

STATE OF MICHIGAN

COURT OF CLAIMS

PETER J. HAMMER,

Plaintiff,

vs.

CASE NO. 04-241 MK

HON. JAMES R. GIDDINGS

THE BOARD OF REGENTS OF THE
UNIVERSITY OF MICHIGAN, a
body public,

Defendant.

DEPOSITION OF:

BRUCE WOODWARD FRIER

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

Appearances - PHILIP GREEN, P-14316
Attorney for Plaintiff

RICHARD J. SERYAK, P-26152
Attorney for Defendant

Also present - Steve Croley

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

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INDEX

PAGE

Examination by Mr. Green. 3

EXHIBIT INDEX
PAGE

None

1 A In the year 2002?
 2 Q Yes.
 3 A I guess there's a short answer to that question and a
 4 longer answer to that question. Can I ask which you want?
 5 Q Well, we'll probably get to the longer one in any event.
 6 A All right.
 7 Q So why don't you give me the longer one and I may ask fewer
 8 questions?
 9 A All right. The -- I had participated in the discussion in
 10 2000, and so I was aware of the situation; namely, that
 11 Peter was a very good teacher and that he had an
 12 outstanding service record, and that there were major
 13 questions about his scholarship. The report by the
 14 Committee in 2002 when it came was a complete surprise to
 15 me. I had not heard -- I had not seen his scholarship in
 16 the meantime. I had not heard very much about what he was
 17 doing in the intervening two years, and so the report is by
 18 our standards an unusually controverted report in the sense
 19 that it had a three-member majority, a concurring opinion,
 20 and a minority opinion, which is very unusual for us. I
 21 mean, the Supreme Court may do it, but we don't. And so I
 22 was immediately struck by that.
 23 The -- in reading the report, which was the first
 24 thing that I did, the majority of the report struck me as
 25 filled with a considerable amount of evasion and special

(Deposition scheduled to start at 1:00 p.m.;
actual start time was 1:06 p.m.)

BRUCE WOODWARD FRIER, having been
called as a witness, having been first duly
sworn, testified as follows:

EXAMINATION BY MR. GREEN:

9 Q For the record, would you state your name, please?
 10 A My name is Bruce Woodward Frier.
 11 Q How are you currently employed?
 12 A I'm employed by the University of Michigan. I'm a
 13 professor in the Law School, and I'm a professor in the
 14 Department of Classical Studies of the College of
 15 Literature, Science, and the Arts.
 16 Q Are you tenured in both positions?
 17 A I am, yes.
 18 Q And as I understand your background, you are not a graduate
 19 attorney?
 20 A I am not.
 21 Q And you are not licensed to practice law anywhere in the
 22 country?
 23 A That's correct.
 24 Q Can you tell me your reasons for submitting a no-vote on
 25 Peter Hammer's application for tenure in the year 2002?

1 pleading, but on the other hand, you know, it was
 2 affirmative of Peter; and the minority report was, of
 3 course, regarding -- regarded the scholarship as not
 4 meeting our standards. It was written by someone whose
 5 opinion I respected very much, who was a co-author of mine.
 6 The concurring opinion struck me as even harsher on
 7 Peter's scholarship than the minority report was. So I sat
 8 down and started reading the writings, and I read the
 9 recommendations and I could see where all of the sides were
 10 coming from; however, I was at that stage in considerable
 11 confusion.
 12 What settled my mind on this was the debate; that the
 13 two days of debate that we had on this or two nights of
 14 debate we had on this, which I listened to very closely. I
 15 did not actually speak myself. This is not an area in
 16 which I'm an expert, although I'm familiar with many of the
 17 concepts that were being deployed in Peter's scholarship.
 18 I can say about the writing that I read that it was very
 19 difficult to read at times. It was -- it struck me as
 20 opaque and jargony and just very hard to read. And what I
 21 was interested in seeing the faculty do during the debate
 22 was to begin to strip away some of this jargon and begin to
 23 try to get at the underlying merits of the work in terms of
 24 its contribution.
 25 There were two principal articles and one of them was

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1 fairly easily dismissed as not being of central
2 significance, I thought. The other one was not so easily
3 dismissed, but in the course of the debate I think we
4 succeeded in getting down to those fundamental principles;
5 that the fundamental arguments of the article -- this is
6 the Michigan Law Review article -- and demonstrated that,
7 in fact, it rested upon -- I mean, it just was not the
8 decisive contribution that we would have expected for
9 tenure.

