

Office of the General Counsel  
UNIVERSITY OF MINNESOTA

ANNUAL REPORT  
2005



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**MISSION STATEMENT  
OF THE  
OFFICE OF THE GENERAL COUNSEL**

- To safeguard the constitutional authority of the Board of Regents and those who act in its behalf to govern the University effectively.
- To represent the University in adversarial forums zealously and in accordance with the highest standards of integrity and ethics.
- To protect the University's legal interests in all transactions, thereby protecting the investment of the citizens of Minnesota in the University.
- To provide sound legal advice to University officials so that the institution's activities conform to applicable law and University policy.
- To protect the principles of due process in the University's treatment of faculty, staff, students, and all other members of the University community.

## INTRODUCTION

I am pleased to provide this annual public report of the Office of the General Counsel for FY 2005.

Our office has continued its tradition of fine legal service to the University this year. We had outstanding litigation outcomes, winning over 90% of the contested cases that were not settled. We provided effective legal counsel on hundreds of transactions. We kept our outside legal fees in check, and provided thousands of hours of preventive law services and training to University officials, faculty, and staff.

The function of our office is to meet the varied and highly specialized legal needs of the University of Minnesota, one of the largest, most complex research universities in the country. Our attorneys provide legal services in many fields: litigation; employment and labor relations; health care law; sponsored research agreements; regulatory compliance; intellectual property; public finance and governance; purchasing and sales of goods and services; real estate transactions; ethics and conflicts of interest; and other specialties. We invite you to learn more about us at [www.ogc.umn.edu](http://www.ogc.umn.edu).

Each member of our legal team has distinguished academic and professional credentials and years of experience in providing sophisticated legal services. In addition to serving the University, our attorneys are active in bar groups such as the National Association of College and University Attorneys, the American Bar Association, the Minnesota State Bar Association, Minnesota Women Lawyers, legal ethics committees, mediation and arbitration bodies, the Minnesota Association of Black Lawyers, Black Women Lawyers, and the Hennepin County Bar Association. They also contribute their legal skills and volunteer time to our community through a variety of pro bono activities and teaching.

This year we were very fortunate to recruit Brent Benrud as a new member of our attorney team. His practice focuses on labor, employment, and general litigation matters. Brent was previously a shareholder in the Denver law firm of Stettner, Miller and Cohn, P.C., where he practiced labor and employment law, education law, and litigation. Brent holds his law degree, *cum laude*, from our Law School, and is admitted to practice in Minnesota, Colorado, Wisconsin, and Illinois. He has been a professional singer, and is an avid scuba diver.

Another new addition to our staff this year is Jay Larson, who is serving as an assistant director in the Athletic Com-

pliance Office. Jay's focus will be on Big Ten Conference and NCAA rules concerning financial aid, and recruiting regulations. Jay obtained his law degree, *cum laude*, from our Law School, and was managing editor of the *Minnesota Law Review*. Jay was a team captain and four-year letter winner in basketball at Minnesota State University-Mankato, and president of the Entertainment and Sports Law Student Association at the Law School.



This year's annual report features a number of important achievements for the University. We successfully negotiated a 25-year Gopher football stadium naming agreement with TCF Bank that, together with other related agreements, is expected to generate many tens of millions of dollars for the University, including significant amounts for scholarships. We also negoti-

ated new contractual relationships with the University of Minnesota Foundation and the Minnesota Medical Foundation that strengthen the already strong relationships between the University and its major fundraising foundations.

In litigation, we spearheaded trust litigation that resulted in a multi-million dollar recovery for the University. We also resolved two long-standing legal disputes, one involving an Open Meeting Law challenge to the Board of Regents' presidential selection process, and a series of lawsuits brought by a former University treasurer.

In addition to its legal functions, the General Counsel's Office also oversees the Office of Athletic Compliance and the Office of Records and Information Management. Both offices are managed by able leaders; descriptions of these offices' activities appear in this report.

All of our activities have been – and will continue to be – devoted to fulfilling our office's mission (see facing page), a mission that directly promotes the most basic features of good governance and accountability that are essential to the success of this public institution. As you review this report, I hope you will see reflected in its pages what I observe daily: the extraordinary diligence, skill, and pride that our legal team demonstrates in providing legal services to our great University.

A handwritten signature in black ink that reads "Mark Rotenberg". The signature is fluid and cursive, with the first name "Mark" and last name "Rotenberg" clearly legible.

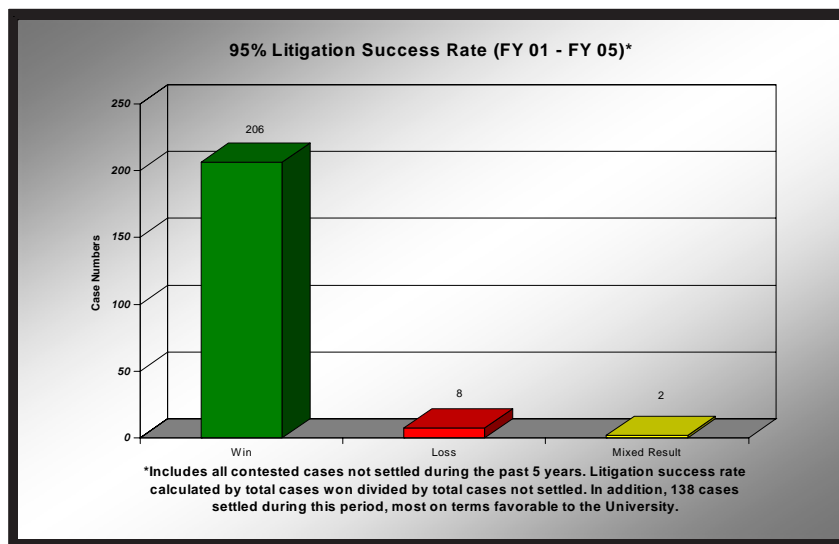
Mark B. Rotenberg  
General Counsel

## LITIGATION

The University had another very successful year in federal and state courts, arbitrations, grievances, and before administrative agencies. In cases that were not settled, the University won 39 and lost 3.<sup>1</sup> An additional 13 matters were settled.

