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COLLEGE AND UNIVERSITY RESPONSES TO THEIR LEGAL ENVIRONMENTS: RE-ACTIVE OR PRO-ACTIVE

The Ohio State University

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COLLEGE AND UNIVERSITY RESPONSES
TO THEIR LEGAL ENVIRONMENTS:
RE-ACTIVE OR PRO-ACTIVE

DISSERTATION
Presented in Partial Fulfillment of the Requirements for
the Degree Doctor of Philosophy in the Graduate
School of The Ohio State University

By
William John Thompson A. B., M. A.
******
The Ohio State University
1981

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To my parents, whose support and love have made this possible.
ACKNOWLEDGEMENTS

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The Relationship Between the Law and Higher Education

In 1936 Edward C. Elliott and M. M. Chambers wrote one of the earliest volumes on the relationship between post-secondary education and the law with the expectation that their work would aid administrators "charged with the responsibility of wisely conserving our higher educational institutions as these (laws) are tested and retested in those great laboratories of the law, the courts of justice" (Elliott, 1936; x). The respect for and suggested deference to courts of law offered by Elliott and Chambers finds little support among contemporary college and university administrators.

Faculty members and administrators of the eighties are more likely to be sympathetic to the view expressed by William Kaplin in the preface to a very recent volume on law and education. Borrowing from Carl Sandburg's "Fog", Kaplin likens the arrival of law on campus sometimes to a beacon and other times to a blanket of ground-fog. He continues his metaphorical writing claiming that unlike the fog, the law has not come "on little cat feet...nor has it sat silently on its haunches; nor will it soon move on" (Kaplin, 1978; vii). Kaplin states the law has come noisily and has stumbled but it has spoken and will continue to speak forcefully to higher
education. He suggests the task facing academe is to make the presence of law on campus more of a beacon and less a fog (Kaplin, 1978).

A lead article in a recent issue of the Ohio State University Monthly may best represent the feelings of many contemporary academics towards the courts: "Once a sanctuary, the university is now plagued with growing intervention" (OSU Monthly, 1980). Speaking on behalf of many of her colleagues, Gouldner (1980) has gone so far as to attack litigation and its ever present threat on campus as leading to increased secrecy at most colleges and universities. This in turn, she suggests, thwarts attempts to maintain an atmosphere conducive to the growth of collegiality. The new wave of litigiousness has increased administrative hesitancy in decision making thus leading to a crisis in confidence in university and college administrators. Overall she claims we risk the danger of becoming a community dominated by legal norms, an option she does not view as attractive (Gouldner, 1980). Dean Gouldner asserts that academe must defend its own way of life and plan its own future.

A literature, highly rhetorical in nature, but consistent in its condemnation of the law on campus is developing. Clearly there must be some individuals who welcome the law or there would be no plaintiffs for the actions brought against colleges and universities. But while these individuals and their attorneys are writing briefs, faculty members and administrators write calls to arms for their colleagues. The fog, the plague, the assassin of collegiality - the law - is anathema to many individuals charged with the governance of
colleges and universities. Shaping the relationship between the law and higher education is one of the most serious problems facing these administrators in the eighties.

A Changing Environment

The courts once viewed by Elliott and Chambers as "great laboratories" are today viewed as institutions meddling in the affairs of higher education. What event or events could cause such a drastic change in attitudes on the part of so many people in a forty-five year period? With a new system of government following the American Revolution, the evolution of new laws and attempts by the courts to clarify a mysterious constitution, changes had to occur in the relationship between colleges and the courts over time. Since the founding of Harvard in 1636 many changes have occurred, but they have been gradual and not very obtrusive. However the last twenty years have witnessed many more radical changes.

Between 1789 and 1896 only 3,096 court cases were recorded which significantly affected the administration of schools and colleges. However, in the latter part of the sixties alone there were more than 3,500 such cases (Hogan, 1974). That five year period resulted in 500 more cases than were litigated in the first century of formal governance in this country. Successful challenges to colleges in the sixties have fueled the hopes of would be litigants in the seventies, thus furthering the growth in the number of court challenges to post-secondary institutions. The eighties may eventually make the late sixties look calm with respect to litigation.
When Elliott and Chambers wrote *The College and The Courts* it was considered a "pioneer effort," and few volumes were written in the decades which followed. However, a recent legal bibliography compiled for college administrators by Patricia Hollander (1979) lists six books, all published within the last decade - three within the last four years. Four up-dating services focusing on legal issues have emerged in recent years. Several legal yearbooks and journals are now published, many of which have an emphasis on higher education. As the field of study continues to grow there are more and more publications based on specific sub-areas of the law. This emergence of literature attests both to a change in the presence of the law on campus and to a change in the attention its presence commands.

As the law became more pervasive in higher education, attorneys or legal officers appeared on more and more campuses. At some institutions legal counsel was called in as needed, but other institutions created full-time, on campus positions. Although these attorneys initially functioned in isolation, an organization recognizing legal issues as a common concern for all of higher education emerged to integrate the efforts of these individuals. As a result, the increase in the pervasiveness of the law on campus was paralleled by the formation and growth of an organization to serve the needs of attorneys who represent colleges and universities. The National Association of College and University Attorneys (NACUA) was founded in 1961. NACUA offers programs to help universities and colleges to understand better and to cope with changes in
institutional legal environments. This organization collects, reviews and disseminates information about changes in the law as it affects post-secondary education. NACUA also provides support directly to member attorneys. When the association commenced operations in 1961 it included counsel for thirty-five institutions among its ranks. After two decades of growth, NACUA now serves nearly eight hundred institutions and approximately twenty-two hundred attorneys who represent them (NACUA, 1981).

The change in administrative attitude towards the courts, the increase in litigation, the sudden explosion of law and higher education literature and the emergence of NACUA as a formidable force among higher education organizations all signify a change in the legal environment of colleges and universities. Kaplin (1978) reminisces about a day when higher education viewed itself as removed from, if not above, the world of the law. Academia, he suggests, was like "a Victorian gentlemen's club whose sacred precincts were not to be profaned by the involvement of outside agents in its internal governance" (Kaplin, 1978; 4). The outside world perceived the academic environment as complex and delicate, and in some ways special. As a result, the legislatures, administrative agencies, and the courts showed great deference to colleges and universities (Kaplin, 1978).

The Contemporary Scene

The day is gone when outsiders view colleges and universities as gentlemen's clubs. The courts and the legislatures are now willing
to examine the activities of colleges and universities. As a result, students are suing institutions for any action which may slow their progress towards a degree. Aggrieved faculty members turn to the courts to protect, if not insure, their positions. Due process and constitutional rights have become part of the campus vocabulary. Regulatory agencies promulgate regulations which increase the impact they have on college and university decision making. Given the option of complying with regulations or losing funding most institutions acquiesce. There can be no question that a change has occurred in the legal environment of every college and university, and that change has been most drastic in the last twenty years.

Many events have led to this change in the nature of the relationship between colleges and universities and the law. These events will be documented in the historical evolution of post-secondary education's legal environment presented in chapter two. For the time being, how the change occurred is not crucial, rather, it is sufficient to establish that a significant change has occurred and that it results in a challenge to colleges and universities. That challenge is both real and substantial.

Institutional Response

Faced with a changing environment colleges and universities can respond in one of three ways: they can ignore the changes and continue to function the way they always have; they can react to changes by meeting the demands of each change and adjusting to accommodate
them; or they can become pro-active working to control and reshape the environment, limiting the effect its changes have on them. Although some institutions may adopt an "ostrich-like" posture, sticking their heads in the sand until such time as the problem disappears, such a stand would soon prove untenable. A college choosing to ignore court challenges and failing to comply with Federal regulations would soon find itself faced with contempt of court citations and with a loss of funding sources. If the institution chose to maintain its course of non-acceptance of the existence of environmental constraints it would eventually be forced to close its doors. The contemporary legal environment is too complex and too pervasive to be ignored.

Terreberry (1967) hypothesizes that organizational change is largely induced by changes in its environment and that system adaptability is derived from the organizational capacity to learn and perform according to changing contingencies in the organization's environment. She argues that effective adaptation requires acquisition of advanced knowledge of impending external events, active searching for more advantageous input/output transactions and available memory of alternative input/output components. Accepting her hypothesis, one would expect that if colleges and universities choose to work towards survival then some internal changes will be induced by the changing legal environment. It seems she favors a pro-active stance, but at the very least she recommends acknowledgement of environmental change and some form of reaction.

Thompson (1967) observed that when faced with heterogeneous
environments organizations tend to identify homogeneous subsections and establish structural units to deal with each. He also noted that when the range of variations in task environments is unpredictable localized units are necessary to monitor the environment and plan responses.

Until the sixties colleges and universities were unaccustomed to government regulation. The institutions had always resolved questions of who would have access to higher education, who would graduate and who would teach without assistance from "outsiders." Now these same institutions are expected to respond to rules from each of the three branches of the Federal government as well as state laws and local ordinances. In the sixties many institutions, especially more complex universities, had experts who understood the complexities of administrative law or monitoring and lobbying pending legislation, but the individuals with these skills were teaching in the law schools and the political science departments on campus. At that time these skills were not present in most college and university administrators. Expertise in an academic discipline, tenure as a faculty member, some experience as a department chairman, interpersonal skills and possibly some budgetary experience were considered the prerequisites for administrative service. No one perceived any need for legal expertise.

In the eighties, the scenario is different. Colleges and universities are expected to be aware of court decisions and the effect they have on institutional policies even though attorneys may differ on the interpretations of these opinions. The same
institutions must be in compliance with federal regulations which often require several hundred pages of interpretations and guidelines. Colleges and universities need to file detailed reports with federal agencies to demonstrate compliance with the laws. The institution must always be prepared to go to court and justify its actions. Future changes in the legal environment could broaden the already wide variety of legal tasks faced by higher education. Traditional academic administrators lack the special skills and knowledge necessary to effectively handle so complex and broad a spectrum of challenges. With so highly specialized a field as the law, a highly differentiated unit with requisite expertise is necessary to monitor and prepare responses to this task environment.

The Boundary Spanning Unit

The membership explosion in the National Association of College and University Attorneys over the last twenty years documents one way institutions have adapted to changes. Retaining an attorney or establishing an office of university counsel has been the first step for many institutions trying to monitor and respond to the changing legal environment. Prior to 1961 few colleges or universities had full-time counsel, but today a full-time attorney, if not an office for legal affairs, is almost a necessity (Papke, 1977). For that reason the locus of this study will be chief officer of the localized unit which monitors the legal sub-environment of each institution. In some cases, this individual may command an office full of attorneys, in other cases, he may be a lawyer with sole responsibility
for all legal actions.

Problem Statement

This study will have two purposes. Examining institutions which have acknowledged the effect of the law on their campuses, it will explore the degree to which their responses have been reactive and the degree to which they have been pro-active. Further, it will attempt to identify organizational factors which may be related to the presence of a pro-active stance. Two terms from the literature on higher education and the law are equatable with the concepts of reactive and pro-active activities. They are, respectively, treatment law and preventive law.

Kaplin (1978) defines treatment law as attempts to protect the institution from real threats. Governmental threats of sanctions resulting from non-compliance with administrative regulations, the writing of contracts, actual litigation and other specific legal problems exemplify treatment law. This is the first step for many colleges and universities trying to survive environmental threats. It is a "knee-jerk", or reflex action. When threatened, most individuals and institutions initially seek protection. If a student sues a college, the college calls an attorney to prepare its response. If the Department of Education threatens to cut off funds due to non-compliance with Title IX regulations, the university hires a legal consultant to help set up a plan which will insure compliance.

These solutions meet short term needs of the institution.
Treatment law makes no attempt to buffer the organization from its environment nor does it attempt to reshape the legal environment to be less of an intrusive factor. Primarily reactive to the environment, this approach results in a very narrow, highly prescribed role for the office of university attorney. Much like an ad-hoc committee, the role of the lawyer would be to address a single problem. Once the problem was solved, his services would no longer be needed. Treatment law is a necessity and therefore is an accepted role for units providing legal services on campus (Kaplin, 1978).

If a college or university chooses to restructure the balance of power between itself and the law, the university can adopt an approach which includes some element of preventive law. Preventive law allows the university attorneys to establish legal parameters for the administration of the institution. This approach involves the attorney in policy planning, appealing court decisions, reviewing institutional rules, forms and practices, and lobbying efforts. It is a more offensive stance, whereby the institution tries to limit, if not reshape, the growth of the legal environment. Preventive law would necessitate greater autonomy for the legal officers. Their role would be more flexible and would enable them to initiate institutional changes. The result of effective preventive law would be a decrease in the amount of treatment law necessary. This proactive stance calls for a degree of permanence to the presence of the legal officer on campus. It acknowledges a long-term nature to the problem and looks at a variety of long-range solutions. Although the arguments of Kaplin (1978), Gouldner (1980) and others seem to call
for a more pro-active stance, preventive law is not readily accepted as a legitimate role for lawyers on campus (Kaplin, 1978).

Throughout this dissertation treatment law still be equated with a reactive stance and preventive law with a pro-active stance. This is not to suggest that they are mutually exclusive categories. The relationship between the two may best be represented along a continuum, with treatment law as pre-requisite to preventive law. Neither is an absolute. Rather there is a substantial "gray" area which represents the mixture of the two. Logic would suggest that a zero-base, or starting point for the continuum would be the absence of any institutional reaction to legal issues. Although institutions may have begun by ignoring the legal environment this stance would eventually have proved inadequate or inappropriate; today treatment law is recognized as a necessity. Since this study is limited to institutions which have passed this "zero base", it is more important to focus on the balance between treatment and preventive law.

![Figure 1](image)

**Figure 1**

Relation Between Treatment and Preventive Law

The danger of setting up a continuum is that it denotes a desired end state. Since treatment law may be "better" and somehow more advanced than no response to legal concerns, it would seem to follow
that preventive law may be "better" and somehow more advanced than treatment law. This is not the case. Although treatment law can exist in the absence of preventive law, the converse is not true. If it were possible to maximize on the use of preventive law, theoretically the need for treatment law would cease. Pragmatically this could never happen. The high degree of uncertainty precludes the ability to foresee all possible legal problems and deal with them in an effective manner which would prevent any need for treatment law. Everything can not be anticipated. Some aspects of treatment law will always be present. The researcher admits a bias towards the use of some preventive law, but makes no premise about the optimal balance.

Emergence of some preventive law on campus signals a step beyond treatment law. After that initial step, the relationship between increased preventive law and decreased treatment law, or, for that matter, effective management, is certainly not linear. There may be factors associated with preventive law which actually detract from institutional efficacy in other areas of its environment. The desirability or feasibility of maximizing preventive law is beyond the scope of this study. Rather, this research will examine the degree to which legal units exhibit behavior indicative of treatment and preventive law and organizational factors which may be related to this balance.

Structural Considerations

An examination of the activities of legal counsel will document
the degree of treatment and preventive law practiced in higher education. Variations can be anticipated from campus to campus. The organizational structure is one factor which may be related to the type of legal services. The level at which legal input enters the educational organization, the relative intra-organizational power of the legal sub-unit, the degree of legal officers' institutional affiliation in proportion to his affiliation to the legal profession, and the degrees of differentiation and integration of the legal affairs division within the college or university are all organizational factors which may be related to the approach to legal matters adopted by an institution. Insights from organizational literature will be used to examine the relationship of these factors to the ways the office of legal counsel functions.

Peculiarities of Educational Institutions

An important caveat at this point stems from the fact that literature developed on business organizations cannot always be applied, without some modification, to educational organizations. In a model examining intra-organizational power Hickson et al. (1971) mention, among other unresolved problems, the question of whether or not their model assumes "perfect knowledge by each sub-unit of the contingencies inherent for it in the actions of others" (p. 227). In an organization characterized as a "garbage can" where participation in decision making is very fluid (Cohen, 1972), an expectation of perfect knowledge is clearly inappropriate.

Weick (1976) has warned methodologists against applying
organizational models to "loosely coupled systems", like colleges and universities, and expecting them to fit. Any study of how a sub-unit of a university fits into the super-structure must consider the concept of loose coupling. Loose coupling is an attempt by Weick to convey an image of coupled events which respond, but each event maintains its own identity, and some evidence of separateness. Further, he suggests that individuals steeped in conventional organizational literature may view loose coupling as "a sin or something to be apologized for" (p. 6). No apologies or pleas for the forgiveness of sins will be offered. It is true that there is an element of risk in applying traditional organizational theory to educational organizations, but until a literature is developed which specifically deals with educational organizations, the literature developed on business organizations is all that is available. Aware of the risk, the exploration of organizations continues, albeit cautiously.

Hierarchy of Activities

Parsons (1960) has delineated three levels in a hierarchy of responsibility and control within an organization: technical, managerial, and institutional. The technical level is primarily concerned with task achievement. The admissions process, classroom teaching and recording of student data are all activities at the technical level. Policy formation is the responsibility of the managerial level. The college or university president and his cabinet, faculty members engaged in policy making and any other
individuals charged with administering internal affairs or mediating between the institution and its environment constitute the managerial level. This institutional level is charged with goal implementation and organizational legitimization. Governing boards best represent the institutional level in colleges and universities. These boards attempt to legitimize the role of the institutions in society, while assuring that institutional goals are realistic and attainable.

The boundaries between the levels within the Parsonian triangle are more discernable and less permeable in business organizations than they are in educational organizations. Unlike IBM or General Electric, positions or titles are not sufficient indicators of the responsibilities of individuals in educational organizations. This makes it difficult to clearly delineate educational positions within the Parsonian hierarchy. Further, the responsibilities of individuals can cross lines, sometimes an individual may function at the technical level and other times at the managerial level. While teaching a professor is working as part of the technical level, but when the same professor is writing university policy papers he is working at the managerial level. The boundaries are permeable in colleges and universities and individuals may perform functions at two or more levels. Colleges and universities are also different from business organizations in that a larger percentage of their staffs operate primarily in the technical level. Most business concerns would have a fairly "tall" triangle with a standardized ratio of managers to technicians based on a calculable span of
control. Colleges and universities are more likely to have elongated triangles with a vast base of technicians and relatively few higher level positions. As a result "technicians" in colleges include many highly trained professionals who would not usually be included in the common conceptualization of that term.

How the actions of the university attorney fit into the Parsonian triangle may be related to how the organization handles its legal environment. The attorney functioning at the technical level may find it very difficult to adopt a preventive law stance. If all of his actions are task focussed then his job can be highly prescribed. Preventive law defies a high degree of prescription and can not be isolated from policy making. Since policy making occurs at the managerial level, entrance into that level may be prerequisite to a pro-active stance and the accompanying practice of preventive law. It would be rare to find many legal officers performing duties at the institutional level, since this level is really limited to governing boards whose members are not involved in the day to day operation of the institution. As was mentioned, individuals may take on a variety of roles which operate at different levels in the Parsonian model. As a result, trustees may act as attorneys, but they do so in the role of lawyer, not trustee. At those times they are acting at either the technical or managerial level. Attempts by trustees to legitimize colleges and universities as institutions somehow above the law, argued from a normative perspective, might be institutional level preventive law. Such cases of preventive law at the institutional level are probably quite rare. Most legal actions
would be at the technical or managerial level.

**Relative Intra-organizational Power**

Power, an often used but rarely defined concept, is a property of a social relationship (Scott, 1970). Blau and Scott (1962) have defined power as the "probability that one actor within a social relationship will be in a position to carry out his own will despite resistance." The concept of actor need not be limited to individuals, it can also be applied to organizations, countries, or sub-units within the same organization. In the last case the power of one sub-unit of the organization vis-a-vis another sub-unit is that unit's intra-organizational power.

The power of the office for legal affairs vis-a-vis other offices within the university may be a factor related to the presence of preventive law. Hickson et. al. (1974) list three determinants of degree of intra-organizational power: ability to cope with uncertainty, degree of substitutability, and centrality. Uncertainty is characterized by a lack of information about the future, thus making alternatives and outcomes unpredictable. Substitutability is determined by the organization's ability to obtain alternative services if anything were to happen to the sub-unit. A sub-unit's centrality is determined by the "degree to which its activities are inter-linked into the system" (p. 221).

It is beyond the scope of this study to examine the relative power of countless sub-units of the university. However, it is possible to examine the self-perceptions of university attorneys on these three scales. Using scales similar to those used by
Hinings et al. (1974) it is possible to get some indication of the relative power of this sub-unit. Attorneys can be asked to record their perceptions of how their sub-units function within the organization.

Since only treatment, not preventive law, is readily accepted on campus (Kaplin, 1978), there is some opposition to expanding the role of legal officers to include preventive law. Involvement of legal offices in policy formation can be viewed as an increase in power for that sub-unit. That increase may be accompanied by a relative decrease in the power of some other sub-units of the institution. As a result, legal offices need a certain degree of intra-organizational power to overcome the opposition to the expanded role necessary for their offices to engage in or expand the role of preventive law.

Degree of Differentiation and Integration

The following hypothesis was supported by the research of Lawrence and Lorsch (1967):

Overall performance in coping with the external environment will be related to there being a degree of differentiation among subsystems consistent with the requirements of their relevant subenvironments and a degree of integration consistent with requirements of the total environment (p. 11).

Lawrence's and Lorsch's research demonstrated that organizations which are both highly differentiated and highly integrated are most effective at surviving environment changes. Differentiation was defined as "the state of segmentation of the organizational subsystem, each of which tends to develop particular attributes in relation to
the requirements posed by its relevant external environment" (pp. 3-4). Integration was simply defined as "the process of achieving unity of effort among the various subsystems in the accomplishment of the organization's task" (p. 4).

The hiring of an attorney to handle legal affairs is one step towards differentiation. The monitoring of the complex legal environment required a specialist. In most colleges and universities existing units were too broad in purpose to focus on this area and acquire the requisite specialized skills; segmentation was necessary. As a result a more specialized unit, an office specifically designed to handle legal concerns, was established. An examination of changes in budget, tasks, autonomy and specialization within this area will give some indication of changes in the degree of differentiation of legal services within the institution over the past decade. Changes in the frequency of meetings with supervisors, the number of reports written and the number of committee assignments may suggest patterns which have developed as integrative devices.

Initially differentiation seems to result from environmental changes. Integrative devices emerge soon after. If a symbiotic relationship develops between differentiating and integrating and each feeds on the growth of the other then a highly differentiated and highly integrated unit emerges. It would seem a unit so closely monitoring its aspect of the environment, frequently reporting back to the central co-ordinator and then becoming even more differentiated would be more sensitized to environmental changes and would want the option of taking charge rather than just waiting for cues. Somewhat
analagous to the soldier who has been prepared for battle and is armed and ready, the highly sensitized, well armed legal sub-unit may be more prone to a pro-active, rather than reactive, stance towards its environment. A relationship may exist between the degree of differentiation and integration and the type of law practiced by the college or university counsel.

University Counsel: Professional or Bureaucrat

Lawyers and doctors have long been considered paradigmatic of professionals. Scott (1966) found that professionals in bureaucratic organizations tend to resist bureaucratic rules, reject bureaucratic standards, resist bureaucratic supervision, and offer only conditional loyalty to the bureaucracy. This may be true of the relationship between attorneys and universities.

If an attorney's identification is primarily with the law his commitment to the institution is the same as it is to any client, to help with specific legal problems, not general issues. Lawyers lacking any formal training in education, unread in the literature of higher education and aspiring to careers in the legal profession may view themselves as "outsiders" at the institution. They may prefer to continue to deal with specific legal issues and be paid on a case by case basis. Treatment law may be the approach they favor. Other attorneys may choose to work in academic settings because of a duality of interest. They may be willing to become more cognizant of educational issues, earn academic degrees and involve themselves in the policy making process. These individuals may identify more
with the field of higher education than the law. They may have a broader, more long range interest in the institution and may favor a preventive approach for legal services.

Even if a lawyer is willing to involve himself more actively in the governance of the institution, he may face many obstacles. The lawyer on campus is a distinct anomaly. The paradigm of the professional in most settings, in the university he often has fewer years of education and less specialized a field than his peers. Many of the academic administrators at the colleges and universities spent five to seven years pursuing Ph.D. degrees in very esoteric fields. The lawyers may have spent as few as three years studying a field which some might view as "technical". Furthermore, most deans and presidents have spent years following the gradual route through the academic ranks to achieve positions of power in the governance structure of their colleges and universities. Few college or university attorneys have achieved their positions through parallel routes as law professors. This less than circuitous route to position and power for university attorneys may make it less likely that academic administrators will accept them as equals in the policy making process. These attributes coupled with the fact that many faculty members possess a generalized contempt for all things legal, which the attorney personifies on campus, may make a bureaucratic stance untenable.

Summary

The legal environment of colleges and universities has changed
in the past twenty years and there is no indication that it will be less of a factor for colleges and universities in the near future. Given its pervasiveness and complexity, ignoring it until conditions become more favorable, or trying to adapt without enlisting the services of attorneys seem to be untenable positions. Higher education must react. That reaction can be short range in focus or it can be long range. The response can be made at the technical level or it can take place at a policy making level. Colleges and universities must choose whether they will limit their reactions to treatment law, accepting the changes demanded by their environments, or if they will include preventive law, attempting to reshape their environments to be more conducive to institutional autonomy.

This paper will document the choices made by a sample of institutions. Further, it will attempt to identify relationships between selected organizational variables and the approach chosen by institutions to deal with legal concerns, and where relationships exist, measure the strength of those relationships. A few additional questions will be asked to help create a construct of legal officers and to identify possible issues for future study. In that sense this research is heuristic. The research is exploratory in nature. Rather than testing specific hypotheses, it attempts to discern key variables and identify possible relationships. In that way it may pave the way for future research.

The second chapter briefly traces the history of the law on campus. It notes key events and policy changes in the legal environment. With the setting established, chapter three zeroes in
on the literature on legal counsel in higher education. Chapter four describes the methodological approach and is supplemented by Appendices A through H, which detail the sample selection and data collection processes. The fifth chapter presents and analyzes the data. Conclusions and recommendations appear in chapter six.
CHAPTER TWO

HISTORICAL DEVELOPMENTS IN THE LEGAL ENVIRONMENT

In the previous chapter organizational responses to the changing legal environment were documented. Some of the environmental changes were gradual or had such limited impact on post-secondary education that the events went virtually unnoticed and often unrecorded. However, some changes were significant and were related to changes in the organization. The purpose of this chapter is to highlight these major changes in the relationship between the law and higher education. Events in the legal environments of colleges and universities which had demonstrable effects on the administration of these institutions will be detailed.

Colonial Colleges and Their Charters

Unlike their contemporary counterparts, the first three colonial colleges, Harvard, William and Mary, and Yale, did not commence operation as incorporated entities. Rather, they were "unincorporated provincial Latin grammar boarding schools governed by trustees" (Herbst, 1977, p. 5.1). Harvard received the sum of 400 pounds from the Massachusetts state legislature in 1637. With the granting of funds came an element of legislative control. In 1638 John Harvard gave a larger donation. One year later grants from both John Harvard and the legislature were received. With two benefactors there was
some question as to whom the college "belonged". Was it a state institution or a private institution for charitable purposes? This question would eventually be raised at every colonial college (Herbst, 1977). In 1650 Harvard became a corporation. The overseers would still control the college, but a degree of accountability would be demanded by the colony's legislature.

As early as 1718 a college student tried to take his college to court. This young lad, a student at Harvard, attempted to bring suit against his tutor. As a result, Harvard revised college rules to prohibit students, parents or guardians from taking college matters to court without permission of the corporation (Herbst, 1977). The nature of the corporation which governed most colleges was still an unresolved issue at the time of the American Revolution. It was unclear if colleges were civil corporations created for public purposes or private corporations founded by individuals to serve the needs of special groups. If the institutions were civil corporations then the state governments were free to set policy, appoint administrators or even close the college. Civil corporations are public institutions funded by and operating at the mercy of the legislature. On the other hand, charitable corporations are funded by private sources, sometimes established for specific private purposes. Although these institutions are not totally free from governmental regulation, that regulation is a factor in, not sole determinant of, policy. The public/private dichotomy is easy to describe in theory, but since most colonial colleges received funds from both public and
private sources, it is a false dichotomy. Institutional type could be better represented as a continuum. Most institutions fell somewhere between the two extremes of public and private, and a clear dividing line between the two did not exist. Whether or not two distinct types of colleges could even exist was questioned. The revolution delayed any attempt to resolve this issue. The war forced all of the colonial colleges, except Dartmouth, to close down. Buildings were requisitioned for barracks and campuses became battlegrounds for several years.

After the war the public/private issue was once again raised. Anti-elitism in the new democracy fueled a call for state college systems. The cry in Maryland, New York and Georgia was for "republican education under statewide public control" (Herbst, 1977, p. 15.25). When students destroyed the Old College Hall at Yale in 1782, a dispute between the state legislature and the trustees ensued. The legislature tried to "evict" the old trustees. The public/private issue was also hot in Philadelphia where the College of Philadelphia and the University of the State of Pennsylvania had to exist side by side for years (Herbst, 1977). Constitutional and legal questions were skirted when the Pennsylvania legislature negotiated a settlement in 1791 establishing the University of Pennsylvania as a self-governing corporation with self-perpetuating trustees. Similar problems were resolved by state legislatures in Connecticut and Maryland. Courts of law were not "troubled" by cases involving colleges. Charters were viewed as legitimate and modifications could be made by mutual consent of private boards and state
The issue of whether these colleges were civil or charitable corporations was almost forced into the court system in 1797. The grammar school master at William and Mary was dismissed when his school and position were abolished. He brought suit against the Visitors of William and Mary, a private governing board. The General Court issued a writ of mandamus, but the Court of Appeals denied the writ on the merits. According to the appellate court, the Visitors were acting within the scope of their authority. The century ended without any court addressing the issue of the distinction between private and public higher education. Most state legislatures were still settling both legislative and judicial questions. With the growth of public education, a showdown seemed inevitable.

The Dartmouth College Case

The republicans won the New Hampshire election of 1816 almost solely on the issue of the governance of Dartmouth College. The new governor attacked the aristocratic nature of self-perpetuating trustees and called for more effective state control. The state legislature responded first by changing the name of Dartmouth College to Dartmouth University and then effected other changes in the institution. The name change resulted from the fact that many states were establishing their own universities as comprehensive centers for higher education. If Dartmouth was to be the pride of the state of New Hampshire then it would have to be a university. The real issue had nothing to do with the name of the institution. In question was
whether or not the state legislature had the right to override a charter which had established a private institution, a decision ultimately to be made by the United States Supreme Court (Rudolph, 1962, pp. 208-210).

Dartmouth, like many colonial colleges, had been chartered by the English Crown. A charter had also been granted by the colony. In 1819 Chief Justice Marshall spoke for the Court stating that the college charter was like a contract which the state must honor. Dartmouth, like most other colonial colleges, was not a public institution but a private, charitable institution with a goal of public benefit. This decision had far reaching effects. Charitable organizations, private businesses and personal property were constitutionally protected from the whims of state legislatures. In particular, this decision was viewed as a step towards insuring the insulation of higher education from the whims of the general public (Rudolph, 1962, pp. 210-212). Further, a major step was taken towards clarifying the public/private distinction. This new found protection from state legislatures and the legal structure lasted for quite some time, but it was not impenetrable. Given time the courts would return to a position which refused to view the public/private division as truly dichotomous.

The Twentieth Century

The first half of the twentieth century witnessed colleges and universities totally insulated from legal concerns. The few cases which were litigated confirmed the special nature of post-secondary
institutions. The concept of "in loco parentis", literally "in the place of parent", gained favor as the definition of the relationship between colleges and their students. Shortly after the turn of the century, a restaurant owner brought suit against Berea College when it listed his establishment as off limits to students. Gott, the restauranteur, contended that the college was overstepping its bounds. The Kentucky Court of Appeals found that the college was within its legal rights, stating:  

"College authorities stand in loco parentis concerning the physical and moral welfare and mental training of the pupils, and we are unable to see why, to that end, they may not make any rule or regulation for the government or betterment of their pupils than a parent could for the same purpose." (Gott v. Berea 156 Ky. 376, 1913.)

The court had given colleges and universities a free hand when they wrote rules and regulations. After choosing to enroll at a given college, a student had virtually no rights other than those given by the institution.

The absolute right of the institution to define its relation with students was further solidified in the late twenties. A young woman was dismissed from Syracuse University when her sorority sisters stated she was not "a typical Syracuse girl." Ms. Anthony, the student, brought suit against the university challenging its right to dismiss her in such an arbitrary manner. Her effort was in vain. The opinion of the court read, in part:

"The University may only dismiss a student for reasons falling within two classes, one, in connection with safeguarding the University's ideal of scholarship, and the other in connection with safeguarding the University's moral atmosphere. When dismissing a student, no reason
for dismissal need be given. The University must, however have a reason...and the courts would be slow in disturbing any decision of the University authorities in this respect." (Anthony v. Syracuse 231 N.Y.S. 435, 1928.)

In the eyes of the courts attendance at a college or university was a privilege, not a right. Further, the courts were willing to trust the "good faith" of university administrators. An opinion from a case in Maryland perhaps best expressed this blind faith:

"Only in extraordinary situations can a court of law ever be called upon to step in between students and the officers in charge of them." (Woods v. Simpson 146 Md. 547, 1924).

