

Mark Becker, Ph.D.

April 22, 2011

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

CAMBRIDGE UNIVERSITY
PRESS, OXFORD UNIVERSITY
PRESS, INC., and SAGE
PUBLICATIONS, INC.,

CIVIL ACTION FILE

Plaintiffs,

NO. 1:08-CV-1425-ODE

vs.

MARK P. BECKER, in his
official capacity as
Georgia State University
President, et al.,

Defendants.

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VIDEOTAPE DEPOSITION OF  
MARK P. BECKER, Ph.D.

April 22, 2011  
8:10 a.m.

Conference Room 16-K  
1180 Peachtree Street, N.E.  
Atlanta, Georgia

S. Julie Friedman, CCR-B-1476

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Gwen Spratt  
Henry Stewart, Videographer

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15 1 4-21-11 Printout of Bylaws of the 37  
16 Board of Regents, Board of Regents,  
17 University System of Georgia

18 2 4-21-11 Website Printout - 2.5 38  
19 Presidential Authority and  
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21 Policy Manual

22 3 University Statutes: Article II, 49  
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24 4 6-12-09 Printout of Policy on the 73  
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6 4-21-11 Printout of Georgia State 96  
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(Original Plaintiff's Exhibits 1 through 8 have been attached to the original transcript.)

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1 Videotape Deposition of Mark P. Becker, Ph.D.

2 April 22, 2011

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4 (Reporter disclosure made pursuant to  
5 Article 10.B. of the Rules and Regulations of  
6 the Board of Court Reporting of the Judicial  
7 Council of Georgia.)

8 THE VIDEOGRAPHER: This is Tape No. 1 to  
9 the videotape deposition of Mark Becker, in the  
10 matter of Cambridge University Press versus Mark  
11 Becker. This deposition is being held at King &  
12 Spalding, 1180 Peachtree Street in Atlanta,  
13 Georgia, on -- on April 22nd, 2011. The time is  
14 now 8:10 a.m. We're on the record.

15 My name is Henry Stewart. I'm the  
16 videographer. The court reporter is Julie  
17 Friedman.

18 Counsel, will you please introduce  
19 yourselves and affiliations, and the witness  
20 will be sworn.

21 MR. ASKEW: I'm Tony Askew, and I'm the  
22 counsel for Georgia State University and Mark  
23 Becker in this litigation.

24 MR. KRUGMAN: And I am Edward Krugman, and  
25 I represent the plaintiffs in this litigation.

1           MARK P. BECKER, Ph.D., having been first  
2           duly sworn, was examined and testified as  
3           follows:

4           MR. KRUGMAN: Yeah. Before we -- Before  
5           we begin, I just want to state on the record an  
6           objection that we have that we object to this  
7           deposition to the extent that it is intended to  
8           be offered as trial testimony.

9           Dr. Becker is a defendant in this lawsuit.  
10          We understand he resides in the district,  
11          resides within subpoena range, and is being  
12          represented by counsel for the defendants; and  
13          presumably Dr. Becker could voluntarily appear  
14          at trial and provide live testimony.

15          And obviously, the deposition is going  
16          forward; but we expressly reserve and do not  
17          waive our right to object at the appropriate  
18          time to any attempts to introduce the deposition  
19          testimony of Dr. Becker on the grounds that he  
20          is not available within the meaning of the  
21          Federal Rules of Evidence or Federal Rules of  
22          Civil Procedure.

23          We also understand that there -- I think  
24          there's a -- a deadline of, I believe, 11:30  
25          when Dr. Becker --

1 MR. ASKEW: There is a deadline.

2 MR. KRUGMAN: -- has -- has to leave, and  
3 we -- We reserve our right in the event that  
4 there's insufficient time to continue this  
5 deposition at a later date.

6 MR. ASKEW: We will address the  
7 unavailability issue in just a second in this  
8 deposition. All right.

9 MR. KRUGMAN: Okay.

10 DIRECT EXAMINATION

11 BY MR. ASKEW:

12 Q. All right. Would you state your name for  
13 the record, please, sir.

14 A. Mark Becker.

15 Q. And what is your current position today or  
16 employment position?

17 A. I'm the president of Georgia State  
18 University.

19 Q. And what are your duties and  
20 responsibilities as the president of Georgia State  
21 University?

22 A. I'm responsible for leading the  
23 university.

24 Q. Will you be available, President Becker,  
25 on the 17th of May and thereafter for several weeks

1 to appear for live testimony in the trial of this  
2 action here in Atlanta?

3 A. I will be outside the United States of  
4 America starting the afternoon of May 17th until  
5 Saturday, May 28th.

6 Q. And were those plans made some time ago,  
7 and would it be very difficult for you to change  
8 those plans?

9 A. Those -- Those plans were made months  
10 ago, well before I knew of the -- of the scheduling  
11 of the trial.

12 Q. Would it be difficult for you to change  
13 those plans?

14 A. It would be difficult. Yes.

15 Q. I'd like to ask you some questions now,  
16 President Becker, about what I might characterize as  
17 the Georgia State University community.

18 A. Yes, sir.

19 Q. Please tell me what is the geographic size  
20 of the Georgia State University community.

21 A. Well, Georgia State University is --  
22 geographically resides in downtown Atlanta, so it  
23 spreads over many blocks. It's more than 40  
24 buildings, I believe.

25 We enroll and teach over 31,000 students.

1 We house over 3,000 students at this point, 4,000  
2 this fall, so we hold -- own multiples buildings over  
3 a large footprint in downtown Atlanta.

4 Q. Now you say you have 31,000 students  
5 today. Do you have a recollection of how many  
6 students Georgia State University had in 2009?

7 A. I became president January 1, 2009. At  
8 that point we had approximately 28,000 plus students,  
9 28,000 and several hundred.

10 Q. How many professors are currently employed  
11 at Georgia State University?

12 A. Well, there's approximately 1,000  
13 tenure -- tenure tract faculty. Then there'd be many  
14 part-time teaching instructors or full-time  
15 instructors, so I don't have a number for the numbers  
16 of instructors and part-time faculty but --

17 Q. Do you have any sense for --

18 A. It would be -- It would be in the  
19 hundreds.

20 Q. Okay.

21 A. Yeah.

22 Q. Can you tell me how many courses,  
23 President Becker, are taught at Georgia State  
24 University today.

25 A. We teach hundreds of thousands of credit

1 hours; and individual courses, I don't have a  
2 specific number; but it would, again, be in the many  
3 hundreds to thousands. Yeah.

4 Q. And -- And do you have a sense of how  
5 many courses were being taught in two thousand --

6 A. Well, it would be --

7 Q. -- nine?

8 A. It would be a like number.

9 Q. Okay.

10 A. In fact, it would have been more. Because  
11 of budget cuts, we've actually had to reduce the  
12 number of cuts -- courses more recently to enroll  
13 more students per section.

14 Q. What is the tuition for students at  
15 Georgia State University today, President Becker?

16 A. Tuition per semester is approximately  
17 \$3,500 in state, approximately \$12,000 out of state;  
18 and there's another \$800 in fees on top of that.

19 Q. What was the tuition for students in 2009,  
20 President Becker?

21 A. It would have been in the 20 -- high  
22 2,000s.

23 Q. The same for --

24 A. For in state, yeah. It was  
25 approximately -- At that point it was approximately

1 a four-to-one relationship in state, out of state.

2 Q. So if it was 2,000 in state, it would be  
3 about 8,000 for out of state?

4 A. Yeah. It was -- It was more than 2,000.  
5 It was probably between 2,500 and 3,000 would be my  
6 guess. Probably 2800, something like that is -- is a  
7 reasonable guess. I don't have the specific --  
8 specifics, numbers in front me.

9 Q. Can you tell us what -- what you believe  
10 to be the -- the average cost for textbooks for  
11 students at Georgia State University?

12 A. Well, we actually have to have that number  
13 for computing financial need; and the number we use  
14 is \$500 per semester per student based on the  
15 conversations of student buying patterns with the  
16 bookstore.

17 Q. And -- And what would that figure have  
18 been in 2009?

19 A. It had -- That figure hasn't changed  
20 dramatically over time. It's been a pretty stable  
21 number.

22 Q. Is -- Is there anything else you can  
23 think of, President Becker, that you'd like to tell  
24 us about the Georgia State University and its  
25 community?

1 MR. KRUGMAN: Objection. Form. Vague.  
2 Over broad.

3 THE WITNESS: In general, it's just a  
4 large public research university, a very complex  
5 institution, six schools and colleges --  
6 business, law, education, arts, and sciences,  
7 health and human sciences, public policy.

8 We enroll of those 31,000 students, 22,500  
9 in round numbers, the number of undergraduate  
10 students. Another 8,500 or so are professional  
11 and graduate students.

12 The student mix is quite diverse. The  
13 race and ethnicity is probably the most diverse  
14 in the nation. We have many part-time students,  
15 as well as large -- a majority of full-time  
16 students.

17 Q. (By Mr. Askew) And what do you believe to  
18 be the on-campus residential community for Georgia  
19 State University?

20 A. Oh, specifically on campus, as I've  
21 mentioned previously, we have approximately -- over  
22 3,000 beds at present and will be -- We're  
23 continuing to add to that base.

24 Q. So the remainder, over 3,000 would be  
25 students that are commuting into the campus; is that

1 correct?

2 A. It would be students who either live in  
3 apartments nearby or commute. We have students that  
4 commute over great distances.

5 The Atlanta metropolitan area is a  
6 population of approximately 6 million people, and it  
7 involves a lot of individuals who commute into the  
8 city either by the two interstates, 75, 85 --  
9 actually, three of them -- Interstate 20, or use the  
10 MARTA rail system.

11 So we -- We would have a very significant  
12 percentage of our students come in from outlying  
13 counties of the metropolitan area.

14 Q. All right. I want to talk to you now  
15 about the copyright policy --

16 A. Yeah.

17 Q. -- that's in place at the University  
18 system and at Georgia State University.

19 Are you familiar with the copyright  
20 policy --

21 A. I --

22 Q. -- that is in place today for the  
23 university system and at Georgia State University?

24 A. I am.

25 Q. Do you have a general understanding of --

1 or familiarity of what that policy provides?

2 A. I do.

3 Q. What -- What is that understanding?

4 A. That the policy basically lays out the  
5 expectations and the processes for faculty to  
6 evaluate whether or not some materials are fair use;  
7 and that if they are fair use, then -- then, of  
8 course, the ability under the law to utilize those  
9 materials without charge.

10 And if the materials are not deemed to be  
11 under fair use, that an appropriate set of steps be  
12 taken either to compensate the holder of the  
13 copyright or to find alternatives.

14 Q. Do you have an understanding as to why  
15 Georgia State University chooses to have a copyright  
16 policy?

17 A. Well, it's -- It's a University System of  
18 Georgia policy; and, you know, it's -- You have it  
19 to comply with the law, which we do.

20 Q. To comply with the copyright law; is  
21 that --

22 A. Right.

23 Q. -- correct?

24 A. Right. Yes, sir.

25 Q. Can you tell me, President Becker, what

1 steps are taken at Georgia State University to ensure  
2 that the faculty complies with the provisions of the  
3 copyright policy?

4 A. Oh. Yes, sir. It's actually in the  
5 policy.

6 There's a required checklist that the  
7 faculty member has to go through if they want to  
8 actually have -- take an item and basically say under  
9 fair use they can make this available to the students  
10 at no charge through electronic reserves or other  
11 means, that they have to go through the checklist and  
12 look at the four categories that are used to evaluate  
13 whether or not fair use is in play in that case.

14 Q. Are you aware of any educational efforts  
15 that have been made by Georgia State University to  
16 educate the faculty as to the copyright policy?

17 A. Oh, yeah. Certainly. We -- at the point  
18 of -- You know, as of the point that the policy was  
19 put into place, all faculty were trained on the  
20 policy. That was a requirement.

21 Q. Are you familiar with the electronic  
22 reserve system at Georgia State University?

23 A. I'm familiar in the sense that I know it  
24 exists, and I know in general terms what it does. I  
25 have not used it myself.

1 Q. Can you tell me generally what you  
2 understand that that reserve system does.

3 A. That items deemed to be of -- covered  
4 under fair use are delivered to the library either in  
5 original or scanned form and then put into an  
6 electronic system where the students who have  
7 access -- and it's only the students in the course  
8 for which that material's been deemed to be fair  
9 use have access through a password-protected  
10 system -- have access for the semester of that course  
11 and only during that course.

12 Q. Why has Georgia State University chosen to  
13 adopt and implement an electronic reserve system?

14 A. Well, quite simply in the --  
15 MR. KRUGMAN: Objection. Foundation.

16 Q. (By Mr. Askew ) You can go ahead and  
17 answer the question --

18 A. Okay.

19 Q. -- please.

20 A. Quite simply, with the technology  
21 available today, it's the most sensible way to make  
22 materials available that are covered under fair use.

23 Students today work from everywhere. They  
24 work electronically. They -- Many of our students,  
25 as I said earlier, come in from large distances.

1 They don't necessarily come in every day.

2 And so that if we were to work only with  
3 paper copies either through distribution in the  
4 classroom or in the library, that would not be  
5 convenient in meeting with the expectations of the  
6 twenty first century student.

7 Q. Are you familiar with the library reserve  
8 system at Georgia State?

9 A. I'm assuming it works like any library  
10 reserve system. Yes.

11 Q. Can you compare for me how the electronic  
12 reserve system works with how the library reserve  
13 system works?

14 A. Well, they're basically -- One is a  
15 technological advancement over the other. Library  
16 reserve systems, you take a paper copy of the  
17 material, if we're talking about books or journal  
18 articles, et cetera, or if it were a work of art.  
19 You put it on reserve in the library.

20 The student can go in, show that they  
21 have -- that they're a member of that class, and ask  
22 to access the material there in the library while  
23 they're in the library.

24 In the electronic case, it's -- the --  
25 The same verification has to take place, but it takes

1 place electronically, and it doesn't require you to  
2 physically be in the library.

3 Q. Are you familiar with course packs,  
4 President Becker?

5 A. I'm familiar with them. Yes.

6 Q. Can you describe for me what your  
7 understanding is of a course pack.

8 A. Well, a course pack is a -- generally has  
9 been a paper collection of materials. Again, it  
10 could be journal articles. It could be book  
11 chapters. It could be other images, things put on  
12 paper, bound together generally by somebody that  
13 produces that.

14 And it is sold in the bookstore to the  
15 students generally sitting right next to the  
16 textbooks for that course.

17 Q. Would that be -- Would that course pack  
18 be available for sale to anyone that's in the  
19 bookstore?

20 A. Well, anyone that's in the bookstore; and  
21 it's also available for resale at the end of the  
22 semester just like textbooks are.

23 Q. Why, Professor -- Well, Professor Becker,  
24 why doesn't Georgia State University simply make  
25 available to students in course packs those materials

1 that are made available to them in the electronic  
2 reserve system?

3 A. Well, that's going to be an individual  
4 determination of the faculty member, what makes the  
5 most sense for that course; but the course pack and  
6 the electronic reserve system are not the same thing.

7 The electronic reserve system are -- are  
8 selected set of materials for that course that are  
9 covered by fair use and can be provided in a cost  
10 effective way to the students and in a convenient,  
11 meaning electronically accessible way to the  
12 students, whereas the course pack is going to be a  
13 very different sort of product, requires that you  
14 carry it around. It's much more like a textbook than  
15 it is the electronic reserve system.

16 So they're -- They're not directly  
17 comparable.

18 Q. Mr. Becker, is there a budget in the  
19 Georgia State University budget process for  
20 permission fees for the electronic reserve system  
21 materials?

22 A. Not to my knowledge.

23 Q. Why don't you have a -- a budget item for  
24 electronic reserve system materials?

25 A. Well, actually, I can't actually answer

1 that question in detail, because that level of budget  
2 detail is below the level at which I review the  
3 budget.

4 Q. Do you understand that electronic  
5 reserve -- that the electronic reserve system is, in  
6 fact, reserved for only a fair use of the material  
7 involved?

8 A. That certainly is my understanding.  
9 That's what the policy says. Yes, sir.

10 Q. If -- If the use that is being made in  
11 the fair -- in the electronic reserve system is a  
12 fair use, do you believe a permission fee should be  
13 paid?

14 A. Absolutely not. Law under fair use there  
15 is no fee to be paid.

16 Q. If, though, the use that was proposed to  
17 be made exceeds what is permitted by fair use, do you  
18 believe a permission fee should be paid under those  
19 circumstances?

20 A. Yes.

21 Q. And do you believe that Georgia State  
22 University is prepared and has in the past paid fees  
23 for uses that exceed fair use?

24 MR. KRUGMAN: Objection. Form. Compound.

25 THE WITNESS: First --

1 MR. KRUGMAN: Lack of foundation.

2 THE WITNESS: First, we are prepared.

3 Secondly, I can't attest to whether we have or  
4 have not paid in the past, 'cause I don't know  
5 if we've ever had a situation where we've put  
6 something on reserve that was not covered by  
7 fair use. It's possible. I'm just not aware.

