

**STATE OF MICHIGAN**  
**IN THE COURT OF CLAIMS**

**Peter J. Hammer,**

Plaintiff

vs.

Case # 04-241 MK  
Hon. James R. Giddings

**Board of Regents of the University  
of Michigan,**

Defendant

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STATE OF MICHIGAN            )  
  )ss.  
COUNTY OF WASHTENAW    )

**AFFIDAVIT OF PETER J. HAMMER**

Peter J. Hammer, being duly sworn, deposes and says as follows:

1. I have personal knowledge of the facts set forth in this Affidavit; and if called as a witness at trial, I am competent to testify to the facts stated herein.
2. In 1986, I graduated summa cum laude with honors from Gonzaga University in Spokane, Washington, with a Bachelor of Science in mathematics, a

Bachelor of Arts in economics and a Bachelor of Arts in speech communication.

3. I enrolled in a Joint J.D./Ph.D. Program in Law & Economics at the University of Michigan. In 1990, I obtained a Juris Doctorate degree graduating magna cum laude. In 1993, I received a PhD in economics.

4. After graduating from Law School, I clerked for the Honorable Alfred T. Goodwin of the United States Court of Appeals for the Ninth Circuit in Pasadena, California (1991-92). From 1993 until May of 1995, I was a litigation associate at O'Melveny & Myers in Los Angeles, California.

5. My intention since graduate school was to teach law. In summer of 1994, I submitted an application and form resume to the American Association of Law Schools (AALS), an organization that coordinates the process of hiring new law professors. At the Fall 1994 AALS hiring conference held in Chicago, I had interviews with more than 20 different law school.

6. After the AALS Conference I had formal call back interviews and gave job talks at the University of Santa Clara, Vanderbilt University, the University of California Los Angeles, the University of North Carolina, the University of Pennsylvania, Georgetown Law Center, the University of Texas, Columbia University and the University of Michigan.

7. I received offers of employment from University of Santa Clara, Vanderbilt University, the University of California Los Angeles, the University of North Carolina, the Georgetown Law Center, and the University of Michigan. I was still under consideration at Columbia. I declined my offers from the University of Santa Clara, Vanderbilt University and the University of North Carolina. I engaged in extensive negotiations

with the deans at Georgetown, UCLA and the University of Michigan.

8. Discussions at Georgetown, UCLA and the University of Michigan revolved primarily around the potential discrimination an untenured gay professor might face, health insurance benefits for same-sex domestic partners and logistical concerns associated with relocating our large extended family, consisting of my partner, his four sisters and their husbands and children (a total of 13 people).

9. The Deans at Georgetown and UCLA each stressed the openness and supportive environment gay and lesbian faculty members experience at their institutions. In addition, they each expressed a willingness to assist in finding employment for my partner in a position that would ensure health benefits and to help problem solve in taking care of the needs of my extended family. The complete employment package they offered consisted of a tenure track job for me, a means of providing employment benefits for my partner, representations about the absence of discrimination, and assistance for my extended family. I had similar discussion with persons at the University of Michigan.

10. Based upon my experience working with other gay and lesbian lawyers and counseling law students about employment strategies, it is my opinion that gay professionals make very calculated decisions about how, whether and when to "come out" in the job search process. This was certainly true in my case. Fearing potential discrimination, I was not "out" on my resume or at any time during the initial job search process for a law teaching job. During the interview process and at the time of the offers of employment were extended at each of the above-named institutions, I had not revealed my sexual orientation or the fact that I had a same-sex domestic partner with a

large extended family.

11. I revealed my sexual orientation and my concerns about discrimination and domestic partner benefits only after I had an offer in hand and only to those schools – Georgetown, UCLA and Michigan – where I was engaging in the final negotiating process.

12. I raised these concerns with Kent Syverud who was then the Associate Dean for Academic Affairs at the University of Michigan Law School. In addition to many verbal assurances about the openness of the institution and the lack of discrimination, Kent Syverud wrote a letter ensuring not only the availability of domestic partnership benefits, but that there would be no exclusions under such benefits for preexisting conditions. In addition, Kent forwarded copies of the University of Michigan's Bylaws and Policies of non-discrimination based upon, among other things, sexual orientation, and specific details about how to enroll in the benefits program.

13. I had similar specific conversations with James Boyd White, the Chair of the Personnel Committee, and other members of the Michigan faculty, asking about nondiscrimination policies and domestic partnership benefits. I received responses and assurances similar to those made by Kent Syverud, citing the protection afforded by University policies and asserting the existence of a healthy and supportive professional environment.

14. Based upon the representations made by Syverud and others that the University of Michigan did not discriminate in the terms and conditions of its employment and tenure based upon sexual orientation and that my partner would be

covered under the University of Michigan's health policies, I accepted employment at the University of Michigan Law School and commenced that employment in May of 1995.

15. After accepting the Michigan offer, I contacted the Deans at Georgetown and UCLA. I thanked them for their offers and the generous manner in which they were willing to meet the needs of my partner and our family, but informed them that I would not be accepting their offers. I then contacted Columbia Law School and cancelled the job talk that I had previously committed to give and withdrew from further personnel consideration.

16. Unfortunately, my experience at Michigan revealed that the promises of openness and non-discrimination were not kept. I was not treated like other straight (or closeted) male professors. It is my opinion, based upon my experience and based upon my observations of how I was treated in comparison to other similarly situated individuals, that I was singled out for opposition due to my sexual orientation.

17. I conducted a 40-year retrospective study of the hiring practices of the University of Michigan Law School. This type of analysis is well within purview of my academic and graduate training. Data were extracted from the Masthead of the first volume of the Michigan Law Review for every year from 1965 to 2004. The Masthead provides a complete list of all Assistant, Associate, Clinical, Visiting and Full Professors at the law school for that academic year. I entered these data into a spreadsheet. Tracking changes by year it is possible to identify whether and when a professor is granted tenure or otherwise leaves the law school. In addition, I had extensive discussions with emeriti professors Whitmore Gray and David Chambers about the

personnel and personal histories of individual cases, as well as the case histories of the hand-full of gay faculty members in the sample. Whitmore Gray has been on the law school faculty since 1965. David Chambers has been on the faculty since 1969.

18. The results are striking. Over this forty year period, the law school considered some 52 individuals for tenure. Of these, 45 individuals were straight (or closeted) men, one was an openly gay man (myself), and, six were women. Without exception, every single straight (or closeted) male was recommended for tenure by the vote of the law school faculty.

19. Of the 52 internal candidates formally considered for tenure, 48 received affirmative tenure recommendations within the standard time frame. Sallyanne Payton was forced to sit for eight years in the rank of an untenured Associate Professor before finally being granted tenure. The average length of time before promotion for men in the same position was less than two years. One woman was denied tenure (Jessica Litman) and another woman withdrew from consideration at the last minute.

20. I am the final aberrational case. I am the only openly gay man ever to be considered for tenure by a vote of the tenured faculty and the only male candidate in this 40 year period not to receive a two-thirds affirmative recommendation by the tenured law school faculty.

