

STATE OF MICHIGAN
IN THE COURT OF CLAIMS

PETER J. HAMMER,
Plaintiff,

vs.

Case No.: 04-241MK
HON. JAMES R. GIDDINGS

BOARD OF REGENTS OF THE
UNIVERSITY OF MICHIGAN, a
body politic,
Defendants.

THE DEPOSITION OF JEFFREY LEHMAN
taken by the Defendant on the 3rd day of
February 2006, at 101 North Main, Ann Arbor,
Michigan, at 9:40 a.m.

APPEARANCES:

For the Plaintiff: PHILIP GREEN
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For the Defendant: RICHARD J. SERYAK
Miller, Canfield, Paddock and
Stone, P.L.C.
150 West Jefferson Avenue
Suite 2500
Detroit, Michigan 48226
(313) 963-6420

Also Present: Steven P. Croley
Evan H. Caminker
Peter Hammer

Reported By: Karen Klerekoper, CSR-4250, RPR

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1 Ann Arbor, Michigan
 2 Friday, February 3, 2006
 3 At 9:40 a.m.

4
 5 JEFFREY LEHMAN
 6 HAVING BEEN CALLED BY THE DEFENDANT AND SWORN:
 7 MARKED BY THE REPORTER:
 8 DEPOSITION EXHIBIT NUMBERS 1 - 3
 9 EXAMINATION

10 BY MR. SERYAK:
 11 Q. Sir, could you tell us your name, please?
 12 A. Jeffrey Sean Lehman.
 13 Q. And you're currently employed, where?
 14 (Discussion off the record)
 15 BY MR. SERYAK:
 16 Q. You are currently employed, where?
 17 A. Cornell University.
 18 Q. What is your capacity there?
 19 A. I'm a professor of law.
 20 Q. Prior to employment at Cornell -- well, first of all,
 21 did you serve in any other capacities at Cornell?
 22 A. Yes, I was president of the university.
 23 Q. For what period of time?
 24 A. 2003 to 2005.
 25 Q. Prior to your serving as president of Cornell

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(Exhibits attached to transcript)

1 University, where were you employed?
 2 A. University of Michigan.
 3 Q. What was your last position at the University of
 4 Michigan?
 5 A. I was Dean of the law school and professor of law and
 6 public policy.
 7 Q. And you served as Dean of the law school at the
 8 University of Michigan from approximately when to
 9 when?
 10 A. From 1994 to 2003.
 11 Q. Do you recall meeting Peter Hammer before he was
 12 employed at the University of Michigan?
 13 A. Yes.
 14 Q. Did you approve his hiring?
 15 A. Yes, I'm sure I was required to officially approve his
 16 hiring. He was hired by the law school, but I
 17 certainly did approve of his hiring and I wanted him
 18 to be hired, yes.
 19 Q. Do you recall whether you signed the letter that
 20 extended Peter Hammer the offer of employment at the
 21 university?
 22 A. I signed all such letters, so I'm sure I did.
 23 Q. Before Peter Hammer was employed by the university,
 24 did you learn that he is gay?
 25 A. Yes.

1 Q. Did you personally attend a faculty vote on -- that
 2 concerned Peter Hammer in the year 2000?
 3 A. Yes.
 4 Q. In the year 2000, did Peter Hammer apply for tenure?
 5 A. Yes.
 6 Q. And was his tenure application evaluated in either
 7 late 1999 or 2000?
 8 A. Yes.
 9 Q. Was it considered by the faculty as a whole?
 10 A. Yes.
 11 Q. Do you recall when the meetings were held in 2000 to
 12 review Mr. Hammer's case, his tenure application?
 13 A. They would have been in February, but I don't remember
 14 the exact dates.
 15 Q. Was there one or more than one meeting?
 16 A. Two meetings.
 17 Q. Did you attend both?
 18 A. Yes.
 19 Q. As a result of those meetings, was Peter Hammer
 20 granted tenure?
 21 A. No.
 22 Q. Sir, I'm just going to -- counsel, I don't have a lot
 23 of questions on this. I only have the one copy. We
 24 can make copies.
 25 I just want to show you, sir, what is

1 A. This is six years ago now.
 2 Q. We know that, but just do the best you can. Take your
 3 time and tell us what you discussed with him in terms
 4 of ways that the law school could assist him.
 5 A. Well, I can't tell you whether this was in a single
 6 meeting or whether this was in several meetings or
 7 whether this was -- I mean, what is in the letter?
 8 I know I discussed with Peter, and we
 9 talked about the main things, was relief from
 10 teaching. Peter had been the primary administrator of
 11 a program that he had started in Cambodia, and I urged
 12 him to hand off the administrative role to another
 13 faculty member, Nick Rinny (phonetic). My
 14 recollection is that Peter was reluctant to do that
 15 but agreed to do that.
 16 We talked about a support committee of
 17 faculty who would work with him, both on -- I mean, it
 18 was always up to Peter whether he wanted to take that
 19 offer of help. But the significant article that was
 20 in draft, which we did talk about this -- more than a
 21 draft. It had been accepted by the Michigan Law
 22 Review, and it had serious problems. And we talked
 23 about whether to pull the article, to try to address
 24 the problems before it saw print. And I urged Peter
 25 to follow that course. And he ultimately did, and

1 Deposition Exhibit Number 1 of the Peter Hammer
 2 deposition and just ask if you can identify that?
 3 A. Yes.
 4 Q. Can you just tell us what it is in general terms?
 5 A. That is after the decision was made not to recommend
 6 Peter for tenure and to grant a two-year deferral
 7 period in which he could supplement his candidacy.
 8 I then wrote a letter in which I explained
 9 that, that -- the faculty had concluded that the file
 10 was not worthy of tenure and set forth things that we
 11 would do to try to help to make sure that two years
 12 later, it could be worthy of tenure. Then it goes on
 13 to explain what happens if not, if it was
 14 unsuccessful.
 15 Q. I'm sorry?
 16 A. If it was unsuccessful.
 17 Q. And did you -- after the vote in 2000, did you also
 18 meet personally with Peter Hammer?
 19 A. Yes.
 20 Q. And when you met with him after the 2000 vote,
 21 was -- did you have any discussion with him about ways
 22 that you could assist him before the next vote in two
 23 years?
 24 A. Yes, we talked about those things.
 25 Q. What did you tell him?

