and associate deans.
- (m) The legal procedures or processes in solving a dispute need brief description of the sequence to follow and at what stage an attorney should be consulted. DEO’s and departmental administrators need to be involved.
- (n) Topics could be covered at brown bag lunches or similar venue for administrators and selected faculty.
- (o) How does one balance discussions with OGC, office of the Ombudsperson, Office of the Provost, academic units, external agencies, human resources etc.? This would be of interest to deans, directors, and DEO’s.
- (p) Issues related to student records, punishment of students, and laws relating to student organizations for those who work with students.
- (q) All academic administrators and faculty need to know about FERPA [Family Education Rights and Privacy Act] as it affects advising and LF.
- (r) A know your rights/know your responsibilities session would be useful for the U of I community.

that present potential serious risks to the university. A legal alert might consider the federal government's recent revamping of the Fair Labor Standards Act (which determines eligibility for overtime pay) and the Patriot Act. We recommend that priority be given to establishing a process that can inform the university of matters that qualify as legal alerts, though tools should be used for other issues as appropriate.

We recommend that the OGC consider becoming more active in educating its client base on when to seek legal advice. Though the office has been quite successful to date in practicing preventive law, rapid changes in many of the legal arenas in which the office practices mandate that clients be made aware of relevant changes in the law and indicators of potential problems. In addition, having a useful, easily accessible webpage would cut down on the number of times the OGC attorneys respond to commonly asked questions.

The OGC's webpage is in its infancy and has not been a high priority. There is real potential to reach broad sections of the community with substantially enhanced Q and A on important legal issues for students, staff, and faculty. This should be a priority item and there are a number of very helpful models that we have located on the webpages of other universities, e. g., the University of Wisconsin (providing answers to frequently asked questions on a range of subjects including ethics, copyright, employment discrimination, the Family and Medical Leave Act, and tenure and appointment issues); the University of Minnesota (providing answers to frequently asked questions on a range of subjects, and also posting updates on recent developments); and the University of Michigan (providing answers to frequently asked questions on a range of subjects including business and contracts, charitable giving, copyright, and immigration).

5. Represent the university in grievances and other internal litigation conducted under the authority of the University Operations Manual

Our information on this role, especially in the context of tenure, promotion, and ethics cases, is highly complimentary. Mark Schantz or Marcus Mills normally represents the University in hearings for these cases when they are necessary. Their preparation and control of the issues is well recognized. In addition, the OGC attorneys have a reputation for treating all parties to the proceedings with respect and understanding.⁴³

6. Provide when requested information and advice for attorneys employed outside the OGC

Under current arrangements, attorneys outside the OGC do not report to the general counsel. With one exception, the relationship between those attorneys and the OGC is no different than the OGC's relationship with any other university administrator seeking legal advice and information from the OGC. The exception is that the OGC seeks to facilitate the participation of attorneys outside the office in the continuing legal education programs of the National Association of College and University Attorneys (NACUA).

The attorneys outside the OGC who responded to our survey are, for the most part, quite satisfied with the quality of the information provided to them by the OGC. Indeed, of the seventeen attorneys working outside the OGC who responded to these questions, twelve agree or strongly agree that the knowledge made available to them by the OGC is useful. Only one respondent disagrees. Further, of the seventeen responding,

⁴³ This reputation evidence comes from members of the local chapter of the American Association of University Professors (AAUP) who have observed such hearings and discussed the issue with outside attorneys who have represented faculty in hearings, and from faculty members who have served on faculty panels.

fifteen agree or strongly agree that informal consultations with the OGC staff members are helpful. Again, one respondent strongly disagrees.

However, these attorney responses also make clear that the OGC does very little to provide training to attorneys working outside its office.⁴⁴ Under the current structure within the university and given the scarcity of resources, we understand why the OGC may place a low priority on assisting attorneys outside the office, especially those who manifest little or no sense of accountability to the OGC. However, under the more centralized system that our committee proposes, we expect that training opportunities for these attorneys will be enhanced.

7. General Counsel's administrative responsibilities outside the OGC

Currently, no campus units outside the OGC report to the general counsel. Our survey of OGCs in peer institutions indicates that this is clearly the norm. Of the 10 OGCs that responded to our questionnaire, three reported additional administrative responsibilities -- an obligation to supervise NCAA rules compliance.⁴⁵

For a brief period, the University of Iowa's intercollegiate athletics program reported to the general counsel. In 2003, President Skorton transferred this responsibility to his office. We support this policy because it brings Iowa in line with peer institutions and ensures the President of an independent general counsel. Accordingly, we

⁴⁴ Of the nineteen respondents, nine (47%) disagree or strongly disagree that the OGC provides useful training in areas relevant to their job duties. App. F, Q 15C, p. 6. Only four (21%) agree or strongly agree that such useful training is provided. We recommend that OGC staff take steps to determine if a more prominent training role for the office would be beneficial, given the decentralization of legal resources on the campus. If attorneys outside the OGC receive all the training they need elsewhere, the OGC may not see the need to provide training for these lawyers. If, on the other hand, more in-house legal training is needed on campus, the OGC may be well situated to facilitate its provision, whether by doing the training using the OGC lawyers, or by arranging for it to be done by others.

