

of the categories. Yet the standard that is contained in the law school faculty handbook talks about weight to be accorded different areas. And it would seem -- would you agree that, if you have to meet each standard that weight really is irrelevant?

MR. SERYAK: Well --

A. I would not say weight is irrelevant, no.

BY MR. GREEN:

Q. Okay. Fair enough. All right. Now I want to move on to other areas.

At the risk of being rude, and it's not my intention to be, I want to ask you, first of all, whether or not in your professional career you have been accused of being homophobic?

A. No.

Q. You have not?

A. I don't believe so.

Q. Do you read the "Cornell Daily Sun", or did you?

A. Yes.

Q. Tell us what the "Cornell Daily Sun" is, please.

A. The "Cornell Daily Sun" is the student newspaper at Cornell University.

Q. When you were president, did you read it?

A. Sometimes.

Q. Did you read articles that applied to you, in

some members of the community in which Cornell is located that by allowing recruiters to come in to Cornell, and to the law school, and wherever else they might want to go, you were perhaps violating some principles that Cornell held dear, as well as perhaps an ordinance from the municipality because the recruiters were asking recruits whether they were homosexuals and telling them such things as Uncle Sam is disappointed in you if they answered affirmatively?

MR. SERYAK: Let me object for the lack of foundation.

MR. GREEN: Sure.

BY MR. GREEN:

Q. You can answer.

A. The arguments that you mention I don't believe were directed against me personally. I think those arguments were directed at the institution of Cornell University.

Q. Okay. While you were the president?

A. While I was the president.

Q. Wasn't it your decision to allow the army recruiters on campus?

A. No.

Q. Whose decision was it?

A. That's probably a -- probably would have been made in

particular, articles regarding the Solomon amendment, and how it was applied at Cornell during your tenure?

A. Sometimes.

Q. Do you wish to alter your statement --

A. Yes.

Q. And so you have been accused of being homophobic --

A. Yes.

Q. -- in the student newspaper at Cornell?

A. Yes.

Q. That would have been in 2005, early in the year that you stepped down as president?

A. Yes.

Q. Now, I understand that there is a confidential agreement. I don't wish to violate that agreement or have you do so. I don't know if you would do it even if I asked you to. But did the Solomon amendment problems, if we can call them that for the moment, have anything to do with your stepping down as president of Cornell?

A. No.

Q. You recall, do you not, that early in the year 2005, you refused to bar the recruiters from the armed forces from the Cornell campus, or perhaps late 2004?

A. Yes.

Q. And there was some concern expressed by students and

the -- I don't actually know whose decision it would have been but I expect it was in the jurisdiction of vice president for student services.

Q. Is that somebody who reported to you?

A. Yes.

Q. Could you have overturned that decision?

A. Probably.

Q. Okay. And you did not do so?

A. No.

Q. Was one of the reasons you did not do so because to do so, would have jeopardized certain federal funding that Cornell enjoyed?

A. Yes.

Q. At about the same time this was going on at Cornell, Yale barred the ROT -- I'm sorry, the army recruiters from its campus?

A. I don't believe so.

Q. Really? Do you think Yale permitted the army recruiters on their campus?

A. I don't know.

Q. Let me ask you a hypothetical, and it may be difficult for you to answer, it may not be. If the army recruiters instead of asking students whether or not they were gay, so that they could exclude gay students from their recruitment efforts, were excluding black

Then an e-mail --

1 A. I'm sorry, what am I looking at here?

2 MR. SERYAK: The first page.

3 BY MR. GREEN:

4 Q. The first page is Bates number 3233; is that correct?

5 Are we on the same --

6 MR. SERYAK: Yes.

7 BY MR. GREEN:

8 Q. It starts with an e-mail from Peter Hammer to you.

9 Then resending that e-mail to you because of a mistype
10 of your e-mail address. And then the top e-mail is
11 one from Evan Caminker to you dated November 20, 2002.

