

**Article: “2005 Workshop for Department Chairs—Chairs and the Law:
Legal Issues Facing Department Chairs”**
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2005 Workshop for Department Chairs—Chairs and the Law: Legal Issues Facing Department Chairs

On Being Chair

—Susan Gluck Mezey,
Loyola University, Chicago

General Observations

Chairs are in a unique position to take the lead within their departments and within the university to advocate for policies and procedures to promote the interests of faculty and students; yet they are also sometimes in the unenviable position of being caught in the middle. Although the issues facing chairs primarily involve department governance and are largely confined to the department, they may have a spillover effect on the larger university community. Even though chairs do not have primary responsibility for legal matters, they should be aware of federal and state laws against discrimination on the basis of sex, race, national origin, age, religion, disability, and sexual orientation; perhaps there are other issues as well arising out of local or municipal ordinances. University charters or handbooks may impose additional requirements or prohibitions. It should be noted that although many of the laws and policies are similar, public universities have more constraints imposed by constitutional limitations, such as due process, equal protection, or First Amendment guarantees, than do private universities. It is important that chairs know what these are and undertake the responsibility of communicating them to the members of their department.

As a lawyer, I would offer two bits of advice:

- a) Put the number of the university counsel on your speed dial;
- b) At your first inkling that the issue might escalate beyond your ability to deal with it, bring your dean and/or academic vice president into the picture.

Chairs may be considered agents of the university when speaking with potential job candidates or evaluating current faculty in annual reviews. Depending on the extent to which they are shielded from liability by university rules, they can be

The 2005 Workshop for Department Chairs was dedicated to discussing the legal issues that face department chairs. Themes included sexual and racial harassment, tenure, and hiring. APSA's Departmental Services Committee (DSC) sponsored the workshop and Edie N. Goldenberg (University of Michigan), a member of the DSC, moderated the panel. American University Counsel Hisham Khalid, Loyola University Chicago's Susan Gluck Mezey, and retired Wheaton College President Dale Rogers Marshall were also part of the panel. The Workshop drew 75 attendees to hear the four presentations and to consider how to deal with legal issues. The 2006 Workshop for Department Chairs is "Planning for Assessment & Accountability Issues"—more information will follow in the coming months.

held responsible for unfortunate statements, such as "don't you think it's about time you retired?" or "the last woman we hired left us when she had kids." At a minimum, if chairs are not the actual defendants, they will be witnesses in any age or sex discrimination lawsuits that may arise from such statements.

When dealing with student issues, if they cannot solve the problem themselves, they should redirect the students to the proper university agency: a sexual or racial harassment officer or a department or college grievance committee. Doing nothing is probably the worst response. Envision a legal case in which the student claims that he or she went to the department chair and the chair did nothing to respond to the complaint. Compare that to the situation in which chairs can testify that they spoke to the faculty member in question, tried to resolve the dispute or referred it to the proper committee or university officer, and kept the student apprised of the steps they took along the way. There might still be a lawsuit, but the chairs will have fulfilled their responsibility. And, in such situations, chairs should keep notes of the various meetings and discussions, but must be aware that anything they commit to writing may be discoverable.

Chairs have a responsibility to ensure that members of their department are aware of the policies that govern their behavior, such as respecting students' privacy by not posting identifiable grades and ensuring that the classroom does not become a hostile environment for students. It will not make a chair popular, but it might be a good idea to devote part of a department meeting each year to reviewing such regulations and policies.

Sexual or Racial Harassment

In dealing with student complaints about sexual or racial harassment (or other types of illegal behavior), chairs should send students to a university official who has the authority to deal with such matters. It is self-evident that this requires chairs to know who this person is. Chairs should take responsibility for ensuring that all the faculty members in their department know the name and location of this university official so that they can properly refer students who seek their advice about such matters. Most chairs will ordinarily not be involved in the intricacies of such laws, but they should have some familiarity with them; they should ensure that the members of their department understand them as well and are aware that harassment is both unprofessional and illegal. If the university administration does not disseminate information to faculty about avoiding sexual or racial harassment, chairs should do so.

There are two federal laws that govern sexual harassment policy in universities:

- a) Title VII of the 1964 Civil Rights Act when the claim involves an employee;
- b) Title IX of the Education Amendments of 1972 when the claim involves a student, whether the person accused of doing the harassing is a student or university employee. Graduate students may fall within Title IX if their complaint involves their role as students or within Title VII if they are the object of the complaint as university employees.

