1 UNITED STATES DISTRICT COURT EASTERN DISTRICT OF KENTUCKY LEXINGTON DIVISION 2 CIVIL ACTION NO. 5:09-CV-00244-KSF 3 4 DEPOSITION OF GARY FERLAND, Ph.D. 5 6 C. MARTIN GASKELL PLAINTIFF 7 v. 8 UNIVERSITY OF KENTUCKY DEFENDANT 9 10 The deposition of GARY FERLAND, Ph.D., was 11 taken on behalf of the plaintiff before Ann Hutchison, 12 13 Registered Professional Reporter and Notary Public in 14 and for the Commonwealth of Kentucky at Large, at the 15 law office of Baker, Kriz, Jenkins, Prewitt & Jones, 16 PSC, 200 West Vine Street, Suite 710, Lexington, 17 Kentucky, on Tuesday, March 23, 2010, beginning at the 18 hour of 9:13 a.m. The deposition was taken by notice and 19 shall be used for any and all purposes allowed by the 20 Federal Rules of Civil Procedure, including use at 21 trial. 22 23 ACTION COURT REPORTERS 24 184 North Mill Street Lexington, Kentucky 40507 25 (859) 252-4004

1 APPEARANCES 2 3 COUNSEL FOR THE PLAINTIFF: Francis J. Manion 4 Geoffrey R. Surtees 5 American Center for Law & Justice-Kentucky 6375 New Hope Road P.O. Box 60 6 New Hope, Kentucky 40052 7 COUNSEL FOR THE DEFENDANT: 8 9 Barbara A. Kriz Baker Kriz Jenkins Prewitt & Jones, PSC 10 200 West Vine Street, Suite 710 Lexington, Kentucky 40507 11 12 ALSO PRESENT: 13 Dr. Michael Cavagnero 14 15 16 17 18 19 20 21 22 23 2.4 25

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INDEX DEPONENT: GARY FERLAND, Ph.D. PAGE EXAMINATION BY: Mr. Manion REPORTER'S CERTIFICATE EXHIBITS NO. DESCRIPTION IDENTIFIED 10/19/07 e-mail from Gary Ferland to members of the advisory committee on Thoughts on Gaskell's Biology 12/3/07 e-mail from Thomas Troland to Gary Ferland 10/29/09 e-mail to Gary Ferland from Martin Gaskell (Above-referenced exhibits accompany original and copy transcripts.)

1 GARY FERLAND, Ph.D. 2 having been first duly placed under oath, was examined 3 and testified as follows: 4 EXAMINATION 5 BY MR. MANION: 6 Q. Good morning, Dr. Ferland. My name is 7 Frank Manion. I previously introduced myself to you 8 briefly. I'm one of the attorneys representing Martin 9 Gaskell in this lawsuit, and we're here today for the 10 purpose of taking your deposition. Have you ever been to a deposition before? 11 12 Α. No. 13 Ο. All right. Let me briefly give you some 14 of the ground rules of a deposition. I'm going to ask 15 you a series of questions, you're going to respond to 16 those questions to the best of your ability and 17 recollection, obviously. You've taken an oath to tell 18 the truth. That oath is binding here and in a court of 19 law. The oath that you just took here is the same one 20 that you would take if we were in a courtroom, even 21 though we're sitting in an informal setting of a 22 lawyer's office. 23 If I ask a question that you don't 24 understand, you should tell me that before answering it. 25 It's important that you only answer questions that you

1	understand. All of my questions and all of your answers
2	and anything that Ms. Kriz may have to say during the
3	course of this deposition is being taken down by the
4	court reporter, who types 225 words a minute, I
5	understand, almost with a hundred percent accuracy, and
6	will be made in to a transcript subsequent to the taking
7	of this deposition. That transcript can be used by any
8	party to the case for a variety of reasons in the course
9	of the litigation. Do you understand all that?
10	A. Yes.
11	Q. All right. If at any time you need to
12	take a break to go to the bathroom or get a drink of
13	water or cup of coffee, just let me know. This is not
14	an endurance test.
15	If I ask you a question and the best you
16	can do is estimate, feel free to estimate, but just let
17	us know that's what you're doing. You shouldn't guess
18	at anything. If during the course of the deposition you
19	remember something that was an answer to a previous
20	question that corrects it or changes it, you should feel
21	free to tell me that you just remembered something or
22	something like that.
23	Are you taking any medication or do you
24	have any condition or illnesses today that would prevent
25	you from understanding my questions and giving truthful

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1 answers? 2 Α. No. 3 Q. Okay. You are Gary Ferland? That's right. 4 Α. 5 And what is your current position? Q. 6 Professor of physics and astronomy at the Α. 7 University of Kentucky. And how long have you been at U.K.? 8 Ο. 9 I originally came in 1980. I was Α. 10 recruited away in 1985 to Ohio State and came back in '91 or '92. 11 12 Okay. Prior to today, or any time prior Q. 13 to this deposition beginning, did you review any documents, e-mails, notes or other writings in 14 preparation for the deposition? 15 16 Several months ago Barbara asked me to Α. 17 forward her all the e-mails in my inbox, so I did a search on Gaskell on both versions that I had and I gave 18 19 her all the copies of the e-mails, and I looked -- I 20 read them many months ago. I haven't looked them over since then. 21 22 Okay. Were there any documents that you Ο. 23 didn't produce that related in any way to Martin 24 Gaskell? And I mean particularly regarding this hiring 25 search for an observatory director.

1 Α. No. 2 Okay. Prior to today's deposition did you Q. speak to Mike Cavagnero about the deposition? 3 4 Α. No. Have you spoken to Tom Troland about his 5 Q. 6 deposition? 7 Α. Not about his questions or answers. Ι 8 asked him after it happened what happened. He said he 9 was told not to talk about it till afterwards. So we 10 made a point of not talking about it. 11 You asked him how did it go? Q. 12 Α. Right. 13 But nothing in detail about questions and Q. 14 answers, that sort of thing? 15 No. No aspect of questions or answers. Α. 16 Okay. Well, as you know, this case Q. involves the hiring process for the director of the 17 McAdam Observatory at the University of Kentucky. You 18 19 understand that. Right? 20 Α. Yes. 21 And as I understand it from the documents Q. 22 that we've received and from the testimony that we've 23 heard from some witnesses already, back in the summer of 24 2007 and the fall of 2007 you were not in Kentucky; is 25 that right?

1 Α. That's right. 2 You were in Cambridge University in Q. England? 3 4 Α. Yes. 5 When did you go to Cambridge? Q. 6 It would have been mid August. We went Α. 7 across on the Queen Mary, so the schedule was set by when it crossed. 8 9 So in mid August of 2007 you went to Q. 10 England? 11 We left Lexington about two weeks before Α. to see relatives, my wife's relatives. We probably left 12 13 around the first of August and then went to New York City and visited Columbia and then left from New York 14 15 City on the Queen Mary. 16 Q. How long does it take to cross on the 17 Queen Mary? 18 Α. Six days. 19 Ο. Sounds like fun. And where do you dock 20 when you get there? 21 Southampton. It was touching, the captain Α. 22 announced when we crossed over the Titanic and asked for 23 a moment of silence. It was interesting. 24 Yeah. And when -- I understand you were Q. 25 on sabbatical.

