

Suzanna Blumenthal, and Richard Primus.
And prior to this whose tenure committee were you on?
Q **Okay. Who was up for tenure? I believe it was Mark West and Adam Pritchard.**
Q **Were both of those individuals tenured?**
A **Yes, they were both granted tenure.**
Q **Are you currently the ombudsperson for the law school?**
A **No.**
Q **Did you serve in that capacity during any period of time?**
A **I did, yes.**
Q **From when to when?**
A **I can't remember the dates.**
Q **Were you the ombudsperson during 2002 when Peter Hammer's tenure application was considered and denied?**
A **Yes.**
Q **Do you know how long you had been the ombudsperson prior to that time?**
A **No.**
Q **So you have no recollection whether you had just been appointed, had been on for a year or two years; anything like that?**
A **I can't remember.**
Q **Now, getting back to Peter Hammer's tenure application, in 2002 it's my understanding that you voted against tenure; is that correct?**

1 A **Well, I can't think of a single event.**
2 Q **I didn't ask you to think of a single event. I asked you**
3 **to indicate what was the most significant, if any. Are you**
4 **saying nothing?**
5 A **Could you read the question back again, please?**
6 Q **Sure.**
7 **(Playback of previous question)**
8 A **So you did ask me what was the single most influential**
9 **event.**
10 Q **What was -- if any, what was the most single event?**
11 A **Okay. I can't think of any single event.**
12 Q **Then what events or input were the most influential in**
13 **helping you arrive at a no vote on the tenure decision?**
14 A **Several things were taken into account. I forget at which**
15 **meeting these various people spoke. I don't know if it was**
16 **the first or the second meeting, but in one of the**
17 **meetings, maybe more, there were people on our faculty who**
18 **I thought knew more about the subject matter than I did who**
19 **spoke quite negatively about the quality of the**
20 **scholarship, and that influenced me significantly. And, as**
21 **I recall, there was at least one outside letter that was**
22 **negative either in its conclusion about the quality of the**
23 **overall work or about the arguments that went into the**
24 **work. But I remember at least one fairly persuasive and**
25 **negative letter that I took into account, and I guess those**

A **Yes, that's correct.**
Q **And do you recall generating an e-mail either on the morning of the vote or in close proximity to the vote to another professor indicating that you as yet did not know how you were going to vote?**
A **That rings a bell. It does ring a bell.**
Q **Would it be fair to say that when you walked into the second tenure meeting, the one at which the final vote was taken in 2002, you had not yet made up your mind whether you were for or against tenure?**
A **I think that's fair, yes.**
Q **Were you leaning in either direction at that time?**
A **I can't remember. I know that I thought it was close, and I hadn't made up my mind, but I can't remember if I was leaning one way or the other.**
Q **When you voted against tenure, did you think it was a close case?**
A **Yes.**
Q **What, if anything, stands out in your mind as the single most influential event or input, if you will, that helped you arrive at your final vote?**
MR. SERYAK: **Let me just object to the form of the question and the lack of foundation that there was any one event that prompted his vote.**
MR. GREEN: **I didn't say there was one.**

1 **were the main things.**
2 Q **Who was the outside letter from? Was it Einer Elhauge?**
3 A **Yes, it was Einer Elhauge. I believe he's at Harvard Law School.**
4
5 Q **Who were the individuals that spoke out and were critical of his scholarship?**
6
7 A **There were a lot.**
8 Q **The ones that you recall that had some influence on you.**
9 A **Okay. I'll try -- well, there were a lot that had influence on me, but the names of the people that I can remember include Rich Friedman, Sallyanne Payton. Actually I think Deborah Malamud spoke at one of the meetings, and although she was in favor, her arguments were -- the deficiencies in the work were extremely persuasive. I can't remember. I think she spoke. Certainly she wrote something in the report that was influential. But the other two people that I -- who I'm certain spoke were Rich Friedman and Sallyanne Payton.**
18
19 Q **Okay. Were any of those four inputs more significant to you than others or were they all pretty equal? And the four we're talking about are Friedman, Payton, Elhauge and Malamud.**
20
21
22
23 A **Right. I don't think those were the only four inputs, but of those four, it would be hard for me to say which was more from the others. I didn't weight it. I didn't try to**
24
25

view on this question. The reason I'm asking is because pro choice and pro life, as I understand it, are slogans that different people can interpret to mean different things depending on the specific question at issue, you know, and so I'm just -- I'm not trying to be difficult. I think actually people are not sure what they mean when they say something is pro choice or pro life, and that's part of why we have some -- we have probably more disagreement than we ought to.

