

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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

DEPOSITION OF JOHN PICA

C. MARTIN GASKELL PLAINIFF
v.
UNIVERSITY OF KENTUCKY DEFENDANT

The deposition of **JOHN PICA** was taken on behalf of the plaintiff before Ann Hutchison, Registered Professional Reporter and Notary Public in and for the Commonwealth of Kentucky at Large, at the law office of Baker, Kriz, Jenkins, Prewitt & Jones, PSC, 200 West Vine Street, Suite 710, Lexington, Kentucky, on Wednesday, June 9, 2010, beginning at the hour of 2:05 p.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.

ACTION COURT REPORTERS
184 North Mill Street
Lexington, Kentucky 40507
(859) 252-4004

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

APPEARANCES

COUNSEL FOR THE PLAINTIFF:

Francis J. Manion
American Center for Law & Justice-Kentucky
6375 New Hope Road
P.O. Box 60
New Hope, Kentucky 40052

COUNSEL FOR THE DEFENDANT:

Barbara A. Kriz
Baker Kriz Jenkins Prewitt & Jones, PSC
200 West Vine Street, Suite 710
Lexington, Kentucky 40507

Barbara W. Jones
General Counsel
University of Kentucky
301 Main Building
Lexington, Kentucky 40506-0032

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

INDEX

DEPONENT: JOHN PICA	PAGE
EXAMINATION BY:	
Mr. Manion	5
REPORTER'S CERTIFICATE	46

EXHIBITS

NO.	DESCRIPTION	IDENTIFIED
1	8/27/07 e-mails between John Pica and Mike Cavagnero	27
2	9/10/07 e-mail to Louie Bosworth from Mike Cavagnero	28
3	10/9/07 e-mail to Mr. Pica and Mr. Bachas from Mike Cavagnero	31
4	10/24/07 e-mail to John Pica from Mike Cavagnero	32
5	10/31/07 e-mail to John Pica from Mike Cavagnero	34
6	11/1/07 e-mail to Mike Cavagnero from John Pica	38

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

JOHN PICA

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

EXAMINATION

BY MR. MANION:

Q. Mr. Pica, my name is Frank Manion, and I'm one of the attorneys for Martin Gaskell in a lawsuit that's pending against the University of Kentucky here in federal court in Lexington. I'm here today for the purpose of taking your deposition in this matter. Have you ever been to a deposition before?

A. I have not.

Q. All right. Let me briefly go over with you the ground rules, and if you have any questions about the ground rules, you feel free to ask me. All of my questions and all of your responses and anything Ms. Kriz may have to say during the course of this deposition -- at least stuff that's on the record, aside from discussions of your other life -- is being taken down by the court reporter who is seated at the end of the table. She will at a later date prepare a transcript of this deposition, and that transcript can be used in the course of this litigation by either side for a variety of reasons. The testimony that you give here today, although done in an informal setting in an

1 attorney's office, has the same legal effect as if we
2 were in court in front of a judge and jury. Do you
3 understand that?

4 A. I do.

5 Q. If I ask you a question that you don't
6 understand, please tell me so. Someone reading the
7 transcript will assume that if you answered a question
8 that you understood it. So if there's confusion, the
9 time to clear it up is now. It's quite likely that I
10 will ask questions that you may not fully understand or
11 may need additional explanation for. Please feel free
12 to ask me to do that. If you don't know the answer to a
13 question, that's -- even that's an acceptable answer.
14 Many witnesses don't appreciate that. But no one
15 expects you to necessarily know everything, and I may
16 very well ask you questions that you don't know the
17 answer to. It's your obligation to tell me that you
18 don't know the answer, not just try to come up with a
19 wild guess just so that there's an answer.

20 A. All right.

21 Q. If Ms. Kriz should object to any of my
22 questions, she will state her objection, and in the
23 event that happens, you should obviously hold off on
24 answering until she's had a chance to state her
25 objection and await her instructions as far as answering

1 a question. This shouldn't take all that long based on
2 what we know of your involvement or lack thereof in this
3 process, but in the event that you need a break or a
4 timeout for any reason, just feel free to tell me and
5 I'll honor that request.

6 A. Sure.

7 Q. Any questions about the process itself?

8 A. No. That's fine.

9 Q. Okay. For the record, your name is John
10 Pica, P-i-c-a?

11 A. Uh-huh. Right.

12 Q. One instruction that I didn't give. You
13 can't say uh-huh.

14 MS. KRIZ: Respond verbally.

15 A. Yes.

16 Q. Right. Don't worry if that happens
17 throughout the course of the deposition. Another thing,
18 and particularly with a fast-talking Philadelphia lawyer
19 like myself, I may start questioning -- asking you a
20 question before you finish your answer; you may start
21 answering my question before I finish my question. For
22 purposes of a clean record, we have to do this in a
23 formal question, answer; question, answer way.

24 A. Sure.

25 Q. Okay. In preparation for today's

1 deposition, did you review any documents?

2 A. Just my previous e-mails. Yeah.

3 Q. And when you refer to your previous
4 e-mails, I will represent to you that within the past
5 few days I received a packet from Ms. Kriz of a series
6 of e-mails. I'm assuming these are -- all of them were
7 e-mails that you either wrote or were copied on. Is
8 that the e-mails you're talking about?

9 A. Yes. Yes.

10 Q. Okay. When did you compile those e-mails
11 if, in fact, you're the one that compiled them?

12 A. I compiled them I guess a week ago, soon
13 after I was -- I think a day after I was told that I was
14 going to be deposed. Yeah.

15 Q. And how did you go about compiling them?

16 A. Through my Outlook e-mail, I went back in
17 to both my inbox and my directories and sent e-mails and
18 sorted by subject and also date to try and get as many
19 of the e-mails related to the subject as I could.