1 Α. That's right. 2 Was that a year sabbatical? Q. 3 Α. That's right. 4 Ο. So when did you return to Kentucky? 5 The following August. Α. 6 So you were gone from August '07 to Q. 7 August '08? 8 Α. That's right. 9 And do you remember when the job of Q. 10 observatory director was first advertised or posted? Ι 11 think is the term. 12 Α. No. I think I may have been the one that 13 did it. We posted it on the American Astronomical 14 Society job site. So I think I did that. So it had to be sometime in the summer. So that was when it was 15 16 nationally advertised. 17 MR. MANION: Off the record. 18 (Off the record.) 19 After the job was posted, can you describe Ο. 20 your involvement in the hiring process? 21 I received e-mails as a former member of Α. 22 the committee, but I was on a leave of absence so I was 23 very indirectly following the e-mail traffic. So there 24 was no direct involvement. There was no -- there were 25 no six-way conservations with members of the committee

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1 on the telephone with me. 2 You didn't participate in any meeting by Q. phone or Skype or anything like that? 3 4 Α. No, not that I can remember. 5 Were you technically a member of the Q. committee? 6 7 Α. I think formally it's a leave of absence, 8 so I don't think you have any official duties, but I 9 don't know this. 10 Q. That's your understanding? (Witness nods head.) 11 Α. I mean I notice in a lot of the e-mails 12 Q. 13 you are copied along with individuals who have been 14 identified as being part of the committee. Is that more 15 of a courtesy to you, do you think? 16 Probably. I don't know. Α. And as I understand it, you did not vote 17 Ο. 18 when the committee ultimately took a vote on who to 19 recommend for the position. 20 That's right. Α. 21 Q. You've indicated that you were following 22 the e-mail traffic, I think you said, and when you say the e-mail traffic, what do you mean by that? 23 24 Α. There would be the give and take among 25 members of the committee what to do next, a short list

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1 of people to invite, so just scan it, put it in the 2 right folder in Outlook. 3 Q. Okay. You would sometimes reply to some 4 of these e-mails, though. Correct? 5 That's right. Α. 6 Q. Prior to his filing an application for 7 this position, did you know of Martin Gaskell? 8 Α. Yes. 9 How did you know him? Q. 10 Α. I reviewed a paper he had submitted for publication probably about 1978, 1979. I left 11 12 Cambridge -- that's when I was a postdoc at Cambridge --13 I left Cambridge in 1980 to come here. I don't know 14 exactly the dates, but he was -- then went to Cambridge, 15 and I think he told me once that he actually had my 16 desk. I'm sure I met him in Cambridge in the very early 17 '80s, so it goes way back. 18 And after that and up until the time of Ο. 19 this hiring process was going on, did you have contact 20 with him of any kind? 21 Α. Perhaps every couple of years there would 22 be an exchange, mainly things to do with quasars. 23 Did you ever run in to him at professional Q. 24 meetings or conventions and that sort of thing? 25 Α. Yes. That's right, yes.

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1 Q. Were you familiar with his reputation as 2 an astronomer? 3 Α. Oh, yes. 4 Ο. What would you say his reputation was in 5 2007?6 He's done many decades of fine work. Α. 7 Q. How about Timothy Knauer, the individual 8 who ultimately was hired for the position? Were you 9 familiar with Tim Knauer prior to 1997? 10 Α. Yes. And how did you come by that familiarity? 11 Q. 12 Α. He was a member of the staff and was doing 13 the demonstration preparation, ran one of the labs in 14 the department. 15 And so how long would you and Q. 16 Mr. Knauer -- is he a professor, by the way? Is that 17 his title? 18 MS. KRIZ: He's the observatory 19 director. 20 Okay. I don't want to MR. MANION: 21 insult anybody. 22 MS. KRIZ: He's not a doctor. He's a 23 master's. 24 How long had you and Knauer worked Q. 25 together, I mean both working at U.K.?

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1 Α. Boy, that's the kind of thing I don't 2 remember. It was several years he ran the demonstrations. I taught the large lecture classes, so 3 4 interacted with him three or four times a week, and it 5 was for several years, roughly five or ten years ago, 6 something like that. 7 Ο. Okay. Now, with regard to the observatory 8 director position, you, I think indicated earlier that 9 you actually wrote the advertisement that was posted in 10 the AAS? 11 I think I remember that. I'm not sure. Α. 12 All right. Well, were you aware of what Q. 13 the requirements for the observatory director job were? 14 Α. Right. I think to some extent. I haven't 15 reviewed it in several years. 16 Okay. When applications came in for that Q. position -- and again, I realize that you left in 17 August -- did you have an opportunity to review the 18 19 applications of the various people who applied for the 20 job? 21 I don't think so. I don't remember. Α. 22 There would have been no way to get those to Cambridge. 23 All right. At any time from the beginning Q. 24 of this process of looking for an observatory director 25 up until today, have you ever spoken with former Dean

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1 Hoch or Provost Subbaswamy regarding any aspect of that 2 hiring process? Α. 3 No. 4 Ο. Have you ever had any written 5 communication with them, e-mail or otherwise, either of 6 them? 7 Α. I think I forwarded -- I think there was 8 an e-mail in all this traffic, which is one of the ones 9 I provided to Barbara, that was in my inbox that said --10 I think that was from Dean Hoch to Mike. I don't know. 11 Q. Okay. Other than that e-mail, which I 12 think I know what you're referring to, did you as an 13 individual ever have any written communication between 14 yourself and those gentlemen? 15 Α. No. 16 Have you ever spoken with anyone at the Q. 17 University of Nebraska in Lincoln regarding Martin 18 Gaskell and his qualifications for the job of 19 observatory director? 20 Α. No. 21 Q. Are you familiar with any of his former 22 colleagues at UN in Lincoln? 23 I visited there, gave a colloquium 10 or Α. 24 15 years ago, and I met a lot of people, but it was a 25 long time ago.

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1 Q. I'm going to show you a number of the 2 documents that have been produced by yourself and other people in the course of this lawsuit and ask you some 3 4 questions about them, and we will start with a document 5 that we had previously marked Exhibit 7 at Tom Troland's 6 deposition. 7 (Off-the-record comments.) 8 Ο. Dr. Ferland, you've had an opportunity to 9 look over Exhibit 7; is that right? 10 Α. Right. 11 Q. And that appears to be an e-mail from Thomas Troland to you dated December 18, 2007 at 12 13 6:01 p.m. Right? 14 Α. Yes. Going down to numbered paragraph three --15 Ο. 16 see where I'm referring? 17 Α. Yes. 18 Troland says to you at that point in the Ο. 19 third line down: Clearly Gaskell is the most 20 experienced applicant by far. He's already done 21 everything we would want the director to do. 22 Then he goes on to explain a little bit 23 about what that means. Did you agree with that 24 statement that Gaskell was the most experienced applicant by far at that point? 25

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1 Α. I think so, yes. 2 He then -- going down a couple more lines, Q. he writes to you: Even Isaac, who's been out of town 3 4 lately, has good things to say about his research. 5 Isaac said Gaskell gave a great talk at a recent 6 conference. 7 Do you know what conference he's referring 8 to there? 9 No, I don't. Α. 10 Q. And then the next sentences says: But Isaac is worried about the creationism matter. Do you 11 12 see that sentence? 13 Α. Yes. 14 Q. When you read that did you know what 15 Troland meant by, quote, the creationism matter? 16 I think so, yeah. Α. 17 Q. Okay. Now, let me show you Exhibit 8. 18 (Document handed to witness.) 19 Ο. And feel free to read the whole thing, but 20 the part I'm interested in is at the bottom of the page. 21 I'll have to confess, I'm not that interested today in 22 lighting in data bases, or some of the other things that 23 are discussed. 24 Α. Okay. 25 At the bottom of Exhibit 8, and again, Q.

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1 this is an e-mail from Gary Ferland to Thomas Troland 2 dated September 19, 2007, 4:25 p.m. There appears to be 3 your response to the previous e-mail regarding Martin 4 Gaskell, and the first sentence of your response says: 5 You know what I know, the night at the public speech in nonevolution. 6 7 Do you see that sentence? 8 Α. Yes. 9 So my question is to you, when you wrote Q. that, what did you know about that night at the public 10 11 speech in nonevolution? In other words, what did you 12 mean by that sentence? 13 Ten or 15 years ago Martin visited here Α. 14 and gave a talk in Memorial Hall, and it was on 15 reconciling science and religion. He gave the physics 16 department a seminar colloquium. That must have been a 17 Friday afternoon, that's when our seminars are. He gave 18 a talk which ended up with some kind of argument at the 19 end, and I think Martin said pretty clearly that 20 evolution was just a theory and that there were a lot of 21 questions about it, and there was a member of the 22 audience, and it became slightly embarrassing and 23 something Tom and I both remembered for some time. 24 Q. As you sit here today, tell me everything 25 you remember him saying as closely as you can to exact

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1 words. 2 Which he? Α. Gaskell. About evolution. 3 Q. 4 Α. I don't remember the talk he gave. 5 MS. KRIZ: Wait. Before you answer, 6 are you talking about at that lecture only? 7 MR. MANION: Yes. 8 MS. KRIZ: Okay. 9 Α. What happened -- I don't remember the talk 10 itself. There was a question from a member of the 11 audience, and then it spiraled in to something that 12 became a little bit ugly and confrontational. What did 13 he say? What did Martin say? I don't remember. Ι 14 guess what I remember is I came away with the impression 15 that he did not accept that biology on the earth 16 happened gradually over four and a half billion years in 17 a way that's taught in biology books. I don't remember 18 what he actually said. 19 So what you remember was an impression Ο. 20 that you had that you came away with? 21 Α. That impression, and that it was not the 22 way I wished the meeting -- the thing had ended. I felt 23 bad about the whole thing at the end. 24 Q. And because there was a question and answer that got -- I think the word you used was ugly. 25

