

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

C. MARTIN GASKELL

PLAINTIFF

V. **DEFENDANT UNIVERSITY OF KENTUCKY'S ANSWERS  
TO PLAINTIFF'S FIRST SET OF INTERROGATORIES**

UNIVERSITY OF KENTUCKY

DEFENDANT

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Comes the Defendant, University of Kentucky, by counsel, and for its Answers to the Plaintiff's First Set of Interrogatories, states as follows:

**INTERROGATORY NO. 1:** Identify any person who has, claims to have, or whom you believe may have knowledge or information concerning any fact alleged in the pleadings (as defined in Fed. R. Civ. P. 7(a)).

**ANSWER:** OBJECTION. A request to identify "any person" who has knowledge or information concerning "any" facts is overly broad and burdensome. The Defendant also objects on the basis of attorney client privilege and the work product privilege. Without waiving these objections, the Defendant adopts by reference the Witness List supplied in Defendant's Initial Disclosures pursuant to Fed. R. Civ. P. 26. In addition, the Defendant has supplied the Plaintiff with documents which include names of individuals who may have knowledge or information regarding any fact alleged in the pleadings. In addition to the individuals previously identified, Professor Moshe Elitzur, Kristin Thomas, Archisman Ghosh, Syed A. Uddin, Carol D. Cottrill, Diane Yates, Louie Bosworth, John Pica, Professor Roger Kirby, Professor Anthony Starace, and Patty Bender.

**INTERROGATORY NO. 2:** Describe the specific nature and substance of the knowledge you believe the person(s) identified in your response to the previous interrogatory may have.

**ANSWER:** Moshe Elitzur, Kristin Thomas, Ardhisman Ghosh and Syed Uddin met with the Plaintiff and accompanied him on a visit to the MacAdam Observatory when he came to the University for his interview. Carol Cottrill and Diane Yates are administrative assistants in the College of Physics and Astronomy at the University and participated in scheduling interviews for applicants for the position of Director of UK's Observatory. Louie Bosworth works in the UK Human Resource Department and participated in posting the Observatory Director position and accumulating applications and advising on the hiring process. John Pica is Assistant Dean of the College of Arts and Sciences and conducted on campus interviews with three applicants for the Observatory Director job including the Plaintiff. Professors Kirby and Starace are affiliated with the University of Nebraska and were contacted by Dr. Cavagnero about the plaintiff. Patty Bender is Assistant Vice President of Institutional Equity and Equal Employment Opportunity at the University and investigated an internal complaint regarding the selection process which resulted in the Plaintiff not getting selected as Director of the Observatory. She also investigated and responded to Plaintiff's charge of discrimination filed with the Kentucky Commission on Human Rights.

**INTERROGATORY NO. 3:** Identify and describe each and every document (including electronically stored information or pertinent insurance agreements) and tangible thing concerning any fact alleged in any pleading (as defined by Fed. R. Civ. P. 7(a)) filed in this action.

**ANSWER:** OBJECTION. Interrogatory No. 3 is overly broad and burdensome and it requests information which is protected by the attorney client privilege and the work product privilege. Without waiving said objection, the Defendant has already submitted documents to the Plaintiff with its Rule 26 Disclosures. The documents are easily identifiable and need no further description. Additional documents are attached to these Answers under Tabs corresponding to the Interrogatory number they address.

**INTERROGATORY NO. 4:** State any and all facts which support each affirmative defense raised in the answer filed by defendant in this action.

**ANSWER:** The Defendant, through its employees and agents who participated in the search for a Director of the Observatory at the University of Kentucky were unaware of the Plaintiff's religious affiliation, and this lack of knowledge forms the basis of the Defendant's First Affirmative Defense.

With regard to Defendant's Third Affirmative Defense, the University of Kentucky is a Division of the Commonwealth of Kentucky, which is entitled to immunity pursuant to the Eleventh Amendment of the United States Constitution.

Defendant's Fourth Affirmative Defense is based on the fact that all decisions regarding the selection of the Director of the MacAdam Observatory were based on non-discriminatory criteria.

**INTERROGATORY NO. 5:** If you or anyone acting on your behalf obtained statements from any person concerning any matter relating to this action, please provide:

- a. the names and addresses of the persons from whom such statements were taken;
- b. the dates and times when the statements were taken;
- c. whether the statements were written, oral or recorded;

- d. the names and addresses of the person having custody of these statements; and.
- e. the names and addresses of the persons who took the statements; and, attach a true copy of any statements referred to above to your answers to this interrogatory.