The courts recognize two kinds of sexual harassment: *quid pro quo* and hostile environment. For an environment to be considered hostile, the harassment must be severe and pervasive. Unfulfilled threats, which, if fulfilled, would be in the *quid pro quo* category, are generally considered to constitute hostile environment harassment.

With respect to Title VII law, to fall within the definition of sexual harassment, the behavior must affect the terms and conditions of employment and be based on sex; specifically, sexual harassment is when “members of one sex are exposed to disadvantageous terms or conditions of employment to which members of the other sex are not exposed.” The sex of the harasser and the sex of the person being harassed is irrelevant for purposes of this law; same-sex sexual harassment can also violate Title VII.

The main issue in sexual harassment cases is usually the liability of the employer. In order to avoid liability, the courts have generally held that:

a) the employer must exercise reasonable care to prevent (usually interpreted as must have a sexual harassment policy) or promptly correct sexually harassing behavior; and

b) the employee must have unreasonably failed to take advantage of it.

Title IX cases can involve student-on-student harassment (although, for a variety of reasons, this is an unlikely suit to be brought at the college and university level) or faculty/staff harassment of students. What we know about Title IX sexual harassment law is mostly derived from cases involving public high schools so the generalities may not apply in a college or university setting. The primary issue here is whether an official with authority to correct the action had actual notice of the behavior and was deliberately indifferent to it.

Hiring Policies

Universities are under a variety of pressures today to be cognizant of spousal hires, but in interviewing job candidates, chairs must be careful to steer clear of questions regarding spouses—an interesting dilemma. These issues may arise during interviews in a variety of contexts, but it is always preferable if the candidates raise them themselves.

Tenure and Promotion

It is crucial to follow the correct procedure in tenure and promotion cases. Courts are very reluctant to get involved in the merits of a tenure or promotion case and are very likely to defer to the professional judgment of the faculty and university administration. They are more likely to take an activist posture when the case involves procedural irregularities. It is essential that chairs and all university officials scrupulously adhere to university procedures. The university is much more likely to prevail in a lawsuit if procedures have been correctly followed at all levels. At the same time, chairs should not be afraid to “do the right thing” professionally even though a lawsuit may be

Higher Education Law and the Department Chair: Comments

—Hisham Khalid, Esq.

Overview

Department chairs are in the unique position of being the middlemen between academia and the university administration. They serve the department and the institution, fulfilling academic, managerial, and supervisory functions. As such, they can be instrumental in the prevention and resolution of nascent legal problems before they become full-fledged conflicts requiring the involvement of legal counsel. It is significant that most chairs are not provided with formal training before taking the position. They learn on the job. They are often ill prepared for the challenge of making appropriate process-approach determinations and are often not fully aware of liability concerns and legal obligations. It is thus incumbent on higher education institutions to develop training programs that explain both the policies and procedures of the university and federal and state laws that govern such matters as firing and hiring practices, sexual harassment, and discrimination. It is equally important that the chair communicate these rules and regulations to each member of his/her department. In the event of conflict, the chair must be prepared to act in a legally responsible way. Finally, chairs should have the benefit of managerial training techniques, including team building tools, leadership, negotiation, and conflict-resolution skills.

Because chairs have an incredibly wide

range of duties and responsibilities, it is useful to clarify some of the legal issues they may confront so that they are better able to apply policy carefully, consistently, and equitably.

Some Laws that Apply

Colleges and universities must comply with many federal laws. They also must comply with state laws, such as those that deal with anti-discrimination. Additionally, colleges are bound by numerous internal sources of law, including: institutional rules and regulations, letters of appointment, academic custom and usage, and, where applicable, collective bargaining agreements.

While courts are deferential to academic judgment when academic decisions are contested, they will examine cases in which institutions fail to follow their own policies and procedures, especially in cases involving alleged discrimination. Here is a brief overview of a few key laws of which chairs should be mindful, as they apply to most higher education institutions.

