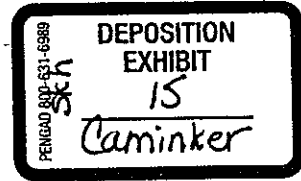


lehma@umich.edu  
From: Evan Caminker <caminker@umich.edu>  
Subject: Fwd: Information and Understanding



Eudora-Signature: <evan>

Some initial thoughts:

to Peter's request that we relax the rules concerning the sharing of information: Peter's stated concerns are (1) ghettoization of health law/policy scholarship; (2) undervaluing of teaching & service; and (3) improper gender stereotyping/discrimination. I don't think any of these concerns would be addressed by the disclosure of the bottom-line vote of the faculty which Peter was pushing for earlier, and indeed Peter doesn't ask here for such a bottom-line accounting. He does object to the "institutional restrictions that were placed on the ability of people to share with me their own beliefs and assessments of the merits of the case." But the confidentiality norms you described to the faculty did not place such an institutional restriction. I thought you made it clear that individuals could share "their OWN beliefs and assessments of merits," so long as they did not reveal to Peter their actual vote (or the votes of any colleagues etc). So i would think about just reminding Peter of this. I also think there are no copies of institutional policies" governing our confidentiality norms, other than perhaps the e-mail you sent out to the entire faculty about this.

to the Right To Know Act, I might read the Lubbers case as giving us somewhat more to play here. For example, Peter asks for the Report of the Tenure Committee, which I believe includes some internal reviews (at least to the extent the report characterizes internal and external reviews of others) and the identity of the Committee is of course known to Peter. I suspect that we could and should claim that merely redacting the names of internal reviewers is sufficient to protect confidentiality. I think that is also true of the teaching reviews, since one can in theory recall who sat in on his class when.

do you want me to contact Dan Sharporn or someone else in the GC's office and forward Peter's request along with a copy of the tenure file, to seek their advice?

Sender: hammerp@h.imap.itd.umich.edu  
Mail: QUALCOMM Windows Eudora Version 4.3.2  
Date: Thu, 30 May 2002 09:11:17 -0400  
To: lehma@umich.edu  
From: "Peter J. Hammer" <hammerp@umich.edu>  
Subject: Information and Understanding  
cc: caminker@umich.edu, rhowse@umich.edu, klogue@umich.edu

May 30, 2002

UM 1242

Jeff,

Three months have passed since the Law School's tenure decision. I have unbundled the different issues implicated by the tenure denial – provost review, search for alternative

lvnette Kosky <lvnettek@umich.edu>

5/19/2005

employment, obtaining information, consideration of possible grievances – and am trying to pursue each, as much as possible, as a discrete problem. At this point, I would like to start addressing issues relating to obtaining better information and understanding.

It is useful to begin by stating my motivations for seeking greater disclosure. I approach the problem in fairly function terms: (1) the need to understand what happened; (2) the need to credibly communicate what happened to outside observers and potential employers; and (3) the need to assess the presence or absence of improper motives behind the Law School's decision. Present levels of disclosure are insufficient to permit me either to fully understand what happened, or to assess the rationales underlying the action. The lack of a personal understanding obviously hamstrings my ability to credibly explain the Law School's action to others, or even to make intelligent decisions as to the proper nature and scope of my search for alternative employment.

Further, existing levels of disclosure are inadequate for me to assess the presence or absence of possibly improper motivations underlying the Law School's decision. I use "improper" here in a lay, rather than a legal sense, although certain of these concerns would have legal analogues. I am concerned that the Law School's action may reflect an improper ghettoization of health law/policy scholarship in the legal academy. I am concerned that the Law School's action may reflect an improper weighting of teaching, service and interdisciplinary scholarship under the Law School's and the University's stated tenure standards. Finally, I am concerned that the Law School's action may reflect improper gender stereotyping and possible discrimination based upon sexual orientation. This last concern is heightened if one views the negative inferences some might draw about the "softness" or lack of credibility/rigor of gay men as the mirror image of the gender stereotype that negatively responds to "hardness" and aggressiveness in female candidates, and then proceeds to juxtapose the Law School's decision in my case with its decisions regarding Professors Heidi Feldman, Jessica Litman and Andrea Lyon. This potential myopia and lack of openness at the tenured faculty level is an unfortunate counterpoint to important statements being made regarding the value of diversity in student enrollment in the current litigation over the Law School's affirmative action policy.

I have already discussed these concerns with many colleagues, and would be happy to have further conversations about them with yourself and others. I raise them as "concerns," not accusations. Based on my present understanding and information set, however, I cannot dismiss them. I find it significant that these factors have staying power, meaning that they remain in my mind after three months of reflection and calm thinking. Furthermore, these issues resonate with the questions and concerns raised by members of the scholarly community outside of the Law School when they try to interpret and understand the Law School's action.

There are two principal sources of information: (1) conversations with colleagues and (2) the formal contents of my personnel file. My first request is the ability to have less constrained and more open conversations with my colleagues. In the wake of the Law School's decision, I raised objections about the institutional restrictions that were placed on the ability of people to share with me their own beliefs and assessments of the merits of the case. It was and remains my belief that the prevailing institutional standard strikes an improper balance between the needs of the candidate, the needs of the institution in preserving the confidentiality necessary to maintaining the integrity of the tenure process, and the need to ensure the accountability of institutional decision making. I asked then that the faculty engage in an introspective assessment of the propriety of the existing standard in light

of the institution's real needs. I would take this opportunity to re-engage that conversation, with the intent of increasing the range of individual beliefs and assessments that my colleagues would be authorized to share. So I can intelligently participate in such a conversation, I would ask to be provided with copies of existing institutional policies governing the confidentiality of the Law School's tenure process, including rules pertaining to what information tenured members of the faculty are and are not empowered to share with an unsuccessful candidate.

