OPERATING PLAN OF THE LABOR DEPARTMENT ART PROJECT

A Project to Employ Experienced Professional Artists Who Are on Relief, in the Making of Murals, Sculpture, and Individual Pictures for Federal Buildings

The LABOR DEPARTMENT ART PROJECT will, in all probability, employ from four to five hundred artists to design, or to assist in designing, works of art for federal buildings.

This new project is a part of the SECTION OF PAINTING AND SCULPTURE and is under the direction of Edward Bruce. It is financed out of the WORKS PROGRESS ADMINISTRATION FUNDS and will function under the Emergency Relief Appropriation Act of 1935. It will, therefore, take NINETY PERCENT of the artists employed by it from the RELIEF ROLLS.

The wages will be those established by the WORKS PROGRESS ADMINISTRATION in each zone for skilled workers. This rate will be paid for not more than 120 hours a month, a maximum that very possibly will be reduced.

Since All of the Work Is for Federal Buildings, It Must Meet Federal Building Standards

Although the element of relief enters so strongly into the workings of the LABOR DEPARTMENT ART PROJECT, all of this work must meet standards of high professional competency and distinguished quality as art.

Emphasis will be placed on murals and on sculpture designed for a specific position, although other classifications of painting and sculpture will be included in the work given out by the project, such as easel paintings, watercolors, prints, reliefs, and sculpture.

This work will be placed in Federal Post Offices, Embassies, Consulates, Courthouses, Marine Hospitals, Immigration Stations, Mints, and various other classes of federal buildings.

The Method of Applying for Work – Eligibility

The program is fairly flexible. There are no special quotas for states and the policy will be to obtain the best art possible wherever it exists. Only artists who

have been found eligible for relief employment by the local public emergency relief agency are eligible for work. Artists who have established their eligibility and who have been certified by the relief agency should, after such certification and not before, send to the Washington office of the LABOR DEPARTMENT ART PROJECT some record of their work, photographs, or sketches, together with a succinct statement of their training and experience.

Labor Department Art Project

On July 21, 1935, the Labor Department Art Project was formed by a grant of $530,000 allocated by the Works Progress Administrator for the decoration of federal buildings and administered strictly under the relief rules of the Works Progress Administration. Artists are employed at rates that vary from $.71 per hour to $1.08 per hour for a minimum of ninety-six hours' work. (These rates are the "going wage" paid by WPA for skilled, professional work.) The work produced is for the decoration of federal buildings. Most of it is architectural, either mural or sculptural, where a federal building has no money available under its building fund for decoration. These works of art are allocated to federal departments, embassies abroad, federal hospitals, and offices.

Any federal building may be decorated by the artists working for the Project. Pictures may be hung in these buildings, and statues placed in them; reliefs or busts may be erected where suitable. The majority of these buildings are federal post offices and courthouses.

As a branch of the Labor Department having to do with federal buildings, this Project must insist on quality. Although it is limited to taking artists off relief rolls, the work itself has to be first rate. Because the painting and sculpture will be placed in federal buildings, professional competence and technical proficiency will be demanded. The Project will follow the precedent set up by the Public Works of Art Project of being open-minded toward all schools or art and of not imposing upon the artists stifling directions.

It has been found that many of the federal buildings have not received sufficient funds to permit mural or sculptural decoration, but under the new Project it will be possible to decorate buildings to which funds have not previously been allocated for that purpose. The new Project proposes, whenever feasible, in carrying out such work, to place an artist of experience and ability in charge of a group of assistants and coworkers.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MAINE

UNITED STATES OF AMERICA	)
Plaintiff	)
	)
v.	) **Civil No. 2002-04-EJR**
	)
MELODY RICHARDSON	)
Defendant	)

DECLARATION OF WILLIAM BROWDER

1. My name is William Browder. I am the Chief of the Civil Division of the U.S. Attorney's Office for the District of Maine. I am one of the attorneys representing the United States in the above-captioned case, which involves the sculpture by William Summers entitled "Boothbay Falcon" ("the sculpture").
2. Prior to filing this lawsuit, I spoke to Ms. Richardson by phone in California on more than one occasion. During our telephone conversations, Ms. Richardson confirmed that she had arranged with Munjoy Galleries to sell the sculpture at auction in Maine. Also during our telephone conversations, we discussed the merits of her claim of ownership to the sculpture relative to the government's claim of ownership.
3. Ms. Richardson never indicated to me that she has any documentary proof to support her claim of ownership to the sculpture.
4. During our telephone conversations, Ms. Richardson has represented that the sculpture has been in the possession of her family for approximately sixty (60) years, and that it was first obtained from family member David Collins who, on information and belief, was the American Ambassador to Canada from 1944–1947.

