

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

VIDEOTAPED DEPOSITION OF STEVE HOCH, Ph.D.

C. MARTIN GASKELL PLAINIFF

v.

UNIVERSITY OF KENTUCKY DEFENDANT

The videotaped deposition of STEVE HOCH, 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 Friday, May 21, 2010, beginning at the hour of 10:31 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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OTHERS PRESENT:

Linda Huddle, Videographer

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(Above-referenced exhibits accompany original and copy transcript of plaintiff only.)

1 MS. KRIZ: We've agreed that any
2 objections that are made during Dr. Hoch's deposition be
3 made at the end of the deposition.

4 VIDEOGRAPHER: We're on the videotape
5 record. Today is Friday, May 21, 2010. The time is
6 10:31 a.m. This is the deposition of Steve Hoch taken
7 at the law office of Baker, Kriz, Jenkins, Prewitt &
8 Jones in Lexington, Kentucky. The deposition is being
9 taken pursuant to notice in the United States District
10 Court, Eastern District of Kentucky, case number
11 09-244-KSF, styled C. Martin Gaskell versus the
12 University of Kentucky. My name is Linda Huddle, the
13 video technician. The court reporter is Ann Hutchison.
14 Counsel will now introduce themselves and state who they
15 represent.

16 MR. MANION: Francis J. Manion for
17 plaintiff, Martin Gaskell.

18 MR. SURTEES: Geoffrey Surtees,
19 counsel for plaintiff, Martin Gaskell.

20 MS. KRIZ: Barbara Kris for the
21 University of Kentucky.

22 MS. JONES: And Barbara Jones for the
23 University of Kentucky.

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STEVE HOCH, Ph.D.

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

EXAMINATION

BY MR. MANION:

Q. Good morning, Steve Hoch.

A. Good morning.

Q. My name is Frank Manion, and I am an attorney representing the plaintiff, Martin Gaskell, in this case. First of all, is it Hoch? Hawk?

A. Hawk. Hawk. Just like the bird.

Q. Hawk. Okay. We had a discussion in our office about this yesterday because I read something where it had that in parentheses. I've been calling him Hoch, but then my colleague told me, well, that's how you say h-a-w-k. So --

MS. KRIZ: You're from up east.

MR. MANION: Exactly.

Q. As you know, we are here to take your deposition in a case called Gaskell versus University of Kentucky. It arises out of the hiring of an observatory director back in 2007. It's my understanding at the time you were the dean of the College of Arts and Sciences. Correct?

A. Yes.

1 Q. Have you ever had your deposition taken
2 before?

3 A. No.

4 Q. Have you ever attended a deposition
5 before?

6 A. No.

7 Q. All right. Have you had a chance to speak
8 with counsel for the university prior to the taking of
9 this deposition?

10 A. Yes.

11 Q. I'm sure that she explained to you the
12 mechanics of a deposition, but just so it's clear that
13 you understand them on the record, I'm going to take you
14 through that exercise again. I'm going to ask you a
15 series of questions about your knowledge concerning the
16 facts that are relevant to this case. Your obligation
17 today is to tell us the truth, the whole truth and
18 nothing but the truth, to the best of your ability to do
19 so. Everybody understands that we're talking about
20 events that in most cases took place two or more years
21 ago, more than two years ago now, and so your obligation
22 is to tell the truth to the best of your ability. You
23 understand that?

24 A. Uh-huh. Yes.

25 Q. Okay. That's -- one of the cautions is

1 you have to use words. I know what you mean by uh-huh,
2 but it's difficult for our court reporter to transcribe
3 that so that the person reading the transcript will be
4 clear that that's what you meant. So -- and you may
5 need to be reminded, we all do, during the course of
6 depositions that you have to answer in words.

7 You have to wait for me to finish my
8 questions before you start to answer. Even though you
9 and I know when we're speaking across the table where
10 the question is going, for purposes of a clear record
11 you have to wait for me to finish my question. Probably
12 you will violate that rule. Probably I will violate
13 that rule. But we'll just have to do the best we can
14 and remember to try to answer questions, ask questions,
15 answer questions.

16 If there's an objection to a question, at
17 least as we've agreed, the objections will be made at
18 the end of the deposition. That's a bit of a departure
19 from a typical deposition, but we're doing that because
20 we have a videotape here and we may be using possibly
21 this deposition at an actual trial. If I ask you a
22 question that you don't understand, please tell me that
23 you don't understand it. That's likely to happen during
24 the course of this deposition. It's important that you
25 only answer questions that you understand. And the

1 reason for that is that the court reporter and the
2 videographer are recording everything that's being said
3 here today, and this deposition can be used by either
4 party in this case down the road, and somebody reading
5 this transcript later on has a right to assume that you
6 understood the question if you, in fact, answered it.
7 Is that clear?

8 A. Yes.

9 Q. All right. I have no idea how long this
10 will take, but we're not here to torture anybody,
11 including ourselves, so if at any time anybody either at
12 the table needs a break, they will say so and we will
13 certainly honor that request and take a break. I don't
14 know if we'll go past a reasonable lunch time, but if we
15 get to that point, we'll certainly take a lunch break.
16 And if at some point you think it's time for you to have
17 lunch, you tell us that and we'll all be very agreeable
18 to that.

19 A. Okay. I'm closer to breakfast right now.

20 Q. Okay. You're closer to --
21 You are currently not living in this area.

22 Correct?

23 A. Correct.

24 Q. Where do you live right now.

25 A. Richland, Washington.

1 Q. How long are you in Lexington area now?

2 A. Three -- for this deposition only. I
3 arrived yesterday. I leave tomorrow.

4 Q. Okay. So you're not catching a plane
5 today.

6 A. Correct.

7 Q. All right. I briefly touched on this
8 earlier, but you did meet and speak with counsel for the
9 university prior to the taking of the deposition.
10 Correct?

11 A. Yes.

12 Q. Was that today or yesterday?

13 A. Today.

14 Q. Okay. Other than that meeting, had you
15 spoken with or met with counsel for the university at
16 any other time concerning this case?

17 A. Yes. When Barbara --

18 THE WITNESS: Is your name Barbara?

19 MS. KRIZ: Yes. Uh-huh.

20 THE WITNESS: Two Barbaras. Oh, okay.

21 MR. MANION: Yeah, it's a good guess.

22 THE WITNESS: Okay.

23 A. When Barbara Kriz called me was the first
24 conversation we had, I guess. She called me to ask me a
25 few questions about the case.

1 Q. Okay. Other than that, had you ever met
2 with or spoken with any of the attorneys for the
3 university about the case?

4 A. No.

5 Q. Okay. Have you reviewed any documents in
6 connection with this deposition?

7 A. This morning I reviewed one or two
8 documents.

9 Q. And what were those documents?

10 A. I think it was -- it was the one e-mail
11 that I wrote in the course of discussions about this
12 case.

13 Q. Okay. Any other documents other than that
14 one e-mail?

15 A. I think we reviewed Martin Gaskell's
16 interview schedule when he was here because I wanted to
17 know whether I had met with him or not.

18 Q. Okay.

19 A. I wasn't on the schedule.

20 Q. Okay.

21 A. That's it.

22 Q. Okay. And I'll probably show you the
23 e-mail that you referred to if it's the one I'm thinking
24 of, but the only e-mail that I have received in the
25 course of this case that you appear to have written is

1 one where you're responding to Mike Cavagnero, two or
2 three paragraphs, about Gaskell's paper that had become
3 somewhat of a discussion point in the hiring process.

4 A. Correct.

5 Q. As far as you know, that's the only e-mail
6 that you produced in connection with this hiring
7 process?

8 A. Correct. I don't have access to my U.K.
9 e-mails anymore, so I have no way of knowing.

10 Q. Okay.

11 A. But yes, to the best of my recollection
12 there's just that one e-mail.

13 Q. When did you leave U.K.?

14 A. In June -- July 1 of '08.

15 Q. So as of July 1 of '08, you were no longer
16 the Dean of the College of Arts and Sciences?

17 A. That's correct.

18 Q. And you moved out to Washington to take a
19 position. Is it Washington State University?

20 A. Washington State University.

21 Q. Okay. So as of July 1, '08 you're no
22 longer with U.K.?

23 A. Correct.

24 Q. Now, have you spoken to anyone other than
25 counsel for the university about this deposition? And

1 when I say anyone, I don't mean your wife and kids. I
2 mean people connected with U.K.

3 A. No. No.

4 Q. Subbaswamy or other professors?

5 A. No.

6 Q. Can you give me a brief sketch of your
7 academic history up to the present time, where you
8 attended college and --

9 A. I did my undergraduate degree at Trinity
10 College in Hartford. My M.A. and Ph.D. are from
11 Princeton University. I spend a year at the Sorbonne in
12 Paris, a year at Moscow State University, a year at
13 Helsinki University. I taught at Drew University in
14 Madison, New Jersey; 15 years at the University of Iowa;
15 five years as dean at the University of Kentucky.

16 Q. When were you at Drew?

17 A. Don't tell me you went to Drew.

18 Q. No, but I lived in Summit --

19 A. I lived in Madison.

20 Q. Did you? And I got in to Drew, and that
21 was my second choice.

22 A. Let's see. 1979 to 1988.

23 Q. Okay. I probably saw you. I had a good
24 friend that lived in Madison.

25 Your academic field is history. Correct?

1 A. Correct.

2 Q. And within history, do you have a sub?

3 A. Russian history.

4 Q. Russian history. And you're published in
5 the field of Russian history. Correct?

6 A. Yes.

7 Q. So you were at the University of Kentucky
8 as Dean of the College of Arts & Sciences from what year
9 to what year?

10 A. From June or July of 2003 till July of
11 2008. Five years I was dean.

12 Q. And had you ever been a dean prior to that
13 anywhere?

14 A. I was Dean of International Programs at
15 the University of Iowa.

16 Q. For how long?

17 A. For three years.

18 Q. When you left U.K. you went to Washington
19 State, and what position did you take at Washington
20 State?

21 A. Provost.

22 Q. And provost is, as we've learned from this
23 case -- those of us who just went to college and didn't
24 really know what those people's jobs were -- provost is
25 above the dean. Correct?

1 A. Correct.

2 Q. And the provost reports to the president
3 of a university?

4 A. Correct.

5 Q. And within the typical college there's
6 usually more than one dean. Correct? In other words,
7 there's a dean of the college of arts and sciences,
8 there may be the dean of some other college within the
9 university?

10 A. Yes.

11 Q. So there are a number of deans in a
12 typical university and they report to the provost?

13 A. Correct.

14 Q. And the provost reports to the president
15 usually?

16 A. Correct.

17 Q. Who does the president report to?

18 A. Usually a board of trustees or a state
19 governing board.

20 Q. Okay. And at Kentucky, is that generally
21 how it was set up?

22 A. Yes.

23 Q. All right. And as the college of arts and
24 sciences, which you were the dean, is made up of a
25 number of departments. Right?

1 A. Correct.

2 Q. And at Kentucky how many departments were
3 there when you were here?

4 A. Sixteen, I think. Sixteen, 17, something
5 like that.

6 Q. All right. And does each of those
7 departments have a chair?

8 A. Yes.

9 Q. And do the chairs report to you as the
10 dean?

11 A. Yes.

12 Q. Generally, what is your job as a dean of
13 the college of arts and sciences such as University of
14 Kentucky's?

15 A. I'm the chief academic officer of the
16 college.

17 Q. And what does that mean? I know I asked
18 you generally, but could you be a little more specific?

19 A. I'm responsible for the entire educational
20 and research mission of the college.

21 Q. Okay. On a day -- on a day-to-day basis,
22 what does the dean -- what did you do as dean?
23 Typically.

24 A. I oversee the budget. I'm responsible for
25 hiring all faculty and staff in the college. Deal with

1 broader university issues. I was heavily involved in
2 fundraising and development, alumni relations, outreach,
3 and other duties as assigned by the provost.