⁴⁵ See App. H., Q. 11, p. 8.

recommend that the general counsel's administrative responsibilities remain limited to the OGC.

D. Organization of the OGC

1. Staffing and resources

The office employs competent well-trained attorneys. It also appears to follow successfully a large-firm model of encouraging specialization and functional assignments to specific units within the university.⁴⁶ In some cases, this results in OGC attorneys being housed in buildings outside Jessup Hall.⁴⁷ This approach appears to have improved counsel's understanding of client problems, enhanced client-counsel relations, and reduced the response time for the delivery of advice and other services. However, occupying satellite offices may carry the risk of undue identification with, and loyalty to, individual administrators rather than to the university. This appears to be the reason that some universities go to great lengths to centralize their offices.⁴⁸

Morale among the OGC attorneys appears to be good, with an atmosphere of mutual respect at all levels. We did not perceive factions or signs of discord disrupting office effectiveness. Also, quite importantly, the attorneys appear to have genuine concern about and respect for the administrators they serve. This is reflected in client survey remarks to the effect that the OGC lawyers treat them with respect. These great strengths provide a good foundation on which Mr. Schantz's successor can build.

Although the matter is not free of all doubt, our distinct impression is that the office has more work than its attorneys can handle in a timely fashion. We believe that

⁴⁶ Among peer universities, specialization is the norm, but functional assignment to specific units within the university is less common. *See* App. H., Questions 17-18, pp. 12-14.

⁴⁷ One works full time in VP for Research and one works part time in the College of Medicine. Among peer universities, satellite offices are uncommon, except for medical centers. *See* App. H., Q. 19, p. 14.

⁴⁸ For example, General Counsel from Texas A & M states: "I have supervised attorneys located at different offices. It was not acceptable." *See* App. H., Q. 23, p 17.

the quality of services delivered may be at risk with the current level of legal staffing. Compared with peer universities, the number of attorneys in our OGC is two and one-half lawyers below the average and three below the median.⁴⁹ Also, client complaints – such as not keeping people informed, not understanding the needs of offices, etc. – although relatively few in number, are what one sees when the attorneys in an office are stretched too thin. We are concerned that a perception that the office is overburdened may incline some administrators⁵⁰ to resort to attorneys outside the OGC who may not be in as strong a position to offer authoritative advice. For these reasons, we recommend expansion of the attorney staff by two additional lawyers, one in the short run with a second hired in a year or so.

On the issue of administrative, paralegal, and secretarial staffing, the situation is much clearer than it is with respect to attorney staffing levels.⁵¹ Compared to peer school OGCs, our two person non-legal staff is the smallest and 4.4 persons below the average and 3 persons below the median.⁵² Even more telling is that our ratio of non-legal staff to attorneys is the lowest among peer institutions.⁵³ Some of our staff attorneys believe the office would be strengthened with more support and paralegal staff. This would allow attorneys to focus on substantive legal matters and spend less time on tasks such as finalizing legal documents. The addition of a single non-legal staff person to the Iowa

⁴⁹ However, as noted above, *supra* note 19, data from peer institutions puts Iowa slightly above the median based on a measure of the ratio of the number of OGC attorneys to the university's student populations. *See supra* note 19 for the limitations of this measure.

Another uncertainty about a comparison of the number of attorneys in our OGC vis a vis peer institutions is the extent to which the peer OGCs count as "OGC counsel" attorneys whom we classify as attorneys outside the OGC.

⁵⁰ Some administrators clearly have such a perception. *See supra* note 39 and accompanying text.

⁵¹ *Supra* note 20 and accompanying text.

⁵² *Ibid.*

⁵³ *Ibid.*

OGC would meet current needs and place us just below the median among peer OGCs in terms of the ratio of non-legal staff to attorneys.⁵⁴

2. Evaluation and training

The approach here is distinctly informal and follows a small firm model. Mark Schantz and his senior attorneys mentor the junior attorneys on a day to day basis. Mr. Schantz is also in regular contact with his senior attorneys with respect to new or unusual problems. An important vehicle currently used by him for coordination and oversight is a weekly staff meeting.⁵⁵ Interviews with Mr. Schantz and his staff indicate that this process appears to work quite well.