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1 Α. It was adversarial. Adversarial. Okay. Do you remember who 2 Q. 3 it was that -- was it more than one question? 4 Α. I don't remember that. It was guite some 5 time ago. 6 Q. Sure. Was there more than one questioner 7 involved in this interchange that got ugly? 8 Α. I don't remember that. 9 And you don't remember what he said during Q. 10 the actual talk itself, though? I think he -- it was along the lines, it's 11 Α. 12 just a theory, that a lot of problems many -- I think he 13 said many biologists don't accept it. I think he 14 mentioned his wife's -- I think he said something that 15 his wife's father was a professor of biology at Santa 16 Cruz, University of California Santa Cruz. It was 17 something that he knew people at Santa Cruz who knew that this didn't -- I think -- I think something like 18 19 that. I don't really remember. 20 Okay. After the talk did you have any Q. discussions with Martin Gaskell about that aspect of the 21 22 whole evolution issue? 23 Α. No. All right. After that talk, and I mean 24 Q. 25 sort of, you know, that night or in the days following

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it, did you have any discussion with any other faculty 1 2 members here at U.K. about his talk and specifically this whole evolution issue? 3 4 Α. Well, Tom and I talked about it, Tom 5 Troland. 6 Q. This was back in '97 or whenever it was? 7 Α. That was the same -- within -- the same 8 day or the next day. 9 Okay. The talk that he gave was in part Q. 10 at least at the invitation of the physics and the 11 astronomy department. Right? 12 Α. Yes. How did that come about? The invitation 13 Ο. to Martin Gaskell. 14 15 I think I am the one who did it. I had Α. 16 known from meeting Gaskell over many decades that he was 17 a deeply religious man, and I thought that it would be 18 good to have a talk saying there was no problem between 19 science and religion. And I think Martin and I may --20 when I went to Nebraska to give a talk, I think we may 21 have started talking about that and one of us had the 22 idea perhaps he would come and give a talk. We had a 23 NASA grant at one time a long time ago, and so I think 24 we had something that we were doing at the time, so it 25 was -- I don't remember that very well. There was

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1 something about our research that there was a reason for 2 him to come through town. 3 Q. Okay. Let me show you another exhibit. 4 I'm showing what we have previously marked as Exhibit 9 5 and ask you to just take a look at that. I'll ask you a 6 couple of questions. 7 (Deponent reviews document.) 8 Α. Okay. 9 Have you had a chance to look at Q. 10 Exhibit 9? 11 Yes. Α. 12 Exhibit 9 appears to be an article from Q. 13 the Kentucky Kernel dated November 19, 1997, and as I 14 read this, and you correct me if I'm wrong -- well, it 15 announces that Martin Gaskell will be speaking the next 16 day. Correct? Yes. 17 Α. 18 Speak tomorrow at 7:30. You're quoted in Ο. 19 there at the end. A number of other people, or at least 20 one other person is quoted during the course of the 21 article; is that right? 22 Yes. Α. 23 And as far as you can tell, does this Q. 24 refer to the talk that you were just describing? 25 Α. I think so. I haven't seen this before,

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1 but yes. 2 Other than that talk at Memorial Hall have Ο. you ever heard Professor Gaskell speak about evolution 3 4 in the public setting? 5 Α. No. Q. Have you ever heard him -- you may have 6 7 started to answer this earlier -- have you ever heard 8 him speak about evolution, specifically, privately? 9 Α. No. 10 Q. Have you ever read anything that Gaskell may have written about evolution? 11 12 There was something on the web which was Α. mainly the subject of this talk, and then at the end 13 14 there was a series of references. If you parsed the 15 words very carefully, they may be ambiguous, but 16 certainly did not come out clearly and say there was a 17 problem with evolution. There was a web document. 18 Ο. Right. I think I'm about to show it to 19 you and you tell me. I'm showing you what's been marked 20 Exhibit 16 at a previous deposition. Do you think that 21 that is the web document that you're -- you just talked 22 about? 23 Α. I don't know. It certainly was -- this looks of that flavor. I haven't -- this must be it. 24 25 Well, you referenced a web document. Do Q.

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1 you know when you would have looked at that document, 2 when you would have seen it? 3 Α. Well, I looked on my server, backup copy 4 of my server in my office about a month ago, something 5 like that, and I was able to find something I had posted 6 on my class website that he had written, which I looked 7 at it very closely. So I looked at that a month ago. 8 It was certainly not this document. It was not as well 9 formatted and not as extensive as this document. What 10 was the question again? I'm trying to -- in your testimony you 11 Q. 12 said that there was a web document, which may or may not 13 have been Exhibit 16, because now I think you're 14 referring to some other document possibly. Am I right 15 about that? 16 Okay. I found a backup of an html file --Α. 17 I don't even know the timestamp on it -- backed up from 18 a server that had been -- something that had been from 19 the astronomy class, and it was likely a file Martin had 20 given me by the time I gave the talk in Nebraska ten or 21 15 years ago. The timestamp was whenever the backup was 22 done, so it didn't speak to when I might have seen it. 23 I stopped using that website long ago when I moved the class to Blackboard, so that site has been dormant for 24 25 quite some time. So I don't -- I don't think it was

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1 this document. I don't know -- I'm looking now -- my 2 memory is really failing here. 3 Q. Okay. Would you be able to produce that 4 document that you found of the backup? 5 Yeah. I don't -- I mean, I don't know its Α. heritage, but yes I can. 6 7 Ο. Would you produce that to counsel? 8 MS. KRIZ: We'll get that. 9 MR. MANION: All right. 10 So you're not able to say whether the Q. 11 document that we've marked Exhibit 16, you're not able 12 to say whether you've ever seen that before. Correct? 13 I've seen things like this, I think. Α. Ι 14 think this is the theme he had been working on for some 15 time. 16 Q. Okay. Whichever document it was, either 17 Exhibit 16 or the document that you were just describing 18 that you found that you came upon about a month ago, do 19 you know if you had reviewed either of those prior to 20 his talk back in '97? 21 Α. I put it on my class website. I said that 22 there is no conflict between science and religion. This 23 is an example of a very deeply religious person who is a 24 respected astronomer, and he had provided this file 25 which I had posted. So I wouldn't -- I mean if there

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were anything -- if there were anything blatantly wrong, 1 2 I would not have put it on my website. And when you say blatantly wrong, would 3 Q. 4 that include denying the validity of the theory of evolution? 5 6 Α. If he had left mainstream science, I 7 certainly would not have put it on the website. 8 All right. Let's look at another Ο. 9 document. I'm showing you Exhibit 18, which appears to 10 be an e-mail from Thomas Troland to -- I assume Gary@pa.uky.edu was you. Right? 11 12 Α. Yeah. Thomas Troland to you dated September 23, 13 Q. 2007, it was 6:32 p.m. 14 15 (Deponent reviews document.) 16 And I'm specifically interested in the Q. second page, which unless you disagree, appears to be 17 your response -- well, I'm not certain about that. 18 19 That's the part that you wrote. Am I right about that? 20 Well, the way --Α. 21 Some of these are hard to understand who Q. 22 is replying to what. 23 Α. Yeah, the carets at the start, at the end 24 mean that's what I had sent originally. 25 But looking at the time, it looks like Q.

