1 UNITED STATES DISTRICT COURT EASTERN DISTRICT OF KENTUCKY LEXINGTON DIVISION 2 CIVIL ACTION NO. 5:09-CV-00244-KSF 3 4 DEPOSITION OF MOSHE ELITZUR, Ph.D. 5 6 C. MARTIN GASKELL PLAINTIFF 7 v. 8 UNIVERSITY OF KENTUCKY DEFENDANT 9 10 The deposition of MOSHE ELITZUR, 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 Monday, April 12, 2010, beginning at the 18 hour of 2:04 p.m. The deposition was taken by notice 19 and shall be used for any and all purposes allowed by 20 the 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

**APPEARANCES** COUNSEL FOR THE PLAINTIFF: Francis J. Manion American Center for Law & Justice-Kentucky 6375 New Hope Road P.O. Box 60 New Hope, Kentucky 40052 COUNSEL FOR THE DEFENDANT: Barbara A. Kriz Baker Kriz Jenkins Prewitt & Jones, PSC 200 West Vine Street, Suite 710 Lexington, Kentucky 40507 2.4 

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1 MOSHE ELITZUR, 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. All right. And for the record, your name 7 is? 8 Α. Moshe Elitzur. 9 Spell the last name. Q. 10 Α. M-o -- first name is M-o-s-h-e; last name is Elitzur, E-l-i-t-z-u-r. 11 12 All right. Professor Elitzur, my name is Q. 13 Frank Manion, and I'm one of the lawyers for Martin 14 Gaskell in this case, and we've asked to take your 15 deposition this afternoon. 16 Now, we understand that you had very 17 little role to play, if any, in the hiring of the 18 observatory director, but your name does show up in an 19 e-mail, possibly another one, and so I'm going to ask 20 you a series of questions to try and find out what you 21 know or don't know about this whole process. 22 All of my questions and all of your 23 answers and anything Ms. Kriz may say is being taken 24 down by the court reporter, who is seated at the end of 25 the table here, and she's going to prepare a transcript

