

The Des Moines Register

U of I concedes at trial key evidence was erased

A video that may have resolved a worker's dispute with the university is now blank.

By: Jason Clayworth – October 17th, 2012

DAVENPORT, IA. — The University of Iowa erased a video that would have been key to resolving a dispute between it and an employee who believes she was illegally passed over for promotion because of her conservative political views, it admitted in federal court here on Tuesday.

The school hired Teresa Wagner as a part-time staffer at the Iowa College of Law Writing Resource Center in 2006. She applied for a full-time instructor's position in the fall of that year, but claims the job went to a lesser qualified candidate with liberal views.

Wagner, an Iowa law school graduate, has previously worked for the National Right to Life Committee and the Family Research Council. The committee opposes abortion and the council opposes same-sex marriage.

The university denies politics played a part in the decision. It says Wagner didn't get the job largely because she said during a presentation to faculty in January 2007 that she was unwilling to teach legal analysis, which was included in the job description.

Testifying before a jury here on Tuesday, Wagner denied making that statement.

A video of her presentation would have resolved the issue, both sides acknowledged. However, the university erased the video shortly after Wagner was denied the job.

It is unclear what the retention policy was for such videos. Eric Andersen, the school's senior associate dean, didn't indicate why or exactly how it was erased but said he wished the video still existed.

"I thought that it went without saying that legal analysis was a core part," said Andersen, who had supported Wagner for the job but called her answers to the questions about analysis work "a huge misstep."

Carolyn Jones, the former dean of the school, encouraged her to apply for another part-time professor position, but Wagner ultimately also was denied that job. She was also denied a similar position in 2008.

Wagner has noted previous newspaper reports that show Democrats make up an overwhelming majority of faculty at the law school. She filed a lawsuit against the

university alleging constitutional violations of her First Amendment rights and the right of due process.

She is seeking compensation for lost wages and a full-time writing instructor's position, which pays about \$65,000 a year.

The case is being followed closely by legal scholars. Walter Olson, a fellow at the Cato Institute, told the New York Times in January that the dispute "threatens to intrude on collegiality, empower some with sharp elbows to sue their way into faculty jobs, invite judges into making subjective calls of their own which may reflect their assumptions and biases, all while costing a lot of money and grief."

Wagner told the jury Tuesday that her decision to bring the lawsuit was not made lightly and that she's lost weight and sleep and over the issue

"The decision to sue your employer, this has been the hardest decision of my life," Wagner said. "I regret it. I regret it because I think it burned all my bridges in Iowa City."

Also testifying Tuesday was Mark Osiel, a U of I law professor who hired Wagner to help edit two research projects. Osiel called Wagner a "superlative writer" and compared her to tenured professors.

Osiel said he believes the university was disabled by liberal bias. "It corrupts everything it touches," he said of the school's liberal leanings, calling them "unconstitutional and morally indefensible."

Defense attorney George Carroll noted that Osiel has refused to attend many faculty meetings for the past decade over his dissatisfaction with the university. That included his absence in Wagner's presentation to the faculty, and a vote that ended with her not getting a job.

Carroll questioned Osiel about a recent professional misconduct investigation in which another employee allegedly heard sexual grunting sounds coming from his university office. Osiel testified that he has arthritis in his hip and he made the sounds while exercising. Carroll argued that information is important since it affects Osiel's credibility as a witness.

Wagner testified that in recent years she has made \$20,000 to \$30,000 from her part-time university job and other part-time work. "It's been both a financial hardship and an emotional hardship," she said.

The trial is expected to last through Friday.