

Nos. 18-6102 / 18-6165

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**UNITED STATES COURT OF APPEALS  
FOR THE TENTH CIRCUIT**

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RACHEL TUDOR,

*Plaintiff-Appellant/ Cross-Appellee,*

v.

SOUTHEASTERN OKLAHOMA STATE UNIVERSITY  
*and the* REGIONAL UNIVERSITY SYSTEM OF OKLAHOMA,

*Defendants-Appellees/ Cross-Appellants.*

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On appeal from the United States District Court  
for the Western District of Oklahoma  
The Hon. Robin J. Cauthron  
No. 5:15-CV-00324-C

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**SUPPLEMENTAL APPENDIX *for* DEFENDANTS–APPELLEES/CROSS-APPELLANTS**

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**VOLUME 7**

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ZACH WEST

*Assistant Solicitor General*

ANDY N. FERGUSON

*Staff Attorney*

OFFICE OF ATTORNEY GENERAL

STATE OF OKLAHOMA

313 N.E. 21st Street

Oklahoma City, OK 73105

Phone: (405) 522-4798

[zach.west@oag.ok.gov](mailto:zach.west@oag.ok.gov)

[andy.ferguson@oag.ok.gov](mailto:andy.ferguson@oag.ok.gov)

*Counsel for Defendants-Appellees/ Cross-Appellants*

TABLE OF CONTENTS  
VOL 7

No.	Date	Description	Page
205	09/22/2017	Pltf's Resp. to Motion for Summary Judgment (from 205-37).....	1735-1932
212	10/20/2017	Defs' Reply to Motion for Summary Judgment ...	1933-1951
318	07/18/2018	Pltf's Mot. to Strike .....	1952-1967
320	07/19/2018	Pltf's Mot. to Strike (10 <sup>th</sup> Cir.).....	1968-1981
324	07/26/2018	Pltf's Resp. to JNOV .....	1982-2020
327	08/02/2018	Defs' Reply to JNOV.....	2021-2029
331	08/08/2018	Defs' Resp. to Mot. to Strike .....	2030-2034

**From:** Sheridan McCaffree smccaffree@ruso.edu  
**Subject:** RE: The Discrimination...  
**Date:** April 27, 2011 at 4:01 PM  
**To:** "Richard Ogden" rco@lawokc.com

---

We are working on this and will get back to you.

Sheridan McCaffree  
Executive Director  
Regional University System of Oklahoma  
3555 NW 58th St., Suite 320  
Oklahoma City, Oklahoma 73112

---

**From:** Richard Ogden [mailto:rco@lawokc.com]  
**Sent:** Wednesday, April 27, 2011 10:10 AM  
**To:** smccaffree@ruso.edu; cbabb@ruso.edu  
**Subject:** RE: The Discrimination...

Sheridan and Charlie,

Please ask Southeastern to get me their policies dealing with application for tenure and the process of review of the tenure application, specifically the policy dealing with the vote of the Faculty Tenure Committee and the recommendation process to the Dean, Provost and President. More particularly I am interested in know what the vote was from the committee and what “ Compelling Reasons or Exceptional Case ” were found by the administration to disregard the recommendation of the committee.

Frankly, from reading the memo Charlie sent me on Monday, I did not see anything that seemed exceptional or compelling. The administration seemed to have a different opinion from the faculty committee, but that does not seem to rise to the standard set forth in the policy (if that is what the policy says) in order to override the recommendation of the Faculty Tenure Committee.

I would also like to know how many times in the past three years the administration, and in particular Dean McMillan, overruled the recommendation of the Faculty Tenure Committee.

There are several things reported, which if true even in part, give me great concern. It does not impress me that Dean McMillan asked Professor Tudor to (as a favor to her) withdraw here application for tenure so as to improve her academic portfolio. This seems not to be consistent with the recommendation of the faculty committee for tenure.

I have read quite a bit of material and none of it has thus far answered these questions:

1. What Compelling Reasons were there to overrule the Faculty Tenure Committee?
2. How many times in the past three years has this occurred?
3. What are the policies in place now dealing with the process for tenure involving the Faculty Tenure Committee, now and at the time Dr. Tudor made her application?
4. Where other Professors recommended for tenure with similar academic portfolios?
5. If this was such a clear case for not recommending tenure to the regents, then how is it that the faculty voted unanimously in support of Dr. Tudor for tenure and for her to be allowed to reapply for tenure?
6. Who was the chair of the Faculty Tenure and Promotion Committee at the time of Professor Tudor 's application in 2010? Who was the chair of the Grievance Committee? And who was

the chair of the Faculty Senate at the time of the unanimous vote asking the administration to allow Professor Tudor to reapply for tenure?

I appreciate Charlie getting the opinion of other attorneys, as it must have seemed that this was a potential problem. I doubt that opinions from other attorneys are solicited routinely. That being said, I feel somewhat frustrated that I found out about this on Monday. Yesterday, I received a call from the ACLU and they advised that they had been made aware of this a week ago. So this problem has been in the public sphere for over a week and in our private realm for over a year.

At this point in time, we need to deal with the issues. I doubt the press is at all going to be satisfied with an answer to the effect that "we did everything right". If the policy dealing with recommendations from the Faculty Tenure Committee required "Compelling Reasons or an Exceptional Case" to overrule their recommendations, I have yet to see the "Compelling Reasons" or this to be an "Exceptional Case". I asked President Meeks to give me the reasons for Professor Tudor's denial of tenure and her termination, he told me that there were very good reasons and that I could be assured of that. I frankly thought there was some other problem that I would see from the paperwork other than a disagreement with the Faculty Tenure and Promotions Committee as to whether or not Professor Tudor's academic portfolio meet the standards for tenure.

Please see if you can get me the answers to the questions above. I appreciate your work. I intend to stay engaged in this matter. Thank you for your assistance.

Richard

---

**From:** smccaffree@ruso.edu [mailto:smccaffree@ruso.edu]  
**Sent:** Wednesday, April 27, 2011 9:03 AM  
**To:** rco@lawokc.com  
**Cc:** Charlie Babb  
**Subject:** FW: The Discrimination...

Regent Ogden:

FYI --The message below is from the same person I talked to on the phone last night.

Sheridan McCaffree  
Executive Director  
Regional University System of Oklahoma  
3555 NW 58th St., Suite 320  
Oklahoma City, Oklahoma 73112

---

**From:** Niloc Namgeews [mailto:jfalconcrest@gmail.com]  
**Sent:** Tuesday, April 26, 2011 4:55 PM  
**To:** smccaffree@ruso.edu  
**Subject:** The Discrimination...

By your staff does not go unnoticed. Healthy piece of advice for the New World (You know, the one where EVERYONE can see what you're up to): Dr. Douglas McMillan's actions, choosing to let his personal beliefs encroach upon and harm his working environment, are being aired, quite publicly, and this will come back around to bite your educational institution. No longer can this type of thing go on behind the scenes. Your actions will be brought to light, and exposed. I will personally do my part to

ensure this. Understand that people from all walks of life will stand in solidarity against this type of behavior. Discrimination against one hurts us all. Give Dr. Tudor her tenure back sirs. It is the right thing to do.

-Johnathan F.

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No virus found in this message.

Checked by AVG - [www.avg.com](http://www.avg.com)

Version: 10.0.1209 / Virus Database: 1500/3600 - Release Date: 04/27/11

# Exhibit 38

# Oklahoma State Senate

SENATOR ANDREW RICE  
District 46  
PHONE: (405) 521-5610  
E-Mail: rice@oksenate.gov



522 STATE CAPITOL  
2300 N. LINCOLN  
OKLAHOMA CITY, OK  
73105-4808

April 28, 2011

Sheridan McCaffree  
Executive Directions  
Regional University System of Oklahoma  
3555 NW 58<sup>th</sup>, Suite 320  
Oklahoma City, OK 73112

Dear Sheridan:

I am troubled to learn about Professor Rachel Tudor's denial of tenure for what appears to be discriminatory motives. The administration of Southeaster may have violated established policies and procedures in the review of Dr. Tudor's application for tenure and promotion.

As a legislative leader, I expect the RUSO regents to take this matter of a possible civil rights violation seriously.

I look forward to seeing a more transparent account of why the administration at Southeastern surprisingly overrule the will of the faculty in this instance.

Sincerely,

A handwritten signature in cursive script that reads "Andrew Rice".

SENATOR ANDREW RICE  
Democratic Leader  
522 State Capitol Building  
2300 N. Lincoln Blvd.  
Oklahoma City, OK 73105-4808  
405-521-5610

CC: Dr. Rachel Tudor  
President Larry Minks

**From:** Sheridan McCaffree smccaffree@ruso.edu  
**Subject:** FW: Tenure and Promotion  
**Date:** April 27, 2011 at 4:14 PM  
**To:** "Richard Ogden" rco@lawokc.com

---

fyi

Sheridan McCaffree  
Executive Director  
Regional University System of Oklahoma  
3555 NW 58th St., Suite 320  
Oklahoma City, Oklahoma 73112

---

**From:** Frank Akehurst [mailto:akehurstfrp@hotmail.com]  
**Sent:** Wednesday, April 27, 2011 11:51 AM  
**To:** smccaffree@ruso.edu  
**Subject:** Tenure and Promotion

Ladies and Gentlemen of the Regents of the Regional University System of Oklahoma:

It has come to my attention that a probationary faculty member at Southeastern Oklahoma State University has been denied tenure and even instructed not to reapply for tenure. This is Professor Rachel Tudor. Her record sounds like one that would be sufficient for promotion and tenure at my university, the University of Minnesota. I have heard about this matter only from Professor Tudor's side, but what she says is alarming and if true it reflects badly on the university and its president.

For many years, at the University of Minnesota, I was a member of the Senate Judicial Committee, which heard grievances, including those from faculty members denied tenure. As a chair of grievance hearing panels, and a member of such, I had to ensure that standards and procedures were followed, and that grievants were afforded a fair hearing. It appears that this was not the case when the recommendation on this matter, as passed by the local University grievance committee and even by the faculty Senate, was overturned by the president without credible reasons.

I hope that the Regents can make a fair inquiry into this matter, and do what is right. You have to deal with the president on a regular basis, and no doubt want to keep that relation cordial; if the president's action was justified and unbiased, you can discover that. If not, and especially if the president's decision can be traced to impermissible prejudice, then you need to rectify Professor Tudor's situation, and ensure that any further consideration of her tenure is conducted in a manner that is above reproach, which probably means that the president must recuse himself from further participation in the decision making.

With best wishes for the future of your Oklahoma State Universities in these difficult times,

**RUSOEMAIL465**



Respectfully, F. R. P. Akehurst

F. R. P. (Ron) Akehurst, Eden Prairie, Minnesota, USA  
Emeritus Professor of French  
University of Minnesota

tel home (952) 934 2027  
cell. (612) 987 5511

**RUSOEMAIL465**

**From:** Sheridan McCaffree smccaffree@ruso.edu  
**Subject:** FW: unjust termination  
**Date:** April 29, 2011 at 10:23 AM  
**To:** "Richard Ogden" rco@lawokc.com

---

fyi

Sheridan McCaffree  
Executive Director  
Regional University System of Oklahoma  
3555 NW 58th St., Suite 320  
Oklahoma City, Oklahoma 73112

---

**From:** Carolyn J Eichner [mailto:eichner@uwm.edu]  
**Sent:** Thursday, April 28, 2011 2:01 PM  
**To:** smccaffree@ruso.edu  
**Subject:** unjust termination

Dear Sheridan McCaffree,

I am writing to express my outrage at your university's recent decision to deny tenure to a highly qualified and clearly tenurable professor, Rachel Tudor. Denying a scholar tenure based on a rejection of her "lifestyle" is shameful. Not only are you a university, and thus assumed to be an arena for inquiry and ideas, but you are at state university - and thus should be held to an even higher standard than a private institution. But rather than creating an environment that encourages openness, you have created one that fosters narrowness and prejudice. If I were employed at Southeastern Oklahoma State, I would be mortified at such a horrifically biased tenure denial. What sort of standards do you uphold at your institution?

Sincerely,

Carolyn J. Eichner  
Associate Professor  
Department of History and Center for Women's Studies  
University of Wisconsin-Milwaukee  
Milwaukee, WI 53201  
eichner@uwm.edu

**RUSOEMAIL494**

**From:** Sheridan McCaffree smccaffree@ruso.edu  
**Subject:** FW: Discrimination against Prof. Rachel Tudor  
**Date:** May 10, 2011 at 3:10 PM  
**To:** "Lauren Eichinger" leichinger@ruso.edu

---

Sheridan McCaffree  
Executive Director  
Regional University System of Oklahoma  
3555 NW 58th St., Suite 320  
Oklahoma City, Oklahoma 73112

---

**From:** jeremyrshiple@gmail.com [mailto:jeremyrshiple@gmail.com] **On Behalf Of** Jeremy Shipley  
**Sent:** Sunday, May 01, 2011 12:59 PM  
**To:** smccaffree@ruso.edu  
**Subject:** Discrimination against Prof. Rachel Tudor

Dear Sir,

I am writing concerning the outrageous case of discrimination in the tenure review process for Prof. Tudor. As I am sure you are well aware of the details of the case I will not review them here. I believe firmly that the scholarly opinion of the Faculty Tenure and Promotion Committee should be adhered to. The personal religious beliefs of the VP of academic affairs, Dr. Douglas McMillan should have no bearing on the tenure review process. I urge you to begin an investigation into the undo influencing of that process by Dr. McMillan and to take appropriate action, up to and including firing, of individuals that have let their personal beliefs interfere with their professional conduct as university administrators.

Sincerely,  
Jeremy Shipley

--  
Jeremy Shipley  
Ballard and Seashore Doctoral Research Fellow  
Department of Philosophy  
The University of Iowa

<http://uiowa.academia.edu/JeremyShipley/About>  
[jeremy-shiple@uiowa.edu](mailto:jeremy-shiple@uiowa.edu)  
[jeremyrshiple@gmail.com](mailto:jeremyrshiple@gmail.com)  
847-732-4513

**RUSOEMAIL1933**

**From:** Sheridan McCaffree smccaffree@ruso.edu  
**Subject:** FW: Discrimination against Prof. Rachel Tudor  
**Date:** May 02, 2011 at 10:41 AM  
**To:** "Richard Ogden" rco@lawokc.com  
**Cc:** cbabb@ruso.edu

---

fyi

Sheridan McCaffree  
Executive Director  
Regional University System of Oklahoma  
3555 NW 58th St., Suite 320  
Oklahoma City, Oklahoma 73112

---

**From:** jeremyrshiple@gmail.com [mailto:jeremyrshiple@gmail.com] **On Behalf Of** Jeremy Shipley  
**Sent:** Sunday, May 01, 2011 12:59 PM  
**To:** smccaffree@ruso.edu  
**Subject:** Discrimination against Prof. Rachel Tudor

Dear Sir,

I am writing concerning the outrageous case of discrimination in the tenure review process for Prof. Tudor. As I am sure you are well aware of the details of the case I will not review them here. I believe firmly that the scholarly opinion of the Faculty Tenure and Promotion Committee should be adhered to. The personal religious beliefs of the VP of academic affairs, Dr. Douglas McMillan should have no bearing on the tenure review process. I urge you to begin an investigation into the undo influencing of that process by Dr. McMillan and to take appropriate action, up to and including firing, of individuals that have let their personal beliefs interfere with their professional conduct as university administrators.

Sincerely,  
Jeremy Shipley

--  
Jeremy Shipley  
Ballard and Seashore Doctoral Research Fellow  
Department of Philosophy  
The University of Iowa

<http://uiowa.academia.edu/JeremyShipley/About>  
[jeremy-shipley@uiowa.edu](mailto:jeremy-shipley@uiowa.edu)  
[jeremyrshiple@gmail.com](mailto:jeremyrshiple@gmail.com)  
847-732-4513

**RUSO EMAIL353**

**From:** Sheridan McCaffree smccaffree@ruso.edu  
**Subject:** FW: Disgraceful Behavior at Southeastern Oklahoma State University  
**Date:** May 06, 2011 at 12:05 PM  
**To:** "Richard Ogden" rco@lawokc.com

---

Sheridan McCaffree  
Executive Director  
Regional University System of Oklahoma  
3555 NW 58th St., Suite 320  
Oklahoma City, Oklahoma 73112

---

**From:** Clayton Alsup [mailto:mystdni@gmail.com]  
**Sent:** Tuesday, May 03, 2011 3:09 PM  
**To:** smccaffree@ruso.edu  
**Subject:** Disgraceful Behavior at Southeastern Oklahoma State University

Dear Ms. McCaffree,

The treatment of Rachel Tudor is abominable, however legal it might be. As a graduate student who plans to stay in academia for a career, I will have many occasions in the future to express my opinions to students about places where they might continue their education. While I would have said nothing against Oklahoma's public universities in the past, I can assure you that, for the rest of my career until such behavior is rectified, I will inform students, colleagues, and anyone else who might listen that Oklahoma would appear to be a bastion of ignorance, bigotry, and immorality and that I could not in good conscience recommend anyone attend or work for its schools. Perhaps those in your state might feel differently today, but I assure you attitudes will change, and this will be a permanent blotch on your memory. Act quickly to remedy this situation and perhaps you can come out of this on the moral high ground. Otherwise, I hope you are content to be defined by your prejudice.

Sincerely,  
Clayton Alsup

**RUSOEMAIL354**

**From:** Sheridan McCaffree smccaffree@ruso.edu  
**Subject:** FW: Request for fair treatment  
**Date:** May 06, 2011 at 5:24 PM  
**To:** "Connie Reilly" bcreilly@sbcglobal.net

---

fyi

Sheridan McCaffree  
Executive Director  
Regional University System of Oklahoma  
3555 NW 58th St., Suite 320  
Oklahoma City, Oklahoma 73112

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

**From:** Therese Quinn [mailto:tquinn@saic.edu]  
**Sent:** Friday, May 06, 2011 3:33 PM  
**To:** smccaffree@ruso.edu  
**Subject:** Request for fair treatment

Dear colleague: I have just heard the shocking news that a hard-working and awarded professor has been denied tenure and a contract because of her gender identity. This is a terrible breach of human rights. I am writing to request that the Governing Board of the Regional System of Oklahoma direct Larry Minks to respect the decision of the Faculty Appellate Committee, and honor the resolution passed by the Faculty Senate to renew Dr. Rachel Tudor's contract.

**RUSOEMAIL452**

Sincerely,

Therese Quinn

SAIC AAUP: Academic Freedom for a Free Society

Facebook group: [http://www.facebook.com/?ref=logo#!/group.php?](http://www.facebook.com/?ref=logo#!/group.php?gid=55468351323)

[gid=55468351323](http://www.facebook.com/?ref=logo#!/group.php?gid=55468351323)

Wiki: <http://saicaaup.wikispaces.com>

**RUSOEMAIL452**

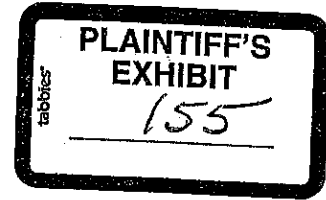
# Exhibit 39



**Lucretia Scoufos**

---

From: Randy Prus  
Sent: Friday, October 01, 2010 10:36 AM  
To: Lucretia Scoufos  
Subject: Tenure & Promotion Committees  
Attachments: Tenure Promotion Committees F 2010.docx



Dean Scoufos,

Attached is the roster for the Tenure & Promotion Committees for Dr. Barker and Dr. Tudor.

Dr. Randy Prus  
Professor & Chair  
English, Humanities, & Languages  
Morrison Hall 326  
1405 N. Fourth Ave, PMB 4050  
Durant, Oklahoma 74701-0609

Phone: (580) 745-2582  
Fax: (580) 745-7406

**FILE COPY**

# Exhibit 40



OFFICE OF THE PRESIDENT

SOUTHEASTERN OKLAHOMA STATE UNIVERSITY  
1405 N. FOURTH AVE., PMB 4236  
DURANT, OK 74701-0609

580-745-2500  
FAX 580-745-2515  
WWW.SE.EDU

MEMORANDUM

TO: Rachel Tudor  
FROM: President Larry Minks *Larry Minks*  
RE: Application for Tenure and Promotion to Associate Professor  
Date: April 21, 2010

---

This memo is to inform you that I have decided to deny your application for tenure and promotion to associate professor. As suggested by The Academic Policy and Procedures Manual 3.7.4 Role of the Faculty, I have delegated the responsibility to Dr. McMillan for providing you with the reasons for my denial. He will be in contact with you as soon as possible to delineate these reasons.

---

SOUTHEASTERN OKLAHOMA STATE UNIVERSITY

# Exhibit 41



7 April 2010

President Larry Minks:

I would appreciate the opportunity to meet with you to discuss my application for tenure and promotion. We have not had an opportunity to visit during my years of service here, therefore I would like to invite you to meet with me in person and ask any relevant questions you may have about my service to Southeastern and how I may contribute to the success of the university in the future. I look forward to hearing from you soon.

Sincerely,

Dr. Rachel Tudor

DEPARTMENT OF ENGLISH, HUMANITIES & LANGUAGES  
**SOUTHEASTERN OKLAHOMA STATE UNIVERSITY**  
1405 N. FOURTH AVE., PMB 4127 • DURANT, OK 74701-0609 • 580-745-2066 • FAX 580-745-7406 • WWW.SE.EDU

# Exhibit 42

**Lucretia Scoufos**

---

From: Lucretia Scoufos  
Sent: Monday, January 03, 2011 2:11 PM  
To: Ross Walkup  
Attachments: Scoufos.pdf

Ross, here is Dr. Mischo's recommendation for Dr. Tudor. He did not write a letter, but included only this form that is required by President Minks and suffices for a letter of recommendation.

Also included are my letter and evaluation summary regarding Dr. Tudor's 2009-10 request for promotion and tenure.

If I can be of further help, please advise me accordingly.

Lucretia

*Lucretia Scoufos, Ph.D.  
Dean, The School of Arts & Sciences  
Professor of Communication  
1405 N. 4th Avenue, EMB 4107  
Durant, OK, 74701  
Toll-free 1-800-435-1327 ext. 2278  
580.745.2278  
F: 580.745.7476*



**FILE COPY**

SOUTHEASTERN OKLAHOMA STATE UNIVERSITY  
 FACULTY PROMOTION AND TENURE EVALUATION SUMMARY  
 CONFIDENTIAL ANALYSIS WORKSHEET

NAME Dr. Rachel Tudor  
 DEPARTMENT English, Humanities, & Languages  
 CURRENT RANK AND LAST PROMOTION DATE Assistant Professor  
 HIGHEST DEGREE HELD PhD  
 YEARS OF SERVICE AT SOSU THROUGH CURRENT YEAR 6  
 YEARS OF UNIVERSITY EXPERIENCE PRIOR TO SOSU 4  
 OTHER RELEVANT EXPERIENCE NA

❖ PLEASE STATE IN COMMENTS SECTION FACTUAL EVIDENCE ONLY

PERFORMANCE EVALUATION

<u>CATEGORY</u>	<u>CRITICAL</u>	<u>NEEDS IMPROVEMENT</u>	<u>PROFICIENT</u>	<u>COMMENDABLE</u>	<u>OUTSTANDING</u>
-----------------	-----------------	------------------------------	-------------------	--------------------	--------------------

<u>1. EFFECTIVE CLASSROOM TEACHING</u>				<u>X</u>	
--	--	--	--	----------	--

**COMMENTS:**

OSLEP course on SE campus  
 Commendable student evaluations of teaching

<u>2. SCHOLARSHIP</u>				<u>X</u>	
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**COMMENTS:**

One article recently accepted for publication in peer-reviewed journal  
 Numerous creative works

**FILE COPY**



<u>CATEGORY</u>	<u>CRITICAL</u>	<u>NEEDS IMPROVEMENT</u>	<u>PROFICIENT</u>	<u>COMMENDABLE</u>	<u>OUTSTANDING</u>
-----------------	-----------------	--------------------------	-------------------	--------------------	--------------------

3. <u>SERVICE TO INSTITUTION, PROFESSION AND PUBLIC</u>				X	
---	--	--	--	---	--

**COMMENTS:**

Native American Symposium Committee  
 Chair, Department POAR Committee

4. <u>PERFORMANCE OF NON-TEACHING/ ADMINISTRATIVE DUTIES/ ASSIGNMENTS</u>					
---	--	--	--	--	--

**COMMENTS:**

**RECOMMENDATION:**

Recommend for tenure and promotion to Associate Professor

  
 Dr. John Brett Mischo, Chair

11/29/09  
 Date

**FILE COPY**




*Notif*

OFFICE OF THE DEAN

SCHOOL OF ARTS AND SCIENCES  
SOUTHEASTERN OKLAHOMA STATE UNIVERSITY  
1405 N. FOURTH AVE., PMB 4107  
DURANT, OK 74701-0609

580-745-2634  
FAX 580-745-7476  
WWW.SO.EDU

To: Douglas McMillan  
Interim Vice President for Academic Affairs

From: Lucretia C. Scoufos   
Dean, School of Arts and Sciences

Date: January 12, 2010

Subject: Recommendation to deny tenure and to give Rachel J. Tudor, Ph.D., a one-year terminal appointment at the rank of Assistant Professor in the Department of English, Humanities and Languages for the 2010-2011 Academic Year

Although there is evidence that Dr. Tudor is a generally effective classroom teacher, her record of scholarship, in my view, falls well short of the noteworthy achievement required for promotion to Associate Professor with tenure. Since coming to Southeastern, there appears to be only one peer-reviewed paper submitted for publication, which has been accepted, but not yet published.

Likewise, there is little documentation of service activity in Dr. Tudor's portfolio, other than routine departmental assignments. She was elected to the Faculty Senate in 2009, and has served one semester.

Dr. Tudor's portfolio appears to be incomplete. In addition to lack of documentation of service activity, there are no letters of recommendation from tenured faculty members in her department. The single sentence recommendations for promotion and tenure from the departmental committee and the chair fail to give any justification for the recommendation for promotion and tenure.

Therefore, based on the available documentation, I am unable to recommend Dr. Rachel J. Tudor for promotion to Associate Professor or for tenure. My recommendation is that she be given a one-year, terminal appointment for the 2010-2011 academic year.

FILE COPY

SOUTHEASTERN OKLAHOMA STATE UNIVERSITY

# Exhibit 43

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA     )  
et al.                             )  
                    Plaintiff         )  
   )  
vs.                                 ) CASE NO. 5:15-CV-00324-C  
   )  
SOUTHEASTERN OKLAHOMA         )  
STATE UNIVERSITY et al.         )  
                    Defendant         )

ORAL DEPOSITION  
DR. CHARLES WEINER  
March 11, 2016

ORAL DEPOSITION OF DR. CHARLES WEINER, produced as a witness at the instance of the Plaintiff and duly sworn, was taken in the above-styled and numbered cause on the 11th day of March, 2016, from 8:38 a.m. to 2:27 p.m., before Cheryl Duncan, Certified Shorthand Reporter in and for the State of Texas, reported by computerized stenotype machine at the offices of U.S. Attorney's Office, 600 E. Taylor Street, Suite 2000, Sherman, Texas, pursuant to the Federal Rules of Civil Procedure and the provisions stated on the record or attached hereto.

1 A. Verbally.

2 Q. Do you remember by who?

3 A. Bridgette Hamill.

4 Q. Do you think that was in about the year  
5 2007?

6 A. Probably. Yes.

7 Q. Did you have any conversations with anybody  
8 about Dr. Tudor's gender transition?

9 A. Yes.

10 Q. Who did you talk to about it?

11 A. Dean Scoufos.

12 Q. Anyone else?

13 A. No.

14 Q. When was this conversation with Dean  
15 Scoufos?

16 A. Around the time that she applied for  
17 tenure.

18 Q. "She" being Dr. Tudor?

19 A. Dr. Tudor.

20 Q. And where were you when you spoke to  
21 Dr. Scoufos about Dr. Tudor's gender transition?

22 A. Either in my office or her office, I don't  
23 remember which one.

24 Q. Was there anyone else there?

25 A. No.

1 Q. What was discussed during that conversation  
2 about Dr. Tudor's gender transition?

3 A. Just that she didn't know, she was not  
4 aware of the transgender issue.

5 Q. Dr. Scoufos?

6 A. Yes.

7 Q. What did you say, if anything, about  
8 Dr. Tudor's gender transition during that  
9 conversation?

10 A. Just that she had -- you know, just that it  
11 had been brought to my attention.

12 Q. Was there anything else that you remember  
13 being discussed about Dr. Tudor during that  
14 conversation?

15 A. No. Nothing egregious.

16 Q. Well, anything at all?

17 A. I -- you know, just, just whatever  
18 discussion ensued, you know as to, you know -- ensued  
19 as to -- you know, of the happenings and stuff. But  
20 nothing, nothing that would lend itself to me coming  
21 to a conclusion about anything, so...

22 Q. What do you mean "the happenings"?

23 A. Of her, of her having -- you know, being a  
24 transgender.

25 Q. Do you remember anything more about the

1 discussion of those happenings?

2 A. No.

3 Q. Did you talk at all about Dr. Tudor's  
4 application for tenure during that conversation?

5 A. No.

6 Q. Do you remember anyone having a negative  
7 reaction to Dr. Tudor's transition, gender  
8 transition?

9 A. No.

10 MR. JOSEPH: Object to the form.

11 Q. Did you -- do you have any information  
12 about the reaction of anybody to Dr. Tudor's gender  
13 transition?

14 A. No.

15 Q. Did you know anyone at Southeastern who had  
16 any moral objection to transgender people?

17 MR. JOSEPH: Object to the form.

18 A. No.

19 Q. Did you know anyone at Southeastern who had  
20 any religious objection to transgender people?

21 MR. JOSEPH: Object to the form.

22 A. Can you rephrase the question?

23 Q. Did you know anyone at Southeastern who had  
24 religious beliefs that made it difficult for them to  
25 be accepting of transgender people?

1 A. No.

2 Q. Did you ever speak with anybody about the  
3 issue of what restroom Dr. Tudor would use after her  
4 gender transition?

5 A. Yes.

6 Q. Who is that?

7 A. I, I cannot recall.

8 Q. What was discussed?

9 A. That there were people -- there were female  
10 professors who were concerned about her using the  
11 female bathroom on the third floor.

12 Q. And when did you hear those -- about those  
13 concerns?

14 A. I don't remember.

15 Q. Do you remember who raised those concerns?

16 A. No.

17 Q. Did these female professors work in the  
18 same building as Dr. Tudor?

19 A. Yes.

20 Q. Do you remember what department they worked  
21 in?

22 A. The department she was in.

23 Q. Do you remember if they were tenured  
24 professors?

25 A. I don't remember.



1 (Brief interruption)

2 Q. Do you remember what these female  
3 professors were concerned about with respect to  
4 Dr. Tudor using the women's restroom?

5 A. They didn't -- they did not believe at the  
6 time that she had made the conversion.

7 Q. By "conversion," do you mean sex  
8 reassignment surgery?

9 A. Yes.

10 Q. And did you have an understanding of why  
11 that was important to them?

12 A. Yes.

13 Q. Why was it?

14 A. Because they were concerned.

15 Q. Right. But do you have any understanding  
16 of why they were concerned about using a restroom  
17 with Dr. Tudor before she had had sex reassignment  
18 surgery?

19 A. They thought she was still a man.

20 Q. Was anything done to address those  
21 professors' concerns?

22 A. Yes.

23 Q. What was that?

24 A. To ask Dr. Tudor to use the bathroom on the  
25 second floor, unisex bathroom on the second floor.

1 Q. Do you know who asked her to do that?

2 A. I think Cathy Conway asked her to do it.

3 Q. How did you hear that Cathy Conway had  
4 asked Dr. Tudor to use the -- unisex restroom, I  
5 think you said?

6 A. Yes.

7 MR. JOSEPH: Object to the form.

8 Q. Let me state the question over, since  
9 there's an objection.

10 How did you learn that Cathy Conway  
11 had asked Dr. Tudor to use the unisex bathroom?

12 MR. JOSEPH: Object to the form.

13 A. I read it in her complaint.

14 Q. Did you -- strike that.

15 The complaint you're talking about is  
16 the complaint Dr. Tudor filed?

17 A. Correct.

18 Q. And you believe the information in her  
19 complaint about Cathy Conway asking her to use the  
20 unisex bathroom to be correct?

21 A. Yes.

22 Q. Why do you believe it's correct?

23 A. Because up until I read that, I thought I  
24 was the one that asked her to do it.

25 Q. Why did you think you had asked her to do

1 it?

2 A. I don't know.

3 Q. Were you involved in a discussion with  
4 somebody about asking Dr. Tudor to use the unisex  
5 restroom?

6 A. I'm sure I was.

7 Q. Do you remember who that conversation was  
8 with?

9 A. It had to be with Cathy Conway, but I can't  
10 remember specifically.

11 Q. Would that have been around the same time  
12 that you learned about Dr. Tudor's name change?

13 A. A little bit later.

14 Q. Which was later, the conversation about the  
15 restroom or the information about the name change?

16 MR. JOSEPH: Object to the form.

17 A. The conversation about the restroom.

18 Q. Was anybody else around when Cathy Conway  
19 was talking to you about Dr. Tudor using the unisex  
20 restroom?

21 A. No.

22 Q. Do you remember anything else about what  
23 Cathy Conway told you regarding Dr. Tudor using the  
24 unisex restroom?

25 A. Other than what's already -- what I already

1 said, no.

2 Q. Did you think Dr. Tudor should not have  
3 used the women's restroom before having sex  
4 reassignment surgery?

5 MR. JOSEPH: Object to the form.

6 A. Yes.

7 Q. Why is that?

8 A. Well, if she was still a man, she needed to  
9 use the appropriate restroom.

10 Q. So in your view, Dr. Tudor was still a man  
11 until such time that she had sex reassignment  
12 surgery?

13 A. I really didn't know if she was still a man  
14 or not.

15 Q. What information would you have needed to  
16 determine whether she was still a man or not?

17 A. I guess I should have asked her.

18 Q. Did anyone ever express reaction to the way  
19 Dr. Tudor dressed after her gender transition?

20 MR. JOSEPH: Object to the form.

21 A. No.

22 Q. Do you remember anyone ever expressing any  
23 concern about how she might dress after she began  
24 presenting as a woman at work?

25 A. No.

1 Q. Did anyone say anything about the type of  
2 makeup Dr. Tudor wore after her gender transition?

3 MR. JOSEPH: Object to the form.

4 A. No.

5 Q. Do you remember anyone ever expressing any  
6 concerns about what type of makeup she would wear  
7 when she became -- let me strike that.

8 Do you remember any conversations  
9 about what type of makeup Dr. Tudor would wear once  
10 she started presenting as a woman at work?

11 MR. JOSEPH: Object to the form.

12 A. No.

13 Q. Do you remember any conversations about  
14 whether Dr. Tudor had had sex reassignment surgery?

15 A. No.

16 Q. You had an understanding, though, that she  
17 had not had sex reassignment surgery, though,  
18 correct?

19 MR. JOSEPH: Object to the form.

20 A. I, I didn't know.

21 Q. Did you assume that she had not had sex  
22 reassignment surgery?

23 A. No.

24 Q. Earlier you had said that you were, you  
25 were concerned about her using the women's restroom

1 because she had not had sex reassignment surgery,  
2 right?

3 MR. JOSEPH: Object to the form.

4 A. Correct.

5 Q. That's why I was asking if you just assumed  
6 that she hadn't had sex reassignment surgery.

7 A. I actually, I actually assumed that she  
8 had. I just assumed it. I didn't know.

9 Q. But even if she, even if she had had sex  
10 reassignment surgery, you would still have been  
11 concerned about her using the women's restroom?

12 A. Correct.

13 Q. And why is that?

14 A. Because women in her department had a  
15 concern.

16 Q. And those are the female professors that  
17 you were referencing earlier?

18 A. Yes.

19 Q. You don't remember any of their names  
20 still, though?

21 A. Well, I remember the names of the women in  
22 the department.

23 Q. I mean, you don't remember the names of the  
24 women who were concerned about Dr. Tudor using the  
25 women's restroom?

1 A. I was never given any specific names.

2 Q. How did you learn that there were women in  
3 Dr. Tudor's department who were concerned about her  
4 use the women's restroom?

5 A. I'm going to guess, and this is just a  
6 guess, that it had to be Cathy Conway.

7 Q. And thank you for qualifying that, that  
8 it's a guess. I normally don't want you to guess  
9 unless you say it's a guess, okay?

10 A. (Nods head)

11 Q. All right. I'm going to switch gears here  
12 a little and talk about some policies.

13 I'm going to show you what was  
14 previously marked as Plaintiff's Exhibit 6. Exhibit  
15 6 is a two-page document, Bates numbered EEOC 300 to  
16 EEOC 301. I wanted to call your attention  
17 particularly to policy 3.7.4, which starts halfway  
18 down the first page and goes on to the second page of  
19 the exhibit. Are you familiar with this policy?

20 A. Yes.

21 Q. Was this the policy that was in effect when  
22 Dr. Tudor worked for Southeastern?

23 A. Yes.

24 Q. I wanted to call your attention to a  
25 particular portion of policy 3.7.4 in Exhibit 6. The

1 MR. JOSEPH: Object to the form.

2 A. Yes.

3 Q. So -- I'm going to move on to a different  
4 policy now, so we're done with Exhibit 6 for now.

5 At Southeastern, at the time that  
6 Dr. Tudor worked there, when could an assistant  
7 professor apply for promotion and tenure?

8 A. During their fifth year.

9 Q. Could they apply at any other time?

10 A. Three-year window. So fifth, sixth or  
11 seventh year.

12 Q. Could they apply three times?

13 A. Yes.

14 Q. Would it matter whether the president  
15 denied their application as to whether they could  
16 apply three times?

17 MR. JOSEPH: Object to the form.

18 A. No.

19 Q. So if -- under the policy as it existed at  
20 the time that Dr. Tudor worked at Southeastern, if an  
21 assistant professor applied for tenure in her fifth  
22 year, president denied it, she could go back and  
23 apply in the sixth year because of the three-year  
24 window?

25 A. That's my understanding.



1 Q. Did you ever provide that interpretation of  
2 policy to anybody at Southeastern?

3 A. No.

4 Q. So if an assistant professor applied for  
5 tenure in the fifth year, got denied by the  
6 president, applied again in the sixth year, got  
7 denied by the president, she could still apply in the  
8 seventh year, as well?

9 MR. JOSEPH: Object to the form.

10 A. That's my understanding.

11 Q. And what do you base your understanding on?

12 A. I never knew any differently.

13 Q. Did you believe that's what the policy  
14 stated?

15 A. I never saw a policy that stated any  
16 differently.

17 Q. Did you ever come to learn that Dr. Tudor  
18 had attempted to apply for promotion and tenure after  
19 President Minks had denied her application?

20 MR. JOSEPH: Object to the form.

21 A. Yes.

22 Q. Did you learn that -- well, strike that.

23 Did you believe that was a violation  
24 of policy?

25 A. No.

1 Q. Why not?

2 A. Once again, I never saw anything that  
3 stipulated that if the president denied, that the  
4 process stopped. My, my belief was always that it --  
5 that you had a three-year window.

6 Q. Right. So let me rephrase my question,  
7 because I think we're talking past each other here.

8 When Dr. Tudor attempted to apply for  
9 promotion and tenure after being denied by the  
10 president, was it a violation of policy for  
11 Southeastern not to let her apply?

12 MR. JOSEPH: Object to the form.

13 A. No.

14 Q. Why not?

15 A. Because I never saw -- I never saw any  
16 document, I never saw anything written, I never saw  
17 anything that said she could not apply for tenure  
18 again.

19 Q. So you just -- okay, that was -- I think  
20 that was why I was confused because I thought you  
21 said earlier that you came to understand that she was  
22 not allowed to apply. But you're not sure of that?

23 MR. JOSEPH: Object to the form.

24 A. My understanding of the policy is that she  
25 could apply again.

1 process would the administration communicate its  
2 reasons for making decisions on the application to  
3 the candidate?

4 MR. JOSEPH: Object to the form.

5 A. Whenever it was, whenever it was --  
6 whenever what had previously been stated was  
7 overturned.

8 Q. So the normal practice was if the faculty  
9 promotion and tenure committee and the chair of the  
10 department recommended that the candidate receive  
11 promotion and tenure and then somebody in the  
12 administration disagreed, that person in the  
13 administration would communicate those reasons at  
14 that time to the candidate?

15 A. Yes.

16 MR. JOSEPH: Object to the form.

17 Q. Why do you think that that was important  
18 for maintaining a spirit of cooperation and a sense  
19 of mutual confidence between the faculty and the  
20 administration?

21 A. Because you knew why you were being denied.  
22 You knew the reasons. They, they would have reasons.  
23 They just would not look at you and say, I'm denying  
24 your application. They wouldn't do that. They would  
25 always call that person in and tell them the reasons

1 why.

2 Q. You're saying "always." Did it ever not  
3 occur?

4 A. Not to my knowledge.

5 Q. Do you recall any instances where  
6 Dr. McMillan as vice-president of academic affairs  
7 disagreed with a recommendation to grant tenure that  
8 was made by faculty promotion and tenure committee  
9 and department chair?

10 A. When you ask these questions, are you  
11 talking about previously to Dr. Tudor, or are you  
12 asking if it includes Dr. Tudor?

13 Q. Including Dr. Tudor, before Dr. Tudor and  
14 after Dr. Tudor.

15 A. So ask your question again.

16 Q. Sure.

17 Are you aware of any instances where  
18 Dr. McMillan disagreed with a recommendation from a  
19 department chair and a faculty promotion and tenure  
20 committee to grant tenure to a candidate?

21 MR. JOSEPH: Object to the form.

22 A. The only one that I am familiar with is  
23 Dr. Tudor.

24 Q. Do you know whether Dr. McMillan spoke to  
25 Dr. Tudor about his reasons for disagreeing with the

1 recommendation of the department chair and faculty  
2 promotion and tenure committee?

3 A. He did not -- well, at the time he did not.

4 Q. Was that -- so that was different than the  
5 normal process; is that right?

6 MR. JOSEPH: Object to the form.

7 A. To my knowledge, it was different than the  
8 normal process.

9 Q. Did you have any discussions with  
10 Dr. McMillan -- well, strike that.

11 Do you know whether Dr. Tudor asked to  
12 meet with Dr. McMillan to discuss his reasons for  
13 disagreeing with the department chair and faculty  
14 promotion and tenure committee?

15 MR. JOSEPH: Object to the form.

16 A. I'm not aware of how she did it. But I'm  
17 assuming that she requested -- well, I know she  
18 requested the information.

19 Q. Did you talk to Dr. McMillan about why he  
20 would not provide her with her reasons when she asked  
21 for them?

22 MR. JOSEPH: Object to the form.

23 A. Yes.

24 Q. When did you talk to him about that?

25 A. Right after when he wouldn't let me give

1 her the letter from the, from the faculty appellate  
2 committee.

3 Q. And I think you're referring to a letter  
4 that was -- strike that.

5 MR. JOSEPH: Allan, we've been going  
6 91 minutes. Is this a good time to take a break or  
7 not?

8 MR. TOWNSEND: Let's go off the  
9 record.

10 (Brief interruption)

11 (Exhibit 45 marked)

12 Q. I'm showing you what is I've marked as  
13 Plaintiff's Exhibit 45. Plaintiff's Exhibit 45 is a  
14 letter dated April 29th, 2010. It's Bates number --  
15 first page is EEOC 183. Does this letter look  
16 familiar to you?

17 A. Yes.

18 Q. Is this the letter that you were  
19 referencing when you said that you talked to  
20 Dr. McMillan at a time when he told you not to send  
21 this letter?

22 MR. JOSEPH: Object to the form.

23 A. Yes.

24 Q. So would the time period that you spoke to  
25 Dr. McMillan that you were -- strike that.

1                   Would the conversation that you had  
2 with Dr. McMillan about his reasons for not  
3 explaining his reasons to Dr. Tudor for not  
4 supporting her tenure application prior to April  
5 29th, 2010?

6                   MR. JOSEPH: Object to the form.

7           A.       Say that again.

8           Q.       Sure. Sorry. It was a bad question.

9                   So the conversation that we were just  
10 talking about that you had with Dr. McMillan  
11 concerned his reasons for not telling Dr. Tudor why  
12 he had not recommended her for tenure, correct?

13          A.       No. It was why I could not present the  
14 letter to her.

15          Q.       Right. You had a discussion about why you  
16 could not present the letter, which is Exhibit 45,  
17 right?