4 Q. Okay. Now, as -- at Washington State,
5 you're no longer the provost, as I understand it.

6 A. Correct.

7 Q. There was some sort of a dispute and at
8 some point you resigned as provost?

9 A. Correct.

10 Q. And your current position there is what?

11 A. I'm a professor of history.

12 Q. And you're at the campus -- what's the
13 name of the campus that you're at?

14 A. In the tri-cities, in Richland,
15 Washington.

16 Q. Okay. Where it never rains.

17 A. Where it never rains.

18 Q. Okay. How long were you the provost?

19 A. For three months.

20 Q. All right. And did you have a contract
21 with -- do you have a contract with Washington State?

22 A. Yes.

23 Q. And what's the time term of that?

24 A. Well, I have tenure, so it's -- I'm a
25 tenured professor in the history department, so I have a

1 lifetime tenured position.

2 Q. As you sit here today, do you have plans
3 to remain there indefinitely or are you --

4 A. Oh, I don't know.

5 Q. Okay. You're not -- you don't have plans
6 to leave there at the end of this academic year or
7 anything of that nature?

8 A. No. No.

9 Q. You indicated just a little bit ago that
10 as part of your duties as dean here at Kentucky you were
11 in charge of faculty and staff hirings.

12 A. Correct.

13 Q. In terms of staff hirings such as the
14 position that we're talking about in this case, what
15 would your involvement typically be in a staff hiring?

16 A. None.

17 Q. Okay. That's simple. And you say you
18 were in charge of it, but your involvement would be
19 none.

20 A. Involvement would be none. All staff
21 hiring was delegated to John Pica who was the assistant
22 dean for -- what is it? -- finance and administration,
23 and he would have overseen all staff hiring.

24 Q. Okay. So you as dean in the typical case
25 would not interview people?

1 A. I would not interview people, no.

2 Q. You would not review their applications?

3 A. No.

4 Q. You would not look at their resumes if
5 they submitted them?

6 A. No.

7 Q. How would you -- when you say you're in
8 charge of hiring, how would you -- how would you make
9 the decision to hire or not someone if you, in fact,
10 made the decision?

11 A. I had delegated that authority, as was
12 long-standing practice in the college, to the assistant
13 dean for finance and administration.

14 Q. And that would be Mr. Pica?

15 A. Mr. Pica, right.

16 Q. Is he still there as far as you know?

17 A. Yes.

18 Q. As you know, this case involves the hiring
19 of the director of the MacAdam Observatory --

20 A. Correct.

21 Q. -- in Lexington, U.K. campus. When did
22 you first become aware that a position for observatory
23 director was open or opening?

24 A. Well, I created the position.

25 Q. Okay. Tell me how you created it and why

1 you created the position.

2 A. We had -- we had been working for four
3 years to build an observatory on campus. That was a
4 four-year period. The observatory was moving towards
5 completion, and we needed to hire a director for the
6 observatory. So I would have been involved in funding
7 the position because it came out of my budget,
8 authorizing the chair to conduct a search.

9 Q. Was that unusual for you in terms of your
10 tenure at Kentucky, where you actually created this
11 position and were involved in funding the position?

12 A. No. I had to fund every -- I controlled
13 the entire college budget, so I had to fund every
14 position.

15 Q. Okay. When you say you have to fund it,
16 I'm not sure I understand what you mean by that. You
17 got to find the money to pay for it?

18 A. I've got to find the money to pay for it,
19 that's correct.

20 Q. Okay. And the money to fund positions at
21 the University of Kentucky comes from where?

22 A. Well, it comes from the state, it comes
23 from student tuition, it comes from private donations.
24 It would come from the federal government in the form of
25 grants. But this was going to be a recurring position

1 so I had to find, within the resources of the college,
2 money to fund this position.

3 Q. Okay.

4 A. So it was done through a reallocation of
5 resources.

6 Q. All right. So there's a certain amount of
7 resources that are budgeted to the university to the
8 College of Arts and Sciences?

9 A. Correct.

10 Q. And it was your job to figure out how to
11 find the money within that --

12 A. Correct.

13 Q. -- sum to pay for this position?

14 A. Correct.

15 Q. And it could be from a mixture of sources,
16 the state, federal grants, private donations; is that
17 correct?

18 A. Theoretically. In this case, to the best
19 of my recollection, it was a wholly state-funded
20 position.

21 Q. Okay.

22 A. Or university-funded position, I should
23 say. So it was part of my recurring college budget.

24 Q. Okay. As part of the creation and the
25 filling of the position of observatory director, did you

1 have any input in to what the job requirements would be
2 for that position?

3 A. I don't recall having a lot of input. It
4 was clear it was not going to be a faculty position, and
5 it was not going to be a position that involved
6 research. Other than that, I really would have had no
7 input. I would have not been involved in forming the
8 search committee. I would have not been involved in
9 approving the job description.

10 Q. Okay.

11 A. I would have not been involved in any of
12 that.

13 Q. Okay.

14 A. Unless somebody brought something to my
15 attention that they thought should be of concern to me.

16 Q. Okay. Prior to the search process taking
17 place in this case with the observatory director, did
18 you have any discussions with members of the physics and
19 astronomy department about any specific candidates?

20 A. No. No.

21 Q. There wasn't somebody already in mind that
22 anybody had that you were aware of?

23 A. No.

24 Q. Okay. Now, eventually, as we know, a
25 decision was made to hire Timothy Knauer for the

1 position of observatory director. You're aware of that?

2 A. Yes.

3 Q. And who made that decision to hire Timothy
4 Knauer? If it was one person.

5 A. Mike Cavagnero. Functionally, Mike
6 Cavagnero.

7 Q. Okay. What do you mean by functionally?

8 A. In other words, he had a search committee,
9 the search committee made a recommendation to him. It
10 would have been Mike's authority to accept that decision
11 or reject it, but if Mike accepted it and made a
12 recommendation, he sent the paperwork forward to John
13 Pica.

14 Q. Okay.

15 A. John Pica simply, then, would file the
16 requisite paperwork. John was not really in a
17 position -- John was in no position to -- in this kind
18 of decision, you know, to say yes or no, really.

19 Q. Okay.

20 A. John would have been involved if there
21 were budgetary concerns or did the person hire not
22 fulfill the job description, but other than things like
23 that, no, John would have -- John is just a rubber
24 stamp, just a formality.

25 Q. And then your role would be -- would it be

1 more of a rubber stamp?

2 A. I would not even be involved at all. I
3 would not in most cases even know who was hired.

4 Q. What about in this case?

5 A. I don't think I knew who was hired.

6 Q. Okay. So Pica -- what was his title, by
7 the way?

8 A. Assistant dean for finance and
9 administration.

10 Q. Okay. His role in this was, as you
11 described it, more or less a rubber stamp.

12 A. Well, rubber stamp in filing the
13 paperwork.

14 Q. Okay. But as far as you know, he didn't
15 participate in --

16 A. No.

17 Q. -- interviews, reviewing applications?

18 A. No, he did participate in the interview
19 process. I believe the candidates met with John Pica
20 because that's the interview document I saw this
21 morning. John would not at all be involved in a
22 substantive decision, but may have been there to answer
23 questions about university benefits, university
24 policies, you know, vacation time.

25 Q. Right.

1 A. Health care benefits, those sorts of
2 things. But John would have not at all been involved in
3 any way in the decision process whatsoever.

4 Q. Okay. I believe that Professor Gaskell --
5 I don't know if he testified to this or he's just -- his
6 recollection was that he was interviewed by two
7 associate deans. He doesn't -- he wasn't interviewed by
8 you, it's agreed, we agree on that, but he believes he
9 was interviewed by two associate deans. Do you know if
10 that's the case? And if so, why?

11 A. I don't know that's the case. I only saw
12 the interview schedule this morning, and there's no
13 associate deans. John Pica is an assistant dean.

14 Q. Okay. Assume that that's interchangeable.

15 A. So I don't know. No, assistant deans and
16 associate deans are not interchangeable.

17 Q. Okay.

18 A. Associate deans are faculty members,
19 tenured faculty members, who are directly involved in
20 the research and educational mission of the college.
21 John Pica holds an administrative position.

22 Q. Okay.

23 A. Okay? To the best of my recollection, I
24 could look at the list again, but I don't think there's
25 an associate dean on the --

1 THE WITNESS: Is there an associate
2 dean on the list?

3 Q. Well, it's just your recollection.

4 A. I have no recollection they met with an
5 associate dean.

6 Q. Okay. You've seen documents that would
7 indicate that Gaskell met with Pica?

8 A. Correct.

9 Q. But other than that, you don't have any
10 recollection or knowledge --

11 A. Correct.

12 Q. -- of him meeting with more than one dean,
13 associate or assistant?

14 A. Correct.

15 Q. All right. And it's your recollection or
16 your understanding that all of the candidates, or at
17 least the finalists, I guess, met with John Pica?

18 A. That would have been college procedure.

19 Q. Okay.

20 A. If John were available. If not, somebody
21 suitable would have, of comparable status. It's not
22 always possible, but the university is very strict about
23 the interviewing process being the same for all
24 candidates.

25 Q. Okay. And you may have answered this

1 already, but you clearly did not meet with Gaskell. Did
2 you meet with any of the other candidates for this
3 position?

4 A. No, not to best of my recollection.

5 Q. Do you know who Patty Bender is?

6 A. Yeah, sure.

7 Q. Who is Patty Bender?

8 A. Well, she's bad news when she comes to a
9 dean's office, I can tell you that.

10 Q. I gathered that.

11 A. She's the university's affirmative action
12 officer. Is that correct? Yeah.

13 Q. We've called her a number of things, equal
14 opportunity, affirmative action. I think we get the
15 point.

16 As I understand Ms. Bender's description
17 of her job, she fields complaints from people, employees
18 or even non-employees, about possible discriminatory
19 actions on the part of the university, allegations that
20 she then takes it upon herself, because it's her job, to
21 investigate those. Is that your understanding --

22 A. Yes.

23 Q. -- of her role? Okay. And she did
24 indicate that during the time that you were the dean she
25 would have met with you on a number of occasions -- she

1 wasn't very specific about it -- and bring to your
2 attention complaints that she had received. Does that
3 sound --

4 A. Correct.

5 Q. -- correct? All right.

6 I'm going to have the court reporter mark
7 a document here that was provided to us that comes from
8 Ms. Bender.

9 (Plaintiff's Exhibit No. 1 marked.)

10 Q. All right. I will represent to you that
11 Ms. Bender has testified that these three sheets of
12 paper that you have in front of you as Exhibit 1 --

13 A. Uh-huh.

14 Q. -- are notes that she made of a phone call
15 she received from Professor Kovash, a phone call she
16 received from Professor Troland -- I'm looking at the
17 first page at this point.

18 A. Uh-huh.

19 Q. And that the second page are notes that
20 she took when she met with you on October 30th of '07.

21 A. Uh-huh.

22 Q. And then the final page she believes are
23 notes that she took during a meeting in your office with
24 Mike Cavagnero, Patty Bender and yourself. All right.

