

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:

WILLIAM I. MILLER

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

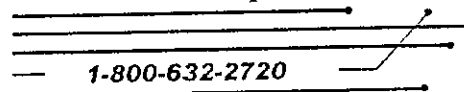
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Diane H. Draugelis, CER-2530

I N D E X

PAGE

|                                    |    |
|------------------------------------|----|
| Examination by Mr. Green . . . . . | 2  |
| Examination by Mr. Seryak. . . . . | 35 |

**Network Reporting**



1-800-632-2720

1 question is so I can -- if there is an objection on --  
 2 MR. GREEN: You've got an objection to the question.  
 3 MR. SERYAK: No. I want to know what the question is.  
 4 MR. GREEN: Well, we'll have to read it back. It was  
 5 a follow-up question to his answer.  
 6 WITNESS: What's the question?  
 7 Q Well, your answer really was a little off tack because you  
 8 were talking about Jewish traits, and the question had to  
 9 do with homosexual traits.  
 10 A No. I thought we were talking about Yoshino's article.  
 11 Q We were. We were. The quote from Yoshino's article that's  
 12 contained in paragraph 10 -- or in footnote 10 deals only  
 13 with the phrase dealing with homosexuality though, and so  
 14 we were dealing with particular --  
 15 A So I was trying to do was to say against homo- -- against  
 16 Yoshino's un-nuanced claim that we should get rid of all  
 17 covering, that he hasn't thought it through carefully  
 18 enough as about what context. You don't want to make what  
 19 seems to be a political statement when all you want to do  
 20 is be who you are in the setting in a way that makes the  
 21 setting run smoothly. We call it often politeness, you  
 22 know.  
 23 Q So if we can get to the example you gave, if you are a  
 24 person who is Jewish who typically uses Yiddish  
 25 expressions, you would avoid doing that unless it was

1 just -- to answer it in a way that would satisfy me  
 2 intellectually, I'd have to distinguish between what we, in  
 3 fact, do, which is we just simply do take an awareness of  
 4 who we're talking to and adjust our accent and our tones  
 5 accordingly, and we just do that. And I think Yoshino in  
 6 that article was simply ignoring that we do that; that any  
 7 kind of socially competent person just must do it and does  
 8 it without intending to; just does it in order to  
 9 communicate.  
 10 Q So you're not putting a value judgment on it in terms of --  
 11 A Not at all. I think he just as a matter misdescribed  
 12 exactly what goes on in social encounters.  
 13 Q You're not indicating that one should temper their  
 14 behavior, only that one does?  
 15 A Only that one does, and that he's ignoring how difficult it  
 16 is not to do that.  
 17 Q Have you ever referred to homosexuality as a stigma?  
 18 A No, unless I borrowed Goffman's usage in quoting him.  
 19 Q Have you ever referred to homosexuality or homosexuals as a  
 20 pariah group?  
 21 A In the same way that I did as Jews and blacks within that  
 22 book in discussion; yes.  
 23 Q Was there any discussion of Peter Hammer's homosexuality at  
 24 any of the tenure meetings you attended?  
 25 A No.

1 relevant to the meeting?  
 2 A I would pick and choose the audiences I would speak that  
 3 way in front of, yes, of course.  
 4 Q And to the same extent, if one were gay; a woman who  
 5 perhaps adopts masculine traits, a man who perhaps adopts  
 6 feminine traits; what you're saying is you would mask those  
 7 traits as well if it was not relevant to what the meeting  
 8 or the intercourse was?  
 9 A Do you know, again, it's complicated --  
 10 MR. SERYAK: Please -- Professor, please let me get my  
 11 objection onto the record as to the form and lack of  
 12 foundation, and the lack of relevance.  
 13 MR. GREEN: You've got your objection. That's fine.  
 14 WITNESS: So does that mean I should answer?  
 15 MR. GREEN: You can answer, yeah; sure. Go ahead and  
 16 answer.  
 17 A It's just, you know -- what's the question again?  
 18 MR. SERYAK: No; no. Do you know what the question  
 19 is? If you don't know what the question is, let's get the  
 20 question.  
 21 MR. GREEN: That's why he objected. Go ahead and play  
 22 back the objection, if you can -- or the question. I'm  
 23 sorry.  
 24 (Playback of previous question)  
 25 A It's would you mask those traits? Here the question is

