

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 JENNIFER ESPOSITO, PH.D., 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, SB-2 Conference Room, Atlanta, Georgia, on Thursday, February 3, 2011, commencing at the hour of 9:09 a.m.

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ALSO PRESENT:

KENNITH DRAKE, VIDEOGRAPHER

- - -

(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 Jennifer Esposito  
3 taken by the plaintiffs in the matter of  
4 Cambridge University Press, Oxford  
5 University Press Incorporated, Sage  
6 Publication Incorporated versus Mark P.  
7 Becker in his official capacity as Georgia  
8 State University president, et al.

9 The date is February the 3rd, 2011.

10 We're on the record at 9:09.

11 JENNIFER ESPOSITO, Ph.D.,

12 having been first duly sworn, was examined and testified as  
13 follows:

14 EXAMINATION

15 BY MR. LARSON:

16 Q. Professor Esposito, can you start by spelling  
17 your name and providing your address for the record?

18 A. My work address or home address?

19 Q. Home address, please.

20 A. Jennifer, J-e-n-n-i-f-e-r, Esposito,  
21 E-s-p-o-s-i-t-o. 1372 Gates Circle, Atlanta, Georgia,  
22 30316.

23 Q. Thank you. I'm Todd Larson, I'm here  
24 representing the plaintiffs in this action from the law  
25 firm called Weil Gotshal.

1                   Have you been deposed before?

2           A.    No.

3           Q.    Did your counsel give you some general  
4 explanation of how things would work today?

5           A.    Yes.

6           Q.    Let me just add a few things to that if I  
7 could.

8                   Just please answer verbally as opposed to a  
9 nod so that it shows up on the transcript that we're  
10 taking. Let me finish my question before you answer.  
11 Again, just so that we have a clean record. If you need  
12 a break, let me know?

13                   I understand that you have an issue with your  
14 neck. Are you on medication for that?

15           A.    No.

16           Q.    Okay. And if your counsel objects to  
17 questions I ask, that's sort of a normal part of the  
18 deposition, you can still answer unless, you know, he  
19 actually instructs you not to for some reason. And the  
20 testimony, just so you know, could be used at trial if  
21 this matter goes to trial.

22                   Did you meet with counsel in preparation for  
23 the deposition?

24           A.    Yes.

25           Q.    When was that?

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A. Monday.

Q. How long did you meet for?

A. Two hours.

Q. Did you review documents or records?

A. What type -- I don't understand.

Q. Did you review any documents or papers as part of that meeting or in preparation for the deposition?

A. My syllabi.

Q. Did you review the declaration that you submitted in this matter?

A. Yes.

Q. Okay. Did you review the checklists that you've completed in the past, the fair use checklists?

A. Yes.

Q. Did you review the Georgia State copyright policy?

A. No.

Q. Did you take a look at any transcripts of any other depositions in this matter?

A. No.

Q. Any filings, briefs, legal briefs, that sort of thing?

A. No.

Q. Did you speak to any of the other professors whose depositions have been taken?



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A. No.

Q. Have you read the complaint in this matter, the legal complaint?

A. Not -- no.

Q. That's fine. Just --

A. Okay.

Q. Just wondering.

What is your understanding of what this case involves?

A. That the publishers that are in the lawsuit feel that the fair use checklist is not a fair practice. And that's it.

Q. And are you aware of whether or not you were named personally in the complaint for your own practices?

A. Obviously I was.

Q. I'll provide you a document that's marked as Esposito Exhibit 1. This is a page just printed out from the Georgia State web site, provides your bio, I believe. Can you confirm that this is accurate?

A. Yes.

Q. You got your Ph.D. in 2002?

A. Yes.

Q. Have you been at Georgia State since that time?

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A. No.

Q. I'm sorry?

A. No.

Q. Where were you after -- well, when did you come to Georgia State?

A. In '04.

Q. Where were you before that?

A. Millersville.

Q. In Pennsylvania?

A. Yes.

Q. Are you tenured?

A. Yes.

Q. When did you make tenure?

A. Last year.

Q. Congratulations.

A. Thank you.

Q. What department are you in?

A. Educational policy studies.

Q. Is Professor Kaufmann in your department?

A. Yes.

Q. Just tell me, if you would, the reporting structure in your department. Is there a chair that you report to or some chain of command?

A. Yes, we have a chair.

Q. Who's that?

1           A.     Sheryl Gowan.

2           Q.     And do you know whether the provost or the  
3 president have -- let me take it one at a time.

4                     Does the provost have supervisory authority  
5 over your department?

6           A.     I'm not sure how the university structure  
7 works.

8           Q.     You report to the chair and that's basically  
9 it?

10          A.     That's right.

11          Q.     Have you published?

12          A.     Yes.

13          Q.     I don't want you to list them all, but give me  
14 a general sense of what you've published.

15          A.     Book chapters, journal articles, encyclopedia  
16 entries.

17          Q.     And are those works that would be considered  
18 works of nonfiction?

19          A.     Yes.

20          Q.     Now, I take it although they're considered  
21 nonfiction, those would contain your original analysis  
22 on the subject of those articles, is that right?

