

# THE ROLE OF CHIEF UNIVERSITY ATTORNEY AS LAWYER, MANAGER, AND HIGHER EDUCATION EXECUTIVE: A Qualitative Multiple Case Study

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## *Abstract*

*Universities' in-house lawyers have accrued broad access and influence within their institutions. Once narrowly tasked with resolving live legal disputes, many chief university attorneys (CUAs) now field calls from decision-makers on all manner of university priorities, seeking legal and extralegal advice. To better understand the expansive role of CUA, a qualitative multiple case study design is employed to consider the cases of six incumbents and explore how they experience their role and influence. The findings reveal participants' experience that the CUA role is ideally composed of three functions: (1) preeminent, efficient lawyering, (2) skillful management of the university's legal enterprise, and (3) influential executive leadership. Further, the findings document participants' shared perception of their executive and extralegal influence as accrued by performing their complex role well and through developing high-quality professional relationships with senior decision-makers. These themes proffer a new role framework depicting CUAs' three contemporaneous functions as lawyer, manager, and executive, and the periodic component activities required to fulfill each of these functions. The framework and knowledge uncovered through this study will empower incumbents, university decision-makers, and other stakeholders in understanding and navigating the expansive role and influence of these traditionally little-known, typically risk averse, and nonacademic university executives.*

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## INTRODUCTION

The *Chronicle of Higher Education* recently proclaimed, “[a] college’s top lawyer has never been more powerful.”<sup>1</sup> Modern anecdotes suggest this assertion may be true. When Harvard University president Dr. Claudine Gay was summoned before Congress to testify on campus speech and activism in the wake of the Israel– Hamas war, she turned to lawyers in preparing her testimony.<sup>2</sup> Weeks later, she was forced to resign.<sup>3</sup> When Texas legislators banned diversity offices, programs, and trainings at the state’s public universities,<sup>4</sup> the University of Texas at Austin turned to its lawyers to guide compliance efforts.<sup>5</sup> Initially, employees were restructured, retitled, and repurposed, though months later dozens were fired anyway.<sup>6</sup> When West Virginia University sought to address a \$45 million budget shortfall, they turned to their lawyer as both advisor and spokesperson in a sweeping academic program overhaul.<sup>7</sup> Twenty-eight programs were shuttered, and 143 positions eliminated.<sup>8</sup> These university lawyers’ proximity to presidents and other top decision-makers at times of legal and extralegal crisis demonstrate lawyers’ expansive influence over fundamental academic and operational concerns such as campus speech, academic freedom, terms of faculty tenure and employment, program offerings, and institutions’ respect for, and exercise of, their institutional values. Further, the complexity of these engagements and the controversial nature of their outcomes depict certain challenges inherent in these attorneys’ modern role.

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- 1 David Jesse, *Your College’s Top Lawyer Has Never Been More Powerful*, Chron. Higher Educ. (Feb. 26, 2024), <https://www.chronicle.com/article/your-colleges-top-lawyer-has-never-been-more-powerful>.
  - 2 Lauren Hirsch, *One Law Firm Prepared Two Colleges for Hearing*, N.Y. Times (Dec. 8, 2023), <https://www.nytimes.com/2023/12/08/business/dealbook/wilmerhale-penn-harvard-mit-antisemitism-hearing.html>.
  - 3 Emma Pettit, *Debate Follows Harvard President’s Resignation Amid Plagiarism Claims and Criticism Over House Hearing*, Chron. Higher Educ. (Jan. 2, 2024), <https://www.chronicle.com/article/harvard-president-resigns-amid-plagiarism-claims-and-criticism-over-congressional-hearing>.
  - 4 Kate McGee, *Texas Senate Approves Bill that Would Ban Diversity Programs in Public Universities*, Tex. Trib. (Apr. 19, 2023), <https://www.texastribune.org/2023/04/19/texas-senate-dei-universities/>.
  - 5 *S.B. 17 Guidance*, Univ. Tex. Sys. (Sept. 15, 2023), <https://www.utsystem.edu/documents/docs/publication/2023/sb17-guidance>.
  - 6 Katherine Mangan, *After DEI Ban, UT-Austin Eliminates a Division and Lays Off Its Former Diversity Staff*, Chron. Higher Educ. (Apr. 2, 2024), <https://www.chronicle.com/article/after-dei-ban-ut-austin-eliminates-a-division-and-fires-its-former-diversity-staff>.
  - 7 Esteban Fernandez, *West Virginia University Cuts Set Off Wave of Fury at Board of Governors Meeting*, Times W.V. (Sept. 16, 2023), [https://www.timeswv.com/news/local\\_news/west-virginia-university-cuts-set-off-wave-of-fury-at-board-of-governors-meeting/article\\_91ea6686-541b-11ee-860e-33b99b163f08.html](https://www.timeswv.com/news/local_news/west-virginia-university-cuts-set-off-wave-of-fury-at-board-of-governors-meeting/article_91ea6686-541b-11ee-860e-33b99b163f08.html).
  - 8 Ryan Quinn, *WVU Professors Get Their Layoff Notices*, Inside Higher Ed (Oct. 17, 2023), <https://www.insidehighered.com/news/faculty-issues/tenure/2023/10/17/wvu-professors-get-their-layoff-notices>.

The role of chief university attorney (CUA)<sup>9</sup> has expanded over time.<sup>10</sup> Indeed, these recent anecdotes suggest a CUA's modern role is broader than that of a classic contract negotiator, policy drafter, and litigation manager.<sup>11</sup> In matters of great consequence to their institution, some argue that "[t]oday, the lawyer is not only in the meeting, but increasingly cast[ing] a deciding vote ... [They] wield considerable power atop campus organizational charts, sitting in on nearly all high-level meetings and shaping colleges' responses to *everything*."<sup>12</sup> Assuming these claims are at least in part true, the delegation of such broad access and influence to CUAs—many instinctually risk-averse advisors by training, and typically lacking other administrative or scholarly experience within the academy<sup>13</sup>—presents tremendous implications for university faculty, staff, students, and other stakeholders. Conceivably, CUAs' influence can dictate what speech is permitted or prohibited, whether academic freedom is respected or eroded, what topics may be taught or studied, and whether fundamental institutional values may endure.

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9 Chief university attorney is the term assigned to the specific role examined in this study: a population university's highest-ranking in-house lawyer. Such lawyer may be directly hired and employed by the university, a parent system or board, or—in the case of certain public institutions—their state's attorney general. In practice, CUA is not a commonly used term. Indeed, incumbents are typically designated with title(s) such as general counsel, vice president/vice chancellor for legal affairs, university attorney, university counsel, or chief legal officer. See James L. Bess & Beth R. Dee, *Understanding College and University Organization: Theories for Effective Policy and Practice* (2012); Peter F. Lake, *Foundations of Higher Education Law & Policy: Basic Legal Rules, Concepts, and Principles for Student Affairs* (2011); Rudolph H. Weingartner, *Fitting Form to Function: A Primer on the Organization of Academic Institutions* (2d ed. 2011); Craig Parker & Linda Henderson, *Nat'l Ass'n Coll. & Univ. Att'ys, Managing Your Campus Legal Needs: An Essential Guide to Selecting Counsel* (2016), <https://www.nacua.org/docs/default-source/legacy-doc/publications/managingyourcampuslegalneeds.pdf>.

The CUA term is employed in this study to emphasize incumbents' role as a population university's highest-ranking in-house lawyer, regardless of their title or the particularities of their respective organization's structure. Note CUAs occasionally hold other administrative roles at their institution, such as secretary of the governing board or supervisor of compliance, ethics, or contracting units. See Jerry Blakemore, *Effective Participation as a Member of Senior Leadership*, (Nat'l Ass'n Coll. & Univ. Att'ys Ann. Conf., 2016), <https://www.nacua.org/docs/default-source/legacy-doc/conference/june2016/4g.pdf>; Stephen Dunham & Madelyn Wessel, *Making Sure the Hat Fits: Juggling the Many Roles of the GC* (Nat'l Ass'n Coll. & Univ. Att'ys Ann. Conf., 2019), [https://www.nacua.org/docs/default-source/legacy-doc/conference/february2019/07\\_19-01-08.pdf](https://www.nacua.org/docs/default-source/legacy-doc/conference/february2019/07_19-01-08.pdf). This study focuses exclusively on the CUA role; therefore, any additional administrative roles that certain incumbents may hold are not explored in this study.

10 Like a time-lapse, the evolution of the CUA role is depicted in former Florida State University general counsel and Stetson University legal scholar Robert Bickel's reflections published in 1974, 1994, and 2004. See Robert Bickel, *The Role of College or University Legal Counsel*, 3 J.L. & Educ. 73 (1974); Robert Bickel, *A Revisitation of the Role of College and University Counsel*, 3 West's Educ. L.Q. 164 (1994); Robert Bickel & Peter Ruger, *The Ubiquitous College Lawyer*, Chron. Higher Educ. (June 25, 2004), <https://www.chronicle.com/article/The-Ubiquitous-College-Lawyer/33466>; see also Blakemore, *supra* note 9.

11 J. Rufus Bealle, *Delivery of Legal Services to Institutions of Higher Education*, 2 J.C. & U.L. 5 (1974); Roderick Daane, *The Role of University Counsel*, 12 J.C. & U.L. 399 (1985).

12 Jesse, *supra* note 1, ¶ 2 (emphasis added).

13 Alexander Kafka, *Liability Everywhere: Why College Lawyers Will Be Working Overtime*, Chron. Higher Educ. (Feb. 16, 2020), <https://www.chronicle.com/article/liability-everywhere/>.

Because of CUAs' modern access and influence, it is imperative for leaders, faculty, and other stakeholders—and for incumbents themselves—to understand CUAs' expansive role. Despite the implications of CUAs' modern “power,”<sup>14</sup> empirical literature exploring the role, identity, and mechanisms of university attorneys is extremely limited.<sup>15</sup> This dearth of knowledge deserves empirical attention given CUAs' expansive influence on all matters of legal and extralegal concern and the university's core academic enterprise. Therefore, this qualitative multiple case study seeks to address significant gaps in empirical knowledge regarding university decision-making: What *is* the modern role of a CUA? In particular, what is the nature of a CUA's executive, extralegal influence? And how do the demands of extralegal leadership and advice-giving impact a CUA's continuing duties to manage their cascading lawyering duties and burgeoning in-house legal teams?<sup>16</sup> This study explores these questions, and the results present an empirically derived CUA role framework defining CUAs' primary role functions as well as each function's component duties. The results provide a tool for CUAs, university executives, faculty, staff, and other stakeholders to understand the duties CUAs fulfill and incumbents' points of access and influence over legal and extralegal decisions. Further, these results provide insight into why university stakeholders may be wise to continue consulting their top lawyers for both legal and extralegal advice, or alternatively, where there may be reason to challenge university lawyers' expansive role or influence.

## I. REVIEW OF RELEVANT LITERATURE

Little empirical research considers the role of university lawyers, though incumbent CUAs have periodically proffered their anecdotal reflections on their role.<sup>17</sup> Early literature depicts CUAs' role in the 1970s and 1980s as guided by economy and efficiency in conducting traditional lawyering duties.<sup>18</sup> More recent

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14 Jesse, *supra* note 1, ¶ 3. Practitioners may well dispute Jesse's perception that modern CUAs exercise *power*, make decisions, or cast votes. Rather, CUAs tend to describe their role as advisors. Therefore, as revealed in the results of this study, below, CUAs' *power* may be more appropriately framed as a capacity to earn and exercise *soft power* or *influence*. Nonetheless, Jesse's lay perception of CUAs offers insight as to how the expanse of incumbents' *influence* can be perceived by other university observers and stakeholders.

15 See, e.g., Jason A. Block, *The Law Comes to Campus: The Evolution and Current Role of the Office of the General Counsel on College and University Campuses* (Oct. 2014) (Ph.D. dissertation, University of Kentucky); Craig Cameron, *The University Lawyer as Collaborator and Facilitator: A Study in Work-Integrated Learning*, 44 J.C. & U.L. 209 (2019).

16 Kafka, *supra* note 13.

17 See, e.g., Bealle, *supra* note 11; Bickel (1994), *supra* note 10; Daane, *supra* note 11; Dunham & Wessel, *supra* note 9. Indeed, significant anecdotal contributions to the literature have been published within this *Journal* and by leaders within the National Association of College and University Attorneys community.

18 See Bealle, *supra* note 11; Bickel (1974), *supra* note 10; Daane, *supra* note 11; Stephen R. Ripps, *A Study of the Perceived Value of In-house Legal Counsel for a College or University in Contrast to that of a Private Law Firm: Controlling Legal Costs and Increasing Efficiency in Policy Formulation and Implementation* (Mar. 1980) (Ph.D. dissertation, University of Toledo) (ProQuest); Oliver B. Thompson, *The Role of Legal Counsel in Institutions of Higher Education in Texas* (June 1978) (Ph.D. dissertation, University of Houston) (ProQuest).

literature describes CUAs as now holding executive status<sup>19</sup> and, more substantively, identifies CUAs as in fact exercising executive influence with regard to their respective institutions' legal and extralegal needs.<sup>20</sup> The following comprehensive review of relevant literature reveals a conceptual framework for the modern CUA that may serve as a starting point for new empirical inquiries exploring the role, relationships, and influence of these higher education executives.