20 Q. Do you have any reason to think that you
21 have not produced an e-mail that's related to the
22 subject of this case?

23 A. No, I don't. I don't believe so. I think
24 it was a pretty thorough search. Yeah.

25 Q. Were there any e-mails that you held back

1 and didn't turn over to Ms. Kriz for any reason?

2 A. No.

3 Q. Other than e-mails did you review any
4 documents in preparation for this deposition?

5 A. I pulled the JAQ, which is a Job Analysis
6 Questionnaire, just to refresh myself with the major job
7 responsibilities and essential functions because I was
8 involved in setting up the observatory manager position.

9 Q. What is a Job Analysis Questionnaire?

10 A. That is basically a job outline of the
11 position that we put together.

12 Q. Other than reviewing those documents --
13 did you review any other documents?

14 A. No.

15 Q. Other than reviewing those documents that
16 you've described, did you speak to anyone -- and I
17 assume you spoke to Ms. Kriz sometime prior to the
18 deposition, but other than an attorney representing the
19 university, did you speak to anyone about this
20 deposition?

21 A. No.

22 Q. Now, as we know from our off-the-record
23 discussion, you are no longer employed at the University
24 of Kentucky; is that right?

25 A. No, I'm currently employed by the

1 University of Kentucky through the end of June, until
2 June 30. Yeah.

3 Q. And what is your title right now?

4 A. Assistant Dean for Finance and
5 Administration.

6 Q. And as of June 30 you will be going where?

7 A. To -- I'll be the principal at St. Agatha
8 Academy in Winchester, Kentucky.

9 Q. How long have you held the position that
10 you currently hold at U.K.?

11 A. I've held the position for four years.

12 Q. Four years.

13 A. Four years, yeah.

14 Q. And how long have you been with U.K.
15 altogether?

16 A. Altogether close to 19 and a half years.

17 Q. What positions have you held while you've
18 been at U.K.?

19 A. I've been the Student Affairs Officer for
20 the university for the College of Arts and Sciences.
21 I've also been Associate Director for Academic and
22 Student Affairs for the College of Dentistry. I was
23 Assistant Dean for Enrollment Management and Assessment
24 for the College of Arts and Sciences, and I have -- that
25 I also assume the role here of Assistant Dean for

1 Finance and Administration.

2 Q. In this current role which you're about to
3 end, what are your duties? What have they been?

4 A. My responsibilities have to do with
5 budget, budget and finance of the College of Arts and
6 Sciences. Also, HR, Human Resources, hiring staff and
7 payroll -- those kinds of things -- salary
8 recommendations, putting together job outlines and
9 getting approval for staff positions that will be on
10 general funds, and also facilities and resources for the
11 College of Arts and Sciences.

12 Q. Okay. The information that we've been
13 provided with in this case, both by the university and
14 by our client, indicates that you participated in the
15 interview, at least of Professor Gaskell and, perhaps
16 based on some of the documents I've seen, of other
17 candidates for the observatory position. Correct?

18 A. Correct.

19 Q. Was that normal as part of your duties to
20 participate in interviews of potential staff hires?

21 A. Uh-huh. Yes, it is.

22 Q. During the time that you've held the
23 current position that you've had have you participated
24 in all staff hire interviews?

25 A. Not all staff hire interviews. Sometimes

1 my staff -- who I have two senior level, an HR person
2 and also a budget officer -- will at times also
3 interview or be involved in interviews of staff
4 depending on their responsibilities. So I'm not
5 involved in every single staff interview.

6 Q. That anticipates my next question, is what
7 determines which ones you get involved in, which ones
8 you don't?

9 A. Usually it's determined by the level of
10 the position and the responsibilities. So, for example,
11 if there was an account clerk at a certain level that
12 we're going to hire in the department, I might have my
13 budget officer who's been a business officer, for
14 instance, in an academic department get involved in that
15 interview since it's mostly a courtesy that we are
16 involved in those interviews, not to really make the
17 hiring decision but -- and if it's a payroll position, I
18 might have my payroll officer, for instance, who is a
19 high level payroll administrator for the college maybe
20 get involved in an interview such as that. So it
21 depends on the responsibilities. And then I would get
22 involved in other interviews that are maybe at a higher
23 level or based on who is available to do those
24 interviews.

25 Q. When you say it was mostly as a courtesy

1 because you're not really involved in the hiring
2 decision, a courtesy to whom?

3 A. Courtesy to the department, to help them,
4 you know, make sure that the process goes smoothly, and
5 also that they're, you know, not overlooking candidates
6 that might qualify, things like that. But usually after
7 they've screened their candidates and they're down to,
8 you know, two or three, maybe four candidates, you know,
9 we'll help them in the interview process just at that
10 point.

11 Q. Are you -- and just judging from some of
12 the e-mails that I've seen, are you kind of the nuts and
13 bolts department, so if a candidate wants to know if I
14 start at this level what's my chances of getting up to
15 this level of salary? Is that the kind of information
16 you would provide that maybe the department would know?

17 A. Exactly. I would be responsible for the
18 salary recommendation, kind of helping them get
19 information about, you know, how does the salary range
20 for this classification work, you know, things like
21 that. So logistics, yeah. Right.

22 Q. Okay. Why were you involved in this
23 particular hiring process, the position of observatory
24 director?

25 A. The chair of the department, Mike

1 Cavagnero, had sent an e-mail asking if anyone in the
2 Dean's office would be interested in interviewing the
3 candidate, not as part of the advisory committee that
4 they had set up, but since I was the person in the
5 Dean's office responsible for helping create the
6 position and he also knew that I would be involved in
7 the salary recommendation portion of the process, he had
8 asked if anyone would be interested in interviewing, and
9 I said yes, I would be.