1 Q Have you ever discussed his homosexuality with anyone?  
 2 A No. With him, but not with anybody else.  
 3 Q When was that?  
 4 A Well, it was during his job interview when we took him out  
 5 to dinner. He mentioned to us that he was gay and we had a  
 6 very interesting discussion about him and his various  
 7 commitments.  
 8 Q This was back in -- what? -- '93, '94?  
 9 A Whenever he was being hired, yeah. It was part -- at the  
 10 dinner, we took a -- a group of us took him out to dinner  
 11 and it came up then. So, in other words, you know, we --  
 12 when I voted yes to hire him, I knew he was gay. I talked  
 13 to him about it.  
 14 Q Do you recall any discussion during any of the tenure  
 15 meetings in which Sallyanne Payton indicated why she was  
 16 either voting for or against Peter Hammer's tenure?  
 17 A I do recall Sally speaking very impassionately --  
 18 impassionedly against the quality. She claimed that  
 19 Peter's work was absolutely awful, pretty much. Those  
 20 might not be the exact words, but that was the message.  
 21 So, yes, I recall that.  
 22 Q Do you remember anything else about what she said?  
 23 A Well, then it ended rather strangely. It ended -- and I  
 24 won't be able to quote the exact words, but after giving a  
 25 diatribe against how weak the work was in health law and

1 how it was just really bad and didn't understand the field,  
2 that she nonetheless was going to vote yes. After she got  
3 through she said, "Therefore, I'm voting yes." And she  
4 didn't give any reasons for voting yes. She only gave  
5 reasons for voting no up until that point.  
6 Q Well, did anybody ask her why she, after --  
7 A No, nobody said a word. But she, too, gave a very  
8 devastating critique of the work from a health law  
9 perspective.  
10 Q Other than her talk and Rich Friedman's talk, anyone else  
11 stand out in your mind either for or against?  
12 A No. The single most important -- Rich Friedman's  
13 explication is what made my mind up.  
14 MR. GREEN: I have no further questions.  
15 MR. SERYAK: I have a few, but I've got to --  
16 MR. GREEN: Take a break?  
17 MR. SERYAK: Could we do that?  
18 MR. GREEN: Sure.  
19 (Off the record)

1 him. I didn't know if you want to open that door. I mean  
2 so far I've been respecting the discussion and narrowing it  
3 only to the tenure decisions having to do with Peter  
4 Hammer, although you and I both know that I don't believe  
5 there is a privilege that covers the tenure votes. But I  
6 understand the law school's position, it wants to maintain  
7 secrecy. But once you open that door, I've got a number of  
8 people I'm going to ask all of the witnesses about then. I  
9 don't know if you want to do that.  
10 MR. SERYAK: Well, I don't think we've -- I mean I  
11 don't think at this point we've prevented that kind of  
12 inquiry.  
13 MR. GREEN: Okay. Fair enough.  
14 MR. SERYAK: But let me -- I mean I don't think I've  
15 foreclosed you from asking those questions, that's all I'm  
16 saying.  
17 MR. GREEN: Okay. That's fair. Well, actually you've  
18 foreclosed me from asking it about Peter Hammer's votes for  
19 awhile, and it was only after some argument that we --  
20 MR. SERYAK: Well, we produced all that, but let me  
21 take a short break and talk to the client.  
22 MR. GREEN: Yeah. I mean it's up to you; just wanted  
23 to alert you.  
24 (Off the record)  
25 MR. SERYAK: As long as we're back on the record,

1 EXAMINATION BY MR. SERYAK:  
2 Q Professor, do you know Jim or James Hathaway?  
3 A Yes, I do.  
4 Q And how do you know him?  
5 A He's a colleague of mine.  
6 Q He's on the faculty at the law school?  
7 A Yes, he is.  
8 Q Did you participate in any vote having to do with whether  
9 he would be hired and/or tenured at the time of hire?  
10 A Yes, I did.  
11 MR. GREEN: Wait a minute. Are you waiving the  
12 privilege, I mean the privilege you guys have been  
13 asserting with respect to others other than Peter Hammer?  
14 Don't you think you ought to consult with Professor  
15 Hammer -- or Hathaway, I mean -- whether he wants the votes  
16 on his tenure disclosed?  
17 MR. SERYAK: Well, I thought you've already asked for  
18 that information.  
19 MR. GREEN: I didn't, but you go ahead. I want to  
20 call it to your attention.  
21 MR. CAMINKER: Can I consult?  
22 MR. GREEN: Sure.  
23 MR. SERYAK: Well, all right. Just let me --  
24 MR. GREEN: Because if you're going to do that, I've  
25 got some questions about some other people I want to put to