Over the past five years, OGC has achieved a remarkably high rate of success in litigation. As the chart below illustrates, in contested cases that were not settled between FY 2001 – FY 2005, the University prevailed in 206 cases, lost 8, and achieved mixed results in 2 cases. Our 95% success rate over the past five years demonstrates in the clearest possible terms that OGC is ready, willing, and able to litigate cases and prevail whenever settlement is not appropriate and achievable.

Equally significant is the financial success OGC has achieved when seeking recovery of sums due the University. While the overwhelming majority of our litigation is defense-oriented, since 1997 OGC has obtained recoveries well in excess of \$370 million for the University.<sup>2</sup> Few, if any, American universities have enjoyed these sustained levels of achievement from their attorneys.



Virtually all of the University’s litigation this past year was handled by OGC litigators and paralegals, rather than by outside counsel. OGC lawyers have demonstrated outstanding ability to handle the vast majority of contested claims that confront the University, whether they involve constitutional, contract, employment, personal injury, condemnation, or other claims against the University. The range and depth of our in-house legal expertise enables us to provide cost-effective litigation services to the University with very favorable results.

<sup>1</sup> Of the three cases in which the University did not prevail, one involved a Bureau of Mediation Services (“BMS”) decision to require onsite polling in a union election for University-wide graduate assistants, rather than allow the graduate assistants to mail in their ballots. The University argued that the graduate assistants would have a fuller opportunity to vote using mail-in ballots. Although the Minnesota Court of Appeals dismissed the University’s appeal of the BMS decision, the graduate assistants voted in substantial numbers not to form a union. The other two losses were in arbitrations: one involved a personal injury case, while the other was a labor arbitration in which the University’s dismissal of an employee was reduced to a 30-day suspension without pay. The University prevailed in five other labor arbitrations. The most important of the labor arbitrations this past year involved a jurisdictional dispute in which the arbitrator upheld the University’s position regarding assignment of work.

<sup>2</sup> Recovered dollars include over \$320,000,000 (patents), \$44,000,000 (federal tax recoveries), \$6,000,000 (securities), \$2,000,000 (contracts), \$1,000,000 (trusts and estates), \$2,000,000 (environmental), and \$200,000 (royalties).

**APPELLATE COURT DECISIONS.** There were eight appellate court decisions this year involving the University, two in the United States Court of Appeals for the Eighth Circuit, one in the Minnesota Supreme Court, and five in the Minnesota Court of Appeals. All but one of these court decisions were favorable to the University.

In a follow-up to last year's decision involving an Open Meeting Law challenge to the Board of Regents' presidential selection process, *Star Tribune Company v. University of Minnesota Board of Regents*, 683 N.W. 274 (Minn. 2004), the Minnesota Supreme Court rejected the newspapers' demand for over \$300,000 in attorneys' fees. The supreme court found that because the University's defense was based on constitutional principles and had a reasonable basis in law, attorneys' fees would not be assessed against the University. This decision on attorneys' fees finally concluded the case.

The University prevailed in both cases that were argued before the United States Court of Appeals for the Eighth Circuit this past year. In *Falcone v. University of Minnesota*, 388 F.3d 656 (8<sup>th</sup> Cir. 2004), the Eighth Circuit denied a claim of disability discrimination, concluding that the University had properly dismissed a medical student who had failed several courses and in the judgment of the faculty should not have continued in the Medical School. In *Sallis v. University of Minnesota*, 408 F.3d 470 (8<sup>th</sup> Cir. 2005), the Eighth Circuit affirmed a grant of summary judgment to the University in a discrimination case, finding that the plaintiff had failed to establish claims of discrimination, a hostile work environment, or retaliation.

Similarly, the University was successful in each of the four cases we argued before the Minnesota Court of Appeals. (The Bureau of Mediation Services union election matter referenced in footnote 1 was decided by the court of appeals on a motion without argument.) In *Stephens v. Board of Regents of the University of Minnesota*, 2005 WL 284788 (Minn. Ct. App. 2005), the court affirmed the district court's grant of summary judgment and denial of a post-judgment motion. This appears to mark the end of a long litigation trail pursued for years against the University by former Treasurer Georgina Stephens, who sued over her termination and has now lost each of four appeals before the court. In *Bieter v. Fetzer*, 2005 WL 87484 (Minn. Ct. App. 2005), the court of appeals affirmed the dismissal of a defamation claim against University of Minnesota-Duluth faculty and administrators, concluding that the plaintiff was a limited purpose public figure who was unable to establish any evidence of actual malice by the defendant. In *Midden v. Board of Regents of the University of Minnesota*, 2005 WL 1389573 (Minn. Ct. App. 2005), the court of appeals held that a disability discrimination claim against the University was barred by the statute of limitations. Finally, and most interestingly, in *Vistad v. Board of Regents of the University of Minnesota*, 2005 WL 1514633 (Minn. Ct. App. 2005), the court of appeals assessed the University's legal responsibility for an injury to a cheerleader hurt during a practice on our Duluth campus. The court concluded that because the University did not control or direct the activities of the University of Minnesota-Duluth men's basketball cheerleading squad, it owed no legal duty to the plaintiff. The court also found that plaintiff's claim was barred by her assumption of the risk of participating in the cheerleading activity.

**DISTRICT COURT DECISIONS.** The University won all six of its cases heard this year in state and federal district courts. In *Labor v. Board of Regents of the University of Minnesota*, the Ramsey County District Court granted summary judgment to the University on a slip and fall claim that occurred on the St. Paul campus just after a snow storm. The court concluded that while the University was removing snow and ice after the storm it was immune from suit so long as it was performing in accordance with its snow removal policy. The case confirms the effectiveness of well-developed internal policies to protect the University from liability. In *Johnson v. University of Minnesota*, the Hennepin County District Court granted summary judgment to the University on a claim under a University professional services contract. The court dismissed the claim based on the indemnity provisions of the contract. Two other cases were brought against the University by a former Cancer Center employee in Hennepin County District Court. In the first case, *Krampf v. University of Minnesota*, the former employee objected to the results of a grievance proceeding that confirmed his dismissal from employment; that lawsuit was dismissed on procedural grounds. He then brought a lawsuit against the University professor who had complained about his activities, alleging defamation. The Hennepin County District Court dismissed that case as well because it was barred by the statute of limitations.