21. Upon arriving to teach at the law school, I learned of a history or discrimination against gay and lesbian faculty members. There is a long tradition at Michigan of hiding, denial and discrimination when it comes to sexual orientation. I learned this history through numerous conversations with people like Professors Whitmore Gray, David Chambers, Brian Simpson, Jessica Litman, Heidi Feldman, and

Deborah Malamud, and Administrators like Virginia Gordan and Robert Precht. The following is based upon a combination of my own experience, my research and my conversations with these people and others at the law school.

22. Jim Martin is one example. Jim Martin was hired as an Assistant Professor of Law in 1970. He became an Associate Professor in 1973. Jim was granted tenure and promoted to Full Professor in 1975. He was closeted and married at the time he was considered for and granted tenure. Jim's name drops off the Law Review Masthead in 1986. Sadly, he was one of the first people in Washtenaw County to be diagnosed with and ultimately die from AIDS. For a long time, Jim hid the fact that he had AIDS from other members of the faculty, claiming that he had a rare disease he contracted while traveling abroad. When his real diagnosis became public knowledge amongst his colleagues, AIDS hysteria swept through the law school. Educated, tenured members of the faculty were afraid to use the same toilet seats, coffee pots and utensils found in the Faculty Lounge.

23. David Chambers is another example. David Chambers was hired as an Assistant Professor of Law in 1969. He became an Associate Professor in 1972 and was granted tenure and promoted to Full Professor in 1974. Like Jim Martin, David was married and closeted when he was considered for and granted tenure by the law school. In addition, David's marriage produced children. David's "coming out" was a traumatic personal and institutional experience. People were hostile and unaccepting. In addition to the stigma of being gay, David had to deal with family-specific negative approbations for "what he did" to his wife and children.

24. Among other things, David is a nationally known scholar on Family Law.

Prior to coming out, David was being groomed for the Deanship of the law school. The law school has a long tradition of selecting internal Dean candidates. An acknowledged candidate typically emerges in each generation. David was the candidate for his generation. Given the anti-gay prejudices of the tenured faculty, this was simply not going to happen. The Dean's wife typically plays an important hosting role, especially for events for alumni and potential donors. Even though David was in a committed relationship, there was simply no way that a gay male partner would be permitted to be the first lady of the law school. David applied for the Deanship and was passed over in the final selection. His entire generation of leadership was by-passed and the position was given to a very young and inexperienced Jeff Lehman.

25. Bruce Frier is a third example. Bruce Frier joined the University of Michigan Department of Classical Studies in 1969 and, even though he does not have a law degree, began teaching in the law school in 1981. He was given a joint tenured appointment in the law school in 1986. At the time of his appointment, Bruce was gay but deeply closeted. As such, all of his important relations at the law school were forged at a time when he was not "out." When I joined the faculty in 1995, I got to know Bruce, as he was then holding himself out, as a "straight" male colleague. It was not until 1998, nearly two decades from his first encounter with the law school, that Bruce started being more open with other gay members of the faculty. That spring, for the first time, he listed himself in the AALS Directory's gay member section. This event triggered an e-mail exchange between David Chambers and Bruce (shared with myself and Robert Precht) congratulating Bruce on his coming out. David also shared Bruce's reply, where Bruce stated he no longer wanted to be so "secretive about such matters,

particularly when so much was now at stake." (Attachment 1).

26. After 1998, Bruce slowly became more "out" with the non-gay members of the faculty. Now, Bruce is quite active on gay and lesbian issues. In 2004, he Chaired a Provost Task Force that produced a document entitled. "From Inclusion to Acceptance: Report of the Task Force on the Campus Climate for Transgendered, Bisexual, Lesbian and Gay (TBLG) Faculty, Staff and Students." One of the principle conclusions of the Report is that despite the official facade of open and accepting policies, the actual climate at the University is often chilly an unwelcoming for gay and lesbian faculty, staff and students. The Report also documents a deeply held conviction in the gay and lesbian community that a substantial gap exists between the University's policies and their actual implementation. The real climate is at best chilly and at worst hostile. This report is attached to Plaintiff's Brief as Exhibit 27.

27. Jane Schacter was hired as a Visiting Professor in the Fall 1997 term. This was not originally scheduled as a visit with personnel implications, or as it is called a "visit with a look." With substantial efforts by a small group of faculty members including David Chambers and myself, the Personnel Committee was persuaded to consider Jane for a permanent position. It was not an easy sell. Not only was Jane a lesbian, but she taught and wrote on gay and lesbian issues as well.

28. After much cajoling, advocacy and walking of the halls, the matter was to come to a vote. The voting procedure for lateral tenured hires is very different from the tenure process for internal candidates. For a lateral tenured hire, all tenured and tenure-track faculty members vote. In addition, administrators and clinical faculty members can attend the meeting and participate in the deliberations. The process is

much more open, transparent and accountable than that for tenure votes for internal candidates.

29. Based upon my experience observing the dynamics of internal law school discussions and how these dynamics differ with the participation of different stakeholders (tenured, tenure-track, clinical faculty and administrators) it is my opinion that if the vote had been taken of the tenured faculty alone, Jane would not have received sufficient support to be extended an offer. The presence of clinical and tenure-track faculty substantially changes the decision making dynamic and acts as a buffer to many latent forms of discrimination. Given this more open process and the votes of untenured faculty members, Jane was extended a lateral tenured offer.

30. When Jane joined the permanent faculty in the 1998-99 academic year, she was joined by her partner Juliet Brodie, who was to become a member of the clinical faculty. Jane and Juliet were beginning the process of raising a family through the process of artificial insemination. When Jane accepted the Michigan offer, she was pregnant. It was telling to observe the reactions of a fairly straight laced, "family values" faculty to this news. The presence of a lesbian couple was a substantial enough shock for many. A pregnant lesbian couple was even more so.

31. I overheard numerous insensitive and inappropriate conversations concerning their pregnancy: people asking wondering questions about how they do it, jokes about turkey basters and test tube fathers, others wondering about who wears the pants in the family, and what it might mean that Jane rather than Juliet was the one who kept getting pregnant. I recall overhearing most of these conversations in the kitchen area of the faculty lounge. These are not conversations that I was or would be

personally involved in. These conversations would typically be in progress when I entered the faculty lounge. I would get my coffee or tea and quickly leave, feeling very uncomfortable. It was clear that Jane and Juliet's pregnancy was treated very differently from the pregnancies of straight couples at the law school. These derogatory comments stand in direct contrast to the goo-goo-eyed adoration that typically accompanied a married, heterosexual pregnancy.

32. When I was at Michigan, I maintained substantial contact with members of the clinical faculty, including Juliet. I also served on the Personnel Committee with Jane in the 1999-2000 school year and had significant professional interaction with her. I played in a monthly poker game that included Juliet. We would meet and play at their house on a rotating basis. Jane and Juliet would often complain about how conservative, pretentious and unwelcoming many of their colleagues were in the law school. They were not happy at Michigan. They stated repeatedly that they did not feel like they fit in.