25 Now, directing your attention to the

1 second page, which is what Ms. Bender testified were the
2 notes that she took of her conversation with you on
3 October 30th. Patty testified that she received a phone
4 call on the 29th -- it's reflected in the previous
5 page -- from Professor Kovash, generally raising an
6 issue about the process for the hiring of the
7 observatory director and specifically complaining that
8 in his opinion something inappropriate had been done
9 with regard to Martin Gaskell and the committee's
10 consideration of him. She then received a phone call
11 from Troland, which is reflected at the bottom of that
12 first page, and she took notes of various things that
13 Troland told her about the process. And then on that
14 same day, October 30th, she went to your office. She --
15 her recollection is that she went to your office and
16 spoke to you for about ten minutes, and that either
17 later that day or in the subsequent days there was a
18 meeting with yourself, Cavagnero, and Patty Bender.

19 Do you remember -- first of all, do you
20 remember an initial meeting with Patty Bender that would
21 have lasted about ten minutes where she first brought
22 the issue to your attention?

23 A. Yes. I remember meeting with her, but
24 that's about it.

25 Q. Okay. Okay. She has written down here on

1 Exhibit 1, page 2 of Exhibit 1, information that she
2 says she received from you that day.

3 A. Uh-huh.

4 Q. As you look at the information that's
5 contained on the second page of this exhibit, do you
6 recall saying things -- saying these things or things
7 like that to Patty Bender that day?

8 A. Can you read this to me?

9 Q. Sure. At the top it obviously says Steve
10 Hoch, 10/30/07. It then reads, as far as I can read it:
11 Not hiring him because of his views on the scientific
12 method - not religion.

13 There's a dash and then it says: Science
14 and scientific method - identifies himself with
15 Department of Astronomy and Physics - disseminating info
16 not scientific.

17 It goes on to say: Views on scientific
18 method makes him unworthy of a scientific position at
19 U.K. Hoch and provost has read.

20 I think I've read that.

21 A. Uh-huh.

22 Q. Of course I've had the advantage of
23 reading this once or twice before you. My questions
24 are -- or my first question is, do you recall saying to
25 Patty Bender on that day that you were not hiring him --

1 and I think it's all understood that we're talking about
2 Gaskell here --

3 A. Uh-huh.

4 Q. -- because of his views on the scientific
5 method, not religion?

6 A. Yes. And I'm conveying things I think
7 that Mike Cavagnero would have informed me about. But
8 yes.

9 Q. Okay. And then it goes on where it says:
10 Science and scientific method, identifies himself with
11 Department of Astronomy and Physics, et cetera. Again,
12 is there anything on this sheet that you think you
13 didn't say to Patty Bender at least in substance?

14 (Deponent reviews document.)

15 A. No, I think that's accurate. I'm largely
16 referring to the e-mail exchange that I had with Mike
17 Cavagnero.

18 Q. Okay. And that's an e-mail exchange that
19 we've alluded to where he sent you a link to a paper
20 that Gaskell had put on the Internet. Right?

21 A. That's correct. And I asked Mike to
22 convey to the search committee that they were not to
23 evaluate Gaskell based on questions of religion, but he
24 had written a paper, and I think I asked him quite
25 directly to apply the standard -- you know, normal

1 academic standards as to the quality of that paper.

2 Q. Okay.

3 A. And then I'm simply repeating what Mike
4 probably had reported back to me in some conversation.

5 Q. Okay. Then my question is, then -- and
6 you've probably just answered it -- what was your basis
7 for saying to Patty Bender on that occasion that, for
8 instance, near the bottom, Gaskell's views on the
9 scientific method make him unworthy of a scientific
10 position at U.K.? Was that a conclusion you reached --

11 A. No.

12 Q. -- independently?

13 A. No. I think that's the conclusion that
14 Mike Cavagnero as chair of physics and astronomy had
15 made with his colleagues, and that he had informed me
16 that that was one of the -- I'm assuming he had informed
17 me that this was one of the major reasons they didn't
18 hire or were not going forward with Gaskell.

19 Q. Okay. So you did not conduct your own
20 evaluation of Gaskell's views on the scientific method
21 or his --

22 A. No.

23 Q. -- scholarly ability as a scientist?

24 A. No. That would not have been for me to
25 do.

1 Q. Okay. And you're not --

2 A. I'm not a scientist.

3 Q. -- in the field of natural sciences
4 anyway. Right?

5 A. Correct.

6 Q. Okay. But it's your best recollection as
7 you sit here today that you're telling Bender what
8 you've heard from Cavagnero?

9 A. Correct.

10 Q. Now, do you recall a specific conversation
11 with Cavagnero where this information or these
12 conclusions were conveyed to you by Cavagnero?

13 A. No, but it would have been sometime
14 between after I sent him that e-mail and when the
15 committee had made its decision, and Mike's probably --
16 it certainly wasn't by e-mail because we've had the
17 e-mail, so it's probably just Mike updating me on the
18 status of the search. And in this case let me just add,
19 the reason I became involved really had nothing to do
20 with the search process itself.

21 Q. Okay.

22 A. But the reason I became involved as dean
23 relates to the fact that Mike initially contacts me
24 because there are personnel issues which are arising in
25 the department out of the conflict. Okay? And that is

1 a matter for the dean. So that's the only way I became
2 aware of anything about this position was that initial
3 e-mail from Mike Cavagnero that he's worried about
4 personnel issues now affecting the ability of the
5 department to conduct its business.

6 Q. And can you be more specific when you say
7 personnel issues? What was he talking about?

8 A. I think just -- oh, I don't have a lot
9 of -- well, the only information I had was that e-mail
10 that he was actually -- he was simply seeking advice
11 from me because I gathered there was concern in the
12 department about how to evaluate part of Dr. Gaskell's
13 scholarly record. And the department was quite sharply
14 divided. So it was very common for a chair in
15 situations like this to ask the dean for advice. And so
16 I responded to him with advice that I thought would be
17 helpful as to how the search committee ought to conduct
18 its business.

19 Q. Okay.

20 A. And that's the only way I became involved
21 in this process. So I was concerned about the well-
22 being of the physics department, not what was going on
23 with this particular search.

24 Q. Okay. Sticking with this exhibit,
25 Exhibit 1, and -- well, sticking with page 2 that we're

1 looking at that you have in front of you now, do you
2 recall saying anything else to Patty Bender during that
3 initial meeting other than what she has written down
4 here in note form?

5 A. No.

6 Q. Okay. If you turn to the next page of
7 this exhibit, Ms. Bender has testified that these are
8 her notes of the meeting which took place either that
9 same day or in a subsequent day with Cavagnero and
10 yourself. And her notes begin, M.G. -- presumably
11 that's Martin Gaskell -- per chair. Poor
12 recommendations times two chairs, and then she puts in
13 quotes, his way or the wrong way. Do you recall
14 Cavagnero saying that at the meeting?

15 A. I don't remember.

16 Q. Do you have any specific recollection of
17 anything Cavagnero said at that meeting?

18 A. No. I don't even remember that meeting,
19 to be perfectly honest.

20 Q. As a dean of a college the size of the
21 college of arts and sciences, how many meetings do you
22 participate in in a given week?

23 A. Twenty, 30.

24 Q. Your job consists a lot of going to
25 meetings and having meetings in your office.

1 A. Yes. I mean there are a thousand people
2 who work in the college. There's 350 faculty, 110
3 staff, 500 teaching assistants, 10,000 students.

4 Q. And they're all happy and have no
5 complaints about anything. Right?

6 A. Well, this is the only complaint in five
7 years I ever had.

8 Q. Okay.

9 A. That's not a truthful statement. I'm
10 sorry, I swore to tell the truth and I better not...

11 Q. So you don't recall specifics of the
12 meeting where Cavagnero came in and spoke with yourself
13 and Patty Bender?

14 A. No. I don't. It would have been logical
15 to have such a meeting, but I don't remember the
16 specifics of it, no.

17 Q. You didn't take any notes, you didn't make
18 any record of it?

19 A. No.

20 Q. Okay. What was the reason for that
21 meeting, do you think? I mean, just to back up. I
22 think Patty Bender said that you wanted the meeting.
23 I'm not positive she said that, but presumably the
24 meeting took place in your office and you must have
25 authorized it or asked for it.

1 A. If I did, and I don't recollect it all
2 that well, is to make sure that institutional procedures
3 were followed and that the search committee and the
4 chair had made their decision according to institutional
5 practices and policies. And so Mike was probably asked
6 to give an accounting of how the decision was made and
7 why it was made. And so he's offering up the kinds of
8 evidence that we'd normally consider; that is, he had
9 poor recommendations from two chairs; that one staff
10 member, a very well-respected staff member, raised
11 another issue, which is quite a typical issue in many
12 cases when we hire Ph.D.'s for positions that are not
13 related to research; other objections from a staff
14 member. So these was the -- this was the list of
15 reasons that Mike is conveying to her as to why the
16 decisions were made, and I wanted assurance, and Patty
17 probably wanted assurance, that proper procedures were
18 followed, and reasons that were inappropriate were not
19 involved in the decision-making process.

20 Q. Okay. At this point --

21 A. And I only had -- and poor recommendations
22 from two chairs is far enough to read in a list like
23 this.

24 Q. Okay. Had you -- you hadn't spoken to any
25 chairs --

1 A. No.

2 Q. -- of Gaskell?

3 A. No. No.

4 Q. You ever read anything any chair had
5 written about Gaskell?

6 A. No.

7 Q. Ever read any summary of any conversations
8 with his previous chairs?

9 A. No.

10 Q. So you're just -- you're taking
11 Cavagnero's word for it that he received poor
12 recommendations from two chairs?

13 A. That's correct. I'm asking Mike to
14 recount the reasons why according to university hiring
15 procedures, you know, he was not offered the position,
16 and Mike is giving me reasons which ring very true.

17 Q. Okay. When you say "ring very true," I
18 mean you don't know whether they're --

19 A. No, I have no way of knowing.

20 Q. -- accurate?

21 A. That's right.

22 Q. But if they're true, as far as you're
23 concerned they're good reasons to --

24 A. That's right. That's exactly what I'm
25 saying.

1 Q. Okay.

2 A. If they are true, they are very good
3 reasons for not hiring him.

4 Q. Okay. At the point where this meeting is
5 taking place, do you know whether the position had been
6 officially offered to Cavagnero?

7 A. I wouldn't know, no.

8 Q. Would you think that at this point there
9 was still an opportunity to undo the decision? Well,
10 let me back up a little.

11 A. I don't know. I'd have to review the time
12 frame. I have no way of knowing that.

13 Q. Well, let me back up a little bit. I
14 think we understand what happened here. There was a
15 search committee, committee interviewed people, Pica
16 apparently interviewed people also, the committee took a
17 vote, committee made a recommendation to the chair, the
18 chair forwarded that recommendation to --

19 A. John Pica.

20 Q. -- well, there's an e-mail. Pica, he cc'd
21 you, and normally that's -- is that the end of the
22 decision-making process?

