

Letter from Charles Robinson, *Vice President and General Counsel*



Six months before the beginning of fiscal year 2007-08, I joined The Regents of the University of California as General Counsel. I am pleased to present this Annual Report, covering the activities of the Office of the General Counsel for the fiscal year 2007-08. It is an inaugural effort, a work-in-progress, if you will, to benchmark the work of the OGC and present our vision. As such, it is part of a broader effort to have a better and more informed dialogue with our clients about how best to meet your needs.

The University of California is one of the nation's largest and most complex organizations. It educates over 220,000 students in programs around the world and employs over 180,000 faculty and staff to fulfill its mission. The university is the second largest employer in California after the state government. It manages an investment portfolio in excess of \$66 billion and has an annual budget of over \$19 billion covering 10 campuses (each of which operates an enormous physical plant), and five major medical centers which handle three million patient visits each year. For the past 14 years the University has generated more patents than any other university in the nation. The UC system also is involved in managing the U.S. Department of Energy national laboratories at Berkeley, Livermore and Los Alamos, N.M.

The legal challenges facing the University are as vast and varied as its activities. During OGC's half-century of service to the University, as the scope and complexity of the UC's educational, research, and community service programs have grown, so have the number and complexity of the laws and regulations that govern its functions. In recent years we have seen an explosion of laws and regulations covering areas as diverse as patient care and MediCal reimbursement, environmental protection, research compliance, information and privacy, intellectual property, labor and employment, corporate governance and land use.

Half a century ago, the University of California's legal work could be handled by three generalist attorneys operating from a single location. That is no longer possible. OGC has adapted to the proliferation of legal issues facing the University by moving its attorneys closer to its clients, through the establishment of campus-based legal affairs offices, and by specializing. Eight

of our campuses and all of our medical centers currently house attorneys ready to provide general legal advice in context. The Oakland central office has established a number of specialized practice groups to meet the UC's recurring need for specific kinds of expertise. This Annual Report describes our offices and practice groups in more detail and presents key highlights of the last fiscal year.

Over the next three years, OGC will enhance its delivery of timely, ethical, efficient and high quality legal services and will contribute to the development of creative strategies that further the University's teaching, research and public service mission. We will continue to foster positive, responsive relationships with our clients in order to become a more valued strategic partner in advancing the University's goals and objectives. Toward that end, we have initiated a number of projects to reduce the overall cost of legal services for UC, by providing more preventative training, delivering enhanced client self-help tools, focusing on earlier closure of claims and transactions, shifting more work from outside to in-house attorneys, and establishing better rates and fee arrangements when outside counsel is necessary. We intend to facilitate better internal departmental communication across the system to spread best practices and to avoid effort duplication. We will develop our use of technology to extend the reach of our services and provide better data for tighter legal management.

I want to emphasize that the Office of the General Counsel is first and foremost a service organization. We welcome comments on any aspect of our services but we particularly seek your comments on this initial Annual Report and on the information you would like to see in future editions.

This report is also available on the OGC website (<http://www.ucop.edu/ogc>), which includes a feedback link for you to provide your comments. Thank you in advance for taking the time to learn more about our services and to contribute toward improving our performance.

Sincerely,

Charles F. Robinson

Vice President, Legal Affairs and General Counsel

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The Role and Mission of the Office of the General Counsel

The responsibilities of the General Counsel are described in The Regents of the University of California Bylaw 21, Duties and Responsibilities of the Officers of the Corporation. Section 21.2 states in part:

“The General Counsel and Vice President for Legal Affairs . . . shall be the chief legal officer of the University; shall have general charge of all legal matters pertaining to the Corporation and the University; shall attend meetings of the Board and its Committees; shall represent the Corporation in all legal proceedings; shall advise the Corporation, its Committees and Officers, the President of the University, University Officers, and Officers of the Academic Senate on legal questions as may be required; and shall, subject to the direction of the President of the University, oversee the provision of all legal services to the University.”

The Office of the General Counsel – through its attorneys and staff in Oakland, on the campuses, in the medical centers, and at the Lawrence Berkeley National Laboratory – supports the University’s teaching, research and public service missions by providing ethical, efficient, and high-quality legal services. These legal services include prosecuting and defending litigation; drafting and negotiating agreements; providing advice, counsel, and interpretation of laws, regulations, and policies; and assisting with the development of effective compliance and risk mitigation strategies to facilitate the University’s complex operations.

The General Counsel is appointed by the Board of Regents and reports jointly to the Board and the President of the University.

Attorneys

OGC currently has a staff of 70 full-time attorneys, equivalent to a mid-sized law firm. Forty of those attorneys are located at the Office of the President in Oakland, and the rest are located on campuses, in the medical centers, or at the Lawrence Berkeley National Laboratory. Attorneys at the Office of the President have an average of 21 years of legal experience. The majority of attorneys have come to OGC directly from private law practices, where some were partners in California’s (and the nation’s) largest and most prestigious firms. Others have come with experience from positions in city, state, and federal government. Still others served as in-house counsel with corporations.

The average tenure of the attorneys currently serving at the Office of the President is over 11 years.

Staff

The Oakland office has a non-legal staff of 37, and the campuses, medical centers and labs have a total of 16 non-legal staff. This includes a highly-skilled group of paralegals and the indispensable clerical and technical staff. OGC has benefited

from the dedication and stability of its staff personnel, many of whom have been with the office for more than 20 years.

Paralegals undertake a wide range of tasks which include:

- Conducting in-depth fact finding and analyzing policy issues, laws, regulations, and court precedents.
- Providing expert advice and interpretation regarding the law and University policy and precedent.
- Drafting legal documents, reports, and responses to politically sensitive issues for management.
- Developing and leading UC training programs.