10 Q Well, I would agree with you if the question was pro abortion and pro life, but I don't think anybody is pro abortion. So pro choice meaning that women should have the right to choose whether or not they want an abortion; pro life meaning that women should not have the right to choose, except in cases of medical emergency or incest.

16 A Okay. So tell me again what you mean by pro choice.

17 Q That women should have the right to choose whether or not they wish to abort a fetus.

19 A You said more in your description.

20 Q We can play it back for you, if you want.

21 A I mean actually I don't have settled views on this, and for me to work out my views here, we would need to specify pretty specifically what you mean by the position pro choice or pro life.

25 Q Well, do you agree with Roe versus Wade?

1 Q How often do you go to church? Do you go weekly?

2 A I go most Sundays.

3 Q And you're married, with children?

4 A Yes.

5 Q Do your children go to church with you as a family?

6 A Yes.

7 MR. GREEN: I have no further questions.

8 MR. SERYAK: Just give me a minute.

9 MR. GREEN: Sure.

10 (Off the record)

12 EXAMINATION BY MR. SERYAK:

13 Q Professor, in the fields that you've identified as having expertise, does economics or economic theory -- is that part of your knowledge base?

16 A Yes.

17 Q Is that a reason why Peter Hammer came to you to have you look at some of his writings?

19 MR. GREEN: Object to the form of the question. You can answer it.

21 MR. SERYAK: Well, I want to cure it.

22 Q Was there any discussion between you and Peter Hammer about your knowledge of economics and economic theory before the vote on his tenure?

25 A I can't remember.

1 A Wow. I haven't thought about that in a long time. I don't know. I'm not an expert on constitutional law or Roe v. Wade. I remember thinking a lot about this and talk -- arguing about it in law school, but I don't have a strong view about the Roe v. Wade case.

6 Q Do you believe that abortion is immoral, setting aside cases of incest and rape, and setting aside cases where the health of the mother is at stake?

9 A I don't know.

10 Q Have you ever discussed the topic of right to life versus choice with Sherman Clark?

12 A I don't know. I don't remember.

13 Q Have you expressed an opinion respecting same sex marriage and whether it should be lawful or not?

15 A I don't remember if I ever have expressed an opinion.

16 Q Do you have an opinion on that topic?

17 A About whether same sex marriage should be legal?

18 Q Yes.

19 A I certainly don't have a problem with same sex marriage. I mean, in any event, whatever my views were on it wouldn't be relevant to my decision about whether to hire or grant tenure to a person based on their sexual orientation or whether or not they're married to someone of the same gender or not. But I don't have a strong view one way or another about same sex marriage.

1 Q Have other faculty come to you to ask you to read their writings?

2 A Yes.

4 Q And when they've done that, what's your understanding of the reason why they've come to you?

6 A They think I'm a good reader, that I'll notice flaws in the logic that I can point out, that I might identify arguments they haven't yet explored. It's conceivable people could come to me, you know, for an economic perspective on something because some of my scholarship involves economic analysis of the law. I go to the law and economics workshop, so I'm one of the group of law and economics people. But people who don't do law and economics sometimes ask me to read their stuff, too.

15 Q What was your understanding of why Peter Hammer came to you and asked -- well, let me just back up. Do I understand your testimony to be that Mr. Peter Hammer came to you to ask you to read his writings?

19 A I think at least once he came to me.

20 Q And what's your understanding as to why?

21 MR. GREEN: Object to the question; lack of foundation, but you can answer.

23 Q I mean do you have an understanding as to why he came to you?

25 MR. GREEN: Same objection. You can answer.

1 there was no statements made that I can recall that would
2 suggest that there was discrimination on the basis of
3 sexual orientation. I think I at least said that.

