

Q All right. And in this particular case -- according to the minutes at least -- Professor White spoke, Professor Green spoke, and a Professor Reimann spoke after being offered the opportunity; do you recall that?

A No.

MR. SERYAK: Let me just object to the question to the extent you're referring to the minutes. And I'm --

MR. GREEN: What's the objection?

MR. SERYAK: -- I'm looking at what you're looking at and those are not the minutes. My understanding is those are the typed -- those are typewritten notes -- well, I'd have to look.

MR. GREEN: Taken by --

MR. SERYAK: It was on a count.

MR. GREEN: Right.

MR. SERYAK: There's another document that reflects the minutes of that meeting.

MR. GREEN: There is?

MR. SERYAK: It's been produced. It's part of the file.

MR. GREEN: Not produced to me. I have been produced a handwritten copy of minutes; I have been produced this (indicating) copy; and then a third copy which is this with the parenthetical note "fleshed out." So if you have another document, I would love to have it.

1 A That's right.

2 Q Do you recall why you spoke early on, as opposed to sitting back and listening to what others might have had to say?

4 A No.

5 Q According to these notes, the first comment that's recorded here is that you were not moved at all by what the reviewers had to say. Do you remember making a statement of that nature?

9 A No.

10 Q Do you remember as you sit here today whether you were moved in any way by what the reviewers had to say?

12 A It depends on what you mean by "moved by." If you mean did I think hard about they were saying, yes, of course, I would have done that. If it means did I change my mind at the end of the day, no.

16 Q Well, since they're not my words but are ascribed to you, it's hard for me to interpret them for you. Had you used that expression, what would it have meant to you?

19 A I would have meant at the end of the day I have the same bottom line that I had.

21 Q Did you review the articles in question?

22 A Meaning did I read them?

23 Q Yes.

24 A Yes.

25 Q And did you form an opinion about their scholarship?

1 MR. SERYAK: Well, it was produced with the tenure file.

2 MR. GREEN: It has never been produced in this discovery. Are you telling me that there is such a document?

3 MR. SERYAK: I mean, I'll check. My understanding there is a typed-up version of the minutes. It's a summary; it's a summary. It's not as detailed as the notes.

4 MR. GREEN: Okay, because this (indicating) is what was produced in response to the corporate notice.

5 MR. SERYAK: Well, you were asked to bring any documents that were connected to the case.

6 MR. GREEN: Any minutes of that meeting. Yeah. All right. Back to this.

7 Q According to the notes that were provided, after the introduction, Professor White, Professor Green, and Professor Reimann spoke. And they were all on the majority. And then you were the next speaker. And I guess the first question on that topic is, had you discussed with anyone prior to this meeting whether you were going to try and make a presentation early on?

8 A I don't remember.

9 Q All right. So you may have, you just have no recollection as you sit here today?

1 A Yes.

2 Q And what was your opinion?

3 A My opinion was that they were weak.

4 Q Weak how?

5 A Weak in conceptualization; weak in execution; poorly written; poorly argued. My sense of the written work was that the author knew a lot of stuff and knew a lot of stuff that was important and interesting, but was doing a very poor job conveying what he thought to his reader.

6 Q And was that because you were having difficulty understanding the import of the articles?

7 A Well, it's not my field, and so one always wonders. Among many other reasons, that's why we get letters from people who do this stuff. I usually think that I can tell the difference between a clear argument and a blurry or opaque or confusing argument, even if it's not stuff I, myself, work on.