1 revised it before it saw print.
 2 Q. Was that an article that Peter Lehman relied upon in
 3 the 2002 review?
 4 A. Yes, yes.
 5 Q. Was there any discussion -- you mentioned relief of
 6 teaching, was there any discussion of leave from
 7 teaching responsibilities?
 8 A. Yes.
 9 Q. Did Peter Hammer, between the two reviews, 2000 and
 10 2002, did he have any leaves of absence?
 11 A. Yes.
 12 Q. How many did he have?
 13 A. Well, in the fall of 2000, he had a research leave
 14 that was supported by a grant by the Robert Woods
 15 Johnson Foundation. In the winter of 2001, he had a
 16 course reduction, he taught one course.
 17 Q. He taught one course for that term?
 18 A. Yes. In the fall of 2001, he had a sabbatical leave.
 19 Q. Prior to the 2000 vote, had Peter Hammer had any
 20 leaves prior to that time?
 21 A. Yes.
 22 Q. What kind of a leave did he have then?
 23 A. He had a research leave in the fall of the fourth
 24 year, which would have been the fall of, I would
 25 guess, 1999, fall of 1999, so that's a leave with no

- 1 teaching, no --
- 2 Q. That was going to be my next question. For any of
- 3 these leaves, the '99, the 2000, fall of 2000 and fall
- 4 of 2001, did he have any teaching or administrative
- 5 duties on campus?
- 6 A. No. In the winter of 2001, when he was teaching the
- 7 one course, he -- I believe he had administrative
- 8 responsibilities.
- 9 Q. But that was a reduced teaching load?
- 10 A. Yes.
- 11 Q. For the winter of 2001?
- 12 A. Yes, but I think he was on committee, but I don't know
- 13 which...
- 14 Q. The leaves that Peter Hammer took in -- before the
- 15 2000 review, 1999, that research leave, and the leave
- 16 in the fall of 2001, that research leave, did either
- 17 of those leaves involve his acceptance of a
- 18 fellowship?
- 19 A. No.
- 20 Q. Did either of those leaves require him to teach at
- 21 another university?
- 22 A. No.
- 23 Q. For either of those leaves, did Peter Hammer submit a
- 24 written request for a scholarly activity leave?
- 25 A. I don't believe so, no.

- 1 Q. I'm going to show you what's been marked as Exhibit
- 2 Number 3 and just ask if you have seen this kind of a
- 3 request form before?
- 4 A. Yes.
- 5 Q. Do you know if this is provided to faculty at the law
- 6 school?
- 7 A. Yes.
- 8 Q. Who does that, who actually provides it to them?
- 9 A. Rozona. It would have been Lillian before, Rozona
- 10 now.
- 11 Q. It would have been who before?
- 12 A. Lillian Fritzler. Rozona Kelemen's predecessor.
- 13 Q. Did you ever receive this form filled out for Peter
- 14 Hammer for any leave of absence?
- 15 A. Did I ever receive?
- 16 Q. Yes.
- 17 A. No.
- 18 Q. Or to your knowledge, did Lillian or Rozona ever
- 19 receive this request form from Peter Hammer?
- 20 A. Not to my knowledge.
- 21 Q. Did you have ever have a written agreement with Peter
- 22 Hammer that any of these leaves would count toward the
- 23 tenure clock in terms of time or semesters of service?
- 24 A. No.
- 25 Q. By that I mean, the leaves, the two research leaves

- 1 that you described for '99 and 2000, was there any
- 2 written agreement that those would count towards
- 3 tenure in terms of service time?
- 4 A. I'm sorry, the research leaves in '99 and 2000, no.
- 5 Q. Were either of those leaves, was there any written
- 6 approval by the Provost that those leaves would count
- 7 toward tenure?
- 8 A. No.
- 9 Q. You mentioned earlier that there was a leave
- 10 after -- was it in the fourth year or after the fourth
- 11 year? The first leave --
- 12 A. It would have been in the fourth year, it would have
- 13 been --
- 14 Q. If Peter Hammer starts employment in 1995, do you
- 15 recall when his first leave would have been?
- 16 A. It would have been 1999.
- 17 Q. '99?
- 18 A. I'm pretty sure.
- 19 Q. Could it have been '98?
- 20 A. I'm sorry, it's the third year. The third-year leave.
- 21 I've been away too long. It was '98. It would have
- 22 been '98.
- 23 Q. But in terms of the nature of the leave, all of your
- 24 other answers are the same?
- 25 A. Yes, that's right, sorry.

- 1 Q. Let me show you what's been marked as Exhibit Number
- 2 1. If you could just tell us what this is?
- 3 A. This is Standard Practice Guide 201.30-4. It
- 4 describes what a scholarly activity leave is.
- 5 Q. Did Peter Hammer's leaves in 1998 or 2000, did either
- 6 of those research leaves qualify as a
- 7 scholarly activity leave?
- 8 A. No.
- 9 Q. I'm going to ask that you to look at this, what has
- 10 been marked as Exhibit Number 2. Just identify that
- 11 for us, please.
- 12 A. This is Standard Practice Guide 201.13, and it sets
- 13 forth the rules concerning acquiring the protection of
- 14 Regents' Bylaw 5.09 by accumulating years of service.
- 15 Q. If you could look at the second page under 3D, as in
- 16 David, did you ever enter into any type of written
- 17 agreement with Peter Hammer that is described in the
- 18 section that was also approved by the Provost?
- 19 A. No.
- 20 Q. Thank you. Sir, at the University of Michigan, in
- 21 connection with tenure reviews at the law school, at
- 22 least while were you Dean, why are outside letters
- 23 sought in connection with a candidate's application?
- 24 A. Well, not all law schools seek outside letters in a
- 25 tenure situation, tenure review.

