

## Appendix D.

### **SOME CASUAL REMARKS USED AS EVIDENCE IN TENURE-DENIAL AND OTHER FACULTY LAWSUITS<sup>1</sup>**

Faculty members who bring lawsuits against educational institutions may offer as evidence comments allegedly made in the past by their colleagues or campus administrators. These comments, which usually come from ordinary casual conversation, are most often used as evidence of discrimination.

The circumstances of the comments can vary widely. To whom was the statement made? It might have been directed to the plaintiff, or he or she may have overheard it or learned of it through a third person. About whom was the comment made? The comment may have been made about the plaintiff. Even if it concerned a different individual, a remark might be offered to show indirectly how the speaker felt about the plaintiff.

Below is a collection of comments that have been offered as evidence in litigation over the denial of tenure or other faculty disputes. Some are direct quotes, while others have been paraphrased from court records or news reports. Some of the speakers may have denied ever making the statements. Others may have claimed that their comments were taken out of context and misconstrued. Most probably found their role in the litigation quite unpleasant.

The message is clear. Faculty and academic administrators need to understand that almost anything they say may someday be repeated in a courtroom. The comments are grouped by the role of the speaker.

#### A. PRESIDENTS, DEANS, AND OTHER ADMINISTRATORS

##### **The English Department is a damn matriarchy.**

University president's comment made to the department chair, offered as evidence by a female English professor who was denied tenure. At the time, the department had a female chair and six other tenured females, out of a total of 26 tenured faculty.

##### **That's a problem. There are different standards for males and females.**

Interim dean, who was a faculty member in the political science department, discussing with a male colleague the successful tenure candidacy of a female professor. The male was later denied tenure.

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<sup>1</sup> Franke, Ann H. "Managing Legal Landmines," American Council on Education Workshop for Department Chairs and Dean, 2006.

**In terms of comparable white faculty members, blacks would cost the university more money to hire.**

University president, responding in a meeting to a question as to why the university did not have more black faculty members. Used as evidence in a lawsuit by a black faculty member who was denied reappointment.

**Your point of the tenure decision of [Professor X] as an instance of continued unfairness in the treatment of women in the Medical School is well taken. (In this particular case, I was already aware of the problem, and I have previously made inquiries of the Dean. I have not had a response.)**

Letter from university president to a tenured medical professor who had expressed concern about the on-going tenure candidacy of a colleague. The colleague, ultimately denied tenure, filed suit for gender discrimination.

**The dean is trying to get rid of black professors and I'm in a struggle with her over the appointment of an additional black professor. The dean's office is a bunch of racists.**

Comments allegedly volunteered by vice provost to an African-American visiting professor who was seeking renewal of her contract.

**All Mexicans hired by the college cause trouble.**

College president's remark to a part-time Mexican-American faculty member who was rejected for a full-time position. The judge specifically found the president's denial at trial that he ever made the statement "unconvincing."

**What are you going to do, sue me? Do you know what happens to people who sue their employer?**

Comments by dean offered as evidence of retaliation by an associate professor of engineering in his lawsuit over denial of salary increases and promotion to full professor. The dean denied using these exact words, but he did admit that he inquired into whether the professor planned to file suit, expressing the opinion that it would be a bad idea. The engineer, who was Jewish and raised in the USSR, also offered evidence that senior colleagues repeatedly referred to him as a "Russian Yankee" and a commie, and made anti-Semitic remarks about Jewish frugality and wearing a propeller on a yarmulke.

**Because of federal legislation that has eliminated a mandatory retirement age, institutional flexibility would be undesirably constrained and the granting of tenure in this instance is likely to foreclose a more appropriate appointment later.**

Letter from college president to faculty member who was nearly 60 years old explaining why she was denied tenure.

**There are too many foreigners in the Life Sciences department, and I plan to do something about it.**

Comment by president of a historically black university to a department chair, used as evidence by a Nigerian chemistry professor. The week after the chemist's discrimination claims were made public, an African American department chairman spoke in the Faculty

Council. The transcript recorded her remarks as **“We ought to be the majority here, the descendants of the slaves in this country ought to be. Now it doesn’t mean that anybody should dominate anybody just because they’re descendants of slaves, but we shouldn’t be absent. And when we start being absent here, I’m going to be concerned.”**

**I feel we should not have too many Chinese or Indian professors here. With too many foreign-born professors they would not assimilate culturally and therefore would not be good role models for the American students.**

Comments by an engineering professor, who was formerly an administrator at the university, to government investigators examining the discrimination claims of a Chinese professor who had been denied tenure.

**This university is first for blacks, then for whites, and then for you.**

Comment by a dean to an Iranian assistant dean. The dean also told a candidate for a faculty position that the assistant dean **did not have the work ethic of most Iranians and did not work as hard as Chinese faculty.**

## B. DEPARTMENT CHAIRS

**The promotions committee decided that you wouldn’t be happy here, and that other members of the department would resent you and be demoralized.**

Department chair’s explanation to a female who was denied tenure.

**Hey, you the Moroccan.**

Greeting at a department event by acting chair of foreign language department to an Algerian visiting professor. The acting chair had opposed the visiting professor’s appointment to an assistant professor position. The federal district judge ruled that a trial was needed to assess whether the visiting professor was a victim of discrimination.

