

## Chapter 16

# “I Object!” Overcoming Obstacles Between Organizational Researchers and Legal Advisors

Kevin J. Eschleman, David Amaya, and Stephanie Swindler

**Abstract** There are unique obstacles that face researchers when a health intervention has full endorsement of senior leadership. Full endorsement results in the availability of all organizational resources, which often include experts in an array of disciplines. With these resources come high expectations, strict timelines, competing goals, and differing concerns that may lead to unforeseen deviations to the initial intervention strategy. We have found that one of the biggest hurdles to overcome in this process is attaining the intervention endorsement from the legal advisor. Thus, this chapter will focus on the communication obstacles encountered between organizational researchers and legal advisors. The lessons learned involve the necessity for a better understanding of the legal advisors’ goals and common legal issues.

**Keywords** Well-being • Stress • Intervention • Military • Air Force • Legal

### 16.1 Intervention Overview

Organizational researchers are often asked to apply psychological theories to provide a quick and effective intervention to extinguish a growing organizational concern – or to “put out fires.” Organizational researchers were tasked to incorporate advances in research regarding psychological health and technology to promote a more healthy and resilient workforce. Among the topics reviewed were advances

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K.J. Eschleman, PhD (✉)

Department of Psychology, San Francisco State University, San Francisco, CA, USA  
e-mail: kesch@sfsu.edu

D. Amaya, JD

Fisher & Phillips, LLP, San Diego, CA, USA  
e-mail: damaya@laborlawyers.com

S. Swindler, PhD

Air Force Research Laboratory, Wright-Patterson AFB, OH, USA  
e-mail: steph\_swindler@yahoo.com

in individual-level resilience (e.g., Eschleman et al. 2010), community-level resilience (e.g., Norris et al. 2008), resilience training (e.g., Reivich et al. 2011), suicide in a military context (e.g., Knox et al. 2003), and health promotion computer applications (e.g., Brainlinemilitary 2013). The intervention was to be implemented across most departments within a very large organization – potentially influencing over one hundred thousand employees to varying degrees. This effort was at the direct request of senior leadership and given high priority. The scope of the intervention was intentionally broad to provide flexibility for the researchers to create an innovative approach. A short-term timeline of 12–18 months was assigned by senior leadership to complete the initial stages of the intervention (i.e., idea generation, protocol development, and pilot study).

Early stages in the intervention included the identification of all stakeholders within the organization. In addition to senior organizational leaders, the stakeholders included department leaders that have implemented smaller interventions or conducted research relevant to linking resilience and technology theories. We also relied upon industry and academic professionals who we identified as subject matter experts. A multiday brainstorming workshop was held to identify potential interventions, such as a large-scaled data mining effort to identify warning signs of poor well-being, implementation of a 360° performance evaluation tool that included factors of “fostering well-being” as performance criteria, development of a computer application to increase self-awareness of well-being, and placement of health advisors into high-risk operation facilities. Unfortunately, prior to implementing the pilot studies, we experienced a major timeline setback because of our team’s inability to efficiently integrate the views of organizational researchers and legal advisors. Without approval from the legal advisors, the intervention would not proceed.

## **16.2 A Self-Audit from an Organizational Researcher’s Perspective**

A better awareness of the potential questions and obstacles encountered would have saved considerable time and improve the working relationships between organizational researchers and legal advisors. Several questions were developed in hindsight and based on both successful and unsuccessful efforts made to improve communication from the organizational researcher’s perspective.

### ***16.2.1 When Should the Legal Advisors Be Brought In?***

Early in the idea generation phase we began discussions with the legal advisors associated with the organization. We acknowledged that any innovative intervention would require extensive vetting with the legal advisors to ensure the organization followed the necessary steps to avoid privacy violations, adhere to ethical standards,

was between the legal advisors' adherence to legal guidelines and organizational researchers' emphasis to provide an ethical intervention. Once this overlap was identified, we experienced a more respectful and collaborative working environment and saved time by exchanging notes.

The question pertaining to conflicting goals is analogous to issues pertaining to labor relations and unions. In organizations where unions are quite powerful, well-being interventions are often paralyzed because the intervention involves modifying part of a negotiated collective bargaining agreement. As a result, unions need to be highly involved in the intervention and become strategic stakeholders. Every major model of stress interventions specifies the importance of involving key stakeholders (e.g., Bauer and Jenny 2013; Giga et al. 2003; LaMontagne et al. 2007), which may include union leaders or union legal representatives.

### ***16.2.3 What Questions Will Legal Advisors ask?***

Organizational researchers often have limited interaction with legal advisors, which was the case with the primary investigator of this intervention. Prior to meeting with the legal advisors for the first time, the organizational researchers were left guessing what questions the legal advisors may ask. To better prepare organizational researchers for the initial meeting with legal advisors, we also provide questions from a legal advisor's perspective. They provide a general overview of potential legal issues raised by an intervention. It is important to remember that laws vary by country, state, county, and city, and interventions will ultimately have to comply with the applicable legal environment.