Specific examples of paralegal projects currently underway include:

- Administering a \$40 million estate from a deceased donor to benefit the UC San Diego School of Medicine.
- Analyzing and responding to appeals from University students and parents who are in disagreement with assessed tuition and fees.
- Planning and presenting a workshop for the campuses to discuss current changes in immigration laws and University policies related to residence for tuition purposes.
- Reviewing campus and laboratory affirmative action plans for compliance with applicable federal laws and Article I, Section 31 of the California Constitution, as required by the Office of Federal Contract Compliance.

The Work of the Office of the General Counsel

The following sections describe our practice groups and our campus offices in more detail, presenting key highlights of the last fiscal year:

Technology Transfer

Description of Group

The technology transfer group consists of five patent attorneys (at approximately 4.1 FTE), two paralegals (at approximately 1.9 FTE), and a legal secretary (at 0.5 FTE). The group supports the University in technology transfer-related matters originating at the 10 campuses, the Office of the President, and at the three DOE national laboratories (Lawrence Berkeley National Laboratory, Lawrence Livermore National Laboratory, and the Los Alamos National Laboratory).

Counseling matters include: patent and related intellectual property licensing; bailment of biological materials; intellectual property provisions in sponsored research agreements; disputes related to intellectual property, including patent infringement; and state or federal court decisions, legislation, regulations, and agency matters (such as at the U.S. Patent and Trademark Office).

Reviews and Counseling Actions

In fiscal year 2007-08, the technology transfer group conducted 3,785 reviews and counseling actions ranging from individual contract provisions to entire contracts, an increase of 26 percent from fiscal year 2006-07.

Special projects addressed this fiscal year include participation in negotiations on patent law reform conducted in U.S. Senate chambers, and support for the University's Federal Governmental Relations staff and the Office of Technology Transfer in their efforts to address patent law reform and other intellectual property-related legislation such as orphan works.

Technology transfer staff also participated in leading negotiations with BP for a \$500 million, 10-year sponsored research project in cellulosic and other advanced biofuels for UC Berkeley.

Intellectual Property Disputes

The technology transfer group helps its clients manage and resolve intellectual property disputes. Such disputes may include patent infringement actions in federal district or appellate courts, breach of contract actions in federal or state courts, and inventorship disputes. Inventorship disputes include interferences, which are administrative actions in the U.S. Patent and Trademark Office to determine which of two or more competing sets of inventors are entitled to a patent on one invention. In fiscal year 2007-08, the group handled 54 technology transfer-related disputes, and increase of 32 percent over the last fiscal year.

Recent Disputes and Settlements

The University and its exclusive patent licensee, Abbott Laboratories, are currently parties in multi-forum patent infringement litigation against Dako, a Danish company, in courts in the U.S., Germany, and Italy, and in the U.S. Patent and Trademark Office and the European Patent Office. The litigation addresses an invention originating at the Lawrence Livermore National Laboratory for a method to determine an appropriate treatment for cancer. The earliest of these actions started in 2004, and in April 2008, the University and Abbott received a favorable ruling by the U.S. Court of Appeals for the Federal Circuit, which in part reversed an adverse ruling by a federal district judge.

Similarly, from 2000 to 2008, the University was a party in multi-forum patent infringement litigation and related actions against Microtherapeutics, Inc. in courts in the U.S., Germany, the Netherlands, and the U.K., and in the U.S. Patent and Trademark Office and the European Patent Office. This litigation was regarding an invention originating from UCLA for treatment of aneurysms via catheter. In 2008, these cases concluded in a global settlement, with the University receiving \$11.66 million.

In another recent major patent infringement litigation, the University and its exclusive patent licensee Eolas Technologies asserted against Microsoft Corporation a patent for an invention originating from UC San Francisco related to interactivity in Internet browsers. The University received \$30.4 million to settle the litigation in 2007.

Real Estate/Transactional

Description of Group

There are three full-time members of the real estate/transactional group. In addition, one member of the health group spends half his time on transactional work, and one member of the land use group spends half his time on real estate work. The real estate group attorneys are responsible for all real property (including endowment property and property used for institutional purposes), external finance, and investments in private equity and real estate funds.

Real Estate

In the 2007-08 fiscal year, there has been an emphasis on privatized development, which has included the following: the Tipton Center at Sedgwick Reserve, the Osher Center for Integrative Medicine at UC San Francisco, and the proposed third party development of office facilities at UC Berkeley and the neuroscience building at UC San Francisco.

For the 2007-08 fiscal year, the real estate group was involved with the following transactions:

- Reviewed 180 leases and licenses, and handled 11 easements.
- Handled more than 43 ground leases, joint ventures, and development projects, including the Davis Hotel, Santa Barbara north campus housing, and the San Diego Venter Institute.
- Handled three gifts of real estate with an aggregate value in excess of \$44.38 million.
- Handled six purchases of real property aggregating over \$70.36 million.
- Handled three sales of real property with an aggregate value of over \$8 million.

External Finance and Investment

In the area of external finance, the group handled unsecured financings such as the commercial paper program, equipment leases, and University bond financings for the campuses and the medical centers. The aggregate amount of bond financings was in excess of \$1.4 billion.

With the assistance of outside counsel, the group handled 24 private equity investments with an aggregate commitment of \$1.29 billion, and investments in 14 real estate funds with a total commitment of \$1.03 billion.

Estate and Trust Administration

The transactions group consists of the Interim Lead, two Principal Legal Analysts, and one administrative assistant. One of the transaction group's main assignments is the oversight and handling of estates and trusts in which decedents have named The Regents as a beneficiary. There are currently over 1,300 open estate and trust matters.

During this fiscal year, over \$60 million was distributed via this office constituting gifts from over 200 individual donors.

Additionally, the transaction group assists campuses with complex and/or problematic estates where the campus foundation is named the beneficiary. The most significant this year was the Estate of Louise Rossi for the UC Davis Foundation, which involved complex funding assets totaling over \$12.5 million.