8 Q. (By Mr. Askew) Do you have any  
9 understanding as to whether Georgia State University  
10 has, in fact, had course packs available to students  
11 in the past?

12 A. That would be a presumption of yes,  
13 because any institution in this country has that.

14 Q. And if course packs are prepared and made  
15 available to students, do you have an understanding  
16 as to whether permission fees are under those  
17 circumstances paid if the use in the course pack  
18 exceeds fair use?

19 A. Absolutely. Yeah.

20 Q. As a general question, President Becker,  
21 is the electronic reserve system free of charge to  
22 the students for its use?

23 A. Well, there's not an added fee for using  
24 it, so any -- Any expenses that go into providing it  
25 would have been covered through either state

1 appropriation and/or tuition and fees.

2 Q. Is there any charge to the students for  
3 the use of the library reserve system?

4 A. It's the same as for the electronic  
5 reserve system. It would be covered by the fees.  
6 There's not an additional fee charged to the student  
7 for access of the material that way.

8 Q. As a final question, President Becker,  
9 what is the value to the education experience at  
10 Georgia State University of the electronic reserve  
11 system?

12 MR. KRUGMAN: Objection. Vague. Lack of  
13 foundation.

14 THE WITNESS: The -- The value of the  
15 electronic reserve system is it provides you a  
16 technologically current way to provide fair use  
17 materials, something we've been doing literally  
18 as long as I've been in the academy, which is  
19 since the 1980s.

20 It's just that now instead of having to  
21 photocopy fair use materials and either  
22 distribute them through the library or in class,  
23 you now have an electronic, technologically  
24 modern way of providing access to the same sorts  
25 of materials.

1                   MR. ASKEW: I have no further questions  
2                   for the witness.

3                   THE WITNESS: Thank you.

4                   CROSS-EXAMINATION

5                   BY MR. KRUGMAN:

6                   Q.        Good morning, Dr. Becker.

7                   A.        Good morning.

8                   Q.        My name is Edward Krugman, and we met for  
9                   the first time just a few minutes ago --

10                  A.        Right.

11                  Q.        -- correct?

12                  A.        That's correct.

13                  Q.        I am with the law firm Bondurant, Mixson &  
14                  Elmore here in Atlanta and am representing Cambridge  
15                  University Press, Oxford University Press, and Sage  
16                  Publication in this litigation in which you are a --

17                  A.        Right.

18                  Q.        -- defendant.

19                  A.        Right.

20                  Q.        If at any time I ask a question, you don't  
21                  understand it, please ask me to restate it, because I  
22                  want to make sure that you and I are on the same  
23                  page.

24                  MR. ASKEW: And, Mr. Krugman, let me just  
25                  make one slight correction. I would agree that

1           President Becker is a defendant, but I think he  
2           is a defendant in his official capacity --

3           MR. KRUGMAN: Yeah. In --

4           MR. ASKEW: -- not as a personal  
5           defendant.

6           Q.       (By Mr. Krugman) Yeah. I did not attend  
7           to suggest that you were a defendant in your personal  
8           capacity, simply --

9           A.       It's my understanding I inherited this  
10          lawsuit when I became president.

11          Q.       From your predecessor, Carl Patton.

12          A.       Correct.

13          Q.       You testified just a moment ago that the  
14          value of the Ereserve system to Georgia State is to  
15          provide fair use materials to --

16          A.       That's --

17          Q.       -- to students; is that correct?

18          A.       Correct.

19          Q.       Now you -- you're -- You're aware of the  
20          existence of the Ereserve system; is that correct?

21          A.       That is correct.

22          Q.       Have you ever used that system?

23          A.       Not personally. No.

24          Q.       Have you ever accessed that system?

25          A.       I have not.

1 Q. Have you ever examined the -- the  
2 Ereserves on -- on file at any time to determine what  
3 is available or not available to students?

4 A. I have not.

5 Q. Okay. So sitting here today, you have no  
6 basis whatsoever to testify that the materials that  
7 are available to students on the electronic reserve  
8 system at Georgia State comport with fair use under  
9 the federal copyright law; is that --

10 A. That is --

11 Q. -- correct?

12 A. -- incorrect. That is not correct.

13 Q. Okay. And if you could please, given that  
14 you've never examined any of the works --

15 A. Correct.

16 Q. -- you've never used the system, the basis  
17 for your testimony that the materials that are  
18 available to students comply with fair use.

19 A. The basis is, just as in every aspect of  
20 the university for which I'm responsible, if we have  
21 a policy that covers it, we have a system in place to  
22 educate people about the policy and how you implement  
23 it and how you use it.

24 And it is the expectation that that is  
25 what happens and that people accountable for it are

1 seeing to it that their duties are fulfilled.

2 Q. And who are those people?

3 A. In the case of the -- of Ereserve system,  
4 it would be faculty that go through the fair use  
5 checklist; and it would be the librarians who are  
6 responsible for making the system available,  
7 function.

8 Q. Is there anyone else?

9 A. No one else comes to mind at this time.

10 Q. Provost Palm?

11 A. Well, Provost Palm, the dean of library  
12 reports directly to Provost Palm. But, again,  
13 Provost Palm personally is not going to be  
14 interfacing with the system.

15 Q. But ultimately it's part of Provost Palm's  
16 responsibilities as provost to ensure that --

17 A. In that the library --

18 Q. -- to ensure compliance with federal  
19 copyright law, correct?

20 A. Yes. In that the library reports to her,  
21 it is -- it falls under her responsibility as  
22 delegated from me.

23 Q. And ultimately it falls under your  
24 responsibility as well as president of the university  
25 to ensure that --

1           A.     Well, you --

2           Q.     -- that the library and the use of the  
3 electronic reserve systems comports with federal  
4 copyright law, correct?

5           A.     Right. And you can carry that all the way  
6 up to the Board of Regents to whom I report.

7           Q.     Now -- Now you became president of  
8 Georgia State on January 1 of 2009; is that --

9           A.     That is correct.

10          Q.     -- correct?

11          A.     That is correct.

12          Q.     And you were elected to that position by  
13 the Board of Regents of the University System of  
14 Georgia?

15          A.     Well, the board appointed me and  
16 presumably held an election, but I wasn't present for  
17 the election.

18          Q.     Okay. And after you assumed office, you  
19 had the good fortune of becoming a named defendant in  
20 this action in -- in your official capacity?

21          A.     I learned that after I assumed the  
22 position. Yes.

23          Q.     And --

24          A.     Well, it was not the first thing the board  
25 discussed with me.

1 Q. I take it you still would have accepted  
2 the offer had -- had you been aware of this  
3 litigation?

4 A. That's a hypothetical. I'm not going to  
5 answer a hypothetical.

6 Q. After becoming president of Georgia State,  
7 you had occasion to review the amended complaint in  
8 this case; is that correct?

9 A. I have.

10 Q. And have you reviewed, other than the  
11 amended complaint, any other pleadings in this case?

12 A. Actually, what I have also found, due to a  
13 Google search of my own name following on a recent  
14 New York Times article about the interesting things  
15 you can find when you Google yourself, came across  
16 the judge's opinions on summary judgments and have  
17 read those as well.

18 Q. Well, other than those opinions and the  
19 amended complaint, have you reviewed any filings in  
20 this case that you can recall.

21 A. I've -- I don't know whether it's  
22 technically part of the amended complaint or not.  
23 The admissions that were requested by plaintiffs and  
24 answered by counsel. Have reviewed those.

25 Q. Anything else that you can recall?

1 A. Not to my -- Not at this time.

2 Q. Have you spoken with other defendants in  
3 this litigation about the matter?

4 A. Have not.

5 MR. ASKEW: The matter being the lawsuit?

6 MR. KRUGMAN: The lawsuit.

7 THE WITNESS: Yeah.

8 Q. (By Mr. Krugman) Yes.

9 A. Have not.

10 Q. Have you spoken with members -- members of  
11 the Board of Regents about --

12 A. Not directly. No.

13 Q. And when you say not directly, what do you  
14 mean?

15 A. Oh, I mean to say no. Okay.

16 Q. Okay. Understood.

17 A. Okay.

18 Q. Have you discussed the litigation with  
19 anyone other than your legal counsel?

20 A. Not to my knowledge.

21 Q. Where do you currently reside?

22 A. 761 Virginia Circle, Atlanta, Georgia  
23 30306.

24 Q. Is -- And that's your permanent  
25 residence?

1 A. That's my own personal residence. Yes.

2 Q. Do you have a second home anywhere?

3 A. I do not.

4 Q. Where is your office located?

5 A. Dahlberg Hall, President's Suite, Third  
6 Floor, Courtland Street, Atlanta, Georgia.

7 Q. Yeah. Is Georgia State currently in the  
8 midst of the spring --

9 A. We --

10 Q. -- 2011 term?

11 A. We are. Yes.

12 Q. And do you plan to be in Atlanta and  
13 working at Georgia State --

14 Well, first of all, when does that term  
15 end?

16 A. The term ends first week of May.  
17 Commencement is May 7th.

18 Q. And do you plan to be in Atlanta through  
19 the end of that term and through commencement?

20 A. Not for the entire period. No. The week  
21 before commencement, I will be out of the city with  
22 the U.S. Department of Defense on a trip for  
23 community leaders hosted by the Secretary of Defense.

24 Q. Okay. You understand that the trial in  
25 this matter has been scheduled to begin on May 16th

1 of two thousand --

2 A. I do understand that.

3 Q. And you responded to questions from Mr.  
4 Askew that you will be outside of the United States  
5 beginning May 17th?

6 A. That is correct.

7 Q. And you will be outside the United States  
8 through May 28th?

9 A. That's correct.

10 Q. On what day do you return to the United  
11 States?

12 A. May 28th.

13 Q. So you'll be back in the States on the  
14 29th?

15 A. Arriving in late afternoon May 28th --  
16 yeah. Arriving -- Yeah. May 29th is a Sunday, if I  
17 have my dates correct.

18 Q. Where are you going?

19 A. Singapore and Indonesia, Yogyakarta and  
20 Jakarta.

21 Q. And what's the purpose of that trip?

22 A. The purpose of the trip in Singapore is we  
23 will meet with U.S. ambassador to Singapore. We will  
24 also meet with -- At least we're planning to meet  
25 with representatives of National University of

1 Singapore, Singapore Management University -- I think  
2 the name's correct -- Singapore Technology  
3 University. It's a new institution.

4 And then we will go on to Yogyakarta,  
5 where we will have the official launching of Georgia  
6 State's masters program of -- in economics being  
7 done -- supported by the U.S. Agency for  
8 International Development.

9 That is the original purpose of this trip.  
10 It was scheduled many months ago for that purpose,  
11 continuing on to Jakarta to meet with U.S. -- U.S.  
12 State Department representatives in Jakarta about our  
13 activities in -- in Indonesia.

14 Q. Yeah. Is any of this trip -- Do you  
15 consider any of this trip personal vacation?

16 A. None at all.

17 Q. And when was this trip scheduled?

18 A. It would have been back in the fall, was  
19 the -- I believe was when I was approached about  
20 being available for travel to Indonesia, and then the  
21 Singapore components were added a few weeks after.

22 Q. Are you flying out of Atlanta on the 17th  
23 of May?

24 A. I am. Yes.

25 Q. Do you know what time your flight is?

1           A.     It -- It will be early afternoon.  
2 Flights from -- on Delta Airlines to Asia generally  
3 leave around 1:00 or 2:00 in the afternoon.

4           Q.     So I take it you would be -- You will be  
5 in the city on May 16th when the trial begins?

6           A.     I will be in the city. Hey. I have plans  
7 to be -- intended to be in the city on May 16th.  
8 Yes.

9           Q.     And you will in -- in the city for at  
10 least a small portion on the day on May 17th,  
11 although --

12          A.     Yeah. But I need to arrive at the airport  
13 two hours early for international travel for the  
14 appropriate clearance.

15          Q.     And you return on, what, Sunday, the  
16 28th --

17          A.     20 --

18          Q.     -- of May?

19          A.     Saturday, the 28th of May. Yeah.

20          Q.     So the 30th is Memorial Day?

21          A.     That's correct.

22          Q.     And then you plan to be in Atlanta  
23 beginning on the 31st of --

24          A.     I do not. The evening of the 30th, I  
25 depart for London.

1 Q. And what is the purpose of --

2 A. It -- It's, again, university business.

3 We have a number of meetings about  
4 potential relationships, opportunities for students  
5 and internships, faculty research and exchange  
6 opportunities, both in Hall with the University of  
7 Hall and then in London with various stakeholders.

8 Q. Is that a trip that you could delay for a  
9 day or two if -- if your testimony were required in  
10 court?

11 A. If I were required by the judge, it could  
12 be; but it would be very unfortunate. This is a trip  
13 I had to cancel last year, and we've had -- To  
14 interrupt it again would be unfortunate, but not  
15 impossible.

16 Q. And I take it if the Court were to order  
17 your appearance at trial, you would comply with the  
18 Court's order?

19 A. I have no intention to -- to deny the  
20 judge.

21 Q. And it's not -- You're not suffering from  
22 any physical ailment that would prevent you from  
23 testifying?

24 A. Not at this time that I'm aware of.

25 Q. And while it would be possible for you to

1 appear and -- and testify at the trial, it would  
2 certainly be very inconvenient for you; is that  
3 correct?

4 A. It would be extremely inconvenient. Yes.

5 Q. What is the University System of Georgia,  
6 as you understand it?

7 A. The University System of Georgia is the  
8 collection of all the public institutions of higher  
9 education that award associate's degrees, bachelor's  
10 degrees, master's degrees, doctoral degrees and --  
11 and other associated programs.

12 There are 35 such institutions ranging  
13 from two-year institutions to research universities.

14 Q. And Georgia State University is one of  
15 those units of the --

16 A. In -- in fact, the --

17 Q. -- of the University System of Georgia; is  
18 that --

19 A. Yes, sir.

20 Q. -- correct?

21 A. That is correct. Georgia State is one of  
22 the four research universities in the University  
23 System of Georgia.

24 Q. And the other four research universities  
25 are University of Georgia in Athens?

1           A.     Georgia Institute of Technology here in  
2 Atlanta and --

3           Q.     And --

4           A.     -- the Georgia Health Sciences University  
5 in Augusta.

6           Q.     Which is previously referred to as the  
7 Medical College of Georgia; is --

8           A.     That is --

9           Q.     -- that correct?

10          A.     -- correct? Yes.

11          Q.     And we'll get in a -- in a bit to talking  
12 about research --

13          A.     Yeah.

14          Q.     -- universities. But what is the -- What  
15 do you understand the Board of Regents of the  
16 University System of Georgia to be?

17          A.     My understanding of the Board of Regents  
18 is the -- is the authority of -- responsible for the  
19 University System of Georgia. By constitution all --  
20 The Board of Regents has a certain amount of autonomy  
21 from state government.

22                 The legislature approves a budget for the  
23 board, and the board is then -- has the authority to  
24 allocate that budget and oversee the operation of the  
25 universities.

1 THE COURT REPORTER: One?

2 MR. KRUGMAN: One. Yes.

3 (Plaintiff's Exhibit 1 was marked for  
4 identification.)

5 THE WITNESS: Okay.

6 MR. KRUGMAN: Thank you. There you go.

7 THE WITNESS: I take this to be Exhibit 1?

8 Q. (By Mr. Krugman) Yes, sir. It's Becker  
9 Exhibit No. 1, and can you identify this as --

10 And I will represent to you it's a  
11 printout from -- of a portion of the bylaws of the  
12 Board of Regents of the University System of Georgia.

13 And do you recognize this document?

14 A. I -- I can't say that I recognize these  
15 specific eight pages, but certainly these eight pages  
16 look like they are printed from the website for the  
17 University System of Georgia. They have the  
18 appropriate seal and all the expected parts.

19 Q. And have you had occasion to review the  
20 bylaws of the Board of Regents at some point during  
21 your tenure as president of the --

22 A. Right.

23 Q. -- of Georgia State?

24 A. I've -- I've never read them front to  
25 back. Have no need to, but I'd certainly consult

1       them if I have an interest in a specific component.

2             Q.       If you could turn to Page 7 --

3             A.       Yes.

4             Q.       -- of this document, and there's reference  
5       in Paragraph 6 to heads of institutions of the  
6       university system. Do you see that?

7             A.       Yep, yep. I do.

8             Q.       And these provide that the president of  
9       each institution and the university system shall be  
10       the executive head of the institution and all of its  
11       departments and shall exercise such supervision and  
12       direction as will promote the effective and efficient  
13       operation of the institution.

14            A.       Yes.

15            Q.       And as president of Georgia State, you  
16       serve as the executive head of the institution; is  
17       that correct?

18            A.       That is correct.

19            Q.       And that's consistent with the bylaws of  
20       the Board of Regents; is that correct?

21            A.       That is correct.

22                    (Plaintiff's Exhibit 2 was marked for  
23       identification.)

24                    THE WITNESS: Thank you.

25            Q.       (By Mr. Krugman) I've handed you, sir,

1 what's been marked as Becker Exhibit No. 2; and this  
2 is an excerpt from the Board of Regents policy  
3 manual, again, printed from the --

4 A. Yes. Okay.

5 Q. -- University System of Georgia website.

6 And, again, this reflects -- Well, first  
7 let me ask you have you had occasion to review the  
8 policy manual of the Board of Regents?