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1
    of my questions and your answers and anything Ms. Kriz
2
    has to say during this deposition. Do you understand
 3
    all that?
                  I think.
 4
           Α.
5
                  Okay. Have you ever been to a deposition
           Q.
    before?
 6
7
           Α.
                  No.
8
                  Okav.
                         It has the same legal effect as if
           0.
9
    you were testifying in court, and the transcript of this
10
    deposition can be used by either side in court if the
11
    case should go to court.
12
                       MR. MANION: Here comes my coffee.
13
                       (Off the record.)
14
           Q.
                   If I ask you a question that you don't
15
    understand, just tell me that you don't understand my
16
    question and I'll try to ask you a different question or
17
    rephrase the question. When you give answers to
18
    questions, you should try to always use words and not
19
    sounds like uh-huh or huh-uh, which we all use when we
20
    speak to each other --
21
                  Uh-huh.
           Α.
22
                   -- but cannot be -- like that.
           Ο.
23
    cannot be transcribed by a court reporter. Or they can
24
    be, but we're not always sure what they mean.
25
    the problem.
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1
                   This deposition should not take very long,
2
    I don't anticipate that it will, but if you need to take
 3
    a break for any reason, just let me know, and of course
 4
    we'll accommodate that request. Please wait for me to
5
    finish a question before you begin to answer, and I will
 6
    try to wait for you to finish your answer before I start
7
    jumping on you with the next question.
8
           Α.
                   Okay.
9
                   Any questions about the procedure?
           Q.
10
           Α.
                   No.
11
           Q.
                   All right. You are a professor in the
12
    physics and astronomy department at U.K.?
13
           Α.
                   I am.
                   What is your specialty?
14
           Q.
15
           Α.
                   Astrophysics.
16
                   And how long have you been a professor at
           Q.
17
    U.K.?
                   Since 1980.
18
           Α.
19
                   All right. As you probably know, this
           0.
20
    case arises out of the hiring of an observatory director
21
    at U.K. back in 2007. It's my understanding that you
22
    were not part of the search committee; is that right?
23
                   That's correct.
           Α.
24
           Q.
                   The reason that your name comes up at all
25
    in this case and the reason we asked for your deposition
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1
    today is that there's an e-mail that we've seen from
2
    Professor Cavagnero which he sent to the dean, Hock at
 3
    the time, and Provost Subbaswamy, in which your name is
 4
    mentioned, and in that e-mail Professor Cavagnero
5
    attributes a statement to you about Martin Gaskell, one
 6
    of the candidates for the job. According to
7
    Dr. Cavagnero's e-mail, he says that Moshe Elitzur --
8
    yourself -- thinks I -- meaning Cavagnero -- am making a
9
    huge public relations mistake by allowing the committee
10
    to even consider Dr. Gaskell.
11
                  Do you remember having a conversation with
12
    Cavagnero where you said something like that?
13
           Α.
                  I do.
14
           Q.
                  What can you tell me about that
15
    conversation?
16
                  I talked with some of the other committee,
           Α.
17
    I think it was Shlosman, and to how the search was
18
    going -- I just came from an overseas trip -- and he
19
    said who were the finalists, and we were surprised that
    Gaskell would be considered because he's a creationist,
20
21
    and this was a public outreach. And so I said that I
22
    will go and talk with Mike, and I did.
                                            And I came to
23
    Mike and I say -- I don't remember the exact words
24
    except for the final words. And I think I said, you
25
    know that he's a creationist. And Mike said, I do.
                                                          And
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1 I say that's a problem. And he said, well, he's in 2 Nebraska and that did not cause a problem. And I say, well, we are 70 miles from the creation museum and 3 4 there's no way you can avoid the headline in the 5 Herald-Leader saying U.K. hires a creationist for public 6 outreach. And when I say that, I think that point 7 registered with him, and that's basically -- was our conversation. 8 9 Okay. Other than that conversation, did 10 you ever have any other conversations with Cavagnero 11 about this whole question? 12 Α. No. 13 Now, you've indicated that you told him Ο. 14 that Gaskell is a creationist. 15 Uh-huh. Α. 16 When you said creationist, what did you Q. mean by creationist? 17 He advocates creation science. 18 Α. 19 And what do you mean by creation science? Ο. 20 Creation science is the idea that the Α. 21 earth was not from the -- as part of the Big Bang and 22 all this kind of thing, and that humans were not -- did 23 not evolve on earth, just like.... 24 And what was your basis for thinking that Q. 25 Gaskell advocates that?

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Α. That was known. I first heard of Gaskell, it was probably when he came here to give a talk in the mid, late '90s, and I was not here when he gave the talk, but I remember when -- I think Gary was the one who --Gary Ferland? Q. Α. Gary Ferland either initiated it or just mentioned it, and Gary said, yeah, he's a creationist and he's not hiding it. And I think before I talk with Michael -- so I went and looked at his website, and it was pretty much -- I don't recall the exact words, but after the first two sentences it was clear that that's his position, and I thought that would be a tremendous problem for the university to hire somebody like that in a public outreach position. You thought that it would cause a public Q. relations problem? Because that would mean that the institute of highest -- that the highest institute of higher learning in the state of Kentucky has an observatory director who is a creationist. I thought that's a -would be a terrible reflection on the university and on the state. And I still do. Okay. Other than -- I think you said that Q. it was known that Gaskell was a creationist.

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1
           Α.
                  As I say, it was known. I didn't know
2
    him. Later I know him because we are in the same --
 3
    because I'm involved in the same research that he is
 4
    doing, but at that time it was known because I had heard
5
    from Gary. Gary knew him. And there was nothing -- and
 6
    it was years before anybody consider anything about him.
7
    So I knew.
8
                  Okay. You say that you heard that he had
           Ο.
9
    given a lecture here at U.K. back in the 1990s.
10
           Α.
                  Yeah.
11
           Q.
                  But you were not here at the time?
12
           Α.
                  I was not here at the time, no.
                  So obviously you didn't attend the
13
           Q.
14
    lecture?
15
               I did not attend the lecture, no. I was
           Α.
16
    out of town.
                  And Gary Ferland has told you something
17
           0.
18
    about the lecture, though, you think?
19
           Α.
                   I can't remember that. But I remember
20
    before -- I don't remember, not the exact thing. It was
21
    such a sentinel event in my life.
22
                  I understand.
           Ο.
23
                  But I remember that that was the first
24
    time I heard about Gaskell and the first -- and going
25
    together that they were creationists.
```

1 Q. Did you ever read anything that Gaskell 2 wrote about that issue? Not other than the first two sentences or 3 Α. 4 so of his website. That was it. 5 So you're talking about -- there's been Q. lots of testimony in this case about a website. It 6 7 had -- some people have called it a paper, some people 8 have called it lecture notes. The title is "Modern 9 Astronomy, the Bible, and Creation." Is that what you 10 think you read the first new sentences of? Could be. It could be. 11 Α. 12 Okay. Did you look for the website, or Q. did somebody direct you to it? 13 14 Α. No, I did, because when I went to talk 15 with Mike, I just want to make sure that I'm not -- when 16 I went to talk with Mike, I just wanted a little bit more. So I just checked for it, and I read the first 17 18 couple of sentences and that was enough for me. 19 Ο. Okay. And you never read further in to 20 it? 21 Α. No. 22 You also mentioned that you had a Q. 23 conversation with Professor Shlosman? 24 Α. I just asked him how the search was going, 25 and that's how I learned, because I was not on the

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search committee. I came back from Europe, and I just
asked how are things, and by the way, how is the search,
and he just mentioned it.
              And when he mentioned Gaskell, you knew
who he was talking about?
              Oh, I know Gaskell. Since his talk, I
       Α.
know him also personally. I know him professionally.
              What do you think of -- what's his
       Ο.
reputation professionally in his field of astronomy?
       Α.
              He has a -- he has his detractors.
actually like him, and I like his -- I got to know him
professionally only the last maybe eight, 10 years or
so, because the area where he's involved, I became
involved in it only recently, the last ten years or so.
              Active galactic nuclei?
       0.
              Active galactic nuclei.
       Α.
                                       So I never
worked -- I never -- I knew about it, but I never much
worked with it. But the last ten years or so I did
something important so I became a big shot in the field
and I -- and so I bumped in to him at a meeting, and I
like him.
              When you say he has detractors, what do
       Ο.
you mean?
       Α.
              I think he's -- there are people who
think -- who have a very low opinion of his science.
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1 Q. Of his science. Of his science, yeah. They think that he 2 Α. 3 is very unreliable, people that I respect very much. 4 Ο. Can you think of any names of people? 5 Α. They're not even American. Q. That's okay. 6 7 Α. And he does have a little bit of a flair 8 which he -- which actually enjoys being a little bit 9 quirky. I like his quirkiness. And so -- in fact, when 10 he was here for the interview, then he asked me and we 11 went together for lunch, and we talked, it was a great 12 lunch. He had a new idea, it meshed very well with my 13 ideas, and so we were both very happy, and yeah, so --14 but when I mention something like that to somebody else whose opinion I respect very much, he wouldn't take --15 16 he considered him very unreliable, Gaskell, his science. 17 But as I say, I don't have any -- I like him, and I don't have any problem with his scientific works with 18 19 which I did have interface. Okay. So when he came for the interview 20 Q. 21 for this job, you actually went to lunch with him that 22 day? 23 Α. He asked me, yeah. He came and we talked 24 and then we went together for lunch. It was a great 25 lunch. Intermezzo.

1 Q. Intermezzo. I've heard about it, but I 2 haven't been there. 3 It's on campus. No, we had a great lunch. 4 It was a lengthy lunch. We talked science, and we were 5 both very happy. 6 My next question was did anything other Q. 7 than strictly science come up during that lunch? 8 Nothing at all. Α. 9 All right. So you had this conversation 10 with Mike in which you said --11 Yeah. Α. 12 -- Gaskell is a creationist, and you Q. 13 expressed your concerns about that. 14 Α. I said -- what I said is exactly -- that, 15 I remember very clearly, that there's no way you can 16 avoid the headline in the Herald-Leader that says U.K. 17 has a creationist. That was my point, and it makes my 18 point. 19 Ο. Sure. 20 And that's the one thing which I remember Α. 21 very clearly. Everything else I can't give you the 22 exact. 23 You've talked a little bit about Gaskell's Ο. 24 reputation among scientists for his science. Have you ever heard any other scientist talking about him as a 25

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creationist or not a creationist or -- in that whole
1
2
    issue?
                   I can't remember now, if at all, maybe
 3
           Α.
 4
    just -- not when you talk science, not when we talk
    science. If at all, then maybe -- maybe somebody talk,
5
 6
    he's doing this, he's doing -- hey, Martin is a
7
    creationist, but I'm not even sure.
8
                   Okay. You can't think of anything
           0.
9
    specific?
10
           Α.
                  No. Definitely not.
                   Okay. You had this conversation with
11
           Q.
12
    Mike.
13
                   Uh-huh.
           Α.
14
           Q.
                   Did you ever have a conversation with the
15
    dean or the provost about Gaskell?
16
                   Not at all.
           Α.
17
           0.
                   How about with any other members of the
18
    committee? You mentioned Shlosman, and Mike, who was
19
    not a member of the committee, but he was the chair.
20
    Anybody else involved in the search?
21
           Α.
                   No. I don't think so, no.
22
           Q.
                   Did you know Timothy Knauer before he was
23
    hired?
24
                   Oh, yes, sure.
           Α.
25
                   He had worked at U.K.
           Q.
```