18          A.       Yes.

19          Q.       And I thought you said that during that  
20 same conversation he explained why he did not want to  
21 tell Dr. Tudor at that time his reasons for --

22          A.       No, you never -- you haven't asked that  
23 question.

24          Q.       Oh, okay.

25                   Did -- well, first of all, let's

1 establish this exhibit. Exhibit 45 is a letter  
2 that's signed by you, correct?

3 A. That is my signature.

4 Q. All right. And on the last page it  
5 indicates that Dr. Tudor received this letter on  
6 April 29th, 2010?

7 A. Correct.

8 Q. And do you remember that she actually did  
9 receive it at that time?

10 A. Yes.

11 Q. Okay. So did you have a conversation with  
12 Dr. McMillan where he explained why he would not tell  
13 Dr. Tudor his reasons for not agreeing with the  
14 recommendation of the promotion and tenure committee  
15 and the department chair with respect to her tenure  
16 application?

17 MR. JOSEPH: Object to the form.

18 A. No, it's, it's the letter. Not, not the  
19 tenure and promotion committee. It was why I could  
20 not present the letter to her.

21 Q. Okay.

22 MR. TOWNSEND: Let's take a break --  
23 wait, hold on. Just one more question before we go  
24 past the letter.

25 Q. Why did Dr. McMillan not want you to



1 present this letter, Exhibit 45, to Dr. Tudor?

2 MR. JOSEPH: Object to the form.

3 A. His, his words to me were that the  
4 president -- that nothing would be done until the  
5 president of the university rendered his decision.

6 Q. His decision about what?

7 A. About whether to deny or approve  
8 Dr. Tudor's application for tenure and promotion.

9 Q. Did he -- did Dr. McMillan say why  
10 President Minks had made that decision?

11 A. In any conversation that I had with  
12 Dr. McMillan, that was his answer every time. It  
13 never deviated.

14 Q. Was that unusual?

15 A. Yes.

16 Q. How so?

17 A. I had never, I had never gone through  
18 anything like that. Never been a part of anything  
19 like that, never gone through anything like that.  
20 Anytime I was -- anytime -- since I oversaw the  
21 faculty appellate committee as a part of my  
22 responsibilities, anytime a decision was rendered, I  
23 wrote the letter, and I would show it to the  
24 vice-president, they would sign off on it, and I  
25 would, and I would present it within the time frame

1 as laid out in the policies and procedures manual.

2 Q. So in this case, you didn't present it  
3 within the time frame in the policies and procedures  
4 manual, correct?

5 A. No.

6 MR. JOSEPH: Object to the form.

7 Q. Wait. I think there was a double negative  
8 in that question.

9 A. The answer is still no.

10 Q. So are you saying that, no, you did not  
11 present this letter within the time frame that policy  
12 required?

13 A. Correct.

14 Q. And why were you -- strike that.

15 Normally in a grievance, would it have  
16 been Dr. McMillan's role as vice-president for  
17 academic affairs to prepare a letter like this?

18 A. I prepared the letter.

19 Q. Why did you prepare it in this instance?

20 A. It was my responsibility.

21 Q. Did it have anything to do with the fact  
22 that Dr. McMillan was one of the subjects of  
23 Dr. Tudor's grievance that you were working on this?

24 A. No. I -- it was my responsibility. I  
25 always wrote these letters.

1 Q. Okay. Did you have any sense of why  
2 President Minks wanted this delay in sending the  
3 letter?

4 A. I was not privy to any of those  
5 conversations.

6 Q. Did you ask why he wanted the delay?

7 A. No.

8 Q. Is there a reason why you didn't ask?

9 A. He probably wouldn't have saw me anyways.

10 Q. Well, did you, did you think to ask  
11 Dr. McMillan why President Minks wanted to wait?

12 A. It's a very specific question. I'm -- I do  
13 not believe that I looked at Dr. McMillan and said,  
14 you know, is this your decision or is this Dr. Minks'  
15 decision. I don't recall asking that question. I  
16 think everything that I asked pertained to why we  
17 were not giving her the letter.

18 Q. And is the only thing that Dr. McMillan  
19 said, was, that's what President Minks told me?

20 MR. JOSEPH: Object to the form.

21 A. He didn't even -- President Minks didn't  
22 say that. That's not what Dr. McMillan said. He  
23 said that, he said that the process had run its  
24 course. And only when President Minks decided, and  
25 then, and then President Minks would make the

1 decision what to do. But he never, he never said,  
2 President Minks told me not to do this, or anything  
3 like that. I never got that impression. The only  
4 impression I got was we were going to wait until the  
5 president saw the -- you know, until he fulfilled his  
6 timeline according to the policies and procedures in  
7 this document that you gave me here.

8 Q. So you, you still don't know whether it was  
9 Dr. McMillan or Dr. Minks or both who had decided  
10 that you should wait to send Exhibit 45 until after  
11 the president decided Dr. Tudor's tenure application?

12 MR. JOSEPH: Object to the form.

13 Q. Let me ask it differently. Do you know, do  
14 you know whether it was Dr. McMillan who decided that  
15 you should wait to send Exhibit 45 to Dr. Tudor until  
16 after President Minks had made his decision about her  
17 tenure application?

18 A. I don't know.

19 Q. Do you know whether President Minks was the  
20 one who decided to wait?

21 A. I don't know. I don't know.

22 Q. Okay.

23 MR. TOWNSEND: We can take the break  
24 now. Off the record.

25 (Recess from 10:20 to 10:37)

# Exhibit 44



Complainant: Dr. Rachel Tudor

Respondent: Dr. Doug McMillan

October 11, 2010

**RECEIVED**

OCT 11 2010

**President's Office**

Grievance

**Complaint**

On October 7<sup>th</sup> Dean Scoufos informed me that Dr. Doug McMillan has decided to refuse to allow me to apply for tenure and promotion. Dr. McMillan's unprecedented action is not supported by policy, procedure, or practice. In fact, his act is so far removed from the normalcy of practice that it represents an alarming expansion of the power of the office of Interim Vice President of Academic Affairs and an unparalleled diminishing of the rights and responsibilities of tenure-track and tenured faculty at Southeastern.

Dr. McMillan's order is in violation of RUSO policy. RUSO specifically prohibits retaliation for filing a grievance or complaint (RUSO 5.6; 5.7).

**Evidence**

Dr. McMillan claims in his letter delivered to me October 7, 2010 (Exhibit A) that his unprecedented decision is based of his BELIEF that (1) alleged deficiencies in scholarship and service in my 2009-2010 application have not been remedied, (2) allowing my application to proceed would be a waste of the time of faculty and administration, and (3) that there would be an "inflammation" of relations between the administration and faculty.

However, he offers no evidence except his unwarranted opinion to support his belief.

In reference to the claim of alleged deficiencies in scholarship and service, I offer the following evidence. In Dr. McMillan's letter dated April 30, 2010 (Exhibit B), Dr. McMillan claims that the administration was unable to verify that I was a co-editor of two editions of the Native American Symposium *Proceedings*. My 2010-2011 application provides unequivocal testimony from the other editor, Dr. Mark Spencer, that I did indeed co-edit two editions of the *Proceedings*. In fact, I presently have eight articles accepted by peer-reviewed scholarly journals, three conference papers, edited two editions of the Native American Symposium *Proceedings*, and one chapter in an anthology of postcolonial literature to my credit. It is an empirical and uncontestable fact that my scholarly record significantly exceeds the scholarly record of other candidates who were granted tenure and promotion. In reference to service, of course I have another year of service to the university since my 2009-2010 application, but more importantly I have letters of reference from the Tenure and Promotion Committee (Exhibits C, D, E, and F) that recommended me for tenure and promotion in 2009-2010 specifying in detail my service and value to the university. In addition, I revised my 2010-2011 application to specifically detail my service. My additional service and the revision of my application should address any perceived or alleged deficiencies in regard to service. I call upon the Committee's knowledge of the tenure and promotion process to be cognizant of the fact that an alleged deficiency in service may simply be a matter of presentation.

In reference to Dr. McMillan's second rationale for prohibiting my 2010-2011 application moving forward, (2) allowing my application would be a waste of the time of faculty and administration. My initial reaction is that this is an example of an *argumentum ad ignorantiam*. One simply may not make a claim about something without looking at the evidence or consulting someone who is familiar with the evidence. Dr. McMillan has not viewed my 2010-2011 application or talked with anyone who has. This brings up another important

point. In our department the Chair reviews applications and advises candidates on whether or not, in their reasoned judgment, the application merits submitting to the Tenure and Promotion Committee. Our Chair, Dr. Prus, has already reviewed my 2010-2011 application and granted permission to proceed. Dr. Prus was as surprised as I was to discover Dr. McMillan's halting of the process, especially in view of the fact that Dr. McMillan made the decision without consulting him. As a matter of fact, a significant amount of time has already been invested in my 2010-2011 application by the faculty—as evidenced by the letters of recommendation for tenure and promotion by Drs. Allen, Cole, Parrish, and Spencer, as well as the review of my portfolio by the Chair of my department, Dr. Prus. Furthermore, reviewing applications for tenure and promotion is one of the responsibilities of the faculty and administration. Policy and procedure does not allow administrators to shun duties and responsibilities simply because they BELIEVE it may be a waste of time. I assure the Committee that my colleagues do not feel reviewing my application would be a waste of their time. Indeed, my respect for my colleagues is such that if they were to express an opinion that it would be a waste of their time to review my application—I would voluntarily halt the process myself.

In reference to the third point in Dr. McMillan's letter, (3) that allowing my application to proceed would result in an "inflammation" of relations between the administration and faculty. This claim contradicts Dr. McMillan's second (2) claim inasmuch as he assumes that the faculty Tenure and Promotion Committee will recommend me for tenure and promotion again and that the administration will reject their recommendation again. Dr. McMillan's assertion is troubling on many levels. For example, it demonstrates a conscious disingenuousness in reference to claims (1) and (2). The fact is, the tension between authoritarianism and participatory democracy (aka "shared governance") will be exacerbated, "inflamed," by the unprecedented act of arbitrarily and unilaterally suspending the right<sup>1</sup> of tenure-track faculty to



address any alleged deficiencies in an application in a subsequent application for tenure and promotion within the time limits provided by RUSO 3.3.4. In addition, Dr. McMillan's newfound assertion of the power of the office of Interim Vice President of Academic Affairs to refuse to allow candidates to address alleged deficiencies effectively removes the purpose of the explanatory letter from the president, required by policy (*Policy and Procedures Manual 3.7.4*). Dr. McMillan's exercise of a new power by the office of Interim Vice President of Academic Affairs not only renders the president's explanatory letter meaningless, but arguably makes it an act of cruelty if it contains easily remedied technical deficiencies; such as letters from the Tenure and Promotion Committee justifying their decision to recommend a candidate for tenure and promotion, or readily obtainable documentation of accomplishments, while the same candidate is prohibited from offering a subsequent application that addresses the president's concerns. Furthermore, it is unjustifiably punitive to begin forbidding ensuing applications for tenure and promotion because the process has recently become adversarial instead of cooperative.

Finally, since the alleged rationales for deciding to halt my application are demonstrably spurious, one must wonder whether or not Dr. McMillan's decision is simply an act of retaliation for exercising rights afforded to the faculty and citizens. This semester I have exercised my rights as provided by the policy and law to file a grievance and complaint against Dr. McMillan. RUSO (5.6; 5.7) specifically prohibits retaliation for exercising my clearly delineated rights. It is important for the Committee to consider whether or not Dr. McMillan's unprecedented act will have a chilling effect on other faculty exercising their rights under policy and law. As a matter of fact, I consider this issue important enough by itself to warrant the Committee recommending Dr. McMillan rescind his decision.

Unfortunately, Dr. McMillan introduces a claim that is extraneous to the purpose of his letter--which is to prohibit the advancement of my application and provide the rationale for his action. I am referring to his assertion that an offer was made to me in April 2010 to renew my contract for the 2010-2011 year and to allow me to reapply for tenure and promotion in 2011-2012. I am uncertain why he would introduce this extraneous assertion into his letter except as an attempt to misrepresent me as being uncooperative and to present himself in a favorable light. However, there are significant factual errors in respect to his account of the purported offer. The offer he is referring to was proffered by Dean Scoufos under most peculiar circumstances. Dr. Mischo, who was the Chair of our department in 2009-2010, and I were called to Dean Scoufos' office in April 2010. Dean Scoufos said I may be allowed to reapply for tenure only (not promotion) in the 2010-2011 academic year if I withdrew my 2009-2010 application. She demanded an immediate decision. I asked for the offer in writing, and she refused. I asked what would be the requirements for the administration to approve a tenure only application, and she refused to discuss the specific requirements with me. When I asked for more time to consider the offer, she threatened to not renew my contract "for cause" for the 2010-2011 academic year (the date set by policy for non-renewal without cause had already passed). The offer, as described in the letter delivered to me October 7, 2010, purports to be one in which I am not allowed to apply for either tenure or promotion in the 2010-2011 academic year, but may apply for tenure and promotion in 2011-2012. This is patently false. (I welcome you to contact Dr. John Mischo in reference to the offer and the circumstances surrounding the offer to verify which account is accurate.) The offer, as described by Dr. McMillan, could not have been legitimately made because only the Board of Regents may approve the renewal of a tenure-track faculty member after seven years (RUSO 3.3.4; *Policy and Procedures Manual* 4.6.4). The 2011-2012 academic year would be my eighth year. Unless Dr.

McMillan had consulted and received approval from the Board of Regents, he did not have the authority to make such an offer. I simply could not accept as legitimate or bona fide an offer that Dr. McMillan refused to put in writing, especially under the unpleasant and threatening conditions in which it was made. Again, my apologies to the Committee for having to think about a matter that is entirely extraneous to issue at hand. Please do not allow it to distract you.

**Relief**

Civil society is dependent on a shared set of common expectations and values. One of the most important shared common values in a democratic society is that everyone is treated equally and given the same opportunities as other members of the community.

I am only asking that the Committee recommend that I be afforded the same opportunity as other members of our community. Preserving due process is the express commission of the Faculty Appellate Committee. As an institution of higher education, whose mission and responsibility is to promote a more equitable and just society, Southeastern has a duty to exemplify not only the letter of the law, but the spirit as well.

THEREFORE, I ask the committee to RECOMMEND that Dr. McMillan rescind his decision and allow my application for tenure and promotion to move forward.

Respectfully submitted,



Dr. Rachel Tudor

---

A "right" in a democratic society may be defined as a practice which is routine and expected. Indeed civil society depends upon members of society interacting with one another in predictable and equitable ways.

Exhibit A



OFFICE OF ACADEMIC AFFAIRS

SOUTHEASTERN OKLAHOMA STATE UNIVERSITY  
1405 N. FOURTH AVE., PMB 413  
DURANT, OK 74701-060

MEMORANDUM

580-745-222  
FAX 580-745-747  
www.SE.ED

TO: Rachel Tudor  
FROM: Douglas N. McMillan, *DNM*  
Interim Vice President for Academic Affairs  
RE: Application for Tenure and Promotion during the 2010-2011 Academic Year  
DATE: October 5, 2010

I have been informed by the Dean of the School of Arts and Sciences that you plan to submit a portfolio for tenure and promotion again for this academic year of 2010-2011. You will recall that during the review of your 2009-2010 academic year application you were extended an offer which would have allowed you an additional year to strengthen your portfolio and hopefully obtain tenure and promotion. Pursuant to policy, academic year 2010-2011 is your seventh year of tenure probation and therefore your terminal year at Southeastern. In my letter of April 30, 2010 I outlined certain deficiencies in scholarly activity and service which needed correcting in your portfolio. You were offered the opportunity to teach at Southeastern during the 2010-2011 and 2011-2012 academic years and then reapply for tenure and promotion during the 2011-2012 academic year if you would withdraw your 2009-2010 application. This offer, in effect, would have given you two years to correct the deficiencies in scholarly activity and service, which were outlined in my letter to you on April 30, 2010. To my astonishment, you declined this offer. At the time the offer was made it was my opinion that one year was insufficient for correcting the deficiencies in your portfolio. This is still my opinion.

After reviewing the Academic Policy and Procedure Manual, I find no policy that allows for an application for tenure in a subsequent year after being denied tenure and promotion in the previous year. The policy states that an application for tenure may occur in the fifth, sixth or seventh year. I recognize that the policy does not proscribe a subsequent application, however, since there is no specific policy, which addresses this issue, I believe the administration is charged with the responsibility of making a decision which is in the best interests of the university. I believe that allowing you to reapply for tenure and promotion so soon after your most recent denial is not in the best interests of the university. This is especially true given the nature and extent of needed improvement and the short amount of time which has passed since the portfolio deficiencies were enumerated. It is my opinion that allowing you to reapply will be disruptive to the School of Arts and Sciences, create unnecessary work for both your department and the administration, and will potentially inflame the relationship between faculty and administration. It is my decision as acting chief academic officer that your application/request and portfolio will not be accepted for review for the 2010-2011 academic year.

SOUTHEASTERN OKLAHOMA STATE UNIVERSITY

OAG/DLC/USA v. SOSU - CIV-15-324/005651

Exhibit B



OFFICE OF ACADEMIC AFFAIRS

SOUTHEASTERN OKLAHOMA STATE UNIVERSITY  
1405 N. FOURTH AVE., PMB 413  
DURANT, OK 74701-0601

580-745-2221  
FAX 580-745-7477  
WWW.SE.ED

MEMORANDUM

TO: Dr. Rachel Tudor  
FROM: Douglas N. McMillan, Ph.D. *DM*  
Interim Vice President of Academic Affairs  
RE: Denial of Application for Tenure and Promotion  
DATE: April 30, 2010

It is my understanding that you have been informed by President Minks of his decision to deny your request for tenure and promotion to associate professor. This authority to communicate the reasons for denial of tenure and promotion rests with the president as suggested in the Academic Policy and Procedures Manual Section 3.7.4. However, the President may delegate this authority under the RUSO Board Policy if he so desires. Dr. Minks has delegated the authority to me, as acting chief academic officer, to communicate the reasons for the denial of your application for tenure and promotion.

After careful review of your portfolio, it was determined that you do not currently meet the policy requirements for tenure and promotion in the areas of research/scholarship and contributions to the institution and/or profession. The Academic Policy and Procedures Manual stipulates that in order to be granted tenure and promotion your body of work in these areas should be both excellent and noteworthy.

An examination of the research/scholarship portion of your portfolio listed eight activities during your employment at Southeastern. These eight activities include two publications, one presentation at a regional symposium, one presentation at a local symposium, two editorships of the proceedings papers at a local symposium, and two "open-mic Chapbooks". The first three activities (the two publications and the presentation at the regional symposium) do appear to be examples of work which meet the excellent and noteworthy standard. However, the remaining activities fail to meet these standards. For example, the two Open-mic Chapbooks appear to be self-collected unpublished works which certainly do not reach the noteworthy and excellent standard. Additionally, in trying to verify your contribution as editor to the proceedings of the 2006 and the 2008 Native American Symposium, some confusing information was found. In fact, the link you provided to the 2006 symposium did not identify you as an editor and the link you provided for the 2008 symposium did not lead to any proceedings. Just as an aside, editing the proceedings at a local symposium does not meet an excellent and noteworthy accomplishment for a university faculty member. In summary, your efforts in scholarship and research

SOUTHEASTERN OKLAHOMA STATE UNIVERSITY

OAG/DLC/USA v. SOSU - CIV-15-324/005652

appear to have yielded some appropriate work; however, the body of your work, since being employed at Southeastern, is either unverifiable or falls below the policy requirement for tenure and promotion.

The Academic Policy and Procedures Manual also requires that your service reach the noteworthy and excellent standard. A review of your university service reveals that since your employment at Southeastern began, until 2009 your service has primarily been limited to serving on internal departmental committees, such as, a program review committee, an assessment committee and a hiring committee, that clearly do not reach the policy requirement for tenure or promotion. In fact, out of eight activities you listed on your vita, four were internal departmental committees. Two of the remaining examples of service were not begun until 2009. This does not establish a record of service that is either noteworthy or excellent.

Subsequently, the reasons delineated in this memorandum formed the basis for the denial of your application for tenure and promotion.

Exhibit C

20 September 2010

Dear Tenure and Promotion Committee:

I am writing in support of Rachel Tudor's application for tenure and promotion to Associate Professor in the Department of English, Humanities, and Languages. I have known Dr. Tudor since 2004, and she has been an asset to the department of English, Humanities, and Languages, to our students, and to the greater Southeastern Oklahoma State University community. Dr. Tudor is sincerely and deeply interested in the success of our students, and she conscientiously makes every effort to determine how she can best serve the students while drawing their attention to the values and the conflicts that inform Western culture in general and American culture, in particular. As a specialist in Native American literature and culture within the context of American history and literature, and as a Native American herself, she is highly cognizant of the fraught situation that arises when Native American literature is taught as separate and distinct from American literature. She performs her culture's ethos by insightfully pointing to the disparities that exist between Native American and American culture; but she accomplishes this pointing in such a way that one is gently led both to understand the disparities and the idea that since these cultural differences are not necessary but chosen, different choices could be made.

Dr. Tudor's teaching is exemplary. She has been nominated in the past two consecutive years for the Faculty Senate Excellence in Teaching Award for the School of Arts and Sciences. The most recent departmental evaluation of Dr. Tudor's teaching supports those nominations and points, in particular, to the mindful way in which the class is taught and the emphasis that is placed on student success and how to achieve it in the given assignment--constructing PowerPoint slides for ancient humanities. In his assessment letter, a faculty observer positively notes the camaraderie between Dr. Tudor and her students and commends her for the careful way she places the day's work in the context of the course. Her teaching reflects the numerous courses she has taken in the Curriculum Instruction and Development in Technology at Southeastern to hone her skills in creating hybrid courses that draw upon online and in-class activities. She has also participated in numerous leadership development courses and assisted in student crisis interventions.

In terms of curriculum, Dr. Tudor has constructed several new courses for the department including one on Great Books, which she suggested in response to a student survey of desired departmental changes. She also devised the course on Native American literature and worked in tandem with the renowned Native American scholar, Rennard Strickland, who taught a course on our campus at the invitation of OSLEP, or the Oklahoma Scholar-Leadership and Enrichment Program, after Dr. Tudor suggested to me that he would be a



good speaker for OSLEP to consider. As the OSLEP representative on our campus at the time, I took her suggestion to OSLEP and they immediately tendered the invitation to Dr. Strickland to be the OSLEP guest lecturer at Southeastern in 2007, the first OSLEP speaker at Southeastern since the 1990's.

The OSLEP program requires that there be a campus coordinator to work with the visiting scholar to help devise the course and assess student involvement. Dr. Tudor took on this task and executed it successfully. Dr. Strickland then became the keynote speaker at Southeastern's biennial Native American Symposium for 2007, a conference that Dr. Tudor helped to coordinate as a member of the Native American Symposium Committee.

As the narrative of Dr. Tudor's experience with the OSLEP program suggests, her service has been an asset to a community far wider than that of Southeastern alone. By serving on the Native American Symposium committee since 2004 and by making suggestions in terms of theme and speaker more than once, Dr. Tudor has served the greater Southeastern community as well. In 2005 she suggested that the topic be "Native Women in the Arts, Education, and Leadership" and was a key player in seeing to it that Native American radio host Jacqueline Battiste attended the 2005 symposium.

Since 2009, Dr. Tudor has also served as a Faculty Senator, elected by the faculty at large. She has served as Chair of the Assessment, Planning, and Development Committee, the most innovative committee of the English, Humanities, and Languages Department. She has also served on hiring committees and on the Five-Year Program Review Committee that I chaired, in which she made a very valuable written contribution that thoughtfully articulated the teaching mission of the department.

It is perhaps in the area of scholarship in which Dr. Tudor has made a great breakthrough in the year 2010. While she has co-edited the Native American Conference proceedings on two occasions and has had articles accepted for publication before this year, 2010 has been a banner year for numerous publications in a broad array of venues that range from regional publications, to Native American collections, to philosophy journals, all indicative of Dr. Tudor's interest in Native American studies, American literature, humanities, and philosophy. In addition to her teaching, service, and scholarship in the world of academia, Dr. Tudor is also an accomplished artist and poet.

Dr. Tudor's passion for teaching and her commitment to her students' success are matched by the high expectations she has for her own scholarship and university service. She will be a thoughtful contributor to any department that is fortunate enough to hire her. If you have any questions or concerns, I would be happy to visit by phone or email.

Sincerely,

Lisa L. Coleman, Ph.D.  
Honors Program Director  
Professor of English

Exhibit D



DEPARTMENT OF ENGLISH, HUMANITIES, & LANGUAGES

SOUTHEASTERN OKLAHOMA STATE UNIVERSITY  
1405 N. FOURTH AVE., PMB 4127  
DURANT, OK 74701-0605

580-745-2060  
FAX 580-745-7400  
www.SE.EDU

September 10, 2010

To Whom It May Concern:

Dr. Rachel Tudor has asked me to write a recommendation letter in support of her application for tenure and promotion, which I am very pleased to do. I have known and worked with Rachel for the past six years since she joined our department here at Southeastern, and I have always considered her an exceptionally valuable asset. Indeed, I was on the committee that originally selected her application from among the many we received and voted to hire her.

Although she made a bit of a slow start, Rachel has recently become one of our most active scholars, with six articles either published or accepted for publication in peer-reviewed journals over the last two years. Her primary emphasis has been on the Native American novel, to which she brings a thoroughly informed and nuanced theoretical perspective, situating it firmly within wider international contexts, such as Latin American magic realism and Euro-American postmodernism. Her achievement in this area is truly impressive and outstanding.

As a teacher, my impression of Rachel is equally laudatory. I know she is always exhaustively prepared for her classes, and projects a demeanor of quiet authority and assured professionalism. Above all, she is interested in challenging the students, many of whom come from a very narrow and limited rural background, with alternative and diverse perspectives on a host of contemporary issues. Several have expressed to me how she convinced them to view matters quite differently than they did before taking her class, and always in the direction of greater tolerance and understanding for those unlike ourselves. On this front alone she makes a major contribution to our department.

Finally, Rachel has also established an solid service record. She is in her second year as a member of the Southeastern Faculty Senate, and before that she served for three years as chair of our Assessment, Planning, and Development Committee, compiling and writing the annual assessment report. This is by far the most important departmental committee, as it oversees all aspects of curriculum development and assessment, potentially charting the course for years to come. In addition, Rachel has been one of the key members of the Native American Symposium Committee, which I chair, helping to

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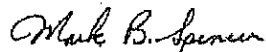
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plan and stage the event every other year. For the 2005 and 2007 symposia, Rachel further served as co-editor with me of the published proceedings, reading and commenting on all the papers submitted, and joining in the selection of those to include.

In short, I can recommend Rachel most highly in all three dimensions of academic performance: scholarship, teaching, and service. I firmly believe she is more than deserving of tenure and promotion at this time.

Sincerely,

A handwritten signature in cursive script that reads "Mark B. Spencer".

Mark B. Spencer  
Associate Professor of English and Humanities

Exhibit E

# SOUTHEASTERN

A CENTURY OF BUILDING FUTURES

September 17, 2010

To whom it may concern:

I am writing to recommend Dr. Rachel Tudor for Tenure and Promotion to Associate Professor within the Department of English, Humanities, and Languages.

I have known Dr. Tudor since her interview and hire. I came to realize her intense interest in teaching, her impressive knowledge in the several fields of English studies, including Native American studies, and her conscientious endeavors (and resulting successes) in teaching those subjects. One of Dr. Tudor's peer teaching observation letters notes that her classroom planning and practices reflect that, as an instructor, she is "knowledgeable, respectful, humorous, helpful, thoroughly prepared, and technologically proficient." Dr. Tudor spends considerable time in the design and implementation of the courses she teaches and maintains high standards for her students in academic achievement.

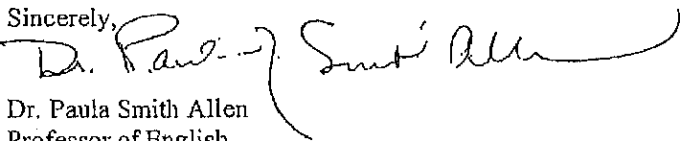
Dr. Tudor's academic/scholarly record is impressive as well. Beside the academic record that she carried when she came to Southeastern, she has recently presented at least one conference and has had a paper accepted at another. She likewise has had several articles accepted for publication recently by journals well respected in our field. Dr. Tudor also is a creative writer, collecting her poetry and other personal writing in several chapbooks.

As a colleague, Dr. Tudor endeavors to carry (at least) her share of the workload within the department. I recall that, while still a relative newcomer within the EHL Department, Dr. Tudor led an assessment effort by the department with alacrity and foresight over a several-year period. She participates on committees and participates actively in planning and assessment. She works effectively with both faculty and staff members, and her demeanor is always professional regardless of the circumstances.

I have the advantage of having the office next to Dr. Tudor's, which I believe gives me some insight into the efforts she makes toward these different duties and endeavors. Though Dr. Tudor has a very quiet demeanor, she is generally hard at work in her office when I come in every morning, no matter how early I arrive. She is often still working in the late afternoon and evening.

I find Dr. Tudor to be a likeable, responsible, and a professional colleague in all respects pertinent to professional life within the University community, and I hope that the University will recognize and acknowledge Dr. Tudor's efforts and worthiness through the Tenure and Promotion process.

Sincerely,

  
Dr. Paula Smith Allen  
Professor of English

DEPARTMENT OF ENGLISH, HUMANITIES & LANGUAGES  
SOUTHEASTERN OKLAHOMA STATE UNIVERSITY  
1405 N. FOURTH AVE., PMB 4127 • DURANT, OK 74701-0609 • 580-745-2066 • FAX 580-745-7406 • WWW.SE.EDU

OAG/DLC/USA v. SOSU - CIV-15-324/005658

Exhibit F



DEPARTMENT OF ENGLISH, HUMANITIES, & LANGUAGES

SOUTHEASTERN OKLAHOMA STATE UNIVERSITY  
1405 N. FOURTH AVE., PMB 4127  
DURANT, OK 74701-0609

September 27, 2010

580-745-2066  
FAX 580-745-7406  
www.SE.EDU

Dear Tenure and Promotion Committee,

I am writing this letter to recommend Dr. Rachel Tudor for tenure and for promotion to Associate Professor. Since August 2004, Dr. Tudor has been a valuable asset to Southeastern Oklahoma State University, to the English, Humanities, and Languages Department (EHL), and to the students.

Dr. Tudor's scholarship interests are rich and varied with seven articles accepted for publication in prestigious journals for the year 2010 as well as publications from previous years of research, including the year 2009. In addition, Dr. Tudor has been invited to present her work at a variety of conferences and symposiums.

In regards to service, Dr. Tudor has been instrumental in the preparation of assessment documents and has participated in work on other committees for the EHL Department. She is a vital member of the department through her service, astute thinking, contributions, and collegiality. However, Dr. Tudor's service extends beyond the department as she currently serves on the Faculty Senate, has served and participated in the Oklahoma Scholar Leadership Enrichment Program (OSLEP), and has been a tireless supporter, worker, and committee member for the Native American Symposium.

Dr. Tudor's teaching is quite effective with solid student evaluations and with two nominations (2008 and 2009) for the SOSU Faculty Senate Teaching Award. In addition, and quite significantly, students benefit from Dr. Tudor's interests, scholarship, and expertise via the variety of courses she teaches for the EHL Department.

As a Native American and as a specialist in Native American culture, history, and literature, Dr. Tudor brings the richness of diversity through her heritage and through her scholarship to Southeastern Oklahoma State University; to the English, Humanities, and Languages Department; to the courses she currently teaches of composition, humanities, literature, and philosophy; and, most importantly, to the students.

As a fellow faculty member and co-worker, I appreciate the opportunity to work with such a fine scholar and educator. Thank you for the opportunity to recommend Dr. Rachel Tudor for tenure and for promotion to Associate Professor.

Sincerely,

Virginia A. Parrish, Ph.D.  
Associate Professor  
English, Humanities, & Languages Department  
PMB 4234  
Southeastern Oklahoma State University  
Durant, Oklahoma 74710  
Office phone: 580.745.2594  
E-mail: vparrish@se.edu

SOUTHEASTERN OKLAHOMA STATE UNIVERSITY

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# Exhibit 45



Notice of Appeal



To: President Larry Minks

From: Dr. Rachel Tudor

Re: Promotion and Tenure

Date: February 26, 2010

FILE COPY

Dear President Minks:

I request a hearing before the Faculty Appellate Committee to review my application for promotion and tenure. In accord with SE's goal of promoting faculty development and retention and in agreement with SE's principles of shared governance, I believe Dr. Scoufos and Dr. McMillan should provide their rationales for not supporting the recommendation of EHL's Promotion and Tenure Review Committee for my tenure and promotion. This information is important in order for faculty to understand their criteria and in what ways their criteria differs from our own. I would like to call the Faculty Appellate Committee's attention specifically to the following section of the Academic Policies and Procedures manual:

3.7.4 Role of the Faculty

The faculty has primary responsibility for such fundamental areas of curriculum, subject matter and methods of instruction, research, faculty status, and those aspects of student life which relate to the educational process. On these matters the power of review or final decision lodged in the governing board or delegated by it to the president should be exercised adversely

DEPARTMENT OF ENGLISH, HUMANITIES & LANGUAGES  
SOUTHEASTERN OKLAHOMA STATE UNIVERSITY

1405 N. FOURTH AVE., PMB 4127 • DURANT, OK 74701-0609 • 580-745-2066 • FAX 580-745-7406 • WWW.SE.EDU

Defs' App'x Vol.7 - 1803

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only in exceptional circumstances, and for reasons communicated to the faculty. It is desirable that the faculty should, following such communication, have opportunity for further consideration and further transmittal of its views to the president or board. Budgets, personnel limitations, the time element, and the policies of other groups, bodies, and agencies having jurisdiction over the institution may set limits to realization of faculty advice.

The faculty sets the requirements for the degrees offered in programs, determines when the requirements have been met, and recommends to the president and board the granting of the degrees.

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

The Faculty Appellate Committee's commission authorizes them to investigate and recommend action in reference to "due process". Due process is not merely a technical concept assuring that every "t" is dotted and every "t" is crossed, but a promise that insures policy is practiced in good faith. Due process is practice that promotes confidence among faculty in administration and provides vital and timely feedback to promotion and tenure committees, department chairs, and candidates in order that all parties may actively participate and be partners in a process vital to the health and well-being of the university. In this instance, Dr. Scoufos and Dr. McMillan did not provide an explanation of their



respective rationales for finding my case a "rare instance" or identify any "compelling reasons" for disagreeing with the conscientious, deliberative decision of senior, experienced faculty in the English, Humanities, and Languages department.

Sincerely,



Dr. Rachel Tudor

Department of English, Humanities & Languages  
PMB 4036  
rtudor@se.edu  
580-745-2588

cc: Dr. Douglas McMillan

# Exhibit 46



TO: Dr. Weiner

FROM: Dr. James Knapp (chair of committee), Dr. Larry Prather, Dr. Jon Reid

DATE: March 25, 2010

RE: Appeal of Dr. Rachel Tudor

On February 26, 2010, Dr. Rachel Tudor issued a formal request to President Larry Minks for a hearing before the Faculty Appellate Committee (FAC). The basis of Dr. Tudor's appeal is that due process has not been followed in regard to her application for promotion and tenure. Specifically, Dr. Tudor is asserting that Dr. Scoufos (Dean of the School of Arts and Sciences) and Dr. McMillan (Interim Vice-President for Academic Affairs) have declined her request for promotion and tenure without providing a detailed explanation of their rationale despite the fact that the English, Humanities, and Languages Promotion and Tenure Review Committee voted to approve her application.

Three members of the FAC (Dr. James Knapp, Dr. Larry Prather, and Dr. Jon Reid) met on Monday, March 22, 2010 to consider the appeal of Dr. Tudor. The FAC supports Dr. Tudor's position that due process has not been followed based on section 3.7.4 of the Policies and Procedures manual of Southeastern Oklahoma State University. In particular, the FAC has referred to the following portion of section 3.7.4:

"The governing board and president should, on questions of faculty status as in other matters where the faculty has a primary responsibility, concur with the faculty judgment except in rare instances and for compelling reasons which **should be stated in detail**" (emphasis added by Dr. Knapp).

It is the recommendation of the FAC that both Dr. Scoufos and Dr. McMillan provide a detailed, written explanation that clearly delineates the factors that have led to their decision to decline Dr. Tudor's application for promotion and tenure.

# Exhibit 47



Complaint

To: Dr. Claire Stubblefield, Special Assistant to the President/Director of Institutional Diversity & Affirmative Action Officer

From: Dr. Rachel Tudor, Department of English Languages & Humanities

Re: Discrimination in Promotion and Tenure

Cc: Dr. Randy Prus, Chair, Dept of English, Humanities & Languages

Date: 30 August 2010

According to the Regional University System of Oklahoma (RUSO) 5.2 (a) all persons should be given "equal opportunity for employment and advancement in employment regardless of race, religion, disability, color, ethnicity, national origin, sex, age, political affiliation, or status as a veteran." It is the responsibility of the Affirmative Action Officer of each university to ensure compliance with the policy and to ensure that each institution meets its (b) "responsibilities under the Civil Rights Act of 1964; commitments as a federal contractor under Executive Order 11246 and Executive Order 11375; and Oklahoma State Regents for Higher Education policies." It is my duty to inform you, as Southeastern's Affirmative Action Officer, of egregious breaches of policy and law in reference to discrimination in promotion and tenure. Following is a brief synopsis of the pertinent dates, events, and personnel involved in violating my rights under policy and law:

I was recommended for tenure and promotion by my department's Faculty Tenure and Promotion Committee in the Fall of 2009. Subsequently, Dean Scoufos and Interim Vice President for Academic Affairs McMillan denied my application for tenure and promotion. Dean Scoufos steadfastly refused to disclose her reasons for not supporting the recommendation of EHL's Tenure and Promotion Committee (Exhibit A). Dr. McMillan not only refused to disclose his reasons, he also refused to even meet with me

(Exhibit B). I appealed to the Faculty Appellate Committee to review their behavior as inconsistent with Southeastern's policy and practice (Exhibit C). The Faculty Appellate Committee supported my point of view and issued a recommendation that Dean Scoufos and Dr. McMillan explain the rationales for their decisions. However, instead of respecting the common sense approach recommended by the Faculty Appellate Committee and honoring their wisdom, they contacted legal counsel and requested a legalistic legerdemain to avoid extending to me the same spirit of cooperation and collegiality that was recently freely extended to a white male candidate for tenure and promotion in my department (Exhibit D, para 3). At this point, I need to call your attention to Dr. Charles Weiner's (Assistant Vice President for Academic Affairs) role in events. The Faculty Appellate Committee met and rendered a judgment in my favor on March 22<sup>nd</sup>, however Dr. Weiner did not inform me of the Committee's decision until April 29<sup>th</sup> (Exhibit D, see date). Policy states unequivocally that I have the right to be informed of the Committee's decision within ten days of the rendering of a verdict. It is not only inexcusable that Dr. Weiner waited five weeks to inform me of the Committee's decision, but his deliberate delay in violation of policy is evidence of collaboration between parties in the administration to delay and hinder my rights to due process and equal treatment. As a matter of fact, before I was informed of the Committee's decision the most egregious breach of my right to due process and equal opportunity for advancement in employment occurred. On April 6<sup>th</sup> I was summoned to Dean Scoufos' office. Dean Scoufos demanded that I immediately withdraw my application for tenure and promotion. When I asked for some time to think about it, she said that if I did not immediately withdraw my application, I would not be allowed to reapply in academic year 2010-2011. I mentioned that policy states tenure-track faculty have six years to apply for tenure, and I was only in my fifth year. She responded that the policy simply says tenure-track faculty "may" apply, it does not say that tenure-track faculty "must" be allowed to apply. When I did not immediately fold, she said, "You may think you are safe because the date for non-renewal of your contract without cause has passed, but you may still be non-renewed with cause if you don't withdraw

your application," I asked her if she was speaking on her own authority or on behalf of Dr. McMillan. Dean Scoufos said that she was speaking on behalf of Dr. McMillan and President Minks. She said that they had met and decided to demand that I withdraw my application and to inform me of the consequences of refusing to comply with their demand. Although I was taken aback by the threats, I placed my faith in my colleagues' judgment, both the Faculty Tenure and Promotion Committee and the Faculty Appellate Committee, and refused to withdraw my application. To me, withdrawing my application would indicate that I was rejecting the good judgment of my colleagues in my department and did not have faith in the sound judgment of my colleagues in the Faculty Senate as well as surrendering to odious bullying. These events seem incredible, but Dr. John Milscho (Chair of English, Humanities, & Languages) was a witness to the meeting with Dean Scoufos and her attempts to coerce me into withdrawing my application. On April 21<sup>st</sup> President Minks denied my application for tenure and promotion. On April 29<sup>th</sup> Dr. Weiner informed me of the Faculty Appellate Committee's recommendation and of the administration's decision not to respect its judgment (Exhibit D). On April 30<sup>th</sup> Dr. McMillan composed a letter (in response to the Faculty Appellate Committee's recommendation) stating President Minks' reasons for denying my application (Exhibit E). And, here is where another egregious violation of my rights to due process and equal rights occurs, Dr. McMillan fails to mail the letter to me until June 9<sup>th</sup> (Exhibit F), almost six weeks later. Taken individually, any one of these events evidence a hostile attitude arising from discrimination; taken collectively, they demonstrate a pattern of calculated adversarial behavior intended to thwart my equal opportunity to advancement in employment—an opportunity protected by policy and law. As a matter of fact, the actions documented are in contradistinction to RUSO Affirmative Action policy 5.2 (c) "to reach out to all persons, including women and racial minority members, in recruitment, placement, development and advancement." Instead of reaching out to me, I was stonewalled, threatened, and denied timely access to vital information at every step of the process. Finally, note should be made of the purported reasons

for President Minks denying my application (Exhibit E). President Minks' letter does not indicate any "compelling reason or exceptional case" for overruling the Faculty Tenure and Promotion Committee's judgment as required by policy. Policy states explicitly that faculty are the best judges of what constitutes substantive and meritorious contributions in their area of expertise—policy specifically eschews the type of second guessing and micromanaging described in the letter (*Policy and Procedures* 3.7.4 Role of the Faculty). As indicated by the minutes cited in his letter, President Minks clearly usurped the rights and responsibilities of the Faculty Tenure and Promotion Committee as well as undermined the principles of shared governance defined in the *Policy and Procedures Manual*. Omitted from mention in his letter are many significant contributions I have made to the university, such as designing and co-teaching a course on Native American history, literature, and law under the auspices of OSLEP (Oklahoma Scholar Leadership Enrichment Program). Most telling is his attitude toward my activities and contributions with respect to Native Americans. For example, President Minks minimizes not only my contributions to the Native American Symposium but demeans the Symposium itself. In his letter, he slights contributions that are culturally specific and valuable to Native Americans, such as preserving the oral tradition of Native American poetry. It must be noted that the Faculty Tenure and Review Committee was able to evaluate the chapbooks containing my poetry—assessment of the quality of literature is an area of expertise President Minks and Dr. McMillan lack the background and education to perform—nevertheless, President Minks and Dr. McMillan dismiss the texts and the expert judgment of the English faculty without even reading the texts or consulting the faculty as to the merits of the work. Likewise, President Minks summarily dismisses my presentation at the Native American Symposium, without so much as reading the text of my presentation in order to assess its merits, as being neither "noteworthy nor excellent" simply because it was presented at the Symposium instead of another, presumably more respectable, venue. In addition, President Minks likewise dismisses the *Proceedings* of the Native American Symposium. Astonishingly, President Minks apparently has never so



much as viewed a copy of the *Proceedings* since he repeatedly affirms in his letter that he was unable to verify that I was an editor of two editions of the Journal. If he had glanced at the cover of the *Proceedings*, he would have seen my name prominently displayed in bold print on the cover, along with Dr. Spencer, as an editor (Exhibit G). Copies of the *Proceedings* are readily available in Southeastern's Native American reading room. Of course, if President Minks (or any of the administrators who were unable to verify that I was an editor of two editions of the *Proceedings*) truly valued the Native American Symposium, then surely copies of the *Proceedings* of the Symposium would be readily accessible in his personal library. It was distressing to discover in President Minks' letter how little regard the administration has for the dedicated effort and sacrifice of all those at Southeastern who make the Native American Symposium possible as well as the low regard the administration has for the contributions of the participants—many of whom travel great distances at their own expense simply because they consider the Native American Symposium a "noteworthy and excellent" event. In re-reading President Minks' letter, I continue to be startled by the callousness with which he dismisses all things Native American. The lack of cultural appreciation is made more troubling by the fact that the letter was composed by another administrator, Dr. McMillan, who is clearly as dismissive of the value of Native American contributions to Southeastern as President Minks.

