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STATE OF MICHIGAN
IN THE COURT OF CLAIMS

PETER J. HAMMER,

Plaintiff,

-vs-

Case No.
04-241-MK

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

politic,

Defendant

PAGE 1 TO 27

The Deposition of JAMES HATHAWAY,
(Via Videoconference)

Taken at 2900 South State Street,
Ann Arbor, Michigan,

commencing at 1:00 p.m.,

Wednesday, January 25, 2006,

Before Laurel A. Frogner, RMR, CRR, CSR-2495

1 true or not.
2 Q. And what was the next step following this
3 second appearance in Ann Arbor with respect to your
4 being hired at the university?
5 A. My recollection is that the dean contacted
6 me and indicated that there was a desire to present my
7 name to the faculty for lateral appointment, and he
8 wanted to be sure that I was happy with that, and I
9 said that I was. The timing was a bit awkward, I
10 recall, because the faculty was going to be meeting as
11 I was going to be flying into South Africa, and I
12 recall getting the results of the vote from Dean Lehman
13 when I was actually in South Africa.
14 Q. And what did Dean Lehman tell you the
15 results of the vote were?
16 A. He told me that the faculty had voted to
17 make me an offer and wondered whether I was in a
18 position to accept it.
19 Q. Did he tell you the nature of the vote, in
20 other words, the count?
21 A. No. As best I recall from our process, we
22 don't do a -- that's not the way lateral appointments
23 are made, in any event.
24 Q. What is your understanding of the way that
25 lateral appointments are made?

1 A. My recollection is if there is any
2 substantial opposition among members of the faculty, an
3 offer isn't made.
4 Q. And do they, as far as you know, involve the
5 nontenured teaching faculty as well as the teaching
6 faculty?
7 A. Yes.
8 Q. And does that differ, then, than the tenure
9 process itself where only tenured faculty --
10 A. It does. For the tenure process, the
11 nontenured faculty don't participate or vote.
12 Q. What is your area of expertise at the
13 University of Michigan?
14 A. I teach public international law with a
15 focus on international refugee and human rights law.
16 Q. And did that area of expertise bring you
17 into contact with Peter Hammer with any frequency?
18 A. Not so much the area of expertise. Peter
19 and I were certainly friends. His Cambodia project
20 brought us into contact professionally because it had
21 an international human rights focus, and obviously that
22 was something I was interested in.
23 Q. You say that you and Peter were friends?
24 A. Yes.
25 Q. Did you socialize?

1 A. On a limited basis. I think I was out to
2 his house at least once or twice. I'm pretty sure he
3 and his partner were at my house at least once or
4 twice. We probably had a couple of dinners out
5 together, that sort of thing. We would occasionally
6 have lunch together.
7 Q. Okay. What was your relationship like with
8 the other tenured faculty? Did you have other friends
9 on faculty with whom you socialized?
10 A. A small number, but to be frank, I'm a
11 fairly private person. Virginia Gordon, the assistant
12 dean, and I are and remain good friends. A smaller
13 number of colleagues are people I socialize with, but
14 by and large I keep my private and my work life
15 separate.
16 Q. Who would be the people that you could
17 identify for us that you would consider your friends at
18 the University of Michigan faculty other than Virginia
19 Gordon and Peter Hammer?
20 A. Well, I mean I saw a fair bit of Sam Gross
21 and his wife Phoebe Elsworth, I saw a lot of Deborah
22 Malamut when she was still on the faculty, Catherine
23 McKinnon is someone I spent time with when she's there.
24 I have a particularly close relationship with a couple
25 members of our overseas affiliated faculty, Christine

1 Chenken and Chris McCrudden, who are in residence
2 during the same term that I am, the fall term.
3 Q. Okay. Other than the fact that you're a
4 private person, is there a reason why you didn't
5 develop friendships with other people on the faculty
6 such as Kyle Lowe, Steve Crowley, people of that
7 nature?
8 MR. SERYAK: I just want to object
9 to the relevancy of the question, lack of foundation.
10 MR. GREEN: Your objection is noted.
11 You can answer the question.
12 THE WITNESS: Do I answer the
13 question in any event?
14 BY MR. GREEN:
15 Q. Yes.
16 A. I consider them colleagues, and I'm friendly
17 with them at a collegial level, but I had much the same
18 pattern over 15 years at Osgoode. I mean I had three
19 or four friends on faculty out of a faculty of 50.
20 Q. Did you feel in any way alienated from any
21 segment of the faculty at the University of Michigan
22 law school?
23 A. No, I didn't, actually, and, in fact, I
24 remember thinking it was the first place I'd ever been
25 where I could actually speak to law and economics

