

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

CHERYL BUTLER,	§	
	§	
Plaintiff,	§	
	§	
v.	§	
	§	
JENNIFER M. COLLINS, STEVEN CURRALL, JULIE PATTERSON FORRESTER, HAROLD STANLEY, AND SOUTHERN METHODIST UNIVERSITY,	§	CIVIL ACTION NO. 3:18-CV-37-E
	§	
Defendants.	§	

**APPENDIX IN SUPPORT OF
DEFENDANTS’ MOTION FOR SUMMARY JUDGMENT**

Pursuant to Federal Rule of Civil Procedure 56 and Local Rule 56.6, Defendants submit the following appendix in support of Defendants’ Motion for Summary Judgment:

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Dated: November 29, 2021

Respectfully submitted,

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CERTIFICATE OF SERVICE

Pursuant to the Federal Rules of Civil Procedure and the Local Rules of the Northern District of Texas, I hereby certify that this document filed November 29, 2021 through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF).

/s/ Mallory Biblo
Mallory Biblo

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

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2
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17 **ALSO PRESENT:**
 18 (Appearing via Videoconference)
 19 **Ms. Kelly Thurman, In-house Counsel Southern**
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20 **Ms. Cheryl Butler, Plaintiff**
 21
 22
 23
 24
 25

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 Southern Methodist University.
2 MR. DUNLAP: Are we ready?
3 THE REPORTER: Yes.
4 MS. ASKEW: Yes. And before we --
5 well, this can be on the record. I just want to
6 state that Professor Anderson, the witness today,
7 has had throat surgery, and so there may be times
8 he needs to leave the depo or he may have coughing,
9 or whatever, and we just need to accommodate that
10 as much as possible, Mr. Dunlap, and we're very
11 appreciative of that. Thank you.
12 EXAMINATION
13 BY MR. DUNLAP:
14 Q. Okay. Professor Anderson, my name is
15 Andrew Dunlap. Pleasure to meet you. I represent
16 Cheryl Butler in a lawsuit against Southern
17 Methodist University. Are you aware of that
18 lawsuit?
19 A. Yes, sir, I am.
20 Q. Okay. And do you know Cheryl Butler?
21 A. Yes.
22 Q. Okay. How do you know her?
23 A. As a colleague on the faculty of SMU
24 Dedman School of Law.
25 Q. Okay. When did you first meet her?

1 ROY ANDERSON,
2 having been first identified as said witness, duly
3 sworn, testified as follows:
4 THE REPORTER: Today's date is October
5 21, 2021. The time is 10:22. This is the Oral
6 Deposition of Roy Anderson and the witness is
7 located in Dallas, Texas.
8 My name is Karen Wilson, CSR No. 2328.
9 I administered the oath and am reporting the
10 deposition remotely by stenographic means from my
11 residence within the State of Texas. The witness
12 has represented to me under oath that he is Roy
13 Anderson.
14 I am taking this for the court
15 reporting firm Bradford Court Reporters. Their
16 business address is 7015 Mumford Street, Dallas,
17 Texas 75252.
18 Would counsel please state their
19 appearance and locations for the record.
20 MR. DUNLAP: Andrew Dunlap for the
21 plaintiff, Irving, Texas.
22 MS. ASKEW: Kim Askew and Mallory
23 Biblo. We are in Dallas, Texas. We represent the
24 defendants in this case, Jennifer Collins, Steven
25 Currall, Julie Forrester, Harold Stanley, and

1 A. I don't recall exactly. I'm sure it was
2 very shortly after she joined the faculty. I do
3 not recall meeting her during the hiring process.
4 I think I may have been on leave that year.
5 Q. Okay. Thank you. And when did you start
6 your career at SMU law?
7 A. The Fall of 1970.
8 Q. Okay. What courses did you teach there?
9 A. Back then or -- well, I started out
10 teaching insurance law, corporate law, we called
11 the course business enterprises, then contract law.
12 And then when I joined the full-time faculty I
13 continued with contract law. I taught the UCC
14 courses, Uniform Commercial Code -- Code, excuse
15 me, and remedies and damages.
16 Q. Okay. And at some point you became a
17 tenured professor; is that correct?
18 A. Yes, sir.
19 Q. Okay. And then at another point in your
20 career you became the chair of the tenure
21 committee; is that correct?
22 A. Of which tenure committee?
23 Q. You became the tenure chair.
24 A. Of -- are you talking about Ms. Butler's
25 committee.

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 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 because at that point in time the only thing left
2 to perform in that regard was for them to submit
3 their reports. And we thought that it would save
4 time and confusion, and also not reflect on Ms.
5 Butler if Professor Norton continued to remind the
6 evaluators about the reports and to have them sent
7 directly to him.

8 That particular aspect is the only big
9 thing I can think of that the committee I chaired
10 for Ms. Butler was different from the way we
11 conducted business on former committees.

12 It's open-ended, sir, but that's all I
13 can think of.

14 Q. Okay. Thank you.

15 So during the tenure review, were you
16 made aware of Ms. Butler's complaint of
17 discrimination against the university?

18 A. No. I thought about this some, and, once
19 again, we're talking about five years ago, but the
20 first time I can remember Ms. Butler using the word
21 discrimination or it being used in any way in the
22 context of her tenure and promotion was after a
23 formal meeting of her with our committee, we had
24 adjourned and she came back by my office. I was
25 leaving. And we had a brief conversation, and I

1 remember that conversation because it surprised me.

2 She said at that time right at the end
3 of the conversation, it was almost threatening, she
4 said don't you dare ask me to extend the
5 consideration of my tenure. I want to be
6 considered at the same time as David Taylor and
7 Keith Robinson, who were in what we call her class,
8 the three candidates that we were going to consider
9 next, because she said that to do that, not to
10 consider all at the same time, would be
11 discriminatory.

12 And I remember that so clearly
13 because, Mr. Dunlap, in this kind of context that's
14 a big word, and that's a -- so I recall that's the
15 first time I heard that word in connection with
16 this, and the first time Ms. Butler raised it, and
17 that's the first time that I became aware that this
18 was even in her mind, but I have no recollection of
19 her saying anything about discrimination and her
20 former committee, I don't have any memory of that
21 at all.

22 Q. Okay. Did anyone tell you to write in the
23 tenure report that the plaintiff should not get
24 tenure because she filed discrimination complaint?

25 A. No.

1 THE REPORTER: Because she filed
2 discrimination?

3 MR. DUNLAP: Complaint.

4 THE REPORTER: Complaint. And your
5 answer was no?

6 THE WITNESS: No.

7 Q. (BY MR. DUNLAP) Okay. Did you know at
8 that time whether or not the complaint had been
9 investigated?

10 A. What complaint? Discrimination?

11 Q. Yes.

12 A. At that point in time I had no idea that
13 Ms. Butler was alleging or had made a
14 discrimination complaint. My understanding was
15 about complaints that she had -- had to do with
16 health and disabilities -- those sorts of things.
17 I had no idea that she was making a complaint
18 against anyone for discrimination.

19 Q. Okay. Did you ever have a communication
20 with the Office of Institutional Equity?

21 A. Yes, sir. In connection with this
22 process, Ms. Butler, yes, sir, I did on one
23 occasion.

24 Q. And did they tell you that they had
25 investigated her allegations?

1 MS. ASKEW: Objection, vague.

2 Q. (BY MR. DUNLAP) If you know, what did --
3 what did they tell you?

4 A. They were -- was a woman named -- I
5 believe her name is Carolyn Hernandez. And she
6 was, as I recall, the head of the Office of
7 Institutional -- excuse me, Equity. I recall -- I
8 do not know her. She was new to SMU is my
9 recollection. We had not had the opportunity to
10 meet.

11 This was, I believe, in 2016, early in
12 the year. And I believe it was after the committee
13 had concluded its work and reported to the faculty
14 regarding the tenure and promotion process.

15 And at that point in time it was clear
16 that Ms. Butler was alleging discrimination.

17 Q. Now, I'm gonna refer you to the tenure
18 report. In the tenure report did you discuss
19 Professor Butler's medical history?

20 MS. ASKEW: I just want to clarify,
21 are you asking him to look at the tenure report or
22 just asking him in general?

23 MR. DUNLAP: If he can recall. I can
24 pull up the tenure report.

25 MS. ASKEW: No, that's okay. I just

1 wanted to be clear.
2 **THE WITNESS: Would you ask me the**
3 **question one more time?**
4 Q. (BY MR. DUNLAP) Did you mention Professor
5 Butler's medical history in the tenure report?
6 **A. I feel confident in saying, no, I didn't**
7 **because I don't know it.**
8 Q. Okay. Hold on a second here. Let's
9 just -- let me see if I can find -- okay. Just
10 give me a second here, and I need to figure out how
11 to share this. Okay. Are you able to see the
12 report on the screen?
13 **A. Yes, sir. Page 18.**
14 Q. Okay. So we're gonna go to paragraph D,
15 page 18.
16 **A. Right.**
17 Q. Okay. So you did mention her medical
18 history.
19 **MS. ASKEW: Objection,**
20 **mischaracterizes his prior testimony.**
21 **THE WITNESS: I don't see anything --**
22 Q. (BY MR. DUNLAP) You don't see it?
23 **A. No. I don't see anything that refers to**
24 **her medical history, as I understand the phrase.**
25 **(Simultaneous speaking.)**

1 **A. Oh, yes, if that's medical history -- I**
2 **apologize, yes. I previously told you that I**
3 **understood she was ill in -- maybe in '15.**
4 Q. I was asking was it in the tenure report.
5 So we've established that. Thank you.
6 **A. I'm sorry.**
7 **THE REPORTER: Are we marking this as**
8 **an exhibit?**
9 **MR. DUNLAP: Yes. I believe that**
10 **would be Exhibit 7.**
11 **MS. ASKEW: Professor Anderson, you**
12 **can take a break at any time.**
13 **MR. DUNLAP: Yes. If you need a**
14 **break, I don't want to put you on --**
15 **THE WITNESS: You are very kind. I**
16 **appreciate it very much. I will tell you -- I'm**
17 **fine.**
18 **MS. ASKEW: Thank you.**
19 **MR. DUNLAP: Okay.**
20 **THE WITNESS: My experience is it gets**
21 **worse as the day goes on but I'm --**
22 Q. (BY MR. DUNLAP) Well, we're just trying to
23 get -- we're not -- I try to do a deposition like
24 I've got a cab waiting, so I will try to get -- get
25 through it as fast as possible. This is not one of

1 my, you know, favorite things to do, you know.
2 It's got to be done, though.
3 **A. I understand.**
4 Q. Okay. So were you ever aware that members
5 of the faculty told Professor Butler that you put
6 retaliatory statements in the tenure report and
7 that they thought this violated her rights?
8 **A. I missed the last part, something about**
9 **retaliatory statements, other members of the**
10 **faculty what?**
11 Q. Okay. Were you ever aware that members of
12 the faculty told the plaintiff, Professor Butler,
13 that you put retaliatory statements in the tenure
14 report and that they thought this violated her
15 rights?
16 **A. No. I was not aware of that.**
17 Q. Okay. Did you ever talk to Associate Dean
18 Professor Spector about any complaints about the
19 tenure report?
20 **A. I don't -- I really don't understand the**
21 **question.**
22 Q. Okay.
23 **A. But I think my answer is no. I never**
24 **talked to anyone about complaints as to the report,**
25 **other than the further evaluation of my colleagues,**

1 **during the tenure and promotion meeting itself.**
2 Q. Okay. So did professor -- I mean Dean
3 Spector, was she a member of the committee?
4 **A. She was not a dean then, but, yes, she**
5 **was.**
6 Q. Okay. She was a member of the committee.
7 Did she agree with the findings of the committee?
8 **A. Yes. I believe she did agree with the**
9 **findings of the committee.**
10 Q. Isn't it true that she did not sign the
11 report?
12 **A. Yes, that is true.**
13 Q. Okay. And did she ever make any concerns
14 about the report to you?
15 **A. Not about the report itself, no, sir.**
16 Q. Okay. What kind of concerns did she make
17 to you?
18 **A. Well, the report was collaborative, so**
19 **there are multiple exchanges between the three of**
20 **us, including Professor Colangelo as we put**
21 **together the report.**
22 **And then as we went through various**
23 **drafts, which we exchanged, the three of us had**
24 **critiques, suggestions, amendments, revisions.**
25 **Ultimately we produced a report that**

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 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. 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 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 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 **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 **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 **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**

1 it.
2 **We did not -- I sure -- certainly did**
3 **not have any detailed discussion with the former**
4 **committee about their deliberations.**
5 Q. You did not have any discussions about
6 their prior deliberations?
7 **A. No, sir.**
8 Q. Wouldn't you think that would --
9 **A. Pardon me?**
10 Q. Wouldn't that have been helpful?
11 **A. I don't think so.**
12 Q. Why not?
13 **A. The committee -- we talked about this, the**
14 **three of us. We were very optimistic when we took**
15 **over for the former committee regarding Ms.**
16 **Butler's candidacy.**
17 **We knew things had to have been very**
18 **bad with her relationship with the former**
19 **committee, because all three of them resigned.**
20 **And we felt that in fairness to Cheryl**
21 **that we start with a clean slate, a level playing**
22 **field, and not be prejudiced in any way about what**
23 **may or may not have precipitated the former**
24 **conflict.**
25 Q. Okay. Now, are you aware that SMU is a

1 member of the American Association of University
2 Professors or of law professors?
3 **A. I don't know how the membership works. I**
4 **thought it was individual things, but I know that**
5 **members of our faculty are members of the AAUP, so**
6 **I think the answer to your question is yes. I**
7 **didn't know the university was actually a member.**
8 Q. Okay. And are you aware that they -- that
9 the -- SMU follows their guidelines for tenure and
10 promotion?
11 **A. No. I wasn't aware of that.**
12 Q. Okay. Are you aware that those guidelines
13 provide that where misconduct issues arise, the
14 best tenure evaluation process is that the best
15 practices is to make sure the professor has due
16 process right to be made aware of these accusations
17 and be afforded the due process right to rebut
18 them?
19 **A. Wasn't aware of that, but it sounds like a**
20 **good thing. I'd be surprised if the university's**
21 **procedures don't reflect that.**
22 Q. Okay. Were there any accusations of
23 misconduct that were made in the tenure report
24 against Professor Butler?
25 **A. In what tenure report? Ours?**

1 Q. Yes.
2 **A. I don't -- misconduct? That's a very**
3 **broad word.**
4 Q. Dishonesty, not telling the truth.
5 **A. Most definitely, yes.**
6 Q. Okay. And so were they ever investigated
7 or did you just take somebody's word that she was
8 not being truthful?
9 **A. No. They were based on personal**
10 **observations from members of the committee.**
11 Q. You said that based on personal
12 observations you took those allegations as fact?
13 **A. Yes, sir.**
14 Q. Okay. And let me see here. I believe
15 those allegations said that she was not being
16 truthful about her -- her husband's medical --
17 **MS. ASKEW: Can you show us where in**
18 **the report you're referring to if you're --**
19 **MR. DUNLAP: Yeah.**
20 **MS. ASKEW: -- referring to the**
21 **report?**
22 **MR. DUNLAP: I'll get to that. Hold**
23 **on a second here. Your screen share is paused.**
24 **Okay. Resume the share. Okay. One second. Let**
25 **me see if I can -- oops.**

1 **MS. BUTLER: Attorney Dunlap, can we**
2 **take a break?**
3 **MR. DUNLAP: Sure. What, five**
4 **minutes, 10 minutes? Okay. Let's -- let's take a**
5 **five-minute break.**
6 **(A break was taken from 12:22-1:10.)**
7 Q. (BY MR. DUNLAP) So, Professor, do you see
8 the screen? I've got the tenure report on the
9 screen. I'm looking at page -- it's gonna be page
10 20. We're going to start with page 19.
11 **A. Okay.**
12 Q. Okay. And I wanted to ask you some
13 questions about some of the comments you made in
14 the -- in that part of the paragraph. So I
15 actually want to start down here in paragraph --
16 let's see here. There's a sentence that says she
17 has made accusations against colleagues, including
18 our dean and our provost, that are demonstrably not
19 true.
20 **MS. ASKEW: Can you tell us what page**
21 **you're on?**
22 **MR. DUNLAP: That's going to be on**
23 **page 20.**
24 **MS. ASKEW: Okay. Thank you.**
25 **MR. DUNLAP: It will be in paragraph**

1 committee continually. And it just got to the
2 point where you just let it go by and not give it a
3 second thought.
4 Q. Okay.
5 A. I'm sorry to say that, but that is the
6 truth.
7 Q. Okay. Hold on just a second. So
8 you're -- I believe you said in here that, you
9 know, basically that she -- and you just testified
10 that these were statements that were untrue. Is it
11 possible that they could have just been inaccurate?
12 MS. ASKEW: Objection, vague.
13 Q. (BY MR. DUNLAP) She often -- let me just
14 read this and get your response, She often states
15 facts in contradiction to what she said earlier in
16 the same conversation.
17 MS. ASKEW: Can I ask where you are?
18 MR. DUNLAP: That is paragraph VI.
19 MS. ASKEW: Are you under Final Point
20 --
21 THE WITNESS: Well --
22 MS. ASKEW: Excuse me, I'm trying to.
23 MR. DUNLAP: Yes. A Final Point,
24 paragraph VI.
25 MS. ASKEW: Uh-huh.

1 THE WITNESS: She often states facts.
2 Q. (BY MR. DUNLAP) Okay. And do you have any
3 examples of those?
4 A. There were -- I mean, that happened so
5 often the answer to your question is no. I mean,
6 she did it all the time. She did it in committee
7 meetings, and we would just look at each other and,
8 like I said, sometimes we'd bring it up, I gave up
9 on that.
10 She would go into a long harangue and
11 at the beginning say this happened and five minutes
12 later she's still talking and she says the exact
13 opposite of what she said originally, and it
14 happened all the time, so.
15 Q. And you said that you called her out on
16 this point several times. What was her response?
17 THE REPORTER: I'm sorry. Would you
18 repeat that?
19 THE WITNESS: I said it varied. Is
20 that me?
21 MR. DUNLAP: Yes.
22 THE WITNESS: Her response varied.
23 Sometimes -- as the report says, sometimes she
24 would say, no, that's not what I said earlier or
25 that's not what I meant to say earlier. Other

1 times she would say I misunderstood what she said
2 earlier, other times she would wave at me and tell
3 me I wasn't listening to her. So I think that's my
4 answer.
5 Q. (BY MR. DUNLAP) Okay. So --
6 A. I would say this, sir, Cheryl Butler lied
7 incessantly to the committee, almost every time we
8 talked to her. It was uncanny. Even in situations
9 where in which I didn't think it was even relevant
10 or necessary. I found --
11 Q. How did you -- how did you verify --
12 MS. ASKEW: Please let him finish his
13 response.
14 MR. DUNLAP: I'm sorry. I'm sorry.
15 THE WITNESS: I was finished. It was
16 incessant. It was also incredible. I've never had
17 that experience before with another colleague.
18 Q. (BY MR. DUNLAP) Okay. So, again, I'm
19 still trying to get some particulars or some
20 specifics about what she was lying about. I mean,
21 if she lied that often certainly you can remember
22 one or two instances of her making an untruthful
23 statement. I just need one. I just need one --
24 A. No, I know what you're -- you're asking
25 me. Let me think about it.

1 Q. Okay.
2 A. I mean, a lot of it had to do with -- with
3 what we -- well, now I'm getting onto an item that
4 was kind of consistent.
5 She would say that we had agreed to
6 consider her medical situation when we had told her
7 just the opposite. She would say that Roy said
8 that the committee would assess her medical
9 situation.
10 She said the committee -- Roy had told
11 her that the report would say that her problems
12 with teaching were largely attributable to her
13 health situation when I had told her just the
14 opposite.
15 Mr. Dunlap, she would tell you -- or
16 tell me that I said things to her when I told her
17 the exact opposite. It wasn't even in a lot of
18 cases any big thing. It was just the exact
19 opposite of what I had said before. She would then
20 say I told her the exact opposite of that, so.
21 Q. Okay. Were you -- did you ever -- were
22 you ever interviewed by the Office of Institutional
23 Access and Equity --
24 A. Yes.
25 Q. -- regarding Professor Butler?

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1 **A. Yes.**
 2 Q. Okay. And what was their -- what was the
 3 nature of their inquiry? What were they asking you
 4 about?
 5 **A. The whole process is my recollection. It**
 6 **was an investigation of the whole process beginning**
 7 **with the committee's appointment in September and**
 8 **concluding in January.**
 9 Q. Okay. Where did you get the information
 10 about Professor Butler's medical history?
 11 **A. I don't know that I've ever had exactly**
 12 **information about the medical history. Comments**
 13 **about her medical history that I have -- or that I**
 14 **had came directly from Cheryl.**
 15 Q. Okay.
 16 **A. And I do know that she was granted an**
 17 **extension of leave or whatever by HR that I gather**
 18 **was medical related, but I have no evidence of her**
 19 **having medical problems. She has stated that she**
 20 **has asthma, and beyond that I have no idea.**
 21 Q. And did all the committee members sign the
 22 report, this tenure report?
 23 **A. Did all the committee members sign it?**
 24 Q. Yes. Did everybody concur with the
 25 report?

1 **A. Yes.**
 2 Q. And who are the members again?
 3 **A. Myself, Anthony Colangelo, and Mary**
 4 **Spector.**
 5 Q. Okay. And they all agreed with the
 6 findings and conclusions of the report?
 7 **A. Yes. And the only disagreement was**
 8 **Professor Spector. Professor Spector did not**
 9 **disagree with any of our conclusions. Professor**
 10 **Spector felt very strongly that it was improper to**
 11 **make -- and I'm putting words in your mouth, but I**
 12 **think that's what the report says as well, that it**
 13 **was unfair -- she believed that Professor Butler**
 14 **was very ill and it was unfair of us to vote on her**
 15 **tenure or promotion while she had such health**
 16 **problems.**
 17 Q. Okay. And she was the only one that felt
 18 that way?
 19 **A. She's the only one -- I will answer that**
 20 **question yes. Anthony and I discussed that with**
 21 **Mary at length. We felt, and I think the report**
 22 **strongly emphasizes that, her health situation**
 23 **beyond the purview of the committee we could**
 24 **only -- we were only qualified and asked to**
 25 **evaluate what we saw in terms of her teaching**

1 scholarship and service. We could not
 2 professionally assess her health situation. And we
 3 told Cheryl as a group several times exactly that
 4 and strongly urged her to get accommodations from
 5 the provost and HR.
 6 Q. Okay. So the basis -- the basis of the
 7 opinions of the committee about Professor Butler's
 8 veracity was -- was because -- was based on just
 9 opinion because I --
 10 **MS. ASKEW: Object.**
 11 Q. (BY MR. DUNLAP) -- not on any factual
 12 allegations that have been impeached? In other
 13 words, you just said that she just lied a lot. You
 14 didn't really --
 15 **MS. ASKEW: Objection, it**
 16 **mischaracterizes his prior testimony, which is**
 17 **clearly stated in the record.**
 18 **THE WITNESS: I'm not sure if I have a**
 19 **question to answer, Mr. Dunlap.**
 20 Q. (BY MR. DUNLAP) I didn't finish my
 21 question, but I'll withdraw it.
 22 **A. Okay.**
 23 Q. Give me one second. So with regard to
 24 your instructions, as the chair of this committee,
 25 is that -- that you were not to consider her

1 medical conditions as a factor in her -- in her
 2 evaluation, is that what you're saying?
 3 **A. Not understanding the question. I am**
 4 **saying that it was beyond our assignment and beyond**
 5 **our capability to assess her medical situation or**
 6 **to judge how her medical situation may or may not**
 7 **have impacted her work capability.**
 8 Q. So you didn't factor -- you didn't --
 9 there was no -- that was not a factor. You just
 10 made your determinations based on what you saw?
 11 **A. Yes, sir. And I would emphasize, I think**
 12 **we made the point in the report, may be wrong, but**
 13 **when we attended her classes, and all three of us,**
 14 **Mary included, agree with this, Cheryl was**
 15 **energetic, vibrant, active. We saw no indication**
 16 **of someone suffering physically in some way, but --**
 17 **and so I would say that we never saw, and I**
 18 **certainly didn't, any indication that she was**
 19 **actually ill other than coughing spells during**
 20 **telephone conversations.**
 21 **We didn't see a lot of the similar**
 22 **coughing and what have you during our meetings with**
 23 **her, so we saw nothing health-wise that we**
 24 **considered alarming.**
 25 **That said, I do understand, something**

1 the committee did not know, that Cheryl and Mary
2 Spector were having conversations regarding her
3 health, but I wasn't privy to those and Mary
4 Spector didn't share those with the committee.

5 Q. And no one from the university told you to
6 consider her health -- her ongoing health problems
7 or not consider her ongoing health problems?

8 A. No, sir. Neither way.

9 Q. Okay. We're gonna -- I need to confer
10 with my client -- client for about five minutes.

11 A. Sure.

12 MS. ASKEW: Certainly.

13 (A break was taken from 1:43-2:03.)

14 MR. DUNLAP: Okay. I'm back.

15 MS. ASKEW: We're ready to go when you
16 are.

17 MR. DUNLAP: Just need our witness.

18 MS. ASKEW: Well, he's there, wasn't
19 he? Yes, the witness is present.

20 MR. DUNLAP: I didn't see him on my
21 little -- oh, okay. Ah, okay.

22 Q. (BY MR. DUNLAP) All right. Professor, I
23 wanted to go back to ask you some questions about
24 your interview with the Office of Institutional
25 Equity. Did you-all discuss the tenure report in

1 conversation. It was nothing that I didn't expect
2 to hear, so, honestly, I don't recall the
3 particulars.

4 Q. Did she mention any names of people and
5 ask you about some of your -- the committee members
6 or the colleagues?

7 A. She asked mainly the process itself, what
8 we did. I recall no questions about particular
9 people.

10 Q. Or allegations made by Professor Butler or
11 did you --

12 A. Other than the fact -- no. Other than the
13 fact that she was alleging discrimination and,
14 therefore, she asked about the particulars of the
15 process. And she never said, and I never
16 understood, what Cheryl was arguing about our
17 process, that is what our committee did being
18 discriminatory.

19 So my conclusion, it was just entirely
20 mine, is that Cheryl was not arguing that our
21 committee, the three of us, had acted in any
22 discriminatory way towards her, that it was other
23 matters. And Hernandez didn't share any of that
24 with us or with me.

25 Q. Okay. All right.

1 that phone call or that meeting?

2 A. I don't recall. My assumption is that we
3 did.

4 Q. Okay. Do you recall whether she asked you
5 anything about the accusations against the provost
6 or the dean?

7 A. No, I don't. Can I tell you what I do
8 recall?

9 Q. Okay.

10 A. I know we had the meeting. I know it was
11 supposed to have been an investigation into a
12 process. I know the meeting was in Carolyn
13 Hernandez's office, who was the head of
14 institutional equity. I remember all that clearly,
15 because I was interested in meeting with her. She
16 was new to the school and I did not know her.

17 I recall leaving that meeting thinking
18 that she was excellent -- she did an excellent job
19 and she just asked a lot of particular questions
20 about our process and what we did. I thought she
21 did a superb job in covering the matter.

22 I remember having a very positive
23 feeling that we had made a good hire in Ms.
24 Hernandez, but, honestly, I don't remember a
25 whole -- I don't remember the particulars of the

1 And so we're gonna talk about her
2 teaching again, a few more questions on that. I
3 believe you said that she did not put the time in,
4 the work in, to prepare for her torts class; is
5 that true?

6 A. That is true.

7 Q. Okay. How did you come to that
8 conclusion?

9 A. Very easily. It was obvious that she had
10 not prepared for class. She was unfamiliar with
11 the cases.

12 I recall the one class where they had
13 four or five cases. The first two cases she seemed
14 to have a general understanding of, although she
15 had facts a little bit backwards.

16 The remainder of the cases that were
17 assigned she was pausing to read the case,
18 sometimes she'd read the case out loud, like, to
19 herself. Other times she would sit there and read
20 her notes for three or four minutes and then start
21 talking about what she had just read from her
22 notes. It was obvious that she had not prepared
23 the material prior to coming to class.

24 Q. And so you're just basing that on what you
25 saw and not what you -- you didn't know how much

1 time. You just said based on the product what you
2 saw that you didn't believe that she was putting
3 enough time in preparation?
4 **A. Well, I've been teaching law for a half**
5 **century, and I do know quite a bit about teaching.**
6 **And I'm basing it on a lifetime of experience and**
7 **talking with students quite often who hadn't read**
8 **or prepared the case, except this time I was seeing**
9 **that same phenomenon with the teacher rather than**
10 **the student.**
11 Q. I understand.
12 **A. And students were correcting her on**
13 **misstatements she was making about the case itself.**
14 **It was extraordinary.**
15 Q. Okay. And you -- you observed, what, two
16 classes; is that correct?
17 **A. That's right.**
18 Q. Okay. And the same period -- same time
19 period, how far apart were these two classes?
20 **A. Probably two or three weeks.**
21 Q. Okay. And this was -- was this at a time
22 when she was taking intermittent family leave?
23 **A. I don't know.**
24 Q. Was this a time when she had already
25 disclosed her -- her health problems?

1 **A. To SMU, I don't know.**
2 Q. Okay. So you're just -- yours is just
3 straight observation, not knowing, you know, any of
4 the context as to why she was not prepared for
5 those two particular classes?
6 **A. That is correct.**
7 Q. Okay. So you were not taking into any
8 facts the outside lectures or service projects,
9 family issues that may have been present at that
10 time or her personal illness?
11 **THE REPORTER: Professor, you're**
12 **muted.**
13 **THE WITNESS: I'm sorry. The answer**
14 **to your question is: I did not take into account**
15 **any of those factors you listed in assessing her**
16 **teaching.**
17 Q. (BY MR. DUNLAP) Okay.
18 **A. I think that's important.**
19 Q. And you previously stated that, you know,
20 your responsibility was not -- you're not a doctor,
21 you couldn't make an assessment of -- of her
22 medical condition, that was not in your wheelhouse,
23 but then you said she didn't look -- she didn't
24 appear to be ill.
25 **A. That's right.**

1 Q. How do you reconcile that? You just made
2 an opinion.
3 **MS. ASKEW: Would you like -- he needs**
4 **to answer the first question and then you can ask**
5 **another one, but we don't need commentary. You can**
6 **answer the question, Professor Anderson.**
7 **THE WITNESS: Well, my answer is she**
8 **was vibrant, energetic, joking with the class,**
9 **telling personal stories and laughing. One was**
10 **about breast-feeding her baby during a black -- in**
11 **an elevator during a blackout in New York City,**
12 **which struck me as beyond the pale for class**
13 **discussion, but didn't -- did reflect happy,**
14 **energetic person comfortable with the class, and**
15 **that's why I put it down to, because, like I said,**
16 **she does have a very compelling, entertaining**
17 **classroom presence. So I saw nothing there to**
18 **indicate illness. But, as I say, and you point**
19 **out, I'm not a doctor, and she could have been very**
20 **ill and energetic I suppose, but I'm not a doctor.**
21 Q. (BY MR. DUNLAP) Okay. And you relied on
22 her colleagues that made comments about her
23 teaching as well; is that correct? I'm looking at
24 page 12 of the tenure report. And you gathered
25 this information from a colleague. How did that --

1 how did that take place?
2 **A. Colleagues -- the ones that appear in the**
3 **report are commentary from colleagues that**
4 **submitted written report usually by e-mail,**
5 **something --**
6 **MS. ASKEW: Excuse me, someone has --**
7 **needs to mute, because I'm hearing background.**
8 **THE WITNESS: Alexa, cancel. Somebody**
9 **said something that set her off. I'm sorry.**
10 **MS. ASKEW: Okay.**
11 **THE WITNESS: It's on my end. She's**
12 **shut off. Don't say --**
13 **(Simultaneous speaking.)**
14 **MS. ASKEW: -- anymore.**
15 **THE WITNESS: What appears in the**
16 **report are written comments mainly by e-mail from**
17 **colleagues that give us -- I would make an**
18 **important point, if you'll allow me, that the**
19 **comments were included in the report for faculty**
20 **consideration. They did not have a direct bearing**
21 **on my own personal conclusions regarding Cheryl's**
22 **teaching. And I was particular in the report to**
23 **put Roy says or Roy thinks before all the comments**
24 **that were solely my personal conclusions. I make**
25 **that distinction.**

1 MR. DUNLAP: Okay. I think that's all
2 I have. I pass the witness.
3 MS. ASKEW: Do we need to take a
4 break? I just have a few questions for Professor
5 Anderson.
6 MR. DUNLAP: Okay.
7 MS. ASKEW: Are you okay, Professor
8 Anderson, going forward?
9 THE WITNESS: Oh, yes.
10 MS. ASKEW: Okay.
11 EXAMINATION
12 BY MS. ASKEW:
13 Q. Just so I'm clear on the record, how long
14 did you teach law at SMU?
15 A. 51 years.
16 THE REPORTER: I'm sorry. Can we stop
17 the screen share?
18 MS. ASKEW: Yes. Please stop the
19 screen share. Yes. Thank you very much. That
20 does help.
21 And, Mr. Dunlap, just so you know, I
22 sent you a zip file of documents that I might refer
23 to, so you might want to go to that e-mail so you
24 can pull them up. And I also sent them to Mr.
25 Anderson so that he would have a hard copy, and I

1 will then send them to the court reporter, the ones
2 we -- if any, that we actually use in the
3 deposition. It actually came from my paralegal,
4 Sherry Faulkner, F-A-U-L-K-N-E-R. Thank you.
5 Q. (BY MS. ASKEW) Mr. -- Professor Anderson,
6 did you -- I think you testified that you served on
7 the tenure committee for Professor Jessica Weaver.
8 A. Yes, I did.
9 Q. When was she up for tenure at SMU?
10 A. My recollection is the previous year to
11 Cheryl, so I'm guessing the fall of 2014.
12 Q. Okay.
13 A. But it was reasonably recently.
14 Q. Okay. Is Jessica Weaver an
15 African-American female professor in the law
16 school?
17 A. Yes.
18 Q. Was Jessica Weaver awarded tenure when she
19 came up for tenure in the law school?
20 A. Yes.
21 Q. Did you vote in favor of awarding tenure
22 to Professor Weaver?
23 A. Yes.
24 Q. And was Professor Weaver considered for
25 tenure under the same policies and tenure rules as

1 Professor Butler, the plaintiff in this case?
2 A. Yes.
3 Q. Now, at the time Ms. Butler was considered
4 for tenure, were there other candidates for tenure
5 in her class?
6 A. Yes, two others, Keith Robinson and David
7 Taylor.
8 Q. Did they also have tenure committees?
9 A. Yes. I was on David's.
10 Q. Okay. Were they subjected to the same
11 policies and tenure rules as Ms. Butler in SMU
12 reaching the determination as to whether they would
13 be awarded tenure?
14 A. Yes, they were.
15 Q. Okay. Was David Taylor granted tenure?
16 A. Yes.
17 Q. Was Keith Robinson granted tenure?
18 A. Yes.
19 Q. Is Keith Robinson an African-American law
20 professor?
21 A. Yes.
22 Q. Did you vote in favor of granting tenure
23 to David Taylor?
24 A. Yes.
25 Q. Did you vote in favor of granting tenure

1 to Keith Robinson?
2 A. Yes.
3 Q. And did those tenure votes for Professors
4 Taylor and Robinson take place at the same time or
5 in the same meeting as the tenure vote for
6 Professor Butler?
7 A. Yes, they did.
8 Q. So they were all up for tenure at the same
9 time; is that correct?
10 A. Yes, ma'am.
11 Q. Okay. I want to go back very quickly to
12 an area that Mr. Dunlap raised with you, that is
13 the contract renewal of Ms. Butler. You indicated
14 that there was a written report related to that
15 contract renewal. Did I understand your testimony
16 correctly?
17 A. Yes, you did.
18 Q. Did you have access to that written report
19 in making determinations on the tenure committee
20 that you chaired related to Ms. Butler?
21 A. Yes.
22 Q. What conclusions did that contract tenure
23 report reach with respect to Ms. Butler's teaching,
24 if you recall?
25 A. Very positive with regard to service and

1 scholarship. Problems with the teaching. But the
2 committee was optimistic that the problems could be
3 corrected and that she would meet our standards
4 when she came up for tenure.

5 Q. As best as you can recall, would you
6 please tell the jury what some of the problems were
7 that were identified with Ms. Butler's teaching at
8 the time of contract renewal?

9 A. I recall the meeting, and my recollection
10 is that it had to do with how she was relating to
11 the class. And I remember I had attended a class
12 and I fought a little bit with the committee about
13 those conclusions.

14 There was -- I talked about perhaps
15 she was being too aggressive with students, and I
16 just made the point that sometimes that's part of a
17 lot of teachers attempting to communicate skills as
18 well as substance, but beyond that I don't remember
19 the particulars.

20 Excuse me just a moment, one second.

21 MS. ASKEW: Did you need to take a
22 break?

23 THE WITNESS: 10 seconds?

24 MS. ASKEW: Oh, yes. Absolutely.

25 THE WITNESS: I'm good. I'm fine.

1 needed a committee for purposes of tenure and
2 promotion.

3 Q. Okay. Did she make any negative comments
4 about Professor Butler --

5 A. No.

6 Q. -- as she is talking to you about
7 appointing a new tenure committee?

8 A. No, she did not.

9 MR. DUNLAP: Objection.

10 Q. (BY MS. ASKEW) Now, before you agreed to
11 serve on Ms. Butler's tenure committee -- and I
12 believe you may have testified to this earlier, you
13 indicated that the dean asked you to do this
14 sometime in the late -- well, in the fall, late
15 September of 2015; is that correct?

16 A. That's my recollection.

17 Q. Okay. Before you agreed to serve on Ms.
18 Butler's tenure committee, did you have a
19 conversation with Ms. Butler about your potential
20 service?

21 A. Well, yes.

22 Q. Why?

23 A. Well, I told the dean I would not feel --
24 or told her I recognized that whatever it was it
25 was an extraordinary situation and I would not be

1 Q. (BY MS. ASKEW) Okay. Thank you so much.
2 And you indicated that you chaired the tenure
3 committee for Professor Butler along with two other
4 professors. Who appointed you to Ms. Butler's
5 tenure committee?

6 A. Dean Collins.

7 Q. Is that the dean of the SMU Dedman School
8 of Law?

9 A. Yes.

10 Q. Is it consistent with the policy and
11 bylaws of the law school for the dean to appoint
12 the tenure committee?

13 A. Yes.

14 Q. When Dean Collins asked you to serve on
15 this committee, what, if anything, did she tell you
16 about why a new committee needed to be appointed?

17 A. She told me the former committee had
18 resigned.

19 Q. Did she make any other statements about
20 why the committee had resigned?

21 A. No, she didn't.

22 Q. Did she make any statements about Ms.
23 Butler in explaining why a new committee was
24 needed?

25 A. Not other than the fact that Ms. Butler

1 comfortable accepting the position before I talked
2 with Cheryl, so the dean told me Cheryl was
3 upstairs, and I said please let me go visit with
4 Cheryl and I will get back to you as soon as I can
5 and I went up and talked to Cheryl.

6 Q. So this was a personal meeting that you
7 had with Ms. Butler before you agreed to serve on
8 her committee?

9 A. Yes.

10 Q. Did she raise any objection to your
11 service on her tenure committee at any time prior
12 to your going on the committee?

13 A. No. I regarded us as very friendly
14 colleagues at that point in time. Ms. Askew, she
15 expressed delight that I would consider being on
16 her committee, and she thanked me profusely for
17 agreeing to do this for her.

18 At that point in time I did not
19 realize I was going to be the chair. In fact, I
20 particularly asked the dean not to make me chair.

21 Q. Now, if Ms. Butler had objected to your
22 service on her tenure committee, would you have
23 agreed to serve on the committee?

24 A. Absolutely not.

25 Q. Now, you served with two other colleagues.

1 In earlier testimony with Mr. Dunlap you talked
2 about what your tenure committee did, but would you
3 tell us just how many meetings Ms. Butler's tenure
4 committee had over the course of considering Ms.
5 Butler's tenure?

6 **A. Well, formal meetings we had two.**

7 Q. Is that with Ms. Butler?

8 **A. Well, that's the reason why I call them**
9 **formally.**

10 Q. Okay.

11 **A. We would meet formally for about half an**
12 **hour prior to inviting Ms. Butler to join us and**
13 **then we would -- we met for a much longer period of**
14 **time with Ms. Butler.**

15 Q. Now, the committee ultimately determined
16 that there were issues with Ms. Butler's teaching
17 as one of the standards that she had to meet to be
18 tenured at SMU. Did you talk to her about the
19 concerns that you had seen related to her tenure?

20 **A. Yes. That was the second formal meeting.**
21 **As I said, we met informally first, because it was**
22 **not going to be a happy meeting. All three of us**
23 **concluded there were some real problems here.**

24 **And I told the committee that I felt**
25 **bound to tell Cheryl that I could not support her**

1 **and service to the university were slam dunks for**
2 **meeting our tenure requirements. And that she --**
3 **her problem was with teaching and she needed to**
4 **spend her entire time gearing up and improving her**
5 **teaching. We repeated that to her, but told her**
6 **that based on the classes that the three of us had**
7 **seen, the comments that were coming in from**
8 **colleagues, that at least Roy Anderson could not**
9 **support her for tenure and urged her to get an**
10 **extension --**

11 **THE REPORTER: Urged her to get a?**

12 **THE WITNESS: Extension of time for**
13 **consideration.**

14 Q. (BY MS. ASKEW) But any extension was
15 beyond the purview of the committee; is that
16 correct?

17 **A. That's entirely with the provost.**

18 Q. But at the time she is up for tenure in
19 this meeting, it was your conclusion, or the
20 committee's conclusion, that she was not meeting
21 that teaching standard?

22 **A. That's correct.**

23 Q. Was she receptive to the concerns you were
24 raising regarding her teaching?

25 **A. I don't know what you mean. I mean, I**

1 **tenure on the basis of her teaching.**
2 **And then we also agreed that we were**
3 **going to slowly encourage her to get a tenure**
4 **extension because we believed she had the ability**
5 **to do the job.**

6 **After we met informally, I learned**
7 **that she was in Professor Ndiva Kofele-Kale's**
8 **office. Ndiva was a distinguished university**
9 **professor. At that time I think the only one from**
10 **the law school, very prestigious position, and**
11 **absolutely extraordinary man.**

12 Q. Did he sit in on the meeting in which you
13 discussed teaching with Ms. Butler?

14 **A. Yes. He was -- she called him her mentor,**
15 **I think rightfully so. I was delighted when I**
16 **found her in Ndiva's office. And I asked Ndiva if**
17 **he would like to join us in the meeting, and Cheryl**
18 **was overjoyed about that, and so Professor**
19 **Kofele-Kale attended that meeting as well.**

20 Q. Okay. What issues did you raise with
21 Professor Butler in that meeting regarding whether
22 her teacher -- teaching was meeting the standards
23 for tenure at SMU?

24 **A. We reiterated to her what we had told her**
25 **originally. That we thought that her scholarship**

1 **think she teared up. I don't blame her. I think**
2 **it was very emotional for all of us, very sad news.**
3 **That's the reason why I say I was so happy Ndiva**
4 **was there. He's like a grandfather. And he was**
5 **there to be with her afterwards, which we thought**
6 **was wonderful.**

7 Q. Now, had you -- you indicated there were
8 two meetings with Cheryl Butler. Did you also
9 discuss her failure to meet the SMU standards for
10 being awarded tenure based on teaching during her
11 first -- the first meeting that the committee had
12 with her?

13 **A. We had reached no conclusions regarding**
14 **her teaching during the first meeting.**

15 Q. Okay. But you had by the second one?

16 **A. Yes.**

17 Q. Okay. And ultimately the committee made
18 the recommendation that she not be awarded tenure,
19 because she did not meet the teaching standards at
20 SMU; is that correct?

21 **A. That's correct.**

22 Q. Now, did Ms. Butler cooperate with the --
23 her tenure committee in preparing for tenure
24 review?

25 **A. She was largely uncooperative.**

1 Q. How was she uncooperative?
2 A. Well, very early on, probably the first
3 meeting, we had by that point done our review. I
4 don't know if any of us had attended her classes at
5 that point, but we noted that one of the problems
6 with her teaching was with her examinations.
7 Students had complained that her exams were poorly
8 written, changed the names during the fact pattern,
9 accusations that she used the same exam multiple
10 times after she had previously passed out the
11 answers to the exam to the prior class.
12 I mention that because from the jump
13 we were asking Cheryl to please give us the prior
14 examinations, which were nowhere in the files that
15 we had. She promised to give us the examinations
16 immediately, because that's very, very, very
17 serious if you're using the same exam and having
18 distributed the answers. We hoped that was false.
19 She kept promising us to give them but
20 wouldn't do it. And she -- oh, yeah. I need to do
21 that. And finally I -- this is after the first
22 meeting, I just said, Cheryl, we have to have them.
23 Can we go to your office and get them now? I will
24 have them to you by the end of the day, didn't get
25 them. Back to Cheryl, she says there were computer

1 problems, that's one example. We never did get a
2 copy of those examinations.
3 Q. Okay.
4 A. Whether --
5 Q. Go -- please go ahead.
6 A. One of the most important things for
7 tenure is you put together, you being the
8 colleague, the candidate, you put together what we
9 call your tenure file or tenure box where you
10 put --
11 Q. Problems with her putting together her
12 tenure file or tenure --
13 A. Yes.
14 Q. -- box on a timely basis?
15 A. The candidate --
16 MR. DUNLAP: I'm gonna object to that.
17 Q. (BY MS. ASKEW) Well, you can answer the
18 question. I'll repeat it. Were there any problems
19 with her putting together her tenure box on a
20 timely basis?
21 A. Yes, --
22 Q. Would you tell --
23 A. -- continually.
24 Q. Would you please tell the jury the
25 problems that you had with Professor Butler

1 presenting her tenure box on a timely basis?
2 A. Okay. She -- there were things that she
3 ultimately -- or that are required to be in the box
4 that she didn't put in the box.
5 Q. What were those?
6 A. Well, the main ones were her
7 self-evaluation report, which I'm not sure she ever
8 wrote and that was a very important document.
9 And then we had the weirdest scenario
10 where there was an old résumé in the box, and she
11 was going to update her résumé, and she would never
12 do it.
13 And I even went to her assistant and
14 asked for a current copy of her résumé, because all
15 our assistants have our résumé on their computer as
16 does the dean's office, and I did that by e-mail,
17 and Cheryl fired an e-mail back saying do not
18 release my résumé to this committee and then went
19 down to get a copy of the old résumé, I had to
20 attach it to the committee report, and it had
21 disappeared.
22 And I then downloaded a copy of her
23 résumé that was on her website and that's what I
24 put on the committee report.
25 Q. So is what you're telling the jury that

1 Professor Butler never provided you with a résumé
2 to include in her tenure box?
3 A. Not include her current résumé for -- and
4 the answer to the question is, no, she never
5 provided it. It's very strange.
6 Q. So the résumé --
7 A. I'm sorry.
8 Q. The résumé that was included in the tenure
9 box was the one that you downloaded from the SMU
10 website?
11 A. That's right.
12 Q. Okay. Now, did her failure to provide
13 this information to include in her tenure box cause
14 a delay in the tenure vote for the three candidates
15 that were up for tenure in the fall of 2015?
16 MR. DUNLAP: Objection, leading.
17 Q. (BY MS. ASKEW) Was there a delay in the
18 tenure vote in the fall of 2018?
19 THE REPORTER: 2018? I'm sorry. You
20 said 2018.
21 MS. ASKEW: Oh, I'm sorry. Thank you
22 very much, Ms. Wilson, for correcting me.
23 Q. (BY MS. ASKEW) In December of 2015, was
24 the tenure vote on the three candidates delayed?
25 A. It was.

1 Q. Would you please tell us the reason for
2 the delay if you know it?
3 **A. I do not know the reason for the delay,**
4 **other than it was a delay requested by Professor**
5 **Butler.**
6 Q. Okay. And when Professor Butler requested
7 that delay, was the vote on all three candidates
8 changed to a new time?
9 **A. They were.**
10 Q. Okay. When was the original tenure vote
11 scheduled with respect to the three candidates in
12 December of 2015?
13 **A. I think it was early in the month like the**
14 **first week.**
15 Q. Okay. Early in December 2015?
16 **A. That's my recollection.**
17 Q. Okay. And when did -- when was the vote
18 changed to?
19 **A. Early January of 2016.**
20 Q. And were all three candidates then voted
21 on at the same time in January of 2016?
22 **A. Yes, they were.**
23 Q. Okay. Were you present at the meeting
24 when the faculty voted on those three candidates?
25 **A. Yes, I was.**

1 Q. Okay. I want to ask you about another
2 piece of the tenure review that your tenure
3 committee conducted with respect to Professor
4 Butler. You indicated that members of the
5 committee personally observed Ms. Butler's classes;
6 is that correct?
7 **A. That's correct.**
8 Q. Is that required by the policies and
9 bylaws of SMU?
10 **A. I don't think so explicitly, but I think**
11 **implicitly it would have to be.**
12 Q. Okay. And you indicated that you
13 personally observed her torts classes; is that
14 correct?
15 **A. That's correct.**
16 Q. Okay. Why did you choose torts over the
17 other classes that she was teaching that semester?
18 **A. Well, memory is not serving me here, but**
19 **there was only two -- she had been teaching one**
20 **other class, and my recollection it was a similar**
21 **class. That being said by the time we took over it**
22 **wasn't a matter of the professor presenting**
23 **material. The students were presenting papers or**
24 **drafts of their papers to the class. You learn**
25 **very little about teaching from a seminar.**

1 **Entirely different experience.**
2 Q. Thank you. Now, you outlined for Mr.
3 Dunlap the conclusions that you reached about Ms.
4 Butler's teaching. And I won't go through those
5 again. But were all of those conclusions you
6 talked about earlier based on your personal
7 observations of her teaching?
8 **A. Yes.**
9 Q. Okay. Based on what you observed in the
10 classes that you attended in which Ms. Butler was
11 teaching, did she demonstrate a mastery of the
12 subject matter of torts that she was teaching at
13 that time?
14 **A. No.**
15 **MR. DUNLAP: Objection, leading.**
16 Q. (BY MS. ASKEW) Did she -- based on your
17 personal knowledge, did Ms. Butler demonstrate a
18 mastery of torts?
19 **A. No.**
20 Q. Did Professor Anthony Colangelo, who is a
21 member of the tenure committee, did he also
22 personally observe Ms. Butler's classes?
23 **A. Yes.**
24 Q. Okay. Did Mary Spector, the other member
25 of the tenure committee, personally observe Ms.

1 Butler's classes?
2 **A. Yes.**
3 Q. Did you receive e-mails or documentation
4 containing comments from other members of the
5 faculty at the Dedman School of Law describing what
6 they observed about Ms. Butler's classes?
7 **A. Yes.**
8 Q. Were those included in the tenure report
9 that you prepared in connection with Ms. Butler?
10 **A. Yes.**
11 Q. Now, I'm going to ask you. I have sent
12 some documents to you, a pack of documents, and I
13 am going to ask you to look at what we have marked
14 as Anderson Exhibit No. 4. I'm taking these a
15 little out of order. It was Plaintiff's Exhibit
16 No. 7 on the share screen, but I have trouble
17 reading share screen, so I sent you a hard copy.
18 Okay. Do you have that?
19 And, of course, those were sent to Mr.
20 Dunlap who has copies of the exhibits that we will
21 be using. And in accordance with the instructions
22 from the court reporter, these exhibits will be
23 sent to the court reporter immediately after the
24 deposition.
25 This is the Confidential Tenure and

1 Promotion Report of Cheryl Nelson Butler. Is this
2 the tenure report that the tenure committee of
3 Cheryl Butler at SMU prepared containing your
4 recommendations on her tenure?
5 **A. It certainly appears to be, has the same**
6 **number of pages, same headings, so I think it is.**
7 Q. Okay. And does your -- at least
8 electronic signature appear on page 21 of Anderson
9 Exhibit 4?
10 **A. Yes.**
11 Q. Are you the author of this Tenure and
12 Promotion Report?
13 **A. One of them.**
14 Q. Okay. Who are the other two authors of
15 this report?
16 **A. Professors Colangelo and Spector.**
17 Q. And, in fact, there is a from column which
18 mentions Roy Anderson, Chair; Anthony and Mary. So
19 this is the actual report of all three members of
20 the tenure report -- of the tenure committee?
21 **A. That's correct.**
22 Q. Now, did all three members of the tenure
23 committee agree on the contents of this report,
24 what would be included?
25 **A. Yes.**

1 Q. Did all three members of the tenure
2 committee have the opportunity to review this
3 report and make comments before it was finalized?
4 **A. Yes. It went through several edits as we**
5 **shared drafts among ourselves.**
6 Q. And so what you're telling the jury is
7 this is the official report of Cheryl Butler's
8 tenure committee at SMU?
9 **A. Yes, I am.**
10 Q. Okay. We have talked about several parts
11 of this report. First of all, did different
12 members of the tenure committee prepare different
13 parts of the report?
14 **A. The initial drafts, yes.**
15 Q. Okay. Was there a part that you were
16 responsible for preparing or leading the
17 preparation of, Professor Anderson?
18 **A. The teaching portion and all other**
19 **portions other than that labeled service and that**
20 **labeled scholarship.**
21 Q. Okay. And, based on this report,
22 Professor Butler met the standards for tenure at
23 SMU as it relates to her scholarship and her
24 service; is that correct?
25 **A. Yes, she did.**

1 Q. Okay. And I want to go to the section of
2 the report that talks about teaching that begins on
3 page 17.
4 **A. Okay.**
5 Q. And I -- I just want to highlight some of
6 the conclusions that were reached in the report.
7 One was that with respect to her teaching, and this
8 is under the section entitled Lack of Commitment to
9 Teaching, the record clearly shows that she has not
10 developed the facility with the subject matter of
11 torts that is to be expected of a teacher at even a
12 poor law school. Is that one of the conclusions of
13 the committee?
14 **A. Yes.**
15 Q. Is that something that you personally saw
16 in the classes that you observed with respect to
17 Professor Butler?
18 **A. Yes.**
19 Q. One of the other conclusions was that
20 she -- that her students complained of her lack of
21 professionalism in the classroom. Was that
22 something -- how did -- how did the committee
23 obtain that information with respect to Ms. Butler?
24 **A. Mainly from the student evaluations.**
25 Q. And are the student evaluations something

1 that the committee reviews as part of conducting
2 its tenure review?
3 **A. Yes.**
4 Q. Okay. And did you review the student
5 evaluations with respect to Ms. Butler?
6 **A. Oh, certainly, yes.**
7 Q. And, just so we're clear, when you talk
8 about student evaluations, are you looking at
9 evaluations for the entire time Ms. Butler has been
10 a professor at SMU or just the fall of 2015?
11 **A. The entire time.**
12 Q. Okay.
13 **A. But I should add to that much more**
14 **emphasis placed on the evaluations since her**
15 **contract renewal.**
16 Q. Okay.
17 **A. So in the last three semesters or so.**
18 Q. Okay. Did you, as chair of the committee,
19 personally review some of those student
20 evaluations?
21 **A. Yes, I did.**
22 Q. Okay. And did you personally, as chair of
23 the committee, pick up this conclusion that you
24 reached that she lacked professionalism in the
25 court -- in the classroom?

1 **MR. DUNLAP: Objection, leading.**
2 Q. (BY MS. ASKEW) You can answer the
3 question.
4 **A. I would not phrase it that way, Ms. Askew.**
5 Q. Okay. How would you phrase it?
6 **A. I'm not sure what they mean by lack of**
7 **professionalism except what I gather from the**
8 **evaluations was particularly early on she was**
9 **barraged, and later things like when she did submit**
10 **her own personal evaluation she distributed to the**
11 **class personally and asked them to review her and**
12 **they submitted them to her. And the students**
13 **didn't -- she eventually berated them and really**
14 **got upset with them for some of the negative points**
15 **they had made. The students said that was**
16 **unprofessional. I didn't see that kind of conduct**
17 **in the classes I reviewed.**
18 Q. And, in fact, your report says that
19 students have complained of lack of
20 professionalism.
21 **A. Yes.**
22 Q. Okay. And one of the other conclusions
23 you reached in support of her lack of commitment to
24 teaching was the fact -- well, the statement, not
25 one time in her years with us has she turned her

1 torts grades in on time. Was that something that
2 you were able to verify as part of your review of
3 her tenure?
4 **A. Yes. I discussed that matter with our**
5 **registrar, Laura Amberson. And if you ask me to**
6 **characterize that I would say it was very**
7 **unprofessional. We have a strong pact among our**
8 **faculty of -- with each other to get our 1L grades**
9 **in on time to the minute, because firm interviews**
10 **begin very quickly and job -- summer jobs and**
11 **clerkships depend on it. And it's -- it's a huge,**
12 **wrong, so I'd say unprofessional to miss one**
13 **semester without a very, very good excuse. She**
14 **never one time got her grades in, according to the**
15 **registrar on time.**
16 Q. Thank you.
17 Now, one of the other conclusions that
18 you reached with respect to the lack of commitment
19 to teaching were the exams themselves. Would you
20 briefly describe for us the issues with the exams
21 themselves that the committee saw in reviewing
22 Professor Butler's tenure?
23 **A. Well, as I said earlier, for the most part**
24 **she wouldn't provide us with examinations. I don't**
25 **recall at this point, and that's maybe just my**

1 **memory from so long ago, ever seeing one of Cheryl**
2 **Butler's exams. Not for lack of trying. I don't**
3 **believe we were ever provided with one of them.**
4 **I do -- and I think we wrote that in**
5 **the report, one of the most extraordinary stories**
6 **I've ever heard, is that her exam was not prepared**
7 **on the day it was scheduled to be given, and the**
8 **registrar was asking her for an examination, and**
9 **she didn't have one and, therefore, she had told**
10 **the class that she was going to give them a major**
11 **essay question, a fact pattern, followed by**
12 **multiple-choice questions. She had no fact pattern**
13 **and she asked a one-sentence question, describe or**
14 **discuss foreseeability in the point of negligence**
15 **and the class was outraged by that.**
16 **I personally was outraged,**
17 **flabbergasted. These exams are so critical to law**
18 **school's success and professional jobs and**
19 **clerkships, and not only is that an inappropriate**
20 **exam question, in my opinion, it's not what she**
21 **told the class they would have to be prepared for.**
22 **And then the rest of that story is she**
23 **didn't have enough multiple-choice questions. She**
24 **needed -- I've forgotten how many, let's say 50,**
25 **she needed three additional ones. And I was**

1 **dumbfounded to hear from Cheryl that she said she**
2 **didn't know what to do, so she went to a colleague,**
3 **Professor Ryan, to borrow three multiple-choice**
4 **questions.**
5 Q. Did she borrow -- she borrowed --
6 **A. She borrowed from Professor Ryan questions**
7 **on her exam, I find that mind boggling. If you**
8 **understand the law of a potential area, here torts,**
9 **and you taught them, you can in a few minutes make**
10 **up three multiple-choice questions, based on your**
11 **class notes and what she taught them. Any teacher**
12 **that understands the subject can do that.**
13 **Cheryl -- I mean, Cheryl was outraged,**
14 **first of all, that somebody didn't alert her the**
15 **exam was due. And then, second of all, how**
16 **inconvenient it was for her to have to prepare an**
17 **exam at the last minute, and how embarrassed she**
18 **was to have to ask another colleague for questions**
19 **to use. I don't know what to make of that. I**
20 **never heard of anything like that in my life.**
21 Q. Okay. Now, one of the other conclusions
22 in talking about the exams you -- the tenure report
23 contains the statement, Cheryl admits that she has
24 given exams with several misspellings and
25 containing questions in which the names of the

1 party changed. She agrees that these exams were
2 not properly proofread in advance, and she says she
3 was ill when she drafted the questions.
4 Were all of these -- well, first of
5 all, did you actually talk to her about the
6 problems with these exams, the misspellings and --
7 **A. Well, I, again, emphasize we never saw the**
8 **exams. This is what I uncovered from reading the**
9 **teaching evaluations from the students.**
10 **So in our meeting I asked Cheryl what**
11 **about this, this, this, misspellings, changing**
12 **names, the list you just mentioned, and Cheryl**
13 **confirmed all of those were true.**
14 **So she told us and I put in the report**
15 **that she confirmed that what the students said in**
16 **the evaluations were true. I never saw those**
17 **exams.**
18 Q. And let me ask you, at the time this
19 report is written and you were pulling this
20 information from prior student evaluations, were
21 these evaluations that students had completed prior
22 to the fall 2015 semester?
23 **A. Yes.**
24 Q. Okay. So you were not looking at what
25 students were saying in the fall of 2015 in

1 reaching these conclusions regarding misspellings,
2 names that were incorrect. Those were based on
3 exam or student evaluations which took place prior
4 to the fall of 2015?
5 **A. Yes.**
6 **MR. DUNLAP: Objection, objection.**
7 **That wasn't a question.**
8 Q. (BY MS. ASKEW) Were the statements that
9 you included in here regarding misspellings, names
10 improperly used, were they obtained from student
11 evaluations which took place prior to the fall
12 semester 2015?
13 **A. Yes.**
14 **MR. DUNLAP: Object, leading.**
15 **THE WITNESS: Yes.**
16 Q. (BY MS. ASKEW) You can answer the
17 question.
18 **A. Yes. Because the student evaluations from**
19 **the fall of 2015 hadn't been done yet.**
20 Q. Right. Thank you.
21 And, just so we are clear, we were
22 talking about torts and you keep -- you had
23 mentioned 1Ls, and just so the jury is clear, is
24 torts a course that is typically taught to first
25 year law students?

1 **A. Yes.**
2 Q. And when we talk about 1Ls, we're
3 referring to first year law students?
4 **A. That's correct.**
5 Q. Okay. We were sort of in the lingo here
6 and the jury might not know what we were saying.
7 **A. Of course.**
8 Q. Thank you.
9 Now, I would ask that you look on page
10 18 of Anderson Exhibit No. 4. Section D is a
11 section called In Cheryl's Defense.
12 **A. Yes.**
13 Q. Who requested that this section be put in?
14 **A. Cheryl was demanding that the committee**
15 **say that we believe that her problems with teaching**
16 **torts that we perceived were due to her illness.**
17 **And, as the report shows, only one member of our**
18 **committee held that opinion.**
19 **And I told Cheryl that we were not**
20 **capable of making that judgment and, therefore, we**
21 **could not grant her request. And then I did say I**
22 **will put in a special section of the report that**
23 **says anything you want us to say. That is how that**
24 **section of the report came about.**
25 Q. And, in fact, if we look, for instance, at

1 page 19, most of the paragraphs are introduced with
2 Cheryl disagrees, it's Cheryl's position. What
3 you're doing in this section is putting in what
4 Professor Butler requested that you put in the
5 report?
6 **A. Yes.**
7 **MR. DUNLAP: Objection, leading.**
8 Q. (BY MS. ASKEW) What are you doing in
9 exhibit -- in section D, In Cheryl's Defense?
10 Well, it begins on page 18, it's what we're looking
11 at on page 19.
12 **A. Okay. I'm --**
13 Q. The comments, where did these comments
14 come from?
15 **A. As I said, we did not agree to Cheryl's**
16 **request that we state that it was the committee's**
17 **opinion that her difficulties in teaching torts**
18 **were due to illness. We said we weren't qualified**
19 **to say that. And -- but on the other hand we would**
20 **put in a section of the report that would include**
21 **anything she wanted the committee to say on her**
22 **behalf and --**
23 Q. Is that what section D represents in this
24 report?
25 **A. Yes. This is the special section.**

1 Q. Okay. Now, in that section you make a
2 reference to information that was provided to you
3 by Dean Collins, that Cheryl was granted FMLA
4 leave. I'm going to ask you to look at what was
5 provided to you as Anderson Exhibit 5 in the
6 packet.
7 **A. Okay.**
8 Q. Which is an e-mail dated December 23rd,
9 2015.
10 **A. Right.**
11 Q. Is this the document that you are
12 referring to when you say the dean advised you that
13 intermittent leave had been granted to Professor
14 Butler?
15 **A. Yes.**
16 Q. And did you also then provide this to the
17 other two members of the tenure committee as shown
18 in the top part of the e-mail where you then
19 forwarded it to Anthony and Mary?
20 **A. Yes. I received it on the 23rd and I sent**
21 **it to the committee on Christmas Eve.**
22 Q. Okay. Is this a true and correct copy of
23 the e-mail that you relied on for this quote in
24 your tenure report on page 19?
25 **A. I believe it is.**

1 Q. Okay.
2 And apart from that information
3 regarding leave having been granted, was there any
4 other discussion about health or leave or anything
5 that you put in this report?
6 **A. No.**
7 Q. Okay. Now, I want to go to the final
8 point on page 20. Mr. Dunlap discussed this with
9 you previously.
10 **A. Okay.**
11 Q. And I don't want to go into the testimony
12 again, but it says, Roy has called her on this
13 point several times where she mischaracterizes what
14 colleagues have said, including what members of
15 this committee have told her. Do you see that
16 language?
17 **A. I do.**
18 Q. Is that something that you personally saw
19 with respect to Ms. Butler in her interactions with
20 the committee?
21 **THE REPORTER: I'm sorry. What did**
22 **you say at the beginning?**
23 **THE WITNESS: Oh.**
24 **MS. ASKEW: I think his response was**
25 **time and again.**

1 **THE WITNESS: Time and again, yes.**
2 **THE REPORTER: Thank you.**
3 Q. (BY MS. ASKEW) And you state, By
4 untruthful, we mean that she says things that she
5 knows or should know are not true. Do you see that
6 language in the committee's report?
7 **A. Yes.**
8 Q. Is that something that you personally saw
9 demonstrated by Ms. Butler as you worked with her
10 on her tenure committee?
11 **A. Yes.**
12 Q. Cheryl -- there's also language, Cheryl is
13 often untruthful in her dealings with her
14 colleagues and the law school administration. Do
15 you see that language, Professor Anderson?
16 **A. Yes.**
17 Q. Is that something -- that untruthfulness,
18 is that something that you saw demonstrated by Ms.
19 Butler?
20 **A. Yes.**
21 Q. There's also language that says, At times
22 she got angry. Did you see this anger demonstrated
23 in your personal dealings with Ms. Butler as part
24 of her tenure committee?
25 **A. Yes.**

1 Q. Okay. Would you give us an example or
2 help -- tell the jury how this -- how you saw this
3 anger being demonstrated?
4 **A. It's hard to describe. Both in the**
5 **committee meetings, in telephone conversations with**
6 **Cheryl, in personal conversations with Cheryl, she**
7 **would go off on harangues, sometimes almost**
8 **hysterical, that would last for the longest time,**
9 **it seemed like forever, where she's almost**
10 **screaming at points, sometimes crying, and it's**
11 **just a barrage of language, very often hard to**
12 **follow, and she will say one thing early on and**
13 **something completely different two minutes later,**
14 **and then maybe something even different from that a**
15 **few minutes later. Even if you're trying to pay**
16 **attention, it's almost impossible. You want her to**
17 **quit. You feel like you're being assaulted.**
18 **When I say that most of the time it's**
19 **not personally directed. It's Cheryl just having a**
20 **fit, but if you challenge anything she says, very**
21 **often she will come back screaming at you.**
22 **And I don't know how else to describe**
23 **it. I've never had this kind of experience with a**
24 **colleague.**
25 Q. Was this behavior that you have just

1 described to the jury demonstrated on more than one
2 occasion during the course of your dealing with
3 Professor Butler on her tenure committee?
4 **A. Yes. And in committee meetings, certainly**
5 **the first one, I mean, she went off on Mary for the**
6 **longest period of time. And since I had already**
7 **experienced one of those in a private meeting with**
8 **Cheryl, I let her go on with Mary. I think Mary**
9 **was very upset.**
10 **On December the 11th, I remember that,**
11 **because Barbara and I were in California, it's our**
12 **wedding anniversary, she called me while we were**
13 **getting ready for dinner, and went into one of**
14 **these harangues, Barbara heard that one, saw the**
15 **phone number, and I was listening, but I had to get**
16 **dressed, we had dinner reservations, that was about**
17 **her illness, and the fact that we needed to put all**
18 **of that in the report, so it happened all the time.**
19 Q. Okay.
20 **A. She called me at home and went on to --**
21 **after midnight I think -- I mean, I couldn't**
22 **believe it. I put it on the speakerphone and just**
23 **went on and on and on.**
24 Q. Thank you.
25 Now, did you attend the tenure -- or

1 Q. Okay. Does the dean then submit the
2 tenure report to the faculty?
3 **A. Yes.**
4 Q. Okay. How is that -- how is that report
5 submitted?
6 **A. Manila envelope always, it's got**
7 **confidential across the top of it, and it's sealed**
8 **and their --**
9 **THE REPORTER: Sealed and their?**
10 **THE WITNESS: Name's on it.**
11 **MR. DUNLAP: Name's on it.**
12 **THE REPORTER: Name's on it.**
13 Q. (BY MS. ASKEW) Does SMU consider the
14 tenure report confidential?
15 **A. Very much so.**
16 Q. Okay. And at the top of Anderson Exhibit
17 No. 4, the tenure exhibit, the first word on it is
18 confidential; is that correct?
19 **A. Correct.**
20 Q. Okay. Now, at the tenure meeting, who
21 presented the tenure report on behalf of Ms.
22 Butler?
23 **A. Primarily I did.**
24 Q. Okay. Was the faculty able to discuss the
25 tenure report and any other aspect of the standards

1 the faculty meeting in January of 2015 [sic] -- in
2 which Ms. Butler and the other two candidates were
3 presented to the faculty --
4 **A. Yes.**
5 Q. -- for tenure consideration?
6 **A. Yes.**
7 Q. Now, prior to that meeting, was there a
8 tenure box presented for Ms. Butler and the other
9 two candidates so they could review background
10 information on the candidates?
11 **A. I didn't follow -- so who couldn't --**
12 Q. Was there a tenure box?
13 **A. Oh, box, box. Yes. All three candidates**
14 **had tenure files or boxes, yes.**
15 Q. The tenure report that you prepared on
16 Ms. -- when you -- when the committee prepares its
17 tenure report that you signed, exhibit -- Anderson
18 Exhibit No. 4, who do you submit your tenure report
19 to?
20 **A. The dean, --**
21 Q. Okay.
22 **A. -- Dean Collins.**
23 Q. Okay. And did you submit Ms. Butler's
24 tenure report, Anderson Exhibit 4, to the dean?
25 **A. Yes.**

1 for tenure related to Ms. Butler?
2 **A. Yes, for three and a half hours I was on**
3 **my feet.**
4 Q. Did you answer questions of the faculty?
5 **A. Yes.**
6 Q. Now, during that discussion, did anybody
7 provide medical documentation or medical records of
8 Ms. Butler as part of this tenure discussion?
9 **A. Not to my recollection, no.**
10 Q. And apart from the statement regarding
11 when SMU had granted Ms. Butler FMLA leave, was
12 there any discussion of FMLA related to Ms. Butler?
13 **A. I do not recall that.**
14 Q. Okay. During this discussion was Ms.
15 Butler's race ever discussed as one of the tenure
16 considerations?
17 **A. Not as a consideration for tenure.**
18 Q. Any aspect of race discussed?
19 **A. I'm sure it was in the sense that our**
20 **faculty is, and I think extraordinarily so,**
21 **committed to diversifying the faculty, not just on**
22 **the basis of race, but that's certainly one of the**
23 **factors, and losing a black American woman for our**
24 **faculty is a huge loss. And a lot of our**
25 **colleagues were very upset to get this kind of a**

1 report. And I'm sure the discussion of race came
2 up.
3 I do remember one colleague made an
4 impassioned statement about the difficulties of a
5 black woman going through the tenure process at any
6 school. And by the process of elimination that's
7 obviously Jessica Dixon Weaver, but she just made a
8 brilliant impassioned segment to our faculty about
9 how critical this is, so, yes, race was discussed
10 in that context.
11 Q. In the context of diversity and its
12 importance at SMU?
13 A. Yes.
14 Q. Okay. Now, I want to go back to the
15 guidelines for tenure. I think they were discussed
16 earlier, but I want to make sure that we have a
17 copy in the record. And I have marked that as
18 Anderson Exhibit 1. Do you have that before you?
19 A. Yes, I do.
20 Q. Okay. These are the Guidelines for the
21 Award of Rank and Tenure, Policy Number 6.12. Are
22 these the guidelines that you followed in
23 connection with your work on the tenure committee
24 in evaluating Ms. Butler's tenure?
25 A. Yes. Of course.

1 Q. And is this a true and correct copy of the
2 policy that you were using at the time?
3 A. I believe it is. It says revised as of
4 December 7th, 2001, so I believe it is. I do know
5 with respect to the points of teaching and research
6 and the factors that should be considered is an
7 accurate segment.
8 Q. Okay. And in that respect, I will ask you
9 to look at paragraph B of the guidelines which
10 cover tenure. And it just states those tenure
11 requirements. And this is -- this is part of what
12 you were guided by in reaching your tenure
13 decisions?
14 A. Yes. Except I would -- would say that the
15 law school has slightly different procedures, which
16 the university has approved and allowed.
17 Q. Okay. And I'm now going to ask you to
18 look at those, please. That will be Exhibit No. 2,
19 the Bylaws of the Dedman School of Law, Southern
20 Methodist University as amended April 15th, 2014.
21 Are those -- do you have those before you,
22 Professor Anderson?
23 A. Yes, I do.
24 Q. And when you refer to the detailed
25 guidelines that the law school uses, this is what

1 you're referring to, these bylaws?
2 A. Yes.
3 Q. Okay. And I'm not gonna ask you to read
4 through all of it. What I'm going to do is ask you
5 to look at Exhibit 3, which I've prepared for you
6 just because it's easier to pull out the portions
7 related to tenure, and that would be portion IX on
8 Promotion and Tenure Procedure and then X, Criteria
9 for Tenure and Promotion. Do you see that?
10 A. Yes, I do.
11 MS. ASKEW: Okay. Do you have that,
12 Mr. Dunlap? It's in the group. It's No. 3.
13 THE REPORTER: I'm sorry. You're
14 muted, Mr. Dunlap.
15 MR. DUNLAP: I got the e-mail from Ms.
16 Faulkner, but there was no attachments, so I don't
17 have any of these documents. If you could send
18 them again.
19 MS. ASKEW: Oh, certainly.
20 MR. DUNLAP: Okay. I appreciate it.
21 MS. ASKEW: I'm just going to forward
22 it to you, because she sent it at 10:11 for -- it's
23 in a zip file. You just open it like you -- it
24 just left me.
25 MR. DUNLAP: I'm sure I'll get it here

1 in a minute.
2 MS. ASKEW: Okay. Well, you know, I
3 think you had it in your exhibits anyway. It's the
4 bylaws.
5 MR. DUNLAP: Okay.
6 MS. ASKEW: And if you just go to
7 section IX.
8 MR. DUNLAP: I don't think I have the
9 SMU bylaws. I have the -- I have the university
10 bylaws, but I don't have the law school bylaws.
11 MS. ASKEW: They were produced but
12 I'll --
13 MR. DUNLAP: Okay. Don't worry about
14 it.
15 MS. ASKEW: Okay. Thank you so much.
16 We'll just move -- we'll just move on.
17 Q. (BY MS. ASKEW) Professor Anderson, I will
18 ask you to look at section IX (a) of Exhibit 3 on
19 that first page, do you have that before you?
20 A. I do.
21 Q. And it says each member of the faculty
22 considered for tenure shall be assigned a
23 three-member advisory committee appointed by the
24 dean. Was that followed with respect to Ms.
25 Butler's tenure?