## **16.3 A Self-Audit from a Legal Advisor's Perspective**

### ***16.3.1 Who Are the Key Players and How Much Will They Know?***

The researcher should determine who are the essential people who need to be involved with the intervention. Because the intervention may reveal information that the company may not otherwise know about certain employees, the dissemination of that information should be limited to only those people within the organization who absolutely need to know the information. Informing the legal advisor that you understand the importance of keeping the information confidential should help alleviate any fears that the results will open the company up to undesired legal exposure.

Some organizations have policy or standard practice not to break results down or report results for groups of fewer than five individuals; only aggregate results are reported to stakeholders. These practices help protect the identity of employees.

In the aforementioned example, the organization had an unofficial practice similar to this. However, the stakeholders of the intervention were considering reporting the results at the individual employee level. If individual employee results will be reported, organizational researchers should be prepared to identify who will and will not have access to the results.

Obviously, revealing data about individuals may raise concerns – especially if the data contains information within the sensitive areas of inquiry. Developing steps to ensure the confidentiality of the information and appropriate dissemination of the information is a good practice and will be appreciated by the legal advisor.

### ***16.3.2 What Are the Sensitive Areas of Inquiry?***

The researcher needs to consider what type of data he or she plans to collect in the intervention. The researcher should consider whether the intervention would obtain information regarding employees' age, disability status, medical condition status, race and color, nationality, religion, marital status, sexual orientation, gender, military service, or any other specific category. Depending on the state or country in which the company is located and the intervention is conducted, the employees may be protected against discrimination and harassment based on some or all of these categories, or other categories not mentioned here. If so, the researcher should be prepared to discuss why the information is needed and who will have access to this information.

Only the minimum necessary amount of demographic information should be requested/ collected by the researchers. Unique combinations of demographics can be used to identify an employee's identity and provide an opportunity for mistreatment toward an employee. For example, organizational researchers assessing burnout and depression levels amongst their employees may also assess age, race, marital status, and gender. Regardless of the size of the organization, the unique combination of these demographics (e.g., 35 years old, Latino, divorced, male) may enable a supervisor to presume the identity of one of the employees.

### ***16.3.3 Are There Privacy Concerns?***

Privacy concerns are raised when you are seeking access to information about a company's employees. Privacy law can involve an intricate web of federal and state laws. For example, the Fourth Amendment to the United States Constitution, federal statutes, the California Constitution and statutes, and common-law privacy rights protect employee privacy in California. Written employment policies, handbooks, and collective bargaining agreements may also contain representations that certain information provided by the employee will be used for a particular purpose or maintained in confidence.

It is important for an organizational researcher to assess whether their intervention will raise potential privacy concerns (hint: it probably will). At the outset, the

researcher should try to determine the organization's applicable privacy policies and their scope (e.g., computer use policy). This will allow the researcher to get a better sense of what areas of inquiry are off-limits based solely on the organization's policies. Also, keep in mind that areas that are generally off limits without an employee's consent are medical information, financial information, and criminal backgrounds. The legal advisor will also appreciate it when the researcher has taken the time to articulate a compelling reason that supports any intrusion on the employees' privacy. In articulating this reason, the researcher should consider why obtaining the information will benefit the organization and the employees.

### ***16.3.4 Will the Intervention Include Medical Examinations?***

Generally speaking, an employee may not be required to undergo a medical examination. Therefore, it is important for the researcher to assess whether the legal advisor may perceive their proposed intervention as a medical examination. Legally, a medical examination is considered to be a procedure or test that seeks information on an individual's physical or mental impairment or health. When determining if a test or procedure is a medical examination, an organizational researcher should consider the following:

- Does a healthcare professional administer the test?
- Does a healthcare professional interpret the test?
- Is the test designed to reveal a physical or mental health impairment?
- Is the test invasive?
- Does the test measure an employee's performance of a task or measure his/her physiological responses to performing a task?
- Is the test normally given in a medical setting?
- Is medical equipment used?

Overall, we believe the interactions between organizational researchers and legal advisors to be an essential factor to a successful and timely intervention. We hope this self-audit and the awareness of our challenges will help organizational researchers develop collaborative working relationships with legal advisors and implement successful large-scale organizational health interventions.

#### **Key Messages**

- Legal advisors should be incorporated into an intervention effort during the idea generation phase to foster a collaborative working relationship.
- Organizational stress and health researchers and legal advisors should recognize that they share a common goal of adhering to ethical principles.
- Legal advisors are likely to ask about key players, sensitive areas of inquiry, dissemination of information, privacy concerns, and use of medical examinations or related testing methods.

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