Planned Gifts

The transaction group also provides services to the campuses with regard to the establishment, funding, and termination of planned gifts for which The Regents serve as trustee. During fiscal year 2007-08, the transaction group assisted with 13 Regental planned gifts worth over \$2.9 million and assisted with the termination of three private charitable remainder trusts totaling over \$2 million.

During fiscal year 2007-08, the transaction group was involved in the review of 22 individual planned gifts, 16 of which were terminated, resulting in the transfer of over \$7 million to the campuses. Of particular note was the Dickson Charitable Remainder Unitrust with a remainder value of \$2.9 million. The trust was established by Regent Emeriti Edward A. Dickson in 1955 to provide support for professorships on the 10 campuses.

Endowment Administration

Within the endowment portfolio, the group handled nine gifts and bequests with an estimated value in excess of \$46 million, and 15 endowment properties were marketed and sold directly or through probate for over \$19.69 million.

Land Use

Description of Group

The land use group consists of six attorneys at the Office of the President, one construction attorney who splits his time between the Office of the President and UC San Francisco, one attorney at UC Berkeley who spends a third of his time on construction related matters, and one attorney at UCLA who works on a broad range of University contracts including construction, real estate, purchasing, and research agreements. Three of the six members of the Oakland-based land use group primarily handle claims and legal matters for the University's \$8 billion construction program, and three members primarily provide advice and representation on environmental matters. The land use attorneys also provide legal services related to non-construction procurement and contracts, litigation, real estate, eminent domain, statutory relocation benefits, external governmental relations, conflict of interest, and the University's powers of self-governance as a constitutionally created state entity. In addition, one of the land use attorneys acts as Campus Counsel to UC Merced.

Construction

Taking into consideration their other responsibilities, the allocation of attorney time to construction amounts to approximately three FTE. Construction attorneys provide legal support on broad programmatic issues, specific construction projects, and construction dispute resolution, as follows.

Policies and Procedures

Construction attorneys work with Facilities Administration at the Office of the President to develop standard policies and procedures for the bidding, negotiation, award, selection, and administration of contracts with architects, consultants, contractors, and subcontractors.

Contract Drafting and Development of Alternate Delivery Methods

Working with Facilities Administration at the Office of the President, the construction attorneys are routinely called upon to refine and develop new systemwide contracts and delivery methods to address current industry trends and institutional needs.

Claims and Litigation

After contracts are awarded, construction attorneys provide advice on claims by and against architects, consultants, or contractors. Related activities include: retaining experts or associated counsel; conducting negotiations; drafting releases, tolling agreements, and settlement agreements; and, if necessary, representing the University in litigation or arbitration.

In fiscal year 2007-08, the group handled 45 active construction lawsuits, as well as dozens of disputes which were resolved through formal mediation or informal settlement discussions.

On matters handled by the construction group, the University paid \$11.55 million to resolve \$75.33 million in construction-related claims against the University, paying 15 percent of the amount claimed.

During that same period, the University collected \$26.68 million of \$31.58 million in construction-related claims, receiving 84 percent of the amount claimed.

The group also obtained favorable results in several matters not related to construction, including obtaining settlements for utility overcharges of \$2.9 million (electrical) and \$616,000 (water) at UCLA.

Reviewing Contractors, Bid Protests, and Subcontractor Substitutions

Prior to and after an award, construction attorneys are routinely called upon to advise and formally respond to bid protests, prequalification protests, subcontractor substitution requests, and related writ proceedings in the courts.

Legislative Efforts

Often working with the University's lobbyist in Sacramento, the construction attorneys provide legal support regarding legislation affecting the University's design and construction program. One of the construction attorneys also coordinates the advice of the entire Office of the General Counsel on all lobbying matters, including those not related to construction.

Environmental and Land Use

Description of Group

Three environmental and land use attorneys provide legal advice, compliance counseling, and litigation representation for all environmental, health, safety and land use matters that arise at all 10 campuses, five medical centers, the Agricultural and Natural Reserve System, and the Office of the President. In addition, the group provides land use counseling and representation for the Lawrence Berkeley National Laboratory (LBNL).

Environmental and land use matters have been increasing over the past several years due to an increase in campuses undergoing Long Range Development Plan (LRDP) updates and increased litigation challenging UC projects in certain urban areas.

Long Range Development Plan Updates

The land use attorneys provided legal advice and support to six campuses that updated their Long Range Development Plans (LRDP) in fiscal year 2007-08.

Significant support was provided to UC Merced, which began the process of updating its 2002 LRDP and associated environmental impact review to reflect a tentative agreement with the U.S. Environmental Protection Agency and Army Corps of Engineers regarding the revised campus boundaries that could be permitted under the section Corps 404 permit.

California Environmental Quality Act Project Advice and Review

The land use attorneys provided daily advice to the campuses on 54 capital projects and real estate transactions requiring review under the California Environmental Quality Act (CEQA). Examples of these projects include:

- The Helios Energy Research Facility and Computational Research and Theory Facility at LBNL.
- UC San Francisco's new Medical Center of Mission Bay.
- A private/mixed-use housing development on the historic UC Berkeley Extension property in San Francisco.
- Replacement of UC San Diego's Chancellor's Residence, a structure listed on the National Historic Register and located on a Native American burial ground.

Major Permitting Activities

Both the environmental and land use attorneys assist the campuses in obtaining required land use and environmental permits, such as the permit applications submitted by UC Santa Cruz and UC Santa Barbara to the California Coastal Commission for development projects.

Environmental Health and Safety Issues

The group worked with campus Environmental Health and Safety departments during fiscal year 2007-08 on two significant security measures: the Chemical Anti-Terrorism regulations promulgated by the federal Department of Homeland Security (DHS) and an order by the federal Nuclear Regulatory Commission (NRC) and the California Radiologic Health Branch regarding the Radioactive Materials License.

