

E  
X  
H  
I  
B  
I  
T  
G

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

CAMBRIDGE UNIVERSITY )  
PRESS, et al., )  
 )  
Plaintiffs, )  
 )  
vs. ) Civil Action File  
 ) No. 1:08-CV-1425-ODE  
MARK P. BECKER, in his )  
official capacity as )  
Georgia State University )  
President, et al., )  
 )  
Defendants. )

- - -

Videotaped deposition of JOHN M. MURPHY, taken on behalf of the plaintiffs, pursuant to the stipulations contained herein, before Teresa Bishop, RPR, RMR, CCR No. B-307, at 1180 Peachtree Street, 16th Floor, Atlanta, Georgia, on Friday, April 22, 2011, commencing at the hour of 10:03 a.m.

---

Shugart & Bishop  
Certified Court Reporters  
Suite 140  
13 Corporate Square  
Atlanta, Georgia 30329  
(770) 955-5252

1 as to why there are hits reflected on this document?

2 MS. QUICKER: Objection. Foundation.

3 THE WITNESS: I really have no idea  
4 about the definition of a hit in this case.  
5 For example, I might have accessed -- I  
6 could have -- one of the hits could be  
7 mine. I don't know.

8 BY MR. BLOOM:

9 Q. Do you have a recollection of personally  
10 accessing those materials on ERes during this semester?

11 A. I remember thinking, oh, this is a pretty cool  
12 accessibility, and I very likely accessed a couple just  
13 to see what it was like and see what they would look  
14 like.

15 Q. And prior to placing these materials on ERes,  
16 did you fill out the fair use checklist for each  
17 reading?

18 A. When you said fill out, I'm not sure. I don't  
19 remember.

20 Q. I'll get to that in a moment. Let me just  
21 direct your attention briefly to the second page of the  
22 syllabus.

23 A. Uh-huh.

24 Q. Specifically to items 3 and 4 under the  
25 required text.

1 varies from the original source, but it is something  
2 that they use as an inspiration and for ideas for what  
3 to do in the classroom.

4 So the reason I use these books is it provides  
5 students with a starting point and then they implement  
6 language activities based upon ideas presented in those  
7 texts.

8 Q. Okay. So you regard that text as a tool for  
9 purposes of this course?

10 A. Yeah.

11 MR. BLOOM: Okay. Why don't we go off  
12 the record. We'll change the tape and then  
13 we'll have our last little portion of the  
14 examination thereafter.

15 THE VIDEOGRAPHER: Off the video record  
16 at 11:01.

17 (Brief recess.)

18 THE VIDEOGRAPHER: This is tape 2.  
19 We're back on the video record at 11:12.

20 BY MR. BLOOM:

21 Q. Professor Murphy, I'm going to show you a  
22 series of documents. First one is Murphy Plaintiff's  
23 Exhibit 7. And Murphy -- sorry. Murphy Plaintiff's  
24 Exhibit 8, Murphy Plaintiff's Exhibit 9, Murphy  
25 Plaintiff's Exhibit 10, Murphy Plaintiff's Exhibit 11,

1 Murphy Plaintiff's Exhibit 12, Murphy Plaintiff's  
2 Exhibit 13, Murphy Plaintiff's Exhibit 14 and Murphy  
3 Plaintiff's Exhibit 15.

4 Professor Murphy, I just ask you to look at  
5 these documents and tell me if these appear to be --  
6 well, why don't you tell me what these are.

7 A. So it's titled fair use checklist and there  
8 seems to be one for however many texts are here, I think  
9 you said nine earlier. Right. So there's nine separate  
10 ones.

11 Q. And do these correspond to the readings that  
12 you placed on EReserve for the course AL 8480 from  
13 Maymester 2009?

14 A. You said do they correspond to the what?

15 Q. Do they correspond to the readings that you  
16 placed on EReserves for the course AL 8480 in the  
17 Maymester 2009?

18 A. The readings, I would use the word  
19 supplemental readings.

20 Q. With that modification --

21 A. Yes.

22 Q. -- is that what they are? Okay.

23 When did you complete these checklists?

24 A. Yeah, what we're looking at is the checklists  
25 as I completed them when I was at the TCEA conference in

1 New Orleans about -- I don't know if it was six weeks  
2 ago or a month ago.

3 Q. Okay. You see there's a date on -- I'm  
4 looking at the first one.

5 A. Right.

6 Q. There's a date that says drop off date?

7 A. Uh-huh.

8 Q. 4/27/2009. Do you see that?

9 A. Yes.

10 Q. What does that refer to?

11 A. That refers to my best estimate of when I  
12 dropped them off with EReserves in 2009.

13 Q. And when you say them, what do you mean,  
14 dropped them off?

15 A. Oh, dropped the excerpts from these various  
16 books to EReserves.

17 Q. Okay. And prior -- strike that.

18 In 2009 did you fill out a fair use checklist  
19 for -- let's talk about this reading, "Pronunciation  
20 Games" pages 8 to 27.

21 A. Your question was did I --

22 Q. Back in 2009 before this reading was placed on  
23 EReserves, did you fill out a fair use checklist?

24 A. I'm only paying attention right there to the  
25 word fill out. I remember --

1 A. I don't remember if they asked me that.

2 Q. Okay. Did you prior to your placing this  
3 reading on EReserves in 2009, did you refer to the fair  
4 use checklist?

5 A. Yes.

6 Q. Did you fill in the boxes in the fair use  
7 checklist at that time? In other words, let me --

8 A. I don't remember specifically what the  
9 procedure was in 2009.

10 Q. So you don't remember physically completing a  
11 checklist in 2009, is that right?

12 A. I don't remember that.

13 Q. Okay. Is it possible that you did?

14 A. Is it possible, yes.

15 Q. Do you recall analyzing this reading in  
16 accordance with the criteria that are listed on the  
17 checklist back in 2009?

18 A. I recall examining the checklist.

19 Q. Okay. And when you completed this document  
20 six weeks or a month ago, what were you attempting to  
21 do?

22 A. I was attempting to complete it as I would  
23 have completed it in 2009.

24 Q. Okay. And in doing so, did you have any  
25 specific recollection of what you did back in 2009?

1 so it's the "Keep Talking" text.

2 Q. And what are you referring to specifically on  
3 Exhibit 8?

4 A. Yeah, that's -- my testimony is that I believe  
5 that I handled those -- I think it was three actually,  
6 there were four in the course but I think three are  
7 included here of the ones that were required for  
8 students to purchase that they owned a copy of, and I  
9 believe I handled them differently when I filled out  
10 this checklist in retrospect in 2011 knowing that when  
11 the course was offered these were materials that  
12 students actually owned. So it was kind of a moot point  
13 that they were on EReserves.

14 Now that I'm looking at them I'm not noticing  
15 that they were handled differently. I seem to have  
16 checked all the same items for those as well.

17 Q. Okay. Looking at these nine documents, is  
18 there any difference in your thinking about fair use in  
19 connection with any of these readings that you would  
20 identify from one to the other, other than what you just  
21 mentioned?

22 A. I don't think so.

23 Q. Okay. So you concluded that each of these  
24 nine readings was fair use, is that correct?

25 A. Yes.