5. Today I made a formal demand that Ms. Richardson return the sculpture to the federal government. Ms. Richardson refused my demand.

I declare under penalty of perjury that the foregoing is true and correct.

/s/ William Browder

Drafting Considerations

Now that you have reviewed the file, it's time for some strategic thinking. Before you start drafting a Complaint, consider the following:

1. What are you trying to accomplish with this document?
2. In order to accomplish your goals, what information should you include? What information should you exclude?
3. What rules govern the drafting of a Complaint? What are the minimum mandatory requirements?
4. Do you have an example of a Complaint that you can use as a model?
5. Who is your primary audience? Who is your secondary audience?

At the outset, you may be surprised at how little guidance is provided by the Federal Rules of Civil Procedure. In essence, the Rules establish certain minimum standards but, beyond that, you are generally left on your own. Once you satisfy the Rules' minimum requirements, all other aspects of the Complaint would depend on strategic considerations.

The Federal Rules of Civil Procedure define a Complaint as a claim for relief that is one of several types of "pleadings."[3] That definition distinguishes a Complaint from a "motion" (the subject of Chapters Four and Ten), which is a request that the court enter a specific order. Fed.R.Civ.P. 7. In other words, when you file a Complaint, you are not asking the court to enter any particular order at that time, so the judge is not your immediate audience. Instead, your immediate audience is the opposing counsel, the opposing party, and the public

[3] Federal Rule of Civil Procedure 7 provides as follows:

(a) *Pleadings. There shall be a complaint and an answer*; a reply to a counterclaim denominated as such; an answer to a cross-claim, if the answer contains a cross-claim; a third-party complaint, if a person who was not an original party is summoned under the provisions of Rule 14; and a third-party answer, if a third-party complaint is served. No other pleading shall be allowed, except that the court may order a reply to an answer or a third-party answer.
(b) Motions and Other Papers.
(1) *An application to the court for an order shall be by motion* which, unless made during a hearing or trial, shall be made in writing, shall state with particularity the grounds therefore, and shall set forth the relief or order sought. The requirement of writing is fulfilled if the motion is stated in a written notice of the hearing of the motion.
(2) The rules applicable to captions and other matters of form of pleadings apply to all motions and other papers provided for by these rules.
(3) All motions shall be signed in accordance with Rule 11.
(c) Demurrers, Pleas, etc., Abolished. Demurrers, pleas, and exceptions for insufficiency of a pleading shall not be used.
Fed.R.Civ.P. 7 (emphasis added).

at large (if it is a matter of public interest). Unless the Complaint becomes a matter of contention later in the lawsuit, it is entirely likely that the judge will never read your Complaint.

The minimum requirements for a Complaint are found in Federal Rule of Civil Procedure 8.[4] In sum, you are required to include a "short and plain" statement that sets forth: (1) why the court has jurisdiction; (2) why you are entitled to relief; and (3) what relief you seek.

In terms of strategy, there are several important aspects to Rule 8. First, notice that the Rule requires the opposing party to "admit or deny the averments upon which the adverse party relies." Fed.R.Civ.P. 8 (b). That presents an opportunity. If your case is based on facts that can be stated clearly and unequivocally, you might want to include those facts in the Complaint and force the other side to admit or deny. For example, if your case relies on the plain language of a contract, you might want to quote the specific contract provisions and force the other side to admit that, indeed, those were the provisions in force at the time. If the other side wrongfully denies facts that are known to be true, you may be entitled to sanctions under Federal Rule of Civil Procedure 11 (which specifically applies to "pleadings").