23          A.     That's right.

24          Q.     And the actual text of the articles would be  
25 your original expression of the subject matter, is that

1 right?

2 A. That's right.

3 Q. You're not -- it's not just -- those articles  
4 have not just been a recitation of facts, is that right?

5 A. True.

6 Q. Would you describe the expression and analysis  
7 in those articles as creative?

8 A. Perhaps.

9 Q. And why do you say perhaps?

10 A. I guess it depends on how you define creative.

11 Q. How would you define it?

12 A. Something that no one has done before.

13 Q. And is that the case for any of the articles  
14 that you've written?

15 A. Some.

16 Q. So the fact that they're nonfiction in your  
17 mind does not mean that they can't also be creative  
18 products, right?

19 A. Yes.

20 Q. Just give you what was marked previously as  
21 Dixon 2. Do you recognize this document?

22 A. Yes.

23 Q. What is it?

24 A. The copyright policy that Georgia State  
25 follows.

1 Q. Okay. Do you recall when you first saw this  
2 document?

3 A. I don't know exactly what year it was, but it  
4 was when the fair use checklist was put into place.

5 Q. So it's your recollection that you saw it,  
6 first saw it shortly after the policy was put into  
7 place?

8 A. Yes.

9 Q. You understand that this was a new policy that  
10 was put into place at some point in the last couple  
11 years?

12 A. Yes.

13 Q. How did you find out about it?

14 A. Through the department chair.

15 Q. And what was the nature of that communication?

16 A. She announced that there was a new copyright  
17 policy, gave us the name of -- you know, someone in the  
18 library we can speak to about it and someone in legal  
19 affairs that we can speak to about it.

20 Q. Do you recall who the person was in the  
21 library?

22 A. I don't.

23 Q. Do you recall who the person was in legal  
24 affairs?

25 A. No.

1 Q. And were you instructed by the department  
2 chair that this was a policy that you were required to  
3 follow?

4 A. Yes.

5 Q. Did you accept that instruction?

6 A. Yes.

7 Q. Is it your sense that if the department chair  
8 were to indicate that some work that you had posted on  
9 EReserve, for example, were in violation of this policy,  
10 would you take it down?

11 A. Yes.

12 Q. Okay. Same question, what if the provost's  
13 office contacted you and instructed that you needed to  
14 take down a work that you posted, would you do so?

15 A. Because it was in violation of the policy?

16 Q. Right.

17 A. Yes.

18 Q. Okay. And would you take -- if the  
19 president's office contacted you and indicated that you  
20 needed to take down a work for being in violation of the  
21 policy, would you do so?

22 A. Yes.

23 Q. And same question, if you were contacted by  
24 the counsel's office for the Board Of Regents for the  
25 state of Georgia, would you take it down?

1           A.    Lawyers, is that what you're saying?

2           Q.    Yeah.

3           A.    Yes.

4           Q.    Do you have an understanding of why the new  
5 policy was put into place?

6           A.    I believe so.

7           Q.    Tell me, please.

8           A.    I guess this is perhaps the second part of a  
9 lawsuit, so initially the publishers thought that the  
10 way that Georgia State was doing -- uses EReserves was  
11 in violation of copyright, so in response to that they  
12 created the fair use checklist.

13          Q.    Okay. Have you read this policy? And you can  
14 flip through it if you need to.

15          A.    I have.

16          Q.    When's the last time you read it?

17          A.    Maybe last summer. I mean, discounting the  
18 checklist, I read the checklist every time I put  
19 something on reserve, but I think the actual policy was  
20 over the summer.

21          Q.    Summer of 2010 that would be?

22          A.    Uh-huh.

23          Q.    Can you turn to the page -- if you look at the  
24 header at the top, the page identified as 4 of 19. The  
25 heading on the page is --

1           A.    I see it, yeah.

2           Q.    The fair use exception is the heading.

3           A.    Okay.

4           Q.    And you see there's a paragraph about two  
5 thirds of the way down that says purpose and character  
6 of the use?

7           A.    Yes.

8           Q.    And then the last sentence of that paragraph  
9 says the statute also notes that multiple copies for  
10 classroom use are permitted?

11          A.    Yes.

12          Q.    Is it your understanding from that sentence or  
13 from the policy in general that if you use multiple  
14 copies in the class that that is automatically  
15 acceptable, so to speak?

16          A.    Not automatically.

17          Q.    Okay.  And it's subject to some other  
18 condition?

19          A.    The checklist.

20          Q.    I'm sorry, just let me finish the question  
21 before you answer, please.

22                    It's subject to some other condition?

23                    MR. ASKEW:  Why don't you restate the  
24 question.

25           BY MR. LARSON:



1 Q. Yeah. I think you said that the checklist  
2 plays some role as well, that it's not automatic to be  
3 able to use multiple copies for classroom use, is that  
4 right?

5 A. That's right.

6 Q. Okay. So you have to -- in your view you need  
7 to also fill out the checklist and see how the works do?

8 A. That's right.

9 Q. Can you look at the checklist itself which  
10 starts on page 7.

11 A. Okay.

12 Q. You see there's a -- in the instructions the  
13 last paragraph starts with the word complete?

14 A. Yeah.

15 Q. Complete and retain a copy of this checklist  
16 for each use of the copyrighted work in order to  
17 establish a reasonable and good faith attempt, and then  
18 it goes on?