### A. *Early Role of Chief University Attorneys*

The first law for the proper use of [university] counsel was to have one.<sup>21</sup>

This quip, attributed to observers in and before the 1960s, reflects institutions' leading motivation for directly employing university lawyers: a simple need for localized attorneys to efficiently perform traditional lawyering tasks.<sup>22</sup> In 1925, the University of Alabama was among the first universities to employ an in-house attorney.<sup>23</sup> By 1961, only about fifty institutions had likewise adopted the role.<sup>24</sup> The National Association of College and University Attorneys (NACUA) was founded in 1960, and by 1981, its membership ballooned to over two thousand member-attorneys—paralleling universities' increased adoption of the CUA role.<sup>25</sup> The widespread, accelerated expansion of universities' legal enterprises during this era is attributed to an increasingly litigious populace and transformational legislative and judicial actions that advanced civil rights and expanded institutional access.<sup>26</sup> The effects of these essential legal advancements, together with the impacts of campus activism surrounding the Civil Rights Movement and Vietnam War, upended nearly every operational practice of U.S. universities.<sup>27</sup> It is only logical, then, that institutions responded to these external legal forces—the extension of fundamental constitutional and legislative protections, as well as Congress's decision to condition universities' federal financial assistance on their compliance with those guarantees<sup>28</sup>—by expanding their on-call legal resources.<sup>29</sup>

The earliest empirical research exploring the role of CUAs documents the opportunity for efficient, economical, and convenient lawyering as, in part, motivating

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19 See Dunham & Wessel, *supra* note 9; Lake, *supra* note 9; Weingartner, *supra* note 9.

20 See Bickel & Ruger, *supra* note 10; Blakemore, *supra* note 9.

21 See Bickel & Ruger, *supra* note 10.

22 See Daane, *supra* note 11.

23 See Bickel & Ruger, *supra* note 10.

24 See *id.*

25 See *id.*; Dunham & Wessel, *supra* note 9.

26 See Bickel & Ruger, *supra* note 10; John S. Brubacher, *The Courts and Higher Education* (1971).

27 See Christopher J. Lucas, *American Higher Education: A History* (2d ed. 2006); Frederick Rudolph, *The American College & University: A History* (1991).

28 See Daane, *supra* note 11; Rudolph, *supra* note 27.

29 See J. Rufus Bealle, *Delivery of Legal Services to Institutions of Higher Education*, 2 J.C. & U.L. 5 (1974); Bickel (1974), *supra* note 10.

institutions to first *lawyer up* in the 1960s and 1970s.<sup>30</sup> These studies, quantitatively<sup>31</sup> and qualitatively,<sup>32</sup> highlight the economic and efficiency benefits achieved by hiring in-house lawyers. Ripps and Gregory's respective 1980s research documented financial savings for CUA-employing universities by analyzing the comparative costs of in-house and outside legal services.<sup>33</sup> Other studies relied on qualitative survey approaches to, in part, demonstrate the efficiencies institutions realized by internally retaining lawyers that absorbed and maintained institutional knowledge—legal and otherwise—and relationships.<sup>34</sup> Underlying these empirical studies is a shared assumption that CUAs primarily operate as traditional lawyers—managing their institutions' litigation, contracts, and legal policy.<sup>35</sup> That these assumptions were incorporated into the foundation of early research suggests similar assumptions were broadly attributable to most university leaders' view of the CUA role. In sum, the early empirical research revealing the efficiencies of employing university attorneys explains why some institutions adopted the role in the mid-twentieth century,<sup>36</sup> how the role was initially performed by incumbents,<sup>37</sup> and how other university leaders perceived the CUA role.

Early empirical research is supplemented by early incumbents' anecdotal writings regarding their role.<sup>38</sup> Indeed, a 1974 issue of this *journal* contained numerous incumbents' contributions to the anecdotal literature. University of Alabama general counsel Rufus Bealle observed universities' "definite trend toward increased employment of full-time counsel ... particularly in larger institutions."<sup>39</sup> Florida State University's Robert Bickel agreed and noted the driver of that trend, observing simply "[t]he Constitution came to campus."<sup>40</sup> Bealle confirmed early university attorneys' role as that of traditional lawyers through his pseudoempirical survey of CUA peers.<sup>41</sup> His survey identified sixteen functions of a university lawyer, nearly all representing a traditional component of legal practice or area of law.<sup>42</sup>

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30 See John P. Geary, *The Role of Staff Counsel in Institutions of Higher Education* (1975) (Ph.D. dissertation, Vanderbilt University); Dennis E. Gregory, *The Role of College and University Legal Counsel as Defined by Operational and Policy Making Responsibilities* (1987) (Ph.D. dissertation, University of Virginia); Ripps, *supra* note 18; Thompson, *supra* note 18.

31 See Gregory, *supra* note 30; Ripps, *supra* note 18.

32 See Geary, *supra* note 30; Thompson, *supra* note 18.

33 See Gregory, *supra* note 30; Ripps, *supra* note 18.

34 See Geary, *supra* note 30; Thompson, *supra* note 18.

35 See Geary, *supra* note 30; Gregory, *supra* note 30; Ripps, *supra* note 18; Thompson, *supra* note 18.

36 *Id.*

37 See Bealle, *supra* note 11; Bickel (1974), *supra* note 10.

38 See *id.* Bealle, *supra* note 11; Bickel (1974), *supra* note 10; Norman L. Epstein, *The Use and Misuse of College and University Counsel*, 4 J. Higher Educ. 635 (1974); Richard J. Sensenbrenner, *University Counselor: Lore, Logic and Logistics*, 2 J.C. & U.L. 13 (1974).

39 Bealle, *supra* note 11, at 11.

40 Bickel (1974), *supra* note 10, at 74.

41 See *id.*

42 See Bealle, *supra* note 11.

California State University's Richard Sensenbrenner interpreted the early CUA's value as controlling costs by eliminating likely replication of legal tasks by external lawyers.<sup>43</sup> Collectively, these early incumbents depicted the early role of CUAs as increasing in number as a result of major legal developments and social changes,<sup>44</sup> and directed toward the cost-efficient provision of traditional legal services.<sup>45</sup>

The early literature depicts the context through which the role of CUA emerged. These works describe an obvious but imperative primary function performed by CUAs: *lawyer*. Even so, incumbents writing as early as 1974 signaled there may be more than *just* lawyering to the role of CUA.<sup>46</sup> While some argued against university attorneys serving as institutional decision-makers<sup>47</sup> and objected to attorneys' involvement in making policy,<sup>48</sup> Bickel opined CUAs "must be involved" with administrators on major administrative issues "on a day-to-day basis."<sup>49</sup> In fact, he asserted the "primary thrust" of the role of CUA "is the providing of preventative advice."<sup>50</sup> Amplifying Bickel's sentiment, then-University of Illinois president John Corbally asserted CUAs should serve a "major administrative" role as "leader and orchestrator."<sup>51</sup> So, while the CUA role was established with underlying financial and logistical motivations,<sup>52</sup> namely, providing universities an efficient incumbent to perform traditional lawyering tasks,<sup>53</sup> as early as 1974 incumbents and other leaders with an eye toward the future foreshadowed CUAs' emerging executive role function.<sup>54</sup> This idea advanced so quickly at some institutions that by 1985, former Yale University CUA Jose Cabranes commented, "of course" recent legal and environmental changes affecting higher education were "accompanied ... by an expansion of the role of the university counsel."<sup>55</sup>

### ***B. Analogous Role Development of Chief Corporate Counsel***

While the higher education sector may lag the corporate sector in the conscious enhancement of the general counsel's role, the opportunity and rationale

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43 See Sensenbrenner, *supra* note 38.

44 See Bealle, *supra* note 11; Bickel (1974), *supra* note 10; Epstein, *supra* note 38.

45 See Bealle, *supra* note 11; Sensenbrenner, *supra* note 38.

46 See Bickel (1974), *supra* note 10; Sensenbrenner, *supra* note 38.

47 See Bealle, *supra* note 11; Bickel (1974), *supra* note 10.

48 See Bickel (1974), *supra* note 10; Sensenbrenner, *supra* note 38.

49 See Bickel (1974), *supra* note 10, at 76.

50 *Id.* at 77.

51 John E. Corbally, *University Counsel: Lore, Scope and Mission*, 2 J.C. & U.L. 1, 2 (1974).

52 See Ripps, *supra* note 18; Thompson, *supra* note 18.

53 See Bickel (1974), *supra* note 10; Sensenbrenner, *supra* note 38.

54 See Bickel (1974), *supra* note 10; Corbally, *supra* note 51.

55 Jose A. Cabranes, *American Higher Education and the Law: Some Reflections of NACUA's Silver Anniversary*, 12 J.C. & U.L. 261, 266 (1985).

for fuller participation by the general counsel in the business and strategic directions of the university client is clear.<sup>56</sup>

Beginning with an early design as traditional legal practitioner and mechanism for organizational efficiency,<sup>57</sup> the role of chief corporate counsel (CCC) evolved in a manner analogous to the more recent development of the CUA role.<sup>58</sup> Corporations broadly employed in-house counsel decades before universities,<sup>59</sup> and corporate leaders sooner integrated counsel into extralegal spheres.<sup>60</sup> Relative to the literature regarding the role of university attorneys, studies exploring the role of corporate counsel are more numerous and their empirical methodologies more sound.<sup>61</sup> Therefore, the literature exploring the role of CCC offers some insight into the evolving role of CUA.

Like scholars and practitioners exploring the role of CUAs, those exploring the role of CCCs agree: An obvious key function chief in-house lawyers must fulfill is that of *lawyer*.<sup>62</sup> Similar to universities' broad adoption of the CUA role in the wake of civil rights legislation and an increasingly litigious university community, corporations adopted the CCC role in part as a response to increased regulation and litigation driven by early twentieth-century legal developments that transformed corporate management, risk, and responsibility.<sup>63</sup> As early as the "golden age of corporate counsel" from the 1900s through the 1930s, CCCs served as legal and extralegal "leaders" involved in advising—if not deciding—on matters covering every aspect of big business.<sup>64</sup> And despite some perceived fade in CCCs' influence from the 1940s through 1970s, as MBA-wielding business executives and consultants took

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56 Willia R. Kauffman & Charles Robinson, *The University General Counsel: New Roles in a New Era* (Nat'l Ass'n Coll. & Univ. Att'ys Gen. Counsel Inst., 2017), 2, <https://www.nacua.org/docs/default-source/legacy-doc/conference/march-2017/the-university-general-counsel-new-roles-in-a-new-era--discussion-context.pdf>.

57 See Deborah A. DeMott, *The Discrete Roles of General Counsel*, 74 *Fordham L. Rev.* 955 (2005); Sarah H. Duggin, *The Pivotal Role of General Counsel in Promoting Corporate Integrity and Professional Responsibility*, 51 *St. Louis U. L.J.* 989 (2007).

58 See Daane, *supra* note 11; Kauffman & Robinson, *supra* note 56.

59 See Bickel & Ruger, *supra* note 10; Duggin, *supra* note 57.

60 See John J. Creedon, *Lawyer and Executive: The Role of the General Counsel*, 39 *Bus. Law.* 25 (1983); DeMott, *supra* note 57; Carl D. Liggio, *A Look at the Role of Corporate Counsel: Back to the Future—Or Is It the Past?*, 44 *Ariz. L. Rev.* 621 (2002).

61 See John L. Abernathy et al., *General Counsel Prominence and Corporate Tax Policy*, 38 *J. Am. Tax. Ass'n* 39 (2016); DeMott, *supra* note 57; Duggin, *supra* note 57; Jonathan C. Lipson et al., *Who's in the House? The Changing Nature and Role of In-House and General Counsel*, 2012 *Wisc. L. Rev.* 237 (2012); Robert L. Nelson & Laura Beth Nielsen, *Cops, Counsel, and Entrepreneurs: Constructing the Role of Inside Counsel in Large Corporations*, 34 *L. & Soc'y Rev.* 457 (2000).

62 See DeMott, *supra* note 57; Ben. W. Heineman, *The General Counsel as Lawyer–Statesman* (Harv. L.S. Program Legal Pro., 2010), [http://www.law.harvard.edu/programs/corp\\_gov/articles/Heineman\\_HLS\\_Legal-Profession-Program.pdf](http://www.law.harvard.edu/programs/corp_gov/articles/Heineman_HLS_Legal-Profession-Program.pdf); Lipson et al., *supra* note 61.

63 See DeMott, *supra* note 57; Duggin, *supra* note 57; Leon E. Hickman, *The Emerging Role of the Corporate Counsel*, 12 *Bus. Law.* 216 (1957).