Changes in the Composition of the Student Body

The end of the Second World War marked the beginning of a new period for American colleges and universities. Rudolph (1962) suggested this period might be called "The Age of the Report" as countless agencies prepared documents offering advice to higher education. Large state universities were now responsible for the education of many students. The nature of the student body was changing. One change in the make-up of the student body resulted from the passage and implementation of the GI Bill which led to the enrollment of large numbers of veterans in higher education (Rudolph, 1962). As the student population changed, the relationship between colleges and their students also changed. The arrival of many older, often married, more mature students on campus called the propriety of the doctrine of in loco parentis into question. Many of the GIs viewed their attendance as a right earned through service to their country, not a privilege. As the relationship between student
and institution changed the legitimacy of several legal precedents
was called into question.

The Constitution and Higher Education

Until 1960 the courts had failed to make any distinction between
public and private education when addressing constitutional rights in
higher education cases. In 1956 a student specifically pled
constitutional protection in a case of dismissal from the University
of Illinois. Two years earlier the Supreme Court had decided the
fifth amendment was applicable to the states through the fourteenth
amendment when it order school desegregation in Brown v. Board of
Education 347 U.S. 483 (1954). But the Illinois court dodged the
issue of whether or not the state university, as an arm of the state,
had to afford a student due process. Instead, People ex. re. Bluett
v. Board of Trustees of the University of Illinois 10 Ill. App. 2d
207 (1956) was decided on the determination of the adequacy of the
dismissal hearing. Until 1961 the courts assumed constitutional
safeguards were not applicable to state college/student conflicts.
Issues were usually decided on the basis of contract rather than
constitutional law (Millington, 1979).

Dixon Open the Floodgates

Changes in American society were often paralleled by changes in
colleges and universities. The end of the Second World War and the
passage of the GI Bill were followed by changes in the nature of the
student body on many campuses and in the relationship between those
students and their institutions. In the fifties, the United States
was forced to address its racial problems. Colleges and universities would also have to examine racial concerns on campus.

In Brown, the Warren Court indicated its willingness to use constitutional force to combat legislated racism. Black leaders were beginning to realize that non-violent activism brought attention to the problems faced by minorities. Rosa Parks refused to give up her seat on a Montgomery, Alabama bus to a white person. Boycotts, sit-ins and massive demonstrations appeared on the national scene (Millington, 1979). Black college students were often at the forefront of these demonstrations.

In February of 1960, Dixon and five other black students from the Alabama State College for Negroes entered a publicly owned lunch-grill in the county courthouse and asked to be served. Service was refused at the "whites only" luncheon. The students were ordered to leave by police officers. Most, if not all, of the six students also attended two subsequent protest marches and rallies. As a result of these actions, without notice or hearing, the students were expelled from the university (Kemerer and Deutsch, 1979). The Dixon case forced the courts to address the question of whether or not constitutional safeguards were applicable to public higher education. The appellate court answered in the affirmative:

"Whenever a governmental body acts so as to injure an individual, the constitution requires the act to be consonant with due process of law." (Dixon v. Alabama State Bd. of Educ. 294 F. 2d 150, 1961.)

Dixon cleared the way for a flood of constitutional cases. However, it is important to note that the court's concern for student
rights actually masked a genuine concern for civil rights. The Federal court was just following the lead set by the Supreme Court in Brown. The fact that the case took place in an academic setting was pure happenstance. From a higher education perspective, the "accidental" inclusion of colleges and universities in the interpretation of the fourteenth amendment of the constitution was unfortunate. Millington (1979) has claimed that the new constitutional accountability eventually meant diminished institutional autonomy for higher education.

Delineation of Civil Rights

The Civil Rights Movement became a model for student activism. What began as a free speech movement at Berkeley in 1964 blossomed into a full-scale student rights movement. Further fueled by the involvement of the United States in the Vietnam War, students tried to use their constitutional rights to the maximum. The Warren Court heard more fourteenth amendment cases in its sixteen year tenure than all previous courts combined. The court showed an interest in Civil Liberties and often ruled in favor of individuals claiming constitutional protection (Millington, 1979). A 1969 opinion written by Justice Fortas affirmed that academic settings were not immune from constitutional protection. Addressing the issue of whether or not elementary and junior high school students were free to express themselves at school, Fortas wrote:

"It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate." (Tinker v. Des Moines Independent Community School Dist. 393 U.S. 503, 1969.)
It would take time and extensive litigation, but eventually the court would affirm that no constitutional right was shed at the schoolhouse or the university gate.

As the courts acted to remove many of the in loco parentis constraints, colleges and universities reacted in artful ways so that their control would not be diminished. Students were still dismissed without the protection of due process. Newspapers were still censored. Leftist groups were still driven from campus. The one difference was that students refused to accept these actions and chose to fight (Millington, 1979). The court system seemed responsive to student challenges to institutions. Once an area with only a handful of cases each year, higher education cases filled many dockets. University cases so burdened the Federal Western District of Wisconsin Court in the late sixties that virtually all other business came to a halt (O'Neil, 1974). Although the number of disciplinary cases dwindled in the seventies, the fact that students had sued institutions and won gave hope to other students with complaints against colleges and universities. The courts were another arena, some thought a higher authority, in which they could plead their cases.

The Faculty and the Constitution

Demonstrations for civil rights, for changes in university policies or against the war in southeast Asia were not solely the territory of students. Faculty members found themselves involved in these causes. Like their students, they too occasionally found
themselves facing disciplinary actions. Since Tinker had included teachers in the fold of individuals retaining constitutional rights, they too resorted to the courts for protection.

The question of constitutional rights, especially freedom of expression and due process rights, in non-retention or tenure denial cases was addressed by the Supreme Court in 1972. David Roth, an assistant professor at the University of Wisconsin, was hired on a one year contract. That contract was not renewed. Roth took the University to court contending he had been punished for critical statements he had made about the university. This, he claimed, violated his first amendment rights to freedom of expression. Roth further argued that under the fourteenth amendment he was entitled to procedural due process, including the reason for his non-retention and the chance to be heard.

Since Roth was unable to prove his claim that his first amendment rights had been abridged, the court only addressed the issue of whether or not Roth's interest in continued employment was included in the fourteenth amendment concept of liberty or property. The court decided that an individual on a one year contract could not expect continued employment and since the university had said nothing about his competence or character his liberty had not been harmed. Board of Regents of State Colleges v. Roth 408 U.S. 564 (1972) affirmed the rights of colleges and universities to dismiss without hearing anyone who could not expect continued employment.

On the same day the Roth decision was announced the court affirmed in a different case that freedom of speech is an issue which
is related to employment. The opinion in *Perry v. Sinderman* 408 U.S. 593 (1972) reprimanded a lower court for trying to separate the two. After addressing the procedural issue the Supreme Court went on to examine the tenure policy of the Texas Community College System. The faculty handbook stated that faculty should feel secure in their jobs, which, the court decided, was a promise of continued employment. It was essentially a de facto tenure policy. Therefore, Perry was entitled to procedural due process. In *Slochower v. Board of Higher Education of New York City* 350 U.S. 551 (1956), the court had stated that due process was mandated in the dismissal of tenured faculty. Roth, Perry and other cases marked a change in the faculty/institution relationship. No longer was the decision of the institution in personnel matters final. Some professors began to bypass internal grievances and procedures and go directly to the court system.

**Reduction in Force**

With the exception of community colleges, the growth period for institutions of higher education had ended by the seventies. For many institutions fiscal belt tightening was in order. The future for marginal institutions was even more bleak. College and universities recognized tenure decisions as permanent commitments of funds and personnel. The tenure granting process became more rigorous than it had been in the sixties, and fewer awards were made. The change in policy increased the pool of potential litigants.
In the mid-seventies, schools claimed extreme financial exigency as cause for terminating employees, including tenured professors. In cases like AAUP v. Bloomfield College 136 N.J. Super. 442 (1975), dismissed employees have brought suit against the institution. The courts have indicated their willingness to intervene and review these actions. Colleges and universities have been forced to verify that the financial situation of the institution justified such drastic action and that the positions were selected solely on the way their elimination would alleviate the financial problems.

Collective Bargaining on Campus

Unionization of faculty in higher education did not begin until the late sixties, but by the mid-seventies more than 400 American campuses had unionized faculties (Baldridge et al., 1978). The problems of negotiating and administering complex contracts compounded the already difficult task of administration (Baldridge et al., 1978). As a result of a 1970 National Labor Relations Board (NLRB) decision involving non-academic personnel at Cornell University, most private colleges became subject to the National Labor Relations Act (Leslie, 1976). Jurisdiction for the adjudication of bargaining decisions and unfair labor practices passed from the colleges to a federal agency, the NLRB.

Public institutions were subject to their individual state labor laws. Virginia had no such law. College and university teachers were one group excluded from those afforded the right to bargain in Missouri. New York allowed faculty to bargain and established a state
board comparable to the NLRB to handle these matters in the state (Leslie, 1976).

By the late seventies some institutions realized that they too could resort to litigation as a means of relief. Yeshiva University refused to accept the decision of the NLRB that faculty were employees within the meaning of that term in the National Labor Relations Act (NLRA). Arguing that a collegial governance structure at the university made faculty administrators, not employees, Yeshiva appealed the decision of the NLRB to a federal Court of Appeals and then to the United States Supreme Court. A five-four decision overturned the decision of the lower court, agreeing that faculty at Yeshiva were managers and therefore not covered by the NLRA (National Labor Relations Board v. Yeshiva University 444 U.S. 672, 1980).

This decision could be viewed as a victory for those who would prefer a higher degree of insulation for higher education from the legal environment. The university won the case and retained control over relations with its faculty. At the same time this case will lead to more litigation. The opinion left many unanswered questions. Can Junior faculty organize? Are colleges which are less collegial than Yeshiva also excluded from NLRA? College and universities may be trying to reverse the intrusion of labor law on campus, but to do so will require more litigation.

**Federal Intervention**

Throughout the sixties, a liberal Congress, encouraged by the "Great Society" administration of Lyndon Johnson passed legislation
to guarantee the civil rights of minority groups. Equal opportunity and affirmative action became buzz words of the day. The Equal Pay Act of 1963 amended the Fair Labor Standards Act of 1938 to include the principle of equal pay for equal work regardless of sex. Title VI of the Civil Rights Act of 1964 prohibited against excluding individuals, limiting their participation or denying them benefits in any federally assisted program due to race, color or national origin. Title VII of the same act prohibited discrimination in employment based on race, color, religion, sex or national origin. Johnson signed Executive Order 11246 in 1965, and its amendment Executive Order 11375 a short time later. These orders essentially extended Title VII to all federal government contractors (Edwards, 1979).

As judge-made law began to diminish in the seventies, new legislation and administrative law emerged. After the Second World War, the federal government had recognized the value of colleges and universities in research and specialized education. Congress had responded with funds for new facilities and scholarships and loans for students. During the sixties as much as one quarter to one half of a given university's budget may have come from the federal government. The federal dependence on universities during the sixties was emerging as a federal dependence coupled with regulation in the seventies (Edwards, 1979). Faced with the option of complying with regulations or losing federal support, few colleges had a real decision to make.
Although many pieces of social legislation were passed during the sixties, it was not until the seventies that several of these laws were amended to include higher education and other laws were written specifically to affect higher education. Actual enforcement was scarce in the sixties.

The oft-maligned federal bureaucracy has offered several reasons for the expansion of federal control into higher education. One assertion rests on the claim that Congress is obligated to protect the "federal dollar". That same body has, on occasion, used programs to provide what it views as social justice or as a means of legislating its view of morality. Finally, it must be mentioned that higher education is an easy target for regulation. Colleges and universities are not very active in the political system; as lobbyists they are quite passive. Stein (1979) argues that colleges and universities are quite used to being regulated and have offered little resistance.

The Seventies

Title IX of the Education Amendments of 1972 was quite similar in structure to Title VI of the Civil Rights Act. The amendments applied only to educational organizations and precluded discrimination based on sex. Title VII of the Civil Rights Act was amended in 1972 to embrace previously excluded educational institutions (Edwards, 1979). Section 504 of the Rehabilitation Act of 1973 became law in 1977. This act, designed to provide the handicapped with access to higher education, was to be implemented within three years. The Deputy
Counsel for the Senate Appropriations Committee estimated compliance would cost between one billion and one-and-a-half billion dollars (Stein, 1979).

The "Buckley Amendment", or as it is officially known, The Family Educational Rights and Privacy Act of 1974, is perhaps paradigmatic of federal intervention. Designed to regulate and limit the use of information contained on student records and in student files, this act was passed without full public hearings or committee consideration of its costs to higher education or of the abuses it was designed to remedy (Edwards, 1979). The list of similar pieces of legislation from the seventies includes, among others: The 1976 Copyright Act; Age Discrimination laws; regulations governing human subjects research; and government in the sunshine laws, designed to force all decision-making into open meetings.

Each piece of legislation has spawned volumes of agency guidelines, regulations and interpretations which require institutional compliance. Disputes over enforcement of the regulations initially go before administrative law judges. Appeals ultimately result in more cases before the federal bench with colleges or universities as either plaintiff or respondent. The increase in administrative law has been the most drastic change in the seventies for higher education's legal environment.

Institutional Negligence

An area of the law just beginning to emerge on campus is tort law. New torts (civil wrongs other than breach of contract) are
created whenever a claimant's grievance is justified by the judicial system. Failure to educate is emerging as the newest tort (Weeks, 1980). In essence students are filing claims of school system negligence. It is difficult to demand accountability for an outcome as ill-defined as education. There are also many factors beyond the control of the school which affects the outcome of an individual's education. As a result, unless there was evidence of gross negligence, most of the suits against schools have been dismissed. Nonetheless the new consumerism in higher education could lead to more requests that the courts help students to hold their institutions accountable (Weeks, 1980). Torts take several years to develop, so they could represent a legal change just beginning to take hold.

The Future

It is doubtful that the changes mandated by litigation in the sixties or those requested by administrative action in the seventies could have been predicted. So an attempt to predict what changes may occur in the eighties would be equally futile. Still, current events have some bearing on what is, and may be. These events merit mention.

The Warren Court, which heard so many constitutional cases in the sixties, has been replaced by the more conservative Burger Court. The current court has embraced a philosophy more prone to judicial abstention than intervention. It seems unlikely that this court will be a source of new judge made law unless it seeks to overturn or limit some of the Warren Court decisions (Edwards, 1979).

The Court has definitely swung to the right, and with the
probability of several Reagan appointees one might expect a more deferential attitude from the court towards higher education in the future. An excerpt from an opinion by the court's most conservative member, Mr. Justice Rehnquist, hints at this. In a 1978 opinion he wrote:

"The educational process is not by nature adversarial; instead it centers around a continuing relationship between faculty and students, one in which the teacher must occupy many roles - educator, adviser, friend, and, at times, parent-substitute...we decline to further enlarge the judicial presence in the academic community and thereby risk deterioration of many beneficial aspects of the faculty-student relationship" (Board of Curators of the Univ. of Mo. v. Horowitz 435 U.S. 78, 1978).

If this is at all indicative of the new view of the court, then the reach of the constitution into higher education has been checked. If the pendulum has swung, the relationship between higher education and the courts may today be closer to the in loco parentis doctrine of the fifties than the libertarianism of the seventies. Since the doctrine of stare decisis, past decisions stand, seems to still be respected by the court, the justices are usually reluctant to overrule previous decisions. As a result, changes in this area will not be drastic and will be slow in coming.

Administrative law has been the growth area of the seventies, but that too may be checked by the election of Ronald Reagan as president. Throughout the campaign Reagan lambasted the morass of federal regulations and promised to reduce government interference. The rules governing the use of human subjects in research have already been loosened by the Department of Health and Human Services.
If Reagan continues to be successful, then administrative law, like constitutional law, may be less of a factor in the future of higher education. Like possible changes in common law, these changes will also take time.

There may be new legal problems for higher education in the future. As standards of accrediting agencies become more rigid and compliance more difficult, one might expect more suits against accrediting agencies. External degree programs, their quality and potential turf disputes with other colleges, represent another possible growth area for litigation (O'Neil, 1976).

Changes within institutions will also have impact on potential changes in the legal environment. A short supply of cash and a scarcity of resources have been responsible for many disputes which end up turning to the legal system for resolution (Daane, 1976). The financial situation for higher education doesn't seem to be improving. Colleges and universities have enjoyed an increasing diversity in their student bodies since 1940. The increased heterogeneity in higher education's clientele has been accompanied by less harmony. At the same time institutions have become more tied to the outside world. Each of these changes has led to a stronger connection between the colleges and the courts (Kaplin, 1978). It is impossible to predict whether a diverse student body which has continued to change by embracing non-traditional students and handicapped students will continue to diversify. Or if decreasing student aid and a belief that college is no longer the means of upward mobility will lead to a shrinking college population with a greater degree of homogeneity.
Collegiate Response

The future environment will be partially determined by the stance colleges and universities adopt towards their legal environments. Historically, colleges and universities have accepted changes mandated by their legal environments without challenge. Their responses have, with a few exceptions, been reactive. The increased legalism has continued to grow relatively unchecked. Only recently have some indications surfaced that suggest the presence of the law may ebb. Constitutional and administrative law may become diminished as factors in the legal environment due to changes in the American political scene. But the cause of these changes is unrelated to any action taken by colleges and universities. At the same time that some areas may become diminished there are other areas which continue to grow. Problems with educational malpractice, accreditation, questionable marketing procedures may increase the presence of law on campus. Colleges and universities are beginning to take note of another option: a pro-active stance.

A pro-active stance by colleges and universities may be able to reshape the legal environment, or at the very least, hold it at bay. By monitoring pending legislation, Stein (1979) claims the regulators can be regulated. Yeshiva is an example of how a university on the offensive used the courts to limit regulatory interference. If the colleges choose to monitor and try to control their legal environments
the future may hold a much less pervasive and less threatening legal environment.

Much of this will be determined by whether colleges and universities remain adrift in the unchartered waters of legalism, taking direction from every gust of legal wind which comes their way, or if they choose to set sail in a way to master the legal sea. A choice exists, but colleges and universities must first recognize their options, and then make the choice.
A Dearth of Literature

The growing presence of the law on campus has been documented in the previous chapter. An increase in the membership of the National Association of College and University Attorneys has accompanied this growth. In recent years several books have been published and new journals have emerged to document these changes and to serve as an emerging body of literature on post-secondary education law. Hollander (1979) prepared a nine page bibliography to constitute a "legal bookshelf" for university administrators. Almost all of the entries are from the latter part of the nineteen seventies. This increase in writing has yet to encompass either roles of university counsel or institutional responses to the new presence of law on campus. Kaplin (1978) cites six articles on the subject of university counsel, all published in 1974. Most of these articles are highly prescriptive and offer little insight into the ways attorneys function in the administration of today's university. The few articles which have been written since 1974 do little more than coalesce and summarize the information contained in the original six articles. A claim that there is a dearth of literature on this subject would be an understatement. Lytle (1979) substantiates that
there is no body of knowledge which deals with the problems inherent in the administration of a university in these litigious times. Articles have been written detailing responses to specific legal problems, but none address the law as a general concern. There are no guidelines to aid administrators planning structural changes to incorporate legal perspectives. Specifically, there is a lack of literature about university counsel. Lytle (1979) suggests the few articles written about counsel "are nearly indistinguishable from one another." It is no wonder that there are so many unanswered questions about university counsel (Kaplin, 1978). More and better quality research on the subject is in order.

Classification of Types of Literature

What little has been written about university counsel falls into six broad categories. There are calls for the need for in-house counsel (Papke, Blumer). These articles seem filled with rhetoric and lack the force necessary to convince people of a need which today few question. The next group attempts to describe the university attorney, his relationship to the institution, variations within the profession and other general characteristics (Arkansas, Beale, Corbally, Kaplin, Stauffer). Most of these articles are based on one individual's personal experiences at one or two institutions. Highly descriptive in nature, these articles attempt to generalize the actions of one or two attorneys to all university attorneys. Most fail.
The next two categories provide some concrete advice to institutions and attorneys. The first includes several articles directed at institutions delineating possible uses for attorneys, advising ways to incorporate them into the organizational structure, and warning institutions about possible misuses and abuses of counsel (Bickel, Blumer, Epstein, Kaplin, Lahti, Papke, Remeley). Most of these articles were written by attorneys to be read by institutional administrators. Another group of articles was written by university attorneys for their peers (Orentlicher, Sensenbrenner, Smith, Williams). These articles address some of the problems faced by university counsel as well as difficult issues which should be anticipated. Some offer insight into problem resolution.

It is not the case that only attorneys are writing about the role of law on campus. Scathing commentaries often appear in journals criticizing the increased legalism on campus and taking swipes at university attorneys in the process (Gouldner, OSU). Some of these articles are of as little value as the rhetoric calling for full-time counsel, but the more factual articles can help attorneys better understand their opposition and thereby make plans to help them operate more effectively within the university confines.

The final category includes articles resulting from quantitative research efforts. There are but three articles in this category (Arkansas, Beale, Lytle). These early efforts attest to the limited data on the role of college and university attorneys. Only one of these articles attempted to collect data on the activities of
attorneys, and a second was a survey which included legal officers as one of a long list of administrators surveyed along one variable. The other article attempted to identify the role of university attorneys along several variables, using the literature on counsel as descriptive data. This short list includes all of the quantitative research available on legal counsel.

The Need for Counsel

There was a time when, on those rare occasions that colleges and universities needed attorneys, they could turn to local law firms or trustees who were members of the bar to obtain necessary counsel. Such casual relationships have given way to the more formalized role of in-house counsel (Papke, 1977). Blumer (1976) claims that a specialist in higher education law, once a luxury, is now a necessity.

Description of Counsel at Different Institutions

Few dispute the need for counsel in these litigious times. However, there is still a variety of ways of obtaining services. Some institutions still use a member of the Board of Trustees as legal counsel. Advantages of such a relationship include: an intimate knowledge of the organization's structure, policy and goals; a person of great influence who speaks with authority for the institution; a person who will minimize charges for his services; and a person at least somewhat aware of the problems of higher education (Beale, 1974). Other institutions have grown to rely on law professors from their own institution to act as counsel. The
professor-attorney is usually an individual of great intellect who relates well to the academic community. He has access to fine libraries and can use law students for research. Like the trustee attorney, he has an intimate familiarity with the university (Beale, 1974). These two means of obtaining legal services are rarely mentioned in contemporary literature and today they are probably much less common than other means of obtaining counsel.

The Attorney General is the chief legal officer for many state university systems (Stauffer, 1975). Relationships between the Attorney General and the institutions vary from state to state. Some have centralized services, but Kaplin (1978) suggests decentralization as a better approach, urging administrators to seek the services of one or a small number of assistant Attorneys General on campus. In some states, statutes prevent state universities from using any state funds to hire attorneys (Corbally, 1974). Beale (1974) argues there are some advantages to using the Office of Attorney General. Members of his staff demand great respect from the public and the courts. They also have access to some of the best investigative resources and can assign cases to specialists within the office. When he was Vice President for Academic Affairs at The Ohio State University, John Corbally found at least one disadvantage to the use of an assistant Attorney General for legal counsel. His assistant was first accountable to the Attorney General and then to the university. This duality of responsibilities presented some problems for Corbally during his tenure at The Ohio State University.
Some institutions, both large and small, retain a variety of private law firms to provide legal counsel (Kaplin, 1978). This approach to counsel allows a great deal of flexibility to the university in selecting high quality counsel, since private firms paying higher wages often attract the best attorneys out of law schools (Beale, 1974). By this approach better qualified counsel with a greater familiarity of the courts and of other local attorneys can be hired. This "sub-contracting" of services also makes specialists and consultants for complex problems available. While president of Syracuse University, Corbally used a private law firm for counsel. Obviously, the use of a state attorney general was not an option at a private university, but this alternative arrangement, like the use of an attorney general, also had drawbacks. Once again, his attorney served both the university and a firm and occasionally two masters made simultaneous demands. Although one member of the firm spent a lot of time at the university, the relationship was never formalized and to some at the university he was still an outsider. Corbally (1974) felt that use of private counsel, without other legal services, was not the best way of meeting the legal demands on the university.

Many larger colleges and universities today require the services of full-time in-house counsel. Resident attorneys can specialize in post-secondary law while also becoming intimately familiar with the daily operation of a particular college or university (Kaplin,
1978). An in-house counsel can respond immediately to the needs of the institution. Beale (1974) believes a full-time in-house counsel can speak with authority for the institution and is more able to call on alumni for assistance. Beyond that, he can help the institution in developing policy to avoid legal problems. As president of the University of Illinois, Corbally finally had the opportunity to work with full-time in-house counsel. The ambiguity of accountability was finally replaced and the result was an administrative officer with a specialty in law and an interest in university governance. Corbally preferred this arrangement for the provision of legal services to all other arrangements (Corbally, 1974).

Of course, it is also possible to obtain legal services through a combination of the ways listed. Today, full-time counsel's use of specialists from private firms is a common practice (Kaplin, 1978). A variety of other combinations of services are also used.

The Role of Counsel

No matter what arrangements are made for obtaining legal services, many questions remain. Institutions must make decisions regarding how attorneys will function, who will have access to them, what duties they will delegate. The degree to which counsel will be involved in policy planning is another critical issue.

Many of the responsibilities are clear cut. Attorneys handle all litigation to which the university finds itself a party. The attorney's office can also assist in drafting and reviewing
contracts; arrange for the acquisition or disposition of all real property; review employment policies for compliance with contracts, collective bargaining arrangements, and federal employment guidelines; inspect the auditing of major financial resources; advise the student affairs division regarding rights of students; assist faculty and others in applying copyright and patent laws; and review university activities for possible liability of the university in tort (Bickel, 1974). University attorneys can also serve to review and advise institutions of proposed legislation which would further restrict the independence of the institution (Bickel, 1974). Late in the seventies, nine university attorneys were successful in an attempt to stop a student activities fees bill filed by Senators Kennedy and Cranston. A joint statement pointing out the flaws of the legislation coupled with testimony before the Labor Subcommittee of the Senate resulted in withdrawal of the bill. One of the nine attorneys commented he wished they had been as alert when the Buckley Amendment was submitted (Papke, 1977).

As the position of university attorney has evolved, more and more responsibilities have been added and at institutions with large legal staffs, representation in actual litigation has become the responsibility of attorneys other than the chief legal officer. Lahti (1976) proposes a job description for college legal counselors who primarily serve as advisors and consultants to the Board of Trustees and the President. His description includes contract review, statute interpretation, offering legal advice and many of the items detailed by Bickel, but the emphasis is on the role of adviser
to high level administrators. Others have also suggested that due to the continually changing relationship between colleges and the courts, at the very least, counsel should periodically meet with top administrators in a seminar format to keep them abreast of changes in the law (Blumer, 1976).

**Limited or Broad Role**

The role of the attorney in administration and policy making is a subject for debate. Institutional lawyers, especially those in government service, normally play a limited role (Epstein, 1974). In general, they review transactions and litigate. As such, attorneys are low level bureaucrats paid to react to problems. If the university is interested in adopting a pro-active stance to ward off further encroachment by the legal system, it seems this limited role is insufficient. Bickel makes this point quite well:

"University counsel must anticipate the legal implications of administrative decisions in each of these areas and identify to central administrative officers the legal issues presented by proposed decisions. To fulfill this role, the university attorney must be involved on a day to day basis with the central university administration. Only where the involvement of counsel is intimate can he or she most effectively and consistently anticipate legal implications of decisions contemplated by the university and prevent critical legal problems from arising" (Bickel, 1974).

He argues that noninvolvement of counsel at early stages often results in legal problems down the road. He presents a normative argument that the primary role of counsel should be preventive advice, not litigation (Bickel, 1974). This viewpoint is shared by Epstein who argues that early involvement of counsel, before plans are hardened,
leads to more mileage for the institution (Epstein, 1974). Corbally also believes that the primary focus of the university attorney should be to prevent litigation. When Corbally was at Illinois, the attorney was both counsel and administrator. As one of the small number of presidential assistants, the attorney had to be a competent administrator as well as a lawyer. In fact, Corbally sought a generalist who could function more as a manager than a practicing attorney (Corbally, 1974). Not everyone accepts such an extensive role for attorneys on campus. Some writers contend that the time has come to check all who would replace the collegial tradition with a legal tradition (Gouldner, 1980).

Others warn about giving attorneys the option of offering personal opinions unrelated to the law for fear that institutions will not be able to differentiate between the legal and the administrative advice (Remeley, 1979).

Kaplin believes the role of counsel will be determined based on the approach a university takes towards dealing with the law on campus. He distinguishes between treatment law and preventive law. Treatment law focuses on real challenges to the institution and the steps necessary to protect the institution. Actual suits, governmental threats of sanction due to non-compliance with regulations, writing of contracts and other attempts to resolve specific legal problems exemplify treatment law. Treatment law is a part of everyday life at most universities and no one questions the legitimacy of this role for university counsel (Kaplin, 1978).
Preventive law, on the other hand, allows counsel to set legal parameters within which administrators should function in order to avoid an increase in the need for treatment law. Under preventive law counsel is involved in policy planning, listing alternatives with fewer legal risks, review of institutional rules, forms and practices, and keeping abreast of new issues in post-secondary education law (Kaplin, 1978). It is this role which is favored by Corbally, Bickel and others. However, some people question the wisdom of allowing a member of the legal community to have so much control over an educational institution. Many educational professionals are suspicious of attorneys. They blame attorneys for the problems facing academia and may even share the sentiment expressed by Shakespeare in Part 2 of Henry VI: "The first thing we do, let's kill all the lawyers." The debate on limitations to the role of university attorney will probably continue for many years.

Problems Faced by University Attorneys

Although the literature making recommendations on the role of university attorney is written for attorneys, it addresses issues ultimately to be decided by their supervisors. Some articles have emerged to help the individual attorneys function in their positions regardless of the scope of their role. Most of these articles address ethical issues peculiar to university counsel. Paramount is the question of whom (or what) the attorney views as his client. Presidents and deans may have conflicts with the institution, or vice versa. Are students making demands of the institution clients or
adversaries? Even trustees may find themselves in conflicts of interest, or, in the case of public institutions, espousing views which are contra-constitutional. In such cases who is the client? At least one writer suggests the client must always be the institution itself (Orentlicher, 1974). Although Orentlicher never clearly defines what he means by the institution, it appears he views counsel as a conflict mediator who would bring factions together around, rather than on opposite sides of, a table to work toward the good of the institution (Orentlicher, 1974).

In two other articles, the same issue is addressed in such a way as to make one question if counsel can function as a high level administrator and still abide by the ABA Cannon of Ethics. In a 1973 address to university attorneys, then president-elect of the ABA, Chester Smith, stated "a legal person...in a non-legal environment, has disproportionate power and a potential for abusive action." He feared the establishment of "legal maximums but moral minimums" (Smith, 1973). A short, certainly not exhaustive list of hypothetical situations destined to challenge the ethics of the "lawyer as advisor" to universities was prepared by Williams (1975). Citing the Code of Professional Responsibility, he offered party line responses to potentially difficult situations. He apparently shared the concerns of both Orentlicher and Smith warning counsel against acting as a "rubber stamp" for the administration. Counsel must always remember he represents the entity and may need to say no to administrators on certain occasions. It may even be necessary to go to the trustees or to resign in order to comply with the Code
(Williams, 1975).

There can be no doubt that some institutions, or members of institutions, have abused counsel. Others may not have know how to best use attorneys. Education of his superiors may be a part of the attorney's responsibilities. Based on his experiences, Epstein has warned his colleagues of some of the pitfalls. Individuals may obfuscate facts so as to paint themselves in a better light. A client may shop for an attorney who will tell him what he wants to hear. Some clients have silenced attorneys by abusing lawyer-client privilege. Administrators have made unethical requests of counselors. Others have sought "guaranteed" results when asking attorneys to predict how a court will respond. Too often counsel is consulted too late (Epstein, 1974). By anticipating these problems and educating their non-attorney colleagues, some of these pitfalls can be avoided. In the same realm of practical advice to university counsel, Sensenbrenner (1974) has attempted to document a file system for a multi-attorney office, as well as making suggestions for information sharing and productive use of personnel.

Attacks on Legal Counsel and Legalism

In recent years articles and commentaries attacking the increased legalism on campus have begun to appear in educational journals (Gouldner, 1980; OSU, 1980). Some of these articles also attack campus lawyers as if they were extensions of the law on campus, rather than professionals hired to handle legal problems and check the growth of legalism. Although these articles are not really about
legal counsel, some of them help to identify possible problems faced by counsel. In as much as attitudes and beliefs can be gleaned from these articles, they can be instrumental in providing insight into faculty and administrators. In so doing they may lead to the articulation of myths borne out of fears of an expanded role for legal counsel. This knowledge may help attorneys trying to debunk the myths and thereby lead to a clearer path for counsel.

Research on University Counsel

To this point all of the literature review has been highly prescriptive. This is due to the dearth of systematic research on the office of university counsel. To my knowledge only three such attempts to gather information have occurred, and one only marginally involved attorneys. In the early seventies Beale (1974) sent questionnaires to the first attorney named for each of approximately 100 institutions listed in the NACUA Directory. His sample consisted primarily of larger institutions. Of the seventy-three institutions responding, fifty-one had full-time counsel. Most attorneys reported to the president and the Board of Trustees. Most task assignments to individuals were random; they were not based on legal specialties. Most of the firms and general practitioners billed the institution for services or were on a retainer plus some special arrangement existed for billing. Only six schools reported trustees serving as counsel. All institutions reported an increase in time devoted to legal matters in recent years. The same issues demanded about the same percentage of time at all types of
institutions. The tendency was towards full-time counsel and away from part-time trustee or professor attorneys. Beale (1974) found an increase in the amount of preventive law taking place.

