

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

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

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Videotaped deposition of JOHN S. DUFFIELD,
taken on behalf of the plaintiffs, pursuant to the
stipulations contained herein, before Teresa Bishop,
RPR, RMR, CCR No. B-307, at 104 Marietta Street, Room 6,
Atlanta, Georgia, on Thursday, April 14, 2011,
commencing at the hour of 9:59 a.m.

Shugart & Bishop
Certified Court Reporters
Suite 140
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No.

Description

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1 curriculum vitae

10

2 class schedule listing from the
GoSolar system

36

3 syllabus from polysci 8470 for
fall 2009

37

4 copy of cover page and table of
contents of "Behavior Society
And Nuclear War" volume I

54

5 fair use checklist filled out
for Holsti chapter

58

Dixon Exhibits

2 current GSU copyright policy

35

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KENNITH DRAKE, VIDEOGRAPHER

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(Disclosure was made pursuant to O.C.G.A. Annotated 9-11-28
(c) and (d) and 15-14-37 (a), (b) and (c).)

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1 THE VIDEOGRAPHER: This will be the
2 videotaped deposition of John Duffield
3 taken by the plaintiffs in the matter of
4 Cambridge University Press, Oxford
5 University Press, Inc., and Sage
6 Publications Inc., versus Mark P. Becker,
7 in his official capacity as Georgia State
8 University president et. al.

9 The date is April 14th, 2011. We're on
10 the record at 9:59.

11 JOHN S. DUFFIELD,
12 having been first duly sworn, was examined and testified as
13 follows:

14 EXAMINATION

15 BY MR. LARSON:

16 Q. Good morning. Could you start by just
17 spelling your full name and providing your address for
18 the record?

19 A. My full name is John Stuart Duffield.
20 J-o-h-n, S-t-u-a-r-t, D-u-f-f-i-e-l-d. And my home
21 address is 596 North Superior Avenue in Decatur,
22 Georgia, 30033.

23 Q. Thank you. I'm Todd Larson, we met off the
24 record. I'm here representing the plaintiffs in this
25 action.

1 Have you been deposed before?

2 A. No.

3 Q. Okay. Let me just give you a few sort of
4 background rules. I'm sure your counsel told you some
5 of this, but just so we're clear. Please answer the
6 questions verbally as opposed to nods. Although we have
7 a videotape, we're also taking a transcript and nods
8 don't show up on the transcript.

9 Just let me finish my questions before you
10 answer so we again have a clear transcript. If you
11 don't understand a question I ask or want some
12 clarification, feel free to tell me and I'll attempt to
13 clarify. If you need to take a break at any point,
14 that's fine, just let me know, we can do that. I think
15 it will be relatively short this morning total, so I'm
16 sure we'll go pretty quickly.

17 If your counsel objects to a question, that is
18 sort of a standard part of the deposition and you can go
19 ahead and answer unless you're actually instructed, your
20 counsel tells you not to answer. And that's about it.

21 Any questions on that?

22 A. No.

23 Q. Okay. What did you do to prepare for today's
24 deposition?

25 A. Is this something that might involve

1 privilege?

2 MS. MOFFITT: I'll just caution the
3 witness not to disclose the substance of
4 any communications with counsel. But you
5 can answer the question generally what you
6 did to prepare.

7 THE WITNESS: All right. Well, I took a
8 look at the checklist that I filled out and
9 submitted to the university counsel several
10 weeks or months ago. And took a look at
11 the syllabus for the course for which the
12 reading in question was used. And then I
13 met on Tuesday with counsel.

14 BY MR. LARSON:

15 Q. How long was that meeting?

16 A. How long was that meeting. It was
17 approximately an hour and a half.

18 Q. So you reviewed a checklist or checklists and
19 syllabus for the class, is that right?

20 A. At what point are you referring to?

21 Q. During the run up to the deposition.

22 A. Well, again, on my own I reviewed the
23 checklists just to refamiliarize myself with what this
24 was all about.

25 Q. And then you reviewed other materials with

1 counsel?

2 A. Well --

3 Q. And you don't need to tell me what they are.
4 But did you look at some other materials with counsel?

5 A. I looked at various materials.

6 Q. Did you review any transcripts of prior
7 depositions in this case?

8 A. No.

9 Q. Did you speak with any persons, other
10 professors and the like who were deposed in the case?

11 A. I did speak yesterday with a colleague who was
12 deposed I think several months ago.

13 Q. Who was that?

14 A. Jason Riefler.

15 Q. And tell me the nature of that discussion.

16 A. Oh, I just asked him what the experience was
17 like. And I don't know, he -- I'm trying to remember
18 what specifically he said to me. It didn't seem to
19 change my expectations of what this would be like.

20 Q. Did you talk about the substance of the case
21 or the deposition at all?

22 A. No.

23 Q. Just the logistics?

24 A. More like what is it like answering questions.

25 MS. MOFFITT: Make sure you let

1 opposing counsel finish his question before
2 you answer.

3 BY MR. LARSON:

4 Q. Did he tell you what a fierce questioner I am?
5 You don't need to answer.

6 Any other materials that you looked at besides
7 the checklists and syllabus or -- strike that.

8 Did you look at the Georgia State copyright
9 policy?

10 A. In preparation for this, no.

11 Q. Have you looked at it before?

12 A. Yes.

13 Q. Other than counsel and Mr. Riefler, did you
14 speak with anyone else about your deposition today?

15 A. I mentioned to another colleague who is a
16 former lawyer that I was going to be deposed. I thought
17 he might be interested. But we didn't talk about the
18 substance of the case.

19 Q. You mentioned with the checklist that I think
20 you said you filled them out several months ago, is that
21 right?

22 A. Are you referring to the checklist in
23 question?

24 Q. Yes, for the course from 2009 that we'll be
25 discussing.

1 A. Is your question when I filled that out?

2 Q. Yes.

3 A. I believe I filled that out in August 2009.

4 Q. Okay. Now, correct me if I'm wrong, I thought
5 you said you filled something out several months ago.
6 Did I misunderstand?

7 A. No, I sent -- I was requested to send a copy
8 of the checklist to the university attorney.

9 Q. I see. But you had filled it out the prior
10 year?

11 A. Long before that.

12 Q. I understand. Okay.

13 You're aware that the case is scheduled to go
14 to trial in the middle of May?

15 A. I believe there was a reference to that in a
16 communication I received.

17 MS. MOFFITT: I caution the witness not
18 to disclose the substance of communications
19 that you may have received from counsel.
20 But just a cautionary instruction.

21 BY MR. LARSON:

22 Q. At this point do you know whether or not
23 you'll be coming to trial as a witness?

24 A. No.

25 Q. Will you be present in the Atlanta area

1 generally between the middle of May and the middle of
2 June?

3 A. Yes.

4 Q. Do you have any trips planned during that time
5 or any plans to be away for research or study or
6 anything like that?

7 A. No.

8 Q. Okay. I'll give you what's been marked as
9 Duffield 1. Do you recognize what I've put in front of
10 you and marked as Duffield Exhibit 1?

11 A. Yes.

12 Q. And what is it?

13 A. It is a version of my curriculum vitae.

14 Q. And when you say a version of it, are there
15 other versions?

16 A. Well, there have been over the years.

17 Q. If you can just take a look, is this the most
18 recent version?

19 MS. MOFFITT: Feel free to take your
20 time to review it.

21 THE WITNESS: No.

22 BY MR. LARSON:

23 Q. And can you tell from looking at it when this
24 was completed?

25 A. I would estimate that it was completed in the

1 fall of 2010.

2 Q. Okay. And are there any significant changes
3 to it that you can tell me about that have happened
4 since the fall of 2010?

5 MS. MOFFITT: Object to the form of the
6 question as vague. You can answer it if
7 you can.

8 BY MR. LARSON:

9 Q. I'll clarify a little for you. I'm not asking
10 you to identify every, you know, new article you've
11 published or something like that or graduate student
12 you've taken on, but if you've changed jobs or taken on
13 any additional roles in the department of anything like
14 that that would be what I'm looking for.

15 A. Nothing along those lines.

16 Q. Okay. And is there anything inaccurate here,
17 to your knowledge?

18 MS. MOFFITT: I'm going to object to the
19 form of the question.

20 Do you want him to read every line?

21 MR. LARSON: No, again, the job
22 position, job description, general
23 responsibilities.

24 MS. MOFFITT: Object to the form of the
25 question. Still vague.

1 Answer it if you understand it.

2 THE WITNESS: I would say no except for
3 some omissions of any recent publications.

4 BY MR. LARSON:

5 Q. Are any of those recent publications books?

6 A. No.

7 Q. Are any of those recent publications published
8 by any of the plaintiffs in this action?

9 MS. MOFFITT: Object to the form. I'm
10 not sure he knows who the plaintiffs are.

11 BY MR. LARSON:

12 Q. The plaintiffs are Cambridge University Press,
13 Oxford University Press and Sage Publications.

14 A. No.

15 Q. If you look at the first page under
16 professional positions it says the University Statute
17 and Senate Bylaws Committee 2008 to present.

18 Just tell me what that committee is.

19 A. The role of that committee is to entertain and
20 approve or not, as the case may be, proposals to amend
21 the university statutes and the senate bylaws.

22 Q. And are the university statutes, are those
23 Georgia state statutes or are those particular just to
24 the university?