33. Shortly after moving to Ann Arbor, buying a house, making renovations, settling into a new job and giving birth to their second child, Jane and Juliet decided to pull up stakes and abandon ship. They moved back to Wisconsin. This decision was made even before completing their second full year at the law school.

34. I was repeatedly told during the course of my employment that the University of Michigan was one of the most prestigious law schools in the country. A move from the University of Wisconsin to the University of Michigan would have been seen as a substantial and positive career advancement. Michigan simply does not lose tenured law professors to the University of Wisconsin. Based on my experience and

my professional understanding of the market, it is my opinion that one would not leave Michigan and return to Wisconsin unless one was very unhappy. To the best of my knowledge, before Jane, Michigan had never lost a member of its tenured faculty to the University of Wisconsin.

35. I was disappointed, but not surprised by Jane and Juliet's decision to leave Michigan. From the very beginning, Jane and Juliet maintained two stories concerning their abrupt decision to leave Michigan. The "private" story was shared with their friends and stressed their unhappiness at Michigan: how unfriendly and unsupportive they found many of their colleagues and the basic fact that they never felt comfortable here. Their "public" story was quite different. The public story stressed how much they missed their friends in Wisconsin and how much they wanted to return to Wisconsin so they could raise their children in a friendly and supportive environment. The public story was an important device to preserve their Michigan contacts and maintain professional connections that might be useful for them in the future. If Jane and Juliet were ever to leave Wisconsin for another school, such as Stanford, for example, their former colleagues at the University of Michigan would certainly be contacted as references.

36. After Jane's and Juliet's return to Wisconsin, I had an extensive discussion with another Wisconsin faculty member. It was clear from their comments that the story Jane and Juliet were circulated at Wisconsin was much more consistent with the private story at Michigan. I was told of numerous complaints that Jane and Juliet had during their time at Michigan and how unfavorably the Michigan faculty compared to the Wisconsin faculty.

37. After I filed this lawsuit, I posted a copy of the complaint on a website. This was a very public act that gave the allegations substantial exposure in the legal academy. I subsequently received a call from Juliet expressing her anger. Juliet stated that she and Jane did not want to be drug into this mess. She stated repeatedly that this was my fight not theirs and they wanted no part of it. Juliet issued an ultimatum. She stated that if I amended the complaint to withdraw any reference to them, they would stay out of the lawsuit. If, however, I did not amend the complaint, she stated that they would submit affidavits and that those affidavits would conform to their public, not their private, story. She did not deny the truth of the allegations I had made, however.

38. I did not amend the complaint. I believe that the allegations in the complaint are true. As a matter of personal courtesy, however, I edited the version of the complaint that was posted on the website to eliminate any reference to Jane or Juliet. The main reason Jane and Juliet were angry was because they were receiving phone calls from colleagues around the country that called into question their carefully constructed public story. It was not my intention to place them in this awkward position or to disrupt the positive relations with Michigan that they had carefully cultivated and maintained. I edited the website to alleviate this pressure on them.

39. During my deposition, I was asked about allegations in the complaint pertaining to Jane and Juliet (Paragraph 22). When I attempted to answer his question in a manner that raised the issues addressed in this affidavit, I was cut off by the Defendant's attorney. (Deposition at 241-42).

40. Jim Hathaway was another controversial hire at the law school. Jim is a

Canadian citizen specializing in the study of international refugee law. He is also gay. Jim embodies many of the personal characteristics sometimes associated with stereotypes of gay men. At the time he moved to Michigan, Jim was in a committed relationship with his partner, John.

41. Jim was considered for a lateral tenured position in the winter 1998 term. Rather than one personnel talk (as is the norm), Jim was asked back to give a second personnel talk. In my eight years at Michigan, no other personnel candidate was asked to give two talks. The alleged concern that people who opposed him gave was that the first talk was too "clinical" and insufficiently theoretical. In reality, this appeared to me to be a thinly veiled pretext for those who opposed his candidacy for other reasons.

42. When Jim was in town for the second talk, I attended a personnel dinner with him, Steve Croley and Michael Heller. While Jim is an expert on international refugee law, Steve Croley and Michael Heller peppered the dinner with moderately hostile and highly inappropriate efforts to quiz him on his competence in Law & Economics, such as the efficient delineation of property right definitions. As part of damage control measures, I had to make efforts both to reassure the candidate and to persuade the Personnel Committee that if negative reports came back from the dinner it was based on inappropriate conduct on the part of the interviewers, not any problem with the candidate.

43. Jim was ultimately extended an offer through the same voting procedures that produced an offer for Jane Schacter: an open process involving tenured, tenure-track, clinical faculty and administrators. Based upon the same reasons stated above concerning Jane Schacter, it is my opinion that Jim would not have received an offer if

the vote had been limited to the tenured faculty and held in secrecy.

44. After Jim joined the law school, he was not treated well by many members of the faculty. Jim was not respected as an intellectual and his views were consistently marginalized. In discussing hires, one tenured member of the faculty openly declared that the only bad hire we have made was "the refugee guy." When Jim would speak at a faculty meeting, other members of the faculty would often engage in eye-rolling, shoulder-shrugging and other inappropriate body language, not affording him the intellectual respect he deserved.

45. A member of the clinical faculty told me a similar story concerning the hostility directed towards Jim Hathaway around the time of his hire. At the round table in the faculty lounge, there was a discussion about some of the personal complications Jim would confront if he were to come to Michigan. Someone at the table had mentioned that Jim had a partner, John, and that John may face some difficult immigration questions. In response, a senior tenured member of the faculty bellowed: "John! John!! JOHN!!! . . . He has a partner named JOHN!?!?"

46. I was actively engaged in recruiting Jim to the faculty. I consider Jim a friend. I socialized with Jim at the law school and socialized with Jim and his partner at their home and the home of friends. From my own observations, Jim's partner, John, was never happy in Ann Arbor. He tried various jobs and educational programs, but never settled in. Jim and John never integrated themselves into the child and family centered social network that defines the mainstream law faculty.

47. They sought options outside of Ann Arbor and to build a life for themselves outside of Michigan. They spent summers in Canada, not in Ann Arbor.

Ultimately they moved to Arizona. Jim took a reduced appointment at the Law School. He now teaches only one of the two academic semesters. Furthermore, Jim will typically condense his one semester of teaching into a concentrated course, sometimes teaching only 6-8 weeks of the 14 week semester. Salaries of law school faculty are posted on line by the Michigan Daily. For Jim's 6-8 weeks of teaching, he earns in excess of \$130,000. The rest of his time is spent outside of Ann Arbor. While Jim claims to have moved to Arizona to satisfy John, the two of them subsequently broke up. After the break up, Jim did not return to a full time teaching load and spends no more time in Ann Arbor than he did when he and John were still together.

48. About six months after the faculty failed to grant me tenure, I had a phone conversation with Jim about my experiences. It was difficult to schedule the call or track him down, because Jim spends so little time in Ann Arbor. During the call, Jim apologized repeatedly for his failure to attend the tenure meeting so he could have voted in my favor. He expressed substantial concern that his vote might have made a difference. He stated emphatically that he felt safe in leaving because he did not think that there would be any problems and believed that I would have been granted tenure with no difficulties.