In conclusion, please note how different the experience of applying for tenure was for a white man in my department, Dr. Mark Spencer. The university president (who was Dr. Jesse Snowden) and Interim Vice President for Academic Affairs Doug McMillan repeatedly met with Dr. Spencer, went over his tenure portfolio, instructed him how to revise it, invited him to provide supplemental material which included articles that he had submitted or planned to submit for publication, and allowed him to fully explain and discuss his contributions to the university as well as providing him ample opportunity to proffer any "verification" required. Dr. Spencer received not only cooperation but a welcoming hand, guidance, and support to shepherd him through, what in the best of times is, a path wrought with

anxiety. I do not resent Dr. Spencer's treatment, but affirm his experience as exemplary of the type of cooperation and collegiality between administration and faculty that characterizes a healthy university. With Dr. Spencer's experience as an exemplar, the question must be asked: why did the administration cooperate with and facilitate the tenure and promotion of a white man while adopting an adversarial and hostile demeanor toward a Native American woman? I deserve an answer to that question; but, more importantly, law and justice demands it.

Signed,

Dr. Rachel Tudor

Dept of English, Humanities & Languages  
1405 N 4<sup>th</sup> Ave, PMB 4036  
Durant, OK 74701  
580.745.2588  
rtudor@sa.edu

EXHIBIT A

Dr. Lucretia Scoufos:

In accord with SE's goal of promoting faculty development and in agreement with SE's principles of shared governance, would you explain your rationale for not supporting the recommendation of EHL's Tenure and Review Committee for my tenure and promotion. This information is important in order for faculty to understand your criteria and in what ways your criteria differs from our own. I would like to call your attention specifically to the following section of the Academic Policies and Procedures manual:

### 3.7.4 Role of the Faculty

The faculty has primary responsibility for such fundamental areas of curriculum, subject matter and methods of instruction, research, faculty status, and those aspects of student life which relate to the educational process. On these matters the power of review or final decision lodged in the governing board or delegated by it to the president should be exercised adversely only in exceptional circumstances, and for reasons communicated to the faculty. It is desirable that the faculty should, following such communication, have opportunity for further consideration and further transmittal of its views to the president or board. Budgets, personnel limitations, the time element, and the policies of other groups, bodies, and agencies having jurisdiction over the institution may set limits to realization of faculty advice.

The faculty sets the requirements for the degrees offered in programs, determines when the requirements have been met, and recommends to the president and board the granting of the degrees.

Faculty status and related matters are primarily faculty responsibility; this area includes appointments, reappointments, decisions not to reappoint, promotions, the granting of tenure and dismissals. The primary responsibility of the faculty for such matters is based upon the fact that its judgment is central to general educational policy. Furthermore, scholars in a particular field or activity have the due competence for judging the work of their colleagues. In such competence it is implicit that responsibility exists for both adverse and favorable judgments.

likewise, there is the more general competence of experienced faculty personnel committees having a broader charge. Determinations in these matters should first be by faculty action through established procedures, reviewed by the chief academic officers with the concurrence of the board. The governing board and president should, on questions of faculty status as in other matters where the faculty has a primary responsibility, concur with the faculty judgment except in rare instances and for compelling reasons which should be stated in detail.

Your cooperation and assistance will be appreciated.

Sincerely,

Dr. Rachel Tudor

EXHIBIT B

Dr. Douglas McMillan:

In accord with SE's goal of promoting faculty development and retention and in agreement with SE's principles of shared governance, please explain your rationale for not supporting the recommendation of EHL's Tenure and Review Committee for my tenure and promotion. This information is important in order for faculty to understand your criteria and in what ways your criteria differs from our own. I would like to call your attention specifically to the following section of the Academic Policies and Procedures manual:

### 3.7.4 Role of the Faculty

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Your cooperation and assistance are appreciated.

Sincerely,

Dr. Rachel Tudor

EXHIBIT C



Notice of Appeal

To: President Larry Minks

From: Dr. Rachel Tudor

Re: Promotion and Tenure

Date: February 26, 2010

Dear President Minks:

I request a hearing before the Faculty Appellate Committee to review my application for promotion and tenure. In accord with SE's goal of promoting faculty development and retention and in agreement with SE's principles of shared governance, I believe Dr. Scoufos and Dr. McMillan should provide their rationales for not supporting the recommendation of EHL's Promotion and Tenure Review Committee for my tenure and promotion. This information is important in order for faculty to understand their criteria and in what ways their criteria differs from our own. I would like to call the Faculty Appellate Committee's attention specifically to the following section of the Academic Policies and Procedures manual:

3.7.4 Role of the Faculty

The faculty has primary responsibility for such fundamental areas of curriculum, subject matter and methods of instruction, research, faculty status, and those aspects of student life which relate to the educational process. On these matters the power of review or final decision lodged in the governing board or delegated by it to the president should be exercised adversely

only in exceptional circumstances, and for reasons communicated to the faculty. It is desirable that the faculty should, following such communication, have opportunity for further consideration and further transmittal of its views to the president or board. Budgets, personnel limitations, the time element, and the policies of other groups, bodies, and agencies having jurisdiction over the institution may set limits to realization of faculty advice.

The faculty sets the requirements for the degrees offered in programs, determines when the requirements have been met, and recommends to the president and board the granting of the degrees.

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

The Faculty Appellate Committee's commission authorizes them to investigate and recommend action in reference to "due process". Due process is not merely a technical concept assuring that every "i" is dotted and every "t" is crossed, but a promise that insures policy is practiced in good faith. Due process is practice that promotes confidence among faculty in administration and provides vital and timely feedback to promotion and tenure committees, department chairs, and candidates in order that all parties may actively participate and be partners in a process vital to the health and well-being of the university. In this instance, Dr. Scoufos and Dr. McMillan did not provide an explanation of their



respective rationales for finding my case a "rare instance" or identify any "compelling reasons" for disagreeing with the conscientious, deliberative decision of senior, experienced faculty in the English, Humanities, and Languages department.

Sincerely,



Dr. Rachel Tudor

Department of English, Humanities & Languages  
PMB 4036  
rtudor@se.edu  
580-745-2588

cc: Dr. Douglas McMillan

EXHIBIT D

OFFICE OF ACADEMIC AFFAIR



SOUTHEASTERN OKLAHOMA STATE UNIVERSITY  
1405 N. FOURTH AVE., PMB 413  
DURANT, OK. 74701-06C

580-745-222  
FAX 580-745-745  
WWW.SE.EDU

April 29, 2010

Dr. Rachel Tudor  
Assistant Professor of English  
Department of English, Humanities  
and Languages

Dr. Tudor:

You recently received from President Minks a letter informing you that your request for tenure and promotion was denied. In President Minks' letter he formally instructs Dr. McMillan to provide you with the reason(s) as to why tenure and promotion were denied.

As my email of March 31, 2010, indicated, the Faculty Appellate Committee did meet and rendered a decision in regard to your appeal. Upon examination of the facts as presented the Faculty Appellate Committee recommended that your request for a detailed written explanation that clearly delineates the factors that led to Dr. Scoufos and Dr. McMillan decision to deny tenure and promotion be provided; however, it needs to pointed out that there is no policy that stipulates that the Vice President and/or the Dean is compelled to provide reasons as to why tenure and promotion were denied. The President's authority, as delegated to him from the RUSO Board of Regents, is clearly spelled out in section 3.7.3 in the Policies and Procedures Manual. This section, and I quote, states that it is: "the duty of the president to see to it that the standards and procedures in operational use within the college or university conform to the policy established by the governing board and to the standards of sound academic practice."

I also took the additional step of consulting with the University's legal counsel in regard to this issue. He reviewed all the pertinent facts and also noted that in section 3.7.4 there is no requirement for anyone, including the President, to state their reasons if their recommendation is different than the recommendation of the Department Tenure and Promotion Committee. The policy only suggests that after the President makes his decision, if different than the recommendation of the Committee, he should state the reasons. Despite not being required to state his reasons, in this case the President has instructed Dr. McMillan to provide you with the information you requested. Dr. Minks' decision, in my view, moots your appeal and has brought this process to an end.

In accordance with section 4.4.6 in the Academic Policies and Procedures Manual you do have the right to appeal this decision to the President of the University. You will have 10 workdays from April 29, 2010, in which to do so. If no appeal is delivered to the President within the 10 workday period, the case is considered closed.

Respectfully,



Charles S. Weiner, Ed.D.  
Assistant Vice President for Academic Affairs

pc: President Larry Minks  
Interim Vice President Douglas McMillan  
Dean Lucretia Scoufos



EXHIBIT E  
OFFICE OF ACADEMIC AFFAIRS

SOUTHEASTERN OKLAHOMA STATE UNIVERSITY  
1405 N. FOURTH AVE., PMB 4  
DURANT, OK 74701-C

580-745-2  
FAX 580-745-7  
www.SE

MEMORANDUM

TO: Dr. Rachel Tudor  
FROM: Douglas N. McMillan, Ph.D. *DM*  
Interim Vice President of Academic Affairs  
RE: Denial of Application for Tenure and Promotion  
DATE: April 30, 2010

It is my understanding that you have been informed by President Minks of his decision to deny your request for tenure and promotion to associate professor. This authority to communicate the reasons for denial of tenure and promotion rests with the president as suggested in the Academic Policy and Procedures Manual Section 3.7.4. However, the President may delegate this authority under the RUSO Board Policy if he so desires. Dr. Minks has delegated the authority to me, as acting chief academic officer, to communicate the reasons for the denial of your application for tenure and promotion.

After careful review of your portfolio, it was determined that you do not currently meet the policy requirements for tenure and promotion in the areas of research/scholarship and contributions to the institution and/or profession. The Academic Policy and Procedures Manual stipulates that in order to be granted tenure and promotion your body of work in these areas should be both excellent and noteworthy.

An examination of the research/scholarship portion of your portfolio listed eight activities during your employment at Southeastern. These eight activities include two publications, one presentation at a regional symposium, one presentation at a local symposium, two editorships of the proceedings papers at a local symposium, and two "open-mic Chapbooks". The first three activities (the two publications and the presentation at the regional symposium) do appear to be examples of work which meet the excellent and noteworthy standard. However, the remaining activities fail to meet these standards. For example, the two Open-mic Chapbooks appear to be self-collected unpublished works which certainly do not reach the noteworthy and excellent standard. Additionally, in trying to verify your contribution as editor to the proceedings of the 2006 and the 2008 Native American Symposium, some confusing information was found. In fact, the link you provided to the 2006 symposium did not identify you as an editor and the link you provided for the 2008 symposium did not lead to any proceedings. Just as an aside, editing the proceedings at a local symposium does not meet an excellent and noteworthy accomplishment for a university faculty member. In summary, your efforts in scholarship and research

appear to have yielded some appropriate work; however, the body of your work, since being employed at Southeastern, is either unverifiable or falls below the policy requirement for tenure and promotion.

The Academic Policy and Procedures Manual also requires that your service reach the noteworthy and excellent standard. A review of your university service reveals that since your employment at Southeastern began, until 2009 your service has primarily been limited to serving on internal departmental committees, such as, a program review committee, an assessment committee and a hiring committee, that clearly do not reach the policy requirement for tenure or promotion. In fact, out of eight activities you listed on your vita, four were internal departmental committees. Two of the remaining examples of service were not begun until 2009. This does not establish a record of service that is either noteworthy or excellent.

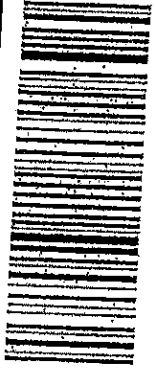
Subsequently, the reasons delineated in this memorandum formed the basis for the denial of your application for tenure and promotion.

Ex(418)T #



OFFICE OF ACADEMIC AFFAIRS  
1405 N. FOURTH AVE., PMB 4137  
DURANT, OK 74701-0689

PLACE STICKER TOP-OF-ENVELOPE TO THE RIGHT  
OF THE ADDRESS. FOLD AT DOTTED LINE  
**CERTIFIED MAIL**<sup>®</sup>  
FIRST CLASS



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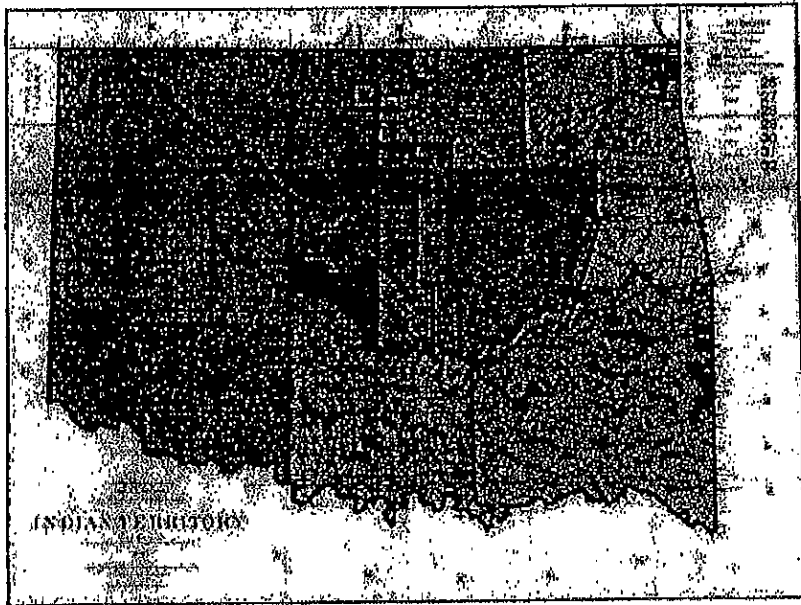
7007 2560 0002 0341 0265

Dr. Rachel Tudor  
1124 N. 10th  
Durant, OK 74701

OAG/DLC/USA v. SOSU - CIV-15-324/005187

EXHIBIT 9

# Sixty-Seven Nations and Counting



NA  
 305.897  
 N2.I.N  
 7th Symp.

## Proceedings of the Seventh Native American Symposium Southeastern Oklahoma State University.

Edited by Mark B. Spencer and Rachel Tudor

# Exhibit 48





**COPY**

**RECEIVED**

SEP 21 2010

**CONFIDENTIAL**

Dean's Office  
School of Arts & Sciences Grievance

**RECEIVED**

AUG 30 2010

**President's Office**

To: President Larry Minks

From: Dr. Rachel Tudor, Department of English Languages & Humanities

Re: Improprieties and Due Process Policy Violations by Administrators in Tenure and Promotion Process

Cc: Dr. Randy Prus, Chair, Dept of English, Humanities & Languages

Date: 30 August 2010

I request a hearing before the Faculty Appellate Committee to review egregious improprieties and substantive violations of due process by the administration during its review of my application for tenure and promotion in 2009-2010. I also request that you appoint a designee to notify the Faculty Appellate Committee of my grievance since the Vice President of Academic Affairs, Dr. McMillan, is one of the administrators cited in my grievance. In support of my grievance, I offer the following evidence:

I was recommended for tenure and promotion by my department's Faculty Tenure and Promotion Committee in the Fall of 2009. Subsequently, Dean Scoufos and Interim Vice President for Academic Affairs McMillan denied my application for tenure and promotion. Dean Scoufos steadfastly refused to disclose her reasons for not supporting the recommendation of BHL's Tenure and Promotion Committee (Exhibit A). Dr. McMillan not only refused to disclose his reasons, he also refused to even meet with me (Exhibit B). I appealed to the Faculty Appellate Committee to review their behavior as inconsistent with Southeastern's policy and practice (Exhibit C). The Faculty Appellate Committee supported my point of view and issued a recommendation that Dean Scoufos and Dr. McMillan explain the rationales for their decisions. However, instead of respecting the common sense approach recommended by the Faculty Appellate Committee and honoring their wisdom, they contacted legal counsel and requested a legalistic legerdemain to avoid extending to me the same spirit of cooperation and collegiality that was recently freely extended to another candidate for tenure and promotion in my department (Exhibit D, para 3). At

this point, I need to call your attention to Dr. Charles Weiner's (Assistant Vice President for Academic Affairs) role in events. The Faculty Appellate Committee met and rendered a judgment in my favor on March 22<sup>nd</sup>, however Dr. Weiner did not inform me of the Committee's decision until April 29<sup>th</sup> (Exhibit D, see date). Policy states unequivocally that I have the right to be informed of the Committee's decision within ten days of the rendering of a verdict. It is not only inexcusable that Dr. Weiner waited five weeks to inform me of the Committee's decision, but his deliberate delay in violation of policy is evidence of collaboration between parties in the administration to delay and hinder my rights to due process and equal treatment. As a matter of fact, before I was informed of the Committee's decision the most egregious breach of my right to due process and equal opportunity for advancement in employment occurred. On April 6<sup>th</sup> I was summoned to Dean Scoufos' office. Dean Scoufos demanded that I immediately withdraw my application for tenure and promotion. When I asked for some time to think about it, she said that if I did not immediately withdraw my application, I would not be allowed to reapply in academic year 2010-2011. I mentioned that policy states tenure-track faculty have six years to apply for tenure, and I was only in my fifth year. She responded that the policy simply says tenure-track faculty "may" apply, it does not say that tenure-track faculty "must" be allowed to apply. When I did not immediately fold, she said, "You may think you are safe because the date for non-renewal of your contract without cause has passed, but you may still be non-renewed with cause if you don't withdraw your application." I asked her if she was speaking on her own authority or on behalf of Dr. McMillan. Dean Scoufos said that she was speaking on behalf of Dr. McMillan and President Minks. She said that they had met and decided to demand that I withdraw my application and to inform me of the consequences of refusing to comply with their demand. Although I was taken aback by the threats, I placed my faith in my colleagues' judgment, both the Faculty Tenure and Promotion Committee and the Faculty Appellate Committee, and refused to withdraw my application. To me, withdrawing my application would indicate that I was rejecting the good judgment of my colleagues in my department and did not have faith in the sound judgment of my colleagues in the Faculty Senate as well as surrendering to odious bullying. These events seem incredible, but Dr. John Mischo (Chair of English, Humanities, & Languages) was a witness to the meeting with Dean Scoufos

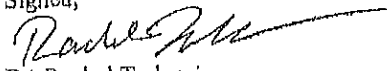
and her attempts to coerce me into withdrawing my application. On April 21<sup>st</sup> President Minks denied my application for tenure and promotion. On April 29<sup>th</sup> Dr. Weiner informed me of the Faculty Appellate Committee's recommendation and of the administration's decision not to respect its judgment (Exhibit D). On April 30<sup>th</sup> Dr. McMillan composed a letter (in response to the Faculty Appellate Committee's recommendation) stating President Minks' reasons, and only his reasons, for denying my application (Exhibit E). And, here is where another egregious violation of my rights to due process and equal rights occurs, Dr. McMillan fails to mail the letter to me until June 9<sup>th</sup> (Exhibit F), almost six weeks later. Taken individually, any one of these events evidence a hostile attitude arising from discrimination; taken collectively, they demonstrate a pattern of calculated adversarial behavior intended to thwart my equal opportunity to advancement in employment—an opportunity protected by policy and law. As a matter of fact, the actions documented are in contradistinction to RUSO Affirmative Action policy 5.2 (c) "to reach out to all persons, including women and racial minority members, in recruitment, placement, development and advancement." Instead of reaching out to me, I was stonewalled, threatened, and denied timely access to vital information at every step of the process. Finally, note should be made of the purported reasons for President Minks denying my application (Exhibit E). President Minks' letter does not indicate any "compelling reason or exceptional case" for overruling the Faculty Tenure and Promotion Committee's judgment as required by policy. Policy states explicitly that faculty are the best judges of what constitutes substantive and meritorious contributions in their area of expertise—policy specifically eschews the type of second guessing and micromanaging described in the letter (*Policy and Procedures 3.7.4 Role of the Faculty*). As indicated by the minutia cited in his letter, President Minks clearly usurped the rights and responsibilities of the Faculty Tenure and Promotion Committee as well as undermined the principles of shared governance defined in the *Policy and Procedures Manual*. Omitted from mention in his letter are many significant contributions I have made to the university, such as designing and co-teaching a course on Native American history, literature, and law under the auspices of OSLEP (Oklahoma Scholar Leadership Enrichment Program). Most telling is his attitude toward any activities and contributions with respect to Native Americans. For example, President Minks minimizes not only my contributions to the

Native American Symposium but demeans the Symposium itself. In his letter, he slights contributions that are culturally specific and valuable to Native Americans, such as preserving the oral tradition of Native American poetry. It must be noted that the Faculty Tenure and Review Committee was able to evaluate the chapbooks containing my poetry—assessment of the quality of literature is an area of expertise President Minks and Dr. McMillan lack the background and education to perform—nevertheless, President Minks and Dr. McMillan dismiss the texts and the expert judgment of the English faculty without even reading the texts or consulting the faculty as to the merits of the work. Likewise, President Minks summarily dismisses my presentation at the Native American Symposium, without so much as reading the text of my presentation in order to assess its merits, as being neither “noteworthy nor excellent” simply because it was presented at the Symposium instead of another, presumably more respectable, venue. In addition, President Minks likewise dismisses the *Proceedings* of the Native American Symposium. Astonishingly, President Minks apparently has never so much as viewed a copy of the *Proceedings* since he repeatedly affirms in his letter that he was unable to verify that I was an editor of two editions of the journal. If he had glanced at the cover of the *Proceedings*, he would have seen my name prominently displayed in bold print on the cover, along with Dr. Spencer, as an editor (Exhibit G). Copies of the *Proceedings* are readily available in Southeastern’s Native American reading room. Of course, if President Minks (or any of the administrators who were unable to verify that I was an editor of two editions of the *Proceedings*) truly valued the Native American Symposium, then surely copies of the *Proceedings* of the Symposium would be readily accessible in his personal library. It was distressing to discover in President Minks’ letter how little regard the administration has for the dedicated effort and sacrifice of all those at Southeastern who make the Native American Symposium possible as well as the low regard the administration has for the contributions of the participants. In re-reading President Minks’ letter, I continue to be startled by the callousness with which he dismisses all things Native American. The lack of cultural appreciation is made more troubling by the fact that the letter was composed by another administrator, Dr. McMillan, who is clearly as dismissive of the value of Native American contributions to Southeastern as President Minks.

In conclusion, please note how different the experience of applying for tenure was for a white man in my department, Dr. Mark Spencer. The university president (who was Dr. Jesse Snowden) and Dr. Doug McMillan repeatedly met with Dr. Spencer, went over his tenure portfolio, instructed him how to revise it, invited him to provide supplemental material which included articles that he had submitted or planned to submit for publication, and allowed him to fully explain and discuss his contributions to the university as well as providing him ample opportunity to proffer any "verification" required. Dr. Spencer received not only cooperation but a welcoming hand, guidance, and support to shepherd him through what in the best of times is a path wrought with anxiety. I do not resent Dr. Spencer's treatment, but affirm his experience as exemplary of the type of cooperation and collegiality between administration and faculty that characterizes a healthy university. With Dr. Spencer's experience as an exemplar, the question must be asked: why did the administration cooperate with and facilitate the tenure and promotion of a white man while adopting an adversarial and hostile demeanor toward a Native American woman? I deserve an answer to that question; but, more importantly, justice demands it.

I rely on the wisdom and discretion of the Faculty Appellate Committee to make appropriate and specific recommendations and remedies to ensure that the egregious violations of due process that occurred in my 2009-2010 application for tenure and promotion are not repeated in mine and other candidates' applications for tenure and promotion.

Signed,

  
Dr. Rachel Tudor

Dept of English, Humanities & Languages  
1405 N 4<sup>th</sup> Ave, PMB 4036  
Durant, OK 74701  
580.745.2588  
rtudor@se.edu

EXHIBIT A

Dr. Lucretia Scoufos:

In accord with SE's goal of promoting faculty development and in agreement with SE's principles of shared governance, would you explain your rationale for not supporting the recommendation of EHL's Tenure and Review Committee for my tenure and promotion. This information is important in order for faculty to understand your criteria and in what ways your criteria differs from our own. I would like to call your attention specifically to the following section of the Academic Policies and Procedures manual:

**3.7.4 Role of the Faculty**

The faculty has primary responsibility for such fundamental areas of curriculum, subject matter and methods of instruction, research, faculty status, and those aspects of student life which relate to the educational process. On these matters the power of review or final decision lodged in the governing board or delegated by it to the president should be exercised adversely only in exceptional circumstances, and for reasons communicated to the faculty. It is desirable that the faculty should, following such communication, have opportunity for further consideration and further transmittal of its views to the president or board. Budgets, personnel limitations, the time element, and the policies of other groups, bodies, and agencies having jurisdiction over the institution may set limits to realization of faculty advice.

The faculty sets the requirements for the degrees offered in programs, determines when the requirements have been met, and recommends to the president and board the granting of the degrees.

~~Faculty status and related matters are primarily faculty responsibility and include appointment, promotion, reappointment, and termination. The granting of tenure and the determination of the responsibility of the faculty for matters such as the setting of standards for general education are primarily the responsibility of the faculty. The faculty is responsible for the development of the curriculum and the selection of the faculty. The faculty is also responsible for the development of the standards for the institution. The faculty is also responsible for the development of the standards for the institution.~~

~~The review of the information on the grounds of alleged faculty harassment shall be conducted by the Board of Directors. Determinations in these matters shall first be by faculty action through established procedures reviewed by the Chief Academic Officer, with the concurrence of the Board of Directors, Board and President. No questions of faculty status as in any manner where the faculty has a personal responsibility to conduct with the faculty judgment except in rare instances and for compelling reasons which should be stated in detail.~~

Your cooperation and assistance will be appreciated.

Sincerely,

Dr. Rachel Tudor

EXHIBIT B

Dr. Douglas McMillan:

In accord with SE's goal of promoting faculty development and retention and in agreement with SE's principles of shared governance, please explain your rationale for not supporting the recommendation of EHL's Tenure and Review Committee for my tenure and promotion. This information is important in order for faculty to understand your criteria and in what ways your criteria differs from our own. I would like to call your attention specifically to the following section of the Academic Policies and Procedures manual:

3.7.4 Role of the Faculty

The faculty has primary responsibility for such fundamental areas of curriculum, subject matter and methods of instruction, research, faculty status, and those aspects of student life which relate to the educational process. On these matters the power of review or final decision lodged in the governing board or delegated by it to the president should be exercised adversely only in exceptional circumstances, and for reasons communicated to the faculty. It is desirable that the faculty should, following such communication, have opportunity for further consideration and further transmittal of its views to the president or board. Budgets, personnel limitations, the time element, and the policies of other groups, bodies, and agencies having jurisdiction over the institution may set limits to realization of faculty advice.

The faculty sets the requirements for the degrees offered in programs, determines when the requirements have been met, and recommends to the president and board the granting of the degrees.

~~Faculty has primary responsibility for such fundamental areas of curriculum, subject matter and methods of instruction, research, faculty status, and those aspects of student life which relate to the educational process. On these matters the power of review or final decision lodged in the governing board or delegated by it to the president should be exercised adversely only in exceptional circumstances, and for reasons communicated to the faculty. It is desirable that the faculty should, following such communication, have opportunity for further consideration and further transmittal of its views to the president or board. Budgets, personnel limitations, the time element, and the policies of other groups, bodies, and agencies having jurisdiction over the institution may set limits to realization of faculty advice.~~





EXHIBIT C



Notice of Appeal

To: President Larry Minks

From: Dr. Rachel Tudor

Re: Promotion and Tenure

Date: February 26, 2010

Dear President Minks:

I request a hearing before the Faculty Appellate Committee to review my application for promotion and tenure. In accord with SE's goal of promoting faculty development and retention and in agreement with SE's principles of shared governance, I believe Dr. Scoufos and Dr. McMillan should provide their rationales for not supporting the recommendation of EHL's Promotion and Tenure Review Committee for my tenure and promotion. This information is important in order for faculty to understand their criteria and in what ways their criteria differs from our own. I would like to call the Faculty Appellate Committee's attention specifically to the following section of the Academic Policies and Procedures manual:

**3.7.4 Role of the Faculty**

The faculty has primary responsibility for such fundamental areas of curriculum, subject matter and methods of instruction, research, faculty status, and those aspects of student life which relate to the educational process. On these matters the power of review of final decision lodged in the governing board or delegated by it to the president should be exercised adversely

DEPARTMENT OF ENGLISH, HUMANITIES & LANGUAGES  
 SOUTHEASTERN OKLAHOMA STATE UNIVERSITY  
PO BOX 5110066 • TEL 580.744.7400 • WWW.SE.EDU

only in exceptional circumstances, and for reasons communicated to the faculty. It is desirable that the faculty should, following such communication, have opportunity for further consideration and further transmittal of its views to the president or board. Budgets, personnel limitations, the time element, and the policies of other groups, bodies, and agencies having jurisdiction over the institution may set limits to realization of faculty advice.

The faculty sets the requirements for the degrees offered in programs, determines when the requirements have been met, and recommends to the president and board the granting of the degrees.

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

The Faculty Appellate Committee's commission authorizes them to investigate and recommend action in reference to "due process". Due process is not merely a technical concept assuring that every "i" is dotted and every "t" is crossed, but a promise that insures policy is practiced in good faith. Due process is practice that promotes confidence among faculty in administration and provides vital and timely feedback to promotion and tenure committees, department chairs, and candidates in order that all parties may actively participate and be partners in a process vital to the health and well-being of the university. In this instance, Dr. Scoufos and Dr. McMillan did not provide an explanation of their

respective rationales for finding my case a "rare instance" or identify any "compelling reasons" for disagreeing with the conscientious, deliberative decision of senior, experienced faculty in the English, Humanities, and Languages department.

Sincerely,



Dr. Rachel Tudor

Department of English, Humanities & Languages  
PMB 4036  
rtudor@se.edu  
580-745-2588

cc: Dr. Douglas McMillan



EXHIBIT D

OFFICE OF ACADEMIC AFFAIRS

SOUTHEASTERN OKLAHOMA STATE UNIVERSITY  
1405 N. FOURTH AVE., PMB 413  
DURANT, OK 74701-0609

580-745-2221  
FAX 580-745-7477  
www.SOU.EDU

April 29, 2010

Dr. Rachel Tudor  
Assistant Professor of English  
Department of English, Humanities  
and Languages

Dr. Tudor:

You recently received from President Minks a letter informing you that your request for tenure and promotion was denied. In President Minks' letter he formally instructs Dr. McMillan to provide you with the reason(s) as to why tenure and promotion were denied.

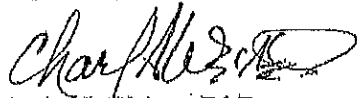
As my email of March 31, 2010, indicated, the Faculty Appellate Committee did meet and rendered a decision in regard to your appeal. Upon examination of the facts as presented the Faculty Appellate Committee recommended that your request for a detailed written explanation that clearly delineates the factors that led to Dr. Scoufos and Dr. McMillan decision to deny tenure and promotion be provided; however, it needs to pointed out that there is no policy that stipulates that the Vice President and/or the Dean is compelled to provide reasons as to why tenure and promotion were denied. The President's authority, as delegated to him from the RUSO Board of Regents, is clearly spelled out in section 3.7.3 in the Policies and Procedures Manual. This section, and I quote, states that it is: "the duty of the president to see to it that the standards and procedures in operational use within the college or university conform to the policy established by the governing board and to the standards of sound academic practice."

I also took the additional step of consulting with the University's legal counsel in regard to this issue. He reviewed all the pertinent facts and also noted that in section 3.7.4 there is no requirement for anyone, including the President, to state their reasons if their recommendation is different than the recommendation of the Department Tenure and Promotion Committee. The policy only suggests that after the President makes his decision, if different than the recommendation of the Committee, he should state the reasons. Despite not being required to state his reasons, in this case the President has instructed Dr. McMillan to provide you with the information you requested. Dr. Minks' decision, in my view, moots your appeal and has brought this process to an end.

SOUTHEASTERN OKLAHOMA STATE UNIVERSITY

In accordance with section 4.4.6 in the Academic Policies and Procedures Manual you do have the right to appeal this decision to the President of the University. You will have 10 workdays from April 29, 2010, in which to do so. If no appeal is delivered to the President within the 10 workday period, the case is considered closed.

Respectfully,



Charles S. Weiner, Ed.D.  
Assistant Vice President for Academic Affairs

pc: President Larry Minks  
Interim Vice President Douglas McMillan  
Dean Lucretia Scoufos



EXHIBIT E  
OFFICE OF ACADEMIC AFFAIR

SOUTHEASTERN OKLAHOMA STATE UNIVERSITY  
1405 N. FOURTH AVE., PMB 41  
DURANT, OK 74701-06

580-745-22  
FAX 580-745-74  
www.SB.B

MEMORANDUM

TO: Dr. Rachel Tudor  
FROM: Douglas N. McMillan, Ph.D. *DM*  
Interim Vice President of Academic Affairs  
RE: Denial of Application for Tenure and Promotion  
DATE: April 30, 2010

It is my understanding that you have been informed by President Minks of his decision to deny your request for tenure and promotion to associate professor. This authority to communicate the reasons for denial of tenure and promotion rests with the president as suggested in the Academic Policy and Procedures Manual Section 3.7.4. However, the President may delegate this authority under the RUSO Board Policy if he so desires. Dr. Minks has delegated the authority to me, as acting chief academic officer, to communicate the reasons for the denial of your application for tenure and promotion.

After careful review of your portfolio, it was determined that you do not currently meet the policy requirements for tenure and promotion in the areas of research/scholarship and contributions to the institution and/or profession. The Academic Policy and Procedures Manual stipulates that in order to be granted tenure and promotion your body of work in these areas should be both excellent and noteworthy.

An examination of the research/scholarship portion of your portfolio listed eight activities during your employment at Southeastern. These eight activities include two publications, one presentation at a regional symposium, one presentation at a local symposium, two editorships of the proceedings papers at a local symposium, and two "open-mic Chapbooks". The first three activities (the two publications and the presentation at the regional symposium) do appear to be examples of work which meet the excellent and noteworthy standard. However, the remaining activities fall to meet these standards. For example, the two Open-mic Chapbooks appear to be self-collected unpublished works which certainly do not reach the noteworthy and excellent standard. Additionally, in trying to verify your contribution as editor to the proceedings of the 2006 and the 2008 Native American Symposium, some confusing information was found. In fact, the link you provided to the 2006 symposium did not identify you as an editor and the link you provided for the 2008 symposium did not lead to any proceedings. Just as an aside, editing the proceedings at a local symposium does not meet an excellent and noteworthy accomplishment for a university faculty member. In summary, your efforts in scholarship and research

SOUTHEASTERN OKLAHOMA STATE UNIVERSITY

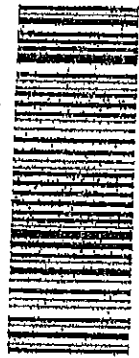
appear to have yielded some appropriate work; however, the body of your work, since being employed at Southeastern, is either unverifiable or falls below the policy requirement for tenure and promotion.

The Academic Policy and Procedures Manual also requires that your service reach the noteworthy and excellent standard. A review of your university service reveals that since your employment at Southeastern began, until 2009 your service has primarily been limited to serving on internal departmental committees, such as, a program review committee, an assessment committee and a hiring committee, that clearly do not reach the policy requirement for tenure or promotion. In fact, out of eight activities you listed on your vita, four were internal departmental committees. Two of the remaining examples of service were not begun until 2009. This does not establish a record of service that is either noteworthy or excellent.

Subsequently, the reasons delineated in this memorandum formed the basis for the denial of your application for tenure and promotion.



Exhibit F



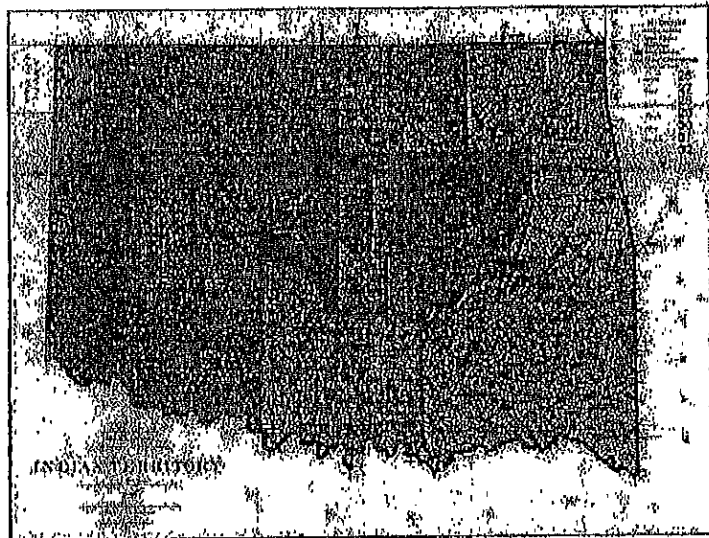
7007 2560 0002 0341 0265

Dr. Rachel Tudor  
 1124 N. 10th  
 Durant, OK 74701



EXHIBIT G

# Sixty-Seven Nations and Counting



SOUTHEASTERN OK STATE UNIV LIBRARY  
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MUNICIPAL CENTER  
MUNICIPAL CENTER

NA  
305.897  
N21N  
7th. Symp.

## Proceedings of the Seventh Native American Symposium Southeastern Oklahoma State University.

Edited by Mark B. Spencer and Rachel Tudor

# Exhibit 49

**Bryon Clark**

---

**From:** Bryon Clark  
**Sent:** Monday, January 31, 2011 2:37 PM  
**To:** Rachel Tudor; Doug McMillan  
**Cc:** Ross Walkup; Charla Hall; James Knapp; Larry Prather  
**Subject:** Tudor Grievance dated 11 October 2010  
**Attachments:** Grievance Policy Section 4.4.6 APPM.docx; Addition to Grievance Policy 24 Jan 2011.docx

Dr. Tudor and Vice President McMillan:

As both of you already have been informed, the President's Designee and the Hearing Committee have met but could not reach a final/joint decision regarding the grievance dated 11 October 2010. Because the Grievance Policy (Section 4.4.6) of the Academic Policies and Procedures Manual does not address this contingency (see attachment titled "Grievance Policy"), the attached procedures/protocols were drafted to allow the grievance to proceed (see attachment titled "Addition to Grievance Policy"). These procedures/protocols were reviewed and approved by legal counsel for RUSO.

I wish to provide both of you time to review these new procedures/protocols before starting the timeline. Therefore, please peruse the procedures/protocols and contact me by no later than **5:00 p.m. on Wednesday, 2 February 2011** if you have questions.

If I do not receive any questions by the deadline listed above, both of you will have **15 working days** to prepare and submit a written appeal to respond to any statements in the written decisions rendered by the Hearing Committee and/or the President's Designee—I must receive your written appeal by **23 February 2011**. The grievance process will proceed regardless of whether or not you submit an appeal.

I will then submit the following written materials to the President within 5 working days of receiving both appeals or at the conclusion of the 15 workday period (2 March 2011): (1) grievance, (2) letter from respondent, (3) recommendation by the Hearing Committee, (4) decision by the President's Designee, (5) appeal by grievant [if one is submitted], and (6) appeal by respondent [if one is submitted]. The President of the University has 10 working days from receipt of these documents to review and render the final decision regarding the grievance. Please note that this step represents your opportunity to appeal the decision rendered by the Hearing Committee and/or the President's Designee. The President's decision shall be considered final and binding; the case shall then be closed and the President's decision shall be put into effect.

Please contact me if you have any questions.

Cordially,

Bryon

PS—Please note that the attachment "Addition to Grievance Policy" is written for inclusion in the APPM; there is only a single respondent (and letter) in the grievance being addressed.



The Faculty Grievance Policy (4.4.6) of the Academic Policies and Procedures Manual does not address the following situation:

- Vice President for Academic Affairs (or President's designee) does not concur with the Hearing Committee.
- The VPAA (or President's designee) meets with the Hearing Committee to reach a final/joint decision.
- The VPAA (or President's designee) and the Hearing Committee cannot reach a final/joint decision.

Therefore, given the scenario above, the protocols and procedures by which the final decision regarding a grievance will be as listed below. Once the pending grievance has been resolved, the following (except italicized red text) also will be submitted for consideration for addition to Section 4.4.6 of the Academic Policies and Procedures Manual after the paragraph starting with "If the Vice President for Academic Affairs (or President's designee) does not concur in the recommendation..."

- The VPAA (President's designee) will notify in writing the Administrative Liaison for the grievance that a final/joint decision could not be reached within 5 working days of the last meeting of the VPAA (President's designee) and Hearing Committee.
- The Administrative Liaison for the grievance will inform the grievant and respondent(s) in writing within 5 working days of this notification that the VPAA (President's designee) and Hearing Committee did not reach a final/joint decision. *(Please note that for the Dr. Rachel Tudor grievance dated 11 October 2010, this 5-working day timeline does not apply. The protocols and procedures listed below had to be drafted and edited, and then the final version reviewed/approved by legal counsel. Once the Administrative Liaison has notified the grievant and respondent, the timeline listed below shall be in effect.)*
- The grievant and respondent(s) will then have 15 working days from this notification to submit in writing to the Administrative Liaison for the grievance an appeal to respond to any statements in the written decisions rendered by the Hearing Committee and/or VPAA (or President's designee). The responses submitted by the grievant and respondent(s) will serve as the appeal stage for this aspect of the grievance.
- The Administrative Liaison for the grievance will submit the following written materials to the President within 5 working days after receiving both appeals or at the conclusion of the 15 workday period listed above: (1) grievance; (2) letter(s) from respondent(s); (3) recommendation by Hearing Committee; (4) decision by VPAA (or President's designee) regarding recommendation(s) by Hearing Committee; (5) appeal by grievant; and (6) appeal(s) by respondent(s).
- The President of the University has 10 working days from receipt of the documents listed above to review and render the final decision regarding the grievance. The decision of the President shall be delivered in writing to the grievant, respondent(s), Hearing Committee, VPAA (or President's designee), and Administrative Liaison for the grievance within the 10 workday period. The President may request additional information from any party involved in the grievance process. Because the grievant and respondent(s) were provided an opportunity to appeal the decision of the Hearing Committee and/or VPAA (or President's designee) to the President, the decision rendered by the President shall be considered final and binding; the case will then be closed and the President's decision shall be put into effect.



# Exhibit 50

# SOUTHEASTERN OKLAHOMA STATE UNIVERSITY

Durant, Oklahoma



**A Self-Study Report for Continued Accreditation**

submitted to

**The Higher Learning Commission**

**A Commission of the North Central Association**

**January 7, 2014**



## Preface

Dear HLC Team Member,

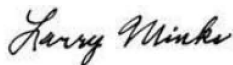
It is my pleasure to welcome you to Southeastern Oklahoma State University. I want to take this opportunity to thank you for your service to our institution. We believe that participation in the HLC self-study process is one of the most important self-examination processes we can engage in as an institution of higher learning. The self-study report is the result of the work of our entire campus community, allowing all stakeholders an opportunity to understand the University better.

I believe you will find two guiding principles that characterize our self-study process. First, we have attempted to illustrate that we are a mature institution. In our opinion, a mature institution is one that is able to recognize what it does well, what it needs to do to improve, and implements initiatives to address identified challenges. Throughout this self-study report, we have shared our progress as well as our plans for addressing these clearly defined challenges.

Second, we have attempted to design a self-study process that is more useful to our institution than a primarily compliance-based process. Our philosophy has been that the best self-study processes are those that achieve a greater institutional purpose, rather than compliance alone. With this in mind, we have designed the self-study process with a goal of using the information we gain as one of the pivotal information sources for our next three to five-year institutional planning cycle. It will serve as a catalyst in furthering our transformational efforts through involvement, self-reflection, planning, and continual improvement.

It is my sincere hope that you will find our self-study process successful in providing a comprehensive self-examination of Southeastern and identifying those things that we currently do well, those things we do adequately, and challenges we must face in the future. Again, I want to thank you for your commitment to help us become a more effective institution.

