UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
LEXINGTON DIVISION
CIVIL ACTION NO. 5:09-CV-00244-KSF

DEPOSITION OF SHELDON STEINER, Ph.D.

C. MARTIN GASKELL PLAINTIFF

v.

UNIVERSITY OF KENTUCKY DEFENDANT

The deposition of **SHELDON STEINER, Ph.D.**, was taken on behalf of the plaintiff before Ann Hutchison, Registered Professional Reporter and Notary Public in and for the Commonwealth of Kentucky at Large, at the law office of Baker, Kriz, Jenkins, Prewitt & Jones, PSC, 200 West Vine Street, Suite 710, Lexington, Kentucky, on Wednesday, March 24, 2010, beginning at the hour of 11:29 a.m. The deposition was taken by notice and shall be used for any and all purposes allowed by the Federal Rules of Civil Procedure, including use at trial.

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(Above-referenced exhibits accompany original and copy transcripts.)

SHELDON STEINER, Ph.D.

having been first duly placed under oath, was examined and testified as follows:

EXAMINATION

BY MR. SURTEES:

Q. Good morning, Dr. Steiner. My name is Geoffrey Surtees. I am one of Dr. Gaskell's attorneys in his lawsuit against the University of Kentucky pending here in the United States District Court for the Eastern District of Kentucky.

Sorry, I just want to get the right name here.

Have you ever had your deposition taken before?

A. Yes.

Q. Oh, okay. And in what connection?

A. It was in connection to a pathogenic micro issue about food. Somebody was questioning -- as an expert witness.

Q. Okay. Have you served as an expert witness in any other cases?

A. No.

Q. Just that one case?

A. Yeah.

Q. And that was the only deposition you've

ever had?

A. Yeah.

Q. How long ago was that?

A. Oh, boy. Fifteen years ago maybe.

Q. Okay. I'm sure the process is exactly the same. Very straightforward. I'm going to ask you questions and you're going to answer them with the truth, the whole truth, and nothing but the truth. And the court reporter here will be taking down everything you say, I say, anything Ms. Kriz may say, and so because of that it's important that we not speak over one another. I will wait for you to finish your answer before I ask another question, and you should wait for me to finish my question before you answer it. Is that understood?

A. That's understood.

Q. It's also important that we both speak in terms of words with respect to responses. So no shaking of the head instead of saying no, no nodding of the head instead of saying yes. You can nod and shake all you want, but it's important that you say no and yes. And again, it's important to say no and yes instead of huh-uh and uh-huh and utterances like those because we're trying to get a clean record here and the more we speak in verbal words the cleaner the record will be.

Is that understood?

A. Yes.

Q. Dr. Steiner, this deposition is not going to take long at all, but if you need to take a break for whatever reason, please don't hesitate to ask and that's easily done.

A. I shall.

Q. Okay. Excellent.

Okay. Dr. Steiner, did you speak with anyone today regarding -- did you speak with anyone regarding today's deposition?

A. Yes.

Q. Okay. With whom did you speak?

A. The lawyer.

Q. Mrs. Kriz?

A. Yeah.

Q. Okay. Did you speak with anyone else regarding today's deposition?

A. No. I acknowledged that it was, but I didn't speak of anything.

Q. Okay. Sure. Did you consult any documents in preparation for today's deposition?

A. Yes, I did.

Q. Okay. And what documents did you consult?

A. The document that Dr. Gaskell had

online -- this is something else -- and some of the notes that I took regarding the document.

Q. Can I see a copy of that? Did you write that? Is that your own copy?

A. Yeah. It's not a complete copy.

Q. Did you write on there?

A. No, I just underlined.

Q. You just did some underlining?

A. Yeah.

Q. And did you do that underlining for yourself in preparation for today's deposition?

A. Yes, I did.

Q. Okay. May I just take a look at them?

A. Sure.

MS. KRIZ: Do you want me to make copies?

MR. SURTEES: Well, I don't know. I may not --

MR. MANION: Yeah, I would. Definitely.

MS. KRIZ: Okay. Well, let me make some copies.

(Off the record.)

MR. SURTEES: Can we mark that, please?

(Exhibit No. 1 marked.)

Q. Dr. Steiner, I'm showing you a document that has been marked Exhibit No. 1. It's a three-page document; is that correct?

A. Yes.

Q. And can you explain to me what this is?

A. Well, it's just -- you know, I've taken portions of Dr. Gaskell's online presentation just to -- which kind of, in my view, summarizes his opinions on different things.

Q. Okay. I see on page 3 of this document you have a definition there. It appears to be a definition of humanism; is that correct?

A. Yes.

Q. And where does this come from?

A. Well, he -- I didn't really know what the definition was that he uses humanistic. In my view pejoratively he uses humanistic statements in his document, and I wanted to know what is -- I wanted to know what -- you know, so I looked up the definition.

Q. Where did this definition come from?

A. Great source, maybe Google, something like that.

Q. Wikipedia perhaps?

A. It could be Wikipedia.

Q. And you copied -- you sought out this definition of humanism when?

A. Maybe yesterday.

Q. Okay.

A. Yesterday when I was reading this over.

Q. Okay. We'll return to that.

Did you make any notes in preparation for today's deposition other than what's contained in what we've marked?