19 A. Uh-huh.

20 Q. Have you completed and retained a copy of the  
21 checklist for all the works that you've placed on the  
22 EReserve system?

23 A. Yes.

24 Q. And when did you start doing that?

25 A. The year that the checklist was put into

1 existence.

2 Q. Okay. And if you recall, when the checklist  
3 was put into existence, was that in the middle of the  
4 semester?

5 A. I don't recall.

6 Q. Let me try a different way. Do you recall  
7 whether you started using it at the beginning of  
8 whatever semester came next or did you go back and check  
9 works that you currently had posted on EReserves to see  
10 if they passed the checklist?

11 A. I can't answer that because I don't remember  
12 when I was told about the checklist.

13 Q. Fair enough.

14 But since you've started using the checklist,  
15 you've completed and saved a copy of all the checklists  
16 you've done?

17 A. That's right.

18 Q. Can you turn to page 13. Is this a page that  
19 you've seen and read before?

20 A. Yes.

21 Q. And can you turn to page 15, page called  
22 collective licensing agencies?

23 A. Uh-huh.

24 Q. Have you seen and read this page before?

25 A. Yes.

1 Q. You see under works in print there's a  
2 reference to something called the Copyright Clearance  
3 Center?

4 A. Uh-huh.

5 MR. ASKEW: You want to go ahead and  
6 answer rather than uh-huh.

7 THE WITNESS: Oh, sorry. Yes.

8 BY MR. LARSON:

9 Q. Thank you. Is that an organization you're  
10 familiar with?

11 A. Familiar in terms of seeing in here.

12 Q. Okay. Beyond seeing a reference to Copyright  
13 Clearance Center, do you know anything else about them?

14 A. I don't.

15 Q. Do you know what they do?

16 A. I could take a guess.

17 Q. I don't want you to guess.

18 Sitting here you don't really know what they  
19 do, is that correct?

20 A. They hold -- I guess they hold copyright or  
21 they -- I don't know what the word is. Monitor  
22 copyright.

23 Q. Have you -- I take it you've not interacted  
24 with them in any way or visited their web site or --

25 A. No.

1 Q. -- anything like that?  
2 Just let me finish the question, if you would.  
3 A. I thought you were done.  
4 Q. Have you attended any training sessions for  
5 the new copyright policy?  
6 A. Yes.  
7 Q. When was the training session you attended?  
8 A. I don't know when it was. It was through my  
9 department.  
10 Q. And what do you mean through your department?  
11 A. At a meeting, a faculty meeting.  
12 Q. And who provided the training?  
13 A. I don't know.  
14 Q. Was it someone from your department?  
15 A. No.  
16 Q. Was it a woman named Cynthia Hall by any  
17 chance?  
18 A. I'm sorry, I don't remember.  
19 Q. Was there a presentation provided to you  
20 during that meeting?  
21 A. What do you mean?  
22 Q. Did someone present a -- you know, give sort  
23 of a spoken presentation about copyright law and  
24 principles?  
25 A. Yes.

1 Q. Was there a Power Point used, do you recall?

2 A. I don't remember.

3 Q. This is a document that's been previously  
4 marked as Plaintiff's 17.

5 MR. ASKEW: You remember which  
6 deposition this was in?

7 MR. LARSON: I don't.

8 MR. ASKEW: Were you numbering the  
9 documents sequentially at that time?

10 MR. LARSON: Yes, I was. I believe the  
11 policy we followed before was just to  
12 number them sequentially, but given the  
13 break I'm not quite sure where we left off.

14 BY MR. LARSON:

15 Q. Do you recognize this document, Professor  
16 Esposito?

17 A. No.

18 Q. So do you recall anything about the  
19 presentation you were provided or whatever the  
20 discussion was at this faculty meeting you've described  
21 as to the copyright policy?

22 A. I remember it was about the new policy.

23 Q. Anything beyond that?

24 A. How to use the checklist.

25 Q. So someone walked through and showed you the

1 new checklist?

2 A. Uh-huh.

3 Q. But you don't remember this particular --

4 MR. ASKEW: Can you try to verbalize?

5 THE WITNESS: I'm sorry. Can you repeat  
6 the question?

7 BY MR. LARSON:

8 Q. Yeah, you don't recall this particular Power  
9 Point?

10 A. Not this particular one.

11 MR. ASKEW: But he had asked if someone  
12 walked you through the policy and the  
13 checklist, and I think that was the  
14 question that she said uh-huh.

15 THE WITNESS: Right, someone has walked  
16 me through the policy and the checklist.

17 BY MR. LARSON:

18 Q. And that was at that meeting that we've been  
19 discussing?

20 A. There are two times when. When the initial --  
21 when the announcement was made that the policy was put  
22 into place, and then again at some other point, but I  
23 don't remember when.

24 Q. When the policy was put in place, was that the  
25 faculty meeting that you described?

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A. Yes.