Mr. Schantz annually reviews the performance of each staff attorney in the course of his annual salary recommendations to the President and the VP for finance. However, we believe that a more systematic method of annual written evaluations of the work of staff attorneys would be useful and recommend that the current system be supplemented with such a procedure.⁵⁶ There are a number of available models reported in the literature, in use in law firms around the country, and in use at the UIHC.

Mr. Schantz encourages his staff attorneys to participate in local Continuing Legal Education (CLE) programs and relevant educational programs of NACUA. It appears that the resources are currently available to meet the demand for such training and education. However, the office could benefit substantially from resources to provide

⁵⁴ *Ibid.* A third non-legal staff person would give us a ratio of .54 (3/5.5) compared to the median of .60 (3/5) reported for NC. Our expert consultant, Pamela Bernard, General Counsel, University of Florida, Gainesville, FL, states that the usual rule of thumb is two to three attorneys per secretary in order to achieve maximum productivity for attorney staff members.

⁵⁵ Among peer institutions, weekly and bi-weekly staff meetings are the norm. Some OGCs also hold retreats or similar large-scale meeting. *See* App. H, Q. 21, p. 15.

⁵⁶ Among peer institutions, the norm is a more formal process of written evaluations than the Iowa system. *See* App. H, Q. 16, pp. 11-12.

specialized training in newly emerging areas of the law.⁵⁷ We recommend enhancement of the OGC budget to support such training.

3. Compensation

There appear to be concerns in the OGC about pay grade, salaries, and equity issues between the OGC salaries and salaries paid attorneys outside the OGC in other parts of the university.⁵⁸ For this reason, we examined the compensation of OGC staff relative to the market. We also compared OGC staff and attorneys outside the OGC in terms of classifications, pay grades, and salaries.

Central Human Resources, Compensation and Classification (C&C) at the University of Iowa determines the classification and pay grade for each Professional and Scientific (P&S) position in the university which embraces OGC attorneys. C&C uses a point-count system that evaluates the relative level of factors such as responsibility, authority, and scope of the duties of the position in relation to other university positions. C&C approves P&S salaries at the time of hire in an effort to maintain internal equity among incumbents in respective classifications and to maintain salaries at a competitive level with outside peer groups. Furthermore, C&C addresses requests for off-cycle adjustments related to retention, equity, and market conditions. The annual salary policy guides each campus unit in the setting of annual salary increases for staff.

By classification, the legal staff in the Office of the General Counsel is comprised of the General Counsel (pay grade 98), three Senior Associate Counsel (pay grade 14),

⁵⁷ Although most peer institutions limit CLE support along the lines of Iowa policy, three of the 10 OGCs surveyed (MN, UT, and VA) appear to provide more extensive support along the lines we are suggesting. See App. H, Q. 14, p. 10.

⁵⁸ Self Study, *supra* note 29 at 22, 26 (“From the perspective of the staff attorneys, there are a number of administrative positions held by law-trained people which have been compensated at levels significantly higher than are the attorneys in this office, particularly in light of the relative duties of the respective positions.”)

one temporary Associate Counsel (pay grade 12), and one Assistant Counsel (pay grade 9). The Assistant Counsel position was newly created during last fiscal year and filled by a new law graduate. The salaries of two of the Senior Associate Counsel are at the top of the pay grade for their classification, creating limited opportunity for salary progression.

The OGC attorneys are part of a peer group of similarly situated attorneys in other institutions of higher education. We compared OGC salaries to attorney salaries at other institutions of higher education adjusted to 2003-2004 levels. The attorneys in no single group of institutions perfectly match our attorneys in terms of their experience and responsibilities. Consequently, we compared Iowa salaries with attorney salaries in the following three different groups of institutions.

a. Doctoral and public research universities. For 2003-2004, data on these schools is limited to all “Staff Attorneys” without differentiation between different grade levels within this group of attorneys. These data show an overall average salary for Staff Attorney of \$88,182, while in the Big Ten the average salary for Staff Attorney was \$100,192. Iowa OGC staff attorney salaries for 2003-2004 were above the overall average, but below the Big Ten average.⁵⁹

b. National Association of College and University Attorneys (NACUA) 1998 average salary data. A NACUA survey of 1998-99 salaries presents detail by attorney grades - General Counsel, Attorney III, Attorney II, and Attorney I. The latter three titles appear comparable to our OGC’s Senior Associate Counsel, Associate Counsel, and Assistant Counsel classifications. After adjustment to 2003-2004 levels (by 2.5% per

