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.

THE UNIVERSITY OF KATAHDIN

Dean Martin Fenick
College of Arts and Sciences
University of Katahdin

Dear Dean Fenick:

I enclose the report of the Sociology Department tenured faculty on the reappointment of Assistant Professor Herman Melton. I will not repeat what is in the report. I think the minutes accurately reflect a ninety-minute discussion by the faculty on a difficult issue. I fully support the decision to end relations with Professor Melton after this academic year.

I do wish to offer some comments of my own that may not be fully reflected in the minutes.

First, in two years as Melton's Chair I have been visited by numerous students with complaints about Mr. Melton's teaching. I don't keep notes of such meetings, but I don't recall another member of the faculty who has drawn so many hostile comments. Most of the students were thoughtful in their assessments of Prof. Melton but came down seriously against the quality of his teaching and his tendency to turn the classroom into a soapbox. I know that several of the students are among our very best majors in the department.

Second, I note the division on the department subcommittee on scholarship. Leaving aside my position as Chair, I would contend that Professor Giannini and I are the two members of faculty whose work is closest to the areas in which Professor Melton purports to specialize. We both strongly opposed Melton's reappointment. I suspect a number of our older colleagues who supported Melton have not done work in his area and are, frankly, a decade or two out of touch with what constitutes significant scholarship in the field. If Professor Melton hasn't shown something by now, it isn't going to happen – ever!

Third, as the chairwoman of the department, I have to note that Professor Melton contributes little to the work of the department. He serves on committees as assigned. However, I can recall no significant contributions that he has made. He always has an excuse why he can't take on extra work.

At our evaluation conferences, I always have the sense that to Melton this "is just a job" that inspires him no more than would working at Wal-Mart or flipping hamburgers. This is not a "role model" that I want to offer to newly hired faculty.

I strongly oppose the reappointment of Assistant Professor Herman Melton.

Sincerely,

Sharon Henrici, Chair
Sociology Department
University of Katahdin

THE UNIVERSITY OF KATAHDIN

Dr. Mary Carter
Academic Vice President
University of Katahdin

Dear Dr. Carter:

Following our procedures, I present the materials regarding the reappointment of Assistant Professor Herman Melton in the Department of Sociology. You will note the divided vote of the department and the negative vote of Chairwoman Susan Henrici.

I have reviewed the materials with care. I have also talked on several occasions with Chairwoman Henrici. I respect her views and those of the members of the department. I have no quarrel with the facts they offer about Professor Melton's teaching and scholarship. I do differ with the conclusion that they draw.

Our tenure standards encourage young faculty to experiment and to grow in their early years as members of the academy. We do not encourage fast decisions or an avoidance of any mistakes by the young professor. Based on my thirty-five years as a member of faculty and university administrator, I think intelligent decisions about the career-long potential of a faculty member are best made only after the full six-year period of review. There are late bloomers. There are faculty members who overcome early missteps. I have seen some of those who then become outstanding members of faculty for the rest of their careers.

With that in mind, I'm inclined to continue our evaluation of Professor Melton and renew his contract for the next year. His teaching indicates that he does inspire a significant number of his students. I find that preferable to the teacher who inspires no one, but doesn't aggravate anyone either. It is still early to make a final judgment on Professor Melton's published scholarship. I would much prefer to see the record several years from now when we face a tenure decision. Lastly, I'm troubled that personal issues may have entered this decision. I'm a hunter myself, but I admire Professor Melton's passion on this issue and his willingness to exercise his rights as a citizen. Others, evidently, do not.

On balance, I endorse the reappointment of Assistant Professor Herman Melton for the next academic year.

Sincerely,

Martin Fenick
Dean, College of Arts and Sciences
University of Katahdin

THE UNIVERSITY OF KATAHDIN

Memorandum to: University Counsel
From: Attorney Ted Garvey, UK Legal Counsel's Office

Dear Boss:

You asked for a copy of the United States Supreme Court opinion in *Board of Regents v. Roth* around which our UK retention and tenure standards are drafted. I also enclose the Katahdin legislation and the UK Regulations that set out our faculty hiring, retention, and tenure processes that might be relevant to the Melton matter. Here it is with deletions of some footnotes and irrelevant material. Good luck.

