

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

CHERYL BUTLER,	§	
	§	
Plaintiff,	§	
	§	CIVIL ACTION NO. 3:18-CV-00037-E
v.	§	
	§	
JENNIFER M. COLLINS, STEVEN C. CURRAL, JULIE FORRESTER ROGERS, HAROLD STANLEY, AND SOUTHERN METHODIST UNIVERSITY,	§	
	§	
Defendants.	§	
	§	

**APPENDIX IN SUPPORT OF
PLAINTIFF’S OPPOSITION TO SUMMARY JUDGMENT**

Pursuant to Federal Rule of Civil Procedure 56 and Local Rule 56.6, Professor Butler submits the following appendix in support of Plaintiff’s Opposition to Summary Judgment:

DOCUMENT TYPE	DESCRIPTION	APPENDIX PAGE
RULES		1
AAUP Statement	Statement on Government of Colleges and Universities	2–8
TENURE BOX		10
Email	Butler and Collins—Curriculum Vitae 8/12/15	11
Email	Butler and Norton—Curriculum Vitae 9/2/15	12
	Encl. Curriculum Vitae	13–29
	Anderson and Butler—Tenure box deadline set by Collins 10/24/15	30–31

Email	Butler and Norton—Tenure box contents 9/6/15	32
	Encl. Promotion and Tenure Checklist	33–34
Email	Norton and Collins—Items in tenure box 9/5/15	35
TEACHING		36
Email	Butler and Norton—Supplemental items to be considered for teaching at tenure 9/7/15	37
	Encl. Norton Memo “Asst. Prof. Cheryl Butler Additional Supporting Factors as to Teaching”	38–44
Email	Butler and Cortez—Teaching Eval 9/16/15	45
Email	Buter and Satz—Teaching Eval 8/14/15	46
Email	Bynum and Collins—Student Eval 10/13/15	47
Letter	Soluto—Student Eval 10/9/15	48
Email	Butler and Norton—Teaching Award 4/19/14	49–50
Email	Butler and Norton—Positive Recollection of Contract Renewal Eval of Teaching 4/20/14	51–53
Email	Butler and Collins—Timeliness of Grades 9/30/15	54
Email	Butler and Collins—Student Eval Bias 9/22/15	55
Email	Butler and Norton—Concern that Colleagues Have only Observed Torts 9/4/15	56–57
FIRST TENURE COMMITTEE		58
Email	Butler and Nelson—Butler is a “Good Teacher”; First Committee formed late and disbanded 9/8/13	59–60
SECOND TENURE COMMITTEE		61
Email	Norton and Collins—Disparagement of Butler 9/19/15	62
Email	Butler, Thomas, and Collins—Systemic (not individual) Bias Concerns 9/22/15	63
Email	Butler, Thomas, and Collins—Follow Up on Bias Concerns 9/22/15	64
Email	Norton and Butler—Anxiety about tenure in light of status as a minority woman 4/20/14	66
Email	Butler, Thomas, and Collins—Resignation of Second Committee 9/22/15	65–70
Email	Collins and Butler—Request for Intercession re past inequities in tenure process 9/15/15	71–72
Email	Butler and Norton—Butler appreciates Norton’s work 9/16/15	73
Email	Collins and Butler—Request for Tenure Report 1/26/16	74

Email	Norton and Butler—Second Committee to review “Concerns” memo 9/13/15	75–76
Email	Norton and Collins—Norton claims Butler has accused Second Tenure Committee of negligence 9/13/15	77
Email	Norton and Collins—Norton anticipates a “lawsuit” 9/15/15	78
THIRD TENURE COMMITTEE		79
Deposition	Roy Anderson	80–87
Email	Norton to Anderson—Committee Transition 9/27/15	88
Email	Collins and Butler—OIAE and Tenure Committee Roles in Investigating Discrimination 10/1/15	89
Email	Anderson, Collins, and Norton—Third Tenure Claimed reliance on STC’s Work 10/2/15	90
FACULTY VOTE		91
Email	Anderson and Collins—Setting January 2016 Vote 10/28/15	92–93
Email	Collins and Butler—Explaining Timing of Faculty Vote 8/13/15	94
Email	Walters and Collins—Forward of Butler request to SMU Police 2/2/16	95
	Original email: Butler and Collins—Request for Tenure Report 2/2/16	95–96
Email	Butler and Collins—Request for Tenure Report for purposes of Appeal 1/26/16	97
DEAN VOTE		98
Email	Butler and Norton (cc Collins)—Explanation about 2014 Torts Exam 7/30/15	99–104
VICE PROVOST VOTE		105
Email	Collins and Eads: Discussing delay in transmitting Butler tenure file on advice of “university counsel’s office” 2/19/16	106
TENURE CLOCK EXTENSION		107
Email	Collins and Eads—Inquiry re Tenure Extension Clock Rule 10/16/15	108

Email	Stanley and Collins—Backchanneling re Tenure Clock Extension Rule 10/21/15	109–10
Email	Butler, Stanley, and Collins—Request for Tenure Clock Extension 11/3/15	111
Letter	Stanley to Butler—Demanding “more particularized request” 11/4/15	112
Letter	Stanley to Butler—Denying Tenure Clock Extension 11/10/15	113–14
Email	Butler and Collins—Extension as Reasonable Accommodation Requested 11/10/15	115–16
FMLA AND DISABILITY ISSUES		117
Letter	Butler to Adams—Forty-one page memo from Butler to Adams memorializing FMLA claims and struggles dated 12/18/15	118–58
Email	Butler and Collins—Consideration of FMLA and ADA in Tenure Appeal 1/29/16	159–64
Email	Collins and Anderson—Discussing Merits of Butler’s ADA requests and IAE Complaints with Second Tenure Committee 12/24/15	165–69
Email	Anderson and Collins—Collins directs Third Tenure Committee to proceed with tenure during FMLA Leave 12/24/15	170–71
Email	Collins and Butler—FMLA Leave Concerns and Request for Medical Documentation and Gossip about “tenure was in jeopardy” 6/22/15	172–77
Email	Collins, Butler, and Adams—Re: Grades and FMLA 6/17/15	178–79
Email	Collins and Thornburg—Discussing possible leak of FMLA leave 6/22/15	180–81
Email	Collins and Adams: Dean demanding FMLA verification and casting doubt on veracity of Butler’s FMLA request 6/16/15	182–84
Email	Collins and Strese—Collins asking if she can demand medical documentation from Butler to prove FMLA labeling requests as “ongoing problem with this faculty member” 6/12/15	185–86
Email	Thornburg and Collins—Opining HR or Legal Counsel should be consulted re Butler FMLA requests 6/12/15	187
Email	Thornburg and Collins—Discussing merits of forwarded request from Butler FMLA leave 6/12/15	188–89

Email	Thornburg and Collins—Discussing Butler Medical Accommodation 1/8/15	190–91
Email	Collins and Butler—Accusations that Butler is Violating ADA Policy 4/27/16	192–93
Email	Collins and Butler: Collins directing Butler to work while sick and on leave 4/29/16	194–95
Email	Collins and Butler: Collins demand that Butler respond daily to emails while on leave 4/6/16	196–97
Form	Butler’s Documentation of Disability Form 1/1/16	198–99
Form	Butler’s Employee Reasonable Accommodation Request 1/1/16	200–01
Email	Collins and Butler: Claiming no notice of accommodations request 4/5/16	202–03
Email	Collins and Butler: Request that Butler work during leave 3/4/16	204–05
Email	Collins and Butler: Request that Butler work during leave 2/29/16	206
Email	Collins and Butler: Explicit requests that Butler work during FMLA leave 2/25/16	207
MISC. BIAS COMPLAINTS		208
Email	Butler: Reporting bias incident with student in Torts 4/2/15	209
Email	Butler: Reporting bias incident with student in Torts, dismissed by Thornburg and Collins notified 2/18/15	210–12
Email	Butler to Collins: Concern that Collins conducted “one sided investigation” 2/12/16	213–14
MISC. RACE		215
Email	Collins: Fwd Butler 2010 application flagged as “Minority Candidate” 2/13/2018	216–17
Email	Collins to Walters: Collins passing on Butler email to SMU Chief of Police 3/7/16	218–19
DECLARATIONS		220
Dr. Shubha Gohsh		221–231
Ex. A: Curriculum vitae		232–63
Ex. B: Syracuse University College of Law profile		264–68
Ex. C: Bias Email		269–72
Ex. D: Documentation of Bias Incident		273–88
Professor Cheryl Butler		289–301

Dated: February 19, 2022

Respectfully submitted,

/s/ Ezra Young

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PROFESSOR CHERYL BUTLER

CERTIFICATE OF SERVICE

I hereby certify that on February 19, 2022, I electronically filed a copy of the foregoing with the Clerk of Court by using the CM/ECF system, which will automatically serve all counsel of record.

/s/ Ezra Young

Ezra Ishmael Young

NY Bar No. 5283114

RULES

Government of Colleges and Universities

Statement on Government of Colleges and Universities

Editorial Note: The statement which follows is directed to governing board members, administrators, faculty members, students, and other persons in the belief that the colleges and universities of the United States have reached a stage calling for appropriately shared responsibility and cooperative action among the components of the academic institution. The statement is intended to foster constructive joint thought and action, both within the institutional structure and in protection of its integrity against improper intrusions.

It is not intended that the statement serve as a blueprint for governance on a specific campus or as a manual for the regulation of controversy among the components of an academic institution, although it is to be hoped that the principles asserted will lead to the correction of existing weaknesses and assist in the establishment of sound structure and procedures. The statement does not attempt to cover relations with those outside agencies which increasingly are controlling the resources and influencing the patterns of education in our institutions of higher learning; e.g., the United States government, the state legislatures, state commissions, interstate associations or compacts, and other interinstitutional arrangements. However, it is hoped that the statement will be helpful to these agencies in their consideration of educational matters.

Students are referred to in this statement as an institutional component coordinate in importance with trustees, administrators, and faculty. There is, however, no main section on students. The omission has two causes: (1) the changes now occurring in the status of American students have plainly outdistanced the analysis by the educational community, and an attempt to define the situation without thorough study might prove unfair to student interests, and (2) students do not in fact at present have a significant voice in the government of colleges and universities; it would be unseemly to obscure, by superficial equality of length of statement, what may be a serious lag entitled to separate and full confrontation. The concern for student status felt by the organizations issuing this statement is embodied in a note, "On Student Status," intended to stimulate the educational community to turn its attention to an important need.

This statement was jointly formulated by the American Association of University Professors, the American Council on Education, and the Association of Governing Boards of Universities and Colleges. In October 1966, the Board of Directors of the ACE took action by which the Council "recognizes the statement as a significant step forward in the clarification of the respective roles of governing boards, faculties, and administrations," and "commends it to the institutions which are members of the Council." The Council of the AAUP adopted the statement in October 1966, and it was endorsed by the Fifty-third Annual Meeting in April 1967. In November 1966, the Executive Committee of the AGB took action by which that organization also "recognizes the statement as a significant step forward in the clarification of the respective roles of governing boards, faculties, and administrations," and "commends it to the governing boards which are members of the Association." (In April 1990, the Council of the AAUP adopted several changes in language in order to remove gender-specific references from the original text.)

I. INTRODUCTION

This statement is a call to mutual understanding regarding the government of colleges and universities. Understanding, based on community of interest, and producing joint effort, is essential for at least three reasons. First, the academic institution, public or private, often has become less autonomous; buildings, research, and student tuition are supported by funds over which the college or university exercises a diminishing control. Legislative and executive governmental authorities, at all levels, play a part in the making of important decisions in academic policy. If these voices and forces are to be successfully heard and integrated, the academic institution must be in a position to meet them with its own generally unified view. Second, regard for the welfare of the institution remains important despite the mobility and interchange of scholars. Third, a college or university in which all the components are aware of their interdependence, of the usefulness of communication among themselves, and of the force of joint action will enjoy increased capacity to solve educational problems.

II. THE ACADEMIC INSTITUTION: JOINT EFFORT

A. Preliminary Considerations

The variety and complexity of the tasks performed by institutions of higher education produce an inescapable interdependence among governing board, administration, faculty, students, and others. The relationship calls for adequate communication among these components, and full opportunity for appropriate joint planning and effort.

Joint effort in an academic institution will take a variety of forms appropriate to the kinds of situations encountered. In some instances, an initial exploration or recommendation will be made by the president with consideration by the faculty at a later stage; in other instances, a first and essentially definitive recommendation will be made by the faculty, subject to the endorsement of the president and the governing board. In still others, a substantive contribution can be made when student leaders are responsibly involved in the process. Although the variety of such approaches may be wide, at least two general conclusions regarding joint effort seem clearly warranted: (1) important areas of action involve at one time or another the initiating capacity and decision-making participation of all the institutional components, and (2) differences in the weight of each voice, from one point to the next, should be determined by reference to the responsibility of each component for the particular matter at hand, as developed hereinafter.

B. Determination of General Educational Policy

The general educational policy, i.e., the objectives of an institution and the nature, range, and pace of its efforts, is shaped by the institutional charter or by law, by tradition and historical development, by the present needs of the community of the institution, and by the professional aspirations and standards of those directly involved in its work. Every board will wish to go beyond its formal trustee obligation to conserve the accomplishment of the past and to engage seriously with the future; every faculty will seek to conduct an operation worthy of scholarly standards of learning; every administrative officer will strive to meet his or her charge and to

attain the goals of the institution. The interests of all are coordinate and related, and unilateral effort can lead to confusion or conflict. Essential to a solution is a reasonably explicit statement on general educational policy. Operating responsibility and authority, and procedures for continuing review, should be clearly defined in official regulations.

When an educational goal has been established, it becomes the responsibility primarily of the faculty to determine appropriate curriculum and procedures of student instruction.

Special considerations may require particular accommodations: (1) a publicly supported institution may be regulated by statutory provisions, and (2) a church-controlled institution may be limited by its charter or bylaws. When such external requirements influence course content and manner of instruction or research, they impair the educational effectiveness of the institution.

Such matters as major changes in the size or composition of the student body and the relative emphasis to be given to the various elements of the educational and research program should involve participation of governing board, administration, and faculty prior to final decision.

C. Internal Operations of the Institution

The framing and execution of long-range plans, one of the most important aspects of institutional responsibility, should be a central and continuing concern in the academic community.

Effective planning demands that the broadest possible exchange of information and opinion should be the rule for communication among the components of a college or university. The channels of communication should be established and maintained by joint endeavor. Distinction should be observed between the institutional system of communication and the system of responsibility for the making of decisions.

A second area calling for joint effort in internal operation is that of decisions regarding existing or prospective physical resources. The board, president, and faculty should all seek agreement on basic decisions regarding buildings and other facilities to be used in the educational work of the institution.

A third area is budgeting. The allocation of resources among competing demands is central in the formal responsibility of the governing board, in the administrative authority of the president, and in the educational function of the faculty. Each component should therefore have a voice in the determination of short- and long-range priorities, and each should receive appropriate analyses of past budgetary experience, reports on current budgets and expenditures, and short- and long- range budgetary projections. The function of each component in budgetary matters should be understood by all; the allocation of authority will determine the flow of information and the scope of participation in decisions.

Joint effort of a most critical kind must be taken when an institution chooses a new president. The selection of a chief administrative officer should follow upon cooperative search by the governing board and the faculty, taking into consideration the opinions of others who are appropriately interested. The president should be equally qualified to serve both as the executive

officer of the governing board and as the chief academic officer of the institution and the faculty. The president's dual role requires an ability to interpret to board and faculty the educational views and concepts of institutional government of the other. The president should have the confidence of the board and the faculty.

The selection of academic deans and other chief academic officers should be the responsibility of the president with the advice of, and in consultation with, the appropriate faculty.

Determinations of faculty status, normally based on the recommendations of the faculty groups involved, are discussed in Part V of this statement; but it should here be noted that the building of a strong faculty requires careful joint effort in such actions as staff selection and promotion and the granting of tenure. Joint action should also govern dismissals; the applicable principles and procedures in these matters are well established. (See the 1940 Statement of Principles on Academic Freedom and Tenure, and the 1958 *Statement on Procedural Standards in Faculty Dismissal Proceedings*, *Academe* 76 [May-June 1990]: 44. These statements have been jointly adopted by the Association of American Colleges and the American Association of University Professors; the 1940 *Statement* has been endorsed by numerous learned and scientific societies and educational associations.)

D. External Relations of the Institution

Anyone -- a member of the governing board, the president or other member of the administration, a member of the faculty, or a member of the student body or the alumni -- affects the institution when speaking of it in public. An individual who speaks unofficially should so indicate. An individual who speaks officially for the institution, the board, the administration, the faculty, or the student body should be guided by established policy.

It should be noted that only the board speaks legally for the whole institution, although it may delegate responsibility to an agent.

The right of a board member, an administrative officer, a faculty member, or a student to speak on general educational questions or about the administration and operations of the individual's own institution is a part of that person's right as a citizen and should not be abridged by the institution. (With respect to faculty members, the 1940 *Statement of Principles on Academic Freedom and Tenure* reads: "College and university teachers are citizens, members of a learned profession, and officers of an educational institution. When they speak or write as citizens, they should be free from institutional censorship or discipline, but their special position in the community imposes special obligations. As scholars and educational officers, they should remember that the public may judge their profession and their institution by their utterances. Hence they should at all times be accurate, should exercise appropriate restraint, should show respect for the opinions of others, and should make every effort to indicate that they are not speaking for the institution.") There exist, of course, legal bounds relating to defamation of character, and there are questions of propriety.

III. THE ACADEMIC INSTITUTION: THE GOVERNING BOARD

The governing board has a special obligation to ensure that the history of the college or university shall serve as a prelude and inspiration to the future. The board helps relate the institution to its chief community: e.g., the community college to serve the educational needs of a defined population area or group, the church-controlled college to be cognizant of the announced position of its denomination, and the comprehensive university to discharge the many duties and to accept the appropriate new challenges which are its concern at the several levels of higher education.

The governing board of an institution of higher education in the United States operates, with few exceptions, as the final institutional authority. Private institutions are established by charters; public institutions are established by constitutional or statutory provisions. In private institutions the board is frequently self-perpetuating; in public colleges and universities the present membership of a board may be asked to suggest candidates for appointment. As a whole and individually, when the governing board confronts the problem of succession, serious attention should be given to obtaining properly qualified persons. Where public law calls for election of governing board members, means should be found to ensure the nomination of fully suited persons, and the electorate should be informed of the relevant criteria for board membership.

Since the membership of the board may embrace both individual and collective competence of recognized weight, its advice or help may be sought through established channels by other components of the academic community. The governing board of an institution of higher education, while maintaining a general overview, entrusts the conduct of administration to the administrative officers, the president and the deans, and the conduct of teaching and research to the faculty. The board should undertake appropriate self-limitation.

One of the governing board's important tasks is to ensure the publication of codified statements that define the overall policies and procedures of the institution under its jurisdiction.

The board plays a central role in relating the likely needs of the future to predictable resources; it has the responsibility for husbanding the endowment; it is responsible for obtaining needed capital and operating funds; and in the broadest sense of the term it should pay attention to personnel policy. In order to fulfill these duties, the board should be aided by, and may insist upon, the development of long-range planning by the administration and faculty.

When ignorance or ill-will threatens the institution or any part of it, the governing board must be available for support. In grave crises it will be expected to serve as a champion. Although the action to be taken by it will usually be on behalf of the president, the faculty, or the student body, the board should make clear that the protection it offers to an individual or a group is, in fact, a fundamental defense of the vested interests of society in the educational institution.

(Traditionally, governing boards developed within the context of single-campus institutions. In more recent times, governing and coordinating boards have increasingly tended to develop at the multi-campus regional, systemwide, or statewide levels. As influential components of the academic community, these supra-campus bodies bear particular responsibility for protecting the autonomy of individual campuses or institutions under their jurisdiction and for implementing policies of shared responsibility. The American Association of University Professors regards the objectives and practices recommended in the *Statement on Government* as constituting equally

appropriate guidelines for such supra-campus bodies, and looks toward continued development of practices that will facilitate application of such guidelines in this new context. [Preceding note adopted by AAUP's Council in June 1978.]

IV. THE ACADEMIC INSTITUTION: THE PRESIDENT

The president, as the chief executive officer of an institution of higher education, is measured largely by his or her capacity for institutional leadership. The president shares responsibility for the definition and attainment of goals, for administrative action, and for operating the communications system which links the components of the academic community. The president represents the institution to its many publics. The president's leadership role is supported by delegated authority from the board and faculty.

As the chief planning officer of an institution, the president has a special obligation to innovate and initiate. The degree to which a president can envision new horizons for the institution, and can persuade others to see them and to work toward them, will often constitute the chief measure of the president's administration.

The president must at times, with or without support, infuse new life into a department; relatedly, the president may at times be required, working within the concept of tenure, to solve problems of obsolescence. The president will necessarily utilize the judgments of the faculty but may also, in the interest of academic standards, seek outside evaluations by scholars of acknowledged competence.

It is the duty of the president to see to it that the standards and procedures in operational use within the college or university conform to the policy established by the governing board and to the standards of sound academic practice. It is also incumbent on the president to ensure that faculty views, including dissenting views, are presented to the board in those areas and on those issues where responsibilities are shared. Similarly the faculty should be informed of the views of the board and the administration on like issues.

The president is largely responsible for the maintenance of existing institutional resources and the creation of new resources; has ultimate managerial responsibility for a large area of nonacademic activities; is responsible for public understanding; and by the nature of the office is the chief person who speaks for the institution. In these and other areas the president's work is to plan, to organize, to direct, and to represent. The presidential function should receive the general support of board and faculty.

V. THE ACADEMIC INSTITUTION: THE FACULTY

The faculty has primary responsibility for such fundamental areas as curriculum, subject matter and methods of instruction, research, faculty status, and those aspects of student life which relate to the educational process. On these matters the power of review or final decision lodged in the governing board or delegated by it to the president should be exercised adversely only in exceptional circumstances, and for reasons communicated to the faculty. It is desirable that the faculty should, following such communication, have opportunity for further consideration and

further transmittal of its views to the president or board. Budgets, personnel limitations, the time element, and the policies of other groups, bodies, and agencies having jurisdiction over the institution may set limits to realization of faculty advice.

The faculty sets the requirements for the degrees offered in course, determines when the requirements have been met, and authorizes the president and board to grant the degrees thus achieved.

Faculty status and related matters are primarily a faculty responsibility; this area includes appointments, reappointments, decisions not to reappoint, promotions, the granting of tenure, and dismissal. The primary responsibility of the faculty for such matters is based upon the fact that its judgment is central to general educational policy. Furthermore, scholars in a particular field or activity have the chief competence for judging the work of their colleagues; in such competence it is implicit that responsibility exists for both adverse and favorable judgments. Likewise there is the more general competence of experienced faculty personnel committees having a broader charge. Determinations in these matters should first be by faculty action through established procedures, reviewed by the chief academic officers with the concurrence of the board. The governing board and president should, on questions of faculty status, as in other matters where the faculty has primary responsibility, concur with the faculty judgment except in rare instances and for compelling reasons which should be stated in detail.

The faculty should actively participate in the determination of policies and procedures governing salary increases.

The chair or head of a department, who serves as the chief representative of the department within an institution, should be selected either by departmental election or by appointment following consultation with members of the department and of related departments; appointments should normally be in conformity with department members' judgment. The chair or department head should not have tenure in office; tenure as a faculty member is a matter of separate right. The chair or head should serve for a stated term but without prejudice to reelection or to reappointment by procedures which involve appropriate faculty consultation. Board, administration, and faculty should all bear in mind that the department chair or head has a special obligation to build a department strong in scholarship and teaching capacity.

Agencies for faculty participation in the government of the college or university should be established at each level where faculty responsibility is present. An agency should exist for the presentation of the views of the whole faculty. The structure and procedures for faculty participation should be designed, approved, and established by joint action of the components of the institution. Faculty representatives should be selected by the faculty according to procedures determined by the faculty. (The American Association of University Professors regards collective bargaining, properly used, as another means of achieving sound academic government. Where there is faculty collective bargaining, the parties should seek to ensure appropriate institutional governance structures which will protect the right of all faculty to participate in institutional governance in accordance with the *Statement on Government*. [Preceding note adopted by the Council in June 1978.]

The agencies may consist of meetings of all faculty members of a department, school, college, division, or university system, or may take the form of faculty-elected executive committees in departments and schools and a faculty-elected senate or council for larger divisions or the institution as a whole.

Among the means of communication among the faculty, administration, and governing board now in use are: (1) circulation of memoranda and reports by board committees, the administration, and faculty committees, (2) joint *ad hoc* committees, (3) standing liaison committees, (4) membership of faculty members on administrative bodies, and (5) membership of faculty members on governing boards. Whatever the channels of communication, they should be clearly understood and observed.

ON STUDENT STATUS

When students in American colleges and universities desire to participate responsibly in the government of the institution they attend, their wish should be recognized as a claim to opportunity both for educational experience and for involvement in the affairs of their college or university. Ways should be found to permit significant student participation within the limits of attainable effectiveness. The obstacles to such participation are large and should not be minimized: inexperience, untested capacity, a transitory status which means that present action does not carry with it subsequent responsibility, and the inescapable fact that the other components of the institution are in a position of judgment over the students. It is important to recognize that student needs are strongly related to educational experience, both formal and informal. Students expect, and have a right to expect, that the educational process will be structured, that they will be stimulated by it to become independent adults, and that they will have effectively transmitted to them the cultural heritage of the larger society. If institutional support is to have its fullest possible meaning, it should incorporate the strength, freshness of view, and idealism of the student body.

The respect of students for their college or university can be enhanced if they are given at least these opportunities: (1) to be listened to in the classroom without fear of institutional reprisal for the substance of their views, (2) freedom to discuss questions of institutional policy and operation, (3) the right to academic due process when charged with serious violations of institutional regulations, and (4) the same right to hear speakers of their own choice as is enjoyed by other components of the institution.

TENURE BOX

RE: PROFESSOR BUTLER'S VITAE ATTACHED - CORRECTED - FINAL VERSION TO POST

From: "Butler, Cheryl Nelson" </o=smu/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=39329177">
To: "Collins, Jennifer" <jmc@mail.smu.edu>, profjnorton@yahoo.com, "Thornburg, Beth" <ethornbu@mail.smu.edu>, "Martinez, George" <gmartine@mail.smu.edu>
Cc: "Aylesworth, Brenda" <bayles@mail.smu.edu>
Date: Wed, 12 Aug 2015 16:21:18 -0500
Attachments: BUTLER_VITAE_REVISIED FALL 2015 SEPTEMBER VERSION - REVISED AND FINAL.docx (61.66 kB)

Colleagues,

My apologies. Here is the final version. Brenda, please post this version - which includes a correction from the last.

Warm regards,

Cheryl

From: Butler, Cheryl Nelson
Sent: Wednesday, August 12, 2015 4:12 PM
To: Collins, Jennifer; profjnorton@yahoo.com; Thornburg, Beth; Martinez, George
Cc: Aylesworth, Brenda
Subject: RE: PROFESSOR BUTLER'S VITAE ATTACHED

THANX JENNIFER. Colleagues, please see attached.

From: Collins, Jennifer
Sent: Wednesday, August 12, 2015 4:11 PM
To: Butler, Cheryl Nelson; profjnorton@yahoo.com; Thornburg, Beth; Martinez, George
Cc: Aylesworth, Brenda
Subject: RE: PROFESSOR BUTLER'S VITAE ATTACHED

It's not attached.

From: Butler, Cheryl Nelson
Sent: Wednesday, August 12, 2015 4:11 PM
To: profjnorton@yahoo.com; Thornburg, Beth <ethornbu@mail.smu.edu>; Martinez, George <gmartine@mail.smu.edu>; Collins, Jennifer <jmc@mail.smu.edu>
Cc: Aylesworth, Brenda <bayles@mail.smu.edu>
Subject: PROFESSOR BUTLER'S VITAE ATTACHED

Dear Colleagues,

Attached for tenure committee purposes is my most updated vitae.

Brenda, thank you again so much for posting it on the website.

RE: CHERYL BUTLER'S REVISED RESUME AND CORRECTION - HERE IS FINAL VERSION OF UCLA ARTICLE

From: "Butler, Cheryl Nelson" <cnbutler@mail.smu.edu>
To: Prof. Joe Norton <profjnorton@yahoo.com>
Cc: "Thornburg, Beth" <ethornbu@mail.smu.edu>, "Martinez, George" <gmartine@mail.smu.edu>, "Collins, Jennifer" <jmc@mail.smu.edu>, "Weaver, Jessica Dixon" <jdweaver@mail.smu.edu>, "Aylesworth, Brenda" <bayles@mail.smu.edu>
Date: Wed, 02 Sep 2015 23:41:44 -0500
Attachments: BUTLER_VITAE_REVISED FALL 2015 SEPTEMBER VERSION - SEND TO REVIEWERS.docx (64.12 kB); UCLA ARTICLE FOR TENURE REVIEWERS - THIS IS THE FINAL.pdf (794.85 kB)

OK - good news and bad news. Good news is that my Yale piece made a second SSRN Top Ten Download List! Bad news - I just saw this email now. So - [HERE is the final resume](#) and final UCLA article.

BRENDA - can you update THIS version of the vitae to the website.

JOE - please confirm that you have these final documents. The latest version of both the UCLA LAW article and the VITAE have "REVIEWERS" in the name of the document.

Cheryl

From: Butler, Cheryl Nelson
Sent: Wednesday, September 02, 2015 11:32 PM
To: Prof. Joe Norton
Cc: Thornburg, Beth; Martinez, George; Collins, Jennifer; Weaver, Jessica Dixon; Aylesworth, Brenda
Subject: CHERYL BUTLER'S REVISED RESUME AND CORRECTION - HERE IS FINAL VERSION OF UCLA ARTICLE

Colleagues,

Correction - here is the FINAL version of the UCLA article; the Editor in Chief sent me an email tonight indicating that the final VERSION attached included two last edits.

jOE- please confirm receipt of the revised final version.

Also, attached please find my updated CV.

BRENDA, can you please place this latest CV on our website? Please confirm.

Warm regards,

Cheryl Butler

From: Butler, Cheryl Nelson
Sent: Wednesday, September 02, 2015 2:18 PM
To: Prof. Joe Norton
Cc: Thornburg, Beth; Martinez, George; Collins, Jennifer; Weaver, Jessica Dixon

CHERYL NELSON BUTLER

3315 Daniel Avenue
Dallas, Texas 75205
Email: cnbutler@smu.edu
Phone 214-768-2598

ACADEMIC APPOINTMENTS

SOUTHERN METHODIST UNIVERSITY (SMU) DEDMAN SCHOOL OF LAW

Assistant Professor of Law, August 2011 – Present

- Courses
- Podium Lectures: Torts I; Torts II; Employment Discrimination
 - Edited Writing Seminars: Civil Rights/Critical Race Theory
- Awards & Honors
- Outstanding Faculty Leadership Award 2014
Awarded by the SMU Women in Law Association for teaching, advocacy & leadership on women's issues
 - Don Smart Directed Research Award 2014
 - Beverly & David Leonard Faculty Research Award 2011-2014
 - Honorable Mention - SMU Law School Hooding Ceremony 2013:
Acknowledged by Valedictorian as one of the "favorite professors."

Service

- COLUMBIA UNIVERSITY PRESS: Manuscript Reviewer, (Gender & the Law)
- American Association of Law Schools (AALS)
 - SMU's Alternate Delegate - 2016 Annual Meeting
 - Civil Rights Section, Secretary 2014-15; Treasurer 2013-14
 - Minority Section, Member 2013-Present
- Southeastern Association of Law Schools (SEALS)
 - SMU Steering Committee Delegate 2013 – 2014
- Lutie Lytle National Black Women's Law Faculty Workshop
- SMU President's Commission on the Status of Women 2012-Present
 - Membership Chair 2015-17; Campus Climate Co-Chair 2014-16
- SMU Bush Institute, George W. Bush Presidential Center
 - Inaugural SMU Women's Initiative Fellowship Program 2011-2012
- SMU Law School Dean Search Committee 2013-2014
 - Appointed by the University Provost; Successful search
- SMU Crum Residential Commons, Inaugural Faculty Affiliate 2014-2015
- SMU Women's Studies Certificate Program, Advisory Committee, 2013-Present
- SMU Black Law Students Association, Faculty Advisor 2012-Present
- SMU Law Judicial Clerkship Committee 2012-Present
- SMU Law ABA Compliance Committee 2015-2016
- SMU Law Faculty Forum & Endowed Lecturer Committees 2014-2015
- SMU Law Jackson Walker Moot Court Competition Judge 2013

UNIVERSITY OF HOUSTON LAW CENTER

[APG]

Visiting Fellow, Center for Children, Law & Policy, June 2010-May 2011

Assistant Clinical Professor of Law, July 2003-June 2005

Courses:

- Legal Research & Writing I & II
- L.L.M. Legal Writing Seminar

EDUCATION

NEW YORK UNIVERSITY SCHOOL OF LAW, Juris Doctor.

- *N.Y.U. Review of Law & Social Change*, Staff Editor
- Root Tilden Kern Scholar – Three Year Tuition Merit Scholars Program
- Junior Fellow, Center for International Legal Studies Merit Scholars Program
- Research Assistant, Professor Derrick A. Bell (Constitutional Civil Rights)
- Inaugural NAACP LDF / Shearman & Sterling Scholar
- Nelson Mandela National Award, National Black Law Students Association
- Patrick B. Abramson Foundation Award for Public Service
- Merit Scholarship, Black Bar Association of Bronx County

HARVARD UNIVERSITY, A.B., *cum laude*, History & African American Studies.

- *Magna cum laude* honors awarded for senior thesis and coursework in the dual major. Thesis: *Models Worthy of a Great Republic: The Nature and Meaning of Education for Blacks in Washington, D.C., 1800-1870*. Harvard University Archives, Permanent Collection
- Harvard College Nominee, John Marshall National Scholarship
- Ellen A. Barr Award for Character & Academic Excellence
- Elizabeth Cary Agassiz Award (for Academic Distinction)
- Undergraduate Research Fellowship, Radcliffe Institute for Advanced Study

PUBLICATIONS

1. *The Racial Roots of Human Trafficking*, 62 **UCLA LAW REVIEW** 1464 (2015)(51 pages)(Symposium contribution invited by UCLA Law faculty).

Featured on:

- Symposium discussed on California's Forgotten Children Blog, <http://www.californiasforgottenchildren.com/blog/examining-the-roots-of-human-trafficking-and-exploitation>

2. *Bridge Over Troubled Water: Safe Harbor Laws for Prostituted Minors*, 93 **NORTH CAROLINA LAW REVIEW** 1281 (2015) (58 pages).

Citations include:

[APG]

- Tamar Birkhead, *Symposium 2014: Vulnerable Defendants in the Criminal Justice System*, 93 N.C. L. REV. 1211, 1214, 1216 (2015). Featured on:
 - The Faculty Lounge, September 30, 2014, available at <http://www.thefacultylounge.org/2014/09/nc-law-review-symposium-on-vulnerable-defendants.html>.
 - Article featured and discussed on North Carolina Law Review website at <http://www.nclawreview.org/symposium/presenters/>

- 3. *A Critical Race Feminist Perspective on Prostitution and Sex Trafficking*, 27 **YALE JOURNAL OF LAW & FEMINISM** 95 (2015)(45 pages).
Featured on:
 - SSRN Top Ten Download List for Sexuality, August 2015
 - SSRN Top Ten Download List for Criminology eJournal, September 2015
 - Gender and the Law Prof Blog, August 27, 2015, http://lawprofessors.typepad.com/gender_law/
 - Crim Prof Blog, August 23m 2015, available at http://lawprofessors.typepad.com/crimprof_blog/2015/08/nelson-butler-on-a-critical-race-feminist-perspective-on-prostitution-and-sex-trafficking.html
 - Just Legal News Blog, August 23, 2015, available at: <HTTP://WWW.JUSTLEGALNEWS.COM/NELSON-BUTLER-ON-A-CRITICAL-RACE-FEMINIST-PERSPECTIVE-ON-PROSTITUTION-AND-SEX-TRAFFICKING/HTML>.

- 4. *The Story Behind a Letter In Support of Professor Derrick Bell: A Symposium in Honor of Professor Derrick Bell: Continuing Professor Bell's Legacy of Race Law Scholarship and Social Justice Advocacy*, 75 **UNIVERSITY OF PITTSBURGH LAW REVIEW** 729 (2015)(11 pages)(Invited Contribution)(Coauthored with Professors Margaret E. Montoya, Natsu Taylor Saito, Tanya M. Washington, Suzette Malveaux; and Sherrilyn Ifill).
Featured on:
 - The Faculty Lounge, June 14, 2015 available at <http://www.thefacultylounge.org/2015/week25/>
 - American Constitutional Society Website, available at <http://www.acslaw.org/DERRICK%20BELL%20letter%20-%20FINAL%2010.5.pdf>.

- 5. *Making the Grade: The United States' TIP Report Card & The Fight Against Child Sex Trafficking*, 67 **SMU LAW REVIEW** 341 (2014)(28 pgs).
Citations include:
 - Cited and quoted parenthetically by *Amicus Curiae* Love 146 in its Brief before the Supreme Court of the United States in the Case of *City of Los*

[APG]

- Angeles v. Naranjibhai Patel* on Writ of Certiorari to the U.S. Court of Appeals for the Ninth Circuit (January 2015).
- Cited in ALEXANDRA LUTNICK, *BEYOND VICTIMS AND VILLAINS: THE COMPLEX ISSUE OF DOMESTIC MINOR SEX TRAFFICKING* (COLUMBIA UNIVERSITY PRESS 2015).
6. *Kids For Sale: Does America Recognize Her Own Sexually Exploited Minors as Victims of Human Trafficking?* 44 **SETON HALL LAW REVIEW** 833 (2014)(39 pgs).
Citations include:
- Ranked #3 – “Most Popular Papers” Published in the Seton Hall Law Review (“based on the average number of full-text downloads per day since the paper was posted. Updated as of 7/23/2015), available at <http://scholarship.shu.edu/shlr/topdownloads.html>.
 - Aya Gruber, *Symposium: Critical Race Theory & Empirical Methods Conference: When Theory Met Practice: Distributional Analysis in Critical Criminal Law Theorizing*, 83 *FORDHAM L. REV.* 3211, 3231 n.111 (2015).
 - Unified Court System, Appellate Divisions of the Supreme Court of the State of New York, *Recent Books & Articles: Child Welfare*, Volume XXX, Issue II *New York Children’s Lawyer* 8 (August 2014)(New York State Bar Publication), available at http://www.courts.state.ny.us/ad3/OAC/NY-Lawyer_07-14.pdf.
 - Zach Dillon Verham, *The Invisibility of Online Slavery*, 8 *INTERSECT: STAN. J SCIENCE, TECHN. & SOCIETY*, 1, ___ (2015).
 - Brendan M. Connor, *In Loco Aequitatis: The Dangers of “Safe Harbor” Laws for Youth in the Sex Trades*, *STAN. J. C.R. & C.L.* (forthcoming 2016).
 - Assigned Course Reading, Professor Jaya Davis, UT Arlington, Syllabus for Course CRCJ 5393: Topics in Crime & Criminology, available at <https://mentis.uta.edu/dashboard/file/download/id/168660>
7. *Blackness as Delinquency*, 90 **WASHINGTON UNIVERSITY LAW REVIEW** 1335 (2013)(Lead Article)(64 pgs).
Citations include:
- Robin W. Sterling, *Juvenile Sex-Offender Registration: An Impermissible Life Sentence*, 82 *U. CHI. L. REV.* 295, 298 n.18 (2015).
 - Aya Neelum, *Family Driven Justice*, 56 *ARIZ. L. REV.* 623, 636 n.72 (2014).
 - MC Quinn, *From Turkey Trot to Twitter: Policing Puberty, Purity & Sex Positivity*, 38 *NYU REV. L. & SOC. CHANGE* 51, 71 n.119 (2014).
 - J.D. Weaver, *Beyond Child Welfare: Theories on Child Homelessness*, 21 *WASH. & L. J. CIV. RIGHTS & Soc. JUST.* 16, 32 n.107 (2014).

[APG]

Featured on:

- Featured on the *CrimProf Blog*, on August 16, 2012
- Featured on the *Legal History Blog*, February 28, 2012
- Featured on the Juvenile Justice Blog, June 21, 2012
- SSRN Top Ten Download List for Criminal Law eJournal, October 2012
- SSRN Top Ten Download List for Criminology eJournal, October 2012
- Over 470 Abstract Views; 200 Downloads as of August 2015

8. *Sex Slavery in the Lone Star State: Does the Texas Human Trafficking Legislation of 2011 Protect Sexually Exploited Minors?* 45 **AKRON LAW REVIEW** 843 (2012)(42 pgs).

Citations include:

- Stewart Chang, *Feminism in Yellowface*, 38 HARV. J.L. & GENDER 235, 250 n. 104 (2015).
- Samuel Vincent Jones, *The Invisible Women: Have Conceptions of Femininity Led to Global Dominance of the Female Human Trafficker?* 7 ALB. GOV'T L. REV. 143, 147 n. 13 (2014).
- Michelle Torres, *A Child Is Not a Commodity: Stopping Domestic Child Sex Trafficking*, 24 U FLA. J.L & POL. 213, 214 n.5 (2013).
- Janet C Sully, Note, *Precedent or Problem: Alameda County's Diversion Policy for Youth Charged with Prostitution & the Case for a Policy of Immunity*, 55 WM. & MARY L REV. 687, 692 n.2 (2013).
- Lisa Holl Chang, Comment, *Reaching Safe Harbor: A Path for Sex Trafficking in Wisconsin*, 2013 Wisc. L. REV. 1489, 1501 n.90 (2013).
- CHILDREN AT RISK, JR HERRERA, JUVENILE SPECIALTY COURTS: AN EXAMINATION OF REHABILITATIVE JUSTICE IN TEXAS AND ACROSS THE NATION (2014)
- E. Goxdziak, Ph.D. et. al., Georgetown University, *Bibliography of Research Based Literature on Human Trafficking*, (2015) available at [HTTPS://ISIM.GEORGETOWN.EDU/SITES/ISIM/FILES/FILES/UPLOAD/2.23.2015%20TRAFFICKING%20BIBLIOGRAPHY.PDF](https://isim.georgetown.edu/sites/isim/files/files/upload/2.23.2015%20Trafficking%20Bibliography.pdf)

Tributes

9. *Eulogy for Sarah McQuillen Tran: Teacher, Scholar, Mother, and Friend*, 67 **SMU LAW REVIEW** 463 (2015) (Tribute to my late SMU Law colleague celebrating her heroic battle against cancer. Based on my eulogy delivered at her memorial service).

Works in Progress

10. *At the Crossroads: The U.S. TIP Report & the War on Human Trafficking*

[APG]

11. *"They Who Rock the Cradle Rule the World": Feminist Origins of the Juvenile Court*

12. *#Blacklivesmatter: Women and the New Civil Rights Movement*

WRITTEN AND ORAL ADVOCACY

1. Before the President of the United States of America: Letter to President Barack Obama from Law Professor Opposing the Deportation of Dominicans of Haitian descent. Editor and Signatory, along with over 100 members of the legal academy. (July 2015), cited at <http://www.ijdh.org/2015/07/topics/immigration-topics/109-us-law-professors-urge-president-obama-to-lead-on-dr-crisis/html>.

2. Before Members of the United States House of Representatives: Moderator, Discussant: Texas Congressional Town Hall Meeting & Community Policing Summit. Moderated discussion between Mayors; police chiefs; district attorneys; United States Attorneys; Texas NAACP leaders; clergy; advocates and members of the U.S. Congress. Provided testimony on legal issues related to community policing. (January 2015).

3. Before Members of the United States Senate: Letter to the Hon. Patrick J. Leahy, Chairman, Committee on the Judiciary, United States Senate, Re: the Recent Debate and Vote on the Confirmation of Debo Adegbile for Assistant Attorney General for the Civil Rights Division, Department of Justice (April 25, 2014)(signatory to letter of support of Mr. Adegbile and the importance of defense counsel to the justice system. Letter contains signatures of over 1,000 law professors nationwide).

4. Before the American Bar Association: Letter to the Hon. Solomon Oliver, Council Chairperson, American Bar Association Section on Legal Education and Admission to the Bar (October 8, 2013) (signatory to advocacy letter concerning the proposed changes in the tenure requirements for ABA accreditation. Over 500 law professors signed the letter. This advocacy campaign resulted in ABA's decision to support tenure.)

PRESENTATIONS

Advancing Your Research & Social Agenda

[APG]

First junior faculty member in the history of the Lutie Lytle Black Women's Law Teacher Workshop's to present on the Plenary Panel on legal scholarship.

Presented to Workshop participants, including before law deans and faculty, on "how to build a scholarly profile and advance your research agenda as well as your social agenda through the pieces you chose to write and disseminate."

Vanderbilt University Law School

9th Annual Lutie A. Lytle Black Women Law Faculty Writing Workshop: "Advancing Your Agenda; Building Your Brand; Charting Your Career."

Nashville, TN July 9-12, 2015

At the Crossroads: The U.S. Trafficking in Persons Report & the War on Human Trafficking

University of Houston Law Center

1st Annual Texas Junior Scholar's Workshop

Houston, Texas August 30-31st, 2015

#Blacklivesmatter: Women and the New Civil Rights Movement

Duke University Law School

Duke Center on Law, Race, and Politics

Conference on "The Present & Future of Civil Rights Movements: Race and Reform in 21st Century America."

Charlotte, NC November 20th-21st, 2015

Vanderbilt University Law School

9th Annual Lutie A. Lytle Black Women Law Faculty Writing Workshop: "Advancing Your Agenda, Building Your Brand, & Charting Your Career."

Nashville, TN July 9-12, 2015

Race and the Roots of Human Trafficking

2015 American Association of Law Schools Mid-Year Meeting

Invited Plenary Speaker, "AALS Workshop: Next Generation Issues of Sex, Gender, and Law."

Universal Studios, Orlando Florida June 25, 2015.

UCLA Law School

Plenary Speaker, 2015 UCLA Law Review Symposium:

"Examining the Roots of Human Trafficking and Exploitation."

[APG]

Los Angeles, CA January 28-30, 2015.

Bridge over Troubled Water: Safe Harbor Legislation for Prostituted Minors

Tulane University Law School

Invited Presenter, Symposium on the Future of Inequality

New Orleans, LA, November 3, 2014.

University of North Carolina (UNC) School of Law

Invited Presenter, 15th Annual North Carolina Law Review Symposium

Panel on “Vulnerable Defendants and the Criminal Justice System,”

Raleigh, NC, October 10, 2014.

University of Kentucky College of Law

Selected Presenter, Annual Developing Ideas Conference, Lexington, KY

Presented draft paper and received feedback from conference participants via teleconference. Provided comments on works in progress presented by other scholars. May 21, 2014.

American University Washington College of Law

Selected Panelist, ClassCrits IV Legal Scholarship Conference: “Criminalizing Economic Inequality,” Washington, D.C. September 24, 2011.

**A Critical Race Feminist Perspective on Prostitution
& Sex Trafficking in America**

Yale Law School

Invited Presenter, Yale Critical Race Theory Conference

Panel on “Intersectionality on the Body: Policing the Sexual and Reproductive Rights of Women of Color.”

New Haven, CT April 5, 2014.

University of Puerto Rico School of Law

Panel Organizer, Panelist, 2013 Northeast People of Color Legal Scholarship Conference (NEPOC)

Panel on “Marginalization in the Struggle Against Human Trafficking.”

San Juan, Puerto Rico, December 5, 2013.

Annual Meeting of the Southeastern Association of Law Schools

Selected Presenter, Nominated by SMU Law Dean

(SEALS) New Scholars Workshop

The Breakers, West Palm Beach, FL., August 5, 2013.

[APG]

University of Nevada School of Law
Selected Presenter, 2013 Lutie A. Lytle Black Women Law Faculty Writing
Workshop: "A Scholarly Salon in Nevada."
Las Vegas, Nevada, June 27-30, 2013.

University of Arkansas William H. Bowen School of Law
Invited Keynote Panelist. Panel on "Status Oppression & Liberation Bioethics." 2013
Southeast Southwest People of Color Legal Scholarship Conference: "Empty
Promises? The Constitution at 225." Little Rock, AK. April 5, 2013
SMU Dedman School of Law
SMU Junior Faculty Forum
Dallas, TX. March 7, 2013.

University of Pennsylvania School of Law
Selected Panelist, Mid-Atlantic People of Color Legal Scholarship Conference
(MAPOC) 2013: "President Lincoln's Emancipation Proclamation: On the Doubts,
Questions & Problems of Full Citizenship."
Philadelphia, PA. Jan. 26, 2013.

Blackness as Delinquency

University of Arkansas William H. Bowen School of Law
Invited Panelist, "Reconstruction Era Amendment Inheritance – Striving for Equality
Beyond Race." 2013 Southeast / Southwest People of Color Legal Scholarship
Conference: "Empty Promises? The Constitution at 225." Little Rock, AK. April 5,
2013.

Annual Meeting of the American Society for Legal History (ASLH), hosted by
Washington University in St. Louis Law School
Selected Presenter, Panel on "Women & Legal History." Four Seasons Hotel St.
Louis, MO. November 8-11, 2012.

15th Annual Conference of the Association for Study of Law, Society & Culture
(ASLSC), hosted by Texas A&M University School of Law
Panel Organizer, Selected Panelist, Fort Worth, TX. March 15, 2012.

SMU Dedman School of Law
Invited Panelist, Panel Topic: "Spotlight on Civil Rights: How Racial and Religious
Profiling Offends the Rule of Law."

[APG]

Dallas, TX. November 4, 2011.

Gonzaga University School of Law, co-sponsored by The Task Force on Race & Criminal Justice in the West Selected Panelist, Conference: "Race and Criminal Justice in the West" Spokane, WA. September 23-24, 2011.

Texas Southern University Thurgood Marshall School of Law
Selected Presenter, 5th Annual Lutie A. Lytle Black Women Law Faculty Writing Workshop, "Freedom Writers," co-sponsored by University of Houston Law Center. Houston, TX. June 16-19, 2011

Kids for Sale

University of Wisconsin Law School
Selected Panelist, "Youth and the Perpetual Underclass," ClassCrits V Legal Scholarship Conference: "From Madison to Zuccotti Park: Confronting Class and Reclaiming the American Dream," Madison, WI.
November 16-17, 2012.

Samford University Cumberland School of Law
Invited Presenter, 2012 Southeast / Southwest People of Color Legal Scholarship Conference: "Transformative Advocacy, Scholarship, and Praxis: Taking Our Pulse." Birmingham, AL. March 30, 2012.

University of Baltimore School of Law, Center for Applied Feminism
Invited Presenter, *Kids for Sale: Should the Courts Treat Under-aged Prostitutes as Criminals or Victims?* Panelist, Luncheon Law Fall Symposium: Girls in the Juvenile Justice System
Baltimore, MD. October 2010.

Sex Slavery in the Lone Star State

University of Denver Sturm College of Law
Selected Presenter, Fifteenth Annual LatCrit (Latina and Latino Critical Legal Theory) Conference: "The Color of the Economic Crisis: Exploring the Downturn from the Bottom Up."
Denver, CO. October 2010.

[APG]

Arizona State University College of Law
Selected Presenter, Second Annual Aspiring Law Professors Conference, Phoenix,
AZ. Oct. 2010.

Other Presentations on Civil Rights & Human Rights Issues

SMU Dedman School of Law & Dedman College
Women & Gender Studies Certificate Program, Guest Lecturer
Dallas, TX. Fall 2014.

Critical Race Feminism –Teaching Across the Globe
Guest Lecturer: Provided several live interactive webinar on Civil Rights taught by
former Associate Dean Suzette Malveaux, Catholic U. School of Law. Fall 2013.

SMU Dedman School of Law
Invited Presenter, *Justice for Trayvon: Race and Police Brutality in America*. Teach-
In on “*Trayvon Martin: Examining Race & Justice in America*,” Presenter, Panel
Presentation with 2012 Professor of the Year Jeffrey Bellin.
Dallas, TX. April 19, 2012.

Samford University Cumberland School of Law
“*You Got Brides!*” *Expanding Our Reach: Human Rights & Legal Issues of
International Online Matchmaking*. Commentator to Presentation by Linh K. Dai,
Ph.D. Candidate, Arizona State University at the 2012 Southeast / Southwest
People of Color Legal Scholarship Conference. “*Transformative Advocacy,
Scholarship, and Praxis: Taking Our Pulse*.”
Birmingham, AL. March 30, 2012.

SMU Dedman School of Law
Invited Panel Moderator, *The ‘F-Bomb’: Women and Feminism*. Dallas, TX. February
28, 2012.

SMU Dedman School of Law
Invited Panelist, *The Legacy of Brown vs. Board of Education*. Panel Moderator,
Panel included federal judges and civil rights leaders. Dallas, TX. February 21,
2012.

SMU Cox School of Business

[APG]

Invited Panelist, *The Women's Suffrage Movement in the United States*.
Panelist, "Women & Democracy," Inaugural Women's Initiative Fellowship Program
of the George W. Bush Presidential Center, Bush Institute.
Dallas, TX. February 11, 2011.

IIT Chicago-Kent College of Law
Institute for Law & Humanities
Invited Participant, Women's Legal History Conference
Provided feedback on presentation of conference papers later published in Chicago-
Kent Law Review Symposium Issue. Chicago, IL. October 1, 2011.

BUSINESS & LEADERSHIP PRESENTATIONS

Legal Issues & Ethics
ParliamenTop: Meeting of the National Executive Board
Top Ladies of Distinction, Inc. & Top Teens of America, Inc.
St. Louis, Missouri, October 2015

Just the Beginning Foundation, Inc., Inaugural Texas Summer Legal Institute Texas
Southern University Thurgood Marshall School of Law
Panelist, "Introduction to the Rule of Law & the Legal Profession."
Houston, TX. June 20, 2011.

Knowledge is Power Program, (KIPP) High School
Intersession Course Instructor, "How to Write as a Law Reporter."
Houston, TX. January 2008.

American Bar Association Council on Legal Education Opportunity (CLEO)
Presenter, "How to Master the 1L Curriculum."
"Attitude Is Essential" Seminar, Atlanta, Georgia. July 2004.

American Express Travel Group
Annual Regional Conference
Invited Presenter, "Corporate Diversity on the 50th Anniversary of the *Brown vs.*
Board of Education Decision." NY, New York, July 22, 2004.

COMMITMENT TO EXCELLENCE IN TEACHING ***(Law Teacher Training & Professional Development)***

- Becoming a Master Teacher

[APG]

Vanderbilt University Law School
9th Annual Lutie Lytle Black Female Law Faculty Writing Workshop
Nashville, TN July 9-12, 2015

- On Being Black and Female in the Classroom

Vanderbilt University Law School
9th Annual Lutie Lytle Black Female Law Faculty Writing Workshop
Nashville, TN July 9-12, 2015

- Balancing Scholarship, Teaching, & Service After Tenure

Vanderbilt University Law School
9th Annual Lutie Lytle Black Female Law Faculty Writing Workshop
Nashville, TN July 9-12, 2015

- 22nd Annual Teaching Effectiveness Symposium

SMU Center for Teaching Excellence
Thursday, August 21, 2014

- Showcase Your Teaching: Beyond Teaching Evaluations

New Faculty Teaching Excellence Program (NFTE)
SMU Center for Teaching Excellence
Dallas, Texas, April 23, 2014.

- Navigating Race in Academic Institutions (Teaching & Scholarship)

Yale Critical Race Theory Conference, Yale Law School, April 5, 2014.

- Crafting Your Teaching Philosophy

New Faculty Teaching Excellence Program (NFTE)
SMU Center for Teaching Excellence
Dallas, Texas, March 25, 2014.

- The Road to Tenure

New Faculty Teaching Excellence Program (NFTE)
SMU Center for Teaching Excellence
Dallas, Texas, October 23, 2013.

- The Raw Materials of Excellent Teaching: Collecting Evidence, Getting Early Feedback

New Faculty Teaching Excellence Program (NFTE)
SMU Center for Teaching Excellence
Dallas, Texas, September 12, 2013.

[APG]

- Critical Race Feminism –Teaching Across the Globe
Guest Lecturer, Online Seminar on Civil Rights. Conducted pre-recorded and live Webinars with students enrolled in course taught by Associate Dean Suzette Malveaux, Catholic University School of Law. Used innovative technology to teach Seminar class to International LLM students in Poland enrolled in online course. Catholic University School of Law, Washington, D.C. April 3, 2013.

- Workshop on Teaching and Evaluation
Annual Meeting of the Southeastern Association of Law Schools (SEALS), The Breakers, West Palm Beach, FL. August 5, 2013.

- Overcoming Barriers to Law Teaching Faced by Women of Color
2013 Lutie A. Lytle Black Women Law Faculty Writing Workshop: “A Scholarly Salon in Nevada.” University of Nevada School of Law
Las Vegas, Nevada, June 27-30, 2013.

- Addressing Challenges in and to the Legal Academy
2012 Southeast / Southwest People of Color Legal Scholarship Conference: “Transformative Advocacy, Scholarship, and Praxis: Taking Our Pulse,” The Cumberland School of Law at Samford University
Birmingham, AL. March 30, 2012.

- New Law Teacher Workshop
American Association of American Law Schools (AALS). Attended several sessions focused on the mastery of law teaching skills. Topics covered “Learning Styles”; “The Changing Nature of Curriculum & Teaching”; “Testing and Assessment of Students, Feedback about Yourself, How to Measure Your Own Effectiveness as a Teacher”; and “Service and Professionalism for Junior Faculty.”
The Renaissance Mayflower Hotel, Washington, D.C., June 23-25, 2011.

- Plenary Session: Teaching
(Session on effective teaching strategies and how to overcome barriers faced by women and people of color)
Pre-tenured People of Color Law School Teachers Workshop, American Association of American Law Schools (AALS).
The Renaissance Mayflower Hotel Washington, D.C., June 25-26, 2011.

- Writing as Creative Habit

[APG]

(Presentation included strategies on how to balance the demands of teaching with the expectation of producing legal scholarship)
2011 Lutie A. Lytle Black Women Law Faculty Writing Workshop, "Freedom Writers," Texas Southern University Thurgood Marshall School of Law, co-sponsored by University of Houston Law Center
Houston, TX. June 16-19, 2011.

- Eighth Annual Junior Faculty Development Workshop
(Full day workshop including presentations on teaching techniques and strategies for balancing the demands of teaching vs. scholarship)
Fifteenth Annual LatCrit (Latina and Latino Critical Legal Theory) Conference: "The Color of the Economic Crisis: Exploring the Downturn from the Bottom Up," University of Denver Sturm College of Law
Denver, CO. October 2010.

MEDIA

- *Texas Congress Members Hold Community Policing Summit, WFAA8 (ABC News), January 15, 2015* (discussing summit between elected officials, police officials, federal and state attorneys, the Texas NAACP, and other community stakeholders with Members of Congress. I served as a moderator and discussant for the second of three panel discussions).
- *SMU Faculty Members Mentor First Women's Initiative Fellows, available at <http://blog.smu.edu/forum/2012/05/22/smu-faculty-mentor-first-class-of-womensinitiative-fellows.html>.*
- The Quad, Fall 2012, *available at <http://www.calameo.com/books/00041460032749db31697>.*
- *Remembering SMU Law Professor Sarah Tran, Texas Lawyer, March 19, 2014, (Paying tribute to my late colleague and friend), available at <http://www.texaslawyer.com/id=1202646480761/Remembering-SMU-Law-Professor-Sarah-Tran?slreturn=20140221234758>.*
- *Sarah Tran, SMU Law Professor Dies at 34, Dallas Morning News, March 15, 2014 (Paying tribute to my late colleague and friend and discussing my forthcoming eulogy delivered at Highland Park United Methodist Church),*

[APG]

available at <http://www.dallasnews.com/obituary-headlines/20140315-sarah-tran-smu-law-professor-dies-at-34.ece>.

- News articles about my professional achievements and public service work prior to joining the SMU faculty are published in *Black Enterprise*, *Jet Magazine*, *The Houston Chronicle*; *Houston Style Magazine*; *The Houston Defender*; *the New York Daily News*, and have been broadcast on *Fox News* and other media outlets.

LEGAL EXPERIENCE

Federal Judicial Clerkship

The Honorable Emmet G. Sullivan, U.S. District Court Judge for the District of Columbia

Judicial Law Clerk. August 1996-August 1997.

Law Practice

Top Teens of America – Top Ladies of Distinction. Inc., Houston, TX.

Executive Director, General Counsel. June 2007-2011. Advised national non-profit organization on matters of real estate, contract, tort, trademark, and nonprofit law.

Enron Corporation, Houston, TX. November 2000 – April 2002.

Senior Counsel. Advised Fortune 500 Corporation on business and litigation matters. Responded to subpoenas from SEC and Congress regarding bankruptcy. Managed legal docket and counseled Purchasing Department -100 client unit.

Debevoise & Plimpton, NY, NY. December 1997-April 2000.

Associate. Litigation Department.

National Partnership for Women & Families (NPWF), Washington, D.C

Policy Counsel, Georgetown U. Law Center Fellow. August 1995-1996.

Lobbied the White House and United States Congress for enactment of fair employment and other civil rights legislation.

Georgetown University Law Center, Women's Law & Public Policy Fellowship Program, Washington, D.C. August 1995-August 1996.

Cleary Gottlieb Steen & Hamilton, NY, NY.

Associate, March-Sept.1995; *Summer Associate*. Summer 1993.

[APG]

Legal Momentum – Women’s Legal Defense & Education Fund, NY, NY.
Law Clerk. Fall 1994; Summer 1994; Spring 1993.

NAACP Legal Defense & Educational Fund; Shearman & Sterling, NY, NY. *Law Clerk*. Summer 1992; Summer 1989.

BAR ADMISSION

New York State (Active)

BAR AFFILIATIONS AND COMMUNITY ACTIVITIES

- Dallas Bar Association
 - Legal History Discussion Group
- Dallas Women Lawyers Association
- J.L. Turner Legal Association, Dallas, Texas
- Top Ladies of Distinction, Incorporated, National Parliamentarian, Counsel
- Highland Park I.S.D., Armstrong Elementary School PTO (former member)

[APG]

From: Anderson, Roy
Sent: Saturday, October 24, 2015 7:54 PM
To: Butler, Cheryl Nelson; Anderson, Roy
Cc: Colangelo, Anthony; Spector, Mary; Collins, Jennifer
Subject: Re: Your Box of Materials

Hi Cheryl,

As I told you two weeks ago, I will be out of town after Monday for the remainder of the week (until November 2). But this is not a committee matter. **The Dean set the deadline.** I'm copying Jennifer so that she is in this loop. You should talk with her.

If we should talk by phone, please call me any time on my cell 214-912-1957.

What about the syllabi and exams?

Hope the family has a great Monday, and happy birthday to your daughter.

Best, Roy

Roy Ryden Anderson
Vinson & Elkins Distinguished Teaching
Fellow & Professor of Law
SMU Dedman School of Law
3315 Daniel Street
P.O. Box 750116
Dallas, TX 75275-0116
tel: 214-768-3279
fax: 214-768-4330

From: "Butler, Cheryl Nelson" <cnbutler@mail.smu.edu>
Date: Saturday, October 24, 2015 at 7:33 PM
To: "Anderson, Roy" <r randers@mail.smu.edu>
Cc: "Colangelo, Anthony" <colangelo@mail.smu.edu>, "Spector, Mary" <mspector@mail.smu.edu>
Subject: RE: Your Box of Materials

Dear Roy,

Regarding this deadline, may I request a meeting with the Committee ASAP? While I will be off campus Monday for my daughter's birthday and camping trip send-off, I am available any other day that you might have time.

Warmly,

Cheryl

From: Anderson, Roy
Sent: Saturday, October 24, 2015 3:10 PM
To: Butler, Cheryl Nelson
Cc: Colangelo, Anthony; Spector, Mary
Subject: Your Box of Materials

Hi Cheryl,

Since we'll be out of town most of next week I should remind you that the Dean's deadline for putting your materials in the faculty reading room is a week from Monday, November 2. Your box, of course, can be supplemented as we go along. So even if you are still tinkering with your personal statement or with your vitae, for examples, include drafts and substitute later when you have them finalized.

Also, we still have not received your course syllabi and exams that we discussed. Please give getting them to us some priority. We do have the current syllabus for Torts I.

Hope your weekend is going well and that you are managing to stay dry.

Best, Roy

Roy Ryden Anderson
Vinson & Elkins Distinguished Teaching
Fellow & Professor of Law
SMU Dedman School of Law
3315 Daniel Street
P.O. Box 750116
Dallas, TX 75275-0116
tel: 214-768-3279
fax: 214-768-4330

I hope you are enjoying your week. Thank you so much for your instructions. You reference an attachment. Did I overlook it?