1 **A. Yes.**
2 Q. Okay. Such committee shall visit the
3 candidate's class. Did the tenure committee that
4 you chaired visit her classes?
5 **A. Yes, it did.**
6 Q. The committee will review his or her
7 writings, the candidate's writing. Did the tenure
8 committee for Ms. Butler review her writings?
9 **A. Yes, it did.**
10 Q. Okay. The committee is to counsel with
11 the candidate on teaching methods and research and
12 be generally available for constructive help. Was
13 this procedure followed with respect to Ms. Butler
14 with the tenure committee that you led?
15 **A. Yes.**
16 Q. I will now ask you to go to section X, the
17 Criteria for Tenure and Promotion.
18 **A. Yes.**
19 Q. A professor has two preeminent
20 responsibilities, teaching and contributing to the
21 growth and understanding of the law. Were these
22 the two standards or the criteria that you looked
23 at in two of the three in evaluating Ms. Butler for
24 tenure?
25 **A. Yes.**

1 Q. Now, it says these two responsibilities
2 shall be given equal weight in the determination
3 whether to award tenure or promotion to a member of
4 the faculty. The other responsibilities listed
5 below are important but should not weigh heavily.
6 Would you talk about how your
7 committee weighed those two responsibilities,
8 teaching and contributing to the growth and
9 understanding of the law?
10 **A. We tried hard to treat both of those**
11 **equally. And it's fair to say that service,**
12 **although important, is not nearly given the weight**
13 **of the other two, and that's what we did.**
14 Q. Okay.
15 **A. And we had absolutely no problem with one**
16 **and so our primary focus was on the teaching.**
17 Q. Okay. Your focus was on the teaching.
18 And we use these lawyer words, contributing to the
19 growth and understanding of the law. In everyday
20 parlance what we're talking about there is
21 scholarship; is that correct?
22 **A. That's correct.**
23 Q. Okay. And Ms. Butler, as the tenure
24 report showed, met that criteria under SMU's
25 standards?

1 **A. Yes, she did.**
2 Q. Okay. And it says the -- in teaching the
3 evaluation of -- and I'm reading under X(a), the
4 evaluation of a candidate's performance as a
5 teacher shall include the report of the candidate's
6 advisory committee. Is that Exhibit No. 4 that we
7 have been talking about earlier, the Tenure and
8 Promotion Report?
9 **A. Right.**
10 Q. Okay. And the student evaluations. You
11 indicated that you reviewed student evaluations for
12 the entire time Ms. Butler was on staff but with
13 the most recent after her contract renewal was
14 something that the committee reviewed; is that
15 right?
16 **A. Yes.**
17 Q. Did you review those student evaluations
18 because the bylaws of SMU required that student
19 evaluations be reviewed?
20 **A. I suppose, yes. I would have done it**
21 **anyway but.**
22 Q. I understand.
23 But in reviewing those student
24 evaluations were you complying with the bylaws that
25 SMU sets forth for tenure consideration?

1 **A. Yes.**
2 Q. The committee is to evaluate the expressed
3 opinion of any faculty member familiar with the
4 candidate's performance. Did you seek and obtain
5 opinions of other faculty members, who were peers
6 of Professor Butler, in evaluating her performance
7 as a professor at SMU Law School?
8 **A. Yes.**
9 Q. Were those evaluations or expressed
10 opinions included in the tenure report that is
11 Exhibit 4 -- Anderson Exhibit 4?
12 **A. Yes.**
13 Q. Thank you.
14 Now, after the -- and were you there
15 for the faculty vote in January of 2015 when Ms.
16 Butler came up?
17 **THE REPORTER: I'm sorry. You said**
18 **January 2015.**
19 **MS. ASKEW: I'm sorry. Those dates,**
20 **January 2016. Thank you so much, Ms. Wilson. We**
21 **appreciate you.**
22 Q. (BY MS. ASKEW) Were you there for the
23 tenure vote related to Ms. Butler in January of
24 2015?
25 **A. 2016, yes.**

1 Q. 2016, we moved over now. Thank you.
2 Was it a negative vote?
3 A. Yes.
4 Q. After the tenure report is presented to
5 the faculty at SMU Law School and they make its --
6 take its vote, is the work of the tenure committee
7 completed?
8 A. Yes.
9 Q. Was your work as a tenure committee
10 completed in January of 2016?
11 A. Yes.
12 MS. ASKEW: Okay. Let me take a quick
13 break, Andrew, to see if I've covered everything I
14 just need to cover here and we may be finished.
15 Would you give me about five minutes, please?
16 MR. DUNLAP: Sure. Sure. Why not.
17 MS. ASKEW: Thank you.
18 (A break was taken from 3:30-3:38.)
19 MS. ASKEW: Well, I will reserve the
20 remainder of my questions for trial. And will pass
21 the witness at this time.
22 FURTHER EXAMINATION
23 BY MR. DUNLAP:
24 Q. Okay. I just got like five minutes. I
25 just wanted to ask you a couple things.

1 So you testified that part of the
2 process was to -- in the tenure process was to, of
3 course, help provide advice or tips or suggestions
4 on how the professor can improve her teaching, so
5 what -- what did you do in that regard with
6 Professor Butler?
7 A. Well, a few things. One, she had been
8 devoting so much time to scholarship and engagement
9 with conferences and making presentations outside
10 the law school, we told her that she should
11 discontinue that and concentrate on her teaching,
12 because her teaching was problematic.
13 And then we told her later on the
14 particular problems that we were finding with her
15 teaching.
16 We also, as a committee and I
17 personally in a meeting with her, discussed some of
18 the problems we were seeing on the student
19 evaluations and pointing those out to her as things
20 she might be able to either improve upon or be
21 cognizant of when she presented her classes. That
22 sort of thing.
23 Q. Okay. And who are the other professors'
24 evaluations that you relied on in the tenure
25 report? Do you know their names?

1 A. Well, I can't remember all the names. I
2 hate doing this because it was confidential. We've
3 mentioned Professor Thornburg, and I recall we did
4 get evaluations from Dean Collins, from Professor
5 Forrester, from Professor Tate, T-A-T-E, trying to
6 think of -- there were some others. I'm talking
7 about the ones we used in the report.
8 We had comments from other faculty
9 that didn't formally send the report. Tom Mayo, if
10 he didn't send a written report, was probably one
11 of those.
12 Paul Rogers I believe -- if memory
13 serves me, we talked personally about nobody ever
14 submitted a written report. Oh, I recall, he --
15 Paul talked with us about prior classes that he had
16 seen, but he couldn't go to the torts class because
17 he had class at the same time.
18 I'm sure there must have been
19 something from Professor Norton.
20 That's all that's coming to mind
21 immediately. I'm leaving people out I know. But
22 that's all that I recall off the top of my head.
23 Q. Okay. Thanks a lot.
24 MR. DUNLAP: Those are all my
25 questions.

1 MS. ASKEW: Thank you very much, --
2 MR. DUNLAP: Thank you.
3 MS. ASKEW: -- Professor Anderson.
4 Are we off the record at this time?
5 THE REPORTER: Yes.
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1 CHANGES AND SIGNATURE
 2 **WITNESS NAME: ROY ANDERSON**
 3 **DATE OF DEPOSITION: OCTOBER 21, 2021**
 4 **PAGE LINE CHANGE REASON**
 5 _____
 6 _____
 7 _____
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 10 _____
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 12 _____
 13 _____
 14 _____
 15 _____
 16 _____
 17 _____
 18 _____
 19 _____
 20 I, ROY ANDERSON, have read the foregoing
 21 deposition and hereby affix my signature that same
 22 is true and correct, except as noted above.
 23 _____
 24 ROY ANDERSON
 25

1 That the amount of time used by each party
 2 is as follows:
 3 Mr. Andrew A. Dunlap - 02:22
 4 Ms. Kim J. Askew - 01:13
 5 I further certify that pursuant to FRCP
 6 Rule 30(e)(1) that the signature of the deponent:
 7 XXX was requested by the deponent or a
 8 party before the completion of the deposition and
 9 is to be returned within 30 days from date of
 10 receipt of the transcript. If returned, the
 11 attached Changes and Signature Page contains any
 12 changes and the reasons therefor and will be
 13 returned to Mr. Andrew A. Dunlap;
 14 _____ was not requested by the
 15 deponent or a party before the completion of the
 16 deposition.
 17 I further certify that I am neither
 18 counsel for, related to, nor employed by any of the
 19 parties or attorneys to the action in which this
 20 proceeding was taken. Further, I am not a relative
 21 or employee of any attorney of record in this
 22 cause, nor am I financially or otherwise interested
 23 in its outcome.
 24
 25

1 IN THE UNITED STATES DISTRICT COURT
 2 FOR THE NORTHERN DISTRICT OF TEXAS
 3 DALLAS DIVISION
 4 CHERYL BUTLER)
 Plaintiff)
 5 VS) CIVIL ACTION NO.
) 3:18-CV-0037-E
 6 JENNIFER P. COLLINS,)
 STEVEN CURRALL, JULIE)
 PATTERSON FORRESTER,)
 7 HAROLD STANLEY, AND)
 SOUTHERN METHODIST)
 8 UNIVERSITY)
 Defendants.)
 9
 10 *****
 11 REPORTER'S CERTIFICATION
 12 ORAL DEPOSITION OF
 13 ROY ANDERSON
 14 OCTOBER 21, 2021
 15 (REPORTED REMOTELY)
 16 *****
 17
 18 I, Karen A. Wilson, Certified Shorthand
 19 Reporter duly commissioned and qualified in and for
 20 the State of Texas, do hereby certify to the
 21 following:
 22 That the witness, ROY ANDERSON, was duly
 23 sworn by the officer and that the transcript of the
 24 oral deposition is a true record of the testimony
 25 given by the witness;

1 In witness whereof, I hereunto set my hand
 2 and affixed my seal this the 5th day of November,
 3 2021.
 4
 5
 6 Karen A. Wilson
 KAREN A. WILSON
 7 CSR 2328, Expires 05/31/22
 Bradford Court Reporting, L.L.C.
 8 Firm Registration No. 38
 7015 Mumford Street
 9 Dallas, Texas 75252
 Telephone: 972.931.2799
 10 Facsimile: 972.931.1199
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ORAL DEPOSITION OF ROY ANDERSON

1 CHANGES AND SIGNATURE

2 WITNESS NAME: ROY ANDERSON

3 DATE OF DEPOSITION: OCTOBER 21, 2021

4	PAGE	LINE	CHANGE	REASON
5	32	12	"No, that is not true."	Spector did sign the report.
6	42	9	"Joseph Jude Norton" in place of "Joe's Dean Norton"	Accuracy
7	51	2	Change "proprietary" to "preparatory"	Accuracy
8	67	2	Change "wave" to "yell"	Accuracy
9	70	11	Change "your" to "her"	Accuracy
10	105	9	Change "barraged" to "abbrasive"	Accuracy
11	121	8	Change "segment" to "statement"	Accuracy

12 _____

13 _____

14 _____

15 _____

16 _____

17 _____

18 _____


19

20 I, ROY ANDERSON, have read the foregoing

21 deposition and hereby affix my signature that same

22 is true and correct, except as noted above.

23

24 

25 ROY ANDERSON
November 11, 2021

11/3/2015

Policy - 6.12 Guidelines for the Award and Rank of Tenure

**SOUTHERN METHODIST UNIVERSITY
POLICIES AND PROCEDURES**

FACULTY

REVISED AS OF: December 7, 2001

POLICY NUMBER: 6.12

GUIDELINES FOR THE AWARD OF RANK AND TENURE

Criteria: The principal factors to be considered in evaluations for promotion and for the award of tenure are teaching and distinction in scholarship or research (or some equivalent activity; e.g., performance, etc. in the arts). Valued service to the University and to the profession to which the faculty member belongs will be taken into consideration for both promotion in rank and the award of tenure, but cannot substitute for the primary factors of teaching and research.

A. Promotion

1. Appointment to the rank of Assistant Professor requires the promise of effective teaching and sound scholarship.
2. The rank of Associate Professor is awarded only to those who have substantial achievement in one of the following areas and whose performance in the other is of high quality:
 - a. Teaching, evaluated by both students and peers;
 - b. Research, (equivalent activities in the arts), evaluated by peers in the professional field of study.
3. The rank of Professor is the highest rank to which a faculty member may aspire. It should not be assumed that promotion to this rank will automatically follow from any certain number of years of service. Nor should it be assumed that all faculty members will achieve this rank. It should be reserved for those persons whose teaching as judged by students and peers is of sustained high quality and whose scholarly achievements (and/or performance and creativity) are recognized by members of the professional field as substantial and continuing.

B. Tenure

1. Tenure cannot be granted on the basis of academic potential alone. Demonstrated accomplishments in teaching and research (or equivalent activity) are essential.
2. 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.
3. At the appropriate time⁽¹⁾, a faculty member will be informed by the dean or department head that he/she is to be considered for the award of tenure. After due process, the major steps of which are outlined below, the faculty member will be informed by letter of the decision. Tenure is not attained automatically but only by affirmative actions flowing out

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Policy - 6.12 Guidelines for the Award and Rank of Tenure

of the process described below, and by final approval by the Board of Trustees.

4. Normally, the tenure review takes place either in the candidate's sixth year or at a time specified in the initial appointment letter. In what appear to be exceptional cases, approved by the dean and provost, candidates may receive earlier consideration. In such cases, the candidate will go through the normal tenure process of the school and the University and will be expected to have demonstrated distinguished achievements in scholarship, research, and/or creative work. Denial of early tenure will not preclude the candidate from being considered again; however, a second denial shall be final.

C. Process

1. Procedure

- a. Each faculty member must be informed as to when he/she is to be considered for promotion and/or tenure.
- b. Information and supporting documents pertinent to the action are assembled by the faculty member and others as appropriate and as prescribed by the school(s).
- c. In accordance with the procedure of the school(s) the data are reviewed and the Dean submits recommendations, either positive or negative, to the Provost no later than February 1.
- d. The Provost submits recommendations of the deans to the Provost's Advisory Committee, a faculty committee appointed by the Provost.
- e. The Provost makes recommendations to the President and ultimately, to the Board of Trustees.

2. Documentation

At each of the levels of evaluation cited above, there must be thorough documentation describing the person's ability in teaching, distinction in scholarship and/or research (and/or performance, etc. in the arts), and accomplishments in serving the University and the profession. Accomplishments in teaching and scholarship, especially, must be evaluated by those competent to judge them. Opinions and evaluations of a person's research should be sought from beyond the University by the Chair, the Dean, or the faculty committee. Evaluation of teaching should include evaluations by students and, if possible, by faculty colleagues.

D. Appeals

1. In schools which conduct reviews at the department level, a negative recommendation in the department must be appealed within three weeks to the Dean.
2. A negative recommendation of the Dean must be appealed within three weeks to the Provost.
3. A negative decision of the Provost must be appealed within three weeks to the President.

The administrators named above may appoint standing or *ad hoc* committees to advise on the matter of the appeal. The decision of the President shall be final.

11/3/2015

Policy - 6.12 Guidelines for the Award and Rank of Tenure

Footnote:

(1) "...the probationary period should not exceed seven years, including within this period full-time service in all institutions of higher education, but subject to the provision that when, after a term of probationary service of more than three years in one or more institutions, a teacher is called to another institution, it may be agreed in writing that his new appointment is for a probationary period of not more than four years, even though thereby the person's total probationary period in the academic profession is extended beyond the normal maximum of seven years. Notice should be given at least one year prior to the expiration of the probationary period if the teacher is not to be continued in service after the expiration of that period." – AAUP Policy Documents and Reports, Academic Freedom of Tenure, 1940 Statement of Principles and Interpretive Comments. 1977 Edition. (The effect of the last sentence is that a decision on tenure, favorable or unfavorable, must be made at least twelve months prior to the completion of the probationary period. If the decision is negative, the appointment for the following year becomes

BYLAWS
DEDMAN SCHOOL OF LAW
SOUTHERN METHODIST UNIVERSITY

As Amended
April 15, 2014

Confidential

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[APG]
BYLAWS

Southern Methodist University
Dedman School of Law

Preamble

Subject to the Charter of Southern Methodist University, and the rules of its governing board and officers, subject to the Standards for the Accreditation of Law Schools in the United States promulgated by the American Bar Association, and subject to the Statements on Academic Freedom and Tenure promulgated by the Association of American University Professors, the Dean and Faculty of the Dedman School of Law (hereinafter "the School") shall determine and execute the policies and procedures for the operation of the School.

I. Dean

The Dean shall be a tenured member of the Faculty.

The Dean shall be the chief administrator of the School and shall represent the School and its interest to the various constituencies of the School.

The Dean shall execute the policies and procedures of the School as they may be determined from time to time pursuant to the bylaws.

The Dean shall by reason of the Dean's office be an ex-officio member of all standing and special committees of the Faculty.

II. Faculty

(a) The Faculty shall in general determine the educational policies for the operation of the School. It shall consist of all professors, associate professors, assistant professors, and lecturers. These classifications include tenured and non-tenured appointments, and faculty holding administrative appointments. Unless otherwise provided, it shall not include adjunct professors, instructors, visiting faculty and emeritus faculty. The tenured and tenure-track Faculty by these bylaws shall determine which of the Faculty shall vote on particular matters which may come before it.

(b) "Lecturers," who have been employed under the provisions in Article VIII (e), are members of the faculty hired on definite term contracts who teach full time, but by the terms of their contracts are not eligible for tenure at the law school. Lecturers may be appointed to the Honor Council and all faculty committees, standing

[APG]

and ad hoc, except the following standing committees: Admissions, Appointments, Financial Aid, and the Executive Committee. Lecturers appointed to the Graduate Legal Studies Committee may not vote with respect to the admission of students. Lecturers may attend all faculty meetings except faculty meetings concerning specific faculty and decanal appointments, specific promotions, specific tenure, and specific contract renewals. Lecturers may vote on all matters brought before the faculty except for votes concerning specific faculty and decanal appointments, specific promotions, specific tenure, specific contract renewals, specific bylaw amendments, commencement or discontinuance of major academic programs (e.g. the evening program or an LL.M. program), issues pertaining to the first year curriculum, and elections of the executive committee. If a question is raised whether these bylaws permit Lecturers to attend a faculty meeting or vote on a particular matter, the question will be decided by vote of the tenured and tenure-track faculty in accordance with Article XII of these bylaws. This vote is final.

III. Meetings

- (a) Regular meetings of the Faculty shall be held once a month during the academic year.
- (b) Special meetings may be held from time to time pursuant to:
 - (1) a notice there of by the Dean,
 - (2) a written petition to the Faculty by a majority of its members, or
 - (3) the procedures described in Article VIII (b) (3).

IV. Agenda

- (a) The Dean shall distribute to the Faculty at least one day before each regular meeting an agenda of business to be considered. Such agenda shall include items placed thereon through the Dean's office by any member of the Faculty.
- (b) In the case of a special meeting the agenda shall be distributed at least three days before such meeting by:
 - (1) the Dean if he or she has called the meeting, or
 - (2) the faculty group organizing the meeting, if such meeting is called by a majority of the Faculty as is provided in Article III (b) (2).

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- (c) A day shall be counted from noon to noon, excluding Saturdays and Sundays.

V. Conduct of Faculty Meetings

- (a) The Dean shall preside at all meetings.
- (b) A quorum, unless otherwise provided herein, shall consist of more than 50% of the tenured and tenure-track Faculty. A faculty member is counted for purposes of a quorum if the faculty member is present at a meeting, either in person or by an audio connection that provides the faculty member the opportunity to participate in the meeting ("audio connection"). A faculty member not attending a meeting in person or by audio connection shall be counted for purposes of the quorum with respect to any item for which the non-attending Faculty member may and does tender a vote to the Dean in advance of the meeting as specifically provided in Article VIII or Article IX of these Bylaws. Faculty on leave shall not be counted for this purpose, whether or not such persons on leave are in residence, unless such Faculty member attends a meeting in person or by audio connection.
- (c) If the Dean is unable for any reason to preside at a meeting, the Dean may designate another member of the Faculty to chair the meeting; or, if the Dean fails to designate a chairperson, then the members present at the meeting may designate their own chairperson.
- (d) Minutes shall be kept by the Faculty Secretary elected by the Faculty or by such other person as the Dean may designate and shall be distributed to the Faculty promptly after each meeting.
- (e) Except as may be otherwise provided herein, meetings shall be conducted in general in accordance with the currently authorized edition of Robert's Rules of Order.
- (f) By a two-thirds vote, items not timely placed on the agenda, or items which arise as new business after the meeting has been called to order, may be considered at either a regular or special meeting.
- (g) Every member of the Faculty who attends a meeting in person or by audio connection shall have the privilege of the floor and the right to vote. Voting by proxy shall not be permitted.
- (h) If the Faculty is voting on an item by secret ballot, a member of the Faculty who attends a meeting by audio connection may vote by

[APG]

directing the Faculty Secretary, in a manner that preserves the secrecy of the Faculty member's vote to the maximum extent possible, to vote as the Faculty member desires.

- (i) If a member of the Faculty does not attend a meeting, either in person or by audio connection, the non-attending Faculty member may tender a vote to the Dean in advance of the meeting. Such a vote will be counted only (1) as to items for which other Articles of these Bylaws specifically permit the tender of a vote prior to the meeting and (2) with respect to any other item properly before the Faculty pursuant to Article IV that is not substantially amended during the meeting.
- (j) Non-faculty may be invited by the Dean from time to time, as may be appropriate, to regular and special meetings and may have the privilege of the floor.

VI. Standing Committees

- (a) The Standing committees of the Faculty are:
 - (1) Executive,
 - (2) Admissions,
 - (3) Curriculum and Academic Standards,
 - (4) Graduate Legal Studies,
 - (5) Library and Information Technology,
 - (6) Appointments,
 - (7) Teaching,
 - (8) Endowed Lectures,
 - (9) Financial Aid,
 - (10) Career Services Committee,
 - (11) Public Service Committee.
- (b) With the exception of the Executive Committee, the members of the standing committees shall be appointed by the Dean with the advice and consent of the Executive Committee. Excluding the Dean as an ex-officio member, the membership of each committee shall be not less than three.

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- (c) The Executive Committee shall be elected by the tenured and tenure-track faculty each year at its regular meeting in April. One member shall be chosen from the rank of full professor, one from the ranks of associate and assistant professors, and two from the Faculty at large. No member shall be eligible to serve more than two consecutive terms.

VII. Operation of Faculty Committees

- (a) Each standing committee operates in accordance with powers and duties delegated to it by the Faculty, and each committee is accountable and responsible to the Faculty for its work.
- (b) Recommendation of any standing committee shall have a presumption of fairness and validity. A member of the Faculty, staff, or student body aggrieved by committee action may appeal to the Faculty for a review of the committee action by filing and distributing to the faculty a written statement of objections to the findings and conclusions of the committee. If 30% of the faculty or 30% of the tenured faculty notify the Dean in writing that they desire to hear the appeal, the appeal shall be heard at either the next regular Faculty meeting or a special meeting called for that purpose.
- (c) In general, the standing committee shall function as follows:
 - (1) Executive - This committee shall meet from time to time with the Dean presiding; it shall consider any and all matters relating to the general program of the School, including faculty and student body size, resource allocation and salary structure, designation of administrators, financial strength of the School, continuing legal education, relationships with the University and the public. Specifically, the Executive Committee shall consult with the Dean, participate as it deems appropriate, and facilitate general Faculty participation with respect to the affairs of the Law School to include, but not be limited to, law school accreditation groups and organized groups concerned with the School as these groups may exist from time to time. The Executive Committee and the Dean shall coordinate law school accreditation group visits to the campus and the preparation of any reports and related communications.

Minutes of each of its meetings shall be promptly distributed to the Faculty.

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- (2) Admissions - This committee shall
 - (A) determine the qualifications for admission to the School for the Juris Doctor degree;
 - (B) devise procedures consistent with privacy laws and University policy for review and action on files;
 - (C) determine procedures for review and action on petitions for re-admission of students having scholastic deficiency;
 - (D) study and make recommendations to the Faculty with respect to policies and standards of admissions and academic performance; and
 - (E) recommend programs for the recruitment of students.
- (3) Curriculum and Academic Standards - This committee shall
 - (A) study the curriculum and make any proposals for changes therein;
 - (B) waive, or accept substitutes for, required courses;
 - (C) approve or disapprove of course overloads;
 - (D) approve or disapprove credit toward the Juris Doctor degree for work done at other law schools;
 - (E) approve or disapprove appropriate credit for courses pursued elsewhere than the School;
 - (F) review and make suggestions with respect to scheduling of course offerings and examinations.
- (4) Graduate Legal Studies - This committee shall
 - (A) examine and pass upon the qualifications of applicants seeking admission to the School for the Master of Laws degree, Master of Laws (Comparative and International Law) degree, Master of Laws (Taxation) degree and Doctor of the Science of Law degree;
 - (B) award scholarship and loan assistance to graduate students;

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- (C) supervise the course program of graduate students;
 - (D) make recommendations to the Faculty regarding the graduate program;
 - (E) supervise the recruitment of students; and
 - (F) recommend to the Faculty for the awarding of degrees those students who have successfully completed the appropriate requirements.
- (5) Library and Information Technology - This committee shall
- (A) consult with the Law Librarian about the operation of the Law Library;
 - (B) make recommendations to the Law Librarian with respect to library plans, operations, and policies; and
 - (C) consult with and make recommendations to the Law Librarian and the administration about law school information technology resources.

The Law Librarian shall be an ex-officio member of this committee.

- (6) Appointments - This committee shall
- (A) make recommendations to the tenured and tenure track faculty with respect to the need for new members of the Faculty; and
 - (B) initiate the procedures for filling vacancies on the Faculty.
- (7) Teaching – This committee shall
- (A) provide the faculty with information, support, and training on issues relating to teaching at the law school, including the use of technology in teaching.
 - (B) advise the administration regarding the pedagogical implications of classroom facilities.
- (8) Endowed Lecturers Committee - This committee shall
- (A) make plans for various speakers to visit the School during the academic year; and

[APG]

- (B) extend invitations to speakers and others as may be appropriate for such occasion.
- (9) Financial Aid - This committee shall determine the policies for awarding scholarships, fellowships, and other financial assistance to students in the Juris Doctor program.
- (10) Career Services Committee - This committee shall
 - (A) study and make recommendations with respect to the policies, procedures, and programs of the Career Services Office;
 - (B) advise Law School students and graduates in securing judicial clerkships, public service positions, and other special appointments; and
 - (C) advise and assist the Director of Career Services.
- (11) Public Service Committee - This committee shall
 - (A) study and make recommendations with respect to the policies, procedures, and operation of the Public Service Program; and
 - (B) advise and assist the Director of the Public Service Program.
- (d) Each committee shall determine the time and place of its meetings, the manner of keeping files and records, and procedures for the conduct of its agenda. Each committee shall at least once a year prepare a report of its activities.
- (e) The President of the Student Bar Association shall be requested to designate representatives to each standing committee and such representatives shall be notified of committee meetings and agenda. The student representatives shall be within the discretion of the Faculty members the particular standing committee.

VIII. Recruitment and Appointment of Faculty

- (a) At the regular meeting of the Faculty in September, the Committee on Appointments shall advise the tenured and tenure-track faculty of needs for new faculty and its plans for recruitment.

By appropriate resolution the tenured and tenure-track faculty may give the Committee such suggestions or instructions as may be appropriate.

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The Committee within its own discretion shall determine the methods for the effective conduct of its business.

- (b) Candidates for term contracts who are eligible for tenure, and the renewal of their contracts.
 - (1) When the Committee determines that a candidate is a prospect for tenure-track employment on a term contract for more than one year, it shall invite the candidate to the School to meet as many members of the Faculty as possible.
 - (2) Following such a visit, on vote of a majority of the Committee and with the approval of the Dean, the faculty shall meet to consider the appointment of the candidate.
 - (3) At such meeting a quorum shall be determined under Article V (b); however, the candidate shall be appointed only on the favorable vote of 51% of those eligible to vote. All members of the tenured and tenure-track faculty, whether or not on leave and whether or not in residence, are eligible to vote in person or by tendering a vote to the Dean before the meeting. The Dean shall exercise his or her best efforts to convey the necessary information to, and obtain votes from, tenured and tenure-track faculty members who are away from the School. An otherwise eligible member who declares his or her intention not to vote shall not be counted for purposes of determining a majority.
 - (4) In the case in which a tenure-track candidate is given a term contract of more than one year, such person's advisory committee, as is provided for in Article IX (a), shall consider whether or not to recommend that the contract of employment be renewed. Generally, such recommendation will be made if the candidate is making satisfactory progress toward meeting the criteria for the award of tenure. The committee shall report to the Faculty its findings and recommendations, and the deliberation of the tenured and tenure-track faculty shall proceed in accordance with Article VIII (b) (3) above.
- (c) Visiting Faculty
 - (1) When the Committee determines that a candidate is a prospect for employment as a visiting professor for a

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semester or for one academic year, it may within its discretion invite the prospective visitor to the School.

- (d) Candidates for Summer Faculty and Part-time Faculty
 - (1) On vote of a majority of the Committee and with the approval of the Dean, the Dean may employ summer faculty and part-time faculty.
- (e) Lecturers
 - (1) The Dean may employ a candidate for Lecturer recommended first by a majority of the Appointments Committee and then by a majority vote of the faculty.
 - (2) Lecturers may be re-appointed by the Dean, after appropriate review and approval by the Appointments Committee, to a subsequent term of one to three years with the Committee not taking research or service into consideration. After a lecturer has been employed for three consecutive academic years, any subsequent reappointment should be for a term of no fewer than three years, if the school's circumstances allow. There is no limit on the number of subsequent fixed-term reappointments that may be offered to a Lecturer or Senior Lecturer. After a Lecturer has been employed by the University for five years, he or she is eligible for promotion for excellence in teaching to the rank of Senior Lecturer. Lecturers may be reappointed pursuant to this provision only, and not pursuant to Articles IX and X of these bylaws.

IX. Promotion and Tenure Procedure

- (a) Each member of the Faculty who is to be considered for tenure or promotion (including a visitor who may be considered for a tenured position) shall be assigned a three-member advisory committee, appointed by the Dean after consultation with the Executive Committee. Such committee shall visit the candidate's classes, review his or her writings, counsel with him or her on teaching methods and research projects and in general be available for constructive help in his or her ongoing association with the School.
- (b) Ordinarily, a candidate for tenure will not be considered for tenure until the candidate is in his or her fifth year of teaching. No precise measure of talent can be made, however, so that any candidate, on consultation with the Dean and his or her advisory committee, may receive earlier consideration.

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- (c) Ordinarily, a candidate for promotion will not be considered until he or she is in the third year of his or her current rank. As in the case of tenure consideration, however, a candidate, on consideration with the Dean and his or her advisory committee, may receive earlier consideration.
- (d) When a Faculty member is to be considered for tenure or promotion, the Dean shall call a special meeting for that purpose.
- (e) In the case of tenure consideration, only tenured members may vote. In the case of promotion to the rank of Associate Professor, only associate and full professors may vote; in the case of promotion to the rank of Professor, only professors may vote.

Members of the Faculty of the required rank and tenure, whether or not on leave and whether or not in residence, are eligible to vote in person or by tendering a vote to the Dean before the meeting. The Dean shall exercise his or her best efforts to convey the necessary information to, and to obtain votes from, Faculty members away from the School. An otherwise eligible member who declares his or her intention not to vote shall not be counted for purposes of determining the number eligible to vote.

- (f) A quorum for a meeting on tenure or promotion shall consist of 75% of the group eligible to vote and the candidate shall be recommended for tenure or promotion only on the favorable vote of 60% of those eligible to vote.
- (g) All voting shall be by unsigned secret ballots.
- (h) If, following the vote of the Faculty, the Dean proposes to make a contrary recommendation to the Provost; the Dean shall explain his or her recommendation at a meeting of the Faculty members eligible to vote on the question before submitting the recommendation to the Provost.
- (i) If promotion or tenure is not approved, the candidate shall be advised of the results of voting.

A candidate who is denied tenure shall be entitled to serve out his or her contract term and such additional extension as may be required under the applicable rules of the University in conformity with statements of the American Association of University Professors. During such extension, a candidate who is denied tenure may petition the Faculty for reconsideration. When a candidate so petitions, the Dean shall promptly convoke a special meeting of those members of the Faculty eligible to vote on the

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candidate's tenure. If, at this meeting, the Faculty denies the petition there shall be no appeal. If 60% of the Faculty members eligible to vote approve the petition, the Dean shall appoint an Ad Hoc Advisory Committee to prepare a dossier and to report to the Faculty at a subsequent meeting. In this reconsideration, the usual criteria and procedures shall apply. If the Faculty does not recommend tenure, the candidate shall not be eligible for any additional extension.

If a candidate, who would ordinarily be considered for tenure in the fifth year but is considered earlier, is denied tenure the Faculty shall reconsider the candidate at the ordinary time.

X. 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 are important but should not weigh as heavily as the foregoing criteria in the promotion and tenure decision.

Promotion to the rank of full professor will only be awarded to candidates who demonstrate both sustained high quality teaching and substantial and continuing contributions to the growth and understanding of the law.

(a) Teaching.

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.

The evaluation of a candidate's performance as a teacher shall include:

- (1) the report of the candidate's advisory committee;
- (2) student evaluations; and
- (3) the expressed opinion of any faculty members who are familiar with the candidate's performance.

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- (b) Contribution to the growth and understanding of the law.

It is a professor's responsibility to contribute toward the growth and understanding of the law. This work may be done individually or in collaboration with others. It may take one or more forms, none of which is inherently superior to others:

- (1) academic research and publication;
- (2) field and empirical research, together with interpretation and analysis of the data and materials developed; or
- (3) constructive change in the law by legislative, judicial, or executive-administrative means.

The choice of the type of activity pursued is within the discretion of the professor. It is his or her responsibility to select those which are most significant, most effective, and best suited to his or her individual skills. The professor also has a responsibility to participate in the activities of the bar and professional societies. These activities, however, fall somewhere below the level of work defined by this criterion unless they are related to such work. Work done by a professor shall be evaluated for quality and not for quantity, but a professor is expected to produce a reasonable quantity of work of this type, according to the particular project undertaken.

In this connection, the Dean and the candidate's advisory committee shall seek evaluations of the candidate's work from recognized leaders in the professional field of study.

- (c) Other School, University and professional activities.

A professor is responsible for participating in the various Law School and University activities which are necessary to the successful functioning of the School and the University: faculty meetings, committees, conferences, continuing education projects, recruiting efforts, and similar activities.

- (a) Other activities.

It is reasonable and proper to recognize and favor all those activities which significantly relate to and advance the professor's academic skills. This includes work in his or her special field, which is not sufficiently disinterested or profound to be regarded as criterion (b) work. Distinctions between activities falling within criterion (b), above may, on occasion, be difficult to make. In such cases, extraordinary cooperation from the professor concerned

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may be required so that the Faculty may accurately and fairly evaluate the activity in question. Cooperation and candor are expected of the professor concerned; in return, members of the Faculty are expected to acquaint themselves with the process involved in the professor's activities in order that they may make an objective and impartial evaluation of his or her efforts.

(b) Additional criteria.

Although credit should be given for the attaining of advanced degrees (LL.M., or S.J.D., or, if in a relevant field, Ph. D.), the attaining of degrees shall not be a prerequisite to promotion or tenure but shall be considered within the total context of a person's competence and progress as a member of the Faculty.

XI. Adoption and Amendment

These bylaws shall be adopted by, and may thereafter be amended from time to time at a regular or special meeting, by a two-thirds vote of the tenured and tenure-track faculty after 3-day notice of the amendment, as the case may be. A quorum shall be determined under Article V (b); an absent member may tender a vote to the Dean before the meeting.

XII. Waiver

The tenured and tenure-track faculty at any regular or special meeting may waive the application of these bylaws to a particular case under consideration on a vote of two-thirds of the tenured and tenure-track faculty, exclusive of those on leave, whether or not such persons on leave are in residence; provided, however, that procedures for tenure and promotion may be waived only by a vote of two-thirds of the entire tenured and tenure-track faculty. A quorum shall be determined under Article V (b); an absent member may tender a vote to the Dean before the meeting.

Comments

Comment: The Dedman School of Law of Southern Methodist University is an integral part of the University. Accordingly, it does not require a constitution because it operates under the University's Charter and its governing statutes.

These bylaws are intended to provide the maximum flexibility for the ongoing administration of the School and its educational program.

The Dean, Faculty, and the various committees are given the broadest discretion in carrying out their respective duties and responsibilities.

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With respect to the sensitive matter of voting on employment of persons for more than one year who are eligible for tenure under these bylaws, and tenure and promotion, the policy adopted herein is to afford every member of the tenured and tenure-track faculty a participation in the decision. Thus, for example, suppose that Professor X is to be considered for tenure. Professor A, a member of the tenured faculty, is on leave but is in residence at the Law School. Professor B, a member of the tenured faculty, is teaching at another law school. Both A and B should have the right to participate in the decision concerning X, and the Dean should exercise his or her best efforts to keep A and B abreast of the developments and materials regarding X. Note the “best efforts” standard for giving information to, and obtaining votes from, absent members. Similarly, in the case of employment of new faculty, tenured and tenure-track members, whether or not on leave, and whether or not in residence, should have the right to vote.

Use of the terms Faculty, quorum, etc.:

Unless otherwise specified in these bylaws, where the term Faculty is used, it means the University Policy Manual’s definition of professors, associate professors, assistant professors, and lecturers.

Assume, for example that there are 30 members of the Faculty (24 tenured and 6 non-tenured), including the Dean. Assume further that 2 members of the Faculty are visiting at other universities, 2 are on leave but in residence, and 2 are ill or unavailable. Then, the number required for effective action is as follows:

Article III (b) (2)	-	16
Article V (b)	-	14
Article VIII (b) (3)	-	9, or 8
Article VIII (b) (5)	-	14; 51% of those eligible to vote = 16
Article IX (f)	-	75% of those eligible to vote for tenure is $75\% \times 24 = 18$ tenured faculty; 60% of the tenured faculty = 15.75% of those eligible to vote for appointment to professor = 75% of all those in that rank.
Article XI	-	Quorum = 14; adoption or amendment requires 20 affirmative votes.
Article VII	-	Quorum = 14, waiver requires 18 affirmative votes.

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TENURE AND PROMOTION REPORT – CHERYL NELSON BUTLER

TO: Tenured Faculty, SMU Dedman School of Law
FROM: Cheryl N. Butler Tenure and Promotion Committee [Roy Anderson (Chair), Anthony Colangelo, Mary Spector]
DATE: January 8, 2016

This committee was appointed in late September 2015 immediately following the resignation of Professor Butler’s former committee. We began our work in early October. We believe that we have had ample opportunity to assess and make our committee recommendation to you with respect to Cheryl’s scholarship and service to the Law School and University communities. As we will explain below, our conclusions regarding Cheryl’s teaching are less cohesive and do not allow us to comfortably make a collective recommendation.

I. Background

Professor Cheryl Nelson Butler attended high school at prestigious Philips Academy in Andover, Massachusetts, college at Harvard, and law school at New York University. She graduated Harvard with an A.B. *cum laude* in African American History and African American Studies. At N.Y.U., Cheryl was a Root Tilden Kern Scholar, a staff editor of the N.Y.U. Review of Law and Social Change, and a research assistant for Professor Derrick Bell, a preeminent scholar in critical race theory. Following her graduation from N.Y.U., Cheryl accepted a fellowship with the Georgetown University Women’s Law & Public Policy Fellowship Program. She then served as a judicial clerk for Judge Emmett G. Sullivan of the U.S. District Court for the District of Columbia. Following her clerkship, Cheryl joined the prestigious NYC law firm of Debevoise & Plimpton. After three years as a litigation associate with the firm, Cheryl was hired by Enron Corporation, where she served two years as a senior counsel. She then spent four years as General Counsel and Executive Director of Top Teens of America, Inc., a nationwide youth service and humanitarian organization. From 2003 – 2005, Cheryl was an Assistant Clinical Professor at the University of Houston Law Center, and in 2010 – 2011 she served as a Visiting Fellow at the Center for Children, Law & Policy (Houston Law Center). She joined our faculty in the fall of 2012.

II. Evaluation Criteria

Article X of our Bylaws affirms our customary 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 [service to the Law School and University and professional activities] are important but should not weigh as heavily as the foregoing criteria in the promotion and tenure decision.”

Further:

“It is a professor’s 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.”

These criteria are echoed by SMU’s University Policy Manual §6.12, which provides that appointment to the rank of associate professor should be granted only to those who demonstrate “substantial achievement in one of the following areas and whose performance in the other is of high quality: a. Teaching, evaluated by both students and peers; b. Research, . . . evaluated by peers in the professional field of study.”

Regarding tenure, §6.12 says 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.”

III. Professor Butler’s Scholarship

As to scholarship, the committee is of the view that Cheryl has clearly contributed to the growth and understanding of the law through her published work as well as through her active engagement with the larger academic community via various presentations and attendances at a multitude of forums and events addressed to the issues she treats in her scholarship. She has produced both a quantitatively and, more importantly, a qualitatively impressive body of published scholarship. Her work has been cited not only in prominent general and specialty law journals but also in an amicus brief to the United States Supreme Court (*United States v. Patel*, 135 S. Ct. 2443 (2015)), and in a legislative staff analysis of a Florida House Bill (545 (2015)). She has also actively discussed her ideas in numerous venues. Her publications and an illustrative sampling of her presentations are listed below:

A. Articles

- *The Racial Roots of Human Trafficking*, 62 UCLA LAW REVIEW 1464 (2015)
- *Bridge Over Troubled Water: Safe Harbor Laws for Prostituted Minors*, 93 NORTH CAROLINA LAW REVIEW 1281 (2015)
- *A Critical Race Feminist Perspective on Prostitution and Sex Trafficking*, 27 YALE JOURNAL OF LAW & FEMINISM 95 (2015) [7]
- *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)
- *Making the Grade: The United States' TIP Report Card & The Fight Against Child Sex Trafficking*, 67 SMU LAW REVIEW 341 (2014)
- *Kids For Sale: Does America Recognize Her Own Sexually Exploited Minors as Victims of Human Trafficking?* 44 SETON HALL LAW REVIEW 833 (2014)
- *Blackness as Delinquency*, 90 WASHINGTON UNIVERSITY LAW REVIEW 1335 (2013)
- *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) [7]
- *Eulogy for Sarah McQuillen Tran: Teacher, Scholar, Mother, and Friend*, 67 SMU LAW REVIEW 463 (2015)

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B. Presentations and Outside Participation

A full listing appears in her C.V.; but an illustrative sampling of Cheryl's various presentations and participation in the larger scholarly community includes:

- The 9th Annual Lutie A. Lytle Black Women Law Faculty Writing Workshop at Vanderbilt Law School
- American Association of Law Schools (AALS) Mid-Year Meeting & Workshop on "Next Generation Issues of Sex, Gender, and Law," where she presented: *The Racial Roots of Human Trafficking*
- UCLA Law Review Symposium: "Examining the Roots of Human

Trafficking and Exploitation,” where she presented: The Racial Roots of Human Trafficking

- Yale Critical Race Theory Conference panel on “Intersectionality on the Body: Policing the Sexual and Reproductive Rights of Women of Color,” where she presented: A Critical Race Feminist Perspective on Prostitution & Sex Trafficking in America
- Southeast Southwest People of Color Legal Scholarship Conference at the University of Arkansas, Little Rock, Bowen School of Law: “Empty Promises? - The Constitution at 225,” where she presented: A Critical Race Feminist Perspective on Prostitution & Sex Trafficking in America
- Tulane University Law School, symposium on the “Future of Inequality,” where she presented: Bridge over Troubled Water: Safe Harbor Laws for Sexually Exploited Minors
- University of North Carolina (UNC) School of Law 15th Annual North Carolina Law Review Symposium on “Vulnerable Defendants and the Criminal Justice System,” where she presented: Bridge over Troubled Water: Safe Harbor Laws for Sexually Exploited Minors
- Southeast / Southwest People of Color Legal Scholarship Conference: “Transformative Advocacy, Scholarship, and Praxis: Taking Our Pulse” at Samford University Cumberland School of Law, where she presented: Kids for Sale
- University of Baltimore School of Law, Center for Applied Feminism, fall symposium “Girls in the Juvenile Justice System,” where she presented: Kids for Sale
- Annual Meeting of the American Society for Legal History (ASLH) hosted by Washington University in St. Louis Law School & Saint Louis University School of Law on a panel “Women & Legal History,” where she presented: Blackness as Delinquency

C. Reviews

The committee has moreover gathered a substantial array of outside reviews of Cheryl’s work from scholars expert in the fields in which she writes. We have also reviewed for ourselves Cheryl’s work. Since it is the committee’s understanding that the faculty will read these reviews for itself, it is not the committee’s intention to extensively and selectively quote from the outside reviews: they are attached in redacted form to this report.

Our overall estimation of Cheryl's work and the reviews is as follows: Cheryl has a distinct talent for identifying underappreciated yet important issues at the crossroads of feminist and critical race theory. And she brings this talent, and her unique thinking about the issues she identifies, to bear on pressing real-world problems like human trafficking in innovative and promising ways. The external and internal reviews conclude in highly positive terms that Cheryl has met SMU's standard for tenure with respect to her scholarship.

As with any honest evaluation of scholarly work, there are also critiques and criticisms in the reviews; in this case, they are typically cast as "not major." Upon careful review, the criticisms do not form an overall cohesive theme; that is, there appears no agreed-upon weakness pervading Cheryl's body of work. Rather, the criticisms do, in fact, appear largely to be idiosyncratic "quibbles," as one reviewer put it. Also, as can be expected, Cheryl's earlier work tends to be less polished than her later work.

One exception, however, is that two reviewers felt that Cheryl had not adequately grappled with the "victim-criminal dichotomy" in her recent 2015 article, *Bridge Over Troubled Water: Safe Harbor Laws for Prostituted Minors*, in the *North Carolina Law Review*. Yet even here, the committee emphasizes that both reviewers nonetheless concluded in glowing terms that the article is "outstanding," "contributes to the growth and understanding of the law," easily "satisf[ies] the standards SMU requires," "evidenc[es] excellent writing and research, and sound conclusions that contribute to a rapidly evolving area of legal scholarship . . . [and] exemplifies that of a newly tenured professor among a top law faculty."

In sum, it is the committee's view that Cheryl clearly meets the tenure standard of contributing to the growth and understanding of the law. Again, the committee urges the faculty to read the review letters for itself, some of which indicate that the reviewers—again, leading experts in these fields—have altered their teaching syllabi to include Cheryl's articles as mandatory reading for their courses.

IV. Professor Butler's Service to the Law School and University Communities

A. Law School Service

Since contract renewal, Professor Butler has provided valuable service to the law school. As a member of the Judicial Clerkship Committee, Cheryl provided valuable service by inviting United States District Judge Alia Moses to the law school to speak and meet with students. Those meetings resulted in regular on-campus interviews, and in the selection of students for post-graduate clerkships with Judge Moses in successive years. Since contract renewal, Cheryl has also been a member of the Law School's ABA Compliance Committee and the Law Faculty Forum and Endowed Lecture Committee. The only negative information we have heard from colleagues

is that, both before and after contract renewal, Cheryl does not regularly attend law school committee meetings.

This fall, Cheryl participated in the law school's first Flash Class and subsequently co-taught a session with Professor Bloom. Professor Butler is also a regular speaker at programs sponsored by student groups. Formally, she also serves as a faculty advisor to the Black Law Students' Association and informally, Cheryl routinely mentors and advises students. In 2014 the SMU Women in Law Association honored Professor Butler with its Outstanding Faculty Leadership Award.

B. University Service

As the committee reported in its March 2014 report to the faculty prior to contract renewal, the Provost appointed Cheryl to serve on the successful Law Dean Search Committee. Since then she has served as a member of the Advisory Committee to the Women and Gender Studies Certificate Program, the President's Commission on the Status of Women and as a Faculty Affiliate to the SMU Crum Residential Commons. As a Faculty Affiliate, Cheryl regularly attended programs at the Commons for students and faculty and also led a discussion group during events related to the Martin Luther King holiday.

C. Other Service

Professor Butler has also provided service to the profession as Treasurer to the AALS Section on Civil Rights in 2013-14 and as Secretary in 2014-15. She is a member of the Dallas Bar Association, Dallas Women Lawyers Association and the J.L. Turner Legal Association. In addition, she serves as Parliamentarian for a national nonprofit organization providing services to women and teens.

V. Professor Butler's Teaching

This committee is in unanimous agreement that Cheryl's student teaching evaluations are, on the whole, problematic and a cause for concern. As noted at the beginning of this report, we do not feel comfortable making a collective recommendation of tenure and promotion for Cheryl based on her teaching. We are in agreement that no colleague should be granted tenure and promotion under our standards unless her teaching is at least of "high quality." Our individual views regarding Cheryl's teaching will be summarized anonymously below along with those of other colleagues who have visited Cheryl's classes and have provided this committee with written evaluations. We have also talked with colleagues who have watched Cheryl teach but do not wish to provide a written evaluation. Nevertheless, their thoughts provided context for our impressions expressed below.

Since joining our faculty Cheryl has taught Torts I and II, Critical Race Theory (seminar), and Employment Discrimination (once as a seminar and once as a larger enrollment class of 36).

This committee has reviewed the student evaluations for all of Cheryl's courses, but we have brooded particularly over those submitted since her promotion report. During the semester of her promotion report (spring, 2014), Cheryl taught CRT and Employment Discrimination as seminars. During the 2014-15 academic year she taught Torts I and Employment Discrimination in the fall. The latter course had an enrollment of approximately 36, but was taught, apparently at the request of the administration, as an anomalous combination of a general paper course for some students and an edited writing course for others. We agree with Cheryl that the workload for such a course would far exceed that which the enrollment might otherwise suggest.

In the spring semester, 2015, Cheryl taught Torts II and CRT. In the fall semester 2015, she taught Torts I and CRT. We have student evaluations for all these courses, including those for the current semester.

A. Critical Race Theory and Employment Discrimination

The student evaluations of Cheryl's Critical Race Theory (CRT) seminars and of her Employment Discrimination courses are outstanding. Members of this committee have not seen Cheryl teach either course. But verbal assurances by several colleagues confirm the very positive student opinions of CRT. Also, we have received several alumni evaluations that the committee did not solicit stating that Cheryl's upper-level courses were excellent and had impacted their lives and careers in positive ways.

In turn, we emphasize our belief that the CRT course, in particular, provides students with a valuable, cathartic outlet for discussion of legal issues pertaining to race and gender. This kind of expertly moderated dialog can significantly enhance the inclusiveness of our law school family and academic community. We strongly feel that our CRT course is an important component of our curriculum and that Cheryl's charisma, passion, and keen intellect have brought excellence to the course.

Our impressions regarding Cheryl's CRT and Employment Discrimination courses are consistent with those stated in the report filed in March, 2014 by her advisory committee (as then constituted) in support of its recommendation that Cheryl's contract with SMU be renewed. The report said that Cheryl's "student evaluations from her seminar classes are consistently excellent" and that Cheryl is very good "when presenting material with which she is comfortable." We confirm the report's observation that Cheryl's students in these courses consistently "remark upon her passion for the subject, the thought-provoking nature of the assignments [and class discussions], and her ability to make all students feel comfortable voicing their opinions." The only recurring constructive criticism we identify is the opinion that students with "conservative" views might feel uncomfortable participating in discussions and that the structure of the course at times seemed to lack organization. In sum, we conclude that Cheryl's teaching of CRT is excellent, that

her teaching of Employment Discrimination is at least very good, and that her teaching in these courses easily meet our standards for tenure and promotion.

B. Torts/Student Evaluations

The student evaluations for Cheryl's Torts I and II courses both before and after her contract renewal report stand in stark contrast to those for her upper-level seminar courses. Concern for this unfortunate divide was emphasized in her contract renewal report, which said:

"With respect to teaching the large, required, first-year Torts class, Professor Butler's teaching has room for improvement. Some students also complimented her teaching of Torts, listing strengths such as 'engaging class in good conversations/debates' and 'very helpful, kind and open to hearing students opinions.' Others, though, found the class to be disorganized or unclear, and had complaints about the exam and about rescheduled classes."

The report concluded, however, "in all fairness to Cheryl," some of the problems may have been attributable to the scheduling of her classes on back-to-back afternoons to leave her free to travel to conferences and speaking engagements. The report also suggested that the committee could have provided Cheryl with better advice as to the priority that she should give her teaching and on proper teaching pedagogy, such as "whether or not to teach to and exam to the 'Bar.'"

The report concluded: "While teaching Torts remains a challenge, we believe that Professor Butler has thoughtfully considered these issues and has concrete plans for improved teaching strategies. . . . We are confident that by tenure time, her teaching . . . will be at least at a high quality level in her large Torts classes."

Based upon our review of Cheryl's Torts student evaluations that were available at the time that the contract renewal report was written, we believe that the problems with Cheryl's teaching were perhaps understated in the report. Further, based upon the student evaluations of Cheryl's Torts classes subsequent to the report and our own observations of her classes, the report's positive forecast for her future progress was regrettably optimistic.

Since the renewal committee report Cheryl has taught Torts I twice (fall, 2014 & 15) and Torts II once (spring, 2015). These more recent evaluations are at best a mirror image of the earlier ones, reflecting no progress for Cheryl as a teacher. More objectively, they demonstrate a marked worsening in the quality of Cheryl's teaching and course management.

Cheryl is a very good presenter to larger audiences. She is charismatic and likeable, and she demonstrates passion and enthusiasm. She continually expresses concern for her students, who in turn seem on the whole to respond positively to her. Her

students (even those most critical of her teaching) say that she is a nice person with a pleasing personality, and many compliment her on her accessibility outside the classroom. A few students in each course (particularly Torts I) even say that she is their “favorite professor.”

Cheryl also has a talent for moderating class discussions, although for reasons expressed below she shows minimal dexterity in tying the discussions back to applicable law or to the relevant course material. The available evidence strongly suggests that this is due to spending insufficient time and energy learning the law of torts and in preparing for her torts classes. There is no question that Cheryl has the ability to be a good torts teacher. For example, in her Torts I evaluations for fall, 2014, which were by far her strongest, several students opined that she demonstrated a strong command of the subject matter and was a good teacher. Nevertheless, more students in that class questioned her understanding of the material and her preparation for class. Several also complained that she repeatedly cancelled classes or terminated them early, a continuing refrain in most of Cheryl’s torts evaluations both before and after her contract renewal.

Cheryl’s evaluations for Torts II (spring, 2015) and Torts I (fall, 2015) were, on the whole, awful. Indeed, constituencies from both of these classes petitioned our Dean’s Office with complaints about the courses. As explained below, the Torts II complaint pertained to the final examination for the course. The Torts I complaint was about the substance and pedagogy of the course itself.

In the Torts II course, in addition to an increase in complaints from the prior semester that Cheryl was unprepared for class and lacked knowledge of tort law, many students complained that the coverage of new material was scant. Several classes (some said 5) were entirely spent going back over past material (reviews). Many students complained of class cancellations (some said at least 5 – with no mention of make ups), and several classes were just terminated early. Other students complained that almost the entire semester was spent solely on the tort of negligence, which had also been covered extensively in the fall semester.

Nevertheless, one student in Torts II described Cheryl as a “favorite professor” and said she demonstrated good knowledge of the course materials. Others, however, said that she was the “worst” professor they have ever had. This set of evaluations was particularly disappointing because the evaluations by these students the previous fall gave hope that during her first year after her contract renewal Cheryl was indeed making some progress as a tort law teacher.

But the evaluations for Torts I in the fall 2015 semester were arguably even worse than those for Torts II the previous spring. Roy believes that these evaluations are as bad as he has ever seen for a colleague at this juncture (the tenure semester), particularly considering that this was the fourth time Cheryl had taught Torts I. Although the evaluations were overwhelmingly bad, most damning were comments that first complimented Cheryl as a passionate and enthusiastic teacher, and as a

nice person, and then opined that she was often unprepared for class and lacked knowledge of the subject matter.

As we have emphasized, Cheryl conveys a passion and enthusiasm in her classes that can be contagious. These qualities were listed in the “strengths” category of the evaluations by even the most scalding critiques. And even in the fall, 2015 course a few students opined that it was a good or great course and that Cheryl was their best teacher. One student complimented Cheryl’s facility with the subject matter. Many of the students said that Cheryl was a nice person and applauded her availability to them outside of class. Thus, the following:

Best 1L course we have this semester. I appreciate the casebook, organization of material & how it is presented. Instruction is always clear. This class keeps me from dropping out of law school on bad days. . . . None [weaknesses] . . . Don’t listen to the haters. They are entitled and whiny. Keep doing what you’re doing.

The following lengthy comment, however, encapsulates the overwhelming majority of the evaluations and is for that reason quoted in full.

I have never had a professor more distracted and unclear. Assignments change constantly, classes are cancelled with minimal notice and rescheduled with no concern for student’s other obligations. I have had to email for clarifications on assignments at least four times; I will receive one answer, then the whole class will be emailed with a different answer, and then what is discussed in class will be different than that. There’s no way to prepare ahead because assignments will change the MORNING of class. She says she wants us to be fact masters, but SHE DOESN’T KNOW THE FACTS of the cases. Class discussion on cases is an excruciating line-by-line rendition of the case. It’s not a creative or enlightening method of learning. Her mood swings are beyond unpredictable. One day she is energetic and wants questions and engagement, some days she’s aloof and distracted, some days she wants questions, other days she acts like they should never even be asked. She is condescending; she is flippant. There seems to be outside personal issues that are affecting the quality of MY education and frankly it makes me mad. If I’m going to pay \$50,000 a year to go here, I at least want my damn assignments to be clearly expressed.

There were recurring complaints that Cheryl was often unprepared for classes, that she often contradicted her previous statements about cases and legal rules, and that she did not have an adequate command of tort law. These criticisms are typical of Cheryl’s evaluations for the prior occasions she has taught Torts, but are more frequent and harsher this time around.

Most unfortunately, many students accused Cheryl of appearing to be angry with them, of belittling and berating particular students and, generally, of acting

unprofessionally toward the class. Several opined that she was averse to criticism and that she appeared to become particularly upset with the class after she had conducted mid-term course evaluations. They said that Cheryl found the criticism to be incorrect or unfair. Although similar complaints of unprofessionalism and harshness toward students had appeared in Cheryl's early evaluations (particularly the first time she taught Torts I), they had largely disappeared from recent evaluations.

But by far the most repeated complaint was of the large number of classes that were cancelled, the inconvenient times classes were rescheduled, the narrow scope of the coverage of tort law, and the large number of classes that were spent reviewing material previously covered (although several students expressed appreciation for the reviews).

Ultimately, members of this class met with Dean Collins to complain about the course, a meeting that Jennifer says was "sad" and "distressing." Jennifer describes the meeting as follows.

A group of students asked to meet with me to share their concerns about the course, and it was obvious they did so with reluctance and regret. They emphasized that Professor Butler is a very nice person and they wished they did not have to come speak with me. But they felt compelled to because they were so concerned about the substantive errors and the style in what they had been taught.

This sort of widespread criticism is extraordinary, coming from first semester 1Ls, who generally tend to trust in the competence and capability of their professors more so than more seasoned law students. Given their inexperience with law school, their criticism might be taken more lightly were it not for its consistency throughout both these evaluations and those of previous classes and the fact that much of the criticism is objectively verifiable, such as class cancellations and minimal coverage of substantive material. The fragility of the trust given us by new students, however, is evidenced by the fact that, although Cheryl's mid-term evaluations of the course (administered by Cheryl) were mixed, they were definitely more positive than the final evaluations (conducted independently) just a few weeks later. Much of what the students had to complain about was substantiated by members of this committee and by other faculty after attending Cheryl's classes.

C. Torts/Peer Evaluations

Cheryl's peer evaluations, including our own, agree that Cheryl is a very good presenter in larger classes. She is comfortable in the setting, and she exhibits good control of the class and of substantive discussion. She has a contagious public personality, and she often expresses care and concern for her students. She is energetic and appears passionate about the course material.

One colleague had a very positive opinion of the class he attended early in the semester (September 22). He said:

I attended both of Professor Butler's classes on Sept. 22: her first-year Torts section as well as her seminar on Critical Race Theory. Based on that review, it is clear to me that Professor Butler is an outstanding teacher.

Professor Butler began her Torts lecture by noting the uncertainty that prevails in much of the law, particularly in non-statutory fields. She then dove into the assigned cases, calling on students to summarize the facts, procedural history, and analysis. The topic of the class was the importance of finding duty as a precursor to negligence. . . . In her back-and-forth with the students, Professor Butler pointed out when she agreed with their analysis and when she disagreed.

For the most part, the students seemed to appreciate Professor Butler's teaching and were attentive and prepared. There was one student who seemed to misunderstand Professor Butler's questions, and I noticed . . . that he spent the entire class surfing websites. . . . Later in the class, a few other students admitted to being unprepared, and Professor Butler informed them they would all be called on in the next class.

Another colleague offered a more balanced perspective of one class.

Overall I saw both aspects that were well done and areas that need work. [Cheryl] began by distinguishing how best to conceptualize and organize the material she had covered so far, providing the students with a useful blueprint for their notes and outlines. This seemed a little repetitive, however, and I would shorten this summation. Moreover, I have come to learn that this is not an occasional wrap-up done at the end of a section, but rather a quotidian feature of her class. That, again, seems redundant and perhaps wasteful. . . .

She seemed largely at ease with the class and the class seemed at ease with her. I thought she also did a nice job of helping students to frame legal analysis by pointing out how her questions and the students' answers related to the different parts of a case brief or the IRAC formula.

There were one or two instances where I thought the law got confused in the discussion, but I also felt that this might have been a result of Cheryl's (perhaps over-) eagerness to use student answers to articulate the legal principle at issue. She did a fine job overall of facilitating discussion by using student questions and her answers to transition to new or old related topics, although on a few occasions I felt she merely acknowledged a question without really engaging it.

The negative aspects noted above are consistent with, and are more starkly presented in, the views of other colleagues, including those who attended more than one of Cheryl's Torts classes this semester. One colleague who has seen multiple classes provided the committee with a lengthy critique that included descriptions of specific instances that support her conclusions. A synopsis of just the general observations follows.

I was distressed by what I observed when I visited Professor Butler's Torts class on November 3rd. My concerns about that class are both pedagogical and substantive. First the good part [she arrived on time and] has a charismatic classroom presence, she is easy to hear, and her presentation is animated. Unfortunately, the content of the class was far more problematic. . .

More importantly, this class was just a reminder of all of the cases that the students had studied on the topic of duty, complete with a recitation of the facts of the cases. There was no structure to the review – principles of law were not organized or systematized. [The committee notes that this criticism is typical of all of Cheryl's torts courses – she gives numerous "review" or "repeat" classes throughout the semester although the students have been assigned new material for the particular class, which is not addressed.] . . .

I am not a Tort law expert, but if I understood the lecture correctly, there were multiple places in which the law was mis-stated. . .

The new cases were never covered. Professor Butler told the class that they would do an exercise in the next class "maybe" using an old exam question, and then would stay 30 minutes over to do the cases they did not reach on Tuesday.

Another colleague attended the same class and characterized the above commentary as, "unfortunately very accurate." This colleague had attended a previous class and had found it to be "okay" but "not of high quality." This colleague attended the second class because Cheryl had predicted that the class was going to be "a very strong one." The colleague wanted the opportunity to reconsider reservations that she had about the other class she attended. Instead the colleague was "deeply troubled, and saddened" by the class, which she characterized as "absolutely awful both pedagogically and substantively."

Finally, another colleague offered the following about another of Cheryl's torts classes this semester:

Overall, I found the class disjointed and difficult to follow. Usually, when I visit a colleague's class, I learn something new or I'm reminded of a topic I learned about in law school – even coming in the middle of the semester without reading the assignment. Yesterday, I had trouble following the class.

At the beginning of class before moving to new material, Cheryl spent 15 or 20 minutes doing a recap of material that she had covered previously. . . She made two different references to questions from a previous exam. About 10 or 15 minutes before the end of the time for the class, she asked the student to hurry because they were running out of time. Then she ended class 7 or 8 minutes early. She did not leave after dismissing class, but stayed in the classroom answering individual students' questions. [Note. Other colleagues who have attended Cheryl's classes note that she ended class early for no apparent reason. The student evaluations over several courses complain of this practice as well.]

A positive note, she used humor effectively at one point and the students laughed.

This same colleague attended another of Cheryl's classes later in the semester and offered the following observations, including a criticism that has been consistently raised by observers that the class lacked coverage of new, relevant material.

I found {the class} difficult to follow. I even took notes on the material in the hopes that it would help, but still found the presentation [mostly lecture] to be disjointed. Cheryl talked about previous exams several times during the class, mentioning specific questions and how they should have been answered. She ran out of material before the end of class and spent time on a preview of the following class. On a positive note, Cheryl is enthusiastic in her teaching. Overall, however, I do not believe her teaching is of high quality.

And further:

Something else that I thought you should know is that I showed up for her class on November 17th, but the class was not there. I found Cheryl in her office, and she told me that she had rescheduled the class because the material was really important, which I thought was an odd reason for rescheduling.

Another colleague who attended this same class had a kinder view that the class was "okay" but "wasn't great" and "wasn't terrible either."

Roy, our chair, attended two of Cheryl's classes, those of September 29 and October 13. He reports as follows.

Cheryl's performance in both classes was disappointing and, on the whole, well below the quality I have come to expect of colleagues in their tenure semesters. I was particularly disappointed because previously I had talked at length with Cheryl about the negative reports I had heard about her torts courses from students and colleagues. Cheryl had assured me that the course

was going very well this semester, that she devoted substantially more time to class preparations than in the past, and that she had “mastered” the substantive material for Torts I (although not, she said, for Torts II). She even said that she believed herself well on her way to winning the Don Smart Excellence in Teaching Award.

The first class I attended, however, confirmed many of the negative comments from colleagues and students noted above. Cheryl does have an excellent classroom presence. She is obviously comfortable with the large classroom audience and conveys enthusiasm and an almost charismatic personality. It seemed to me that the students in turn were comfortable with her. However, I found little else to like about the class. I saw a teacher who was ill prepared to present the assigned material and who was clearly not comfortable with the tort law addressed by the assigned cases.

Cheryl spent the first 10 – 15 minutes reviewing the material covered in the previous class. While doing this she read almost entirely from her notes, rarely looking up from them. The purpose of the review, however, was apparently not to ensure the students’ understanding of the material because, when she occasionally did look up from her notes, she ignored several students who were waving hands. Finally, she snapped at one student that she was “not finished catching up.” That ended the show of hands. She took no questions after she had finished the review.

There were apparently four major cases assigned for the class. All related to the issue of whether, given differing relationships between the litigating parties (doctor and patient, business entity and customer, business entity and tenant of customer, etc.), duty as an element of a negligence action should be extended to the defendant on the facts of the particular case. Cheryl began coverage of the new material by continuing to read from her notes. Even when she called on a student to recite the first case her questions of the student were read verbatim from her notes. At one point when a student asked a question, she responded by first flipping through her notes and then replying “My notes say . . .”.

Cheryl apparently ran out of notes after two of the cases (about 45 minutes into the class). She then turned to the casebook and paused while she silently read through the case. She then began reading passages, saying these were important points that should be learned verbatim. On two or three occasions she said that a point the court made was often addressed by bar exams. The remainder of the class was pedantic, with Cheryl reading from the final two cases, followed by statements like “Write this down, it’s important...” and questions like “Does this make sense...?”. During the entire class she came across more as a tour guide through the material than as a teacher of it. In the latter part of the class the tour guide appeared lost.

Cheryl did make the salient point on two or three occasions that the cases were driven more by policy than by strict application of rules of law. On a couple of occasions, however, I believe she misstated the law and confused the facts of one case with those of another. I did like that she pointed out to one particular student that the case addressed a question he had raised in a previous class.

In contrast, in another of the cases the court had refused to find a duty to the plaintiff because of the absence of a contract relationship between the parties. Cheryl opined that a contract relationship is a poor basis for determining duty in negligence law. But she did not explain why she thought that or why that was so in the case being discussed. Instead she said that a better basis for the decision was to avoid “crushing liability” to the defendant. A student tried to argue that point, suggesting that the defendant (Con Ed) could bear the loss and that the court’s decision encouraged corporate carelessness. I thought it was an engaging point, but Cheryl simply moved on to the next case.

The second class I attended was somewhat better, mainly because the students were allowed the opportunity to speak more. The primary subject was foreseeability as a factor in an action for negligence. Cheryl began the class with a confusing harangue defending an exam question she had used for her Torts I exam the previous year. Her comments, which went on for several minutes, clearly confused the class, because they had no apparent relevant context. Although the context is explained below, Cheryl’s addressing the matter was largely a waste of class time and bewildering to most of the students.

Cheryl then began coverage of the new material by reading from her notes. She briefly reviewed the material covered in the previous class. She then called on a student who gave a nice synopsis of the case and was well prepared to discuss it. All questions that Cheryl asked the student were read from her notes. After some interchange, Cheryl asked the student whether he had ignored one of the most important facts of the case – the fact that the tort occurred after dark. The student, clearly confused, began thumbing through his casebook. Several hands went up around the room. Finally a student blurted that the tort had occurred mid-day. This truly was an uncomfortable moment. After Cheryl rechecked her notes she conceded the point and called for discussion. The discussion was quite good. Cheryl acted mostly as a moderator, however, by asking good leading questions. Nevertheless, at no point did she tie the discussion points back to the case being discussed. As suggested above, the two occasions when she briefly allowed class discussion were the high points of the class. Cheryl cut both occasions short, however, without summary or resolution, saying that they had to move on in the assigned material.

The class was similar to the previous class I attended. Throughout the class Cheryl was energetic and enthusiastic. At all times, however, she was tied either to her class notes, which she held in her hand as she walked around the front of the room, or to the casebook, which she read from extensively. But she never even attempted to put the courts' words into her own. Once again, it was apparent to me that Cheryl was ill prepared to present the assigned coverage. I concluded that she was bluffing her way through the material. That thought regarding a colleague made me uncomfortable. But it also angered me because these were first semester 1Ls, most of whom might well have been taken in by such machinations. Their end of semester evaluations of Cheryl's teaching, however, proved my pessimism to be misplaced.

D. Lack of Commitment to Teaching

One interpretation of Cheryl's time with us is that she has spent almost all of it on her scholarship and academic reputation at the expense of her development as a teacher. With four plus years behind her Cheryl should have shown much greater progress in the classroom, particularly after this faculty, through her advisory committee, had counseled her on her shortcomings in this regard well over a year ago. Cheryl's failure is particularly frustrating because she has all the natural ability to be a superb teacher – intelligence, personality, charisma, and all the other talents referenced above. She conveys enthusiasm for the subject matter and great concern for her students. The record, however, clearly shows that she has not developed the facility with the subject matter of torts that is to be expected of a teacher at even a poor law school. Further she frequently attends class without adequate preparation. On numerous occasions she disguises the situation by either spending the class reviewing previous material or by terminating class early or cancelling it entirely. Dean Collins has advised the committee that Cheryl terminated a class she attended ten minutes early and then spent at least a half hour after the class answering student questions. Roy advises, after talking with two colleagues who attended Cheryl's November 3 class (the "review" session referenced above), that the class was virtually identical to the class he attended on September 29. In other classes she simply turns to reading from the casebook.

Over the years Cheryl's students have complained of her lack of professionalism in the classroom. Other than her attacking students, individually or collectively, who criticize her teaching, the most disturbing is the accusation of several students that Cheryl asks her students to download her articles to help her professional standing. [Cheryl emphasizes the number of her downloads on the Law School website.]

Over the years, Cheryl's lack of commitment to teaching has been demonstrated in other ways. For example, not one time in her years with us has she turned her Torts grades in on time. This despite the fact that job interviews for our students may critically hinge on first semester grades being in at least by the scheduled deadline.

On most occasions the delay has only been a day or two. On others, however, it has been a week or more.

More problematic are the exams themselves. Cheryl apparently devotes little time or energy to developing good examinations. Her Torts exams are (roughly) a combination of essay and short answer (multiple choice) questions. Students have complained that Cheryl used the identical exam two years in a row, after having distributed the answers the first time around. Cheryl has been unable to provide the committee with copies of many of her exams because of computer problems. However, Cheryl admits that she has given exams with several misspellings and containing questions in which the names of the parties change inexplicably within the question. Cheryl agrees that these exams were not properly proofread in advance but defends that she was ill when she drafted the questions.

Cheryl also has had problems getting exams submitted in time for them to be prepared for distribution. An example involved the “foreseeability” exam question referenced above. In December 2014 Cheryl was contacted by our registrar’s office for copies of her Torts I exam that were needed that day for students with exam-taking accommodations. As Cheryl explained to Roy, she was completely surprised by the request because no one had advised her of the date scheduled for her exam and, therefore, she had not begun to write it. Hence her essay question (contrary to the fact pattern that students later complained had been promised) was simply one sentence asking the students to analyze the role of foreseeability in the tort of negligence. Cheryl herself complained that lack of proper notice meant that she had to “beg” another colleague for three additional questions to complete the multiple-choice portion of the examination. Roy could make no sense of much of this story and still has difficulty understanding Cheryl’s outrage at not being advised of the time and date of her exam. Particularly perplexing is that Cheryl related this vignette moments after spending several minutes explaining to Roy how careful she is in preparing examinations and that her practice is to begin preparing them weeks before they are scheduled.

D. In Cheryl’s Defense

Cheryl maintains that many of the shortcomings we have emphasized above are attributable to her being ill and to personal circumstances, including those pertaining to her husband’s health issues. Since late September, however, Roy individually and the committee as a whole have spent hours with Cheryl. Cheryl told us early on that she and her husband had experienced health problems during last spring semester (2015). However, the first time this committee heard from Cheryl that she was having health issues this semester was by email of November 8. This was after members of our committee had visited her classes and had advised Cheryl that we had problems with her teaching. We have no knowledge of the particulars of Cheryl’s illness, but we saw no evidence that Cheryl was unwell during the classes we visited. As have all colleagues we’ve heard from, we found Cheryl to be vibrant and energetic during the classes we visited.

As noted previously, after the semester was over we did learn that in late December Cheryl received accommodations from HR retroactively to include part of the fall semester.

Since November 8 the committee has consistently advised Cheryl that her illness or other personal circumstances that may have affected our objective conclusions are not proper matters for our inquiry. We have continually advised Cheryl to consult with our office of Human Resources (HR) and with our Dean and Provost. We do know that Cheryl has contacted and is working with HR. We also know that the Provost has denied Cheryl's request that her tenure clock be tolled.