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1 he's replying to you. Okay. It's signed Gary, the part 2 at the top of page 2, is it not? 3 Α. Right. 4 Ο. The question -- the sentence I'm 5 interested in is it appears that you're saying to Tom 6 Troland what about -- quote, "What about Gaskell's 7 fundamentalist tendencies?" Do you see that sentence? 8 Α. Yes. 9 What did you mean by Gaskell's Q. 10 fundamentalist tendencies when you wrote that? 11 The conversation at the end of the talk he Α. 12 gave in Memorial Hall. And that was it? That was your basis for 13 Ο. 14 saying Gaskell's fundamentalist tendencies? 15 Α. I think it is, yes. 16 Okay. There's nothing else as you sit Q. 17 here today that you can think of that Gaskell had ever 18 said or done other than that part of the talk at 19 Memorial Hall that led you -- gave you the impression 20 that he had or has fundamentalist tendencies? That's 21 what I'm trying find out. 22 I think that's the only time. Α. 23 Okay. Let's move on. I'm showing you Q. 24 what we've marked Exhibit 19. Exhibit 19 for the record appears to be an e-mail from Thomas Troland dated 25

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1 September 24, 2007 at 7:19 p.m. addressed to Keith 2 McAdam, Nancy Levenson, Isaac Shlosman, Gary Ferland -is it Steve Ellis? 3 4 Α. Uh-huh. 5 -- Mike Cavagnero and Sally Anne Shafer. Q. 6 I think this has been previously identified by Professor 7 Troland as a summary of one of the meetings of the 8 advisory committee, and you were copied on it even 9 though you were not present in the country or maybe not 10 even technically part of the committee. Correct? 11 Α. Right. 12 Do you remember reviewing this when it was Q. 13 sent to you? Seeing it when it was sent to you? Not now. 14 Α. 15 Ο. Okay. About in the middle of the page, 16 maybe a little bit lower, there's a series of names with 17 numbers next to them. Do you see that? 18 Α. Yes. 19 Ο. Do you know what those are? 20 No, I don't. I think -- I'm --Α. 21 Q. Okay. I'll give you a chance to read 22 through it. 23 (Deponent reviews document.) 24 Α. Okay. 25 What does it appear that those numbers Q.

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1 represent? 2 It's a quality rank from a scale that had Α. 3 been agreed upon I guess in a meeting. 4 Ο. Okay. And is it correct that Gaskell got an 8? 5 6 Α. Yes. 7 Q. And that Knauer got a 5? 8 Α. Yes. 9 So Gaskell of the one, two, three, four, Q. 10 five, six, seven candidates scored the highest? 11 Α. Yes. 12 Did that, or does that surprise you? Q. 13 Α. No. 14 Q. And why not? 15 If you look at this series of five Α. 16 bulleted points, this is what he was doing at Nebraska. 17 Ο. Okay. Let's go to Exhibit 20. 20 appears 18 to be an e-mail from Mike Cavagnero dated October 3, 19 2007 at 11:57 a.m. addressed to I think the same people 20 that received the previous e-mail. Appears to be the 21 members of the committee plus -- well, not including --22 yes, including yourself. Just take a minute or so to 23 review this e-mail. 24 (Deponent reviews document.) 25 Α. Okay.

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1 Q. Okay. This actually appears to be an 2 e-mail from Mike Cavagnero to which he has appended e-mails from the provost and the dean. Does it not 3 4 appear that way to you? 5 Α. Yes. Q. Okay. Earlier in this deposition I think 6 7 you had said something about a written communication 8 from the dean and the provost. Is this what you're 9 referring to? 10 Α. I think so. 11 Q. Okay. Other than these two statements, if 12 you will, one from Swamy, who I assume is the nickname 13 for the provost, and the one for Dean Hoch, which starts 14 at the bottom of the page and continues on page 2, do 15 you recall as you sit here today ever seeing anything 16 else in writing from either of those gentlemen regarding 17 the observatory director hiring process? 18 Α. No. 19 Ο. Okay. Let's go to Exhibit 21, which 20 appears to be an e-mail from Gary Ferland dated 21 October 3, 2007, 1:06, to a number of individuals. 22 Again, it appears that these are the members of the 23 advisory committee. Subject: RE: Something to think about. 24 25 (Deponent reviews document.)

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1 Α. Okay. This is an e-mail that you sent? 2 Q. It looks like that. 3 Α. 4 Ο. Do you know why you sent this e-mail? 5 I'm sure it's in response -- it's Α. 6 October 3rd. It's likely in response to the previous 7 e-mails. I don't know. I don't remember. 8 Is it fair to say that before this --Ο. 9 before you drafted and sent this e-mail, you had become 10 aware that Gaskell's alleged non-mainstream position on evolution had become a matter of some concern to the 11 12 committee? 13 Well, we talked about these other exhibits Α. 14 where it's -- it was there, yes. 15 Okay. And were you trying to sort of Q. weigh in and give your view on whether or to what extent 16 17 that should be considered in this e-mail? 18 Α. What was my motive for sending the e-mail? 19 Ο. Yeah. 20 This is a very complex issue. Here are Α. 21 some thoughts. I guess I was just sharing -- sharing my 22 thoughts. 23 Q. Okay. You say just before that big block 24 of citations, the paragraph just before that: Have we 25 ever asked a staff member for their personal religious

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1 beliefs, or made this a standard for employment. You 2 say that. Right? Yeah. 3 Α. Was it your understanding that in the case 4 Ο. 5 of Gaskell that had occurred, that his personal 6 religious or political beliefs had been asked about or discussed? 7 8 Α. I don't know -- I don't think anybody 9 asked him anything about religious or personal beliefs, 10 but the creationism evolution I think here is what's meant by religious, is this is the biological evolution. 11 12 The biological evolution was the concern. I don't think 13 anybody knew what his personal beliefs about religion 14 were. I think what happens is the word religious -- I think personally that this problem that some people have 15 16 with biological evolution is based on religious beliefs, 17 so these words get -- these two things get used 18 interchangeably. So I think personal religious 19 political beliefs, I think what I meant here was 20 biological evolution. 21 Ο. But as you say, the two words -- the two 22 concepts get used interchangeably, do they not? 23 Which two concepts? Α. 24 Religious beliefs and someone's views on Q. 25 biological evolution?

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1 Α. Yes. That's -- I think that's what's 2 happening here. 3 If you go down to the bottom of this page, Q. 4 the paragraph beginning with "His actual beliefs." 5 Α. Right. 6 Q. What's your basis for saying that those --7 what you describe there are Gaskell's actual beliefs? This is the talk at Memorial Hall. 8 Α. 9 That's it, though? Nothing else? Q. 10 Α. That's right. Right. That's all I know, that apparently from this exchange here, this long 11 12 document here must have something in it, but I don't --13 Are you referring to Document No. 16? Q. Yes, right. Well, I'm just looking --14 Α. 15 this No. 20 says that 16 -- I mean I never read 16. 16 That's not something that I would have been worried 17 about. 18 When you refer to 20, if you look at the Ο. bottom -- do you have 20 in front of you? 19 20 Yes. Α. 21 If you look at the bottom of 20, this is Q. 22 the part from Dean Hoch. Correct? 23 Α. That's right. 24 And the third line up from the bottom of Q. the page, Dean Hoch writes: For example, is the quote, 25

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"Young Earth creationist position he advocates 1 2 supportable on the basis of the standards of science?" 3 Is that what he says there? 4 Α. That's what he says. 5 Did you understand that Martin Gaskell was Q. 6 advocating a Young Earth creationist position? 7 Α. Help me parse this. Is this referring to 16? 8 9 It appears to be from my standpoint, yes. Q. 10 Α. So I don't know what's in 16. 11 Q. Take a look at page 4 of Exhibit 16, if 12 you would. Page 4 of 12. 13 Α. Okay. 14 Q. Take a look at the last paragraph of 16 --15 I'm sorry of page 4 of 12 of Exhibit 16. 16 Α. I can't parse that. 17 MR. MANION: Read the numbers, people. 18 MS. KRIZ: You're asking him to look 19 at the last paragraph? 20 MR. MANION: Yes. 21 MS. KRIZ: God made everything pretty? 22 Read through it. Q. 23 MS. KRIZ: Is that what the --MR. MANION: Yes. 24 25 MS. KRIZ: Okay.