1 Q. I'm asking at Michigan --
 2 A. At Michigan an outside review letter is sought because
 3 the decision on the award of tenure is profoundly
 4 important. It's the most important decision that a
 5 faculty makes. And the concern, both at the
 6 university level, but also within the law school, is
 7 that because the faculty has gotten to know someone as
 8 a colleague, they might, without meaning to, be less
 9 critical in their judgment about the quality of the
 10 person's work, quality of their scholarship, than they
 11 would be if they didn't know the person. And,
 12 therefore, they turn to scholars who can, in effect,
 13 stand in for themselves, scholars who don't work with
 14 the candidate as a colleague but, otherwise, hold the
 15 same standards of scholarship. And so they get their
 16 view of the work of the candidate and they -- they use
 17 that to inform -- inform their judgment, if you will,
 18 to spot issues, spot flaws in the work that they might
 19 not otherwise see, and to give an external assessment.
 20 Q. Does it -- again, I'm just asking you about Michigan,
 21 does it make any difference which school the outside
 22 reviewer is affiliated with?
 23 A. Yes.
 24 Q. Why so?
 25 A. Often -- I don't recall the exact letter that is sent

1 what those are.
 2 A. Those are research, teaching and service.
 3 Q. Are those three criteria equally weighted in the
 4 tenure review?
 5 A. No.
 6 Q. Tell us how that's not the case.
 7 A. Well, if I remember the policy correctly --
 8 Q. The policy of --
 9 A. University of Michigan Law School tenure policy.
 10 Q. Okay.
 11 A. Service is explicitly given less weight than research
 12 and teaching. There are three separate criteria, and
 13 my observation over time is that it is very rare for a
 14 faculty member to reach the stage of consideration for
 15 tenure and not leave the teaching stage so the
 16 most -- the most difficult of the three in practice is
 17 the research prong.
 18 Q. There is an evaluation committee that assesses the
 19 candidate's work?
 20 A. A tenure committee is one, yeah.
 21 Q. And that committee prepares a report?
 22 A. Yes.
 23 Q. And that was done for both the 2000 and 2002 reviews
 24 for Peter Hammer?
 25 A. For both in 2000 and in 2002, yes.

1 to ask an outside reviewer for their opinion, but I
 2 believe that often the letter asks -- or even if it's
 3 not asked in a request letter, it's often volunteered
 4 by the outside reviewer, whether -- if the candidate
 5 had been on their faculty and were being considered
 6 for tenure at the institution of the reviewer, would
 7 they support an award of tenure or promotion?
 8 Under those circumstances, if the outside
 9 reviewer is at a peer institution, then that -- then
 10 their opinion on that would be helpful. If they are
 11 not at a peer institution than their opinion on that
 12 would be less helpful.
 13 Even if that question is not specifically
 14 posed, if that's the background frame, if that's
 15 the -- you know, if we know that they are thinking
 16 about the question of whether a file is tenure-worthy
 17 in the same way that Michigan does, then that's
 18 obviously a much more helpful letter than if we
 19 weren't sure of whether they think of the tenure
 20 decision in the same way.
 21 Q. There has been prior testimony from a number of folks,
 22 including Peter Hammer, that there are three principal
 23 criteria for tenure?
 24 A. Yes.
 25 Q. And those are -- if you could just tell us quickly

1 Q. Does the report make a recommendation?
 2 A. Yes.
 3 Q. What was the recommendation in 2000?
 4 A. In 2000 the recommendation was that Peter Hammer not
 5 be put forward for tenure.
 6 Q. What was the recommendation in 2002?
 7 A. In 2002 the committee recommended that Peter be put
 8 forward for tenure.
 9 Q. Was that a unanimous recommendation in 2002?
 10 A. No, it was not.
 11 Q. Was it unanimous against tenure in 2000?
 12 A. I don't believe so, no.
 13 Q. Are faculty who are not on the tenure committee, are
 14 they bound by that recommendation of the tenure
 15 committee?
 16 A. No.
 17 Q. And why not?
 18 A. At Michigan, this -- the decision on the vote for
 19 tenure is the responsibility of the tenured faculty,
 20 and each individual tenured faculty member is required
 21 to make their own assessment. And the committee's
 22 function is to gather all the relevant data, and to
 23 analyze it and to perform an assessment, and to
 24 present a recommendation. But it is the
 25 responsibility of each faculty member to decide how

1 they will -- how they will respond to that
 2 recommendation.
 3 So individual faculty members read the
 4 file, they read the published work of the candidate,
 5 they read the letters, the outside letters, they read
 6 the teaching evaluations. They read everything in the
 7 file and then they form their own judgment.
 8 If they find the analysis of the tenure
 9 committee persuasive, then they vote in accord with
 10 it. If they are not persuaded, then they vote
 11 differently.
 12 Q. Sir, did you attend both faculty meetings in -- for
 13 the 2002 vote?
 14 A. Yes.
 15 Q. In either 2000 or 2002, did you hear any comments or
 16 observe anything to indicate that Peter Hammer's
 17 sexual orientation was a factor in either of those
 18 votes?
 19 A. No.
 20 Q. Did Peter Hammer ever provide you, either complain to
 21 you or as part of that complaint, provide to you any
 22 information to support a claim that he had been denied
 23 tenure because he is gay?
 24 A. Ever?
 25 Q. After -- well --

1 BY MR. SERYAK:
 2 Q. I was asking after this letter, Exhibit Number 1, was
 3 sent, if Peter Hammer had asked that the terminal year
 4 be 2002/2003 rather than the year set forth in this
 5 letter.
 6 MR. GREEN: The letter is the one in 2000?
 7 MR. SERYAK: Correct.
 8 MR. GREEN: I'm sorry. I apologize.
 9 MR. SERYAK: Okay.
 10 BY MR. SERYAK:
 11 Q. Part of Peter Hammer's request was that because he
 12 wanted to work on the scholarship, he didn't want to
 13 be looking for a job at the same time he is trying do
 14 a scholarship; is that your recollection?
 15 A. My recollection is that it was a pretty long letter
 16 that set forth a number of concerns. I think there
 17 was some mention of a mortgage issue in it as well.
 18 But the main point was that he did not -- he wanted to
 19 be able to focus completely -- prior to February of
 20 2002, he wanted to be able to focus completely on
 21 working on bringing his scholarship up to standard and
 22 did not want to have to worry about employment for the
 23 following year.
 24 Q. Did you agree to that request?
 25 A. I did.