On December 23, Dean Collins was advised by HR (and in turn Jennifer advised this committee) that Cheryl was granted FMLA leave for the period from November 18, 2015 through December 21, 2015 (in effect, retroactively). The HR letter then says:

Intermittent leave has also been 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.

As is her right, Cheryl has specifically instructed HR that it may not divulge the specific reasons for the leave.

During the second week in December Cheryl contacted Roy by phone to ask for a committee meeting for the purpose of presenting the committee with evidence of her illness. She said that she was being granted FMLA leave by HR and that this would prove that she had been ill during the current semester. Roy declined to call a meeting for that purpose, repeating the advice our committee has consistently given Cheryl regarding her health issues. Roy tried to explain that all three of us are personally sympathetic but that it is not our job to evaluate her health or to assess its impact on her job performance. Roy emphasized that we are not doctors and that we cannot properly evaluate the relevance or credibility of any evidence Cheryl might want to show us. Roy also said that he personally had no wish to be privy to the personal, private matters of the Butler family.

Cheryl strongly disagrees with the committee's position in this regard. She believes that "in fairness and equity" the committee must conclude that most of the problems with her teaching are attributable to her poor health and that our conclusions are therefore "tainted." Roy advised Cheryl that if she wished he would explain her position in this report. Therefore, we have included this section. Roy also advised Cheryl that he would put any information in this report that was recommended by the Dean or the Provost.

One of us finds some merit in Cheryl's position. In October, Cheryl advised our colleague in confidence that she had health problems. Our colleague believes that

these problems continued to exacerbate with a downward spiral that appeared to spin out of control by early December. This likely contributed to poor decision-making (including in matters relating to her request for a tolling of her tenure clock and FMLA leave), had a negative impact on her work, and may be one cause of Cheryl's poor peer and student teaching evaluations. Our colleague says that if a student exhibited behavior similar to Cheryl's over much of the past semester, the colleague would immediately recommend that the student seek counseling and medical help. Additionally the colleague notes that this committee collectively did not have the opportunity to observe Cheryl's teaching in any semester other than this one. For these reasons, our colleague believes it is unfair to make an evaluation of Cheryl's teaching at this time and cannot suggest a determination that will adversely affect Cheryl's career.

VI. A Final Point

Finally, given the committee's own experiences with Cheryl and the repeated, consistent, and unsolicited comments received by the committee from several members of the faculty, two members of the committee feel obligated to note that Cheryl is often untruthful in her dealings with her colleagues and the law school administration. By untruthful, we mean that she says things that she knows or should know are not true. She repeatedly mischaracterizes what colleagues have said, including what members of this committee have told her. She often states facts in contradiction to what she said earlier in the same conversation. Roy has called her on this point several times. Sometimes she attempts to explain. Sometimes she says Roy misunderstood. Other times she gets angry. She has made accusations against colleagues, including our Dean and our Provost, that are demonstrably not true.

Cheryl's tendency to obfuscate is but an exemplar of her refusal on numerous occasions to cooperate with this committee and, on other occasions, to delay or attempt to obstruct the work of the committee. Cheryl's conduct in this regard even predates the committee's advising her that we had problems with her teaching and with her candidacy for tenure. It has made the work of this committee much more difficult than need be and has caused a significant waste of time. For example, most recently the committee requested by email to her assistant (with a copy to Cheryl) that she provide us with an electronic copy of her resume and her personal statement to be included with this report. Cheryl immediately responded by instructing her assistant not to provide the information, saying that she was doing updates. At least twice we have asked Cheryl to either provide the updates or release the originals. Cheryl has ignored the requests. The personal statement that is attached to this report is the one Cheryl filed in her tenure and promotion box. The resume, however, has been removed from the box. The attached resume is taken from the Law School website.

VII. Conclusion.

We believe that Cheryl's scholarship and her service adequately meet Law School and University standards for tenure and promotion. The committee agrees that Cheryl's teaching falls short of those standards. Two of us therefore recommend that tenure and promotion to the rank of associate professor of law not be granted by this faculty. One of us believes that, as discussed above, the faculty should not be making a recommendation regarding tenure at this time.

Respectfully submitted,

Roy Anderson
Anthony Colangelo
Mary Spector

_s/Roy Anderson

Roy Ryden Anderson
For the Committee

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)(
)

REMOTE ORAL DEPOSITION OF

STEVEN CURRALL

OCTOBER 27, 2021

VOLUME I

1 ANSWERS AND DEPOSITION OF STEVEN CURRALL, taken at
 2 the instance of Plaintiff in the above-styled and -numbered
 3 cause from 9:09 a.m. to 10:42 a.m., on the 27th day of October,
 4 2021, before Denise Carrifee, Certified Shorthand Reporter No.
 5 4411 in and for the State of Texas, deposition being taken
 6 remotely, the witness being in Dallas County, Texas, by
 7 agreement and in accordance with the Plan of all Districts of
 8 Texas.

A G R E E M E N T

12 It is agreed that this deposition transcript may be signed
 13 before any Notary Public.

I N D E X

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A P P E A R A N C E S

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18 Kelly Thurman, Esq. (All Via Zoom)
 19 Cheryl Butler
 20 Mallory Biblio
 21 Sherry Faulkner

E X H I B I T S

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1 PROCEEDINGS
2 (Deposition commenced at 9:09 a.m.)
3 STEVEN CURRALL,
4 having been first duly sworn, testified as follows:
5 EXAMINATION
6 BY MR. DUNLAP:
7 Q. Okay. Dr. Currall, am I saying that correctly?
8 A. Yes. Good morning.
9 Q. Good morning. I'm Andrew Dunlap. I represent Cheryl
10 Butler, the plaintiff in this case. And do you know Cheryl
11 Butler?
12 A. Yes. I am aware that she was a faculty member at
13 SMU.
14 Q. Okay. During the -- and so during the -- have you
15 ever had a personal meeting with Professor Butler?
16 A. No.
17 Q. Okay. Have you ever met her socially, casually?
18 A. I don't recall meeting her. Well, I met her at a
19 mediation gathering that we had some years ago when I was still
20 at SMU.
21 Q. Okay. Are you still at SMU now?
22 A. No.
23 Q. Okay. When did you leave SMU?
24 A. Summer of 2019. In June of 2019.
25 Q. Okay. And how long were you at SMU?

1 A. Three and a half years.
2 Q. And what was your role there?
3 A. Provost and vice president for academic affairs. And
4 I also held a tenured faculty role, and courtesy appointments
5 in two other academic departments.
6 Q. So that's what, five paychecks?
7 A. Just one.
8 Q. Would have been nice, huh?
9 A. Yes.
10 Q. Okay. And so as provost, do you have the opportunity
11 to get involved in the tenure process?
12 A. Yes.
13 Q. Okay. And what is your role in the tenure process?
14 A. My role is to uphold the university policies and
15 practices. I'm advised by information from the faculty of the
16 school, and from which the faculty member -- in which the
17 faculty member holds a position.
18 I'm also advised by the dean of the school, as well
19 as an advisory committee/faculty from across the university,
20 who advise me. And we are -- we engaged in deliberations about
21 every tenure case.
22 Q. Okay. So any professor that is up for tenure at SMU,
23 you would be involved in that process, correct?
24 A. That's correct. Promotion and tenure. All promotion
25 and tenure.

1 Q. Promotion and tenure. Okay. What about contract
2 renewal?
3 A. Not at all. That's all done at the school level and
4 by the dean of the department.
5 Q. So, I have an exhibit -- I don't -- I doubt if you
6 have that.
7 MR. DUNLAP: Ms. Askew, have you been able to get
8 Dr. Currall the Exhibit No. 2?
9 MS. ASKEW: I have provided him with what you sent me
10 this morning --
11 MR. DUNLAP: Okay. Okay.
12 MS. ASKEW: -- as Plaintiff's Deposition
13 Exhibit 2.
14 MR. DUNLAP: Okay.
15 Q. (BY MR. DUNLAP) So do you have that available,
16 Dr. Currall, that you can see or --
17 A. If you'll tell me -- if you'll describe the document,
18 I will tell you if I've got it.
19 Q. It's the guidelines for award of rank and tenure.
20 MS. ASKEW: It's the document that I just -- I most
21 recently forwarded to you.
22 THE WITNESS: I have that. Yes, I have it. I have
23 it on the screen.
24 Q. (BY MR. DUNLAP) Okay. Good. And you'll be able to
25 follow that on the screen?

1 A. Yes.
2 Q. Okay. All right. Okay. So I know it's been a while
3 since you've been at SMU, but I wanted to go over the
4 guidelines with you. And let's start with No. 5. It's the
5 Promotion and Tenure Process, No. 5.
6 And I'll give you a chance to kind of -- I'm going to
7 ask you some questions about that, so take your time in kind of
8 reviewing it so that it'll be familiar with you. Let me know
9 when you're ready.
10 A. So, Mr. Dunlap, were these the policies in place
11 during the deliberation about Professor Butler's case in spring
12 of 2016?
13 Q. I believe so.
14 MS. ASKEW: I'm looking at Plaintiff's Deposition
15 Exhibit No. 2, and it says it was revised December 16th, 2019.
16 Is there another document that you are referring to, because
17 this would not be the policy that was in place?
18 MR. DUNLAP: You've got a -- you've got a point
19 there.
20 Q. (BY MR. DUNLAP) Okay. So I tell you what, this is
21 the latest policy. I'm going to ask Dr. Currall what -- could
22 you describe the process that was in place, if you can re -- if
23 you can, that was in place when you were there?
24 A. So the process back in early 2016 that's applicable
25 to Professor Butler's case was that for every school in the

1 university, they would go through a process of assess -- the
2 faculty would go through the process of assessing the
3 candidate's research or scholarly activity, teaching,
4 in-service.
5 For those schools that had academic departments, that
6 would take place at the departmental level. My memory is that
7 the Dedman School of Law does not have departments, and so the
8 faculty as a whole would deliberate on a case.
9 They would make an assessment of research, teaching,
10 in-service. That would then go to the dean. The dean would
11 then make a recommendation to me. I would receive all of that
12 in a dossier that was very standardized across the university.
13 And then my provost advisory committee and I would
14 deliberate on each case and reach a position. And then I would
15 send a recommendation to the president.
16 MS. BUTLER: Excuse me. May I request a one-minute
17 break with my counsel before I go on and teach torts?
18 MR. DUNLAP: Yeah. Let's just take a quick one. I
19 apologize for that.
20 MS. BUTLER: Thank you. Thank you so much. Excuse
21 me.
22 (Recess taken from 9:17 a.m. to 9:19 a.m.)
23 Q. (BY MR. DUNLAP) Okay. So you were talking about --
24 you got to -- I think your last response was that you got the
25 tenure recommendation, and then you have an advisory committee

1 that you work with.
2 And then you guys deliberate, and then you make the
3 decision, correct?
4 MS. ASKEW: Objection, mischaracterizes his
5 prior testimony. He stated he made a recommendation.
6 MR. DUNLAP: He can say yes or no.
7 MS. ASKEW: I'm sorry?
8 MR. DUNLAP: I can't remember. I can't
9 remember. You know, I mean, I'm doing my best.
10 MS. ASKEW: Why don't you just let him describe
11 the process --
12 MR. DUNLAP: Okay.
13 MS. ASKEW: -- and that way, we are all on the
14 record together.
15 MR. DUNLAP: Absolutely. Okay.
16 Q. (BY MR. DUNLAP) So, we got to that point. What
17 happens after that?
18 A. After my recommendation?
19 Q. Yes.
20 A. That goes to the president of the university. And
21 the positive cases of promotion and tenure are then voted on by
22 the board of trustees.
23 Q. Okay. And if there is a denial, the trustees don't
24 vote on that one?
25 A. Correct.

1 Q. Okay. So --
2 A. If there is a denial, the candidate has the
3 opportunity to appeal.
4 Q. Okay. And these new guidelines, I guess they came
5 out right about the time you were leaving; is that right?
6 A. I don't know the date of these -- the exact date of
7 these new guidelines, but I left in June of 2019.
8 Q. Okay. Can you point to any differences between the
9 two?
10 A. I'd have to -- I'd have to read the new policy in
11 detail, which --
12 Q. Okay.
13 A. -- I can do that if you wish, but, I mean, that would
14 -- that would take a fair amount of time to read the entire
15 document.
16 Q. No problem. Okay.
17 So then in the -- I'm going to ask you a question:
18 During the time that you were there, was there an opportunity
19 during the tenure process for a candidate to take a pause?
20 What did you know? What can you recall about that?
21 A. Well, regarding Professor Butler's case, she was
22 granted family and medical leave. And I was notified of that,
23 but I had no involvement in making the decision about FMLA. I
24 was only notified of the decisions about FMLA that are done by
25 the department of human resources.

1 And that has no bearing whatsoever on our
2 deliberations about promotion and tenure.
3 Q. Okay. I understand.
4 So if a -- do you participate in any of the
5 decision-making process when a candidate would ask for a pause
6 in the tenure review?
7 A. I did not participate in any of that regarding
8 Professor Butler's case. I began my employment at SMU in
9 January of 2016, and the documents that I have show that there
10 were deliberations about a pause in her tenure clock that
11 predated my employment at SMU.
12 Q. Okay.
13 A. That was done by the interim provost.
14 Q. But as a provost, if there was a request for a pause
15 in the review, would that come to your desk?
16 A. Well, it came to the desk of the interim provost
17 before I was there. So, presumably, any future cases like that
18 would come to -- would be -- would involve the provost.
19 Q. Okay. So, in other words, that -- the provost is
20 involved in that process? You just were not involved -- I'm
21 not asking you about this case, I'm just asking you in general,
22 not the particular case.
23 A. Yeah, just to be -- to be clear, I have no
24 involvement in FMLA, none at all.
25 Q. No. I'm asking you: Do you have any involvement in

1 the tenure process, a review --
2 **A. Well, if there -- if there are alterations in the**
3 **tenure clock --**
4 **MS. ASKEW: Objection, asked and answered. He's**
5 **talked about what he does in the tenure process.**
6 **MR. DUNLAP: This is a different question.**
7 **MS. ASKEW: Okay.**
8 Q. (BY MR. DUNLAP) The question is, again: Is it part
9 of the provost's responsibilities to participate in the pause,
10 a request for a pause in the tenure process?
11 **MR. DUNLAP: Not -- I understand he doesn't do**
12 **anything with the FMLA, but in the -- in the pause of the**
13 **tenure process.**
14 **A. The role of the provost may involve deliberations**
15 **about a pause or a delay in the promotion and tenure process.**
16 **But again, in her case, that was done by my predecessor, the --**
17 Q. Okay.
18 **A. -- interim provost.**
19 Q. **And so do you know -- and if don't, you can say no.**
20 **Do you know if the previous provost made a decision on her**
21 **request to pause the tenure process?**
22 **A. Yes. He declined that request.**
23 Q. Okay. And then when the dean of the law school makes
24 a recommendation of denial of tenure, isn't it true that the
25 candidate has like a three-week time period in which they can

1 **appeal that decision?**
2 **A. I believe the candidate can appeal a dean's decision.**
3 Q. Okay. Do you know if that occurred in this case?
4 **A. I recall that there were -- there was a request by**
5 **Professor Butler to appeal the faculty vote or the faculty**
6 **recommendation to the dean.**
7 **I don't recall if she formally appealed the dean's**
8 **position. That's what I remember.**
9 Q. **And then once you make a decision, is she entitled to**
10 **any other appeal before it goes to the president?**
11 **A. She is allowed to appeal the recommendation of the**
12 **provost, and she has three weeks to do that.**
13 Q. And do you know if she did that in this case?
14 **A. I believe that she did not do that.**
15 Q. Okay. And then once it goes to the president, is it
16 the president that sends her the letter denying the tenure, or
17 how does she get the formal end of this process?
18 **A. The provost sends a letter, and in that case it was a**
19 **letter from me saying that I could not make a positive**
20 **recommendation to the president.**
21 Q. Okay. And was that the only letter that you sent to
22 her about this?
23 **A. Yes.**
24 Q. Okay. And would that be definitive? In other words,
25 based on your recommendation, the game is over?

1 **A. No. She can appeal. And then the president would**
2 **deliberate, and then he would just reach whatever decision he**
3 **would reach.**
4 Q. Okay. Now, is it true that when you deny tenure, you
5 have to state the reasons for the denial?
6 **A. The letter -- again, the letter said that I was not**
7 **able to make a positive recommendation to the president, and**
8 **the letter does not generally explain in detail what the**
9 **reasoning was.**
10 Q. Okay. So you did not send a letter to her saying
11 that I am denying tenure. You're just saying, I couldn't make
12 a recommendation?
13 **A. I could not make a positive recommendation.**
14 Q. Okay. And so were you aware of the problems that
15 Professor Butler was having with regard to her FMLA?
16 **MS. ASKEW: I object, it assumes facts not in**
17 **evidence here in the deposition; lack of foundation.**
18 Q. (BY MR. DUNLAP) You can go ahead and answer the
19 question.
20 **A. Can you repeat the question, please.**
21 Q. **Were you aware -- let me ask you this: Were you**
22 **aware that Professor Butler had requested FMLA during this time**
23 **that she was being reviewed for tenure?**
24 **A. Yes.**
25 Q. And did you ever review any of the process of that?

1 **Did you have -- did that ever come across your desk?**
2 **A. I was only notified of the outcomes of FMLA**
3 **decision-making that are done by human resources.**
4 Q. Okay. Were you aware of any of the other claims of
5 discrimination or retaliation made by Professor Butler during
6 this process?
7 **A. Well, I'm aware that she's making those claims now.**
8 Q. But during the process, were you aware that she had
9 gone to the office of -- the OIC office regarding claims of
10 unfair treatment?
11 **A. The only thing that we deliberate about in the**
12 **promotion and tenure decision is the merits of the case,**
13 **research, teaching, in-service. FMLA, any other accusations,**
14 **are irrelevant to our decision-making.**
15 Q. I understand. I wasn't asking whether they affected
16 your decision, but were you aware of them. Were you aware of
17 the other things that were going on while she was under review?
18 **A. Well, honestly, I don't remember the exact timing of**
19 **all that. I don't remember when exactly she made the claims,**
20 **and I don't know -- I don't remember when I would have been**
21 **aware of that.**
22 Q. Okay. Were you aware of the incident where a student
23 was stalking her, complaining about the grade that she
24 received?
25 **A. No, I don't recall that.**

1 Q. Okay. Or any of the medical issues that she was
2 having while she was under review or the --
3 **A. No, and that was none of my business.**
4 Q. Okay. But that would -- that would not come to your
5 desk; is that what you're saying?
6 **MS. ASKEW: You need to respond audibly,**
7 **Dr. Currall, so that --**
8 **A. No.**
9 Q. (BY MR. DUNLAP) Thank you for that.
10 **A. Thank you.**
11 Q. So your -- you look at the information that is
12 provided to you from the dean of the law school, the tenure
13 report, the vote by the faculty; and you don't do -- you base
14 your deliberation just on what is provided to you, correct?
15 **A. That's right, Mr. Dunlap. The promotion and tenure**
16 **process is a very solemn and rigorous process. It's very**
17 **standardized. The process is very clear to both the candidate**
18 **and everyone involved in the deliberations.**
19 **And part of my job is to ensure that the process is**
20 **done to the best of our ability. And all we -- all we look at**
21 **is what's in the dossier. The dossier covers research,**
22 **teaching, in-service. We don't look at anything else. It's**
23 **pure -- it's a merit-based process.**
24 Q. So you don't look to see if she would be eligible for
25 a tenure pause? That's not part of your concern?

1 **A. No, that -- no. And that had -- the -- her request**
2 **for a tenure pause had already been decided upon by my**
3 **predecessor.**
4 Q. Okay. So if that issue had come to you, you would
5 have decided that separate from the actual review of the tenure
6 recommendation, correct?
7 **A. Yes, although, in this case, I was not employed at**
8 **SMU --**
9 Q. I understand.
10 **A. -- when her request was presented.**
11 Q. Okay. So you look at the guidelines that are set
12 before you by the university, you go down the guidelines, and
13 your job is to ensure that the process is being followed,
14 correct?
15 **A. Correct.**
16 Q. Who was -- do you remember who was on your advisory
17 panel?
18 **A. Well, there -- over the -- over the span of my time**
19 **at SMU, that composition changed somewhat, but I can -- I**
20 **certainly can recall some of them. And I'm sure that we can**
21 **provide the documentation to you for exactly who was on the --**
22 **on the committee.**
23 **Christopher Hanna from the law school was on. Rhonda**
24 **Blair was -- was on. There was a gentleman from engineering.**
25 **There was a gentleman from the school of education. There was**

1 **a gentleman from History, Ken Andrien.**
2 **So I mean, I -- I can -- I mean, I can remember most**
3 **of the people and some of the names.**
4 Q. Okay. Thank you.
5 **And how does the appeal process work? So you**
6 **testified that Professor Butler did not appeal, but if she had**
7 **appealed, what -- how did -- have you ever had a situation like**
8 **that where someone appealed?**
9 **A. Yes.**
10 Q. Okay. And how does that work?
11 **A. The entire dossier is handed over to the president,**
12 **and it's customary for me to have a meeting with the president,**
13 **and he can -- he can ask questions why -- why is the -- what's**
14 **the rationale for the appeal. I describe that, and hand over**
15 **the dossier to him, and then he deliberates and makes a**
16 **decision.**
17 Q. Okay. And I meant to say OIE instead of OIC, Office
18 of Institutional Equity.
19 **A. I assumed that's what you were --**
20 Q. I should know better, I'm a former military guy. I
21 should know these acronyms, you know. But any --
22 **A. I knew what you were referring to.**
23 Q. Okay. Thank you.
24 **So in your deliberation, what were some of the things**
25 **that you-all considered?**

1 **A. Well, again, the three categories of research,**
2 **teaching, in-service. And the dossier covers all of those**
3 **materials. And then the group deliberates, sometimes for long**
4 **periods of time about a case.**
5 **And we deliberate until we converge on a shared**
6 **understanding of the outcome, what recommendation we would**
7 **have.**
8 Q. And with regard to the university's bylaws, is it
9 possible for a candidate to ask for a pause in the process
10 without the FMLA procedure? In other words, "Hey, look, I'm
11 just going through a whole lot. Can we review this later, give
12 me another -- give me a little more opportunity before we make
13 a decision?"
14 **MS. ASKEW: Objection to the extent you're**
15 **asking the witness to speculate.**
16 Q. (BY MR. DUNLAP) You can go ahead and answer the
17 question.
18 **A. There is, for example, pregnancy, childbirth; there**
19 **are sometimes changes in the tenure clock for those reasons.**
20 **So there are policies on that.**
21 Q. Other than those, are there any other policies or
22 other reasons that you can think of?
23 **A. Other than FMLA, I cannot recall other reasons for**
24 **pausing the tenure clock.**
25 Q. Okay. And when you looked at her teaching, what --

1 did anybody question the fact that she had been there for five
2 years, and that this issue had not been rectified before her
3 review, her final review?

4 **MS. ASKEW: Objection. I did not understand the**
5 **question.**

6 **MR. DUNLAP: Okay. I'll ask --**

7 **MS. ASKEW: So it's vague. Please, if you would**
8 **repeat.**

9 **MR. DUNLAP: Okay.**

10 **MS. ASKEW: Thank you.**

11 **MR. DUNLAP: I'm not above or below asking a**
12 **vague question. So let me try it again.**

13 **Q. (BY MR. DUNLAP) So the question is: Did it concern**
14 **the committee that after all of this time that she had been**
15 **there; I think at that time she had been there almost five**
16 **years, that she had not yet met the teaching standards?**

17 **A. Well, Mr. Dunlap, that -- those deliberations occur**
18 **at the school level, and the provost is not involved in any**
19 **advising to the faculty member. That's not within my job**
20 **scope. That's all done by the faculty in the school and the**
21 **dean.**

22 **Q. Okay. So you would have to rely on their**
23 **representations?**

24 **A. Correct.**

25 **Q. And so are you looking for factual support of their**

1 **MR. DUNLAP: Hey, Ms. Askew, could I -- I got**
2 **the email, but I haven't opened it up. I'd like to take --**

3 **MS. ASKEW: Would you like to take five minutes?**

4 **MR. DUNLAP: -- a couple of minutes --**

5 **MS. ASKEW: Certainly.**

6 **MR. DUNLAP: -- you know, to get those**
7 **downloaded. Thank you.**

8 **MS. ASKEW: Okay. Thank you. We will reconvene**
9 **in five minutes. And will the court reporter confirm that**
10 **we're off the record and the time?**

11 **THE REPORTER: Yes, ma'am. We are off the**
12 **record at 9:42 a.m.**

13 **(Break taken from 9:42 a.m. to 9:50 a.m.)**

14 **EXAMINATION**

15 **BY MS. ASKEW:**

16 **Q. Dr. Currall, you were formerly the provost at SMU**
17 **when Cheryl Butler's tenure decisions were made. Would you**
18 **tell us what a provost of a university actually is?**

19 **A. The provost is the chief academic officer. So I**
20 **oversee all of the academic strategy and operations of the**
21 **university. All of the deans report to me. And I oversee**
22 **student recruitment and admissions.**

23 **I oversee the libraries. And I oversee the faculty**
24 **promotion and tenure process. I do not oversee faculty hiring.**

25 **Q. Right.**

1 **recommendations? Is that -- is that important to you in the**
2 **deliberation process?**

3 **A. Yes. I mean, we look at student teaching**
4 **evaluations, and we have access to all of those. And we read**
5 **the commentary written by faculty who had visited the class,**
6 **the classes, and made their own -- written their own**
7 **description of teaching quality and teaching effectiveness. So**
8 **we -- we had access to all of that.**

9 **Q. Okay. And your recommendation was based on the --**
10 **her failure to meet those teaching standards? Would that be a**
11 **fair summation of your reasoning?**

12 **A. The assessment by the school, and I concurred, that**
13 **the teaching was not of high quality. That's the term, that's**
14 **the standard that is used.**

15 **Q. And did you and the advisory committee feel that she**
16 **had been given an adequate opportunity to repair in that area**
17 **during the entire tenure process?**

18 **A. Well, I know that she was advised by faculty**
19 **colleagues about how to further improve her teaching. So I was**
20 **aware of that. And that's in the documentation, it was**
21 **described in the documentation.**

22 **MR. DUNLAP: Okay. I'm going to go -- I'm going to**
23 **pass the witness.**

24 **MS. ASKEW: Dr. Currall, do you need a break, or**
25 **can we go right into our questions on behalf of the defendants?**

1 **A. That's done at the school level.**

2 **Q. Okay. Did you serve as provost for all of the**
3 **schools at SMU?**

4 **A. Yes, ma'am.**

5 **Q. Okay. So the law school, the Dedman School of Law,**
6 **where Professor Butler taught, was just one of the schools that**
7 **you oversaw?**

8 **A. That's correct.**

9 **Q. And I think you told Mr. Dunlap that you oversaw the**
10 **tenure process with respect to Ms. Butler, which led to you not**
11 **providing a positive tenure recommendation?**

12 **A. That's right. My recommendation -- I could not offer**
13 **a positive recommendation.**

14 **Q. Okay. Over the course of your work as a provost, had**
15 **you been involved in making tenure decisions prior to making**
16 **the decision on Ms. Butler?**

17 **A. So prior to becoming provost, I had overseen about**
18 **100 promotion and tenure cases. And by the end of my tenure at**
19 **SMU, I had overseen about 200.**

20 **Q. Okay.**

21 **A. It's about an average of about 25 per year at SMU,**
22 **and I oversaw four tenure rounds.**

23 **Q. Okay.**

24 **A. So that's the spring of 20 -- sorry, the spring of**
25 **'16, '17, '18 and '19.**

1 Q. Okay. Thank you. There was also some testimony in
2 the record that I want to clarify. Did you oversee any of the
3 day-to-day work of Professor Butler as a law professor at the
4 Dedman School of Law?
5 A. None whatsoever.
6 Q. And I think you testified that prior to this
7 litigation, had you ever met Ms. Butler?
8 A. I don't recall meeting her prior to the mediation
9 meeting that we had --
10 Q. Okay.
11 A. -- back in Dallas. I mean, we may have been in -- in
12 gatherings at the same time at the -- at the law school, but I
13 don't recall any personal interaction or discussions with her.
14 Q. Did Ms. Butler ever talk to you personally as part of
15 her tenure review process?
16 A. No. No. And we don't allow faculty to do that in
17 any case.
18 Q. At any time in your role serving as provost, did
19 Ms. Butler ever come to you with any allegations that she was
20 being subjected to a hostile work environment at SMU?
21 A. No.
22 Q. At any time during your role as provost at SMU, did
23 Ms. Butler ever come to you regarding any allegations of
24 harassment?
25 A. No.

1 Q. During your work as provost at SMU, did Ms. Butler
2 ever come to you with any allegations of retaliation?
3 A. No.
4 Q. Where is the law school housed on the SMU campus? Do
5 you remember what building?
6 A. Well, there's three law school buildings in the law
7 quad.
8 Q. Okay.
9 A. And then the administration building where my office
10 was, was across the street.
11 Q. Okay. So I guess my question is: Were you
12 physically located in the law quad where Ms. Butler worked?
13 A. No.
14 Q. I note that you made a recommendation with respect to
15 Ms. Butler's tenure. Did you, as the provost of the
16 university, have the power to make a final decision on
17 Ms. Butler?
18 A. I make a recommendation. I don't make a final
19 decision.
20 Q. Okay. At this time I am going to ask you to look at
21 what we have previously provided to you and to counsel for
22 Ms. Butler as well, Currall Exhibit No. 1. Do you have that
23 before you?
24 A. Yes, I do.
25 Q. Okay. This is a contract dated March 3rd, 2011, that

1 is signed by John Attanasio and Cheryl Nelson Butler.
2 Can you tell us what Currall Exhibit No. 1 is,
3 Dr. Currall?
4 A. Yes. I have the hard copy here.
5 Q. Okay. What is this document?
6 A. I think you're referring to the offer letter from
7 Dean Attanasio to Professor Butler to join the Dedman School of
8 Law at SMU.
9 Q. Okay. And is that the document or the contract that
10 SMU looked to in deciding or making decisions regarding
11 Ms. Butler's tenure?
12 A. No. This offer letter simply refers to the existence
13 of bylaws in the Dedman School of Law and university policies.
14 Q. Okay.
15 A. So this -- this document does not prescribe or say
16 anything about promotion and tenure, other than when the --
17 when the decision would be made and what guidelines would be
18 followed.
19 Q. Okay. So in this letter, is there notice that tenure
20 will be decided in accordance with those bylaws and the
21 guidelines?
22 A. Yes.
23 Q. Is this a true and correct copy of the offer letter
24 or the contract letter that SMU maintains with respect to
25 Ms. Butler?

1 A. Yes.
2 Q. Okay. Now, it states, "If your contract is renewed,
3 you would normally be considered for a tenured appointment
4 during the 2015/2016 academic term."
5 Do you see that language?
6 A. Yes.
7 Q. Is that the term that Ms. Butler was considered for
8 tenure, the 2015/2016 academic term?
9 A. Yes.
10 Q. And it also states that they are enclosing the bylaws
11 and the guidelines. Is that something that SMU provides at the
12 time it sends out a letter like this?
13 A. Absolutely.
14 Q. I'm now going to ask you to take a look at Currall
15 Exhibit No. 2, Policy No. 6.12, entitled "Guidelines for the
16 award of Rank and Tenure."
17 A. Policy 6.12?
18 Q. Yes.
19 A. Yes, I have it.
20 Q. Okay. Are these the guidelines that were in effect
21 at the time Cheryl Butler was put up for tenure?
22 A. Yes.
23 Q. Is this a true and correct copy of those guidelines?
24 A. Yes, I believe it is.
25 Q. Okay. Now, the Exhibit 1, which is -- which was

1 provided to Professor Butler prior to her employment at SMU,
2 refers to the university guidelines for tenure and promotion.
3 Are these the guidelines that that letter is
4 referring to?
5 **A. Yes.**
6 Q. Okay. Now, I will ask you to look at Section B of
7 the guidelines tenure. Do these guidelines set forth the
8 tenure standards that SMU will follow in promoting Professor
9 Butler?
10 **A. Yes.**
11 Q. Okay. I'll also ask you to look at the next page,
12 Page 2 of Exhibit 2, under C - Process.
13 **A. Yes.**
14 Q. Do these guidelines also contain the procedure that
15 SMU would follow in considering Ms. Butler for tenure?
16 **A. Yes.**
17 Q. Procedure 1-A, "Each faculty member must be informed
18 as to when they are to be considered for promotion or tenure."
19 Did SMU provide such knowledge to Ms. Butler?
20 **A. Yes. The dean did so in the offer letter.**
21 Q. Okay. And that is in Exhibit No. 1 that we earlier
22 discussed where it states that she would be considered for
23 tenure during the 2015/2016 academic year?
24 **A. Correct.**
25 Q. Okay. It also states as part of the procedure that

1 information and supporting documents pertinent to tenure are
2 assembled by the faculty member and others in the school.
3 Was that followed with Ms. Butler?
4 **A. Yes.**
5 Q. It states that, in accordance with the procedures of
6 the school, the data is reviewed and the -- and the dean
7 submits recommendations, either positive or negative, to the
8 provost.
9 Was this procedure followed?
10 **A. Yes.**
11 Q. Section C(1)(d) states that the provost submits
12 recommendations of the dean's to the provost advisory
13 committee, a faculty committee appointed by the provost.
14 Did the dean of SMU School of Law submit a
15 recommendation to you on tenure with respect to Ms. Butler?
16 **A. Yes.**
17 Q. Did you submit that as part of the materials the
18 provost advisory committee considered as part of her tenure
19 evaluation?
20 **A. Yes.**
21 Q. And then it states, "The provost makes
22 recommendations to the President and ultimately to the Board."
23 Was that done here? Did you make a recommendation
24 which could go up if there had been an appeal?
25 **A. Yes.**

1 Q. Okay. Section C-2 states that there are certain
2 documentation that will be developed as part of the tenure
3 process, which shows the person's ability in teaching,
4 scholarship, research, and service.
5 Was that done with respect to Professor Butler?
6 **A. Yes.**
7 Q. Section D, under Process, provides information
8 regarding appeals. Was Ms. Butler provided the opportunity to
9 appeal decisions or recommendations with respect to her tenure
10 as part of this process?
11 **A. Yes.**
12 Q. I'm going to ask you to now look up, Dr. Currall, at
13 Currall Exhibit 3, which are the bylaws of the Dedman School of
14 Law at Southern Methodist University as amended April 15, 2014.
15 Do you have that --
16 **A. Yes, I have --**
17 Q. -- before you?
18 **A. Yes, I have those.**
19 Q. Okay. Are these the bylaws that were in effect in
20 the Dedman School of Law at the time Cheryl Butler was
21 considered for tenure at SMU?
22 **A. Yes.**
23 Q. Now, the earlier document we looked at, Exhibit No.
24 1, it refers to the Bylaws and Articles 9 and 10, so I'm going
25 to ask you to look at Article 9 first of these bylaws. This

1 document, the Bates number is 6381. If you would turn to Page
2 6381.
3 **A. I'm looking at Section 9, Promotion and Tenure**
4 **Procedure.**
5 Q. Okay. That's it. I'm going to ask you to look at
6 9-A. It states that each member of the faculty who is up for
7 tenure shall be assigned a three-member advisory committee
8 appointed by the dean.
9 Was that process followed with respect to Ms. Butler
10 in her tenure consideration?
11 **A. Yes.**
12 Q. Did Dean Jennifer Collins of the SMU School of Law
13 appoint that committee?
14 **A. Yes.**
15 Q. Did members of that committee visit Professor
16 Butler's classroom?
17 **A. They did.**
18 Q. Did members of that tenure committee also review her
19 writings as required by Bylaw 9-A?
20 **A. They did.**
21 Q. Did the tenure committee counsel her on her teaching
22 methods and research as required by Section 9-A?
23 **A. Yes.**
24 Q. 9-B states that the candidate will normally be
25 considered for tenure about her fifth year of teaching.

1 Is that the time period Ms. Butler was put up for
2 tenure, after her fifth year?
3 **A. Yes, I believe so. So she --**
4 **Q. 2011.**
5 **A. She started in 2011, and then she was in the '15/'16**
6 **year.**
7 **Q. Right. Section 9-D states that there's to be a --**
8 **the dean is to call a special meeting to vote on tenure**
9 **decisions.**
10 **Did the dean of the SMU law school follow that with**
11 **respect to Ms. Butler?**
12 **A. Yes.**
13 **Q. Was a special meeting called by which the faculty of**
14 **the SMU law school voted on Ms. Butler's tenure?**
15 **A. Yes. It would be the tenured members.**
16 **Q. Okay.**
17 **A. So not -- so the assistant professors would not be**
18 **voting on a promotion and tenure case.**
19 **Q. Okay. Thank you for that clarification, and that is**
20 **exactly what Section 9-E states, that the persons who will vote**
21 **on Ms. Butler's -- or consider it, are tenured faculty members.**
22 **And did the law school follow this requirement that**
23 **only tenured faculty members voted on Ms. Butler's tenure**
24 **decision?**
25 **A. I believe they did.**

1 **Q. Okay. Was there a quorum at the time this was -- the**
2 **vote took place with respect to Ms. Butler, a quorum in the law**
3 **school?**
4 **A. I believe, yes. I believe this was all satisfied.**
5 **Q. Okay. And then one other I'll ask you about, the**
6 **voting; it's done by unsigned secret ballot.**
7 **Is that process followed in the law school? Was it**
8 **followed with Ms. Butler?**
9 **A. Yes.**
10 **Q. And then it states, under 9-I, "If the promotion or**
11 **tenure is not approved, the candidate shall be notified or**
12 **advised of the results of the vote."**
13 **Was Ms. Butler advised of the results of the vote of**
14 **the faculty?**
15 **A. I believe the dean advised her, informed her of it.**
16 **Q. Okay. I'm now going to ask you to look at Section**
17 **10, Criteria for Tenure and Promotion, of the bylaws.**
18 **A. Yep.**
19 **Q. That is Page 6383. There is a statement, "A**
20 **professor has two imminent responsibilities: Teaching and**
21 **contributing to the growth and understanding of the law. The**
22 **two responsibilities shall be given equal weight in the**
23 **determination whether to award tenure or promotion to a member**
24 **of the faculty."**
25 **Was this tenure standard followed with respect to**

1 **Ms. Butler's tenure consideration?**
2 **A. I think it was, yes.**
3 **Q. Okay. And how about in your tenure advisory -- in**
4 **your provost advisory committee, when you were actually**
5 **considering Ms. Butler's tenure, is this the standard that you**
6 **followed?**
7 **A. Absolutely.**
8 **Q. Okay. And were there other members up for tenure**
9 **from the law school during the period Ms. Butler was being**
10 **considered for tenure?**
11 **A. I believe that there may have been two others.**
12 **Q. Okay. Do you remember the names?**
13 **A. I think it was Keith Robinson and David Taylor.**
14 **Q. Okay. And were these standards, the Criteria for**
15 **Tenure and Promotion, that are discussed in these bylaws, were**
16 **they also followed with respect to those tenure candidates?**
17 **A. We administer the standards in a very uniform way.**
18 **Q. So Ms. Butler -- was Ms. Butler subject to any tenure**
19 **criteria other than the ones set forth in the bylaws of the law**
20 **school and the guidelines of SMU?**
21 **A. Absolutely not.**
22 **Q. Was one of these candidates that was up for tenure**
23 **from the law school an African-American candidate --**
24 **A. Yes.**
25 **Q. -- besides Ms. -- and who was that?**

1 **A. Keith Robinson.**
2 **Q. Okay. Just so the record is clear, Keith Robinson**
3 **and Cheryl Butler were two African-American candidates that**
4 **came up for tenure at the same time out of the SMU law school**
5 **in this 2015/2016 period?**
6 **MR. DUNLAP: That's a leading question. I'm going to**
7 **object to it. You can ask him.**
8 **Q. (BY MS. ASKEW) Would you identify the two**
9 **African-American candidates who were up for tenure out of the**
10 **law school during the tenure period 2015/2016?**
11 **A. Keith Robinson and Cheryl Butler.**
12 **Q. Would you tell the jury what the recommendation was**
13 **of the law school with respect to Keith Robinson.**
14 **A. It was affirmative; it was positive, for promotion**
15 **and tenure.**
16 **Q. Would you tell the jury what the recommendation was,**
17 **your recommendation and the provost advisory committee, with**
18 **respect to the tenure of Keith Robinson?**
19 **A. I recommended that he be tenured and promoted.**
20 **Q. Did SMU grant tenure to Keith Robinson during this**
21 **2015/2016 time period?**
22 **A. Yes.**
23 **Q. Okay. Did SMU grant tenure to the other candidate**
24 **you mentioned, David, who also came up out of the law school?**
25 **A. Yes.**

1 Q. Is it correct to say that Ms. Butler was the
2 candidate that the committee did not give a positive
3 recommendation to who came up that year out of the law school?
4 **A. Yes.**
5 Q. Did your provost advisory committee, and you as the
6 provost, apply the same standards for teaching, service, and
7 scholarship to all three of these candidates who came up from
8 the Dedman School of Law in 2015/2016 for tenure?
9 **A. Absolutely.**
10 Q. Now, if you look at, again, in Exhibit Currall 3,
11 Section 10, it talks about what an -- what will be evaluated in
12 determining whether the criteria for tenure and promotion are
13 met. I'd like to focus your attention on that.
14 It states that an evaluation of a candidate's
15 performance as a teacher shall include the report of the
16 candidate's advisory committee?
17 Did SMU prepare a report of Cheryl Butler's -- was
18 there a report prepared by an advisory committee for her?
19 **A. Yes.**
20 Q. Did you and faculty, as part of this tenure process,
21 evaluate student evaluations?
22 **A. Yes, we did.**
23 Q. Did you and, as the provost, your committee, the
24 faculty, and others involved in the tenure process, also were
25 given the opportunity to review the opinions of faculty members

1 who were familiar with Cheryl Butler's performance as a
2 teacher?
3 **A. Yes, we did.**
4 Q. Now, did you know, do you know, or during the time
5 you were provost, know Jessica Weaver, also a professor at SMU
6 law school?
7 **A. Yes, as just a faculty colleague and acquaintance.**
8 Q. Okay. Did she ever talk to you about Professor
9 Butler or any aspects of her tenure consideration?
10 **A. No; and I would not have allowed that even if she had
11 asked to.**
12 Q. Okay. Did --
13 **A. I don't -- I don't allow -- I don't allow faculty
14 members or others in the university to lobby on behalf of a
15 candidate.**
16 Q. Okay.
17 **A. We don't allow that for any case.**
18 Q. Okay. Do you know if SMU awarded tenure to Professor
19 Weaver?
20 **A. I believe they did, but that predated my employment
21 at SMU.**
22 Q. Okay. Now, there was -- in Section 10(A)(2), there's
23 a discussion of student evaluations. You testified that you
24 considered Professor Butler's student evaluations as part of
25 her tenure evaluation. Is that in complying with the bylaws

1 and the guidelines of the university?
2 **A. Yes.**
3 Q. Please tell the jury why you consider student
4 evaluations as part of your tenure considerations.
5 **A. Well, obviously, for a university, students are
6 important stakeholders, and they, along with faculty
7 colleagues' assessment of teaching or those -- they are
8 important inputs. They are not necessarily binding.
9 We read all of the student evaluations. And having
10 taught for 20, 25 years myself, I believe I'm a sophisticated
11 consumer of student evaluation information.**
12 Q. Okay.
13 **A. So we read all of that and took that into account as
14 one, only one, consideration in assessing her teaching.**
15 Q. But you did review the student evaluations of
16 Professor Butler?
17 **A. Absolutely we did.**
18 Q. And would that -- would those evaluations have
19 covered the entire period she was teaching at the Dedman School
20 of Law?
21 **A. Yes.**
22 Q. So based on Currall Exhibit No. 1, she began her
23 employment in August of 2011. So you had evaluations from August
24 2011 through the spring 2015 period; would that be correct?
25 **A. That's right.**

1 Q. Okay. Now, there was brief discussion earlier about
2 an extension, and you indicated that the Interim Provost Harold
3 Stanley had not -- had decided not to extend the tenure
4 deadlines for Professor Butler?
5 **A. Correct.**
6 Q. I ask you to look at Exhibit No. 4, Currall Exhibit
7 4, which is a letter dated November 10th, 2015, signed by --
8 well, it's a signature for Harold Butler [sic]?
9 **A. I have it.**
10 Q. Have you seen this document before, Dr. Currall?
11 **A. Yes, I have.**
12 Q. Would you tell us what this is.
13 **A. This is the letter from Interim Provost Stanley to
14 Professor Butler saying that he could not extend the tenure
15 deadlines applicable to her.**
16 Q. Is this a -- is this an official part of the records
17 of SMU?
18 **A. Yes.**
19 Q. When you were considering the tenure of Professor
20 Butler, it was your understanding that this letter was in
21 place, meaning that her tenure deadlines had not been extended?
22 **A. Yes. That's largely irrelevant to our deliberations.
23 We're just -- we're just evaluating her on the record, on her
24 performance. Whether she's delayed or not, irrelevant.**
25 Q. Now, are you aware that the law school voted not to

1 award tenure to Professor Butler?
2 **A. Yes.**
3 Q. When that occurred, the information that was provided
4 in the law school in that tenure dossier, is that then
5 presented to you as the provost?
6 **A. Yes.**
7 Q. Does that tenure dossier of Ms. Butler also go to
8 your provost advisory committee?
9 **A. Yes.**
10 Q. And would you, as best you can recall, tell the jury
11 what you recall being a part of Ms. Butler's tenure dossier?
12 And I'll ask about particular documents.
13 Did she have a tenure report?
14 **A. From the faculty of the law school?**
15 Q. Yes.
16 **A. Yes.**
17 Q. Okay.
18 **A. Yes.**
19 Q. I'm going to ask you to look at what has been marked
20 as Deposition Exhibit 7. I'm taking this a little bit out of
21 order.
22 **A. Is that the tenure and promotion report?**
23 Q. Uh-huh.
24 **A. January 8th of 2016?**
25 Q. Yes. Is this the tenure and promotion report for

1 Cheryl Butler that was considered by you and the provost
2 advisory committee?
3 **A. It was.**
4 Q. Did you also have comments from other faculty members
5 recording Professor Butler's teaching that they had observed?
6 **A. We had -- we had some other documentation, yes.**
7 Q. Okay. I'm going to ask you to look at what has been
8 marked as Currall 8.
9 **A. Okay, I have that.**
10 Q. Okay. Is this a copy of some of the written teaching
11 evaluations that came up as part of the tenure dossier on
12 Professor Butler that you and your committee were able to
13 consider?
14 **A. Yes.**
15 Q. Did you consider these comments as part of your
16 tenure evaluation?
17 **A. Yes, we did.**
18 Q. Did you also have Ms. Butler's résumé?
19 **A. Oh, yes.**
20 Q. Did you have the candidates prepare a personal
21 statement? Did you and your committee have access to
22 Ms. Butler's personal statement?
23 **A. Yes, we did.**
24 Q. Were all of those pieces of information that you
25 considered in deciding what recommendation you as the provost

1 would make with respect to awarding tenure to Ms. Butler?
2 **A. We had all that information, yes.**
3 Q. Okay. Did you review it as part of your
4 deliberations?
5 **A. We did. We probably read it at least twice; maybe**
6 **more.**
7 Q. You talked about deliberations. Did you and your
8 tenure -- and your faculty advisory committee deliberate or
9 talk about tenure as it related to Ms. Butler?
10 **A. Yes, we did.**
11 Q. Do you recall when the faculty voted on Ms. Butler's
12 tenure?
13 **A. Well, that's probably in the dean's letter, but I --**
14 **I don't remember the exact date.**
15 Q. Are you notified of the faculty vote shortly after it
16 takes place?
17 **A. Yes. And I think the guidelines say that I have to**
18 **receive that information by January.**
19 Q. Okay. And did you receive that information?
20 **A. I had that information, yes.**
21 Q. Okay. Would it -- so you would have had that
22 information from around January, and you had the -- would you
23 have the opportunity to review that information from January
24 through the time you came out with your letter in May of 2016?
25 **A. Definitely we did so.**

1 Q. Okay. I am going to ask you to look at Deposition
2 Exhibit No. 5, Currall Exhibit 5, which is a letter dated May
3 4th, 2016, from Jennifer Collins to you.
4 **A. Yeah, May 4th, 2016.**
5 Q. Is this a true and correct copy of the letter that
6 you received from the dean of SMU law school, Jennifer
7 Collins --
8 **A. Yes.**
9 Q. -- containing her recommendation on Ms. Butler's
10 tenure?
11 **A. Yep. Yes.**
12 Q. Was this also presented by you to your advisory
13 committee?
14 **A. Yes.**
15 Q. Is presenting this type of recommendation part of the
16 normal procedure in considering tenure?
17 **A. It is, yes.**
18 Q. I'm going to ask you to look at some of what is in
19 the dean's letter. If you look at Page 2, she stated that, I
20 concur in my colleagues' assessment that Professor Butler has
21 not demonstrated high quality in teaching.
22 Was that the right standard that was to be applied to
23 teaching?
24 **A. Yes, that had to be the standard because it had**
25 **already been established that Professor Butler's scholarship**

1 **was very good, it was outstanding. So then she had to reach**
2 **the standard of high quality in teaching in order to be**
3 **tenured.**
4 Q. Okay. Did she meet that standard?
5 **A. No.**
6 Q. In your assessment of what had been presented by the
7 faculty through the tenure report, which is Exhibit No. 7, and
8 now the dean's recommendation letter, which is Exhibit 5, had
9 Ms. Butler met that teaching standard?
10 **A. No.**
11 Q. If you will look on Page 3 of Exhibit No. 5, the
12 dean's recommendations, she says that the student evaluations
13 were a source of concern, and they contained complaints about
14 Ms. Butler's lack of preparation, disorganization, excessive
15 reviews of previously covered materials; and most worrisome, a
16 lack of knowledge of tort law that manifested itself in
17 repeated misstatements of law and confusing contradictions in
18 class.
19 Was that considered by you as part of your evaluation
20 of her tenure?
21 **A. I read that multiple times.**
22 Q. Okay. Did you see support for that in the record
23 that had been presented by you in the tenure dossier?
24 **A. Yes, from the faculty evaluations and the student**
25 **evaluations as well.**

1 Q. Okay. The dean also talked about her attending
2 classes to personally observe Ms. -- Professor Butler teaching.
3 And I ask you to look at Page 4 of Exhibit 5, where the dean of
4 SMU law school describes a November 3rd class in torts as
5 absolutely awful, both substantively and pedagogically.
6 Inexplicably, she did not cover any new material, but
7 instead spent the entire class session reviewing material
8 addressed in earlier classes?
9 **A. Yes, I read that.**
10 Q. As provost, is that teaching behavior that meets the
11 high quality standard administered at SMU?
12 **A. No.**
13 Q. I ask that you look on Page 5, where the dean talks
14 about Professor Butler's unwillingness or -- or that she's
15 unable to accept constructive feedback about her teaching and
16 make positive changes in response. She only hears what she
17 wants to hear.
18 Was this something considered by you and the provost
19 advisory committee?
20 **A. Yes. But again, her -- her attitude is only one**
21 **portion. We're really concerned and focused on performance in**
22 **the classroom, and performance that can be documented through**
23 **either student evaluations or faculty evaluations.**
24 **So we would be encouraged by a better attitude, but**
25 **we're really just looking at her performance in the classroom.**

1 Q. Okay. Would it be appropriate for the dean to note
2 this as part of her review and recommendation?
3 **A. Yes.**
4 Q. Okay. I also ask you to look on Page 5. The dean
5 raised his concerns about the edited writing class, and
6 Ms. Butler did not provide the editing necessary for an edited
7 writing class.
8 First of all, what is an edited writing class? Do
9 you know?
10 **A. Well, these courses are focused on strengthening the**
11 **writing ability of students. And so it's kind of more of an**
12 **apprentice-type arrangement, where the faculty member is**
13 **expected to provide detailed comments on the writings that the**
14 **students submit.**
15 **So it's a writing-intensive course and very important**
16 **for law students to strengthen their writing skills.**
17 Q. And would you expect a professor in that class to
18 provide that type of detailed review in an edited writing
19 class?
20 **A. I would expect them to provide very detailed and**
21 **intensive feedback.**
22 Q. Okay. I am now going to ask you to look at Exhibit
23 No. 6, which is your letter dated May 5th, 2016, to Professor
24 Butler.
25 **A. Yep.**

1 Q. Is this a true and correct copy of the letter that
2 you sent to Professor Butler?
3 **A. Yes.**
4 Q. And this is your signature on Exhibit No. 6?
5 **A. Yes.**
6 Q. Okay. You state, "I regret to inform you that after
7 thoroughly reviewing your case for promotion and tenure, I have
8 determined that I cannot make a positive recommendation to the
9 president."
10 You talked about that earlier. I won't go into it
11 again. "According to university policy, you have the right to
12 appeal this negative decision to the President within three
13 weeks of the date on which you receive this letter."
14 Why were you giving her notice of her appeal rights?
15 **A. Because that's what the policy stipulates.**
16 Q. Okay. And you tell her that she can write directly
17 to President Gerald Turner and state the reasons for her
18 appeal.
19 **A. That's right.**
20 Q. Did Professor Butler appeal the decision that you
21 provided to her on May 5th, 2016, where you did not make a
22 positive tenure recommendation?
23 **A. She did not appeal.**
24 Q. Okay. And just to clarify, Gerald Butler {sic} was
25 the president of SMU that she would have appealed to if she had

1 chosen to make an appeal?
2 **A. Yes. Gerald Turner.**
3 Q. Gerald Turner. Thank you.
4 "The next academic year, 2016/2017, will be your
5 terminal year and your employment at SMU will conclude at the
6 end of the spring semester 2017."
7 Why were you providing Professor Butler notice of
8 this?
9 **A. Because that's stipulated by the -- by the policy.**
10 **So if there is a decision not to award promotion/tenure, then**
11 **the faculty member gets a terminal year, which for her would**
12 **have ended in spring semester 2017.**
13 Q. Did SMU grant Ms. Butler her terminal year?
14 **A. I believe we did.**
15 Q. Okay. And did we pay her for that year? Did SMU pay
16 her for that year?
17 **A. We would pay her, yes.**
18 Q. Okay. Mr. Dunlap discussed with you the FMLA with
19 respect to Ms. Butler, and my final area of inquiry relates to
20 that area.
21 Does the provost at SMU make any decisions with
22 respect to whether an employee of SMU is entitled to leave
23 under the Family Medical Leave Act?
24 **A. Definitely not.**
25 Q. Did you make any FMLA determinations as to Professor

1 you?
2 **A. No.**
3 Q. Okay. And did the dean ever discuss any FMLA
4 information with you as it relates to Ms. Butler?
5 **A. Are you talking about her particular health**
6 **conditions?**
7 Q. Right.
8 **A. No.**
9 Q. Okay. One of the allegations made by Ms. Butler is
10 that you talked to Professor Butler about FMLA issues as it
11 related to her. Did you ever have any discussions with
12 Professor Butler about that?
13 **A. No, I don't recall any discussions with her about**
14 **FMLA.**
15 Q. Okay. One of the other allegations made by
16 Ms. Butler is that the tenure dossier that you received as
17 tenure contained confidential FMLA information about her.
18 **A. The tenure dossier?**
19 Q. Yes. Is that true?
20 **A. The dossier would not include any personal health**
21 **information.**
22 Q. All right.
23 **MS. ASKEW: Those are all the questions that I have.**
24 **I will pass the witness and save the remainder of my questions**
25 **for the time of trial.**

1 Butler?
2 **A. No. I was only notified of the decisions about FMLA**
3 **by the human resource department.**
4 Q. Did anyone at SMU ever provide you with any medical
5 or confidential information regarding Ms. Butler's health or
6 health members of her family?
7 **A. I didn't know what her health concerns were, and that**
8 **was none of my business.**
9 Q. Okay. Did you ever receive any type of medical
10 information from SMU about Ms. Butler's health or her family's
11 health?
12 **A. I only receive what they sent me from HR, and that**
13 **would have just been a determination of whether or not the FMLA**
14 **was granted or extended or whatever.**
15 Q. Okay. And you never discussed the FMLA with
16 Ms. Butler?
17 **A. No.**
18 Q. Okay. And I know you told me that -- and you also
19 told Mr. Dunlap, that you got notification from HR that
20 Ms. Butler had been granted certain FMLA leave. But did HR
21 ever discuss with you any of the details of that FMLA leave?
22 **A. No. It wouldn't be -- it wouldn't be proper for her**
23 **-- for them to share any of that information. It would be**
24 **prohibited by HIPAA.**
25 Q. Okay. But you never -- they never discussed it with

1 **MR. DUNLAP: Okay. Thank you. Thank you for the**
2 **prompting there.**
3 **REEXAMINATION**
4 **BY MR. DUNLAP:**
5 Q. Dr. Currall, I just had a couple questions.
6 In the documents that Counsel shared with you, I
7 think it was Document 4. Let me make sure that's right.
8 **A. Which one was that, Mr. Dunlap?**
9 Q. Let's go with Document 5.
10 **A. I may have some different numbers here.**
11 Q. Exhibit 5. I'm sorry. Exhibit 5. I think
12 Exhibit --
13 **MS. ASKEW: Are you referring to the May 4th,**
14 **2016, letter?**
15 **MR. DUNLAP: Correct.**
16 **MS. ASKEW: Okay.**
17 Q. (BY MR. DUNLAP) Okay. So --
18 **A. Okay. I have that, yes.**
19 Q. Okay. So on May 4th, you received a letter from the
20 dean explaining their decision or their decision to not
21 recommend tenure.
22 **A. Right.**
23 Q. And then the following day, on May 5th, you sent
24 Professor Butler a letter from yourself, indicating that you
25 were not going to recommend tenure. So there was just one day

1 there. Did you have the deliberation on that day, or how did
 2 that happen?
 3 **A. We, the provost advisory committee, had already**
 4 **deliberated extensively about Professor Butler's case, and the**
 5 **only item that we had yet to receive was the letter from the**
 6 **dean, which --**
 7 Q. Okay.
 8 **A. -- was May 4th. So we had already read and reread**
 9 **Professor Butler's dossier, discussed it. The dean's letter**
 10 **was just the final required documentation that we needed.**
 11 **And so then that allowed me to -- that permitted me**
 12 **then to send a letter the following day to Professor Butler.**
 13 Q. Do you know if Professor Butler was given the
 14 opportunity to appeal? Did you have any -- do you have any
 15 evidence that the dean notified Professor Butler of their
 16 decision, and she waited three weeks before she issued this
 17 letter, or how did that work?
 18 **A. Well, my recollection, Mr. Dunlap, is that Professor**
 19 **Butler appealed the faculty recommendation to the dean.**
 20 Q. She appealed the faculty recommendation?
 21 **A. Yeah.**
 22 Q. I thought you had said that earlier you didn't know
 23 that.
 24 So she did appeal the dean's and the faculty's
 25 recommendation?

1 **A. I think it was the faculty recommendation. But**
 2 **again, that -- all of -- the details of all that is really --**
 3 **would be best answered by the dean. And that -- those are**
 4 **things that I was not involved in because that all happened**
 5 **within the law school itself.**
 6 Q. Okay. So when the faculty makes a recommendation to
 7 deny tenure, are they required to wait until the candidate has
 8 an opportunity to appeal that before they forward it to your
 9 office, or does that happen at the same time?
 10 **A. No, I think it's the faculty vote, then the oppor --**
 11 **then I believe Professor Butler appealed that recommendation,**
 12 **and then that, then, is all handled by the dean.**
 13 Q. Okay. And so you wouldn't know about the
 14 recommendation until that was -- that process was exhausted,
 15 right?
 16 **A. I wouldn't -- I had her dossier, so I had the report**
 17 **of the faculty. Any outcome of an appeal within the law school**
 18 **would eventually come to me. I would be made aware of that.**
 19 Q. Okay.
 20 **A. That's really something that's done within the law**
 21 **school.**
 22 Q. So the May 4th letter triggered your action to move
 23 forward; is that correct?
 24 **A. That was the final piece of documentation I needed to**
 25 **render a decision and inform Professor Butler of the**

1 **recommendation, my recommendation.**
 2 Q. So you had to wait on that before you could move
 3 forward; is that correct?
 4 **A. That's right.**
 5 Q. All right.
 6 **MR. DUNLAP: That's all the questions I have. Thank**
 7 **you for your time.**
 8 **MS. ASKEW: Thank you. Appreciate it.**
 9 **THE REPORTER: May I ask for the address to send the**
 10 **original for signature? I'm assuming you do want him to read**
 11 **and sign, correct?**
 12 **MS. ASKEW: I absolutely want him to read and sign.**
 13 **And I will let my paralegal, Sherry, contact you with all the**
 14 **logistical information.**
 15 **(Deposition concluded at 10:42 a.m.)**
 16
 17
 18
 19
 20
 21
 22
 23
 24
 25

1 STATEMENT OF CHANGES
 2
 3 DEPOSITION OF STEVEN CURRALL
 4 DATE OF DEPOSITION: 10-27-21
 5 CASE NO. 3:18-CV-0037-E
 6 PAGE/LINE CORRECTION REASON FOR CHANGE
 7 _____
 8 _____
 9 _____
 10 _____
 11 _____
 12 _____
 13 I, STEVEN CURRALL, have read the foregoing deposition and
 14 hereby affix my signature that same is true and correct, except
 15 as noted above.
 16 _____
 17 STEVEN CURRALL
 18 THE STATE OF TEXAS)
 19 COUNTY OF SMITH)
 20
 21 Before me, _____, on this day personally
 22 appeared STEVEN CURRALL, known to me (or proved to me on the
 23 oath of _____ or through _____
 24 (description of identity card or other document) to be the
 25 person whose name is subscribed to the foregoing instrument and
 acknowledged to me that he/she executed the same for the
 purposes and consideration therein expressed.
 Given under my hand and seal of office this ____ day of
 _____, 2021.

 Notary Public in and for
 the State of Texas

1 STATE OF TEXAS)
) REPORTER'S CERTIFICATE
2)
)
3 COUNTY OF SMITH)

4
5 I, DENISE CARRIFEE, Certified Shorthand Reporter #4411, do
6 hereby certify that I am a Certified Shorthand Reporter in and
7 for the State of Texas; that previous to the commencement of
8 the examination, the deponent was duly sworn by me to testify
9 to the truth.

10 I further certify that this deposition was taken in
11 shorthand by me at the time and place herein set forth and was
12 thereafter reduced to typewritten form by means of
13 computer-aided transcription, and that the foregoing represents
14 a true and correct transcript.

15 I further certify that the amount of time used by each
16 party is as follows:

17 Attorney Andrew Dunlap - 33 minutes
18 Attorney Kim Askew - 54 minutes

19 I further certify that pursuant to information given to
20 the deposition officer at the time said testimony was taken,
21 the following includes counsel for all parties of record:

22 Attorney Andrew Dunlap for Plaintiff
23 Attorney Kim Askew for Defendants;

24 That the deposition transcript was submitted on the ____
25 day of November, 2021, to the attorney for witness for

1 examination, signature, and returned to Bradford Reporting by
2 the ____ day of _____, 2021;

3 That the amount of time used by each party at the
4 deposition is as follows:

5 Attorney Andrew Dunlap - 35 minutes

6 Attorney Kim Askew - 1 hour, 13 minutes

7
8 I further certify that pursuant to information given to
9 the deposition officer at the time said testimony was taken,
10 the following includes counsel for all parties of record:

11 Andrew Dunlap, Esq., Attorney for Plaintiff;
12 Kim Askew, Esq., Attorney for Defendants.

13 I further certify that I am neither counsel for, related
14 to, nor employed by any of the parties or attorneys in the
15 action in which this proceeding was taken, and further that I
16 am not financially or otherwise interested in the outcome of
17 the action.

18 IN WITNESS WHEREOF, I have affixed my signature this ____
19 day of November, 2021.

20
21 _____
22 DENISE CARRIFEE, Texas CSR #4411
23 Expiration Date: 12/31/2023
24 Carrifee Reporting Firm #331
25 1800 Shiloh Road, Suite 102
Tyler, Texas 75703
Phone 903/596-7714

ORAL DEPOSITION OF DR. STEVEN CURRALL - Vol. 1

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1 STATEMENT OF CHANGES

2

3 DEPOSITION OF STEVEN CURRALL
4 DATE OF DEPOSITION: 10-27-21
5 CASE NO. 3:18-CV-0037-E

6 PAGE/LINE CORRECTION REASON FOR CHANGE

- 7 Page 7, line 4: Should be "school," not "department."
- 8 ~~Page 8, line 10: Should be "Q," not "A."~~
- 9 ~~Page 8, line 13: Should be "A," not "Q."~~
- 10 ~~Page 9, line 1: Should be "assessment," not "assess."~~
- 11 ~~Page 9, line 4: Should be "and," not "in."~~
- 12 ~~Page 9, line 10: Should be "and," not "in."~~
- 13 ~~Page 13, line 11-13: Text should not be bolded.~~
- 14 ~~Page 16, line 13: Should be "and," not "in."~~
- 15 ~~Page 17, line 22: Should be "and," not "in."~~
- 16 ~~Page 20, line 2: Should be "and," not "in."~~
- 17 ~~Page 40, line 24: Should add "is" before "irrelevant."~~

18 I, STEVEN CURRALL, have read the foregoing deposition and
19 hereby affix my signature that same is true and correct, except
20 as noted above.

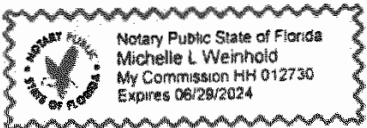
[Handwritten Signature]
STEVEN CURRALL

21 THE STATE OF ~~TEXAS~~ FLORIDA
22 COUNTY OF SMITH)

23 Before me, STEVEN CURRALL, on this day personally
24 appeared STEVEN CURRALL, known to me (or proved to me on the
25 oath of _____ or through DRIVERS LICENSE
(description of identity card or other document) to be the
person whose name is subscribed to the foregoing instrument and
acknowledged to me that he/she executed the same for the
purposes and consideration therein expressed.

Given under my hand and seal of office this 18 day of
November, 2021.

[Handwritten Signature]
Notary Public in and for
the State of ~~Texas~~ FLORIDA





SMU

DEDMAN SCHOOL OF LAW

John B. Attanasio
Judge James Noel Dean and Professor of Law
& William Hawley Atwell Chair of Constitutional Law

March 3, 2011

Cheryl Nelson Butler
3341 Charleston Street
Houston, TX 77021

Dear Cheryl,

I am pleased to confirm the offer of an appointment as Assistant Professor of Law without tenure at Southern Methodist University. Your appointment will be for a three-year period beginning August 1, 2011, and ending May 31, 2014. Details of the pay options will be explained to you when you process through the Department of Human Resources.

Pursuant to Article VIII of the Bylaws of the School of Law, your contract may be renewed for an additional period upon demonstration of promise of substantial compliance with the School's criteria for tenure and promotion as set out in Article X. If your contract is renewed, you would normally be considered for a tenured appointment during the 2015-2016 academic term. I am enclosing a copy of the Law School Bylaws and direct your attention to Articles IX and X which detail Law School tenure procedures and standards. Also enclosed is a copy of the University Guidelines for tenure and promotion for your review.

Your compensation for the 2011-2012 academic term will be \$ 115,000.00. Adjustments in salary will be made based upon review of your progress in teaching, scholarly writing and research, and service to the University and the profession.

You are eligible for one of our two summer research grant programs for the summer of 2011 if you file an appropriate request for support of a research project. Additional summer research grants for succeeding years may also be available on a competitive basis, depending upon available funds, your proposal and your scholarly progress from your previous summer grants.

It is a requirement of the University's accrediting association that we maintain on file for all faculty an official transcript of your J.D. degree earned. Please send or have sent this document to the Office of the Provost, Southern Methodist University, Post Office Box 221, Dallas TX 75275 by June 1st. This offer is conditioned on your

Dedman School of Law
Southern Methodist University PO Box 750116 Dallas TX 75275-0116
214-768-2621 Fax 214-768-2182 www.smu.edu/law

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SMU_Butler_00017312

APP. 086

Contract: Cheryl Nelson Butler
Page 2 of 2


ability to demonstrate work authorization pursuant to immigration laws (if applicable) and the satisfactory completion of a background check.

For the 2011-2012 and 2012-2013 academic terms, you will teach a reduced teaching load of 8-9 semester hours in Torts I, Torts II, and a seminar. In your third academic year 2013-2014, you will teach an additional course, to be dictated by the school, with a typical teaching load of 11 to 12 semester hours. You will also be entitled to a one semester pre-tenure research leave.

The University maintains an excellent employee benefits program.

We are delighted about the prospect of your association with us and the entire University family extends you the most cordial welcome. Please indicate your formal acceptance by signing in the space provided below and return the original letter to the attention of Roland Webb, Director of Finance, PO Box 750116, Dallas, TX 75275 as soon as possible. Please retain a signed copy for your file.

Sincerely,



John B. Attanasio
Judge James Noel Dean and
Professor of Law and William Hawley Atwell
Professor of Constitutional Law

Accepted:

 3/30/11

Cheryl Nelson Butler Date

11/3/2015

Policy - 6.12 Guidelines for the Award and Rank of Tenure

**SOUTHERN METHODIST UNIVERSITY
POLICIES AND PROCEDURES**

FACULTY

REVISED AS OF: December 7, 2001

POLICY NUMBER: 6.12

GUIDELINES FOR THE AWARD OF RANK AND TENURE

Criteria: The principal factors to be considered in evaluations for promotion and for the award of tenure are teaching and distinction in scholarship or research (or some equivalent activity; e.g., performance, etc. in the arts). Valued service to the University and to the profession to which the faculty member belongs will be taken into consideration for both promotion in rank and the award of tenure, but cannot substitute for the primary factors of teaching and research.

A. Promotion

1. Appointment to the rank of Assistant Professor requires the promise of effective teaching and sound scholarship.
2. The rank of Associate Professor is awarded only to those who have substantial achievement in one of the following areas and whose performance in the other is of high quality:
 - a. Teaching, evaluated by both students and peers;
 - b. Research, (equivalent activities in the arts), evaluated by peers in the professional field of study.
3. The rank of Professor is the highest rank to which a faculty member may aspire. It should not be assumed that promotion to this rank will automatically follow from any certain number of years of service. Nor should it be assumed that all faculty members will achieve this rank. It should be reserved for those persons whose teaching as judged by students and peers is of sustained high quality and whose scholarly achievements (and/or performance and creativity) are recognized by members of the professional field as substantial and continuing.

B. Tenure

1. Tenure cannot be granted on the basis of academic potential alone. Demonstrated accomplishments in teaching and research (or equivalent activity) are essential.
2. 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.
3. At the appropriate time⁽¹⁾, a faculty member will be informed by the dean or department head that he/she is to be considered for the award of tenure. After due process, the major steps of which are outlined below, the faculty member will be informed by letter of the decision. Tenure is not attained automatically but only by affirmative actions flowing out

11/3/2015

Policy - 6.12 Guidelines for the Award and Rank of Tenure

of the process described below, and by final approval by the Board of Trustees.

4. Normally, the tenure review takes place either in the candidate's sixth year or at a time specified in the initial appointment letter. In what appear to be exceptional cases, approved by the dean and provost, candidates may receive earlier consideration. In such cases, the candidate will go through the normal tenure process of the school and the University and will be expected to have demonstrated distinguished achievements in scholarship, research, and/or creative work. Denial of early tenure will not preclude the candidate from being considered again; however, a second denial shall be final.

C. Process

1. Procedure

- a. Each faculty member must be informed as to when he/she is to be considered for promotion and/or tenure.
- b. Information and supporting documents pertinent to the action are assembled by the faculty member and others as appropriate and as prescribed by the school(s).
- c. In accordance with the procedure of the school(s) the data are reviewed and the Dean submits recommendations, either positive or negative, to the Provost no later than February 1.
- d. The Provost submits recommendations of the deans to the Provost's Advisory Committee, a faculty committee appointed by the Provost.
- e. The Provost makes recommendations to the President and ultimately, to the Board of Trustees.

2. Documentation

At each of the levels of evaluation cited above, there must be thorough documentation describing the person's ability in teaching, distinction in scholarship and/or research (and/or performance, etc. in the arts), and accomplishments in serving the University and the profession. Accomplishments in teaching and scholarship, especially, must be evaluated by those competent to judge them. Opinions and evaluations of a person's research should be sought from beyond the University by the Chair, the Dean, or the faculty committee. Evaluation of teaching should include evaluations by students and, if possible, by faculty colleagues.

D. Appeals

1. In schools which conduct reviews at the department level, a negative recommendation in the department must be appealed within three weeks to the Dean.
2. A negative recommendation of the Dean must be appealed within three weeks to the Provost.
3. A negative decision of the Provost must be appealed within three weeks to the President.

The administrators named above may appoint standing or *ad hoc* committees to advise on the matter of the appeal. The decision of the President shall be final.

11/3/2015

Policy - 6.12 Guidelines for the Award and Rank of Tenure

Footnote:

(1) "...the probationary period should not exceed seven years, including within this period full-time service in all institutions of higher education, but subject to the provision that when, after a term of probationary service of more than three years in one or more institutions, a teacher is called to another institution, it may be agreed in writing that his new appointment is for a probationary period of not more than four years, even though thereby the person's total probationary period in the academic profession is extended beyond the normal maximum of seven years. Notice should be given at least one year prior to the expiration of the probationary period if the teacher is not to be continued in service after the expiration of that period." – AAUP Policy Documents and Reports, Academic Freedom of Tenure, 1940 Statement of Principles and Interpretive Comments. 1977 Edition. (The effect of the last sentence is that a decision on tenure, favorable or unfavorable, must be made at least twelve months prior to the completion of the probationary period. If the decision is negative, the appointment for the following year becomes



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



Curral Dep.
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No. 4

SMU_Butler_00016671

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 at the end.

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

cc: Dean Jennifer Collins



SMU

May 5, 2016

PERSONAL AND CONFIDENTIAL

Professor Cheryl Nelson Butler
3341 Charleston St
Houston TX 77021-1126

Dear Professor Butler:

I regret to inform you that, after thoroughly reviewing your case for promotion and tenure, I have determined that I cannot make a positive recommendation to the President.

According to University policy, you have the right to appeal this negative decision to the President within three weeks of the date on which you receive this letter. If you wish to appeal, please write directly to President R. Gerald Turner and state the reasons for your appeal.

The next academic year (2016-2017) will be your terminal year and your employment at SMU will conclude at the end of the spring semester 2017. I do hope you will recognize that your record shows many obvious strengths and that it provides a solid basis for furthering your career.

Negative decisions such as this one are always difficult to reach. I truly wish you all the best for the future. If I can be of any assistance as you pursue other opportunities, please do not hesitate to let me know.