**An effort to correct the imbalances in the department is beginning to show its effects. The ratio of U.S. born versus foreign born has improved from 5:37 to 10:28.**

Draft departmental self-evaluation by the department chair, discussing “present weaknesses” in a department of east Asian languages. Offered as evidence by a Japanese professor who alleged national origin bias upon being denied tenure.

**As indicated on the recruitment signoff sheet, the hiring goals for the psychology department are 61.8 percent women and 9.8 percent minorities. According to the attached workforce utilization report, there are 4 women and 2 minorities in the department. Thus, the department needs 3.23 women to reach its target.**

Memo by a department chair used as evidence by a male candidate who was denied a tenure-track position. In later email messages, the chair also commented on a particular search, **“Two male candidates cannot go forward”** and **“We cannot send two male candidates forward, given the targets in the department.”** The appeals court quipped in its opinion that the chair did not explain how the department “was going to appoint 23/100 of a woman.”

**You are at the university only because you're African-American. Being African-American without meeting publishing expectations isn't enough for tenure.**

Remarks allegedly made by department chair in conversation with untenured medical professor. Department chair alleged that professor claimed that being African-American ought to suffice for tenure.

**Whites at a historically black institution can only make a contribution in a subordinate role.**

From an article distributed by the chair of the physics department at a historically black institution, The chair also allegedly told a Mongolian professor that there was no room for advancement for whites in the physics department and only blacks could expect advancement.

**Your performance wasn't bad for a broad.**

Chair of music department, said after a performance by a female faculty member. The statement was used as evidence by another female musician who was denied a promotion to full professor.

**How can you stand to be around those white bitches?**

Comment by chair of recreation department made to black coach, used in lawsuit by a white physical education professor. Evaluating this and other evidence, a federal judge concluded that the chair's "equivocal explanation of these incidents is less than satisfactory and is inconsistent."

**There is no room for an Indian in this department. You are not "black enough."**

Remarks by department chair made in African-American Studies department meetings to an East Indian professor who was later denied tenure. Although the chair, who was untenured, did not vote on the tenure application, the candidate alleged that the chair poisoned her chances.

#### C. COLLEAGUES AND COMMITTEE MEMBERS

**We want to see young blood in the department.**

Comments to colleagues by two interviewers who rejected a woman over 40 for a community college faculty position. The following year two candidates under 40 were hired.

**White people who do research in black history are exploiting blacks just for their personal advancement.**

From a black colleague to a white professor of religion whose work on religion and society touched on black studies. The white professor was denied tenure.

**The department made a mistake in bringing in a person of such advanced age to teach classes one after another. The university is trying to renew itself.**

Comments made during consideration of candidate's tenure application. The trial judge observed that the plaintiff "has presented the rare 'smoking gun' in a discrimination case

that compels the Court to find that he has come forth with direct evidence of discrimination.”

**He is too old for the job.**

A colleague wrote an evaluation of an engineer seeking a mid-career change into academia that he was “too old for the job.” The candidate was nonetheless hired and eventually denied tenure, when the evidence of earlier hiring bias came out. In addition, another colleague frequently referred to older professors in an industrial engineering department as the “legacies,” borrowing a term that refers to old and outdated computer systems.

**It will go through because she’s a woman.**

Comment by a member of a promotion and tenure committee about a female professor’s tenure application. Offered as evidence in the case of a *male* electrical engineering professor who was *denied* tenure.

**I have trouble working with her because she reminds me of a prison matron.**

Comment by one professor to another made about a third. Offered as evidence in a discrimination lawsuit over the selection of a department chair.

**She had trouble attracting graduate students because she was too feminine, namely too unassuming, unaggressive, unassertive and not highly motivated for vigorous interpersonal competition.**

Comment during tenure committee meeting by department member who abstained from voting on the candidate.

**She is able to get her work published because of her relations with her publisher.**

Comment by male during department tenure meeting. When asked to explain, he allegedly replied, “You are very naïve.”

**We are interviewing you because we have to interview women.**

Remark to candidate for position in social science department, who was eventually hired as the first woman in the department. She later complained of harassment and the college eventually denied her tenure for failing to establish effective working relationships. She alleged the tenure denial was in retaliation for her harassment complaint.

**Us white folks have rights too.**

Comment made during a department’s consideration of a black faculty member for tenure.

**Women and blacks don’t have any trouble getting jobs.**

Comment by senior department member shortly after a 5-2 vote against the candidacy of a woman for promotion to full professor.

**Her lab manual is like a collection of cookie recipes.**

Trial testimony by a philosophy professor who served on the appointments and promotion committee, commenting on the work of a scientist whose tenure candidacy was rejected by his committee.

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This final example, from a dean, was not used in a lawsuit but rather reported in the *Wall Street Journal*.

**It is no secret that faculty effectiveness decreases with age, and turnover would be healthy. Older faculty members become distanced from the modern roots of their fields. There are the yellowed lecture notes, the less-traveled path to conferences and seminars, the less than enthusiastic welcome for students.**

Memo from a dean of faculty to the college's board of trustees, advocating swift implementation of a retirement program.