BOARD OF REGENTS V. ROTH, 408 U.S. 564 (1972)

MR. JUSTICE STEWART delivered the opinion of the Court.

In 1968 the respondent, David Roth, was hired for his first teaching job as assistant professor of political science at Wisconsin State University-Oshkosh. He was hired for a fixed term of one academic year. The notice of his faculty appointment specified that his employment would begin on September 1, 1968, and would end on June 30, 1969. The respondent completed that term. But he was informed that he would not be rehired for the next academic year.

The respondent had no tenure rights to continued employment. Under Wisconsin statutory law a state university teacher can acquire tenure as a "permanent" employee only after four years of year-to-year employment. Having acquired tenure, a teacher is entitled to continued employment "during efficiency and good behavior." A relatively new teacher without tenure, however, is under Wisconsin law entitled to nothing beyond his one-year appointment. There are no statutory or administrative standards defining eligibility for re-employment. State law thus clearly leaves the decision whether to rehire a nontenured teacher for another year to the unfettered discretion of university officials.

The procedural protection afforded a Wisconsin State University teacher before he is separated from the University corresponds to his job security. As a matter of statutory law, a tenured teacher cannot be "discharged except for cause upon written charges" and pursuant to certain procedures. A nontenured teacher, similarly, is protected to some extent during his one-year term. Rules promulgated by the Board of Regents provide that a nontenured teacher "dismissed" before the end of the year may have some opportunity for review of the "dismissal." But the rules provide no real protection for a nontenured teacher who simply is not re-employed for the next year. He must be informed by February 1 "concerning retention or non-retention for the ensuing year." But "no reason for non-retention need be given. No review or appeal is provided in such case."

In conformance with these rules, the President of Wisconsin State University-Oshkosh informed the respondent before February 1, 1969, that he would not be rehired for the 1969–70 academic year. He gave the respondent no reason for the decision and no opportunity to challenge it at any sort of hearing.

The respondent then brought this action in Federal District Court alleging that the decision not to rehire him for the next year infringed his Fourteenth Amendment rights ["nor shall any State deprive any person of life, liberty, or property, without due process of law"]. He attacked the decision both in substance and procedure. First, he alleged that the true reason for the decision was to punish him for certain statements critical of the University administration, and that it therefore violated his right to freedom of speech. [Amendment One: "Congress shall make no law . . . abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."] Second, he alleged that the failure of University officials to give him notice of any reason for nonretention and an opportunity for a hearing violated his right to procedural due process of law.

[The District Court ruled for Roth on the procedural argument. It ordered University officials to provide Roth with the reasons for his nonretention and provide him a hearing. The Court of Appeals affirmed.]

The only question presented to us at this stage in the case is whether the respondent had a constitutional right to a statement of reasons and a hearing on the University's decision not to rehire him for another year. We hold that he did not.

The requirements of procedural due process apply only to the deprivation of interests encompassed by the Fourteenth Amendment's protection of liberty and property. When protected interests are implicated, the right to some kind of prior hearing is paramount. But the range of interests protected by procedural due process is not infinite. . . . Undeniably, the respondent's re-employment prospects were of major concern to him – concern that we surely cannot say was insignificant. . . . But, to determine whether due process requirements apply in the first place, we must look not to the "weight" but to the nature of the interest at stake. We must look to see if the interest is within the Fourteenth Amendment's protection of liberty and property. . . .

There might be cases in which a State refused to re-employ a person under such circumstances that interests in liberty would be implicated. But this is not such a case.