64 Liggio, *supra* note 60, at 621, 630.

on new strategic advising roles,<sup>65</sup> most observers document extralegal roles for corporate lawyers that make clear CCCs have maintained and grown their influence within their organizations.<sup>66</sup> Modern CCCs serve as lawyers,<sup>67</sup> managers of in-house legal enterprises,<sup>68</sup> and as executives serving as senior counselor to governing boards, chief executives, and other corporate leaders on legal and extralegal matters.<sup>69</sup>

The emergence of CCCs' *management* function parallels with that of CUAs. In the corporate context, chief counsel hire, develop, direct, and manage teams of in-house lawyers and support staff, including subject-matter specialists, to fulfill their organization's legal needs.<sup>70</sup> When matters require particular time or expertise, CCCs identify and manage outside attorneys to provide additional legal services.<sup>71</sup> While seemingly obvious, this function of chief attorney is critical. As Heineman describes, CCCs' management function requires "hiring the best possible ... talent," "creating an inside-outside relationship [with outside counsel] which minimizes conflicts over money," building an "inside legal team ... integrated with other staff ... and business teams," and establishing "one legal culture" among their team.<sup>72</sup>

In addition to *lawyering* and *managing*, literature exploring the role of CCCs describe an additional *executive* function in advising corporate leadership on both legal and extralegal matters.<sup>73</sup> The literature does not establish a succinct definition for this broad executive function, but scholars and practitioners have described it in various ways. In 1983, Creedon observed that to fulfill a broad executive role, effective CCCs should be "immersed in the company's business ... [including all] sensitive and significant phases of the company's operations."<sup>74</sup> This immersion empowers CCCs to "offer[] advice not just on law and related matters but [to] help[] shape discussion and debate about business issues."<sup>75</sup> In fulfilling their executive function, CCCs act "as [a] curious, broad-gauged business partner [who] must help define, debate and develop business positions on broad company issues."<sup>76</sup> Specifically, Heineman states CCCs "should be at the table ... on the broad array of ... issues" including "key operational initiatives, economic risk assessment and mitigation, major transactions, new strategic directions ... important template contracts, resolution of major disputes ... and major accounting decisions that

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65 *See id.*

66 *See* Creedon, *supra* note 60; DeMott, *supra* note 57; Duggin, *supra* note 57.

67 *See* DeMott, *supra* note 57.

68 *See* Ben W. Heineman, *The Rise of the General Counsel*, Harv. Bus. Rev. (Sept. 27, 2012), <https://hbr.org/2012/09/the-rise-of-the-general-counsel>.

69 *See* DeMott, *supra* note 57; Duggin, *supra* note 57; Heineman, *supra* note 62.

70 *See* DeMott, *supra* note 57; Heineman, *supra* note 68; Liggio, *supra* note 60.

71 *See* Heineman, *supra* note 62; Liggio, *supra* note 60.

72 Heineman, *supra* note 62, at 8.

73 *See* DeMott, *supra* note 57; Heineman, *supra* note 62.

74 Creedon, *supra* note 60, at 26.

75 Heineman, *supra* note 68, ¶ 3.

76 Heineman, *supra* note 62, at 8.

have a forensic dimension<sup>77</sup> as well as matters involving company ethics, public policy, and crisis management. It is essential that CCCs performing their executive function “understand [the organization’s] rhythms and personality” and be “in the daily flow of business.”<sup>78</sup> According to Heineman, the result of such executive role is an in-house lawyer who is “far more effective, and far more cost-effective.”<sup>79</sup>

Nelson & Nielsen’s 2000 study articulates the shift of CCC from mere lawyer to complex lawyer–manager–executive and comprehensively illustrates the nuance of this evolved, tripartite role among a spectrum of approaches. Incumbents may perform the role of CCC as traditional “cops,” as hybrid traditional-emerging “counsel,” or as broadly engaged legal and extralegal “entrepreneurs.”<sup>80</sup> Beginning on the least-complex end of this spectrum, as *cops* CCCs act as independent, siloed gatekeepers, focused primarily on the constraints of law, who often “say no.”<sup>81</sup> At the midpoint of Nelson & Nielsen’s conceptual spectrum, *counsel* “most often confine their advice to legal questions and legitimate their suggestions or demands based on legal knowledge.”<sup>82</sup> In effect, this midpoint role attaches a limited extralegal executive role to matters that maintain a direct nexus to concrete legal issues. More comprehensively, the third category of CCCs are “[e]ntrepreneurial lawyers [that] say law is not merely a necessary complement to corporate functions;” rather, CCCs performing as *entrepreneurs* understand that legal issues and the “law ... itself” relate to and can themselves be “a source of profits, an instrument to be used [by the organization] in the marketplace, or the mechanism through which major [objectives] are executed.”<sup>83</sup> By presenting the cop, counsel, and entrepreneur approaches on a spectrum, this study captures the evolution of in-house lawyers’ executive function while acknowledging certain tasks, or leaders may require incumbents to periodically act at discrete positions on the cop, counsel, entrepreneur spectrum.<sup>84</sup>

Collectively, the literature exploring the modern role of CCC reflects senior leaders proactively incorporating their leading lawyers as advisors in all significant organizational operations and decision-making. They do so not only because law or legal policy may be directly affected, but because they could be tangentially implicated or strategically leveraged by nearly all corporate operations and decisions.<sup>85</sup> The evolution of CCC from traditional in-house lawyer to complex

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77 *Id.*

78 *Id.* at 13.

79 *Id.*

80 Nelson & Nielsen, *supra* note 61, at 462.

81 *Id.* at 464.

82 *Id.*

83 *Id.* at 467.

84 *See id.*

85 *See* DeMott, *supra* note 57; Duggin, *supra* note 57; Heineman, *supra* note 62; Nelson & Nielsen, *supra* note 61.

lawyer–manager–executive is evidenced by the literature<sup>86</sup> and provides a source of comparison to the development of CUAs' role.

### C. *Modern, Expanded Role of Chief University Attorneys*

[I]f the first law for the proper use of counsel is to have one, the second is to use that counsel wisely.<sup>87</sup>

Recent literature suggests such *wise* use of CUAs amounts to more than engagement on routine legal tasks.<sup>88</sup> As with early literature, recent contributions are limited in quantity and scope,<sup>89</sup> and incumbents' anecdotal contributions provide further context to the modern CUA role.<sup>90</sup> In particular, practitioners' interest in understanding the role is evident through their recurring contributions and discussion of the topic—specifically CUAs' role function as extralegal executive—in their professional development spheres.<sup>91</sup>

The role of CUA as *lawyer* is restated throughout modern literature.<sup>92</sup> In their *Essential Guide to Selecting Legal Counsel*, Parker and Henderson remind university attorneys and leaders that “manag[ing] institutional legal issues” remains the foundation of CUAs' role.<sup>93</sup> Indeed, this study adopts the American Bar Association's (ABA's) definition of lawyer as one who “advises and represents others in legal matters.”<sup>94</sup> In the case of CUAs, the *other* represented is the institution the CUA serves.<sup>95</sup> As lawyers representing institutional clients, CUAs must be mindful of the

86 See DeMott, *supra* note 57; Duggin, *supra* note 57; Heineman, *supra* note 62; Nelson & Nielson, *supra* note 61.

87 See Bickel & Rugar, *supra* note 10, at B1.

88 See Blakemore, *supra* note 9; Parker & Henderson, *supra* note 9.

89 E.g., Richard Ludwick, *The Role of Legal Counsel in the Decision-Making Process of Presidents at Small, Private Colleges* (2005) (Ph.D. dissertation, University of Oregon); Frank A. Sargent, *Legal Services Delivery at Public Institutions of Higher Education in a New England State* (2010) (Ed.D. dissertation, Johnson & Wales University).

90 E.g., Jerry Blakemore et al., *Can You Hear Me Now? Ethical Considerations in Discharging the Duties of General Counsel* (Nat'l Ass'n Coll. & Univ. Att'ys Ann. Conf., 2012), [https://www.nacua.org/docs/default-source/legacy-doc/conference/june2012/08c\\_v-12-06-16.pdf](https://www.nacua.org/docs/default-source/legacy-doc/conference/june2012/08c_v-12-06-16.pdf); Marc Goodman et al., *The Ever-Expanding Role of the General Counsel: Leadership, Governance, Covid & Everything in Between* (Nat'l Ass'n Coll. & Univ. Att'ys Ann. Conf., 2022), <https://www.nacua.org/docs/default-source/legacy-doc/conference/2022annualconference/01d-final.pdf>.

91 E.g., Laurie E. Barnes et al., *The Value-Added Counsel: Being a Strategic Partner and Institutional Guardian While Minding Ethical Obligations* (Nat'l Ass'n Coll. & Univ. Att'ys Ann. Conf., 2021), [https://www.nacua.org/docs/default-source/legacy-doc/conference/june2021/16b\\_21\\_30.pdf](https://www.nacua.org/docs/default-source/legacy-doc/conference/june2021/16b_21_30.pdf); Jose D. Padilla et al., *How Do I Become the Next General Counsel? Or President?* (Nat'l Ass'n Coll. & Univ. Att'ys Ann. Conf., 2023), [https://www.nacua.org/docs/default-source/legacy-doc/conference/2023ac/05c\\_23\\_06\\_30.pdf](https://www.nacua.org/docs/default-source/legacy-doc/conference/2023ac/05c_23_06_30.pdf).

92 See, e.g., Blakemore, *supra* note 9; Block, *supra* note 15.

93 Parker & Henderson, *supra* note 9, at 26.

94 Am. Bar Ass'n, *Legal FAQs: What Is a Lawyer* (Sept. 10, 2019), [https://www.americanbar.org/groups/public\\_education/resources/public-information/what-is-a-lawyer/](https://www.americanbar.org/groups/public_education/resources/public-information/what-is-a-lawyer/).

95 See Am. Bar Ass'n, *Model Rules of Professional Conduct* (2024), [https://www.americanbar.org/groups/professional\\_responsibility/publications/model\\_rules\\_of\\_professional\\_conduct/](https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/)

best interest of their university, as typically determined by its governing authority and executives acting in their official capacity.<sup>96</sup> At its core, CUAs' lawyering function requires "clear deliverables" of traditional lawyering tasks such as "counsel on [a] legal issue [or] ... litigation risk analysis."<sup>97</sup> These deliverables include those responsive to live legal concerns such as lawsuits, subpoenas, and contracts.<sup>98</sup> More importantly, though, as in-house lawyers, CUAs engage in "preventive" law through deliverables such as prospective legal risk analyses, trainings, and stakeholder relationships leveraged to avoid future matters demanding legal response.<sup>99</sup>

Nonlegal observers have observed colleges lawyering up in response to a cascade of new legal demands by hiring more lawyers.<sup>100</sup> For most institutions, this means building a multilawyer in-house legal team, along with paralegals or other legal support staff.<sup>101</sup> As a result, the role of CUA as *manager* appears as a critical component of their modern role. University of Michigan CUA Roderick Daane noted the imperative to "recruit, train, and manage professional and nonprofessional legal staff"; manage office functions, such as budgeting; and select and manage relationships with outside counsel.<sup>102</sup> Daane articulates this management function; in part, "[l]ike a football quarterback, counsel must decide when to keep the ball and when to hand it off or pass it."<sup>103</sup>

In addition to lawyering and managing, the rise of modern CUA as a university *executive* represents the most significant shift for in-house university lawyers since the role's wide adoption in the 1960s and 1970s. According to University of Michigan CUA Roderick Daane, by 1985,

Things [had] changed. The student activism of the 1960s and early 70s, federal and state regulation of higher education, advances in technology, and a burgeoning entrepreneurial spirit in the professoriate, to say nothing of the increased litigiousness of society in general—all [had] combined to expand the need for campus legal advice.<sup>104</sup>

The literature reflects a continuing expansion of CUAs' executive-like duties since 1985. As former Washington University CUA Peter Ruger elaborated, the "expand[ed] need" that Daane referenced a decade earlier<sup>105</sup> meant "campus counsel

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96 See *id.*; Blakemore *et al.*, *supra* note 90.

97 Goodman *et al.*, *supra* note 90, at 1.

98 See Parker & Henderson, *supra* note 9.

99 Kathleen Curry Santora & William A. Kaplin, *Preventive Law: How Colleges Can Avoid Legal Problems*, Chron. Higher Educ. (Apr. 18, 2003), <https://www.chronicle.com/article/preventive-law-how-colleges-can-avoid-legal-problems/>.

100 See Kafka, *supra* note 13.

101 See Blakemore, *supra* note 9; Daane, *supra* note 11.

102 Danne, *supra* note 11, at 405.

103 *Id.*

104 *Id.* at 399.

