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

DEPOSITION OF STEVE ELLIS

C. MARTIN GASKELL PLAINTIFF

v.

UNIVERSITY OF KENTUCKY DEFENDANT

The deposition of **STEVE ELLIS** 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, May 5, 2010, beginning at the hour of 10:07 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

25 transcript of plaintiff only.)

STEVE ELLIS

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

EXAMINATION

BY MR. SURTEES:

Q. Would you state your name for the record, please.

A. My name is Steve Lee Ellis.

Q. Mr. Ellis, my name is Jeff Surtees. I am one of Dr. Martin Gaskell's attorneys in his lawsuit against the University of Kentucky, pending here in the Eastern District of Kentucky, the United States District Court. Have you ever had your deposition taken before?

A. Yes.

Q. Okay. In what connection?

A. In the military court system, different cases.

Q. Okay. In what capacity were you giving deposition testimony? As a witness?

A. I was an officer in the military and so...

Q. Okay. Does that go years back?

A. Yes.

Q. How long were you in the military?

A. Twenty-three years.

Q. Well, then, you are well familiar with

what a deposition is all about.

A. Certainly.

Q. It's a very simple and straightforward procedure, a question-and-answer period. I ask questions and you answer them under oath as you just swore or affirmed you would do.

Because there's a court reporter taking down everything we say, it's important that you verbalize all your responses. A mere shake of the head or nod of the head is not sufficient. The court reporter can't take that down. Please refrain from saying uh-huh and huh-uh for yes and no, she can't take those down either, even though actually they usually do. It's still better to say yes and no?

It's also important that we not speak over one another. Please wait for me to finish my question before responding. I'll wait for you to finish up any of your answers before I ask an additional question.

If you don't understand a question that I ask, please feel free -- more than free -- to ask me to either rephrase it or to repeat it and I'll do my best to do so. Because again we're having a transcript made of this deposition, it will be assumed that if you answer a question of mine that you understood what my question was. And so that's why it's important for you

to ask me to clarify any questions that you may not understand. Again, this is a painless procedure. We're not going to be here long, but if for whatever reason you need to take a break, please don't hesitate to say so and we can accommodate you for that.

Did you speak with anyone regarding your deposition here today this morning?

A. I have not.

Q. Did you speak with Ms. Kriz?

A. Yes.

Q. Okay. Other than Ms. Kriz?

A. No.

Q. Okay. And in preparation for today's deposition, did you review any documents?

A. Yes. The two e-mails that were -- I think there's three e-mails that have statements that I have made in them.

Q. Review any other documents other than those three e-mails?

A. No.

Q. Did you speak to Dr. Cavagnero regarding Dr. Cavagnero's deposition?

A. I did not.

Q. Did you speak with any person regarding any deposition testimony they may have given in this

case?

A. No, I did not.

Q. And is it Mr. Ellis or Dr. Ellis?

A. Mister.

Q. Okay. Mr. Ellis, what is your current position with the University of Kentucky?

A. I am -- my title is the instructional lab specialist. I'm also an instructor in several courses, basically a jack-of-all-trades in certain areas there.

Q. How long have you been with the University of Kentucky?

A. Fifteen years.

Q. And have you had that same position at the University of Kentucky that whole time?

A. Yes, I have.

Q. And just a little bit about your professional background. You mentioned earlier you were in the military.

A. Yes.

Q. When did you begin with the military?

A. I began with the military in 1971 and served as a combat arms officer for 23 years in the Airborne Rangers cavalry, a number of different positions, but also I served as a research and development officer with my scientific background, of

course. And I did some time teaching; I taught at West Point and St. Bonaventure University before coming here.

Q. And your academic background. You say you've taught in the science field.

A. Yes.

Q. What education have you had in the science field?

A. I got my undergraduate degree from Ohio State University in Aero-Astro Engineering, and master's degree in Physics from St. Bonaventure University.

Q. In the year 2007 you served on a committee to help the University of Kentucky fill a position for an observatory director for the MacAdam Student Observatory; is that correct?

A. That's correct.

Q. How did you come about to be on -- be placed on that committee?

A. Well, I think I was selected to be on there being a staff member, as opposed to a faculty member, to give that perspective, since the person that would be hired would be working as a staff member in our relatively small group of staff, you know, to give my perspective and my understanding of what that person would be doing.

Q. And so how was the invitation or the

request extended to you to serve on that committee? Did it come from Dr. Cavagnero, from someone else?

A. I believe it was Dr. Cavagnero.

Q. And to the best of your recollection -- and again, everything we discuss today is to the best of your recollection. If you cannot remember, you cannot remember; that is fine. Don't hesitate to say so.

A. Okay.

Q. Who else was on that committee with you?

A. There was Dr. Troland, who was the chair of the committee, as I understood it; there was Sally Shafer, Keith MacAdam; Dr. Cavagnero was there, but I think as kind of an external observer on it; from time to time Moshe Elitzur and Isaac Shlosman were on the committee. I think that's all.

Q. And what was your understanding of the purpose of this committee?

A. To select from the candidates that had applied for the position of director of the observatory, to select the primary candidate or the person who would receive that position.

Q. Was it your understanding while you were on that committee that however -- whatever the committee decided would be the candidate, or was the decision of the committee a recommendation to Dr. Cavagnero or to

the dean, or -- I'm just trying to understand what exactly the role of the committee was. Was it purely advisory? I've had like five different questions in that, but if you can see where I'm going, feel free; otherwise, I can stop and ask again one step at a time.

