

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

*filed electronically*

C. MARTIN GASKELL

PLAINTIFF

V. **DEFENDANT UNIVERSITY OF KENTUCKY'S RESPONSE  
TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT  
PURSUANT TO FED. R. CIV. P. 56(a) and (d)(2)**

UNIVERSITY OF KENTUCKY

DEFENDANT

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Comes the Defendant, University of Kentucky (UK), by counsel, and for its Response to the Plaintiff's Motion for Summary Judgment, states as follows:

**STATEMENT OF THE FACTS**

UK has filed a Motion for Summary Judgment in this case and adopts by reference its Memorandum of Law in Support of that Motion as its response to Gaskell's Motion for Summary Judgment.

UK is one of SIXTY employers who rejected Gaskell for employment after he was terminated from his post at the University of Nebraska, Lincoln (UNL) and yet the only employer who Gaskell has sued for religious discrimination. The "superbly qualified" Gaskell apparently is not as qualified as he would have this Court believe. Although Gaskell received his Ph.D. in 1981, underwent a two-year post-doctorate study at the University of Cambridge and has worked almost exclusively in the academic world for 30 years, he has never been tenured. (Exhibit 6 to Defendant's Memorandum in support of its Motion for Summary Judgment, Deposition of Martin Gaskell, hereinafter "Gaskell" pp. 15-16, 32). His longest period of employment was with UNL where he worked from 1992 through 2007 when, according to

Gaskell, he was terminated. (Gaskell, p. 24 and 40). Well before UK even posted the job opening for Observatory Director, Gaskell was on the job market looking for employment. According to a document submitted by Gaskell in response to Defendant's Requests for Production of Documents, he filed a charge of retaliation against the UNL and in that charge, outlined the particulars of his troubles with the UNL. (see Exhibit 36). In paragraph 3 of the "Requested Changes to Charge of Discrimination," Gaskell stated that on January 26, 2007, he received a memo from the chair of his department that his position would end at the end of the academic year, and that on August 7, 2007, he was severed from employment at the University of Nebraska. Beginning in 2007, he filed applications for employment with approximately 60 different employers, most of which were academic institutions. (see Exhibit 37). He also applied for work at the National Science Foundation and the Keck Observatory. (Gaskell, p. 13). The only offers that Gaskell received, despite his "superb qualifications" were for a position as an orchestra conductor, a temporary faculty at the University of Texas, and a temporary substitute organist. (see Exhibit 37).

When Gaskell filed his application with UK, he specifically asked the Advisory Committee not to contact his current supervisor at UNL, Professor Kirby. (Gaskell p. 110). Understandably, Gaskell had some concerns about what Kirby would say about him given his rocky relationship with his department Chair. When Cavagnero contacted Kirby, he didn't ask any questions about the specifics of Gaskell's personal religious beliefs but only whether Gaskell's religious beliefs affected his job performance at UNL. There is no evidence in the record to suggest that Cavagnero had any specific interest whatsoever in what Gaskell believed from a religious standpoint; his concern was whether whatever Gaskell believed might interfere with his job performance.

Gaskell's case relies substantially on emails generated by Gary Ferland, who wasn't present during any of the interview process and only learned of what was happening through information supplied by other members of the Advisory Committee including Tom Troland. Based on one of Ferland's uninformed e-mails, Gaskell claims that Shafer volunteered, in response to a sarcastic suggestion by Ferland, to check up on how Fayette County Public Schools determine which churches their teachers attend in order to ferret out "potentially religiously problematic (potentially evangelical) employees." A copy of the email exchange is attached hereto as Exhibit 38. Ferland stated, "If it became known that a prospective teacher belonged to a church that taught against evolution, as most of the mega churches around town do, I believe, would that candidate be excluded from consideration? How are a person's beliefs taken into account in hiring teachers?" Sally responded, "Good point about what do school systems do. Mike, do you want me to look into this? I think it would be best to do so through the Kentucky Department of Education rather than just Fayette County, but we could inquire of both." Gaskell skewers Shafer for wanting to "ferret out religiously problematic employees" and yet Sally Shafer never made any statement about "religiously problematic employees. Although she described Gaskell as "potentially evangelical", Gaskell referred to himself as "evangelical" at his deposition. (Gaskell p. 70) Calling Gaskell "potentially evangelical" when he calls himself evangelical is not discriminatory, nor does it suggest an anti-religious animus.

Gaskell argues that Troland was in a position to know what all the Observatory Advisory Committee members said at meetings as well as privately, not just what was contained in their email comments. However, a review of Troland's deposition testimony reveals no evidence that Troland based any of his conclusions on any specific comments made by any of the individual advisory committee members about Gaskell's personal religious beliefs. Instead, the entire

conversation raised by Gaskell's public lecture at UK in the late 90's and his "lecture notes" posted on the internet was about Gaskell's comments on the topic of evolution.

Gaskell spends a lot of time defending his lecture notes styled, *Modern Astronomy, the Bible and Creation*, but yet, according to the testimony of the Advisory Committee members, very few of them spent much time reviewing the article, if at all. Their concern was the fact that Gaskell, an astronomer, made comments which appeared to raise questions about evolution and biology which have little to do with astronomy.

Gaskell tries to portray his lecture notes as his "religious beliefs", but at his deposition he admitted that many of the statements he made in those notes were scientific rather than religious. He conceded that his statement, "there are significant scientific problems in evolutionary theory" is a scientific statement. (Gaskell, p. 191). He also agreed that his comment, "these problems are bigger than is usually made out in Introductory Geology/Biology courses, but the real problem with humanistic evolution is in the unwarranted and atheistic assumptions and extrapolations", is a scientific statement (Gaskell, pp. 191-193). By mixing the terms "atheism" and "humanistic evolution," Gaskell clearly blended science and religion and it is his apparent inability to separate his personal or religious beliefs from his scientific comments that raised concerns with the Advisory Committee members. Why he believes what he believes was immaterial to all of the Advisory Committee members. In fact, even Tom Troland admitted that he made the assumption that Gaskell's comments on evolution were premised on his religious beliefs but he had no idea what those religious beliefs were! (Exhibit 8 to Defendant's Memorandum in Support of Motion for Summary Judgment, Deposition of Tom Troland, hereinafter, "Troland" p. 82). There is no evidence that anyone at UK knew what religion Gaskell was except maybe Gary Ferland who concluded that Gaskell had "fundamentalist tendencies" based on comments Gaskell made in his lecture at UK in the 90's

(Exhibit 23 to Defendant's Memorandum in Support of Motion for Summary Judgment, Deposition of Gary Ferland, hereinafter "Ferland" p. 26).

Gaskell can distance himself as much as he wants from his published lecture notes, but in the end, Gaskell disseminated those notes into the public realm and he cannot argue that they are not fair game for consideration by the scientific community. The scientific community does not accept "intelligent design" as science. The Court's attention is directed to the case of Kitzmiller v. Dover School District, 400 F. Supp. 2d 707 (M.D. Pa. 2005) for a complete discussion on how "creationism" evolved into "intelligent design" in an effort to convert a clearly religious theory into something that sounded more scientific. In Kitzmiller, the United States District Court judge for the Middle District of Pennsylvania, after hearing exhaustive testimony from experts on both sides of the evolution issue, concluded that "intelligent design" is not science and has failed to gain any acceptance in the scientific community. The judge ruled that the Dover School District violated the First Amendment to the United States Constitution and particularly the Establishment Clause by requiring a science curriculum which included instruction on "intelligent design". This is exactly the reason that the Advisory Committee members had concerns about Gaskell. UK is a public university and is legally prohibited from endorsing a particular religious philosophy in performing its mission of educating college students. Gaskell's public comments indicated a failure on his part to understand the difference in science and religion in the field of biology. The fact that he was being interviewed for a position which was envisioned as a liaison between the University and the local public schools on issues of science raised concerns that he could not separate his personal beliefs from established scientific principles in the field of biology. Contrary to Gaskell's assertion, no one on the committee attacked Gaskell's scientific integrity as an astronomer. The only issue any of the Advisory committee members cited as a concern was raised by Gaskell's comments about evolution.

Again, this is science, not religion, and the fact that many of the witnesses identified by Gaskell refer to this as a “religious issue” does not change that fact.

Gaskell claims that Ellis testified that there were committee discussions about whether Gaskell was a creationist and that “religion” was “an underlying theme” in the committee’s discussions of Gaskell’s views, citing pp. 26-27 of the transcript of Ellis’ deposition. This is a mischaracterization of Ellis’ testimony. Ellis did not testify that Gaskell’s religion was a concern to the committee; rather, the discussion had to do with the fact that if Gaskell was hired, the University would have to be prepared to address Gaskell’s comments on evolution in an open and proper way. (Exhibit 34 to Defendant’s Memorandum in Support of Motion for Summary Judgment, hereinafter “Ellis” p. 26.) He was asked, “Did anyone during any committee meeting say something to the effect of Dr. Gaskell as a creationist?” He answered, “Not that specifically. They said that some of his comments could be attributed to his scientific belief in creationism, but not, you know, he is a creationist. I don’t – at least I didn’t have, you know, enough information to say yes he is or he isn’t because I hadn’t talked to him about that.” (Ellis, p. 27).