The Americans with Disabilities Act (ADA) prohibits discrimination against individuals with disabilities. Individuals are “qualified” for a position if they can perform the essential functions of the position. The college must provide a reasonable accommodation unless it provides “undue hardship” for the college. The law covers hiring, compensation, promotion, and discharge, as well as other terms and conditions of employment, including work schedules, the physical organization of work, and even the time work is conducted. It should be noted that mental disabilities are included in ADA, however, a chair or dean is entitled to request both documentation from a qualified professional that the individual has in fact been diagnosed with a psychiatric disorder, as well as a second medical or psychiatric opinion concerning both the diagnosis and the proposed accommodations. Some examples of reasonable accommodation include:

“a) making existing facilities used by employees readily accessible to and usable by individuals b) job restructuring, part-time or modified work schedules, reassignment to a vacant position, acquisition or modification of equipment or devices, appropriate adjustment or modification of examinations, training materials or policies, the provision of qualified readers or interpreters.” (42 U.S.C. 12111[9])

Other reasonable accommodations include the modification of teaching schedules, curricular materials, or teaching technology to meet the faculty member's disability. The ADA defines "undue hardship" as "an action requiring significant difficulty or expense" (42 U.S.C. 12111(10)[A]). An open-ended disability leave or a request to work at home when the work needs to be done on site would be considered "undue hardship."

ADA also applies to students. Chairs must be sensitive to students with physical handicaps. If a student with a handicapped condition makes a request for reasonable accommodation to assist in overcoming the disabling situation, the burden of that request falls on the college or university, and not on the student. As such, chairs should work closely with their disability support services coordinator to address the accommodation request appropriately.

Another area of concern is the Age Discrimination in Employment Act (ADEA), which prohibits age discrimination with respect to people who are at least 40 years old. Mandatory retirement for faculty, tenured or not, is unlawful. Chairs should avoid initiating discussions or making even casual comments about retirement to avoid charges of age discrimination.

Claims of sexual discrimination and harassment have recently been cause for frequent litigation by faculty members. As a result of two major Supreme Court decisions, colleges and universities have been held liable for actions caused by colleagues or supervisors, even if senior administrators were unaware of the incidents. The law has now placed the burden on supervisors, particularly department chairs, to investigate claims and assure that proper action is taken. So, as not to put the university at risk, chairs can no longer try to resolve matters themselves, but must involve deans, human resources personnel, vice-presidents, and senior administrators. When there is a claim of sexual or other type of harassment, the chair must follow university procedures. When an individual is interviewed about a claim of sexual harassment or discriminatory behavior, it is advisable to take notes of the conversation and keep them on file. These notes will prove useful in the event of litigation!

Because chairs are involved in significant employment issues within the university, they should familiarize themselves with both the internal procedures and policies and the federal requirements that govern their institution. These include hiring and interviewing faculty members, faculty evaluations, granting and denying tenure, faculty discipline and dismissal, confidentiality of personnel information,

soliciting and providing employment references, searching for new candidates, permissible and prohibited inquiries in interviewing applicants, contractual issues, internal grievance and appeal procedures, and other dispute resolution mechanisms.

Contracts and letters of appointment signed by faculty members are enforceable under most state laws. Faculty handbooks, which elaborate on the finer points of policies, rules, and regulations, are also legally enforceable, further illustrating the importance of academic policy implementation.

The Search Process

When hiring, faculty and administrators should be mindful that "quotas" are legally impermissible, but that expanding the search pool is a perfectly acceptable tool in seeking diversity. Chairs should also be aware of the standards outlined in AAUP's *The Ethics of Recruitment of Faculty*, which includes the need for a clear vacancy announcement distributed to all potential candidates with a 30-day period for submitting applications. Other standards to follow are:

1. Drafting the job description. The posting should be clear. It should be based on neutral job-related criteria such as academic degrees, experience, and abilities. Consulting with the campus office charged with enforcing non-discrimination/affirmative action provisions is recommended.
2. Advertising for candidates. Identify all appropriate professional publications and media outlets for broad outreach. Include journals that reach minorities and female prospective candidates. Some examples are: *University Faculty Voice*, *Black Issues in Higher Education*, and *Hispanic Outlook in Higher Education*. Consulting with the affirmative action office on how to properly attract a diverse pool of candidates is highly recommended.
3. Appoint and train a search committee. A diverse committee will choose diverse candidates. Consult with an affirmative action officer to help develop clear written guidelines for searches. See *The Affirmative Action Office, Penn State, Getting Results: Affirmative Action Guidelines for Searches to Achieve Diversity* (1997).