A. Well, I wasn't -- I suppose that wasn't exactly clear, but I understood my role to be advisory in nature. The purpose of me being there was to give my perspective on the different candidates.

Q. Okay. Explain to me, again to the best of your recollection, the process by which the committee undertook its search. Did it begin with receiving applications from the candidates?

A. Yes.

Q. And then after the candidates submitted their applications, what was the next step in vetting the best person for the job?

A. From my standpoint, and I didn't participate in all the committee meetings, was to look at the candidates' submission, look at what background they had, their experience and the skills that they would bring to the position, and then evaluate them and give some priority as who we should move forward and actually invite to come and interview face-to-face. There was also in most cases a phone interview on the

reduced candidates list that they would talk to as well. And like I said, I didn't participate in all of those.

Q. Did you participate in any telephone interviews?

A. In my recollection, I don't think so.

Q. Did you participate in any face-to-face interviews with the candidates?

A. Yes.

Q. And with what candidates did you have face-to-face interviews with?

A. With Martin Gaskell and Tim Knauer.

Q. Anyone else?

A. No.

Q. Do you know whether or not there were other candidates who went through face-to-face interviews other than Dr. Gaskell and Mr. Knauer?

A. I don't recall if that was the case. Those are the two that I remember being associated with.

Q. Approximately, to the best of your recollection, how many meetings of the search committee were there?

A. I would say I attended less than ten, probably somewhere between five and ten.

Q. And did those, the meetings that you participated in, did they stretch -- you say between

five and ten. Did they stretch from the very beginning when the applications started coming in to the final decision or the final vote, or did you start participating in the meetings after the face-to-face interviews were completed?

A. No, I participated in the meetings just before the face-to-face interviews began.

Q. Prior to your face-to-face interview with Dr. Gaskell, which we'll discuss down the road here, had you ever heard of Dr. Martin Gaskell?

A. No.

Q. In 1997 it appears Dr. Martin Gaskell delivered a lecture at Memorial Hall at the University of Kentucky. Were you present at such a lecture?

A. No.

Q. Did you ever hear about that lecture?

A. Not until our discussion in committee.

Q. So not until the search was underway for an observatory director did you ever hear tell of this lecture by Dr. Gaskell; is that correct?

A. That's correct.

Q. What did you hear about the lecture during the committee hearings?

A. There was a discussion that he had spoke at the university and that there were some, I guess,

notes attached from that lecture, attached to the website that he had, and that in some people's opinion some of the things he said were controversial.

Q. Did anyone at the -- at these meetings that we're discussing say that they were at the lecture?

A. I don't recall. I believe perhaps Tom Troland was there, being that he was an astronomer at that time, but I don't -- I don't know for sure. I don't recall him saying that.

Q. So you don't recall -- do you recall what Dr. Troland said about that lecture?

A. Only that it had occurred and that there was some controversy about remarks at the end of the lecture.

Q. Do you know whether or not Dr. Gaskell was invited, at least in part, by the Department of Physics and Astronomy to deliver that lecture?

A. No, I do not.

Q. You may have answered this question before, but just so it's clear. In 1997 did you hear that such a lecture was going to be presented at Memorial Hall and chose not to go, or you just don't recall anything at all about this lecture until --

A. I don't recall anything about it.

Q. -- until after the selection process

began?

A. That's correct.

Q. Okay. And have you exhausted your memory about the committee meetings discussing the lecture in question? Do you recall anything else anyone said about the 1997 lecture and what Dr. Gaskell may have said?

A. No, nothing else.

Q. Okay. I'm going to go through a couple of documents here, Mr. Ellis. If you can mark that.

(Plaintiff's Exhibit No. 1 marked.)

Q. Mr. Ellis, I am showing you a document we have marked Exhibit No. 1. Have you ever seen this document before? Please feel free to take the time to look at it.

A. This document in this form, I don't believe I have seen.

Q. Okay.

A. I may have seen parts of it as far as the background of Dr. Gaskell, but I haven't seen it in this complete form.

Q. Do you recall seeing a CV of Dr. Gaskell?

A. Yes. Parts of it.

Q. Okay. And you think maybe the CV that you saw is maybe similar to this or had parts of it?

A. I believe it had pieces of information;

for instance, the employment record here and some other things that I had seen. I'm not sure if it was a CV or not, a complete CV.

Q. Okay.

MR. SURTEES: Mark this, please.

(Plaintiff's Exhibit No. 2 marked.)

Q. I'm showing you, Mr. Ellis, what we have marked as Exhibit No. 2. Have you ever seen this document?

A. No, I have not.

Q. Okay. Let me start again here because I'm going to add something to it. Have you ever seen this document in paper form or on a screen, computer screen?

A. No, I have not.

(Plaintiff's Exhibit No. 3 marked.)

Q. Mr. Ellis, I'm showing you what we've marked as Exhibit No. 3. Have you ever seen -- again, take your time to look through it. Have you ever seen this document before, either in paper form as you've just been presented with or on a computer screen?

A. No, I have not.

(Plaintiff's Exhibit No. 4 marked.)

Q. Mr. Ellis, we're showing you what we've marked as Exhibit No. 4. Have you ever seen this document before, either in paper form or on a computer

screen?

A. No, I have not.

Q. You're making things very easy.

A. I hope so.

(Plaintiff's Exhibit No. 5 marked.)

Q. Mr. Ellis, I'm showing you what we have marked as Exhibit No. 5. Have you ever seen this document before, either in paper form or on a computer screen?

A. I have not.

Q. Can I ask you just to thumb through those pages and think about that again?

A. For this particular document?

Q. Yeah. Just that one.

(Witness reviews document.)