**ANSWER:** OBJECTION. This information is not subject to discovery on the basis of the attorney/client privilege. Without waiving this OBJECTION,

- a. Michael Cavagnero, Steven Hoch, Tom Troland, Mike Kovash.
- b. October/November of 2007.
- c. Statements were oral, not recorded, although the interviewer took some written notes.
- d. Patty Bender, University of Kentucky Equal Opportunity Office, 13 Main Building, Lexington, Ky. 40506-032 and counsel for Defendant.
- e. Patty Bender.

Mike Kovash filed an Internal Complaint with the University of Kentucky's Office of Institutional Equity and Equal Opportunity, alleging that Plaintiff had been treated unfairly on the basis of his religious beliefs during the search process for the Director of the University's Observatory. Dr. Kovash had no personal knowledge regarding the circumstances which led to the selection of the Observatory Director position but based on statements made to him by Tom Troland and Gary Ferland, he filed the Internal Complaint. Patty Bender investigated the Complaint and determined that there were no facts to support Dr. Kovash's allegations. Subsequently, the Plaintiff filed a Charge of Discrimination with the Kentucky Commission on Human Rights and Patty Bender investigated and responded to that charge. Copies of the documentation and statements obtained by Ms. Bender are attached under Tab 5. The Plaintiff

already has copies of the Response the Defendant filed with the KCHR to Plaintiff's Charge of Discrimination as it was attached to Plaintiff's R. 26 Initial Disclosures.

**INTERROGATORY NO. 6:** Provide the following information for each and every person who participated in the decision not to hire plaintiff for the position of Director of the MacAdam Student Observatory:

- a. identify him or her;
- b. his or her job category as of the date of the decision not to hire plaintiff;
- c. a detailed description of his or her participation;
- d. date(s) of his or her participation;
- e. Whether there exists a document generated in connection with his or her participation, and , if affirmative, identify each such document; and
- f. whether he or she is still in defendant's employ and, if not, the date of that separation and the reason(s) known to defendant for his or her separation.

**ANSWER:**

- a. Michael Cavagnero, Gary Ferland, Tom Troland, Keith MacAdam, Nancy Levenson, Isaac Shlosman, Steve Ellis, Sally Anne Shafer, and Steven Hoch.
- b. All individuals are employees of the University of Kentucky. Michael Cavagnero is a Professor of Physics and Department Chair; Gary Ferland is a Professor of Astronomy, Chair of the Department but was on sabbatical in the Fall of 2007; Tom Troland is a Professor of Astronomy; Keith MacAdam is a Professor Emeritus of Physics; Nancy Levenson is a Professor of Astronomy; Isaac Shlosman is a Professor of Astronomy; Steve Ellis is an Academic Coordinator/Instructional Lab Specialist in the Departments of Physics and Astronomy; Sally

Anne Shafer is on the Outreach staff in the College of Physics & Astronomy; and Steven Hoch was the former Dean of the College of Arts & Sciences. but has since left UK.

c. Michael Cavagnero staffed an Advisory Committee which reviewed applications and resumes, conducted phone and in person interviews of applicants, contacted references and discussed and researched the various applicants for the position of Director of the Observatory. The Advisory Committee voted on the candidates and communicated the results of its vote to Michael Cavagnero who in turn communicated the Committee's recommendations to Steven Hoch. The majority of the Advisory Committee members recommended Timothy Knauer for the job and Professor Cavagnero accepted the recommendation and forwarded the recommendations to Dean Hoch on Oct. 24, 2007. The Dean authorized the offer of the position which was communicated to Mr. Knauer in early November of 2007 and Mr. Knauer accepted the offer.

d. July, 2007 through January, 2008.

e. Yes. Minutes were not kept of meetings by the Advisory Committee although Dr. Canagnero occasionally summarized committee progress through e-mail correspondence to all members. These e-mails have already been supplied to Plaintiff with Defendant's Rule 26 Disclosures. Additional documents are attached under Tab 6.

f. All individuals identified are currently employees of the University of Kentucky except for Steven Hoch who currently is a faculty member at Washington State University. Nancy Levenson is currently on academic leave to the Gemini Observatory in Chile since 2008.