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1 (Deponent reviews document.) 2 Α. Okay. Would you agree with me that in that 3 Q. 4 paragraph he is saying he doesn't advocate the young 5 earth creationist position? 6 Right. Yes, that's what he says. Α. 7 Q. Okay. Now, take a look at page 5 of 12 in 8 Exhibit 16. And referring to the second to the last 9 full paragraph on the page beginning with "The main controversy has been," and if you could just read 10 through that briefly. 11 12 (Deponent reviews document.) 13 Q. Have you had a chance to read that 14 paragraph? 15 I'm having trouble parsing it, some of Α. 16 these sentences. This one sentence is four lines long. 17 Ο. He's an astronomer. He's not a writer. I don't know what a humanistic 18 Α. 19 evolution -- is that --20 Well, I haven't asked you any questions Q. 21 about it. I just asked you to read it. 22 Α. Okay. 23 All right. Dr. Gaskell says in this Q. 24 paragraph, does he not, that: "Scientific" -- which he puts in quotes -- explanations offered by 25

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"creationists" -- which he puts in quotes -- are mostly 1 2 very poor science, and I believe this sort of thing actually hinders some -- and he puts (many?) and a 3 4 question mark -- scientists becoming Christians. 5 He says that. Right? 6 Α. Yes. 7 Q. Okay. Now, if you would, take a look at 8 page 8 of 12, second to the last paragraph. 9 MS. KRIZ: Read 20 onwards? Is that 10 what it starts with? 11 MR. MANION: Yeah, that's where that 12 paragraph starts. 13 (Deponent reviews document.) 14 Α. Okay. 15 In that paragraph he says, does he not, Q. 16 "The evidence is very good, and gets stronger every 17 year, that all life on earth descended, i.e., evolved from, a common origin." He says that. Right? 18 19 Α. Yes. 20 He also says that a discussion later on in Q. 21 another sentence, "A discussion of the current 22 controversy over evolutionary theory and how Christians 23 view them is beyond the scope of this handout." He says 24 that. Right? 25 Yes. Α.

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1 Q. If you turn to the top of page 9 of 12, we 2 only have to go down to the second line, he says, does 3 he not: This is probably a good place to state that I 4 personally have no theological problem with the idea of 5 God doing things in the way he's described in modern 6 theories of evolution, i.e., theistic evolution. 7 He says that. Right? 8 Α. This is in the top paragraph? 9 Yeah. Q. 10 Α. Oh, okay. Yes. 11 Q. Okay. And if you turn to page 12 of 12, 12 third paragraph down, he's talking about a book 13 Defeating Darwinism by Opening Minds, Phillip E. 14 Johnson. He says, does he not, "As I've said above, I 15 believe the evidence for common descent of species is 16 very strong, and I have no personal theological trouble --17 18 Α. I'm lost here. Sorry. 19 Okay. Third paragraph down. Ο. 20 Α. Third paragraph. Okay. Here it is. 21 Okay. 22 He says, does he not, "As I've said above, Q. 23 I believe the evidence for common descent of species is 24 very strong, and I have no personal theological trouble 25 with the theory of evolution." He says that. Right?

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1 Α. Yes. 2 Okay. Do you know who Eugenie Scott is, Q. Professor Eugenie Scott? 3 I know of her. She was here 20 years ago. 4 Α. 5 Q. Do you know what she's noted for now? 6 MS. KRIZ: Well, I'm going to object 7 to the form of that question. 8 Okay. Are you familiar with her work in Ο. 9 addressing what she perceives to be a problem in science 10 education caused by so-called scientific creationists 11 throughout the country? 12 Α. No, I don't follow that. 13 Q. Okay. All right. Let's go back shuffling 14 documents here to No. 21. I asked you what your basis 15 was for saying what Martin Gaskell's actual beliefs 16 were, and I believe that what you told me was what you 17 heard him say the night of the talk at Memorial Hall. Correct? 18 19 Α. Yes. 20 All right. Let's move to Exhibit 24. Q. 21 (Document handed to witness.) 22 For the record, Exhibit 24 is an e-mail Q. 23 from Mike Cavagnero dated October 11, 2007, 11:24 a.m., 24 and again it appears to be addressed to the individual 25 members of the committee. After you've had a chance to

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1 peruse that, my question is, do you remember seeing this 2 when it was sent? 3 Α. Vaguely. 4 Ο. Okay. Is it fair for me to say that in 5 this e-mail Professor Cavagnero is summarizing his interview of Martin Gaskell? 6 7 Α. I think so, yes. Other than reading this e-mail, have you 8 Ο. 9 ever talked to Professor Cavagnero about his interview 10 of Martin Gaskell? 11 Α. No. 12 Do you know if Tom Troland was present for Ο. 13 that interview? 14 Α. I was in Cambridge. No. 15 I mean based on conversations that may Ο. 16 have taken place --17 Α. No. 18 Ο. -- around the time? 19 Α. No. 20 Okay. Let's look at Exhibit No. 27. Ο. 21 (Document handed to witness.) 22 Which appears to be an e-mail from Mike Q. 23 Cavagnero dated October 17, 2007 at 10:44 a.m., to 24 yourself and members of the committee, and the title of 25 the e-mail is: The biologists weigh in. And my

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1 question is, after you've had a chance to peruse it, do 2 you remember receiving and reviewing this e-mail? I remember receiving it. I did not review 3 Α. 4 it. It's three pages long. I think -- I just wasn't 5 that heavily invested in this so... Were you surprised that biology professors 6 Q. 7 were asked for their input in the hiring of an 8 observatory director at U.K.? 9 I think it was just concern about the Α. 10 biological evolution. I think that's -- I don't know that I -- I don't think I was surprised, no. 11 12 Okay. You didn't object to it in writing Q. 13 or verbally? 14 Α. No. I provided all the e-mails I have. Ι 15 don't remember much of this, actually. 16 Have you ever discussed this hiring Q. process with any of the biologists whose comments are 17 here on this e-mail? 18 19 Α. No. 20 Have you ever discussed Martin Gaskell Q. 21 with any of them, Steiner, Krupa or Osborn? 22 Α. No. 23 Let me show you Exhibit 29. For the Q. 24 record this appears to be an e-mail from Thomas Troland 25 dated October 18, 2007 at 4:11 p.m. to Gary Ferland.

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1 (Deponent reviews document.) 2 Okay. I've read Tom's e-mail. Α. 3 Q. What I'm interested in is your part of 4 this which appears to start about three-quarters of the 5 way down and continue on to the next page. And as with 6 some of the previous e-mails between yourself and 7 Professor Troland, there's discussion of scientific 8 matters, personal matters -- I'm not interested in 9 those. I'm interested in the discussion of Martin 10 Gaskell and the hiring process. And I'll specifically 11 refer you to page 2 of this document, where it appears 12 that you begin -- where you say there is an old saying 13 in public service. Do you see where I'm referring to? 14 Α. Yes. 15 Ο. Okay. You say there's an old saying in public service, which is what we're doing here: 16 Do 17 everything as if there were a reporter listening in. 18 You might have added a lawyer, I suppose. 19 And then you say if this got out, the 20 stench would put U.K. on CNN. What did you mean by 21 that? 22 This was focusing on the idea of operating Α. 23 a telescope and judging that by biological evolution. 24 This was that controversy. 25 So you thought if -- and I don't want to Q.

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1 put words in your mouth -- that it was not appropriate 2 to judge qualifications of the observatory director by 3 what they believed or didn't believe about biological evolution? 4

5 Α. I think at the time that's certainly 6 what -- that's very clearly what's here. I think that's 7 what I was saying. Today, I mean after looking at it 8 two years back, if it were a privately-held biological 9 belief, that would be off the table. But my 10 recollection is that this -- in public and in an 11 official presentation, these reservations are made 12 known. So that's the distinction. I think looking back 13 on it two years later that I think I don't agree with 14 what I was thinking at the time.

So you're disagreeing with yourself? 16 Well, the earlier comment about Allan Α. 17 Sandage, Sandage has never published anything --18 anything about what he has said he's kept a very low 19 profile. And so I think it would be -- it would be not 20 right to bring up what he believes about evolution. The 21 distinction here, which is what has raised a concern, was this talk in Memorial, and so that's what has given 22 23 people pause here.

15

Ο.

24 But at the time you wrote this you knew Q. 25 that whatever it was that Martin Gaskell said was given

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1 at Memorial Hall. Right? 2 That's right. Α. 3 Q. Okay. In the next paragraph you say: Ιt is said that he uses this as a chance to try to convert 4 5 the Russians to his church. 6 When you say "it is said," my question is, 7 by whom? In other words, what's your source or your 8 basis for saying that? 9 Astronomers gossip. I think I just picked Α. 10 it up out of the ether. I think I knew at one time that 11 he had NSF grants with the former Soviet Union, and he 12 was going there, and people talk. I don't remember 13 where that came from. 14 MR. MANION: Off the record. 15 (Off-the-record comments.) 16 MR. MANION: Back on the record. So you're not sure as you sit here today 17 Q. 18 where you picked up that gossip or hearsay about Gaskell 19 and Russia and converting people. Correct? 20 That's right. Α. 21 Let's look at Exhibit 30. Q. Exhibit 30 22 appears to be an e-mail from Thomas Troland from Gary 23 Ferland, it's dated October 18, 2007 at 6:52, and 24 appended to the bottom of this and continuing on to the 25 next page is an e-mail from you to Thomas Troland?