THE OFFICE OF THE GENERAL COUNSEL WAS ESTABLISHED IN 1981 TO SERVE THE LEGAL NEEDS OF THE UNIVERSITY OF MINNESOTA, INCLUDING ALL THE UNIVERSITY'S CAMPUSES AND OPERATIONS. MARK ROTENBERG, GENERAL COUNSEL, SUPERVISES AND DIRECTS THE ACTIVITIES OF THE OFFICE, AS WELL AS THE ATHLETIC COMPLIANCE AND RECORDS AND INFORMATION MANAGEMENT OFFICES.

The University was in federal district court this year in two cases. In *Spoo v. Maciejewski, et al.*, 2004 WL 2457859 (D. Minn. 2004), the court awarded summary judgment to the University on a claim of improper arrest and excessive force by a University police officer. The court concluded that our officer enjoyed qualified immunity from such claims. In *Rasidescu v. University of Minnesota*, 2005 WL 159304270, (D. Minn. 2005), a University student sued to avoid the payment of tuition on numerous theories. The federal court dismissed the case for lack of jurisdiction.

OGC has also successfully represented the University in three **condemnation matters** to acquire land for recreational sports fields and completion of the tennis facility on the Minneapolis campus. After obtaining court approval for the takings, the issue of valuation was tried before three court-appointed commissioners. The University obtained a favorable award and paid that award with respect to the property owned by McLaughlin Gormley & King Co. The University reached a favorable settlement with respect to property owned by Lorraine Larson. The University obtained a favorable award with respect to property owned by Union Pacific Railroad, but the Railroad has appealed the award to district court and a trial is expected in late 2005 on the issue of value. The University has taken title to all three properties and is proceeding with its planned improvements.

**SETTLEMENTS AND OTHER RESOLUTIONS.** OGC resolved 13 contested cases through settlements this year. In two cases the University collected money; six were covered by insurance; and the remaining five were employment matters resolved with a payment by the affected University department or college. The most notable settlement this year involved an estate matter where the University, together with the Minnesota Attorney General, challenged the actions of a trustee. The University was the residual beneficiary of a trust from an elderly woman in a small Minnesota town who intended the University Cancer Center and Diabetes Institute to be significant beneficiaries of her estate. The matter was settled for approximately \$2.8 million.

## LEGAL ADVICE AND PREVENTIVE LAW ACTIVITIES

While litigation is a highly visible part of OGC's activities, much of the most important legal work of the office is aimed at preventing legal difficulties before they turn into litigation. OGC advises, counsels, and conducts training in diverse areas, including labor and employment, affirmative action, University policy development, privacy, intellectual property, academic research, environmental law, and business and financial matters. Our extensive training and counseling activities enhance the University's compliance record and reduce the potential for grievances, administrative charges, and lawsuits. The following are a few of the more important counseling projects undertaken this year:

- OGC assisted the Board of Regents and administration in its comprehensive review of University policies governing organizations outside of the University that support its mission. (Our involvement in negotiating new legal agreements with the University of Minnesota Foundation and the Minnesota Medical Foundation is discussed below on page 9.) The activities of these "**associated organizations**" significantly affect the University's financial, legal, and reputational interests. At the President's direction, OGC attorneys reviewed the University's relationships with these associated organizations, cataloging their activities and legal structures. We then advised the Board in developing framing principles for the University's relationships with, and oversight over, the associated organizations. OGC attorneys are now working with the Board and members of the administration to develop a Regents Policy on Associated Organizations. OGC also has advised the senior leadership of the University on the development and implementation of three administrative policies pertaining to associated organizations: a policy on the use of the University's name, marks and logos; a policy on the use of agency accounts; and a policy on the use of University employees.
- OGC has been deeply involved in many aspects of work related to a new **on-campus football stadium** (discussed further on page 9). In 2005, OGC helped secure the University's designation by the Minnesota Environmental Quality Board as the governmental unit responsible for completing a review of potential environmental impacts of the proposed stadium. We advised the Board of Regents and senior administrators regarding the preparation of environmental review documents, including the year-long process to develop an environmental impact statement (EIS), and advised the administrators who selected the firms to complete both the EIS and a study of on-site environmental conditions. OGC lawyers routinely participate in meetings regarding the business, real estate, construction coordination, and other aspects of the stadium project.
- OGC provided counsel on the **two union organizing drives** that occurred at the University last year. The first was a faculty organizing drive in Crookston that resulted in a decision by the faculty on that campus to be represented by a union. The second was an organizing drive for the graduate assistants on the Twin Cities campus that resulted in a decision by the graduate assistants not to be represented by a union. Both organizing drives and elections were successfully conducted in accordance with Minnesota law and without any unfair labor practices.

- OGC developed and implemented a comprehensive program to review and certify the **admissions programs** of all University units that admit students for compliance with the U.S. Supreme Court's rulings in the University of Michigan affirmative action cases. Last year, OGC developed and presented a number of seminars for University admissions directors and senior academic administrators on the implications of the *Grutter* and *Gratz* decisions. This year OGC attorneys worked to certify the admissions criteria and procedures of each admitting unit for compliance with constitutional equal protection principles.
- OGC devoted significant effort during the past year to multiple aspects of the **protection and licensing of University trademarks**. OGC lawyers are working with the Department of University Relations in a comprehensive proposed restructuring and updating of the administrative policy for use of University names, marks, and logos. We are also involved with the Department of Intercollegiate Athletics in the licensing of University marks and logos and protecting them against infringement, including taking action against infringing parties. Our lawyers work with the University's Office of Patents and Technology Marketing (PTM) to choose appropriate names for new horticultural varieties, whether or not it is contemplated that such varieties will be patented. OGC counsels departments across the University in naming new projects and initiatives, determining whether or not name registration is appropriate, and identifying the best methods of protecting such names. We also search multiple databases to help University departments discover whether contemplated new names are claimed by others in order to avoid allegations of infringement.
- OGC regularly provides advice to the Sponsored Projects Administration (SPA) offices and other clients on agreements that propose restrictions on publishing the results of University research, and works to remove such clauses. In the past year, one contractual exception from the policy against **research secrecy** was approved by President Bruininks. It involved development of computer algorithms to help identify potential terrorist threats in mass transit systems. In another matter with national security implications, the University received a multi-year, several million dollar grant from the Department of Homeland Security to study ways to improve the security of the nation's food supply. OGC lawyers advised the grant's principal investigator on steps to ensure the confidentiality of information gathered under the study, and held discussions with federal officials on the need for governmental action to protect study data and results.