Land Use and Environmental Litigation

The land use attorneys, working with outside counsel, have actively managed the litigation that attempted to halt implementation of recently adopted LRDPs and individual UC projects. Petitions were filed challenging the Lawrence Berkeley National Laboratory LRDP, UC Berkeley's Helios project, and UC San Francisco's Institute for Regenerative Medicine, among others.

In 2007, the land use attorneys helped UC Santa Cruz prevail in its challenge to Measures I and J – local ballot measures restricting UCSC's entitlement to water and sewer service on undeveloped property located adjacent to the main campus. The campus is now pursuing an attorneys' fees claim in the Court of Appeals.

Superfund Sites and Remedial Actions

The group's environmental attorneys assisted the campuses in handling issues relating to three major contaminated sites: the Richmond Field Station (RFS), which is administered by UC Berkeley; the UC Davis Laboratory for Environmental Health Research (LEHR); and the Yosemite Creek site, for which the EPA named UC San Francisco, UC Berkeley, and the Lawrence Berkeley National Laboratory as potentially responsible parties, among others. In addition, the environmental attorneys addressed a complaint filed by over 100 plaintiffs in the San Jose area against The Regents for alleged contamination of residential property surrounding the former Bay Area Research and Extension Center.

Health Law/Health Business Transactions

Description of Group

The health law group consists of 13 attorneys, four at the Office of the President and nine at the University's medical centers. Between 2001 and 2008, there has been a major shift in the location of health law group attorneys from the Office of the President to the medical centers, with a net reduction of three Oakland attorneys. The health law group provides legal advice and guidance to the medical centers, faculty practice groups, and the Schools of Medicine at UC Davis, UC Irvine, UCLA, UC San Diego and UC San Francisco.

Health care education, research, and clinical services all operate in a highly complex and legally challenging environment. Recent changes in governmental regulation have increased the demand for legal assistance.

Highlights for fiscal year 2007-08 include the following transactional projects, regulatory matters, and litigation.

Transactional Projects

- Assisted the UC San Diego Medical Center in structuring, negotiating, and permitting a joint venture Ambulatory Surgery Center in Encinitas, California, providing three needed surgery suites and saving the Medical Center an estimated \$12 million in design and construction costs.
- Secured Regent's approval for a long-term affiliation between Saint John's Medical Center and the UCLA Health System, providing the requisite volume of patients required for the School to meet accreditation requirements.
- Secured approval from the State Treasurer's Office to issue Proposition 61 Children's Hospital Bonds as 501I(3) bonds to permit a joint venture of neonatal services between the UC Irvine Medical Center and the Children's Hospital of Orange County.
- Represented The Regents in the issuance of \$324 million of Medical Center Pooled Revenue Bonds, the proceeds of which were used to refinance the acquisition, construction, and equipping of health care facilities at the UC Davis Medical Center.
- Structured arrangements permitting UC medical schools to provide several million dollars in telemedicine equipment to outlying facilities in a manner compliant with California Proposition 1D bonds and with federal and state tax and compliance requirements.

Regulatory Matters

- Provided counsel for all UC medical centers and clinics in completing the process for re-enrolling in the Medicare program.
- Provided advice at UC San Francisco following a California Department of Public Health validation survey and assisted with a related Plan of Correction

regarding pharmaceutical services, quality assessment/performance improvement, and nursing services.

- Assisted with negotiations, litigation, and patient care issues relating to contractual disputes between the medical centers and managed care payors.
- Advised UCLA leadership on multiple issues related to high profile government and media inquiries concerning the UCLA transplant program.
- Provided legal advice with respect to mental health issues for the UCLA Neuropsychiatric Hospital (NPH), including evaluating and responding to subpoenas and court orders, representing NPH at court proceedings, and counseling clients regarding laws and regulations concerning involuntary treatment.
- Assisted the UCLA Office of the Dean on a Master Research Agreement between the Veterans Administration and UCLA, which will facilitate research between the two institutions.

Litigation and Litigation Support

- Provided advice to and oversight of retained counsel regarding investigations and grand jury subpoenas resulting from issues with the UC Irvine Liver Transplant Program.
- Assisted the UCLA Medical Center with investigation by the U.S. Attorney's Office of possible criminal violations of federal privacy laws, and provided assistance with related Department of Public Health investigations relating to patient privacy matters.

Labor/Employment/Benefits

Description of Group

The labor, employment, and benefits group (the labor group) normally consists of seven full-time labor and employment attorneys and two benefits attorneys. During fiscal year 2007-08, the labor group has been challenged by attrition, leaving only three labor and employment attorneys and one benefits attorney.

As the second largest employer in the state of California, UC faces complex employment and labor challenges. The labor group provides advice, counseling, representation, and training to the University's management regarding the University's 170,000 full and part-time faculty, staff, and student employees in one of the country's most complex and challenging labor and employment environments.

Labor

With more than 25 separate bargaining units covering over 66,000 employees who are represented by 10 separate unions, the labor attorneys respond to myriad labor issues on behalf of the University. The labor group provides legal and strategic advice on the University's relationship with its employee unions, and oversees litigation related to labor matters such as injunctions.

In fiscal year 2007-08, of the 54 matters before the Public Employee Relations Board (PERB), 48 were dismissed or withdrawn, an 88 percent success rate for the University.

The labor group was successful in obtaining the first Temporary Restraining Order against a union (nurses) under the Higher Education Employer Employee Relations Act (HEERA), and followed that achievement with a successful request to PERB for restraining orders against AFSCME in May 2008.

Other Litigation

In addition to handling litigation and representation petitions before PERB, labor attorneys represent the University in an array of administrative proceedings, internal University disciplinary and grievance hearings, and representation before federal and state agencies.

Settlement and Separation Agreements

Pursuant to Regental policy and OGC delegations, the labor attorneys review settlement and separation agreements requiring approval of OGC, the President, or The Regents. For fiscal year 2007-08, the group handled 102 settlement agreements and 15 separation agreements.