Sincerely,



**Dr. Larry Minks**  
President



## SELF-STUDY STEERING COMMITTEE AND CHAPTER SUB-COMMITTEES

**Self-Study Coordinator**  
**Ex-officio**

**Bryon Clark**, AVPAA – Student Learning & Accreditation  
**Doug McMillan**, Vice President for Academic Affairs

*The self-study process engaged the entire campus community; however, members of the Self-Study Steering Committee and the sub-committees for each criterion deserve special acknowledgement for their hard work, dedication, and perseverance during the completion of the self-study.*

### **Introduction and Review of Previous Accreditation Visits**

**Theresa Hrcncir (co-chair)**, Professor of Accounting/Former Department Chair  
**Dan Moore (co-chair)\***, Executive Director, Chief Information Officer  
**Keith Baxter**, Director of Intercollegiate Athletics  
Bruce Johnson, Assistant Professor of Political Science/Department Chair (retired)  
Jamie Knapp, Professor of Sociology  
Robert McFadden, Professor of Music  
Margaret Cotter-Lynch, Associate Professor of English  
April Zimmerman (student)

### **Criterion 1—Mission**

**Jerry Polson (co-chair)\***, AVPAA—Academic Outreach & Research/Dean of Graduate Studies  
**Rhonda Richards (co-chair)**, Assistant Professor of Accounting  
**Liz McCraw**, Dean of Enrollment Management  
Penny Bridwell, Office Assistant for Teacher Education Services  
Michael Stout, immediate past President of the Staff Association/Help Desk Director  
Kathy Hendrick, Director of the Center for Regional Economic Development  
Alan Burton, Director of University Communications  
Ben Wright (previously Randy Daley)—student

### **Criterion 2—Ethical and Responsible Conduct**

**Diane Dixon (co-chair)**—immediate past chair of Faculty Senate/Professor of Biol. Sciences  
**Camille Phelps (co-chair)**, Dean of Students  
Kitty Campbell, Professor of Management/Department Chair  
Bruce King, Dean of McCurtain County Campus  
Cathy Conway, Director/Affirmative Action Officer (retired)  
Kay Lynn Roberts, Director/Controller of Office of Finance  
Charla Hall, Professor of Psychology  
Morgan Pierce (previously Kasidy Kinkade & Joseph Baden)—student

### **Criterion 3—Teaching and Learning—Quality, Resources, and Support**

**Lucretia Scoufos (co-chair)**, Dean of Instruction  
**Randy Prus (co-chair)**, Professor of English/Department Chair  
Kathryn Plunkett, Digital Information Literacy Librarian (no longer at SE)  
Ellen Hendrix, Instructional Technology & Design Specialist  
Lisa Coleman, Professor of English/Director of Honors Program  
Riley Coker, Assistant Professor of Theatre/Oklahoma Shakespearean Festival  
Tim Patton, Associate Professor of Biological Sciences  
Joseph Baden (previously Matt Sitton & Demetra Wilkerson)—President of SGA

### **Criterion 4—Teaching and Learning—Evaluation and Improvement**

**Margaret Avard (co-chair)**, Professor of Earth & Environmental Science  
**Tim Boatman (co-chair)**, Associate Dean of Academic Services  
**David Conway**, Professor/Director/Department Chair of Aviation Sciences Institute  
Aaron Adair, Assistant Dean of Adult & Online Education/Assessment  
**Sharon Morrison**, Director/Associate Professor of Henry G. Bennett Memorial Library  
Kay Daigle, Associate Professor of Health, Physical Education & Recreation

### **Native American Symposium**

- The Native American Symposium (<http://homepages.se.edu/nas/>), which takes place on a biennial basis, is a regional conference that brings in international participants to Southeastern's campus. Numerous students, faculty, and staff attend and contribute to this film and lecture series.

### **Residence Life**

The mission of the Department of Residence Life is to create a living environment that supports student learning, fosters personal growth and development, and encourages the development of personal integrity and civic responsibility. We effectively manage well-maintained and reasonably priced residential facilities. We value the individuality of each student and the diversity reflected within our community (<http://homepages.se.edu/residence-life/>).

From 2007 until 2010-11, the Residence Life community followed a "Program" model centered on "events" whose purpose would serve the following criteria: spiritual, social, citizenship/life planning, educational/intellectual, physical, cultural, political, and sexual. Records of attendance at events were kept as were the numbers in attendance and types of programs offered. Resident Opinion Surveys were also provided. Surveys of satisfaction with activities and with the RA's that led the activities were largely in the mid-range in the years 2007-2012.

Beginning in 2010 and continuing in 2011, RA's and Director of Residence Life developed a new model of student contact. This move was made because students often came to events for food and left before the actual event. During the academic year of 2010-11, the Director and RA's focused on "*Mission Centered Conversations*" in which frequent contact was initiated between RA's and the students that they are responsible for. This model also promoted higher levels of communication through intentional discussion of relevant topics. Weekly contact was initiated between RA's and their students (50-60 per RA) and RA's submitted documentation of this weekly contact. This programming model was adopted for fall 2011.

Each RA team (4-5 teams each semester) was also responsible for planning and implementing at least one large program (event) and one service project each semester. The focus of the program was frequent contact to develop mission-centered conversations instead of a focus on the actual event. The following represents some observations made after the implementation of this new model:

- Contact was defined as an "exchange," preferably fact-to-face. Unanswered calls or text messages did not count.
- Procedures were outlined for an unresponsive resident.
- Examples of contact logs were provided.
- Frequency of log submissions was determined.
- Examples of ways to contact residents (Facebook, for example) were provided.

# Exhibit 51



COPY

OFFICE OF THE PRESIDENT

SOUTHEASTERN OKLAHOMA STATE UNIVERSITY  
1405 N. FOURTH AVE., PMB 4236  
DURANT, OK 74701-0609

580-745-2500  
FAX 580-745-2515  
WWW.SE.EDU

March 25, 2011

Dr. Rachel Tudor  
1124 North 10<sup>th</sup>  
Durant, Oklahoma 74701

RE: Appeal Review regarding the rejection of Dr. Tudor's tenure and promotion application

Dear Dr. Tudor:

After careful review of the material submitted in the above, my conclusions are as follows:

1. That Southeastern's Academic Policies and Procedures 4.6.3. Procedure for Granting Promotion and Tenure was followed;
2. That both the above policy and **University precedent** are consistent regarding faculty members ability to make application for tenure only *one time* following the fifth, sixth or seventh year of service to the University;
3. That a compromise was offered to you to withdraw your application for tenure and allow further time to work on your portfolio, which you rejected;
4. That 4.4.6 of Southeastern's Faculty Grievance Policy was followed;
5. That the faculty hearing committee makes **recommendations** to the Vice President for Academic Affairs (or President's designee) pursuant to 4.4.6 of the Grievance Policy;
6. That pursuant to the Grievance Policy the hearing committee and the Vice President for Academic Affairs (or President's designee) must meet to reach a final decision, which occurred, however no consensus was reached;
7. That either party may appeal the decision to the President for final review and binding decision, which occurred.

Therefore, due to the findings above, your application for tenure and promotion shall not be accepted for review.

Sincerely,

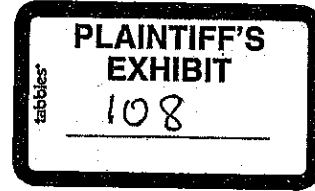
Larry Minks,  
President

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SOUTHEASTERN OKLAHOMA STATE UNIVERSITY

# Exhibit 52

From: Dr. Rachel Tudor  
To: Dr. Claire Stubblefield  
Re: Additional Information  
October 13, 2010



Dear Dr. Stubblefield,

I am putting the information I discovered and shared with you last Friday into writing. After filing my initial complaint, I discovered that two candidates (Dr. Virginia Parrish and Dr. Margaret Cotter-Lynch), in addition to Dr. Spencer, were also awarded tenure and promotion by the administration even though their applications were not significantly different from mine. First, I want to state that Dr. Parrish and Dr. Cotter-Lynch are both deserving of tenure and promotion, and I have the utmost respect for them. The fact that an objective evaluation of their records demonstrates that my scholarship and service record is equivalent to theirs in no way demeans their accomplishments or value. Because our records are equivalent, it is entirely disingenuous for the administration to allege deficiencies in scholarship and service in denying my application last year. And, it is particularly onerous for Dr. Doug McMillan to presently deny me the opportunity to reapply for tenure this year because of alleged deficiencies in my scholarship when it is an indisputable fact that I presently have more articles accepted for publication in peer-reviewed scholarly journals than the **combined** record of the last **three** candidates at the time that he recommended them for tenure and promotion. Dr. McMillan's decision to not allow my application for tenure and promotion to proceed is clearly not based on facts, but on his own prejudices. A candid analysis of his memorandum (see Grievance) halting my tenure and promotion application demonstrates that the memorandum lacks knowledge, thought, and reasons—vital safeguards against bigotry.

It is most important to note that the awarding of tenure and promotion to two cis<sup>1</sup> women in my department does not in any way diminish the fact that the administration has discriminated against me as a trans woman. As a matter of fact, the disparate treatment of cis women and a trans woman demonstrates a profound disregard for fair and equal treatment by the administration. For example, if an employer discriminated against women who have children by denying them promotion while promoting women without children; then discrimination has occurred. There are many categories of women and it is not necessary that a party discriminate against all categories of women to be guilty of discriminating against women. It is also pertinent to bear in mind that Southeastern Oklahoma State University, and the other universities in Oklahoma, allowed some minorities to enroll and graduate while specifically discriminating against Ada Sipuel (*Sipuel v. Board of Regents of Oklahoma*) and later placed unequal obstacles in the way of the education of George McLaurin (*McLaurin v. Oklahoma State Regents*). It is simply beyond doubt that different policies, practices, and standards are being applied to me than to other candidates, white men (Dr. Mark Spencer) and white cis women (Drs. Cotter-Lynch and Parrish), for tenure and promotion.

Finally, I would like to call your attention to Dr. Doug McMillan in particular. Dr. Doug McMillan's own sister, Dr. Jane McMillan, disclosed to me that Dr. Doug McMillan considers transgender people a grave offense to his "Baptist sensibilities." Dr. Doug MacMillan's "Baptist sensibilities," as he expressed them to his sister, Dr. Jane McMillan, prevents him from tolerating, much less accepting or welcoming, transgender people to Southeastern. Quite simply, my presence at Southeastern is intolerable to him. The evidence demonstrates, quite unequivocally, that Dr. Doug McMillan has abused the power of his office to deprive me of my rights; rights protected by policy and the law.

I would also like to document the fact that Dr. Scoufos repeatedly uses inappropriate pronouns when speaking to and about me. Although Dr. Scoufos' use of inappropriate pronouns is intermittent, it has occurred too often to be attributable to mere carelessness.

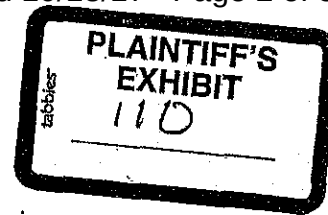
Finally, please do not misconstrue the focus of this letter to diminish in any way my conviction that racial discrimination is also a factor in the disparate treatment accorded me in reference to tenure and promotion. Indeed, intolerant people often hold multiple and overlapping prejudices.

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<sup>1</sup> *Cisgender* can be used in place of less accurate terms such as *biological* or *genetic* male or female since transgender people are also "biologically" (and not made from some non-biological material), while the "genetically"-argument falls when one considers the genetic variations present in ~~intersex~~ people. *Born* male or female is equally inaccurate, since transgender and transsexual people feel that they are born with a male or female gender identity irrespective of their physiological sex. The use of the term *real* male or female is both inaccurate, because each and every point that is usually attributed to "real" (=cisgender) women either does not apply to all cisgender women either, or to transwomen and/or many intersex women as well, or to transmen as well, who are usually not counted as "real women". (The same of course applies to "real men".) When used comparatively these expressions are often seen as disrespectful to and by transgender and transsexual people. (From *WordIQ.com*)



# Exhibit 53



Amended Complaint

To: Dr. Claire Stubblefield, Special Assistant to the President/Director of Institutional Diversity & Affirmative Action Officer

From: Dr. Rachel Tudor, Department of English Languages & Humanities

Re: Discrimination in Promotion and Tenure & Retaliation

Date: 28 October 2010

According to the Regional University System of Oklahoma (RUSO) 5.2 (a) all persons should be given "equal opportunity for employment and advancement in employment regardless of race, religion, disability, color, ethnicity, national origin, sex, age, political affiliation, or status as a veteran." It is the responsibility of the Affirmative Action Officer of each university to ensure compliance with the policy and to ensure that each institution meets its (b) "responsibilities under the Civil Rights Act of 1964; commitments as a federal contractor under Executive Order 11246 and Executive Order 11375; and Oklahoma State Regents for Higher Education policies." It is my duty to inform you, as Southeastern's Affirmative Action Officer, of egregious breaches of policy and law in reference to discrimination in promotion and tenure. Following is a brief synopsis of the pertinent dates, events, and personnel involved in violating my rights under policy and law:

I was recommended for tenure and promotion by my department's Faculty Tenure and Promotion Committee in the Fall of 2009. Subsequently, Dean Scoufos and Interim Vice President for Academic Affairs McMillan denied my application for tenure and promotion. Dean Scoufos steadfastly refused to disclose her reasons for not supporting the recommendation of EHL's Tenure and Promotion Committee (Exhibit A). Dr. McMillan not only refused to disclose his reasons, he also refused to even meet with me (Exhibit B). I appealed to the Faculty Appellate Committee to review their behavior as inconsistent with Southeastern's policy and practice (Exhibit C). The Faculty Appellate Committee supported my point of view and issued a recommendation that Dean Scoufos and Dr. McMillan explain the rationales for their decisions. However, instead of respecting the common sense approach recommended by the Faculty Appellate Committee and honoring their wisdom, they contacted legal counsel and requested a legalistic legerdemain to avoid extending to me the same spirit of cooperation and collegiality that was recently freely extended to a white male candidate for tenure and promotion in my department (Exhibit D, para 3). At this point, I need to call your attention to Dr. Charles Weiner's (Assistant Vice President for Academic Affairs) role in events. The Faculty Appellate Committee met and rendered a judgment in my favor on March 22<sup>nd</sup>, however Dr. Weiner did not inform me of the Committee's decision until April 29<sup>th</sup> (Exhibit D, see date). Policy states unequivocally that I have the right to be informed of the Committee's decision within ten days of the rendering of a verdict. It is not only inexcusable that Dr. Weiner waited five weeks to inform me of the Committee's decision, but his deliberate delay in violation of policy is evidence of collaboration between parties in the administration to delay and hinder my rights to due process and equal treatment. As a matter of fact, before I was informed of the Committee's decision the most egregious breach of my right to due process and equal opportunity for advancement in employment occurred. On April 6<sup>th</sup> I was summoned to Dean Scoufos' office. Dean Scoufos demanded that I immediately withdraw my application for tenure and promotion. When I asked for some time to think about it, she said that if I did not immediately withdraw my application, I would not be allowed to reapply in academic year 2010-2011. I mentioned that policy states tenure-track faculty have six years to apply for tenure, and I was only in my fifth year. She responded that the policy simply says tenure-track

faculty "may" apply, it does not say that tenure-track faculty "must" be allowed to apply. When I did not immediately fold, she said, "You may think you are safe because the date for non-renewal of your contract without cause has passed, but you may still be non-renewed with cause if you don't withdraw your application." I asked her if she was speaking on her own authority or on behalf of Dr. McMillan. Dean Scoufos said that she was speaking on behalf of Dr. McMillan and President Minks. She said that they had met and decided to demand that I withdraw my application and to inform me of the consequences of refusing to comply with their demand. Although I was taken aback by the threats, I placed my faith in my colleagues' judgment, both the Faculty Tenure and Promotion Committee and the Faculty Appellate Committee, and refused to withdraw my application. To me, withdrawing my application would indicate that I was rejecting the good judgment of my colleagues in my department and did not have faith in the sound judgment of my colleagues in the Faculty Senate as well as surrendering to odious bullying. These events seem incredible, but Dr. John Mischo (Chair of English, Humanities, & Languages) was a witness to the meeting with Dean Scoufos and her attempts to coerce me into withdrawing my application. On April 21<sup>st</sup> President Minks denied my application for tenure and promotion. On April 29<sup>th</sup> Dr. Welner informed me of the Faculty Appellate Committee's recommendation and of the administration's decision not to respect its judgment (Exhibit D). On April 30<sup>th</sup> Dr. McMillan composed a letter (in response to the Faculty Appellate Committee's recommendation) stating President Minks' reasons for denying my application (Exhibit E). And, here is where another egregious violation of my rights to due process and equal rights occurs, Dr. McMillan fails to mail the letter to me until June 9<sup>th</sup> (Exhibit F), almost six weeks later. Taken individually, any one of these events evidence a hostile attitude arising from discrimination; taken collectively, they demonstrate a pattern of calculated adversarial behavior intended to thwart my equal opportunity to advancement in employment—an opportunity protected by policy and law. As a matter of fact, the actions documented are in contradistinction to RUSO Affirmative Action policy 5.2 (c) "to reach out to all persons, including women and racial minority members, in recruitment, placement, development and advancement." Instead of reaching out to me, I was stonewalled, threatened, and denied timely access to vital information at every step of the process. Finally, note should be made of the purported reasons for President Minks denying my application (Exhibit E). President Minks' letter does not indicate any "compelling reason or exceptional case" for overruling the Faculty Tenure and Promotion Committee's judgment as required by policy. Policy states explicitly that faculty are the best judges of what constitutes substantive and meritorious contributions in their area of expertise—policy specifically eschews the type of second guessing and micromanaging described in the letter (*Policy and Procedures* 3.7.4 Role of the Faculty). As indicated by the minutia cited in his letter, President Minks clearly usurped the rights and responsibilities of the Faculty Tenure and Promotion Committee as well as undermined the principles of shared governance defined in the *Policy and Procedures Manual*. Omitted from mention in his letter are many significant contributions I have made to the university, such as designing and co-teaching a course on Native American history, literature, and law under the auspices of OSLEP (Oklahoma Scholar Leadership Enrichment Program). Most telling is his attitude toward any activities and contributions with respect to Native Americans. For example, President Minks minimizes not only my contributions to the Native American Symposium but demeans the Symposium itself. In his letter, he slights contributions that are culturally specific and valuable to Native Americans, such as preserving the oral tradition of Native American poetry. It must be noted that the Faculty Tenure and Review Committee was able to evaluate the chapbooks containing my poetry—assessment of the quality of literature is an area of expertise President Minks and Dr. McMillan lack the background and education to perform—nevertheless, President Minks and Dr. McMillan dismiss the texts and the expert judgment of the English faculty without even reading the texts or consulting the faculty as to the merits of the work. Likewise, President Minks summarily dismisses my presentation at the Native American Symposium, without so much as reading the text of my presentation in order to assess its merits, as

being neither "noteworthy nor excellent" simply because it was presented at the Symposium instead of another, presumably more respectable, venue. In addition, President Minks likewise dismisses the *Proceedings* of the Native American Symposium. Astonishingly, President Minks apparently has never so much as viewed a copy of the *Proceedings* since he repeatedly affirms in his letter that he was unable to verify that I was an editor of two editions of the Journal. If he had glanced at the cover of the *Proceedings*, he would have seen my name prominently displayed in bold print on the cover, along with Dr. Spencer, as an editor (Exhibit G). Copies of the *Proceedings* are readily available in Southeastern's Native American reading room. Of course, if President Minks (or any of the administrators who were unable to verify that I was an editor of two editions of the *Proceedings*) truly valued the Native American Symposium, then surely copies of the *Proceedings* of the Symposium would be readily accessible in his personal library. It was distressing to discover in President Minks' letter how little regard the administration has for the dedicated effort and sacrifice of all those at Southeastern who make the Native American Symposium possible as well as the low regard the administration has for the contributions of the participants—many of whom travel great distances at their own expense simply because they consider the Native American Symposium a "noteworthy and excellent" event. In re-reading President Minks' letter, I continue to be startled by the callousness with which he dismisses all things Native American. The lack of cultural appreciation is made more troubling by the fact that the letter was composed by another administrator, Dr. McMillan, who is clearly as dismissive of the value of Native American contributions to Southeastern as President Minks.

In conclusion, please note how different the experience of applying for tenure was for a white man in my department, Dr. Mark Spencer. The university president (who was Dr. Jesse Snowden) and Interim Vice President for Academic Affairs Doug McMillan repeatedly met with Dr. Spencer, went over his tenure portfolio, instructed him how to revise it, invited him to provide supplemental material which included articles that he had submitted or planned to submit for publication, and allowed him to fully explain and discuss his contributions to the university as well as providing him ample opportunity to proffer any "verification" required. Dr. Spencer received not only cooperation but a welcoming hand, guidance, and support to shepherd him through, what in the best of times is, a path wrought with anxiety. I do not resent Dr. Spencer's treatment, but affirm his experience as exemplary of the type of cooperation and collegiality between administration and faculty that characterizes a healthy university. With Dr. Spencer's experience as an exemplar, the question must be asked: why did the administration cooperate with and facilitate the tenure and promotion of a white man while adopting an adversarial and hostile demeanor toward a Native American woman? I deserve an answer to that question; but, more importantly, law and justice demands it.

#### Additional Information

After filing my initial complaint, I discovered that two candidates (Dr. Virginia Parrish and Dr. Margaret Cotter-Lynch), in addition to Dr. Spencer, were also awarded tenure and promotion by the administration even though their applications were not significantly different from mine. First, I want to state that Dr. Parrish and Dr. Cotter-Lynch are both deserving of tenure and promotion, and I have the utmost respect for them. The fact that an objective evaluation of their records demonstrates that my scholarship and service record is equivalent to theirs in no way demeans their accomplishments or value. Because our records are equivalent, it is entirely disingenuous for the administration to allege deficiencies in scholarship and service in denying my application last year. And, it is particularly onerous for Dr. Doug McMillan to presently deny me the opportunity to reapply for tenure this year because of alleged deficiencies in my scholarship when it is an indisputable fact that I presently have more articles accepted for publication in peer-reviewed scholarly journals than the combined record of the last three candidates at the time that he recommended them for tenure and promotion. Dr. McMillan's decision

to not allow my application for tenure and promotion to proceed, is clearly not based on facts, but on his own prejudices. A candid analysis of his memorandum halting my tenure and promotion application demonstrates that the memorandum lacks knowledge, thought, and reasons—vital safeguards against bigotry.

It is most important to note that the awarding of tenure and promotion to two cis women in my department does not in any way diminish the fact that the administration has discriminated against me as a trans woman. As a matter of fact, the disparate treatment of cis women and a trans woman demonstrates a profound disregard for fair and equal treatment by the administration as required by policy and law. For example, if an employer discriminated against women who have children by denying them promotion while promoting women without children; then discrimination has occurred. There are many categories of women and it is not necessary that a party discriminate against all categories of women to be guilty of discriminating against women. It is also pertinent to bear in mind that Southeastern Oklahoma State University, and the other universities in Oklahoma, allowed some minorities to enroll and graduate while specifically discriminating against Ada Sipuel (*Sipuel v. Board of Regents of Oklahoma*) and later placed unequal obstacles in the way of the education of George McLaurin (*McLaurin v. Oklahoma State Regents*). It is simply beyond doubt that different policies, practices, and standards are being applied to me than to other candidates, white men (Dr. Mark Spencer) and white cis women (Drs. Cotter-Lynch and Parrish), for tenure and promotion.

Finally, I would like to call your attention to Dr. Doug McMillan in particular. Dr. Doug McMillan's own sister, Dr. Jane McMillan, disclosed to me that Dr. Doug McMillan considers transgender people a grave offense to his "Baptist sensibilities." Dr. Doug MacMillan's "Baptist sensibilities," as he expressed them to his sister, Dr. Jane McMillan, prevents him from tolerating, much less accepting or welcoming, transgender people to Southeastern. Quite simply, my presence at Southeastern is intolerable to him. The evidence demonstrates, quite unequivocally, that Dr. Doug McMillan has abused the power of his office to deprive me of my rights; rights protected by policy and the law.

I would also like to document the fact that Dr. Scoufos repeatedly uses inappropriate pronouns when speaking to and about me. Although Dr. Scoufos' use of inappropriate pronouns is intermittent, it has occurred too often to be attributable to mere carelessness.

Finally, please do not misconstrue the focus of this additional information to diminish in any way my conviction that racial discrimination is also a factor in the disparate treatment accorded me in reference to tenure and promotion. Indeed, intolerant people often hold multiple and overlapping prejudices.

#### Retaliation Complaint

On October 7<sup>th</sup> Dean Scoufos informed me that Dr. Doug McMillan has decided to refuse to allow me to apply for tenure and promotion. Dr. McMillan's unprecedented action is not supported by policy, procedure, or practice. Dr. McMillan's order is in violation of RUSO policy. RUSO specifically prohibits retaliation for filing a grievance or complaint. (RUSO 5.6; 5.7).

Dr. McMillan claims in his letter delivered to me October 7, 2010 that his unprecedented decision is based on his BELIEF that (1) alleged deficiencies in scholarship and service in my 2009-2010 application have not been remedied, (2) allowing my application to proceed would be a waste of the time of faculty and administration, and (3) that there would be an "inflammation" of relations between the administration and faculty. However, he offers no evidence except his unwarranted opinion to support his belief.

In reference to the claim of alleged deficiencies in scholarship and service, I offer the following evidence. In Dr. McMillan's letter dated April 30, 2010, Dr. McMillan claims that the administration was unable to verify that I was a co-editor of two editions of the Native American Symposium *Proceedings*. My 2010-2011 application provides unequivocal testimony from the other editor, Dr. Mark Spencer, that I did indeed co-edit two editions of the *Proceedings*. In fact, I presently have eight articles accepted by peer-reviewed scholarly journals, three conference papers, edited two editions of the Native American Symposium *Proceedings*, and one chapter in an anthology of postcolonial literature to my credit. It is an empirical and uncontestable fact that my scholarly record significantly exceeds the scholarly record of other candidates who were granted tenure and promotion. In reference to service, of course I have another year of service to the university since my 2009-2010 application, but more importantly I have letters of reference from the Tenure and Promotion Committee that recommended me for tenure and promotion in 2009-2010 specifying in detail my service and value to the university. In addition, I revised my 2010-2011 application to specifically detail my service. My additional service and the revision of my application should address any perceived or alleged deficiencies in regard to service.

In reference to Dr. McMillan's second rationale for prohibiting my 2010-2011 application moving forward, (2) allowing my application would be a waste of the time of faculty and administration. My initial reaction is that this is an example of an *argumentum ad ignorantiam*. One simply may not make a claim about something without looking at the evidence or consulting someone who is familiar with the evidence. Dr. McMillan has not viewed my 2010-2011 application or talked with anyone who has. This brings up another important point. In our department the Chair reviews applications and advises candidates on whether or not, in their reasoned judgment, the application merits submitting to the Tenure and Promotion Committee. Our Chair, Dr. Prus, has already reviewed my 2010-2011 application and granted permission to proceed. Dr. Prus was as surprised as I was to discover Dr. McMillan's halting of the process, especially in view of the fact that Dr. McMillan made the decision without consulting him. As a matter of fact, a significant amount of time has already been invested in my 2010-2011 application by the faculty—as evidenced by the letters of recommendation for tenure and promotion by Drs. Allen, Coleman, Parrish, and Spencer, as well as the review of my portfolio by the Chair of my department, Dr. Prus. Furthermore, reviewing applications for tenure and promotion is one of the responsibilities of the faculty and administration. Policy and procedure does not allow administrators to shun duties and responsibilities simply because they BELIEVE it may be a waste of time.

In reference to the third point in Dr. McMillan's letter, (3) that allowing my application to proceed would result in an "inflammation" of relations between the administration and faculty. This claim contradicts Dr. McMillan's second (2) claim inasmuch as he assumes that the faculty Tenure and Promotion Committee will recommend me for tenure and promotion on my merits and that the administration will reject their recommendation. Dr. McMillan's assertion is troubling on many levels. For example, it demonstrates a conscious disingenuousness in reference to claims (1) and (2). The fact is, relations will be "inflamed" by Dr. McMillan's unprecedented act of arbitrarily and unilaterally suspending the right<sup>1</sup> of tenure-track faculty to address any alleged deficiencies in an application in a subsequent application for tenure and promotion within the time limits provided by RUSO 3.3.4. In addition, Dr. McMillan's newfound assertion of the power of the office of Interim Vice President of Academic Affairs to refuse to allow candidates to address alleged deficiencies effectively removes the purpose of the explanatory letter from the president, required by policy (*Policy and Procedures Manual* 3.7.4). Dr. McMillan's exercise of a new power by the office of Interim Vice President of Academic Affairs not only renders the president's explanatory letter meaningless, but arguably makes it an act of cruelty if it contains easily remedied technical deficiencies; such as letters from the Tenure and

Promotion Committee justifying their decision to recommend a candidate for tenure and promotion, or readily obtainable documentation of accomplishments, while the same candidate is prohibited from offering a subsequent application that addresses the president's concerns. Furthermore, it is unjustifiably punitive to begin forbidding ensuing applications for tenure and promotion because the process has recently become adversarial instead of cooperative.

Finally, since the alleged rationales for deciding to halt my application are demonstrably spurious, it is unassailable that Dr. McMillan's decision is simply an act of retaliation for my exercising rights afforded to faculty and citizens. This semester I have exercised my rights as provided by the policy and law to file a grievance and complaint against Dr. McMillan. RUSSO (5.6; 5.7) specifically prohibits retaliation for exercising my clearly delineated rights under policy and law.

Unfortunately, Dr. McMillan also introduces a claim that is extraneous to the purpose of his letter—which is to prohibit the advancement of my application and provide the rationale for his action. I am referring to his assertion that an offer was made to me in April 2010 to renew my contract for the 2010-2011 year and to allow me to reapply for tenure and promotion in 2011-2012. I am uncertain why he would introduce this extraneous assertion into his letter except as an attempt to misrepresent me as being uncooperative and to present himself in a favorable light. However, there are significant factual errors in respect to his account of the purported offer. The offer he is referring to was proffered by Dean Scoufos under most peculiar circumstances. Dr. Mischo, who was the Chair of our department in 2009-2010, and I were called to Dean Scoufos' office in April 2010. Dean Scoufos said I may be allowed to reapply for tenure only (not promotion) in the 2010-2011 academic year if I withdrew my 2009-2010 application. She demanded an immediate decision. I asked for the offer in writing, and she refused. I asked what would be the requirements for the administration to approve a tenure only application, and she refused to discuss the specific requirements with me. When I asked for more time to consider the offer, she threatened to not renew my contract "for cause" for the 2010-2011 academic year (the date set by policy for non-renewal without cause had already passed). The offer, as described in the letter delivered to me October 7, 2010, purports to be one in which I am not allowed to apply for either tenure or promotion in the 2010-2011 academic year, but may apply for tenure and promotion in 2011-2012. This is patently false. (I welcome you to contact Dr. John Mischo in reference to the offer and the circumstances surrounding the offer to verify which account is accurate.) The offer, as described by Dr. McMillan, could not have been legitimately made because only the Board of Regents may approve the renewal of a tenure-track faculty member after seven years (RUSSO 3.3.4; *Policy and Procedures Manual* 4.6.4). The 2011-2012 academic year would be my eighth year. Dr. McMillan did not have the authority to make such an offer. Dr. McMillan's introduction of this spurious and extraneous claim is simply further incontrovertible evidence of his impassioned and unreasonable hostility toward me because of my membership in groups that have suffered egregious violations of our civil and human rights.

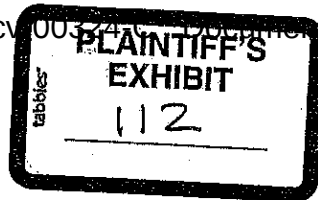
<sup>1</sup> *Cisgender* can be used in place of less accurate terms such as *biological* or *genetic* male or female since transgender people are also "biologically" (and not made from some non-biological material), while the "genetically"-argument falls when one considers the genetic variations present in *intersex* people. *Born* male or female is equally inaccurate, since transgender and transsexual people feel that they are born with a male or female gender identity irrespective of their physiological sex. The use of the term *real* male or female is both inaccurate, because each and every point that is usually attributed to "real" (=cisgender) women either does not apply to all cisgender women either, or to transwomen and/or many intersex women as well, or to transmen as well, who are usually not counted as "real women". (The same of

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course applies to "real men".) When used comparatively these expressions are often seen as disrespectful to and by transgender and transsexual people. (From *WordIQ.com*)  
" A "right" in a democratic society may be defined as a practice which is routine and expected. Indeed civil society depends upon members of society interacting with one another in predictable and equitable ways.



# Exhibit 54



Attachment K

## Dr. Rachel Tudor

### Timeline

<b>2/12/10</b>	Letter from Dr. Scoufos to Dr. McMillan recommending the denial of tenure and to give Dr. Tudor a one-year terminal appointment for the 2010-2011 academic year. The letter states, "Dr. Tudor's portfolio appears to be incomplete. In addition to lack of documentation of service activity, there are no letters of recommendation from tenured faculty members in her department. The single sentence recommendations for promotion and tenure from the department committee and the chair fail to give any justification for the recommendation for promotion and tenure."
<b>2/23/10</b>	Letter from Dr. McMillan to President Minks in response to Faculty Senate letter dated 1/25/10. The letter clarifies a possible disconnect between what is considered a discipline specific definition for tenure and promotion and the RUSO Board Policy and our Academic Policy and Procedure Manual requirements.
<b>2/26/10</b>	Letter from Dr. Rachel Tudor to President Minks. Dr. Tudor requested hearing before the Faculty Appellate Committee to review her application for promotion and tenure.
<b>3/21/10</b>	Email from James Knapp to Larry Prather and Jon Reid regarding a formal statement of the Faculty Appellate Committee conclusion on Dr. Tudor. The conclusion stated, "Dr. Tudor's appeal is valid in that Section 3.7.4 of the SE Policy and Procedures Manual indicates, "The governing board and president should, on questions of faculty status as in other matters where the faculty has a primary responsibility, concur with the faculty judgment except in rare instances and for compelling reasons which should be stated in detail."
<b>3/25/10</b>	Official meeting with Dr. Knapp, Dr Prather, Dr. Reid, and Dr. Weiner to concur with the letter submitted in the record.
<b>3/25/10</b>	Letter from Dr. Knapp, Dr, Prather, Dr. Reid to Dr. Weiner. See copy.
<b>4/21/10</b>	Letter from RUSO attorney Charlie Babb to Dr. McMillan indicating, "The Regents of RUSO have delegated to the respective presidents or their designees <b>all</b> (emphases added) Personnel decisions regarding the hiring, promotion, rank and salaries of faculty but have not delegated the granting of tenure. Only the Regents grant tenure and then if the president determines to recommend the granting of tenure to the Regents. See, RUSO policy 1.25.1 and 3.3.5 The letter concludes stating, "I do not find anything in the RUSO policy which suggests that anyone should provide a rationale for not following the recommendation of a department committee. I do not find anything in the Southeastern policy which suggests that anyone other than the President or the Board should provide rationale for not following a department recommendation. I also note that the Southeastern policy is merely suggestive as to whether the president states a rationale for his decision. Finally, it should be obvious that the RUSO policy would control over the Southeastern policy and that the

	Southeastern policy cannot direct the Regents to perform a particular act."
<b>4/29/10</b>	Letter signed by Rachel Tudor acknowledge receipt of the decision of the Faculty Appellate Committee.
<b>4/29/10</b>	Letter from Dr. Weiner to Dr. Tudor. See letter.
<b>4/30/10</b>	Letter from Dr. McMillan to Dr. Rachel Tudor indicating he has been delegated to communicate the reason for denial of her application for tenure and promotion. Paragraph 3, states, "An examination of the research/scholarship portion of your portfolio listed eight activities...The first three activities (two publications and one presentation at a regional symposium) do the remaining activities fail to meet these standards." "In summary, your efforts in scholarship and research appear to have yielded some appropriate work; however, the body of work, since being employed at Southeastern, is either unverifiable or falls below the policy requirements for tenure and promotions."
<b>8/30/10</b>	Letter from Dr. Tudor to Dr. Stubblefield Cc: Dr. Prus regarding a change of discrimination in promotion and tenure.
<b>8/31/10</b>	Email from Rachel Tudor to Dr. Stubblefield correcting an error of fact. Dr. Tudor indicated Dr. Snowden was president during the tenure and promotion of Dr. Mark Spencer not Dr. Minks.
<b>9/6/10</b>	Dr. Stubblefield conferred with legal counsel regarding the discrimination charges.
<b>9/8/10</b>	Letter from Emeritus Interim President and retired VPAA Jesse Snowden to Dr. McMillan providing a recollection of the events surrounding the tenure and promotion of Dr. Mark Spencer. The letter is as follows: <ul style="list-style-type: none"> <li>• When I reviewed Dr. Spencer's portfolio in December, it was my opinion that his record in scholarship was borderline, but not sufficient to meet the minimum standard for promotion and tenure.</li> <li>• I also recall that his record in both teaching and service was very good.</li> <li>• I met with Dr. Spencer, probably in January, to discuss my reasons for not recommending his promotion and tenure.</li> <li>• Dr. Spencer indicated that he had submitted a paper for publication since his portfolio was submitted and that he had one or two additional manuscripts completed and ready to submit for publication.</li> <li>• In view of this, and since it was still relatively early in the process, I agreed to give Dr. Spencer some additional time, I believe two months, to get the additional manuscripts submitted and to learn of the fate of the one he had submitted.</li> <li>• Dr. Spencer followed through, and submitted the additional manuscripts, and received word that at least one of them (it could have been more) was accepted for peer-reviewed publication. This would have been around March 1st.</li> <li>• This additional work, in my view, brought Dr. Spencer's record of scholarship up to the minimum standard required for promotion and tenure.</li> <li>• By this time I was Interim President, and I met with Interim Vice President McMillan to let him know what had transpired in Dr. Spencer's case. My</li> </ul>

---

**9/13/10**

Met with Dr. Mark Spencer to discuss the accusation from Dr. Tudor that he was treated differently in t & P process. Dr. Spencer explains his tenure process as a split decision. Receives tenure but was denied promotion. The department chair and Dean concurred with the decision. Collegiality was a cited as the issue. Dr. Spencer says an offer of additional time was requested to include a notification of acceptance to a refereed journal article. Dr. Spencer said Dr. Snowden indicated that due to holidays and a heavy workload, he probably would not start the portfolios for several months. Snowden indicated he would speak with Dr. McMillan about the situation. After speaking with Dr. McMillan, Snowden made a proposal to Spencer to send to him particulars of the articles and to agree to hurry. A two month period was extended to him. Dr. Spencer was emphatic when he said Dr. Snowden did not "promise" me anything but he said he thought it was implied. Dr. Spencer said he submitted three articles and all were accepted. He also said, "you can have too little but never too much research and scholarship."

AAO asked Dr. Spencer if he thought the process was typical or atypical. He responded that he wasn't really sure but he thought it was. He knew he had completed the articles since the submission of the portfolio and knew if he was borderline in scholarship (stream of thought from Dr. Spencer-"he wasn't sure what was really considered exemplary and noteworthy. Number of refereed journal articles, or national vs. state/regional presentation).

AAO stated the RUSO policy 1.25.1 and 3.3.5 that only the Regents can grant tenure. Charlie Babb, general counsel, on April 21, 2010 states, "I do not find anything in the RUSO policy which suggests that anyone should provide a rationale for not following a department recommendation." AAO then asked Dr. Spencer if he believed Dr. Tudor, was treated unjustly or in a discriminatory manner? AAO indicated that a legal interpretation or stance was not requested, merely the impression from a colleague and associate. Dr. Spencer states, "Now that I understand the process better, maybe I would not have advised Dr. Tudor that my request for time was atypical but maybe a gift." "I guess, I'll have to recant my prior recommendations to her." Meeting ended at 2:15

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Amended complaint received from Dr. Tudor indicating disparate treatment exist between T and P. She states Drs. Cotter-Lynch, Parrish and Spencer received T & P. having similar portfolios.

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**9/17/10**

10:30-Meeting with Dean Scoufos. She indicated that she did not say anything of an intimidating nature to Dr. Tudor. In fact, Dr. Scoufos was aware that she (Dr. Tudor) was running out of time to extend her options for T & P. In Dr. Scoufos' characteristic, low, slow southern dialect, imparted what she felt was a possible solution to address the deficiencies.

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1:00-Meeting with former department chair, Dr. John Mischo regarding meeting between Drs. Scoufos, Tudor. Dr. Mischo indicates he was present at the meeting discussed earlier with Dr. Tudor. AAO specifically asked if he would described the meeting as "intimidating, coercive and demanding?" He responded, "It did not appear to be a serious discussion but matter of fact and not personal." "I cannot determine how someone feels but I would not use any of those terms to describe the meeting."

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2:45-Discussion with Native American Symposium webmaster, Dennis Miles. Miles pulled up the website for the 7<sup>th</sup> symposium dated May, 2008. Discrepancy regarding cover and index. Cover listed Dr. Tudor but table of contents lists only Mark Spencer as editor. After searching history of communications with webmaster for proceeding, Mr. Miles found request from Mark Spencer to add the name of Rachel Tudor. This change was made. Mr. Miles indicated that a period of time existed where Dr.

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Tudor's names was not on the website.

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# Exhibit 55



SOUTHEASTERN OKLAHOMA STATE UNIVERSITY



To: Dr. Rachel Tudor, Department of English, Languages & Humanities  
Dr. Douglas McMillan, Interim Vice President for Academic Affairs  
Mr. Ross Walkup, Vice President for Business Affairs (President's Designee)

From: Dr. Charla Hall, Chair, Faculty Appellate Committee, Hearing Committee  
Dr. James Knapp, Member, Faculty Appellate Committee, Hearing Committee  
Dr. Larry Prather, Member, Faculty Appellate Committee, Hearing Committee

*Handwritten signatures and initials, including 'Celt' and 'JP'.*

RE: Grievance dated 10-11-10

Date: 12-3-10

After multiple meetings, members of the Faculty Appellate Committee's Hearing Committee, unanimously agree that Dr. Rachel Tudor should be allowed to apply for tenure and promotion during the 2010-11 academic year. The committee based their decision solely on the written documentation submitted and did not deem it necessary to call witnesses. Consequently, no recording was made.

If deadlines have been missed due to the grievance process, the committee recommends that appropriate adjustments to the timeline be made.

Please note that this recommendation is from the Faculty Appellate Committee's Hearing Committee. Since the Interim Vice President for Academic Affairs is the respondent in this case, Mr. Ross Walkup has been identified as the President's designee. According to Southeastern Oklahoma State University's Academic Policies and Procedures Manual, 4.4.6, "If the Vice President for Academic Affairs (or President's designee) concurs in the recommendation of the Hearing Committee, that recommendation shall be put into effect. The Vice President for Academic Affairs (or President's designee) must report to the grievant, respondent, and the Hearing Committee his/her decision within 10 workdays of receipt of the Hearing Committee's recommendation. If the Vice President for Academic Affairs (or President's designee) does not concur in the recommendation, he/she must meet with the committee to reach a final decision. The work of the Hearing Committee is finished when the Vice President for Academic Affairs (or President's designee) communicates this joint decision in writing to the grievant and respondent, the Hearing Committee, and necessary University officials."

SOUTHEASTERN OKLAHOMA STATE UNIVERSITY

# Exhibit 56





RECEIVED

JAN 28 2011

President's Office

To: President Minks  
From: Dr. Rachel Tudor  
Date: 28 January 2011

Re: Appeal of Dr. Stubblefield's "Findings and Conclusions on Gender Discrimination Complaint"

On January 19, 2011, I received Dr. Stubblefield's "Findings and Conclusions on Gender Discrimination Complaint." I would like to note to be taken of the following significant omissions and distortions in her report that create a misleading portrayal of events and lead to a reader making erroneous conclusions. The significant omissions and distortions are detailed in reference to the number assigned to each complaint.