10 Q. Okay. So it was nothing particularly
11 unusual in you becoming involved in this process?

12 A. Right.

13 Q. You're involved in -- well, let me ask it
14 this way. Four and a half years you've been in this
15 position, how many interviews of prospective hires have
16 you participated in where you actually participated in
17 the interview process?

18 A. I would say -- I would say dozens. Yeah.
19 Uh-huh.

20 Q. And you've already described some of the
21 factors that would go in to whether or not you
22 personally would be involved.

23 A. Uh-huh.

24 Q. You have to say yes.

25 A. Yes. I'm sorry.

1 Q. If that's your answer.

2 A. Yes.

3 Q. If you're that rare person that says
4 uh-huh when they mean no, we're all in trouble.

5 A. Yes. Yes.

6 Q. You indicated in response to I think the
7 previous question that you were involved in creating
8 this position of observatory director or something to
9 that effect.

10 A. Uh-huh.

11 Q. What did you mean by that?

12 A. What I mean by that is, I'm the person
13 that is responsible, my office is responsible, for
14 processing the major job responsibilities and essential
15 functions that will be submitted to the human resources
16 office. So the dean approves the position, we get
17 approval also from the provost's office to create the
18 position, and then the position is then developed, and
19 we process the major job responsibilities of this
20 position with human resources.

21 Q. And I assume somewhere the major job
22 responsibilities of this particular position were
23 committed to writing?

24 A. Committed to writing, yes.

25 Q. And is there a particular document that

1 you can point to where that appears?

2 A. The Job Analysis Questionnaire is the
3 document that is the job outline for what the person's
4 responsibilities would be.

5 MR. MANION: Okay. Let's go off the
6 record for a second.

7 (Off-the-record discussion.)

8 Q. We've had a brief discussion off the
9 record of this Job Analysis requirements. I don't deny
10 for a second that I've seen that in the pile of
11 documents I've reviewed in this case. I don't recall
12 seeing it as I sit here at this minute. I do recall
13 seeing the job posting, as it's been referred to, by
14 various witnesses. Would that include the information
15 that you just described?

16 A. That's a summary of the information that's
17 on the job outline. The job summary that's posted is
18 drawn from that job outline that we're talking about.

19 Q. Okay. Now, you're obviously in
20 administration and you're not a member of the specific
21 Physics and Astronomy Department or Biology Department.
22 How do you as an administrator know what to put in the
23 job analysis?

24 A. That's something that's actually developed
25 by the department.

1 Q. Okay.

2 A. Yes, I'm just making sure that that job
3 analysis is done correctly, you know, that the
4 percentages come to a hundred percent effort, things
5 like that.

6 Q. Okay. In the course of the hiring of the
7 observatory director, how many candidates' interviews
8 did you participate in?

9 A. Three.

10 Q. And that would have been Gaskell, Knauer,
11 and who else?

12 A. I'm not recalling the third one. I think
13 it's -- is it a Skyes or --

14 Q. Sykes?

15 A. Sykes.

16 Q. Sykes?

17 A. Yes.

18 Q. And I just assumed that you had
19 participated in Knauer's.

20 A. Yes, I did.

21 Q. I mean, you've answered --

22 A. Yes, I did. Yes.

23 Q. Okay. Did you prepare any writing of any
24 kind e-mail, notes, memoranda following those
25 interviews?

1 A. No.

2 Q. Is that normal or is that unusual for you
3 to not write anything, not to prepare a memorialization?

4 A. Yeah. It is normal, uh-huh. I would
5 discuss with whoever I was interviewing with, you know,
6 my observations from the interview but not necessarily
7 write them down in a report to them or anything like
8 that.

9 Q. In this particular case was your primary
10 interaction regarding the interview with Mike Cavagnero
11 or the dean?

12 A. I'm not sure I understand the question.

13 Q. Okay. It sounds to me as though you
14 primarily would have been reporting verbally to Mike
15 Cavagnero, but I may be wrong about that.

16 A. Oh, yes. Yeah, to Mike. Mike was
17 interested in what our take would be after the
18 interview.

19 Q. Okay.

20 A. Yeah.

21 Q. In conducting an interview such as the
22 interviews that you conducted in this case, would you in
23 your position have had the authority to -- let me back
24 up a little bit, try to lay some background here.

25 It's my understanding based on everything

1 we've seen and heard from the discovery in this case
2 that there was an advisory committee in the Physics and
3 Astronomy Department, sometimes referred to as a search
4 committee by some people.

5 A. Correct.

6 Q. That they took a vote, made a
7 recommendation to the chair, Mike Cavagnero, and that
8 Mike in this case agreed with their vote, their
9 recommendation, and that that was passed on to Dean Hoch
10 who ultimately accepted that recommendation. Is that
11 your understanding of generally how this worked?

12 A. That's my understanding.

13 Q. And as an assistant dean would you in this
14 process have had the authority to say anything about the
15 ultimate decision? When I say anything, I mean about
16 whether it's made or not in favor of this candidate or
17 that candidate?

18 A. No, not as an assistant dean in my role,
19 no.

20 Q. Okay. Would you have had the authority to
21 make your own recommendations? Let's say, for instance,
22 you disagreed with the recommendation made by the search
23 committee and the department chair. Before the dean of
24 the college makes the decision, would you have had the
25 authority to add your own recommendation, say

1 disagreeing with it, if you thought it was appropriate.