25 A. They are Georgia State University statutes.

1 Q. And do those statutes govern or spell out the
2 responsibilities of university administrators?

3 MS. MOFFITT: Object to the form.

4 Question is vague.

5 BY MR. LARSON:

6 Q. You can answer if you understand.

7 A. The statutes refer to -- establish several
8 administrator positions, president, provost. I can't
9 recall all the details. I think in very general terms
10 describes their responsibilities.

11 Q. And what's your understanding of the role of
12 the provost?

13 MS. MOFFITT: Object to the form of the
14 question.

15 BY MR. LARSON:

16 Q. You can answer if you know.

17 A. Well, the provost is the senior academic
18 officer of the university, most universities, with broad
19 responsibilities concerning faculty, academic programs.
20 It's a little bit complicated because there are some
21 other senior positions like vice presidents that report
22 directly to the president, so I can't tell you exactly
23 what the scope of the provost's responsibilities are
24 beyond that.

25 Q. Would the provost have responsibility on

1 campus for the university's compliance with copyright
2 laws?

3 MS. MOFFITT: Object to the form of the
4 question. Foundation. And vague.

5 You can answer.

6 THE WITNESS: I don't know.

7 BY MR. LARSON:

8 Q. Have you had any training, any legal training?

9 A. What do you mean by legal training?

10 Q. Have you taken any classes at a law school or
11 other classes?

12 A. No.

13 Q. Any classes involving law in any way?

14 MS. MOFFITT: Object as vague. But you
15 can answer it.

16 THE WITNESS: You know, nationalized
17 has been a topic in some classes I've
18 taken.

19 BY MR. LARSON:

20 Q. Any copyright training?

21 A. No, not in a formal legal training.

22 Q. Okay. Is there copyright training in some
23 other setting that you're referring to when you answer
24 that way?

25 A. Well, what I'm thinking of is the seminar I

1 took at GSU to instruct faculty in compliance, how to
2 comply with the copyright rules.

3 Q. And when was that seminar?

4 A. It was -- I don't recall exactly. Several
5 years ago.

6 Q. Do you recall whether that was after the new
7 copyright policy at GSU was put in place?

8 A. I don't.

9 Q. Do you recall if it was prior to 2009?

10 A. I don't.

11 Q. Do you recall who led the seminar?

12 A. Not specifically.

13 Q. Was it an attorney, to your recollection?

14 A. I can't recall.

15 Q. Okay. Do you recall at that seminar being
16 shown any materials?

17 A. What do you mean by materials?

18 Q. PowerPoints, handouts, any sort of written
19 materials?

20 A. Yes, there was a PowerPoint presentation and
21 written materials, handouts.

22 Q. And what were the handouts?

23 A. I don't recall the specifics.

24 Q. And what was the subject of the seminar?

25 A. Well, I believe it was what to do to be in

1 compliance with the copyright rules when assigning
2 works.

3 Q. And do you recall whether the checklists that
4 are now in use at the university were shown to you at
5 this seminar?

6 A. I don't.

7 Q. How long was the seminar, do you recall?

8 A. I can't recall specifically. At least an
9 hour.

10 Q. Do you recall after that seminar making any
11 changes in your practices based on what you heard at the
12 seminar?

13 MS. MOFFITT: I object to the form of
14 the question. It's vague.

15 BY MR. LARSON:

16 Q. By practice, I mean your practices of using
17 materials in your courses with your students.

18 A. I don't recall specifically when I have made
19 changes in my practices and whether the seminar resulted
20 in any changes.

21 Q. Have you made changes in your practices with
22 respect to providing reading materials to students in
23 the last two years?

24 MS. MOFFITT: I object to the form of
25 the question as vague and ambiguous.

1 THE WITNESS: The question is concerning
2 the -- my assignments or my -- or the
3 aspects of the --

4 BY MR. LARSON:

5 Q. Not the actual assignments, but the ways you
6 provide materials to students as in, you know, whether
7 they have to purchase books, whether you use ERes,
8 whether you put them on hard copy reserve.

9 A. During what time period?

10 Q. During the last two years.

11 A. During the last two years --

12 MS. MOFFITT: Just object as vague. But
13 you can answer.

14 THE WITNESS: Nothing significant.

15 BY MR. LARSON:

16 Q. Looking back to Duffield 1, it's correct you
17 were at the University of Georgia until 2001, is that
18 right?

19 A. Until January 2002.

20 Q. And have been at GSU since that time?

21 A. Yes.

22 Q. I see on page 3 appears you're the author of
23 three books, is that correct?

24 A. Yes.

25 Q. And each of those --

1 A. Three published books.

2 Q. Each of those are published by Stanford
3 University Press?

4 A. Yes.

5 Q. Did you sign contracts with Stanford for those
6 books?

7 A. I believe I signed a contract for each one.

8 Q. Why don't we talk about the most recent one
9 just to focus the discussion.

10 That was in 2008, is that right?

11 A. It was -- it's listed as -- I only hesitate
12 because it actually appeared in late 2007, but according
13 to the publisher convention you use 2008 for books that
14 appear after October 2007.

15 Q. And do you recall signing a contract with
16 Stanford University Press for the third book "Over A
17 Barrel"?

18 A. Yes.

19 Q. Do you own the copyright in the book or did
20 you assign it to the publisher?

21 MS. MOFFITT: I object to the form of
22 the question. It's compound and vague and
23 to the extent it calls for a legal
24 conclusion.

25 Go ahead.

1 THE WITNESS: I don't know without
2 looking at the contract what my rights are.

3 BY MR. LARSON:

4 Q. Do you recall in the contract for the third
5 book whether you granted electronic rights to the
6 publisher?

7 MS. MOFFITT: Object to the form of the
8 question as vague.

9 THE WITNESS: I don't recall.

10 BY MR. LARSON:

11 Q. Do you receive royalties for sales of the
12 book?

13 A. That's a hard one to answer, too, because in
14 theory I can receive royalties. I received an advance
15 payment -- no, I'm sorry. Yeah, for that book, so I
16 don't know if those count as royalties or not.

17 But I assume -- I believe they would come out
18 of -- were meant to come out of the future royalties.

19 Q. And has the -- that advance been recouped by
20 the royalties earned?

21 A. I don't know. I do not know.

22 Q. Do you know whether you have received any
23 payments for Stanford University Press granting
24 licensing rights to the books or permissions fees of any
25 kind?

1 MS. MOFFITT: Object to the form.

2 THE WITNESS: I don't know.

3 BY MR. LARSON:

4 Q. Do you know whether the book has been adopted
5 for use in courses at other universities?

6 A. I do not know.

7 Q. Do you know how many copies have been sold?

8 MS. MOFFITT: Object to the form.

9 Question is vague.

10 THE WITNESS: I don't know exactly. I
11 believe it's somewhere between 1 and 2,000,
12 at least according to the last statement I
13 received.

14 BY MR. LARSON:

15 Q. And when you got that last statement, was
16 there -- you receive a payment as well?

17 A. For this book?

18 Q. Yeah.

19 A. No.

20 Q. Do you receive royalty payments for either of
21 the other two books listed on page 3?

22 A. No, I never have.

23 Q. Okay. Do you know whether the book has been
24 profitable for Stanford University Press?

25 MS. MOFFITT: Object to the form of the

1 question, its foundation and it's vague.

2 THE WITNESS: I don't.

3 BY MR. LARSON:

4 Q. Other than the financial aspects of the book
5 and the advance you mentioned, again focusing on the
6 third one, are there other benefits to you career wise
7 from having published this book?

8 MS. MOFFITT: Question is vague.

9 You're referring to "Over A Barrel"?

10 MR. LARSON: Yeah.

11 BY MR. LARSON:

12 Q. Actually let me make the question more
13 general.

14 Are there benefits to you other than financial
15 benefits from publishing books?

16 A. I feel like there are.

17 Q. And what are they?

18 A. Well, one would be my feelings about myself
19 for having accomplished something like that. Another
20 would be, though it's harder to measure, would be my
21 reputation and standing in my field.

22 One would be, though I'm beyond the point
23 where there are any obvious further potential
24 promotions, but that publishing books, I've seen
25 publishing books as useful for increasing my chances of

1 promotion along the way.

2 Q. Let me ask, I notice on the first page of your
3 CV that you're on the social and behavioral sciences
4 area committee on promotion and tenure, and another
5 committee, the promotion and tenure third year review,
6 contract renewal and lecture review committee?

7 MS. MOFFITT: I was just going to
8 object. I'm not sure that this suggests
9 that he's still on that committee, but --

10 BY MR. LARSON:

11 Q. Let's talk about the -- what's the first one
12 that I mentioned, the social and behavioral sciences
13 area committee on promotion and tenure?

14 A. What is that committee?

15 Q. Yeah.

16 A. That is the -- promotion and tenure process
17 works as follows. A candidate for promotion and tenure
18 or promotion is first reviewed by a committee in the
19 candidate's department and the department chair
20 separately. Recommendations from the committee,
21 department committee and the department chair then go to
22 the college level.

23 At the college level in the college of arts
24 and sciences, there are three or four committees
25 reflecting the different areas of the college. So for

1 the area of the social and behavioral sciences, there is
2 a separate committee, currently consists of five faculty
3 members, one from each of five departments. They review
4 dossiers of candidates for promotion and tenure and make
5 recommendations to the dean.

6 Q. I see. And in that process do you consider
7 or -- are the candidates for promotion, are their
8 publications considered?