A. No. No notes.

Q. Are you familiar with the name Martin Gaskell?

A. Yes.

Q. Okay. And when did you first become familiar with the name Martin Gaskell?

A. When contacted by the physics department.

Q. Okay.

(Off-the-record discussion.)

Q. I'm showing you a document which has been identified as Osborn Exhibit 1.

A. Right.

Q. Okay. It's an e-mail from Dr. Cavagnero to Dr. Osborn dated Thursday, October 4, 2007; is that correct?

A. That's correct.

Q. Okay. Just looking on page one there, it looks like this is the e-mail where Dr. Cavagnero asks Dr. Osborn to look in to Dr. Gaskell. Have you seen this e-mail before?

A. I have it. I didn't really read it. I skimmed it. I didn't really read it carefully.

Q. Although actually it doesn't appear his name is mentioned in this e-mail, but his name appears on the website which is cited in this e-mail, is this e-mail the first time that you learned of the name Martin Gaskell to your recollection?

A. There could have been a primer before that indicating that something was coming.

Q. Oh, okay.

A. But this is the first time -- it was at that time I read this there was any -- I saw any rhetoric, written rhetoric.

Q. So prior to getting the copy of this e-mail --

A. Right.

Q. -- did anyone from the physics and astronomy department speak to you about Dr. Gaskell?

A. Only Dr. Cavagnero. He called and said there was something coming.

Q. So you had a telephone conversation with

Dr. Cavagnero?

A. Yeah. And -- yeah.

Q. And what did Dr. Cavagnero say?

A. He apologized, you know, time loss and so on, and indicated that -- I think physics had some questions about biology, basically. I can't remember exactly, but some of the biological points that Dr. Gaskell had put forth, and they'd like to have an opinion. We do this all the time for other departments, like to have an opinion and, you know, the validity and the -- what we think about it, as I recall.

Q. Okay. Sure. And what did you say to Dr. Cavagnero?

A. Well, at that point I said fine.

Q. Did he indicate whether or not he wanted your opinion in writing or verbally, or did he not indicate anything along those lines at all?

A. In my case I was kind of peripheral. I was chairman. He was kind of doing it to be polite. And I think I, you know -- I don't think he requested anything from me in writing.

Q. Okay. Okay. After that conversation --

A. I don't remember.

Q. I'm sorry?

A. I don't remember really. I'm not real

sure.

Q. And that's perfectly fine. After your conversation -- and that was a telephone conversation, did you say?

A. Yeah.

Q. After your telephone conversation with Dr. Cavagnero, did you speak with Dr. Osborn regarding the request from Dr. Cavagnero?

A. If I did it was cursory. I didn't have a big conversation with him. May have mentioned something, but I certainly didn't discuss the details.

Q. Did you after receiving -- after having that conservation with Dr. Cavagnero, did you speak with Dr. Krupa regarding the request from the physics and astronomy department regarding Dr. Gaskell?

A. Again, without -- not going into details, because I hadn't had them at that point, I may have said something to him.

Q. You don't recall the details of that conversation?

A. No. No, I don't.

Q. At any time did Dr. Krupa ever say to you anything about a lecture Dr. Gaskell gave at Memorial Hall here at the University of Kentucky?

A. Yes, I believe he did.

Q. Okay. And what did he say to you about that lecture?

A. He said that he attended with some other ecology types, I think he said, and he got -- you know, he -- it was his first major exposure to the idea of intelligent design, you know, the first sort of public speech he heard. Now, what he knew before, I have no idea. At any rate, and it -- you know, he challenged some of the ideas in that talk.

Q. Okay. Did Dr. Krupa indicate to you how he challenged some of the ideas in the talk?

A. No, not --

Q. If you don't know, it's perfectly fine to say you don't know.

A. I don't remember. He may have, but I don't remember really. It wasn't high on my...

Q. Did Dr. Krupa indicate to the best of your recollection what Dr. Gaskell said during that lecture about evolution?

A. No, not enough to tell. I really don't remember the specifics of it.

Q. Sure. And I'm sorry, I'm going to have to keep --

A. That's okay.

Q. I'm trying to jog your memory here.

A. Getting old. Jog hard.

Q. To the best of your recollection did Dr. Krupa say anything about Dr. Gaskell and Dr. Gaskell's beliefs regarding creationism?

A. I don't think -- I don't think he used the term "creationism." He was talking about intelligent design.

Q. Intelligent design.

A. Yeah. I didn't hear anything about creationism.

Q. So again -- it's only to the best of your knowledge -- the focus of Dr. Krupa's challenge to Dr. Gaskell's presentation was about intelligent design; is that correct?

A. Yes. That's what I understood from the conversation.

Q. Sure. Did Dr. Krupa indicate anything about the content of the lecture itself, you know, prior to the question-and-answer period?

A. No, not at all.

Q. With whom, other than Dr. Krupa and Dr. Osborn, did you speak with regarding Dr. Cavagnero's request of the biology department?

A. I spoke to the dean. Yeah.

Q. And is that Dean Steve Hoch?

A. Yeah.

Q. And what was that -- tell me about that conversation.

A. Well, you know, the question was how appropriate was it for me to discuss issues of personnel hiring issues with somebody that was in the pack. And he told me I could not, that I was bound not to do that.

Q. Okay. Is this a conversation you had with Dean Hoch after the physics and astronomy department hired a person for the observatory director; do you know?