49. We spoke about my experiences at the law school and my belief that a number of members of the faculty harbored strong anti-gay sentiments. Jim stated that he could not dismiss my concerns. He said that he was often oblivious to those types of problems. He also stated that he spent so little time at the law school that he was not in a good position to judge the environment. In addition to his travel and multiple homes, Jim likes to hold himself up in his office. Consequently, he has little social

contact with his colleagues even when he is working at the law school. When I raised issues about how he was treated and whether he was aware of how his views were persistently marginalized, he stated that he was unaware about how people reacted to him. In the end, he basically said "wow," "I was not aware of that," "I will have to think more about that." He said that I may well be right and that he did not have a good basis to otherwise explain what had happened to me.

50. I did not take Jim's claimed naivete as being completely sincere. In my opinion, someone as intelligent as Jim would have to be aware of the negative environment that pervades the law school. Based upon our conversations and my observations, it is my opinion that Jim deals with this negative environment through avoidance. Rather than staying and helping to improve the situation, he has carefully fashioned his life so he is able to ignore and deny it. At the same time, it appears, that the only way he can sustain his present life style is to maintain good relations with the institution.

51. I have had no conversations with Jim since I filed the law suit. I have never had a conversation with Jim where he denied the truth of the underlying allegations in the complaint. During my deposition, I was asked about allegations in the complaint pertaining to Jim (Paragraph 21). When I attempted to answer his question in a manner that raised the issues addressed in this affidavit, I was cut off by Defendant's attorney. (Deposition at 241).

52. In the 1930s, economist Paul Samuelson pioneered "revealed preference theory." You cannot trust what consumers say about their preferences. Consumers' real preferences are revealed not by what they say, but by what they do. Jane and

Juliet left Michigan for Wisconsin at substantial personal and professional cost after a very short stay in Ann Arbor. Actions speak louder than words. Jane and Juliet's preferences have been further revealed by their decision to visit and now to move to Stanford, leaving their friends and the alleged supportive environment in Wisconsin behind them. Similarly, Jim Hathaway's preferences are revealed by his choices. He spends as little time as possible in Ann Arbor, working there only 6-8 weeks a year.

53. Discrimination at the law school is not limited to faculty. Robert Precht was hired to be the Director of Public Service in 1993. He was subsequently promoted to the position of Assistant Dean. Rob is gay. This is a fact that he did not hide while he was working at the law school. The administration was aware of this fact. Shortly after becoming Dean in 2003, Evan Caminker initiated a "review" of the Office of Public Service. The Dean has discretion in deciding whether or not to review particular offices, as well as how such reviews are conducted. Dean Caminker specifically chose to review Rob's Office and to conduct the review by appointing an Ad Hoc Faculty Committee to write a report.

54. Dean Caminker appointed J.J. White to Chair the Ad Hoc Committee. J.J. White was on the Tenure Committee that considered my 2002 application for tenure. J.J. White authored a sharp and unprincipled dissent from the Tenure Committee's recommendation that I be granted tenure. Dean Caminker was aware of this fact, as well as aware of the fact that I had grieved the adverse tenure decision alleging discrimination based on sexual orientation on the part of the faculty, including J.J. White. Knowing this, Dean Caminker appointed J.J. White to Chair an Ad Hoc Committee initiated to review the only office run by a gay male member of the Law

School Administration.

55. The Ad Hoc Committee chaired by J.J. White drafted a negative report of Rob's Office. Dean Caminker proceeded to leverage the negative report to force Rob out of his position. Rob was the only member of the administration Dean Caminker terminated. I had numerous conversations with Rob during this process and, at his request, read a copy of the Report.

56. In my capacity as the Director of the Program for Cambodian Law & Development, I had worked extensively with the Office of Public Service. The Office was run in an efficient and professional manner. Rob was respected by students, faculty and other members of the administration. Based upon my observations and my reading of the Report, there was no basis on the merits for forcing Rob out of the law school.

57. Much of the anti-gay animus at the law school revolves around a narrow and traditional view of family life. Family is exclusively viewed as a heterosexual institution within the legal bonds of marriage. These traditional views are formally expressed and given force in the scholarship of people like Carl Schneider.

58. When I accepted the offer at Michigan, I moved myself, my partner and his extended family from Los Angeles to Ann Arbor. My partner is Cambodian. He survived the U.S. bombing of his country, the civil war, the killing fields and the invasion of Vietnam. Both his parents were killed, as was his only brother, his brother's wife and all their children. My partner is the only surviving son and, therefore, the defacto head of the family. He has two younger sisters and three older sisters. He was sent alone across the Thai border to go out and try to make a better life. He came to the United

States as a refugee in 1981. After he became a citizen, he started the process of trying to sponsor his siblings. Working without the help of a lawyer, he was able to reunite what was left of his family in the United States in 1991. His sisters and their families had spent nearly a decade in refugee camps in Thailand.

59. There are 13 of us in Ann Arbor. One of my partner's older sisters and one of his younger sisters are married and have children. The youngest child was born in Los Angeles. She was raised in a bilingual environment, speaks excellent English, loves reading and is an honor's student in the Ann Arbor middle school system. The second youngest was born in Thailand and came to the United States when he was just an infant. He was raised in America, speaks excellent English and is now a successful student in the Ann Arbor high schools. The oldest three children were born and raised in their early years in the refugee camps. They had to learn English when they came to the United States. Each of these children graduated from the Ann Arbor high school system and are enrolled in and doing well in college. The oldest will graduate from college this summer.

60. Family life on the Michigan faculty focuses predominately on white, heterosexual couples. Trying to mix my untraditional family with this conservative family dynamic was like trying to mix oil and water. We were never integrated into the law school's family dynamic. Our children did not play together. We did not socialize as families. For the first five years, I did bring the entire family to the annual law school picnic. It was always an awkward and uncomfortable experience. Inevitably, we would find ourselves sitting at a table on the periphery of the group. Despite our efforts to break the ice, there was very little interaction. While I thought it was important to show

up and try and fit in, I dreaded the social awkwardness that this annual event always precipitated. After the fifth year, I stopped attending the picnic.

61. This fall, my partner and I will celebrate our 15<sup>th</sup> anniversary. My relationship with my partner was not afforded the same respect and dignity afforded to married heterosexual couples. It was common for some tenured members of the faculty would ask me "how my wife was." Even after working 7 years at the law school, I would receive mailings from the Dean's Office addressing my partner as "Ms." rather than "Mr." On one occasion when trying to describe my extended family to J.J. White, I was repeatedly confronted with a question that bordered on a hostile accusation. When I was talking about the children, he kept asking "What do they call you," "What do they call you," "What do they call you." It was like a computer incapable of processing information. Our family, especially as it related to the children, did not fit his narrow, traditional view of family.