The State, in declining to rehire the respondent, did not make any charge against him that might seriously damage his standing and associations in his community. It did not base the nonrenewal of his contract on a charge, for example, that he had been guilty of dishonesty, or immorality. Had it done so, this would be a different case. . . . Similarly, there is no suggestion that the State, in declining to re-employ the respondent, imposed on him a stigma or other disability that foreclosed his freedom to take advantage of other employment opportunities. The State, for example, did not invoke any regulations to bar the respondent from all other public employment in state universities. Had it done so, this, again, would be a different case.

To be sure, the respondent has alleged that the nonrenewal of his contract was based on his exercise of his right to freedom of speech. But this allegation is not now before us. . . . [T]he respondent has yet to prove that the decision not to rehire him was, in fact, based on his free speech activities. . . .

To have a property interest in a benefit, a person clearly must have more than an abstract need or desire for it. He must have more than a unilateral expectation of it. He must, instead, have a legitimate claim of entitlement to it. It is a purpose of the ancient institution of property to protect those claims upon which people rely in their daily lives, reliance that must not be arbitrarily undermined. It is a purpose of the constitutional right to a hearing to provide an opportunity for a person to vindicate those claims.

Property interests, of course, are not created by the Constitution. Rather, they are created and their dimensions are defined by existing rules or understandings that stem from an independent source such as state law – rules or

understandings that secure certain benefits and that support claims of entitlement to those benefits. Thus, the welfare recipients in *Goldberg v. Kelly* [397 U.S. 254 (1970)] had a claim of entitlement to welfare payments that was grounded in the statute defining eligibility for them. The recipients had not yet shown that they were, in fact, within the statutory terms of eligibility. But we held that they had a right to a hearing at which they might attempt to do so.

Just as the welfare recipient's "property" interests in welfare payments was created and defined by statutory terms, so the respondent's "property" interest in employment at Wisconsin State University-Oshkosh was created and defined by the terms of his appointment. Those terms secured his interest in employment up to June 30, 1969. But the important fact in this case is that they specifically provided that the respondent's employment was to terminate on June 30. They did not provide for contract renewal absent "sufficient cause." Indeed, they made no provision for renewal whatsoever.

Thus, the terms of the respondent's appointment secured absolutely no interest in re-employment for the next year. They supported absolutely no possible claim of entitlement to re-employment. Nor, significantly, was there any state statute or University rule or policy that secured his interest in re-employment or that created any legitimate claim to it. In these circumstances, the respondent surely had an abstract concern in being rehired, but he did not have a property interest sufficient to require the University authorities to give him a hearing when they declined to renew his contract of employment. . . .

[R]espondent has not shown that he was deprived of liberty or property protected by the Fourteenth Amendment. The judgment of the Court of Appeals, accordingly, is reversed and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.

MR. JUSTICE DOUGLAS, dissenting:

Respondent Roth . . . had no tenure under Wisconsin law and . . . he had had only one year of teaching at Wisconsin State University-Oshkosh – where during 1968–69 he had been Assistant Professor of Political Science and International Studies. Though Roth was rated by the faculty as an excellent teacher, he had publicly criticized the administration for suspending an entire group

of 94 black students without determining individual guilt. He also criticized the university's regime as being authoritarian and autocratic. He used his classroom to discuss what was being done about the black episode, and one day, instead of meeting his class, he went to the meeting of the Board of Regents. . . .

[T]he First Amendment, applicable to the States by reason of the Fourteenth Amendment, protects the individual against state actions when it comes to freedom of speech and of press and the related freedoms guaranteed by the First Amendment, and the Fourteenth protects "liberty" and "property" as stated by the Court. . . .

No more direct assault on academic freedom can be imagined that for the school authorities to be allowed to discharge a teacher because of his or her philosophical, political, or ideological beliefs.

KATAHDIN REVISED STATUTES

Section 37.05 Faculty Appointments. The Board of Trustees is authorized to create a system of tenure for faculty at the University of Katahdin. The Trustees shall provide the details of such system. Under no circumstances shall tenure be granted to a faculty member in a period shorter than five academic years.