Q. And what was the other situation?

A. Someone came and told us, again, how to use the policy and make decisions with the checklist.

Q. And that person came where?

A. To the department.

Q. Okay. And was that a mandatory meeting for the department?

A. It most likely was.

Q. And was it the same or different person from the first meeting?

A. Different.

Q. And do you recall who the person was in the second meeting?

A. I don't.

Q. Was it someone from the legal affairs or counsel's office?

A. I don't know.

Q. And was there any sort of presentation or Power Point or anything like that?

A. Yeah, you asked me that. Yes. I mean, there was a presentation, I don't remember if there was Power Point. I'm sorry.

Q. That's okay. Just so -- I just want to make sure I understand. Two meetings, two presentations

1 about the new policy and each time you were walked  
2 through the checklist?

3 A. That's right.

4 Q. And roughly how far apart were these two  
5 different meetings?

6 A. I can't say for sure.

7 Q. I mean, a year, a couple months?

8 A. No, a few months.

9 Q. Do you have any understanding as to why if you  
10 had the first meeting there was a second meeting?

11 A. The first meeting was just the chair, the  
12 department chair, announcing that a new policy was in  
13 place and, you know, she pointed us again to the two  
14 people that we could speak to regarding the policy.  
15 Showed us the checklist and told us how to access it.

16 Q. Okay. And the second meeting was where some  
17 outside person from outside the department provided more  
18 instruction or detail?

19 A. Uh-huh. Yes.

20 Q. Are you aware of whether there is a resource  
21 available to you to consult if you have a question about  
22 whether a particular use is a fair use or not?

23 A. Yes.

24 Q. And who's that?

25 A. Legal affairs.



1 Q. Do you know who in particular?

2 A. No. I have it in my records. I don't know  
3 off the top of my head.

4 Q. Have you ever consulted with legal affairs in  
5 the course of filling out your checklists?

6 A. No.

7 Q. Would you do so if you found that you had a  
8 use that was, you know, difficult, perhaps on the  
9 borderline in your mind?

10 A. Yes.

11 Q. And that would be I take it because that  
12 person would be -- would have some copyright expertise  
13 that you don't have personally, correct?

14 A. That's correct.

15 Q. And that person as a copyright expert I take  
16 it would be best positioned to make that difficult  
17 choice, is that right?

18 A. In a situation that was not -- that I couldn't  
19 decide from the checklist, yes.

20 MR. ASKEW: Is your neck bothering you?

21 THE WITNESS: It's a little bit.

22 MR. LARSON: Do you need to shift or --

23 THE WITNESS: No, I'll be all right. I  
24 mean, it will bother me. I'm sorry.

25 BY MR. LARSON:

1 Q. What's your understanding, if you have any, as  
2 to the consequences of violating the copyright policy?

3 A. Personally or as an institution?

4 Q. Personally.

5 A. I mean, I guess I had always assumed that  
6 perhaps I would not be allowed to use the library  
7 EReserves any more.

8 Q. And what's the source of that understanding?

9 A. There isn't one.

10 Q. Have you ever had any EReserve work flagged or  
11 noted by library personnel or someone saying --

12 A. Yeah.

13 Q. Saying this is inappropriate?

14 A. Yes.

15 Q. When did that happen?

16 A. Before the checklist was put into place.

17 Q. And what happened?

18 A. They told me that they could not put it on  
19 reserve because it was too much of -- too much a portion  
20 of one source.

21 Q. Do you recall how much it was?

22 A. I don't.

23 Q. Let me ask. Did they tell you that it was too  
24 much because it was over 20 percent or 30 percent or  
25 some number?

1           A.    I don't remember.

2           Q.    But this was before the new policy was put in  
3 place?

4           A.    That's right.

5           Q.    Since the new policy has been put in place,  
6 has anything that you've posted been similarly flagged?

7           A.    No.

8           Q.    You said before you haven't consulted with  
9 legal affairs as to any of your ERes uses. Has that  
10 been because the checklist -- having completed the  
11 checklist it seems to have been fairly clear to you that  
12 each use was a fair use?

13          A.    That's right.

14          Q.    Are you familiar with the GoSolar system on  
15 the university web site?

16          A.    Yes.

17          Q.    Let me provide you with what's been marked as  
18 Esposito 2. And I'll represent to you this is a  
19 printout we made just recently from the GoSolar system  
20 showing your courses in the summer semester for 2009 and  
21 the fall semester for 2009.

22                If you look at the first page I see here this  
23 indicates that there was a class EPSF 8280 taught during  
24 the summer semester of 2009. Do you recall that as  
25 being accurate?

1 A. Yes.

2 Q. And this indicates that there were it looks  
3 like 22 students in the class. Is that accurate, to  
4 your recollection?

5 A. Yes.

6 Q. Can you turn to the second page which is a  
7 similar printout for the fall semester of 2009. This  
8 appears to indicate that you taught a class called EPRS  
9 8520 in the fall semester. Does that square with your  
10 recollection?