8 Q Okay. Did you form an opinion as to whether or not the articles contained substance that was important to the field?

9 A My impression was that -- if by "substance" you mean their topic, my impression was, yes, they did.

10 Q How about the content, irrespective of the style?

11 A Well, when I say I was worried about the style, I don't simply mean that the work was not graceful or elegant. I

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1 **exclusively. And so what I'm balking at is just the**  
 2 **thought that there's a discreet group of people who do**  
 3 **that.**  
 4 Q I see. You indicated earlier that you were impressed with  
 5 the minority report of J.J. White in 2002?  
 6 A **Yes.**  
 7 Q Okay. Didn't he make reference to the estrangement, if you  
 8 will, of Peter Hammer from the law and economics group in  
 9 his report?  
 10 A **Yes.**  
 11 Q Who did you think he was talking about?  
 12 A **Not the Michigan faculty. I assumed he meant the national**  
 13 **conferencas and things of that sort that happen.**  
 14 Q That was your assumption?  
 15 A **Yes.**  
 16 Q And you wouldn't know what the referenced law and economics  
 17 group would be comprised of if it was limited to the  
 18 University of Michigan law school?  
 19 A **I could name particular people who specialize in law and**  
 20 **economics, and a broader cast of people who sometimes do**  
 21 **law and economics, and a yet broader cast of people who**  
 22 **occasionally use particular maneuvers from law and**  
 23 **economics. And if you ask me where the boundary line was,**  
 24 **I'd have no idea.**  
 25 Q Okay. How about the senior most anti-trust person on the

1 Q Did he do a written review?  
 2 A **I don't recall.**  
 3 Q As you sit here today, you don't know whether Tom Kauper  
 4 did a written review in which he without hesitation  
 5 recommended tenure?  
 6 A **I don't recall.**  
 7 Q If he had done the same, that would not be consistent with  
 8 your impression of his position at the tenure meeting  
 9 itself; right?  
 10 MR. SERYAK: Object for lack of foundation.  
 11 MR. GREEN: All right.  
 12 A **I would need to think about both the tone and substance of**  
 13 **what each statement said to make a judgment on that.**  
 14 Q And you don't recall either?  
 15 A **I don't recall the written statement at all.**  
 16 Q Do you recall at the time of the meeting indicating that  
 17 Peter was a good teacher?  
 18 A **Yes.**  
 19 Q How did you come to that conclusion?  
 20 A **We had teaching evaluations. Each committee would have met**  
 21 **with particular students in his classes. I had had one**  
 22 **student at least that I can remember who was a top notch**  
 23 **student having nothing to do with the tenure proceedings**  
 24 **volunteer great enthusiasm for Peter's class.**  
 25 Q Do you know whether he had been selected for any teaching

1 faculty? Who would that have been?  
 2 A **I guess Tom Kauper.**  
 3 Q Were you present when he spoke about the tenure application  
 4 during the tenure meetings?  
 5 MR. SERYAK: In?  
 6 Q In 2002?  
 7 A **Yes.**  
 8 MR. SERYAK: Object for lack of foundation.  
 9 Q Please answer the question. Did he speak favorably on the  
 10 tenure application?  
 11 A **My impression of Tom was that he was not going to tell us**  
 12 **that he thought that Peter's case was weak, but that it was**  
 13 **not a vigorous, enthusiastic, unconditional, hearty**  
 14 **approval.**  
 15 Q I guess the question was, did he tell in his speech that he  
 16 was in favor of tenure for Peter Hammer?  
 17 MR. SERYAK: Again, object for lack of foundation.  
 18 MR. GREEN: I understand.  
 19 A **I think he formally stated a positive bottom line, but it**  
 20 **struck me as not a hearty endorsement. And given that Tom**  
 21 **was not just senior person in the field, but Peter's**  
 22 **teacher, it's an awkward position for him to be in. And**  
 23 **what's striking is when somebody doesn't say, "This is**  
 24 **clearly, clearly someone who ought to be promoted. Here's**  
 25 **why."**

1 awards?  
 2 A **I don't remember.**  
 3 Q According to the notes you remark that you "don't know how  
 4 much weight to give to the Cambodian project." What was  
 5 the Cambodian project?  
 6 A **Peter was instrumental in setting up a program in which**  
 7 **University of Michigan students had been doing legal work**  
 8 **in Cambodia.**  
 9 Q Did you attend both meetings? I'm sorry.  
 10 A **Yes.**  
 11 Q When you attended the first meeting, had you yet made up  
 12 your mind which way you were going to vote?  
 13 A **No.**  
 14 Q When you came to the second meeting before it actually took  
 15 place, had you yet made up your mind which way you were  
 16 going to vote?  
 17 A **No.**  
 18 Q When you came to the first meeting, were you leaning either  
 19 way, either pro or con tenure?  
 20 A **Yes.**  
 21 Q Which way?  
 22 A **Against.**  
 23 Q Okay. And would that be based upon what you've already  
 24 testified to, namely your review of the articles written by  
 25 Peter Hammer as well as the outside and the internal