23 A. Yes.

24 Q. Okay. In some instances can you or even
25 Pica -- well, just focus on you as the dean -- override

1 that decision? In other words, suppose --

2 A. I had the authority to do it.

3 Q. Had you ever done it during the time
4 you --

5 A. No.

6 Q. Okay. But you did have the authority to
7 do it?

8 A. I had the authority to do it.

9 Q. In other words, if something had been
10 brought to your attention that indicated to you that
11 something -- something improper --

12 A. Patty Bender showed up in my office.

13 Q. Right. But let's say that Cavagnero's
14 reasons, in your opinion, were not sufficient, and then
15 you had some reason to think that there was something
16 inappropriate or illegal done, you could have said we
17 can't do this, we can't hire this guy, we got to do it
18 or something. You could have done that? I'm not
19 suggesting you should have.

20 A. It's very hard for me to speculate.

21 Q. Right.

22 A. I would have gone to university counsel at
23 that point.

24 Q. Okay. There was nothing brought to your
25 attention in this instance, the observatory director,

1 that thought that you should go to university counsel?

2 A. That's correct. Patty came, explained the
3 nature of the complaint, the chair was brought in to a
4 meeting with me and Patty, and my recollection is solely
5 from this piece of paper. I don't really recall the
6 meeting. But I can understand its purpose. And I
7 wanted assurance that the decision was made based upon
8 university policies and procedures, and he could
9 enunciate those and convince both me and Ms. Bender that
10 we had followed our normal practices and procedures.

11 Q. Okay.

12 A. And he very clearly did that in this
13 document.

14 Q. And so -- and so you were satisfied that
15 he had done that?

16 A. Right. More importantly, Patty was
17 satisfied.

18 Q. Why do you say more importantly?

19 A. Because I would have heard more.

20 Q. Okay. Because that's her specific job.

21 A. That's right. If Patty had concerns, she
22 would have gotten back to me and there are university
23 procedures we would have followed.

24 Q. Okay. Okay. You've referred earlier in
25 this deposition to an e-mail that you received from

1 Cavagnero. I'm going to have the court reporter mark an
2 e-mail for identification and show it to you.

3 (Plaintiff's Exhibit No. 2 marked.)

4 Q. This is Exhibit 2, I think. This appears
5 to be an e-mail dated October 1, 2007, from Mike
6 Cavagnero to you, with a copy -- well, also to Kumble
7 Subbaswamy, the provost at the time.

8 A. Uh-huh.

9 Q. And still. Right? He's still the
10 provost?

11 A. Uh-huh.

12 Q. Okay. You can ignore the underlining and
13 the circling, that was mine; there's nothing
14 particularly profound about it. At least in my opinion.

15 Does this appear to be the e-mail that you
16 referenced that you received from Cavagnero at some
17 point during the search process?

18 A. Yes.

19 Q. And in this e-mail he lays out for you a
20 concern that he has that has arisen during the process
21 of hiring for this position. Right?

22 A. Uh-huh.

23 MS. KRIZ: Say yes.

24 Q. Say yes or no, I'm sorry.

25 A. Yes. Sorry.

1 Q. That's all right. And in the second
2 sentence he writes: One of the candidates they, meaning
3 the committee, have short-listed is something close to a
4 quote, unquote creationist. Do you see that?

5 A. Yes.

6 Q. Did you have any idea -- what idea did you
7 have was the meaning of creationist as it was being used
8 by Cavagnero there?

9 A. You know, I didn't give it a lot of
10 thought. I think he was -- I don't -- I don't know.

11 Q. Okay. He then goes on to give I guess his
12 view of what Gaskell's opinions are.

13 A. Uh-huh.

14 Q. And then links to a website. You see that
15 link there?

16 A. Yes.

17 Q. And I believe in the original e-mail that
18 it's an actual link that you can click on and you get --

19 A. That's correct.

20 Q. Do you recall clicking on that link and
21 going to what it links to?

22 A. Yes.

23 Q. All right.

24 MR. MANION: Let me have this marked
25 and I'll show it to you.

1 MS. KRIZ: There's no need.

2 MR. MANION: You have a room in your
3 house wallpapered with this, don't you? Or you soon
4 will. Geoff, would you like a copy? Barb, how about
5 you?

6 (Plaintiff's Exhibit No. 3 marked.)

7 Q. All right. We're showing you what we
8 marked Exhibit 3, Professor Hoch, and this appears to
9 be, I think it's fairly undisputed, what one would have
10 gotten to when one clicked on the link contained in
11 Professor Cavagnero's e-mail. Does it appear to be that
12 way to you?

13 A. Yes.

14 Q. All right. Now, you got this on
15 October 1, 2007, and did you read it at that time?

16 A. I read it -- through it very quickly.

17 Q. All right. How much time do you think you
18 spent reading it?

19 A. Five or ten minutes.

20 Q. Okay. It's about -- it says it's 12 pages
21 long. All right. Let's mark this one.

22 (Plaintiff's Exhibit No. 4 marked.)

23 Q. I'm showing you what we marked Exhibit 4.
24 Exhibit 4 is a -- it's a series of e-mails. The heading
25 is -- at the top is from Cavagnero to Ferland and other

1 members of the committee, it's dated October 3, 2007, at
2 11:57 a.m., and I think we can agree based on the
3 testimony of everybody that's testified so far at
4 depositions, Cavagnero is with this e-mail sending to
5 the committee members the responses he received from
6 yourself and from Subbaswamy to Exhibit 2. Does that
7 make sense?

8 A. Exhibit --

9 Q. Well, Exhibit 2 is his e-mail --

10 A. Oh.

11 Q. -- saying an issue has arisen --

12 A. Yes.

13 Q. -- here's a link to his paper. Exhibit 3
14 is the paper. You responded to him, the provost
15 responded to him, and then he forwarded your responses
16 to the committee, and that's what we're looking at in
17 Exhibit 4.

18 A. Right.

19 Q. Okay.

20 A. I've never seen this e-mail before, the
21 top one.

22 Q. Okay.

23 A. This one.

24 Q. You're talking about the part where
25 Cavagnero is writing to the committee and basically

1 introducing yours and Swamy's responses?

2 A. Correct.

3 Q. Toward the bottom of the page you see
4 where it says original message from Hoch, Steven?

5 A. Uh-huh.

6 Q. Okay. You have to say yes or no.

7 A. Yes.

8 Q. All right. And does this appear to be the
9 e-mail response you sent to Cavagnero?

10 A. Yes.

11 Q. All right. And this followed your -- I
12 think you said five or 10 minutes reading of Professor
13 Gaskell's paper. Right?

14 A. Correct.

15 Q. Other than that e-mail, which starts at
16 the bottom of the first page of this exhibit and
17 continues on to the top of the next page, did you write
18 any other e-mails to Cavagnero or the committee or
19 anyone else for that matter regarding the observatory
20 director process?

21 A. No.

22 Q. Okay. The first line of your e-mail you
23 say that the link, the paper that's at the end of this
24 link, should be considered a scholarly paper. You say
25 that?

1 A. Yes.

2 Q. Why do you think it was a scholarly paper,
3 or should be considered a scholarly paper?

4 A. Well, because it clearly identifies Martin
5 Gaskell as a member of the Department of Physics and
6 Astronomy at the University of Nebraska, and he uses the
7 authority of his position in producing this paper, which
8 is common among all faculty members.

9 Q. What do you mean common among all faculty
10 members?

11 A. All faculty members when they publish
12 professionally state their institutional affiliation.
13 It tells you about the authority of the person writing
14 the piece.

15 Q. Okay. And why is that significant to you
16 as the dean? I mean, I assume it was significant to you
17 and that's why you mentioned it in your response.
18 What's the significance of that to you?

19 A. The significance of it to me was that this
20 was clearly part -- Professor Gaskell was putting this
21 forward as a professional paper as part of his scholarly
22 body of work, because he identifies himself with the
23 department and the University of Nebraska.

24 MR. MANION: Okay. Let's mark this.

25 (Plaintiff's Exhibit No. 5 marked.)

1 Q. Showing you what we've marked Exhibit 5.
2 This appears to be an article that appears on the
3 Internet authored by a Douglas Mock and James J. Krupa.
4 And if you look at the back page --

5 A. Uh-huh.

6 Q. -- James J. Krupa is identified as an
7 alumnus and biology professor at the University of
8 Kentucky. Would you consider this a scholarly paper of
9 Dr. Krupa's?

10 A. I don't know. I'd have to look at it and
11 know where it appeared. It starts with opinion, though.

12 Q. Okay.

13 A. I can't answer the question without more
14 information.

15 Q. Okay. Let's go back to Professor
16 Gaskell's paper and your e-mail regarding that. You say
17 in the third sentence -- I think it's the third
18 sentence: Therefore, I suggest that the committee needs
19 to determine whether this paper and others he might have
20 written are good science. You see that?

21 A. Yes.

22 Q. Your reference to "others he might have
23 written," have any others ever come to your attention in
24 the course of this process?

25 A. No.

1 Q. All right. This is the only paper,
2 talking about Exhibit 3, that was brought to your
3 attention and that's what you're referring to?

4 A. Yes.

5 Q. All right. In the next paragraph you make
6 the statement, for example -- quoting you, "For example,
7 is the "young earth creationist" position he advocates
8 supportable on the basis of the standards of science."
9 What led you to conclude that he advocated a young earth
10 creationist position?

11 A. Both young earth creationist position in
12 quotes, so I assume those words appear in his paper.

13 Q. Okay. Can you show me where?

14 A. No. But I bet they're in here.

15 Q. Take your time.

16 A. There it is on the first page. Young
17 earth creationist position, first page, first paragraph.

18 Q. And you make the statement, however, in
19 your e-mail, that he advocates that position. And so my
20 question is, where does he advocate that -- I'm assuming
21 advocates mean that he agrees with and tries to advance
22 a position.

23 (Deponent reviews document.)

24 A. I don't know. I'd have to read it
25 further.

1 Q. Okay. Well, let me direct your attention
2 to page 4 of 12 of the exhibit, at the bottom, the last
3 paragraph. And this is, to put it in context, it
4 appears in -- under the heading of Different
5 Interpretations of Genesis, and then he puts it in
6 quotes: God made everything pretty much as it is now in
7 six 24-hour days about 6,000 years ago, which he refers
8 to the so-called Creationist position. He goes on to
9 say that he considers the young earth creationist
10 position. And he goes on to say couple lines down, I
11 don't believe it is the interpretation the Bible
12 requires of itself, and it certainly clashes head-on
13 with science.

14 So my question is, isn't it clear from
15 this paper that, in fact, Professor Gaskell does not
16 advocate a young earth creationist position?

17 A. I don't know. All I'm doing is asking the
18 committee to review this paper as part of his body of
19 scholarly work and to see whether it's good science or
20 not.

21 Q. Okay. And this is based on your five to
22 10-minute reading of it?

23 A. Very quick, yeah. My main concern was to
24 assist the committee in determining whether they should
25 consider it part of his body of scholarly work or not.

1 And I thought it should be considered that. And that's
2 really what my goal was.

3 Q. Okay. Is it fair to say that you weren't
4 making a scientific evaluation of his paper?

5 A. Correct. That's right. I'm in no
6 position to make a scientific evaluation of his paper.

7 Q. And is it fair to say that the questions
8 that you asked, specifically the one about young earth
9 creationism, and then on the next page there's one about
10 where you reference a specific quote from his paper,
11 you're trying to give the committee guidance in the
12 kinds of questions that they should be asking?

13 A. Yes. Or at least, you know, is the
14 article as a whole -- and I'm trying to give some
15 examples maybe, they're bad examples -- but still does
16 the paper accord with the principles of good science.
17 That's the question that's -- I'm trying to put before
18 the committee.

19 Q. Okay. Okay.

20 A. And in particular does the literature he
21 cite reflect the current state of the discipline. Is he
22 privileging certain materials because of their
23 theological provenance and prominence.