As the position of university attorney gains credibility and visibility, it may be included in more studies of university governance personnel, thus yielding more information on the subject. Arkansas University included legal counsel in its 1979-1980 study of administrative salaries. During that year, forty-nine of the one hundred twenty-eight institutions studied reported salaries for legal counsel. Salaries ranged from $14,310 to $62,500 with a mean of $35,633 (Arkansas, 1979). In the future, other governance studies may include university counsel making more information available on this position.

Lytle (1979) created a typology on the role and function of counsel. He views counselor and advocate as two possible roles for college and university attorneys. By counselor he means an individual who is a part of the organization with the perspective of a team member trying to be helpful. The advocate would view himself as an outsider to the organization, speaking up on all issues based on his perspective. Lytle also viewed independence or subordination of the attorney relative to his supervisor as a continuum of possible functions for counsel. Using these two variables Lytle devised a typology which would classify attorneys in one of four role/function categories: Ombudsman, Companyman, Pointman, or Muckraker.
LYTLE'S TYPOLOGY

Relatively Independent of Administrator

THE MUCKRAKER       THE OMBUDSMAN

Advocate <-- I       I --> Counselor
           I

THE POINTMAN       THE COMPANYMAN

Relatively Subordinate to Administrator

Figure 2

Lytle suggests that the Ombudsman would be a problem solver, highly accessible and with easy access to all levels of the university. This type of counsel would probably be engaged in preventive law. The Companyman would be a mid-level bureaucrat carrying out tasks clearly defined by his superior. The Pointman might lobby, engage in litigation and fight for various causes, but would not always be his own man. He would always be directed by an administrator. Internal conflict might lead to self destruction. It is doubtful that this position is tenable. Finally, the Muckraker functions in a way few organizations would tolerate. He would set his own goals and even act as advocate counter to the goals of the university. Since few universities are public interest groups, attorneys would not last in this position long (Lytle, 1979).

Lytle examined the literature written by and about university counsel. Using highly descriptive articles as data he attempted to
place college and university attorneys in his typology. The articles suggested that most attorneys functioned as Companymen (Lytle, 1979).

Summary

The literature on legal counsel in higher education is not extensive. Legal counsel is a necessity for today's colleges and universities, but there are many ways of obtaining legal services. They range from a part-time counsel on retainer from a private firm to a complement of full-time in-house specialists. There are advantages and disadvantages to the use of professors, trustees, attorneys general or part-time attorneys as legal counsel, but the tendency seems to be towards full-time professional counsel.

Colleges and universities vary in the responsibilities assigned to attorneys. Some act as technicians, litigating and writing contracts. Others are involved in policy making. Once they assume the role of college attorney individuals still face dilemma posed by unclear roles. Unsure of whether their primary commitment is to the Bar or to the institution, problems can result. Institutions and individuals unsure of how to best use attorneys can conflate these problems by misusing counsel or making unethical requests of them.

This composite of legal counsel is painted through personal accounts, yet the role, function, situation and problems of counsel vary greatly from institution to institution. Further, most of these
accounts were written in the early seventies when the position was just beginning to emerge. Many changes have occurred since then. Lytle used descriptive studies in classifying attorneys for his typology because hard data on counsel was lacking. As university counsel emerges as an important position in the administrative structure of colleges and universities, more research on this position is in order.
CHAPTER 4

METHODOLOGY

Population

There are several ways of recording the provisions of legal services on campus. Presidents, high level administrators, faculty, attorneys and students observe the process from various perspectives. Each group could provide some data towards the composite. In addition to this descriptive data, almost everyone has an opinion on what the role of the attorney in higher education ought to be. Although the attitudes of these individuals may be related to the type of services provided, attitudes are not the focus of this study. The best source of descriptive data is the individual charged with the provision of legal services, the chief legal officer of the institution. For that reason, this study will focus on individuals serving in that capacity.

The professional association exclusively for college level officers is The National Association of College and University Attorneys (NACUA). Founded in 1961, NACUA currently serves eight hundred institutions. The association was form to meet the needs of lawyers who represent post-secondary institutions and functions as a center for information sharing and clearinghouse for ideas. The Journal of College and University Law, College Law Digest and NACUA
News are all published by the association. A legal information exchange and annual conferences are also sponsored by NACUA (NACUA, 1981). John Hill, former counsel at the University of Connecticut, has described NACUA as the "undisputed barometer of university related legal developments" (Papke, 1977).

Not all colleges and universities are institutional members of NACUA. However, association members constitute the best identifiable population for this study. Since the study is designed to record the relationship between preventive and treatment law, the population should be comprised of institutions which have acknowledged the presence of law on campus and taken some action to deal with legal concerns. The appointment of legal counsel and institutional membership in NACUA, an information clearinghouse, are indicative of some degree of reaction. As one might imagine more complex institutions are over-represented in this population. Again, the design of the study to examine organizational variables which may be related to the type of law is geared towards more complex organizations. The use of NACUA members offers more promise of usable data in the identification of legal stance and related organizational factors.

The selection of NACUA members as a population was also based on logistical considerations. The validity of the study is partially determined by the response rate. The use of NACUA members may maximize the response rate. Many non-member institutions either lack counsel or use part-time attorneys. Sending a letter addressed to the holder of a particular position is tantamount to a letter
addressed to occupant. Neither letter commands the attention merited by a personally addressed letter, and the risk of the letter reaching the wrong person and never being rerouted is increased. Further, a letter sent by a college to an attorney in private practice might result in a bill. At rates in excess of $100.00 per hour, it is doubtful that many institutions would forward the request to the source of information. Although many NACUA members are also in private practice, the instrument and follow-up letters can be sent directly to them. This may, in turn, increase the response rate.

There are tradeoffs which result from the use of this limited population. Data may be lacking on the smaller, less affluent colleges. Effective means of coping with the environment in the absence of NACUA support may even be missed. Colleges like Bob Jones University which decline federal support rather than accept the administrative rules which accompany the funding may not belong to NACUA. This stance of preventive law through total divorce from federal funds is not common. Bob Jones and Brigham Young typify the evangelical colleges which have been able to avoid dependency on federal support, but this approach has only proved viable at a few institutions. NACUA membership does encompass some of the less renowned evangelical colleges, and some of these institutions (like Berry College in Georgia) were among institutions randomly selected for the sample. There may be other means of coping with the environment involving preventive law which are practiced by colleges
and universities which exist outside of the mainstream of American higher education. This study will not be useful in obtaining that data.

The value of examining this elite sub-group of the population of all colleges and universities lies in the fact that colleges and universities trying to identify alternative means of responding to their legal environments will look to these institutions, NACUA members, as models. The models practiced by these institutions may eventually "trickle down" to smaller, less complex schools. The population is not representative of all institutions in higher education, and as such there is a bias in the data. But since the study has purposively narrowed the population of all colleges and universities to just NACUA members, the bias is intentional. It will be recognized in all analyses and no attempt will be made to generalize conclusions to all of higher education.

Sample

In the interest of comparing services among different types of institutions a stratified random sample was selected from the specific population of NACUA members to insure adequate representation in each of the eight categories of the institutional typology devised by the Stanford Project on Academic Governance (SPAG). The Stanford Project pared the twelve Carnegie Council categories to the following eight:

PRIVATE JUNIOR COLLEGES: private colleges offering certificates or associate degrees;
COMMUNITY COLLEGE: public institutions offering associate degree programs;

PRIVATE LIBERAL ARTS: all private colleges offering at least a bachelor's degree, but not included in the elite category;

PUBLIC COLLEGE: little research, non-selective focus on undergraduate programs;

ELITE LIBERAL ARTS COLLEGES: high quality undergraduate programs, some graduate programs, strong scholarship, and research;

PUBLIC COMPREHENSIVE: solid middle quality state schools with emphasis on undergraduate programs;

PRIVATE MULTIVERSITY: elite, large, complex research facilities, leading graduate programs, at least twenty doctorates/year;

PUBLIC MULTIVERSITY: extremely large, at the front of state systems, prestigious graduate programs, recipients of substantial sums of federal research dollars (Baldridge et al., 1978).

Some states provide services to higher educational systems rather than individual institutions. Most of these institutions would fall into either the public multiversity or public comprehensive categories. A few would include public colleges or community colleges.

Since it is not possible to delineate the institutions included in each system, a ninth category is used for this study: state systems.

Each of the 695 NACUA member institutions was categorized. Some institutions were eliminated due to the special nature of their purposes. The lines for each category were not always clear, and in some cases, judgment calls were made. A sample of 25% of the NACUA population was chosen. Details of the sample selection process appear in Appendix A. The distribution of members in the sample by institutional type is provided in Table 1.
Table 1

Distribution of Population and Sample by Institutional Type

<table>
<thead>
<tr>
<th>INSTITUTIONAL TYPE</th>
<th>NACUA MEMBERS</th>
<th>SAMPLE MEMBERS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Private Junior Colleges</td>
<td>20</td>
<td>05</td>
</tr>
<tr>
<td>Community Colleges</td>
<td>76</td>
<td>19</td>
</tr>
<tr>
<td>Private Liberal Arts Colleges</td>
<td>257</td>
<td>64</td>
</tr>
<tr>
<td>Public Colleges</td>
<td>11</td>
<td>03</td>
</tr>
<tr>
<td>Elite Liberal Arts Colleges</td>
<td>69</td>
<td>17</td>
</tr>
<tr>
<td>Public Comprehensive</td>
<td>60</td>
<td>15</td>
</tr>
<tr>
<td>Private Multiversity</td>
<td>51</td>
<td>13</td>
</tr>
<tr>
<td>Public Multiversity</td>
<td>65</td>
<td>16</td>
</tr>
<tr>
<td>State Systems</td>
<td>32</td>
<td>08</td>
</tr>
<tr>
<td></td>
<td>641</td>
<td>160</td>
</tr>
</tbody>
</table>

1A complete list of selected institutions appears in Appendix B. For each college or university the contact person chosen was the primary legal officer designated in the NACUA bulletin.

Pilot Testing

A copy of the instrument was sent to four attorneys currently serving as university counsel. The group represented full and part-time attorneys from a range of institutional types, including both public and private institutions. The instrument was revised in accordance with many of their suggestions.

Data Collection

Data collection was achieved by means of a survey instrument (Appendices G and H). One of the major criticisms of questionnaires is that they only report what the respondent sees and is willing to share with the research. As a result perceptions are often idealized (Schatzman, 1973). This limitation is duly noted. Although much of the information on the questionnaire is factual, there are several
questions which ask the attorney to detail how his unit fits into the organizational structure. Reality checks by collecting data from other members of the academic community would be helpful, but due to time and financial considerations, they are beyond the scope of this study. When interpreting the data the reader should be cautious; attorney's perceptions may occasionally distort the data.

A copy of the instrument with a cover letter (Appendix C) and a pre-addressed stamped return envelope were mailed to each attorney on March 29, 1981. One week later, a thank-you/reminder post-card (Appendix D) was sent to each member of the sample. Exactly three weeks after this card was mailed, a second post-card (Appendix E) informing participants of the researcher's desire to conclude data collection for the study and asking them to respond as promptly as possible was sent to each non-respondent. In mid-May, a little more than six weeks after the original mailing, a final letter (Appendix F), complete with a new copy of the questionnaire and another stamped, pre-addressed return envelope was sent to each of the non-respondents.

Response Rate

A total of one hundred and eighteen (118) individuals sent some form of response, yielding a response rate of 73.8% of the sample. Given a sample size of 25% of the original population, the response rate accounted for 18.41% of the population. In survey research it is rare that all responses are useable, and this study was no exception. Four individuals (3.4%) felt the instrument was inappropriate given the part-time nature of their relationship with
the institution. Two attorneys (.17%) stated that they were not willing to take the time to respond. One individual (0.8%) responded to too few questions to make the instrument meaningful. Routing and rerouting problems precluded two (1.7%) questionnaires from being received. One letter was returned by the Post Office due to the fact that the individual had moved. Another was returned by an individual who had relinquished his position, but he didn't provide the name of his successor. One institution had a vacancy; another had eliminated the position. Two respondents failed to identify themselves and without a postmark on the envelope it wasn't possible to identify the sources. As a result of these varied reasons, fifteen responses were deemed unuseable. The remaining one hundred and three respondents (64.4% of the sample; 16.1% of the population) constitute the data which is the basis of analysis in this study. Table 2 provides a breakdown of the response rate and useable responses by institutional type.

Any response rate short of one hundred percent introduces the possibility that the respondents are not totally representative of the selected sample. This would occur if the respondents were markedly different along some variable from the non-respondents. The only variable controlled throughout data selection in this study was institutional type. Table 3 shows a comparison between the population and the useable responses along this variable.
### TABLE 2

Total Response and Useable Response by Institutional Type

<table>
<thead>
<tr>
<th>Institution Type</th>
<th>Sample Size</th>
<th>Total Responses</th>
<th>Response Rate</th>
<th>Useable Responses</th>
<th>Useable Response Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Systems</td>
<td>8</td>
<td>7</td>
<td>87.5%</td>
<td>5</td>
<td>62.5%</td>
</tr>
<tr>
<td>Public Multiversities</td>
<td>16</td>
<td>12</td>
<td>75.0%</td>
<td>10</td>
<td>62.5%</td>
</tr>
<tr>
<td>Private Multiversities</td>
<td>13</td>
<td>7</td>
<td>53.8%</td>
<td>7</td>
<td>53.8%</td>
</tr>
<tr>
<td>Public Comprehensives</td>
<td>15</td>
<td>13</td>
<td>86.7%</td>
<td>12</td>
<td>80.0%</td>
</tr>
<tr>
<td>Elite Liberal Arts</td>
<td>17</td>
<td>11</td>
<td>64.7%</td>
<td>10</td>
<td>58.8%</td>
</tr>
<tr>
<td>Public Colleges</td>
<td>3</td>
<td>3</td>
<td>100.0%</td>
<td>2</td>
<td>66.7%</td>
</tr>
<tr>
<td>Liberal Arts Colleges</td>
<td>64</td>
<td>47</td>
<td>73.4%</td>
<td>41</td>
<td>64.1%</td>
</tr>
<tr>
<td>Community Colleges</td>
<td>19</td>
<td>11</td>
<td>57.9%</td>
<td>11</td>
<td>57.9%</td>
</tr>
<tr>
<td>Private Junior Colleges</td>
<td>5</td>
<td>5</td>
<td>100.0%</td>
<td>5</td>
<td>100.0%</td>
</tr>
<tr>
<td>(Not Identifiable)</td>
<td>-</td>
<td>2</td>
<td>-</td>
<td>0</td>
<td>-</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>160</strong></td>
<td><strong>118</strong></td>
<td><strong>73.8%</strong></td>
<td><strong>113</strong></td>
<td><strong>64.3%</strong></td>
</tr>
</tbody>
</table>
TABLE 3
Comparison Between Sample and Useable Responses by Institutional Type

<table>
<thead>
<tr>
<th>Institution Type</th>
<th>% of Population</th>
<th>% of Useable Responses</th>
<th>Variance</th>
</tr>
</thead>
<tbody>
<tr>
<td>Systems</td>
<td>5.0%</td>
<td>4.9%</td>
<td>-0.1</td>
</tr>
<tr>
<td>Public Multiversities</td>
<td>10.1%</td>
<td>9.7%</td>
<td>-0.4</td>
</tr>
<tr>
<td>Private Multiversities</td>
<td>8.0%</td>
<td>6.8%</td>
<td>-1.2</td>
</tr>
<tr>
<td>Public Comprehensives</td>
<td>9.4%</td>
<td>11.7%</td>
<td>+2.3</td>
</tr>
<tr>
<td>Elite Liberal Arts</td>
<td>10.7%</td>
<td>9.7%</td>
<td>-1.0</td>
</tr>
<tr>
<td>Public Colleges</td>
<td>1.7%</td>
<td>1.9%</td>
<td>+0.2</td>
</tr>
<tr>
<td>Liberal Arts Colleges</td>
<td>40.1%</td>
<td>39.8%</td>
<td>-0.3</td>
</tr>
<tr>
<td>Community Colleges</td>
<td>11.9%</td>
<td>10.7%</td>
<td>-1.2</td>
</tr>
<tr>
<td>Private Junior Colleges</td>
<td>3.1%</td>
<td>4.9%</td>
<td>+1.7</td>
</tr>
</tbody>
</table>

In Table 3 you will note that with the exception of Public Comprehensives, which comprised 2.3% more of the useable responses than the actual population, the variance of all other institutional types was less than 1.7%. This suggests that the responses seem to represent a fairly random sample of the selected sample. This would limit errors due to respondents who did not reflect the general sample. This factor coupled with a fairly high useable response rate in each stratum (over 60% in most categories) suggests that although there is a margin for error due to response rate that error is not substantial enough to preclude analysis of the data and some generalizeable conclusions.
Data Coding

Responses were coded and recorded on computer cards to facilitate machine analysis. Non-responses to individual questions were coded as such as were not included in the analysis of that variable. In cases where an attorney clearly misread a question and the response was inappropriate (i.e., an outside counsel in private practice describing himself as "full-time"), a correction and a proper interpretation was made if possible. If that was not possible the question was coded as if it lacked any response. On questions asking counsel to divide 100% of their time among different roles or different tasks the sums did not always add to 100%. In these cases, the responses were treated as raw scores indicative of ratios and were recalculated as percentages of the total raw scores, thus converting them to a 100 point scale. Once coded the data was subjected to appropriate multivariate analysis.

Problems Associated with Data Collection

As stated in Chapter 1, very little was known about the population to be studied. Without an intimate knowledge of the respondents it was very difficult to design an instrument which would be deemed appropriate and conceptually clear on all points for the respondents. This instrument failed on a few counts. The suggestions made by the college and university attorneys who pilot tested the instrument were good, but like the researcher, these individuals missed a few design flaws.
It is true that an in-house counsel would have found it easier to respond to the instrument than an attorney in private practice, but the questionnaire could be answered by either. Some part-time attorneys chose not to respond due to the design of an instrument not tailored specifically to their role. This problem could have been avoided by using an alternative approach to data collection. It would have been possible to guess, based on addresses, whether or not an attorney was in-house or outside counsel. This probably could have been done with about 90% accuracy. However, one of the questions addressed by this study pertained to the nature of counsel. An attempt to assess the in-house/outside issue in such an unscientific way would not have been valid. Building the entire study on such a shaky basis was not desirable. For that reason, the research methodology was designed to include all counsel and to ask each the same questions.

Two problems surfaced in instrument construction which were not detected by the pilot study. Question number 2 in Section II was designed to determine if individuals serving as chief legal officers viewed themselves and their interests primarily in law or in education. Respondents were asked to examine their long range career goals and predict in which field their future would be. With such limited research on the population, the investigator did not anticipate that almost one quarter of the respondents would be over 60 years old. Many of these individuals suggested they no longer had long range goals, and chose not to respond. Others viewed their current
position as university counsel as a terminal position.

A more serious error occurred in question nine, Section I. The types of law listed were meant to be mutually exclusive, and fairly exhaustive, but several respondents pointed out the Civil Law includes most of the other categories. Most individuals responded without comment. It was difficult, if not impossible, to set up an extensive list of types of law which would be mutually exclusive while conceptually easy to understand for respondents. This contention is supported by the fact that many respondents used the open ended responses to demonstrate their preferred constructs. For example, some added Equal Employment Law, Affirmative Action Law, Handicapped (504) Law and Civil Rights as other areas. These "types" of law could have been spread across Administrative Law, Constitutional Law, and others. As a result, the usefulness of the responses to this question has been diminished but it is still of some value. The question still provides an indication of the types of legal problems associated with different types of institutions.

Analysis of Data

Data analysis is divided into three specific areas in this study. A preliminary examination of the type of legal services provided to colleges and universities and of the individuals serving as chief legal officers was conducted using primarily descriptive statistics. Summary statistics were used to build a composite of legal services and legal officers. This data served two purposes. First, it provided necessary groundwork and additional familiarity with the
sample to facilitate more meaningful analysis of other issues addressed by the study. Second, it is a study in and of itself providing a basis for future study.

This descriptive analysis was followed by an examination of the issues of treatment and preventive law. Once institutions were characterized as low, medium or high in degree of treatment and degree of preventive law, tests were conducted to explore the possibility of relations between the degree of preventive law and organizational characteristics or traits of individuals in the position of chief legal officer. Hypothesis testing was used to determine whether or not a relation existed, for example, between level of preventive law and the sex of the chief legal officer. Chi square and Pearson's r tests (explained in detail later in this chapter) were used to test hypotheses of possible relations. This section of the study, exploratory in nature, was used to identify factors related to levels of treatment and preventive law. The strong relations merit further study, including tests for possible causality.

The third and final section of the analysis examines selected organizational issues. Borrowing from the literature on organizations, this section combines the research tools of each of the previous two sections. It combines descriptive research, an attempt to analyze organizational issues, with hypothesis testing to explore the possibility of relations between the organizational variables and the levels of treatment and preventive law.
Statistical Tests

Two events occurring in this world can either be independent or dependent. Independence suggests that the occurrence of two events is not related; one can happen in the presence or the absence of the other, and the determination of which of these two combinations will occur is one of chance. Dependence suggests the opposite is true, and the two events are somehow related. A relation implies that one event is affected by the other event. This relation does not imply causality (i.e., one event does not cause the other); it simply says that changes in one event are paralleled by changes in the other.

For this study, a significance level of .05 was chosen for all tests of relation. As a result, all claims of the existence of dependence are made with 95% certainty. Two tests were used to determine the dependence or independence of variables in the study. Pearson's r (the product-moment correlation) was used to test for relations whenever interval or ratio data were being examined. Interval data are designed on a scale with equal distance between all possible data values. Ratio data is interval scale data which has a fixed zero value. The Pearson test is a strong test which attempts to identify a linear relation between two variables. A line of "best fit" is approximated and the data is measured to see how far it varies from this line. Very little variation supports a relation, a great deal of variation suggests no relation. Once r is calculated, a t value is computed using the formula:

\[ t = \frac{r \sqrt{n-2}}{\sqrt{1-r^2}} \]
In this formula, \( n \) is equal to the number of pairs of data being compared. The \( t \) value is then used to assess how common that amount of variation is given the number of data sets compared (Williams, 1979).

Chi Square, a fairly weak test, was used on all nominal and ordinal data examined by this study. Nominal data is data which cannot be ordered in any quantitative way. Eye color and attorney type are examples of nominal data. Ordinal data is data which can be represented on a scale with increasing order, but the distance between successive data values is not always equal. Daily, monthly and annually, as frequency measures, are examples of ordinal values. The Chi Square test uses contingency tables to group data and approximate how many cases would fall in each category if that determination was made in a random way. These expected values are then compared with actual values. If they are the same, or there is little variation, then a random distribution is assumed and the test supports independence of the two variables. If, on the other hand, the difference is substantial, then the distribution must be attributed to some design other than randomness. In that case, the variables are viewed as dependent (Williams, 1979).

Person's \( r \), with the \( t \) test, and chi square are used to test the dependence or independence of the variables. If a relation exists, a second test is used to determine the strength of the relation. For product-moment, the absolute value of \( r \) measures the strength of the relation. Among the different tests for strength of the chi square
test, this study will use Cramer's V. The values for Cramer's V range from 0 to 1. Cramer's test was chosen because it can be used on square and rectangular tables of any size and with data of any scaling type (Nie et al., 1975). No firm rules govern the values of r or V used to assess the degree of strength, but Williams (1979) offered the following guide: .0-.2, very weak; .2-.4, weak; .4-.7, moderate; .7-.9, strong; .9-1.0, very strong. These guidelines are used by this study.

For r, the sign (+ or -) provides one more piece of information. This indicates the direction of the relation. It can either be direct (+) or indirect (-). A direct relation implies that as one variable increases in value, so does the second variable. An indirect, or inverse, relation implies that as the value of one variable increases the value of the second variable decreases (Williams, 1979).

These tests for existence of relations, their strength and direction, are used throughout this study.

Limitations

As is the case with any research, this study has limitations. The use of a survey instrument without corroborative evidence results in assessment of the office of university counsel only by those who hold said office. Any limitations on their knowledge of the system or their willingness to be absolutely candid with themselves or the researcher effectively limit the study. Further, since only NACUA members were sampled, the results do not generalize to all colleges
and universities, only to those for which NACUA membership is represen-
tative. As is the case with almost all research dependent on the
willingness of individuals to participate, the response rate was less
than 100%. This research is limited to the extent that the
respondents are representative of the overall sample, and the sample
is representative of the population. The reasons for the decisions
which led to these limitations have been given.
Chapter 5 presents and analyzes the data collected by the study. The chapter begins with primarily descriptive data about the type of legal services, individuals serving as chief legal officers, and how they function in their roles. The second part of the chapter addresses the presence of treatment and preventive law on campus and attempts to identify relationships between the presence of these types of law and other variables. The final section of the chapter offers an introduction to selected organizational issues which may merit further study.

I. Lawyers and Legal Services in Higher Education

Means of Obtaining Legal Services

A variety of means of obtaining legal services has been described in the literature. Resident counsel, attorneys general, attorneys in private practice, trustees and law professors have been listed as the most common means for providing legal services (Beale, 1974). It appears that the use of law professors as chief legal counsel is no longer a common practice. None of the respondents in this study described themselves as professors of law. A new category does seem to be emerging. Employees of the college or university who...
hold law degrees serving in full-time capacities, other than as counsel (professors, assistants to the president, financial officers or other administrators) are called on to provide legal services. These individuals serve as in-house counsel spending only a part of their time meeting the legal needs of the institution. The type of counsel, like the need for legal services, varies with the type of institution. This is demonstrated in Table 4 which provides a breakdown of the role of the chief legal officer compared with institutional type.

Attorneys in private practice constitute the largest group of chief legal officers, representing 44.1% of the institutions. Since most trustee-attorneys, who constitute 17.6% of the population, are also engaged in the practice of law full-time, in actuality 61.7%, almost two thirds, of the institutions depend on private practitioners for legal services. Fewer than one third, 31.4%, of the institutions have full-time, in-house counsel. Only 3.9% of the institutions use full-time employees who have other responsibilities, and 2.9% rely on attorneys-general as primary legal officers. This suggests 38.2% of the institutions contract directly rather than "sub-contract" for legal services.

There is some variation in the types of legal officers used by various types of institutions. The SPAG typology provides an approximated index of size and complexity. Complexity of institutions as measured by size of staff, faculty, and study body and number of departments and inter-related subunits, is related to institutional
<table>
<thead>
<tr>
<th></th>
<th>Attorney General</th>
<th>Full-time Counsel</th>
<th>Trustee Attorney</th>
<th>Private Practitioner</th>
<th>Other Administrator</th>
</tr>
</thead>
<tbody>
<tr>
<td>Systems</td>
<td>1</td>
<td>2.9%</td>
<td>3</td>
<td>60.0%</td>
<td>1</td>
</tr>
<tr>
<td>Public Multiversities</td>
<td>-</td>
<td>-</td>
<td>10</td>
<td>100.0%</td>
<td>-</td>
</tr>
<tr>
<td>Private Multiversities</td>
<td>-</td>
<td>-</td>
<td>5</td>
<td>71.4%</td>
<td>-</td>
</tr>
<tr>
<td>Public Comprehensives</td>
<td>1</td>
<td>9.1%</td>
<td>8</td>
<td>72.7%</td>
<td>-</td>
</tr>
<tr>
<td>Elite Liberal Arts</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>2</td>
</tr>
<tr>
<td>Public Colleges</td>
<td>1</td>
<td>50.0%</td>
<td>-</td>
<td>-</td>
<td>50.0%</td>
</tr>
<tr>
<td>Liberal Arts Colleges</td>
<td>-</td>
<td>-</td>
<td>3</td>
<td>7.3%</td>
<td>15</td>
</tr>
<tr>
<td>Community Colleges</td>
<td>-</td>
<td>-</td>
<td>2</td>
<td>18.2%</td>
<td>-</td>
</tr>
<tr>
<td>Junior Colleges</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>1</td>
</tr>
<tr>
<td>All Institutions</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
placement in the SPAG typology (Baldridge et al., 1978). The four most complex institutional types in the typology are private multiversities, public multiversities, elite liberal arts colleges and public comprehensives. Using size as a variable elite liberal arts colleges are smaller than institutions in the other three categories. With regard to legal issues it can be argued that the three largest institutional types (public and private multiversities and public comprehensives) are the most complex. Size of staff, degree of involvement with the Federal government due to research and therefore degree of governmental regulation, constitutional constraints posed on the public institutions all support an argument that from a legal perspective, as well as an organizational perspective, these institutional types are more complex than the other five institutional types. This distinction between large, complex institutions and small, less complex institutions will be used at times to analyze the findings of this study.

The larger, more complex, institutions (public multiversities, private multiversities and public comprehensives) rely primarily on full-time counsel. In each of these institutional types more than 70% of the chief legal officers are full-time counsel. Full-time counsel are much less common in the other institutional types. The trustee-attorney combination is limited to the smaller, private colleges. No private multiversities in the sample reported the use of trustees as primary legal officers. Ranging from 20.0% of the chief legal officers at junior colleges and elite liberal arts colleges to 36.6% at liberal
arts colleges, trustees constitute 28.6% of all private college chief legal officers. These attorneys often serve in a different role than those at larger institutions. In many instances, they view themselves as mediators assisting the institution which is their charge. A trustee at a liberal arts college wrote that in his thirty three years as trustee and college attorney, there had been no litigation against the institution. Problems with termination of faculty were always settled. Most of his work consisted of preparing contracts. Few large institutions could make similar claims about litigation, and trustee-attorneys would not be sufficient to meet the needs of complex universities, but the arrangement makes sense for some institutions. In some states, the trustee-attorney is not an option. Legislation passed in at least one state makes it illegal for trustees to perform legal services for the institution. A respondent from California wrote that after twenty five years on the Board of Trustees, he resigned rather than be found in violation of a new state law which views the provision of legal services by trustees as self-dealing.

The same attorney wrote that most small colleges aren't large enough to justify a staff attorney. The only option seems to be employing a local firm. He continued by discounting this option, saying it precluded any preventive law. This individual stated:

For a small college, it might be ideal to have someone in a responsible position on the administrative staff who is interested in the changes that are affecting the legal responsibilities of colleges. This person should devote a fair amount of time to journals which keep up with changes in college law, but must also be a person who is heavily involved in the administration of the college affairs, so that he or she will know what legal problems are likely to affect the
college. When necessary, that person can consult with legal counsel for further help in preventive steps.

Based on the last sentence of this quote, it seems the individual need not be a trained attorney. At each of the colleges which rely on private counsel, someone must take responsibility for contacting counsel and incurring the inevitable expenses. It may be that some of these individuals already serve in the capacity outlined above; others who serve as contact persons may lack any awareness of legal issues. This linking person holds a position meriting further study.

Somewhat akin to this administrator with some legal knowledge is the full-time administrator/part-time attorney. This somewhat new role is held by only 3.9% of the respondents, but all of these individuals are at liberal arts, elite liberal arts, or community colleges. Institutions needing legal services but not large enough to justify a full-time attorney may find this approach a viable alternative.

It is not surprising that most small colleges opt for attorneys in private practice. Ranging from 51% of the chief legal officers at liberal arts colleges to 80% of the chief legal officers at junior colleges, the bulk of the private attorneys serve these smaller, and with the exception of community colleges, private schools. Of chief legal officers at all private schools, 54.0% are non-trustee private practitioners.

The final category of attorneys are attorneys-general. Usually an assistant attorney-general on campus, these individuals represent 2.9% of the institutions sampled. All institutions so represented were public, and the use of attorneys-general seemed to be spread throughout
the public institutional types in a random way. Use of attorneys-
geneneral seems to be more of a function of the laws of a given state
than any conscious decision on the part of institutions.

Attorneys-general can serve either as full-time, in-house counsel
or as part-time counsel. Again, this is usually determined by state
law.

### TABLE 5

<table>
<thead>
<tr>
<th>Attorney Type by Funding Source</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Attorney General</strong></td>
</tr>
<tr>
<td>N</td>
</tr>
<tr>
<td>Public Institutions</td>
</tr>
<tr>
<td>Private Institutions</td>
</tr>
</tbody>
</table>

Table 5 provides a breakdown of the type of services by all
public/private institutions. Public colleges and universities are
almost five times as likely as private colleges to have full-time
counsel. As of this point, six means of obtaining legal services have
been listed, and the frequency with which each is used, or, in the
case of law professors, not used, has been described. For the purposes
of this study, the distinction of in-house counsel and outside counsel
seems to be a more useable dichotomy than relying on six attorney
types. An attorney situated on a campus is in a better position to
observe the day to day operations and be integrated into the
administrative structure than his off-campus counterpart. For
purposes of this study, an in-house attorney will be defined as any attorney in residence on the campus full-time, regardless of whether his legal duties constitute all, or but a part, of his responsibilities at the institution. Outside counsel will be all attorneys who do not meet the criteria for in-house counsel. In essence, full-time counsel, administrators who serve part-time as counsel, and some attorneys-general would constitute in-house counsel. Outside counsel would be comprised of trustee-attorneys, private practitioners and attorneys-general with responsibilities in addition to their institutional activities.

