

The Rise of the General Counsel





Higher education has become an increasingly litigious environment in recent years. You needn't look any further than recent Chronicle of Higher Education headlines to understand why: "Michigan State's Ex-President, Who Faces Criminal Charges, Will Retire with a \$2.5 Million Payout," "U. of Southern California Doctor Is Accused of Sexually Abusing 48 Patients," "Strikes at Colleges Are at a 7-Year High as Unions Rebound" and "Higher-Ed Groups Are Warning Against 'Surveillance' of Chinese Academics. On Some Campuses, That's Already Begun" are but a few examples of the myriad issues institutions face. This is on top of routine, day-to-day legal matters such as contracts, employment agreements, and regulatory and Title IX compliance work that have long been part and parcel of running any organization.

Almost every college and university today has outside legal counsel, private law firms they can call on to assist in both routine and extraordinary matters. But as legal issues increase, academic institutions are starting to shift away from relying solely on external counsels—who, by virtue of their third-party status, tend to be more reactive than proactive—and toward hiring a general counsel (GC) who can handle the bulk of legal needs internally, while turning to external counsel for assistance as needed.

Large research universities have long had GCs. Recently, however, we have seen a spike in top liberal arts colleges starting to consider or actively creating this new role.

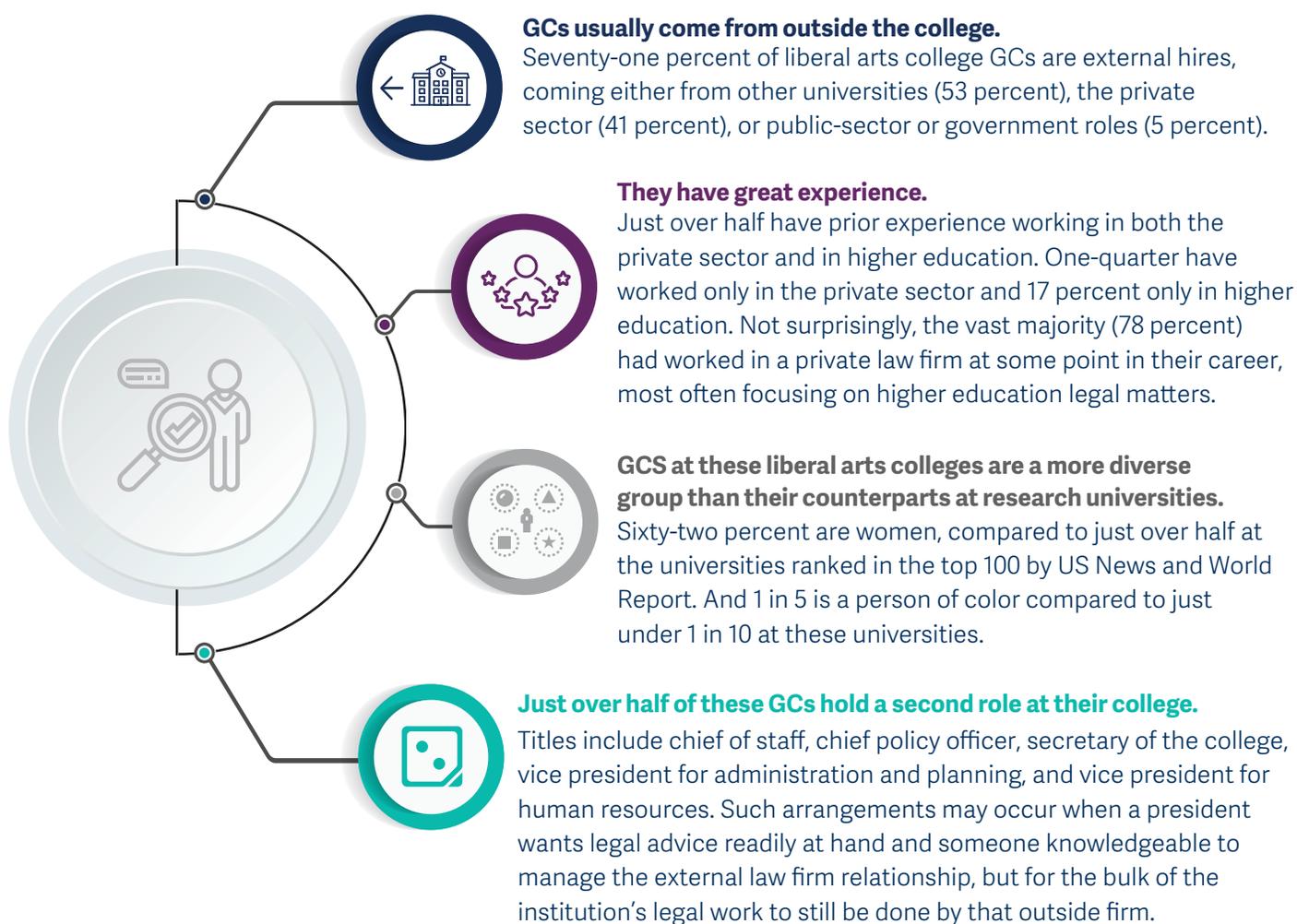
While some may question the perceived added expense of hiring a general counsel, bringing the role in-house typically results in a substantial reduction in spending on external legal work. GCs can address a number of issues themselves, many proactively, allowing them to be judicious in their use of their external counsel and the amount the institution spends on them.