9 A. Yes.

10 Q. And would you say they're important?

11 A. Yes.

12 MS. MOFFITT: Objection to form.

13 BY MR. LARSON:

14 Q. And is it generally important that a candidate
15 for a tenured position have published a book?

16 MS. MOFFITT: Same objection. Go ahead.

17 THE WITNESS: It depends very much on
18 the field.

19 BY MR. LARSON:

20 Q. Could you explain, please?

21 A. Well, different disciplines have different
22 expectations. Some disciplines, my understanding --

23 In political science there is no single
24 standard. Some people will be recommended for promotion
25 and tenure even without ever having published a book.

1 In other cases where a candidate has published a book
2 and is regarded as a good, significant, important book,
3 that can carry considerable weight in the process.

4 Q. And what kind of weight does the, if any, does
5 the actual publisher of the book carry?

6 A. Consideration is given to the publishers. How
7 much weight I couldn't say. It's part of an overall
8 assessment.

9 And this will -- I'm assuming you're referring
10 to Georgia State University?

11 Q. Yeah. Yeah.

12 A. And specifically to political science, we
13 evaluate candidates in terms of the progress they're
14 making toward obtaining a national reputation as a
15 respected scholar in their field. The publishers of
16 books is a factor that we consider in whether somebody
17 has the potential or is achieving or they have achieved
18 a national reputation of that nature.

19 Q. And which publishers, if you can name any,
20 would you consider to be in the tier where it's helpful
21 to have published, you know, for the candidate to have
22 published with that publisher?

23 MS. MOFFITT: Object as to form. It's
24 vague in its context.

25 THE WITNESS: Well, there are quite a

1 few. There's no absolute hierarchy.
2 People have different views and we discuss
3 them.

4 BY MR. LARSON:

5 Q. In your view would Oxford University Press and
6 Cambridge University Press fall into that category,
7 we'll say respected publishers or publishers with whom
8 it would be good for a candidate to have published with?

9 MS. MOFFITT: Object to the form. Vague
10 in its context.

11 THE WITNESS: I personally generally
12 have a good impression of those presses,
13 though there are exceptions, and that's why
14 we don't rely just on the press, but on the
15 content of the book in evaluating it.

16 BY MR. LARSON:

17 Q. When you -- let's look again back at the "Over
18 A Barrel", the 2008 book. What was the actual role of
19 Stanford University Press in publishing that book?

20 In other words, did you work with an editor
21 there? Did they help you develop the book at all?

22 MS. MOFFITT: Object to the form of the
23 question. It's vague. And multiple
24 questions.

25 THE WITNESS: Well, in the process of --

1 I would not say that the -- depends what
2 you mean by developed the book.

3 BY MR. LARSON:

4 Q. I'll just say a little more and hopefully it
5 will give you the gist of what I'm trying to understand.

6 Did you have a finished manuscript that you
7 gave them and they just printed it or did they
8 participate in the substantive development of the
9 manuscript prior to publishing it?

10 MS. MOFFITT: Question is vague.

11 BY MR. LARSON:

12 Q. You can answer.

13 A. I would say I contacted the press before I had
14 a complete manuscript. This gets at the issue of
15 receiving an advance on -- and the press expressed an
16 interest in the project as it was described and offered
17 me a contract on the basis of the book proposal.

18 And -- but in terms of the substance of the
19 book, the press left those decisions entirely up to me.

20 Q. Why did you contact Stanford University Press
21 about this particular book?

22 A. Well, I had already published two books with
23 the press. I had a working relationship with one of the
24 editors there. I thought they might be interested in
25 the project and so it seemed logical to approach the

1 press about the project.

2 Q. Did you approach other publishers or just
3 Stanford?

4 A. I believe I talked with some other editors.

5 Q. At what other presses, do you recall?

6 A. I might have talked with Cornell, Cambridge,
7 Princeton. I can't remember any others. I don't know
8 for sure. But I'm pretty sure I contacted the editors
9 of those presses.

10 Q. Do you know who at Cambridge you spoke with?

11 A. I believe it was Jonathan Haslam. I could be
12 wrong. I would have probably spoken with editors at
13 either the annual meeting of the American Political
14 Science Association or the International Studies
15 Association where they often send -- have a
16 representative and he has been the person that I recall
17 meeting at some of those conferences.

18 So I couldn't say for sure he was the one I
19 talked about this book, but it's likely.

20 Q. And how is it that you chose ultimately to
21 publish with Stanford as opposed to these other presses
22 that you just mentioned?

23 A. Well, Stanford showed an immediate interest in
24 the form of offering me a contract at an early stage.

25 Q. All right. Including the advance?

1 A. I believe that was specified in the contract.

2 Q. And did you request the advance or did they
3 offer that on their volition?

4 MS. MOFFITT: I object to the form.

5 THE WITNESS: I don't recall.

6 BY MR. LARSON:

7 Q. Could you have completed the book without the
8 advance?

9 A. Yes.

10 Q. Was the advance helpful to you in finishing
11 the book?

12 MS. MOFFITT: Question is vague.

13 THE WITNESS: I don't think so. It
14 wasn't that much money.

15 BY MR. LARSON:

16 Q. Would you have -- let's see.

17 Had there been no publisher interest in your
18 idea, would there have been some other way to publish
19 the book other than through a press, through a
20 publisher?

21 A. I don't know. I never had to figure that out.

22 Q. Okay. Can you turn to the sixth page of your
23 CV. The third entry on page 6, "International Security
24 Institutions". Do you see that?

25 A. Yes.

1 Q. Indicates it's a book published by Oxford
2 University Press.

3 Did you author a chapter in that book?

4 A. Yes.

5 Q. And that's "The Oxford Handbook Of Political
6 Institutions"? Did you deal directly with Oxford on
7 that or with the author?

8 A. I dealt directly with one of the editors.

9 Q. An editor at Oxford?

10 A. No, one of the editors of the book. There may
11 have been at one point or another some communications
12 with the press directly, but I don't remember with whom
13 or about what.

14 Q. I see. Did you have a contract of some kind
15 for that book chapter?

16 A. I don't recall exactly. Usually my experience
17 is usually there is some kind of contract.

18 Q. You don't recall specifically for that book?

19 A. No.

20 Q. And when you say there usually is a contract,
21 do you know, is it usual that you assign your rights to
22 the publisher when you write a chapter for a book like
23 this?

24 MS. MOFFITT: I object to the form of
25 the question as vague.

1 THE WITNESS: I can't really answer that
2 without looking at the wording.

3 BY MR. LARSON:

4 Q. Several lines down there's an entry for
5 "Alliance Theory and NATO" and a book called "Explaining
6 International Relations Since 1945". Do you see that?

7 A. Yes.

8 Q. That's also Oxford University Press book?

9 A. Yes.

10 Q. Do you recall there whether you dealt with
11 anyone at Oxford on that book?

12 A. No.

13 Q. You didn't or you just don't recall?

14 A. Oh, no, I don't recall.

15 Q. And do you recall whether you had a contract
16 for the chapter in that book?

17 A. No.

18 Q. Let's turn over to page 7. One entry up from
19 the bottom it says you were a contributor to "The Oxford
20 Companion To Military History", Oxford Press book. You
21 see that?

22 A. Yes.

23 Q. Same question there, do you recall dealing
24 with anyone at Oxford with respect to your contribution
25 to that book?

1 A. I don't recall.

2 Q. If you turn to 14, please. In the middle of
3 the page there's a section for book manuscript reviewer
4 and Oxford University Press is listed. You see that?

5 A. Yes.

6 Q. Can you tell me what that means?

7 MS. MOFFITT: Object to the form. What
8 what means?

9 BY MR. LARSON:

10 Q. What book manuscript reviewer for Oxford
11 University Press means?

12 A. Well, to me it means that at some point I was
13 asked to review all or part of a book manuscript by an
14 editor at the press.

15 Q. Do you recall a specific example of that
16 happening with Oxford or are you just surmising that
17 that's what that means?

18 A. Well, I vaguely recall a book in question. I
19 believe it was a textbook, but beyond that I don't
20 recall the details.

21 Q. Okay. Do you recall who you dealt with at
22 Oxford?

23 A. No, I do not.

24 Q. Do you recall whether you were paid?

25 A. I don't recall specifically.

1 Q. When you do book reviewing of that type, is it
2 typical that you're paid for it?

3 MS. MOFFITT: Object to the form. It's
4 vague.

5 THE WITNESS: You are typically offered
6 some compensation either in pecuniary --
7 monetary form or in terms of books
8 published by the press up to a certain
9 value.

10 BY MR. LARSON:

11 Q. Do you recall roughly when it was that you had
12 this experience with Oxford University Press with the
13 textbook you mentioned?

14 A. I vaguely recall it being in the middle of the
15 last decade, but it could be plus or minus a couple of
16 years.

17 Q. Thanks.

18 Give you what has been previously marked as
19 Dixon 2. Do you recognize this document?

20 A. It looks familiar.

21 Q. And do you recognize it as the current GSU
22 copyright policy?

23 A. I don't know just looking at it.

24 Q. You don't know, you don't recall having seen
25 it before?

1 A. No, I don't know what the current policy is
2 and whether this corresponds to it or not.

3 Q. I understand. Just not clear.

4 Do you recall having seen this document
5 whether or not it's the current policy?

6 A. Well, I recall seeing this or something very
7 similar to it.

8 Q. And do you recall when you first saw it?

9 A. When I first saw it, no.

10 Q. So sitting here you don't know whether or not
11 this is the current GSU copyright policy?

12 A. No.

13 Q. Just direct your attention to page 7 of this.
14 You see at the top it says 1 of 19, 2 of 19, 3 of 19?
15 Do you recognize page 7?

