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**Promotion and Tenure, Sexual Harassment, Gender
Discrimination, Whistle-blowing, and the Grievance Process**

Instructional Format & Objectives

This case study is designed for a one hour and forty-five minute session with academic deans. The participants will be divided up into groups of 8-10 at tables. They will be provided with background materials associated with the case study. The background materials will include hypothetical university standards on promotion and tenure, grievance procedures, a statement on academic freedom and responsibility, and synopses of several relevant statutes and cases relating to the case study. Each group will work through the case study in four stages, addressing proposed questions after each stage, with intervening short discussion led by the moderators after each stage. After each discussion the participants will be given additional facts based upon decisions and approaches suggested by analysis of questions presented in the previous stage. The key topics covered in this case study include:

- Documentation of a promotion and tenure recommendation
- Standards and processes for handling a sexual harassment claim
- Communicating a promotion and tenure decision
- Consulting institutional policies
- Separating collateral issues of significant import to the university from the promotion and tenure review process
- Protecting confidentiality of university processes in a high risk situation
- Applying university grievance processes
- Determining the sufficiency of wrongful conduct in a grievance process
- Consideration of First Amendment values in a promotion and tenure dispute
- Clarifying the university's expectations for tenure in a complicated case involving perceived "mixed motives."
- Anticipating and avoiding liability risks with integrity

Case Study "Harassment at Humanitarian"

The recently appointed Dean of the College of Arts and Sciences at Humanitarian State University, Dean Patricia Newcomer, has just learned from the Chief of University Police about a troubling pattern of harassing phone calls received by faculty and staff throughout the University. The phone caller claims that the University has conspired to take his children away from him, and in response he plans to do the same to faculty and staff at the University. The caller has threatened to kidnap and "do worse" until the University "resolves the situation." The Chief has identified the caller, Abraham Streckni, as the estranged spouse of an anthropology professor, Assistant Professor Eva Adams. Dean Newcomer remembers that Eva and Abraham met while she was conducting ethnographic studies on a Fulbright fellowship in Serbia during the conflict in Kosovo. Eva is an American citizen, and Abraham applied for citizenship after they were married several years ago. They have two young children, Rachael, age 3, and Jacob, age 5. Abraham suffers from bipolar illness and was arrested a year ago for spousal abuse. He and Eva have been legally separated for over a year. After treatment in a stateside psychiatric hospital, Abraham was deported to Serbia. Eva instituted divorce proceedings and obtained legal custody of the children.

Three months ago immigration and customs enforcement agents apprehended Abraham after he crossed the Mexican border. They again deported him to Serbia. After determining that he had once been a member of a Serbian extremist group loyal to Slobodan Milosevic, the FBI placed him on a watch list. Faculty and staff who have received harassing phone calls seem to know of Abraham's condition, and some have expressed concern that he is dangerous to the community.

After meeting with the chair of the Anthropology Department, Professor Miles Franken, Dean Newcomer understands that most of the department's faculty members - who are all women, with the exception of Professor Franken and a recently tenured male professor - have been subjected to these phone calls. Eva has served six years with the University. Last year, after Professor Franken became concerned about the pressure and stress on Eva as a result of her personal situation, he granted her a year extension on her promotion and tenure review without notifying the outgoing Dean. Eva's teaching evaluations have suffered in the last year, and she has not completed a book which would satisfy the department's publication requirement. For promotion to Associate Professor with tenure the College requires evidence of significant scholarship, sustained excellence in teaching, and substantial community service. Each department establishes its own specific criteria related to satisfying these standards.