A. I don't believe so. I think it was before. I think Gaskell called me several times.

Q. Did he -- okay. I'm sorry. I'm violating my own rule, so go ahead.

A. And he was asking me, he initially said -- he called me about the situation, and I said I can't speak to you. I'm not sure I can speak to you, I'll check. Then I called up Hoch, and he said you can't while there was a process going on, you can't. You're obligated not to speak to any of the candidates. First of all, I wasn't on the committee, but that's not the reason he gave. He just said while the process is going forward, you cannot speak to the candidates because -- yeah.

Q. When did Dr. Gaskell make that phone call to you; do you recall? Do you recall just the month even?

A. Ask me about breakfast. I'm sorry, but I really don't remember. It was early-ish in the process. I don't think the decision had been made at that point.

Q. Do you know whether or not it was early in the interview process or early in the decision process?

A. Since I wasn't in contact with any of the -- I didn't know the decision process. You know what I mean? I was only very -- the only thing I had was this link, this evaluation link. I have no idea really because I just -- I didn't know where they were. I had no idea.

Q. And what was Dr. Gaskell asking of you, or why did he call you?

A. Well, what he said was that he was told that he didn't get the job because of his religion, and that could I comment on that.

Q. Okay.

A. And I don't know what his religion is. I mean, I -- first of all, I wasn't in that loop, but I had no answer. I didn't answer him. I just said I can't answer you because -- first I said I want to check, and then when I checked I was told definitely you

cannot answer that during -- if it's a personnel business.

Q. Okay. Okay.

MR. SURTEES: Can we mark this, I guess, Steiner 2.

(Exhibit No. 2 marked.)

Q. Dr. Steiner, I'm showing you a two-page document which has been marked Steiner Exhibit No. 2.

A. Right.

Q. It's a document that we -- that Dr. Gaskell turned over to the University of Kentucky in initial disclosures.

A. Right.

Q. Okay. At the bottom of that e-mail it says original -- I'm sorry, at the bottom of the page it says --

A. First page?

Q. Yeah, first page. At the bottom of that page it says from Martin Gaskell to Steiner, Sheldon. Correct?

A. Yeah.

Q. Okay. Then it goes on: Dear Dr. Steiner, I gather from people in the Physics and Astronomy Department that input was sought from the Biology Department on my candidacy for a position in Physics and

Astronomy. Since I'm unaware of any connection at all between my professional interests and biology, could you explain what happened here and what input you or your department provided? Sincerely yours, Martin Gaskell. Do you see that?

A. Oh, yeah.

Q. Okay. And now having seen that e-mail, are you -- would you still say that you had a telephone call with Dr. Gaskell regarding this request, or do you think maybe it was just an e-mail?

A. No, it was both.

Q. It was both. Okay.

A. I had a telephone conversation with him and this thing. In the telephone conversation he told me that, you know, that Dr. Cavagnero had told him it was because of his religion, and I -- that was the telephone conversation. But I was just told I couldn't -- I could not respond. First of all, I didn't know, I have no idea, because I wasn't in the search committee. I was just asked to do a small part.

Q. Sure.

A. But yeah.

Q. You just said something about Dr. Gaskell told you something that Dr. Cavagnero told him; is that correct?

A. Yeah.
Q. About his religious beliefs?
A. That's what he told me.
Q. Okay. Can you tell me what Dr. Gaskell told you, then?
A. He said something to the effect that he was told because of his religious beliefs that he didn't get the job.
Q. Okay. And he identified Dr. Cavagnero as the source of that to the best of your knowledge?
A. I believe so.
Q. What else did Dr. Gaskell say to you during that conversation?
A. It was quick because I said I can't talk to you. So I ended it, you know, I'm not allowed to talk to you.
Q. And how many telephone conversations did you have with Dr. Gaskell?
A. There were two, two conversations. First one I wanted to check things out, and then the second one was this -- he came at it. Yeah.
Q. So you had -- I'm sorry, there were two telephone conversations you had with Dr. Gaskell?
A. That's correct.
Q. Okay. And the first time he called you up

to --

A. Try to find out what was going on. I don't remember the exact words. I told him I can't. I got to check and see if I can. I did not --

Q. Okay. And then the second telephone conversation you had with Dr. Gaskell, did you call him?

A. No, no.

Q. And he called you?

A. He called me.

Q. And what was the substance of that?

A. Which is what I'm telling you, the latter, the latter conversation.

Q. So then when was the -- I'm trying to connect what you said with which conversation, telephone conversation.

A. The first conversation I told him I couldn't talk to him.

Q. Okay. You had to check?

A. I had to check, see what's going on. And I checked with Hoch, and he told me you can't.

Q. Okay.

A. The second conversation there was a volley opened up, and I told him the same thing after I heard the volley, I can't talk to you.

Q. Okay. Anything else you can remember

about those telephone conversations with Dr. Gaskell?

A. They were quite short, I mean, because I wasn't inclined to discuss anything with him.

Q. Okay.

A. Because I was told not to.

Q. Sure. And so after your first telephone conversation with Dr. Gaskell, you spoke with Dean Hoch. Correct?

A. Yeah.

Q. And did you speak with him on the telephone or was it a face-to-face?

A. No, it was a telephone call.

Q. Okay. Again, we touched on it earlier, but to the best of your recollection tell me everything about that telephone call with Dean Hoch.