**INTERROGATORY NO. 7:** Provide the following information for each and every person who participated in the decision to hire Timothy Knauer for the position of Director of the MacAdam Student Observatory:

a. identify him or her;

- b. his or her job category as of the date of the decision not to hire Plaintiff;
- c. a detailed description of his or her participation;
- d. date(s) of his or her participation;
- e. whether there exists a document generated in connection with his or her participation, and , if affirmative, identify each such document; and.
- f. whether he or she is still in defendant's employ and, if not, the date of that separation and the reasons(s) known to defendant for his or her separation.

**ANSWER:** See Answer to Interrogatory No. 6.

**INTERROGATORY NO. 8:** Identify and explain any and all factors used by defendant to evaluate applicants' qualifications for the position of Director of the MacAdam Student Observatory.

**ANSWER:** The job posting listing the minimum requirements for the position was provided to Plaintiff with Defendant's Rule 26 Disclosures. Additional factors included experience with astronomical observation, astronomy in general, student and public contact, and equipment associated with astronomical observation; ability to relate successfully with University students, faculty and administration, K through 12 school teachers and administrators, pupils and the general public concerning astronomy, and the programs and projects of the observatory; the candidates' initiative and aspirations for this newly-established observatory and its projected student-oriented roles; proven success in teaching college-level Introductory Astronomy, work history, communication and interpersonal skills as evidenced by on-campus and telephone interviews and references or evaluations of previous employers..

**INTERROGATORY NO. 9:** Identify and explain every reason why Plaintiff was not hired for the position of Director of the MacAdam Student Observatory.

**ANSWER:** The Observatory Director position was a new staff level position in the College with no precedent on record and there were varying views among Department faculty on the appropriate nature of the position, the precise job description and responsibilities and the relative importance of the different Observatory missions and functions with regard to teaching, research and service. The University had not had an Observatory on campus for several decades. It was understood at the beginning of the search that the first Director would, with guidance and supervision of a faculty committee, define the position and the role of the Observatory on campus and community life. The Department Chair concluded that it was most important to hire someone with the sensibilities of a staff person, i.e. someone who would dedicate him or herself entirely to service to students, faculty and to the public at large with the Department faculty members still engaged in the Observatory operations.

The Department Chair and a substantial majority of the Advisory Committee concluded that the Plaintiff's focus on professional astronomy and time and effort spent with funded research and publications was greater than what characterized the ideal candidate for the director position. There were doubts whether Plaintiff would be content with a 100% service distribution of effort and whether he could conform to the wishes of the faculty, work well and establish good rapport with other Departmental staff members and whether he could successfully divorce himself from his long standing research interests. There was some concern about Plaintiff's communication skills as opposed to the selected candidate. There was some concern that the Plaintiff lacked discretion in communicating his personal views as opposed to his professional views to students and the public at large and whether he would be willing to conform to



governing regulations with regard to the dissemination of his personal views. The Committee was apprised by Professor Cavagnero of comments from a representative of Plaintiff's previous employer concerning collegiality and had concerns that he might have difficulty accepting directions and instructions from a faculty committee, especially if disagreements arose. Committee members had previous contact with the chosen candidate who had been both a University of Kentucky student and employee, but had no previous contact with the Plaintiff, and the Committee judged that the selected candidate better fit the profile outlined in the Answer to Interrogatory No. 8.

**INTERROGATORY NO. 10:** Identify and explain every reason why Timothy Knauer was hired for the position of Director of the MacAdam Student Observatory.

**ANSWER:** Timothy Knauer exhibited an enthusiastic and creative outlook in every contact with the Committee and its individual members during the search process. Knauer spontaneously expressed attractive ideas for projects and programs at the observatory during his interview and other communications before the Committee reached its decision. In the Committee's judgment, Knauer had superior ability to relate to UK students and to the public and school groups. In the Committee's judgment, Knauer would be more flexible in meeting the needs of the observatory because of his earlier career status. Knauer had a successful experience teaching astronomy at the University prior to his application for the position of Observatory Director. Knauer had an unpretentious and affable nature, was approachable and with his solid engineering and physics background, was a good communicator on technical issues to untrained individuals of all ages. As an avid amateur astronomer and photographer, Knauer had a remarkable ability to share his passion for observational astronomy with a general audience and with students and teachers at an introductory level, especially with regard to K-12 outreach

activities. Knauer was felt by some to be the applicant most likely to happily dedicate himself to service to students, faculty and the community at large.