Training

A major focus of the labor group's work is prevention. In addition to advising clients, labor attorneys provide training on matters such as sexual harassment prevention,

non-discrimination, whistleblower protections, disability accommodations, immigration laws, wage and hour requirements, Regents' settlement and separation procedures, protected leaves, and investigation procedures. In fiscal year 2007-08, the labor attorneys conducted approximately 20 training sessions for the system.

Benefits

The benefits attorneys provide advice and counsel to the pension, defined contribution, and health and welfare plans, regarding matters such as compliance with state and federal laws, health insurance requirements, protection of employee personal information, claims resolution, and plan investment. The benefits attorneys worked closely with national laboratory attorneys, management, and human resources staff on many complex issues involved in the transfer of the Department of Energy's Lawrence Livermore National Laboratory from UC management to management by a limited liability company in which UC is a partner. Prior to the spin-off of assets for the Lawrence Livermore National Laboratory in 2008 and the Los Alamos National Laboratory in 2007, there were no precedents to guide this type of public to private plan transaction.

Litigation

Description of Group

The litigation group consists of nine attorneys who represent the University as counsel of record or provide oversight of outside counsel in all litigation matters, with more limited oversight of construction, patent, and environmental litigation (which is primarily handled by attorneys from those groups). The group also handles a variety of other adversarial matters including writ proceedings and internal administrative hearings, and defending University witnesses in deposition or during trial.

Types of Litigation

By far the largest segment of the University's litigation is within the University's self-insurance programs in professional, employment practices, and general and auto liability. These programs collectively represent approximately 90 percent of the litigation.

Another segment of the University's litigation involves commercial transaction litigation, which includes claims for breach of contract and related claims, class actions, insurance coverage disputes, employee defalcations, contested probate matters, and trade secret litigation.

A third group of lawsuits arises from the University's academic functions, including student challenges to disciplinary or academic suspensions, constitutional attacks on University admission policies, suits challenging University tuition and fee charges, and cases about the free speech rights of faculty, students, or the public.

Litigation attorneys are also responsible for appeals, writ proceedings, administrative hearings, and related adversarial matters. Examples include representing the University in courts of appeal in cases involving University policies and representing the University administration in hearings before the Academic Senate privilege and tenure hearing committees.

Litigation Recoveries

Litigation recoveries for the fiscal year 2007-08 totaled \$85 million, not including the significant collections by the UC hospitals and medical centers.

Litigation Cases

Notable litigation cases in fiscal year 2007-08 include:

- The AOL/Time-Warner litigation was settled for \$246 million, the largest opt-out securities settlement in history.
- As Lead Plaintiff in the Enron litigation since 2002, the group achieved settlements on behalf of class of \$7.3 billion, the largest class action recovery in history.

- Hundreds of plaintiffs alleged that donated body programs at UC Irvine and UCLA Medical Schools mishandled or misused their relatives' donated remains. A series of decisions significantly reduced the University's potential liability and resulted in the dismissal of many claims.
- A suit against Aetna U.S. Healthcare of California and Aetna Life Insurance Company (Aetna) alleging Aetna's failure to meet performance standards under University-funded healthcare plans resulted in Aetna paying the University \$3.1 million plus interest (a 100 percent recovery of the amounts Aetna owed the University including attorneys' and accountants' fees).
- The University obtained a temporary restraining order and preliminary injunction prohibiting harassment of UCLA faculty engaged in animal research.
- The University obtained a temporary restraining order and injunction against individuals occupying oak trees who were protesting against the construction of a Student Athlete High Performance Center adjacent to the UC Berkeley California Memorial Stadium.
- The California Court of Appeal affirmed a judgment of \$33.8 million against the University in a class action brought by students contesting certain fee increases adopted by The Regents beginning in 2002.

Governance and Compliance

Description of Group

The governance and compliance group was established in July 2007 as a new practice area within the Office of the General Counsel. Two attorneys currently comprise the section, whose primary objectives are to provide preventive, proactive legal services in governance and compliance; identify and assist in managing ethical, compliance, and legal risk issues; and enhance accountability and transparency under the University's new Ethics and Compliance program.

The group continues executing responsibilities in substantive legal areas such as audit and finance, campus crime reporting under the Clery Act, and public records. Most of the activities of governance and compliance, however, fall into three general categories: preparation for Regents meetings, review and assistance with drafting Presidential delegations of authority, and provision of analysis and legal opinions.

Preparation for Regents Meetings

Preparation for Regents meetings included responsibility for coordinating preparation, review, and timely submission of 224 OGC Regents items this year, reporting on nearly 500 cases; preparation of the General Counsel's bi-monthly Risk and Strategy report for the Office of Ethics, Audits and Compliance; and review of all Regents items to assist the General Counsel in preparation for Regents meetings.

Drafting Presidential Delegations of Authority

The group assisted with drafting several amendments to Bylaws, Standing Orders, and Regental and Presidential policies, including revision of the Charter for the Committee on Compliance and Audit.

Last July, the group embarked on a comprehensive review of the University's Bylaws, Standing Orders, and Regental Policies at the request of Chairman Blum, to determine which matters must be brought to The Regents and which should be delegated to the President and Regents' Officers. The review underscored the need for a comprehensive revision of the University's governance documents. The group will assist the Office of the Secretary and Chief of Staff as it addresses this need in the future.

Analysis and Legal Opinions

Governance and compliance attorneys responded to more than 80 requests for analysis and legal opinions, and provided guidance about laws and regulations, UC governance documents, and other sources, such as the University's compliance with good business practices under Sarbanes-Oxley.

Training

Finally, the governance and compliance group assisted in developing an orientation program for new Regents, and assumed responsibility for compliance within OGC for employee training. The Office of the General Counsel achieved 100 percent

completion rates for the online tutorials on Ethics, Conflicts of Interest, and Sexual Harassment Prevention.

