

Comment from Senior Fellow Richard J. Pierce, Jr. on *Contractors in Rulemaking*
April 11, 2022

I am strongly opposed to any recommendation that agencies should refrain from using contractors to perform any functions except those that are IGFs. We do not have anything like the understanding of the effects of the widely varying practices of hundreds of agencies required to have a basis for any such recommendation.

Here is one example of the potential value of a contractor. In response to great pressure from the university president, the then-dean of GW Law decided to adopt a five-year strategic plan. 7 years later, the faculty had made no progress on that project. In response to a mandate from the president that we adopt such a plan, the new dean decided to adopt a strategic plan this year. Over the objection of many (me included), she hired a consulting firm to aid in the process. Next friday, the faculty will vote on whether to adopt the resulting 35-page plan. It includes numerous goals, a calendar that establishes temporal priorities for attaining each goal, and metrics to determine how we are progressing with respect to each goal. I expect the vote to be unanimous in support of the plan.

I was absolutely wrong to oppose the use of a contractor to assist us in this process. Without them we made no progress in 7 years. With them we completed the process in 7 months. The contractor performed many tasks, including gathering data, scheduling and running meetings, getting feedback from all affected constituencies, and initial drafting. They were careful never to cross the line into decision making. Both decisionmaking and the final choice of wording was entirely up to a 10-person committee, informed by the comprehensive input and feedback that the contractor obtained from the entire faculty, staff, student body, and alumni.

I learned my lesson. Contractors can play a wide variety of extraordinarily important roles, including drafting, that allow an institution to make decisions expeditiously without depriving the institution of its critical decision making role. We should not get in the way of agency use of contractors to help them further their missions.

Richard J. Pierce, Jr.