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1 Α. Right. So it should be the whole thing? 2 Yeah, if you wouldn't mind, just peruse Q. 3 it. (Deponent reviews document.) 4 5 Have you had a chance to review that? Q. I read my e-mail first. I got to read 6 Α. 7 Tom's reply next. 8 Ο. Okay. 9 (Deponent reviews document.) 10 Α. Okay. 11 Q. First thing I want to ask you about is you 12 refer to Allan Sandage in your part of the e-mail, and 13 you say Allan Sandage has kept his mouth shut about this. And in previous answers you refer to Allan 14 15 Sandage, and I think in a previous document there was 16 reference to Allan Sandage. I have general familiarity with who that is. You say that he kept his mouth shut 17 18 about this, and am I correct in thinking that what 19 you're talking about is his views on biological 20 evolution? 21 Α. Yes. 22 Well, how do you know what they are? Ο. 23 Astronomy is a small community. It's just Α. 24 broadly known, it's broadly said within this community 25 that Sandage is what's called an Old Earth creationist.

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1 Q. Okay. And is that the entirety of your 2 basis for thinking that he is one, just sort of people 3 talking? 4 Α. Yes. You haven't read anything by him where he 5 Q. 6 has said that? 7 Α. He's been very careful not to -- he has 8 written how deeply religious he is, but he's never gone 9 anywhere near biology. So I've known people who are 10 postdocs working with him, so I think -- it's rumors, it's only rumors. 11 12 Where is Sandage nowadays? Q. Okay. Carnegie. I was outside his office last 13 Α. 14 Friday. 15 Okay. He's pretty old. Right? Q. 16 He was Hubble's assistant for a long time. Α. 17 He must be -- last time I -- I've known him for some 18 time. He must be in his eighties at least. 19 Ο. Okay. On page 2 of this e-mail you start 20 by saying: If it hinges on this issue, then a grave injustice is being done. 21 22 What did you mean by this issue? 23 The biological evolution. Α. 24 All right. Why did you think a grave Q. 25 injustice was being done if it hinges on that issue?

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1 Α. If you focus on the qualities of 2 observatory director, this would not have any bearing. 3 Q. This issue meaning the biological evolution issue? 4 5 Α. Right. 6 Q. And at the end of that paragraph you say: 7 This is a form of Nazi behavior. You say that. Right? 8 Α. That's over the top. That's what I said. 9 You said it. Right? Q. 10 Α. Yeah. It's here, I think. I must have. 11 I'm showing you a document that hasn't Q. 12 been marked yet apparently. 13 (Exhibit No. 1 marked.) 14 Q. We are showing you what we have marked 15 Ferland 1 -- you finally get your own exhibits -- and 16 this appears to be an e-mail from Gary Ferland dated October 19, 2007, 9:18 a.m., to apparently the members 17 of the advisory committee. Does it not appear to be 18 19 that? 20 Α. Yes. 21 And it's titled Thoughts on Gaskell's Q. 22 Biology. Correct? 23 Α. Yes. 24 Some of what you say in this e-mail you Q. 25 have previously said in e-mails to Tom Troland that

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we've looked at so far. Correct? 1 2 Yes. Α. And you refer to Allan Sandage, you refer 3 Q. 4 to Hagai Netzer. What's your basis for thinking that Hagai Netzer believes in UFOs, that they're in contact 5 6 with several governments? 7 Α. He told me privately. Where and when? 8 Ο. 9 On a train in Germany. Α. 10 And then the next paragraph after that you Q. 11 say: At coffee this morning I spoke with a very senior 12 Cambridge professor about Gaskell. 13 Do you remember the name of that 14 professor? 15 Andy Fabian. Α. 16 Other than Fabian, can you remember the Q. names of any other people in your field with whom you 17 18 have discussed Gaskell's alleged views on biological 19 evolution? 20 No. Α. And no one else at Cambridge when you were 21 Q. 22 over there? 23 I don't remember talking to anybody else. Α. 24 How about here at U.K.? Q. 25 Α. I don't think -- it was all over by the

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1 time I came back so... 2 So you don't remember having any other Q. 3 conversations with other people in your and Gaskell's 4 field about what you believe are his views on evolution. 5 Correct? 6 Α. That's right. 7 Q. Okay. And just summarizing the 8 conversation you had with the professor at Cambridge, he 9 gave you the view that having offbeat or other 10 mainstream position on evolution wouldn't sink a 11 candidate or torpedo a candidate at Cambridge. Right? 12 Α. Right. 13 You then go down a few paragraphs after Q. 14 that to quote -- there's a quote in the middle paragraph 15 here. "I was struck by a comment in the e-mail from the 16 biologists." I guess you're quoting from the biologists 17 in an e-mail to Mike Cavagnero, and the quote is: Mike, 18 thanks for the cc. I had experience in the U.K. senate 19 in which colleagues from the School of Engineering 20 challenged evolution as a science." See that quote? 21 Α. Yes. 22 And why were you struck by that? Ο. You may 23 explain why you were struck by that in a couple of sentences after that, actually. 24 25 (Deponent reviews document.)

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1 Α. So what are we talking about? 2 You say at the end of that paragraph: Q. Ιf this policy is good enough for the engineers, is it good 3 4 enough for us? 5 Α. Right. 6 Is that why you were struck by that Q. 7 comment? 8 Α. I'm having trouble parsing this. I mean, 9 I know of U.K. faculty who -- I know a professor in 10 mathematics and an engineer who don't accept evolution. That just never has come up. I don't -- let me try to 11 12 read this again. 13 Q. Okay. 14 (Deponent reviewing document.) 15 Α. Okay. So, okay, yes. 16 Q. My question was simply: What was it about 17 that comment that struck you? Why was it worth quoting in this e-mail to the members of the committee? 18 19 Α. Do I say why? 20 I'm interpreting your last sentence in Q. that paragraph as explaining why you say that, but I 21 don't want to speak for you --22 23 Α. Okay. 24 -- when you say if this policy is good Q. 25 enough for the engineers, is it good enough for us?

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1 Α. I thought that the biology should not have 2 been a major point in his hire, which I think in the end it wasn't. 3 4 Ο. If you'll turn to page 2 of the e-mail, 5 the last paragraph, you start by saying: I suspect that 6 the fear is that Gaskell might do something that he did 7 not do while in Nebraska, Arkansas or Texas. 8 And I assume by that you're referring to 9 his previous academic positions. Correct? 10 Α. Right. 11 Q. And is it fair to say that you're not 12 aware of him ever doing or saying anything at any of those positions regarding biological evolution which was 13 14 out of the mainstream if he did anything at all? 15 Α. I think there was an e-mail in this pile from Mike saying they checked Nebraska, and there was 16 17 nothing wrong. And I certainly have not heard just from the rumor mill what -- anything else happened. 18 19 Ο. So to use your phrase, there's nothing in 20 the ether about him doing -- going out and speaking 21 against evolution in any of his previous positions? 22 Right. Α. 23 Okay. Let's go to -- I'm showing you what Q. 24 was marked Exhibit 34 at Professor Troland's deposition. I'll give you a chance to read it while I try to find 25

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1 it. 2 (Deponent reviews document.) 3 Α. Okay. MR. MANION: Since Exhibit 34 is 4 probably on my dining room table, I'm going to come over 5 here and look. 6 7 MS. KRIZ: You can take a look at mine, if you want to reference mine. 8 9 MR. MANION: Okay. At the bottom of this e-mail -- for the 10 Q. record, this is an e-mail from Thomas Troland to Gary 11 12 Ferland, October 19, 2007 at 12:08 p.m., and it begins: 13 Gary, yes, it is over. And that appears to be Tom 14 Troland writing that. 15 At the bottom it says at 11:36 a.m., 16 10/19/2007 you wrote -- and I gather this is something that you, Gary Ferland, wrote from Keith - it is indeed 17 over. Gary. Do you see that? 18 19 Α. Yes. 20 What were you referring to there when you Q. 21 said from Keith? 22 I haven't the foggiest. Α. 23 You don't remember receiving any Q. 24 communication, whether an e-mail or phone or other form from Keith? 25

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1 Α. I gave Barbara everything in my e-mail. 2 I am assuming that Keith is Keith McAdam? Ο. 3 Α. I guess that. 4 Ο. Are there any other Keiths that you're 5 aware of anywhere near this process? 6 Α. No. 7 Q. Any other -- anybody else named Keith at 8 the U.K. physics and astronomy department back then? 9 Nothing comes to mind. Α. 10 Q. Okay. But you don't recall when you were 11 going through your e-mails or in your recollection 12 seeing an e-mail from Keith McAdam to you conveying to 13 you that it, meaning the search process, I think we 14 would all agree, was over? 15 Nothing comes to mind now. I gave Barbara Α. everything that was in -- that had the word Gaskell in 16 I wasn't paying that much attention to this. 17 it. That 18 doesn't stop me from expressing strongly held opinions. 19 Ο. I suppose if you're doing a search for 20 Gaskell, it's possible that an e-mail was sent about 21 this process where his name wasn't mentioned. Right? I searched Gaskell in Outlook and in --22 Α. 23 made a pdf of everything that turned up. 24 But, for instance, a short e-mail that Q. 25 doesn't mention his name might not turn up. Right?