4. Screening Candidates. Draft fair and objective criteria for review of each applicant's materials. Provide full analysis of the most qualified female and minority candidates and draft clear job-related assessments for them if they are not recommended for campus interviews.

5. Interviewing Candidates. Draft fair and objective interview questions for each interviewer to cover in each interview. Draft candidate evaluation forms with job-related reasons used to evaluate the candidates. For a full discussion of the legal issues affecting hiring and promotion, See Donna Euben, *Hiring and Promotion: Legal Issues for Department Chairs*, AAUP publication (February 2000).

To avoid any legal issues related to unlawful discrimination, it is important to ask only job-related questions. Avoid any questionable topics. If asking a candidate about availability for teaching on weekends and in evenings, ask all candidates, not just women with children. For a good reference point for questions to ask and not to ask, See Ann H. Franke, "Questions NOT to ask Candidates During Interviews," *Academe* (May-June 1994); Catholic University and Rice University web sites; and College and University Personnel Association, "Do's and Don'ts for Interviewers," *ADA: Compliance Manual for Higher Education: A Guide to Title I 81-86* (1992).

Once a candidate is selected, be aware of institutional policies and procedures in making an offer. Most universities require all offers be in writing from the chief academic officer. Oral promises should be avoided because they can lead to claims of fraud, negligent misrepresentation, and breach of good faith and fair dealing. It is also important to check the references of the selected candidate. There has been increased litigation in the academic world involving misrepresentation of credentials.

Faculty Promotion and Tenure

Adjunct professors are becoming more active in litigation. See Ann Franke, "The Legal Complaints of Visiting and Adjunct Faculty," *Employment Action 1* (summer 1998). A common complaint is that an adjunct professor was promised a tenure position that never materialized. Even if no promises were made, professors may feel entitled to tenure given their record of service. In the event of a vacancy, it

is advisable to notify non-tenure-track faculty and advise them on application procedures. The best approach is to grant interviews to internal candidates who possess the stated qualifications and who have given good service in their current positions. Search committees “should avoid viewing non-tenure-track faculty as second class, but rather should evaluate them on their merits.” For new faculty members, chairs should clearly communicate the requirements for reappointment or tenure.

Tenure and promotion positions should be handled in an equitable, timely, and consistent way. The criteria at most institutions are well established, requiring teaching, service, and research. Chairs must know the procedures and follow them. The evaluation process is one of the most critical and challenging of a chair’s duties. In the case of a retention review, the chair must communicate any negative feedback, and, if necessary, request a written response. In the event of non-reappointment, timely notices should be given in writing in accordance with institutional policies. Chairs should be careful to follow all institutional procedures. If the university procedures call for three outside evaluators to review the candidates work as part of the review process, then by all means the policy should be followed.

Resources & Advise

Finally, chairs must be intimately familiar with sources of help within the institution—whom to call, and when. Chairs should watch out for claims asserting “arbitrary and capricious” action, breach of contract, denial of constitutional rights, discriminatory practice, and intentional and unintentional breach of common law duty. Below is a hot list of preventative measures that will help protect the chair as well as the institution he/she represents from lawsuits.

1. Know your policies and follow your procedures (i.e., faculty handbook, search and hiring procedures, affirmative action statement, procedures for handling grade grievance and other student complaints, FERPA rights, sabbatical policy, dismissal, political activities, personal and medical policies, copyright, and Collective Bargaining Agreement, if applicable).

2. Beware of promises. Remember that as chair you are now an agent of the university. Your promises

can be construed as legally binding contracts.

3. Don’t be the only person in the deal. Alert your dean or human resources person, or legal counsel, or disability support coordinator of issues before they become a problem. Get to know these people. They will make your job easier.

4. Guard against retaliation claims by having good documentation. One of the major claims asserted against colleges and universities is retaliation. For instance, a female faculty member files a grievance challenging her merit pay increase alleging gender inequity. To guard against a future retaliation claim by the faculty member, it is important for the chair to properly document his/her reasons for class assignments or the allocation of research assistants within the department to support the university position that the decision was based on legitimate non-discriminatory reasons and not because the faculty member had filed an internal grievance.

5. Tenure Reviews should be honest, conscientious evaluations. Convey them in a timely manner, in the event of allegations of sexual harassment or other misconduct, consider whether the candidate received warning of the problem and was given an opportunity to respond. Be careful what you say. There is no such thing as “off the record.”