Gaskell also claims that Sally Shafer labeled him as “potentially evangelical”. Placed in context, Shafer’s comment has a dramatically different meaning than Gaskell claims. Attached as Exhibit 39 is an actual copy of Ms. Shafer’s email. In that email, she refers Tom Troland and Mike Cavagnero to Gaskell’s web site, including the link to his lecture notes. She makes the comment, “The last is of some length and I have not yet read it, but it promises to be thought-provoking. Clearly this man is complex and likely fascinating to talk with – but potentially evangelical. If we hire him, we should expect similar content to be posted on or directly linked from the department web site.” Again, no reasonable person reading that email would ascribe an anti-religious animus to Sally Shafer.

Despite Isaac Shlosman's deposition testimony that he never read Gaskell's lecture notes nor opposed Gaskell's application, but simply preferred Tim Knauer as a more suitable candidate, Gaskell argues that Isaac was put off by the religious thing. He cites an e-mail from Troland to Ferland which is nothing more than Troland's opinion of why Isaac opposed Gaskell's application. Nowhere in Troland's deposition testimony does he explain how he drew that conclusion, and yet, Gaskell wants the Court to accept Troland's statement as evidence that Shlosman opposed Gaskell on religious grounds. Shlosman testified that he selected Knauer "because I think he was more suitable for this position....Mr. Knauer worked in our department as a demonstration technician prior to this for a number of years, and I have – I was teaching these big large classes, and he was a person who was bringing up the demonstrations for me, and I liked him for creativity, for his desire to help, for his broad knowledge of the things that – brought interest in the amateur astronomy. He was circulating certain artifacts that he created himself, and so I liked what he did, liked his attitude, and I said that he is the person." (Exhibit 40, Deposition of Isaac Shlosman hereinafter "Shlosman", p. 26).

Gaskell alleges that Moshe Elitzur was quite influential in the selection process for Observatory Director but cites no evidence to support the allegation. Moshe's concern was not about what Gaskell believed or did not believe but rather, how his public comments may be used by those affiliated with the Creationism Museum in Northern Kentucky. (Exhibit 13 to Defendant's Memorandum in Support of Motion for Summary Judgment, Deposition of Moshe Elitzur, hereinafter, "Elitzur", p. 9).

Gaskell claims that Cavagnero asked the UK Biology Department to evaluate Gaskell's lecture notes and that they "jumped to the task with gusto." In fact, Dr. Cavagnero asked Dr. Jeffrey Osborn of the UK Biology Department to evaluate Gaskell's published lecture notes from a scientific standpoint. The biologists never expressed any animus toward Gaskell's religion, but

they had significant problems with the fact that he could not separate his religious beliefs from his scientific discussions. Gaskell's insinuation that the Biology staff at the University of Kentucky was lying in wait to sabotage his application because they opposed his religious beliefs in some way is completely delusional.

Gaskell states, "After some anxious prodding by Sally Shafer on October 15 to hurry up with his report so that it could be given to the committee before its October 16 meeting (Shafer already knew the biologists would trash Gaskell), Osborn delivered his report..." (Plaintiff's Memorandum, p. 26). Of course, there is no citation to any evidence in the record to support this claim. There is no evidence that Shafer was aware of what the biologists would conclude before she received Osborn's e-mail. Merely asking the biologists to provide a response with their evaluation of Gaskell's publicly disseminated lecture notes could hardly be classified as "anxious prodding."

Gaskell's description of the Biology Department's assessment of his lecture notes drips with sarcasm and innuendo. Osborn's email is straightforward in laying out what his concerns were with hiring an Observatory Director who accepts scientific principles when it relates to his area of astronomy but rejects them in the area of biology. (Exhibit 35 to Defendant's Memorandum of Law In Support of Motion for Summary Judgment). Clearly, Gaskell cannot accept differing viewpoints from his on evolution as he belittles the biologists who did nothing more than respond to a request for help from a professional colleague by assessing the scientific credibility of Gaskell's published statements on evolution.

Gaskell claims that, "Cavagnero admits the obvious" but then cites Troland's testimony to argue Gaskell's position on evolution was one of the elements in the hiring decision for the Observatory Director. Regardless, it is undisputed that it was Gaskell's position on evolution, not his religious beliefs that was discussed by the Advisory Committee in the context of the

Director search. In the end, Gaskell, who appeared well qualified for the job on paper, was not the best candidate based on his in person interview and the comments made by Dr. Kirby who worked at UNL, Gaskell's single longest employer. The fact that there was some controversy over comments he made which were interpreted as showing a lack of understanding of accepted scientific biological principles does not change this case into one of religious discrimination.

### **ARGUMENT**

#### **I. THERE ARE NO MATERIAL ISSUES OF FACT AS TO WHETHER THE UNIVERSITY OF KENTUCKY DISCRIMINATED AGAINST GASKELL ON THE BASIS OF HIS RELIGIOUS BELIEFS, AND THE UNIVERSITY IS ENTITLED TO JUDGMENT AS A MATTER OF LAW.**

Gaskell argues that reviewing the record as a whole compels the conclusion that Gaskell's religion was a motivating factor in UK's decision to bypass him for the position of Observatory Director. Avoiding the single motive analysis addressed by UK in its Motion for Summary Judgment, Gaskell instead relies on the mixed-motive analysis adopted by the Sixth Circuit Court of Appeals in the case of White v. Baxter Healthcare Corp., 533 F. 3d 381 (6th Cir. 2008). Nowhere in Gaskell's complaint does he allege violations of 42 U.S.C. section 2000e-2(m). He merely states he is bringing the action pursuant to 42 U.S.C. 2000e *et. seq.* (See Plaintiff's complaint, par. 2). However, if this Court accepts Gaskell's allegations as sufficient to raise a claim of mixed motive religious discrimination, he is still required to produce evidence sufficient to convince a jury that UK took an adverse employment action against him which was motivated by his religion. White, supra. at. 47-48. Regardless of whether this case is analyzed under a single motive or mixed motive construct, Gaskell's "evidence" of religious discrimination falls short of creating a genuine issue of fact warranting summary judgment in his favor or precluding summary judgment for UK.

In support of his claim that his religion was a factor in UK's rejection of him for Observatory director, Gaskell relies exclusively on e-mails and testimony from Troland, Kovash and Ferland. Kovash and Ferland have no personal knowledge regarding any of the events which led to the recommendation of the Advisory Committee. Ferland testified that his involvement was limited; "I received e-mails as a former member of the committee, but I was on a leave of absence so I was very indirectly following the e-mail traffic. So there was no direct involvement. There were no six-way conversations with members of the committee on the telephone with me." (Ferland p. 10.). He did not vote on any applicant. (Id.). Ferland understood from his distant vantage point that there was no discussion about Gaskell's religious or personal beliefs "but the creationism evolution I think here is what's meant by religious....The biological evolution was the concern. I don't think anybody knew what his personal beliefs about religion were." (Ferland p. 31). Ferland went on to explain that because some people take issue with biological evolution on religious grounds, the two terms get used interchangeably. (Id.)

Kovash was not even included in the e-mail exchange by the advisory committee members. His only role in the hiring process for the Observatory Director was to interview the final candidates and submit an evaluation of the candidates for that position. Kovash p. 8. He attended no committee meetings and only learned about those meetings through casual conversations with Tom Troland. (Kovash p. 9). In terms of Gaskell's personal beliefs, Kovash testified, "I didn't talk with Gaskell about these issues. I didn't go to any websites to look up. I didn't review any papers that Gaskell produced. This was not something that was talked about in the hallways or in a public sort of way that I knew about, so it was basically these conversations that Tom and I had where I learned anything that I learned." (Kovash p. 20). Kovash, equipped

with nothing more than what Troland told him and an apparent bias against his former wife<sup>1</sup>, Sally Shafer who served on the committee, asked UK's Equal Employment Office to "review the process and to say that it wasn't tainted by Gaskell's personal beliefs on human evolution." (Kovash p. 27). Although Kovash spoke to Cavagnero about Gaskell, Cavagnero never even mentioned Gaskell's views on evolution to Kovash. (Kovash p. 53). Kovash admitted that other than what Troland told him he had no personal knowledge about the factors that influenced the committee members in making their recommendation for Observatory Director. (Kovash p. 58).

Since Kovash and Ferland are incompetent witnesses to provide ANY evidence other than hearsay on the selection process, Gaskell's case depends exclusively on the e-mails of Tom Troland. Troland's e-mail statements are nothing more than his opinions. Since Troland has never been qualified as an "expert" on religious matters, his opinions are irrelevant unless they are informed by actual statements from his fellow advisory committee members from which the inference can be drawn that Gaskell was rejected on religious grounds.