A. Well, I just asked him if it was appropriate for me to speak with Gaskell, a candidate, and he said no, you're not supposed to speak to candidates while the process is going forward.

Q. And did you talk at all about Dr. Gaskell's scientific beliefs?

A. No. He's an historian. I mean, there's no point in that anyway, but not at all. I was just interested in the one fact, whether I could communicate or not, and I was told I could not.

Q. Let's look again at Steiner Exhibit No. 2.
A. Sure.
Q. So you e-mailed Dr. Gaskell, correct, and it says: No one in the biology department was on the search committee. Do you see that?
A. Yeah.
Q. Okay. This e-mail exchange on January 15th and then January 16, 2008, did this take place before or after or sometime between the two telephone conversations with Dr. Gaskell that we were just discussing?
A. I believe, but I'm not sure, that it was before.
Q. Okay. And on your e-mail to Dr. Gaskell you cc'd Dr. Cavagnero. Correct?
A. Yeah, I guess I did.
Q. And that was just out of courtesy and respect because Dr. Cavagnero is the chairman. Correct?
A. Oh, yeah. Of course.
Q. Okay. Any other conversations with Dean Hoch about Martin Gaskell other than the one that we've just discussed?
A. No.
Q. Have you at any time ever discussed Dr. Martin Gaskell with Provost Subbaswamy?

A. Discussed it, no.

Q. Okay. Have you ever mentioned it to --

A. I may have at a lunch, at one lunch. We had a lunch; I may have said something, I forget what, just on passing, but there was no discussion.

Q. No discussion. Okay.

Did you go to that lecture that Dr. Krupa told you about?

A. No, I did not, huh-uh.

Q. Did you hear anything else about that lecture other than from Dr. Krupa?

A. Just what was online.

Q. Okay. And you're pointing to --

A. I just took pieces out. I mean, I read it.

Q. Okay.

A. You know, I read the lecture.

Q. So it was your understanding that the lecture notes that you copied from -- in preparation for today's deposition --

A. Yeah.

Q. -- were the lecture notes for the lecture that Dr. Gaskell gave in 1997?

A. He put online, the one that was online. I don't remember the date. I didn't...

Q. That's fine. Is the biology department to the best of your knowledge often consulted regarding applicants for positions in other departments of the college in the College of Arts and Sciences?

A. Frequently.

Q. So you weren't surprised, then, to receive this request from the physics and astronomy department?

A. No.

Q. Dr. Steiner, I want to show you something that we marked as Osborn Exhibit No. 4. That appears to be the professional website at the time of Dr. Martin Gaskell. Do you remember ever seeing that before, visiting that website?

A. I may have visited it. I don't remember. I very well may have, but I don't remember it. I didn't study it.

Q. Okay. That's fine. I'm showing you something we marked as Osborn Exhibit No. 5, looks like a printout of another web page. Have you ever seen that web page before?

A. I could well have, but when I start looking through things, I may have, but I didn't study them.

Q. And then Osborn Exhibit No. 6 appears to be a printout of a website from the University of

Nebraska titled Professor Profiles, Martin Gaskell. Have you ever seen that before?

A. I may have. You know, as I was flipping through the web looking at stuff, I may have very well looked at all of those, but I didn't -- I couldn't tell you what's in them.

Q. Sure. I understand. So to your knowledge, Dr. Osborn wrote a response to Dr. Cavagnero. Right?

A. Yeah.

Q. And do you know whether or not Dr. Krupa wrote a response to Dr. Cavagnero?

A. Yeah, he wrote a response to Dr. Cavagnero.

Q. And then you wrote a response as well. Correct?

A. Yeah.

Q. And we'll get to that response in a moment, but I want to show you now what we've marked as Osborn Exhibit No. 8, Modern Astronomy, the Bible, and Creation. Have you ever seen that document before?

THE WITNESS: Is that the one I took the stuff from?

MS. KRIZ: If you want to compare them.

A. That's the one I took my -- those quotes from.

Q. I would suggest, but you can confirm, that the document that you brought with you this morning were excerpts from this document, Exhibit No. 8.

A. Then I saw it.

Q. Okay. Then you did see it.

And when did you first see that?

A. After the request from physics to, you know, examine, to look -- to get a biologist's perspective of this material that he's publishing in areas of biology.

Q. Okay. And then you reviewed it again, correct, in preparation for today's deposition?

A. Yeah. Well, I just -- yeah.

Q. Skimmed it?

A. Skimmed it.

Q. Okay. Dr. Osborn, at the time that you --

A. Steiner.

Q. I apologize. It's these exhibits.

A. With lawyers here, I'm afraid you'll change my name.

Q. Dr. Steiner, at the time that you first read this --

A. Yeah.

Q. -- with the goal in mind of responding to Dr. Cavagnero's request --

A. That's correct.

Q. -- what did you think of this document, generally speaking?

A. I thought, you know, it was -- it had a lot of -- it was a mixture of science and theology in many ways. Humanism was downplayed. It was in my view pejoratively dealt with. Atheism was pejoratively dealt with as not an acceptable alternative. But basically there were a couple of phrases that pinpointed the mixture between science and religion.