4 Q And in doing that, weren't you revealing to him at least
5 what had transpired during the course of the tenure
6 meetings?

7 A Yes.

8 Q Had you heard statements that suggested to you sexual
9 orientation may have played a part in someone's criticisms
10 of his work during those meetings, would you have told him
11 that?

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

14 MR. GREEN: It's hypothetical. You can answer it.

15 A So state it again.

16 MR. GREEN: Could you play it back?

17 (Playback of previous question)

18 A Okay. If I had heard? I don't know if I would or not.

19 Q Did you feel uncomfortable that you were the person to whom
20 Peter Hammer was coming in your capacity as ombudsperson
21 for counselling or help in the grievance process when you
22 were one of the individuals that had voted against him in
23 the tenure process?

24 A I might have felt a little uncomfortable.

25 Q Did you think it a conflict of interest perhaps for you to

1 MR. GREEN: I was just explaining it to him. I think
2 that Professor Logue understood the question to the extent
3 he could and needed some additional explanation, which is
4 what I've offered.

5 WITNESS: Okay. Could you just say it again? Sorry.

6 Q Sure. Without getting into your particular religious
7 affiliation --

8 A What does that mean? I don't understand what that means.

9 Q The church to which you belong, the church in which you
10 pray, the denomination you are. I don't want to get into
11 that if we don't need to. With respect to your -- whatever
12 membership that might be, does the institution that you
13 belong to for your religious practices condemn
14 homosexuality as an abomination?

15 A Okay. The reason I'm having trouble with the question is
16 because the two parts of it -- I don't understand how to
17 put the two together.

18 Q Do you belong to a religious institution of any kind, a
19 church?

20 A Yes. I'm a member of a church.

21 Q All right. Does that church condemn homosexuality as an
22 abomination?

23 A I don't know. I don't know that there is an official
24 position of my church on that.

25 Q Now I guess I do have to get into it. What church do you

1 be counseling him on how to overturn your vote?

2 A I remember wondering about it and trying to consider am I
3 in a position of conflict of interest and could I be an
4 objective source of help, and I remember concluding that I
5 didn't think it was a conflict of interest; that I could do
6 the job reasonably well.

7 Q Did you discuss that topic with anyone?

8 A I can't remember; can't remember.

9 Q And by "anyone," I mean in particular either Evan Caminker
10 or Jeff Lehman.

11 A I can't remember.

12 Q Okay. Without getting into the specifics of your religious
13 affiliation, do your beliefs condemn homosexuality --
14 religious beliefs?

15 A You have to be more specific. What do you mean?

16 Q I didn't want to get into your religious affiliation
17 necessarily as much as I want to find out whether or not
18 the institution, if any, with which you're affiliated for
19 religious practices condemns homosexuality as an
20 abomination.

21 A Okay. I'm sorry. You lost me on the last part. You said
22 not to deal with the specifics and then you said --

23 Q Of your affiliation as opposed to the belief.

24 MR. SERYAK: Well, let's have it read back so that he
25 understands the question.

1 belong to?

2 A Huron Hills Baptist Church.

3 Q And you don't know whether or not the Baptist church that
4 you belong to condemns homosexuality?

5 MR. SERYAK: Asked and answered.

6 A I don't know.

7 MR. GREEN: It's cross-examination.

8 Q How about you, personally? Do you, in your own beliefs --
9 religious beliefs, believe that homosexuality is an
10 abomination?

11 A I don't -- no, I do not.

12 Q Do you believe that it is contrary to the teachings of the
13 Bible?

14 A I don't know. I haven't made a study of it. I don't know.

15 Q Changing the topic a bit, although still with religious
16 overtone, are you pro choice or pro life?

17 MR. SERYAK: Again, I'm going to object on grounds of
18 relevance.

19 MR. GREEN: That's fine. You can answer.

20 A You'll need to be more specific.

21 Q What is there about the statement you don't understand?

22 A What do you mean by "pro choice" and "pro life"?

23 Q With respect to the issue of abortion, that which is
24 typically meant by those expressions today.

25 A I'm not being evasive. I actually don't have a settled