

Q you remember any peer reviews after the book came out?

A **No.**

Q Okay. Now let's talk about before the book was published. Were there peer reviews?

A **I don't remember.**

Q If there were, would they have submitted to you writings that evidenced peer reviews?

A **The ordinary practice is to show authors some -- the peer reviews or some redaction of them.**

Q Would the peer review have gone in the first instance to the University Press that would have then shown you some redaction or iteration of that peer review?

A **That would be the ordinary practice.**

Q So if a peer review had been done on this particular work, that's where it would have gone first?

A **That's what I would have expected.**

Q Do you recall whether or not there were any peer reviews that discussed the chapter that had been written by Peter Hammer?

A **No.**

Q Was the chapter that was written by Peter Hammer written prior to his mid tenure review in 1998?

A **I don't remember.**

Q Did you receive a Robert Wood Johnson Foundation Health Policy Investigator Award?

1 Peter Hammer had identified as a potential external  
2 reviewer on the issue of his tenure?

3 A **No.**

4 Q Would Mark Hall's input into the process of tenure by --  
5 I'll wait.

6 A **Sorry.**

7 Q That's all right. Take your time. This is not going to be  
8 a long deposition, by the way, so don't fear that we're  
9 going to run out of time.  
10 (Witness pours water)

11 A **Well, my medical colleagues tell me that dehydration is  
12 very foolish, so --**

13 Q It is.

14 A **I try to follow their medical advice.**

15 Q Okay. Is Mark Hall someone whose opinions you might have  
16 valued on the issue of whether Peter Hammer's writings were  
17 worthwhile or not?

18 A **Yes.**

19 Q Can you think of any reason why Mark Hall opinions should  
20 not be solicited for purposes of an external review on  
21 writings of Peter Hammer here at the University of Michigan  
22 when he sought tenure?

23 MR. SERYAK: Let me just object. I think it's --  
24 yourself asking the witness to speculate.

25 Q Yeah. You can answer.

A **Yes.**

Q And was that in 2004?

A **Yes.**

Q What was the amount of that award? That's fairly recent history.

A **Yeah. But I don't get most of it, so --**

Q I know that.

A **There were two of us who did it, and I don't remember what the amount that my co-investigator gets.**

Q Your co-investigator was Mark Hall?

A **That's correct. Is.**

Q Did you select him as a co-investigator?

A **Did I select him? No.**

Q How did he become your co-investigator?

A **He asked me to join him.**

Q Oh, I'm sorry. So he initiated the application or the idea for the application, shall we say?

A **Yeah.**

Q All right. But wanted your partnership, so to speak, in pursuing and performing under the grant?

A **Yeah.**

Q All right. Is Mark Hall someone whose opinion you value?

A **Yes.**

Q Were you aware in 2002 -- actually, it would have been 2001 -- that Mark Hall was one of the individuals that

1 A **I'm sorry. Now, that you've had the conversation, I've now  
2 forgotten what the question was.**

3 Q Well, what I'm asking you is can you think of any reason  
4 why Mark Hall should be disqualified by the Law School from  
5 providing input into a tenure decision by doing an external  
6 review for a tenure applicant at the University of Michigan  
7 Law School?

8 A **Should be --**

9 MR. SERYAK: I'm going to object to the form of  
10 that question, too.

11 Q You can answer it.

12 MR. SERYAK: Lack of foundation.

13 Q You can answer it.

14 A **Should be disqualified from?**

15 Q Uh-huh (affirmative).

16 A **No.**

17 Q All right. Where does Mark Hall teach at?

18 A **Wake Forest.**

19 Q Is Wake Forest the type of law school that the University  
20 of Michigan looks to to seek external reviewers on tenure  
21 cases? Type of law school meaning quality, basically?