Warm regards,

Cheryl

From: Prof. Joe Norton [profjnorton@yahoo.com]
Sent: Sunday, September 06, 2015 12:41 PM
To: Butler, Cheryl Nelson
Cc: Thornburg, Beth; Martinez, George; Collins, Jennifer; Rogers III, C. Paul; Bloom, Lackland
Subject: Your "Tenure Box" for Faculty Review

Dear Cheryl,

CB- Faculty Tenure Box- Sept. 2015

By the third week of September 2015, if at all possible, please place your "Faculty Tenure Box" for Faculty review in the Faculty Lounge (2nd floor Storey) . This "Box" should contain the following:

1. an index of materials included;
2. copy of the relevant LS and University Bylaw provisions on promotion and tenure(see attached);
3. your Personal Statement(this can contain a section on your research agenda to date and in moving forward , or you could have this as a separate document);
4. Your current CV;
5. A schedule of your fall teaching for Faculty information.
6. Copy of your current course Syllabi (optional).
7. Copy of the 7 articles that are being reviewed externally (5) and internally (2) (though not required, it would be helpful for the Faculty reviewers if you would place a short "Abstract" for each of the 7 items, unless there is a sufficient Abstract already at the front of an article).
8. A statement on your Law School/University/Community service (this can be in your Personal Statement, CV and/or via separate document).
9. Copy of your student teaching evaluations for the past 4 yrs since you started teaching at our Law School (Provost and his Committee will require this: Brenda has already forwarded you copies).
10. Copy of any other document/statements you think relevant as may be related to your teaching (see the University guidelines attached)
11. Copy of any miscellaneous documents/statements /information you think the Faculty and Provost Advisory committee should consider.

Solely for you information, I am enclosing a copy of what the Dean had to send over to the Provost Advisory Committee for tenure candidates last AY. Though the documents referred to overlap a lot with what will be in your tenure box, these are separate matters. Post- tenure meeting, the Dean will advise the various Tenure Committees and candidates of exactly what she will need .

Many thanks and all best wishes, Joe

Prof. Joe Norton
SJD(Mich.), DPhil.(Oxon), LLD(London),LLD(hc)(Stockh.)
James L Walsh Distinguished Faculty Fellow and Professor of Financial Institutions Law (SMU); and
formerly Sir John Lubbock Professor of Banking Law (London) (1993-2004)
profjnorton@yahoo.com
Storey Hall, Rm 306,3315 Daniel Ave, Dallas, Texas 75275

Promotion & Tenure Checklist – Spring 2014

1. Promotion and Tenure Summary Sheet, specifying:
 - Name, Rank, Department, School.
 - Rank/Tenure, action to be considered.
 - Date of original appointment at SMU.
 - Date of any previous appointment at SMU.
 - Courses taught at SMU, with dates and enrollments.
2. Recommendation of Dean.
3. Recommendation of each faculty member who participated in the review.
4. Updated *curriculum vitae*.
5. Personal statement from the candidate—each candidate must be invited to submit a written statement concerning his or her aims and accomplishments in teaching, scholarship and research, and also to discuss other activities within the University and the candidate's profession.
6. Any letters or other written communication sent to the candidate about the candidate's progress toward tenure and promotion during the period of employment under consideration. Also, include any contracts between the candidate and the University.
7. Record of grants proposed/received, if applicable.
8. Reviews of candidate's publications.
9. Citations list, if used.
10. Information on journals that contain candidate's publications—this will be especially helpful in the evaluation process.
11. We recommend a minimum of six letters from outside the University assessing the candidate's accomplishments. Brief statements should be included that identify how the outside evaluators were selected, the relevant qualifications of the outside evaluators, and the professional relationships, if any, that exist between the evaluators and the candidate. A copy of the letter soliciting the recommendation also should be included. In most instances,

Promotion & Tenure Checklist – Spring 2014

outside evaluators should not have a significantly close professional or personal relationship with the candidate.

12. Internal letters of recommendation, if used.
13. Student evaluation of teaching. Provide the last five years of student evaluations for those faculty being considered for tenure, and provide, for those being considered for promotion, student evaluations for all years between the award of tenure and the request for promotion.
14. Peer evaluation of teaching.
15. Other evaluation materials of teaching, i.e., student letters.
16. Materials submitted by the candidate (papers, books, etc.).

Items in Faculty Tenure Box- Confidential

From: Prof. Joe Norton <profjnorton@yahoo.com>
To: "Rogers III, C. Paul" <crogers@mail.smu.edu>, "Bloom, Lackland" <lbloom@mail.smu.edu>
Cc: "Collins, Jennifer" <jmc@mail.smu.edu>, "Thornburg, Beth" <ethornbu@mail.smu.edu>
Date: Sat, 05 Sep 2015 10:49:58 -0500
Attachments: Promotion and Tenure Checklist - Spring 2014.docx (21.33 kB); University-GUIDELINES FOR THE AWARD OF RANK AND TENURE.docx (17.61 kB); Article X of our Bylaws sets out the following criteria for tenure and promotion.docx (15.04 kB)

Below is a copy of a draft memo I intend to send to Cheryl regarding what she needs in her Faculty Tenure Box. If this list differs -more or less- as to what you have advised you candidate, please let me know. Cheryl wishes she be treated the same as David and Keith. Any comments will be greatly appreciated. Many thanks, Joe

>
DRAFT- CB- Faculty Tenure Box- Sept. 2015
Cheryl, By the third week of September 2015, if at all possible, please place your "Faculty Tenure Box" for Faculty review in the Faculty Lounge (2nd floor Storey). This "Box" should contain the following:

1. an index of materials included;
2. copy of the relevant LS and University Bylaw provisions on promotion and tenure(see attached);
3. your Personal Statement(this can contain a section on your research agenda to date and in moving forward , or you could have this as a separate document);
4. your current CV;
5. a schedule of your fall teaching for Faculty information;
6. Copy of the 7 articles that are being reviewed externally (5) and internally (2) (though not required, it would be helpful for the Faculty reviewers if you would place a short "Abstract" for each of the 7 items, unless there is a sufficient Abstract already at the front of an article).
6. a statement on your Law School/University/Community service (see attached);
7. copy of your student teaching evaluations since you started teaching at our Law School (Brenda has already forwarded you copies.
8. copy of any other document/statements you think relevant as may be related to your teaching (see the University guidelines
9. copy of any miscellaneous documents/statements you think the Faculty and Provost Advisory committee should consider.

Solely for you information, I am enclosing a copy of what the Dean had to send over to the Provost Advisory Committee for tenure candidates last AY. Though the documents referred to overlap a lot with what is in your tenure box, these are separate matters. Post tenure meeting the Dean will advise the various Tenure Committees and candidates of what she will need .

Many thanks and all best wishes, Joe

Prof. Joe Norton
SJD(Mich.), DPhil.(Oxon), LLD(London),LLD(hc)(Stockh.)

TEACHING

Several invitees had to decline and a couple did not respond. People are very busy. Anyway, I feel confident, we can get everything in place for the reviews of your 5 major pieces: George will do the two other reviews.....For yourself, my best advice is to just concentrate on your classes and try to get your Faculty Box in place sooner than later. The first part of Oct. and again early Nov, I will remind the Faculty to review your classes. You might make sure there are 5-6 seats along the wall in your CC101 for Faculty visitors. Stay well and stay calm (easier said than done, I know). In any event, try not to buy into the rumor mill that always seems to develop around tenure time (as it does in law firms around partnership time). All best regards, Joe

Prof. Joe Norton

SJD(Mich.), DPhil.(Oxon), LLD(London),LLD(hc)(Stockh.)

James L Walsh Distinguished Faculty Fellow and Professor of Financial Institutions Law (SMU); and formerly Sir John Lubbock Professor of Banking Law (London) (1993-2004)

profjnorton@yahoo.com

Storey Hall, Rm 306,3315 Daniel Ave, Dallas, Texas 75275

Phone: 469-774-4888(m); 214-328-8876(h)

Fax: 214-768-3142 (w)

Texas Bar No. 15107000

Faculty Assistant: Sharon Magill-Tabbert--214-768-2639- smagill@smu.edu - Rm311AStorey

Thoughts for the Day: All that is necessary for the triumph of evil is that good (people) do nothing. (Edmund Burke ?); Fear of losing power corrupts those who wield it.....ones responsibility is to do the right thing. (Aung San Suo Kyi)

From: "Butler, Cheryl Nelson" <cnbutler@mail.smu.edu>

To: Prof. Joe Norton <profjnorton@yahoo.com>

Cc: "Thornburg, Beth" <ethornbu@mail.smu.edu>; "Martinez, George" <gmartine@mail.smu.edu>

Sent: Wednesday, September 9, 2015 12:18 PM

Subject: RE: Tenure Process: Possible Additional Teaching Commitment Items

Joe,

Thank you so much for this idea. Hope you all are having a great week. I had the flu last week but am doing better.

Cheryl

From: Prof. Joe Norton [profjnorton@yahoo.com]

Sent: Monday, September 07, 2015 1:32 PM

To: Butler, Cheryl Nelson

Cc: Thornburg, Beth; Martinez, George

Subject: Tenure Process: Possible Additional Teaching Commitment Items

Cheryl, I am attaching as a possible starting point for you in preparing a statement concerning supplemental matters for evaluating your teaching. You do not need it in your Tenure Box at the moment; but, it would be good to have this for the Faculty Tenure Meeting and for the Dean's file. This is all discretionary for you. As you Committee Chair, I think something as to supplemental info will inure to your benefit. Just my suggestion.
Joe

Prof. Joe Norton

SJD(Mich.), DPhil.(Oxon), LLD(London),LLD(hc)(Stockh.)

James L Walsh Distinguished Faculty Fellow and Professor of Financial Institutions Law (SMU); and

Asst Prof. Cheryl Butler: Additional Supporting Factors as to Teaching

Peer Reviews/Statements: (TBC)

Additional Considerations:

- Outstanding Faculty Leadership Award 2014
Awarded by the SMU Women in Law Association for teaching, advocacy & leadership on women's issues
- Don Smart Directed Research Award 2014
- Honorable Mention - SMU Law School Hooding Ceremony 2013: Acknowledged by Valedictorian as one of the "favorite professors."
- SMU Black Law Students Association, Faculty Advisor 2012-present

Presentations

- First junior faculty member in the history of the Lutie Lytle Black Women's Law Teacher Workshop's to present on the Plenary Panel on legal scholarship. Presented to Workshop participants, including before law deans and faculty, on "how to build a scholarly profile and advance your research agenda as well as your social agenda through the pieces you chose to write and disseminate." Vanderbilt University Law School 9th Annual Lutie A. Lytle Black Women Law Faculty Writing Workshop: "Advancing Your Agenda; Building Your Brand; Charting Your Career." Nashville, TN July 9-12, 2015
- 2015 American Association of Law Schools Mid-Year Meeting Invited Plenary Speaker, "AALS Workshop: Next Generation Issues of Sex, Gender, and Law." Universal Studios, Orlando Florida June 25, 2015. UCLA Law School Plenary Speaker, 2015 UCLA Law Review Symposium: "Examining the Roots of Human Trafficking and Exploitation." Los Angeles, CA January 28-30, 2015.
- Tulane University Law School Invited Presenter, Symposium on the Future of Inequality New Orleans, LA, November 3, 2014.
- University of North Carolina (UNC) School of Law Invited Presenter, 15th Annual North Carolina Law Review Symposium Panel on "Vulnerable Defendants and the Criminal Justice System," Raleigh, NC, October 10, 2014.
- University of Kentucky College of Law Selected Presenter, Annual Developing Ideas Conference, Lexington, KY Presented draft paper and received feedback from conference participants via teleconference. Provided comments on works in progress presented by other scholars. May 21, 2014.

- American University Washington College of Law Selected Panelist, ClassCrits IV Legal Scholarship Conference: “Criminalizing Economic Inequality,” Washington, D.C. September 24, 2011.
- Yale Law School. Invited Presenter, Yale Critical Race Theory Conference Panel on “Intersectionality on the Body: Policing the Sexual and Reproductive Rights of Women of Color.” New Haven, CT April 5, 2014.
- University of Puerto Rico School of Law Panel Organizer, Panelist, 2013 Northeast People of Color Legal Scholarship Conference (NEPOC) Panel on “Marginalization in the Struggle Against Human Trafficking.” San Juan, Puerto Rico, December 5, 2013.
- Annual Meeting of the Southeastern Association of Law Schools Selected Presenter, Nominated by SMU Law Dean (SEALS) New Scholars Workshop The Breakers, West Palm Beach, FL., August 5, 2013.
- University of Nevada School of Law Selected Presenter, 2013 Lutie A. Lytle Black Women Law Faculty Writing Workshop: “A Scholarly Salon in Nevada.” Las Vegas, Nevada, June 27-30, 2013.
- University of Arkansas William H. Bowen School of Law Invited Keynote Panelist. Panel on “Status Oppression & Liberation Bioethics.” 2013 Southeast Southwest People of Color Legal Scholarship Conference: “Empty Promises? The Constitution at 225.” Little Rock, AK. April 5, 2013
- University of Pennsylvania School of Law Selected Panelist, Mid-Atlantic People of Color Legal Scholarship Conference (MAPOC) 2013: “President Lincoln’s Emancipation Proclamation: On the Doubts, Questions & Problems of Full Citizenship.” Philadelphia, PA. Jan. 26, 2013.
- University of Arkansas William H. Bowen School of Law Invited Panelist, “Reconstruction Era Amendment Inheritance – Striving for Equality Beyond Race.” 2013 Southeast / Southwest People of Color Legal Scholarship Conference: “Empty Promises? The Constitution at 225.” Little Rock, AK. April 5, 2013.
- Annual Meeting of the American Society for Legal History (ASLH), hosted by Washington University in St. Louis Law School Selected Presenter, Panel on “Women & Legal History.” Four Seasons Hotel St. Louis, MO. November 8-11, 2012.

- 15th Annual Conference of the Association for Study of Law, Society & Culture (ASLSC), hosted by Texas A&M University School of Law Panel Organizer, Selected Panelist, Fort Worth, TX. March 15, 2012.
- SMU Dedman School of Law Invited Panelist, Panel Topic: “Spotlight on Civil Rights: How Racial and Religious Profiling Offends the Rule of Law.” Dallas, TX. November 4, 2011.
- Gonzaga University School of Law, co-sponsored by The Task Force on Race & Criminal Justice in the West Selected Panelist, Conference: “Race and Criminal Justice in the West” Spokane, WA. September 23-24, 2011.
- Texas Southern University Thurgood Marshall School of Law Selected Presenter, 5th Annual Lutie A. Lytle Black Women Law Faculty Writing Workshop, “Freedom Writers,” co-sponsored by University of Houston Law Center. Houston, TX. June 16-19, 2011
- University of Wisconsin Law School Selected Panelist, “Youth and the Perpetual Underclass,” Class Crits V Legal Scholarship Conference: “From Madison to Zuccotti Park: Confronting Class and Reclaiming the American Dream,” Madison, WI. November 16-17, 2012.
- Samford University Cumberland School of Law Invited Presenter, 2012 Southeast / Southwest People of Color Legal Scholarship Conference: “Transformative Advocacy, Scholarship, and Praxis: Taking Our Pulse. Birmingham, AL. March 30, 2012.
- University of Baltimore School of Law, Center for Applied Feminism Invited Presenter, *Kids for Sale: Should the Courts Treat Under-aged Prostitutes as Criminals or Victims?* Panelist, Lunchtime Law Fall Symposium: Girls in the Juvenile Justice System Baltimore, MD. October 2010.
- University of Denver Sturm College of Law Selected Presenter, Fifteenth Annual LatCrit (Latina and Latino Critical Legal Theory) Conference: “The Color of the Economic Crisis: Exploring the Downturn from the Bottom Up.” Denver, CO. October 2010.
- Arizona State University College of Law Selected Presenter, Second Annual Aspiring Law Professors Conference, Phoenix, AZ. Oct. 2010.
- SMU Dedman School of Law & Dedman College Women & Gender Studies Certificate Program, Guest Lecturer Dallas, TX. Fall 2014. Critical Race Feminism – Teaching Across the Globe Guest Lecturer: Provided several live interactive webinar on Civil Rights taught by former Associate Dean Suzette Malveaux, Catholic U. School of Law. Fall 2013.

- SMU Dedman School of Law Invited Presenter, *Justice for Trayvon: Race and Police Brutality in America*. Teach-In on “Trayvon Martin: Examining Race & Justice in America,” Presenter, Panel Presentation with 2012 Professor of the Year Jeffrey Bellin. Dallas, TX. April 19, 2012.
- Samford University Cumberland School of Law “You Got Brides!” *Expanding Our Reach: Human Rights & Legal Issues of International Online Matchmaking*. Commentator to Presentation by Linh K. Dai, Ph.D. Candidate, Arizona State University at the 2012 Southeast / Southwest People of Color Legal Scholarship Conference: “Transformative Advocacy, Scholarship, and Praxis: Taking Our Pulse. Birmingham, AL. March 30, 2012.
- SMU Dedman School of Law Invited Panel Moderator, *The ‘F-Bomb’: Women and Feminism*. Dallas, TX. February 28, 2012.
- SMU Dedman School of Law Invited Panelist, *The Legacy of Brown vs. Board of Education*. Panel Moderator, Panel included federal judges and civil rights leaders. Dallas, TX. February 21, 2012.
- SMU Cox School of Business Invited Panelist, *The Women’s Suffrage Movement in the United States*. Panelist, “Women & Democracy,” Inaugural Women’s Initiative Fellowship Program of the George W. Bush Presidential Center, Bush Institute. Dallas, TX. February 11, 2011.
- IIT Chicago-Kent College of Law Institute for Law & Humanities Invited Participant, Women’s Legal History Conference. Provided feedback on presentation of conference papers later published in Chicago-Kent Law Review Symposium Issue. Chicago, IL. October 1, 2011.
- Legal Issues & Ethics ParliamenTop: Meeting of the National Executive BoardTop Ladies of Distinction, Inc. & Top Teens of America, Inc. St. Louis, Missouri, October 2015
- Just the Beginning Foundation, Inc., Inaugural Texas Summer Legal Institute Texas Southern University Thurgood Marshall School of Law Panelist, “Introduction to the Rule of Law & the Legal Profession.” Houston, TX. June 20, 2011.

Law Teacher Training & Professional Development

- Becoming a Master Teacher
Vanderbilt University Law School
9th Annual Lutie Lytle Black Female Law Faculty Writing Workshop
Nashville, TN July 9-12, 2015

- On Being Black and Female in the Classroom
Vanderbilt University Law School
9th Annual Lutie Lytle Black Female Law Faculty Writing Workshop
Nashville, TN July 9-12, 2015
- Balancing Scholarship, Teaching, & Service After Tenure
Vanderbilt University Law School
9th Annual Lutie Lytle Black Female Law Faculty Writing Workshop
Nashville, TN July 9-12, 2015
- 22nd Annual Teaching Effectiveness Symposium
SMU Center for Teaching Excellence
Thursday, August 21, 2014
- Showcase Your Teaching: Beyond Teaching Evaluations
New Faculty Teaching Excellence Program (NFTE)
SMU Center for Teaching Excellence
Dallas, Texas, April 23, 2014.
- Navigating Race in Academic Institutions (Teaching & Scholarship)
Yale Critical Race Theory Conference, Yale Law School, April 5, 2014.
- Crafting Your Teaching Philosophy
New Faculty Teaching Excellence Program (NFTE)
SMU Center for Teaching Excellence
Dallas, Texas, March 25, 2014.
- The Road to Tenure
New Faculty Teaching Excellence Program (NFTE)
SMU Center for Teaching Excellence
Dallas, Texas, October 23, 2013.
- The Raw Materials of Excellent Teaching: Collecting Evidence,
Getting Early Feedback
New Faculty Teaching Excellence Program (NFTE)
SMU Center for Teaching Excellence
Dallas, Texas, September 12, 2013.
- Critical Race Feminism –Teaching Across the Globe
Guest Lecturer, Online Seminar on Civil Rights. Conducted
prerecorded and live Webinars with students enrolled in course
taught by Associate Dean Suzette Malveaux, Catholic University
School of Law. Used innovative technology to teach Seminar class to
International LLM students in Poland enrolled in online course.
Catholic University School of Law, Washington, D.C. April 3, 2013.
- Workshop on Teaching and Evaluation
Annual Meeting of the Southeastern Association of Law Schools
(SEALS), The Breakers, West Palm Beach, FL. August 5, 2013.

- Overcoming Barriers to Law Teaching Faced by Women of Color
2013 Lutie A. Lytle Black Women Law Faculty Writing Workshop: “A Scholarly Salon in Nevada.” University of Nevada School of Law Las Vegas, Nevada, June 27-30, 2013.
- Addressing Challenges in and to the Legal Academy
2012 Southeast / Southwest People of Color Legal Scholarship Conference: “Transformative Advocacy, Scholarship, and Praxis: Taking Our Pulse,” The Cumberland School of Law at Samford University Birmingham, AL. March 30, 2012.
- New Law Teacher Workshop
American Association of American Law Schools (AALS). Attended several sessions focused on the mastery of law teaching skills. Topics covered “Learning Styles”; “The Changing Nature of Curriculum & Teaching”; “Testing and Assessment of Students, Feedback about Yourself, How to Measure Your Own Effectiveness as a Teacher”; and “Service and Professionalism for Junior Faculty.”
The Renaissance Mayflower Hotel, Washington, D.C., June 23-25, 2011.
- Plenary Session: Teaching
(Session on effective teaching strategies and how to overcome barriers faced by women and people of color))
Pre-tenured People of Color Law School Teachers Workshop, American Association of American Law Schools (AALS).
The Renaissance Mayflower Hotel Washington, D.C., June 25-26, 2011.
- Writing as Creative Habit
(Presentation included strategies on how to balance the demands of teaching with the expectation of producing legal scholarship)
2011 Lutie A. Lytle Black Women Law Faculty Writing Workshop, “Freedom Writers,” Texas Southern University Thurgood Marshall School of Law, co-sponsored by University of Houston Law Center Houston, TX. June 16-19, 2011.

MEDIA

- *Texas Congress Members Hold Community Policing Summit, WFAA8 (ABC News), January 15, 2015* (discussing summit between elected officials, police officials, federal and state attorneys, the Texas NAACP, and other community stakeholders with Members of Congress. I served as a moderator and discussant for the second of three panel discussions).

- *SMU Faculty Members Mentor First Women's Initiative Fellows*, available at <http://blog.smu.edu/forum/2012/05/22/smu-faculty-mentor-first-class-of-womensinitiative-fellows.html>.
- The Quad, Fall 2012, available at <http://www.calameo.com/books/00041460032749db31697>.
- *Remembering SMU Law Professor Sarah Tran, Texas Lawyer*, March 19, 2014, (Paying tribute to my late colleague and friend), available at <http://www.texaslawyer.com/id=1202646480761/Remembering-SMU-Law-Professor-Sarah-Tran?slreturn=20140221234758>.
- *Sarah Tran, SMU Law Professor Dies at 34, Dallas Morning News*, March 15, 2014 (Paying tribute to my late colleague and friend and discussing my forthcoming eulogy delivered at Highland Park United Methodist Church), available at <http://www.dallasnews.com/obituary-headlines/20140315-sarah-tran-smu-law-professor-dies-at-34.ece>.

)

FW: Your Class TENURE FILE

From: "Butler, Cheryl Nelson" </o=smu/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=39329177">
To: "Butler, Cheryl Nelson" <cnbutler@mail.smu.edu>
Date: Wed, 16 Sep 2015 15:07:28 -0500

From: Cortez, Nathan
Sent: Wednesday, September 16, 2015 2:06 PM
To: Butler, Cheryl Nelson
Subject: Your Class

Hi Cheryl,

I enjoyed your class yesterday. I jotted down a few notes that you may (or may not) find helpful:

- You had great energy to start the class and a great voice. I could hear everything clearly sitting in the back row. Sometimes, it sounded too much like shouting, which can come across as a bit hortatory. But as class continued, you varied your volume and pitch more, and it sounded more natural. For what it's worth, I could also hear your quite/whisper voice where I was sitting too. My voice is naturally monotone, and I have to work at this during class, so I pay attention to voice variation.
- You spoke directly to what the students should be learning, which is important. I think a lot of colleagues dive into substance without giving context.
- I liked how you required precise answers from your students. The students were very well prepared (with the lone exception of the one student who got tripped up by the radiologist question). I'm curious, did you call on the woman who walked in late on purpose?
- You covered a nice mixture of substance and procedure, focusing on the standard of review and limited decision for appellate court.
- On the respondeat superior discussion, your office hours example was useful.
- I liked how you required students to focus on the importance of discrete facts and how they might alter the test for respondeat superior.
- Nice point on why understanding the policy behind the rules is important.
- Class got bogged down a bit with the radiologist question — but I really liked the “fact masters” theme. Young lawyers have to master details.
- “Outsourcing” probably isn't the right word for the independent contractor arrangement. Hospitals structure these contracts precisely to avoid liability.
- Good job making students understand the medical terms (episiotomy). Students are adults and have to handle adult facts. The student handled it well.
- When you cover med mal, you should note that Texas has an incredibly restrictive and plaintiff-unfriendly regime — the worst in the nation. I think you said something about students going out and practicing med mal. That practice area is almost dead due to the 2003 Medical Liability Act.
- I'm surprised there wasn't more discussion in the respondeat superior case and apparent/implied liability about any claims by the hospital of the quality of care it provides and the physicians it works with. I teach similar cases in Health Law and there's extensive discussion of not only the terms of the contract between the parties, but also any claims of a special relationship that the hospital makes to customers.
- You paused a bit on the hypothetical posed by the student on using a “proctologist” in a pediatrician's case (or vice versa). One trick is to kick the question to the class — someone

RE: NOTE FOR TENURE FILE RE VISIT TO PROFESSOR BUTLER'S CLASS LAST FALL

From: "Butler, Cheryl Nelson" </o=smu/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=39329177">
To: "Satz, Martha" <msatz@mail.smu.edu>
Date: Fri, 14 Aug 2015 11:08:34 -0500

Thanx Martha! The class was "Employment Discrimination" No pressure, but if you have actual student comments or evaluations, would you mind adding them to you letter so that I could include them in the file with the other comments - my law students also loved the class.

My tenure chair has advised me to bolster my "teaching" file to get a full flavor of me as a teacher. I teach four classes. Torts I - large lecture to first years; Torts II - the same. Critical Race Theory - a seminar. And the class you visited - Employment Discrimination Lecture. My evaluations in three of the four, Torts I, Employment Discrimination, and Critical Race Theory, are consistently excellent. The fourth class, Torts II (and the only one in which I have to re-teach students who got low grades on a curve) are mixed. So, to ensure that the evaluations reach the standard of "excellent" I encourage of all of my visiting colleagues and students to send as much information as possible.

Thank you again - and I hope all is well after your return from the funeral. We had a death in our family across the country - my husband at the funeral. I stayed home with the kids.

All the best,

Cheryl

From: Satz, Martha
Sent: Friday, August 14, 2015 11:00 AM
To: Butler, Cheryl Nelson
Subject: RE: NOTE FOR TENURE FILE RE VISIT TO PROFESSOR BUTLER'S CLASS LAST FALL

Just reviewing the rave student comments on your class and preparing e-mail plus letter. Please refresh my memory and let me know the exact name of the class. Thanks, Martha

From: Butler, Cheryl Nelson
Sent: Wednesday, August 05, 2015 3:46 PM
To: Satz, Martha
Subject: RE: NOTE FOR TENURE FILE RE VISIT TO PROFESSOR BUTLER'S CLASS LAST FALL

Hang in there. Be strong. I have lost so many loved ones lately. I value every family member of friend who crosses my path.

From: Satz, Martha
Sent: Monday, August 03, 2015 10:18 AM
To: Butler, Cheryl Nelson
Subject: RE: NOTE FOR TENURE FILE RE VISIT TO PROFESSOR BUTLER'S CLASS LAST FALL

Thank you so much.

From: Butler, Cheryl Nelson
Sent: Monday, August 03, 2015 9:30 AM

RE: Professor Butler's Tenure

From: Justin Bynum <justinbynum653@gmail.com>
To: "Collins, Jennifer" <jmc@mail.smu.edu>
Date: Tue, 13 Oct 2015 14:43:09 -0500

Dear Dean Collins,

I am an alumnus of the SMU Dedman School of Law Class of 2014. I am writing today to express my support and appreciation of Professor Butler's bid for tenure. She and I were in similar situations when we arrived at SMU in 2011. Both of us were beginning our journeys at SMU, albeit, she as a professor and I as a law student. Although she may not have realized it at the time, Professor Butler's classes were instrumental in molding my perspective on law school and the practice of law.

Duty, Breach, Causation, and Damages: the four components of any tort case. If I learned nothing else in law school, I learned that. Professor Butler's Torts class was one of the first that I took at SMU, and I was thankful to be in her class. Professor Butler made Torts interesting by ensuring that she incorporated everyone's perspective into class discussions. As stressful as it was for some people when called on, Professor Butler made being called on a positive experience by encouraging us all to develop and defend our legal arguments.

As I progressed through law school, I made it a point to take as many of Professor Butler's classes as I could. Her class on Critical Race was one of my favorites. I loved the way that people were forced to confront legal issues that touched on our preconceived notions of ethics and equality. Although we often disagreed, we were forced to make logical legal arguments to support our positions in a class that welcomed discourse. Professor Butler made class an open place for discussion. I appreciated that.

I am thankful to be an SMU Mustang. Deciding to go to SMU was one of the best decisions that I could have made. Now that I am an alumnus, I look back fondly on my experience at SMU, in large part, because of the effect professors like Professor Butler had on my experience. It is my sincere hope that other students who are fortunate enough to be accepted into Dedman School of Law will also have the opportunity to learn from Professor Butler.

Sincerely,

Justin Bynum, J.D.
SMU Dedman Class of 2014

SMU Dedman School of Law
Office of the Dean
C/O Jennifer M. Collins
P.O. Box 750116
Dallas, TX 75275-0116

October 9, 2015

Dear Dean Jennifer M. Collins:

I am writing on behalf of Professor Cheryl Butler, a candidate for tenure at SMU Dedman School of Law. Over the past five years, I have known Professor Butler as a student and young attorney, as she has helped mentor me both inside and outside of the classroom. It has been a privilege and pleasure to know Professor Butler over the past five years and I wholeheartedly endorse her application for tenure.

From my first classroom interaction with her, I was immediately impressed by Professor Butler's ability to combine her command of the academic subject matter with a practical application of the law as it operates today. Her engaging, intriguing and challenging classes, actively challenged students to reflect on what they were learning and not just parrot out a response they thought was acceptable. Every class reflected the organization and preparation Professor Butler constantly put in to all of her sessions, while simultaneously putting her students on notice that an academic bar of excellence had been set. What's more is that Professor Butler was always dedicated to providing each student with the tools they needed to be successful both inside and outside the classroom.

As the former president of the Black Law Students Association (BLSA), I also had the privilege of forming a mentee relationship with Professor Butler, who served as BLSA's faculty advisor during my tenure with the organization. During the school year there were several occasions where I was unsure if I would be able to lead the organization well or successfully execute one of BLSA's large and demanding programs. Throughout these times Professor Butler was a steadfast rock and advocate for both BLSA and myself personally. She served as a sounding board for various ideas the BLSA executive board had throughout the year and personally encouraged me to step out and participate in national levels of BLSA leadership that I was unsure if I was fit for. Her encouragement served as the catalyst to help both myself and the organization grow tremendously.

Professor Butler exemplifies every attribute I would envision for a candidate for tenure, and I have no doubt she will become even more of an excellent asset to the SMU Dedman School of Law. It is for these reasons I give my unreserved endorsement for Professor Butler's application for tenure.

Sincerely,

Soluto Uba, Esq.
SMU Dedman School of Law '2013

the conference. The audience included scholars in my field who teach at Harvard, Columbia, Yale, UCLA, Iowa as well as those who are others who have written the seminal articles in the field - articles that I cite (have to cite) in my article. They are potential reviewers and they all now know my name and my work for sure. This was a career changer for sure, regardless of what tenure reviewers write. This was like being on a panel with you or Lack Bloome - I was the new untenured kid going toe to toe with the giants in the field. That is also why a lot of people were like - AWESOME!

Timing of conferences - You are right on. I am not doing conferences that conflict with class time or take place during the week unless they are a big deal. So, in the Fall, the NC symposium is during the week, but not on a day I teach. In the Fall, I teach on Monday and Wednesday, which is much more supportive of a junior scholar than teaching on Friday afternoons, the latter which undermines ones ability to present at conferences.

I hope that answers your questions. I appreciate your asking them.

Cheryl

From: Prof. Joe Norton [profjnorton@yahoo.com]
Sent: Saturday, April 19, 2014 6:13 PM
To: Butler, Cheryl Nelson
Subject: Re: [lawfaculty] Congratulations Cheryl!

Cheryl, Great stuff.....The Don Smart and WLA award are most helpful as they relate to your role as teacher. The Yale and Kty presentations are helpful in building your network, but really do not add much to the scholarship factor as your external reviews will be what will be looked to by the University's Tenure Committee and the Provost's Office. I do note that both conferences were held at times/dates that did not detract from your teaching schedule.....Wasn't there a memo that just went out about you doing something for the NC Law Rev. I cannot find it. At your convenience, could you advise me on this. Is this your "Over Troubled Water" piece? Anyway, I would suggest you don't give this piece to Kentucky, as you can probably get a better offer. Your call....Anyway, refresh my recollection on NC L Rev, which is very well thought of. Have a Blessed Family Easter Weekend. Joe

Prof. Joe Norton
SJD(Mich.), DPhil.(Oxon), LLD(London),LLD(hc)(Stockh.)
James L Walsh Distinguished Faculty Fellow
and Professor of Financial Institutions Law (SMU); and
formerly Sir John Lubbock Professor of Banking Law (London) (1993-2004)
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Storey Hall, Rm 306,3315 Daniel Ave, Dallas, Texas 75275
Phone: 469-774-4888(m); 214-328-8876(h) ; Fax: 214-768-3142 (w)
Texas Bar No. 15107000
Faculty Assistant: Sharon Magill-Tabbert--214-768-2639- smagill@smu.edu - Rm311AStorey

Thoughts for the Day:

All that is necessary for the triumph of evil is that good (people) do nothing. (Edmund Burke)

Fear of losing power corrupts those who wield it.....ones responsibility is to do the right thing. (Aung San Suo Kyi)

From: "Nguyen, Xuan-Thao" <xnguyen@mail.smu.edu>
To: lawfaculty@list.smu.edu

Sent: Wednesday, April 16, 2014 2:55 PM
Subject: RE:[lawfaculty] Congratulations Cheryl!

CONGRATULATIONS, Professor Butler!

Xuan-Thao
From: Law Faculty Forum
Sent: Tuesday, April 15, 2014 6:20 PM
To: lawfaculty@list.smu.edu
Subject: [lawfaculty] Congratulations Cheryl!

Congratulations to Cheryl on these accomplishments!

She was invited to present her forthcoming article in the YALE JOURNAL OF LAW AND FEMINISM, "Prostitution and Human Trafficking: A Criminal Race Feminist Critique," at the 2014 Yale Critical Race Theory Conference this past April 5, 2014. Cheryl presented to a group of 100 scholars and students on the panel, "Intersectionality on the Body: Policing the Sexual and Reproductive Rights of Women of Color." Her presentation received a great deal of positive feedback, and she fielded multiple questions from the audience, including inquiries from leading critical race scholars, Devon Carbado (UCLA) and Kimberly Crenshaw (UCLA).

SMU Dedman School of Law was the only law school at the Yale Critical Race Conference with two junior scholars (Cheryl and Jessica) selected for presentations.

Cheryl is one of a few junior scholars selected to present her work in progress, *Bridge Over Troubled Water: Safe Harbor Legislation for Sexually Exploited Minors*, at the University of Kentucky's Developing Ideas Conference to be held next month at the UK College of Law.

Cheryl is also the winner of the 2014 Don Smart Directed Research Competition (She supervised Lauren Olson '13 outstanding research paper on sexual assault in the military) and the recipient of the Outstanding Faculty Leadership Award, given by the Women in Law Association for outstanding work as a teacher, scholar and member of the law school community.

-The Law Faculty Forum

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Fwd: [lawfaculty] Cheryl!'s Publications

From: "Thornburg, Beth" <ethornbu@mail.smu.edu>
To: "Collins, Jennifer" <jmc@mail.smu.edu>
Date: Thu, 01 Oct 2015 16:01:48 -0500

Beth Thornburg
Richard R. Lee Endowed Professor of Law
Senior Associate Dean for Academic Affairs
SMU Dedman School of Law
<http://www.law.smu.edu/professor-profiles/thornburg>
@btSMU
<http://ssrn.com/author=121753>

Begin forwarded message:

From: "Prof. Joe Norton" <profjnorton@yahoo.com>
Subject: Re: [lawfaculty] Cheryl!'s Publications
Date: April 20, 2014 at 6:00:17 PM CDT
To: "Butler, Cheryl Nelson" <cnbutler@mail.smu.edu>
Cc: "Thornburg, Beth" <ethornbu@mail.smu.edu>, "Martinez, George" <gmartine@mail.smu.edu>, "Cortez, Nathan" <ncortez@mail.smu.edu>
Reply-To: "Prof. Joe Norton" <profjnorton@yahoo.com>

Cheryl, Appreciate your email. I am glad you are raising at this time what appears to be some fundamental concerns you have about your tenure process.....I do not wish to get in a contentious posture with you, but you and I appear to have fundamentally different interpretations of my prior emails and discussions concerning publications/scholarship requirements for contract renewal and tenure. First, I was only asked to chair your Committee in late January 2013, with George and Julie, but then Julie had to drop out due to her Interim Deanship and Beth was not appointed until late spring 2013. My first substantive discussions with you began in late March/April 2013. At that time, you expressed a high degree of "anxiety", feeling you were competing with Sarah and other of your young peers. I tried to assure you this was not a comeptitive race and each candidate is considered individually on his/her own merits. I also told you I was not sure whether the tenure requirement would be 4, 5 or 6 substantive articles, and that lengthy articles like your Wash U. article would probably count for 2. I also told you that a good, well-placed book chapter would count as one. I further explained that the ultimate test would be the quality of the external reviews down the road for tenure and that for CR purposes reviews would be by the

Committee..... This being said, by the time, I first spoke to you, you had 3 articles already completed and another 2 in near final form and it sounded like another couple in the works. I personally thought you were pushing yourself too hard and this was not a quantitative process. I never said you had to have 6 articles for tenure and 4 for CR. You had already chosen your dual scholarship tracks by the time we first talk and had already 5-6 pieces in the can. I never asked you, directly or indirectly, to readjust your scholarship plans or to produce more articles.

Also, I find this gossip circle which seems to surround the younger scholars is circulating a lot of misinformation. My recollection of Jessica's CR meeting is

a positive one, with Jessica being on track.....My recollection of your CR meeting was also a positive one. Your scholarship was presented as "excellent" and "well on its way to more than fulfilling" the tenure standard. Your service was viewed as "exceptional". Your teaching of your seminars was considered "excellent", and you were commended for taking on board suggestion for dealing with your large tort courses and your Committee was confident this would meet a high quality standard for tenure. It was noted that you might not have been provided adequate advice and class scheduling; that several of the Faculty sat in on and favorably reviewed your torts class and that you had a number of favorable student comments. The difficulties were described as more logistical and remediable in nature. It was also noted that others, like Assoc. Provost Eads, had heard you lecture otherwise and were impressed. Also, there are other factors that go into teaching such as working with student organizations, supervising DR papers, being accessible to students etc.....If there were any problems that arose as to you at the meeting, I would have promptly told you and you didn't need to get into the uninformed, misinformation loop.

As to the issue of external reviewers, you simply do not understand how difficult it is to get sufficient, high quality examiners. This is really an imposition on the time of others external to the LS and University. To get 8-12 good examiners is not easy and often one or two drop out. This is all something we can discuss next spring when we have a better idea of what is the full body of your scholarship. You Committee as a Committee, with your input, will make a final decision as what we conclude is the best approach. Under no circumstances are we going to engage in some form of synthetic equivalency test with Keith's and David's Committee....You also keep in mind that the more reviewers obtained the greater the chances of getting a mediocre review, particularly as to and "lesser" piece. One mediocre or back-handed review can really prove problematic.

Also, you have a misguided view that somehow if one can has "super-excellent" scholarship evaluations that this will offset less than "high quality" teaching. Evaluating scholarship and evaluating teaching are each separate evaluations and each has to meet its own standard- they are not "averaged".

Further, your characterization of Julie's calling a meeting of all tenure Chairs to discuss tenure requirements is misplaced. This had nothing to do with Jessica's meeting. Julie, her staff and the Library, had pulled together into a booklet for the Chairs relevant internal and external information on tenure standards. Julie was concerned that matters had uncritically ratcheted up without deliberative Faculty consideration, and was getting to generate a counter-productive competitive environment among our fine young scholars. Julie felt that one or two good, well-placed articles should be sufficient for CR and 3-4 substantial, well-placed and well-reviewed pieces should be sufficient for tenure. I orally conveyed this information to you at the time. That is why I did not ask

Please let me know whether or not you agree. Also, please do not think I am angry or anything like that just because I am expressing disagreement. It is hard to read tone in an email. I am the same happy go lucky Cheryl. However, a lot is at stake. So, I feel it is time to stop trying to make everyone else happy and stand up for myself.

Hang in there with me,

Cheryl

From: Prof. Joe Norton [profjnorton@yahoo.com<mailto:profjnorton@yahoo.com>]
Sent: Saturday, September 07, 2013 7:25 PM
To: Butler, Cheryl Nelson
Cc: Thornburg, Beth; Martinez, George
Subject: Re: Meeting informally for a few minutes before tomorrow's (Wed.) Faculty Forum

Cheryl, Following up on a chat last Wednesday,

1. I see no problem with your CR if we make a few adjustments now. I, and your Committee, however, want to approach your CR with the Faculty as providing a solid foundation for the subsequent tenure vote and then on promotion to full professor.

2. Yes, do finish up your current article(s). But, let's see if we can have 2 or 3 good solid pieces for your CR. Save the rest as works in progress that can then go in your subsequent tenure file. We can chat as to which articles you should highlight for CR.

3. A good Personal Statement, though not formally required at this stage, is (in my view and the Dean's view) highly desirable at this stage: it will provide something you/we can build on as you move forward. A draft of this Statement should be sent in advance to Beth, George and me so we can make constructive comments/suggestions.

4. You should complete your "box" for the faculty lounge by mid October 2013.

5. Meeting with Beth on your teaching evaluations is most important. I have passed on the Beth my comments on these evaluations. You have exceptional evaluations for your EW seminars, and (in my view) good Tort evaluations for Spring 2012 and Fall 2012. Your first teaching of torts in Fall 2011 was problematic, and your Spring 2013 tort course are problematic. I personally think this latter problem is remedial with certain adjustments on your part (e.g., using a comprehensive syllabus, not teaching on two consecutive days, not canceling classes unless absolutely necessary, not giving an exam of the type you did in Fall 2012; and just being yourself).....Anyway, we all can chat after you and Beth get your heads together.

6. On your courses in the Spring 2014, I personally think it is not best for you to do two seminars. One should be taught as a regular class. You need as much experience in regular larger classes as you can get in before tenure consideration. Anyway, I think you need to discuss this with Beth and with Julie.

Although we have a few road bumps to smooth out, I am very positive about you, your scholarship and your teaching. Just relax a bit, be yourself and proceed on a measured basis. You are not in a sprint and you are not competing with anyone, including yourself. All personal best wishes, Joe

Prof. Joe Norton

RE: Following up

From: "Butler, Cheryl Nelson" <cnbutler@mail.smu.edu>
To: "Collins, Jennifer" <jmc@mail.smu.edu>
Cc: "Henley, Becca" <becca@mail.smu.edu>
Date: Wed, 30 Sep 2015 22:33:26 -0500

Jennifer and Becca,

In addition to the discussion about perceived heavier tenure standards imposed on me, as compared to other candidates, I also raised a concern about colleagues holding against me the fact that I turned in my Spring 2015 Torts grades late due to a medical illness in my family. I reminded you that I turned in those grades late for several circumstances of which there was no fault, unprofessionalism or negligence on my part. And, that given that the delay was due in part to my husband's recovery from hospitalization due to a serious health condition (as defined under the FMLA), it would be inappropriate and discriminatory to use the need for extra time against me. I asked you to consider ways to guard against such an impermissible outcome.

Jennifer indicated that someone told you that I have turned in my grades late every semester. I emphasized that this was a one sided mistruth and is inaccurate. Last Spring, I turned in grades past the time that they were needed or required by the school. That has not happened before. In some instances in the past, I have turned in my grades after the soft deadline requested by the registrar. However, in those instances, I have by habit called the registrar for permission or a request for extra time. The need for such has varied but do not reflect any unprofessionalism. For example, in some instances, I have called the registrar in advance for extra time to grade or negotiate a curve with my colleagues. In some instances, the registrar indicated that it was ok and did not matter if I turned in the grades a few hours or so late because e.g., other professors had not turned in their grades either. In one instance, I recall delaying the submission of the grades to negotiate a higher curve for my students.

Also, I want to ask you to not consider some of the challenges that I face in a vacuum or to assume that infractions are the result of incompetence of my part. A Lot of issues that I face that contribute to issues like needing extra time to grade or not having time to proof read a syllabus are the result of having to bear extra burdens and responsibilities as a black woman professor here or just for being me. I ask that you ask my perspective. Consider this. Yes, sometimes I have needed more time to submit grades. But, also consider that I have taught seminars of 23 students the same semesters that David Taylor and other candidates only had 5 or 6 students in their seminar classes. I have had a lot more papers to grade and also many of these additional students are 3L's. I am exhausted even before I pick up the Torts grades.

I have given a lot of myself to students and colleagues in crisis – including crises during exam period (which seems to be prime time for crises). I have turned in grades after counseling students whose significant others had attempted suicide,; helped a student whose classmate here at the law school committed suicide; helped a dying colleague – I have done all of this while grading.

I have also faced several personal challenges of my own while grading. While on tenure track, I buried a child, a parent and a colleague and took care of a seriously ill spouse. I've given a lot of support while a member of our community. I too need support.

Cheryl

FW: NOTE FROM JENNIFER ABOUT TENURE PROCESS

From: "Butler, Cheryl Nelson" </o=smu/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=39329177">
To: cnelsonbutler@aol.com
Date: Tue, 22 Sep 2015 03:39:33 -0500

From: Butler, Cheryl Nelson
Sent: Tuesday, September 22, 2015 3:39 AM
To: Collins, Jennifer
Cc: Thomas, Samantha (IAE)
Subject: RE: NOTE FROM JENNIFER ABOUT TENURE PROCESS

Dear Jennifer and Samantha,

Here is an example of a statement that I request that my colleagues, either my tenure committee or the Dean, add to my tenure report. Maybe it helps that I propose language. Could you advise me whether there is anything factually incorrect or otherwise harmful in my tenure committee having made such a statement? Isn't the statement accurate AND it is a statement in the university's and my mutual interest?

"Professor Butler has expressed concerns that some student evaluations and other conduct reflect bias. The law school investigated some of these concerns of bias and harassment against Professor Butler and found that they had merit. The law school admonished some students behavior was unwarranted and unacceptable. In some cases, the law school found that this harassment adversely affected Professor Butler's evaluations. Further, to raise awareness about the pervasiveness of bias against African American female law professors in particular, the law school Dean's office agreed to invite an expert to meet with the Faculty Forum to discuss this issue."

Would this be a fair and accurate statement that a faculty member - the Dean or my tenure committee could make on my behalf. If there is a need to "re-investigate" or "fact check" this statement, I am willing to pull together a file of the email correspondence that supports each sentence of this statement.

While there are other instances of harassment by students or other inequities that I have not had a chance to make Dean Collins aware of, at least the above statement would address the question I have been presenting to the Dean and my committee - namely, is there a way that the tenure committee or someone else can help convey the point to my colleagues who will vote on my tenure that some of my evaluations were adversely affected by harassment.

I do not think there is time for some long drawn out investigation. And, I am trying to be collegial and non-adversarial with my colleagues by making a suggestion that the law school simply note what has already been investigated and resolved at the law school level. Otherwise, how will colleagues be aware of all of these factors that affected my evaluations.

Aside from teaching evaluations, I had concerns that the terms that I had to meet for tenure were different from the other candidates. But, if discussing these concerns is making things worse, I will squash that and just ask whether in the interest of time and peace, we could determine if the law school could help make it known to my colleagues that I experienced harassment by students which the law school addressed and found to be inappropriate.

Re: REQUEST THAT WE INVITE COLLEAGUES SOON TO VISIT PROF BUTLER'S CLASSES/Notice of Presentationa and publications

From: Prof. Joe Norton <profjnorton@yahoo.com>
To: "Butler, Cheryl Nelson" <cnbutler@mail.smu.edu>
Cc: "Thornburg, Beth" <ethornbu@mail.smu.edu>, "Martinez, George" <gmartine@mail.smu.edu>, "Collins, Jennifer" <jmc@mail.smu.edu>, "Weaver, Jessica Dixon" <jdweaver@mail.smu.edu>
Date: Fri, 04 Sep 2015 17:55:28 -0500

Cheryl, I have had it on my list for some time to send out the notice to attend classes this Labor Day weekend. I wanted to give you a little time to get your classes up and going. I intend to strongly encourage the tenured faculty to attend your classes and to furnish me their written comments if they wish.....I have never asked you to seek approval of the Committee for conferences attended. I merely advised you two years ago that the Provost's Advisory Committee does not place much emphasis on tenure candidates attending conferences, but the Committee was very concerned about teaching and scholarship. I gave you my best advice at that time to be selective on what outside speaking engagements you accepted and otherwise to minimize cancelling and rescheduling classes due to your speaking engagements. Hope you and your Family have a good Labor Day. Joe

Prof. Joe Norton
SJD(Mich.), DPhil.(Oxon), LLD(London),LLD(hc)(Stockh.)
James L Walsh Distinguished Faculty Fellow and Professor of Financial Institutions Law (SMU); and
formerly Sir John Lubbock Professor of Banking Law (London) (1993-2004)
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Storey Hall, Rm 306,3315 Daniel Ave, Dallas, Texas 75275
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Fax: 214-768-3142 (w)
Texas Bar No. 15107000
Faculty Assistant: Sharon Magill-Tabbert--214-768-2639- smagill@smu.edu - Rm311AStorey

Thoughts for the Day: All that is necessary for the triumph of evil is that good (people) do nothing. (Edmund Burke ?); Fear of losing power corrupts those who wield it.....ones responsibility is to do the right thing. (Aung San Suo Kyi)

From: "Butler, Cheryl Nelson" <cnbutler@mail.smu.edu>
To: Prof. Joe Norton <profjnorton@yahoo.com>
Cc: "Thornburg, Beth" <ethornbu@mail.smu.edu>; "Martinez, George" <gmartine@mail.smu.edu>; "Collins, Jennifer" <jmc@mail.smu.edu>; "Weaver, Jessica Dixon" <jdweaver@mail.smu.edu>
Sent: Friday, September 4, 2015 4:50 PM
Subject: REQUEST THAT WE INVITE COLLEAGUES SOON TO VISIT PROF BUTLER'S CLASSES/Notice of Presentationa and publications

Dear Colleagues,

I hope that you will enjoy your holiday weekend.

Respectfully, I write to express a concern and make a request.

As you know, the tenure chairs for Keith and David have sent a notice to the faculty (1) indicating that they will be considered for tenure this Fall and (2) therefore encouraging colleagues to visit their classes. These notices were sent out yesterday and today.

I am writing to request that you send out a similar notice for me within this timeframe. Joe has indicated to me on several occasions that it is very important for colleagues to visit classes in part, because the university is relying less on student evaluations as a sole or major determinant of faculty teaching and, that instead, the university will look to additional indicia such as faculty observations. Notwithstanding this, in the past, colleagues have been slow to visit my classes. In fact, I have taught five classes - two seminars : CRT and Employment Discrimination and three different lectures - ED, Torts I and Torts II. But, colleagues have only visited Torts.

I really would like my colleagues to see me teach and I would like for them to have the same amount of notice and opportunity to see me teach as they receive for the other candidates.

Thank you so much colleagues for hearing my concerns.

Also colleagues, you advised me that I needed to give my committee notice for approval of both my plans to travel for conferences during the school year and of my plans to publish. Please note that, as indicated in the Faculty Forum, I have been selected to present an article at the Duke Race conference in November. Having been selected to present an article, I will seek publication of that article either in a Duke law journal or alternative during this school year. Further, I do have another article that I worked on as the recipient of a summer research grant that I may submit for publication in the next week - I have to get Nathan's advise on whether the Fall season has passed. If it has, then I will submit this article for publication in January.

Cheryl Butler

From: Butler, Cheryl Nelson
Sent: Wednesday, September 02, 2015 11:41 PM
To: Prof. Joe Norton
Cc: Thornburg, Beth; Martinez, George; Collins, Jennifer; Weaver, Jessica Dixon; Aylesworth, Brenda
Subject: RE: CHERYL BUTLER'S REVISED RESUME AND CORRECTION - HERE IS FINAL VERSION OF UCLA ARTICLE

OK - good news and bad news. Good news is that my Yale piece made a second SSRN Top Ten Download List! Bad news - I just saw this email now. So - HERE is the final resume and final UCLA article.

BRENDA - can you update THIS version of the vitae to the website.

JOE - please confirm that you have these final documents. The latest version of both the UCLA LAW article and the VITAE have "REVIEWERS" in the name of the document.

Cheryl

From: Butler, Cheryl Nelson
Sent: Wednesday, September 02, 2015 11:32 PM
To: Prof. Joe Norton
Cc: Thornburg, Beth; Martinez, George; Collins, Jennifer; Weaver, Jessica Dixon; Aylesworth, Brenda
Subject: CHERYL BUTLER'S REVISED RESUME AND CORRECTION - HERE IS FINAL VERSION

FIRST TENURE COMMITTEE

Fwd: IMPORTANT -- NOTE TO TENURE COMMITTEE FROM CHERYL - PLEASE RESPOND

From: "Thornburg, Beth" <ethornbu@mail.smu.edu>
To: "Collins, Jennifer" <jmc@mail.smu.edu>
Date: Thu, 01 Oct 2015 15:29:20 -0500

2 pieces for contract renewal, 2 more for tenure

Beth Thornburg
Richard R. Lee Endowed Professor of Law
Senior Associate Dean for Academic Affairs
SMU Dedman School of Law
<http://www.law.smu.edu/professor-profiles/thornburg>
@btSMU
<http://ssrn.com/author=121753>

Begin forwarded message:

From: "Butler, Cheryl Nelson" <cnbutler@mail.smu.edu>
Subject: RE: IMPORTANT -- NOTE TO TENURE COMMITTEE FROM CHERYL - PLEASE RESPOND
Date: September 8, 2013 at 11:42:23 AM CDT
To: "Prof. Joe Norton" <profjnorton@yahoo.com>
Cc: "Thornburg, Beth" <ethornbu@mail.smu.edu>, "Martinez, George" <gmartine@mail.smu.edu>

Joe,

I am so grateful that I have the committee to help me now. Thank you for helping me to get my act together.

I am going to get through the next month wrapping up my scholarship and then see if there is still time for me to go back and revamp the ED course.

Warm regards,

Cheryl

From: Prof. Joe Norton [profjnorton@yahoo.com]
Sent: Sunday, September 08, 2013 11:21 AM
To: Butler, Cheryl Nelson
Cc: Thornburg, Beth; Martinez, George
Subject: Re: IMPORTANT -- NOTE TO TENURE COMMITTEE FROM CHERYL - PLEASE RESPOND

Cheryl, I was completely unaware (unfortunately your Committee was formed very late in the game, with little guidance on your situation) of your arrangements with JBA or with any conversations with Julie...I think any perceived problems with Torts will sort themselves through

well...Please do not over-worry and get yourself demoralized. I just regret we did not have a Committee set up much earlier for you. Anyway, I am pleased with Beth and George.....No rush to meet. You can share your Personal Statement and Research Plan with us via email for comments. I thin we can meet later in August. No rush.....Don't get down and don't get defensive/adversarial....Keep in mind you have reviews on your Critical Race course are excellent-if my recollection is correct. All will be well, Joe

PS: For myself, on evaluations, I look at two things: is professor knowledgeable in subject, and is he/she prepared. Students don't like my accent and humor; think at times I am rude; and some think I am disorganized though I have a comprehensive Twen site and transparencies for each class. I have some students say I am one of the best teachers and some say I am one of the worst.....I think addressing canceling clsses and BRI comments will help greatly. As to your back to back scheduling classes, I leave to you, Julie and John L....But, don't forget your seminar reviews are superb!---- Stay upbeat. Give my very wishes to Sarah.

Prof. Joe Norton
SJD(Mich.), DPhil.(Oxon), LLD(London),LLD(hc)(Stockh.)
James L Walsh Distinguished Faculty Fellow
and Professor of Financial Institutions Law (SMU); and
formerly Sir John Lubbock Professor of Banking Law (London) (1993-2004)
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Phone: 469-774-4888(m); 214-328-8876(h) ; Fax: 214-768-3142 (w)
Texas Bar No. 15107000
Faculty Assistant: Sharon Magill-Tabbert--214-768-2639- smagill@smu.edu - Rm311AStorey

Thoughts for the Day:

All that is necessary for the triumph of evil is that good (people) do nothing. (Edmund Burke)

Fear of losing power corrupts those who wield it.....ones responsibility is to do the right thing. (Aung San Suo Kyi)

From: "Butler, Cheryl Nelson" <cnbutler@mail.smu.edu>
To: Prof. Joe Norton <profjnorton@yahoo.com>
Cc: "Thornburg, Beth" <ethornbu@mail.smu.edu>; "Martinez, George" <gmartine@mail.smu.edu>
Sent: Tuesday, July 2, 2013 10:29 AM
Subject: RE: Your Advisory Committee and Preparing for Contract Renewal

Dear Joe,

SECOND TENURE COMMITTEE

Re: Tenure chairs meeting on Monday

From: Prof. Joe Norton <profjnorton@yahoo.com>
To: "Collins, Jennifer" <jmc@mail.smu.edu>
Date: Sat, 19 Sep 2015 13:19:44 -0500

Thanks. Have a good weekend, Joe

Prof. Joe Norton
SJD(Mich.), DPhil.(Oxon), LLD(London),LLD(hc)(Stockh.)
James L Walsh Distinguished Faculty Fellow and Professor of Financial Institutions Law (SMU); and
formerly Sir John Lubbock Professor of Banking Law (London) (1993-2004)
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Fax: 214-768-3142 (w)
Texas Bar No. 15107000
Faculty Assistant: Sharon Magill-Tabbert--214-768-2639- smagill@smu.edu - Rm311AStorey

Thoughts for the Day: All that is necessary for the triumph of evil is that good (people) do nothing. (Edmund Burke ?); Fear of losing power corrupts those who wield it.....ones responsibility is to do the right thing. (Aung San Suo Kyi)

From: "Collins, Jennifer" <jmc@mail.smu.edu>
To: Prof. Joe Norton <profjnorton@yahoo.com>
Sent: Saturday, September 19, 2015 1:13 PM
Subject: Re: Tenure chairs meeting on Monday

I think there is a difference between disparagement and accurately and truthfully conveying the facts of the situation. I will forward you what I send to her, which will be based on what you send me. Counsel is reviewing it.

Sent from my iPhone

On Sep 19, 2015, at 1:09 PM, Prof. Joe Norton <profjnorton@yahoo.com> wrote:

I will be there. My only problem is I have pledged not to "disparage" CB during the tenure process. In talking about my experience with CB and the Committee, will this be disparagement should I revise my resignation letter. For example at the tenure meeting I may or may not refer to my experience? Joe

Prof. Joe Norton
SJD(Mich.), DPhil.(Oxon), LLD(London),LLD(hc)(Stockh.)
James L Walsh Distinguished Faculty Fellow and Professor of Financial Institutions Law (SMU); and
formerly Sir John Lubbock Professor of Banking Law (London) (1993-2004)
profjnorton@yahoo.com
Storey Hall, Rm 306,3315 Daniel Ave, Dallas, Texas 75275

FW: NOTE FROM JENNIFER ABOUT TENURE PROCESS

From: "Butler, Cheryl Nelson" </o=smu/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=39329177">
To: cnelsonbutler@aol.com
Date: Tue, 22 Sep 2015 02:37:55 -0500

From: Butler, Cheryl Nelson
Sent: Tuesday, September 22, 2015 2:37 AM
To: Collins, Jennifer
Cc: Thomas, Samantha (IAE)
Subject: RE: NOTE FROM JENNIFER ABOUT TENURE PROCESS

Samantha and Jennifer,

Here is my correspondence with Jennifer and my committee this week asking that I meet with my tenure committee to share with them by desire to meet to discuss my concerns about inequities in the tenure process. Please note from the correspondence below that:

1. I did not accuse my tenure committee members individually of discriminating me. Rather, I framed my concerns in terms of discrimination in the tenure process. I tried to speak cordially and diplomatically.
2. I asked the committee for an opportunity to meet as a committee in person. We had never done so.
3. I make clear that I am asking to meet with the committee to tell them of my concerns about discrimination in the tenure process. That means that there are concerns that I had not shared. As such, it is devastating to me that the law school or university concluded that my rights were not violated. How can we know that my rights were not violated if we have never met to discuss my basis for such a claim? I also indicated in prior communications to my committee, that I had voiced some concerns not all. Further, the email that I wrote to Beth about negligence was not directed at the entire committee.
4. Samantha, you told me, and the materials that you gave me seem to suggest, that filing a complaint is not the only means to resolve concerns about discrimination. I believe that, in the case or pretenured faculty, the prospect of other options is all the more imperative because the faculty vote on my tenure. So, I am hoping that I am not being told that this is my only option. I hope that somehow I do have the option or right to have my dean, associate dean and or tenure committee to advise me on and to protect me from discrimination. I hope that your office is not the only space at the law school to discuss these issues, particularly because you are not a tenured professor and have not experienced the process that I am going through of trying to secure a fair and equitable path to tenure.

Please help me.

Cheryl Butler

From: Collins, Jennifer
Sent: Tuesday, September 15, 2015 1:01 PM
To: Butler, Cheryl Nelson

FW: Next Appointment

From: "Butler, Cheryl Nelson" </o=smu/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=39329177">
To: cnelsonbutler@aol.com
Date: Tue, 22 Sep 2015 01:58:19 -0500

From: Butler, Cheryl Nelson
Sent: Tuesday, September 22, 2015 1:58 AM
To: Thomas, Samantha (IAE)
Cc: Collins, Jennifer
Subject: RE: Next Appointment

Jennifer,

As per my earlier emails this evening re: my tenure committee, below is my note to Samantha at IAE indicating my assumption that you supported my desire to direct my concerns to you and my tenure committee instead of filing a complaint with the IAE. Samantha also seems to confirm that opting to not file a complaint and instead work with my colleagues is a viable option consistent with university policy. She indicated to me that she would postpone my meeting with her while I met with you instead. So, I was surprised when you wrote to me tonight that I should have gone to the IAE to complain about discrimination rather than bother my colleagues about it.

Cheryl Butler

From: Thomas, Samantha (IAE)
Sent: Wednesday, September 16, 2015 7:29 PM
To: Butler, Cheryl Nelson
Subject: RE: Next Appointment

Cheryl,

I'll cancel our appointment for Thursday and wait to hear from you.

Samantha

From: Butler, Cheryl Nelson
Sent: Tuesday, September 15, 2015 6:41 PM
To: Thomas, Samantha (IAE) <thomassa@mail.smu.edu>
Subject: RE: Next Appointment

Hey there Samantha,

I would like to suggest that we hold off meeting again until after I meet with my Dean Tuesday. She has stated that she wants to address some of the issues I raised and it is better for me to let her work them out if possible. We meet on Tuesday and I can keep you posted.

I enjoyed our meeting and I am very grateful to have you as a resource.

FW: Your tenure advisory committee

From: "Butler, Cheryl Nelson" </o=smu/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=39329177">
To: cnelsonbutler@aol.com
Date: Tue, 22 Sep 2015 01:43:09 -0500

From: Butler, Cheryl Nelson
Sent: Tuesday, September 22, 2015 1:31 AM
To: Collins, Jennifer
Cc: Thomas, Samantha (IAE)
Subject: RE: Your tenure advisory committee

Jennifer,

I am also concerned about your statement below that **"Each member of the committee has made clear to me that all of their work on behalf of the committee has been done in accordance with University standards and practices, and that there is no basis for your assertions that the committee has been negligent, or that the committee has discriminated against you or somehow violated your civil rights or the University's policies on equal employment opportunities."**

First, I wanted to ask whether your writing this statement means that you agree with it? Are you just stating that this is the committee's view?