11 A. Yes.

12 Q. And is it correct that you had 14 students in  
13 the class?

14 A. Yes.

15 Q. Let me give you a document identified as  
16 Esposito 3. Do you recognize this as your syllabus from  
17 the EPSF 8280 class that we were just --

18 A. Yes.

19 Q. -- discussing from the summer of 2009?

20 A. Yes.

21 Q. Is it a graduate course or an undergrad  
22 course?

23 A. Graduate.

24 Q. And if you turn to page 2 there's -- you'll  
25 see about four lines down a star, additional readings

1 available on on-line library reserve.

2 That's a reference to the fact that some of  
3 the readings in the course are put on the ERes system?

4 A. Yes.

5 Q. If you'd look at the last paragraph starting  
6 with this course assumes. You say in the second  
7 paragraph, I expect that students will come to class  
8 having read and reflected on the assigned material.  
9 Reading the assigned material means that you will have  
10 underlined, highlighted or made notes in the margins of  
11 particular passages that are important to you.

12 Does that expectation and instruction apply to  
13 the materials that you put on the ERes system?

14 A. Not necessarily.

15 Q. And what do you mean not necessarily?

16 A. Students -- this paragraph was written years  
17 ago before students showed up with laptops to class, so  
18 they can bring their laptops and pull up assignments.

19 Q. And what has your experience been over, say,  
20 the last two years with respect to the EReserves  
21 readings you provide, do students tend to bring them on  
22 their laptops, do they print them out and bring them,  
23 what's your experience been?

24 A. They tend to bring them on their laptops.

25 Q. And do you have understanding as to whether

1 when they're looking at them on their laptops, if  
2 they're accessing them live from the system or do they  
3 just make a copy to their hard drive and save them?

4 A. I have no idea.

5 Q. Have you seen students bring printed copies of  
6 the EReserves materials to class?

7 A. Sometimes.

8 Q. How frequent an occurrence has that been?

9 A. I'm not sure.

10 Q. But it happens?

11 A. Yes.

12 Q. If you could turn to the -- I guess four pages  
13 in where the assignments start. There's a chart.

14 A. Yes.

15 Q. If you look down to the June 11th entry, the  
16 last three entries Hammersley, Tedlock and Gordon. Are  
17 those all on -- works that were placed on EReserves?

18 A. The way that -- way that I do the EReserves is  
19 that I -- at the beginning of the course I fill out the  
20 paperwork required, which includes the citation  
21 information, the checklist. And then if the library  
22 doesn't own the book or if it's checked out, then the  
23 instructor has to actually physically bring his or her  
24 copy to the library. So if at the time the library  
25 didn't own the book or have a copy physically, I just

1 deleted it from the readings. And so -- you know, and I  
2 would tell students just cross this out.

3 So I am not 100 percent positive that students  
4 read all three of those readings for the 11th.

5 Q. Let me make sure I understand. So it's --  
6 syllabus was created at the beginning of the semester, I  
7 take it?

8 A. For a summer syllabi I create them a month to  
9 two months in advance, send them out to students that  
10 are registered so they can start purchasing the books.  
11 You can see there's five textbooks that they have to buy  
12 and that's a heavy reading load for the summer. So I  
13 always do the syllabi in advance.

14 Q. Okay. So -- and then after doing the syllabi  
15 you would have, if I understand what you're saying,  
16 contacted the library with respect to let's just say  
17 these three works here in the June 11th entry and to  
18 start, attempted to put them on EReserves, is that  
19 right?

20 A. That's right.

21 Q. And one possible response from the library  
22 would be that their copy of the work was signed out or  
23 they just don't have a copy of the work, is that --

24 A. That's correct.

25 Q. And at that point I think what you said was

1       rather than providing a copy you would have just scraped  
2       the work?

3           A.    Yes.

4           Q.    Okay.  And then how would the class -- what  
5       would have happened in class then if there was a work  
6       indicated on the syllabus that was no longer available?

7           A.    I would either have e-mailed them to let them  
8       know to disregard that reading or announced it in class.

9           Q.    And sitting here now you can't recall if these  
10       three works in the June 11th entry, whether that  
11       happened for any of those three?

12          A.    I believe it happened with Tedlock.  But I'm  
13       not sure.

14          Q.    If you got to the point of filling out a fair  
15       use checklist -- strike that.

16                The decision or the indication from the  
17       library that they didn't have a copy and your decision  
18       to scrap the work, would that have happened before or  
19       after filling out the fair use checklist?

20          A.    After.

21          Q.    So it's possible you filled out a checklist  
22       but then subsequently did not use the work, is that  
23       right?

24          A.    That's right.

25          Q.    And it's your testimony that the Tedlock was



1 one situation where that did happen or you think maybe  
2 that's what happened with that one?

3 A. I think maybe it did.

4 Q. You're not sure?

5 A. I'm not sure.

6 Q. Any on here in either of the three pages of  
7 assignments where you are sure that you didn't use the  
8 work?

9 A. No.

10 Q. Anywhere you are sure that you did?

11 A. Not 100 percent sure.

12 Q. Do you know for -- going back to the June 11th  
13 entry for the Gordon Tuula entry, do you have a  
14 recollection as to whether you did or did not end up  
15 using that work?

16 A. I am not sure. I can't answer with 100  
17 percent certainty.

18 Q. And why is it that in the situation you  
19 described that you wouldn't simply provide a copy to the  
20 library yourself?