1. There is no refutation of the context in which the demand that I withdraw my FY 2009-2010 application for tenure was made, i.e. The threat to non-renew my 2010-2011 contract and to not allow me to apply for tenure in FY 2010-2011. Nor is there refutation of the fact that an answer was demanded immediately. In addition, Dr. Stubblefield's quotes of Dr. Mischo are misleading. In point of fact, in response to my inquiry, Dr. Mischo made the following reply: "I agreed to discuss the facts behind the case but not to speculate or engage in any kind of subjective interpretation. I certainly, though, never said it was "not" any of those things [i.e. intimidating, coercive, demanding], but that I was not going to speak in such terms. Rather, I wanted to keep to facts, such as the fact that you were indeed expected to respond in the way that you refer to . . ." In fact, Dr. Stubblefield portrays the incident as a "gift"—even stating that I was given reasons for the administration's demand that I withdraw my application. When, in fact, it is very clear from the record that the administration not only refused to inform me of any problems with my application, but sought legal counsel in reference to their decision not to honor the Faculty Appellate Committee's recommendation that they inform me of any problems with my application. For example, it is to be noted that Dr. McMillan claims he was unable to verify whether or not I was an editor of the Proceedings of the Native American Symposium in his belated, after the President's denial of the application, letter of explanation required by policy. Thus, it is simply not credible to suggest, as Dr. Stubblefield does, that a candid discussion of the administration's concerns with my application occurred at the time.
2. It is misleading to suggest that the idiosyncratic particulars of the disparate treatment was the primary issue of my complaint when, even by the narrative in Dr. Stubblefield's letter, it is the process and policy of openness in terms of specific feedback, a genuine spirit of cooperation in amending any perceived deficiencies, and, most importantly, the active facilitation of the process in its entirety that is in issue. Dr. Stubblefield fails to provide any concrete examples of

her claims that the portfolios of Dr. Parrish and Dr. Cotter-Lynch far exceeded mine in all areas of consideration. How so? The sole source for her assertions is a quote from Dr. Prus that "In his opinion a comparison of your portfolio with that of the tenured faculty members resulted in your portfolio falling short. This was the reason for the non recommendation." In reality, Dr. Prus unequivocally denies stating as a matter of fact "this was the reason for the non recommendation." He explained to me that he was discussing the portfolios with Dr. Stubblefield and was hypothesizing about possibilities—not stating why the administration did not honor the decision of the Faculty Tenure and Promotion Committee as well as the recommendation of the Chair of the department, Dr. John Mischo. If Dr. Stubblefield is citing Dr. Prus because he is the present Chair of our department, I submit that Dr. Mischo is a much more qualified authority to cite in reference to my merits for tenure and promotion because he was the Chair since my employment until the fall of 2010. In addition, Dr. Mischo regularly reviewed my student evaluations and yearly faculty development agreements. Also, omitted from Dr. Stubblefield's letter are interviews and opinions of the tenured faculty members as well as the Chair of the Faculty Tenure and Promotion Committee who recommended me for tenure and promotion (Dr. Coleman). Dr. Parrish and Dr. Cotter-Lynch have been very vocal in their support for my application as well as their opinion that I am as deserving as they of tenure and promotion. I submitted copies of letters to Dr. Stubblefield from every member of last year's tenure and promotion committee (with the exception of Dr. Prus) recommending me for tenure and promotion as well as their examples of concrete reasons for why I merit tenure and promotion. It is disingenuous to cite as the sole authority as to my merits the one person who is not documented as supporting me—not only citing him, but, most egregiously, claiming he said something that he did not, in fact, say. The preponderance of evidence, which is the only reason I can surmise for its omission, as well as the overwhelming preponderance of testimony, substantiates my complaint.

3. Dr. Stubblefield does not deny that policy was violated in reference to the requirement that I be informed of the judgment of the Faculty Appellate Committee in a timely manner. However, she dismisses this gross violation of policy by asserting that I was not "harmed by the delay" and asserting that the violation of policy was not based on gender or race. This certainly begs the question, what was the violation based on? Dr. Stubblefield proffers no explanation as to why I was not informed, she simply asserts, *ex cathedra* if you will, that it was not based on gender or race. Surely, anyone who is injured by such a gross violation of policy is entitled to an explanation. It is part of the record that I repeatedly requested the withheld information, and my requests were not honored. Thus, the violation occurred willfully and deliberately. If the intent was not to harm, what was it? How does Dr. Stubblefield define "harm"?
4. Dr. Stubblefield disingenuously suggests that my complaint of retaliation is based solely on a conversation that Dr. Jane McMillan had with me in which she discussed the Dr. Doug

McMillan's religious biases. When, in fact, it is based on the circumstances of the case. Dr. Stubblefield fails to even acknowledge the circumstances of the case, instead she cites Jane McMillan's statement that she regrets if she had misled me in reference to her conversation with her brother as grounds for dismissing the complaint in its entirety. Dr. Stubblefield does not mention the fact that in December of 2010 the Faculty Appellate Committee unanimously recommended that I be allowed to apply for tenure and promotion in contravention to Dr. McMillan's order. Obviously, the Faculty Appellate Committee found something untoward in Dr. McMillan's action.

The sheer magnitude of significant omissions and distortions demonstrate that Dr. Stubblefield's "Findings and Conclusions on Gender Discrimination Complaint" is in error. This list is not intended to be an exhaustive or conclusive repudiation of Dr. Stubblefield's findings, it is simply a compendium of some of the most compelling reasons and facts I have been able to assemble in the brief time (10 days) allowed to respond under present policy. Please keep in mind that Dr. Stubblefield took six months and had the assistance of Southeastern's legal counsel in the preparation of her document.

# Exhibit 57



COPY

OFFICE OF THE PRESIDENT

SOUTHEASTERN OKLAHOMA STATE UNIVERSITY  
1405 N. FOURTH AVE., PMB 4236  
DURANT, OK 74701-0605

580-745-2500  
FAX 580-745-2515  
WWW.SOSU.EDU



February 21, 2011

Dr. Rachel Tudor  
1124 North 10<sup>th</sup>  
Durant, Oklahoma 74701

RE: Appeal of the Findings and Conclusions on Gender Discrimination Complaint

Dear Dr. Tudor:

I am in receipt of the documents filed by you regarding alleged gender discrimination as well as Dr. Stubblefield's January 19, 2011 document. After a thorough review, I concur with Dr. Stubblefield's findings and conclusions that neither discrimination nor retaliation has been shown in this matter.

Sincerely,

*Larry Minks*  
Larry Minks,  
President

cc: Dr. Claire Stubblefield

SOUTHEASTERN OKLAHOMA STATE UNIVERSITY

# Exhibit 58

**From:** Claire Stubblefield /O=SOSU/OU=SOSU/CN=RECIPIENTS/CN=CSTUBBLEFIELD  
**Subject:** info  
**To:** Microsoft Exchange  
**Cc:** Babb,Charlie , LarryMinks

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The saga continues!

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**From:** Rachel Tudor  
**Sent:** Thursday, October 14, 2010 1:43 PM  
**To:** Claire Stubblefield  
**Subject:** info

Dear Dr. Stubblefield,

I have put the information we discussed earlier into a letter and attached it to this email. I have a class at 5:00, but would be happy to visit with you before then or tomorrow (classes at 9 & 11).

Sincerely,

Rachel Tudor, PhD  
Dept of English, Humanities & Languages  
Southeastern Oklahoma State University  
1405 North 4th Ave.  
Durant, OK 74701  
580.745.2588  
rtudor@se.edu

**SEOSUEMAIL2297**

# Exhibit 59



**From:** Claire Stubblefield /O=SOSU/OU=SOSU/CN=RECIPIENTS/CN=CSTUBBLEFIELD  
**Subject:** TUDOR  
**Date:** November 18, 2010 at 4:59 PM  
**To:** Doug McMillan /O=SOSU/OU=SOSU/CN=RECIPIENTS/CN=CSTUBBLEFIELD

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Wanted to see draft before I send to Babb on Monday. I simplified from 8-4 pages. No recommendations. Feel free to make any comments or corrections as needed.

**SEOSU EMAIL 3553**

# Exhibit 69

To: Charla Hall[CHall@se.edu]  
From: Bryon Clark  
Sent: Thur 9/30/2010 10:37:03 PM  
Importance: Normal  
Subject: RE: grievance  
Received: Thur 9/30/2010 10:37:00 PM

Charla:

I probably would e-mail the letter as an attachment (or embedded in the text of the e-mail) to Dr. Tudor as well as everyone cc'd in the letter today or no later than tomorrow (1 October 2010). I also would indicate in the e-mail that Dr. Tudor will be provided a hard copy of the letter with original signatures of FAC members as soon as it is signed and those cc'd also will be provided copies of the signed letter.

Questions, e-mail or call me (cell phone: 903-815-0626).

Thank you!

Bryon

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**From:** Charla Hall  
**Sent:** Thursday, September 30, 2010 3:26 PM  
**To:** Bryon Clark  
**Subject:** Re: grievance

No need to e-mail or fax. **Ends up that Charlie has the document and has approved our response.** He suggested that the other two committee members also sign the document. I haven't heard back from them about a convenient time to get their signatures. I don't think Dr. Knapp is back on campus until next week.

So, is your recommendation that I go ahead and e-mail the document to Dr. Tudor today? Would I also cc(in the e-mail) the same people who are to be cc'd in the memo?

Charla R. Hall, Ph.D.  
Professor  
Southeastern Oklahoma State University  
1405 N. 4th  
Durant, OK. 74701  
580-745-2378

On Sep 30, 2010, at 3:18 PM, "Bryon Clark" <BKClark@se.edu> wrote:

Charla:

Yes, I will scan and e-mail a copy of the grievance and the e-mail naming the respondents to him this afternoon.

It would be best if the letter could be e-mailed to Dr. Tudor and the hard copy hand-delivered tomorrow; 1 October 2010 is 15 days after the respondents were identified.

Thanks.

Bryon



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**From:** Charla Hall  
**Sent:** Thursday, September 30, 2010 1:51 PM  
**To:** Bryon Clark  
**Cc:** Charla Hall  
**Subject:** grievance

**Defs' App'x Vol.7 - 1887**

Charlie Babb has asked for a copy of the grievance filed by Dr. Tudor. Do you have a clean copy that you can fax or e-mail to him? Mine is written all over.

Thanks!

Charla R. Hall, Ph.D.  
Professor  
Department of Behavioral Sciences  
Southeastern Oklahoma State University  
1405 N. 4th

PMB 4102  
Durant, OK 74701-0609  
580-745-2378  
580-745-7421 (fax)

# Exhibit 61

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff(s),	)	
	)	
RACHEL TUDOR,	)	
	)	
Plaintiff Intervenor,	)	
	)	
-vs-	)	No. 5:15-CV-00324-C
	)	
SOUTHEASTERN OKLAHOMA STATE	)	
UNIVERSITY, and	)	
	)	
THE REGIONAL UNIVERSITY	)	
SYSTEM OF OKLAHOMA,	)	
	)	
Defendant(s).	)	

DEPOSITION OF CLAIRE STUBBLEFIELD, PhD

TAKEN ON BEHALF OF THE PLAINTIFF(S)

IN OKLAHOMA CITY, OKLAHOMA

ON MAY 17, 2016

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REPORTED BY: LESLIE A. FOSTER, CSR

**Claire Stubblefield**

24

1 Q Did somebody communicate to you that you had  
2 the option to withdraw your application?

3 A Yes.

4 Q Who was that?

5 A Doug McMillan.

6 Q And why was he the one communicating to you  
7 that you had the option to withdraw your application?

8 MR. JOSEPH: Object to the form.

9 A A friend, a confidant.

10 Q (BY MR. TOWNSEND) Did he work in the academic  
11 affairs office at the time?

12 A Yes.

13 Q You -- strike that.

14 Do you still consider Dr. McMillan to be --  
15 strike that again.

16 Do you still -- do you still consider Doug  
17 McMillan to be a friend?

18 A Friendly, yes.

19 Q And I think you said at that time that Doug  
20 McMillan informed you of the option to withdraw your  
21 application, that he was a friend and confidant. Right?

22 A Yes.

23 Q Did he continue to be your friend and confidant  
24 after that point in time?

25 A Friendly, yes.

**Claire Stubblefield**

25

1           Q    Was there ever a point in time where he stopped  
2 being your friend and confidant?

3           A    I don't believe so.

4           Q    When Doug McMillan told you about your option  
5 to withdraw your application for tenure, did he identify  
6 the deficiencies in your portfolio?

7           A    The way that's posed is difficult for me to  
8 answer because my meeting with him was not an official  
9 meeting. I basically bursted in his office. I went in  
10 and said, "I hear that I'm not going to make it through  
11 the first -- this time." That's all. He did not call  
12 for me. I did not make an appointment. There was  
13 nothing -- nothing official about that. And I actually  
14 was out of line.

15          Q    What did he say when you burst into his office  
16 and asked him that question?

17          A    "What's -- what's wrong?" You know, and I told  
18 him that I'd heard that I was -- there was some things  
19 deficient and had -- and had he received it.

20                   He said they had just come over, so, no.  
21 Really, no. And so just disappointment in that. There's  
22 some disappointment in -- in not getting it.

23                   And I -- so I just looked at it and he said,  
24 you know, that's kind of what it was. That was how it  
25 happened. And I had to inject that it was not an



## Claire Stubblefield

127

1 about where in the process her indication that Jane  
2 McMillan had -- I'm not sure which of the amendments and  
3 iterations that one came out.

4 Q Did he say, though, that he did not have any  
5 religious beliefs related to transgender people?

6 A If we're understanding at -- make sure we're --  
7 I want to make sure we're communicating. At what point?  
8 Which -- you want the second conversation or when did he  
9 say or when did I ask him? I'm not sure what you're  
10 asking.

11 Q Sure. Well, let me just make it clear, then.  
12 Doug McMillan's religious beliefs didn't come up as a  
13 topic when you spoke to him the first time about  
14 Dr. Tudor's --

15 A No.

16 Q -- portfolio. Right?

17 A That's correct.

18 Q Okay. So during this second conversation where  
19 you're speaking to him about discrimination, did you ask  
20 him what his religious beliefs were with respect to  
21 transgender people?

22 A I don't remember. I don't think it was asked  
23 that way.

24 Q Did you ask him whether he had ever said  
25 anything to anyone about his religious beliefs about

Claire Stubblefield

129

1 pertain to transgender people?

2 A Not stated that way.

3 Q What do you mean when you say, "Not stated that  
4 way"?

5 A Not stated that way.

6 Q Meaning, you didn't ask in the exact words I  
7 just stated?

8 A That is correct.

9 Q All right. Let me ask the question again.

10 A Please.

11 Q At any point during your investigation of  
12 Dr. Tudor's discrimination complaint, did you collect any  
13 evidence or any information about Dr. McMillan's  
14 religious beliefs?

15 A No.

16 Q Did you ask Dr. McMillan how he felt about  
17 transgender people?

18 A Yes.

19 Q What did he say?

20 A He says it doesn't matter.

21 Q What did you take that to mean?

22 A I think of everything that you're going to ask  
23 me, this is the most problematic for me because I'm  
24 talking about someone who I've talked to about  
25 discrimination from the time I got to Southeastern. He

**Claire Stubblefield**

130

1 has never, never mentioned he disliked anybody. He was  
2 my confidant as far as discrimination, what people talk  
3 about, what hurts people, and humanity.

4 And for you to ask me that and continue to ask  
5 me if he was prejudiced when I know what he's done for  
6 me, I take offense to that. Now, every time it comes up,  
7 I will probably be equally as pissed about this. But  
8 that's the one person who I have never heard say  
9 anything, anything, about people of color.

10 He -- he always said do the right thing for the  
11 right reasons. We constantly said that to each other  
12 because I've been upset about things, he's been upset  
13 about things, and we say the same thing. Do the right  
14 thing for the right reasons. So his Baptist background  
15 or any other background does not preclude his stand on  
16 humanity. And I stand by that. I want a break.

17 MR. TOWNSEND: Certainly.

18 (Off the record at 12:18 P.M.)

19 (On the record at 1:23 P.M.)

20 Q (BY MR. TOWNSEND) All right, Dr. Stubblefield.  
21 We just returned from a lunch break. Is there any reason  
22 that you could not continue to give truthful testimony  
23 today?

24 A No.

25 Q Before our lunch break, we were talking some

**Claire Stubblefield**

132

1 A Indirectly, yes.

2 Q Did you file any complaints about the racial  
3 slur?

4 A No. It was a one-time occurrence.

5 Q So when you learned that Dr. Tudor was  
6 complaining about Doug McMillan discriminating against  
7 her --

8 A Sorry.

9 Q -- did you have the same reaction in your mind  
10 about that complaint that you had just before we stopped  
11 for lunch in response to my question?

12 A Say -- please repeat that.

13 MR. TOWNSEND: Can you read the question back?

14 THE COURT REPORTER: "Question: Did you have  
15 the same reaction in your mind about that complaint that  
16 you had just before we stopped for lunch in response to  
17 my questions?"

18 MR. JOSEPH: Object to the form.

19 Q (BY MR. TOWNSEND) All right. I'll ask it  
20 again.

21 A Okay.

22 Q All right. I'll ask it a different way.

23 So when Dr. Tudor told you that she had a  
24 complaint about Dr. McMillan discriminating against her,  
25 in your mind, what did you think about her making that

**Claire Stubblefield**

133

1 complaint, given what you knew about Doug McMillan?

2 A It was something I was -- I needed to find out.

3 Because that would have surprised me.

4 MR. TOWNSEND: Let's go off the record for a  
5 second.

6 (Off the record at 1:27 P.M.)

7 (On the record at 1:28 P.M.)

8 Q (BY MR. TOWNSEND) Was there a process for you  
9 to recuse yourself from doing an investigation as  
10 affirmative action officer if you were in a situation  
11 where you didn't think you could be impartial?

12 A I would be able to say I don't want to do that,  
13 yes.

14 Q What was the -- what would have been the  
15 process for doing that?

16 A I don't know because I've never had to do that.  
17 But I would feel empowered to do that.

18 Q Why would you have felt empowered to do that?

19 A Because there's not -- because I feel that I  
20 could do that. I just -- I don't want to do this for  
21 some reason.

22 Q Was there some sort of written procedure or  
23 policy on what you would need to do to recuse yourself in  
24 that way?

25 A Not that I'm aware of.

**Claire Stubblefield**

138

1 made by Dr. McMillan or by Jane McMillan, whether Jane  
2 McMillan had any knowledge of Doug McMillan's religious  
3 beliefs as they pertained to transgender people?

4 A Repeat that.

5 Q Sure. So irrespective of whether Jane McMillan  
6 made a comment about Doug McMillan's religious beliefs to  
7 Dr. Tudor, did you ask Jane McMillan if she knew what  
8 Doug McMillan's religious beliefs were about transgender  
9 people?

10 MR. JOSEPH: Object to the form.

11 A I don't know.

12 Q (BY MR. TOWNSEND) When you say "I don't know,"  
13 are you meaning you don't remember if you asked her, or  
14 is it -- or are you saying you don't know because there's  
15 something with my question you're unclear on?

16 A Yes.

17 Q All right. Do you remember asking Jane  
18 McMillan whether she had any knowledge about Doug  
19 McMillan's religious beliefs as they pertained to  
20 transgender people?

21 A No.

22 Q Did you take notes when you spoke to Jane  
23 McMillan in connection with your investigation of  
24 Dr. Tudor's discrimination complaint?

25 A Yes.

**Claire Stubblefield**

1 A I don't recall.

2 Q Did you investigate the reasons why the  
3 administration had decided not to allow Dr. Tudor to  
4 apply for tenure?

5 A Yes.

6 MR. JOSEPH: Object to the form.

7 Q (BY MR. TOWNSEND) What did you do to  
8 investigate that complaint?

9 A I don't recall.

10 Q Do you remember if you spoke to any witnesses  
11 in connection with your investigation of Dr. Tudor's  
12 discrimination complaint about Dr. Tudor not being  
13 allowed to apply for tenure?

14 MR. JOSEPH: Object to the form.

15 A I don't recall.

16 (Plaintiff's Exhibit 106 has been  
17 marked for identification purposes  
18 and made a part of the record.)

19 Q (BY MR. TOWNSEND) Handing you what I've marked  
20 Plaintiff's Exhibit 106.

21 (Plaintiff's Exhibit 107 has been  
22 marked for identification purposes  
23 and made a part of the record.)

24 Q (BY MR. TOWNSEND) And what I've marked  
25 Plaintiff's Exhibit 107. Is Plaintiff's Exhibit 106 an

**Claire Stubblefield**

173

1 Q You don't understand the word accused? I can  
2 use a different word if that's the confusion.

3 A The semantics is what I'm having a problem  
4 with.

5 Q All right. Would it be inappropriate for an  
6 affirmative action officer, in connection with an  
7 investigation of a discrimination complaint, to ask the  
8 person who the complainant believes discriminated against  
9 him or her what the affirmative action officer should put  
10 in the investigation report?

11 A Believes to -- believe, suspects, to me that's  
12 a difference in a criminal and one who even is arrested.  
13 You don't know at that point. You don't know. I don't  
14 know if he's a respondent or not. She's accusing.

15 Q Uh-huh.

16 A She's accusing.

17 Q Uh-huh. So --

18 A I have no -- that's all -- that's all I can say  
19 about that.

20 Q All right. So if a -- let me strike that.

21 As affirmative action officer, when you  
22 investigate a discrimination complaint, you're looking at  
23 whether a particular person discriminated against the  
24 complainant. Right?

25 A Yes. We can agree.



**Claire Stubblefield**

174

1 Q So as affirmative action officer, would it be  
2 appropriate to ask the person that you're  
3 investigating -- whether they discriminated -- what you  
4 should put in your investigation report?

5 A To make sure I'm understanding, you're asking  
6 me if I would ask someone who was being investigated if I  
7 should do something or should not do something?

8 Q Right.

9 A That would be inappropriate.

10 Q Okay.

11 (Plaintiff's Exhibit 109 has been  
12 marked for identification purposes  
13 and made a part of the record.)

14 Q (BY MR. TOWNSEND) Showing you what's been  
15 marked Plaintiff's Exhibit 109. Plaintiff's Exhibit 109  
16 is an e-mail Bates numbered EEOC 44.

17 A Uh-huh.

18 Q Is Plaintiff's Exhibit 109 an e-mail that you  
19 sent to Doug McMillan and his reply dated October 14,  
20 2010?

21 A Yes.

22 Q In your e-mail you ask Doug McMillan "Have you  
23 had the opportunity" -- strike that.

24 You ask him "Have you had opportunity to  
25 discuss case with C. Babb, question mark?"

**Claire Stubblefield**

197

1           A     Did you indicate that there was a summary?  
2     That -- restate your -- your question to me.

3                   MR. TOWNSEND:    Could you read my question?

4                   THE COURT REPORTER:   "Question:   **Could you**  
5 **please point to me where under the heading "Grievance" in**  
6 **Plaintiff's Exhibit 17 you described Dr. Tudor's**  
7 **complaint about not being allowed to apply for promotion**  
8 **and tenure?"**

9           A     **The one prior to that was this is a summary and**  
10 **that was the summary.   And the summary, in my opinion, is**  
11 **not specific illumination on every single point.**

12           Q     (BY MR. TOWNSEND)   Did you summarize under the  
13 heading "Grievance" in Plaintiff's Exhibit 17 Dr. Tudor's  
14 complaint that she was not permitted to apply for  
15 promotion and tenure?

16           A     I still don't understand what you're asking me.

17           Q     Is there a summary of Dr. Tudor's complaint  
18 that she was not permitted to apply for promotion and  
19 tenure under the heading of "Grievance" of Plaintiff's  
20 Exhibit 17?

21           A     I'm not clear what you're asking.

22                   MR. TOWNSEND:    Would you read back the  
23 question?

24                   THE COURT REPORTER:   "Question:   Is there a  
25 summary of Dr. Tudor's complaint that she was not

Claire Stubblefield

218

1 under any harassment. It's not a -- it's not acceptable.

2 Q Any harassment including harassment because  
3 someone is transgender?

4 A That's correct.

5 Q I'm going to direct you to Plaintiff's  
6 Exhibit 110. It's also going to be a looseleaf thing.  
7 It's Dr. Tudor's amended complaint --

8 A Uh-huh.

9 Q -- dated October 28, 2010.

10 A 108?

11 Q 110.

12 A Yes.

13 Q Okay. So on page 2 of Plaintiff's Exhibit 110  
14 about mid way through the page, there's a sentence that  
15 starts with "Taken individually, any one of these events  
16 evidence a hostile attitude arising from discrimination.  
17 Taken collectively, they demonstrate a pattern of  
18 calculated adversarial behavior intended to thwart my  
19 equal opportunity to advance in employment, an  
20 opportunity protected by policy and law."

21 Did I read that correctly?

22 A I -- I found it late, but yes.

23 Q Okay. In this phrase "hostile attitude," what  
24 was your understanding of what Dr. Tudor was referring to  
25 with that phrase?

## Claire Stubblefield

219

1           A     I'm not sure what Dr. Tudor was asking -- what  
2 she was -- she's a very good writer. Very strong writer  
3 and very prolific writer, so I don't know.

4           Q     Did you ever ask Dr. Tudor what she meant by  
5 "hostile attitude"?

6           A     She told me. She --

7           Q     What's your recollection of what Doctor told  
8 you about what she meant by "hostile attitude"?

9           A     She believed that -- my recollection is that  
10 she believed that because she didn't get what she wanted,  
11 it was hostile. And the reasons were discriminatory.

12          Q     And when you just said "didn't get what she  
13 wanted to get," do you mean the application for promotion  
14 and tenure? Is that what --

15          A     That's my assumption.

16          Q     Okay. Do you happen to recall if Dr. Tudor  
17 complained to you about any other hostilities in the  
18 workplace that were unrelated to the tenure and promotion  
19 application?

20          A     I don't recall. If you can refresh my memory.

21          Q     If Dr. Tudor would have complained to you about  
22 other hostilities unrelated to the tenure and promotion  
23 application, would you have investigated those?

24          A     Give me an example --

25               MR. JOSEPH: Object to the form.

**Claire Stubblefield**

221

1 A That's what's here.

2 Q Did you ask Dr. Tudor about this allegation  
3 that Dr. Scoufos used inappropriate pronouns with her?

4 A Yes.

5 Q What do you recall Dr. Tudor telling you about  
6 that?

7 A I recall asking her what was intermittent, and  
8 I asked what was inappropriate pronouns.

9 Q And what's your recollection of what Doctor  
10 told you is intermittent?

11 A She just said it's not -- I remember her saying  
12 "Not often." I'm not sure how often she saw Dr. Scoufos,  
13 either.

14 Q All right.

15 A I don't know if they saw each other once a  
16 month, once every five months. I don't know.

17 Q And what was your recollection of what Doctor  
18 told you was inappropriate pronouns?

19 A Using he rather than she.

20 Q Anything else?

21 A No.

22 Q Did you investigate this allegation that  
23 Dr. Scoufos repeatedly used inappropriate pronouns to  
24 talk to --

25 A I talked to Dr. Scoufos about it.

**Claire Stubblefield**

231

1 Q To your knowledge, did including the additional  
2 statuses of sexual identity and sexual orientation change  
3 the rights of any students at Southeastern with regards  
4 to filing claims of discrimination on the count of sexual  
5 identity?

6 A Change rights, no.

7 MR. JOSEPH: Object to the form.

8 Q (BY MR. YOUNG) So if there was no change in  
9 rights, why was it important to amend the policy?

10 MR. JOSEPH: Object to the form.

11 A Other institutions had done it and it was -- it  
12 was -- our president believed that that would be  
13 something to do -- would be a good thing to do.

14 Q (BY MR. YOUNG) Dr. Stubblefield, who currently  
15 evaluates your performance? Every year?

16 A I'm direct report to the president.

17 Q And who's the current president at  
18 Southeastern?

19 A Sean Burrage.

20 Q And do you happen to recall who evaluated your  
21 performance in the 2010-2011 school year?

22 A Whoever the current president was at that time.

23 Q Do you happen to recall if you had a favorable  
24 evaluation in 2010?

25 A They've all been favorable. Yes.

# Exhibit 62

**Bryon Clark**

---

**From:** Rachel Tudor  
**Sent:** Monday, February 07, 2011 9:53 AM  
**To:** Bryon Clark  
**Subject:** response to policy change  
**Attachments:** Amended Faculty Grievance Policy.docx

Dr. Clark,

Today is the first day the university has been open since I received your email. Please note the attached response in reference to the policy changes noted in your letter.

Sincerely,

Rachel Tudor, PhD  
Dept of English, Humanities & Languages  
Southeastern Oklahoma State University  
1405 North 4th Ave.  
Durant, OK 74701  
580.745.2588  
[rtudor@se.edu](mailto:rtudor@se.edu)



Please note the following issues I consider relevant to the amended Faculty Grievance Policy:

1. The current policy invites administration to share its perspective once the Faculty Appellate Committee has made its decision—but deliberately makes no provision for the President's Designee to usurp the decision of the Faculty Appellate Committee because current policy states that in matters related to faculty:

The governing board and president should, on questions of faculty status as in other matters where the faculty has a primary responsibility, concur with the faculty judgment except in rare instances and for compelling reasons which should be stated in detail. (3.7.4 Role of the Faculty)

2. The current policy recognizes that if such exceptional circumstances or compelling reasons exists—the faculty are intelligent and responsible enough to give them due weight in their deliberations with the President's Designee.
3. Amending the Faculty Grievance Policy without the advice or consultation of the Faculty Senate violates the principles of shared governance and due process.
4. Amending the Faculty Grievance Policy without the advice or consultation of the Faculty Personnel Policies Committee usurps the specific commission of the Committee as well as violates the principles of shared governance and due process.
5. The administration's consultation with legal counsel for review and approval, while deliberately omitting the faculty from the process demonstrates an egregious usurping of faculty rights.
6. The amended policy should reflect established written policy of privileging faculty in affairs related to faculty. i.e. "the administration should defer to the faculty except in exceptional circumstances and for compelling reasons." As amended, the policy assigns equal weight to the singular opinion of the President's Designee as it does to the considered judgment of Faculty Appellate Committee.
7. The amended policy should clearly place the burden on the President's Designee when the Designee disagrees with the recommendation(s) of the Faculty Appellate Committee.
8. In the interest of shared governance and due process as well as our democratic values, the opinion of one person (the President's Designee) should not be given the same weight as that of the decision three faculty members reached after conducting a thorough investigation and consulting with one another.

In light of the seriousness of the above mentioned issues, I recommend that the amended policy be rejected and that a new policy should be composed in collaboration with the faculty.

# Exhibit 63

**Bryon Clark**

---

**From:** Bryon Clark  
**Sent:** Friday, February 11, 2011 1:06 PM  
**To:** Rachel Tudor  
**Cc:** Doug McMillan; Ross Walkup; Charla Hall; James Knapp; Larry Prather  
**Subject:** Response to 7 Feb 2011 e-mail  
**Attachments:** Addition to Grievance Policy 24 Jan 2011.docx; Grievance Policy-Section 4.4.6 APPM.docx; Tudor Grievance dated 11 October 2010; response to policy change

Dr. Tudor:

I have reviewed your e-mail dated 7 February 2011 to the "Addition to Grievance Policy" e-mailed on 31 January 2011 which asked the grievant and respondent to contact me with questions about the protocols/procedures developed that would allow the grievance to proceed in the absence of policy for the situation that occurred (i.e., inability of President's Designee and Hearing Committee to develop a final/joint determination). The points raised in your response to the e-mail are more related to the elements of your grievance and not the protocols/procedures developed. After thoroughly considering the points in your e-mail, I believe that the protocols/procedures developed are fair, do not place unreasonable expectations on any party involved, and consistent with existing policy. In fact, these protocols/procedures are identical to the steps taken in the existing policy when the President's Designee and Hearing Committee are able to reach a final/joint determination; the grievant and/or respondent may appeal this final/joint determination to the President who will then make the final and binding decision.

Therefore, the attached protocols/procedures and the following timeline will be applied. The deadline for submitting an appeal is different than the one listed in the original e-mail dated 31 January 2011 because of the inclement weather and campus being closed as well as the time needed to consider your e-mail dated 7 February 2011. **You must submit your appeal in writing to me (Administrative Liaison) by the deadline of 4 March 2011 for it to be considered;** the respondent also will be provided this new deadline regarding this grievance. If you choose to submit an appeal, what is included is completely your decision. However, please consider the appeal a chance to address specific statements in the written decisions rendered by the Hearing Committee and/or President's Designee that you disagree with or to clarify information that you previously provided. You also may wish to include points raised in your e-mail dated 7 February 2011.

Please note that even if no appeal is submitted, the process will continue and the President will render a final and binding decision for the grievance because a final/joint determination could not be reached by the President's Designee and Hearing Committee. The Administrative Liaison has five working days from whichever is sooner, receipt of both appeals or deadline to submit an appeal, to provide all materials to the President. The President then has 10 working days to review and render the final and binding decision regarding the grievance.

Cordially,

Bryon

**Attachments:**

- Addition to Grievance Policy 24 Jan 2011
- Grievance Policy Section 4.4.6 AAPM
- 31 Jan 2011 e-mail from Clark to Tudor and McMillan—Subject: Tudor Grievance dated 11 October 2010
- 7 Feb 2011 e-mail from Tudor to Clark—Subject: response to policy change

# Exhibit 64

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff(s),	)	
	)	
RACHEL TUDOR,	)	
	)	
Plaintiff Intervenor,	)	
	)	
-vs-	)	No. 5:15-CV-00324-C
	)	
SOUTHEASTERN OKLAHOMA STATE	)	
UNIVERSITY, and	)	
	)	
THE REGIONAL UNIVERSITY	)	
SYSTEM OF OKLAHOMA,	)	
	)	
Defendant(s).	)	

DEPOSITION OF CHARLES BABB

TAKEN ON BEHALF OF THE PLAINTIFF(S)

IN OKLAHOMA CITY, OKLAHOMA

ON MAY 18, 2016

---

REPORTED BY: LESLIE A. FOSTER, CSR

Charles Babb

106

1 McMillan during the October 2010 timeframe?

2 A Dr. Tudor had filed her -- one of her  
3 grievances in October of 2010, so I'm sure that I would  
4 have talked to him around -- during that month during  
5 that time period.

6 Q Is that the same reason why you believe you  
7 talked to Dr. Stubblefield during that October 2010 time  
8 period?

9 A One of them, yes.

10 Q What's the other one?

11 A I don't know.

12 Q During this timeframe in October 2010, did RUSO  
13 policy say anything about whether Dr. Stubblefield would  
14 need to put her findings on Dr. Tudor's retaliation claim  
15 in writing?

16 A No.

17 Q Did Southeastern's policy around this  
18 October 2010 timeframe indicate whether Dr. Stubblefield  
19 would need to put her findings on Dr. Tudor's retaliation  
20 complaint in writing?

21 A I don't recall.

22 Q Could you please take a look at Plaintiff's  
23 Exhibit 17.

24 A Okay.

25 Q This is Dr. Stubblefield's report beginning



Charles Babb

108

1 Scoufos, dean of arts and sciences; and Charles Weiner,  
2 assistant vice president for student learning and  
3 institutional research."

4 Did I read that correctly?

5 A Yes, sir.

6 Q So then if you go to the second-to-the-last  
7 page of Plaintiff's Exhibit 17, it has the defendants  
8 Bates number ending in 1800.

9 A Okay.

10 Q Under conclusion, Dr. Stubblefield indicated  
11 here that Dr. Tudor had the right to appeal her  
12 determination. Correct?

13 A That's what it says, yes.

14 Q And the appeal was to be made to the president  
15 of Southeastern. Correct?

16 A Yes.

17 Q If Dr. Stubblefield had determined that  
18 President Minks had discriminated against Dr. Tudor,  
19 would there have been a different process required for an  
20 appeal of that determination than to the president?

21 A I don't know.

22 Q So it's possible that the policy at  
23 Southeastern could have permitted President Minks to  
24 appeal to himself a determination that he discriminated  
25 against Dr. Tudor?

Charles Babb

109

1 MS. COFFEY: Object to the form.

2 A I don't know.

3 Q (BY MR. TOWNSEND) Would it conflict with RUSO  
4 policy if Dr. Stubblefield had found that Dr. Minks had  
5 discriminated against Dr. Tudor and the appeal of that  
6 determination could be made by Dr. Minks to himself?

7 MS. COFFEY: Object to form.

8 A Conflict with RUSO policy? Is that --

9 Q (BY MR. TOWNSEND) Yes.

10 A Not that I know of.

11 Q Could you please take a look at Plaintiff's  
12 Exhibit 20.

13 A Okay.

14 Q Do you remember receiving a copy of the memo  
15 that's Plaintiff's Exhibit 20 in connection with  
16 Dr. Tudor's charge of discrimination?

17 A There's some documents here in this --

18 Q I don't think those are part of the exhibit.

19 A Well --

20 MR. TOWNSEND: Let's go off the record for a  
21 second.

22 (Off the record at 2:15 P.M.)

23 (On the record at 2:15 P.M.)

24 Q (BY MR. TOWNSEND) All right. Plaintiff's  
25 Exhibit 20 is two-page document. It's Bates numbered

Charles Babb

165

1 A I -- I don't know of any. There may be, but --

2 Q Okay. That's fine. Let's --

3 A I'm not aware of any documents that would  
4 refresh my recollection on that.

5 Q Okay.

6 Let's switch gears and go to a different topic.  
7 You previously testified that a faculty member at  
8 Southeastern can file a grievance against the president  
9 of Southeastern for wrongful discrimination directly to  
10 the RUSO board. Is that correct?

11 MS. COFFEY: Object to form.

12 A I believe that's right.

13 Q (BY MR. YOUNG) Was it possible for a faculty  
14 member to file such a grievance against the president of  
15 Southeastern for wrongful discrimination directly to the  
16 RUSO board in 2010?

17 MS. COFFEY: Object to form.

18 A Yes.

19 Q (BY MR. YOUNG) Is there a RUSO policy that  
20 spells out the process for filing such a grievance?

21 A No.

22 Q How were faculty members at Southeastern made  
23 aware that they could file a grievance against the  
24 president directly with the RUSO board in 2010?

25 MS. COFFEY: Object to form.

Charles Babb

166

1 A I don't know.

2 Q (BY MR. YOUNG) I'll have you look again at  
3 Plaintiff's Exhibit 78. Apologize.

4 A Okay. I'm there.

5 Q I'm going to have you look at the page that's  
6 Bates marked DOJ 345.

7 A Okay.

8 Q There's a heading in the middle of the page  
9 that is bolded that reads "Southeastern Follow-up:  
10 Comprehensive System for Documenting Complaints and  
11 Resolutions in the area of Opportunity and Affirmative  
12 Action, in parentheses, Assurance."

13 Did I read that correctly?

14 A Yes.

15 Q Okay. Can you read the paragraph that falls  
16 under that heading and let me know when you're done  
17 reading it.

18 A Okay.

19 Q Are you familiar with the Internet-based  
20 recording system referenced here as EthicsPoint?

21 A Yes.

22 Q What is EthicsPoint?

23 A It's a online service that is separate from  
24 RUSO, so -- and it -- it's pretty well explained here, I  
25 think. It provides an ability for people to go online or

Charles Babb

167

1 to call toll-free to register a complaint about any of  
2 the schools.

3 Q Does that complete your answer?

4 A That's a very short thumbnail of it, of what  
5 EthicsPoint is.

6 Q Do you have any knowledge as to why RUSO  
7 adopted that EthicsPoint system in 2011?

8 MS. COFFEY: Object to form.

9 A Yes.

10 Q (BY MR. YOUNG) Can you please tell me why RUSO  
11 adopted the EthicsPoint system in 2011?

12 MS. COFFEY: Instruct you not to answer to the  
13 extent you have to reveal attorney-client privilege.  
14 Otherwise you may answer.

15 A There had been a presentation by the Oklahoma  
16 State University business officer about detecting fraud  
17 at their university and the success that they had had.  
18 They advised that they had used EthicsPoint. And the  
19 RUSO audit and finance committee liked the idea, so we  
20 reached out to EthicsPoint and eventually the board  
21 approved contracting with EthicsPoint.

22 Q (BY MR. YOUNG) Does RUSO still utilize the  
23 EthicsPoint system?

24 A Does RUSO what?

25 Q Currently utilize the EthicsPoint system --

Charles Babb

168

1 A Yes.

2 Q -- to process complaints?

3 A Yes.

4 Q Can a faculty member at a university -- RUSO

5 university file a discrimination complaint using

6 EthicsPoint?

7 A Yes.

8 Q Who would investigate a discrimination  
9 complaint filed by a faculty member via EthicsPoint?

10 A It would depend on the situation.

11 Q Can you give me an example of a situation and  
12 explain who would investigate --

13 MS. COFFEY: Object to form.

14 Q (BY MR. YOUNG) -- such a complaint?

15 MS. COFFEY: Object to form.

16 A Whenever someone files a complaint with  
17 EthicsPoint, they can do so anonymously. And then it's  
18 my understanding that it goes through the EthicsPoint  
19 server and then is sent to me.

20 I then have a point of contact with each  
21 university. We discuss who would investigate. It's  
22 pre-trained investigators for each school. Unless it's a  
23 complaint about the president, then it doesn't go to  
24 that -- then -- we don't talk to the school until we've  
25 talked to the president about who's going to investigate.

Charles Babb

169

1 And then that process would involve getting the board,  
2 executive members involved in deciding who would  
3 investigate, if it were the president that were being --  
4 the accusations against the president.

5 Q (BY MR. YOUNG) Prior to RUSO's adoption of  
6 EthicsPoint, was there any set process for handling  
7 complaints made against a university president in the  
8 RUSO system?

9 MS. COFFEY: Object to form. Asked and  
10 answered.

11 A Was there a set policy? Is that your question?  
12 I'm sorry.

13 Q (BY MR. YOUNG) Let me rephrase my question.  
14 Was there an established process for handling complaints  
15 filed against a RUSO system president prior to the  
16 adoption of EthicsPoint?

17 MS. COFFEY: Object to form.

18 A It was ad hoc.

19 Q (BY MR. YOUNG) And the ad hoc process -- as  
20 you understand it, were you typically, as general counsel  
21 of RUSO, involved in determining who would investigate a  
22 complaint against the president at a RUSO university  
23 school?

24 MS. COFFEY: Object to form.

25 A Your word "typically" throws me off. I may or

Charles Babb

172

1 A Sorry. You said 2010, 2008.

2 Q Sorry.

3 A That threw me off right then.

4 Q I apologize.

5 A I didn't listen to the rest of it.

6 Q No problem. Let's -- one more time.

7 A Okay.

8 Q To your knowledge, Mr. Babb, in 2010 and

9 2011 --

10 A Okay.

11 Q -- was there an established process for faculty  
12 members at RUSO universities to file grievances against a  
13 university president directly with RUSO?

14 A And I believe I testified there was no written  
15 policy to that effect.

16 Q Are you aware of any faculty member at a RUSO  
17 institution filing a grievance against a university  
18 president directly with RUSO?

19 MS. COFFEY: Did you say university president  
20 or precedent?

21 MR. YOUNG: President.

22 MS. COFFEY: Okay.

23 A I know we've had them come in. But I couldn't  
24 tell you when or who or what school.

25 Q (BY MR. YOUNG) Okay. Let's switch topics.



# Exhibit 65



OFFICE OF THE DEAN

SCHOOL OF ARTS AND SCIENCES  
SOUTHEASTERN OKLAHOMA STATE UNIVERSITY  
1405 N. FOURTH AVE., PMB 4107  
DURANT, OK 74701-0609

580-745-2634  
FAX 580-745-7476  
WWW.SE.EDU

To: Rachel J. Tudor, Assistant Professor  
Department of English, Humanities and Languages

From: Lucretia C. Scoufos  
Dean, School of Arts and Sciences

Date: January 12, 2010

Subject: Recommendation to deny tenure and to give Rachel J. Tudor, Ph.D., a one-year terminal appointment at the rank of Assistant Professor in the Department of English, Humanities and Languages for the 2010-2011 Academic Year



Based on the available documentation, I am unable to recommend Dr. Rachel J. Tudor for promotion to Associate Professor or for tenure. My recommendation is that she be given a one-year, terminal appointment for the 2010-2011 academic year.

Cc: Dr. John Mischo

---

SOUTHEASTERN OKLAHOMA STATE UNIVERSITY

# Exhibit 66

Rachel Tudor

---

**From:** John Mischo  
**Sent:** Wednesday, September 15, 2010 10:30 AM  
**To:** Rachel Tudor  
**Subject:** RE: Scoufos letter

Rachel,

Any apparent backdating of letters is a serious concern. Randy would be the one to consult about that.

What also concerns me here is the issue of expecting faculty "recommendations" in a portfolio. (Certainly, peer-evaluation teaching visits are appropriate, but I believe something different is at issue here.) And I've raised this general concern with Randy. To me it makes no sense to have members of the T/P committees writing letters of recommendation for tenure/promotion for the portfolio—if that is indeed what is being referred to as lacking in your portfolio. How can faculty recommend tenure/promotion *before* having seen the portfolio? If faculty write letters of recommendation *before* the portfolio is submitted, why even have a committee? It makes no sense.

John

Dr. John Brett Mischo  
Professor  
English, Humanities, & Languages  
Morrison Hall 316  
1405 N. Fourth Ave, PMB 4060  
Durant, Oklahoma 74701-0609

Phone (580) 745-2590  
Fax (580) 745-7406



**From:** Rachel Tudor  
**Sent:** Tuesday, September 14, 2010 3:12 PM  
**To:** John Mischo  
**Subject:** Scoufos letter

John,

I was going through my portfolio and found that Scoufos placed a new letter in the place of the one she mailed to you and me. The letter is dated January 12, 2010, the date of the letter we received that failed to indicate any reason for her action. As you know, her refusal to let us know the reason for her decision led to the Faculty Senate Appellate Committee "recommending" that she do so and the administration's refusal to follow their recommendation. If you note the third paragraph, highlighted, it appears she is placing the responsibility on the faculty. She claims the file was "incomplete" because of lack of justification from the committee and lack of letters of recommendation from the tenured members of the department. It appears the administration has decided to throw you and the committee under the bus. I just thought you should know what's coming.