The Committee members, all of whom testified in this case, explained why they specifically rejected Gaskell, like 60 other academic institutions and scientific associations with whom Gaskell filed applications. To grant Gaskell summary judgment and/or to deny UK's Motion for Summary Judgment would require this Court to accept Troland's opinion about the motivations of the other Advisory Committee members without any proof that they made statements expressing a concern about Gaskell's religious convictions. Absent from Troland's deposition testimony is any examination of the reasons he drew the conclusions that he did. Troland testified that he recalled that Gaskell's views on evolution came up in the committee discussions but he had no recollection of what was said. (Troland. P. 116). When asked what personal or religious beliefs were discussed by the committee, Troland testified, "I recall none

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<sup>1</sup> The basis for Kovash's testimony that Sally Shafer had no place for religion in her life was that he was married to her at one time and that she objected to having their child baptized even though the baby was baptized. Kovash p. 48-49.

were ever discussed.” (Troland p. 117). The only topic of conversation about Gaskell, other than his qualifications for the observatory director position, was about the public comments he made in his lecture at UK in the 90’s and the lecture notes that were found on Gaskell’s website. (Troland p. 117). When Troland referred to the “creationism matter” in his e-mails, he was referring to, “the possibility that Gaskell might hold beliefs regarding biological evolution contrary to scientific evidence”. (Troland p. 34). He described the particular concern as, “whether he would make use of a position at the University of Kentucky to promote those views as opposed to holding them as personal, individual beliefs. (Troland p. 53). Troland conceded that his statement that the biologists’ conclusions about Gaskell’s position on evolution would have some effect on the committee was mere “suspicion—this was just speculation.” (Troland p. 72). Troland had no recollection of the number of Advisory Committee meetings that were held; those meetings were neither recorded nor were notes taken about what was discussed during those meetings. (Troland, pp. 16-17). When asked whether any of the Committee members discussed the hiring process privately with him, Troland could not recall. (Id.). Troland testified that he was not surprised when the issue regarding Gaskell’s position on evolution came up because he had attended Gaskell’s lecture at UK in the 1990’s, and he was aware that Gaskell had made comments that some people objected to. (Troland, p. 36). Troland testified that he has very close to no knowledge whatsoever about what Gaskell believes regarding biological evolution. (Troland, p. 37). Troland testified that the Observatory Director would not directly deal with biology but would serve as a science outreach person and would thus be perceived by the public as a science “expert”. (Troland p. 63). Troland was asked about an e-mail he sent stating, “In the end, I’m sure, enough reasons will be found to hire another candidate, and the whole matter will be safely swept under the rug” and he explained that he was frustrated that the other committee members didn’t agree with his assessment and that the statement simply

reflected that frustration. (Troland p. 74). It was Troland's assessment of the disparity in the qualifications between Gaskell and the selected candidate, Tim Knauer, which led him to use tell his friend, Ferland, "this matter certainly does not pass the stench test". (Troland p. 78). In explaining why his language was so strong regarding the "Gaskell Affair", Troland testified;

First of all, you have to understand I was...very frustrated at that time that other members of the committee did not agree with me....Secondly, it is a fact, to the best of my recollection, that at no time, at any committee meeting or with any individual member of the committee, was Martin Gaskell's religious beliefs ever discussed. We never discussed what God, if any, he praised to; we never discussed what church, if any, he goes to; we never discussed any matter of his theological beliefs, anything of that sort. What was discussed...at some level, at least, was the possibility that he might hold nonscientific views in the topic of biological evolution. I realize, upon reflection, looking over some of these emails, that I, in writing the emails that I wrote and using the language I did, was making a hidden assumption. And the hidden assumption that I was making was that any discussion of Martin's beliefs regarding biological evolution amounted, in some way, to a discussion of his religion.... So the bottom line is we never discussed, in the committee, Martin Gaskell's religion." (Troland, p. 81-83).

Gaskell's comments about evolution were discussed by some members of the advisory committee because Gaskell made those comments public, first when he gave a lecture at UK in the 90's and then by posting those comments on the internet. There is NO evidence that Gaskell's religious beliefs were discussed by anyone who made the recommendation to hire Tim Knauer rather than Gaskell. The fact that there were discussions about Gaskell's public comments on evolution does not mean Gaskell was rejected because of those statements. He cannot place his personal views in the public domain then complain when those views are discussed by a potential employer.

This is not a case of religious discrimination regardless of how the evolution issue is described or referred to by anyone. It did not matter to any of the advisory committee members why Gaskell believed there were scientific problems with the theory of evolution; they had no

interest in his religious beliefs. The only concern was whether Gaskell's publicly expressed views would impair his ability to serve effectively as Observatory Director; clearly a proper hiring criteria. The only question that was asked of Gaskell regarding his statements on evolution was posed by Mike Cavagnero who was concerned that Gaskell would violate UK policy by representing his own opinion as that of the University. Gaskell did not get the job because another candidate was considered superior in terms of what the Advisory Committee wanted in the first Director of the MacAdam Observatory. There being no material issue of fact to support Gaskell's allegation that he was rejected for employment as UK's Observatory Director on the basis of his religious beliefs, the Court is respectfully requested to deny Gaskell's Motion for Summary Judgment and to Grant UK's Motion for Summary Judgment.

Respectfully submitted,

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*Counsel for Defendant, University of Kentucky*

**CERTIFICATE OF SERVICE**

I hereby certify that on **October 19, 2010**, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system, which will send a notice of electronic filing to the following: Francis J. Manion, Geoffrey R. Surtees and Edward L. White, III.

s/Barbara A. Kriz  
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*Counsel for Defendants*

Requested Changes to Charge of Discrimination

Martin Gaskell  
May 1, 2008-05-02

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THE PARTICULARS ARE

I. I was employed by the Respondent from August 1992 to August 17, 2007, most recently in a Research Associate Professor position in the Department of Physics. In or about June 2003 I had informal discussions with a program director at the National Science Foundation (NSF) that the Respondent was not willing to fulfill the terms of a federal grant. In June of 2006, with the full approval of the Respondent, I submitted a NASA proposal which included the salary for my position for the 2007-2009 academic years. My proposal was approved by NASA. My salary for the 2007-2008 academic year was to be provided from a no-cost extension of my NSF grant and by the NASA grant, and my salary for the 2008-2009 academic year was to be provided from the NASA grant. In September 2006, I made a verbal report of the NSF grant violations to Vice Chancellor for Research, Prem Paul, and reported to him that it was the opinion of the NSF Program Director that the Respondent was not fulfilling the terms of my grant and earlier NSF astronomy grant to UNL. Afterwards, I was retaliated against.

II. I believe I have been discriminated against on the basis of Whistleblower retaliation in violation of Section 48-1114 (3) of the Nebraska Fair Employment Practice Act for the following reasons:

1. In November, 2006, Physics Department Chair Roger Kirby refused to approve a submission from me for an NSF grant.
2. I reported Chairman Kirby's refusal to approve my grant submission to Richard Hoffmann, dean of the College of Arts and Sciences. I then received an e-mail that stated that no submission from me would be approved because "I had expressed to NSF a complaint that the (Respondent) had failed to honor its obligations under a different NSF grant on which (I) was the primary investigator."
3. On January 26, 2007, I received a memo from Chair Kirby that my position would end at the end of the academic year.
4. On June 4 I made a formal request to submit a one-year extension of the NSF grant, at no cost to the respondent. This request was turned down.
5. I was severed from UN-L on August 17, 2007.



**PLAINTIFFS EFFORTS TO PROCURE GAINFUL EMPLOYMENT**

Employer	Date of applicati Yr	Mon.	Job Description	Outcome
Sacred Art Council of Lincoln, NE Univ, Utah	2007	8	Orchestra conductor	Accepted position
National Science Foundation Univ, Wisconsin	2007	11	Faculty position	Rejected
Univ, Arizona	2007	11	Research grant	Not funded
Univ, Hawaii, Hilo	2007	12	Faculty position	Rejected
Keck Observatory	2008	1	Faculty position	Rejected
NASA Headquarters	2008	1	Observatory director	Telephone interview; rejected
National Optical Astron. Observatories	2008	1	Staff astronomer	Telephone interview; in-person interview; rejected
Rutgers Univ.	2008	1	Discipline program scientist	Rejected
univ. Texas at Austin	2008	1	Staff astronomer	Rejected
Johns Hopkins Univ.	2008	1	Endowed chair in astrophysics	Rejected
New Mex. Tech Univ, Rochester	2008	2	Faculty position	Rejected
Space Telescope Institute	2008	2	Faculty position	Rejected
Space Telescope Institute	2008	2	Faculty position	Telephone interview; rejected
NASA Astrophysic Theory Program	2008	2	Faculty position	Rejected
NASA Astrophysic Data Program	2008	3	Research grant	Not funded
Univ, Mass. at Amherst	2008	3	Research grant	Not funded
Univ, Texas	2008	5	Research grant	Not funded
National Science Foundation	2008	6	Research grant	Not funded
Wheaton College	2008	7	Faculty position	Rejected
Arizona State Univ.	2008	10	Temporary faculty position	Accepted position
Lowell Observatory	2008	11	Research grant	Not funded
NASA Astrophysic Theory Program	2009	3	Faculty position	Position not filled - asked to reapply in 2009
NASA Astrophysic Data Program	2009	3	Faculty position	Rejected
Texas Christian Univ.	2009	3	Observatory director	Rejected
University of Victoria	2009	5	Research grant	Rejected
College of New Jersey	2009	5	Research grant	Not funded
First Cumberland Church, Austin	2009	5	Research grant	Not funded
National Science Foundation	2009	5	Faculty position	Rejected
Univ. Texas San Antonio	2009	9	Faculty position	Rejected
Mississippi State Univ.	2009	10	Department chairmanship	Rejected
Canadian Inst. of Theoretical Astrophysics	2009	10	Temp. substitute organist	Accepted position
Space Telescope Institute	2009	10	Research grant	Not funded
National Science Foundation	2009	11	Faculty position	In-person interview; search cancelled (budget cuts)
Mississippi State Univ.	2009	11	Faculty position	Rejected
Canadian Inst. of Theoretical Astrophysics	2009	11	Research Associate	Rejected
Space Telescope Institute	2009	11	Senior staff astronomer	Rejected
National Science Foundation	2009	11	Program Director	Telephone interview; in-person interview; rejected