6. Hiring and reappointment process should be adhered to. For searches, remember that “quotas” are not good but “broadening the pool” is okay. Consult with an AA officer and HR before conducting a search. Consider different ways of posting to attract a broad group.

7. Be prepared to intervene in allegations of sexual harassment. You can’t just sit back. Notify Human Resources and senior administrators immediately.

8. Beware of ADEA and conversations about retirement. Never initiate the conversation. Take notes.

Do’s and Don’ts from an Administrative Perspective

**—Dale Rogers Marshall,
Wheaton College**

I commend APSA for holding annual sessions for department chairs. Chairs can learn a great deal by comparing experiences and getting advice about departmental governance from political science colleagues. I’m going to focus on legal issues from my perspective as president at Wheaton College and academic dean at Wellesley College, both small liberal arts colleges. But I am mindful that in many ways being chair is harder than being president or dean.

I am assuming that your institution has fair, clear policies that are published in a faculty handbook, kept up to date, communicated regularly, and followed consistently. That is an essential precondition for everything I am going to say. If that is not the case, I urge you to work with the administration of your institution to put this basic foundation in place. Assuming that your institution has these policies, I want to propose two “don’ts” and two “do’s.”

1. Don’t Ask Lawyers for Direction

I say this even though I come from a family of lawyers, or perhaps because I come from such a family. I am always surprised when faculty members seem paralyzed until they talk to a lawyer. At a small institution without in-house lawyers, talking to a lawyer means that the clock will be running and the unnecessary costs mounting.

Even at large institutions with in-house lawyers, I wouldn’t call the legal office first (though as Khalid says, it is fine to have them on your speed dial).

Instead I suggest consulting first with your dean and together agreeing on what direction you want to take consistent with college policy. Deans can boost chairs’ confidence and assure that you will have the support of the institution. Deans should remind you to document your actions and not to put in writing (including email) anything you don’t want to become public.

As president I asked deans and vice presidents not to call the lawyers until they had consulted with me, and often we have decided that we didn’t need to consult lawyers. When we did consult our lawyer we told them what we wanted

to do and why we thought it was fair and consistent with our policies. Only then did we ask for advice. Note we did not turn to the lawyers for moral guidance or ask them what to do. We did ask them for advice about possible problems in our intended direction and how we might strengthen or modify our position to achieve the best result.

2. Don't Overreact to the Threat of a Lawsuit

Just as I am dismayed by faculty members who are paralyzed until they talk with a lawyer, I marvel at the number of very opinionated academics and powerful board members who quake at the threat of a lawsuit. In this era, we are all going to be threatened with lawsuits—by angry parents and by outraged faculty colleagues and other employees. They will charge discrimination or other unfair treatment on the basis of gender, race, age, religion, or whatever else is handy whether there is any basis in fact at all. Do not let those threats deter you from doing what you believe is right and consistent with policy.

We all have to learn to respond calmly to the threat of a lawsuit by saying “I understand that you have every right to pursue legal action.” However, threatening legal action is quite different from actually pursuing it. In my experience, nothing generally comes of these threats and even if some action is taken, it is usually dropped as soon as the emotions subside and practical considerations become primary.

But, of course, sometimes people decide to take a certain action for the message it sends, even though there will probably be a legal challenge and the legal challenge may not be dropped. For example, I decided to fire an employee for inappropriate sexual behavior that interfered with job performance. I was warned by the trustees that this particular employee would probably sue. My response was “yes, probably, but it is a suit that I am willing to fight because people who work here need to know that that behavior will not be tolerated.”

Which brings me to my first “do.”

3. Do Weigh Carefully When to Settle and When to Fight

I chose to develop a reputation for not settling to discourage nuisance suits. It takes valuable staff time to fight a lawsuit. I'm sure there were times when the staff members who had to respond to the

lengthy requests from lawyers wished I would just settle the case. Responsible lawyers often advise settling when they sense that a settlement might cost less than the legal fees of fighting even if the institution wins. However, when our case was strong and when the principle was particularly important,

I didn't necessarily take that advice. (We found that there are lawyers who will prey on disgruntled employees urging them to bring lawsuits even when their cases are weak and when they have very limited resources.)