21 A. Plain and simple, I don't like to walk to the  
22 library from my office building. I wear heels all the  
23 time and it's an uncomfortable walk.

24 Q. In the 6/16 entry there's an entry for Pillow  
25 and Mayo. Same question there. Do you have an

1 understanding as to whether or not those were used?

2 A. I believe they were used.

3 Q. You believe they were?

4 A. Uh-huh. Yes.

5 Q. In the 6/23 entry there's an entry for  
6 Michelle Fine "Working The Hyphens", do you see that?

7 A. Yes.

8 Q. Do you have a recollection as to whether that  
9 one was or was not used?

10 A. I believe that was used.

11 Q. And when you say used, that means placed on  
12 EReserves?

13 A. That's right.

14 Q. Have you ever seen printouts from the EReserve  
15 system?

16 A. Yes.

17 Q. Give me one second.

18 I'll hand you what I'm marking as Esposito 19.  
19 I'm skipping because I pre-labeled exhibits.

20 This is a printout from an Excel report that  
21 was provided by your counsel as to the activity on the  
22 EReserve system for the date range 6/8/2009 to 8/1/2009.  
23 And we've just -- we pulled out the entries for the  
24 class EPS 8280.

25 Have you look at the second page, the very

1 last entry, which shows Tedlock, "Ethnography And  
2 Ethnographic Representation" from the "Handbook Of  
3 Qualitative Research". I count 98 in the hit count  
4 column.

5 A. Uh-huh.

6 Q. Does that refresh your recollection whether  
7 the Tedlock assignment was placed on the EReserve  
8 system?

9 A. It doesn't refresh my recollection, but I  
10 mean, if it had 98 hits that means it was available to  
11 students.

12 Q. You can put that one aside. Let me give you  
13 what's been marked as Esposito Exhibit 4.

14 If you could just look back at Esposito 19 for  
15 one second. Look on the front page, the fourth entry.  
16 You see there's an entry for Gordon Tuula or Tuula  
17 Gordon?

18 A. Uh-huh.

19 Q. "Ethnographic Research In Educational  
20 Settings", a hit count of 62. Does that refresh your  
21 recollection as to whether that excerpt was in fact made  
22 available to students in the course?

23 A. Again, I mean, seeing it doesn't refresh my  
24 recollection. It's not going to make me remember  
25 something that I don't remember.

1 Q. Would you have reason to believe that the work  
2 was not made available and hit 62 times during that  
3 semester?

4 A. I don't believe I said that with Gordon. I  
5 think I said that I thought the one that wasn't made  
6 available was Tedlock.

7 Q. Yeah, I'm not trying to suggest otherwise. I  
8 think, correct me if I'm wrong, you just couldn't recall  
9 with the Gordon one way or the other, that is right?

10 A. That's correct.

11 Q. And do you have any reason to believe that the  
12 work wasn't made available and hit 62 times during that  
13 time range?

14 A. No.

15 Q. All right. Let's turn to Esposito 4. Do you  
16 recognize this as the syllabus for EPRS 8520 from the  
17 fall of 2009 semester?

18 A. Yes.

19 Q. Can you take a look at page 4 for me. Is it  
20 correct that the entries where you provide the full  
21 title of the excerpt and book are EReserves entries, for  
22 example, the Corrine Glesne and Denzin and Lincoln?

23 A. Yes. Some are full text articles that the  
24 library owns a license to. The majority of them are  
25 full text articles that the library owns a license to.

1 Q. Which ones do you mean? I'm looking on page  
2 4, for example.

3 A. Page 4, if you go to 9/3, St. Pierre and  
4 Soulston, the library owns that journal. Preisale,  
5 Judith, the library owns that journal. Nukaga, Misako,  
6 the library owns that journal.

7 Q. Okay, if you -- oh, yeah, just on that page.

8 A. Dongxiao and the Grbich, those are texts,  
9 textbooks by Sage that the students had to purchase.

10 Q. The entry for Corrine Glesne, is that an  
11 EReserve entry?

12 A. That is.

13 Q. And that's one where the actual article itself  
14 would have been placed on EReserves, right?

15 A. That's right.

16 Q. With the journals the EReserves listing  
17 provides a link to the database or something?

18 A. That's right.

19 Q. And the Denzin and Lincoln, that would be an  
20 EReserves article?

21 A. That's right.

22 Q. If you turn to the 9/17 page. The Charmaz  
23 entry, is that -- those were EReserves excerpts placed  
24 on EReserves? I'm sorry, strike that. Let me ask that  
25 again.

1                   The Charmaz entry, that reflects an excerpt  
2 from the book that was placed on EReserves?

3           A.    Yes.

4           Q.    And on page 8 in the 11/19 section, you see  
5 that?

6           A.    Yes.

7           Q.    I won't try to pronounce the name, but the  
8 entry framework for analyzing data and mixed methods  
9 research --

10          A.    Yes.

11          Q.    -- that was an excerpt placed on EReserves?

12          A.    I attempted to place both of the articles for  
13 11/19 on reserve, but if memory serves me correctly, the  
14 library didn't have either text at the time.