Second, I am concerned that the committee drew this conclusion because I never met with my committee to explain all my concerns that I experienced discrimination.

Third, I am also concerned about this statement because it misconstrues some of the concerns that I expressed to the committee. Some of the concerns do not reflect discrimination by the committee per se but discrimination in the tenure process. For example, the fact that the law school does not have consistent tenure standards that are applied to each candidate in the same manner may or may not reflect intentional discrimination by individual members of my committee. By committee members may be defensive in part because, never having had the opportunity to meet in person to discuss my concerns - ever - they do not understand the nature of my concerns about discrimination. Illegal discrimination can occur as a result of intentional discrimination by an individual. But, there are other ways. The individual can follow a school policy that has a discriminatory impact.

Fourth, the law school tenure process has conflicted with my civil rights. This is a fact. The law school could however cure those defects rather than continuing to perpetuate them.

Fifth, as I discussed below, you seem to critique me for bringing my concerns of discrimination to my colleagues instead of going to the Office of Institutional Equity. I don't understand this because you are aware of, and are otherwise encouraging me to resolve my concerns by other means - including an ongoing dialog with you. We met already once to discuss my concerns about how the law school tenure process imposed on me different terms and conditions of employment. We left our meeting with me asking you the question of whether or not the tenure committee has a duty to note past discrimination.. This is the same main issue that I have raised with my committee in writing this week before they suddenly resigned. You said that you would get back to me. I also copied you in the discussion with the committee via email and you said that you would get back to me.

Fwd: [lawfaculty] Cheryl!'s Publications

From: "Thornburg, Beth" <ethornbu@mail.smu.edu>
To: "Collins, Jennifer" <jmc@mail.smu.edu>
Date: Thu, 01 Oct 2015 16:02:35 -0500

Beth Thornburg
Richard R. Lee Endowed Professor of Law
Senior Associate Dean for Academic Affairs
SMU Dedman School of Law
<http://www.law.smu.edu/professor-profiles/thornburg>
@btSMU
<http://ssrn.com/author=121753>

Begin forwarded message:

From: "Butler, Cheryl Nelson" <cnbutler@mail.smu.edu>
Subject: RE: [lawfaculty] Cheryl!'s Publications
Date: April 21, 2014 at 1:29:29 AM CDT
To: "Prof. Joe Norton" <profjnorton@yahoo.com>
Cc: "Thornburg, Beth" <ethornbu@mail.smu.edu>, "Martinez, George" <gmartine@mail.smu.edu>, "Cortez, Nathan" <ncortez@mail.smu.edu>

Thank you so much, Joe. Thank you for taking my concerns seriously. I am grateful for the opportunity for all of us to communicate in person, as opposed to via email. Thank you so much for taking the time to explain the process, correct misconceptions and encouraging me to put my anxieties in perspective.

I look forward to meeting with you soon.

Cheryl

From: Prof. Joe Norton [profjnorton@yahoo.com]
Sent: Sunday, April 20, 2014 6:21 PM
To: Butler, Cheryl Nelson
Cc: Thornburg, Beth; Martinez, George; Cortez, Nathan
Subject: Re: [lawfaculty] Cheryl!'s Publications

Cheryl, I do understand your concerns. Having gone through partnership in a law firm and tenure here, I can fully understand how things can build up that unfortunately trigger unneeded anxiety for candidates. Also, I do hear you as to your concerns as a woman and a minority- I am not unsensitive to these concerns. I honestly believe you are on track for a successful tenure process. Julie has gone a long way in bringing matters back into a proper prospective and I am sure Jennifer will continue this collegial, collaborative approach..Also, you have a very experienced and balanced Committee.....I will do a

the Torts course itself, with Beth's Guidance. I personally think you are a good teacher and obviously in your specialty seminar a superb teacher. Just proceed as you have discussed with JBA and Julie. Your Committee has no power to ask you to do otherwise. If you can do your 2nd major course in the Fall of 2014, this would give you two fall semesters (2014 and 2015) of teaching it, so this should work out fine as to the tenure process/report.

Do stay in close touch with George as to your publication strategy. I get the impression you are juggling with way too much on your plate at one time. Quantity never helps. For CR you need 2 good pieces, which I think you have, and for tenure another two good ones and maybe a smaller piece or two. Placement in quality journals- nationally or in your critical studies area- should be your focus.....Anyway, George is best positioned to counsel with on this matter.

We can discuss all this and any other matters with you within the entire Committee you in early October.....

I personally feel bad that you did not have a senior faculty mentor from the start and did not have your Committee formed during your first year....I also think you are pushing yourself a bit too hard and you focus (perhaps naturally) too much on "competing" with your peers. I have no doubt that you will be a national figure in the critical race area and that you will be a good and effective teacher, in addition to being a wonderful LS and University colleague...Try to sort out your "plate" and be a bit more selective and focused as you go forward.....I am not a prophet or a seer, but I have good feelings about your journey with us.....All the very best, Joe

Prof. Joe Norton
SJD(Mich.), DPhil.(Oxon), LLD(London),LLD(hc)(Stockh.)
James L Walsh Distinguished Faculty Fellow
and Professor of Financial Institutions Law (SMU); and
formerly Sir John Lubbock Professor of Banking Law (London) (1993-2004)
profjnorton@yahoo.com
Storey Hall, Rm 306,3315 Daniel Ave, Dallas, Texas 75275
Phone: 469-774-4888(m); 214-328-8876(h) ; Fax: 214-768-3142 (w)
Texas Bar No. 15107000
Faculty Assistant: Sharon Magill-Tabbert--214-768-2639- smagill@smu.edu - Rm311AStorey
Thoughts for the Day:

short memo in a couple of weeks touching upon some points you/we might need to consider addressing as we go forward. Glad we have your concerns out in the air. Get some rest for you leg and mind. All should be well- God willing. Joe

Prof. Joe Norton
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and Professor of Financial Institutions Law (SMU); and
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From: "Butler, Cheryl Nelson" <cnbutler@mail.smu.edu>
To: Prof. Joe Norton <profjnorton@yahoo.com>
Cc: "Thornburg, Beth" <ethornbu@mail.smu.edu>; "Martinez, George" <gmartine@mail.smu.edu>; "Cortez, Nathan" <ncortez@mail.smu.edu>
Sent: Sunday, April 20, 2014 5:46 PM
Subject: RE: [lawfaculty] Cheryl!'s Publications

Joe,

Thank you for your reassurance and advice that I should not perceive the tenure process as a competition between the candidates. I appreciate that.

I welcome your advice but I do want to confess that I see the process inevitably as one in which the candidates are *compared* to each other. This has always been my impression based on my experience here based on remarks made by colleagues and students. I have a great deal of worry and concern about how and why colleagues compare junior faculty members. I was told, but could be wrong, that in my contract renewal discussion our Dean commented that I was "on the bottom" with respect to teaching. If the comment was made by anyone, it confirms that, colleagues are comparing my credentials to either David and Keith or to everyone generally.

Because I a woman in general and an African-American woman, my credentials will be evaluated closely. Mindful of my unique position and of these concerns, I want to put my best foot forward.

Having expressed these concerns, I am hoping that we can talk further in person (as opposed to email) on how to proceed notwithstanding the unique challenges I face in the tenure process.

Warm regards,

Cheryl

From: Butler, Cheryl Nelson
Sent: Sunday, April 20, 2014 2:57 PM
To: Prof. Joe Norton
Cc: Thornburg, Beth; Martinez, George; Cortez, Nathan
Subject: RE: [lawfaculty] Cheryl's Publications

Joe,

I hope I did not offend you. I need a safe space to express my concerns. I wanted to trust you to express them.

Cheryl

From: Prof. Joe Norton [profjnorton@yahoo.com]
Sent: Sunday, April 20, 2014 2:48 PM
To: Butler, Cheryl Nelson
Cc: Thornburg, Beth; Martinez, George; Cortez, Nathan
Subject: Re: [lawfaculty] Cheryl's Publications

Cheryl, You are not competing with David and Keith. Also, logistically, it is very difficult to impose upon busy senior external people to review a candidate's articles. Sending out 4 strong articles to 8 senior experts, and reviewing the others internally is well sufficient. I personally am not going to engage in worrying about what other Committees are doing. I and your other Committee members have considerable experience in dealing with tenure matters, and we are looking to you (as required) as an individual developing scholar, teacher and colleague, not to some competitive situation. If at anytime you don't have confidence in me and/or your other Committee members, you are always free to request another Committee. You have been appointed a very seasoned Committee. I think you might tend to spend too much time viewing matters as a competition. There are certain set standards of being "outstanding" in scholarship or teaching and at least of "high quality" in the other, with each candidate to be judged individually and not collectively (see below). Best, Joe

Article X of our Bylaws sets out the following criteria for tenure and promotion:

“A professor has two preeminent responsibilities: teaching and contributing to the growth and understanding of the law. These two responsibilities shall be given equal weight in the determination whether to award tenure or promotion to a member of the Faculty. The other responsibilities listed below [i.e., ‘Other School, University and Professional Activities’] are important but should not weigh as heavily as the foregoing criteria in the promotion and tenure decision.”

We note also the University policy that: “While each faculty member should be judged individually on the basis of his/her particular ability to contribute to the educational, intellectual and creative life of the University, generally tenure should be awarded only to those who are outstanding in either teaching or research (or equivalent activity) and whose performance in the other is of high quality.” University Policy Manual section 6.12(B)(2).

With respect to the teaching criteria for tenure, the Law School Bylaws provide:

‘It is a professor’s primary responsibility to teach his or her classes in an effective and scholarly manner. Closely related is the professor’s accessibility to students outside the classroom and his or her assistance in students’ academic work by supervising theses, supervising directed research, and serving as a faculty advisor on law journal written work. The development of new course materials, whether or not published, is a valuable contribution to the teaching process and should be given appropriate credit.’ [We can discuss these teaching standards subsequently]

Prof. Joe Norton

SJD(Mich.), DPhil.(Oxon), LLD(London),LLD(hc)(Stockh.)

James L Walsh Distinguished Faculty Fellow

and Professor of Financial Institutions Law (SMU); and

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To: Prof. Joe Norton <profjnorton@yahoo.com>

Cc: "Thornburg, Beth" <ethornbu@mail.smu.edu>; "Martinez, George" <gmartine@mail.smu.edu>; "Cortez, Nathan" <ncortez@mail.smu.edu>

RE: NOTE FROM JENNIFER ABOUT TENURE PROCESS

From: "Butler, Cheryl Nelson" <cnbutler@mail.smu.edu>
To: "Collins, Jennifer" <jmc@mail.smu.edu>
Date: Tue, 15 Sep 2015 18:32:52 -0500

Thank you. Thank you again for visiting my class. I appreciate it. I need to get more colleagues to attend.

From: Collins, Jennifer
Sent: Tuesday, September 15, 2015 1:02 PM
To: Butler, Cheryl Nelson
Subject: RE: NOTE FROM JENNIFER ABOUT TENURE PROCESS

I will get back to you.

From: Butler, Cheryl Nelson
Sent: Monday, September 14, 2015 9:20 PM
To: Collins, Jennifer <jmc@mail.smu.edu>
Subject: NOTE FROM JENNIFER ABOUT TENURE PROCESS

Dear Jennifer,

Can you intercede? On the one hand, I do not want to offend my committee repeatedly by asking them to address my concerns about civil rights inequalities and other issues of equity in my tenure process. On the other hand, as you know from our own meetings in your office, **I have legitimate concerns about past inequalities as well as how the law school will now address them so that they are not perpetuated through this phase of the tenure process.**

I would think that a request to meet at least once with my tenure advisory committee as a committee is a reasonable request. I know Joe has made efforts to get the committee to meet but WITHOUT assigning fault, I do not think that has ever happened. I cannot recall EVER meeting with my entire tenure advisory committee, at all - and if we ever met, we certainly never met as a committee to voice my concerns.

I have voiced concerns with colleagues individually about inequities in the tenure process and their impact on me for years - but only individually. I have met with Nathan, in his capacity as research Dean and with Beth, in her capacity as both Dean of Faculty and as a tenure advisor about these concerns and of course I have met with Joe and you. But, I have never met with the COMMITTEE to express my concerns about civil rights, equity or fairness. This is why in part there are so many emails.

But, obviously, there is value in meeting as a GROUP. It is one thing, for example, for me to go to lunch with Beth to express concerns. But, it is different to express those concerns in front of her and the entire committee.

It would be shocking and frustrating to me that even in the face of something so serious and important as me stating to my committee that I have civil rights questions or concerns that I would like to discuss respectfully before you complete your report - that the committee would decline to meet with me to even here the concerns. I never stated that any one email correspondence

summarized my concern. I have not expressed all of my concerns with you and the committee. And, I am just worn out and discouraged from having to state everything via email, with no dignity and comfort of a face to face meeting.

It seems that Joe has taken an approach that it is not the committee's job to discuss issues of race or inequities that I have faced. If this is his view, although I cannot say for sure, I disagree with it. The committee has taken the liberty to discuss other personal and professional issues that have impacted me (and presumably that they thought bore on my candidacy and character). For example, in my contract renewal letter, the committee stated that it chose to talk about my work helping our colleague Sarah Tran during her cancer battle. Indeed, my helping Sarah had a tremendous impact on me, including my experience as a teacher and my views on what it means to be a good colleague. But, other factors have shaped my experience as a teacher and scholar. I am hoping that the committee is willing to hear from me about some factors that have shaped my experience in the classroom and as a scholar as these factors are relevant not only to my personal statement but also to their report.

I look forward to meeting with you next Tuesday to continue the discussion between the two of us about these issues. But, if these concerns are not heard by the tenure committee as well, then I believe a grave injustice will be done.

Cheryl

From: Butler, Cheryl Nelson
Sent: Monday, September 14, 2015 8:16 PM
To: Prof. Joe Norton; Thornburg, Beth; Martinez, George
Cc: Collins, Jennifer
Subject: RE: 6 external Reviewers in place

Also Joe,

I did not know that the Dean or my tenure committee was consulting with university counsel. But in any case, if my committee or the Dean is consulting with university counsel, I would think all the more the committee would want to meet with me and do so first, no? Otherwise, you would be consulting with counsel without taking the time to hear my perspective on policies and practices that may have undermined your efforts to provide me with equal opportunity to present a favorable tenure application, no?

Cheryl

From: Butler, Cheryl Nelson
Sent: Monday, September 14, 2015 8:11 PM
To: Prof. Joe Norton; Thornburg, Beth; Martinez, George
Cc: Collins, Jennifer
Subject: RE: 6 external Reviewers in place

Joe,

I hope that we could meet in person as an entire committee to discuss my concerns, rather than having to always communicate by email. I can not remember the last time we met as an entire committee.

I would be so grateful for the opportunity to meet face to face with the committee to discuss my concerns. It is often more collegial to meet in person - there are fewer misunderstandings. I would

Re: Your Request for a 7th External Reviewer

From: Prof. Joe Norton <profjnorton@yahoo.com>
To: "Butler, Cheryl Nelson" <cnbutler@mail.smu.edu>
Cc: "Thornburg, Beth" <ethornbu@mail.smu.edu>, "Martinez, George" <gmartine@mail.smu.edu>, "Collins, Jennifer" <jmc@mail.smu.edu>
Date: Wed, 16 Sep 2015 11:03:47 -0500

Noted.

Prof. Joe Norton
SJD(Mich.), DPhil.(Oxon), LLD(London),LLD(hc)(Stockh.)
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Texas Bar No. 15107000
Faculty Assistant: Sharon Magill-Tabbert--214-768-2639- smagill@smu.edu - Rm311AStorey

Thoughts for the Day: All that is necessary for the triumph of evil is that good (people) do nothing. (Edmund Burke ?); Fear of losing power corrupts those who wield it.....ones responsibility is to do the right thing. (Aung San Suo Kyi)

From: "Butler, Cheryl Nelson" <cnbutler@mail.smu.edu>
To: Prof. Joe Norton <profjnorton@yahoo.com>
Cc: "Thornburg, Beth" <ethornbu@mail.smu.edu>; "Martinez, George" <gmartine@mail.smu.edu>; "Collins, Jennifer" <jmc@mail.smu.edu>
Sent: Wednesday, September 16, 2015 11:03 AM
Subject: RE: Your Request for a 7th External Reviewer

Joe,

And, yes, I am very grateful that George, a leading critical race and Latcrit scholar, will review my Akron and Seton Hall articles. My email below is regards concerns about having an adequate number of outside reviewers - especially when and if compared to my male colleagues with whom I go up for tenure. Particularly if it true that Ketih has eight outside reviewers for four main articles. If I only have six outside reviewers for five main articles. I do not know what this disparity might signal to SMU colleagues on the university level. If possible, I do not want to take any changes. I would like to give a strong impression, Joe, especially in light of the issues you raised about the difficulty that all of the candidates may face on that level.

In any case, I am so appreciative of all of your efforts. My raising concerns, my disagreeing, my expressing fears, my request for equity is in no way a personal slight to you and could in so way diminish my acknowledgement and appreciation of all of your help, advice, and concern throughout the years.

Cheryl

Cheryl Butler

From: Collins, Jennifer
Sent: Tuesday, January 26, 2016 8:32 PM
To: Butler, Cheryl Nelson
Cc: Anderson, Roy; Colangelo, Anthony; Spector, Mary
Subject: Re: IMPORTANT NOTE FROM CHERYL BUTLER

Cheryl - let me deal with the most time sensitive matter first. I will confess I am confused by your email. I emailed you yesterday, careful to use both email addresses that you have been using, to say that of course I would meet with you and I would make myself available, at your convenience and on your schedule, to be sure that could happen. I will forward you that email again.

Sent from my iPhone

On Jan 26, 2016, at 8:07 PM, Butler, Cheryl Nelson <cnbutler@mail.smu.edu> wrote:

Dear Jennifer,

When you contacted me about the tenure vote, you indicated that we could meet to follow-up. I emailed you to request a meeting but you have not responded. Please confirm whether or not we can meet. I also wrote requesting a copy of my tenure report. To date, I have not received a copy. Please let me know whether or not I can have a copy. The Office of Institutional Equity contacted me to indicate that I had a right to raise concerns about the deprivation of my civil rights under the FMLA and the ADA. As I mentioned to the committee prior to the vote, the Office of Institutional Equity had already confirmed with me that Provost Stanley violated SMU procedure and ADA law in handling my request for an ADA accommodation. While Roy refused to acknowledge the OIE's advice, the ADA officers insist that its office is committed to further addressing the issue. The university cannot cure the defect without the pertinent documentation. We need the tenure report to proceed with the investigation.

Warm regards,

Cheryl Butler

also be so grateful because meeting in person can be less time consuming than me having to construct all of these long email communications.

Warm regards,

Cheryl

From: Prof. Joe Norton [profjnorton@yahoo.com]
Sent: Sunday, September 13, 2015 12:32 PM
To: Butler, Cheryl Nelson; Thornburg, Beth; Martinez, George
Cc: Collins, Jennifer
Subject: Re: 6 external Reviewers in place

Cheryl, Your Committee members have not met to discuss exactly how we are going to approach the structure and substance of your final Report, including the Teaching portion. We still have considerable additional information to receive and digest. When your Committee meets, the Committee members will discuss your extensive memo on your "Concerns." In that memo you raise possible questions on "negligence" and "violation" of your Civil Rights. As such, your Committee will need to consult with the Dean and University counsel on how your Committee member might best proceed. Regards, Joe

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To: Prof. Joe Norton <profjnorton@yahoo.com>; "Thornburg, Beth" <ethornbu@mail.smu.edu>; "Martinez, George" <gmartine@mail.smu.edu>
Cc: "Collins, Jennifer" <jmc@mail.smu.edu>
Sent: Sunday, September 13, 2015 11:56 AM
Subject: RE: 6 external Reviewers in place

Thank you so much, Joe. This is great news.

You also indicated in previous emails that I would be able to meet with the committee prior to the completion of the final report to express my concerns about how certain issues and factors would be reflected in, or impact my tenure report. Respectfully, in previous communications I shared my concerns about whether that the use of some factors on the one hand and the refusal to take into account other factors on the other hand in assessing my qualifications for tenure (particularly my teaching evaluations) would be consistent with my rights under civil rights laws.

And the beat goes on.....From my brief, preliminary review review of CB's student evaluations since coming here, her 4 reviews of the Critical Race seminar were excellent; the two reviews of her ED class are very good; and, 3 of her Tort reviews (plus one mid-term review) were very good, but three other Tort reviews very problematic.....As to Jessica, XT and Rose, I think our LS were very supportive of them and enthusiastically voted each of them tenure (in fact we most aggressively sought to get Rose back).....Anyway, CB has accused her Committee, and me in particular, of being negligent as to her Contract Renewal process and Report and now being even more so negligent/indifferent and possibly violating her civil rights as to her tenure process. I have tried to hang in there, but I really must recuse myself from being the Chair and a member of her Committee.....I will be home tomorrow if you wish to chat. I am so very sorry for all this, but I have really tried my very best. Joe

Prof. Joe Norton

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To: Prof. Joe Norton <profjnorton@yahoo.com>; "Thornburg, Beth" <ethornbu@mail.smu.edu>;

"Martinez, George" <gmartine@mail.smu.edu>

Cc: "Collins, Jennifer" <jmc@mail.smu.edu>

Sent: Sunday, September 13, 2015 5:13 PM

Subject: RE: 6 external Reviewers in place

Joe, that is just one email where I was venting my frustrations about one particular issue - namely, whether the committee owes a duty to acknowledge discrimination that I have faced as a teacher (especially in cases where the law school acknowledged the discrimination, sought to address it, but that the discrimination was nevertheless reflected in the teaching evaluations and may have impacted my morale and effectiveness in the classroom). That is a very important issue since it is a recurring theme in my experience as a law professor at our school and, because there is extensive legal scholarship and social science research affirming that hostility, discrimination toward, and presumed incompetence of, African-American WOMEN law professors is a common problem not only at SMU but also throughout the legal academy. The ABA, NBA and AALS have all acknowledged - and asked law school deans to acknowledge - not ignore - the prevalence of this problem.

Meaning well, my committee has suggested in the past, that I discuss these experience in a separate statement for my tenure file. However, I should not have to carry the burden of explaining my experience of discrimination, adversary etc. As indicia of its institutional support, the law school should take on the responsibility of explaining these experiences. That way, I do not have to carry the burden of appearing defensive or angry. Instead, the law school should

Fw: 6 external Reviewers in place

From: Prof. Joe Norton <profjnorton@yahoo.com>
To: "Collins, Jennifer" <jmc@mail.smu.edu>, "Thornburg, Beth" <ethornbu@mail.smu.edu>
Date: Sun, 13 Sep 2015 17:58:24 -0500

And the beat goes on.....From my brief, preliminary review review of CB's student evaluations since coming here, her 4 reviews of the Critical Race seminar were excellent; the two reviews of her ED class are very good; and, 3 of her Tort reviews (plus one mid-term review) were very good, but three other Tort reviews very problematic.....As to Jessica, XT and Rose, I think our LS were very supportive of them and enthusiastically voted each of them tenure (in fact we most aggressively sought to get Rose back).....Anyway, CB has accused her Committee, and me in particular, of being negligent as to her Contract Renewal process and Report and now being even more so negligent/indifferent and possibly violating her civil rights as to her tenure process. I have tried to hang in there, but I really must recuse myself from being the Chair and a member of her Committee.....I will be home tomorrow if you wish to chat. I am so very sorry for all this, but I have really tried my very best. Joe

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Cc: "Collins, Jennifer" <jmc@mail.smu.edu>
Sent: Sunday, September 13, 2015 5:13 PM
Subject: RE: 6 external Reviewers in place

Joe, that is just one email where I was venting my frustrations about one particular issue - namely, whether the committee owes a duty to acknowledge discrimination that I have faced as a teacher (especially in cases where the law school acknowledged the discrimination, sought to address it, but that the discrimination was nevertheless reflected in the teaching evaluations and may have impacted my morale and effectiveness in the classroom). That is a very important issue since it is a recurring theme in my experience as a law professor at our school and, because there is extensive legal scholarship and social science research affirming that hostility, discrimination toward, and presumed incompetence of, African-American WOMEN law professors is a common problem not only at SMU but also throughout the legal academy. The ABA, NBA and AALS have all acknowledged - and asked law school deans to acknowledge - not ignore - the prevalence of this problem.

Re: Your Request for a 7th External Reviewer

From: Prof. Joe Norton <profjnorton@yahoo.com>
To: "Collins, Jennifer" <jmc@mail.smu.edu>
Cc: "Thornburg, Beth" <ethornbu@mail.smu.edu>, "Martinez, George" <gmartine@mail.smu.edu>
Date: Tue, 15 Sep 2015 18:54:16 -0500

Is this before or after the lawsuit?

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To: Prof. Joe Norton <profjnorton@yahoo.com>
Cc: "Thornburg, Beth" <ethornbu@mail.smu.edu>; "Martinez, George" <gmartine@mail.smu.edu>; "Collins, Jennifer" <jmc@mail.smu.edu>
Sent: Tuesday, September 15, 2015 6:35 PM
Subject: RE: Your Request for a 7th External Reviewer

Joe, someday I am going to repay you for all that you have done. I am grateful for you – I hope that point never gets lost.

From: Prof. Joe Norton [mailto:profjnorton@yahoo.com]
Sent: Tuesday, September 15, 2015 8:37 AM
To: Butler, Cheryl Nelson
Cc: Thornburg, Beth; Martinez, George; Collins, Jennifer
Subject: Your Request for a 7th External Reviewer

Cheryl, You only raised the issue of a 7th external reviewer this past weekend. I had explained to you why I thought 6, plus George as a recognized critical race scholar, was sufficient. I also explained the difficulty I had at this late stage to secure six and that I had a number of scholars solicited decline. That being said, as you are so insistent, I have sent out another email invitation this morning for a further review of your Wash U piece. This is the best I can do under the circumstances; and, I can provide no assurance that the invitee will accept. Regards, Joe

THIRD TENURE COMMITTEE

IN THE UNITED STATES DISTRICT COURT
 FOR THE NORTHERN DISTRICT OF TEXAS
 DALLAS DIVISION
 CHERYL BUTLER)
 Plaintiff)
 VS) CIVIL ACTION NO.
) 3:18-CV-0037-E
 JENNIFER P. COLLINS,)
 STEVEN CURRALL, JULIE)
 PATTERSON FORRESTER,)
 HAROLD STANLEY, AND)
 SOUTHERN METHODIST)
 UNIVERSITY)
 Defendants.)

 ORAL DEPOSITION OF
 ROY ANDERSON
 OCTOBER 21, 2021
 (REPORTED REMOTELY)

ORAL DEPOSITION OF ROY ANDERSON, produced as a witness at the instance of the Plaintiff, and duly sworn, was taken in the above-styled and numbered cause on the 21st day of October, 2021, from 10:22 a.m. to 3:42 p.m., via videoconference, before

1 Karen A. Wilson, CSR in and for the State of Texas,
 2 reported by machine shorthand, with all parties
 3 appearing remotely, and the witness appearing
 4 remotely in Dallas, Texas, pursuant to the Federal
 5 Rules of Civil Procedure, and the provisions stated
 6 on the record or attached hereto.
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1 APPEARANCES

2
 3 **FOR THE PLAINTIFF:**
 4 (Appearing via Videoconference)
 5 **ANDREW DUNLAP ATTORNEYS, PLLC**
 6 6565 N. MacArthur Blvd
 Suite 140
 Irving, Texas 75039
 7 **BY: MR. ANDREW DUNLAP**
 Telephone: 972.807.6357
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 E-mail: andrew@dunlapattorneys.com

9 **FOR THE DEFENDANTS:**

10 (Appearing via Videoconference)

11 **DLA PIPER, LLP**
 12 1900 N. Pearl Street
 Suite 2200
 13 Dallas, Texas 75201-2482
BY: MS. KIM J. ASKEW
 14 **MS. MALLORY BIBLO**
 Telephone: 214.743.4506
 15 Facsimile: 214.665.5990
 E-mail: kim.askew@dlapiper.com
 mallory.biblo@dlapiper.com

16 **ALSO PRESENT:**

17 (Appearing via Videoconference)
 18 **Ms. Kelly Thurman, In-house Counsel Southern**
 19 **Methodist University**

20 **Ms. Cheryl Butler, Plaintiff**
 21
 22
 23
 24
 25

1 INDEX

2 PAGE
 3
 4 Appearances..... 3
 5 **ROY ANDERSON**
 6 Examination by Mr. Dunlap..... 7
 Examination by Ms. Askew..... 81
 Further Examination by Mr. Dunlap.....129
 7
 8 Signature and Changes.....133
 9
 10 Reporter's Certificate.....134
 11
 12
 13
 14
 15
 16
 17
 18
 19
 20
 21
 22
 23
 24
 25

1 Q. Yes.
 2 **A. Yes, sir, I did.**
 3 Q. Okay. So --
 4 **MS. ASKEW: Excuse me, I just want to**
 5 **make sure the court reporter is tracking the time,**
 6 **because this is being recorded by Zoom. Are you**
 7 **keeping track of the time, Ms. Wilson?**
 8 **THE REPORTER: Yes. I'm keeping track**
 9 **of the question and answer time.**
 10 **MS. ASKEW: Right. Thank you.**
 11 **THE REPORTER: Like, so far we've gone**
 12 **about four minutes.**
 13 **MS. ASKEW: That's fine. Thank you.**
 14 Q. (BY MR. DUNLAP) So, is there a -- is
 15 there a tenure chair for each candidate; is that --
 16 is that correct?
 17 **A. That is the practice, yes, sir.**
 18 Q. Okay. So have you been the tenure chair
 19 on other candidates?
 20 **A. Yes, I have.**
 21 Q. Okay. How many?
 22 **A. Several. I've been on -- I would guess**
 23 **dozens maybe of committees over the years, tenure**
 24 **committees. I've chaired several of those. I**
 25 **could not tell you how many.**

1 Q. Okay. And in your -- your career there,
 2 have you ever -- and I just want to preface this
 3 that one of the issues in this case is race
 4 discrimination. Have you ever participated on a
 5 tenure committee for black or African-American
 6 candidates --
 7 **A. Yes.**
 8 Q. -- other than Ms. Butler?
 9 **A. Yes, sir, I have.**
 10 Q. Okay. And have you ever -- have you ever
 11 opposed other black candidates for tenure?
 12 **A. As a member of the committee?**
 13 Q. Yes.
 14 **A. No, sir, I have not.**
 15 Q. Okay. And have you recommended black or
 16 female law professors for tenure?
 17 **A. Yes, sir.**
 18 Q. Okay. Now, do you remember a professor
 19 named Kofele-Kale?
 20 **A. Ndiva Kofele-Kale, yes, sir.**
 21 Q. I'm sorry. Kofele-Kale. Okay. Did you
 22 vocalize opposition to her tenure?
 23 **A. It's a he.**
 24 Q. I'm sorry.
 25 **A. I was not a member of that committee.**

1 Q. Okay. And do you know of any other
 2 professors that were on that committee such as
 3 Anthony Colangelo or Mary Spector?
 4 **MS. ASKEW: Objection. I need you --**
 5 **would you clarify that? You said that committee.**
 6 **I was not sure what --**
 7 Q. (BY MR. DUNLAP) The tenure committee that
 8 -- the Professor Kofele-Kale's tenure, do you
 9 remember any of the other professors that were on
 10 that committee?
 11 **A. I am not certain, but I believe that**
 12 **Professor Walter Steele was a member of that**
 13 **committee. I do not recall who other -- who else**
 14 **might have been on that committee. That was a**
 15 **while ago.**
 16 Q. Okay. And I'm going to direct your
 17 attention to Professor Butler. When did you -- I
 18 mean, who was on your committee, other than
 19 yourself in reviewing her -- her tenure?
 20 **MS. ASKEW: I'm going to object to the**
 21 **vagueness in the question, who was on the**
 22 **committee. He's testified that there are many**
 23 **tenure committees. I just want to be clear what**
 24 **tenure committee we're talking about.**
 25 **MR. DUNLAP: I believe I said**

1 **Professor Butler. I'm sorry if you didn't hear**
 2 **that.**
 3 **MS. ASKEW: I did not. Thank you.**
 4 Q. (BY MR. DUNLAP) I want to direct your -- I
 5 want to -- Professor, I want to direct your
 6 attention to the committee for Professor Butler's
 7 tenure?
 8 **A. Yes, sir. The other members of Professor**
 9 **Butler's committee, the one I chaired, were Anthony**
 10 **Colangelo and Mary Spector.**
 11 Q. Okay. And were you the first tenure chair
 12 for her -- her tenure process?
 13 **A. No, sir.**
 14 Q. Okay. So there was another -- a former
 15 tenure chair?
 16 **A. Yes, sir.**
 17 Q. Okay. And why was there a change? What
 18 happened that they changed committees or changed --
 19 sorry?
 20 **A. My understanding is that her former**
 21 **committee -- Ms. Butler's former committee**
 22 **resigned.**
 23 Q. Okay. And do you have any idea why they
 24 resigned?
 25 **A. I have been told that they resigned**

1 **because Ms. Butler accused them of discrimination.**

2 Q. Okay. Did you know or did you have any
3 knowledge that -- that some of those people on
4 that -- on that committee evaluated her as fully
5 qualified for tenure and promotion?

6 **A. No, sir.**

7 Q. Okay. Would that surprise you if that's
8 the truth?

9 **A. No, sir.**

10 Q. Okay. Do you know about Ms. Butler's
11 contract renewal evaluation? What do you know
12 about her contract renewal evaluation?

13 **A. Well, I recall that I read the report of**
14 **her contract renewal report. I recall using it in**
15 **preparing my own report. From that time when she**
16 **was -- Ms. Butler was proposed for renewal, I**
17 **recall our meeting in which that renewal was**
18 **approved.**

19 I recall also that that committee
20 expressed reservations regarding her teaching in
21 the sense that it needed improvement. And I recall
22 that that committee -- both in the report and in
23 that meeting, expressed real optimism that it
24 was -- the teaching problems were something that
25 Ms. Butler could and would easily overcome.

1 Q. Okay. Now, the -- I want to go back a
2 little bit about your -- your history with
3 reviewing candidates for tenure.

4 **A. Okay.**

5 Q. Have you or did you oppose the tenure
6 of -- of any candidates, other than Ms. Butler?
7 Were there others that you opposed?

8 **MS. ASKEW: Objection, it's so broad.**
9 **Do you mean in his history at SMU or those -- is**
10 **there a time frame on it, particular candidates?**

11 Q. (BY MR. DUNLAP) The question is: In his
12 experience as a tenure committee member, has he
13 opposed the tenure of other candidates?

14 **A. I -- let me think. I can only recall**
15 **opposing one other candidate for tenure whose**
16 **committee I so formed. Am I being responsive to**
17 **your question?**

18 Q. Yes. Yes. And could you describe that
19 candidate? What was the -- what was the gender and
20 race of that candidate?

21 **A. He was a white male.**

22 Q. Okay. So in your -- in your experience
23 with reviewing candidates for tenure, you've never
24 opposed a black candidate or a female candidate?

25 **A. No.**

1 Q. Okay.

2 Okay. So when did you first begin
3 your -- your evaluation of Ms. Butler for tenure?

4 **A. That would be as chair of her tenure**
5 **committee. I assume that's your question. That**
6 **would be the fall of 2015.**

7 Q. Okay. Do you recall -- do you recall
8 anything unusual that occurred during that time in
9 Ms. Butler's life?

10 **A. In her life, personal life --**

11 Q. Yes.

12 **A. -- or professional life?**

13 Q. Personal life.

14 **A. I apologize, but I have no idea how to**
15 **answer that question.**

16 Q. Were you aware that she was having health
17 problems?

18 **A. Personal?**

19 Q. Yes.

20 **A. I was aware that she had previously had**
21 **health problems. I was told that was in the**
22 **previous spring, the spring of 2015. I personally**
23 **and -- I personally did not know she was**
24 **experiencing personal health problems until early**
25 **November, I think it was November the 8th, when she**

1 **told me that or told the committee that she**
2 **personally was having health problems.**

3 Q. Okay. And did you have any conversations
4 with her during this time?

5 **A. Yes, sir.**

6 Q. Okay. Did they involve her -- her health?

7 **A. No conversation I had with her prior to**
8 **early November of -- touched the subject of her**
9 **health. That's my recollection.**

10 Q. Okay. Did you ever have an opportunity,
11 during a conversation with her, where you noticed
12 or heard her coughing and commented on her
13 appearing sick?

14 **A. I -- the answer to your question is yes.**

15 Q. Okay. And did you express concern about
16 her situation?

17 **A. When she was coughing and I noticed that**
18 **she was -- the answer to your question is yes. I**
19 **mean, I asked her what the problem was, and I can't**
20 **remember what she said. If I said asthma, that's**
21 **probably based on something I learned later. I**
22 **don't know whether she said allergies, asthma or**
23 **whatever, but I can recall a telephone conversation**
24 **in which Ms. Butler was coughing a lot, and we --**
25 **we talked about that. We're talking, Mr. Dunlap,**

1 **five years in the past and my recollection is**
 2 **fuzzy.**
 3 Q. Okay. And did you ever have a -- did you
 4 ever relay to her that you understood the problem
 5 because you, yourself, had had some health
 6 problems, like lung cancer? Do you recall having a
 7 conversation about that?
 8 **A. No.**
 9 Q. Okay. Besides her coughing, did you
 10 observe any other symptoms of illness?
 11 **A. No.**
 12 Q. Okay. Did you ever -- when you learned of
 13 her -- her symptoms, did you have any questions as
 14 to whether these were real symptoms? Did you ever
 15 doubt her -- her symptoms?
 16 **A. No.**
 17 Q. Okay. Did you ever say to her that the
 18 best thing was not to worry about the tenure
 19 process and that getting better was the most
 20 important thing?
 21 **A. No.**
 22 Q. And so you never said that?
 23 **A. I don't believe I did, no, sir.**
 24 Q. Did she express to you her concerns about
 25 the unfairness of being evaluated for tenure and

1 can you see this document, it is Plaintiff's
 2 Deposition Exhibit 4. It's the University Policy
 3 Manual Guideline for the Award of Rank and Tenure.
 4 Do you see that?
 5 **A. I see a pdf tenure policies. Would that**
 6 **be the one?**
 7 Q. You don't see it opened?
 8 MS. ASKEW: No.
 9 THE WITNESS: No.
 10 **MR. DUNLAP: Okay. So let me see if I**
 11 **can --**
 12 **MS. ASKEW: What we have, Mr. Dunlap,**
 13 **is the screen or your share file which lists all of**
 14 **the --**
 15 **MR. DUNLAP: Okay. I gotcha. Okay.**
 16 **So let me see how I -- all right. How about now?**
 17 **MS. ASKEW: Yes.**
 18 **THE WITNESS: Yes.**
 19 **MR. DUNLAP: Okay. Not bad for a guy**
 20 **that went to law school when all they had -- the**
 21 **highest technology they had was an IBM Selectric.**
 22 **So I'll pat myself on the back.**
 23 **MS. ASKEW: I still have mine. I**
 24 **still have it.**
 25 Q. (BY MR. DUNLAP) Okay. So I'm gonna direct

1 promotion while she was sick?
 2 **A. Yes.**
 3 Q. Okay. In addition to the coughing, did
 4 you -- did she tell you that she was on some kind
 5 of -- any kind of medication or anything like that
 6 for her -- her asthma attacks?
 7 **A. Not that I recall.**
 8 Q. In fact, you joked with her that you
 9 understood her plight because she knew that
 10 steroids cause constipation?
 11 **A. That -- that rings a bell, Mr. Dunlap. I**
 12 **don't know why.**
 13 Q. Okay.
 14 **A. I seem to recall, but I can't say for**
 15 **certain, that indeed we did have some discussion**
 16 **about steroids. I apologize, --**
 17 Q. I understand.
 18 **A. -- five years ago, but that rings a bell.**
 19 Q. I understand, thank you.
 20 Okay. Let's see here. Give me a
 21 minute here. I need to go to share screen.
 22 **A. Okay. I'll be one minute myself if you --**
 23 Q. Okay. Go ahead.
 24 (A break was taken from 10:44-10:47.)
 25 Q. (BY MR. DUNLAP) I've got on the screen,

1 you to bullet point number eight, and give you an
 2 opportunity to review that.
 3 **A. Okay. I'm skipping the second paragraph**
 4 **on childbirth and parental leave.**
 5 Q. I think it's called extension of
 6 probationary period.
 7 **A. Yes, sir. I read the first paragraph. I**
 8 **was skipping the second because --**
 9 Q. Okay.
 10 **A. -- it -- okay. I'm on the third**
 11 **paragraph.**
 12 Q. Okay. So do you recall whether Professor
 13 Butler asked for a pause or an extension of her
 14 probationary period during the time that she was
 15 sick?
 16 **A. I think she did, yes.**
 17 Q. Okay. What was the result of that --
 18 what was -- what did the university do or what did
 19 the committee do?
 20 **A. Well, the committee did nothing. And what**
 21 **the school did would be speculation on my part.**
 22 Q. Was it in the purview of the committee to
 23 act on her request?
 24 **A. Was it in the purview of the committee to**
 25 **what?**

1 Q. To act upon her request to pause her
 2 review until she got better?
 3 **A. No.**
 4 Q. So the committee had no authority to do
 5 that?
 6 **A. No, sir.**
 7 Q. Okay. Who would, if you know -- if you
 8 don't know then, you know, you don't. How would
 9 she get -- how would she be able to take advantage
 10 of this policy?
 11 **MS. ASKEW: Objection, compound**
 12 **question.**
 13 **THE WITNESS: Your question, if I**
 14 **understand it, is what should she do if she wished**
 15 **to extend the process? That would have been an**
 16 **administrative matter. And when she brought it up**
 17 **with the committee, we told her that, and told her**
 18 **to consult with Dean Collins or the provost office**
 19 **or both. It was not part of the committee --**
 20 Q. (BY MR. DUNLAP) Okay. So did the provost
 21 or the administration ever tell the committee or
 22 inform the committee that they should pause the
 23 review?
 24 **A. I'm not sure I understand the question. I**
 25 **do know that the committee was told that what we**

1 **had originally planned, which was to consider Ms.**
 2 **Butler's tenure and promotion in the month of**
 3 **December of 2015, would be extended to January of**
 4 **2016. I recall that.**
 5 Q. 2016?
 6 **A. Yes, sir.**
 7 Q. Okay. So are you saying that you-all
 8 paused the process or extended the process?
 9 **A. That's what has me confused. We were told**
 10 **that a report would not be due until January and**
 11 **that -- I take that back. I don't recall that the**
 12 **report itself was extended. I recall definitely**
 13 **that the date for the faculties' consideration of**
 14 **Ms. Butler's tenure and promotion was moved, as I**
 15 **said, January 2016. I'm not sure about the report.**
 16 **By the time we received that**
 17 **notification I think by and large the committee's**
 18 **work was largely completed.**
 19 Q. Okay. Okay.
 20 And does SMU have a code of ethics?
 21 **A. I'm sure we do, yes.**
 22 Q. Are you -- are you familiar with that code
 23 or?
 24 **A. No, sir. I am not.**
 25 Q. Okay. Are you aware that SMU has a policy

1 against discrimination and retaliation?
 2 **A. Yes, sir.**
 3 Q. Okay. And so in your tenure report did
 4 you make mention or was mention made that Ms.
 5 Butler had filed a discrimination report against a
 6 colleague?
 7 **A. Was information -- did we say something in**
 8 **the report about a discrimination against a**
 9 **colleague? I don't think so, no.**
 10 Q. Okay. Now, let's talk about your
 11 participation -- what -- what -- how -- give me an
 12 idea what you do as the tenure chair in conducting
 13 your review of a candidate for tenure. Just a
 14 two-minute blurb on that.
 15 **A. Okay. As chair of the tenure committee,**
 16 **you're responsible for ultimately putting together**
 17 **the report. You are the direct contact with the**
 18 **particular candidate. And you would be the person**
 19 **that would call any formal meetings of the**
 20 **committee itself with or without the candidate's**
 21 **presence. In other words, the normal things that a**
 22 **chair of a committee would do.**
 23 Q. Who do you -- who do you talk to? What
 24 documents do you gather? How -- how is all that
 25 done?

1 **A. Well, individually and collectively you**
 2 **invite members -- eligible members of the faculty,**
 3 **which would be the tenured faculty, to review the**
 4 **candidate's scholarship, attend his or her classes**
 5 **for purposes of making an evaluation.**
 6 **You would invite your colleagues --**
 7 **tenured colleagues to submit any observations,**
 8 **evaluations or recommendations that they might have**
 9 **regarding the candidate for purposes of the report.**
 10 **You advise the faculty that you'll be**
 11 **happy to talk with them individually about the**
 12 **candidate at their request, that sort of thing.**
 13 **In other words, you're an information**
 14 **gatherer for purposes of writing the report on the**
 15 **candidate.**
 16 **Normally a committee chair also**
 17 **selects and works with outside reviewers who are**
 18 **experts in the area of the candidate's writing and**
 19 **scholarship.**
 20 **I, as chair, did not perform that**
 21 **function because by the time we took over those**
 22 **evaluators had already been selected.**
 23 **Professor Joe Norton was chair of her**
 24 **former committee. And we requested and he agreed**
 25 **to continue to work with those outside evaluators,**

1 all three of us felt in good conscience that we
 2 could sign off on and present to the faculty.
 3 Q. Okay. Did Dean Collins review the tenure
 4 report before its distribution to the faculty?
 5 A. No, she did not.
 6 Q. Did she ever express concerns -- any
 7 concern that making retaliatory statements or
 8 complaining about Butler's discrimination
 9 complaints was inappropriate for a tenure report?
 10 A. No.
 11 MS. ASKEW: Objection, go ahead. You
 12 answered.
 13 THE WITNESS: No, she did not.
 14 Q. (BY MR. DUNLAP) Okay.
 15 A. I'm sorry for --
 16 MS. ASKEW: Oh, no. It's okay.
 17 Q. (BY MR. DUNLAP) Did the Office of
 18 Institutional Equity ever contact you to
 19 investigate whether there was discriminatory
 20 content in your -- in the tenure report?
 21 A. I don't understand the question. As I
 22 told you, I did talk with Ms. Hernandez, who did
 23 investigate the process itself and including the
 24 report, but that's the best I can answer your
 25 question, --

1 A. It's certainly not typical. And generally
 2 a committee works for a much longer period.
 3 Ideally, but I would guess not normally, you'd have
 4 the same committee for the full five years prior to
 5 your -- I guess, technically it would be four years
 6 prior to the decision on your tenure and promotion.
 7 Q. So did you rely on the work of the
 8 previous committee?
 9 A. Very little, other than to read the
 10 contract renewal report. We did rely on that, but
 11 otherwise, no.
 12 Q. Did you ever talk to the former chair
 13 about her tenure process?
 14 A. Yes, sir.
 15 Q. Okay. Do you know Associate Dean Beth
 16 Thornburg?
 17 A. Yes, I do.
 18 Q. And were you aware, according to her, that
 19 she felt that Professor Butler's teaching was
 20 satisfactory?
 21 A. Was -- last word?
 22 Q. Satisfactory.
 23 A. I think Professor Thornburg believed that
 24 Professor Butler's teaching was unsatisfactory.
 25 Q. Is that what she told you?

1 Q. Okay.
 2 A. -- as I understand it.
 3 Q. Okay. We're gonna take about a 10-minute
 4 break at this point. That will give you a chance
 5 to rest your -- your pipes. We'll be on break for
 6 about 10 minutes.
 7 MS. ASKEW: Thank you.
 8 THE WITNESS: Okay.
 9 (A break was taken from 11:16-11:33.)
 10 MR. DUNLAP: I'm ready when everybody
 11 else is.
 12 MS. ASKEW: Are you ready, Professor
 13 Anderson?
 14 THE WITNESS: Yes, ma'am. I am.
 15 MS. ASKEW: Thank you. We are ready,
 16 Mr. Dunlap. Thank you.
 17 Q. (BY MR. DUNLAP) Professor, how long did
 18 you serve as the tenure chair of her review -- of
 19 Professor Butler's review?
 20 A. I believe that we -- I was appointed in
 21 late September of 2015 and we concluded our
 22 business in early January of 2016.
 23 Q. Okay. And is that -- is that typically --
 24 is that a typical period of duration or is that
 25 shorter or longer?

1 A. Yes, sir.
 2 Q. Okay. Did you ever get any e-mails from
 3 Professor Butler forwarding information regarding
 4 her teaching?
 5 A. I'm sure I did.
 6 Q. Okay.
 7 A. I don't recall anything specific.
 8 Q. And that e-mail would have -- would
 9 contradict what you just said if you -- if you were
 10 to see it, right?
 11 MS. ASKEW: Objection, lack of any
 12 foundation.
 13 THE WITNESS: I don't recall a
 14 particular e-mail. I would be -- as I told you,
 15 Professor Thornburg, on more than one occasion,
 16 expressed dissatisfaction with Professor Butler's
 17 teaching.
 18 Q. (BY MR. DUNLAP) Okay. So are you aware
 19 that she's given a written -- she's given a written
 20 evaluation that contradicts what you said?
 21 A. I know that she gave an evaluation,
 22 written, e-mail and it's my recollection to the
 23 committee expressing grave reservations.
 24 Q. Okay. So, before you wrote the report,
 25 how well did you --

1 Q. Okay. Did y'all ever have lunch together,
 2 anything like that?
 3 **A. I don't recall having lunch with Cheryl.**
 4 Q. Did you ever visit any of her classes?
 5 **A. Yes.**
 6 Q. Okay. When -- when did that take place?
 7 **A. I recall visiting at least a part of one**
 8 **of her classes. I'm sure it was torts back when**
 9 **she was being considered for contract renewal.**
 10 **And then after I was appointed chair**
 11 **of her committee I attended, I believe, two --**
 12 **maybe three, but I think two of her classes.**
 13 Q. Okay. And did you ever visit her
 14 employment discrimination course or her civil
 15 rights seminar courses?
 16 **A. No.**
 17 Q. And was there a reason you didn't do that?
 18 **A. Those courses -- well, in the fall of**
 19 **2015, her other course, and memory doesn't serve**
 20 **whether -- excuse me, what it was, but it was a**
 21 **similar kind of course in which the students would**
 22 **be presenting papers, so, no, I did not attend**
 23 **either of those.**
 24 **I also recall that her -- that**
 25 **teaching evaluations for those other courses were**

1 Q. What were they? What were those?
 2 **A. Well, as we mentioned earlier,**
 3 **extraordinary that her committee resigned and a new**
 4 **committee was appointed. That's not without**
 5 **precedent, but that took it out of the normal form**
 6 **most certainly.**
 7 Q. Did you ever talk to any of those members?
 8 **A. The committee members?**
 9 Q. That resigned.
 10 **A. Yes.**
 11 Q. Okay. And what -- what was the basis of
 12 that conversation?
 13 **A. Well, I had two easily for me to remember.**
 14 **I had one meeting with Professor Norton in my home.**
 15 **Joe lives in the same neighborhood I do, and he**
 16 **came by and dropped off her tenure file. In other**
 17 **words -- excuse me, in other words, his records for**
 18 **the process, so he gave me his files.**
 19 Q. Okay. Did you talk to -- you said you
 20 talked to Norton and did you talk --
 21 **A. I'm sorry. I forgot the other. I had one**
 22 **brief conversation with George Martinez.**
 23 Q. Okay.
 24 **A. That's the third -- another member of her**
 25 **original committee. I asked George if there was**

1 **not problematic, but, at any rate, the short answer**
 2 **to your question is, no, I did not.**
 3 Q. Okay. Anyone else -- do you know if
 4 anyone else on your committee visited these
 5 classes?
 6 **A. I don't know -- I don't recall that they**
 7 **did, no, sir.**
 8 Q. Okay. Do you know a Joe Norton?
 9 **A. Yes, I do. Joe's Dean Norton.**
 10 Q. He was her former tenure chair, correct?
 11 **A. Yes.**
 12 Q. Were you aware that he sent her an e-mail
 13 indicating that he thought that she had met the
 14 standard for teaching?
 15 **A. No. I'm not aware of that.**
 16 Q. Okay. And he was her tenure chair for
 17 four years, correct?
 18 **A. I don't know, but I think that is correct.**
 19 Q. Okay. And you never talked to him about
 20 her teaching?
 21 **A. Not that I recall, no, sir.**
 22 Q. Okay. Were there procedural differences
 23 between Professor Butler's tenure process and that
 24 of others?
 25 **A. Most definitely, yes, sir.**

1 anything that he wanted to tell me about my taking
 2 on this job of the new chair. And he said that he
 3 didn't have anything to say other than what Joe
 4 Norton might have to say. And beyond that he
 5 didn't want to talk about the matter.
 6 I had more than one conversation --
 7 those were the only -- both those individuals I
 8 talked to once.
 9 Beth Thornburg I talked to more than
 10 once. Don't recall how many times, at least twice.
 11 And one -- both conversations were at -- that I
 12 recall were at her instance.
 13 One was ask me what I thought about
 14 her having lunch with Professor Butler. She felt
 15 that was a strange request of Professor Butler to
 16 make of her. And I said I did not know what to say
 17 to that.
 18 And she asked me if she thought -- if
 19 I thought that was a smart thing to do. And I said
 20 I had no opinion on the matter.
 21 And she asked me if she should be
 22 concerned, and I said something along the lines of
 23 I don't think Cheryl is very happy with you right
 24 now, so beyond that I have nothing to say.
 25 I recall that conversation. And the

1 her teaching?

2 **A. It is.**

3 Q. She was not committed?

4 **A. Yes, sir. That is my -- that's my**
5 **personal opinion, yes, sir.**

6 Q. You also mention the three main criteria
7 in the tenure report; scholarship, teaching and
8 service. And under scholarship you mention that
9 Butler gave presentations at several leading law
10 schools, including -- well, you know, we can go on,
11 it's in the report. And she got rave reviews, so
12 isn't this evidence of her talent as a classroom
13 teacher.

14 **A. I don't know how to tie those two**
15 **together.**

16 Q. Okay.

17 **A. Cheryl is, in my opinion, a brilliant**
18 **person, and I assume an excellent lawyer. And, Mr.**
19 **Dunlap, she has all the attributes to be a -- I**
20 **think a superb teacher.**

21 **She's personable, charismatic,**
22 **articulate, as I say, extremely bright. And she**
23 **has a talent that very virtually I think is God**
24 **given in that she can command a room, and that's a**
25 **very important tool for a teacher so gifted. So**

1 **cares about. I know this, that in my opinion, at**
2 **least, she did not put in the proprietary work to**
3 **teach the classes that she was teaching, in quotes.**

4 Q. (BY MR. DUNLAP) Okay. So wouldn't that be
5 more of an objective statement about her teaching
6 ability?

7 **A. Well, it's both. It's subjective based on**
8 **objective observations.**

9 Q. Were you aware of the fact that while
10 Sarah Tran, another professor there, was having
11 some health issues, that Professor Butler helped
12 her teach all of her classes? Were you aware of
13 that?

14 **A. At the time that Sarah was battling her**
15 **last illness, I was not aware that Cheryl had**
16 **helped out to the extent that I ultimately learned**
17 **that she did.**

18 Q. Okay.

19 **A. I think extraordinary work in helping**
20 **Sarah, certainly professionally, but I think --**
21 **also think personally.**

22 Q. Right. Did you know that she won a
23 teaching award in part of her work helping
24 Professor Tran teach her classes?

25 **A. I did not. That surprises me. I would**

1 **her classroom presence and ability to control a**
2 **classroom, I would rate as superb. That doesn't**
3 **make you a good teacher.**

4 Q. Okay. And who -- other than yourself, who
5 else evaluated her teaching?

6 **A. Almost all of our faculty I'm sure**
7 **attended her classes, maybe all of our faculty. I**
8 **hope all of our faculty did. And many, many**
9 **submitted written comments to our committee.**

10 Q. Okay. So you got input from other
11 professors?

12 **A. Yes, sir. And I believe actually most --**
13 **probably all are contained in the report that could**
14 **have been summarized but mostly quoted in part.**

15 Q. Okay. So, I mean, there's a difference
16 between a person's ability and a person's desire,
17 would you agree with me about that?

18 **A. Yes, sir.**

19 Q. And so the report basically is saying that
20 she did not care about teaching. But how did you
21 get to that? I mean, what's the -- what's the
22 basis for that opinion?

23 **MS. ASKEW: Objection, misstates prior**
24 **testimony.**

25 **THE WITNESS: I don't know what Cheryl**

1 **have put that in her report.**

2 Q. Okay. And so when you're -- when you
3 are -- you testified that you only have a couple
4 months, right?

5 **A. Right.**

6 Q. Only worked on this a couple months.

7 **A. Yes, sir.**

8 Q. So she was not given the same amount of
9 time that other professors have to be evaluated;
10 isn't that correct?

11 **A. Well, no. That's not correct. She was**
12 **given the same amount of time, but our committee**
13 **itself only spent two months of that time, but it**
14 **didn't erase all of the past.**

15 Q. Okay. So you relied on the former chair
16 and the work that that former committee did, even
17 though they -- they were disbanded -- they
18 disbanded?

19 **A. I'd like to make this very clear, the only**
20 **thing we relied on from the former committee was**
21 **the report it filed with the faculty of --**
22 **regarding her contract, her continuation, year and**
23 **a half or so earlier. And then also the student**
24 **evaluations and -- from -- from those former years.**
25 **We worked back through those. And I believe that's**

Re: Cheryl's tenure committee

From: Prof. Joe Norton <profjnorton@yahoo.com>
To: "Collins, Jennifer" <jmc@mail.smu.edu>
Cc: "Anderson, Roy" <rlanders@mail.smu.edu>
Date: Sun, 27 Sep 2015 13:00:30 -0500

Jennifer, At this very moment, I am trying to pull together my voluminous materials respecting Cheryl's tenure. I will try to have Roy a well organized file sometime this Tuesday, and will arrange to meet with him soon thereafter. I am including any correspondence except my resignation letter and Cheryl's two letters of complaints/concerns: I think Roy needs this background....What I am pulling off included the invitation letters to the nine external reviewers who have agreed, the reviewers' bio statements, CVs and contact emails; the 7 articles being reviewed; CB's teaching evaluations since coming on board; a list of possible collateral items that might enhance CB's teaching; the LS and university's tenure standards; CB's Fall 2015 Torts I syllabus; info on fall mid-semester course reviews (optional-up to Cheryl); info on the Faculty Tenure box and on what you as Dean will be requiring for your report to the Provost; copy of CB's Report on Contract Renewal as to which she strongly objects; CBs latest CV; memo sent to Faculty on reviewing CBs classes etc.

Because I could not get out the invite letters until end of August, first week of Sept., I have given the reviewers from Nov. 15 to Nov. 20 to deliver their reports.....On the Faculty Tenure Box, I had asked Cheryl to put it out by mid-late Sept; but I guess early-mid Oct. will be fine.

I would suggest that Roy and the other Committee chairs should think of attending Prof. Angela Onwauachi-Willig's Faculty presentations on this Wed. concerning problems of black women in academia. By the way Angela, by coincidence, is one of CB's nine external reviewers: CB has not been advised of the names of any of her reviewers.

As mentioned above ,I will be in touch with Roy by email later today and will arrange to meet in person with Roy this week.

All the very best, Joe

Prof. Joe Norton
SJD(Mich.), DPhil.(Oxon), LLD(London),LLD(hc)(Stockh.)
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Thoughts for the Day: All that is necessary for the triumph of evil is that good (people) do nothing. (Edmund Burke ?); Fear of losing power corrupts those who wield it.....ones responsibility is to do the right thing. (Aung San Suo Kyi)

From: "Collins, Jennifer" <jmc@mail.smu.edu>
To: Prof. Joe Norton <profjnorton@yahoo.com>; "Anderson, Roy" <rlanders@mail.smu.edu>

From: Collins, Jennifer
Sent: Thursday, October 01, 2015 5:54 PM
To: Butler, Cheryl Nelson
Subject: Following up on your emails from last night

Dear Cheryl:

First, I am so sorry to hear of the losses you have suffered. I did not know about the loss of your parent and your child, but please accept my heartfelt condolences. You are in my thoughts and prayers. In my sadness over hearing this news, I checked with both Joe and Ruth today to see how the law school had supported you and neither of them knew about the loss of your child (I assumed they would have in their respective roles). If I may make a gentle suggestion, it is difficult for the law school to support you if we do not know what is going on.

Second, I want to address your various emails discussing our conversations regarding your issues with the tenure process. I am quite concerned that your emails misconstrue and frankly misstate our discussions. I don't think we move forward by having me address and correct each of these misstatements, as I would like to focus our energies on ensuring that your tenure process continues to move forward. However, your statement regarding an investigation on substantive tenure standards is wrong and I need to make sure you are aware of the correct facts. I did not tell you that I had launched a general investigation concerning inconsistent tenure standards or concluded that the substantive tenure standards in the law school had been inconsistent. I have read some of the many emails between you and Joe on the issue of number of articles, which I think speak for themselves. You misconstrue the nature of Jeff Kahn's work, which is focused on issues related to organization and timing. For example, should materials be available to the faculty in hard copy or are electronic versions sufficient? From reading your emails, it appears that you are using these misstatements to justify why you do not wish to follow our well established procedures for addressing such concerns. As I emphasized before, the Office of Institutional Access and Equity can investigate any concerns you have, and they are trained to investigate claims of any faculty member, whether tenured or non-tenured. This Office also knows how to conduct investigations in a manner that protects a complainant from possible retaliation. Your tenure committee is the other avenue to address these issues. I am cognizant of the concerns you have raised, have taken affirmative steps to raise awareness among the entire faculty about the challenges faculty of color can face, and have provided you with two different channels for ensuring that your particular concerns are thoroughly evaluated as part of this process.

Third, at your request, I will notify the committee of your concerns about how many articles you were told to write and forward them the emails that I have seen from Joe and from you about his advice in that regard. You should of course supplement those with any relevant information that you possess. So you would not have to do so, I have also now asked Lack and Paul to send me any emails they might have written to David and Keith specifying a precise number of articles; they both informed me they have sent no such emails.

Jennifer M. Collins
Judge James Noel Dean and Professor of Law

SMU-Dedman School of Law
3315 Daniel Avenue
Dallas, TX 75205
214-768-2621
214-768-2182 (fax)
jmc@smu.edu

Cheryl's Tenure and Promotion Committee

From: "Anderson, Roy" <rranders@mail.smu.edu>
To: "Collins, Jennifer" <jmc@mail.smu.edu>
Cc: "Norton, Joseph" <jnorton@mail.smu.edu>
Date: Fri, 02 Oct 2015 16:03:40 -0500

Hi Jennifer,

Joe and I met for a couple of hours today to bring me up to date. The new committee is fortunate to have Joe's usual meticulous work to go forward with.

One thing we decided was that, with your permission, Joe would remain as the recipient of Cheryl's outside reviews. He would forward them to me as they come in.

Joe, if this is ok with Jennifer, would you give me an index of the reviewers, the articles they are assigned, and the deadlines for each. I've only thumbed through the files, so if an index is there just let me know.

Best, Roy

Roy Ryden Anderson
Vinson & Elkins Distinguished Teaching
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SMU Dedman School of Law
3315 Daniel Street
P.O. Box 750116
Dallas, TX 75275-0116
tel: 214-768-3279
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FACULTY VOTE

Re: November 16 Deadline

From: "Anderson, Roy" <rlanders@mail.smu.edu>
To: "Collins, Jennifer" <jmc@mail.smu.edu>
Date: Wed, 28 Oct 2015 15:52:27 -0500

When we have the letters we can meet almost any time frame you want. I think it's a crying shame David and Keith have to wait. The reason Joe set the late date for all is that in September Cheryl insisted on two or three new reviewers so she would have nine as do David and Keith. Nine strike me as over the top for anyone. Is anything about all this easy? It should be an exciting and happy time for all candidates. Hell even I'm getting stressed.

Sent from my iPhone

On Oct 28, 2015, at 3:41 PM, Collins, Jennifer <jmc@mail.smu.edu> wrote:

I have been clinging to hope the vote could be in December so David and Keith would not have to wait until after the holidays. And I hoped Cheryl's reviewers would not wait until the very last minute! But if it needs to be in January, that is what we will do.

From: Anderson, Roy
Sent: Wednesday, October 28, 2015 3:40 PM
To: Collins, Jennifer <jmc@mail.smu.edu>
Subject: Re: November 16 Deadline

Semester. Didn't you tell me that we could have until early January although it would compress the time for yours? Norton doesn't have the review letters coming in until November 20. Or thereabouts.

Sent from my iPhone

On Oct 28, 2015, at 3:34 PM, Collins, Jennifer <jmc@mail.smu.edu> wrote:

Which break?

From: Anderson, Roy
Sent: Wednesday, October 28, 2015 3:34 PM
To: Collins, Jennifer <jmc@mail.smu.edu>
Subject: Re: November 16 Deadline

I'll faint if I get it by then. But I don't anticipate using it for our report. We are planning on doing the report over the break. Okay?