Q. Not trying to trick or trap you, I just want to be sure that, in fact, you have never seen this before.

A. No. No, I have not.

Q. Okay.

(Plaintiff's Exhibit No. 6 marked.)

Q. Mr. Ellis, I'm showing you a document we have marked as Exhibit No. 6. This appears to be a four-page document. The first page contains an e-mail from you to, it appears, the members of the committee.

I've attached to this document the e-mails of others just for context's sake, if you wanted to take a look at those, but I'm really only going to ask you about page one here.

A. Uh-huh.

Q. Could you just describe for me what this e-mail is that you sent to the committee.

A. I -- whenever I sit on a committee like this, I try to steer the committee to a standard form of questioning so that we can compare our observations when we interview a candidate to -- in the same venues, and this was a list of things that I was -- that I talked to Martin Gaskell about when I -- and Tim Knauer in the same vein. When I sat down, I had a personal interview with each of those two.

Q. Did you take any notes of those interviews?

A. I did not.

Q. And it appears -- well, let me just ask it. Did you send this e-mail out the morning that the committee met to discuss the three candidates?

A. I don't recall exactly how this fit in in the scheme of things but...

Q. And you say here, "I interviewed all three candidates." One of those candidates was Dr. Gaskell;

is that correct?

A. That's correct.

Q. And Mr. Knauer?

A. That's correct.

Q. And who was the third?

A. To be honest with you, I do not remember.

Q. And then we have your list of questions that you asked of all three candidates; is that correct?

A. Yes.

Q. And do you recall what Dr. Gaskell said during your face-to-face interview? I'm not asking you -- if you wish, that will be fine as well, to go through each of these questions, but I'd just like to know to the best of your recollection what Dr. Gaskell talked about during that face-to-face interview.

A. It was hard to get him to answer the questions specifically. He was obviously more comfortable talking about his agenda and what he wanted to do coming here to the University of Kentucky. In my recollection, I found it very hard to get him pinned down to the particular answers of what he wanted to do -- what he could do for us in the venues of both bringing on this new observatory and in the area of outreach, which were the two major considerations for the candidates. So I wasn't able to get answers that

specifically answered the questions that I wanted to in that interview.

Q. Sure. You mentioned the word "agenda." What did you mean by that?

A. Well, he had -- as I recall, had research that he was involved in at his position that he wanted to bring forward and to continue in his position here, and I use the word "agenda" to follow that because it was outside of the scope of what I was considering his job to be in fitting in to the job here as director of our observatory. It seemed that the observatory, the things that I thought were salient to doing the job in the observatory, were secondary to what he wanted to do, and that's why I called it an agenda.

Q. Was it your sense, either during or after your face-to-face interview, that Dr. Gaskell would have not abided by directions or guidance as to how he should run the observatory?

A. I don't know if I can extrapolate that type of a decision from what I got out of this interview. I do know that he had very strong opinions on what he wanted to do that came out of the interview.

Q. So it was your understanding at the time that Dr. Gaskell would not have been a good fit for the observatory based on a preconceived agenda? Is that...

A. Based on my knowledge of what it would take to bring this new facility on line and make it a functioning part of the department, he did not appear to be a good fit for that, at least he hadn't given a lot of thought to what it would take and what he would do to overcome or to accomplish those tasks that needed to be done in my opinion.

Q. Are you familiar at all with Dr. Gaskell's work with observatories elsewhere?

A. Yes. He had a good deal of experience in running a public observatory and -- at least from what our discussions had told us before, and he had mentioned that in the interview that he had that experience in doing that, but it was very brief.

Q. Did he mention whether or not anyone in the U.K. Physics and Astronomy Department had visited him in Nebraska to seek advice on the building of the MacAdam Student Observatory?

A. Not in this discussion he didn't, did not mention that.

Q. Did he say that to you on some other occasion?

A. No, but we had discussed that in the committee.

Q. During the face-to-face interview with

Dr. Gaskell, did the subject of religion come up?

A. Never.

Q. Did the subject of biological evolution come up?

A. No.

Q. Did his lecture in 1997 ever come up?

A. No.

(Plaintiff's Exhibit No. 7 marked.)

Q. Mr. Ellis, I'm showing you what we marked as Exhibit No. 7. Have you ever seen this three-page document before?

(Deponent reviews document.)

A. I do not recall ever having seen it.

(Plaintiff's Exhibit No. 8 marked.)

Q. Mr. Ellis, I'm showing you a document we've marked as Exhibit No. 8. It's a two-page document. It appears to be an e-mail from Tom Troland to the members of the committee. Would you agree with that assessment?

A. That it's an e-mail?

Q. Yeah, that it's an e-mail from --

A. Yes.

Q. -- Dr. Troland to the members of the committee --

A. Yes.

Q. -- dated Monday, September 24th. And you were a recipient of this e-mail?

A. I believe so, yes.

Q. Is Ellis@pa.uky.edu your e-mail?

A. Yes.

Q. Okay. It appears to be Tom Troland's conclusion based upon, quote, "much deliberation" of a meeting of the search committee whereby they looked at several factors, which are indicated in the e-mail, and then gave assigned numbers to each of the candidates based on those factors. Do you remember participating in this meeting where these factors and these numbers were arrived at?