24 Q. Why did you -- why did you refer to
25 theological provenance there? And that's

1 p-r-o-v-e-n-a-n-c-e. It's a professor word.

2 A. Uh-huh.

3 Q. Why did you refer to theological
4 provenance there in the context of this whole thing?

5 A. Probably that was one of the quick
6 impressions I got of the document.

7 Q. Is it fair to say that you yourself did
8 not reach any conclusions about the questions that you
9 raise here? At least not --

10 A. Yes.

11 Q. -- as of the time you sent this?

12 A. Yeah, yeah, right.

13 Q. Did you ever after that come to any
14 conclusion --

15 A. No.

16 Q. -- as far as any of these questions?

17 A. No.

18 Q. Okay. Did anyone on the committee,
19 Cavagnero or any of the individual members of the
20 committee, ever convey to you whether they answered the
21 questions that you raised or the type of questions
22 suggested by your e-mail?

23 A. Yes. Indirectly because when Mike met
24 with me and Patty Bender, he elicited the reasons why
25 Gaskell wasn't hired.

1 Q. Okay. And did those include --

2 A. No. Well, I have to go back to what...

3 MS. KRIZ: Wait. Let him finish his
4 question.

5 THE WITNESS: Oh. Sorry.

6 MS. KRIZ: Did those include?

7 Q. Did those include anything that would
8 respond to the questions you raise in your e-mail here?
9 Let me just back up so --

10 A. Uh-huh.

11 Q. In other words, you get this e-mail from
12 Cavagnero. He attaches this link. You read it quickly.
13 You're not a scientist. But you conclude that this is
14 part of his scholarly work and it's something the
15 committee should evaluate. Right?

16 A. Correct.

17 Q. And you -- based on your quick reading of
18 it, you pull out a couple of possible questions that
19 someone might get from this and you suggest the
20 committee should look in to that, those questions or
21 questions like that.

22 A. Uh-huh.

23 Q. Is that fair?

24 A. Correct.

25 Q. So my question is, did anybody from the

1 committee ever say to you, in writing or verbally, Dean,
2 you raised these questions, this is how the committee
3 approached those questions, and this is what the
4 committee concluded about those questions?

5 A. No. No.

6 Q. Were you surprised at that?

7 A. No. Because the reasons that Mike gave
8 with the meeting with Patty Bender were so overwhelming,
9 this whole issue became moot. As I said, as soon as I
10 read that he'd had two negative recommendations from
11 previous supervisors, that was the end of the discussion
12 as far as I was -- I was concerned, and everything else
13 now became moot and not relevant. We didn't need to go
14 that far.

15 Q. Okay.

16 A. We had overwhelmingly good reasons not to
17 hire him, so we didn't even have to go down this road.

18 Q. Based on the two negative
19 recommendations --

20 A. Well, the two negative recommendations and
21 some other -- some other things, but two negative
22 recommendations from previous supervisors will not get
23 you hired in most cases as a staff member at the
24 University of Kentucky.

25 Q. Okay. And did you ever see any

1 recommendations in writing from any previous
2 supervisors?

3 A. Of Gaskell's?

4 Q. Of Gaskell.

5 A. No.

6 Q. Okay. Let's have this marked.

7 (Plaintiff's Exhibit No. 6 marked.)

8 Q. All right. So I'm showing you what we
9 marked Exhibit 6, and it's a performance evaluation that
10 Professor Gaskell received from his previous chair at
11 the University of Nebraska. I'd like you to take a look
12 at that and ask you some questions about it.

13 (Deponent reviews document.)

14 A. Okay.

15 Q. Okay. That appears to be a performance
16 evaluation done by Roger Kirby, professor and chair at
17 the University of Nebraska in Lincoln. Correct?

18 A. Correct.

19 Q. And it's dated May 25, 2006. Right?

20 A. Correct.

21 Q. And it purports to be an evaluation of
22 Gaskell's performance at Nebraska. Right?

23 A. Correct.

24 Q. Is there anything negative in that
25 performance evaluation about Gaskell? I mean anything?

1 A. No.

2 Q. Would you consider that's a pretty
3 positive evaluation. Right?

4 A. My experience as a dean is that department
5 chairs tend to be very hyperbolic in their
6 recommendations of other people.

7 Q. Okay.

8 A. I would describe this more as average in
9 spite of the language.

10 Q. But certainly not poor?

11 A. Certainly not poor.

12 Q. So if superior, superior plus, and good
13 plus are average, what's a good evaluation look like?

14 A. Do you want me to answer?

15 Q. Yeah.

16 MS. KRIZ: You're promoted to dean.

17 THE WITNESS: Yeah. Right.

18 A. I mean I can give you an example.

19 Q. Okay.

20 A. I mean, one of the things that I fought at
21 Kentucky as dean is we ranked faculty on a five point
22 scale.

23 Q. Okay.

24 A. And everybody was between four and five.

25 Q. This is sort of like grade inflation?

1 A. Well, it's like, you know, Lake Wobegon.
2 Everybody is above average.

3 Q. Okay. Let's look at this.

4 (Plaintiff's Exhibit No. 7 marked.)

5 Q. Showing you what we've marked Exhibit 7,
6 which is an e-mail from Thomas Troland to what we can
7 all agree are members of the committee, dated
8 September 24, 2007. There's been testimony about this
9 particular e-mail. It apparently is a summary of
10 committee deliberations or committee activity that took
11 place on or about September 24th, and everyone has
12 agreed that they believe that at that particular meeting
13 the members of the committee ranked the candidates for
14 the position on a variety of criteria which are listed
15 in the e-mail, and that as you can see, a little bit
16 below the middle of the page, Gaskell received a score
17 of 8, which was higher than anyone else's, and Knauer
18 received a score of 5. Did you know about this
19 particular evaluation at the time you were presented
20 with this issue by Patty Bender?

21 A. No.

22 MR. MANION: Let's mark this.

23 (Plaintiff's Exhibit No. 8 marked.)

24 Q. Showing you what we've marked as
25 Exhibit 8, which is a chart three pages long, which

1 appears to be a chart setting forth the names of the
2 various applicants for the observatory director position
3 and an evaluation of their various strengths and
4 weaknesses. I'm only interested, you'll not be
5 surprised to learn, in Martin Gaskell and Tim Knauer,
6 who appear on the first page of the chart. You see
7 that?

8 A. Uh-huh.

9 Q. Did you ever see this before?

10 A. No.

11 Q. Cavagnero did not bring this to your
12 attention, nor did anyone else?

13 A. No.

14 Q. If you would, take a look with me at the
15 boxes for Gaskell and let's compare them with Knauer.
16 Would you agree that the chart indicates that Gaskell
17 has extensive experience? Developed and directed the
18 University of Nebraska student observatory and that
19 Knauer has long-standing interest in small telescopes
20 and engineering background to deal with technical
21 issues. That's what the chart says. Right?

22 A. Correct, that's what the chart says.

23 Q. All right. And rather than just have you
24 indicate that I can read, let's go to the final column
25 of the chart for each of those individuals, and you can

1 see for Gaskell that the person who prepared this chart
2 concluded: He has very significant experience in all
3 areas relevant to our position. Then it says quite
4 senior. And then for Knauer it says reasonable
5 candidate, probably not among the best. Do you see
6 that?

7 A. Yes.

8 Q. And you were not given this or you were
9 not apprised of this chart prior to the final offer
10 being made to Knauer. Right?

11 A. Yes. I'm not also aware that this is the
12 final version of the chart.

13 Q. Okay. That's -- I don't know much about
14 the chart other than it was supplied to us in discovery
15 by the university and a number of witnesses have
16 testified about it, but you're right, it's quite
17 possible there's another version of the chart. We're
18 not aware of that, though.

19 A. Would it be compiled for affirmative
20 action procedures or...

21 Q. We -- well, no one has testified to that.
22 It appears that it was compiled September 5, 2007, which
23 was relatively early in the process. It looks like the
24 final committee meeting was on the 23rd of --

25 A. Was this before or after interviews?

1 Q. I'm not sure.

2 A. Well, if it's before interviews, it's
3 irrelevant to a certain degree.

4 Q. Why?

5 A. Because the main reason we bring people to
6 campus is to interact with them.

7 Q. Okay.

8 A. So if this is before interviews, these are
9 impressions of people on paper. And people on paper
10 differ very substantially from the person in flesh when
11 they show up on campus.

12 Q. Okay.

13 A. We all the time -- all the time someone
14 will impress us on paper and then come to campus. There
15 will be different issues raised, different concerns
16 raised. That's why we bring them to campus. And
17 overwhelmingly that campus interview is probably crucial
18 to the final decision. So this looks like if it's early
19 in the process that it's an interim document giving
20 initial impressions of CVs, recommendations they may
21 have. They could subsequently change their mind
22 substantially based upon interviews and follow-up
23 conversations with supervisors and other things. So I
24 wouldn't want you to have the impression that an interim
25 document is -- you know, is solely about what makes the

1 determination in the hiring process.

2 Q. Okay.

3 MR. MANION: Let's re-mark this.

4 (Plaintiff's Exhibit No. 9 marked.)

5 Q. Showing you what we marked Exhibit 9 for
6 your deposition. How this exhibit is in the current
7 form it's in, it appears to be a mystery. It's an
8 e-mail from Krupa, who is a biology professor, to
9 Cavagnero, dated October 26, 2007, 3:30 p.m., forwarding
10 to Cavagnero, Cavagnero's e-mail to John Pica and
11 yourself, dated Friday, October 26, 2007.

12 A. Well, Mike had obviously shared it with --

13 Q. Krupa.

14 A. -- Krupa.

15 Q. Okay. However it is, it's not that
16 significant as far as I can tell. It appears to be Mike
17 Cavagnero's transmittal to Pica and yourself, by the cc,
18 of the search committee's final report on the search
19 process. Does that seem fair, that characterization of
20 it by me?

21 A. Yes.

22 Q. Do you recall ever reading this before?

23 A. No.

24 Q. Do you think you read it as part of the
25 search process?

1 A. No. I had almost a standing policy never
2 to read things that were cc'd to me.

3 Q. Okay. Why?

4 A. Because I would get 4- or 500 e-mails a
5 day directed to me, so, you know, since it was cc'd to
6 me, it went in the file.

7 Q. Okay. Since it wasn't intended for you
8 initially?

9 A. That's right. There was no action
10 required on my part. I had enough trouble reading the
11 ones that were directed to me.

12 Q. Okay.

13 A. If anything, I would have responded to
14 John Pica: Take appropriate action. But I doubt I even
15 did that in this case.

16 Q. Okay.

17 MR. MANION: Let's mark this one.

18 (Plaintiff's Exhibit No. 10 marked.)

19 Q. I'm showing you what we've marked
20 Exhibit 10, which is an e-mail from Tom Troland -- by
21 the way, you understand that Troland was the chair of
22 the search committee in this case?

23 A. Yes.

24 Q. Did you know Troland?

25 A. Oh, sure, yeah.

1 Q. Okay. You met him during the course of
2 your time there?

3 A. Uh-huh.

4 Q. You have to say yes or no.

5 A. Yes. Yes. Yes. Yes.

6 Q. What this e-mail dated October 23, 2007,
7 at 5:50 p.m. appears to be is Troland sending to the
8 committee members his summary of what the committee had
9 done that day at its meeting in recommending that the
10 director position be offered to Tim Knauer. And at the
11 bottom of this e-mail, or sort of toward the middle and
12 then continuing on the second page, he attaches a draft
13 of a formal report that I -- that he's going to send to
14 Cavagnero. Is that what this appears to be?