12 A. Uh-huh.

13 Q. Do you recall this series of e-mails?

14 A. Not specifically, but why don't you let me read this?

15 Q. Take a moment. Do you recall this?

16 A. Yes.

17 Q. Generally speaking, in this e-mail Peter Hammer is
18 updating on the efforts he has made to find employment
19 within the university, correct?

20 A. Yes.

21 Q. Did you in response to this indicate to anyone at the
22 university that the law school was unwilling to
23 cooperate in whatever way it could in finding
24 employment for Peter Hammer within the university?
25

1 A. Was unwilling?

2 Q. Was unwilling, right.

3 A. I don't believe so.

4 Q. Did you have any conversations on this topic with
5 Peter Hammer, the willingness of the law school to
6 assist him in finding employment within the
7 university?

8 A. Yes.

9 Q. I assume that you were encouraging Peter Hammer to
10 look within the university for other employment?

11 A. I was supportive of that.

12 Q. I'm going to skip the next one.

13 MR. SERYAK: We are skipping the 12-2-02.

14 MR. GREEN: It starts with Bates number
15 3238.

16 MR. SERYAK: Right. We are skipping that.

17 MR. GREEN: Yes. It's a nine-page
18 document. So the record is clear, I have provided
19 counsel a stack of anticipated exhibits and we want to
20 all stay on the same page.

21 BY MR. GREEN:

22 Q. Did there come a time late in 2002 when you authorized
23 Evan Caminker to draft letters and send them out over
24 your signature?

25 I don't recall.

MARKED BY THE REPORTER:
DEPOSITION EXHIBIT NUMBER 12

3 BY MR. GREEN:

4 Q. I show you an e-mail marked Deposition Exhibit Number
5 12. It appears to an e-mail from Evan Caminker to, I
6 assume, Rozona Kelemen, dated December 15, 2002.
7 Have you seen this document before?

8 A. I don't think so.

9 Q. Do you have any idea what this is a reference to?

10 A. No.

11 Q. You have already indicated at some point Peter Hammer
12 did, in fact, file a grievance. Did there come a time
13 when the grievance review board wanted to receive
14 specific answers to questions from the office of the
15 general counsel at the University of Michigan before
16 concluding their deliberations?

17 A. I believe so.

18 Q. If we can move through this part of it perhaps
19 quickly, we can get it done at a reasonable hour.
20 It's my understanding that you opposed the
21 grievability of all of the issues that Peter Hammer
22 raised in his grievance; is that correct?

23 MR. SERYAK: I think his answer
24 speaks -- the written response, the grievance speaks
25 for itself, but go ahead and answer.

1 BY MR. GREEN:

2 Q. He can answer it.

3 A. Can you give me something to look at?

4 Q. You don't recall whether you opposed the grievability
5 of all of the issues that were raised by Peter Hammer?

6 A. I don't recall what -- I don't understand what -- I'm
7 tripping on the word grievability here.

8 Q. You are tripping on that word? Did you use that word
9 in communications?

10 A. I don't recall whether I used that word.

11 Q. Do you --

12 A. It was a while ago.

13 Q. Let's not use that word. Did you take the position in
14 response to Peter Hammer's grievance that none of the
15 issues that he raised could be the subject matter of a
16 grievance under the law school's grievance policy?

17 A. I don't recall.

18 Q. All right. You do, however, recall the grievance
19 board wanting to seek counsel on some issue from the
20 general counsel's office?

21 A. Correct.

MARKED BY THE REPORTER:
DEPOSITION EXHIBIT NUMBER 13

22 BY MR. GREEN:

23 Q. I show you what is now marked deposition Exhibit

Number 13, which is a series of e-mails starting with an e-mail from you or perhaps -- I'm sorry, from Ed Cooper to Peter Hammer and yourself, dated June 6th, 2002, and concluding with an e-mail from you to Evan Caminker, dated June 15, 2002. Take a moment to look at that.

MR. SERYAK: Can you give me the Bates number?