A. In that particular meeting, no, I do not recall having attended that one.

Q. Mr. Ellis, you said that you have -- you sat in on numerous meetings of the search committee and --

A. Yes.

Q. -- that the name of Dr. Gaskell came up. Correct?

A. Yes.

Q. I'd like you to think about and then tell me everything that you can recall, and I mean everything that you can recall, that was said about Dr. Martin

Gaskell. Let's begin with his experience. What was said about Dr. Gaskell's experience during the search committee meetings?

A. We talked about, as you had mentioned previously, his experience in managing and operating a telescope facility similar to ours. We talked about his experience working with students and some of his research that bordered on -- that used students, and as part of the research to develop it. We talked about his teaching experience.

Q. Do you recall -- I'm sorry.

A. No, go ahead, please.

Q. Well, staying on the subject of experience, do you recall anyone on the committee saying anything negative about Dr. Gaskell's teaching experience, previous teaching experience?

A. No.

Q. Did anyone on the committee, to the best of your recollection, cast doubt on Dr. Gaskell's abilities as a scientist?

A. Can you clarify what you mean as abilities as a scientist?

Q. Sure. Let be back up and say it this way. What was said about Dr. Gaskell's scientific credentials that you can recall?

A. Yes. And it relates back to some of his comments in public forum. There was some question as to the scientific rigor by which he drew some of the conclusions which he stated in supposedly this lecture that -- and particularly the comments at the end. And I believe that was the venue which the doubt was stated.

Q. So the doubt stated with respect to Dr. Gaskell was doubt with respect to biological evolution; is that correct?

A. I believe that was the subject, yes.

Q. Was there any doubt cast on Dr. Gaskell's abilities as an astronomer?

A. No. Let me clarify that.

Q. Sure.

A. There may have been some doubt cast about time lines.

Q. I'm sorry, what was that?

A. Time lines; for instance, the evolution of the universe.

Q. Okay.

A. As I recall.

Q. And who discussed -- what members of the committee discussed Dr. Gaskell -- Dr. Gaskell's views with respect to biological evolution?

A. Are you asking who brought it up?

Q. Who brought it up?

A. That came from Sally Shafer, a member of committee, and she had -- she, being on a very large grant with several biologists and had consulted with them, particularly as it might affect other things that Dr. Gaskell might do, and that's where that came up.

Q. Anyone else on the committee discuss Dr. Gaskell's views with respect to biological evolution?

A. Well, it was brought up in the open committee forum, so it was discussed; but most of the committee members didn't see any relevance in how it applied to his application for this particular position except for the fact that some of his views may be a bit controversial and that we need to be prepared to -- you know, to work with him, if you will, to make sure his views were expressed properly and in support of the university.

Q. Did you say anything during the committee meetings with respect to Dr. Gaskell's alleged position on biological evolution?

A. My comments were particularly what -- in the nature of what I just said, that these views, particularly in the setting in Kentucky, were certainly on the forefront of scientific discussions and that the

university needed to be -- if we hired Martin, we needed to be prepared to address those in an open and proper way and prepare to, you know, support or guide Martin in how to do that. So it was kind of an additional feature that came with this particular candidate, and most of my comments were of that nature.

Q. Did you say the word -- this was an issue that was foregrounded in Kentucky? I'm sorry, what did you say with respect to this being an issue?

A. Well, there are within Kentucky -- you know, the views of evolution versus creationalism are on the forefront, you know, they're in the news a lot, and so if and when this was addressed by someone from our department, we needed to be prepared to -- you know, to support both sides of it and discuss both sides of it openly. I guess I was just, you know, highlighting this as a portion of what this candidate brings to the table.

Q. Did anyone discuss during these committee meetings the creation museum?

A. It was mentioned that we have one in Kentucky; and, of course, that goes along with what I just said, that, you know, there would be discussions about the differences between these two ways of looking at our world.

Q. Did anyone during the committee

discussions opine that Dr. Gaskell was a creationist?

A. What do you mean by opine?

Q. Oh. Convey the opinion.

A. Convey the opinion that he was a creationalist?

Q. Creationist, yes.

A. Convey the opinion.

Q. Did any --

A. Can you rephrase that?

Q. Sure. Sure. Did anyone during any committee meeting say something to the effect of Dr. Gaskell is a creationist?

A. Not that specifically. They said that some of his comments could be attributed to his scientific belief in creationalism, but not, you know, he is a creationalist. I don't think -- at least I didn't have, you know, enough information to say yes he is or he isn't because I hadn't talked to him about that.

Q. You bring that up, Mr. Ellis. What was your opinion with respect to Dr. Gaskell and his stance, to the best of your knowledge what his stance was, on biological evolution?

A. I did not have a real opinion on it. I'm not knowledgeable enough in the argument to be able to

comment one way or another.

Q. So you would not have characterized Dr. Gaskell at that time as a creationist?

A. No.

Q. Did you believe at that time that Dr. Gaskell did not accept the fact and theory of biological evolution?

A. I had no knowledge or information either way.

(Plaintiff's Exhibit No. 9 marked.)

Q. Mr. Ellis, I'm showing you a document we've marked as Exhibit No. 9. This is an e-mail from Dr. Cavagnero to the members of the committee, including yourself, subject line reading: Something to think about. Do you recall receiving this e-mail?

A. Yes.

Q. And in that e-mail Dr. Cavagnero has a link to a website beginning -- it's underlined -- http: etc.

A. Uh-huh.

Q. Did you click on that link?

A. I did not.

Q. And why did you not do that?

A. I didn't think it was relevant to, particularly in line of the questions and things that I

had developed, to my decision on his suitability for candidacy for this position.

(Plaintiff's Exhibit No. 10 marked.)