15 A. Uh-huh. Yeah. Right.

16 Q. And there's an indication in the top part
17 where he says that this -- the statement is to be
18 directed to Mike who will forward the committee
19 statement and his own analysis to the dean. Presumably
20 you.

21 A. Uh-huh.

22 Q. And it says the dean will make the final
23 decision regarding the observatory director position.

24 What I'm interested in figuring out is, it
25 appears that the previous exhibit, which we've marked 9,

1 is what Troland is referring to there. It's Cavagnero
2 forwarding to the dean the committee's report and his
3 own analysis. Does that appear accurate to you?

4 A. Say that again, please.

5 Q. Okay. In Exhibit 10 Troland says here's
6 what we did, you know, you all know what we did, but
7 here's formally what we did. Here's a draft of a report
8 that I'm sending to Mike of our committee deliberations
9 and Mike is going to forward this report to the dean
10 with his own analysis.

11 A. Correct.

12 Q. And my -- I'm just asking you to confirm
13 what appears --

14 A. Yes.

15 Q. -- to be the case, that Exhibit 9 was in
16 fact Cavagnero doing just what Troland said he was going
17 to do. In other words, forwarding the committee's
18 report with his own analysis.

19 A. Yes.

20 Q. All right. And as we know, Cavagnero
21 agreed with the committee's recommendation of Knauer.
22 Correct?

23 A. Correct. And this is after the interview
24 process has taken place.

25 Q. Right.

1 A. Unlike the previous document, which is
2 dated September 5th.

3 Q. Right. Right.

4 MR. MANION: Let's mark this one.

5 (Plaintiff's Exhibit No. 11 marked.)

6 Q. Showing you what we have marked
7 Exhibit 11, which is an e-mail from Mike Cavagnero to
8 Tom Troland dated September 19, 2007. Have you ever
9 seen this e-mail before?

10 A. No.

11 Q. Okay. Obviously, then, it was not
12 something that you considered to whatever extent you
13 were involved in the decision in this case, it's not
14 something that you took in to consideration. Right?

15 A. Correct. I've never seen it before.

16 Q. Okay. If you look at the last paragraph
17 of this document, Cavagnero says to Troland -- and he's
18 talking about -- we can all agree he's talking about a
19 conversation he had with Gaskell's chair at the
20 University of Nebraska in Lincoln. It says: I also
21 raised the questions of whether his personal beliefs
22 affected his job performance. You see that?

23 A. Yes.

24 Q. Did Cavagnero ever tell you at any point
25 that he raised the question of whether Gaskell's

1 personal religious beliefs affected his job performance?

2 A. No.

3 Q. Would you consider that something
4 important for you to know in evaluating whether or not
5 this search process had been handled appropriately?

6 A. I think it's a reasonable question to ask
7 in this sense. The university certainly does not permit
8 faculty members to proselytize in the classroom. And I
9 think if someone's personal religious beliefs affect
10 their job performance in the sense that they are
11 proselytizing in the classroom, this would be considered
12 inappropriate. And I suspect that's the question that
13 Mike is trying to determine.

14 Q. Do you have any reason to believe he asked
15 that question of anybody else's previous employer in
16 this search process?

17 A. That, I don't know and it may have been --
18 it may have been a reasonable question based upon the
19 information he had in front of him.

20 Q. Well, you don't know what that information
21 was?

22 A. Well, we had the article.

23 Q. The article, Modern Astronomy, the Bible,
24 and Creation?

25 A. Correct.

1 Q. What about the article would lead you to
2 think that that made it reasonable for Cavagnero to
3 raise this issue with Gaskell's previous chair?

4 A. Well, I think a number of faculty members
5 who had read the article had raised that concern; that
6 is, again, are his personal religious beliefs going to
7 impact his commitment to the scientific method and how
8 astronomy and physics and science is generally taught at
9 the University of Kentucky.

10 Q. But -- and you think that because of this
11 article, that that raised that issue fairly in this
12 instance?

13 A. It wasn't for me to determine whether it
14 raised that issue fairly. I sent it back to the
15 department saying I think you need to view this as a
16 scholarly publication. And in viewing it as a scholarly
17 publication, they need to then address whether this is
18 good science.

19 Q. Right. But that's not exactly an answer
20 to my question. The question is what about the
21 existence of that paper that we've identified leads you
22 to think that it was appropriate to approach his
23 previous chair and ask the question of whether his
24 religious beliefs affect his job performance?

25 A. I think that was the job of the committee

1 to determine whether that was a good question to ask
2 based upon the publication. I think when a faculty
3 member puts out a scholarly publication and we determine
4 it's a scholarly publication, it's fair for the
5 committee and the chair to ask anything -- anything of
6 their supervisor, their colleague, the scientific
7 community in general reasonable questions that arise
8 from that. And obviously Mike thought it was a
9 reasonable question.

10 Q. Okay. Well, referring to that paper,
11 Modern Astronomy, the Bible, and Creation, I mean
12 clearly Gaskell doesn't label it a scholarly paper
13 anywhere, does he?

14 A. Yes, he does.

15 Q. He doesn't say this is a scholarly paper
16 anywhere on this, does he?

17 A. Yes, he does.

18 Q. Where?

19 A. By form and his affiliation.

20 Q. That's sufficient to make this a scholarly
21 paper?

22 A. Absolutely. It's out on the web, it's out
23 for all members of the scientific community to read, and
24 he makes it very clear that he is writing this paper
25 under the authorial voice as a member of the University

1 of Nebraska academic community.

2 Q. And the implication from that is that
3 somebody reading this should conclude that that's --
4 that the opinions expressed in here are those of the
5 University of Nebraska?

6 A. No. No one ever says that they are the
7 opinions of the University of Nebraska. But he's using
8 his status as a University of Nebraska faculty member to
9 put forth his scientific -- his scientific or personal
10 views, whatever he's doing. Institutional affiliation
11 is exceedingly important in the same sense that you have
12 permission to practice law.

13 Q. So by putting -- by putting his
14 identification with the University of Nebraska and
15 identifying himself as such, his personal religious
16 beliefs are then fair game to explore in a hiring
17 process?

18 A. No. The -- it's got nothing to do with
19 his personal religious beliefs. It has to do with
20 evaluating the scholarly merit of that paper.

21 Q. Okay. But the question I'm asking you is,
22 is not what you're saying. It's -- Cavagnero said I
23 raised the questions of whether his personal religious
24 beliefs affected his job performance. And my question
25 is, do you think that that was an appropriate question

1 for him to ask a previous employer?

2 A. If after reading that paper that was a
3 concern of the chair, I think it was a legitimate
4 question to ask. If I had -- let me give you a
5 hypothetical situation.

6 Q. Okay.

7 A. Okay? If I received information from a
8 previous chair of someone that the person teaching
9 calculus spent ten minutes a day proselytizing among the
10 students, okay, this would be a very grave concern to
11 me.

12 Q. Right. But is there anything in this
13 paper that indicates --

14 A. I haven't read the paper and it's not my
15 job to assess that. Okay? I told the committee that I
16 considered it part of his scholarly body of work. If
17 Mike reading that paper then concluded that this may
18 impact his teaching, because usually a good teacher and
19 a good researcher, good research impacts good teaching.
20 And poor research, you know, can impact poor teaching.
21 So we certainly -- it's a very legitimate area to --
22 very legitimate question to ask. Faculty are not to
23 proselytize among the students. They can hold whatever
24 personal belief they want. There's their business.

25 Q. What indication was there in this paper

1 that Martin Gaskell proselytized among students?

2 A. As a said, I didn't read the paper.

3 Q. Well, you said you did read the paper.

4 A. No, I said I skimmed it very quickly.

5 It's a 12-page paper, it's a dense paper. I looked at
6 it very quickly. My sole purpose was to let the
7 committee know that I thought they should consider it
8 part of his scholarly body of work.

9 Q. Okay.

10 A. I did not read the paper carefully at all.
11 And as it turns out, it is evident that I didn't read it
12 very carefully.

13 Q. The evidence being that you perhaps
14 misunderstood the position --

15 A. Right.

16 Q. -- he was advocating.

17 Okay. So hypothetically do you have any
18 particular religious beliefs or lack of religious
19 beliefs? You don't have to tell me what they are. I'm
20 just asking you if you have some.

21 A. Well, the answer is do I have some or do I
22 have a lack of some. The answer to that is yes.

23 Q. Supposing someone learned what your
24 religious beliefs were. Do you think it would be
25 appropriate for a prospective employer to call your

1 previous employer to ask whether your religious beliefs
2 affected your job performance?

3 A. If they had reason to ask the question, I
4 think it's of concern.

5 Q. And in this case the reason to ask the
6 question is the mere fact that he put on the web this
7 paper, which he refers to as lecture notes, you refer to
8 it as a scholarly paper, in which he talks about Modern
9 Astronomy, the Bible, and Creation?

10 A. Say the question again.

11 Q. You think that when you say that it would
12 be perhaps an appropriate question if there was reason
13 to ask it, and I'm saying that -- and I'm asking you so
14 you think that in this case the reason was that the fact
15 that Martin Gaskell had put on the web something that he
16 describes as lecture notes and you call a scholarly
17 paper titled Modern Astronomy, the Bible, and Creation?

18 A. I think your description of them as
19 lecture notes is inappropriate. These are lecture notes
20 from presentations, formal presentations that he's made
21 at universities. So these aren't just scratch notes on
22 a piece of paper. These are notes from formal
23 presentations he's made as part of the academic and
24 educational mission of universities. And then to
25 disseminate them even further, he's put them on the web,

1 noted his affiliation with the University of Nebraska.
2 And it has all the portents, structure, language of a
3 regular academic and scholarly paper, which scholars do
4 all over the world.

5 Q. This paper does?

6 A. This paper does.

7 Q. Have you ever seen Gaskell's CV?

8 A. To the best of my knowledge, no.

9 Q. Okay. It's probably, in the same way
10 yours is, it lists scholarly papers that have been
11 published.

12 A. Correct.

13 Q. In excess of a hundred I think in his.

14 A. Uh-huh.

15 Q. Would you be surprised to learn that this
16 is not included in them? When I say this, I mean Modern
17 Astronomy, the Bible, and Creation.

18 A. I have no reaction one way or the other.

19 Q. Okay. Is everything that a professor
20 affiliated with a university writes and disseminates on
21 the web a scholarly paper?

22 A. No, but if they -- if it's not intended to
23 be part of his scholarly work, it should not include
24 their institutional affiliation. Op-ed pieces, for
25 example. Novels. I mean, we have a political scientist

1 who wrote a novel about Martians. That's fine. It's
2 not part of his scholarly work. And he doesn't pretend
3 it to be part of his scholarly work.

4 Q. So in Gaskell's case the fact that he says
5 these are notes based on public talks I have given --

6 A. Public talks at universities.

7 Q. Right. And he says this is the web
8 version of a handout that he's given at public talks,
9 you still consider this to be a scholarly paper?

10 A. Yes.

11 Q. Okay.

12 A. I think any talk you give at a university
13 is a scholarly activity.

14 Q. Okay. And just so I'm clear, you do not
15 think it was inappropriate for Cavagnero to raise the
16 question of whether Gaskell's personal religious beliefs
17 affected his job performance?