105 *Id.*

should not be just an administrator with a law degree."<sup>106</sup> Describing the importance of this modern extralegal role of university attorneys, then-Northern Illinois University CUA Jerry Blakemore observes "the 'counsel' function of the [CUA] ... is just as significant if not more so as the attorney function."<sup>107</sup> While incumbents' nomenclature may differ, and none have proposed a concise description of their complex role, they agree that CUAs serve an expanding and important multifunction role as lawyer, manager, and executive, and those functions are inextricably intertwined.<sup>108</sup> Underlying the increasing entanglement of CUAs' role functions is the view that "the line between traditional 'lawyering' and what has historically been viewed as non-legal 'business' advice and decision making has blurred."<sup>109</sup>

Though recent literature has struggled to clearly articulate CUAs' executive function, it does offer various descriptions of this emerging imperative, including the sample listed in *Table 1*. Among the descriptors offered to illustrate CUAs' executive function, incumbents note their appropriate "ubiquitous" participation in discussion and decision-making regarding significant strategic and operational matters.<sup>110</sup> When effective, this presence and influence materialize in a chief attorney's recognition as an "overt leader" at their institution.<sup>111</sup> Some observers perceive the emerging role of CUAs to embrace a practice of both responsive and proactive lawyering<sup>112</sup>—depicted by others as a shift from "lawyer and advocate to policy and operational executive."<sup>113</sup> Jerry Blakemore asserts, "[b]eing an effective member of senior leadership is the essence of [the role of] general counsel."<sup>114</sup> Such effective executive engagement marks a CUA as a "defender and trusted colleague in the trenches" with their executive-level peers.<sup>115</sup> Finally, so significant is the potential confluence of the lawyer and executive functions, in Blakemore's view, that it positions CUAs as "the professional and ethical moral conscious of the organization."<sup>116</sup> There is little room to doubt that incumbents perceive effective CUAs must serve an extralegal executive function; however, a succinct description of this role function is yet to emerge from the literature.

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106 Peter H. Ruger, *The Practice and Profession of Higher Education Law*, 27 *Stetson L. Rev.* 175, 184 (1997).

107 Blakemore, *supra* note 9, at 2. Note that in addition to his role at Northern Illinois University, Blakemore previously served as CUA at Southern Illinois University and subsequently serves as CUA at University of North Carolina Greensboro. *Jerry D. Blakemore*, U.N.C. Greensboro (last visited Aug. 15, 2023), <https://oiigc.uncg.edu/general-counsel/attorneys/jerry-blakemore/>.

108 *See id.*; Daane, *supra* note 11; Dunham & Wessel, *supra* note 9; Ruger, *supra* note 106.

109 Dunham & Wessel, *supra* note 9, at 1.

110 Bickel & Ruger, *supra* note 10, at B1.

111 Goodman et al., *supra* note 90, at 1.

112 *See* William A. Kaplin et al., *The Law of Higher Education: Student Version* (6th ed. 2020).

113 Blakemore et al., *supra* note 90, at 1.

114 Blakemore, *supra* note 9, at 1.

115 Barnes et al., *supra* note 91, at 6.

116 Blakemore, *supra* note 9, at 1.

**Table 1. Descriptors Assigned to Chief University Attorneys' Executive Function in Recent Literature**

Business advisor <sup>117</sup>	Not just an administrator with a law degree <sup>127</sup>
Change agent <sup>118</sup>	Overt leader <sup>128</sup>
Collaborator and facilitator <sup>119</sup>	Policy and operational executive <sup>129</sup>
Connector of the dots <sup>120</sup>	Political and personnel advisor <sup>130</sup>
Conscience of the institution <sup>121</sup>	Political prophet <sup>131</sup>
Defender and trusted colleague in the trenches <sup>122</sup>	Strategic partner <sup>132</sup>
Effective member of senior leadership <sup>123</sup>	Strategic thinker on the leadership team <sup>133</sup>
Embedded in the decision process <sup>124</sup>	True counselor <sup>134</sup>
Full-service executive <sup>125</sup>	Ubiquitous <sup>135</sup>
Institutional guardian <sup>126</sup>	

The parallels between the executive function of corporate and university lawyers and the utility of the more robust literature considering the role of CCCs are evident; however, the role of CUA is distinguishable from their corporate counterparts. Referencing the experience of then-Ohio State University CUA Larry Thompson, Roderick Daane emphasizes that “differences between the horizontal, collegiate structure of a university and the vertical or pyramidal structure of the corporation” render the corporate and university contexts unique.<sup>136</sup> Specifically, CUAs’ role is “more complicated than” CCCs’ due to the “decentralized nature of college and

117 Dunham & Wessel, *supra* note 9, at 14.

118 *Id.*

119 Cameron, *supra* note 15, at 211.

120 Dunham & Wessel, *supra* note 9, at 14.

121 *Id.* at 15.

122 Barnes et al., *supra* note 91, at 6.

123 Blakemore, *supra* note 9, at 1.

124 Ludwick, *supra* note 89, at 16.

125 Blakemore et al., *supra* note 90, at 2.

126 Barnes et al., *supra* note 91, at 1.

127 Ruger, *supra* note 106, at 184.

128 Goodman et al., *supra* note 90, at 1.

129 Blakemore et al., *supra* note 90, at 1.

130 *Id.* at 8.

131 Blakemore, *supra* note 9, at 1.

132 *Id.*

133 Parker & Henderson, *supra* note 9, at 23.

134 *Id.*

135 Bickel & Ruger, *supra* note 10, at B1.

136 Daane, *supra* note 11, at 401.

university management” and the complexity of higher education institutions’ mission.<sup>137</sup> While the literature suggests an emerging tripartite role framework for CUAs, no empirical works have specifically explored the role. New research is now appropriate and necessary to understand the role and influence of CUAs as lawyers, managers, and—increasingly—executives.

*D. Emerging Conceptual Framework: Chief University Attorney as Lawyer, Manager, and Executive*

Application of an appropriate conceptual framework orients a study’s design and analysis.<sup>138</sup> Comprehensive literature review serves as a useful approach to forming conceptual frameworks.<sup>139</sup> Here, the literature’s framing of CUAs’ tripartite role as composed of broad lawyering, managerial, and executive functions provided a framework to guide this study’s empirical inquiry. Current literature does not define these role functions or describe their components, but a tripartite framing was employed in this study’s qualitative design, development of open-ended interview questions, and qualitative data analysis. Application of this, or any, conceptual framework may inherently limit the study’s findings;<sup>140</sup> however, potential limitations are mitigated by the definitional breadth of these three functions and the methods employed in conducting this study.

*E. Application of Systems Theory Framework to Study of the Chief University Attorney Role*

An exploration of the role of CUA is a study within the field of university organizational behavior.<sup>141</sup> CUAs’ “ubiquitous”<sup>142</sup> role and potential to exert influence across the silos of complex university organizations can be framed through the lens of systems theory. Unlike the tripartite CUA role framework emerging from the literature, systems theory framework does not emerge from the literature, nor is its application intended to significantly guide the design of this study.<sup>143</sup> Rather, the application of systems theory framework overlays the study design by providing a unified vocabulary for communicating the interconnectedness of individuals, including CUAs, and subsystems within and outside the complex university organization.<sup>144</sup>

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137 *Id.* at 402.

138 See John W. Creswell & J. David. Creswell, *Research Design: Qualitative, Quantitative, and Mixed Methods Approaches* (5th ed. 2018); Sharon M. Ravitch & J. Matthew Riggan, *Reason & Rigor: How Conceptual Frameworks Guide Research* (2d ed. 2017).

139 See Ravitch & Riggan, *supra* note 138.

140 *Id.*

141 See Bess & Dee, *supra* note 9; Stephen P. Robbins & Timothy A. Judge, *Organizational Behavior* (2d ed. 2017).

142 Bickel & Ruger, *supra* note 10, at B1.

143 See Bess & Dee, *supra* note 9; Ravitch & Riggan, *supra* note 138.

144 See F. Kenneth Berrien, *General and Social Systems* (1968); Mary E. Conway, *Organizations, Professional Autonomy, and Roles, in Role Theory: Perspectives for Health Professionals* (Margaret E. Hardy & Mary E. Conway eds., 2d ed. 1988); Talcott Parsons, *The Social System* (1951).

This language was uniformly incorporated into qualitative interview questions, data analysis, and presentation of the study's findings.

Systems theory describes a *system* as comprised of multiple component *subsystems*.<sup>145</sup> In turn, each subsystem is in effect its own system that may comprise further subsystems.<sup>146</sup> Each system is bounded by metaphorical—and at times physical—*boundaries* from its external *environment*.<sup>147</sup> Individuals within a system act as *interfaces* when communicating with the outside environment<sup>148</sup> or as *boundary spanners* by operating or communicating across multiple subsystems.<sup>149</sup> Each system or subsystem receives *inputs* from the environment, other systems, or subsystems and transforms and returns them as *outputs*.<sup>150</sup>

Applied to this study's context, CUAs provide counsel by transforming inputs to outputs. Transformations may include a contract negotiated, subpoena fulfilled, lawsuit defended, or compliance certified. As managers, CUAs may provide inputs by assigning legal research to outside or junior attorneys, and receive outputs such as draft pleadings, redlined contracts, or research memoranda. CUAs may interface those outputs by communicating the findings to university executives. Finally, as executives, CUAs act as interfaces and boundary spanners across the university subsystems in working to balance risk and deliver advice. In these ways, the complexities of CUAs' role are highlighted by, and may be organized for research analysis through a systems theory framework.

## II. PURPOSE OF THE STUDY

The purpose of this study was to explore the modern composition and context of CUAs' role as lawyer, manager, and—increasingly—executive. Using qualitative multiple case study, incumbents were interviewed to better understand their role. This study was guided by two research questions:

**Question # 1:** How do CUAs experience and describe the primary functions of their role—specifically those functions in addition to traditional lawyering?

**Question # 2:** How do CUAs experience their extralegal role in influencing their institution and its decision-makers?

## III. RESEARCH METHODOLOGY

This study employed qualitative research design and multiple case study strategy to uncover the *what* of the role of CUAs, as experienced by role incumbents, and

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145 See Berrien, *supra* note 144; Daniel Katz & Robert L. Kahn, *The Social Psychology of Organizations* (2d ed. 1978).

146 See Bess & Dee, *supra* note 9.

147 See *id.*

148 See Berrien, *supra* note 144; Katz & Kahn, *supra* note 145.

149 See Bess & Dee, *supra* note 9.

150 See *id.*

the *why* underlying CUAs' perceptions and experiences of their role.<sup>151</sup> The CUA role was considered in the context of *complex research universities*. Here, such institutions include U.S. nonprofit universities granting undergraduate through doctoral degrees, maintaining brick-and-mortar campuses, enrolling at least ten thousand students, and holding a Carnegie classification of high (R2) or very-high (R1) research activity. This population was identified as of January 1, 2020, using the National Center for Education Statistics' Integrated Postsecondary Education Data System (IPEDS) and includes 191 of the 4000 U.S. degree-granting postsecondary institutions, listed in *Table 2*. These institutions similarly experience myriad complex legal challenges and typically employ offices of in-house attorneys,<sup>152</sup> and the CUAs serving these institutions experience a broad and complex portfolio.<sup>153</sup> By bounding this study to *complex research universities*, a connecting thread emerged between the studies' participants and their experiences.<sup>154</sup>

**Table 2. Complex Research Universities (Study Population)**

American University	Clemson University
Arizona State University	Cleveland State University
Auburn University	Colorado State University
Ball State University	Columbia University
Baylor University	Cornell University
Binghamton University	CUNY City College
Boise State University	DePaul University
Boston College	Drexel University
Boston University	Duke University
Bowling Green State University	East Carolina University
Brigham Young University-Provo	East Tennessee State University
Carnegie Mellon University	Eastern Michigan University
Case Western Reserve University	Emory University
Central Michigan University	Florida Atlantic University

151 John W. Creswell & Cheryl N. Poth, *Qualitative Inquiry & Research Design: Choosing Among Five Approaches* (4th ed. 2018).

152 See Lake, *supra* note 9; Weingartner, *supra* note 9.

153 See Bess & Dee, *supra* note 9; Dunham & Wessel, *supra* note 9.

154 Marilyn Lichtman, *Qualitative Research for the Social Sciences* (2014). It should be expressly acknowledged that bounding the population of this study to *complex research universities* inherently excludes an exploration of the role of CUAs serving other types of institutions, including the role of many readers of this journal. As discussed below, bounding the population studied is appropriate to ensure the methodological integrity of this project and is necessary to promote the trustworthiness of this study's findings. It is the researcher's hope that many of the findings and implications for practice detailed here will translate beyond the context of *complex research universities* and that further research will specifically explore the distinct role of CUAs serving regional comprehensives, liberal arts colleges, community colleges, faith-based institutions, and other populations of higher education institutions.