15          Q.    Okay. And so you didn't use them is your  
16 testimony?

17          A.    That's correct.

18          Q.    And that's both for the --

19          A.    Onwuegbuzie.

20          Q.    And for the Creswell and Clark?

21          A.    Yes.

22          Q.    If you could turn to the next page, there's an  
23 entry for Anfara and Mertz. Was that placed on  
24 EReserves?

25          A.    I am -- I'm not sure. We didn't -- I didn't

1 have that last class on December 3rd, and so I don't  
2 remember if I went ahead and placed those items on  
3 reserve.

4 Q. Well, correct me if I'm wrong, but wouldn't  
5 the -- isn't this done at the beginning of the semester  
6 and the articles placed at the beginning of the  
7 semester?

8 A. No. You know, with the EReserves I put -- I  
9 do list everything that I intend for students to read.  
10 The EReserve process is very slow, and so if you don't  
11 do it by a certain date it takes weeks for them to  
12 actually go through and, you know, look at your  
13 checklist and do everything that they need to do.

14 So this -- you know, I don't know if this is  
15 on reserve or not. Like the situation with  
16 "Anthropology Of Education", I can't remember.

17 Q. You would have filled out -- correct me if I'm  
18 wrong, you would have filled out your EReserves  
19 checklist for this course at the beginning of the  
20 semester?

21 A. That's correct.

22 Q. And so do you recall -- do you have any reason  
23 to believe that the library would not have posted any of  
24 these EReserves works at the beginning of the semester?

25 A. Yes, I do have reason to believe that.

1 Q. And tell me what that is with respect to this  
2 Anfara work?

3 A. If the library didn't have the book in its  
4 collection at the time or if it was checked out, then I  
5 would need to provide my copy of the book. And as a  
6 blanket policy I do not walk to the library to provide  
7 my copy of the book, so I would therefore e-mail the  
8 EReserves and tell them please delete that.

9 Q. Okay. I understand that is a possibility.  
10 What I'm asking is whether you have specific  
11 recollection as to this Anfara work about what happened  
12 with it and whether it fell into that category?

13 A. I don't remember. I'm sorry.

14 Q. So if there were a separate record from the  
15 ERes system with the work being there, you would have no  
16 reason to doubt that, is that correct?

17 A. Can you state that again?

18 Q. Yeah. If the EReserve records from the system  
19 showed that work as being present, it's not your  
20 testimony that those records would be wrong, is that  
21 right?

22 MR. ASKEW: I'm going to object to that  
23 question as vague as to what you mean by  
24 EReserve records.

25 BY MR. LARSON:



1 Q. If a printout from the system showed the  
2 Anfara work was present on the system with hits of the  
3 work, you don't believe that would be in error, correct?

4 MR. ASKEW: Well, I'm going to -- Todd,  
5 again, I'm going to object to the vagueness  
6 of that question because just because it's  
7 on the system -- just because something has  
8 one or two hits does not mean that it was  
9 actually posted to the students. That  
10 could be the process of posting it and then  
11 subsequently gets taken down and the  
12 students never did access it, for instance.

13 So I'm saying it's on the record and it  
14 has some hits is too vague I think as a  
15 question for the witness.

16 BY MR. LARSON:

17 Q. You can answer the question.

18 A. If it has only a few hits my students did  
19 not -- were not required to read it.

20 I teach doctoral students, they generally  
21 complete all assigned readings. They go above and  
22 beyond. So if it had one or two hits on a list, that --  
23 most likely it was not available to my students. If it  
24 did, you would see many hits.

25 Q. My question isn't around whether there are one

1 or two hits or 20. My question is, if there were  
2 records showing that the work was present on the system,  
3 put aside how many hits there were or weren't, just  
4 accept that as the premise of the question, it's not  
5 your testimony that the work was not available, is that  
6 right?

7 A. I don't understand.

8 Q. Looking at Anfara and Mertz here, you just  
9 don't remember or don't know one way or the other  
10 sitting here whether or not it was available, is that  
11 right?

12 A. That's true.

13 Q. Could have been, right?

14 A. Yes.

15 Q. Turning back to page 8. Just so we're clear,  
16 for the Teddlie entry, is it your testimony that you  
17 definitely did not use that work and it did not go up on  
18 the EReserve system?

19 A. When you say go up on EReserve, the library --  
20 what the library does is it doesn't make public certain  
21 entries until I've provided the documentation that it is  
22 a fair use. So if I never bring this book in, they  
23 don't make the article public.

24 And so I believe in this situation that is  
25 what happened. I know this because on that date I had a

1 guest speaker and there were -- there was no reading  
2 due.

3 Q. So your testimony is that the library did not  
4 post on the EReserve system either of these two works in  
5 the 11/19 week, is that right?

6 A. Post meaning make available to my students?

7 Q. Did not place a copy of either of these  
8 excerpts on the EReserve system to make them available  
9 to your students?

10 A. Yes.

11 MR. ASKEW: Your question was did not,  
12 is that right?

13 BY MR. LARSON:

14 Q. My question is did not.

15 I want to make sure I understand. You are  
16 saying neither of these works were put on the EReserve  
17 system and made available to your students?