How big an issue is spending on external legal services? A look at the most recent IRS 990 tax filings for liberal arts colleges that do not have in-house legal counsel reveals that many of them now spend so much that they need to list their law firms among their five highest-compensated independent contractors. Take Pomona College, for example: The California institution spent over \$1.34 million across two law firms in one recent year. Hamilton College in New York spent \$787,848.

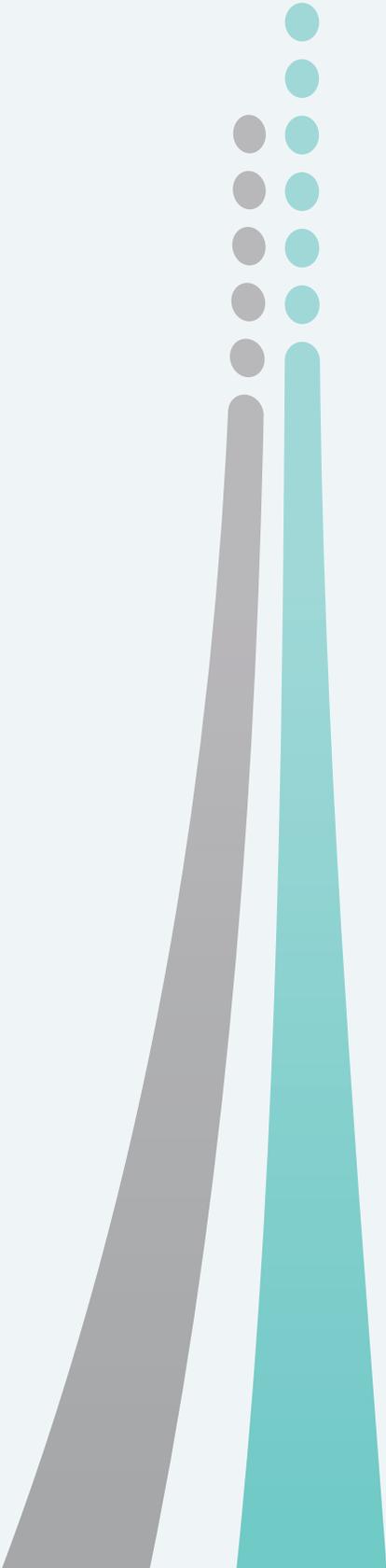
We do not question the validity of these expenditures; we simply note that they are part of the body of evidence that suggests that institutions now need to wrestle with legal issues in addition to academics, student affairs, campus operations and the physical plant. The result is that presidents are now thinking about adding a role to their senior team focused largely, if not exclusively, on legal issues.

According to research we conducted earlier this year with our colleagues Katie Whittum and Kara Finnerty, just about half—24 of 50—of top liberal arts colleges today have an individual who holds an explicit role as a legal advisor to the institution. Titles vary, for reasons we will discuss momentarily. Eleven of them are called “general counsel,” the title we use here when talking about the group as a whole. Regardless of the title, this is a rapidly emerging position and institutions are wrestling with how to define the job and whom to hire for it.

When we examined the backgrounds of each of these GCs and explored their role at their institution, we got a better understanding of the individuals and how they spend their time:



While it may be tempting to combine the GC role with another senior position, it also creates challenges. A GC who also leads a function (like HR or finance) would have trouble providing independent legal oversight and guidance of those operations. Similarly, a GC who runs a function will have no shortage of things to do and will likely need to rely more heavily on outside counsel to address the institution’s legal needs, resulting in added expense.



Hiring a general counsel is different from hiring for other more traditional roles, and understanding where to start the recruitment process can be difficult. When looking for candidates, presidents and chief human resources officers at liberal arts colleges should consider the following:

Look at major universities. Most have large general counsel offices, with multiple assistant, associate or “director of” roles—all individuals with tremendous experience and an existing understanding of higher education culture, some of whom may welcome the opportunity to step up into a GC position at a smaller institution.

Look at your current external law firm. The lawyers who currently support your institution are not only higher education experts, but they are also intimately familiar with your institution, your people and your issues. As an added bonus, if they take the GC role and continue to use the external law firm for work, they know that firm intimately as well.

Look at major law firms for lawyers with ties to your community and relevant expertise. One recent analysis calculated the chance of making partner at a major (Am Law 200) law firm at less than 16 percent—and at many firms, less than 1 percent. These large firms are filled with talented lawyers with deep expertise, many of whom are desperately looking for an exit. While most colleges cannot match their compensation, they may offer a collegial environment, better work-life balance and meaningful work.

We may all wish for a decline in the number of regulatory and legal issues facing colleges, but until then, college leaders need to make legal decisions, and having a GC on their team who can proactively work to address issues before they spiral out of hand can help prevent them from ending up as newspaper headlines.

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