9 A. Again, I've not read it front to back. I  
10 may have consulted it from time to time on specifics  
11 where the -- had a need to do so.

12 Q. Okay. And this -- And 2.51, again, it --  
13 Well, Section or the Article 2.5 --

14 A. Okay.

15 Q. -- talks about presidential authority and  
16 responsibility.

17 A. Yes.

18 Q. And you understand this would relate to,  
19 in part, to you as the president of Georgia State?

20 A. Absolutely.

21 Q. And 2.5.1 says -- or states executive head  
22 of institution, "The president of each USG  
23 institution shall be the executive head of the  
24 institution and all of its departments, and shall  
25 exercise such supervision and direction as will

1 promote the efficient operation of the institution."

2 Then it says, "The president shall be  
3 responsible to the Chancellor for the operation and  
4 management of the institution."

5 And do you understand that you are  
6 responsible to the chancellor of the University  
7 System of Georgia for the operation and management of  
8 Georgia State?

9 A. I do.

10 Q. And that you're responsible for the  
11 execution and directives of the board and the  
12 chancellor --

13 A. I do.

14 Q. -- is that correct?

15 A. Yes.

16 Q. Then it goes on to state that the  
17 president's discretionary powers shall be broad  
18 enough to enable him or her to discharge these  
19 responsibilities.

20 And do you, as president, under --  
21 understand that you have discretionary powers to  
22 enable you to discharge your responsibilities as the  
23 executive head of Georgia State?

24 A. I do.

25 Q. Now if the -- If the chancellor of the

1 University System of Georgia or the members or the  
2 board itself were to direct you to bring the  
3 university into -- into compliance with federal  
4 copyright law with respect to use of the electronic  
5 reserve system at Georgia, would you comply with that  
6 directive?

7 A. I don't understand the question, 'cause we  
8 are in compliance, so I don't see it -- I don't see  
9 how I'd be directed to come into compliance with  
10 something where we're already in compliance.

11 Q. Yeah. And you believe you're in  
12 compliance for the reasons that you've stated  
13 previously, that although you've never actually seen  
14 any work that's been posted on the electronic reserve  
15 system?

16 MR. ASKEW: I'll object to the question as  
17 summarizing his previous testimony. His  
18 testimony is as it was presented.

19 THE WITNESS: Right.

20 Q. (By Mr. Krugman) You may answer the  
21 question.

22 A. The -- The university has policies and  
23 procedures for complying, and we follow those  
24 policies and procedures.

25 Q. Do you have any knowledge of any

1 individual professors failing to follow university  
2 policies and procedures with respect to copyright  
3 law?

4 A. I do not have such knowledge.

5 Q. If -- If that were the case where there  
6 were professors who were not complying with the  
7 policy, would that give you some concerns as to  
8 whether the university itself was in compliance with  
9 federal copyright law with respect to use of the  
10 electronic reserve system?

11 A. Right. That's a hypothetical but -- So  
12 I'll have answer it in broad terms. If somebody was  
13 found not to be in compliance, we would take  
14 appropriate action to be -- be corrective to be --

15 Q. Okay.

16 A. -- in compliance.

17 Q. And is it your understanding that -- that  
18 to the extent that professors have not been in  
19 compliance with the policy on copyright law, that the  
20 university has taken action to ensure that they come  
21 into compliance?

22 A. I'm not aware of any individuals being  
23 found to be out of compliance.

24 Q. No one has ever told you anything about  
25 individuals failing to comply with --

1           A.     That's correct.

2           Q.     -- with the -- with the policy?

3           A.     That's correct.

4           Q.     If the chancellor of the University System  
5 of Georgia were to conclude, contrary to your --

6           A.     Right.

7           Q.     -- understanding, that the university is  
8 not in compliance with federal copyright law with  
9 respect to its use of the electronic reserve system  
10 and directed you to bring the university into  
11 compliance, would you follow that directive?

12          A.     I would.  Yes.

13          Q.     And if the Court were to determine that  
14 the university -- excuse me -- that Georgia State  
15 University was not in compliance with federal  
16 copyright law with respect to the use of the  
17 electronic reserve system and ordered the university  
18 to come into compliance, would you follow that order?

19          A.     Yes.  Of course.  We -- We have no  
20 interest in violating the law.

21          Q.     If the chancellor of the university were  
22 to direct you to prohibit the library from posting  
23 more than a certain number of pages on -- of -- of a  
24 particular work on the electronic reserve system,  
25 would you comply with that directive?

1           MR. ASKEW: I'm going to -- I'm going to  
2           object to the question as vague and indefinite.  
3           I --

4           THE WITNESS: Well --

5           MR. ASKEW: -- think it's unclear.

6           THE WITNESS: -- that was my intent as  
7           well, is I think the question's too vague to be  
8           able to make a determination of what I would do,  
9           because I don't -- I don't understand what the  
10          circumstances would be that would lead us to the  
11          question the way you've framed it.

12          Q.        (By Mr. Krugman) Okay. Let's assume that  
13          the chancellor concluded that -- that posting more  
14          than a certain number of pages on a copyrighted  
15          work --

16          A.        Right.

17          Q.        -- would not comport with fair use under  
18          the copyright law and to do so would violate that law  
19          using the electronic reserve system and directed you  
20          to instruct the library that no more than X number of  
21          pages of a particular work could be posted on  
22          electronic reserves, would you comply with that  
23          directive?

24          A.        Well, the first thing that I would do is  
25          that -- this is not a simple yes or no -- the

1 chancellor and I would initiate a conversation so  
2 that I -- I would have a clear understanding of what  
3 is the legal basis of that directive, and we would  
4 have a conversation, and presumably we would both  
5 arrive at the same understanding of what the law is  
6 and what the law requires and would follow the law  
7 accordingly.

8 Q. Do you have any understanding as to what,  
9 if anything, the law requires with respect to the  
10 number of pages of a work that may be used and posted  
11 electronically on electronic reserves and --

12 A. Well, my -- My understanding is imperfect  
13 as it may be, is that the law does not actually  
14 specify a number of pages. The law talks about a --  
15 there's a --

16 One of the four tests requires the  
17 substantive or a substantial portion, but it does not  
18 in any case in my reading of fair use and copyright  
19 laws and -- and -- say that -- this spans my entire  
20 career as an academic, because I was a professor long  
21 before I was a president; and have understood and  
22 operated under fair use for a long time, that there  
23 is not a specific page number requirement.

24 That's why I answered the question the way  
25 I did. The chancellor and I would have to have a

1 very serious conversation if we were to go -- become  
2 arbitrary in that way.

3 Q. If -- If the Court were to order the  
4 defendants in this case including --

5 A. Right.

6 Q. -- including you to prohibit more than a  
7 certain percentage of a work protected by copyright  
8 law from being posted on the electronic --

9 A. Uh-huh.

10 Q. -- reserve system, would you comply with  
11 such an order?

12 A. I would consult with counsel to find out  
13 what our appeal strategy would be at that point.

14 Q. Under the -- on -- On Exhibit 2 in terms  
15 of -- I think it's under personnel --

16 A. Personnel policies?

17 Q. -- policies, the president --

18 A. Article 2.5.3?

19 Q. Yeah. Yes, sir. "The president shall be  
20 responsible for the initial appointment of faculty  
21 members and administrative employees of each --

22 A. Uh-huh.

23 Q. -- "institution, the salary and all  
24 promotions of each, and be authorized to make all  
25 reappointments of faculty members and

1 administrative --

2 A. Okay.

3 Q. -- "employees except as otherwise  
4 specified..."

5 Is that part of your responsibilities  
6 as --

7 A. It --

8 Q. -- president?

9 A. It is -- It is a responsibility that the  
10 board delegates to me, and it is a responsibility  
11 that in a -- the overall, in the majority of cases, I  
12 delegate to others.

13 Q. And who are the others to whom you  
14 delegate that responsibility?

15 A. I delegate to vice presidents, to the  
16 general counsel of the university, to the athletic  
17 director and -- and to the senior advisor to the  
18 president are the titles under which people report  
19 directly to me, and they are delegated responsibility  
20 for their areas.

21 Q. Are you responsible for appointing and  
22 reappointing the dean of the library?

23 A. That falls to the provost, so that's a --  
24 That is one of the delegations. All deans report to  
25 the provost.

1 Q. Okay. And -- and -- but you -- you  
2 appoint -- You appointed the provost; is that  
3 correct?

4 A. That is correct.

5 Q. With the approval of the Board of Regents?

6 A. Actually, I'm not sure that requires  
7 regental approval anymore. That's one of the  
8 policies that may have changed, but if it was  
9 required, it was -- If that approval was required,  
10 it was sought and received.

11 Counsel, I should warn you that policies  
12 as you print them off the web can be out of date in  
13 some cases.

14 Q. I would -- I -- So the policies as they  
15 exist on the web may be -- may be out of date. Is  
16 that what you're saying?

17 A. That is possible that the web versions are  
18 not the current versions in some -- in some matters  
19 of technical detail.

20 Q. Okay. Now we'll -- In terms of at least  
21 the -- the ones we've used thus far --

22 A. The -- the --

23 Q. -- they were just printed?

24 A. Yeah, yeah. Now the -- now the --

25 They're all correct, but in terms of approvals that

1 are required, there's certain things that used to  
2 require board approval that no longer require board  
3 approval; and there's no guarantee that the website  
4 reflects those changes.

5 Q. How would one go about finding the -- the  
6 current and correct version?

7 A. Well, I would ask my legal counsel, my  
8 university attorney.

9 Q. How would someone who -- who is not  
10 employed by the university --

11 A. I would suggest you contact Burns Newsome  
12 in the Board of Regents office, their legal counsel.

13 (Plaintiff's Exhibit 3 was marked for  
14 identification.)

15 Q. (By Mr. Krugman) Okay. What are -- What  
16 are the statutes of Georgia State University?

17 A. Be a set of rules, policies, by which the  
18 university is structured and governed.

19 Q. And who adopts those statutes, if you have  
20 an understanding?

21 A. Actually, I don't know who initially put  
22 the statutes into place. One second.

23 Regents policy.

24 Statutes would come under the university  
25 senate.

1 Q. Okay. And what is the university senate?  
2 If you could, describe that, but very briefly.

3 A. I'll be as brief as I possibly can,  
4 because university governance is unlike just about  
5 any other entity in the world.

6 As you've already demonstrated in Articles  
7 I, II, and III, and I should note that Article 3 has  
8 now been introduced. That was not put on the record;  
9 but I now have Article III, which is a universe --  
10 university statute -- or I'm sorry -- Plaintiff's  
11 Exhibit Becker 3.

12 Q. Three which is Article II of the --

13 A. Of the --

14 Q. -- university statutes.

15 A. Correct. Okay. I just wanted to make  
16 sure we got that on the record.

17 The university has, if you will, a top  
18 down structure in that the Board of Regents delegates  
19 to the president certain authorities; and the  
20 president delegates certainly authorities on through  
21 the system of -- such as to the provost, who  
22 delegates to deans, who delegates to department  
23 chairs, our academic structure.

24 But then we have a university senate which  
25 is -- The closest thing I can give you an example

1 would be the legislative body -- branch as opposed to  
2 the executive branch, but its powers and its  
3 oversight are limited in certain areas. The  
4 university senate primarily deals with matters of  
5 academics, not matters of operations.

6 Q. Do you as president of the university  
7 preside over the university's --

8 A. I preside --

9 Q. -- senate?

10 A. I preside in the meetings, and I'm ex  
11 officio in the senate's executive committee, and I  
12 have veto authority over anything the senate passes.

13 Q. And can you identify -- What's Becker 3  
14 is the -- it's Article II of the university  
15 statutes --

16 A. Right.

17 Q. -- at Georgia State?

18 A. It -- It basically gives a -- a  
19 description of the roles and responsibilities of the  
20 president.

21 Q. At the -- Toward the bottom of the page,  
22 it states last updated 15 May, 1996.

23 Do you have any understanding as to  
24 whether this Article II of the university statutes  
25 has been amended since --

1           A.     It's --

2           Q.     -- since that date?

3                     And I -- It's hard to read, but these --  
4 These were printed on April 18th --

5           A.     Right.

6           Q.     -- of 2011.

7           A.     I do not know that the -- the -- whether  
8 or not this particular article's been changed since  
9 1996, but presumably not substantively.

10          Q.     Again, in Section 1, it states that the  
11 president is the head of the university and its  
12 chief --

13          A.     Yeah.

14          Q.     -- administrative officer. The President  
15 shall be elected by the Board of Regents and shall  
16 serve at the pleasure of the board.

17          A.     That's correct.

18          Q.     And what do you understand serve as the --  
19 at the pleasure of the board to mean?

20          A.     Oh, that's quite simple. The board can  
21 remove me at any time, at their will. I -- I do not  
22 have a contract of fixed term. I am reappointed  
23 annually. I do not have a contract that is beyond  
24 that; but at any point during the year of  
25 appointment, the board may remove me, if they see fit

1 to do so.

2 Q. And Section 2 delineates at least some of  
3 your powers and duties as president of the  
4 university --

5 A. Well --

6 Q. -- is that correct?

7 A. -- including starting with the  
8 responsibilities prescribed by the Board of Regents,  
9 that is correct.

10 Q. And -- and that -- That certainly is one  
11 of your responsibilities, to comply with directives  
12 and duties and responsibilities prescribed by the  
13 board; is that correct?

14 A. That is correct. Yes.

15 Q. Then it states in B that, "The President  
16 shall prepare the annual budget of the University for  
17 presentation to the Board of Regents and shall  
18 recommend to the Board amendments thereto."

19 A. That is correct.

20 Q. And that is part of your responsibilities  
21 as president of the university?

22 A. Yes. Yeah. So yeah. There -- There are  
23 staff that -- reporting to me that prepare the  
24 budget.

25 But yes. It is a budget that I sign off

1 on and submit, and it is a budget that I approve.

2 Q. On direct examination Mr. Askew asked you  
3 whether the budget includes -- and I'm  
4 paraphrasing the question --

5 A. Right.

6 Q. -- whether the budget includes any -- any  
7 funds for the electronic -- for the electronic  
8 reserve system for -- to pay --

9 A. Right.

10 Q. -- fees or license fees for permission to  
11 use works on that.

12 A. I remember the question.

13 Q. Yeah. And -- And you were unable to  
14 respond to that question.

15 A. Yes. And appropriately so.

16 You need to understand that the budget  
17 that is submitted to the board is in broad  
18 categories. It does not go line item by line item.  
19 It just does not give every single expenditure of the  
20 library or of any college.

21 We allocate to deans and delegate to deans  
22 the authority, responsibility for their individual  
23 budgets.

24 So we -- We do not give a line item  
25 detail of every action within every subunit all the

1 way down the line.

2 Q. You also indicated that we -- we  
3 probably -- someone else would -- may be able to  
4 respond to that question as to whether funds had been  
5 allocated to -- to pay fees or license fees for --  
6 for permissions to use works on the electronic  
7 reserve system.

8 A. I presume that to be the case.

9 Q. And who -- Who would we need to ask?  
10 Who -- Who can answer that question?

11 A. Presumably the dean of the library would  
12 be able to answer that question.

13 Q. And that's Nancy Seamons?

14 A. That is correct.

15 Q. Does Nancy Seamons serve at your pleasure?

16 A. Yes. Deans serve at my pleasure, yes, as  
17 well as the pleasure of the provost.

18 Q. Although not part of the -- not --  
19 Although not a specific line item in the budget --

20 A. Uh-huh.

21 Q. -- do you understand that as president of  
22 Georgia State University, you are empowered to  
23 prepare and recommend a budget that includes funds to  
24 pay the owners of copyrighted works for licenses and  
25 permissions in connection with the posting of their

1 works on the Georgia State electronic reserve system?

2 A. Were we to decide to do so, we could do  
3 that. Yes. I could do that.

4 Q. You certainly have that power?

5 A. I have that power. Yes.

6 Q. Georgia State, I believe, in 2008 decided  
7 to -- to develop a football program; is that correct?

8 A. I believe it was 2008. I wasn't at the  
9 university; but by the time I arrived on January 1,  
10 2009, it had been decided.

11 MR. ASKEW: I'm going to object to that  
12 question, Mr. Krugman, as going beyond the scope  
13 of the direct examination.

14 MR. KRUGMAN: Well, I believe it doesn't.  
15 It relates to the -- the issue of the budget.

16 Q. (By Mr. Krugman) I assume the university  
17 has -- has budgeted a certain amount of money for the  
18 football program; is that correct?

19 A. There would be a budget within the  
20 athletic department for football.

21 Q. Okay. And for 2010 do you know  
22 approximately what the budget was for the football  
23 program --

24 MR. ASKEW: I'll object --

25 Q. (By Mr. Krugman) -- at Georgia State?

1           MR. ASKEW: I'll object to that question  
2 going -- going well beyond the scope of the  
3 direct examination.

