

1 Q Okay. May have been a little bit later?

2 A Yeah.

3 Q Okay. Were you consulted with respect to the filing of
4 that grievance?

5 A By the law school?

6 Q Yeah. By anybody else.

7 A No. No. That was -- I want to be clear from the
8 question.

9 Q Sure.

10 A That the -- I became aware of it and it was not
11 unusual -- it's not unusual for administrators to -- to
12 consult with my office, as well as others, when a
13 grievance is filed.

14 Q Okay. Do they seek guidance on the application of
15 policies?

16 A They typically seek guidance with respect to the process
17 and procedures, because the grievance procedure is
18 not -- not used on a regular basis. So it's not
19 something that the -- that a lot of schools and colleges
20 have recurring intimate knowledge about.

21 Q Were you consulted with respect to whether or not the
22 substance of the grievance that Professor Hammer filed
23 was grieveable?

24 A I recall being involved in discussions about that. I
25 don't recall the time frame, whether that was 2002 or

1 not, but I have been involved in those discussions, yes.

2 Q Do you recall with whom you were involved? Let me start
3 with a short list.

4 A Yeah.

5 Q Were you consulted by Jeff Layman?

6 A I don't recall whether I talked with Jeff Layman about
7 this or not.

8 Q Were you consulted by Evan Caminker?

9 A I do recall talking with Evan about it, yes.

10 Q Okay. Do you remember approximately when you spoke with
11 him?

12 A I don't.

13 Q Do you remember how many times you spoke with him?

14 A No. But I can tell you it was more than once.

15 Q Okay.

16 A Okay.

17 Q Do you remember the substance of the conversations you
18 had with him on the topic of whether or not the
19 substance of Peter Hammer's grievance was grieveable?

20 A Yes, I do.

21 Q Okay. All right. And would you relate to me what those
22 conversations consisted of generally? And if you can
23 tell me word for word, that's great, but I don't expect
24 you to.

25 A No, I can't tell you word for word.

1 Q Okay.

2 A The general thrust of the question was that the
3 procedure, the -- the grievance procedure of the law
4 school, as I recall this, had a -- had a clear statement
5 that no issue pertaining to tenure decision was
6 grieveable. And it was irrespective of what the claim
7 was, whether it was procedural, whether it was
8 discrimination, anything else, it was an absolute clear
9 statement.

10 And so the conversations about that statement
11 were institutionally, you know, could the law school --
12 could the law school promulgate such a policy; yes,
13 because the grievance procedures are specific to the
14 schools and colleges, but institutionally should there
15 not be a mechanism by which a faculty member who had
16 a -- who had such an issue be able to have that issue
17 heard. And institutionally we informed the law school
18 that we would have to, you know, we would certainly have
19 to make arrangements for that. We couldn't just rest on
20 the -- the declarative statement of the -- of the
21 grievance procedure in the law school.

22 Q Just so that I'm sure that I understand it, the law
23 school had a policy that no aspect of the tenure
24 decision could be grieveable, and that included claims
25 of discrimination?

1 A That was the reading we got from the law school at that
2 time, yes.

3 Q Okay. And in your discussions with Evan Caminker did
4 you make clear that the University's position was that
5 such matters should be reviewable in some fashion?

6 A We concluded as a part of the conversation that, yes,
7 that it could not -- that there needed to be some avenue
8 for redress if the law school procedures were not the
9 place for it there had to be some other -- there was
10 indeed some other place; I mean, our University policies
11 with respect to allegations of discrimination.

12 Q And what process, if any, did the two of you conclude
13 should be available to Peter Hammer, if, in fact, you
14 concluded any?

15 A I don't recall that we did. And I also don't want to
16 leave the impression that it was just Evan and I.

17 Q Who else was involved in those discussions as best you
18 recall?

19 A My recollections those discussions included Dan
20 Sharphorn from general counsel's office and the provost.

21 Q Was there a consensus concerning what process should be
22 available to Peter Hammer to pursue his grievance?

23 MR. SERYAK: Let me just get an objection to
24 the extent that any of this -- that that answer would
25 call for any discussions with counsel.

1 A No.

2 Q Were you consulted at any time regarding whether
3 Professor Hammer should have additional teaching
4 responsibilities after he had been denied tenure?

5 A I was never consulted as to whether or not
6 Professor Hammer should have any teaching
7 responsibilities.

8 Q Were you ever consulted respecting the issue of the
9 import of any additional teaching responsibilities
10 Professor Hammer might have subsequent to being denied
11 tenure?

12 A Import? I'm sorry?

13 Q The effect.

14 A Yes.

15 Q Can you tell me when you were consulted?

16 A My recollection is that it was sometime in winter or
17 spring of 2002.

18 Q Okay. By whom were you consulted?

19 A Evan Caminker.

20 Q Would this have been around the same time as the
21 discussions respecting the grieveability of the denial
22 of tenure to Professor Hammer?

23 A No, I don't believe so.

24 Q Was this subsequent to that being resolved? And by that
25 being resolved I'm talking about the procedure of being.

1 A The conversation that I'm referring to preceded the
2 grievance as far as I recall.

3 Q Who initiated the contact?

4 A Evan Caminker.

5 Q How did he initiate the contact?

6 A My recollection is that he called me.

7 Q And relate to me the best you can what that conversation
8 consisted of.

9 A Okay.

10 Q And if you can't do it verbatim, just give me the gist
11 of it.

12 A I have not much recall of the interaction, but I believe
13 I got a question, the individual may or may not have
14 been identified in the -- in the conversation, and
15 that's not unusual for any school or college, you just
16 ask me a question about in this set of circumstances
17 what -- what might be the issues, and as I recall the
18 particular issue had to do with someone coming up into
19 their eighth year and whether or not there needed to be
20 issuance of Notice of Nonreappointment, which is part of
21 the policy of the University to let nontenured faculty
22 members know that their contract is going to expire, and
23 the procedure is for nine months of notice at this point
24 in time. It graduates depending on length of service,
25 but in this case it's nine months of notice.

1 Essentially the academic year.

2 Q Right.

3 A Right.

4 Q As I understand it, there is -- is it an AAUP rule, by
5 the way?

6 A Not that I'm --

7 Q It's a --

8 A It's the University rule. I don't know it's an AAUP
9 rule.

10 Q And is the topic that we're talking about generally
11 referring to as de facto tenure?

12 A That's generally the topic that people use to describe
13 it, yes.

14 Q And as I understand it, if you have taught for eight
15 years without having received the requisite nine months
16 notice prior to the end of your eighth year of service
17 that that eighth year was going to be a terminal year,
18 you are granted tenure as a result of a procedure at the
19 University?

20 MR. SERYAK: I'm going to object. Let me --

21 THE WITNESS: Uh-huh.

22 MR. SERYAK: Please let me object, get my
23 objection in to the form of the question and lack of
24 foundation.

25

1 A You have the same procedural protection.

2 Q Right. While you continue to be paid. Right?

3 A That's correct.

4 Q Theoretically you can only be terminated for cause?

5 A Correct.

6 Q You receive the same salary increments that a tenured
7 professor would receive, do you not?

8 A You're subject to the same salary program as a tenured
9 faculty member, that's correct.

10 Q You receive the same perquisites of employment that a
11 tenured professor would receive?

12 MR. SERYAK: I'm going to object for lack of
13 foundation.

14 BY MR. GREEN:

15 Q You can answer.

16 A I'm not absolutely sure about that as to what
17 perquisites might enter into someone who is tenured or
18 someone who is continuing in an appointment without
19 tenure.

20 Q Do they receive sabbatical leave?

21 A I don't know.

22 Q Okay. Did Evan Caminker in the course of your
23 conversation with him -- by the way, was there more than
24 one conversation on this topic? I'm sorry.

25 A There was a subsequent conversation the following fall

1 as I recall.

2 Q And that would have been the fall of 2002?

3 A I believe so.

4 Q Why don't we go to that conversation. Who initiated
5 that conversation?

6 A That would have been Evan Caminker.

7 Q Okay. And did he tell you why he was initiating the
8 conversation?

9 A Yes, he did.

10 Q What did he tell you?

11 A He indicated that he had not met the time line with
12 respect to the -- the rules of the Standard Practice
13 Guide, and we discussed where we were at with respect to
14 that -- to that issue. We sought advice and counsel
15 from general counsel's office about that and reached a
16 determination about where we stood with respect to the
17 procedures of the University.

18 Q Did you in your conversation with him before you sought
19 counsel with the University general counsel's office
20 conclude that he had not provided the requisite nine
21 months preliminary notice of termination to
22 Professor Hammer?

23 A It was clear that he had not sent the letter by
24 September 15th. I hadn't concluded anything beyond
25 that.

1 Q Okay. In the first four or five months of 2002?

2 A That's correct.

3 Q You had a conversation precipitated by a -- some
4 communication from Evan Caminker on the topic of what
5 notice was appropriate to give to Peter Hammer so as to
6 avoid the implications of the protection of Regent bylaw
7 5.09?