1 A. I will answer the question.
 2 Q. Yes, ever.
 3 A. He raised the suggestion that he thought that perhaps
 4 his sexual orientation had played a role in the
 5 summer -- it was probably the fall, the fall of 2002.
 6 Q. Did he ever present you with any specifics to support
 7 that claim?
 8 A. No. I asked.
 9 Q. I'm sorry?
 10 A. I asked for specifics.
 11 Q. You asked Peter?
 12 A. Yes.
 13 Q. And how did he respond?
 14 A. He did not give specifics.
 15 Q. Now, after you had provided Peter Hammer with your
 16 February 28th, 2000 letter, but before the vote in
 17 2002, did Peter Hammer contact you and request that
 18 the -- that the terminal year be 2002/2003 rather than
 19 the terminal year set forth in Exhibit Number 1?
 20 A. Yes, he did.
 21 Q. How did you respond to that?
 22 A. I agreed that I would do that.
 23 MR. GREEN: I'm sorry, my mind was
 24 wondering. What did you ask? I apologize.
 25 MR. SERYAK: That's all right.

1 Q. Excuse me one second.
 2 (Discussion off the record)
 3 MR. SERYAK: Counsel, before we are done
 4 today, do you mind if we look at the Answers to
 5 Interrogatories?
 6 MR. GREEN: I don't mind at all.
 7 MR. SERYAK: I don't know if there is
 8 anything I want to ask the witness about that, and
 9 there may not be.
 10 MR. GREEN: I don't think there is but I
 11 have no objection at all.
 12 MR. SERYAK: We can do that. We don't need
 13 to delay that now.
 14 BY MR. SERYAK:
 15 Q. The last question I have, sir, with respect to the
 16 Exhibit Number 1 from the Hammer deposition, in terms
 17 of the last paragraph that begins on that page, did
 18 you consider that to be the notice of nonrenewal to
 19 Peter Hammer were he not to be tenured in 2002?
 20 A. Yes.
 21 Q. Aside from this letter, did you have any oral
 22 conversations or face-to-face meetings with Peter
 23 Hammer in which he acknowledged to you that the
 24 '02/ '03 academic year was his last year?
 25 A. Sure, yes.

1 Q. You don't understand that?
 2 A. (Witness indicating.)
 3 Q. Service is one of the components, correct? And that
 4 service can be to the university itself?
 5 A. I see, yes.
 6 Q. It can be extended outside of the university, for
 7 example, Cambodia, in Peter Hammer's case?
 8 A. Yes.
 9 Q. Do you know whether or not in the fall of 1998 when he
 10 was on leave of absence, he continued to attend
 11 faculty meetings?
 12 A. No.
 13 Q. You don't know?
 14 A. I don't know.
 15 Q. All right. Let's talk about the next research leave,
 16 which was in the fall of 2000 when he was given a
 17 leave of absence as a result of a Robert Woods Johnson
 18 Grant, and that was a research leave.
 19 Again, do you know whether or not his
 20 service to the university terminated during that
 21 period of time?
 22 A. I believe so but I don't -- whether he did -- ask the
 23 question again, I'm sorry.
 24 Q. Let me do it a different way. Did he conduct the
 25 research for that leave or during that leave in Ann

1 the winter of 2001, you say that actually wasn't a
 2 leave, that was a course reduction, correct?
 3 A. Yes.
 4 Q. Now, lastly, just to finish off on the points raised
 5 by Mr. Seryak, you were asked about the different
 6 standards that are applied for the consideration of
 7 tenure. I think you said the three standards were
 8 service, teaching, and research -- research and/or
 9 writing -- and that of the three, service was the
 10 least important by weight; is that correct?
 11 A. The tenure standard speaks of three areas that are
 12 considered.
 13 Q. Right.
 14 A. Is that what you mean when you speak of the tenure
 15 standard, three standards?
 16 Q. Sure.
 17 MR. SERYAK: He asked you about weight. Do
 18 you want the question read over?
 19 MR. GREEN: No. If he is having some
 20 problem with it, let me refine it.
 21 BY MR. GREEN:
 22 Q. I think you indicated that in passing upon tenure, the
 23 law school has a faculty handbook that instructs its
 24 tenured faculty how they are to arrive, in other
 25 words, the process they are to use to arrive at their

1 Arbor?
 2 A. I don't know.
 3 Q. Do you know whether he continued during that leave of
 4 absence to attend faculty meetings?
 5 A. I don't know.
 6 Q. Do you know whether he continued in whatever his
 7 outside service he was engaged in, for example, to the
 8 Cambodian law project?
 9 A. I'm pretty sure he did not. I'm pretty sure we had
 10 counseled him not to -- not to continue working on the
 11 Cambodian project. And I know he resisted. I guess
 12 if you are asking was he under any obligation to do
 13 any of those, the answer would be no. He was not
 14 under any obligation.
 15 Q. That was not my question. My question was, did he do
 16 them?
 17 MR. SERYAK: Objection on the grounds of
 18 relevance.
 19 BY MR. GREEN:
 20 Q. You can still answer. I think you have answered. I
 21 do recall your testimony that the Cambodian law
 22 project was handed over to Nick Rinny, I think you
 23 said, as a result of your counseling following the
 24 February 2000 vote.
 25 Coming forward to the leave of absence in