22 A **Well, I don't think that we look at the institution in  
23 deciding who the outside reviewer should be.**

24 Q Very good. Thank you. Now, Peter Hammer received a  
25 similar grant, did he not, in 2002?

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A Yes.  
 Q And when have you most recently written on that topic?  
 A **I believe it would be in the second edition of my Family Law Case Book.**  
 MR. GREEN: I have to buy another book.  
 Q Second edition --  
 A **I would be grateful.**  
 Q -- Family --  
 A **I don't get a lot, but every dollar helps.**  
 Q Well, you know, what's happening is I'm learning a lot of the areas of law that I didn't learn when I was at law school. Second edition, Family Law Case Book? Okay. And when was that published, approximately? Within the last five years?  
 A **I don't even remember some of the articles that I've written, and if you ask me what year they were published in --**  
 MR. SERYAK: Well, just do -- if you can remember, fine. If you can't, tell him you can't remember.  
 A **It's within the last ten years.**  
 Q Okay. Did your discussion touch upon the issue of same-sex marriage?  
 A Yes.  
 Q Have you written or in your writings, either there or elsewhere, have you expressed the belief that the strength

1 Q You can answer it.  
 2 A **I don't believe so.**  
 3 Q All right. Do you know William Duncan?  
 4 A **No.**  
 5 **(Deposition Exhibit 1 marked)**  
 6 Q I'll show you a copy of an article, "Moral Discourse and the Transformation of American Family Law," from 83 Michigan Law Journal at 1803. Did you write this article?  
 7  
 8  
 9 A **Yes.**  
 10 Q This was written some 20 years ago; correct?  
 11 A **More than that.**  
 12 Q More than that?  
 13 A **Yes.**  
 14 Q Published a little over 20 years ago?  
 15 A **Published about 20 -- a little over 20 years ago.**  
 16 Q Have you updated this article at any time?  
 17 A **No.**  
 18 Q Do you as a matter of course look to see where your articles are being quoted?  
 19  
 20 A **No.**  
 21 Q You don't. So you don't get on Lexus and attempt to see how you're being characterized or your writings are being characterized?  
 22  
 23  
 24 A **No.**  
 25 Q Do you believe that same-sex marriages should be legal in

of marriage as a social institution can be lost if the family is simply a collection of individuals united temporarily for their mutual convenience and armed with rights against each other?  
 A **I'm sorry?**  
 Q Do you want me to read it again?  
 A **If you would.**  
 Q Have you expressed the belief that the strength of marriage as a social institution can be lost if the family is simply a collection of individuals united temporarily for their mutual convenience and armed with rights against each other?  
 A **Have I expressed that view? I don't remember what it said.**  
 Q Okay. Are you opposed to same-sex marriage rights?  
 A **No.**  
 Q Have you expressed a belief that in some way by granting such rights there is a diminution of the family -- of the family as we know it?  
 A **I don't know.**  
 MR. SERYAK: I'm going to -- let me just object to the form.  
 MR. GREEN: Sure.  
 MR. SERYAK: The form of the -- and the vagueness of the question.  
 MR. GREEN: You can object.

1 the state of Michigan?  
 2 A **No.**  
 3 Q Why?  
 4 A **I haven't thought about the issue enough to reach a decision one way or the other.**  
 5  
 6 Q Well, then why is your answer "no"?  
 7 A **You asked me whether I believed something, and I don't believe that because I have not worked through my thoughts on it enough to have an opinion one way or the other.**  
 8  
 9  
 10 Q I didn't ask you if you had a belief. My question -- let's go back so that the record is clear. I asked whether or not you believed in same-sex marriage?  
 11  
 12 MR. SERYAK: No. You said -- you asked him if he should -- if he believed it should be legal in Michigan?  
 13  
 14 MR. GREEN: Right. And he said "no."  
 15  
 16 MR. SERYAK: And, well, maybe you'd better clarify, because I think he's saying --  
 17  
 18 MR. GREEN: Well, that's what I'm trying to do.  
 19  
 20 MR. SERYAK: -- he doesn't have --  
 21  
 22 MR. GREEN: Without your interruption, I will.  
 23  
 24 MR. SERYAK: Well --  
 25 Q Your answer to that question was "no." And I take it your answer was intended to be "I don't know whether I do or not because I haven't thought it through"?  
 A **My answer is I don't have a belief because I can't reach a**