TABLE 6
In-house/Outside Distinction by Institutional Type

<table>
<thead>
<tr>
<th>In-house Counsel</th>
<th>Outside Counsel</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>N</td>
</tr>
<tr>
<td>Systems</td>
<td>4</td>
</tr>
<tr>
<td>Public Multiversities</td>
<td>10</td>
</tr>
<tr>
<td>Private Multiversities</td>
<td>5</td>
</tr>
<tr>
<td>Public Comprehensives</td>
<td>8</td>
</tr>
<tr>
<td>Elite Liberal Arts</td>
<td>1</td>
</tr>
<tr>
<td>Public Colleges</td>
<td>2</td>
</tr>
<tr>
<td>Liberal Arts Colleges</td>
<td>5</td>
</tr>
<tr>
<td>Community Colleges</td>
<td>3</td>
</tr>
<tr>
<td>Junior Colleges</td>
<td>-</td>
</tr>
<tr>
<td>All Institutions</td>
<td>38</td>
</tr>
</tbody>
</table>

As shown in Table 6, 37.3% of all counsel are in-house counsel; 62.7% are outside. Larger, more complex institutions are more likely to have in-house counsel; smaller, less complex institutions are more likely to have outside counsel.
Provisions for Systems

A brief aside may be appropriate for the purpose of describing special arrangements for legal services to public systems of higher education. In some states, legal services are provided system-wide rather than at each institution. Some systems share a centralized office for legal services, and, in one case, supplements it with attorneys on campuses (20% of the time). These offices serve between ten and sixty-four institutions, with an average of thirty campuses. Most represent both two and four year campuses. Four of the offices (80%) are located in state capitals, not on any individual campus. Only one (20%) is located on a campus, the flagship university. The central organizations work to maintain contact with each campus via telephone, telex, telecopiers, memoranda, opinions, letters and campus visits.

Details on the positive and negative aspects of this arrangement were not collected by this study. If the arrangement is feasible, something which could be determined by further study, it might serve as a model arrangement for consortium of smaller colleges. In much the same way that several small colleges share libraries, faculty, facilities, etc., through a consortium, several institutions might band together to hire a full-time attorney. Steps in this direction have been taken by some attorneys who represent several colleges or who have practices which focus on institutions like colleges, hospitals, other non-profit organizations and corporations. If a group of colleges were geographically situated close enough and took the initiative to hire counsel who would devote full-time to their legal concerns, a new option for obtaining legal services might evolve.
Age

Although Beale (1974) suggested that college or university counsel was proving to be a viable career option for quality graduates of law schools, the data suggests that few young attorneys begin as chief legal officers. The average age of chief legal officers is about fifty years old. Table 7 provides a breakdown of each institutional type by the age of the chief legal officer. More senior individuals seem to serve in liberal arts and elite liberal arts institutions where close to forty percent of the respondents are over sixty years old. Some of this can be attributed to two factors. Many of these institutions use trustees as attorneys, and some of these individuals, as life trustees, are very senior individuals. The average age of trustee attorneys is 62 years old. A second phenomena seemed to appear in a small number of cases; private practice attorneys who "retire" to the university. One such individual wrote:

This position was offered me when I was 75 years of age. I accepted it because: (1) I did not want to retire; (2) I love the practice of law; ... (5) I like the university environment.

At the age of 83, this man is probably the oldest college attorney, but a few other respondents followed a similar path to their current positions. Counsel for public institutions are on average nine years younger than their private institution counterparts. Over 42% of the attorneys at public colleges and universities are 39 years old or younger, and only 5% are over 60 years old. Fewer than 15% of the attorneys at private colleges and universities fall in the 39 or younger age range and over 29% are over 60. In-house counsel averages
<table>
<thead>
<tr>
<th>Institution Type</th>
<th>20-29 Years</th>
<th>30-39 Years</th>
<th>40-49 Years</th>
<th>50-59 Years</th>
<th>60-69 Years</th>
<th>Over 70 Years</th>
<th>Mean</th>
</tr>
</thead>
<tbody>
<tr>
<td>Systems</td>
<td>-</td>
<td>1</td>
<td>20.0</td>
<td>2</td>
<td>40.0</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Public Multiversities</td>
<td>-</td>
<td>6</td>
<td>60.0</td>
<td>1</td>
<td>10.0</td>
<td>2</td>
<td>20.0</td>
</tr>
<tr>
<td>Private Multiversities</td>
<td>-</td>
<td>1</td>
<td>14.3</td>
<td>2</td>
<td>28.6</td>
<td>3</td>
<td>42.9</td>
</tr>
<tr>
<td>Public Comprehensives</td>
<td>1</td>
<td>8.3</td>
<td>5</td>
<td>41.7</td>
<td>3</td>
<td>25.0</td>
<td>2</td>
</tr>
<tr>
<td>Elite Liberal Arts</td>
<td>-</td>
<td>2</td>
<td>20.0</td>
<td>3</td>
<td>30.0</td>
<td>1</td>
<td>10.0</td>
</tr>
<tr>
<td>Public Colleges</td>
<td>-</td>
<td>1</td>
<td>50.0</td>
<td>1</td>
<td>-</td>
<td>1</td>
<td>50.0</td>
</tr>
<tr>
<td>Liberal Arts Colleges</td>
<td>2</td>
<td>4.9</td>
<td>2</td>
<td>4.9</td>
<td>11</td>
<td>26.8</td>
<td>10</td>
</tr>
<tr>
<td>Community Colleges</td>
<td>-</td>
<td>3</td>
<td>27.3</td>
<td>2</td>
<td>18.2</td>
<td>6</td>
<td>54.5</td>
</tr>
<tr>
<td>Junior Colleges</td>
<td>1</td>
<td>20.0</td>
<td>1</td>
<td>20.0</td>
<td>2</td>
<td>40.0</td>
<td>1</td>
</tr>
<tr>
<td>All Institutions</td>
<td>4</td>
<td>3.9</td>
<td>22</td>
<td>21.4</td>
<td>26</td>
<td>25.2</td>
<td>28</td>
</tr>
</tbody>
</table>
ten years younger than outside counsel, with 50% under 40 and fewer than 11% of them are over 60 years old as compared with fewer than 11% of the individuals serving as outside counsel under 40 and almost 30% over 60 years old.

Sex

Chief legal officers tend to be male. Only 9.8% of the respondents are female. Very few women represent the small institutions; almost all of the women worked at multiversities. The highest percentage of women serving as counsel is in private multiversities where they constitute 42.9% of the chief legal officers. In public multiversities, 30.0% of the attorneys are women. Across the board women represent about 10% of all public and all private college and university attorneys. However, women constitute a much larger (24.3%) percentage of in-house attorneys and are almost excluded from the ranks of outside attorneys (1.6%).

Race

Like sex, there is very little variance in race of chief legal officers. Almost 94% of the respondents described themselves as white, non-Hispanic. Three percent self-reported American Indian or Alaskan Native and three percent reported Black, non-Hispanic. Most of the non-white responses came from institutions which are readily identifiable as serving a predominently minority population.
Educational Background

All respondents held either a J.D. or an LL.B., essentially comparable degrees. In addition, 9% of the attorneys had earned an LL.M., a degree taken after the first law degree to specialize in a given area of the law, usually taxation. The LL.D., which is customarily awarded as an honorary degree, had been bestowed on 5% of the attorneys. All of these individuals represented either junior colleges or liberal arts colleges. In most cases, they had been bestowed on trustees and former trustees, probably for their service to the institution. Only 2% of the chief legal officers had earned a J.S.D., an advanced scholarly degree earned by some individuals interested in teaching or the judiciary.

Several attorneys held professional or graduate degrees in fields other than law. A total of 13% of the respondents had earned a M.A., M.S., M.B.A., M.P.A., or Ph.D. degree, and others reported work in progress on advanced degrees. Among in-house counsel, 31.5% (12/38) of the attorneys had advanced, non-legal degrees.

When Counsel Was First Retained

Some institutions have had college counsel positions in some form since their creation; for others, the phenomena is more recent. In his 1974 study, Beale attempted to categorize periods during which institutions first retained counsel. Table 8 contrasts his results with the results of this study.
TABLE 8

Year Counsel Was First Retained: A Contrast With Beale's Earlier Study

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Beale Full-Time</td>
<td>41.2</td>
<td>13.7</td>
<td>27.5</td>
<td>17.6</td>
</tr>
<tr>
<td>This Study Full-Time</td>
<td>15.1</td>
<td>6.2</td>
<td>6.2</td>
<td>72.6</td>
</tr>
<tr>
<td>Beale Part-Time</td>
<td>63.2</td>
<td>10.5</td>
<td>21.1</td>
<td>5.3</td>
</tr>
<tr>
<td>This Study Part-Time</td>
<td>55.7</td>
<td>9.3</td>
<td>20.6</td>
<td>14.5</td>
</tr>
</tbody>
</table>

This study indicates that the growth in the use of full-time attorneys occurred much later chronologically than Beale's work would suggest. There are two reasons which might account for these discrepancies. First, Beale surveyed primarily larger schools, which, as previously noted, are more likely to have full-time counsel and which may have felt the need to retain counsel at a time when the broader spectrum of institutions of higher education had yet to experience legal problems. Second, one would expect the percentage of institutions who first retained counsel prior to 1970 to continue to diminish. Since membership in NACUA has not remained constant and the population has grown, most new members would be institutions which have recently retained counsel. This means that as long as the organization continues to grow, mathematically the percentage of institutions which had full-time counsel prior to 1961 can only diminish.

A better sense of the growth periods in the retention of counsel can be obtained from Tables 9 and 10, which document when part-time
TABLE 9

When Part-Time Counsel Was First Retained

<table>
<thead>
<tr>
<th></th>
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<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>N</td>
<td>%</td>
<td>N</td>
<td>%</td>
<td>N</td>
<td>%</td>
<td>N</td>
</tr>
<tr>
<td>Systems</td>
<td>3</td>
<td>100.0%</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Public Multiversities</td>
<td>6</td>
<td>66.7%</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Private Multiversities</td>
<td>6</td>
<td>85.7%</td>
<td>1</td>
<td>14.3%</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Public Comprehensive</td>
<td>3</td>
<td>27.3%</td>
<td>2</td>
<td>18.2%</td>
<td>1</td>
<td>9.1%</td>
<td>3</td>
</tr>
<tr>
<td>Elite Liberal Arts</td>
<td>6</td>
<td>60.0%</td>
<td>1</td>
<td>10.0%</td>
<td>2</td>
<td>20.0%</td>
<td>1</td>
</tr>
<tr>
<td>Public Colleges</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>2</td>
<td>100.0%</td>
<td>-</td>
</tr>
<tr>
<td>Liberal Arts Colleges</td>
<td>25</td>
<td>62.5%</td>
<td>1</td>
<td>2.5%</td>
<td>8</td>
<td>20.0%</td>
<td>4</td>
</tr>
<tr>
<td>Community Colleges</td>
<td>3</td>
<td>27.3%</td>
<td>3</td>
<td>27.3%</td>
<td>4</td>
<td>36.4%</td>
<td>-</td>
</tr>
<tr>
<td>Junior Colleges</td>
<td>2</td>
<td>50.0%</td>
<td>1</td>
<td>25.0%</td>
<td>-</td>
<td>-</td>
<td>1</td>
</tr>
<tr>
<td>ALL</td>
<td>54</td>
<td>55.7%</td>
<td>9</td>
<td>9.3%</td>
<td>20</td>
<td>20.6%</td>
<td>9</td>
</tr>
</tbody>
</table>

counsel was first retained and when, if at all, full-time counsel was first retained.

More than half of the institutions had part-time counsel prior to 1961. Community colleges and public comprehensives are the only institutional types in which fewer than 50% of the institutions had any provision for counsel by that year. Both types were very near, or had surpassed, that percentage by 1965. Although some of the smaller colleges continue to join the ranks of colleges retaining part-time counsel, the growth area in recent years has been in the area of full-time counsel. Beale (1974) predicted that a trend would develop towards the use of full-time counsel. At the time the article was written, the retention of full-time counsel was undergoing rapid growth. Table 10 shows that between the years of 1971 and 1975, a large number of colleges first retained full-time counsel. Of the
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>N %</td>
<td>N %</td>
<td>N %</td>
<td>N %</td>
<td>N %</td>
<td>N %</td>
<td>N %</td>
</tr>
<tr>
<td>Systems</td>
<td>2 40.0%</td>
<td>1 20.0%</td>
<td>- -</td>
<td>1 20.0%</td>
<td>- -</td>
<td>- -</td>
<td>1 20.0%</td>
</tr>
<tr>
<td>Public Multiversities</td>
<td>3 33.3%</td>
<td>- -</td>
<td>1 11.1%</td>
<td>4 44.4%</td>
<td>1 11.1%</td>
<td>- -</td>
<td>- -</td>
</tr>
<tr>
<td>Private Multiversities</td>
<td>- -</td>
<td>1 14.3%</td>
<td>- -</td>
<td>3 42.9%</td>
<td>1 14.3%</td>
<td>- -</td>
<td>2 28.6%</td>
</tr>
<tr>
<td>Public Comprehensives</td>
<td>- -</td>
<td>- -</td>
<td>- -</td>
<td>5 41.7%</td>
<td>2 16.7%</td>
<td>1 8.3%</td>
<td>4 33.3%</td>
</tr>
<tr>
<td>Elite Liberal Arts</td>
<td>- -</td>
<td>- -</td>
<td>- -</td>
<td>- -</td>
<td>- -</td>
<td>- -</td>
<td>- -</td>
</tr>
<tr>
<td>Public Colleges</td>
<td>- -</td>
<td>- -</td>
<td>- -</td>
<td>1 50.0%</td>
<td>1 50.0%</td>
<td>- -</td>
<td>- -</td>
</tr>
<tr>
<td>Liberal Arts Colleges</td>
<td>- -</td>
<td>- -</td>
<td>1 2.4%</td>
<td>- -</td>
<td>2 4.9%</td>
<td>- -</td>
<td>38 92.7%</td>
</tr>
<tr>
<td>Community Colleges</td>
<td>- -</td>
<td>- -</td>
<td>- -</td>
<td>2 18.2%</td>
<td>- -</td>
<td>- -</td>
<td>9 81.8%</td>
</tr>
<tr>
<td>Junior Colleges</td>
<td>- -</td>
<td>- -</td>
<td>- -</td>
<td>- -</td>
<td>- -</td>
<td>- -</td>
<td>5 100.0%</td>
</tr>
<tr>
<td><strong>All</strong></td>
<td><strong>5 4.9%</strong></td>
<td><strong>2 2.0%</strong></td>
<td><strong>2 2.0%</strong></td>
<td><strong>16 15.7%</strong></td>
<td><strong>7 6.9%</strong></td>
<td><strong>1 1.0%</strong></td>
<td><strong>69 67.6%</strong></td>
</tr>
</tbody>
</table>
eight institutional types, all but one reported a larger percentage of institutions retained full-time counsel in this time block than during any other time span. Of full-time in-house attorneys, more than 47% were first retained in this time span. About one-half of the full-time attorneys in public institutions were also retained during this period. The retaining of full-time counsel has continued to grow through the end of the seventies.

Chapter Two described the early seventies as a time of rapid growth of the law on campus. Many of the constitutional issues regarding student rights at public institutions were being decided in the courts and the Congress was enacting the social engineering legislation it has begun during the Johnson years. Related to these events, and to a certain degree as a result of them, changes were taking place on many campuses. A job description of university counsel at a public comprehensive university described the period after 1967 by observing that many high level university officials were spending a lot of time in the law offices of the firm which represented the university. Eventually, the President asked for a study of the feasibility of full-time counsel and in 1971 the position was created, saving the administrators many trips away from campus.

Respondents were asked to describe what event or events led to the retention of full-time counsel. Most stated no singular event caused the change; rather, a sequence of events demonstrated a need for full-time counsel. Collective bargaining, the increase in Federal regulations, increased student and faculty demands and increased litigation were cited most frequently as reasons for the switch. A
few attorneys credited personnel changes, specifically new presidents, with the policy change. New Federal contracts and the cost of private counsel were also cited as reasons for employing full-time counsel.

**Supervision of Legal Counsel**

Beale (1974) found that most attorneys report to the chief executive officer, and to the Board on matters handled by that body. That is still true. A total of 84.3% of the attorneys report to the chief executive officer or the Board. The breakdown is 44.1% report to the Board and 40.2% to the President or Chancellor. Most of the Board accountable attorneys are also accountable to the chief executive officer. The remaining 14.8% of the attorneys report to vice presidents, attorneys general, deans or treasurers. At public comprehensive colleges and multiversities between 57% and 75% of the attorneys report directly to the president; only 8% to 20% of these attorneys report to the Board. In each of the other institutional types at least half of the attorneys report to the Board. In-house counsel in 80% of the cases reports to the president or some administrative officer other than a member of the Board.

**University Level at Which Work is Initiated**

Attorneys were asked to estimate the percentage of their work originating at different levels within the institution. Ten levels, from governing board to students, were delineated. The average amount of time spent at each level within each institutional type is provided in Table 11. Table 12 provides the same information for
### TABLE 11

Institutional Level at Which Work Originates by Organizational Type

<table>
<thead>
<tr>
<th>Institutional Type</th>
<th>Board</th>
<th>President</th>
<th>Instit. Wide Committee</th>
<th>Deans</th>
<th>Program Directors</th>
<th>Dept. Head</th>
<th>Faculty</th>
<th>Staff</th>
<th>Special Groups</th>
<th>Students</th>
</tr>
</thead>
<tbody>
<tr>
<td>Systems</td>
<td>38.2%</td>
<td>42.2%</td>
<td>2.8%</td>
<td>2.8%</td>
<td>3.0%</td>
<td>1.2%</td>
<td>2.5%</td>
<td>3.0%</td>
<td>1.5%</td>
<td>2.8%</td>
</tr>
<tr>
<td>Public Multiversities</td>
<td>10.2%</td>
<td>28.7%</td>
<td>6.2%</td>
<td>10.0%</td>
<td>13.3%</td>
<td>5.6%</td>
<td>4.7%</td>
<td>10.1%</td>
<td>3.9%</td>
<td>7.3%</td>
</tr>
<tr>
<td>Private Multiversities</td>
<td>4.3%</td>
<td>38.6%</td>
<td>2.3%</td>
<td>13.6%</td>
<td>15.4%</td>
<td>7.6%</td>
<td>1.9%</td>
<td>10.7%</td>
<td>1.7%</td>
<td>3.9%</td>
</tr>
<tr>
<td>Public Comprehensives</td>
<td>3.4%</td>
<td>34.3%</td>
<td>4.1%</td>
<td>19.5%</td>
<td>8.4%</td>
<td>5.8%</td>
<td>14.8%</td>
<td>5.4%</td>
<td>1.3%</td>
<td>2.8%</td>
</tr>
<tr>
<td>Elite Liberal Arts</td>
<td>15.5%</td>
<td>47.0%</td>
<td>3.0%</td>
<td>12.0%</td>
<td>7.0%</td>
<td>6.0%</td>
<td>1.5%</td>
<td>4.0%</td>
<td>-</td>
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<td>12.5%</td>
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<td>6.5%</td>
<td>1.0%</td>
<td>-</td>
<td>10.5%</td>
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<td>6.0%</td>
<td>1.7%</td>
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<td>3.2%</td>
<td>0.3%</td>
<td>3.1%</td>
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<tr>
<td>Community Colleges</td>
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<td>2.1%</td>
<td>11.0%</td>
<td>7.6%</td>
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<td>1.4%</td>
<td>0.2%</td>
<td>1.5%</td>
</tr>
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<td>Junior Colleges</td>
<td>27.0%</td>
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<td>13.0%</td>
<td>3.0%</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>1.0%</td>
<td>-</td>
</tr>
<tr>
<td>All</td>
<td>15.4%</td>
<td>45.6%</td>
<td>2.7%</td>
<td>12.7%</td>
<td>7.8%</td>
<td>3.5%</td>
<td>3.7%</td>
<td>4.4%</td>
<td>0.8%</td>
<td>3.4%</td>
</tr>
</tbody>
</table>
TABLE 12

Institutional Level at Which Work Originates by In-house/Outside Status

<table>
<thead>
<tr>
<th></th>
<th>President</th>
<th>Wide Program</th>
<th>Dept. Directors</th>
<th>Faculty</th>
<th>Staff</th>
<th>Special Groups</th>
<th>Students</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>In-house</strong></td>
<td>11.8%</td>
<td>34.1%</td>
<td>3.9%</td>
<td>11.7%</td>
<td>10.5%</td>
<td>4.7%</td>
<td>8.2%</td>
</tr>
<tr>
<td><strong>Outside</strong></td>
<td>17.6%</td>
<td>52.5%</td>
<td>2.1%</td>
<td>13.0%</td>
<td>6.3%</td>
<td>2.6%</td>
<td>1.1%</td>
</tr>
</tbody>
</table>
Attorneys in smaller, less complex institutions, junior colleges through elite liberal arts colleges, work on projects which originate primarily on the level of chief executive and his staff or Board of Trustees. Between 62% and 81% of their work originates at this level. At the larger, more complex institutions only 37% to 43% of the work comes from these two top levels. The variance for work at the next three levels, Institution-wide Committees, Deans of Schools, Colleges and Units, and Directors of non-academic programs, is not as great as it is at the highest levels. The range for smaller schools is 17% to 22%; for larger schools it is between 29% and 32%. Although this difference of approximately 10% is not large, it suggests that attorneys may have a greater pervasiveness and be more accessible to all individuals within the organization. This would facilitate acceptance of a broader role for attorneys on campus. An examination of the lowest five levels, academic department heads through students and student groups, provides more support to the theory that counsel at larger, more complex institutions are involved with work from all levels of the institution. None of the five institutional types representing smaller colleges had mean responses in excess of 18.0% for the sum of these five levels. Comparable statistics for comprehensive universities and multiversities ranged from 25.8% to 31.6%.

Table 12 demonstrates that in-house counsel, like attorneys at large institutions, receive work from all levels within the
organization. Only 45.9% of the in-house counsel's work comes from the chief executive or higher level, as compared to 70.1% from these levels for outside counsel. Although the middle levels are fairly similar, there is a major difference at the bottom levels. Outside counsel receives only 8.7% of its cases from levels below that of department head. In-house counsel receives 28.0% of its cases from these levels. One private practitioner stated that it was difficult for him to assess the level at which cases originate, since all cases come to him through the president's office. It stands to reason that attorneys on campus are going to be both more visible and more accessible to all segments of the institution's population than someone off campus who bills the institution for all contacts.

Committee Work

As attorneys worked their way into the organization, it was inevitable that they would become involved in the committee work which keeps the institutions running. Respondents were asked to state the number of permanent and the number of ad-hoc committees on which they served in the last year. With the exception of liberal arts colleges attorneys, more than half of the attorneys at the smaller colleges did not serve on any permanent committees in the last year. The average number of permanent committee assignments for all attorneys at small colleges was one committee. Although the average for liberal arts college attorneys was quite a bit higher at 1.41 and several of these individuals served on more than five committees, this apparent aberration can be partially explained by the large
number of trustee attorneys in this category who listed standing committees of the Board of Trustees as their committees. Since it isn't possible to determine if these appointments were made based on legal expertise or other criteria, it's difficult to say whether or not these assignments are directly related to the position of counsel. For that reason, they have not been excluded. Table 13 verifies that attorneys at comprehensive colleges and multiversities are more likely to serve on a larger number of committees than other attorneys. These individuals averaged between 1.42 and 2.50 committee assignments during the year.

In-house counsel were rarely excused from committee work; only 13.5% did not serve on any permanent committees during the past year. On average, in-house counsel served on more than twice as many committees as outside counsel did. Although serving on ad-hoc committees was more rare, in-house counsel was three times as likely as outside counsel to serve on ad-hoc committees. Table 15 provides a breakdown of ad-hoc committee assignments by institutional type. Overall, college and university attorneys averaged less than one ad-hoc committee assignment per year, with attorneys at larger institutions more likely to be involved in this kind of work than those at smaller institutions.

The nature of the committee work gives some further indication of the type of work done by university attorneys. The most commonly cited committee was that of the president's cabinet or executive committee: a high level policy making body. A large number of
### TABLE 13
Number of Permanent Committee Assignments by Institutional Type

<table>
<thead>
<tr>
<th>None</th>
<th>One</th>
<th>Two</th>
<th>Three</th>
<th>Four</th>
<th>Five</th>
</tr>
</thead>
<tbody>
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<td>N</td>
<td>%</td>
<td>N</td>
<td>%</td>
<td>N</td>
<td>%</td>
</tr>
<tr>
<td>Systems</td>
<td>1</td>
<td>20.0</td>
<td>1</td>
<td>20.0</td>
<td>-</td>
</tr>
<tr>
<td>Public Multiversities</td>
<td>1</td>
<td>10.0</td>
<td>2</td>
<td>20.0</td>
<td>3</td>
</tr>
<tr>
<td>Private Multiversities</td>
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<td>42.9</td>
<td>1</td>
<td>14.3</td>
<td>2</td>
</tr>
<tr>
<td>Public Comprehensives</td>
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<td>33.3</td>
<td>2</td>
<td>16.7</td>
<td>5</td>
</tr>
<tr>
<td>Elite Liberal Arts</td>
<td>6</td>
<td>60.0</td>
<td>1</td>
<td>10.0</td>
<td>2</td>
</tr>
<tr>
<td>Public Colleges</td>
<td>1</td>
<td>50.0</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Liberal Arts Colleges</td>
<td>10</td>
<td>41.0</td>
<td>7</td>
<td>17.9</td>
<td>7</td>
</tr>
<tr>
<td>Community Colleges</td>
<td>7</td>
<td>63.6</td>
<td>1</td>
<td>9.1</td>
<td>2</td>
</tr>
<tr>
<td>Junior Colleges</td>
<td>3</td>
<td>60.0</td>
<td>1</td>
<td>20.0</td>
<td>1</td>
</tr>
<tr>
<td>All</td>
<td>42</td>
<td>41.6</td>
<td>15.8</td>
<td>22</td>
<td>21.8</td>
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</table>

### TABLE 14
Number of Permanent Committee Assignments by In-house/Outside Status

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<th>Two</th>
<th>Three</th>
<th>Four</th>
<th>Five</th>
</tr>
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<td>%</td>
<td>N</td>
<td>%</td>
<td>N</td>
<td>%</td>
</tr>
<tr>
<td>In-house</td>
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<td>13.5</td>
<td>8</td>
<td>21.6</td>
<td>14</td>
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<tr>
<td>Outside</td>
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<td>57.1</td>
<td>8</td>
<td>12.7</td>
<td>8</td>
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107
<table>
<thead>
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<th>Three</th>
<th>Four</th>
<th>Five or more</th>
</tr>
</thead>
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<td>N</td>
<td>%</td>
<td>N</td>
<td>%</td>
</tr>
<tr>
<td>Systems</td>
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<td>-</td>
<td>-</td>
<td>-</td>
</tr>
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<td>10.0</td>
<td>1</td>
<td>10.0</td>
</tr>
<tr>
<td>Public Comprehensives</td>
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<td>41.7</td>
<td>-</td>
<td>-</td>
<td>4</td>
<td>33.3</td>
</tr>
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<td>Elite Liberal Arts</td>
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<td>2</td>
<td>20.0</td>
<td>2</td>
<td>20.0</td>
</tr>
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<td>1</td>
<td>50.0</td>
<td>-</td>
<td>-</td>
</tr>
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<td>7.5</td>
<td>4</td>
<td>10.0</td>
</tr>
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<td>9.1</td>
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<td>20.0</td>
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<td>65.7</td>
<td>10</td>
<td>9.8</td>
<td>12</td>
<td>11.8</td>
</tr>
</tbody>
</table>

Table 15
Number of Ad-hoc Committee Assignments by Institutional Type
attorneys at research universities listed committees related to research, such as Human Subjects Research, Biological Hazards, Radiation or General Research, among their assignments. Attorneys at a variety of institutional types listed Affirmative Action, Section 504, Personnel Policies, Promotion and Tenure, Residency, and Real Estate/Gifts/Investments as areas explored through their committee work. Also cited, but less frequently, were committees charged with responsibilities for copyrights and patents, liabilities, student affairs, institutional bylaws, athletics and self study.

Ad-hoc committee assignments were most often either state/federal investigations or self studies on compliance with affirmative action/equal opportunity/access for the handicapped legislation or personnel search committees. Other assignments focused on more topical subjects including student legal services, DNA research, sexual harassment, and the impact of the Yeshiva decision.

Legal Specialties

University legal counsel is usually described as a generalist position. Increasingly college attorneys rely on specialists in private practice to supplement their services. The following duties and responsibilities, taken from the job description of counsel at a public multiversity, gives some indication of the breadth of responsibilities.

Furnish advice and other legal services...relative to employment policies and practices, laws and regulations pertaining to students, union contract and labor laws, real estate transactions, contracts and grants, tax matters, workmen's compensation, malpractice and other insurance matters, public purchases
and public moneys, equal employment opportunity, other City, State and Federal laws affecting the University and other legal questions arising in the administration of the University.

Incumbant must keep abreast of all legal developments, particularly including administrative and academic law.

Although the above are typical...additional duties and responsibilities...may be required.

Given such a breadth of responsibilities, it was probably not wise to try to get a breakdown of the type of law which accounts for most of the attorneys' time. The list of types doesn't seem to be finite. The attorney who currently holds the position described above wrote, "I have covered as many as fifty areas of law in a given year." At one public comprehensive college, a list of twenty-two types of law were covered, including Admiralty, Maritime, Domestic Relations, and Collection/Repossession. In some cases, it is also difficult to identify one person who can assess the full legal picture of an institution. This is particularly true of large private research universities with substantial government contracts. The attorney at one of these institutions responded from the perspective of his position, but said similar functions were carried out by the patent office counsel, the director of planned giving (legal affairs division) and the labor relations manager. These issues coupled with the methodological problems of non-exclusivity of categories and varied constructs described in Chapter Four undermine some of the value of the information presented in Tables 16 and 17, but there are a few similarities and differences which merit attention.
<table>
<thead>
<tr>
<th>Administrative</th>
<th>Civil Rights</th>
<th>EEOC/AA</th>
<th>Contract</th>
<th>Tort</th>
<th>Tax</th>
<th>Criminal</th>
<th>Copyright/Patent</th>
<th>Constitutional</th>
<th>Civil</th>
<th>Administrative</th>
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<td>20.7%</td>
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<td>3.3%</td>
<td>2.7%</td>
<td>2.5%</td>
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<td>9.9%</td>
<td>1.9%</td>
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<td>8.5%</td>
<td>25.5%</td>
<td>19.5%</td>
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<td>4.4%</td>
<td>2.5%</td>
<td>1.4%</td>
<td>13.3%</td>
<td>19.5%</td>
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<td>1.1%</td>
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<tr>
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<td>12.5%</td>
<td>14.5%</td>
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<td>2.8%</td>
<td>5.9%</td>
<td>2.3%</td>
<td>1.4%</td>
<td>6.8%</td>
<td>1.1%</td>
<td>3.6%</td>
</tr>
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<td>1.2%</td>
<td>4.0%</td>
<td>6.5%</td>
<td>0.4%</td>
<td>2.0%</td>
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<td>5.4%</td>
<td>1.2%</td>
<td>3.8%</td>
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<td>2.5%</td>
<td>1.0%</td>
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<td>3.2%</td>
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<tr>
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<td>3.2%</td>
<td>4.0%</td>
<td>1.0%</td>
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<td>1.2%</td>
<td>3.2%</td>
<td>4.0%</td>
<td>1.0%</td>
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</tr>
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</table>

Time spent on selected types of law by institutional type

TABLE 16
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<th>Type</th>
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</thead>
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<td>Miscellaneous</td>
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</tr>
<tr>
<td>Labor/Personnel</td>
<td></td>
</tr>
<tr>
<td>Trusts/Probate/Civil Rights</td>
<td></td>
</tr>
<tr>
<td>Contract</td>
<td></td>
</tr>
<tr>
<td>Tort</td>
<td></td>
</tr>
<tr>
<td>Tax</td>
<td></td>
</tr>
<tr>
<td>Criminal</td>
<td></td>
</tr>
<tr>
<td>Copyright/Patent</td>
<td></td>
</tr>
<tr>
<td>Constitutional</td>
<td></td>
</tr>
<tr>
<td>Civil</td>
<td></td>
</tr>
<tr>
<td>Administrative</td>
<td></td>
</tr>
</tbody>
</table>

Time Spent on Selected Types of Law by In-house/Outside Status

<table>
<thead>
<tr>
<th>Outside</th>
</tr>
</thead>
<tbody>
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<td>18.5%</td>
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<tr>
<td>0.3%</td>
</tr>
<tr>
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<tr>
<td>7.5%</td>
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<tr>
<td>2.2%</td>
</tr>
<tr>
<td>6%</td>
</tr>
<tr>
<td>5.9%</td>
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</table>

<table>
<thead>
<tr>
<th>In-house</th>
</tr>
</thead>
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<tr>
<td>24.6%</td>
</tr>
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<tr>
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<td>5.1%</td>
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<tr>
<td>5.2%</td>
</tr>
</tbody>
</table>

Table I7
It should be noted that the question assessing time spent on various types of law was an open-ended question. The responses added to the categories most frequently were contract, equal opportunity/affirmative action/civil rights law, trusts/estates/probate/real estate law, and labor/personnel law. These appear in the last columns of Table 16. The category of Miscellaneous Law includes other, less frequently cited responses to the open-ended portion of the question. This category includes Bankruptcy, Collection, Commercial, Corporate, Immigration, Insurance, Property, Securities and Sports Law. Since individuals chose to add each of these thirteen categories, and in a sense, they were not "readily" available to all respondents, the percentages in these categories are probably underrepresentative of what the actual figures are.