Educational Affairs

The educational affairs group is comprised of five attorneys based at the Office of the President who work closely with 16 campus-based attorneys. Two of the attorneys divide work between educational affairs and other sections.

Educational affairs attorneys provide advice on the following: faculty and Academic Senate matters, including advice on academic freedom; the Academic Personnel Manual, governing the terms and conditions of faculty employment; and on Senate hearing panels in connection with grievances and discipline. Educational affairs attorneys also provide advice on matters relating to student affairs, such as student discipline, international study, political and religious activities, and policies relating to student organizations and student government.

The group also includes experts on a number of state and federal laws and University policies relating to such matters as the University's constitutional autonomy under Article IX, Section 9, conflict of interest and the California Political Reform Act, Proposition 209, Title IX, copyright and trademark, and review of purchasing contracts. In addition, two of the attorneys in the group serve as Campus Counsel for UC Santa Barbara and UC Merced, which do not have on-site attorneys.

Educational Affairs Issues

Some of the matters worked on the in past year by educational affairs attorneys include:

- Amending Regental policies and providing advice regarding conflict of interest, the Regents' Committee on Investments, and the Treasurer's selection of outside investment managers.
- Advising on the interaction of fiduciary responsibilities between campus foundation board members and The Regents.
- Advising on undergraduate diversity efforts under Proposition 209.
- Advising the Campus Security Task Force, constituted in response to the tragedy at Virginia Tech.
- Advising faculty committees investigating charges of research misconduct.
- Advising on the fiduciary responsibilities of Regents in connection with divestment decisions (such as Sudan and Iran).
- Advising on education abroad in Israel and other State Department travel warning countries.

Campus Counsel

Each campus in the UC system has at least one attorney whose primary responsibility is to provide legal services to the University at the campus level (UC Santa Barbara and UC Merced's Campus Counsel operate out of the Oakland office of the General Counsel – every other Campus Counsel is located at a campus). Like attorneys in the Oakland office, attorneys at the campuses are highly experienced, having come from positions in government and as in-house counsel, and from partnerships in major private law firms.

Campus Counsel are the primary source of legal advice for Chancellors, Vice Chancellors, and Deans. They provide advice for discrete legal matters, counseling at a strategic level by sitting on Chancellor's Cabinet and other committees, and develop and implement campus initiatives. They also provide legal support for the medical clinical enterprise with advice given to medical center CEOs and their administrations as well as to the medical staff.

Campus Counsel are the most effective and efficient means for addressing campus legal problems, either by solving the problem directly, referring the matter to attorneys in the Oakland office, or facilitating the retention of outside counsel.

Campus Counsel handle matters as diverse as:

- Representing the University in administrative proceedings before the EEOC or Department of Education's Office for Civil Rights regarding claims of discrimination in employment or education.
- Negotiating contracts with vendors.
- Advising the Executive Vice Chancellor/Provost concerning faculty matters.
- Counseling the campus police department on criminal law matters.
- Advising the Vice Chancellor for Student Affairs concerning First Amendment or Due Process issues raised by student matters.
- Advising information technology executives concerning electronic documents and their retention and security.
- Advising faculty members concerning conflict of interest rules.
- Advising on whistleblower complaints.
- Advising faculty on copyright law.

Many campuses face common challenges; other issues arise uniquely at a specific campus. Some highlights from each campus's past year are outlined in the following sections.

UC Berkeley

UC Berkeley is served by one full-time Chief Campus Counsel (a part-time Assistant Campus Counsel focuses solely on construction matters). Given UCB's high profile, substantial attention is paid by the Office of Legal Affairs to matters generating public interest or media attention.

Issues worked on during fiscal year 2007-08 include:

- Memorial Stadium “tree sitters” demonstration and the long standing litigation over University plans to renovate the stadium and construct a Student-Athlete High Performance Center.
- The status of Peoples' Park and the campus' relationship with the city regarding its use.
- Potential litigation following the accidental death of writer David Halberstam, and potential liability of the University for the negligence of a volunteer graduate student driver.
- Issues with the Hearst Museum and the Native American Graves Protection and Repatriation Act (NAGPRA). One issue involved a dispute between faculty researchers and campus administrators regarding the proposal to remove UCOP's oversight over local repatriation decisions. Another was a public personnel dispute regarding the reorganization of the museum and allegations of mismanagement and whistle-blowing retaliation, which resulted in a legislative hearing and investigation.
- Advising faculty and administrators of their legal rights and remedies against animal rights protestors who have committed acts of violence and harassment, and investigating potential litigation against the protestors.
- Numerous questions presented by PATRIOT Act subpoenas, Recording Industry Association of America subpoenas involving illegal music downloads, and compliance with state computer security breach requirements.
- Investigating numerous whistleblower complaints, such as investigating reports of discrimination and sexual harassment, advising on the handling of retaliation complaints, and assisting in the resolution of faculty misconduct matters.

UC Davis

The UC Davis campus Office of Campus Counsel is comprised of a Chief Campus Counsel, Associate Campus Counsel, Information Practices Coordinator, and an Executive Assistant.

Some of the most significant issues addressed by this office during fiscal year 2007-08 include the following.

Faculty/staff matters: Responded to grievances, negotiated separations and resignations, and pursued disciplinary actions against faculty and staff. Examples include: responding to a Committee on Privilege and Tenure recommendation to grant a Medical School faculty member's grievance claiming a right to non-clinical research time associated with his FTE position, and responding to academic freedom issues relating to licensing restrictions placed on intellectual property (crop varieties) developed by faculty.