1 decision. And one of the factors they are to consider
 2 is the individual's service. And I believe your
 3 testimony was that service does not carry as much
 4 weight. It is not weighted as heavily as the other
 5 two factors according to the published standard,
 6 correct?
 7 A. Correct.
 8 Q. Now, my question to you is, is there a standard which
 9 must be met for each of those criteria in order to
 10 positively pass on tenure?
 11 A. Yes.
 12 Q. I guess then the next question is, then why ascribe
 13 weight to any of the standards if each must be met?
 14 A. No, the tenure policy provides guidance to individual
 15 faculty members on how to think about a decision that
 16 must ultimately be represented in a binary vote,
 17 either yes or no. And the way in which most people
 18 think about that is, in arriving at that decision, I
 19 need to focus on three domains and allocate my focus
 20 among the three domains. I understand what you are
 21 asking as a question. It's an interesting kind of
 22 question.
 23 Q. If you don't know the answer, that's fine. I'm
 24 curious because I have had other professors who have
 25 now described the standard as being absolute for each

1 the following academic year?
 2 A. No, I don't.
 3 MARKED BY THE REPORTER:
 4 DEPOSITION EXHIBIT NUMBER 4
 5 BY MR. GREEN:
 6 Q. I show you what is marked as Exhibit Number 4.
 7 By the way, I don't know why they copied
 8 four or five different copies in the package. Some
 9 are different Bates numbers, Dick, but those first
 10 five pages are all the same, just from different
 11 sources.
 12 MR. SERYAK: Okay.
 13 MR. GREEN: So we will only use one of
 14 them.
 15 BY MR. GREEN:
 16 Q. Do you recall this e-mail?
 17 A. No.
 18 Q. You do not recall receiving this communication from
 19 Evan Caminker?
 20 A. No.
 21 Q. Do you recall the topic that is raised in the e-mail?
 22 A. I can read the e-mail.
 23 Q. I understand that you can read it. Do you recall it?
 24 MR. SERYAK: I think he answered that.
 25 MR. GREEN: I don't think he --

1 Peter or to a phone call from Peter or to a meeting
 2 with Peter. It could be any of those.
 3 Q. The e-mail pretty much speaks for itself but I would
 4 like to direct your attention to the second to the
 5 last paragraph.
 6 A. Uh-huh.
 7 Q. It reads, "I also should say that I do not believe
 8 your discrimination concerns are well founded.
 9 Everything I saw and heard concerned the merits of
 10 your scholarship." Do you see that?
 11 A. Yes.
 12 Q. I take it whatever prompted you to write that was some
 13 part of communication from Peter Hammer to you that
 14 resulted in this reply, correct?
 15 A. I assume so.
 16 Q. All right. In your reply, there is no mention here,
 17 is there, that you would like him to provide whatever
 18 information he has to verify that claim that he
 19 believes discrimination was part of the reason for the
 20 decision, right?
 21 A. In this sentence?
 22 Q. In this e-mail communication.
 23 A. No. Well, I say, "If you would like to meet with Evan
 24 and me next week, I would be happy to do so."
 25 Q. Right. That's not a request for additional

1 A. I don't recall it.
 2 BY MR. GREEN:
 3 Q. At some point in time Peter Hammer grieved, or
 4 attempted to grieve, the denial of tenure to him, did
 5 he not?
 6 A. Yes, he did.
 7 Q. The grievance that he filed, without going through it
 8 point for point, did not actually complain that the
 9 decision made was incorrect, did it?
 10 A. I don't recall.
 11 Q. Do remember when he ultimately filed his grievance?
 12 A. It was the fall of 2002.
 13 Q. Prior to the time he filed the grievance, did he seek
 14 your assistance or your counsel respecting what might
 15 or might not be grievable and how best to proceed?
 16 A. He might have.
 17 MARKED BY THE REPORTER:
 18 DEPOSITION EXHIBIT NUMBER 5
 19 BY MR. GREEN:
 20 Q. I show you what is marked as Deposition Exhibit Number
 21 5, which appears to be e-mail from you to Peter Hammer
 22 dated July 22nd, 2002; do you recall this e-mail?
 23 A. Yes.
 24 Q. What prompted the e-mail, if you recall?
 25 A. It would have been a response either to an e-mail from

1 information on his assertion of discrimination, is it?
 2 A. It's an invitation to keep talking.
 3 Q. And when you say, "I also should say that I do not
 4 believe your discrimination concerns are well
 5 founded," as of this time, Peter Hammer had not
 6 provided you with any basis, had he, for the claim of
 7 discrimination?
 8 A. I don't believe he ever provided me.
 9 Q. That's not the question. The question is, as of the
 10 time you wrote that sentence he had not provided you
 11 with information to justify his claim for -- of
 12 discrimination, correct?
 13 A. Correct.
 14 Q. And your reply was to indicate that you felt his claim
 15 was not well founded?
 16 A. What I said was, "I do not believe your discrimination
 17 concerns are well founded."
 18 The way I read that is that he had
 19 suggested that he was concerned that there might have
 20 been some discrimination.
 21 Q. When you say, "Everything I saw and heard concerned
 22 the merits of your scholarship," that has reference to
 23 the two tenure committee meetings, the faculty tenure
 24 meetings, correct?
 25 A. It was -- it was -- it was everything.