4           MR. KRUGMAN: This is also a discovery  
5 deposition as well.

6           MR. ASKEW: I would not agree that this is  
7 a discovery deposition. This is a  
8 cross-examination on a direct examination of a  
9 testimonial deposition.

10           But if the witness knows, but I still  
11 object. This question's going well beyond the  
12 scope of the direct examination at this --

13           THE WITNESS: I --

14           MR. ASKEW: -- point.

15           THE WITNESS: I do not know the amount of  
16 the budget for football.

17           Q.     (By Mr. Krugman) Do you believe it's more  
18 than a million dollars?

19           A.     I believe it is.

20           Q.     Do you believe it's more than \$2 million?

21           A.     I have no idea.

22           Q.     Do you have a -- any understanding as  
23 to -- as to how the expenses of the football program  
24 at Georgia State are covered?

25           A.     Primarily by student fees, ticket revenue,

1 and advertising -- Or advertising and/or sponsorship  
2 revenue are the main sources that I am aware of.

3 Oh. And, plus, philanthropy donations by  
4 individuals.

5 Q. Do you recall that in 2008 that -- Well,  
6 you weren't here in 2008.

7 A. I was going to say I have a hard time  
8 recalling --

9 Q. Right.

10 A. -- in 2008.

11 Q. I know. But -- But ultimately you  
12 were -- You do know that -- that there is a student  
13 fee that was enacted that -- that covers a -- at  
14 least a --

15 A. Yeah.

16 Q. -- portion of the expenses of the --

17 A. That was --

18 Q. -- football program?

19 A. That was my testimony. Yes.

20 Q. Yeah. And do you recall the amount of  
21 that student fee?

22 A. I believe it's in the order of \$90 per  
23 semester, but I'm not a hundred percent certain of  
24 that.

25 Q. Okay. So that is a -- It's a fee per

1 semester?

2 A. Per -- Per semester per student. Yes.

3 Q. Okay. So if it were either 85 -- If it  
4 was \$90 a semester that -- that would be a mandatory  
5 athletic fee that students --

6 A. Yes.

7 Q. -- would be required to pay?

8 A. Students -- Students pay mandatory fees.  
9 As I gave in my testimony earlier when asked the  
10 question on tuition, I mentioned that there's  
11 approximately \$814, I think, is the number is what  
12 students are paying per semester in fees at this  
13 point.

14 Q. And that includes the roughly \$90 --

15 A. Yes.

16 Q. -- for the -- to cover a portion of the  
17 expenses of the football program?

18 A. That is accurate. Yes.

19 Q. Do you know how much that approximately  
20 \$90 fee generated for the athletic program at Georgia  
21 State during 2010?

22 A. Well --

23 MR. ASKEW: My -- My objection continues  
24 to the fact that this -- this examination or  
25 these questions goes well beyond the scope of

1 the direct examination.

2 THE WITNESS: You can do the math off the  
3 top of your head -- 90 times 31,000 times two  
4 semesters, except it's not exactly 31,000. So,  
5 you know, you -- you could get the number. I'm  
6 not going to do the math for you.

7 Q. (By Mr. Krugman) So approximate number  
8 would be 90 -- 30,000 times 90 times two?

9 A. Most likely. But, you know, again, I  
10 don't know that -- those -- the final numbers  
11 exactly, but that -- That's a good approximation.

12 Q. So the initial math would be approximately  
13 2.7 million in -- for one semester; and then if you  
14 were to double that, about 5.4 million?

15 A. That's too high, so that -- That seems  
16 too high to me, so it may be 90 for the year. I'm  
17 not -- I'm just not certain.

18 I don't -- I don't track that level of  
19 detail. Again, that's delegated to the athletic  
20 director; and the fee itself goes through our  
21 university senate through a fee committee.

22 Q. But it's certainly in the order of -- of  
23 more -- of more than \$2 million?

24 A. That math would seem to suggest it as  
25 such.

1 Q. How much does the university spend or does  
2 the university spend money to provide course reading  
3 materials to students?

4 A. I don't have that number available to me.

5 Q. Does -- Does the university spend money  
6 to provide course reading materials to students other  
7 than materials that may be available --

8 A. Would you --

9 Q. -- in the library?

10 A. -- define course reading materials. I'm  
11 not sure what you mean by course reading materials.

12 Q. Well, to start with textbooks.

13 A. The university provides nothing. The  
14 students pay for the textbooks themselves.

15 Likewise, the library reserve system, we  
16 don't provide. It's just the books in the library or  
17 books that people bring in the library. These are  
18 not things that we have to fund explicitly.

19 Q. What about course reading materials, you  
20 know, reading materials that are not contained in  
21 textbooks that professors assign students to read?

22 MR. ASKEW: I'm going to object to the  
23 question --

24 THE WITNESS: Yeah.

25 MR. ASKEW: -- again as vague. I'm not --

1 I think it's unclear as to what you mean by  
2 course reading materials other than textbooks.

3 MR. KRUGMAN: Yeah.

4 THE WITNESS: Well, it's -- I -- Again,  
5 as you pointed out at the beginning, I have to  
6 request clarification. I don't understand the  
7 question.

8 Q. (By Mr. Krugman) Yeah. Do you  
9 understand -- Well, let me come at it this way.

10 You understand the electronic reserve  
11 system is -- is used by the university and by  
12 professors to provide portions of works to students  
13 to be utilized in connection with assigned readings  
14 from professors for classes that they take at the  
15 university?

16 A. I understand that. Yes.

17 Q. And I take it from your understanding of  
18 university policy that if a professor were to  
19 conclude in filling out the fair use checklist, which  
20 we'll talk about a little bit later --

21 A. Right.

22 Q. -- that a particular work did not comport  
23 with --

24 A. Fair use.

25 Q. -- a fair use, then the professor could

1 not or the -- or that work could not be posted on the  
2 electronic reserve system unless a -- unless  
3 permission were obtained from the owner of the  
4 copyright?

5 A. That's my understanding.

6 Q. Okay. Does the university budget any  
7 funds that would enable a professor who desired to  
8 use a particular work that did not comport with fair  
9 use under the checklist --

10 A. The --

11 MR. ASKEW: I'm going to object to the  
12 question again. I think it's vague, and I think  
13 it's -

14 Q. (By Mr. Krugman) I'm not -- I'm not done  
15 with the -- I'm not done with the --

16 A. Okay.

17 Q. -- question.

18 A. Okay.

19 Q. Does the university budget any funds that  
20 would enable a professor who desired to use in a  
21 class a particular work, but that did not comport  
22 with fair use under the -- under the university  
23 policy to -- to pay the copyright owner for use of  
24 that work in order -- in order to --

25 A. Okay.

1 Q. -- make it available to students either  
2 electronically or in hard copy?

3 MR. ASKEW: I'm going to object to the  
4 question. It's just too complicated, Mr.  
5 Krugman. I don't think --

6 MR. KRUGMAN: You can state -- you can  
7 state --

8 MR. ASKEW: I think it's too vague.

9 MR. KRUGMAN: No -- No speaking  
10 objections, Mr. Askew.

11 MR. ASKEW: Well, okay. Trying to make  
12 clear what my objection is to you.

13 THE WITNESS: Okay. I want to try  
14 restating your question --

15 Q. (By Mr. Krugman) Yes.

16 A. -- as I -- as I believe I understand it is  
17 if the professor were to determine that a item is not  
18 covered under fair use, how would they make it  
19 available, in other words, how would -- how would the  
20 fee be paid?

21 Q. Yes.

22 A. Okay. There -- there --

23 Q. And that's -- that's a better -- better  
24 question than I asked. Thank you.

25 What -- What is your understanding as to

1 how that work could be made available and the fee  
2 paid?

3 A. Okay. If it -- if it was not covered by  
4 fair use, the fee -- it -- there is not a -- there --

5 Let's put it this way. I would be shocked  
6 if we actually had a budget for things that are not  
7 covered by fair use. That's -- The items that we  
8 put on the Ereserve system are for fair use, uses.  
9 We don't carry a budget for items not covered for  
10 that.

11 Doesn't mean that in exceptional  
12 circumstance that if a faculty member really wanted  
13 to use it, that they could not find resources in a  
14 budget somewhere, because presumably this would be a  
15 small amount of money. They might find that.

16 Another approach would be to make that --  
17 to have that information made available for purchase  
18 to the student --

19 Q. Okay. So these --

20 A. -- purchased by the student --

21 Q. Okay.

22 A. -- which is the more likely scenario; but,  
23 again, you have over a thousand professors.

24 There's -- It could be done in different ways.

25 Q. The -- The more likely scenario is that

1 the student would -- would be required to pay for --

2 A. Well, actually, we -- we --

3 Q. -- any fees associated with the use of a  
4 work that did not comport with fair use under --

5 A. I would substitute --

6 Q. -- under the plaintiffs --

7 A. -- encouraged rather than required.

8 Nobody makes students buy the books. In fact, many  
9 students do not buy all the books that are listed  
10 in a -- in a bookstore. Students make their own  
11 judgments.

12 And some students don't bother to read the  
13 material if they find that the cost is not something  
14 they're willing to bear. That's -- That's a  
15 reality.

16 Q. Okay. I -- I certainly understand  
17 that --

18 A. Right.

19 Q. -- that even though a textbook may be  
20 assigned, there may be individual students who --

21 A. Right.

22 Q. -- who for whatever reason don't -- don't  
23 purchase the --

24 A. Right.

25 Q. -- book. But to the extent that it's an

1 assigned reading and you have a diligent student who  
2 desires to read --

3 A. Right.

4 Q. -- all of the works assigned to him or her  
5 by a professor --

6 A. Right.

7 Q. -- it would be your expectation that if  
8 the professor wanted to use a particular work and if  
9 there were fees associated with the use of that work,  
10 that those fees would be paid for by the student?

11 A. I -- I think that is the most likely  
12 scenario.

13 Q. Has the university, to your knowledge,  
14 considered charging students a fee to create a fund  
15 that could be used to pay the owners of copyrighted  
16 works for the use of their materials that did not  
17 comport with fair use under the university's  
18 copyright policy?

19 A. Now as I stated, we already have a  
20 mechanism for making -- for that to be happened,  
21 which is for the students to purchase the materials  
22 as course materials through a bookstore or on-line or  
23 however they decide to go about purchasing those  
24 materials.

25 Q. Yeah. My question is just -- just a

1 little bit different. Has -- has the university  
2 given any consideration to your --

3 Well, let me ask it this way.

4 A. I -- I --

5 Q. Have you as president of the university  
6 who's responsible for the budget --

7 A. Right.

8 Q. -- have -- have you considered  
9 recommending that a -- a fee be imposed on students  
10 to create a fund --

11 A. Right.

12 Q. -- that would enable payments to --

13 A. Right.

14 Q. -- owners of copyrights for use of works  
15 that did not comport with fair use?

16 A. I have not.

17 Q. To your knowledge, has anyone within the  
18 university done that during your tenure?

19 A. I have no knowledge of it or no memory, if  
20 it's happened.

21 I do know that our current student  
22 government ran on the platform of no new fees, and  
23 so I -- I --

24 And you should understand that the way  
25 these fees come into being, including the specific

1 fees you asked about, the athletic fee, all go  
2 through a process. The Board of Regents require that  
3 students have input into fees.

4 And students, if anything, are -- are  
5 not -- are not excited about the prospects of  
6 increased fees.

7 Q. Okay. Going back to Exhibit 3,  
8 Dr. Becker --

9 A. Uh-huh.

10 Q. -- on number -- on Subpart E of Section 2,  
11 it states --

12 A. Uh-huh.

13 Q. -- that subject to the approval of the  
14 Board of Regents, the president shall appoint a  
15 provost and vice president for academic affairs, and  
16 such other general administrators and assistants --

17 A. Uh-huh.

18 Q. -- as are needed to carry out the  
19 president's responsibility.

20 A. Yes.

21 Q. And I take it you -- you were -- You  
22 testified earlier that you appointed Provost Palm?

23 A. Right. Though with a minor technicality.  
24 Her title is senior vice president rather than vice  
25 president, but that's a -- That's a technicality.

1 Q. Okay. And now you did not recall that  
2 that appointment was subject to Board of Regents'  
3 approval?

4 A. I don't require -- recall having to get  
5 approval; but if I was required to get approval, I  
6 got it, obviously.

7 Q. And this Article III gives you the power  
8 to appoint such other general administrators and  
9 assistants as -- as are needed to carry out the  
10 president's responsibility and --

11 A. That's correct.

12 Q. -- conduct --

13 A. Yes.

14 Q. -- the president's office; is that  
15 correct?

16 A. That's correct.

17 Q. And who generally are those other  
18 administrators and assistants that --

19 A. Okay. The -- The president's cabinet  
20 includes the provost and senior vice president for  
21 academic affairs, Dr. Risa Palm; the senior vice  
22 president for finance and administration; the -- I  
23 think I call him senior counsel, senior advisor to  
24 the president, Mr. Tom Lewis, who oversees our  
25 government and community relations; vice president

1 for university relations; athletic director; vice  
2 president for student affairs; vice president for  
3 research; vice president for development, fundraising  
4 basically.

5 Just looking around the metal model, the  
6 table in our meetings, I think that's everybody.

7 Q. So the -- the --

8 A. Oh, and I'm sorry. The university  
9 attorney also is in those meetings.

10 Q. The -- do you -- Do you appoint the  
11 university attorney?

12 A. Yeah. That -- That university report --  
13 attorney reports directly to the president.

14 Q. And who is the university attorney?

15 A. Miss Kerry Heyward.

16 Q. And -- and those -- the -- The positions  
17 that you identified, those are --

18 A. Uh-huh.

19 Q. -- appointments that you make directly?

20 A. Yes.

21 Now the -- The truth be told, January 1,  
22 2009, some of those individuals were in those  
23 positions. Not all those positions existed with  
24 their titles, so some individuals either received new  
25 titles, or some individuals have changed. So the

1 athletic director and the provost are individuals  
2 that were not here when I arrived.

3 Likewise, the vice president for  
4 development is new to -- is -- was hired last summer,  
5 so it -- Some of those individuals are people that  
6 were in the position who I have continued in the  
7 positions. Others are new to their positions.

8 Q. That's right. And do all of those  
9 individuals serve at your pleasure?

10 A. They do.

11 Q. And I believe you indicated earlier that  
12 you also appoint the deans of the --

13 A. Well, the -- The provost appoints the  
14 dean -- The provost oversees the searches for the  
15 deans. The deans report directly to the provost.

16 The provost makes those appointments on my  
17 approval, so I am involved in the discussion, but I  
18 don't -- I'm not hands-on in actually conducting the  
19 searches and identifying, but I -- I do have final  
20 say in the appointments. Yes.

21 Q. If the court in this case were to order  
22 you as president of Georgia State University to  
23 appoint an administrator to oversee the university's  
24 compliance with federal copyright law in -- in  
25 connection with the electronic reserve system, do you

1 understand that you would have the power under this  
2 Article II to make such an appointment?

3 A. Such an order would seem absurd to me, and  
4 I would have to consult with counsel on the -- the  
5 precedent for such an order; but were -- Were I to  
6 be required by law to do so, of course, I would  
7 comply with the law.

8 Q. And you understand that you would have  
9 that authority under Article II of the university  
10 statutes, correct?

11 A. I have authority to create positions and  
12 to appoint individuals to those is my understanding.

13 Q. So the answer is yes?

14 A. Yes.

15 (Plaintiff's Exhibit 4 was marked for  
16 identification.)

17 MR. KRUGMAN: There you go.

18 Q. (By Mr. Krugman) Dr. Becker, I've handed  
19 you a copy of the Exhibit 4, which I'll represent to  
20 you is a copy of the University System of Georgia  
21 policy on the use of copyrighted works in  
22 education --

23 A. Yes.

24 Q. -- and research. Do you see that?

25 MR. ASKEW: I'll object to that

1           characterization. That appears to be only a  
2           portion of the policy.

3           Q.       (By Mr. Krugman) Have you had occasion  
4 prior to today to review the policy on the use of  
5 copyrighted works in education and research?

6           A.       Yes. I have.

7           Q.       When was the first time that you reviewed  
8 this policy?

9           A.       I can't recall the first time. I can  
10 remember -- recall the last time.

11          Q.       And when was the last time?

12          A.       Last evening.

13          Q.       And that was in -- in preparation for your  
14 deposition today?

15          A.       Of -- Yes.

16                    It's not my normal bedtime reading.

17          Q.       Now you understand this policy was adopted  
18 by the Board of Regents in 2009; is that correct?

19          A.       In -- in fact, that's -- Yeah. It's  
20 copyrighted here as 2009, so yes. It's what I  
21 understand.

22          Q.       Do you -- Do you have an understanding as  
23 to why the Board of Regents adopted this policy in  
24 2009?

25          A.       Well, I would -- I don't have an

1 understanding, 'cause I didn't actually direct the  
2 action.

3 But I would presume that it has to do with  
4 the fact that the technology has changed and how  
5 copyrighted materials can be made available, so the  
6 policies need to be -- needed to be brought up to  
7 date with current electronic tools, if you will,  
8 because this policy does specifically speak to  
9 electronic reserves.