Sent from my iPhone

On Oct 28, 2015, at 2:32 PM, Collins, Jennifer <jmc@mail.smu.edu> wrote:

Do you want to wait until November 16 for the personal statement? Don't you need that sooner?

From: Anderson, Roy
Sent: Wednesday, October 28, 2015 9:42 AM
To: Collins, Jennifer <jmc@mail.smu.edu>
Subject: Fwd: November 16 Deadline

Sent from my iPhone

Begin forwarded message:

From: <rlanders@mail.smu.edu>
Date: October 28, 2015 at 9:40:05 AM CDT
To: <cnbutler@mail.smu.edu>
Cc: <mspector@mail.smu.edu>, <colangelo@mail.smu.edu>
Subject: November 16 Deadline

Cheryl, The Dean advises that you are going forward with the Provost on your extension request. Regardless, you do need to meet the new deadline for your tenure box, including your personal statement. Also, we still don't have your course syllabi and exams. Please get them to us asap. See you when we get back next week. Best,Roy

Sent from my iPhone

FW: Rescheduling Your Meeting with the Dean - NOTE TO JENNIFER

From: "Butler, Cheryl Nelson" </o=smu/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=39329177">
To: cnelsonbutler@aol.com
Date: Thu, 13 Aug 2015 15:09:54 -0500

From: Butler, Cheryl Nelson
Sent: Thursday, August 13, 2015 3:03 PM
To: Collins, Jennifer
Subject: RE: Rescheduling Your Meeting with the Dean - NOTE TO JENNIFER

Gotcha!

From: Collins, Jennifer
Sent: Thursday, August 13, 2015 1:24 PM
To: Butler, Cheryl Nelson
Subject: RE: Rescheduling Your Meeting with the Dean - NOTE TO JENNIFER

I am happy to talk in person. It cannot be the 19th to 21st, as I am juggling two retreats and three different orientations in those three days.

I am not sure why this is not clear, so let me try again. There was never a plan to discuss you at one meeting and the two other candidates at another. As Joe stated, *no tenure discussions or votes have been scheduled yet for any candidate*. There was simply a suggestion by Joe that it would be helpful to you to be able to include your fall 2015 evaluations as part of your portfolio. You have made it plain that you do not want to wait for those if it would mean you are discussed at a different time than the other candidates. So we will plan to discuss and vote on all three of you together, although of course considering each of you individually and holistically. **Whether that happens in November, December or January depends on when all three files are complete.** If all three files are not complete until January, then the meeting will be in January, and all Fall 2015 evaluations will be considered for all candidates. If they are complete earlier and the meeting can be had in November, for example, then Fall 2015 evaluations would not be considered for any candidate, as they would not yet have taken place.

From: Butler, Cheryl Nelson
Sent: Thursday, August 13, 2015 12:59 PM
To: Collins, Jennifer <jmc@mail.smu.edu>
Subject: RE: Rescheduling Your Meeting with the Dean - NOTE TO JENNIFER

Respectfully, I would like to talk to you in person. Having gone back and forth via email - in many tense moments, I need to reverse course. I sincerely look forward to seeing you.

Cheryl

From: Collins, Jennifer
Sent: Thursday, August 13, 2015 12:57 PM

RE: TENURE APPEAL TO DEAN COLLINS: REQUEST FOR FOLLOW UP INTO ALLEGATIONS OF WILLFUL AND INTENTIONAL DISCRIMINATION DURING TENURE PROCESS

From: "Walters, Jim" <jwalters@mail.smu.edu>
To: "Collins, Jennifer" <jmc@mail.smu.edu>
Date: Tue, 02 Feb 2016 10:42:56 -0600

Thanks!

From: Collins, Jennifer
Sent: Tuesday, February 02, 2016 9:25 AM
To: Walters, Jim <jwalters@mail.smu.edu>
Subject: FW: TENURE APPEAL TO DEAN COLLINS: REQUEST FOR FOLLOW UP INTO ALLEGATIONS OF WILLFUL AND INTENTIONAL DISCRIMINATION DURING TENURE PROCESS

Here is the other one.

From: Butler, Cheryl Nelson
Sent: Tuesday, February 2, 2016 3:32 AM
To: Collins, Jennifer <jmc@mail.smu.edu>
Cc: cherylbutler2002@gmail.com
Subject: RE: TENURE APPEAL TO DEAN COLLINS: REQUEST FOR FOLLOW UP INTO ALLEGATIONS OF WILLFUL AND INTENTIONAL DISCRIMINATION DURING TENURE PROCESS

NOTE TO FILE: **TENURE APPEAL TO DEAN COLLINS**
FOLLOW UP ON TENURE APPEAL MEMO: REQUEST FOR FAIR AND THOROUGH INVESTIGATION INTO ALLEGATIONS OF WILLFUL DISCRIMINATION AND DEFAMATION BY TENURE COMMITTEE & INTENTIONAL INTERFERENCE OF FMLA RIGHTS BY SMU HR RHONDA ADAMS & RESULTING NEGATIVE TENURE COMMITTEE RECOMMENDATION

Dear Jennifer:

I wanted to raise one more concern about your note below. You have indicated that you would put my appeal in a file until February 19th. I am worried that you mean that you would "table" my appeal until then. Respectfully, my appeal raises some serious issues and allegations that require investigation. Please do not violate my due process rights as you seemed to do last Friday by dismissing my concerns as "simply untrue." I need for you to clarify what parts of the appeal you claim are untrue. I am requesting that you investigate my grounds for appeal. your refusal to do so is a breach of contract.

The IAE mishap is a case in point. You indicated on Friday that you wanted to highlight one grounds in which my appeal is inaccurate. You yourself brought up the example of my claim that the Office of Institutional Equity had already advised me that you and Provost Stanley violated the ADA and the university's own policies and procedures for handling requests for ADA accommodations. Your response to this claim was to contact Carolyn Hernandez. You then took Carolyn's word that she did not so advise me. And, for you, that was the end of it. You have always taken other people's word

documents relevant for my meeting with them. I assume that you are not disputing the presumption that the IAE would need to see the Tenure Report in order to evaluate the merits (or lack thereof) of my updated claim that the Provost's denial of my ADA request adversely affected my tenure recommendation and vote. Roy maintained repeatedly that my failure to provide documents to the Provost, and his response, affected both the procedural decision to proceed with tenure as well as his view of my fitness for tenure.

In any case, thank you for informing me that I will not be allowed to see the report. I will ask IAE to contact you directly as to whether they can review it.

Thank you for agreeing to meet with me on Friday. If I might choose a time, may I suggest the early afternoon?

Cheryl

From: Collins, Jennifer
Sent: Wednesday, January 27, 2016 10:20 AM
To: Butler, Cheryl Nelson; cherylbutler2002@gmail.com
Cc: Anderson, Roy; Colangelo, Anthony; Spector, Mary
Subject: RE: IMPORTANT NOTE FROM CHERYL BUTLER

Cheryl,

As I have mentioned several times, I am available to meet at your convenience and specifically am available on Friday. What time would you be available to meet on Friday? You request a copy of the tenure report. The tenure report is confidential so we cannot provide it to you. I also have verified that IAE did not request a copy of the tenure report as you suggest in your email to me below.

Jennifer

From: Butler, Cheryl Nelson
Sent: Tuesday, January 26, 2016 9:15 PM
To: Collins, Jennifer <jmc@mail.smu.edu>
Cc: Anderson, Roy <rlanders@mail.smu.edu>; Colangelo, Anthony <colangelo@mail.smu.edu>; Spector, Mary <mspector@mail.smu.edu>
Subject: RE: IMPORTANT NOTE FROM CHERYL BUTLER

Jennifer,

My apologies. I am sick on FMLA leave and am trying to catch up on email from bed. Under the circumstances, I overlooked your earlier email. But, I do appreciate your resending it.

Please let me know asap if you can meet in person on Friday. Then, I will see if I can get someone to bring me to meet with you. Also, please tell me whether or not I can have a copy of my tenure report. It is hard to appeal the tenure vote if I do not know the grounds ultimately used for the negative recommendation or presumably, for the unfavorable vote. However, if you do not wish to provide a copy of the report, please let me know ASAP. The window to appeal is quite small and it is difficult to work while ill; therefore, it will be helpful to know ASAP what material I have upon which to base an appeal.

Thank you.

Cheryl Butler

From: Collins, Jennifer
Sent: Tuesday, January 26, 2016 8:32 PM
To: Butler, Cheryl Nelson
Cc: Anderson, Roy; Colangelo, Anthony; Spector, Mary
Subject: Re: IMPORTANT NOTE FROM CHERYL BUTLER

Cheryl - let me deal with the most time sensitive matter first. I will confess I am confused by your email. I emailed you yesterday, careful to use both email addresses that you have been using, to say that of course I would meet with you and I would make myself available, at your convenience and on your schedule, to be sure that could happen. I will forward you that email again.

Sent from my iPhone

On Jan 26, 2016, at 8:07 PM, Butler, Cheryl Nelson <cnbutler@mail.smu.edu> wrote:

Dear Jennifer,

When you contacted me about the tenure vote, you indicated that we could meet to follow-up. I emailed you to request a meeting but you have not responded. Please confirm whether or not we can meet. I also wrote requesting a copy of my tenure report. To date, I have not received a copy. Please let me know whether or not I can have a copy. The Office of Institutional Equity contacted me to indicate that I had a right to raise concerns about the deprivation of my civil rights under the FMLA and the ADA. As I mentioned to the committee prior to the vote, the Office of Institutional Equity had already confirmed with me that Provost Stanley violated SMU procedure and ADA law in handling my request for an ADA accommodation. While Roy refused to acknowledge the OIE's advice, the ADA officers insist that its office is committed to further addressing the issue. The university cannot cure the defect without the pertinent documentation. We need the tenure report to proceed with the investigation.

Warm regards,

Cheryl Butler

DEAN VOTE

Faculty Assistant: Sharon Magill-Tabbert--214-768-2639- smagill@smu.edu - Rm311AStorey

Thoughts for the Day: All that is necessary for the triumph of evil is that good (people) do nothing. (Edmund Burke ?); Fear of losing power corrupts those who wield it....ones responsibility is to do the right thing. (Aung San Suo Kyi)

From: "Butler, Cheryl Nelson" <cnbutler@mail.smu.edu>
To: "profjnorton@yahoo.com" <profjnorton@yahoo.com>; "Collins, Jennifer" <jmc@mail.smu.edu>
Cc: "Thornburg, Beth" <ethornbu@mail.smu.edu>; "Martinez, George" <gmartine@mail.smu.edu>
Sent: Thursday, July 30, 2015 1:12 AM
Subject: FOLLOW UP WITH JOE RE: THE FACTS AND RESOLUTION OF A STUDENT COMPLAINT

Dear Joe,

It was a pleasure speaking with you by phone today. Thank you for alleviating some of my concerns about my tenure process. As you know, the primary purpose of our phone call was to discuss your intention to send my tenure review letters out and to receive the articles to be reviewed. You indicated that I should send the articles to you by August 15th. This date takes into consideration both the scheduled completion of my editorial process with the UCLA Law Review is for next week as well as your plan to have surgery next week.

As you undergo your surgery, you are in my prayers and in Jarvis' prayers. I appreciate that you have been willing to listen to me discuss Jarvis' health concerns. I look forward to talking with you when you are back up and about.

As promised, I am writing to follow-up with information you requested about another matter.

You also mentioned that my committee wanted to discuss with me that there had been several student complaints this semester. I had not discussed the complaints with the committee. However, as you had mentioned it, I did want to provide some background information to the committee in anticipation of our discussion. There were two complaints that I was made aware of. In this email, I will discuss one complaint and email later about the other complaint.

Attached below to this email is a memo that I sent to Beth and Jennifer summarizing the outcome of that complaint. Jennifer, Beth and I were involved in investigating the complaint. Beth and I resolved the complaint. I notified both the registrar and Jennifer as to the resolution of the complaint.

BRIEF ANSWER: A student in my Torts class made a complaint to the Dean and Associate Dean that her civil rights under the Americans with Disabilities Act may have been violated in the administration of her Torts exam. Beth and Jennifer inquired with me as to whether I was at fault in depriving the student of her rights.

Our investigation determined two important points. First, that while the students rights may have been violated, I was not primarily or exclusively at fault for the deprivation of those rights. In fact, errors made by the law school, primarily the registrar's office, deprived the student of her rights.

Second, even if I were partially at fault, my actions had little impact on the student's exam performance. The student was not damaged in any material way by any actions on my part. Instead, we found again that oversights by the registrar's office materially impacted the student's grade. In support of these findings, Beth and I adjusted the student's grade two grades up based on the oversights of the registrar's office, any action or oversight by the professor (me) having had very little impact on the student's exam performance.

It is very important that we are clear on the facts of this complaint. I have seen our colleagues make employment decisions (in the context of contract renewals at least) based on speculation, rumor and misinformation. As to this student's complaint, here are my understanding of the facts. As the complaint was made to Beth, she is copied on this email. Thus, if there is anything incorrect or misstated as to the facts of this case, I would ask that Beth please clarify them for me in writing.

Here are the Facts:

1. During exam period, I experienced two key personal circumstances. First, my husband was hospitalized with a life threatening serious health condition. (As you may recall, I too was hospitalized for a week during the Spring semester; however, my husband's hospitalization was separate matter. Second, while my husband was in the hospital - in fact at the hospital - my laptop broke.
2. I promptly notified administrators at the law school that both my husband was in the hospital and that my laptop was broken. In that notification, I expressly stated that, as a result of these two issues, I would have limited to access to email, and that the circumstances of the illness were serious. I do not recall who I notified first, but Beth and Jennifer were made aware of the circumstances and wrote me back to acknowledge their awareness of the circumstances. My assistant TaLibra Ferguson was also notified. I believe that I notified Beth around Thursday or Friday. On the following Monday, Jennifer wrote to me acknowledging the circumstances.
3. My emails piled up. Students emailed with questions as it was exam period. The Torts exam was in a few days.
4. On that Monday, I believe (or during this same 3-5 day period), the registrar emailed me indicating that she needed a copy of my exam 4 hours early because a student with an accommodation would be taking the exam. She was not aware that my husband had been sick and that I had not had access to email; so I discussed the matter with her. The registrar did not mention the nature of the accommodation, when or where the student would take the exam in whole or part.
5. I did not see or respond to the email from the registrar, likely because there were many emails from students and, having lost time, was trying to answer student questions both online and in my office.
6. Because I taught the night section, students advocated earnestly to me that I give them a review session during exam period. The students made two arguments to support their request. First, the torts exam was at the end of exam period and they would a review after having focused on other course for a week. Second, the students explained that because many of them work during the day, the night time was a good time for the review. By class vote, we settled on the night before the exam as a time for the review session. The students also agreed that the review would count as a makeup class (we missed several classes due to weather and some due to my being in the hospital).
7. During the review session, a student made an inquiry about one of the sample multiple choice questions I had given them for study purposes. The student asked the question toward the end of the session. I promised the class that I would email them the answer to the question the following day and before they took their exam.
8. On the following day, the associate registrar called me around lunchtime. She indicated that she had emailed me days ago about her request to receive a copy of the exam four hours early. At this point, she needed the exam in about 90 minutes. My exam for the rest of the class was not for another five and a half hours. I had planned during that time to choose two more exam questions (from my exam bank - past exams) and to then proofread the exam. The exam already had the 30 standard questions that I informed the students would represent the format. However, I always give 32-33 questions in case I have to throw any out due to error, over-difficulty [no one got it right], too easy etc. While five hours was more than enough time to complete these tasks, 90 minutes was

cutting things close. Having to finish lunch and rush, I was not able to proofread the exam to the extent that I had wanted.

9. I turned in the exam to the registrar and told her the circumstances. I told her that I wanted to give extra time - ten minutes - so that the students would have a little extra time to read the exam and note any errors. I told the associate registrar that, because other folks were coming in and out of her office - students, other profs etc. - that I would send her a written notice so that she would be sure of my instructions.

10. I emailed the registrar to remind her to tell the student that she had ten extra minutes to take the exam.

11. The registrar emailed me back that she had received the written email about the ten extra minutes and would so advise the student.

12. The registrar emailed me back a few minutes after the student had begun the exam but several hours before the exam would end. Therefore, the registrar had plenty of time to advise the student of the extra ten minutes or advise a proctor to do so.

13. The registrar forgot to inform the student of the extra ten minutes available to take the exam. When the student found out from other students who were notified of the ten minutes, the discrepancy formed the basis of part of her complaint.

14. As stated below, I recommended that the student's grade be raised by one whole grade based on the registrar's failure to notify the student of the extra ten minutes. This recommendation was made in part based on Beth's sharing with me that the student felt strongly that she could have done much better had she been advised of the extra ten minutes. Beth accepted my recommendation to raise the student's grade on this basis. To make the student whole, we raised her grade from a B- to a B.

15. In addition to the registrar's oversight as to exam time, the student also confided in Beth (although this did not form the basis of her initial complaint), that she felt that she may have done poorly on the exam because she spent all of her exam time - except for the last ten minutes or so, on one entire half of the exam.

16. Based on that information, I realized that the student's comments raised another oversight in the proctoring of the exam by the registrar. The student may not have been paced in the exam. This would create an equity issue because I knew for sure that the students in the main exam room had been paced by their proctor. After I handed the exams over to the proctor, I witnessed the proctor, on her own initiative and process, write on the board instructions about pacing the exam. She advised the students that she would warn them when they had key limited time left (for example 30 minutes, ten minutes, five minutes).

17. I took the initiative to inquire with the registrar as to whether the student with the accommodation had been paced. I determined that the student had not been paced for time during the exam (you have 30 minutes left, ten minutes left etc.) by anyone.

18. As a result of the failure by the registrar to pace the student, I recommended to Beth that we raise the student's grade an entire grade from a B to a B+.

19. A second factor (in addition to the loss of ten minutes exam time) formed the basis of the student's initial complaint. That factor stemmed from the student's belief that I had given the students substantive information regarding a model question and that the accommodated student, not being in the room, did not hear and was therefore disadvantaged by the oversight. The student's belief was true, in part but false in part.

20. As I had mentioned above in #7, I promised the students that I would provide an answer to a question before the exam. However, having had to deal with the unforeseen circumstance of completing my exam hours early and provide it to the registrar, I lost the time to send the answer to all of the students via email.

21. However, having promised the students the chance to hear the answer, I created a legal obligation to do so. (a breach of the promise in fact would have given ALL of my students a right to sue for breaching the promise; I provided Beth with a case in which students did so). In my view, I had no choice but to provide the information to the students in the room.

22. I provided the students with the information in the exam room before the administration of the exam started. In the room, I confirmed to the students that under the fact pattern of the model question, several causes of action were available. I listed (without legal analysis the causes of action). But, I had not provided the information to the accommodated student.

23. However, I believed that the information was otherwise provided to the student. The information provided was not new, but was a confirmation. I had stated the same list of claims in class the night before, of which attendance was taken. All of the possible claims had been discussed the night before.

24. Perhaps more importantly, I knew that the exam itself had a similar question which required students to analyze each of these causes of action. AND, the exam question also REMINDED and CUED the students to discuss each of the causes of action. Except for one cause of action - a Section 1981 claim.

25. However, the student suffered virtually no harm because even without the prompt, the student discussed Section 1981 claim on her own. He or she earned - almost on her own - the maximum number of points for that part of the question.

26. Having suffered no material harm for any actions on my part, the student would not have had any claim that I violated her rights. Indeed, a cornerstone of the very Tort law that I teach is that without damages or harm, there is no claim.

27. Thus, in summary, the material harm that the student suffered stemmed from oversights made by the registrar's office, not in any way on my part.

28. The student's complaint is merely a complaint. Employment actions should not be taken just on the basis of a complaint in and of itself. The complaint has to have merit both in terms of a breach of a duty and actual damages. Here, on my part, based on these facts, the student did not have a viable complaint against me as her professor.

29. Beth was privy to the complaint and its resolution. I sent the Dean a copy of the memo at the bottom of this email stating my understanding of the facts and the resolution of the complaint, including the conclusion that no oversight on my part played a material part in any deprivation of the student's rights.

30. Jennifer did write back to me indicating that she had some suggestions for me as to how to strategically address issues in the exam room. I welcomed those and any suggestions and took the initiative to schedule a meeting with her to discuss them. Other than that, I have had no material discussions, orally or in writing with Beth or Jennifer as to this complaint. And so, I put the matter to rest.

31. If anyone does not agree with anything I had written here about this incident, I would request due process notice of such. I am not sure if Joe is under the impression that this complaint is an issue for my tenure. But, Joe did mention concern about the complaint, granted with the caveat that he did not know all of the facts since I had not mentioned them.

32. Thank you all for having the patience and commitment to equity and fairness to remember these facts and discourage the proliferation of misinformation or gossip that deviates from the truth.

33. See memo below.

Warm regards,

Cheryl Butler

From: Butler, Cheryl Nelson
Sent: Monday, June 22, 2015 12:32 PM
To: Collins, Jennifer
Cc: Thornburg, Beth
Subject: FW: FINAL GRADE ADJUSTMENT FOR TORTS STUDENT WITH ACCOMMODATION

Dear Jennifer,

Hello again.

Notwithstanding the concerns raised in my earlier email today, I was relieved that Beth and I were able to resolve the complaint made by my Torts student regarding circumstances related to her exam taking. I wanted to thank Beth again for her input and for her time for our multiple conversations about the student's concerns and our mutual desire to do all that we could to make the student whole.

As per the email below, Beth and I determined that the harm to the student that resulted in my repeating my response to a model question in an exam room in which the student was not present, did NOT substantially affect or otherwise harm the student's grade. The substance of the comment at issue was to list the possible statutes that one could use to address an employment discrimination claim (state law, Title VII and Section 1981). The comments were of concern because in fact an essay on the exam worth 25 percent of the grade asked students to analyze such a claim. However, the essay question itself further reminded the student of two of these three causes of action by prompting the student to discuss them. Further, as to the third cause of action, the student addressed the claim earning half of the points awarded in her own right. I then gave the student the few remaining extra points for other comments she could have made with respect to the third cause of action.

I believed that the student was disadvantaged because, as she so complained, the exam proctor, if any, did not notify the student that I awarded the class ten extra minutes to review the exam in the event that we needed to discard 1-2 exam questions that had not been vetted. I had personally asked the assistant registrar to offer this extra accommodation and then later sent an emailed request but the student did not get the message.

I also wanted to bring to your attention the need for the law school to take further measures to protect the rights of our students. In an effort to go above and beyond to make sure that the student was made whole, I took my own initiative to look further into the student's test taking circumstances to foresee the best response from the law school. In doing so, I determined that the student had not been paced during her exam but the other students were paced by their proctor. I have nothing to do with the proctor's decision to pace the remainder of the class but was present when the proctor announced that she would cue and pace the exam takers and made pacing notes on the chalk board. As Beth had informed me that the student had trouble pacing herself during the exam (spending only ten minutes to complete the last half of the exam), I adopted the view that the absence of a proctor to provide the student the same benefits the other students.

This was a learning experience for me (we have not yet covered disability law in my classes for lack of time). I think that there are several ways in which the law school could improve our policies to better protect students.

If there is a committee assigned to address these issues, I would be willing to serve.

In the meantime, I wanted to suggest that we do the following in the future:

1. If Professors or students notify the law school that they have personal or other medical emergencies during exam periods, the Dean of Faculty should notify the Registrar - as now we are reminded that this is a time period when the registrar is trying to communicate with faculty.
2. Professors may need to be better informed about what happens when students have an exam accommodation. It may not be clear that accommodated students are in the classroom or not. For example, I talked to the registrar this week about the fact that in the past, I HAVE had accommodated students in the classroom with the regular students. Laura explained that the accommodation depends on the disability. Some students ARE in the classroom. But, the professor does not know the disability. Also, professors and students may not know what they are allowed to know about accommodations.
3. I was curious whether law professors can offer or give input into accommodations. If students need an accommodation for example, if they have dysgraphia - trouble writing, can the professor offer a multiple choice format? Should the professor be engaged in that process?

If there is anything else that I can do to help this student or any other future student with a disability, let me know.

Warm regards,

Cheryl Butler

From: Butler, Cheryl Nelson
Sent: Thursday, June 18, 2015 1:18 PM
To: Thornburg, Beth
Subject: RE: FINAL GRADE ADJUSTMENT FOR TORTS STUDENT WITH ACCOMMODATION - SUMMARY OF FACTORS

Dear Beth,

Thank you so much for our conversation. I feel whole in terms of the outcomes for the student. As we discussed, the accommodated student received a grade of B MINUS on the exam. I advocated that we give the student a final grade of B PLUS. You agreed to final outcome. Thank you! I feel so much better. I think this a fair outcome for the student. I hope this makes the student feel better as well.

Particularly in case the student wants to meet to discuss her or his grade, I wanted to note some of the factors (which we discussed) that went into this determination.

(Please excuse the third person, but wanted to take the "I's" out of it - its not about me but about the student.)

I. ADJUSTMENTS DUE TO STUDENT NOT BEING PRESENT WITH OTHER STUDENT WHEN PROFESSOR COMMENTED ON MULTIPLE CHOICE SAMPLE QUESTION

VICE PROVOST VOTE

Re: Butler tenure file

From: jmc@mail.smu.edu
To: "Eads, Linda" <leads@mail.smu.edu>
Cc: "King, Judy" <jaking@mail.smu.edu>, "Brosseau, Tina" <tbrossea@mail.smu.edu>
Date: Fri, 19 Feb 2016 14:54:02 -0600

I really apologize for that; I assumed (obviously erroneously!) that the university counsel's office had let you know.

Sent from my iPhone

On Feb 19, 2016, at 12:29 PM, Eads, Linda <leads@mail.smu.edu> wrote:

Jennifer,

Of course I agree with you. Judy was just asking what are the deadlines for Butler so we would know what to do. We have heard nothing, and just wanted to get some input.

L

From: "Collins, Jennifer" <jmc@mail.smu.edu>
Date: Friday, February 19, 2016 at 1:48 PM
To: "Eads, Linda" <leads@mail.smu.edu>, "King, Judy" <jaking@mail.smu.edu>, "Brosseau, Tina" <tbrossea@mail.smu.edu>
Subject: Butler tenure file

Linda,

I understand that Judy King contacted Tina Brosseau regarding the status on Cheryl Butler's tenure decision. The faculty voted not to grant tenure to Professor Butler on January 14th and that decision was communicated to Professor Butler by me on that same day. Professor Butler's deadline to appeal the faculty's decision to the Dean has been extended until February 26th given her FMLA leave. I do not see how I can complete a letter containing a recommendation to the provost and the university P&T committee until I have the chance to carefully and thoughtfully evaluate any issues she may raise in her appeal. We can send the materials over absent my letter if that would be helpful but I thought you would prefer to have it all as a single package.

Jennifer

Sent from my iPhone

TENURE CLOCK EXTENSION

Confidential inquiry

From: jmc@mail.smu.edu
To: "Eads, Linda" <leads@mail.smu.edu>
Date: Fri, 16 Oct 2015 06:27:08 -0500

Linda - are you aware of any tenure candidates, in their decision year, being delayed an additional year so they have the opportunity to work on teaching and/or scholarship? Is that even a possibility under our rules? I just haven't been here long enough to know if this is something that's ever been done. Thanks so much for your help.

Sent from my iPhone

RE: Confidential inquiry

From: "Stanley, Harold" <hstanley@mail.smu.edu>
To: "Collins, Jennifer" <jmc@mail.smu.edu>
Date: Wed, 21 Oct 2015 09:20:02 -0500

Jennifer,

I see things the way Linda sets out that Paul saw this although I don't think of the tenure clock as being "arbitrarily imposed requirements."

I hope that clarity helps. I understand the situation is a very difficult one.
Harold

Harold W. Stanley
Provost ad interim, SMU
214.768.3219

-----Original Message-----

From: Collins, Jennifer
Sent: Tuesday, October 20, 2015 2:37 PM
To: Stanley, Harold
Subject: RE: Confidential inquiry

Harold -- it would be really helpful to know your thoughts on this. We are in a very, very difficult situation over here.

-----Original Message-----

From: Collins, Jennifer
Sent: Monday, October 19, 2015 9:47 AM
To: Stanley, Harold <hstanley@mail.smu.edu>
Subject: FW: Confidential inquiry

Harold -- may I ask what your thoughts are about this?

-----Original Message-----

From: Eads, Linda
Sent: Friday, October 16, 2015 11:39 AM
To: Collins, Jennifer <jmc@mail.smu.edu>
Subject: Re: Confidential inquiry

Jennifer,

Paul Ludden was totally opposed to extending the tenure clock and never approved it. We can discuss Paul's reasons which, in my opinion, were very valid. Cox always complained that the "turn around" time for publications was so slow that it prevented faculty from getting everything in good order during the pre tenure period. Some Dedman College departments make the same argument.

Paul's response was simple. Each school and department has had enough time to evaluate this person and that arbitrarily imposed requirements do not constitute good reason to extend the period.

It would cause an ever-lengthening tenure clock with no clear cut off point because every case would be unique. I imagine that Harold would adhere to this policy, but you can always ask.

There is one option and that is Policy 6.13.1. It permits untenured faculty to take a year WITHOUT pay and benefits and this stops the tenure clock. So if one of your candidates wants another year, the only way to do it without Provost approval is to take leave without pay. We can talk about whether

during this time of leave without pay, the person could teach and receive extra compensation but not benefits.

Call me when you return from the AALS.

On 10/16/15, 6:27 AM, "Collins, Jennifer" <jmc@mail.smu.edu> wrote:

>Linda - are you aware of any tenure candidates, in their decision year,
>being delayed an additional year so they have the opportunity to work
>on teaching and/or scholarship? Is that even a possibility under our rules?
>I just haven't been here long enough to know if this is something
>that's ever been done. Thanks so much for your help.
>
>Sent from my iPhone

NOTE RE: TENURE REVIEW

From: "Butler, Cheryl Nelson" </o=smu/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=39329177">
To: hstanley@smu.edu
Cc: "Collins, Jennifer" <jmc@mail.smu.edu>
Date: Tue, 03 Nov 2015 15:58:06 -0600

Dear Provost Stanley,

I write to request a revision to my employment contract such that I could be considered for tenure during the next academic year (2016-2017) and preserve a post-review year of employment.

What information do I need to provide to you to grant this request?

Warm regards,

Cheryl Nelson Butler
Assistant Professor
SMU Dedman School of Law
3315 Daniel Avenue
Dallas, Texas 75275



SMU

Office of the Provost

PERSONAL AND CONFIDENTIAL

November 4, 2015

Professor Cheryl Nelson Butler
Dedman School of Law
Southern Methodist University
P.O. Box 0116

Dear Professor Butler:

I received your email requesting an extension of your tenure consideration to the 2016-17 academic year.

Before I can act on your request, I will need you to provide a detailed written explanation of the reasons you are seeking this extension. As you have known since your initial hiring that you would be considered for tenure during this 2015-16 term and your tenure advisory committee has already been working with you, I will need to know the reasons for the extension, why the initial tenure period was not sufficient, and what you plan to do during the requested extension period that could not be accomplished prior to this time.

In the absence of a more particularized request and a final decision by the University, please understand that your tenure clock has not stopped and that all timelines for submissions of your tenure materials are still in effect.

Please submit your written response to me by noon on Friday, November 6.

Please let me know if you have any questions.

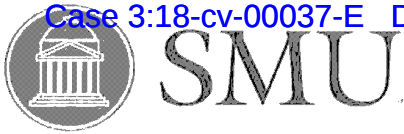
Sincerely,

Harold W. Stanley
Provost and Vice President
for Academic Affairs *ad interim*

cc: Jennifer Collins

Southern Methodist University PO Box 750221 Dallas TX 75275-0221
214-768-3219 Fax 214-768-1130

SMU
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Office of the Provost

PERSONAL AND CONFIDENTIAL

November 10, 2015

Professor Cheryl Nelson Butler
Dedman School of Law
Southern Methodist University
P.O. Box 0116

Dear Professor Butler:

Thank you for your email of November 9. You did not comply with the Friday deadline, but I have nonetheless considered the reasons set forth in your email in support of your request that SMU delay your tenure decision until the 2016-2017 academic year. Based on the information you have presented, we cannot extend the tenure deadlines applicable to you. Accordingly, you will continue to be considered for tenure in the 2015-2016 academic year. I urge you to submit your tenure materials in accordance with the deadlines set forth by the Dean and tenure advisory committee.

SMU notified you at the time of your hiring that you would be considered for tenure in the 2015-16 academic year. You have had two separate tenure committees appointed for you and each of those committees apprised you of the dates applicable for your tenure submissions. Upon your invitation, members of your tenure advisory committee have visited your classroom and are planning for your tenure review. Both the dean and members of your committee have repeatedly advised you of the relevant deadlines and requested materials from you; I note it is my understanding that you have thus far failed to provide some of the requested materials.

While I understand that the tenure process can be a stressful time for any professor, you have not provided reasons that would suggest your tenure consideration should be extended for another year. We are judging the teaching, research, and service that you have been demonstrating since you were hired in 2011. At this juncture, you simply need to provide your documentation to your committee by the November 16 deadline. I am also influenced by the fact that you plan to continue to teach during the period of the requested extension. If you can teach your classes during this semester and the spring semester, you should be able to submit your tenure materials.

Southern Methodist University PO Box 750221 Dallas TX 75275-0221
214-768-3219 Fax 214-768-1130



Professor Cheryl Nelson Butler

November 10, 2015

Page 2

You allude to various health concerns which might affect your teaching and ability to submit your tenure materials. Any such concerns should be raised with the University's Human Resources Department which can guide you through University procedures. They can answer any questions you may have regarding leave under the Family Medical Leave Act or an accommodation under the Americans with Disabilities Act.

Sincerely,

A handwritten signature in black ink, appearing to read "Harold W. Stanley". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Harold W. Stanley
Provost and Vice President
for Academic Affairs *ad interim*

cc: Dean Jennifer Collins

Re: Attached Letter from the Provost - FOLLOW UP LETTER TO DEAN COLLINS FROM CHERYL BUTLER

From: jmc@mail.smu.edu
To: "Butler, Cheryl Nelson" <cnbutler@mail.smu.edu>
Date: Wed, 11 Nov 2015 07:45:23 -0600

I will respond to your substantive email later - my plane is about to take off - but wanted to let you know I am not available to meet. I am doing alumni events on the East Coast for the rest of the week.

Sent from my iPhone

On Nov 11, 2015, at 12:35 AM, Butler, Cheryl Nelson <cnbutler@mail.smu.edu> wrote:

Also Jennifer, Are you available to meet sometime Thursday? I may also be on campus on Friday, unless I have to attend a funeral out of town that day. I am also available by phone tomorrow.

Cheryl

From: Butler, Cheryl Nelson
Sent: Tuesday, November 10, 2015 11:39 PM
To: Collins, Jennifer
Subject: RE: Attached Letter from the Provost - FOLLOW UP LETTER TO DEAN COLLINS FROM CHERYL BUTLER

Dear Jennifer,

As you are aware, Provost Stanley denied my request for a reasonable accommodation based on medical reasons. You indicated that Provost Stanley, as opposed to yourself, was the person who could decide whether to grant an extension of my tenure clock.

As a result of this denial, I write to you as the law school Dean to request a reasonable accommodation based on medical reasons. The same facts I presented in the letter to Provost Stanley (in which you were copied) are relevant to my request to you for an accommodation. On Friday, November 6th, my doctor provided a letter indicating that I am currently being treated for a serious health condition. The conditions also meet the legal definition of "serious health condition" under the FMLA and "disability" under the FMLA.

Last Spring, I visited with doctors who in turn sent me from a local urgent care center via ambulance to a major hospital. There, as timely informed you last Spring, I was admitted to the hospital and remained there for several days. I might also add that, at the time, I was Facebook friends with several of our colleagues including Dean Beth Thornburg, Dean Martin Camp and Professor Jessica Dixon Weaver. They may have noticed (I will check) the various Facebook postings that I made indicating that I was in the hospital.

As I indicated to Provost Stanley, here in the following semester, the symptoms that sent me to the hospital, as well as others, persisted. I have notified several members of the faculty about these issues throughout the semester. Other colleagues noticed that I was ill and pressed me to see a doctor.

As I have previously indicated, these conditions have undermined my equal employment opportunity as a professor at the our law school, particularly, the opportunity to seek promotion by meeting the deadline that you impose of November 16th for the submission of certain parts of the application. To be clear, my illness has impacted my ability to complete my application by November 16th. There is a nexus between the illness, the opportunity that I seek and my ability to seek that opportunity. However, I could meet your deadline with a reasonable accommodation. The reasonable accommodation would be some form of additional time in order to meet the deadline.

If you need further information in order to determine whether or not to grant my request, please tell me what you need. While the Provost did not ask for a medical note, I provided one. Please accept that same note as my good faith effort to continue a dialogue with my employer about my need for an accommodation.

Cheryl Butler

From: Jeter, Carolyn
Sent: Tuesday, November 10, 2015 4:24 PM
To: Butler, Cheryl Nelson
Cc: Collins, Jennifer
Subject: Attached Letter from the Provost

Dear Professor Butler,

Please see the attached letter from Provost Harold Stanley.

Thank you.

Carolyn

Carolyn W. Jeter
Executive Assistant to the Provost
Southern Methodist University
P.O. Box 750221
Dallas, TX 75275-0221
cwjeter@smu.edu
Ph. 214.768.1491

FMLA AND DISABILITY ISSUES

To: Rhonda Adams, SMU HR
From: Professor Cheryl Butler
SMU Dedman School of Law
Re: FMLA Certification
Date: December 18, 2015

INTRODUCTION

This memo addresses the factual and legal issues that support my request for FMLA certification. This memo proceeds in four Parts. Part I discusses my right to retroactive certification of several FMLA-qualifying events. Specifically, these FMLA events involve two overnight hospitalizations for me and my husband in 2015 and a 2012 medical event I experienced while employed at SMU. Part I explains how each of these events are FMLA qualifying events that SMU should have certified for leave and job protection under the FMLA. Under the FMLA, an overnight hospitalization is always an FMLA qualifying event. Further, because the 2012 medical event involves 2 visits to the ER and a regimen of prescriptive antibiotics and steroids, it also qualifies for FMLA protection.

Part II documents how I notified several law school deans of the hospitalizations and the 2012 medical illness. Furthermore, I repeatedly reminded my Deans that the hospitalizations had occurred, that I had to leave or delay work due to these medical events and that both the hospitalizations and the illnesses adversely affected my job performance.

Part III explains that SMU failed to meet its employer notice requirements mandated by the FMLA and its regulations and therefore, must retroactively designate the FMLA leave. The FMLA requires retroactive certification where, as here, the employer's failure to meet its notice requirements and to certify the FMLA-qualifying events would cause harm to the employee.

Part IV outlines several FMLA-qualifying events experienced by myself, my husband and my children. These are FMLA-qualifying events involving "chronic health conditions" and/or "continuous treatment by a health care provider." All of these events in the certification forms and medical records that I provided to SMU HR on December 18, 2015. These events include the hospitalizations discussed in Part I also qualify as current FMLA-qualifying events because they are part of "a regimen of continuing treatment" and are indicia of "chronic health conditions" within the meaning of the statute and its regulations. Part IV explains how the other FMLA-qualifying events also meet the legal definition of "serious health condition" and/or "chronic serious health condition" under the FMLA. Part IV then documents how the employee notice requirement has been met for each of these events.

PART I: My Legal Right to FMLA Certification for Hospitalizations

This Part addresses my second request that you certify three overnight hospital stays for me and my husband as well as my June 2012 emergency room visits and follow-up care for acute bronchitis (later diagnosed as severe asthma). This memo marks my third request for retroactive certification.

In January 2015, during the Spring 2015 Semester, I was in the hospital for four days and placed on a regimen of ongoing care, including the immediate care of thirty days of medication and referrals to a cardiologist, gastroenterologist, and a pulmonary specialist.

The remaining events involve the illness and multiple hospitalizations of my husband, who has been diagnosed with several FMLA-qualifying serious health conditions. First, in June 2014, my husband was hospitalized for four days. Second, in February 2015, my husband took sick leave from work due to his serious health conditions. Third, his illness and leave culminated in another overnight hospital stay in April - May 2015. Following this second hospital stay, he was unable to return to full-time work for several weeks while he recovered. Even though, I gave SMU notice of these hospital stays, SMU failed to certify these claims.

As explained below, the FMLA requires that SMU retroactively certify these medical events for three reasons. The facts surrounding the hospitalizations are known to my supervisors. First, I met all of my employee responsibilities with respect to seeking FMLA protection for these hospital stays. Second, the hospital stays themselves all qualify for FMLA protection; the FMLA recognizes all overnight hospital stays as “serious health conditions.” Third, as explained below, the hospitalization obviously affected “my ability to perform the function of my job.” Fourth, federal law requires that employers retroactively certify FMLA-eligible events where, as here, the employer failed to certify the events in the first place and the employee will suffer actual harm if the failure to certify is not corrected.

A. FMLA Law: The 2015 Hospitalizations & 2012 ER Visits are Prima Facie FMLA-Qualifying Events

The Fifth Circuit has long upheld the basic rights and remedies that the FMLA affords to its employees: “The FMLA guarantees eligible employees a total of twelve weeks of leave in a one-year period when the leave is related to certain circumstances, such as the birth of a child or the presence of a serious health condition.”¹ Upon the employee’s timely return, the employer must reinstate the employee in his or her previous position or an equivalent position.²

¹ *Stain v. Downey*, No. 06-30613 (2007), citing 29 U.S.C. § 2612(a) (1) (upholding the FMLA’s individualized notice requirements).

² *Id.* at *5, citing 29 U.S.C. § 2614(a) (1).

The Department of Labor has made clear that the FMLA guarantees job protection when the employee or a family member must take leave for a “serious health condition.” The Department of Labor publication that you emailed to me clearly states that an “overnight hospital stay” is a “serious health condition” under the FMLA.³ Indeed, the publication further states that an overnight hospital stay is one of the most common reasons for FMLA leave.⁴ Furthermore, your emailed materials expressly state that conditions involving three days of incapacity plus ongoing treatment qualify for FMLA protection.⁵

Specifically, the DOL handbook that SMU provided states that, under the FMLA, “serious health conditions” include:

- 1) A condition requiring an overnight stay in a hospital or other medical care facility;
- 2) A condition that incapacitates you or your family member (for example, unable to work or attend school) for more than three consecutive days and requires ongoing medical treatment (either multiple appointments with a health care provider, or a single appointment and follow-up care such as prescription medication);
- 3) chronic conditions that cause occasional periods when you or your family member are incapacitated and require treatment by a health care provider at least twice a year; and
- 4) Pregnancy (including prenatal medical appointments, incapacity due to morning sickness, and medically required bed rest).⁶

Furthermore, the Department of Labor has also stated that a ‘serious health condition’ also includes

- 5) “an illness, injury, impairment, or physical or mental condition that involves a period of incapacity that any absences to receive multiple treatments (including any period of recovery there from) by, or on referral by, a health care provider for a condition that likely would result in incapacity of more than three consecutive days if left untreated (e.g., chemotherapy, physical therapy, dialysis, etc.).”⁷

³ UNITED STATES DEPARTMENT OF LABOR, NEED TIME: THE EMPLOYEE’S GUIDE TO THE FAMILY & MEDICAL LEAVE ACT, which the SMU HR emailed to me in November 2015.

⁴ Id.

⁵ Id.

⁶ Id.

⁷ See <http://www.dol.gov/whd/regs/compliance/1421.html> (defining “serious health condition” as

B. My 2012 ER Visits and Continuing Care are Prima Facie FMLA-Qualifying Events

My 2012 fight with severe bronchitis, medical event involving two trips to the ER in June 2012 plus a regimen of continuing care including breathing treatments and prescription antibiotics, satisfies the definition of “continuing care” under the FMLA. Furthermore, severe bronchitis and asthma are prima facie “chronic serious health conditions” under the FMLA.

As stated above, the FMLA protects employees who experience a “serious health condition.” A “serious health condition” includes:

- 2) A condition that incapacitates you or your family member (for example, unable to work or attend school) for more than three consecutive days and requires ongoing medical treatment (either multiple appointments with a health care provider, or a single appointment and follow-up care such as prescription medication);
- 3) chronic conditions that cause occasional periods when you or your family member are incapacitated and require treatment by a health care provider at least twice a year; and

In June 2012, I visited the emergency room for coughing and trouble breathing. The records indicate that I had already been sick for a week when I finally went to the ER. My medical records indicate that I was treated in the ER with asthma medication and other medications administered through a breathing machine. The doctors also prescribed 14 days of medication including steroids and antibiotics. Despite this regimen of care, I returned to the ER a few weeks later at the end of June. The ER provided a repeat regimen of the same medicines. In light of this illness, I spent over a month virtually bedridden. The illness delayed my class prep for Fall 2012 and caused me to forfeit a publication opportunity. I had to cancel my presentation on a panel of legal scholarat the Law & Society Conference in Hawaii.

Because I had to cancel my appearance at a leading law conference, I notified my Law Dean and explain what happened. I notified my former Dean John Attanasio that I had been sick

-
- any period of incapacity or treatment connected with inpatient care (i.e., an overnight stay) in a hospital, hospice, or residential medical care facility; or
 - a period of incapacity requiring absence of more than three calendar days from work, school, or other regular daily activities that also involves continuing treatment by (or under the supervision of) a health care provider; or
 - any period of incapacity due to pregnancy, or for prenatal care; or any period of incapacity (or treatment therefore) due to a chronic serious health condition (e.g., asthma, diabetes, epilepsy, etc.); or
 - a period of incapacity that is permanent or long-term due to a condition for which treatment may not be effective (e.g., Alzheimer's, stroke, terminal diseases, etc.); or, any absences to receive multiple treatments (including any period of recovery there from) by, or on referral by, a health care provider for a condition that likely would result in incapacity of more than three consecutive days if left untreated (e.g., chemotherapy, physical therapy, dialysis, etc.).”

with severe bronchitis and that the illness has affected my ability to complete my work. Dean John Attanasio showed a lot of empathy for me; he confided that he understood what I had gone through because, from what he told me, he too had a medical history of bronchitis. However, notwithstanding my notice to my Dean, the university did not provide employer notice of my rights to take FMLA leave or to designate my time as FMLA-protected.

C. Facts: My Spring 2015 Overnight Hospitalization & Continuing Treatment

On January 5, 2015, I was in Houston, Texas with my family. I experienced severe chest pains and shortness of breath. As a result, my husband took me to the St. Luke's Urgent Care facility – a neighborhood urgent care - emergency room. I have visited this ER several times whenever my family has needed urgent care. In the past, we have had our needs met in the ER without need for further hospitalization. For example, on two occasions in 2012, I visited the ER for trouble breathing. The doctors there were able to provide Oxygen breathing therapy, prescribe a regimen of care including antibiotics or other medication etc. and I was able to go home.

However, this January 5, 2015 visit to this ER was different in that it led to a four day hospital stay - a medical event for which the FMLA, on its face, guarantees protection. After the doctors and other medical staff assessed me in the Urgent Care ER and noted my chest pains and shortness of breath, they decided to send me by ambulance from the Urgent Care ER to St Luke's hospital with orders that I be admitted immediately. I was admitted to the hospital immediately on January 5, 2015 and ordered to stay in the hospital until I was released four days later on January 8, 2015.

At the end of the hospital stay, the doctors diagnosed me with an abnormal “enlarged heart” and “parenchymal lung disease.” Upon release from the hospital, I was put on “a regimen of continuous care” which included a 30 day regimen of prescribed medication. The doctor recommended that upon release, I not return to work for three extra days, but I returned to work immediately. I was placed on medication for the next 30 days, through early February 2015.

My regimen of continued care also included follow up visits with my primary care physician, a cardiologist, a gastroenterologist, and ultimately, with a pulmonologist. As part of my regimen of continuous care following the hospitalization, I am currently treatment by these specialists. The pulmonologist is further investigating the nature of the lung disease and has further diagnosed me with asthma and prescribed both preventive medications and treatments for severe attacks including an inhaler and a breathing machine with medications. This is a similar breathing machine that I have used in the emergency room. In addition to the asthma diagnosis, the regimen of continuous care by the pulmonologist includes further tests to further evaluate the parenchymal lung disease. To the present date, I remain under the continued care of the

pulmonologist. For example, the pulmonologist has ordered further lung x-rays, which I will complete within the next week.

D. Facts: My Husband's Hospitalizations

In addition to my own hospital stay in January, my husband has also experienced two hospitalizations during my employment at SMU. In June-July 2014, my husband was in the hospital due a pulmonary embolism. I believe that the hospitalization occurred or coincided with the same exact day(s) that Dean Collins arrived as Dean. I recalled that the hospitalization prevented me from being on campus to welcome her to the law school as planned. However, I did mention the hospitalization to several colleagues including Associate Dean Thornburg and my former tenure chair Joe Norton.⁸

In late April 2015 during final exam period, my husband was in the hospital for at least three days. As the documents sent to you indicate, this hospitalization was the culmination of a continuous sick leave from work beginning in February 2015 in which he fought the life-threatening chronic serious health conditions that his doctor lists on the certification form.

Furthermore, those certification forms and sick leave forms confirm that after my husband was released from the hospital, he had a period of ongoing care from his physician. He was out on sick leave unable to work for about another month. In any case, his diagnosis reflects, in his doctor's words, several chronic serious health conditions which are life threatening. He has needed and continues to need the physical and emotional support of his wife and family in order to complete daily life functions and to comply with his regimen of medical care.

E. Facts: The Hospitalizations Undermined By Ability to Do My Job Effectively

My hospitalization and the regimen of continuing care is a "serious health condition" that made me "unable to perform the essential functions of their position." The hospitalization itself made me unable to work during the stay itself. This hospital stay involved constant medical tests and a regimen of medication – incidents which clearly compromised my ability to do my job while hospitalized.

Furthermore, once I was released from the hospital, the hospitalization and the regimen of continuing care that followed undermined my work performance for the remainder of the Spring 2015 Semester. I was unable to edit on two scholarly articles – one for Yale and one for the University of North Carolina. I had to write the article editors to inform them that I was in the hospital but hoped to resume work on the articles after being released from the hospital. During most of my hospital stay, I was unable to grade student papers, although I ultimately turned in my grades in on time. The hospitalization occurred during the days before and the first days of the commencement of the semester. As a result, I lost precious time to prepare the first

⁸ I have asked my husband's Doctor to amend his certification form to include the dates of this first hospitalization.

few weeks of class. Most notably, due to the hospitalization, I was unable to start my course on time. With the suggestion/permission of the Dean and the Associate Dean, I had to postpone the first few days of my Spring 2015 Courses. My Torts class did not start until the following week.

Once the Spring 2015 Courses began, the symptoms of my health condition for which I was hospitalized, as well as other health conditions, affected my work performance throughout the Spring 2015 Semester (January – May 2015) and Fall 2015 Semester (August – December 2015). The illness undermined my class preparation for the course. Notwithstanding the medication, the symptoms of illness – aching chest, persistent cough, wheezing persisted, even while I worked. Throughout the Spring 2015 and Fall 2015 semesters, I am experienced dizziness, chest pains, other aches and pains, uncontrolled coughing, wheezing, and shortness of breath while teaching. I have paused during lectures to use an inhaler. I was concerned that often the inhale was inadequate for helping me to speak without my vocal cords trembling or for stopping the sharp rapid coughing. I expressed concern to my colleagues and students that I was having trouble breathing while teaching my courses, especially my Torts course where I tend to stand up and engage in discussion with up to 95 students in a large lecture hall.

The strain of the persistent illness did not go unnoticed. Colleagues noticed and commented upon my cough and look of exhaustion. In the FMLA certification forms, my primary care physician, Dr, Fadulu confirms these symptoms and their impact on work; he states that the chronic chest pains for which I was hospitalized and referred to specialists “affect my ability to lecture during flair ups.”

In my teaching evaluations for Spring 2015 Semester, some of my students stated that I seemed stressed, distracted and not my normal animated, motivated and highly engaged self. They note that my performance as a professor was inconsistent – sometimes lectures are great and at other times, I seem distracted.

Furthermore, there is evidence that my FMLA qualifying events affected my Fall 2015 Semester teaching. On October 20th I administered teaching evaluations for my Torts class. Those teaching evaluations were outstanding – with 92 out of 95 students offering overwhelming positive comments about my Torts class. About three to four weeks later, the law school administered final teaching evaluations. My tenure chair recently reported to me that these Fall 2015 Semester teaching evaluations for Torts were poor. Furthermore, I teach a Civil Rights Seminar each year. My illness caused delays in communicating the course requirements to students toward the end of the semester. This Fall 2015 Semester was the first time that I was too sick to teach at all during the last weeks of the semester.

In the FMLA certification forms, my primary care physician, Dr, Fadulu states that the chronic chest pains for which I was hospitalized and referred to specialists “affect my ability to

lecture during flair ups.” Throughout and Fall 2015 semester, I am experienced dizziness, chest pains, other aches and pains, uncontrolled coughing, wheezing, and shortness of breath while teaching. I have paused during lectures to use an inhaler. I was concerned that often the inhale was inadequate for helping me to speak without my vocal cords trembling or for stopping the sharp rapid coughing. I expressed concern to my colleagues and students that I was having trouble breathing while teaching my courses, especially my Torts course where I tend to stand up and engage in discussion with up to 95 students in a large lecture hall.

Likewise, Dr. Fadulu also added that the breathing issue that sent me to the ER at least five times has been diagnosed as severe asthma. Asthma affects different people differently. In my case, the asthma is so severe that it is precipitated by several factors including stress, sends me to the emergency room and hospital during flair ups. Dr. Fadulu also expressly states that the asthma makes it difficult for me to speak and teach during flair ups. However, D. Fadulu’s notes also make clear that I can teach with a reasonable accommodation. The asthma can be treated with medications including a breathing machine.

My husband’s illness and hospitalization (especially coupled with my own simultaneous illness) had a profound impact on my ability to do my work. My Dean and Associate Dean are well aware of the impact that the illnesses had on my work. First, my work performance during the time in which I had to care for my husband suffered; I wrote a final exam for Spring 2015 that included spelling errors on three multiple choice questions. The exam provided three extra questions for such contingencies and the questions were thrown out. However, discontent with the three spelling errors persisted and resulted in my tenure committee requesting a thorough review of all the written exams I had ever given while a professor at the university.

Finally, I had to submit my Spring 2015 final exam grades a few days late and indicated that this was due in part to my need to care for my husband who was home sick even a month after the hospitalization. The late submission of the exam prompted Dean Collins to conduct an investigation of the timing of all of my grade submissions from which she drew the (incorrect) conclusion that I “always turn in my grades late.” Third, as discussed above, my Spring 2015 evaluations are unique in that the students claim that my morale and focus was low. As stated above, my husband was on sick leave at home during the almost entirety of the semester.

II. SMU Received Employee Notice of the Hospitalizations

The FMLA imposes notice requirements on both employee and employers. Once an employee provides notice, the FMLA also requires employers to retroactively designate leave if failure to do so would harm the employee.

A. FMLA Law: Employee Notice

An employee has to give her employer notice that they need leave for an FMLA-qualifying reason.⁹ Upon receipt of such notice, the employer in turn has to (1) send the employee a Statement of Rights and Responsibilities under the FMLA and (2) give the employee notice as to whether or not her medical event qualifies for FMLA protection.¹⁰ Second, the employee must provide an estimate, if not precise dates, of the timeframe needed for leave.

The FMLA regulations make it very clear that an employee does not need to expressly request FMLA leave or even mention the FMLA in order to be entitled to the leave.¹¹ For example, in Manuel, the infamous “ingrown toenail case” the Fifth Circuit made clear that an employee does not have to reference the FMLA at all in order to provide FMLA notice of the need for leave and job protection.¹² In Manuel, the Fifth Circuit found that employee notice was sufficient without mention of the FMLA even for a condition – such as ingrown toenail – that might not trigger the employee to seek more information but for which, if not treated, could lead to a serious health condition.”¹³

Instead, the employees must provide “at least verbal notice sufficient to make the employer aware that the employee needs FMLA-qualifying leave.”¹⁴ Fifth Circuit law supports this rule.¹⁵ Most importantly, SMU supports this rule; indeed, the Department of Labor Booklet that SMU HR recently provided me acknowledges that the employee does not have to mention the FMLA in order to trigger the employer’s obligation to begin the process of confirming that the event qualifies for FMLA protection and to send the employee certification forms and other details of her rights and responsibilities.¹⁶

⁹ 29 U.S.C. § 2612 (e); 29 C.F.R. § 825.208; 825.302; 825.303

¹⁰ 29 U.S.C. § 2612(d)(2); 29 C.F.R. §§ 825.110(d), 825.208(a)&(c).

¹¹ 29 C.F.R. 825.302 (b).

¹² Manuel v. Westlake, 66 F.3d 758, 763-64 (5th Cir. 1998).

¹³ Id.

¹⁴ 29 C.F.R. 825.302 (c).

¹⁵ 29 C.F.R. §§ 825.208(a), 825.302(c), 825.303(b); See Manual v. Westlake Polymers Corp., 66 F.3d 758, 763-64 (1995); Lubke v. City of Arlington, 455 F.3d 489 (2006).

¹⁶ Department of Labor’s publication, NEED TIME: THE EMPLOYEE’S GUIDE TO THE FAMILY & MEDICAL LEAVE ACT at 6 (“While you do not have to specifically ask for FMLA leave for your first leave request, you do need to provide enough information so your employer is aware it may be covered by the FMLA.”)

Notice to the employee must be individualized and unless the need for leave is continuous from a previous leave, the employer must provide the employee with FMLA information particularized to the FMLA event for which leave is sought. Sending blank forms to the employee does not suffice. The certification forms sent to the employee must indicate (1) that the specific event is FMLA-qualifying; (2) the deadline for completing forms to get the event FMLA certified; (3) whether the employee has FMLA time available for leave; (4) the form of leave available; (5) and any other rights and responsibilities under the FMLA.

Rather than having to mention the FMLA, an employee must only provide two types of key information in order to give her employer proper notice of the need for FMLA Leave. First, she must give “sufficient information to make the employer aware of the need for FMLA leave and the anticipated timing and duration of the leave.” If the employee gives a reason that possibly suggests the right to take FMLA leave, the employer should inquire further to determine whether FMLA rights are triggered.¹⁷ The FMLA requires that employees must give notice “as soon as practicable.”¹⁸ Courts have recognized that timely notice may not be practical in cases in which the employee suffers from depression.¹⁹ In cases in which an employee suffers from depression, constructive notice will suffice.²⁰

The Fifth Circuit has given great deference to these FMLA regulations – both with respect to the rule requiring individual notice and the rules imposing remedies where the employee is harmed by the employer’s failure to notify. With respect to FMLA regulations, the Fifth Circuit “gives considerable weight to the judgment of the Secretary of Labor (the “Secretary”) and may not substitute its own preference for a reasonable alternative devised by the Secretary.²¹ Further, “a regulation will be given controlling weight unless it is “arbitrary, capricious, or manifestly contrary to the statute.”²² With respect to the DOL’s requirement that employer give individualized notice of FMLA rights and responsibilities to its employees, the Fifth Circuit has given great deference to this rule.

¹⁷ Manual v. Westlake Polymers Corp., 66 F.3d 758, 763-64 (1995).

¹⁸ Id.

¹⁹ See Byrne.

²⁰ See Byrne.

²¹ Strain at *5, citing Ragsdale v. Wolverine World Wide, Inc., 535 U.S. 81, 86 (2002); Bellum v. PCE Constructors, Inc., 407 F.3d 734, 740. (5th Cir. 2005).

²² Strain at *6, citing Chevron U.S.A., Inc. v. Natural Res. Def. Council, Inc., 467 U.S. 837, 844 (1984).

B. Facts: Employee Notice to SMU of My 4 Day Hospital Stay

There are several occasions in which I have met the employee notice requirements but in turn, SMU has not fulfilled its employer notice obligations. I have repeatedly given notice to my Deans, my Tenure Chair and-or HR that (1) I was in the hospital overnight; (2) I was in the hospital last semester and the symptoms causing the hospitalization has returned and affect my work; (3) my husband is in the hospital overnight; (4) my husband was in the hospital last month but he is still out sick recovering; (5) I am sick in the ER; (6) I was in the ER several times this week and am on medication; (7) I confirmed with HR that her current illness qualifies First, notice to an employer that the employee or her spouse experienced an overnight hospitalization – even without information as to the nature of the hospitalization – is notice of an FMLA event because any and all overnight hospitalizations are prima facie FMLA events. A hospitalization is an FMLA-qualifying event in and of itself, even if the employer does not have specific information as to the reason for the hospitalization.

Employee notice to my supervisors that I was hospitalized include, but are not limited to, the following communications:

- Email from Associate Dean Beth Thornburg, January 8, 2015 @ 6:57pm (“Hi Cheryl – I learned from Jennifer today that you have been in the hospital. So I’m writing to see how you are and if there is anything that I can do to help.”)
- Email from Dean Jennifer Collins, January 8, 2015 @ 4:27pm (Are you okay? I am really worried that Beth did not hear from you.”); Reply Email to Dean Jennifer Collins, January 8, 2015 @ 7:20pm (“Sorry, I did not mean to worry you. I was not able to get online today until now because we had a busy day at the hospital. I had to prep and take medical tests.”)
- Email to Associate Dean Beth Thornburg from me, January 11th, 2015 @ 1:12am [discussing the hospital’s attempt to diagnose a problem with my lungs and pain in my legs and chest. No blood clot was found in my lungs and the illness was instead diagnosed as parenchymal lung disease and an enlarged heart] (“I was admitted to the hospital on Monday evening due to a concern that I might have a blood clot in my lung or leg. During the last month of the semester, [I] was experiencing pain in my leg that made it hard to stand and walk up the stairs. When the pain became intermittent I went to see the doctor . . . One of the concerns had been that my leg had not healed properly after my Fall last Spring and that clots had formed there. In any case, I had great treatment via blood thinners and other medicines. And, after four days, the hospital could no longer find any abnormalities suggesting that I have any major blood clot.”)

- November 9, 2015, Letter to Provost Stanley, copy Dean Collins: “I want to make sure that you are aware that in January 2015, at the commencement of the Spring 2015 Semester, I was taken by ambulance . . . to a hospital where I received care as an inpatient for several days. As the concerns and symptoms related to that hospitalization persisted, I have sought the care of Dr. Fadulu. I have also sought medical care for other serious health conditions. In the past two months in particular, these medical issues have affected me and slowed the preparation of my materials for tenure consideration.

Furthermore, I contacted HR by phone on several occasions to request retroactive certification. In addition to those phone conversations, prior requests for certification of the hospitalizations include for example:

- Email from me to Rhonda Adams: 12.3.15 @ 8:59pm: (“Rhonda, SMU has notice of FMLA-qualifying events of some prior dates. But, I will send them by email as well.”)

C. Facts: Employee Notice of My Husband’s Hospitalizations

Employee notice of my husband’s hospitalization went well beyond the notice requirements for such an FMLA-qualifying event. Since the FMLA on the very face of the statute covers all overnight hospitalizations for a spouse, notice of the overnight stay in a medical facility itself is another information to put an employer on immediate notice that the employee is entitled to FMLA protection. Furthermore, I made clear about the timing and duration of the hospitalizations.

Although not required for notice of a hospitalization, I also gave details about my husband’s condition to inform my supervisors about the gravity of the health risks, which in turn, also put them on notice as to the foreseeable emotional and physical impact that my husband’s hospitalization would have on me. Specifically, I informed Dean Collins and Associate Dean Thornburg that the hospitalization was for “life threatening illnesses.” Furthermore, in confidence, I have disclosed and identified the life threatening illnesses with several supervisors including Associate Dean Beth Thornburg, my former tenure committee Chair Joe Norton, and, with my current tenure committee chair Roy Anderson and my current tenure committee member Mary Spector.

Employee notice of My Husband’s Hospitalization included, but was not limited to:

- Email to me from Associate Dean Beth Thornburg April 30th, 2015 @ 7:47am (“Cheryl -- I'd love for you to develop a human trafficking seminar for spring. I could look for an adjunct to teach employment discrimination as an exam course.