[4] Federal Rule of Civil Procedure 8 provides as follows:

(a) Claims for Relief. A pleading which sets forth a claim for relief, whether an original claim, counterclaim, cross-claim, or third-party claim, shall contain (1) *a short and plain statement of the grounds upon which the court's jurisdiction depends*, unless the court already has jurisdiction and the claim needs no new grounds of jurisdiction to support it, (2) *a short and plain statement of the claim showing that the pleader is entitled to relief*, and (3) *a demand for judgment for the relief the pleader seeks*. Relief in the alternative or of several different types may be demanded.

(b) Defenses; Form of Denials. A party shall state in short and plain terms the party's defenses to each claim asserted and *shall admit or deny* the averments upon which the adverse party relies. If a party is without knowledge or information sufficient to form a belief as to the truth of an averment, the party shall so state and this has the effect of a denial. Denials shall fairly meet the substance of the averments denied. *When a pleader intends in good faith to deny only a part or a qualification of an averment, the pleader shall specify so much of it as is true and material and shall deny only the remainder*. Unless the pleader intends in good faith to controvert all the averments of the preceding pleading, the pleader may make denials as specific denials of designated averments or paragraphs or may generally deny all the averments except such designated averments or paragraphs as the pleader expressly admits; but, when the pleader does so intend to controvert all its averments, including averments of the grounds upon which the court's jurisdiction depends, the pleader may do so by general denial subject to the obligations set forth in Rule 11.

(c) Pleading to be Concise and Direct; Consistency.

(1) *Each averment of a pleading shall be simple, concise, and direct*. No technical forms of pleading or motions are required. . . .

Fed.R.Civ.P. 8 (emphasis added).

Second, the rule provides that "each averment shall be simple, concise, and direct." Fed.R.Civ.P. 8 (e)(1). It is wise to follow that approach, especially if you want to force the other side to admit or deny specific factual assertions. Many lawyers draft their Complaints using what might be called the opposite approach – complicated, wordy, and indirect – and then wonder why the other side's Answer provides nothing more than a series of blanket denials. In short, if you are too lazy to draft a Complaint with specific allegations, then you should not expect to receive an Answer with specific responses.

Third, even though it is technically required by Rule 8, you should not count on the other side to break down your sentences and admit in part and deny in part. Fed.R.Civ.P. 8 (b) ("When a pleader intends in good faith to deny only a part or a qualification of an averment, the pleader shall specify so much of it as is true and material and shall deny only the remainder"). Instead, you should anticipate that defendants will seize on any complicated sentences in your Complaint as a reason to provide a general denial. Therefore, to avoid any wiggle room, follow the advice in Rule 8 and draft your Complaint using the language that is the most "simple, concise, and direct."

Similar advice is found in Federal Rule of Civil Procedure 10,[5] which requires that "All averments of claim or defense shall be made in numbered paragraphs, the contents of each of which shall be limited as far as practicable to a statement of a single set of circumstances." In other words, the allegations in your Complaint should be broken down into their elemental parts and presented in separately numbered paragraphs. That way, there is no mistake about what is alleged, admitted, or denied.

[5] Federal Rule of Civil Procedure 10 provides as follows:

(a) Caption; Names of Parties. Every pleading shall contain a caption setting forth the name of the court, the title of the action, the file number, and a designation as in Rule 7(a). In the complaint the title of the action shall include the names of all the parties, but in other pleadings it is sufficient to state the name of the first party on each side with an appropriate indication of other parties.

(b) *Paragraphs; Separate Statements. All averments of claim or defense shall be made in numbered paragraphs, the contents of each of which shall be limited as far as practicable to a statement of a single set of circumstances*; and a paragraph may be referred to by number in all succeeding pleadings. Each claim founded upon a separate transaction or occurrence and each defense other than denials shall be stated in a separate count or defense whenever a separation facilitates the clear presentation of the matters set forth.

(c) Adoption by Reference; Exhibits. Statements in a pleading may be adopted by reference in a different part of the same pleading or in another pleading or in any motion. A copy of any written instrument which is an exhibit to a pleading is a part thereof for all purposes.

Fed.R.Civ.P. 10 (emphasis added).