Q. Mr. Ellis, I'm showing you a three-page document we've marked as Exhibit No. 10 from Dr. Cavagnero to the members of the committee, including yourself. It appears it's in response to what Dr. Ferland wrote to the members of the committee, and in this e-mail Dr. Cavagnero is discussing this whole issue of Dr. Gaskell, and for lack of a better word, creationism, biological evolution, and his position on this.

The reason why I wanted to show this to you is because the next e-mail I'm going to show you references dowsing, and for the sake of the record, I wanted to make sure that everyone knew that you did, in fact, not attend the National Institute for Quantum Dowsing.

But anyway, when you read this e-mail did you then click on that link that Dr. Cavagnero sent out earlier after you read this e-mail? Looked like it was becoming a subject of discussion here.

A. I did not.

Q. Did you think it still wasn't really all that relevant to at least what you were envisioning the

ideal candidate would be?

A. Not to my consideration.

(Plaintiff's Exhibit No. 11 marked.)

Q. Mr. Ellis, I'm showing you a document we have marked as Exhibit No. 11, yet another e-mail from Dr. Cavagnero to the members of the committee, subject line reading: the biologists weigh in. This is an e-mail from Dr. Cavagnero to the members of the committee sharing with them the comments from the three University of Kentucky biologists regarding Dr. Gaskell. Do you recall reading this e-mail?

A. I do.

Q. Did you read the entirety of the e-mail?

A. Probably not entirely. I remember seeing it and looking through it.

Q. After reading this e-mail did your opinion of Dr. Gaskell change in either way?

A. No, not of Dr. Gaskell, but of the controversy that might exist here at the university in this venue. I mean, this showed me some detailed opinions, at least in what I scanned through here that -- strong opinions that other people had that might cause conflict.

Q. Could you elaborate on what you just said about how the conflict or the controversy was

accentuated or something? I'm not sure exactly what you said. I'm trying to get at -- it didn't change your opinion of Dr. Martin Gaskell as such, is that correct, this document --

A. No.

Q. -- Exhibit 11? But it brought -- but it raised a concern? Is it correct to say that it raised a concern in your mind about hiring Dr. Gaskell?

A. It raised the idea of a scientific controversy, but scientific controversies are part of a university. You know, if we look at the last century there were hundreds of -- is light a wave? Is light a photon? You know, is it a particle? What is it? Major fist fights and arguments. All it did was basically show specifically some different opinions, if you will, or scientific statements of belief that were different from Dr. Gaskell's. I'm not sure I answered your question.

Q. Dr. Osborn in this -- in his comments references what we have marked -- may I just look through your pile here?

A. Uh-huh.

Q. -- what we have marked as Exhibit No. 5, Modern Astronomy, the Bible and Creation. After reading Dr. Osborn's comments did you then read this document

that we've marked as Exhibit No. 5?

A. No, I did not.

Q. I know I asked you that, but while we go through the process, sometimes people's memories are triggered so I just wanted to double check. And so did you think that the controversy that could ensue as a result of the university hiring Dr. Gaskell was a strike against him in your mind?

A. No.

Q. And why not?

A. As I stated previously, controversy is part, in particular, of the scientific side of any good university, and being able to discuss different ideas is also part of a university.

Q. Do you think, then, it would be unfair for anyone on the committee to take in to consideration the potential of a controversy in deciding whether or not to hire Dr. Gaskell?

MS. KRIZ: Let me object to the form of that question. But you can answer it if you can.

Q. Could you restate it?

(Last question read.)

A. I didn't think that was relevant to our consideration or the things we should be looking at for the candidate to fill this position.

Q. Did you speak with anyone about the biologists' e-mail?

A. Other than what was brought up in the committee meeting? I don't recall having talked to anyone about it.

MR. SURTEES: Can we just take a five-minute break here?

(A break was taken.)

Q. Mr. Ellis, we were just at break. Prior to the break, we were discussing Dr. Gaskell and potential controversy that could ensue if the University of Kentucky hired him as the observatory director. And to your knowledge was this controversy based solely on science or on religion or something else entirely?

A. The controversy was that of science and different ways of looking at science and what has happened, and observations, if you will.

Q. Let me mark this now. The reason why I'm asking you is because of -- that question is because of this e-mail.

(Plaintiff's Exhibit No. 12 marked.)

Q. Mr. Ellis, I'm showing you a two-page document that we have marked as Exhibit No. 12. And is it correct to say that this is an e-mail from you to Dr. Cavagnero and the members of the committee?

A. Yes.

Q. And is dated October 8, 2007?

A. Uh-huh.

Q. And would you agree with me that this e-mail is in response to the previous e-mails we discussed from Dr. Cavagnero, subject line reading: something to think about?

A. More directed at what we were discussing in the committee and afterthoughts, you know, going back to my office and sitting down and thinking about the direction I was going with all this information, but yes.

Q. But it was in response to Dr. Cavagnero, at least in part -- the only reason why -- just for the sake of the record am I saying all this because the subject line reads: Re: something to think about. The previous e-mail we looked at from Dr. Cavagnero, the subject line read: something to think about, and then you also in the first paragraph of this e-mail make the joke about the famous NIQD, the National Institute for Quantum Dowsing, which Dr. Cavagnero mentioned dowsing in the previous e-mail. I have to admit when I first looked at this e-mail and did not recall the context, I was a bit shocked, and I thought, well, that would be an interesting line of questioning, but then I --

DR. CAVAGNERO: You didn't Google it.