MR. GREEN: Sure. The Bates numbers are 3253 and 3254.

A. Yes, okay.

BY MR. GREEN:

Q. Do you recall that the grievance review board had some concern on the topic of whether Peter Hammer had been provided all of the information to which he was entitled in advance of the grievance?

A. I don't recall that.

Q. All right. But you do recall at some point the grievance review board wanted to communicate their concerns about some issue with the general counsel's office?

A. I do recall that there was a set of conversations about -- I honestly don't remember whether it was the full grievance review board or some members of the grievance review board about some direct communication

between the board and the general counsel's office.

Q. Did you have any concerns about that procedure?

A. Yes.

Q. What were the concerns?

A. They were about the role of the general counsel within the university in a process like this.

Q. In your memo forwarding these earlier e-mails to Evan -- I'm sorry, Evan -- I'm puzzled about this. This appears to be your signature but the heading seems to say it's from Evan to you. Do you have any explanation of that?

A. Evan's message to me says, "I would say something like this in response." There is a colon, and he is suggesting language from me in response that would be signed Jeff, because it's from me.

Q. Okay. He is even suggesting how you would sign it. Is that correct?

MR. SERYAK: If you recall that, just don't speculate.

MR. GREEN:

If you recall.

This is suggestive.

For my purposes, everything following the first sentence on the top part of this page 1 is what Evan Caminker is suggesting you might do?

1 A. Right.

2 Q. In it he is suggesting --

3 MR. SERYAK: Excuse me.

4 (Discussion off the record)

5 BY MR. GREEN:

6 Q. Back on the record.

7 With regard to the Exhibit Number 13, did
8 you have a conversation with Evan Caminker about his
9 suggested response?

10 A. I don't recall.

11 Q. Do you recall whether or not you used the response he
12 suggested?

13 A. I don't recall.

14 Q. Do you recall what the conflict of interest issues
15 were that he raised in his suggested response for you?

16 MR. SERYAK: Let me just object on
17 attorney-client grounds to the extent the answer would
18 call for the witness to disclose confidential
19 communications.

20 MR. GREEN: I don't want to know what the
21 communications were but I think I'm entitled to know
22 if he had communications on a topic that raised a
23 conflict of interest.

24 MR. SERYAK: Right. But in order to answer
25 that, you would have to get into that topic, and that,

1 I think, would call for the disclosure. That's the
2 basis for my objection.

3 BY MR. GREEN:

4 Q. Well, without regard to the topic, was one of the
5 issues for the conflict the fact that the law school
6 had been conferring with the general counsel's office
7 on the subject matter of the grievance?

8 A. This was a long time ago. The conflict that came into
9 my mind when I read this just now was about the role
10 of, sort of, you got a board that is giving advice to
11 a dean, making a recommendation to a dean. The
12 question is, if the dean then has questions afterwards
13 and can go to the general counsel about that, whether
14 if the dean's -- the dean ends up wanting to take a
15 different position from the board, if the board has
16 already conferred with the dean's lawyer, that is to
17 say the general counsel, is there a potential
18 conflict? That's what came into my mind when I read
19 this.

20 Q. Okay. Do you recall whether or not the grievance
21 board ultimately consulted with the general counsel's
22 office on the issues they identified for that purpose?

23 A. No, I don't recall.

24 Q. I think we can skip Bates pages 3255, 56 and 57. That
25 should be the next three pages in the file.

MARKED BY THE REPORTER:
DEPOSITION EXHIBIT NUMBER 14

BY MR. GREEN:

Q. If we can back up in time to the period following the denial of tenure by Peter Hammer. Was there an issue about him contacting individuals to talk with individual members who had attended the tenure meetings to talk to them about the denial of tenure; do you recall that coming up?

A. I'm sorry, are you asking me in connection with this document?

Q. Not yet. Don't put it aside yet.

I'm asking you whether or not some issue arose with regard to Peter Hammer contacting tenured faculty about why he was denied tenure shortly after the tenure vote?

