> F.2d 34, 37 (1st Cir. 1993) (party opposing summary judgment must point to "concrete, admissible evidence").

11. The next heading should be: "**ARGUMENT**."
12. Under that heading, draft a paragraph that begins by quoting the Maine replevin statute. In the same paragraph, explain how that statute applies to the facts of this case.
13. In the next paragraph, use the following quotation (verbatim) to explain the general legal landscape:

> The federal government cannot abandon property. *United States v. Steinmetz*, 763 F. Supp. 1293 (D.N.J. 1991), *aff'd*. 973 F.2d 212 (3d Cir. 1992). "It is well settled that title to property of the United States cannot be divested by negligence, delay, laches, mistake, or unauthorized actions by subordinate officials." *Id*. Furthermore, the government's ownership interest in property is not divested by inactivity, neglect, or unauthorized intentional conduct by government officials. *Kern Copters, Inc. v. Allied Helicopter Serv., Inc.*, 277 F.2d 308 (9th Cir. 1960); *United States v. City of Columbus*, 180 F. Supp. 775 (S. D. Ohio 1959). Congress has the exclusive authority to acquire and dispose of federal property. U.S. Constitution, Article 4, Section 3, Clause 2. *See also Allegheny County, PA v. United States*, 322 U.S. 174 (1944).

14. In the next paragraph, *apply* those general principles to the facts of our case.
15. In the next paragraph, describe the one specific case that we rely on for summary judgment: *United States v. Steinmetz*, 763 F. Supp. 1293 (D. N. J. 1991). Explain what happened in that case and why. Don't get distracted by a lot of the facts and law in that case that might not apply here. Present *Steinmetz* in a way that makes sense to someone who has never read the case. Make sure to include some pithy quotes from the case that you will use to apply the legal principles of *Steinmetz* to the facts of this case.
16. In the next paragraph, *apply Steinmetz* to this case.
17. The next heading should be: **"CONCLUSION**."
18. Under that heading, write something like: "For the foregoing reasons, the Plaintiff respectfully requests that the Court grant this motion for summary judgment."
19. At the end, include a place for the date and your signature. Feel free to use the same one as you did in the Complaint.
20. I expect the entire motion would be about five to six pages long.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MAINE

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

RESPONSE TO PLAINTIFF'S REQUEST FOR ADMISSION

NOW COMES Defendant, by undersigned counsel, pursuant to Federal Rule of Civil Procedure 36, and hereby responds to Plaintiff's request for admission as follows:

Plaintiff's Request to Admit: *That the documents attached to the Diebenkorn Declaration are true and correct copies of official records of the Labor Department Art Project that qualify as public records and/or reports pursuant to Federal Rule of Evidence 803(8).*

Defendant's Response: Admit.

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

_____ _____

Melody Richardson Date

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MAINE

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

RESPONSE TO PLAINTIFF'S INTERROGATORIES

NOW COMES Defendant, pursuant to Federal Rule of Civil Procedure 33, and hereby responds to Plaintiff's interrogatories as follows:

Plaintiff's Interrogatory 1: *If you deny any assertion in the Diebenkorn Declaration (paragraphs 1–13), specify each such assertion and state all the facts that support your denial.*

Defendant's Response: I do not deny those assertions.

Plaintiff's Interrogatory 2: If you deny any assertion in the Browder Declaration (paragraphs 1–5), specify each such assertion and state all the facts that support your denial.

Defendant's Response: I do not deny those assertions.

Plaintiff's Interrogatory 3: If you deny any assertion in Plaintiff's request for admission, specify each such assertion and state all the facts that support your denial.

Defendant's Response: I do not deny those assertions.

Plaintiff's Interrogatory 4: List the name and address of each person with firsthand knowledge of the facts that support your denial, if any, reflected in your response to interrogatories 1–3 above.

Defendant's Response: None.

Plaintiff's Interrogatory 5: *State the date, author, and all recipients of every document that supports your denial, if any, reflected in your response to interrogatories 1–3 above.*

Defendant's Response: None.

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

_____ _____

Melody Richardson Date

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MAINE

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

RESPONSE TO PLAINTIFF'S DOCUMENT REQUESTS

NOW COMES Defendant, by undersigned counsel, pursuant to Federal Rule of Civil Procedure 34, and hereby responds to Plaintiff's document requests as follows:

Plaintiff's Document Request 1: *Produce all documents that support your response to Plaintiff's interrogatories*.