*OGC lawyers are working with the Department of University Relations to achieve a comprehensive restructuring of the administrative policy for use of University names, marks, and logos.*

- OGC has continued to provide counsel to University academic leaders and research faculty concerning **export control policy and compliance**. OGC has prepared educational materials (posted on the OGC and Vice President for Research Web sites) on export control basics and key problem areas for University researchers. This year, OGC provided training on export controls to the Council of Research Associate Deans, the Executive Council of the Institute of Technology (IT), and the faculties of two IT departments. Working with the Vice President for Research, SPA, and IT, OGC enhanced export control compliance by implementation of needed policies, procedures, and defined roles. OGC also assisted the Vice President for Research in submitting comments to the Department of Commerce in response to an advance notice of proposed rulemaking relating to possible export controls over the use of research equipment by foreign nationals.
- Working with the University's **international programs** office, OGC assisted in developing final procedures for the Administrative Policy on Suspending Education Abroad Opportunities Due to Health & Safety Risks, and providing education abroad waivers for University departments. This policy establishes a committee and a process for deciding whether to suspend education programs abroad when issues of health, natural disaster, or security make those programs vulnerable.
- OGC has worked closely with the University's Institutional Compliance Director and as part of a **compliance working group** to enhance the University's operations and processes in order to assure full compliance with federal and state laws and regulations, and University policies.
- OGC provided ongoing counsel on the development of Regents and University policies, and participated on the **Regents Policy Review Committee**, which is engaged in a multi-year process of reviewing all Regents policies. OGC also has been advising the Office of Human Resources policy revision process, which has been ongoing for some time.
- OGC has provided advice with respect to the **President's strategic positioning initiatives** approved by the Board of Regents in June 2005, and continues to work with the Executive Vice President and Provost and the Vice President for University Services on the implementation of those initiatives.

OGC attorneys provide many other preventive lawyering services on a daily basis, which include both individual client counseling and group presentations. Some examples include:

- Group training and individual advice for University supervisors on human resources issues, including discipline, just cause terminations, disability accommodations, medical leave, and other employment issues;
- Presentation of "Navigating the Maze of Legal Issues" to departmental heads and administrators;
- Legal updates for human resources professionals on the coordinate campuses;

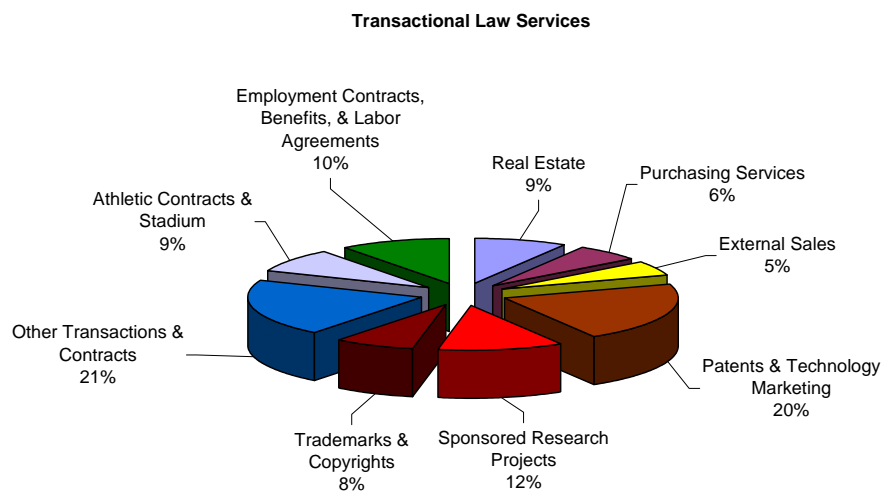
- ❑ Human resources orientation presentations on the union grievance process;
- ❑ Advising the Office of Information Technology (OIT) on protocols regarding security breaches, and counseling when breaches occur to address notice, reporting, liability, and other issues; and
- ❑ Training of student affairs personnel regarding student internships and issues of liability and contracting.

## TRANSACTIONAL LAW SERVICES

The attorneys and paralegals in OGC prepare, negotiate, and provide legal counsel for thousands of agreements entered into by the University each year. Many routine purchases, sales, permits, leases, releases, and licenses are completed by University departments using standard forms developed or approved by OGC. Our attorneys continuously make improvements to our Standard Contracts Library, working with clients to develop new form agreements and fine-tune existing ones. Nearly 200 forms are now available on the Library website, [www.ogc1.umn.edu/contracts/library](http://www.ogc1.umn.edu/contracts/library). University departments may utilize these pre-approved documents with confidence, knowing that significant legal issues have already been addressed by University attorneys.

However, there are hundreds of other instances each year where University clients require the personal assistance of OGC staff to create satisfactory agreements. These agreements are crafted not only to reflect precisely the business terms acceptable to the University, but also to minimize risk and conform to applicable University policies and the law. Daily contact between OGC staff and University administrators and faculty allows us to bring our legal insight and experience to bear on contract negotiations and the achievement of the University's goals.

As the chart below illustrates, OGC staff represent the University in transactions across a vast spectrum that includes sponsored research projects, patents and technology marketing, real estate, purchasing services, external sales, trademarks and copyrights, athletic contracts, employment contracts, employee benefits packages, union labor agreements, and many others.



Some agreements require months of concentrated attention by attorneys; others require only a few minutes. While the diversity of transactional work performed

by OGC and its importance to the University cannot be captured fully in a few paragraphs, the examples below illustrate the range of matters handled by our attorneys and paralegals.