10 It's Page 9 to which I'm referring.

11 Q. And this is the Page 9 that -- well, both  
12 on the bottom and the top, the Page 9 of 19?

13 A. Yes. Page 9 of 19. Appendix B, Page 9.  
14 Yes.

15 Q. Now -- Now you understand the -- the  
16 policy to require a faculty member to complete what  
17 is called a -- a fair use checklist --

18 A. Yes, sir.

19 Q. -- prior to requesting that the library  
20 post a portion of a copyrighted work on electronic  
21 reserve; is that correct?

22 A. Yes.

23 Q. And if you look on Page 7, you see that  
24 the policy provides that -- that the professor is to  
25 "Complete and retain a copy of this checklist for

1 each 'fair use' of a copyrighted work in order to  
2 establish a 'reasonable and good faith' attempt at  
3 applying fair use should any dispute regarding such  
4 use arise."

5 You see that?

6 A. Yes.

7 Q. Am I correct that as president of the  
8 university, you expect professors at the university  
9 to comply with that requirement?

10 A. Yes. We expect them to comply with all  
11 policies that we have.

12 Q. And as president, you expect professors to  
13 complete a checklist and retain a copy of the  
14 checklist prior to requesting the library to post  
15 copyrighted works on the electronic reserve system at  
16 Georgia State?

17 A. I -- I will repeat that I expect them to  
18 comply with the policy as it's stated.

19 Q. If it turned out that certain faculty  
20 members did not complete a fair use checklist prior  
21 to requesting copyrighted works to be posted on the  
22 electronic reserve system at Georgia State, you would  
23 agree that the policy had not been -- would not have  
24 been followed by those faculty members, correct?

25 A. That would be correct.

1           Q.     And similarly, if it turned out that  
2 faculty members did not retain a copy of a fair use  
3 checklist, you would agree that the policy had not  
4 been followed by those faculty members either,  
5 correct?

6           A.     It would not be strict adherence to the  
7 policy. That's correct.

8           Q.     If checklists were not filled out by  
9 professors, the fair use determinations that are  
10 intended to be made by completion of the checklist  
11 will not, in fact, have been undertaken --

12          A.     That -- that --

13          Q.     Is that correct?

14          A.     I don't believe that's correct at all.

15          Q.     Okay. And why do you believe that is not  
16 correct?

17          A.     One could have made the determination, but  
18 not merely written it down, so one could have very  
19 well in -- in good faith have gone through the  
20 checklist; and mentally, you know, it could have been  
21 a trivial case, one -- one page of a book or  
22 something like that and obviously fits it; and they  
23 may not have bothered to write it down. So it would  
24 not be a willful -- it -- it --

25                   It would still have had a good faith

1 attempt to comply with fair use. In fact, fair use  
2 may indeed apply. It just would not be strict  
3 adherence to the policy --

4 Q. So --

5 A. -- in that case.

6 Q. -- it would be a -- a violation of the  
7 policy in the case?

8 A. It would not be strict adherence to the  
9 policy.

10 Q. Yeah. Would it be a violation of the  
11 policy if the professor did not go through that  
12 mental assessment with respect to the fair use  
13 checklist before requesting the library to post a  
14 certain copyrighted work on the electronic reserve  
15 system?

16 A. It would be a violation of the policy.

17 Q. That would -- That would go beyond simply  
18 a failure of strict adherence to the policy, correct?

19 A. I don't see the distinction.

20 I would say, though, however, it would not  
21 necessarily be a violation of the law. Fair use may  
22 still be in play.

23 Q. Have you had any legal training in your  
24 career?

25 A. I have not had legal training, but I've

1 had substantial interaction with university attorneys  
2 over approximately 15 years.

3 Q. Have you studied copyright law?

4 A. I've become familiar with fair use because  
5 I've been a faculty member and have -- and have  
6 complied with the law under fair use.

7 Q. You don't consider yourself to be an  
8 expert in copyright law. Would that be a fair  
9 statement?

10 A. I expect -- I expect myself to be a  
11 practitioner in compliance with the law.

12 Q. Do you currently teach any courses at  
13 Georgia State?

14 A. No. No courses of record. No.

15 Q. Okay. And I take it consistent with your  
16 earlier testimony, you've never -- you've not had  
17 occasion to -- to use the electronic reserve system  
18 at Georgia State?

19 A. That's correct.

20 Q. And have you had occasion to undertake any  
21 fair use determinations since you have assumed the  
22 office of the presidency at Georgia State?

23 A. Not at Georgia State. No, sir.

24 Q. Assume a professor at Georgia State  
25 decided that completing the checklist either

1 physically or mentally for works posted on Ereserve  
2 was too much work and -- and instead of utilizing the  
3 fair use checklist made a PDF of each of the works  
4 that he or she wanted to make available to students  
5 and then e-mailed those PDFs to students.

6           Would you agree that the policy in place  
7 with respect to the use of copyrighted works at  
8 Georgia State had not been followed?

9           MR. ASKEW: I'm going to object to the  
10 question. Assuming facts that are not in  
11 evidence and, also -- also, posing a  
12 hypothetical for the witness that may not be  
13 complete in its presentation of facts.

14           THE WITNESS: Yeah. That's --

15           Well, counsel has anticipated my response,  
16 which is it's -- It's very hypothetical. It's  
17 difficult for me to be able to respond with any  
18 precision to the request.

19           Q.       (By Mr. Krugman) Yeah. But, I mean,  
20 it -- I think it's --

21           A.       What I -- What I can say --

22           Q.       Go ahead.

23           A.       -- is that they still may be in compliance  
24 with fair use. That's -- That's a separate  
25 determination.

1 Q. Well, we --

2 A. The -- The policy is one thing. The law  
3 is another, but the policy is the university policy,  
4 and we expect them to follow it.

5 Q. Well, does -- To the extent that a -- a  
6 professor fails to follow university policy, how  
7 would the --

8 And when you talk about university --

9 A. Right.

10 Q. -- policy, you're talking about --

11 A. Yes, yes.

12 Q. -- Exhibit 4 and the fair use --

13 A. Right.

14 Q. -- checklist --

15 A. Yes.

16 Q. -- contained therein.

17 MR. ASKEW: My objection again to that's a  
18 portion of the policy.

19 THE WITNESS: Right.

20 MR. ASKEW: But please answer the  
21 question.

22 THE WITNESS: That's so. Yes. But  
23 there's no question yet.

24 Q. (By Mr. Krugman) I -- I understand, and  
25 I would --

1           A.     Okay.  Yes.  Okay.

2           Q.     -- request that Mr. Askew at least wait  
3 until the question, how poorly phrased, has been  
4 completed.

5           A.     Think so.

6           MR. ASKEW:  And now I've forgotten the --  
7 Yeah.  Scroll up.  Okay.

8           THE VIDEOGRAPHER:  I only have one minute  
9 of tape left.

10          MR. KRUGMAN:  Okay.  Why don't we --  
11 We're about out of tape, so let's take a break  
12 and then --  And then I will rephrase the  
13 question.

14          THE VIDEOGRAPHER:  This concludes Tape No.  
15 1.  9:28 a.m.  We're off the record.

16                   (Recess from 9:28 a.m. to 9:38 a.m.)

17          THE VIDEOGRAPHER:  This is Tape No. 2.  
18 9:38 a.m.  We're on the record.

19          Q.     (By Mr. Krugman)  Now do you understand  
20 that the fair use checklist applies to works that a  
21 professor would want to use in -- in a class  
22 irrespective of whether it's being provided in hard  
23 copy or on electronic reserve?

24          A.     Yes.

25          Q.     So this fair use checklist is something

1 that a professor is expected to complete and retain a  
2 copy of in all --

3 A. Yeah.

4 Q. -- instances whenever --

5 A. That is our policy. Yes.

6 Q. -- whenever a work is being provided  
7 either physically --

8 A. Yeah.

9 Q. -- or electronically to --

10 A. Yes.

11 Q. -- students?

12 A. Yes.

13 Q. And it's your understanding that the  
14 completion of the fair use checklist by professors,  
15 when that is done, that allows the university to be  
16 compliant with federal copyright law --

17 MR. ASKEW: I'll object to form.

18 Q. (By Mr. Krugman) -- with respect to  
19 materials that are being provided to students either  
20 physically or electronically?

21 MR. ASKEW: I'll object to the form of the  
22 question as vague and not -- not in compliance  
23 with what I think the testimony's been so far.

24 THE WITNESS: The checklist is a tool to  
25 be helpful to professors in determining fair use

1           is my understanding of the -- the purpose of the  
2           checklist.

3           Q.       (By Mr. Krugman)  And is it your  
4           understanding that if a professor completes a  
5           checklist and a majority of the factors weigh in  
6           favor of fair use, that the professor may then use  
7           that work --

8           A.       Yes.

9           Q.       -- without payment of a license fee or --

10          A.       Yes.

11          Q.       -- permission fee to the publisher or  
12          other copyright owner?

13          A.       Right.  As --  As it has always been, yes,  
14          the case --

15          Q.       And --

16          A.       -- in my professional career.

17          Q.       When you say it's always been the case,  
18          what is --

19          A.       I mean, fair -- fair use predates  
20          electronic reserves, and there has always been --  
21          You know, as long as there's been copyright law  
22          around fair use, we've been expected as faculty  
23          members to go through and make these determinations.

24          Q.       I -- I understand that.

25          A.       Okay.

1           Q.     But have -- have you -- are you aware --  
2                    Have -- Have any of the universities that  
3 you were at prior to the Georgia State, are you aware  
4 that they utilized a fair use checklist in order to  
5 allow those determinations to be made?

6           A.     I don't recall any of them having this  
7 specific tool available to faculty, but I do recall  
8 having the expectation placed on us that we would  
9 comply with fair use.

10          Q.     And this fair use checklist is a tool  
11 that -- that the university uses in order to,  
12 hopefully, ensure compliance with federal copyright  
13 law?

14          A.     That's -- That's how I would paraphrase  
15 it. Yeah.

16                   And actually, again, this is a board --  
17 This is university system policy, so this is a tool  
18 that's been provided to the 35 institutions, the  
19 faculty members of the 35 institutions to facilitate,  
20 to make -- to make it easier to them, document how  
21 they've complied with fair use.

22          Q.     If the evidence in this case showed  
23 instances of professors not completing a fair use  
24 checklist prior to utilizing a work, how would the  
25 university determine whether those professors are

1       comporting with the requirements of --

2           A.     Right.

3           Q.     -- federal copyright law prior to using  
4 particular works?

5           A.     The -- The question's too vague and  
6 hypothetical for me to be -- be able to provide a --

7           Q.     So --

8           A.     -- reasonable response.

9           Q.     So do you know of any way that the  
10 university could determine whether individual  
11 professors are complying with federal copyright law  
12 if those professors are not completing a fair use  
13 checklist in advance of using a particular  
14 copyrighted work in a class?

15          A.     Request clarification of the question.  
16 It's -- It's almost circular (indicating).

17          Q.     Well, I'm just -- You know, you have  
18 professor who doesn't complete the fair use  
19 checklist --

20          A.     Yeah. Okay.

21          Q.     -- and ignores the policy and --

22          A.     Right.

23          Q.     -- either make -- you know, and -- and  
24 makes physical copies of works and provides those --

25          A.     Okay.

1 Q. -- to the students. Is there --

2 A. Okay.

3 Q. Is there any way that the university, you  
4 know, any procedure or any way that the university  
5 has to -- to ensure compliance by such a professor  
6 with federal --

7 A. Okay.

8 Q. -- copyright law?

9 A. Okay. I'll answer the question as I  
10 believe I understand it, which is if we had a faculty  
11 member that we determined was not following the  
12 policy, we would take action to make every effort to  
13 bring that individual in compliance with the policy.

14 Q. And what would -- What would those  
15 efforts or what could those efforts be?

16 A. It's -- It's going to depend on the  
17 nature of the noncompliance, if you will. It could  
18 be as simple as a conversation that the department  
19 chair has with the faculty member and says, look.  
20 This is important. You need to do it. Do it.

21 And my assumption is 99 times out of a  
22 hundred, that will be sufficient.

23 Q. Uh-huh. Do you understand that it would  
24 be within your authority to order a particular  
25 professor who was not complying with the policy to,

1 in the future, do so?

2 A. That -- That is within my authority. It  
3 probably would not require a heavy-handed action like  
4 that to -- to achieve success, but I -- that -- That  
5 is within my authority.

6 Q. And it's certainly within your authority  
7 to direct the faculty at the university to comply  
8 with federal copyright law?

9 A. Absolutely. Yeah.

10 Q. If you concluded that a course reading  
11 excerpt posted on the ERes system was infringing the  
12 copyright of the owner, you would order that it be  
13 removed, would you not?

14 A. We would take appropriate action to be in  
15 compliance with the law.

16 Q. And that would either be removal of the  
17 work or a payment of some license fee or --

18 A. It -- it --

19 Q. -- to the owner?

20 A. Those are two of the approaches available.  
21 There -- There may be others.

22 I would have to seek the advice of legal  
23 counsel to determine what our best and most  
24 appropriate action would be, but the ultimate goal  
25 and the ultimate outcome would be to comply with the

1 law.

2 Q. Are you familiar with the university's  
3 uLearn system?

4 A. Not in great detail. I'm -- I'm aware  
5 that we have it as a tool, but I don't actually know  
6 the functionality of the tool.

7 Q. Yeah. If -- If you were to learn that a  
8 professor was infringing the copyright of the owner  
9 by posting a reading excerpt on the university's --

10 A. Uh-huh.

11 Q. -- uLearn system, would you direct that it  
12 be removed?

13 A. Of course.

14 MR. ASKEW: I'll object to form of the  
15 question as assuming facts not in evidence such  
16 as the university's uLearn system.

17 THE WITNESS: We will comply with the law.

18 Q. (By Mr. Krugman) Now if the Court in this  
19 case concluded that a course reading excerpt posted  
20 to the university's ERes system was infringing the  
21 copyright of the owner and ordered its removal, you  
22 would comply with the Court's directive?

23 A. Again, we comply with the law. You know,  
24 we -- we have -- We're not operating above or beyond  
25 the law.

1 Q. And it would certainly be within your  
2 authority as president to direct the employees at the  
3 library who administer the electronic reserve system  
4 to remove such an excerpt?

5 A. It would be within my authority to do so.

6 Q. And faculty members or library employees  
7 who fail to follow your directive could be subject to  
8 disciplinary action?

9 A. They could be. Yes.

10 Q. Now if the Court in this case were to  
11 issue an injunction ordering you in your capacity --

12 A. Uh-huh.

13 Q. -- as university president to bring the  
14 practices of -- at -- at Georgia State into  
15 compliance with federal copyright law, you would  
16 order that the appropriate personnel at Georgia State  
17 do so, correct?

18 MR. ASKEW: I'll object to the question  
19 again as being vague and assumes facts not in  
20 evidence.

21 MR. KRUGMAN: Okay.

22 MR. ASKEW: And assuming that such an  
23 injunction would ever be issued, which I don't  
24 think it would; but I would object to the  
25 question.

1 THE WITNESS: And my own statement is that  
2 the question seems to make a presumption that  
3 has not been established, therefore, is  
4 irrelevant.

5 Q. (By Mr. Krugman) Okay. Well, I'm -- I'm  
6 simply asking if the Court were to do that, if the  
7 Court were to order you in your capacity as president  
8 of Georgia State --

9 A. I'll -- I'll state again for the record.  
10 We will comply with the law. We believe we are in  
11 compliance with law now. We will continue to comply  
12 with the law.

13 Q. Yeah. And if the Court concluded that you  
14 are not in compliance with the law and ordered you to  
15 do something, you would --

16 A. We will --

17 Q. -- undertake to do that?

18 A. -- comply with the law. We do not operate  
19 outside the law.

20 MR. KRUGMAN: Thank you.

21 (Plaintiff's Exhibit 5 was marked for  
22 identification.)

23 Q. (By Mr. Krugman) Dr. Becker, I've handed  
24 you what's been marked as Becker Exhibit No. 5  
25 and which was printed from the Georgia State website.

1           A.     Right.

2           Q.     And can you identify this as a portion of  
3 the university policies.

4           A.     It is.  In fact, it's a university policy  
5 on intellectual property --

6           Q.     Yeah.

7           A.     -- policy 4.00.08.

8           Q.     And it was approved on October 7th of  
9 2010?

10          A.     That's correct.

11          Q.     Approved by the senate and became  
12 effective that date?

13          A.     Yes.

14          Q.     And a portion of the policy states that,  
15 "The University recognizes and encourages the  
16 publication of scholarly works as an integral part of  
17 teaching, research, and service.  The University  
18 acknowledges the rights held by individuals who  
19 publish articles, pamphlets, books, and other works  
20 created through individual effort and initiative that  
21 are protected by copyright."

22                    You see that?

23          A.     Yes.

24          Q.     Then it goes on to say that, "The  
25 University also recognizes that some publications may

1 result from work supported, either partially or  
2 completely, by the University."