Defendant's Response: None.

Plaintiff's Document Request 2: *Produce all documents that support your response to Plaintiff's request for admission*.

Defendant's Response: None.

Plaintiff's Document Request 3: *Produce all documents that support any defense you are asserting in this case*.

Defendant's Response: None.

Respectfully submitted,

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

UNITED STATES v. STEINMETZ, 763 F. Supp. 1293 (D. N. J. 1991)

DEBEVOISE, District Judge.

I. THE PROCEEDINGS

In this action plaintiff, the United States of America, seeks to recover from defendant, Richard Steinmetz, a ship's bell taken from the celebrated Confederate warship, the CSS ALABAMA. In response to an order to show cause, Mr. Steinmetz delivered the bell to the Court. A hearing was held on January 4, 1991. The hearing not only developed evidence required to dispose of this case; it was also a celebrative event. The final encounter of the CSS ALABAMA was recalled. Each student in the sixth grade of Maplewood's Middle School struck the bell bringing forth once again the vibrant tone heard many times at sea during the years 1862 to 1864.

Since the bell had been deposited in Court there was no need for preliminary injunctive relief. Mr. Steinmetz answered and counterclaimed, seeking (1) a determination that the bell is his property, (2) compensation on a theory of *quantum meruit* and (3) compensation on a theory of unjust enrichment. I suggested to the parties that they cross-move for summary judgment and, pending a hearing on the motion, seek to arrive at a fair and reasonable disposition of the case. Unfortunately, the efforts to reach agreement failed and it thus became necessary to rule upon cross-motions for summary judgment.

II. THE FACTS

Many events preceded the arrival of the bell in Newark. These events are recounted in the Official Records of the Union and Confederate Navies in the War of the Rebellion (Government Printing Office 1896), in the works of recognized historians of the Civil War, in the testimony in this case of Naval Historian William S. Dudley, and in the testimony of Mr. Steinmetz, an antique dealer who has great expertise in the field of military artifacts. These events can be summarized as follows:

. . .

In 1861 James D. Bulloch, representing the Confederate States of America, proceeded to England. His mission was to obtain ships for the Confederacy. Among other activities, he arranged for two warships to be

built in Liverpool. One was the vessel named the FLORIDA; the other was the ALABAMA.

For the next two years [Captain] Semmes and the ALABAMA roamed the seas and destroyed or captured 64 American merchant ships before meeting the USS KEARSARGE off Cherbourg in June of 1864.

. . . the USS KEARSARGE, under the command of Captain John Winslow, entered Cherbourg and then positioned herself in international waters beyond the harbor mouth.

Captain Semmes decided to do battle. By Saturday night, June 18, his preparations were complete. Between nine and ten o'clock on June 19 the ALABAMA proceeded to sea, accompanied by the French ironclad FRIGATE COURONNE, some French pilot boats, and the English steam yacht, the Deerhound. The KEARSARGE awaited seven miles off shore.

John Kell, executive officer of the ALABAMA, has described the battle. . .

The firing now became very hot and heavy. . . . The battle lasted an hour and ten minutes [which resulted in the sinking of the ALABAMA].

It goes without saying that the ship's bell, which is the subject of this case, accompanied the ALABAMA as "she sank fathoms deep." The ALABAMA still rests where she sank, but the bell was salvaged. Mr. Steinmetz traced its separate history.

In 1979 Mr. Steinmetz participated in an antique gun show in London. A dealer informed him that he knew where the bell of the CSS ALABAMA was located, and Mr. Steinmetz asked to see it. The dealer took Mr. Steinmetz to Hastings on the English coast where an antique dealer, a Mr. Walker, showed him the bell and documentation concerning it. It purportedly came from the Isle of Guernsey off the French coast.

Mr. Steinmetz was skeptical, but he paid a deposit, took possession of the bell, and proceeded to Guernsey to check it out.

Guernsey fishermen have a sideline – wreck stripping. Mr. Steinmetz visited a Guernsey friend and the friend introduced him to various persons who dealt in shipwrecks and salvage. When these persons were shown the bell they identified it as a bell which had hung in a Guernsey bar. It developed that a diver, William Lawson, had salvaged the bell in about 1936 and most likely had traded it at the bar for drinks. There it hung until World War II. The Germans captured Guernsey from the British. Thereafter, the bar was destroyed in a British bombing raid.

