

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:

SALLYANNE PAYTON

October 31, 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

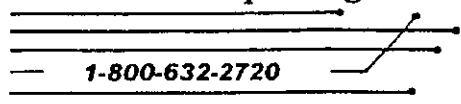
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| <p>1 A I voted in favor.</p> <p>2 Q All right. At the meeting at which the tenure vote was</p> <p>3 taken, there was, as I understand it, consideration of</p> <p>4 whether or not to make an offer of employment to a woman by</p> <p>5 the name of Oona Hathaway. Do you recall that?</p> <p>6 MR. SERYAK: I'm going to object for lack of</p> <p>7 foundation. You can answer if you have that recollection.</p> <p>8 A This was at the same meeting?</p> <p>9 Q Yes.</p> <p>10 MR. SERYAK: Well, don't assume that what he says is</p> <p>11 true. That was why I'm objecting. I understand his</p> <p>12 question to mean do you have any recollection that that</p> <p>13 occurred.</p> <p>14 A You mean do I remember the question on -- that we were</p> <p>15 making a judgment? Yes.</p> <p>16 Q And do you remember prior to a vote being taken on whether</p> <p>17 to offer employment to Oona Hathaway whether there was</p> <p>18 discussion of the qualities of her work and potential as a</p> <p>19 faculty member at the University of Michigan?</p> <p>20 A Yes.</p> <p>21 Q Do you recall whether or not during the course of that</p> <p>22 discussion there was reference to the perception that</p> <p>23 anything useful that she had done was really her husband's</p> <p>24 work?</p> <p>25 MR. SERYAK: Again, I'm going to object for lack of</p> | <p>1 Q Do you remember anyone expressing reservation about hiring</p> <p>2 her or offering her employment during the course of the</p> <p>3 meeting, whenever it took place?</p> <p>4 A I don't remember anything in particular.</p> <p>5 Q Do you remember anyone indicating that her notions or ideas</p> <p>6 about human rights were an anathema or opposed to the human</p> <p>7 rights people on the law school faculty?</p> <p>8 A Yes, but that's very vague. I do remember that.</p> <p>9 Q Do you recall whether it was at that meeting?</p> <p>10 A No.</p> <p>11 Q Since the vote on Peter Hammer's tenure, have you had</p> <p>12 occasion to discuss with any of your colleagues their</p> <p>13 opinions on why Peter was denied tenure?</p> <p>14 A No.</p> <p>15 Q Has anyone discussed your vote with you since then?</p> <p>16 A No. Now, wait; wait; wait; wait; wait; wait; wait; wait.</p> <p>17 Q Okay.</p> <p>18 A At the point at which Peter began to file grievances, I did</p> <p>19 inquire what the basis of the grievance was, and in that</p> <p>20 context there was some discussion of what the basis of his</p> <p>21 grievance was.</p> <p>22 Q Do you remember with whom you had this discussion?</p> <p>23 A No, I don't.</p> <p>24 Q Was it faculty lounge type discussion, --</p> <p>25 MR. SERYAK: Object to the form of the question.</p> |
| <p>1 foundation.</p> <p>2 A I don't remember.</p> <p>3 Q You don't? Do you recall ever hearing words to that</p> <p>4 effect?</p> <p>5 A Who was she married to?</p> <p>6 Q She was married to a political scientist from Boston</p> <p>7 College who was being recruited by the university and she</p> <p>8 was -- they were looking for a job for her as well.</p> <p>9 A Oh, right. All right.</p> <p>10 Q Do you recall that?</p> <p>11 A I remember that. I remember that. Jacob Hacker, wasn't</p> <p>12 it?</p> <p>13 Q May have been.</p> <p>14 A Was that Oona's --</p> <p>15 Q I'm not sure; I'm not sure.</p> <p>16 MR. SERYAK: Try to just focus on his question, if you</p> <p>17 would.</p> <p>18 WITNESS: Right.</p> <p>19 MR. GREEN: I don't mind if she has some background so</p> <p>20 that she can focus on it better.</p> <p>21 Q You do recall her coming before the faculty -- the tenured</p> <p>22 faculty for an offer of employment sometime in February of</p> <p>23 2002?</p> <p>24 A I don't remember the time. I do remember that we</p> <p>25 considered an appointment to Oona Hathaway.</p> | <p>1 Q -- if you understand?</p> <p>2 A I can't remember.</p> <p>3 Q At the time of the vote on Peter Hammer's tenure were you</p> <p>4 aware that he was gay?</p> <p>5 A Oh, yes.</p> <p>6 Q All right. I take it he didn't keep that a secret?</p> <p>7 A Oh, no.</p> <p>8 Q Did you ever have occasion to discuss with any other</p> <p>9 faculty members the fact that Peter was gay?</p> <p>10 A No.</p> <p>11 Q No one ever raised it as an issue?</p> <p>12 A It was known. I knew that his partner was a --</p> <p>13 MR. SERYAK: The question is whether you -- you</p> <p>14 answered it and then he asked the question again. Did you</p> <p>15 discuss that with any other faculty?</p> <p>16 A I'm trying to figure out what the word "discuss" means.</p> <p>17 Okay? Someone had told me who his partner was. Okay?</p> <p>18 That's what I knew, period.</p> <p>19 Q Do you remember who told you that?</p> <p>20 A No.</p> <p>21 Q Was that before or after the tenure vote?</p> <p>22 A Before.</p> <p>23 Q Do you know David Chambers?</p> <p>24 A Yes.</p> <p>25 Q Do you know him to be gay?</p> |