⁵⁹ College and University Professional Association (CUPA) for Human Resources, 2003-2004 Mid-level Administrative/Professional Salary Survey (2004) and 2003-2004 Administrative Compensation Survey (March 2004). The average salary for staff attorneys in the OGC during 2003-2004 was \$92,319 prior to the hire of the Assistant Counsel in January 2004. When the salary of the Assistant Counsel (a new law graduate) is included, the average salary was \$83,225.

year), the average comparison salaries reported in the NACUA survey were \$137,480 for General Counsel; \$101,967 for staff attorney III; \$80,491 for staff attorney II; and \$55,605 for staff attorney I.⁶⁰ A comparison of these salaries to 2003-2004 Iowa OGC individual salaries reveals that our salaries for the staff attorney I and III positions fall below these averages.⁶¹

c. National Association of College and University Attorneys (NACUA) 1998 data for 40 institutions with “\$600 million or more current fund expenditures” in the 1998-99 academic year.⁶² We consider these institutions particularly relevant because a large proportion of them, like Iowa, include a teaching hospital with a faculty practice plan. After adjustment to 2003-2004 levels (by 2.5% per year), the average comparison salaries were \$ 179,090 for General Counsel; \$110,735 for staff attorney III; \$82,660 for staff attorney II; and \$57,554 for staff attorney I. A comparison of these data to Iowa OGC individual salaries reveals that our salaries for staff attorneys I, II, and III fall below these average salaries.⁶³

⁶⁰ These are average figures from the following subgroups in each of which the University of Iowa was classified for 1998: Current Fund Expenditures - \$600 million or more (n=40), Student Enrollment – 25,000-29,999 (n=14), Highest Offering – doctorate (n=117), Affiliation – state (n=120), Annual Tuition – \$5000-19,999 (n=55), Employer – college or university (n=210), Carnegie Code – research, public (n=36), and Years of Experience for each grade across all reporting institutions (n=222).

⁶¹ National Association of College and University Attorneys, National Association of College and University Attorneys—1998 Compensation and Benefits Survey (1999). Data was aged by 2.5% per year to the 2003-2004 year. During 2003-2004, the average OGC salary for Senior Associate Counsel (Attorney III) was \$95,892; for Associate Counsel (Attorney II) the average was \$81,600; and for Assistant Counsel (Attorney I) the average is \$47,000. During 2004-2005, the average salary for Senior Associate Counsel (Attorney III) in the OGC is \$99,390; for Associate Counsel (Attorney II) the average is \$84,594; and for Assistant Counsel (Attorney I) the average is \$47,000. The current General Counsel salary is \$182,279.

⁶²*Id.* Iowa’s current fund revenues in 1998-99 were well over \$600 million.

⁶³ National Association of College and University Attorneys, National Association of College and University Attorneys—1998 Compensation and Benefits Survey (1999). Data was aged by 2.5% per year to the 2003-2004 year. During 2003-2004 in the OGC, the average salary for Senior Associate Counsel (Attorney III) was \$95,892; for Associate Counsel (Attorney II) the average was \$81,600; and for Assistant Counsel (Attorney I) the average is \$47,000. The average salary for Senior Associate Counsel (Attorney III) in the OGC during 2004-2005 is \$99,390; for Associate Counsel (Attorney II) the average is \$84,594; and for Assistant Counsel (Attorney I) the average is \$47,000.

We also compared the OGC staff attorney pay grades and salaries to those of attorneys in other University of Iowa offices. Some discrepancies are related to historical accident; i.e., persons who occupied positions of greater administrative authority at one time and whose pay grade and/or salary continues to reflect that experience. Outside that scenario, the primary discrepancy of concern raised questions regarding the relative pay grade assignments of OGC attorneys when compared with those employed within UIHC, with pay grade assignments of the former lower than those of the latter.

We recommend that Mr. Schantz or his successor request Central Human Resources to review the pay grade assignments for the classifications held by the staff attorneys in the OGC to determine whether reassignment to a higher pay grade is indicated by their current duties and responsibilities. Furthermore, we recommend that Central Human Resources continue to evaluate market and internal relationships among salaries for staff attorneys and make adjustments as necessary.

Overall, we share the belief of our external consultant, Pam Bernard, that a competitive salary structure is essential to the OGC's ability to attract and retain highly competent attorneys. For this reason, we recommend that the President place high priority on compensation issues within the office.