After the destruction of the bar the bell passed from hand to hand until it was acquired in 1978 by the Hastings antique dealer.

Satisfied with the authenticity of the bell, Mr. Steinmetz completed the purchase and brought it to the United States. He had given the dealer other antique items having a value of approximately $12,000 in exchange for the bell.

In 1979, after returning to the United States, Mr. Steinmetz offered the bell to the Naval Academy. The Academy was unwilling or unable to trade or purchase it. Mr. Steinmetz put the bell on a shelf until December 1990, at which time he placed it in the Harmer Rooke Gallery for auction.

The bell was advertised in the gallery's catalogue. Alert Naval authorities noticed the advertisement and claimed entitlement to the bell. Mr. Steinmetz resisted the claim, and this action ensued.

III. DISPOSITION OF SUMMARY JUDGMENT MOTIONS

Each party either has, or by direction of the Court is deemed to have, moved for summary judgment. Judgment shall be rendered if the record shows that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. Fed.R.Civ.P. 56(c). There are no genuine issues as to any material facts and I conclude that as a matter of law the United States is entitled to a judgment in its favor.

A. *Right of Capture*. The bell is the property of the United States both by the right of capture and by virtue of the fact that the United States is successor to the rights and property of the Confederate States of America. . . .

B. *Right of Succession*. Also CSS ALABAMA is the property of the United States as the successor to all the rights and property of the Confederate Government. *See J. B. Moore's Digest of International Law* (1906), Vol. 1, Section 26 . . . C. *Lack of Abandonment*. Article IV, Section 3, Clause 2 of the United States Constitution provides: The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States; and nothing in this Constitution shall be so construed as to Prejudice any Claims of the United States, or of any particular State.

Thus, under the above clause only Congress and those persons authorized by Congress may dispose of United States property pursuant to appropriate regulations.

In the similar case of *Hatteras, Inc. v. USS HATTERAS, her engines, etc., in rem, and United States of America, in personam*, 1984 AMC 1094, 1096 (1981), *aff'd* without opinion, 698 F.2d 1215 (5th Cir.1983) involving a claim to the wreck of USS HATTERAS and artifacts from it, the District Court for the Southern District of Texas held that although the wreck had lain untouched since the Civil War, title and ownership of the wreck remained with the United States.

Citing numerous cases, the Court observed: It is well settled that title to property of the United States cannot be divested by negligence, delay, laches, mistake, or unauthorized actions by subordinate officials. *Id*. at 1098.

Relying on *United States v. California,* 332 U.S. 19, 40, 67 S.Ct. 1658, 1669, 91 L.Ed. 1889, 1947 AMC 1579, 1595 (1947), the Court held that neither the maritime nor common law doctrine of abandonment was applicable to that case.

While this traditionally conceived doctrine might prove dispositive of the factual questions in this case if it concerned a dispute between private citizens,

[T]he Government which holds its interests here as elsewhere in trust for all the people, is not to be deprived of those interests by the ordinary court rules designed particularly for private disputes over individually owned pieces of property; and officers who have no authority at all to dispose of government property cannot by their conduct cause the Government to lose its valuable rights by their acquiescence, laches, or failure to act. *United States v. California,* 332 U.S. 19, 40 [67 S.Ct. 1658, 1669, 91 L.Ed. 1889], 1947 AMC 1579, 1595 (1947). 1984 AMC at 1098.

The United States has never formally abandoned the wreck of CSS ALABAMA. It is, therefore, in all respects similar to USS HATTERAS. It is a sunken wreck located in non-territorial waters. In view of this, the wreck, and by extension, the ship's bell, remain the property of the United States.

Consequently, it is clear that under well-established State practice, States generally do not lose legal title over sunken warships through the mere passage of time in the absence of abandonment. They do not lose title during combat in the absence of an actual capture of the warships. Although abandonment may be implied under some circumstances, United States warships

that were sunk during military hostilities are presumed not to be abandoned and are considered not subject to salvage in the absence of express consent from the United States Government. *Id.* at 1005.

Thus, the lapse of time between the sinking of CSS ALABAMA and Mr. Steinmetz's acquisition of the ship's bell did not result in abandonment or the United States' loss of title to the ship and its equipment.