Let's talk when your husband gets out of the hospital/after your Torts exam so we have plenty of time to get the proposal through the Curriculum Committee and faculty to get it on the schedule before spring registration. Beth”)

- Email from Dean Collins to me, May 1, 2015 @ 7:01am (“I am so sorry to hear that your husband is in the hospital. I hope he is feeling better and that you are hanging in there!”)
- Email to Dean Jennifer Collins, Dean Beth Thornburg, June 11, 2015 @ 4:58pm (“But, again, I told the law school that my husband was in the hospital Reminder that on May 1st, you emailed me indicating that you had heard that my husband was in the hospital My husband was gravely ill, Jennifer. But, I still pulled through and showed my dedication to our school and to my students. I showed up for the review session and gave marathon office hours (which is extra work and not required) while my husband was very ill.”)
- Email to Dean Collins, Dean Thornburg, June 22, 2015, 11:38am (“This past academic year was really hard on me, particularly because my husband, Jarvis, was hospitalized twice (for about 4-5 days) and I was hospitalized once as well for a similar amount of time. Jarvis’ second hospital stay was right on the eve – beginning of exam period. In particular, Jarvis developed a serious health condition whose symptoms were life threatening.”)
- Email from me to Joe Norton, my former Tenure Chair, July 30, 2015 @ 1:12 am (“Dear Joe As you undergo your surgery, you are in my prayers and in Jarvis’ prayers. I appreciate that you have been willing to listen to me discuss Jarvis’ health concerns. I look forward to talking with you when you are back up and about. “)
- Email to Dean Beth Thornburg, October 7, 2015 @ 12:39pm (“Also, Beth, as Associate Dean of the Faculty, perhaps I should give you a copy of the documentation that my husband was in the hospital during exam period. . . . We also have FMLA documents that chronicle his time off due to illness prior to and following the actual hospital stay including during grading period.”); Reply Email from Dean Thornburg on October 7, 2015 @ 3:19pm (“And, I would love to take you up on your offer to share his medical records for my records.”)
- Email to Dean Collins, Dean Spector, Roy Anderson, Anthony Colangelo, November 8, 2015 @ 12:55pm (“In addition, as previously mentioned last Spring, I had to deal with my own health issues at the same time that my husband was

suffering from a serious health condition was hospitalized for several days during the Spring 2015 exam period, and remained on FMLA leave and otherwise rehabilitating during May and June 2015 (while I graded exams)).”

- Email to Rhonda Adams, December 28, 2015 (“A first scanned file is for FMLA certifications for my husband, documenting his life-threatening Chronic Health Conditions, including hospital stays. The health conditions are specified. In addition to the FMLA certification form, you will also find sick leave forms for several periods of incapacitation [from] February 2015 to the present. There is a hospital stay from end of April through early May 2015 with a return to work of late May - June 2015, with ongoing need for care.”)

D. Notice that the Hospitalizations & Illness Affected My Work

In addition to giving notice of the hospitalization and illness itself, there are several communications in which I informed my supervisors of the ways in which the hospitalizations and underlying illnesses affected my work. Further, even though they did not at that time provide employer notice of my FMLA rights, there are many emails from my Dean and Associate Dean critiquing the negative impact on my work administering exams.

Notice that my husband and I were hospitalized was often coupled with explanations that the hospitalizations itself, the underlying illness and the regimen of ongoing care affected my teaching and other professional obligations.

- Email to Jennifer Collins & Associate Dean Beth Thornburg, June 22, 2015 @ 11:38pm Subject: FMLA, Grades & Other Issues (“This past academic year was really hard on me, particularly because my husband, Jarvis, was hospitalized twice [for about 4-5 days] and I was hospitalized once as well for a similar substantial amount of time. Jarvis' second hospital stay was right on the eve - beginning of exam period. In particular, Jarvis developed a very serious health condition whose symptoms were life threatening.”)
- Email to Beth Thornburg, October 7, 2015 @4:15pm (“As I mentioned to you and Jennifer, the grades were submitted late due to the following factors . . . my husband was hospitalized and when released from the hospital had to recover at home on FMLA or FMLA eligible leave away from work.”)
- Email to Dean Collins, Dean Spector, Roy Anderson, Anthony Colangelo, November 8, 2015 @ 12:55pm (“In addition, as previously mentioned last Spring, I had to deal with my own health issues at the same time that my husband was suffering from a serious health condition was hospitalized for several days during

the Spring 2015 exam period, and remained on FMLA leave and otherwise rehabilitating during May and June 2015 (while I graded exams)).”

- October 29, 2015 @ 7:26pm Email to Jeff Kahn (and forwarded November 20, 2015 @ 10:11am to Dean Collins & tenure committee members, Roy Anderson, Dean Mary Spector, Anthony Colangelo (“Dear Jeff, Thank you so much for attending my class and thank you for your suggestions. This was actually not the best class to observe because I have been feeling sick. I had mentioned it to some colleagues but had not remembered to tell you. I felt dizzy toward the end of class and struggled a bit. Some of the students knew, so I do not think it bothered them much that I ended class early.”)
- Email to Associate Provost Julie Forrester and Professor Jeff Kahn, October 30, 2015 [in addition to this email, I also confided in Provost Forrester that I was seeing a cardiologist and that I thought the dizziness had to do with a cardiology issue.] (“Thank you for taking the time to visit my Torts class yesterday. My apologies that I did not have time to email you to suggest that yesterday was not the best day to visit. As our other colleagues know, I had been sick. However, I had to postpone my own doctor's appointment to be in the ER with my son Wednesday night (before class) after he broke his arm. I am on my way to take him to the orthopedic surgeon this morning. After a long week, I felt dizzy in class and hence, ended five minutes early.”)

These communications meet the FMLA’s employee notice requirements. By expressly informing my supervisors of an overnight hospital stay, I clearly met the standard for “sufficient notice to make an employer aware of the need for FMLA leave.” Further, the express request for a reprieve from work related requirements, also met the standard for FMLA protection.

III. SMU’s Failure to Provide Employer Notice & My Right to Retroactive Designation

A. Law: Employer Notice

FMLA and its regulations require that, upon receipt of such notice, the employer must meet certain employer notice requirements. Specifically, the employer must (1) send the employee a statement of rights and responsibilities under the FMLA and (2) give the employee notice as to whether or not her medical event qualifies for FMLA protection. According to the Department of Labor, the Rights and Responsibilities Notice must contain the following information:

- Notice that the leave may be counted as FMLA leave;

- The employer’s designated 12-month period for counting FMLA leave entitlement;
- Any requirement for the employee to furnish a certification and the consequences for failing to do so;
- Information regarding the employee’s right or the employer’s requirement for substitution of paid leave and conditions relating to any substitution, and the employee’s right to take unpaid FMLA leave if the conditions for paid leave are not met;
- Instructions for making arrangements for any premium payments for maintenance of health benefits that the employee must make during leave (and potential employee liability if the employee fails to return to work after FMLA leave);
- Notice of designation as “key” employee and what that could mean; and
- The employee’s right to job restoration and maintenance of benefits.²³

An employer’s refusal or failure to provide Notice of her FMLA Rights and Responsibilities can amount to a violation of the FMLA. The FMLA and its regulations prohibit the following actions:

- An employer is prohibited from interfering with, restraining, or denying the exercise of, or the attempt to exercise, any FMLA right.²⁴
- An employer is prohibited from discriminating or retaliating against an employee or prospective employee for having exercised or attempted to exercise any FMLA right.
- An employer is prohibited from discharging or in any other way discriminating against any person, whether or not an employee, for opposing or complaining about any unlawful practice under the FMLA.
- All persons, whether or not employers, are prohibited from discharging or in any other way discriminating against any person, whether or not an employee, because that person has—
 - Filed any charge, has instituted, or caused to be instituted, any proceeding under or related to the FMLA;
- Given, or is about to give, any information in connection with an inquiry or proceeding relating to any right under the FMLA; or

²³ <http://www.dol.gov/whd/regs/compliance/whdfs28d.pdf>.

²⁴ See Bryant v. Texas Dept. of Aging & Disability Services, No. 1420278 (March 25, 2015) (“Employers subject to the FMLA must comply with two separate “prohibited acts” provisions found in Section 2615(a). Section 2615(a)(1) provides: “It shall be unlawful for any employer to interfere with, restrain, or deny the exercise of or the attempt to exercise, any right provided under this subchapter.” Section 2615(a)(2) provides: “It shall be unlawful for any employer to discharge or in any other manner discriminate against any individual for opposing any practice made unlawful by this subchapter.”)

- Testified, or is about to testify, in any inquiry or proceeding relating to a right under the FMLA.

Examples of prohibited conduct include:

- Refusing to authorize FMLA leave for an eligible employee,
- Discouraging an employee from using FMLA leave,
- Manipulating an employee's work hours to avoid responsibilities under the FMLA,
- Using an employee's request for or use of FMLA leave as a negative factor in employment actions, such as hiring, promotions, or disciplinary actions, or,
- Counting FMLA leave under "no fault" attendance policies.²⁵

An employer's failure to provide individual notice to an employee of her rights and responsibilities under the FMLA amounts to interference with an employee's FMLA rights.²⁶ The Department of Labor regulations state that "if an employer does not give notice of eligibility, the employer cannot later challenge the employee's FMLA eligibility, and in certain cases, the employee is deemed automatically eligible and the employer may not deny FMLA leave."²⁷

B. FMLA Law: Retroactive Designation is Required if the Employee is Harmed By Employer's Failure to Provide Notice

An employer must retroactively designate FMLA leave if the employer's failure or refusal to do so would cause harm to the employee. Generally, the FMLA regulations themselves allow employers and employees to mutually agree upon retroactive designation.²⁸ The Department of Labor regulations involving FMLA employer notice issued by the Department of Labor provide that:

If an employer does not designate leave as required by § 825.300, the employer may retroactively designate leave as FMLA leave with appropriate notice to the employee as required by § 825.300, provided that the employer's failure to timely designate does not cause harm or injury to the employee. In all cases where leave

²⁵ <http://www.dol.gov/whd/regs/compliance/whdfs77b.pdf>.

²⁶ *Id.* at *5.

²⁷ See C.F.R. 825.110(d).

²⁸ See 29 CFR 825.301(d).

would qualify for FMLA protections, an employer and employee can mutually agree that leave be retroactively designated as FMLA leave.²⁹

Furthermore, the Department of Labor has also explained that, under Ragsdale v. Wolverine Worldwide, Inc., 535 U.S. 81 (2002), “retroactive designation is permitted if an employer fails to timely designate leave as FMLA leave and notify the employee of the designation. ”³⁰ In the Department of Labor’s words: “The employer may be liable, however, if the employee can show that he or she has suffered harm or injury as a result of the failure to timely designate the leave as FMLA.”³¹

Furthermore, U.S. Supreme Court and Fifth Circuit case law interpreting these regulations, agree that the employer must retroactively designate FMLA leave where, as in my case, (1) the employee desires, rather than opposes, retroactive designation and (2) the employee would be harmed by the refusal or failure to retroactively designate.³² An employer’s failure to inform an employee of her FMLA rights after the employee has given notice to the employer of an FMLA qualifying event amounts to interference with FMLA rights if such failure causes in “an impairment of [her] rights and resulting prejudice.” Ragsdale v. Wolverine Worldwide, Inc., 535 U.S. 81, 90 (2002). FMLA interference claims are derived from 29 U.S.C. § 2615(a) (1), which provides that “It shall be unlawful for any employer to interfere with, restrain, or deny the exercise of or the attempt to exercise any right provided under this chapter.”³³

C. Facts: Despite Employee Notice, SMU Did Not Fulfill its Employer Notice Requirements for the 2015 Hospitalizations or the 2012 Medical Event

Notwithstanding my repeated notice to SMU regarding the hospitalizations and ongoing care, SMU did not meet its FMLA mandated requirements to provide notice. While I gave repeatedly given SMU notice of these statutorily protected hospital stays, SMU notified me of my rights to take FMLA leave or have the hospitalizations certified as FMLA protected.

²⁹ See 29 CFR 825,301(d).

³⁰ <https://www.dol.gov/whd/fmla/finalrule/NonMilitaryFAQs.pdf>.

³¹ <https://www.dol.gov/whd/fmla/finalrule/NonMilitaryFAQs.pdf>.

³² See Strain, at *11 (“In sum, we hold that because Downey showed that Strain’s noncompliance with the individualized notice regulations impaired her ability to exercise her rights under the FMLA and thereby caused her prejudice, enforcement of the notice regulations here is consistent with the FMLA’s remedial scheme.”)

³³ 29 U.S.C. § 2615(a) (1).

I have repeatedly mentioned to my Deans and colleagues, including my tenure chair, that my husband and I experienced these hospital stays. Even though I informed my Dean and Associate Dean of my hospital stay and 30 day regimen of medication during the Spring 2015 Semester, I received no response from SMU whatsoever regarding FMLA as a result of my January hospital stay. At no time during that Semester did SMU give me notice of my rights and responsibilities for FMLA leave for this hospital stay. Further, at no point did SMU present me with a Statement of Rights and Responsibilities for FMLA leave in response to that hospital stay. Further, SMU never sent me a certification form indicating (1) whether I was entitled to take FMLA leave of any kind during the Spring 2015 Semester; (2) whether the university would support any FMLA leave for the Spring 2015 Semester (3) whether the 30 days of continuing care was protected under the FMLA; (4) whether I could submit an FMLA certification form, (5) the deadline or time frame for submitting the form. However, eventually, in the middle of the subsequent Fall 2015 semester, Dean Jennifer Collins eventually suggested that I contact HR to address my FMLA events. As Dean Collins has encouraging me to contact HR to certify these events, there should be no barrier, objection, or burden to certifying the events.

As was the case with my hospitalization in January 2015, SMU did not fulfill its employer notice requirements when my husband was hospitalized in June-July 2014 or April 2015. At no time during the hospitalization or in the weeks following the hospitalization did SMU send me a Notice of Rights and Responsibilities for FMLA with respect to my husband's hospitalization. SMU did not provide a certification form for the hospitalization which indicated whether or not I was eligible for FMLA for this event or whether or not the event qualified for FMLA protection. SMU did not give me a deadline for submitting a certification form for this event.

In August, I wrote to Dean Collins repeating my notice that I had an FMLA qualifying event that had not passed but for which I was afraid to apply for FMLA, she ignored my request to discuss the matter with her or otherwise did not discuss the matter with me. I expressed concern via email to Dean Collins that I was afraid that I would be discriminated against if I pursued the FMLA certification. In any case, following this notice to Dean Collins in August, no one sent me any of the FMLA-mandated Employer notice documents.

D. Because SMU Did Not Meet Its Employer Notice Requirements for the Hospitalizations, SMU Must Retroactively Designate

Prior to submission of this memo, I have asked SMU HR to cure its failure to certify these FMLA-qualifying events. In response, SMU has wavered and thus far, has failed to cure. At first, you told me that the hospital stays and their resulting regimen of ongoing care qualified for FMLA protection and you encouraged me to seek certification of these events. Then, in a subsequent conversation, you changed your position, asserting that the law did not require that

SMU certify prior events, even where the events otherwise qualified for FMLA protection. I believe that your latest interpretation of FMLA law is incorrect. Notwithstanding your assertions to the contrary, the FMLA itself, as well as United States Supreme Court precedent require that SMU cure its failure to provide past certification of these hospitalizations. Under FMLA law, a refusal to certify FMLA qualifying events of which the employer received notice amounts to interference with my FMLA rights and hence, a prima facie violation of the FMLA itself.

Recently, you agreed that these hospital stays should be certified but then, you abruptly changed your position. On November 23, 2015, we talked by phone and you told me that the hospital stays qualified for FMLA protection. Then, abruptly, you reversed course. Then, in a subsequent phone conversation, you reiterated this point, indicating that the law did not require that SMU certify prior events, even where the events otherwise qualified for FMLA protection.

As explained above, the law requires retroactive designation where the employer's failure to meet the statutorily mandated notice requirements would undermine the employee's rights or cause other harm. Once an employee gives notice of an FMLA qualifying event, an employer initially must give employees notice of their FMLA rights. As explained above, the law requires retroactive designation if the employer failed to provide notice and the employee would be harmed by a failure to retroactively designate.

E. Irreparable Harm Will Occur If SMU Continues its Refusal to Retroactively Designate

As stated above, an employer's failure to inform an employee of her FMLA rights after the employee has given notice to the employer of an FMLA qualifying event amounts to interference with FMLA rights if such failure causes in "an impairment of [her] rights and resulting prejudice," Ragsdale v. Wolverine Worldwide, Inc., 535 U.S. 81, 90 (2002). Ragsdale provides that the remedies for the harm that I may suffer if you continue your refusal to retroactively designate my hospital stays as FMLA protected include "compensatory damages," "other monetary losses" and "appropriate equitable relief, including employment, reinstatement and promotion."³⁴

Indeed, in this case, the designation is not just an issue of semantics but a determining factor for protecting the employee from real damages. The employer may be liable for damages, however, if the employee can show that he or she has suffered harm or injury as a result of the failure to timely designate leave as FMLA. Additionally, an employee and employer may agree to retroactively designate an absence as FMLA protected."³⁵

³⁴ See Ragsdale, 535 U.S. at 90, quoting 29 U.S.C. § 2617(a)(1); see Strain at *10-11 (following Ragsdale)

³⁵ <http://www.dol.gov/whd/fmla.finalrule/nonmilitary/FAQ's.pdf>.

PART IV: FMLA Certification for Medical Events Involving “Continuous Treatment by a Health Care Provider” and “Chronic Health Conditions”

My medical events are FMLA protected because they involve “continuous treatment by a health care provider” and / or “chronic health conditions.” This Part summarizes the legal standard for certifying FMLA vents involving “continuous treatment by a health care provider” or “chronic serious health conditions.” Second, this memo shows how each event meets the standard for certification. Third, for each event, this memo summarizes (1) the notice that was given for each event; (2) the facts that show that the event qualifies for FMLA protection and (3) the dates for FMLA protection that the event warrants.

A. FMLA Law: Protection for “Continuous Treatment” & “Chronic Health Conditions”

The FMLA provides job protection for “serious health conditions” and medical events involving “continuous treatment by a health provider” meet the standard for “serious health conditions.”

As explained in Part I, the FMLA protects employees who experience a “serious health condition.” A “serious health condition is “any illness, injury, impairment, or physical or mental condition that involves:

- any period of incapacity or treatment connected with inpatient care (i.e., an overnight stay) in a hospital, hospice, or residential medical care facility; or
- a period of incapacity requiring absence of more than three calendar days from work, school, or other regular daily activities that also involves continuing treatment by (or under the supervision of) a health care provider;
- any period of incapacity due to pregnancy, or for prenatal care; or
- any period of incapacity (or treatment therefore) due to a chronic serious health condition (e.g., asthma, diabetes, epilepsy, etc.); or
- a period of incapacity that is permanent or long-term due to a condition for which treatment may not be effective (e.g., Alzheimer’s, stroke, terminal diseases, etc.); or,
- any absences to receive multiple treatments (including any period of recovery there from) by, or on referral by, a health care provider for a condition that likely would result in incapacity of more than three consecutive days if left untreated (e.g., chemotherapy, physical therapy, dialysis, etc.).”³⁶

³⁶ <http://www.dol.gov/whd/regs/compliance/1421.htm>

Thus, the FMLA’s definition of a “serious health condition” includes: “an illness, injury, impairment, or physical or mental condition that involves either (a) inpatient care at a hospital or medical center or (b) “continuing treatment by a health care provider.”³⁷

According to the Department of Labor, the (b) “continuing treatment” test³⁸ for a serious health condition may be satisfied by proof of:

- (1) A period of incapacity of more than 3 consecutive full calendar days PLUS EITHER: treatment by a health care provider twice OR treatment by a health care provider once with a continuing regiment of treatment.³⁹ Under Section 825.114(b) of the FMLA regulations, a “regiment of continuing treatment includes a course of prescriptive medication such as antibiotics or therapy requiring oxygen breathing treatments.
- (2) Any period of incapacity due to pregnancy;
- (3) Any period of incapacity or treatment for a chronic health condition. A “chronic health condition” is one that: requires periodic visits for treatment by a health care provider etc.; continues over an extended period of time and may cause episodic, rather than continuing, periods of incapacity – such as periodic visits of twice a year to the doctor.
- (4) Any period of incapacity to receive multiple treatments or recover from treatments for a condition that would likely result in an incapacity of more than 3 consecutive full calendar days absent medical treatment.

Indeed, the Department of Labor publication, “NEED TIME: THE EMPLOYEE’S GUIDE TO THE FAMILY & MEDICAL LEAVE ACT,” that you emailed me acknowledges that the “continuous treatment” paradigm is FMLA protected. That publication acknowledges that serious health conditions include:

³⁷ Id.

³⁸ Under Section 825.114(a)(2)(i), a “period of incapacity (inability to work, attend school or perform other regular activities) due to the serious health condition, treatment for or recovery from) of more than three calendar days and any subsequent treatment or period of incapacity related to the same condition that involves (1) treatment of 2 or more times by a health care provider or (2) treatment by a health care provider on at least one occasion that results in a regiment of continuing treatment by a doctor.

³⁹ Under Section 825.114(a)(2)(i), a “period of incapacity (inability to work, attend school or perform other regular activities) due to the serious health condition, treatment for or recovery from) of more than three calendar days and any subsequent treatment or period of incapacity related to the same condition that involves (1) treatment of 2 or more times by a health care provider or (2) treatment by a health care provider on at least one occasion that results in a regiment of continuing treatment by a doctor.

- 1) A condition that incapacitate you or your family member (for example, unable to work or attend school) for more than three consecutive days and require ongoing medical treatment (either multiple appointments with a health care provider, or a single appointment and follow-up care such as prescription medication);
- 2) chronic conditions that cause occasional periods when you or your family member are incapacitated and require treatment by a health care provider at least twice a year.⁴⁰

Applying these regulations, several of the chronic health conditions from which my husband and I suffer are prima facie “chronic health conditions” under the FMLA regulations. For example, asthma and diabetes, family illnesses for which I have sought FMLA leave and job protection are prima facie FMLA-qualifying illnesses.⁴¹

B. Facts: “Continuing Treatment by a Health Care Provider” for Me and My Husband Due to “Chronic Health Conditions”

The certification forms and doctor’s notes show several FMLA events involving “continuous treatment” for several illnesses. For example, we have provided a series of doctor’s notes that prove that my husband was unable to work – either at full or part capacity for a continuous period of time – from February 2015 until June 2015. For myself, the certification forms clearly document “continuous treatment” for several illnesses. For my severe asthma, I was hospitalized and there, diagnosed with lung disease. Upon release from the hospital, I was placed on a 30 day regimen of medication. Upon the release from the hospital, I was also referred to several specialists including a pulmonologist and a cardiologist. I also was observed by my primary care physician. Thereafter, I have been in the emergency room several times for trouble breathing and severe coughing. The Emergency room physicians prescribed regimens of antibiotics and steroids and a breathing machine with medications. I was also provided breathing

⁴⁰ See UNITED STATES DEPARTMENT OF LABOR, “NEED TIME: THE EMPLOYEE’S GUIDE TO THE FAMILY & MEDICAL LEAVE ACT.”

⁴¹: See <http://www.dol.gov/whd/regs/compliance/1421.html> (defining “serious health condition” as

- any period of incapacity or treatment connected with inpatient care (i.e., an overnight stay) in a hospital, hospice, or residential medical care facility; or
- a period of incapacity requiring absence of more than three calendar days from work, school, or other regular daily activities that also involves continuing treatment by (or under the supervision of) a health care provider; or any period of incapacity due to pregnancy, or for prenatal care; or any period of incapacity (or treatment therefore) due to a chronic serious health condition (e.g., **asthma**, **diabetes**, epilepsy, etc.))

treatments in the emergency room. To treat depression, I am under the weekly care of a physician who has also prescribed medication.

Furthermore, in the certification forms, the doctor's specifically identify each of these illnesses as "chronic serious health conditions" requiring FMLA protection during periods of incapacity. The FMLA provides that any period of time needed to care for a family member with a chronic health condition is FMLA protected.

For my husband's "chronic serious health conditions" we have provided SMU HR several doctor notes documenting illness in which the patient was unable to work full duty for several periods. The periods of incapacity include February 1st to 6th; February 9th to 11th; February 25th through March 7th; April 27th to May 5th (and when released to work only allowed desk work and several restrictions imposed); extended to April 27th through May 15th with restrictions upon release; May 17th through May 27th.

These doctors are signed by a doctor who confirms there is an actual illness or injury. The doctor then goes on to indicate whether upon release back to work, there are medical restrictions imposed. Each time that one of these forms was signed, the patient has to report to the doctor for observation. Therefore, these periods of incapacity satisfy both the test for "chronic condition" and "3 day period of incapacity plus one doctor's visit." In some instances, the doctor indicates that he could work at part capacity and other times the doctor restricted his work capacity (limiting his work to desk duty; indicating that he could or could not lift items). As he suffers from several chronic conditions, his doctor provided a regimen of care during that time which included prescription medication to help him get well.

C. Notice of My Husband's Chronic Health Conditions & Continuous Treatment

Repeatedly, I have given SMU notice that my husband suffered from an ongoing chronic serious health condition. Throughout the years, I have shared with several of my colleagues that my husband was chronically ill and was in and out of the hospital. I shared this information with my former Dean John Attanasio and current Dean Jennifer Collins. In writing, I sought FMLA protection for the period covering May 17th through May 19th when he was back sick at home and I grew sick from the stress of the situation. My Dean requested and continued to require that I produce proof that my husband was sick at this time and that the illness affected my ability to do my job. The requirement that I provide such information amounts to employer imposed FMLA leave (if not, the demand would violate HIPPA as my husband and I have a right to privacy). In particular, my Dean wanted to confirm that the reason met the FMLA standard – directing me to report the reason to HR if I did not want to provide her with the reason. Documentation of the Dean's repeated requests that I provide such paperwork is notice that the university was aware of the FMLA-qualifying event. Rhonda Adams, reminder that you are

copied on those emails from the Dean and we have had several conversations about the request for the documentation.

Furthermore, in June 2015, I notified Dean Collins and Dean Thornburg that the circumstances surrounding past medical emergencies were continuing and serious. As a result I asked her to help me find ways for SMU to support my family. I expressed equity issues related to real or perceived prejudices against faculty members who take sick leave.

Such notice, includes but is not limited to, the following instances:

- Email to Dean Collins & Dean Thornburg, June 22, 2015, 11:38am, addressing the assumption that the medical events during the Spring 2015 grading period had NOT passed but instead were ongoing: (“Can you let me know whether you have time to meet over the next couple of weeks to meet in person or by phone? I had some equity concerns about two issues . . . the first concerns medical issues related to my family. There may be a misunderstanding that my family’s medical emergency has passed. It has not.”)
- Email to Tenure Committee, April 20, 2015: 10:09am: (“Dear colleagues, I am sorry for the late notice. But, I need to request that we reschedule this meeting. I have to take my husband to an urgent care doctor today. Please advise if we can reschedule for later this week Wednesday or Thursday or any day next week. Cheryl”) (Joe Norton then wrote that “he hopes its nothing serious” and I wrote back, “He is sick, Joe.”).
- Email from me to Joe Norton, my former Tenure Chair, July 30, 2015 @ 1:12 am (“Dear Joe . . . As you undergo your surgery, you are in my prayers and in Jarvis' prayers. I appreciate that you have been willing to listen to me discuss Jarvis' health concerns. I look forward to talking with you when you are back up and about. “)
- Email to Beth Thornburg , October 7, 2015 @4:15pm (“As I mentioned to you and Jennifer, the grades were submitted late due to the following factors . . . my husband was hospitalized and when released from the hospital had to recover at home on FMLA or FMLA eligible leave away from work.”).
- Email to Dean Collins, Dean Spector, Roy Anderson, Anthony Colangelo, November 8, 2015 @ 12:55pm (“In addition, as previously mentioned last Spring, I had to deal with my own health issues at the same time that my husband was suffering from a serious health condition was hospitalized for several days during the Spring 2015 exam period, and remained on FMLA leave and otherwise rehabilitating during May and June 2015 (while I graded exams)).”

- Email to Beth Thornburg 10.7.15 @ 7:17pm: As I mentioned to you and Jennifer, the grades were submitted late due to the following factors (1) my husband was hospitalized *and when released from the hospital had to recover at home on FMLA l (or FMLA eligible) leave away from work.* I think your statement here, and your other recent statements when we have talked about this before, reflects (or I worry that it reflects) a bias or unwillingness to acknowledge or credit these circumstances. When we talked about this in person a few weeks ago, there too, you told me that moving forward, I should “get my grades in on time and tell Jarvis to not get sick.” And, you expressed your view that “I had had the exams awhile after he got out of the hospital.”

D. Continuous Treatment & Chronic Health Conditions Involving Care by Doctor Sloan

The certification forms document continuous care by Dr. Sloan from May 2015 to the present. The FMLA certification form indicates that I have met with Dr. Sloan several times since April 2015. She further indicates that I meet with her on a weekly basis. She also clearly states that she is treating me for a chronic serious health condition.

1. Actual Notice

SMU also had actual notice that I was suffering emotionally due at least to stress at work and that these issues could trigger the FMLA and or the ADA. The FMLA requires notice “as soon as practical under the circumstances.” In cases involving the chronic health conditions such as depression and anxiety, the notice requirements changes significantly. The Fifth Circuit has recognizes that in such cases, timely notice may be impossible to provide and should be excused. This is true especially where the employer has signs that the employee is under stress or duress, such as unusual behavior or a change in job performance.

In my case, I gave my Dean and tenure committee notice that my health was deteriorating in part due to stress and anxiety at work. I met with the Dean regularly and emailed her regularly to express my distress, worry and anxiety over discrimination in the workplace. As a separate matter, I also shared with them my distress over physical and verbal harassment by a former student (while the harassment occurred). I also shared that the harassment with my former tenure chair, Joe Norton, who encouraged me to file an Honor Code violation against the student. However, the Associate Dean, who was also on my tenure committee, discouraged me from filing an Honor Code complaint. I also shared with the Dean and other colleagues that I was devastated over several events that have occurred during the Fall 2015 semester which I perceived as retaliation for complaining about discrimination.

a. Written Notice of Performance Based Work-Related Stress, Anxiety & Depression

Examples of written notice that I suffered harassment, stress and anxiety due to work:

- Email to Dean Collins and Roy Anderson, Sunday, Nov. 8, 2015 @ 12:55pm (“As I reported to Jennifer and Mary, I started to feel sick again this semester. As you know, I was sick during the Spring 2015 semester, spending several days in the hospital after having been sent by ambulance from a doctor's office. Out of loyalty to my students with whom I had a great Fall 2014 semester, I labored through the semester even though I still was ill. In addition, as I previously mentioned last Spring, I had to deal with my own health issues at the same time that my husband was suffering from a serious health condition, was hospitalized for several days during the Spring 2015 exam period, and remained on FMLA leave and otherwise rehabilitating during May and June 2015 (while I graded exams). In the middle of this semester, I started to feel sick again . . .
- Email to Dean Collins, Dean Thornburg, June 22, 2015, 11:38am (“This past academic year was really hard on me, particularly because my husband, Jarvis, was hospitalized twice (for about 4-5 days) and I was hospitalized once as well for a similar amount of time. Jarvis’ second hospital stay was right on the eve – beginning of exam period. In particular, Jarvis developed a serious health condition whose symptoms were life threatening.”)
- Email to Dean Collins and Roy Anderson November 9, 2015, at 11:08am: (“Please forgive the inconvenience. When I stated that ‘I was sick,’ I did not mean to infer that I ‘was not feeling well.’ I do not have the flu. I have a serious health condition. As such, I found Roy’s email very stressful.”)
- Email to Jennifer Collins & Roy Anderson, November 9, 2015, 10:20am (“Colleagues, I just want to emphasize that, as I stated in my email to you on Sunday, [November 8th] I am sick. Thank you. Cheryl”)
- Email to Dean Collins, June 22, 2015 @ 1:55pm (“Are you available the following week. I feel a huge drain. Colleagues confiding that that is a lot of gossip and chatter about my not tuning in my grades in and speculating that my ‘tenure is in jeopardy.’ Very stressful.”)

- Email to Jennifer Collins and Samantha Thomas (IAE) August 10, 2015 @ 4:13 pm (“Jennifer, Thank you for writing. We should talk because you may have unintentionally misconstrued the facts regarding Pin Wu. **As he seems to have damaged my reputation and caused me distress, I am wondering what steps the university can take to cure that. And, to make sure that no other harm is done.** Also, since his acts of harassment - yelling and screaming at me, imposing himself physically in my space, threatening to damage my reputation - have been carried out by other students, what can the Dean's office and the OIE do to make sure that this does not occur again. I need your help. **I complained to the law school that I did not feel comfortable meeting with this student and the student was badgering me. I told my colleagues and my family that the student had cornered me in my classroom and my office several times, appeared to be threatening, combative and manipulative.** Therefore, I did not feel comfortable being alone with this student. I did not feel comfortable teaching at night. I did not trust the student. I told the student to not visit me in my office; that if he wanted to meet with me he would have to meet in the presence of a Dean or in a Dean's office. I requested that the student be moved to another class. The request was granted. The student still made threats to harm my reputation if I did not change his grade from a C (or C- whatever the grade was). I asked my colleagues to talk to the student and the class to inform everyone that further discussion of the dispute was not allowed.
- Email to Samantha Thomas (IAE) and Jennifer Collins. August 2015: (“My complaints are not meant to attack but to cry out to say enough is enough. For years, some of us have worked under a discriminatory environment but had a fear of speaking out. **Finally, due possibly in part to the stress that is generated from the hostile work environment, my health is deteriorating or is negatively affected. Thus, with respect to some of these issues, I want to make sure that I am not discriminated against based on any real or perceived disability.**”)
- **I am trying to do better at protecting myself - in terms of my time, and my physical and emotional health. My concerns do not pertain to you and are not directed at you but I have to share them with someone so that I do not get too depressed or stressed out by continuing to keep them bottled up.** In the past, before Jennifer came, I have felt obligated to take on extra work, unforeseen and shifting course assignments. I have been made to feel that I have to always do extra because what I had done thus far was never

good enough. I never really got a pre-tenured leave of absence.⁴² **It has also been extremely stressful to be subjected to different and unwarranted expectations and judgments from colleagues regarding my private life, family life, [and] family obligations.** Long story short. I do not want to feel anymore that I have to do more than others in order to be accepted by our colleagues. I love so many of my colleagues and my students. But, I also have a family. I want to pull my weight on the faculty, but over the next year, I do not want to take on more than that. I have LOVED teaching in the evening - in fact. But, if it is someone else's turn to do so, I would be so grateful if he or she could take that turn.

- Email to Associate Dean Beth Thornburg from me, January 11, 2015 @ 6:58pm (So, first, I wanted to share the personal circumstances surrounding the hospital stay because your knowledge of those circumstances will help you guide me in planning my semester. My personal preference however is that I did not wish at this time to share my personal medical history with the entire faculty. **Part of this stems from my feeling that my colleagues spend a lot of time with me expressing interest in my personal life. This is a problem for me because in some instances colleagues draw inaccurate conclusions and links between my personal and professional life. This vibe causes me a lot of stress and anxiety.** I did not want any discussion of my medical history to add to this. And, just personally, I need to jump right in and focus on work. I entrust this information to you as Academic Dean, to our Dean and to the other members of my tenure committee.”)

2. Constructive Notice: Notice of Non-Performance Based Work-Related Triggers to Stress & Anxiety

Particularly in cases involving depression, employee notice can be constructive. Where an employee has demonstrated a successful job performance in the past, but then her performance or behavior suddenly changes, these changes in work performance can amount to constructive notice that the employer may need to provide FMLA certification forms to the employee. See *Byrne v. Avon Products, Inc.*, 328 F. 3d 279 (7th Cir. 2003). In *Byrne*, for example, an employee began to fail to perform well in work tasks that he had previously performed in a satisfactory manner. It turns out that the employee was suffering from depression

⁴² A pre-tenured leave of absence is a benefit that has been provided to other pre-tenured professors. I discussed this further with my Dean that I did not in practice get a paid leave of absence because the Dean Search committee took up far more time than was anticipated by the former Provost on the committee. I asked Provost Stanly to meet with me to approve it. But, Provost Stanley declined to meet at the time of the request and did not invite a follow-up meeting.

and sleep deprivation. The court held that the changes in work performance amounted to constructive notice that the employee needed FMLA protection.

Here, my teaching evaluations provide notice that medical issues affected my teaching and enthusiasm at work. In virtually all of the teaching evaluations that I have received at SMU, students always attest to my high energy and enthusiasm in the classroom. This has been the case for all four courses I have taught. Even students who have otherwise not liked the course, the professor, or who have had other negative things to say about my Torts class, they have noted that I “want to be there” “like teaching the course” “is highly motivated.” However, the Spring 2015 course evaluations for Torts were the first time that students wrote otherwise. Students wrote that I “seemed distracted” “did not want to be there” “seemed unfocused” “came to class disheveled” etc. At times I have defensively disputed the accuracy of these evaluations.

Yet, these evaluations are of a course that I began in the hospital. Indeed, the course began a week later because I was sick and in the hospital. Then, for the first month of the semester I was on medication as part of a continued regimen of care following the hospitalization. As the medical notes and certification forms from my husband’s doctor indicate, my husband was sick and home from work virtually the entire semester from February through June of the Spring 2015 Semester. During the Spring 2015 Semester, the university was also on notice that a student who was disgruntled by his C grade in the Fall 2015 course was harassing me. He was physically harassing me, yelling at me, threatening to harm my reputation with the Dean and Associate Dean and trying to get me fired. As indicated below, I specifically informed the university that the harassment was undermining my health. On these facts, SMU had constructive notice that I could be depressed and that my depression was work related.

In addition to the performance related work events described above, Dean Collins and my other supervisors are also aware that I experienced several traumatic events during my tenure track period. While several of these incidents are not FMLA-qualifying events, a reasonable person could foresee that they would create or exacerbate distress or depression for most human beings. As some of the incidents are work-related, workplace fairness, equity and equitable estoppel would require that SMU acknowledge the link between these events and actual depression that I suffered due to these events. In fact, with respect to some of the events, Dean Collins sent public notices acknowledging that certain events could have a distressing effect on members our law school community and if that occurred, faculty or community could discuss the concerns with her. In fact, I discussed the distressing impact of the events with Dean Collins and Associate Dean Thornburg. These events include, but are not limited to:

Work Related Events:

- a. Post-Traumatic Stress Related to Caregiving and Death of my Good Friend and Colleague Sarah Tran. During Spring 2014 and thereafter, I played a significant

role providing personal support to my colleague Sarah Tran and her family as Sarah battled cancer. I allowed Sarah's family to stay with me for long periods of time in my Dallas home. When Sarah visited Houston for medical treatment, my husband and I took care of her in our Houston home during her stay. When Sarah only had 24 hours to live, I organized a bedside vigil of her colleagues. Along with her family and a handful of close friends, I stayed with Sarah and was present when she died. This experience would cause stress and depression in the average person.

- b. Deaths in the Family. In addition to the death of my colleague, I also buried my father who died suddenly in Fall 2014 and my nephew who lived in our household during summers died suddenly in Fall 2012.
- c. Racial Tensions in the Greater Community and on College Campuses Nationwide including at SMU. Dean Collins has also expressed concern over the likelihood that students would be stressed over racial tensions on campus. But these events have affected faculty members as well.

III. Continuous Treatment for Chronic Health Conditions: Parenchymal Lung Disease - Asthma/ Cardiology

Dr. Fadulu indicates in his certification that I was put on a regimen of continuing treatment following my hospitalization. This treatment includes cardiology related medication. This medication was proscribed for 30 days. (I have further documentation of this precise period.) Furthermore, I have visited with several specialists since the hospital stay. The hospital records and Dr. Fadulu's certification forms document referral to several specialists including a cardiologist and pulmonologist to date. I also have been referred to a gastroenterologist. The hospital diagnosed a chronic serious health condition – parenchymal lung disease. Thus far, specialists have diagnosed the specific parenchymal lung disease as severe asthma – a prima facie chronic serious health condition under the FMLA. Further, in my case, my asthma requires continuous treatment including preventative medicine as well as medicine for current symptoms including a recent regimen of 5 days of steroids, seven days of antibiotics, an inhaler and ongoing use of a breathing machine powered by medication. I have been in the ER several times for trouble breathing due to lung disease.

A. Notice

My hospital stay and regimen of care has been discussed in Part One. Further, in several phone conversations, I have also provided notice to HR of the ongoing treatments and

regimen of care stemming from that hospital stay. In fact, I have given my supervisors repeated notice that I needed FMLA leave for several chronic serious health conditions.

Notice that I suffered from chronic serious health conditions should not be in dispute. As indication that my employee notice of certain health conditions was sufficient, Dean Collins responded to such notice by suggesting that I contact SMU HR to seek FMLA protection for these illnesses. Granted, Collins did not have HR contact me or otherwise send me a Notice of My Rights and Responsibilities as to these specific events; counsel me whether the events were FMLA covered or provide me with a certification form and its deadline for return. However, I did eventually contact HR on my own to get certification for the FMLA-qualifying events for which I had already provided notice to Dean Collins and my other supervisors.

When the symptoms that caused my initial hospitalization persisted, I gave notice to my supervisors using words and phrases that specifically linked the continued symptoms of the illness diagnosed at the hospital. For example, I did not merely tell my Dean and tenure chair that “I was sick,” but instead advised that “I was sick because I have a serious health condition” or because “the symptoms related to my hospitalization had returned.” Under FMLA law, such statements linking the illness to the hospital stay give my supervisor enough specific facts to know that the illness was FMLA protected.

B. Actual & Constructive Notice – First Hand Observation of My Lung Disease

For the colleagues and students who speak with or interact with me on a regular basis, it is common knowledge and obvious that I suffered from some form of chronic illness that needed medical care.⁴³ Unlike depression, whose diagnosis and symptoms can be hidden, severe asthma, and pulmonary disease have symptoms that can become visible and if visible, are undeniable. You can see someone have an asthma attack, have trouble breathing, interrupt a lecture to use an inhaler. This has been my case at work, By their interactions with me alone, my supervisors – including my Deans and my tenure chair – knew or should have known that I suffered from some type of pulmonary condition that would affect my work. My chronic wheezing, interrupted breathing and in particular, my debilitating, incessant, hard dry cough are hard to miss if you interact with me regularly.

My colleagues During the Spring 2015 and Fall 2015 semesters, my supervisors and colleagues also have actual notice that I suffered from a serious health condition because they have personally witnessed me sick at work. Colleagues have witnessed me constantly wheezing and coughing continuously for weeks and weeks non-stop and commented on it with me or amongst themselves. As several colleagues can attest, anyone who spoke to me regularly at

work could see that I was having trouble breathing. Students and colleagues commented that I looked sick and tired. I was coughing nonstop. It was not the same as seeing someone with the flu because rarely did I have congestion. But, one could see and hear that I had a hard time speaking, talking and breathing. My tenure chair Roy Anderson observed and commented on the nonstop coughing.

Furthermore, in private discussions I have shared the specifics of my illness and my husband's with various members of my tenure committee and with other colleagues on the law faculty. It is no secret among several members of the faculty that my husband has had a chronic illness and that I was often worried and distressed about him. I have often turned to my colleagues for advice, comfort and venting about my husband's health.

Associate Dean Beth Thornburg witnessed my having an asthma attack at work on or about December 16, 2015. Dean Thornburg did not recognize the asthma attack as such, but she and another law professor did come to my aid with water and cough drops as they witnessed my having a severe coughing spell. Dean Thornburg questioned whether she should leave me alone at work. But, I showed her that I had an inhaler. Other faculty members have witnessed me having an asthma attack and have encouraged me to seek medical treatment. I also notified Dean Spector via text message that I had to leave work several times to go to emergency room specifically because I was having trouble breathing and that, the illness was temporarily cured through the use of an inhaler and prescription medication. Dean Collins also received similar notices via text message and email.

In a meeting about my interest in asking for an ADA accommodation, Dean Collins has also witnessed me having trouble breathing and coughing. In one meeting with Dean Collins I told her directly that I was hospitalized for trouble breathing. I told her that I was diagnosed with some form of lung disease and that further specifics of that diagnosis was being determined. Dean Collins asked me whether my diagnosis was asthma. She indicated that she was familiar with asthma because she has asthma herself and controls her asthma with an inhaler.

Furthermore, in addition to my colleagues, several of my students were aware that I taught during the Spring 2015 semester and Fall 2015 semesters. These students include those in my classes as well as current and now former students (now alums). Several alums with whom I keep in touch, know that I was in the hospital and have been sick during the Spring 2015 and Fall 2015 Semesters.

C. Written Notice

I gave written notice to my supervisors enough specific details about the symptoms of my physical illness to trigger notice that the illnesses were FMLA-qualifying. First, as stated, I indicated that the illnesses were related to recent hospitalizations. Second, I identified the symptoms as serious. I told my Dean and my tenure committee members that I was dizzy when I lectured and sometimes had trouble breathing while I taught my courses. Whenever I was in the Emergency room for trouble breathing, I would email or text my Dean, Associate Dean, tenure or chair member Dean Mary Spector.

The certification forms confirm that after the hospital stay, I have been treated with medication, referred to specialists and sent to the emergency room several times for the pulmonary problems that were treated in the hospital. As part of a continued regimen of care stemming from the hospital visit, I have been referred to and am under the continued care of a pulmonologist and cardiologist:

- November 8, 2015, at 12:55pm. Email to Dean Collins, Dean Spector Roy Anderson, Anthony Colangelo: “As I reported to Jennifer and Mary, I started to feel sick again this semester. As you know, I was sick during the Spring 2015 semester, spending several days in the hospital after having been sent by ambulance from a doctor’s office. Out of loyalty to the students with whom I had a great Fall 2014 semester, I labored through the semester even though I was still ill.”
- October 21st, 2015 7:03pm Email to Dean Mary Spector (member of my tenure committee) (“I am about to let Beth and Jennifer know that I have been having chest pains and shortness of breath, including while I have been teaching. So, I need to see my doctor. I am going to call the doctor back in the morning. I do not want to reschedule office hours tomorrow - as they are very important for the students in both classes. But, I might not be able to make it on Friday.”)
- October 21, 2015 @7:07pm Email to me from Dean Mary Spector (“Do you need help tonight to get to an emergency room or urgent care facility? Mary Spector”)
- October 29, 2015 @ 7:26pm Email to Jeff Kahn (and forwarded November 20, 2015 @ 10:11 am to Dean Collins & tenure committee members, Roy Anderson, Dean Mary Spector, Anthony Colangelo (“ Dear Jeff, Thank you so much for attending my class and thank you for you suggestions. This was actually not the best class to observe because I have been feeling sick. I had mentioned it to some colleagues but had not remembered to tell you. I felt dizzy toward the end of class and struggled a bit. Some of the students knew, so I do not think it bothered them much that I ended class early,”)

- Email to Associate Provost Julie Forrester and Professor Jeff Kahn, October 30, 2015 [in addition to this email, I also confided in Provost Forrester that I was seeing a cardiologist and that I thought the dizziness had to do with a cardiology issue.] (“Thank you for taking the time to visit my Torts class yesterday. My apologies that I did not have time to email you to suggest that yesterday was not the best day to visit. As our other colleagues know, I had been sick. However, I had to postpone my own doctor's appointment to be in the ER with my son Wednesday night (before class) after he broke his arm. I am on my way to take him to the orthopedic surgeon this morning. After a long week, I felt dizzy in class and hence, ended five minutes early.”)
- Email to Jennifer Collins & Associate Dean Beth Thornburg, June 22, 2015 @ 11:38pm Subject: FMLA, Grades & Other Issues (“Dear Jennifer, I hope that you and your family enjoyed Father's Day. Can you let me know whether you have time over the next couple of weeks to meet in person or by phone? I had some equity concerns about two issues. I copied Beth on this email because I would like to discuss these concerns with her as well. **Medical Issues and Work:** The first concerns medical issues related to my family. There may be a misunderstanding that my family's medical emergency had passed. It had not. As a result, we wish that our colleagues could support us. We also have some concerns about the university's response (actual or perceived) to our medical emergencies . . . I am concerned about BOTH the university's official position, and yours, as to the consequences of a medical emergency delaying the completion of my grading. I thought that, by either law, university policy, or at least good will and collegiality, [that] certain medical or life events would excuse a faculty member's ability to complete grading. I wanted to speak with you about how colleagues do, and actually should perceive these circumstances. So, I would like to discuss with you in more detail our medical circumstances, past and moving forward to make sure that you have all of the facts . . . I also wanted to discuss what duty, if any, the Dean and Associate Dean have in shaping and correcting perceptions about what transpired. In addition to any actual policy position, I am also concerned about how that medical event, and its impact on my grading schedule, was perceived by colleagues, particularly at the law school. Along these lines, I wanted to ask you we can discuss ways for the law school community to support our family. This past academic year was really hard on me, particularly because my husband, Jarvis, was hospitalized twice (for about 4-5 days) and I was hospitalized once as well for a similar substantial amount of time. Jarvis' second hospital stay was right on the eve - beginning of exam period. In particular, Jarvis developed a very serious health condition whose symptoms were life threatening.
- In June 2015, I notified Dean Collins and Dean Thornburg that the circumstances surrounding past medical emergencies were continuing. As a result I asked her to help

me find ways for SMU to support my family. I expressed equity issues related to real or perceived prejudices against faculty members who take sick leave. : Email to Dean Collins, Dean Thornburg, June 22, 2015, 11:38am (“Can you let me know whether you have time to meet over the next couple of weeks to meet in person or by phone? I had some equity concerns about two issues . . . the first concerns medical issues related to my family. There may be a misunderstanding that my family’s medical emergency has passed. It has not.)

- Email to me from Beth Thornburg, copy Jennifer Collins, Roy Anderson: Cheryl, I was glad to hear that after your night in the ER last week you were able to go to the Thanksgiving pot luck lunch and teach class on Thursday. I’m so sorry to hear that you were once again in the ER last night. You do, of course, need to follow the medical advice of your doctors but if it is possible to teach your classes on Tuesday I know your students would deeply appreciate it.
- Email from Rhonda Adams November 11, 2015: “Cheryl, I have attached the two documents to utilize as you deem applicable relative to our discussion this morning. The first document does not require action on your part and is for informational purposes only. However, this document does indicate if you do desire to proceed with seeking FMLA protection, either or both certification forms need to be returned by Friday, December 18, 2015.”
- Email to Rhonda Adams: 12.3.15 @ 8:59pm: “Rhonda, SMU has notice of FMLA-qualifying events of some prior dates. But, I will send them by email as well. Cheryl (responding to email providing FMLA dates for November 23rd to the present and reminding that there are FMLA-qualifying dates that proceed November 23rd.)”
- Email to Rhonda Adams 12.4.15 @ 10:26am: “Rhonda, thank you for talking to me to clarify the FMLA procedure. Can you also call Dean Collins to tell her that I have experienced FMLA-qualifying events? This too will quash some of the confusion. Thank you again for all of your help. I appreciate you. Cheryl”

IV. FMLA Events Related to My Children

A. The Medical Records Submitted are Sufficient

On December 18th, SMU received several documents confirming that I experienced several FMLA-qualifying events involving my children. These documents included their medical records. Attached also to this memo are the certification forms that their pediatrician

was able to submit after December 18th. As per my email, these certifications were delayed by the doctor due to an emergency in her office. Furthermore, my son's therapist, Dr. Loos, as also provided a doctor's note confirming that my son suffers from chronic depression that requires weekly visits to the doctor.

One of these events involved my daughter's illness in June 2015. All of the other events involve my children's repeated visits to the emergency room in October- November 2015 for illness followed by a regimen of continuous care including additional visits to their pediatricians, referral to specialists and prescription medications. Significantly, these FMLA-qualifying events undermined my ability to do my job. While course evaluations administered on October 20th were excellent, course evaluations for the same course administered 3 weeks later were negative.

As HR should be aware, the medical records submitted until certification forms are completed are submitted must be accepted to meet your deadline. SMU has been inconsistent about issue of whether a doctor's note is sufficient to meet your deadline. SMU HR indicated to me a few weeks ago that you could not accept a doctor's note instead of a certification form. However, this representation contradicted an earlier written notice from June 2015 in which HR stated that a doctor's note is sufficient to certify an FMLA event.

SMU's recent claim that this documentation would not suffice is contrary to Fifth Circuit case law. As the Fifth Circuit made clear in Lubke, doctor's notes, medical examination forms and prescription drug receipts are adequate evidence to begin the FMLA certification process. In Lubke, the firefighter employee's wife suffered from severe bronchitis and back pain brought on by the bronchitis. After rejecting the defendant's claim that the severe bronchitis was not a serious health condition, the Fifth Circuit then held that doctor's notes, medical records and prescription drug records were sufficient to meet the deadline for certification.

The Fifth Circuit reasoned that the FMLA regulations require that, with respect to certification, the employer give the employee the benefit of the doubt. Indeed, in cases in which any original certification is "insufficient o incomplete, the employer must provide reasonable opportunity to cure."⁴⁴

B. The FMLA Events

The medical documents reference several FMLA-qualifying events related to my children.

⁴⁴ Lubke, citing 29 CFR 825.305(d).

Son's Fractured Arm: My son fractured his arm on or about October 24th while playing football. He could not move his arm and was in a lot of pain. On the third day of pain, which was October 26th, I took him to the ER and he was diagnosed with a broken arm and put in a soft cast. On October 27th, we returned to the ER as he reported that the pain accelerated and the cast was hurting. They reworked the cast in the ER and referred him to the pediatrician and an orthopedic surgeon. We saw his pediatrician who prescribed pain medication. He visited the orthopedic surgeon twice. The surgeon has provided the doctor's note to you.

Son's depression and anxiety disorder: The break in the arm accelerated the son's depression. He already had anxiety related to school and now he could not use his writing arm. As his therapist writes in a note, son was referred by pediatrician and confirmed to suffer a chronic health condition that needs visits once or twice a week to address. Son was taken to pediatrician in November for diagnosis and has seen therapist twice in early December. (see Doctor's note from Dr. Victor Loose). Anxiety is severe and undermines son's ability to attend school. When my child has not attended school or was depressed when his arm was in a cast, it has undermined my ability to work. Notice that these issues arose and affected my ability to work during November and December was provided to HR.

Daughter's severe allergies: Daughter suffers from severe allergies. On October 26-28, she suffered severe allergic reaction from bites while on a camping trip. She broke out in large raised abrasions all over her body including eyes, ears, back etc. She visited the ER for two consecutive days (late October-early November) and her pediatrician put her on regimen of care including one week off from school, two additional visits to the pediatrician (first week in November) and a week of meds. She was also referred to a specialist. As discussed below, simultaneous notice of this event was provided to supervisors via email and to HR in November.

C. Notice

Notice of my children's FMLA protected events, included but was not limited to the following communications. If more information is needed, I can provide other examples of written notice.

- Email to Registrar Laura Amberson (who was waiting for final grades), May 11, 2015 @ 10am ("Off to take my daughter to the ER – oh, the chronicles of the working mother.") I also communicated the nature of this issue to Dean Beth Thornburg via phone call.
- Email to Dean Collins, Dean Spector, Roy Anderson, Anthony Colangelo November 9, 2015, at 11:08am ("As a side bar, these past three weeks were also consumed by other extraordinary circumstances, including Emergency Room and hospital care for my children (4-5 visits to the ER total in two weeks)). One seemingly broke his arm playing football and has to wear a cast on his writing arm. My daughter suffered a severe toxic

reaction to something that bit her during her school camping trip and ended up in the hospital ER and requiring [sic] daily visits to the doctor and a regimen of steroids.”)

- Email to Associate Provost Julie Forrester and Professor Jeff Kahn, October 30, 2015 & forwarded to tenure committee members Roy Anderson, Dean Mary Spector & Anthony Colangelo, October 30th 2015 @ 8:35pm (“Thank you for taking the time to visit my Torts class yesterday. My apologies that I did not have time to email you to suggest that yesterday was not the best day to visit. As our other colleagues know, I had been sick. However, I had to postpone my own doctor's appointment to be in the ER with my son Wednesday night.”)
- Email to Tenure Committee Roy Anderson, Dean Mary Spector, Anthony Colangelo, October 30, 2015 @ 8:35am (“FYI. I had a long week. My kiddo broke his arm and we have been to the ER twice and are off to the doctor. I will be back on campus next week.”)
- Email from Rhonda Adams 11. 23. 15 (“Cheryl, I have attached the two documents to utilize as you deem applicable relative to our discussion this morning. The first document does not require action on your part and is for informational purposes only. However, this document does indicate if you do desire to proceed with seeking FMLA protection, either or both certification forms need to be returned by Friday, December 18, 2015.”)
- Email to Rhonda Adams: 12.3.15 @ 8:59pm (“Rhonda, SMU has notice of FMLA-qualifying events of some prior dates. But, I will send them by email as well. Cheryl (responding to email providing FMLA dates for November 23rd to the present and reminding that there are FMLA-qualifying dates that proceed November 23rd.”)
- Email to Rhonda Adams 12.4.15 @ 10:26am (“Rhonda, thank you for talking to me to clarify the FMLA procedure. Can you also call Dean Collins to tell her that I have experienced FMLA-qualifying events? This too will quash some of the confusion. Thank you again for all of your help. I appreciate you. Cheryl.”)
- Email to Rhonda Adams 12/3/2015 at 12:43 (“Dear Rhonda, Thank you. Turns out I am back to the hospital tomorrow morning and afternoon with follow-up from my inpatient care. So, let me leave a brief note here to make sure that I comply with your follow-up request. You asked me whether I had advanced notice of any need for FMLA leave between December 1st and December 18th. Forgive me for my delayed response. But, I DID have to consult with doctors to determine this. Based on meetings today, I was able

to confirm that I MAY need to include in my FMLA request, request for protection for the following dates a they will involve medical care or continuous treatment for me or my child: December 1, 2, 3, 4, 7, 8, 9, 11, 16 (scheduled but tentative); 23, and 29. This is a good faith estimate. Dates may change as I talk to doctors but I will try to call you about that. If I can't call tomorrow, I am trying to check my email accounts for a few moments in the evening.”)

- Email to Jennifer Collins, Beth Thornburg, Roy Anderson 11.23.15: (“Dear Beth, Do you by chance to meet briefly tomorrow? Can you by chance meet any time between 1 and 4pm? I notified Jennifer by text message this morning that, due to the time spent last week and today at the doctor's office (and with follow up appointments on Wednesday), I would not be able to teach Torts tomorrow. I would like to get your advice on strategies for finishing the semester. You have had some good ideas and insight and I appreciate the opportunity to discuss them with you. Also, fyi, I did speak with Rhonda in HR and she did promise to call Jennifer on my behalf. Thank you in advance, Beth for any help you can provide. Cheryl”)

Conclusion

For these reasons, my request for FMLA certification for the all of the abovementioned events should be approved.

RE: NOTE FROM CHERYL TO FILE : GROUNDS FOR APPEAL OF DENIAL OF TENURE

From: "Butler, Cheryl Nelson" <cnbutler@mail.smu.edu>
To: "Collins, Jennifer" <jmc@mail.smu.edu>, cherylbutler2002@gmail.com
Date: Fri, 29 Jan 2016 16:53:19 -0600

You do not need to be an ADA or FMLA expert to know that it is unconscionable to evaluate a candidate for tenure under these facts. You told BLSA that you will not tolerate any discrimination. Here is your test. We shall see.

Cheryl

From: Butler, Cheryl Nelson
Sent: Friday, January 29, 2016 4:28 PM
To: Collins, Jennifer; cherylbutler2002@gmail.com
Subject: NOTE FROM CHERYL TO FILE : GROUNDS FOR APPEAL OF DENIAL OF TENURE

Dear Jennifer,

You DID request such medical information in writing. You gave me the OPTION of sending the information to you directly or, if I chose, to Rhonda Adams. I have to go offline now but will forward the proof of your request shortly.

Further, we have many emails in which you questioned my "failure" to provide the documentation. And, even though I forwarded this information to the university, Roy has accused me of lying about my medical illness or facts. The committee cannot have its cake and eat it too - it can't accuse me of lying about my illness but turn a blind eye when the proof of such illness is presented before it.

Further, you keep indicating that you are not the FMLA or ADA decision-maker. First, you were an ADA decisionmaker in that you denied my request for an ADA accommodation and you used Provost Stanley's denial of my ADA accommodation as a grounds for moving forward with my tenure vote. The committee used the Provost's ADA decision as a grounds to not recommend tenure. Now, you must decide whether to vote on that recommendation or to support my appeal on the grounds that (1) the AIE told me in writing and over the phone that the Provost violated my civil rights when he denied my ADA request; (2) the AIE told me in writing and over the phone that YOU likewise violated my ADA rights; (3) there is an active investigation into whether the tenure committee violated my ADA rights by relying on the Provost's civil rights violation.

But, finally, skip the FMLA and ADA. I am submitting my paperwork to you NOT to ask you decide FMLA on the merits but to show you that there is documentation proving the existence of medical illness. While SMU denied some of my requests for FMLA, every denial was for a procedural reason. (I retained counsel - national FMLA experts to address the denial). But, here is a point that we can agree on. Contact HR - HR has not denied the existence of the illness itself. Most of the FMLA denials are based on the reported reason that I was already given the medical leave. Would you like to see the correspondence from Rhonda? You have an obligation to check. Rhonda does not dispute, for example, that she received a documentation indicating that my husband has certain illnesses.

You can't refuse to face the facts and then deny me tenure pretending that the facts do not exist. At some point, we are going to have to stop hiding behind legalities and technicalities. I was sick and my husband was seriously ill while I was being evaluated for tenure. Your refusal to address this matter is a civil rights violation. The time to ignore this is about to run out.

Since the ADA and FMLA qualification is in dispute, skip it. Let's just look at the facts assuming arguendo that I never applied for FMLA or ADA protection. There was a time when these statutes did not exist. Then, as now, principles of equitable estoppel prevented employers from refusing to provide job protection where, as here, medical illness affected job performance. Furthermore, the ADA and the FMLA are not the only civil rights laws that judge how you weigh these medical facts. As stated in my appeal, other colleagues have been offered protection when their spouses were ill, irrespective of the FMLA. Dean Attanasio offered Dean Nathan Cortez a reduced course load when Nathan's wife battled cancer. You offered me a reduced course load for medical illness this semester (albeit after the tenure evaluation process) and you made that offer independent of the FMLA. Sarah Tran was given institutional support for illness independent of FMLA.

So, now I am asking you to do what SMU has done for others but, curiously, has refused to do for me. Look at the medical illnesses and weigh them because you have offered this support to white colleagues.

You do not have to look at the medical records. You and my committee members have asked me about the nature of my need for medical leave. I am now going to tell you about the illnesses. There is no policy against voluntary disclosure. We know that Sarah had cancer. We know that Nathan's wife has cancer. We know that Keith's wife suffered a life threatening pulmonary embolism. You have been open to hearing about their family illnesses. I am now going to ask you to listen to me tell you about mine.

I think you started as Dean during the first week of July 2014. Having served on the Dean Search Committee, I wanted to be on campus to welcome you and see the beautiful flowers that we sent for you. But, I could not. My husband had been sent by ambulance to the hospital. While on a forbidden run to Church's Fried Chicken, he passed out bleeding from the mouth. The business called an ambulance for him. He had suffered a pulmonary embolism. He has explained to me that a blood clot damaged his kidneys and his lungs. He stayed in the hospital for at least four days.

His recovery was a long one. As a result of the illness that ensued, he was home sick during the entire Fall 2014 (praying that I have the dates correct, but I write in good faith) semester. I have submitted to HR the medical records documenting that he was on sick leave for the entire semester. His medical records sent to HR indicate that in Fall 2014 and now, my husband has several life threatening serious health conditions. Let me say here that he was sick at home fighting Stage IV Kidney Failure. That means we are looking for a kidney donation for him. Stage Five Kidney Failure means that you do not have any kidney function at all. So, this is a serious matter.

While working and on tenure track, I have had to care for my husband. The need to care for him took a lot of time away from teaching and other responsibilities. I have developed anxiety attacks and depression over the fear that his health is deteriorating. While he was on sick leave, my kids and I watched his condition deteriorate. We were all worried about him. My son and I developed depression in part worrying about my husband. My son and I developed anxiety about my having to leave my kids with a sick husband while I stayed in Dallas to teach. What if he got sick while he was picking them up from school? What if he was too sick to get out of bed to feed them? Why has he not answered his phone?

Sometimes my job provided a much needed distraction from my fears about my husband's health. The ability to teach and to fellowship with my students and colleagues kept me.

But, sometimes the dual responsibilities of working and having to care for a very sick spouse was too much. In hindsight, it is not surprising to me that after an entire Fall 2014 semester caring for a sick spouse, that I ended up in the hospital myself. From approximately January 4th through January 8th or 9th, I was hospitalized for cardiology and pulmonary illness. When I experienced shortness of breath and chest pains on January 4th, 2015, my husband took me to an urgent care center (local emergency room near our home). The emergency room doctor called an ambulance which took me to a hospital where I was admitted. The doctor's took several tests and diagnosed me with a heart

abnormality and "parenchymal lung disease." I was given 30 days of prescribed medication. I was referred to a cardiologist and a pulmonologist. So began my Spring 2015 teaching semester.

The hospital stay, you may recall, delayed the start of my classes. Throughout the semester, I worked hard even though I was sick, having trouble breathing intermittently. I was also starting to get very depressed. I was sick, my husband was sick and I was up for tenure. I had great teaching evaluations in all of my classes the previous semester. But, feeling overwhelmed, I was starting to fall apart. For the first time in my entire teaching career at SMU, my student evaluations stated that I seemed distracted, stressed, unmotivated. Someone even said I looked disheveled. Since I am known for being impeccably dressed, any claim that I was disheveled must be taken seriously. At first, I would rebuff these evaluations as biased. But, eventually, I would have take a closer look. The students were telling us something.

By the end of the semester, I was in distress. My husband was admitted back to the hospital on or about the last week in April., remember? This was the exam period in which I had those spelling errors on the exam and made other mistakes. I was not sure about him this time. Even when he got out of the hospital, he was home recovering for an entire month. This covered exam period and grading. Remember, I had to turn in my grades a few days late.

You asked for medical justification for the delayed grades. I did not want to disclose to my colleagues that I was now being treated for depression. I flip flopped between guarding my privacy and reaching out for help. Check your email for the note that I sent you in September indicating that the illness that caused in the delay had not passed and that, I wanted to take FMLA leave but was worried what my colleagues would think of me if I took FMLA. Things got stressful as Associate Dean Beth Thornburg told my tenure committee chair that she would not support my tenure because I turned in my grades late and had spelling errors on my exams. Her insistence in doing so violated my civil rights. When I complained about Beth's insensitivity toward my medical facts and other issues, you took away my tenure committee.

If I was depressed before, now I was doomed. I do not know how I got up every day to teach or do anything else. Then to make matters worst, both of my kids were sick in November. They both were in the emergency room. My son broke his arm and my daughter has sick at home for a week with hives. My tenure chair kept telling me that he was not supporting me for tenure. Faculty were coming to visit my classes almost every day (check the literature on the adverse affects of such scrutiny on Black women tenure candidates). I wanted to just give up and die.

While I had great Fall 2015 mid-term teaching evaluations, the stress from having two sick kids and a sick husband - and having to be tortured by a tenure chair who told me that I was going to walk the plank, so to speak - was too much. So, three weeks later, when it was time to do final evaluations, the awesome Professor Butler who had been with us through October 20th, was, by November 16th, no where to be found.

My new committee chair kept accusing me of lying about being sick. He told me that some people were doubting that I was really sick and that instead, I was a liar. You told me yourself that they did not believe that I so sick as to need FMLA leave. You said that I was a great teacher and was producing great scholarship. Such assessments left me confused about whether to request FMLA leave or other help.

But, what does a sick person look like? And who are we too judge whether our colleagues are really sick?

These and similar comments made me worried that my colleagues would not respect me if I asked for help. Other people had serious health conditions and kept working. Why couldn't I do the same.

Moreover, quite frankly, since Professor Anderson told me from virtually the onset of his time of my tenure chair that I was not going to make tenure, I think that he believed that I was faking illness to

counter his negative evaluation. I was not. I was sick before that. Take a peek at the medical records. I give you permission to do so. They back up everything that I have said here.

The facts are before you. Don't squash me now that I have laid before you these facts. Don't hate me that much. What are you going to do? Are you going to ruin my career because my family and I were sick? It is not too late to do the right thing. My reputation is not the only one at stake here. I still believe in SMU.

Best,

Cheryl

From: Collins, Jennifer
Sent: Friday, January 29, 2016 3:05 PM
To: cherylbutler2002@gmail.com; Butler, Cheryl Nelson
Subject: FW: PLEASE CALL ME ON JARVIS' CELL PHONE 832-423-9542

Cheryl:

As I have informed you on numerous occasions, I do not make decisions related to FMLA or ADA. And as you recognize, such "medical documentation" is "private" information and therefore I am returning it to you unopened. Please do not forward such information to me in the future.

Further, I did not requested information related to your husband's illness. During the spring 2015 semester I did ask you for a doctor's excuse related to your failure to submit grades on time and asked you to provide that directly to Rhonda Adams to protect your privacy. You never provided it. I am happy to provide my email to you to refresh your recollection if that would be helpful.

Finally, any information that you provide related to your appeal may be reviewed during other parts of the appeal process so I will not consider any information that cannot be properly reviewed by others as part of that process.

I will get back to you on next steps after I have had a chance to review the appeal information you just submitted. And, I request that you make your written appeal as comprehensive as possible so we all have a record of all the reasons for the appeal.

Jennifer

From: Butler, Cheryl Nelson
Sent: Friday, January 29, 2016 1:59 PM
To: Collins, Jennifer <jmc@mail.smu.edu>
Cc: cherylbutler2002@gmail.com
Subject: RE: PLEASE CALL ME ON JARVIS' CELL PHONE 832-423-9542

Jennifer,

Attached please find medical documentation that I will discuss during our phone conversation. This documentation, includes, but is not limited to, medical documentation that you requested related to my husband's illness during the Spring 2015 grading period. This is private medical information. Please do not share without my express knowledge or permission. Thank you.

Cheryl

From: Butler, Cheryl Nelson
Sent: Friday, January 29, 2016 1:53 PM
To: Collins, Jennifer
Subject: PLEASE CALL ME ON JARVIS' CELL PHONE 832-423-9542

Hi Jennifer,

Ugh, my cell phone has died. I will take the call on my husband Jarvis' cell phone. The number is 832-423-9542. Would you please call me on his phone at 2:15pm? I pray this all works.

In support of my request for an appeal of the faculty's decision, I ask that you review the attached letter. I realize that you will not be able to give them a full review before the conference call. During the call, I will ask for the opportunity to take 10 minutes to summarize the points made in the documents.

Cheryl

From: Collins, Jennifer
Sent: Friday, January 29, 2016 11:44 AM
To: Butler, Cheryl Nelson
Subject: RE: Are we talking this afternoon in person or by phone?

Just keep me posted.

From: Butler, Cheryl Nelson
Sent: Friday, January 29, 2016 11:43 AM
To: Collins, Jennifer <jmc@mail.smu.edu>
Subject: RE: Are we talking this afternoon in person or by phone?

Hi Jennifer,

We are speaking by phone. But, as Murphy's Law would have it, my cell phone has died. I will call or email back at 1:30pm or so to advise as to whether we must use an alternative to my cell phone number. Thank you again for the opportunity to meet. Talk shortly.

Cheryl

From: Collins, Jennifer
Sent: Friday, January 29, 2016 10:35 AM
To: Cheryl Butler; Butler, Cheryl Nelson
Subject: Are we talking this afternoon in person or by phone?

If by phone, what number would you like me to use?

Jennifer M. Collins
Judge James Noel Dean and Professor of Law

SMU-Dedman School of Law
3315 Daniel Avenue
Dallas, TX 75205
214-768-2621
214-768-2182 (fax)
jmc@smu.edu

FW: NOTE FROM CHERYL BUTLER RE: FMLA PROTECTION SPRING 2015

From: "Anderson, Roy" <rranders@smu.edu>
To: "Colangelo, Anthony" <colangelo@mail.smu.edu>, "Spector, Mary" <mspector@mail.smu.edu>
Date: Thu, 24 Dec 2015 11:12:05 -0600

Roy Ryden Anderson
Vinson & Elkins Distinguished Teaching
Fellow & Professor of Law
SMU Dedman School of Law
3315 Daniel Street
P.O. Box 750116
Dallas, TX 75275-0116
tel: 214-768-3279
fax: 214-768-4330

From: "Collins, Jennifer" <jmc@mail.smu.edu>
Date: Thursday, December 24, 2015 at 9:43 AM
To: "Anderson, Roy" <rranders@mail.smu.edu>
Subject: Re: NOTE FROM CHERYL BUTLER RE: FMLA PROTECTION SPRING 2015

One important clarification for you and the committee. The assertions at the bottom of her email regarding the provost, IAE and the ADA are not accurate. Cheryl has not submitted an ADA request at this time. Actions on an ADA request are handled by IAE and the Provost would simply send anyone with an ADA issue to IAE as the Provost did indeed do with Cheryl. The Provost did not deny an ADA accommodation or violate university policies and procedures.

Sent from my iPhone

On Dec 24, 2015, at 12:01 AM, Anderson, Roy <rranders@mail.smu.edu> wrote:

Hi Cheryl,

I hope you are in better health and I wish a joyous holiday for you and you family.

Frankly, I'm baffled by the purpose of the bulk of your email and I disagree with your recollection of several things you say below.

To begin, I don't recall that you promised the committee the "follow up" you refer to below. I do recall that we asked you to keep let us know of any relevant developments and that you let us know if we can help with your health situation. You promised nothing.

Next, I don't think Mary, Anthony, or I have heard any rumor that you are not ill. Nor have we questioned your health in any of our meetings. Nor have I ever suggested that you are not ill.

We did tell you that you needed to go through HR to document your illness, and that your and your family's health and personal matters were for HR and, if you so chose, the SMU administration (the offices of the provost and the law school dean). Those matters are not for our

committee. They are not part of our job assignment, which is to give our objective assessment of your teaching, scholarship, and service. Period. We have tried so hard to get that across to you from the beginning. We are not doctors, nor are we in a position to make a valid assessment of the severity of your medical situation, nor are we qualified to make an assessment of the bonafides of any documentation you may submit.

Please don't say that Mary "pressed" you. Mary spoke for all three of us when she said that, given the circumstances you described during our meeting, you needed to contact Rhonda Adams (HR) right away. We all told you that we thought that was very important.

We did discuss your teaching evaluations for the current semester. We advised you that they are, on the whole, not good. We had previously advised you that our committee would not be able to make a positive recommendation of your teaching in our report to the faculty. Your teaching evaluations for the current semester did not change that assessment.

I/we did tell you that our understanding was and still is that the Provost denied your request for an extension because you did not give him objective verification of your reasons for requesting the extension. He gave you a deadline for that. You did not meet the deadline. I don't think I questioned your integrity or credibility, nor did I suggest that the Provost did. I said that in this type of situation you needed to provide him with objective evidence of your reasons. Your memory on point may be better than mine, so I will accept that I used the phrase "hard core data" in that particular context. But I don't get your point in emphasizing the phrase. No one even vaguely suggested that your reasons were not valid or that you were not experiencing health difficulties. I find it implausible in the extreme that you find it cruel, stressful or hurtful that important decisions such as those you requested of the Provost cannot be accepted on your word alone. So I'm again baffled by your point.

In the third sentence of your paragraph below beginning "The technicalities" you reference a telephone conversation we had while Barbara and I were on vacation. I will assume you left the word "not" out of that sentence. I said that I do "not" want to know anything specific pertaining to your health and personal situation. Once again Cheryl, those matters are not my business or the business of the committee.

I completely understand that you want our committee report to say that any poor performance in teaching your courses is attributable to ill health or other personal circumstances. We/I have consistently told you that we, as a committee, are not in a position to make that assessment. We have consistently told you that, at your request, we will say in the report that "Cheryl says that...." (followed by a synopsis of what you would like us to say). We have also said that we will put in the report anything that we are told to say by the Dean or the Provost.

There are probably several other of your statements and interpretations in the email below that I would quarrel with. But I think I've hit the major points. Unless your intent is to quarrel, I'm, again, baffled by your purpose.

Finally, I'm unsure what you mean by how we "want to proceed." We plan to finalize our report to present to the faculty in early January. But please let me know if there is anything else you wish of us.

Please note that I've included Jennifer in this response and that I may have deleted your gmail account. In the future do you wish us to contact you through both accounts?

Please enjoy the holidays with your family. I wish you the best.

Roy

Roy Ryden Anderson

Vinson & Elkins Distinguished Teaching
Fellow & Professor of Law
SMU Dedman School of Law
3315 Daniel Street
P.O. Box 750116
Dallas, TX 75275-0116
tel: 214-768-3279
fax: 214-768-4330

From: "Butler, Cheryl Nelson" <cnbutler@mail.smu.edu>
Date: Wednesday, December 23, 2015 at 12:05 PM
To: "Anderson, Roy" <rranders@mail.smu.edu>
Cc: "Colangelo, Anthony" <colangelo@mail.smu.edu>, "Spector, Mary" <mspector@mail.smu.edu>, "cherylbutler2002@gmail.com" <cherylbutler2002@gmail.com>
Subject: RE: NOTE FROM CHERYL BUTLER RE: FMLA PROTECTION SPRING 2015

Dear colleagues,

I hope that you are enjoying the holiday season. I wanted to check in with you again to provide the promised follow-up from our last tenure committee meeting and to determine how you wanted to proceed in light of the updates on health issues related to me and my family.

During our last tenure committee meeting, the committee informed me that the bulk of our meeting would be spent strategizing on how to proceed with my tenure candidacy in light of several concerns about my health. First, we discussed concerns about my teaching evaluations for the current semester. Then, we spent the bulk of the time talking about the committee's interest in my documenting the health issues that I had previously raised with the committee and with the university.

First, Mary pressed me to cancel all of my appointment that day and go immediately to HR that very day to further pursue my FMLA rights. The committee indicated that if I could show not just by my words but with, in Roy's words "hard core data" that my family had been very ill, then the committee was committed to considering this data as relevant to its report.

Second, Roy indicated that this data was important to address an issue of integrity and credibility. Roy explained that when it appeared that I failed to provide proof of illness to the Provost as part of his request for proof of a disability, this signaled to some that I was not really sick or could not prove that I was sick. Several colleagues have indicated that the faculty is questioning "how sick" I am or whether I was sick at all. Some believe that my claim of being sick is completely fabricated. These accusations are very cruel and hurtful to me and my husband, particularly because we have been so committed to helping the law school community while our colleague Sarah had cancer.

In our meeting, you allowed me to explain my view that Jennifer was incorrect to inform the committee that I had failed to comply with the Provost's request for medical information. I explained then that, in fact, the Provost had never asked me to supply any specific medical forms. Instead, unfortunately, I expressed my view that the Provost had violated university procedures and the ADA by not giving me the proper time and procedure to apply for an accommodation and to properly document my disability.

Update

FMLA

By way of update, I did follow the committee's request that I go immediately to HR that afternoon to request FMLA protection. Shortly thereafter that visit, I applied for FMLA protection. I am awaiting a response from the university. Having been informed of the current FMLA law, I am very confident that the medical events that the doctors confirmed are prima facie textbook examples of illnesses that should be FMLA protected. In addition to meeting the substantive requirements for FMLA protection, my FMLA paperwork meets all of the procedural and administrative rules for FMLA protection.

The technicalities of the FMLA aside, I am hoping that my colleagues will consider these illnesses and their effect on my work not only as a matter of law but as a matter of fact. Specifically, even if I do not wish to have the illnesses count for FMLA leave, the doctor's notes I submitted prove the existence of the illnesses. Last week, I talked to Roy by phone. Roy indicated that he was interested in knowing the details of the illnesses including the life threatening illnesses that caused my husband to be home sick from work for five months this year and to be hospitalized for a second time during finals period Spring 2015. (Indeed, knowledge of the illnesses may be the only way that the committee can help quash the rumors that my husband and I are not really sick). I have also shared some of these details of my family's medical issues with Mary and Anthony. The FMLA paperwork submitted by the doctor clearly state that these illnesses undermined my ability to teach and otherwise perform my work responsibilities.

ADA

By way of update as to the ADA, the Office of Institutional Equity has advised me that Provost Stanley did violate university policies and procedures as well as the ADA in denying my request for an accommodation.

Please let me know how you want to proceed.

Happy holidays.

Cheryl

From: Butler, Cheryl Nelson
Sent: Monday, December 14, 2015 2:41 PM
To: Adams, Rhonda (BENEFITS) <radams@mail.smu.edu>; Collins, Jennifer <jmc@mail.smu.edu>
Cc: Anderson, Roy <rlanders@mail.smu.edu>; Colangelo, Anthony <colangelo@mail.smu.edu>; Spector, Mary <mspector@mail.smu.edu>; Thornburg, Beth <ethornbu@mail.smu.edu>
Subject: NOTE FROM CHERYL BUTLER RE: FMLA PROTECTION SPRING 2015

Dear colleagues,

I hope that all is going well with you. As you know, I have given our school notice that I experienced several FMLA-qualifying events and have requested FMLA job protection for these events. In addition to notifying my colleagues of these FMLA-qualifying events, I have now contacted Rhonda Adams in our HR Department to have those events confirmed, or in FMLA parlance "certified" for FMLA protection. These FMLA events took place throughout my tenure probation period - some took place prior to this Fall 2015 semester. Others are current and ongoing. I am relieved that doctors

have completed some of the FMLA paperwork and it will be delivered to Rhonda Adams shortly.

I also wanted to make sure that I notified you directly and as soon as practicable that I had contacted Rhonda to indicate that I am considering FMLA leave for the Spring 2015 semester. Rhonda had not sent the paperwork or responded back to answer my questions to her about this option, but I am hoping that she will move forward to do so. As I am not certain whether she informed you of such, I did want to inform you of this consideration as soon as possible. Please let me know if you have any questions or if there is anyone on the faculty with whom I could discuss this matter.

Thank you.

Cheryl

Cheryl Nelson Butler
Assistant Professor
SMU Dedman School of Law
3315 Daniel Avenue
Dallas, Texas 75275

FW: FMLA Leave Approval and Intermittent Leave Approval for Cheryl Nelson Butler

From: "Anderson, Roy" <rranders@smu.edu>
To: "Colangelo, Anthony" <colangelo@mail.smu.edu>, "Spector, Mary" <mspector@mail.smu.edu>
Date: Thu, 24 Dec 2015 11:08:24 -0600

Roy Ryden Anderson
Vinson & Elkins Distinguished Teaching
Fellow & Professor of Law
SMU Dedman School of Law
3315 Daniel Street
P.O. Box 750116
Dallas, TX 75275-0116
tel: 214-768-3279
fax: 214-768-4330

From: "Collins, Jennifer" <jmc@mail.smu.edu>
Date: Thursday, December 24, 2015 at 7:44 AM
To: "Anderson, Roy" <rranders@mail.smu.edu>
Subject: Re: FMLA Leave Approval and Intermittent Leave Approval for Cheryl Nelson Butler

We can talk more in person but for immediate purposes, it does not affect our going forward on the 14th. Cheryl has let me know she would prefer not to teach Torts next semester and just teach her seminar. I agreed to that, before seeing the notice below which indicates that in fact only minimal absences are necessary each month, but I will of course keep my word as to Torts. Mexico has been wonderful. Happy holidays!

Sent from my iPhone

On Dec 24, 2015, at 12:07 AM, Anderson, Roy <rranders@mail.smu.edu> wrote:

Jennifer, Not sure what this means. I assume it does not affect our going forward with the scheduled meeting, but please confirm. I also assume I can share this with Mary and Anthony. Finally, just curious about whether she will or will not be able to teach in the spring semester. Hope Mexico is/was fantastic. Roy
Roy Ryden Anderson
Vinson & Elkins Distinguished Teaching
Fellow & Professor of Law
SMU Dedman School of Law
3315 Daniel Street
P.O. Box 750116
Dallas, TX 75275-0116
tel: 214-768-3279
fax: 214-768-4330

From: "Collins, Jennifer" <jmc@mail.smu.edu>
Date: Wednesday, December 23, 2015 at 4:38 PM
To: "Anderson, Roy" <rlanders@mail.smu.edu>
Subject: Fwd: FMLA Leave Approval and Intermittent Leave Approval for Cheryl Nelson Butler

FYI.

Sent from my iPhone

Begin forwarded message:

From: "Adams, Rhonda (BENEFITS)" <radams@mail.smu.edu>
Date: December 23, 2015 at 3:52:25 PM EST
To: "Collins, Jennifer" <jmc@mail.smu.edu>
Subject: FMLA Leave Approval and Intermittent Leave Approval for Cheryl Nelson Butler

Dean Collins,

FMLA Leave has been approved on behalf of Cheryl Nelson Butler for November 18, 2015 – December 21, 2015. Intermittent leave has also be approved for Cheryl thru June 15, 2016. It is possible Cheryl will be away from the office twice a month with two days allowed for each absence. In addition, Cheryl will be away from the office on January 14, 2016.

Please contact me the week of January 4th if you have any questions.

Best,

Rhonda

Rhonda Ice Adams
Benefits Specialist



radams@smu.edu

O-214-768-2132 F-214-768-2043

Mailing: PO Box 750232 | Dallas, Texas 75275

Physical: 6116 Central Expressway, Suite 200 | Dallas, Texas 75206

Shipping Delivery: 3140 Dyer St | MailStop 232 | Dallas, Texas 75275-0232

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<https://blog.smu.edu/hr>

-

To: Collins, Jennifer

Subject: RE: Some concerns about FMLA, Grades & Other Issues

Jennifer,

Did you get my response? Not sure if it went through. I indicated in an earlier email that I determined that I could honor my commitment to serve on the plenary panel at AALS this week. The following week is the holiday week and we are family visiting with us out of town.

Are you available the following week. I feel a huge drain. Colleagues confiding that there is a lot of gossip and chatter about my not turning my grades in and speculating that my "tenure was in jeopardy." Very stressful.

From: Collins, Jennifer

Sent: Monday, June 22, 2015 12:18 PM

To: Butler, Cheryl Nelson

Cc: Thornburg, Beth

Subject: RE: Some concerns about FMLA, Grades & Other Issues

I would be delighted to chat. In person would be best. When works for you?

From: Butler, Cheryl Nelson

Sent: Monday, June 22, 2015 11:38 AM

To: Collins, Jennifer

Cc: Thornburg, Beth

Subject: Some concerns about FMLA, Grades & Other Issues

Dear Jennifer,

I hope that you and your family enjoyed Father's Day.

Can you let me know whether you have time over the next couple of weeks to meet in person or by phone? I had some equity concerns about two issues. I copied Beth on this email because I would like to discuss these concerns with her as well.

Medical Issues and Work

The first concerns medical issues related to my family. There may be a misunderstanding that my family's medical emergency had passed. It had not. As a result, we wish that our colleagues could support us. We also

have some concerns about the university's response (actual or perceived) to our medical emergencies. For example, when I spoke to Rhonda in the HR Office, I informed her that, while I would defer to her expertise, I did not think that I would need to fill out FMLA paperwork because, as it had turned out, I foresaw completing my grading of exams 1-2 business days after they were due, despite the persistence of those medical circumstances. Rhonda responded initially by stating that I WOULD still have to fill out the FMLA paperwork because (to paraphrase) "I had failed to meet the obligations of my contract which ended May 31st, where such obligations including completing the grading for courses taught that ended by that date."

Rhonda's request raised several concerns for me and my family that I would like to discuss with someone. Most distressing was Rhonda's assessment that I had failed to meet the obligations of my contract. Respectfully, I do not agree with this assessment. Could I discuss this with you? I am concerned about BOTH the university's official position, and yours, as to the consequences of a medical emergency delaying the completion of my grading. I thought that, by either law, university policy, or at least good will and collegiality, certain medical or life events would excuse a faculty member's ability to complete grading.

At the very least, Rhonda's comment reveals how perceptions matter. I wanted to speak with you about

how colleagues do, and actually should perceive these circumstances. So, I would like to discuss with you in more detail our medical circumstances, past and moving forward to make sure that you have all of the facts. I would also like to speak with you to make sure that you understand all of the factors that contributed to the delayed grading. As mentioned in an earlier email (but had not heard back from you), some of the circumstances do not have to do with our personal circumstances/ I also wanted to discuss what duty, if any, the Dean and Associate Dean have in shaping and correcting perceptions about what transpired.

In addition to any actual policy position, I am also concerned about how that medical event, and its impact on my grading schedule, was perceived by colleagues, particularly at the law school.

Along these lines, I wanted to ask you we can discuss ways for the law school community to support our family. This past academic year was really hard on me, particularly because my husband, Jarvis, was hospitalized twice (for about 4-5 days) and I was hospitalized once as well for a similar substantial amount of time. Jarvis' second hospital stay was right on the eve - beginning of exam period. In particular, Jarvis developed a very serious health condition whose symptoms were life threatening.

I know that Jarvis is not a member of the faculty, but he has been a great citizen of our law school community,

supporting the school and faculty in a variety of ways. Because of extraordinary circumstances this year, you had not had the chance to meet Jarvis. I hope that you can meet soon. He has enjoyed a great rapport with many members of our faculty and has even sat on some of my Torts classes offering insight when I teach the "Firefighter Rule" and cover the many tort cases related to fires. While it is well known that I provided tremendous support to the university and to Sarah and her family during her long illness, Jarvis' role may be obscured. When Sarah traveled to Houston for medical care, Jarvis was an anchor. He picked her up at the airport, took the kids to school while I drove Sarah to her doctor's appointments. He welcomed her into our home in Houston where she stayed. He has a huge sense of humor and giving of himself, he eased our fears. Jarvis and the rest of my family provided huge support to me while I helped out as well. He was supportive as we opened our Dallas home to Sarah's family. He also supported me, giving guidance as I served as a liaison between the university and Sarah's family. We both stepped in the gap, helping Sarah to complete her grading and informing them when we could not get the work done on time. My family and I did that not just for Sarah but for the law school. I stayed with my colleague until the very end. I called our colleagues to the hospital to say goodbye that morning. I stayed with our colleague until she passed on. It was I who called the Dean's office to inform the university that she had

passed on. I helped plan her memorial service on our campus. I could not have done that without Jarvis' help.

As I mentioned above, there are some other concerns raised by my family's medical circumstances. But, I would rather discuss them with you personally, as opposed to merely via email.

Substantive and Procedural Concerns about Student Complaints

As a separate, but in some ways, related matter, I was hoping that we could spend some time together talking about student complaints. I have some concerns both about the substance of students' complaints (and their impact, if any) and some questions about the procedures surrounding past and potential future complaints.

First, I have some concerns about the resolution of these complaints and how colleagues perceive these complaints. Second, of equal concern, I have several concerns about how the law school handles complaints, both complaints by students about professors and complaints by professors about students, particularly where my safety - my physical and emotional well-being - is compromised. As one example (but there are others), I have some concerns about how the complaint regarding my former student, Pin Wu was addressed.

I am very grateful for any help or insight that you and Beth can provide. I am hopeful that you can help me resolve these issues.

I look forward to hearing from you.

Warm regards,

Cheryl

Cheryl Nelson Butler
Assistant Professor of Law
SMU Dedman School of Law
Dallas, Texas 75205

From: Butler, Cheryl Nelson
Sent: Thursday, June 18, 2015 1:48 PM
To: Collins, Jennifer
cc: Adams, Rhonda (BENEFITS)
Subject: RE: Grades and FMLA

Dear Jennifer,

Thank you so much for your expression of hope and concern for me and my family. We need and very appreciate ongoing support from my colleagues at the law school.

We are so sorry that medical illness in our family contributed to the delay in some of my students receiving their Spring grades. We will make sure to follow your request to receive a doctor's note.

As you know, the success and well-being of my students, particularly my 1L's is very important to me. I have tried to go above and beyond for them. I am so relieved to confirm that the registrar has received their grades.

As I have been in touch with Beth as a point person, I am not sure whether you are aware of the other factors that contributed substantially to the delay in our getting the grades to the students. I will send you a detailed explanation later; however, one of those factors was that, as the university informed me, that my SMU account was hacked. The university IT and HR shut my account down in the middle of my efforts to grade. Beth helped me contact Lawtech to try to resolve the problem on Sunday; however, even lawtech was shut out and we were not able to get into my email until later. I would like to discuss this with you later in person.

Warm regards,

Cheryl

Cheryl Nelson Butler
Assistant Professor of Law
SMU Dedman School of Law
Dallas, Texas 75205

From: Collins, Jennifer

Sent: Wednesday, June 17, 2015 9:27 AM

To: Butler, Cheryl Nelson
cc: Adams, Rhonda (BENEFITS)
Subject: Grades and FMLA

Cheryl – Rhonda tells me that you will not be putting in for FMLA. I assume that means the medical crisis has passed – I am so glad for you and your family! I will still need a doctor's note confirming that a medical situation involving you and/or a family member prevented you from turning in your grades by June 12. (I believe your exam was May 6 – is that correct?) For privacy reasons, you may of course submit that directly to Rhonda. Thanks so much, Cheryl!

Jennifer M. Collins
Judge James Noel Dean and Professor of Law

SMU-Dedman School of Law
3315 Daniel Avenue
Dallas, TX 75205
214-768-2621
214-768-2182 (fax)
jmc@smu.edu

Re: Some concerns about FMLA, Grades & Other Issues

From: "Thornburg, Beth" <ethornbu@mail.smu.edu>
To: "Collins, Jennifer" <jmc@mail.smu.edu>
Date: Mon, 22 Jun 2015 16:40:58 -0500

It's also possible that Cheryl's students said something to their other professors (Anderson and Martinez) about the late Torts grades, but I have no knowledge that they did.

I don't believe that Laura or Kim would have said anything to faculty or others about it, and especially not about "tenure in jeopardy."

By the way, I strongly disagree with any suggestion that the failure to give Nicole 20 extra minutes was something Kim could have been expected to deal with in the middle of administering a number of accommodated and regular exams, especially when it was contrary to what the exam itself said, and note that Cheryl only on Thursday claimed for the first time that she had orally communicated that information to Kim before sending the email.

Also, to update you: when Cheryl complained earlier this semester that Pin Wu was continuing to criticize her to his fellow students, Martin and I together called him in and talked to him. He denied having done so (don't know if I believe him), but we strongly cautioned him not to discuss Professor Butler at all, and he promised not to.

Beth

Beth Thornburg
Richard R. Lee Endowed Professor of Law
Senior Associate Dean for Academic Affairs
SMU Dedman School of Law
ethornbu@smu.edu
@btSMU
<http://ssrn.com/author=121753>

On Jun 22, 2015, at 4:10 PM, Collins, Jennifer <jmc@mail.smu.edu> wrote:

Have you heard any such chatter? I have not. Who would even know? The only folks I am aware of who know about the delay in grades issue are you and the registrar's office.

From: Butler, Cheryl Nelson
Sent: Monday, June 22, 2015 1:55 PM
To: Collins, Jennifer
Subject: RE: Some concerns about FMLA, Grades & Other Issues

Jennifer,

Did you get my response? Not sure if it went through. I indicated in an earlier email that I determined that I could honor my commitment to serve on the plenary panel at AALS this week. The following week is the holiday week and we are family visiting with us out of town.

Re: Some concerns about FMLA, Grades & Other Issues

From: "Thornburg, Beth" <ethornbu@mail.smu.edu>
To: "Collins, Jennifer" <jmc@mail.smu.edu>
Date: Mon, 22 Jun 2015 16:27:11 -0500

I know of no such chatter. Meghan and David would know that the grades were not in on time because they were waiting to confer with Cheryl about curves and then told they didn't have to. All of Cheryl's students were notified that they would not get their Torts grade when they got the other grades, but we have said nothing other than that they would be late, and then that they were available (no explanation provided). I don't know where speculation about tenure would even come from.

Beth Thornburg
Richard R. Lee Endowed Professor of Law
Senior Associate Dean for Academic Affairs
SMU Dedman School of Law
ethornbu@smu.edu
@btSMU
<http://ssrn.com/author=121753>

On Jun 22, 2015, at 4:10 PM, Collins, Jennifer <jmc@mail.smu.edu> wrote:

Have you heard any such chatter? I have not. Who would even know? The only folks I am aware of who know about the delay in grades issue are you and the registrar's office.

From: Butler, Cheryl Nelson
Sent: Monday, June 22, 2015 1:55 PM
To: Collins, Jennifer
Subject: RE: Some concerns about FMLA, Grades & Other Issues

Jennifer,

Did you get my response? Not sure if it went through. I indicated in an earlier email that I determined that I could honor my commitment to serve on the plenary panel at AALS this week. The following week is the holiday week and we are family visiting with us out of town.

Are you available the following week. I feel a huge drain. Colleagues confiding that there is a lot of gossip and chatter about my not turning my grades in and speculating that my "tenure was in jeopardy." Very stressful.

From: Collins, Jennifer
Sent: Monday, June 22, 2015 12:18 PM
To: Butler, Cheryl Nelson
Cc: Thornburg, Beth
Subject: RE: Some concerns about FMLA, Grades & Other Issues

I would be delighted to chat. In person would be best. When works for you?

From: Butler, Cheryl Nelson
Sent: Monday, June 22, 2015 11:38 AM

RE: Were you able to connect with Cheryl?

From: "Adams, Rhonda (BENEFITS)" <radams@mail.smu.edu>
To: "Collins, Jennifer" <jmc@mail.smu.edu>
Date: Tue, 16 Jun 2015 16:02:39 -0500

Jennifer,

I have spoken with her. Are you available to talk? She is indicating she doesn't know if she wants to proceed with FMLA due to the implications, etc. My office hours are 7:00 to 4:00 each day and I have to leave to meet one of my daughters. Can you call me on my cell at 972-948-4778?

Rhonda

From: Collins, Jennifer
Sent: Tuesday, June 16, 2015 3:40 PM
To: Adams, Rhonda (BENEFITS)
Subject: Re: Were you able to connect with Cheryl?

I have the number 713-828-3958 for her.

Sent from my iPhone

On Jun 16, 2015, at 3:36 PM, Adams, Rhonda (BENEFITS) <radams@mail.smu.edu> wrote:

Jennifer,

I attempted to call Cheryl late this morning at the following phone number, 832/247-8056, but received a "this is no longer a working number" response. She has not updated her phone number in the SMU system.

I also sent another email to her at 12:30 p.m. with a "read receipt". At this time, she has not opened this email.

If you can provide a current phone number, I am willing to attempt to reach out to her again.

Rhonda

From: Collins, Jennifer
Sent: Tuesday, June 16, 2015 8:40 AM
To: Adams, Rhonda (BENEFITS)
Subject: Re: Were you able to connect with Cheryl?

I understand that, but I need the FMLA assertion verified.

Sent from my iPhone

On Jun 16, 2015, at 8:32 AM, Adams, Rhonda (BENEFITS) <radams@mail.smu.edu> wrote:

Jennifer,

I still have not heard from Cheryl. Since my role is to verify the validity of the FMLA request and she has not responded, I believe it is appropriate for Beth or Laura to reach out to her relative to turning in the Torts grades. Especially since she indicated within a previous email she would turn them on Monday.

Rhonda

Rhonda Ice Adams
Benefits Specialist

<image001.jpg>

radams@smu.edu

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Physical: 6116 Central Expressway, Suite 200 | Dallas, Texas 75206

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<https://blog.smu.edu/hr>

From: Collins, Jennifer
Sent: Monday, June 15, 2015 7:08 PM
To: Adams, Rhonda (BENEFITS)
Subject: Re: Were you able to connect with Cheryl?

Did you get her today? She still has not turned in her grades - the only faculty member in the whole school not to do so.

Sent from my iPhone

On Jun 15, 2015, at 7:43 AM, Adams, Rhonda (BENEFITS) <radams@mail.smu.edu> wrote:

Jennifer,

I sent an email midafternoon on Friday and did not receive a reply.

Rhonda

From: Collins, Jennifer
Sent: Friday, June 12, 2015 5:11 PM
To: Adams, Rhonda (BENEFITS)
Subject: Were you able to connect with Cheryl?

Despite her FMLA medical emergency preventing her from turning in her Torts grades today as required, she has been posting on Facebook today and managed to submit her grades for another, smaller class.

Jennifer M. Collins

Judge James Noel Dean and Professor of Law

SMU-Dedman School of Law
3315 Daniel Avenue
Dallas, TX 75205
214-768-2621
214-768-2182 (fax)
jmc@smu.edu

Re: NOTICE REGARDING FMLA AND GRADES

From: "Strese, Jeff" <jstrese@mail.smu.edu>
To: "Collins, Jennifer" <jmc@mail.smu.edu>
Date: Fri, 12 Jun 2015 08:03:14 -0500

Yes. For general documentation, but not for any specific details about condition or diagnoses. I would encourage you to contact Rhonda Adams in HR. She is our resident expert on medical leave issues.

Thanks,

Jeff

On Jun 12, 2015, at 7:30 AM, Collins, Jennifer <jmc@mail.smu.edu> wrote:

Are we allowed to ask for a doctor's note or something as corroboration? This is an ongoing problem with this faculty member.

Sent from my iPhone

Begin forwarded message:

From: "Thornburg, Beth" <ethornbu@mail.smu.edu>
Date: June 12, 2015 at 7:18:10 AM CDT
To: "Collins, Jennifer" <jmc@mail.smu.edu>
Subject: Fwd: NOTICE REGARDING FMLA AND GRADES

Latest development.

Beth Thornburg
Richard R. Lee Endowed Professor of Law
Senior Associate Dean for Academic Affairs
SMU Dedman School of Law
ethornbu@smu.edu
214-768-2613
MiSpElled from my iPad

Begin forwarded message:

From: "Butler, Cheryl Nelson" <cnbutler@mail.smu.edu>
Date: June 12, 2015 at 12:26:58 AM CDT
To: "Amberson, Laura" <lamberso@mail.smu.edu>, "Thornburg, Beth" <ethornbu@mail.smu.edu>
Subject: NOTICE REGARDING FMLA AND GRADES

Dear Beth and Laura,

I write to inform you that due to a medical emergency, I will not be able to submit my Torts grades before Monday. Due to serious medical circumstances, e.g., that would qualify under the Family and Medical Leave Act, I will not be able to work further tonight or tomorrow to grade final exams. Both an immediate member of my family and I are receiving ongoing medical care by a physician. I anticipate that on Monday I will be able to submit the grades and I will contact you then, or feel free to contact me then by cell phone to confirm.

If the law school chooses to recognize the need to take off tomorrow as FMLA leave, I would presume that this email to you would suffice to fulfill my obligation to provide notice to you. If that is not the case, please advise me in writing. However, please note that I may not be able to respond to your writing before Monday.

Beth, we have already discussed my assessment of the exam taken by the student with the accommodation. Please advise on how you want to proceed. You can email or text me. I will follow-up by Monday.

Warm regards,

Cheryl Butler

FMLA form

From: "Thornburg, Beth" <ethornbu@mail.smu.edu>
To: "Collins, Jennifer" <jmc@mail.smu.edu>
Date: Fri, 12 Jun 2015 07:41:54 -0500
Attachments: WH-380-F.pdf (397.11 kB); ATT00001.txt (188 bytes)

If this continues beyond Monday, we should probably involve HR or OFFICE of Legal Counsl. The area appears to be fraught with regulations. But it appears that we can request documentation.

See Department of Labor form attached

<http://www.dol.gov/whd/forms/WH-380-F.pdf>

Re: NOTICE REGARDING FMLA AND GRADES

From: "Thornburg, Beth" <ethornbu@mail.smu.edu>
To: "Collins, Jennifer" <jmc@mail.smu.edu>
Date: Fri, 12 Jun 2015 07:35:04 -0500

I will research what we can ask for. As you'll see in my reply to her, I've asked informally as a friend and colleague.

She was posting on Facebook last night after 9:00.

Beth Thornburg
Richard R. Lee Endowed Professor of Law
Senior Associate Dean for Academic Affairs
SMU Dedman School of Law
ethornbu@smu.edu
214-768-2613
MiSpElled from my iPad

On Jun 12, 2015, at 7:28 AM, Collins, Jennifer <jmc@mail.smu.edu> wrote:

What in the world??? Are we allowed to ask for underlying documentation like a doctor's note?

Sent from my iPhone

On Jun 12, 2015, at 7:18 AM, Thornburg, Beth <ethornbu@mail.smu.edu> wrote:

Latest development.

Beth Thornburg
Richard R. Lee Endowed Professor of Law
Senior Associate Dean for Academic Affairs
SMU Dedman School of Law
ethornbu@smu.edu
214-768-2613
MiSpElled from my iPad

Begin forwarded message:

From: "Butler, Cheryl Nelson" <cnbutler@mail.smu.edu>
Date: June 12, 2015 at 12:26:58 AM CDT
To: "Amberson, Laura" <lamberso@mail.smu.edu>, "Thornburg, Beth" <ethornbu@mail.smu.edu>
Subject: NOTICE REGARDING FMLA AND GRADES

Dear Beth and Laura,

I write to inform you that due to a medical emergency, I will not be able to submit my Torts grades before Monday. Due to serious medical circumstances, e.g., that would qualify under the Family and Medical Leave Act, I will not be able to work further tonight

or tomorrow to grade final exams. Both an immediate member of my family and I are receiving ongoing medical care by a physician. I anticipate that on Monday I will be able to submit the grades and I will contact you then, or feel free to contact me then by cell phone to confirm.

If the law school chooses to recognize the need to take off tomorrow as FMLA leave, I would presume that this email to you would suffice to fulfill my obligation to provide notice to you. If that is not the case, please advise me in writing. However, please note that I may not be able to respond to your writing before Monday.

Beth, we have already discussed my assessment of the exam taken by the student with the accommodation. Please advise on how you want to proceed. You can email or text me. I will follow-up by Monday.

Warm regards,

Cheryl Butler

Cheryl

From: "Thornburg, Beth" <ethornbu@mail.smu.edu>
To: "Collins, Jennifer" <jmc@mail.smu.edu>
Date: Thu, 08 Jan 2015 20:27:04 -0600

More information about her medical condition (in case she has not already shared this with you). The issue is blood clots, and it appears that for now it is not an ongoing issue. I told her we could talk at more length next week, but for now the quick answer is that she may start Torts on Wednesday rather than Monday next week and figure out later how to make it up.

Beth

Beth Thornburg
Richard R. Lee Endowed Professor of Law
Senior Associate Dean for Academic Affairs
SMU Dedman School of Law
ethornbu@smu.edu
214-768-2613
MiSpElled from my iPad

Begin forwarded message:

From: "Butler, Cheryl Nelson" <cnbutler@mail.smu.edu>
Date: January 8, 2015 at 8:15:52 PM CST
To: "Thornburg, Beth" <ethornbu@mail.smu.edu>
Subject: RE: Can I help? - NOTE FROM CHERYL

Hi Beth,

Thank you for writing. I mentioned to Jennifer last night that I would contact you today to let you know about me. However, my schedule changed so much today. From very early this morning, I was taking several medical tests and was not able to get online until today. Fortunately, I was able to be discharged from the hospital late this afternoon. And with that discharge, I have a better sense of the extent to which this hospital stay impacts my work.

So, first, I wanted to share the personal circumstances surrounding the hospital stay because your knowledge of those circumstances will help you guide me in planning my semester. My personal preference however is that I did not wish at this time to share my personal medical history with the entire faculty. Part of this stems from my feeling that my colleagues spend a lot of time with me expressing interest in my personal life. This is a problem for me because in some instances colleagues draw inaccurate conclusions and links between my personal and professional life. This vibe causes me a lot of stress and anxiety. I did not want any discussion of my medical history to add to this. And, just personally, I need to jump right in and focus on work. I entrust this information to you as Academic Dean, To our Dean and to the other members of my tenure committee.

I was admitted to the hospital on Monday evening due to a concern that I might have a blood clot in my lung or leg. During the last month of the semester, was experiencing pain in my leg that made it hard to stand and walk up the stairs. When the pain became intermittent I went to see the doctor, The good news is that I was released from the hospital this afternoon that it did not appear that a clot was anywhere in my body at this time. One of the concerns had been that my

leg had not healed properly after my Fall last Spring and that clots had formed there. In any case, I had great treatment via blood thinners and other medicines. And, after four days, the hospital could no longer find any abnormalities suggesting that I have any major blood clot.

This hospital stay had a minor impact on my work commitments. I had already completed my grading for my Torts class. I had only a handful of exams left to grade and I worked when I could. By am this morning I was able to complete the raw score grading part of my exam. Tonight and by noon tomorrow, I hope to have the final grades ready for the registrar.

This good news also means that I do not have to make any major changes to my teaching schedule for the semester. I can still keep my Monday -Wednesday schedule for Torts and my Wednesday EW Seminar.

I did want to get your advice on whether or not it would be acceptable for me to commence Torts, not on Monday but on Wednesday. At first, I wanted to discuss with you how to proceed with the semester with the premise that I did not know my diagnosis. But now I do know. Having lost the prep time as a result of my hospital stay, coupled with the need and suggestion that I continue to rest for a few days, it would be less stressful to start on Wednesday.

I wanted to get your permission but also your advice that this would not adversely affect my students. I want to get off on the right foot with them and make them feel motivated and comfortable with the class. the other option is to get someone else to sub on Monday. while several Professors do use my textbook now, I am not sure letting someone else start my class off works in my favor.

Please let me know what you think. You can write back, or I can call you or you can call me on my cell phone 713-828-3958.

Thank you for taking the time.

Cheryl

From: Thornburg, Beth
Sent: Thursday, January 08, 2015 6:57 PM
To: Butler, Cheryl Nelson
Subject: Can I help?

Hi, Cheryl -- I learned from Jennifer today that you have been in the hospital. So I'm writing to see how you are, and if there's anything I can do to help.

Beth

Beth Thornburg
Richard R. Lee Endowed Professor of Law
Senior Associate Dean for Academic Affairs
SMU Dedman School of Law
ethornbu@smu.edu

Cheryl

On Wed, Apr 27, 2016 at 12:03 PM, Cheryl Butler <cherylbutler2002@gmail.com> wrote:

Dear Jennifer,

I am writing in response to your email below. I believe that we have a misunderstanding or different perspective on the facts as to whether I have violated SMU ADA policy. Respectfully, I do not see the facts as you do and, even though I have critiqued SMU's ADA policy as violating the ADA, I have still followed the policy to the best of my ability. More importantly, as you know, I have filed a complaint with the Office of Institutional Equity alleging that it is my colleagues who have violated that policy. However, even if I had violated SMU ADA policy, the harm, if any, is nowhere near the legal, physical and emotional harm that I have suffered as a result of the violations committed by others.

I cannot respond in detail to your email at this time, but will do so later.

I did feel obligated to respond immediately to your requirement that I notify you by tomorrow about meeting with the students, least you take away my rights to meet with them. I would like to meet with the students as soon as possible. I want to help them and I do not want to be fired for failing to do. I am so stressed by the prospect that they have wanted to meet and I have not been able to do so. I cannot do so today or tomorrow; I notified the Office of Institutional Equity that I suffered an asthma attack this morning and am just getting home from the clinic. I have to return tomorrow. I promise that I will contact you next week to follow up about meeting with the students.

(Also, I hope that you do not mind that I copied Carolyn on our email. If you do, let me know and I will not do it again).

Thank you in advance for any assistance that you may provide.

Respectfully,

Cheryl

On Fri, Apr 22, 2016 at 9:58 AM, Collins, Jennifer <jmc@mail.smu.edu> wrote:

Cheryl,

You sent me repeated emails on April 19 and 20, 2016, regarding your scheduling and ADA accommodation requests. I understand that IAE will respond to these as necessary.

Please do not continue to send me emails regarding your ADA requests in the future. Your email of April 19th on ADA issues attaches my email of April 6th in which I explicitly stated to you that IAE handles ADA accommodation requests.

This is exactly what I have been telling you since last fall. Despite the fact that we have told you over and over where to submit ADA requests, you continue to send these requests to me, and then contend that I have denied your ADA requests when I do not respond. I will forward these requests to IAE who makes such determinations. If IAE needs my involvement in fashioning a reasonable accommodation, they will contact me. They will also alert me and appropriate staff to any accommodations they approve.

I am becoming quite concerned. You seem to ignore our repeated requests for you to follow University procedures in submitting ADA requests. These procedures are followed by all employees of SMU. If you continue to ignore them in the future, I will assume that you are intentionally ignoring University policy.

With respect to the torts students' grades and review of their exams from the fall semester, it is imperative that they be able to resolve their issues and questions about your grading as soon as possible because it impacts the law review selection process. Please let me know if you will be available to meet with students, by phone or in person, beginning April 28th. If not, we will have to move forward with a modified appeals process so these students can have their concerns addressed. Regardless, in light of the lateness of the hour and the fact that students will be in exams, I ask that you please meet with the students without requiring them to write out a memorandum about their concerns before meeting with you. Please let me know as soon as possible about your availability to meet with the students beginning April 28th.

Thank you very much.

Jennifer

Jennifer M. Collins
Judge James Noel Dean and Professor of Law

SMU-Dedman School of Law
3315 Daniel Avenue
Dallas, TX 75205
214-768-2621
214-768-2182 (fax)
jmc@smu.edu

Re: Your emails of April 19 and 20

From: jmc@mail.smu.edu
To: Cheryl Butler <cherylbutler2002@gmail.com>
Date: Fri, 29 Apr 2016 12:35:38 -0500

Cheryl - it appears at the bottom of this thread. I will resend.

Sent from my iPhone

On Apr 29, 2016, at 12:34 PM, Cheryl Butler <cherylbutler2002@gmail.com> wrote:

I mean accidentally deleted it.

On Fri, Apr 29, 2016 at 12:33 PM, Cheryl Butler <cherylbutler2002@gmail.com> wrote:
Can you resend the email referencing your advice below. I am little frazzled here - can't find it or may have just accidentally emailed it. Thank you for the heads-up but I had not realized that any students had emailed me directly about their Torts exams. I will check. If there are any problems, I will let you know.

On Fri, Apr 29, 2016 at 12:28 PM, Collins, Jennifer <jmc@mail.smu.edu> wrote:
Cheryl - I reiterate my advice below. I urge you to 1) reply to all the students who have previously emailed you and 2) send an email to the entire section. I know Lindsay Rattikin, who has emailed you multiple times, and Caroline Hunt are particularly eager to speak with you. The students can provide you with their PIN numbers.

Sent from my iPhone

On Apr 29, 2016, at 12:21 PM, Cheryl Butler <cherylbutler2002@gmail.com> wrote:

Hi there Jennifer,

Sorry that I am just seeing your email. I am sick but Let's just do whatever it takes. I do not want to fight with you or my school anymore. I will talk to the students. I am working today. You can email, call or text me - 713-828-3958. If I do not respond online, then texting is the best way to get my attention. If you identify the students, I can also try to contact them over the weekend.

Monday is a different story. I will not be able to work or talk with anyone on Monday or Tuesday because the medical procedure involves the use of strong medication. But, I will call or text you next week as soon as I can next week or you can check in with me at 713-828-3958. You can call me directly or text me ANYTIME YOU NEED TO between 9am and 10pm.

Best,

Cheryl

On Thu, Apr 28, 2016 at 5:52 PM, Collins, Jennifer <jmc@mail.smu.edu> wrote:

Cheryl – my understanding is that students would like to speak with you for a multitude of reasons. Some hope to learn how to improve their performance in

Torts before their next exam in the subject, which is May 6. Some hope to learn how to improve their exam performance more generally. Some are hoping for an explanation of their grade, particularly those who reviewed their exams and were unable to get any feedback from that review because there were no markings or comments on their exams (for your information, Tina did not show your cover sheets to students because we thought those might possibly be notes that you just used to assist yourself in the grading and did not want them to be shared with students). Even if we had shown students those cover sheets, that would not have helped some students because some students had no marks on their exams (some literally had none; some had just an underline or two with no comments) *and* no comments at all on the cover sheets. I believe these students wish to speak with you before deciding whether to contest their grades. Assuming your leave is in fact over (I of course do not want you to work if either IAE or HR have authorized additional leave and have not yet had the chance to tell me), I urge you to 1) reply to the individual emails students have sent you over the past semester about their exams and 2) send an email to the entire section letting them know you are now available to meet with the students about their exams if they would like to do so (ideally such meetings would happen before May 6). Of course, some students may decide it is now too late for a meeting to be worthwhile, but I am sure they would appreciate the outreach in any event. Thank you so much, Cheryl.

Jennifer

From: Cheryl Butler [mailto:cherylbutler2002@gmail.com]
Sent: Thursday, April 28, 2016 9:56 AM
To: Collins, Jennifer <jmc@mail.smu.edu>
Cc: Butler, Cheryl Nelson <cnbutler@mail.smu.edu>; Hernandez, Carolyn (IAE) <hernandez@mail.smu.edu>
Subject: Re: Your emails of April 19 and 20

Jennifer,

Please send me the names and or exam numbers of the students who are contesting their grades for Torts Fall 2015.

Cheryl

On Wed, Apr 27, 2016 at 12:03 PM, Cheryl Butler <cherylbutler2002@gmail.com> wrote:

Re: Fall 2016 courses - Butler REMINDER: YOU HAVE NOTICE OF MY NEED FOR AN ADA ACCOMMODATION. PLEASE SCHEDULE COURSES ACCORDINGLY TO AVOID INCONVENIENCE TO THE STUDENTS AND HARDSHIP TO PROFESSOR

From: jmc@mail.smu.edu
To: "Butler, Cheryl Nelson" <cnbutler@mail.smu.edu>
Cc: Cheryl Butler <cherylbutler2002@gmail.com>, "Henley, Becca" <becca@mail.smu.edu>, "Hernandez, Carolyn (IAE)" <hernandez@mail.smu.edu>
Date: Wed, 06 Apr 2016 17:43:44 -0500

Cheryl,

This responds to your email below on the class schedule. As I have told you numerous times in the past, I do not make decisions regarding reasonable accommodations under the Americans with Disabilities Act. Any request you make should be submitted to IAE. I am copying Carolyn Hernandez on IAE on this email so she is aware of your request and my response. Please do not make ADA accommodation requests to me in the future. Please direct any such request to IAE.

Although I do not make ADA accommodation decisions, we always try to work with faculty on scheduling issues. Accordingly, we will adjust your Fall 2016 schedule as follows:

Employment Discrimination will be scheduled on Mondays and Wednesdays from 3:30 to 4:45p.m. and will be taught as a lecture course.

The Civil Rights course will be scheduled on Mondays from 6:00 to 7:40 p.m.

You did not respond to several earlier emails from Becca and me regarding the proposed schedule. We cannot wait until the last minute to provide this information to our students. I will need your response by tomorrow, April 7, at 5:00 pm. Thank you.

Jennifer

Sent from my iPhone

On Apr 6, 2016, at 9:34 AM, Butler, Cheryl Nelson <cnbutler@mail.smu.edu> wrote:

Hi Jennifer,

Thank you for your note below; however, I just opened it now. As I have indicated before, I am not able to check email daily while on medical leave. Instead, I have suggested that, where you need an emergency response from me on a work related matter, it is better to text me on my cell phone at 713-828-3958 or have Becca to call.

I agree with you that you do not have any notice of any agreed upon special accommodations from me. But, reminder that, my previous email to you and Becca, coupled with this here email today, is notice to you that I am requesting an accommodation. This email that you are reading now, like the email that I sent to you and Becca the other day, are bona fide requests for an

accommodation. Respectfully, it is my humble opinion that it is inappropriate that you respond to my request for an accommodation by giving me a deadline that you know I may not make.

As my Dean and my colleague, you already know that I am sick and being treated for a medical illness. Can you help me as a courtesy. We have helped other colleagues in medical crisis, adjusting their class loads, course schedules, deadlines for submission of papers and grades and other faculty responsibilities beyond and independently of the legal limitations of the FMLA and the ADA. Would you consider providing me with the same privileges of employment and institutional support?

But, if you are only willing to provide institutional support which you perceive is legally required, I would still respectfully request that you change the schedule to a seminar for another reason - the need to protect an accommodate the students. If I am still sick in the Fall and need a teaching schedule with fewer days standing up in front of students, then why not plan for that? Why set me and the students up for the inconvenience and frustration of having to cancel a lecture course when the lecture course can just be scheduled for the Spring semester in the first place? I am about to submit my request for an ADA accommodation. Unless you already know that the request will be denied, then why not make plans now in anticipation of it?

You indicated that "we need to teach the employment discrimination class as a lecture class and not as a seminar class to accommodate more students." And, why can't we accommodate those students in the Spring instead of the Fall? You asked me a few weeks ago to teach the class as a seminar one semester and as a lecture course another semester in the same school year. So, what difference does it make to our school that I teach it as a lecture course in the Spring instead of the Fall of the same school year?

I believe that, previously, you had given me the option of deciding which semester to teach the seminar vs. lecture course. I certainly hope that I have not done anything to offend you such that you would now take that option away from me. I do very much appreciate your offer to teach the seminar course on the same day as I teach another course. I would like to do that regardless of whether the other course is a seminar. As for days, it is better that I teach on Mondays. **My doctor can only see patients on Tuesdays Wednesdays and Thursdays. Her office is closed on Mondays and Fridays. A teaching schedule in which I have to teach all of those days would interfere with my ability to continue my medical treatment in the Fall. Therefore, it is better that I teach on Mondays and or Fridays.**

Cheryl

From: Collins, Jennifer
Sent: Tuesday, April 05, 2016 11:38 AM
To: Cheryl Butler; Henley, Becca; Butler, Cheryl Nelson
Subject: RE: FW: Fall 2016 courses - Butler

Cheryl,

I have no notice of any special accommodations for you for the fall semester. As I have repeatedly urged you, please begin any such discussions with IAE or HR as soon as possible. We really need for you to teach the employment discrimination class as a lecture course and not as a seminar course so it can accommodate more students.

We are certainly willing to try to adjust the schedule so that you can teach the Civil Rights seminar at another time. **We need an answer on these options by 5 pm today.** As you know, we have been trying to finalize the schedule with you since February, registration is just a

Office of Institutional Access and Equity
Southern Methodist University

Employee Documentation of Disability Form

Employee Section

Employee Instructions: Please complete the Employee Section of this form and submit it to your physician. Please inform your physician of the essential functions of your position and your request for a reasonable accommodation by submitting a copy of the Employee Reasonable Accommodation Request Form and/or Job Evaluation Form to your physician. After your physician completes the Employee Documentation of Disability Form, please submit it and the Employee Reasonable Accommodation Request Form to the ADA/504 Coordinator in the Office of Institutional Access and Equity to initiate a request for a reasonable accommodation. These confidential forms will not be placed in your personnel file and will be maintained in the Office of Institutional Access and Equity.

Authorization and Release of Information:

I, Cheryl Butler, hereby authorize my physician to release to and discuss with the Office of Institutional Access and Equity any and all information related to my impairment that may be required to properly assess my request for a reasonable accommodation. I further authorize the Office of Institutional Access and Equity to seek clarification of this documentation by contacting my physician.

Employee Signature: Cheryl Nelson Butler Date: 1/1/16

Physician Section

Physician Instructions: To request a reasonable accommodation, an employee must provide current documentation of a disability. Federal law defines a disability as a physical or mental impairment that substantially limits a major life activity, a record of such an impairment, or being regarded as having such an impairment. As the employee's physician, please complete all sections of this form and attach additional information if needed. Please return the form to the employee or directly to the Office of Institutional Access and Equity, Southern Methodist University, P.O. Box 750200, Dallas, TX 75275-0200, or by Fax to 214-768-2101. Please feel free to contact us at 214-768-3601 if you have any questions. Thank you for your assistance.

Please identify and describe the nature and severity of the employee's physical or mental impairment (physiological or psychological disorder):

Patient has moderate persistent asthma. Flare ups cause significant distress with coughing, wheezing shortness of breath and chest pain

What is the duration of the impairment? illness is chronic

Please describe how the impairment substantially limits a major life activity (e.g., walking, breathing, hearing, speaking, seeing, learning, eating, sleeping, thinking, performing manual tasks, lifting, major bodily functions):

flare ups cause difficulty and impairment with walking, breathing, and speaking due to wheezing, coughing and trouble breathing

Please describe any medications and/or corrective measures that have been prescribed or recommended and their effect:

Patient has been prescribed Singulair and Symbicort for maintenance and Albuterol nebulizer for acute flare ups.

Please describe how the impairment impacts the essential functions of the employee's position:

she is a lecturer and flare ups interfere with her ability to speak. Acute flare ups cause significant distress and disability to the point that she can not perform any of the essential functions of her job during a flare up

Please identify any accommodations that could assist the employee in performing the essential functions:

Access to medication, especially nebulizer machine at work for acute flare ups. Excused absence during asthma attacks. Clean work environment to avoid triggers - dust, dogs etc. Reduce work schedule if symptoms become persistent

Physician's Name: Sunday Fadhul Jr Phone: (713) 442-0000

Fax: (713) 442-0116 License Number: 63637 State: TX

Type of Practice: multi-specialty Email: Sunday.Fadhul@Kelsey-Seybold.com

Address: 2727 W. Holcombe Blvd Kelsey-Seybold Clinic
Houston, TX 77025

Physician's Signature: [Signature] Date: 2/4/16

Office of Institutional Access and Equity
Southern Methodist University

Employee Reasonable Accommodation Request Form

Instructions: To initiate a request for reasonable accommodation, please complete and submit the Employee Reasonable Accommodation Request Form and the Employee Documentation of Disability Form to the ADA/504 Coordinator in the Office of Institutional Access and Equity. The Employee Documentation of Disability Form must be completed by an appropriate and qualified health care professional. These confidential forms will not be placed in your personnel file and will be maintained in the Office of Institutional Access and Equity. Please attach additional sheets of paper if needed.

General Information:

Name: Cheryl Butler SMU ID No: _____
Job Title: Assistant Professor Department: Law
Campus Phone: _____ Home/Cell Phone: 713 828 3958
Campus Address: SMU Dedman School of Law
Home Address: _____

E-Mail: cnbutler@smu.edu Supervisor: Jennifer Collins/
Beth Thornburg
Classification: Full-time Part-time Faculty Staff

Please describe the nature of your impairment: In January 2015, I was hospitalized overnight for 4 days + diagnosed with Parenchymal lung disease. Workup shows severe asthma causing periodic visits to ER + interference with effective lecture.

What is the duration of your impairment? In 2012 in June, I was hospitalized with severe bronchitis and given asthma medication. Worked to asthma.

Please describe the essential functions of your position: Teach large lecture class (95 students); medium size lecture (45 students) + seminars (20-25 students); write scholarly articles; travel to lecture at conferences; participate on faculty committees.

Please explain how your condition is impacting the essential functions of your position:

Asthma attacks cause incessant coughing; heavy wheezing; trouble breathing; dizziness; trembling of vocal chords. Some asthma meds caused drowsiness (steroids + anti-biotics).

Asthma attack at work causes dizziness + anxiety/panic attack/stress; Asthma interrupts sleep pattern, reading + speaking
Please describe the reasonable accommodation you are requesting and how will it help you perform the essential functions of your position:

- ① Seated Lecture;
- ② Excused absence during asthma attack;
- ③ reduced work schedule, if needed, if asthma flairs up continuously during a season (if seasonal);
- ④ extended evaluation period/adjustments if asthma condition undermines ability to Lecture

Name of Treating Physician: Dr. Sunday O. Fadulu, Jr.

Physician's Address: Kelsey-Seybold Clinic
2727 W Holcombe Blvd Houston 77025

Physician's Phone: 713 442-3333

- ⑤ Dr. Provided Breathing machine. Use breathing machine at work as needed.

Authorization and Release of Information:

I hereby authorize the Office of Institutional Access and Equity to discuss and disclose information as needed within the University and with my physician to properly assess my request for a reasonable accommodation. I verify that the preceding statements are complete and accurate to the best of my knowledge. I understand that the University is not obligated to provide any specific accommodation and that I will be held to the same performance, conduct, and attendance standards as all other SMU employees if a reasonable accommodation is provided.

Employee Signature: Cheryl Nelson Butler Date: 1/1/16

Submit forms to: Office of Institutional Access and Equity, Perkins Administration Building - Room 204. For questions or assistance, please call 214-768-3601.

RE: FW: Fall 2016 courses - Butler

From: "/o=smu/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=4525702157a"
To: Cheryl Butler <cherylbutler2002@gmail.com>, "Henley, Becca" <becca@mail.smu.edu>, "Butler, Cheryl Nelson" <cnbutler@mail.smu.edu>
Date: Tue, 05 Apr 2016 11:36:00 -0500

Cheryl,

I have no notice of any special accommodations for you for the fall semester. As I have repeatedly urged you, please begin any such discussions with IAE or HR as soon as possible. We really need for you to teach the employment discrimination class as a lecture course and not as a seminar course so it can accommodate more students.

We are certainly willing to try to adjust the schedule so that you can teach the Civil Rights seminar at another time. We need an answer on these options by 5 pm today. As you know, we have been trying to finalize the schedule with you since February, registration is just a few days away, and students have been finalizing their schedule plans for some time. Your employment discrimination class needs to remain as scheduled on Monday and Wednesday from 3:30 to 4:45. If you want your EW on the same day as your lecture course, it can be Monday from 10:30 to 12:10 or it can be at 6 pm on Monday. If you just want a later start time, your EW could be on Tuesdays at 3:30. If I do not hear from you by 5 pm today, we will leave the schedule as it appears below because that is how it has been previously published to students.

Thank you so much for providing us with the information we need for planning purposes.

Jennifer

From: Cheryl Butler [mailto:cherylbutler2002@gmail.com]
Sent: Monday, April 4, 2016 5:04 PM
To: Henley, Becca <becca@mail.smu.edu>; Collins, Jennifer <jmc@mail.smu.edu>; Butler, Cheryl Nelson <cnbutler@mail.smu.edu>
Subject: Re: FW: Fall 2016 courses - Butler

Becca,

Also, I would like to teach the seminar on the same day that I am teaching another class, unless the other class is also a seminar. This schedule will work better for me in light of the possibility of the imminent hospitalization. Also, for the same reasons, I would like to teach the ED in the Fall as a seminar. In a recent communication, I believe that Jennifer said that this remained an option.