18 A. I think if he had -- on the basis of the
19 information that he had in front of him, okay, if there
20 are circumstances in which it can be an appropriate
21 question.

22 Q. Can be an appropriate?

23 A. Can be an appropriate question.

24 Q. Okay.

25 A. In the same sense that if we had

1 information that a faculty member discriminated against
2 African-Americans, we would want to know that.

3 Q. Right.

4 A. Same thing. If they had information that
5 led us to believe that this faculty member failed
6 African-Americans every time they took one of his
7 classes, perfectly legitimate question to ask.

8 Q. Okay. I think I would agree with that.
9 I'm trying to understand how that's in any way analogous
10 to raising the question of whether a person's personal
11 religious beliefs -- we're talking about their personal
12 religious beliefs -- those are the words Cavagnero
13 used -- affected his job performance. And as far as --
14 and you know of no other information. You're saying
15 that if he had other information, that would be possibly
16 an appropriate question. But the only information
17 you're aware that he had is this article, Modern
18 Astronomy, the Bible, and Creation.

19 A. The only information I'm aware of.

20 Q. Right.

21 A. I don't know what other information he
22 had.

23 Q. Okay.

24 MR. MANION: All right. Let's mark
25 this.

1 (Plaintiff's Exhibit No. 12 marked.)

2 Q. Showing you what we have marked
3 Exhibit 12, which is another e-mail. This one is from
4 Sally Shafer to Troland and Cavagnero dated
5 September 21, 2007, 10:03 a.m. Have you ever seen this
6 e-mail before?

7 A. No.

8 Q. And so I can assume that it's not
9 something that you considered in any way in the search
10 process in this case?

11 A. No. I've never seen it before.

12 MR. MANION: Okay. Let's mark this
13 one.

14 (Plaintiff's Exhibit No. 13 marked.)

15 Q. I'm showing you, Professor, what we've
16 marked Exhibit 13. This is an e-mail from Cavagnero to
17 the committee, and the subject is Knauer Interview.
18 Have you ever seen this e-mail before?

19 A. No.

20 Q. Therefore I can assume, can I not, that it
21 was not something that entered in to your consideration
22 to whatever extent you were involved in the
23 decision-making process here?

24 A. I was not at all involved in the
25 decision-making process.

1 Q. Okay. So then the answer is?

2 A. No.

3 Q. Right.

4 A. I haven't seen this e-mail and I was not
5 involved in the decision-making process.

6 Q. Okay. And again, not to belabor the
7 point, when you say you were not involved in the
8 decision-making process, you could have been had you
9 felt it necessary for you in your capacity as the dean
10 to intervene. You could have intervened, could you have
11 not?

12 A. Yes. I have the authority to intervene.

13 Q. Right. But you didn't in this case.
14 Obviously. Except to the extent --

15 A. Correct.

16 Q. -- that you answered a request for --

17 A. I can't -- matter of fact, the one e-mail
18 that I sent to Mike is probably more involvement than I
19 had at any staff decision during my tenure as dean on a
20 staff hire.

21 MR. MANION: Off the record.

22 VIDEOGRAPHER: The time is 11:58 a.m.
23 We now leave the videotape record.

24 (Off the record.)

25 VIDEOGRAPHER: This is Tape No. 2.

1 The time is 12:16 p.m. We now resume the videotape
2 record.

3 A. In light of what you just read, I do want
4 to make clear, of course, that staff that reported
5 directly to me, I was very involved in those hiring
6 decisions.

7 Q. Okay. This particular position was not
8 one that would report directly to you.

9 A. Correct.

10 Q. When you say staff, that would be working
11 for the dean directly.

12 A. Correct.

13 Q. That makes sense.

14 All right. The last exhibit I showed you
15 was Exhibit 13, I believe?

16 A. Correct.

17 Q. Let's take a look at another exhibit.

18 (Plaintiff's Exhibit No. 14 marked.)

19 Q. I think I know the answer to this question
20 and several others, but I'm going to ask you for the
21 record anyway. Exhibit 14, I believe, is an e-mail from
22 Thomas Troland to Mike Cavagnero dated October 19, 2007,
23 at 4:57 p.m., subject The Gaskell Affair. Have you ever
24 seen this e-mail before?

25 A. No.

1 Q. All right. You indicated early in the
2 deposition today that -- actually you've said several
3 times that you did not play a role in the decision-
4 making process in this case.

5 A. Correct.

6 Q. All right. However, as we know, that
7 Patty Bender brought to your attention a complaint by a
8 faculty member about the decision-making process.

9 A. Correct.

10 Q. And I think you indicated, and correct me
11 if I'm wrong, that had something come to your knowledge
12 about the decision-making process that struck you as
13 improper or a violation of institutional procedures, you
14 could have and presumably would have at least asked for
15 further investigation. Right?

16 A. Yes.

17 Q. And you could have, you had the authority
18 at least, to undo the hiring process. In other words,
19 you could have said we can't hire that guy or we have to
20 go back and review everybody. You could have done that
21 if you had seen sufficient grounds for doing so?

22 A. Yes. I probably would not have made that
23 determination myself, however. I probably would have
24 spoken first to university counsel or HR or Patty Bender
25 to get advice.

1 Q. Okay. Okay.

2 A. Because it may have been possible to
3 provide an immediate remedy as opposed to one ex post
4 facto.

5 Q. Okay. When you met with Patty Bender and
6 Professor Cavagnero that day, we think it was
7 October 30th.

8 A. Yeah.

9 Q. And we've talked a little bit based on
10 Patty Bender's notes about what Cavagnero said during
11 that meeting. During that meeting did Cavagnero tell
12 you that the head of the search committee, Tom Troland,
13 had written an e-mail to him, which we're looking at as
14 Exhibit 14 now, in which he made, among other
15 statements, the following statement: The real reason
16 why we will not offer him -- meaning Gaskell -- the job
17 is because of his religious beliefs in matters that are
18 unrelated to astronomy or to any of the duties specified
19 for this position. Did Cavagnero tell you that Troland
20 felt that way?

21 A. No.

22 Q. Okay.

23 A. I assumed Patty Bender had informed me
24 about the nature of the concern. She would not have
25 told me which faculty member made the -- filed the

1 complaint or brought the issue to her attention.

2 Q. Okay. Would you have wanted to know that
3 the head of the search committee had reached that
4 conclusion? Would you have considered it important for
5 you to know that?

6 A. No.

7 Q. Why?

8 A. Because I was not involved in these
9 decisions. The ultimate authority resides with the
10 chair of the department.

11 Q. Okay. But ultimately you had the
12 authority to undo that decision if you thought it was --

13 A. The faculty member did not bring it to my
14 attention, so there was nothing I could do. The only
15 way it was brought to my attention was through Patty
16 Bender.

17 Q. Okay.

18 A. So I had no knowledge that there was any
19 concern whatsoever until Patty Bender asked to meet with
20 me the first time.

21 Q. Right. But then you had the meeting with
22 Cavagnero and Patty Bender.

23 A. Correct.

24 Q. And you've testified that when -- and I'm
25 not -- I don't want to put words in your mouth, but that

1 when you heard from Cavagnero something to the effect
2 that Gaskell had received poor recommendations from two
3 chairs, that basically that would have been enough for
4 you to conclude that there was sufficient reason not to
5 hire Gaskell. Right?

6 A. Correct. But, I mean, to be fair, Mike
7 enunciated based on -- because I don't have really
8 direct recollection of the meeting myself.

9 Q. Right.

10 A. And I suspect probably because Mike and
11 Patty were probably doing most of the talking.

12 Q. Right.

13 A. Because I was not really involved in the
14 decision. So Patty was probably trying to make -- I'm
15 guessing that she was trying to make a determination
16 whether things had gone according to university policies
17 and procedures. And Mike enunciated a whole series of
18 reasons why Gaskell wasn't hired. All of them seemed to
19 be very legitimate reasons and concerns.

20 Q. Okay.

21 A. One would have been enough for me, but
22 there was a long list of reasons.

23 Q. Right. But in your position as dean at
24 the time, would you not have wanted to know that in the
25 opinion of the head of the search committee --

1 A. No, I would not --

2 Q. Well, I haven't finished my question yet.

3 A. Sorry.

4 Q. A long-standing professor in good standing
5 at the university, that no objective observer could
6 possibly believe that we have excluded Martin on any
7 basis other than religious, would you not have wanted to
8 know that?

9 A. No.

10 Q. Why not?

11 A. Because I interact with the chair. So I
12 follow the -- you know, chain of authority. The chair
13 of the search committee reports to the chair of the
14 department. The chair of the department reports to me.

15 Q. Supposing the chair of the search
16 committee had concluded that particular applicant was
17 being denied because he was African-American. Isn't
18 that something you would have wanted to know?

19 A. It needed to be brought to my attention.

20 Q. Right.

21 A. Okay. Nobody brought this to my
22 attention.

23 Q. Right.

24 A. Okay? Had somebody brought it to my
25 attention, I would have called Patty Bender's office and

1 asked her to investigate the situation. So the person
2 brought it to Patty Bender's office, so she basically
3 followed the procedures.

4 Q. Okay.

5 A. The university has a number of pathways by
6 which faculty can address complaints of this sort, and
7 having a number of pathways is a very good thing because
8 there are times where faculty members are reluctant to
9 follow a certain route. They're more comfortable going
10 other routes. So the university has set aside a number
11 of different pathways for complaints regarding its
12 hiring process. So it's perfectly appropriate that the
13 faculty member directed their concern to Patty Bender's
14 office. They could have addressed it to me. They could
15 have addressed it to the -- to John Pica. They could
16 have addressed it to the associate chair of faculty.
17 They could have addressed it directly to Barbara's
18 office.

19 Q. Barbara Jones?

20 A. Barbara Jones' office. Wherever they felt
21 most comfortable bringing their concern.

22 Q. Okay.

23 A. But ultimately it would have gone to
24 Patty -- ultimately it would have gone to Patty Bender.

25 Q. And it would have been her job to

1 investigate the complaint.

2 A. Right. And to determine whether there was
3 a finding or not.

4 Q. Okay. Other than the meeting or meetings
5 that you had on October 30th with Patty, one with just
6 Patty and another with Mike Cavagnero, did you have any
7 other discussions with Patty regarding the search or the
8 hiring process for observatory director?

9 A. Not to the best of my knowledge.

10 Q. Did you ever discuss the observatory
11 hiring process with the provost, Subbaswamy?

12 A. You know, I don't -- I don't remember.
13 There was the one e-mail. Mike Cavagnero had cc -- had
14 contacted both me and the provost with his initial
15 e-mail.

16 Q. Right.

17 A. And Swamy chimed in after I'd informed
18 Mike Cavagnero what my decision is. I don't remember
19 talking to Swamy about it. I have no recollection of
20 that.

21 Q. Okay. I've shown you a number of e-mails
22 and documents, and we've identified other documents so
23 far in this deposition.

24 A. Uh-huh.

25 Q. The only e-mail that you're aware of that

1 you wrote is the one that we've previously identified
2 where you're responding to Cavagnero about his link to
3 the paper. Correct?

4 A. Correct.

5 Q. In this entire observatory director hiring
6 process, are you aware of any other documents that you
7 reviewed other than that e-mail from Cavagnero
8 forwarding you the link?

9 A. No.

10 Q. I've shown you a number of e-mails, and
11 you've said you don't recall ever reviewing those.

12 A. Right.

13 Q. I'm not going to go through the entire
14 stack of e-mails -- there are a lot more -- because
15 you're telling me that you didn't review any e-mails
16 other than the one that Cavagnero sent you.