Johns Hopkins Univ.	2009	12	Faculty position	Rejected
Univ. of Alberta	2009	12	Faculty position	Rejected
Univ. Chicago	2009	12	Faculty position	Rejected
New York University	2009	12	Faculty position	Rejected
Georgia Tech	2009	12	Faculty position	Rejected
Arizona State Univ.	2009	12	Faculty position	Rejected
Univ. Pittsburg	2009	12	Endowed chair in astrophysics	Rejected
Case Western Reserve Univ.	2010	1	Faculty position	Rejected
Carnegie Observatories	2010	1	Staff astronomer	Rejected
Georgia State Univ.	2010	1	Faculty position	Rejected
Space Telescope Institute	2010	2	Research grant	Not funded
Univ. Arizona	2010	2	Faculty position	Rejected
Wheaton College	2010	2	Faculty position	Rejected
Lowell Observatory	2010	3	Staff astronomer	Rejected
Univ. Texas at Arlington	2010	3	Faculty position	Rejected
Bracecliff Music School, Austin, TX	2010	4	Temp. substitute piano teacher	Accepted position
San Antonio College	2010	4	Adjunct faculty position	Telephone interview, offered position
Univ. Central Florida	2010	4	Faculty position	Rejected
St. Edwards University	2010	4	One-year faculty position	Rejected
Univ. of Zurich	2010	4	Faculty position	Under consideration
NASA Astrophysics Theory Program	2010	5	Research grant	Pending
Univ. Valparaiso	2010	5	Faculty position	Video interview, offered position
NASA Astrophysic Data Program	2010	6	Research grant	Pending

**Angela C. Worley**

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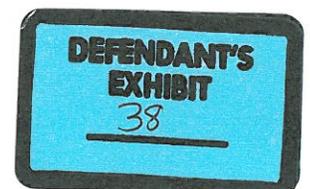
**From:** Mike Cavagnero [mike@pa.uky.edu]  
**Sent:** Monday, October 22, 2007 12:19 PM  
**To:** shafer@pa.uky.edu  
**Cc:** gary@pa.uky.edu; 'Thomas H. Troland'  
**Subject:** Re: questions re Fayette Co RE: thoughts on Gaskell's biology

**I think we should hold off on this until after Tuesday's committee meeting. If the committee as a whole wants more info, then we should certainly provide it. But it isn't clear to me that Fayette Co. is any more of an expert on this than our own Dean's Office, and that office certainly knows that we have been wrestling with what is, and is not, appropriate for consideration in this particular case.**

Mike

Sally Shafer wrote:

> Gary  
>  
> Good point about "what do school systems do?".  
>  
> Mike, do you want me to look into this? I think it would be best to  
> do so through the Ky Dept of Edu rather than just Fayette Co, but we  
> could enquire of both.  
>  
> Considering how touchy this issue is becoming I would prefer to have  
> your agreement before I probe into this further.  
>  
> Sally  
>  
>  
>  
> -----Original Message-----  
> From: Gary J. Ferland [mailto:gary@pa.uky.edu]  
> Sent: Saturday, October 20, 2007 2:35 AM  
> To: shafer@pa.uky.edu  
> Cc: macadam@uky.edu; levenson@pa.uky.edu; shlosman@pa.uky.edu;  
> ellis@pa.uky.edu; mike@pa.uky.edu; 'Thomas H. Troland'; Gary J.  
> Ferland  
> Subject: RE: thoughts on Gaskell's biology  
>  
> Hi Sally,  
>  
> two things. As you point out, I missed the interviews and the discussions.  
> I did not meet Sykes so can form no opinion. So I won't be voting.  
> But I think my being removed from the process may give me an  
> outsider's perspective. I fear that if our actions were publically known we would read  
> about it in the newspapers. We might even make the New York Times.  
>  
> The issue about K-12 education is interesting. What is Fayette County



- > **policy on hiring teachers? If it became known that a prospective**
- > **teacher belonged to a church that taught against evolution (as most of**
- > **the mega Churches around town do, I believe), would that candidate be**
- > **excluded from consideration? How are personal beliefs taken into**
- > **account in hiring teachers?**
- >
- > **all the best,**
- > **Gary**
- >

Shafer # 4

**Bender, Patty**

**From:** Sally Shafer [shafer@pa.uky.edu]  
**Sent:** Friday, September 21, 2007 10:03 AM  
**To:** 'Thomas H. Troland'; 'Mike Cavagnero'  
**Subject:** gaskell web info

Tom and Mike

I decided to see what was available about Martin Gaskell on the web, in particular about his approach to blending of science and religion.

<http://physics.unl.edu/directory/gaskell/gaskell.html> which links to

'professor profile' at [http://physics.unl.edu/directory/gaskell/professor\\_profile.html](http://physics.unl.edu/directory/gaskell/professor_profile.html)

and also to 'personal webpage' <http://incolor.inetnebr.com/gaskell/gaskell.html>  
with links to multiple sites including 'Bible and Astronomy lecture notes'  
<http://incolor.inetnebr.com/gaskell/genesis.html>

The last is of some length and I have not yet read it, but it promises to be thought provoking. Clearly this man is complex and likely fascinating to talk with – but potentially evangelical. If we hire him, we should expect similar content to be posted on or directly linked from the department website.

Please advise the committee of these links if you think the content relevant to our decision.

Sally A. Shafer  
University of Kentucky  
Dept. of Physics & Astronomy  
Chem-Physics Bldg rm. 177  
Lexington, KY 40506-0055  
ph 859-257-5131  
fax 859-323-2846

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

---

**DEPOSITION OF ISAAC SHLOSMAN, Ph.D.**

---

C. MARTIN GASKELL PLAINTIFF  
v.  
UNIVERSITY OF KENTUCKY DEFENDANT

---

The deposition of **ISAAC SHLOSMAN, Ph.D.**, was taken on behalf of the plaintiff before Ann Hutchison, Registered Professional Reporter and Notary Public in and for the Commonwealth of Kentucky at Large, at the law office of Baker, Kriz, Jenkins, Prewitt & Jones, PSC, 200 West Vine Street, Suite 710, Lexington, Kentucky, on Wednesday, May 12, 2010, beginning at the hour of 9:25 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.

---

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



**1 APPEARANCES**

**2**

**3 COUNSEL FOR THE PLAINTIFF:**

**4** Geoffrey Surtees  
**5** American Center for Law & Justice-Kentucky  
**6** 6375 New Hope Road  
**7** P.O. Box 60  
**8** New Hope, Kentucky 40052

**9 COUNSEL FOR THE DEFENDANT:**

**10** Barbara A. Kriz  
**11** Baker Kriz Jenkins Prewitt & Jones, PSC  
**12** 200 West Vine Street, Suite 710  
**13** Lexington, Kentucky 40507

**14** Barbara W. Jones  
**15** University of Kentucky  
**16** General Counsel  
**17** 301 Main Building  
**18** Lexington, Kentucky 40506-0032