18 A. That's a double question, because I filled out  
19 a checklist for these works, which means that the  
20 library attempted to place them on reserve.

21 If the library didn't own the book and I did  
22 not bring the book to the library it would not be put on  
23 reserve for student use.

24 Q. And I'm asking -- my question is what actually  
25 happened, did they do it or not?

1           A.    I don't know.

2           Q.    You don't know.  So you're not saying these  
3 two definitely weren't used, you're saying you don't  
4 know whether they were or weren't?

5           A.    I didn't use them in the class.  I didn't  
6 require students to read them.

7           Q.    But your not using them in the class doesn't  
8 mean they weren't placed on the EReserve system,  
9 correct?

10          A.    I don't know.

11          Q.    At the beginning of the semester you requested  
12 that these works be used, is that right?

13          A.    That's right.

14          Q.    And then whether or not they ended up being  
15 placed on the EReserve system, you just don't know?

16          A.    If the library owned the book then I'm sure  
17 because I filled out the checklist because the library  
18 owns the book because it was a fair use it was put on  
19 reserve.

20          Q.    And turning back to page 5.  Same question  
21 with the Charmaz, sitting here do you know whether or  
22 not that excerpt referred to here was in fact placed on  
23 the system?

24          A.    I typed in the citation, I filled out the  
25 checklist, I sent it to the library.  But it is my

1 memory, and my memory is faulty, but my memory leads me  
2 to believe that this was not placed on reserve for  
3 student use.

4 Q. And is it -- your recollection is that was  
5 because the library didn't have a copy from which to  
6 make the EReserve copy?

7 A. Either they didn't have a copy or the copy  
8 that they had was checked out.

9 Q. How are you doing time wise?

10 A. I'm okay.

11 Q. Just want to show you a couple printouts here.  
12 This is Esposito 5. And if you could also pull out the  
13 summer syllabus, Esposito 3, for me. And turn back to  
14 the fourth page.

15 You see the Tedlock entry in the 6/11 box?

16 A. Yes.

17 Q. Looking back to Esposito 5, the table of  
18 contents -- let me represent to you that Esposito 5 is  
19 just a photocopy of the cover and table of contents from  
20 the "Handbook Of Qualitative Research" Second Edition.

21 You'll see on the third page that there's a  
22 chapter 17 by Barbara Tedlock called "Ethnography And  
23 Ethnographic Representation" that runs from 455 to looks  
24 like 486.

25 Is that the chapter that's referenced in the

1 Tedlock --

2 A. I don't have that.

3 MR. ASKEW: You must have given us the  
4 wrong edition.

5 MR. LARSON: I gave you the third.

6 MR. ASKEW: Is this going to be Esposito  
7 5 or are you going to change the number?

8 MR. LARSON: I will -- let's go off the  
9 record for a moment.

10 THE VIDEOGRAPHER: Off the record at  
11 10:01.

12 (Brief recess.)

13 THE VIDEOGRAPHER: This is tape 2.

14 We're back on the record at 10:07.

15 BY MR. LARSON:

16 Q. Professor Esposito, you said before the break  
17 that if ERes report showed there was only a couple hits  
18 for a given work, that indicates that your students  
19 didn't -- that work wasn't made available or required,  
20 something along those lines, is that right?

21 A. Yes.

22 Q. Is it your testimony that if you assign  
23 something for students to read, that as a general matter  
24 they do in fact read it?

25 A. Yes.

1 Q. I want to give you what I've now marked as  
2 Esposito 20.

3 MR. ASKEW: Putting 4 aside?

4 MR. LARSON: Yeah.

5 BY MR. LARSON:

6 Q. Which is a printout of the "Handbook Of  
7 Qualitative Research" Second Edition and the cover and  
8 table of contents. If you could turn to the third page.  
9 And if all goes as planned there should be chapter 17 by  
10 Barbara Tedlock, "Ethnography And Ethnographic  
11 Representation".

12 A. Yes.

13 Q. Is that the Tedlock chapter that's referenced  
14 in the syllabus from the summer of 2009 course that we  
15 were talking about before?

16 A. Yes.

17 Q. And the assignment would have involved the  
18 entire chapter, is that right?

19 A. Chapter 17, yes.

20 Q. Look, if you would, at Esposito 6. This is a  
21 printout of the or photocopy of the cover sheet of the  
22 "Handbook Of Ethnography "along with the table of  
23 contents.

24 And on the top of page 3 there's a chapter 13  
25 called "Ethnographic Research In Educational Settings"

1 by Gordon, Holland and Lahelma. You see that?

2 A. Yes.

3 Q. Is that the chapter that's referenced on the  
4 summer 2009 syllabus, "Ethnographic Research In  
5 Educational Settings"?

6 A. Yes.

7 Q. And your assignment of that work involved the  
8 entire chapter?

9 A. Yes.

10 Q. Handing you Esposito 7, which is a printout or  
11 copy of the cover page and table of contents from the  
12 "Handbook Of Feminist Research Therapy And Praxis".

13 And if you take a look at the second page,  
14 chapter 8 is a chapter by Pillow and Mayo called "Toward  
15 Understanding Of Feminist Ethnography" starting on page  
16 155. