

1 STATE OF MICHIGAN
2 COURT OF CLAIMS

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4 PETER J. HAMMER,
5 Plaintiff,

6 vs.

CASE NO. 04-241 MK

HON. JAMES R. GIDDINGS

7 THE BOARD OF REGENTS OF THE
8 UNIVERSITY OF MICHIGAN, a
9 body public,
10 Defendant.

11 -----
12 DEPOSITION OF:

13 SHERMAN JOSEPH CLARK

14 Tuesday, November 1, 2005
15 Green, Green & Adams, P.C.
900 Victors Way, Suite 240
Ann Arbor, Michigan

16 Appearances - PHILIP GREEN, P-14316
Attorney for Plaintiff

17 RICHARD J. SERYAK, P-26152
18 Attorney for Defendant

19 Also present - Steven Croley

20 Recorded By - NETWORK REPORTING CORPORATION
21 Sandra K. Harrison, CER-3193

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DEPOSITION OF:
Sherman Joseph
Clark



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- 1 **A I thought that -- I thought and think and have always**
 2 **thought that gays and lesbians should be permitted to**
 3 **marry.**
 4 Q Okay. All right. Now, let's get back to Peter Hammer.
 5 You voted "no" on his application for tenure in 2002?
 6 **A I did.**
 7 Q And I take it you read the entire tenure package that was
 8 provided to each of the faculty members?
 9 **A I did.**
 10 Q And in that tenure package were a series of internal and
 11 external reviews. Did you read each of the reviews?
 12 **A Yes.**
 13 Q And did you read the committee reports?
 14 **A Yes.**
 15 Q And as I understand there were three of them; a committee
 16 report, a concurring independent report, and a dissent of
 17 the five committee members?
 18 **A I don't recall that much detail about the composition of**
 19 **the reports.**
 20 Q Okay. Once you had finished reviewing the tenure package
 21 but before the meetings took place, had you formed an
 22 opinion as to whether you would vote in favor or against
 23 tenure for Peter Hammer?
 24 **A No.**
 25 Q So you were still open-minded as the meetings began?

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- 1 **A Yes.**
 2 Q You were not committed to either a no-vote or a yes-vote?
 3 **A That's right.**
 4 Q All right. Would it be fair to assume then that what
 5 tipped the balance was what transpired during the two
 6 tenure meetings?
 7 **A Yes.**
 8 Q Did you attend both of the tenure meetings?
 9 **A Yes.**
 10 Q Okay. And were there any opinions that were expressed
 11 during the tenure meetings that you felt were more
 12 efficacious than others or perhaps more helpful, I should
 13 say, to you in reaching the conclusion you should vote
 14 "no"?
 15 **A Richard Friedman's opinion.**
 16 Q Okay. And what was there about Richard Friedman's opinion,
 17 if you remember today, that you found persuasive?
 18 **A I wish I could remember more detail. I remember Rich**
 19 **making an analysis of Peter's work that was helpful to me**
 20 **in understanding it, trying to understand it. I wish I**
 21 **could remember more detail about exactly what he said that**
 22 **was particularly important or moving, but I can't remember**
 23 **more detail than that.**
 24 Q Do you recall any of those in attendance speaking favorably
 25 of their intentions to vote based upon Peter's service as

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- 1 opposed to his scholarship?
 2 **A I don't remember particular people who said "I'm going to**
 3 **vote for Peter because of his service as opposed to his**
 4 **scholarship" --**
 5 Q Okay.
 6 Q -- that couched their opinion in that way, no. I'm not
 7 saying there weren't.
 8 Q Right.
 9 **A I just don't remember that particular statement.**
 10 Q Have you worked with Professor Friedman on writing amicus
 11 briefs or articles or things of that nature?
 12 **A Yes. Recently Rich and I did work together on a brief.**
 13 Q Okay. And was that an amicus brief to the U.S. Supreme
 14 Court?
 15 **A It was.**
 16 Q Is that the first time you worked together with him in
 17 writing anything?
 18 **A Yes.**
 19 Q Have you taught anti-trust law?
 20 **A No.**
 21 Q Is it an area of particular interest for you?
 22 **A I teach a little bit of anti-trust law as a part of my**
 23 **sports law course, but it is not an area of particular**
 24 **focus for me.**
 25 Q Okay. Prior to the meetings at which the tenure of Peter

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- 1 Hammer was discussed, had you discussed with any of your
 2 fellow faculty members how they intended to vote or their
 3 views, I should say, on the application for tenure?
 4 **A No.**
 5 Q And as you sit here today you can't recall specifically
 6 what there was about what Rich Friedman had said during the
 7 course of those meetings that you found persuasive?
 8 MR. SERYAK: Other than it pertained to Hammer's
 9 scholarship?
 10 MR. GREEN: Yeah.
 11 **A Well, I can say this: I want to try to remember as much as**
 12 **I can. I remember reading Peter's work and finding it**
 13 **difficult and vague, hard to read, and not finding in it**
 14 **any particular insight. And I reread the work and found it**
 15 **still difficult and did not find in it any particular**
 16 **insight. But I went to the meetings hoping that people**
 17 **could tell me -- "hoping" may be the wrong word -- open to**
 18 **people telling me here or here or here are the insights**
 19 **that I missed because of a lack of expertise or background.**
 20 **I did not hear that from anyone at the meetings, and I**
 21 **recall Rich Friedman's discussion convincing me that it**
 22 **wasn't there, the insight that I was looking for.**
 23 Q Okay. What is Rich Friedman's area of expertise?
 24 **A Rich teaches and has taught a range of courses. I know**
 25 **he's taught civil procedure, evidence, anti-trust,**

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