- Among the most noteworthy contracts negotiated by University attorneys this year was a **twenty-five year Gopher football stadium naming agreement** with TCF Bank under which TCF will pay the University \$35 million for the right to have the new on-campus stadium bear its name. In addition to the core agreement, University attorneys were responsible for negotiating a series of **other important agreements with TCF, including a lease, an affinity card agreement, and an extension of the “U Card” agreement** between the parties. Taken together, the agreements are expected to generate many tens of millions of dollars for the University, including significant amounts for scholarships. Several TLSG attorneys brought their expertise to bear on this complex project in areas ranging from real estate to trademarks to income taxation, while use of expensive outside counsel was minimized. The naming agreement with TCF is the first of several expected sponsorship transactions that will contribute to bringing Gopher football back to the Twin Cities campus.
- OGC took a leading role in assisting the Board of Regents to establish **new contractual relationships with the University of Minnesota Foundation and the Minnesota Medical Foundation**, the University’s two major fundraising foundations. New memoranda of agreement between the organizations were negotiated by OGC and approved by the Board of Regents in April 2005 that strengthen the already strong relationships that exist between the University and its foundations.
- The University’s Real Estate Office looked to OGC for advice on a number of important transactions. This year, negotiations were completed on an agreement for the University to lease space in the newly renovated **University Enterprises Laboratory** building. The leased space is designed to facilitate interactions between high tech start-up businesses occupying space in the building and the University’s Office of Business Development, and the financial structure of the lease is driven by the University’s desire to foster the potential of these businesses to generate new jobs.
- The commercialization of the University’s intellectual property is a key component of its mission, and the enhancement of revenues from technology transfer is an integral part of the President’s strategic plan as approved by the Board of Regents. OGC lawyers advised PTM on several **technology licensing transactions** this year that led to the creation of new Minnesota companies and a likelihood of many new Minnesota jobs.
- OGC lawyers represented PTM in its licensing of a process developed by University researchers to extract islets from human and porcine pancreases. The process can be used to **treat diabetes and other diseases**. Through the transaction the University was paid a substantial upfront license fee and received an equity stake in the licensee, a Minnesota-based biotechnology company. The University now is working with the company to obtain FDA approval for the production of islets and NIH support for this public-private collaboration.

- University lawyers also represented PTM in a **multinational licensing arrangement** involving a University-developed process to extract resin from agarwood. The tree, which grows plentifully in Southeast Asia, is prized for its sap used in cosmetics and medicines. The University partnered with a Dutch nonprofit entity to commercialize the process for extracting the sap. The company agreed to pay the University a royalty on each “kit” sold to farmers to tap the agarwood trees. Under a program supported by the United Nations, the University agreed to make the technology available to farmers in Vietnam for no royalty fee.
- The University successfully negotiated a **software license agreement** with a major paint manufacturer in connection with an automotive color design program that was principally developed by a Computer Science and Engineering professor. The license agreement included an initial \$200,000 license fee for approximately two years, with a five-year renewal option for an additional \$300,000 fee. The software is licensed for use in the automotive and other motor vehicle coatings field.
- OGC assisted PTM in adapting a **license agreement for a “Living With Heart Failure” product** so that it could be efficiently administered via web-based enrollment and licensing. This approach permits fast and easy licensing by users while minimizing risk to the University, and enables PTM to realize significant savings by not having to process paper licenses for these users.
- OGC played an active part this year in the University’s initiatives related to **alternative fuel research**, providing contract advice for the West Central Research and Outreach Center **wind turbine** at the University of Minnesota–Morris (UMM) and Southeast Steam Plant **bio-mass fueled steam production** projects. The wind turbine project is illustrative of the complexity of many University transactions in which OGC provides counsel. This project involved buying the turbine; arranging for construction of the foundation; obtaining permits from the FAA and others; contracting for a power line to carry power from the generator to UMM; negotiating an interconnection agreement and a power purchase agreement with the local utility allowing excess power generated by the University to be sent to the grid, and assuring the University a reasonable price for the power it draws from the grid; negotiating a contract for power line maintenance; and documenting an agreement between University units to share the costs of the University’s participation in the project. An OGC attorney also served on a committee charged with making recommendations on whether the University should join the **Chicago Climate Exchange**, a collaboration among academic institutions, governments, and industry to use market forces to address emissions of greenhouse gases.
- OGC provided extensive counsel to the Office of Human Resources and the University’s Benefits Advisory Committee in their analysis of proposals from health care provider organizations. These proposals ultimately became **provider contracts for health care services** to University employees.

- Building upon the University's 2004 initial arrangement with Real Rhapsody, Inc. to provide students with a **legal and affordable means of downloading popular music**, OGC recently assisted the Department of Academic/Distributed Computer Services in a new contract with Ruckus Network, Inc. of Herndon, Virginia. In addition to music, the Ruckus contract makes available a broader range of services, including movie downloads and community services through which educational, editorial, and other content may be shared among faculty and students. According to OIT, during the past year illegal music downloads appeared to decline at the University for the first time, though it is not possible to monitor such activity precisely.
- OGC also is working with OIT to establish a **multi-state consortium to build and operate a regional fiber optic network**. This network will serve the advanced production and experimental network requirements of the University and of other leading research institutions by increasing the capacity of these institutions to conduct high tech and biotechnology research projects. The network also will enable the University to connect with similar projects on a national level, including the National Lambda Rail. OGC worked with OIT to draft a request for proposals that was sent out to network vendors and will assist in the negotiations covering the vendor agreements and in the creation of the consortium itself.
- Governmental and privately funded research agreements are a vital source of University revenue. This year OGC provided advice on a number of agreements involving University participation in **international and multi-party research collaborations**. These projects include: research on production of fish and animal foods from methane funded by the Research Council of Norway; participation in carp research as part of a \$100 million research center on invasive species in Australia; an NIH-funded therapeutic cell resource center at the University; and a proposed NSF-funded fluid power research center at the University that involves six other universities and dozens of companies. OGC also assisted with agreements that make foreign design rule technologies for designing microchips available to University research teams, and in securing on short notice an export license for an advanced Global Positioning System that was needed by a University faculty member for lake bottom/climate change research in Iceland.