Student affairs: Responded to lawsuits, complaints, and petitions regarding issues with students ranging from cheating allegations, compliance with Title IX, and alleged sexual harassment. One significant case involved allegations against a graduate student of academic misconduct and deficient performance, and allegations of race discrimination by the student against faculty, staff, students, and police - the latter claim was based upon police detention of the student due to mistaken identity in an assault rifle incident on campus.

Whistleblower cases: Investigated allegations of misuse of funds from a federal food stamp program grant and related matters: responded to federal criminal investigations and personnel actions resulting from misconduct of campus employees; negotiated with state and federal agencies concerning the repayment of non-allowable costs; and negotiated remedies for a whistleblower who was subject to retaliation.

Safety and security: Advised on free speech parameters governing regular union demonstrations at campus events relating to demands that the campus cease outsourcing campus food service positions; responded to a number of student threat issues, including denial of readmission of a former graduate student who owned several assault rifles and who had publicly threatened a dean.

UC Irvine

The UC Irvine Office of Campus Counsel has three attorneys and two support staff. Campus attorneys have provided significant legal advice within a wide range of practice areas, including constitutional law, employment law, gifts and trusts, health law, intellectual property law, research compliance, student matters, and whistleblower issues.

Recent legal matters of note include the following:

- Advice and participation with outside counsel in litigation resulting from a decision to not advance a student to a Ph.D. program. On appeal the court affirmed summary judgment in favor of the campus on all causes except one, which was later settled. The opinion synthesized a large body of state and federal law concerning due process arguments and set forth what has become known as the “Lachtman standard.”
- Advice and consultation regarding investigation of Social Security Number identity theft. Working with investigators from the IRS, DOJ, Secret Service, and California and Texas investigators, UCI helped identify the source of the breach as a former employee with United Healthcare, which provided insurance for the students.
- Ongoing advice and consultation on Jewish/Muslim relations on campus, which involves the tension between free speech and allegations of discrimination. The U.S. Department of Education Office for Civil Rights investigated allegations by the Zionist Organization of America that UCI had violated Title VI by discriminating against Jewish students. In 2007, after almost three years of investigation, OCR closed the investigation finding that some allegations were not within its jurisdiction and that UCI took prompt and effective action to address the incidents that were within OCR’s jurisdiction.
- Ongoing advice and consultation regarding malpractice suits filed by patients of the now-closed liver transplant program at the medical center.
- Advice and participation with the OGC and outside counsel on litigation against the Kaiser System involving under-reimbursement of UCI physicians and the medical center for emergency services provided to individuals enrolled in Kaiser health plans.

UCLA

The UCLA Office of Legal Affairs has 20 FTE located on the main campus and at the medical enterprise. This includes eight attorneys, the Ombudsperson and her operation, and the Title IX/Sexual Harassment Prevention coordinator. Staff on the campus handle a wide variety of matters for the Chancellor, high ranking academic and non-academic administrators, and faculty. The UCLA Health System Office of Legal Affairs provides legal advice and guidance to the UCLA Medical Centers, the Faculty Practice Group, and the School of Medicine.

In fiscal year 2007-08, a sampling of matters handled includes:

- Advising on claims of sexual harassment and/or sex discrimination by and against faculty and administrators, negotiating faculty separation and settlement agreements, and advising on conflict of interest issues for designated officials.
- Negotiating research and affiliation agreements with industry and other institutions, including foreign institutions.
- Coordinating the response to parallel state and federal investigations into breaches of patient privacy at the UCLA Medical Center. Counsel coordinated the production of hundreds of thousands of pages of materials and access to information that resulted in the approval of corrective action plans by the state regulators as well as the protection of UCLA from accusations of criminal misconduct.
- Advising on whistleblower, public records, sensitive donor relations, admissions, and standardized testing issues concerning a professional school program.
- Advising on revision of campus “time, place and manners” regulations, academic personnel policies, student conduct codes, privacy, and IT policies, etc.
- Assisting in litigation/disputes involving the campus in such areas as real estate and construction, utilities, animal rights terrorism, police excessive force, public records, employment, trademarks (including trademark monitoring), athletics, student grievances, matters involving use of the UCLA name, discovery, witness preparation, and depositions.

UC Merced

OGC provides the services of one of its land use and environmental attorneys based at the Office of the President to act as Campus Counsel. In addition to providing land use and environmental advice, the Campus Counsel devotes approximately one-third of her time to assisting UC Merced with general legal advice. Given its limited resources, in order to provide the best possible service to UC Merced, the Campus Counsel serves as a liaison with the attorneys in the Office of the President, who provide expert advice on the full range of University legal issues.

As UC's newest campus, UC Merced has yet to face many of the legal challenges that the system's larger campuses face daily. At the same time, the legal issues posed by a small university campus ultimately will include the full range of issues seen by larger campuses, including issues related to student affairs, privilege and tenure, employment and labor law, public contracts, and technology transfer.

As a growing campus, UC Merced also faces significant hurdles associated with the development of its campus, including the ongoing Section 404 permit process (needed to fill wetlands on University property) for the second phase of the campus and a host of complex land use and real estate transactions.

The UC Merced Campus Counsel is also working with the campus to coordinate its new policies and protocols consistent with systemwide practices, and to help find solutions to issues faced for the first time at the UC's newest campus.

UC Riverside

The UC Riverside Office of the General Counsel was established in July 2006. The office is staffed by the Campus Counsel, a full-time senior legal assistant and a part-time administrative assistant. Hiring of additional legal staff is anticipated once planning for the School of Medicine advances to the next phase.

Highlights for fiscal year 2007-08 include:

- Providing legal advice and counsel regarding issues relating to the vision of the new UC Riverside School of Medicine, specifically education and retention of a diverse physician workforce, and recruitment of a diverse student body and faculty.
- Providing legal support for the restructuring of campus dispute resolution services.
- Providing legal advice and counsel regarding the 2007 commencement incident (arson and threat to further disrupt graduation by a former student) and the investigations that followed.
- Providing legal support to outside counsel and OGC on Regents lawsuit against Professor Sarkis Khoury, (Regents v. Khoury Case No. RIC 473028).
- Providing legal advice and counsel to the Office of the EVC regarding investigation of issues raised about Graduate School of Education and implementation of remedial measures.