1 Hammer to do so.
 2 A. No.
 3 Q. Skip the next one. The next one we have already
 4 marked. Skip pages 3305, 3306, 3307.
 5 MARKED BY THE REPORTER:
 6 DEPOSITION EXHIBIT NUMBER 19
 7 BY MR. GREEN:
 8 Q. I show you what is marked as Deposition Exhibit Number
 9 19, Bates pages 3375 and 76. Starting with an e-mail
 10 from you to colleagues. Then an e-mail from you to
 11 Peter Hammer. Do you recall this communication?
 12 A. Now I do.
 13 Q. Is this an e-mail that you first sent out to the
 14 tenured faculty that attended and/or voted on Peter
 15 Hammer's tenure and then ultimately forwarded to Peter
 16 Hammer on June 14 of 2002?
 17 A. I think actually the first underlying message went to
 18 the entire tenured faculty, whether or not they
 19 attended or voted.
 20 Q. Including Peter Hammer?
 21 MR. SERYAK: Tenured --
 22 MR. GREEN: I'm sorry. Thank you.
 23 BY MR. GREEN:
 24 Q. As of June 14th, 2002, was Peter Hammer asking to see
 25 the underlying documents that dealt with the issue of

1 you know, try to answer.
 2 A. I don't know.
 3 BY MR. GREEN:
 4 Q. If I asked you to find them, where would you look for
 5 them?
 6 A. I would try looking in the Standard Practice Guide.
 7 Q. Skip 3405. I think we will skip the next one, which
 8 is 3406 and 7.
 9 MARKED BY THE REPORTER:
 10 DEPOSITION EXHIBIT NUMBER 20
 11 BY MR. GREEN:
 12 Q. Take a look at Exhibit Number 20, which is an e-mail
 13 from you to Peter Hammer, dated July 19, 2002 and
 14 redated with an explanation August 14, 2002.
 15 A. Uh-huh. Yes.
 16 Q. Now, I take it that as of July of 2002, you believed
 17 that the law school grievance policy did not apply to
 18 any of the issues that Peter Hammer had raised?
 19 A. Yes.
 20 Q. In the second from the last paragraph of the e-mail
 21 within the e-mail, you observe, "I also should say I
 22 do not believe your discrimination concerns are well
 23 founded. Everything I saw and heard concerned the
 24 merits of your scholarship." Is that a reference to
 25 the tenure meetings?

1 tenure in their entirety? By underlying documents, I
 2 mean reviews, external and internal?
 3 A. I believe he wanted to see the outside letters.
 4 Q. Okay. Your response was in part to tell him that you
 5 knew of no written policies respecting the
 6 confidentiality of such materials?
 7 A. Confidentiality of outside letters?
 8 Q. "I thought I should respond directly to your request
 9 for policies relating to confidentiality and the
 10 tenure process."
 11 A. I think -- I read this e-mail to Peter as being in
 12 response to the question about this underlying e-mail
 13 to the tenured faculty about their conversations with
 14 him.
 15 Q. Do you know of any written policies regarding the
 16 confidentiality of the external reviews?
 17 A. There might be, there might be some but I don't know
 18 what they are.
 19 Q. Would they be found in the faculty handbook if they
 20 exist?
 21 A. Confidentiality of outside letters?
 22 Q. Yes.
 23 A. I think if they exist, they would be in the
 24 university's Standard Practice Guide, perhaps, or --
 25 MR. SERYAK: Don't guess or speculate. If

1 A. Didn't you ask that earlier?
 2 Q. Yes, I'm just checking again.
 3 A. This is a general comment, I think. It responds to
 4 whatever discrimination concerns he was addressing.
 5 MR. SERYAK: Would that include the
 6 meetings?
 7 A. It would include the meetings, sure.
 8 MARKED BY THE REPORTER:
 9 DEPOSITION EXHIBIT NUMBER 21
 10 BY MR. GREEN:
 11 Q. I show you what has been marked as Exhibit Number 21,
 12 which appears to be a four-page series of e-mails
 13 starting at 3458, ending at 3461, and starts with an
 14 e-mail from Peter Hammer to you dated October 22nd.
 15 It appears to be another e-mail to you dated November
 16 5th, 2002, and then an e-mail to Peter Hammer from you
 17 sent on to Valerie Castle, and this appears to be
 18 dated November 13th, 2002. Do you recall this series
 19 of e-mails?
 20 A. Yes.
 21 Q. The first part of this series is the e-mail we
 22 discussed a short while ago where Peter Hammer claims
 23 he first learned of the fact that the Provost review
 24 had probably already been done. Do you see that?
 25 That would start on the second page toward the bottom.

1 and advisory, that is to say. So we put that caption
 2 on internal communications between the Dean and the
 3 Provost.
 4 Q. Those words, did those words indicate in any way that
 5 the law school's decision was not final?
 6 A. No.
 7 Q. Now, are you familiar with the Fair v Rumsfeld
 8 litigation?
 9 A. Yes.
 10 Q. What was the issue in that case?
 11 A. The issue in that case is the constitutionality of the
 12 Solomon Amendment. The Solomon Amendment prohibits
 13 universities from treating military employers
 14 differently from other employers, even though the
 15 military, through its Don't Ask Don't Tell Policy,
 16 discriminates on the basis of sexual orientation.
 17 Q. You were asked, I believe, by Mr. Green regarding a
 18 student newspaper piece that referred to you in the
 19 context of that litigation. Did you take a position
 20 regarding that case, at least in its early stages?
 21 A. Yes, I did. There was some substantial discussion at
 22 Cornell about what role the university should take in
 23 the Fair litigation. I was of the view that the case
 24 as framed was unlikely to succeed if it reached the
 25 current Supreme Court because, as I mentioned earlier,

1 vivid to the court the harm that is caused to
 2 individuals and to the university by this type of
 3 discrimination and that we should secure, to the
 4 extent possible, the participation of other top
 5 universities in that brief.
 6 Q. Was such a brief filed with the Court?
 7 A. An amicus curiae brief was filed after I was no
 8 longer -- the time for filing was after I was no
 9 longer president.
 10 Q. Did that brief reflect the university's position?
 11 MR. GREEN: Object to the form of the
 12 question.
 13 You can answer.
 14 BY MR. SERYAK:
 15 Q. Did you have an opportunity --
 16 A. The brief did argue for -- that the Solomon was
 17 unconstitutional, yes.
 18 Q. That comported with your directive?
 19 A. Yes. Because at the time it was filed, I was no
 20 longer president, my -- it also had to be approved by
 21 president Hunter Rawlings.
 22 Q. Your area of expertise is what?
 23 A. Tax law.
 24 Q. That's what you teach?
 25 A. Yes.