2 A. I would have had the opportunity to share
3 with the chair of the department what my recommendation
4 was on the best candidate for the position. If I heard
5 that there was a candidate that was selected and I
6 thought that it was a mistake, I wouldn't have the
7 authority to necessarily change that or anything like
8 that, but I would have the opportunity to again say, you
9 know, that I think another candidate, you know, might be
10 better for the position or something along those lines.
11 But I typically go with the recommendation of the
12 department and the advisory committee.

13 Q. During the time that you were in this
14 position was there ever an occasion where you weighed in
15 and said I disagree with the department or the advisory
16 committee?

17 A. No.

18 Q. You know, it's been represented to us by
19 Professor Gaskell that he was actually interviewed by
20 two assistant or associate deans, at least that's what
21 he thought.

22 A. Uh-huh.

23 Q. Does that accord with what you remember
24 here?

25 A. Yes.

1 Q. And who would that have been other than
2 yourself?

3 A. That was Dr. Leonidas Bachas.

4 Q. And what was his position at the
5 university?

6 A. Associate Dean for Research and Graduate
7 Studies -- I'm sorry, Associate Dean for Research and
8 Academic Programs. That position, title has changed
9 just recently so -- Research and Academic Programs, that
10 was his title in the College of Arts and Sciences.

11 Q. And why was he involved in these
12 particular interviews?

13 A. He's an associate dean that was on the
14 floor that was very interested in the observatory, and I
15 asked him -- I told him that I was meeting with three
16 candidates Monday, Wednesday, Friday, if he happened to
17 be on the floor, which he was a full-time associate
18 dean, and also his -- he's in the chemistry department,
19 scientist, would he be interested in joining me with --
20 for the interview, and he was very excited about the
21 observatory and said sure.

22 Q. Had this particular individual ever
23 participated in any other interviews with you?

24 A. With me? Maybe one other interview having
25 to do with a grants officer position when we were hiring

1 or interviewing for a grants officer position. He and
2 I, I think, interviewed together for that position
3 because it was related to his area. So I think in that
4 case he asked me to join him in that interview.

5 Q. Okay. To any extent was Dean Hoch
6 involved in the decision of Dr. -- is it Bachas? --

7 A. Uh-huh.

8 Q. -- to participate in the interviews with
9 you?

10 A. No. It was really in passing in the
11 hallway asking Dr. Bachas if he'd just like to join me.
12 I had 30 minutes with this candidate. Yeah.

13 Q. And since he was in the science field and
14 was interested in the observatory, it seemed like --

15 A. Down the hall.

16 Q. -- something he might be interested in?

17 A. Exactly. Yeah. Yeah.

18 Q. And did the two of you interview all three
19 of the finalists for the observatory director position?

20 A. Yes.

21 Q. Who did you interview first; do you
22 remember?

23 A. I think it was the Sy --

24 Q. Sykes?

25 A. Sykes candidate was first. Yeah.

1 Q. And did all of the interviews last
2 approximately the same length of time?

3 A. Yes.

4 Q. What do you recall asking -- let's focus
5 on Gaskell right now. What do you recall -- and
6 obviously I know you don't remember word for word. Give
7 me the substance of the interview between yourself and
8 Professor Bachas and Professor Gaskell. What did you
9 ask? What did he answer? That sort of thing.

10 A. We had 30 minutes between the two of us,
11 and from what I recall I was -- I know that the position
12 was going to be, you know, heavy in the outreach area,
13 and so I believe that my line of questioning had to --
14 was focussed on how much outreach with astronomy and
15 observatories that, you know, he had conducted and what
16 engagement he had with doing outreach with the public.

17 Q. Do you recall the substance of his answers
18 to those questions?

19 A. Not specifically. Yeah. Three years
20 later not much. Yeah.

21 Q. I understand.

22 A. But it was -- yeah.

23 Q. Anything else you recall about the
24 interview with Professor Gaskell?

25 A. That's about all I can recall from my line

1 of questioning, and I can't recall Dr. Bachas's line of
2 questioning. I think it was more scientific and
3 academic in nature, I guess. Yeah.

4 Q. And with respect to the interview of
5 Mr. Knauer, can you tell me the substance of that
6 interview?

7 A. It was along the same lines as what his
8 experience was with doing outreach and working in the
9 astronomy field. He had been at the University of
10 Kentucky previously and so, again, when I do interviews
11 I try to do the same line of questioning for each
12 candidate so that I have a baseline.

13 Q. Did you know Tim Knauer when he had
14 previously been at the university?

15 A. No, I didn't.

16 Q. Just for my own information, how many
17 people work at the University of Kentucky? I know,
18 that's a ballpark figure.

19 A. I can't tell you the University of
20 Kentucky, but in the College of Arts and Sciences, at
21 the staff level, 180, and we have over 340 faculty. But
22 I'd only be guessing as far as the whole University of
23 Kentucky. The college is -- we have -- it's a very
24 large college. Yeah. Close to 200 staff. And then
25 another 350 or so faculty, tenured lines, you know.

1 Q. So it would not be unusual for you not to
2 know somebody like Tim Knauer --

3 A. Exactly.

4 Q. -- who worked there previously?

5 A. Yeah.

6 Q. Of course this is not a problem at the
7 school you're about to be a principal at where you will
8 know everybody. Be quite a change.

9 A. Exactly. Both good and bad.

10 Q. That's right. That's right.

11 I'm going to take you through some of the
12 e-mails that we've been provided with and ask you some
13 questions about some of them. Before I do that, though,
14 following your interviews with the three finalists for
15 this position, I think you indicated that you probably
16 verbally communicated with Mike Cavagnero?

17 A. Uh-huh.

18 Q. And --

19 MS. KRIZ: Are you saying yes?

20 Q. You have to say yes or no.

21 A. Yes.

22 Q. And your purpose for communicating with
23 him was to what? Tell him your impression of the
24 candidates or something else?