Q. What do you suppose was the principal aim of this paper?

A. I have no idea.

Q. Do you consider -- did you at the time consider this to be a work of scientific research?

A. Versus...?

Q. Nonscientific research.

A. I think it was an attempt to be scholarly research.

Q. You would consider this a scholarly paper?

A. It was an attempt to be a scholarly paper, yes.

Q. Why do you say that this is a scholarly

paper?

A. Well, it's published. He gave references, all kinds of references. I mean, it's not just a -- he didn't just write something. He wrote something with references and quotes and taking different pieces of, you know, things from other articles, and that's basically how I would define a scholarly work, or an attempt at a scholarly work, where you back up what you say with supporting documents. That's the way I see it.

Q. Sure. To your understanding is that the common understanding of scholarly paper in the scientific community?

A. I think so. If it doesn't have references -- you know, if you're not referencing things, then it could be just whatever. But when you start pulling either historically or you start pulling in references and quotes and things of that from other -- I would consider it a scholarly work or an attempt at a scholarly work.

Q. Sure. Do you know whether or not this was ever published in a journal or --

A. No. It was online, though.

Q. Sure.

A. A lot of current scientific works go online without being hard copied.

Q. Absolutely. I guess that's the way of science these days, huh?

A. Particularly in physics.

Q. Sure. And you must read countless scholarly journals and articles. Correct?

A. I used to.

Q. Well, during the time when you were doing that, would it be frequent that you would see a citation to a personal website in support of a proposition?

A. Not frequent, but I've seen it.

Q. You've seen it?

A. Yes. Not frequent, but I've seen it.

Q. Dr. Thomas Troland of the Department of Physics and Astronomy testified a couple of weeks ago that he didn't consider this a scholarly paper. So you would disagree with Dr. Troland, then?

A. I would disagree with him.

Q. And just to be clear, the reason why you believe it's a scholarly paper is because it's --

A. It's cited. He cited.

Q. There are citations?

A. Right. He's trying to make his point with literature support.

Q. Sure. Okay. So is that what the distinguishing feature, then, would you say, of a

scholarly paper are citations?

A. Yeah, using citations and quoting others and trying to support your position with literature. That would be distinguishing. If he just wrote this without -- you know, just on the fly, it would be different I think.

Q. The fact that he references -- describes them as lecture notes, does that change at all your opinion of whether or not this is a scholarly paper?

A. No. There are great lecture notes that have become part of the literature.

Q. And the title of the paper, Modern Astronomy, the Bible, and Creation, do you have any expertise in astronomy?

A. No.

Q. Biblical interpretation?

A. No.

Q. Cosmology?

A. Layman's understanding of cosmology.

Q. Sure. Okay. Well, we can't be experts in everything. Right?

And what scientific biological conclusions, if any, does Dr. Gaskell reach in this paper that you dispute? I should make it clear, Dr. Steiner, it's at the time. So at the time that you

read this on your first reading.

A. Sure. "While discussing controversies and interpretations of Genesis I should mention something that is not an interpretation of Genesis, what is called "Intelligent Design." This movement, which is often erroneously confused with young earth creationism, is simply exploring the question of what evidence there is in the universe for design by an intelligence. This is a general, nonreligious question, and there is no opinion on the interpretation of Genesis."

That's a classic statement confusing science and religion. It is a religious statement. Intelligence designed by the...

Q. Do you believe that's a biological scientific conclusion, what you just read?

A. Yes.

Q. What is intelligent design?

A. It's a hypothesis which argues that an intelligent source designed a lot of the features of biological systems, a supernatural force I would say.

Q. And do you believe that intelligent design is an interpretation of Genesis?

A. It's not the Genesis part of it. It's the evolution part of it.

Q. And what do you mean by that?

A. I mean a lot of explanations of how things evolve are interpreted by intelligent design folks as being created by a supernatural being.

Q. Did you take this statement that you just read from Modern Astronomy, the Bible, and Creation, did you take that to mean that Dr. Gaskell does not subscribe to the theory of evolution?

A. No.

Q. Do you know whether or not Dr. Gaskell subscribes to the theory of evolution?

A. He does. He says so in that article. But this modification is, in my view, a serious breach of modern evolutionary biology. It does have -- it has no place in evolution.

Q. Does Dr. Gaskell say that intelligent design does have a place in evolution?

A. This line -- to me I interpret it to mean that he does. It's a scientific explanation of evolution. The general nonreligious question. And there's no opinion -- and so on. It is a religious question. And that's very important if that's the way you think.

Q. Does Dr. Gaskell indicate, though, that he accepts the theory of intelligent design in this paper?

A. This is in his writing. I interpret his

writing to mean that -- in fact, he states it here that he does.

Q. I'm sorry, and where does he state that? I'm just trying to be clear, sir.

A. Okay. "While discussing controversies and interpretations of Genesis, I should mention something that is not an interpretation of Genesis, what is called intelligent design. This movement, which is often erroneously confused with young earth creationism, is simply exploring the question of what evidence there is in the universe for design by an intelligence."

This is general, nonreligious question. That's his statement, modifying the previous statement.

Q. Sure.

A. That's his statement.

Q. That is his statement, but I'm sorry, I don't see here that he is saying that he does in fact accept the theory of intelligent design. And just so we're clear, you do read those words to mean that he does accept the theory of intelligent design?