Please email me at both email addresses - work and here.

Thank you,

Cheryl

On Mon, Apr 4, 2016 at 4:43 PM, Cheryl Butler <cherylbutler2002@gmail.com> wrote:

Becca,

Sorry for the delay in responding to you. I have been swamped on leave and am at a crossroads with my husband's care/ I am not sure that this schedule - teaching so early in the morning will work for me. My husband may need a kidney transplant or dialysis shortly. To work through this, I will continue therapy. I will know for sure upon his doctor's appointment on or about May 6th. I will ask the university for an accommodation. Please advise.

Best wishes,

Cheryl

On Mon, Apr 4, 2016 at 3:58 PM, Henley, Becca <becca@mail.smu.edu> wrote:

Cheryl:

We need to make one change to the time of your EW class and have it start at 10:30 instead of 10:00. With this change, your schedule would look like this:

Civil Rights Sem: Critical Race Theory (EW) (D)(3)T 10:30-12:10 (101CC)
Emplmt Discrim (lecture course) MW 3:30-4:45 (100F)

If you have any issues with this schedule, please contact me by noon tomorrow (Tuesday).

Thanks so much,
Becca

Becca Henley (SMU JD 2002)
Assistant Dean for Administration

SMU Dedman School of Law
214-768-4670
becca@smu.edu

From: Henley, Becca
Sent: Tuesday, March 29, 2016 9:54 AM
To: Butler, Cheryl Nelson
Subject: Fall 2016 courses - Butler

Cheryl:

Laura and I are double-checking the fall schedule and working on the exam schedule. Per our earlier communications, we have you down for this:

Civil Rights Sem: Critical Race Theory (EW) (D)(3)T 10:00-11:40 (101CC)
Emplmt Discrim (lecture course) MW 3:30-4:45 (100F)

If you have any issues with the schedule, please contact me by noon tomorrow (Wednesday). We are trying to firm everything up and get the exam schedule done in the next day or two.

Thanks,

RE: NOTE FROM CHERYL BUTLER

From: "/o=smu/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=4525702157a"
To: Cheryl Butler <cherylbutler2002@gmail.com>
Date: Fri, 04 Mar 2016 10:38:20 -0600

Cheryl – What wonderful news about your husband! Thank you for the update. I am happy to talk to you at any time. I frankly was surprised to learn that you were on campus for two days just a couple of weeks ago but did not attempt to schedule a time for us to get together. I do need to reiterate, however, that you are not to do any work while on FMLA leave.

What I do need is 1) to provide students the opportunity to review their Torts exams. I have attempted to make this as easy as possible by repeatedly offering to have a courier to pick them up at your home and offering my assistant to supervise the student review. Next week is the tenth week of the semester. We need to give students an opportunity for review just as soon as we possibly can. 2) I need information about the fall semester so we can plan. Ideally we would have finalized the schedule weeks ago.

From: Cheryl Butler [mailto:cherylbutler2002@gmail.com]
Sent: Friday, March 4, 2016 12:10 AM
To: Collins, Jennifer <jmc@mail.smu.edu>
Subject: Re: NOTE FROM CHERYL BUTLER

Dear Jennifer,

Thank you for your prayers. Jarvis is going to be ok. We are following up at the doctor's office tomorrow. Thank you for forwarding the text messages to Rhonda. Sometimes in an emergency, it is hard to contact everyone quickly. So, I appreciate you allowing me to text you and taking time to contact Rhonda for me.

We need to talk about Torts. I have not TALKED to you in months. All we do is email like we are litigants. :(.

Best,

Cheryl

On Thu, Mar 3, 2016 at 2:41 PM, Collins, Jennifer <jmc@mail.smu.edu> wrote:

Dear Cheryl – I am so sorry to hear about your husband. I will keep him in my thoughts and prayers and send him every good wish for a speedy recovery. I forwarded your text message to Rhonda at your request. Please do remember that any communications regarding FMLA matters should go directly to her, and any communications about ADA matters should go to Carolyn Hernandez in IAE. They stand ready to help you with any necessary forms, or with any questions you may have.

From: Cheryl Butler [mailto:cherylbutler2002@gmail.com]
Sent: Thursday, March 3, 2016 1:22 PM
To: Collins, Jennifer <jmc@mail.smu.edu>; Adams, Rhonda (BENEFITS) <radams@mail.smu.edu>;

Cheryl Butler <cherylbutler2002@gmail.com>; Butler, Cheryl Nelson <cnbutler@mail.smu.edu>

Subject: NOTE FROM CHERYL BUTLER

Dear Jennifer,

As per my text message to you today, I ask that you please forgive my delay in getting back to you on any and all outstanding matters. As you know, I do not check emails daily while I am home sick. I requested FMLA leave from the University due to my serious health condition. As per my text, my husband was injured today. I am also trying to meet my FMLA certification deadline; however, in light of the accident, we may have to turn in the forms tomorrow, if necessary.

Rhonda - please confirm.

Jennifer - As to the Torts exams, you referred the matter to legal counsel. My attorney be in contact with the university so that we can work together to meet the needs of the students while I am on FMLA leave.

Best wishes,

Cheryl

RE: Fall 2016 courses - Butler

From: "/o=smu/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=4525702157a"
To: "Butler, Cheryl Nelson" <cnbutler@mail.smu.edu>, cherylbutler2002@gmail.com
Date: Mon, 29 Feb 2016 16:30:30 -0600

In the spring, I think it would be terrific if you could teach the human trafficking seminar you have expressed an interest in offering and then a second section of either critical race theory or employment discrimination, depending on how much demand we see for those in the fall.

I am still awaiting your reply to my multiple emails about the fall Torts exams. I would like to get a courier to your house to pick them up just as soon as possible – ideally tomorrow.

From: Butler, Cheryl Nelson
Sent: Monday, February 29, 2016 3:54 PM
To: Collins, Jennifer <jmc@mail.smu.edu>; cherylbutler2002@gmail.com
Cc: Henley, Becca <becca@mail.smu.edu>
Subject: RE: Fall 2016 courses - Butler

Hello there Jennifer and Becca,

I am sorry for the delayed response. Being ill, I am not online everyday. We had never discussed this modified schedule and it is a departure from my normal teaching schedule for the Fall. I do not understand the implications for the changes. So, do you mind that I ask a few questions to understand what is going on?

As you know, I normally teach four courses for the year, Torts I, Torts II and the two courses mentioned below. I normally teach Torts and one of these courses in the Fall. Apparently, I have been removed from teaching my Torts class - I get that. If I teach these two classes in the Fall and I do not teach Torts, then what two classes would you expect me to teach in the Spring?

Warm regards,

Cheryl

From: Collins, Jennifer
Sent: Monday, February 29, 2016 8:57 AM
To: Butler, Cheryl Nelson; cherylbutler2002@gmail.com
Cc: Henley, Becca
Subject: FW: Fall 2016 courses - Butler

Cheryl – Becca and I need an answer back on this ASAP. Thanks so much!

From: Henley, Becca
Sent: Friday, February 26, 2016 10:40 AM
To: Butler, Cheryl Nelson
Subject: Fall 2016 courses - Butler

Cheryl:

I am finalizing the fall schedule and here is what I have for you for the fall:

Re: Torts exams

From: jmc@mail.smu.edu
To: cherylbutler2002@gmail.com, "Butler, Cheryl Nelson" <cnbutler@mail.smu.edu>
Date: Thu, 25 Feb 2016 16:31:49 -0600

Cheryl,

This is a gentle reminder that I need you to respond to the email below regarding the Torts I exams. Our students really need to be able to review their exams from last semester. The exams you graded are the only ones they have not been able to review. I have tried to make this as easy as possible for you by having a courier come to your home and pick them up. If you would like to make some other arrangements, please let me know. We do need to get those exams and the grading key(s) within the next couple of days. Thank you for helping us on an issue so important to our students.

Jennifer

Sent from my iPhone

On Feb 23, 2016, at 12:00 PM, Collins, Jennifer <jmc@mail.smu.edu> wrote:

Cheryl,

We have had numerous requests by students to be able to review their Torts I exams. I would like to make arrangements to have the exams and your grading key(s) picked up so the students who want to do so can review their exams. I understand that you may be on FMLA leave at this time, but we must continue to meet the needs of our students. Given that we are already well past the date when other students have had access to their exams, I would like to have the exams picked up as soon as possible. I am happy to have a courier come to your home to pick up the exams and the grading key. Once the exams are here, I can have Tina let the students know they can come by and look over their exams and the grading key in the dean's suite under her supervision to ensure we maintain security of and control over the exams. If there is a model answer you would like a student to review in conjunction with his or her exam and you have secured permission from the appropriate student, just let me know that as well. Please let me know when you are available for a courier pickup within the next couple of days. Thank you for working to accommodate our students by getting their exams to them.

Jennifer

Jennifer M. Collins
Judge James Noel Dean and Professor of Law

SMU-Dedman School of Law
3315 Daniel Avenue
Dallas, TX 75205
214-768-2621
214-768-2182 (fax)
jmc@smu.edu

MISC. BIAS COMPLAINTS

Fwd: Pin Wu-Confidential and II - FOLLOW UP ON CONCERN THAT STUDENT CONTINUES TO DISPARAGE ME WITH FORMER CLASSMATES

From: "Thornburg, Beth" <ethornbu@mail.smu.edu>
To: "Collins, Jennifer" <jmc@mail.smu.edu>
Date: Thu, 02 Apr 2015 16:55:05 -0500

FYI re Cheryl.

Beth Thornburg
Richard R. Lee Endowed Professor of Law
Senior Associate Dean for Academic Affairs
SMU Dedman School of Law
ethornbu@smu.edu
@btSMU
<http://ssrn.com/author=121753>

Begin forwarded message:

From: "Butler, Cheryl Nelson" <cnbutler@mail.smu.edu>
To: "Prof. Joe Norton" <profjnorton@yahoo.com>, "Thornburg, Beth" <ethornbu@mail.smu.edu>
Cc: "Camp, Martin" <mlcamp@mail.smu.edu>, "Martinez, George" <gmartine@mail.smu.edu>
Subject: RE: Pin Wu-Confidential and II - FOLLOW UP ON CONCERN THAT STUDENT CONTINUES TO DISPARAGE ME WITH FORMER CLASSMATES
Date: April 2, 2015 at 4:51:51 PM CDT

Dear colleagues,

In an earlier note below, I expressed concerns that Pin Wu had made concerted efforts to retaliate for his grade by disparaging me with my other Torts students. One of my current students came to visit me today. She reported that Pin has and continues to engage in a campaign with other students to turn the class against me so to speak. The student was so concerned about the disparaging and in her view, gender and racially biased chatter that she came to discuss the matter with me in confidence. As you may recall, I suggested that we resolve the matter by having Pin transfer to David DiPianto's class. I have never disparaged the student with his new professor. I think that it would have heled to have a meeting to advise the student that this behavior was improper and that we agreed not to discuss the matter at all and certainly not in a way that would defame my character. Perhaps, we can speak about this during the tenure committee meeting.

Cheryl

From: Prof. Joe Norton [<mailto:profjnorton@yahoo.com>]
Sent: Friday, February 13, 2015 1:56 PM
To: Butler, Cheryl Nelson; Thornburg, Beth
Cc: Camp, Martin; Martinez, George
Subject: Re: Pin Wu-Confidential and II

Fwd: Pin Wu

From: "Thornburg, Beth" <ethornbu@mail.smu.edu>
To: "Collins, Jennifer" <jmc@mail.smu.edu>
Date: Wed, 18 Feb 2015 17:00:17 -0600

Finally, this is the exchange in which Cheryl asked me to speak to or email her class to affirm her right to her exam review procedure or state that it is admirable. As I said, I'd be glad to do that if you think it is best, but under the circumstances I think it would do more harm than good.

Beth

Beth Thornburg
Richard R. Lee Endowed Professor of Law
Senior Associate Dean for Academic Affairs
SMU Dedman School of Law
ethornbu@smu.edu
@btSMU
<http://ssrn.com/author=121753>

Begin forwarded message:

From: "Thornburg, Beth" <ethornbu@mail.smu.edu>
To: "Butler, Cheryl Nelson" <cnbutler@mail.smu.edu>
Cc: "Thornburg, Beth" <ethornbu@mail.smu.edu>, Joe Norton <profjnorton@yahoo.com>, "Camp, Martin" <mlcamp@mail.smu.edu>
Subject: Re: Pin Wu
Date: February 13, 2015 at 3:32:56 PM CST

Cheryl, I agree with Joe. All we know at this point is that Pin *claims* that he has talked with other students. I can say from experience (and I think Joe and Martin would probably agree) that it is quite common for students to claim that they are speaking for many people, when they are really the only ones who are unhappy. In this case, for example, I have heard from no other students in your class. With regard to the exam, Pin may well abandon his desire to meet with you about the exam now that he will not be in your spring class, and will put his energy toward doing well in his new section. Even if he still wants to talk, he must follow your process in order to do so. And I will not meet with him about his grade unless he meets with you first, as I have previously stated.

At this point, with no sign of broad rebellion, I tend to think that you best assert your authority simply by exercising it: you are their professor, you control the classroom, and you give the grades. My fear is that a visit from me would undermine rather than support your role. It would suggest that there is widespread unhappiness and that you can't deal with Pin on your own. If things change we can reconsider, but at this point I don't see an intervention as in your best interest.

Beth

Beth Thornburg
Richard R. Lee Endowed Professor of Law
Senior Associate Dean for Academic Affairs
SMU Dedman School of Law
ethornbu@smu.edu
@btSMU

Cheryl, I do appreciate your concerns. However, I encourage you to take a step back and take a deep breath. You are the Professor and Torts I and II are your classes. You don't need anyone to come in to affirm this. By upping the ante you are giving PIN way too much credibility. You have no need to go on the defensive or to seek outside assistance to protect your authority. Your class reviews are great, and you have great command over your classes. PIN is a malcontent who is apparently very unhappy about his grade: just let him go and move on. To have someone come in to defend you or to instruct the class on this or that will only undermine your authority and position. You are a very good teacher! I really think you do not need to fight a battle or war over this. Anyway, this is my best judgment. Try to have a good weekend, though I do understand how upsetting this incident is to you. All the very best, Joe

Prof. Joe Norton

SJD(Mich.), DPhil.(Oxon), LLD(London),LLD(hc)(Stockh.)

**James L Walsh Distinguished Faculty Fellow and Professor of Financial Institutions Law (SMU);
and**

formerly Sir John Lubbock Professor of Banking Law (London) (1993-2004)

profjnorton@yahoo.com

Storey Hall, Rm 306,3315 Daniel Ave, Dallas, Texas 75275

Phone: 469-774-4888(m); 214-328-8876(h)

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Texas Bar No. 15107000

Faculty Assistant: Sharon Magill-Tabbert--214-768-2639- smaqill@smu.edu - Rm311AStorey

Thoughts for the Day: All that is necessary for the triumph of evil is that good (people) do nothing. (Edmund Burke ?); Fear of losing power corrupts those who wield it.....ones responsibility is to do the right thing. (Aung San Suo Kyi)

From: "Butler, Cheryl Nelson" <cnbutler@mail.smu.edu>
To: "Thornburg, Beth" <ethornbu@mail.smu.edu>
Cc: Joe Norton <profjnorton@yahoo.com>; "Camp, Martin" <mlcamp@mail.smu.edu>
Sent: Friday, February 13, 2015 1:26 PM
Subject: RE: Pin Wu

Dear Beth,

Thank you for making this potential arrangement.

You mentioned that the move to the other section does not resolve Pin's concerns about his exam. As I mentioned in my email yesterday, for the past four years I have asked students to follow a certain procedure for reviewing their Fall 2015 exams. I appreciate comments from you that this process is a good one. Other colleagues have shared in this view and, as I mentioned several members of our faculty also follow this exact procedure.

Pin, however, has refused to follow the procedure. He challenged the procedure on several grounds. First, he accused me of adopting a "bizarre" and "rogue" procedure that no other professor would follow and adopt. Second, his response consisted of a legal memo in which he attacked the merits of the model answer (which is a student exam). Third, he attacked my exam - making the illogical argument that the brevity of the four exam questions (along with the presence of a spelling mistake in one of the questions) is proof positive that I put in no effort in making the exam. This was just one example of his attacks on my professionalism.

This smoke and mirrors aside, Pin did not follow the procedure of answering a printed survey about his exam as compared to the model. I ask the students to answer specific questions (composed by our colleague David Taylor). After the student answers the survey we meet.

Can you intercede to have Pin follow these procedures to meet with me to go over his exam. He is still anticipating a meeting. And, as you and I discussed, I understand that this meeting with me is a prerequisite of his meeting with you. I believe that it would undermine my authority with my students if Pin would delightfully report to his fellow students that he did not have to answer my "rogue" survey and that the Dean of Faculty put me in my place by casting the procedure aside.

I appreciate you asking whether I had any other concerns. I do. Seemingly as an effort to intimidate me, Pin has been emphasizing to me that he has been talking to the other students in the class and that I should take heed that he has gotten them to take his "side" in the dispute. He told me that he was able to get the others in the class to agree that my grading process and my process for exam review had so merit. To me, this is a classic case of bullying of the professor who gave the student a low grade.

Note that when I received poor evaluations in Torts class two years ago, this was the same semester in which 3-4 students were angry that I told the class I would reschedule a class to go an lecture at Yale. First, the group of 4 students were outraged, I was told by others in the class, because they did not believe that I would be invited to lecture at Yale and therefore, I was cancelling classes for lame and dishonest excuses. Second, the students felt that I should be fired for prioritizing anything over their class. I thought that this second claim was based on race and gender bias. because there was no other rationale explanation for their position since Julie and Paul also had postponed classes for the same section to attend a bar event in Houston. Yet, the students did not rally to have Julie or Paul fired.

This group of students did proceed, as has Pin, on a campaign to turn the class against me.

I need institutional support. Can you advise me on something that the faculty and administration can do to protect my authority in the class and to forbid the student or class from either engaging in this activity or having impact? Can someone come and speak to the class or send the class an email affirming my right to apply the exam review procedure and, even better, that the process is an excellent one applied by the law school?

In the case of the Torts class two years ago, Julie actually spoke to the class. (she was the interim dean). She told the class that a complaints had no merit and should stop. She told the class that I was a dedicated teacher, an outstanding scholar and that the SMU law school knew that I was going to teach at Yale and that in fact, SMU was paying for the trip.

I appreciated Julie's stepping in. It was a powerful example of an understanding by SMU that there is a duty not only to recruit minority and women professors but to retain them. Part of the effort to retain has to be that the administration acknowledges that bullying of professors by students indeed is a phenomenon that occurs - indeed, you and Martin Camp have shared war stories with me. However, the literature on the subject also emphasizes that this bullying is MORE rampant towards women and minority professors. Several scholars have just written a book, which our library purchased, which argues that minority women are the most common target of this presumed incompetence. I am working so hard to teach this section and I do not want Pin's unjustified attacks to undermine my efforts or the student evaluations of such.

Please advise.

Re: Torts exams and FERPA

From: jmc@mail.smu.edu
To: "Butler, Cheryl Nelson" <cnbutler@mail.smu.edu>
Cc: cherylbutler2002@gmail.com
Date: Fri, 12 Feb 2016 14:57:03 -0600

Cheryl,

As I noted in my earlier email, this can be resolved when you return to work when you can provide whatever details you wish. I am sure you know I have an obligation as dean to ensure that we always follow FERPA, so you can simply confirm to me you had permission or not release any further information until you provide me whatever information you wish and this is resolved. And Cheryl, students certainly have the right to raise their concerns whenever they believe private information has been disclosed.

Sent from my iPhone

> On Feb 12, 2016, at 12:05 PM, Butler, Cheryl Nelson <cnbutler@mail.smu.edu> wrote:
>
> Jennifer,
>
> Thank you for the reminder about FERPA.
>
> As is custom, you have conducted a one-sided investigation and drawn a conclusion about an event involving me without asking my view of the events. Your statements below misconstrue my the interaction with the students.
>
> From whom did you gather this version of facts? Did someone or something ease drop on the conversation? If I do not have an expectation of privacy in my office, please let me know. Also, please let me know whether or not I have a due process right to dispute false allegations of wrongdoing.
>
> Best,
>
> Cheryl
>
>
>
>
>
> -----Original Message-----
> From: Collins, Jennifer
> Sent: Friday, February 12, 2016 9:38 AM
> To: Butler, Cheryl Nelson; cherylbutler2002@gmail.com
> Subject: Torts exams and FERPA
>
> Cheryl -
>
> As I mentioned yesterday, I learned that you met with a group of students yesterday afternoon to discuss the Torts I exam from last semester. During that meeting you mentioned distributing a model answer and then you identified by name, to other students, the student who wrote the model exam answer.
>

> I need to give you a gentle reminder about the critical importance of FERPA. As you know, the Family Educational Rights and Privacy Act ("FERPA") requires that SMU, including all of its faculty, maintain the privacy of all student educational records. Unless the student you identified had given you permission to release his name and his exam answer to use as a model answer, you cannot release that information or any other information from his educational records. Please verify for me whether you had obtained permission from the student prior to disclosing the student's identity.

>

> In the future, please do not release any information from student educational records, especially as you may have done in these circumstances. Until we can determine whether proper permission of the student was obtained, please do not release or distribute a model answer for Torts I based on the student's exam answer.

>

> We can further address this issue when you return from FMLA leave. However, in the interim, please do not further disclose or discuss the identity of the student and do not release any aspect of his exam answer as a model answer for the Torts I class. Thank you, Cheryl. I continue to keep you and your family close in my thoughts and send you my very best wishes for good health and your continuing recovery.

>

> Jennifer

>

> Sent from my iPhone

MISC. RACE

FW: Minority Candidate Interested in Teaching Property at SMU Dedman School of Law

From: "/o=smu/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=4525702157a"
Date: Tue, 13 Feb 2018 17:07:59 -0600
Attachments: Butler_Cheryl__Curriculum_Vitae-August2009_AALS_REVISED.doc (118.78 kB)

From: Brosseau, Tina
Sent: Tuesday, February 13, 2018 5:06 PM
To: Collins, Jennifer <jmc@mail.smu.edu>
Subject: FW: Minority Candidate Interested in Teaching Property at SMU Dedman School of Law

Tina M. Brosseau
Executive Assistant to the Dean

SMU Dedman School of Law
3315 Daniel Avenue
Dallas, TX 75205

214-768-2621
214-768-2182 (Fax#)
tbrossea@smu.edu

From: Nguyen, Xuan-Thao
Sent: Sunday, September 19, 2010 7:38 PM
To: Bloom, Lackland; Kofele-Kale, Ndiva; Forrester, Julie; Gaba, Jeffrey; Hanna, Christopher
Cc: Attanasio, John; Lowe, John; Steinberg, Marc
Subject: FW: Minority Candidate Interested in Teaching Property at SMU Dedman School of Law

Dear FAC Members:

Please read the email message from Cheryl Nelson Butler. We had her on "Hold".

See you on Tuesday at 2:00 p.m.

Xuan-Thao

From: Cheryl Nelson Butler [cnelsonbutler@aol.com]
Sent: Friday, September 17, 2010 8:51 PM
To: Nguyen, Xuan-Thao
Subject: Minority Candidate Interested in Teaching Property at SMU Dedman School of Law

Dear Professor Nguyen,

I write to express my strong interest in a tenure track teaching position at SMU Dedman School of Law. I am interested in teaching both the first year property course as well as upper level courses in real estate transactions, land use and local government, and an advanced property law seminar. My references include my property professor, Vicki L. Been, Director of the Furman Center for Real Estate and Urban Policy and Boxer Family Professor of Law at New York University School of Law. I also want to emphasize that I am very interested in remaining in Texas because I have family here.

My two forthcoming articles and my scholarly agenda focus on (a) “women as property” *i.e.*, the international and domestic exploitation of women as sex slaves and (b) the intersection of the law of real property with issues involving natural disasters and community economic development. My scholarship and teaching interests in property law are shaped by my professional experience as a real estate investor, an advocate for property development and a writer on community economic development issues. Further, my current scholarship on “women as property” is inspired by my two academic fellowships NYU School of Law and Georgetown Law Center – both of which addressed women’s international human rights.

I would be happy to send you a research agenda summarizing my research interests in the area of property law. Attached please find an updated CV.

Thank you for considering my application.

My best regards,

Cheryl Nelson Butler

RE: NOTE FROM CHERYL BUTLER

From: "/o=smu/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=4525702157a"
To: "Walters, Jim" <jwalters@mail.smu.edu>
Date: Mon, 07 Mar 2016 14:57:55 -0600

From: Walters, Jim
Sent: Monday, March 7, 2016 2:25 PM
To: Collins, Jennifer <jmc@mail.smu.edu>
Subject: RE: NOTE FROM CHERYL BUTLER

Thanks. I have talked to Rhonda as well. I will check these and follow up.

From: Collins, Jennifer
Sent: Monday, March 07, 2016 2:24 PM
To: Walters, Jim <jwalters@mail.smu.edu>
Subject: FW: NOTE FROM CHERYL BUTLER

Here are my most recent communications from this individual. Rhonda Adams may have had more.

From: Cheryl Butler [mailto:cherylbutler2002@gmail.com]
Sent: Friday, March 4, 2016 12:10 AM
To: Collins, Jennifer <jmc@mail.smu.edu>
Subject: Re: NOTE FROM CHERYL BUTLER

Dear Jennifer,

Thank you for your prayers. Jarvis is going to be ok. We are following up at the doctor's office tomorrow. Thank you for forwarding the text messages to Rhonda. Sometimes in an emergency, it is hard to contact everyone quickly. So, I appreciate you allowing me to text you and taking time to contact Rhonda for me.

We need to talk about Torts. I have not TALKED to you in months. All we do is email like we are litigants. :(.

Best,

Cheryl

On Thu, Mar 3, 2016 at 2:41 PM, Collins, Jennifer <jmc@mail.smu.edu> wrote:

Dear Cheryl – I am so sorry to hear about your husband. I will keep him in my thoughts and prayers and send him every good wish for a speedy recovery. I forwarded your text message to Rhonda at your request. Please do remember that any communications regarding FMLA matters should go directly to her, and any communications about ADA matters should go to Carolyn Hernandez in IAE. They stand ready to help you with any necessary forms, or with any questions you may have.

From: Cheryl Butler [mailto:cherylbutler2002@gmail.com]

Sent: Thursday, March 3, 2016 1:22 PM

To: Collins, Jennifer <jmc@mail.smu.edu>; Adams, Rhonda (BENEFITS) <radams@mail.smu.edu>; Cheryl Butler <cherylbutler2002@gmail.com>; Butler, Cheryl Nelson <cnbutler@mail.smu.edu>

Subject: NOTE FROM CHERYL BUTLER

Dear Jennifer,

As per my text message to you today, I ask that you please forgive my delay in getting back to you on any and all outstanding matters. As you know, I do not check emails daily while I am home sick. I requested FMLA leave from the University due to my serious health condition. As per my text, my husband was injured today. I am also trying to meet my FMLA certification deadline; however, in light of the accident, we may have to turn in the forms tomorrow, if necessary.

Rhonda - please confirm.

Jennifer - As to the Torts exams, you referred the matter to legal counsel. My attorney be in contact with the university so that we can work together to meet the needs of the students while I am on FMLA leave.

Best wishes,

,
Cheryl

DECLARATIONS

DECLARATION OF SHUBHA GHOSH

1. I have taught at American law schools for several decades and held tenured professorships at SUNY Buffalo School of Law, SMU Law, University of Wisconsin Law School, and Syracuse University College of Law.
2. I am presently the Crandall Melvin Professor of Law and Director of the Syracuse Intellectual Property Law Institute at Syracuse University College of Law.
3. I was born in India and immigrated to the United States as a child. I am ethnically Indian and have dark skin.
4. A copy of my curriculum vitae is appended as Exhibit A.
5. A copy of my faculty profile at Syracuse Law is appended as Exhibit B.
6. I worked at SMU Law from 2002 through 2008. Starting in 2002, I held summer appointments at SMU Law. From 2004–05, I was a visiting professor of law. Thereafter I was a full professor of law with tenure.
7. I am still affiliated with SMU. Since 2010, I have served as a fellow at the Tower Center for Political Studies at SMU. This is an unpaid, honorary position.
8. I experienced and have personal knowledge that other faculty of color experienced racial hostilities at SMU Law.

9. During my time at SMU Law, it had a racially homogenous faculty and culture that made it unwelcoming to faculty of color.

Suspicious Disappearance of Black Colleague

10. I recall first becoming concerned about the environment at SMU when I returned as a tenured professor to teach full time in 2006.

11. During my time as visiting faculty at SMU, I made friends with Maurice Dyson (Black). We both taught first year Torts during my visit and I recall that he was a delightful colleague and engaging professor.

12. To my surprise, when I returned to SMU, I learned that Maurice was no longer there and the reasons why seemed suspicious. Among other things, my colleagues shared a rumor that Maurice had a mental breakdown, but it struck me as untrue.

13. It especially seemed weird given how racially homogenous the SMU Law faculty was at that time.

14. I tried asking around to see if anyone knew the true reason why Maurice had left, which seemed to irritate my colleagues.

15. At one point I prodded the Dean about the matter, but that went nowhere which seemed strange to me.

Lackland Bloom's Email Tirade About Minorities

16. My concerns grew as I settled in as a tenured faculty member. In the beginning I was quite vocal about how important it was for SMU

Law to diversify the faculty. I was immediately met with opposition by other senior faculty. One email exchange stands out in particular.

17. Another tenured professor, Lackland Bloom (white) who had pushed back repeatedly on efforts to recruit minority faculty, sent an email out to the entire faculty listserv accusing me of being “every bit as rotten of a colleague as the references at every place you have taught said you are” and told me to “please leave” and it was “time for [me] to leave] SMU because I had purportedly “alienated virtually everyone” and had “no friends or supporters on this faculty.”

18. In a follow up email, Bloom dug into me again by impugning my sanity and gratuitously reminded the faculty that he opposed SMU Law devoting “hiring efforts to recruiting minorities,” instead insisting the faculty would magically diversify if SMU continued to follow its same old approach to faculty hiring. Bloom concluded by insisting that “[i]f that makes me a racist, then it’s a goofy definition of the term and one which I will claim without embarrassment.”

19. A copy of that email chain is appended as Exhibit C.

20. I have had spirited disagreements with colleagues on every law faculty I have served on, but this email stands out as the most derogatory and unprofessional I’ve ever received.

Retaliation

21. For a while, I continued to be very vocal about my opinions with my colleagues. This seemed to be acceptable to some extent. But things changed markedly when I started criticizing the dean.

22. Close in time to me vocally criticizing the dean, my summer research funding was cut entirely. This was a significant amount of money—\$20,000 every summer. I was never given a formal explanation for why my summer funding was cut. To my eye, it was retaliation.

Discipline for Honestly Discussing Hostilities with SMU Law Recruit

23. Documentation corroborating the situation I describe in this section is appended as Exhibit D.

24. Sometime in the 2007-08 recruiting cycle, SMU Law was trying to recruit a Black male professor who was then working at Barry Law School.

25. As a tenured member of the faculty, I sat in faculty meetings where we discussed the merits of potential hires and attended the meetings where the Black professor's candidacy was discussed.

26. In some of these meetings, my other tenured colleagues spoke about the Black professor's candidacy in derogatory and racially charged ways. He was a strong candidate. Rather than focusing on his strengths—which is normal, and what we did whenever we were

considering hiring or promoting a white colleague—several of the faculty framed hire of the Black professor as something we’d have to “take a chance on,” evidencing that they were discounting his credentials in a way they never with white candidates.

27. It seemed to me that my colleagues were looking for reasons not to extend an offer to our Black colleague, rather than searching for reasons to make the offer.

28. I recall this approach being quite different from conversations the faculty were having around the same time in considering a white female colleague’s tenure bid. She was a good colleague, but I recall her tenure box was shoddily put together and have lots of typos as did her committee’s tenure report. It did not look to me that anyone had put much time into crafting her package. Nonetheless, my colleagues all seemed invested in pushing her tenure through without a fraction of the scrutiny they insisted was necessary when considering the Black professor.

29. After sitting through those meetings, I grew concerned that even if SMU Law extended an offer to the Black professor that this might not be a good place for him to work if he had offers elsewhere.

30. With that in mind, I reached out to the Black professor directly to share some of my concerns via email. My email warned that the faculty

culture was racially hostile and noted that one of the Black Professor's areas of interest, employment discrimination, was only of interest to faculty who want "to figure out how to avoid being sued." I also identified three Black men—Darren Hutchinson, Tim Green, and Maurice Dyson—who came through SMU Law and left.

31. Things went sideways shortly thereafter.

32. One day the Dean called an emergency faculty meeting without telling anyone why we were meeting. When I arrived, I quickly learned the "emergency" was my email to the Black professor. The Dean and the rest of the faculty confronted me, several of them accusing me of inappropriately injecting race into hiring decisions.

33. Puzzlingly, one of the few minority faculty members also lashed out at me about my email, even though he himself had accused SMU of discrimination when he was denied tenure years earlier. At the time, his behavior drove home to me how toxic the environment was at SMU that someone who personally experienced bias would gang up with the very people who wronged him to shout down another minority faculty member who was simply trying to break the cycle of bias.

34. After that emergency meeting, the Dean filed an honor's code violation against me with the Provost Office. Ultimately, I was ordered

to write a letter of apology to the faculty and read it at a meeting to everyone.

35. I did grieve this situation to the SMU Faculty Senate Committee on Ethics and Tenure. In a letter dated March 3, 2008, the Committee concluded that the law school administration's publication of my email to the entire law school faculty and presentation of me for public censure was "intimidating and degrading and appears in violation of University Policy 1.20."

36. To this day, SMU's handling of that whole situation still bothers me. I ultimately agreed to the letter because I had accepted an offer for a professorship at University of Wisconsin at that point and just wanted to put SMU Law behind me.

37. In my last year or so at SMU Law, I had come to believe that if they could have figured out a way to strip me of tenure, they would have. That is how hostile things were.

38. To my knowledge, the Black professor ultimately left SMU Law in 2008 without ever being considered for tenure.

39. Many of the administrators and faculty members who participated in and instigated the actions which the Faculty Senate Ethics Committee deemed to violate University Policy 1.20 were also involved in Butler's tenure case. I identify the persons involved in my

situation in a letter dated March 5, 2008, a list which includes Defendants Roy Anderson and Julie Forrester, as well as Forester's husband Paul Rogers.

Sexist Hostilities at SMU Law During and After My Departure

40. During my time at SMU Law, I noticed that a significant number of tenured female associate law professors were never considered for promotion to full professor. There was even a bizarre code for this—they were referred to as “permanent associate professors.” While they held tenure, they were out ranked by their male colleagues who were put up and awarded full professorships, creating a stark gender hierarchy within the SMU Law faculty that was impossible to miss.

41. Male faculty at the Law School also openly critiqued the appearance of our female colleagues and administrators. As one example, when Dean Collins was hired, one of my male colleagues told me casually that she does not look as good as her photos.

42. I am also aware of a long pattern of sexual harassment at SMU Law. For example, when I was recruited, a colleague shared with me that she was upset the faculty had not apprised her before she came on of issues of sexual harassment on the law school faculty. I'm also aware that Susan Scafidi was denied tenure in 2003 because she complained that a tenured male colleague sexually harassed her.

Racial Bias Incidents at SMU Law After My Departure

43. Like many professors, I maintain cordial relationships with my former students. Unfortunately, in early 2020 I learned from one of my former SMU Law students, Emmanuel Obi '08 (Black), that he experienced a bias incident and that Dean Collins inappropriately handled his complaint.

44. Emmanuel was an alum at the time of the incident. He was visiting the SMU Law library with his young nephew (Black) showing the boy how legal research works. What should have been a bonding experience turned sour when an SMU staff member started harassing Emmanuel and his nephew.

45. Shortly after that incident, Emmanuel approach Dean Collins to express concern about the encounter. But Collins did not take the complaint seriously and Emmanuel felt unsupported, like going to Collins about this incident was futile.

Teaching Quality

46. I have been a law professor for several decades at this point. During my career I have had my own teaching evaluated more times than I can remember and also evaluated my colleagues' teaching and voted on many tenure cases. Suffice to say, I have considerable knowledge of what makes a law professor a good teacher.

47. I have also learned over time, that biased evaluations stick out like a sore thumb—critiques tend to focus on bizarre details or make problems out of nothing rather than giving a holistic assessment of the professor aptitude and pedagogical approach.

48. When evaluating teaching in a tenure case, faculty are supposed to be looking at the applicant's whole package.

49. Teaching evaluations done by colleagues (peer evaluations) are supposed to be about pedagogy and feedback on classroom presence and interaction, not the substance of the course.

50. No professor is a perfect teacher. *If* someone is having difficulties with teaching, this is usually easily fixed during the probationary period because one's committee intervenes early and often to make sure the candidate is connected with additional resources (e.g., specialized trainings) to help them improve their craft.

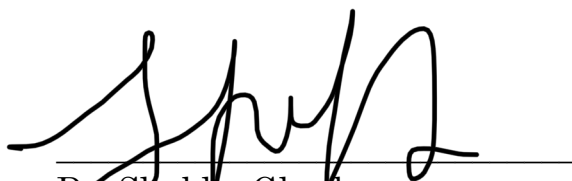
51. In my opinion, a tenure denial premised solely on a candidate's supposed poor teaching is highly unusual and likely suspect. Honestly, if a candidate's teaching were actually that subpar, their committee would have had to have intervened far before they went up for tenure. Not intervening to ensure success under the teaching criteria sounds like someone was setting a trap to ensure the candidate did not get tenure.

52. I taught first year Torts at SMU for several years and have taught it other law schools as well. It is not unusual for professors to use notes during lecture let alone read passages directly out of the casebook. Indeed, I've routinely done both and most certainly seen my colleagues do the same.

53. To my recollection, first year Torts was a disfavored course at SMU Law. I enjoyed teaching it, but I know other faculty looked down upon it because SMU Law views itself as more of a contracts / business law faculty. That kind of culture may make some faculty (intentionally or not) be skeptical about the people and ways Torts is taught given that much of the class is focused on litigation against corporations.

I state under penalty of perjury that the foregoing is true and correct.

Executed on February 18, 2022, in Syracuse, New York.



Dr. Shubha Ghosh




Exhibit A

SHUBHA GHOSH

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EDUCATION

Stanford Law School, J.D., with distinction, 1994.

University of Michigan, Ph.D. (Economics), 1988

Amherst College, B.A., History and Economics, *cum laude*, 1984

ACADEMIC APPOINTMENT

Syracuse University College of Law, from January 2016, Crandall Melvin Professor of Law
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PUBLICATIONS

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EXHAUSTING INTELLECTUAL PROPERTY RIGHTS—A CRITICAL AND COMPARATIVE ANALYSIS (with Irene Calboli, Cambridge University Press, forthcoming).

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SELECTED PRESENTATIONS AND APPEARANCES

Spurious Production Differentiation and Intellectual Property Protection for Design, German Law & Economics Association Annual Meeting, University of Marburg Institute for Law & Economics, July, 2017.

Commentator on paper on patents and warfare and paper on traditional knowledge, ISHTIP Annual Meeting, University of Toronto Faculty of Law, July, 2017.

Author Meets Reader Session, Panel Discussion on “Writing for Hire” by Catherine Fisk, Law & Society Annual Meeting, Mexico City, June, 2017.

Chair, panel on Designing IP Law and panel on Exhaustion of Rights, Law & Society Annual Meeting, Mexico City, June, 2017.

Trademark Fundamentals, American Intellectual Property Lawyers Association Trademark Boot Camp, Arlington, VA, June, 2017.

First Amendment and Death of Trademark, INTA Annual Meeting, Barcelona, Spain, May, 2017.

Keynote Lecture, Transaction Cost Lawyering and Intellectual Property, NCCCU, Taipei, Taiwan, May, 2017.

Patents, Nationalism, and Colonialism: A Preliminary Study of the Indian Patent Office During the Raj, Conference on 50th Anniversary of Stockholm Conference, Texas A&M University School of Law, April, 2017; Singapore Management University, February, 2017.

A Preliminary Study of the Settlements under Rule 317, 7th Annual Patent Conference, Northwestern University School of Law, April, 2017.

Panel Discussion on Lee v Tam Case, University at Buffalo Law School, April, 2017.

IP Developments, Panel Discussion, Broome County Bar Association, Binghamton, NY, March, 2017.

Invited Lecturer, Short Course on Intellectual Property and Competition Law, National Law University of Delhi, March, 2017.

Invited Lecture on First Amendment, University of Hong Kong Law Faculty, November, 2016.

Intellectual Property Exhaustion Law and Policy, International IP Workshop, Indiana University-Bloomington, October, 2016.

Patent Licensing and the Costs of Transacting, University of Ahmedabad School of Management, Ahmedabad, India, July, 2016.

Economics of Precedent, Canadian Law and Economics Association Annual Meeting, University of Toronto Faculty of Law, September, 2016; Keynote Lecture, German Law & Economics Association Annual Meeting, Andrassy University, Budapest, Hungary, July, 2016.

Keynote, Marketplace of Ideas and Products, National Law University, Delhi, India, May, 2016.

University as an Organization, Faculty Workshop, University of Tennessee, Knoxville, January, 2016.

Visiting Lecturer, Singapore Management University, lectures at law school and at Competition Commission, November, 2015.

Organizer, Panels on Culture, Society, and Intellectual Property, Law & Society Association Annual

Meeting, Seattle, WA, June, 2015.

Patent Law and Antitrust After Actavis, Workshop on Actavis, University of San Francisco Law School, San Francisco, CA, February, 2015.

Biotechnology Patent Law Updates, UIA Annual Meeting, Florence, Italy, October, 2014.

Competition and Intellectual Property, Vienna School of Business and Economics, Vienna, Austria, September, 2014.

Rethinking Patent Cultures, University of Leeds, July, 2014.

Demarcating Nature, IP & the Biosciences, Griffiths University, July, 2014.

IP and Competition Policy, Wuhan University Faculty of Law, May, 2014.

The New Global IP Jurisdrudence from the U.S. Supreme Court, National Law University, Delhi, March, 2014.

Interview and Panel Discussion on Dotcom Prosecution, Wisconsin Eye Television Program, September, 2013.

Organizer and Commentator, Author Meets Reader Session on Margaret Radin's Boilerplate, Law and Society Association, May, 2013.

Lecture and discussion on my book Identity, Invention and Personalized Medicine, Stanford Law School Center on Law and Biosciences, April 2013; Information Society Project, Yale Law School, March 2013; Petrie-Flom Center on Law and Biosciences, Harvard Law School, March 2013; Institute for IP and Social Justice, Howard Law School, September 2012.

"The Idea of International Intellectual Property," Works in progress seminar, University of San Diego Law School, April 2013.

"Duty, Consequences, and Intellectual Property," University of Saint Thomas Law School, Symposium on Intellectual Property and Religious Thought, April 2013.

Lecture on copyright and sound recordings, Mayrent Institute for Yiddish Culture, University of Wisconsin, March 2013.

Lecture on Bowman v. Monsanto, Intellectual Property Students Organization, University of Wisconsin Law School, March 2013.

"Federal Circuit's Common Law Contract Law Jurisprudence," Texas A&M at Texas Wesleyan School of Law, Eighth Annual Contracts Conference, February 2013.

Panel Discussion on *Bowman v. Monsanto*, Intellectual Property Owner's Association, New York, New York, February 2013.

Recent Intellectual Property Developments, SMU Lyle School of Engineering, Short Course on Intellectual Property for Scientists and Engineers, January 2013.

Chair, Section on South Asian Legal Studies, AALS Annual Meeting, Panel on Legal Education and Legal Reform, New Orleans 2013.

Presenter, Wisconsin Law Review Symposium on Comparative Institutional Analysis and Komesar, University of Wisconsin, October 2012.

Seminar on then forthcoming book *Identity and Invention*, Goethe University, Frankfurt, Germany, August 2012.

Presenter, paper on recognizing the user in intellectual property law and policy, University of San Diego Law Review, May, 2012; Notre Dame Law School, April 2012.

Chair, Panel on BRICS, Law and Development, Tower Center, Southern Methodist University, March 2012.

Lecturer, Copyright Law, WIPO Training Workshop on Intellectual Property, New York City, March 2012.

Presenter, Developments in Intellectual Property Law, Howard Law School Institute for Social Justice, March 2012.

Keynote, Intellectual Property Works in Progress Conference, University of Houston Law Center, February 2012.

Presenter, Ethics of Intellectual Property, Lyle School of Engineering, Southern Methodist University, January 2012.

Chair, Section on South Asian Legal Studies, AALS Annual Meeting, Panel on South Asian Jurisprudence, Washington, D.C., January 2012.

Lecturer, Commercializing Intellectual Property, Amrita Vishwa Vidyapeetham University, December 2011.

Presenter, Conference on Interdisciplinary Approaches to Intellectual Property, Golden Gate University School of Law, November 2011.

Keynote Speaker, Workshop on Traditional Knowledge, World Intellectual Property Organization and Ono Academic College, Tel Aviv, Israel, October, 2011.

Presenter, Faculty Workshops, Research on Holmes' Intellectual Property Jurisprudence, Marquette Law School; Lewis & Clark Law School, September 2011.

Presenter, Developments in Intellectual Property, Wisconsin Bar Section on Intellectual Property, Green Bay, WI, July 2011.

Presenter, Global Legal Studies Workshop on Law and Development, University of Wisconsin Law School, May 2011.

Presenter, Bayh-Dole at 30, Conference held at University of California Davis Law School, April 2011.

Organizer and Presenter, Intergenerational Equity and Intellectual Property, Wisconsin Law Review Symposium, November 2010.

Presenter, BRIC's and the New Law and Development, FGV School of Law, Sao Paulo Law School, November, 2010.

Law Review Symposium on Transparency in Government, Elon Law School, October, 2010.

Co-organizer, Canadian Law and Economics Association Annual Meeting, October, 2010.

Presenter, Texas Wesleyan Faculty Workshop, October, 2010.

Presenter and Organizer, Three Panels on Law and Creativity, Law and Society Annual Meeting, May, 2010.

Presenter and Commentator, Future of Intellectual Property, University of Leeds, March, 2010.

Presenter, Global Intellectual Property Law and Open Borders, King's College Law School, March, 2010.

Presenter, Law and Development and BRIC's, workshop organized by Professor David Trubek, March, 2010.

Commentator, Intellectual Property Developments in Mexico, John Tower Center Conference on Doing Business in Mexico, Dallas, Texas, March 2010.

Organizer and Presenter, Global Legal Studies Panel on Intellectual Property Commercialization, February, 2010.

Organizer and Presenter, Global Legal Studies Panel on Intellectual Property Commercialization, February, 2010.

Moderator, Private Orderings, AALS Section on Intellectual Property, AALS Annual Meeting, New Orleans, January, 2010.

“Entrepreneurship and IP in a US Research University,” Center for Innovation and Structural Change, Cairnes School of Management, National University of Ireland Galway.

“Transactions through an IP Lens,” AALS Workshop on Transactional Law, Long Beach, CA, June 13, 2009.

"Carte Blanche, *Quanta*, and Competition Policy," Workshop on Invention, Creation, and Public Policy, University of Iowa Law School, February 13-14, 2009.

"Patenting Games," Workshop on Intellectual Property, Vanderbilt Law School, November 14, 2008.

"Effects of the Economic Espionage Act on Skilled Immigrant Labor," University of Wisconsin Ideas and Innovation Series, Madison, Wisconsin, October 24, 2008; University of Wisconsin Business School, November 4, 2008.

"Expressive Works as Trademark Infringement," Debate with Professor William Ford, John Marshall Law School, Sponsored by Intellectual Property Students Organization, University of Wisconsin Law School, Madison, Wisconsin, October 22, 2008.

"Intellectual Property as a Business Asset," Conference on Commercialization and Intellectual Property, Nanjing University, Nanjing, China, October 18, 2008.

"Doing Business in India: Intellectual Property and Competition Law Perspectives," University of Wisconsin Executive Education Program, Abbott Labs, Chicago, Illinois, October 7, 2008.

"Intellectual Property, Migration, and the Economic Espionage Act," Intellectual Property Scholars Conference, Stanford Law School, August, 2008.

“IP as CP: Competition Policy Norms in Intellectual Property,” Invited Distinguished Lecture, John Marshall Law School, Chicago, IL, April, 2008.

Comments on “The Benefits of Private Antitrust Enforcement,” Institute for Consumer Antitrust Studies, Loyola Law School, Chicago, IL, April, 2008.

“IP Developments in India,” Doing Business in India Conference, CAIL, Plano, TX, April, 2008.

Comments on Besen and Meurer’s Patent Failure, University of Georgia Law School, Athens, GA,

March, 2008.

“Competition and Intellectual Property Developments in India,” Workshop on Intellectual Property and Development, University of Illinois Law School, Champaign, IL, March, 2008.

“Race and Entrepreneurship: Patenting Personalized Medicine,” Workshop on Law and Entrepreneurship, The University of Arizona Law School, Tucson, AZ, March, 2008.

“Belief: At The Intersection of Religious and Market Fundamentalism,” Faculty Workshop, Thomas Jefferson Law School, San Diego, CA, February, 2008.

“Competition Norms and IP Before the Supreme Court: The Quanta v. LG Electronics Litigation,” CLE on Intellectual Property, Northern Kentucky University, Cincinnati, Ohio, February, 2008.

Comments on Papers by Aviva Bernstein and Katje Weckerstorm, MSU IP Scholars Conference, E. Lansing, MI, February, 2008.

Comments on James Hackney’s Under Cover of Science, AALS Section of Socioeconomics Annual Meeting, New York, New York, January, 2008.

“How Far Does The Long Arm of Patent Law Reach?: The Supreme Court’s Review of the First Sale Doctrine in Quanta v. LG Electronics,” Annual Federalist Society Meeting, Washington, D.C., November, 2007.

“Dilution Claims Against Direct Competitors,” The 45th Annual Intellectual Property Conference, Center for American and International Law (CAIL), Plano, Texas, November 2007.

“Digital Rights Management: How Intellectual Property Protects Ordinary Objects,” Department of Engineering Short course on Intellectual Property, Southern Methodist University, Dallas, Texas, October, 2007.

“Parallel Imports and Intellectual Property Policy,” ALI-ABA Conference of Cross-Border Issues in Intellectual Property, Toronto, Canada, October, 2007.

“Race Specific Patents and Intellectual Property Policy,” The University of Wisconsin Law School, October, 2007.

“Patents, Pharmacogenomics, and Venture Capital: The Role of PTO Oversight,” Center for Entrepreneurship, The University of Wisconsin School of Business, October, 2007.

“Dilution and Competition Norms,” Conference on Trademark Dilution, Santa Clara School of Law, October, 2007.

“Normative Law and Economics,” Canadian Law and Economics Association Annual Meeting, University of Toronto Faculty of Law, September 2007.

“Race, Markets, and Patents,” Seventh Annual Intellectual Property Scholars Conference, DePaul College of Law, August, 2007.

“Roundtable for Collaborative Research Network on Intellectual Property, Culture, and Society,” Law and Society Annual Meeting, Berlin, July, 2007.

“Identifying Competitive Norms in Intellectual Property,” Session on Property Rights: Structures of Property, Session on The Legal Regulation of Art and Fashion, and Session on Market Access, Law and Society Annual Meeting, Berlin, July, 2007.

“Property and Competition,” Conference on Property, Citizenship, Sovereignty, and Entrepreneurship, University of Durham, July, 2007.

“Internet Market Diversity,” ALI-ABA Conference on Internet Law, Washington, D.C., May, 2007.

“Are Patents Private Property Under the Fifth Amendment?,” The Federalist Society for Law and Public Policy Luncheon Symposium, Washington, D.C., March, 2007.

“Racial Categories in Patent Law: Reflecting Social Hierarchies or Creating Them?,” Howard University School of Law. Conference on Intellectual Property and Social Justice, March 2007; University of Oklahoma College of Law Faculty Workshop, February, 2007.

“Is Intellectual Property Constitutionally Protected Property?,” Debate Series, Intellectual Property Center, University of Richmond School of Law, February, 2007.

Lectures on the Law and Economics of Intellectual Property, National Law School of India University, Bangalore, India, December, 2006.

“Deregulation, Intellectual Property, and Competition Policy, International Conference on Impact of TRIPS, Indo-US Exchange, National Academy of Legal Studies and Research, Hyderabad, India, December, 2006.

Panel Discussion of Intellectual Property Issues confronting the Courts, Appellate Judges Education Institute, Dallas, Texas, November, 2006.

“A Bend in the River?: Intellectual Property and the Supreme Court’s 2005-2006 Term,” Appellate Judges Education Institute, Dallas, Texas, November, 2006.

“Decoding and Recoding Natural Monopoly, Deregulation, and Intellectual Property,” Annual Intellectual Property Scholars Meeting, Boalt Hall School of Law, Berkeley, California, August,

2006.

"Economics and Intellectual Property," AALS Mid-year Meeting of the Intellectual Property Section, Vancouver, British Columbia, June 15, 2006.

"Exclusivity and the Construction of Intellectual Property Markets in Cyberspace and Real Space," Public Lecture, Oxford Internet Institute, Oxford University, April 10, 2006.

"The Fable of the Commons: Rethinking Intellectual Property Rights and the Construction of the Commons," Public Lecture, AHRC Research Centre for Studies in Intellectual Property and Technology Law, University of Edinburgh Faculty of Law, April 6, 2006.

"The Fable of the Commons," Symposium on Intellectual Property and Distributive Justice, University of California, Davis, School of Law, March 10, 2006.

"Experimental Use," Facultes Universitaires, Centre Innovation-Propriete Intellectuelle (CIPI), Brussels, Belgium, October 28, 2005.

"How the Grokster Decision Makes Copyright More Like Patent," Conference on Peer to Peer and File Sharing Technologies, Santa Clara Law School, October 7, 2005.

"Intellectual Property and Privatization," participant, Childress Lecture Series, Saint Louis University School of Law, September 30, 2005.

Interviewed on Squawk Box, CNBC, about Grokster case, June 6, 2005.

"Exclusivity, Free Riding, and Antitrust," Institute for Consumer Antitrust Studies, Loyola Law School, Chicago, April 8, 2005.

"Patents and the Regulatory State," Faculty Seminar Series, University of Ottawa Faculty of Law, March 15, 2005.

"Strict Liability for Information Privacy Breaches," Symposium on Cybersecurity: Developing a Legal and Regulatory Framework for Cybersecurity, Carnegie Mellon University and Internet Security Alliance Joint Symposium, October 13-14, 2004, National Press Club, Washington, D.C.

"Intellectual Property and Distributive Justice," Annual Conference of the Society for Economic Research of Copyright Issues, Turin, Italy, July, 2004; University of Sienna Summer School, July, 2004.

"Decentering Property," Law and Society Annual Meeting, Chicago, Illinois, May, 2004.

"Author Meets Reader Panel: Discussion of Robin Paul Malloy's Law in a Market Context," Law and Society Annual Meeting, Chicago, Illinois, May, 2004.

“A Social Insurance Perspective on Cybersecurity and Privacy,” Conference on Security and Privacy in Cyberspace, Stanford Law School, March, 2004.

“Standard Setting Organizations and the Duty to Disclose Patents: A Discussion of the Federal Circuit’s Decision in *Rambus v. Infineon Technologies*,” Erie County Bar Association, Intellectual Property Section, Monthly Meeting, December, 2003.

“Son of Sony: Comments on *Grokster*,” Niagara Falls Intellectual Property Law Association Meeting, November, 2003.

“Copyright as Privatization,” Oxford Intellectual Property Research CenterCentre, St. Peter’s College, Oxford University, October, 2003.

“Culture, Copyright and the Public Domain,” Seminar Series on Institutionalism, University at Buffalo Law School, September, 2003.

“Understanding Copyright Markets,” IP Scholars Conference, Tulane Law School, October, 2003; IP Scholars Conference, Boalt Hall, August, 2003; Annual Meeting of American Law and Economics Association, September 2003.

“Recent Cases from the Federal Circuit,” Intellectual Property Continuing Legal Education Seminar, Law Firm of Hodgson Russ, Buffalo, New York, August, 2003.

“Rights of First Entry in Derivative Markets,” Society for Economic Research in Copyright Issues Annual Meeting, Northampton, Mass., June, 2003.

Television Appearance, WKBW-TV, Buffalo, New York, interviewed on privacy in social security numbers, May, 2003.

“Competitive Baselines for Intellectual Property Systems,” Conference on Global Public Goods and Technology Transfer, Duke University School of Law, April, 2003.

“Country Level Domain Names in India,” Conference on Ruling the Root, Cardozo Law School, March, 2003.

“Law and Economics and Other Schools of Jurisprudence,” Meeting of the AALS Section of Law and Economics, AALS Annual Meeting, Washington, D.C., January, 2003.

“Foreseeability and the Scope of the Patent Grant,” Conference on International Patent Law, Cardozo Law School, November, 2002.

“Manufacturing Law,” Boston University School of Law, October, 2002; IP Scholars Conference,

Cardozo Law School, August, 2002.

Radio Appearance, Buffalo Beat, NPR, interviewed on new JD/MA in economics program, August, 2002.

“Kelly v. Arriba Soft: Copyright Treatment of Search Engines and Linking,” Intellectual Property Continuing Legal Education Presentation, Law Firm of Hodgson Russ, Buffalo, New York, April, 2002.

“Literary Woman and Economic Man Revisited,” Conference on Law, Culture, and Humanities, University of Pennsylvania Law School, March, 2002.

“Reflections on the Traditional Knowledge Debate,” Conference on Traditional Knowledge and Intellectual Property Systems, Cardozo Law School, February, 2002.

"Pharmaceutical Patents," Joint Panel of AALS Sections on Patent Law and Health Law, AALS Annual Meeting, New Orleans, January, 2002.

"Contracts and Socio-economics," AALS Section on Socio-economics, AALS Annual Meeting, New Orleans, January, 2002.

"Intellectual Property and Market Creation: On Napster and Neem," invited lecture, Syracuse University School of Law, October, 2001.

"Comparison of Canadian and US Copyright and Trademark Law," Intellectual Property and Innovation in the Knowledge-Based Economy, Industry Canada and Center for Innovation, University of Toronto Faculty of Law, May, 2001.

"Fixed Costs, Public Goods, and Napster," Conference on Beta-testing the First Amendment, Hastings College of Law, April 2001.

"Understanding the Public Domain," Commodification Futures Conference, University of Denver College of Law, April, 2001.

"Gray Markets, Intellectual Property Rights, and Access to Pharmaceuticals," University of Florida School of Law, Symposium on Intellectual Property, February, 2001.

"Beyond Napster: Debating the Future of Copyright on the Internet," American University, Washington College of Law, November, 2000.

"Traditional Knowledge, Intellectual Property, and Biodiversity," invited lecture, Vermont Law School, October, 2000.

Television Appearance, WKBW-TV and WIVB-TV, Buffalo, New York, interviewed about Napster,

October, 2000.

"Real Options and Antitrust Law," Antitrust Section of the American Bar Association Symposium, Washington College of Law, American University, September, 2000.

"Market Definition for Web-Based Transactions," Joint ABA and AALS Session on Antitrust Law, American Bar Association Antitrust Section, Annual Meeting, Washington, D.C., April, 2000.

"Norms and Gateway2000," AALS Section on Contract, AALS Annual Meeting, January, 2000.

"Bundling Information Products After Microsoft," Joint Meeting of the Antitrust and Intellectual Property Sections of the State Bar of Georgia, Atlanta, GA, December, 1999.

"Product Innovation and the Biomaterials Access Assurance Act of 1998," Meeting of the Products Liability Section of the American Bar Association, Atlanta, GA, November, 1999.

"Coase, Causation, and Expert Witnesses" Canadian Law and Economics Association Annual Meeting, University of Toronto, September, 1999.

"State Sovereign Immunity and the Aftermath of College Savings," South Eastern Association of American Law Schools Annual Meetings, Hilton Head, South Carolina, July, 1999.

"The Origins of 'Intellectual' Property," Law & Society Annual Meeting, Chicago, Illinois, May, 1999.

"Gray Markets in Cyberspace," Works in Progress Series, Boston College Law School, October, 1998.

"The Economic Theory of the Family from an Evolutionary Perspective," First Annual Society of Evolutionary Analysis of the Law Conference, Pace University, October, 1998.

"Gray Markets and Club Goods in Cyberspace," Canadian Law and Economics Association Annual Meeting, University of Toronto, September, 1998.

"Expert Testimony and Social Science," Law & Society Annual Meeting, Aspen, Colorado, May, 1998; Central States Law School Conference, Tulsa, Oklahoma, October, 1997.

"Employment at will: A Property Rights Perspective," Works in Progress Series, UCLA Law School, September, 1996; American Law & Economics Association Annual Meetings, Chicago, Illinois, May, 1996.

"Immigrant Entrepreneurship," various audiences of legal and business professionals, New York City, Dallas, Houston, San Francisco, March-April, 1996.

"Gray Marketing," George Mason Law School, January, 1994; Stanford Law School, Oct., 1993.

"International Trade and Population Growth," Midwest Regional International Conference, Kellogg School of Business, Northwestern University, May, 1991.

"Transfers within the Family," University of Chicago Dept. of Economics, February, 1989; University of Pennsylvania Dept. of Economics, January, 1988.

ORGANIZED PANELS AND CONFERENCE

Founder, Chair, Panel Organizer, Section on South Asian Legal Studies, AALS, January 2010 to present. (Chair, 2012-13).

Organizer, Wisconsin Law Review Symposium on Intellectual Property and Intergenerational Equity, University of Wisconsin Law School, November 12-13, 2010.

Organizer, Workshop on Creativity, Law, and Entrepreneurship, Institute for Legal Studies, INSITE, and Global Legal Studies, University of Wisconsin-Madison School of Law, April, 2009.

Organizer, "The Elephant and the Dragon: Comparative Issues in Law and Development Facing China and India," The National Law School of India University, Bangalore, India, jointly with SMU Dedman School of Law, SMU Tower Center, Shanghai University of Finance and Economics, and The University of Hong Kong, May, 2008.

Organizer, Panels on Culture, Society and Intellectual Property, Law and Society Annual Meetings, Chicago (2004), Berlin (2007), Montreal (2008).

Organizer, Workshop on Ownership and Repatriation of Cultural Heritage, Baldy Center for Law and Policy, April, 2004.

Organizer, Workshop on Law, Technology, and Development, Baldy Center for Law and Policy, March, 2003. Proceedings to be published in Law & Policy.

Organizer, Panel on Teaching Law and Economics, American Association of Law Schools Annual Meeting, January, 2003.

Commentator, Workshop on Technology and Libraries, Baldy Center for Law and Policy, March, 2002.

Organizer, Panel on Economics and Intellectual Property, American Association of Law Schools Annual Meeting, January, 2002.

"Institutional Economics," Session Organizer and Chair, Canadian Law and Economics Conference, University of Toronto Faculty of Law, September, 2002.

“Lotteries,” Session Organizer and Chair, Canadian Law and Economics Conference, University of Toronto Faculty of Law, September, 2002.

"Game Theory Panel," Session Organizer and Chair, Canadian Law and Economics Conference, University of Toronto Faculty of Law, September, 2001.

COURSES AND ACADEMIC SUPERVISION

Intellectual Property in Business Organizations (Spring 2012, 2011, 2010, 2009, 2007; Fall 2009); Intellectual Property Licensing Seminar (Spring 2006); Patent Litigation (Spring 2006); Patent Law (Spring 2012, 2005, Summer 2005, Fall 2008, 2007, 2005); Internet Law (Summer 2004, 2003); Copyright (Spring 2005, 2004, 2003, 2002, 2001; Fall 2012, 2011, 2010); Intellectual Property (Summer 2009, 2008, 2007, 2006, 2003; Fall 2012, 2011, 2010, 2009, 2008, 2006, 2002, 2001, 2000, 1997); Law and Economics (Fall 2005, 2001, 2000; Spring 1998, 1997); Antitrust and Intellectual Property (Fall 2002; Spring 2001); International Intellectual Property (Fall 2009, Summer 2009, 2005, Spring 2004, 2002); Trademark Law (Spring 2003); International Patent Law (Spring 2004); Torts (Spring 2008, 2007, 2005, 2000, 1999; Fall 2007, 2006, 2004, 1999, 1998); Property (Spring 1998); Business Associations (Summer 2002, 2000, 1999; Spring 1998, 1997, 1996; Fall 1997, 1996); Antitrust (Spring 2000, 1999).

SJD/LLM Supervisor, University of Wisconsin Law School, Do Wang Jin, 2008-2011; Chung Wa Kim, 2009-present; Arpita Gupta, 2012-present.