25 A. Exactly, yeah. Yes.

1 Q. Do you remember what you told him about
2 the three candidates that you interviewed?

3 A. I do. The first candidate was -- I don't
4 recall being impressed with the first candidate, and I
5 really felt as though the other two candidates were, I
6 guess, the stronger of the two candidates, and I
7 remember talking to him about how impressed I was with
8 Tim Knauer and his enthusiasm for astronomy and
9 outreach. He was very engaging. He had just an
10 excellent interview. He was the last interview that we
11 had, Dr. Bachas and I, and we were just, you know, very
12 impressed with how he had prepared for that interview,
13 especially from the outreach standpoint and his ability
14 to articulate his enthusiasm for the field. It was --
15 even in just a short time of 30 minutes it seemed to be
16 infectious. So...

17 Q. Did you have anything negative to say
18 about Knauer, or not necessarily negative in the sense
19 of pejorative, but just reasons why he might not be the
20 best candidate for the job?

21 A. I don't remember mentioning any negative
22 aspects.

23 Q. How about with respect to Professor
24 Gaskell? Do you remember what you said to Cavagnero
25 about Gaskell?

1 A. I don't recall really saying much about
2 Dr. Gaskell except that in comparison with Mr. Knauer
3 that Tim seem to be again much more engaging and even
4 had this, you know, hand-held smart phone or computer
5 where he had downloaded a number of things and kind of
6 wowed us with the things that he had recently discovered
7 on his own in astronomy and showed us some time lapse, I
8 guess some streaming video and things like that; but
9 didn't have anything negative to say about Dr. Gaskell,
10 but, you know.

11 Q. Do you recall anything about what
12 Cavagnero said in response to your report about these
13 candidates?

14 A. Don't recall what he said after I told him
15 my observation.

16 Q. When you made your observations to him was
17 it in person?

18 A. Yes, it was in person. I believe it
19 was -- I believe it was at a chair -- after a chairs'
20 meeting. We have a monthly chairs' meeting. I believe
21 it was after a chair's meeting that I was able to run
22 into him. That's usually where I run in to many of the
23 chairs of departments.

24 Q. Do you know if Professor Bachas also
25 conveyed his impressions to Cavagnero at any point?

1 A. I don't know.

2 Q. Did you ever see any writing?

3 A. No.

4 Q. And you yourself didn't make any writing
5 giving your impression following the interviews to
6 Cavagnero?

7 A. Right.

8 Q. Or anyone else for that matter?

9 A. Right.

10 MR. MANION: I've never done this the
11 same way twice so there is no system.

12 (Exhibit No. 1 marked.)

13 Q. I'm showing you what we've marked
14 Exhibit 1 for today's deposition, which appears to be an
15 e-mail from Mike Cavagnero to yourself dated August 27,
16 2007, regarding the observatory director. About halfway
17 down the page there's -- this is part of a string of
18 e-mails, it looks like, appears to be an e-mail from you
19 to Mike Cavagnero where you say yes, if the person is
20 going to be paid on state funds. You see that?

21 A. Yes.

22 Q. What was the significance of whether or
23 not the person was going to be paid on state funds?

24 A. Well, sometimes if a department is hiring
25 someone on grant funds, on grant money, I won't

1 necessarily get fully engaged in an interview process in
2 that --

3 Q. Why is that?

4 A. I'm responsible for -- primarily
5 responsible for how we spend our general fund accounts
6 on that. And on a grant if someone is going to hire a
7 lab tech or something, I would defer to them in
8 99.9 percent of the cases.

9 Q. Okay.

10 (Exhibit No. 2 marked.)

11 Q. I'll show you what we marked as Exhibit 2.
12 Do you recognize what that particular e-mail is about?

13 A. I was cc'd on that e-mail, and from what I
14 can tell, there was -- it looks like the chair was
15 asking someone in HR to reopen the search for a short
16 period to see if they could get a -- some more people in
17 the pool of candidates.

18 Q. Is there a time limit that they initially
19 put on a search process?

20 A. Yes.

21 Q. And then when --

22 A. Yeah.

23 Q. -- they can reopen it? Is that what's
24 happening here?

25 A. Exactly. Yeah.

1 Q. That's the sole significance of this as
2 far as you can tell?

3 A. Yes.

4 Q. All right. It's not like they had
5 rejected all of those folks?

6 A. No. No.

7 Q. As far as you know?

8 A. No.

9 Q. Again, obviously not since the one they
10 hired is on here also?

11 A. Yeah. Uh-huh.

12 Q. You've described for me today your
13 involvement in the interview process, your involvement
14 in formulating the job requirements for this particular
15 position. In the course of the hiring of the
16 observatory director, how many times, if any, did you
17 discuss that position with Dean Hoch?

18 A. It's a very few times. It was when I knew
19 that the position had been approved to go forward and
20 post it, and then really not much after that. I think
21 there's some e-mails where I had to go back to Dean Hoch
22 when it was -- when Tim Knauer was selected to make sure
23 everything was fine to go forward with that based on an
24 e-mail that Mike Cavagnero had sent me. Yeah. But I
25 hadn't talked to Dean Hoch much about how the interviews

1 went or anything like that.

2 Q. And my next question was going to be, did
3 you ever have any discussion with him about the
4 substance of who should or should not be hired based on
5 their relative qualifications?

6 A. No.

7 Q. Did you hear him talking to anyone else
8 about his opinion regarding who should or should not be
9 hired?

10 A. No, I have not.

11 Q. How often in the course of the time that
12 you and he worked together would you meet? How often
13 would you meet? On a weekly basis, let's say.