Persuasive Facts

The most persuasive legal writing emphasizes facts, not law. Nevertheless, the question remains: How do you present the facts in the most persuasive way? Although you can't change the facts, here are some things a strategic litigator can do:

1. *Develop the facts*. In law school, students are typically asked to analyze a discrete, prepackaged fact pattern. However, in real life, the facts are much more elusive. Most litigation is won or lost before the Complaint is filed, when one party is able to identify the critical facts and pin them down. Sometimes it may be as simple as finding the key witness and convincing him or her to sign an affidavit that can be used as evidence. Other times it calls for a search through a warehouse of documents for the "smoking gun." Regardless, the most important part of litigation is developing the factual record that supports your case. All the lawyering in the world is useless without a favorable supporting factual record.

2. *Select the facts*. In a case with any degree of complexity, it is impractical to state all the facts. Therefore, part of the litigator's job is to be selective. Obviously a litigator needs to select the facts necessary to establish all the elements of his or her client's cause of action. Yet telling a one-sided story is not very persuasive. It is far more persuasive to demonstrate that your client's position should prevail even if you take into consideration your opponent's key facts. In other words, don't ignore your opponent's key facts – find a way to *embrace* them.

3. *Arrange the facts*. In the vast majority of cases, the best way to arrange the facts is chronologically. It is the simplest approach and the easiest for the reader to follow. Most legal disputes are sufficiently complex that they do not lend themselves to a complicated factual arrangement. Therefore, in the vast majority of cases, stick with a simple chronology.

4. *Emphasize certain facts*. There are several ways to emphasize or deemphasize particular facts. Common examples are underlining, italics, and the use of quotations. A well-placed footnote is also a form of emphasis because it separates the matter from the normal flow of text. Conversely, if you want to deemphasize something, don't try to "bury" it in a footnote, because that will only serve to highlight your weakness.

5. *Use details*. As in good storytelling, the most powerful way to emphasize certain facts is to "slow down the action" and provide additional detail. For example, if you are trying to prove plaintiff's comparative negligence in a car accident case, you might include a lot of detail about the facts leading up to the accident when the other party should have seen trouble ahead.

6. *Select a point of view*. When describing the facts, it is easy to overlook the importance of "point of view." Typically, the lawyers for each side will simply retell the story from their client's point of view, which often reinforces the stalemate that led to the litigation in the first place. Instead, consider whether you can tell the story from the perspective of a critical witness that supports your client's position. For example, if you represent the plaintiff in a car accident case, you might want to tell the story of the case from the perspective of an innocent bystander who is expected to testify in your client's favor. Similarly, if you are defending a medical malpractice case, you might want to describe the case from the perspective of your medical expert, who could describe how she reviewed the entire medical file, interviewed everyone who provided the underlying medical treatment, and then evaluated whether the conduct met the applicable standard of care. Likewise, if you are a government prosecutor, you might consider telling the story from the perspective of your lead investigator, so you can describe how the "mystery" of the case was solved.

7. *Verify the facts*. Nothing deflates a case faster than inaccuracy. Before making any factual assertions, check – and double-check – to make sure every assertion is factually accurate. Credibility depends on a careful, detailed, and relentless devotion to factual accuracy. In that regard, never underestimate the importance of consistency; it is the primary criterion for separating truth from fiction.

WHEN SHOULD YOU USE "NOTICE PLEADING"?

"Notice pleading" is the name used to describe a Complaint that merely meets the minimum pleading requirements. *Swierkiewicz v. Sorema*, 534 U.S. 506, 511 (2002). The idea is that the plaintiff is only required to provide fair notice of what the claim is and the grounds upon which it rests. *Id.* at 512.

Generally speaking, there is nothing wrong with filing a Complaint that merely satisfies the minimum pleading requirements. Sometimes it is a matter of necessity, such as when you must file immediately to satisfy an imminent

statute of limitations. Other times you may be limited by your client's unwillingness to spend the money necessary to prepare a more thorough Complaint. In terms of strategy, a minimally acceptable Complaint might be preferable if you are trying to "hide the ball" from your opponent. In a simple negligence action, for example, plaintiffs generally prefer to say the minimum and leave their opponents guessing.