*OGC played an active part this year in the University's initiatives related to alternative fuel research, helping to establish the West Central Research and Outreach Center wind turbine at the University of Minnesota-Morris (UMM) and the Southeast Steam Plant bio-mass fueled steam production project.*

- In furtherance of the University’s outreach mission, OGC assisted the College of Natural Resources in various agreements relating to the production and broadcast of a widely acclaimed **four-part television series “Minnesota – A History of the Land,”** which was broadcast on public television stations and made available to Minnesota K-12 schools. The series also included an accompanying musical score of original compositions by a well-known Minnesota musician.
- OGC assisted Boynton Health Services in its acquisition this year of a **new patient records software system** from NextGen Healthcare Information Systems. The system will allow Boynton to improve its ability to share and manage clinical and administrative patient information. OGC worked with Boynton to negotiate favorable terms on system acceptance testing, training, implementation, and compliance with data privacy requirements.
- OGC played an important role in negotiating the purchase agreements and closing the sales of **two significant real estate purchases.** An entire city block of property near the University’s Oak Street ramp was acquired by the University in a deal that required the seller to demolish the 11 houses on the block and dispose of hazardous materials identified in the course of the University’s pre-closing due diligence. The University also purchased a building at 717 Delaware Street that now houses the State of Minnesota Department of Health. A lease was negotiated as part of that transaction to allow the Department to continue to occupy the building until its new headquarters in St. Paul is ready for use. Other examples of real estate transactions that benefit more than one unit of government were **agreements with MnSCU,** whose Itasca Community College is built on land in Grand Rapids leased from the University, that allowed for the financing of a new residence hall, and agreements with the City of East Bethel that will result in the relocation of a road bisecting the **University’s Cedar Creek Natural History Area (CCNHA)** and the city’s development of hiking and skiing trails through part of the Natural History Area to serve local residents and expose them to the CCNHA.
- OGC also provided representation in numerous transactions involving copyright and related issues that are important to the University’s libraries, museums, OIT, and other units. These transactions, of which there are several hundred, range from the licensing of an electronic journal to the University’s use of the internet to disseminate research findings. Examples include contracts to acquire library and archival works and **cooperation agreements with libraries,** including an agreement with the State of Minnesota through which the University provides library services to state libraries and to the libraries of the states of North Dakota and South Dakota.
- OGC helped negotiate an **aggregate savings to the University of nearly \$1,000,000** in expenses in several disputed contract situations. One involved a renegotiation of the amount of assets allocated to a trust from which the income directly supports University student scholarships, resulting in significantly more income to the scholarship fund. Another disputed matter involved the scope of technical support services to be provided to the University over several years by an outside vendor, realizing a savings of hundreds of thousands of dollars for the University.

## ATHLETIC COMPLIANCE OFFICE

The Athletic Compliance Office, which reports to the General Counsel, works with all of intercollegiate athletics regarding the National Collegiate Athletic Association (NCAA), Big Ten Conference, and Western Collegiate Hockey Association (WCHA) rules. The office works with 25 teams and over 700 student-athletes. In addition, the Athletic Compliance Office works closely with the Academic Counseling and Student Services, Admissions, Financial Aid, and Registrar's offices. The functions of the Athletic Compliance Office include education, policy and procedure development, monitoring rules compliance, and investigation and enforcement of rules.

Over the course of the 2004-05 academic year, the Athletic Compliance Office conducted more than 25 educational seminars regarding rules compliance for units both within athletics and across campus. Nearly 900 individuals attended these seminars. In addition, the Athletic Compliance Office met with every team - over 600 student athletes - to review NCAA rules during the first week of school. For the second straight year, the Athletic Compliance Office, in conjunction with the Kinesiology Department, offered a course for credit on NCAA governance issues in higher education which attracted more than 20 students.

This past year the Athletic Compliance Office worked in conjunction with the University Audits Department to review the eligibility certification work done in the Office of the Registrar and to audit the volleyball program. The Big Ten Conference also sent a representative to review our certification procedures, and the Athletic Compliance Office itself conducted more than 15 audits of coaches' activities.

The Athletic Compliance Office conducted 27 investigations in 2004-05 and submitted reports of 37 violations of NCAA and Big Ten Conference rules. Fortunately, all of these violations were considered to be secondary infractions under NCAA guidelines. The Athletic Compliance Office also submitted approximately 30 official requests for waivers or "variances" of either NCAA or Big Ten rules.

## RECORDS AND INFORMATION MANAGEMENT

The Records and Information Management Office coordinates the development and implementation of a strategic plan for departmental and University-wide records management; provides advice, training, and direction on federal, state, and institutional records requirements; and oversees the collection, use, and dissemination of data in accordance with the Minnesota Governmental Data Practices Act (DPA) and other state and federal information disclosure laws.

This year the office responded to approximately 35 requests from the media, and over 100 requests from the public, for information about contracts, bids, budgets, salaries, athletics, research, construction, audits, and other matters.

The office co-chairs the University's privacy committee which addresses growing concerns about privacy related to electronic and traditional paper-based data. This year, the privacy committee established a website for University staff on privacy issues. Our office also participates in the compliance partners program.

The office continued this year to expand its training offerings, including a training program called “Privacy for University Staff;” collaborated with the Office of the Registrar in presenting training sessions on the Family Educational Rights and Privacy Act (FERPA) and the DPA, and delivered similar training sessions in HR orientations and HR-Pros meetings. Training was also provided on the coordinate campuses.

The office continued to work with University units to develop tailored records retention schedules and to help them clean out files and storage areas while appropriately maintaining institutional records. The office also trained University staff on the appropriate methods for destroying information.

Our Records and Information Management Director, Susan McKinney, was recently elected President-Elect of the Association of Records Managers and Administrators, International (ARMA). She also serves as host of the records management listserv, and is an internationally known speaker on records related issues.

## REPORT ON THE USE OF OUTSIDE COUNSEL

The total sum paid from OGC’s budget to outside counsel for FY 05 was \$813,094. Total outside counsel legal expenditures incurred by the University during this fiscal year were \$4,267,008, a majority of which was related to insurance defense and patent and technology marketing matters.

Regents Policy requires OGC to carefully manage the cost of all outside counsel retained to provide legal services to the University. While the professional qualifications of the outside counsel we select to represent the University are the foremost criteria applied, we also seek attorneys who provide reasonable rates and demonstrate economical use of attorney and staff resources. We request and often receive discounted hourly rates from our outside counsel. We also routinely require written budgets on matters that may incur large fees, and aggressively enforce the University’s expense limitations and payment policies.