16 A. This looks like the fair use checklist I have
17 filled out when requesting that items be made available
18 on reserves.

19 Q. And look at page 13 for me, if you would. Is
20 that a page that you recall having seen before?

21 A. It looks familiar. Whether I've seen it in
22 this particular context or not, I couldn't say. But the
23 content looks familiar.

24 Q. Could you look at page 15. Is that a page
25 that you recall having seen before?

1 A. I don't recall clearly having seen this
2 particular page.

3 Q. You see under the middle under works in print
4 it refers to Copyright Clearance Center. Are you
5 familiar with Copyright Clearance Center?

6 A. It sounds familiar, but I don't recall having
7 had any contact with it.

8 Q. Do you recall whether some form of what we're
9 looking at here in Dixon 2 was shown to you at this
10 seminar that you described earlier in the deposition?

11 A. I don't recall specifically.

12 Q. Now, you've used the university ERes system
13 before for your classes, is that right?

14 A. Yes.

15 Q. You've filled out the checklist that we looked
16 at on page 7 in the past, also?

17 A. Yes.

18 Q. Have you ever had occasion to consult with
19 anyone at the library or an administrator about the fair
20 use checklist?

21 MS. MOFFITT: Object to the form of the
22 question as vague.

23 THE WITNESS: I don't recall.

24 BY MR. LARSON:

25 Q. You don't recall having done so?

1 A. Right. It doesn't mean I didn't, but I just
2 don't recall having done so.

3 Q. If you had a question about the checklist, do
4 you know who you would consult or whether there is
5 someone available to consult with?

6 A. If I had a question I would check the relevant
7 pages of the university web site to try to identify
8 somebody I could consult with.

9 Q. Okay. Do you use the ULearn system?

10 A. No.

11 Q. Do you know the consequences if you were to
12 violate the university copyright policy?

13 MS. MOFFITT: Object to the form.

14 THE WITNESS: No.

15 BY MR. LARSON:

16 Q. I'm going to ask it a different way.

17 If you were contacted by the provost's office
18 and were told that something you had put on the EReserve
19 system was in violation of copyright law, would you take
20 it down?

21 A. Well, the first thing I would do is seek
22 clarification of what the concern was and try to confirm
23 that the work was indeed in violation.

24 Q. And if it were found to be, would you then
25 remove it?

1 A. Yes.

2 Q. And if you were contacted by the president's
3 office and told that something that you had posted on
4 the EReserve system was in violation of copyright law,
5 would you remove it?

6 A. Yes.

7 Q. You can put that one aside. You doing okay
8 break wise?

9 A. Yes. Thanks for asking.

10 Q. Are you familiar with the GoSolar system at
11 the university?

12 A. Yes.

13 Q. Is that something you have used or looked at
14 before?

15 A. I use it for various purposes.

16 Q. Just show you what I've marked as Duffield 2.
17 And this is a printout that we made from the GoSolar
18 system on the GSU web site indicating that --

19 I want to ask you to confirm that you taught
20 polysci 8470 in the fall 2009 semester?

21 A. Yes, I did.

22 Q. And this, if I'm reading it right, says there
23 was a cap of 15 students and 14 actual students in the
24 course?

25 A. Yes, there was a cap of 15 and 14 who

1 registered. I don't believe it shows -- occasionally a
2 student will drop out of the course during the course of
3 the semester so it may not reflect the actual number at
4 any particular time.

5 Q. I see. But does 14 sound approximately right
6 for that course?

7 A. Yes.

8 Q. I'll give you what's been marked as Duffield
9 3. Do you recognize Duffield 3 as the syllabus from
10 polysci 8470 in the fall 2009 semester?

11 A. It looks like it.

12 Q. I know it's long so if you want to flip
13 through it or do anything to confirm, please do.

14 A. Well, it bares a strong resemblance to what
15 would have been the syllabus of record.

16 Q. Do you have any reason to believe this
17 wouldn't be the syllabus?

18 A. No.

19 Q. And so the -- strike that.

20 Just looking under the course objectives, the
21 second paragraph. Is it correct to say that the gist of
22 this course was to introduce students to readings on the
23 topic and to discuss those readings in class?

24 MS. MOFFITT: Object to the form.

25 Question is vague. You can answer.

1 THE WITNESS: Well, the objective is
2 stated here clearly to introduce graduate
3 students to the literature in political
4 science on violent conflict and security,
5 especially their international dimensions.

6 The discussion was not an objective, it
7 was a means to the end.

8 BY MR. LARSON:

9 Q. And if you take a look at page 3.

10 MS. MOFFITT: Are you referring to
11 65705?

12 MR. LARSON: I am.

13 BY MR. LARSON:

14 Q. Do you see there's a section there for
15 readings which says all of the readings will take the
16 form of journal articles and book chapters?

17 Just tell me how were the readings provided to
18 the students?

19 A. Well, as I recall all the readings were
20 available through a variety of electronic sources. The
21 readings that fall under the category of the journal
22 articles were usually -- I can't think of any
23 exceptions, but nevertheless I'll say usually available
24 through one electronic database or another that is
25 available to students and faculty of the university.

1 And then a handful of readings I believe which
2 were not available through one of those databases, I
3 requested that they be made available on the electronic
4 reserve system.

5 Q. And that was a case where -- would that be for
6 book chapters that you use that system for?

7 A. I would use it for book chapters.

8 Q. And were there any texts required for purchase
9 in the course?

10 A. I believe not. As it says all the readings
11 will take the form of journal articles and book
12 chapters.

13 Q. And why did you choose to use the EReserve
14 system for the book chapters?

15 A. I have found the EReserve system to be
16 convenient both for me and the students for making
17 available and obtaining access to readings that aren't
18 available on other electronic forms.

19 Q. Did you consider having the students purchase
20 the books rather than using EReserves?

21 A. No, I didn't consider having the students --
22 well, when you say the books, which books are you
23 referring to?

24 Q. Yeah, let me -- tell me if this is wrong, but
25 my understanding is that there were some book chapters

1 that you put on this ERes system for this course, is
2 that right?

3 A. Right.

4 Q. And so the question is about those, the books
5 in which those chapters are found. And the question is,
6 did you consider just having the students purchase those
7 books rather than putting them on the EReserve, the
8 chapters on the EReserve system?

9 A. I did not consider asking the students to
10 purchase those books.

11 Q. And why not?

12 A. I believe that in each case I wanted the
13 students to read no more than one chapter from any of
14 those books and it would have seemed too -- I'm mindful
15 of the expense of and the resources of students, and so
16 I try to minimize the cost to them of purchasing
17 materials.

18 So if I'm assigning all or large parts of the
19 book, I will make that book -- request that they
20 purchase that book. When I am assigning only a chapter
21 or the equivalent, a small part of a book, I
22 will attempt to make it available through EReserves.

23 Q. Now, just so I understand, there were no
24 required purchases at all in this course I think you
25 said, right?

1 A. Right.

2 Q. So the cost for any student in this class was
3 zero, is that right?

4 MS. MOFFITT: Object to the form of the
5 question.

6 BY MR. LARSON:

7 Q. I mean the cost for reading materials.

8 MS. MOFFITT: Same objection.

9 THE WITNESS: Well, they weren't
10 required to purchase directly any reading
11 materials.

12 BY MR. LARSON:

13 Q. For the -- again for the book chapters you
14 placed on EReserves, did you consider rather than using
15 EReserves putting the book on hard copy reserves in the
16 library?

17 A. I don't recall if I did in this particular
18 case.

19 Q. Okay. Is that something you've done, you
20 know, in other courses?

21 MS. MOFFITT: Question is vague.

22 THE WITNESS: I have put books, hard
23 copies on reserve. That doesn't mean that
24 it has been either/or, though I can't think
25 of -- I mean, I don't recall specifically

1 what I did in other cases.

2 I have a concern about relying just on
3 making the hard copy available. One, that
4 means there's only one copy that a large
5 number of students might have to share
6 within a very limited time period.

7 And two, at Georgia State given the
8 nature of the student body, many students
9 are on campus only very briefly during the
10 week, that it might -- it may be difficult
11 for students to have an opportunity to
12 consult the hard copy in the library.

13 BY MR. LARSON:

14 Q. You said there's only one copy that a large
15 number of students would have to share with the hard
16 copy reserve. With the EReserves, is that different
17 somehow?

18 A. My understanding of EReserves is that every
19 student in the class can access the -- an electronic
20 version of a document that's put on EReserves.

21 Q. And is it your understanding that each student
22 can get their own personal copy from that version put on
23 EReserves?

24 MS. MOFFITT: Object to the form of the
25 question.

1 THE WITNESS: By getting their own
2 personal copy, what do you mean?

3 BY MR. LARSON:

4 Q. I mean, can they -- do you have an
5 understanding as to whether a student who accesses the
6 EReserves copy can save it to their computer or print it
7 or that sort of thing?