A. There was an issue about contacting people about how they voted.

Q. Okay. Now, if you would look at Exhibit Number 14, which is Bates pages 3270 and 3271, starting with an e-mail sent by Peter Hammer to Don Herzog, February 26th. It appears that Professor Herzog forwarded it to you February 26th as well. And you forwarded it to Liz Barry on February 26th. Do you see that?

A. Yes.

Q. Do you recall receiving the underlying e-mail and forwarding it?

A. I don't recall it, but this certainly looks plausible.

Q. As of February 26th, 2002, what was Liz Barry's position?

A. I believe she was in general counsel's office.

Q. Why were you forwarding this e-mail to her?

MR. SERYAK: I want to object to that because I think that does call -- the answer does call for attorney-client communication.

BY MR. GREEN:

Q. Okay. Let's back up then. Did you receive other e-mails -- I'm sorry, did you receive concerns from other tenured faculty other than Don Herzog who received similar e-mails from Peter Hammer?

A. I have a general sense that I did, but I don't remember any specific communications.

Q. Had you, as of February 26th, 2002, told Peter Hammer that he should not ask any of the tenured faculty members how they voted?

A. I don't recall.

Q. Is there any written policy that indicates that the tenured faculty are not to disclose how they voted on the issue of tenure?

A. I don't know.

MARKED BY THE REPORTER:
DEPOSITION EXHIBIT NUMBER 15

BY MR. GREEN:

Q. I'm showing you what is marked as Deposition Exhibit Number 15, Bates pages 3275 and 3276, which appearances to be a similar e-mail from Peter Hammer directed to Michael Heller forwarded by Michael Heller to you, and your forwarding of the same series to Evan Caminker. Do you recognize this?

A. It looks like an e-mail to me that I forwarded to Evan Caminker.

Q. Do you recall whether at this point in time you had any discussions with Evan Caminker about the fact that you had received similar e-mails from Michael Heller and from Don Herzog?

A. I don't recall specific conversations but I assume I probably did.

MARKED BY THE REPORTER:
DEPOSITION EXHIBIT NUMBER 16

BY MR. GREEN:

Q. I will show you Exhibit Number 16, which is Bates number 3277, an e-mail from Professor Miller to you and, again, your forwarding it to Evan Caminker also dated February 26th, 2002. Do you recall receiving this e-mail?

A. I don't recall it specifically but it looks like a message from Bill Miller.

Q. Again, Bill Miller is talking about messages received by a few people that seemed to be only sent to the no voters; is that correct?

A. Yes.

Q. At some point in time did Professor Friedman accuse Mathias Reimann of being the leak of the information respecting how people voted on the tenure issue for Peter Hammer?

A. I don't recall.

Q. You don't recall that at all?

A. (Witness indicating.)

Q. Would you consider that to have been a serious personnel issue?

MR. SERYAK: Objection to the form of the question.

A. Do I consider what to be serious --

BY MR. GREEN:

Q. If someone brought to your attention that one of the tenured professors was going to the subject of a tenure vote and telling them how people voted, would you consider that a serious accusation?

A. Yes.

MARKED BY THE REPORTER:

1 BY MR. GREEN:
 2 Q. Let me show you what is marked as Exhibit Number 22,
 3 Bates pages 3468 and 69, which appears to be an e-mail
 4 from you to Peter Hammer dated November 22nd, 2002.
 5 Do you recall this?
 6 A. Yes.
 7 Q. Did you write this or did Evan Caminker write it on
 8 your behalf?
 9 A. I believe I wrote this in consultation with Evan.
 10 Q. Okay. Now, I would like to draw your attention to the
 11 third paragraph where you start by discussing the
 12 second issue. Take a moment and look at that.
 13 A. Okay.
 14 Q. Here you were indicating to Peter Hammer that you
 15 wrote him a letter dated February 28th, 2000. Then
 16 you quote from it. I believe that was Exhibit Number
 17 I from Peter Hammer's deposition that was shown to you
 18 by Mr. Seryak early in this deposition, correct?
 19 A. Yes.
 20 Q. You indicate what the letter says, and what its import
 21 was, correct?
 22 A. Correct.
 23 Q. Then in the last paragraph on page 1, you indicate,
 24 "Notwithstanding this arrangement after the final
 25 faculty decision in February 2002, I made a