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4 (Pages 10 to 13)

1 MR. SERYAK: Just one second.
 2 (Off the record)
 3 (Playback of previous testimony off the record)
 4 MR. SERYAK: We are back on the record. Thank you.
 5 MR. GREEN: I had one question I forgot to ask.
 6 MR. SERYAK: Sure.
 7 A Yes, sir.
 8 Q Do you recall at the time of the tenure vote meeting Omri
 9 Ben-Shahar apologizing for the tenor of his written review
 10 of Peter Hammer's work?
 11 A No.
 12 MR. GREEN: Okay. That's it.
 13 MR. SERYAK: Thank you.

EXAMINATION BY MR. SERYAK:

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 16 Q Doctor, I just want to be clear, when you had the
 17 conversation with Tom Green and he was telling you what
 18 you've indicated earlier, were you still satisfied with the
 19 other writings as opposed to the committee being satisfied
 20 that the -- Hammer's other writings had addressed concerns
 21 raised in your memo?
 22 A You're quite right. I did not have access to those other
 23 writings at the time. I did not know what they were. I
 24 would take the view that if it was true that the committee
 25 was satisfied that other writings had -- were substantial

1 then the concern that I raised would be appropriately
 2 dismissed by them. So I was not offended that they had --
 3 if you will, that they had not regarded my -- on Tom's
 4 account they had not viewed my memo as important to them
 5 because there were other writings that indicated ambition.
 6 If that was true, then -- he asked me if I agreed with
 7 that -- then I would say that --
 8 WITNESS: I interpreted your question to say, "If the
 9 committee actually had satisfied itself on that point,
 10 would it have been appropriate that they had viewed your
 11 memo as not very important?" and the answer to that precise
 12 question is yes. And you're nodding, so I assume --
 13 okay -- that that is the question that you intended to ask.
 14 MR. GREEN: I understand.
 15 WITNESS: Is that right?
 16 MR. GREEN: Yes; yes.
 17 WITNESS: Is that the question you intended to ask?
 18 MR. GREEN: Yes.
 19 Q But you hadn't seen the other writings?
 20 A No, I had not seen the other writings.
 21 Q So you don't know whether those other writings would have
 22 satisfied your concerns or not, from your point of view --
 23 not the committee's, your point of view?
 24 A Oh; oh, no. When I did read the other writings, I agreed
 25 that they satisfied the concern that I had raised in my

1 memo, but I didn't know that at the time when I talked to
 2 Tom.
 3 Q And how can you say that if you can't recall Eimer
 4 Elhaug's writings?
 5 A There were a number of writing -- there were a number of
 6 reviews of the anti-trust pieces, which were the more
 7 ambitious pieces, and I just don't remember who exactly
 8 said what.
 9 MR. SERYAK: That's all I have.
 10 MR. GREEN: I just have a couple of questions, since
 11 you're here.

EXAMINATION BY MR. GREEN:

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 14 Q As I understand the tenure vote, the faculty members
 15 consider service, teaching and writing as the three
 16 components in evaluating the efficacy of a tenure vote?
 17 A That's right.
 18 Q And as I understand the process, someone can be weak in one
 19 of those three elements but so strong in the other two that
 20 a faculty member or tenured faculty member, such as
 21 yourself, for example; feels free to vote in favor of
 22 tenure; true?
 23 MR. SERYAK: I'm going to object for lack of
 24 foundation.
 25 Q You can answer.

1 A If you look at the tenure standard, it is, I think,
 2 reasonably clear that the candidate must pass -- must
 3 perform at a certain level on all three of those, and that
 4 the scholarship is the most important of those. The dean
 5 is sitting here and he can correct me if I'm wrong.
 6 Q So you felt then comfortable with your vote -- your
 7 affirmative vote for tenure based upon the standards that
 8 you have described?
 9 A No.
 10 Q You didn't?
 11 A No. I viewed my vote as an act of civil disobedience.
 12 Q All right. Explain.
 13 A Because I thought that the scholarship was below our
 14 standard, but that -- and I understood at the time, and
 15 still understand that public service does not count.
 16 Public service cannot make up for deficiency in
 17 scholarship, but I thought that the quality of Peter's
 18 public service and the moral presence within the law school
 19 that that created for us was so extraordinary that in this
 20 case I was prepared to, as I thought, violate my obligation
 21 to the school and to vote in favor of tenure.
 22 Q Is diversity a consideration at all in your mind in a
 23 tenure vote?
 24 A I believe it is not a permissible consideration on tenure;
 25 at least that's my interpretation.