3 A. Right.

4 Q. And generally, while the university  
5 retains the rights to intellectual property developed  
6 at the university, the university releases rights in  
7 scholarly works, as such are defined in this policy,  
8 to the creator of such works.

9 That last statement is -- just so I  
10 understand it, means if someone -- a professor writes  
11 a book or an article for publication, the professor  
12 retains title to that work?

13 A. Well, I'll give it in very practical  
14 terms.

15 As a faculty member, as an author, when  
16 you go to publish your work, you have the authority  
17 to release copyrights or to release some property  
18 rights, so most journals, for example, and book  
19 publishers require as a condition of publication your  
20 material that you assign it to them.

21 And so this gives the faculty member the  
22 authority to do that without requiring presidential  
23 or other formal approvals.

24 Q. Thank you. I understand that now.

25 A. Okay.

1           Q.     Why was this policy adopted last year, if  
2 you -- if you know?

3           A.     In general terms, the -- you always  
4 have -- You know, these intellectual property  
5 policies have been around for a long time. This is  
6 just trying to clarify. In particular, the specifics  
7 of this are -- are not related to the copyright  
8 issues at all.

9                     The most issue confronting universities  
10 around intellectual property are the, if you will,  
11 the fiduciary opportunities for an individual faculty  
12 member around certain intellectual property such that  
13 it may become a product or a company; and so seeking  
14 clarification on those matters has been deemed  
15 important to minimize future litigation over who  
16 owned the intellectual property.

17                     That's my understanding.

18           Q.     Okay. As president of the university, do  
19 you believe it is true that Georgia State recognizes  
20 and encourages the publication of scholarly works as  
21 an integral part of teaching, research, and service?

22           A.     Absolutely.

23           Q.     And do you believe it is true that Georgia  
24 State acknowledges the rights held by individuals who  
25 publish articles, pamphlets, books, and other works

1 created through individual effort --

2 A. Yes.

3 Q. -- and initiative that are protected by  
4 copyright?

5 A. Yes.

6 Q. Okay. Assume that the evidence in this  
7 case revealed that the Georgia State University  
8 electronic reserve system is being used by professors  
9 to post multiple chapters of copyrighted works  
10 without getting permission from or paying license  
11 fees to the owners of the copyrights. Assume that is  
12 the evidence.

13 Do you believe that such conduct, that  
14 posting multiple chapters of copyrighted works and  
15 making them available without getting permission from  
16 or paying license fees acknowledges the rights held  
17 by individuals who publish articles, pamphlets,  
18 books, and other works created through individual  
19 effort and initiative that are protected by  
20 copyright?

21 MR. ASKEW: Objection. Vague and  
22 indefinite.

23 THE WITNESS: You left out fair use. If  
24 they went through the procedures of fair use and  
25 they cite the sources of the material,

1           there's -- There's no inconsistency or --

2           Q.       (By Mr. Krugman) All right.

3           A.       -- incongruity.

4           Q.       What if there were instances where  
5 professors did not undertake a fair use analysis  
6 and -- and posted multiple chapters of copyrighted  
7 works?

8           A.       That's -- The question is: Is fair use  
9 in play in that case or not?

10                   And I can't answer the question without  
11 knowing the further specifics.

12                   (Plaintiff's Exhibit 6 was marked for  
13 identification.)

14                   MR. KRUGMAN: Oh, that goes to -- I'm  
15 sorry.

16                   THE WITNESS: Thank you.

17           Q.       (By Mr. Krugman) You're -- You're  
18 familiar with the Georgia State University faculty  
19 handbook, Dr. Becker?

20           A.       Again, I've not read it cover to cover;  
21 but I'm familiar that we have a faculty handbook.

22           Q.       Yeah.

23           A.       Yes. And I've read parts of it.

24           Q.       And you -- You're aware that it serves as  
25 a source of information about university and Board of

1 Regent's policies that relate to Georgia State  
2 University faculty members; is that correct?

3 A. Yes.

4 Q. And Exhibit 6 that I've handed you, I will  
5 represent is a -- is a portion of the faculty  
6 handbook --

7 A. Yes.

8 Q. -- as it appears on the Georgia State  
9 website --

10 A. Right.

11 Q. -- as of April 21st, 2011?

12 A. That's the date on the page. Yes.

13 Q. Yeah. And this handbook can be accessed  
14 on-line by professors at the university?

15 A. Yes.

16 Q. And am I correct that the university  
17 endeavors to provide the faculty at Georgia State  
18 accurate information in the handbook as it is posted  
19 on the website?

20 A. It -- It endeavors to. I can't say that  
21 it's necessarily up to the minute accurate because  
22 there are delays in how these things posted, but  
23 it -- it makes an effort to provide accurate and  
24 current information.

25 Q. Yeah. On Page 1 of Exhibit 6 it notes

1 that, "All faculty are responsible and accountable  
2 for the information contained in Section 200 and  
3 Section 300 of this Faculty Handbook" and --

4 A. Yes.

5 Q. And those sections deal -- Section 200  
6 deals with Georgia State University; is that correct?

7 A. It does.

8 Q. And Section 300 addresses faculty  
9 personnel policies?

10 A. It does.

11 Q. If you turn in past the table of contents  
12 in this book -- in this exhibit, this will be the --  
13 I think the eighth page in the -- in the document.  
14 There's a copy of a letter from you as university --

15 A. Yes.

16 Q. -- present -- president to -- to your  
17 colleagues at the university; is that correct?

18 A. There is. Yes.

19 Q. And the letter states, "Dear colleagues:  
20 The Georgia State University Faculty Handbook serves  
21 as a source of information about University and Board  
22 of Regents' policies that relate to Georgia State  
23 University faculty members...."

24 And you encourage all to review the  
25 handbook; is that correct?

1 A. It -- It is.

2 Q. Now if you could, turn to -- turn to the  
3 next page --

4 A. (Witness complies with request of  
5 counsel.)

6 Q. -- in -- in the exhibit.

7 A. Right.

8 Q. And it's one that -- It talks about  
9 faculty duties and responsibilities.

10 A. It does.

11 Q. You see that?

12 A. Yes.

13 Q. And this is in Section -- it's in -- the  
14 300 article of this --

15 A. Uh-huh.

16 Q. -- brochure.

17 A. Right.

18 Q. And --

19 A. This is -- This is 312.

20 Q. Yeah. And 312 states that, "Broadly  
21 defined, faculty fulfill three primary functions at  
22 Georgia State University" -- you see that --

23 A. Yes.

24 Q. -- "teaching, research, and service"?

25 A. Yes.

1 Q. And the Section 312.01 of this handbook  
2 address the -- the teaching function --

3 A. Yes.

4 Q. -- for faculty at Georgia State?

5 A. Correct.

6 Q. And 312.01 begins on -- It's Page 1 of 18  
7 and goes down to near the bottom of the third page;  
8 is that correct?

9 A. That appears to be correct. Yes.

10 Q. And you can review this. But am I correct  
11 that in this section regarding teaching, that  
12 there's -- there's no mention of the University  
13 System of Georgia policy on use of copyrighted works  
14 in education and research?

15 A. I would need to review this to be able to  
16 conclude that.

17 Upon first review I don't see a specific  
18 mention. Yes.

19 Q. And then the next section of this  
20 beginning at the bottom of Page -- of Page 3 of 18 of  
21 this portion of the exhibit addresses research, and  
22 that's 312.02; is that correct?

23 A. That is correct.

24 Q. And the research portion, which is 312.02,  
25 goes through Page 18 of this portion of the exhibit;

1 is that correct?

2 A. One second. That all can use research  
3 work.

4 It appears to go to the top of Page 15 out  
5 of 18 where services comes up as 312.03.

6 Q. Okay. Thank you.

7 A. Yeah.

8 Q. And then service being the third function  
9 begins at 312.03 --

10 A. Right.

11 Q. -- and goes through Page 18; is that  
12 correct?

13 A. Right.

14 Q. At 312.02, which is Page 3 of 18 of  
15 this --

16 A. Yes.

17 Q. -- it states that, "Faculty members are  
18 expected to participate in scholarly and research  
19 activities which enhance their professional  
20 development and contribute to their disciplines."

21 You see that?

22 A. I do.

23 Q. And that -- And that is an expectation of  
24 faculty at the university; is that correct?

25 A. That is correct.

1 Q. And -- And that's particularly true  
2 because Georgia State University is a -- is a  
3 research --

4 A. We are designated as a research university  
5 by the Board of Regents of the University System of  
6 Georgia. That is correct.

7 Q. And professors' participation in scholarly  
8 and research activities is critical to a university  
9 attaining the goal of being a research university; is  
10 that correct?

11 A. That is correct. Yes.

12 Q. If you turn to Page 4 of 18 of this  
13 document, you'll see in Section 312.02.02 --

14 A. Uh-huh.

15 Q. -- it's a copyright policy, and I will  
16 represent to you that -- that this provides a link to  
17 the university's system --

18 A. Okay.

19 Q. -- University System of Georgia website  
20 that Exhibit 4 --

21 A. Right.

22 Q. -- is contained on. But the entire policy  
23 is not itself set forth in --

24 A. No. There's --

25 Q. -- in the handbook.

1           A.     I would characterize that as a hot link to  
2 the document.  Yes.  Likewise, with 312.02.03 on the  
3 intellectual property policy.

4           Q.     Okay.  You can --  If you click on this  
5 link, then you -- then that will take you to --

6           A.     I believe what you've referred to as  
7 Becker 5.

8           Q.     Yes, sir.

9           A.     Yes.

10          Q.     And so the --  The link to the copyright  
11 policy is contained in the section that deals with  
12 research, as distinguished from teaching; is that  
13 correct?

14          A.     It appears to be the case.  Yes.

15          Q.     And if you can now turn to the last pages  
16 of this exhibit --

17          A.     (Witness complies with request of  
18 counsel.)

19          Q.     -- and -- which begins --  It's --

20          A.     This is section?

21          Q.     313 --

22          A.     313.  Yes.

23          Q.     -- "Other Duties and Responsibilities."

24          A.     Uh-huh.  Yes.

25          Q.     And in 13.01, which is contained in the

1 current faculty handbook, there references "Agreement  
2 On Guidelines for Classroom Copying in Not-for-Profit  
3 Educational --

4 A. Uh-huh.

5 Q. -- "Institutions with Respect to Books and  
6 Periodicals."

7 And it goes on to talk about the -- "The  
8 purpose of the following guidelines is to state the  
9 minimum and not the maximum standards of educational  
10 fair use under Section 107 of H.R. 2223."

11 A. Uh-huh.

12 Q. "The parties agree that the conditions  
13 determining the extent of permissible copying for  
14 educational purposes may change in the future, that  
15 certain types of copying permitted under these  
16 guidelines may not be permissible in the future --

17 A. Uh-huh.

18 Q. -- "and conversely that in the future,  
19 other types of copying not permitted under these  
20 guidelines may be permissible under revised  
21 guidelines."

22 And then it references "Regents Guide to  
23 Understanding Copyright and Fair Use."

24 A. Uh-huh.

25 Q. And then it goes on to talk about

1 guidelines for single copy for teachers, and then  
2 further down under B, "Multiple Copies for  
3 Classroom --

4 A. Uh-huh.

5 Q. -- Use." And then goes on to talk about  
6 brevity --

7 A. Uh-huh.

8 Q. -- spontaneity, and cumulative effect.  
9 Do you see that?

10 A. I do.

11 Q. And you would agree that these guidelines  
12 are different than Becker Exhibit 5, which is the  
13 University System of Georgia policy on copyright?

14 A. It would suggest to me that this is text  
15 that predated the current policy and that this has  
16 not been updated to comport with the revised policy.

17 Q. Now do you know whether these guidelines  
18 that -- in Becker Exhibit No. 6 that begin on page --

19 A. Right.

20 Q. -- under Page 1 of 4 under other duties  
21 and responsibilities are -- are still in effect at  
22 Georgia State?

23 A. Well, these are guidelines, so it's --  
24 It's not specifically a policy, so there's not a  
25 direct contradiction.

1           This is a set of guidelines that were  
2 developed before the policy was developed. So the  
3 policy is what they're expected to comport with, but  
4 this may help them in understanding their evaluation  
5 of fair use.

6           Q.     Is there any reference in Section 3.301 to  
7 the checklist that I understand is a --

8           A.     Well, it depends on what is --

9           Q.     -- an important part of the policy?

10          A.     Where it says, "See 'Regents Guide to  
11 Understanding Copyright and Fair Use'" --

12          Q.     Yeah.

13          A.     -- I don't -- I don't know where that  
14 goes.

15          Q.     I'll represent to you that it goes  
16 nowhere. It goes -- And it does not -- It does not  
17 go to Becker Exhibit 5.

18          A.     Uh-huh.

19          Q.     How would a professor teaching, currently  
20 teaching at Georgia State and using the faculty  
21 handbook know what policy applies if he or she wants  
22 to provide copies of works to students or multiple  
23 copies of works to students in a class either  
24 physically or in electronic format?

25          A.     Again, at the time that the -- the new

1 policy was put into place, all faculty were made  
2 aware of it. We provided training for them, so they  
3 were brought up to date with the -- the current, in  
4 effect policy; and that is now our culture and our  
5 operating procedure.

6 Q. Okay. Is it your understanding that all  
7 faculty members at Georgia State under -- undertook  
8 training in the new policy?

9 A. It's my understanding that they were  
10 expected to. I can't vouch for every single  
11 individual, but that was the expectation.

12 Q. Would it concern you that if -- that if a  
13 number of faculty members did -- did not participate  
14 in the training under the new copyright policy?

15 A. Not if they were familiar with and  
16 understood the policy, you know. It's if the policy  
17 itself is clear and understood. We would prefer that  
18 they all participate in the training, but what is  
19 most important is that they understand and they  
20 operate by the policy.

21 Q. Would it concern you that if individual  
22 professors neither read the policy nor under --  
23 undertook training offered by the university?

24 A. It would be a cause of concern.

25 Q. And I believe you may have answered this

1 question for me before. But it's your understanding  
2 that the checklist applies in any instance when a  
3 professor desires to distribute a copyrighted work to  
4 a student either in physical form or electronically,  
5 and that's the checklist that's contained in  
6 Exhibit --

7 A. Any instance is too vague and too broad  
8 for me to know exactly what sort of things you're  
9 anticipating or attempting to cover.

10 Q. It's actually Becker Exhibit 4 rather than  
11 5.

12 A. It is Becker Exhibit 4, and the checklist  
13 comes as an introduction to fair use checklist, and  
14 it says, "The fair use checklist is a tool to assist  
15 you in making a reasoned and balanced application  
16 of... fair use factors in determining whether a given  
17 use of the work is a fair use."

18 So, again, the -- the legal requirement is  
19 to comply with fair use. This is a tool for helping  
20 faculty members make that determination.

21 Q. Okay. And it's your expectation as  
22 president of the university that faculty members, in  
23 fact, will complete and retain a copy of the fair use  
24 checklist in every instance in which they desire to  
25 use a copyrighted work?

1 MR. ASKEW: I'm going to object to the  
2 question as having been asked more than once  
3 already.

4 THE WITNESS: I don't see a need to repeat  
5 questions nor --

6 Q. (By Mr. Krugman) Well, you may --

7 A. -- answer.

8 Q. (By Mr. Krugman) You may answer.

9 A. My testimony is whatever it is I said  
10 before.

11 Q. Yeah. If you can -- That's your  
12 expectation, Dr. Becker, is it not?

13 A. If that's what I said, yes.

14 Q. Going back to Exhibit No. 6, which is the  
15 faculty handbook --

16 A. Yes.

17 Q. -- and this -- There was under other  
18 duties and responsibilities --

19 A. Yes.

20 Q. -- if you can take a look at --

21 A. It's three --

22 Q. -- at that.

23 A. -- 313? It's --

24 Q. Yeah. And you go to 313.05.

25 A. Yes. Ethical behavior with regard to

1 complimentary textbooks.

2 Q. Right. And this was -- At least the  
3 handbook states that the University Senate passed the  
4 following resolution on February 2 of 1989.

5 A. Yes.

6 Q. And is it your understanding that this  
7 Section 13.05 regarding ethical behavior with regard  
8 to complimentary textbooks remains --

9 A. Right.

10 Q. -- in effect at the university?

11 A. I believe it does.

12 Q. And this section of the handbook's -- in  
13 the resolution passed by the university senate  
14 provides that, "The distribution of complimentary  
15 textbooks is an important part of the process whereby  
16 professors review the full range of instructional  
17 materials available for their courses. However, the  
18 integrity of this process must be respected." And --

19 A. Yes.

20 Q. -- do you agree with that statement?

21 A. Yes.

22 Q. Do you agree that selling complimentary  
23 copies of textbooks adversely effects the entire  
24 academic community, as stated --

25 A. Well, as --

1 Q. -- in 13.05?

2 A. Right. Yeah. The policy says it would be  
3 bad form, so to speak. It's not a -- a procedure  
4 that we encourage --

5 Q. And --

6 A. -- or a practice that we encourage.

7 Q. Yeah.

8 A. I'm sorry.

9 Q. And this 13.05 also states that,  
10 "Professor-authors are deprived of economic return  
11 and royalties, and incentives to write textbooks are  
12 diminished."