Sincerely,

Steven C. Currall, Ph.D.
Provost and Vice President for Academic Affairs
David B. Miller Endowed Professor
Professor of Management and Organization
Adjunct Professor of Psychology
Adjunct Professor EMIS

c: R. Gerald Turner, President
Jennifer Collins, Dean
Linda S. Eads, Associate Provost

Office of the Provost

Strategic Management Drive • Box 750220 • Dallas, TX 75275-0220
214-768-3210 • Fax 214-768-1155

Currall Dep.
10/27/21
No. 06

SMU_Butler_00019408

Confidential

Anthony Colangelo comments on Cheryl Nelson Butler's class on October 8, 2015

I observed Cheryl's Torts class at 2pm. Overall, I saw both aspects that were well done and areas that need work. She began by distinguishing how best to conceptualize and organize the material she had covered so far, providing the students with a useful blueprint for their notes and outlines. This seemed a little repetitive, however, and I would shorten this summation. Moreover, I have come to learn that this is not an occasional wrap-up done at the end of a section, but rather a quotidian feature of her class. That seems, again, redundant and perhaps wasteful. I would excise an everyday summation of this sort and instead supply one only when wrapping up a more or less self-contained section of the material.

She seemed largely at ease with the class and the class seemed at ease with her. I thought she also did a nice job helping students to frame legal analysis by pointing out how her questions and the students' answers related to the different parts of a case brief or the IRAC formula.

There were one or two instances where I thought the law got confused in the discussion, but I also felt that this might have been a result of Cheryl's (perhaps over-) eagerness to use student answers to articulate the legal principle at issue. She did a fine job overall of facilitating discussion by using student questions and her answers to transition to new or old related topics, although on a few occasions I felt she merely acknowledged a question without really engaging it. The most impressive moment for me came when she took a seemingly off-topic and colorful question about parental liability for children pool-hopping in a stranger's pool into a framework for the different elements of a tort case, strands of potential liability, and how they might relate to each element of the tort—all the way through contributory negligence and damages.

Currall Dep.
10/27/21
No. 8

Tuesday, January 26, 2016 at 7:24:05 PM Central Standard Time

Subject: Re: Butler Report

Date: Tuesday, January 5, 2016 at 9:11:26 PM Central Standard Time

From: Collins, Jennifer

To: Anderson, Roy

Cheryl says students went to Julie but Julie says that never happened. Cheryl has repeated that assertion a lot so that is probably what you are thinking of. Students did come to me this semester but I wouldn't say they "petitioned" because it was even sadder and more distressing than that. A group of students asked to meet with me to share their concerns about the course, and it was obvious they did so with reluctance and regret. They emphasized that Professor Butler is a very nice person and they wished they did not have to come speak with me. But they felt compelled to because they were so concerned about the substantive errors and the style in what they had been taught. Beth could provide even more details on that conversation. One other correction. You are talking about my observations at one point. The class that was awful substantively and pedagogically was in fact the second class I saw (the same one Beth saw). The first class I had seen was okay, although certainly not of high quality, so I went to the second class hoping it would allay any lingering concerns from the first class (and because she had told me it would be a strong class). And then it turned out to be awful. I'm still reading.

Sent from my iPhone

Wednesday, November 4, 2015 at 7:10:18 PM Central Standard Time

Subject: Fwd: Cheryl
Date: Friday, October 30, 2015 at 1:01:43 PM Central Daylight Time
From: Collins, Jennifer
To: Anderson, Roy

FYI.

Sent from my iPhone

Begin forwarded message:

From: "Forrester, Julie" <jforrest@mail.smu.edu>
Date: October 30, 2015 at 11:30:10 AM CDT
To: "Collins, Jennifer" <jmc@mail.smu.edu>
Subject: RE: Cheryl

Overall, I found the class disjointed and difficult to follow. Usually, when I visit a colleague's class, I learn something new or I'm reminded of a topic I learned about in law school--even coming in the middle of the semester without reading the assignment. Yesterday, I had trouble following the class.

At the beginning of class before moving to new material, Cheryl spent 15 or 20 minutes doing a recap of material that she had covered previously. She did not have a PowerPoint and used the board very little during the class--just two short lists on the board, one labeled "Policy" and the other not labeled. She made two different references to questions from a previous exam. About 10 or 15 minutes before the end of the time for the class, she asked the student who was reciting to hurry because they were running out of time. Then she ended class 7 or 8 minutes early. She did not leave after dismissing class, but stayed in the classroom answering individual students' questions.

A positive note, she used humor effectively at one point and the students laughed.

Also, I will forward an e-mail she sent to Jeff and me this morning telling us she has been sick.

Julie P. Forrester
Associate Provost and Professor of Law
Southern Methodist University
P.O. Box 750221
Dallas, TX 75275-0221
214-768-2574
jforrest@smu.edu

Confidential

SMU_Butler_00009237

APP. 096

From: "Forrester, Julie" <jforrest@mail.smu.edu>

Date: Tuesday, January 5, 2016 at 1:00 PM

To: "Anderson, Roy" <rranders@mail.smu.edu>

Subject: second class visit

Roy,

I had promised you a review of the second of Cheryl's classes that I attended:

I found Cheryl's Torts class difficult to follow. I even took notes on the material in hopes that it would help, but still found the presentation (mostly lecture) to be disjointed. Cheryl talked about previous exams several times during the class, mentioning specific questions and how they should have been answered. She ran out a material before the end of class and spent time on a preview of the following class. On a positive note, Cheryl is enthusiastic in her teaching. Overall, however, I do not believe that her teaching is of high quality.

Something else that I thought you should know is that I showed up for her class on November 17th, but the class was not there. I found Cheryl in her office, and she told me that she had rescheduled the class because the material was really important, which I thought was an odd reason for rescheduling. I wondered if she was working on her personal statement since it was not in her tenure file that day.

Finally, I am planning to get back over to the law school next week to spend more time reviewing all three

tenure files. When I looked through Cheryl's file before, I noticed that the online teaching evaluations (spring 2015 and possibly fall 2014) did not include the summary sheet showing overall results but just the individual pages showing individual students' ratings. I think that the summary sheet needs to be included.

Julie

Julie P. Forrester
Associate Provost and Professor of Law
Southern Methodist University
P.O. Box 750221
Dallas, TX 75275-0221
214-768-2574
jforrest@smu.edu



From: "Spector, Mary" <mspector@mail.smu.edu>
Date: Tuesday, January 5, 2016 at 10:46 PM
To: "Colangelo, Anthony" <colangelo@mail.smu.edu>, "Anderson, Roy" <rranders@mail.smu.edu>
Subject: RE: Butler Report

Gentlemen,

I'm reading Roy's report now, and working on my section as well. I've thought and thought about Cheryl's teaching and what I see as increasingly strange behavior. As I said in our last meeting with Cheryl, if she were a student, I'd urge her to seek counseling and medical help. I would also suggest we consider an incomplete to allow her to get back on her feet. I believe I said at that time that, unfortunately, we didn't have the power to offer her the incomplete, only the Provost could do that. Still, I cannot give an opinion on her teaching (and on her career) based on what I've observed and experienced over the last few months.

My assessment of the first Torts class I saw essentially mirrors Anthony's very articulate description of the class he observed. I thought the class was okay. It wasn't great, but I didn't think it was terrible either. Apparently, other colleagues observed similar classes early in the semester. At some point, however, things changed and began to deteriorate. As Cheryl began to complain about her health, the reviews got worse. I'm not sure which came first, the bad reviews or the bad health. It may not make a difference.

Mary

Mary Spector
Professor of Law
Associate Dean for Clinics
SMU Dedman School of Law
214-768-2578
214-768-1611 (fax)
mspector@mail.smu.edu



Joseph J. Norton
James L. Walsh Distinguished Faculty Fellow and Professor in Financial Institutions Law
SMU Dedman School of Law
3315 Daniel Avenue
Dallas, TX 75205

October 19, 2015

Dear Professor Norton,

You have asked members of the Dedman Law faculty to evaluate the teaching of Professor Cheryl Nelson Butler for purposes of her promotion and tenure review. I attended both of Professor Butler's classes on Sept. 22: her first-year Torts section as well as her seminar on Critical Race Theory. Based on that review, it is clear to me that Professor Butler is an outstanding teacher.

Professor Butler began her Torts lecture by noting the uncertainty that prevails in much of the law, particularly in non-statutory fields. She then dove into the assigned cases, calling on students to summarize the facts, procedural history, and analysis. The topic of the class was the importance of finding a duty as a precursor to negligence. Professor Butler did not use PowerPoint slides, instead sketching out some of the key principles on the whiteboard. In her back-and-forth with the students, Professor Butler pointed out when she agreed with their analysis and when she disagreed.

For the most part, the students seemed to appreciate Professor Butler's teaching and were attentive and prepared. There was one student who seemed to misunderstand Professor Butler's questions, and I noticed (since he was sitting in front of me) that he spent the entire class surfing websites such as Twitter, Facebook, and Amazon.com. Later in the class, a few other students admitted to being unprepared, and Professor Butler informed them they would all be called on in the next class.

In her Critical Race Theory seminar, Professor Butler addressed the problem of sex trafficking and how it impacts minority communities. The discussion was informal, and the students offered mature and intelligent comments on the complex issues involved.

In conclusion, it is my strong opinion that Professor Butler is an outstanding teacher. Please let me know if I can be of any further assistance.

Sincerely,

A handwritten signature in dark ink, appearing to read "Joshua C. Tate".

Joshua C. Tate
Associate Professor of Law
Southern Methodist University
214.768.2791 (office)
jctate@smu.edu

Southern Methodist University PO Box 750116 Dallas TX 75275-0116

The logo for SMU's 100th anniversary. It features the letters "SMU" in a large, serif font, with "100" below it in a similar font. The number "100" is significantly larger than the "SMU".

Confidential

SMU_Butler_00009241

APP. 100

Thursday, November 5, 2015 at 9:45:36 PM Central Standard Time

Subject: Re: my observations of Professor Butler's class on November 3, 2015
Date: Thursday, November 5, 2015 at 9:40:56 PM Central Standard Time
From: Anderson, Roy
To: Thornburg, Beth, Anderson, Roy, Spector, Mary, Colangelo, Anthony

Beth, Thank you for your candor. I share so many of your observations based on the classes I have attended, both those positive and those negative. I know this was not easy for you personally and that as our SAD your spare time is precious. As promised, your comments will be treated in confidence. That said, may we share them with Jennifer? If it's no, it's no. 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: "Thornburg, Beth" <ethornbu@mail.smu.edu>
Date: Thursday, November 5, 2015 at 7:09 PM
To: "Anderson, Roy" <rlanders@mail.smu.edu>, "Spector, Mary" <mspector@mail.smu.edu>, "Colangelo, Anthony" <colangelo@mail.smu.edu>
Cc: "Thornburg, Beth" <ethornbu@mail.smu.edu>
Subject: my observations of Professor Butler's class on November 3, 2015

Dear Roy, Mary, and Anthony — I'm writing this email to you as Professor Butler's tenure committee. I want to report, with regret, my observations of her Torts class on November 3rd.

I was distressed by what I observed when I visited Professor Butler's Torts class on November 3rd. My concerns about that class are both pedagogical and substantive. First, the good part: although she arrived at the very last minute, she started the class almost on time. She had emailed the students the day before to say that the beginning of the class would be a review of the concept of duty in negligence law, followed by a discussion of two new cases. Professor Butler has a charismatic classroom presence, she is easy to hear, and her presentation is animated. Unfortunately, the content of the class was far more problematic. I've tried to be somewhat specific, in case other people might think that what bothered me would not bother them. I also understand that Professor Butler made an audiotape of the class. Here are my observations:

- The "review" took all of the class time. It was a lecture with no opportunity whatsoever for students to ask questions. If a student was confused by part of the lecture, he or she had no opportunity to seek clarification or further information. No visual aids were used.
- More importantly, this class was just a reminder of all of the cases that the students had studied on the topic of duty, complete with a recitation of the facts of the cases. There was no structure to the review — principles of law were not organized or systematized. At random moments a "takeaway" would be announced. But if the point of a mid-semester review is to help students see how a disparate set of cases resolves itself into a big picture, this recitation failed. If it was an attempt to highlight and clarify the way the doctrines of duty and foreseeability interact in negligence, it was unsuccessful. The cases were summarized, I believe in casebook order.

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- While there were frequent admonishments that learning black letter rules is not enough, and that policy arguments are important, it was only sporadically that the black letter rules were explained clearly, and references to policy were very vague. The result was that neither rules nor policy were explored in depth or organized in a way that enhances understanding. Nor was there any discussion of the ways in which lawyers use policy discussions when trying to convince courts to change the rule or interpret it in a particular way. Negligence law is, as Professor Butler correctly points out, heavily influenced by policy issues. However, the “policy” discussions in this class tended to be vague statements about fairness – not explorations of tort law themes such as deterrence, efficiency, compensation, or redress for wrongs.
- I am not a Tort law expert, but if I understood the lecture correctly, there were multiple places in which the law was mis-stated. It was also a bit worrying to hear that the important thing for exams is to get the “sense” of the thing.
- Although the clock is clearly visible from the teacher’s podium, Professor Butler asked the class at 3:00 (60 minutes into a 75 minute class) how they were doing on time. (Answer: not so well, given the plan to cover two new cases. And since the presentation was entirely in Professor Butler’s hands, this can be attributed only to her lack of planning, not to unexpectedly time-consuming student feedback).
- After asking the students again about 10 minutes later how much time was left, the last few minutes of class were used to try to clarify confusion from the previous class about the last case studied at the end of that class. I applaud Professor Butler’s desire to respond to student expressions of confusion at the end of the last class. But the explanation provided was itself unclear, and left me uncertain about the holding in the case (it involved the limits of duty to third persons for economic harms). [This need to re-teach a topic also worried me because of an incident related to the spring 2015 exam: in a review class the day before the exam, Professor Butler had been unable, by her own account, to explain the correct answer to a sample multiple choice question that she had given the students for review. She promised to email them that evening with a clarification, but failed to do so. Instead, she gave the explanation orally at the beginning of the exam. This was especially significant, since the exam’s short answer questions were slight modifications of the multiple choice question that had caused the confusion. I hope that this inability to provide answers to hypotheticals is not a recurrent pattern.]
- The new cases were never covered. Professor Butler told the class that they would do an exercise in the next class “maybe” using an old exam question, and then would stay 30 minutes over to do the cases they did not reach on Tuesday. While she was correct that the students do not have a class right after Torts, she had not investigated whether the classroom would be available (it is not), and so that last-minute plan will not be feasible. They do still need to do 30 minutes worth of make up class between now and the end of the semester, as they have not yet fully made up a class that was canceled early in the semester.

In summary, this was an entire class spent rehashing material previously covered in a way that shed no additional light on the topic and may, in fact, have provided misinformation. It was interspersed with passing references defending last fall’s exam question (‘discuss the uses of foreseeability in negligence’) for no apparent purpose, as well as recurrent disparagement of students who wanted black letter rules. (She is, of course, right that memorizing black letter rules is only a small part of the lawyer/law student’s task and only the starting point of what students need to learn).

Finally, I want to add some information based not on my observation of this class but on my interactions with Professor Butler and her students since becoming Senior Associate Dean for Academic Affairs. While what happens in class is extremely important, providing students with a coherent course structure, well-constructed exams, and timely feedback is also an important part of our job as teachers. First, as far as I know, Professor Butler has never turned her grades in on time since she began teaching at SMU. (Since she teaches a first year subject, that creates problems not only for her own students but for the entire first year class – grades have to be coordinated between sections and ideally none are released until all are in). Second, students do not seem to receive timely and accurate syllabi. Third, the exams themselves suggest of a lack of thoughtful construction. (For example, the spring 2016 exam had questions that needed to be discarded because of name changes and failure to actually ask a question).

I hope that my information is unrepresentative or incomplete, and urge the committee to seek copies of past syllabi and past exams and grading keys. If they are in fact of high quality, I would be so relieved, and evidence of careful student assessment would be helpful to Professor Butler in refuting the persistent student complaints to the contrary. I would really like to be wrong. I have provided Professor Anderson with some email chains reflecting exam issues, and will let them speak for themselves should the committee consider them relevant.

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>



Center for Teaching Excellence

To Whom It May Concern:

Cheryl Nelson Butler, JD, requested a consultation and observation through the Center for Teaching Excellence in early Fall 2015. As a result of this request, I observed Cheryl on November 10, 2015, in her afternoon class on Torts. Cheryl has great rapport with her students, fed in part by her great sense of humor, cheerful disposition, and lots of energy. Cheryl had at least 20 students lined up to speak with her after class, and she met every one of them with an attentive patience.

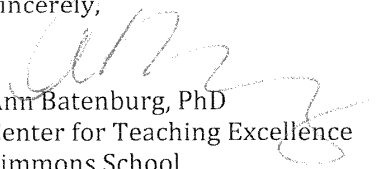
This was a large class, and Cheryl handled the class with aplomb. She both called on students to answer questions and analyze aspects of cases and took volunteers for some questions. Student engagement was high. Sitting in the back of the room, as is my custom, I am privy to what students are doing on their computers. Cheryl had everyone's attention. All students were madly taking notes; I saw no one surfing the web or texting during class. I think that her practice of taking volunteers to help students when they stumble adds to everyone's motivation to pay attention. She is also a very engaging personality in class, joking with students while keeping standards high.

The discussion was based around several cases relating to negligence. Her explanations of how cases revealed the different tests were cogent and connected to students' lives. She asked students to recall other cases from earlier in the semester that related to the discussion, which is an excellent way to continually bring previous content back for review, to compare and contrast how different tests apply in different situations, and to show students how new information can shed new light on an old case.

Cheryl set the agenda for the class initially, reviewing where they had been, and taking them further. Students had a clear idea of where this lecture fit into the larger scheme. Cheryl respected student responses when they weren't answering questions correctly, and she moved the discussion deftly to the correct answers. There were basic questions of how the tests apply to the case, as well as questions that allowed student opinion ("What do you think?") about laws that related more to policy.

I learned a lot from this class and wish I could have stayed longer! Cheryl showed that she understands what it means to get students to learn. I've been in the classroom a long time, and Cheryl is one professor who "gets it."

Sincerely,


Ann Batenburg, PhD
Center for Teaching Excellence
Simmons School

Southern Methodist University PO Box 750360 Dallas TX 75275-0360
214-768-3995 Fax 214-768-4121 smu.edu/cte

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

CHERYL BUTLER,	§	
	§	
Plaintiff,	§	
	§	
v.	§	
	§	
JENNIFER M. COLLINS, STEVEN CURRALL, JULIE PATTERSON FORRESTER, HAROLD STANLEY, AND SOUTHERN METHODIST UNIVERSITY,	§ § § § § § § § §	CIVIL ACTION NO. 3:18-CV-37-E
Defendants.	§	

**DECLARATION OF JENNIFER M. COLLINS
IN SUPPORT OF DEFENDANTS' MOTION FOR SUMMARY JUDGMENT**

I, Jennifer Collins declare, and state as follows:

1. My name is Jennifer M. Collins. I am over 18 years of age, of sound mind, have never been convicted of a felony, and can make this declaration. The facts stated in this declaration are within my personal knowledge and are true and correct.

2. I am the Judge James Noel Dean & Law Professor at the Dedman School of Law ("Law School") at Southern Methodist University ("SMU"). I have held this position since July 2014 and served as Dean in the 2015-2016, the academic tenure year for Professor Cheryl Butler ("Butler").

3. Professor Butler entered into an employment contract with SMU dated March 3, 2011 in which she was hired as an Assistant Professor in the Law School ("Contract"). She joined the Law School faculty in the summer of 2011. A true and correct copy of the Contract

is attached to hereto as Exhibit 1. If the Contract was renewed, Professor Butler was to be considered for tenure during the 2015-1016 academic term. Professor Butler was considered for tenure during the 2015-2016 academic year as her Contract required. The Contract also included the Law School bylaws and SMU's guidelines for the award of tenure.

4. Over the courses of her career at SMU, Professor Butler taught four courses - Torts I and II, Employment Discrimination, and Critical Race Theory.

Standards and Guidelines for Tenure at SMU and the Law School

5. SMU and the Law School evaluate three criteria in making the determination to award tenure – teaching, scholarship [research], and service. Under the Bylaws – Dedman School of Law (“Law School Bylaws”), attached hereto as Exhibit 2, a professor has “two preeminent responsibilities” -- teaching and scholarship, which are given equal weight in the determination whether to award tenure. Other responsibilities such as service are important but not weighed as heavily as the teaching and scholarship criteria in a tenure decision.

6. The Law School Bylaws follow the tenure guidelines set forth in the SMU Guidelines for the Award of Rank and Tenure, Policy 6.12, (Revised as of December 7, 2001) attached to this Declaration as Exhibit 3 (“Guidelines”). Tenure is awarded to faculty members who are outstanding in either teaching or research [scholarship] and whose performance in the other is of high quality.

7. Under Law School Bylaws, a candidate for tenure is considered in the fifth year of teaching [Bylaw IX (b)], as Professor Butler was considered. The following requirements of the Law School Bylaws and Guidelines are followed in the tenure process in the Law

School: (a) the Dean appoints a three-member advisory committee, commonly known as the “Tenure Committee”; and (b) members of the Tenure Committee review the tenure candidates’ scholarship and teaching, counsel the candidate on teaching and research, and are generally available to the candidate professor during the tenure process. The Guidelines allow a candidate to appeal a negative tenure recommendation.

The Contract Renewal, Tenure Committees and Confidential Tenure Report

8. In March 2014, the Law School tenured faculty voted to renew Professor Butler’s Contract. As part of the renewal process, an Advisory Committee, consisting of Professors Joe Norton, George Martinez and Beth Thornberg, evaluated the three criteria for tenure. While Professor Butler met the standards for scholarship and service, she did not meet the “high quality” standard in her teaching. There was “room for improvement” with her teaching, especially as it related to her teaching of torts which remained a “challenge” for her. Because the Law School tenured faculty believed that Professor Butler could improve her teaching sufficient to meet the “high quality” standard in her torts classes, her Contract was renewed in the Spring 2014 semester. A true and correct copy of her Contract renewal report is attached to this Declaration as Exhibit 4.

9. In March 2013, then-Law School Dean John Attanasio had appointed a three-member Tenure Committee so that Professor Butler could be considered for tenure during the 2015-2016 academic year. The Tenure Committee consisted of Professors Norton, Thornberg, and Martinez who had also served as her Contract renewal Advisory Committee. Professor Norton chaired the committee (“First Tenure Committee”).

10. The First Tenure Committee continued to work with Professor Butler and raised concerns that her teaching was still not meeting the “high quality” standard for being awarded tenure. Professor Butler appeared to meet the standards for scholarship and service. When Professor Butler became aware that that her First Tenure Committee had concerns about whether she was meeting the tenure criteria for teaching, she accused the Committee of violating her civil rights in raising such issues. Each member of the First Tenure Committee resigned on or about September 21, 2015. I did not request the committee’s resignation. Attached to this Declaration as Exhibit 5 is an email dated September 21, 2015 in which I “regretfully” accepted the resignations of the members of the First Tenure Committee.

11. On or about September 27, 2015, I appointed a new tenure committee consisting of Professors Roy Anderson, Mary Spector, and Anthony Colangelo to serve after the resignation of the First Tenure Committee (“Tenure Committee”). Professor Anderson agreed to serve as its chair. Professor Butler agreed to Professor Anderson’s leadership of the committee and to the service of Professors Spector and Colangelo. Attached to this Declaration as Exhibit 6 is the September 27, 2015, email in which I notified Professor Butler and the Tenure Committee of the appointment and Professor Butler’s confirmation email. At no time did I discuss with the Tenure Committee the reasons for the resignation of the First Tenure Committee. I advised Professor Butler to report any concerns she had about the tenure process to the Office of Institutional Access and Equity (“IAE”), the office at SMU that handles any complaints of discrimination.

12. Professor Butler informed me that she was “grateful” for the service of her colleagues on the Tenure Committee and “happy” that Professor Anderson would serve as the chair. Professor Butler did not raise any objections to any member of the Tenure Committee. Indeed, Professor Anderson had served on many tenure committees over the course of his years at the Law School and was a member of the tenure committee of Professor Jessica Weaver who had been granted tenure as the first African American female professor in the Law School in the Spring of 2015. And Professor Butler had informed the first Tenure Committee, the Tenure Committee, and me that she wanted to be considered for tenure in the 2015-2016 academic year with the other two candidates in her tenure class in the Law School – Professors Keith Robinson (“Robinson”) and David Taylor (“Taylor”).

13. The Tenure Committee met with Professor Butler and undertook its work of evaluating whether Professor Butler met the three criteria for being awarded tenure – teaching, scholarship, and service. During the Fall 2015 semester, the Tenure Committee also identified concerns regarding whether Professor Butler met the standards for tenure in her teaching.

Interim Provost’s Denial of Tenure Extension – November 10, 2015

14. After concerns were raised regarding her deficiency in teaching during the Fall 2015 semester, Professor Butler sought an extension of her tenure decision from her Tenure Committee and me. I directed Professor Butler to the Interim Provost of SMU regarding any requests for an extension of her tenure decision because the Tenure Committee and I did not have the power to make such determinations. Attached to this Declaration as Exhibit 7 is my

email to Professor Butler dated October 28, 2015, in which I informed her to seek such relief from the Interim Provost.

15. Professor Butler sought from Interim Provost Harold Stanley (“Stanley”) an extension of her tenure decision from the 2015-2016 academic year set forth in her Contract to the 2016-2017 academic year. Provost Stanley requested that she send a “detailed written explanation of the reasons” for the request. I was copied on the letter of November 4, 2015 from Interim Provost Stanley to Professor Butler attached to this Declaration as Exhibit 8 in which he requested her reasons. SMU did not extend the tenure deadline for Professor Butler and advised her to raise any “health concerns” she had with SMU’s Human Resources Department who could guide her on questions regarding the Family Medical Leave Act (“FMLA”) or Americans With Disabilities Act (“ADA”). I am copied on the letter from Interim Provost Stanley to Professor Butler dated November 10, 2015 and attached to this Declaration as Exhibit 9. Interim Provost Stanley made his independent determination on the tenure extension request. Law School faculty and I did not have the power to grant a tenure extension.

16. Each candidate for tenure in the Law School submits what is known as a “tenure box” which contains a personal statement, syllabi, resume of qualifications, teaching evaluations, and other materials a candidate may wish to include that is available for tenured faculty to review in advance of the tenure vote. Despite repeated requests from her Tenure Committee and me, Professor Butler did not submit her tenure box in a timely manner. The other two candidates for tenure in the Law School (Professors Robinson and Taylor) submitted all tenure materials on a timely basis. Because Professor Butler insisted on being

considered for tenure at the same meeting as the other two Law School tenure candidates, the Interim Provost and I made the decision to move the vote on tenure for all Law School candidates from December 2015 to January 2016, even though the other two candidates had submitted materials for their tenure boxes on a timely basis and were ready to be considered earlier.

17. Professor Butler's Tenure Committee prepared a detailed "Confidential - Tenure and Promotion Report" report dated January 8, 2016 in which it concluded that Professor Butler's scholarship and service met the University standards, but her teaching did not. I did not assist the Tenure Committee in drafting, editing or reviewing the Tenure Report and did not direct what the report would contain. The Tenure Committee provided the Tenure Report on a confidential basis to each voting tenured member of the Law School faculty. I did not provide the report to Professor Butler because it is not the practice of the Law School for the Dean to provide the reports to candidates or to the faculty.

Law School Faculty Meeting on Tenure Vote - January 13, 2016

18. The meeting to vote on tenure for Law School candidates, including Professor Butler, was held on January 13, 2016. Professor Anderson led the tenure discussion on Professor Butler, and the other two members of her Tenure Committee were present. Three candidates were considered at the meeting - Professors Butler, Taylor, and Robinson. Professor Robinson is an African American male law professor. The faculty voted to recommend tenure for Professors Taylor and Robinson. Professor Butler received a negative tenure recommendation. I did not vote at the faculty meeting.

19. No details on Professor Butler's FMLA leave or her medical issues were discussed at the tenure meeting except the dates on which she had been granted FMLA leave as stated in her Tenure Report. The tenure decisions for the three candidates were based on the criteria set forth in the Law School Bylaws and Guidelines – teaching, scholarship, and service. The same standards and procedures were applied to the three candidates in evaluating whether they had met the requirements for tenure. Professor Butler met the standards for scholarship and service but failed to meet the standard for “high quality” teaching. Professors Taylor and Robinson satisfactorily met all three criteria for tenure.

20. In convening the tenure meeting vote, I followed all requirements of the Law School Bylaws, and all three candidates for tenure were evaluated for tenure under the same standards set forth in the Guidelines and Law School Bylaws. I called a meeting for the tenure vote for January 2016, and a quorum of tenured Law School faculty members voted on the three candidates by unsigned secret ballots. I notified Professor Butler by telephone of the tenure recommendation on January 13, 2016.

Negative Tenure Recommendation to the Provost and Appeal of Faculty Vote

21. After the Law School faculty voted on tenure at the January 2016 meeting, Professor Butler appealed her tenure recommendation to me, as Dean of the Law School. Because Professor Butler was on FMLA leave until April 11, 2016, SMU delayed consideration of her appeal until the end of her FMLA leave. I informed her in a letter dated April 5, 2016, that I would consider her appeal after FMLA leave ended on April 11, 2016 and that I would base her appeal on the materials she had previously submitted unless she provided me with additional materials by April 25, 2016. A true and correct copy of my April

5, 2016 letter to Professor Butler is attached hereto as Exhibit 10. Professor Butler did not provide additional materials. I denied the appeal on May 4, 2016 and informed Professor Butler that I also would make a negative tenure recommendation to the Provost. I followed the Guidelines and Law School Bylaws in notifying Professor Butler of my decision on the appeal and in making a recommendation to the Provost on tenure. A true and correct copy of my email to her dated May 4, 2016 is attached hereto as Exhibit 11.

22. I presented my negative tenure recommendation to Provost Currall in a true and correct copy of a letter dated May 4, 2016 which is attached hereto as Exhibit 12. (Information has been redacted from Exhibit 12 on the actual number of votes from page 1.) After consideration of the comprehensive Tenure Report, my personal observations of Professor Butler's teaching from visiting her classes, the vote of the Law School faculty, and the student evaluations for the entire period of her work at SMU, I regretfully concluded that Professor Butler did not satisfy SMU's requirement for high quality teaching. The reasons for my negative tenure recommendation are set forth in detail in Exhibit 12 and incorporated into this Declaration.

23. Professor Butler had outstanding scholarship and service, but I independently concluded that she failed to demonstrate high quality teaching and concurred in the comprehensive discussion of her teaching deficiencies contained in her Tenure Report. Professor Butler had extremely negative student evaluations. The extensive observations by her fellow faculty members and the evaluations showed that she had problems with course syllabi, assignments, exams and grading. She demonstrated a lack of preparation in the classroom, excessively reviewed materials that she has previously covered in the

classroom and showed a lack of knowledge of tort law that manifested itself in misstatements of law and confusing contradictions in class. She confused her students. I visited two of Professor Butler's classes and personally saw these serious teaching issues which supported my negative tenure recommendation.

24. Professor Butler was also not willing to accept any constructive criticism related to issues in her teaching and refused to accept the negative criticism in student evaluations that had been consistently identified over the course of her work at SMU. Over the course of many semesters, Professor Butler had received some of the lowest teaching evaluations in the entire Law School. I verified this by taking a comparative look at the evaluations of all tenured and non-tenured faculty in the Law School for the Spring 2015 semester. Professor Butler had the lowest scores in the Law School for teaching, primarily in her torts class, one of the mandatory and foundational courses for law students. I did not consider race in making my tenure recommendation on Professor Butler and race was not discussed in the faculty meeting except as a reminder of the importance of diversity and inclusion at SMU.

Provost's Negative Tenure Recommendation and No Appeal to President

25. Provost Currall notified Professor Butler on May 5, 2016, that he could not make a positive tenure recommendation to the President of SMU. A true and correct copy of the letter of May 5, 2016 from Provost Currall is attached hereto as Exhibit 13. Professor Butler had three weeks from the date of the letter to appeal the tenure recommendation to the SMU President, but did not file an appeal.

26. After Professor Butler was not granted tenure, SMU employed her through her terminal year (Fall semester 2016 - Spring semester 2017) as required by the Contract and Law School Bylaws. SMU fully paid her annual salary even though she did not return to the classroom. Professor Butler was free to work on her research and other scholarship of her choosing during her terminal year.

My Lack of Involvement in Tenure Extension, FMLA and ADA Decisions.

27. As Dean, I make an independent assessment on tenure and promotion which is presented to the Provost. I do not vote on these issues in faculty meetings. I am an ex officio member of hiring committees and make recommendations on hiring as part of that process. I also do not vote at faculty meetings when hiring decisions are made. I have been never been involved in the termination of a faculty member during my work at SMU, but that process is also governed by a lengthy process covered by SMU Bylaws and such decisions are made at the University level.

28. I had no role in considering or approving decisions related to Professor Butler's tenure extension, leave under the FMLA, and ADA accommodations. I did not direct IAE or HR in these decisions. When Professor Butler notified me that she might need FMLA leave in June 2015, I directed her to Rhonda Adams in HR. My email to her dated June 12, 2015 is attached hereto as Exhibit 14. IAE, through Carolyn Hernandez, provided me with notice of reasonable accommodations that SMU had approved for Professor Butler. HR, through Rhonda Adams, informed me of the dates when Professor Butler had been granted FMLA leave, and this was the only information that I provided to her Tenure Committee regarding FMLA. An example of a notification that I received from HR when it had approved

FMLA leave for Professor Butler is the attached email from Rhonda Adams to me and my email to Roy Anderson, Chair of the Tenure Committee, dated December 23, 2015, attached hereto as Exhibit 15.

29. During the Fall 2015 and Spring 2016 semesters, Professor Butler tried to involve me in her tenure extension, FMLA and ADA decisions after she had been informed that I did not make such decisions and she had been provided information on the proper decisionmakers at SMU. As an example, after Provost Stanley denied Professor Butler's request to extend her tenure consideration on November 10, 2015, she requested that I revisit the decision on November 11, 2015. I informed Professor Butler that the Interim Provost made decisions related to the "tenure clock," that I did not "have the power to overrule him," and that he had directed her to HR with FMLA and ADA concerns. My email to her dated November 11, 2015 is attached hereto as Exhibit 16.

30. In the Spring 2016 Semester, I returned medical information un-opened to Professor Butler and reminded her that I did not evaluate ADA requests when she copied me on an email to IAE (Carolyn Hernandez) regarding an ADA request. A true and correct copy of my email dated April 6, 2016 is attached as Exhibit 17. Despite my April 6 email in Exhibit 17, Professor Butler still sent me emails on April 19 and 20 regarding ADA accommodation requests when IAE had been identified to her many times as the only SMU office to make accommodation decisions. I was concerned that Professor Butler was intentionally ignoring requests that she follow SMU procedures. A true and correct copy of my email dated April 22, 2016 is attached as Exhibit 18.

I declare under penalty of perjury that the facts stated in this declaration are true and correct. Exhibits 1 through 18 attached to this Declaration are true and correct copies of the originals and are incorporated herein for all purposes.

Executed in Dallas County, State of Texas, on November 19, 2021.


Jennifer M. Collins



SMU

DEDMAN SCHOOL OF LAW

John B. Attanasio
Judge James Noel Dean and Professor of Law
& William Hawley Atwell Chair of Constitutional Law

March 3, 2011

Cheryl Nelson Butler
3341 Charleston Street
Houston, TX 77021

Dear Cheryl,

I am pleased to confirm the offer of an appointment as Assistant Professor of Law without tenure at Southern Methodist University. Your appointment will be for a three-year period beginning August 1, 2011, and ending May 31, 2014. Details of the pay options will be explained to you when you process through the Department of Human Resources.

Pursuant to Article VIII of the Bylaws of the School of Law, your contract may be renewed for an additional period upon demonstration of promise of substantial compliance with the School's criteria for tenure and promotion as set out in Article X. If your contract is renewed, you would normally be considered for a tenured appointment during the 2015-2016 academic term. I am enclosing a copy of the Law School Bylaws and direct your attention to Articles IX and X which detail Law School tenure procedures and standards. Also enclosed is a copy of the University Guidelines for tenure and promotion for your review.

Your compensation for the 2011-2012 academic term will be \$ 115,000.00. Adjustments in salary will be made based upon review of your progress in teaching, scholarly writing and research, and service to the University and the profession.

You are eligible for one of our two summer research grant programs for the summer of 2011 if you file an appropriate request for support of a research project. Additional summer research grants for succeeding years may also be available on a competitive basis, depending upon available funds, your proposal and your scholarly progress from your previous summer grants.

It is a requirement of the University's accrediting association that we maintain on file for all faculty an official transcript of your J.D. degree earned. Please send or have sent this document to the Office of the Provost, Southern Methodist University, Post Office Box 221, Dallas TX 75275 by June 1st. This offer is conditioned on your

Dedman School of Law
Southern Methodist University PO Box 750116 Dallas TX 75275-0116
214-768-2621 Fax 214-768-2182 www.smu.edu/law

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Contract: Cheryl Nelson Butler
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ability to demonstrate work authorization pursuant to immigration laws (if applicable) and the satisfactory completion of a background check.

For the 2011-2012 and 2012-2013 academic terms, you will teach a reduced teaching load of 8-9 semester hours in Torts I, Torts II, and a seminar. In your third academic year 2013-2014, you will teach an additional course, to be dictated by the school, with a typical teaching load of 11 to 12 semester hours. You will also be entitled to a one semester pre-tenure research leave.

The University maintains an excellent employee benefits program.

We are delighted about the prospect of your association with us and the entire University family extends you the most cordial welcome. Please indicate your formal acceptance by signing in the space provided below and return the original letter to the attention of Roland Webb, Director of Finance, PO Box 750116, Dallas, TX 75275 as soon as possible. Please retain a signed copy for your file.

Sincerely,



John B. Attanasio
Judge James Noel Dean and
Professor of Law and William Hawley Atwell
Professor of Constitutional Law

Accepted:

 3/30/11

Cheryl Nelson Butler Date

BYLAWS
DEDMAN SCHOOL OF LAW
SOUTHERN METHODIST UNIVERSITY

As Amended
April 15, 2014

Collins Dec. No. 2

[APG]
BYLAWS

Southern Methodist University
Dedman School of Law

Preamble

Subject to the Charter of Southern Methodist University, and the rules of its governing board and officers, subject to the Standards for the Accreditation of Law Schools in the United States promulgated by the American Bar Association, and subject to the Statements on Academic Freedom and Tenure promulgated by the Association of American University Professors, the Dean and Faculty of the Dedman School of Law (hereinafter "the School") shall determine and execute the policies and procedures for the operation of the School.

I. Dean

The Dean shall be a tenured member of the Faculty.

The Dean shall be the chief administrator of the School and shall represent the School and its interest to the various constituencies of the School.

The Dean shall execute the policies and procedures of the School as they may be determined from time to time pursuant to the bylaws.

The Dean shall by reason of the Dean's office be an ex-officio member of all standing and special committees of the Faculty.

II. Faculty

(a) The Faculty shall in general determine the educational policies for the operation of the School. It shall consist of all professors, associate professors, assistant professors, and lecturers. These classifications include tenured and non-tenured appointments, and faculty holding administrative appointments. Unless otherwise provided, it shall not include adjunct professors, instructors, visiting faculty and emeritus faculty. The tenured and tenure-track Faculty by these bylaws shall determine which of the Faculty shall vote on particular matters which may come before it.

(b) "Lecturers," who have been employed under the provisions in Article VIII (e), are members of the faculty hired on definite term contracts who teach full time, but by the terms of their contracts are not eligible for tenure at the law school. Lecturers may be appointed to the Honor Council and all faculty committees, standing

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and ad hoc, except the following standing committees: Admissions, Appointments, Financial Aid, and the Executive Committee. Lecturers appointed to the Graduate Legal Studies Committee may not vote with respect to the admission of students. Lecturers may attend all faculty meetings except faculty meetings concerning specific faculty and decanal appointments, specific promotions, specific tenure, and specific contract renewals. Lecturers may vote on all matters brought before the faculty except for votes concerning specific faculty and decanal appointments, specific promotions, specific tenure, specific contract renewals, specific bylaw amendments, commencement or discontinuance of major academic programs (e.g. the evening program or an LL.M. program), issues pertaining to the first year curriculum, and elections of the executive committee. If a question is raised whether these bylaws permit Lecturers to attend a faculty meeting or vote on a particular matter, the question will be decided by vote of the tenured and tenure-track faculty in accordance with Article XII of these bylaws. This vote is final.

III. Meetings

- (a) Regular meetings of the Faculty shall be held once a month during the academic year.
- (b) Special meetings may be held from time to time pursuant to:
 - (1) a notice there of by the Dean,
 - (2) a written petition to the Faculty by a majority of its members, or
 - (3) the procedures described in Article VIII (b) (3).

IV. Agenda

- (a) The Dean shall distribute to the Faculty at least one day before each regular meeting an agenda of business to be considered. Such agenda shall include items placed thereon through the Dean's office by any member of the Faculty.
- (b) In the case of a special meeting the agenda shall be distributed at least three days before such meeting by:
 - (1) the Dean if he or she has called the meeting, or
 - (2) the faculty group organizing the meeting, if such meeting is called by a majority of the Faculty as is provided in Article III (b) (2).

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- (c) A day shall be counted from noon to noon, excluding Saturdays and Sundays.

V. Conduct of Faculty Meetings

- (a) The Dean shall preside at all meetings.
- (b) A quorum, unless otherwise provided herein, shall consist of more than 50% of the tenured and tenure-track Faculty. A faculty member is counted for purposes of a quorum if the faculty member is present at a meeting, either in person or by an audio connection that provides the faculty member the opportunity to participate in the meeting ("audio connection"). A faculty member not attending a meeting in person or by audio connection shall be counted for purposes of the quorum with respect to any item for which the non-attending Faculty member may and does tender a vote to the Dean in advance of the meeting as specifically provided in Article VIII or Article IX of these Bylaws. Faculty on leave shall not be counted for this purpose, whether or not such persons on leave are in residence, unless such Faculty member attends a meeting in person or by audio connection.
- (c) If the Dean is unable for any reason to preside at a meeting, the Dean may designate another member of the Faculty to chair the meeting; or, if the Dean fails to designate a chairperson, then the members present at the meeting may designate their own chairperson.
- (d) Minutes shall be kept by the Faculty Secretary elected by the Faculty or by such other person as the Dean may designate and shall be distributed to the Faculty promptly after each meeting.
- (e) Except as may be otherwise provided herein, meetings shall be conducted in general in accordance with the currently authorized edition of Robert's Rules of Order.
- (f) By a two-thirds vote, items not timely placed on the agenda, or items which arise as new business after the meeting has been called to order, may be considered at either a regular or special meeting.
- (g) Every member of the Faculty who attends a meeting in person or by audio connection shall have the privilege of the floor and the right to vote. Voting by proxy shall not be permitted.
- (h) If the Faculty is voting on an item by secret ballot, a member of the Faculty who attends a meeting by audio connection may vote by

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directing the Faculty Secretary, in a manner that preserves the secrecy of the Faculty member's vote to the maximum extent possible, to vote as the Faculty member desires.

- (i) If a member of the Faculty does not attend a meeting, either in person or by audio connection, the non-attending Faculty member may tender a vote to the Dean in advance of the meeting. Such a vote will be counted only (1) as to items for which other Articles of these Bylaws specifically permit the tender of a vote prior to the meeting and (2) with respect to any other item properly before the Faculty pursuant to Article IV that is not substantially amended during the meeting.
- (j) Non-faculty may be invited by the Dean from time to time, as may be appropriate, to regular and special meetings and may have the privilege of the floor.

VI. Standing Committees

- (a) The Standing committees of the Faculty are:
 - (1) Executive,
 - (2) Admissions,
 - (3) Curriculum and Academic Standards,
 - (4) Graduate Legal Studies,
 - (5) Library and Information Technology,
 - (6) Appointments,
 - (7) Teaching,
 - (8) Endowed Lectures,
 - (9) Financial Aid,
 - (10) Career Services Committee,
 - (11) Public Service Committee.
- (b) With the exception of the Executive Committee, the members of the standing committees shall be appointed by the Dean with the advice and consent of the Executive Committee. Excluding the Dean as an ex-officio member, the membership of each committee shall be not less than three.

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- (c) The Executive Committee shall be elected by the tenured and tenure-track faculty each year at its regular meeting in April. One member shall be chosen from the rank of full professor, one from the ranks of associate and assistant professors, and two from the Faculty at large. No member shall be eligible to serve more than two consecutive terms.

VII. Operation of Faculty Committees

- (a) Each standing committee operates in accordance with powers and duties delegated to it by the Faculty, and each committee is accountable and responsible to the Faculty for its work.
- (b) Recommendation of any standing committee shall have a presumption of fairness and validity. A member of the Faculty, staff, or student body aggrieved by committee action may appeal to the Faculty for a review of the committee action by filing and distributing to the faculty a written statement of objections to the findings and conclusions of the committee. If 30% of the faculty or 30% of the tenured faculty notify the Dean in writing that they desire to hear the appeal, the appeal shall be heard at either the next regular Faculty meeting or a special meeting called for that purpose.
- (c) In general, the standing committee shall function as follows:
 - (1) Executive - This committee shall meet from time to time with the Dean presiding; it shall consider any and all matters relating to the general program of the School, including faculty and student body size, resource allocation and salary structure, designation of administrators, financial strength of the School, continuing legal education, relationships with the University and the public. Specifically, the Executive Committee shall consult with the Dean, participate as it deems appropriate, and facilitate general Faculty participation with respect to the affairs of the Law School to include, but not be limited to, law school accreditation groups and organized groups concerned with the School as these groups may exist from time to time. The Executive Committee and the Dean shall coordinate law school accreditation group visits to the campus and the preparation of any reports and related communications.

Minutes of each of its meetings shall be promptly distributed to the Faculty.

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- (2) Admissions - This committee shall
 - (A) determine the qualifications for admission to the School for the Juris Doctor degree;
 - (B) devise procedures consistent with privacy laws and University policy for review and action on files;
 - (C) determine procedures for review and action on petitions for re-admission of students having scholastic deficiency;
 - (D) study and make recommendations to the Faculty with respect to policies and standards of admissions and academic performance; and
 - (E) recommend programs for the recruitment of students.
- (3) Curriculum and Academic Standards - This committee shall
 - (A) study the curriculum and make any proposals for changes therein;
 - (B) waive, or accept substitutes for, required courses;
 - (C) approve or disapprove of course overloads;
 - (D) approve or disapprove credit toward the Juris Doctor degree for work done at other law schools;
 - (E) approve or disapprove appropriate credit for courses pursued elsewhere than the School;
 - (F) review and make suggestions with respect to scheduling of course offerings and examinations.
- (4) Graduate Legal Studies - This committee shall
 - (A) examine and pass upon the qualifications of applicants seeking admission to the School for the Master of Laws degree, Master of Laws (Comparative and International Law) degree, Master of Laws (Taxation) degree and Doctor of the Science of Law degree;
 - (B) award scholarship and loan assistance to graduate students;

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- (C) supervise the course program of graduate students;
 - (D) make recommendations to the Faculty regarding the graduate program;
 - (E) supervise the recruitment of students; and
 - (F) recommend to the Faculty for the awarding of degrees those students who have successfully completed the appropriate requirements.
- (5) Library and Information Technology - This committee shall
- (A) consult with the Law Librarian about the operation of the Law Library;
 - (B) make recommendations to the Law Librarian with respect to library plans, operations, and policies; and
 - (C) consult with and make recommendations to the Law Librarian and the administration about law school information technology resources.

The Law Librarian shall be an ex-officio member of this committee.

- (6) Appointments - This committee shall
- (A) make recommendations to the tenured and tenure track faculty with respect to the need for new members of the Faculty; and
 - (B) initiate the procedures for filling vacancies on the Faculty.
- (7) Teaching – This committee shall
- (A) provide the faculty with information, support, and training on issues relating to teaching at the law school, including the use of technology in teaching.
 - (B) advise the administration regarding the pedagogical implications of classroom facilities.
- (8) Endowed Lecturers Committee - This committee shall
- (A) make plans for various speakers to visit the School during the academic year; and

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- (B) extend invitations to speakers and others as may be appropriate for such occasion.
- (9) Financial Aid - This committee shall determine the policies for awarding scholarships, fellowships, and other financial assistance to students in the Juris Doctor program.
- (10) Career Services Committee - This committee shall
 - (A) study and make recommendations with respect to the policies, procedures, and programs of the Career Services Office;
 - (B) advise Law School students and graduates in securing judicial clerkships, public service positions, and other special appointments; and
 - (C) advise and assist the Director of Career Services.
- (11) Public Service Committee - This committee shall
 - (A) study and make recommendations with respect to the policies, procedures, and operation of the Public Service Program; and
 - (B) advise and assist the Director of the Public Service Program.
- (d) Each committee shall determine the time and place of its meetings, the manner of keeping files and records, and procedures for the conduct of its agenda. Each committee shall at least once a year prepare a report of its activities.
- (e) The President of the Student Bar Association shall be requested to designate representatives to each standing committee and such representatives shall be notified of committee meetings and agenda. The student representatives shall be within the discretion of the Faculty members the particular standing committee.

VIII. Recruitment and Appointment of Faculty

- (a) At the regular meeting of the Faculty in September, the Committee on Appointments shall advise the tenured and tenure-track faculty of needs for new faculty and its plans for recruitment.

By appropriate resolution the tenured and tenure-track faculty may give the Committee such suggestions or instructions as may be appropriate.

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The Committee within its own discretion shall determine the methods for the effective conduct of its business.

- (b) Candidates for term contracts who are eligible for tenure, and the renewal of their contracts.
 - (1) When the Committee determines that a candidate is a prospect for tenure-track employment on a term contract for more than one year, it shall invite the candidate to the School to meet as many members of the Faculty as possible.
 - (2) Following such a visit, on vote of a majority of the Committee and with the approval of the Dean, the faculty shall meet to consider the appointment of the candidate.
 - (3) At such meeting a quorum shall be determined under Article V (b); however, the candidate shall be appointed only on the favorable vote of 51% of those eligible to vote. All members of the tenured and tenure-track faculty, whether or not on leave and whether or not in residence, are eligible to vote in person or by tendering a vote to the Dean before the meeting. The Dean shall exercise his or her best efforts to convey the necessary information to, and obtain votes from, tenured and tenure-track faculty members who are away from the School. An otherwise eligible member who declares his or her intention not to vote shall not be counted for purposes of determining a majority.
 - (4) In the case in which a tenure-track candidate is given a term contract of more than one year, such person's advisory committee, as is provided for in Article IX (a), shall consider whether or not to recommend that the contract of employment be renewed. Generally, such recommendation will be made if the candidate is making satisfactory progress toward meeting the criteria for the award of tenure. The committee shall report to the Faculty its findings and recommendations, and the deliberation of the tenured and tenure-track faculty shall proceed in accordance with Article VIII (b) (3) above.
- (c) Visiting Faculty
 - (1) When the Committee determines that a candidate is a prospect for employment as a visiting professor for a

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semester or for one academic year, it may within its discretion invite the prospective visitor to the School.

- (d) Candidates for Summer Faculty and Part-time Faculty
 - (1) On vote of a majority of the Committee and with the approval of the Dean, the Dean may employ summer faculty and part-time faculty.
- (e) Lecturers
 - (1) The Dean may employ a candidate for Lecturer recommended first by a majority of the Appointments Committee and then by a majority vote of the faculty.
 - (2) Lecturers may be re-appointed by the Dean, after appropriate review and approval by the Appointments Committee, to a subsequent term of one to three years with the Committee not taking research or service into consideration. After a lecturer has been employed for three consecutive academic years, any subsequent reappointment should be for a term of no fewer than three years, if the school's circumstances allow. There is no limit on the number of subsequent fixed-term reappointments that may be offered to a Lecturer or Senior Lecturer. After a Lecturer has been employed by the University for five years, he or she is eligible for promotion for excellence in teaching to the rank of Senior Lecturer. Lecturers may be reappointed pursuant to this provision only, and not pursuant to Articles IX and X of these bylaws.

IX. Promotion and Tenure Procedure

- (a) Each member of the Faculty who is to be considered for tenure or promotion (including a visitor who may be considered for a tenured position) shall be assigned a three-member advisory committee, appointed by the Dean after consultation with the Executive Committee. Such committee shall visit the candidate's classes, review his or her writings, counsel with him or her on teaching methods and research projects and in general be available for constructive help in his or her ongoing association with the School.
- (b) Ordinarily, a candidate for tenure will not be considered for tenure until the candidate is in his or her fifth year of teaching. No precise measure of talent can be made, however, so that any candidate, on consultation with the Dean and his or her advisory committee, may receive earlier consideration.

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- (c) Ordinarily, a candidate for promotion will not be considered until he or she is in the third year of his or her current rank. As in the case of tenure consideration, however, a candidate, on consideration with the Dean and his or her advisory committee, may receive earlier consideration.
- (d) When a Faculty member is to be considered for tenure or promotion, the Dean shall call a special meeting for that purpose.
- (e) In the case of tenure consideration, only tenured members may vote. In the case of promotion to the rank of Associate Professor, only associate and full professors may vote; in the case of promotion to the rank of Professor, only professors may vote.

Members of the Faculty of the required rank and tenure, whether or not on leave and whether or not in residence, are eligible to vote in person or by tendering a vote to the Dean before the meeting. The Dean shall exercise his or her best efforts to convey the necessary information to, and to obtain votes from, Faculty members away from the School. An otherwise eligible member who declares his or her intention not to vote shall not be counted for purposes of determining the number eligible to vote.

- (f) A quorum for a meeting on tenure or promotion shall consist of 75% of the group eligible to vote and the candidate shall be recommended for tenure or promotion only on the favorable vote of 60% of those eligible to vote.
- (g) All voting shall be by unsigned secret ballots.
- (h) If, following the vote of the Faculty, the Dean proposes to make a contrary recommendation to the Provost; the Dean shall explain his or her recommendation at a meeting of the Faculty members eligible to vote on the question before submitting the recommendation to the Provost.
- (i) If promotion or tenure is not approved, the candidate shall be advised of the results of voting.

A candidate who is denied tenure shall be entitled to serve out his or her contract term and such additional extension as may be required under the applicable rules of the University in conformity with statements of the American Association of University Professors. During such extension, a candidate who is denied tenure may petition the Faculty for reconsideration. When a candidate so petitions, the Dean shall promptly convoke a special meeting of those members of the Faculty eligible to vote on the

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candidate's tenure. If, at this meeting, the Faculty denies the petition there shall be no appeal. If 60% of the Faculty members eligible to vote approve the petition, the Dean shall appoint an Ad Hoc Advisory Committee to prepare a dossier and to report to the Faculty at a subsequent meeting. In this reconsideration, the usual criteria and procedures shall apply. If the Faculty does not recommend tenure, the candidate shall not be eligible for any additional extension.

If a candidate, who would ordinarily be considered for tenure in the fifth year but is considered earlier, is denied tenure the Faculty shall reconsider the candidate at the ordinary time.

X. 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 are important but should not weigh as heavily as the foregoing criteria in the promotion and tenure decision.

Promotion to the rank of full professor will only be awarded to candidates who demonstrate both sustained high quality teaching and substantial and continuing contributions to the growth and understanding of the law.

(a) Teaching.

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.

The evaluation of a candidate's performance as a teacher shall include:

- (1) the report of the candidate's advisory committee;
- (2) student evaluations; and
- (3) the expressed opinion of any faculty members who are familiar with the candidate's performance.

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- (b) Contribution to the growth and understanding of the law.

It is a professor's responsibility to contribute toward the growth and understanding of the law. This work may be done individually or in collaboration with others. It may take one or more forms, none of which is inherently superior to others:

- (1) academic research and publication;
- (2) field and empirical research, together with interpretation and analysis of the data and materials developed; or
- (3) constructive change in the law by legislative, judicial, or executive-administrative means.

The choice of the type of activity pursued is within the discretion of the professor. It is his or her responsibility to select those which are most significant, most effective, and best suited to his or her individual skills. The professor also has a responsibility to participate in the activities of the bar and professional societies. These activities, however, fall somewhere below the level of work defined by this criterion unless they are related to such work. Work done by a professor shall be evaluated for quality and not for quantity, but a professor is expected to produce a reasonable quantity of work of this type, according to the particular project undertaken.

In this connection, the Dean and the candidate's advisory committee shall seek evaluations of the candidate's work from recognized leaders in the professional field of study.

- (c) Other School, University and professional activities.

A professor is responsible for participating in the various Law School and University activities which are necessary to the successful functioning of the School and the University: faculty meetings, committees, conferences, continuing education projects, recruiting efforts, and similar activities.

- (a) Other activities.

It is reasonable and proper to recognize and favor all those activities which significantly relate to and advance the professor's academic skills. This includes work in his or her special field, which is not sufficiently disinterested or profound to be regarded as criterion (b) work. Distinctions between activities falling within criterion (b), above may, on occasion, be difficult to make. In such cases, extraordinary cooperation from the professor concerned

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may be required so that the Faculty may accurately and fairly evaluate the activity in question. Cooperation and candor are expected of the professor concerned; in return, members of the Faculty are expected to acquaint themselves with the process involved in the professor's activities in order that they may make an objective and impartial evaluation of his or her efforts.

(b) Additional criteria.

Although credit should be given for the attaining of advanced degrees (LL.M., or S.J.D., or, if in a relevant field, Ph. D.), the attaining of degrees shall not be a prerequisite to promotion or tenure but shall be considered within the total context of a person's competence and progress as a member of the Faculty.

XI. Adoption and Amendment

These bylaws shall be adopted by, and may thereafter be amended from time to time at a regular or special meeting, by a two-thirds vote of the tenured and tenure-track faculty after 3-day notice of the amendment, as the case may be. A quorum shall be determined under Article V (b); an absent member may tender a vote to the Dean before the meeting.

XII. Waiver

The tenured and tenure-track faculty at any regular or special meeting may waive the application of these bylaws to a particular case under consideration on a vote of two-thirds of the tenured and tenure-track faculty, exclusive of those on leave, whether or not such persons on leave are in residence; provided, however, that procedures for tenure and promotion may be waived only by a vote of two-thirds of the entire tenured and tenure-track faculty. A quorum shall be determined under Article V (b); an absent member may tender a vote to the Dean before the meeting.

Comments

Comment: The Dedman School of Law of Southern Methodist University is an integral part of the University. Accordingly, it does not require a constitution because it operates under the University's Charter and its governing statutes.

These bylaws are intended to provide the maximum flexibility for the ongoing administration of the School and its educational program.

The Dean, Faculty, and the various committees are given the broadest discretion in carrying out their respective duties and responsibilities.

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With respect to the sensitive matter of voting on employment of persons for more than one year who are eligible for tenure under these bylaws, and tenure and promotion, the policy adopted herein is to afford every member of the tenured and tenure-track faculty a participation in the decision. Thus, for example, suppose that Professor X is to be considered for tenure. Professor A, a member of the tenured faculty, is on leave but is in residence at the Law School. Professor B, a member of the tenured faculty, is teaching at another law school. Both A and B should have the right to participate in the decision concerning X, and the Dean should exercise his or her best efforts to keep A and B abreast of the developments and materials regarding X. Note the “best efforts” standard for giving information to, and obtaining votes from, absent members. Similarly, in the case of employment of new faculty, tenured and tenure-track members, whether or not on leave, and whether or not in residence, should have the right to vote.

Use of the terms Faculty, quorum, etc.:

Unless otherwise specified in these bylaws, where the term Faculty is used, it means the University Policy Manual’s definition of professors, associate professors, assistant professors, and lecturers.

Assume, for example that there are 30 members of the Faculty (24 tenured and 6 non-tenured), including the Dean. Assume further that 2 members of the Faculty are visiting at other universities, 2 are on leave but in residence, and 2 are ill or unavailable. Then, the number required for effective action is as follows:

Article III (b) (2)	-	16
Article V (b)	-	14
Article VIII (b) (3)	-	9, or 8
Article VIII (b) (5)	-	14; 51% of those eligible to vote = 16
Article IX (f)	-	75% of those eligible to vote for tenure is $75\% \times 24 = 18$ tenured faculty; 60% of the tenured faculty = 15.75% of those eligible to vote for appointment to professor = 75% of all those in that rank.
Article XI	-	Quorum = 14; adoption or amendment requires 20 affirmative votes.
Article VII	-	Quorum = 14, waiver requires 18 affirmative votes.

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11/3/2015

Policy - 6.12 Guidelines for the Award and Rank of Tenure

**SOUTHERN METHODIST UNIVERSITY
POLICIES AND PROCEDURES**

FACULTY

REVISED AS OF: December 7, 2001

POLICY NUMBER: 6.12

GUIDELINES FOR THE AWARD OF RANK AND TENURE

Criteria: The principal factors to be considered in evaluations for promotion and for the award of tenure are teaching and distinction in scholarship or research (or some equivalent activity; e.g., performance, etc. in the arts). Valued service to the University and to the profession to which the faculty member belongs will be taken into consideration for both promotion in rank and the award of tenure, but cannot substitute for the primary factors of teaching and research.

A. Promotion

1. Appointment to the rank of Assistant Professor requires the promise of effective teaching and sound scholarship.
2. The rank of Associate Professor is awarded only to those who have substantial achievement in one of the following areas and whose performance in the other is of high quality:
 - a. Teaching, evaluated by both students and peers;
 - b. Research, (equivalent activities in the arts), evaluated by peers in the professional field of study.
3. The rank of Professor is the highest rank to which a faculty member may aspire. It should not be assumed that promotion to this rank will automatically follow from any certain number of years of service. Nor should it be assumed that all faculty members will achieve this rank. It should be reserved for those persons whose teaching as judged by students and peers is of sustained high quality and whose scholarly achievements (and/or performance and creativity) are recognized by members of the professional field as substantial and continuing.

B. Tenure

1. Tenure cannot be granted on the basis of academic potential alone. Demonstrated accomplishments in teaching and research (or equivalent activity) are essential.
2. 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.
3. At the appropriate time⁽¹⁾, a faculty member will be informed by the dean or department head that he/she is to be considered for the award of tenure. After due process, the major steps of which are outlined below, the faculty member will be informed by letter of the decision. Tenure is not attained automatically but only by affirmative actions flowing out

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Policy - 6.12 Guidelines for the Award and Rank of Tenure

of the process described below, and by final approval by the Board of Trustees.

4. Normally, the tenure review takes place either in the candidate's sixth year or at a time specified in the initial appointment letter. In what appear to be exceptional cases, approved by the dean and provost, candidates may receive earlier consideration. In such cases, the candidate will go through the normal tenure process of the school and the University and will be expected to have demonstrated distinguished achievements in scholarship, research, and/or creative work. Denial of early tenure will not preclude the candidate from being considered again; however, a second denial shall be final.

C. Process

1. Procedure

- a. Each faculty member must be informed as to when he/she is to be considered for promotion and/or tenure.
- b. Information and supporting documents pertinent to the action are assembled by the faculty member and others as appropriate and as prescribed by the school(s).
- c. In accordance with the procedure of the school(s) the data are reviewed and the Dean submits recommendations, either positive or negative, to the Provost no later than February 1.
- d. The Provost submits recommendations of the deans to the Provost's Advisory Committee, a faculty committee appointed by the Provost.
- e. The Provost makes recommendations to the President and ultimately, to the Board of Trustees.

2. Documentation

At each of the levels of evaluation cited above, there must be thorough documentation describing the person's ability in teaching, distinction in scholarship and/or research (and/or performance, etc. in the arts), and accomplishments in serving the University and the profession. Accomplishments in teaching and scholarship, especially, must be evaluated by those competent to judge them. Opinions and evaluations of a person's research should be sought from beyond the University by the Chair, the Dean, or the faculty committee. Evaluation of teaching should include evaluations by students and, if possible, by faculty colleagues.

D. Appeals

1. In schools which conduct reviews at the department level, a negative recommendation in the department must be appealed within three weeks to the Dean.
2. A negative recommendation of the Dean must be appealed within three weeks to the Provost.
3. A negative decision of the Provost must be appealed within three weeks to the President.

The administrators named above may appoint standing or *ad hoc* committees to advise on the matter of the appeal. The decision of the President shall be final.

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Policy - 6.12 Guidelines for the Award and Rank of Tenure

Footnote:

(1) "...the probationary period should not exceed seven years, including within this period full-time service in all institutions of higher education, but subject to the provision that when, after a term of probationary service of more than three years in one or more institutions, a teacher is called to another institution, it may be agreed in writing that his new appointment is for a probationary period of not more than four years, even though thereby the person's total probationary period in the academic profession is extended beyond the normal maximum of seven years. Notice should be given at least one year prior to the expiration of the probationary period if the teacher is not to be continued in service after the expiration of that period." – AAUP Policy Documents and Reports, Academic Freedom of Tenure, 1940 Statement of Principles and Interpretive Comments. 1977 Edition. (The effect of the last sentence is that a decision on tenure, favorable or unfavorable, must be made at least twelve months prior to the completion of the probationary period. If the decision is negative, the appointment for the following year becomes

Confidential- Advisory Committee Report for Cheryl Nelson Butler- Contract Renewal

From: Prof. Joe Norton <profjnorton@yahoo.com>
To: SMU Law Faculty (tt) <ttlawfaculty@list.smu.edu>
Cc: "Forrester, Julie" <jforrest@mail.smu.edu>, "Collins, Jennifer" <jmc@mail.smu.edu>
Date: Mon, 03 Mar 2014 13:28:17 -0600
Attachments: CB- Report on Contract Renewal.docx (30.34 kB); CB-CV.pdf (92.21 kB); CB- CR-
Personal Statement-Feb 2014.doc (45.57 kB); CB- Contract Renewal File-Box -Feb
2014.docx (16.44 kB)

Attached please find a copy of the Advisory Committee (Norton, Chair, Martinez and Thornburg) Report on Cheryl's Contract Renewal, accompanied by a copy of Cheryl's most recent CV, Cheryl's Personal Statement, and a Table of Content respecting her CR File that has been open for inspection in the Faculty Reading Room. A confidential hard copy will be placed in your 2nd floor mail slots this afternoon. 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
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Texas Bar No. 15107000
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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)

Collins Dec. No. 4

Report on Contract Renewal- Confidential

To: Law Faculty (tenured-tenure track members)

From: Cheryl Nelson Butler's Contract Renewal Advisory Committee

Date: March 2, 2014

The tenured-tenured track faculty will consider the renewal of Cheryl Nelson Butler's contract at a meeting scheduled for March 4, 2014 (or if needed also on March 6, 2014). We, the undersigned members of Cheryl's Advisory Committee¹, unanimously and affirmatively recommend to you that her three-year contract of employment be renewed, pursuant to Article VIII(b)(6) of the Bylaws of the Dedman School of Law, which provides in relevant part:

"In the case in which a candidate is given a term contract of more than one year, such person's advisory committee, as is provided for in Article IX (a), shall consider whether or not to recommend that the contract of employment be renewed. Generally, such recommendation will be made if the candidate is making satisfactory progress toward meeting the criteria for the award of tenure. The committee shall report to the Faculty its findings and recommendations, and the deliberation of the Faculty shall proceed in accordance with Article VIII (b)(5) above."

After due review and deliberation, we have concurred that Cheryl has made "satisfactory progress toward meeting the criteria for the award of tenure," and that she merits contract renewal. The record before you is that of a highly engaged, hard-working and productive member of our community of scholars and teachers. Accompanying this recommendation, for your review, are Cheryl's most recent Curriculum Vitae and a personal statement by her covering her "scholarly agenda" and her "teaching philosophy." Copies of her articles, teaching evaluations and other relevant materials have been made available for inspection in the Faculty Reading Room (attached hereto is also a "Table of Contents" to such materials made available for inspection).

After presenting relevant background information concerning Cheryl, we will briefly discuss below Cheryl's scholarship, teaching and service to our Law School, the University, the community and to the profession, respectively.

BACKGROUND

Cheryl, in joining our Faculty in the fall 2011, brought with her a rich and diverse personal, professional and academic background. From her roots in a loving, working-class family in the South Bronx, New York City, Cheryl's step-father was a butcher at the local supermarket. He was the son of a pastor who founded Cheryl's family church. Her mother was a sales clerk at Saks Fifth Avenue. As Cheryl has relayed: "From my father, we always had lots of food. My father taught us to be kind and caring and to have a servant's heart. Our house was a place where a lot of other neighborhood kids who did not have food or fathers could

¹ The members of the Advisory Committee wishes to make note that the Committee was not formally constituted until mid-Spring semester 2013. As such, Cheryl did not have the benefit of working with her Committee until quite "late in the game." The members strongly urge the Dean and Executive Committee to ensure that an incoming Faculty member be appointed an Advisory Committee at the earliest date practicable.

come. From my mother, we always had really nice clothing (she received a great discount). My mother taught us discipline - she demanded that we do well academically in order to achieve good jobs.”

Cheryl and her siblings were the firsts in her family to finish high school: Cheryl was the first to graduate from college. She won an academic scholarship to Phillip’s Academy (Andover), where she excelled. She then entered Harvard College, from which she received an A.B. *cum laude* in American History and African American Studies, with *magna cum laude* awarded for her senior thesis. Cheryl then went on to New York University School of Law where she was a Root Tilden Kern Scholar, a staff editor of the N.Y.U. Review of Law and Social Change, and a research assistant in Critical Race Theory for Professor Derrick Bell.

Following her law studies at NYU, she obtained a Fellowship as Policy Counsel for the Georgetown University Law Center’s Woman’s Law and Public Policy Fellowship Program and then a Judicial Clerkship with the D.C. District Court (Judge Sullivan). Since 1997, Cheryl has had three-years of litigation experience as an associate with the major NYC law firm of Debevoise & Plimpton; two-years’ experience as a senior counsel with Enron Corporation; and, four-years as General Counsel and Executive Director of Top Teens of America, Inc., a nationwide youth service-humanitarian organization. From 2003-2005, Cheryl was an Assistant Clinical Professor at the University of Houston Law Center, and in 2010-11 was a Visiting Fellow at the Center for Children, Law & Policy at the Houston Law Center.

SCHOLARSHIP

Since becoming a member of our Law Faculty in the fall of 2012, Cheryl has produced an impressive body of high quality scholarship in which she has developed two lines of research: (1) race or critical race theory and law and (2) human sex trafficking. In accordance with this agenda, Cheryl has published two law review articles and has three articles submitted, accepted and forthcoming in journals well-regarded by the Washington and Lee University Law Journal rankings: *Blackness as Delinquency*, 90 WASHINGTON UNIVERSITY LAW REVIEW 1335-1397 (2013), *Sex Slavery in the Lone Star State: Does the Texas Human Trafficking Legislation of 2011 Protect Minors?*, 45 AKRON LAW REVIEW 843-885 (2012), *A Critical Race Feminist Perspective on Prostitution & Sex Trafficking in America*, YALE JOURNAL OF LAW & FEMINISM (forthcoming 2014), *Making the Grade? Evaluating the U.S. TIP Report Card on Domestic Child Sex Trafficking*, SMU LAW REVIEW (forthcoming 2014), and *Kids for Sale: Does America Recognize Her Own Sexually Exploited Minors as “Victims of Human Trafficking”?*, SETON HALL LAW REVIEW (forthcoming 2014).

As to the race or critical race theory and law agenda, in *Blackness as Delinquency*, Cheryl analyzes “the role of ‘blackness’” in shaping the first juvenile court and the African-American reaction—especially of black women activists—to this court. In *A Critical Race Feminist Perspective on Prostitution & Sex Trafficking in America*, Cheryl explores prostitution and trafficking in America through the lens of critical race feminist theory. As to her human sex trafficking research, in *Sex Slavery in the Lone Star State*, Cheryl analyzes Texas legislation regarding human sex trafficking. In *Making the Grade ?*, Cheryl critically evaluates the U.S. Department of State’s annual Trafficking in Persons Report (TIP Report)—which evaluates the extent to which countries comply with certain minimum legal standards for effective anti-trafficking law and policy—and the U.S. TIP Report Card (formerly called the “United States

Country Narrative”), a self-evaluation of the United States’ efforts to combat human trafficking at home. In *Kids for Sale: Does America Recognize Her Own Sexually Exploited Minors as “Victims of Human Trafficking”?*, Cheryl considers certain states’ laws that have limited the outlawing of child sex trafficking to those cases in which force, fraud, or coercion was proven. She argues that state sex trafficking laws that require proof of force, fraud, or coercion in child sex trafficking cases undermine efforts to combat domestic child sex trafficking.

In our view, Cheryl’s scholarship is excellent, and clearly and easily satisfies a contract-renewal standard of satisfactory progress towards tenure, We have no doubt that Cheryl has already positioned herself and her scholarship to play a major part in the national “conversation” in each of her two areas of related research. We also note in passing that the Dean may well wish to consider how Cheryl’s scholarship can interface and support the efforts of our new Hunt Family Judge Elmo B. Hunter Legal Center for Victims of Crimes Against Women.

Accompanying the Report, as part of Cheryl’s Personal Statement, is a more detailed discussion of Cheryl’s “Scholarly Agenda.”

TEACHING

From fall 2011 through present, Cheryl has taught the following courses:

- Fall 2011-Torts I (84 students)
- Spring 2012- Torts II - 82 students; and, Critical Race Theory - 22 students
- Fall 2012- Torts I - 77 students; and, Critical Race Theory - 20 students
- Spring 2013- Torts II – 76 students
- Fall 2013- Pre-tenured leave. No courses taught. Served on Dean Search Committee
- Spring 2014- Employment Discrimination Seminar - 20 students ; and, Critical Race Theory Seminar - 22 students

The Chair of this Committee (Prof. Norton) has directly observed Professor Butler’s teaching, as have a number of Faculty colleagues (e.g., Prof. Nguyen and Prof. Tate)- each found the classes observed to be very good. In addition, Committee members have reviewed the syllabi and teaching materials in her files and have had extensive conversations with her about teaching. We have formal student end-of-course evaluations from each semester, as well as mid-semester evaluations from the current semester.

It is clear that Professor Butler’s strength as a teacher lies in her ability to stimulate class discussions. Her student evaluations from her seminar classes are consistently excellent. This semester, for example, one student in the Critical Race Theory seminar answered the question, “what do you like most about this course?” by saying, “The lively debates in class. Most fun I’ve ever had in a law school classroom.” Students remark upon her passion for her subject, the thought-provoking nature of the assignments, and her ability to make all students feel comfortable voicing their opinions.

Professor Butler is also a clear and compelling presenter when presenting material with which she is very comfortable, as evidenced by Associate Provost Eads’s email regarding Butler’s presentation to the Bush Institute Fellows, and Professor Malveaux’s email regarding Butler’s

online class presentation to students in Poland.

With respect to teaching the large, required, first-year Torts class, Professor Butler's teaching has room for improvement. Some students also complimented her teaching of Torts, listing strengths such as "engaging class in good conversations/debates" and "very helpful, kind and open to hearing student opinions." Others, though, found the class to be disorganized or unclear, and had complaints about the exam and about rescheduled classes. In all fairness to Cheryl, the Committee believes that certain of the problem areas flow from flawed decisions made in the scheduling of the Torts classes on back-to-back afternoons of Thursday and Friday and in misplaced perceptions of Prof. Butler that a priority was to get out lecturing across the state and country so she could become part of the national conversation in her areas of scholarship, which led her to cancel/reschedule a number of classes. In addition, most unfortunately, Cheryl did not have her Advisory Committee in place until March 2013. We believe we could have better advised Cheryl on these and other matters (e.g., whether or not to teach to and exam to the "Bar").