14 A. We had a recurring meeting maybe once a
15 week that was standard on his calendar. And, you know,
16 we work on the same floor just down the hall from each
17 other and so we'd see each other just about every day.
18 And then, of course, we had weekly staff meetings as
19 well, so a few hours each workweek that were recurring
20 times that we were together.

21 Q. Is it fair to say based on the description
22 that you gave of your job duties that participating in
23 the hiring process was only part of your job. Right?

24 A. Exactly. Yeah.

25 Q. How much a part? If you can put a

1 percentage on it. Roughly.

2 A. I'd say a third.

3 Q. Okay.

4 MR. MANION: All right. Let's mark
5 this one.

6 (Exhibit No. 3 marked.)

7 Q. Showing you what we've marked Exhibit 3
8 for today's deposition. This appears to be an e-mail
9 from Mike Cavagnero to yourself and Professor Bachas in
10 which he asks -- and I'm paraphrasing -- do either of
11 you have any comments on the candidates for observatory
12 director? Is that a fair paraphrase of this?

13 A. Yes.

14 Q. And I think you've already answered my
15 questions about what you said to Cavagnero regarding
16 your comments about the candidates. Correct?

17 A. Right.

18 Q. Anything else other than what you've told
19 me so far that you can recall?

20 A. No.

21 Q. All right. Now, the date of this
22 particular e-mail is October 9, 2007. And obviously
23 this was after you had done the interviews. Correct?

24 A. No, I think I met with -- I think I
25 interviewed -- I think the interview was that week --

1 the interviews were that week, Monday, Wednesday and
2 Friday, so I only interviewed one candidate at that
3 point.

4 Q. Oh, okay.

5 A. So I think this was, again, by the way,
6 you know, if either of you have any comments, I think,
7 you know, after you've done this week of interviewing
8 then I appreciate your insight.

9 Q. All right. This doesn't necessarily mean
10 that the interviews have already taken place?

11 A. Right. Exactly.

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

14 (Exhibit No. 4 marked.)

15 Q. I'm showing you what we've marked
16 Exhibit 4. The previous e-mail which we looked at which
17 was dated October 9th, which you believe was the week
18 the interviews took place --

19 A. Uh-huh.

20 Q. -- asks you about your -- if you have any
21 comments, to convey them to Cavagnero.

22 Now, this e-mail that we're showing you
23 now, Exhibit 4, is dated October 24th, and in it -- and
24 again, I'm just summarizing -- Mike Cavagnero is
25 informing you that the search committee has voted to

1 recommend Timothy Knauer for the position. He's telling
2 you that Steve, presumably Steve Hoch --

3 A. Right.

4 Q. -- suggests that he -- or the committee
5 chair, which is Professor Troland, give a summary, and
6 he's telling you that he will then compose a letter to
7 you. Correct? Is that a fair paraphrase of this
8 e-mail?

9 A. Yes.

10 Q. All right. Between October 9th and
11 October 24th had there been any communication between
12 you and Mike Cavagnero regarding the observatory
13 director position other than what you've told me about
14 already?

15 A. No.

16 Q. Maybe a better way of asking it is, other
17 than what you've told me about already, which was mainly
18 your impressions of the candidates sometime after the
19 interviews took place, up until the time you learned
20 that Knauer had been picked by the committee and
21 confirmed by Cavagnero, did you have any conversations,
22 e-mails, or other forms of communication with Mike
23 Cavagnero about the observatory director search?

24 A. Not that I recall.

25 Q. How about with anybody else such as the

1 dean or other members of the search committee or anyone
2 else?

3 A. No, not that I recall.

4 (Exhibit No. 5 marked.)

5 Q. Before I ask you about Exhibit 5, in a
6 typical hiring situation that you would be involved in,
7 whether or not you participated in the interviews, once
8 you hear that the department has picked somebody, what's
9 your involvement after that typically?

10 A. My involvement after that is to prepare a
11 salary recommendation.

12 Q. And the e-mails that we've seen, not
13 pointing to anyone specifically, would reflect that you
14 were going back and forth with Cavagnero about what the
15 salary recommendation should be for the position.

16 Right?

17 A. Uh-huh. Yes.

18 Q. Okay.

19 A. Yes.

20 Q. The e-mail that we've marked Exhibit 5 --

21 A. Yes.

22 Q. -- which is from Cavagnero to you,
23 indicates that Cavagnero tells you, quote, "Apparently
24 Patty Bender's office has been alerted to it and is
25 concerned about the committee decision to hire Tim

1 Knauer for the observatory director position."

2 When you received this e-mail were you
3 surprised to read that?

4 A. I was.

5 Q. Had you had any reason prior to receiving
6 this to think that -- let's back up again. Patty Bender
7 was who?

8 A. Patty Bender works in our EEOC office.

9 Q. And --

10 A. EEO.

11 Q. No one seems to know; EO, EEO, EEOC.

12 MS. KRIZ: Institutional Equity.

13 THE WITNESS: Institutional Equity,
14 yeah. Yeah.

15 Q. We've called it all variations of E and O,
16 and sometimes C.

17 A. I'm glad I'm not the only one.

18 Q. Okay. Generally, and you correct me if
19 I'm wrong, she was part of the office that reviewed
20 complaints of discrimination of one form or another,
21 whether race, gender, religion, disability; is that
22 fair?

23 A. Yes. That's my understanding.

24 Q. And prior to this particular hiring
25 process had you ever been involved in a hiring process

1 where Patty Bender's office had also gotten involved in
2 some point?

3 A. No, not that I recall.

4 Q. In this particular e-mail, Exhibit 5,
5 Cavagnero goes on to say to you, "I am told that I will
6 be meeting with Steve and Patty on Thursday afternoon."
7 And then he says, "Should I hold off on making the offer
8 to Tim until after that meeting?"