1 colleagues and feel happy about it. It's not a crowd I
2 tend to enjoy, but at Michigan I found them quite
3 different.
4 Q. And why do you pick out law and economics
5 faculty as opposed to any --
6 A. I think probably ideologically I'm farther
7 away from them than any other group.
8 Q. Okay. You were in Arizona, were you not, at
9 the time of Peter Hammer's tenure vote in February of
10 2002?
11 A. I was on a research leave that term, and my
12 partner and I were living in Sedona. I actually think
13 I was out of the country at the time of the vote on
14 Peter, but I wasn't living in Ann Arbor during the time
15 of the entirety of the winter term.
16 Q. Were you in Ann Arbor during the year 2000
17 when Peter's request for tenure was considered?
18 A. I presume I was, but the truth is I actually
19 can't recall that.
20 Q. Do you remember whether or not there was a
21 faculty vote on his application for tenure in 2000?
22 A. I honestly don't know.
23 Q. Okay.
24 A. I apologize, but I have sort of a short-term
25 memory, and we do so many votes on tenure and hiring

1 A. About the substance of the vote may be
2 slightly overstating it, but I think I did send her an
3 e-mail in which I referred to the vote.
4 Q. Okay. Do you happen to have a copy of that
5 e-mail with you?
6 A. Yes.
7 Q. Excellent.
8 A. I'll put on my old man glasses if you're
9 going to ask about it.
10 Q. Okay. Now, we're referring to a document
11 that was marked Deposition Exhibit 13 in the Evan
12 Caminker deposition.
13 A. Actually, on my copy it's marked Deposition
14 Exhibit 3. Is that the same document?
15 Q. It probably is, and I probably mismarked my
16 copy, but it's --
17 A. Okay.
18 Q. If we can, it's a two-page document.
19 A. Mine is a one-page document. The e-mail on
20 top is dated February 22 from Catherine, and below that
21 is an e-mail dated February 21 from me to her.
22 Q. Okay. Well, let me start with the original.
23 I have --
24 A. Okay.
25 Q. On the original copy there is an e-mail that

1 that after they're done I tend to put them in the
2 discard bin.
3 Q. Let me see if I can refresh your
4 recollection a little bit.
5 A. Sure.
6 Q. In the year 2000 there was some
7 consideration of his request for tenure, and that
8 tenure decision was deferred for two years. Do you
9 recall anything about such an event?
10 A. I recall the fact of the deferral, but I
11 don't recall the meeting that led to it.
12 Q. Okay. During the years 2001 and early 2002,
13 maybe 2000 and 2001, did you hear conversation in the
14 faculty lounge, in the hallways, elsewhere at the law
15 school, that had any bearing on Peter's tenure
16 application or eligibility that you recall?
17 A. I may have heard it, but I simply don't
18 recall any of it.
19 Q. Okay. And you were either out of -- you
20 were certainly out of the state in 2002 when the tenure
21 vote took place?
22 A. Right, yes.
23 Q. Did you have occasion to communicate with
24 Catherine McKinnon following that tenure vote about the
25 substance of the vote?

1 started at 7:11 p.m. on February 21st.
2 A. Yes. That's the same date and time that I
3 have.
4 Q. Okay. I see. And this is an e-mail from
5 you to Catherine McKinnon, correct?
6 A. Yes.
7 Q. In which you state, "Just in case you
8 haven't heard, not only did Una get hired on a 20 to 4
9 affirmative vote, but Peter Hammer was denied tenure
10 last night. Not a good week for human rights at
11 Michigan, I'd say." Is that correct?
12 A. Yes, that's correct.
13 Q. All right. And, first of all, who is Una?
14 A. Una is Una Hathaway, who was at the time a
15 candidate for appointment to the Michigan faculty and
16 is presently a member of the faculty at Yale.
17 Q. Is she someone that you're familiar with?
18 A. Not personally, but I know her work.
19 Q. Okay. And do you look favorably upon her
20 work or unfavorably?
21 A. Quite unfavorably.
22 Q. Okay. And why is that?
23 A. I felt she was making claims about the lack
24 of enforceability and viability of international human
25 rights law that was based on what I considered to be