8 A. I think they're able to do that.

9 Q. And do you know whether they do in fact in
10 your courses print out copies of the EReserves reading
11 materials?

12 A. I don't know for sure.

13 Q. And do you know whether they're able to view
14 the copy placed on EReserves simultaneously?

15 MS. MOFFITT: Question is vague.

16 THE WITNESS: I don't know for sure.

17 BY MR. LARSON:

18 Q. I'm just trying -- you said with the hard copy
19 reserve there's one copy they each have to share and I'm
20 trying to understand how EReserves somehow, if it does,
21 avoids that issue.

22 Is it your understanding that EReserves does
23 avoid that issue?

24 MS. MOFFITT: Question is vague and it's
25 been asked and answered.

1 THE WITNESS: I don't know how it works
2 for sure.

3 MR. LARSON: I think our tape is about
4 up so why don't we take a little breather
5 for a couple minutes.

6 THE VIDEOGRAPHER: Off the record at
7 10:58.

8 (Brief recess.)

9 THE VIDEOGRAPHER: This is tape 2.
10 We're back on the record at 11:08.

11 BY MR. LARSON:

12 Q. Professor Duffield, picking up where we left
13 off, for the chapters that were placed on EReserves in
14 polysci 8470 in the fall 2009 semester, do you know
15 whether there was any payment or permission fee made to
16 the publisher for those chapters?

17 A. I don't know.

18 Q. You didn't make one, I take it?

19 A. I did not.

20 Q. But you don't know whether or not the
21 university makes any sort of permissions payment?

22 MS. MOFFITT: Object to the form.

23 THE WITNESS: I don't know what the
24 university does.

25 BY MR. LARSON:

1 Q. We were talking about the possible use of hard
2 copy reserves for the readings. Have you ever
3 considered using coursepacks for the chapters that you
4 assign?

5 A. I have used coursepacks in the past.

6 Q. When was that?

7 A. Certainly during my first few years at Georgia
8 State I used coursepacks.

9 Q. Then that would have been early 2000s?

10 A. Yeah, I arrived January of 2002, so between
11 then and roughly 2005. I can't remember when I last
12 used a coursepack.

13 Q. And did you use them for book chapters that
14 you assigned your students?

15 A. I don't recall exactly, but I'm pretty
16 confident there have been book chapters in my
17 coursepacks.

18 Q. You used coursepacks to provide reading
19 materials for the course to your students, right?

20 MS. MOFFITT: Object to the form.

21 THE WITNESS: Well, I don't recall
22 whether I used them for this particular
23 course.

24 BY MR. LARSON:

25 Q. Understood.

1 A. For some courses.

2 Q. And at some point did you stop using
3 coursepacks?

4 A. Yes.

5 Q. And how come?

6 A. As I recall there were a couple of problems
7 with coursepacks. The students -- I'm thinking mainly
8 my undergraduate students -- and I don't recall how much
9 I made use of them for graduate courses -- I definitely
10 recall using them for undergraduate courses, that the
11 undergraduate students complained of about the cost of
12 the coursepacks and the inconvenience of lugging around
13 a large coursepack.

14 And I also got the impression that maybe for
15 those reasons a significant number of students weren't
16 actually buying the coursepack. Now, whether they were
17 obtaining the readings elsewhere or from friends, I
18 don't know. But I was concerned that it contributed to
19 students not doing the readings.

20 Q. And was it the case that you -- when you
21 stopped using the coursepacks that you, rather than
22 putting the readings in the coursepack, put them on ERes
23 in place of coursepacks?

24 MS. MOFFITT: Object to the form.

25 THE WITNESS: I can't say for sure in

1 part because for my --

2 Now I'm a little confused. There are
3 two forms of sort of electronic reserves.
4 One is -- and I think they're available
5 through the same web portal, but I'd have
6 to look at the library web site just to
7 make sure. But there are --

8 EReserves consists of -- if there's an
9 EReserve page for a course, part of it will
10 be links to the types of articles that are
11 in the databases that are already available
12 and could be accessed other ways. And
13 others will be links to electronic versions
14 of, say, chapters that are put on reserve.

15 So can you restate the question so I
16 answer it accurately?

17 BY MR. LARSON:

18 Q. Focusing on the latter category, were there
19 instances where you provided those sorts of chapters to
20 students in a coursepack and then when you stopped using
21 coursepacks subsequently put them on EReserves instead?

22 MS. MOFFITT: Object to the form. The
23 question is vague.

24 THE WITNESS: And my answer would be I
25 don't know because at this point -- I do

1 recall using coursepacks for my
2 undergraduate courses.

3 For my graduate courses I have
4 stopped -- I don't currently use -- put
5 anything on EReserves that requires, you
6 know, scanning a chapter. I rely entirely
7 on other types of readings.

8 I do -- as exemplified by political
9 science 8400, I will often have chapters
10 put on EReserves, but I can't say for sure
11 that that replaced an old coursepack or
12 not. I just don't recall using coursepacks
13 for the graduate courses in particular.

14 BY MR. LARSON:

15 Q. I see. So sitting here you can't recall any
16 particular instance where a book chapter was used in a
17 coursepack and then subsequently used -- put on
18 EReserves?

19 A. No, I cannot.

20 Q. Can you turn to the fourth page of the
21 syllabus.

22 A. 06?

23 Q. Yes.

24 A. Uh-huh.

25 Q. Looking at week 1, I see there's a category

1 for general readings?

2 A. Uh-huh.

3 Q. Now, can you just tell me, were those assigned
4 readings for the students or what was --

5 A. No, they were not. There were no readings
6 assigned for week 1. There were no assigned readings.
7 Yeah, there are no assigned readings.

8 Q. So these are what then?

9 A. These are -- much of the syllabus, which is
10 why it's so long, is readings related to the topics that
11 aren't required, but this serves as a resource for
12 students to access to identify readings related to
13 particular topics.

14 So in this particular case, these are some
15 general readings on the broad subject matter of the
16 course that students might find useful to refer to at a
17 later point.

18 Q. And this is a graduate course?

19 A. This is a graduate seminar.

20 Q. All right. And so these are generally
21 students who are contemplating becoming professors in
22 the topic or --

23 MS. MOFFITT: Object to the form of the
24 question.

25 THE WITNESS: Some of them are.

1 BY MR. LARSON:

2 Q. Can you turn to page 5708.

3 A. Yes.

4 Q. And you see here there's listings for week 4?

5 A. Yes.

6 Q. Just tell me, starting at the first category
7 for further readings, Overviews of the Causes of War.
8 What's that category of readings listed there?

9 A. So these are general -- these are books that I
10 have found useful in introducing students to a range of
11 explanations of the causes of military conflict.

12 Q. These aren't required readings?

13 A. No.

14 Q. Okay. And I take it not books they're
15 required to purchase then, either?

16 A. No.

17 Q. And then looking down under section B,
18 there's -- towards the bottom of the page there's a
19 section for readings starting with D. Byman, do you see
20 that?

21 A. Yes.

22 Q. And tell me, are those required readings for
23 that week?

24 A. Those were the four readings that were the
25 required readings for that week.

1 Q. And turning over to the next page, what is --
2 the fourth reading in that category at the top of the
3 page there, Holsti "Crisis Decision Making", that was a
4 required reading?

5 A. Yes, for that week.

6 Q. And that was placed on the EReserve system?

7 A. I believe it was, yes.

8 Q. And that's a book chapter from "Behavior,
9 Society And Nuclear War" volume I?

10 MS. MOFFITT: I'm going to object to
11 form.

12 THE WITNESS: The Holsti "Crisis
13 Decision Making" is a book chapter from
14 that book.

15 BY MR. LARSON:

16 Q. And am I right that you selected some
17 particular pages from within the chapter?

18 A. Correct.

19 Q. 8 to 15 and 19 to 48?

20 A. Yes.

21 Q. And why did you narrow it to those pages?

22 A. Because I -- for two reasons. One, I don't
23 want -- I didn't feel the material on pages, I can't
24 remember where, in the middle of page 15 and the middle
25 of page 19 was absolutely necessary for understanding

1 what I thought were the important points in the chapter.
2 And two, I wanted to minimize the number of pages that I
3 was requesting to be put on electronic reserves.

4 Q. So you anticipated my next question. The
5 actual scanned copy that was placed on EReserves
6 included just those particular pages that are identified
7 here?

8 A. That's what I requested. I don't recall
9 checking to make sure.

10 Q. And just flipping back to the prior page, the
11 other three readings in this category we're looking at,
12 were those also placed on the EReserve system?

13 A. Looks like those all should have been
14 available through other electronic databases, because
15 those are all articles from journals.

16 Q. So there would be a link provided to those
17 within the EReserve system?

18 A. Usually I think in this case I required the
19 students to get them on their own rather than requesting
20 that they be put on the EReserve. So that is possible.

21 Q. Just flipping back to 5709 there's a further
22 reading category. Can you just tell me what -- were
23 those required or what is that category?

24 A. Nothing below the Holsti was required. Under
25 down to, you know, the causes, domestic sources of

1 conflict.

2 Q. If you could turn to page 5720. And in the
3 middle of the page about a third of the way down there's
4 a reference to J. Stein, "Deterrence And Reassurance"
5 and Tetlock "Behavioral Society And Nuclear War"?