<b>Table 2. Complex Research Universities (Study Population)</b> <i>Continued</i>	
Florida International University	Oakland University
Florida State University	Ohio State University
Fordham University	Ohio University
George Mason University	Oklahoma State University
George Washington University	Old Dominion University
Georgetown University	Oregon State University
Georgia Institute of Technology	Portland State University
Georgia Southern University	Purdue University
Georgia State University	Rochester Institute of Technology
Harvard University	Rowan University
Howard University	Rutgers University-New Brunswick
Illinois State University	Rutgers University-Newark
Indiana University-Bloomington	Saint Louis University
IUPUI-Indianapolis	San Diego State University
Iowa State University	Southern Methodist University
Johns Hopkins University	Stanford University
Kansas State University	Stony Brook University
Kennesaw State University	SUNY at Albany
Kent State University	Syracuse University
Louisiana State University	Temple University
Loyola University Chicago	Texas A&M University
Marquette University	Texas Christian University
Marshall University	Texas State University
Massachusetts Institute of Technology	Texas Tech University
Miami University-Oxford	The Pennsylvania State University
Michigan State University	The University of Alabama
Mississippi State University	The University of Tennessee
Montana State University	The University of Texas at Arlington
Montclair State University	The University of Texas at Austin
New Mexico State University	The University of Texas at Dallas
New York University	The University of Texas at El Paso
North Carolina A&T State University	The University of Texas at San Antonio
North Carolina State University	The University of Texas Rio Grande Valley
North Dakota State University	Tufts University
Northeastern University	Tulane University of Louisiana
Northern Arizona University	University at Buffalo
Northern Illinois University	University of Akron
Northwestern University	University of Alabama at Birmingham
Nova Southeastern University	University of Arizona

<b>Table 2. Complex Research Universities (Study Population)</b> <i>Continued</i>	
University of Arkansas	University of Missouri-Kansas City
University of California-Berkeley	University of Nebraska at Omaha
University of California-Davis	University of Nebraska
University of California-Irvine	University of Nevada-Las Vegas
University of California-Los Angeles	University of Nevada-Reno
University of California-Riverside	University of New Hampshire
University of California-San Diego	University of New Mexico
University of California-Santa Barbara	University of North Carolina
University of California-Santa Cruz	University of North Carolina Charlotte
University of Central Florida	University of North Carolina Greensboro
University of Chicago	University of North Carolina Wilmington
University of Cincinnati	University of North Dakota
University of Colorado	University of North Texas
University of Colorado Denver	University of Notre Dame
University of Connecticut	University of Oklahoma
University of Dayton	University of Oregon
University of Delaware	University of Pennsylvania
University of Denver	University of Pittsburgh
University of Florida	University of Puerto Rico
University of Georgia	University of Rhode Island
University of Hawaii at Manoa	University of Rochester
University of Houston	University of South Alabama
University of Illinois Chicago	University of South Carolina
University of Illinois	University of South Florida
University of Iowa	University of Southern California
University of Kansas	University of Southern Mississippi
University of Kentucky	University of Toledo
University of Louisiana-Lafayette	University of Utah
University of Louisville	University of Vermont
University of Maryland-BC	University of Virginia
University of Maryland	University of Washington
University of Massachusetts-Amherst	University of Wisconsin
University of Massachusetts-Boston	University of Wisconsin-Milwaukee
University of Massachusetts-Lowell	University of Wyoming
University of Memphis	Utah State University
University of Miami	Vanderbilt University
University of Michigan	Virginia Commonwealth University
University of Minnesota	Virginia Polytechnic Institute and State University
University of Mississippi	Washington State University
University of Missouri-Columbia	Washington University in St. Louis

<b>Table 2. Complex Research Universities (Study Population)</b> <i>Continued</i>	
Wayne State University	Wichita State University
West Virginia University	Yale University
Western Michigan University	

### A. Research Design

Qualitative multiple case study is useful for in-depth exploration of complex social phenomena.<sup>155</sup> The exploration of an organization role, such as a CUA, is a study of a particular complex social phenomenon of organizational behavior.<sup>156</sup> Inherent in an exploration of an organizational role are incumbents' lived experiences, perceptions, and behaviors.<sup>157</sup> Qualitative design produced an in-depth description and analysis of the CUA role through the lived experiences and subjective perspectives of six participants.<sup>158</sup> A social constructivist lens was adopted, where meaning is socially constructed by the participants observing and interpreting their experiences and perceptions.<sup>159</sup> This paradigm permitted deep exploration of individuals' experiences and subjective truths, freed participants to richly describe their perceptions, and relied on analyses that identified emergent themes rather than merely testing for confirmation or rejection of a predicted truth.<sup>160</sup>

Case study strategy permitted a "holistic and real-world perspective" of "organizational and managerial processes" specific to the CUA role.<sup>161</sup> It accounted for the complexity of this inquiry where data cannot easily be compared to a control variable or reduced to simple data points.<sup>162</sup> This inquiry used "in-depth data collection"<sup>163</sup> to ascertain a "holistic and real-world"<sup>164</sup> understanding of the CUA role. As a "multiple" case study,<sup>165</sup> this study holistically examined empirical evidence from multiple cases of incumbent CUAs. The participants' individual contexts and cases were individually explored through in-depth, semistructured qualitative interviews.<sup>166</sup> Using a replication approach, each incumbent was

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155 See Creswell & Poth, *supra* note 151; Robert K Yin, *Case Study Research and Applications: Design and Methods*, (6th ed. 2018).

156 See *id.*; Robbins & Judge, *supra* note 141.

157 See Creswell & Poth, *supra* note 151.

158 See *id.*

159 See *id.*; Bess & Dee, *supra* note 9.

160 See *id.*

161 Yin, *supra* note 155, at 5.

162 *Id.*

163 Creswell & Poth, *supra* note 151, at 96.

164 Yin, *supra* note 155, at 5.

165 *Id.* at 48.

166 *Id.*

considered as a single case through a within case analysis.<sup>167</sup> Employing a “feedback loop,” data and analyses from preceding cases were incorporated into subsequent cases’ data collection and analysis.<sup>168</sup> Finally, a “holistic” cross-case synthesis considered data across all six cases to identify themes emerging from the shared perceptions and experiences of the participants.<sup>169</sup>

Trustworthiness was integrated into this study’s design using tools that bolster findings’ credibility.<sup>170</sup> Credibility is established when a study’s findings are believable and credible to its participants; therefore, data was collected using semistructured and open-ended interview questions that minimized bias in participants’ responses, and participants were provided copies of their transcripts and summaries of the study’s initial findings for feedback, supplement, and credibility check.<sup>171</sup> This study’s bounding context limiting the population to 191 complex research universities—together with the researcher’s detailing of the study’s methodology and the contexts of its design, participants, and researcher—promote transferability, dependability, and confirmability of the study’s findings.<sup>172</sup> Further, trustworthiness was enhanced through triangulation of sources and methods by analyzing each of the six cases independently, then collectively, to identify and confirm emerging themes.<sup>173</sup>

Finally, the researcher’s individual context is accounted for by relaying and examining how their experiences effect interpretation of the data.<sup>174</sup> Here, the researcher’s professional experience includes service as deputy CUA for a population institution. The researcher’s occasional service in the stead of a CUA, observations of CUA mentors, and professional relationships frame this study, including its design, data collection, analysis, and conclusions. To promote confirmability, this context was disclosed and the researcher strived to maintain self-awareness and examine for influence of bias at every research stage.

### ***B. Data Sources and Collection***

Eight potential CUA participants were identified through snowball sampling within the researcher’s professional network.<sup>175</sup> The researcher solicited suggestions for participants possessing relevant experience and perspectives from an experienced

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167 *Id.*

168 *Id.* at 57.

169 Creswell & Poth, *supra* note 151, at 96; *see also* Robert E. Stake, *The Art of Case Study Research* (1995); Yin, *supra* note 155.

170 *See* Lichtman, *supra* note 154; Yvonna S. Lincoln & Egon Guba, *Naturalistic Inquiry* (1985).

171 *See id.*; Egon Guba & Yvonna S. Lincoln, *Competing Paradigms in Qualitative Research*, in *Handbook of Qualitative Research* (Norman K. Denzin & Yvonna S. Lincoln eds., 1994).

172 *See id.*; Lincoln & Guba, *supra* note 170; Lichtman, *supra* note 154.

173 *See id.*; Yin, *supra* note 155.

174 *See* Creswell & Poth, *supra* note 151; Lichtman, *supra* note 154.

175 *See* Michael Quinn Patton, *Qualitative Research & Evaluation Methods*, (4th ed. 2015).

CUA who did not participate.<sup>176</sup> Initially, three were recommended and solicited, and all agreed to participate. Each of the first three participants were asked to nominate additional participants, producing a list of five additional prospects. All were solicited, three agreed to participate, one declined, and one did not respond.

Qualitative semistructured interviews were designed with open-ended “grand tour”<sup>177</sup> questions, allowing participants’ experiences and perceptions to emerge through rich dialogue.<sup>178</sup> Questions and researcher-led dialogue incorporated language intended to contextualize participants’ answers onto the systems theory framework. In individual, sixty-minute interviews, participants were first asked to describe their perception of the role of CUA. Following lengthy open-ended dialogue, the researcher introduced the tripartite conceptual role framework emerging from this study’s guiding literature: CUA as lawyer, manager, and executive. Participants were asked if they agreed with this framing. Each agreed and engaged in extensive discussion, guided by the researcher using the tripartite framework, exploring the participants’ perceptions of the duties composing each of the three role functions. Following discussion of each function, participants were asked again to consider the conceptual framework, whether it fit their perception of the role, whether any broad role functions were omitted, and how much of their time is spent engaged in each. No additional functions were proposed. Finally, any remaining or additional time was utilized to continue exploring participants’ experiences and perspectives in their exercise of influence through their *executive* function.

In addition to the primary interview data, secondary documents were collected from archival records of participants’ universities—such as organizational charts, position descriptions, and job postings—and analyzed for purposes of context and triangulation.<sup>179</sup> Data mined from these records were used to design the interview protocol, frame interview questions, and provide additional understanding of participants’ institutionally defined role. Ultimately, these documents provided additional context for participants’ individual cases but offered limited utility in examining answers to this study’s research questions.

### C. Analytical Approach

Primary interview data were analyzed through individual, within-case analyses and a comprehensive cross-case synthesis. First, an individual within-case analysis was conducted as to each of the six participants’ respective cases. For each case, the respective interview transcript and archival documents were coded for descriptions of the participant’s experience and perception of the CUA role within the tripartite CUA role framework and systems theory framework. Then, a comprehensive cross-case synthesis was conducted—an approach that embraced a holistic view of the study and searched upward from the data for trends, rather than downward

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176 *Id.*

177 Lichtman, *supra* note 154, at 264.

178 See Creswell & Creswell, *supra* note 138.

179 See Creswell & Poth, *supra* note 151.

from the results.<sup>180</sup> Documents and transcripts were holistically reviewed and coded based on the researcher's early and emerging observations.<sup>181</sup> "Open coding [is employed as a] starting point" in identifying emergent themes.<sup>182</sup> Documents and transcripts were thus reviewed for "open-ended" phrases and themes from recurring or synonymous key words and phrases that directly answer each of the study's research questions.<sup>183</sup> Additionally, observations about participants' respective commentary, nonverbal cues, tone, and insinuated meanings were noted while conducting interviews and provided additional data to analyze and employ in triangulating the themes that emerged from interview data.<sup>184</sup>

#### IV. FINDINGS

Clear themes emerged from the six cases, each providing insight into this study's guiding research questions. Because each participant was interviewed on the condition of anonymity, identifying information has been removed from quotations. Pseudonyms listed in *Table 3* were borrowed from attorney-portraying characters in the television shows *Law & Order*, *Damages*, *Suits*, and *Night Court*, then randomly assigned to participants. No inferences regarding the participants' respective identities or personalities can be made based on those of the characters; any overlap is coincidental.

Participant Pseudonym	Governance	Carnegie Classification	Total Enrollment	Total Employees
Arthur Branch	Public	R1	> 50,000	30,000–40,000
Jack McCoy	Private	R2	10,000–20,000	2,500–5,000
Patty Hughes	Private	R2	10,000–20,000	2,500–5,000
Michael Ross	Private	R1	10,000–20,000	30,000–40,000
Dan Fielding	Public	R1	> 50,000	10,000–20,000
Jessica Pearson	Public	R1	> 50,000	10,000–20,000

*Note.* Some participants serving public institutions are employed by the population university's governing system. However, in each case, the participant serves as the population university's CUA, and the university does not independently maintain a separate CUA or other internal legal advisor.

##### A. The Six Studied Cases

In addition to participants' pseudonyms, *Table 3* sets forth contextual information specific to each participant's case. Their respective institutional data reflects the

180 See Yin, *supra* note 155.

181 See Lichtman, *supra* note 154.

182 Johnny Saldaña, *The Coding Manual for Qualitative Researchers*, 115 (3d ed. 2016).

183 *Id.*

184 See Creswell & Poth, *supra* note 151; Yin, *supra* note 155.

university they served at the time of data collection. While participants' individual demographic information and periods of incumbency are omitted from *Table 3* to protect anonymity, collectively the participants have served seventy-four years as CUAs for ten population universities—six public and four private—located in the West, South, Midwest, and Atlantic coast regions of the United States. Participants included two persons of color, four men, and two women. Each serve as a member of their chief executive's cabinet and has managed an office of four or more attorneys. Finally, each is recognized as an industry leader, having served as an elected leader, published author, or speaker associated with the National Association of College and University Attorneys.