At the beginning of the present academic year Miles met with Eva and discouraged her from seeking tenure. In light of her personal situation he encouraged her to look for a position elsewhere. Eva was incredulous and insisted that she be reviewed for tenure. She reminded Miles that when he met with her a year ago, he said that she had satisfied all the criteria for tenure except for publication, and that if she published her book, "tenure would be assured." A denial of tenure at Humanitarian ordinarily results in termination of employment at the end of the academic year, although the Dean, upon recommendation of the Department Chair, usually agrees to an additional contract "grace year" of employment. Last week the department's promotion and tenure committee voted to deny Eva tenure, based upon insufficient scholarship and teaching excellence. The Chair of the Department, Professor Franken, also serves as Chair of the department's Promotion and Tenure Review Committee (PTRC). The Committee's report cited average teaching evaluations in the last year, modest scholarship, and lack of collegiality as reasons for the denial. In fact Oxford University Press has just agreed to publish Eva's recently completed book, *Patterns of Ethnic and Religious Conflict in Kosovo*. Privately, Professor Franken has disclosed to Dean Newcomer that Eva's personal situation has been very disruptive of relationships within the department. Her supporters claim that members of the department have not been sympathetic to Eva's troubles, and her detractors are simply tired of living through her turmoil. They resent her working at home, not actively participating in committee work, and constantly talking about her personal troubles with Abraham. Now, many faculty members have been subjected to harassing phone calls from Abraham at all times of the day and night. When Professor Franken told Eva of the committee's decision, she threatened to sue the University. She wrote an e-mail to the entire department claiming that certain members of the committee were taking their revenge upon her for the actions of her former spouse. Moreover, she also claimed in the e-mail that Professor Franken sexually harassed her after her separation. "He invited me to his house, tried to kiss and fondle me, and told me that he would make it worth my while if I would go to bed with him." Eva also claimed in the e-mail that Professor Franken had "seriously mismanaged two federal research grants to the Department and diverted funds for use on other departmental pet projects." Miles vehemently denies the charges.

Meanwhile the Chief has just telephoned Dean Newcomer to report that Abraham's threatening calls have escalated across campus. Eva emailed Abraham with news of the tenure denial and to inform him that he will need to increase the amount of alimony paid; Abraham responded by calling the President's office and threatening to bomb the University because it has denied tenure to his wife and plunged his family into financial insecurity. Eva's legal counsel has called University Counsel and insisted upon a meeting. The FBI has informed University Police that Abraham has left Serbia and cannot be located.

In addition, the Provost has asked Dean Newcomer to report her recommendation on promotion and tenure for Assistant Professor Adams.

Instructions for Group Discussion - Part I.

Professor Adams has requested a meeting with Dean Newcomer to discuss her "situation".

1. What documentation should Dean Newcomer consult in preparation for the meeting, and what additional questions from Adams should Dean Newcomer be prepared for?
2. How should Dean Newcomer advise Adams if she raises the sexual harassment claim?
3. How should Dean Newcomer respond if Professor Adams alleges that her denial of tenure is in retaliation for her former spouse's actions?

Part II

Dean Newcomer informed Professor Adams that she will not endorse the Committee's recommendation denying promotion and tenure until a thorough review of her sexual harassment claim has been conducted by the University's Human Resources Department. The Human Resources Department conducted a review of Adams' allegations and found them without merit. The investigator has provided the Dean with a report that indicates that the meeting at Franken's house, which was the principal basis of the charge, never took place. Franken was suddenly called out of town that evening to attend to his mother, who had been hospitalized. However, Franken did acknowledge that he may have hugged Eva at a meeting in his office when she disclosed her separation from Abraham as a way of comforting her in a time of emotional distress. When confronted with this information by the investigator, Adams was incensed, and claims that the meeting took place, but she may have been mistaken about the exact date. Moreover, she claims that because of Franken's continuing requests for sexual favors, she began to work at home and avoid committee work which brought her in contact with Franken. The investigator asked Dean Newcomer if she "should do anything else" regarding the allegation. Dean Newcomer replied that she was convinced that the claim was unfounded and "nothing more was necessary."

In the course of his inquiry the investigator also uncovered some irregularities in the grant accounts of the anthropology department, and he has recommended that the University's internal auditor conduct a more intensive examination of Chairman Franken's records. Dean Newcomer has decided to accept the recommendation of the Anthropology Department and inform Professor Adams. She plans to consult with legal counsel before meeting with her.

Instructions for Group Discussion – Part II.

1. What grounds does Dean Newcomer have for making her decision to deny tenure? Does she need any additional information before making her decision?
2. How should she plan to communicate her decision to Professor Adams?
3. What issues should be anticipated and addressed in her communication, if any?

Part III.