For the foregoing reasons the United States' motion for summary judgment must be granted and Mr. Steinmetz's motion for summary judgment must be denied. The United States is entitled to ownership and possession of the bell. I shall prepare and file an appropriate order.

Drafting Considerations

At the close of discovery, when it is time to consider a motion for summary judgment, you should be in a position to benefit from the strategic choices you made earlier in the case. By way of example, let's recap the strategic steps in "the sculpture case" that brought us to this point.

At the outset, the government stumbled across evidence that government property was about to be privately auctioned. The U.S. Department of Labor scrambled to pull together the known evidence that the sculpture was government property. The U.S. Attorney's Office drafted a fairly thorough Complaint with an eye toward convincing Richardson to settle.

Instead of settling, Richardson moved to dismiss for lack of jurisdiction and improper venue. Although Richardson did not necessarily expect to win the motion (and she didn't), it bought Richardson some time and allowed her to further her "theme" that the government was overreaching by trying to take away a sculpture that had been in her family for more than sixty years.

The U.S. Attorney's Office then used a variety of discovery techniques (a) to authenticate its documents; and (b) to otherwise establish that there was no dispute about the government's facts and that Richardson really had no ownership evidence of her own. Thus, by the close of discovery, the government had accomplished its goal of narrowing the case to the best possible situation: undisputed facts demonstrating government ownership of the sculpture and the absence of any facts demonstrating valid private ownership, all of which was in the context of some very strong legal principles that the government normally does not lose title to its property, despite the passage of time.

Accordingly, in a simple example like this, if you have successfully pinned down your opponent by the close of discovery, it may not matter whether you file a motion for summary judgment or simply proceed to trial. Either way, you have created the best possible chance for success. As a result, the summary judgment motion in this assignment is not really the *subject* of a strategic decision as it is the happy *result* of prior successful strategic decisions made during the course of discovery.

With respect to the timing of a Rule 56 motion for summary judgment, however, there can be some strategic considerations. In that regard, consider how a Rule 56 motion for summary judgment differs from a Rule 12 motion to dismiss. A Rule 12 motion to dismiss is primarily a legal argument. As discussed in Chapter Four, it is typically filed at the outset of a case. Generally

speaking, a Rule 12 motion to dismiss assumes the truth of the facts alleged in the Complaint and asserts, as a matter of law, that the allegations fail at the threshold, either because they do not state a claim for which relief should be granted, or because they fall short in some other definitive respect, such as lack of jurisdiction or improper venue.

In contrast, a Rule 56 motion for summary judgment asserts a legal argument based on undisputed facts. It is typically filed near the end of the case, after the close of discovery, when it may be apparent that the material facts are undisputed, such that one side or the other is entitled to judgment as a matter of law. In other words, a Rule 56 motion for summary judgment relies on the factual record generated by the parties during the course of discovery, including the results from document requests, interrogatories, requests to admit, as well as deposition transcripts and affidavits and the like.

In a Rule 56 motion for summary judgment, the emphasis is on the facts that are *undisputed* and *material*. In other words, the party filing for summary judgment is arguing that discovery has revealed a set of facts, about which there is no real disagreement, that determine the outcome of the case. Based on those undisputed material facts, the party filing for summary judgment is asking the court to rule on the merits without waiting for the case to proceed to trial. Most commonly, the defendant is the party that moves for summary judgment on the grounds that the plaintiff cannot prove one or more elements of the claim. However, as illustrated by this assignment, the plaintiff may also move for summary judgment.

Follow-up Sections

Chapter One Prayer at the Athletic Banquet

You have completed your first draft. How well have you addressed the following issues?

1. What is your legal conclusion in one sentence? Or doesn't the situation allow such a clear answer? If the president asked you for one or two sentences that he could offer to the students, their supporters (including legal advisors), or the media (imagine President McBee having fifteen seconds of sound bite to explain her decision for the evening news), what would you suggest?

2. Are there plausible grounds for distinguishing *Lee v. Weisman* and *Santa Fe School District v. Doe* from the situation that faces the president?

3. Are there alternatives that are allowed by the law that would support the students in some part of their request? Should you mention them here or wait for the students to ask a slightly different question?

4. Do you offer policy considerations as well as your legal opinion? For example, how valuable is it to support the views of the majority of student/athletes? Would the prayer, even if legal, be divisive or threatening to some students? Are you clear when you are discussing law (your area of professional expertise) and when you are discussing policy (a matter on which your position may be no stronger than the president's other senior advisors)?