### ***B. How Chief University Attorneys Experience Their Role***

Participants recognized a persistent expansion of the CUA role. Hughes acknowledged, "the role ... is growing increasingly more complicated,"<sup>185</sup> and Ross added CUAs are now "counted on and asked to play a broader role than they were in the past."<sup>186</sup> Each perceive this broad, complex role as "mov[ing] away from [their] traditional legal role to ... giving strategic advice through a legal lens."<sup>187</sup> The tripartite role framework of lawyer, manager, and executive emerging from previous literature was accepted by all participants; however, they unanimously noted aspects of these functions are often performed concurrently. As Branch articulated, it is difficult to "create hard and fast lines between the three" functions.<sup>188</sup> In fact, discrete tasks "can be a blend" of the CUA role functions, and "at no point in time are people thinking [a CUA has] stopped being a lawyer."<sup>189</sup> While CUAs are always lawyers, "they're not just technical lawyers ... they're not just lawyering ... they are higher education leaders and understand where [the industry and their institution] are headed. They understand the challenges, the opportunities, and the role their institution plays in that context."<sup>190</sup>

Mindful of the contemporaneous nature of the three CUA role functions, participants were asked to consider their total work time and assign an approximate percentage to the share they perceive as primarily expended in each of the three functional areas. Their responses, presented in *Table 4*, reflect participants' experience about one-half of their work time performing a primarily *executive* role. Notably, participants generally assigned the smallest share of their time to a traditional *lawyering* function. Each emphasized these percentages are estimates, and their actual time allocation regularly fluctuates.

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185 Interview with Patty Hughes, Chief Univ. Att'y, Anonymized Priv. Univ., via Zoom (Apr. 21, 2020) (transcript on file with author).

186 Interview with Michael Ross, Chief Univ. Att'y, Anonymized Priv. Univ., via Zoom (April 13, 2020) (transcript on file with author).

187 Hughes, *supra* note 185.

188 Interview with Arthur Branch, Chief Univ. Att'y, Anonymized Pub. Univ., via Zoom (Apr. 22, 2020) (transcript on file with author).

189 Ross, *supra* note 186.

190 Branch, *supra* note 188.

<b>Table 4. Participants' Perceptions of Their Work Time as Expended in Their Primary Role Functions (out of 100%)</b>			
<b>Participant</b>	<b>Executive</b>	<b>Manager</b>	<b>Lawyer</b>
Arthur Branch	40%	30%	30%
Jack McCoy	60%	20%	20%
Patty Hughes	50%	30%	20%
Michael Ross	60%	25%	15%
Dan Fielding	40%	40%	20%
Jessica Pearson	50%	25%	25%
Mean	50%	28%	22%

In exploring the study's first research question, and given participants' acknowledgment of an expansive CUA role, adoption of the tripartite lawyer–manager–executive role framework, and assignment of the greatest share of their work time to primarily *executive* work, participants were asked to describe their perception of each individual functional area. Themes regarding each role function emerged from their responses, including (1) maintaining “preeminent”<sup>191</sup> standards in performing their *lawyering* role as “the hare, not the tortoise,”<sup>192</sup> (2) performing their *management* role as “grand masters”<sup>193</sup> of their university's legal enterprise, and (3) conducting their *executive* role as “connective tissue”<sup>194</sup> that university leaders can rely on to consistently, collaboratively, and creatively advise and solve complex legal and extralegal problems.

#### 1. Chief University Attorneys as Lawyers: Preeminent, Efficient Attorneys

Despite the participant-perceived shift in CUAs' role to emphasize an executive function, each agreed superb lawyering ability remains a prerequisite for CUAs. In some cases, CUAs must regularly engage in a broad swath of traditional lawyering tasks, and in others, CUAs may choose to retain only discrete matters or practice areas relating to sensitive or significant institutional interests. Participants' perceptions are supported by the archival documents relating to their cases. Their archived job posting set forth minimum lawyering experience (e.g., ten years) and incorporate a laundry list of requisite legal knowledge and experience, from contract and policy drafting to dispute resolution. Between two-thirds and three-fourths of the qualifications and job duties required in their job postings and position descriptions relate to traditional lawyering tasks.

In every case, CUAs' lawyering function underlies and is inextricable from their management and executive functions. Branch described CUAs' necessary lawyering

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191 *Id.*

192 Interview with Jack McCoy, Chief Univ. Att'y, Anonymized Priv. Univ., via Zoom (Apr. 27, 2020) (transcript on file with author).

193 Branch, *supra* note 188.

194 McCoy, *supra* note 192.

ability as that attributable to “a preeminent type of lawyer.”<sup>195</sup> In considering the requisite sophistication of CUAs’ lawyering abilities, Hughes observed, “I don’t even think there’s a threshold level of being a good lawyer that you can meet but just really excel at the [other functions].”<sup>196</sup> Rather, participants perceive top-flight lawyering capabilities are foundational to effectively performing the CUA role.

Intertwined with high-level lawyering skills is participants’ perception that a CUA should be “a jack of all legal trades”<sup>197</sup> who obtains and actively maintains broad domain expertise of the law impacting their complex research institutions. Hughes articulated domain expertise as “know[ing] a little bit about everything from A to Z ... aviation to zoning, and that’s literally true ... in the [CUA] role you can’t just be a specialist.”<sup>198</sup> McCoy explained their perception of the minimum knowledge standards and, if insufficient, the required responsive action as, “you have to be able to do 80% of the job a subject-matter expert could do and be prepared to delegate quickly when 80% is not good enough.”<sup>199</sup> Merely obtaining domain knowledge is insufficient in participants’ view; actively maintaining domain expertise as the law evolves is equally critical. As Hughes described,

In a higher education environment, you are repeatedly asked to answer the same questions ... I have caught multiple seasoned attorneys ... giving misinformation because ... they do not review their previous answer [for changes in the law]. They do not look for new cases or to see if any new guidance letters have been issued. It is a seductive trap because you have a clientele that may believe everything you say. So maintaining [current domain knowledge] is crucial when it comes to delivering sound legal advice.<sup>200</sup>

Attaining recognition as a preeminent lawyer and actively maintaining domain expertise assist CUAs in nimbly and efficiently fulfilling their lawyering function. McCoy explained that CUAs must also be “a quick study” and illustrated this distinct, efficient lawyering skill as akin to being “the hare, not the tortoise.”<sup>201</sup> In this way, participants agreed CUAs must leverage their high-level abilities and broad knowledge to quickly accrue new knowledge when necessary. Because this particular combination of abilities and knowledge is not universally shared by attorneys, McCoy concluded “not all great lawyers are great [CUAs] ... but all great [CUAs] are great lawyers.”<sup>202</sup>

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195 Branch, *supra* note 188.

196 Hughes, *supra* note 185.

197 Interview with Dan Fielding, Chief Univ. Att’y, Anonymized Pub. Univ., via Zoom (Oct. 23, 2020) (transcript on file with author).

198 Hughes, *supra* note 185 (crediting the “A to Z ... aviation to zoning” descriptor to former NACUA President and Chief Executive officer Kathleen Curry Santora).

199 McCoy, *supra* note 192.

200 Hughes, *supra* note 185.

201 McCoy, *supra* note 192.

202 *Id.*

2. *Chief University Attorneys as Managers: Grand Masters of the University Legal Enterprise*

Participants noted three primary components of CUAs' function as *managers*: leading an internal team of lawyers and support staff, engaging and managing external counsel, and conducting the administrative duties of a unit leader. Participants' respective job postings and position descriptions echo these sentiments—all but one case's respective archival records summarily list managerial duties, and all include administrative duties as expectations of the CUA. In their interviews, several participants noted the significant independence CUAs are granted as managers relative to other university leaders. Participants credited this autonomy to the university legal enterprise's cross-silo reach and the distinctive nature of lawyers' training, knowledge, and skills that render many nonlawyer executives uncomfortable in second-guessing CUAs' management of the legal enterprise. As a result of universities' deference to CUAs' management, Branch quipped, "I am sort of the grand master, the puppeteer, of the legal enterprise."<sup>203</sup> Each of the three components of CUAs' management function identified by the participants are next described in turn.

Each participant emphasized CUAs' duty to hire, develop, and lead their office of legal affairs team. Except in McCoy's case, these duties were also set forth in participants' job posting or position description. Participants perceive attorney hiring and development as essential to allow CUAs to delegate important legal tasks and allocate a greater share of their own time to executive duties. Branch observed, "if you do a good job in hiring really, really talented lawyers, you will be able to engage in high-level work and not spend your time looking over [other attorneys'] shoulders."<sup>204</sup> Pearson added, "hiring and developing attorneys is the whole ballgame; whether you need generalists, specialists, litigators, deal lawyers, talented speakers, or excellent writers, [the CUA's] role is to build one trustworthy, talented, and cohesive team."<sup>205</sup> Although they perceive building a team fit to receive delegation of many legal matters is paramount, participants indicated a team's abilities, an office's available resources, other administrative demands, and the significance of discrete matters may dictate CUAs' management role to include stepping into a lawyering or hybrid lawyer-manager role with regard to certain legal matters. Two participants described significant reliance on their deputy CUAs to oversee routine matters and elevate issues to the CUA as appropriate. As Branch portrayed, "I'm on the horn with [my deputy CUA] nearly every day."<sup>206</sup> Four separately indicated that nearly all first-draft legal memoranda originate from another attorney before elevating for the CUAs' review. Leaning into the inextricable nature of CUAs' lawyering and management functions, Fielding illustrated their function as legal team leader in baseball terms:

Baseball is the only sport where coaches wear uniforms. You don't see basketball coaches out there wearing shorts and a tank top, but baseball

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203 Branch, *supra* note 188.

204 *Id.*

205 Interview with Jessica Pearson, Chief Univ. Att'y, Anonymized Pub. Univ., via Zoom (Oct. 29, 2020) (transcript on file with author).

206 Branch, *supra* note 188.

coaches are in full uniform like they are ready to get put in at any time. The genesis of that ... relates to the [CUA] role. In early professional baseball, there was a [hybrid] player-manager that could put themselves into the game in unique situations ... Being a [CUA] is a bit like being both a player and coach. Most of the time there's a lot of delegation, but sometimes a [CUA] has to put themselves in the game, and that's why they still wear the uniform.<sup>207</sup>

Each participant CUA's commentary insinuated that legal team leadership is the primary component of their management function. However, no single model for team leadership emerges from the data. Instead, each case is dictated by the specific context of an institution, its office of legal affairs' particular personnel and financial resources, the CUA's leadership style and preferences—such as how and when they prefer to meet with their teams and individual lawyers—and the many competing demands for the CUA's time.

Participants also included engagement and management of outside counsel among the components of their management function. This duty appeared in all but Fielding's respective archival records, and that exception may be explained by their institution's reliance on Attorney General representation in most litigation. According to Pearson, "Outside attorneys plug the holes my team cannot because of time or expertise. Like most of my [CUA] colleagues, we outsource courtroom litigation, and finding the resources internally to identify and engage capable outside lawyers is a must."<sup>208</sup> Finally, participants unanimously perceived, and their position postings and descriptions likewise document, routine unit administration as a third component of their management function. They experience these duties as a "necessity but seeming distraction from [their] high-level work."<sup>209</sup> These administrative tasks include managing budgets, securing resources, conducting routine personnel management such as performance reviews, and completing other administrative tasks assigned to university unit heads. As with office leadership, each participant's experience in navigating the management components of outside counsel engagements and unit administration vary based on their university's capacities and expectations.

### 3. *Chief University Attorneys as Executives: Connective Tissue Leaders Can Rely On*

Most participants' job postings and position descriptions used terms including *executive* and *senior* in describing the CUA role. These archival records further expressed the incumbents' role as including *strategic* thinking and necessary skills including *communication* and *dispute resolution* skills. In sum, these records insinuate role functions beyond lawyering duties and management, but none specifically outline or define such a third job function. In their interviews, however, participants embraced this "strategic bucket"<sup>210</sup> of executive duties prior to the researcher's introduction of the tripartite role framework.

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207 Fielding, *supra* note 197.

208 Pearson, *supra* note 205.

209 Branch, *supra* note 188.

210 McCoy, *supra* note 192.

In their interviews, participants collectively described a CUA effectively exercising their *executive* function as a senior university leader with an expertise in higher education law and thorough understanding of the higher education landscape, ably navigating complex and interconnected university interests and structures, maintaining and leveraging high-quality professional relationships, and proactively contributing the product of these competencies and relationships to provide and influence decision-makers with timely, reliable, and useful advice spanning the domain of university concerns. This comprehensive description emerged through participants' interview data and is assembled from its component parts. Each is next fully described in turn.

*As senior university leaders with an expertise in higher education law and thorough understanding of the higher education landscape*, participants noted the cabinet-level status associated with their role and connected that positioning to their concurrent function as the university's top lawyer. In the context of their executive function, participants were emphatic in their experience as *leader and lawyer* rather than *administrator*. Asked if they considered CUAs higher education administrators, participants rebuffed the *administrator* taxonomy—some emphatically. Rejection of the term was linked by four participants to a shared perception that *administrator* indicates *decision-maker*, and CUAs “only make significant decisions in their narrow managerial” function.<sup>211</sup> The participants agreed the advisory nature of CUAs' role, combined with their access and potential for influence within the university hierarchy, is more appropriately described as *leadership* than *administration*. Pearson contextualized this perception to highlight the inextricable nature of CUAs' lawyering and executive functions: “I consider myself a higher education ... leader because I am always an attorney—that is my administrative arena—but as [CUA] I am also always [advising as] an executive. [So] I think ‘professional’ or ‘leader’ better captures the true breadth of what I do.”<sup>212</sup> As it relates to their thorough understanding of the higher education landscape, McCoy captured the participants' shared perspective in stating, “you have to know all the internal and external challenges and how they relate to one another within the university.”<sup>213</sup>

In describing how they *ably navigate complex and interconnected university interests and structures*, participants highlighted attorneys' cross-silo vantage. McCoy captured participants' shared experience, observing, “one of the things about universities is they are extremely siloed, and there are not many people who cut across all those silos—the lawyers do.”<sup>214</sup> Further illustrating how CUAs navigate such complex university structures and intertwined interests, McCoy describes CUAs' as “the connective tissue for the university.”<sup>215</sup> With a cross-silo vantage, and “without [their] own turf like the deans and many other cabinet members,”<sup>216</sup> the participants perceive that CUAs' functioning as executive occupy a

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211 Pearson, *supra* note 205.