17 A. Correct.

18 Q. Now, are you aware that at some point in
19 this process Cavagnero consulted with members of the
20 biology department?

21 A. Yes.

22 Q. Did you -- did he discuss that with you
23 before doing that?

24 A. I don't believe so.

25 Q. Did you ever see anything in writing from

1 any of the biologists concerning Cavagnero's request for
2 their opinion?

3 A. No.

4 Q. Did you ever talk to any member of the
5 biology department regarding their opinion of Gaskell's
6 scientific method, understanding?

7 A. Yes. I remember having a very brief
8 conversation, which was part of a larger conversation
9 about something else, with Shelly Steiner as chair of
10 the department.

11 Q. And when did that conversation take place?

12 A. I don't -- I don't recall, maybe Shelly
13 does. It was -- I think, but I'm not sure, before the
14 decision was made to hire -- to hire --

15 Q. Knauer?

16 A. Knauer.

17 Q. Okay. And can you tell me what was said
18 in that conversation?

19 A. Yes. Shelly was concerned about --
20 Professor Steiner, chair of biology, was concerned about
21 the fact that whether Professor Gaskell was, you know,
22 seriously committed to the process of scientific inquiry
23 on the basis of his views, particularly whether, you
24 know, important tenets of science are whether something
25 is testable and whether it can be repeated by others,

1 and he was -- he raised with me the -- these concerns
2 about Professor Gaskell.

3 Q. In what context did that conversation take
4 place? Was it on the phone? Was it in person?

5 A. It was a phone conversation, and that was
6 not the purpose of the phone conversation.

7 Q. Okay.

8 A. It was something else. So this was, I
9 suspect, about a 30-second discussion of this issue.

10 Q. And did he bring the issue up?

11 A. He brought the issue up.

12 Q. And how did you respond when he brought
13 the issue up? What did you say?

14 A. You know, I honestly don't know. Knowing
15 me -- I don't know.

16 Q. Okay. And you believe that that was
17 before the final decision was made that that
18 conversation took place?

19 A. Yes, but I'm really not sure at all.
20 Maybe Professor Steiner has a better sense of the
21 timeline.

22 Q. And did you at any point convey to Mike
23 Cavagnero or anybody else in the physics and astronomy
24 department that --

25 A. No.

1 Q. -- you had heard from Steiner?

2 A. No.

3 Q. Did Steiner ever send anything to you in
4 writing?

5 A. No.

6 Q. And no other member of the biology
7 department did either?

8 A. To the best of my knowledge, no.

9 Q. Any other conversations between yourself
10 and any members of the biology department about the
11 hiring of the observatory director?

12 A. No.

13 Q. Were you surprised that Professor Steiner
14 raised the issue in a conversation with you?

15 A. No. Since -- I learned subsequently he
16 had been contacted by members of the physics department.

17 Q. Okay. But were you surprised at the time?
18 I mean, he's in the biology department.

19 A. I was surprised because this is a physics
20 department issue.

21 Q. And you don't recall what you said to him
22 in response to his expression of concern?

23 A. No. This is what I was going to venture
24 before. I don't know, but knowing him -- knowing me, I
25 probably would have told him that this was a matter for

1 the physics department to resolve.

2 Q. Okay.

3 A. And that's a polite version of what I
4 would have said probably.

5 Q. And did he respond to your response?

6 A. I don't remember, no. I had a very good
7 relationship with Shelly, and he probably expected that
8 out of me.

9 Q. How about -- did you ever have any
10 conversations with members of the physics and astronomy
11 department other than Cavagnero about the hiring
12 process?

13 A. No. No.

14 Q. Never spoke to Professor Elitzur?

15 A. No. To my recollection, I didn't speak to
16 anybody about this.

17 Q. Okay. There's an indication -- I guess
18 it's in the e-mail that Cavagnero sent to you which he
19 says that it was Professor Elitzur or Elitzur who raised
20 the issue with him. Does that refresh your recollection
21 about whether you spoke to Professor Elitzur or not?

22 A. I don't have any recollection of speaking
23 to him. Actually, I don't have any recollection of ever
24 speaking to him.

25 Q. Okay.

1 MR. MANION: Off the record.

2 (Off-the-record comment.)

3 Q. I think you told me that John Pica is
4 still at the University of Kentucky. Right?

5 A. Correct.

6 Q. Does he still occupy the same position as
7 far as you know?

8 A. Yes.

9 Q. Did he ever -- I believe I'm unplugged.
10 Did Pica ever submit anything in writing
11 about his interviews with the candidates to you?

12 A. No.

13 Q. Was that -- I mean, you described earlier
14 the process, the general process of Pica interviewing
15 people and you would not be involved in that process.

16 A. Correct.

17 Q. Did he typically provide you with any sort
18 of a summary or report or notes of his interviews with
19 people?

20 A. No.

21 Q. Let me show you another document.

22 (Plaintiff's Exhibit No. 15 marked.)

23 Q. I'm showing you what we marked Exhibit 15,
24 which is a letter that was sent to the Kentucky
25 Commission on Human Rights by Patty Bender, and it's

1 dated August 20, 2008. This is a -- the university's
2 response to the complaint that was filed by Martin
3 Gaskell with the Kentucky Commission of Human Rights. I
4 note from the date that at this point you were gone from
5 the University of Kentucky.

6 A. Correct.

7 Q. Did you have anything to do with the
8 drafting of this letter?

9 A. No.

10 Q. You obviously didn't review it before it
11 was sent.

12 A. Correct.

13 Q. All right. Have you ever had any
14 communication, written or verbal, with Martin Gaskell?

15 A. No.

16 Q. Did you ever discuss this observatory
17 director process with Professor MacAdam, Keith MacAdam?

18 A. I hesitate only -- I have no recollection
19 of it. Professor MacAdam was a -- I'd say a close
20 colleague and someone I had a lot of interaction with.
21 I don't have any specific recollection. I saw Professor
22 MacAdam outside of formal university settings many
23 times.

24 Q. Okay.

25 A. But I don't have any recollection of

1 talking to him about this at all.

2 Q. Okay. Was he -- he was instrumental in
3 getting this observatory established, wasn't he?

4 A. Yes. He made a donation towards the
5 observatory.

6 Q. Right. And it's named for --

7 A. That's correct.

8 Q. It's got his last name. I don't know if
9 it's for him or his father or his family.

10 A. No, it's for him.

11 Q. Okay.

12 A. And his wife.

13 Q. Okay. Did he ever express an opinion to
14 you about who should or should not be hired --

15 A. No.

16 Q. -- for the position?

17 A. No.

18 Q. Did anyone else, and I mean anyone else,
19 ever express to you an opinion about who should or
20 should not be hired for the observatory position other
21 than Cavagnero?

22 A. No.

23 Q. And you never reviewed any documents other
24 than the ones we've identified today as you having
25 reviewed?

1 A. Correct.

2 Q. Do you still have in your possession any
3 documents related to the observatory director hiring
4 process at the University of Kentucky?

5 A. No.

6 Q. And you obviously don't have access to
7 computer files at the University of Kentucky anymore.
8 Correct?

9 A. Correct.

10 Q. Looking at Exhibit 15, which is the letter
11 that was sent to Kentucky Commission on Human Rights, if
12 you look at page 4, second to the last page of the
13 letter -- the page before that one. There you go -- you
14 see there's a heading in quotes, "I believe I was not
15 offered the position because of my strongly held
16 religious beliefs." You see where I'm referring to?

17 A. Yeah.

18 Q. Yeah, that's a quote from Gaskell's
19 complaint at the Kentucky Commission on Human Rights,
20 and then what's underneath it is the university's
21 response, and in that first couple of sentences after
22 that, actually the second sentence after that, says:
23 Dean of Arts and Sciences Steve Hoch, with the
24 recommendations of the chair of physics and a five-
25 member search committee made the final hiring decision

1 based on a number of factors. Is that incorrect that
2 you made the final hiring decision?

3 A. I hire all members -- I hire -- in my
4 capacity as dean, I hire all employees of the college.
5 In many instances I delegate that authority. And this
6 position was delegated to John Pica.

7 Q. Okay. Which is something you have stated
8 previously in this deposition.

9 A. Correct.

10 Q. So that statement reflects a -- you don't
11 have to agree with me here -- a technical role that you
12 played in this particular hiring process as opposed to a
13 substantive involvement in the actual process. Right?
14 In other words, you technically hired Knauer as opposed
15 to Gaskell, but you didn't participate in any of the
16 thought process that went in to making the decision?

17 A. I'll just say, I did not participate in
18 any of the thought processes or the decision-making.

19 MR. MANION: Okay. Off the record.

20 VIDEOGRAPHER: The time is 12:37 p.m.

21 We now leave the videotape record.

22 (Off the record.)

23 VIDEOGRAPHER: The time is 12:38 p.m.

24 We now resume the videotape record.

25 MR. MANION: I have no further

1 questions.

2 MS. KRIZ: And I have none for this
3 witness. Thank you.

4 VIDEOGRAPHER: The time is 12:38 p.m.
5 This concludes the videotape record.

6 (Off the videotape record.)

7 MS. KRIZ: Now, for the record, I want
8 to enter an objection to the question directed toward
9 Dr. Hoch regarding his personal religious beliefs
10 because that's irrelevant. And I also have an objection
11 to posing hypothetical questions to Dr. Hoch. He is a
12 fact witness and has not been identified by the
13 university as an expert. How he would handle a
14 hypothetical situation is not at issue in this case and
15 it calls for speculation and I would object to that
16 question and move to strike both questions and any
17 response that was made to it.

18 MR. MANION: Is that it?

19 MS. KRIZ: That's it.

20 (DEPOSITION CONCLUDED.)

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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 29th day of May, 2010.

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

Mike Kovach, PhD

10/29/07

DUES - Physics

Recruiting staff director of observatory - well-known scientist, published scientist - Martin Haskell

Part of the job - outreach activities -

Island, Tom - 78620

Chair of Search Committee

~~scribble~~

Offer being Krauer, Jim

Observatory Mgr. SM 517360

EXHIBIT AH
1
5-21-10 Hoch

Tom Island, PhD - 10/30/07

3 final candidates - top two above. MB - Different opinions w/ biologists on science and religion. Has a pre-invited talk 3-10 days ago @ UK - not a biologist. Sean made the final decision -

Committee 4-1 in favor of Krauer

Island dissent

Committee backed to Biology - recommended against.

Alexe Hoch
~~XXXXXXXXXXXXXXXXXXXX~~

10/30/07

Not hiring him because of his views on the scientific method - not religion

- Science and scientific method - identifies himself to Dept of Astronomy & Physics - demonstrating it is not scientific.
- Views on scientific method makes him unworthy of a scientific position @ OK.
- Hoch and Probst has read _____

M.G. per Chair
Four recommendations x 2 chairs -
"his way or the wrong way"

Steve Ellis - staff on committee
Thought he would be unhappy reporting
to faculty - wanted more research at
Nebraska - unhappy - wanted a $\frac{1}{3}$, $\frac{1}{3}$, $\frac{1}{3}$
teaching, research, outreach

Daily Shafer - did not think he would
interact w school teachers (professor time)

good science despite good astronomer

Nancy Levinson - ranked MG 1st

Master's thesis in astronomy -
Thinks about the subject in a way -
closer to his target audience - demonstrates
astronomy