UNIVERSITY OF KATAHDIN REGULATIONS

Chapter 9 Hiring, Retention, Tenure, and Promotion of Faculty

9.01. Faculty who are new to the University of Katahdin shall be hired on a one-year contract. This fact shall be reflected in a letter to the faculty member from the Provost. The letter shall specify the dates of the appointment and shall make clear that the letter makes no promise of employment beyond that period.

9.02. Faculty may be reappointed to subsequent one-year contracts for up to seven years. In the seventh year of appointment, faculty will be considered for a permanent tenured appointment. See, Sections 9.13–21 Consideration for Tenure. By February 15 of each year, all untenured faculty members will be notified concerning their retention or nonretention for the ensuing year. The President shall give such notice by letter.

9.03. No reason for nonretention shall be given in the initial letter of notification. At the request of the faculty member, the President shall provide reasons for the nonretention. Consistent with United States Supreme Court guidance in *Board of Regents v. Roth*, the faculty member has no entitlement to a hearing, appeal, or other formal review proceedings.

9.04. "Dismissal" as opposed to "Nonretention" means termination of responsibilities during an academic year. When a nontenured faculty member is dismissed, the President may, in his discretion, grant a request for a review within the University, either by a faculty committee or by the President, or both. Any such review is informal in nature and is advisory only. The dismissed faculty member may also request a hearing from the Board of Trustees. The Board in its discretion may grant or deny the request for correction.

You have reviewed the information in the Melton retention case. It is time to do some strategic thinking before you begin writing. What are the objectives of your letter to President McBee for Vice President Carter? She feels strongly about how the decision in the case should come out. So long as that is consistent with the law, you need to express that viewpoint to the president. What else should go into your strategic thinking?

CHAPTER FOUR

How to Draft a Motion

For your second litigation assignment, you are a summer associate for the law firm that represents Melody Richardson, the woman who is trying to auction the sculpture "Boothbay Falcon." Your job is to draft a motion to dismiss the Complaint that you prepared in Chapter Two. The assignment arrives in the form of the following memo:

MEMORANDUM

The Law Offices of Jones, Jones & Day
100 Commercial Street
Portland, Maine 04101

To: Summer Associate
Fr: Stephen Jones, Senior Partner
Re: *United States v. Melody Richardson*, Civil Docket No. 2002–04-EJR

I have a new assignment for you. Our client is Melody Richardson, a very nice woman from San Diego whose grandfather was David Collins, the American Ambassador to Canada from 1944–1947. It seems that our client inherited a sculpture from her grandfather, and the government is now trying to take it away from her.

From our perspective, venue is very important. Our client simply cannot afford to litigate this case in Maine and incur the cost of flying back and forth from California. I want you to draft a motion to dismiss the Complaint on the grounds of improper venue pursuant to Federal Rule of Civil Procedure 12(b)(3). You should rely on the appropriate portion of the venue statute, 28 U.S.C. § 1391.

Attached is an affidavit from our client. As you can see, she is a resident of California, and the sculpture was never in Maine. Put together an argument that venue is improper in Maine and that the case should be dismissed pursuant to the applicable subsection in 28 U.S.C. § 1391.

For legal authority, please rely on *Smith v. Fortenberry*, 903 F. Supp. 1018 (E.D. La. 1995) and *SeaRiver Maritime Financial Holdings, Inc. v. Pena*, 952 F. Supp. 455 (S.D. Texas 1996).

You should also argue that the Complaint should be dismissed because the Plaintiff failed to obtain a writ of replevin as required by Maine law. For your assistance, I have attached a copy of the applicable section from Professor Zillman's torts treatise, which explains the importance of that prerequisite. In your motion, you also need to discuss the seminal case of *Doughty v. Sullivan*, 661 A.2d 1112 (Me. 1995), which explains what happens if you fail to obtain a writ of replevin.