1 sexual orientation is not a category -- it's not a
 2 suspect classification. It does not receive strict
 3 scrutiny in the Supreme Court and, therefore, my view
 4 was that the university should not join the litigation
 5 as a party, or as an intervenor, although a number of
 6 students had asked that I -- that the university do
 7 so.
 8 I further -- however, because I object to
 9 the Solomon Amendment, object to the Don't Ask Don't
 10 Tell Policy, gave instructions that if the case were
 11 to reach the Supreme Court, as I hoped it would not,
 12 but if it did reach the Supreme Court, that the
 13 university should file a brief, amicus curiae, in
 14 support of the plaintiffs arguing that the Solomon
 15 Amendment should be struck down.
 16 Q. And did the Cornell University ever file or join in
 17 such a brief?
 18 A. Yes, it did.
 19 Q. Did you give any instructions with respect to that
 20 filing?
 21 A. Yes, I did.
 22 Q. Just briefly, without getting into attorney-client
 23 privilege, what was your direction?
 24 A. My direction to the general counsel was that we should
 25 use the opportunity of an amicus brief to make more

1 Q. You don't teach constitutional law?
 2 A. No.
 3 Q. I want to ask you to look again at Exhibit Number 29.
 4 My question to you is, did that memo or e-mail, or
 5 whatever form you received it in, did that specify for
 6 you facts that would support a concern or a claim that
 7 the tenure vote in 2002 -- that Peter Hammer's sexual
 8 orientation had something to do with the tenure vote
 9 in 2002?
 10 A. No, it did not.
 11 Q. With respect to Exhibit Number 23, in particular this
 12 time frame on this, December 1 of 2002 --
 13 A. Yes.
 14 Q. -- and this e-mail, eight pages, at the time Peter
 15 Hammer presented this to you, did he tell you that he
 16 had three outstanding job offers?
 17 A. I don't believe so.
 18 Q. Did he tell you that he had a deadline of the first
 19 week of January to accept one of those offers at the
 20 time he was submitting Exhibit Number 23 to you?
 21 A. I don't believe so.
 22 Q. With respect to the Michigan, the actual faculty vote,
 23 is there a number of votes necessary to earn tenure?
 24 A. Yes, two-thirds.
 25 Q. Two-thirds of --

STATE OF MICHIGAN
IN THE 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
politic,

Defendant.

DEPOSITION OF:

KYLE LOGUE

November 14, 2005
900 Victors Way
Ann Arbor, Michigan

Appearances - PHILIP GREEN, P-14316
Attorney for Plaintiff

RICHARD J. SERYAK, P-26152
Attorney for Defendant

Also Present - Evan Caminker

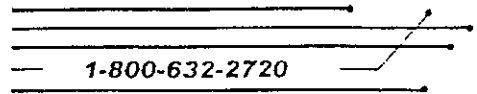
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I N D E X

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NetworkReporting



1 Suzanna Blumenthal, and Richard Primus.
 2 Q And prior to this whose tenure committee were you on?
 3 A Okay. Who was up for tenure? I believe it was Mark West
 4 and Adam Pritchard.
 5 Q Were both of those individuals tenured?
 6 A Yes, they were both granted tenure.
 7 Q Are you currently the ombudsperson for the law school?
 8 A No.
 9 Q Did you serve in that capacity during any period of time?
 10 A I did, yes.
 11 Q From when to when?
 12 A I can't remember the dates.
 13 Q Were you the ombudsperson during 2002 when Peter Hammer's
 14 tenure application was considered and denied?
 15 A Yes.
 16 Q Do you know how long you had been the ombudsperson prior to
 17 that time?
 18 A No.
 19 Q So you have no recollection whether you had just been
 20 appointed, had been on for a year or two years; anything
 21 like that?
 22 A I can't remember.
 23 Q Now, getting back to Peter Hammer's tenure application, in
 24 2002 it's my understanding that you voted against tenure;
 25 is that correct?

1 A Yes, that's correct.
 2 Q And do you recall generating an e-mail either on the
 3 morning of the vote or in close proximity to the vote to
 4 another professor indicating that you as yet did not know
 5 how you were going to vote?
 6 A That rings a bell. It does ring a bell.
 7 Q Would it be fair to say that when you walked into the
 8 second tenure meeting, the one at which the final vote was
 9 taken in 2002, you had not yet made up your mind whether
 10 you were for or against tenure?
 11 A I think that's fair, yes.
 12 Q Were you leaning in either direction at that time?
 13 A I can't remember. I know that I thought it was close, and
 14 I hadn't made up my mind, but I can't remember if I was
 15 leaning one way or the other.
 16 Q When you voted against tenure, did you think it was a close
 17 case?
 18 A Yes.
 19 Q What, if anything, stands out in your mind as the single
 20 most influential event or input, if you will, that helped
 21 you arrive at your final vote?
 22 MR. SERYAK: Let me just object to the form of the
 23 question and the lack of foundation that there was any one
 24 event that prompted his vote.
 25 MR. GREEN: I didn't say there was one.

1 A Well, I can't think of a single event.
 2 Q I didn't ask you to think of a single event. I asked you
 3 to indicate what was the most significant, if any. Are you
 4 saying nothing?
 5 A Could you read the question back again, please?
 6 Q Sure.
 7 (Playback of previous question)
 8 A So you did ask me what was the single most influential
 9 event.
 10 Q What was -- if any, what was the most single event?
 11 A Okay. I can't think of any single event.
 12 Q Then what events or input were the most influential in
 13 helping you arrive at a no vote on the tenure decision?
 14 A Several things were taken into account. I forget at which
 15 meeting these various people spoke. I don't know if it was
 16 the first or the second meeting, but in one of the
 17 meetings, maybe more, there were people on our faculty who
 18 I thought knew more about the subject matter than I did who
 19 spoke quite negatively about the quality of the
 20 scholarship, and that influenced me significantly. And, as
 21 I recall, there was at least one outside letter that was
 22 negative either in its conclusion about the quality of the
 23 overall work or about the arguments that went into the
 24 work. But I remember at least one fairly persuasive and
 25 negative letter that I took into account, and I guess those