**19 ALSO PRESENT:**

**20** Mike Cavagnero

**21**

**22**

**23**

**24**

**25**

ACTION COURT REPORTERS 2

**1 ISAAC SHLOSMAN, Ph.D.**

**2** having been first duly placed under oath, was examined

**3** and testified as follows:

**4 EXAMINATION**

**5 BY MR. SURTEES:**

**6 Q.** Would you state and spell your name for

**7** the record, please.

**8 A.** Isaac Shlosman, I-s-a-a-c S-h-l-o-s-m-a-n.

**9 Q.** Dr. Shlosman, my name is Jeffrey Surtees.

**10** We met before the deposition this morning. I am one of

**11** Dr. Martin Gaskell's attorneys representing him in his

**12** lawsuit against the University of Kentucky, pending here

**13** in the United States District Court for the Eastern

**14** District of Kentucky. Have you ever had your deposition

**15** taken before?

**16 A.** No.

**17 Q.** Well, I'm sure you've been apprised of

**18** what the procedure is about. It's not as complicated as

**19** studying active galactic nuclei.

**20 A.** I see you did your homework.

**21 Q.** It is far less complicated than that. It

**22** is simply my asking you questions and you answering them

**23** with the truth, the whole truth, and nothing but the

**24** truth, as you just swore or affirmed you would do. Do

**25** you understand that?

ACTION COURT REPORTERS 4

**1 INDEX**

**2** DEPONENT: **ISAAC SHLOSMAN, Ph.D.** PAGE

**3** EXAMINATION BY:

**4** Mr. Surtees ..... 4

**5** REPORTER'S CERTIFICATE ..... 36

**6**

**7 EXHIBITS**

<b>8</b> NO.	<b>9</b> DESCRIPTION	<b>10</b> IDENTIFIED
<b>11</b> 1	<b>12</b> Dr. Gaskell's Curriculum Vitae	<b>13</b> 13
<b>14</b> 2	<b>15</b> Dr. Gaskell's homepage	<b>16</b> 14
<b>17</b> 3	<b>18</b> Dr. Gaskell's personal page	<b>19</b> 14
<b>20</b> 4	<b>21</b> Professor Profiles - Martin Gaskell	<b>22</b> 14
<b>23</b> 5	<b>24</b> Modern Astronomy, the Bible, and Creation	<b>25</b> 15
<b>26</b> 6	<b>27</b> Observatory Director Applicants	<b>28</b> 20
<b>29</b> 7	<b>30</b> 9/24/07 e-mail to the committee from Dr. Troland	<b>31</b> 21
<b>32</b> 8	<b>33</b> 10/23/07 e-mail to the committee from Dr. Troland	<b>34</b> 21
<b>35</b> 9	<b>36</b> 10/17/07 e-mail: The biologists weigh in	<b>37</b> 22
<b>38</b> 10	<b>39</b> Isaac Shlosman web page	<b>40</b> 28
<b>41</b> 11	<b>42</b> homepage of science fiction writers	<b>43</b> 30
<b>44</b> 12	<b>45</b> link from Dr. Shlosman's homepage to Stanislaw Lem's website	<b>46</b> 31

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

ACTION COURT REPORTERS 3

**1 A.** Sure.

**2 Q.** Because a court reporter is here taking

**3** down everything anyone in the room may say when we are

**4** on the record, it's important that we follow a couple of

**5** rules. First is that we not talk over one another.

**6** Please wait for me to finish a question before

**7** responding to that question. I'll wait for you to

**8** finish an answer to a question before I ask you another

**9** question.

**10 A.** Okay.

**11 Q.** If you do not understand a question I ask,

**12** please ask me to rephrase it, restate it, and I'll be

**13** happy to do so. If I ask a question -- which of course

**14** I will do -- and you answer it, we will assume if you do

**15** not ask me to rephrase or restate the question that you

**16** understood my question and that your response was

**17** responsive to my question. Is that understood?

**18 A.** Yes.

**19 Q.** And again, the court reporter is taking

**20** down everything we say, but she cannot take down nods

**21** and shakes of the head, so please verbalize all of your

**22** responses. Please refrain, as well, from saying uh-huh

**23** or uh-huh or grunts of that nature. Please say yes and

**24** no.

**25 A.** Okay.

ACTION COURT REPORTERS 5

1 Q. It's difficult for the court reporter to  
 2 take that down and for the rest of us to read the  
 3 transcript later if we have responses of that nature.  
 4 This deposition is not going to last  
 5 terribly long, but if you need to take a break at all  
 6 during the course of the deposition, please indicate  
 7 that, we'll be happy to take a break.  
 8 Do you have any questions about procedure  
 9 here this morning?  
 10 A. No. It's clear.  
 11 Q. First and foremost, Dr. Shlosman, are you  
 12 aware of the fact that you are not a defendant in this  
 13 lawsuit?  
 14 A. Yes. I was told.  
 15 Q. Dr. Shlosman, did you speak with anyone  
 16 regarding today's deposition other than Ms. Kriz?  
 17 A. I spoke briefly and generally with  
 18 Dr. Troland.  
 19 Q. What did the two of you speak about?  
 20 A. Well, like how long it will take, how  
 21 intrusive it is. Basically that's all.  
 22 Q. Did Dr. Troland tell you about his  
 23 deposition at all?  
 24 A. No way.  
 25 Q. Did you review any documents in

ACTION COURT REPORTERS 6

1 preparation for today's deposition?  
 2 A. No.  
 3 Q. Did you speak with anyone regarding any  
 4 depositions that were involved in this case?  
 5 A. No.  
 6 Q. Dr. Shlosman, what is your current  
 7 position with the University of Kentucky?  
 8 A. I'm professor at Department of Physics and  
 9 Astronomy.  
 10 Q. And prior to being a professor in the  
 11 Department of Physics and Astronomy at the University of  
 12 Kentucky, what was your position previous to that?  
 13 A. I was senior postdoctoral fellow at the  
 14 California Institute of Technology in Pasadena.  
 15 Q. And how long were you there?  
 16 A. Three years.  
 17 Q. And how long have you been a professor  
 18 here at the University of Kentucky?  
 19 A. Nineteen years.  
 20 Q. And could you give me a rundown,  
 21 Dr. Shlosman, of your academic background prior to going  
 22 to the California Institute of Technology?  
 23 A. Well, I finished my Ph.D. in Tel Aviv  
 24 University in 1986. I came to this country, to Boulder,  
 25 Colorado, to be a postdoctoral fellow at the University

ACTION COURT REPORTERS 7

1 of Colorado, the Joint Institute for Astronomy, there,  
 2 and after two years there I moved to California  
 3 Institute of Technology.  
 4 Q. In 2007 did you serve on a committee to  
 5 help find a director for the MacAdam Student  
 6 Observatory?  
 7 A. Yes, I did.  
 8 Q. What was your understanding of the purpose  
 9 of that committee?  
 10 A. Well, the purpose of this committee was to  
 11 find a suitable director for the observatory.  
 12 Q. How would you describe your role in  
 13 particular in that committee?  
 14 A. I suppose to help with this task.  
 15 Q. And how did you help with that task?  
 16 A. Well, by evaluating the personal dossiers  
 17 of candidates and making a decision what is best for the  
 18 university.  
 19 Q. Did you participate in any telephone  
 20 interviews with any of the candidates for the position?  
 21 A. I did not.  
 22 Q. And why not? Were you not asked to?  
 23 A. No. I was away for some period of time.  
 24 Presumably this. Yes, I heard that there had been some  
 25 telephone interviews, but I was not part of them.

ACTION COURT REPORTERS 8

1 Q. Did you participate in any face-to-face  
 2 interviews of the candidates for the position?  
 3 A. Don't remember whether I did.  
 4 Q. Do you recall having a face-to-face  
 5 interview with Mr. Timothy Knauer for the position?  
 6 A. No, I think I didn't, to the best of my  
 7 memory.  
 8 Q. And that's all you can give me. If you  
 9 can't recall, you can't recall. It's a perfectly  
 10 legitimate response.  
 11 A. I think I didn't.  
 12 Q. Did you participate in any face-to-face  
 13 interview with Dr. Martin Gaskell?  
 14 A. I think I didn't to the best of my memory.  
 15 Q. Are you familiar with the name of  
 16 Dr. Martin Gaskell?  
 17 A. Yes, I do.  
 18 Q. And how are you familiar with his name?  
 19 A. Well, I encountered him a number of times  
 20 at scientific conferences, and I know his name from the  
 21 papers that I read.  
 22 Q. Would you consider him a good scientist?  
 23 A. I guess he is okay, yeah.  
 24 Q. Would you consider him a good astronomer?  
 25 A. Yeah. That's what I meant, yeah. Why

ACTION COURT REPORTERS 9

1 not?  
 2 Q. Have you ever read anything by Dr. Gaskell  
 3 which would indicate that he fails to understand the  
 4 scientific method?  
 5 A. No.  
 6 Q. Do you have any professional disagreements  
 7 with anything Dr. Martin Gaskell has written on  
 8 astronomical issues?  
 9 A. No.  
 10 Q. Have you ever -- I'm sorry.  
 11 A. Nothing.  
 12 Q. Have you ever worked with Dr. Gaskell on  
 13 any scientific projects?  
 14 A. Never.  
 15 Q. And so you've never coauthored any  
 16 articles --  
 17 A. No.  
 18 Q. -- with him?  
 19 A. No.  
 20 Q. Please wait for me to finish that question  
 21 even though you know where I'm going.  
 22 A. Sorry.  
 23 Q. No, it's fine. It's just for the clarity  
 24 of the record.  
 25 Are you aware whether or not Dr. Gaskell

ACTION COURT REPORTERS 10

1 meetings of the search committee?  
 2 A. To the best of my memory, I think I was --  
 3 I participated in about one or two meetings. Not less  
 4 than one.  
 5 Q. And do you recall any of the discussions  
 6 from those meetings?  
 7 A. Some of them.  
 8 Q. And please tell me to the best of your  
 9 recollection what you recall from those committee  
 10 meetings.  
 11 A. The committee meeting that I remember  
 12 clearly was probably the last one where actually the  
 13 vote was taken and there had been some deliberations,  
 14 general deliberations, before the vote, and then we took  
 15 the vote.  
 16 Q. Tell me everything you can recall about  
 17 those deliberations. I'll begin with everything that  
 18 was said about Dr. Gaskell.  
 19 A. Because this was one of the -- I mean it  
 20 was the last meeting, then my feeling was that everybody  
 21 was already, I mean, familiar and so there had been not  
 22 too many initial discussions of who he is. So we sit  
 23 down, we just chatted a little bit, quite insignificant,  
 24 and then we said, well, we need to come up with -- and  
 25 we voted.