On the other hand, various considerations may call for a more detailed Complaint. In some cases it is required, such as when you allege fraud.[6] In other cases, you may be inspired to prepare a detailed Complaint for a nonlitigation reason. For example, suppose you want to convince your opponent to settle the case before litigation begins. You might consider sending a draft Complaint to opposing counsel together with a letter explaining that you are prepared to file the Complaint unless the parties can agree to settlement terms. In such circumstances, it would be far more persuasive to include a detailed Complaint that would send a strong message that you are not only prepared to litigate, but that you are aware of the detailed facts that support a winning case. The other side might also have an added incentive to agree to an out-of-court settlement in order to avoid the public embarrassment of having you file the detailed Complaint.[7]

[6] F.R.C.P. 9(b) ("In all averments of fraud or mistake, the circumstances constituting fraud or mistake shall be stated with particularity. Malice, intent, knowledge, and other condition of mind of a person may be averred generally.")

[7] In terms of strategy, remember that a successful out-of-court settlement is similar to winning a battle without firing a shot. *Cf*. Sun Tzu, *The Art of War*. ("One hundred victories in one hundred battles is not the most skillful. Seizing the enemy without fighting is the most skillful.")

A SAMPLE COMPLAINT

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

UNITED STATES OF AMERICA	)
Plaintiff,	)
	)
v.	) **Civil No. 07-**
	)
THE NICKERSON MEMORIAL CLINIC	)
Defendant	)

COMPLAINT

NOW COMES Plaintiff, the United States of America ("United States") and asserts the following as its Complaint.

INTRODUCTION

This is a health care fraud case against the Nickerson Memorial Clinic ("Defendant" or "the Clinic"), which submitted nearly $300,000 in false claims to Medicare for neurology services and related medications. The bills were false because the Clinic consistently overstated the number of units billed. The Clinic knew or should have known it was falsely billing Medicare for these drugs and neurology services, but the Clinic nevertheless failed to take the necessary steps to train the staff, correct the problem, or notify Medicare representatives.

PARTIES

1. Plaintiff, the United States of America ("the United States"), brings this action on behalf of itself and its agencies, the U.S. Department of Health and Human Services ("HHS"), as well as the HHS Office of Inspector General ("OIG").
2. Defendant is a specialized neurology clinic located in Maine.

JURISDICTION AND VENUE

3. This action arises under the federal False Claims Act, 31 U.S.C. § 3729 et. seq., as well as the common law.
4. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1345, 1355, and 31 U.S.C. § 3732.
5. Venue is proper pursuant to 28 U.S.C. §§ 1391 and 1395.

BACKGROUND

The Discovery of the False Billing

6. In February of 2007, the Centers for Medicare and Medicaid Services ("CMS") notified the OIG that the Clinic was potentially overbilling Medicare for neurology services and related medications.
7. CMS noticed the problem based on a review of computerized Medicare billing patterns in New England for the years 2005 and 2006.
8. Medicare's review of that data revealed that the Clinic was billing for those services and drugs at a significantly higher rate, and with an unusually high number of billing units, than comparable Medicare providers in the region.
9. In response to the CMS referral, OIG reviewed the Clinic's underlying hospital records and confirmed that the Clinic was in fact overbilling Medicare for neurology services and related medications.

The Undisputed Amount of the Clinic's Overbilling

10. In April 2007, OIG performed an audit to determine the scope of the billing problem.
11. Based on the results from that audit, the Clinic overbilled Medicare $292,854.14 for neurology services and related medications.
12. The attached spreadsheet is a true and correct statement of each of those false claims, patient-by-patient, claim-by claim, dollar-for-dollar.

Medicare Billing for Neurology and Related Medications

13. For neurology services, the Clinic only should have billed Medicare one unit of service per day, regardless of the number of hours of service provided per day.

14. Instead, as reflected in the spreadsheet, the Clinic billed Medicare multiple units for the neurology services.
15. Similarly, for each of the related medications, the Clinic only should have billed Medicare one unit for each dose provided to a Medicare patient.
16. Instead, as reflected in the spreadsheet, the Clinic billed Medicare multiple units for each dose of medication.