5. Are you willing to "take a meeting" with the students if they should request it?

6. How clearly have you stated your legal opinion? Is there room for the president to misunderstand what you are saying? You should consider repeating your conclusion at several points in the memorandum.

7. Are there matters in the memo that you would not like persons other than the president to see? Imagine the reaction to the Washington or Kowalski e-mails among members of the general public.

8. How much legal analysis do you want to include in the memo? This isn't an advocacy document to another lawyer or a court. Does the president need more than a simple "It's legal" or "It's unconstitutional"?

EVALUATE THESE FIRST-DRAFT PROVISIONS FROM PRIOR BANQUET PRAYER MEMOS

Here are extracts from our former students' first drafts. What do you like or dislike as a matter of 1) good writing; 2) good legal analysis; and 3) good strategic thinking?

1. As demonstrated by the *Lee* and *Santa Fe* decisions, the current trend in the Supreme Court has been to oppose officially sponsored prayer at public school events. The same is probably true here.

2. The second issue in this matter is whether the University of Katahdin should consider the establishment of a university policy. The university should not adopt an endorsement of school prayer as a policy matter.

3. The said banquet, which will be held in two weeks, is one of the most important and publicized UK events. Therefore, the committee members would like to recommend that a "nondenominational prayer" be performed at the opening of the banquet.

4. The United States Supreme Court has addressed this issue numerous times and has reached what could be described as a solid body of cases that suggests such prayers in public schools are rarely to never upheld. Yet the support by student athletes, the Committee members, and the long-standing tradition of religion in ceremonial form does not seem to tip the scales in favoring this request as a good idea by the university.

5. Although this will no doubt be disappointing to many students, and particularly those involved in planning the banquet, this recommendation is based on the current state of constitutional law relevant to prayer in public schools as it stands today.

6. However, you might suggest that they find an alternate reading or opening that does not involve religion, such as a quote or poem involving a sports theme.

7. With regard to establishing a school policy, it would be safest to draft the policy by noting that the University of Katahdin intends to comply fully with the laws of the United States and the holdings of the Supreme Court cases outlined earlier.

8. In that case [*Lee*], the principal of a Providence middle school invited a rabbi to deliver a nondenominational prayer at the school's graduation ceremony.

ELECTRONIC COMMUNICATIONS

The file in the Athletic Banquet Prayer case is composed of both communications in writing and electronic communications that have been printed out for the file. The growth of electronic messaging over the last two decades has added a further complexity to legal writing. A seasoned transactional practitioner messaged us: "This medium [e-mail writing] has become ubiquitous, even when serious and complex legal advice is rendered. My sense is that young lawyers sometimes view this medium too casually, respond too quickly, and do not discipline their thinking."

Unfortunately, the perception has arisen that e-messages "aren't really writing" in the sense that a letter or a memorandum would be. The analogy is often to unrestrained speech. Unless your speech is electronically recorded, you are not burdened by a record of the communication that can later be summoned up and used to your disadvantage in court proceeding or media report. Your adversary can say you said one thing. You can reply that you said something else. No outside party can be sure. The parties to the conversation themselves, whose memories are fallible, can't even be sure. However, with writing, a copy can remove the doubt. Moreover, for these purposes an electronic message is far more a writing than a conversation. The electronic message can be retrieved. It also may be far harder for the writer to remember where all e-messages have gone than with an originally printed message. The electronic message can be introduced into evidence in a judicial, legislative, or administrative proceeding. Your ability to deny what you said is removed by the printed message. "I didn't really mean that" is a far weaker defense than "I didn't say that."

Electronic communication has further encouraged a contentious communication style. Things that never would be said in a written letter routinely appear in e-messages. As an example, a matter of student government practice on Don's campus turned contentious. Parties on both sides took to circulating

e-mails to campus administrators, faculty, and fellow students defending their position and attacking their opponents. One author referred to a fellow student officer as a "retard" on several occasions. The author did not know that the opponent had a developmentally disabled child and took the casual insult very personally. The relation of the two parties doubtless changed forever. Faculty and administrators also cringed as each new message crossed their computer screens.