Best,

Rachel Tudor, PhD  
Dept of English, Humanities & Languages  
Southeastern Oklahoma State University

# Exhibit 67



OFFICE OF ACADEMIC AFFAIRS

SOUTHEASTERN OKLAHOMA STATE UNIVERSITY  
1405 N. FOURTH AVE., PMB 400  
DURANT, OK 74701-0000

580-745-2200  
FAX 580-745-7000  
www.SE.edu

MEMORANDUM

TO: Dr. Rachel Tudor  
FROM: Dr. Douglas N. McMillan *Douglas N. McMillan*  
Interim Executive Vice President for Academic Affairs  
RE: NOTIFICATION OF PROMOTION STATUS  
DATE: February 15, 2010

This is to provide notification of my recommendation to the President that you not be granted promotion to Associate Professor with tenure.

cc: Dr. Lucretia Scoufos, Dean, School of Arts & Sciences  
Dr. John Mischo, Department Chair, English, Humanities & Languages  
Dr. Lisa Coleman, Chair, Promotion Review Committee

dm

SOUTHEASTERN OKLAHOMA STATE UNIVERSITY

# Exhibit 68

**Claire Stubblefield**

---

**From:** Rachel Tudor  
**Sent:** Tuesday, September 14, 2010 10:22 AM  
**To:** Claire Stubblefield  
**Subject:** scoufos letter  
**Attachments:** scoufos letter.tif

Dear Dr. Stubblefield,

I need to call your attention to a Dean Scoufos' letter dated January 12, 2010 (attachment). This is NOT the letter that was originally sent to Dr. Mischo (Chair of the Dept), Dr. Lisa Coleman (Chair of the Tenure and Promotion Committee), nor to myself. This letter is a falsification of an official state record. The letter is misleading and appears to be an attempt to shift responsibility, and accountability, from the administration to the faculty. Dr. Scoufos' original letter gave no indication of why she was recommending denying tenure. If you will note paragraph three of the letter, for instance, Dean Scoufos claims my application is "incomplete" because the department chair and committee "fail to give any justification for the recommendation for promotion and tenure". I talked to Dr Prus this morning, and he said that the administration specifically directed the chair and committee to simply report their decision without elaboration. The paragraph also states that my application was "incomplete" because there were no "letters of recommendation from tenured faculty members in her department". Dr. Prus, the current chair of the department, and Dr. Mischo, the former chair of the department, concur that it would be inappropriate for members of the department evaluating a candidate for tenure and promotion to write letters of recommendation for tenure and promotion. Finally, it is also very important to point out that if this information had been provided to me, or Dr. Mischo, or Dr. Coleman, in a timely manner—it could have been easily remedied without delaying the process. If you recall, one of the criterions we discussed at our last meeting was the issue of "pretext"—the inserting of a letter purporting to be the original recommendation denying my application and belatedly inserting reasons that shift responsibility to the faculty from the administration, is certainly evidence of "pretext" as well as of other serious breaches of policy and procedure.

I look forward to hearing from you on this new development.

Sincerely,

Rachel Tudor, PhD  
Dept of English, Humanities & Languages  
Southeastern Oklahoma State University  
1405 North 4th Ave.  
Durant, OK 74701  
580.745.2588  
[rtudor@se.edu](mailto:rtudor@se.edu)



**IN THE UNITED STATES DISTRICT COURT FOR  
THE WESTERN DISTRICT OF OKLAHOMA**

UNITED STATES OF AMERICA,

Plaintiff,

RACHEL TUDOR,

Plaintiff-Intervenor,

v.

**Case No. 15-cv-324-C**

SOUTHEASTERN OKLAHOMA STATE  
UNIVERSITY, and

THE REGIONAL UNIVERSITY  
SYSTEM OF OKLAHOMA,

Defendants.

**DEFENDANTS SOUTHEASTERN OKLAHOMA STATE UNIVERSITY AND  
THE REGIONAL UNIVERSITY SYSTEM OF OKLAHOMA'S REPLY TO  
INTERVENOR'S RESPONSE AND OPPOSITION TO DEFENDANTS'  
MOTION FOR SUMMARY JUDGMENT AND BRIEF IN SUPPORT**

Defendants, Southeastern Oklahoma State University, ("SEOSU"), and The Regional University System of Oklahoma ("RUSO"), (collectively "University Defendants" or "the State"), and pursuant to Fed. R. Civ. P. 56(a) and LCvR 56.1, and mindful of LCvR 7.1(i), provide the following reply brief in further support of their Motion for Summary Judgment [Doc. 177] in their favor, showing the Court as follows:

**I. THE JUNE 1, 2007 CONVERSATION BETWEEN INTERVENOR AND CATHY CONWAY**

Intervenor's Response brief [Doc. 205] relies heavily on a contorted fabrication of an account of a conversation which all parties agree took place in one

form or another in 2007, (but before the beginning of the fall semester), between then-Professor Tudor, and then-Human Resources Director Cathy Conway. In particular, Intervenor's self-serving "Declaration of Rachel Jona Tudor" [Doc. 205-2], (which is not sworn before a notary or any other officer of the Court), is replete with accusations (unsubstantiated by any other witness) that Ms. Conway indicated exactly one time to Intervenor in 2007 that then-Vice-President McMillan wanted to summarily fire Intervenor, that Conway ordered Intervenor to restrict her restroom use, her make-up choices, her choices of attire, and that Conway threatened Intervenor with termination if the restroom, dress code, and make-up restrictions were not followed.

Ms. Conway has testified, under oath sworn by an officer of the Court, that the suggestion (rather than directive) was made by her to Intervenor that the privacy of the single-occupancy handicapped-accessible restroom might be desirable during the transition period of time, that use of that restroom was not mandatory, that it was Intervenor's choice, and that such a private restroom was available both in the office building and the student union building. Nothing was said about Intervenor's attire or makeup during this conversation, or any other conversation with Intervenor. Ms. Conway also testified under oath that she informed Intervenor about the university's non-discrimination and anti-harassment policies and "reminded [Intervenor] that those were for her and everyone at the university." (*Conway Depo*, at p. 48, ln. 4 - p. 49, ln. 4, attached as Exhibit 1).

According to Intervenor's own sworn deposition testimony, her response to the information provided by Ms. Conway during this 2007 conversation was that she "would abide by" the conditions discussed at that conversation. (*Tudor Depo*, p. 227, ln. 25 – p. 228, ln. 1, attached as Exhibit 2). Further, Intervenor testified under oath that at the time of the 2007 discussion she "complimented [Ms. Conway] on her professionalism." (*Id.* at p. 310, ln. 22-23). While we have Intervenor's sworn testimony that she would abide by the conditions discussed with Ms. Conway in 2007, (but Ms. Conway denies any conditions were placed on her), and Intervenor's testimony that she may have commended Ms. Conway for her work, we have no evidence (reliable or otherwise) that Intervenor ever complained about the supposed restrictions on restroom use, attire, and make-up to the school's administration, the RUSO governing board, or any investigative body (State or Federal), until after the denial of tenure and promotion at least three (3) years later. In fact, in the "Declaration" offered as an exhibit to Intervenor's Response to Defendants' Motion for Summary Judgment, Intervenor indicates that she made the decision to "keep silent for as long as possible" and that she "did not complain about hostilities." [Doc. 205-2, section 4(a)].

Clearly, Intervenor either (a) agreed with, or did not actually object to any of, the alleged conditions offered (or imposed) during the 2007 conversation with Cathy Conway, or (b) objected, but said nothing. The undisputed fact that Intervenor did not complain about the supposed conversation and conditions for some three (3) years means that despite sworn testimony from Ms. Conway that Intervenor was

advised of the presence of the anti-discrimination and anti-harassment policies and their availability to everyone, Intervenor failed to timely exhaust administrative remedies and her claims in this regard are fatally flawed. If something were truly wrong, then Intervenor intentionally denied Defendants the meaningful opportunity to address and correct it. This concept is fundamental to Title VII law. Summary judgment in Defendants' favor is appropriate.

## II. NO EVIDENCE SHOWING SEX STEREOTYPING IN DECISIONS

There is no evidence of sex stereotyping in Defendants' decision-making in this case. In its Order regarding Defendants' motion to partially dismiss Intervenor's complaint, the Court found that Intervenor "alleges Defendants took [actions] against her [] based on their dislike of her presented gender." [Doc. 34, p. 5]. The Supreme Court has stated that in order to rely on a theory of sex stereotyping, a "plaintiff must show that the employer actually relied on her gender in making its decision." *Price Waterhouse v. Hopkins*, 490 U.S. 228, 251, 109 S.Ct. 1775, 1791 (1989).

Intervenor holds herself as female, (a protected class under Title VII). If Intervenor is relying upon the protected class of female, and acknowledging the non-protected class status of "transgender" *per se*, Intervenor's Response brief fails to address Defendants' argument in the Motion for Summary Judgment [Doc. 177] that Intervenor has failed to carry the burden to show sex stereotyping. In fact, Intervenor's Response brief does not mention sex stereotyping by name even once. Intervenor's Response does contend that she was subject to "policies because she

presented herself as female but Defendants treated her as if she were male.” [Doc. 205, p. 21]. Intervenor references materials in footnote 4 of the Response brief to support this contention, but those references merely list such things as former HR Director Cathy Conway’s supposed “discomfort” with, then-RUSO General Counsel Charlie Babb’s acknowledgment of the uncertainty in the law in 2007 regarding the status of transgender persons, then-President of SEOSU Larry Minks’ lack of personal knowledge one way or another about Intervenor’s gender, and then-Vice-President for Academic Affairs Douglas McMillan’s personal consideration of and reflection upon changes in gender. But none of these supposed items show that the University or RUSO actually relied on Intervenor’s gender in making decisions about Intervenor’s work, promotion, or tenure. Intervenor’s burden is not carried, and summary judgment is appropriate.

### **III. LATE BLOOMING DECLARATIONS SUBMITTED BY INTERVENOR**

As support for the Response in Opposition to Defendants’ Motion for Summary Judgment, Intervenor attaches three (3) declarations (as opposed to witnessed affidavits) from (a) Daniel Althoff, [Doc. 205-17] signed on October 10, 2017, (b) Meg Cotter-Lynch, [Doc. 205-18] signed on October 12, 2017, and (c) Intervenor herself [Doc. 205-2] signed on October 12, 2017.<sup>1</sup> All three were signed

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<sup>1</sup> In addition to the three (3) “Declarations” discussed above, there is a fourth such document offered as an exhibit to Intervenor’s Response. The “Declaration of Mark Spencer” [Doc. 205-25], a four (4) page document apparently signed on May 2, 2016. However, this document is not Bates stamped, nor was it ever produced by Plaintiff, USA, or Plaintiff-Intervenor, Tudor. The first time Defendants or their counsel saw this document was upon Intervenor’s filing of her Response [Doc. 205] on October 13, 2017, nearly a full month after the close of Discovery, and over sixteen (16) months after the document was apparently signed. Assuming that

after the close of Discovery on September 22, 2017, and none of them were produced as supplementation to Intervenor's responses to written Discovery requests. Although Althoff and Cotter-Lynch had not been deposed, Intervenor had. The description of events in her "Declaration" go far beyond what she deigned to provide during her oral deposition by Defendants' counsel.

Declarations submitted by a party must be made on personal knowledge and must set forth facts that would be admissible in evidence. Fed. R. Civ. P. 56(c)(4). Just as the requirements for the form of a statement should not be relaxed, evidentiary requirements also should be strictly enforced. Failure to analyze the substance of a declaration, in light of the requirements of the Rules of Evidence, can undermine the integrity of the process.

Intervenor appears to be attempting to correct or supplement prior sworn testimony by way of declaration and therein create an issue of fact. This directly undermines the integrity of the process. Where a party submits an affidavit to the court that contains information inconsistent with the party's prior deposition testimony or other sworn submission, courts hold that these contradictory affidavits should be disregarded as "shams" or "competing affidavits." *See Margo v. Weiss*, 213 F.3d 55, 63 (2nd Cir. 2000); *Rohrbough v. Wyeth Labs. Inc.*, 916 F.2d 970, 976 (4th Cir. 1990); *Martin v. Merrell Dow Pharms., Inc.*, 851 F.2d 703, 705 (3rd Cir. 1988). Courts will disregard a subsequent affidavit as a sham—that is, as not creating an issue of fact for purposes of summary judgment—in the event that it contradicts the

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counsel for USA or Tudor generated, crafted, or assisted in the production of this document in May 2016, the non-production of this document suggests an improper

party's own prior sworn statement. All federal circuits and most state jurisdictions have adopted the sham affidavit doctrine in some form. *Cain v. Green Tweed & Co., Inc.*, 832 A.2d 737, 740 (Del. 2003) (citing *Shelcusky v. Garjulio*, 172 N.J. 185, 797 A.2d 138 (N.J. 2002)).

Essentially, this doctrine provides that Intervenor cannot submit a sworn declaration in which she alleges new or different facts from those previously asserted in an attempt to create a material issue for trial. Intervenor's sworn declaration indicates that Cathy Conway stated to her that any violation of the alleged restrictions on bathroom usage, dress code, or make-up would be construed as sexual harassment and could result in disciplinary measures. [Doc. 205-2, pp. 1-2]. This directly conflicts with her deposition testimony wherein Intervenor never mentioned that Ms. Conway said if Intervenor did not conform to the alleged restrictions it could be considered harassment by Intervenor of her coworkers, or that deviation from these supposed restrictions would result in termination, restrictions that have still not ever been proven with any evidence beyond Intervenor's own testimony. As noted above, Intervenor testified that she agreed to the terms discussed by Conway and then commended Conway on her professionalism.

In distinguishing between a sham sworn declaration versus one that merely corrects or clarifies an issue previously addressed by the party, some courts have developed the following considerations for guidance: (1) whether an explanation is offered for the statements that contradict prior sworn statements; (2) the

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attempt at litigation by surprise.

importance to the litigation of the fact about which there is a contradiction; (3) whether the nonmovant had access to this fact prior to the previous sworn testimony; (4) the frequency and degree of variation between statements in the previous sworn testimony and statements made in the later affidavit concerning this fact; (5) whether the previous sworn testimony indicates the witness was confused at the time; and (6) when, in relation to summary judgment, the second affidavit is submitted. *Cothran v. Brown*, 357 S.C. 210, 218, 592 S.E.2d 629, 633 (S.C. 2004) (citing *Pittman v. Atl. Realty Co.*, 754 A.2d 1030, 1042 (Md. 2000)). Where a party submits a competing affidavit that attempts to create an issue of fact, the court may properly disregard the party's subsequent conflicting affidavit or sworn statement.

#### **IV. TOO MUCH RELIANCE ON HEARSAY GENERALLY BY RESPONSE**

Intervenor's response to Defendants' Motion for Summary Judgment is based largely on hearsay evidence that would not be admissible at trial under the standard set forth in Fed. R. Civ. P. 56(c)(4).

In order to survive summary judgment, the content of the evidence to which the nonmoving party points must be *admissible*. *Adams v. American Guarantee and Liability Ins. Co.*, 233 F.3d 1242, 1246 (10th Cir. 2000) (citing *Wright-Simmons v. City of Oklahoma City*, 155 F.3d 1264, 1268 (10th Cir.1998) (“It is well settled in this circuit that we can consider only admissible evidence in reviewing an order granting summary judgment.”) (quoting *Gross v. Burggraf Const. Co.*, 53 F.3d 1531, 1541 (10th Cir.1995)). Hearsay testimony that would be inadmissible at trial



cannot be used to defeat a motion for summary judgment because “a third party's description of a witness’ supposed testimony is ‘not suitable grist for the summary judgment mill.’ ” *Wright–Simmons*, 155 F.3d at 1268 (quoting *Thomas*, 48 F.3d at 485).

Intervenor’s heavy reliance on hearsay evidence, (and attributed to Defendants), but without supporting witness or documents to verify the veracity of statements alleged by Intervenor, is not enough to defeat Defendants’ Motion. Specifically, Intervenor has accused Defendants of threatening termination or other disciplinary measures without any proof. She has further attributed religious context to alleged statements made between Doug McMillan and Jane McMillan, without any proof, direct evidence, or circumstantial evidence. It is as though Intervenor is simply trying to speak these facts into existence or to convince the Court they are true simply because she wants them to be true. The facts in this case are not malleable regardless of how hard Intervenor tries to make them so.

#### **V. INTERVENOR’S FACTS PRECLUDING SUMMARY JUDGMENT**

On pages 8-18 of the Response, Intervenor offers a list of seventeen (17) supposed facts (“PIF”) precluding summary judgment. Defendants dispute the accuracy and validity of most of them. Several simply reflect the fluctuating state of public discourse on transgender issues over the past decade, (PIF 1-4); several engage in wild speculation or are irrelevant, (PIF 7, 10, 11, 13, 14, 17); several grossly mischaracterize legitimate process or business decisions (PIF 5, 15,) and others are simply denied by Defendants or are the subject of pending motions in

limine or *Daubert* motions (PIF 6, 8, 9, 12). At PIF 16, assuming arguendo this is accurate, Intervenor is alleging that she was replaced by someone (female) in the same protected class. Further, there is no evidence proffered that Dr. Shires presents as any more or less feminine than Intervenor.

### CONCLUSION

Although female, and thus a member of a protected class, Intervenor, by virtue of her transgender status does not, *per se*, belong to a class protected under Title VII. For the reasons set forth previously, summary judgment should be granted in favor of the Regional University System of Oklahoma and Southeastern Oklahoma State University.

Respectfully submitted,

/s/ Jeb E. Joseph

**DIXIE L. COFFEY, OBA #11876**

**JEB E. JOSEPH, OBA #19137**

**KINDANNE JONES, OBA #11374**

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*Attorneys for Defendants Southeastern  
Oklahoma State University and The  
Regional University System of Oklahoma*

**CERTIFICATE OF SERVICE**

I hereby certify that on this 20th day of October 2017, I electronically transmitted the foregoing document to the Clerk of Court using the ECF System for filing and transmittal of a Notice of Electronic Filing to the following ECF registrants:

Ezra Young  
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*Attorney for Plaintiff*

/s/Jeb E. Joseph

Jeb E. Joseph

UNITED STATES DISTRICT COURT  
FOR THE  
WESTERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA, )  
et al. )

Plaintiff, )

VS. ) Civil Action No.  
5:15-CV-00324-C )

SOUTHEASTERN OKLAHOMA STATE )  
UNIVERSITY, et al. )

Defendant. )

\*\*\*\*\*

ORAL DEPOSITION OF  
CATHY CONWAY  
MARCH 10, 2016

\*\*\*\*\*

ORAL DEPOSITION OF CATHY CONWAY, produced as a witness at the instance of the Plaintiff, and duly sworn, was taken in the above-styled and -numbered cause on the 10th day of March, 2016, from 8:58 a.m. to 4:52 p.m., before Chrissa K. Mansfield-Hollingsworth, CSR in and for the State of Texas, reported by machine shorthand, at the offices of U.S. Attorney's Office, located at 600 East Taylor Street, Suite 2000, Sherman, Texas, pursuant to the Federal Rules of Civil Procedure.

1 June 1st.

2 A. Yes.

3 Q. What do you remember?

4 A. I told Dr. Tudor about the two policies,  
5 reminded her that those were for her and everyone at the  
6 university. I'm sure I told her like I tell -- told  
7 everyone that she should contact me if she had any  
8 concerns or questions, that the sexual harassment  
9 include -- policy included how to report. I advised her  
10 that she should let her department chair know about the  
11 name change and her dean, and that if she had questions  
12 about people's opinions as to gender presentation, which  
13 one to use, that she should discuss that with her  
14 counselor, such as Feleshia Porter.

15 I told her that this was new to all of us  
16 and that there was a restroom available, the handicapped  
17 restroom, on the second -- I believe it was the second  
18 floor of the building where she worked, that it was not  
19 mandatory, that it was her option, and there was another  
20 restroom that was a family restroom in the student  
21 union. She thanked me for my professionalism and I  
22 believe that was the end of the conversation.

23 Q. The two policies that you went over with her  
24 were the nondiscrimination and harassment policies that  
25 you talked to Mr. Babb about?

1 MS. COFFEY: Object to form.

2 A. Those weren't the titles of the forms, but the  
3 two forms if you're referring to what we discussed  
4 before, yes.

5 Q. (By Mr. Townsend) The handicapped restroom  
6 that you mentioned, where was that restroom located in  
7 proximity to Dr. Tudor's office?

8 A. She would take a few steps down the hall, the  
9 elevator. Right outside the elevator was the  
10 handicapped, unisex bathroom.

11 Q. So it was on the same floor as her office?

12 A. No. She took the elevator down. I think her  
13 office was the third floor.

14 Q. What floor was the handicapped restroom?

15 A. Second floor.

16 Q. Were there any policies in place at  
17 Southeastern regarding who could and couldn't use the  
18 handicapped restroom?

19 A. No.

20 Q. Was it not supposed to be reserved for  
21 handicapped people?

22 MS. COFFEY: Object to form.

23 A. It was available for handicapped people, for  
24 family, to be used as a family restroom. Anyone could  
25 use it. It was not solely limited to handicapped.

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA, and)

DR. RACHEL TUDOR,

Plaintiffs,

vs.

NO. 5:15-CV-00324-C

SOUTHEASTERN OKLAHOMA  
STATE UNIVERSITY, and

THE REGIONAL UNIVERSITY  
SYSTEM OF OKLAHOMA,

Defendants.

DEPOSITION OF RACHEL JONA TUDOR, Ph.D., VOLUME I  
TAKEN ON BEHALF OF THE DEFENDANTS  
IN OKLAHOMA CITY, OKLAHOMA  
ON MARCH 7, 2016

REPORTED BY: JANA C. HAZELBAKER, CSR

Rachel Tudor

March 7, 2016

Page 227

1           A     In a telephone conversation before the  
2 beginning of the fall semester '07.

3           Q     What was your response to Cathy Conway?

4           A     To that particular information?

5           Q     Uh-huh.

6           A     Did I have a -- you're asking, did I have a  
7 verbal response or emotional response?

8           Q     What was your response to Cathy Conway?  
9 Did you say anything to Cathy in response to that  
10 statement regarding Doug McMillan's inquiry if you  
11 could be fired?

12          A     That information was within --

13          Q     My question --

14          A     -- a number --

15          Q     -- is, did you say anything to Cathy Conway  
16 in response to her statement to you about  
17 Dr. McMillan's inquiry regarding whether you could be  
18 fired?

19          A     I responded to information that she gave me  
20 that included that Dr. McMillan asked if I could be  
21 fired simply for being transgender.

22          Q     What was your response?

23          A     She also listed some odious restrictions  
24 that Dr. McMillan insisted on for my continued  
25 employment, and so my response to that was that I



1 would abide by those odious conditions.

2 Q Okay. I believe that -- that subject area  
3 is going to take a little while, so let me go back  
4 because we had been discussing your -- we had been  
5 talking about your discussions with Dr. Mischo. And  
6 you said that some discussion regarded Scoufos, some  
7 regarded McMillan and some regarded them both.

8 Have we talked about all of your  
9 discussions with Dr. Mischo about your concerns that  
10 their decisions -- decisions were discriminatory?  
11 Meaning Scoufos and McMillan's.

12 A Did we include the fact that Dr. McMillan  
13 would not share his rationale for denying me tenure  
14 and promotion, either? That --

15 Q Okay. Is this a discussion you had with  
16 Dr. Mischo?

17 A Yes.

18 Q That's what -- I'm just trying to find out  
19 everything --

20 A Yes.

21 Q -- all the discussions. Okay. You shared  
22 that with Dr. Mischo, but what was his response to  
23 you?

24 A That I should follow policy and procedure  
25 and exercise the rights that I have.

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA, and)

DR. RACHEL TUDOR,

Plaintiffs,

vs.

NO. 5:15-CV-00324-C

SOUTHEASTERN OKLAHOMA  
STATE UNIVERSITY, and

THE REGIONAL UNIVERSITY  
SYSTEM OF OKLAHOMA,

Defendants.

DEPOSITION OF RACHEL JONA TUDOR, Ph.D., VOLUME II  
TAKEN ON BEHALF OF THE DEFENDANTS  
IN OKLAHOMA CITY, OKLAHOMA  
ON MARCH 8, 2016

REPORTED BY: JANA C. HAZELBAKER, CSR

1 acknowledged that you thanked her for  
2 professionalism; is that true?

3 A And I said I may or may not.

4 Q Who at Southeastern, that would have the  
5 ability to make any changes, did you complain to  
6 about these alleged odious conditions that were  
7 placed on you?

8 MS. WEISS: Objection.

9 Q (By Ms. Coffey) Nobody. Isn't that the  
10 correct answer?

11 MS. WEISS: Objection.

12 THE WITNESS: I was contemplating whether  
13 or not Jane McMillan, for example, could have made --

14 Q (By Ms. Coffey) I'm sorry, are you claiming  
15 that Jane McMillan could have reported it?

16 A I was considering whether or not she -- she  
17 could have -- in her capacity as a counselor, could  
18 have intervened.

19 Q The only comment you ever had with Jane  
20 McMillan about it was when she said -- what you claim  
21 to have happened is that she said, "Let's step into  
22 the bathroom," and you told her you couldn't go into  
23 that bathroom, correct?

24 A Yes.

25 Q No other conversations with Jane McMillan

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF OKLAHOMA

DR. RACHEL TUDOR,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 5:15-CV-00324-C
	)	
SOUTHEASTERN OKLAHOMA	)	
STATE UNIVERSITY,	)	
	)	
and	)	
	)	
THE REGIONAL UNIVERSITY	)	
SYSTEM OF OKLAHOMA,	)	
	)	
	)	
Defendants.	)	

**PLAINTIFF DR. RACHEL TUDOR’S MOTION TO STRIKE  
DEFENDANTS’ RENEWED MOTION FOR  
JUDGMENT AS A MATTER OF LAW AND,  
IN THE ALTERNATIVE, FOR NEW TRIAL  
WITH INCORPORATED BRIEF**

**INTRODUCTION**

At the request of counsel for the parties, the Court proffered a schedule for post-verdict briefing on reinstatement and challenges to the jury’s verdict. The deadline set was the same for both—briefs were to be filed no later than December 11, 2017, and responses and replies were to be synchronized.

While Tudor filed her reinstatement motion within the time allotted, Defendants inexplicably filed their combined Rule 50(b) and 59 motion on July 5, 2018—159 days late (ECF No. 316) [hereinafter the “Motion” or

“Defendants’ Motion”]. Defendants’ blatant disregard for the December 11, 2017 deadline flies in the face of this Court’s scheduling directions and is inexcusable. As such, Defendants’ Motion should be stricken.

## I. STATEMENT OF FACTS AND BACKGROUND

On November 20, 2017, the jury in this case returned a verdict in Tudor’s favor on three of four claims (ECF No. 262). At the request of Tudor’s counsel, the Court delayed entry of judgment until *after* resolution of post-verdict briefing on reinstatement. At that same hearing, and in light of the Court’s decision to alter the default scheduling of entering judgment, counsel for Defendants requested a deadline for the filing of any motion challenging the jury’s verdict. The Court set the same deadline for both motions, with opening briefs due by December 11, 2017.<sup>1</sup>

Later in the day on November 20, 2017, Southeastern president Sean Burrage issued a public statement, expressing support for the jury’s verdict in this case. Burrage’s statement unequivocally indicated that, as of that

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<sup>1</sup> See Trial Trans., ECF No. 262 at 873–74:

Ms. Coffey: Your Honor, is this the appropriate time, or do we submit it at some point later, for judgment notwithstanding the verdict on behalf of defendants?

The Court: I would say if you want to file a written motion, the same schedule would apply. Fourteen days from Monday would be your opening brief on that.

point, Defendants did not deem the jury's verdict to be flawed and implied there was no intent to appeal the verdict itself.<sup>2</sup>

Tudor filed her motion for reinstatement on December 11, 2017 (see ECF No. 268). Once the December 11, 2017 deadline for Rule 50(b) and 59 motions passed, Tudor and her counsel proceeded to brief other sensitive and important matters in this case in reliance on Defendants' election to not challenge the verdict as signaled by their declination to file a timely motion on December 11, 2017 and Burrage's statement. *See* ECF No. 290 at 21 n.16 (indicating the same). In the months that followed, the parties briefed reinstatement and front pay through multiple motions for extension of time and reconsideration.

On April 13, 2018, the Court ordered briefing on the final amount of damages (ECF No. 287). On May 3, 2018, Defendants moved for remittitur, indicating in their brief for the first time that they planned to file a Rule 50(b) and Rule 59 motion (ECF No. 289 at 6). On May 24, 2018, Tudor filed a brief in opposition, therein pointing out that by that point Defendants had already missed the deadline to file such a motion and also pointed out such motions would otherwise be futile because of deficiencies in Defendants' oral

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<sup>2</sup> *See* ECF No. 282-2 at 15 ("Southeastern Oklahoma State University places great trust in the judicial system and respects the verdict rendered by the jury. It has been our position throughout this process that the legal system would handle the matter, while the University continues to focus its time and energy on educating students.").

Rule 50(a) motion, including the failure to preserve the very same arguments Defendants now seek to raise (ECF No. 290 at 21 n.16).

On June 6, 2018, the Court granted remittitur to Defendants (ECF No. 292) and entered final judgment (ECF No. 293). Hours later, Tudor filed a timely notice of appeal to the Tenth Circuit (ECF No. 294). In the days and weeks that followed, the Tenth Circuit set numerous deadlines for Tudor's appeal, including entry of appearance of counsel, transmission of transcripts, filing of the docketing statement, a mandatory mediation conference set for mid-July 2018,<sup>3</sup> and proffered a July 30, 2018 deadline for Tudor to file an opening brief which also triggered the deadline for filing of amicus briefs. (All of those deadlines were set by June 28, 2018.<sup>4</sup>)

On June 20, 2018, Tudor's counsel filed lengthy motions for taxing of costs and sought attorneys' fees and expenses (see ECF Nos. 299, 300, 303). The undersigned attests that those substantial filings were prepared on the understanding that Defendants were not challenging the jury's verdict at the

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<sup>3</sup> The mandatory conference was first scheduled by the 10th Circuit's Mediation Office by letter on June 28, 2018 with the conference set for July 17, 2018. Due to a scheduling conflict, the conference was rescheduled for July 18, 2018. The undersigned attests that at the time of filing this Motion, that conference concluded and no settlement was reached.

<sup>4</sup> Fed. R. Ev. 201(b) allows this Court to take judicial notice of facts not subject to reasonable dispute where such facts are "capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned." Thus, this Court may take notice of entries on the Tenth Circuit's docket of Tudor's appeal, styled as *Tudor et al. v. Se. Okla. State Univ. et al.*, 18-6102.

district court level since the deadline to file such a motion had long passed. During this same period, the undersigned attests that Tudor's counsel made substantial efforts to complete the work of readying her appeal as well as expended substantial time and resources reaching out to potential *amici* to ensure timely filing of merits and amicus briefs in the Tenth Circuit.

On June 28, 2018, Defendants filed a motion seeking an extension of page limit on what they claimed to be their soon to be filed Rule 50(b) and 59 motion (ECF No. 309). That motion did not seek leave to file the principle motion out of time. On July 5, 2018, Defendants' inexplicably filed their untimely Motion.<sup>5</sup> At that point, Defendants' Motion was 159 days past the original December 11, 2017 deadline set by this Court. The undersigned attests that on July 13, 2018, counsel for the National Women's Law Center contacted counsel for Defendants to seek permission to file an *amicus* brief in support of Tudor, as is required by the Federal Rules of Appellate Procedure. The undersigned further attests that other *amici* have begun substantial work on briefs in support of Tudor relying upon the deadlines for such briefs triggered by scheduling orders from the Tenth Circuit.

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<sup>5</sup> In addition to being untimely, Defendants' Rule 50(b) and 59 motion purports to challenge the verdict on issues not preserved through a proper 50(a) motion, belatedly challenges the meaning of "sex" despite the fact that Defendants stipulated prior to trial that they would not contest its meaning going forward (ECF No. 225 at 7:22–23 [Ms. Coffey: "Your Honor, we do not intend to dispute the definition of sex."]), and inexplicably seeks remittitur of the jury's award despite the fact that that issue has already been fully briefed and resolved (see Order, ECF No. 292).



By early July 2018, and despite the plain fact that the Tenth Circuit was proceeding with Tudor's appeal at full-speed, Defendants made no efforts to apprise the Circuit or this Court that it would in fact file motions at the trial-court level challenging the verdict out of time let alone indicate which day they would do so. Nor did Defendants move for an extension of time in advance of the original December 11, 2017 deadline, as is required by Local Rule 7.1(h). Nor did they seek leave of any court to file their untimely motion. Defendants did not even attempt to seek a stipulation from Tudor allowing extension of the filing deadline.

This Court unequivocally set deadlines for motions challenging the jury's verdict and otherwise steered the parties through a sensible briefing schedule on all other post-verdict matters. Defendants simply blew past this Court's deadline. If the deadline was missed in error, or another credible reason excusing their lateness existed, it was incumbent Defendants to apprise this Court of the problem and move with all deliberate speed to avoid inconvenience and prejudice. Instead, Defendants ignored the Court's deadline and filed their untimely Motion without seeking leave to do so.

## **II. ARGUMENT**

### **A. Legal Standard**

It is well-settled that this Court has the inherent authority to manage these proceedings. "[D]istrict courts have the inherent authority to manage

their dockets and courtrooms with a view toward the efficient and expedient resolution of cases.” *Dietz v. Bouldin*, 136 S.Ct. 1885, 1892 (2016) (Sotomayor, J.). Further, district courts possess inherent powers that are “governed not by rule or statute but by the control necessarily vested in courts to manage their own affairs so as to achieve the orderly and expeditious disposition of cases.” *Link v. Wabash R. Co.*, 370 U.S. 626, 630–31 (1962) (Harlan, J.). *See also Hartsel Springs Ranch of Col. Inc. v. Bluegreen Corp.*, 296 F.3d 982, 985 (10th Cir. 2002) (district court has inherent authority to manage its docket to promote judicial efficiency and the “comprehensive disposition of cases”).

It is also well-settled that this Court has the authority to set and enforce deadlines for briefing motions. Indeed, a critical part of a district court’s power to manage dockets is establishing a schedule for motion practice and policing the filing of motions. “A case management schedule serves important purposes.” *A-Cross (A+) Ranch, Ltd. v. Apache Corp.*, 2007 WL 7754451 at \*1 (W.D.Okla. Feb. 20, 2007).

Parties that ignore court schedules do so at their own risk. Where deadlines are missed and untimely motions filed, this Court may act on its inherent authority to impose sanctions to address abuses of the judicial process. *Steinert v. Winn Grp., Inc.*, 440 F.3d 1214, 1227 n.15 (10th Cir. 2006). A district court’s power to sanction a party who fails to follow local rules or a court order is well-established. *See Issa v. Comp USA*, 354 F.3d

1174, 1178 (10th Cir. 2003); *Gripe v. City of Enid, Okla.*, 312 F.3d 1184, 1188 (10th Cir. 2002). Striking filings is a method of sanctioning. *Med. Supply Chain, Inc. v. Neoforma, Inc.*, 2008 WL 11333741 at \*3 (D.Kan. July 8, 2008) (citing *Lynn v. Roberts*, 2005 WL 3087841, at \*6 (D.Kan. Nov. 1, 2006)).

Filing of an otherwise untimely motion may be excused by this Court. *Pepe v. Koreny*, 189 F.3d 478, 1999 WL 686836 at \*2 (10th Cir. 1999) (“The inherent authority of a district court to manage its docket includes discretion to grant or deny continuances or extensions of time.”). However, this Court’s power to excuse an exceedingly untimely motion is limited. “Federal Rule of Civil Procedure 6(b)(1)(2) permits the Court, for good cause, to allow a party that has failed to act after the time to do so has expired to file or respond on a showing of excusable neglect.” *Pourchot v. Pourchot*, 2008 WL 11338418 at \*1 (W.D.Okla. Oct. 17, 2008) (Cauthron, J.).

Determination of whether neglect is excusable is “an equitable one, taking account of all relevant circumstances surrounding the party’s omission’ [...] including [1] the danger of prejudice to [the non-moving party], [2] the length of the delay and its potential impact on judicial proceedings, [3] the reason for delay, including whether it was within the reasonable control of the movant, and [4] whether the movant acted in good faith.” *Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. P’ship*, 507 U.S. 380, 395 (1993) (cleaned up). See also *Quigley v. Rosenthal*, 427 F.3d 1232, 1238 (10th Cir. 2005)

(finding no abuse of discretion in refusing to consider untimely motion “[b]ecause it is well established that inadvertence, ignorance of the rules, and mistakes construing the rules do not constitute excusable neglect for the purposes of Rule 6(b).”).

### **B. Defendants’ Motion is Untimely**

Defendants filed their Motion 159 days after the deadline set by this Court, long after other subsequently scheduled post-verdict motions, past preliminary deadlines for Tudor’s appeal in the Tenth Circuit, and on the eve of the deadline for the filing Tudor’s opening brief in the Circuit. By all measures, Defendants’ Motion is untimely.

There was no ambiguity as the deadline to file motions challenging the jury’s verdict in this case. Indeed, the record reflects that Defendants’ counsel expressly sought clarification from the Court at the close of trial as to the time to file such motions and the Court unequivocally declared the deadline would be December 11, 2017—the same date Tudor’s opening brief on reinstatement was due. *See* ECF No. 262 at 873–74.

To the extent that Defendants argue that they innocently relied upon the default deadlines of the Federal Rules of Civil Procedure rather than the deadline set by this Court, that position totally lacks merit. This Court has the power to set deadlines and manage its docket, plainly empowering it to adjust deadlines given the exigencies of a particular case and to facilitate an

expeditious resolution. *Diaz*, 136 S.Ct. at 1892. Moreover, it would be disingenuous at best for Defendants to claim they were confused about the deadline for their Motion given the fact that it was they whom requested at the November 20, 2017 hearing a date certain to file—which the Court unequivocally set as December 11, 2017. *See* ECF No. 262 at 873–74.

The Court’s sequencing of other post-verdict motions makes plain that the Court and the parties all proceeded for months along a path of briefing post-verdict relief that hinged on Defendants’ timely filing of any motion challenging the verdict. Indeed, it makes perfect sense that the Court sought motions challenging the verdict early on—if the verdict was disrupted, deciding Tudor’s equitable relief would be unnecessary.

In a similar vein, this Court’s care to sequence the other post-verdict motions by a combination of orders directing scheduling and reliance on default rules not disturbed by the Court’s superseding scheduling orders—on front pay (ECF No. 275 at 4), extension on time to file motion on front pay (ECF No. 278), remittitur (ECF No. 287), and attorneys’ fees and costs (triggered by final judgment, as expressly intended as of the November 20, 2017 hearing<sup>6</sup>)—makes plain the intent was to hear motions challenging the verdict *before* entry of judgment.

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<sup>6</sup> *See* ECF No. 262 at 873:18–21:

Lastly, Defendants' Motion is wildly untimely in light of the stage of Tudor's appeal to the Tenth Circuit and Tudor's diligence to stay on top of all deadlines throughout these proceedings. Up to this point, Tudor has filed every motion timely and, where her counsel's workload threatened timeliness set by default rule or court order, she sought scheduling relief. Tudor also took care to file a timely notice of appeal and, as it should, the Tenth Circuit has moved that proceeding forward with all deliberate speed. If Defendants desired to challenge the jury's verdict, they should have followed the briefing schedule set by the Court. Given this context, Defendants' Motion is plainly untimely.

**C. Defendants' neglect to file a timely motion is inexcusable.**

While this Court is empowered to allow for the filing of late motions, Defendants bear the burden of demonstrating that there is excusable neglect allowing for late filing. Under the *Pioneer* factors, Defendants' 159-day late motion is patently inexcusable.

***Factor 1: Prejudice to Tudor.*** Defendants' Motion was filed 159 days past the deadline this Court set for it, long after other inter-dependent post-verdict briefing was completed in this case, after Tudor and her counsel made

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Mr. Young: I believe the cost application is due 14 days from the date you enter judgment on the verdict.

The Court: Okay. Well, I'll just not enter judgment then.

consequential litigation decisions in that other briefing on the reasonable belief that Defendants would not file such a motion (see ECF No. 290 at 21 n.16), and in the midst of quickly moving deadlines in Tudor's timely appeal to the Tenth Circuit (see discussion *supra* Part I). Accepting Defendants' untimely Motion at this juncture would undeniably prejudice and inconvenience Tudor and her counsel, as well as *amici* whom are preparing briefs at this very moment to file with the Tenth Circuit. Any one of those considerations is sufficient to tilt the first factor in favor of not finding excusable neglect.

*Factor 2: Length of delay and impact.* If Defendants' 159-day late motion is accepted, this Court will potentially be forced to revisit a slew of earlier issued orders touching on post-verdict relief sought by Tudor (e.g., reinstatement and front pay), Defendants (e.g., remittitur), as well as would potentially make a nullity other motions filed by both parties which have already been briefed on the implicit understanding that Defendants would not challenge the jury's verdict in this Court (e.g., Tudor's motions for attorneys' fees and costs). Moreover, accepting Defendants' Motion 159 days late and in the midst of Tudor's timely merits appeal stands to throw a wrench into the earlier scheduled proceedings before the Tenth Circuit, which are already underway. Given the foregoing, the second factor tilts in favor of not finding excusable neglect.

*Factor 3: Reason for delay and control.* To date, Defendants have not proffered a credible reason for failing to file their Motion in a timely matter let alone failing to seek leave from this Court to file out of time. The closest Defendants have gotten to proffering an excuse is to allude to the position that they intended to abide by the default deadline of Rule 50(b) rather than that set by this Court. *See* ECF No. 316 at 2 (arguing that the deadline for their motion is set by default as 28 days after the entry of judgment). However, given the fact that Defendants sought a deadline certain for their Motion to be filed and the Court declared December 11, 2017 as the due date (ECF No. 262 at 873–74), pointing to a default deadline that was plainly modified by this Court misses the mark. Indeed, that particular excuse is plainly an inadequate explanation weighing in favor of rejecting a finding of excusable neglect. *Perez v. El Tequila, LLC*, 847 F.3d 1247, 1253 (10th Cir. 2017) (“[A]n inadequate explanation for delay may, by itself, be sufficient to reject a finding of excusable neglect.”).

As to control, it is plain that it was wholly within Defendants’ control to either file their Motion by the deadline originally set by this Court *or*, once that deadline had passed, to promptly seek leave to file their Motion out of time early enough to avoid the inconvenience and prejudice that would necessarily result from accepting it at this late juncture. The fact that it was wholly within Defendants’ control to make the original deadline let alone



seek leave to file their untimely Motion in the months leading up to Tudor's timely appeal to the 10th Circuit weighs heavily against Defendants. *See, e.g., United States v. Munoz*, 664 Fed.Appx. 713 (10th Cir. 2016) (affirming denial of prisoner's motion for leave to file untimely notice of appeal on finding that prisoner's failure to act in three-day period during which he had complete control is dispositive as to inexcusability). Given the foregoing, the third factor also weighs in favor of not finding excusable neglect.

***Factor 4: Good faith.*** To date, Defendants have not moved this Court to file their untimely motion let alone proffered a credible excuse. They simply filed their Motion 159 days late and baldly asserted it is timely under the default rule rather than head-on facing the December 11, 2017 deadline set by this Court. By all reasonable measures, Defendants have failed to demonstrate good faith. *Contrast with Flores v. Monumental Life Ins. Co.*, 2009 WL 10671776 (W.D.Okla. June 25, 2009) ("attorneys acted, at all times, in good faith, bringing this matter to the prompt attention of the court and recounting what happened in an unvarnished manner"). Thus, the fourth factor also weighs in favor of not finding excusable neglect.

**D. Striking Defendants' Motion is an appropriate sanction.**

Given the exceedingly untimely nature of Defendants' Motion, and the fact that Tudor's appeal has been docketed and is otherwise moving along in the Tenth Circuit at full-speed, it is appropriate for this Court to strike

Defendants' untimely Motion as a sanction. Sanctions are appropriate where a party fails to follow local rules or a court order. *See Issa v*, 354 F.3d at 1178; *Gripe*, 312 F.3d at 1188. Striking a filing is one form of sanction available. *See, e.g., Med. Supply Chain*, 2008 WL 11333741 at \*3 (*citing Lynn*, 2005 WL 3087841, at \*6). And, in this particular case, striking Defendants' untimely Motion will go a long way towards promoting judicial economy as well as preserving the integrity of this process and these proceedings.