6 MS. MOFFITT: "Deterrence And
7 Compellence"?

8 MR. LARSON: "Deterrence And
9 Reassurance".

10 MS. MOFFITT: Okay. Sorry.

11 THE WITNESS: I see that, yes.

12 BY MR. LARSON:

13 Q. Now, is that -- was that a required reading?

14 A. No.

15 Q. Was that placed on EReserves?

16 A. No.

17 Q. Was that -- this is the same book that the
18 Holsti chapter came from, is that right?

19 A. It looks like it might not be because it's --
20 I don't know off the top of my head, but the Holsti
21 piece was from volume I and looks like this is from
22 volume II and I wouldn't consider that the same book.

23 Q. Understood. So when you identified the pages
24 here, was this entire chapter or the entire book made
25 available to students in the course in any way?

1 A. No.

2 Q. Not placed on hard copy reserve?

3 A. No.

4 Q. Flipping one page over to 5721, the first
5 entry under arms races. You see G. Downs?

6 A. Yes.

7 Q. "Arms Races And War"?

8 A. Yes.

9 Q. Is it the same for that work, that it was not
10 placed on reserve in any way?

11 A. It was not placed on reserve.

12 Q. Just something students could consult if they
13 wanted to?

14 A. Exactly.

15 Q. Let me show you Duffield 4. Duffield 4 I'll
16 represent to you is a photocopy we made of the "Behavior
17 Society And Nuclear War", volume I, and the table of
18 contents.

19 If you turn over to the second page, you'll
20 see that there's an entry, the first chapter is "Crisis
21 Decision Making" starting on page 8. Do you see that?

22 A. Yes.

23 Q. Is that the chapter that you assigned, the
24 Holsti chapter we were discussing before?

25 MS. MOFFITT: Object to the form of the

1 question to the extent it mischaracterizes
2 what he assigned. And also the
3 photograph -- photocopy doesn't include
4 obviously the text of any of the chapters.

5 So to the extent you can answer the
6 question based on what's been provided, you
7 can do so.

8 THE WITNESS: This looks like the table
9 of contents of the book from which the
10 excerpts were taken.

11 BY MR. LARSON:

12 Q. And the Holsti excerpts were taken from
13 chapter one, "Crisis Decision Making"?

14 A. That would be the chapter.

15 Q. Have you taught the polysci or did you teach
16 the polysci 8470 prior to the fall of 2009 semester?

17 A. Yes, I believe I taught it at least once
18 before at Georgia State.

19 Q. And do you recall whether when you taught it
20 before you used the Holsti excerpts that are on page
21 5709?

22 A. I don't recall for sure.

23 Q. When you taught the course in the fall of
24 2009, why did you choose to include the Holsti excerpts?

25 A. Well, I chose to include it because I felt

1 that it offered a valuable perspective related to the
2 general topic of the role of human nature and human
3 decision -- decision making as a possible cause of war
4 and conflict.

5 Q. Were there other works that you could have
6 used in place of that chapter that you're aware of?

7 A. Well, there are probably dozens of works one
8 could assign. I don't know of anything in particular
9 that discuss the material covered in that chapter as
10 well as -- as concisely as this chapter does.

11 And the reason, as you can see, there are
12 typically lots of potentially related articles, and the
13 ones I assign are in my estimation the most useful to
14 provide a representative set of perspectives and
15 approaches within that topic for the week.

16 Q. With the Holsti reading, how did it work
17 procedurally to get the excerpt on to the EReserve
18 system? Did you do it, did you ask the library to do
19 it, how did it work?

20 A. Well, I'm pretty sure what I did, which is the
21 current practice, which is there's a web page one can go
22 to to request that a chapter, say, be put on reserve.
23 And we are required to fill out certain identifying
24 information.

25 I can't recall, you may be asked to confirm

1 that it is something that can be put on reserve, and
2 then the library does the rest.

3 Q. So the library makes a copy of the article or
4 scan to put on the EReserve system?

5 A. I assume it's the library that does that.

6 Q. It's not you?

7 A. No, no.

8 Q. Is this a book, "Behavioral Society And
9 Nuclear War" volume I, a book that you own?

10 A. No.

11 Q. Is it a book that's in the GSU library?

12 A. I'm pretty sure it is.

13 Q. Do you know for sure or not?

14 A. Well, I don't know for sure. I infer that it
15 is because I requested that they make the chapter
16 available and I usually check the holdings to make sure
17 it's there.

18 Q. Do you know whether students in the course get
19 access to the reading on EReserves, the Holsti reading?

20 A. I don't know for sure.

21 Q. Is it generally the case that in a graduate
22 course the students do the reading that's required?

23 MS. MOFFITT: Object to the form of the
24 question.

25 BY MR. LARSON:

1 Q. Well, in your experience, I mean, do students
2 typically do the reading?

3 MS. MOFFITT: Same objection. Question
4 is vague.

5 THE WITNESS: I don't know for sure.
6 I'm sure some do, and whether all do I
7 can't say.

8 BY MR. LARSON:

9 Q. Let's mark this as Duffield 5.

10 A. Thank you.

11 Q. Do you recognize this as the checklist, fair
12 use checklist that you filled out for the Holsti chapter
13 that we've been discussing?

14 A. It looks like it.

15 Q. And you completed this on August 23rd of 2009,
16 is that right?

17 A. Yes.

18 Q. And is it your practice to complete these
19 checklists for any work that you post to the EReserve
20 system?

21 A. Yes, we're required.

22 Q. And when did you start, first start filling
23 out these checklists for readings on the EReserve
24 system?

25 A. I don't recall exactly.

1 Q. Do you recall why you started doing them, the
2 checklists?

3 A. I recall that the university requested or
4 required that I do so.

5 Q. And do you recall being provided any training
6 or -- well, any training in how to go about filling out
7 the fair use checklist?

8 A. I don't recall specifically. It might be
9 associated with the training session that I attended
10 that I referred to earlier, but I just don't remember
11 specifically covering it there.

12 Q. Let's look at your checks that you placed on
13 this checklist.

14 Looking at factor one in the weighs in favor
15 of fair use column, just tell me -- you checked the
16 nonprofit educational. Can you tell me why you checked
17 that?

18 A. Let me just say in general I can't recall what
19 I was thinking at the time when I checked any of these.

20 Q. Understood. So recognizing sitting here now,
21 what is your understanding of nonprofit educational and
22 why that would be checked?

23 A. My understanding is that the teaching I'm
24 engaged in is nonprofit, educational activity.

25 Q. And the next box is teaching. So is it the

1 same reason that that one would be checked?

2 A. I can't think of any difference.

3 Q. And looking down at the last line in that
4 category there, you see use is necessary to achieve your
5 intended educational purpose?

6 A. Yes.

7 Q. That's one that you checked. Tell me your
8 understanding of that factor?

9 A. My understanding is if it's a document that is
10 particularly useful for teaching my students something
11 that I'd like them to understand, I would check that.

12 Q. Would that be the case for any required
13 reading that you assigned your students and put on the
14 EReserve system?

15 MS. MOFFITT: Object to the form.

16 THE WITNESS: Yeah, I guess I would
17 consider any required reading as satisfying
18 that criteria.

19 BY MR. LARSON:

20 Q. Do you know -- strike that.

21 For all the fair use checklists you've filled
22 out since you started doing it, have you checked
23 nonprofit educational, teaching and use is necessary to
24 achieve your intended educational purpose on all of
25 them?

1 MS. MOFFITT: I'm going to object to the
2 form of the question as vague.

3 THE WITNESS: I don't -- I just don't
4 recall.

5 BY MR. LARSON:

6 Q. Can you envision any scenario where with the
7 required reading on the EReserve system that you've
8 given your students that you wouldn't check those three
9 boxes?

10 A. No.

11 Q. You didn't check transformative. Can you tell
12 me your understanding of transformative?

13 A. My understanding of it is based on the
14 parenthetical information and the issue of changing the
15 work. So I guess I couldn't anticipate any way in which
16 the work itself would be changed.

17 Q. You see on the other side --

18 A. Sorry. And that may be a misunderstanding or
19 misreading, but that's my reading of it.

20 Q. You'll see in the weighs against fair use
21 column there's an entry for nontransformative. Given
22 what you said a moment ago, why did you not check
23 nontransformative?

24 A. Well, again, I don't know why this particular
25 case.

1 Q. What's your understanding, though, for a
2 reading you select for -- strike that.

3 For a reading that you choose to put on
4 EReserve like this book chapter, like this Holsti
5 chapter, is it your understanding sitting here that that
6 would be -- that use would be nontransformative?

7 MS. MOFFITT: Object to the form.

8 THE WITNESS: Well, sitting here as I
9 think about it and I now see that it might
10 be intended to mean the opposite of
11 transformative, I might see a reason to
12 check that box if I did not check
13 transformative.

14 I don't know if I have had that
15 understanding of the two being paired in
16 the past, though.

17 BY MR. LARSON:

18 Q. Do you recall ever checking on any of your
19 fair use checklists the nontransformative box?

20 A. I don't recall.

21 Q. Do you recall under factor one in the weighs
22 against fair use column, do you recall in any of your
23 fair use checklists that you filled out ever checking
24 any of the boxes?

25 A. I'm sorry. Under factor one?

1 Q. Yeah, factor one, weighs against fair use.

2 A. Weighs against fair use.

3 Q. Yeah.

4 A. I don't recall doing so.

5 Q. Let's look at factor 2. You've checked all
6 three boxes there.

7 Just tell me your understanding of important
8 to educational objectives. That's the third entry in
9 factor 2.

10 A. Well, my understanding of that is probably
11 similar to the box use is necessary to achieve my
12 intended educational purpose. That work, again, is --
13 use is particularly useful for introducing students to a
14 valuable perspective.