62. The evening of my tenure vote, before the tenured faculty met to discuss my case and take a final vote, I received an e-mail from Richard Friedman. The message was gracious and supportive in tone and ended wishing me "good luck." In light of this message, I was somewhat mystified and taken aback to later learn that Friedman aggressively led the charge against me during the first meeting and took up the same charge at the second meeting, aggressively speaking out and voting against my tenure.

63. After seeking access to my personnel file pursuant to the Michigan Employee Right to Know Act, Richard Friedman stopped by my office and asked if he could talk with me. He stated that he was stopping by as a "friend" and that what he

had to say was out of concern for me and my future. He strongly urged me not to push the tenure issues further and simply to let things go. He was concerned that I was starting down a road that might lead to litigation. He said that this would not be good for me personally or professionally. He further stated that I needed to maintain good relations with Michigan Law School. He said that I would "need people here" if I wanted to get another job and advance my career. The intimation was clear and not subtle – do not rock the boat and do not cause trouble because people here could and presumptively would hurt you.

64. Omri Ben-Shahar joined the law school as a lateral, untenured professor in 1999. He was granted tenure in 2001, the year before the vote in my case. My personal interactions with Omri were always marked by an intense, smoldering hostility on his part.

65. As part of the tenure review process, the candidate is given anonymous and redacted negative comments from reviewers. Rob Howse, the Chair of the Tenure Committee provided me with these comments, with a group of comments from someone Rob designated as "Reviewer One." I was originally given the impression that the comments were from external reviews. I was shocked that someone whose comments were so unprincipled and unprofessional as Reviewer One could have tenure at a peer institution. In my memo to the Tenure Committee responding to the blinded comments of Reviewer One, I characterized the comments as "illegitimate and uninformative," betraying "a fundamental misunderstanding of the project," and reflecting either "the reviewers unwillingness to make a good faith effort to understand the nature of our study or his (her?) unwillingness to engage the initiative on its own terms." I

made no similar statements about the comments of any other reviewer, even those that were sharply critical of my work. The point about Reviewer One was not that the comments were critical, but that they were unprofessional, far beyond the pale of legitimate criticism. I later found out that the redacted comments came from both internal and external reviewers and that the identity of Reviewer One was, in fact, Omri Ben-Shahar. I also learned that even though Omri was on sabbatical for the entire academic year and was spending that year back home in Israel, he had intentionally flown to Ann Arbor, specifically to attend and vote at my final tenure meeting. Omri voted against my tenure and actively persuaded others to do the same.

66. Defendant's briefs make much of a stray comment made during my deposition in the presence of Dean Caminker that I considered Evan to be a "friend." It is my nature to be a civil person, even under difficult circumstances. At the time I made that comment, however, I was unaware that Evan had voted against my candidacy for tenure. I was unaware that at key points in our formal dealings when I was assessing my options and strategies concerning the University, Evan dealt with me without disclosing what was a critical conflict of interest on his part. At the time I made the statement, I was not aware of e-mail correspondence generated during discovery where he discussed strategies with Dean Lehman and others of how he could use his hat as "my friend" to manipulate our conversations and obtain information. I was unaware of Evan's role in orchestrating the denial of my access to basic information in a manner that was far more aggressive than other departments in the University and beyond what was justified under state law. At the time I made the statement, I was unaware of Evan's role in ghost writing for Dean Lehman critical parts of Lehman's filings in front of

the Grievance Review Board, all the while maintaining a public image as the impartial referee in the Dean's office responsible for coordinating the Grievance process.

67. From my personal observations, Sherman Clark is a very religious person who has strong pro-life views. When the issue of homosexuality or gay rights would come up, it would trigger what sounded like a highly rehearsed spiel on Sherman's part about why it was wrong to discriminate against gays. It was not a simple declaration that discrimination was wrong. It was a tortured string of analogies told in a pedantic, Sunday School manner. One had the impression that he was making these statements, in part, to convince himself and, in part, to establish his bona fides on civil rights issues.

68. It was clear to me that Sherman's comments were not spontaneous expressions. The same spiel was used two or three times in direct personal communications between us. There were another few occasions when he made the same presentation to others, while I just stood there like his gay prop. These exchanges made me feel incredibly uncomfortable. I was never made to feel more self-conscious or feel more awkward about my status as an openly gay member of the faculty than on these occasions. It got to the point when I was able to tell when the spiel was coming. Rather than going through it again, I would do everything I could to excuse myself and avoid the ordeal.

69. Provost Review of the Tenure Decision On February 21, 2002, the day after the faculty vote, I had a meeting with Dean Lehman in my office. Lehman stressed that the faculty vote was only part of a multi-layered process and that the next step of the process involved Provost review of the decision. We talked about the Provost's role in considering the significant contributions I have made to departments in

the University outside the law school. I raised the issue about whether it would be appropriate to solicit input into the process from people I had worked with in the School of Public health, the International Institute and the Center for Southeast Asian Studies.

70. Starting on February 25, 2002, through emails and personal conversations with Dean Lehman and Associate Dean Caminker, I tried to obtain as much information as I could about the nature, timing and substance of Provost review. I drafted a personal letter to the Provost and, as a courtesy, shared copies of the letter with Lehman and Caminker before sending it to the Provost on April 4, 2002. I also know that Michael Kennedy, the Vice Provost for International Affairs and Director of the International Institute and Judith Becker and Nancy Florida, the Director and Interim Director of the Center for Southeast Asian Studies communicated with the Provost on my behalf, as did people at the School of Public Health. I was told by people in the International Institute that many people around the University were angry about the law school's decision and that I had good reason to be optimistic about the Provost review.

71. I fully expecting to hear something back from the Provost Office concerning its review of my tenure decision. Throughout April and May, there was no response. I raised the issue in a May 30, 2002, e-mail with Dean Lehman, but received no response from him either. I raised the issue in an August 13, 2002, e-mail with the Dean's Administrative Assistant, Rozona Kelemen, after receiving a Notification of a change in terms and conditions of my employment reflecting a merit pay increase. I stated in the e-mail: "I have received no official correspondence from either the Law School of the Provost Office concerning Provost-level review of the tenure decision. Is there a connection between this document and that process?" Rozona replied in bold

and all caps: "NO." On August 19, 2002, I made a supplemental request under the Michigan Employee Right to Know Act specifically asking for the production of any documents relating to Provost Office review of my case. No documents were ever produced pursuant to this request. On August 22, 2002, in response to some misstatements Evan Caminker made about the nature of Provost review in a personal conversation, I sent him an e-mail directing him to on-line resources documenting the substantive nature of the review and the ability of the Provost to reverse negative determination. In a September 17, 2002, meeting I had with Lehman and Caminker, I again raised to issue of Provost review and was told that the law school had received no communication from the Provost on the matter. Dean Lehman stated that it would not be inappropriate for me to contact the Provost Office directly and make inquiries. On September 23, 2002, I e-mailed the Associate Provost and asked for information pertaining to the substance and timing of the Provost's review of negative tenure recommendations. After a number of e-mail exchanges, I had a phone conversation with Associate Provost Valerie Castle on October 2, 2002. She stated while she was not working in the Provost Office at the time, she believed that a decision had been made sometime in the Spring and that it should have been communicated to me through the law school Dean's office. I expressed shock and anger, telling her that I had been waiting months for news from the Provost Office with my life and future hanging in the balance and that I had received no news in any form from either the law school or the Provost.