Q. -- I went back, I saw your e-mail, and I thought okay.

A. Yes.

Q. Anyway, so now the record is clear on all that. You actually did not go on a sabbatical to the NIQD.

A. Not yet.

Q. Maybe one day. Okay. Maybe there'll be a quantum dowsing museum.

Anyway, Mr. Ellis, in this e-mail you discuss both Martin Gaskell and Tim Knauer. So I want to go through this carefully with you. The second -- the first paragraph under the line "Regarding Martin," reads: I believe I am the only one on either the staff or the faculty besides Bill, Rick and Charles that has actually been in harm's way in support of our basic freedoms, particularly religion and speech. Asking a candidate about their views would be inappropriate.

A few questions about this paragraph. First of all, who is Bill?

A. Bill Fuqua, Rick and Charles are veterans in the department.

Q. In the department of...?

A. Physics.

Q. Physics and astronomy?

A. Uh-huh.

Q. And what did you mean by you and these other members have actually been in harm's way in support of your basic freedom, particularly religion and speech?

A. When you go in to a situation where someone is shooting at you and you may have to shoot at them, you tend to think very carefully about why you're there and, you know, why you're not sitting at home with your family, drinking a beer and playing with the kids at the time. And that's all I meant by that. Anyone that's been in a situation like that has to think very carefully about the basic freedoms that we have here and why we're in some godforsaken place in the world doing what we're doing.

Q. Well said. Why did you reference religion?

A. Well, I guess it's an underlying theme in everything that we discussed here about the two scientific trains of thought or directions of thought, at least in one of them, normally associated with ideas coming from a particular segment of our society. It has to do with the subject of whether we bring religion in to what we say or whether we leave it out in kind of a

cold, calculating thing. And scientists that I've looked at, you know, differ on this opinion. One might say that, you know, I believe in one train of thought, but I also believe in -- you know, that it may have been directed by some higher authority. And there's all kinds of different ways, but I think it's underlying everything that we've talked about.

Q. When you say --

A. To a certain extent.

Q. Sure. When you say it's been underlying everything, you mean religion; is that correct?

A. Yeah, religion and freedom of speech. I think they go together in this particular instance.

Q. You then go on in the second paragraph and say, "That said, we have public source information to consider in this case. And I clearly believe that Martin's views will become very public and problematic for the university at some point in the future." At the time that you wrote this, what public source information did you have in mind?

A. Well, the discussions in the committee referred to the outreach program, which is very public-type thing, and also the public viewing sessions at the observatory. Those two venues would be a place where these might surface.

Q. And you say, "I believe that Martin's views will become public and problematic for the university at some point in the future." At this time, what was your understanding of what Martin's views were?

A. Once again, my knowledge of him came from our committee discussions, and it stems from the theory of creationalism versus the theory of evolution, and that's what I'm -- that's the controversy that I'm talking about that could become problematic. Problematic is not in a negative way but just something that you need to deal with.

Q. And then you go on in this paragraph and discuss how it possibly could be dealt with. Correct? I mean, you say, "I would strongly suggest that possible scenarios be war-gamed and position papers and press releases be drafted for the appropriate response at each administrative level."

So you were making the suggestion that if Dr. Gaskell became the observatory director, perhaps the university ought to think about how it would handle someone in the media attributing to Dr. Gaskell certain views with respect to creationism or evolution not being attributed to the university and the university having to have some sort of response. Is that what you're sort of --

A. I think for a university, that's prudent in any situation that there is a controversy associated with it. Being prepared from a public information standpoint is key to any major organization in today's society, and that's what I was trying to, perhaps poorly, state it to.

Q. It's actually very well stated.

In the next paragraph you say, "Other information that's surfaced about Martin's previous employment appears to be more directly related to our selection process. One of the goals of any good interview is to predict future performance by looking at past actions. Martin's actions after being hired as a teacher and then doggedly buying out of his primary duties (to the dissatisfaction of his peers) is a strong indication of his intentions here." What did you mean by that statement?

A. Well, this was something that came up once again in the committee discussions, and to me it showed, I don't know how to say this, an aversion to doing the job that you were hired to do. I think it goes back to my previous comments on an agenda that takes you away from the primary tasks that need to be done to be successful in the eyes of the department, college, university in making the observatory a functioning

component of our organization.

Q. You say doggedly buying out of his primary duties. What did you mean by doggedly there?

A. Well, perhaps consistently. At least the information that I had from discussions in the committee said that he had done that regularly.

Q. Do you know who said that to you?

A. I knew you were going to ask that, and I was trying to remember. I do not recall who said it in the committee, but I know it was said in the context of a committee discussion.

Q. Do you know how many times Dr. Gaskell bought out his primary duties?

A. Statistically, no.

Q. Was it your understanding that if Dr. -- strike that.

Is it your understanding that whoever became observatory director, or even Mr. Knauer today, can buy out of teaching?

A. Could you restate that?

Q. Sure. Is it your understanding that the observatory director at the University of Kentucky can somehow buy out of teaching duties, to give those duties to someone else in order to do some other form of academic activity?

A. As a staff member, no. But as a faculty member, there is a mechanism for buying out of teaching duties.

Q. Is the observatory director to your knowledge a staff position or a faculty position?

A. It was designed as a staff position, a primary staff position within the department, that's correct.

Q. So as a staff position, Mr. Knauer today or Dr. Gaskell, if he had become director, could not have bought out of teaching as a staff member; is that correct?

A. As I understand the mechanisms at play. It's part of the job description and therefore, as defined by the chair, it needs to be performed as directed.