15 Q. Let me ask this. Would you ever assign a
16 reading to your students and put it on EReserves that
17 wasn't important to educational objectives?

18 A. I can't think of a reason for doing so.

19 Q. Look down in factor 3 for me, the third entry
20 there. Amount taken is narrowly tailored to educational
21 purpose such as criticism, comment, research or subject
22 being taught.

23 What's your understanding of that factor or
24 that entry?

25 A. Well, at least one part of my understanding is

1 that I would only use that part of a work that I see as
2 necessary or especially useful for exposing my students
3 to a perspective.

4 Q. So am I understanding you to say that if you
5 choose a reading that you want -- that's required for
6 your students, that it would satisfy that entry, that
7 you would check that box?

8 MS. MOFFITT: Object to the form.

9 Question is vague.

10 THE WITNESS: I can't imagine a
11 situation where I wouldn't check that box.

12 BY MR. LARSON:

13 Q. Understood.

14 Explain to me, you checked, looking under
15 factor 3, small portion of work used. Tell me why you
16 checked small portion of work used?

17 A. Uh-huh.

18 MS. MOFFITT: Question is vague. Are
19 you talking about in this case or
20 generally?

21 BY MR. LARSON:

22 Q. Talking about in this case first.

23 A. Well, again, I can't recall specifically what
24 I was thinking in this case.

25 Q. And how do you understand then, if you can't

1 recall particularly, what's your understanding of when
2 or why you would check small portion of work used?

3 A. Well, my understanding is that, and it has
4 been for a while, that a small portion would be an
5 amount that didn't exceed either one chapter of a book
6 or 10 percent of the book.

7 Q. So just so I'm clear. If it was one chapter
8 but that chapter was 20 percent of the book, would that
9 be okay?

10 A. No.

11 Q. So it's whatever is less of those two criteria
12 is what governs?

13 MS. MOFFITT: Object to the form.

14 THE WITNESS: You know, not necessarily.
15 I guess I can imagine a situation where
16 there were two chapters that together added
17 up to less than 10 percent, so maybe it's
18 probably the 10 percent rule that governs.

19 BY MR. LARSON:

20 Q. And what's the source of that understanding,
21 the 10 percent?

22 A. I don't recall specifically where I got it.

23 Q. And is that something you've always followed
24 in placing materials on EReserves?

25 A. For some time. I can't remember when I

1 started doing it.

2 Q. And just so I'm clear, is that 10 percent rule
3 just what you used to determine small versus large on
4 the checklist or is that sort of something that you rely
5 on no matter what?

6 In other words, if the check -- even if the
7 checklist suggested it was a fair use, if it was 20
8 percent, would you not use it? You see what I'm saying?

9 MS. MOFFITT: Object to form.

10 THE WITNESS: I guess that I have
11 equated 10 percent with fair use for some
12 time.

13 BY MR. LARSON:

14 Q. Just so -- I guess let me try again. Does the
15 10 percent criteria that we're discussing, does that
16 sort of trump the checklist for you?

17 A. I would say that whenever I became familiar
18 with this checklist I -- and again, I guess I have to
19 speculate here, I was either shown or just came to
20 associate the two, the 10 percent was associated with
21 small portion of work used. But I can't remember
22 exactly where I began that association.

23 Q. And forgive me if I've asked this question,
24 but I want to make sure I have a full understanding. If
25 your checklist after you have filled it all out

1 suggested that the use was a fair use but the excerpt
2 was 25 percent of the book, would you choose not to use
3 it?

4 A. Oh, can I -- in other words, if I couldn't
5 check small portion but all the other factors weighed in
6 favor of fair use?

7 Q. Right. Right.

8 A. I don't know. I've never encountered that
9 situation.

10 Q. Looking in the right hand side of factor 2, I
11 see that there are no boxes checked.

12 A. Uh-huh.

13 Q. Do you recall in any of your experience
14 filling out the checklists ever checking any of the
15 boxes in the weighs against fair use column under factor
16 2?

17 A. Under factor 2, I don't recall ever doing so.

18 Q. And same question for factor 3.

19 A. No, I don't recall ever doing so.

20 Q. In factor 3 for the Holsti excerpt, you did
21 not check portion used is not central or significant to
22 entire work as a whole. Tell me why not?

23 A. Well, again, I don't recall what I thought at
24 the time.

25 Q. How about sitting here today?

1 A. And again, I guess without taking a look at
2 the work I might need -- necessarily what I say is
3 somewhat speculative. But my thinking would be that it
4 is significant to the entire work insofar as -- well, I
5 wouldn't regard it as central to the work because the
6 book itself contains a handful of different
7 perspectives.

8 I guess I see it analogous to one of my
9 required readings for a week, so potentially they could
10 have had somebody else write a chapter on a related
11 subject and it would have been just as good of a book.
12 But I do see it as significant because it is an
13 important contribution to the book.

14 Q. So if you were to do this chart today, would
15 you check that box then because it's significant?

16 A. Well, I would not check the box on the left
17 side because I would not be able to say it is not
18 significant.

19 Q. I see.

20 A. But I wouldn't check one thing on the right
21 side because it doesn't say -- ask whether it is
22 significant to the work.

23 Q. I see. So if on the right hand side it said
24 portion used is significant to the work, then you would
25 check it, but not central?

1 A. I mean, I'd have to --

2 MS. MOFFITT: Object to the form of the
3 question.

4 THE WITNESS: I'd have to think about
5 it. But based on what I just said, yes.

6 BY MR. LARSON:

7 Q. Let's look at factor 4 on the left hand side.

8 A. Uh-huh.

9 Q. You checked no significant effect on market or
10 potential market for copyrighted work.

11 What's your understanding of that factor or
12 entry?

13 A. My general understanding?

14 Q. Uh-huh.

15 A. I guess it would be that by making this work
16 available to my graduate students it's not going to
17 reduce their likelihood of purchasing the book or
18 perhaps even purchasing a copy of the chapter, however
19 they might do that.

20 Q. So by market, you understand the market to be
21 the market for sales of the book or sales of the
22 particular chapter?

23 A. That's my understanding.

24 Q. Okay. And am I understanding you right that
25 giving them, giving your students the chapter on the

1 EReserve system in your view wouldn't dissuade them from
2 possibly purchasing that chapter?

3 A. No.

4 Q. No I said it wrong or no it doesn't dissuade
5 them?

6 A. No, it wouldn't dissuade them because they
7 would not have the intention to do so.

8 Q. All right. So let me try again just so I'm
9 clear.

10 Is what you're saying that even if you give
11 them the chapter on EReserves for this course they might
12 still go out and purchase that same chapter?

13 A. No, I'm saying that if I don't give it to them
14 on EReserves it won't affect their -- now I'm getting
15 confused.

16 Where I see it says weighs in favor of fair
17 use, I'm assuming -- yeah, yeah, if I make it available
18 to them it won't alter the likelihood of them purchasing
19 the book or the chapter.

20 Q. And so I guess why would a student purchase
21 the chapter if you've given it to them?

22 A. They wouldn't, but if I didn't give it to them
23 they wouldn't purchase the chapter because I wouldn't
24 assign it and they wouldn't see it as -- maybe a very
25 small chance they would, but given that it wasn't

1 required and given that it might be available through
2 the library anyway and they could go access it, then
3 they wouldn't have any -- there wouldn't be a strong
4 incentive to purchase it. That's my thinking.

5 Q. On the right hand side you checked licensing
6 or permission reasonably available.

7 Tell me what your understanding of that entry
8 is.

9 A. My understanding now or in general is that if
10 somebody sought to obtain a license or permission for
11 this work they would be able to do so.

12 Q. And do you know how they would do that?

13 A. Not in any detail.

14 Q. Did you --

15 A. Based on assumptions.

16 Q. So you didn't -- I take it when you were
17 filling out the checklist, you didn't investigate
18 whether you could get a license or permission for the
19 particular chapter that you used, is that right?

20 A. Correct.

21 Q. You checked numerous copies made or
22 distributed, and then I see a little handwritten
23 annotation 10 next to it. Tell me what you meant by
24 that?

25 A. By the 10?

1 Q. Yeah.

2 A. I think I meant at the time I was assuming
3 there would be about 10 students in the class.

4 Q. And tell me why you checked the box?

5 A. Well, again, I don't know why I did then.

6 Q. But sitting here now, what's your
7 understanding of that factor?

8 A. That -- that by making it available on
9 EReserves numerous copies might be made.

10 Q. Okay. Might be made or are made?

11 A. I don't know.

12 Q. But if each student goes and accesses the
13 work, then numerous copies would be made?

14 A. If each student printed out a copy or
15 downloaded a copy on their own computer, then I would
16 regard that as numerous or -- on the order of 10 copies
17 would be made in this case.

18 Q. What would be the cutoff for you in terms of
19 what's numerous?

20 MS. MOFFITT: Object to form.

21 BY MR. LARSON:

22 Q. If it were five students in the class, would
23 you consider that numerous?

24 A. In general I think my approach here is to put
25 down as many -- to err on the conservative side and to

1 check as many items under weighs against fair use as I
2 could possibly imagine I might want to check rather than
3 making assumptions that, you know, three is not numerous
4 or five is not numerous.