The use of in-house counsel is far more economical for the University, as costs per hour for legal services performed within the office are approximately 40% less than those of outside counsel. In



addition, and beyond the issue of cost, the *quality* of legal services the University receives is enhanced by OGC attorneys’ intimate knowledge of the University’s unique structure, operations, priorities, and values. Often this reduces preparation time that would be required by outside counsel less familiar with the University, and provides more focused counseling tailored to the unique issues facing our clients. Routine feedback from our clients suggests that our OGC legal team provides high quality legal services on a level at least equal to that provided by leading private firms.

## BIOGRAPHICAL NOTES

### GENERAL COUNSEL

**MARK B. ROTENBERG**, General Counsel. Mark has served as the University's General Counsel since 1992. Before coming to the University, Mark was a partner at Dorsey & Whitney in Minneapolis, specializing in employment litigation and labor law. Previously he served in the Department of Justice's Office of Legal Counsel, which provides legal counsel to the President, the White House staff, and heads of federal executive departments and agencies. He also served in Washington as law clerk to Judge Patricia M. Wald on the United States Court of Appeals, D.C. Circuit. Mark earned his B.A., *magna cum laude*, from Brandeis University, and J.D., M.Phil. and M.A. degrees from Columbia University where he served as editor of the Columbia Law Review and was twice named Harlan Fiske Stone Scholar in the Law School. For years Mark has been an Adjunct Professor at the University of Minnesota Law School, teaching a seminar on the constitutional powers of the presidency, and an Adjunct Professor in the University's College of Liberal Arts, teaching a seminar on public education and the Constitution. During the spring semester 2004, Mark was on sabbatical as Visiting Professor at the Hebrew University Law School in Jerusalem. Mark has argued and won cases in the U.S. Supreme Court, U.S. Court of Appeals, Minnesota Supreme Court, Minnesota Court of Appeals, and other forums. He is a member of the American Law Institute, and has been named a "Super Lawyer" by Minnesota Law & Politics and Twin Cities Business Monthly.

### OGC ATTORNEYS

**DONALD M. AMUNDSON**, Associate General Counsel. Don joined the Office of the General Counsel in June 1996. Don, a member of the Transactional Law Services Group, focuses on patent and technology transfer, intellectual property, and general business matters. Don received his law degree *cum laude* from the University of Minnesota in 1980 after earning his baccalaureate degree *summa cum laude* from St. Olaf College, where he was also a member of the Phi Beta Kappa Honor Society. Don's prior legal experience includes private practice at Dorsey & Whitney as well as in-house work for several corporations.

**BRENT P. BENRUD**, Associate General Counsel. Brent joined the Office of the General Counsel in January 2005. Brent practices in the areas of labor, employment, and litigation. Before joining the OGC, Brent was a shareholder in the law firm of Stettner, Miller and Cohn, P.C., in Denver, Colorado. There he represented public school districts, community colleges, and school-related professional organizations in a variety of labor, employment, litigation, and school law matters. Brent received his J.D., *cum laude*, from the University of Minnesota Law School in 1992. He received his B.A., *magna cum laude*, in 1989 from Luther College, in Decorah, Iowa.

**MARK A. BOHNHORST**, Associate General Counsel. Mark has served as Associate General Counsel since 1992. Mark's practice previously focused on civil litigation including health science and research matters. Since January 2001, Mark has been part of the Transactional Law Services Group and practices in the areas of research contracts and compliance. Prior to joining the Office of the General Counsel, Mark was the litigation coordinator for Southern Minnesota Regional Legal Services. He is a graduate of the University of Chicago, received his law degree *magna cum laude* from the University of Minnesota Law School in 1975, and served as law clerk to U.S. District Judge Earl Larson.

**GREGORY C. BROWN**, Associate General Counsel. Greg has been an Associate General Counsel since 1991. He is a member of the Transactional Law Services Group whose primary areas of practice involve patent and technology transfer, intellectual property, and business matters. Prior to coming to the University, Greg worked as an attorney with Leonard, Street & Deinard in Minneapolis. Greg graduated from the University of Michigan Business School in 1980 and its Law School in 1984.

**SHELLEY CARTHEN WATSON**, Associate General Counsel. Shelley joined the Office of the General Counsel in 1999. Her practice is primarily devoted to labor and employment matters. Prior to coming to the University, Shelley was a partner with the law firm of Robins, Kaplan, Miller & Ciresi, and served as Deputy Commissioner of the Minnesota Department of Human Rights and as Executive Director of the Hennepin County Bar Association and Hennepin County Bar Foundation. Shelley is an honors graduate of Macalester College and received her law degree from Northwestern University in 1985.

**WILLIAM P. DONOHUE**, Deputy General Counsel. Bill has been Deputy General Counsel since 1996 and has served in the Office of the General Counsel since 1982. Bill guides the overall administration of the office and coordinates all University litigation. Prior to coming to the Office, Bill was on the staff of the Minnesota Attorney General. Bill is a graduate of Carleton College, and received his law degree *cum laude* from the University of Minnesota in 1974. He has taught Higher Education and the Law through the College of Education for several years.

**KEITH A. DUNDER**, Academic Health Center Counsel. Keith has served as Academic Health Center Counsel, and formerly the University's Hospital Counsel, since 1990, and practices in the areas of health care law and tort litigation. He is a former member of the Governing Council of the Health Law Section of the Minnesota State Bar Association and former co-chair of the Medical-Legal Committee of the Hennepin County Bar Association. Keith graduated *cum laude* from the University of Minnesota Law School in 1978. He served as an associate and partner at Mahoney, Doherty & Mahoney, and as a partner at Rossini & Dunder, where he concentrated in litigation and health care law.

**JENNIFER L. FRISCH**, Associate General Counsel. Jennifer has served as Associate General Counsel since 2003. Jennifer's practice is primarily devoted to litigation. Prior to coming to the Office of the General Counsel, she was an attorney at Kelly & Berens, P.A., in Minneapolis. During the 1997-98 academic year, Jennifer was Adjunct Professor of Law at William Mitchell College of Law. In 1992, she received her undergraduate degree *magna cum laude* from Macalester College. In 1995, she received her law degree *cum laude* from the University of Minnesota Law School, where she received the Best Oralist award and was Managing Director of the Maynard Pirsig Moot Court.