My second request is to be provided with the entire contents of my "personnel file," as that term is defined in the Michigan Employee Right To Know Act, MCL § 423.501. It is my understanding that the file should include, among other things, the entire tenure record, inclusive of the Report of the Tenure Committee, other internal memoranda relating the tenure decision, as well as minutes of the two tenure meetings. I believe that the personnel file should also include, among other things, reports, memoranda, letters, minutes, and communications relating to the 2000 decision to defer tenure. I understand that the Act provides for the redaction of names of "references," and that this provision has been interpreted to extend to internal peer review, as well as external evaluators. I also understand that the Act has been interpreted to permit the limited reordering of materials, if the unaltered context would betray personal identity. Searches of the University's web-site, however, reveals a fairly knee-jerk instinct to resort to the prophylactic reordering of materials in tenure files. The leading case I could find interpreting the Act is *Muskovitz v. Lubbers*, 182 Mich. App. 489 (1990). I think that a fair reading of the case suggests that the reordering of materials is warranted *only* to the extent that a string of paragraphs would tend to reveal the identity of the reviewer. If lengthy excerpts do not tend to suggest individual identity, then randomization serves only to undermine the law's objective of providing employees contextual information that will aid their understanding of personnel decision. I have faith in the Law School's ability to disclose the contents of the file in a manner that maximizes its informational value, subject to the University's legitimate constraint of preventing the disclosure of individual identity. I would suggest that the Tenure Committee's reviewer-by-reviewer disclosure of redacted negative criticisms could serve as a template as to how such a balance should be struck.

Information has its own value, principally as an aid to understanding. At this stage, I am feeling fairly centered and well-balanced. I am comfortable with my motivations for seeking the information, and I am comfortable with my ability to process what is disclosed and to make reasoned decisions based upon its contents.

Sincerely,

Peter

cc: Evan Caminker, Associate Dean

Robert Howse, Chair, Tenure Committee  
Kyle Logue, Ombudsperson

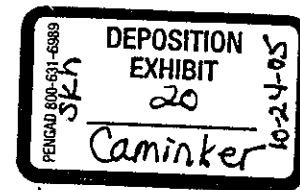
Evan Caminker  
Associate Dean for Academic Affairs and Professor

UM 1244

6/4/2002

University of Michigan Law School  
625 South State Street, Ann Arbor, MI 48109-1215  
ph: 734-763-5695; fax: 734-763-7415

UM 1245



Sender: caminker@c.imap.itd.umich.edu  
Mailer: QUALCOMM Windows Eudora Version 5.1  
Date: Mon, 15 Jul 2002 15:24:47 -0400  
To: rlempert@umich.edu, bsimpson@umich.edu, smrenier@umich.edu,  
merrittf@umich.edu, dherzog@umich.edu, rmann@umich.edu,  
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ckrine@umich.edu,  
omri@umich.edu, rse@umich.edu, donregan@umich.edu  
From: Evan Caminker <caminker@umich.edu>  
Subject: update concerning Hammer Right to Know production request

All. After taking into account all of the responses to my prior inquiry concerning your desire to maintain or waive confidentiality with respect to memos in Peter's tenure file (and those of all of the external reviewers), I decided that the appropriate way to comply with the Right to Know statute and simultaneously protect our institutional interests in a confidential and candid tenure process is to produce a single document scrambling together all of the substantive evaluations (internal and external) into a single document. I will not be releasing to Peter any original memos or redacted memos, even from those of you who gave me permission to do so (the problem is, of course, the more "originals" I release, the easier it is for a reader to identify the authors of the remaining redacted/scrambled memos).

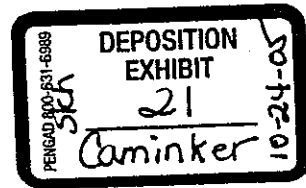
A couple of you asked me to show you a copy of your own portions -- perhaps that was only on the assumption that I was redacting letters but keeping them otherwise intact, but perhaps you would prefer this opportunity even for an entirely scrambled product. I will produce the draft in a separate followup email to those of you who expressed such an interest.

Thanks again for your earlier input, Evan

Evan Caminker  
Associate Dean for Academic Affairs and Professor  
University of Michigan Law School  
625 South State Street, Ann Arbor, MI 48109-1215

UM 1073

omri@umich.edu  
From: Evan Caminker <caminker@umich.edu>  
Subject: Hammer production document



cc:  
Eudora-Signature: <evan>

Omri. You didn't ask to see a copy of your portion, but expressed such misgivings that I'm sending it to you anyway. Obviously this is a confidential document, so please destroy it immediately after you look at it should you choose to do so, and please let me know if you have any serious misgivings ASAP.

Portions of your letter appear at pp4-6, 9-10, 10-11, 30-31, 64, 109-110, 111.

Thanks, evan

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UM 3097

for Lynette Kosky <lynettek@umich.edu>

5/18/2005