### CONCLUSION

For all of the foregoing reasons, Dr. Tudor respectfully requests that that the Court grant her motion to strike **Defendants' Renewed Motion for Judgment as a Matter of Law and, in the alternative, for New Trial** (ECF No. 316).

Dated: July 18, 2018

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**CERTIFICATE OF SERVICE**

I hereby certify that on July 18, 2018, I electronically filed a copy of the foregoing with the Clerk of Court by using the CM/ECF system, which will automatically serve all counsel of record.

/s/ Ezra Young  
Ezra Young (NY Bar No. 5283114)

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF OKLAHOMA

DR. RACHEL TUDOR,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 5:15-CV-00324-C
	)	
SOUTHEASTERN OKLAHOMA	)	
STATE UNIVERSITY,	)	
	)	
and	)	
	)	
THE REGIONAL UNIVERSITY	)	
SYSTEM OF OKLAHOMA,	)	
	)	
	)	
Defendants.	)	

**PLAINTIFF DR. RACHEL TUDOR'S  
NOTICE REGARDING  
FILING OF MOTION TO VACATE ABATEMENT ORDER  
PENDING BEFORE THE TENTH CIRCUIT**

Plaintiff Dr. Rachel Tudor hereby notifies this Court and all counsel that on July 19, 2018 she filed a motion with the United States Court of Appeals for the Tenth Circuit seeking to vacate its July 18, 2018 order (cross-docketed in this Court as ECF No. 319). A copy of Tudor's motion is appended hereto as Exhibit 1. Later that same day, the Tenth Circuit issued an order directing Defendants to respond to Tudor's motion by no later than August 2, 2018. A copy of that order is attached as Exhibit 2.

Dated: July 19, 2018

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**CERTIFICATE OF SERVICE**

I hereby certify that on July 19, 2018, I electronically filed a copy of the foregoing with the Clerk of Court by using the CM/ECF system, which will automatically serve all counsel of record.

/s/ Ezra Young  
Ezra Young (NY Bar No. 5283114)

IN THE UNITED STATES COURT OF APPEALS  
FOR THE TENTH CIRCUIT

DR. RACHEL TUDOR et al.,	§	
	§	
Plaintiff-Appellant.	§	
v.	§	
	§	
SOUTHEASTERN OKLAHOMA	§	Case No. 18-6102
STATE UNIVERSITY	§	
	§	
and	§	
	§	
REGIONAL UNIVERSITY SYSTEM	§	
OF OKLAHOMA	§	
	§	
Defendants-Appellees.	§	
	§	

**APPELLANT-PLAINTIFF DR. RACHEL TUDOR'S  
OPPOSED MOTION TO VACATE ABATEMENT ORDER**

Appellant-Plaintiff Dr. Rachel Tudor (“Tudor”) respectfully moves to vacate the July 18, 2018 scheduling order (“July 18 Order”) issued *sua sponte* by this Court which abated the July 30, 2018 deadlines for Tudor to file her opening brief and appendix in this Court. For the reasons elaborated more fully below, the July 18 Order is premature because the automatic tolling provisions of Fed. R. App. P. 4(a)(4)(B) were not triggered by motions filed in the District Court and thus Tudor’s June 7, 2018 Notice of Appeal was itself not premature and her appeal should move forward forthwith as originally calendared. To cure this, Tudor requests that the July 18 Order be vacated and the original deadline for her opening brief and appendix be reinstated as July 30, 2018.

## BACKGROUND

This case was tried to a jury and a verdict returned in Tudor's favor on three of four counts on November 20, 2017 (Doc. No. 262). At a hearing immediately after the verdict was returned, and at the request of both parties, the Court set a special briefing schedule for Tudor's motion for reinstatement and any motions seeking to challenge the verdict, with both sets of briefs due on December 11, 2017 (Doc. No. 262 at 873-74) (hearing transcript reflecting that counsel for Appellees-Defendants requested a date certain to file motions challenging the jury verdict in light of the District Court's decision to withhold issuing final judgment until post-verdict motions were finally resolved). Appellees-Defendants did not file a timely motion on December 11, 2017. In the proceeding months, the parties briefed all other post-verdict issues according to a special schedule set by the District Court so that all matters save for attorneys' fees and costs would be settled *before* judgment was entered.

The District Court entered final judgment in this matter on June 6, 2018 (Doc. No. 292). Hours later, Dr. Tudor filed a timely notice of appeal to this Court (Doc. No. 293).

On July 3, 2018, Dr. Tudor filed a motion intended to notify the District Court of her desire to move for tax off-set and post-judgment interest once her appeal was resolved by this Court (Doc. No. 311). Due to an error of counsel, the wrong draft of that motion was filed. Upon discovering that error, counsel redocketed the corrected motion on July 5, 2018 (Doc. No. 314) with a footnote requesting the earlier filed motion be struck, as was the practice for all parties throughout the proceedings below



where such errors occurred (*id.* at 1 n.1). In the July 5 motion, Tudor requested conditional relief from the District Court, clarifying that it should not act until after her appeal is finally resolved by this Court, since the relief Tudor sought was dependent upon the disposition of her appeal. *See* Doc. No. 314 at 1 (“Dr. Tudor respectfully moves this Court to, at an appropriate time, conform its judgment to include post-judgment interest and a tax offset upon resolution of Tudor’s pending appeal to the U.S. Court of Appeals for the Tenth Circuit.”).

Later in the day on July 5, 2018, Appellees-Defendants filed an untimely Rule 50(b) and 59 motion challenging the jury’s verdict with the District Court (Doc. No. 316), 159 days past the special deadline set by the District Court. Inexplicably, Defendants-Appellees did not seek leave to file that untimely motion with the District Court let alone notify this Court of their plans.

On July 18, 2018, the parties participated in a mandatory mediation conference with this Court’s Mediation Office. Unfortunately, that conference ended without settlement. Within minutes of that conference ending, Tudor filed a motion to strike Appellees-Defendants’ untimely motion (Doc. No. 318) in the District Court, explaining in exhaustive detail that the Appellees-Defendants’ motion is untimely given the District Court’s original December 11, 2017 deadline. Later that same day, this Circuit issued a *sua sponte* order vacating the deadline for Tudor to file her opening brief and appendix on the premise that Tudor’s erroneously filed July 3 motion (Doc. No. 311) should toll this matter or, alternatively, that Appellees-

Defendants' untimely motion (Doc. 316) challenging the verdict should toll the time for appeal.

## ARGUMENT

### I. Tudor's Motion Does Not Toll This Appeal

Dr. Tudor respectfully points out that she asked the District Court to strike her July 3, 2018 motion (Doc. No. 311), as it was filed in error, vis-à-vis her corrected motion filed on July 5, 2018 (Doc. No. 314 at 1 n.1). Because Tudor withdrew the July 3 motion by filing a corrected motion on July 5, the July 3 motion does not trigger the automatic tolling provision of Fed. R. App. P. 4(a)(4)(B). *See Copar Pumice Co., Inc. v. Morris*, 639 F.3d 1025, 1030 (10th Cir. 2011) (A “withdrawn motion is treated ‘as though the motion had never been made’ for the purposes of Rule 4 [rendering] Rule 4(a)(4)(B) inapplicable.”).

Tudor's corrected July 5, 2018 motion (Doc. 314) on the docket below also does not trigger the automatic tolling provision of 4(a)(4)(B), albeit for a different reason. Tudor's July 5 motion seeks conditional relief from the District Court that may only be adjudicated *after* this Court hears her appeal. Thus, the automatic tolling provision of 4(a)(4)(B) is not triggered because, until this Court acts on Tudor's appeal, there is no issue before the District Court to decide. To rule otherwise would place Tudor in an intractable procedural loop.

## II. Appellees-Defendants' Motion Does Not Toll This Appeal

Appellees-Defendants did not file their motion challenging the jury verdict (Doc. No. 316) until July 5, 2018, 159 days past the special deadline set by the District Court. In this situation, the automatic tolling provision of Rule 4(a)(4)(B) is not and cannot be triggered.

Here, it is beyond dispute that Appellees-Defendants expressly asked the District Court to set a special deadline for filing any motion challenging the jury's verdict. The District Court granted that request and set a special deadline for December 11, 2017 (Doc. No. 262 at 873–74). Pursuant to that special deadline, Appellees-Defendants' motion (if any) under Rule 50(b) and/or 59 was due on December 11, 2017 rather than the default deadline for such motions.

Appellees-Defendants' filing of their motion without leave of the District Court on July 5, 2018—165 days *after* the special deadline—renders it untimely. That untimeliness has particular consequence for the purposes of Rule 4(a)(4)(B)—an untimely precursor motion cannot trigger automatic tolling. *Longstreth v. City of Tulsa*, 948 F.2d 1193, 1195 (10th Cir. 1991) (noting that “to toll the appeal time under [Rule 4(a)(4)] a pleading must (1) be a motion, (2) be timely, and (3) be one of the [...] motion[s] specified in the tolling rule”). *See also Browder v. Director, Dep't of Corrections of Ill.*, 434 U.S. 257, 264 (1978) (untimely motion for reconsideration does not toll time for appeal); *Allen v. Chapter 7 Trustee*, 223 Fed.Appx. 770, 772 (10th Cir. 2007) (unpublished) (untimely Rule 59 motion does not toll time for appeal);

*Searles v. Dechant*, 393 F.3d 1126, 1130 (10th Cir. 2004) (“motion for reconsideration could not have such a tolling effect, because it was itself untimely”).

To the extent Appellees-Defendants may argue that their motion in the District Court is timely because it was filed within 28 days of entry of judgment, which is the default deadline established by the Fed. R. Civ. P., and thus should be timely for the purposes of triggering Rule 4(a)(4)(B)’s automatic tolling provision, that position wholly lacks merit.

It conflicts with the spirit of the Federal Rules of Civil and Appellate Procedure to deem Rule 4(a)(4)(B)’s automatic tolling provision triggered where the District Court, totally within its inherent authority,<sup>1</sup> adjusts the default deadline for precursor motions, that deadline is missed, and an untimely motion is later filed. Rule 4(a)(4)(B) is intended to provide clarity for parties and order the relations between trial and appellate courts. Timeliness and transparency as between the parties and the courts are necessary to make the system work.

Appellees-Defendants’ ploy in this case threatens to throw a wrench into the works. If this Court deems Appellees-Defendants’ untimely motion as triggering 4(a)(4)(B)’s automatic tolling, the consequence is to gift a free pass to a litigant seeking to both to halt an otherwise timely appeal and extend a special deadline that

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<sup>1</sup> See *Link v. Wabash R. Co.*, 370 U.S. 626, 630–31 (1962) (Harlan, J.) (district courts possess inherent powers that are “governed not by rule or statute but by the control necessarily vested in courts to manage their own affairs so as to achieve the orderly and expeditious disposition of cases”); *Hartsel Springs Ranch of Col. Inc. v. Bluegreen Corp.*, 296 F.3d 982, 985 (10th Cir. 2002) (district court has inherent authority to manage its docket to promote judicial efficiency and the “comprehensive disposition of cases”).

same litigant itself requested and belatedly decided it would rather not adhere to. That is simply not a result that Rule 4(a)(4)(B) intended.

Moreover, treating an untimely motion, like Appellees-Defendants', as automatically tolling the time for appeal pursuant to Rule 4(a)(4)(B) would have other absurd and deleterious consequences. First and foremost, it would unnecessarily undermine the inherent power of district courts to set scheduling deadlines, which are absolutely necessary so as to ensure the expeditious resolution of cases, because virtually any scheduling decisions that alter default deadlines would be a nullity if ignored by a litigant. Second, it would create perverse incentives for parties to game scheduling between trial courts and this Court, disrupting the capacity of both to manage and control their respective dockets.

To the extent that Appellees-Defendants' argue that this Court should wait on the District Court to rule on Tudor's motion to strike (Doc. No. 318) their untimely motion below, that argument also lacks merit. Tudor's request to this Court is a narrow one—vacate the scheduling abatement for her appeal. This Court may grant that relief, and should do so, because regardless of how the District Court disposes of Appellees-Defendants' motion, Rule 4(a)(4)(B)'s tolling provision cannot be triggered. Even if a district court entertains an untimely precursor motion on the merits and rules on it, the resulting order does retroactively satisfy the timeliness requirement of Rule 4(a)(4)(B). *See, e.g., In re Harth*, 619 Fed.Appx. 719, 721 (10th Cir. 2015) (unpublished) (“lower court’s discretionary election to deny an untimely post-judgment motion on the merits (an equitable action without jurisdictional import in

that court) does not re-invest that motion with a tolling effect for purposes of appellate jurisdiction”). There is thus no need to wait on the District Court to act.

**III. Appellant-Plaintiff Wishes to Proceed with Her Appeal  
With All Deliberate Speed**

In addition to the foregoing, Dr. Tudor emphasizes to this Court that she sincerely desires to move forward with her merits appeal with all deliberate speed. Dr. Tudor took great pains to meet all deadlines for her merits case in the District Court and to promptly and expediently pursue her appeal with this Court. Conversely, Appellees-Defendants have, repeatedly, sought to delay the resolution of this case, the latest example of which is their 159-day late motion with the District Court, which prejudices Tudor given her long wait for final resolution. “Justice delayed is justice denied.” *Johnson v. Rogers*, 917 F.2d 1283, 1285 (10th Cir. 1990).

**RELIEF REQUESTED**

For all of the foregoing reasons, Dr. Tudor prays that the Court grant her motion to vacate the July 18, 2018 scheduling abatement order, and thereby restore the deadline for Tudor’s opening brief and appendix to July 30, 2018.

**CERTIFICATION OF COMPLIANCE WITH TENTH CIRCUIT RULE 27.1**

Counsel for Tudor reached out to counsel for Appellees-Defendants via email on July 19, 2018 to inquire as to their position on this motion. Counsel for Appellees-Defendants indicate that they oppose this Motion.

Dated: July 19, 2018

Respectfully submitted,

/s/ Ezra Young

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**CERTIFICATE OF SERVICE**

I, Ezra Young, hereby certify that on July 19, 2018, I electronically filed a copy of the foregoing with the Clerk of Court using the CM/ECF system, which will automatically serve all counsel of record.

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FILED

United States Court of Appeals  
Tenth Circuit

UNITED STATES COURT OF APPEALS  
FOR THE TENTH CIRCUIT

July 19, 2018

Elisabeth A. Shumaker  
Clerk of Court

DR. RACHEL TUDOR,

Plaintiff - Appellant,

and

UNITED STATES OF AMERICA,

Plaintiff,

v.

No. 18-6102


SOUTHEASTERN OKLAHOMA STATE  
UNIVERSITY, et al.,

Defendants - Appellees.

ORDER

This matter is before the court on appellant's Opposed Motion to Vacate Abatement Order. The Appellees' are directed to file a response to the motion on or before August 2, 2018.

Entered for the Court



ELISABETH A. SHUMAKER, Clerk

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF OKLAHOMA

DR. RACHEL TUDOR, )  
 )  
 Plaintiff, )  
 )  
 v. ) Case No. 5:15-CV-00324-C  
 )  
 SOUTHEASTERN OKLAHOMA )  
 STATE UNIVERSITY, )  
 )  
 and )  
 )  
 THE REGIONAL UNIVERSITY )  
 SYSTEM OF OKLAHOMA, )  
 )  
 )  
 Defendants. )

**PLAINTIFF DR. RACHEL TUDOR'S  
PRELIMINARY RESPONSE IN OPPOSITION TO  
DEFENDANTS' MOTION FOR JUDGMENT NOTWITHSTANDING  
THE VERDICT, OR, IN THE ALTERNATIVE, NEW TRIAL**

TABLE OF CONTENTS

INTRODUCTION.....1

ARGUMENT AND AUTHORITIES.....2

I. RENEWED JUDGMENT AS A MATTER OF LAW UNWARRANTED.....2

    A. Legal Standard.....2

    B. Failure to Preserve.....4

    C. *Etsitty* Arguments.....5

    D. Sufficiency of Evidence.....6

II. NEW TRIAL UNWARRANTED.....15

    A. Legal Standard.....15

    B. Sufficiency of Evidence.....17

    C. Belated Objections to Fleeting Comments.....17

    D. Parker Testimony.....20

    E. Purported “Handicaps”.....22

    F. Remittitur.....24

CONCLUSION.....25

**TABLE OF AUTHORITIES**

**Cases**

*Anaeme v. Diagnostek, Inc.*,  
164 F.3d 1275 (10th Cir. 1999).....16

*Arizona v. California*,  
460 U.S. 605 (1982).....5

*Beck v. N. Natural Gas Co.*,  
170 F.3d 1018 (10th Cir. 1999).....3

*Bd. of Cnty. Comm’rs v. EEOC*,  
405 F.3d 840 (10th Cir. 2005).....13

*Bourjaily v. United States*,  
483 U.S. 171, 179–80 (1987).....8

*Bruno v. Western Elec. Co.*,  
829 F.2d 957 (10th Cir. 1987).....3

*Cooper v. Asplundh Tree Expert Co.*,  
836 F.2d 1544 (10th Cir. 1988).....3

*Cortez v. Wal-Mart Stores, Inc.*,  
460 F.3d 1268 (10th Cir. 2006).....8

*Denison v. Swaco Geolograph Co.*,  
941 F.2d 1416, 1422 (10th Cir. 1991).....7

*Deters v. Equifax Credit Info. Servs., Inc.*,  
202 F.3d 1262 (10th Cir. 2000).....25

*Dow v. Chemical Corp. v. Weevil-Cide Co., Inc.*,  
897 F.2d 481 (10th Cir. 1990).....2

*Edwards v. Okla.*,  
2017 WL 401259 (W.D.Okla. 2017).....9

*EEOC v. Horizon/CMS Healthcare Corp.*,  
220 F.3d 1184 (10th Cir. 2000).....9

*EEOC v. Jetstream Ground Servs., Inc.*,  
2017 WL 8201623 (D.Colo. Nov. 3, 2016).....15

*EEOC v. Prudential Fed. Sav. & Loan Ass’n*,  
763 F.2d 1166 (10th Cir. 1985).....3

*Etsitty v. Utah Transit Auth.*,  
502 F.3d 1213 (10th Cir. 2007).....5, 6, 14

*Garrett v. Hewlett-Packard Co.*,  
305 F.3d 1210 (10th Cir. 2002).....10, 17

*Glenn v. Cessna Aircraft Co.*,  
32 F.3d 1462 (10th Cir. 1994).....15

*Gomez v. Martin Marietta Corp.*,  
50 F.3d 1511 (10th Cir. 1995).....16

*Hardeman v. City of Albuquerque*,  
377 F.3d 1106 (10th Cir. 2004).....4

*Hertz v. Luzenac Am., Inc.*,  
370 F.3d 1014 (10th Cir. 2004).....14

*Johnson v. Weld Cnty., Colo.*,  
594 F.3d 1202 (10th Cir. 2010).....13

*Jones v. Barnhart*,  
349 F.3d 1260 (10th Cir. 2003).....12

*Joyce v. Atlantic Richfield Co.*,  
651 F.2d 676 (10th Cir. 1981).....3

*Kinser v. Gehl Co.*,  
184 F.3d 1259 (10th Cir. 1999).....21

*Lillie v. U.S.*,  
935 F.2d 1188 (10th Cir. 1992).....22

*Love v. RE/MAX of Am., Inc.*,  
738 F.2d 383 (10th Cir. 1984).....14

*Masterpiece Cakeshop v. Colo. Civil Rights Comm’n*,  
138 S.Ct. 1719 (2018).....19, 20

*Maul v. Logan Cnty. Bd. of Cnty. Com’rs*,  
2006 WL 3447629 (W.D.Okla. Nov. 29, 2006).....23

*McEwen v. City of Norman, Okla.*,  
926 F.2d 1539 (10th Cir. 1991).....21

*Oncala v. Sundowner Offshore Servs., Inc.*,  
523 U.S. 75 (1998).....6, 11

*Perry v. Amtrak*,  
2013 WL 12071665 at (W.D.Okla. 2013) .....2

*PriceWaterhouse v. Hopkins*,  
490 U.S. 228 (1998).....6, 11

*Rasmussen Drilling, Inc. v. Kerr-McGee Nuclear Corp.*,  
571 F.2d 1144 (10th Cir. 1978).....6

*Roberts v. State of Okla.*,  
110 F.3d 74, 1997 WL 163524 (10th Cir. 1997).....11

*Ryder v. City of Topeka*,  
814 F.2d 1412 (10th Cir. 1987).....23, 24

*Sanjuan v. IBP, Inc.*,  
160 F.3d 1291 (10th Cir. 1998).....16

*Schmidt v. Medicalodges, Inc.*,  
350 Fed.Appx. 235 (10th Cir. 2009).....7

*Snyder v. City of Moab*,  
354 F.3d 1179 (10th Cir. 2003).....17

*Socony-Vacuum Oil Co.*,  
310 U.S. 150 (1940).....15

*Stouffer v. Trammell*,  
738 F.3d 1205 (10th Cir. 2013).....16

*Tidewater Oil Co. v. Waller*,  
302 F.2d 638 (10th Cir. 1962).....23

*Toliver v. New York City Dep’t of Corr’s*,  
202 F.Supp.3d 328 (S.D.N.Y. 2016).....12, 18

*Ulane v. E. Airlines*,  
742 F.2d 1081 (7th Cir. 1984).....6

*United Inter. Holdings, Inc. v. Wharf (Holdings) Ltd.*,  
210 F.3d 1207 (10th Cir. 2000).....2

*United Phosphorous Ltd. v. Midland Fumigant, Inc.*,  
205 F.3d 1219 (10th Cir. 2000).....17

*United States v. Cardinas Garcia*,  
596 F.3d 788 (10th Cir. 2010).....7

*United States v. Gomez*,  
67 F.3d 1515 (10th Cir. 1995).....21

*United States v. Monsisvais*,  
946 F.2d 114 (10th Cir. 1991).....5, 25

*United States v. Smaldone*,  
485 F.2d 1333 (10th Cir. 1973).....6

*United States v. Webb*,  
98 F.3d 585 (10th Cir. 1996).....5, 25

*Wald v. Mudhopper Oilfield Servs., Inc.*,  
2006 WL 2128835 (W.D.Okla. July 27, 2006).....2

*Webb v. ABF Freight Sys., Inc.*,  
155 F.3d 1230 (10th Cir. 1998).....16

*Webco Indus., Inc. v. Thermatool Corp.*,  
278 F.3d 1120 (10th Cir. 2002).....3, 4

*Whitaker v. Kenosha Unified Sch. Dist.*,  
858 F.3d 1034 (7th Cir. 2017).....6

*Wolfgang v. Mid-Am. Motorsports*,  
111 F.3d 1515 (10th Cir. 1997).....4

*York v. Am. Tel. & Tel. Co.*,  
95 F.3d 948 (10th Cir. 1996).....8

**Rules**

42 U.S.C. § 2000e-3(a).....13

Fed.R.Civ.P. 50(a).....*passim*

Fed. R. Civ. P. 50(b).....*passim*

Fed. R. Civ. P. 59.....*passim*

Local Rule 7.1(g).....1

**Misc.**

Ellsworth, Marcus Patrick. “Who Is My Neighbor: Some Catholics  
Fight for Trans Rights Even When the Church Won’t,”  
MTVNews.com (Sept. 7, 2016).....19



## INTRODUCTION

Out of an abundance of caution, Dr. Tudor files this Preliminary Response <sup>1</sup> in Opposition to Defendants' Motion for Judgment Notwithstanding the Verdict, Or, in the Alternative, New Trial (ECF No. 316) ("Motion"). For the reasons articulated in Tudor's July 18, 2018 Motion to Strike (ECF No. 318), Defendants' Motion is inexcusably untimely and should be struck.

In the event Defendants' Motion is not struck, Tudor believes it can and should be denied on the merits. Grant of renewed judgment as a matter of law is not warranted because Defendants did not preserve the arguments raised in their Motion through a proper Rule 50(a) motion at trial and, even if they had, Defendants failed to carry their hefty burden to demonstrate the presumptively valid jury verdict must be vacated. Similarly, grant of a new trial is not warranted because Defendants failed to properly object to the issues they now complain of at trial and, even if they had, Defendants fail to demonstrate entitlement to the relief sought.

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<sup>1</sup> On July 25, 2018 the Court entered an Order (ECF No. 323) directing Defendants to respond to Tudor's pending Motion for Extension of Time (ECF No. 322) to Respond to Defendant's Motion for Judgment as a Matter of Law, Or In the Alternative, New Trial (ECF No. 316). Because the Court's Order did not expressly permit Tudor to file her Response at a later date and because Local Rule 7.1(g) permits the Court in its discretion to treat motions for which a response is not filed within 21 days without leave of Court to be deemed confessed, the undersigned quickly drafted this Response in the 24-hours following the issuance of the Court's July 25 Order. In the event that Tudor's Motion to Strike (ECF No. 318) is not granted, Tudor requests leave to amend this Brief as necessary.

## ARGUMENT AND AUTHORITIES

### I. RENEWED JUDGMENT AS A MATTER OF LAW UNWARRANTED

#### A. Legal Standard

*50(b) arguments must be preserved through 50(a) motion.* “Only questions raised in a prior motion for directed verdict may be pursued in a motion for judgment notwithstanding the verdict.” *Perry v. Amtrak*, 2013 WL 12071665 at \*4 (W.D.Okla. 2013) (quoting *Dow v. Chemical Corp. v. Weevil-Cide Co., Inc.*, 897 F.2d 481, 486 (10th Cir. 1990)). “A party may not circumvent 50(a) by raising for the first time in a post-trial motion issues not raised in an earlier motion for directed verdict.” *United Inter. Holdings, Inc. v. Wharf (Holdings) Ltd.*, 210 F.3d 1207, 1228 (10th Cir. 2000). The “specific grounds” requirement of 50(a) demands that a party must identify issues with specificity to preserve them for 50(b) purposes. “Merely moving for directed verdict is not sufficient to preserve any and all issues that could have been, but were not raised in the directed verdict motion.” *Id.* at 1229. Moreover, “[i]n view of a litigant’s Seventh Amendment rights, it would be constitutionally impermissible for the district court to re-examine the jury’s verdict to enter JMOL on grounds not raised in the pre-verdict JMOL.” *Wald v. Mudhopper Oilfield Servs., Inc.*, 2006 WL 2128835 at \*5 (W.D.Okla. July 27, 2006) (Cauthron, J.) (cleaned up).

*High bar for setting aside jury verdict.* “[S]ince grant of [a motion for

judgment notwithstanding the verdict] deprives the nonmoving party of a determination of the facts by a jury, [it] should be cautiously and sparingly granted.” *Joyce v. Atlantic Richfield Co.*, 651 F.2d 676, 680 (10th Cir. 1981). This Court cannot weigh the evidence, consider the credibility of witnesses, or substitute its judgment for that of the jury. *Id.* at 680 n.2. Overturning a jury’s verdict is permissible only when the evidence points but one way and is susceptible to no reasonable inferences sustaining the position of the nonmovant. *Cooper v. Asplundh Tree Expert Co.*, 836 F.2d 1544, 1547 (10th Cir. 1988). Lastly, all evidence and inferences must be construed in the favor of the non-movant. *Bruno v. Western Elec. Co.*, 829 F.2d 957, 962 (10th Cir. 1987) (quoting *EEOC v. Prudential Fed. Sav. & Loan Ass’n*, 763 F.2d 1166, 1171 (10th Cir. 1985)).

***Sufficiency of evidence burden.*** The jury verdict must be “supported by substantial evidence when the record is viewed most favorably to the prevailing party.” *Webco Indus., Inc. v. Thermatool Corp.*, 278 F.3d 1120, 1128 (10th Cir. 2002). Sufficient evidence can mean “something less than the weight of the evidence,” and consists of “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion, even if different conclusions also might be supported by evidence.” *Id.* (quoting *Beck v. N. Natural Gas Co.*, 170 F.3d 1018, 1022 (10th Cir. 1999)). Moreover, “the mere existence of contrary evidence does not itself undermine the jury’s

findings as long as sufficient evidence supports the findings.” *Webco*, 278 F.3d at 1128. A Rule 50(b) motion should be granted only “if the evidence points but one way and is susceptible to no reasonable inferences supporting the party opposing the motion.” *Hardeman v. City of Albuquerque*, 377 F.3d 1106, 1112 (10th Cir. 2004) (cleaned up).

#### **B. Failure to Preserve**

Defendants’ 50(b) motion can and should be denied for the simple fact that none of the arguments raised in it were preserved in a 50(a) motion, as is required. At trial, Defendants proffered only an oral 50(a) motion on the record, arguing cryptically and without requisite specificity: “We believe the facts in evidence support a motion for directed verdict on each of plaintiff’s claims.” ECF No. 266, 724:18–25. This preserves nothing.

A 50(a) motion must “specify the judgment sought and the law and facts on which the moving party is entitled to judgment.” Fed.R.Civ.P. 50(a)(2). Defendants’ 50(a) motion did not identify any, and thus failed to preserve, legal issues for a subsequent 50(b) motion, even those arguments Defendants previously raised at summary judgment. *Wolfgang v. Mid-Am. Motorsports*, 111 F.3d 1515, 1521–22 (10th Cir. 1997). Though Defendants’ 50(a) motion proffered that “facts in evidence” supported a verdict in their favor, that statement is so cryptic and vague that it fails the “specific grounds” test. To wit, Defendants did not identify which “facts in evidence”

supported their position or explain how construed such facts entitled them to judgment. Defendants cannot use such a vague statement to buttress a 50(b) motion since it does not apprise Tudor or the Court of the “specific grounds” purportedly entitling them to a directed verdict. *See Wharf*, 210 F.3d at 1229.

### C. *Etsitty* Arguments

Despite past admonishments from this Court that Defendants cease arguing that Tudor is not a member of a protected class, Defendants revive that argument in their Motion. *Compare* Motion at 3–6 *with* Order Denying SJ, ECF No. 219 at 6 (“Defendants again revisit their argument that Plaintiff is not entitled to protected status. That argument warrants no further discussion.”).

This Court already decided that Tudor is a member of a protected class, which is law of this case. “The law of the case doctrine posits that when a court decides upon a rule of law, that decision should continue to govern the same issues in subsequent stages in the same case.” *United States v. Monsisvais*, 946 F.2d 114, 115 (10th Cir. 1991) (*citing Arizona v. California*, 460 U.S. 605, 618 (1982) (cleaned up)). *See also United States v. Webb*, 98 F.3d 585, 587 (10th Cir. 1996) (“Under law of the case doctrine, findings made at one point during the litigation become law of the case for subsequent stages of the same litigation.”). Defendants fail to argue why law of the case doctrine should be set aside and thus their arguments are unavailing.

Moreover, even if this Court were to entertain Defendants' arguments, Defendants identify no error of law pursuant to *Etsitty v. Utah Transit Auth.*, 502 F.3d 1213 (10th Cir. 2007) which entitles them to renewed judgment as a matter of law.<sup>2</sup>

#### D. Sufficiency of Evidence

***Sufficiency generally.*** Defendants repeatedly delve into the warring

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<sup>2</sup> Defendants quote fleeting comments made by counsel and witnesses at trial, arguing that the mere use of the word “transgender” is fatal under *Etsitty*. But *Etsitty* did not address statements at jury trials let alone hold that use of the word transgender is fatal. In fact, *Etsitty* implies the opposite—“an individual’s status as a transsexual should be irrelevant to the availability of Title VII protection.” *Etsitty*, 502 F.3d at 1222. Moreover, Defendants’ contention that Tudor “put on a transgender identity” case rather than a sex discrimination case is equally nonsensical. The jury was instructed that liability for Tudor’s two sex discrimination claims could only be found if there was evidence showing she experienced discrimination because of her gender or failure to conform with gender stereotypes (ECF No. 257 at 10–11). It must be assumed that the jury followed the instructions. *Rasmussen Drilling, Inc. v. Kerr-McGee Nuclear Corp.*, 571 F.2d 1144, 1149 (10th Cir. 1978) (citing *United States v. Smaldone*, 485 F.2d 1333 (10th Cir. 1973)).

Defendants also raise a slew of arguments which they claim show either that Title VII cannot protect transgender persons from sex discrimination or that the trial itself was forbidden by *Etsitty*. Both contentions are unsound. As to the contention that the United States government does not believe transgender persons are within the protective ambit of Title VII—that is utterly ridiculous. The United States settled their portion of Tudor’s case on the merits in August 2017 (ECF No. 268-3), best evidence of the government’s true position. Regardless, this Court’s duty is to independently interpret the law, not acquiesce to the position of the current federal administration. Additionally, Defendants’ reliance upon *Ulane v. E. Airlines*, 742 F.2d 1081 (7th Cir. 1984) is misplaced (Mot. at 6 n.2). The Seventh Circuit recognizes that the very language Defendants lift from *dicta* in *Ulane* is wholly abrogated by the Supreme Court’s intervening decisions, including *PriceWaterhouse v. Hopkins*, 490 U.S. 228 (1998) and *Oncale v. Sundowner Offshore Servs., Inc.*, 523 U.S. 75 (1998). See *Whitaker v. Kenosha Unified Sch. Dist.*, 858 F.3d 1034, 1042–49 (7th Cir. 2017). This Court must abide by *Etsitty*. But, if the Court desires to follow the Seventh Circuit instead, then it should follow that Circuit’s holding that “[b]y definition, a transgender individual does not conform to the sex-based stereotypes of the sex that he or she was assigned at birth.” *Whitaker*, 858 F.3d at 1048

Lastly, Defendants’ argument that *Etsitty* forecloses protection for transgender persons because they are not properly considered biologically “male or female” is totally foreclosed. At the November 1, 2017 hearing, Defendants stipulated that in exchange for Dr. Brown—Tudor’s expert on sex—not testifying at trial, they would cease raising arguments questioning the meaning of “sex.” See ECF No. 225 at 7 (“[W]e do not intend to dispute the definition of sex”). Moreover, the *Etsitty* Court held that construction of Title VII must be guided by the “plain language of the statute” and, if appropriate evidence about the nature of sex is presented reflecting its “plain meaning” encompasses something more than assumed in 2007 without the aid of scientific evidence on point, then *per se* protection might be found. *Etsitty*, 502 F.3d at 1222 (“Scientific research may someday cause a shift in the plain meaning of the term ‘sex.’”). It is Tudor’s position that Dr. Brown’s report (ECF No.205-1) is uncontroverted scientific evidence showing the plain meaning of sex has shifted.

evidence and claim that, because evidence was presented in support of both Tudor's and Defendants' theories of the case, Tudor must have presented insufficient evidence. Not so. Tudor need not confine her evidence to Defendants' view of the case in order to prevail at trial let alone for the verdict to survive a sufficiency challenge. *Denison v. Swaco Geolograph Co.*, 941 F.2d 1416, 1422 (10th Cir. 1991). Tudor was free to present evidence in support of her merits case that conflicted with Defendants' evidence or simply prove essential facts, like pretext, by alternative means. *Id.*

Moreover, where there is conflicting evidence on a particular issue, the jury is free to decide what weight should be given. Thus, where fact witnesses provide conflicting accounts, the jury is entrusted to make credibility decisions. *United States v. Cardinas Garcia*, 596 F.3d 788, 794 (10th Cir. 2010) ("We accept at face value the jury's credibility determinations and its balancing of conflicting evidence."). Moreover, it does not follow that conflicting evidence which the jury must make credibility decisions on proves insufficiency of evidence—weighing sharply conflicting evidence is simply what juries do. *See Schmidt v. Medicalodges, Inc.*, 350 Fed.Appx. 235, 240 (10th Cir. 2009) (jury findings on "sharply conflicting evidence" conclusively binding and not against the weight of evidence).

Lastly, Defendants must do more than lodge piecemeal attacks on discrete evidence to carry their burden. "[I]ndividual pieces of evidence,

insufficient in themselves to prove a point, may in cumulation prove it. The sum of an evidentiary presentation may well be greater than its constituent parts.” *Bourjaily v. United States*, 483 U.S. 171, 179–80 (1987).

***Tudor’s qualifications.*** Defendants’ contention that Tudor failed to present sufficient evidence of her qualifications for tenure in the 2009-10 cycle is preposterous (Motion at 7–8).

As Defendants acknowledge, different witnesses at trial articulated slightly different understandings of the standard for tenure at Southeastern during the pertinent period. That admission is dispositive here. The jury need not accept Defendants’ witnesses stated qualifications where there is evidence that different qualifications existed and/or were applied to other similarly situated applicants. *York v. Am. Tel. & Tel. Co.*, 95 F.3d 948, 945 (10th Cir. 1996). Additionally, the jury is “free to consider the employer’s subjective hiring or promotion criteria in the mix of plaintiff’s circumstantial evidence of discrimination, but it not required to accept the employer’s version of its motivation.” *Cortez v. Wal-Mart Stores, Inc.*, 460 F.3d 1268, 1274 (10th Cir. 2006). Thus, Parker’s testimony revealing how Tudor’s denial could not be reconciled with tenure granted to comparators (see, e.g., ECF No. 263 at 266–73), Cotter-Lynch’s testimony regarding the same (see, e.g., *id.* at 319–21), or testimony from others claiming Tudor met the pertinent qualifications is sufficient to foreclose this issue.



Defendants' related contention that Tudor did not show she met the minimum qualifications for tenure is also infirm. To sustain the verdict, Tudor must only have proffered evidence that she does not suffer from "an absolute or relative lack of qualifications" not that she "is able to meet all the objective criteria adopted by the employer." *EEOC v. Horizon/CMS Healthcare Corp.*, 220 F.3d 1184, 1193–94 (10th Cir. 2000). *See also Edwards v. Okla.*, 2017 WL 401259, at \*2 (W.D.Okla. 2017) (Cauthron, J.) (*quoting EEOC v. Horizon/CMS*, 220 F.3d at 1193 ("relevant inquiry at the prima facie stage is not whether an employee is able to meet all the objective criteria adopted by the employer, but whether the employee has introduced some evidence that she possesses the objective qualifications necessary to perform the job sought"))).

Tudor made at least the minimal showing. She testified to her understanding of the qualifications in the 2009-10 cycle (ECF No. 246 at 50–52; *id.* at 55–56; *id.* at 74–78). Dr. Parker did the same and explained in detail why Tudor met those qualifications (ECF No. 263 at 227–74). Drs. Spencer (see, e.g., ECF No. 264 at 441–42) and Mischo (see, e.g., *id.* at 390), both of whom reviewed Tudor's 2009-10 portfolio, testified they believed at the time that Tudor met the standard for tenure. Dr. Cotter-Lynch did the same as well (see, e.g., ECF No. 263 at 320–21). Though Defendants dispute the weight one might give to Tudor's evidence as opposed to their evidence—

it is plain that Tudor met the requirement of presenting some evidence of her qualifications.

*Pretext in 2009-10 cycle.* Defendants' contention that Tudor failed to present any evidence of pretext relating to her discrimination claim for the 2009-10 cycle fails on its face. Among other things, Tudor and others testified at length about procedural irregularities in Tudor's 2009-10 tenure application experience—that alone is sufficient to support a finding of pretext. *Garrett v. Hewlett-Packard Co.*, 305 F.3d 1210, 1217 (10th Cir. 2002) (examples of pretext include, "prior treatment of plaintiff," "disturbing procedural irregularities (e.g., falsifying or manipulating . . . criteria); and the use of subjective criteria.")). As another example, Tudor and others also testified about subjective criteria—as one example, subjective judgments concerning the application cover letter wholly apart from qualifications in the areas of teaching, scholarship, and service—which Defendants' own witnesses claimed played a part in their decision on the 2009-10 portfolio. *See, e.g.*, ECF No. 265 at 607–09 (Scoufos testimony). That, too, is sufficient evidence of pretext. *Garrett*, 305 F.3d at 1217.

*Missing Minks.* Similarly, Defendants' argument that there was a total absence of pretext evidence because, they claim, no evidence of President Minks' sex stereotyping was produced at trial is also misguided (Mot. at 12–13). Defendants fundamentally misapprehend sex stereotype doctrine. Sex

stereotype is a means of explaining both the broad scope of Title VII's status coverage (see, e.g., *Oncale v. Sundowner Offshore Servs., Inc.*, 523 U.S. 75 (1998)) as well as a form of proof that a plaintiff may—but is not required to—proffer in support of her claim of discrete act discrimination (see, e.g., *PriceWaterhouse v. Hopkins*, 490 U.S. 228 (1989)). As to the latter, while stereotyped remarks from the mouth of a bad actor “can certainly be evidence that gender played a part,” such evidence is not required. *PriceWaterhouse*, 490 U.S. at 251–52. Where, as is the situation here, the employer proffers a facially nondiscriminatory rationale for the adverse action, the employee can prove discrimination by showing “the proffered reason is a pretext for illegal discrimination.” *Roberts v. State of Okla.*, 110 F.3d 74, 1997 WL 163524 at \*5 (10th Cir. 1997).

Tudor did what was required—she proffered evidence of pretext. As one example, the April 30, 2010 McMillan Letter (attached hereto as **Exhibit 1**; marked at trial as Tudor Ex. 79) purports to set forth Mink's rationales for denial as parroted by McMillan. The jury plainly could have seen the bizarre procedural irregularities and logical infirmities in that letter as evidencing pretext attributable to Minks.

Lastly, if Defendants are so certain that Minks could himself explain why he did not harbor bias and/or why his rationales for denial were not pretextual, he should have testified at trial. Tellingly, Defendants chose not

to put Minks on the stand. That strategic choice can neither bar liability nor give rise to a right for a new trial. *See, e.g., Toliver v. New York City Dep't of Corr's*, 202 F.Supp.3d 328, 341 (S.D.N.Y. 2016) (strategic and/or tactical errors of party's own counsel do not rise to level of threatening miscarriage of justice or erroneous outcome meriting new trial).

*Pretext in 2010-11 cycle.* Defendants make similarly disingenuous arguments purporting that Tudor failed to present any evidence of pretext relating to her discrimination claim for the 2010-11 cycle. Defendants claim there was no discrimination in the 2010-11 cycle because Southeastern's rules prohibited reapplication. Yet, Tudor presented evidence showing that was simply not true. Among other things, she introduced into evidence emails between April 2010 emails between Scoufos, McMillan, Minks, counsel, and Charles Weiner attesting to their collective understanding that the rules permitted Tudor to reapply in the 2010-11 cycle (attached hereto as **Exhibit 2**; marked at trial as Tudor Ex. 35). That alone is sufficient to show pretext since it is plain the actors in question did not always believe reapplication was barred despite saying otherwise after the fact. *See, e.g., Jones v. Barnhart*, 349 F.3d 1260, 1266 (10th Cir. 2003) (pretext established by pointing to "such weaknesses, implausibilities, inconsistencies, incoherencies, or contradictions in the employer's proffered legitimate reasons for its actions that a reasonable factfinder could rationally find them unworthy of

credence”); *Johnson v. Weld Cnty., Colo.*, 594 F.3d 1202, 1211 (10th Cir. 2010) (pretext established with “evidence that the employer didn’t really believe its proffered reasons for action and thus may have been pursuing a hidden discriminatory agenda”).

*Evidence of retaliation in 2010-11 cycle.* Defendants’ contention that Tudor did not present evidence supporting her retaliation claim at trial totally lacks merit. As a threshold matter, Defendants’ argument that Tudor has no retaliation claim because she is not a member of a protected class is infirm for the reasons explained *supra* Argument Part I-C.

Moreover, Defendants misapprehend what conduct is prohibited as retaliation. It states,

It shall be unlawful employment practice for an employer to discriminate against any of its employees . . . because he has opposed any practice made an unlawful employment practice by this subchapter [Opposition Clause], or because he has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this subchapter [Participation Clause].

42 U.S.C. § 2000e-3(a). By its terms, Title VII does not limit protection for opposition. *Bd. of Cnty. Comm’rs v. EEOC*, 405 F.3d 840, 852 (10th Cir. 2005) (explaining Title VII “empowers employees to report what they reasonably believe is discriminatory conduct without fear of reprisal”). Thus, once Tudor filed good faith complaints with the EEOC and at Southeastern—which happened in Fall 2010 prior and close in time to Defendants’ decision to

prohibit her tenure reapplication—any retaliation against Tudor for opposing what she believed to be acts in violation of Title VII gave rise to a claim for retaliation. *Hertz v. Luzenac Am., Inc.*, 370 F.3d 1014, 1015 (10th Cir. 2004) (“[p]rotected opposition can range from filing formal charges to voicing informal complaints to superiors”); *id.* at 1016 (employee need only show “[s]he had a reasonable good-faith belief that the opposed behavior was discriminatory”). Thus, even if Tudor is not a member of a protected class—which would be contrary to *Etsitty*—Tudor can still state a valid claim for retaliation. *See, e.g., Hertz*, 370 F.3d at 1015–16 (employee not required to “convince the jury that [her] employer ... actually discriminated against [her]” for retaliation claim to be viable); *Love v. RE/MAX of Am., Inc.*, 738 F.2d 383, 385 (10th Cir. 1984) (employee’s complaint of discrimination is protected opposition even if it is mistaken, so long as the belief that discrimination occurred was objectively reasonable and made in good faith).