212 *Id.*

213 McCoy, *supra* note 192.

214 *Id.*

215 *Id.*

216 Ross, *supra* note 186.

neutral space within leadership that empowers them to “play a norming function ... and reinforce university mission and values across silos where people may not be as integrally connected to the big picture.”<sup>217</sup> Ross expounded on this concept of neutrality inherent in CUAs’ position within the university leadership team, asserting “in some ways [CUAs are] Switzerland; we’re not academic, and we’re not finance—we’re sort of everything, so our loyalty more easily runs to the best interest of institution.”<sup>218</sup> In addition to the framing of the CUAs’ executive function as connective tissue, Hughes provided this illustration:

As an executive ... I walk alongside or half a step behind my colleagues in leadership with the flashlight sweeping to illuminate the landscape and make sure they don’t step on a landmine. I don’t just say, “no, you can’t go in that direction.” I say, “you want to go in this direction—how do I help you go around or build a bridge over that landmine ... to make what you want happen?”<sup>219</sup>

Participants cited additional terms to describe this component of their executive function such as “holistic advisor”<sup>220</sup> and “strategic partner.”<sup>221</sup> Regarding the latter—which also appeared in three participants’ position posting or description—Ross observed, “I often hear the term ‘strategic partner,’ but I’m not sure anyone really knows what that means”<sup>222</sup> because—like CUAs’ executive function—a definition is difficult to ascertain. Collectively, these several terms and illustrations are most succinctly captured through the concept of CUAs as the *connective tissue* that leaders rely on to consistently, collaboratively, and creatively assist decision-makers in solving complex problems.

To operate as connective tissue, participants emphasized the imperative of relationships—specifically *maintaining and leveraging high-quality professional relationships* across the institution. As Pearson explained, capturing most participants’ shared experience, “the whole job, it’s all about relationships—if you fail to build them, if you lose your president or peers’ trust, it’s over.”<sup>223</sup> Hughes described the relationship-building process in political terms as “precinct work”<sup>224</sup> that, McCoy explained, assists CUAs in accruing “soft power”<sup>225</sup> and a capacity for influence to enhance CUAs’ executive function. In every case, participants perceive building high-quality relationships with university decision-makers as foundational to effectively performing their executive duties.

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217 McCoy, *supra* note 192.

218 Ross, *supra* note 186.

219 Hughes, *supra* note 185.

220 Fielding, *supra* note 197.

221 McCoy, *supra* note 192.

222 Ross, *supra* note 186.

223 Pearson, *supra* note 205.

224 Hughes, *supra* note 185.

225 McCoy, *supra* note 192.

The sum of these executive-function components allows CUAs to exert *influence and provide decision-makers with timely, reliable, and useful advice spanning the domain of university concerns*. The participants share a perception, as articulated by McCoy, that “[CUAs are] just there to help people solve problems.”<sup>226</sup> They emphasize, though, that performing the executive function well merely opens a seat at the table for CUAs to utilize in influencing decision-makers. CUAs rarely, if ever, transcend the divide from decision *influencer* to *decision-maker*; therefore, continually practicing the components of the executive function—and the concurrent functions of lawyer and manager—is a professional imperative. “We advise the client, but we are not the client or decision-maker. We tell you what the risks are and make recommendations based on our legal expertise, but it is never ‘thus sayeth the lawyer.’”<sup>227</sup>

This study’s participants perceive their role as complex and demanding. They describe the CUA role as preeminent lawyer, capable manager, and an executive committed to maintaining expertise in both the law and industry of higher education, functioning as connective tissue across a complex organization through high-quality professional relationships. In sum, they describe their “position [as] one of soft power” where they may effectively influence decision-makers “through persuasion and building consensus.”<sup>228</sup>

### *C. How Chief University Attorneys Experience Their Extralegal Role in Influencing Their Institution and Its Decision-Makers*

This study’s second research question explored participants’ experience of their extralegal influence. However, in exploring the first research question, it became evident that CUAs’ executive function is so paramount among their duties, and so intertwined with all manner of university concerns, that their specific *extralegal* influence could not be parsed from their general executive influence. Indeed, the definition of CUAs’ executive function emerging from this study requires incumbents, in part, to possess an expertise in the law *and environment* affecting higher education so that they may advise decision-makers across the *domain of university concerns*. Therefore, CUAs’ executive function itself requires CUAs to maintain expertise in extralegal matters and proffer extralegal advice. Given this finding, the answer to this study’s second research question was considered through participants’ perceptions of their overarching, general executive influence within their institution and on its leadership team. The data revealed CUAs (1) accrue extralegal influence by performing the entirety of their complex role well, and (2) enhance their executive and extralegal influence by building and maintaining high-quality professional relationships with senior university decision-makers.

#### *1. Extralegal Influence Is Accrued by Delivering Wins*

Participants considered their *extralegal role* and influence as a component of their general influence as an *executive*. As Pearson articulated, “[CUAs] extralegal

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226 *Id.*

227 Hughes, *supra* note 185.

228 McCoy, *supra* note 192.

work relates to all those matters ... that fall into the executive bucket."<sup>229</sup> When asked to describe what might constitute an extralegal matter on which decision-makers seek CUAs' counsel, participants agreed they could include "[matters] with only a distant or ... conceivable connection to legal risk, if any."<sup>230</sup> Often, CUAs are invited to advise on extralegal matters because they are intertwined with top university priorities, and CUAs have been offered or earned a seat at the table where such matters are discussed. As Pearson described, "not just any seat at the table because of [CUAs'] position on the organizational chart, but a respected seat at the table and an invitation to really participate in debate because of ... the reputation [they] have built by first being a trusted lawyer on legal matters," then by being an effective executive advising on legal-adjacent matters, and finally "routinely adding value to nonlegal discussions."<sup>231</sup> Pearson's description, echoed by other participants, indicates CUAs establish their executive influence by performing their complex, tripartite role well.

This trust and influence-building sequence describes a roadmap for CUAs expanding a traditional CUA role into the modern role revealed in this study. McCoy framed this process of building influence by successfully performing the CUA role in different terms:

To do a good job ... you understand what [your executive peer] is trying to accomplish. You understand their division and what they're doing in deep detail. You've got relationships with people pretty deep into their division that feel supported by you and [feel] that they're ... able to be successful because you're involved. And, so, you've delivered wins for that [team].<sup>232</sup>

This portrayal of "delivering wins"<sup>233</sup> as emblematic of performing the CUA job well directly connects with most components of CUAs' executive function emerging through this study and adds that effective performance is signaled by CUAs' clients experiencing successful results. Through this illustration and other commentary, this study reveals trust and influence are byproducts of effective role performance—particularly CUAs' fulfillment of their executive function.

Two notes supplement this theme. First, participants emphasize that CUAs' role, motivation, and achievement must be to deliver positive results, not to accrue influence. The trust and influence CUAs accrue by effectively performing their role are byproducts of a job well performed that, in turn, provide CUAs the opportunity to do so again. Second, according to three participants, CUAs should "choose their [extra]-legal battles carefully."<sup>234</sup> Although CUAs must possess broad domain knowledge on the challenges, priorities, and opportunities facing their institution and the higher education industry, participants highlighted the risk inherent in

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229 Pearson, *supra* note 205.

230 Branch, *supra* note 188.

231 Pearson, *supra* note 205.

232 McCoy, *supra* note 192.

233 *Id.*

234 Ross, *supra* note 186.

proffering advice when insufficiently informed on an extralegal matter under review. Despite this risk, McCoy noted that “if you’re doing the [CUA] role well, you will be asked all sorts of nonlegal questions, and because of the way you perform, leaders will expect you to have knowledge and be able to speak intelligently”<sup>235</sup> to reputational and other nonlegal considerations. Taken together, participants describe a cyclical relationship between effectively performing the CUA role, accruing and exercising influence, and being consulted for advice on concerns spanning the domain of university concerns. CUAs should simply be mindful of their motivations and limitations when engaging in extralegal discussions.

## 2. *Extralegal Influence Is Enhanced by High-Quality Professional Relationships*

One component of CUAs’ executive function is *maintaining and leveraging high-quality professional relationships* across the institution. Each participant’s position solicitation or description included an expectation that CUA will *build* or *develop* relationships with *key* or *senior* university leaders, though no description of these relationships’ desired outcomes is articulated. In their qualitative interviews, participants emphasized the necessity of “precinct work”<sup>236</sup> in relationship-building, and relationships themselves, as a form of “soft power.”<sup>237</sup> In discussing how they perceive and experience their influence in practice, participants unanimously cited the critical nature of what one CUA termed “cashing in on”<sup>238</sup> or, more plainly, leveraging the soft power accrued through their professional relationships to influence good decision-making by university leaders. As Pearson described, the CUA role and the exercise of extralegal influence, “[are] all about relationships.”<sup>239</sup> Participants agreed that their *extralegal* influence, in particular, is enhanced by high-quality professional relationships. As McCoy illustrated,

A good [CUA], when you walk in the room, the decision-makers are glad you are there. When you walk in, they immediately relax and think ‘oh, thank goodness [my CUA] is here, and [they] are going to help me solve this problem and help manage this load with me.’<sup>240</sup>

High-quality professional relationships do not emerge after delivering a single win or taking one step toward building an effective relationship, according to participants. Instead, relationships take time. According to Fielding, “you cannot build up a reputation overnight. You cannot build up trust overnight. It’s a thousand different conversations and experiences and things until someone finally says, ‘do you know what, I trust this [person].’”<sup>241</sup> Collectively, the participants emphasize diligence and patience in building relationships as a tool to enhance their effective role performance.

235 McCoy, *supra* note 192.

236 Hughes, *supra* note 185.

237 McCoy, *supra* note 192.

238 Fielding, *supra* note 197.

239 Pearson, *supra* note 205.

240 McCoy, *supra* note 192.

241 Fielding, *supra* note 197.

In considering their experience as extralegal influencers, participants clarified the inherent extralegal element of their executive role function. Taken together, participants consider their executive and extralegal influence to accrue and enhance relationships through two focused efforts: *delivering wins* by doing their multifaceted job well and establishing high-quality professional relationships with university leaders and decision-makers. Achieved together, participants suggest these actions serve as a reinforcing cycle for effectively performing the CUA role.

## V. DISCUSSION AND APPLICATION

As lawyers for sprawling and complex enterprises, managers of burgeoning legal teams, and executives with access to prime seats at the tables of university power,<sup>242</sup> this study's findings reveal CUAs have amassed significant capacity for influence at complex research institutions. It is therefore critical for university stakeholders—from faculty and staff seeking the advancement of their priorities to executives receiving CUAs' advice—to understand CUAs' role and influence. This study explored the modern role of CUAs and reveals a new and robust role framework, articulates a first-ever definition of CUAs' influence-rich *executive* role, and highlights significant implications of the expansive CUA role in modern higher education practice.

### A. *A New Conceptual Framework Depicting the Modern Rule of Chief University Attorney*

This study's qualitative data depicts the details of three contemporaneous role functions effective CUAs must fulfill: lawyer, manager, and executive. These results align with the tripartite—but previously undefined—conceptual framework emerging from relevant literature.<sup>243</sup> Because most previous literature relied on anecdotal evidence and dated narratives,<sup>244</sup> this study's results provide new and extensive empirical knowledge about each component of the modern CUA role and their respective implications.

