

I. INTRODUCTION

“[I]t was a cooked-up case.”

Professor Andrei Marmor, USC Grievance Hearing, March 27, 2015. ([AR 610](#).¹)

At the center of this case lies a nefarious, “cooked-up” tenure review held in 2011 to 2013 at the Gould School of Law, which resulted in the wrongful denial of tenure to Appellant, USC Law School Professor Shmuel Leshem, and the loss of his livelihood. Respondent’s own policies and procedures require tenure reviewers to “scrupulously follow tenure procedures” explicitly because deviations can be used as “evidence that the institution breached its obligation to conduct a fair review.” ([AR 126](#), [796](#).) Respondent USC intentionally violated numerous tenure-review rules, standards and guidelines, offering no reasonable explanation for its repeated and egregious misconduct, giving rise to a biased tenure review process and an unfair subsequent grievance hearing.

Appellant’s procedurally-deficient tenure review process was wholly and entirely inconsistent with its own policies. The process included extensive reliance on peer-review reports not used for any other candidates in violation of a contrary documented promise; dismissal of standard tenure review letters used in each and every other tenure evaluation case; improper

¹ “AR” refers to the Administrative Record, lodged separately.

use of undisclosed citation counts; reliance on non-existent publications quota; dismissal of draft papers; and lack of warning that Appellant was not on track for tenure due to misleading mentoring.

Respondent further failed to document key components of the tenure review process, as required by its own policies and best practices. Finally, Respondent's tenure-denial letters, authored by then-Dean Robert K. Rasmussen, set forth inconsistent reasons for the denial of tenure and identified alleged scholarly inadequacies that were not previously raised during either the probationary period or the initial tenure decision and were not supported by contemporaneous evidence of performance reviews.

As detailed in Professor Andrei Marmor's January 30, 2011 Letter of Complaint submitted to university administrators in the midst of the tenure review, the most egregious violation of the tenure review process involved the extensive use of fraudulently-solicited confidential journal referee reports and editor letters related to both accepted and rejected scholarly work. (AR 707-709). These documents were received by Appellant as part of the peer-review publication process which is different from the law review publication process with which the majority of law professors are most familiar.

Peer-review reports are deliberately-unbalanced

anonymous critique of individual scholarly pieces and are not intended or used for tenure review purposes. Indeed, Respondent's own policies explicitly prohibit the use of peer-review reports in the tenure review process because they are inherently unreliable measures of a body of scholarly work. Respondent, furthermore, disregarded as evidence of scholarly quality the fact that Appellant has published in highly respected peer-reviewed journals.

Upon denial of tenure, Appellant filed a grievance with Respondent, detailing the myriad of deficiencies and policy violations that occurred during his tenure review. Appellant sought a copy of the tenure dossier – the file compiled by Respondent and relied upon by tenure reviewers in evaluating Appellant's tenure. The grievance hearing was marred with its own serious policy violations rendering it grossly unfair and fundamentally unlawful.

More specifically, during the grievance process, the University ignored the evidentiary rulings of the Grievance Panel Chair to produce the tenure file to Appellant, dictating instead what evidence would be produced at the hearing. The Panel Chair ceded control over the hearing, followed the dictates of the University, and denied Appellant access to the tenure dossier – key evidence needed to fully uncover the serious misconduct that plagued the tenure review process. The Panel

Chair's conduct blatantly violated Respondent's own hearing procedures and due process.

The Grievance Panel subsequently issued a whitewashed report of the Law School's misconduct signed off by then-President C. L. Max Nikias. ([AR 683-721](#); [AR 1-7](#).) The Panel members nevertheless embedded in their report a series of inculpatory findings, determining among other things that Tenure Review Subcommittee Chair Gillian Hadfield's (hereinafter "Hadfield") "request" for peer-review documents was "irregular" and her "defense puzzling;" referring to Subcommittee Member Daniel Klerman's (hereinafter "Klerman") comments on the "the inscrutability of [standard] external tenure letters" and the fact that peer-review documents are "more objective, more useful standard;" and finding "procedural irregularities in the compilation of [the tenure] dossier," whose nature and quantity were left unspecified. ([AR 686-687](#).)

The Panel concluded its report by urging the Law School to "take its review process more seriously," recommending that "in future cases it would behoove the law faculty to conduct a more thorough and serious review of tenure-track professors' progress" and "develop fair and consistent policies for weighing [interdisciplinary] publications." ([AR 687](#).) Staggeringly, despite its sweeping recommendations to overhaul the Law School's

tenure review process based on findings that policies were not followed in Appellant's case, the Panel went on to self-contradictorily recommend rejecting the request for a new, rule-compliant tenure review. ([AR 688](#).)

Having exhausted his administrative remedies at USC, Appellant filed on January 10, 2017 a Petition for Writ of Mandate at the Los Angeles Superior Court. (Appellant's Appendix, hereinafter "AA," Vol. 1, page 13.) On September 26, 2017, the Superior Court issued an Order sustaining Respondent's demurrer as to the underlying tenure review, erroneously finding that the tenure review process itself did not qualify for writ review under Civ. Code Pro. §1094.5. (AA V4, p 1028.) This is an error of law and fact.

Subsequently, in a December 10, 2018 order, the Superior Court denied writ relief as to the grievance hearing. (AA V5, p 1231.) Like the Grievance Panel, the Superior Court ignored a wealth of evidence supporting the clear policy violations and procedural errors that existed throughout the tenure review and grievance processes. Instead, the Court based its decision largely on the discredited and self-serving testimony of Hadfield, the Tenure Review Committee Chair who fraudulently secured and wrongfully shared Appellant's peer-review materials in the first instance, while ignoring Subcommittee Member Klerman's own testimony describing his elaborate and uninterrupted subversive

statement advising the Law School voting faculty members to disregard “for four [lengthily explained] reasons” standard tenure review letters and to rely instead on peer-review reports and journal denials. (AR 538-543.)

In patent violation of both state law and fair-process principles and precedents, the Superior Court went on to sanction the Panel’s exclusion of the tenure dossier file at the grievance hearing and to deny Appellant’s motion to augment the administrative record with the tenure file. (AA V5, p 1231-1246.) In making its decision, the Court incorrectly relied on the conclusion that the subcommittee’s report did not reference or quote peer-review documents, when the record clearly indicated that the subcommittee had considered this data. (*Id.*)

Appellant, via this appeal, seeks an opportunity to review the key evidence previously denied to him: his tenure dossier file. Appellant also seeks a rule-compliant tenure review and/or grievance processes.

II. STATEMENT OF CONTENTIONS

- A. Grievance Hearing: Appellant did not receive a fair grievance hearing because Appellant was unfairly and improperly denied access to his tenure dossier.
- B. Failure of the trial court to provide Appellant with his tenure dossier is reversible error.