Before Dean Newcomer has a chance to draft her letter informing Eva of the recommendation of the Anthropology Department and her decision, Dean Newcomer receives an anonymous letter from another member of the Anthropology Department. The letter, signed by Professor X, points out that in the past seven years, no female member of the Anthropology Department has received tenure. In that same period, two male professors were hired for tenure-track positions; one left shortly after receiving tenure, while the other received tenure two years ago and has remained at Humanitarian. Professor X's letter says that Professor Franken has told her privately that she should be glad that Eva likely will not receive tenure because "there are too many women in this department already," and "there are only two tenure lines that will be coming up and we've got to keep one open for a man."

Newcomer asks the other tenured male professor, Jim Balkin, if he has ever heard comments about trying to increase the number of male faculty members in the department; Professor Balkin shrugs and says, "look, we're not going for a quota or anything, but everyone knows that it's harder to get students to major in a department that's dominated by women. The Board of Trustees has told everyone that we're supposed to develop our departments to attract more students."

Instructions for Group Discussion – Part III.

1. Should this information affect Dean Newcomer's decision to affirm the decision of the Department of Anthropology?
2. What other information would help Dean Newcomer evaluate the accusation of gender discrimination?
3. What additional information or facts, if available, would suggest that even if there is truth to the accusations of gender discrimination, Dean Newcomer could still affirm the department's decision?

Part IV.

With the advice of University legal counsel Dean Newcomer just finished crafting a letter to Professor Adams in which she endorses the decision of the department denying promotion and tenure when the University Police Chief and the University's Director of Communications arrive at her office with troubling news. They have learned from a friend of the Streckni's that Abraham was seen purchasing groceries at a local food store. The harassing calls have escalated and are now being made to faculty and staff throughout the University. In light of the situation they recommend that a campus wide e-mail be sent to all faculty and staff alerting them to the situation. Moreover, several faculty insist that University officials meet with them to fully disclose what the University knows about Abraham and the exact nature of the risk that they face.

Instructions for Group Discussion - Part IV

1. Should Dean Newcomer reconsider her promotion and tenure decision? Should she send the letter endorsing the tenure denial to Professor Adams or consider another approach? Should she grant Professor Adams another contract year, or should she discharge Professor Adams for making a false claim regarding sexual harassment? What might be the consequences of each approach? Can Adams invoke grievance processes in regard to her promotion and tenure decision, the judgment regarding her sexual harassment claim, or to claim retaliation for exercising her First Amendment rights in "blowing the whistle" on Miles ?
2. Should Dean Newcomer authorize sending a campus wide e-mail? What should the e-mail communicate to the campus community?
3. Should Dean Newcomer agree to meet with concerned faculty who have received threatening phone calls? What should she disclose to them?

Part V.

Dean Newcomer met with Professor Adams and informed her of her decision to accept the recommendation of the Department of Anthropology. The Dean revealed that Adams' claim of sexual harassment was found "unwarranted" by Human Resources. The Dean informed Eva of her right to grieve under established University grievance procedures, which were provided to her. As the Chair of the University Grievance Committee you have been provided with a Grievance Statement from Professor Adams which alleges wrongful conduct: (1) on the part of the Anthropology's Promotion and Tenure Review Committee in denying her promotion and tenure based upon her lack of

collegiality because members had been harassed by her former husband; (2) on the part of Professor Miles Franken, Department Chair and PTRC Chair, for wrongfully encouraging and facilitating the Committee's decision because Professor Adams did not accede to his sexual advances; and, (3) on the part of Dean Patricia Newcomer for denying her promotion and tenure based upon a flawed review process in which she affirmed the Committee's decision to retaliate against her for allegations made against Chairman Franken for his wrongful conduct and the disruption of the University by her former spouse.

Instructions for Group Discussion - Part V.

Based upon the University Grievance Policy (attached) and consideration of other relevant University policies:

1. Is the complaint by Professor Adams "grievable?"
2. What ways, if any, could be explored in the Grievance Committee's preliminary review of the complaint to resolve the grievance informally? Can the Committee simply avoid this step in the process, finding that it would be a futile effort?
3. In deciding upon the Committee's findings of fact and recommendations, what facts and circumstances are worthy of further investigation? What factual resolutions might be critical to the Committee's eventual decisions regarding each claim of wrongful conduct?