The Clinic Knew or Should Have Known of Its False Claims

17. In 2005 and 2006, the Clinic knew or should have known it was falsely billing Medicare for neurology services and related medications.
18. For example, on December 31, 2005, the Clinic's Deputy Chief of Neurology raised her concerns with Clinic management about whether the Clinic was properly billing for the services and drugs.
19. Those concerns were passed on to the Clinic's Chief Financial Officer, Budget Director, Pharmacy Director, and Nursing Director.
20. Despite knowledge of those concerns, the Clinic failed to follow up and make certain that the billing problems had been corrected.

Count 1
False Claims Act, 31 U.S.C. §3729 (a)(1)

Knowingly Presenting or Causing To Be Presented a False or Fraudulent Claim

22. The foregoing paragraphs are hereby incorporated by reference.
23. The Clinic knowingly presented, or caused to be presented, to officers, employees, or agents of the United States Government false or fraudulent claims for payment or approval.
24. By virtue of the false or fraudulent claims made or caused to be made by the Clinic, the United States has suffered damages and therefore is entitled to multiple damages under the False Claims Act, to be determined at trial, plus a civil penalty of $5,500 to $11,000 for each such false or fraudulent claim presented or caused to be presented by the Clinic.

Count 2

Unjust Enrichment

25. The foregoing paragraphs are hereby incorporated by reference.
26. This is a claim for the recovery of monies by which the Clinic has been unjustly enriched.
27. As a result of the facts alleged in this Count, the Clinic has received and has continued to maintain control over certain monies to which it is not entitled.
28. By directly or indirectly obtaining government funds to which it was not entitled, the Clinic was unjustly enriched and is liable to account and pay such amounts, or the proceeds therefrom, which are to be determined at trial, to the United States.

WHEREFORE, the United States demands and prays that judgment be entered in its favor and against the Clinic for actual damages, civil penalties, interest, litigation costs, investigative costs, and an accounting, to the fullest extent as allowed by law, and for such further relief as may be just and proper.

Respectfully submitted,

Assistant U.S. Attorney
100 Middle Street
Portland, Maine 04101
Dated: _____

CHAPTER THREE

Terminating Professor Melton

Part of the work of the Legal Counsel's Office of the University of Katahdin is to review correspondence terminating the employment of any UK professor or staff member. These are important decisions for the university. They are equally important to the employee who faces involuntary separation from his or her job. Such terminations have given rise to litigation or threats of litigation that may be expensive for the university, may disrupt working relationships, and may give rise to unfavorable publicity about the University. The following correspondence and request for some strategic legal writing arises from such a situation.

THE UNIVERSITY OF KATAHDIN

Dear Counsel:

Assistant Professor Herman Melton has completed two years as a faculty member in the Sociology Department at UK. He is now in the Fall semester of his third year. Department and college officials have completed the standard review of his performance that will help determine his retention beyond the third year.

I summarize the paperwork and offer my comments as the senior administrator with responsibility for academic programs and faculty at UK. I ask you to prepare for my signature a letter to President McBee strongly recommending that we NOT offer a contract to Assistant Professor Melton for a fourth year and that we terminate any relationship with him after the end of this academic year in May.

Professor Melton's Department Chair reports that Melton's teaching evaluations regularly have been below the Sociology Department average. Melton does have several scholarly articles in print, but the Department Chair reports that they are in second-tier journals and none gives evidence of making a significant impact on his field. The Department Chair also reports that following annual face-to-face evaluation conferences with Melton she is left with the sense that this "is just a job" to Melton and that Melton rarely goes out of his way to help with departmental or university work. I suspect that part of this may be explained by Professor Melton's passionate opposition to hunting, which he expresses regularly in newspaper letters and Op-Ed pieces and in testimony and protest activities before the Katahdin legislature. You may have seen some of these diatribes. They hardly reflect a scholarly examination of anything.

The tenured members of the Sociology Department have, by strong majority, voted against renewing Melton's contract. The Dean of Melton's College disagrees and recommends another year's appointment for Melton. However, he makes no quarrel with the facts of Melton's performance so far. I find no basis for his hope that "things may turn around."

As you know, our procedures are governed by University of Katahdin Regulations. In brief, they require an annual notification to Professor Melton as to whether he will be retained for another year. That decision rests with the

president following advice from the tenured faculty members of the department, the Department Chair, the College Dean, and the Academic Vice President. The regulations provide: "The President shall inform the faculty member of his/her decision and shall promptly supply written reasons upon the request of the faculty member." We have promptly completed the review and need to present the president's letter to Professor Melton within the next six weeks.