5 Q. And why is that?

6 A. Because I take the concern about fair use
7 seriously and want to make sure that what I'm doing
8 fairly, clearly can be justified in terms of the factor,
9 various factors.

10 Q. And with that approach it still came out under
11 factor 4 that there were four checks on the weighs in
12 favor of fair use side and only three on the weighs
13 against fair use side, is that right?

14 A. That looks like what happened here.

15 Q. And overall for the chart, am I right that
16 you've got 12 in the weighs in favor of fair use and
17 only three in weighs against fair use?

18 A. Oh, I counted twice here. Three, four,
19 five -- yeah, looks like 12 to 3.

20 Q. Have you ever filled out a fair use checklist
21 and had it come out such that the chart weighed against
22 fair use? You had more checks on the right hand side
23 than the left hand side?

24 A. I don't recall that ever happening.

25 Q. Do you recall ever filling out a checklist and

1 having any more checked than the three that are checked
2 here under factor 4 in weighs against fair use?

3 A. I don't recall.

4 Q. Have you ever had an EReserves reading flagged
5 by the library for any reason, you know, too large or
6 some other concern about it?

7 A. I don't think so. Certainly since I started
8 using the checklist.

9 Q. If it were the case that you were required to
10 pay a permissions fee for using the Holsti chapter, what
11 would you do?

12 MS. MOFFITT: Object to form.

13 THE WITNESS: If I were as the professor
14 of record?

15 BY MR. LARSON:

16 Q. Well, let's start with that.

17 A. Were required to --

18 Q. If you were required to pay a permissions fee
19 to use it in your course.

20 MS. MOFFITT: Same objection.

21 THE WITNESS: I can only speculate. And
22 for this work in particular?

23 BY MR. LARSON:

24 Q. Uh-huh.

25 A. You'd have to tell me what the fee is or was.

1 Q. As an approximation let's say it's 10 cents
2 per page, so \$3.80 per --

3 A. Per page.

4 Q. \$3.80 per student.

5 A. Per student.

6 MS. MOFFITT: Same objection.

7 THE WITNESS: I can't tell you without
8 having more time to think about it, to
9 think about what the alternatives would be.

10 BY MR. LARSON:

11 Q. What if it were -- if that charge were charged
12 to the students, you know, through their student ID card
13 or school account or something?

14 MS. MOFFITT: Same objection.

15 THE WITNESS: I'd have to think about
16 it, and probably something I'd want to talk
17 over with the students to get their sense
18 of what would be --

19 BY MR. LARSON:

20 Q. To the extent you can answer, sitting here
21 today would you view it as unreasonable to require
22 students to pay, you know, \$4 for a reading of this
23 nature?

24 MS. MOFFITT: I want to object to the
25 form of the question. The question is

1 vague.

2 THE WITNESS: I wouldn't object in
3 principle to charging students a certain
4 amount, you know. I couldn't tell you what
5 amount would be appropriate and under what
6 circumstances.

7 BY MR. LARSON:

8 Q. Have there ever been any readings that you
9 have chosen not to use because they weren't -- that they
10 weren't fair use on the -- or you didn't consider them
11 to be a fair use?

12 A. Yes.

13 Q. And tell me what -- when that happened or what
14 happened?

15 A. I recall some other readings -- I just know
16 that there have been times, you know, I can't give you
17 the specifics, you know, because I sort of moved on to
18 other readings.

19 Q. And was that a situation where you went
20 through the checklists for those readings or was it a
21 situation where they were above your 10 percent figure
22 that you told me about before?

23 A. I think usually stopped there in that I didn't
24 bother going through the checklist trying to make a case
25 for assigning it anyway.

1 Q. And in those situations, did you scrap it all
2 together or did you put the work on hard copy reserve or
3 provide it to students in some other fashion?

4 MS. MOFFITT: Object to the form.

5 THE WITNESS: I don't recall for sure.
6 I know that I didn't make it a required
7 reading.

8 BY MR. LARSON:

9 Q. And I take it you didn't consider in those
10 situations then licensing the work or paying a
11 permissions fee to use it and decided to use the one you
12 wanted?

13 MS. MOFFITT: Object to the form.

14 THE WITNESS: I don't recall for sure,
15 but I probably didn't.

16 MR. LARSON: Why don't we pause a couple
17 minutes and let me flip through my notes
18 and make sure I've covered everything and I
19 think we'll be done.

20 THE VIDEOGRAPHER: Off the record at
21 12:00.

22 (Brief recess.)

23 THE VIDEOGRAPHER: Back on the record
24 at 12:05.

25 MR. LARSON: I have no further

1 questions.

2 MS. MOFFITT: I have a few questions,
3 Professor Duffield.

4 EXAMINATION

5 BY MS. MOFFITT:

6 Q. If you could put in front of you Duffield 5,
7 the checklist that you completed for the PLS 8407
8 course.

9 I believe Mr. Larson had asked you some
10 questions about factor 2 on Georgia State 65189
11 regarding whether you had ever for any of the works you
12 filled out a checklist for checked any of the boxes on
13 the right under weighs against fair use.

14 Do you recall that question?

15 A. His question?

16 Q. His question.

17 A. Yes.

18 Q. Okay. Have you ever filled out a checklist
19 for a work that was an unpublished work?

20 A. I don't recall doing so.

21 Q. Do you recall ever having filled out a
22 checklist for a work that was a highly creative work
23 such as art, music, novels, films, plays, poetry or
24 fiction?

25 A. No, I don't recall doing so.

1 Q. Do you recall ever having filled out a
2 checklist for a work that was a consumable work, like a
3 workbook or a text?

4 A. No, I don't recall doing so.

5 Q. Turning to factor 3, do you recall ever having
6 filled out a checklist for a work where you were using a
7 large portion of the work or the entire work?

8 A. No, I don't recall doing that.

9 Q. Do you recall ever having filled out a
10 checklist for a work where the portion you were using
11 was the heart of the work?

12 MR. LARSON: Object to the form.

13 THE WITNESS: No, I don't recall doing
14 that.

15 BY MS. MOFFITT:

16 Q. Or let me ask the question another way. Do
17 you ever recall filling out a checklist for a work where
18 the portion used was central to the work or the heart of
19 the work?

20 MR. LARSON: Object to the form.

21 THE WITNESS: No, I don't recall doing
22 so.

23 BY MS. MOFFITT:

24 Q. Do you recall ever filling out a checklist for
25 a work where the amount was taken was more than

1 necessary for criticism, comment, research or the
2 subject being taught in your class?

3 MR. LARSON: Object to the form. I take
4 your question to be whether he considered
5 it to be more than necessary, not sort of
6 an objectively whether it was more than
7 necessary?

8 MS. MOFFITT: You have an objection to
9 the question?

10 MR. LARSON: Yeah, I object to the
11 form.

12 MS. MOFFITT: Can you repeat that
13 question?

14 (The record was read by
15 the court reporter.)

16 THE WITNESS: Shall I answer?

17 No, I don't recall doing so.

18 BY MS. MOFFITT:

19 Q. I'll ask it another way. Have you ever filled
20 out this checklist for a work where you considered it to
21 have been taking more than necessary for criticism,
22 comment, research or the subject being taught in your
23 class?

24 A. Could you restate it again, because there's a
25 little difference?

1 Q. Yep. Let me try to ask it more artfully.

2 Have you ever filled out a checklist for a
3 work where you considered that the amount you were
4 taking from the work was more than necessary for either
5 criticism, comment, research, or the subject that you
6 were teaching in that course?

7 A. No, I don't recall doing so.

8 MS. MOFFITT: Okay. I don't have any
9 further questions.

10 MR. LARSON: Nothing further.

11 THE VIDEOGRAPHER: That concludes the
12 deposition. We're off the record at 12:08.

13 MS. MOFFITT: And we are going to read
14 and sign.

15 (Deposition concluded at 12:08 p.m.)
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E R R A T A S H E E T

I, the undersigned, John S. Duffield, do hereby certify that I have read the foregoing deposition and that, to the best of my knowledge, said deposition is true and accurate (with the exception of the following corrections listed below).

PAGE / LINE CORRECTION

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NOTARY PUBLIC SIGNATURE

DATE-----

MY COMMISSION EXPIRES:

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C E R T I F I C A T E

G E O R G I A :

F U L T O N C O U N T Y :

I hereby certify that the foregoing deposition was taken down, as stated in the caption, and the questions and the answers thereto were reduced to printing under my direction; that the preceding pages represent a true and correct transcript, to the best of my ability, of the evidence given by said witness upon said hearing. And I further certify that I am not of kin or counsel to the parties to 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 20th day of April, 2011.

Teresa Bishop, RPR, RMR
CCR No. B-307
My commission expires 11-21-11.

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DISCLOSURE

STATE OF GEORGIA

COUNTY OF DEKALB

Deposition of John S. Duffield

Pursuant to Article 10.B of the Rules and Regulations of the Board of court Reporting of the Judicial Council of Georgia, I make the following disclosure:

I am a Georgia Certified Court Reporter. I am here as a representative of Shugart & Bishop.

I am not disqualified for a relationship of interest under the provisions of O.C.G.A. 9-11-28.

Shugart & Bishop was contacted by the offices of Bondurant Mixson & Elmore to provide court reporting services for this deposition.

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Teresa Bishop
RPR, RMR, CCR B-307

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