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1 Α. Well, the subjects, the way Outlook works, 2 it keeps the subjects -- together, so I mean, if it'd pick that up. I mean, I can tell you what I did. 3 Ι 4 searched on Gaskell in Outlook, and I printed everything 5 that came out. 6 Q. Okay. Let's take a look at Exhibit 43 7 from the Troland deposition, an e-mail from Thomas 8 Troland dated November 4, 2007, 11:36 a.m., to yourself, 9 and again, this appears to be an e-mail exchange between 10 yourself and Professor Troland, some of which concerns 11 the hiring process of the observatory director. 12 (Deponent reviews document.) 13 Q. I'm particularly interested in page 2, 14 where you are writing to Shafer, who I assume is Sally 15 Shafer, a member of the search committee. 16 MR. MANION: Off the record. 17 (Off the record.) 18 Ο. You see where I'm referring, your e-mail starts, Hi, Sally? 19 20 At the bottom? Α. 21 Q. Yes. You say in this e-mail to Sally 22 Shafer that you won't be voting because you did not meet 23 Sykes, who was one of the candidates. Correct? 24 Α. Right. 25 You then go on to say that: I think my Q.

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1 being removed from the process may give me an outsider's 2 perspective. Correct? 3 Α. Right. 4 Ο. You then go on to say: I fear that if our 5 actions were publicly known, we would read about it in 6 the newspapers. We might even make the New York Times. 7 Why did you think that? Or why did you 8 say that? 9 This biological evolution has been a Α. 10 chestnut that's been around for decades and it keeps popping up. I think this was soon after the intelligent 11 12 design ruling by, I think a Pennsylvania court, which I 13 actually read cover to cover, so I guess I was thinking about that. I don't remember when that was. These 14 15 things come up. 16 It's a hot issue that people are Q. 17 interested in and it makes the press from time to time. 18 Correct? 19 Α. Yes. 20 Q. That's fair to say? 21 MS. KRIZ: We'll stipulate that. 22 (Off-the-record comments.) 23 Q. The next paragraph of this particular 24 e-mail that we're looking at, you say to Professor 25 Shafer: If it became known that a prospective teacher

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1 belonged to a church that taught against evolution, as 2 most of the mega churches around town do, I believe, would that candidate be excluded from consideration? 3 4 You say that. Right? 5 I say that, yes. Α. Q. Were you being facetious when you said 6 7 that? I don't know. I don't --8 Α. 9 I don't want to put you at any Q. 10 disadvantage. Let me show you an exhibit we haven't 11 marked. 12 (Exhibit No. 2 marked.) 13 I'm showing you what we've marked Ferland Q. 14 2, an e-mail from Thomas Troland to yourself dated 15 December 3, 2007 at 8:15 p.m., and I direct you to the 16 second page of this document, paragraph beginning, 17 "During the exchange of e-mails." This appears, does it 18 not, to be you writing to Tom Troland? It says, Hi, 19 Tom, signed Gary. 20 Yeah. Α. 21 Q. Okay. And you say during the exchange of 22 e-mails: I made the comment about not penalizing people 23 for deeply held religious beliefs, and Sally followed up 24 with her statement that the education mission was 25 important and the director would heavily influence

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1 Fayette County Schools, and in parentheses, never mind 2 how Tim will do this. Then you go on: Then I sent an 3 e-mail, actually intending it to be totally sarcastic 4 and cynical, asking whether the county schools checked 5 which church their applicants attended. 6 So is it fair to say when you made that 7 statement in the previous e-mail, you were being 8 sarcastic and cynical? 9 That's what I say. Α. 10 Q. Okay. Why were you being sarcastic and 11 cynical? 12 Α. I think it was probably an attempt at 13 putting it in some context. If you were to hire 14 somebody based on biological evolution, get out of 15 control, get out of hand. 16 In fact, if you go down two paragraphs Q. 17 from what we're looking at, you say: The concept, where the public schools check on the religious background of 18 19 applicants before hiring them, is so fundamentally 20 un-American as to be impossible to consider. But at 21 least some of us considered it seriously. 22 You said that. Right? 23 So I did. Α. 24 Who of us considered it seriously? Q. 25 I think it's in reference to Sally's Α.

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1 e-mail, I think. 2 And you conclude this e-mail by saying Q. this is McCarthyism at its worst. Right? Is that what 3 4 vou said? 5 I wrote that. Α. Q. What did you mean by McCarthyism at its 6 7 worst? Well, McCarthyism is in reference to witch 8 Α. hunts, that aspect of things. So this was focusing in 9 10 on the biology and bringing the biology in for a different -- as a criterion for a different job. 11 12 The date of that e-mail is what? Ο. 13 November 3rd? 14 Α. Right. 15 (Off-the-record comments.) 16 MR. MANION: Anyway, back on the 17 record. 18 Ο. The e-mail we just were looking at, 19 Ferland 2, is dated November 3, 2007. I have not 20 received any later e-mails in which you were the author. I know this is a difficult question to ask off the top 21 22 of your head -- to answer off the top of your head. Do 23 you recall other e-mails about this hiring process after that? 24 25 Α. No. This was not something I was paying a

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1 lot of attention to, and no, I don't recall. 2 Okay. Were you at some point aware that Q. Mike Kovash had contacted the U.K. EEO office about this 3 4 hiring process? 5 That was part of the e-mails I gave Α. 6 Barbara. There was an e-mail about that. 7 Q. All right. Were you yourself ever 8 contacted by the EEO office in connection with this 9 process? 10 Α. No. Did you ever volunteer anything to -- like 11 Q. 12 sending something to them or speaking with anybody 13 there? 14 Α. No. 15 All right. Have you ever discussed what Q. the U.K. EEO office did about this with anybody? 16 17 Α. I'm not even sure what EEO is, but I think I know what you're referring to. But no, I didn't. 18 19 That I can think of. 20 Have you ever spoken with Martin Gaskell Q. 21 about the hiring process and what happened? Yesterday I met with Barbara, who told me 22 Α. 23 that --24 MS. KRIZ: I'm going to instruct you 25 not to tell them what I told you.