13 Do you agree with that statement in the  
14 faculty handbook --

15 A. I -- I can understand --

16 Q. -- that addresses --

17 A. I can --

18 Q. -- ethical behavior with regard to --

19 A. What I --

20 Q. -- complimentary --

21 A. -- can say is --

22 Q. -- textbooks?

23 A. -- I can understand why the faculty who  
24 crafted this version of the policy chose that  
25 language, but it perhaps is a bit strong a statement.

1 Q. Oh. And how is it a bit strong?

2 A. The number of complimentary textbooks that  
3 are distributed that would go on the market and be  
4 sold would probably not have a huge financial impact  
5 on the process.

6 Again, this was a faculty statement as an  
7 ethical standard for their colleagues not to partake  
8 in that process; but that personally I believe the  
9 economic consequences, if people were to do that,  
10 would be rather minor to the publishers; but that's  
11 immaterial. The -- what --

12 What it says here and is most important is  
13 that we think it is not good practice to be selling  
14 these complimentary copies.

15 You know, a faculty member gets a  
16 complimentary copy either from an agent of the seller  
17 or in the mail. It's a single copy. A few -- You  
18 know, these go to instructors of certain types of  
19 courses for the particular textbook.

20 This is not going to drive the textbook  
21 market, but we do think it -- You know, the policy  
22 states that the university community adopted 22 years  
23 ago. Plus, that we think it's bad practice.

24 Q. Do you -- Do you agree that, as stated in  
25 13.05, that, "Selling complimentary copies violates

1 the tradition of respect by professors for the  
2 intellectual work of their colleagues and for the  
3 textbook publishers"?

4 A. Violates the tradition of respect.  
5 Haven't really thought about it in that language  
6 before so --

7 Q. You have no opinion one way or the other?

8 A. Not at this time.

9 Q. Do you agree that, "The future of  
10 availability of complimentary textbooks may be  
11 seriously jeopardized by the reluctance of publishers  
12 to risk further financial loss," as stated in 13.05?

13 A. What I can say is that as someone who  
14 received complimentary textbooks as a faculty member,  
15 I never sold them. Actually -- I actually don't  
16 know that I know anybody personally who has sold  
17 them. Again, I think it's bad ethical behavior.

18 I'll reserve judgment on the economic  
19 impacts, not ever seeing -- having seen an economic  
20 analysis of that sort of behavior. I'm skeptical.

21 Q. In -- In part, you're skeptical because  
22 you're dealing with a single --

23 A. Well, because we're dealing with a very  
24 small number of copies relative to the market for  
25 that product.

1 Q. Okay.

2 A. You know, there's very often that a  
3 producer of a product gives away samples, and that  
4 doesn't seem to diminish the market for the product.  
5 In fact, it may even support it.

6 Now if somebody were to resell  
7 that that's -- that's bad ethical behavior. Whether  
8 its going to economically destroy the market for that  
9 product, I'm skeptical.

10 Q. Uh-huh. Now if instead -- If instead of  
11 selling a complimentary textbook to a single student,  
12 a professor instead copied the entire work and  
13 provided that copy to students in -- either  
14 physically or in electronic form, would you in that  
15 instance agree that the professor-authors would be  
16 deprived of economic return in royalties?

17 MR. ASKEW: I would object to the  
18 question. Assuming facts not in evidence.

19 THE WITNESS: What I'd have to say is that  
20 I've never seen anybody do that. I have no  
21 knowledge of that ever happening. That's --  
22 That's not consistent with fair use.

23 Q. (By Mr. Krugman) But you would agree that  
24 if that were to occur, that the -- the consequence of  
25 that would be to deprive professor-authors of

1 economic return with respect to royalties that they  
2 might otherwise receive for the sale -- from a sale  
3 of the book to --

4 A. From that -- From that particular copy or  
5 that particular number of copies, yes.

6 Q. And would you agree that if such conduct  
7 were to become widespread, the incentives to write  
8 textbooks could be diminished?

9 A. It could be, but that's the problem with  
10 this -- with the question is, is it makes this  
11 presumption were it to become widespread.

12 I've been in universities since 1976.  
13 I've been a faculty member since 1985; and I've never  
14 seen this behavior or this conduct, so it -- it's  
15 a -- It seems like a stretch or a reach for me, an  
16 extreme stretch at that.

17 Q. Okay. You testified on direct about --  
18 about course packs.

19 A. Yes.

20 Q. Yeah. And course packs are -- are  
21 physical copies of excerpts of works that are --

22 A. A -- A set of collected works typically.

23 Q. That are printed and then --

24 A. Bound together.

25 Q. -- bound together and then made available

1 to students for purchase?

2 A. Yes.

3 Q. In -- In university bookstore?

4 A. That's typically the case. Yes.

5 Q. Okay.

6 A. Or it could be bookstores that are serving  
7 a university community. Not all bookstores are owned  
8 or operated by the university.

9 Q. Right. I -- I understand that.

10 A. Okay.

11 Q. And is your understanding in those that  
12 with respect to course packs, that permissions or  
13 either obtained fund or fees paid to the owner of the  
14 copyrights that are a part of the course pack  
15 material?

16 A. That's what I've been told. I've never  
17 actually used course packs in any of my teaching.

18 Q. But it's your understanding based on what  
19 you've --

20 A. That's what I've been told.

21 Q. -- that --

22 A. Yes.

23 Q. -- that the publishers who own the  
24 copyrights or other owners of the copyrights receive  
25 some payment for the reproduction of their works in

1 the course pack materials?

2 A. That's what I've been told. Yes.

3 Q. Okay. Okay. Assume the evidence in this  
4 case shows that a individual professor posted a  
5 collection or caused the library to post a collection  
6 of works on the Ereserve system at Georgia State for  
7 a course --

8 A. Yes.

9 Q. -- required the students taking that  
10 course to print out physical copies of the works that  
11 were posted on electronic reserve --

12 A. Yes.

13 Q. -- and then to bring those physical copies  
14 with them to each of the classes for which the works  
15 were assigned.

16 A. I'm following you.

17 Q. Okay. Okay. Do you see any functional  
18 difference between that practice and a professor's --  
19 the same professor's use of course pack materials --

20 A. Yes. There --

21 Q. -- for a class?

22 A. There's -- There's a functional  
23 difference.

24 Q. And what -- and what -- what is the --  
25 What is the functional difference?

1           A.     Again -- Again, the course pack is a  
2 physical product available to everybody for purchase  
3 as a set of collected works created as a unique  
4 entity. It is also a product that exists in  
5 perpetuity for sale or resale. That is different  
6 than having access to materials on-line.

7                     The access for Ereserves, first off, is --  
8 is tied to a specific timeframe. Even if it was  
9 printed out, it is not the same as the course pack.  
10 It is the same as if there had been a book on reserve  
11 and people had been asked to photocopy certain pages  
12 and bring those to class.

13           Q.     Okay. Any other functional differences  
14 that you can --

15           A.     Well --

16           Q.     -- think of?

17           A.     -- not at this moment, but reserve the  
18 right to think of them.

19           Q.     Yeah. Let's say in one semester a student  
20 took a particular course, printed out -- printed out  
21 all the materials for the course, and bound them  
22 together, and stapled them together --

23           A.     Uh-huh.

24           Q.     -- and that -- With respect to that  
25 collection of materials --

1           A.     Uh-huh.

2           Q.     -- do you -- do you -- can you identify  
3 any difference between that collection and a course  
4 pack of the same --

5           A.     Well, the student --

6           Q.     -- work?

7           A.     The student's making his own -- his or her  
8 own individual determination. This is the course  
9 pack has economic value because it has been packaged  
10 and produced bound as a product for that course and  
11 has been sold, and so there exists, therefore, a  
12 market for that product.

13                   The student's action is an independent and  
14 individual action and -- And it is not responding to  
15 a market. It is not intended for a market, as you  
16 have phrased the question.

17           Q.     Well, now one difference between the two,  
18 as you understand use of course packs, is that in the  
19 course pack situation, publishers or other copyright  
20 owners would be paid for use of those materials that  
21 went into the course pack, correct?

22           A.     Again, I have not used course packs. I've  
23 been told that that happens.

24           Q.     In -- In the case of the use of the  
25 electronic reserve system where students print out

1 and bring with them to class the --

2 A. Right.

3 Q. -- the collection of works, that in those  
4 instances, the publishers and other copyright owners  
5 would not receive any payment?

6 A. Not if the documents fall under fair use.

7 Q. On -- If you go back to Exhibit 4, which  
8 is the --

9 A. Yes.

10 Q. -- a portion of the University System of  
11 Georgia copyright policy --

12 A. Yes.

13 Q. -- and the fair use checklist, and at --  
14 at Page 8 of 19, and Factor 4, which talks about  
15 effect on market for original --

16 A. Uh-huh.

17 Q. -- and factors that weigh in favor --

18 A. Yes.

19 Q. -- of fair use --

20 A. Yes.

21 Q. -- and weighs against fair use, and the  
22 factors at the top talk about no significant effect  
23 on market or potential market --

24 A. Right.

25 Q. -- for copyrighted work and use stimulates

1 market for original work.

2 A. Uh-huh.

3 Q. As president of Georgia State University,  
4 do you have an understanding as to what the market is  
5 that is set forth in those two subfactors?

6 A. As a faculty member who has made these  
7 determinations in my own courses, I have an  
8 understanding.

9 Q. Yeah. And what -- what is -- What is  
10 that understanding?

11 A. Well, so I can give you examples from my  
12 own experience; but quite simply, the materials that  
13 I would distribute under fair use were situations  
14 where under no circumstances would I have expected  
15 the students to purchase a book or the -- a whole  
16 entity, but, rather, were taking a very specific  
17 slice for the precise purposes as covered under  
18 Factor 1, which is for teaching purposes.

19 But that it's -- it's -- were I not to use  
20 that document, I would not be -- create -- I would  
21 not go down another -- I would not be requiring the  
22 students to purchase something that they're going to  
23 go out -- in other words, my --

24 My determination of using that document is  
25 it is consistent with Factor 1, and it is not causing

1 somebody to lose the sale of something --

2 Q. Okay.

3 A. -- by me doing that.

4 Q. And did -- Okay. I think maybe then  
5 you -- you answered my question. The market is the  
6 market for the sale of the book?

7 A. The -- the sale of the -- Yeah. The  
8 sale -- The sale of the saleable unit, whatever the  
9 saleable unit may be.

10 Q. Yeah. Whether it be a book or a journal?

11 A. Right. Exactly. Yes.

12 Q. So --

13 A. Yes.

14 Q. And I take it you -- you do not understand  
15 the market in this instance to relate to a market for  
16 licensing fees or permission fees for use of a -- a  
17 segment of a copyrighted work?

18 A. It would seem to me that a licensing fee  
19 for something covered by fair use is much like paying  
20 a travel agent to do something for which there's not  
21 a required fee. You -- You're exercising an option  
22 out of some sort of convenience to pay somebody for  
23 something that is not required.

24 Q. Yeah.

25 A. Just like you pay a travel agent to book

1 your flights when you could have just as equally done  
2 it at a lower cost by not utilizing that service.

3 Q. Yeah.

4 A. It's a convenience.

5 Q. Well, it assumes a fair use determination  
6 in that instance, correct?

7 A. We have -- We are assuming a fair use  
8 determination.

9 Q. Yeah.

10 A. Yes.

11 Q. But all I'm asking is what you -- what the  
12 market is. And the market is a market for the sale  
13 of whatever the particular work is, as --

14 A. Well, again --

15 Q. -- as distinguished from a licensing fee  
16 or permission fee?

17 A. I'm not exactly sure what you mean by a  
18 licensing or a permission fee.

19 Again, people charge in some cases for  
20 things that are otherwise available for free. That's  
21 not the -- That's not the -- the way I'm thinking of  
22 the market. There -- there --

23 Yeah. I'll leave it at that.

24 Q. Dr. Becker, if the practices at Georgia  
25 State with respect to the Ereserve system deprived

1 authors of -- and publishers -- excuse me -- deprived  
2 authors and publishers of royalties or fees for  
3 licenses and permissions, if that was the effect of  
4 the practices at Georgia State, would you agree that  
5 some of the same concerns set forth in Section 13.05  
6 of dealing with ethical behavior with regard to  
7 complimentary textbooks could be implicated?

8 A. That's an absurd --

9 MR. ASKEW: I'll object to form of the  
10 question.

11 THE WITNESS: That's an absurd stretch.

12 No. I would not conclude that. That's --  
13 That's bizarre. That's absolutely bizarre,  
14 Counselor.

15 Q. (By Mr. Krugman ) And why do you say  
16 that's bizarre?

17 A. 'Cause I don't -- Even though I'm not  
18 trained in the law, I am trained in mathematics and  
19 logic; and I do not see the logical conclusion that  
20 you're attempting to draw under any circumstances.

21 Q. Georgia State's one of the four research  
22 universities within the University System of Georgia?

23 A. We have established that. Yes.

24 Q. Yeah. And a core mission, one of the core  
25 mission statements for research universities is a

1 commitment to wide-ranging research, scholarship, and  
2 creative endeavors that are consistent with the  
3 highest standards of academic excellence; is that  
4 correct?

5 A. That's correct.

6 Q. And last week, you -- you delivered the  
7 2011 state of the university address; is that  
8 correct?

9 A. That's correct.

10 Q. Okay. And that was delivered on April  
11 11th of last week, which I believe was --

12 A. Would have been Wednesday, I believe.

13 Q. And maybe that -- Maybe that was the  
14 13th, right?

15 A. Yeah. I -- it was -- I believe it was  
16 Wednesday. I don't -- I don't remember the exact  
17 date.

18 Q. Okay.

19 A. I could consult my calendar --

20 Q. Yeah.

21 A. -- if I turned on my smart phone, but --

22 Q. Okay.

23 A. -- it's not necessary.

24 Q. Not important.

25 A. Yes.

1 Q. And in your speech, you stated that the  
2 signature achievement of the past year was the  
3 crafting and the -- and adoption of Georgia State  
4 University's strategic plan for the next ten years;  
5 is --

6 A. I did --

7 Q. -- that correct?

8 A. I did state that. Yes. The -- The  
9 public speech is available to the public so --

10 Q. And the strategic plan has five goals; is  
11 that correct?

12 A. It is correct.

13 Q. And one of those goals is for Georgia  
14 State to become a leading public research university  
15 addressing the most challenging issues of the  
16 twenty-first century; is that correct?

17 A. Yes.

18 Q. And did you report in your speech that the  
19 Georgia State University faculty have already  
20 achieved recognition for their scholarly and creative  
21 works?

22 A. I believe there's a sentence to that  
23 effect in the speech. Yes.

24 Q. And that -- That was a correct  
25 statement --

1           A.     Yes.

2           Q.     -- was it not?

3                     Would you agree that the availability of  
4     scholarly journals and the viability of publishers of  
5     those journals and the publishers of academic books  
6     have been critical to the ability of the Georgia  
7     State University faculty to achieve recognition for  
8     their scholarly and creative works?

9           A.     I would agree that journals and books are  
10    among the important outlets for scholarly research.

11          Q.     And they're important to Georgia State  
12    University's ability to achieve its goal of becoming  
13    a leading public research university; is that  
14    correct?

15          A.     Yes.

16          Q.     And you received your Ph.D. in statistics  
17    from Penn State?

18          A.     Pennsylvania State University --

19          Q.     Right.

20          A.     -- August 1985.    Yes.

21          Q.     And you were an assistant professor of  
22    statistics at the University of Florida --

23          A.     That is correct.

24          Q.     -- for some time?

25                     And you were a senior fellow in

1 biostatistics at the University of Washington?

2 A. 1987 to '89.

3 Q. And you were a, I guess, assistant,  
4 associate, and then full professor of biostatistics  
5 at the University of Michigan?

6 A. Yes. Through the end of 2000.

7 Q. And then you became dean of the School of  
8 Public Health and professor of biostatistics at the  
9 University of Michigan?

10 A. January --

11 Q. Minnesota. I'm sorry.

12 A. University of Minnesota, January 1, 2001.  
13 That's correct.

14 Q. What is biostatistics?

15 A. It is the -- It is a subfield of the  
16 discipline of statistics with application -- an  
17 emphasis on applications to and the solution of  
18 problems in the health sciences.

19 Q. Okay. Then after the University of  
20 Minnesota, you went to the University of South  
21 Carolina?

22 A. I started there September 1, 2004, as  
23 executive vice president for academic affairs and  
24 provost, as well as professor of statistics.

25 Q. And your CV that's published on the

1 university website identifies three books that you  
2 coauthored?

3 A. Yes. Those were edited volumes. Yes.

4 Q. Okay. And you've either authored or  
5 coauthored more than 40 articles?

6 A. Yes. That would be accurate. Yes.  
7 Published in peer-reviewed outlets.

8 Q. And what are peer-reviewed outlets?

9 A. There is within the academy, when we talk  
10 about the importance of scholarship, one of the ways  
11 of evaluating the substance of one's work is that  
12 your peers have reviewed it and deemed it meritorious  
13 for publication in a -- in an appropriate venue.