9 When you received this e-mail, did you do
10 anything to ascertain what this was all about, why Patty
11 Bender's office was involved?

12 A. I didn't necessarily ascertain as to why
13 Patty Bender's office was involved. I wanted to try --
14 I was focussed on answering his question as to whether
15 or not we should move forward, so at that point I talked
16 to the dean about trying to answer that question. So...

17 Q. And would that conversation have taken
18 place on the same day you received this e-mail?

19 Although I see this e-mail was sent at 6:33 p.m.

20 A. Yeah. It was probably the next day.
21 Yeah.

22 Q. And what can you tell me that you recall
23 about your conversation with the dean the next day?

24 A. Just that Mike wanted to know if they
25 should hold off on making this offer to Tim until after

1 this meeting and -- you know, with Patty Bender. I
2 don't recall getting in to a conversation with the dean
3 about what was necessarily holding this up. I assumed
4 that Steve was obviously aware of why he and Patty and
5 Mike were going to meet on Thursday. So I was focussed
6 on trying to answer the question as to whether or not we
7 should wait.

8 Q. And what did Steve Hoch say?

9 A. All I recall is from the chain of e-mails
10 that I said that I looked at and I pulled together, and
11 it looks like Steve said that the hire could go forward
12 and that they shouldn't necessarily hold this up.

13 Q. And did he give you any indication of what
14 the issue was that Patty Bender's office had gotten
15 involved with?

16 A. No.

17 Q. And did you speak to anyone else at that
18 point regarding why is there an issue with the
19 observatory director position or something like that?

20 A. No, I hadn't.

21 Q. Do you know if -- well, you indicated that
22 Steve Hoch said or indicated that the offer should not
23 be held up. Correct?

24 A. Right.

25 Q. Do you know if that was said to you before

1 or after his meeting with Patty and Mike?

2 A. I don't know if it was before or after.

3 (Exhibit No. 6 marked.)

4 Q. Showing you what we've marked Exhibit 6,
5 which is an e-mail from you to Mike Cavagnero dated
6 November 1, 2007, at 1:51 p.m. This appears, does it
7 not, to be your reply to Mike's e-mail about should I
8 hold off in making the offer?

9 A. Right.

10 Q. And in your reply you tell him Steve has
11 indicated that this situation should not delay your
12 offer to Tim. Correct?

13 A. Correct.

14 Q. And I believe you've just described the
15 conversation which led to you sending this e-mail.
16 Right?

17 A. Correct.

18 Q. Anything else you recall about -- any
19 other conversations you recall with Steve Hoch other
20 than what you've just told me about prior to sending
21 this e-mail to Mike Cavagnero?

22 A. I do not recall another conversation.

23 Q. Did you ever talk to Patty Bender about
24 this particular job?

25 A. No.

1 Q. And I assume from your answer and other
2 things that you were not in the meeting between Hoch,
3 Cavagnero and Bender?

4 A. Correct. I was not in that meeting.

5 Q. Since November 1, 2007 have you ever
6 spoken to either of those individuals, by which I mean
7 Hoch or Bender, about this particular job situation and
8 why there was an issue?

9 A. No.

10 Q. How about with Mike Cavagnero? You had
11 had some communication with him about the position and
12 you communicated your impressions of I guess at least
13 two of the three leading candidates. Have you ever
14 discussed with Cavagnero what may or may not have been
15 the issue that was raised by Patty Bender's office on or
16 about November 1, 2007?

17 A. No. I did not talk to him about any of
18 the details of that.

19 Q. As you sit here today, do you know
20 anything about what the issue may have been that was
21 raised by Patty Bender that day?

22 A. Since that time?

23 Q. Yeah.

24 A. Since that time, yes. I've -- it's --
25 I've been made aware of what the issue was, but it's

1 been fairly recent, you know. You know, it's been, I
2 guess, three years.

3 Q. Right.

4 A. And I guess it was at the time that the
5 college was made aware that there may be a lawsuit, I
6 think it was addressed -- I think it came through my
7 office as finance and administration, and it was at that
8 point that I realized that there was, you know,
9 something, you know -- something more to this than I was
10 aware of. And I wasn't brought in to it by the dean at
11 all.

12 Q. So at some point through your office, and
13 I don't know obviously whether that was the Kentucky
14 Human Rights Commission charge that was filed or the
15 lawsuit itself; do you know?

16 A. I don't know.

17 Q. Okay.

18 A. I can't recall who the communication came
19 from.

20 Q. Okay. But it was something that indicated
21 to you that a legal matter was being pursued?

22 A. Exactly.

23 Q. Regarding Professor Gaskell's not getting
24 the observatory director's position?

25 A. Right. Yeah.

1 Q. Did that click in your head that it must
2 be what Patty Bender's issue was back in November of
3 2007?

4 A. Yeah. That's about all, yeah.

5 Q. Okay. Have any conversations with the
6 dean at that time, who I guess it was still Dean Hoch,
7 about this whole situation with Gaskell and Knauer?

8 A. No, I didn't have a conversation with the
9 dean about it. As far as the communication that came, I
10 looked in to it and discovered that I was supposed to
11 turn it over to Patty Bender's office as far as a
12 response to it. So a response wasn't supposed to come
13 from my office. So -- yeah.

14 Q. Okay. And was that the first time, and
15 assuming you read it even cursorily --

16 A. Yeah. Yeah.

17 Q. -- was it the first time you were made
18 aware of what the allegations of Professor Gaskell were?

19 A. Correct.

20 Q. When you read that did it refresh your
21 recollection about any conversations you may have had
22 back during the hiring process itself about issues
23 concerning his candidacy for the position?