1 said it was inappropriate. I think the vote on Peter
2 was 19/13, so failed of the two-thirds I think is
3 required for tenure (although I'm not positive about
4 the two-third part). You know that confidentiality
5 means Peter isn't to be told the numbers, right?
6 Peter's dream job is apparently doing his same work in
7 the Public Health School, and maybe it will work out.
8 He has a lot of support from the law school, and
9 sometimes we've hired people to do law (say with
10 economics) who the original discipline didn't tenure.
11 Sounds like it would be good for his family situation
12 certainly," and then C.A.M. Do you recall receiving
13 such a communication from her?
14 **A. I frankly don't, but if you're reading it, I**
15 **presume I received it.**
16 **Q. Did anybody contact you respecting**
17 **confidentiality in the process?**
18 **A. You mean explicitly to remind me of that?**
19 **Q. Yes.**
20 **A. No, I can't recall that. It sounds as**
21 **though Catherine did an e-mail that you've read, but**
22 **that's the only thing that I can identify.**
23 **Q. You didn't receive an e-mail, for example,**
24 **from Dean Caminker advising you that anything that**
25 **transpired in these meetings is confidential?**

1 **A. It would have been Dean Lehman at the time,**
2 **but if I did, I probably treated it as routine**
3 **correspondence, I can't recall it.**
4 **Q. Did you speak with any of your colleagues**
5 **following the vote about why this had happened?**
6 **A. Not that I can recall, and I think that's**
7 **simply a function of the fact that I was thousands of**
8 **miles away.**
9 **Q. When did you return to the University of**
10 **Michigan campus?**
11 **A. I believe we went from Arizona directly to**
12 **British Columbia for the summer, so it's likely it was**
13 **the following September or late summer.**
14 **Q. I see. Did any of your fellow colleagues at**
15 **the law school, tenured faculty, at any time indicate**
16 **to you how they had voted on Peter's tenure?**
17 **A. I presume they must have at some point, but**
18 **I just don't recall it. I mean it's entirely possible**
19 **it occurred, but it just isn't something I remember.**
20 **Q. Do you recall hearing anything about the**
21 **fact that Peter was trying to file a grievance or did**
22 **file a grievance contesting the denial of tenure during**
23 **the fall of 2002 when you were back on campus?**
24 **A. I can't recall when I heard about it, but**
25 **Peter told me that directly.**

1 **Q. Did you have conversations with anyone else**
2 **at the law school regarding that grievance?**
3 **A. You know, the only conversation that I can**
4 **honestly recall about this was perhaps one or two**
5 **conversations, perhaps even three, with Peter himself.**
6 **Q. Okay. No one else at the law school**
7 **discussed this with you?**
8 **A. If they did, it must have been**
9 **extraordinarily casual because I just don't remember**
10 **it.**
11 **Q. No further questions.**
12 **EXAMINATION BY MR. SERYAK:**
13 **Q. Professor, were you recruited to the law**
14 **faculty at the University of Michigan?**
15 **A. I was.**
16 **Q. And who exactly or who extended you the**
17 **offer of a position of an appointment?**
18 **A. That would have been Dean Lehman.**
19 **Q. And did Dean Lehman make known to you his**
20 **desires regarding whether you should come to Michigan?**
21 **A. Yes, he was extraordinarily enthusiastic, as**
22 **every dean would be.**
23 **Q. He wanted you to come?**
24 **A. Yes, he did.**
25 **Q. And you mentioned, without any names, but**

1 you made a reference to your partner. Did you make
2 known to Dean Lehman or any of the faculty before the
3 offer of employment your sexual orientation?
4 **A. Yes. I mean my partner, my then partner was**
5 **John Mareau, and John accompanied me on a visit to the**
6 **campus. I believe after Dean Lehman had made the offer**
7 **to me by telephone and prior to my accepting it we came**
8 **to Ann Arbor. I know John and I had dinner with, for**
9 **example, the one I recall for sure is with Don Regan**
10 **and a number of colleagues that evening, but Don had**
11 **organized it. John was involved -- you know, certainly**
12 **accommodated in the hotel while we were there, visited**
13 **the law school with me. I know we met a number of**
14 **colleagues, but I just honestly apart from Don Regan**
15 **can't recall specific names.**
16 **Q. And was your partner also a Canadian**
17 **citizen?**
18 **A. He is only a Canadian citizen, yes.**
19 **Q. Did the university provide any assistance to**
20 **him for entry into the United States?**
21 **A. Extraordinarily so. I mean Jeff Lehman was**
22 **a thousand percent aware of my situation, the fact that**
23 **John and I had been together for more than a decade,**
24 **and he, quite frankly, took what I would consider to be**
25 **almost heroic steps to try to make it possible for John**

1 to immigrate to the United States. He hired legal
2 counsel to investigate green card and other
3 possibilities for John at the law school's expense.
4 Q. And you were hired with tenure?
5 A. Yes, I was.
6 Q. Professor, have you had an opportunity to
7 look at the lawsuit that Peter Hammer filed in this
8 case?
9 A. I looked at the documents on-line last
10 summer, and I do have a copy of a portion of the
11 complaint with me.
12 Q. When you looked at the document last summer,
13 how, again, did you look at that?
14 A. I looked at it on-line. I think somebody
15 had pointed out to me that Peter had set up a website
16 where he had put up the documents relating to his
17 complaint, and I looked at them.
18 Q. And I'd ask that -- do you have a portion of
19 that complaint in front of you?
20 A. I do.
21 Q. Could you look, please --
22 A. The portion that begins roughly Paragraph 18
23 and extending to roughly Paragraph 24.
24 Q. Could you look at Paragraph 21.
25 A. Yes.