Here are some tips for organizing the motion:

1. Start with the caption. Delete the part about "jury trial demanded," because you only need that in a Complaint (or an Answer).
2. Center the following heading: "**MOTION TO DISMISS AND INCORPORATED MEMORANDUM OF LAW**."[1]
3. Then start with a sentence like this: "**NOW COMES** the Defendant, by undersigned counsel, and hereby moves to dismiss the Complaint pursuant to Federal Rule of Civil Procedure 12."
4. Center the following heading: "**INTRODUCTION**."
5. Under that heading, include one paragraph that summarizes the entire motion and introduces a "theme."
6. Don't forget that our client is Melody Richardson. Try to personalize her story. You might start by saying something like: "This is a case about. . . ."
7. Center the following heading: "**BACKGROUND**."
8. Unlike a Complaint, a motion does not require separately numbered sentences. Therefore, you need to build your argument in narrative form using paragraphs as your basic building block. That means every paragraph should have one point, which is often succinctly stated in the opening sentence. With that approach, the reader can follow your argument more easily.[2]
9. Make sure your Background section includes enough facts so that the reader can understand the "story" of the case, from our perspective, without having to read the government's Complaint. You also need to include all the facts necessary to support our motion to dismiss.
10. In the Background section, you might want to include one paragraph that summarizes the allegations in the Complaint (together with citations to

[1] The phrase "incorporated memorandum of law" is a holdover from the days when the court required two separate documents: (1) a motion that specified the relief requested; and (2) a supporting memorandum of law that explained the factual and legal authority in support of the motion. I predict that someday the court will amend the Local Rules to eliminate the distinction, but for now it is required.

[2] Here's an example:

Even if the Court finds that Baker's statement was sufficiently widespread, Count V should be dismissed on account of Jones' consent. In a privacy case, consent offers a complete defense. *Veilleux v. NBC*, 8 F.Supp.2d 23, 39 (D. Me. 1998). In this case, Jones agreed to proceed with the interview in Richardson's presence (Facts ¶ 25–27). Jones did not stop the conversation or insist that it be kept confidential (Facts ¶ 28). Under these circumstances, Jones's consent provides a complete defense. Accordingly, Count V should be dismissed.

the Complaint). The rest will most likely derive from the facts set forth in our client's declaration (with citations to Richardson Decl. ¶).

11. Don't forget to simplify names when you identify people and entities. You should start with the full name and follow up with a shorthand version. Don't switch back and forth.[3]
12. The next heading should be "**STANDARD FOR MOTION TO DISMISS**."
13. Under that heading, feel free to insert the following, verbatim: "When considering a Rule 12(b) motion to dismiss, the Court must accept as true all well-pleaded factual allegations, draw all reasonable inferences in the claimant's favor, and determine whether the Complaint sets forth sufficient allegations to support the challenged claims, or whether the Complaint fails to state a claim for which relief can be granted. *Clorox Co. v. Proctor & Gamble Commer. Co.*, 228 F.3d 24, 30 (1st Cir.2000); *LaChapelle v. Berkshire Life Ins. Co.*, 142 F.3d 507, 508 (1st Cir.1998). The Court, however, need not credit conclusory allegations or indulge unreasonably attenuated inferences. *Aybar v. Crispin-Reyes*, 118 F.3d 10, 13 (1st Cir.1997); *Ticketmaster-NY, Inc. v. Alioto*, 26 F.3d 201, 203 (1st Cir.1994)."
14. Center the following heading: "**ARGUMENT**."
15. The next heading, flush left, should be: "**I**. ***Failure to Obtain a Writ of Replevin***."
16. Under that heading, explain the general law of replevin in one paragraph. The only legal authority you need is the portion of the Zillman treatise that explains the applicable three-step procedure for replevin cases.
17. In the next paragraph, you need to *apply* that general law to the facts of this case and explain how the government failed to satisfy all three elements.
18. In the next paragraph, explain the *Doughty* case. Try to write the paragraph so the reader can quickly understand what happened in *Doughty* and why the court ruled the way it did.
19. In the next paragraph, *apply Doughty* to this case.
20. The next heading, flush left, should be: "**II**. ***Improper Venue***."