A. By stating that he thinks that this is a general nonreligious question, in my view he's accepting the basic tenet of intelligent design.

Q. Is intelligent design always and everywhere according to your opinion, Dr. Steiner, a

1 religious issue? Or let me rephrase. Could intelligent
2 design not be viewed as a philosophical doctrine as
3 opposed to a religious doctrine?
4 A. It's my understanding, which is limited,
5 I'm not a --
6 Q. Sure.
7 A. -- that it's always used in a religious
8 context.
9 Q. And what works on intelligent design are
10 you familiar with where that is -- the religious aspects
11 of intelligent design are put forth?
12 A. Well, implicit in that is that there's a
13 supernatural force that makes flagella, and nothing else
14 could do that. A watch is made by a watchmaker,
15 therefore flagella is a good example that's used. I'm
16 aware of that. Plus the fact there are other -- there
17 are modifications of flagella, but things too complex to
18 evolve, and that there must be a hand in it, I assume a
19 supernatural hand.
20 Q. Dr. Steiner, at the time that you read
21 this, I believe you said you didn't think that
22 Dr. Gaskell was antievolution; is that correct?
23 A. That's correct.
24 Q. But what about -- would you have called or
25 described Dr. Gaskell as a creationist?

A. He certainly wasn't what he uses the short term creationist. I mean, believes that the world was formed in 6,000 years, he doesn't believe in that.

Q. He doesn't believe in that.

A. No.

MR. MANION: You mean young earth creationist.

THE WITNESS: Young earth creationist.

A. That's not my area. But -- so I can't go beyond -- I mean, I don't know.

Q. That's fine. That's fine.

Dr. Steiner, so I asked you to identify any biological, scientific conclusions Dr. Gaskell reaches in this paper that you would dispute, and you identified this paragraph about intelligent design. Correct?

A. That's correct.

Q. Are there any other biological, scientific conclusions Dr. Gaskell reaches in this paper that you would disagree with?

A. I think there's a -- well, not directly. There's an intolerance in it to other points of view, but that's a philosophical question, using the word atheist and humanist in a pejorative manner. In my view that's --

Q. Oh, sure. Well, assuming that, yes, that Dr. Gaskell uses humanist and atheist in a pejorative manner, that has nothing to do with biology, does it?

A. No.

Q. And would you say that's sort of beyond your expertise?

A. Yes. I agree. I agree. It is beyond.

Q. So other than -- again, just to be clear, other than that one statement that you cited, there are no other biological, scientific conclusions that Gaskell reaches in this paper that you would dispute? I should say, Dr. Steiner, this is not a test. I'm not trying to trick you. I'm just asking just to identify everything.

A. No, I understand. He also talks about -- he talks about -- "but the real problem with humanistic evolution is the unwarranted atheistic assumptions and extrapolations." That basically is a biological issue. In other words, he's arguing humanists would say that there's chemical evolution or the Big Bang happened, just happened. That's physics -- but would say that life, whatever. He's arguing. And then he says it is the latter that the creationist should really be attacking. To me that's biology. He's talking about only one interpretation about creationism.

Q. So do you think that philosophical -- the

philosophical implications of a scientific theory is itself a scientific conclusion?

A. Say that again.

Q. Would you say, then, that the philosophical implications of a scientific doctrine themselves constitute a scientific conclusion? In other words --

A. I'm not clear.

Q. That's fine. I apologize. I'm just trying to say is that you are criticizing Dr. Gaskell's discussion of atheistic humanism; is that correct?

A. As it relates to creation.

Q. Okay. And I'm just wondering whether or not the real issue is a philosophical issue that you may have with Dr. Gaskell -- well, Dr. Gaskell's point in that paper, or is that really a biological issue?

A. It's nonscience. That's what my problem is with it. It's nonscience.

Q. Okay. That is not a scientific statement?

A. It's not testable. It's not science.

Q. Okay.

A. That's my only problem with it. If he wrote a -- well, that's my problem with it. It's also the problem with the intelligent design. It's not testable.

Q. It's not testable. In that second -- the second error that you pointed to on atheistic humanism, you think that that statement that you read is a -- that Dr. Gaskell thinks that's a scientific conclusion?

A. He's mixing up science and religion. I can't tell what's in his head, but he's mixing those two factors up. When you get in to -- he's mixing the two factors up.

Q. Okay. Any other biological, scientific conclusions Dr. Gaskell reaches in this paper that you would object to?

A. No, but I'm sorry I didn't study it more carefully.

Q. I'm only asking because you did sort of refresh your memory with it recently.

A. Yeah.

Q. That's all you can point out right now?

A. Yeah, I mean, I just -- I skimmed it. I remember reading that.

Q. Is there anything in this paper which indicates that Dr. Gaskell does not appreciate or understand or has deficiencies in the scientific method?

A. I'm not -- I don't -- I'm not able to answer that based on this paper.

Q. Okay.

A. I have no idea.

Q. Very fair. Okay. Okay.

(Off-the-record comments.)

MR. SURTEES: Let's go ahead and mark that.

(Exhibit No. 3 marked.)

Q. Dr. Steiner, I've given you an exhibit which we have marked Steiner 3. Just familiarize yourself with that document. And I'm really kind of curious as to the -- I want to ask you about the last e-mail because it's an e-mail -- well, it's a copy -- again, it's a copy and paste of your e-mail to Dr. Cavagnero. In fact, it's entirely on the last page, page 3.