What is probably most striking about Table 16 is the fact that there are few glaring differences. Constitutional law averages more time in public institutions bound by the Constitution than it does in private institutions. This would be expected. Contract law is most prevalent in multiversities where most government contracts and sponsored research are centered. Labor law consumes more time in public institutional types than in private institutions. Counsel at public institutions spend almost three times as much time in this area as their private institution counterparts do. Both Tax Law and Trusts/Estates/Probate/Real Estate take up more time in the private sector. Private sector attorneys spend five times as much time on Tax Law and seven times as much time on Trust (etc.) Law as their
public sector equivalents. In some ways this reinforces the notion of the attorney at small colleges who primarily helps with non-profit tax issues and investigating wills and titles. The one difference is that although counsel in private institutions still fulfill this role, they no longer devote all of their time to such tasks.

The comparison of in-house counsel with outside counsel yields more similarities than it does differences. Once again, the greater emphasis on Tax Law and Trusts (etc.), as was the case with private institutions, stands out. This may reflect a willingness on the part of institutions to incur expenses for legal services if the expenses are likely to lead to additional resources (tax savings, bequests, inheritances, etc.). Offsetting this imbalance, in-house counsel spend more time on Equal Employment/Affirmative Action Law and Copyright and Patent Law than outside counsel. This may reflect the ability of in-house counsel to become involved in a greater variety of issues, or it may just be a reflection of the nature of the institution they represent.

Size of Legal Staffs

The actual size of the legal staff of an institution is probably not measurable. Three quarters of all institutions rely on private practitioners in some way for legal assistance. When a non-routine legal matter requires a specialist, almost all institutions will "sub-contract" for services. This provides a great deal of flexibility in obtaining legal services, and at the same time,
suggests that legal staff size may not be measurable in a conventional way. As a result, it only makes sense to examine the full-time permanent staff size of in-house counsel. Those statistics are reported in Table 18.

Although more than half of the offices headed by in-house counsel are single attorney offices, over one quarter have four or more full-time attorneys or staff. On average, in-house counsel offices are staffed by 2.13 attorneys. The use of full-time administrators, who are not attorneys, is quite rare. Only 18.4% of the respondents reported the use of non-attorney administrators. As is the case with most new units to campus, support services must be provided for counsel. In-house counsel averaged 1.87 support personnel, just a little short of one support person for each attorney.

As stated earlier, these figures are somewhat deceptive. If the need arises, an assistant attorney general serving as outside counsel to an institution may muster the support of the entire staff of the Attorney General's office. The trustee attorney who heads a large firm can do likewise. There are many additional legal resources available to chief legal officers to supplement their own work. Table 19 gives an indication of what additional services are available and how frequently they are used.

The services of the Attorney General's office are called on by 18.4% of the respondents. In some cases, these services supplement the work of an assistant attorney general on campus; in others,
TABLE 18

Size of In-house Legal Staff

<table>
<thead>
<tr>
<th></th>
<th>None</th>
<th>One</th>
<th>Two</th>
<th>Three</th>
<th>Four</th>
<th>Five or More</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>N</td>
<td>%</td>
<td>N</td>
<td>%</td>
<td>N</td>
<td>%</td>
</tr>
<tr>
<td>Full-Time Attorneys</td>
<td>2</td>
<td>5.3%</td>
<td>19</td>
<td>50.0%</td>
<td>5</td>
<td>13.2%</td>
</tr>
<tr>
<td>Full-Time Administrators</td>
<td>31</td>
<td>81.6%</td>
<td>6</td>
<td>15.8%</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Full-Time Support Staff</td>
<td>7</td>
<td>18.4%</td>
<td>13</td>
<td>34.2%</td>
<td>9</td>
<td>23.7%</td>
</tr>
</tbody>
</table>
TABLE 19
Use of Attorneys to Support Chief Legal Officers by In-house/Outside Counsel Status

<table>
<thead>
<tr>
<th>Reporting Using:</th>
<th>In-house</th>
<th>Outside</th>
<th>All</th>
</tr>
</thead>
<tbody>
<tr>
<td>Attorneys General</td>
<td>15/39.5%</td>
<td>3/4.7%</td>
<td>19/18.4%</td>
</tr>
<tr>
<td>Full-Time Attorneys at Institution</td>
<td>20/52.6%</td>
<td>1/1.6%</td>
<td>21/20.4%</td>
</tr>
<tr>
<td>Trustees</td>
<td>1/2.6%</td>
<td>3/4.7%</td>
<td>4/3.9%</td>
</tr>
<tr>
<td>Law Professors</td>
<td>0/0.0%</td>
<td>0/0.0%</td>
<td>0/0.0%</td>
</tr>
<tr>
<td>Private Practitioners</td>
<td>29/76.3%</td>
<td>48/75.0%</td>
<td>77/74.8%</td>
</tr>
</tbody>
</table>

they supplement the services of full-time counsel not affiliated with the office of the attorney general. It may be stating the obvious, but only public institutions call on the attorney general for assistance. The use of additional full-time attorneys is primarily limited to house counsel with multi-attorney offices. These arrangements have already been described. Trustee-attorneys and other chief legal officers rely on the services of other Board members in 3.9% of the cases. Each of these instances was reported by less complex institutional types. No respondents reported using law professors to supplement their services. The most common practice was to use attorneys in private practice when additional personnel were needed. Close to 75% of the institutions reported so doing, and at least half so reported in each of the eight SPAG-institutional types. The chief legal officer at one public comprehensive college
also reported the use of four legal interns for ten to fifteen hours per week. This arrangement represents a fairly economical way for some institutions to provide support to a small legal staff.

**Accuracy of the Literature**

In Chapter Three, the limited literature on university counsel was explored. Most of the articles on university counsel were written between 1973 and 1976, a time of change and substantial growth for this emerging profession. The positions are perhaps more clearly defined today, and probably reflect some of the changes which have occurred. This questions the validity of a body of literature dated only by seven years. Some of the findings of this study have contradicted the findings of Beale (1974). A comparison between the two studies is not totally accurate since his population, which consisted primarily of large institutions, was different from the broader range of institutions encompassed by this study. Some of the differences may reflect trends Beale predicted in his article.

One other way to attempt to measure the accuracy of the literature would be to compare this data with the findings of Lytle (1979). Lytle attempts to position the literature of university counsel on his typology of role of university counsel. Lytle placed each article in one of the quadrants he had posited as possible roles. Among Ombudsman, Companyman, Pointman and Muckraker, most college or university attorneys seemed to fall in the category of Companyman. Figure 3 demonstrates the positioning of the literature as done by Lytle.
FIGURE 3

Key Literature Findings Positioned on the Typological Scale
Although it lacks scaling, the figure would suggest that most counsel function as Companymen, and that a moderately strong, negative linear relationship exists between autonomy (relative freedom to define position, select tasks, etc.) and degree of counselor (inside team member). No instrument exists to measure the degree of each role so in an attempt to assess the role of legal officers, each respondent was asked to choose from the following descriptions of role (used to describe, respectively, Ombudsman, Companyman, Pointman, and Muckraker):

ROLE A: You are free to choose your tasks. You function as a problem solver. In this capacity you are able to get information from anyone at the institution. They in turn have equal access to you and your services.

ROLE B: You function within a narrowly defined range of tasks. Your job is designed to be respective to the needs of the college. Those needs are determined by someone else.

ROLE C: You function as an advocate, often in the midst of controversy. At all times this advocacy must be for causes consistent with the goals delineated by university administrators.

ROLE D: You are free to choose tasks, and often function as an advocate. At times your causes may be in direct conflict with those of other administrators and goal settings at the college or university.

Since most individuals function in a variety of roles in a given position, the options were not set up as mutually exclusive. Instead, each individual was asked to estimate what percentage of time he spends in each role. Table 20 provides a summary of the average amount of time spent in each role as reported by the attorneys. Comparable data for in-house counsel and outside counsel appear in Table 21.
### TABLE 20
Average Time Spent in Each Lytle Role by Institutional Type

<table>
<thead>
<tr>
<th>Role Type</th>
<th>In-house</th>
<th>Outside</th>
<th>Average</th>
<th>Ombudsman</th>
<th>Companyman</th>
<th>Pointman</th>
<th>Muckraker</th>
</tr>
</thead>
<tbody>
<tr>
<td>Systems</td>
<td>17.50%</td>
<td>30.00%</td>
<td>24.18%</td>
<td>30.00%</td>
<td>45.23%</td>
<td>22.12%</td>
<td>8.47%</td>
</tr>
<tr>
<td>Public Multiversities</td>
<td>35.00%</td>
<td>27.22%</td>
<td>27.22%</td>
<td>38.75%</td>
<td>25.00%</td>
<td>12.78%</td>
<td>9.50%</td>
</tr>
<tr>
<td>Private Multiversities</td>
<td>23.83%</td>
<td>47.83%</td>
<td>38.75%</td>
<td>47.83%</td>
<td>22.50%</td>
<td>11.00%</td>
<td>8.50%</td>
</tr>
<tr>
<td>Public Comprehensives</td>
<td>43.64%</td>
<td>30.00%</td>
<td>43.64%</td>
<td>16.82%</td>
<td>11.00%</td>
<td>8.50%</td>
<td>9.56%</td>
</tr>
<tr>
<td>Elite Liberal Arts</td>
<td>6.50%</td>
<td>74.00%</td>
<td>6.50%</td>
<td>11.00%</td>
<td>22.50%</td>
<td>11.00%</td>
<td>5.00%</td>
</tr>
<tr>
<td>Public Colleges</td>
<td>34.50%</td>
<td>38.00%</td>
<td>34.50%</td>
<td>22.50%</td>
<td>11.00%</td>
<td>8.50%</td>
<td>9.56%</td>
</tr>
<tr>
<td>Liberal Arts Colleges</td>
<td>17.83%</td>
<td>53.14%</td>
<td>17.83%</td>
<td>22.50%</td>
<td>11.00%</td>
<td>8.50%</td>
<td>6.53%</td>
</tr>
<tr>
<td>Community Colleges</td>
<td>31.00%</td>
<td>19.50%</td>
<td>31.00%</td>
<td>38.00%</td>
<td>11.50%</td>
<td>8.50%</td>
<td>11.50%</td>
</tr>
<tr>
<td>Junior Colleges</td>
<td>31.00%</td>
<td>60.00%</td>
<td>31.00%</td>
<td>7.00%</td>
<td>2.00%</td>
<td>2.00%</td>
<td>2.00%</td>
</tr>
<tr>
<td>All</td>
<td>24.18%</td>
<td>45.23%</td>
<td>22.12%</td>
<td>8.47%</td>
<td>8.47%</td>
<td>8.47%</td>
<td>8.47%</td>
</tr>
</tbody>
</table>

### TABLE 21
Average Time Spent in Each Lytle Role by In-house/Outside Status

<table>
<thead>
<tr>
<th>Status</th>
<th>Ombudsman</th>
<th>Companyman</th>
<th>Pointman</th>
<th>Muckraker</th>
</tr>
</thead>
<tbody>
<tr>
<td>In-house</td>
<td>37.12%</td>
<td>25.53%</td>
<td>22.74%</td>
<td>14.62%</td>
</tr>
<tr>
<td>Outside</td>
<td>17.02%</td>
<td>56.69%</td>
<td>21.29%</td>
<td>5.00%</td>
</tr>
</tbody>
</table>
A division by in-house and outside counsel yields some interesting differences. The most common mode of operation for in-house counsel is that of Ombudsman. In-house counsel function more than twice as much time in this role as do outside counsel. However, they only spend one-half as much time in the role of Companyman as outside counsel. Statistics for Pointman are comparable for both groups, but in-house counsel risks functioning as a Muckraker three times as often as outside counsel. Considering Lytle's claim that an attorney serving as Ombudsman would stand a better chance of working on preventive law than those in other roles, this finding suggests the possibility of some major differences in the types of law practiced by these two groups of attorneys.

In an attempt to graph the role of attorneys, the time spent in each role was converted to a raw score. The measure of autonomy was computed by subtracting the amount of time spent in the roles of Companyman and Pointman from the sum of the time spent in the roles of Ombudsman and Muckraker. The measure of counselor/advocate was computed in a similar way by subtracting the time spent in the roles of Muckraker and Pointman from the sum of the time spent in the role of Ombudsman and Companyman. These numbers, divided by ten to make them more manageable, served as abscissa and ordinate, respectively, to plot values. Figures 4, 5 and 6 give some indication of where college and university attorneys in general, in-house counsel and outside counsel position themselves on the scale.

Compared with the findings of Lytle (1979) his analysis seems to
FIGURE 4
Positioning of Counsel on Approximated Lytle Typological Scale
FIGURE 5

Positioning of In-house Counsel on Approximated Lytle Typological Scale
FIGURE 6
Position of Outside Counsel on Approximated Lytle Typological Scale
fit most attorneys, but there seems to be some movement towards the role of Ombudsman especially among in-house counsel. If the figures were recalculated to indicate a forced choice among counsel, the role which seems to dominate for most attorneys is Companyman. A breakdown of those which fall clearly into one category, not on either axis, is given for all attorneys and for in-house and outside counsel in Figure 7. In-house counsel fall into the category of Ombudsman more frequently than any other category.

<table>
<thead>
<tr>
<th>Muckraker</th>
<th>Ombudsman</th>
<th>5.4%</th>
<th>21.6%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Pointman</td>
<td>Companyman</td>
<td>13.0%</td>
<td>59.5%</td>
</tr>
</tbody>
</table>

**Figure 7**

Percentage of Counsel Identifying Primarily with Each Lytle Type
One final observation regarding the variables of autonomy and counselor/advocate posited by Lytle is worth making. The figure positioning literature on this scale indicated a moderately strong negative relationship between the two variables. A relation between the two variables existed for some institutional types. Overall, the strengths of these relations varied from very weak to quite strong. Among elite liberal arts colleges, there is a strong inverse relation ($r = -0.75$) similar to the one suggested by Lytle's graph. Moderately strong direct relationships were found for community colleges, public multiversities and systems ($r$ values of .40, .51 and .47). Overall, the relationship for private institutional types and outside counsel had negative relationships, as suggested by Lytle. The converse is true for public institutional types and in-house counsel.

**Summary**

Thus far this chapter has attempted to describe the means by which colleges and university obtain legal services, the individuals who serve as chief legal officers, what they do, with whom they work, and how they function. With this improved understanding of the population, it is now possible to examine the issues of treatment and preventive law and how organizational variables may be related to these concepts.
II. Treatment and Preventive Law

The practice of both treatment law, reacting to legal problems as demands arise, and preventive law, a pro-active approach of anticipating possible legal problems and, if possible, defusing them, was present on most campuses. Two scales were used to quantify the presence of each in an attempt to create an index which could be used to make comparisons. A list of attorney behaviors and activities was generated based on the definitions and examples of treatment and preventive law provided in the literature. Once again, a guarantee that the list was exhaustive was not possible, but an attempt was made to include as many different activities indicative of each law type as possible. A total of sixteen elements comprised the list. Six were primarily reactive behaviors and therefore deemed indicative of treatment law; ten were primarily pro-active behaviors and were labelled as preventive law. Figure 8 provides the breakdown of the sixteen activities into treatment and preventive categories.

Respondents were asked to report whether their offices spent no time, a little time, some time or a great deal of time on each activity. The responses were used to determine the presence or absence of each activity and provide some indication of the frequency of that activity. It did not measure the amount of time spent on each activity as a percentage of the time spent as counsel. This limitation reflected an uneasiness on the part of the researcher to ask individuals to try to divide 100% of their time among sixteen
TREATMENT LAW

1. Engaging in collective bargaining negotiations.
2. Interpreting Federal regulations, guidelines and legislation.
3. Providing legal advice to members of the college or university community when solicited.
4. Preparing documented responses to inquiries from governmental agencies or other organizations outside the college or university.
5. Representing the college or university in litigation resulting from suits brought against it.
6. Writing institutional contracts.

PREVENTIVE LAW

1. Lobbying at the State and Federal levels.
4. Offering legal advice to members of the college or university community even when it has not been solicited.
5. Participating in college or university policy-making meetings.
6. Preparing amici briefs for cases involving other colleges and universities.
7. Representing the college or university in cases the school chooses to appeal.
8. Representing the college or university in suits initiated by the institution.
9. Reviewing institutional contracts.
10. Reviewing institutional publications.

FIGURE 8

Activities Classified as Indicative of Treatment or Preventive Law
variables. The accuracy of such data, assuming respondents didn't choose to bypass it altogether, would be questionable.

A scale of raw scores on the levels of treatment law and preventive law was devised by scoring one point for the response "a little", two points for "some", and three points for "a great deal" on each of the activities. The total points for treatment law activities were summed up yielding a scale of zero to eighteen. The same procedure was followed to create an index for the level of preventive law on a scale of zero to thirty. These scales were used to attempt to identify possible relationships between the variables of levels of treatment and preventive law and other variables in the study. In cases where the other variable was interval data, each scale was used as a raw index. Since several variables were measured as either nominal or ordinal data, the scales were also converted into low/medium/high ranges to facilitate the use of contingency tables to examine the relationship between variables not measurable by simple correlation statistics. The criteria used to divide the scales into three ranges was that the low and high ranges could not include more than one-third of the responses. Due to clustering at certain levels of the scales, it was necessary to choose cut-off points less than 33.3% or to arbitrarily call 12 points medium in some cases and high in others. The first option was selected. As a result the breaking points for treatment law were: 27.2% - low; 49.5% - medium; and 31.1% - high. These ranges are used throughout the study.
As a secondary index, individuals were asked to indicate what percentage of their time was spent on treatment law and what percentage was spent on preventive law. There was very little variance on this question. Table 22 shows a breakdown of these self-reports by institutional types. It appears that a greater percentage of time is spent on treatment law in the more complex institutions than the smaller, less complex colleges and universities. Since this is a measure of percentage of time, and these institutions have larger legal staffs as compared to part-time counsel at some of the smaller schools, it may not be any indication of the extent of preventive law on campus. A test for a relation between the self-reported percentage of time spent on treatment law and the level of treatment law present on campus leads to the conclusion that no relation exists between the two variables. Although a similar test suggests that a relation does exist between the self-reported percentage of time spent on preventive law and the level of preventive law, an r value of -.19 indicates that relation is very weak, almost negligible. The index for levels of treatment and preventive law provides more variance than the self-reported percentages. As a value free index, the report of activities is probably more reliable than the direct report of treatment/preventive law and is used as the basis of tests of relations for the purpose of this study.

Activities of University Counsel

In the area of treatment law, college and university attorneys spend only a little time engaging in collective bargaining.
negotiations or preparing responses to inquiries from governmental or other outside agencies. In-house counsel is likely to spend more time on reports for outside agencies than outside counsel. Outside counsel and counsel in general spend some time writing contracts, representing the institution in litigation over which it had no control, providing solicited legal advice to individuals at the institution and interpreting regulations, guidelines and legislation. In-house counsel spends a great deal of time providing advice to members of the academic community and interpreting regulations and guidelines. On average, outside counsel and in-house counsel reported spending more time on three of the six activities than outside counsel did.

With regard to preventive law, attorneys state that the preparation of amici briefs for other cases involving colleges and universities was not a common practice. Although Figure 9 suggests no time was spent on this activity, the table reflects the average response. Some individuals reported that they did prepare amici briefs, but their number was small. Although outside counsel do not spend time lobbying, in-house counsel spend little time in this activity as does the overall group of university attorneys. Both groups of attorneys spend only a little time in litigation initiated by the institution. Although outside counsel only devote a little time to monitoring legislation and litigation affecting higher education, reviewing institutional publications and offering advice to members of the academic community, even when it hasn't been
solicited, in-house counsel spends some time on each of these activities. Both types of counsel spend some time in policy making. In-house counsel spend a great deal of time reviewing contracts; outside counsel spend some time in this activity. Overall, in-house counsel spend more time on six of the ten preventive activities than do outside counsel. On average, outside counsel fall in the medium level of preventive law, but in-house counsel would be categorized in the high preventive level.

In sum, Figure 9 suggests that in-house counsel is likely to be engaged in a greater variety of activities than outside counsel, and in nine of the sixteen types, the degree of involvement is more substantial.

Relationship Between Treatment and Preventive Law

Preventive law has been described as the involvement of legal counsel in the process of administration in such a way as to diminish the long range need for treatment law. Although a perfect linear relationship was not predicted, it was assumed that increases in preventive law would lead to decreases in treatment law. The study not only fails to support this hypothesis, but actually refutes it. There is a relationship between level of treatment law and the level of preventive law. With a correlation of .74, the relationship is both strong and direct. As the presence of treatment law increases, so does the presence of preventive law. Not all of the data in this study lends itself to analysis by means of Pearson's product-moment correlation. As a result, the existence of a relationship between
## Time Devoted to Treatment and Preventive Activities by In-House/Outside Counsel Status

### FIGURE 9

(N) None, (l) A Little, (s) Some, (g) A Great Deal

<table>
<thead>
<tr>
<th>All Counsel</th>
<th>In-House Counsel</th>
<th>Outside Counsel</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

### Activities

1. Collective Bargaining
2. Interpreting Rules
3. Providing Solicited Advice
4. Preparing Responses
5. Writing Contracts
6. Litigation
7. Monitoring Legislation
8. Initiating Litigations
9. Reviewing Publications
10. Preparing Legal Advice
11. Offering Legal Advice
12. Policy Making
13. Preparing Amici Briefs
14. Litigation Appeals
15. Initiating Appeals
levels of treatment and preventive law when divided into low, medium and high ranges was tested by means of a chi-square test. A relation was found between the two variables. A Cramer's V value of .58 suggests the relation is moderately strong, even with this ordinal data. Table 22 shows the distribution of the respondents by levels of treatment and preventive law.

TABLE 22
Comparison Between Levels of Treatment and Preventive Law

<table>
<thead>
<tr>
<th></th>
<th>Low</th>
<th>Medium</th>
<th>High</th>
</tr>
</thead>
<tbody>
<tr>
<td>TR EL</td>
<td>Low</td>
<td>21.4% (22)</td>
<td>5.8% (6)</td>
</tr>
<tr>
<td></td>
<td>Medium</td>
<td>7.8% (8)</td>
<td>29.1% (30)</td>
</tr>
<tr>
<td></td>
<td>High</td>
<td>--</td>
<td>4.9% (5)</td>
</tr>
</tbody>
</table>

Tests for Relations

Hypotheses were generated about the possibility of relations between the levels of treatment and preventive law and the following variables: institutional complexity, funding source, attorney type, in-house/outside status, age of chief legal officer, willingness of counsel to initiate meetings, willingness of administrator to initiate meetings, dominant Lytle role, Lytle high/low autonomy, Lytle insider/
outsider, time spent in each Lytle role, year counsel was first retained, self-reported degree of insider, counsel's supervisor, level of origin of work, number of regular committees, and number of ad-hoc committees. In each case, a Pearson test or a chi-square test, depending on the scale of the data, was conducted to determine whether the variables were independent or dependent. In cases where relations were found the strength, and, when applicable, the direction of the relation were measured. The results of these tests follow.

Type of Law and Institutional Type

Table 23 provides a breakdown of levels of treatment and preventive law by the eight institutional types (systems have been omitted). The frequency of counts in high levels of treatment and preventive law seems to be concentrated in the larger, more complex institutional types.

A chi-square test could not be performed since some of the expected values for cells would be smaller than 5, the minimal value necessary to assure test validity. As an alternative, a way was devised to combine rows. It was argued earlier in this chapter that institutional types could be broken into two categories based on levels of complexity. The data suggests that with respect to legal needs, public comprehensives, public multiversities and private multiversities are more complex than the other five institutional types. To test the relationship between this measure of complexity and treatment and preventive law, institutional type was recorded to reflect the appropriate level of complexity. A relationship was found between
<table>
<thead>
<tr>
<th>Institution Type</th>
<th>Treatment</th>
<th></th>
<th></th>
<th>Preventive</th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Low N %</td>
<td>Medium N %</td>
<td>High N %</td>
<td>Low N %</td>
<td>Medium N %</td>
<td>High N %</td>
</tr>
<tr>
<td>Public Multiversities</td>
<td>0 - 5 50.0%</td>
<td>5 50.0%</td>
<td>0 - 1 20.0%</td>
<td>4 80.0%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Private Multiversities</td>
<td>0 - 5 71.4%</td>
<td>2 28.6%</td>
<td>0 14.3%</td>
<td>4 57.1%</td>
<td>2 28.6%</td>
<td></td>
</tr>
<tr>
<td>Public Comprehensives</td>
<td>1 8.3%</td>
<td>5 41.7%</td>
<td>6 50.0%</td>
<td>0 - 3 25.0%</td>
<td>9 75.0%</td>
<td></td>
</tr>
<tr>
<td>Elite Liberal Arts</td>
<td>7 70.0%</td>
<td>3 30.0%</td>
<td>0 - 7 70.0%</td>
<td>3 30.0%</td>
<td>0 -</td>
<td></td>
</tr>
<tr>
<td>Public Colleges</td>
<td>1 50.0%</td>
<td>1 50.0%</td>
<td>0 - 1 50.0%</td>
<td>1 50.0%</td>
<td>0 -</td>
<td></td>
</tr>
<tr>
<td>Liberal Arts Colleges</td>
<td>14 34.1%</td>
<td>21 51.2%</td>
<td>6 14.6%</td>
<td>14 34.1%</td>
<td>18 43.9%</td>
<td>9 22.0%</td>
</tr>
<tr>
<td>Community Colleges</td>
<td>1 9.1%</td>
<td>8 72.7%</td>
<td>2 18.2%</td>
<td>4 36.4%</td>
<td>5 45.5%</td>
<td>2 18.2%</td>
</tr>
<tr>
<td>Junior Colleges</td>
<td>3 60.0%</td>
<td>2 40.0%</td>
<td>0 - 2 40.0%</td>
<td>3 60.0%</td>
<td>0 -</td>
<td></td>
</tr>
</tbody>
</table>
levels of both treatment and preventive law and complexity. Cramer values of .44 and .52, respectively, suggested moderately strong relations. More complex institutions are more likely to have higher levels of both treatment and preventive law.

An examination of the public/private dichotomy of funding source reveals similar results. There is a relation between the source of funding and the level of treatment and preventive law. Cramer values of .38 and .38, respectively, suggest this relationship is not too strong.

Relationship Between Attorney Type and Treatment and Preventive Law

Table 24 shows the contingency tables used to determine whether or not there is a relationship between type of attorney and level of treatment and preventive law.

<table>
<thead>
<tr>
<th></th>
<th>TREATMENT</th>
<th></th>
<th></th>
<th>PREVENTIVE</th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Low</td>
<td>Medium</td>
<td>High</td>
<td>Low</td>
<td>Medium</td>
<td>High</td>
</tr>
<tr>
<td>Attorney General</td>
<td>2.0%</td>
<td>1.0%</td>
<td>0.0%</td>
<td>2.0%</td>
<td>0.0%</td>
<td>1.0%</td>
</tr>
<tr>
<td>Full-time Attorney</td>
<td>0.0%</td>
<td>14.7%</td>
<td>16.7%</td>
<td>0.0%</td>
<td>9.8%</td>
<td>21.6%</td>
</tr>
<tr>
<td>Trustee-Attorney</td>
<td>9.8%</td>
<td>6.9%</td>
<td>1.0%</td>
<td>6.9%</td>
<td>6.9%</td>
<td>3.9%</td>
</tr>
<tr>
<td>Private Practitioner</td>
<td>12.7%</td>
<td>25.5%</td>
<td>5.9%</td>
<td>18.6%</td>
<td>20.6%</td>
<td>4.9%</td>
</tr>
<tr>
<td>Administrator-Counsel</td>
<td>2.0%</td>
<td>2.0%</td>
<td>0.0%</td>
<td>2.0%</td>
<td>2.0%</td>
<td>0.0%</td>
</tr>
</tbody>
</table>

The chi-square test supports the hypothesis that there is a relationship between attorney type and levels of treatment and preventive law. That relationship is moderately strong as evidenced by Cramer
values of .42 and .44, respectively.

A comparison of attorney status as in-house or outside counsel reveals that there is a relationship between this status and the levels of treatment and preventive law. Cramer values of .42 and .46 suggest the relationship is of moderate strength. Table 25 provides a breakdown for these variables.

### TABLE 25

Levels of Treatment and Preventive Law by In-house/Outside Status

<table>
<thead>
<tr>
<th></th>
<th>TREATMENT</th>
<th>PREVENTIVE</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Low</td>
<td>Medium</td>
</tr>
<tr>
<td>In-house</td>
<td>3.9%</td>
<td>16.7%</td>
</tr>
<tr>
<td></td>
<td>(4)</td>
<td>(17)</td>
</tr>
<tr>
<td>Outside</td>
<td>22.5%</td>
<td>33.3%</td>
</tr>
<tr>
<td></td>
<td>(23)</td>
<td>(34)</td>
</tr>
</tbody>
</table>

Based on the frequencies in each cell high levels of treatment and preventive law seem to depend on in-house counsel; low levels depend on outside counsel.

**Attorney Characteristics**

Tests were run to see if age or willingness to initiate contact and schedule meetings with non-legal personnel at the institution were related to the levels of treatment and preventive law. There is a relationship between the age of the chief legal officer and the levels of treatment and preventive law. Cramer values of .35 and .31 suggest
a relationship of weak strength. The relation suggests that as the age of the chief legal officer increases, the levels of treatment and preventive law decrease.

The hypothesis that a relationship exists between the percentage of time attorneys took the initiative and scheduled meetings with non-legal personnel at the institution and the levels of treatment and preventive law were tested by Pearson's product-moment correlation. A relationship does exist. Values of .32 and .39, respectively, for r suggest the relationship is of weak to moderate strength and that as the percentage of meetings scheduled by the attorney increases, so do the levels of treatment and preventive law.

Although there is no relation between the percentage of meetings scheduled by officers of the institution with counsel and the level of treatment law, there is a relation between the percentage of meetings scheduled by individuals at the institution and the level of preventive law. The relation is inverse and quite weak, almost negligible, with r = .20.

**Attorney Role**

Lytle (1979) hypothesized that the role of Ombudsman would be the most conducive to preventive law among the four modes of operation. The possibility of a relation between Lytle's roles and levels of treatment and preventive law was tested a variety of ways.

Each respondent was identified as an Ombudsman, Companyman, Pointman or Muckraker based on the role which consumed most of his time. The use of chi-square tests failed to support the existence of
any relation between the dominant role and the level of treatment or preventive law. Individuals for whom time spent as Ombudsman and Muckraker was greater than the time spent as Companyman and Pointman were grouped as high in autonomy. If the converse was true, individuals were considered low in autonomy by Lytle's scale. Tests suggested this measure of autonomy and the levels of treatment and preventive law are independent. In a similar manner, the advocate/counselor continua offered by Lytle was approximated by taking the difference between the time spent as Ombudsman and Companyman and time spent as Pointman and Muckraker. If the difference was positive, individuals were labeled counselors, if negative, they were labeled advocates. Tests were run to determine if a relationship exists between counselor/advocate type and level of treatment and preventive law. Again, no support for a relationship was found. The variables are independent.

Lytle's actual hypothesis (1979) was that time spent as Ombudsman might be more conducive to preventive law than time spent in other roles. The percentage of time spent in each role was used as an independent variable to see if any relationship existed between the percentage of time spent in a role and the levels of treatment and preventive law. Tests for product-moment correlation were run on the percentage of time spent in each role and the levels of treatment and preventive law. These tests were more successful at identifying relationships.

There are relationships between the percentage of time spent in
the role of Ombudsman and the levels of treatment and preventive law. Weak positive relations were indicated by r values of .23 and .25, suggesting the more time spent as Ombudsman the higher the levels of treatment and preventive law. Relationships also exist between percentage of time spent as Companyman and levels of treatment and preventive law. The weak, inverse relation with treatment law, indicated by an r value of -.26 is accompanied by a weak to moderate inverse relation with preventive law, with an r value of -.32. In other words, as time spent as Companyman increases, the levels of treatment and preventive law decrease. There is no relation between time spent as Pointman and level of either treatment law or preventive law. Although there is no relation between the percentage of time spent as Muckrakers and level of treatment law, a relation does exist between time spent as Muckrakers and level of preventive law. With r = .18, the relation is very weak and positive. As time spent as a Muckraker increases, so does the level of preventive law.

Organizational Characteristics

The year counsel was first retained, the degree to which counsel views himself as an insider, his supervisor, the level at which his work originates and the number of committee assignments (both permanent and ad-hoc) were examined for possible relation with levels of treatment and preventive law. No relation between the year part-time counsel or the year full-time counsel was first retained and the levels of treatment and preventive law exists. A relationship was found between the degree to which individuals view themselves as
insiders and the levels of treatment and preventive law. A moderately strong direct relation was found with values of .39 and .48, respectively. The more an individual feels like an insider, the higher the levels of treatment and preventive law.

Supervisors were divided into three categories: trustees, presidents, and other administrators below the level of president. A contingency table was created to determine if there is a relation between the level of supervisor and the levels of treatment and preventive law. No relation was found: the variables are independent. A new variable was computed to measure the percentage of attorney time spent at work originating below the level of trustee or president/president's staff. This index of how pervasive the attorney's presence is on campus was measured against the levels of treatment and preventive law. No relation was found between the degree of pervasiveness (divided into low/medium/high) and treatment law, but dependence was established between pervasiveness and preventive law. With Cramer's $V = .25$, the relation is fairly weak. As pervasiveness increases, so does the level of preventive law.