The current Iowa General Counsel salary is \$182,279. With respect to General Counsel salaries, a 2002 survey conducted by John Morris, General Counsel, University of Utah, is relevant. It included a sample of general counsel salaries for fifteen Pac-Ten and Big-Ten universities (not including the University of Michigan), all of which had expenditures of over one billion dollars. The overall average general counsel salary was \$175,000. For the four universities in the sample that included a medical school with a faculty practice plan, but not a hospital, the average salary was \$183,300, while for the seven institutions, like Iowa, with a medical school (including a faculty practice plan) and a hospital, the average salary was \$198,300. The mean years of experience for these attorneys was 26.

IV. Attorneys Employed Outside the OGC and Their Relationship with the OGC

A. Organization and Roles of Attorneys Outside the OGC

1. Overview

As noted above, under current arrangements, attorneys outside the OGC do not report to the general counsel. The formal relationship between those attorneys and the OGC is no different than it is between any other university administrator and the OGC. This means that contacts between attorneys outside the OGC and that office are initiated by the outside attorney and evolve by mutual consent. However, what distinguishes attorneys outside the OGC from non-J.D. administrators is the common interest they share with the OGC in the law and the legal well-being of the university. These common interests have evolved into a variety of informal relationships, the effectiveness of which depends in important part on the personalities and perceptions of the attorneys involved, both within and without the OGC. A principal finding of our research is that, while the current arrangement has some advantages, the interests of the university would be better served by a greater formalization and clarification of these relationships with a substantial enhancement of the general counsel's authority to oversee and supervise the delivery of legal services within the university. We are not advocating an abrupt change in existing relationships. Rather we recommend a gradual evolution of the relationship at the discretion of the general counsel. We recommend first bringing into a closer relationship with the OGC attorneys outside the OGC whose positions routinely require legal judgments that affect decisions of administrators who speak for the university. For J.D. administrators, we believe that their principal obligations should be to ensure that the

OGC is kept informed of the legal issues with which they deal and that non-routine legal judgments affecting their responsibilities are exercised by the OGC.

2. Personnel and organization

As noted earlier,⁶⁴ at the time of the creation of the OGC, a significant number of attorneys working as administrators throughout the university practiced law in the course of their job responsibilities. The UIHC and the Office of the Vice President for Student Affairs are good examples of this pattern.⁶⁵

Given this history, it is not surprising to find considerable variability in the professional backgrounds and job descriptions of University of Iowa attorneys employed outside the OGC. Some were hired to fill jobs for which law degrees were not required. Yet, over time, some of those lawyers have developed and expanded the legal aspects of their jobs, and their co-workers and supervisors have come to rely on them for legal expertise. In most cases, the attorneys' responses to our questionnaire makes it clear their positions involve complex legal work.⁶⁶ For these attorneys, their relationships with the OGC vary greatly in terms of the frequency and nature of contact, who initiates contact, and the usefulness of the contact. This variance appears to be largely the result of historical accident, though it may also depend on the nature of the work performed by the non-OGC lawyer and its relationship to work performed by the OGC.

In addition, a number of attorneys outside the OGC, because of their legal training, were hired for full time legal work or a combination of legal and administrative work. They operate in different settings and with different relationships to the OGC.

⁶⁴ *Supra* p. 15.

⁶⁵ We are not aware of the extent to which similar situations existed in peer institutions when they created their OGCs. Our survey of these offices suggests that today all attorneys involved in the practice of law are affiliated with the OGC. *See* App. H, Q. 22, pp. 15-17.

⁶⁶ *See supra* note 5.

The team of three and one-half (FTE) lawyers in UIHC looks very much like a small law firm⁶⁷ with a hierarchical structure under the leadership of Bill Hesson, who is both head counsel and a hospital administrator. Their clear loyalty is to the CEO of the hospital and they usually function as a distinct legal entity operating largely independently of the OGC.

Other teams of attorneys outside the OGC are employed by and report to lay administrators. Some of these lawyers cooperate closely with the OGC and consider themselves part of a broader legal community under the OGC leadership. Others consider themselves solo practitioners operating on their own with little or no connection with or loyalty to the OGC.⁶⁸

Finally, three and one-half (FTE) attorneys outside the OGC hold positions that involve interactions with the OGC but, by virtue of the nature of their responsibilities, require distance and independence from the OGC in most aspects of their relationship with that office.⁶⁹

The OGC currently plays no role in the hiring of attorneys outside the OGC.

3. Missions and roles

Attorneys outside the OGC generally consider that their role is to provide legal advice to and protect the interests of their immediate supervising employers. For example, if a legal or policy issue arises between an administrator and the general counsel, the expected role of the attorney is to negotiate with the OGC on behalf of his or her administrator client. These expectations appear to be particularly strong in the offices

⁶⁷ Small law firms are commonly characterized by a common interest focused on distinct clients with shared responsibilities toward them and a range of specialized expertise.

