

1 STATE OF MICHIGAN
2 IN THE 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 politic,
10 Defendant.

11 -----
12 DEPOSITION OF:

13 THOMAS E. KAUPER

14 December 20, 2005
15 900 Victors Way
16 Ann Arbor, Michigan

17 Appearances - THOMAS L. KENT, P-55863
18 Attorney for Plaintiff

19 RICHARD J. SERYAK, P-26152
20 Attorney for Defendant

21 Also Present - Steve Croley

22 Recorded By - NETWORK REPORTING CORPORATION
23 Rebecca A. Alexander, CER-4233

24 I N D E X

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DEPOSITION OF:
Thomas E.
Kauper



1 A Oh, sure.
 2 Q Instead of being asked, again, if you know, to review
 3 reviewers, why isn't your review of the work sufficient
 4 evidence of your feelings about the case?
 5 A Well, that strikes me as kind of an arrogance to say,
 6 "Well, here's my review, and what anybody else says is
 7 irrelevant." It's not irrelevant.
 8 Q The reason I asked is, do you know whether others were
 9 asked to review what you wrote?
 10 A I don't know. I don't know.
 11 MR. SERYAK: Counsel, in that last question, you mean
 12 others asked to do a written review of the witness's
 13 writings?
 14 MR. KENT: That's right.
 15 Q And that's how you understood my question?
 16 A Yes. And I don't know the answer. I would assume the
 17 answer's probably yes, but I don't know.
 18 Q After you learned of the tenure vote, were you outspokenly
 19 critical of the outcome to anyone?
 20 A I don't know that I was outspokenly critical. I was
 21 surprised.
 22 Q Did you express that surprise to any of your colleagues?
 23 A I probably did, but there again, I wasn't there, and I
 24 didn't -- I was not in a lot of communication with my
 25 colleagues.

1 Q Obviously scholarship is one of the criteria that's used to
 2 assess a tenure application. In your experience, what are
 3 the other criteria that are used to assess a person's
 4 tenure application?
 5 A Well, in theory at least, they are teaching and service to
 6 the academic community.
 7 Q And when you said "in theory," why did you qualify it that
 8 way?
 9 A Well, I think increasingly the primary emphasis is
 10 scholarship.
 11 Q Do you know whether diversity is ever a consideration on a
 12 tenure application or has ever been on one that you have
 13 reviewed?
 14 A There may have been in some people's minds.
 15 Q It's not something for which there's a policy though?
 16 A No.
 17 Q And you've never been directed to consider diversity as a
 18 criteria for awarding tenure?
 19 A I've never been directed on anything concerning tenure.
 20 Q Well, you've received some direction in the past about
 21 scholarship, teaching and service being appropriate.
 22 A Oh, yes, sure. But the answer to your question is "no."
 23 Q When you testified that you were surprised that -- at the
 24 outcome of the tenure vote, can you tell me why you were
 25 surprised?

1 A Well, not having been there, I guess I just -- I didn't
 2 know how strong the opposition was. If you're going to ask
 3 me, was I greatly surprised? The answer is "no."
 4 Q If you had known prior to the vote the extent of the
 5 opposition to Professor Hammer's application for tenure, do
 6 you believe that would have mitigated against staying for
 7 the seminar? Do you believe you would have flown back in
 8 that case?
 9 A I can't answer that.
 10 MR. KENT: Okay. That's all I have. Thank you.
 11 WITNESS: That's it?
 12 MR. KENT: It might be.
 13 MR. SERYAK: It might be. Just give me a minute.
 14 (Off the record)
 15 MR. KENT: Let me just do these quick one or two.
 16 MR. SERYAK: That's all right.
 17 MR. KENT: And I'm sorry about closing the record up
 18 like that.
 19 MR. SERYAK: No, that's all right.
 20 Q Professor Kauper, I just want to ask you what the -- just
 21 skip over and leave Omri Ben-Shahar's review. Did you levy
 22 any criticisms about the review that was authored by Einer
 23 Elhauge?
 24 A I don't think I leveled criticisms at it. I thought many
 25 of his comments were very good.

1 Q Was he considered to be an external reviewer on Professor
 2 Hammer's case?
 3 A Yes; yes.
 4 MR. KENT: Okay. That's all I have.
 5
 6 EXAMINATION BY MR. SERYAK:
 7 Q Professor, when you were at Harvard, did you have any
 8 conversations with Professor Elhauge about his review?
 9 A No.
 10 Q You didn't discuss the case -- Hammer's case at all with
 11 Professor Elhauge?
 12 A No, I did not.
 13 Q Professor, did you observe anything in Omri Ben-Shahar's
 14 review or analysis to indicate to you that Peter Hammer's
 15 sexual orientation was being considered in any way in the
 16 analysis of his work?
 17 A Oh, absolutely not.
 18 Q Did you hear or observe anything to indicate that his
 19 sexual orientation had anything to do with the faculty
 20 vote?
 21 A No.
 22 Q You say you did have an opportunity to look at your last
 23 evaluation of his work --
 24 A Uh-huh (affirmative).
 25 Q -- in '02, your written review?

1 **A Do you mean my reviewing the reviewers?**
2 **Q No, not of the reviewers, but of Peter Hammer's work?**
3 **A Yes.**
4 **Q And the conclusion, based your prior involvement in tenure**
5 **cases, was that an enthusiastic endorsement of his case?**
6 **A I don't think you could say that.**
7 MR. SERYAK: All right. That's all I have.
8 MR. KENT: Thank you.
9 MR. SERYAK: Thanks.
10 (Deposition concluded at approximately 10:42 a.m.)

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