Although there is no relation between the number of permanent committees on which attorneys serve and the level of treatment law, a weak, direct relation ($r = .25$) does exist with the level of preventive law. The larger the number of permanent committee assignments, the higher the level of preventive law. A relationship also exists between the number of ad-hoc committee assignments and levels of treatment and preventive law. The relation with treatment law is
direct and weak, with \( r = 0.21 \). With preventive law, the relation is weak to moderate (\( r = 0.31 \)). As the number of ad-hoc committee assignments increases so do the levels of treatment and preventive law.

Summary

Section II of this chapter has attempted to identify variables which are related to the levels of treatment and preventive law. Several relations of varying strengths emerged as bases for future study. In the remaining sections of this chapter, selected organizational variables will be explored to assess how legal offices and officers fit into the organizational superstructure. In each instance, the possibility of relationships with treatment and preventive law levels will be explored.

III. Organizational Issues

In this final section, the Parsonian level of activity, the identification of counsel with the legal profession as compared to identification with education, the self-reported indices of intra-organizational power of the unit which provides legal services, and several measures of differentiation and integration are explored in very general ways. These selected organizational characteristics were chosen to provide additional information on how legal services fit into the organizations they serve. As a result, most of the statistics are descriptive, much like the summary statistics reported in the
first section of this chapter. However, this section also incorporates the exploratory hypothesis testing of section two. Tests were conducted to ascertain if relations exist between levels of treatment and preventive law and the organizational variables explored by this section. Once again, if support for a relation was found, the strength and, if appropriate, direction of the relation were measured.

Parsonian Level

Chief legal officers were asked to assess what percentage of their time was spent on each of three types of activities, each representing the Parsonian technical, managerial and institutional levels. The following descriptions of each (technical, managerial, institutional) and examples of activities classified as each were provided to members of the sample:

TYPE I ACTIVITIES: The day to day activities necessary to keep the institution open and operating smoothly, like litigating, writing federal reports, writing contracts, etc.

TYPE II ACTIVITIES: Less routine activities, with longer range focus designed to help shape and make policy for internal affairs, like designing new admissions procedures, designing affirmative action programs, deciding on rules for student conduct, etc.

TYPE III ACTIVITIES: Working to assure that goals of the institution are met and providing liaison with the broader community to legitimize the role of the institution, like guaranteeing fundings, building ties to the community.

As was expected, most of the attorney's time was spent in Type I, technical, activities. The breakdown for all college and university attorneys was: technical level - 59.73%; managerial level - 26.45%;
and institutional levels - 13.87%. There was very little variation among the different institutional types, or between in-house and outside counsel. A weak relation was found between the percentage of time spent at the technical level and the level of treatment law \((r = .22)\), suggesting the greater the percentage of time spent at the technical level, the greater the amount of treatment law. No support was found for a relation between the percentage of time spent at the managerial level and the level of treatment law. A fairly weak, inverse relation was found between the percentage of time spent at the institutional level and the level of treatment law. As time at the institutional level increases, the amount of treatment law decreases. No relations were found between the level of preventive law and the percentage of time spent at the technical, managerial, or institutional levels.

**University Counsel: Attorney or Educational Administrator**

Beale (1974) stated that the position of college or university counsel held promise as an entry position for attorneys who might be interested in position in educational administration. Individuals with such aspirations need to be prepared for some degree of role conflict. Several respondents intimated they were not perceived as friends of the faculty; that the lack of faculty status may at times undermine the inclusion of the attorney in the ranks of those who run the institution. At the same time, attorneys in university settings may lose status with their peers in private practice. One respondent wrote that it was difficult to attain "solid respect within the BAR
for the practice of Higher Education Law." It seems that both
groups demand full commitment from the university attorney while
condemning him for identification with the other group. Counsel
walks a fine line between the two groups.

Respondents were asked to identify their long term career goals
as being primarily in the legal field (attorney, partner or head of
firm, judge) or in education (dean, vice president or president of a
college or university). Educational administration goals were cited
more frequently by individuals at the larger, more complex
institutions. In-house counsel chose career goals in education in
three out of four cases. Almost all outside counsel hope to remain
in private practice or the judiciary. Overall, only 30.0% of the
respondents expect to end up in educational administration. Table
26 provides a breakdown of career goals by in-house/outside status.

TABLE 26
Career Goals by In-house/Outside Status

<table>
<thead>
<tr>
<th></th>
<th>Legal Goals</th>
<th></th>
<th>Educational Goals</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>N</td>
<td>%</td>
<td>N</td>
<td>%</td>
</tr>
<tr>
<td>In-house Counsel</td>
<td>7</td>
<td>25.9%</td>
<td>20</td>
<td>74.1%</td>
</tr>
<tr>
<td>Outside Counsel</td>
<td>42</td>
<td>97.7%</td>
<td>1</td>
<td>2.3%</td>
</tr>
<tr>
<td>All Counsel</td>
<td>49</td>
<td>70.0%</td>
<td>21</td>
<td>30.0%</td>
</tr>
</tbody>
</table>
Chi square tests support a finding of a relation between career goals and levels of treatment and preventive law. These relations are moderately strong with values of .47 and .46 for Cramer's V.

Journals Read by Counsel

Respondents were asked to indicate how frequently they used eight journals, four primarily educational and four primarily legal, in the context of their work. Never, sometimes, often and always were the options available as responses. Educational journals were read occasionally by in-house counsel but rarely by outside counsel. Table 27 gives an indication of how often the educational journals (Change, The Chronicle of Higher Education, The Journal of Higher Education, and New Directions for Higher Education) are read by college and university attorneys.

The Chronicle of Higher Education, a weekly update on issues in higher education, is the most commonly used educational journal. Almost 60% of the attorneys read this journal at least sometimes; more than half of the in-house attorneys never miss an issue. The Journal of Higher Education, a bi-monthly scholarly publication, is used on occasion by 40% of all attorneys and almost 60% of the in-house attorneys. Change, a monthly opinion focused journal and New Directions, a quarterly topical publication, are rarely used by college and university attorneys. Among other educational publications cited by attorneys as open ended responses were Higher Education Daily, Higher Education and National Affairs, and campus newspapers and journals.
### TABLE 27

**Use of Education Journals by College and University Attorneys**

<table>
<thead>
<tr>
<th>Change</th>
<th>Never</th>
<th>Sometimes</th>
<th>Often</th>
<th>Always</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>In-house</strong></td>
<td>73.7%</td>
<td>23.7%</td>
<td>-</td>
<td>2.6%</td>
</tr>
<tr>
<td><strong>Outside</strong></td>
<td>93.8%</td>
<td>3.1%</td>
<td>1.6%</td>
<td>1.6%</td>
</tr>
<tr>
<td><strong>All</strong></td>
<td>86.4%</td>
<td>10.7%</td>
<td>1.0%</td>
<td>1.9%</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Chronicle</th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>In-house</strong></td>
<td>5.3%</td>
<td>18.4%</td>
<td>21.1%</td>
<td>55.3%</td>
</tr>
<tr>
<td><strong>Outside</strong></td>
<td>62.5%</td>
<td>20.3%</td>
<td>7.8%</td>
<td>9.4%</td>
</tr>
<tr>
<td><strong>All</strong></td>
<td>41.7%</td>
<td>19.4%</td>
<td>12.6%</td>
<td>26.2%</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Journal of Higher Education</th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>In-house</strong></td>
<td>42.1%</td>
<td>36.8%</td>
<td>10.5%</td>
<td>10.5%</td>
</tr>
<tr>
<td><strong>Outside</strong></td>
<td>75.0%</td>
<td>17.2%</td>
<td>6.3%</td>
<td>1.6%</td>
</tr>
<tr>
<td><strong>All</strong></td>
<td>62.1%</td>
<td>25.2%</td>
<td>7.8%</td>
<td>4.9%</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>New Directions</th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>In-house</strong></td>
<td>81.6%</td>
<td>13.2%</td>
<td>5.3%</td>
<td>-</td>
</tr>
<tr>
<td><strong>Outside</strong></td>
<td>87.5%</td>
<td>9.4%</td>
<td>3.1%</td>
<td>-</td>
</tr>
<tr>
<td><strong>All</strong></td>
<td>84.5%</td>
<td>11.7%</td>
<td>3.9%</td>
<td>-</td>
</tr>
</tbody>
</table>
Law journals directly related to higher education or used regularly by colleges and universities are read by counsel more often than education journals. NACUA Summaries are used at some point by almost all of the attorneys, with 60% reporting they always read the summaries. The Journal of College and University Law, a quarterly publication of NACUA, was also used by almost all of the respondents. The Federal Register, a source of regulations and general information from the Federal government, and The Journal of Law and Education, a quarterly law journal, were both used less often. In-house counsel reported using each of the publications more frequently than outside counsel. Table 28 provides a breakdown of the frequency with which in-house and outside counsel read the legal publications.

Among the other education-specific law journals cited as used in the work of counsel were: NOLPE publications, School Law News, The College Student and the Courts, The College Administration and the Courts, Higher Education Admission Law Service, CCH College and University Reporter, School Law Register, School Law Bulletin, and textbooks on education law. In addition, the respondents listed state law journals, Law Weekly, update services, and publications on specializations in the law.

Scales for commitment on educational journals and to law/education journals were devised based on the frequency with which individuals read the journals listed. Relations exist between the time devoted to legal/educational journals and levels of treatment and preventive law. With r values of .35 and .49, these relations
<table>
<thead>
<tr>
<th></th>
<th>Never</th>
<th>Sometimes</th>
<th>Often</th>
<th>Always</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Federal Register</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>In-house</td>
<td>10.5%</td>
<td>55.3%</td>
<td>15.8%</td>
<td>18.4%</td>
</tr>
<tr>
<td>Outside</td>
<td>45.3%</td>
<td>37.5%</td>
<td>9.4%</td>
<td>7.8%</td>
</tr>
<tr>
<td>All</td>
<td>33.0%</td>
<td>43.7%</td>
<td>11.7%</td>
<td>11.7%</td>
</tr>
<tr>
<td><strong>Journal of College and University Law</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>In-house</td>
<td>5.3%</td>
<td>7.9%</td>
<td>36.8%</td>
<td>50.0%</td>
</tr>
<tr>
<td>Outside</td>
<td>15.6%</td>
<td>15.6%</td>
<td>43.8%</td>
<td>25.0%</td>
</tr>
<tr>
<td>All</td>
<td>11.7%</td>
<td>12.6%</td>
<td>41.7%</td>
<td>34.0%</td>
</tr>
<tr>
<td><strong>Journal of Law and Education</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>In-house</td>
<td>42.1%</td>
<td>31.6%</td>
<td>15.8%</td>
<td>10.5%</td>
</tr>
<tr>
<td>Outside</td>
<td>71.9%</td>
<td>14.1%</td>
<td>7.8%</td>
<td>6.3%</td>
</tr>
<tr>
<td>All</td>
<td>61.2%</td>
<td>20.4%</td>
<td>10.7%</td>
<td>7.8%</td>
</tr>
<tr>
<td><strong>NACUA Summaries</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>In-house</td>
<td>-</td>
<td>5.3%</td>
<td>21.1%</td>
<td>73.7%</td>
</tr>
<tr>
<td>Outside</td>
<td>4.7%</td>
<td>12.5%</td>
<td>29.7%</td>
<td>53.1%</td>
</tr>
<tr>
<td>All</td>
<td>2.9%</td>
<td>9.7%</td>
<td>27.2%</td>
<td>60.2%</td>
</tr>
</tbody>
</table>
are weak to moderately strong. The higher the levels of treatment and preventive law, the more time spent on education related law journals. Similar relations were established between the time devoted to education journals and levels of treatment and preventive law. Correlation values of .40 and .57 indicate moderately strong relations.

Involvement in the Instructional Process

Several respondents wrote that they held faculty appointments either prior to or concurrent with their appointment as legal counsel. They suggested this helped make them more readily acceptable on campus. The emergence of the administrator-attorney on campus suggests another way to make counsel an "insider." On the premise that some degree of involvement in curricular matters might make a more expansive role for university counsel acceptable to the academic community, respondents were asked if they taught, guest lectured or consulted with faculty on curricular matters regarding legal issues. More than one third (35/101, 34.7%) responded in the affirmative. In-house counsel was almost twice as likely to answer yes than outside counsel. Only 25.4% of the outside counsel were involved in instruction; 48.6% of in-house counsel reported engaging in such activities. Relations were found between involvement of counsel in instruction and levels of treatment and preventive law. Cramer's values of .24 and .25, respectively, suggest the relationships are very weak.
Relative Intra-Organizational Power

Hickson et al. (1974) proposed that subunits of organizations are powerful vis-a-vis other subunits if they cope with a high degree of uncertainty, possess a high degree of centrality within the organization, and provide services and skills which are not easily replaced. Hinings et al. (1974) operationalized the model by studying the subunits of an organization, asking each unit to rate themselves and the other units on the three scales. Questions similar to those used by Hickson et al. (1974) were incorporated into this study. Respondents were asked to provide ratings for their offices only; no assessment of other units or by other units was obtained. The interpretation of the results is therefore very limited, but may provide an indication of the potential for intra-organizational power of this subunit.

As a measure of uncertainty respondents were asked to estimate the percentage of time spent on non-routine issues whose outcome could neither be totally controlled nor predicted. Respondents were asked to select among the following options: 0%; 25%; 50%; 75%; and 100%. Attorneys at the less complex institutions spent, on average, between 25% and 50% of their time on issues which encompassed a high degree of uncertainty. The degree of uncertainty was greater at the more complex institutions where respondents indicated 50% to 75% of their time was spent on uncontrollable or unpredictable issues. The same difference is found when outside counsel is compared to in-house counsel. On average, in-house counsel spend more time on non-routine
issues than outside counsel. Table 29 provides a breakdown of these responses.

<table>
<thead>
<tr>
<th></th>
<th>00%</th>
<th>25%</th>
<th>50%</th>
<th>75%</th>
<th>100%</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>N</td>
<td>%</td>
<td>N</td>
<td>%</td>
<td>N</td>
</tr>
<tr>
<td>In-house</td>
<td>6</td>
<td>16.2%</td>
<td>13</td>
<td>35.1%</td>
<td>15</td>
</tr>
<tr>
<td>Outside</td>
<td>24</td>
<td>39.3%</td>
<td>14</td>
<td>23.0%</td>
<td>11</td>
</tr>
<tr>
<td>All</td>
<td>30</td>
<td>30.3%</td>
<td>26</td>
<td>26.3%</td>
<td>10</td>
</tr>
</tbody>
</table>

Direct, but weak, realtions were found between the degree of uncertainty and the levels of treatment and preventive law ($r = .24$ and $r = .31$). As the degree of uncertainty increases, so do the levels of treatment and preventive law.

Centrality was measured on two scales. Counsel was first asked to gauge how quickly the institution would feel the effect if legal services were not longer available to the institution. Responses were scaled from 1 to 5 with the extremes defined as "not for a long time" and "instantly". As was the case with uncertainty, counsel at more complex institutions estimated the effect would be felt much sooner than was predicted by counsel at smaller less complex institutions. Table 30 shows 69% of all respondents predicted that the effect would be felt very quickly if not instantly. In-house counsel estimated instantaneous effects more than twice as often as
TABLE 30

Measure 1 of Level of Centrality Reported by Counsel

<table>
<thead>
<tr>
<th></th>
<th>Instantly</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>1 2 3 4 5</td>
</tr>
<tr>
<td>N %</td>
<td>N % N % N % N %</td>
</tr>
<tr>
<td>In-house</td>
<td>0 1 2.6% 3 7.9% 12 31.6% 22 57.9%</td>
</tr>
<tr>
<td>Outside</td>
<td>4 6.6% 9 14.8% 14 23.0% 19 31.1% 15 24.6%</td>
</tr>
<tr>
<td>All</td>
<td>4 4.0% 10 10.0% 17 17.0% 31 31.0% 38 38.0%</td>
</tr>
</tbody>
</table>

outside counsel. No in-house counsel predicted it would take a long time for the effect to be felt; some outside counsel believed this was possible.

Moderately strong relations, \( r = .55 \) and \( .48 \), were found between the first measure of centrality and the levels of treatment law and preventive law. Since high scores on both treatment and preventive law levels indicate a high degree of involvement in a variety of tasks, one would expect that these levels would be related to the measure of certainty.

As a second measure of centrality, counsel was asked what percentage of the work of his office was done in conjunction with non-legal officers of the university. There was very little variance in response to this question. Table 31 gives some indication of the breakdown.

The average response for in-house and outside counsel was the same, between 50% and 75%. The only major difference was that for
those responding 75% or 100% outside counsel was much more likely to respond 100%. For attorneys called in on rare occasions for simple matters, never needing to consult with other attorneys, this response is appropriate, but it is not an accurate measure of centrality. The application of the Hickson et al. (1974) model to college and university counsel may, of necessity, be only applicable to full-time in-house counsel.

A very weak, almost negligible, relation exists between this second measure of centrality and the level of treatment law. Support for a relation with the level of preventive law did not exist.

To measure substitutability, counsel was asked how difficult it would be to replace the services of legal counsel if all personnel of his staff were lost. On a scale of 1 (easy) to 5 (impossible), most respondents indicated moderate difficulty indicated by the neutral response of three. As indicated in Table 32, outside counsel viewed their services as readily available elsewhere twice as often as in-house counsel. At the other end of the spectrum, responses were
TABLE 32
Level of Substitutability Reported by Counsel

<table>
<thead>
<tr>
<th></th>
<th>1</th>
<th>2</th>
<th>3</th>
<th>4</th>
<th>5</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>N %</td>
<td>N %</td>
<td>N %</td>
<td>N %</td>
<td>N %</td>
</tr>
<tr>
<td>In-house</td>
<td>4 10.8%</td>
<td>4 10.8%</td>
<td>14 37.8%</td>
<td>9 24.3%</td>
<td>6 16.2%</td>
</tr>
<tr>
<td>Outside</td>
<td>12 21.1%</td>
<td>13 22.8%</td>
<td>9 15.8%</td>
<td>14 24.6%</td>
<td>9 15.8%</td>
</tr>
<tr>
<td>All</td>
<td>16 17.0%</td>
<td>17 18.1%</td>
<td>23 24.5%</td>
<td>23 24.5%</td>
<td>15 16.0%</td>
</tr>
</tbody>
</table>

almost equal. In-house counsel viewed replacement as moderately
difficult twice as often as outside counsel. This may reflect on
acknowledgement of their somewhat specialized expertise in higher
education law tempered with the realization that others could attain
comparable degrees of specialization. Relations of moderate strength
(r = .34, .39) were found between the degree of substitutability and
levels of treatment law and preventive law.

The self reported degree of influence is related to levels of
treatment and preventive law. With r values of .43 and .43, the
moderate, direct relation suggests that as influence increases so do
the degrees of treatment and preventive law.

Differentiation and Integration

Environmental demands often lead to increased differentiation of
organizations. The office of university counsel was born out of a
need for differentiation and has become increasingly differentiated
throughout its formative years. Laurence and Lorsch (1967) have
argued that as differentiation increases, integrative devices emerge. In an attempt to ascertain whether legal services have been allowed to become more differentiated and increasingly integrated over the years, a list of ten indicators of integration and differentiation was created. Figure 14 details these ten events. In each case, counsel was asked if the event or activity had decreased, remained the same, or increased over the last ten years.

**FIGURE 14**

Events Indicative of Changes in Differentiation and Integration

**Differentiating**

1. Size of Legal Staff  
2. Complexity of Tasks  
3. Budget Size  
4. Freedom to Take on New Projects  
5. Specialization of Legal Staff

**Integrative**

1. Number of Reports Written  
2. Number of Meetings with Non-lawyers  
3. Degree of Formal Supervision  
4. Communication with Other Departments  
5. More Timely Involvement of Legal Personnel

Very little variation was found in responses to these questions. More than half of all attorneys indicated there had been an increase in the size of legal staff, the complexity of the staff, the specialization of the staff, and the size of the budget. One respondent from a community college stated his budget had gone from $5,000 in 1969 to
over $50,000 the past year. Few respondents stated these four areas had experienced any decrease. In the area of freedom to take on new tasks, 9.8% of all attorneys indicated there had been a decrease in their freedom to select new tasks and only 26.1% reported an increase in this area. The expanding differentiation in the other four areas has apparently not been accompanied by total autonomy. A full breakdown by institutional type of the percentage of respondents indicating increases in each of the differentiating tasks appears in Table 34. Table 35 provides the same information for in-house and outside counsel. With the exception of staff specialization, in-house counsel reported increases in differentiation at a higher rate than outside counsel. As was the case with all counsel, the only significant decrease was in its area of freedom to select new projects. Almost 19% of in-house counsel reported a drop in this area.

A relation was found between increased differentiation and levels of treatment and preventive law. R values of .31 and .31 suggest a fairly weak relation.

Substantial increases were reported in the number of reports written, attendance at meetings with non-legal administrators, communication with other departments and timeliness of involvement of legal personnel. Formal supervision recorded only a marginal increase of 9.5%. It was also this area which showed the only significant decrease. Approximately 20% of all attorneys and 39% of in-house counsel reported a decrease in formal supervision. This may reflect an increase in trust and acceptability which is emerging as counsel
### TABLE 34
Percentage of Individuals Reporting an Increase in Differentiating Events by Institutional Type

<table>
<thead>
<tr>
<th>Size</th>
<th>Complexity</th>
<th>Budgets</th>
<th>New Projects</th>
<th>Specialization</th>
</tr>
</thead>
<tbody>
<tr>
<td>Systems</td>
<td>60.0%</td>
<td>100.0%</td>
<td>100.0%</td>
<td>-</td>
</tr>
<tr>
<td>Public Multiversities</td>
<td>90.0%</td>
<td>100.0%</td>
<td>100.0%</td>
<td>60.0%</td>
</tr>
<tr>
<td>Private Multiversities</td>
<td>50.0%</td>
<td>100.0%</td>
<td>66.7%</td>
<td>50.0%</td>
</tr>
<tr>
<td>Public Comprehensives</td>
<td>66.7%</td>
<td>100.0%</td>
<td>81.8%</td>
<td>30.0%</td>
</tr>
<tr>
<td>Elite Liberal Arts</td>
<td>30.0%</td>
<td>90.0%</td>
<td>80.0%</td>
<td>11.1%</td>
</tr>
<tr>
<td>Public Colleges</td>
<td>-</td>
<td>100.0%</td>
<td>100.0%</td>
<td>50.0%</td>
</tr>
<tr>
<td>Liberal Arts Colleges</td>
<td>48.7%</td>
<td>69.2%</td>
<td>78.9%</td>
<td>25.0%</td>
</tr>
<tr>
<td>Community Colleges</td>
<td>43.6%</td>
<td>100.0%</td>
<td>100.0%</td>
<td>18.2%</td>
</tr>
<tr>
<td>Junior Colleges</td>
<td>40.0%</td>
<td>80.0%</td>
<td>40.0%</td>
<td>-</td>
</tr>
<tr>
<td>All</td>
<td>54.0%</td>
<td>86.0%</td>
<td>82.7%</td>
<td>26.1%</td>
</tr>
</tbody>
</table>

### TABLE 35
Percentage of Individuals Reporting an Increase in Differentiating Events by In-house/Outside Status

<table>
<thead>
<tr>
<th>Size</th>
<th>Complexity</th>
<th>Budget</th>
<th>New Projects</th>
<th>Specialization</th>
</tr>
</thead>
<tbody>
<tr>
<td>In-house</td>
<td>71.1%</td>
<td>100.0%</td>
<td>92.1%</td>
<td>43.2%</td>
</tr>
<tr>
<td>Outside</td>
<td>42.6%</td>
<td>77.0%</td>
<td>76.3%</td>
<td>14.5%</td>
</tr>
</tbody>
</table>
establish themselves as part of the administrative structure. As the trust increases, the need for formal supervision may decrease. Table 36 lists the percentage of respondents reporting increases in integrative devices and is broken down by institutional type. Similar data on in-house and outside counsel is provided in Table 37.

Increases in integrative devices were reported much more often by in-house counsel than by outside attorneys in four of the five categories. Only in the area of supervision was there but a marginal increase. More in-house counsel reported a decrease in supervision than reported an increase. A fairly weak relation was found between the change in integration and levels of treatment and preventive law as evidence by values for r of .28 and .32.

Relation Between Differentiation and Integration

Lawrence and Lorsch (1967) found that organizations which were both highly differentiated and highly integrated were the most effective at surviving environmental changes. A comparison between the degree of increase in differentiation and the degree of increase in integration suggests a relation between the two variables. Large increases in differentiation are accompanied by large increases in integration. Small increases in differentiation are accompanied by small increases in integration. Table 38 shows the relation between the two variables. A chi square test verifies the variables are dependent and a Cramer's value of .39 suggests a relation of moderate strength.
### TABLE 36

Percentage of Individuals Reporting an Increase in Integrative Events by Institutional Types

<table>
<thead>
<tr>
<th>Institution Type</th>
<th>Reports</th>
<th>Meetings</th>
<th>Supervision</th>
<th>Communication</th>
<th>Timelessness</th>
</tr>
</thead>
<tbody>
<tr>
<td>Systems</td>
<td>60.0%</td>
<td>60.0%</td>
<td>-</td>
<td>40.0%</td>
<td>50.0%</td>
</tr>
<tr>
<td>Public Multiversities</td>
<td>90.0%</td>
<td>90.0%</td>
<td>12.5%</td>
<td>90.0%</td>
<td>100.0%</td>
</tr>
<tr>
<td>Private Multiversities</td>
<td>40.0%</td>
<td>60.0%</td>
<td>-</td>
<td>100.0%</td>
<td>100.0%</td>
</tr>
<tr>
<td>Public Comprehensives</td>
<td>90.6%</td>
<td>81.8%</td>
<td>16.7%</td>
<td>54.5%</td>
<td>60.0%</td>
</tr>
<tr>
<td>Elite Liberal Arts</td>
<td>30.0%</td>
<td>70.0%</td>
<td>10.0%</td>
<td>50.0%</td>
<td>77.8%</td>
</tr>
<tr>
<td>Public Colleges</td>
<td>100.0%</td>
<td>100.0%</td>
<td>50.0%</td>
<td>100.0%</td>
<td>-</td>
</tr>
<tr>
<td>Liberal Arts Colleges</td>
<td>57.9%</td>
<td>69.2%</td>
<td>10.5%</td>
<td>29.7%</td>
<td>61.5%</td>
</tr>
<tr>
<td>Community Colleges</td>
<td>63.6%</td>
<td>72.7%</td>
<td>-</td>
<td>45.5%</td>
<td>90.9%</td>
</tr>
<tr>
<td>Junior Colleges</td>
<td>20.0%</td>
<td>20.0%</td>
<td>20.0%</td>
<td>40.0%</td>
<td>60.0%</td>
</tr>
<tr>
<td>All</td>
<td>60.8%</td>
<td>70.4%</td>
<td>9.5%</td>
<td>47.9%</td>
<td>71.6%</td>
</tr>
</tbody>
</table>

### TABLE 37

Percentage of Individuals Reporting an Increase in Integrative Events by In-house/Outside Status

<table>
<thead>
<tr>
<th>Status</th>
<th>Reports</th>
<th>Meetings</th>
<th>Supervision</th>
<th>Communication</th>
<th>Timelessness</th>
</tr>
</thead>
<tbody>
<tr>
<td>In-house</td>
<td>84.2%</td>
<td>89.2%</td>
<td>8.3%</td>
<td>76.3%</td>
<td>77.8%</td>
</tr>
<tr>
<td>Outside</td>
<td>44.8%</td>
<td>59.0%</td>
<td>10.3%</td>
<td>29.8%</td>
<td>67.2%</td>
</tr>
</tbody>
</table>

### TABLE 38

Degree of Increase in Differentiation Compared with Degree of Integration

<table>
<thead>
<tr>
<th>Integration</th>
<th>Low</th>
<th>Medium</th>
<th>High</th>
</tr>
</thead>
<tbody>
<tr>
<td>LOW</td>
<td>16.5% (17)</td>
<td>8.7% (9)</td>
<td>0.0% (0)</td>
</tr>
<tr>
<td>MEDIUM</td>
<td>6.8% (7)</td>
<td>27.2% (28)</td>
<td>12.6% (13)</td>
</tr>
<tr>
<td>HIGH</td>
<td>2.9% (3)</td>
<td>15.5% (16)</td>
<td>9.7% (10)</td>
</tr>
</tbody>
</table>
In-house counsel is more likely to have undergone higher degrees of integration and differentiation than outside counsel. The relations, verified by a chi-square test, between in-house/outside status and increase in differentiation are of weak to moderate strength with Cramer's V values of .37 and .31, respectively.

**Frequency of Meetings with Key Staff**

Respondents were asked to identify the individual or individuals whose support would be needed to change the approach to legal affairs at the institution. Most individuals said their supervisors, usually presidents, were the individuals whose support was essential to change. As one index of the actual level of integration, counsel was asked how frequently they met with the individual: daily, every other day, weekly, or monthly. Table 39 summarizes the responses.

**TABLE 39**

*Frequency of Meeting Between Counsel and Administrator Whose Support is Essential to Change*

<table>
<thead>
<tr>
<th></th>
<th>Daily</th>
<th>Every Other Day</th>
<th>Weekly</th>
<th>Monthly</th>
</tr>
</thead>
<tbody>
<tr>
<td>N %</td>
<td>N %</td>
<td>N %</td>
<td>N %</td>
<td>N %</td>
</tr>
<tr>
<td>Systems</td>
<td>1 25.0%</td>
<td>25.0%</td>
<td>25.0%</td>
<td>25.0%</td>
</tr>
<tr>
<td>Public Multiversities</td>
<td>1 10.0%</td>
<td>30.0%</td>
<td>40.0%</td>
<td>20.0%</td>
</tr>
<tr>
<td>Private Multiversities</td>
<td>-</td>
<td>-</td>
<td>66.7%</td>
<td>33.3%</td>
</tr>
<tr>
<td>Public Comprehensives</td>
<td>7 70.0%</td>
<td>-</td>
<td>20.0%</td>
<td>10.0%</td>
</tr>
<tr>
<td>Elite Liberal Arts</td>
<td>-</td>
<td>-</td>
<td>22.2%</td>
<td>77.8%</td>
</tr>
<tr>
<td>Public Colleges</td>
<td>-</td>
<td>50.0%</td>
<td>50.0%</td>
<td>-</td>
</tr>
<tr>
<td>Liberal Arts Colleges</td>
<td>2 6.3%</td>
<td>3 9.4%</td>
<td>40.6%</td>
<td>43.8%</td>
</tr>
<tr>
<td>Community Colleges</td>
<td>2 25.0%</td>
<td>-</td>
<td>62.5%</td>
<td>12.5%</td>
</tr>
<tr>
<td>Junior Colleges</td>
<td>-</td>
<td>-</td>
<td>100.0%</td>
<td>-</td>
</tr>
<tr>
<td>All</td>
<td>13 15.7%</td>
<td>8 9.8%</td>
<td>36.1%</td>
<td>38.6%</td>
</tr>
</tbody>
</table>
Only one quarter of the attorneys meet every other day or more often with the key administrative officer. Almost forty percent meet with this supervisor monthly or less often. Although it is difficult to find a pattern in the above table, it does appear that attorneys in public institutions meet with these supervisors more frequently than their private institution counterparts. Only 10.2% of private counsel meet every other day or more often with the supervisor. Over 47% of counsel in public institutions met this frequently with superiors. It seems that larger, more complex institutions have more frequent contacts between counsel and supervisor than do the less complex institutions. In-house counsel meets with supervisors daily, or every other day, in 51.4% of the cases. Only 6.3% of outside counsel meet with supervisors that often. Table 40 details the frequency of in-house and outside counsel's meetings.

**TABLE 40**

<table>
<thead>
<tr>
<th></th>
<th>Daily</th>
<th>Every Other Day</th>
<th>Weekly</th>
<th>Monthly</th>
</tr>
</thead>
<tbody>
<tr>
<td>N</td>
<td>%</td>
<td>N</td>
<td>%</td>
<td>N</td>
</tr>
<tr>
<td>In-house</td>
<td>11</td>
<td>31.4%</td>
<td>7</td>
<td>20.0%</td>
</tr>
<tr>
<td>Outside</td>
<td>2</td>
<td>4.2%</td>
<td>1</td>
<td>2.1%</td>
</tr>
</tbody>
</table>
Chi square tests support the finding of relations between frequency of contact and levels of treatment and preventive law. Cramer's V values of .37 and .37 suggest weak to moderate relations. As frequency increases do so levels of treatment and preventive law.

Job Description and Evaluation

Formal job descriptions and evaluations, further indication of formal integration into the organization, yield limited information. Fewer than one third of all attorneys had job descriptions in their roles as university counsel. Even among in-house counsel, only 62.2% (23/37) had a job description. Although several private practitioners assumed they were evaluated on a regular basis (the assumption was based on a belief that otherwise they would not have been kept on by the institution), only 35.8% (34/95) of the respondents reported a formal evaluation of their services. Only 22.4% (13/58) of outside counsel are formally evaluated and just a little more than one-half (55.6%, 20/36) of in-house counsel are formally evaluated.