ACTION COURT REPORTERS 12

1 visited the University of Kentucky in 2007 for purposes  
 2 of being interviewed for the position of observatory  
 3 director?  
 4 A. I guess I was never so curious to check  
 5 this, so no, I was never asking this, whether -- who was  
 6 invited and who was not invited.  
 7 Q. Who else was on the search committee with  
 8 you, Dr. Shlosman?  
 9 A. Dr. Troland, the chair as ex-officio;  
 10 Dr. Levenson; I think also our -- whatever his official  
 11 position is, director of our labs.  
 12 MS. KRIZ: You want to identify him?  
 13 A. Steve Ellis.  
 14 Q. Any other names that you can recall?  
 15 A. No.  
 16 MR. SURTEES: Let's just go off the  
 17 record for a second.  
 18 (Off the record.)  
 19 MR. SURTEES: Back on.  
 20 Q. Dr. Shlosman, would you say that you  
 21 played a very involved role in the search process for  
 22 director of the observatory?  
 23 A. No, I did not, for the reason that I was  
 24 away quite a lot during this time.  
 25 Q. Did you participate in any committee

ACTION COURT REPORTERS 11

1 Q. And do you recall anyone saying anything  
 2 at all about Dr. Martin Gaskell?  
 3 A. The name was mentioned, but I don't  
 4 remember anything specific.  
 5 Q. Did the name of Timothy Knauer come up  
 6 during this meeting that we're discussing?  
 7 A. I think it was mentioned, but I don't  
 8 remember in what context.  
 9 Q. And you say you may have served -- may  
 10 have participated in at least one other committee  
 11 meeting; is that correct?  
 12 A. Well, this I don't remember. I mean, it  
 13 could be that it was just some -- I was reading e-mail  
 14 exchanges. I clearly remember the last one that I  
 15 mentioned.  
 16 Q. Can you recall anything else about the  
 17 last meeting other than what you've already told me?  
 18 A. If there would be something substantial, I  
 19 would remember, but it was just generalities, which I've  
 20 quickly forgotten.  
 21 Q. Did the subject of -- strike that.  
 22 (Exhibit No. 1 marked.)  
 23 Q. Dr. Shlosman, I'm showing you a document  
 24 we have marked as Exhibit 1. I take it you all have a  
 25 copy. Have you ever seen this document before?

ACTION COURT REPORTERS 13

1 **A. I think when I was going over the personal**  
 2 **dossiers, yes.**  
 3 (Exhibit No. 2 marked.)  
 4 **Q. Dr. Shlosman, I'm showing you what we have**  
 5 **marked as Exhibit No. 2. Have you ever seen this?**  
 6 **A. No, I don't remember. Based on the**  
 7 **picture, I don't remember that I saw this photo before**  
 8 **so...**  
 9 **Q. All right. Let me just back up and wait**  
 10 **for me to finish the question, again just for the sake**  
 11 **of the record.**  
 12 Have you ever seen this document in paper  
 13 form before I have just handed it to you?  
 14 **A. No, I don't think so.**  
 15 **Q. Have you ever seen this document on a**  
 16 **computer screen?**  
 17 **A. I don't think so.**  
 18 (Exhibit No. 3 marked.)  
 19 **Q. Dr. Shlosman, I'm showing you what we have**  
 20 **marked as Exhibit No. 3. Have you ever seen this**  
 21 **before, either in paper form or on a computer screen?**  
 22 **A. No.**  
 23 (Exhibit No. 4 marked.)  
 24 **Q. Dr. Shlosman, I'm showing you what we've**  
 25 **marked as Exhibit 4. Have you ever seen this document**

ACTION COURT REPORTERS 14

1 **A. He told me that the astronomy part of the**  
 2 **talk was very nice and nicely received by the students,**  
 3 **but then that there was some disagreement during the**  
 4 **question-and-answer part of the -- of this event.**  
 5 **Q. What did Dr. Ferland tell you about the**  
 6 **disagreement during the question-and-answer period?**  
 7 **A. Well, I was told that somebody asked the**  
 8 **question about evolution and that Dr. Gaskell was**  
 9 **negative about this.**  
 10 **Q. What do you mean by Dr. Gaskell was**  
 11 **negative about this?**  
 12 **A. Dismissive. That's what I was told.**  
 13 **Q. Anything else you can recall Dr. Ferland**  
 14 **telling you about the 1997 lecture?**  
 15 **A. No. It was a short conversation.**  
 16 **Q. Did you ever speak with anyone else**  
 17 **regarding Dr. Gaskell's 1997 lecture at the University**  
 18 **of Kentucky?**  
 19 **A. I only spoke to Dr. Gaskell himself at**  
 20 **that time. In my office.**  
 21 **Q. When -- okay. So you met with Dr. Gaskell**  
 22 **when he came to visit the University of Kentucky in**  
 23 **1997?**  
 24 **A. Right.**  
 25 **Q. And what was that conversation about?**

ACTION COURT REPORTERS 16

1 either in paper form or on a computer screen?  
 2 **A. No, I did not.**  
 3 (Exhibit No. 5 marked.)  
 4 **Q. Dr. Shlosman, I'm showing you what we have**  
 5 **marked as Exhibit No. 5. Have you ever seen this**  
 6 **document before, either in paper form or on a computer**  
 7 **screen?**  
 8 **A. No.**  
 9 **Q. I'm sorry?**  
 10 **A. No. I did not.**  
 11 **Q. Dr. Shlosman, did you ever attend a**  
 12 **lecture given by Dr. Martin Gaskell at the University of**  
 13 **Kentucky in 1997?**  
 14 **A. No, I did not. That was a public lecture?**  
 15 **Q. That is correct.**  
 16 **A. Yeah. I did not.**  
 17 **Q. Have you ever heard anyone discuss that**  
 18 **lecture from 1997?**  
 19 **A. Yes, I did.**  
 20 **Q. And how many people have you had**  
 21 **discussions with regarding that lecture?**  
 22 **A. I had discussion -- I was told about this**  
 23 **by Dr. Gary Ferland.**  
 24 **Q. And what did Dr. Ferland tell you about**  
 25 **that 1997 lecture?**

ACTION COURT REPORTERS 15

1 **A. Well, life in the place where he was at**  
 2 **that time, in Nebraska, general recollections about**  
 3 **common colleagues. And that was before his talk, so I**  
 4 **had no questions to him about the talk.**  
 5 **Q. Did you speak with Dr. Gaskell during his**  
 6 **visit in 1997 about the lecture that he gave?**  
 7 **A. No. As I just said, this was before his**  
 8 **talk, and I apologize that I cannot be at his talk.**  
 9 **Q. Was that time you saw Dr. Gaskell in 1997**  
 10 **the last time that you've seen Dr. Gaskell face-to-face?**  
 11 **A. That's correct.**  
 12 **Q. So the meetings you've had with**  
 13 **Dr. Gaskell at scientific conventions were prior to**  
 14 **1997?**  
 15 **A. Well prior.**  
 16 **Q. Dr. Shlosman, did you ever indicate to**  
 17 **Dr. Cavagnero that it was your opinion that Dr. Gaskell**  
 18 **was a creationist?**  
 19 **A. I don't remember this.**  
 20 **Q. Do you recall telling anyone that it was**  
 21 **your understanding Dr. Gaskell was a creationist?**  
 22 **A. I don't remember speaking to anybody about**  
 23 **Dr. Gaskell except the vote itself. It may be that I**  
 24 **commented, I just don't...**  
 25 **Q. Was it your opinion in 2007 that**

ACTION COURT REPORTERS 17

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1 Dr. Gaskell was a creationist?  
 2 **A. In 2007?**  
 3 **Q.** That's correct.  
 4 **A. I think I was not even -- I mean, my main**  
 5 **problem with Dr. Gaskell was completely different.**  
 6 **Q.** I'm sorry?  
 7 **A. My main problem with his candidacy was a**  
 8 **different one.**  
 9 **Q.** We can get to that. I'm just wondering  
 10 right now whether or not you've had any conversations  
 11 with anyone about Dr. Gaskell's being or not being a  
 12 creationist?  
 13 **A. As I said, I do not remember it. It may**  
 14 **be that I commented, but I don't remember.**  
 15 **Q.** Have you had any conversations with  
 16 Dr. Elitzur regarding Dr. Gaskell's belief regarding  
 17 evolution?  
 18 **A. I would answer differently than the**  
 19 **previous question. I mean, it could be. We had so many**  
 20 **discussions, but I do not remember the specific, whether**  
 21 **I did mention this or not.**  
 22 **Q.** Is it that you can't remember having any  
 23 conversation at all of this nature, or that you just  
 24 can't remember the specifics of the conversation? Do  
 25 you see what I'm saying?