Ph.D. Committee Member, Andrew Dunning, SMU Perkins School of Theology, dissertation on intellectual property and social justice, 2009-present.

Outside Reader, “Empirical Investigation of Attitudes Towards Copyright by Academics,” PhD dissertation of Shahren Ahmed Zaidi Adruce, PhD candidate, Syracuse University School of Information Studies, January, 2004.

Supervised independent studies: **at Buffalo:** Christopher Copeland, “Doctrine of Equivalents” (Fall 2001; Spring 2002); Charles Miller, “Native American Intellectual Property” (Spring 2002); Cindy Majewski, “Chinese Trademark Law” (Fall 2002); Erika Mirabella, “Right of Publicity and the First Amendment” (Fall 2003); Thad McMurray, “Employee Patent Rights in Japan” (Spring 2004)(winner of first place prize in NY State Bar IP Section Competition, 2005); Laura Lombardo, “Intellectual Property Issues in the Art Framing and Reproduction Industry” (Fall 2004); **at SMU:** Brad Luo, “Enforcement of Famous Marks in China” (Fall 2007); Wei Li, “Nonobviousness and Patents in the Computer Electronics Industry” (Fall 2007); **at Wisconsin:** Lucas Divine, “The On Sale Bar After Quanta” (Summer 2009); Grant McNeilly, “IP in Bankruptcy” (Spring 2010); Wen Li, “Copyright and First Sale” (Spring 2010); Zi Yang, “Fiduciary Duties and IP” (Spring 2010); Brian Dunham, “IP in India” (Fall 2010; Spring 2011); Qianli Sha, “Costco Litigation” (Spring 2011); Kyle Tostensen, “IP in Russia”

(Spring 2011); Benjamin Beduhn, Senior Thesis Project on Pharma in India (Fall 2010; Spring 2011).

Supervised Intellectual Property Practice (at Buffalo): Rebecca Dalpe (Spring 2002; Albright-Knox placement); Rachel Williams (Fall 2002; Albright-Knox placement); Mary Beth Priore (Fall 2002; Association of Writers and Publishers placement).

PROFESSIONAL EXPERIENCE

- Spring, 2016 **Fulbright-Nehru Scholar, National Law University, Delhi, Delhi, India.** Taught course on Technology Transfer Law (licensing and contract issues in patent law). Made presentations on work at various conferences in India, including Festival of Innovation, Rashtrapati Bhavan, Delhi, India.
- Academic Year **Federal Judicial Center, Washington, D.C.,** as Inaugural Law, Science, & 2014-2015 Technology Fellow. Selected through national competition by American Association for the Advancement of Science (AAAS). Conducted research and preparing research reports on fee shifting in patent cases. (on leave from University of Wisconsin).
- Summer 2013 Consultant, International Centre for Trade and Sustainable Development (ICTSD), Geneva, Switzerland. Drafted a 107 page white paper on exhaustion of intellectual property rights, comparing the laws of US, Canada, EU, Japan, India, China, and Brazil.
- Summer 2013 Professor, East China University of Political Science & Law, Shanghai, China. Lectured on international intellectual property, technology transfer, and development.
- Summer 2012 Professor, Biotechnology Program, International Summer University, Justus Liebig University, Giessen, Germany. Lectured on stem cell patenting and transactional IP issues.
- Summer 2012 Professor, Comparative and International Law Program, University of Wisconsin Summer Program, Giessen, Germany. Taught International Intellectual Property Law.
- Summer 2012 Professor, Comparative and International Law Program, University of San Diego, Summer Program, Florence, Italy. Taught International Intellectual Property Law.
- Summer 2012 Expert Witness, Hopkins McCarthy LLC, Milwaukee, WI. Provided testimony on copyright in architectural works in ongoing copyright litigation.
- Summer 2011 Professor, Executive LLM Program in Business Law, Thamassat University, Bangkok, Thailand. Taught course in Introduction to Intellectual Property.
- Summer 2011 Expert Witness, Weil, Gotshal, & Manges, Washington, D.C. Drafted report on

comparative patent invalidity and infringement analysis in Japan, South Korean, EU, and USA.

- Summer 2011 Exchange Professor, Justus Liebig University, Giessen, Germany. Taught Business Torts and Unfair Competition.
- Summer 2010 Professor, University of Wisconsin Summer Program, Giessen, Germany. Taught International Intellectual Property Law.
- Spring 2010- Lecturer on Patent Law and Research Commercialization, NCET. (online courses)
- Summer 2009 Professor, Seton Hall Summer Program on Intellectual Property and Pharmaceutical Regulation in European Union, National University of Ireland Galway.
- February 2009- Expert Witness, Wright, Brown & Close, Houston, TX. Trade secret and trademark ownership issues.
- May 2008- Expert Witness, Caddell & Chapman, Houston, TX. Patent damages in infringement suit.
- November 2007 Pro-Bono, American Antitrust Institute. Drafted Amicus Brief in support of petitioner in Quanta v. LG Electronics, decided by the United States Supreme Court, June 2008.
- July 2007 Expert Witness, Orrick, Menlo Park, California. Antitrust treatment of patent pool.
- January 2007- Fellow, Centre for Competition, Investment, & Economic Regulation, Consumer Unity & Trust Society, Jaipur, India
- November, 2006 Expert Witness, Haynes & Boone, Fort Worth, Texas. Copyright litigation involving issue of originality.
- August 2006-present Expert Witness and Consultant, Bickel & Brewer, Dallas, Texas, Litigation involving proposed reforms of Wright Amendment.
- April 2006 Visiting Fellow, AHRC Research Centre for Studies in Intellectual Property and Technology Law, University of Edinburgh Faculty of Law.
- Summer 2005 Professor, SMU Oxford Summer Program, University College, Oxford.
- Summer 2004 Professor, European Summer Program, University of Siena Faculty of Law and Economics.
- May 2004- May 2005 Co-Director, NYSTAR Science and Technology Law Center, Joint Project of Syracuse Law School and University at Buffalo Law School.

Summer 2003 Consultant, Consumer Project on Technology, Project on South African Competition Law and pharmaceutical pricing.

2000-present Consultant, Legal Resources Solution, New York, New York.

2000-2002 www.giglaw.com, an online journal devoted to Intellectual Property and Cyberspace Member and former monthly columnist

Summer 2000 Instructor, CLEO Program, University of Georgia School of Law, Instructor

1998-2003 Lecturer, Oklahoma Bar Review

1995-1996 Consultant, Mellon Foundation

1995-1996 Associate, Baker & McKenzie, San Francisco

1994-1995 Law Clerk, The Honorable John T. Noonan, United States Court of Appeals for the Ninth Circuit, San Francisco

June 1993-
August 1993 Department of Justice, Antitrust Division, Summer Honors Program, Washington, D.C.

June 1989-
August 1989 Visiting Scholar, International Institute For Applied Systems Analysis, Vienna, Austria

May 1987-
August 1987 Consultant, National Academy of Science, Committee on Population, Washington, D.C.

OTHER ACADEMIC APPOINTMENTS

University of Wisconsin Law School, Vilas Research Fellow & George Young Bascom Professor of Business Law; Associate Director, Initiatives on Studies in Technology and Entrepreneurship (INSITE); Honorary Fellow, Center for South Asian Studies; Faculty, MSc in Biotechnology Program. 2008-present. Recruited in 2007 to teach in areas of intellectual property law and transactions.

Tower Center for Political Studies, Southern Methodist University, Fellow. 2010-present. Recruited to work on conferences relating to law, trade and development.

Adjunct Professor, Seton Hall Law School, developed and taught on line courses in intellectual property for LLM program in health law. 2012-present.

Adjunct Professor, Texas A&M at Texas Wesleyan Law School, teaching courses in patent law, patent litigation, and intellectual property transactions.

Southern Methodist University, Dedman School of Law, Professor of Law (with tenure). 2005-2008.

Southern Methodist University, Dedman School of Law, Visiting Professor of Law. 2004-2005. Recruited to teach intellectual property courses and add to scholarly profile of school.

SUNY, University at Buffalo School of Law, Professor of Law (with tenure). 2003-2006.

SUNY, University at Buffalo School of Law, Associate Professor of Law. 2000-2003. Recruited to develop program in intellectual property law.

National Law School of India, Bangalore, India, Visitor. August, 2000; January, 2006 & 2007; May, 2008.

Georgia State University College of Law, Associate Professor of Law. 1998-2000.

Oklahoma City University School of Law, Assistant Professor of Law. 1996-1998.

University of Texas at Austin, Assistant Professor of Economics. 1988-1991.

ACADEMIC SERVICE

Member, Copyright Policy Committee, University of Wisconsin, 2012-present.

Series Editor, Creativity, Law & Entrepreneurship Series for Edward Elgar Publishing, 2009-present.
Moot Court Adviser, Saul Lefkowitz Moot Court, 2009-present; Giles Rich Moot Court, 2011.
Coach and Judge for Cardozo Entertainment Law Competition; John Marshall IT Competition, 2010-present.

Chair, Faculty Promotion and Tenure Committee, University of Wisconsin Law School, 2009 to 2011;
Member, 2011-present.

Member, University Lectures Committee, 2011-present.

Member, Student Exchange and Overseas Program Committee, 2010-present.

Representative, Faculty Senate, University of Wisconsin Law School, 2008 to present.

Member, Committee to Select Hastie Fellow, University of Wisconsin Law School, 2008 to present.

Member, Library Committee, University of Wisconsin Law School, 2008 to present.

Editor, The International Lawyer, SMU Dedman School of Law, 2006-2008.

Faculty Adviser, Computer Law Review and Technology Journal, SMU Dedman School of Law, 2006-2008.

Member, University Technology Teaching Committee, Southern Methodist University, 2006-2008.

Member, Curriculum Committee, SMU Dedman School of Law, 2006-2008.

Member, Graduate Committee, SMU Dedman School of Law, 2006-2008.

Promotion and Tenure Reviews for faculty at University at North Carolina-Chapel Hill Law School; University of Louisville Law School; Michigan State Detroit College of Law; Loyola Chicago Law School; University of South Florida, Department of Economics and Geography; Fordham Law School; Emory Law School; University of Toronto Faculty of Law; University of Oklahoma College of Law; University of Maine School of Law; University of San Diego School of Law.

Member, History Department Appointments Committee, South Asianist Search, University at Buffalo, SUNY, 2003-2004.

Faculty Senate Computer Services Committee, University at Buffalo, SUNY, 2002-2006.

Director, Intellectual Property Practice Course, University at Buffalo Law School, SUNY, 2002-present.

Co-director, Program on Regulation and Technology, Baldy Center for Law and Social Policy, University at Buffalo Law School, SUNY, 2001-present.

Co-Director, Concentration in Technology and Intellectual Property, University at Buffalo Law School, SUNY, 2001-present.

Admissions Committee, University at Buffalo Law School, SUNY, 2001-2002.

Faculty Adviser, BUFFALO INTELLECTUAL PROPERTY LAW JOURNAL, University at Buffalo Law School, SUNY, 2000-present.

Admissions Committee, Georgia State University College of Law, 1999-2000.

PROFESSIONAL SERVICE

Vice Chair, Committee on University Intellectual Property, ABA Section on Intellectual Property, since

August 2013.

Panelist to review summer grant applications, National Endowment for Humanities, Fall 2011.

Refereed articles for following journals: ANTITRUST LAW JOURNAL, INTERNATIONAL REVIEW OF LAW AND ECONOMICS, LAW & POLICY, JOURNAL OF FINANCE, JOURNAL OF ECONOMIC ISSUES IN COPYRIGHT; LAW & POLICY REVIEW, LAW AND SOCIAL INQUIRY.

Reviewed book manuscripts for: ASPEN LAW & BUSINESS PRESS, OXFORD UNIVERSITY PRESS, CAMBRIDGE UNIVERSITY PRESS, FOUNDATION PRESS, STANFORD UNIVERSITY PRESS.

Founder, Section of South Asian Legal Studies, AALS, 2010; Chair, 2011-2012.

Member, Executive Committee, Canadian Law and Economics Association, 2000-2008.

Member and Treasurer, American Association of Law Schools Section on Law and Economics, 2001-2003.

Member and Conference Organizer for Sessions on Works in Progress, Northeast Law Professors of Color Conference, 2001-2003.

Member and Treasurer, Conference on Asian Pacific American Law Faculty, 2000-present.

HONORS AND FELLOWSHIPS

Fulbright Research Grant, India, awarded for 2003-2004; awarded for 2001-2002.

National Endowment for the Humanities Summer Stipend, Summer, 2003.

Rackham Dissertation Fellowship, The University of Michigan, 1987-1988.

National Institute for Child Health and Development, Graduate Fellowship, The University of Michigan, 1985-1987.

Department Fellowship, The University of Michigan Department of Economics, 1984-1985.

Amherst Memorial Fellowship, Amherst College, 1984-1985.

PROFESSIONAL AFFILIATIONS

US Supreme Court Bar, 2013- present.

American Antitrust Institute, 2012-present.

American Law Institute (ALI), 2012-present.

Association of Teachers and Researchers in Intellectual Property (ATRIP), 2007-present.

Law and Society Association, 1998-present.

American Bar Association, 1998-present.

Canadian Law and Economics Association, 1998-present.

American Intellectual Property Law Association, 1998-present.

State Bar of California, 1996-present.

HOBBIES

Biking, travel, film, creative writing

CITIZENSHIP

United States; Overseas Citizen of India

REFERENCES AVAILABLE UPON REQUEST

Exhibit B

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Profile

SHUBHA GHOSH

Crandall Melvin Professor of Law

Director, Syracuse Intellectual Property Law Institute

(315) 443-2532

sghosh01@syr.edu (<mailto:sghosh01@syr.edu>)

Curriculum Vitae [PDF] (http://law.syr.edu/uploads/docs/deans-faculty/Ghosh%2C_Shubha_-_CV.2017.acc.pdf)

(https://twitter.com/ip_comm)

Education

Stanford Law School

J.D., with distinction 1994

University of Michigan

Ph.D., Economics 1988

Amherst College

B.A., cum laude 1984

[Publications\[PDF\]](#)

(/uploads/docs/deans-faculty
/Ghosh_Publications_2021b.pdf)



Dr. Shubha Ghosh earned his J.D. from Stanford University, with distinction, and his Ph.D. in Economics from the University of Michigan. He earned his B.A., cum laude, from Amherst College. Prior to joining Syracuse University College of Law, Ghosh taught at the University of Wisconsin Law School as a chaired, tenured professor and co-director of the Innovation cluster, consisting of faculty in the law and business schools.

Ghosh joined the Syracuse University College of Law in January, 2016, as Crandall Melvin Professor of Law and Director of the Technology Commercialization Curricular Program, a unique program which trains students in intellectual property, business law, and the legal foundations for the commercialization of patents, copyrights, trademarks, and other legal property governing technology and innovation. The Program consists of the Syracuse Intellectual Property Law Institute (SIPLI), which Professor Ghosh manages, and the Innovation Law Center, which offers clinical experience for students in the Program.

Ghosh also works through the state-funded New York State Science and Technology Law Center (NYSSTLC), an entity that guides entrepreneurs, start-ups, universities, and research centers in New York State and beyond. In this capacity, Ghosh frequently works with administrators in Albany who focus on economic development and innovation policy in the State. Most recently, he has advised on the risks to 501(c) entities that collaborate with private enterprise and on intellectual property and technology licensing policies for state research entities.

His extensive research focuses on the development and commercialization of intellectual property and technology as a means of promoting economic and social development. He has published extensively on pharmaceutical, design, copyright protection of standards, competition policy, and other intellectual property issues; antitrust law; legal construction of the marketplace; technology transfer; and the role of intellectual property law and policy in shaping these diverse areas. His most recent book, *Exhausting Intellectual Property Rights* (Cambridge, 2018) was the subject of a panel discussion at the World Trade Organization in Geneva and the AALS Annual Meeting in New Orleans.

Ghosh is also a frequent blogger and commentator in webcasts and webinars, including the JOTWELL section on International & Comparative Law; Hedgehogs and Foxes, a blog on law and popular culture; and the webcast series for SIPLI and the Technology Commercialization Law Program (<https://www.youtube.com/channel/UCrAWyTZvhIBZkqgHe3-94eg>).

Working closely with student research assistants and colleagues across various disciplines and jurisdictions, Professor Ghosh is working currently on the following projects:

- Development of LLC law and possible convergence with corporate law principles.
- Custom fit design and the role of patents and copyrights in the standardization of fashion.
- Updates on patent and trade secret laws for “Understanding Intellectual Property,” a treatise published by Lexis-Nexis.
- Diffusion of patented technologies to aid the visually impaired, for a book project with the Harvard Law School Project on Disability.
- Comparison of design protection law in Japan and US across patent, copyright, and trademark regimes (based on original research at the Institute for Intellectual Property, Tokyo).
- Collaboration with John Gee, University Relations Manager, Empire State Development, Albany, on issues

facing research centers and universities in New York with respect to private-public partnerships and IP licensing.

A member of the California, Federal Circuit Bar, and US Supreme Court bars, Ghosh was elected to the American Law Institute in 2012 and is currently a member of the advisory board on the Restatement of Copyright. He has been a Visiting Fellow at Bucerius Law School in Germany; IIP Research Fellow in Tokyo; a Fulbright Fellow to India; the inaugural AAAS Science and Policy Fellowship at the Federal Judicial Center; and a recipient of a National Endowment of the Humanities research grant.



Contact Us (/contact-us/)

Welcome to...

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Dineen Hall

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Case 3:18-cv-00037-E Document 161 Filed 02/19/22 Page 275 of 308 PageID 3001


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Media (<http://law.syr.edu/media/>)

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Exhibit C

From: shubha ghosh ghoshwisclaw@yahoo.com 
Subject: Fwd: Empty Response
Date: February 18, 2022 at 12:02 PM
To: ezra@ezrayoung.com

SG

Shubha Ghosh

Begin forwarded message:

From: "Ghosh, Shubha" <sgghosh@mail.smu.edu>
Date: June 14, 2008 at 6:15:32 PM CDT
To: ghoshwisclaw@yahoo.com
Subject: FW: Empty Response

Shubha Ghosh, Ph.D., J.D.
Professor of Law
SMU Dedman School of Law
(214)768-2598
<http://faculty.smu.edu/sgghosh/>
<http://www.ipsurveyghosh.com> <<http://www.ipsurveyghosh.com/>>

From: Bloom, Lackland
Sent: Sun 3/18/2007 8:23 PM
To: Ghosh, Shubha; lawfaculty@list.smu.edu
Cc: Crespi, Gregory
Subject: RE: Empty Response

Do you believe this guy colleagues? I simply suggested that we publicize this most recent survey which ranks us in the top 25 and I get hit with all of this nonsense.. All of this racist business by the way goes back to my response several months ago to Bill Bridge's proposal that we devote all of our hiring efforts to recruiting minorities. I opposed that proposal then arguing that we should focus on needs based hiring taking race and gender into account within the universe of candidates who meet our curricular needs and I continue to oppose Bill's approach. If that makes me a racist, then it's a goofy definition of the term and one which I will claim without embarrassment. I simply ask you to look at this man's behavior and ask yourself whether he is sane and rational.

Lack

From: Ghosh, Shubha
Sent: Sunday, March 18, 2007 7:51 PM
To: Bloom, Lackland; lawfaculty@list.smu.edu
Cc: Crespi, Gregory
Subject: RE: Empty Response

I have no intention of leaving. My goal is to improve the school. Enough is enough with SMU . Frankly, I have lots of supporters that will gladly stand by me, despite racists like you and those at other schools that I tried to expose. And frankly, the law school is every bit as racist and unprofessional as everyone knows it to be. Just keep in mind the ABA and AALS reports that folks attempted to cover up. Keep in mind that I could get a large number of people at other schools who would verify how rotten SMU has been in the past and seems to continue to be now.

If you want to try to fire me or chase me out for telling the truth, keep in mind that the truth has a habit of winning. You need to take a long look in the mirror and ask what kind of colleague you are. I gladly helped you a number of times when you had IP questions. What have you ever done for me or anyone except spill your racist diatribe?

What have you ever done for me or anyone except smm your racist drabno :

If you ask anyone objectively.SMU would be better off with folks like me, than unqualified, alienating people like you, Lack.

Shubha Ghosh, Ph.D., J.D.

Professor of Law

SMU Dedman School of Law

(214)768-2598

<http://faculty.smu.edu/sghosh/>

From: Bloom, Lackland
Sent: Sun 3/18/2007 7:37 PM
To: Ghosh, Shubha; lawfaculty@list.smu.edu
Subject: RE: Empty Response

Shuba You are every bit as rotten of a colleague as the references at every place you have taught said you are. If you have so much contempt for this institution please leave. As far as I can tell in the short space that you have been here you have alienated virtually everyone. You have no friends or supporters on this faculty. You are totally isolated. Its time for you to move on.

Lackland Bloom

From: Ghosh, Shubha
Sent: Sunday, March 18, 2007 6:44 PM
To: Daly, Gail
Subject:

Gail:

Could I get a list of the names of the 25 or 30 high power lawyers and judges that the LawDragon web site was referring to? I am a bit skeptical that we should advertise this. It strikes as somewhat embarrassing that the Dedman School of Law needs to troll the Internet for validation. But perhaps that is easier than faculty actually doing recognized and serious legal scholarship or teaching solid classes. In any case I would be curious who these allegedly respected legal professionals are. I continue to be amazed by how mediocre SMU is and how embarrassing the faculty here are, especially those like Lackland Bloom who attempt to be gatekeepers ranting about minority faculty. I have looked at the records of him and others, and it is not hard to see why SMU has the reputation it has.

I imagine there will be the usual empty comments in repect to this message. Enough is enough at SMU. The mediocrity has to stop.

Shubha Ghosh, Ph.D., J.D.

Professor of Law

SMU Dedman School of Law

(214)768-2598

<http://faculty.smu.edu/sghosh/>

Exhibit D

February 20, 2008

Dear Professor Hill-Moore:

I would like to bring to the attention of the Faculty Senate a matter that should be of deep concern to the SMU community. Before describing the details, let me present the two reasons why the University should be concerned about this matter. First, the incident illustrates a serious problem of faculty and decanal governance as well as of harassment and intimidation at the Law School. Second, the incident indicates a potential misuse and abuse of the University's Code of Ethics by the current Provost. Both together indicate from the perspective of academic freedom and open and honest discussion that there are serious problems of governance at SMU, at least when judged by the standards for solid research and teaching universities.

In early November, 2007, the faculty at the law school was considering a candidate for an appointment to a position at the law school. During the review of the candidate a number of comments were made that made me doubt the sincerity of the faculty in taking the candidate seriously and with respect. The comments included statements to the effect that the candidate was not as strong or as qualified as recent hires and that the candidate currently taught at a school that no one had heard of. The faculty, nonetheless, voted to make an offer to this candidate unanimously. I was concerned about the faculty's seriousness about this candidate, especially given the history of the school with respect to retaining and supporting faculty. The concerns were exacerbated by the fact that the candidate is an African-American male. A few days after the faculty vote I sent the candidate the attached email (I have redacted his name).

A few days after sending the message, I received a phone call from the candidate stating that he hoped that he had not gotten me in trouble. When I asked why he thought I might be in trouble, he stated that he had received phone calls from the Provost at SMU and the Dean of the Law School in response to my email message. I told the candidate that I did not feel as I was in trouble since I was honestly trying to let him know about issues at the law school while indicating my enthusiasm for him. He indicated that at first he did not know what to make of the message, but understood that I was trying to help him. We spoke for a bit and then ended our conversation.

Later the same day, I received an email message from the Provost's office indicating that he would like to meet with me and the Dean of the Law School. This initial message did not inform me what the meeting was about, and so I replied asking what the agenda of the meeting would be. I received a reply, a day or two later, stating that it had to do with communications with appointment candidates at the University. We agreed to have a meeting on November 14,

and I received permission to have my colleague Alan Bromberg accompany me. I also requested that I meet with the Provost individually without the presence of the Dean of the Law School.

A few days after the email message from the Provost, the Dean of the Law School sent a memo to all faculty members announcing that there would be a Special Faculty Meeting on November 12 to deal with an appointments matter. No other agenda was given for the meeting. A number of faculty were curious about the nature of the meeting, especially since no specific agenda was given. I told my colleagues that it probably had to do with the correspondence with the faculty candidate. About a little less than half the faculty were present at the November 12 meeting. Present at the meeting were members of the Faculty Appointments Committee: Xuan-Thao Nguyen, Lackland Bloom, Jeff Gaba, Julie Forrester, Ndiva Kofele-Kale, Roy Anderson (ex officio as Senior Associate Dean), and John Attanasio (Dean of the Law School). The meeting was started by the Dean handing out a hard copy of my email message to each member of the faculty present at the meeting. The faculty was asked to read the message to themselves. After each faculty member had been given sufficient time to read the message, Xuan-Thao Nguyen stated that she had spoken with the candidate a few days earlier to congratulate him on his offer. During this conversation, the candidate had mentioned that he had received a message from me and was not sure what to make of it. Nguyen requested that the message be forwarded to her, and after she had received it, she sent it to the Dean. After Nguyen spoke, Lackland Bloom read a resolution which he stated came from the Appointments Committee that had met privately a few days earlier seeking to censure me for the email message that I sent and asking the faculty members to vote to approve the resolution. After Bloom spoke, I explained why I felt compelled to send the message, given the history of how African-American faculty members had been treated at the law school, continuing issues of promotion and tenure within the law school, and the nature of the comments I heard during consideration of the candidate. After I spoke, Ndiva Kofele-Kale stated that there were no issues of race at the law school and that I liked to use race as an excuse for my own troubles. I responded that I was not aware that I had troubles that needed excuses. The meeting continued in this vein for another hour with comments of a similar nature going back and forth. At one point, Jenia Turner stated that if someone at a law firm sent such a message, he would be fired. Nguyen expressed outrage at my comments and demanded leadership from the dean and the faculty to do something about my action. In response, the dean shouted that in his many years in legal education he had never seen anything as outrageous as my email comments. He slammed the table causing a glass of water to spill its contents onto me and Roark Reed who was sitting next to me. In response to the Appointments Committee's demand that the faculty pass the resolution to censure, a number of faculty members responded that they were not sure whether such a resolution to censure was permissible under the faculty bylaws and that there was a concern with notice. The faculty agreed to address the issue of the resolution again at the next faculty meeting scheduled for November 27.

The next chapter involved the meeting with the Provost on November 14. The meeting was scheduled in the afternoon and had requested to meet with the Provost one on one in the morning without the presence of the Dean of the Law School. At the morning meeting, I told Provost Ludden about the November 12 meeting. He seemed to be surprised to hear that such a meeting occurred. I then mentioned that I was concerned about the state of affairs at the law school and that I felt obligated to make the comments I did to the candidate out of a sense of

academic integrity and full disclosure about the situation as I saw it. I spoke for five minutes. At the end of my comments, Provost Ludden simply stared at me blankly. Since he seemed to be nonresponsive, I said that I had nothing more to say and the meeting was over.

The next meeting with the Provost was on the afternoon of November 14 with Dean Attanasio and Alan Bromberg present. The Provost began the meeting by saying that he had reviewed my email and that he found its content to be in violation of the provision of the Code of Ethics dealing with intimidating and offensive conduct. He said that the content of the private confidential email hurt the feelings of many people at the Law School. He said that I needed to repair the damage through a sincere apology. After the meeting, I drafted an apology that was delivered to the faculty at the November 27 faculty meeting. At the meeting, Nguyen and Bloom moved to table the resolution for censure. At the end of the meeting, several faculty members spoke in approval of the apology. I would like to point out that Associate Dean Steinberg also spoke indicating that as a member of the Appointments Committee, he had not been involved in the drafting of the resolution to censure me, suggesting that the resolution to censure itself was not in truth the product of the Appointments Committee. The text of the apology and subsequent correspondences with Ludden are attached. The final chapter of this episode is the candidate to whom the email was sent accepted the offer to join the SMU faculty starting Fall of 2008.

I want to bring to the attention of the Faculty Senate the following items of concern:

- My email correspondence with the candidate was confidential. It was made public by the Dean and the Faculty Appointments Committee and done so in a way that caused embarrassment and harm to many members of the faculty.
- The email correspondence was a privileged communication designed to let a prospective member of the SMU faculty know of genuine issues and concerns at the law school and University. The communication was no different than the types of communications made to me by members of the faculty when I was being recruited. Nguyen herself when she joined the faculty was concerned that members of the faculty had not told her about issues involving sexual harassment on the law school faculty.
- By breaching the confidentiality of the email correspondence, the Dean and the Faculty Appointments Committee were in violation of the provisions of the Faculty Code of Ethics regarding respect for privacy and confidentiality. By setting up a meeting without an agenda by which to publicize the email communication to the entire faculty, the Dean and the Faculty Appointments Committee harassed and intimidated me in violation of the Code and University standards. The matter could have been handled more professionally and appropriately.
- Since the communication was confidential and privileged, I believe that I did nothing unethical by contacting the candidate. In fact, the communication was consistent with my obligation as a faculty member to improve the conditions at the law school and the University. To sit silently by while problems continue to be ignored would in fact be inconsistent with my obligations to the University.
- Finally, by bringing this matter under the Code of Ethics, the Provost has seriously compromised academic freedom and the integrity of the University and its commitment to truth and discussion. The Provost's decision is in disregard of the discussion by the

Faculty Senate last Spring with regards to the issue of disloyalty as a basis for charges of unethical conduct.

I write this, knowing full well that nothing will come of my placing this matter in the record. But it should be in the record and subject to some scrutiny. It is an odd university that allows a dean and a faculty appointments committee to abuse its authority in a harassing way to silent a faculty member who speaks truthfully about matters of concern to university governance and standards. It is an even odder university that uses a disciplinary code to perpetuate such silencing. But as many know in the local and national community, SMU is a special place with special people. At least, the matter has been brought to the record, and I, and many others who have been apprised of this revealing incident, wait to see how the Faculty Senate deals with this troubling matter of academic freedom and university standards.

Sincerely,

A handwritten signature in black ink, appearing to read 'Shubha JH', written in a cursive style.

Shubha Ghosh
Professor of Law

i You forwarded this message on 2/3/2008 9:42 AM.

Ghosh, Shubha

From: Ghosh, Shubha
To: [REDACTED]
Cc:
Subject: Offer (confidential)
Attachments:

Sent: Sat 11/3/2007 6:21 AM

[REDACTED]

By this time, you may have been informed that the faculty at SMU has overwhelmingly voted to give you an offer. I hope you accept. You would be an exceptional addition to the faculty. You would bring much theory and genuine commitment to scholarship and teaching that the school is lacking, even in its more recent hires. Just to let you know, I joined the faculty permanently in 2005 and physically moved here in 2006. I was, prior to coming to SMU, a Professor of Law at the University at Buffalo, SUNY, where I taught for a total of six years, being promoted and tenured within the first three. (By the way, I understand you grew up in PG County. I grew up in PG County, my parents' house in Brentwood. I went to high school in DC at Saint Anselm's, just over the line.)

Although I am excited about your coming here, I would like to put this place in perspective for you. Dallas has evolved into a nice city with diversity in pockets. I cannot speak for the African-American population, but there are thriving areas for Mexicans and Asians, and the negatives of the white population seem to have become tempered, except perhaps at SMU. With this mind, I would recommend the following:

(1) Make sure everything you have from the dean is in writing. Truth is not his forte nor is professionalism. Basically, he manipulates to get what he wants and does nothing unless he somehow benefits. Keep in mind that his main goal is to maintain his position, rather than to benefit the law school or improve legal education. He is not a particularly established or respected scholar and is, essentially like many of my colleagues, particularly good at manipulating to obtain position, as opposed to doing it on merit.

I know there was some discussion about your coming in as associate and your time to promotion and tenure, get that in writing, not only your time to tenure, but also your time to promotion to full. I was a tenured full professor in Buffalo, an established and respected school, as of 2004 before I did my visit here in 04-05. So I came in as a full professor. Nguyen came in from Texas Wesleyan, an unestablished school, with not as much in terms of quality or quantity in terms of publication as you and much weaker teaching. She was promoted and tenured within two years of joining (in 2005). There is no reason that if you start in 2008 and continue your current pattern of scholarship and teaching that you should not be considered for tenure and full professorship by 2010. A person hired in 2004 is being considered for tenure now (three years later) with very little in terms of quantity and quality. People have commented on this person's thin record, but the case is being forced through, or so it seems now.

(2) There are one or two decent people at SMU Law School. The rest are fairly ignorant and unenlightened, long timers who have gotten by on very little. The new hires seem to be exhibiting the same pattern as the senior people: superficial interest in teaching and scholarship, cronyism, and coasting on the tenure track. But just to let you know, in case it was not obvious, you had people squirming in your seats during your talk. Their sole interest in employment discrimination law is to figure out how to avoid being sued. Social justice is outside the picture. That would explain the tenor of the questions during your talk, which to me displayed a level of cluelessness (particularly the comment about refugees from Laos, or "wherever" as the questioner put it). What the colleagues do not get is they have gotten by on extremely little and continue to do nothing, except mindless committee work for the dean and practice downtown. You may want to chat with folks who have been through here, such as Darren Hutchinson at American, Tim Green at Wake Forest, or Maurice Dyson at Thomas Jefferson. Maurice is the recent example of someone the school ran off, even though the official story is that he had some sort of personal issues (despite the fact that he received an unanimous vote for

tenure and was extremely productive during a time that his father passed away and his mother's health was declining). So be wary of what goes on here. On the bright side, there are decent people at SMU outside the law school.

You should come here. There are many positives for you, and more importantly your being here will make this a better place, much better than what my colleagues have been able to make out of it. But you should know the facts.

I would be glad to chat more if you like.

Shubha Ghosh, Ph.D., J.D.
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<http://www.ipsurveyghosh.com>



SMU

SOUTHERN METHODIST UNIVERSITY

Office of the Provost

November 20, 2007

Professor Shuba Ghosh
Dedman School of Law
Southern Methodist University
P.O. Box 0116

Dear Professor Ghosh:

This letter is in regard to your email of November 3, 2007, to a candidate for a position at Dedman School of Law at SMU. You and I met along with Dean Attanasio and Professor Alan Bromberg on November 14 to discuss this letter, and at that meeting I indicated to you that I felt your correspondence with the candidate was inappropriate and not consistent with SMU's policy of faculty ethics as stated in the Faculty Policy Manual. My concern is with the fact that you were explicitly negative about both the Dean and members of the Law School. I was particularly concerned about your disparaging comments regarding young members of the Law Faculty who were caused anxiety and hurt by your comments.

In that meeting you asked what you could do to rectify the situation, and I indicated that in your position I would correspond in writing with my colleagues to apologize.

You have provided me with a draft dated November 27, 2007, in which you live up to your promise to me to prepare that letter. It is my understanding that you intend to read that letter to your colleagues on November 27 at the meeting of the faculty of the Dedman School of Law, and that you will provide me with a signed copy of the letter.

In our meeting last week, I indicated that this letter would be placed along with your letter in your file. I also indicated that I would then consider this matter closed provided that there were no recurrences of this sort of behavior. If behavior such as this occurs again, it will be a very serious matter. At our November 14 meeting, I encouraged you to find aspects of the Law School that interested you and to find a way to contribute positively and productively towards this end.

As indicated, Dean Attanasio will receive a copy of this letter. I appreciate your willingness to meet and discuss this candidly and your willingness to reach out to your colleagues in a positive way.

Sincerely,

Paul W. Ludden
Provost and Vice President
for Academic Affairs

cc: File
Dean John Attanasio

PO Box 750221 Dallas TX 75275-0221
214-768-3219 Fax 214-768-1130



SMU | DEDMAN
SCHOOL OF LAW

November 27, 2007

Provost Paul Ludden
Southern Methodist University
Perkins Hall

Dear Provost Ludden:

I am writing to let you know that I read the attached letter of apology to the faculty today. As per your letter of November 20, 2007, my submission of the signed letter of apology brings this matter to a close. I understand from your letter that you believe statements that are negative or disparaging about other persons are in violation of faculty ethics as stated in the Faculty Policy Manual and that any such conduct is a very serious matter. As we discussed in our meeting of November 14, 2007, my apology is sincere and is meant to rectify any hurt feelings that were unintentionally caused, but is not an admission of any violation of ethics, policy, or law.

Your comments about finding something positive about the law school are also taken to heart. For the record, I have maintained a high level of productivity at the law school both as a scholar and a classroom teacher and have developed solid professional and working relationships with a number of colleagues. I will continue to contribute in these ways. I trust that this matter will in fact be closed and that my productivity and contributions to institution building through scholarship, teaching, and service will be fairly and accurately evaluated this year and in the future.

I request that this letter and the letter of apology be attached to your letter and included in the folder. In accord with the provision of the Code of Ethics, Policy Number 1.20, which expresses the University's commitment to maintaining confidentiality and to respecting the privacy of others, I consider our communications, including oral communications, all drafts of our correspondences, and any communications to and among the faculty concerning this matter to be confidential.

Thank you once again for your attention to this matter.

Sincerely,

Shubha Ghosh



SMU | DEDMAN
SCHOOL OF LAW

November 27, 2007

Dear Colleagues:

I am writing to express my sincere apologies for any hurt I may have caused in my email communication with the job candidate. I never intended to cause embarrassment or pain but I understand that certain of the statements made were hurtful and might have unintentionally caused distress among members of the faculty. I share the sincere hope of our community that we move forward to treat all its members and all potential members with respect and consideration. Let me emphasize that I will work hard to further the law school's commitment to recruitment and support all the hard work of the faculty in further building the strengths of the law school.

I understand the Provost and Dean will consider this unfortunate, but unintended, matter to be at a complete close and that it will be treated with confidence.

Sincerely,

A handwritten signature in cursive script that reads "Shubha Ghosh".

Shubha Ghosh

SOUTHERN METHODIST UNIVERSITY

POLICIES AND PROCEDURES

GENERAL

EFFECTIVE DATE: September 9, 2005

POLICY NUMBER: 1.20

CODE OF ETHICS

Southern Methodist University creates and shares knowledge and prepares citizens for a global society. The University is entrusted with the freedom and opportunity to fulfill these purposes by a public that values our creativity and needs our leadership. Our vision of the future draws on the legacy of those whose learning, faith, and moral commitments shaped the institution we now share. Whatever our individual roles at SMU, we owe it to the public, to our common heritage, and to one another to uphold certain basic values. These include:

Pursuit of truth. We seek knowledge and understanding through open, energetic inquiry and creative freedom. We support one another with hard questions and sincere encouragement. Because we seek truth, we encourage free expression of ideas, accept challenges to our assumptions, and treat those whom we question as colleagues sharing a common purpose.

Integrity in work. In teaching and learning, research, administration, and all aspects of university life, we strive for the highest standards of excellence. We represent what we have done honestly, and we acknowledge the ideas, effort, and resources that others have contributed to our achievements.

Respect for persons. We honor the dedication of faculty, staff, and students to their work at SMU. We evaluate them and their work fairly. We seek diversity, which enhances our search for truth and enriches our experiences in learning, work, and life together. We extend hospitality to visitors, guests, and participants in programs at SMU. We maintain confidentiality and respect the privacy of others. We do not tolerate any form of discrimination, harassment, or intimidation, and we reject behavior that is degrading to ourselves or those around us.

Responsible use of resources. We direct funds and services to their intended purposes. We do not make personal use of University assets, nor do we permit misappropriation of those assets to go unchallenged. We use resources efficiently, conserving financial assets, physical resources, and the built and natural environment for future generations.

Accountability. We take personal responsibility for respecting these values. We keep accurate and complete reports of the work we have done and the funds we have handled. We disclose potential conflicts of interest and reject inappropriate influences on our choices. We endeavor to make decisions that meet public and professional standards of honesty, competence, and fairness.

To implement the principles in this Code of Ethics. SMU has developed policies, disciplinary procedures, and sanctions related to academic honesty, non-discrimination, use of University funds and resources, faculty, staff, and student conduct, and other aspects of our life and work together. Upholding the basic values we share includes knowing and following the applicable policies and incorporating the spirit of these values, as well as the requirements of law and policy, into all of our decisions and actions as members of the University community.



SMU

M E A D O W S S C H O O L . O F T H E A R T S

Professor Shubha Ghosh, Professor
Dedman School of Law
Southern Methodist University
Dallas, Texas 75275

March 3, 2008

Dear Professor Ghosh:

Thank you for your letter of February 20, 2008 outlining concerns regarding decanal governance, harassment and intimidation and the potential for abuse of the University Code of Ethics in the law school. The Committee on Ethics and Tenure (with the exception of Mary Spector who excused herself from discussion and deliberations because of her affiliation with the law school) has thoroughly reviewed the materials you submitted and respectfully submits the following recommendations for your consideration.

We believe it is commendable to offer sound and positive advice with respect to contract negotiations to an incoming colleague as you indicate in section 1 ("Make sure everything you have from the Dean is in writing") of your email message. However, as you so aptly highlighted in your communications to the committee, University Policy Number 1.20 states "We do not tolerate any form of discrimination, harassment or intimidation, and we reject behavior that is degrading to ourselves or those around us." The committee believes subsequent statements made throughout the document are ethically inappropriate and a degrading attack on your Dean and your law school colleagues. The fact that you chose to write disparaging comments about your Dean and colleagues is disconcerting and highly unfortunate.

It is the position of the committee that the manner in which the law school administration publicized your documents to the entire law school faculty and presented you for public censure was intimidating and degrading and appears to be in violation of University Policy 1.20.

It is our recommendation and our sincere hope that future issues of concern in the law school will be addressed in a more discreet and respectful manner by all parties involved.

Yours sincerely,

Barbara Hill Moore, Chair

The Senate Committee on Ethics and Tenure

Professors Christine Buchanan, Evelyn Parker, Marion Sobol, Glenn Linden, Ken Springer and David Willis

Copy: Provost Paul Ludden

Division of Music

Southern Methodist University PO Box 750356 Dallas TX 75275-0356

214-768-1951 Fax 214-768-4669

March 5, 2008

Dear Professor Hill-Moore:

Thank you for your letter of March 3, 2008. I appreciate the time and effort that you and the Senate Committee on Ethics and Tenure have taken to review this matter. Your position that the actions of the law school administration was in violation of University Policy 1.20 is well taken. For the record, I want to make it clear that the university employees who participated and instigated these unethical actions were John Attanasio (as dean), Roy Anderson (as Senior Associate Dean and member of the Appointments Committee), Marc Steinberg (as Senior Associate Dean and member of the Appointments Committee), Lackland Bloom (as member of the Appointments Committee), Xuan-Thao Nguyen (as member of the Appointments Committee), Jeffrey Gaba (as member of the Appointments Committee), Ndiva Kofele-Kale (as member of the Appointments Committee), Julie Forrester (as member of the Appointments Committee), Jenia Tuner (as active participant of the meeting), and Paul Rogers (as active participant of the meeting). I understand that you have sent the committee's letter to Provost Ludden. I assume that, so informed, he will take appropriate steps to remedy actions that are in violation of University policy. Failure to remedy and apply the Code of Ethics in an equitable and just manner would in turn be a serious violation indeed and call into question the sincerity of enforcing the Code.

I also appreciate your conclusion that my statements were in violation of the Code of Ethics. I have made my sincere apologies for hurt feelings that arose from the law school administration's disclosure of this statement. I, however, do not feel I did anything unethical. The Committee's conclusions seem to stem from deference to the Provost's conclusion and perhaps from a fear in challenging his judgment. But I should point out that this conclusion has turned the Code of Ethics into a speech code, similar to ones that have been found to be in violation of the First Amendment of the U.S. Constitution when adopted by public universities. See, e.g., *Roberts v. Haragan*, 346 F. Supp. 2nd 856 (N.D. Tex. 2004)(challenge to speech code adopted by Texas Tech University). Such speech codes are also questionable when adopted by private universities. For example, the State of California has adopted legislation prohibiting speech codes adopted by private universities. I have not completed my research, but my sense is that speech codes adopted by private universities would also be suspect in the State of Texas.

Whatever the legal status of a speech code under state or federal law, the adoption of a speech code by a private university would conflict with the Guidelines of the AAUP. I attach the AAUP statement "On Freedom of Expression and Campus Speech Codes," adopted in 1994. The AAUP states unequivocally that "rules that ban or punish speech based upon its content cannot be justified." The conclusion that my private email correspondence, made public by the individuals mentioned above, violates the Code of Ethics is a punishment of speech based upon its content. While the AAUP does permit measures that penalize conduct or behavior, "such as rules against defacing

property, physical intimidation or harassment, or disruption of campus activities,” a single, private email correspondent that reports honestly on one’s beliefs about the state of the university or law school does not rise to any of these activities. Furthermore, the AAUP guidelines are concerned primarily with homophobic, racist, and sexist speech. My correspondence cannot seriously be described as any one of these offensive categories. It was a statement about academic dishonesty and hypocrisy at SMU. It was aimed at the kind of degrading comments made about the background of the candidate during the hiring process. Perhaps these, as well as many other similar comments, should be investigated as well if the University takes this new speech code seriously, unless of course the enforcement of this new speech code is meant to silence only one person who is willing to voice honest criticism of the law school and its current culture.

In conclusion, the facts of last Fall make two things clear. First, I did nothing wrong unless the University wants to adopt an outmoded, unfashionable speech code of questionable legality and policy as part of its Code of Ethics. Second, the “law school administration,” specifically the individuals listed above, have done something wrong in abusing their positions to harass and intimidate one of its members for an honest statement of opinion. Please keep in mind the following from the AAUP Guidelines on freedom of expression:

Members of the faculty, too, have a major role: their voices may be critical in condemning intolerance, and their actions may set examples understanding, making clear to their students that civility and tolerance are hallmarks of educated men and women.

Now ask which is worse: sending a confidential message to a potential candidate that states an honest opinion or a law school administration or faculty using its position of authority to bully and harass one of its members?

Once again I respect and appreciate your work, but the adoption of a speech code is the offense here, compounding the abuse of power and position that has already been evinced by the “law school administration.”

Sincerely,



Shubha Ghosh
Professor of Law

CC: Provost Paul Ludden

The statement that follows was approved by the Association's Committee A on Academic Freedom and Tenure in June 1992 and adopted by the Association's Council in November 1994.

Freedom of thought and expression is essential to any institution of higher learning. Universities and colleges exist not only to transmit knowledge. Equally, they interpret, explore, and expand that knowledge by testing the old and proposing the new. This mission guides learning outside the classroom quite as much as in class, and often inspires vigorous debate on those social, economic, and political issues that arouse the strongest passions. In the process, views will be expressed that may seem to many wrong, distasteful, or offensive. Such is the nature of freedom to sift and winnow ideas.

On a campus that is free and open, no idea can be banned or forbidden. No viewpoint or message may be deemed so hateful or disturbing that it may not be expressed.

Universities and colleges are also communities, often of a residential character. Most campuses have recently sought to become more diverse, and more reflective of the larger community, by attracting students, faculty, and staff from groups that were historically excluded or underrepresented. Such gains as they have made are recent, modest, and tenuous. The campus climate can profoundly affect an institution's continued diversity. Hostility or intolerance to persons who differ from the majority (especially if seemingly condoned by the institution) may undermine the confidence of new members of the community. Civility is always fragile and can easily be destroyed.

In response to verbal assaults and use of hateful language, some campuses have felt it necessary to forbid the expression of racist, sexist, homophobic, or ethnically demeaning speech, along with conduct or behavior that harasses. Several reasons are offered in support of banning such expression. Individuals and groups that have been victims of such expression feel an understandable outrage. They claim that the academic progress of minority and majority alike may suffer if fears, tensions, and conflicts spawned by slurs and insults create an environment inimical to learning.

These arguments, grounded in the need to foster an atmosphere respectful of and welcoming to all persons, strike a deeply responsive chord in the academy. But, while we can acknowledge both the weight of these concerns and the thoughtfulness of those persuaded of the need for regulation, rules that ban or punish speech based upon its content cannot be justified. An institution of higher learning fails to fulfill its mission if it asserts the power to proscribe ideas—and racial or ethnic slurs, sexist epithets, or homophobic insults almost always express ideas, however repugnant. Indeed, by proscribing any ideas, a university sets an example that profoundly disservices its academic mission.

Some may seek to defend a distinction between the regulation of the content of speech and the regulation of the manner (or style) of speech. We find this distinction untenable in practice because offensive style or opprobrious phrases may in fact have been chosen precisely for their expressive power. As the United States Supreme Court has said in the course of rejecting criminal sanctions for offensive words:

[W]ords are often chosen as much for their emotive as their cognitive force. We cannot sanction the view that the Constitution, while solicitous of the cognitive content of individual speech, has little or no regard for that emotive function which, practically speaking, may often be the more important element of the overall message sought to be communicated.

The line between substance and style is thus too uncertain to sustain the pressure that will inevitably be brought to bear upon disciplinary rules that attempt to regulate speech.

Proponents of speech codes sometimes reply that the value of emotive language of this type is of such a low order that, on balance, suppression is justified by the harm suffered by those who are directly affected, and by the general damage done to the learning environment. Yet a college or university sets a perilous course if it seeks to differentiate between high-value and low-value speech, or to choose which groups are to be protected by curbing the speech of others. A speech code unavoidably implies an institutional competence to distinguish permissible expression of hateful thought from what is proscribed as thoughtless hate.

Institutions would also have to justify shielding some, but not other, targets of offensive language—proscribing uncomplimentary references to sexual but not to political preference, to religious but not to philosophical creed, or perhaps even to some but not to other religious affiliations. Starting down this path creates an even greater risk that groups not originally protected may later demand similar solicitude—demands the institution that began the process of banning some speech is ill equipped to resist.

Distinctions of this type are neither practicable nor principled; their very fragility underscores why institutions devoted to freedom of thought and expression ought not adopt an institutionalized coercion of silence.

Moreover, banning speech often avoids consideration of means more compatible with the mission of an academic institution by which to deal with incivility, intolerance, offensive speech, and harassing behavior:

1. Institutions should adopt and invoke a range of measures that penalize conduct and behavior, rather than speech—such as rules against defacing property, physical intimidation or harassment, or disruption of campus activities. All members of the campus community should be made aware of such rules, and administrators should be ready to use them in preference to speech-directed sanctions.
2. Colleges and universities should stress the means they use best—to educate—including the development of courses and other curricular and co-curricular experiences designed to increase student understanding and to deter offensive or intolerant speech or conduct. These institutions should, of course, be free (indeed encouraged) to condemn manifestations of intolerance and discrimination, whether physical or verbal.
3. The governing board and the administration have a special duty not only to set an outstanding example of tolerance, but also to challenge boldly and condemn immediately serious breaches of civility.
4. Members of the faculty, too, have a major role; their voices may be critical in condemning intolerance, and their actions may set examples for understanding, making clear to their students that civility and tolerance are hallmarks of educated men and women.
5. Student-personnel administrators have in some ways the most demanding role of all, for hate speech occurs most often in dormitories, locker rooms, cafeterias, and student centers. Persons who guide this part of campus life should set high standards of their own for tolerance and should make unmistakably clear the harm that uncivil or intolerant speech inflicts.

To some persons who support speech codes, measures like these—relying as they do on suasion rather than sanctions—may seem inadequate. But freedom of expression requires toleration of “ideas we hate,” as Justice Holmes put it. The underlying principle does not change because the demand is to silence a hateful speaker, or because it comes from within the academy. Free speech is not simply an aspect of the educational enterprise to be weighed against other desirable ends. It is the very precondition of the academic enterprise itself.

**DECLARATION OF
PROFESSOR CHERYL BUTLER**

1. I am the Plaintiff in *Butler v. Collins et al.*, 3:18-cv-00037-E.

Background

2. I was born and raised in the South Bronx. I come from a close-knit working-class family. My family did not have a lot of money growing up but we had a strong family values, faith and commitment to community. I was raised in a loving home with my two parents and three brothers. I am a first-generation college graduate.
3. From a young age, my family instilled in me a strong sense of integrity, faith and commitment to service to my community. My parents are not college graduates but they are hard-working people of faith. Like my grandfather, many of my uncles and cousin are ministers. My family built a church that is a pillar in the South Bronx, the Greater Holy Tabernacle Church. My family and church family instilled in me and my brothers the strong values of faith, integrity, high moral standards, hard work and community service.
4. My mother, who is one of several of the licensed ministers in my family, repeatedly told me that if I excelled in college and worked hard professionally, that would be enough to overcome all of the barriers this

world puts in front of Black women and other marginalized people. I dreamed of becoming a lawyer. But, I also wanted to be a teacher.

5. At age 14, I received a full scholarship to attend Phillips Academy in Andover, Massachusetts (“Andover”), one of the most academically rigorous college prep schools in the world. It was difficult to leave my family and my community at such a young age to board at a school hundreds of miles away. Notwithstanding my modest upbringing, I thrived at Andover alongside friends from the wealthiest and prominent families in our nation. I made lifelong friendships with people from diverse racial and socioeconomic backgrounds. At Andover, I worked extremely hard and did very well academically.

6. I spend my junior year of high school with the School Year Abroad Program (SYA) in Barcelona, Spain. The only other Black student to participate in the program that year with me was Edmund Perry, an honors student from rival prep school, Phillips Exeter Academy. Two weeks after our high school graduations, a New York police officer shot and killed Eddie. There were many a book and movie scripts written about the case stereotyped a highly accomplished young Black man on his way to Stanford University as a criminal and a threat. The loss was a turning point in my life and shaped my life work as an advocate for social justice and civil rights. My current scholarship and teaching on

racial justice issues is moved by this loss and similar life experiences of racial inequality.

7. At Harvard University, I further developed this commitment to racial justice issues and realized that I wanted to address these issues both as an advocate and as a scholar. I studied American History and African-American Studies, focusing on civil rights, with the leading scholars in my field. I wrote and defended a Thesis that is published in the Harvard University Archives. I received *magna cum laude* honors in my dual major. I After Harvard, I was selected to attend New York University as a Root Tilden Kern Scholar, the premier public interest law program in the nation, and as a Fellow, with the Center for International Legal Studies, a leading human rights law program. Several of my NYU law professors encouraged me to pursue a career as a law professor. NYU faculty members, including Professor Vicki Been, Boxer Family Professor of Law; William E. Nelson, the Judge Edward Weinfeld Professor of Law Emeritus, and the late Derrick Bell, preeminent civil rights lawyer and scholar, wrote my recommendations for a tenure track appointment at SMU Dedman School of Law. Professor Bell passed away a few weeks after I began my Appointment. My work as a law professor is a tribute to my own professors.

8. After several years in legal practice, I set my eyes on becoming a law professor. This was the best possible way, I thought, to harness my passion for equity and to pay it forward by teaching the next generation of lawyers about how powerful and reparative law can be.
9. Going into this career, I was well aware that minority candidates face an uphill battle getting tenure track placements, let alone obtaining tenure at American law schools. I realized that less than 5% of the lawyers in America are African-American and likewise, there are very few tenured African-American law professors in the United States. Nonetheless, I was hopeful that if I worked hard, embraced my colleagues and drew their attention to the barriers that have kept minority scholars at the margins of the legal profession for far too long, that my candidacy would ultimately be decided on the merits.

Probationary Period at SMU

10. I began my Appointment as a tenure track professor at the SMU Dedman School of Law in Fall 2011.
11. My first few years I thrived at SMU. I loved teaching, developed strong relationships with many of my colleagues, and also was thrilled to pitch in and help my students engage with the law in and outside the classroom.

12. I developed a reputation as a collegial colleague and sought-after professor, particularly in the Upper Level courses that I taught in my areas of expertise in Employment Law, Employment Discrimination and Civil Rights Law.
13. For my excellence in teaching, scholarship and service, I received Outstanding Faculty Leadership Award 2014 - Awarded by the SMU Women in Law Association for teaching, scholarship, advocacy & leadership on women's issues; Don Smart Directed Research Award (a teaching award for supervising Directed Research coursework) 2013-14 and the Beverly & David Leonard Faculty Research Award in 2011-2015.
14. There were, however, serious problems in the workplace at SMU. SMU's culture, especially around retention and tenure, is the product of decades of unchecked bias based on race and gender. I soon began to notice conspicuous differences in how I was being treated compared to other members of my cohort. Several other women of color on the faculty at the Dedman School of Law regularly complained to me about discrimination in hiring, tenure, and promotion.

Complaints at SMU

15. I filed numerous internal complaints at SMU in the 2015–16 and 2016–17 academic years. Some of these complaints I initiated on my

own. Other complaints were initiated by Professor Jessica Dixon Weaver, the only other black woman on tenure track during my Appointment and by former SMU Law Professor Xuan Tao Nguyen, who told me of discriminatory hiring practices she observed as a member of SMU Law's Appointments Committee.

16. I recall making direct requests and appeals to my colleagues and superiors pertaining to my concerns about discriminatory tenure standards, and tenure process, disability accommodations, as well my need to take FMLA leave.

17. I started to suffer from anxiety and depression because my colleagues would shame and threaten me for seeking FMLA leave or accommodations. Associate Dean of Faculty Beth Thornburg and others repeatedly warned me that my requests for FMLA leave and ADA accommodations based on my husband's serious health condition were not believable or acceptable. When I had to turn in my Spring 2015 grades 1-2 days late in order to care for my husband after a hospital stay for a life-threatening condition, Dean Thornburg repeatedly berated me telling me to "tell [my husband] Jarvis to not get sick next grading period." FMLA Chair Rhonda Adams told me that she and Dean Collins believed that I was "breaching my contract" to request FMLA intermittent leave, even for a day." Dean Collins told me that "I should

feel ashamed of myself’ for seeking a day off from teaching in order to seek treatment for an asthma attack.

18. As a Black woman and tenure candidate, I was very worried that if I made formal complaints about discrimination, that some of my colleagues and administrators would unfairly hold my observations and complaints against me in the tenure process. For that reason, I endeavored to try to negotiate resolutions directly with colleagues and administrators with the hope that taking that softer approach would be deemed more acceptable and thus not imperil my tenure bid.

19. Unfortunately, I quickly discovered that trying to directly speak with the members of my Second and Third Tenure Committees, the Dean, Interim Vice Provost Stanley, and other administrators at SMU about my concerns only made things worse. Several SMU administrators and faculty threatened or warned that my tenure bid would not be supported if I persisted with my claims of workplace discrimination. In Summer and Fall 2015, several of my colleagues on the law faculty warned me that, in response to my recent complaints of discrimination, several administrators, including Dean Jennifer Collins, Associate Dean Beth Thornburg and Associate Provost (and former Interim Dean) Julie Forrester were engaging in a scheme to sabotage and or deny my application for Tenure and Promotion.

20. On or about September 2015, I filed a formal complaint with SMU's Office of Institutional Equity. Particularly, at a meeting with Samantha Thomas and other administrators in that office, I reiterated my concerns, that SMU applied discriminatory tenure standards to me and other Black women; and that Associate Dean Beth Thornburg were rejecting my tenure bid because I had sought FMLA leave. In less than three days, Dean Collins allowed my tenure committee to "resign" and assigned a new tenure committee that would only evaluate my teaching for a few weeks – while I was visibly sick from severe asthma attacks and depression.

21. Several of my SMU colleagues, including professors Maureen Armour, Josh Tate, Jessica Dixon Weaver and Nathan Cortez told me that SMU was subjecting me to a highly unusual tenure process that was strikingly different from other candidates, particularly white candidates. For example, Professor Cortez confirmed that SMU systemically applied different tenure standards to different faculty candidates and reserved the right to do so. Professor Weaver, who is African-American, repeatedly told me that SMU applied more stringent tenure standards based on race and gender in her tenure case and mine.

22. I expressed my concern to several SMU administrators and faculty members that I did not receive a copy of the Tenure Report written by

Chair Roy Anderson's committee. Precisely because Professor Anderson's committee recommended that SMU deny my candidacy, I sought a copy of the report to appeal the grounds for the denial. Dean Collins repeatedly told me that SMU's policy was to refuse to provide copies of the report to tenure candidates. I did not see how I could appeal the grounds for the denial of tenure without knowing the grounds for the denial.

23. However, Professor Weaver told me that she, and other recent tenure candidates on the law faculty had received copies of their tenure committee reports during their tenure bids. Moreover, Professor Weaver put me in contact with other SMU professors who confirmed that the university had allowed them to review their tenure reports in order to appeal an adverse recommendation by the tenure committee. SMU ignored or rebuffed my repeated appeals to review my tenure report.

24. My colleagues also told me that the tenure report contained attacks on my character. However, Dean Collins and Office of Institutional Equity Chair Samantha Thomas told me otherwise – that the tenure report did not contain any attacks on my character or accusations of misconduct. However, when I reviewed the copy of the tenure report produced in discovery, I read therein that both Tenure

Chair Roy Anderson and Dean Collins in fact had attacked my character in their reports.

My Missing Tenure Box

25. As part of my application for tenure and promotion, I assembled a “Tenure Box” which included my Vitae (academic resume); my personal statement; recommendations from faculty colleagues and alumni; favorable Teaching evaluations from peers and students; and other materials supporting my bid. The box is placed on display for voting tenured faculty members to review and inspect as part of their consideration of the candidate.

26. Once I submitted these materials, I never saw them again. Professor Weaver told me that it is routine for faculty members to receive a copy of their “Tenure Box” and that she received a copy of her “tenure box.”

27. Professor Josh Tate told me that he found it unusual that parts of my application, including favorable peer reviews of my scholarship and teaching were removed from my Tenure Box during the inspection period and instead, placed separately in Dean Collins’ office or some other remote location.

28. During this time period immediately before and after the faculty vote on my tenure application, Professor Weaver repeatedly called me to

tell me that she was getting physically and emotionally ill from witnessing SMU's handling of my tenure process and that she was intimidated to complain to SMU President Turner. Professor Weaver told me that if she too spoke out to complain, she was afraid that SMU would not recommend her for promotion or for a position at another school. "It's like they lynched you," Professor Weaver said. "I see how they destroy people." Professor Armour likewise told me that, at the meeting in which the faculty deliberated on my tenure bid, "they attacked you for asserting your civil rights (paraphrasing).

Impact on Me and My Family

29. My family and I have suffered tremendously from the denial of my tenure bid at SMU and the ongoing legal battle for reinstatement to my teaching position. First, the emotional and psychological toll on me and my two children have been devastating. Admittedly, I was shocked and devastated not only by the tenure bid but by the dehumanizing treatment of me by Dean Collins and other SMU administrators. To date, I continue to suffer from depression and anxiety at work. It is hard to accept the reality that my credentials as an honors graduate of Harvard University and New York University School of Law mean less than my race and gender in the context of a tenure bid. Worst, these qualifications did not protect me from dehumanizing treatment.

30. As a result of observing the toll that the job loss and legal battle has taken on me, my children have suffered from anxiety and depression as well. This battle has had a profound effect on their development. They have anxiety about whether they can achieve success as Black people and whether they would lose all of their possessions and standing if they spoke out about injustice.

31. For years, we suffered financially and our children were affected. While my husband worked as a firefighter, I earned the higher income. When we lost my income, we foreclosed on our home because we could not pay the taxes. One child was in private school, and we removed him in part because we could not afford the expense. I filed bankruptcy. My husband and I have had to take hundreds of thousands of dollars out of our retirement accounts to pay bills, including those related to this lawsuit.

Impact on My Career

32. SMU has sabotaged my ability to obtain alternative employment. When I taught at TSU Thurgood School of Law, the faculty and staff warned me that SMU was providing a negative reference. SMU has repeatedly refused my request for a letter of reference even though former Provost Currall stated in writing (before the lawsuit) that he would assist me in obtaining alternative employment. In my profession,

it is extremely difficult for another school to offer tenure to a candidate who was denied tenure. Without reinstatement, my career most likely will not recover from this legal dispute.

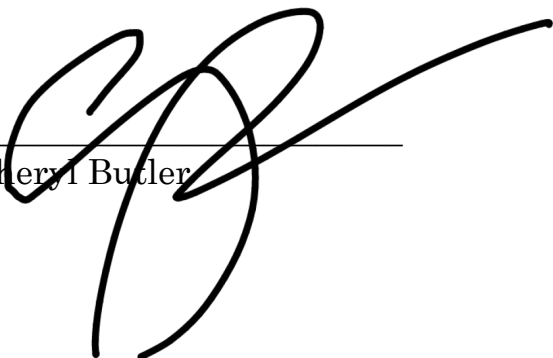
2016-17 Academic Year

33. I remained on at SMU in the 2016–17 term, but I was neither fully compensated nor permitted to exercise the duties of a regular law professor that year.

34. That year, SMU withheld financial support I needed to fund my research which I had been awarded in previous years including a \$20,000 research grant I had received in the five previous years. SMU also withheld bonuses that it typically awarded around Christmas time and other compensation.

I state under penalty of perjury that the foregoing is true and correct.

Executed on February 18, 2022, in Houston, Texas.



Cheryl Butler