72. In addition to never receiving any notification about the Provost Office review of my tenure decision, I never received any Notice of Non-Renewal following the

2002 tenure vote, informing me that my appointment at the University was to be terminated. On October 22, 2002, I sent a long e-mail to Dean Lehman, summarizing my conversations with the Associate Provost, expressing anger about the failure of the law school and the Provost Office to provide any notice, and reiterating my demand under state law to be provided with any documents concerning the Provost review of my case. I received no response from the Dean. On November 5, 2002, I resent the message asking for a reply. Finally, on November 13, 2002, Lehman sent a message acknowledging and apologizing for his failure to provide notice of the Provost decision, but stating that no documents existed documenting the nature or the outcome of the Provost review. On November 16, 2002, I sent Lehman a message asking how he could reconcile the University's failure to provide notice about the Provost's review of my tenure case with various University Standard Practice Guidelines requiring written notice of final tenure decisions, as well as specific requirements concerning Notices of Non-Renewal of Appointments and the protections specified by Regent's Bylaw 5.09.

73. Access to Information After midnight, in the early morning of February 21, 2002, Dean Lehman called me to tell me the outcome of the faculty vote. All he would say was that I had failed to receive the two-thirds vote necessary to send an affirmative recommendation for tenure to the central administration. He would not tell me the actual vote count. He would not tell me whether the Tenure Committee Report was favorable or unfavorable. He would not tell me whether the opposition was internal or external. He did tell me, however, that no faculty member would be able to tell me any of these things either. He stated that faculty members were expressly prohibited from revealing anything that happened at the meeting, even to the point that they could not

express their own views of the merits of the case or how they voted as individuals.

74. On February 22, 2002, I sent an e-mail to Dean Lehman asking him to reconsider the strong confidentiality norms he imposed forbidding faculty members from revealing any substantive information about the tenure process. The Dean kept stating that the strong confidentiality norms were law school policy and had to be respected. On May 13, 2002, I again e-mailed Lehman raising concerns over the strict confidentiality policies preventing communications with colleagues over the tenure decision. On May 17, 2002 we had a phone conversation, unsuccessfully trying to address these concerns. Facing no prospect of gaining any information internally, on May 30, 2002, I filed a formal request for the contents of my entire "personnel record" under the Michigan Employee Right to Know Act. This triggered a conversation with Evan Caminker about the law school's confidentiality norms. When Evan again stated that disclosure of such information violated the law school's policies concerning confidentiality, I asked that I at least be provided with a copy of those policies so I could understand what was and was not subject to disclosure. Once pressed in this manner, Evan admitted that no formal law school policies existed on confidentiality so there were no policies that he could provide to me (an episode I memorialized in a June 6, 2002 e-mail to Evan). On June 14, 2002, Dean Lehman sent me a copy of the February 22, 2002, e-mail he circulated to the tenured faculty establishing his confidentiality norms. In the e-mail, he told faculty members not to discuss the process that led to the faculty decision, the actions of the Tenure Committee, the faculty action as a whole, or any individual statements of their own made during the process or how they cast their own votes.

75. On July 26, 2002, nearly two months after my initial request, the law school made its first production of documents under the Michigan Employee Right to Know Act. Despite obtaining express waivers from numerous external and internal reviewers, no unredacted reviews were disclosed. In addition, despite being critical elements of the "personnel record," no copies of the 2000 or 2002 Tenure Committee Reports were disclosed. Finally, the disclosure mixed together, randomized and scrambled all materials from 1998, 2000 and 2002 into a single, undifferentiated mass. On August 19, 2002, I sent an e-mail to Evan Caminker objecting to the form and content of Law School's production: arguing that the randomization and scrambling of reviews rendered the production meaningless; complaining about the failure to produce the Tenure Committee Reports; challenging the failure to produce any unredacted letters where the authors had given permission for their disclosure; and making a supplemental request for production of documents related to the Provost Office review of the case. When I filed my formal Grievance under the law school grievance policy, I incorporated the law school's failure to produce documents in compliance with state law as one of the claims. Later in the Fall, the Grievance Review Board suggested that the disclosure question be submitted to the General Counsel's Office for advice to assess whether the law school had complied with state law. The Dean strongly objected to the suggestion, alleging potential confidentiality concerns.

76. Even after making three supplemental requests under state law and filing a formal grievance, copies of the Tenure Committee Report were never disclosed by the law school. It was not until after filing this law suit and raising the matter with the discovery master that the materials were produced.

77. Discrimination I told Dean Lehman and Evan Caminker on a number of occasions, one of the reasons I was fighting so hard to obtain information was because of my strong belief that improper motives played an important role in the faculty decision. I reiterated these claims in a May 30, 2002, e-mail to Dean Lehman. I told him that even after three months, these concerns had substantial staying power. In that message I expressly raised my concerns about discrimination based on sexual orientation and the role that sex-based gender stereo types play in law school decision making. I raised these concerns again in an e-mail to Dean Lehman on July 15, 2002. In that message, I outlined my concerns about discrimination, provided statistics which showed a history of bias against women, gays and lesbians at the law school, detailed a history of inappropriate sexist comments at the law school and the mistreatment of gay faculty members, relayed the substance of inappropriate, anti-gay jokes and comments, and described the substantial hostility non-traditional families such as mine face at the law school.

78. On July 17, 2002, I expressed my desire to bring a formal grievance under the law school policy as an avenue to peruse my concerns about discrimination. Two days later, on July 19, 2002, without asking me for any additional information or conducting any independent investigation, Dean Lehman summarily dismissed my concerns about discrimination as unfounded. Furthermore, he asserted that, the law school grievance policy would not permit the grievance of any issues related to tenure anyway, even claims of discrimination. Because the message was misaddressed, I did not get it until it was resent on August 14, 2002. The following day, I e-mailed Jim Hathaway about these issues and tried to set up an opportunity to speak with him. On

August 20, 2002, I filed a formal grievance under the law school policy further detailing my complaints about discrimination.

79. On September 16, 2002, Ed Cooper, one of the law school members of the Grievance Review Board send Lehman and myself an e-mail concerning scheduling. He also copied Evan Caminker on the message "because [Evan] seems to have assumed the role of Dean for this grievance." E-mails produced in discovery show how Evan actively developed strategies with Lehman and ghost wrote many of the filings.

80. At the same time the law school was defending the importance of affirmative action and the value of diversity in front of the United States Supreme Court, it was taking a very different view about these matters in applying in its own internal Grievance Procedures. The law school's position was clearly stated in Dean Lehman's October 28, 2002, Response to Memorandum of Peter J. Hammer Concerning Scope of Law School Grievance Procedures. According to Lehman, nothing related to tenure was grievable under the Law School policy, including even the crassest forms of discrimination based on race, gender or sexual orientation. On January 6, 2003, the Grievance Review Board issued its Final Decision rejecting all claims on the basis of jurisdictional, not substantive grounds. On January 17, 2003, I appealed the Final Decision to Jeff Lehman. On January 27, 2003, Dean Lehman issued his final decision rejecting all claims, concluding that nothing related to tenure, even claims of discrimination, are grievable under the law school policy.