Q. Okay. Turn with me, if you would, to page number two under the line Tim Knauer. "Addressing the comment about Tim's prickly nature," I'm not sure if I provided you with an e-mail where Tim's prickly nature is discussed. What do you recall about the comment about Tim's prickly nature?

A. Tim was employed previously at the university and actually worked for me as the lecture demonstration specialist. There were a couple of

instances where he was rather curt, brash to other members of the staff, I think it was a librarian or something that got in to an altercation, and that is what the nature of this comment was. And it really -- I think it came -- I'm not sure whether Keith MacAdam brought it up, I forget who was the chairman at the time when this happened, but it was brought up in discussion in the committee, and so I felt a need to address this from my knowledge of what was said. Some of it is rather sensitive, I guess, in nature, but I thought it was pertinent.

Q. But what came up during the committee meetings about Tim's demeanor? Was it his diabetic condition or was it his prickly nature?

A. Well, it was a comment about this altercation. I mean, we obviously have more direct knowledge about Tim because he had worked here. People on the committee saw him and observed him and, rightly so, it was brought up in the discussion of this particular candidate.

Q. In the last sentence of that paragraph we were just looking at, "This information and our discussion of it are just as sensitive as Martin's freedom of speech and religious beliefs." Why did you mention there Martin's religious beliefs?

A. Once again, I feel that the issues that were raised at least border on both of these basic freedoms that we have. I have no knowledge that Martin's comments that were referenced in the committee are coming from a religious belief, and that's probably an assumption on my part, but they certainly are a freedom of speech issue that I felt was not appropriate to be discussed in the same way that Tim's health condition was an appropriate factor in discussing him as a candidate.

Q. You say that you were once a supervisor to Mr. Knauer; is that correct?

A. That's correct.

Q. And explain to me that supervisory relationship. What position did Mr. Knauer have at the time?

A. As I mentioned before, he was the what we call the lecture demonstration specialist, and under the overall umbrella of my duties the lecture demonstration support area falls under my responsibility, and he occupied that position for a time, particularly when I first arrived at the university. So he was -- I supervised him.

Q. How many years did you supervise him?

A. I think it was -- I don't recall exactly.

It was two to three, I believe. He was also a graduate student at that time, and when he finished his graduate work he moved on.

Q. Did you participate in any telephone interviews with Mr. Knauer?

A. I don't recall whether I did or not. That whole part you asked me about before is a little fuzzy. I may have, but I don't recall.

Q. But you did have a face-to-face interview with Mr. Knauer; is that correct?

A. I did.

Q. And how did that interview go? What were your impressions after the conclusion of that interview?

A. I felt that from my previous experience with Tim that he had -- he had gained knowledge and experience that would help us in the direction that we wanted to go with the observatory. He seemed to be very open to exploring the outreach portion of it -- it was part of the concern -- and in particular the overall implementation or getting the observatory off the ground and integrated in to the operations of the department in a very effective way. And I guess finally open to the guidance, you know, that he would get, sometimes from multiple sources, which is -- as another staff member, I have many bosses, and he would have the same,

1 particularly from the astronomy and astrophysicists in
2 the department, each of which wanting him to do
3 something else. And negotiating that is a difficult
4 thing, and he was very open to that, which I thought was
5 a key part of his interview when I talked to him.
6 Q. And you didn't think Dr. Gaskell would
7 have been open to that?
8 A. I didn't get the impression -- I got the
9 impression that he would rely on his previous experience
10 and not necessarily be as open to suggested different
11 paths to follow in accomplishing the tasks at hand.
12 Q. Do you know whether or not anyone with the
13 University of Kentucky's equal employment office, or
14 whatever the name of that agency is, investigated any
15 complaints surrounding the process by which the position
16 for observatory director was filled?
17 A. I was not aware of that until my
18 discussion with Barbara today.
19 Q. Okay. You don't need to go there. So
20 prior to discussion with Ms. Kriz, you had never heard
21 of any such investigation?
22 A. No, had not.
23 Q. Do you know who Patty Bender is?
24 A. I do not.
25 (Plaintiff's Exhibit No. 13 marked.)

Q. Mr. Ellis, I'm showing you a two-page document we have marked as Exhibit No. 13, an e-mail from Dr. Troland to the members of the committee, and it appears to be a first draft of a -- the final statement of the committee with respect to who should get the position for observatory director; is that correct? Again, take your time looking at it.

A. What was your statement?

Q. Is that what this is?

A. Oh, a first draft.

Q. Yeah, a first draft of the statement that was to be sent to Dr. Cavagnero regarding the findings of the committee.

A. I believe that was the intent of this document.

Q. Did you read the draft?

A. I believe I did at the time. Let me just go through it again to refresh my memory.

Q. Sure.

(Deponent reviews document.)

A. Okay.

Q. Did you read the draft, then, at the --

A. Yes. I had read it, yes.

Q. Okay. And did you e-mail anything in response to this draft?

A. I don't recall.

Q. Did you speak with anyone in response -- with respect, I'm sorry -- to this draft?

A. Outside the committee?

Q. Yeah, outside the committee.

A. No.

Q. Did you speak with anyone inside the committee regarding the draft of this report?

A. I'm not -- I don't recall whether we had another meeting after this e-mail came out or not, but that would be where I would have discussed this. I think -- well, I don't recall whether this went directly to -- as a first draft or whether we sent it out as a committee or not after that.

Q. Okay. You just took a look at it, you just read through it again so your memory is refreshed. If it's not, though, take some more time to look through it again.

A. That's fine.

Q. Looking at the paragraph which describes the beliefs, or this says feelings, of the majority of the committee, do you agree with the assessment provided here?