⁶⁸ See *infra* note 70.

⁶⁹ They are the ombudsperson, two attorneys in the Office of Equal Opportunity and Diversity, and a one-half time investigating officer for the faculty judicial commission.

that have had a long-term counsel-administrator relationship that existed before the creation of the OGC.

However, in a number of the smaller administrative offices without a tradition of a strong counsel-administrator relationship, attorneys view themselves as part of the university legal community with an interest in protecting and serving the university as a whole.

We believe it is important for the general counsel to understand fully the legal qualifications and responsibilities of all attorneys employed outside the OGC. Our principal organizational recommendation gives the general counsel the authority necessary to develop a full understanding of these issues.

4. Training and evaluation

In the UIHC, there are ample resources for training new additions to the legal staff and providing continuing legal education. Also, UIHC staff attorneys are routinely reviewed by senior counsel and evaluated with the help of evaluation guidelines.

In contrast, most of the other attorneys working outside the OGC appear to be subject to no systematic legal evaluation and review. Most are supervised by non-lawyers, even on legal or quasi-legal matters. Lay administrators generally make promotion and salary decisions, with no input from the OGC or other legal professionals. The rule appears to be that, in the absence of serious problems, the legal services delivered are satisfactory.

Under our proposal for a revised relationship between the OGC and attorneys practicing outside the OGC, the general counsel would have jurisdiction over the training and evaluation of all practicing university attorneys.

5. Compensation

Compensation levels for attorneys practicing outside the OGC appear to reflect the overall compensation levels in the units that employ them. The OGC plays no role in setting or recommending salaries for these attorneys. We consider this a weakness in the current system. Under our proposal for reshaping the relationship between the OGC and all practicing lawyers, the general counsel would, in coordination with Human Resources, participate in the process of setting pay grades and salaries for all such university attorneys.

6. Quality of legal services delivered

A number of the respondents in our client satisfaction survey mentioned that they obtained legal services from attorneys outside the OGC. It is quite likely that the administrators assisted by these attorneys are reasonably well satisfied with the legal services they receive. When they do not consider themselves properly served, they are always free to seek assistance from the OGC. Also, as noted above, such administrators may feel they have more control over the attorneys on their staff than they would over the OGC counsel.

We believe that the decentralization of the provision of legal services within the university poses a risk of legal error and inconsistency in the delivery of legal advice among attorneys outside the OGC in some cases. We consider the risk low at the University Hospital, where senior attorneys provide meaningful oversight of the legal work done. The same appears to hold true in offices with close ties to the OGC, such as the Vice Presidents for Research and Finance and Operations, which also use counsel from the OGC. However, until lawyers practicing within the university are fully

accountable to the general counsel, the assessment of risk from legal practice outside the OGC remains somewhat uncertain. It is principally for this reason that we recommend a restructuring of the relationship between the general counsel and all attorneys practicing within the university.

B. The Evolving Relationship with the OGC

As noted above, the relationships appear to vary considerably. Fifty-two percent (11/21) of the attorneys outside the OGC perceive themselves as having a “duty to report and consult with OGC in connection with non-routine legal aspects” of their jobs. Twenty-nine percent (6/21) view themselves as independent of the OGC.⁷⁰ As already suggested, these perceptions of independence appear to be associated with the strength and duration of the counsel-administrator relationships. However, a substantive majority of the attorneys outside the OGC believe they have an obligation to keep the OGC advised of developments in the legal aspects of their jobs.⁷¹

These relationships stand in sharp contrast to the relationships that exist in our peer institutions between practicing attorneys and the OGC. No university contacted in our survey of other OGCs maintains a system comparable to ours in terms of the level of decentralization authorized for attorneys delivering legal services outside the OGC. As far as we can ascertain, the prevailing rule elsewhere is that, with few exceptions, the only individuals authorized to deliver legal services, especially legal advice, are attorneys

⁷⁰ See Appendix E, Question 15a, p. 4 (Survey of University of Iowa Attorneys Outside the Office of General Counsel (OGC)) and Question X15A, App. F, p. 5. Two respondents did not answer this question.

⁷¹ 67% (14/21) “agree” or “strongly agree” and 19% (4/21) are neutral. *Id.* at Question X15B, p. 5. Only one respondent disagreed with this “obligation.” Two respondents did not answer this question.

hired by the general counsel and operating under his or her supervision and control.⁷² A strong OGC model along these lines has several virtues.