Professor Kahn's observations from his February 2012 class visit shed some light on the challenges presented in teaching novice students in a major, large class by using a very discussion-intensive method. The same teaching methods that work so well in the upper level seminar context can present difficulties if not deployed differently in the first year. This being said, Professor Kahn concluded that "overall, the class was good."

While teaching Torts remains a challenge, we believe that Professor Butler has thoughtfully considered these issues and has concrete plans for improved teaching strategies. We look forward to working with her and to observing her Torts classes in the Fall of 2014 and Spring of 2015 to see the results. We are confident that by tenure time, her teaching will remain excellent in her specialty seminar course and will be at least at a high quality level in her large Torts classes.

See the "Teaching Philosophy" section of Cheryl's accompanying Personal Statement.

SERVICE TO THE UNIVERSITY AND LAW SCHOOL COMMUNITIES

Cheryl has involved herself fully in the life of our Law School and has offered her services without reservation to the University community as well. For example, Cheryl has given most generously of her time by agreeing to be a member of the Law Dean Search Committee, even though she was on leave. She also serves as Faculty Advisor to the SMU Black Law Students Association, and is a member of the Southeastern Association of Law Schools Steering Committee. Cheryl has also served as a judge for the SMU Jackson Walker Moot Court Competition.

The Committee members also wish to note the large and selfless service and support Cheryl provided Sarah Tran during these past months of Sarah's most difficult struggle. She served as the liaison between Sarah's Family and the University, provided continual individual support to Sarah, and was one of the several young Faculty members who stayed with Sarah and her Family during Sarah's last moments. Cheryl also is continuing to provide considerable ongoing assistance to Sarah's Family.

On a University level, in addition to the Dean Search Committee, Cheryl was a participant in the Bush Institute's Inaugural Women's Initiative Fellowship Program. Additionally, Cheryl has given various public presentations within the University community (at the law School and at the Cox Business School).

NOTE ON EXTERNAL SCHOLARLY PRESENTATIONS

As evidenced in the attached CV ("Scholarly Presentations"), since joining our Faculty Cheryl has delivered approximately 20 scholarly presentation throughout the country (north-south-east and west), including at Yale, NYU and University of Pennsylvania. It is most evident that Cheryl is well on her way to solidifying a national presence in her two areas of research interest. This being said, the Committee recommends to Cheryl that she better manage her external commitments to avoid unneeded class cancellations.

CONCLUSION

After a thorough review of Cheryl's record and supporting materials, the Committee unanimously concludes that Cheryl meets the "satisfactory progress" standard for Contract Renewal: in fact, we believe she has made "substantial progress." Consequently, the members of the Committee recommend that Prof. Butler's contract be renewed. In addition, the members of the Committee look forward to working with Cheryl over the coming several years toward her tenure consideration. The Committee members believe that Cheryl has all the attributes in line for tenure and that she will continue to make significant contributions to the academic and social life of our Law School and University.

RESPECTFULLY SUBMITTED

Joseph J. Norton, Chair

George Martinez, Member

Elizabeth Thornburg, Member

ATTACHMENTS:

1. CB's Recent CV
2. CB's Personal Statement
3. Table of Contents of CB's CR File (open for inspection)

Tenure advisory committee

From: "Collins, Jennifer" <jmc@mail.smu.edu>
To: Prof. Joe Norton <profjnorton@yahoo.com>, "Thornburg, Beth" <ethornbu@mail.smu.edu>, "Martinez, George" <gmartine@mail.smu.edu>
Date: Mon, 21 Sep 2015 12:11:23 -0500

Professors Norton, Thornburg and Martinez: I regretfully accept your resignations as chair and as members of Cheryl Butler's tenure advisory committee. I thank you for your distinguished service on the committee. The advisory committee is a very important part of the tenure process and I am thankful that colleagues of your stature chose to serve.

I am aware of the issues you have faced regarding concerns raised by Professor Butler because she copied me on some of her emails to the Committee. In accepting your resignations, I fully understand that your resignations are not an admission of any conduct by you in your individual capacities or by the committee that was negligent or that violates Professor Butler's civil rights or our equal opportunity policies. I also understand that your resignations are not an admission as to the factual accuracy of the many statements and representations contained in her written or verbal communications to you. Thank you for your leadership and the direction that you have given to Professor Butler throughout the process.

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

Collins Dec No. 5

RE: Tenure committee

From: "Butler, Cheryl Nelson" <cnbutler@mail.smu.edu>
To: "Collins, Jennifer" <jmc@mail.smu.edu>
Cc: "Anderson, Roy" <rranders@mail.smu.edu>, "Spector, Mary" <mspector@mail.smu.edu>, "Colangelo, Anthony" <colangelo@mail.smu.edu>
Date: Sun, 27 Sep 2015 21:03:41 -0500

Dear Jennifer,

Thank you so much for assembling this new committee so quickly. I am so very grateful to you for working so quickly to do so. I too am so grateful to my colleagues, Roy, Mary, and Anthony for agreeing to serve on my tenure committee. Roy and I met briefly last week and have communicated via email. I have shared with him that I am so happy that he will serve as my Chair.

Colleagues, as I have shared with Roy, I am hopeful that you will visit my classes soon. However, please note that I do not have Torts this Thursday. As you may know, the Registrar informed all professors who teach on Tuesdays that they have one extra Tuesday in their calendar and therefore, can eliminate a class. As per my syllabus, I have notified the students that our eliminated class is this Thursday.

For your interest, in addition to teaching my regularly scheduled classes, I am a featured speaker at the American Constitution Society event on Tuesday in which I will discuss the Griswold case, its progeny and the state of reproductive rights/freedoms today. (I can send the location and time if anyone is interested in observing the event).

Also, fyi, pertinent to my experience as a law professor and my tenure candidacy, Professor Angela Onwuachi-Willig from Iowa Law will visit with the Faculty Forum on Wednesday to discuss legal scholarship and AALS research pertaining to the difficulties that Black women throughout the legal academy have faced historically with respect to teaching evaluations, tenure, promotion and related matters.

Warmly,

Cheryl

From: Collins, Jennifer
Sent: Sunday, September 27, 2015 12:33 PM
To: Butler, Cheryl Nelson
Cc: Anderson, Roy; Spector, Mary; Colangelo, Anthony
Subject: Tenure committee

Cheryl - Roy, Anthony and Mary have agreed to serve on your tenure committee. I have done the very best I could to put together an outstanding committee in light of folks' personal circumstances and other time commitments. Roy has agreed to serve as chair. I have instructed each member not to draw any adverse inferences against you as a result of the change in your committee membership and that they should approach your tenure process with fresh eyes and open hearts and minds. I am completely confident they will do so. I am profoundly grateful to Roy, Mary and Anthony for agreeing to take on this important role. Please let me know if you have any questions.

Sent from my iPhone

Collins Dec No. 6

SMU_Butler_00004458

Collins, Jennifer

From: Collins, Jennifer
Sent: Wednesday, October 28, 2015 9:14 AM
To: Butler, Cheryl Nelson
Subject: Following up on our meeting yesterday

Cheryl,

As I emphasized in our meeting yesterday, you will need to make your request for an extension of your tenure clock directly to Provost Stanley. This is not a decision that can be made by your tenure committee or me. I urge you to present the reasons for your extension request to him in writing.

You have long been aware of the timetable for the tenure decision. The bylaws outline the process and both of your tenure committees discussed timing with you. Given that we are so far along in the process, you really need to submit your request immediately.

Jennifer M. Collins

Judge James Noel Dean and Professor of Law

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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



Collins Dec. No. 8

Confidential

SMU_Butler_00005846



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 P.O. Box 750221 Dallas, TX 75275-0221
214-768-3219 fax 214-768-1150

Collins Dec No. 9



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 at the end.

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

cc: Dean Jennifer Collins

BUTLER 00014



SMU

DEDMAN SCHOOL OF LAW

Jennifer M. Collins

Judge James Noel Dean & Professor of Law

Via Email

April 5, 2016

Professor Cheryl Butler
3341 Charleston Street
Houston, TX 77021

Dear Cheryl:

I hope that you are feeling better and that you and your family are doing well.

Human Resources has notified me that your leave under the Family Medical Leave Act (FMLA) will end on April 11, 2016. As you know, we delayed the appeal of the recommendation on your tenure while you were on FMLA leave. You have already submitted a lengthy appeal of the faculty recommendation to me, but subsequent emails indicated that you might provide additional materials related to the appeal.

Please submit any additional materials related to your appeal to me by April 11, 2016. Please use my email address as you did before. If you believe the materials you submitted are complete, please let me know and we can move forward before April 25.

I also need to let you know that there are students who wish to review with you Torts exams from last semester. It will be critical for you to meet with students just as soon as possible to assist them in this process, so that they may learn from their mistakes in order to improve their performance on their second semester exam and so they can utilize the appeal process if they wish to do. Because students were not able to see their exams until April 28, we will extend the period of time they have available to file a grade appeal, if any student chooses to do so. Thank you so much for your prompt attention to this issue that is so important to our students.

Best wishes,

Jennifer M. Collins

JMC:tb

Collins Dec. Ex. 10

SMU_Butler_0008017

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

SMU_Butler_00008018

Your tenure case

From: "Collins, Jennifer" </o=smu/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=4525702157a">
To: Cheryl Butler <cherylbutler2002@gmail.com>, "Butler, Cheryl Nelson" <cnbutler@mail.smu.edu>
Date: Wed, 04 May 2016 11:32:11 -0500

Dear Cheryl – I am writing to follow up on your appeal of the faculty's negative vote on your candidacy. After careful consideration and reflection, I regret to inform you that I am denying your appeal and that my recommendation to the provost will also be negative. My decision is based on the conclusion that your teaching does not satisfy the university's standard for tenure and promotion. I truly wish that I had better news, Cheryl, and I continue to wish you and your family all the best. Please let me know if you have any questions.

Jennifer M. Collins

Judge James Noel Dean and Professor of Law

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Collins Dec No. 11

SMU_Butler_00007999



SMU

DEDMAN SCHOOL OF LAW

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

May 4, 2016

Dr. Steven Currall
Provost
Southern Methodist University
Perkins Administration, Room 219
Dallas, TX 75275

RE: Assistant Professor Cheryl Nelson Butler

Dear Dr. Currall:

This is perhaps the most difficult letter that I have had to write in my professional career. I firmly believe that every single faculty member at the SMU Dedman School of Law was eager to see Assistant Professor Cheryl Nelson Butler succeed at SMU, worked hard to help that happen, and fervently hoped that her performance as a teacher and scholar would warrant a positive tenure decision. The University's standard states that "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." With a heavy heart, I share my colleagues' conclusion that her teaching does not satisfy SMU's requirement of "high quality" sufficient to justify an award of tenure and promotion to the rank of associate professor.

In January 2016, the law faculty tenure and promotion Advisory Committee for Professor Butler, which consisted of Roy Anderson (chair), Anthony Colangelo, and Mary Spector, unanimously concluded that Professor Butler's scholarship satisfied SMU's tenure standards.¹ All three members of the committee concluded her teaching fell short of these standards. Two members of the committee recommended that tenure and promotion not be granted; one recommended that a decision about tenure not be made at the present time. The Advisory Committee's recommendation came at the customary time in Professor Butler's career and was developed following the law school's normal evaluation procedures. At a meeting in January 2016, the tenured law faculty voted and Professor Butler did not receive the requisite positive votes from 60 percent of the faculty. [REDACTED]

[REDACTED]

Redacted

¹ Professor Butler's original tenure committee resigned in September and was replaced by these three new members, all of whom she agreed to with enthusiasm.

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Collins Dec No. 12

SMU
Unbridled
100

Professor Butler received her bachelor's degree from Harvard University and her J.D. degree from New York University, where she was a staff editor for the N.Y.U. Review of Law and Social Change. After graduation, Professor Butler accepted a fellowship at Georgetown, served as a judicial law clerk, and worked in a legal practice in a wide array of impressive settings, including a prestigious law firm, the Enron Corporation, and a service organization. She also worked as an assistant clinical professor, and then as a visiting fellow, at the University of Houston Law Center. There is a typo in the tenure committee's report; Professor Butler actually joined our faculty in the summer of 2011, not 2012.

Professor Butler writes about the intersection of race and gender in the legal treatment of women of color by the state, with a particular focus on the important problem of human trafficking. She has authored seven major articles and essays since joining the SMU faculty, as well as two short pieces. This is an extraordinary quantity of pre-tenure work and the number of articles far exceeds the number required by many other law schools in order to obtain tenure. As Dean Ad Interim Julie Forrester previously noted, the published standards found from Ohio State University, the University of Minnesota, the University of North Carolina, and the University of Texas required two articles for tenure. Wake Forest required slightly more -- two major articles and at least one additional essay -- and Professor Butler far exceeds that standard as well.

With regard to quality, the Advisory Committee obtained evaluations from eight reviewers from other academic institutions, including some of the top critical race scholars in the country. All the reviewers were extremely positive about Professor Butler's work and agreed that she has contributed in important ways to the growth and understanding of the law. One reviewer of her two most recent pieces summarizes it well, writing that "it is clear that Professor Butler is an important scholar who is making significant contributions to the fields of critical race theory and critical race feminism." Reviewers praised her "provocative," "smart," and "thoughtful" work, written with a "fresh perspective" and a "distinct voice." Some reviewers offered some constructive criticisms in relation to some of her pieces but I agree with her tenure committee that these were relatively minor. Professor Butler has received numerous invitations to speak at important academic conferences across the country, at schools such as Yale and UCLA, a further testament to the impact of her scholarly work. I believe Professor Butler's work absolutely satisfies the University's criteria that her scholarship be outstanding, and to my knowledge all faculty members at the law school agree.

Unfortunately, I concur in my colleagues' assessment that Professor Butler has not demonstrated high quality in teaching. I think the committee did an extraordinarily comprehensive job in its assessment of her teaching, so I will attempt to share additional information in this letter rather than summarize what is in the report. Professor Butler has taught Torts 1, Torts II, Employment Discrimination and Critical Race Theory since joining our faculty. As the tenure committee notes, she has enjoyed success with the teaching of her two smaller classes and students have personally advised me that they truly enjoyed those classes and considered her to be a wonderful teacher in them. I do have some concerns about the educational experience students are receiving in these

classes and I will discuss those issues below. The biggest problems have been in her two Torts classes. Torts is the most important course in Professor Butler's portfolio, with the largest student enrollment, and it is a mandatory, foundational course for law students.

The student evaluations are obviously a source of real concern. It is important to note that both my colleagues and I know that student evaluations can be influenced by racial and gender bias, and as a result we went to great lengths to put this issue at the forefront of the faculty's minds, including bringing a renowned speaker on the topic to the law school this fall. In Professor Butler's case, however, the problems identified in the student evaluations were confirmed by extensive peer observations and other indicia of unsatisfactory teaching, including problems with syllabi, assignments, exams, and grading. Any professor can receive some negative comments. But Professor Butler's student evaluations are in a different category than the rest of the faculty. When Professor Forrester was Dean ad interim, she reported to the faculty that Professor Butler's evaluation scores were the lowest in the entire school. I decided to do a comparative look at the Spring 2015 evaluations for all the tenured and tenure track professors in an ongoing effort to obtain as fair, balanced, and comprehensive information as possible in order to aid my assessment of Professor Butler's teaching and to give the candidate every possible opportunity to demonstrate satisfaction of the university's standards. Good comparative work can be done on these evaluations because all the evaluations were done online that semester and thus extensive data was generated. I looked at the reports for all the tenured and tenure track professors. The two first questions go to the core of the teaching role in many ways: question 1 is "Professor demonstrated a command of the material" and question 2 is "Professor was prepared for class." Professor Butler's scores in Torts II were the lowest in the school at a 3.73 for question 1 and 3.48 for question 2; no other professor received a score in the 3's on those two questions. (The next lowest score was a 4.13 that one colleague received on question 2, on which Professor Butler received a 3.48). Professor Keith Robinson, who is also a tenure candidate this year, received scores of 4.86 and 4.92 on these questions for his large first year class, and Professor David Taylor, our other candidate, received scores of 4.92 and 4.98 for his. The one question that asks students to compare the professors to other professors at the school is question 19. Professor Butler again received the lowest score in the school at 2.98 and was the only professor to receive a score in the 2's on this question. One other colleague received a 3.21 and one received a 3.16, which were also outliers compared to the rest of the faculty; the next lowest score anyone got was a 3.58. For their large first year classes, Professor Robinson received a score of 4.76 on this question and Professor Taylor received a score of 4.23.

Some pervasive complaints in the student evaluations were a lack of preparation, disorganization, excessive reviews of previously covered material and, most worrisome, a lack of knowledge of tort law that manifested itself in repeated misstatements of law and confusing contradictions in class. These problems manifested themselves in the two classes I observed. Professor Butler is a vibrant, high energy presenter, which I believe would enable a colleague who is not familiar with legal concepts to overlook the most problematic aspect of her teaching – that she unfortunately misstates the law, and thus deeply confuses the students, on multiple occasions. The first class I saw was not a

disaster, but I did see worrying signs of the disorganization and misstatements about the law which had so often formed the basis of student complaints. As a result, I attended a second class on November 3, specifically because Professor Butler told me that very day that it was going to be a strong class and I was hoping to lay to rest the lingering concerns I had after observing the first class. The November 3 class was absolutely awful, both substantively and pedagogically. Inexplicably, she did not cover any new material, but instead spent the entire class session reviewing material addressed in earlier classes. This review did not involve any effort to synthesize the earlier material or provide students with an overarching conceptual framework, but instead consisted of unnecessarily detailed recitation of the facts of cases previously discussed. She did not give students an opportunity to ask any questions or use any method to assess the students' understanding of the material. She repeatedly referred to the importance courts place on "policy" arguments but without any discussion of what policy she might be talking about -- deterrence? Corrective justice? Assigning economic costs to the party best able to bear them? Just saying over and over that courts care about "policy" tells the students nothing. She mentioned last year's exam at least six times, which was completely unnecessary, frankly confusing, and came across as defensive. Most troubling, she misstated the law on several occasions. I literally wrote in my notes that I was aghast at what I was watching. As a dean, I was deeply embarrassed that students who pay so much money to attend SMU should be subjected to this kind of classroom experience.

The problems with disorganization, carelessness and a lack of preparation manifest themselves in other ways. Her problems with exam preparation are one example. Her Advisory Committee sets out in full on page 18 of their report the problems with her December 2014 examination, which she inexplicably and inexcusably did not begin to prepare until the actual day the exam was to be given. This resulted in the students being given a question, which constituted the bulk of the grade, completely different than what they had been told to expect and that I think was frankly unfair. Despite this fiasco with the December 2014 exam, the problems continued with the May 2015 exam, which contained multiple choice questions that failed to ask a question or randomly switched the names of the parties in the middle of the fact pattern. Earlier exams had questions taken directly from a commercial study aid, which prejudiced students who had not purchased that aid.

I know that Professor Butler and her family have faced health challenges in the past year, and my heart goes out to her. But it is very important to note these problems with her teaching are not confined to the past year. Let's look at her spring 2013 evaluations as an example. They are quite frankly awful. 64 students filled out the evaluation. 39 of them, or 61 percent, said she only sometimes, rarely or never demonstrated a command of the material. Only 7 students out of 64 said she always demonstrated a command of the material. For the question asking students to compare her to other professors at SMU, by far the largest group (22 students) said she was one of the worst. 14 students gave her a rating of poor and 7 said she was average. Only 7 said she was one of the best. There were many student complaints about disorganization, her weak command of the material, and her tendency to present material that conflicted with

the textbook or what she had said in an earlier class – themes completely consistent with what we have seen over the entire span of Professor Butler’s teaching career.

Perhaps my biggest regret about Professor Butler is that she is unwilling or unable to accept constructive feedback about her teaching and make positive changes in response. She hears only what she wants to hear. For example, I met with her after my first observation and shared extensive comments. I told her that she has a natural charisma, a wonderful speaking voice, and a powerful classroom presence. But I also told her I could see the issues the students were talking about in terms of disorganization and a lack of clarity and gave her some very specific ideas for improvement (giving the students a roadmap at the start of each class, creating some PowerPoints to add structure and clarity, planning in advance which students to call on, and so on). She appears to have heard none of that, because she keeps insisting now that I told her she was an excellent teacher, when in fact I told her no such thing. She repeatedly dismisses the negative student evaluations, for example by claiming they are the result of disgruntled students being angry about a bad grade in their first semester (see page 18 of her personal statement), rather than reflecting upon the feedback the students are trying so hard to give her and making the necessary corrections. She also insists that her bad evaluations are confined to Torts II, but she has many negative evaluations in Torts I as well. In Fall 2012, for example, even a student who praised her for keeping “things engaging” noted that “class was super confusing.” Another who complemented her “passion” complained about her “disorganization” and “apparent lack of prep[aration].” Her evaluations for Torts I in Fall 2011 were the worst that I have ever seen. This admittedly was her first semester teaching, but it is worth noting that the students in that first class raised the same concerns that have recurred throughout her teaching career. Students wrote that “the prof often confused the class by explicitly saying one thing, and then turned around in the next class and saying the opposite,” that she gave “confusing and sometimes contradictory explanations,” that she was “disorganized,” and that “she has been sarcastic to students, inconsistent in her pedagogy, [and] unprofessional on many occasions.” The students took the time in those evaluations to offer very concrete suggestions, but unfortunately the lessons do not seem to have been learned in four and a half years of teaching. Instead, Professor Butler told her tenure committee chair that she believed she was well on the way to winning the law school’s teaching award.

I also have concerns about Professor Butler’s other class this semester, Critical Race Theory. This is what we call an “edited writing” class, which means students must prepare a substantial paper and receive the professor’s feedback on a draft of that paper before turning in a final draft. Professor Butler did not provide her tenure committee with a syllabus for this class, despite repeated requests from her chair. Thus, I am relying on information from students regarding deadlines. Students turned in their first drafts of their papers to Professor Butler on October 20. The students were told they would receive their papers back with comments within a couple of weeks. That did not happen. On December 1, Professor Butler informed the students via email that she had read all the papers. But she still did not give the students their papers back with comments. On Monday, December 14, with only three days left to go in the exam period, the students in the class approached us for the first time to say they had not heard nothing from Professor

Butler since December 1, had never seen an edited version of their drafts, and did not know how to proceed in light of the fact the deadline for handing in the papers was in three days. After multiple attempts to contact Professor Butler to let her know of the urgent need to provide the students with information so they could plan, she finally sent them an email on December 15 telling them to add a roadmap to the beginning of the paper if they did not have one and to incorporate feedback they heard during oral presentations. That means students never received the written feedback and professorial editing that are at the very heart of the edited writing requirement (a graduation requirements for our students). And if the papers had in fact been read by December 1, as she claimed to the students themselves, why did she not have her secretary simply make the papers available to students at that time?

The fiasco in Critical Race Theory is an example of my final area of concern. One criteria for tenure under the Law School bylaws is that a “professor is responsible for participating in the various Law School and University activities which are necessary to the *successful functioning* of the School and the University . . .” (emphasis added). Professor Butler has repeatedly impeded the successful functioning of the Law School, to the detriment of our students, our staff and her faculty colleagues. I will give just a few examples in the interests of brevity. She has consistently failed to hand her grades in on time. Students receive confusing and constantly changing assignments. Professor Butler continually obstructed the work of her two tenure committees by failing to provide them with necessary materials despite multiple and timely requests. She has repeatedly failed to respond to the most basic inquiries on simple scheduling or exam-related matters. And, as her tenure committee wrote, I too have found her to be “often untruthful in her dealings with her colleagues and the law school administration.”

As I indicated at the beginning of this letter, I reach these conclusions with great regret. I fervently hoped for a different outcome for Professor Butler. Unfortunately, it is my firm belief that she has not satisfied the University’s tenure standards in regard to her teaching, and therefore I cannot recommend her for tenure.

Very truly yours,



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

JMC:tmb



SMU

May 5, 2016

PERSONAL AND CONFIDENTIAL

Professor Cheryl Nelson Butler
3341 Charleston St
Houston TX 77021-1126

Dear Professor Butler:

I regret to inform you that, after thoroughly reviewing your case for promotion and tenure, I have determined that I cannot make a positive recommendation to the President.

According to University policy, you have the right to appeal this negative decision to the President within three weeks of the date on which you receive this letter. If you wish to appeal, please write directly to President R. Gerald Turner and state the reasons for your appeal.

The next academic year (2016-2017) will be your terminal year and your employment at SMU will conclude at the end of the spring semester 2017. I do hope you will recognize that your record shows many obvious strengths and that it provides a solid basis for furthering your career.

Negative decisions such as this one are always difficult to reach. I truly wish you all the best for the future. If I can be of any assistance as you pursue other opportunities, please do not hesitate to let me know.

Sincerely,

Steven C. Currall, Ph.D.
Provost and Vice President for Academic Affairs
David B. Miller Endowed Professor
Professor of Management and Organization
Adjunct Professor of Psychology
Adjunct Professor EMIS

c: R. Gerald Turner, President
Jennifer Collins, Dean
Linda S. Eads, Associate Provost

Office of the Provost

Stammar-McIntosh Drive • Box 11 • 30210-1100 • TX 75275-1100
214-768-3210 • Fax 214-768-1150

Collins Dec. No. 13

SMU_Butler_00019408

Confidential

Collins, Jennifer

From: Collins, Jennifer
Sent: Friday, June 12, 2015 9:04 AM
To: Thornburg, Beth; Butler, Cheryl Nelson
Cc: Amberson, Laura
Subject: RE: NOTICE REGARDING FMLA AND GRADES

Cheryl – I am so sorry to hear this news. You and your family are in my thoughts and prayers. As we are required to do any time an employee invokes FMLA, I have notified HR, and you should expect Rhonda Adams to be in touch. If you encounter any difficulties with getting HR to provide any assistance to you that you need, please just let me know and I will do my best to help in whatever way I can. Please take good care.

Thinking about you,
Jennifer

From: Thornburg, Beth
Sent: Friday, June 12, 2015 7:33 AM
To: Butler, Cheryl Nelson
Cc: Amberson, Laura; Thornburg, Beth; Collins, Jennifer
Subject: Re: NOTICE REGARDING FMLA AND GRADES

Cheryl, I am so sorry to hear that. What's going on, who is the family member, and is there any way we can help?

I will tell Laura that she can go ahead and release the other two sections of Torts grades if all the other first year grades are in, and when you are ready you can, if necessary, adjust your curve to be consistent under the faculty guidelines.

When you turn in your grades with PINS (i.e. while they are still anonymous), please just call or send me an email regarding what you think is the fairest way to handle the accommodated student's grade, considering the impact not hearing the announcement appears to have had on his/her answer and that s/he had 20 minutes less than s/he should have had (out of what would have been 4 hours and 20 minutes). As we've already discussed, I suggest that you curve the grades without regard to that student.

You and your family are in my thoughts and prayers.

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

On Jun 12, 2015, at 12:26 AM, Butler, Cheryl Nelson <cnbutler@mail.smu.edu> wrote:

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

FW: FMLA Leave Approval and Intermittent Leave Approval for Cheryl Nelson Butler

From: "Anderson, Roy" <rranders@mail.smu.edu>
To: "Colangelo, Anthony" <colangelo@mail.smu.edu>, "Spector, Mary" <mspector@mail.smu.edu>
Date: Thu, 24 Dec 2015 11:07:21 -0600

fyi
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" <rranders@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

Collins Dec No. 15

Confidential

SMU_Butler_00003974

APP. 164

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

Get the latest HR news on our blog:

<https://blog.smu.edu/hr>

-



Collins, Jennifer

From: Collins, Jennifer
Sent: Wednesday, November 11, 2015 3:39 PM
To: Butler, Cheryl Nelson
Subject: Following up on your email asking for an extension

Cheryl, as I have told you, the provost is the chief academic officer for the university and decisions related to the tenure clock are his to make. I do not have the power to overrule him. You need to focus and get this done. Your box needs to be in the faculty reading room Monday so the faculty has time to review its contents before the vote in early December. You do not teach on Friday. I suggest you spend the day Friday putting the contents of the box together. You can write your personal statement over the weekend, a statement you have known you needed to write for months and months now. I note you have been able to write lengthy memos and emails to the provost and me over the past couple of weeks, which gives me every confidence you can write a personal statement of the same length. I am so glad to hear you have finally taken steps to get some of the specific materials to your committee that they have been requesting for weeks. I know you can get the remainder of the work done.

Also, I received a copy of the Provost's response to you. He suggested that you take any issues you have concerning your health, FMLA, or an ADA accommodation to Human Resources. If you wish to pursue this, I strongly urge you to contact Rhonda Adams in Human Resources who may be reached at [214.768.2132](tel:214.768.2132). I look forward to having your materials by the November 16 deadline.

Sent from my iPhone

Fwd: The SMU tenure process - CONCERNS ABOUT DISREGARD OF ADA ACCOMMODATION REQUEST AND FMLA INTERFERENCE COMPLAINT

From: "Collins, Jennifer" </o=smu/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=4525702157a">
To: "Butler, Cheryl Nelson" <cnbutler@mail.smu.edu>, cherylbutler2002@gmail.com, "Hernandez, Carolyn (IAE)" <hernandez@mail.smu.edu>
Date: Wed, 06 Apr 2016 17:20:05 -0500
Attachments: image003.jpg (104.84 kB); ATT00001.htm (1.64 kB); BUTLER ADA DOCUMENTS FROM DR FADULU.pdf (369.16 kB); ATT00002.htm (168 bytes)

Cheryl,

As I noted earlier, I do not evaluate ADA requests and am returning this to you. Any such information should be sent to IAE as you did. IAE will inform me of any decision they make regarding reasonable accommodations under the ADA. If they need my assistance in evaluating your request, I am certain that they will contact me.

I have not opened the attached medical information. Please do not send medical information to me in the future. I will not open it and I will not review it. Thank you.

Jennifer

REDACTED

Collins Dec. No. 17

SMU_Butler_00008006

Your emails of April 19 and 20

From: "Collins, Jennifer" <jmc@mail.smu.edu>
To: Cheryl Butler <cherylbutler2002@gmail.com>, "Butler, Cheryl Nelson" <cnbutler@mail.smu.edu>
Date: Fri, 22 Apr 2016 09:58:40 -0500

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

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

CHERYL BUTLER,	§	
	§	
Plaintiff,	§	
	§	
v.	§	
	§	
JENNIFER M. COLLINS,	§	
STEVEN CURRALL,	§	CIVIL ACTION NO. 3:18-CV-37-E
JULIE PATTERSON FORRESTER,	§	
HAROLD STANLEY, AND	§	
SOUTHERN METHODIST	§	
UNIVERSITY,	§	
	§	
Defendants.	§	

**DECLARATION OF RHONDA ICE ADAMS
IN SUPPORT OF DEFENDANTS’ MOTION FOR SUMMARY JUDGMENT**

I, Rhonda Ice Adams declare, and state as follows:

1. My name is Rhonda Ice Adams. I am over 18 years of age, of sound mind, have never been convicted of a felony, and can make this declaration. The facts stated in this declaration are within my personal knowledge and are true and correct.

2. I began my employment in Human Resources (“HR”) at Southern Methodist University (“SMU”) in 2001. In 2015-2017, I served as a Benefits Specialist in HR. As part of my job duties, I was responsible for receiving and processing documentation from employees seeking leave under the Family Medical Leave Act (“FMLA”). I held that responsibility since SMU first implemented its FMLA policy after the FMLA became law.

3. SMU maintained a policy covering FMLA leave of which a true and correct copy is attached to this Declaration as Exhibit 1 (“FMLA Policy”). The FMLA Policy was available

on the SMU website on a 24/7 basis and notified all employees regarding how FMLA leave could be sought. Under SMU policy, an employee was entitled to up to 12 weeks of FMLA leave per calendar year. In addition, SMU maintained on its website the certification forms that an employee and their health care provider had to provide to complete the certification process for an employee to obtain FMLA leave. A true and correct copy of the FMLA certification form used by SMU is attached to my declaration as Exhibit 2 (“FMLA Certification Form”). The FMLA Certification Form identified me as the employer contact in the Office of Human Resources for FMLA purposes. My phone number was also provided on the form so that employees or health care providers could call with questions.

4. Under SMU policy, no persons outside of HR at SMU were authorized to make determinations on FMLA leave. I was the sole person in HR who made FMLA determinations, which could be reviewed by Sheri Starkey, the Chief Human Resource Officer in HR. The Dean of the Dedman School of Law, the Provost, and Interim Provost of SMU and no other persons at SMU were authorized to receive FMLA certification forms or to make FMLA determinations under SMU policy. All employees who received FMLA leave from SMU had to follow the procedures outlined in the FMLA Policy and certification form and all determinations were made by me in my HR role. Medical information on employees was received by me and was not shared with any employees beyond those who made FMLA determinations in HR – Ms. Starkey and me.

5. I have never discussed the details of any FMLA leave sought by Plaintiff Cheryl Butler or any medical information provided by caregivers related to her leave requests with any representatives outside of HR. I have never discussed FMLA information related to Professor Butler with Dean Collins, Interim Provost Harold Stanley, Provost Steven Currall,

faculty in the Dedman School of Law or any other persons. None of them have ever discussed with me or directed me to take any action with respect to any FMLA leave request related to Professor Butler. Dean Collins was only provided dates of FMLA leave that I had granted after making determinations on Professor Butler's leave requests. It is my standard practice to notify supervisors of the dates of FMLA leave so they are aware that the employee is on leave.

6. I first learned that Professor Butler sought information on FMLA leave policies on or about June 12, 2015. On that date, I provided Professor Butler with all forms necessary to seek FMLA leave. A true and correct copy of my email to Professor Butler transmitting the forms is attached hereto as Exhibit 3. My email clearly stated that Professor Butler was to provide all FMLA documentation to me and not to the Law School to avoid any HIPPA violations. As Exhibit 3 reflects, I sent a follow-up email to her on June 16, 2015, to determine if she had questions on the FMLA. Professor Butler did not respond.

7. Following a conversation I had with Professor Butler on November 23, 2015, I sent her an email the following day reminding her that if she wanted to seek FMLA leave, she had to apply for leave and have it certified by a health care provider. I again provided FMLA certification forms. That email is attached as Exhibit 4 and it attached four separate forms, including the FMLA Notice of Eligibility and Rights, the FMLA Family Certification of Health Provider form, the FMLA Employee certification form and the ADA disability forms.

8. Because employees seeking FMLA leave may also consider reasonable accommodations under the Americans With Disabilities Act ("ADA"), in an email dated November 23, 2015, a true and correct copy is attached as Exhibit 5, I also provided Professor Butler the forms for seeking ADA accommodations and identified Carolyn Hernandez in the

Office of Institutional Access and Equity as the contact for any questions on reasonable accommodations under the ADA.

9. On December 18, 2015, several months after I had first provided her with FMLA forms on June 12, 2015, Butler submitted FMLA certification forms seeking FMLA leave. The portion of the email from Professor Butler to me dated December 18, 2015 is attached as Exhibit 6, with medical and personal information removed from the email. The portion of the email attached is true and correct.

10. On behalf of SMU, I approved FMLA leave for Professor Butler from November 18, 2015 through December 21, 2015. As SMU is on a calendar year for FMLA purposes, this was the full amount of FMLA leave that she was entitled to under SMU policy for calendar year 2015. I received the FMLA employee and health care provider certifications from Professor Butler and made all FMLA leave determinations for 2015. Dean Collins, Interim Provost Stanley, Provost Currall and no other representative of the Dedman School of Law had any role in the FMLA determination. The only information provided by me to Dean Collins, as her supervisor, was notice that FMLA leave had been approved for Professor Butler. A true and correct copy of my email to Dean Collins dated December 23, 2015, is attached here as Exhibit 7. That email contained only the dates of leave. It contained no other details regarding the nature of the leave, underlying medical conditions or why leave had been granted.

11. I approved the full 12 weeks of available leave under the FMLA to Professor Butler in the calendar year 2016. Leave was approved as follows:

- January 6, 2016 to February 17, 2016

- February 18 to April 11, 2016

12. Because Dean Collins was Professor Butler's supervisor, I notified her only of the dates of leave as shown in the email dated January 21, 2016, which is attached to this Declaration as Exhibit 8. As shown in my email of March 8, 2016, to Professor Butler attached hereto as Exhibit 9, in which I approved FMLA leave from February 18 through April 11, 2016, I also notified Professor Butler that she had used all 12 weeks of her entitlement for FMLA leave for calendar year 2016. Professor Butler had been on paid FMLA leave since January 4, 2016 and had not had to teach or be present in the classroom. In providing Professor Butler with 12 weeks of paid leave in 2016, SMU had provided her with the maximum number of weeks of leave required by the FMLA on the calendar basis that it followed. I notified her that she had received her full entitlement of FMLA leave for 2016 in an email dated May 2, 2016 which is attached as Exhibit 10. I also provided Professor Butler with a chart showing all FMLA leave she had received in the calendar year 2016 and that her FMLA leave had ended on April 11, 2016. A true and correct copy of the chart is attached hereto as Exhibit 11.

13. Dean Collins, Provost Currall, Interim Provost Stanley, and SMU law faculty had no role in making any FMLA determinations related to Professor Butler. None of them instructed me to take any action with respect to the FMLA leave requests submitted by Professor Butler.

14. All FMLA determinations that I made regarding Professor Butler's leave requests were made based on SMU policy and procedures and the requirements of the FMLA. I had no knowledge of the details of her tenure proceedings, and they did not factor into my

FMLA determinations. I did not present any FMLA information to Professor Butler's tenure committee or the faculty of the Dedman School of Law in making tenure decisions on Professor Butler.

15. Although the FMLA Policy required that all FMLA forms be submitted to HR and to me as the Benefits Specialist listed on the online certification forms, Professor Butler did not always follow the policy and attempted to submit FMLA issues to Dean Collins. I had directed Professor Butler to only submit FMLA request to me as early as June 12, 2015, when I first sent her the FMLA forms. (Exhibit 3) In the Spring 2016 semester, I counseled Professor Butler to only submit FMLA certification forms and leave requests to me.

16. If Professor Butler disagreed with my FMLA determinations, she would then try to discuss the issue with Dean Collins who was not authorized to handle FMLA determinations. When I learned that Professor Butler was not following the FMLA Policy, despite her having notice of the actual procedures for FMLA leave, I would again notify Professor Butler of the FMLA Policy and that this was the only procedure by which FMLA leave could be obtained at SMU. The email dated February 23, 2016 attached hereto as Exhibit 12 is an example of my notifying Professor Butler that FMLA materials had to be submitted to HR, that only HR could certify FMLA leave, and that sending FMLA materials to her Dean was not in compliance with SMU's FMLA policy because Dean Collins was not an "FMLA decisionmaker" who could certify FMLA leave. My email again informed her that her emails to her Dean were not notice to HR or to me as the FMLA Benefits Specialist.

I declare under penalty of perjury that the facts stated in this declaration are true and correct. Exhibits 1 through 12 attached to this Declaration are all true and correct and incorporated herein for all purposes.

Executed in Dallas County, State of Texas, on November 27, 2021.


Rhonda Ice Adams



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Health and Other Benefits

Benefits and Wellness / Health and Other Benefits / FMLA and Military Caregiver Leave

FMLA and Military Caregiver Leave

Reasons for Taking FMLA Leave

The University will grant or designate unpaid FMLA Leave for an employee for any of the following reasons:

- To care for the employee's newborn child or recently adopted child or a child recently placed in foster care with an employee
- To care for the employee's spouse, parent or child (including step-relations) ("covered relative") who has a serious health condition, as defined by the FMLA
- For an employee's own serious health condition, as defined by the FMLA
- Due to a qualifying exigency, as defined by the FMLA, when the employee's spouse, parent, or child is: (i) a member of the regular Armed Forces who is deployed to a foreign country; or (ii) a member of the Reserves or National Guard who is deployed with the Armed Forces to a foreign country under a call or order to active duty ("qualifying exigency leave").

NOTE: Both a mother and father may take FMLA leave for the birth or adoption/foster placement of a child. However, if both the mother and father work for the University, their combined total FMLA leave may not exceed 12 weeks during a calendar year.

Reasons for Taking Military Caregiver Leave

The University will grant or designate unpaid Military Caregiver Leave to care for a covered service member while he or she undergoes medical treatment, recuperation, or therapy for a serious injury or illness. A "covered service member" is defined as the employee's spouse, parent, child or next of kin who:

- Is a current member of the Armed Forces or on the temporary disability retired list, and who incurred a serious injury or illness, as defined by the FMLA, in the line of duty on active duty; or
- Is a veteran of the Armed Forces who incurred a serious injury or illness, as defined by the FMLA, in the line of duty on active duty, and who was discharged or released from service under conditions other than dishonorable at any time during the 5 years prior to the first date an eligible employee takes FMLA leave to care for that veteran.

NOTE: If spouses are both employed by the University, both employees may take military caregiver leave, or a combination of military caregiver leave and FMLA leave, for a combined total of 26 weeks during a calendar year.

Advance Notice and Medical Certification Requirements

Employees who request FMLA Leave or Military Caregiver Leave must adhere to the following procedures:

Adams Dec No. 1



The employee must provide to his/her supervisor and to the Department of Human Resources 30 days' advance notice when the leave is "foreseeable." The University may delay the leave for up to 30 days after the request is made if this provision is not met.

- If the leave is not "foreseeable," the employee must provide notice to the Department of Human Resources and his/her supervisor of the need for leave as soon as practicable. "As soon as practicable" generally means giving at least verbal notice to the University the same or next business day after learning of the need for leave.
- The employee must provide to his/her supervisor and to the Department of Human Resources medical certification to support a request for leave because of his/her own serious health condition or that of a covered relative. The Department of Human Resources will provide the employee a form on which certification shall be provided. The employee must return the completed form to the Department of Human Resources within 15 days. If leave has been granted because of an employee's serious health condition, the University may require a second or third opinion (at the University's expense) before granting the leave. The University may also require a fitness for duty report for an employee to return to work after FMLA Leave has been taken.
- An employee's available earned vacation and sick leave time must be taken concurrently with FMLA Leave and/or Military Caregiver Leave. Upon exhaustion of available vacation and sick leave, the remainder of the employee's FMLA Leave and/or Military Caregiver Leave will be unpaid. An employee's vacation and sick leave time taken is counted as part of the employee's leave.
- The University may designate FMLA Leave or Military Caregiver Leave for an employee, even if the employee has not requested it, within two business days of the University's receiving notice that an employee is absent because of an FMLA-qualifying reason.
- The University may require periodic written documentation from an employee on FMLA Leave or Military Caregiver Leave regarding the employee's status and intent to return to work. If an employee gives an unequivocal notice of intent not to return to work, the University's obligations to maintain health benefits (except COBRA benefits) and to restore the employee to an equivalent position cease.
- If necessary, leave may be taken intermittently (in separate blocks of time) or on a reduced work schedule (reducing the usual number of hours the employee works per workweek or workday). If a reduced work schedule is implemented, the University will pay hourly employees only for the hours actually worked. For salaried employees, the University will reduce employees' salary accordingly.

Job Protection, Benefits, and Returning to Work

- During FMLA Leave and Military Caregiver Leave, the employee's health coverage will be maintained under the University's group health plan.
- Once the employee's vacation leave and sick leave are exhausted, the employee may continue to be absent on unpaid FMLA Leave up to the total amount of 12 weeks per calendar year, or on unpaid Military Caregiver Leave up to the total amount of 26 weeks per calendar year. While on unpaid leave, however, the employee will no longer be on the University's payroll. In such case, the University will continue to pay the employer's portion of the employee's group healthcare premiums, but the employee must pay the portion of such premiums that is ordinarily deducted from the employee's payroll check. Benefit contributions that accrue while an employee is on unpaid leave must be prepaid each month, unless the employee on unpaid leave requests, in a timely manner in writing to the Department of Human Resources, that he/she be allowed to make an advanced lump sum payment of benefit premiums due for the duration of the leave.
- If an employee takes FMLA Leave because of his or her own serious health condition, the employee is required to provide a medical certification that he or she is fit to resume work. Employees may obtain return-to-work medical certification forms from the Department of Human Resources. The University will not permit the employee to return to work without the return-to-work medical certification form properly completed by the employee's health care provider.



Upon return from FMLA Leave or Military Caregiver Leave, the employee will be restored to his/her same position, or to an equivalent position with equivalent pre-leave pay, benefits, and other employment terms if returning consistent with this Policy.

- Using FMLA Leave or Military Caregiver Leave will not cause an employee to lose any employment benefits that accrued prior to the start of an employee's leave, except the paid vacation and sick leave that an employee was required to use concurrently with leave. While the employee is on leave, using paid vacation and sick leave benefits, the employee will be on the University's payroll and will continue to accrue vacation and sick leave benefits as usual. Once the employee has exhausted his/her paid vacation and sick leave and is on unpaid leave, the employee will no longer be on the University's payroll, and therefore will not continue to accrue vacation and sick leave benefits.

Exercise of FMLA Rights

The University will not:

- interfere with, restrain, or deny the exercise of (or attempts to exercise) any right provided under FMLA.
- discharge or discriminate against any person for opposing or complaining of any practice made unlawful by FMLA or for involvement in any legal proceeding or inquiry under or relating to FMLA.
- retaliate against an employee for taking or requesting FMLA Leave or Military Caregiver Leave.

Any employee experiencing or witnessing retaliation must report it to a supervisor. If an employee is uncomfortable making such a report to a supervisor or is not satisfied with how the report was handled, the employee should report the retaliation to the supervisor's supervisor or to the Department of Human Resources.

FMLA does not affect any Federal or State law prohibiting discrimination, or supersede any State or local law, or other University leave policy which provides greater family or medical leave rights.

DOL Notice of Employee Rights and Responsibilities

Included below is a copy of the Department of Labor's Notice to Employees of Rights under the FMLA. Employees who have questions relating to their rights and responsibilities under the FMLA are advised to consult this Notice and/or to request additional information from the Department of Human Resources.

Employee Rights and Responsibilities Under the Family and Medical Leave Act

HEALTH AND OTHER BENEFITS

Benefits Guide

Eligibility

Life Events

Online Premium Payments

Can't find what you need?



healthyu@smu.edu



benefitsu@smu.edu



214-768-3311

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EMPLOYEE RIGHTS AND RESPONSIBILITIES UNDER THE FAMILY AND MEDICAL LEAVE ACT

Basic Leave Entitlement

FMLA requires covered employers to provide up to 12 weeks of unpaid, job-protected leave to eligible employees for the following reasons:

- for incapacity due to pregnancy, prenatal medical care or child birth,
- to care for the employee's child after birth, or placement for adoption or foster care,
- to care for the employee's spouse, son, daughter or parent, who has a serious health condition, or
- for a serious health condition that makes the employee unable to perform the employee's job.

Military Family Leave Entitlements

Eligible employees whose spouse, son, daughter or parent is on covered active duty or call to covered active duty status may use their 12-week leave entitlement to address certain qualifying exigencies. Qualifying exigencies may include attending certain military events, arranging for alternative childcare, addressing certain financial and legal arrangements, attending certain counseling sessions, and attending post-deployment reintegration briefings.

FMLA also includes a special leave entitlement that permits eligible employees to take up to 26 weeks of leave to care for a covered servicemember during a single 12-month period. A covered servicemember is: (1) a current member of the Armed Forces, including a member of the National Guard or Reserves, who is undergoing medical treatment, recuperation or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness*; or (2) a veteran who was discharged or released under conditions other than dishonorable at any time during the five-year period prior to the first date the eligible employee takes FMLA leave to care for the covered veteran, and who is undergoing medical treatment, recuperation, or therapy for a serious injury or illness.*

***The FMLA definitions of "serious injury or illness" for current servicemembers and veterans are distinct from the FMLA definition of "serious health condition".**

Benefits and Protections

During FMLA leave, the employer must maintain the employee's health coverage under any "group health plan" on the same terms as if the employee had continued to work. Upon return from FMLA leave, most employees must be restored to their original or equivalent positions with equivalent pay, benefits, and other employment terms.

Use of FMLA leave cannot result in the loss of any employment benefit that accrued prior to the start of an employee's leave.

Eligibility Requirements

Employees are eligible if they have worked for a covered employer for at least 12 months, have 1,250 hours of service in the previous 12 months*, and if at least 50 employees are employed by the employer within 75 miles.

***Special hours of service eligibility requirements apply to airline flight crew employees.**

Definition of Serious Health Condition

A serious health condition is an illness, injury, impairment, or physical or mental condition that involves either an overnight stay in a medical care facility, or continuing treatment by a health care provider for a condition that either prevents the employee from performing the functions of the employee's job, or prevents the qualified family member from participating in school or other daily activities.

Subject to certain conditions, the continuing treatment requirement may be met by a period of incapacity of more than 3 consecutive calendar days combined with at least two visits to a health care provider or one visit and

a regimen of continuing treatment, or incapacity due to pregnancy, or incapacity due to a chronic condition. Other conditions may meet the definition of continuing treatment.

Use of Leave

An employee does not need to use this leave entitlement in one block. Leave can be taken intermittently or on a reduced leave schedule when medically necessary. Employees must make reasonable efforts to schedule leave for planned medical treatment so as not to unduly disrupt the employer's operations. Leave due to qualifying exigencies may also be taken on an intermittent basis.

Substitution of Paid Leave for Unpaid Leave

Employees may choose or employers may require use of accrued paid leave while taking FMLA leave. In order to use paid leave for FMLA leave, employees must comply with the employer's normal paid leave policies.

Employee Responsibilities

Employees must provide 30 days advance notice of the need to take FMLA leave when the need is foreseeable. When 30 days notice is not possible, the employee must provide notice as soon as practicable and generally must comply with an employer's normal call-in procedures.

Employees must provide sufficient information for the employer to determine if the leave may qualify for FMLA protection and the anticipated timing and duration of the leave. Sufficient information may include that the employee is unable to perform job functions, the family member is unable to perform daily activities, the need for hospitalization or continuing treatment by a health care provider, or circumstances supporting the need for military family leave. Employees also must inform the employer if the requested leave is for a reason for which FMLA leave was previously taken or certified. Employees also may be required to provide a certification and periodic recertification supporting the need for leave.

Employer Responsibilities

Covered employers must inform employees requesting leave whether they are eligible under FMLA. If they are, the notice must specify any additional information required as well as the employees' rights and responsibilities. If they are not eligible, the employer must provide a reason for the ineligibility.

Covered employers must inform employees if leave will be designated as FMLA-protected and the amount of leave counted against the employee's leave entitlement. If the employer determines that the leave is not FMLA-protected, the employer must notify the employee.

Unlawful Acts by Employers

FMLA makes it unlawful for any employer to:

- interfere with, restrain, or deny the exercise of any right provided under FMLA; and
- discharge or discriminate against any person for opposing any practice made unlawful by FMLA or for involvement in any proceeding under or relating to FMLA.

Enforcement

An employee may file a complaint with the U.S. Department of Labor or may bring a private lawsuit against an employer.

FMLA does not affect any Federal or State law prohibiting discrimination, or supersede any State or local law or collective bargaining agreement which provides greater family or medical leave rights.

FMLA section 109 (29 U.S.C. § 2619) requires FMLA covered employers to post the text of this notice. Regulation 29 C.F.R. § 825.300(a) may require additional disclosures.



For additional information:
1-866-IUS-WAGE (1-866-487-9243) TTY: 1-877-889-5627
WWW.WAGEHOUR.DOL.GOV

U.S. Department of Labor | Wage and Hour Division



WHD Publication 1420 • Revised February 2013

Certification of Health Care Provider for Family Member's Serious Health Condition (Family and Medical Leave Act)

U.S. Department of Labor Wage and Hour Division



DO NOT SEND COMPLETED FORM TO THE DEPARTMENT OF LABOR; RETURN TO THE PATIENT.

OMB Control Number: 1235-0003 Expires: 5/31/2018

SECTION I: For Completion by the EMPLOYER

INSTRUCTIONS to the EMPLOYER: The Family and Medical Leave Act (FMLA) provides that an employer may require an employee seeking FMLA protections because of a need for leave to care for a covered family member with a serious health condition to submit a medical certification issued by the health care provider of the covered family member. Please complete Section I before giving this form to your employee. Your response is voluntary. While you are not required to use this form, you may not ask the employee to provide more information than allowed under the FMLA regulations, 29 C.F.R. §§ 825.306-825.308. Employers must generally maintain records and documents relating to medical certifications, recertifications, or medical histories of employees' family members, created for FMLA purposes as confidential medical records in separate files/records from the usual personnel files and in accordance with 29 C.F.R. § 1630.14(c)(1), if the Americans with Disabilities Act applies, and in accordance with 29 C.F.R. § 1635.9, if the Genetic Information Nondiscrimination Act applies.

Employer name and contact: Southern Methodist University/Rhonda Ice Adams @ 214-768-2132

SECTION II: For Completion by the EMPLOYEE

INSTRUCTIONS to the EMPLOYEE: Please complete Section II before giving this form to your family member or his/her medical provider. The FMLA permits an employer to require that you submit a timely, complete, and sufficient medical certification to support a request for FMLA leave to care for a covered family member with a serious health condition. If requested by your employer, your response is required to obtain or retain the benefit of FMLA protections. 29 U.S.C. §§ 2613, 2614(c)(3). Failure to provide a complete and sufficient medical certification may result in a denial of your FMLA request. 29 C.F.R. § 825.313. Your employer must give you at least 15 calendar days to return this form to your employer. 29 C.F.R. § 825.305.

Your name: First Middle Last

Name of family member for whom you will provide care: First Middle Last

Relationship of family member to you:

If family member is your son or daughter, date of birth:

Describe care you will provide to your family member and estimate leave needed to provide care:

Blank lines for describing care and leave needed.

Employee Signature Date

Adams Dec. No. 2

SECTION III: For Completion by the HEALTH CARE PROVIDER

INSTRUCTIONS to the HEALTH CARE PROVIDER: The employee listed above has requested leave under the FMLA to care for your patient. Answer, fully and completely, all applicable parts below. Several questions seek a response as to the frequency or duration of a condition, treatment, etc. Your answer should be your best estimate based upon your medical knowledge, experience, and examination of the patient. Be as specific as you can; terms such as “lifetime,” “unknown,” or “indeterminate” may not be sufficient to determine FMLA coverage. Limit your responses to the condition for which the patient needs leave. Do not provide information about genetic tests, as defined in 29 C.F.R. § 1635.3(f), or genetic services, as defined in 29 C.F.R. § 1635.3(e). Page 3 provides space for additional information, should you need it. Please be sure to sign the form on the last page.

Provider’s name and business address: _____

Type of practice / Medical specialty: _____

Telephone: (_____) _____ Fax:(_____) _____

PART A: MEDICAL FACTS

1. Approximate date condition commenced: _____

Probable duration of condition: _____

Was the patient admitted for an overnight stay in a hospital, hospice, or residential medical care facility?
___ No ___ Yes. If so, dates of admission: _____

Date(s) you treated the patient for condition: _____

Was medication, other than over-the-counter medication, prescribed? ___ No ___ Yes.

Will the patient need to have treatment visits at least twice per year due to the condition? ___ No ___ Yes

Was the patient referred to other health care provider(s) for evaluation or treatment (e.g., physical therapist)?
___ No ___ Yes. If so, state the nature of such treatments and expected duration of treatment:

2. Is the medical condition pregnancy? ___ No ___ Yes. If so, expected delivery date: _____

3. Describe other relevant medical facts, if any, related to the condition for which the patient needs care (such medical facts may include symptoms, diagnosis, or any regimen of continuing treatment such as the use of specialized equipment):

PART B: AMOUNT OF CARE NEEDED: When answering these questions, keep in mind that your patient's need for care by the employee seeking leave may include assistance with basic medical, hygienic, nutritional, safety or transportation needs, or the provision of physical or psychological care:

4. Will the patient be incapacitated for a single continuous period of time, including any time for treatment and recovery? ___ No ___ Yes.

Estimate the beginning and ending dates for the period of incapacity: _____

During this time, will the patient need care? ___ No ___ Yes.

Explain the care needed by the patient and why such care is medically necessary:

5. Will the patient require follow-up treatments, including any time for recovery? ___ No ___ Yes.

Estimate treatment schedule, if any, including the dates of any scheduled appointments and the time required for each appointment, including any recovery period:

Explain the care needed by the patient, and why such care is medically necessary: _____

6. Will the patient require care on an intermittent or reduced schedule basis, including any time for recovery? ___ No ___ Yes.

Estimate the hours the patient needs care on an intermittent basis, if any:

_____ hour(s) per day; _____ days per week from _____ through _____

Explain the care needed by the patient, and why such care is medically necessary:

7. Will the condition cause episodic flare-ups periodically preventing the patient from participating in normal daily activities? ___ No ___ Yes.

Based upon the patient’s medical history and your knowledge of the medical condition, estimate the frequency of flare-ups and the duration of related incapacity that the patient may have over the next 6 months (e.g., 1 episode every 3 months lasting 1-2 days):

Frequency: ___ times per ___ week(s) ___ month(s)

Duration: ___ hours or ___ day(s) per episode

Does the patient need care during these flare-ups? ___ No ___ Yes.

Explain the care needed by the patient, and why such care is medically necessary: _____

ADDITIONAL INFORMATION: IDENTIFY QUESTION NUMBER WITH YOUR ADDITIONAL ANSWER.

Signature of Health Care Provider

Date

PAPERWORK REDUCTION ACT NOTICE AND PUBLIC BURDEN STATEMENT

If submitted, it is mandatory for employers to retain a copy of this disclosure in their records for three years. 29 U.S.C. § 2616; 29 C.F.R. § 825.500. Persons are not required to respond to this collection of information unless it displays a currently valid OMB control number. The Department of Labor estimates that it will take an average of 20 minutes for respondents to complete this collection of information, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. If you have any comments regarding this burden estimate or any other aspect of this collection information, including suggestions for reducing this burden, send them to the Administrator, Wage and Hour Division, U.S. Department of Labor, Room S-3502, 200 Constitution Ave., NW, Washington, DC 20210. **DO NOT SEND COMPLETED FORM TO THE DEPARTMENT OF LABOR; RETURN TO THE PATIENT.**

FW: FMLA Certification Form

From: "Adams, Rhonda (BENEFITS)" <"o=smu/ou=dallas/cn=staff/cn=radams">
To: "Butler, Cheryl Nelson" <cnbutler@mail.smu.edu>
Date: Tue, 16 Jun 2015 12:37:18 -0500
Attachments: WH-380-F Family Certification of Health Provider.pdf (397.11 kB); WH 380 E Employee Certification of Health Provider.pdf (346.8 kB); 0952_001.pdf (115.95 kB); GINA FMLA.docx (14.57 kB)

Cheryl,

Do you have any questions regarding my email of last Friday?

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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From: Adams, Rhonda (BENEFITS)
Sent: Friday, June 12, 2015 3:07 PM
To: Butler, Cheryl Nelson
Subject: FMLA Certification Form

Good afternoon Cheryl,

I understand you have experienced a FMLA event and therefore need a FMLA Certification form for completion. Since I am not certain if the event is for a family member or yourself, I have provided one of each. In the event this absence qualifies for FMLA relative to a visit to a physician's office, dispensing of a medication and an illness for three consecutive days or longer, a note from the physician so indicating is sufficient. Please note all documentation relative to FMLA should be sent to me and not provided to the Law School due to HIPPA regulations.

Finally a Notice of Eligibility and Rights & Responsibilities notice is attached, but the timeframe and for whom the FMLA is relevant is not indicated. An update will be provided once you have an opportunity to contact me at the phone number below.

I look forward to speaking with you next week.

Adams Dec. No. 3

SMU_Butler_00001125

Rhonda

Rhonda Ice Adams
Benefits Specialist



radams@smu.edu

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SMU_Butler_00001126

FMLA and Disability Accommodation

From: "Adams, Rhonda (BENEFITS)" <"o=smu/ou=dallas/cn=staff/cn=radams">
To: "Butler, Cheryl Nelson" <cnbutler@mail.smu.edu>
Date: Tue, 24 Nov 2015 10:52:34 -0600
Attachments: Cheryl Nelson Butler WH-381 Notice of Eligibility & Rights.pdf (231.3 kB); Cheryl Nelson Butler WH-380-F Family Certification of Health Provider.pdf (191.24 kB); Cheryl Nelson Butler WH 380 E Employee Certification of Health Provider....pdf (210.17 kB); FormEmpDocDisability112010.docx (21.92 kB); FormEmpDocDisabilityWriteable112010.ashx.pdf (54 kB)

Cheryl,

This email confirms our conversation of yesterday. Within our conversation you indicated you are considering applying for FMLA protection. In order for SMU to make a determination relative to your FMLA eligibility, SMU needs your physician(s) to complete the attached Employee Certification of Health Provider and if applicable the Family Certification of Health Provider form(s). Please return this document(s) to me no later than Friday, December 18, 2015.

Furthermore, I have also taken the liberty of attaching the documentation needed if you are seeking an accommodation due to impairment. Again, the accommodation documentation should be returned to Carolyn Hernandez at chernandez@smu.edu. You may speak to her directly at 214-768-1979.

SMU cannot make any decisions on leave under the FMLA or a reasonable accommodation until your physician(s) complete the "Health Care Provider" section on the FMLA forms and the "Physician Section" on the Employee Documentation of Disability Form. To further assist you, I have attached the certification forms to this email so you can directly forward them to your physician(s).

Rhonda

Rhonda Ice Adams
Benefits Specialist



radams@smu.edu

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Adams Dec. No. 4

SMU_Butler_00001098

Notice of Eligibility and Rights & Responsibilities (Family and Medical Leave Act)

U.S. Department of Labor Wage and Hour Division



OMB Control Number: 1235-0003 Expires: 5/31/2018

In general, to be eligible an employee must have worked for an employer for at least 12 months, meet the hours of service requirement in the 12 months preceding the leave, and work at a site with at least 50 employees within 75 miles. While use of this form by employers is optional, a fully completed Form WH-381 provides employees with the information required by 29 C.F.R. § 825.300(b), which must be provided within five business days of the employee notifying the employer of the need for FMLA leave. Part B provides employees with information regarding their rights and responsibilities for taking FMLA leave, as required by 29 C.F.R. § 825.300(b), (c).

[Part A – NOTICE OF ELIGIBILITY]

TO: Cheryl Nelson Butler Employee
FROM: Rhonda Ice Adams Employer Representative
DATE: 11/23/2015

On 11/23/2015, you informed us that you needed leave beginning on 11/23/2015 for:

- The birth of a child, or placement of a child with you for adoption or foster care;
Your own serious health condition;
Because you are needed to care for your spouse; child; parent due to his/her serious health condition.
Because of a qualifying exigency arising out of the fact that your spouse; son or daughter; parent is on covered active duty or call to covered active duty status with the Armed Forces.
Because you are the spouse; son or daughter; parent; next of kin of a covered servicemember with a serious injury or illness.

This Notice is to inform you that you:

- Are eligible for FMLA leave (See Part B below for Rights and Responsibilities)
Are not eligible for FMLA leave, because (only one reason need be checked, although you may not be eligible for other reasons):
You have not met the FMLA's 12-month length of service requirement.
You have not met the FMLA's hours of service requirement.
You do not work and/or report to a site with 50 or more employees within 75-miles.

If you have any questions, contact Rhonda Ice Adams @ 214-768-2132 or view the FMLA poster located in

[PART B-RIGHTS AND RESPONSIBILITIES FOR TAKING FMLA LEAVE]

As explained in Part A, you meet the eligibility requirements for taking FMLA leave and still have FMLA leave available in the applicable 12-month period. However, in order for us to determine whether your absence qualifies as FMLA leave, you must return the following information to us by December 18, 2015. (If a certification is requested, employers must allow at least 15 calendar days from receipt of this notice; additional time may be required in some circumstances.) If sufficient information is not provided in a timely manner, your leave may be denied.

- Sufficient certification to support your request for FMLA leave. A certification form that sets forth the information necessary to support your request is/ is not enclosed.
Sufficient documentation to establish the required relationship between you and your family member.
Other information needed (such as documentation for military family leave):

No additional information requested

If your leave does qualify as FMLA leave you will have the following responsibilities while on FMLA leave (only checked blanks apply):

- Contact Rhonda Ice Adams at 214-768-2132 to make arrangements to continue to make your share of the premium payments on your health insurance to maintain health benefits while you are on leave. You have a minimum 30-day (or, indicate longer period, if applicable) grace period in which to make premium payments. If payment is not made timely, your group health insurance may be cancelled, provided we notify you in writing at least 15 days before the date that your health coverage will lapse, or, at our option, we may pay your share of the premiums during FMLA leave, and recover these payments from you upon your return to work.
- You will be required to use your available paid sick, vacation, and/or other leave during your FMLA absence. This means that you will receive your paid leave and the leave will also be considered protected FMLA leave and counted against your FMLA leave entitlement.
- Due to your status within the company, you are considered a "key employee" as defined in the FMLA. As a "key employee," restoration to employment may be denied following FMLA leave on the grounds that such restoration will cause substantial and grievous economic injury to us. We have/ have not determined that restoring you to employment at the conclusion of FMLA leave will cause substantial and grievous economic harm to us.
- While on leave you will be required to furnish us with periodic reports of your status and intent to return to work every _____ (Indicate interval of periodic reports, as appropriate for the particular leave situation).

If the circumstances of your leave change, and you are able to return to work earlier than the date indicated on the this form, you will be required to notify us at least two workdays prior to the date you intend to report for work.

If your leave does qualify as FMLA leave you will have the following rights while on FMLA leave:

- You have a right under the FMLA for up to 12 weeks of unpaid leave in a 12-month period calculated as:
 - the calendar year (January – December).
 - a fixed leave year based on _____
 - the 12-month period measured forward from the date of your first FMLA leave usage.
 - a "rolling" 12-month period measured backward from the date of any FMLA leave usage.
- You have a right under the FMLA for up to 26 weeks of unpaid leave in a single 12-month period to care for a covered servicemember with a serious injury or illness. This single 12-month period commenced on _____
- Your health benefits must be maintained during any period of unpaid leave under the same conditions as if you continued to work.
- You must be reinstated to the same or an equivalent job with the same pay, benefits, and terms and conditions of employment on your return from FMLA-protected leave. (If your leave extends beyond the end of your FMLA entitlement, you do not have return rights under FMLA.)
- If you do not return to work following FMLA leave for a reason other than: 1) the continuation, recurrence, or onset of a serious health condition which would entitle you to FMLA leave; 2) the continuation, recurrence, or onset of a covered servicemember's serious injury or illness which would entitle you to FMLA leave; or 3) other circumstances beyond your control, you may be required to reimburse us for our share of health insurance premiums paid on your behalf during your FMLA leave.
- If we have not informed you above that you must use accrued paid leave while taking your unpaid FMLA leave entitlement, you have the right to have sick, vacation, and/or other leave run concurrently with your unpaid leave entitlement, provided you meet any applicable requirements of the leave policy. Applicable conditions related to the substitution of paid leave are referenced or set forth below. If you do not meet the requirements for taking paid leave, you remain entitled to take unpaid FMLA leave.

For a copy of conditions applicable to sick/vacation/other leave usage please refer to _____ available at: _____

Applicable conditions for use of paid leave: _____

Once we obtain the information from you as specified above, we will inform you, within 5 business days, whether your leave will be designated as FMLA leave and count towards your FMLA leave entitlement. If you have any questions, please do not hesitate to contact:

Rhonda Ice Adams at 214-768-2132

PAPERWORK REDUCTION ACT NOTICE AND PUBLIC BURDEN STATEMENT

It is mandatory for employers to provide employees with notice of their eligibility for FMLA protection and their rights and responsibilities. 29 U.S.C. § 2617; 29 C.F.R. § 825.300(b), (c). It is mandatory for employers to retain a copy of this disclosure in their records for three years. 29 U.S.C. § 2616; 29 C.F.R. § 825.500. Persons are not required to respond to this collection of information unless it displays a currently valid OMB control number. The Department of Labor estimates that it will take an average of 10 minutes for respondents to complete this collection of information, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. If you have any comments regarding this burden estimate or any other aspect of this collection information, including suggestions for reducing this burden, send them to the Administrator, Wage and Hour Division, U.S. Department of Labor, Room S-3502, 200 Constitution Ave., NW, Washington, DC 20210. **DO NOT SEND THE COMPLETED FORM TO THE WAGE AND HOUR DIVISION.**

Certification of Health Care Provider for Family Member's Serious Health Condition (Family and Medical Leave Act)

U.S. Department of Labor Wage and Hour Division



DO NOT SEND COMPLETED FORM TO THE DEPARTMENT OF LABOR; RETURN TO THE PATIENT.

OMB Control Number: 1235-0003 Expires: 5/31/2018

SECTION I: For Completion by the EMPLOYER

INSTRUCTIONS to the EMPLOYER: The Family and Medical Leave Act (FMLA) provides that an employer may require an employee seeking FMLA protections because of a need for leave to care for a covered family member with a serious health condition to submit a medical certification issued by the health care provider of the covered family member. Please complete Section I before giving this form to your employee. Your response is voluntary. While you are not required to use this form, you may not ask the employee to provide more information than allowed under the FMLA regulations, 29 C.F.R. §§ 825.306-825.308. Employers must generally maintain records and documents relating to medical certifications, recertifications, or medical histories of employees' family members, created for FMLA purposes as confidential medical records in separate files/records from the usual personnel files and in accordance with 29 C.F.R. § 1630.14(c)(1), if the Americans with Disabilities Act applies, and in accordance with 29 C.F.R. § 1635.9, if the Genetic Information Nondiscrimination Act applies.

Employer name and contact: Southern Methodist University/Rhonda Ice Adams @ 214-768-2132

SECTION II: For Completion by the EMPLOYEE

INSTRUCTIONS to the EMPLOYEE: Please complete Section II before giving this form to your family member or his/her medical provider. The FMLA permits an employer to require that you submit a timely, complete, and sufficient medical certification to support a request for FMLA leave to care for a covered family member with a serious health condition. If requested by your employer, your response is required to obtain or retain the benefit of FMLA protections. 29 U.S.C. §§ 2613, 2614(c)(3). Failure to provide a complete and sufficient medical certification may result in a denial of your FMLA request. 29 C.F.R. § 825.313. Your employer must give you at least 15 calendar days to return this form to your employer. 29 C.F.R. § 825.305.

Your name: First Middle Last

Name of family member for whom you will provide care: First Middle Last

Relationship of family member to you:

If family member is your son or daughter, date of birth:

Describe care you will provide to your family member and estimate leave needed to provide care:

Employee Signature Date

SECTION III: For Completion by the HEALTH CARE PROVIDER

INSTRUCTIONS to the HEALTH CARE PROVIDER: The employee listed above has requested leave under the FMLA to care for your patient. Answer, fully and completely, all applicable parts below. Several questions seek a response as to the frequency or duration of a condition, treatment, etc. Your answer should be your best estimate based upon your medical knowledge, experience, and examination of the patient. Be as specific as you can; terms such as “lifetime,” “unknown,” or “indeterminate” may not be sufficient to determine FMLA coverage. Limit your responses to the condition for which the patient needs leave. Do not provide information about genetic tests, as defined in 29 C.F.R. § 1635.3(f), or genetic services, as defined in 29 C.F.R. § 1635.3(e). Page 3 provides space for additional information, should you need it. Please be sure to sign the form on the last page.

Provider’s name and business address: _____

Type of practice / Medical specialty: _____

Telephone: (_____) _____ Fax:(_____) _____

PART A: MEDICAL FACTS

1. Approximate date condition commenced: _____

Probable duration of condition: _____

Was the patient admitted for an overnight stay in a hospital, hospice, or residential medical care facility?
___ No ___ Yes. If so, dates of admission: _____

Date(s) you treated the patient for condition: _____

Was medication, other than over-the-counter medication, prescribed? ___ No ___ Yes.

Will the patient need to have treatment visits at least twice per year due to the condition? ___ No ___ Yes

Was the patient referred to other health care provider(s) for evaluation or treatment (e.g., physical therapist)?
___ No ___ Yes. If so, state the nature of such treatments and expected duration of treatment:

2. Is the medical condition pregnancy? ___ No ___ Yes. If so, expected delivery date: _____

3. Describe other relevant medical facts, if any, related to the condition for which the patient needs care (such medical facts may include symptoms, diagnosis, or any regimen of continuing treatment such as the use of specialized equipment):

PART B: AMOUNT OF CARE NEEDED: When answering these questions, keep in mind that your patient's need for care by the employee seeking leave may include assistance with basic medical, hygienic, nutritional, safety or transportation needs, or the provision of physical or psychological care:

4. Will the patient be incapacitated for a single continuous period of time, including any time for treatment and recovery? ___ No ___ Yes.

Estimate the beginning and ending dates for the period of incapacity: _____

During this time, will the patient need care? ___ No ___ Yes.

Explain the care needed by the patient and why such care is medically necessary:

5. Will the patient require follow-up treatments, including any time for recovery? ___ No ___ Yes.

Estimate treatment schedule, if any, including the dates of any scheduled appointments and the time required for each appointment, including any recovery period:

Explain the care needed by the patient, and why such care is medically necessary: _____

6. Will the patient require care on an intermittent or reduced schedule basis, including any time for recovery? ___ No ___ Yes.

Estimate the hours the patient needs care on an intermittent basis, if any:

_____ hour(s) per day; _____ days per week from _____ through _____

Explain the care needed by the patient, and why such care is medically necessary:

7. Will the condition cause episodic flare-ups periodically preventing the patient from participating in normal daily activities? ___ No ___ Yes.

Based upon the patient’s medical history and your knowledge of the medical condition, estimate the frequency of flare-ups and the duration of related incapacity that the patient may have over the next 6 months (e.g., 1 episode every 3 months lasting 1-2 days):

Frequency: ___ times per ___ week(s) ___ month(s)

Duration: ___ hours or ___ day(s) per episode

Does the patient need care during these flare-ups? ___ No ___ Yes.

Explain the care needed by the patient, and why such care is medically necessary: _____

ADDITIONAL INFORMATION: IDENTIFY QUESTION NUMBER WITH YOUR ADDITIONAL ANSWER.

Signature of Health Care Provider

Date

PAPERWORK REDUCTION ACT NOTICE AND PUBLIC BURDEN STATEMENT

If submitted, it is mandatory for employers to retain a copy of this disclosure in their records for three years. 29 U.S.C. § 2616; 29 C.F.R. § 825.500. Persons are not required to respond to this collection of information unless it displays a currently valid OMB control number. The Department of Labor estimates that it will take an average of 20 minutes for respondents to complete this collection of information, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. If you have any comments regarding this burden estimate or any other aspect of this collection information, including suggestions for reducing this burden, send them to the Administrator, Wage and Hour Division, U.S. Department of Labor, Room S-3502, 200 Constitution Ave., NW, Washington, DC 20210.
DO NOT SEND COMPLETED FORM TO THE DEPARTMENT OF LABOR; RETURN TO THE PATIENT.