10 By the end of the debate there was, I think -- there
11 were opinions all over the map, as there always are in Law
12 School faculty discussions. There is -- we don't have a
13 strong tradition of consensus.

14 MR. SERYAK: Try to just stick with the reasons for
15 your vote, if you could.

16 WITNESS: Okay. My own vote.

17 MR. SERYAK: Because this is becoming a long -- long
18 answer.

19 WITNESS: Yes.

20 MR. GREEN: I don't mind.

21 A Yes. But, I mean, I guess this did impact on me in the
22 sense that I felt that there was a -- something of a
23 consensus in the room -- probably a majority in the room,
24 including myself -- that felt that he -- that Peter did not
25 meet our scholarly standards, and that on that basis I

1 MR. SERYAK: Try to wait for the -- try to focus on
2 the question.

3 WITNESS: Okay.

4 Q Feel free to answer in whatever way you feel your answer
5 meets the question, too. Professor, when did you start
6 working with J. J. White on the book that has now been
7 published?

8 A 19 -- I'm sorry. Two thousand and -- I think in the summer
9 of 2002; I'm not positive, though. About then.

10 Q Who approached who on the topic of --

11 A He did. He approached me.

12 Q Okay. And prior to that time, had you worked with J. J.
13 White on any writings of any kind?

14 A No.

15 Q Had you worked with him putting together any symposia?

16 A No.

17 Q Well, whose arguments -- if we can call them that -- were
18 the most persuasive to you as you recall them today in the
19 context of the two tenure meetings in 2002?

20 A I think I was most persuaded by Rich Friedman's arguments.

21 Q Do you recall what he said?

22 A I can't -- I don't recall the precise details. They were
23 complicated articles. I think at the time I understood
24 them, but --

25 Q You say that one of articles was easily dismissed.

1 could not vote for tenure. And so I voted against tenure.

2 Q Had you had a feeling that there was a majority in the room
3 that did feel that his writings met the scholarly standards
4 for the University of Michigan Law School, would you have
5 voted affirmatively?

6 A No, not necessarily. I would have exercised my own
7 judgment, but it was considerably easier for me because I
8 felt as I did that people that I -- I mean, that had really
9 thought about this writing deeply shared my apprehensions
10 with regard to it.

11 Q Would it be fair to say that J. J. White was the individual
12 that you looked to for guidance the greatest among the
13 faculty members?

14 A No, it would not be fair to say that. It was someone whose
15 opinion I respected when I read the report, but he did not
16 directly engage the merits of the scholarship, and -- I
17 mean, he was enough to -- it was a red flag for me as,
18 indeed, the entire report was a red flag for me. But, no,
19 he did not particularly influence my vote. I mean, I -- he
20 was the member of the committee, I think, that I felt
21 closest to, but we disagree on huge amounts.

22 Q Did you co-author an article with him?

23 A A book.

24 Q A book.

25 A And the book is filled with our disagreements.

1 A Yes.

2 Q Can I assume that by that you meant easily dismissed is not
3 terribly scholarly?

4 A Yes, I think you could basically say that. It was unsound
5 in it's method and that was conceded by the committee, and
6 I agreed with that view.

7 Q Was that the article that was co-authored with Bill Sage?

8 A Yes.

9 Q To what extent were you influenced by the outside review
10 letters?

11 A I was influenced to some extent by them.

12 Q It's fair to say, then, as you walked into the first
13 meeting, which took place approximately a week before the
14 actual tenure vote --

15 A Yes.

16 Q -- that you were still open-minded about whether you might
17 vote favorably or unfavorably on the tenure decision?

18 A Yes.

19 Q All right. And after the close of the debate on the first
20 meeting, were you still up in the air, so to speak, about
21 which way you were going to vote?

22 A I think so. I don't remember exactly where I was at that
23 point. I don't remember.

24 Q Okay. In the second meeting, do you recall there being a
25 straw vote part way through the meeting?

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