ACTION COURT REPORTERS 18

1 **A. Yes, I do. I have some recollection that**  
 2 **I -- may be I did speak to -- I don't remember to whom,**  
 3 **but I don't remember the specifics.**  
 4 **Q.** Okay. You think you may have spoken to  
 5 someone about Dr. Gaskell and evolution? I'm sorry, I'm  
 6 just trying to get where you're coming from here.  
 7 **A. I could speak to somebody about**  
 8 **Dr. Gaskell's candidacy.**  
 9 **Q.** Did you have any opinion in 2007 of what  
 10 Dr. Gaskell believed about biological evolution?  
 11 **A. I have no interest in this.**  
 12 **Q.** Did you have any opinion what  
 13 Dr. Gaskell's belief was concerning biological evolution  
 14 in 2007?  
 15 **A. I don't think this problem entertained me**  
 16 **at that time, so I do -- I don't know.**  
 17 **Q.** So just for clarity's sake, in 2007 you  
 18 had no opinion regarding Dr. Gaskell's beliefs with  
 19 respect to the subject of biological evolution?  
 20 **A. I don't say no that I didn't, but at that**  
 21 **time I was not thinking about this.**  
 22 **Q.** I think I know the answer to this  
 23 question, Dr. Shlosman, but I'm going to ask it anyway.  
 24 Are you the author of any scientific  
 25 articles?

ACTION COURT REPORTERS 19

1 **A. I'm sorry?**  
 2 **Q.** Are the author of any scientific articles?  
 3 **A. I do.**  
 4 **Q.** Hundreds, perhaps?  
 5 **A. Yes.**  
 6 **Q.** And in those articles do you identify  
 7 yourself as being with the University of Kentucky?  
 8 **A. You mean if the title -- yes.**  
 9 **Q.** Why do you do that?  
 10 **A. Well, because there is a formality in**  
 11 **publishing an article, you need to be affiliated with a**  
 12 **particular academic institution in order to pass the**  
 13 **selection process, refereeing process and so on.**  
 14 **Q.** And you must read hundreds of scientific  
 15 articles; is that correct?  
 16 **A. That's correct.**  
 17 **Q.** When you see an article whose author is  
 18 identified as being affiliated with an educational  
 19 institution, is it your understanding that the  
 20 educational institution endorses everything that the  
 21 author has written in that article?  
 22 **A. No, I don't think there is any**  
 23 **relationship to it.**  
 24 (Exhibit No. 6 marked.)  
 25 **Q.** Dr. Shlosman, I'm showing you a document

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1 we have marked as Exhibit No. 6. Have you ever seen  
 2 this before?  
 3 **A. No, I did not.**  
 4 (Exhibit No. 7 marked.)  
 5 **Q.** Dr. Shlosman, I'm showing you a document  
 6 we have marked as Exhibit No. 7. Have you ever seen  
 7 this document before?  
 8 (Deponent reviews document.)  
 9 **A. Not that I remember.**  
 10 **Q.** It appears to be an e-mail --  
 11 **A. Right.**  
 12 **Q.** -- from Dr. Troland to what appears to be  
 13 the members of the search committee, and your name is  
 14 mentioned there, Shlosman, Isaac. Do you see that?  
 15 **A. Yes.**  
 16 **Q.** So you don't recall receiving -- first of  
 17 all, let me ask. Do you recall receiving this e-mail  
 18 before?  
 19 **A. No, I did not. I do not remember this.**  
 20 (Exhibit No. 8 marked.)  
 21 **Q.** Dr. Shlosman, I'm showing you a document  
 22 we have marked as Exhibit No. 8. It appears to be an  
 23 e-mail from Dr. Troland to the members of the search  
 24 committee, subject line reading: Report to the Chair,  
 25 r.e. committee decision. Have you ever seen this e-mail

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1 before?

2 **A. I don't remember that I've seen this.**

3 **Q.** Is your e-mail address

4 shlosman@pa.uky.edu?

5 **A. That's correct.**

6 **Q.** And was that your e-mail address in 2007?

7 **A. That's correct.**

8 **Q.** But still you do not recall receiving this

9 e-mail?

10 **A. I have a simple explanation about this.**

11 **Q.** Okay.

12 **A. I don't read every e-mail that I get,**

13 **especially when I am away from my desk.**

14 (Exhibit No. 9 marked.)

15 **Q.** Dr. Shlosman, I'm showing you what we have

16 marked as Exhibit No. 9. Do you recall seeing this

17 e-mail before?

18 (Deponent reviews document.)

19 **A. I think I actually did read the first**

20 **paragraph of this e-mail.**

21 **Q.** Okay. That's interesting, only because

22 now that I look at this e-mail, I do not see your name

23 in the addressee line.

24 **A. It could be that somebody forwarded this**

25 **to me.**

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1 in this e-mail?

2 **A. Well, as I say, I didn't read till the**

3 **end, but the first paragraph was something that I would**

4 **not disagree with.**

5 **Q.** And which first paragraph are you

6 referring to, Dr. Shlosman?

7 **A. The first paragraph of the opinion that**

8 **was forwarded to me. I'm not sure that it was in this**

9 **format, but there was an opinion from the Department of**

10 **Biology, and I see part of it, at least, here.**

11 **Q.** Take a moment to look through this

12 document and tell me whether or not that paragraph is

13 included here.

14 **A. Okay. That would be difficult to remember**

15 **if this is exactly this.**

16 (Deponent reviews document.)

17 **A. It seems like, but I cannot be sure a**

18 **hundred percent.**

19 **Q.** Okay. I'm sorry, it seems like what?

20 **A. It seems like this was part of the**

21 **document of the e-mail that I was forwarded to, but I**

22 **cannot be sure hundred percent, but I have some**

23 **recollections, it looks like.**

24 **Q.** The e-mails, or at least the e-mail

25 discussed -- I apologize. Let me start again.

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1 **Q.** Okay. What do you recall about your

2 receiving and reading this e-mail?

3 **A. I remember -- if I am correct -- but I**

4 **just go quickly over this -- that there was this opinion**

5 **from somebody from the Department of Biology, and I was**

6 **intrigued to read the first paragraph of this.**

7 **Q.** And did you speak with anyone about the

8 e-mail -- let me rephrase that. Did you speak with

9 anyone about the analysis provided by the biologists in

10 this e-mail?

11 **A. I don't think so.**

12 **Q.** Do you recall having any discussions or

13 participating in discussions when the opinions of the

14 biologists regarding Dr. Martin Gaskell were discussed?

15 **A. No, I do not.**

16 **Q.** Do you recall having an opinion as to the

17 evaluation provided by the biologists?

18 **A. Can you repeat it, please?**

19 **Q.** Sure. Did you think that the opinions

20 shared by the biologists were valid?

21 **A. Valid? Well, I didn't read it to the end,**

22 **but the general trend of the first paragraph I was**

23 **agreeing with.**

24 **Q.** So you agreed -- are you saying that you

25 agreed with the comments of the biologists as set forth

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1 The opinion from Dr. Osborn contained in

2 this e-mail, which we have marked as Exhibit 9, purports

3 to be an evaluation of a document provided or written by

4 Dr. Gaskell. Did you ever read the document that

5 Dr. Osborn is discussing in this e-mail?

6 **A. No, never.**

7 **Q.** What I guess I'm trying to find out is how

8 you could have an opinion as to the validity of the

9 biologists' opinion if you didn't read what they read.

10 **A. Well, it was my understanding from the**

11 **first paragraph that it was a general statement of**

12 **scientific methods and much less that it was**

13 **Dr. Gaskell.**

14 **Q.** Dr. Shlosman, you said earlier that you

15 opposed Dr. Gaskell's candidacy for a position for

16 observatory director; is that correct?

17 **A. No, I didn't say this.**

18 **Q.** Okay. I apologize.

19 **A. I was voting for a different person,**

20 **simply.**

21 **Q.** And who did you vote for?

22 **A. I voted for Tim Knauer.**

23 **Q.** And why did you vote for doctor -- I'm

24 sorry, Mr. Knauer?

25 **A. Because I think he was more suitable for**

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1 this position.

2 Q. And why did you think he was more suitable  
3 for this position?

4 A. Dr. -- not doctor, but Mr. Knauer worked  
5 in our department as a demonstration technician prior to  
6 this for a number of years, and I have -- I was teaching  
7 these big, large classes, and he was a person who was  
8 bringing up the demonstrations for me, and I liked him  
9 for creativity, for his desire to help, for his broad  
10 knowledge of the things that -- broad interest in the  
11 amateur astronomy. He was circulating certain artifacts  
12 that he created himself, and so I liked what he did,  
13 liked his attitude and I said that he is the person.

14 Q. In your opinion at the time was  
15 Dr. Gaskell lacking in any qualifications to serve as  
16 observatory director?