A. Okay.

Q. And we have no e-mail headings here. This e-mail, it appears that Dr. Cavagnero copied and pasted an e-mail that you wrote to him into an e-mail that Dr. Cavagnero sent to numerous members of the physics and astronomy department. So that copy and pasted e-mail appears on page 3. Could you just read through that and tell me whether or not you remember writing this.

A. Yeah, I do remember writing it.

Q. To the best of your knowledge is there

anything sort of missing from this e-mail? Does it look like everything -- you wrote everything in this e-mail?

A. Yeah.

Q. Take your time.

A. Yeah. Okay.

Q. Okay. Dr. Steiner, you began the e-mail by saying: Biology would not hire an individual who supports the thesis that the sun revolves around the earth. No matter how good a biologist he or she was. Correct?

A. That's correct.

Q. And were you -- why did you write that?

A. Basically because in reviewing other disciplines, even though a person might be adequate in biology, if they basically believe that the sun revolves around the earth, we wouldn't hire them. The basic science, the broader context of their science to me would be inadequate. And I would ask the physics people or whatever to look at it. That's the point of that, just that.

Q. Were you making an analogy, then, between an individual who supports the thesis that the sun revolves around the earth and Dr. Gaskell's positions in Modern Astronomy, the Bible, and Creation?

A. Not particularly. I was just --

Q. So you weren't saying that Dr. Gaskell's position as set forth in Modern Astronomy, the Bible, and Creation is not as absurd as someone who supports a thesis that the sun revolved around the earth?

A. The point of this was only to say that, you know, that we -- I was agreeing that you should have biologists look because it's an important element. People are publishing or putting stuff on and publishing stuff, and if it were reverse, I'd want to get information from the physics department. That's what I meant by that.

Q. Okay. Excellent. And then you continue: Regarding the public ignorance about evolution which we combat in biology today [sic]. Just -- and then you quote something, we'll get to that in a second. But then regarding the public ignorance about evolution, did you think that Dr. Gaskell was ignorant about evolution?

A. If he believes in intelligent design, then I think he's ignorant about evolution, yes.

Q. And we've already -- and you think he does, correct, believe --

A. I think that's clear -- clearly states that he does in my opinion.

Q. Okay. And then you -- it looks like you maybe copied and pasted something here in your e-mail

from Religious Might, the Church of Bush by John Steinberg, raw story columnist. See that?

A. Yeah. I don't remember.

Q. I'm just wondering, what is the Church of Bush?

A. I have no idea. I don't remember why I put that.

Q. Okay. That's fine.

A. I went off on something, I don't know.

Q. Just real quick, you say in the second sentence of this quote from the Church of Bush, or maybe that's not a quote of Church of Bush or whatever, "A 2001 Gallup poll found that 45 percent of Americans believe evolution is flat-out wrong."

Now, I believe you told me that in your opinion Dr. Gaskell does not believe evolution is flat-out wrong.

A. A scientific explanation of evolution. I do not think that he believes that a scientific -- strictly scientific explanation of evolution is correct. I think he's got the general flow, but I don't think he believes. I think he thinks there's a supernatural force involved. That's my impression. And that's religion and evolution.

Q. But do you think that that supernatural

force is a religious belief or a scientific belief or both?

A. Religious. Just looking at his article, it's religious. All the quotes he does, they're all from religious documents.

Q. So would you say, then, that to the extent that Dr. Gaskell is incorrect about evolution, it's because of his religious beliefs?

A. You know, I can't read his mind. I'm just telling you what he wrote. What he wrote was that he thought there was a -- you know, that there's a supernatural element in evolution. I don't know where it comes from. I have no idea.

Q. But do you know where that comes from, that there's a supernatural element in evolution?

A. I assume it's religious in nature. With him particularly I have no idea. You know, his paper would certainly suggest that's where it's coming from, but I haven't spoke to the guy about that.

Q. Uh-huh. So you are familiar with the statement by Dr. Gaskell in his paper: I believe -- quote, I believe the evidence for common descent of species is very strong, and I have no personal theological trouble with the theory of evolution.

A. Yeah, I read that.

Q. And that's why you said earlier that you didn't think that Dr. Gaskell was antievolution?

A. That's correct. He's not antievolution, but I think he's mixing up science -- he's mixing up evolution and religion. That's, in my view, what intelligent design is.

Q. And in your view is that a reason why Dr. Gaskell should not have been hired for the position of observatory director?

A. I wasn't on the committee. I have no idea what the other elements were. You know, that's one input. If I could have sat on the committee, I could have -- you know, tell you -- there are lots of other inputs, and I have no idea what those were. This one thing is an isolated thing.

Q. Sure. Would you ever fight against an applicant in the department of -- for the department of biology a person who subscribed to the theory of intelligent design?

A. Would I hire one?

Q. Yeah. Would you ever hire one?

A. No.

Q. And why not?

A. Because --

Q. Again, I'm sorry.

A. -- it's mixing religion and science. It's supernatural. It's untestable is why.

Q. Sure. Are you familiar with Bradley Monton?

A. No.

Q. He was a professor of philosophy or assistant professor or associate professor, I'm not sure all of these academic titles, professor of philosophy at the University of Kentucky for about five, six years?