The simple advice is to treat the e-message as you would treat a writing. Be accurate and be civil. Don't assume that only you and the recipient will ever share the message. For example, imagine what the release of the file in the Banquet Prayer matter, with the e-mail comments of Mr. Washington and Ms. Kowalski, might inspire. Save your insults or doubtful humor for a phone call or a hallway conversation.

Our colleague Professor Nancy Wanderer capably elaborates on these points in "E-Mail for Lawyers: Cause for Celebration and Concern," *Maine Bar Journal*, Fall 2006 at page 196.

IN-CLASS ROLE-PLAYING EXERCISE

You have agreed to the meeting with the students on the Banquet Committee (and possibly their lawyer). One or two of you will represent the university's Legal Counsel's Office. The remainder of the class will be the students or their representative. Be ready to explain and defend the decision if you represent the Legal Counsel's Office. Be ready to question or explore alternatives if you are the students or their representative.

Chapter Three Terminating Professor Melton

You have completed your first draft of Vice President Carter's letter to the president. How well did you address the following issues?

1. *The Context*. Remember that by university regulation, President McBee is the decision-maker. All commentary from department, department chair, college dean, and the academic vice president is advisory to the president. However, the president may be quite distant from Professor Melton's case (it is possible she hasn't even met him) and may have little familiarity with his academic field. The folks who know Melton best are likely to be in his department.

2. *The Law*. The United States Supreme Court opinion in *Roth* makes clear that Professor Melton needs to establish he has a "property" or "liberty" right in order to trigger the Due Process Clause, that is, require the university to provide him with some "process" before his "property" or "liberty" rights are terminated. At this stage, Melton would probably appreciate a degree of "process" that would require the university to give him a hearing with the right to cross-examine university officials before his employment could be ended. *Roth* also makes clear that the United States Constitution, with rare exceptions, does not create "property" rights. Those must be found in other sources of law – federal statutes or regulations, state statutes or regulations, state common law.

We look to Katahdin law. It does provide some guidance. Katahdin statute indicates that a professor, like Melton, with only two years of employment is not entitled to a tenured (propertied) status. The statute further authorizes the UK Board of Trustees to provide procedural protections for employees in Melton's position. They certainly could provide for extensive hearing procedures before Melton could be terminated. However, they have not. The regulations only require the president to notify Melton in writing about his future employment and then, upon Melton's request, to provide the reasons for the nonrenewal of his contact. No hearing. No witnesses. No cross-examination. No review (e.g., to the Trustees) beyond the president's decision.

This suggests the university needs little reason to end Professor Melton's employment. If asked for a reason, President McBee could explain that UK needed to reduce its personnel budget or that it felt stronger candidates than Melton would be available in next year's hiring pool. However, the majority opinion and Justice Douglas's dissent suggest that there may be certain grounds that the university may NOT use in making or explaining its decision. One of those grounds is the exercise of First Amendment rights.

3. How much law should appear in the vice president's letter? We don't think this is the place to provide a lawyer's brief on the *Roth* case even though it is crucial that the counsel know *Roth* and the state and university law. Instead, we favor a concise paragraph that informs the president of the decision facing her and the "standard of review" that governs. What are the essential points from *Roth* and Katahdin law that guide the president? President McBee is probably quite familiar with this language from renewal decisions in previous years. However, the "boilerplate" (which would appear in every employment

review letter) is useful to make the university's case that it followed proper procedures in reaching its decision.

4. Be careful in your choice of terms. You are "denying reappointment" to Professor Melton. You are not "dismissing" him (the word has a precise meaning in UK regulations). You are certainly not "firing" him even though that is the term Melton and his supporters will probably use.

5. What is the crucial evidence that persuades the vice president that reappointment is not appropriate? You have a considerable factual record before you on paper. The vice president may also have some personal awareness of Melton's record and some personal views on re-employment cases (e.g., a desire to give strong weight to the opinion of the department chair or a strong dislike of faculty who appear to be imprecise in their scholarship). There certainly seems enough evidence to make the case that Melton is less than an academic star. His classroom teaching is not a hit. His published scholarship is unexciting. His attitude toward work is unenthusiastic.

The tricky question is whether to make any mention of Professor Melton's anti-hunting advocacy in print and before the state legislature. This certainly appears to be legitimate citizen advocacy protected by the First Amendment. The written reports from lower levels do raise the issue. A review of all materials (a certainty if Melton decides to litigate his nonrenewal) will present the question: Did Melton get terminated because he was expressing unpopular views? We believe there are sound arguments for and against making reference to the anti-hunting matters. What do you think they might be? Explore that issue further in class.