Certification of Health Care Provider for Employee's Serious Health Condition (Family and Medical Leave Act)

U.S. Department of Labor Wage and Hour Division



OMB Control Number: 1235-0003 Expires: 5/31/2018

SECTION I: For Completion by the EMPLOYER

INSTRUCTIONS to the EMPLOYER: The Family and Medical Leave Act (FMLA) provides that an employer may require an employee seeking FMLA protections because of a need for leave due to a serious health condition to submit a medical certification issued by the employee's health care provider. Please complete Section I before giving this form to your employee. Your response is voluntary. While you are not required to use this form, you may not ask the employee to provide more information than allowed under the FMLA regulations, 29 C.F.R. §§ 825.306-825.308. Employers must generally maintain records and documents relating to medical certifications, recertifications, or medical histories of employees created for FMLA purposes as confidential medical records in separate files/records from the usual personnel files and in accordance with 29 C.F.R. § 1630.14(c)(1), if the Americans with Disabilities Act applies, and in accordance with 29 C.F.R. § 1635.9, if the Genetic Information Nondiscrimination Act applies.

Employer name and contact: Cheryl Nelson Butler

Employee's job title: Faculty Regular work schedule:

Employee's essential job functions:

Check if job description is attached:

SECTION II: For Completion by the EMPLOYEE

INSTRUCTIONS to the EMPLOYEE: Please complete Section II before giving this form to your medical provider. The FMLA permits an employer to require that you submit a timely, complete, and sufficient medical certification to support a request for FMLA leave due to your own serious health condition. If requested by your employer, your response is required to obtain or retain the benefit of FMLA protections. 29 U.S.C. §§ 2613, 2614(c)(3). Failure to provide a complete and sufficient medical certification may result in a denial of your FMLA request. 29 C.F.R. § 825.313. Your employer must give you at least 15 calendar days to return this form. 29 C.F.R. § 825.305(b).

Your name: First Middle Last

SECTION III: For Completion by the HEALTH CARE PROVIDER

INSTRUCTIONS to the HEALTH CARE PROVIDER: Your patient has requested leave under the FMLA. Answer, fully and completely, all applicable parts. Several questions seek a response as to the frequency or duration of a condition, treatment, etc. Your answer should be your best estimate based upon your medical knowledge, experience, and examination of the patient. Be as specific as you can; terms such as "lifetime," "unknown," or "indeterminate" may not be sufficient to determine FMLA coverage. Limit your responses to the condition for which the employee is seeking leave. Do not provide information about genetic tests, as defined in 29 C.F.R. § 1635.3(f), genetic services, as defined in 29 C.F.R. § 1635.3(e), or the manifestation of disease or disorder in the employee's family members, 29 C.F.R. § 1635.3(b). Please be sure to sign the form on the last page.

Provider's name and business address:

Type of practice / Medical specialty:

Telephone: () Fax:()

PART A: MEDICAL FACTS

1. Approximate date condition commenced: _____

Probable duration of condition: _____

Mark below as applicable:

Was the patient admitted for an overnight stay in a hospital, hospice, or residential medical care facility?
___No ___Yes. If so, dates of admission:

Date(s) you treated the patient for condition:

Will the patient need to have treatment visits at least twice per year due to the condition? ___No ___Yes.

Was medication, other than over-the-counter medication, prescribed? ___No ___Yes.

Was the patient referred to other health care provider(s) for evaluation or treatment (e.g., physical therapist)?
___No ___Yes. If so, state the nature of such treatments and expected duration of treatment:

2. Is the medical condition pregnancy? ___No ___Yes. If so, expected delivery date: _____

3. Use the information provided by the employer in Section I to answer this question. If the employer fails to provide a list of the employee's essential functions or a job description, answer these questions based upon the employee's own description of his/her job functions.

Is the employee unable to perform any of his/her job functions due to the condition: ___No ___Yes.

If so, identify the job functions the employee is unable to perform:

4. Describe other relevant medical facts, if any, related to the condition for which the employee seeks leave (such medical facts may include symptoms, diagnosis, or any regimen of continuing treatment such as the use of specialized equipment):

PART B: AMOUNT OF LEAVE NEEDED

5. Will the employee be incapacitated for a single continuous period of time due to his/her medical condition, including any time for treatment and recovery? ___No ___Yes.

If so, estimate the beginning and ending dates for the period of incapacity: _____

6. Will the employee need to attend follow-up treatment appointments or work part-time or on a reduced schedule because of the employee's medical condition? ___No ___Yes.

If so, are the treatments or the reduced number of hours of work medically necessary? ___No ___Yes.

Estimate treatment schedule, if any, including the dates of any scheduled appointments and the time required for each appointment, including any recovery period:

Estimate the part-time or reduced work schedule the employee needs, if any:

_____ hour(s) per day; _____ days per week from _____ through _____

7. Will the condition cause episodic flare-ups periodically preventing the employee from performing his/her job functions? ___No ___Yes.

Is it medically necessary for the employee to be absent from work during the flare-ups? ___ No ___ Yes. If so, explain:

Based upon the patient's medical history and your knowledge of the medical condition, estimate the frequency of flare-ups and the duration of related incapacity that the patient may have over the next 6 months (e.g., 1 episode every 3 months lasting 1-2 days):

Frequency : _____ times per _____ week(s) _____ month(s)

Duration: _____ hours or _____ day(s) per episode

ADDITIONAL INFORMATION: IDENTIFY QUESTION NUMBER WITH YOUR ADDITIONAL ANSWER.

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, _____, 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: _____ Date: _____

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):

What is the duration of the impairment? _____

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):

Please describe any medications and/or corrective measures that have been prescribed or recommended and their effect:

Please describe how the impairment impacts the essential functions of the employee's position:

Please identify any accommodations that could assist the employee in performing the essential functions:

Physician's Name: _____ Phone: _____

Fax: _____ License Number: _____ State: _____

Type of Practice: _____ Email: _____

Address: _____

Physician's Signature: _____ Date: _____

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, _____, 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: _____ Date: _____

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):

What is the duration of the impairment? _____

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):

Please describe any medications and/or corrective measures that have been prescribed or recommended and their effect:

Please describe how the impairment impacts the essential functions of the employee's position:

Please identify any accommodations that could assist the employee in performing the essential functions:

Physician's Name: _____ Phone: _____

Fax: _____ License Number: _____ State: _____

Type of Practice: _____ Email: _____

Address: _____

Physician's Signature: _____ Date: _____

Accomodation Process

From: "Adams, Rhonda (BENEFITS)" </o=smu/ou=dallas/cn=staff/cn=radams">
To: "Butler, Cheryl Nelson" <cnbutler@mail.smu.edu>
Cc: "Hernandez, Carolyn (IAE)" <hernandez@mail.smu.edu>
Date: Mon, 23 Nov 2015 14:22:02 -0600

Cheryl,

Following our conversation this morning, I want to reiterate Carolyn Hernandez, Director for Access & Equity in the Office of Institutional Access and Equity, serves as the University's ADA/504 Coordinator and handles employee requests for reasonable accommodations on the basis of a disability. The attached Needs of Persons with Disabilities Policy explains the reasonable accommodation process, and you can find more information and resources on IAE's website at: <http://smu.edu/aaol/>. Please feel free to contact Carolyn via phone at 214-768-1979 or email at chernandez@smu.edu if you would like to request a reasonable accommodation on the basis of a disability or if you have any questions about the reasonable accommodation process.

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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Adams Dec. No. 5

SMU_Butler_00001113

BUTLER FMLA FORMS

From: Cheryl Butler <cherylbutler2002@gmail.com>
To: "Adams, Rhonda (BENEFITS)" <radams@mail.smu.edu>, cnelsonbutler@aol.com, cherylbutler2002@gmail.com
Date: Fri, 18 Dec 2015 15:28:52 -0600
Attachments: 20151218142517.pdf (606.41 kB); 20151218142550.pdf (2.91 MB); 20151218142652.pdf (968.64 kB); 20151218142734.pdf (1.81 MB)

Dear Rhonda,

Attached please find scanned copies of the completed FMLA certification forms and other accompanying documentation. SMU has received employee notice for all of these listed FMLA-qualifying events. As we discussed, I will send you a memo or note reminding you of the employee notice that SMU has received regarding these events. I have closely checked the regulations and confirmed that, as a matter of law, all of these events meet the legal requirements for FMLA protection. They are all either serious health conditions (hospital stays or illnesses requiring continuous care) and or they are chronic serious health conditions. Most of them are prima facie black letter law examples of FMLA qualifying events warranting FMLA certification and protection.

I am aware that the University has a deadline for confirming certification. The University is also obligated to ask follow-up questions to make a good faith effort to clarify any information, if needed.

I want to thank you in advance for your time and effort in ensuring that all of these events are certified. I am not asking you to certify any events just as a matter of record or documentation. I request that all of these events be certified so that I may document to the university the ways in which my health and that of my immediate family warranted job protection. The failure or refusal to certify any of these events would cause me irreparable harm. I have not signed any HIPPA forms waiving my right or that of my family members to the upmost confidentiality and protection of our medical records. If I chose on my own accord to share any of this information with colleagues, I will let you know.

There are four scanned files attached.

Redacted -Medical and personal information removed. Full copy is available for the Court if needed.

Adams Dec. No. 6

SMU_Butler_00000241

FMLA Leave Approval and Intermittent Leave Approval for Cheryl Nelson Butler

From: "/o=smu/ou=dallas/cn=staff/cn=radams"
To: "Collins, Jennifer" <jmc@mail.smu.edu>
Date: Wed, 23 Dec 2015 14:46:37 -0600

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 w 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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Adams Dec. No. 7

Cheryl Nelson Butler FMLA Certification

From: "Adams, Rhonda (BENEFITS)" </o=smu/ou=dallas/cn=staff/cn=radams">
To: "Collins, Jennifer" <jmc@mail.smu.edu>
Date: Thu, 21 Jan 2016 11:01:09 -0600

Dean Collins,

Cheryl Nelson Butler's continuous FMLA Leave for the first part of the Spring 2016 semester has been approved. She has been notified accordingly this morning via email. This leave is for January 6, 2016 to February 17, 2016. I have requested Cheryl to create an Out of Office message for her Outlook account and direct any questions to you.

Rhonda Ice Adams
Sr. 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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Adams Dec. No. 8

FMLA

From: "Adams, Rhonda (BENEFITS)" <"o=smu/ou=dallas/cn=staff/cn=radams">
To: "Butler, Cheryl Nelson" <cnbutler@mail.smu.edu>, "Cheryl Butler (cherylbutler2002@gmail.com)" <cherylbutler2002@gmail.com>, cnelsonbutler@aol.com
Date: Tue, 08 Mar 2016 14:37:24 -0600
Attachments: Cheryl Nelson Butler Designation Notice .pdf (137.1 kB)

Cheryl,

I attached the designation notice for FMLA leave from February 18 - April 11, 2016 based on the information provided to us by fax that we received from Victoria Sloan dated March 3, 2016. April 11, 2016 is the end of your 12 weeks of FMLA entitlement for 2016 (as you know, you began this current continuous leave on January 4, 2016). You will not have job-protected FMLA leave for 2016 after this date as you have exhausted your full entitlement.

Rhonda

Rhonda Ice Adams
Sr. 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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-

Adams Dec. No. 9

SMU_Butler_00000530

RE: FMLA

From: "Adams, Rhonda (BENEFITS)" <"/o=smu/ou=dallas/cn=staff/cn=radams">
To: Cheryl Butler <cherylbutler2002@gmail.com>, "Butler, Cheryl Nelson" <cnbutler@mail.smu.edu>
Date: Mon, 02 May 2016 09:15:33 -0500

Cheryl:

This responds to your email of April 29, 2016, regarding the calculation of your FMLA leave for 2016. SMU has not miscalculated your FMLA leave. SMU has provided you with 12 weeks of paid FMLA leave for 2016, the maximum number of weeks required by the FMLA. I am sorry to hear about your husband, but we cannot approve additional FMLA leave.

Perhaps it will be helpful if I again review the prior decisions we have made on the recalculation of leave. You initially contacted me regarding the calculation of your FMLA leave based on your statement that you had actually worked on some of the days that SMU had approved for FMLA leave. That is information SMU would not have known without your informing us and we certainly could not have known it at the time we approved the leave. Because you apprised us that you had graded papers and prepared a tenure appeal on leave days, we recalculated the leave and did not include those days in the FMLA calculations.

On March 25, after SMU had approved FMLA leave that exhausted the 12 weeks of leave you are entitled to in 2016, you asked us to recalculate the leave based on your belief that a class schedule that you had worked out with Dean Collins required us to again recalculate the leave.

On March 28, I informed you that matters that you had worked out with the Dean did not impact the FMLA calculation, and that the 12 weeks of leave SMU had afforded to you in 2016 would expire on April 11. To further assist you in understanding the calculations, I provided you a detailed calendar showing the leave. Based on the FMLA leave calculation you suggested, you would not have any teaching duties, not appear in the classroom at all, would be paid for five days a week, and SMU would only be able to designate one day a week as FMLA leave. That is not how leave is calculated under the FMLA.

Your leave was calculated in accordance with SMU policy and was properly applied to you.

I wish the very best for you and your family.

Rhonda

Rhonda Ice Adams
Sr. Benefits Specialist



radams@smu.edu

O-214-768-2132 F-214-768-2043

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-

Adams Dec. No. 10

SMU_Butler_00000514

2016

Yearly Calendar

Cheryl Nelson Butler - 39329177

January						
Su	Mo	Tu	We	Th	Fr	Sa
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Maternity
Sick
Vacation
Unpaid
Worked

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Adams Dec. No. 11

RE: FMLA Leave

From: "Adams, Rhonda (BENEFITS)" </o=smu/ou=dallas/cn=staff/cn=radams">
To: Cheryl Butler <cherylbutler2002@gmail.com>, "Butler, Cheryl Nelson" <cnbutler@mail.smu.edu>, cnelsonbutler@aol.com
Date: Tue, 23 Feb 2016 16:23:24 -0600

Cheryl,

I received your email from yesterday regarding notice to Dean Collins and the open issues regarding your FMLA leave. This responds to the issues you raised.

SMU procedures require that you submit your FMLA requests or notices to HR. If you do not submit your requests to HR, we cannot properly certify leave. If you fail to follow these procedures, you will not be certified for FMLA leave. You know the procedures because I have informed you of them many times in the past, both orally and in writing. You have my email and fax addresses so I know that you know how to reach me. Please send any FMLA notices, requests or other information regarding your FMLA leave to me. Of course, you may correspond with your Dean on any matter, but sending an FMLA request to her is not in compliance with SMU procedure because she is not an "FMLA decision maker." She cannot certify FMLA leave under SMU procedures. Only HR can do that. Notice to your Dean is not notice to HR.

As you know, we base our certifications on what your doctors certify. The fax from Dr. Wagle said that you can return to work without restrictions. If there is another doctor that believes you should be on FMLA leave after February 17, the last date certified for leave, you need to get that information to us. We just need to know whether you will take further FMLA leave or whether you intend to come back to work. Again, you need to provide this information to HR.

Thank you.

Rhonda

Rhonda Ice Adams
Sr. Benefits Specialist



radams@smu.edu

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Adams Dec. No. 12

SMU_Butler_00000538

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

CHERYL BUTLER,	§	
	§	
Plaintiff,	§	
	§	
v.	§	
	§	
JENNIFER M. COLLINS,	§	
STEVEN CURRALL,	§	CIVIL ACTION NO. 3:18-CV-37-E
JULIE PATTERSON FORRESTER,	§	
HAROLD STANLEY, AND	§	
SOUTHERN METHODIST	§	
UNIVERSITY,	§	
	§	
Defendants.	§	

**DECLARATION OF CAROLYN HERNANDEZ
IN SUPPORT OF DEFENDANTS' MOTION FOR SUMMARY JUDGMENT**

I, Carolyn Hernandez, declare and state as follows:

1. My name is Carolyn Hernandez. I am over 18 years of age, of sound mind, have never been convicted of a felony, and can make this declaration. The facts stated in this declaration are within my personal knowledge and are true and correct.
2. In 2015 through 2016, I served as the Director and ADA/504 Coordinator and Deputy Title IX Coordinator in the Office of Institutional Access and Equity ("IAE") at Defendant Southern Methodist University ("SMU"). I worked at SMU from October 7, 2013 to until December 31, 2016. I am a trained investigator who has conducted investigations into employment claims since 1995. As part of my work in IAE, I conducted investigations brought by SMU employees on employment claims regarding any protected status. Another IAE employee handled claims brought by students but I also assisted in student investigations when needed. I reported to Samantha Thomas ("Thomas"), the Executive

Director of IAE. I conducted investigations on behalf of SMU in 2015 and 2016 when Butler raised allegations of discrimination and retaliation in connection with her denial of tenure in the SMU Dedman School of Law (Law School”), and her seeking leave under the Family Medical Leave Act (“FMLA”) and reasonable accommodations under the Americans with Disabilities Act (“ADA”).

SMU ADA Policy and Reasonable Accommodation Procedures

3. As part of my responsibilities as the ADA/504 Coordinator, I assisted SMU in enforcing its “Needs of Persons with Disabilities” policy, Policy Number 2.4 (“ADA Policy”) under which SMU worked with persons with disabilities to determine reasonable accommodations in the workplace. A true and correct copy of the ADA Policy is attached to this Declaration as part of Exhibit 1 (pages 16539-41). Under the procedures section of the ADA Policy, faculty and staff could initiate the reasonable accommodation process by submitting the request form and documentation of disability to me as the ADA/504 Coordinator. The Employee Documentation of Disability Form (pages 16535-36) and Employee Reasonable Accommodation Request Form (pages 16537-38) are attached in Exhibit 1 (collectively “ADA Forms”). The ADA Policy and accommodation request form inform employees that all requests for reasonable accommodations are to be submitted to the ADA/504 Coordinator and that they should contact IAE with questions.

4. The ADA Policy and ADA Forms were available on SMU’s website to all persons on a 24/7 basis. As a faculty member, the ADA Policy was also available to Professor Butler as it was to all faculty and staff as part of the SMU policy manual. All ADA Forms could be picked up in IAE and Human Resources (“HR”), and IAE and HR representatives were

available during office hours to answer questions regarding SMU's ADA policy, ADA Forms, and how to seek reasonable accommodations from SMU.

SMU Approved Plaintiff's ADA Accommodations; Not SMU Deans and Provosts

5. I was one of the representatives in IAE who approved requests for reasonable accommodations under the ADA. The Dean of the Law School, Interim Provost, and Provost of SMU did not have authority under the ADA Policy to receive or make determinations on reasonable accommodations. Defendant Jennifer Collins, Dean of the SMU Dedman School of Law, Defendant Harold Stanley, SMU Interim Provost in Fall Semester 2015, and Defendant Steven Currall, who became Provost in 2016, had no role in handling any ADA reasonable accommodation requests on behalf of SMU or Professor Butler. I did not provide any information from health care providers related to Professor Butler to Dean Collins or Provosts Stanley and Currall and I did not discuss her submissions or requests, or any medical information related to ADA reasonable accommodations with them. Interim Provost Stanley, Provost Currall, and Dean Collins did not make any ADA determinations on behalf of Professor Butler and I made this clear to Professor Butler throughout the interactive process in which she sought ADA accommodations from IAE - the only SMU office that could approve ADA accommodations.

6. I provided all ADA Forms and the ADA Policy to Professor Butler by email on December 14, 2015. A true and correct copy of the email transmitting those documents to Professor Butler is attached hereto as Exhibit 1 (page 16534). I also personally saw Professor Butler pick up the ADA Forms and ADA Policy from the IAE office on December 14, 2015.

7. Professor Butler first submitted an ADA reasonable accommodation request form to IAE on April 6, 2016, some four months after I initially provided the ADA forms to her in December 2015. IAE had not received an ADA accommodation request from her before this date. I was responsible for reviewing her submissions and the submissions of health care providers on her behalf and for making determinations as to ADA reasonable accommodations for her on behalf of SMU.

8. I approved the following requests for ADA reasonable accommodations for Cheryl Butler during the Spring 2016 semester:

- a. By letter dated April 11, 2016, based on ADA accommodation request paperwork from two health care providers, I approved certain ADA reasonable accommodations. These requests covered accommodations for the classroom such as sitting during lectures and using medicines and devises. Other accommodations were not reasonable and could not be approved such as unlimited preapproved absences for future asthma attacks that had not occurred and possible work schedule reductions for conditions that were not persistent. Accommodations were made based on information provided by her health care provider. A true and correct copy of the letter outlining the details of those accommodations is set forth as Exhibit 2.
- b. Leave from classroom teaching and all SMU work from April 14-27, 2016. A true and correct copy of my email of April 27, 2016, notifying Dean Collins of the ADA accommodation is attached hereto as Exhibit 3. A copy of this letter was also provided to Professor Butler.

- c. Leave from classroom teaching and all SMU work April 27 through May 20, 2016. True and correct copies of emails dated May 19, 2016 and May 27, 2016 are attached hereto as Exhibit 4.

9. SMU granted ADA reasonable accommodations to Professor Butler such that she was not required to teach or to be in the classroom during the Spring 2016 semester after her 12 weeks of leave under the FMLA was exhausted on April 11, 2016. She was on leave from the classroom as a reasonable accommodation under the ADA from April 14, 2016, to May 20, 2016, the date the Spring 2016 semester ended. SMU paid Professor Butler her full salary during the entire period she was on out of the classroom as an ADA reasonable accommodation during the Spring 2016 semester.

10. I notified Professor Butler as early as December 14, 2015 that ADA requests were to be made to IAE. (Exhibit 1). Despite providing the procedures for ADA accommodations submissions, Professor Butler sometimes refused to follow these well-documented procedures at various times in the Spring 2016 semester, and she tried to direct ADA inquires to Dean Collins. This usually occurred when Professor Butler disagreed with an accommodation request handled by IAE. Dean Collins would forward such ADA inquiries from Professor Butler to me, and I would remind Professor Butler that only IAE could determine ADA reasonable accommodations on behalf of SMU. An example of me reminding Professor Butler of the need to follow ADA Policy procedures on seeking ADA accommodations is set forth in my email to her dated May 11, 2016 and attached to this Declaration as Exhibit 5. I informed Professor Butler that she had continued to text Dean Collins and had refused to send ADA accommodation requests to me, even though she knew that I had handled her ADA accommodation requests in the past, the ADA Policy and forms

identified me as the ADA representative, and she had my email address and telephone number and had communicated with me regarding prior ADA accommodation requests. I asked her not to send information to Dean Collins and reminded her that decisions on absences from the classroom were approved by HR or IAE, not by Dean Collins.

11. Throughout the time I reviewed or approved reasonable accommodation requests for Professor Butler in 2015 and 2106, Professor Butler insisted that Provost Interim Stanley and Dean Collins could approve or had approved ADA accommodations for her. Dean Collins and Provost Stanley had not assisted me in approving ADA accommodation requests for Professor Butler and could not do so. I am the only SMU representative to make any ADA determinations on behalf of Professor Butler in 2016. SMU did not make any ADA accommodations for her in 2015 because she did not seek accommodations until April 2016.

12. Ms. Thomas and I interviewed Provost Stanley and learned that he had denied Professor Butler's request to extend her tenure consideration and had referred her to HR for questions related to the FMLA and ADA. Provost Stanley had not considered any ADA accommodation request from Professor Butler - only a request to delay her tenure consideration. If an employee went to HR with questions regarding benefits, as Provost Stanley had informed Professor Butler, the employee would be directed to the proper office for handling. I referred inquiries regarding the FMLA to Rhonda Adams ("Adams") in HR, when appropriate, and Ms. Adams referred employee ADA issues to me that were properly handled by IAE. Ms. Adams and I frequently coordinated so that SMU employees had the full range of resources available to them on FMLA and ADA matters.

**No Discrimination or Retaliation in Tenure Denial
and Plaintiff's Refusal to Cooperate in Investigation**

13. Professor Butler spoke to IAE representatives Thomas and me on September 10, 2015 regarding allegations of possible discrimination related to her tenure. Professor Butler did not wish to file a complaint of discrimination but had concerns about possible discrimination and being treated fairly in the tenure process. Because Ms. Butler did not wish to file a complaint, we set a new meeting time with her and provided her with copies of the SMU policy against discrimination, Title IX policy, racial and ethnic harassment policy, and the University Grievance & Policy & Procedure. Professor Butler cancelled the meeting and never followed up.

14. While Professor Butler never filed a formal complaint of discrimination related to tenure, her emails sent to me during the Spring 2016 semester made clear that she was complaining of discrimination and retaliation in connection with her denial of tenure. I investigated her allegations of discrimination and retaliation related to the denial of tenure. As part of that investigation, I interviewed the following persons:

Jennifer Collins, Dean of Dedman School of Law	February 24, 2016
Professor Roy Anderson, Chair, Butler Tenure Committee	November 4, 2016
Professor Anthony Colangelo Member, Butler Tenure Committee	December 8, 2016
Professor Mary Spector Member, Butler Tenure Committee	December 14, 2016
Professor George Martinez Member, First Butler Tenure Committee	December 16, 2016
Professor Beth Thornberg Member, First Butler Tenure Committee	December 19, 2016
Professor Joe Norton Chair, First Butler Tenure Committee	December 20, 2016

These SMU representatives were fully cooperative and answered my questions regarding their participation in the tenure decision.

15. I began my investigation into Professor Butler's concerns regarding tenure denial in February 2016 but delayed the investigation because she was either on FMLA leave or out of the classroom as an ADA reasonable accommodation during the Spring 2016 semester. Professor Butler asked that IAE halt the investigation during the Spring 2016 semester. IAE accommodated her request, and I did not commence the investigation again until the Fall 2016 semester.

16. After the Spring 2016 semester, I spent months trying to obtain Professor Butler's cooperation in the investigation. Because Professor Butler was not teaching on campus and was in Houston and not Dallas, I frequently called her, offered to conduct interviews with her by SKYPE, offered to interview her over the telephone, and offered to accommodate any special timing issues she might have. Professor Butler refused to participate in the investigation of the allegations she had made regarding her tenure denial. She did not return my telephone calls even though I called her on many occasions and left messages. On some occasions, her voice mailbox was full.

17. After I had spoken to Dean Collins and members of her tenure committees, I made follow-up calls to Professor Butler to obtain her position on information I had obtained during the investigation. It is my standard practice to conduct such follow-up interviews or calls in conducting investigations. Professor Butler still did not return my calls and she did not participate in the follow-up investigation. I made repeated attempts to contact Professor Butler before finalizing the IAE investigation on her tenure denial. She sent allegations via email to IAE and IAE investigated. Professor Butler did not allow me to

interview her even after she was no longer on FLMA leave or out of the classroom as a ADA reasonable accommodation. Both her FLMA leave, and reasonable accommodations had ended after the Spring 2016 Semester.

18. I issued my findings on my investigation into Professor Butler's allegations on the denial of tenure on December 22, 2016. A true and correct copy of the letter that I sent to Professor Butler outlining my findings is attached hereto as Exhibit 6. My investigation uncovered no evidence of discrimination or retaliation in the tenure process. Professor Butler had been denied tenure based on her failure to meet the "high quality" teaching standard of SMU. While Professor Butler had appealed the faculty vote denying tenure which occurred in January 2016, she did not appeal the tenure recommendation of the Provost of May 5, 2016. When I finalized my investigation, the tenure decision was final, with no appeal from Professor Butler. The details of my findings regarding all allegations made by Professor Butler related to discrimination and retaliation in her negative tenure decision are discussed in Exhibit 6. Race was not a factor in any of the tenure decisions that I reviewed as part of my investigation. I also informed Professor Butler that even though she had refused to participate in the investigation - despite requests for telephone interviews, SKYPE, or other special accommodations as she needed them- I had investigated each of the allegations she had raised.

IAE Investigation Showed No Discrimination in FMLA and ADA Determinations

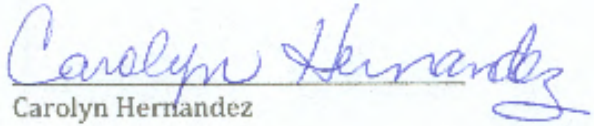
19. Professor Butler made allegations to IAE that there had been violations of SMU policy in the Fall 2015 and Spring 2016 semesters in making determinations related to her requests under the FMLA and ADA. I conducted the investigation into these allegations. My investigation revealed that SMU had not violated any policy in making determinations on

reasonable accommodations under the ADA or in providing leave under the FMLA. SMU had granted Professor Butler 12 weeks of FMLA leave in the 2016 calendar year. That was the maximum amount of leave available for the 2016 calendar year. SMU had also awarded her the maximum number of days she was eligible to receive after she submitted her FMLA forms on December 18, 2015 for the 2015 year. After Professor Butler submitted an ADA accommodation request for the first time in April 2016, SMU granted reasonable accommodations which allowed Professor Butler to be out of the classroom from the time her FMLA leave ended on April 11, 2015 until the end of the Spring 2016 semester. She did not teach or personally appear in an SMU classroom at any time during the Spring 2016 Semester.

20. My investigation also revealed no basis for Professor Butler's allegations that Dean Collins or Provost Stanley had denied her ADA accommodations or had failed to provide her with information on how to obtain an ADA accommodation. Provost Stanley had not made any decision on an accommodation request for Professor Butler; he has referred her to HR so that any concerns she had related to the ADA or FMLA could be properly determined. HR could properly advise SMU employees on all benefits. A true and correct copy of the letter that I sent to Professor Butler dated November 10, 2016 outlining my findings with respect to the FMLA and ADA allegations is attached to this Declaration as Exhibit 7 (Exhibit 17086-88). Exhibit 7 also noted that Professor Butler had refused to participate in the investigation even though I had invited her to do so by telephone and SYKPE. I considered all information that Professor Butler had provided me by email in conducting my investigation.

I declare under penalty of perjury that the facts stated in this declaration are true and correct. The exhibits attached to this Declaration are all true and correct and incorporated herein for all purposes.

Executed in Smith County, State of Texas, on November 17, 2021.


Carolyn Hernandez

Hernandez, Carolyn (IAE)

From: Hernandez, Carolyn (IAE)
Sent: Monday, December 14, 2015 8:10 AM
To: Butler, Cheryl Nelson
Subject: ADA Forms and Policy
Attachments: FormEmpDocDisability112010.pdf; FormEmpReasAccom022010.pdf; 2.4.NEEDS OF PERSONS WITH DISABILITIES POLICY 2.4.pdf

Hi Cheryl,

I know you said you were dropping by to pick up these forms, but I thought I would e-mail them to you in case something came up. One form needs to be completed by your doctor and the other one is for you to complete. You can e-mail them to me or put them in the mail.

Carolyn

Carolyn Hernandez, Ph.D.
Director for Access & Equity,
Deputy Title IX Coordinator & ADA/504 Coordinator
Institutional Access & Equity
Southern Methodist University
P.O. Box 750200
Dallas, TX 75275-0200
(Office) 214-768-3601
(Fax) 214-768-2101
E-Mail: hernandez@smu.edu
www.smu.edu/iae



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, _____, 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: _____ Date: _____

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):

What is the duration of the impairment? _____

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):

Please describe any medications and/or corrective measures that have been prescribed or recommended and their effect:

Please describe how the impairment impacts the essential functions of the employee's position:

Please identify any accommodations that could assist the employee in performing the essential functions:

Physician's Name: _____ Phone: _____

Fax: _____ License Number: _____ State: _____

Type of Practice: _____ Email: _____

Address: _____

Physician's Signature: _____ Date: _____

**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: _____ SMU ID No: _____

Job Title: _____ Department: _____

Campus Phone: _____ Home/Cell Phone: _____

Campus Address: _____

Home Address: _____

E-Mail: _____ Supervisor: _____

Classification: Full-time Part-time Faculty Staff

Please describe the nature of your impairment: _____

What is the duration of your impairment? _____

Please describe the essential functions of your position: _____

Please explain how your condition is impacting the essential functions of your position:

Please describe the reasonable accommodation you are requesting and how will it help you perform the essential functions of your position:

Name of Treating Physician: _____

Physician's Address: _____

Physician's Phone: _____

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: _____ Date: _____

Submit forms to: Office of Institutional Access and Equity, Perkins Administration Building - Room 204.
For questions or assistance, please call 214-768-3601.

SOUTHERN METHODIST UNIVERSITY
POLICIES AND PROCEDURES

EEO/INSTITUTIONAL ACCESS AND EQUITY

POLICY NUMBER: 2.4

REVISED AS OF: August 4, 2011

NEEDS OF PERSONS WITH DISABILITIES

- A. It is the policy of the University to encourage qualified persons with disabilities to participate in University activities, programs, services and as applicants for admission or employment. The University will not discriminate or deny access or participation in its activities, programs, services, admissions or employment on the basis of an individual's disability, on the need to provide reasonable accommodation for a disabled person, on a perception of disability, or because an individual is affiliated with a disabled person.
- B. A person with a disability is one who has a physical or mental impairment that substantially limits a "major life activity," has a record of such an impairment, or is regarded as having such an impairment. With respect to employment, a qualified person with a disability is one who, "with or without reasonable accommodation, can perform the essential functions of the 'job' in question." A qualified student or applicant with a disability is one who, with or without reasonable accommodation, meets the academic standards requisite to admission to the University's educational program.
- C. This policy shall guide facility design, modification, and location of classes and events, whether permanent or temporary, to assure accessibility and accommodation in integrated settings appropriate to the needs of disabled persons. Where structural design may prevent accessibility, alternative methods or relocation may be employed to secure a more appropriate accessible and integrated site.
- D. A qualified individual with a disability is one who does not pose a "direct threat" which is defined as a significant risk of substantial harm to the health and safety of himself/herself or others that cannot be eliminated or reduced by a reasonable accommodation.
- E. The University shall endeavor to provide special teaching aids, services and integrated reasonable accommodations to assure that qualified disabled persons are not deprived of opportunity or access to participate in classes, activities, programs, services and employment.
- F. In accordance with applicable laws, the University shall provide reasonable accommodations to an otherwise qualified individual with a disability, unless such accommodation imposes an undue hardship on the institution. An undue hardship is an action that requires significant difficulty or expense or fundamentally alters the nature of a service or program. A reasonable accommodation is a modification or adjustment to the work or academic environment that enables a qualified individual with a disability to enjoy equal employment and academic opportunities. Examples of reasonable accommodations may include making existing facilities accessible, job restructuring, modified work schedules, reassignment to a vacant position, acquisition or modification of equipment, and the provision of qualified readers and interpreters. During the accommodation process, the preference of the individual with a disability will be considered, but the University reserves the right to make the final selection of the accommodation that best serves the needs of the individual and the University. All

SMU_Butler_00016539

determinations of reasonable accommodation will be made on a case-by-case basis.

- G. Any work alterations made outside of the procedures outlined in this policy will not be considered reasonable accommodations under applicable laws. Temporary, non-chronic impairments of short duration with little or no residual effects (such as the common cold, seasonal or common influenza, a sprained joint, minor or non-chronic gastrointestinal disorders, or a broken bone that is expected to heal completely) usually will not substantially limit a major life activity and be considered a disability.

PROGRAM RESPONSIBILITY

- A. The President has overall responsibility for development and implementation of appropriate plans and programs relevant to this policy. The Office of Institutional Access and Equity shall serve as the coordinator to assist in the development and implementation of University policy and programs regarding the needs of persons with disabilities.
- B. The Provost and Vice Presidents are responsible for development and implementation of plans and programs in their areas of responsibility and for monitoring compliance.
- C. Deans, directors and managers are responsible for development, implementation, and/or monitoring of plans and programs in their areas. These include, but are not limited to, Personnel, Institutional Access and Equity, Admissions, Student Life, academic departments and other academic units.
- D. The Office of Institutional Access and Equity should be consulted as needed during the accommodation process to ensure compliance with this policy. The Director of Institutional Access and Equity has been designated as the University's ADA/504 Coordinator and is available to the University community for guidance and counseling.
- E. Departments are responsible for funding and coordinating reasonable accommodations for persons with disabilities in their areas.

PROCEDURES FOR REQUESTING REASONABLE ACCOMMODATIONS

A. Employees (Faculty and Staff)

Employees initiate the reasonable accommodation process by submitting an Employee Reasonable Accommodation Request Form and an Employee Documentation of Disability Form to the ADA/504 Coordinator in the Office of Institutional Access and Equity. The Documentation of Disability Form must be completed by an appropriate and qualified health care professional and be submitted before accommodations can be considered. Once the ADA/504 Coordinator establishes that the employee is a qualified individual with a disability, he/she will engage in an interactive process with the employee and his/her supervisor to identify and discuss potential reasonable accommodations that will enable the individual to perform the essential functions of the position or to enjoy equal benefits and privileges of employment.

In compliance with applicable laws and regulations, medical documents relating to a request for a reasonable accommodation will be treated as confidential and will not be included in the employee's personnel file. Such records will only be shared with University employees on a need-to-know basis in order to implement the accommodation or with others as required by law.

B. Applicants for Employment

Applicants for employment should contact the Department of Human Resources to request

reasonable accommodations during the hiring process.

C. Students

Students should contact the Office of Services for Students with Disabilities to request reasonable accommodations. To receive academic accommodations, students must register with the Office and submit appropriate medical documentation.

D. Visitors

Departments are responsible for providing reasonable accommodations for visitors with disabilities. Visitors to the University who require an accommodation should contact the department sponsoring the program or service that brings the visitor to campus.

COMPLAINTS

Violations of this policy or complaints of discrimination on the basis of a disability can be filed with the Office of Institutional Access and Equity. Complaints will be resolved in accordance with the procedures outlined in the University Grievance Policy and Procedure, Policy 2.8.

For Your Information

From: "Hernandez, Carolyn (IAE)" <hernandez@mail.smu.edu>
To: "Collins, Jennifer" <jmc@mail.smu.edu>
Date: Tue, 12 Apr 2016 14:19:19 -0500
Attachments: Butler, Cheryl.ADA Ltr.4.12.16.pdf (154.44 kB)

Dean Collins,

Please see attached letter.

Let me know if you have any questions.

Carolyn

Carolyn Hernandez, Ph.D.
Director for Access & Equity,
Deputy Title IX Coordinator & ADA/504 Coordinator
Institutional Access & Equity
Southern Methodist University
P.O. Box 750200
Dallas, TX 75275-0200
(Office) 214-768-3601
(Fax) 214-768-2101
E-Mail: hernandez@smu.edu
www.smu.edu/iae



Hernandez Dec. No. 2

SMU_Butler_00005237



SMU

SOUTHERN METHODIST UNIVERSITY

April 12, 2016

Sent via E-Mail to jmc@smu.edu

Dean Collins,

Professor Cheryl Butler sent you a series of emails related to accommodations she sought under the Americans with Disabilities Act (“ADA”). Thank you for sending the emails to IAE for evaluation. We have responded to Professor Butler and wanted to update you so that you are aware of any potential impact to her schedule.

Professor Butler sought the following accommodations to assist her in performing the essential functions of her job, including: (1) the ability to sit during lectures; (2) access to a nebulizer machine at work for asthma flare-ups; (3) a clean work environment to prevent triggers (such as dust and dogs); (4) excused absences during asthma attacks; (5) a reduced work schedule if the symptoms become persistent; and (6) the ability to extend evaluation periods based on her symptoms.

IAE responded as follows to each of the requests:

1. **Sitting During Lectures**

Professor Butler has the freedom to lecture as she sees fit so there is no need for such an accommodation under the ADA. As SMU has never dictated whether a professor stands or sits during any lecture, this remains within the discretion of the professor. Of course, we informed Professor Butler that she may sit during lectures if this will help with her asthma.

2. **Access to Medicine and Nebulizer**

Professor Butler did not need to request as an ADA accommodation access to her medicine (including her nebulizer machine). That is totally within her control and discretion. But, in the interest of clarity, IAE informed Professor Butler that she may use her medication as needed, including the nebulizer machine, just as any other professor may do without requesting an accommodation.

3. **Clean Work Environment**

SMU uses cleaning services on a daily basis to ensure that a clean environment is always present for our students, faculty, and staff. We have asked Professor Butler to notify us of any special needs she may have for cleaning. If she presents such information to you, please forward it to us, if necessary.

Office of Institutional Access and Equity
PO Box 750200 Dallas TX 75275-0200
214-768-3601 Fax 214-768-3557

Confidential

SMU_Butler_00005238

Dean Jennifer Collins
Page 2
April 12, 2016

4. Absences During Asthma Attacks

As to the suggested accommodation of excused absences during asthma attacks, we will work with Professor Butler to extend sick days, but cannot approve unlimited excused absences in advance, especially without any indication as to the frequency. We have asked Professor Butler to inform us if her asthma attacks become so frequent that normal use of sick days does not sufficiently resolve this request.

5. Reduced Work Schedule for Persistent Symptoms

IAE did not prospectively approve Professor Butler's requested ADA accommodation of a reduced work schedule in the event her asthma symptoms become persistent. Any accommodation must be based on her current condition. Professor Butler may discuss a future accommodation with IAE if her condition becomes persistent.

6. Extended Evaluation Period

IAE did not approve Professor Butler's prospective request for an ADA accommodation of extended evaluation periods if her asthma undermines her ability to lecture. Any accommodation must be based on her current condition. Professor Butler may discuss a future accommodation with IAE if her condition becomes persistent.

Professor Butler also sought an accommodation for reasons covered by her current leave under the Family Medical Leave Act. At this time, Professor Butler has not provided IAE with sufficient information to make an assessment of whether she is disabled and what accommodation may be reasonable. Of course, SMU will engage in the interactive process with Professor Butler if she submits such information to us for consideration. Her deadline for submitting that information is April 15. IAE will promptly evaluate her request and apprise you of any reasonable accommodation IAE approves.

Please call should you have any questions.

Sincerely,



Carolyn Hernandez, Ph.D.
Director Institutional Access and Equity
ADA/504 Coordinator

Hernandez, Carolyn (IAE)

From: Hernandez, Carolyn (IAE)
Sent: Wednesday, April 27, 2016 5:14 PM
To: Collins, Jennifer
Subject: ADA Leave

Dean Collins,

As we previously informed you, IAE had approved leave as an ADA accommodation for Professor Cheryl Butler for the period from April 14 to 27, 2016. Professor Butler was to return to work on April 28, but has notified IAE that she has doctor's appointments that will prevent her from assuming her teaching duties on April 28 and May 2. We have informed Professor Butler that she will need to provide us with a doctor's statement as this is not pre-approved leave. We also have asked Professor Butler to let us know when she plans to resume her teaching responsibilities. We will inform you if these days are later approved as leave.

Carolyn

Carolyn Hernandez, Ph.D.
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Hernandez, Carolyn (IAE)

From: Hernandez, Carolyn (IAE)
Sent: Thursday, May 19, 2016 11:49 AM
To: Collins, Jennifer
Subject: Update

Dean Collins

I just wanted to let you know that Cheryl has provided information from her doctors that covers her being out through May 18, 2016. I will let you know if there are any further developments.

Carolyn

Carolyn Hernandez, Ph.D.
Director for Access & Equity,
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Hernandez Dec. No. 4

Hernandez, Carolyn (IAE)

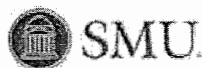
From: Hernandez, Carolyn (IAE)
Sent: Friday, May 27, 2016 11:42 AM
To: Collins, Jennifer
Subject: Butler ADA Accommodation

Dean Collins,

Based on the most recent documentation submitted by Professor Butler, SMU has granted her leave from her classroom duties through May 20, 2016 as a reasonable accommodation under the ADA. Please call should you have any questions.

Carolyn

Carolyn Hernandez, Ph.D.
Director for Access & Equity,
Deputy Title IX Coordinator & ADA/504 Coordinator
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Info Regarding Absences & Info from Dr.

To: "Butler, Cheryl Nelson" <cnbutler@mail.smu.edu>, Cheryl Butler
<cherylbutler2002@gmail.com>

Date: Wed, 11 May 2016 15:37:39 -0500

:

Cheryl,

Dean Collins has sent me several texts from you concerning your absences and information you plan to have your doctor send her. DO NOT SEND any further information to the Dean. I have asked you to send such information to me yet you continue to refuse to do so. Just as you email and text the Dean, you can email me. Decisions concerning your excused absences will be handled by HR or IAE, not by Dean Collins.

Please send such information to me at 214-768-2101.

Carolyn

Carolyn Hernandez, Ph.D.
Director for Access & Equity,
Deputy Title IX Coordinator & ADA/504 Coordinator
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Hernandez Dec. No. 5

SMU_Butler_00009653



SMU.

December 22, 2016

Via email

cnbutler@smu.edu

cherylbutler2002@gmail.com

Professor Cheryl Butler
3341 Charleston Street
Houston, TX 77021-1126

**Re: *Conclusions on Investigation of Complaint of Discrimination
And Retaliation in Tenure Denial***

Dear Professor Butler:

As you know, the Office of Institutional Access and Equity ("IAE") has been investigating your complaint of discrimination and retaliation related to the decision by SMU to not grant you tenure. Specifically, you informed IAE that you suffered race discrimination and retaliation and a violation of your civil rights in connection with the tenure decision. You specifically mentioned actions and statements by Jennifer Collins, Dean of the Dedman School of Law, Harold Stanley, Interim Provost in the Fall of 2015 who undertook certain actions related to your request for a tenure extension, and Steven Currall, Provost and Vice President for Academic Affairs.

You have provided IAE with emails regarding the basis for your complaint that there was discrimination and retaliation in your tenure decision. Those emails identified persons such as Dean Collins, Interim Provost Stanley and Provost Currall and members of your first and second tenure committees as persons who made statements or engaged in actions which you believe support your concerns. Although we previously notified you of our findings regarding possible violations of SMU policy as it relates to the Americans with Disabilities Act (ADA) and Family Medical Leave Act. (FMLA), we again considered those allegations in connection with this tenure complaint.

After fully investigating your allegations, IAE has discovered no evidence of discrimination and retaliation in the tenure decision. Our investigation shows that such comments were never made. Throughout the process, you were apprised of the sole basis for the tenure decision, which was that your teaching did not meet the University's standards for tenure and promotion. You appealed the initial tenure recommendation from the law faculty to Dean Collins who reviewed your appeal and again informed you (on May 4, 2016) of the basis for the denial of the appeal and for her recommendation to the Provost that you not be granted tenure. The basis was your failure to meet the University's teaching standards. Your race was not a factor. The Provost informed you of his decision on your tenure on May 5, 2016 and you did not appeal.

Office of Institutional Access and Equity
Southern Methodist University PO Box 750200 Dallas TX 75275-0200
214-768-3601 Fax 214-768-3557

Hernandez Dec. No. 6

SMU_Butler_00009417

We fully investigated all negative statements regarding race that you attributed to members of the University's administration and faculty regarding your tenure and your allegation that administrators and other faculty had made general comments that SMU had no intention of granting you tenure because the school does not keep or tolerate professors who complain of discrimination. Again, our investigation has shown that these comments were never made by administrators or faculty.

Similarly, the decision related to your request for an extension was made in accordance with SMU policy, with Interim Provost Stanley directing you to HR for assistance with your ADA and FMLA concerns. Our investigation shows that once you sought leave, SMU granted you FMLA leave in 2015 and the maximum amount of FMLA leave allowable in the 2016 calendar year. When your FMLA leave ran out, SMU granted you reasonable accommodations under the ADA. You were out of the classroom (and did not teach) for the entire spring 2016 semester on leave or as an accommodation. Thus, after fully looking at all the facts available to us, we have concluded that there was no violation of SMU's policies against discrimination and retaliation.

While we fully investigated your allegations of discrimination and retaliation, it is important to note that you did not participate in the investigation beyond sending emails to us. I sought to schedule interviews with you on numerous occasions, but you either did not respond or told me that you would not participate. After I learned that you were not on campus in the classroom, I offered to conduct interviews by telephone or by SKYPE and at your convenience and at times which accommodated any special timing issues you might have, but you still refused to participate. I offered to have another IAE representative sit in on the interviews to allay any concerns you might have about talking to a single investigator, but you did not participate. After interviews revealed no basis for your allegations, and the allegations were denied, you continued to refuse to speak with me, so I could conduct follow-up questions. Our investigations are thorough, but we always encourage the complainant to participate and provide us with additional feedback as we are conducting an investigation.

As you know, SMU policy prevents retaliation against anyone who files a complaint. Please notify IAE immediately if you have any concerns regarding retaliation. Please direct any future questions you might have regarding any aspect of this investigation directly to Samantha Thomas, Executive Director and Title IX Coordinator in IAE. Thank you for your consideration.

Sincerely,



Carolyn Hernandez, Ph.D.
Director and ADA/504 Coordinator
Deputy Title IX Coordinator
Office of Institutional Access and Equity

Hernandez, Carolyn (IAE)

From: Hernandez, Carolyn (IAE)
Sent: Thursday, November 10, 2016 2:33 PM
To: 'cherylbutler2002@gmail.com'; Butler, Cheryl Nelson
Subject: ADA/FMLA Determination Letter
Attachments: Cheryl Butler ADA FMLA Determination Ltr.pdf

Cheryl,

Please see the attached ADA/FMLA determination letter.

Carolyn

Carolyn Hernandez, Ph.D.
Director for Access & Equity,
Deputy Title IX Coordinator & ADA/504 Coordinator
Institutional Access & Equity
Southern Methodist University
P.O. Box 750200
Dallas, TX 75275-0200
(Office) 214-768-3601
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E-Mail: hernandez@smu.edu
www.smu.edu/iae





November 10, 2016

Via email
cnbutler@smu.edu
cherylbutler2002@gmail.com

Professor Cheryl Butler
3341 Charleston Street
Houston, TX 77021-1126

Re: Conclusions on Investigation on ADA and FMLA Allegations

Dear Professor Butler:

This letter is to inform you of the outcome of the investigation with respect to your allegations of violations of SMU policy related to the Americans with Disabilities Act (ADA) and the Family Medical Leave Act (FMLA).

With respect to the ADA, you informed the Office of Institutional Access and Equity (IAE) that Jennifer Collins, Dean of the Law School, and Harold Stanley, interim Provost and Dean of Academic Affairs at the time of your allegations, violated your ADA rights by failing to grant a reasonable accommodation under the ADA and by denying you the opportunity to apply for a reasonable accommodation. You claim that because the Dean and Provost did not refer you to IAE, you did not know how to obtain an accommodation and did not know where to go for assistance with the ADA.

You also raised concerns that Rhonda Adams, Senior Benefits Specialist in Human Resources (HR), failed to properly designate leave you sought as FMLA qualified leave. SMU has investigated your allegations related to the ADA and FMLA and has concluded that violations of SMU policy did not occur.

While IAE considered many facts in reaching its conclusion, we note that you had been apprised of your ADA rights throughout the period you claim you were not, and well in advance of the date you first submitted your ADA accommodation request forms to IAE on April 6, 2016. The *Needs of Persons with Disabilities Policy 2.4* was available in SMU's online policy manual and on the IAE website. As a professor, you have had access to this Policy at all times. You also received training on discrimination and harassment that included this policy as recent as August 6, 2015. In his November 10, 2015 letter to you, Provost Stanley referred you to HR regarding leave under the FMLA and reasonable accommodations under the ADA. Beth Thornburg, Sr. Associate Dean for Academic Affairs for the Law School, sent you Policy 2.4 on November 19, 2015, including a link to the accommodation request forms. Ms. Adams sent you contact information for the ADA/504 Coordinator and the relevant forms on November 23 and November 24, 2015. Finally, I sent you Policy 2.4 and the forms on December 11, 2015, and you personally picked up copies of these documents from my office on December 14, 2015.

Office of Institutional Access and Equity
Southern Methodist University PO Box 750200 Dallas TX 75275-0200
214-768-3601 Fax 214-768-3557

SMU_Butler_00017087

Sheri Starkey, Associate Vice President and Chief Human Resource Officer, reviewed your FMLA allegations, including your requests for FMLA leave and the determinations made by Ms. Adams, and concluded that SMU appropriately administered your requests for leave under the FMLA.

Finally, you had raised concerns regarding the time it took to complete this investigation. IAE investigated your allegations several months ago, but delayed issuing its conclusions because you were not in the classroom and had asked to speak with an investigator again before IAE finalized the investigation. Although we offered possible interview dates and times, in person, by SKYPE, and by telephone, you did not respond or did not provide dates when we asked you to respond. Please know that we fully considered all of the information you provided to IAE.

Of course, you are protected from retaliation which is considered a separate violation of University policy. Please notify me immediately if you feel that adverse action was taken against you for filing a complaint with our office. As I informed you in my November 3 email, IAE is separately investigating your claims of retaliation and discrimination related to your tenure denial and is aware of the concerns you have raised.

Sincerely,

A handwritten signature in cursive script that reads "Carolyn Hernandez". The signature is written in black ink and is positioned above the typed name and title.

Carolyn Hernandez, Ph.D.
Director for Access & Equity,
Deputy Title IX Coordinator & ADA/504
Coordinator
Institutional Access & Equity

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

CHERYL BUTLER *
 PLAINTIFF, *

VS. * NO. 3:18-CV-0037-e

JENNIFER P. COLLINS, *
 STEVEN CURRALL, JULIE *
 PATTERSON FORRESTER, *
 HAROLD STANLEY, AND *
 SOUTHERN METHODIST *
 UNIVERSITY *
 DEFENDANTS. *

 ORAL DEPOSITION OF
 SAMANTHA THOMAS
 OCTOBER 25, 2021

ANSWERS AND DEPOSITION of SAMANTHA THOMAS, a witness produced on behalf of the Plaintiff, taken in the above styled and numbered cause on the 25th day of October, 2021, from 9:08 a.m. to 12:27 p.m. before Kathy Bradford, a Certified Court Reporter in and for the State of Texas, reported by machine shorthand, with all parties and the witness appearing remotely pursuant to the the Emergency Order Regarding the COVID-19 State of disaster and the provisions stated on the record or attached hereto in accordance with the Federal Rules.

I N D E X		
EXHIBIT	PAGE	
NUMBER	IDENTIFIED	
1 -- Nondiscrimination, Affirmative Action and Equal Opportunity Policy	48	
2 -- SMU Universal Policy Manual, Needs of Persons with Disabilities	48	
3 -- FLMA Policy	50	
4 -- Certification Form for FMLA Leave	65	
5 -- Letter Dated April 11, 2016, Related to Accommodations Granted to Professor Butler	55	
6 -- Meeting Invitation sent by Harold Stanley	57	
7 -- E-mail String	58	
8 -- November 10, 2015, Letter From Harold Stanley to Professor Butler	59	
9 -- February 11, 2016, Handwritten Notes	62	
10 -- E-mail from Sheri Starkey to Samantha Thomas	67	
11 -- E-mail sent from Samantha Thomas to Ms. Butler and to Dean Collins	69	
12 -- Handwritten Notes dated 9/10/15	77	
13 -- September 10, 2015, Typewritten Notes	77	
14 -- Chain of E-mails	78	
15 -- E-mail dated September 23rd	80	
16 -- Handwritten Notes dated	84	

1 A P P E A R A N C E S
 2 FOR THE PLAINTIFF:
 3 Andrew Dunlap
 4 ANDREW DUNLAP ATTORNEYS, PLLC
 5 6565 N. MacArthur Boulevard
 6 Suite 140
 7 Irving, Texas 75039
 8 Phone: 972/807-6357
 9 andrew@dunlapattorneys.com
 10 FOR THE DEFENDANTS:
 11 Kim Askew
 12 Mallory Biblo
 13 DLA PIPER LLP (US)
 14 1900 North Pearl Street
 15 Suite 2200
 16 Dallas, Texas 75201-4629
 17 Phone: 214/743-4506
 18 kim.askew@dlapiper.com
 19 ALSO PRESENT:
 20 Cheryl Butler
 21 PLAINTIFF

REPORTER'S NOTE

Quotation marks are used for clarity and do not necessarily reflect a direct quote.

17 -- Typewritten Notes titled Roy Anderson dated November 4, 2016	85	
18 -- Handwritten Notes dated December 8, 2016, Anthony Colangelo	85	
19 -- Typewritten Notes dated December 14, 2016, Mary Spector	86	
20 -- Handwritten Notes dated December 16, 2016, George Martinez	86	
21 -- Handwritten Notes dated December 19, 2016, Beth Thornburg	87	
22 -- Handwritten Notes dated December 20, 2016, Joe Nelson	87	
23 -- December 22, 2016, letter to Professor Cheryl Butler	89	
24 -- November 10, 2016, E-mail from Carolyn Hernandez	94	
25 -- December 2, 2016, E-mail from Samantha Thomas	100	
26 -- 12/22/17 Handwritten Notes	102	
27 -- 1/12/17 Handwritten Notes	104	
28 -- 1/13/17 Handwritten Notes	105	
29 -- January 26, 2017, E-mail from Samantha Thomas to Cheryl Butler	107	
30 -- January 26, 2017, Letter from Samantha Thomas to Cheryl Butler	113	
EXAMINATION	PAGE	
BY MR. DUNLAP	5	
BY MS. ASKEW	43	

1 PROCEEDINGS
2 (Exhibits 1-30 Premarked)
3 (Witness cautioned and sworn)
4 COURT REPORTER: My name is Kathy
5 Bradford, Certified Shorthand Reporter, Number 3082.
6 I am located in Collin County, Texas. The witness is
7 located in Dallas County, Texas. The case is styled
8 Cheryl Butler vs. Jennifer P. Collins, et al, Civil
9 Action Number 3:18-CV-0037-E.
10 Will everyone present please state their
11 appearance and agreements for the record.
12 MR. DUNLAP: Andrew Dunlap, attorney for
13 the plaintiff, Cheryl Butler. I'm in Irving, Texas.
14 MS. ASKEW: Kim Askew, attorney for the
15 defendants in this case, Jennifer Collins, Steven
16 Currall, Julie Forrester, Harold Stanley, and Southern
17 Methodist University. And I'm here with my associate,
18 Mallory Biblo. I'm in Dallas, Texas.
19 MS. BUTLER: Do you need a statement
20 from me, as well, Kathy?
21 MR. DUNLAP: No.
22 SAMANTHA THOMAS,
23 having been first duly sworn, testified as follows:
24 EXAMINATION
25 BY MR. DUNLAP:

1 THE WITNESS: I'm listening through
2 that. Thank you.
3 A. Could you repeat that, please?
4 Q. (BY MR. DUNLAP) How long have you been in
5 that position?
6 A. At SMU?
7 Q. Yes.
8 A. Sixteen years.
9 Q. Okay. And what is your educational
10 background?
11 A. I have a bachelor's degree in business
12 administration and a master's degree in public
13 administration.
14 Q. Okay. Did you ever serve in, like, city
15 government with your --
16 A. No.
17 Q. And tell me what your duties are in that
18 position. What's your role?
19 A. I direct the office of institutional access
20 and equity. And we have various responsibilities.
21 One of our primary is handling and concerns and
22 complaints of discrimination. We're a four person
23 office, and I oversee three staff members.
24 Q. Do you conduct investigations of complaints
25 of discrimination?

1 Q. Ms. Thomas, I represent Cheryl Butler. She's
2 attending the conference for a moment today. Do you
3 see her on the screen?
4 A. Yes.
5 Q. And you know her from previous dealings; is
6 that correct?
7 A. Yes.
8 Q. And what is your position at SMU?
9 A. I'm the executive director, executive
10 assistant to the president, and Title IX coordinator
11 in the office of institutional access and equity.
12 Q. Okay. And how long have you been in that
13 position?
14 A. Excuse me. I couldn't hear you.
15 Q. How long have you been --
16 THE WITNESS: I can't -- I can't hear
17 through this. I hear him through this.
18 MS. ASKEW: So you're listening through
19 here.
20 THE WITNESS: I'm sorry. I can't hear
21 through here, but I can hear through that.
22 MS. ASKEW: Can you hear it now?
23 THE WITNESS: Now through this.
24 MS. ASKEW: You're listening through
25 that.

1 A. I do.
2 Q. Okay. And when you say you do, do you
3 actually interview people, collect evidence, make
4 findings and file reports?
5 A. Yes.
6 Q. Okay. Do you ever use outside personnel to
7 assist you in those reports?
8 A. Not my office. I work with legal affairs, if
9 necessary, at SMU.
10 Q. Okay. So who would be the people that would
11 complain and you would conduct investigations on?
12 A. Can you repeat that question?
13 Q. Okay. So you handle complaints filed by
14 what -- what people?
15 A. Okay. Our office handles complaints filed by
16 faculty, staff, students, could be a visitor
17 applicant.
18 Q. Okay. What about employees other than --
19 A. Yes, faculty and staff.
20 Q. Okay. So -- all right. And what -- do you
21 handle complaints under Title VII?
22 A. Yes.
23 Q. And Title IX?
24 A. Yes.
25 Q. Okay. Isn't it true that in the spring of

1 **MS. ASKEW: Same objection to the extent**
2 **it's based on a document not before the witness and**
3 **documents that have not been previously produced in**
4 **the lawsuit by Ms. Butler.**
5 **MR. DUNLAP: I'm not -- I'm not asking**
6 **for a document. I'm asking her from her memory.**
7 Q. (BY MR. DUNLAP) Do you remember that?
8 **A. Could you repeat the question, please?**
9 Q. Do you remember whether or not SMU was
10 investigated by the United States Department of
11 Education for failing to perform investigations of the
12 Title IX? Do you remember that? Did y'all ever have
13 any problems with the Department of Education
14 regarding that?
15 **A. I know we were investigated.**
16 Q. Do you remember that letter?
17 **MS. ASKEW: Objection to the extent**
18 **you're asking the witness about documents that have**
19 **not been produced in the litigation and a document**
20 **that is not before her.**
21 **MR. DUNLAP: I understand that,**
22 **Ms. Askew. I'm asking her did she recall. I did not**
23 **mention a document. I asked her --**
24 **MS. ASKEW: You did.**
25 **MR. DUNLAP: -- did she recall. I'm**

1 **going to ask her again. I'm asking her does she**
2 **recall --**
3 Q. (BY MR. DUNLAP) Ms. Thomas, do you recall
4 the university being contacted by the Department of
5 Education regarding your Title IX investigations? Do
6 you recall that?
7 **A. I know we were contacted regarding some**
8 **complaints.**
9 Q. Okay. Okay. Do you remember what the
10 conclusion of that communication was?
11 **A. We did sign a resolution agreement with the**
12 **Department of Education.**
13 Q. Okay. And what was that -- what did that
14 resolution agreement require SMU to do?
15 **A. It had various stipulations of things that we**
16 **had to do. For example, we had to modify our**
17 **nondiscrimination statement, make some modifications**
18 **to our Title IX policy. Those, I recall.**
19 Q. Okay. So let's talk about Professor Butler.
20 Do you recall if Professor Butler made a complaint of
21 harassment in the spring of 2014?
22 **A. No.**
23 Q. Do you recall any complaints of harassment by
24 Ms. Butler during your tenure?
25 **A. I recall a concern she brought to the**

1 **attention of our office but not that she filed a**
2 **complaint.**
3 Q. Has Professor Butler ever filed any written
4 **complaints with your office?**
5 **A. No.**
6 Q. Have you investigated any complaints of
7 **discrimination by Professor Butler?**
8 **A. My office investigated some concerns that she**
9 **raised in e-mails that she sent.**
10 Q. What's the difference between a concern and a
11 **complaint?**
12 **A. A concern is when someone comes to our office**
13 **or provides information regarding unfairness or**
14 **potential discrimination; but a complaint is when a**
15 **formal document is filed with our office. And I don't**
16 **recall Dr. Butler filing any formal complaints or**
17 **cooperating when we did try to look into her**
18 **allegations.**
19 Q. Okay. So how many concerns did she file with
20 **your office?**
21 **A. She raised concerns in e-mails about filing**
22 **directly with our office.**
23 Q. Did she ever allege that you failed to
24 investigate her claim of race and gender harassment
25 during September 2014?

1 **A. September 2014?**
2 Q. Uh-huh.
3 **A. My recollection is the first meeting that my**
4 **office had with Dr. Butler was September of 2015.**
5 Q. Okay. So you don't recall any e-mails or
6 **complaints or concerns prior to 2015?**
7 **A. No.**
8 Q. What documents did you review in preparation
9 of this deposition? Did you look at anything? Did
10 you do a scan of your communications to see what
11 involvement you had with Professor Butler?
12 **MS. ASKEW: Objection. Compound nature**
13 **of the question, but she can answer that. That's**
14 **fine.**
15 **A. Yes.**
16 Q. (BY MR. DUNLAP) And what did you review?
17 **A. Certain documents from the file.**
18 Q. Okay. Which file is that?
19 **A. A Cheryl Butler file in our office.**
20 Q. And how is that file developed?
21 **COURT REPORTER: Developed?**
22 **MR. DUNLAP: Yes.**
23 Q. (BY MR. DUNLAP) How did you develop it?
24 **A. How is the file developed?**
25 Q. Yes. How did you compile that file?

1 the ADA?
2 **A. Me personally or my office?**
3 Q. Yes, we'll start with that.
4 **A. I know my office received a request for an**
5 **accommodation from her.**
6 Q. Okay. All right. And is that -- does your
7 office -- office handle those?
8 **A. Yes.**
9 Q. Okay. And what -- what did you do with that
10 request? What steps did you take?
11 **A. Well, that request went to the director of my**
12 **office, Carolyn Hernandez, who serves as the ADA/504**
13 **coordinator.**
14 Q. Okay. And what steps did she take?
15 **A. She --**
16 **MS. ASKEW: I'm sorry. Mr. Dunlap, I**
17 **did not hear your question.**
18 **MR. DUNLAP: She said -- I asked her**
19 **if -- what happened to Professor Butler's request.**
20 **She said she referred it to Ms. Hernandez.**
21 **MS. ASKEW: Right.**
22 **MR. DUNLAP: And the next question was**
23 **what did Ms. Hernandez do.**
24 **MS. ASKEW: Thank you.**
25 **A. Review the documentation and conduct an**

1 **analysis to determine if we can provide reasonable**
2 **accommodations.**
3 Q. (BY MR. DUNLAP) Okay. And what does that
4 process -- I mean, how do you do that?
5 **A. We have a policy, a person's with**
6 **disabilities policy, that we share with employees.**
7 **And it describes a reasonable accommodation process.**
8 **There are two forms involved.**
9 **One form is completed by the employee.**
10 **The other form is initially signed by the employee and**
11 **then completed by the employee's physician and**
12 **submitted to our office. And then (indiscernible)**
13 **coordinator reviews that information --**
14 **COURT REPORTER: I'm sorry? The what?**
15 **A. -- and follows up with the employee.**
16 **COURT REPORTER: I'm sorry. The -- I --**
17 **A. -- and/or the manager to tell me if we can**
18 **provide the accomodation.**
19 **MR. DUNLAP: Okay. We're getting**
20 **feedback. Are you -- is your microphone --**
21 **COURT REPORTER: I missed a word. I was**
22 **trying to get her to stop, and I was talking the whole**
23 **time she was --**
24 **THE WITNESS: I'm sorry.**
25 **COURT REPORTER: "One form is completed**

1 **by the employee. The other form is initially signed**
2 **by the employee and then completed by the employee's**
3 **physician and submitted to our office. And then the**
4 **other" --**
5 **MR. DUNLAP: Something like a 504**
6 **coordinator.**
7 **COURT REPORTER: That's it. That was**
8 **the word. Thank you.**
9 Q. (BY MR. DUNLAP) So who makes the decision as
10 to whether an accomodation is given or not?
11 **A. That would be Carolyn Hernandez.**
12 Q. Okay. And so SMU doesn't use a third party?
13 **A. No.**
14 Q. Okay. And so what criteria does
15 Ms. Hernandez rely on to either grant or deny the
16 accommodation?
17 **A. She would review the documentation to**
18 **determine if the employee has -- a disability under**
19 **our policies; and if so, is it a reasonable**
20 **accommodation we can provide that doesn't cause an**
21 **undue hardship.**
22 Q. Okay. Is Ms. Hernandez like a nurse, or does
23 she have some type of medical background?
24 **A. No.**
25 Q. So they look at the -- what the doctor says

1 the individual can or cannot do, correct?
2 **A. Yes, it's part of it.**
3 Q. Okay. And then the university must decide,
4 well, we can accommodate that individual; and then
5 they make a determination whether they can accommodate
6 that individual and that person can still do their
7 job, correct?
8 **A. Can you repeat that?**
9 Q. So the physician says the professor can only
10 teach for 15 minutes -- this is just a hypothetical.
11 Kim may object to this.
12 **MS. ASKEW: Yes.**
13 **MR. DUNLAP: This is just for**
14 **illustration. This is just for illustration.**
15 **MS. ASKEW: I will listen, and I will**
16 **determine at that time.**
17 **MR. DUNLAP: If you'll just let me**
18 **answer -- ask the question.**
19 Q. (BY MR. DUNLAP) So if the physician says the
20 professor can only stand on her feet for 15 minutes at
21 a time, then the university has to make a decision as
22 to whether that she could actually do her job with
23 that limitation, correct?
24 **A. I'm sorry. I'm confused by your question.**
25 Q. Okay.

1 **A. Because it's -- there's -- there's lots of**
2 **information we have to look at. And a part of it is**
3 **the recommendation by the physician.**
4 Q. Okay. So did you get a recommendation from
5 Professor Butler's physician?
6 **A. I believe Dr. Hernandez did.**
7 Q. Okay. And you referred to Dr. Hernandez. Is
8 that an academic doctorate that she has?
9 **A. Yes. She has a Ph.D.**
10 Q. Okay. So she did get a recommendation from
11 Professor Butler's physician; is that correct?
12 **A. I assume she did.**
13 Q. Okay. Was any accommodations granted?
14 **A. I believe so.**
15 Q. Okay. Was your office involved in -- in
16 the -- any aspect of Professor Butler's tenure
17 process?
18 **A. No.**
19 Q. Did you receive any complaints or concerns or
20 communications from Professor Butler about her tenure
21 process?
22 **A. I believe so, yes.**
23 Q. Okay. What did you get from her?
24 **A. I believe she sent some e-mails with some**
25 **concerns she had about the tenure process.**

1 Q. Okay. Did she allege any discrimination?
2 **A. I believe so.**
3 Q. Okay. And what did your -- what did your
4 office do with respect to that?
5 **A. I know that Dr. Hernandez conducted an**
6 **investigation to the extent possible since a formal**
7 **complaint wasn't filed. And I don't -- I believe -- I**
8 **don't recall exactly, but I don't think Dr. Butler**
9 **participated actively in that investigation.**
10 Q. Okay. So isn't that a requirement when you
11 investigate, to talk potential witnesses and parties?
12 **A. Can you repeat that?**
13 Q. When you are conducting an investigation,
14 isn't it true that you are required to do your due
15 diligence by contacting and interviewing all potential
16 witnesses and parties?
17 **A. Yes, yes.**
18 Q. But this was not done in this case, correct?
19 **MS. ASKEW: Objection. Mischaracterizes**
20 **her testimony.**
21 Q. (BY MR. DUNLAP) You can go ahead and ask --
22 answer the question.
23 **A. Could you repeat it, please?**
24 Q. You said -- or I guess you said that you
25 didn't talk to Professor Butler about this, her

1 complaint. You can --
2 **A. Could you repeat that?**
3 Q. Okay. You conducted an investigation
4 regarding the tenure process, correct?
5 **MS. ASKEW: Objection. Mischaracterizes**
6 **her prior testimony.**
7 **A. Dr. Hernandez conducted an investigation.**
8 Q. (BY MR. DUNLAP) I'm sorry. I'm sorry.
9 Okay -- your office. Okay. And in that
10 investigation, you did not talk to Professor Butler;
11 is that correct?
12 **A. We attempted to talk to Professor Butler.**
13 Q. Okay. You attempted to. Okay. What
14 prevented you from talking to her?
15 **A. She -- my recollection is she normally wasn't**
16 **available. She couldn't meet with us. She often**
17 **didn't return phone calls, respond to e-mails.**
18 Q. Okay. And what was the conclusion of your
19 investigation?
20 **A. The conclusion of the investigation was that**
21 **there was no policy violation, no finding of**
22 **discrimination is my recollection.**
23 Q. Did you receive -- I know that you testified
24 that you got a recommendation from her physician with
25 respect to her request for accommodation. In that,

1 did you get any medical documentation showing that the
2 professor was treated by doctors for depression or
3 anxiety during the summer of 2015 and the fall of
4 2015?
5 **A. I don't recall exactly her disability.**
6 Q. Okay. But you -- it would be in your
7 records, right?
8 **A. Could you repeat that, please?**
9 Q. Any -- you would have a record of whatever
10 medical that the doctor submitted, correct?
11 **A. Yes.**
12 **MS. ASKEW: And those have been produced**
13 **in the litigation.**
14 **MR. DUNLAP: Thank you.**
15 Q. (BY MR. DUNLAP) And let me see here. Did
16 you ever have any communications with Professor Butler
17 in the fall of 2015 regarding her FMLA?
18 **A. No, I didn't, not that I recall. We don't**
19 **handle FMLA.**
20 Q. You don't handle -- did you have -- did she
21 complain to you about the FMLA process at any time?
22 **A. Yes.**
23 Q. Okay. And what action did you take as a
24 result of that?
25 **A. I recall personally looking into some**

1 **concerns she had about Dr. Hernandez and -- sorry --**
2 **Rhonda -- Rhonda Adams who handles FMLA, if she**
3 **handled her FMLA request appropriately.**

4 Q. Okay. And did you make any findings or did
5 you report your findings to anyone regarding this?

6 **A. Yes, I responded back to Dr. Butler that I**
7 **didn't see -- I didn't have any information from her**
8 **to show that either Dr. Hernandez or Rhonda Adams**
9 **didn't appropriately bolster the ADA accomodation**
10 **process or the FMLA process.**

11 Q. Did you have any interaction with the provost
12 regarding her tenure, her complaints regarding her
13 tenure process?

14 **A. I did not. And I don't -- I don't know that**
15 **Carolyn did or not.**

16 Q. Okay. Did you ever have -- as a result of
17 your dealings with Professor Butler, did you ever have
18 an interview with Professor Weaver?

19 **A. No.**

20 Q. Okay. Did you ever -- are you aware that
21 Professor Butler gave SMU actual notice that her
22 husband was hospitalized during the spring of 2014?

23 **A. I don't recall.**

24 Q. Okay. Did you ever have any communications
25 with Associate Dean Thornburg regarding Professor

1 Butler's FMLA leave? Did you ever talk to the -- or
2 have any interaction with the associate dean regarding
3 that?

4 **A. I don't believe so.**

5 Q. Do you know -- is it true that Professor
6 Butler told Dean Collins she wanted to take FMLA leave
7 due to her husband being sick?