The meeting before the faculty...  
 The majority report in 2002 struck me as leaning over backwards to make the positive case. And so repeatedly it deals with criticism and worries by saying things of the form, "It would not be unreasonable nevertheless to believe that... go on and so forth. And I mean, I've always thought... is not just very smart, but a blunt straight shooter of a guy. And his report seemed to me to be -- more decisively and crisply make the case on the merits. No one enjoys denying somebody tenure. It's not easy to do. It's not fun to do. And I understood the majority report to be driven by the same worries all of us has, which is not to say that I didn't believe at the end of the day that he ought to get tenure. But J.J.'s report I simply found more convincing on that score.

- 20 Q Understanding that this is hypothetical, had J.J. instead agreed with the majority and recommended in favor of tenure, would that have changed your position?
- 21 A I don't know. It would depend in part on what he said and how he said it.
- 22 Q What if he relied on Merritt Fox and Merritt Fox's support

- 1 form and foundation.
- 2 MR. GREEN: That's fine.
- 3 A Yes.
- 4 Q Would you have deferred to him in terms of whether or not Peter's work contributed significantly to the area of law in which he was writing?
- 5 A If that means on the question where does this work sit as against what other published work is out there that I don't know anything about, yes.
- 6 Q How about in terms of the understandability of the arguments that were being posed by Peter in his writings?
- 7 A Much less so, if at all.
- 8 Q What is the area of expertise you most frequently work in?
- 9 MR. SERYAK: I'm sorry. Most frequently what?
- 10 MR. GREEN: Work in.
- 11 A Political theory.
- 12 Q To what extent do -- or does the study of emotions play any part in the work that you do?
- 13 A The book I published in 1998 has a chapter on -- the setting here is England about 200 years ago. It has a chapter on insolence, impudence, and contempt and then -- and condescension -- and then goes on to consider contempt.
- 14 Q Other than that, do you teach any courses that focus in any way on emotions?
- 15 A No.

- 1 of the tenure application? What if that was his basis?
- 2 MR. SERYAK: Let me just get the objection as to the form of the question.
- 3 MR. GREEN: Sure.
- 4 Q Go ahead. You can answer.
- 5 A If he simply deferred to Merritt, that would interest me very much. If he had things to say -- further things on the merits to say along the lines of whatever Merritt had said, which I don't now remember, that would have interested me.
- 6 Q Do you remember of anything Merritt Fox said at the time of the tenure meetings?
- 7 A No.
- 8 Q Would Merritt Fox have been considered the longest standing member of those faculty members that were clearly law and economics oriented?
- 9 A Probably.
- 10 Q Would he have had significant stature nationally in that area?
- 11 A Yes.
- 12 Q He's now at Columbia?
- 13 A Yes.
- 14 Q Had he spoken openly in favor of Peter Hammer's tenure, would that have impressed you?
- 15 MR. SERYAK: Again, let me get the objection as to

- 1 Q And when you talk about contempt, you're not using it in the legal sense, you're using it in the social sense, I take it?
- 2 A That's right.
- 3 Q Following the denial of tenure, did you have any discussions with other faculty members about what their votes were?
- 4 A Not that I remember.
- 5 Q Did you have conversations with other faculty members concerning your justification for your vote?
- 6 A Not that I remember.
- 7 Q Did other faculty members disclose to you outside of the two meetings why they voted however they may have voted on Peter Hammer's tenure?
- 8 A Not that I remember.
- 9 Q After Peter Hammer filed his lawsuit, did you have discussions with other faculty members about the allegations in that lawsuit?
- 10 A Not that I remember.
- 11 Q When is the first time, if ever, you've become aware of the nature of the allegations in Peter Hammer's lawsuit?
- 12 A Sometime over the last year, I suppose. I don't now remember who told me, but somebody told me that the complaint or some version of the complaint at some point posted on the web had an item which clearly referred to