1 Q. And just take a moment to read that to
2 yourself.
3 A. Yes, I recall this paragraph.
4 Q. And even though it doesn't mention you by
5 name, does that paragraph refer to you?
6 A. I can't imagine any other person it might
7 refer to.
8 Q. And did there ever come a point in time at
9 Michigan where you did take a reduced appointment?
10 A. Yes.
11 Q. And why was that?
12 A. I had been offered what is referred to as a
13 Canada research chair to return to Osgoode Hall Law
14 School. It's an extraordinarily prestigious
15 appointment that involved a full American style salary
16 with teaching that would be limited to one term per
17 annum in perpetuity, and I had intended to accept that
18 offer, to be frank. Dean Lehman and then Associate
19 Dean Caminker met with me, and we negotiated an
20 alternative that would allow me to remain at Michigan
21 instead of accepting that chair.
22 Q. So Dean Lehman and now Dean Caminker wanted
23 you to stay in some capacity at Michigan?
24 A. I think that would be an understatement.
25 Jeff and I worked extraordinarily hard to come up with

1 the terms of something that would be workable both for
2 the law school and for me personally, and indeed we
3 codified that in an agreement of, as I recall, four or
4 five single spaced pages. He was extremely anxious to
5 make it possible for me to remain.
6 Q. Did your decision to take a reduced
7 appointment -- was that in any way because of a hostile
8 environment at the Michigan Law School?
9 A. To start with, I have no idea where the
10 notion that there was a hostile environment came from.
11 I don't view the environment as hostile, I have never
12 viewed it as hostile, and that had absolutely nothing
13 to do with my decision. Quite frankly, had there been
14 any hostility at Michigan, the last thing I would have
15 done is to turn down a prestigious offer to return to a
16 school that I loved in a city where I had lived for
17 many years. I would have gone in a flash. The fact
18 that I tried very hard to find a way to remain at
19 Michigan I think is testament to the fact that I cared
20 deeply about the law school and wanted to remain there.
21 Q. Is that part of the allegation in Paragraph
22 21, that you took a reduced appointment with the law
23 school, that given the hostility of the environment,
24 you took a reduced appointment, is that allegation
25 false?

1 A. If that refers to me, it's patently and
2 absolutely false.
3 Q. Did Peter Hammer -- prior to your seeing
4 this lawsuit last year, did Peter Hammer ever contact
5 you and review or discuss with you the allegation in
6 Paragraph 21 before you saw it?
7 A. He contacted me by telephone, and I honestly
8 can't recall the month or, quite frankly, even the
9 year, but I remember receiving the telephone call at my
10 summer home in British Columbia, and it was fairly
11 clear that Peter wanted me to say that I had felt
12 uncomfortable at Michigan, and I told him that that may
13 have been his experience but it had never been mine.
14 Q. Did any attorney representing Peter
15 Hammer -- did Phil Green or any lawyer representing him
16 ever contact you before you saw Paragraph 21 in the
17 complaint?
18 A. No, it was strictly with Peter.
19 Q. Okay. Thank you, Professor. That's all I
20 have.
21 MR. GREEN: I have nothing further.
22 MR. SERYAK: Thank you very much.
23 MR. GREEN: Thank you.
24 THE WITNESS: Okay. Thank you.
25 (The deposition was concluded at 1:35 p.m.)

1 CERTIFICATE OF NOTARY

2
3 STATE OF MICHIGAN)
4) SS
5 COUNTY OF OAKLAND)
6 I, Laurel A. Frogner, Certified Shorthand
7 Reporter, a Notary Public in and for the above county
8 and state, do hereby certify that the above deposition
9 was taken before me at the time and place hereinbefore
10 set forth; that the witness was by me first duly sworn
11 to testify to the truth, and nothing but the truth,
12 that the foregoing questions asked and answers made by
13 the witness were duly recorded by me stenographically
14 and reduced to computer transcription; that this is a
15 true, full and correct transcript of my stenographic
16 notes so taken; and that I am not related to, nor of
17 counsel to either party nor interested in the event of
18 this cause.

19
20
21
22 Laurel A. Frogner, CSR-2495, RMR, CRR
23 Notary Public,
24 Oakland County, Michigan
25 My Commission expires: 4-22-08

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