17 A. On the opposite. I thought that he's  
18 overqualified for this position, and he will do research  
19 instead of public outreach.

20 Q. What do you mean by he was overqualified?

21 A. Well, this is not a research observatory,  
22 it's a public observatory which serves a very limited --  
23 well, it has no scientific purpose, it's just teaching,  
24 and I know -- I knew Dr. Gaskell as being active  
25 researcher, and so I thought that -- I also knew that he

1 involved, outreach activities, and I thought that this  
2 component would suffer if there would be an active  
3 researcher.

4 Q. Do you have any reason to doubt that if  
5 Dr. Gaskell were made director of the observatory that  
6 he would do what he was told to do by way of his duties  
7 as director?

8 A. Well, I presume the position is such that  
9 he's not told every time what to do. Much depends on  
10 his initiative. And as past director of observatory  
11 myself, I know that you really -- these two components  
12 are not nicely mixed.

(Exhibit No. 10 marked.)

14 Q. Dr. Shlosman, I'm showing you a document  
15 that we have marked as Exhibit No. 10. Have you ever  
16 seen this before?

17 A. Yes, I do.

18 Q. Okay. What is this?

19 A. This is a web page prepared by the  
20 department for me.

21 Q. And over on the right-hand side it says  
22 Isaac Shlosman, and then it says personal page. Do you  
23 see that?

24 A. Yes.

25 Q. And is it your understanding that that's a

1 didn't have a tenured position so I thought he will get  
2 a tenured position and he will do research while the  
3 outreach component will suffer.

4 Q. When you say tenured position, did you  
5 mean a tenured position as observatory director?

6 A. Right. Well, he will be -- right, that's  
7 correct.

8 Q. Is that a tenured position?

9 A. No, it's not a tenured position, but it's  
10 a position that will -- is not so likely to change the  
11 person there because it will involve additional search.  
12 And I know how these things are going, you compromise on  
13 the person.

14 Q. What do you mean by that, you compromise  
15 on the person?

16 A. Well, if the person doesn't fit hundred  
17 percent, if it fits 50, 60 percent, then to avoid  
18 additional expenditures, additional search and efforts,  
19 you tolerate what the person is doing if he's doing  
20 minimal, if his performance is at least minimal.

21 Q. And so you thought that Dr. Gaskell would  
22 spend more time doing research than teaching if made  
23 observatory director? Is that what you're saying?

24 A. Not teaching, but what I call -- there is  
25 a whole spectrum of activities that he would be

1 link?

2 A. To my personal page.

3 Q. And what do you know, I have a copy of  
4 that personal page.

(Off-the-record comments.)

6 Q. Dr. Shlosman, what's on your personal  
7 page?

8 A. On my personal page, I have link to my  
9 publications, link to the classes that I teach, the web  
10 sites of the classes that I teach, a link to some people  
11 that are associated with me, my past graduate students,  
12 post docs, visitors, distinguished visitors.

13 Q. Anything else that you can recall as you  
14 sit here?

15 A. Well, there is more.

16 Q. Okay.

17 A. There is a link to some of the general  
18 publications where our work was cited.

19 Q. Is there a link on your personal page to  
20 the Jerusalem Post?

21 A. That's correct.

22 Q. Why do you have a link to the Jerusalem  
23 Post?

24 A. I'm an Israeli. I read it.

25 Q. But you can access it -- can you access

1 the Jerusalem Post without having to go to your personal  
2 site?

3 **A. Yeah, but then you need to type this.**

4 **Q.** Are you saying that the primary reason the  
5 link to the Jerusalem Post is on your personal web page  
6 is for you to click on it and get to the Jerusalem Post?

7 **A. That's correct.**

8 (Exhibit No. 11 marked.)

9 **Q.** Dr. Shlosman, I'm showing you something we  
10 have marked Exhibit No. 11. Have you ever seen this  
11 before?

12 **A. Yes, I do.**

13 **Q.** And what is this?

14 **A. This is a home page of a couple of  
15 scientific -- science fiction writers, very famous.**

16 **Q.** And is it your understanding that on your  
17 personal website page there is a link to this page that  
18 we have marked as Exhibit No. 11?

19 **A. That's correct.**

20 **Q.** And why do you have that link on your  
21 personal page?

22 **A. I have because -- because I liked what  
23 they write and they still publish -- one of them is, but  
24 one is still publishing articles, and I am interested to  
25 have a direct link to them.**

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1 **Q.** But the fact you're putting it on your  
2 personal website on the Internet, is that so you -- for  
3 you to share with people that come to your personal web  
4 page what interests that you have?

5 **A. Yeah, sure, that's correct.**

6 **Q.** Believe it or not, academics do have  
7 interests beyond academia. Right?

8 **A. I agree with you.**

9 (Exhibit No. 12 marked.)

10 **Q.** Dr. Shlosman, have you ever seen this  
11 before, which we have marked as Exhibit No. 12?

12 **A. I have a link to -- three links, and one  
13 of them to Stanislaw Lem on my home page, but I'm not  
14 sure that his -- unless it changed recently. I don't  
15 remember this particular arrangement. But I have a link  
16 to his homepage, yes.**

17 **Q.** It was visited by me last night at --  
18 yesterday evening at 4:23, and I did access this page  
19 from your personal website.

20 **A. Okay.**

21 **Q.** You say -- is it Lem?

22 **A. Stanislaw Lem, yes.**

23 **Q.** And who is he?

24 **A. Like the other two, he is the top -- or he  
25 was the top science fiction writer, one of the maybe**

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1 **three or four, of the 20th century.**

2 **Q.** And why do you have a link from your  
3 personal page to this page?

4 **A. I admire his intellectual ability.**

5 **Q.** And you wish to convey that to people  
6 visiting your personal web --

7 **A. I would like to have a quick access to his  
8 homepage, which is maintained quite efficiently and,  
9 yeah, I have nothing against that others will see it.**

10 MR. SURTEES: Let's just take a  
11 five-minute break.

12 MS. KRIZ: Okay.

13 (10:13 off the record 10:16.)

14 **Q.** Dr. Shlosman, I have just some more  
15 questions, which you may find repetitive, but I'm going  
16 to ask them again anyway because I just want to be  
17 abundantly clear. Sometimes during the course of a  
18 deposition people's minds are refreshed and they can  
19 recollect more later in the deposition than they could  
20 at the outset.

21 Would you say you were heavily involved in  
22 the search committee process?

23 **A. Thank you for this question. I was  
24 probably the least involved due to my travel.**

25 **Q.** And you say you participated in no

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1 telephone interviews. Correct?

2 **A. Correct.**

3 **Q.** And you did not have a face-to-face  
4 interview with Mr. Knauer. Correct?

5 **A. That's correct.**

6 **Q.** And you did not have a face-to-face  
7 interview with Dr. Gaskell in 2007. Correct?

8 **A. That's correct.**

9 **Q.** In 2007 while the University of Kentucky  
10 was seeking to fill the position of observatory  
11 director, did you hear anyone in the physics and  
12 astronomy department discuss or mention, even, the  
13 subject of evolution?

14 **A. Maybe, but I do not remember whether this  
15 was in the -- during the formal meeting, and I actually,  
16 as I said, participated in probably only one meeting,  
17 which was the last one, and I was away, so it could be  
18 that I do not -- I do not remember such conversation.**

19 **Q.** What about the subject of creationism? Do  
20 you recall anyone discussing or even mentioning that  
21 word during the process to fill the position of  
22 observatory director?

23 **A. I do not remember this. It may be that it  
24 was mentioned but...**

25 **Q.** Did you speak at -- with Dean Hoch ever

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1 regarding the observatory director position? 2170

2 **A. No, I did not.**

3 **Q.** Did you ever speak in 2007 with

4 Dr. Subbaswamy regarding the observatory director

5 position?

6 **A. No, I did not.**

7 **Q.** Did you have an opinion as to why you were

8 on the committee, the search committee, if you were

9 doing the traveling that you were doing and could not

10 participate as much as maybe some of the others were

11 participating?

12 **A. Well, the assignments come first, and we**

13 **do not report to anybody about our travels. It's just**

14 **kind of post facto. I'm away and that's all.**

15 **Q.** Did the subject of -- let me start again.

16 Was the subject of religion ever mentioned

17 or discussed in any committee meeting that you

18 participated in for filling the position of observatory

19 director?

20 **A. Not to my recollection.**

21 **Q.** Did the subject of religion ever come up,

22 or to the best of your recollection, even mentioned in

23 2007 by any member of the physics and astronomy

24 department?

25 **A. I do not understand it, in what context it**

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1 **could be.**

2 **Q.** Any context.

3 **A. Not that I remember.**

4 MR. SURTEES: I have nothing more.

5 MS. KRIZ: Nothing more.

6 (DEPOSITION CONCLUDED 10:21.)

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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 13th day of May,

19 2010.

20

21

22 \_\_\_\_\_

23 ANN HUTCHISON, RPR

24 Registered Professional Reporter

25 Notary Public, State-at-Large

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