The measures discussed thus far provide some indication of the degrees of differentiation and integration of legal services into the formal organization. Indications of relation between degree of differentiation and integration and degree of treatment and preventive law have been found. Further investigation of these variables as well as indications of how well legal services are integrated into the informal structure are in order.
Summary

In this final section of Chapter 5, selected organizational variables have been examined as they relate to the office of university counsel and levels of treatment and preventive law. Several of these variables indicate promise for future study and help establish guidelines for detailed studies on each issue.
CHAPTER 6

CONCLUSIONS AND RECOMMENDATIONS

This study has attempted to document institutional responses of colleges and universities to the demands of their legal environments. Three overarching questions governed the investigation. Out of necessity, the mode of response was examined. Limited writing about legal counsel verified a need for data which would be both detailed and current to provide a basis for future research and to provide a context in which other data collected by this study could be analyzed. Second, the nature of the response was addressed. The range of activities in which counsel engaged was examined to see whether the institutional response was limited primarily to treatment law, responding to challenges as they occur - a re-active approach - or if it encompassed some degree of preventive law, anticipating and forecasting possible legal problems and taking the steps necessary to prevent them from becoming problems - a pro-active approach. Finally, selected organizational variables were examined for possible relations to both the mode and the nature of the response to the legal environment and for phenomena which might merit future study. This chapter will summarize and analyze the data presented in Chapter 5, offer some conclusions, and, when appropriate, make recommendations for future study.

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A Changing Environment

Twenty years ago an attempt to identify individuals at colleges and universities with primary responsibility for legal matters would have been akin to a quest for the proverbial needle in a haystack. Prior to 1961, only 56% (54/97) of the institutions in this study had any established arrangement for the provision of legal services. Of the institutions which now have full-time counsel, only 15% (5/33) had such positions in 1960. Chapter Two detailed the many changes which occurred in the legal environments of colleges and universities throughout the sixties and seventies. The extensive litigation of the early seventies called the attention of university administrators to the need for some contingency plan for legal services. Specifically, colleges which had never made use of legal counsel often found themselves as respondents in litigation, and, therefore, in need of counsel. Between 1966 and 1975, 30% (29/97) of the institutions surveyed in this study established arrangements for part-time counsel. Throughout the seventies, new legislation and the extensive regulations from the Federal government led to an increasingly complex legal environment. The use of full-time counsel became a more common occurrence. In the ten year span from 1971 to the present, 73% (24/33) of the institutions which now employ full-time counsel experienced changes in their legal environments sufficiently drastic to merit a switch from part-time to full-time counsel. In 1981, more than 32% (33/102) of the institutions use full-time counsel and over 37% (38/102) have some sort of arrangement which provides for in-house
counsel. Even those institutions whose needs are met by part-time
counsel exhibit bonds between themselves and counsel which are much
stronger than a "sub-contracting" arrangement might imply. Almost
half (43%, 27/63) of outside counsel serve on at least one committee
at the institution. Increases in staff size and specialization during
the last ten years were reported by approximately one-half of outside
counsel and more than three-fourths of outside counsel reported
increases in the complexity of tasks handled and the specialization
of legal staff during the same time span. Increases in the number of
reports written, meetings scheduled with university personnel and
timeliness of contacting legal counsel were reported over the past
ten years by almost one half of outside counsel. By 1981, almost
44% (21/48) of outside counsel had contact with key administrators on
campus at least weekly. These increases in activities which tighten
the relationship between part-time counsel and the institution suggest
that even part-time counsel exhibit a tighter bond to institutions
today than they did twenty years ago.

The greatest difference between the position of legal counsel in
1961 and the same position in 1981 is that today the services provided
are more visible and have been integrated to a greater degree into the
institution. The establishing of full-time positions at many
institutions and the closer ties with "part-time" counsel attest to
these increases in visibility and integration. As a result, a study
of the position of college and university legal counsel and the
individuals serving in these positions is now possible.
The Provision of Legal Services

Arrangements for the provision of legal services vary from institution to institution. The most common arrangements are: use of private practitioners, use of trustees as counsel, establishing a full-time position for in-house counsel, use of state or county attorneys general, and the use of full-time administrators whose responsibilities include legal matters.

The use of attorneys in private practice serving one or more institutions remains the most common approach to obtaining legal services. Many colleges and universities find that on occasion they need professional legal advice, but that need is not sufficient to justify full-time counsel. Trustee-attorneys serve in a similar role, on a part-time basis, but offer their services at minimal or reduced fees. They have a vested interest in the well being of their clients, which may be lacking in all but the most conscientious of non-trustee private practitioners. The use of trustee-attorneys may become less common in the future if other states follow the lead of California and view trustees representing their institutions as self-dealing. The use of full-time counsel continues to grow, especially at larger, more complex institutions. Attorneys general are still used by some state institutions. This practice is usually dictated by state law. The use of law professors as legal counsel has all but disappeared. The sudden changes which took place in institutional legal environments in the sixties and seventies forced administrators to react quickly and seek legal counsel wherever it
was available. For those universities fortunate enough to count law schools among their instructional units, it was a natural response to call on the expertise of law professors. These individuals were already on the payroll, were experts in their fields and had a vested interest in the future of the institution. Short range planning suggested that the use of professors might help the institution through what was optimistically perceived by some as a temporary problem. With the continued litigation and increased regulation of the seventies, one could no longer claim that the newfound presence of the law on campus was a temporary condition; it was both permanent and pervasive. The changing legal environment demanded a boundary spanning unit within the organization which would be totally focussed on the legal environment and with the capacity to become increasingly differentiated. The use of law professors as legal counsel had been limited to multiversities, the only institutional types sufficiently large and complex to include law schools as components of their institutions. It was these multiversities which felt the impact of the demands of the legal environment to the greatest degree as evidenced by the greater tendency towards full-time counsel, larger legal staffs, and a greater variety of legal tasks assumed by counsel in these institutions. Given the excessive environmental demands and the need for an adequate long range institutional response, law professors would either have to forego their teaching role and assume a full-time position as counsel, or return to teaching and encourage the institution to make other arrangements for counsel. It appears
the latter option has prevailed.

A new mode for obtaining legal services, in some ways a variation on the use of law professors, was recorded by this study. Approximately 4% (4/102) of the respondents were full-time administrators at the institution and their responsibilities included, but were not limited to, legal concerns. These individuals were primarily located in medium sized institutions, liberal arts colleges, elite liberal arts colleges and community colleges, which couldn't justify the use of full-time counsel but did need some form of legal expertise. It is possible that in some of these cases positions were created to combine legal needs with other administrative needs and attorneys interested in administration were attracted to the positions. In other cases, administrators may have recognized a need for legal counsel and searched among individuals already on staff for someone with legal expertise. This latter route to "recruiting" counsel is similar to the thinking which led to the use of law professors at multiversities for legal counsel. Since this study made no attempt to collect data on the "recruitment" of individuals to the position of counsel or the factors affecting the decision making of administrators charged with deciding what arrangement would be used at their institution, any statements regarding the basis for selection of one arrangement are purely speculative. Given that caveat, one conjecture is that these medium sized institutions with moderately complex legal environments first conducted a search for legal expertise among individuals already on staff. If the resources were
already on hand, there was no reason to go outside the institution. Only failing in that attempt, and feeling a strong need for counsel did these administrators look to combine positions (e.g. assistant to the president and chief legal counsel) and begin external recruiting.

This somewhat new option for obtaining legal services may be a very attractive option for medium sized institutions. Depending on the future changes in the legal environment, it is possible that this option will follow the path of the law professor-attorney. However, one should not assume that the role of full-time administrator/part-time counsel is one which will necessarily lead to an increasingly present legal force on campus, possibly culminating in the use of full-time counsel. In at least one case, the reverse was true. An individual who had served as Director of Giving at a liberal arts college and had handled legal concerns informally moved from that position to Assistant to the President and Counsel. Rather than taking the next step to full-time counsel, he re-entered private practice, taking the university as his client. In-house/part-time counsel may not be the panacea for all medium sized institutions.

The means for obtaining legal services seems to be controlled by a variety of factors. Environmental demands lead the list of determinative factors in the selection of a specific arrangement to meet the needs of an institution. Chapter Two detailed the changes which occurred in institutional legal environments over the last twenty years and, as previously argued in this chapter, although no institutions have escaped the environmental demands, the larger, more
complex institutions have been most vulnerable in this area.

Most multiversities exhibit a need for legal expertise on a regular basis. Federal research contracts, collective bargaining, inevitable suits from disgruntled faculty, staff or students, and Federal rules and regulations place daily demands on legal staffs. Furthermore, a history of litigation and faculty and administrators who are sensitized to legal concerns create an awareness within those individuals of the need to address legal implications of new policies. This reinforces the need for readily available and easily accessible legal advice. The best arrangement to meet these needs is often viewed to be in-house counsel. Smaller, less complex institutions, with few contacts with the Federal government, little sponsored research, and smaller staffs and student bodies, thereby decreasing the number of possible law suits (assuming one could expect n law suits for every x staff members and every y students), while not invulnerable, are less likely to experience environmental demands of the magnitude which affect multiversities and public comprehensives. As a result, the consensus at these institutions is that they don't need full-time counsel. In some cases, this may be true; in others, it may just be that no such need is perceived.

There is a difference between actual needs and perceived needs. Often, perceived needs reflect an inaccurate assessment or the false equating of needs with wants. As a result, perceived needs may include items not vitally necessary to an institution. For example: the president of a small college may decide his institution needs
counsel due to the fact that many other institutions have counsel, his does not, and therefore it needs legal counsel. This perceived need may not reflect an actual need. In a similar way, there may be actual needs, which due to a lack of insight or long range planning, are not recognized by administrators. Not all colleges and universities involve counsel in policy decisions, even when those decisions have legal implications. In some cases, it may be ignorance of possible liabilities which prevent administrators from viewing counsel as a need. If a poor decision results in a law suit, perhaps from tenured teachers whose services are no longer required (an event which could cost the institution thousands of dollars in compensatory damages) then an actual need did exist but went unrecognized. This hypothetical law suit is an example of a situation where an institution might have benefitted from a preventive law stance from legal counsel. Two types of judgement errors could result from inaccurate perceptions regarding needs. The first type occurs when "unreal" needs are perceived as real. An individual establishing a college who perceives a need for full-time counsel before he makes any decision about faculty selection is certainly overestimating real needs. From an administrative stance, this decision may not be considered wise. Over-commitment of personnel, costs, excessive involvement of a legalistic perspective in governance are all valid criticisms of the decision from an institution-wide perspective. However, this individual certainly is in a position to effectively handle all of the institution's legal concerns. It may
be a prime example of overkill, but the legal needs of the institution would be met.

Of greater concerns is that of misperception when real needs go unnoticed or are incorrectly classified as wants or imagined needs. Treatment law (report writing, litigation, collective bargaining, etc.) represents real needs which few individuals fail to recognize or classify as real needs. This may contribute to the fact that treatment law is readily accepted on campus. It is the opinion of this researcher that preventive law is also a real need on all campuses (a claim with which some will take issue) but that it is a need which goes unnoticed or is misclassified as a want on many campuses. As a result, a preventive stance is neither as common nor as readily accepted at colleges and universities as the treatment approach to legal problems.

The relation between actual needs, perceived needs and the type of legal services merits further study. An assessment of the perceived legal needs of the institution from the perspectives of faculty members, administrators and other constituencies within the institution in conjunction with a legal needs assessment performed by attorneys would provide a solid data base. The relation of perceived and actual needs to the type of services currently provided and the role they play in the selection of an arrangement for the provision of legal services could then be studied.

Cost of legal services, though not addressed by this study, must be another factor in the selection of a mode for obtaining legal
services. Trustee attorneys meet many needs at very little cost.

Colleges and universities, like most organizations, have learned that the concepts of maximizing and optimal results can not always govern their actions. Optimal standards in decision making require the existence of a set of criteria which can be used to compare all alternatives and that set of criteria can be quantified in such a way as to yield a preferred, "optimal" alternative (March and Simon, 1958). Rarely are decisions made by administrators in colleges and universities easily reducible to a set of readily measurable, rational criteria. Even attempts at such quantification are often just that, attempts, with a numerical system which would not withstand scrutiny. Decision making is more often governed by "satisficing", the process of establishing a set of criteria which describes minimally satisfactory alternatives and then choosing an alternative which meets or exceeds each of the established criterion (March and Simon, 1958). Simple economics suggest that the prospect of slightly better service at significantly higher costs is not an attractive option to an institution accustomed to "satisficing". The use of private practitioners at full cost may remain attractive to institutions as long as his annual bill is less than the salary of a full-time in-house attorney. Even if private practitioners are more expensive, if the services of two different specialists are needed, several private practitioners may be a more viable solution when the combination of needs and costs is considered. Returning to the wishful thinking that the need for legal services may pass, the use of
several specialists in private practice to meet short term needs may make a lot of sense. Although there is no one individual charged with overseeing legal needs, the short term legal needs are being met, and great flexibility has been maintained by the institution in the event of sudden changes in the legal environment. If the institution no longer needed a labor relations specialist but due to increased regulation of DNA research, found it necessary to acquire the services of a patent/copyright lawyer, the arrangements with several private practitioners would be flexible enough to accommodate the change. A decision to employ full-time counsel could be a step toward permanence which may not be in the best interests of all institutions.

Finally, the range of available options is also a factor. Not all institutions can request an attorney general, whose salary may be carried in someone else's budget. Some institutions may not have any lawyers on their Board of Trustees, thereby precluding the option of trustee attorney. Those few institutions (4%) fortunate enough to have administrators with some legal training on staff can introduce a legal perspective into decision making processes without committing themselves to any additional staff. For a small to medium sized institution, this can be a very attractive option.

In essence, many factors can be involved in the process of selecting a means of obtaining legal services. Needs (actual and perceived), financial resources and range of alternatives for obtaining legal services, all factors in the selection of a mode for
the provision of legal services, vary for each institution. Certain patterns do emerge. Larger, more complex institutions are much more likely to use full-time counsel rather than part-time counsel; the opposite is true in smaller, less complex institutions. Trustee-attorneys are used by junior colleges, liberal arts colleges and elite liberal arts colleges, but not by other institutional types. In spite of these patterns, there is no one best system for obtaining legal services. The apparent "waffling" on the part of the researcher when discussing the relative merits and demerits of each arrangement reflects an unwillingness to commend or condemn any particular arrangement. The decision must be tailored to the needs of each institution and in the final analysis, the mode must be evaluated based on whether or not it "works". Beale (1974) emphasized that effectiveness is more often a factor of the ability and experience of individuals rather than the delivery means. One respondent, who returned his instrument uncompleted, agreed with Beale's placing of importance on the individual. This respondent stated his belief that effectiveness stems from the relationship and trust between the attorney and the administrators and faculty of the institution. His concern was that that this relationship could not easily be quantified. It is probably true that an individual in private practice could build up the same level of trust, openness of communication, etc., as his full-time counsel counterpart, though it would be more difficult and take a longer period of time to achieve. In that sense, it is true that the means of achieving legal services need not be a sure indicator
of effectiveness. At the same time, most institutions make decisions based on what works. It is doubtful that 100% of the public multiversities chose in-house counsel even though services of comparable quality were available through total use of private practitioners. Effectiveness, while not the only concern in selecting the mode of legal services, is an important issue.

**In-house vs. Outside Counsel**

Several distinctions did emerge between in-house and outside counsel. Outside counsel serve primarily in the role described by Lytle as Companyman. They are called on to handle specific, well-defined legal tasks and rarely become involved in the overall process of managing the institution. As private practitioners, their interest and expertise lie in the law. The college or university is but another client whose needs are no different from any other client who might retain them. This arrangement seems to meet the needs of many institutions, although the details of the arrangement between the client and the attorney are probably as varied as the institutions using this arrangement. In most cases, the attorney's only source of contact with the institution is the president or a member of his staff. As a result, a funnel effect occurs at the institution with one individual serving as gatekeeper. This individual serves to link the lawyer and the institution and decides what legal needs merit incurring the inevitable costs. A detailed study of the use of private practitioners as legal officers might focus on this gatekeeper.
He is, in essence, the chief legal officer of the institution. All private attorneys only supplement his activities.

Thompson's (1967) of a boundary spanning unit, a subunit with the responsibility for isolating the technical core of the organization from environmental influences, has been used to describe the position/office of legal affairs. The boundary spanning unit can be totally internal to the organization, as is the case for in-house counsel, assuming their services are sufficient and are never supplemented by additional outside counsel, or it can have an internal component and be supplemented by external units. The amount of work handled by individuals outside the university can vary, but the arrangement of one individual serving as the institutional link to outside counsel represents the extreme of most of the services being provided by individuals external to the organization.

The two extremes described (all services handled by an internal unit as opposed to a linking person with no legal training who arranges for all services to be handled externally) are somewhat comparable to the extremes of total integration and total differentiation.

In-house counsel are more likely to serve in the role described by Lytle as Ombudsman: insiders who are highly autonomous, very accessible, and, in turn, have access to all within the institution. Their presence on campus provides them with a greater opportunity to see and be seen. This enhances their ability to become more integrated into the system and to have impact beyond routine legal
matters. It's natural to assume that these individuals are more accessible than their outside counsel counterparts and that by virtue of their knowledge of the system they know where to turn for information. Although the capacity for a high level of integration is present with in-house counsel, for those attorneys who serve without any additional support, as is the case for 24% of in-house counsel, there is a major impediment to high levels of differentiation. As generalists with some specialization in higher education law, few in-house counsel have the opportunity to master the intricacies of tax law, binding arbitration, or the most effective means of litigating. At the other end of the spectrum, specialists in different areas of the law handling requests for counsel on a case by case basis, at the request of a non-lawyer administrator, represents nearly total differentiation. The linking person serves an integrative function which is more one of simple coordination than integration into the organization. Lacking specific legal skills, or even the capacity to identify possible legal problems, this individual could never integrate the elements of the boundary spanning unit into the organization in such a way as to do anything more than react to specific problems.

The research of Lawrence and Lorsch (1967) supports the hypothesis that neither a high degree of differentiation nor a high degree of integration is sufficient to effectively handle changes in a complex environment. Those organizations which were both highly differentiated and highly integrated were most likely to survive environmental
challenges. Based on the findings of Lawrence and Lorsch, the best arrangement, theoretically, for the provision of legal services to institutions facing complex legal environments would be the use of in-house counsel trained as generalists but with the authority to retain specialists from private practice as needed. The use of private practitioners to supplement their legal services was reported by at least three-fourths of in-house counsel. This suggests approximately one-third of all institutions have arrangements for legal services which are both fairly well differentiated and fairly well integrated.

Characteristics of Chief Legal Officers

Chief legal officers at colleges and universities resemble other administrators in the areas of race and sex. This field is dominated by White males. Two somewhat interesting phenomena did emerge. Between thirty and forty percent of the attorneys at multiversities were women, as compared to only 10% of the overall college and university attorney population. It is difficult to accurately speculate whether this position is particularly appealing to women or if the position is considered "second echelon" within the legal profession, a level historically relegated to women who have met discrimination at higher levels. One respondent stated she preferred working at the university due to the regularity of hours, which provided her with more time for her family. This reasoning would lend credence to the belief that the choice is made by the women, not the legal profession. Another possible explanation stems from the
fact that in-house counsel is a relatively "new" position in the administrative structure and has been subject to affirmative action guidelines. That somewhat visible, moderately high level administrative position may have offered some institutions a chance to improve their affirmative action statistics without necessarily admitting more women to the administrative inner circle. Interviews with female chief legal officers, salary figures and details on applicant pools are necessary parts of further investigation before any conclusion can be reached in this regard. If smaller institutions follow the lead of larger, more complex institutions and switch from part-time to full-time counsel in the years to come, it will be interesting to see if this becomes a position traditionally held by women at these institutions as well.

The second phenomena was that of very senior lawyers "retiring" to the position of legal counsel. In some cases, attorneys reported that after many years in private practice, rather than retire, they took up residence on college campuses to serve as legal advisers. In most cases, this arrangement was either between an alumnus and his alma mater or a former trustee and the institution he served. The benefits to each party are obvious. The institution gets easily accessible legal advice at reduced cost; the individual continues to work, in a relatively low pressured position, in a field he enjoys. On the surface, the arrangement seems to suit both parties quite well. However, before attesting to its value, some form of evaluation by a party other than the attorney seems in order.
New Issues

Like most research, this study raises more questions than it answers. A study on the position of in-house counsel with data collected through observation of his activities on a day to day basis would help to create a sharper image of how college and university counsel actually function. Issues of the amount of time, in terms of man-hours, and money, in terms of personnel, services, court costs, studies, etc., spent on legal services have not been addressed. These issues should be the bases of future inquiry. General perspectives on the efficacy of the current modes of operation should be collected and evaluation of the various arrangements should begin. As research continues, the information should be shared with practitioners in hopes they will continue to refine practices within their profession.

Relation Between Treatment and Preventive Law

The concepts of treatment and preventive law were presented in Chapter 3 as successive steps along a continuum. It was argued that the presence of treatment law, a re-active mode to legal problems encompassing generally accepted tasks for counsel, precedes the presence of preventive law, a pro-active approach geared towards anticipating, and where possible, preventing legal problems. It was assumed that the presence of preventive law and the degree of its presence as compared to other institutions would be a measure of how advanced legal services were at that institution. The definition of preventive law suggested that as time spent on preventive law
increased, time spent on treatment law would decrease. This study verified that there is a strong relation between the level of treatment law and the level preventive law. However, rather than an inverse relation, the two go hand in hand. As the presence of one increases, so does the presence of the other. The inference drawn from this data is that counsel will either work to meet minimal legal needs or the full range of legal issues at an institution.

For full-time counsel to address the legal needs of an institution, it would probably be impossible not to encompass some aspects of preventive law in his work. It is understandable that during the early seventies when there were so many cases pending in the courts and college and university administrators were faced with new legal challenges on almost a daily basis, legal counsel may have been limited to a treatment law stance. The adage "when you're up to your ass in alligators it is difficult to remember that your initial objective was to drain the swamp" seems applicable here. For many years, counsel was so involved in litigation and other problems requiring immediate attention, there was no time to sit back and examine the broad situation and plan for the future. The short range objective for counsel, like that of the swamp drainer, was to stay alive. The long range goal was to meet the short range goal.

Changes on campuses during the seventies (including the appointment of full-time counsel, increases in the size of the legal staff, increased autonomy, and increased authority) have left counsel in a better position to work beyond the purely reactive stance. He can
now focus on the initial objective of draining the swamp. Ideally, counsel has learned a lesson from the sixties and has a vested interest in making sure the institution never again finds itself so engulfed by legal problems that it has limited its options and can only choose a reactive mode of operation. The presence of preventive law is indicative of attempts on the part of counsel to forecast and, where possible, shape the future of legal affairs.

High levels of preventive law were most common in the larger, more complex institution types. All of the public comprehensives and public multiversities and over 85% of private multiversities scored in the medium to high ranges of preventive law. At the lower end of the institutional scale with respect to complexity, all of the junior colleges, public colleges and elite liberal arts, 82% of the community colleges and 78% of the liberal arts colleges scored in the low to medium range in preventive law.

There are two possible explanations for the higher degree of preventive law at the more complex institutions. As argued earlier in this chapter, the legal environments of public comprehensives and multiversities are more complex than the legal environments of the other kinds of institutions. Much of the test litigation has been directed at the larger, more visible institutions. Numerous Federal contracts and extensive research have led to more contact with, and therefore more regulation by, the various levels of government. This greater complexity has demanded legal attention in a larger variety of areas within the institutions than has been needed at institutions
with less complex legal environments. Furthermore, these institutions had to make arrangements for counsel at a time when other institutions perceived no need for legal services. This time differential has allowed counsel to become more established at the more complex institutions, thereby becoming more integrated into the institution and enhancing the opportunity for preventive law. The second reason for the presence of higher levels of preventive law in more complex institutions is that these institutions are served primarily by in-house counsel.

In-house counsel is much more likely to be involved in preventive law than outside counsel. Of the ten activities indicative of preventive law, in-house counsel spent more time on six of these activities (lobbying, monitoring litigation, monitoring legislation, offering legal advice, reviewing contracts and reviewing publications) than did outside counsel. Time devoted to the remaining four activities was approximately the same for both groups of attorneys. On average, in-house counsel would be coded in high level preventive law while outside counsel would be coded in the medium level of preventive law. Considering the types of activities indicative of preventive law, it is no wonder that outside counsel scores low on the counts. An intimate familiarity with an institution, its personnel and its problems, coupled with day to day involvement in the process of running an institution and being both visible and accessible all seem to be essential to preventive law stance. It would be difficult for an outsider, not aware of the problems of an
institution or its personnel, to be able to know enough about what was happening at the college or university to even identify areas of concern, let alone anticipate problems. Without regular contact with individuals at the university, how could outside counsel even offer warnings about potentially troublesome actions? The need to witness actions before labelling them as troublesome simply isn't possible without observing the day to day actions at the institution, an impossible task for an attorney in an office located downtown. Monitoring higher education litigation and legislation would be costly waste of time for a private practitioner if the only work done for an institution in a given year was to investigate an estate. Full-time counsel, on the other hand, could use this information in their day to day opinions and to forewarn administrators of possible problems. Preventive activities, impossible or impractical for outside counsel, are both feasible and essential for in-house counsel. Attorney initiative in scheduling meetings was moderately related to level of preventive law. While it would be quite natural for in-house counsel to call another administrator and request a meeting, for part-time counsel to initiate a meeting with a client, in essence, scheduling a meeting for which he would bill the client, raises some ethical questions. Furthermore, a relationship between time spent in the Ombudsman role and the level of preventive law suggests that counsel must feel a part of the organization yet be fairly high in autonomy to adopt a strong preventive law stance. Being accessible to all on campus really requires a full-time in-house
counsel. Administrators can effectively limit the type of law to a purely treatment stance, if they so choose, by severely limiting the autonomy of counsel. An inverse relation between preventive law and time spent as companyman suggests this role may preclude, or at least severely limit, the capacity for preventive law. If administrators force counsel into the role of companyman, they can limit the potential for preventive law. As a result, the selection of a means for obtaining legal services can determine the type of law practiced. On the other hand, if a desire for a preventive law stance is a given, that desire can determine the means of obtaining legal services by eliminating those options which preclude a preventive stance.

Two issues still need to be addressed regarding the relation between treatment and preventive law on campus. Treatment law has been described as the necessary and acceptable role for law on campus. Preventive law has been described as a stance which would decrease the need for treatment law; a stance not as readily accepted by the academic community. Writing on the need for preventive law has come primarily from counsel; the attitudes and beliefs of administrators and faculty members on this issue have not been explored in any systematic way. Those individuals charged with the governance of colleges and universities must decide what the acceptable role for counsel is at their individual institutions and then work to either assist counsel in succeeding in that role, or if need be, to keep him within the bounds defined for a more limited role.
As long as administrators remain ambivalent about the desired role, countless individuals have the capacity to throw up blocks to discourage, if not destroy, any attempt at preventive law. Faculty members who would prefer not to be bothered by legal concerns, and aware that their Deans or the Provost will not censure them for ignoring legal implications of their actions, may choose to ignore the advice of counsel, even if the end result may be an unwanted and possible avoidable law suit. Administrators may choose not to include counsel in policy making meetings on issues with legal implications, or they may solicit a legal opinion and then consciously decide to ignore the advice of counsel. It has been argued that legal services must be integrated into the organization if they are to be successful at negotiating the legal environment. That integration can only be achieved if there is a design for that integration and the design is supported by institutional administrators. Absent an integrative plan and support for, if not enforcement of, the plan, those individuals opposed to preventive law on campus can be very successful at stonewalling a pro-active legal stance.

The second area for research focusses on the hypothesis that increased preventive law will result in a decreased need for treatment law. A test for this hypothesis should be devised and carried out. This study only measured the presence of activities indicative of treatment or preventive law. If the percentage of time spent in each area could be measured, a longitudinal study might give some indication of the relation between the two types of law. For an accurate test of the hypothesis, the time spent by all administrators
on legal issues (testimony, depositions, report writing, court or hearing appearances, etc.) would have to be recorded in addition to the time spent by counsel. The measure of time spent by other administrative officers is important because it is their time which may be increasingly saved as a result of a preventive stance.

Organizational Issues

The selected organizational issues of attorney identification with the law or with education, relative intra-organizational power of the legal services subdivision and degrees of differentiation and integration of the subunit were examined in the most general of ways. Some of the findings merit further, more detailed study.

Individuals serving as in-house counsel have mixed loyalties. They often must make choices between commitment to the legal profession and the seemingly unconditional loyalty demanded of them by the educational institution. Private practitioners also serve the two masters, but with their decision to remain in private practice they have made a clear choice of law over education. For in-house counsel, almost three quarters of whom have career aspirations in educational institutions, the choice is not as clear. Gouldner (1957) described a phenomena which plagued technical "experts" in industrial organizations which may be relevant here. Experts, who usually had reference groups outside of the organization (other specialists in their fields), had plenty of opportunity for lateral movement, but rarely for any horizontal movement. These individuals were viewed as subordinates, capable of advising, but never
commanding, unless they were willing to give up their external reference group and identify more strongly with the institution. College and university counsel may face a similar plight. Their role may be limited to advising unless they come to identify strongly with the institution they serve, at which point leadership may be available to them.

Gouldner divided individuals in organizations into two groups: Cosmopolitans and Locals. Cosmopolitans were individuals low on institutional loyalty, high on commitment to their specialized role and identifying primarily with a group external to the institution. Locals, on the other hand, were high on institutional loyalty, low on commitment to their specialized role and identified primarily with a reference group internal to the institution. This set of labels may be appropriate to counsel. The lawyer working at the institution and the administrator with legal training working for the institution are two distinct latent identities and each role may result in a different approach to the delivery of legal services. Gouldner found that as the degree of localization increases, up to a point, so do the degrees of participation in decision making and influence. This suggests there are real limits placed on the role a highly cosmopolitan counsel can play at a college or university. In-house counsel who view the position as a possible stepping stone to other administrative posts in higher education should note the need to become part of the organization, more of a local, if they want to pursue educational career goals.

Some of the differences between in-house and outside counsel
substantiated by this study suggest that individuals serving as in-house counsel are working to identify more closely with education, in general, rather than the legal profession. When compared to outside counsel, these individuals are more likely to be engaged in a more varied practice of law, including high levels of both treatment and preventive law, on campus. These attorneys have advanced degrees in fields other than law, read the publications specifically designed to merge legal and educational perspectives and devote time to educational issues. It is these individuals who will be charged with the ongoing development of this emerging profession of full-time legal counsel.

This group merits further study on a variety of counts. Whether or not this group plays a leadership role in NACUA should be examined to determine if that organization meets the needs of quasi-educational leaders or if it is directed more to the needs of part-time counsel. If the latter is true, the question must be asked if there is a need for a new professional organization. The acceptance of counsel as an administrator by other institutional administrators also merits study. Do presidents, vice presidents, and faculty actually view counsel as a professional equal, or as a technician subject to their direction? This issue may determine whether or not the position really does provide entree to more responsible administrative positions. In the same area, Gouldner's study of Cosmopolitans and Locals should be replicated to assess not only counsel's level of commitment to administration in higher education, but also to the
particular institution with which he is affiliated. Finally, longitudinal studies should be conducted on individuals who serve as legal counsel. How long they remain in that position, whether or not an institutional pecking order for counsel exists, and what positions counsel go to when they leave current positions may help to determine the accuracy of the claim that legal counsel positions are stepping stones to other administrative positions.

Hickson et al. (1974) argue that organizational subunits which cope with a high degree of uncertainty, possess a high level of centrality within the organization, and provide services for which substitutes are not readily available are very powerful, vis-a-vis other subunits. In-house counsel view themselves as coping with a high degree of uncertainty, being very centrally located, and offering services which are moderately difficult to replace. All things considered, counsel report they exert a great deal of influence on problems faced by their respective institutions. Based on the Hickson model, if these self reports are accurate measures, the office of legal counsel is in a very powerful position in the organization. Certainly the potential for building a strong power base exists. Whether or not this power is realized is another issue. The "loosely coupled" nature of educational institutions, a lack of sensitivity to the political nature of college and universities, no desire to use the power of the office, could all be factors related to whether or not the legal subunit is more powerful than other units. A study designed to cross check the perceptions of attorneys with the
perceptions of others in the institution along the variables of
degree of uncertainty, centrality, and substitutability is the first
step. Follow-up studies on the most powerful legal units to deter-
mine what factors, personal and organization, are related to the high
degree of relative power would then be in order.

Degrees of differentiation and integration of the subunit into
the superstructure also merit further study. This research supported
the contention that degrees of differentiation and integration have
increased over the last ten years but made limited attempts to gauge
the degrees of differentiation and integration. Frequency of meetings
between legal counsel and their superiors, one index of degree of
integration, was found to be related to levels of treatment and
preventive law. Future research may indicate that highly differen-
tiated and highly integrated units are those most effective at
eliminating the nuisance of treatment law.

The Future

The subject of this dissertation would probably not have been
approved as a legitimate basis for inquiry fifteen years ago. Few
predicted the changes which would occur in the legal environments of
colleges and universities. The drastic and sudden change makes one
wonder (perhaps even wish) if this need for legal services will pass.
The attorneys interviewed in this study believe the opposite is true.
Over 87% said they believed the need for legal services will increase.
None expected a decrease. More specifically, almost three fourths of
the respondents in this study believe there will be increases in
students suing colleges and universities, faculty and administrators suing the institutions, application of administrative law to higher education, and legislation affecting higher education.