UC San Diego

UC San Diego has three full-time attorneys who provide advice on all aspects of campus operations, including the School of Medicine and the UCSD Medical Center. Some of the significant legal matters that occurred during fiscal year 2007-08 include:

- The investigation of allegations of improper grading at the charter school operated by UCSD and related employment and public relations issues.
- Advice responding to historic preservation challenges regarding the development of a \$100 million facility.
- Supervision of a three-week trial that resulted in a complete defense verdict.
- Advice regarding conflicts of interest related to construction of a \$160 million proton therapy building.
- The negotiation and drafting of a license agreement with the U.S. Golf Association to facilitate the 2008 U.S. Open Golf Championship.
- Participation in a review of outside counsel to identify preferred legal service providers for the campus.
- Conducting trainings regarding conflicts of interest, employment law, and the Public Records Act.

Another significant issue involves the University House. In 2006, UCSD began a nearly 18-month process to conduct an environmental review and approval of a newly-designed replacement for its Chancellor's residence. The existing residence had fallen into disrepair and was found to be uninhabitable in 2003. The existing residence had been listed on the local historic register and is located in the site of numerous Native American burials. Local historic preservation groups and Native American tribes opposed the construction of a new residence on the site. Attorneys are working with the local groups and the Native American Heritage Commission in Sacramento to develop an alternate proposal that will meet the needs of UCSD and protect the sensitive resources on the site.

UC San Francisco

The Office of Legal Affairs serves both the UC San Francisco campus and the medical center. It is staffed by a Chief Campus Counsel and three other full time attorneys, a paralegal and two staff members. In addition, an additional attorney has been assigned full time by the Office of the General Counsel to cover the very large construction program at its Mission Bay Campus as well as other sites.

Highlights of issues worked on during fiscal year 2007-08 include:

Employment: Legal Affairs has worked collaboratively to identify and analyze employment disputes with liability risk and to resolve those matters in the pre-litigation stage. Estimated savings by the program for fiscal year 2007-08 was calculated by Risk Management to be approximately \$1.2 million. In addition, our office worked closely with the Chancellor and other campus leadership, the Office of the General Counsel, and outside counsel on the termination of the Dean of the School of Medicine.

Clinical issues: In the last fiscal year, the California Department of Public Health made multiple site visits to the Medical Center Pharmacy due to concerns about medication management. This office worked closely with the Medical Center leadership on strategy, regulatory issues, review of the Plans of Correction, etc. In addition, this office worked closely with medical staff as we took on numerous efforts and investigations to address issues involving unprofessional conduct.

Animal research terrorism: This office works with the research office on issues involving threats, public records act requests from the press, animal activist organizations, and the federal government.

Mission Bay Medical Center: For this project, it was necessary to draft a new contract for a delivery method (Cost Plus Guaranteed Maximum Price), heretofore never utilized by The Regents of the University of California. The contract was drafted to meet the bonding challenges faced by contractors in the wake of a lack of interest in the project and the credit crunch. The solicitation also utilized Best Value Contracting pursuant to a UCSF-specific statute/five year pilot program effective in January 2007. The contract contains incentive clauses for attainment of certain schedule and construction cost-related milestones.

UC Santa Barbara

UC Santa Barbara is served by one part-time attorney operating out of the Office of the President. Over the next year, the campus plans to hire a full-time, on-site attorney. Some of the significant legal matters dealt with at UCSB over the last fiscal year include:

- The negotiated retirement of a tenured faculty member.
- Response to campus concerns about a search and arrest of an undocumented student by Homeland Security.
- Response to campus concerns that anti-Israel postings by a student were threatening to the campus Jewish community.
- Termination of a staff member and charges against a faculty member involved in potentially criminal misconduct, and negotiation with state and federal criminal authorities over an investigation and possible prosecution.
- Drafting conflict of interest policies for graduate students working for companies owned by faculty members.
- Providing advice about a variety of issues related to the systemwide Education Abroad Program (EAP), such as student safety, foreign labor laws, contract drafting, and student discipline. One issue that has received particular attention is whether EAP should reopen one or more programs in Israel, which would require an exception to its policy to suspend programs in countries with U.S. State Department travel warnings.

UC Santa Cruz

The UC Santa Cruz Office of Campus Counsel is comprised of one full-time campus attorney and one full-time administrative assistant. Among other issues, the office advises on contracts, real estate matters, intellectual property, public records requests and subpoenas, employment matters, disability and accommodation issues, and student affairs.

Some of the significant legal matters handled at UCSC over fiscal year 2007-08 include:

- Negotiation of Reimbursable Space Act Agreement with NASA regarding the creation of the Advanced Studies Laboratory.
- Ongoing advice to the campus regarding the rights of demonstrators, the University, and the campus community in connection with protests, career fairs, and events.
- Supervision of litigation involving campus tree-sitters, including obtaining a preliminary injunction.
- Advice regarding childcare licensing issues, including representation of the campus in administrative proceedings initiated by the Department of Social Services.
- Consultation with library staff in connection with negotiation of deeds of gifts to the campus library.
- Review and revision of various campus policies, including policies on employee background checks, service animals on campus, and implementation guidelines of systemwide policies concerning electronic security breaches.
- Advise and participate with the OGC litigation team in protracted mediation culminating in the successful resolution of multiple lawsuits filed by the city, county, and neighborhood groups, which challenged UCSC's Long Range Development Plan and Environmental Impact Report and the Bio-Medical Sciences Building.
- Advice and consultation regarding legal issues related to criminal acts of animal terrorists, including harassment of faculty, vandalism, and fire bombings.