[3] Here's an example:

The Defendant in this case is Melody Richardson ("Richardson"). Richardson is a resident of San Diego.

21. Under that heading, explain the general rules regarding venue, including a statement of which party bears the burden of proof. I would suggest that you devote the majority of the paragraph to explaining the alternatives for venue pursuant to the applicable portion of the venue statute. It's up to you to figure out which sub-section of the venue statute applies. 28 U.S.C. 1391.
22. In the next paragraph, you should *apply* those general legal principles and the statutory provisions to the facts of this case. You should devote the majority of the paragraph to an explanation as to why, in this case, a "substantial part of the events or omissions giving rise to the claim" did *not* occur in Maine. Here's a hint: think about the nature of the claim and the location of the events that gave rise to it.
23. In the next paragraph or two, you should explain what happened in the *Seariver* and *Fortenberry* cases and why.
24. Next, you should *apply* those cases, and the common principle that can be derived from those cases, to the facts of this case.
25. The next heading should be "**CONCLUSION**."
26. Under that heading, feel free to include the following, verbatim: "**WHEREFORE** for all the foregoing reasons, the Defendant respectfully requests that the Court grant this motion to dismiss the Complaint."
27. Add a signature block and a date.

Thanks again for your help. I look forward to reading the draft, which should be about four to five pages, double-spaced.

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 MELODY RICHARDSON

1. My name is Melody Richardson. I own the sculpture "Boothbay Falcon" ("the sculpture") by William Summers. I am fifty-two years old and a lifelong resident of San Diego, California.
2. I make this declaration based on personal knowledge, unless otherwise stated or implied.
3. I inherited the sculpture from my grandfather, David Collins. My grandfather was also a lifelong resident of San Diego, California.
4. My grandfather was born in 1897. He was the American Ambassador to Canada from 1944–1947. My grandfather died in 1968. I have owned the sculpture ever since.
5. My grandfather was a highly respected member of the United States Diplomatic Corps. It is my personal belief that my grandfather must have received the sculpture as a gift from the federal government upon his retirement from government service. I can't imagine that he received the sculpture in any other fashion.
6. The sculpture was one of my grandfather's favorite works of art. It was always displayed in a prominent place in his home in San Diego. I have numerous photographs in my possession (some taken in the 1950s) that show the sculpture displayed above his fireplace.
7. I am not familiar with any time that the sculpture left the State of California.
8. I asked Munjoy Galleries in Portland to offer the sculpture at their upcoming auction. As a result, Munjoy Galleries included the sculpture in their

auction catalog. However, I never delivered the sculpture to Munjoy Galleries. Under our agreement, I was not required to deliver the sculpture until one week before the auction. It was more than two weeks before the auction when the U.S. Attorney's Office demanded that I turn over the sculpture. That's when I decided to keep the sculpture in my house in San Diego.

9. I am not a lawyer, so I don't know what it means to be "served with a writ of replevin." However, I can state with certainty that no one has ever handed me a document entitled "writ of replevin." My only contact with the U.S. Attorney's Office was by telephone when an Assistant U.S. Attorney called me in California and demanded that I give him the sculpture. I refused.

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

_____ _____

Melody Richardson Date

ZILLMAN ON MAINE TORTS: THE DEFINITIVE TREATISE

§18.13 REPLEVIN

The ancient writ of replevin is one of the oldest known remedies. In Maine, there is a three-step procedure that must be followed. First, the Plaintiff must file a complaint with the Court, together with a motion for approval of the writ of replevin, as well as affidavits that establish an immediate right to possession of the property. Second, the Plaintiff must win a court-ordered seizure of the property. Third, the Court asserts its jurisdiction to adjudicate which party owns the property. If a Plaintiff fails to follow the three-step procedure, the Court lacks jurisdiction, and the Plaintiff has no power to request a Court determination as to ownership.