In light of the fact that legal officers will continue to be a part of the administrative structure of most institutions, these individuals, how they perform their duties and the problems they encounter must be the basis of continued research. More than half of the in-house counsel reported that at least once, being a lawyer, rather than a professor, worked to their disadvantage at the institution. One respondent wrote, "I have found that the initial reaction to (the position of) lawyer by most people influences their perception of me." Another wrote that "occasionally academic personnel attempt to treat counsel as hired help." One individual tried to explain the cause of the antagonism saying, "I think there is a basic antagonism towards attorneys which stems from the increased litigation involving the university." Another offered a different perspective: "Faculty members-Ph.D.s-believe they are more intelligent, scholarly, etc. (than attorneys)." In his writing on the relationship between industry and universities, Shapero (1979) noted problems which stem from the conflicting values of academicians and industrialists. Professors tend to value theory over application and as a result they derogate any form of application. Attorneys, much like the engineers and businessmen in Shapero's study, like practitioners, and as such their activities are less valued by academicians than the esoteric work of the academicians' professorial
colleagues. The resulting antagonism could represent a serious impediment to effective use of counsel and needs further study. A survey of faculty attitudes, beliefs and awareness of legal issues would be a major step towards assessing this potential problem and identifying possible solution. Several attorneys reported that faculty appointments help keep communications open between themselves and other faculty. This is one route to help diminish antagonism.

Improved relations with faculty may be the key to a strong preventive approach to law at the institutions. The inability of faculty and administrators to recognize incipient legal problems, the difficulty of getting faculty and administrators to consider legal issues in decision making, and the tendency of these individuals to act without legal advice, or call counsel too late were cited by counsel as major problems. Some education of faculty and administrators seems to be in order, but first receptivity of that audience must be insured.

It is somewhat ironic that the list of problems cited by counsel included too much legislation, overwhelming regulation, intrusive laws, and excessive bureaucratic interference. A similar list with equally condemning adjectives might have been generated by faculty and administrators. It appears as if counsel and faculty and administrators may be on the same side of this issue, both viewing the law on campus in an equally bad light. If so, these groups need to be told they are allies, not enemies.

Outside counsel did not report encountering antagonism on campus
as frequently as did in-house counsel. Fewer than 18% of the legal officers reported any problem in this area. Since outside counsel are in contact with faculty less often than in-house counsel, and their actions are less visible, this statistic may not reflect a more accepting attitude on the part of faculty. It is more probable that it reflects a lack of awareness on the part of outside counsel.

Beyond acceptance on campus, college and university attorneys face many of the same problems faced by other administrators. The inability to specialize and trying to remain current in a rapidly changing field is an often cited source of frustration. Budgetary concerns were listed by others. At least one conscience-ridden private practitioner suggested it was difficult to determine what sort of fees to charge a charitable institution.

It has been suggested that there is a potential for confusion regarding who (or what) is the attorney's client. One third of the attorneys suggested this was occasionally a problem. One individual responded that client confusion is a problem for any in-house counsel. An example was provided by counsel from an institution where the Board of Trustees and the President were at odds. When the Board fired the President, the President turned to counsel and asked that he be apprised of his rights. Many other individuals reported never experiencing any confusion. Among their responses were the following: "my client is the legal entity", "the President is my client", "goals control", and "the institution is the client". Once again, the question arises whether absence of confusion reflects no conflict or
just a lack of awareness of the conflict.

In spite of all of the problems associated with the position of chief legal officer, individuals are still attracted to the position. The challenge, the variety of tasks, a feeling of self satisfaction and love for the academic community were given as reasons for selecting full-time positions as college or university counsel. These rewards will continue to be there to attract some people to the field, but still others may view the position as a calling. One respondent stated she specialized in higher education law due to a "wish to assist in restoring higher education to its former privileged position." Many of us hope she will succeed!

Conclusion

The presence of the law has been felt on every American campus, and it is doubtful that demands for legal accountability will diminish in years to come. Colleges and universities must examine existing arrangements for legal services and generate alternatives for the future. The need for preventive law must be considered at all institutions. Making provisions for expanded legal services at institutions will not be sufficient to guarantee effective responses to environmental demands. The role of university legal counsel must be integrated into the institution and accepted by all members of the institution. Ability to differentiate the services provided and a flexibility to adjust to environmental challenges must be incorporated into any plan for legal services. But most important, legal needs should be addressed in the long range planning of all colleges and
universities.

This study has recorded and reported preliminary findings on the mode of obtaining legal services at colleges and universities, the nature of the services, and some organizational variables related to the provision of legal services. Future research in each of these areas should be more detailed. This continued research will provide institutions with data which will assist them in long range planning. This study should provide a firm basis upon which, it is hoped, others will build.


NACUA, 1981 Information Brochure and Member Institutions Directory.


Weeks, Kent M. "They'll be Suing You". *AGB Reports,* Vol. 22, no. 1, January/February 1980, pp. 36-41.


APPENDIX A

SAMPLE SELECTION PROCEDURE

A copy of the 1980-1981 NACUA directory and handbook was obtained from the headquarters of the association. The directory lists 695 institutional members. Some institutional memberships were granted to state boards and systems which include more than one institution. Eleven institutional members were eliminated from the population because they were located outside of the United States.

An attempt to identify the remaining 684 institutions by type was made using the 1976 Carnegie Council Classification of Institutions of Higher Education. Institutional members which were systems rather than single campuses were put into a special category. In the case of state universities, it was often difficult to discern if the main campus was the member or if the entire system had the membership. The determination was made based on the physical location of the chief legal officer. If he had an office on the main campus it was considered a single institution, otherwise, it was a system. To the extent that an error was possible in classification, there is a possibility of a sampling error. In the case of the University of Puerto Rico, no individual was listed. Since it was impossible to classify the University as either a single institution or a system it was eliminated from the population.
All but four of the 683 remaining members could be identified and classified; thirty-two were listed as systems, 651 were labeled by Carnegie type. *The College Blue Book* (1979) was used to classify three of the four other institutions. A telephone call to the remaining school, the University of Central Florida, revealed a name change from Florida Institute of Technology. With that piece of information, each of the 683 members of the population was categorized.

Thirty-seven categories (thirty-six Carnegie types plus systems) were too cumbersome for this study, yet some delineation by institutional type was appropriate. The Stanford Project on Academic Governance typology (SPAG) (Baldridge et al., 1978) was appealing because it pared the Carnegie typology to eight categories which made intuitive sense. Since the sample within each strata would be small it was important that the population have some degree of homogeneity. For that reason, the population was limited to colleges and universities in the mainstream of higher education. Highly specialized schools which have very different student populations or which might have problems primarily in one area of the law were considered outside of the mainstream. Colleges which don't offer undergraduate degrees, like medical schools and other health related schools and law schools were eliminated. Art, music and design schools which don't offer degrees and other specialized schools were eliminated. Theological seminaries and Bible colleges whose primary purpose was to train individuals for the ministry were also eliminated. Institutions for non-traditional study were also
classified as outside the mainstream of higher education. Forty two institutions were eliminated from the population because they fell into one of these categories. Any error in categorization of these schools outside of the mainstream would lead to a possible bias in the sample.

The remaining schools were converted from Carnegie type to SPAG type using the conversion table detailed in Figure 3. Engineering and Technology Schools, Schools of Business, and Teachers' Colleges were included in the "catch all" categories of Public College or Private Liberal Arts depending on the nature of funding, public or private. The justification for this classification stems from the fact that the legal problems faced by four year institutions with undergraduate programs should be quite similar.

INSTITUTIONAL TYPOLOGY

<table>
<thead>
<tr>
<th>CARNEGIE TYPE</th>
<th>SPAG TYPE (PUBLIC/PRIVATE)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Research University I and II</td>
<td>Public Multiversity/Private</td>
</tr>
<tr>
<td>Doctorate Granting Univ. I</td>
<td>Multiversity</td>
</tr>
<tr>
<td>Doctorate Granting Univ. II</td>
<td>Public Multiversity/Private</td>
</tr>
<tr>
<td>Comprehensive Univ. &amp; College I</td>
<td>Multiversity</td>
</tr>
<tr>
<td>Comprehensive Univ. &amp; College II</td>
<td>Public Comprehensive/Private</td>
</tr>
<tr>
<td>Liberal Arts I</td>
<td>Liberal Arts</td>
</tr>
<tr>
<td>Liberal Arts II</td>
<td>Public Comprehensive/Private</td>
</tr>
<tr>
<td>Two Year Colleges &amp; Institutes</td>
<td>Liberal Arts</td>
</tr>
<tr>
<td>Theological Seminaries, Bible Colleges, and other institutions offering degrees in religion</td>
<td>None/Eliminate</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>
## INSTITUTIONAL TYPOLOGY (Continued)

### CARNEGIE TYPE

<table>
<thead>
<tr>
<th>Medical Schools and Medical Centers</th>
<th>SPAG TYPE (PUBLIC/PRIVATE)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Other separate Health Professional Schools</td>
<td>Eliminate/Eliminate</td>
</tr>
<tr>
<td>Schools of Engineering and Technology</td>
<td>Eliminate/Eliminate</td>
</tr>
<tr>
<td>Schools of Business and Management</td>
<td>Public College/Private Liberal Arts</td>
</tr>
<tr>
<td>Schools of Art, Music and Design</td>
<td>Public College/Private Liberal Arts</td>
</tr>
<tr>
<td>Schools of Law</td>
<td>Eliminate/Eliminate</td>
</tr>
<tr>
<td>Teachers Colleges</td>
<td>Eliminate/Eliminate</td>
</tr>
<tr>
<td>Other Specialized institutes Institutes for Non-traditional Study</td>
<td>Eliminate/Eliminate</td>
</tr>
</tbody>
</table>

Samples ought to be at least 10% of the population. Any increase in size will decrease the probability of sampling error, but time and financial constraints precluded use of the entire population or an extremely large sample. A sample size of 25% of the population of 641 (160 institutions) was chosen.

The 641 Institutions were numbered sequentially. A random number table (Mendenhall, 1977) was used to generate 200 random numbers between 001 and 641 inclusive. This list was used to select institutions with corresponding numbers until each of the nine strata (eight SPAG categories plus systems) was filled to 30% of that strata's population. The sample was overdrawn to anticipate possible problems with some elements of the sample. For each sample member selected, the name of the chief legal officer was recorded as the contact person.
If there was no individual listed, the institution was eliminated from the sample and replaced by the next institution within the strata on the list. This replacement may lead to sample bias, but it was not a common occurrence. It only occurred twice in the sample selection process. Some private attorneys were chief legal officers for more than one institution. This duality of role presented a problem only once in the selected sample. The University of Vermont and Endicott College were both selected for the sample. Both share the same chief legal officer. The University of Vermont was selected before Endicott College so it was retained. Rather than ask one individual to complete two instruments, Endicott was eliminated and replaced by the next institution in its strata. Again, this may account for some bias in the sample, but it only occurred once in the selection process.

The list of members chosen for the sample appears in Appendix B.
APPENDIX B

PARTICIPATING INSTITUTIONS

I. PUBLIC MULTIVERSITIES

001 Ball State University
002 City University of New York
003 Indiana University
004 Michigan State University
005 North Carolina State University
006 Ohio University
007 University of Cincinnati
008 University of Kansas
009 University of Minnesota
010 University of New Mexico
011 University of Oklahoma
012 University of Pittsburgh
013 University of South Carolina
014 University of Vermont
015 Wayne State University
016 West Virginia University

II. PRIVATE MULTIVERSITIES

017 Brown University
018 California Institute of Technology
019 Claremont Colleges
020 Fordham University
021 George Washington University
022 Johns Hopkins University
023 Lehigh University
024 Massachusetts Institute of Technology
025 Northeastern University
026 Rensselaer Polytechnical Institute
027 Rice University
028 Southern Methodist University
029 Stanford University

III. PUBLIC COMPREHENSIVE

030 Alabama Agricultural & Mechanical University
031 Boise State University

211
III. PUBLIC COMPREHENSIVE (Continued)

032 Central Michigan University
033 Central Missouri State University
034 Eastern New Mexico University
035 Florida Atlantic University
036 Illinois State University
037 Southeastern Louisiana University
038 Southwest Texas State University
039 Texas Women's University
040 University of Akron
041 University of Alaska
042 Weber State University
043 Western Carolina University
044 Western Michigan University

IV. PUBLIC COLLEGES

045 Alabama State University
046 College of Charleston
047 Southern Utah State College

V. ELITE LIBERAL ARTS

048 Agnes Scott College
049 Assumption College
050 Barnard College
051 Bowdoin College
052 Carlow College
053 Central University of Iowa
054 Colby College
055 Hampden-Sydney College
056 Hartwick College
057 Linfield College
058 MacMurray College
059 Marian College Fond du Lac
060 Pomona College
061 St. Lawrence University
062 Trinity College
063 Vassar College
064 Williams College

VI. PRIVATE LIBERAL ARTS

065 Alfred University
066 Allentown College
067 Alliance College
VI. PRIVATE LIBERAL ARTS (Continued)

<table>
<thead>
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<th>No.</th>
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<td>Benedict College</td>
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<tr>
<td>070</td>
<td>Berry College</td>
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<tr>
<td>071</td>
<td>Bryant College</td>
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<td>Catholic University of Puerto Rico</td>
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<td>073</td>
<td>College of St. Benedict</td>
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<td>074</td>
<td>College of St. Rose</td>
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<td>Fairleigh Dickinson University</td>
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<td>Mount St. Mary's College</td>
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<td>Mundelein College</td>
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<td>Pace University</td>
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<td>Spelman College</td>
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<td>University of Bridgeport</td>
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<td>University of Hartford</td>
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<td>University of Santa Clara</td>
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<td>Wittenberg University</td>
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VII. PUBLIC COMMUNITY COLLEGE

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<td>Miami-Dade Community College</td>
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<td>Mineral Area College</td>
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<td>Tompkins Cortland Community College</td>
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<td>Ulster County Community</td>
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<td>Vincennes University</td>
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VIII. PRIVATE JUNIOR COLLEGES

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<td>Mount Ida Junior College</td>
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<td>Mount Olive Junior College</td>
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<td>152</td>
<td>Union College (NJ)</td>
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IX. SYSTEMS

153 Arizona University System
154 Board of Regents of the University System of Georgia
155 Massachusetts Board of State Colleges
156 South Dakota Board of Regents
157 State University and Community College System of Tennessee
158 State University of New York
159 University of Alabama System
160 University of Wisconsin System
APPENDIX C
COVER LETTER TO PARTICIPANTS

The Ohio State University
OSU

March 30, 1981

I am conducting research on the provision of legal services to different colleges and universities. You are no doubt aware that very little has been written about this process within college and university administrative structures. This research may lead to a better understanding of how attorneys function within academic settings and will clarify the role for members of your profession as well as those who may question what attorneys do on campus. I am asking for your assistance based on your experience as chief legal officer at

Your name and institution are necessary on the enclosed survey to help identify non-respondents and to classify data by institutional type. Beyond that, all information is confidential. Responses will appear only as a part of the aggregate total. No institution will be associated with its data in any identifiable way.

A stamped return envelope has been provided to facilitate the return of the instrument. If you would like an additional copy for your files just indicate so at the end of the instrument. A blank copy will be forwarded to you upon the receipt of the completed form.

Please complete and return the survey as soon as you can.

Sincerely,

W. J. Thompson

Enclosure
April 6, 1981

Dear Counselor:

Let me take this opportunity to thank you for responding to the "College and University Attorneys Survey" which you received last week. If you have yet to respond, let this serve as an added reminder, and a repeated request for your assistance. I NEED YOUR RESPONSE!

If you have any questions at all regarding this research, please contact me.

Sincerely,

301 Ramseyer Hall
The Ohio State University
Columbus, OH 43210
614-422-0307

W. J. Thompson
APPENDIX E
FOLLOW-UP CARD TO NON-RESPONDENTS

April 27, 1981

Dear Counselor:

Earlier this month you received a copy of a survey instrument designed for college and university attorneys. Many of your colleagues have already responded to the instrument and have expressed an interest in the results of this research. To obtain valid results a high response rate is critical. As a result your individual response is very important.

May I ask you to take ten minutes from your busy schedule, find the instrument, and respond as best you can to understandably general questions? Your time and assistance will be appreciated greatly.

Sincerely,

W. J. Thompson
I am concluding data collection for my study on College and University Attorneys. As of today I have yet to receive a completed survey from you.

No doubt you have been quite busy, or have just forgotten about the study. If this is the case I ask that you take some time out of your busy schedule to help me out. Because of the nature of the sample, EVEN A FEW NON-RESPONDENTS WILL THROW OFF THE RESULTS OF THE WHOLE STUDY. Consequently your response is critical to the study. A new copy of the form has been provided for your convenience, and once again a stamped return envelope is enclosed.

Some of the responses received to date have indicated that certain questions are not germane to the relationship between particular colleges and their attorneys. This concern has been most pronounced among part-time counsel. The broad scope of the study precludes tailoring the instrument to specific relationships, so I ask that you forge ahead, as many of your colleagues have already done, and answer these general questions as best you can.

If for any reason you are unable to complete this instrument please call me at 614-261-0826 or 614-422-0307. Thank you again for your cooperation.

Sincerely,

W. J. Thompson

closure
APPENDIX G
SURVEY INSTRUMENT FOR INSTITUTIONS

The Ohio State University
Academic Faculty
of Educational Administration
29 West Woodruff Avenue
Columbus, Ohio 43210
Phone 614 422-7700

UNIVERSITY ATTORNEY SURVEY

College or University Name_____________________________________________
Name of Person Completing this Survey__________________________________
Position or Title_____________________________________________________

SECTION 1: This instrument is designed to collect data on the chief legal officer
of colleges and universities. Information is requested on the individual
who serves in that capacity, the nature of the services and conditions
within the institution. If you serve as a part-time counsel then
all questions should be answered from the perspective of the time
you spend as counsel.

1. As the primary legal officer of the institution are you:
   _ The State Attorney General or a member of his staff.
   _ An attorney who is a full-time employee of the college or university
   _ A member of the Board of Trustees
   _ A law professor at the college or university
   _ An attorney in private practice retained by the university
   _ Other (please specify)____________________________________________

2. Are your services to the college or university supplemented by the use of:
   Y N Attorneys General
   Y N Other full-time attorneys employed by the university
   Y N Members of the Board of Trustees
   Y N Law Professors
   Y N Attorneys in private practice

3. How many full-time personnel are involved in the delivery of legal services
   at your institution (include yourself, if you are full-time):
   0 1 2 3 4 5 or more
   _ Attorneys
   0 1 2 3 4 5 or more _ Non-attorney administrators
   0 1 2 3 4 5 or more _ Support staff (clerks, secretaries, etc.)

4. How often do you read the following journals:
   Never Sometimes Often Always _ Change Magazine
   Never Sometimes Often Always _ The Chronicle of Higher Education
   Never Sometimes Often Always _ The Federal Register
   Never Sometimes Often Always _ Journal of College and University Law
   Never Sometimes Often Always _ Journal of Higher Education
   Never Sometimes Often Always _ Journal of Law and Education
   Never Sometimes Often Always _ NACUA Summaries
   Never Sometimes Often Always _ New Directions for Higher Education

5. List any other journals which help you in the performance of your job:

College of Education
6. On how many regularly meeting college or university committees do you serve?

0 1 2 3 4 5 or more

What committees are these? ______________________________________________________

7. On how many ad-hoc college or university committees did you serve during the last year?

0 1 2 3 4 5 or more

What committees were they? _____________________________________________________

8. The following areas of the law affect higher education to varying degrees. About what percent of your work time do you spend focusing on each area of the law? Even though this is very difficult, please just give your best estimate. The total should add to 100%.

% Administrative Law
% Civil Law
% Constitutional Law
% Copyright and Patent Law
% Criminal Law
% Tax Law
% Tort and Liability Law
% Other (specify) ____________________________
% Other (specify) ____________________________

100% Total

9. Estimate what percentage of your time is spent working on cases/projects initiated at each of the following levels of the university. Once again the total should add to 100%.

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% Institution wide committees, Faculty Senate
% Deans of Schools, Colleges or other academic units
% Directors of non-academic programs (admissions, development, records, etc.)
% Academic Department Heads
% Academic faculty members or departmental committees
% Non-faculty staff members
% Special interest groups
% Students and Student groups

100% Total

10. Of the meetings you attended with at least one other non-legal college or university personnel in the last year, at whose initiative were the meetings scheduled. Estimate the percentage. The total should add to 100%.

% at my initiative,
% at the initiative of another,
% by mutual agreement.

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% ROLE A: You are free to choose your tasks. You function as a problem solver. In this capacity you are able to get information from anyone at the institution. They in turn have equal access to you and your services.

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% ROLE C: You function as an advocate, often in the midst of controversy. At all times this advocacy must be for causes consistent with the goals delineated by university administrators.

% ROLE D: You are free to choose tasks, and often function as an advocate. At times your causes may be in direct conflict with those of other administrators and goal setters at the college or university.

100% Total

12. How much time does your office spend on each of the following activities:

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14. As you view your role as legal officer do you adopt more of an outsider/consultant approach to what happens at the institution or are you more of a member of the institutional team? How would you assess the balance?

| Outsider | 0 | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | Team Member |

15. In your duties as chief legal officer what percentage of your time is spent on treatment as opposed to preventive law? The total should add to 100%.

- % TREATMENT LAW: reacting to each legal problem as it occurs, each case is seen as an isolated incident.
- % PREVENTIVE LAW: trying to anticipate what legal problems may occur and taking actions to prevent problems which might necessitate treatment law.

100% Total

SECTION 2: This section examines the relationship between the services provided by legal officers and the rest of the college or university. Some questions ask you to assess changes over the years and to look ahead to possible changes in the future. Some of the questions are less concrete than those in the previous section and may be difficult to respond to. All that is asked is your best estimate.

1. Classifying the types of activities in which you personally engage as chief legal officer, approximate the percentage of your time spent in each of the following activities. The total should add to 100%.

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100% Total

2. Which of the following statements best describes your long range professional goals?

- I would like to remain in the field of higher education administration and maybe become a Dean, a Vice-President, or a college or university President someday.
- My professional goals include becoming a partner, the head of the firm, or perhaps becoming a member of the judiciary someday,
3. For the following five questions you will be asked to give your perception of how you assess the activities of the office which is responsible for the provision of legal services. If you are the only attorney you should respond only in terms of your actions. If you have a staff, then respond for the whole office.

a. What percentage of its time does the office charged with providing legal services spend working on issues which are non-routine and whose outcome can neither be totally controlled nor predicted?

NONE 00% 25% 50% 75% 100% ALL

b. If all legal services were stopped tomorrow, how soon would the institution feel the effects?

NOT FOR A LONG TIME 1 2 3 4 5 INSTANTLY

c. What percentage of the work done by the office responsible for the provision of legal services is performed in conjunction with non-legal personnel of the institution?

NONE 00% 25% 50% 75% 100% ALL

d. How easy would it be to replace the services provided by the legal offices if that office lost all of its personnel (recruitment, consultants, etc. could be used in the process)?

EASY 1 2 3 4 5 IMPOSSIBLE

e. How much influence does the office for legal services have on problems faced by the institution?

VERY LITTLE 1 2 3 4 5 A GREAT DEAL

4. Colleges and universities frequently must make decisions which pit humanistic concerns against efficient operation of the institution. Where, on balance, all things considered does your college or university fall on the following scale:

Humanistic 1 2 3 4 5 6 7 8 9 10 Efficient

Where do you think it should fall?

Humanistic 1 2 3 4 5 6 7 8 9 10 Efficient

5. Over the last ten years how would you say the provision of legal services at your institution has changed with regards to the following:

a. Size of legal staff INCREASED REMAINED THE SAME DECREASED
b. Complexity of tasks INCREASED REMAINED THE SAME DECREASED
c. Number of reports to be written INCREASED REMAINED THE SAME DECREASED
d. Budget size INCREASED REMAINED THE SAME DECREASED
e. Number of meetings with non lawyers INCREASED REMAINED THE SAME DECREASED
f. Freedom to take on new projects INCREASED REMAINED THE SAME DECREASED
g. Degree of formal supervision INCREASED REMAINED THE SAME DECREASED
h. Communication with other departments INCREASED REMAINED THE SAME DECREASED
i. Specialization of legal staff INCREASED REMAINED THE SAME DECREASED
j. Involvement of legal personnel in issues became more timely INCREASED REMAINED THE SAME DECREASED
6. If you wanted to change the approach to legal affairs at the college or university whose support would you need? ______________________ (Title)

   a. How frequently do you meet with this person?
      DAILY    EVERY OTHER DAY    WEEKLY    MONTHLY

   b. Who most often schedules these meetings?
      I DO    (S)HE DOES    ABOUT 50/50

7. If you wanted to change the approach to the provision of legal services at the college or university where in the institution would you expect the most opposition?

______________

8. As you look ahead to the next ten years, how do you expect the following conditions to change?

   a. Students suing colleges   INCREASE REMAIN THE SAME DECREASE
   b. Faculty/administrators suing colleges INCREASE REMAIN THE SAME DECREASE
   c. Administrative law applied to education INCREASE REMAIN THE SAME DECREASE
   d. Legislation affecting higher education INCREASE REMAIN THE SAME DECREASE
   e. Expansion of common law to education INCREASE REMAIN THE SAME DECREASE
   f. The need for legal services at the institution INCREASE REMAIN THE SAME DECREASE

SECTION 3: This section has a few final questions to help construct the composite of individuals responding to the survey and to examine a few areas for future study.

1. When did your institution first retain part-time counsel?


2. When did your institution first retain full-time counsel?


   Does not have full-time counsel

3. Do you think there was one particular event which caused the change? If so, what was it?

______________

4. Do you have a formal job description at the institution? YES NO

   (If a copy of the description is available, please attach it to this instrument)

5. If your office evaluated on a regular basis by the institution? YES NO

6. Are you involved in the instructional process as a teacher, guest lecturer or consultant to faculty on curricular matters regarding legal issues? YES NO

7. How old were you on your last birthday?

   20-29  30-39  40-49  50-52  60-69  70-79
8. Race?
   ___ American Indian or Alaskan Native
   ___ Asian or Pacific Islander
   ___ Black, non-Hispanic
   ___ Hispanic
   ___ White, non-Hispanic

9. Sex?
   ___ Female
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10. What was your undergraduate major?

11. Please list all graduate and/or professional degrees you hold

12. To whom do you report in the organizational structure?
   ___ Board of Trustees
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13. Does being a lawyer, rather than a professor, ever work to your disadvantage at the institution?
   NEVER 0 1 2 3 4 5 ALWAYS
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14. Do you ever feel confused as to who your "client" really is (i.e. do you do what the Board wants or what the goals of the institution call for)?
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15. Briefly, what do you consider to be the biggest problem faced by university attorneys?

16. Why have you chosen to specialize in higher education law?

17. Any additional comments?

Thank you for taking the time to complete this survey. Please place it in the return envelope provided and mail it as soon as possible to:

W. J. Thompson
Faculty of Educational Administration
The Ohio State University
301 Ramseyer Hall/29 West Woodruff
Columbus, Ohio 43210
On the following pages are several questions about the provision of legal services to colleges and universities. The instrument is designed for individuals at the campus, not systemwide, level. The questions are still appropriate to an individual serving in your position. Some may be a bit difficult to answer, but please answer them as best you can. Thank you.

This first page asks a few open-ended questions about attorneys who serve systems or Boards of Regents.

1. Name of the system you represent__________________________________________

2. How many colleges and universities are included in this system?________

3. Is your office on one of the campuses?_____ If not, where is the office located?____________________________________

4. Is there an attorney on each campus to supplement your services?

5. Briefly describe how services are provided to each college or university in the system through your office__________________________________________

6. How would you describe your degree of involvement in policy making for the system you represent?__________________________________________
UNIVERSITY ATTORNEY SURVEY

Name of Person Completing this Survey____________________________
Position or Title_______________________________________

SECTION 1: This instrument is designed to collect data on the chief legal officer of a higher education system. Information is requested on the individual who serves in that capacity, the nature of the services and conditions within the system. If you serve as a part-time counsel then all questions should be answered from the perspective of the time you spend as counsel.

1. As the primary legal officer of the system are you:

   - The State Attorney General or a member of his staff
   - An attorney who is a full-time employee of the system
   - A member of the Board of Trustees
   - A law professor at a college or university
   - An attorney in private practice retained by the system
   - Other (please specify)____________________________________

2. Are your services to the system supplemented by the use of:

   Y  N  Attorneys General
   Y  N  Other full-time attorneys employed by the system
   Y  N  Members of the Board of Trustees
   Y  N  Law Professors
   Y  N  Attorneys in private practice

3. How many full-time personnel are involved in the delivery of legal services in your system? (include yourself, if you are full-time)

   0 1 2 3 4 5 or more Attorneys
   0 1 2 3 4 5 or more Non-attorney administrators
   0 1 2 3 4 5 or more Support staff (clerks, secretaries, etc.)

4. How often do you read the following journals:

   Never Sometimes Often Always Change Magazine
   Never Sometimes Often Always The Chronicle of Higher Education
   Never Sometimes Often Always The Federal Register
   Never Sometimes Often Always Journal of College and University Law
   Never Sometimes Often Always Journal of Higher Education
   Never Sometimes Often Always Journal of Law and Education
   Never Sometimes Often Always NACUA Summaries
   Never Sometimes Often Always New Directions for Higher Education

5. List any other journals which help you in the performance of your job:

________________________________________________________________________________________
6. On how many regularly meeting system wide committees do you serve?

0 1 2 3 4 5 or more

What committees are these? ______________________________________

7. On how many ad-hoc system wide committees did you serve during the last year?

0 1 2 3 4 5 or more

What committees are they?_______________________________________

8. The following areas of the law affect higher education to varying degrees. About what percent of your work time do you spend focussing on each area of the law? Even though this is very difficult, please just give your best estimate. The total should add to 100%.

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% Civil Law
% Constitutional Law
% Copyright and Patent Law
% Criminal Law
% Tax Law
% Tort and Liability Law
% Other (specify) _____________________________.
% Other (specify) __________________________________

100% Total

9. Estimate what percentage of your time is spent working on cases/projects initiated at each of the following levels of the system. Once again the total should add to 100%.

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% President and President's Staff
% Institution wide committees, Faculty Senate
% Deans of Schools, Colleges or other academic units
% Directors of non-academic programs (admissions, development, records, etc.)
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% Students and student groups

100% Total

10. Of the meetings you attended with at least one other non-legal college or university personnel in the last year, at whose initiative were the meetings scheduled. Estimate the percentage. The total should add to 100%.

% at my initiative
% at the initiative of another
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100% Total
11. Four distinct roles are detailed below. Estimate what percentage of your time is spent functioning in each role. The total should add to 100%.

% ROLE A: You are free to choose your tasks. You function as a problem solver. In this capacity you are able to get information from anyone in the system. They in turn have equal access to you and your services.

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2. d. How easy would it be to replace the services provided by the legal office if that office lost all of its personnel (recruitment, consultants, etc. could be used in the process)?

   EASY  1  2  3  4  5  IMPOSSIBLE

e. How much influence does the office for legal services have on problems faced by the system?

   VERY LITTLE  1  2  3  4  5  A GREAT DEAL

3. Which of the following statements best describes your long range professional goals?

   __ I would like to remain in the field of higher education administration and maybe become a Dean, a Vice-President, or a college or university President someday.
   __ My professional goals include becoming a partner, the head of the firm, or perhaps becoming a member of the judiciary someday.

4. Colleges and universities frequently must make decisions which pit humanistic concerns against efficient operation of the institution. Where, on balance, all things considered does your system fall on the following scale:

   Humanistic  1  2  3  4  5  6  7  8  9  10  Efficient

   Where do you think it should fall?

   Humanistic  1  2  3  4  5  6  7  8  9  10  Efficient

5. Over the last ten years how would you say the provision of legal services in your system has changed with regards to the following:

   a. Size of legal staff
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      INCREASED REMAINED THE SAME DECREASED

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f. The need for legal services in the system

SECTION 3: This section has a few final questions to help construct the composite of individuals responding to the survey and to examine a few areas for future study.

1. When did your system first retain part-time counsel?
   - Prior to 1961
   - 1961-1965
   - 1966-1970
   - 1971-1975
   - 1976-1980
   - 1980-present

2. When did your system first retain full-time counsel?
   - Prior to 1961
   - 1961-1965
   - 1966-1970
   - 1971-1975
   - 1976-1980
   - 1980-present

3. Do you think there was one particular event which caused the change? If so, what was it?

4. Do you have a formal job description in the system? YES NO
   (If a copy of the description is available, please attach it to this instrument)

5. Is your office evaluated on a regular basis by the system? YES NO

6. Are you involved in the instructional process as a teacher, guest lecturer or consultant to faculty on curricular matters regarding legal issues? YES NO

7. How old were you on your last birthday?
   - 20-29
   - 30-39
   - 40-49
   - 50-59
   - 60-69
   - 70-79

8. Race?
   - American Indian or Alaskan Native
   - Asian or Pacific Islander
   - Black, non-Hispanic
   - Hispanic
   - White, non-Hispanic

9. Sex?
   - Female
   - Male

10. What was your undergraduate major?

11. Please list all graduate and/or professional degrees you hold
12. To whom do you report in the organizational structure?

- Board of Trustees
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13. Does being a lawyer, rather than a professor, ever work to your disadvantage in the system?

NEVER 0 1 2 3 4 5 ALWAYS
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14. Do you ever feel confused as to who your "client" really is (i.e. do you do what the Board wants or what the goals of the system call for)?

NEVER 0 1 2 3 4 5 ALWAYS

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