

## Senior Counsel's Office

The Senior Counsel's Office is MIT's central, primary, in-house counsel's office, providing comprehensive legal services and counseling on all MIT matters (except intellectual property law and investments) of concern to MIT's senior officers, faculty members, and administration. We arrange for and manage outside legal services when needed and oversee all litigation and legal processes for the Institute. The office is also responsible for enterprise risk management, working with the Institute auditor and leadership across MIT. In FY2006, the Senior Counsel's Office had five full-time attorneys: senior counsel Jamie Lewis Keith, litigation and risk management counsel Mark DiVincenzo, contracts counsel Margaret Brill, associate counsel Richelle Nessralla, and one full-time equivalent assistant counsel, a position held jointly by Regina Dugan and Kathryn Johnson.

We are problem solvers and strategic thinking partners for our clients. We strive to assist MIT's senior officers, faculty and staff to accomplish their mission-critical objectives and to make informed decisions. Our office brings the lessons learned from litigation, other disputes, and major transactions back to the MIT community through counseling and education. These lessons support management and faculty initiatives to prevent and minimize legal risks to reputation, finances, and operation while still achieving MIT's core mission.

### Highlights

#### International and Other Complex Research and Educational Initiatives

The senior counsel represented the Institute in connection with a number of complex and international transactions. These included:

- The negotiation of a second \$100 million gift for the Broad Institute
- The negotiation of a collaboration agreement with the Cyprus Research and Education Foundation and the Research Promotion Foundation to create collaborative energy, environment, and water laboratories in Cyprus and at MIT's Laboratory for Energy and the Environment
- The negotiation of a collaboration agreement with the government of Portugal for joint educational and research programs

The senior counsel also represented the Institute in the early stages of a major collaborative research undertaking with the National Research Foundation of Singapore.

#### Significant Work for the MIT Corporation

In an initiative to modernize the MIT Corporation's bylaws, the senior counsel worked with the chair of the Corporation, the secretary and associate secretary of the Corporation, and the Executive Committee to prepare amendments. These amendments clarify existing provisions in the bylaws, take advantage of changes in the Massachusetts Corporations Act, enhance governance, and increase the efficiency of the Corporation's activities. To implement MIT's restructuring of responsibilities for financial affairs and

investments of the Institute, the senior counsel prepared amendments to the bylaws of the MIT Corporation and of the MIT Investment Management Company to make the new executive vice president and treasurer of the Corporation also MIT's chief financial officer. The senior counsel facilitated the appropriate allocation of treasury functions to this office and of investment functions to the MIT Investment Management Company.

### **Serving in the Post-9/ 11 Environment**

The senior counsel served on the Deemed Export Task Force of the Council for Government Relations (COGR), representing research universities and academic medical centers across the nation on strategies to maintain open, collaborative, international campus research environments without compromising legitimate security interests. She was a significant contributor to COGR comment letters filed with the departments of Commerce and Defense on the appropriate scope of the fundamental research exclusion from "deemed export" controls on the transfer of technical information to foreign nationals on campus in the United States. She was also a member of the task force that revised COGR's manual on good research management practices.

In FY2006, the senior counsel and the litigation and risk management counsel continued to represent MIT on post-September 11, 2001, matters. The senior counsel continued to participate on the COGR Task Force on Bioterrorism, and she and the litigation and risk management counsel continued to work with the vice president for research and associate provost, faculty leaders, the Environment, Health, and Safety (EHS) Office, and the Office of Sponsored Programs (OSP) to design and implement a compliance program under new federal laws and regulations governing biological research.

### **Supporting Research and Other Compliance Initiatives**

During the past five years, there has been an Institute-wide initiative to design and implement a model Environment, Health, and Safety Management System that would add value to and be sustainable in an academic research setting. The senior counsel oversaw the extraordinary efforts of the project manager and team of colleagues from the faculty and administration that completed the initial implementation of the EHS Management System. MIT committed to this project as part of its 2001 consent decree with the US Environmental Protection Agency and the Justice Department, settling an enforcement action, but went beyond the EPA's requirements to demonstrate the Institute's commitment to environmental stewardship and leadership. An outside audit of the system concluded that implementation was successful and that the EHS Management System is broadly owned and supported across the Institute in research laboratories and facilities.

Contracts counsel, litigation and risk management counsel, and the senior counsel continued to work with academic and administrative colleagues across the Institute to support the development and implementation of sustainable compliance programs under various federal and state regulations and statutes. These and other efforts addressing privacy laws and policies involved a review of programs and activities of a wide range of departments at MIT, both academic and administrative, identification of activities covered by these laws, and support of departments in their efforts to develop sustainable compliance approaches that add value to, and do not unduly burden, core work.

The lawyers in the Senior Counsel's Office advised senior officers, the Office of Government Relations, the Office of the Dean for Student Life, the Controller's Office, the Department of Facilities, and Lincoln Laboratory on certain state and local laws and regulations affecting campus activities, including student and employee health and safety, residential life, child care, and campus and public construction.