First, it assures that practicing attorneys outside the OGC are sufficiently accountable to the general counsel to permit the President in turn to hold the GC accountable for their actions. Our research strongly suggests that under the current system, there is too much opportunity for problems to arise without prior knowledge or opportunity for intervention of the OGC. Accordingly, the current system may create potential risks of which the general counsel and ultimately the president may not be fully aware.

Second, we are concerned that changes of legal personnel may have deleterious effects on the operation of the system. Currently, the attorneys outside the OGC appear to have cordial relationships with the OGC, despite any perceptions of independence from the OGC. In this regard, the diplomatic, legal, and personal skills of Mr. Schantz and his staff have sustained cordial and productive relationships in nearly all cases. However, when Mr. Schantz's replacement is appointed or new attorneys outside his office assume existing positions with no input from the general counsel on their relationship with the OGC, we perceive a risk of unproductive relationships developing between his office and attorneys practicing outside the OGC.

Third, we believe that the current level of autonomy of some practicing lawyers outside the OGC may introduce inefficiencies in the delivery of legal services. For example, there is a risk that outside lawyers may operate at cross purposes with the OGC's perception of the best interests of the university. Also, errors committed by counsel outside the OGC may require OGC time and expense to correct problems that

⁷² See App. H., Q. 22, pp. 15-17.

could have been avoided if the OGC had been involved with the problem from the outset. Such inefficiencies come at a price in terms of scarce resources.

Fourth, a strong OGC model would strengthen two university protections that arise from a clearly established attorney-client relationship, protections that may not exist between attorneys outside the OGC and the administrators they advise. The first is confidentiality for attorney-client communications that arise from an “attorney-client relationship.”⁷³ The second protection is the defense of reliance on the advice of counsel, which may arise from the attorney-client relationship.⁷⁴ Depending on the circumstances of the attorney- administrator relationship involved in a given case, the status of these protections may be in doubt for attorneys practicing outside the OGC. For attorneys within the OGC, there is no such doubt.

For these four reasons, we believe the general counsel’s role as chief legal officer within the university should be more clearly defined. Toward that end, we recommend that the job description of our general counsel explicitly include the following:

The general counsel is the chief legal officer of the university. As such, all practicing attorneys within the university report to the general counsel, who has jurisdiction and authority over the hiring, firing, compensation, promotion, and evaluation of all such attorneys.

We do not recommend an abrupt change in the relationship between the General Counsel and the attorneys practicing outside the OGC. Rather, we recommend gradual change to a more centralized legal services system within the university guided by the general counsel. In this process, we recognize the strong tradition of administrative decentralization within the university. Accordingly, we recommend that stronger ties to

⁷³ This protection may shield such communications from disclosure in the testimony of university administrators in discovery and court proceeding.

⁷⁴ Such defenses may be relevant to punitive damages claims and liability claims under some law.

the general counsel evolve first in the form of direct or dual reporting obligations to the general counsel among attorneys practicing outside the OGC whose legal judgments routinely affect the decisions of administrators who speak for the university. For all such attorneys, we recommend that general counsel's authority embrace hiring,⁷⁵ firing, evaluation, compensation, and promotion. However, we recommend that the relationship between the general counsel and the attorneys practicing within the UIHC evolve more slowly, in recognition of their long-term tradition of autonomy and their strong relationship with the UIHC leadership. Also, the general counsel's relationship with the Office of Equal Opportunity and Diversity should reflect its direct reporting relationship to the President.

We expect that most J.D. administrators outside the OGC will continue in that capacity. However, they might benefit from the networking activities of the OGC. The principal responsibility of J.D. administrators should be to ensure (a) that the OGC is kept informed of the legal issues with which they deal, and (b) that legal judgments in non-routine matters related to their responsibilities are exercised by the OGC.

We believe that the pace and emphasis of the general counsel's evolving relationship with attorneys currently outside the OGC should be within the discretion of the general counsel.

As the general counsel adopts changes over time, we believe they should be communicated by the President to administrators and counsel through the usual chain of command. Periodic meetings of the general counsel with attorneys employed outside the OGC, and the administrators to whom they report, can also enhance detailed

⁷⁵ Hiring also contemplates the assignment of job titles, such as assistant and associate OGC counsel that communicates their relationship with the OGC.

understanding. In addition, for new administrators joining the university, training sessions should embrace this subject.

Finally, to provide a foundation for the changing relationships that we propose, we recommend that Mr. Schantz initiate a systematic inventory of the work of all attorneys outside the OGC to identify those whose legal judgments routinely affect the decisions of administrators who speak for the university.