(Deponent reviews document.)

A. Yes.

Q. And what, if anything, do you disagree with in Dr. Troland's dissenting statement?

A. I'm not sure what you -- what the intent of your question is. That is Dr. Troland's dissenting statement. He made that clear. So I guess -- I mean, I agree with the fact that it is his statement, his assessment, I guess.

Q. Just to be clear, I do want to ask you something about Dr. Troland's dissenting statement.

A. Uh-huh.

Q. He says, "Troland believes that Gaskell's considerable experience with virtually all aspects of the observatory's mission makes him dramatically more qualified for the position." Of course this is a statement of Dr. Troland's opinion.

"Gaskell is a Ph.D. astronomer with 26 years of doctoral experience in academic institutions." Do you have any reason to doubt that statement?

A. No.

MS. KRIZ: Well, I guess, are you saying that he's dramatically more qualified or that Gaskell is a Ph.D. astronomer?

MR. SURTEES: Oh, I'm sorry.

Q. Yeah, the first sentence was the opinion, which I said that was his opinion. And then the

statement "Gaskell is a Ph.D astronomer," it doesn't purport to be an opinion, it purports to be a statement of fact, it seems to me, and I'm wondering whether or not you have any basis to disagree with that?

MS. KRIZ: That Gaskell is a Ph.D. astronomer with 26 years of post --

MR. SURTEES: Yes.

A. No.

Q. Any reason to doubt, looking at the next sentence, that Gaskell has already established a similar student observatory at the University of Nebraska?

A. No.

Q. Any reason to doubt that, quote, he has worked extensively with undergraduate students at all levels, including upper level undergraduate research?

A. No.

Q. And again, you're answering no in response to the question: Any reason to doubt the statements that we're reading?

A. That's correct.

Q. "He has considerable experience with astronomy outreach activities including open observatory nights, public lectures, school planetarium shows, and telescope making workshops." Any reason to doubt --

A. No.

Q. As of the day that you received this, or shortly thereafter -- the e-mail was sent October 23, 2007 -- do you know whether or not Mr. Knauer had any experience with optical observatories?

A. When he was under my employ, he would do observing sessions. It wasn't an observatory, per se, but he would do many observing sessions with the students where he would take several telescopes to a location, the students would join him, and he would conduct that. He did some things in conjunction with the local astronomy club in Lexington. So in specific answer to your question, no, not a particular facility and management, but observing sessions with telescopes of multiple kinds, yes.

Q. At the time that this was written and sent by Dr. Troland, do you know whether or not Mr. Knauer had performed or undertaken any undergraduate astronomy research?

A. That, I'm not sure. He -- I don't know.

Q. Okay. That's a perfectly legitimate answer. If you don't know, you don't know.

Do you know, again at the time this e-mail was sent to you, whether or not Mr. Knauer had ever been employed in an astronomy-related position other than as a part-time astronomy instructor at U.K.?

A. I have no knowledge of that.

MR. SURTEES: We're getting to the end of this, Mr. Ellis. I appreciate your patience with me.

THE WITNESS: This is beginning to look like one of my student's lab reports here.

(Plaintiff's Exhibit No. 14 marked.)

Q. Mr. Ellis, I'm showing you a one-page document which we have marked as Exhibit 14. It is an e-mail from Dr. Troland to Mike Cavagnero, and not to the committee, so far as we know, subject line reading the Gaskell affair. Take a moment, if you would, and let me know whether or not you have ever seen this document before.

(Deponent reviews document.)

A. I do not recall ever seeing this document.

Q. Okay. Four paragraphs down Dr. Troland writes, "If Martin were not so superbly qualified, so breathtakingly above the other applicants in background and experience, then our decision would be much simpler. We could easily choose another applicant and we could content ourselves that Martin's religious beliefs played little role in our decision. However, this is not the case. As it is, no objective observer could possibly believe that we have excluded Martin on any basis other than religious." Do you agree or disagree with that

last statement of Dr. Troland? As it is, no objective observer could possibly believe that we have excluded Martin on any basis other than religious.

A. I disagree with it.

Q. Okay. And why would you disagree with that statement?

A. I consider myself an objective observer, and I discounted him for other reasons, as I've stated previously, in my knowledge I gained through the interview and the things that I believe I learned from talking with him.

Q. In your opinion, did any -- other than yourself, did any other members of the committee exclude Martin on any basis other than religious?

A. Did anyone exclude Martin on other than religious basis. I would say the majority, or all the ones that excluded him were other than religious.

Q. The reason why I asked is because I believe you said -- scratch that. Strike that, I should say.

MR. SURTEES: Mr. Ellis, I'm going to take a two-minute break just to make sure I've got everything in my head and everything I need to ask you.

(Off the record.)

Q. Mr. Ellis, just a few additional

questions. How long have you known -- let me back up and ask you this. Do you know Dr. Thomas Troland?

A. Yes.

Q. How long have you known Dr. Troland?

A. For the 15 years I've been employed in the department.

Q. Do you consider Dr. Troland to be an honest person?

A. Yes.

Q. A reasonable person?

A. Yes.

Q. An objective person?

A. Yes.

Q. Do you have any ideas as to why Dr. Troland wrote that statement that he wrote that we had just read?

A. I believe at that time he thought that was his assessment of what he had observed and learned about the candidates.

MR. ELLIS: Mr. Ellis, I thank you very much.

MS. KRIZ: You're finished.

(DEPOSITION CONCLUDED 11:40.)

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 12th day of May, 2010.

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