A. (Witness shakes head.)

Q. He wrote a book, I think it's called, Finding God and Science, an Atheist Defends Intelligent Design. You're not familiar with that book?

A. No.

Q. Okay. And then at the conclusion of the e-mail to Mike Cavagnero you write: I had experience in the U.K. Senate in which colleagues from the School of Engineering challenged evolution as a science.

What happened there? Describe that experience if you could?

A. Okay. There was a move afoot -- there was a rule that was set back in the Vietnamese War which indicated that you had to be tolerant of alternative explanations regarding the war, and that was an administrative reg or something, administrative

regulation, and I moved to modify that saying that -- one of the classes -- may have been Krupa, but I'm not sure -- one of the classes students were challenging on that kind of basis saying that, well, you have to take our -- you have to take our position, which is that of creationism, intelligent design, I wasn't sure exactly, one of those two -- and I said that's -- you know, you should modify and express what you think. Intelligent design is not a science, it's not a scientific hypothesis. And to teach that would be leading the students astray. And then some guy in the Senate said do you mean to say you think there's evidence of evolution. The guy from engineering said that. That's the basis of that. And I said yes.

Q. But someone could be a good engineer and believe in intelligent design at the same time. Right?

A. They could be a good engineer, a good person, and believe whatever they believe. I mean, I'm not -- I mean, it's not a -- just caught me by surprise.

MR. SURTEES: Okay. Can we just take a five-minute break here? You can go feed your meter.

(12:30 off the record 12:43.)

Q. All right, Dr. Steiner, we are back on the record. I want you to take a look, if you would, at Steiner Exhibit 1 one more time. Those were a copy of

the notes that you brought with you this morning; is that correct?

A. That's correct.

Q. Now, why did you excerpt these passages in particular from Modern Astronomy, the Bible, and Creation?

A. This is the only thing I had, and I just skimmed it and took things that I thought represented his positions on things -- on things that had to be evaluated, things associated with biology.

Q. Associated with biology or associated with religion?

A. Well, a mixture.

Q. Okay.

A. Where there's confusion.

Q. Sure. Let's go back briefly to Dr. Gaskell's lecture in 1997 at the University of Kentucky. I know you weren't there.

A. That's correct.

Q. Do you know who invited Dr. Gaskell to speak at that lecture?

A. I have no idea.

Q. Do you know whether or not it was the physics and astronomy department?

A. I have no idea.

Q. Do you know what topic he was asked to give a lecture on?

A. I have no idea. I had no contact.

Q. Sure. And I may have asked you this before, but I don't have a running transcript with me, and I wish that they that would come up with that technology. What in your mind at the time that you were reading these papers --

A. Right.

Q. -- did you have any definition for the word "creationism"? You identified earlier Dr. Gaskell was not a creationist in your view. Correct?

A. Not a short-term creationist. I don't know about -- I mean, who believes the world -- I'm not sure about the other. I'm not sure that he doesn't believe from his article, I'm not sure that he doesn't believe that a supernatural force created things. Some of his statements would certainly imply they do, but that's -- you know, he doesn't believe in the world 6,000 years old and that sort of thing.

Q. So according to Dr. Gaskell's terms, in your understanding, Dr. Gaskell would not be a young earth creationist. Right?

A. That's correct.

Q. Okay.

A. For sure.

Q. But in your view Dr. Gaskell, according to this paper, may be a creationist if he believes that there is a supernatural origin to the universe; is that correct?

A. That's correct.

Q. Would you have any objections to a creationist working as a biologist in the department of biology at the University of Kentucky?

A. As long as he kept his creation, you know, his religious views and his biology views totally separate, because -- you know, I can't tell unless I saw the whole thing, but, you know, there are a lot of religious people on campus who believe in a divine origin, and I don't have a problem with that.

Q. Again, this is pure speculation so feel free to speculate here, and it will be noted as speculation. Do you think Dr. Gaskell would have been able to separate his religious from his scientific views in serving as an observatory director at the University of Kentucky?

A. I can't answer that question. I have doubts based on this kind of writing. I have serious doubts as to when he's in outreach, I understand that that position had a fair bit of outreach associated with

it. I can't tell. I mean, I don't know the guy. I don't know the man.

Q. Sure. But you had doubts?

A. It would not surprise me, you know, if he mixed the two up. I don't know. You asked me to speculate.

Q. I did.

A. That's really where I'm coming from on that.

MR. SURTEES: Okay. I have no further questions, Dr. Steiner.

MS. KRIZ: And that's all for me.

(DEPOSITION CONCLUDED.)

STATE OF KENTUCKY)
COUNTY OF FAYETTE)

I, ANN HUTCHISON, Registered Professional Reporter and Notary Public, State of Kentucky at Large, whose commission as such will expire May 3, 2012, do hereby certify that the foregoing deposition was taken by me at the time, place, for the purpose and with the appearances set forth herein; that the same was taken down by me in stenotype in the presence of the witness and thereafter correctly transcribed by me upon computer; and that the witness was duly placed under oath by me prior to giving testimony.

I further certify that I am not related to nor employed by any of the parties to this action or their respective counsel and have no interest in this litigation.

Given under my hand, this 2nd day of April, 2010.

_____
ANN HUTCHISON, RPR
Registered Professional Reporter
Notary Public, State-at-Large