### **Supporting Human Resources Management**

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

### **Supporting Student Life**

Litigation and risk management counsel served as the primary legal resource for offices and committees conducting or addressing student life matters, including: a review of the student discipline system and revision of relevant policies; enhanced communication among MIT Medical, counseling services, housing, and housemasters; new student life policies; policies and procedures on background checks; managing internal complaints of all types, including harassment investigations; and record keeping processes. Litigation and risk management counsel provided primary legal and risk management guidance to the offices of the president, provost, chancellor, dean for student life, and the Committee on Discipline regarding various student life issues, including disciplinary matters. He also led educational sessions on risk management issues, student discipline and other student life issues for the various offices of the Division of Student Life.

### **Risk Management and Litigation**

The senior counsel and the litigation and risk management counsel, working with senior officers and outside litigation counsel, resolved several major lawsuits and counseled the MIT community on lessons learned.

The litigation and risk management counsel continued to manage outside counsel and worked closely with the senior counsel and MIT's senior officers on several major litigation matters in the areas of employee relations, faculty issues, student life issues, campus police, procurement, construction, facilities, and intellectual property, and he counseled clients across the Institute to prepare them for the litigation process. He prepared deponents for depositions and guided outside counsel in strategy during litigation to ensure protection of the Institute's primary mission and goals. He led the office's response to all legal processes, including subpoenas, court orders, and other demands. The litigation and risk management counsel, working with MIT's insurance manager, controller, and senior counsel, also led the review of insurance policies and development of strategies for ensuring coverage and payment of costs and fees. He counseled the provost and deans in resolving employee, promotion, and tenure disputes. The litigation and risk management counsel and the senior counsel worked

with the News Office to provide appropriate statements and communications regarding various matters involving the Institute. The senior counsel and litigation and risk management counsel conferred with Institute leadership on litigation trends and related management initiatives of the past several years. The senior counsel and litigation counsel continued to collaborate with academic colleagues, the Institute auditor, the director of OSP, and the controller to identify and devise workable approaches to compliance issues and to manage MIT's principal reputational, financial, operational, and legal risks while supporting MIT's core objectives.

Litigation and risk management counsel continued to work with the community to assist in managing risk of traveling abroad, including updating the MIT Travel Risk Policy.

### **Major Institute Contracts**

Contracts counsel worked with the Department of Facilities and the Office of Government Relations on numerous design and construction projects, including several major capital projects. This work included contracting with various entities to enable projects to proceed, and advising on title requirements and local, state, and federal permitting matters. Contracts counsel also worked with various research laboratories on contracting for the appropriate use and disposal of regulated materials. Working with the Central Utility Plant, contracts counsel negotiated agreements related to expanded utility services. In addition, contracts counsel worked with Information Services and Technology in negotiating new contracts for improved campus internet and cell phone service. She also worked with the Human Resources Department, the Controller's Accounting Office, and the Procurement Office in contracting for temporary personnel, and with the Center for Work, Family, and Personal Life on expanded child care and elder care services.

Contracts counsel worked with the MIT Investment Management Company's real estate group, the executive vice president, and several research laboratories to address real estate needs, including real estate acquisitions, as well as leases for research and other academic uses. Contracts counsel assisted in several initiatives to improve the management and operations of student housing at fraternities, sororities, and independent living groups and handled related licensing matters. She also worked with the List Visual Arts Center and the Department of Facilities in connection with contracts for the commissioning of new works of art. In addition, contracts counsel reviewed and updated financial aid program documentation for the Office of Student Financial Aid.

### **Professional Association Leadership Roles and Presentations**

The senior counsel spoke at several conferences on the subjects of export controls and financial anti-terrorism regulations, and she participated in a conference of the College Board on diversity in higher education. The senior counsel also participated in a panel of research university general counsels hosted by the joint Committee on Science, Technology, and Law of the National Academy of Sciences, the National Academy of Engineering, and the Institute of Medicine to explore current significant issues for research universities.

The litigation and risk management counsel continued to participate in the Legal Education Committee of the National Association of College and University Attorneys (NACUA). He also spoke on risk management and legal issues concerning best practices in responding to a variety of legal processes, specifically in connection with electronic information requests and data security breaches at the 2006 annual NACUA conference. In addition, he served as a member of the steering committee of the College and University Law Section of the Boston Bar Association.

### **Controlling Legal Costs**

The Senior Counsel's Office manages MIT's outside legal services funding. In FY2006, the office continued its seven-year initiative to account for and report on legal expenditures across the Institute. Legal costs can fluctuate from year to year for a number of reasons, including major litigation, extraordinary new initiatives, special events, increased necessary use of outside counsel, rising outside counsel fees, and significant increases or decreases in regulation of university programs and activities.

The lawyers in the Senior Counsel's Office track their time on all hours worked. Significantly greater hours have been worked by inside counsel than were originally projected in the past few years. There is a major differential between the hourly cost of inside and outside partner-level counsel, resulting in significant savings when inside counsel performs work. In FY2006, this meant a savings of \$2.3 million in avoided outside legal costs (a greater savings than FY2005). However, unavoidable demands for legal work significantly exceeded inside counsels' workload capacity, necessitating more work to be performed by outside counsel. These factors prompted a review of the funding level of the Central Legal Fees budget and a subsequent base budget increase for fiscal year 2007.

#### **Mark C. DiVincenzo** **Interim Senior Counsel**

*More information about the Senior Counsel's Office may be found at <http://web.mit.edu/srcounsel/>.*