1 again, I reiterate, I don't think we've foreclosed you from  
2 asking these questions of other witnesses.  
3 MR. GREEN: Okay. That's fine.  
4 MR. SERYAK: And I don't know that I need to get into  
5 it with this witness.  
6 MR. GREEN: No, that's fine. I wasn't objecting.  
7 MR. SERYAK: Okay. I just don't want to be foreclosed  
8 from down the road if we have to or at trial if we have to  
9 do that.  
10 MR. GREEN: Not at all.  
11 Q Professor, I want to be clear. You say you attended -- did  
12 you say a recruiting or a hiring dinner with Peter Hammer?  
13 A It was at a -- when he --  
14 Q Did you attend the dinner? That's my question.  
15 A Yes; yes.  
16 Q And were you just the two of you or were there others?  
17 A There were others.  
18 Q And was this the first time you met him?  
19 A Yes, it was at that dinner. I'm sure I heard the job talk  
20 that day, but the dinner meeting was the first time I ever  
21 got to see him.  
22 Q In person, you meant, at that time?  
23 A Yeah.  
24 Q And it was at this dinner meeting that he mentioned to you  
25 and others the fact that he is gay?

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10 (Pages 34 to 37)

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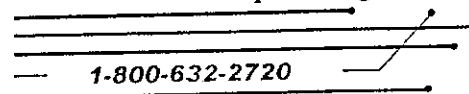
1 A Yes.  
 2 Q And did you and other faculty vote on whether he should be  
 3 hired?  
 4 A Yes.  
 5 Q And did that vote come after this dinner meeting?  
 6 A Yes, it did.  
 7 Q And did you vote in that vote?  
 8 A Yes, I did.  
 9 Q And what was your vote?  
 10 A Yes, we should hire him.  
 11 Q And with respect to the vote in 2000, had Peter Hammer  
 12 not -- had there not been a decision to defer or give him  
 13 two more years?  
 14 A Yes, there was a decision to --  
 15 Q But had that not been the case, what would have been the  
 16 other alternative at that point?  
 17 A It was pretty clear, based on the straw vote at that time,  
 18 that he was going to be denied tenure.  
 19 Q Did you support or oppose his being given more time to  
 20 obtain tenure?  
 21 A I supported his being given more time.  
 22 Q With respect to Deborah Malamud -- first of all, did you  
 23 read the -- for the 2002 faculty consideration of Peter  
 24 Hammer's tenure case, did you read the report of the  
 25 evaluation committee?

1 Q You recall that question?  
 2 A Yes.  
 3 Q And I believe your answer was Deborah Malamud's review  
 4 stood out?  
 5 A Yes.  
 6 Q Was that a written review?  
 7 A Yes, it was.  
 8 Q And why did that written review stand out in your mind?  
 9 A Well, she was on the committee and so her writing appeared  
 10 as part of the committee's report, and although she  
 11 concurred in the judgment of the committee to grant tenure,  
 12 her report was very critical of Peter's work, and it was  
 13 devastatingly so, I thought. So in the same way that I  
 14 said that I couldn't believe after Sallyanne got done --  
 15 Sallyanne Payton got done with her just devastating  
 16 comments about Peter's competence in health law that she  
 17 was going to vote yes, I was kind of taken aback that  
 18 Deborah Malamud went through this point by point just utter  
 19 devastation of Peter's work, quite cogent, quite powerful,  
 20 that she concurred. She wasn't going to sign onto it, but  
 21 she concurred, which is in the judgment, with the majority  
 22 of the committee to grant tenure.  
 23 MR. SERYAK: Okay. Thank you. That's all I have.  
 24 MR. GREEN: I have nothing further.  
 25 (Deposition concluded at approximately 2:50 p.m.)

1 A Yes.  
 2 Q And did Deborah Malamud have a statement as far as that  
 3 report?  
 4 A Yes, she did.  
 5 Q You read that?  
 6 A Yes, I did.  
 7 Q And was there any dissent to the committee report?  
 8 A J.J. White dissented to the committee report. He voted  
 9 against -- and the committee -- against granting Peter  
 10 tenure, recommending him for tenure.  
 11 Q Was White's dissent reduced to writing?  
 12 A Yes, it was.  
 13 Q In response to Mr. Green's questions earlier he asked you  
 14 if there was any -- were there any particular writings as  
 15 part of the 2002 tenure file that you remembered. Do you  
 16 recall that question?  
 17 A Yes. By writings we mean just the -- like the letters, the  
 18 outside letters, Peter's own scholarly contributions and  
 19 stuff.  
 20 Q Well, anything in the file. I mean you read the file?  
 21 A Yes. Yes, I read the file.  
 22 MR. GREEN: I'm going to object to the form of the  
 23 question. My question was if any of the internal or  
 24 external reviews stood out in his mind. But the record  
 25 will bear whatever.

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1-800-632-2720

11 (Pages 38 to 41)

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