I'm ready to dump Melton. Would you please draft the letter to the president for my signature that does this in a fashion that puts us at least risk of any successful legal actions against the University?

Sincerely,
Mary Carter, Academic Vice President

Department of Sociology Minutes – October 15

The renewal of Assistant Professor Herman Melton's contract came before the tenured members of the department. Chairwoman Susan Henrici reported that Melton's course evaluations, prepared by students in his classes, continue to be inconsistent and do not show improvement over his first year. In general, in survey classes in which students are not selecting their instructor, about 20–25 percent of the students give Melton the highest marks. Many of these students comment that Melton is an inspiration and "one of the best teachers I have ever had." However, about half of the respondents in these classes give Melton negative marks. They find him disorganized, overly opinionated, and dismissive of opinions that disagree with his own. The remainder of those students completing the evaluations give average evaluations for Mr. Melton. In advanced courses, where students are able to select their instructor, Melton's evaluations are stronger and reflect the favorable comments from the survey courses. It appears that Professor Melton has something of a cult following, a good deal of which stems from his anti-hunting activism. It is also worth noting that enrollments in Professor Melton's advanced courses are typically well below maximum possible enrollments for the classes.

Overall, despite the laudatory comments, Professor Melton has regularly ranked in the bottom quarter of all Sociology Department faculty members for numerical teaching evaluation scores.

In addition to the numerical and anecdotal student evaluations, a subcommittee of three tenured faculty members visited each of Professor Melton's classes in the last month. Their report was presented to the tenured faculty by Subcommittee Chairman Boyd Dyer. Professor Dyer reported that the classes were rather unstructured and that Professor Melton would allow discussion to move from topic to topic without much effort at providing structure or eliminating irrelevant comments. Professor Dyer also noted that class attendance seemed well below the number of students registered for the class. Although some students seemed very engaged, others appeared to "have tuned out." A review of Professor Melton's teaching notes and syllabi confirmed the view that Melton taught courses "by the seat of his pants."

Copies of the course evaluations for all of Professor Melton's courses were available to the faculty for review and comment. No faculty member questioned Chairwoman Henrici's summary of the course evaluations.

Chairwoman Henrici reviewed Professor Melton's published scholarship. She noted that a subcommittee of the Sociology Department had reviewed the three published articles that Professor Melton presented in satisfaction of the "high quality academic scholarship" requirement for retention and promotion in the department. The subcommittee divided. Two members felt the works were adequate evidence of performance for a young faculty member. They agreed that stronger work would need to be shown before a grant of tenure would be appropriate in Professor Melton's seventh year of employment, but felt Melton was making progress toward that standard. Two members felt the writings were below quality even for a beginning member of faculty. They characterized the articles as "sloppy, unoriginal, and poorly written."

Chairwoman Henrici added her comments. She noted that her scholarship was in fields quite close to Professor Melton's and that she knew the literature that he cited very well. She sided with the opponents of Melton's work. She noted Melton's last publication had been overdue to the publisher and contained half a dozen mistakes "that would embarrass a second-year graduate student."

Chairwoman Henrici then reported on Professor Melton's service to the community, the university, and the department. She characterized it as "below par, but probably adequate for a reappointment decision."

The floor was then opened to general discussion. Professor John Clune stated that it was well known that Henrici had a personal grudge against Melton because of Melton's frequent television appearances and provocative testimony before the State Legislature on hunting issues. Prof. Henrici had been particularly upset by a newspaper report of Melton describing hunters as "orange-clad storm troopers" to a legislative hearing. Professor Sharon Washington said that Melton should be fired on the basis of being arrested in an antihunting protest at the state capitol. Professor Washington said this was harmful to the university at a time the legislature was also considering the university budget. Professor Jack O'Connor said he had heard rumors that

Professor Melton was encouraging students to carry on protests in the woods during hunting season, going to the extent of placing themselves in positions where they might be shot by a careless or spiteful hunter. Professor Clune responded that Melton had never been arrested or convicted on any criminal charges.

A motion was made to retain Professor Melton for the following academic year. The motion failed by a vote of 5 YES and 11 NO.