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Q **held until I've thought it through, so --**  
 All right. So if I asked you the same question but in reverse --

A **That's correct.**

Q **your answer again would be "no"?**

A **Yes.**

Q **All right. "Yes" it would "no."**

A **Exactly; exactly.**

Q **Okay. Did you vote on the constitutional amendment in Michigan respecting the definition of marriages being a union between a man and a woman?**

A **I don't remember what that -- it was an initiative?**

Q **Yeah.**

A **I don't remember what it said.**

Q **It defined marriage as being the union between a man and a woman, and was, in fact, used by the Attorney General as the basis for an opinion that public institutions could not provide benefits to same-sex partners. So let's take the first half of it, first.**

A **It would help me if we had a copy of the actual language.**

Q **Well, I don't have a copy of the actual language. You don't recall it, then?**

A **I don't recall the exact language and it mattered to me.**

Q **Well, irrespective of the exact language, the essence of the vote was whether or not we should allow -- actually, it**

1 MR. SERYAK: A secret ballot --

2 MR. GREEN: I think I'm entitled to ask him.

3 MR. SERYAK: A secret ballot election.

4 MR. GREEN: I think I'm entitled to ask him.

5 MR. SERYAK: Well, I want to see some authority.

6 MR. GREEN: If you're objecting on the basis of

7 privilege, then that's fine. You can instruct him not to

8 answer.

9 MR. SERYAK: Well, if you --

10 MR. GREEN: I'm not going to do research to

11 determine whether or not you have an objection.

12 MR. SERYAK: All right.

13 MR. GREEN: You can either make the

14 objection and ask him not to answer.

15 MR. SERYAK: Okay. Well, I don't think he has to

16 answer this.

17 MR. GREEN: All right. So you're objecting and

18 instructing him not to answer on the basis of privilege, I

19 assume?

20 MR. SERYAK: Yes.

21 MR. GREEN: All right. That's fine.

22 Q **Irrespective of how you may have voted on that initiative,**

23 **do you have a belief whether or not marriage should be**

24 **defined as a union between a man and a woman for legal**

25 **purposes?**

wasn't. It was whether or not we should define marriage as being the union between a man and a woman, and the initiative passed. And I guess my question is, did you vote that you believed marriage should be a union between a man and a woman?

MR. SERYAK: Okay. Well, wait a minute. This is a different question. The first question was, "Do you know" --

MR. GREEN: This is the only question he's got in front of him now.

MR. SERYAK: So you've changed the question and asked --

MR. GREEN: I've asked him a direct question.

MR. SERYAK: I'm objecting to this question, because you're asking him how he voted.

MR. GREEN: That's right.

MR. SERYAK: And I don't think you can ask him that.

MR. GREEN: Are you telling him not to answer?

MR. SERYAK: If you want to cite me some authority that allows you to ask a witness how they voted in an --

MR. GREEN: I'm not going to.

MR. SERYAK: -- election --

MR. GREEN: I'm not going to.

1 A **No.**

2 Q **You don't have a belief either way?**

3 A **That's correct, either way.**

4 Q **And that is despite publishing articles on -- dealing with the transformation of American family law as much as 20 years ago?**

5

6

7 A **Uh-huh (affirmative).**

8 Q **And that is despite this being at least one of your areas of expertise?**

9

10 A **Well, I stopped teaching family law 10 or 15 years ago, and I almost never write in the area any more. And I'm not sure that I would describe myself as an expert in a field where I don't write.**

11

12

13

14 Q **All right. Fair enough.**

15 A **Would that I could.**

16 Q **And despite the fact that this has been a topic of some heated debate, would you agree --**

17

18 A **Uh-huh (affirmative).**

19 Q **-- for the last few years, you have not arrived at any opinion on how you feel about it personally?**

20

21 A **About "it," meaning --**

22 Q **Meaning whether or not the union between a man and a woman should be the definition of marriage for our purposes?**

23

24 A **No, I have not.**

25 Q **Have you ever expressed any belief on that topic to your**

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