1 Α. He was a grad student in our department. 2 He was a student in my classes. He was my student, 3 yeah. 4 0. Did you ever speak to anybody at Nebraska about Gaskell, either scientifically or the other 5 6 issues? 7 Α. Not at all. I don't know anybody over 8 there. By and large, other than Mike, I didn't talk to 9 anybody about this. So I'll tell you right away, you 10 don't have to ask. 11 Q. I'd like to ask you a few more questions 12 about what your definition is of a creationist. 13 other words, we've heard that phrase or that term a lot 14 here in this case, and I think you've already given me a 15 definition. 16 I think so. Α. 17 Ο. Is it your position that someone who 18 believes that the universe was created is a creationist 19 even if they also believe that it -- even if they also 20 believe in evolution? I mean, can someone believe in 21 both? 22 To be absolutely honest with you, I never Α. 23 bothered to think about these things. So I don't know 24 if I can tell you more than I just did. 25 Q. Okay. But from what you had heard about

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his talk and from reading the first few sentences --I did not hear about his talk. I only Α. heard before he came. Gary just mentioned him. The guy come and he's a creationist. I heard nothing about his I was not here and I didn't hear any... But you also -- you said that from reading Q. the first couple of sentences of his paper --It was clear, he was talking about theistic and atheistic -- atheistic principle -atheistic science and so on and so forth, which was enough for me to -- yeah. Other than the brief conversation you told Ο. me about with Mike and the conversation where you asked Shlosman how is the search going and he told you, can you recall any conversations with anybody else who was involved in the hiring process for the observatory director? Not at all. I don't think so. Α. Up until today. Ο. Up until today. Other than hearing from Α. Shlosman what happened, who was selected. Okay. Did you talk to anybody who has had Ο. their deposition taken in this case? Not at all. Α. And, of course, obviously you talked to Q.

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1
    U.K.'s lawyer today, which is perfectly appropriate and
 2
    expected. Right?
 3
                   Yeah. We just met.
            Α.
                   There you go.
 4
            Q.
5
                       MR. MANION: I think that's all I
 6
    have.
7
                       MS. KRIZ: I guess the e-mail is
8
    already introduced. I don't have any questions.
9
                        (DEPOSITION CONCLUDED 2:22.)
10
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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. 18 Given under my hand, this 12th day of April, 19 2010. 20 21 22 ANN HUTCHISON, RPR Registered Professional Reporter 23 Notary Public, State-at-Large 24 25