**INTERROGATORY NO. 11:** Identify every person consulted by any member of the MacAdam Student Observatory Search committee concerning anything pertaining to Plaintiff, including, but not limited to, his professional and personal opinions, religious beliefs, academic credentials, and professional background, and indicate:

- a. the time, place and manner of the consultation;
- b. the contents of the consultation; and,
- c. the name of the Search Committee member who sought the consultation.

**ANSWER:** No member of the Search Committee consulted any person regarding Plaintiff's religious beliefs. Professor Michael Cavagnero consulted with Dr. Jeffrey L. Osborn, Dr. Sheldon Steiner, and Dr. James Krupa on the scientific validity of an article that the Plaintiff published which was linked to his professional website at the University of Nebraska. Consultation was via email and oral communications in October of 2007. A copy of the email exchange is attached hereto under Tab 11.

Thomas Troland contacted, either via email or by telephone, Dr. Eugenie Scott, who is a physical anthropologist and Director of the National Center for Science Education. The time of this consultation is unknown, but presumably it occurred during the period of October 2007. The contents of the consultation included whether Plaintiff and his scientific views were known to Dr. Scott. Dr. Scott was not familiar with the Plaintiff.

Michael Cavagnero discussed the Plaintiff with a University of Nebraska faculty member. This communication occurred in September of 2007. Dr. Cavagnero outlined the

conclusions of this discussion in an email dated September 19, 2007, which is attached hereto under Tab 11.

Dr. Cavagnero consulted Steven Hoch of the UK College of Arts & Sciences, and Professor Michael A. Kovash, Director of Undergraduate Studies in Physics and Astronomy. Dr. Cavagnero contacted the references named by the Plaintiff in his application for employment. These contacts were presumably via telephone or in person as no e-mail documents have been located.

**INTERROGATORY NO. 12:** State whether any office, agency or agent of Defendant investigated any matter pertaining to Defendant's decision not to hire Plaintiff for the position of the MacAdam Student Observatory and include:

- a. the name of the person or persons who filed the charge and/or brought the matter to the attention of the office, agency or agent of Defendant;
- b. the name of the person or persons who investigated the charge on behalf of said office, agency or agent;
- c. the name of any person interviewed pursuant to this investigation, the date of the interview, and the substance of said interview;
- d. the identity of every document examined by said agency pursuant to the investigation; and,
- e. the results and/or conclusion of the investigation.

**ANSWER:** Yes.

a. Patty Bender from the University's Office of Institutional Equity & Equal Opportunity investigated a complaint filed by Michael Kovash regarding the non-selection of the Plaintiff for the position of Director of the MacAdam Observatory. Additionally, the

Plaintiff filed a Charge of Religious Discrimination with the Kentucky Commission on Human Rights, which notified the University of Kentucky about the pending charge.

b. Patty Bender, Assistant Vice President of the Equal Opportunity Office at the University of Kentucky investigated the internal complaint. Additionally, Ms. Bender investigated and responded to the Plaintiff's charge of discrimination with Kentucky Commission on Human Rights. The investigator assigned to the matter by the Kentucky Commission on Human Rights was Sharita Davis.

c. Patty Bender interviewed Michael Cavagnero, Steven Hoch, Michael Kovash and Tom Troland. The specific dates of these interviews were October 29 and October 30 of 2007. The Defendant objects to providing the substance of said interviews as these interviews were conducted in anticipation of litigation and are therefore work product and not subject to discovery.

d. Defendant has attached under Tab 5 the documents reviewed by Patty Bender. Plaintiff already has copies of the Defendant's Response to his charge of discrimination filed with the KCHR. The Defendants are unaware of any other documents reviewed by the Kentucky Commission on Human Rights.

e. The University's Office of Equal Employment Opportunity concluded that the Plaintiff's civil liberties were not abridged by those making the hiring decision for the Director of the MacAdam Observatory. The Kentucky Commission on Human Rights did not reach a conclusion before the Plaintiff withdrew his complaint and requested a right-to-sue letter.

**INTERROGATORY NO. 13:** State the name, home and work addresses and telephone numbers of anyone with whom Michael Cavagnero had communications concerning any of the allegations set forth in Plaintiff's Complaint, including:

- a. the separate contents of each communication;
- b. the names of the persons present at each communication; and,
- c. the dates, times and places of each communication.

**ANSWER:** OBJECTION. Any communications by Michael Cavagnero concerning the allegations set forth in the Plaintiff's Complaint are work product and protected by the attorney client privilege and are not subject to discovery.