One case I remember with particular pleasure was brought by a male candidate who said he didn't get the job because of sex discrimination. As someone who had fought throughout my life to end discrimination against women and minorities, I felt it was particularly important never to discriminate on the basis of gender and race and never to be intimidated by charges of discrimination. Our lawyer strongly advised me to settle, but I said “absolutely not.” This was a matter of principle. Several months later the lawyer called me to tell me that much to his surprise the complainant had dropped the case and that I had been right not to settle.

The other piece of advice I have about the decision whether to settle or not is . . . and I may regret putting this in writing . . . do not even tell your lawyer what your real bottom line is. By that I mean, you can tell your lawyer that you would be willing to settle but not for more than X amount. Then the lawyer will work hard with the other lawyer to try to get a settlement that is as low as your stated bottom line. When they come back to tell you what is possible, it is always more than X but if you had stated a higher figure, the proposed settlement would have been even higher.

It is true that whether you settle a legal action or not, some colleagues will not be happy. It is a difficult situation because you can't tell them all the considerations that led you to make the decisions you did. Hopefully your colleagues will learn to trust your judgment about which cases should be settled and which should be fought, but in any case you will feel that you did what is best for the institution.

4. Do Increase Racial and Gender Diversity

In this era where laws and court interpretations of the law are complex and changing, I want to end with an affirmation of the importance of increasing racial and gender diversity. About 30 years ago, academic administrators became aware

of the need to comply with affirmative action requirements. Now the legal imperatives are less clear but the changing demographics in our country make it clear that educational institutions need to pursue diversity because it is essential to quality education and to meeting the needs of a changing citizenry. Academic administrators have the responsibility to exercise leadership in their own institutions to make them welcoming to women and minorities both as professors and as students.

At both Wellesley and Wheaton I saw that department chairs were key to increasing the racial diversity of the faculty. In both institutions women constituted half of the faculty at every level, so that was not an issue. Wellesley had enough resources to add positions when talented faculty of color who met the needs of the institution were found and successfully recruited. It was fascinating to watch how quickly departments found qualified minorities when they found they could get a new slot. At Wheaton it wasn't possible to add positions in quite that way. So, faculty, chairs, and administrators took the lead in rethinking and redefining available positions to increase the probability of attracting strong minority candidates. Again the success was dramatic. In both cases, faculty diversity increased faculty quality and thus the vibrancy of the campus culture attracted more diverse and talented students and enhanced the quality of education.

Department chairs must be proactive in promoting changes in departmental culture to respond to changes in the composition of the faculty and students. This means being attentive to possible problems of sexual harassment for women and subtle and not so subtle forms of racial discrimination. Your job is not over when diversity increases. In fact, your job continues to be extremely important. It is admittedly a hard job but when you do it well, according to your principles and policies, you will have something to be very proud of. Best of luck to you in your important work.

Surviving Legal Headaches as Department Chair

—**Edie Goldenberg,**
University of Michigan

Although we are trained in graduate school and encouraged in academic life to be precise in our scholarly writing and to support claims with appropriate evidence, faculty have enormous freedom to say whatever we wish in the classroom and in the hallways. Many of us express our opinions gladly and enjoy the freedom of expression in academic life. We are totally unprepared to curb our spontaneous comments. Then, all of a sudden, we become department chairs. Once we assume our administrative responsibilities we become “agents” of the university, and what we say and do matters in a legal sense. To avoid legal hassles, we need to form new habits and become more careful about what we say and do.

This is only one important way our lives change when we become chairs. As soon as our names are announced as chairs-elect, even before we assume our duties, colleagues treat us differently. We start hearing about the dissatisfactions within our organizations and sometimes become targets for unhappy colleagues, students, and staff. We become the focus for lobbying and for individual requests for money, space, and privilege.

This observation is not meant to dull our personalities and make us wooden in our human relations, but it does reflect the reality that chairs face, and it takes some getting used to. Legal challenges can be frightening and upsetting for any of us, especially when we have never been sued before. With more experience, we should realize that a lawsuit is not the worst thing an administrator can face, and the threat of a suit is no reason to abandon one’s principles and avoid taking actions that ought to be taken.

Based upon my experience, the most common types of legal challenges for chairs are the following:

• **Promotion and tenure cases.**

Over time, grievances and lawsuits concerning decisions not to promote have become more common. I have always believed, and continue to believe, that departmental promotion and tenure decisions are the most important recommendations that academics make. The quality of these decisions makes or breaks the quality of the faculty and, therefore,

the quality of the department and the institution. They should be made carefully, according to proper college and university procedures. Handling this process well within the department is the most significant responsibility of a chair; handling the process poorly means that a chair’s term will be troubled and unimpressive.