81. University Job Search Beginning in February 2002, I started having conversations with Dean Lehman about obtaining a position at a different unit of the

University. He represented his support of the idea and his willingness to help. These conversations continued throughout the summer. These matters were again discussed in our September 17, 2002 meeting. On September 23, 2002, I e-mailed Dean Lehman providing him with additional contacts of people working in the Public Health School. On September 26, 2002, and October 1, 2002, Lehman e-mailed me with updates of his efforts to track down Ken Warner at the School of Public Health and further expressing his willingness to contact the Dean at the Public Health School. In my October 2, 2002, and October 16, 2002, phone conversations with Associate Provost Castle, she expressed the willingness of the Provost Office to help "problem solve" in providing resources if I could generate interest with one of the other units at the University. She told me to continue to use Dean Lehman as the primary contact person, but to copy her on our correspondence.

82. On October 27, 2002, I sent a message to Dean Lehman and Associate Provost Castle providing them with an update on my efforts to meet with Bill Weissert, Chair of the Department of Health Management and Policy, at the School of Public Health, Mark Wilson who runs the Public Health School Interdepartmental Concentration on Global Health, and John Chamberlin at the Ford School of Government. On November 1, 2002, I sent an e-mail to Tom Green, Merritt Fox, Phoebe Elsworth, Sam Gross Robert Howse and J.B. White on the law school faculty informing them of my discussions with Associate Provost Castle and the willingness of the Provost Office to find an alternative employment on campus. I solicited their assistance in identifying possibilities and generating interest. In late October 2002, I met with Bill Weissert. At his request sent him a Memorandum dated November 5,

2002, outlining a Prospective Research Agenda involving the Pharmaceutical Industry that could serve as the basis of an appointment. On November 15, 2002, I received an email from Phoebe Elsworth expressing her willingness to send a supportive message to John Chamberlain at the Ford School. On November 27, 2002, I sent messages to Associate Provost Castle and Jeff Lehman providing them with updates on my job search efforts at the School of Public Health and the Ford School of Government and requesting specific advice about what to do next in light of pending January 2003 deadlines I was facing from Law Schools outside the University. Unfortunately, I never received a reply to this message. After generating substantial interest for three different placements at the University, the Provost Office took no concrete steps to generate possible resources for an appointment. I received no further advice or support from Associate Provost Castle or Dean Lehman and no meaningful alternatives at the University ever materialized.

83. December Break Down My relations with the law school became increasingly strained after my December 1, 2002, e-mail to Dean Lehman. In that message, I expressed anger and disappointment over the Law School and Provost Office failure to provide notice of Provost review of my tenure decision, outlined the University requirements for written notice at each stage of determinations effecting tenure, detailed University requirements of written notices of non-renewals of appointment and the mandates of Regent Bylaw 5.09, and disagreed strongly with Lehman's assertion that a February 2000 letter could constitute proper notice of non-reappointment. A meeting was scheduled for December 17, 2002, between myself, Dean Lehman and Evan Caminker to address these issues. At the meeting, Lehman

provided me with letter offering a range of adjunct fractional appointments and/or coverage of COBRA benefits for my partner in exchange for my signing a waiver of all my legal rights and claims against the University. At that point, issues of the law school's discrimination and its failure to meet the mandates of Bylaw 5.09 were all on the table. I felt insulted by the letter and refused to waive any of my rights against the University.

84. Three days later, on December 20, 2002, I received a letter from Dean Lehman (that had been ghost written by Evan Caminker) stating now for a record that was anticipating litigation that he did not believe that there was any merit in the discrimination claim and that is why he had failed to engage in any investigation of the claim. This letter was sent while the formal Grievance was still pending and before Dean Lehman would have to make an official assessment of the merits of the claim in light of the Grievance panel's recommendation. Lehman's December 20<sup>th</sup> message was styled as a "follow-up" to our December 17, 2002, meeting, even though these issues had not been raised or addressed at our meeting. I replied on December 22, 2002, with a message expressing strong disagreement with the sentiment that serious claims of discrimination had not been raised, and expressing my disappointment that he believed such serious concerns can be dismissed so easily.

85. At that point, it was clear that the University would not take any serious action on the discrimination claim. It was also clear to me that the University would not honor their obligations under Rule 5.09 of the Bylaws. Finally, it was clear that they were renegeing on their commitments to provide alternative employment at the University, despite my having identified three viable options. As I indicated at the

December 17, 2002, meeting, I had no desire to relinquish any of my rights or claims against the University. At the same time, I could not afford to be unemployed or experience a lapse in my partner's health care benefits. Based upon these events, it was my belief that the University had clearly and unequivocally breached its commitments to me. On advice of counsel and with my own knowledge of a contracting party's obligations to mitigate damages, I pursued employment options outside the University in the face of looming January deadlines. There was no other reasonable alternative.

86. My perception that the University would not honor its commitments proved prophetic. On January 6, 2003, the Grievance Review Board issued a Final Decision holding that none of the claims, including the claims of discrimination, were grievable for jurisdictional reasons. On January 17, 2003, I appealed the decision to the Dean. That same day, I distributed a letter and a packaged of publications addressed to members of the law school community (consisting of tenured, tenure-track and clinical faculty as well as senior administrators). At that point, given the Dean's embargo on information, no one but the tenured faculty knew the facts about the Tenure Committee Report or the final faculty vote. In my letter, I let the broader community know that the Tenure Committee had affirmatively voted to recommend my tenure and that a majority of the faculty had supported the recommendation. The truth was that I had been denied tenure by a veto of a minority of the faculty. I had been blackballed. In academics, all sins are papered over with claims about "scholarship." To counter that lie, I provided recipients of the letter with reprints of all the publications detailed in the correspondence and included in the tenure file.

87. Defendant's claim that this was a letter of resignation is in error. That was not the intent in writing the letter and that is not how any one interpreted it. The letter was perceived by senior members of the tenured faculty as a serious breach of confidentiality and open act of insubordination. I received many tearful embraces from administrators and members of the clinical faculty. They thanked me for letting them know what "really" happened.

88. As the new year progressed, I continued to aggressively pursue my claims against the University. On January 14, 2003, my lawyer sent a letter to the General Counsel's Office demanding a hearing pursuant to Rule 5.09. On January 27, 2003, Dean Lehman issued his Final Decision holding that none of the claims, including discrimination, was grievable under the Law School policy. On February 11, 2003, I appealed the Dean's Final Decision to the Provost. On February 25, 2003, I sent a message to Associate Provost Castle and Evan Caminker inquiring about the standards, timing and range of possible outcomes that I might expect from the Provost appeal. On March 5, 2003, I sent the Provost a letter providing him an update as to my professional activities. The letter detailed the testimony I was asked to provide at Public Hearings jointly sponsored by the United States Department of Justice and the Federal Trade Commission concerning Health Care Law & Competition Policy. It was the second time in 6 months I was asked to testify before that body. The letter also described an invitation I had received to participate in an exclusive roundtable forum at the Federal Agency for Healthcare Research and Quality on competition related concerns. On March 14, 2003, the Provost issued a decision rejecting my appeal and upholding the law school policy stating that nothing relating to tenure could be grieved.