**INTERROGATORY NO. 14:** State the name, home and work addresses and telephone numbers of anyone with whom Steven L. Hoch had communications concerning any of the allegations set forth in Plaintiff's Complaint, including:

- a. the separate contents of each communication;
- b. the names of the persons present at each communication; and,
- c. the dates, times and places of each communication.

**ANSWER:** OBJECTION. Any communications made by Steven L. Hoch concerning the allegations set forth in the Plaintiff's Complaint are work product and protected by the attorney client privilege and are not subject to discovery.

**INTERROGATORY NO. 15:** State the name, home and work addresses and telephone numbers of anyone with whom Kumble R. Subbaswamy had communications concerning any of the allegations set forth in Plaintiff's Complaint, including:

- a. the separate contents of each communication;
- b. the names of the persons present at each communication; and,
- c. the dates, times and places of each communication.

**ANSWER:** OBJECTION. Any communications made by Provost Subbaswamy concerning the allegations set forth in the Plaintiff's Complaint are work product and protected by the attorney client privilege and are not subject to discovery.

**INTERROGATORY NO. 16:** State whether any employee or agent of Defendant had any communications with any employee or agent of the University of Nebraska and/or the University of Texas concerning Plaintiff, and if so, state the following:

- a. the name of the persons involved in and present at each communication;
- b. the separate contents of each communication; and,
- c. the dates, times and places of each communication.

**ANSWER:** Yes. Michael Cavagnero spoke to Professor Roger Kirby, Chair of the Department of Physics and Astronomy at the University of Nebraska – Lincoln and Professor Anthony Starace. These communications occurred after the Plaintiff left the University of Nebraska, but the specific date is unknown. Dr. Cavagnero's communications with Dr. Kirby are described in an email under Tab 16. Dr. Cavagnero's communications with Professor Starace's were merely to relate that Plaintiff had applied for the position of Director of UK's Observatory and there was nothing substantive regarding the Plaintiff discussed in that conversation. To Defendant's knowledge, there has been no contact by anyone at the University with anyone affiliated with the University of Texas concerning the Plaintiff.

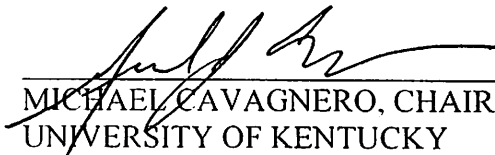
**INTERROGATORY NO. 17:** State the name and title of every individual who was consulted and/or provided information in response to this First Set of Interrogatories and identify which Interrogatory or Interrogatories for which they provided information in response.

**ANSWER:** See individuals identified in Defendant's Rule 26 Disclosures, Answer to Interrogatory No. 1, and any individuals identified in any of the documents produced by the

Defendant pursuant to its Rule 26 Disclosures, and its Answers to Plaintiff's Interrogatories and Requests for Production of Documents.

**INTERROGATORY NO. 18:** Identify any and all documents, records, tangible things, or other materials (including electronically-stored information) considered and/or used in preparing your answers to, or containing information relating to matters raised in these Interrogatories, setting forth the information separately for each Interrogatory, and indicating the location and the name, office address, and title of the custodian.

**ANSWER:** OBJECTION. The identity of documents is unnecessary as the actual documents have been provided to the Plaintiff with Defendant's Initial Disclosures pursuant to Fed. R. Civ. P. 26 and in the documents attached to Defendant's Answers to Plaintiff's Interrogatories and Requests for Production of Documents.

  
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MICHAEL CAVAGNERO, CHAIRMAN  
UNIVERSITY OF KENTUCKY  
DEPARTMENT OF PHYSICS & ASTRONOMY

STATE OF Kentucky  
COUNTY OF Fayette

Subscribed, sworn to and acknowledged before me by Michael Cavagnero, on this 13<sup>th</sup>  
day of January 2010.

My commission expires: 5-3-12.

  
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NOTARY PUBLIC

Respectfully submitted,

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BARBARA A. KRIZ, ESQ.  
COUNSEL FOR DEFENDANT  
UNIVERSITY OF KENTUCKY

**CERTIFICATE OF SERVICE**

I hereby certify that a true and accurate copy of the foregoing pleading has been served by mail upon the following parties on this the 22 day of January, 2010:

**Original to:**

Geoffrey R. Surtees  
Francis J. Manion  
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6375 New Hope Road  
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