**ARNIE H. FRISHMAN**, Associate General Counsel. Arnie joined the Transactional Law Services Group in 2000. His practice is primarily devoted to general commercial matters, especially purchasing and external sales. Prior to coming to the Office of the General Counsel, he was in private law practice dealing with transactional and real property law, and a litigation associate with Dorsey & Whitney. He is a *summa cum laude* graduate of the University of the South at Sewanee (Tenn.), and received his law degree from the Columbia University School of Law in 1992, and Masters in Education from Harvard University in 1988.

**KENNETH A. LARSON**, Associate General Counsel and Director of Transactional Law Services. Ken joined the Transactional Law Services Group in 2001 and has been its Director since in 2003. Ken practices primarily in the area of real estate law, and also counsels clients in a broad range of commercial matters. Prior to joining the General Counsel's office, Ken was a shareholder in the Minneapolis law firm of Head, Seifert & VanderWeide, P.A., and an Assistant Ramsey County Attorney. He is an honors graduate of Macalester College and received his law degree *cum laude* from the University of Minnesota in 1975.

**SAUNDRA A. MARTELL**, Associate General Counsel. Sandra joined the Office of the General Counsel in 1999. Sandra's transactional practices range from acquiring utility services to protecting copyrights in works of art. She works closely with Facilities Management, the Purchasing Department, the Office of Business Community and Economic Development, Outreach and Research Centers, coordinate campuses, libraries and museums, and the University Press. Sandra is responsible for the Standard Contracts Library and the President's Delegations of Authority Library. Before coming to the Office of the General Counsel, she served as General Counsel of S.J. Groves & Sons Co. Sandra has also served as a Judge on the U.S. General Services Board of Contract Appeals, as an Assistant General Counsel of the U.S. Department of the Navy, and as Special United States Attorney in the Justice Department's Criminal Division, Fraud Section. She is a graduate of Vanderbilt University and received her law degree from the University of Virginia in 1971.

**ROSALIE W. O'BRIEN**, Associate General Counsel. Rosalie joined the Transactional Law Services Group of the Office of the General Counsel in 2004. Before coming to the University, she was a partner in the St. Louis office of Sonnenschein Nath & Rosenthal, where she specialized in corporate governance, transactions, and affiliations. Rosalie has also practiced law in Chicago, Illinois and Richmond, Virginia, and is a certified public accountant. In 1981 Rosalie earned a B.S. in accounting from the University of Illinois, with college honors and high distinction in accounting, and earned her C.P.A. In 1987 she earned her J.D. from Northwestern University School of Law, where she was a member of the Law Review. She has also attended the University of Virginia Law School, and is a member of the Corporate Governance and Law and Accounting Committees of the American Bar Association. Before embarking on her legal and accounting career, Rosalie was a violinist in the Milwaukee Symphony Orchestra.

**BARBARA L. SHIELS**, Associate General Counsel. Barbara has served as Associate General Counsel since 1983. Her practice focuses on health sciences research, including human and animal subject regulations, academic misconduct, and student issues. Barbara recently served as a member of the board of directors of the National Association of College and University Attorneys. She is a *summa cum laude* graduate of Gustavus Adolphus College and received her law degree *cum laude* from the University of Minnesota in 1983.

**BRIAN J. SLOVUT**, Associate General Counsel. Brian joined the OGC in 2003 and practices primarily in the area of litigation. Before joining the Office of the General Counsel, Brian was a partner in the law firm of Hinshaw & Culbertson in Minneapolis, and an associate with the Minneapolis law firm of Popham Haik. He received his law degree, *magna cum laude*, from the University of Minnesota Law School in 1993, where he served as an Associate Editor of the Minnesota Law Review and was a member of the Order of the Coif. After graduating from law school, Brian served as a law clerk on the Minnesota Supreme Court.

**TRACY M. SMITH**, Associate General Counsel. Tracy has served as Associate General Counsel since 1994. Tracy practices in litigation and provides advice in the areas of student affairs, employment, privacy, and data practices. Prior to coming to the Office of the General Counsel, she served as law clerk to Judge Max Rosenn, United States Court of Appeals for the Third Circuit. Tracy was also an Assistant Attorney General for the State of Minnesota. She is a *cum laude* graduate of Georgetown University and received her law degree *magna cum laude* from the University of Minnesota in 1988, where she was articles editor of the Minnesota Law Review and a member of the Order of the Coif.

### **ATHLETIC COMPLIANCE OFFICE**

**FRANK KARA**, Director. Frank was appointed by the General Counsel in 2000 to be the University's Athletic Compliance Director, after serving for seven years as the Assistant Director. He graduated *cum laude* from the University of Minnesota in 1990, and received his law degree from the University of Minnesota Law School in 1993. Frank directs the University's compliance with NCAA and Big Ten Conference rules for the Intercollegiate Athletics Department on the Twin Cities campus.

**J. T. BRUETT**, Associate Director. J. T. joined the Office of Athletic Compliance full time in November 2001, coming from the University of Illinois at Chicago where he served as Compliance Director, and previous to that Assistant Baseball Coach. He graduated with a bachelor's degree from the University of Minnesota in 1993 and received his Masters in Athletic Administration from the University of Illinois at Chicago in 2000. J. T. assists Director Kara on a wide range of compliance activities relating to NCAA and Big Ten Conference rules for the Intercollegiate Athletics Department.

**JAY LARSON**, Assistant Director. Jay began his Assistant Director duties in August 2005. He previously served as an intern in the Office of Athletic Compliance while completing law school. Jay assists Director Kara with a wide range of compliance activities relating to Big Ten Conference and NCAA rules, focusing primarily on financial aid and recruiting regulations. He received a bachelor's degree, *magna cum laude*, from Minnesota State University-Mankato in 2002, and was a team captain of their basketball program. He earned his law degree, *cum laude*, from the University of Minnesota Law School in 2005, where he was managing editor of the Minnesota Law Review.

### **RECORDS AND INFORMATION MANAGEMENT OFFICE**

**SUSAN MCKINNEY**, Coordinator. Susan has been the Coordinator of Records and Information Management at the University of Minnesota since December 1995. She previously served for 10 years as the Director of Records Management at the University of Florida. Susan received her M.A. in History with an Archival, Museum and Editing studies concentration from Duquesne University in 1982, and Certification in Records Management in 1993. Susan is responsible for the international Records Management Listserv, and is President-Elect of ARMA International, the professional association for records and information management.