1 discretionary decision to offer you an appointment for
 2 one additional year, meaning the 2002/2003 academic
 3 term." Is that a correct statement? By that, I don't
 4 mean did I read it correctly. I mean, is that an
 5 accurate statement?
 6 A. It's actually inaccurate.
 7 Q. You then go on to say, "This offer was not required by
 8 university policy and it went beyond the terms of our
 9 February understanding. My intention was to
 10 facilitate your smooth transition to another academic
 11 unit or university." Is that an accurate statement?
 12 A. Parts of it are accurate, yes. Parts of it are
 13 inaccurate. I mean, what is going on here, was the
 14 letter terminal-year provision, was -- described the
 15 terminal year as being 2001/2002.
 16 I think Mr. Seryak's questions earlier
 17 pointed out that Professor Hammer wrote me a letter in
 18 the summer of 2000 asking that the terminal year be
 19 instead 2002/2003. And I agreed that that would be
 20 okay. The -- so the terminal year was moved back to
 21 2002/2003 already, and that was our prior
 22 understanding.
 23 The statement in here that my intention was
 24 to facilitate your smooth transition to another
 25 academic unit or university is accurate, because

1 throughout the summer Peter and I had been talking
 2 about different ways that he could make a transition
 3 to another academic unit or another university. So
 4 that's what we were working on.
 5 Q. In point of fact, after you sent that e-mail to Peter
 6 Hammer, didn't he respond and explain to you how you
 7 were incorrect in indicating the one-year extension
 8 was provided after the faculty vote in 2002?
 9 MR. SERYAK: Let me object. The response
 10 was self-serving argument. It doesn't establish any
 11 factual incorrectness in terms of Exhibit Number 22.
 12 I'm going to object for that reason. It's obvious.
 13 The prior exhibit has your law firm's e-mail address
 14 on it.
 15 MR. GREEN: We will mark it as an exhibit.
 16 MARKED BY THE REPORTER:
 17 DEPOSITION EXHIBIT NUMBER 23
 18 BY MR. GREEN:
 19 Q. I show you an eight-page e-mail marked Exhibit Number
 20 23, starting at Bates pages 3473, ending at page 3480.
 21 The initial part of this exchange of e-mails is your
 22 e-mail to Peter Hammer dated November 22nd, 2002 that
 23 we were just talking about that is marked Exhibit
 24 Number 22, followed by his response to it.
 25 A. I'm sorry, did you want me to read the eight pages?

1 Q. I want you to take a look at it and see if you can
 2 identify it as a response to Exhibit Number 22.
 3 A. Yes, it is.
 4 Q. If you will look at page 4 of the eight-page exchange,
 5 in the lower half of that, doesn't Peter Hammer
 6 specifically address the misstatement that you have
 7 identified in Exhibit Number 22, and doesn't he tell
 8 you why it was incorrect?
 9 MR. SERYAK: I object to the form of the
 10 question.
 11 BY MR. GREEN:
 12 Q. You can answer it.
 13 MR. SERYAK: The document speaks for
 14 itself.
 15 A. This is a very long letter. This is a long paragraph.
 16 Did you want me to read you the paragraph?
 17 Q. I'm asking you if in that paragraph, in particular
 18 about ten lines down starting with the words, "Second,
 19 in the summer of 2000," isn't it true that Peter
 20 Hammer there indicates why your Exhibit Number 22 is
 21 inaccurate in the manner in which you described, how
 22 his contract for the 2002/2003 year came about?
 23 A. This letter --
 24 MR. SERYAK: Excuse me, what paragraph are
 25 we talking about?