These results propose a detailed role framework that accounts for the complexity of CUAs' modern role, set forth in *Figure 1* and *Figure 2*. First, *Figure 1* illustrates CUAs' three role functions. Its torus shape emphasizes the singular role of CUA and evokes the contemporaneous and inextricable nature of CUAs' functions as lawyer, manager, and executive. The relative area of each function's shaded area on the torus corresponds to the study participants' perceived allocation of time primarily expended in the respective functional areas. The complementary *Figure 2* summarizes the primary components of each CUA role function. These are visually listed outside the torus because the individual components were not revealed to require simultaneous performance by CUAs. Specifically, the results of this study propose that CUAs' *role functions* are inextricable from one another and

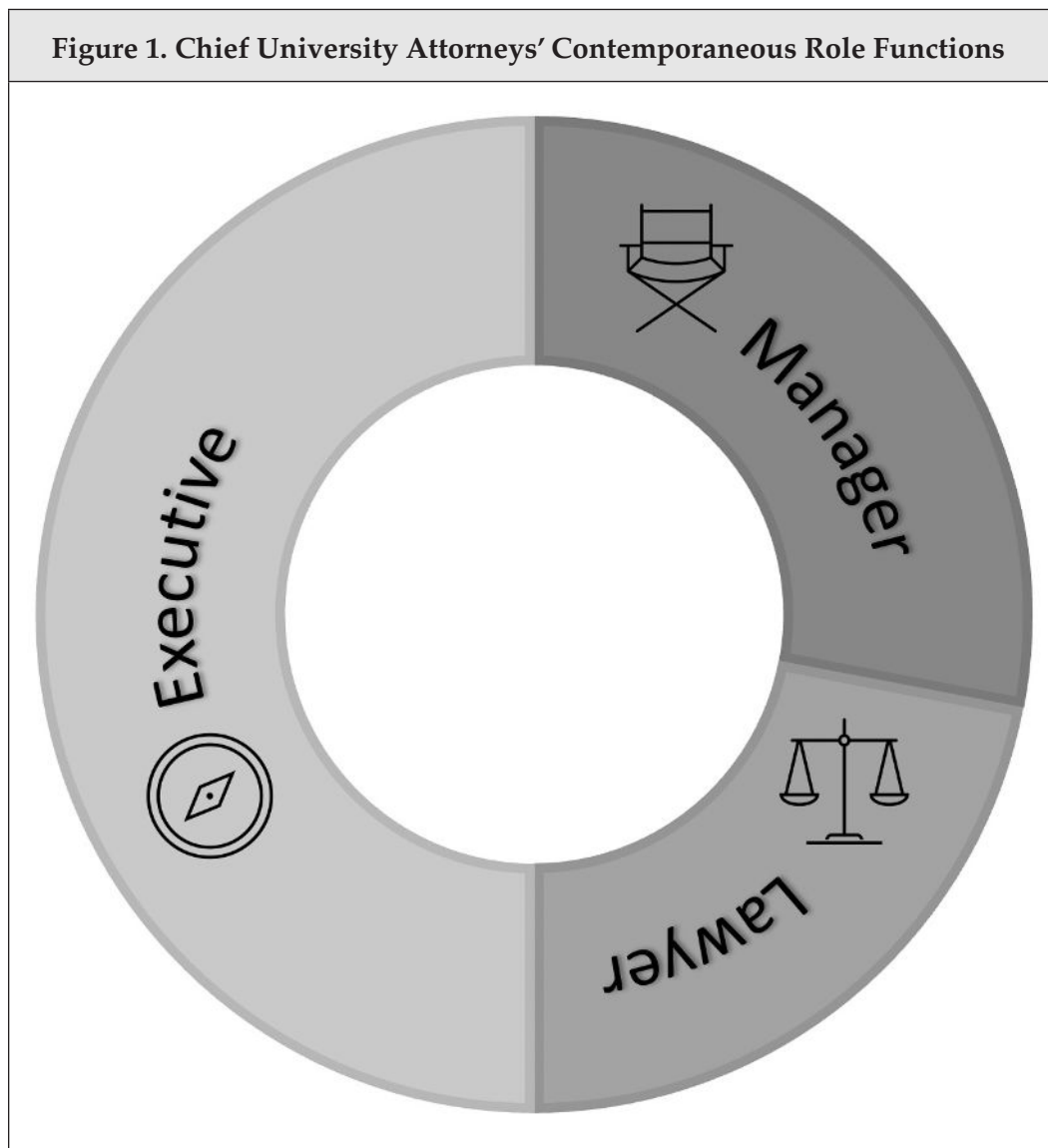
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242 See Jesse, *supra* note 1; Kafka, *supra* note 13.

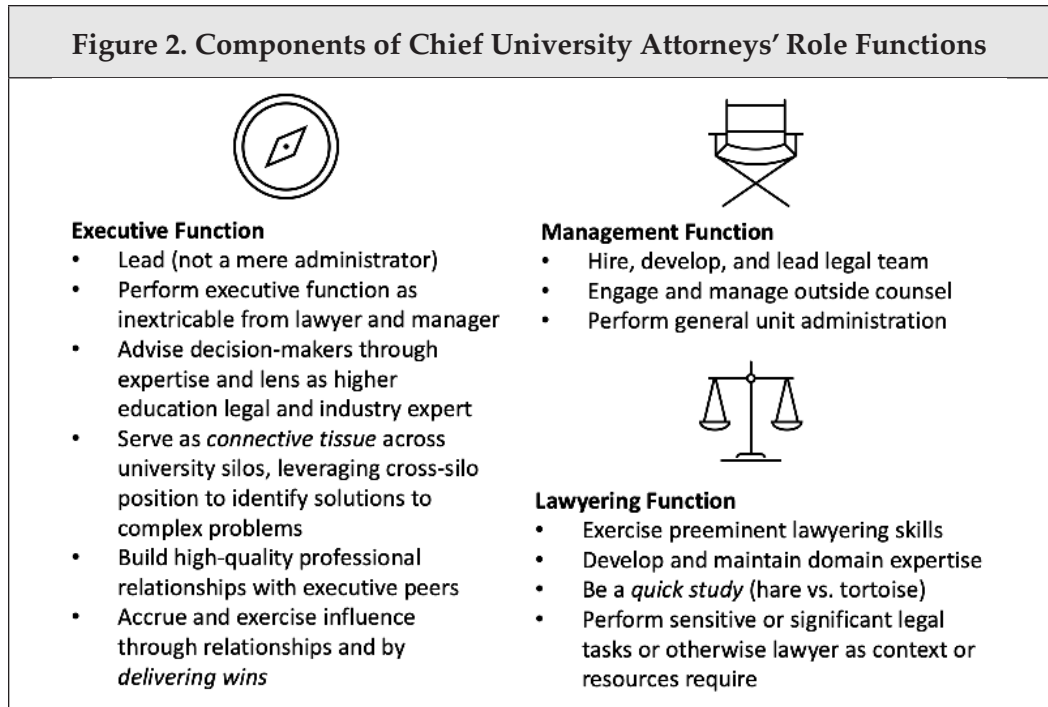
243 See, e.g., Blakemore, *supra* note 9; Dunham & Wessel, *supra* note 9.

244 See, e.g., Bickel & Ruger, *supra* note 10; Daane, *supra* note 11.

conducted contemporaneously, but the results do not suggest that a CUA must always actively perform each component of these functions. For example, CUAs are not necessarily expected to constantly engage in general unit administration and participate in a discrete relationship-building activity. Rather, the inextricable and contemporaneous nature of CUAs' role functions should constantly inform how CUAs perform their role through each component activity—whether, in the context of systems theory, in transforming inputs to outputs, acting as executive boundary spanners, interfacing with the external environment, or performing discrete components of CUAs' role functions within the complex university system or office of legal affairs subsystem.<sup>245</sup>



<sup>245</sup> See Berrien, *supra* note 144; Bess & Dee, *supra* note 9.



The conceptual framework emerging from the results and depicted in *Figure 1* and *Figure 2*—like the systems theory framework guiding this study<sup>246</sup>—is not a predictor of outcomes. Rather, it simply functions to efficiently conceptualize and communicate the findings of this study of a complex university organizational role.<sup>247</sup> That said, this visual representation highlights specific implications of the uncovered role framework. With CUAs devoting significant time to executive and managerial functions, it is no surprise that universities' legal teams are growing<sup>248</sup> to satisfy their traditional lawyering needs. Further, the framework's visual form depicts the cyclical nature of CUAs' work to build and exert influence through lawyering, administration, and broad-scope advising. And finally, the component duty lists—while numerous—reflect the many components competing for modern CUAs' time. As a tool for university stakeholders, this framework may be utilized by decision-makers engaging with CUAs, faculty and staff seeking to garner their attention or leverage their influence, presidents managing or hiring their next CUA, and incumbent or aspiring CUAs seeking to develop their skills.

### ***B. A Proposed Definition for Chief University Attorneys' Executive Role Function***

CUAs' evolving "ubiquitous" role<sup>249</sup> is an increasingly scrutinized topic among higher education legal practitioners,<sup>250</sup> and much of their dialog focuses on CUAs'

<sup>246</sup> See Bess & Dee, *supra* note 9.

<sup>247</sup> See *id.*; Robbins & Judge, *supra* note 141.

<sup>248</sup> See Kafka, *supra* note 13.

<sup>249</sup> Bickel & Ruger, *supra* note 10.

<sup>250</sup> E.g., Barnes et al., *supra* note 91; Blakemore et al., *supra* note 90; Blakemore, *supra* note 9; Dunham

previously enigmatic legal-adjacent and extralegal components. In addition to proposing a new CUA role framework, this study—for the first time and through empirical research—proposes a definition of CUAs' executive function:

In their executive role, a CUA serves as a senior university leader with an expertise in higher education law and thorough understanding of the higher education landscape, ably navigating complex and interconnected university interests and structures, maintaining and leveraging high-quality professional relationships, and proactively contributing the product of these competencies and relationships to provide and influence decision-makers with timely, reliable, and useful advice spanning the domain of university concerns.

This proposal emerges from the rich qualitative data provided by this study's participating CUAs, together with a thorough review of literature exploring the role of university lawyers. It incorporates sweeping elements of leadership, essential competencies, interpersonal skills, and an ability to counsel and engage with decision-makers on an array of consequential university concerns. Each component of this proposed definition is robustly described in this study's *Findings* section, and this comprehensive definition should be considered, tested, and incumbents' performance analyzed, through its component parts. Role incumbents, aspirants, and higher executive leaders and scholars should continue to refine and enhance this definition for the benefit of other CUAs and university leaders.

### *C. Additional Implications for Practice*

This study's results, including the CUA role framework, definition of CUAs' executive function, and themes emerging from CUAs' experiences as executive and extralegal influencers, pose additional implications for higher education practitioners and scholars. In higher education practice, this study's emerging CUA role framework provides university constituents a new framework for understanding their lawyers' impact—legal and extralegal—on university operations, decision making, and even institutional values. Constituents may, based on this study's results, adopt new methods for engaging lawyers as problem solvers, connective tissue, or influential advocates. Or they may assess the expansive influence of these nonacademic executives as misaligned in some way and seek opportunities to challenge their extralegal impact. CUAs' fellow executives may utilize these results to better utilize their lawyers—whether in fulfilling their *lawyering* or other *executive* needs. Governing boards, presidents, and search committees may apply this framework to develop stronger CUA position solicitations and descriptions, assess applicants, measure incumbents' performance, and determine the resources needed to operate an effective in-house legal enterprise.

CUA practitioners may utilize the role framework other findings documented in this study to adapt their practices with the broad, empirically derived role of CUA revealed in this study. They may apply these results to assess their performance

and effectiveness holistically and within each of the three CUA role functions. Such analyses can reveal opportunities for growth and direct a personalized professional development agenda. In leading their legal affairs teams, CUAs may adapt the conceptual framework and themes emerging from this study to articulate and implement office-wide principles for delivering legal advice in a relevant and effective way. Aspiring CUAs may lean on these findings to guide their development for CUA roles. In these ways, this study produced a new resource for college lawyers to measure their approach to the CUA role and direct their professional growth.

Finally, scholars may rely on this research as a foundation to further inquiry. While this study reveals *what* a complex and influential role CUAs perform and *why* that role matters to campus stakeholders, the results prompt further inquiry. What qualifies or prepares these nonacademic professionals for highly influential roles within the academy? How should CUA search practices be aligned to account for the legal complexities and extralegal implications of the modern CUA role? How do CUAs develop the sort of relationships this study reveals are essential to performing their modern role? And are the results of CUAs' extralegal access and influence leading to positive or negative outcomes for the universities they serve?

## VI. CONCLUSION

This study explored the role of CUA and sought to understand the three role functions suggested, but not empirically explored, by preceding literature: lawyer, manager, and executive.<sup>251</sup> Through the cases of six incumbent CUAs, including their individual experiences and perceptions of their role, a new and robust role framework emerged that technically defines and visually depicts these three functions within a single role and details the primary components of each contemporaneous function. Further, this study's results proffered the first empirically driven definition of CUAs' emerging executive—and frequently extralegal—role. Incumbents, aspirants, and other higher education leaders should examine, challenge, and build on this proposed definition.

CUAs' expansive modern role has been described as wielding significant "power."<sup>252</sup> Incumbents in this study may challenge that view, insisting their power is *soft* or that they merely have access to influence without decision-making authority. Nonetheless, their access and influence are now visible in matters of significance to university stakeholders.<sup>253</sup> When presidents and other leaders next consider the weight of political and legislative forces in university decision-making, the value and associated risks of academic freedom and free speech, and the core academic and research mission of their institutions, recent anecdotal evidence and this study reveal that the university lawyers may play a critical role in shaping the president's decisions. Understanding their role is therefore critical, and this study's results represent a step forward in uncovering that knowledge.

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251 See, e.g., Bickel (1974), *supra* note 10; Blakemore, *supra* note 9; Daane, *supra* note 11; Dunham & Wessel, *supra* note 9.

252 Jesse, *supra* note 1, ¶ 3.

253 See Jesse, *supra* note 1; Kafka, *supra* note 13.