Lastly, the assertion that Defendants could not have retaliated against Tudor because once tenure was denied in the 2009-10 cycle she could not apply again was disputed at trial with evidence showing just the opposite. For example, Dr. Prus testified that reapplication was possible, he had in fact restarted the tenure process for Tudor in Fall 2010, and he thought she merited tenure that year (ECF No. 264 at 482–86). Additionally, the April 2010 email (**Exhibit 2**) between administrators evidences that they believed

then that the rules permitted Tudor to reapply in the 2010-11 cycle, undercutting Defendants' proffered rationale that they always believed reapplication was prohibited. Of course, McMillan's October 2010 letter to Tudor (attached hereto as **Exhibit 3**; marked at trial as Tudor Ex. 84), similarly highlighting that reapplication is not *per se* prohibited by the rules, is also probative of pretext.

## II. NEW TRIAL UNWARRANTED

### A. Legal Standard

*Comments by counsel at trial.* A movant seeking new trial on the premise that opposing counsel made prejudicial comments to the jury carries a hefty burden. First and foremost, the movant must show they timely objected to those same purportedly prejudicial comments at trial. "A party who waits until the jury returns an unfavorable verdict to complain about improper comments during opening statement and closing argument is bound by that risky decision and should not be granted relief." *Glenn v. Cessna Aircraft Co.*, 32 F.3d 1462, 1465 (10th Cir. 1994). "[C]ounsel [] cannot as a rule remain silent, interpose no objections, and after a verdict has been returned seize for the first time on the point that the comments to the jury were improper and prejudicial." *Socony-Vacuum Oil Co.*, 310 U.S. 150, 238–29 (1940). Second, if the alleged comments were fleeting at best, there is an inference that they are not prejudicial. *EEOC v. Jetstream Ground Servs.*,

*Inc.*, 2017 WL 8201623, at \*8 (D.Colo. Nov. 3, 2016) (*citing Stouffer v. Trammell*, 738 F.3d 1205, 1225 (10th Cir. 2013) (declining to find prejudice in part because the challenged comments were brief)).

***Admission of evidence.*** Evidentiary rulings are committed to the “very broad discretion” of the trial court. *Webb v. ABF Freight Sys., Inc.*, 155 F.3d 1230, 1246 (10th Cir. 1998), *cert denied* 526 U.S. 1018 (1999). An evidentiary ruling is an abuse of discretion only if based on “an erroneous conclusion of law, a clearly erroneous finding of fact, or a manifest error in judgment.” *Id.* Even if an evidentiary ruling is an abuse of discretion, a new trial is still inappropriate unless the error prejudicially affected the movant’s “substantial rights.” *Id.* Moreover, “[e]vidence admitted in error can only be prejudicial if it can be reasonably concluded that with or without such evidence, there would have been a contrary result.” *Sanjuan v. IBP, Inc.*, 160 F.3d 1291, 1296 (10th Cir. 1998). Ultimately, “the burden of demonstrating that substantial rights were affected rests with the party asserting error.” *Gomez v. Martin Marietta Corp.*, 50 F.3d 1511, 1518 (10th Cir. 1995).

***Sufficiency of evidence.*** “Where a new trial motion asserts that the jury verdict is not supported by the evidence, the verdict must stand unless it is clearly, decidedly, or overwhelmingly against the weight of the evidence.” *Anaeme v. Diagnostek, Inc.*, 164 F.3d 1275, 1284 (10th Cir.) (cleaned up), *cert. denied*, 528 U.S. 814, 120 S.Ct. 50, 145 L.Ed.2d 44 (1999). Evidence



must be considered in the light most favorable to the prevailing party, bearing in mind that “the jury has the exclusive function of appraising credibility, determining the weight to be given to the testimony, drawing inferences from the facts established, resolving conflicts in the evidence, and reaching ultimate conclusions of fact.” *Snyder v. City of Moab*, 354 F.3d 1179, 1188 (10th Cir. 2003) (quoting *United Phosphorous Ltd. v. Midland Fumigant, Inc.*, 205 F.3d 1219, 1226 (10th Cir. 2000)) (cleaned up).

### **B. Sufficiency of Evidence**

Defendants raise one new argument in support of their contention that evidence was so insufficient that a new trial is warranted—they argue that Tudor’s 2009-10 cycle cover letter was poor and thus it would have been appropriate for tenure to be denied on the basis alone (Motion at 22). But that argument gets them nowhere. None of Defendants witnesses claimed that Tudor was denied tenure solely because of her cover letter. Indeed, they testified to the opposite at trial. *See, e.g.*, ECF No. 265 at 599–600 (Scoufos testimony on factoring in recommendation letters even though not required qualification). And, if they had claimed as much, that would be such a suspicious subjective criteria that it would itself serve as ample evidence of pretext. *See Garrett*, 305 F.3d at 1217.

### **C. Belated Objections to Fleeting Comments**

*Defendants put McMillan’s religion into issue.* Defendants’ claim of

prejudice is infirm because the record reflects that it was Defendants—not Tudor—whom placed Dr. McMillan’s religion into issue. Thus, any prejudice incurred was at Defendants’ own hands and is no grounds for a new trial.

At trial, Mindy House made a fleeting comment concerning the undisputed fact that Dr. McMillan made an employment decision premised upon his religious beliefs, which she in turn found concerning (ECF No. 264 at 511). Defendants admit that they were spooked, so they both cross-examined House on that comment at length *and* tailored McMillan’s direct testimony so as to exhaustively explore the same (Mot. at 22–23). The fact that Tudor’s counsel made a passing comment in closing about McMillan’s credibility based upon his direct testimony at trial—nearly all of which focused on his religious convictions—is unsurprising and most certainly not prejudice giving rise to a new trial. Tellingly, Defendants cite no precedent for the proposition that mere mention of a person’s having (or not having) religious beliefs is grounds to warrant a new trial.

Defendants’ true complaint seems to be that they now believe they made a fatal strategy decision when they elected to draw more attention to McMillan’s religious beliefs at trial. But, even if Defendants’ strategy choice was fatal, their failure to raise their concerns at trial rather than engaging in what they contend was harmful self-help cannot give way to a new trial. *Toliver*, 202 F.Supp.3d at 341.

**Masterpiece Cake *explained*.** Defendants’ contention that the Supreme Court’s recent decision in *Masterpiece Cakeshop v. Colo. Civil Rights Comm’n*, 138 S.Ct. 1719 (2018) mandates a new trial is wholly specious. Indeed, Defendants fundamentally misunderstand the crux of *Masterpiece* let alone its proper application to this case.

*Masterpiece* holds that state actors cannot endorse (or counter-endorse) particular religious beliefs in the course of administering civil rights laws.<sup>3</sup> 138 S.Ct. at 1732. Put another way, *Masterpiece* proscribes the conduct of state actors, not private citizens like Tudor and her counsel. *Id.* at 1733 (Kagan, J. concurring) (clarifying state actor lynch-pin of majority decision). Thus, Defendants’ contention that *Masterpiece* commands a new trial because one witness, Ms. House, mentioned the religion of Dr. McMillan in passing during direct testimony and Tudor’s counsel—himself a devout Catholic<sup>4</sup>—made a passing comment about McMillan’s overarching credibility

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<sup>3</sup> In summary, *Masterpiece* involved a private citizen’s challenge to an administrative penalty imposed by a government commission tasked with enforcing state nondiscrimination laws. The citizen, a devout Christian whom owned and operated a bakery open to the public at large, refused to sell wedding cakes to gay couples. The Commission found the baker in violation of a state law expressly forbidding such practices. Though myriad points of purported error were raised to the Supreme Court, it ultimately decided the case narrowly, holding that the Commission’s members’ ultimate merits decision was tainted by anti-religious bias as evidenced by on the record comments from one commissioner comparing the baker’s religious refusal to the conduct of Nazis.

<sup>4</sup> The undersigned attests that the religious views of counsel (or lack thereof) have no relevance to these proceedings. However, Defendants’ Motion endeavors to paint the undersigned as harboring bigotry for persons of faith, which is patently offensive given his own faith. Indeed, the undersigned is outspoken about his faith and its relation to his work as a civil rights lawyer representing transgender persons. *See, e.g.*, Marcus Patrick Ellsworth, “Who Is My Neighbor: Some Catholics Fight for Trans Rights Even When the Church Won’t,” MTVNews.com (Sept. 7, 2016), <http://www.mtv.com/news/2929013/who-is-my-neighbor/> (“There’s a tendency to see a strict divide between people who have religious beliefs, whatever those might be, and people who are trans. [...]

is simply unfounded. The evil that so concerned the Supreme Court in *Masterpiece* was that state actors whom adjudicate cases were impermissibly biased against a party because of his religious beliefs, thereby depriving the citizen of a fair hearing. 138 S.Ct. at 1729. In the case at bar, the jury was the ultimate decision-maker. Defendants have pointed to no evidence showing the jury itself harbored anti-religious bias let alone that that was determinative of the outcome, thus retrial is not warranted.

Moreover, *Masterpiece* suggests that Defendants created impermissible prejudice for Tudor. Under *Masterpiece*, state actors, in the course of civil rights proceedings like this one, are absolutely barred from expressing an opinion for or against a particular religious viewpoint because the power of the State cannot be used to endorse or counter-endorse particular views. It is undisputed that Defendants' counsel—the Oklahoma Attorneys General Office—and Defendants themselves are state actors. Thus, under *Masterpiece*, it was inappropriate for Defendants to affirmatively introduce evidence of McMillan's religious point of view in a manner that communicated to the jury a State preference for those viewpoints.

#### **D. Parker Testimony**

Defendants' argument that a new trial is necessary because Dr.

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There are many trans people, myself included, who are deeply religious. I'm an observant, practicing Roman Catholic. It's not appropriate to say it's Catholics versus trans people or any other particular group of believers.").

Parker's testimony should not have been admitted at trial is also patently infirm. As a threshold matter, Defendants did seek to exclude Parker's testimony via a *Daubert* motion before trial (ECF No. 96) which was denied on the merits by this Court (ECF No. 163). But at trial, Defendants neither objected to Parker taking the stand *nor* admission of Parker's expert report.<sup>5</sup> Thus, Defendants waived any claim of prejudice as to Parker's testimony and his report. *McEwen v. City of Norman, Okla.*, 926 F.2d 1539, 1544 (10th Cir. 1991) ("A party whose motion in limine has been overruled must nevertheless object when the error he sought to prevent by his motion occurs at trial."). Similarly, Defendants failed to seek leave to *voir dire* Parker out of the ear shot of the jury so as to establish limits on his testimony they now claim resulted in prejudice—that failure also constitutes waiver. *See United States v. Gomez*, 67 F.3d 1515, 1526 (10th Cir. 1995).

Additionally, even if admission of Parker's testimony was erroneous, Defendants fail to prove it was sufficiently prejudicial as to warrant grant of a new trial. Typically, improper admission of expert testimony is deemed harmless error, which is insufficient grounds on which to grant a new trial. *See Kinser v. Gehl Co.*, 184 F.3d 1259, 1271 (10th Cir. 1999). To demonstrate that the error was greater than harmless, Defendants bear the burden of

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<sup>5</sup> *See* ECF No. 263 at 212 (showing Plaintiff counsel naming Parker as next witness and Defendants not objecting to his taking stand); *id.* at 243 (The Court: "Do you have an objection to the report?" Mr. Joseph: "We don't have an objection to that admission, Your Honor, no.").

showing that the admission of Parker's testimony was dispositive of the ultimate verdict. *Lillie v. U.S.*, 935 F.2d 1188, 1192 (10th Cir. 1992).

Defendants' main gripes with Parker's trial testimony is that, in their minds, it is *possible* that the jury could have given more weight to Defendants' witnesses and/or theory of the case if Parker had not testified. But that argument falls short of Defendants' hefty burden. The jury could have returned a verdict in Tudor's favor based upon other evidence at trial—such as the testimony of Tudor, Cotter-Lynch, Weiner, Mischo, Spencer, or others. Since Parker's testimony was one of many pieces of evidence, its admission did not foreclose the jury from considering Defendants' alternative theory or evidence, and its admission was at most harmless error which is insufficient to warrant a new trial.

#### **E. Purported “Handicaps”**

Defendants also argue that a collection of events left Defendants “handicapped throughout trial,” and thus a new trial is merited. Among other things, they argue they (1) did not receive marked trial exhibits and witness subpoenas until “the literal last second” (Mot. at 24); (2) one day of trial transcripts was briefly released online (*id.*); and (3) Tudor “essentially refused to answer questions on the stand” (*id.*). Defendants contend, without explanation, that failure to grant a new trial under those circumstances, stands to threaten the “integrity of the jury system itself.” *Id.* at 25 (*quoting*

*Tidewater Oil Co. v. Waller*, 302 F.2d 638, 643 (10th Cir. 1962)).

But in order to merit a new trial, Defendants must demonstrate that they were fundamentally prejudiced by errors. New trials should not be ordered simply because things did not go a movant's way or there were minor mishaps. *Maul v. Logan Cnty. Bd. of Cnty. Com'rs*, 2006 WL 3447629, at \*1 (W.D.Okla. Nov. 29, 2006) (Cauthron, J.) (Rule 59 not intended to offer a "second bite at the proverbial apple"). Defendants' argument fails because the issues they cling to did not in fact result in prejudice. *Ryder v. City of Topeka*, 814 F.2d 1412, 1425 (10th Cir. 1987) ("A showing of prejudice, however, is essential. A new trial is not to be granted simply as a punitive measure.") (cleaned up).

(1) As to trial exhibits, Defendants fail to mind their duty of candor by reminding this Court that later on in the trial the Court itself acknowledged that Defendants' argument about improperly labeled exhibits prejudicing them was infirm. That was so because Tudor provided Defendants with exhibits both marked with the case number on each page *and* in clearly labeled binders with numbered dividers by exhibit which were sufficient enough for the Court itself to follow along with exhibits as they were introduced at trial. *See* ECF No.263 at 202-04. As to trial subpoenas, Defendants' counsel can hardly claim surprise or disadvantage in this case. Tudor docketed the subpoenas on November 6, 2018, prior to them being

served. Thus, Defendants were apprised well ahead of time of the persons Tudor sought to testify, the days on which she desired them to be called, and had ample opportunity to quash the subpoenas if needed. Indeed, Defendants tried to quash several subpoenas, even for persons they did not represent though they claimed they did. *See, e.g.*, ECF No. 265 at 559 (Tudor’s counsel raising issue to Court).

(2) As to mistaken release of one day of trial transcripts during the pendency of trial—that error was quickly fixed by Tudor’s counsel upon notice of the issue (see, e.g., ECF No. 265 at 556–57). Moreover, Defendants do carry the burden of showing that that mishap prejudiced them, as is required. *Ryder*, 814 F.2d at 1425.

(3) As to Defendants’ claimed concerns regarding Tudor’s ability to directly answer a handful of questions on cross-examination on the first day of trial—Defendants do not cite any authority for the proposition that this is prejudice giving rise to a new trial. Moreover, Defendants fail to point with particularity to specific questions asked of Tudor that she did not answer which caused them prejudice, as is required. *Ryder*, 814 F.2d at 1425.

#### **F. Remittitur**

Defendants also seek a new trial on the premise that the jury’s verdict should be remitted or a new trial granted (Mot. at 28–29). That argument fails on its face because the Court already considered Defendants’ sufficiency



of evidence argument for remittitur and denied it. *See* ECF No. 292 at 5 (“Defendants’ arguments for further reduction are rejected, as they lack sufficient evidentiary or legal support.”). Under the law of the case doctrine, Defendants must present some new evidence or argument supporting disturbing this Court’s prior decision on remittitur—their failure to do so means their request should be summarily denied. *Monsisvais*, 946 F.2d at 1115; *Webb*, 98 F.3d at 587. Moreover, Defendants’ request fails because they present no argument, evidence, or case law in support of the contention that a jury verdict of \$300,000 is excessive in this matter. Lastly, binding precedent bars this Court from remitting the jury’s award below the \$300,000 maximum cap threshold. *See Deters v. Equifax Credit Info. Servs., Inc.*, 202 F.3d 1262, 1273 (10th Cir. 2000).

### CONCLUSION

For the reasons articulated in Dr. Tudor’s Motion to Strike (ECF No. 318), Tudor respectfully requests that the Court strike Defendants’ Motion for Judgment Notwithstanding the Verdict, Or, in the Alternative, New Trial (ECF No. 316) as sanction for it being inexcusably untimely. In the event that Tudor’s Motion to Strike is not granted, she alternatively requests that Defendants’ Motion be denied on the merits for the reasons articulated above.

Dated: July 26, 2018

/s/ Ezra Young  
Ezra Young (NY Bar No. 5283114)  
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**CERTIFICATE OF SERVICE**

I hereby certify that on July 26, 2018, I electronically filed a copy of the foregoing with the Clerk of Court by using the CM/ECF system, which will automatically serve all counsel of record.

/s/ Ezra Young  
Ezra Young (NY Bar No. 5283114)

# Exhibit 1

## MEMORANDUM

TO: Dr. Rachel Tudor

FROM: Douglas N. McMillan, Ph.D.  
Interim Vice President of Academic Affairs

RE: Denial of Application for Tenure and Promotion

DATE: April 30, 2010

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It is my understanding that you have been informed by President Minks of his decision to deny your request for tenure and promotion to associate professor. This authority to communicate the reasons for denial of tenure and promotion rests with the president as suggested in the Academic Policy and Procedures Manual Section 3.7.4. However, the President may delegate this authority under the RUSO Board Policy if he so desires. Dr. Minks has delegated the authority to me, as acting chief academic officer, to communicate the reasons for the denial of your application for tenure and promotion.

After careful review of your portfolio, it was determined that you do not currently meet the policy requirements for tenure and promotion in the areas of research/scholarship and contributions to the institution and/or profession. The Academic Policy and Procedures Manual stipulates that in order to be granted tenure and promotion your body of work in these areas should be both excellent and noteworthy.

An examination of the research/scholarship portion of your portfolio listed eight activities during your employment at Southeastern. These eight activities include two publications, one presentation at a regional symposium, one presentation at a local symposium, two editorships of the proceedings papers at a local symposium, and two "open-mic Chapbooks". The first three activities (the two publications and the presentation at the regional symposium) do appear to be examples of work which meet the excellent and noteworthy standard. However, the remaining activities fail to meet these standards. For example, the two Open-mic Chapbooks appear to be self-collected unpublished works which certainly do not reach the noteworthy and excellent standard. Finally, in trying to verify your contribution as editor to the proceedings of the 2006 and the 2008 Native American Symposium, some confusing information was found. In fact, the link you provided to the 2006 symposium did not identify you as an editor and the link you provided for the 2008 symposium did not lead to any proceedings. Just as an aside, editing the proceedings at a local symposium does not meet an excellent and noteworthy accomplishment for a university faculty member. In summary, your efforts in scholarship and research appear to have yielded some appropriate work; however, the body of your work, since being employed at Southeastern, is either unverifiable or falls below the policy requirement for tenure and promotion.

The Academic Policy and Procedures Manual also requires that your service reach the noteworthy and excellent standard. A review of your university service reveals that since your employment at Southeastern began, until 2009 your service has primarily been limited to serving on Internal

**COPY**

departmental committees, such as, a program review committee, an assessment committee and a hiring committee, that clearly do not reach the policy requirement for tenure or promotion. In fact, out of eight activities you listed on your vita, four were internal departmental committees. Two of the remaining examples of service were not begun until 2009. This does not establish a record of service that is either noteworthy or excellent.

Subsequently, the reasons delineated in this memorandum formed the basis for the denial of your application for tenure and promotion.

**Lucretia Scoufos**

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**From:** Charles Weiner  
**Sent:** Thursday, April 01, 2010 9:38 AM  
**To:** Doug McMillan; Larry Minks; Lucretia Scoufos  
**Cc:** 'Babb, Charlie'  
**Subject:** FW: Rachel Tudor

**Exhibit 2**

**Importance:** High  
**Sensitivity:** Confidential

Let me put an addendum on to my previous email. Records indicate that she started at SE in 2004 so this is not her terminal year. Next year will be her terminal year. The two options are still viable. Dismiss her without cause or let her reapply. In either instance she will need to be notified by March 1<sup>st</sup> that she is not being reappointed or if she doesn't get tenure, than she will not be rehired.

Chip

*Charles "Chip" Weiner, Ed.D.*

Assistant Vice President for Academic Affairs  
Director of Student Learning and Institutional Research  
Coordinator, HLC/NCA Accreditation  
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[cweiner@se.edu](mailto:cweiner@se.edu)

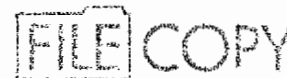
*Southeastern Oklahoma State University*

**From:** Charles Weiner  
**Sent:** Thursday, April 01, 2010 9:28 AM  
**To:** Doug McMillan; Larry Minks; Lucretia Scoufos  
**Cc:** 'Babb, Charlie'  
**Subject:** Rachel Tudor  
**Importance:** High  
**Sensitivity:** Confidential

Good Morning All:

I had the most interesting conversation with Charlie Babb yesterday in regard to the Tudor appeal. I will try and enumerate everything that we talked about but there are places my handwriting is hard to read. First I will start off with the Fridley appeal. Charlie said everything there was fine, no problem. The Tudor appeal however has many different angles to it. First of all he concurred that the policies in question were conflicting. In this appeal there are four different policies at play. They are:

- 3.7.3 – Role of the President
- 3.7.4 – Role of the Faculty
- 4.4.6 – Faculty Grievance Policy



#### 4.6.3 – Procedure for Granting Promotion and Tenure

Each one of these policies played a role in this appeal. She filed her grievance under section 3.7.4 focusing on the part about reasons having to be provided if there was an adverse action taken. She requested that Drs. McMillan and Scoufos provide her with reasons as to why their recommendation was to deny granting tenure and promotion. The fallacy here is that the faculty member is provided an opportunity to request a due process hearing before any adverse action has been taken. According to Charlie this really isn't a due process issue but an administrative policy issue; however, it is stated that way in our Policies and Procedures Manual. She requested a due process hearing and based upon her complaint, the Faculty Appellate Committee met on March 22, 2010, and agreed with her grievance that reasons must be provided. I will admit that I had difficulty writing the letter and was very appreciate of Charlie's comments in regard to it. Here are the things that Charlie and I talked about in regard to this appeal:

- The policy does not require the dean or the VP to provide reasons
- The authority is vested in President and if he chooses to do so, he may provide reasons as to why
- Since this was her terminal year in the process Charlie wanted to know if we gave her that information in writing before March 1<sup>st</sup>
- If we did not provide her with written notice by March 1<sup>st</sup> than we are in violation of that policy (our policy is pulled directly from the RUSO policy)
- Our options are twofold – at this point we can give her written notice that next year will be her last year at SE. If we give it to her now than we meet the March 1, 2011, deadline and we don't have to provide her any reason at all for anything. She is just being dismissed without cause. The second option would be to let her reapply for tenure and promotion next year, provide her with the reasons as to why she was denied this year, and inform her that if she does get tenure next year than she will not be reappointed. In this way we also meet the March 1<sup>st</sup> deadline.

If I understood Charlie correctly it would be in our best interest, and RUSO's best interest, to provide her with another year at Southeastern based upon the options presented above.

Charlie – I hope I have stated everything correctly. I am sure that President Minks and Drs. McMillan and Scoufos will have questions for you. If I have misspoke in anyway please correct me by providing them with the correct information.

Chip

*Charles "Chip" Weiner, Ed.D.*

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## OFFICE OF ACADEMIC AFFAIRS

SOUTHEASTERN OKLAHOMA STATE UNIVERSITY  
 1405 N. FOURTH AVE., PMB 4137  
 DURANT, OK 74701-0609

## MEMORANDUM


## Exhibit 3

580-745-2220

FAX 580-745-7474

WWW.SE.EDU

**TO:** Rachel Tudor

**FROM:** Douglas N. McMillan,   
 Interim Vice President for Academic Affairs

**RE:** Application for Tenure and Promotion during the 2010-2011 Academic Year

**DATE:** October 5, 2010

I have been informed by the Dean of the School of Arts and Sciences that you plan to submit a portfolio for tenure and promotion again for this academic year of 2010-2011. You will recall that during the review of your 2009-2010 academic year application you were extended an offer which would have allowed you an additional year to strengthen your portfolio and hopefully obtain tenure and promotion. Pursuant to policy, academic year 2010-2011 is your seventh year of tenure probation and therefore your terminal year at Southeastern. In my letter of April 30, 2010 I outlined certain deficiencies in scholarly activity and service which needed correcting in your portfolio. You were offered the opportunity to teach at Southeastern during the 2010-2011 and 2011-2012 academic years and then reapply for tenure and promotion during the 2011-2012 academic year if you would withdraw your 2009-2010 application. This offer, in effect, would have given you two years to correct the deficiencies in scholarly activity and service, which were outlined in my letter to you on April 30, 2010. To my astonishment, you declined this offer. At the time the offer was made it was my opinion that one year was insufficient for correcting the deficiencies in your portfolio. This is still my opinion.

After reviewing the Academic Policy and Procedure Manual, I find no policy that allows for an application for tenure in a subsequent year after being denied tenure and promotion in the previous year. The policy states that an application for tenure may occur in the fifth, sixth or seventh year. I recognize that the policy does not proscribe a subsequent application, however, since there is no specific policy, which addresses this issue, I believe the administration is charged with the responsibility of making a decision which is in the best interests of the university. I believe that allowing you to reapply for tenure and promotion so soon after your most recent denial is not in the best interests of the university. This is especially true given the nature and extent of needed improvement and the short amount of time which has passed since the portfolio deficiencies were enumerated. It is my opinion that allowing you to reapply will be disruptive to the School of Arts and Sciences, create unnecessary work for both your department and the administration, and will potentially inflame the relationship between faculty and administration. It is my decision as acting chief academic officer that your application/request and portfolio will not be accepted for review for the 2010-2011 academic year.

**FILE COPY**

SOUTHEASTERN OKLAHOMA STATE UNIVERSITY



**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF OKLAHOMA**

RACHEL TUDOR,

Plaintiff,

v.

SOUTHEASTERN OKLAHOMA STATE  
UNIVERSITY, and THE REGIONAL  
UNIVERSITY SYSTEM OF  
OKLAHOMA,

Defendants.

**Case No. 15-cv-324-C**

**DEFENDANTS' REPLY IN FURTHER SUPPORT  
OF THEIR RENEWED MOTION FOR JUDGMENT  
AS A MATTER OF LAW AND, IN THE ALTERNATIVE, FOR A NEW TRIAL**

In response to Defendants' renewed motion for judgment as a matter of law and, in the alternative, for a new trial, Plaintiff again puts forth questionable claims, misrepresentations, and false statements. Here are some of the most egregious examples.

**Religion**

Plaintiff claims the "Defendants put McMillan's religion into issue." [Doc. 324, p. 17]. This statement is demonstrably false. Not only was Plaintiff undeniably the first to inject religion during trial, despite Plaintiff's bizarre post-hoc denial of this, but Plaintiff and her federal government cohorts were the first to make Dr. McMillan's religious beliefs an issue well before trial, even though there was no evidence to corroborate the accusations.

Let us go back to the beginning. On March 30, 2015, the United States (as Plaintiff) submitted the following language in its Complaint: a "human resources

employee warned Dr. Tudor that Southeastern's Vice President for Academic Affairs, Dr. Douglas McMillan, had inquired whether Dr. Tudor could be fired because her 'transgender lifestyle' offended his religious beliefs." [Doc. 1, ¶15]. The United States further alleged: "Jane McMillan . . . told Dr. Tudor that Vice President McMillan (who is her brother) considered transgender people to be a 'grave offense to his [religious] sensibilities.'" *Id.* at ¶ 17. Tudor's "Complaint in Intervention," [Doc. 24], made the same type of allegation on May 5, 2015, stating: "the human resources employee warned Dr. Tudor that Southeastern's Vice President For Academic Affairs, Dr. Douglas McMillan, had inquired whether Dr. Tudor could be fired because her 'transgender lifestyle' offended his religious beliefs." *Id.* at ¶40. Plaintiff continued the attack on Dr. McMillan's religious beliefs two paragraphs later: "Jane McMillan . . . told Dr. Tudor that Vice President McMillan (who is her brother) considered such people to be a 'grave offense to his [religious] sensibilities.'" *Id.* at ¶42.

Defendants attempted to prevent this line of attack in advance of trial. Specifically, Defendants moved to have testimony and evidence regarding Plaintiff's uncorroborated insinuations about Dr. McMillan's religion excluded [Doc. 195], a motion which the Court granted. [Doc. 224]. But, as described in Defendants' Motion for a New Trial, Plaintiff nevertheless first broached the issue of Dr. McMillan's religious beliefs during Plaintiff's questioning of Plaintiff's own witness, Mindy House:

- Q. Have you ever had conversations with Douglas McMillan, the former vice president of academic affairs at Southeastern, where he shared with you his religious beliefs?

(*Trial Transcript*, Vol. 3, p. 510, ln. 16-18). Counsel for Defendants immediately objected. The Court overruled the objection, however, and Plaintiff continued:

Q. Okay. Did you think the conversations you had with Douglas McMillan where religion was brought up were appropriate?

A. No. It had nothing to do with my employment.

Q. Did Douglas McMillan make an employment decision –

A. Yeah.

Q. -- on the basis of his religion?

A. Yes.

Q. Did that make you feel uncomfortable?

A. Yes.

Q. Did Douglas McMillan frequently bring up his religion at work?

A. I don't know frequently, but, yes –

*Id.* at ln. 2-14.

In closing, Plaintiff's counsel zeroed in on Dr. McMillan's faith once again, arguing, "[f]rankly, you'd think that a true man of faith might just come out and confess to doing the obvious. Something was rotten at Southeastern. I guess he's not yet ready to admit it." *Trial Transcript*, Vol. 5, p. 841, ln. 14-17. So, Plaintiff's counsel planted the seeds of religious bigotry in the jury's mind in the opening, let those seeds germinate for the remainder of the trial, and then when it came time for closing arguments reaped the insidious intolerance he had sewn.

Again, it is undeniable—though Plaintiff nevertheless denies it—that Plaintiff put Dr. McMillan's religion at issue in this case, and that Plaintiff raised it first at trial, despite a motion in limine being granted against this. Plaintiff's counsel now

complains that “Defendants’ Motion endeavors to paint the undersigned as harboring bigotry for persons of faith, which is patently offensive given his own faith.” [Doc. 324, p. 19, fn. 4]. Whether Plaintiff’s counsel is offended has no relevance here; nor do his own religious beliefs. What is relevant is that Plaintiff’s counsel told the jury that if Dr. McMillan were a “true man of faith” he would admit to being guilty, thereby insinuating that, since he had not admitted guilt, he was not a “true man of faith.” Sliming Dr. McMillan in this way is inexcusable in an American court of law—where religious exercise is respected and people, presumed innocent, have no obligation to confess—regardless of counsel’s own faith or beliefs. A new trial should be granted.

#### **Waiver Arguments and Expert Testimony**

Plaintiff argues that Defendants have waived a number of issues. This contention is without merit. As a reminder, Plaintiff has a habit of making frivolous waiver claims. Recently, Plaintiff argued that Defendants had somehow waived the statutory damages cap under Title VII, [Doc. 290], despite the fact that the Title VII cap was listed by the parties in the joint pretrial report as a “Stipulated Fact.” [Doc. No. 207]. The Court rejected this absurdity, stating, “Plaintiff’s arguments of waiver are without merit.” [Doc. 292, p. 3]. Plaintiff also argued that Defendants had “waived” the use of so-called after-acquired evidence (regarding Plaintiff’s non-renewal at Collin College), even though Defendants’ use of that evidence was not as ‘after-acquired’ evidence at all. The Court found this waiver argument to be “without merit” as well. *Id.* at p. 2.

Plaintiff's current assertions of waiver are also without merit. To give just one example, Plaintiff takes issue with Defendants' argument regarding Dr. Parker. Plaintiff claims that Defendants waived their objections to Dr. Parker's testimony. But, it is undisputed that Defendants sought to exclude Dr. Parker's testimony and his report entirely via their Second Motion in Limine (*Daubert*) [Doc. 98]. The Court denied this motion. [Doc. 163]. Plaintiff cites *McEwen v. City of Norman* for the proposition that Defendants' objections to Dr. Parker were waived by insufficient objections voiced during the trial itself. 926 F.2d 1539 (1991). Plaintiff's reliance on *McEwen* is misplaced. In 1993, the Tenth Circuit held that, "an adequately presented motion in limine may preserve an objection if it concerns an issue that can be and is definitely ruled upon in a pretrial hearing." *United States v. Mejia-Alarcon*, 995 F.2d 982, 987–88 (10th Cir. 1993). The *Mejia-Alarcon* case noted that its holding was *not* inconsistent with *McEwen* because the district court in *McEwen* "expressly reserved ruling on the plaintiff's motion in limine until trial." *Id.* at 988 (emphasis added).

Here, the district court expressly denied Defendants' motion in limine. The Court's "Memorandum Opinion and Order" of September 9, 2017 [Doc. 163], definitively addressed the issues of whether Dr. Parker could testify at trial and whether his report could be submitted. According to the Court: "Dr. Parker will be permitted to offer expert testimony in this matter," his "testimony will be helpful to the jury," and "Defendants' Second Motion in Limine (Dkt. No. 98) is DENIED." [Doc. 163, pp. 3-4]. Thus, the present matter is directly analogous to *Mejia-Alarcon* and not *McEwen*, and the matter of Dr. Parker was not waived by Defendants.

### Handicaps at Trial

Lastly, Plaintiff continues to make numerous misleading statements regarding the procedural hardships foisted on Defendants during trial. Plaintiff baselessly asserts Defendants “fail to mind their duty of candor” with respect to Plaintiff’s failure to follow a basic local rule regarding the marking of exhibits and the disadvantage this failure posed on Defendants. Despite Plaintiff’s counsel’s direct statement to the Court that “this was the first he heard of this problem,” Plaintiff was informed multiple times prior to trial, in writing. *Trial Transcript*, Vol. 1, p. 5, ln. 23 – p. 6, ln.12, and [Doc. 243-1]. Plaintiff was even admonished by the Court, and restricted from presenting exhibits until Plaintiff’s counsel remedied their procedural failure. *Id.* at p. 6, ln.13-21.

Next, Plaintiff misrepresents the hardship caused by Plaintiff’s failure to serve trial subpoenas on witnesses in a reasonable time as required by Fed. R. Civ. P. 45. Rather than focus on trial preparation, Defendants’ counsel had to field multiple calls from individuals at the University who were requesting assistance in quashing the subpoenas calling for their appearance the next day. Plaintiff’s counsel was given the clear statement of the Court that “one day’s notice would not be reasonable. For many people, two day’s notice is not reasonable.” *Trial Transcript*, Vol. 2, p. 201, ln. 13-15. Despite the rule only requiring the movant prove only one element for quashing a subpoena, Defendants’ counsel were required (on behalf of the various witnesses subpoenaed by Plaintiff at the proverbial eleventh hour) to show **both** unreasonable

time to comply *and* that it subjected the person to undue burden. This effectively changed the rule from “or” to “and,” resulting in unfair prejudice against Defendants.

Finally, Plaintiff falsely claims that there was merely a “mistaken release of one day of trial transcripts during the pendency of trial.” But, in fact, trial for this matter commenced on Monday, November 13 and the release of the transcripts was not discovered by the Court, and Defendants, until Thursday, November 16. That would mean that Plaintiff released three (3) days’ transcripts, not just one. Furthermore, it was not a mistake. Daily transcripts were ordered by, and provided to Plaintiff, whereby she or her counsel released them to the media for online publication contemporaneous with trial, much to the Court’s concern. *Trial Transcript*, Vol. 3, p. 556, ln. 4 – p. 557, ln. 12.

### CONCLUSION

Plaintiff failed to put forth sufficient factual evidence to sustain the jury verdicts here. Most prominently, Plaintiff put on a transgender identity case, which is not encompassed by Title VII under Tenth Circuit precedent, rather than a sex-stereotyping case. As such, Defendants renew their motion for judgment as a matter of law under Rule 50(b) of the Federal Rules of Civil Procedure.

In the alternative, Defendants move under Rule 59 for a new trial because: (1) Plaintiff’s evidence was insufficient and tainted by religious bigotry; (2) Plaintiff’s expert should not have been allowed to testify, as was made apparent by his unfounded and subjective trial testimony; (3) even with the Title VII statutory cap applied, Plaintiff’s award was wrongly based on emotional distress and otherwise

unsupported by the evidence; and (4) Plaintiff's trial presentation was misleading and unfairly prejudicial. It injected inappropriate religious animus into the jury's deliberations. Plaintiff's unwillingness or inability to follow basic precepts of civil procedure, service of process, and trial conduct handicapped Defendants in the presentation of their defenses at trial. Defendants respectfully ask this Court to grant the motion for judgment notwithstanding the verdict, and in the alternative for a new trial.

Respectfully submitted,

/s/ Jeb E. Joseph

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**CERTIFICATE OF SERVICE**

I hereby certify that on this 2nd day of August 2018, I electronically transmitted the foregoing document to the Clerk of Court using the ECF System for filing and transmittal of a Notice of Electronic Filing to the following ECF registrants:

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/s/Jeb E. Joseph  
Jeb E. Joseph

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF OKLAHOMA**

RACHEL TUDOR,

Plaintiff,

v.

SOUTHEASTERN OKLAHOMA STATE  
UNIVERSITY, and THE REGIONAL  
UNIVERSITY SYSTEM OF  
OKLAHOMA,

Defendants.

**Case No. 15-cv-324-C**

**DEFENDANTS' RESPONSE IN OBJECTION  
TO PLAINTIFF'S MOTION TO STRIKE**

Defendants, Southeastern Oklahoma State University (“SEOSU”) and the Regional University System of Oklahoma (“RUSO”), (collectively “Defendants”), and provide their Response in Objection to [Doc. 318], Plaintiff’s Motion to Strike, (“Motion to Strike”). As a preliminary matter, Plaintiff cites to no Federal or Local Rule for the authority to wholesale strike Defendant’s motion for judgement notwithstanding the verdict or in the alternative for new trial. Federal Rule of Civil Procedure 12(f) authorizes a district court to “strike from a pleading . . . any redundant, immaterial, impertinent, or scandalous matter.” Fed. R. Civ. P. 7 defines what constitutes a “pleading,” and none of the seven (7) items listed therein are a motion for judgment notwithstanding the verdict or for a new trial. Regardless, in case the Court is inclined to entertain Plaintiff’s Motion to Strike, and classify Defendants’ motion as a pleading subject to striking, then Defendants submit the following for the Court’s consideration:

## FUNDAMENTAL FACTS

1. Judgment in this case was not final until the Court entered it on June 6, 2018. *See* [Doc. 293], and Fed. R. Civ. P. 58.

2. According to Fed. R. Civ. P. 50(b), Defendants could “file a renewed motion for judgment as a matter of law” addressing “a jury issue not decided by the verdict, no later than 28 days after the jury was discharged.”

3. Fed. R. Civ. P. 50(b) further provides that “[n]o later than 28 days after the entry of judgment . . . [Defendants] may file a renewed motion for judgment as a matter of law and may include an alternative or joint request for a new trial under Rule 59.” (Emphasis added).

2. According to Fed. R. Civ. P. 59(e), Defendants could file a motion to alter or amend judgment no later than 28 days after the entry of judgment.

3. According to Fed. R. Civ. P. 59(b), Defendants could file a motion for new trial no later than 28 days after the entry of judgment.

4. Given that the Court entered judgment on June 6, 2018, Defendants had until Wednesday, July 4, 2018 to file motions under Fed. R. Civ. P. 59. However, since July 4 was the Federal Independence Day holiday, Defendants’ motion to alter or amend was due on or before July 5, 2018. *See* LCvR 6.1.

5. On July 5, 2018, Defendants timely filed their Motion for judgment notwithstanding the verdict and in the alternative for new trial. [Doc. 316]

6. Despite the somewhat casual colloquy now pointed to by Plaintiff, which took place very briefly at the very end of a long morning of awaiting a jury’s verdict,

which itself followed after a week-long trial, the Federal Rules of Civil Procedure make clear that motions for judgment notwithstanding the verdict and motions for new trial may be filed within twenty-eight (28) days of the entry of judgment. Fed. R. Civ. P. 58(a) also makes clear that a written judgment “must” be entered “in a separate document,” and the Court made very clear that it was not entering judgment that day in December 2017.<sup>1</sup>

### ARGUMENT AND AUTHORITY

“A cat can have kittens in the oven but that don’t make ‘em biscuits.” Dr. Frasier Crane, *Frasier*. Similarly, just because Plaintiff cries that something is late does not mean that it is. Plaintiff’s coupled misreading of the law and the Court’s isolated statement near the end of the proceedings after the jury’s verdict was read, is either disingenuous, or simply craven in the face of Defendant’s Motion for Judgment Notwithstanding the Verdict or Alternatively for New Trial. The brief verbal exchange pointed to by Plaintiff between The Court and Mrs. Coffey at the end of the last day of trial proceedings can only have been referring to a Rule 50(b) motion addressing a “jury issue *not* decided by a verdict,” Fed. R. Civ. P. 50(b), (emphasis added), because the deadline for such motion is not contingent on judgment being entered, but rather runs from the date the jury is discharged.

In addition, as a precautionary measure, Mrs. Coffey contacted Judge Cauthron’s courtroom deputy, Linda Goode, for clarification of the application of the

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<sup>1</sup> “Okay. Well, I’ll just not enter judgment then.” The Honorable Robin Cauthron, Trial Transcript Vol. 6, p. 873, ln. 20-21.

December 11, 2017 deadline. Specifically, counsel indicated Fed. R. Civ. P. 50(b) and 59(e) set certain deadlines based upon the entry of judgment, which, of course, had not yet occurred, and thus, wanted to be certain it was not Judge Cauthron's intent to set a deadline to apply to those motions. After consulting with Judge Cauthron, Ms. Goode relayed to Mrs. Coffey the deadlines set forth in the federal rules were applicable. And, as noted above in the "Fundamental Facts" section, *supra*, the Court "must" enter the judgment as a separate document, and that event then begins the period of twenty-eight (28) days within which parties may file motions for judgment notwithstanding the verdict or motions for new trial under Fed. R. Civ. P. 50(b) and 59. As all parties are aware, Defendants' Motion was timely filed within the twenty-eight (28) days afforded them (and all parties) by the Federal Rules of Civil Procedure.

### CONCLUSION

The Federal Rules of Civil Procedure are clear. The date judgment was entered in this case is undisputedly June 6, 2018. The fact that Fed. R. Civ. P. 50(b) affords Defendants twenty-eight (28) days from the date the Court enters judgment to file a renewed motion for judgment as a matter of law that may include an alternative or joint request for a new trial is undisputed. The fact that Defendants filed their Motion within twenty-eight (28) days of the Court's entry of judgment is undisputed. The fact that those kittens born in the oven are still kittens, (and not biscuits), is manifest. Plaintiff's Motion to Strike should be denied.

Respectfully submitted,

/s/ Jeb E. Joseph

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**CERTIFICATE OF SERVICE**

I hereby certify that on this 8th day of August 2018, I electronically transmitted the foregoing document to the Clerk of Court using the ECF System for filing and transmittal of a Notice of Electronic Filing to the following ECF registrants:

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/s/ Jeb E. Joseph

Jeb E. Joseph

~ 5 ~

### **CERTIFICATE OF COMPLIANCE**

This document was scanned for viruses using Symantec Endpoint Protection version 14.2. Any required paper copies to be submitted to the court are exact copies of the version submitted electronically. Additionally, all required privacy redactions have been made in accordance with Fed. R. App. P. 25(a)(5) and 10th Cir. 25.5.

*/s/ Zach West*

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### **CERTIFICATE OF SERVICE**

I certify that on March 4, 2019, I filed the foregoing with this Court and served a copy on all parties via the Court's CM/ECF filing system. A single hard copy of the foregoing, which is an exact copy of the document filed electronically, will be dispatched via commercial carrier to the Clerk of the Court for receipt within 2 business days.

*/s/ Zach West*

---

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