• **Other performance-based actions.** These include hiring, salary setting, removing someone from an administrative post, encouraging or forcing retirement, or reassigning someone to a smaller office or laboratory. For example, in research settings, where research-active faculty may teach fewer courses than others, assigning differential course loads can generate grievances or lawsuits. Or, even though a chair has the authority to appoint someone as associate chair, program head, or departmental administrator, a decision to remove that same person for inadequate performance could generate a grievance or lawsuit. Having recourse to a grievance process and the courts is an important protection for faculty and staff against arbitrary and unfair behavior by those in power. It is essential for chairs to understand the scope of their authority and to use what authority they have wisely. It is also important, as with tenure and promotion decisions above, to apply consistent processes that satisfy departmental, college, and university guidelines.

• **Harassment charges.** Harassment can occur in any number of settings—inside or outside the classroom, on or off campus, between student(s) and faculty, student and student, faculty and faculty, faculty and staff, staff and staff. A charge of harassment can result from a persistently poisoned climate. Actions leading to a charge of harassment can be intentional or unintentional. They sometimes result from what began as an apparently consensual relationship. Charges can take the form of rumors, informal complaints, and formal charges. Serious charges inevitably find their way to the department chair and must be addressed.

The other contributors to this symposium offer sound advice for department chairs. I would add and reinforce six main points:

1) Become familiar with department, college, and university guidelines on promotion and tenure. Be careful about following procedures. It is dangerous to bend rules, even in an effort to help someone, unless the guidelines permit it. If you have questions, ask the dean and ask for an answer in writing. If written guidelines do not exist, ask the dean or provost to develop them. If they exist but are unclear, ask that they be clarified.

2) As soon as a situation seems likely to generate conflict, start keeping notes, realizing that anything written on paper or in email can become part of a court record. Recreating a long and complicated chronology can be difficult after the fact. While you may be sure at the moment that you will never forget the details, you surely will forget something by the time legal action comes to a head.

3) Understand what your obligations are in dealing with rumors, complaints, confidentiality, and privacy. As an agent of your institution, you cannot simply choose to ignore certain types of complaints, nor can you always deliver on promises of confidentiality. Colleges should offer training to new chairs that covers this territory.

4) Try not to take legal challenges personally. When faculty members become chairs, they can feel betrayed by professional “friends” who become adversaries. Remember that you are usually a target of a complaint or suit because of your position, not because of your person.

5) Understand that lawyers nearly always want to settle if they can do so with little expense. Cost is their primary consideration. But, settling can be upsetting to the accused chair or department faculty member. A groundless accusation that brings profit to the accuser seems unfair. Moreover, a settlement of any kind implies to those charged that they and/or the department were thought to have a weak case or even judged to be guilty. Universities cannot fight every legal challenge in court, but they ought to fight those that involve important principles, even if the court costs exceed the amount of proposed settlement. Deciding which cases to pursue is an important responsibility of academic leaders, and

presidents and deans rarely leave that decision in the hands of department chairs.

6) Cases that proceed to the deposition stage take time; prepare to give the time that is needed. If the principle is important enough to warrant proceeding rather than settling, then it is important enough to take the time to see the process through. A frequent strategy of litigants is to raise the non-monetary costs of proceeding by making endless

requests for information in various forms. When you have more to do on your job than there is time to do it—a common reality for university administrators—you can come to resent the time devoted to providing information or appearing for depositions. A calm, determined, and patient exterior can sometimes convince litigants to give up on frivolous cases.

In conclusion, department chairs should recognize that grievances and legal actions may become part of your professional life. Taking extra care in personnel matters will save you time in the long run and make your leadership experiences more rewarding. Avoiding circumstances that lead to litigation in the first place is obviously to be preferred as long as it does not imply a lapse in important principles or standards. But even if litigation does follow, your case will be stronger and more readily presented if you have appropriately followed procedures and documented your actions.

SYMPOSIUM AUTHORS' BIOS

Eddie N. Goldenberg is professor of political science and public policy at the University of Michigan. From 1989–1998 she served as dean of the College of Literature, Science and the Arts and from 1987–1989 she served as director of Michigan's Institute of Public Policy Studies (now the Gerald R. Ford School of Public Policy).

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