14 Now the venues depend on the discipline;  
15 so in some venues, it would be scholarly journals.  
16 It could be edited volumes such as the volumes that I  
17 edited with Michael Sobel, who is a professor at  
18 Columbia University.

19 In other cases, it can be juried shows in  
20 the arts. In the case of computer science, it can be  
21 publications and proceedings volumes of certain  
22 conferences that have a certain level of prestige  
23 because of the review that takes place for  
24 presentation there.

25 Q. Publication in those works certainly

1 enhances and enhances one's reputation in the  
2 particular field?

3 A. Publications in certain journals, you  
4 know. The easiest way for me to say is that not all  
5 journals are viewed equivalently. The journals with  
6 the highest standards are considered -- Publication  
7 in those so-called premiere journals is a -- is a  
8 high bar and a significant achievement, just as  
9 publications with certain presses is a higher bar and  
10 a certain achievement than some others.

11 But I'd go on to say that I've had  
12 colleagues remark to me, a distinguished professor  
13 holds an endowed chair at Texas A&M who put it most  
14 succinctly, that publications in certain journals  
15 should require -- should be interpreted as a negative  
16 impact on your scholarship --

17 Q. Yeah.

18 A. -- because not all journals are viewed to  
19 be of quality; and in some cases, it can be a sign of  
20 poor work by publishing in journals that are not  
21 respected.

22 Q. Have you published in any such journals  
23 that you can recall?

24 A. I have refused to publish in many of them.

25 I had one paper in one journal that would

1 not -- Actually, I have two papers in two journals  
2 that would probably not be of the caliber of which  
3 I'm most proud.

4           However, I can say that the other measure  
5 of success in the academy is citation counts; and  
6 both of those papers have been cited, so perhaps  
7 occasionally the works do get noticed even in the  
8 lower prestige journals.

9           Q.     Okay. Is -- Are you familiar with Oxford  
10 University Press's reputation in the academic  
11 community?

12           A.     I am. I have owned volumes published by  
13 Oxford University Press, and I have reviewed  
14 for Oxford -- Oxford University Press.

15           Q.     It has a good reputation in academia, does  
16 it not?

17           A.     Oxford University, anything that includes  
18 Oxford University is generally considered a --  
19 reputable.

20           Q.     Would the same be true for Cambridge  
21 University?

22           A.     I would presume to be the case. I'm  
23 actually not familiar. In my particular discipline,  
24 I'm not familiar with Cambridge University's  
25 publications.

1 Q. Are you familiar with Sage Publications?

2 A. I -- Yeah. I am familiar with Sage,  
3 primary though monograph series that they've  
4 published in statistical and research methodology.

5 Q. And do you have any opinion regarding its  
6 reputation?

7 A. I would say in my discipline it doesn't  
8 carry the same prestige as -- as either Oxford or  
9 Cambridge.

10 Q. The first page of your CV identifies --

11 A. Uh-huh.

12 Q. -- you as a internationally recognized  
13 researcher in biostatistics and public health  
14 sciences.

15 A. It doesn't say that on my CV, but it  
16 probably says it on some university publication.

17 Q. Okay.

18 THE COURT REPORTER: Becker 7.

19 (Plaintiff's Exhibit 7 was marked for  
20 identification.)

21 THE WITNESS: Okay.

22 Q. (By Mr. Krugman ) I've handed you  
23 Becker --

24 A. Right.

25 Q. -- 7, which was a printout --

1           A.     Right.

2           Q.     -- from the website.

3                     And I take it on Page 1 this is what  
4 you're referencing?

5           A.     Right. That's the text the university has  
6 placed in front of my CV.

7           Q.     Okay.

8           A.     Yes.

9           Q.     And do you consider yourself to be an  
10 internationally recognized researcher in  
11 biostatistics?

12          A.     I believe that I am viewed that way within  
13 my community.

14          Q.     And when you say within your community,  
15 what --

16          A.     Biostatistics.

17          Q.     Okay. And if you turn to -- toward the  
18 back --

19          A.     Actually, you'll -- you'll see the --

20          Q.     -- it talks about the publications --

21          A.     Yes.

22          Q.     -- there. And that identifies the -- the  
23 books and at least some of the articles that you have  
24 either authored or coauthored --

25          A.     In fact --

1 Q. -- during --

2 A. -- I would add, Counsel, that on the fifth  
3 page in -- they're not numbered, so you'll have to  
4 count them. But on the fifth page in, it says  
5 explicitly that I have reviewed books for Academic  
6 Press, Harvard University Press, and Oxford  
7 University Press so in further evidence. Okay. So  
8 the --

9 Q. Thank you.

10 A. Yeah. The publications are --

11 Q. Yeah. It begins --

12 A. -- some ways in. Yes.

13 Q. Some ways in and Pages 1 of 3, and this  
14 is --

15 A. Yes.

16 Q. -- a list of at least --

17 A. Uh-huh.

18 Q. -- some, if not all, of your publications.

19 A. It's most of it. Yeah.

20 Q. And would you agree that the availability  
21 of the scholarly journals that your articles were  
22 published in contributed to your success in academia?

23 A. Yes.

24 Q. And contributed to your ability to obtain  
25 recognition internationally as a researcher in

1 biostatistics --

2 A. Yes.

3 Q. -- in public health sciences?

4 A. Yes.

5 Q. And -- And had the publishers of those  
6 journals and the journals themselves not existed, not  
7 been available, that your ability to succeed in  
8 academia and achieve international recognition in  
9 your field would have been severely hampered, would  
10 you --

11 A. That's -- Again, that -- that's an  
12 extreme stretch, because the discipline would have  
13 come up with some way for the work to be evaluated by  
14 our peers; and the publications of journals, I mean,  
15 some are published by society. Some are published by  
16 commercial publishers. They are -- They are a venue  
17 by which we make our material available.

18 Q. Okay. Let me -- let me state --

19 A. But -- But the question is saying they  
20 didn't exist is --

21 Q. Yeah. Let me say that --

22 A. Something -- Something would exist.

23 MR. ASKEW: Wait. Let him --

24 Q. (By Mr. Krugman) Let me state it --

25 MR. ASKEW: -- finish his answer.

1 MR. KRUGMAN: I'm sorry.

2 MR. ASKEW: Let him finish his answer,  
3 please.

4 Q. (By Mr. Krugman) No. I was just trying  
5 to --

6 A. Yeah. So --

7 Q. -- move it, and I was going to state it  
8 another way --

9 A. Okay.

10 Q. -- without --

11 MR. ASKEW: Well -- well --

12 Q. (By Mr. Krugman ) You agree that their  
13 presence and financial viability of publishers of --  
14 of these scholarly journals are certainly important  
15 to academic career advancement?

16 A. That's actually -- that --

17 MR. ASKEW: I'm going to object to the --

18 THE WITNESS: Okay.

19 MR. ASKEW: -- question --

20 THE WITNESS: Yeah.

21 MR. ASKEW: -- so that the witness could  
22 answer the previous question completely.

23 THE WITNESS: Well, the -- the --

24 MR. ASKEW: He was interrupted.

25 THE WITNESS: Now to conclude the previous

1           answers --

2           Q.       (By Mr. Krugman) Okay. I -- I apologize  
3 if I interrupted. I was just trying to move us  
4 along, 'cause I know you --

5           A.       Understood.

6           Q.       -- you would like to get out.

7           A.       Okay. The -- It's hard for me to believe  
8 that they wouldn't exist; but if they were not to  
9 exist, we would have some way of making our material  
10 available to be evaluated.

11                   Now if you'll -- To restate the next  
12 question is the existence of commercial publishers  
13 is -- their existence or not as being critical to the  
14 success is subject to -- is a subject for academic  
15 debate.

16                   You know, I could actually see a world  
17 where we would not have commercial publishers, and we  
18 would still be able to produce these materials,  
19 because the cost of the production and the difficulty  
20 in producing is so much lower today than when these  
21 norms were established within these disciplines; and  
22 that, in fact, a number of professional societies  
23 and/or individuals within specific disciplines have  
24 been actively exploring alternative outlets for  
25 making this material available while lowering the

1 cost of making it available to the people interested  
2 in having the material.

3 So I do not accept that the economic  
4 vitality of a specific publisher is absolutely  
5 essential to the success of the discipline in the  
6 future.

7 Q. Yeah. Well, my question wasn't --

8 A. It's -- That's the way I interpreted --

9 Q. No.

10 A. That's the way I interpreted your  
11 question.

12 Q. The second question was whether, you know,  
13 whether their presence and viability are at least  
14 important --

15 A. Oh.

16 Q. -- to academic career advancement.

17 Let me -- Let me state it another way.  
18 Are their presence and viability at least beneficial  
19 to academic career advancement?

20 A. They're beneficial at this time, but  
21 their -- The long range for that is up -- the  
22 subject of academic debate at this time, and I'm sure  
23 you're aware of such debates being active in various  
24 scholarly communities.

25 Q. Yeah. Yeah. Do you agree that it's

1 important for students to have access to the  
2 scholarly works that are -- that have been published  
3 in journals and -- of the type that you've published  
4 in?

5 A. Certainly there are things that -- Yeah.  
6 Yes.

7 Q. And would you agree that if access to  
8 those works were not available to -- to students,  
9 that that would be detrimental to the academic  
10 process?

11 A. Would it -- Yes.

12 MR. KRUGMAN: Why don't we take a break,  
13 and then I may be done but --

14 THE WITNESS: Okay.

15 THE VIDEOGRAPHER: 10:41 a.m. We're off  
16 the record.

17 (Recess from 10:41 a.m. to 10:49 a.m.)

18 (Plaintiff's Exhibit 8 was marked for  
19 identification.)

20 THE VIDEOGRAPHER: 10:49 a.m. Back on the  
21 record.

22 Q. (By Mr. Krugman) And, Dr. Becker, can you  
23 identify what's been marked as Becker Exhibit No. 8  
24 as the responses to requests to admit that you  
25 referred to earlier in response to my questions as

1 to --

2 A. Right. This is -- Oh. Yeah. This is --

3 Q. -- as to materials you had reviewed?

4 A. Right. This is Defendants' Objections and  
5 Responses to Plaintiffs' First Set of Requests for  
6 Admission.

7 Q. Yeah. And did you review a draft of this  
8 document prior to its being finalized?

9 A. Not that I recall.

10 Q. Okay. And I don't -- did -- did -- Well,  
11 let me ask you this. Go ahead. And I don't want you  
12 to reveal any communications that you had with  
13 counsel in reference to -- to this document.

14 But to the extent that there were requests  
15 directed to you in your official capacity as GSU  
16 president, did you review this -- the responses to  
17 those requests to ensure that those responses were  
18 accurate?

19 A. I would say that given my understanding of  
20 this document and my actual review of the document,  
21 the information in here is what I might call almost  
22 publicly available information.

23 I mean, this is straightforward  
24 information that would not necessarily request my  
25 direct input.

1           Q.     Okay. Did you -- Did you review the  
2 responses relating to you and conclude that any of  
3 those responses were incorrect?

4           A.     I have reviewed the document with --  
5 with -- in terms of responses relating to me, and I  
6 did not find any places where I thought it to be  
7 incorrect.

8           Q.     Okay. Did you find any places in the  
9 document -- Or did you review the document in  
10 reference to anyone else other than yourself?

11          A.     Only in that the -- There are items in  
12 here relating to lines of authority involving the  
13 provost, the dean of the library, and the vice --  
14 the -- J.L. Albert responsible for information  
15 systems and technology.

16                    So in the fact that there are references  
17 to me and reporting lines of those individuals, I  
18 reviewed those.

19          Q.     Yeah. And did you find any of those  
20 references to be inaccurate in any way?

21          A.     Well, I think our -- our responses,  
22 Georgia State University's responses are accurate.

23                   MR. KRUGMAN: That's all I have.

24                   MR. ASKEW: I have one --

25                   THE WITNESS: Okay.

1 MR. ASKEW: -- short question for you.

2 REDIRECT EXAMINATION

3 BY MR. ASKEW:

4 Q. President Becker, when a faculty member is  
5 reviewing material pursuant to the copyright policy  
6 and completing the checklist either in writing or  
7 mentally and concludes that the material that was  
8 being considered exceeded what is permitted by fair  
9 use, what are the alternatives available to that  
10 professor if the professor wants to use that material  
11 in the classroom or something like that material in  
12 the classroom?

13 A. Well, the professor could have a number of  
14 alternatives. The ones that immediately jump to my  
15 mind is they could pay for a fee to use that  
16 material, pay the fee to the copyright holder to use  
17 that material in an appropriate form, and that would  
18 depend on the material.

19 They could seek similar or equivalent  
20 information that is available in another form. That  
21 is -- That would be a fair use, so basically find an  
22 alternative.

23 Or they could just decide they're not  
24 going to use that material, that they instead might  
25 prepare lecture notes or just use their own lecture

1 to convey the material without providing the actual  
2 work as it is that's copied under copyright, so they  
3 may just choose not to use -- to introduce any  
4 material as such.

5 Q. Could the professor choose to have that  
6 material made available at the library reserve  
7 system?

8 A. Absolutely.

9 So in the case of, for example, there had  
10 been earlier questioning from the plaintiffs about  
11 books and the copying of books; and that's -- Books  
12 are not in my experience, as I said, photocopied and  
13 distributed. Books that are going to be made  
14 available, but not as a required are placed on  
15 reserve typically in the library for the duration of  
16 the course.

17 MR. ASKEW: That's all the questions I  
18 have.

19 MR. KRUGMAN: Okay. Just a couple of --  
20 couple of questions.

21 RECROSS-EXAMINATION

22 BY MR. KRUGMAN:

23 Q. Another option for the professor -- and it  
24 may be encompassed --

25 A. Uh-huh.

1 Q. -- within one that you described -- would  
2 be use -- use of a course pack?

3 A. Yeah. That would be one way to -- to make  
4 it available, that you could make materials  
5 available.

6 Q. Dr. Becker, are you aware of any instance  
7 of a professor completing a fair use checklist at  
8 Georgia State following adoption of the policy where  
9 that professor -- where -- where the --

10 A. Right.

11 Q. -- where the completed checklist weighed  
12 against fair use in -- under the policy at Georgia  
13 State would prohibit use of the material?

14 A. Now I -- I don't have the knowledge of  
15 specific evaluations of the checklist.

16 Q. Has anyone to this day advised you that  
17 that has occurred?

18 A. No.

19 Q. As a statistician, would you have any  
20 expectations as to the probability of -- as -- as to  
21 whether some percentage of checklists filled out by  
22 professors in connection with --

23 A. Well --

24 Q. This -- fair use analysis would --

25 A. Right.

1 Q. -- would yield a conclusion that would  
2 weigh against fair use?

3 A. As a statistician, I have healthy respect  
4 for data; and given no data, I would not subjectively  
5 supply a probability.

6 MR. KRUGMAN: That's all I have.

7 THE WITNESS: Okay.

8 MR. ASKEW: That would conclude this  
9 testimony by President Becker.

10 THE VIDEOGRAPHER: This concludes today's  
11 deposition. 10:55 a.m. We're off the record.

12 (Whereupon, the deposition was concluded  
13 at 10:55 a.m.)

14 (Pursuant to Rule 30(e) of the Federal  
15 Rules of Civil Procedure and/or O.C.G.A.  
16 9-11-30(e), neither a party nor the deponent  
17 having requested right of review of the  
18 deposition, the reading and signing of the  
19 deposition is waived.)  
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C E R T I F I C A T E

STATE OF GEORGIA:

COUNTY OF FULTON:

I hereby certify that the foregoing transcript was taken down, as stated in the caption, and the questions and answers thereto were reduced to typewriting under my direction; that the foregoing pages 1 through 145 represent a true, complete, and correct transcript of the evidence given upon said hearing, and I further certify that I am not of kin or counsel to the parties in the case; am not in the regular employ of counsel for any of said parties; nor am I in anywise interested in the result of said case.

This, the 27th day of April, 2011.

S. JULIE FRIEDMAN, CCR-B-1476

## 1 COURT REPORTER DISCLOSURE

2  
3 Pursuant to Article 10.B of the Rules and  
4 Regulations of the Board of Court Reporting of the  
5 Judicial Council of Georgia which states: "Each court  
6 reporter shall tender a disclosure form at the time  
7 of the taking of the deposition stating the  
8 arrangements made for the reporting services of the  
9 certified court reporter, by the certified court  
10 reporter, the court reporter's employer or the  
11 referral source for the deposition, with any party to  
12 the litigation, counsel to the parties, or other  
13 entity. Such form shall be attached to the  
14 deposition transcript," I make the following  
15 disclosure:

16 I am a Georgia Certified Court Reporter. I am  
17 here as a representative of Esquire Deposition  
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19 to provide court reporting services for the  
20 deposition. Esquire Deposition Solutions will not be  
21 taking this deposition under any contract that is  
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any reporter or reporting agency from whom a referral  
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21 S. Julie Friedman, CCR-1476  
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|                                                                                                                                         |                                                                                                    |                                                   |                                                                   |                                                                                   |
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