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1 Α. Okay. I don't remember the conversations, 2 but -- okay. Do you think you had at least one 3 Q. 4 conversation with Martin Gaskell about what happened? 5 I don't remember the conversation. Α. 6 THE WITNESS: So what do I say, 7 Barbara? Off the record. 8 MR. MANION: 9 (Off-the-record comments.) 10 MS. KRIZ: All I'm telling you is not to share what I related with you. 11 12 You know, for the record, I did -- I 13 explained to him about Gaskell's testimony about the 14 Skype session, so he has some knowledge of that portion 15 of Gaskell's testimony. 16 MR. MANION: Back on the record. 17 Ο. Professor Gaskell testified in his 18 deposition that he had at least one Skype session with 19 you at some point while you were over in Cambridge about 20 the hiring process for the observatory directorship. Do 21 you have any recollection of those conversations? 22 No, I don't. Α. 23 Q. All right. Other than those Skype 24 sessions, which you don't recall, have you had any other 25 conversations with him, in person, on the phone, Skype

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1 or any other way with Gaskell about the hiring process 2 that led to Tim Knauer being hired? 3 Α. I can't remember now. I have typically 4 five or six Skype calls a day. I mean, this is how we 5 work in astronomy. 6 MS. KRIZ: Off the record. 7 (Off-the-record discussion.) To amend what I said is that --8 Α. 9 MR. MANION: Is this on the record? 10 MS. KRIZ: Yeah. 11 Α. There was a -- I have a project underway 12 with Ski Antonucci at University of California Santa 13 Barbara, and so we had a long e-mail exchange between 14 Ski and a guy name Patrick Augell. Ski asked Martin a 15 question, and then this became a discussion of quasars 16 between the four of us, which then became another 17 discussion on quasars between just Martin and me 18 concerning Martin Bottoroff, a former postdoc of mine 19 here at U.K., a former student here, and then that 20 somehow spun off in to this exchange. So this has 21 happened -- that's all there is, and as you see, I never 22 keep my own e-mails, but I think from -- so you can see my reply here: Let's not talk about it till it's all 23 24 over. 25 MR. MANION: Yeah, let me just mark --

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1 let's have this marked so I can make it a part of the 2 record. (Exhibit No. 3 marked.) 3 Now, I'm showing you what we've marked 4 Ο. Ferland Exhibit 3. And you've already started talking 5 6 about what this is. Just so I can identify if for the 7 record, it appears to be an exchange of e-mails. If I 8 read this correctly, it appears that Martin Gaskell sent 9 an e-mail to you on October 29, 2009 at 6:19 p.m., 10 undoubtedly after reviewing documents in this case, and made a statement about what his beliefs are or are not 11 12 about biology. Is that the first e-mail in this series 13 as far as you can tell? 14 Α. Right. 15 Ο. And to which you replied: Hi, Martin, 16 Thanks for the update. Let's agree to get together and 17 talk about this when the lawyers are all finished. All the best, Gary. Right? 18 19 Α. Yeah. 20 Q. And then he replied: He agreed that -- to 21 not talk about that issue that he raised, I suppose, 22 until after this case is resolved one way or the other. 23 Is that how you read this exchange? 24 Right. Α. 25 Okay. But he does want to talk about Q.

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Who doesn't? Other than what we've marked 1 AGNs. 2 Exhibit 3, any other e-mails between you and Gaskell? Okay. There is this back and forth with 3 Α. 4 Ski Antonucci about a detail. 5 Okay. About astronomy --Q. 6 Α. The detail on things. 7 Q. Nothing to do with hiring issues, lawsuits, or views on evolution, does it? 8 9 Α. No. 10 Q. Have you ever spoken to Patty Bender of the EEO office about this whole situation? 11 12 Α. No. 13 Q. You communicated quite a bit, it's 14 obvious, with Tom Troland about this hiring process 15 while it was going on. Correct? 16 Α. Right. 17 Q. You and Tom are friends, is it fair to 18 say? 19 Α. Yes. 20 You still friends? Q. 21 Α. Yes. 22 Okay. Other than the e-mails we've looked Q. 23 at, have you had conversations about the whole 24 Gaskell -- what we called it, the Gaskell affair, that 25 were not committed to e-mail?

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I don't remember. 1 Α. 2 How about with Professor Cavagnero? Q. He's the chair of the department. Right? 3 4 Α. Right. 5 Have you ever had any conversations with Q. 6 Professor Cavagnero about the hiring process for the 7 observatory directorship? 8 Only these e-mails that I know of. Α. 9 How about with Mike Kovash, who is also a Q. 10 member of the department, is he not? 11 Α. Right. 12 Have you had any discussions or Q. 13 conversations with Mike Kovash about the process of 14 hiring the observatory director? 15 No, not that I know of. Α. 16 And Tim Knauer is the individual who got Q. 17 the position. Correct? 18 Α. Yes. 19 Ο. Is he still in the position? 20 Yes. Α. 21 Q. All right. Have you ever discussed with 22 him the hiring process at any -- to any extent? 23 Α. No. 24 MR. MANION: Let's take a break now. 25 (Off the record.)

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1	MR. MANION: I have no questions.
2	(DEPOSITION CONCLUDED 11:02.)
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1 STATE OF KENTUCKY) 2 COUNTY OF FAYETTE) 3 I, ANN HUTCHISON, Registered Professional 4 5 Reporter and Notary Public, State of Kentucky at Large, 6 whose commission as such will expire May 3, 2012, do 7 hereby certify that the foregoing deposition was taken 8 by me at the time, place, for the purpose and with the 9 appearances set forth herein; that the same was taken 10 down by me in stenotype in the presence of the witness 11 and thereafter correctly transcribed by me upon 12 computer; and that the witness was duly placed under 13 oath by me prior to giving testimony. 14 I further certify that I am not related to nor 15 employed by any of the parties to this action or their 16 respective counsel and have no interest in this 17 litigation. Given under my hand, this 29th day of March, 18 19 2010. 20 21 22 ANN HUTCHISON, RPR Registered Professional Reporter 23 Notary Public, State-at-Large 24 25

Gary J. Ferland

Gary,

I'll try to catch up with you a bit later!

Sally did consult with the equal opportunity office on campus regarding your question (which I took as an interesting way of looking at the issues). I copy below her reply to me and to Mike regarding what she learned. It is apparent from what Sally reports that one cannot inquire into anyone's religious beliefs, and those beliefs are deemed irrelevant as long as the applicant agrees to teach whatever the institution has determined to be appropriate. Sally has made the point in e-mail and elsewhere that the K12 teacher outreach component might be compromised by a director who does not subscribe to all standard scientific concepts, not just astronomy concepts. I do not agree with this perspective since the director would never be asked to participate in biology outreach as far as I know. Also, the job description published in the AAS job register made no mention of K12 teacher outreach.

I predict that we will be asked to re-open the search and that the new job description (as well as all others aspects of the new search) will be carefully monitored by the equal opportunity office. Of course, I could easily be wrong about this prediction. However, everything I've heard from the equal opportunity folks (directly and indirectly) suggests that they will have a real problem with certain aspects of our search process. As you know, I do, too. And, of course, you have also been raising alarm bells for quite some time. Why didn't everyone see this coming long ago?

I get an extra hour of sleep tonight.

Tom

To: "'Thomas H. Troland'" <<u>troland@pa.uky.edu</u>> Cc: <<u>mike@pa.uky.edu</u>> Subject: RE: thoughts on Gaskell's biology Date: Mon, 22 Oct 2007 11:15:00 -0400

Tom

I am no expert but my understanding (based on conversations with UK EEO office) is that we must focus on the job description, and not on any individual's 'different' circumstances. We are allowed to present applicants with a full description / curriculum of the science that they will be expected to teach in the position (eg the National Science Education Standards for someone expected to work with KY teachers; or the department's astro curriculum including references to the origin of life if that subject is supposed to be taught) and to ask if they will teach the science as described. If they say yes, then we can have no objection. It is only after they are hired and do NOT teach as they agreed to that we would be in a position to take corrective action.

Conversely, once any applicant has agreed to teach the science in the way the curriculum describes, we may NOT ask if they will teach anything additional.

And indeed, as you point out, we should treat all applicants in the same way and ask the same questions of each.



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Sally

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At 07:31 PM 11/3/2007, you wrote:
>Hi Tom,
>I am deeper into my cups than you, by four hours (we went off summer
>time last weekend) - fireworks are going off everywhere - the pre Guy
>Faulks day weekend blast. I was thinking ....
>
>during the exchange of emails I made the comment about not penalizing
>people for deeply held religious beliefs, and Sally followed up with
wher statement that the education mission was important and the director
>would heavily influence Fayette County schools (never mind how Tim will
>do this). Then I sent an email, actually intending it to be totally
>sarcastic and cynical, asking whether the county schools checked which
>church their applicants attended. We would not want to hire a teacher who believed the
wrong thing.
>
>Sally took it seriously and offered to check into how the schools
>tested for this. Chairman Mike said the dean was on top of this so it
>was not necessary.
>
>the concept, where the public schools check on the religious background
>of applicants before hiring them, is so fundamentally un-American as to
>be impossible to consider. But at least some of us considered it seriously.
>
>this represents a loss of moral compass, never mind the rudder. what
>has happened?? this is McCarthyism at its worst.
>Gary
>
>Gary J. Ferland,
                           Tel (859)-257-8795
>Physics, U of Kentucky
>Lexington, KY 40506
                           Fax (859)-323-2846
>gary@pa.uky.edu
                           http://www.nublado.org
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