6. Be precise in summarizing the information you received from the prior reviews. You are welcome to comment on it, but don't change it to strengthen your case. DON'T SAY: "Melton's Chair reports he doesn't give a damn about teaching." That isn't what was said or even a fair paraphrase. You MAY SAY: "Melton's Chair reports his attitude is that this is 'just a job.' Our obligations to our students entitle us to demand more of our faculty."

7. As noted, the UK regulations require a statement of "reasons" *if* Melton asks for them. Your letter will give the president a number of reasons for nonrenewal. You may anticipate that Melton will shortly be asking for them. However, you may want to make clear to the president that she should not express the reasons until Melton asks. Melton may not want to know the reasons why he was "nonreappointed." This may make it easier for him in seeking

other positions to explain his time at the University of Katahdin. "They didn't tell me, but I've heard next year's budget had been cut substantially" sounds better to a prospective next employer than "They told me my teaching was below department averages and my scholarship was unimpressive."

8. You should examine how strongly or weakly you have expressed the opinion of the senior academic officer of the university. The final decision is the president's, but Vice President Carter's opinion is likely to be highly important to the president.

SOME SELF-EDITING SUGGESTIONS

We have discussed the need for self-editing. Often you will be the last reviewer of the document before it reaches its audience(s). You want the writing to be as clear and concise as possible. Take two or more paragraphs of your draft of the Melton letter. Run those paragraphs through the following ten tests.

1. Delete all adjectives and adverbs. Reread the sentence. Reinsert only those adjectives and adverbs that are necessary.

2. Examine any sentence of more than twenty words. Is the meaning clear? Would deletions of words and phrases help? Would two sentences be better than one?

3. Check all legal terms. Are they necessary for accuracy and clarity? If not, use simple English.

4. Check all parallel "and" phrasings (e.g., "The court ruled and ordered . . ."). Are both necessary?

5. Review all references to "he," "she," "it," or "they." Is it clear who or what is being identified? If not, return to the more precise term (e.g., "Smith," "the Cadillac's driver").

6. Compare the number of active and passive sentences. Too many passive sentences detract from the vigor of your writing.

7. Review all qualifying phrases and words (e.g., "with some exceptions, the rule is . . ."; "The opinion seemed to say . . ."). Is there really ambiguity or are you being too cautious?

8. Avoid phrases that prolong sentences without adding to their meaning. For example, "Officially defined, defamation is a type of action in the general field

of torts involving, as it were, harm to reputation." Why not "Defamation is a tort action for harm to reputation"?

9. Reexamine paragraph structure. The first sentence should introduce the paragraph or summarize its contents.

10. Spelling. Any time that you would not give fifty-to-one odds that your spelling is correct, use the dictionary.

EVALUATE THESE FIRST-DRAFT EXCERPTS OF THE MELTON TERMINATION LETTER

1. The University of Katahdin has certain expectations of all faculty. They include, as most important, student evaluations of professors' teaching ability. We also look for a certain amount of scholastic publication or work. Lastly, a more intangible element is that all teachers approach their interactions with students with some amount of enthusiasm.

2. I have solicited advice from the university's legal counsel and have taken note of their recommendations for properly denying reappointment to Melton.

3. Although this policy provides for due process for faculty members, it may cause the university to be vulnerable to unnecessary litigation.

4. Professor Melton's community activism risks becoming another impediment to the quality of his teaching. I have concerns about the future effect his activism might have on his classroom performance. He has been arrested at least once for interfering with lawful hunting activity. Should he continue to seek arrest in an effort to bear witness to his personal beliefs, he may prove physically unable to teach.

5. It would be in the best interest of both the university and Melton's career for him to move on next year.

6. The university acknowledges Professor Melton's strength and passion for the community. However, unfortunately, under the UK's policy on employment, the university is not allowed to take these great credentials into account during the decision-making process.

IN-CLASS ROLE-PLAYING EXERCISES

1. The vice president receives a call from the chairperson of the Faculty Appointments Committee at a university in a neighboring state. He says, "We are considering Professor Herman Melton for a position in our Sociology Department. Professor Melton tells us he is considering leaving the University of