24 A. No.

25 Q. Okay. And since receiving that document,

1 whatever it was that you passed on to Patty Bender's
2 office, have you had any conversations with Mike
3 Cavagnero about this hiring process, Gaskell's
4 complaints, or the lawsuit?

5 A. No, not with the chair.

6 Q. How about with any other faculty or staff
7 members at the university?

8 A. No.

9 Q. When did Steve Hoch leave the position of
10 dean of the college?

11 A. June of '08. Yeah, June of '08.

12 Q. And who took his place?

13 A. There was an interim dean, Phil Harling,
14 was interim dean, faculty member in the department -- in
15 the college.

16 Q. You've made reference to what sounds to me
17 like it was the Kentucky Human Rights Commission charge.
18 It may have been the lawsuit, but either way, were you
19 ever contacted by the Kentucky Human Rights Commission
20 to give a statement of any kind?

21 A. No.

22 Q. Were you ever asked by Patty Bender's
23 office to give a statement of any kind?

24 A. No.

25 Q. Other than the day that you met with the

1 candidates, you and Professor Bachas, did you and
2 Professor Bachas ever discuss between yourselves your
3 opinions about the candidates?

4 A. Maybe just after the interview itself,
5 after we dismissed the candidates we would discuss
6 the -- I would make a habit of, you know, reviewing the
7 interview with whoever was with me at the time.

8 Q. And do you remember what he said? What
9 his impressions were of the candidates?

10 A. Just, like, he was very excited about Tim
11 Knauer. He was very impressed with just how prepared he
12 was to demonstrate what he had been doing recently in
13 the field.

14 Q. Did he -- do you recall anything he said
15 pro or con about Gaskell?

16 A. No, I don't recall anything.

17 Q. I believe I've asked you already whether
18 you knew or personally were familiar with Tim Knauer
19 during the time he had previously worked at the
20 university. Are you acquainted on anything other than a
21 nodding basis with any members of the Physics and
22 Astronomy Department at the present time?

23 A. At the present time?

24 Q. Yeah.

25 A. Oh, yes. Am I familiar with the faculty

1 and staff of the physics department; is that what you're
2 saying?

3 Q. More than just knowing that say Mike
4 Cavagnero is the chair or Troland is -- are you -- do
5 you socialize with any of them?

6 A. Oh. No.

7 Q. Discuss astrophysics with any of them or
8 anything else for that matter?

9 A. No. No. No, it's all business.

10 Q. Business?

11 A. Exactly.

12 Q. Do they come to you when they want raises?

13 A. Every day. Every single day. Oh, yeah.

14 Q. So it's never a relaxed conversation is
15 what you're telling me?

16 A. Yeah.

17 Q. Okay. Have you been to the observatory
18 since it opened?

19 A. Oh, yes.

20 Q. How many times?

21 A. Once. Yeah.

22 Q. Just for the sake of thoroughness, I think
23 I know your answer from what you've said so far, is it
24 fair to say that you yourself never reviewed any
25 writings by Professor Gaskell that may have appeared on

1 the Internet regarding his views on Modern Astronomy,
2 the Bible, and Creation?

3 A. That's correct. I'm not familiar with any
4 of his writings at all.

5 Q. That was never brought to your attention
6 by anyone involved in the search process?

7 A. No.

8 Q. And I take it from what you've answered
9 already, but just for the sake of thoroughness, at any
10 time did you ever discuss this hiring process with the
11 head of the search/advisory committee, Professor
12 Troland?

13 A. No.

14 MR. MANION: I believe that's all the
15 questions I have.

16 MS. KRIZ: I have none.

17 (DEPOSITION CONCLUDED 2:58.)

18

19

20

21

22

23

24

25

1 STATE OF KENTUCKY)

2 COUNTY OF FAYETTE)

3

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

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

18 Given under my hand, this 17th day of June,
19 2010.

20

21

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

24

25

Pica, John

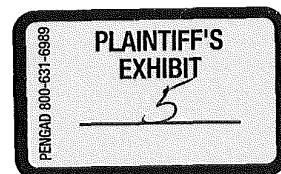
From: Mike Cavagnero [mike@pa.uky.edu]
Sent: Wednesday, October 31, 2007 6:33 PM
To: Pica, John
Cc: Hoch, Steven
Subject: Observatory Director
Attachments: Offer for Tim Knauer.eml

Apparently, Patty Bender's Office has been alerted to and is concerned about the Committee decision to hire Tim Knauer for the Observatory Director position.

I am told that I will be meeting with Steve and Patty on Thursday afternoon.

Should I hold off on making the offer to Tim until after that meeting?

Mike



Pica, John

From: Pica, John
Sent: Thursday, November 01, 2007 1:51 PM
To: 'Mike Cavagnero'
Subject: RE: Observatory Director

Steve has indicated that this should situation should not delay your offer to Tim.

John

John Pica
Assistant Dean, Finance and Administration University of Kentucky College of Arts & Sciences
271 Patterson Office Tower
Lexington, KY 40506-0027
Phone: 859-257-7296
Fax: 859-323-1073
pica@uky.edu

-----Original Message-----

From: Mike Cavagnero [mailto:mike@pa.uky.edu]
Sent: Wednesday, October 31, 2007 6:33 PM
To: Pica, John
Cc: Hoch, Steven
Subject: Observatory Director

Apparently, Patty Bender's Office has been alerted to and is concerned about the Committee decision to hire Tim Knauer for the Observatory Director position.

I am told that I will be meeting with Steve and Patty on Thursday afternoon.

Should I hold off on making the offer to Tim until after that meeting?

Mike