8 A Yes, I had that conversation.

9 Q And the cutoff for giving the formal notice whether on
10 the template provided by the Standard Practice Guide or
11 not as you understood it was September 15th of 2002?

12 A The cutoff for the notice in the policy is
13 September 15th of the final year.

14 Q Well, what year would that have been?

15 A That would have been 2002.

16 Q Okay. So that the conversation that was precipitated by
17 Evan Caminker on that topic occurred at least a few
18 months before the cutoff for the formal letters?

19 A That's correct.

20 Q As you sit here today, is there any doubt in your mind
21 that Evan Caminker at least understood that a formal
22 notice of final year of appointment had to be given to
23 Professor Hammer by September 15th of 2002?

24 MR. SERYAK: Well, let me object for the lack
25 of foundation to that question. You're asking the

1 witness to get inside the mind of another person, and I
2 want to object to the form of the question on that
3 basis.

4 BY MR. GREEN:

5 Q You can answer.

6 A It is my recollection that the conclusion of the
7 conversations whether by e-mail and/or telephone that
8 spring were that Evan Caminker was going to issue a
9 letter by September 15th.

10 Q A letter or did you advise him of the template that was
11 provided in the Standard Practice Guide?

12 A I wouldn't have advised on the template. I would have
13 said just given notice.

14 Q Do you recall exchanging e-mails with Evan Caminker on
15 the topic of, if we can use the word, de facto tenure,
16 on that topic?

17 A Yes.

18 Q Do you recall receiving an e-mail from Evan Caminker
19 asking about what notice had to be given and whether or
20 not the fact that Peter Hammer had already been given a
21 contract for the following year might effect whether or
22 not he received de facto tenure?

23 MR. SERYAK: Well, let me object. Let me
24 object to the form of the question. I mean, if you want
25 to show him an e-mail.

1 Q And what is the purpose of the non -- of a Notice of
2 Nonreappointment?

3 A The purpose of Notice of Nonreappointment is --

4 MR. GREEN: I'm going to object to lack of
5 foundation, but go ahead. I'm sorry to interrupt.

6 THE WITNESS: Okay. The purpose of notice of
7 nonreappointment is to provide adequate notice to the
8 eligible faculty members covered by the policy that
9 their appointment at the University is going to
10 terminate at a date specific.

11 BY MR. SERYAK:

12 Q And the template or the -- the form that is attached to
13 that Standard Practice Guide you're familiar with that?

14 A I know that there is --

15 Q Form letter?

16 A I know that there's one there, yes, I'm familiar with
17 it.

18 Q Is it mandatory that the notice be provided only in the
19 form of that letter?

20 A No.

21 Q In your testimony you stated that after reviewing
22 communications to Peter Hammer from then Dean Layman
23 that you along with others concluded that Peter Hammer
24 had received adequate notice. Did I -- did I summarize
25 your -- Notice of Nonreappointment. Did I summarize

1 your testimony accurately?

2 A Yes, you did.

3 Q And I'm going to show you what is Exhibit 1 from the
4 Hammer deposition and ask if that is one of the
5 particular -- take a moment and look at it. And my
6 question is that one of the communications you were
7 referring to in your answer?

8 MR. GREEN: For the record, it's a letter
9 dated February 28th of 2000?

10 MR. SERYAK: Correct.

11 THE WITNESS: Okay. I've reviewed it. You
12 want to ask me the question again, please?

13 BY MR. SERYAK:

14 Q And the question is, is this one of the communications
15 that you were referring to in your prior answer?

16 A That's correct.

17 Q And in your opinion did this letter satisfy the notice
18 requirement of the Standard Practice Guide?

19 A Yes, it does.

20 Q And why?

21 A The language that is at the end of the first page and
22 going forward to the -- continuing on to the second page
23 is very specific with respect to what will occur
24 regarding his current appointment, current to the date
25 of the letter, and how -- how long his appointment is

1 person that was involved in reviewing the actions of the
2 grievance review board?

3 A That's correct.

4 Q All right. So you were not directly involved in the
5 appointment of the review board or the review of their
6 decision. Correct?

7 A That's correct.

8 Q Do you know what process was used by that board?

9 A No, I do not.

10 Q Do you know what process was used to select that board?

11 A No, I do not.

12 Q Do you know what the membership of that board consisted
13 of?

14 A No, I do not.

15 Q And you said a written decision was issued by the
16 provost. Have you seen that decision?

17 A I may have.

18 Q Do you recall as you sit here today?

19 A No, I don't recall it.

20 Q Whether you saw it or not, do you recall the substance
21 of it today?

22 A I recall the conclusion.

23 Q And that was that?

24 A The grievance was denied.

25 Q All right.