89. During the course of this litigation, I learned that there was one negative external review in the tenure file. Also through discovery, it was disclosed that the reviewer was Einer Elhauge. I was surprised to find this out. Einer was on the list of reviewers I struck as part of the 2000 review. Einer is known to be very conservative politically, and he lets this conservatism bleed into his scholarship. In addition, I had never felt comfortable in my personal interactions with him. I did not view him as an appropriate reviewer of my work.

90. The law school maintains a generous sabbatical policy, which it promotes aggressively in the recruitment process. Law school faculty are given a one semester sabbatical after each three years of teaching. One of these is funded by the University, while the other is funded by the law school. The Dean's Office routinely notifies faculty members when they are eligible for these sabbaticals. As would be the norm at the law school, I took sabbaticals in the Fall of 1998 and the Fall of 2001. The first was a law school sabbatical. This sabbatical was promised to me during the initial recruitment process and memorialized in Dean Lehman's offer letter. I received regular notices from the Dean's Office about my eligibility for and timing of this sabbatical. The same can be said for my University Sabbatical in Fall 2001. Each sabbatical was devoted to research, writing and publishing. Research is the primary job responsibility of any faculty member at the law school. I spent each of these sabbaticals in residence at the University, regularly using my office at the law school and using the University's library resources. Even while on sabbatical, I made myself available for meeting with, counseling, supervising research and writing recommendations for my students. Also, I made myself available to read and comment on work for the Personnel Committee and

attended faculty workshops. During these sabbaticals, I received my full regular pay and benefits from the University.

91. The Robert Wood Johnson Foundation sponsors the Health Policy Investigator Award Program. The award provides a grant of up to \$250,000 to sponsor cutting edge health policy research. Most recipients of this award are senior tenured university faculty members in the medical and social sciences. For example, at the University of Michigan, the following are illustrative of people who have received the reward: Kenneth E. Warner, Ph.D., Dean and Avedis Donabedian Distinguished University Professor of Public Health, University of Michigan School of Public Health; James S. House, Ph.D., Professor of Sociology, Senior Research Scientist Survey Research Center, University of Michigan; Joel D. Howell, M.D., Ph.D., Victor Vaughan Professor of the History of Medicine, University of Michigan Medical School; and Peter D. Jacobson, J.D., M.P.H., Professor of Health Law and Policy, and Director, Center for Law, Ethics and Health University of Michigan School of Public Health. It is unusual for the Award to be given either to a lawyer or to an untenured faculty member. In 1998, I applied for the program with my colleague William M. Sage, a J.D/M.D., who teaches at Columbia University Law School. Our project was entitled "Competing on Quality of Care: Comparing Antitrust Law to Market Reality." Through a competitive selection process overseen by leading health policy scholars, our project was selected for funding. Under the rules of the program, however, all funds are paid to the University and not the grant recipient.

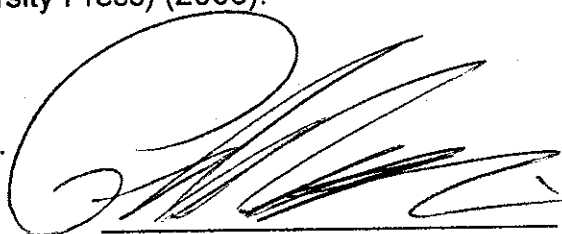
92. Law school policy required faculty members to obtain administration approval before seeking outside research funds. Before applying for the Health Policy

Investigator Award Program, I sought and obtained permission from then Associate Dean Chris Whitman. The law school financial officer worked with me to provide data and cost estimates for the grant and to set up the accounting infrastructure for the funds after we were successful. In addition to paying for a team of research assistants, the funds were used to pay for a scholarly activity leave in the fall of 2000. I had to apply for this leave through the law school Research Committee, which made an affirmative recommendation to the Dean, who formally approved the leave. I spent the scholarly activity leave in residence at the University, using my office, using the University's library resources and overseeing the work of a team of law school research assistants. The scholarly activity leave only relieved me of teaching duties for the term to focus on the research project. I still maintained my full service and administrative responsibilities. During this scholarly activity leave, I received my full regular pay and benefits from the University.

93. The Robert Wood Johnson Foundation Health Policy Investigator Award Program is the most prestigious award one can receive in health policy research. The recipients reflect a virtual "Who's Who" in the academic field. The receipt of this award was highlighted as the only academic research project at the law school in the University's publication "Research and Scholarship at the University of Michigan." The Award generated an important string of academic articles consisting of: *Antitrust, Health Care Quality, and the Courts*, 102 COLUM. L. REV. 545 (2002) (with William M. Sage); *A Copernican View of Health Care Antitrust*, 65 LAW & CONTEMP. PROBS. 241 (Special Issue: Is the Health Care Revolution Over?, Clark C. Havighurst, ed.) (2002) (with William M. Sage); *How Doctors Became Distributors: A Fabled Story of Vertical*

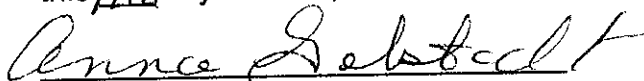
*Relations*, (AALS Antitrust Law Section, *Guilds at the Millennium: Antitrust and the Professions*) 14 LOY. CONSUMER L. REP. 411 (2002); *Critical Issues in Hospital Antitrust Law*, 22(6) HEALTH AFFAIRS 88 (November/December 2003) (with William M. Sage); and *Monopsony as an Agency and Regulatory Problem in Health Care*, 71 ANTITRUST L. J. 949 (2004) (with William M. Sage). In addition, the Investigator Award Program encourages interdisciplinary collaboration between award recipients in the form of "cluster groups." I Co-Chaired a cluster group on Competition Policy. The work of the group culminated in a special issue of the *Journal of Health Politics Policy & Law* which I guest edited entitled "Uncertain Times: Kenneth Arrow and the Changing Economics of Health Care" (2002). This was subsequently published as a book by Duke University Press under the same title: *UNCERTAIN TIMES: KENNETH ARROW AND THE CHANGING ECONOMICS OF HEALTH CARE*, (Peter J. Hammer, Deborah Haas-Wilson, Mark Petersen and William M. Sage, eds.) (Duke University Press) (2003).

Further your deponent sayeth not.



Peter J. Hammer

Subscribed and sworn to before me  
this 17th day of June, 2006.



Anna Gebstadt, **NOTARY PUBLIC**  
Livingston County, MI  
My Commission Expires: 01/22/07  
*Acting in Washtenaw County, MI*