8 **A. I don't know.**

9 Q. Okay. And so you don't have -- you just do
10 the -- I need to, you know, understand.

11 **A. Uh-huh.**

12 Q. You don't handle FMLA? That's not a process
13 that you handle?

14 **A. (Shaking head from side to side.)**

15 Q. Okay.

16 **A. No, that's handled by human resources.**

17 Q. Okay. Human resources. Do you -- but you
18 handle FMLA complaints, correct?

19 **A. No.**

20 Q. If somebody complained about being denied
21 FMLA, that would not be in your department?

22 **A. No.**

23 Q. Okay. And let me see here. So Rhonda Adams
24 is the FMLA coordinator; is that correct?

25 **A. Yes.**

1 Q. Did you ever have any communications with
2 Ms. Adams or Dr. Adams?

3 **A. Yes.**

4 Q. Okay. And what was the gist of that
5 communication?

6 **A. I remember talking to her when I was**
7 **conducting my investigation about some of the concerns**
8 **that Dr. Butler had about the FMLA. The other thing I**
9 **directly remember was I think there was a concern that**
10 **the dean was -- that Rhonda Adams had made comments**
11 **that the dean was making the decisions regarding FMLA.**
12 **And she said that's inaccurate.**

13 Q. Okay. So that's what Rhonda said, that
14 that --

15 **A. Yes.**

16 Q. -- was inaccurate? Okay. Are you aware of
17 whether there have been faculty members at the law
18 school who have had their tenure delayed or their --
19 who have delayed their tenure vote due to an FMLA
20 qualifying event?

21 **A. No, I'm not aware of that.**

22 Q. Okay. As part of your investigation into
23 discrimination in the tenure process, did you find out
24 whether the law school granted other professors they
25 delayed or adjusted tenure review timelines based on

1 an FMLA event?

2 **A. I'm not aware of that.**

3 Q. In your folder or your file regarding
4 Professor Butler, is there an e-mail on/or about
5 September 15, 2015, from Professor Butler in which he
6 tells Dean Collins that she suffered from depression?

7 **A. I don't know if there is or not.**

8 Q. Okay. And do you know if it would be a
9 violation of the SMU policy to put a professor up for
10 tenure and promotion while the professor is suffering
11 from depression?

12 **A. Would you repeat that, please?**

13 Q. If you know, is it a violation of SMU policy
14 to consider a professor for tenure and promotion while
15 that professor is suffering from depression?

16 **A. I don't know if that's a violation or not.**

17 Q. Okay. And so in the process of your
18 investigations, are you required to review and
19 understand SMU -- various SMU policies?

20 **A. Yes.**

21 Q. Okay. So would it be a violation of SMU
22 policy if a professor gives notice that she's
23 suffering from asthma and wants to delay evaluation of
24 her promotion or tenure on that basis?

25 **MS. ASKEW: Objection. You're asking**

1 tenure and they complain that it is a violation of
2 their protected status?
3 **A. If they file a complaint with our office --**
4 Q. Okay.
5 **A. -- then we would investigate the complaint.**
6 Q. Did Professor Butler do that?
7 **A. Could you repeat the question?**
8 Q. I said, did Professor Butler file a complaint
9 with your office on her --
10 **A. No.**
11 Q. -- tenure?
12 **COURT REPORTER: I'm sorry. I didn't**
13 **hear the last part of your question.**
14 **MR. DUNLAP: Based on her protected**
15 **status.**
16 **A. Again, I -- I said no because, to me, I know**
17 **she raised concerns; but she didn't actively**
18 **participate in an investigation. So we attempted to**
19 **look into it to the extent possible.**
20 Q. (BY MR. DUNLAP) So she never alleged or
21 complained to you that she felt discriminated in the
22 process?
23 **MS. ASKEW: Objection. Mischaracterizes**
24 **her prior testimony.**
25 **A. She raised allegations. She didn't**

1 **participate actively in the investigation.**
2 Q. (BY MR. DUNLAP) Was there a reason why she
3 didn't?
4 **A. You would have to ask her.**
5 Q. Other than the allegations that she raised,
6 did you ever interview her regarding those
7 allegations?
8 **A. We tried to. I believe Dr. Hernandez tried**
9 **to interview her; but she never responded, didn't**
10 **participate, wasn't available, and wouldn't answer any**
11 **questions.**
12 Q. Do you know whether at that time that she
13 would -- that she raised these questions whether she
14 was on medical leave or not?
15 **A. I don't recall.**
16 Q. So if she was on leave -- on FMLA leave while
17 you were trying to conduct this investigation,
18 wouldn't you have to wait until after she was able to
19 return to work to continue your investigation?
20 **A. Would you repeat that?**
21 Q. If she was home or off work based on family
22 leave, isn't it true that you would have to wait until
23 she returned to continue your investigation?
24 **A. I think that would be up to the employee. If**
25 **the employee wanted to participate while they're out,**

1 **that's up to them. If they would not, we would wait.**
2 Q. Okay. And SMU bylaws state that a professor
3 has three weeks to appeal on an adverse decision by
4 the dean. However, SMU deprived Professor Butler of
5 those three weeks to appeal; isn't that true?
6 **MS. ASKEW: Objection. Lack of**
7 **foundation.**
8 Q. (BY MR. DUNLAP) Do you know if that is true,
9 that SMU bylaws state that a professor has three weeks
10 to appeal an adverse decision by the dean?
11 **A. I don't know.**
12 **MR. DUNLAP: I'm finished.**
13 **MS. ASKEW: Thank you Andrew. We are**
14 **going to have some questions. There was an e-mail**
15 **sent to you which has the documents which we are going**
16 **to use in the deposition. I believe it came from**
17 **Sherry Faulkner, who is -- who sent you the documents.**
18 **MR. DUNLAP: Yeah, I did see those in my**
19 **e-mail. I'll open my --**
20 **MS. ASKEW: Great.**
21 **MR. DUNLAP: I'll open them up.**
22 **MS. ASKEW: Is it okay to begin?**
23 **MR. DUNLAP: Yes, ma'am. It's your**
24 **witness.**
25 **EXAMINATION**

1 **BY MS. ASKEW:**
2 Q. Good morning, Ms. Thomas. Would you state
3 your title again?
4 **A. Yes, the executive director -- executive**
5 **assistant to president and Title IX coordinator in**
6 **SMU's office of institutional access and equity.**
7 Q. Would you explain to us what the office of
8 institutional access and equity is at SMU?
9 **A. Yes, we're the university's equal opportunity**
10 **and affirmative action office. We have various**
11 **functions. One of our primary functions is handling**
12 **concerns and complaints of discrimination.**
13 Q. Did you have this position in 2015 and 2016?
14 **A. Yes, I did.**
15 Q. Had you met the plaintiff in this lawsuit,
16 Cheryl Butler?
17 **A. Yes.**
18 Q. And do you have personal knowledge of her
19 interactions with IAE during this 2015, 2016, time
20 period?
21 **A. Yes.**
22 Q. I think you told us you have held your
23 position as the executive director over IAE for some
24 16 years?
25 **A. I've been in that office for 16 years. I've**

1 **been in this role now about eight years.**
2 Q. You were the executive director at the time
3 of the events involving the plaintiff, Cheryl Butler?
4 **A. Yes.**
5 Q. And just so we're clear in the deposition,
6 when we talk about IAE, that is the acronym for the
7 office of institutional access and equity at SMU?
8 **A. Yes.**
9 Q. Now, does IAE maintain policies and
10 procedures against discrimination?
11 **A. Yes.**
12 Q. How about retaliation? Are there policies
13 and procedures against retaliation at SMU?
14 **A. Yes.**
15 Q. If there are complaints of discrimination,
16 retaliation, or form of harassment involving protected
17 status, does IAE investigate them?
18 **A. Yes.**
19 Q. Do you personally conduct investigations from
20 (indiscernible)?
21 **A. Yes.**
22 **COURT REPORTER: I'm sorry? The audio**
23 **is --**
24 **MR. DUNLAP: Yeah, we're getting the**
25 **feedback, and you may have to -- I don't know. You**

1 **might have to put her in another room on a separate**
2 **computer. It's just a lot of echoing.**
3 **MS. ASKEW: Okay. Yeah, because I**
4 **really -- it's always important -- give us a second to**
5 **logistically work through this.**
6 **MR. DUNLAP: No problem.**
7 **MS. ASKEW: We want everybody to be able**
8 **to hear.**
9 **MR. DUNLAP: Thank you.**
10 **COURT REPORTER: So off the record?**
11 **MS. ASKEW: Off the record.**
12 **(Recess.)**
13 Q. (BY MS. ASKEW) Now, you testified,
14 Ms. Thomas, that IAE handled some concerns of
15 discrimination that Cheryl Butler raised sometime in
16 2015?
17 **A. Yes.**
18 Q. Were you personally involved in some of the
19 investigation related to the handling of those
20 concerns that were raised by Ms. Butler?
21 **A. Yes.**
22 Q. Would you just generally describe for us how
23 you were involved?
24 **A. I was involved in the initial meeting that**
25 **was held with Professor Butler in September of 2015**

1 **and then also looking at some concerns that she had**
2 **about the investigation that Dr. Hernandez conducted**
3 **and some concerns about how Rhonda Adams handled her**
4 **FMLA claims.**
5 Q. You told us that Rhonda Adams actually works
6 in HR at SMU?
7 **A. Yes.**
8 Q. Is human resources or HR the entity at SMU
9 that handles requests for leave under the FMLA or the
10 Family Medical Leave Act?
11 **A. Yes.**
12 Q. Did you personally have a conversation with
13 Ms. Butler about her complaint -- her concerns that
14 she raised?
15 **A. Not beyond the one meeting September 15th --**
16 **September of 2015.**
17 Q. Okay. We'll talk about that in just a few
18 minutes. You indicated that your office, IAE,
19 enforces the policies that SMU maintains against
20 discrimination and retaliation; is that correct?
21 **A. Yes.**
22 Q. I'm going to ask you to look at Thomas
23 Exhibit Number 1.
24 **A. Uh-huh.**
25 Q. Do you have that document in front of you?

1 **A. Yes.**
2 Q. This is the nondiscrimination, affirmative
3 action and equal opportunity policy; is that correct?
4 **A. Yes.**
5 Q. Was this the nondiscrimination policy that
6 SMU maintained at the time Ms. Butler raised her
7 concerns?
8 **A. Yes.**
9 Q. Who is the designated entity at SMU that
10 handles any type of concerns or complaints raised
11 regarding discrimination at SMU?
12 **A. Our office, institutional access and equity.**
13 Q. Okay. If you look at Page 2 of Thomas
14 Exhibit 1, does it state that the office of
15 institutional access and equity has been designated to
16 handle these types of complaints?
17 **A. Yes.**
18 Q. Are you generally familiar with that policy
19 in your day-to-day work at SMU?
20 **A. Yes.**
21 Q. You indicated that SMU also maintained a
22 policy regarding a person's -- the needs of persons
23 with disabilities. I'm going to ask you to look at
24 Thomas Exhibit Number 2. Have you seen this policy
25 before?

1 **A. Yes.**
2 Q. Could you please tell the jury what this
3 policy is?
4 **A. This is the university's needs of persons**
5 **with disabilities policy that discusses that we do not**
6 **discriminate on the basis of a disability, and it has**
7 **information on how to request a reasonable**
8 **accommodation on the basis of a disability.**
9 Q. I think in your earlier testimony, you stated
10 that at some point, Professor Butler actually sought a
11 reasonable accommodation under this policy that SMU
12 has?
13 **A. Yes.**
14 Q. Who handles any type of request that -- an
15 employee such as Professor Butler, if they come with a
16 request for an accommodation, who in your office would
17 handle this in the 2015, 2016, time period?
18 **A. Uh-huh, the ADA/504 coordinator, who was**
19 **Dr. Hernandez.**
20 Q. Is that Carolyn Hernandez?
21 **A. Yes.**
22 Q. Did Carolyn Hernandez make the determinations
23 on reasonable accommodations for Cheryl Butler in this
24 case?
25 **A. Yes.**

1 Q. And of course, is that done under your
2 supervision in -- in the IAE office?
3 **A. Yes.**
4 Q. I'm going to ask you to look at Thomas
5 Exhibit Number 3, which is the FMLA policy. Do you
6 have that before you?
7 **A. Yes.**
8 Q. Is this the SMU policy regarding Family
9 Medical Leave Act and other leave?
10 **A. Yes.**
11 Q. Did Ms. Butler seek FMLA leave in this case?
12 **A. I believe she did through HR, human**
13 **resources.**
14 Q. Okay. So your office does not handle FMLA
15 leave requests? That would be done under HR?
16 **A. Yes.**
17 Q. Who was the person in HR at SMU in the 2015,
18 2016, time period that made determination as to
19 whether you could get leave under the FMLA?
20 **A. Rhonda Adams.**
21 Q. Now, under SMU policy, under FMLA, could the
22 provost of the university make a decision on whether
23 to grant or deny FMLA leave?
24 **A. No.**
25 Q. Under SMU FMLA policy, could the dean of any

1 school at SMU make a decision on whether to grant or
2 deny FMLA leave to any employee?
3 **A. No.**
4 Q. Who was the only person at SMU under -- in
5 this time period, 2015, 2016, 2017, who could make
6 determinations on behalf of SMU as to whether an
7 employee was entitled to leave under the FMLA?
8 **A. Rhonda Adams.**
9 Q. To your knowledge, is Rhonda Adams the
10 representative of SMU that made all FMLA
11 determinations on behalf of Plaintiff Butler?
12 **A. Yes.**
13 Q. We talked about Exhibit 2, which was SMU's
14 disability policy. Under that policy, could the
15 provost of SMU make a decision on behalf of SMU on
16 what a reasonable accommodation would be under the
17 ADA?
18 **A. No.**
19 Q. Could the dean of any school at SMU make a
20 decision on whether an employee was entitled to a
21 reasonable accommodation under the ADA?
22 **A. No.**
23 Q. Who was the person at SMU who made
24 determinations as to whether a Professor Butler could
25 obtain reasonable accommodations under the ADA?

1 **A. Carolyn Hernandez.**
2 Q. Now, we have -- and I'm now going to ask you
3 to look at Thomas Exhibit 4, which is the
4 certification form for FMLA leave. Have you seen this
5 document before?
6 **A. I've seen it before.**
7 Q. Yeah. Is this the form that SMU uses when an
8 employee seeks to obtain leave under the FMLA?
9 **A. Yes.**
10 Q. Is this a true and correct copy of this form?
11 **A. Yes.**
12 Q. Now, on the policies and forms that we have
13 just talked about, discrimination, disability, FMLA,
14 are all of those forms available on-line at SMU?
15 **A. Yes.**
16 Q. Is the ADA policy and procedures on-line at
17 SMU?
18 **A. Yes.**
19 Q. Is the nondiscrimination policy available
20 on-line at SMU?
21 **A. Yes.**
22 Q. Is the retaliation -- the policy against
23 retaliation, is that available on-line?
24 **A. Yes.**
25 Q. Are the FMLA policy and the certification

1 forms that an employee must complete, are those
2 available on-line at SMU?
3 **A. I know the policy is. I believe the forms**
4 **are, also; but I know the policy is for sure on-line.**
5 Q. And during the period Ms. Butler was employed
6 at SMU as a professor, were all of those forms on-line
7 at that time?
8 **A. Yes.**
9 Q. Are they available 24/7?
10 **A. Yes.**
11 Q. Do you need any type of special code or
12 password to access them?
13 **A. No.**
14 Q. Are they available -- are these policies
15 available to all members of the public who wanted to
16 look at them?
17 **A. Yes.**
18 Q. You mentioned Carolyn Hernandez as the person
19 who handles all of Ms. Butler's complaints or -- or
20 her requests for accommodations under the ADA. Is she
21 still employed by SMU?
22 **A. No.**
23 Q. Why is she no longer employed by SMU?
24 **A. She retired.**
25 Q. When did she retire?

1 **A. December of 2016, I believe. Yes, December**
2 **of 2016.**
3 Q. So you've mentioned medical information that
4 employees would provide to IAE, Ms. Hernandez, in
5 connection with seeking an accommodation. Did she
6 provide that type of medical information to any third
7 parties?
8 **A. Not that I'm aware of, no.**
9 Q. Once she had made a determination as to what
10 a reasonable accommodation was, was that information
11 provided to people who needed to know at SMU?
12 **A. Could you repeat that, please?**
13 Q. Yes. Once she had made a determination --
14 **A. Oh.**
15 Q. -- as to SMU granting a reasonable
16 accommodation to an --
17 **A. Yes.**
18 Q. -- employee --
19 **A. Yes.**
20 Q. -- would she then provide that to persons at
21 SMU who needed to know?
22 **A. Yes.**
23 Q. Why would the IAE representative who was your
24 504 coordinator, ADA coordinator -- why would she need
25 to provide that information to certain persons at SMU?

1 **A. In order to implement the reasonable**
2 **accommodations that were granted.**
3 Q. So would it be necessary at times to provide,
4 say, the dean of a school at SMU about what a
5 reasonable accommodation was?
6 **A. Yes.**
7 Q. I'm going to ask you to look at Thompson
8 Exhibit Number 5.
9 **A. Uh-huh.**
10 Q. Have you seen this document before?
11 **A. Yes.**
12 Q. Okay. This is a letter dated April 11, 2016,
13 related to accommodations granted to Professor Butler?
14 **A. Yes.**
15 Q. Is this Carolyn Hernandez' signature?
16 **A. Yes.**
17 Q. Is this a copy of what was provided to
18 Ms. Butler notifying her as to what the reasonable
19 accommodations were that SMU was providing?
20 **A. Yes.**
21 Q. Does SMU maintain a true and correct copy of
22 this type of letter in its files?
23 **A. Yes.**
24 Q. Ms. Butler has made allegations in its
25 lawsuit that the provost, interim provost of the

1 university, Harold Stanley, denied an ADA
2 accommodation to her. I want to ask you about those
3 allegations. Does the office of the provost at SMU
4 oversee the enforcement of SMU's policies for -- on
5 disability?
6 **A. No.**
7 Q. Who is the office that does that?
8 **A. Our office of institutional access and**
9 **equity.**
10 Q. Does the provost, in this case, Harold
11 Stanley, did he have the power to divide -- to devise
12 or to decide a reasonable accommodation under the ADA
13 on behalf of Ms. Butler?
14 **A. No.**
15 Q. So if the provost received a request for an
16 ADA reasonable accommodation, how is the provost
17 supposed to handle that under SMU policy?
18 **A. He should refer that to my office. Sometimes**
19 **the deans may refer things, also, to human resources**
20 **who then directs any ADA accommodation requests back**
21 **to institutional access and equity.**
22 Q. So if somebody went to HR with a question on
23 the ADA or reasonable accommodation under the ADA,
24 would HR refer them to IAE, the office of
25 institutional access and equity?

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1 **A. Yes.**
 2 Q. Now, at some point as part of your
 3 investigation here, did you and Carolyn Hernandez talk
 4 to Provost Harold Stanley about the allegation that
 5 Cheryl Butler had made that he had somehow denied a
 6 reasonable accommodation under the ADA?
 7 **A. Yes.**
 8 Q. I'm going to ask you to look at Thomas
 9 Exhibit Number 6.
 10 **A. Uh-huh.**
 11 Q. Do you have that before you?
 12 **A. Yes.**
 13 Q. Could you please tell the jury what Exhibit 6
 14 is?
 15 **A. It is a meeting invitation that was sent by**
 16 **me to Dr. Stanley, Harold Stanley.**
 17 Q. So you sent this to Dr. Stanley?
 18 **A. Yes.**
 19 Q. And in it, you state "I would like to meet
 20 with you regarding Cheryl Butler's allegation that she
 21 requested a tenure extension as a reasonable
 22 accommodation on the basis of a disability." Is that
 23 what you talked about with Provost Stanley when you
 24 met with him?
 25 **A. Yes.**

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1 Q. And you and Carolyn Hernandez, did you both
 2 meet with the provost --
 3 **A. Yes.**
 4 Q. -- to discuss this?
 5 **A. Yes.**
 6 Q. I'm now going to ask you to look at Thomas
 7 Exhibit Number 7. Do you recognize Thomas Exhibit
 8 Number 7?
 9 **A. Yes.**
 10 Q. Would you please tell the jury what Thomas
 11 Exhibit Number 7 is?
 12 **A. It is an e-mail that -- it was a follow-up**
 13 **e-mail after our meeting. And Harold Stanley provided**
 14 **our office with a copy of an e-mail that he received**
 15 **from Professor Butler on November 15th, and he sent**
 16 **that to our office.**
 17 Q. Okay. I'm going to ask you to look at Page 2
 18 of Exhibit Number 7.
 19 **A. Uh-huh.**
 20 Q. It says "Dear Provost Stanley, I write to
 21 request a revision to my employment contract such that
 22 I could be considered for tenure during the next
 23 academic year, 2016, 2017, and preserve a post-review
 24 year of employment." Is this the e-mail that Provost
 25 Stanley sent you that Professor Butler had sent to

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1 him?
 2 **A. Yes.**
 3 Q. Now, did you meet with the provost?
 4 **A. Yes.**
 5 Q. You and Ms. Hernandez?
 6 **A. Yes.**
 7 Q. Would you tell us what you talked about in
 8 your conversation with the provost?
 9 **A. Yes, we asked him about the information and**
 10 **request that he had received from Professor Butler to**
 11 **see if she was alleging that that was a request for a**
 12 **reasonable accommodation on the basis of a disability;**
 13 **but the provost stated that it was not, that she had**
 14 **requested, I believe, additional time for her -- or to**
 15 **be able to extend her tenure clock.**
 16 Q. And what was his response to her request to
 17 extend her tenure clock?
 18 **A. I believe he ended up denying the request.**
 19 Q. Okay. I'm going to ask you to look at Thomas
 20 Exhibit Number 8.
 21 **MR. DUNLAP: Kim?**
 22 **MS. ASKEW: Yeah.**
 23 **MR. DUNLAP: The only thing I got from**
 24 **you was 60 pages of handwritten notes. Is that all**
 25 **that --**

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1 **MS. ASKEW: No, this is an e-mail today.**
 2 **That was -- we sent you an earlier one because --**
 3 **MR. DUNLAP: Okay. So you sent another**
 4 **one today.**
 5 **MS. ASKEW: No, remember, I told you it**
 6 **came from Sherry Faulkner. It is not from me. It is**
 7 **from my assistant.**
 8 **MR. DUNLAP: All right. Thanks.**
 9 **MS. ASKEW: If not, we're happy to send**
 10 **it out again; but I was copied on it. So I know it**
 11 **was sent. Do you need some time?**
 12 **MR. DUNLAP: No, I'm good. Thank you.**
 13 **MS. ASKEW: Okay.**
 14 Q. (BY MS. ASKEW) If you look at Thomas Number
 15 8, a November 10, 2015, letter from Harold Stanley to
 16 Professor Butler --
 17 **A. Uh-huh.**
 18 Q. -- did you discuss this letter that the
 19 provost had sent to Ms. Butler?
 20 **A. Yes, I believe we did.**
 21 Q. And I'm going to ask you to look at the back
 22 page or Page 2 of the letter, Thomas Exhibit 10.
 23 **A. Okay.**
 24 Q. And the statement is made "you allude to
 25 various health concerns which might affect your

1 teaching and ability to submit your tenure materials.
2 Any such concern should be raised with the
3 university's human resources department which can
4 guide you through university procedures. They can
5 answer any questions you may have regarding leave
6 under the Family Medical Leave Act or an accommodation
7 under the Americans with Disabilities Act." Is this
8 the advice that the provost provided to Ms. Butler?
9 **A. Yes.**
10 Q. And it was sent, this letter?
11 **A. Yes.**
12 Q. Do you recall any of the discussion that you
13 had with the provost about him sending her to HR with
14 respect to any ADA or FMLA concerns?
15 **A. Yes, I believe so. I believe he shared that**
16 **with us.**
17 Q. Okay. Do you recall any of the discussion?
18 **A. I believe so. I remember asking questions**
19 **about it; but I believe that's what he did share with**
20 **us, that he sent the individuals to -- or sent her to**
21 **human resources.**
22 Q. Okay. Was that a proper thing to do?
23 **A. Yes. It was because we work closely with the**
24 **office of human resources when it comes to ADA,**
25 **FMLA -- ADA accommodation issues and FMLA. Not every**

1 **dean or supervisor or manager on our campus will**
2 **recall where to send anyone. We will send -- anything**
3 **that comes to us via -- that's for an FMLA request to**
4 **HR. And any ADA accomodation request, HR sends to our**
5 **office.**
6 Q. So if Professor Butler had gone to HR seeking
7 information related to the FMLA or the ADA, would HR
8 had directed -- would it have directed her to the
9 appropriate resource at SMU?
10 **A. Yes.**
11 Q. I'm now going to ask you to look at Thomas
12 Exhibit Number 9.
13 **A. Uh-huh.**
14 Q. These are notes of a February 11, 2016 --
15 Harold Stanley, Carolyn, and Samantha, re: Cheryl
16 Butler. Do you recognize these notes?
17 **A. Yes.**
18 Q. Whose handwriting?
19 **A. Carolyn Hernandez.**
20 Q. Does her signature appear on Thomas
21 Exhibit --
22 **A. Yes.**
23 Q. -- 9?
24 **A. Correct.**
25 Q. Are you aware of Carolyn Hernandez'

1 handwriting after all these years?
2 **A. Yes.**
3 Q. Are these notes maintained in the files of
4 SMU?
5 **A. Yes.**
6 Q. Do these notes correctly and accurately
7 summarize the meeting that you and Carolyn Hernandez
8 had with Harold Stanley, the interim provost, to
9 discuss Ms. Butler's allegation that he had denied her
10 an ADA accommodation?
11 **A. Yes.**
12 Q. As a result of your meeting with the interim
13 provost, Harold Stanley, and discussing Ms. Butler's
14 allegation that he had discriminated against her, did
15 you find any basis for her allegation of ADA
16 discrimination?
17 **A. No.**
18 Q. Had the provost made any determination on an
19 ADA accommodation for Ms. Butler?
20 **A. No.**
21 Q. When that ADA accommodation -- when any
22 decisions were made regarding Ms. Butler in this case,
23 who was the SMU representative who made the decision
24 on whether to grant her an accommodation under the
25 ADA?

1 **A. Carolyn Hernandez.**
2 Q. Is Carolyn Hernandez the person designated
3 under SMU policy to make such determinations regarding
4 requests for accommodations under the ADA?
5 **A. Yes.**
6 Q. Now, Professor Butler also alleges that the
7 dean of the SMU law school, Jennifer Collins, made
8 determinations regarding accommodations under the ADA.
9 Are you aware of Jennifer Collins, the dean of the law
10 school, making any such determinations under the ADA
11 related to Cheryl Butler?
12 **A. No.**
13 Q. Does Dean Collins, the dean of the law
14 school, have the power or authority under SMU policies
15 and procedures to make a decision on a reasonable
16 accommodation under the ADA?
17 **A. No.**
18 Q. If a staff member or a member of her faculty
19 goes to Dean Collins and asks for a -- an
20 accommodation under the ADA, what is Dean Collins to
21 do?
22 **A. She should refer that request to our office,**
23 **institutional access and equity.**
24 Q. And again, Carolyn Hernandez would be the
25 person who would make those decisions?

1 **A. Yes.**
2 Q. And with respect to the FMLA, there are
3 allegations by Professor Butler that Dean Collins made
4 decisions under the FMLA related -- related to her.
5 Did Dean Collins ever make any determinations under
6 the FMLA as they related to Professor Butler?
7 **A. Not that I'm aware of.**
8 Q. Who would -- and who did make the FMLA
9 determinations related to Cheryl Butler at SMU?
10 **A. Rhonda Adams.**
11 Q. Would you tell us what Rhonda Adams' title
12 was?
13 **A. I actually don't recall Rhonda Adams' direct**
14 **title. I know that she oversaw university benefits.**
15 Q. All right.
16 **A. So I believe at one point, she was a benefit**
17 **specialist. And I know that she handled all FMLA**
18 **requests for HR.**
19 Q. I'm going to -- if you go back to Thomas
20 Exhibit Number 4 that you previously looked at --
21 **A. Uh-huh.**
22 Q. -- which is the certification --
23 **A. Yes.**
24 Q. -- form that one must fill out under the
25 FMLA --

1 **A. Uh-huh.**
2 Q. -- when it says employer -- employee --
3 employer name and contact --
4 **A. Yes.**
5 Q. -- Southern Methodist University, who is
6 listed on this form as the person who handles such
7 request for the -- at SMU?
8 **A. Rhonda Adams.**
9 Q. Okay. And her phone number is listed there?
10 **A. Yes.**
11 Q. Is the dean of the law school listed there?
12 **A. No.**
13 Q. Is the provost listed on that form?
14 **A. No.**
15 Q. So if there is a request for any type of FMLA
16 leave, was Rhonda Adams the person who handles such
17 request throughout the period Cheryl Butler was
18 employed by SMU?
19 **A. Yes.**
20 Q. Now, at some point, Ms. Butler made
21 complaints about how Rhonda Adams had handled her
22 request for FMLA leave. Do you recall that?
23 **A. Yes.**
24 Q. Did you investigate or have investigated the
25 allegation by Ms. Butler that she did not believe

1 her -- her leave had been designated properly under
2 the FMLA?
3 **A. Yes.**
4 Q. Okay. Who did you have investigate that
5 issue?
6 **A. I asked Sheri Starkey, who was the associate**
7 **vice president and chief human resources officer, who**
8 **Rhonda -- she oversees Rhonda Adams, to look into the**
9 **matter.**
10 Q. Why did you ask Sheri Starkey to undertake
11 that investigation into whether the FMLA designations
12 had been properly handled?
13 **A. Because Sheri Starkey is the -- is in charge**
14 **of the human resources office. And my office does not**
15 **oversee FMLA.**
16 Q. Did Ms. Starkey report back to you on the
17 findings of her investigation into whether or not the
18 FMLA leave had been properly handled by Ms. --
19 **A. Yes.**
20 Q. -- Adams?
21 **A. Yes.**
22 Q. I'm going to ask you to look at deposition
23 Exhibit Number 10. Would you please tell the jury
24 what this document is?
25 **A. Uh-huh. It's an e-mail from Sheri Starkey to**

1 **me saying that she reviewed Professor Butler's**
2 **discrimination claim and determined that SMU has**
3 **appropriately administered her FMLA claim.**
4 Q. Well, keep reading.
5 **A. And that there is no discrimination and to**
6 **let me know if she needs any additional information.**
7 Q. Is this a true and correct copy of the e-mail
8 that you received from Ms. Starkey confirming the
9 findings of her investigation?
10 **A. Yes.**
11 Q. She found that there was no discrimination
12 that SMU had inappropriately administered this FMLA
13 claim; is that correct?
14 **A. Yes.**
15 Q. Now, how was -- do you recall the nature of
16 Ms. Butler's allegation here? How was the handling of
17 her FMLA claim discrimination against her?
18 **A. Well, in my office, it's not discrimination.**
19 **It's an FMLA issue. In our office, we only handle**
20 **discrimination on a protected basis.**
21 Q. Okay. But you sent it to the office that
22 administered the FMLA?
23 **A. Yes.**
24 Q. Did you treat her allegation of
25 discrimination regarding an FMLA claim seriously?

1 **A. Yes.**
2 **MR. DUNLAP: Object to that. That's**
3 **leading.**
4 Q. (BY MS. ASKEW) Did you at any time ever
5 uncover or Ms. Starkey uncover any evidence suggesting
6 that this FMLA claim made by Ms. Butler had been in
7 any way inappropriately handled?
8 **A. No.**
9 Q. Now, you indicated earlier that you and
10 Carolyn Hernandez met with Ms. Butler?
11 **A. Yes.**
12 Q. Okay. Would you tell us approximately when
13 that occurred?
14 **A. September of 2015, I believe.**
15 Q. Okay. I'm going to ask you to look at Thomas
16 Exhibit 11, which is an e-mail that you sent to
17 Ms. Butler and to Dean Collins. Do you have that
18 before you?
19 **A. Yes.**
20 Q. Is this an e-mail that you prepared in
21 response to one from Cheryl Butler?
22 **A. Yes.**
23 Q. And you state that in her e-mail, Ms. Butler
24 had raised numerous -- and here's your word --
25 'concerns' of harassment and bullying, some of which

1 the address that you gave Ms. Butler in this e-mail?
2 **A. Yes.**
3 Q. You also state "if you ever feel an immediate
4 threat to your health and safety, please call the SMU
5 Police Department by dialing 911 from any campus
6 phone." And then you give another number from a cell
7 phone. Why were you giving this advice or information
8 to Ms. Butler?
9 **A. In one of the e-mails, she had, I believe,**
10 **talked about her safety or had some safety concerns.**
11 **So any time an employee or student has safety**
12 **concerns, we refer them to the police department.**
13 Q. Is that what you did with Ms. Butler here?
14 **A. Yes.**
15 Q. In your discussions with Ms. Butler, did you
16 find that she had -- was subject to any immediate
17 safety concerns?
18 **A. No.**
19 Q. Again, just so the jury is clear, does SMU
20 have a police department?
21 **A. Yes.**
22 Q. Are there offices on campus at all times that
23 can assist student or faculty with any safety
24 concerns?
25 **A. Yes.**

1 you allege are tied to your race and gender. I would
2 like to meet with you to get more information about
3 your concerns that relate to discrimination on a
4 protected basis." Why did you send this e-mail to
5 Ms. Butler?
6 **A. Because she had previously sent an e-mail**
7 **to -- I believe it was to our office or an e-mail to**
8 **the dean with some concerns of race and gender,**
9 **possibly, harassment or discrimination. And so I was**
10 **following up.**
11 **It could have been the dean that**
12 **forwarded this; but I was following so Professor**
13 **Butler knew where to go if she had a claim of**
14 **discrimination on a protected basis so we could talk**
15 **about our policies and procedures if she wished to**
16 **file a complaint.**
17 Q. And you directed her to the web site -- I'm
18 looking at this. Would you tell us what this web site
19 address is?
20 **A. Yes, that's our office web site, the web site**
21 **for the office of institutional access and equity.**
22 **And all of our nondiscrimination policies and**
23 **procedures are listed on our web site.**
24 Q. So all of the policies against discrimination
25 retaliation, they would be listed on the web site at

1 Q. Did you and Carolyn Hernandez meet with
2 Ms. Butler to discuss what you mentioned in Exhibit 11
3 as her concerns?
4 **A. Yes.**
5 Q. Was it a personal meeting?
6 **A. Do you mean in person?**
7 Q. Yes.
8 **A. Yes. I'm sorry. Yes, it was an in-person**
9 **meeting.**
10 Q. In the days of Zoom, personal is -- where did
11 the meeting take place?
12 **A. In my office.**
13 Q. On the SMU campus?
14 **A. Yes.**
15 Q. Who was in attendance?
16 **A. Professor Butler, Carolyn Hernandez, and**
17 **myself.**
18 Q. Would you tell us what you discussed in that
19 meeting?
20 **A. Uh-huh. I would start meetings with sharing**
21 **who we are, what our office does.**
22 Q. And who we are, you mean the office of
23 institutional --
24 **A. Sorry. The office, what we do. We discuss**
25 **policies that may be relevant, share those policies**

1 with the employee, and also discuss confidentiality
2 and retaliation.
3 MS. BUTLER: I'm sorry to interrupt, but
4 I have a question of whether it's appropriate or
5 allowed to take a break.
6 MR. DUNLAP: Yes.
7 MS. BUTLER: Okay. Can we take a break?
8 MR. DUNLAP: Yeah.
9 MS. ASKEW: You know, Ms. Butler, I'm
10 going to let you talk to your lawyer; but your lawyer
11 is the one that give instructions; but for a break,
12 certainly, how long, Mr. Dunlap, do you need?
13 MR. DUNLAP: How much time do you need,
14 Ms. Butler?
15 MS. BUTLER: Can we take ten minutes?
16 MR. DUNLAP: Okay. We'll take ten
17 minutes. We'll be back in ten minutes.
18 (Recess.)
19 MS. ASKEW: Would the court reporter
20 please read back the last question before our break?
21 (Requested material was read back.)
22 Q. (BY MS. ASKEW) Would you continue to tell us
23 what you recall further discussing in the meeting that
24 you had with Carolyn Hernandez and Cheryl Butler in
25 September of 2015?

1 A. Yes. So we discussed policies and
2 procedures, what our office does. I asked Cheryl if
3 she would like to file a complaint against her tenure
4 committee. She said she had concerns about her tenure
5 committee.
6 And she said she did not come to our
7 office to file a complaint, that her dean had sent her
8 to our office. She shared a little bit about the
9 student, Pin Wu, that he had gotten a C, complained, I
10 guess to Beth.
11 He was challenging Professor Butler's
12 qualifications and her exam. She said that she was
13 not going to go up for tenure vote due to certain
14 issues like the student. There was another situation
15 where the student, I guess, complained about Professor
16 Butler violating her rights on the basis of a
17 disability.
18 She mentioned teaching evaluations and
19 being subjected to different requirements for tenure.
20 So she spoke about those issues briefly. And we ended
21 that meeting then. And as I mentioned, she stated she
22 did not wish to file a complaint.
23 My recollection was that she was trying
24 to work things out on a lower level more informally
25 with the dean and said she had a meeting with the

1 dean. And so we decided that we would schedule a
2 meeting, I believe, a week from that date. I have in
3 my notes September 17th, and we met on September 10th.
4 So we were going to meet again and get an update of
5 her conversation with the dean.
6 Q. Okay. Did she ever file a complaint alleging
7 discrimination?
8 A. No.
9 Q. Okay. I'm going to ask you to please look at
10 Thomas 12, Exhibit Thomas 12 --
11 A. Yes.
12 Q. -- which are handwritten notes dated
13 September 10, 2015. It says meeting with Cheryl
14 Butler. Would you please tell the jury what these
15 notes are, if you know?
16 A. Yes, these are my handwritten notes from the
17 meeting.
18 Q. Did you prepare these notes at the time you
19 were speaking with the person?
20 A. Yes.
21 Q. So are these notes that you prepared in the
22 meeting when you and Carolyn Hernandez are meeting
23 with Cheryl Butler regarding her concerns?
24 A. Yes, I take notes during the meeting. And
25 then after the meeting, I will rewrite them because

1 I'm taking quick notes during the meeting as I'm also
2 trying to listen to the employee I'm talking to or the
3 student.
4 Q. Are these true and correct copies of the
5 notes that you prepared contemporaneously with your
6 meeting with Cheryl Butler --
7 A. Yes.
8 Q. -- on September 10, 2015?
9 A. Yes.
10 Q. Now, I'm going to ask you to look at Page 4,
11 which is a discussion regarding Pin Wu.
12 A. Yes.
13 Q. It talks about the C. You mentioned that.
14 In Mr. Dunlap's questions, he asked you whether
15 Ms. Butler had mentioned that there was a student who
16 had engaged in harassing conduct, discriminatory
17 conduct. Did Ms. Butler mention any of those things
18 to you during this meeting?
19 A. Let me look real quick. She did not mention
20 that the student had discriminated against her. It
21 sounds like he was attacking her teaching.
22 Q. Was it within the purview of a student
23 regarding raising concerns about the teaching of a
24 professor at SMU?
25 A. Yes, a student has that right.

1 Q. Now, there were -- Mr. Dunlap's question
2 suggested that there may have been some racial terms
3 used by the student. Is that something that you would
4 have recorded in these notes if Ms. Butler had
5 provided you with that information?

6 **A. Yes.**

7 Q. And I think you've testified that Thomas
8 Exhibit Number 12 is a true and correct copy of the
9 notes that you maintained regarding your meeting with
10 Ms. Butler?

11 **A. Yes.**

12 Q. Have these been in the file of SMU since you
13 prepared them?

14 **A. Yes.**

15 Q. I'm now going to ask you to look at Thomas
16 Exhibit Number 13. This is also September 10, 2015,
17 typewritten notes, Cheryl Butler; present, Samantha
18 Thomas and Carolyn Hernandez. Would you please tell
19 the jury what Exhibit Number 13 is?

20 **A. Yes, these are Carolyn Hernandez' notes from
21 our meeting on September 10th with Professor Butler.**

22 Q. Now, does Carolyn Hernandez' signature appear
23 on Page 5 of Exhibit 13?

24 **A. Yes.**

25 Q. Is this a true and correct copy of the notes

1 **meeting with her again Thursday, September 17, a week
2 from our previous meeting.**

3 **Then she suggested we hold off until
4 after she meets with the dean, let the dean address
5 some of her issues, try to work it out through the
6 dean. She said she enjoyed our meeting, was very
7 grateful to have us as a resource. So we canceled our
8 meeting at that point.**

9 **And then she mentioned she may have been
10 discriminated against in her pay and compensation
11 based in part on the pay scale set by the former dean
12 of the law school and wondered if there could be a
13 friendly inquiry to look into this.**

14 Q. Did you -- do you do friendly inquiries in
15 a --

16 **A. No, I don't know what a friendly inquiry is.
17 And I mentioned to her "I don't know what you mean by
18 friendly inquiry" and that this could be part of her
19 conversation when she meets with Dean Collins.**

20 Q. Did she ever follow up on any concern
21 regarding her pay and compensation?

22 **A. No.**

23 Q. Did this issue die, the paid compensation
24 issue?

25 **A. Yes.**

1 that Carolyn Hernandez prepared --

2 **A. Yes.**

3 Q. -- regarding your meeting?

4 **A. Yes.**

5 Q. Had those notes been maintained in the files
6 of SMU since its meeting occurred in September of
7 2015?

8 **A. Yes.**

9 Q. Do those notes in Exhibit 13 fairly and
10 accurately state what was discussed during that
11 meeting?

12 **A. Yes.**

13 Q. I'm going to ask you to look at Thomas
14 Exhibit 14. Have you seen this e-mail before?

15 **A. Yes.**

16 Q. Would you explain to the jury what Exhibit
17 Number 14 is?

18 **A. Let me look. It's a chain of e-mails, and it
19 started with me discussing -- thanking Cheryl for
20 meeting -- Professor Butler for meeting with us and
21 that --**

22 Q. Did that relate back to the meeting you had
23 on September --

24 **A. Yes, yeah. Sorry -- for meeting with us and
25 we won't be taking any action. And we look forward to**

1 **Q. I'm now going to ask you to look at Thomas
2 Exhibit Number 15. Do you have that before you?**

3 **A. Yes.**

4 **Q. And would you tell the jury what this exhibit
5 is? It's an e-mail dated September 23rd from you to
6 Cheryl Butler in which you copied Dean Jennifer
7 Collins.**

8 **A. Let's see. There's -- it looks like some
9 e-mails going back and forth between Professor Butler,
10 Dean Collins, and myself. And I'm responding back to
11 Professor Butler where she says to be clear, she does
12 not wish to file any complaints here or otherwise.
13 She said I can even disregard her earlier post. She
14 doesn't want to further offend anyone or risk any
15 retaliation.**

16 Q. Okay.

17 **A. And --**

18 Q. Go ahead. You state -- so she said to be
19 clear, I do not want to file any complaints here or
20 otherwise. Is that -- was that her response back to
21 you?

22 **A. That was her response back to -- yes, to a
23 previous e-mail.**

24 Q. Okay. Now, you also state in the first part
25 of this e-mail "your e-mail misstates our conversation

1 of September 10th." So I just went to clarify what
2 you did want to talk about. Would you explain to the
3 jury how -- what Ms. Butler was stating back to you
4 misstated what you talked about in that meeting?
5 **A. My recollection of this is that Professor**
6 **Butler, I believe, was saying that our office had**
7 **directed her complaint -- or her to take her complaint**
8 **to the dean. And that's not what we discussed**
9 **directly in our meeting.**
10 **She wanted to -- she said she wanted to**
11 **follow up with her dean to try to resolve this**
12 **informally; but any complaints of discrimination on a**
13 **protected basis, that is something that would have to**
14 **come back to our office.**
15 Q. Okay. In fact, the last sentence, the second
16 paragraph on Exhibit 15 --
17 **A. Uh-huh.**
18 Q. -- you say "at this point, if you're going to
19 continue to raise issues of discrimination and
20 retaliation, I recommend that you file a complaint
21 with my office so we may conduct a full
22 investigation."
23 **A. Yes.**
24 Q. Is that the advice that you gave her, that
25 she needed a file a complaint if she wanted to proceed

1 concerns, these e-mails that Professor Butler was
2 sharing with members of the faculty and dean?
3 **A. Carolyn Hernandez.**
4 Q. Did she conduct an investigation?
5 **A. Yes.**
6 Q. Did Professor Butler participate in that
7 investigation?
8 **A. No.**
9 Q. Did you ask her to assist her by talking to
10 her by telephone?
11 **A. Yes.**
12 Q. Did she participate by telephone in the
13 investigation?
14 **A. No.**
15 Q. Did you offer to have her come into the
16 office at her convenience?
17 **A. Yes.**
18 Q. As part of the investigation?
19 **A. Yes.**
20 Q. Did she ever do so?
21 **A. No.**
22 Q. Did you offer -- I guess, at that time, you
23 were using Skype. Did you ever offer Skype or other
24 means by which you could participate in the
25 investigation?

1 with her allegations of discrimination and
2 retaliation?
3 **A. Yes.**
4 Q. Now, did she ever file a complaint?
5 **A. No.**
6 Q. How did this investigation unfold into her
7 concerns of discrimination here?
8 **A. Into an investigation?**
9 Q. Yes.
10 **A. Well, she continued to follow up with e-mails**
11 **directly to the dean of the law school, Dean Collins,**
12 **copying myself, e-mails to Carolyn Hernandez in my**
13 **office, lots of e-mails to lots of people alleging**
14 **discrimination, retaliation.**
15 **So we did what we could to investigate**
16 **those concerns because they continued over time, I**
17 **think over at least a year or two. And we tried to**
18 **look into them to the extent possible because they**
19 **continued to be raised in various ways; but she never**
20 **filed a formal complaint, shared any specific**
21 **information, agreed to be interviewed. So it was**
22 **difficult to -- to look into this matter; but we**
23 **tried.**
24 Q. Now, who was the person in your office who
25 actually conducted the investigation into these

1 **A. I don't recall directly, but we would have**
2 **done that if that's what she would -- how she would**
3 **prefer to meet with us.**
4 Q. Okay. Now, would Carolyn -- as part of
5 Carolyn Hernandez' investigation, did she talk to
6 various members of the faculty regarding the
7 discrimination allegations?
8 **A. Yes.**
9 Q. Did she maintain notes of those conversations
10 that she had?
11 **A. Yes.**
12 Q. I'm going to ask you if you'll just take a
13 look at these. Exhibit Number 16, would you please
14 identify to the jury what Exhibit Number 16 is?
15 **A. These are Carolyn Hernandez' interview notes**
16 **dated February 24, 2016, when she interviewed Dean**
17 **Collins.**
18 Q. Is this Carolyn Hernandez' handwriting?
19 **A. Yes.**
20 Q. Does her signature appear at the end of these
21 notes?
22 **A. Yes.**
23 Q. Is this a true and correct copy of the notes
24 that have been maintained by SMU in the ordinary
25 course of business?

1 **A. Yes.**
2 Q. I ask you to look at Thomas Exhibit Number
3 17. Would you please identify for the jury what
4 Exhibit 17 is, please?
5 **A. Yes, these are Carolyn Hernandez' notes when**
6 **she interviewed Roy Anderson on November 4, 2016.**
7 Q. Was this part of her investigation into the
8 discrimination complaint -- or concerns that had been
9 raised by Cheryl Butler?
10 **A. Yes.**
11 Q. Does Ms. Hernandez' signature appear on Page
12 4 of Exhibit 17?
13 **A. Yes.**
14 Q. And you are familiar with her signature?
15 **A. Yes.**
16 Q. Is this a true and correct copy of the notes
17 prepared by Carolyn Hernandez as part of her
18 investigation into the discrimination allegations of
19 Ms. Butler?
20 **A. Yes.**
21 Q. I ask you to look at Thomas Exhibit 18.
22 Would you please identify for the jury what Exhibit 18
23 is?
24 **A. These are Carolyn Hernandez' notes from**
25 **December 8, 2016, when she interviewed Anthony**

1 **Colangelo.**
2 Q. Does her signature appear on Page 7 of these
3 notes?
4 **A. Yes.**
5 Q. Are these notes in her handwriting?
6 **A. Yes.**
7 Q. Is this a true and correct copy of the notes
8 that Ms. Hernandez prepared as part of her
9 investigation into Ms. Butler's discrimination claims?
10 **A. Yes.**
11 Q. I'm asking you to look at Thomas Exhibit
12 Number 19. Would you please identify to the jury what
13 Exhibit Number 19 is?
14 **A. These are Carolyn Hernandez' notes from**
15 **December 14, 2016, when she interviewed Mary Spector.**
16 Q. Are these true and correct copies of the
17 interview notes that SMU maintains in its files?
18 **A. Yes.**
19 Q. I'm going to ask you to look at Thomas
20 Exhibit Number 20. Would you please identify for the
21 jury what Exhibit Number 20 is?
22 **A. Yes, these are Carolyn Hernandez' notes from**
23 **December 16, 2016, when she interviewed George**
24 **Martinez.**
25 Q. Is this her handwriting?

1 **A. Yes.**
2 Q. Is this her signature on Exhibit Number 20?
3 **A. Yes.**
4 Q. Is this a true and correct copy of the notes
5 that were prepared by Carolyn Hernandez as part of her
6 investigation into the discrimination issue that had
7 been raised by Professor Butler?
8 **A. Yes.**
9 Q. Please look at Exhibit Number 21. Would you
10 identify for the jury what Exhibit Number 21 is?
11 **A. These are Carolyn Hernandez' notes from**
12 **December 9, 2016, when she interviewed Beth Thornburg.**
13 Q. Is her -- first of all, are these notes in
14 her handwriting?
15 **A. Yes.**
16 Q. Does Carolyn Hernandez' signature appear on
17 Page 6 of Exhibit 21?
18 **A. Yes.**
19 Q. Is this a true and correct copy of the notes
20 prepared by Carolyn Hernandez as part of the
21 investigation into Ms. Butler's concerns of
22 discrimination?
23 **A. Yes.**
24 Q. I'm asking you to please look at Exhibit
25 Number 22. Would you please identify for the jury

1 what Exhibit Number 22 is?
2 **A. These are Carolyn Hernandez' notes from**
3 **December 20, 2016, when she interviewed Joe Norton.**
4 Q. Was that part of her investigation into the
5 discrimination concerns raised by Professor Butler?
6 **A. Yes.**
7 Q. Does Ms. Hernandez' signature appear on Page
8 8 of Exhibit 22?
9 **A. Yes.**
10 Q. Are these true and correct copies of the
11 notes that Ms. Hernandez prepared as a part of her
12 investigation into Ms. Butler's allegations?
13 **A. Yes.**
14 Q. Now, is it the practice of Ms. Hernandez to
15 prepare notes at the time she's talking to people?
16 **A. Yes.**
17 Q. And you have been in meetings where you have
18 seen her follow this practice of taking notes during
19 the meeting when you're talking to a particular
20 witness?
21 **A. Yes.**
22 Q. And is that what she did with respect to the
23 exhibits we just looked at, Exhibits 16 through 22?
24 **A. Yes.**
25 **MR. DUNLAP: Objection. Objection. Not**

1 a proper foundation for that exhibit.
2 Q. (BY MS. ASKEW) Was it Ms. --
3 Dr. Hernandez' practice to record her notes
4 simultaneously during the meetings when she was
5 conducting them?
6 A. Yes.
7 Q. All of the notes that we just talked about,
8 Exhibit 16 through 22, are all of these notes
9 maintained in the files of SMU?
10 A. Yes.
11 Q. Are they maintained in the office of
12 institutional access and equity at SMU?
13 A. Yes.
14 Q. And is it the normal practice of SMU's office
15 of institutional access and equity to maintain these
16 types of investigation notes in the ordinary course of
17 business?
18 A. Yes.
19 Q. I'm going to ask you to please look at Thomas
20 Exhibit 23. Do you have that before you?
21 A. Yes.
22 Q. It is a letter dated December 22, 2016,
23 conclusions of investigation of complaint of
24 discrimination and retaliation in tenure denial. Have
25 you seen this letter before?

1 A. Yes.
2 Q. Would you tell the jury what Thomas Exhibit
3 23 is?
4 A. Yes, it is a letter that is written by
5 Carolyn Hernandez where she summarizes her conclusions
6 from investigating the complaints -- or concerns, I
7 should say, of discrimination and retaliation in the
8 tenure denial decision of Professor Butler.
9 Q. Okay. Now, does Ms. Hernandez' signature
10 appear on Page 2 of the letter in Exhibit 23?
11 A. Yes.
12 Q. Is this a true and correct copy --
13 A. Yes.
14 Q. -- of the letter that SMU maintains?
15 A. Yes.
16 Q. Is this the letter that sets forth the
17 conclusions that Dr. Hernandez reached in
18 investigating, in her words, the complaint of
19 discrimination and retaliation in tenure denial?
20 A. Yes.
21 Q. What was her conclusion with respect to the
22 allegations or complaint of discrimination and
23 retaliation in tenure denial?
24 A. That there was no policy violation, no
25 discrimination was found.

1 Q. Was there any retaliation found?
2 A. No.
3 Q. She states that "throughout the process, you
4 were apprised of the basis for the tenure decision,
5 which was that your teaching -- which was that your
6 teaching did not meet the university's standards for
7 tenure and promotion." Was that part of her
8 conclusion?
9 A. Yes.
10 Q. Did Dr. Hernandez talk to you about her
11 finding here?
12 A. Yes.
13 Q. What do you recall in the way of discussion
14 that you had with Dr. Hernandez regarding her finding
15 that there was no evidence of discrimination and
16 retaliation in the tenure decision relating to
17 Ms. Butler?
18 A. I just recall that conversation, that she
19 investigated this matter to the extent that she felt
20 that she could without Professor Butler participating
21 and that there was not enough evidence or information
22 to conclude any sort of policy violation on the basis
23 of discrimination or retaliation.
24 Q. Okay. Now, I -- I've asked you to look at
25 Page 2 of Exhibit 23. She says "we fully investigated

1 your allegations of discrimination." Was a full
2 investigation conducted here?
3 A. To the extent possible.
4 Q. And what was the limitation on the
5 investigation?
6 A. The limitation was that Professor Butler did
7 not participate. So any --
8 Q. Was there opportunities for Professor Butler
9 to participate?
10 A. Yes.
11 Q. I will ask you to look at her language. She
12 says "I sought to schedule interviews with you on
13 numerous occasions, but you did not respond or told me
14 that you would not participate. After I learned that
15 you were not on campus in the classroom, I offered to
16 conduct interviews by telephone or by Skype and at
17 your convenience and at times which accommodate any
18 special timing issues you might have; but you still
19 refused to participate." Were you aware that
20 Professor Butler was refusing to participate?
21 A. Yes.
22 Q. She said she offered to have another IAE
23 representative sit in on the interviews to allay any
24 concerns you might have about talking to a single
25 investigator; but did not did participate. Was that

1 an offer that IAE made to Ms. Butler to facilitate her
2 participation in this investigation?
3 **A. Yes.**
4 Q. Is that something that as investigators, that
5 you would typically do, put more than one investigator
6 in a room if a witness has concerns?
7 **A. Yes.**
8 Q. She says "after interviews revealed no basis
9 for your allegations and the allegations were denied,
10 you continued to refuse to speak to me so I could
11 conduct follow-up questions." Did Ms. Butler refuse
12 to participate after Ms. -- Dr. Hernandez had
13 conducted certain interviews?
14 **A. Yes.**
15 Q. Were you aware of that at the time after all
16 of this was going on?
17 **A. Yes.**
18 Q. And just so the jury is clear, are you and
19 Dr. Hernandez in the same office?
20 **A. We're in the same suite.**
21 Q. So suite?
22 **A. Yes.**
23 Q. You could walk out and wander around --
24 **A. Yes.**
25 Q. -- and talk to each other?

1 **A. Yes.**
2 Q. She said "our investigations are thorough,
3 but we always encourage the plaintiff to participate
4 and provide us with additional feedback as we are
5 conducting an investigation." Did Professor Butler
6 participate and provided additional information as you
7 were learning things in the investigation?
8 **A. She did not.**
9 Q. Now, do you agree with Ms. Hernandez'
10 conclusion that her investigation was a thorough one?
11 **A. Yes.**
12 Q. I'm now going to direct your attention to
13 exhibit -- Thomas Exhibit 24. Do you have that before
14 you?
15 **A. Yes.**
16 Q. This is an e-mail which attaches a letter
17 dated November 10, 2015, from Carolyn Hernandez to
18 Cheryl Butler. Conclusions on investigation on ADA
19 and FMLA allegations is the re.
20 **A. Yes.**
21 Q. Have you seen this letter before?
22 **A. Yes.**
23 Q. Would you please identify for the jury what
24 Thomas Exhibit 24 is?
25 **A. Yes, it's a letter from Carolyn Hernandez to**

1 **Professor Butler where she summarizes her**
2 **conclusion -- her conclusions on her investigation on**
3 **Professor Butler's ADA and FMLA investigations.**
4 Q. Now, had Professor Butler made claims
5 regarding how SMU had handled the ADA and FMLA aspect
6 of her leave and reasonable accommodation?
7 **A. Yes.**
8 Q. One of the things she points out was that
9 Professor Butler alleged that Dean Collins and Interim
10 Provost Stanley had violated her ADA rights by failing
11 to grant a reasonable accommodation under the ADA and
12 the opportunity to apply for a reasonable
13 accommodation.
14 "You claim that because the dean and
15 provost did not refer you to IAE, you did not know how
16 to obtain an accommodation and did not know where to
17 go for assistance with the ADA." Had IAE provided
18 information to Ms. Butler on where to go to obtain
19 information on the ADA at SMU?
20 **A. Yes, yes.**
21 Q. And was this information available on the SMU
22 web site for Ms. Butler to access to at any time?
23 **A. Yes.**
24 Q. It says "you also raise concerns that Rhonda
25 Adams had failed to properly designate your leave."

1 Did this investigation find that Rhonda Adams had in
2 any way failed to designate leave for Ms. Butler?
3 **A. No.**
4 Q. Did the investigation reveal any evidence
5 showing that Provost Stanley or Dean Collins had in
6 any way violated the ADA rights of Professor Butler?
7 **MR. DUNLAP: I'm going to object to that**
8 **as leading. You can ask her what the report says.**
9 **You're putting words in her mouth.**
10 **MS. ASKEW: I'm asking a specific**
11 **question.**
12 Q. (BY MS. ASKEW) Did the investigation reveal
13 that there was any evidence in support of Ms. Butler's
14 allegation that Provost Stanley and Dean Collins had
15 violated her ADA rights?
16 **A. No.**
17 Q. Did Provost Stanley make an ADA determination
18 as to Ms. Butler?
19 **MR. DUNLAP: Object --**
20 **A. No.**
21 **MR. DUNLAP: -- to that as leading.**
22 Q. (BY MS. ASKEW) Did Dean Collins make any
23 type of ADA decision with respect to Ms. Butler?
24 **MR. DUNLAP: Same objection.**
25 **A. No.**

1 Q. (BY MS. ASKEW) Thank you. Would you tell
2 me -- I'm going to focus you in on that last
3 paragraph. It talks about all the things that
4 Ms. Butler -- when we had given her -- SMU had given
5 her notice of her ADA rights. Would you please look
6 at that paragraph?
7 **A. Are you -- which page are you on?**
8 Q. I'm on Page 1 of the letter.
9 **A. Okay. On which paragraph?**
10 Q. On the last full paragraph.
11 **A. Okay.**
12 Q. On Page 1?
13 **A. Uh-huh, I see it.**
14 Q. It states that "we had provided ADA
15 accommodation request forms." Had IAE provided ADA
16 accommodation request forms to Ms. Butler?
17 **A. Yes.**
18 Q. It notes "the Needs For Persons With
19 Disability Policy 2.4 was available on-line at SMU and
20 on the web site." Were they available on-line and on
21 the web site?
22 **A. Yes.**
23 Q. Was this policy also available on the on-line
24 policy manual of SMU?
25 **A. Yes.**

1 Q. As a professor at SMU, did Ms. Butler have
2 access to the SMU on-line policy manual?
3 **A. Yes.**
4 **MR. DUNLAP: Object. She's already**
5 **asked that -- answered that question.**
6 Q. (BY MS. ASKEW) It notes that Ms. Butler had
7 received discrimination and harassment training at
8 least as recent as August 6, 2015. Does SMU maintain
9 records on when its employees are trained on
10 discrimination and harassment?
11 **A. Yes.**
12 Q. Is this something that Carolyn Hernandez
13 would have had access to investigating the claims of
14 Professor Butler?
15 **A. Yes.**
16 Q. She references information that had been sent
17 to Professor Butler by Beth Thornburg and Rhonda
18 Adams. Did Ms. Adams send such information to
19 Ms. Butler, to your knowledge?
20 **A. Yes.**
21 Q. And then Ms. -- Dr. Hernandez says that she
22 sent the policy and forms to -- on December 11, 2015;
23 and then doctor -- Professor Butler came by on
24 December 14, 2015. Was it the practice of
25 Dr. Hernandez to send forms when somebody wanted an

1 ADA accommodation?
2 **A. Yes.**
3 Q. And did we do so with Professor Butler?
4 **A. Yes.**
5 Q. I will ask you to look at Page 2 of Exhibit
6 29 which is the paragraph that begins with "finally."
7 "You had raised concerns regarding the time it took to
8 complete this investigation. IAE investigated your
9 allegation several months ago but delayed issuing its
10 conclusions because you were not in the classroom and
11 had asked to speak with an investigator before I --
12 before IAE finalized." Had IAE delayed issuing
13 conclusions because Professor Butler was not in the
14 classroom?
15 **A. Yes.**
16 Q. Why? Why would it delay that decision?
17 **A. Because she wasn't in the classroom and she**
18 **said she wanted to speak to someone before we**
19 **finalized the investigation. So we were trying to**
20 **give her time to get back to us, but she never**
21 **participated.**
22 Q. Did you offer her an opportunity to speak
23 with an investigator before the conclusions were
24 finalized and released in this report reflected in
25 Thomas Exhibit 24?

1 **A. Yes.**
2 Q. Did Ms. Butler ever take up the offer of
3 Carolyn Hernandez and IAE to participate before this
4 report was finalized?
5 **A. No, she did not.**
6 Q. I am going to ask you to take a look at
7 Thomas Exhibit Number 25, which is an e-mail from you
8 dated December 2, 2016, to Cheryl Butler. Would you
9 describe to the jury what this e-mail is?
10 **A. Yes, it's an e-mail I sent to Professor**
11 **Butler December 2, 2016 in response to an e-mail that**
12 **she sent letting her know that we initiated an**
13 **investigation because she complained that Carolyn**
14 **Hernandez was biased in her investigation of Professor**
15 **Butler's ADA and FMLA claims. And when such a claim**
16 **is made, we have to look into it because you're**
17 **basically saying an investigator in our office is**
18 **biased.**
19 Q. So just so I'm clear on what you're saying,
20 previously, I think you said Professor Butler had
21 alleged that Rhonda Adams was biased in how she
22 handled the FMLA --
23 **A. Uh-huh.**
24 Q. -- determined it?
25 **A. Yes.**

1 Q. That was investigated, and no basis was
2 found?
3 A. Yes.
4 MR. DUNLAP: That's a leading question.
5 Q. (BY MR. DUNLAP) She is now complaining, just
6 so I understand it, that Carolyn Hernandez, the
7 investigator, was biased?
8 A. Yes.
9 Q. Okay. Are you -- did you investigate her
10 claim that Carolyn Hernandez was biased in her
11 investigation of ADA and FMLA claims?
12 A. Yes.
13 Q. Did you personally conduct that
14 investigation?
15 A. Yes.
16 Q. You invited her to participate in the
17 investigation by speaking to you. Did Ms. Butler
18 speak to you in connection with your investigation
19 into this alleged bias by Dr. Hernandez?
20 A. No.
21 Q. Did you offer her the opportunity to speak to
22 you as part of your investigation into the alleged
23 bias of Dr. Hernandez?
24 A. Yes.
25 Q. I ask that you look at Thomas Exhibit 26.

1 Would you please identify for the jury what Thomas
2 Exhibit 26 is?
3 A. Yes. These are my handwritten notes from
4 December 22, 2017, when I met with Carolyn Hernandez
5 regarding my investigation of Professor Butler's
6 allegations that she was biased in her investigation.
7 Q. Now, you have 12/22/17. Is that date
8 correct? When did you actually meet with her?
9 A. That was actually -- that's a mistake on my
10 part. That would have actually been December 22,
11 2016.
12 Q. And how do you know that it was 2016 and not
13 2017?
14 A. She retired at the end of 2016.
15 Q. Because was she -- is this an in-person
16 meeting that you're having with Dr. Hernandez?
17 A. I believe it was.
18 Q. You said "I met with Carolyn"?
19 A. Yes, that I was in person.
20 Q. Does that mean that you actually met with her
21 in person?
22 A. I think it does mean that, yes.
23 Q. Did you ask her about the specific
24 allegations that Professor Butler had made?
25 A. I asked -- yes, well, the allegations were

1 never very specific. It was always just that Carolyn
2 was biased in her investigation since Professor Butler
3 did not participate in the investigation and provide
4 any specific information to me.
5 Q. There's a statement here that "no one
6 hindered Carolyn's investigation except that Cheryl
7 would not return calls, e-mails, or answer any
8 questions." Would you tell us what you recall that
9 discussion being when you met with Dr. Hernandez?
10 A. I just recall that she could only investigate
11 to the extent possible based on the information that
12 was provided and some e-mails provided by Mr. Butler,
13 but there was never an opportunity to interview
14 Professor Butler, ask any follow-up questions from the
15 other interviews that Carolyn Hernandez had conducted.
16 There was -- I don't know. We were told that there
17 was some sort of recordings on something out there.
18 Nothing was provided. So we could only
19 go on generalities of what she was saying. And that
20 is just generally she was biased somehow in her
21 investigation.
22 Q. You state "Carolyn stated that she never told
23 Cheryl that Dean Collins or former Provost Harold
24 Stanley violated her ADA right by denying Cheryl's
25 request for an ADA accommodation." What do you recall

1 discussing in that regard?
2 A. Yeah, I believe Professor Butler had alleged
3 that Carolyn Hernandez actually told her that Dean
4 Collins and Provost Stanley violated her ADA rights
5 which is not something that I would have ever seen
6 Carolyn stating because they don't make that decision.
7 Q. But you did talk to Carolyn about that
8 allegation that had been made by Ms. Butler?
9 A. Yes.
10 Q. Okay. I'm now going to ask you that you look
11 at Thomas Exhibit 27.
12 A. Yes.
13 MR. DUNLAP: Can I interrupt for a
14 moment?
15 MS. ASKEW: Uh-huh.
16 MR. DUNLAP: I -- the last e-mail I got
17 from Sherry Faulkner was on the 21st. And it only
18 contained Exhibits 1, 3, 4 and 5. So I am not --
19 MS. ASKEW: I -- I will --
20 MR. DUNLAP: I am looking for those
21 exhibits.
22 MS. ASKEW: Hold on. Let me get with
23 her because I want to make sure that you have the
24 exhibits. And I will -- and I apologize to you, but I
25 thought those had been sent to you. I don't have it

1 on my e-mail. I will ask her to do that right now.
2 MR. DUNLAP: Okay.
3 MS. ASKEW: Thanks.
4 (Recess.)
5 Q. (BY MS. ASKEW) I ask you to look at Document
6 Number 27.
7 A. Yes.
8 Q. Would you please identify for the jury what
9 document -- what Thomas 27 is?
10 A. These are my notes from January 12, 2017,
11 when I had a phone call and spoke to Roy Anderson.
12 Q. Is this a true and correct copy of the notes
13 that you took while you were talking to Professor
14 Anderson?
15 A. Yes.
16 Q. Does this accurately reflect the conversation
17 that you had with Professor Anderson as part of your
18 investigation?
19 A. Yes.
20 Q. I'm going to ask you to look at Deposition
21 Exhibit Number 28, Thomas 28.
22 A. Yes.
23 Q. Would you please identify for the jury what
24 Thomas 28 is?
25 A. These are my notes from January 13, 2017,

1 FMLA rights and she wanted no part of that
2 determination.
3 Q. Did Rhonda Adams ever state whether she had
4 made such a comment to Cheryl Butler?
5 A. She stated she did not.
6 Q. And the last sentence of your notes said
7 "Rhonda said she initially sent Cheryl FMLA paperwork
8 in June of 2013, but Cheryl never responded"?
9 A. Yes.
10 Q. What do you recall about the discussion that
11 you had with Rhonda Adams in that regard?
12 A. Because Professor Butler was alleging that
13 she never was, I guess, told or no paperwork had been
14 shared with her on how to request FMLA leave. And
15 then Rhonda Adams stated, yes, she had been -- she had
16 received that information all the way back in June of
17 2015.
18 Q. Okay. Thank you. I am going to ask you to
19 take a look at Deposition Exhibit 29. First of all,
20 the three documents that we just talked about, 26, 27,
21 and 28, are all of those in your handwriting,
22 Ms. Thomas?
23 A. Yes.
24 Q. Are those true and correct copies of the
25 notes that you recorded at the time you spoke with

1 when I spoke to Rhonda Adams.
2 Q. And why were you speaking to Rhonda Adams?
3 Was this part of the investigation?
4 A. This was part of the investigation, yes.
5 Q. And why did you need to speak with Ms. Adams?
6 A. Because Professor Butler alleged that Rhonda
7 Adams did not appropriately follow the FMLA policies
8 and procedures and violated her FMLA rights.
9 Q. And there's also the statement here that you
10 asked Rhonda Adams about Cheryl Butler's allegations
11 that Rhonda Adams stated that Dean Collins had
12 interfered in her FMLA rights. Did you look at that
13 question or that allegation?
14 A. Yes. Rhonda -- yeah, Rhonda Adams responded
15 that she did not.
16 Q. Let me ask the question so we have a clear
17 record here.
18 A. Sure.
19 Q. Did you raise with Rhonda Adams the
20 allegation made by Cheryl Butler that somehow Dean
21 Collins had interfered with her FMLA rights?
22 A. Yes.
23 Q. What was Rhonda Adams' response to you during
24 that investigation?
25 A. That Dean Collins did not interfere in any

1 Carolyn Hernandez, Roy Anderson, and Rhonda Adams?
2 A. Yes.
3 Q. Are these notes maintained in the files of
4 IAE at SMU?
5 A. Yes.
6 Q. Are these true and correct copies of those
7 notes?
8 A. Yes.
9 Q. I'm now going to ask you to look at Thomas
10 Exhibit 29.
11 A. Yes.
12 Q. This is an e-mail which attaches a letter
13 dated July 26, 2017. Would you please tell the jury
14 what Exhibit 29 is?
15 A. Yes. It was an e-mail that I sent to
16 Professor Butler on Thursday, January 26, 2017. And I
17 attached my conclusions from my investigations of her
18 concerns of discrimination regarding Carolyn Hernandez
19 and Rhonda Adams.
20 Q. Is this your signature on Page 2 of Exhibit
21 29?
22 A. Yes.
23 Q. Is this a true and correct copy of the letter
24 that you prepared and sent to Ms. Butler?
25 A. Yes.

1 Q. Now, these -- you talk about other
2 conclusions that were reached by Carolyn Hernandez.
3 Are these conclusions that you personally reached
4 based on your investigation into the concerns of
5 discrimination regarding Carolyn Hernandez and Rhonda
6 Adams?
7 A. Yes.
8 Q. Did you use the summaries of your discussions
9 that are reflected in Depositions Exhibit 26, 27, and
10 28 in --
11 MR. DUNLAP: Objection. Leading.
12 Q. (BY MS. ASKEW) -- in coming to your
13 conclusions?
14 MR. DUNLAP: Objection. Leading.
15 MS. ASKEW: Would you please let me ask
16 the question?
17 Q. (BY MS. ASKEW) Did you use these notes in
18 Exhibits 26, 27, 28 in coming to any conclusions that
19 you might have reached in this letter?
20 MR. DUNLAP: Same --
21 A. Yes.
22 MR. DUNLAP: -- objection. Same
23 objection.
24 Q. (BY MS. ASKEW) Let's go to your conclusions.
25 What conclusions did you reach first?

1 A. I did not find any evidence to support
2 allegations of discrimination by Carolyn Hernandez or
3 Rhonda Adams against Professor Butler.
4 Q. And how about with respect to retaliation?
5 Did you find any evidence to support Professor
6 Butler's allegations of retaliation?
7 A. No.
8 Q. You made findings regarding Rhonda Adams.
9 What were your findings regarding Rhonda Adams?
10 A. I did not find that Rhonda Adams did not
11 follow -- I did not find that she did not follow SMU
12 policies and procedures when it came to FMLA. And I
13 just found again in speaking with -- as my notes
14 showed, to Rhonda Adams that she stated Dean Collins
15 did not instruct her or have anything to do with her
16 decision-making with regard to granting FMLA to
17 Professor Butler.
18 Q. You also in the second paragraph talk about
19 Ms. Butler's behavior during this investigation.
20 Would you please tell the jury whether Ms. Butler
21 participated in the investigation that you conducted
22 into the allegations that she made regarding Rhonda
23 Adams, Carolyn Hernandez, and the -- the investigation
24 into her tenure decision?
25 A. No, she did not participate.

1 Q. Had you invited her to participate?
2 A. Yes.
3 Q. How did you do that?
4 A. I believe it was via e-mail. I believe I
5 also attempted to call her. I know that sometimes
6 when I tried to call and/or Carolyn Hernandez tried to
7 call, Professor Butler's e-mails would be full.
8 Sometimes we couldn't leave any messages. When that
9 occurred, we tried to reach out via e-mail.
10 Q. Did she ever specifically tell you in e-mails
11 that she would not talk to you?
12 A. I don't recall.
13 Q. I want to go back to the finding that you
14 reached with respect to Carolyn Hernandez.
15 A. Uh-huh.
16 Q. On page -- it's the second paragraph on Page
17 1 of Exhibit 29. What were your findings with respect
18 to whether Carolyn Hernandez had properly conducted
19 the investigation into the allegations of
20 discrimination related to the tenure decision?
21 A. I didn't find any evidence to support
22 Professor Butler's allegations that Mr. Hernandez
23 lacked impartiality, I think, was her allegation and
24 was biased in the investigation. I didn't have any
25 evidence or find any evidence of that.