1 were the main things.
 2 Q Who was the outside letter from? Was it Einer Elhauge?
 3 A Yes, it was Einer Elhauge. I believe he's at Harvard Law
 4 School.
 5 Q Who were the individuals that spoke out and were critical
 6 of his scholarship?
 7 A There were a lot.
 8 Q The ones that you recall that had some influence on you.
 9 A Okay. I'll try -- well, there were a lot that had
 10 influence on me, but the names of the people that I can
 11 remember include Rich Friedman, Sallyanne Payton. Actually
 12 I think Deborah Malamud spoke at one of the meetings, and
 13 although she was in favor, her arguments were -- the
 14 deficiencies in the work were extremely persuasive. I
 15 can't remember. I think she spoke. Certainly she wrote
 16 something in the report that was influential. But the
 17 other two people that I -- who I'm certain spoke were Rich
 18 Friedman and Sallyanne Payton.
 19 Q Okay. Were any of those four inputs more significant to
 20 you than others or were they all pretty equal? And the
 21 four we're talking about are Friedman, Payton, Elhauge and
 22 Malamud.
 23 A Right. I don't think those were the only four inputs, but
 24 of those four, it would be hard for me to say which was
 25 more from the others. I didn't weight it. I didn't try to

1 there was no statements made that I can recall that would
 2 suggest that there was discrimination on the basis of
 3 sexual orientation. I think I at least said that.
 4 Q And in doing that, weren't you revealing to him at least
 5 what had transpired during the course of the tenure
 6 meetings?
 7 A Yes.
 8 Q Had you heard statements that suggested to you sexual
 9 orientation may have played a part in someone's criticisms
 10 of his work during those meetings, would you have told him
 11 that?
 12 MR. SERYAK: I'm going to object to the lack of
 13 foundation for the question.
 14 MR. GREEN: It's hypothetical. You can answer it.
 15 A So state it again.
 16 MR. GREEN: Could you play it back?
 17 (Playback of previous question)
 18 A Okay. If I had heard? I don't know if I would or not.
 19 Q Did you feel uncomfortable that you were the person to whom
 20 Peter Hammer was coming in your capacity as ombudsperson
 21 for counseling or help in the grievance process when you
 22 were one of the individuals that had voted against him in
 23 the tenure process?
 24 A I might have felt a little uncomfortable.
 25 Q Did you think it a conflict of interest perhaps for you to

1 be counseling him on how to overturn your vote?
 2 A I remember wondering about it and trying to consider am I
 3 in a position of conflict of interest and could I be an
 4 objective source of help, and I remember concluding that I
 5 didn't think it was a conflict of interest; that I could do
 6 the job reasonably well.
 7 Q Did you discuss that topic with anyone?
 8 A I can't remember; can't remember.
 9 Q And by "anyone," I mean in particular either Evan Caminker
 10 or Jeff Lehman.
 11 A I can't remember.
 12 Q Okay. Without getting into the specifics of your religious
 13 affiliation, do your beliefs condemn homosexuality --
 14 religious beliefs?
 15 A You have to be more specific. What do you mean?
 16 Q I didn't want to get into your religious affiliation
 17 necessarily as much as I want to find out whether or not
 18 the institution, if any, with which you're affiliated for
 19 religious practices condemns homosexuality as an
 20 abomination.
 21 A Okay. I'm sorry. You lost me on the last part. You said
 22 not to deal with the specifics and then you said --
 23 Q Of your affiliation as opposed to the belief.
 24 MR. SERYAK: Well, let's have it read back so that he
 25 understands the question.

1 MR. GREEN: I was just explaining it to him. I think
 2 that Professor Logue understood the question to the extent
 3 he could and needed some additional explanation, which is
 4 what I've offered.
 5 WITNESS: Okay. Could you just say it again? Sorry.
 6 Q Sure. Without getting into your particular religious
 7 affiliation --
 8 A What does that mean? I don't understand what that means.
 9 Q The church to which you belong, the church in which you
 10 pray, the denomination you are. I don't want to get into
 11 that if we don't need to. With respect to your -- whatever
 12 membership that might be, does the institution that you
 13 belong to for your religious practices condemn
 14 homosexuality as an abomination?
 15 A Okay. The reason I'm having trouble with the question is
 16 because the two parts of it -- I don't understand how to
 17 put the two together.
 18 Q Do you belong to a religious institution of any kind, a
 19 church?
 20 A Yes. I'm a member of a church.
 21 Q All right. Does that church condemn homosexuality as an
 22 abomination?
 23 A I don't know. I don't know that there is an official
 24 position of my church on that.
 25 Q Now I guess I do have to get into it. What church do you

1 belong to?
 2 A Huron Hills Baptist Church.
 3 Q And you don't know whether or not the Baptist church that
 4 you belong to condemns homosexuality?
 5 MR. SERYAK: Asked and answered.
 6 A I don't know.
 7 MR. GREEN: It's cross-examination.
 8 Q How about you, personally? Do you, in your own beliefs --
 9 religious beliefs, believe that homosexuality is an
 10 abomination?
 11 A I don't -- no, I do not.
 12 Q Do you believe that it is contrary to the teachings of the
 13 Bible?
 14 A I don't know. I haven't made a study of it. I don't know.
 15 Q Changing the topic a bit, although still with religious
 16 overtone, are you pro choice or pro life?
 17 MR. SERYAK: Again, I'm going to object on grounds of
 18 relevance.
 19 MR. GREEN: That's fine. You can answer.
 20 A You'll need to be more specific.
 21 Q What is there about the statement you don't understand?
 22 A What do you mean by "pro choice" and "pro life"?
 23 Q With respect to the issue of abortion, that which is
 24 typically meant by those expressions today.
 25 A I'm not being evasive. I actually don't have a settled