V. Conclusion

Since 1992, the OGC has evolved into an effective resource to handle the challenges presented by the law-intensive legal environment in which the university now operates. Given its resources, the office is well organized and managed, and functions well in terms of accomplishing its principal roles and missions. The following recommendations are intended to facilitate the continuing evolution of the office to its next stage of development under the leadership of Mark Schantz's successor.

Principal Recommendations

1. To increase the preventive awareness of the university's middle and upper management, we recommend that the President encourage university administrators, especially at the Dean and Vice Presidential levels, to deepen the OGC's understanding of the business of their clients by routinely including OGC staff in their group deliberations.
2. We recommend that the President consider the creation of a more centralized structure within the university, involving the participation of the OGC, to monitor and control university compliance with external legal regulations.
3. To date, the OGC has conducted no client satisfaction survey. We recommend that such a survey be conducted every third or fourth year.
4. We recommend that the office develop a protocol to advise, up front, all faculty and staff members who contact the office for assistance, with special attention given in this regard to individuals who may not fully understand the obligations and loyalties of the OGC to them as individuals.

5. We recommend the OGC become more active in providing legal advice and information to the university community through meetings, workshops and its webpage, with special priority given to legal alerts. We also recommend that the office prepare annual reports of its activities for the President and the public.
6. We recommend that the current methods of evaluation be supplemented with more formal, systematic, written methods for the annual evaluation of both staff attorneys and support staff at all levels of experience.
7. We recommend that the general counsel's administrative responsibilities remain limited to the OGC.
8. We recommend authorization for two additional attorneys and one additional secretary for the OGC.
9. We recommend enhancement of the OGC budget to provide support for specialized training in emerging areas of the law.
10. We recommend that Mr. Schantz or his successor invite Central Human Resources to review the pay grade assignments for the classifications held by the staff attorneys in the OGC to determine whether reassignment to a higher pay grade is indicated by their current duties and responsibilities. We also recommend that Central Human Resources continue to evaluate market and internal relationships among salaries for staff attorneys and attorneys outside the OGC and recommend adjustments as necessary.
11. We recommend that the general counsel's role as chief legal officer within the university be more clearly defined. Toward that end, we recommend that the job description of our general counsel explicitly include the following:

The general counsel is the chief legal officer of the university. As such, all practicing attorneys within the university report to the general counsel, who has jurisdiction and authority over the hiring, firing, compensation, promotion, and evaluation of all such attorneys.
12. We recommend that this change in the role of the general counsel be effected by (a) the President's adoption of this recommendation, (b) its dissemination throughout the university, and (c) its inclusion in the job description used in the search for Mr. Schantz's successor.
13. We do not recommend an abrupt change in the relationship between the General Counsel and the attorneys practicing outside the OGC. Rather, we recommend gradual change to a more centralized legal services system within the university guided by the general counsel.

14. We recognize the strong tradition of administrative decentralization within the university. Accordingly, we recommend that stronger ties to the general counsel evolve first in the form of direct or dual reporting obligations to the general counsel among attorneys outside the OGC whose legal judgments routinely affect the decisions of administrators who speak for the university. For all such attorneys, we recommend that general counsel's authority embrace hiring,⁷⁶ firing, evaluation, compensation, and promotion. However, we recommend that the general counsel's relationship with attorneys practicing within the UIHC evolve more slowly, in recognition of their long-term tradition of autonomy and their strong relationship with the UIHC leadership. Also, the general counsel's relationship with the Office of Equal Opportunity and Diversity should reflect its direct reporting relationship to the President.
15. We expect that most J.D. administrators outside the OGC will continue in that capacity. They might benefit, however, from the networking activities of the OGC. The principal formal responsibility of J.D. administrators should be to ensure (a) that the OGC is kept informed of the legal issues with which they deal, and (b) that legal judgments in non-routine matters related to their responsibilities are exercised by the OGC.
16. We recommend that the pace and emphasis of the general counsel's evolving relationship with attorneys currently practicing outside the OGC be within the discretion of the general counsel.
17. As the general counsel adopts changes over time, they should be communicated by the President to administrators and counsel through the usual chain of command. Periodic meetings of the general counsel with attorneys employed outside the OGC, and the administrators to whom they report, can also enhance detailed understanding. In addition, for new administrators joining the university, training sessions should embrace this subject.
18. To provide a foundation for the changing relationships that we propose, we recommend that Mr. Schantz initiate a systematic inventory of the practice of all attorneys outside the OGC to identify those whose legal judgments routinely affect the decisions of administrators who speak for the university.

⁷⁶ Hiring also contemplates the assignment of job titles, such as assistant and associate OGC counsel that communicates their relationship with the OGC.