1 Q. Did Professor Butler ever give you a reason
2 why she would not participate in the investigation?
3 A. I don't recall her specifically providing a
4 reason why she wasn't participating.
5 Q. But she did not participate?
6 A. She did not.
7 Q. Now, when you conduct an investigation and
8 you conducted the investigation that you just talked
9 about that's summarized in Thomas Exhibit 29, are you
10 making credibility determinations as you're talking to
11 these witnesses?
12 A. Well, in this -- sometimes we do, do that.
13 In this case, the difficulty we have here is that we
14 did not have a willing participant as I'm
15 investigating these allegations. So I just had to go
16 with what I found in Professor Butler's e-mails and
17 then looked into the matter to the extent possible.
18 Q. But would you tell the jury -- you talk about
19 the e-mails. Did you take what Professor Butler had
20 put in e-mails to investigate that?
21 A. Yes, I attempted to, yes, to the extent
22 possible; but she never provided -- never -- you know,
23 she never participated, didn't provide any follow-up
24 information, couldn't answer any questions because she
25 didn't participate. So the information that was

1 shared with me by the other witnesses I spoke to,
 2 that's no reason to not believe the information they
 3 shared.
 4 Q. Thank you. I'm going to ask you to look at
 5 Thomas 30 which is an e-mail dated January 27, 2017.
 6 Would you -- have you seen this e-mail before?
 7 A. Yes.
 8 Q. I want to ask you about -- there was a
 9 request for documents made by Professor Butler. Do
 10 you recall that circumstance?
 11 A. I recall the e-mail.
 12 Q. Okay.
 13 A. Yeah.
 14 Q. As long as Ms. Butler is employed at the law
 15 school or was employed, would she have had access to
 16 her e-mail?
 17 A. Yes.
 18 Q. Now, you also -- she asked you for a copy of
 19 the tenure report to the faculty. Is that something
 20 that your office provided to her?
 21 A. No.
 22 Q. Why?
 23 A. My office doesn't have a copy of the tenure
 24 report.
 25 Q. Is it the policy of SMU to provide the tenure

1 CORRECTIONS AND SIGNATURE
 2 SAMANTHA THOMAS - OCTOBER 25, 2021
 3 PAGE/LINE CHANGE/REASON
 4 _____
 5 _____
 6 _____
 7 _____
 8 _____
 9 _____
 10 _____
 11 _____
 12 _____
 13 _____
 14 _____
 15 _____
 16 SIGNATURE OF WITNESS
 17 STATE OF TEXAS)
 18 COUNTY OF)
 19 SUBSCRIBED AND SWORN TO by the said witness,
 20 SAMANTHA THOMAS, on this the _____ day of
 21 _____, 20____.
 22 _____
 23 Notary Public in and
 24 for the State of Texas.
 25 My Commission expires: _____

1 reports to faculty?
 2 A. I don't believe so.
 3 Q. Okay.
 4 MS. ASKEW: I pass the witness. I will
 5 reserve the remainder of my questions until the
 6 time -- oh, wait. One other thing I want to ask about
 7 and make sure. I think we've covered it. I pass the
 8 witness.
 9 MR. DUNLAP: You've already pass.
 10 MS. ASKEW: I passed. I passed her, but
 11 I know you would have accommodated me. Thank you.
 12 MR. DUNLAP: I have no further
 13 questions. Thanks.
 14 COURT REPORTER: How do you want to do
 15 signature? Do you want her to read and sign?
 16 MS. ASKEW: I do want the witness to be
 17 able to read her depo. So if you will send me the
 18 deposition so that she can read it, and I want the
 19 opportunity for her to be able to sign it.
 20 (Deposition concluded.)
 21
 22
 23
 24
 25

1 IN THE UNITED STATES DISTRICT COURT
 2 FOR THE NORTHERN DISTRICT OF TEXAS
 3 DALLAS DIVISION
 4 CHERYL BUTLER *
 5 PLAINTIFF, *
 6 VS. * NO. 3:18-CV-0037-e
 7 *
 8 JENNIFER P. COLLINS, *
 9 STEVEN CURRALL, JULIE *
 10 PATTERSON FORRESTER, *
 11 HAROLD STANLEY, AND *
 12 SOUTHERN METHODIST *
 13 UNIVERSITY *
 14 DEFENDANTS. *
 15
 16 REPORTER'S CERTIFICATION
 17 ORAL DEPOSITION OF
 18 SAMANTHA THOMAS
 19 OCTOBER 25, 2021
 20 I, KATHY BRADFORD, Certified Shorthand Reporter in and
 21 for the State of Texas, hereby certify to the
 22 following:
 23 That the witness, SAMANTHA THOMAS, was duly sworn by
 24 the officer and that the transcript of the oral
 25 deposition is a true record of the testimony given by
 the witness;
 That the deposition transcript was submitted to the
 witness or to the attorney for the witness for
 examination and signature;
 That the time used by the parties is as follows:
 Andrew Dunlap - 1:01
 Kim Askew - 1:00
 That a copy of this certificate was served on all
 parties and/or the witness shown herein on _____.
 I further certify that pursuant to FRCP Rule 30(e)(1)
 that the signature of the deponent:
 XXXXXX was requested by the deponent or a party before

ORAL DEPOSITION OF SAMANTHA THOMAS


Page 117

1 signature is to be before any notary public and
2 returned within 30 days from the date of receipt of
3 the transcript. If returned, the attached Changes and
4 Signature page contains any changes and the reasons
5 therefor.

6 _____ was not requested by the deponent or a party
7 before the completion of the deposition.

8 I further certify that I am neither attorney or
9 counsel for nor related to or employed by any of the
10 parties to the action in which this deposition is
11 taken, and further that I am not a relative or
12 employee of any attorney or counsel employed by the
13 parties hereto or financially interested in the
14 action.

15 Certified to by me this 5th day of November, 2021.

16 
17 _____
18 KATHY BRADFORD,
19 Certified Shorthand Reporter
20 in and for the State of Texas.
21 Certification Number: 3082
22 Date of Expiration: 7-31-2023
23 Firm Registration Number 38
24 Bradford Court Reporting, L.L.C.
25 7015 Mumford
Dallas, Texas 75252
Phone: (972) 931-2799
Fax: (972) 931-1199

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CORRECTIONS AND SIGNATURE

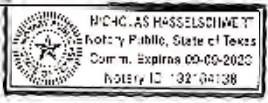
SAMANTHA THOMAS - OCTOBER 25, 2021

PAGE/LINE CHANGE/REASON

Samantha Thomas
SIGNATURE OF WITNESS

STATE OF TEXAS)
COUNTY OF *Dallas*)

SUBSCRIBED AND SWORN TO by the said witness,
SAMANTHA THOMAS, on this the *29th* day of
November, 2021.



public in and
for the State of Texas.
My Commission expires: *09-09-2023*

SOUTHERN METHODIST UNIVERSITY

POLICIES AND PROCEDURES

EEO/INSTITUTIONAL ACCESS AND EQUITY

POLICY NUMBER: 2.1

REVISED AS OF: January 18, 2013

**NONDISCRIMINATION, AFFIRMATIVE ACTION AND EQUAL OPPORTUNITY
POLICY**

Policy: SMU will not discriminate in any employment practice, educational program, or educational activity on the basis of race, color, religion, national origin, sex, age, disability, genetic information, or veteran status. SMU's commitment to equal opportunity includes nondiscrimination on the basis of sexual orientation and gender identity and expression. These groups may be referred to as protected classes. This policy is intended to comply with applicable federal, state and local laws and regulations. The Office of Institutional Access and Equity has been designated to handle inquiries regarding the nondiscrimination policies.

The University expects its campus community to respect the rights and dignity of all its members in matters of personnel consideration, admissions, or academic evaluation. The University is committed to policies and actions that assure and promote equality of access and opportunity to its educational and employment programs. Individuals are afforded the rights and privileges established by the University for living, studying, working and visiting on the campuses of Southern Methodist University. Notwithstanding the foregoing, the University does not:

- A. limit freedom of religion;
- B. require adherence to these principles by government agencies or external organizations that associate with, but are not controlled by, the University; and
- C. extend benefits or remedies to any student, faculty, or staff beyond those benefits or remedies provided under other policies of the University.

The University will make changes in its educational and employment programs in order to comply with applicable federal, state, and local laws, regulations and directives and in order to promote diversity and take remedial action. The University will identify, initiate, and implement policies and programs that will facilitate nondiscrimination, promote affirmative action and take

remedial measures as indicated to enhance diversity among its students, faculty, staff and administration in all areas at all levels.

Every member of the University community has a responsibility to be supportive of and to assist the University to meet its established goals and commitments and its legal obligations. Every division of the University will adopt realistic and viable plans of action to achieve immediate and long-range goals to increase and advance the presence of protected class members among students, faculty and staff in recruitment, admissions, and employment; to identify and implement support structures that enhance student, faculty and staff retention and advancement; and to promote the goal of achieving greater racial, ethnic, gender and cultural diversity for the University community.

The Associate Vice President for Institutional Access and Equity and/or designee is the President's principal assistant for the coordination of a variety of University policies, procedures, programs and initiatives. The Associate Vice President and/or designee will assist administrative officials in the development and implementation of programs, strategies, and activities to promote the goal of promoting nondiscrimination and increasing diversity among protected classes in accordance with established goals and commitments.

Any person covered by this policy that has a claim of impermissible discrimination, harassment, assault or violence based on membership in a protected class is encouraged to promptly contact the Office of Institutional Access and Equity and make known their complaint. The Office will address the report pursuant to SMU policy.

Any member of the University community that becomes aware of a potential violation of SMU policy that prohibits discrimination, harassment, assault or violence against protected class members is obligated to promptly report it to the Office of Institutional Access and Equity. The Office will address the report pursuant to SMU policy.

The Office of Institutional Access and Equity has been designated to handle inquiries regarding the nondiscrimination and affirmative action policies and may be contacted at Southern Methodist University, Dallas, TX 75275; 214-768-3601, or by e-mail at accessequity@smu.edu

The University reserves the right to review and investigate potential violations of SMU policy whether through the filing of a complaint or otherwise at its sole discretion.



SMU

Origin of All Things

PERSONAL AND CONFIDENTIAL

November 10, 2015

Professor Cheryl Nelson Butler
Dehman 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.

S. Thomas Dep.
1025/21
8

Southern Methodist University, P.O. Box 750322, Dallas, TX 75275-0322
214-768-2070 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 large, stylized initial "H".

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

cc: Dean Jennifer Collins

Butler

From: "Starkey, Sheri" </o=smu/ou=dallas/cn=staff/cn=starkey">
To: "Thomas, Samantha (IAE)" <thomassa@mail.smu.edu>, "Hernandez, Carolyn (IAE)" <hernandez@mail.smu.edu>
Date: Wed, 20 Apr 2016 10:14:20 -0500

Samantha

I have reviewed Cheryl Butler's discrimination claim and have determined that SMU has appropriately administered her FMLA claim and that there is no discrimination. Please let know if you need additional information. Thank you

Sheri Starkey

Sheri A. Starkey
Associate Vice President and
Chief Human Resource Officer

SMU
Department of Human Resources
6116 North Central Expressway Suite 200
Dallas TX 75206

v: 214-768-2024
f: 214-768-2299
email: starkey@smu.edu

S.Thomas Dep.
10/25/21
10

RE: Following up on one issue - which is tied to a pattern and practice of harassment and other discrimination

From: "Thomas, Samantha (IAE)" <thomassa@mail.smu.edu>
To: "Butler, Cheryl Nelson" <cnbutler@mail.smu.edu>, "Collins, Jennifer" <jmc@mail.smu.edu>
Date: Mon, 10 Aug 2015 18:46:12 -0500

Cheryl,

In your email, you raised numerous concerns of harassment and bullying some of which you allege are tied to your race and gender. I would like to meet with you to get more information about your concerns that relate to discrimination on a protected basis. I will have our office Coordinator, Claire Schmitt, contact you tomorrow to schedule the meeting at your earliest convenience. Please note that under SMU policy, you are protected from retaliation if you file a complaint of discrimination with our office or participate in an investigation of discrimination. To learn more about our office or to access all of the University's nondiscrimination policies and procedures, please visit the Office of Institutional Access and Equity website at: <http://www.smu.edu/iae/>. If you ever feel an immediate threat to your health and safety, please call the SMU Police Department by dialing 911 from any campus phone or 214-768-3333 from your cell phone.

Please feel free to give me a call at ext. 8-3601 if you have any questions before we meet.

Sincerely,
Samantha

Samantha Thomas
Executive Director and Executive Assistant to the President
Title IX Coordinator
Office of Institutional Access and Equity
Southern Methodist University
214-768-3601
thomassa@smu.edu
www.smu.edu/iae
www.smu.edu/LiveResponsibly

From: Butler, Cheryl Nelson
Sent: Monday, August 10, 2015 4:10 PM
To: Collins, Jennifer <jmc@mail.smu.edu>
Cc: Thomas, Samantha (IAE) <thomassa@mail.smu.edu>
Subject: RE: Following up on one issue - which is tied to a pattern and practice of harassment and other discrimination

Jennifer,

Thank you for writing. We should talk because you may have unintentionally misconstrued the facts regarding Pin Wu. I am on my way out to the doctor's office, but I will make a few observations here. I want to thank you for copying me and bringing me into the discussion so that I can 1. clarify the facts and 2. put them into context so that we do not frame the incident with Pin Wu as being over. As he seems to have damaged my reputation and caused me distress, I am wondering what

S. Thomas Dep.
10/25/21
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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.

You have indicated that I have continued to raise concerns about the student this summer. That is correct. Please read my statement below to understand why. Then, please respond. I need your help.

FIRST, THE FACTS: THE LAW SCHOOL DID NOT RESPOND IMMEDIATELY TO MY REQUEST FOR HELP WITH THIS STUDENT. IN FACT, MY COLLEAGUES DENIED SOME OF MY REQUESTS FOR ACTION, SPECULATING THAT THE STUDENT WOULD CEASE AND DESIST

It is not my view that the law school took immediate action. When I raised concerns about Pin Wu. Here is what happened:

1. 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, was 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.
2. I requested that the student be moved to another class. The request was granted.
3. 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).
4. I asked my colleagues to talk to the student and the class to inform everyone that further discussion of the dispute was not allowed.
5. THAT REQUEST WAS DENIED.
6. I met with my Dean and was advised that the associate dean had sent her emails about the dispute. However, the associate dean never mentioned to me on her own that she had sent the dean emails about the dispute. I do not know which emails were sent. I was not asked to send any emails or to add any facts to the email (to provide context, to show any emails that preceded or followed up on these emails). (The facts stated in note 5 above may precede the facts in this paragraph, I would have to doublecheck).
7. The student and class having not been warned to disengage in discussions, apparently continued to engage in discussions in which Pin Wu made disparaging remarks, make gender stereotyped remarks about me. The student also informed me that Pin Wu had gotten other students to join him in leading the barrage of harassing remarks. One student identified at least one other student as joining Pin Wu in discussing the complaint (even though, note the student was never present, to my knowledge, in any discussion with administration about the complaint).
8. I was unaware that this discussion continued until informed by other members of the class. The concern was not only that Pin Wu was disparaging me but it was annoying and humiliating to others that he made these remarks. It was also a distraction.
9. I notified my colleagues that the harassment continued as per the claims of Pin Wu's classmates.

10. Then, colleagues - the Dean of Students and Dean of Faculty warned Pin Wu to cease the behavior.

11. It appears to me that even then the bad behavior did not cease.

HERE IS HOW THE INCIDENT DID NOT END AND HAS CONTINUED TO CAUSE ME WORRY AND DISTRESS THROUGHOUT THE SUMMER:

12. Even though Pin Wu was no longer in my class, several students commented on the dispute in their evaluations. Some of the students explicitly mentioned the dispute by speculating about the impact that the dispute had on me. Others explicitly and implicitly repeated the same disparaging remarks accusations that at least one student said Pin Wu made to the class. Therefore, even if I never hear from the student again, he achieved his goals. I refused to raise his grade. And, in turn, he carried out his goals of harassing me and damaging his reputation.

13. Members of my tenure committee suggested that I might have to delay my tenure vote because I have "bad evaluations from last semester in Torts" and "students made complaints about me. These comments suggest that the dispute - or at least its impact - did not end when the law school administration spoke to the student.

14. Students also remarked in the evaluations that, to paraphrase "I was the worst professor at the school and that even the other professors at the law school have told them that." Such comments also continue to cause great anxiety. They raise the issue of whether my own colleagues are disparaging me to my own students, thereby undercutting my effectiveness in the classroom and undermining my morale.

15. On the one hand, it seems that I have been punished for this incident with the student - the associate dean - who is also on my tenure committee - discussed the matter with my dean by sharing written documentation without due process notice to me and then, my tenure chair told me that this dispute had affected my prospects for tenure.

16. On the other hand, any efforts to discipline the student repeatedly are discouraged. His actions clearly violate the honor code and might deprive me of civil rights protected under Title 9 and other laws. When I asked the first time that the student and the other class members be warned, the request was denied. When I asked the associate dean whether I should file an honor code complaint, that idea was discouraged. At the very least, he violated the demand by administrators to stop talking about the matter. I am troubled by the associate dean's suggestion that I should not bring an honor code charge against him. I would have done so immediately last semester, but both my husband and I fell sick towards the end of the semester. So, I had to focus on those issues and getting my class through the end of the semester and the exam period.

17. I don't feel as safe on campus as I used to. Safe in terms of physical or emotional well being. I feel that intentionally or not, if students or colleagues bully me at the law school, the cultural expectation is that I am supposed to stick it out. If a student yells and screams at me, I had better not yell back at the student, even if doing so, makes me feel safe or signals to the aggressor that I will fight back if this goes any further. If I complain, no one is going to promptly respond or demand that the bullying stop.

18. This is not the first time that I have experienced bullying by students. All of the incidents, taking cumulatively, is starting to wear on me physically and emotionally.

19. More persistent than bullying by students is the bullying by colleagues. Again, the culture and practice at the law school is that I am supposed to endure the bullying. After all, the bullies have to vote on my tenure. So, filing complaints against them would be political and professional suicide, right? And, they know that.

20. But, some of this bullying is framed in rhetoric and conduct that may violate my civil rights. I teach Employment Discrimination in three out of the four classes that I teach at SMU and also practiced in this area. Based on my knowledge from these experiences, I wanted to respectfully state to you that I feel that my civil rights under Title VII and other civil rights statutes perhaps including Title 9 are violated first by these incidents in and of themselves but second, by the failure of the administration to act - to take steps to protect me and to tell the culprits to STOP.

21. I love SMU as much as anyone does. I love the university and the law school. It has done such great things and has so much potential to do more. I see how much the law school means to my students. My students know that I care so much about them and I am grateful that over the years the students have expressed their appreciation.

IS THERE A PATTERN OF LAW STUDENTS HARASSING THE ONLY BLACK FEMALE PROFESSOR TEACHING THE 11 BAR COURSES? AND IF SO, WHAT IS THE INSTITUTIONAL RESPONSE TO - NOT JUST INDIVIDUAL INCIDENTS - BUT TO THE PATTERN AND PRACTICE?

YES, THERE IS A PATTERN.

22. But, in my view (and in the estimation of others), our colleagues at the law school engage in a pattern and practice of bullying, demeaning, sabotaging, and discriminating against women of color. I have witnessed this behavior toward others. I have spoken out against it. I have witnessed that treatment myself. Sometimes, law school administrators have addressed the discriminatory treatment. Other times, no one has.

23. What forms have bullying by students taken? Pin Wu's behavior is an annual occurrence. Almost each year, a student approaches me to threaten to get me fired OR goes behind my back to ask an administrator to fire me. Pin Wu was not the first one to do this. Pin Wu was also not the first student to assault me. Other students have yelled at me - my first year one student yelled me at me IN MY CLASSROOM IN FRONT OF OTHER STUDENTS! This student also threatened to get me fired. She informed me that she was best friends with the daughter of a faculty member and that she would say bad things about me to the faculty member. And, she did. This student also threatened to have her cousin, who she said was a tenured faculty member at the University of Alabama to check my scholarship to see if I in fact had written my law review articles.

24. Other students have also raised complaints to the administration for outrageous reasons and it is demoralizing to me that my tenure committee wants to take these incidents into account. One year, I am told, a group of students went to the Student Bar Association to try to get a petition to get me fired. They then went to the Interim Dean to state their grounds for why I should be fired.

Pause.

25. The students argued that I should be fired because I had told the class a suspicious story that I needed to postpone and reschedule two classes because . . . I had been invited to present a paper at Yale Law School (ranked #1) and the University of Pennsylvania (ranked #7?). The Interim Dean told me that she informed the students that the law school was well aware that I was attending these events because . . . the law school was paying for the trip.

Pause.

26. The students' complaint was all the more shocking because other professors teaching this same section - in particular former Dean Paul and then-interim dean Julie had also postponed classes. They postponed classes to attend a Bar event in Houston. But, the students did not wage a war to complain about these postponements. What, other than my race, made me different from my colleagues, Paul and Julie?

27. More important, why did the students think that they had any chance of getting a professor fired? And fired, for postponing a class - meaning that it was rescheduled? They know that I am vulnerable. Vulnerable not only because I am not tenured. But permanently vulnerable because I am Black and female.

28. Then, there was the time the year prior when a group of students went to the Dean and Associate Dean Ruth to accuse me of violating the honor code allegedly by lecturing to the class about how to complete their research briefs for another class. This was so bizarre to me because I was a Legal Writing Prof in the past. so I know first hand that another professor can't do this. I had simply told the students that we would cover the subject matter of the brief in a later class next semester.

29. My colleague's response, one that has been repeated in other incidents, was to presume my guilt and to try to punish me. Her inclination was not to respect or protect me as a colleague. Without even asking me whether or not the student's complaint was true, the associate dean wrote me a cease and desist letter. She chastised me for violating trust, demanded that I not say anything else, lectured me on how she had spent the whole summer preparing the assignment and I had ruined things. On and on. Never asked me was this true in whole or part.

WHAT CAN WE LEARN FROM THESE INCIDENTS? WHAT DO THEY SAY ABOUT THE NEED FOR INSTITUTIONAL SUPPORT FOR ME AND PERHAPS OTHER BLACK WOMEN LAW PROFESSORS?

30. Most of these events happened in the past. And, Jennifer wasn't even the Dean then. So, what is a positive reason for bring them up now. They show a pattern of students bullying the professor. According to the Princeton Review, SMU (#3) has one of the most conservative student bodies in the nation. So many of the students are wonderful. And, I count on having students with conservative viewpoints to make my upper level classes diverse and interesting. But, conservative does not always work in my favor. Based on statements made in student evaluations ("I am insulted that someone like you is teaching me here," "This professor should be fired. She is a liberal. So obviously she can't be trusted to objectively grade our Torts exams), the students have implicit and explicit biases against me, biases which have nothing to do with my teaching but with my identity.

31. In my view, colleagues judging performance IGNORE THAT THERE IS A PATTERN OR PRACTICE. They feel no professional or moral obligation to acknowledge the wide range of legal scholarship or best practices reports from the American Bar Association or others that point out that women of color (all women) are discriminated against in the law school classroom.

32. Instead, colleagues seek to punish the professor for the complaints by students. Punish in terms of seeking termination, refusing contract renewals, denying or delaying tenure based on the complaints, irrespective of whether the student has violated any rules, fabricated the complaint, acted irrationally, or otherwise. There is a lack of institutional support. There is also a lack of cultural competency because all faculty who have a vote on tenure, or any other power to promote, hire or fire, should be aware.

33. A refusal to address these concerns AS TO ME PERSONALLY shows a lack of institutional commitment to RETAIN people of color on the faculty.

34. In summary, Jennifer, I continue to complain about Pin Wu because, even if I never hear from him ever again, he damaged my reputation; my colleagues are retaliating against me or punishing me for his complaint; his complaint is part of a pattern and history of harassment by students; I am tired of being assaulted by students and otherwise harassed - this is starting to hurt me and wear on me; and, I have anxiety because I fear that my colleagues are not going to do anything about this problem as evidenced, by your email below and Beth's suggestion that I not file an honor code complaint.

WHAT SHOULD I DO?

ALSO, I HAVE CONTINUED TO RAISE CONCERNS BECAUSE THE STUDENT BULLYING, COUPLED WITH BULLYING BY COLLEAGUES, HAS GOTTEN TO BE TOO MUCH

35. I have shared with you the war stories about how colleagues are bullying me. Here is the issue. Perhaps, unknowingly (though ignorance of the law is no defense), my colleagues are engaging in activity that is, has or will deprive me of my civil rights, including my rights under Title 9, Title 7 (race; gender; race+ gender); the ADEA and other civil rights statutes. With respect to day to day teaching and with respect to trying to meet the requirements for tenure, my colleagues have engaged in a PATTERN of subjecting me, or trying to subject me, to different terms and conditions of employment. I could take my experiences and put them into a classic exam fact pattern to show a prima facie case of discrimination. That is what I endure. I need you to make this stop.

36. I appreciate your willingness to talk about them. Some colleagues and former Deans would not even engage in such discussion without taking offense or retaliating. So, first, I do appreciate you. I have taken a lot of your time. I hope that I have not alienated or offended you.

37. But, I need more than someone to talk to. I need someone to protect me. I need someone at the university to decide what can be done.

38. I do not wish to discuss the details of the harassment and discrimination from colleagues. Here. As I mentioned, I had hesitated to make a complaint for fear of retaliation. Your approaching the Office of Institutional Equity allows me to avoid taking that initiative. Instead, in responding to your comment below, I wish to raise my concerns about the interconnectiveness of these issues.

39. So, in summary, the issue with pin Wu is tied to a pattern of hostile work environment that is causing me anxiety and distress. that is why in part I keep bringing it up.

Please reconsider the facts and my views to better understand the problem and work toward a solution. I appreciate you and all of your efforts. These issues make the job tough. But, we looked for someone who promised to address them in a way that considered the problems that protected classes - women, racial minorities, LGBT people face. So, I maintain my faith in you that you will make our community not only safe and welcoming for students, but for everyone, including the faculty. For everyone, including me.

Cheryl Butler

From: Collins, Jennifer
Sent: Monday, August 10, 2015 2:21 PM
To: Butler, Cheryl Nelson
Cc: Thomas, Samantha (IAE)
Subject: Following up on one issue

Dear Cheryl – I look forward to our upcoming meeting. In the meantime, I want to address the concerns you have raised regarding Pin Wu. As you know, the law school took immediate action when you raised concerns about him following the release of fall grades; he was moved to another section of Torts and he was called in to a meeting with the Senior Academic Dean and the Dean of Students in the spring semester where he was asked if he was continuing to make comments about you to fellow students. He asserted that he was not in fact doing so and he was told by the deans that there was no reason that he should be making any comments about you and he agreed that he would not in the future. However, you have continued to raise concerns about him this summer, although thankfully, to my knowledge, there have been no additional encounters between you and this student since his move to another section. For example, in emails dated August 6 and 7, you specifically refer to threats, harassment and intimidation, and not feeling safe. I have no greater obligation as a dean than to do everything I can to ensure the safety and well-being of each and every cherished member of our community. Therefore, I believe the appropriate course is to make sure Samantha Thomas from the Office of Institutional Access and Equity is aware of your concerns; she is copied on this email. My understanding is what additional action, if any, you choose to pursue at this point is up to you, but because you referenced concerns about safety, it is the most prudent course for me to let Samantha know about your concerns, as I would for any faculty, staff or student who raised a similar safety concern (this does not mean that I have filed a complaint on your behalf; it means I am simply letting Samantha know about the situation by virtue of this email). She is here to support you and I very much hope that you will find any conversations with her helpful.

I look forward to seeing you soon.

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

From: Thomas, Samantha (IAE)
Sent: Wednesday, September 23, 2015 11:20 AM
To: Butler, Cheryl Nelson
Cc: Collins, Jennifer
Subject: RE: SUGGESTED RESOLUTION RE: CONCERNS ABOUT DISCRIMINATION AND INEQUITY

Cheryl,

Your email misstates our conversation of September 10, so I just want to clarify what we did talk about. First, our discussion on retaliation was that SMU had policies against retaliation and that you are protected against retaliation. Second, we did not develop any plan of action in which you were to share your concerns of discrimination with Dean Collins and your colleagues. You indicated that you felt things were looking up in your tenure process and told me that you did not wish to file a complaint of discrimination. You then scheduled another meeting for September 17 which you cancelled on September 15.

At our meeting, I shared several of the University's nondiscrimination policies with you. We discussed the grievance process including the right of employees to attempt to resolve their concerns through their respective departments. As Dean Collins noted in her email regarding the appointment of a new tenure advisory committee, although you can bring issues of bias and discrimination to the committee for consideration, the committee cannot make a determination of whether you were discriminated against on a protected basis. At this point, if you are going to continue to raise issues of discrimination and retaliation, I recommend that you file a complaint with my office, so we may conduct a full investigation.

Please let me know if you have any questions.

Sincerely,
Samantha

From: Butler, Cheryl Nelson
Sent: Tuesday, September 22, 2015 4:17 AM
To: Collins, Jennifer <jmc@mail.smu.edu>
Cc: Thomas, Samantha (IAE) <thomassa@mail.smu.edu>
Subject: RE: SUGGESTED RESOLUTION RE: CONCERNS ABOUT DISCRIMINATION AND INEQUITY

Samantha,

To be clear, I do not want to file any complaints here or otherwise. You can even disregard my earlier posts this evening. I do not want to further offend anyone or risk anyone retaliating against me. I just want to keep on the table my suggestion in the immediate email below - the question of whether my tenure committee or Dean could add such a statement as the proposed language to my file or otherwise communicate the subject matter to all those having a vote. This perhaps is a question for my Dean, Jennifer. So, I will wait for her.

Thank you for having met with me.

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Best wishes,

Cheryl

From: Butler, Cheryl Nelson
Sent: Tuesday, September 22, 2015 3:40 AM
To: Collins, Jennifer
Cc: Thomas, Samantha (IAE)
Subject: SUGGESTED RESOLUTION RE: CONCERNS ABOUT DISCRIMINATION AND INEQUITY

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

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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.

Please advise if we can do this.

Thank you so much.

Cheryl

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

Feb. 24, 2016 Jennifer Collins

When asked if Cheryl ever informed her if she had a medical condition + that she wd. need an extension for tenure, the Dean cd not recall how Cheryl awarded the subject. It was only after the tenure comtee began telling Cheryl there were problems w/ her teaching that she raised health issues.

The Dean explained that it was not for her to decide if Cheryl needed an accommodation. Regarding her granting or denying Cheryl an extension for tenure, she again said that is not a decision she wd make. That wd be up to the Provost.

The Dean said that she advised Cheryl to go to HR for assistance + also to the provost. She also told her she needed to reach out to I/E for ADA.

Cheryl mentioned that her asthma was flaring up in January.

When Cheryl's teaching evals came in, the tenure comtee recommended to Cheryl to put off her tenure + this is when Cheryl started saying she

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she was being discriminated based on her race & gender. Then she was late turning in grades - her husband has been ill. Cheryl was working w/ Rhonda w/ FMLA - but Cheryl still did not provide information from the Dr. as to why she was late turning in grades.

The committee argued because they started feeling harassed. Cheryl's teaching evals were bad, then she did not get the FMLA paperwork to Rhonda until Dec. - but she never raised any health issue w/ the Dean

The Dean referred Cheryl to HR in June & then to IRE in August.

In June, when her counsel told her the teaching evals were bad & recommended she pursue an extension, this is when things started getting bad & Cheryl raised the race & gender discrimination

around the end of Oct. She told Cheryl again that the Provost was the decision maker for tenure - & told her to go to HR for FMLA & ADA -

Carlyn Hines

November 4, 2016

Roy Anderson

Roy has been a faculty member in the law school for 48 years. During that time he has served as Chair, and as a member, of tenure committees numerous times. He said this committee situation was unique in that there has only been one other time that a second committee was appointed because for some reason the first committee stepped down. He recalls that the only other time was with a faculty member by the name of Jane Winn who fired her entire committee and a new committee had to be appointed.

Roy said that the committee start out with the candidate when they are first hired. The committee acts as mentors. Around the fall of the 3rd year there will be a contract renewal and the committee will discuss the process with the candidate, letting them know what needs to get done – they will be advisors to the candidate because they want the candidate to succeed. Tenure happens in the fall of the 5th year, but candidates have to put together a box for contract renewal also. So, Cheryl would have had to do this too. The box for contract renewal is not as extensive as that for tenure, but it does require things like articles, service, and teaching.

Re: Cheryl Butler --- Her former committee resigned in her tenure semester. This would have been around fall of last year, around September. Jennifer Collins asked Roy to be on the committee. She did not say anything about why the former committee resigned, nor did she provide him with any other information. He said he would talk to Cheryl, and he did. He said they had a friendly relationship. She is very personable and he liked her a lot.

He went to her and asked her what was going on and she said she did not have any problem with two of the members, but that one of them hated her and they could not see eye to eye. Cheryl told him this person was mean and hated her. When she finished talking he said he asked her where she was in the tenure process because he had heard rumors that her teaching was problematic – but this had been over a year ago. At the time the committee had said she could turn it around. Cheryl told him that she had turned the teaching around and that it kept getting better and that she was on the verge of winning the Don Smart Award for teaching. Roy said she never won the award.

After talking with Cheryl he went back to Jennifer and said he would be on the committee, but not as Chair. He felt that Cheryl had a lot to offer and thought he and the committee would be able to turn things around. When Jennifer got the other 2 members Anthony Colangelo and Mary Spector – she asked him to be the Chair. Roy said he met with Mary Ann and Anthony right away and they all thought they do so something positive.

Roy said that he met with Joe Norton. Joe was a faculty member that had been on the first committee and he lived on the same street as Roy. Joe was going to turn over Cheryl's tenure file. Joe shared with Roy that the committee resigned because they did not feel they could make a positive recommendation and they had recommended that she petition the Provost and the Dean for an extension for consideration of tenure.

Before he talked to Joe he talked to Linda Eads and she said that the Provost was reluctant to grant a tenure extension. But she said there was more wiggle room with the law school because the process for the law school is 5 years vs. the University is 6, so it could be possible.

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The report had to be out in November. The committee was fond of Cheryl and felt they could do good by her, because they needed women and African Americans in the department. The committee wanted to do whatever they could so that Cheryl would be successful.

All of the committee members went to her Torts class because it was an important class. The other 2 classes were more seminar classes and much smaller. There was really no issue with the small classes. But her Torts classes were "beyond awful." Roy said he felt horrible, but her teaching was 'not up to snuff' and 'not very good.' He even asked himself if he should overlook this – because he thought she was very, very smart and he knew she could master the material, but she had not even tried. Roy said that many times she gave the same class twice, but she would get the facts mixed up. One of the times, she lit into a student for not articulating the case.

Each member of the committee sat in on 2 of the classes. And, he was getting reports from other faculty that had attended other classes and was hearing the same thing – that she was not doing well in the classroom. The committee had another meeting with Cheryl. Initially, at the first meeting, before they saw the classes – that first meeting went well and this was where they told her what the expectations were. After the first hour, Anthony left, and this was when she said how ill she had been treated by the first committee. Roy said he and the others would attend her classes.

The second meeting was for the committee to tell her where she was with her teaching and scholarship. They looked at her scholarship, but they did not know much about race. But, Anthony, had started a mentoring program with younger faculty, and he had been her mentor for over a year. He knew her writing and he thought it would not be a problem with external reviewers.

The committee found that scholarship was no problem, as was service. She actively mentored African American students that adored her. But, it was teaching the Torts class that was problematic and bad. In that second meeting he told her he would not recommend her for tenure and told her he would recommend she ask for an extension so she could improve her class evaluations, but she said she would not request an extension and she got upset and said she knew what her legal rights were. Cheryl told him that they could not treat her differently from Keith, who is a black male, and outstanding.

Ndiva Kofele-kale, who is from Cameroon, and African, has been here for 30 years, and he is a mentor to Cheryl. He resigned from the first tenure committee. Before the second meeting the committee had met to discuss how they were going to present a not so positive tenure report. Roy asked Ndiva to be in on the second meeting and asked Cheryl if it was o.k. and she said yes. Cheryl had been mentioning health issues with her family. Roy said that Cheryl is personable and dynamic and fun in the classroom, but she does not know the material. She was cancelling classes and not making them up, and sometimes when she did, she would give no advance notice. She would be missing classes because she was presenting papers elsewhere, and the committee told her she needed to concentrate on her teaching.

At the second meeting she said "I've lost my chair." Because it was not a positive meeting. The committee told her they thought that because of her health and her husband, she needed to petition the Provost for an extension, and Mary said she needed to meet with Rhonda Adams their HR person. The committee said the best thing is for the Provost to give her an extension and that would give her one more year to turn her to a good teacher.

This was the last time they met as a committee, but she would call him. After the meeting with Cheryl they talked about each of them writing a part of the report. The Chair does 90% of the work, but all of three were charged with writing certain areas of the report. Mary wrote the service portion, Anthony wrote the scholarship portion and he wrote the introduction and teaching portion. After each wrote their own section they would circulate each part and give each member the opportunity to comment. It was then up to Roy to pull the report together.

Mary thought Cheryl's conduct was so bizarre, that it was not fair to vote. Roy and Anthony said they were not equipped to assess her mental health, and that there were others - professional people to do that. They were there to assess her work as a faculty member. The second time the committee would recommend to Cheryl that she wait on going up for tenure.

Did you tell Cheryl that you thought the administration had no intention of granting tenure before the vote and had no intention of ever reversing the denial of tenure? (CB Oct. 26, 2016 email)

Roy said that he may have told Cheryl in her trying to work with the Provost and Human Resources, to grant an extension, that maybe there might be a more positive outcome if she waited, versus going up for tenure now - before the voting began.

Did you confess that Dean Collins and others engaged in fraudulent tactics to force the committee to gain a negative adverse tenure vote from faculty?

Roy said that he never said this. He said that Dean Collins would never meet with the committee and she did not ever comment at all about Cheryl. She did not tell Roy anything about Cheryl. The Dean wanted to be fair and wanted the committee to start fresh, so she didn't tell them anything of why the first committee resigned.

Roy said that Cheryl was adamant that she go up with Keith Robinson (Black male) and David Taylor (White male), and she said it would be discriminatory to be treated differently. Roy said it was difficult because they were trying to convince her to ask for an extension. When she said no, they then asked David and Keith to put their off until January, for Cheryl's sake. He said that by asking them to do this, it was not fair to them. The reason tenure packets are turned in the fall, is so that people can know before the holidays and be able to celebrate. Asking the two individuals to wait - when they had met all of the deadlines and requirements, was not fair to them.

The tenure box is kept in a room that all faculty have access to. They go there and review the material. There is a meeting and the voting is a confidential ballot. 12 voted NO; 9 YES and 6 Abstained. Roy said that "abstain" is basically a "NO" vote.

During the 5 year tenure process there is one semester for scholarship.

Cheryl has taught Torts 4 times and there has never been this bad teaching evaluations. Her "teaching is inadequate." Her "teaching is awful."

Cheryl told Roy he was not qualified to say she was unhealthy.

Cheryl worked and helped Jessica Weaver, a Black female, put together her tenure box. Roy was on Jessica' committee too.

Yes – sometimes the Committee, Dean, and the Provost all vote differently. E.g. Endiva had bad teaching evaluations, but the faculty voted “yes”, the Dean voted “No”, but the University voted “Yes.”

Dan Posson, a White Male, did not get tenure. Faculty and Dean voted “Yes” but the University said “No.” He left and went on to Tulane.

Regarding what Cheryl wrote in her e-mail, Roy said:

He never told Cheryl that the investigation was a waste of time.

He never told Cheryl that the University was not vested in her because she complained about discrimination.

Committee: Roy Anderson, Anthony Colangelo and Mary Spector.

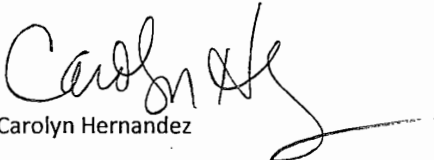
When it came time for them to vote – 2 said “NO.” 1 said “Wait.”

Faculty voted:

12 – NO

9 – YES

6 - Abstained


Carolyn Hernandez

Dec. 8, 2016 Anthony Colangelo

Has been w/ SMU - 10 yrs - & is a full-professor.

Has been through the tenure process & has been on 1 tenure Committee.

His appointment to Cheryl's tenure committee was due to Cheryl. Cheryl asked the Dean that he be on the committee so the Dean asked him. Anthony was at SMU before Cheryl. When she arrived she asked Anthony to be her mentor. She thought there should be a mentoring program & told him so he is the one that started it.

Cheryl never talked to him about why there was a second committee. While he could not recall, he thinks there was correspondence that was forwarded to the new Committee. He said that Cheryl was angry & accusing people of things. The new Committee said they told her they wanted to start fresh, so they never got a clear idea of what happened.

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The Committee met w/ Cheryl on a weekly basis - for hours. The meetings started as soon as the Committee was appointed. Anthony said the Committee spent a serious amount of hrs. w/ her. He said she knew what material was needed for the tenure box. She knew exactly what was needed.

They met as a whole Committee on a weekly basis on Friday afternoons. + she also met w/ them individually. They also went to her classes + gave her feedback. The weekly meetings were not shared.

The Committee was on a crunch schedule + since they were not the original committee they wanted to get as much info. as they cd. He said it became apparent there were serious problems, e.g. She was not a good teacher + she refused to accept that + change accordingly to the recommendations. She resisted feedback. He said she lies consistently + there was drama from day one. The Committee never knew what version of Cheryl to expect; Anthony said he had been her mentor in a discreet way - nothing formal + wd talk w/ her abt where + what publishing she should send her papers to. He wd.

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talk to her abt. strategy & how to balance her teaching & scholarship.

Cheryl wd. be in a meeting w/ the committee talking abt something & then she wd turn around & contradict herself. He said the Dean never met w/ the committee & never influenced them in any way regarding the tenure vote.

The committee encouraged her to ask for an extension early on - when they saw she was having problems - but she resisted the extension. The Comm's plan was that if she asked for an extension it wd give her more time to bring her teaching evals up. He said they were on her side & wanted her to succeed. They met for hours & tried to come up w/ a way for her to get tenure & to get an extension & work on her teaching. She resisted because she thought she wd be treated differently. It was not until later that she switched gears & changed her mind. He said it was surreal.

As the 1st meeting w/ Cheryl the Chair asked her for supplementary items - eg. copies of her syllabi - which she

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 she should have had + sh. not have
 been a problem - the Chair asked
 her on a weekly basis - but she never
 got the info. to them.

When asked if faculty going up for
 tenure cd. get a copy of the final
 report, he said that they cd. - but
 it wd be redacted if names were
 used. Aft. the vote / fac. member cd.
 ask for it & it wd not be unusual
 to get that redacted copy aft the
 vote.

Cheryl visited the extension. She
 had such bad tearful evals. that
 the Comde really thought aft. it
 & talked abt it - & that is why
 they wanted her to get an extension.
 But, she wd not have any of it. He
 sat in on her class & gave her
 constructive criticisms & she fought
 him on every point. He said that
 it became apparent that she had
 something else going on - but he did
 not know what that was.

He said she lied & lied abt. other
 people on the faculty. As the Comde
 talked to others - this became a major
 problem. He cd not recall specifics, but

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it was things like — Anthony gave me this advice — + he knows it was not what he had said. He said it all became toxic. He said that no one with such bad teaching evals that wd have gotten tenure — not even close. He said that you could have a colleague that has a personality that undermines everyone. He has not talked to her since before the tenure vote.

Anthony said the Comte never told Cheryl the Univ. had no intention of granting her tenure even before there was a vote. The Comte also never told her the Univ. had no intention of reversing the denial of tenure.

The comte, or other fac- members never told Cheryl the administrators denied her tenure because she had a disability or because she had complained abt. being denied ^{her rights} under FMLA & ADA.

When asked if Ray ever told Cheryl during one of their Comte members meeting w/ her — that the Univ. was no longer invested in her because she complained abt. discrimination,

Anthony said it was completely the ⁶ opposite - he recalled Roy saying that the Univ. had a vested interest in her success - he has a clear recollection of Roy saying 'of your success.' He said that the Chief had a way of taking words that were said & changing them around to suit what she wanted to say. -

Anthony said the Dean appr'd. the Combs - but they were handled by Cheryl. Cheryl wd have known what was expected for tenure & wd have known what was required for the 'tenure box.' Deadlines wd be established for her - & they wd come & go - & the Combs wd receive no response.

When the 2nd Combs took over her teaching evals - according to her - we had because she said students were discriminating against her. The Combs said they wd go to her classes & invite other faculty - but then her evals were negative & then she said she had health problems - but then, all the while she thought she was going up for a teaching award.

He said the Combs tried really hard

to help her — they wanted her to succeed.⁷
Race was not an issue — the
discussion was always regarding
qualifications.

Carolyn Howard

December 14, 2016

Mary Spector

Mary has been full time on the law faculty since 1995. Before this she was an adjunct professor. She has gone through the tenure process herself, and the process is the same now as it was when she went through it. She has never been chair of a committee. The Dean asked her in the fall, 2015 to be on Cheryl's committee. This was the second committee, and for some reason the committee had been changed.

Mary said that midway through her own tenure process her tenure committee changed because one left and a new one was appointed. The same thing happened during her promotion and by the time the committee presented her report, 2 out of the 3 had changed.

Mary said that as a full-committee they met 2-3 times. She said she met individually with Cheryl and this was before the fall decision, in addition to meeting formally early on. She said she had face to face meeting at least 2-3 times during the semester.

Mary said that the first committee was in place since Cheryl had the contract renewal, and this committee that she was on was appointed 3-4 months before the vote. She said that papers had been sent out for review. The committee did consult with her about the process. The tenure process starts from the hiring of the faculty member. The committee guides the faculty member as to what is needed in the tenure box. She remembers talking to Cheryl about getting a CV in good shape. Cheryl knew that teaching evaluations would be included as would outside evaluations. Cheryl also knew there was a personal statement that would need to be written.

Mary said that the original committee is usually appointed the first or second semester after the faculty begins. The committee's role is to protect the faculty member from having too many roles and being on too many committees; and to support the faculty member. The committee feels they have the responsibility to be honest about the candidate's prospect for tenure.

By the time of the second committee there were 3-4 years of evaluations in. Cheryl knew that her teaching was an issue, because the committee told her that. Mary attended her classes and thought she was engaging and enthusiastic and observed a faculty member who was trying and maybe uncomfortable with some of the material. And she handled it in a way that she appeared to be confident, but did not cover as much of the material.

Regarding Cheryl asking the committee to wait another semester so she could get good evaluations, Mary said she recalled discussing this with other people and that Cheryl take a leave, but the second committee was told that waiting was not an option. She said she does not remember asking Cheryl to wait. It was Mary's understanding that Cheryl wanted to move forward.

Mary said there was some discussion generally about race and gender being a factor in student evaluations. Someone that had written an article and came to give a talk about what

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they had written for a Law Review article. Mary said she does not doubt that research. But, this was just a discussion. Cheryl never said she was being discriminated against by the Dean/Provost.

Regarding the tenure report, Mary said she did not see her own report. When she was promoted she saw a redacted report. The faculty member going up for tenure does not see the letters from outside reviewers. But, the candidate would know when someone from a different school would send a letter.

Neither Mary, nor or anyone on the committee ever tell Cheryl that the investigation was a waste of time. In addition, neither she, or anyone else on the committee tell Cheryl that they thought the administration had no intention of granting tenure before the vote and had no intention of ever reversing the denial of tenure. This was never discussed. Mary also said that neither she, or anyone one else on the committee said "the university is not invested in you because you complained about discrimination."

Neither Mary, or anyone else on the committee confess that Dean Collins and others engaged in fraudulent tactics to force the committee to gain a negative adverse tenure vote from faculty. Mary said that she did not recall the Dean ever being at one of their meetings before the vote. She said the Provost and the Dean met with the committee after the vote, but not before.

Carolyn Hernandez

Dec. 16, 2016 George Martinez

He has been w/ SMU for 26 yrs & has been on tenure Committees before.

Cheryl's ~~search~~^{tenure} committee was approx around her 1st or 2nd yr. - He cd. not recall when. - But, their purpose was to ultimately make a recommendation to the faculty regarding tenure.

The Comd wd meet w/ Cheryl periodically. They attempted to set up meetings, but she wd always have something come up. This happened a # of times. He said he met w/ her individually a couple of times.

The Committee tries to give advice. Cheryl seemed to be in an adversarial stance. There were a bunch of E-mails she sent to Joe Nordin - & he was copied. Joe was the chair of the Comd. George said the direct conversations were between Cheryl & Joe.

They did not have a conversation w/ Cheryl. - but individually they think it wd be a good idea to step down because she seemed to be adversarial.

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Individually they went to the Dean + told her they did not want to be on the Committee. Joe stepped down 1st then Beth + George stepped down.

He does not recall when - but he + Beth met w/ Cheryl + it wd be one of the few times they met. Each time the Comtee requested a meeting she said she could not meet.

He does not recall Cheryl mentioning any type of discrimination. He does not recall her ever saying the Dean/Purves were discriminating against her.

Cheryl did request a tenure extension from the Committee. He recalls that she did not want an extension.

The tenure box is informal + wd be no big deal. It's no secret what goes in the box. People know what is supposed to be in the box. He said he recalled Joe asking her for a personal statement + telling her that way people can read that first. He said that what went in the box was very routine stuff. She was told she wd have to put together a tenure box + what goes

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in it. He has been here for 26 years
↓ people know about the tenure box
↓ what goes in it.

He does not know the requirements
of getting a copy of the report. -

He never heard anyone say that
the administration does not have a
vested in her. He said that if
they did not have a vested interest
in her - then why wd they have
placed her on the Dean's search
Committee when she was
non-tenure?

Carolyn Hanan

Dec. 19, 2016 Beth Monberg
Telephone [REDACTED]

Beth is currently the Jr. Assoc. Dean for Academic Affairs. She has served several times on tenure committees & has chaired one. Beth said the process is always the same. Beth was appointed to Cheryl's committee when Julie Fouader became Interim Dean. Julie had been on the committee, but when she became Interim, she stepped down & appointed Beth.

Joe had asked Beth to meet w/ Cheryl because of Cheryl's teaching evaluations. They were so negative, that it seemed like it was going to be an issue. At this time Beth was the Director for the Center for Teaching Excellence, so Joe thought she might be able to help Cheryl.

Beth said that she had a conversation w/ Cheryl & advised Cheryl that she had any problems & felt the students were unreasonable - but then, she conceded that in the Spring semester she might not have learned the material. Beth said the students talked w/ Cheryl, Cheryl cancelled classes & then not giving enough notice for the make-up class. Beth said

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that this could be the source of unhappiness of the students, but that it was something that could have been dealt with. The student's unhappiness came from the re-scheduling of classes, the lackers of getting back exams from her + the shudure of her exams.

Beth said that she talked to Cheryl and it was thought it would be resolved. They talked about getting other materials for her dossier + Beth observed her class + how other colleagues could come in. Beth's office is catcorner to Cheryl's so they talked informally - but there were also email exchanges.

Early the 2nd yr. of being on the comtee, Beth was Assn. Dean for Academic Affairs. She said there was no way Cheryl would not have known what it would take to get tenure. She was told over + over again. She would have known from the beginning because there are By-laws standards + Univ. Standards - so she had those + Beth said that compared to other tenure comtees she has been on, Cheryl had more guidance than anyone.

Beth said that the challenge for any tenure candidate is not the quantity, it's

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the outstanding standards & high quality of scholarship & the scholarship that contributes to the growth & development of the law. Cheryl had plenty of articles, but she needed to work on her teaching. We wd also have known - & had access to - the contents of the tenure boxes of those that were up for tenure because all the boxes are kept in the library. With the exception of student evals & letters from outside people - the boxes are there for everyone to look at.

The Committee did have face-to-face meetings w/ Cheryl, but, much of the time Cheryl wd cancel the meeting. She recalled 1 time Joe was sick so he had to cancel. - but the other time it was Cheryl that cancelled.

Towards the end Cheryl was making discriminations on race & gender statements abt the Comm. Beth cd not recall if Cheryl ever got specific - but she got the general sense that Cheryl thought they were more crucial than they wd have been a white male.

When this happened Joe decided that given Cheryl's comments - & the fact that he was chair & that she was say. he was

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discriminately against her - & the tone of her e-mails - all of this was causing him health problems - he decided to step down. He thought it wd be better for Cheryl to have a committee that she thought wd not be discriminating against her - so Cheryl wd be better off w/ a clean slate.

Beth had a conversation w/ George and what wd be best for Cheryl. George said he wd resign - so as Beth was Assoc. Dean - it wd not have been appropriate for her to be chair - it was that & the fact she had a less than friendly meeting w/ Cheryl regarding her teaching. Cheryl wd say Beth said this & Beth wd say this isn't true - & there wd be a whole string of e-mails that wd go on & sometimes Beth wd respond. Then, Cheryl seemed to think she sh. ~~continue~~ criticizing the other 2 people going up for tenure - & Beth wd respond - so, she also decided to step down.

Beth said that a committee member individually decided to step down & she thinks that all 3 of them may have been in a meeting w/ the Dean,

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but she's not sure. Beth said she did have a conversation w/ George abt stepping down.

Beth said the comte did not take the decision of stepping down lightly - it was a difficult & painful decision. The law school views as advising the candidate & helping the candidate move along through the process - but it is always up to the intention of the candidate to proceed.

The committee thought it wd be in Cheryl's best interest to have a fresh start + ~~for her~~ to have a comte that she feels comfortable with & not one that she thought was discriminating against her. A new committee wd be a clean slate + fresh start.

Beth said Cheryl was highly sensitive to postponing her tenure & was adamant to not postpone & to have it the same time as Keith & David. What ended up happening was actually postponing their tenure.

Beth said to look at all of the emails & there is a string of e-mails on this.

The process for her was the

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was the same as everyone else's.

Cheryl was repeatedly told what the expectations were. So whatever decision she made - was refusing to hear what the committee was telling her - or do what she was told.

There is/was no race/gender discrimination.

Carol M. Henning

Dec. 20, 2016 Joe Newton - Phone

JN has been w/ SMU for 43 yrs. He started as an adjunct in 1973 & is now a tenured prof. He has been on 4-5 other tenure comms. that were successful.

He was appointed Chair of Cheryl's Comm. in Fall 2013 by Dean Asanazio - as were Beth & George.

The role of the Chair was to get together w/ the other members & w/ Cheryl to prepare her for getting her contract renewal & tenure review.

The Committee met w/ Cheryl a # of times - but there were also times that she cancelled. He said he had over 100 e-mails from her, that he gave to Roy Anderson when he became Chair.

JN said they had problems at the end - things started to unwind. Cheryl felt that there was favoritism being given to the other 2 candidates that were coming up for tenure. She kept talking about Civil Rights violations - & then turn around and say how much she appreciated what they were doing - it was all very contradictory.

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JN said there seemed to be something going on w/ IAE - Sean - & thought it best if he recused himself. He said he turned over all his emails & materials to Ray Anderson. He has had no communication w/ Cheryl since Sept. 2015. This was also when the Committee dropped out.

JN said he was encouraging Cheryl & that initially she was on track, but then, when things started to unravel, the committee asked her if she wanted to put off her tenure & then it became an issue of discrimination for her. JN said that normally have 5 external reviewers & she said 8-9 - so the committee accommodated her.

When the committee was appointed she had issues w/ her text class. There were problems w/ 1 or more students that complained abt her & others complained abt her teaching. She wanted the Commitee to make public statements to the class that students were discriminatingly against her, but he told her that was not the job of the committee - & that there was a process for that. But, she kept on pushing -

saying that they were not defending her.

JN said her scholarship was good - & so was her service. & he felt there was a way they could get over the teaching issues - by bringing her up outside presentations - but she never got over the fact that students criticized her.

The Comde tried to keep her on track - but then her husband got sick & then there were problems w/ her children. JN told Cheryl that if things were getting too stressful she needed to talk to the Dean.

The former Dean had arranged Cheryl's schedule to accommodate her where she would be at school for 48 hrs - & then go back to Houston.

JN said Cheryl never wanted to take his advice. He said there was no problem with the way the 1st Committee was set up. Her Scholarship was good - she had problems w/ logic classes - but he did not have any real concerns that she would get through the tenure process. - But then she got hung up on teaching, & that the other 2 faculty members had

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were coming up for tenure were getting special treatment & everything started spiraling downward.

The summer before he stepped down he was on a phone conversation w/ her in Houston & it seemed like someone else was on the line - & then the language in her emails became coded & all the language that he was a racist was there. She led it ~~off~~^{spin} out of control & it got worse w/ the 2nd ^{not} comm.

JN said her scholarship, events/ speaking engagements, political skill, service were all good. He said he laid out a plan w/ Roy - concentrating on her teaching.

Cheryl was always off at conferences → he recommended that she concentrate on being here now - particularly since she was having teaching issues.

She did well at presenting at the conferences & they were going to build that into her lectures.

Students were on issue.

Then there was her health & family situation.

They told her there were procedures

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procedures up in the University to deal w/ this. She was stressing out. She cd not take criticism & puzzled everytime someone said anything.

In late or middle spring 2016 something was going on with her - but he didn't know what it was.

Until the end, when he told her to put this off for a couple of months - she said NO. She wanted to bring in a scholar to do Critical Race Theory - then she picked up on some medical problems - then she was falling apart & wanted medical leave - & then it went to Roy.

[Jennifer never discussed anything w/ the committee]

When he turned it over to Roy he thought there was still a good chance for her to get tenure.

1 time Julie Forester went to one of her classes & she did not show up - She was in her office.

He has not seen nor talked to her since turning it over to Roy - Sept 2015.

JN said Cheryl is very bright, & very energetic - it is unfortunate that it did not work out. They did

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everything to accommodate her - but everything centered around her teaching.

The class he went, she knew he was coming - it was her seminar class - & it was good. Other colleagues went to different ones they thought those classes were not good because she wd give misinformation & not answer questions. The Comde thought they cd work around this & cd pay her scholarship & service was good quality.

But as for her teaching - a lot of it had to do w/ preparation - which she was good for her Critical Race Seminar because this was her area & a smaller group of students. He heard from other people that had heard other public speakers & she was well organized & well prepared.

He did not have any problems w/ her that he did not feel they cd get over. But in the end she felt she was not being treated fairly - it all went back to her teaching.

The spring & summer before things started getting out of control & she before she started feeling that her Comde was against her, she told him that both did not like her. But both

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was on board + so was George + he felt they cd get through the faculty, emphasizing her scholarship + everything else she was doing. He was not a novice + had been in practice - but had not gotten a full teaching position in Houston - but people in her area liked her.

But things fell apart + it was very unfortunate - because it wd have worked out.

When the new committee was set-up, it was on a positive note. But, whatever was going on came to head. There were things going on w/ her husband who was not doing well + did not want to come to Dallas

JN referred her to FMLA - IAF - + the Dean. He corresponded w/ her via email + phone.

Last up. was hard to arrange a meeting w/ her because she was not there much. He offered to meet w/ her individually but she never took him up on that.

Cheryl thought the role of the ~~was~~ comde was to be her advocate - so if a student

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Criticized her, she expected the Comte to take up for her & she was upset when they did not. The students did not back off & neither did Cheryl.

Cheryl cd not take criticism. He was her own worst enemy. He told her that her scholarship was in the bag, but that she needed to concentrate on her classes. He told her to quit going to a lot of conferences. She was cancelling class & there were complaints that she wd cancel at the last minute or reschedule.

This whole situation is extremely unfortunate. Everybody liked her.

The situation w/ the second comte became tense.

He tried to think of what he cd have done differently, but he can't. She wanted the comte to publicly say the students were being racist - but the comte cd not do that.

Ray has his file.

Carlton H.



December 22, 2016

Via email

cnbutler@smu.edu

cherylbutler2002@gmail.com

Professor Cheryl Butler
3341 Charleston Street
Houston, TX 77021-1126

**Re: *Conclusions on Investigation of Complaint of Discrimination
And Retaliation in Tenure Denial***

Dear Professor Butler:

As you know, the Office of Institutional Access and Equity ("IAE") has been investigating your complaint of discrimination and retaliation related to the decision by SMU to not grant you tenure. Specifically, you informed IAE that you suffered race discrimination and retaliation and a violation of your civil rights in connection with the tenure decision. You specifically mentioned actions and statements by Jennifer Collins, Dean of the Dedman School of Law, Harold Stanley, Interim Provost in the Fall of 2015 who undertook certain actions related to your request for a tenure extension, and Steven Currall, Provost and Vice President for Academic Affairs.

You have provided IAE with emails regarding the basis for your complaint that there was discrimination and retaliation in your tenure decision. Those emails identified persons such as Dean Collins, Interim Provost Stanley and Provost Currall and members of your first and second tenure committees as persons who made statements or engaged in actions which you believe support your concerns. Although we previously notified you of our findings regarding possible violations of SMU policy as it relates to the Americans with Disabilities Act (ADA) and Family Medical Leave Act. (FMLA), we again considered those allegations in connection with this tenure complaint.

After fully investigating your allegations, IAE has discovered no evidence of discrimination and retaliation in the tenure decision. Our investigation shows that such comments were never made. Throughout the process, you were apprised of the sole basis for the tenure decision, which was that your teaching did not meet the University's standards for tenure and promotion. You appealed the initial tenure recommendation from the law faculty to Dean Collins who reviewed your appeal and again informed you (on May 4, 2016) of the basis for the denial of the appeal and for her recommendation to the Provost that you not be granted tenure. The basis was your failure to meet the University's teaching standards. Your race was not a factor. The Provost informed you of his decision on your tenure on May 5, 2016 and you did not appeal.

Office of Institutional Access and Equity
Southern Methodist University PO Box 750200 Dallas TX 75275-0200
214-768-3601 Fax 214-768-3557

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SMU_Butler_00009417


We fully investigated all negative statements regarding race that you attributed to members of the University's administration and faculty regarding your tenure and your allegation that administrators and other faculty had made general comments that SMU had no intention of granting you tenure because the school does not keep or tolerate professors who complain of discrimination. Again, our investigation has shown that these comments were never made by administrators or faculty.

Similarly, the decision related to your request for an extension was made in accordance with SMU policy, with Interim Provost Stanley directing you to HR for assistance with your ADA and FMLA concerns. Our investigation shows that once you sought leave, SMU granted you FMLA leave in 2015 and the maximum amount of FMLA leave allowable in the 2016 calendar year. When your FMLA leave ran out, SMU granted you reasonable accommodations under the ADA. You were out of the classroom (and did not teach) for the entire spring 2016 semester on leave or as an accommodation. Thus, after fully looking at all the facts available to us, we have concluded that there was no violation of SMU's policies against discrimination and retaliation.

While we fully investigated your allegations of discrimination and retaliation, it is important to note that you did not participate in the investigation beyond sending emails to us. I sought to schedule interviews with you on numerous occasions, but you either did not respond or told me that you would not participate. After I learned that you were not on campus in the classroom, I offered to conduct interviews by telephone or by SKYPE and at your convenience and at times which accommodated any special timing issues you might have, but you still refused to participate. I offered to have another IAE representative sit in on the interviews to allay any concerns you might have about talking to a single investigator, but you did not participate. After interviews revealed no basis for your allegations, and the allegations were denied, you continued to refuse to speak with me, so I could conduct follow-up questions. Our investigations are thorough, but we always encourage the complainant to participate and provide us with additional feedback as we are conducting an investigation.

As you know, SMU policy prevents retaliation against anyone who files a complaint. Please notify IAE immediately if you have any concerns regarding retaliation. Please direct any future questions you might have regarding any aspect of this investigation directly to Samantha Thomas, Executive Director and Title IX Coordinator in IAE. Thank you for your consideration.

Sincerely,



Carolyn Hernandez, Ph.D.
Director and ADA/504 Coordinator
Deputy Title IX Coordinator
Office of Institutional Access and Equity

Hernandez, Carolyn (IAE)

From: Hernandez, Carolyn (IAE)
Sent: Thursday, November 10, 2016 2:33 PM
To: 'cherylbutler2002@gmail.com'; Butler, Cheryl Nelson
Subject: ADA/FMLA Determination Letter
Attachments: Cheryl Butler ADA FMLA Determination Ltr.pdf

Cheryl,

Please see the attached ADA/FMLA determination letter.

Carolyn

Carolyn Hernandez, Ph.D.
Director for Access & Equity,
Deputy Title IX Coordinator & ADA/504 Coordinator
Institutional Access & Equity
Southern Methodist University
P.O. Box 750200
Dallas, TX 75275-0200
(Office) 214-768-3601
(Fax) 214-768-2101
E-Mail: hernandez@smu.edu
www.smu.edu/iae





November 10, 2016

Via email
cnbutler@smu.edu
cherylbutler2002@gmail.com

Professor Cheryl Butler
3341 Charleston Street
Houston, TX 77021-1126

Re: *Conclusions on Investigation on ADA and FMLA Allegations*

Dear Professor Butler:

This letter is to inform you of the outcome of the investigation with respect to your allegations of violations of SMU policy related to the Americans with Disabilities Act (ADA) and the Family Medical Leave Act (FMLA).

With respect to the ADA, you informed the Office of Institutional Access and Equity (IAE) that Jennifer Collins, Dean of the Law School, and Harold Stanley, interim Provost and Dean of Academic Affairs at the time of your allegations, violated your ADA rights by failing to grant a reasonable accommodation under the ADA and by denying you the opportunity to apply for a reasonable accommodation. You claim that because the Dean and Provost did not refer you to IAE, you did not know how to obtain an accommodation and did not know where to go for assistance with the ADA.

You also raised concerns that Rhonda Adams, Senior Benefits Specialist in Human Resources (HR), failed to properly designate leave you sought as FMLA qualified leave. SMU has investigated your allegations related to the ADA and FMLA and has concluded that violations of SMU policy did not occur.

While IAE considered many facts in reaching its conclusion, we note that you had been apprised of your ADA rights throughout the period you claim you were not, and well in advance of the date you first submitted your ADA accommodation request forms to IAE on April 6, 2016. The *Needs of Persons with Disabilities Policy 2.4* was available in SMU's online policy manual and on the IAE website. As a professor, you have had access to this Policy at all times. You also received training on discrimination and harassment that included this policy as recent as August 6, 2015. In his November 10, 2015 letter to you, Provost Stanley referred you to HR regarding leave under the FMLA and reasonable accommodations under the ADA. Beth Thornburg, Sr. Associate Dean for Academic Affairs for the Law School, sent you Policy 2.4 on November 19, 2015, including a link to the accommodation request forms. Ms. Adams sent you contact information for the ADA/504 Coordinator and the relevant forms on November 23 and November 24, 2015. Finally, I sent you Policy 2.4 and the forms on December 11, 2015, and you personally picked up copies of these documents from my office on December 14, 2015.

Office of Institutional Access and Equity
Southern Methodist University PO Box 750200 Dallas TX 75275-0200
214-768-3601 Fax 214-768-3557

SMU_Butler_00017087

Sheri Starkey, Associate Vice President and Chief Human Resource Officer, reviewed your FMLA allegations, including your requests for FMLA leave and the determinations made by Ms. Adams, and concluded that SMU appropriately administered your requests for leave under the FMLA.

Finally, you had raised concerns regarding the time it took to complete this investigation. IAE investigated your allegations several months ago, but delayed issuing its conclusions because you were not in the classroom and had asked to speak with an investigator again before IAE finalized the investigation. Although we offered possible interview dates and times, in person, by SKYPE, and by telephone, you did not respond or did not provide dates when we asked you to respond. Please know that we fully considered all of the information you provided to IAE.

Of course, you are protected from retaliation which is considered a separate violation of University policy. Please notify me immediately if you feel that adverse action was taken against you for filing a complaint with our office. As I informed you in my November 3 email, IAE is separately investigating your claims of retaliation and discrimination related to your tenure denial and is aware of the concerns you have raised.

Sincerely,

A handwritten signature in cursive script that reads "Carolyn Hernandez". The signature is written in black ink and is positioned above the typed name and title.

Carolyn Hernandez, Ph.D.
Director for Access & Equity,
Deputy Title IX Coordinator & ADA/504
Coordinator
Institutional Access & Equity



November 10, 2016

Via email
cnbutler@smu.edu
cherylbutler2002@gmail.com

Professor Cheryl Butler
3341 Charleston Street
Houston, TX 77021-1126

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You also raised concerns that Rhonda Adams, Senior Benefits Specialist in Human Resources (HR), failed to properly designate leave you sought as FMLA qualified leave. SMU has investigated your allegations related to the ADA and FMLA and has concluded that violations of SMU policy did not occur.

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SMU_Butler_00017087

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Of course, you are protected from retaliation which is considered a separate violation of University policy. Please notify me immediately if you feel that adverse action was taken against you for filing a complaint with our office. As I informed you in my November 3 email, IAE is separately investigating your claims of retaliation and discrimination related to your tenure denial and is aware of the concerns you have raised.

Sincerely,

A handwritten signature in cursive script that reads "Carolyn Hernandez". The signature is written in black ink and is positioned above the typed name and title.

Carolyn Hernandez, Ph.D.
Director for Access & Equity,
Deputy Title IX Coordinator & ADA/504
Coordinator
Institutional Access & Equity

Response to December 1, 2016 Email

From: "Thomas, Samantha (IAE)" </o=smu/ou=dallas/cn=recipients/cn=thomassa">
To: "Butler, Cheryl Nelson" <cnbutler@mail.smu.edu>, cherylbutler2002@gmail.com
Date: Fri, 02 Dec 2016 18:31:52 -0600

Cheryl,

This responds to your email of December 1. IAE initiated this investigation because you complained that Carolyn Hernandez was biased in her investigation of your ADA and FMLA claims. When such an allegation is made, SMU must investigate it. You now tell me that you do not plan to participate in the investigation based on "logical assumptions" and your conclusions from those assumptions which are not based on anything IAE has told you.

So, IAE will investigate your allegations as I set forth in my email of November 30. IAE cannot allow you to dictate how we conduct that investigation. I again invite you to participate in the investigation by speaking to me. I also ask that you submit to me any other materials you would like for IAE to consider, such as the tape recordings you mentioned. IAE's goal is to fully investigate your allegations and determine what happened here and that is certainly not a violation of your civil rights.

Please know that your refusal to participate in the investigation will not stop the investigation.

Thank you,
Samantha

Samantha Thomas
Executive Director and Executive Assistant to the President
Title IX Coordinator
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12-22-17

Meeting with Carolyn Hernandez

I met with Carolyn to ask her several questions related to allegations raised by Cheryl Butler. Carolyn stated that she never shared any information about Cheryl's case beyond a need-to-know basis. Carolyn stated that she investigated Cheryl's allegations to the extent possible based on the information provided by Cheryl to date. No one hindered Carolyn's investigation, except that Cheryl would not return calls, email, or answer any questions. She also would not provide the type of recordings that she stated she had. Carolyn stated that she never told Cheryl that Deana Collins or former Provost Harold Stanley violated her ADA rights by denying Cheryl's request for an ADA accommodation.

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1-12-19

Phone Call - Roy Anderson

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Roy Anderson stated that he never told Cheryl Butler that the University was no longer invested in her because she complained about discrimination. He also stated that he never told Cheryl that there are statements in her tenure report that violate her civil rights.

Roy said the only comment he made about this matter to her was that he told her that she messed up with the Provost's office by not providing medical information as was requested. He believes she told him that she didn't provide the information.

He stated that the tenure committee members said they really liked Cheryl. They wanted her to succeed.

He said he wrote the section on teaching and wrote his personal impressions of her courses. He said all these committee members went to her classes and things went south. Roy said he spoke to Cheryl. He told her that her teaching was not where it should be to make a positive tenure recommendation.

The committee recommended that Cheryl get an extension to help herself. Then Cheryl's interactions changed. Then she also didn't cooperate with the Provost. Cheryl did not want the extension and said then they would be treating her differently from the other two candidates who were also up for tenure.

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Roy said Cheryl made this statement at the last meeting of the 2nd (Chia) tenure committee.

Roy said until there were problems with her teaching, Cheryl would call him and scream and yell at him. Sometimes for over an hour.

Roy said he was currently on Sabbathial and on vacation with his wife, but he could call again if needed.

1-13-17

Phone Call - Rhonda Adams

I called Rhonda Adams to inquire about allegations raised by Cheryl Butler. Rhonda stated that Dean Collins never interfered with Cheryl's FMLA rights, and Rhonda said she never made such a comment to Cheryl.

Rhonda stated that Dean Collins did not contact her and tell her how to make FMLA determinations to delay the tenure vote.

Rhonda is not aware of any tape recordings of her conversations with Cheryl.

Rhonda said she initially sent Cheryl FMLA paperwork in June 2015, but Cheryl never responded.

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10/25/21
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Thomas, Samantha (IAE)

From: Thomas, Samantha (IAE)
Sent: Thursday, January 26, 2017 3:47 PM
To: Butler, Cheryl Nelson; 'cherylbutler2002@gmail.com'
Subject: Determination Letter
Attachments: Butler, Cheryl Determination Letter 01262017.pdf

Cheryl,

Please see the attached letter.

Sincerely,
Samantha Thomas

Samantha Thomas
Executive Director, Executive Assistant to the President
and Title IX Coordinator
Office of Institutional Access and Equity
Southern Methodist University
214-768-3601
thomassa@smu.edu
www.smu.edu/iae
www.smu.edu/LiveResponsibly



January 26, 2017

Via email
cnbutler@smu.edu
Cherylbutler2002@gmail.com

Professor Cheryl Butler
3341 Charleston Street
Houston, Texas 77021-1126

***Re: Conclusions on Investigation of Concerns of Discrimination Regarding
Carolyn Hernandez and Rhonda Adams***

Dear Professor Butler:

As you know from my November 30 email, I undertook the investigation into your allegations of race and disability discrimination and retaliation regarding Carolyn Hernandez, former Director and ADA/504 Coordinator in the Office of Institutional Access and Equity (IAE), and Rhonda Adams, Senior Benefits Specialist in Human Resources.

I also have received a copy of your email of December 29, 2016, to Ms. Hernandez in which you again raised concerns regarding Ms. Hernandez's lack of impartiality in conducting the investigation into allegations of discrimination related to your tenure decision. Your December 29 email was forwarded to me because Ms. Hernandez retired at the end of the year. That email raised the same concerns that you had raised before - that Ms. Hernandez allegedly told you that Jennifer Collins, Dean of the Dedman School of Law, and Harold Stanley, former Interim Provost and Vice President for Academic Affairs, had violated your ADA rights by failing to follow University procedures for handling requests for ADA accommodations. You had previously alleged that Ms. Adams had violated your FMLA rights by telling you that the Dean had violated your FMLA rights and by following instructions from the Dean in making determinations on your FMLA requests.

I completed my investigation and found no evidence to support your assertions of discrimination and retaliation. Ms. Hernandez denied making such statements to you regarding the Dean or Interim Provost. IAE fully investigates claims of discrimination and retaliation before communicating any findings. Further, the position of the Interim Provost was clearly set forth to you in his November 15, 2015, letter in which he directed you to Human Resources regarding FMLA and ADA concerns.

Office of Institutional Access and Equity
Southern Methodist University PO Box 750200 Dallas TX 75275-0200
214-768-3601 Fax 214-768-3557

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Similarly, my investigation did not reveal support for your allegations regarding Ms. Adams. Ms. Adams made FMLA determinations in accordance with SMU policy and procedures. Dean Collins did not instruct her on any aspect of your FMLA determinations, and Ms. Adams would not have sought such input from the Dean. Dean Collins was not involved in those determinations, so there was no breach of alleged confidentiality in IAE or Human Resources. As your supervisor, Dean Collins would have been notified that you were granted FMLA leave or a reasonable accommodation under the ADA because both involved your being out of the classroom.

You mentioned in your emails a tape recording that allegedly contains statements supporting your assertions against Ms. Hernandez and Ms. Adams. Despite my repeated requests for you to provide a copy of the recording, you did not do so. You also refused to speak to me as part of this investigation. I am aware of your concerns regarding impartiality, but my investigation was designed to determine whether there was support for your allegations. Speaking to me and providing alleged direct evidence of your allegations would certainly have facilitated that process.

Please remember that you are protected from retaliation under SMU policy and notify me immediately if you have any concerns of retaliation.

Sincerely,



Samantha Thomas
Executive Director, Executive Assistant to the President
and Title IX Coordinator
Office of Institutional Access and Equity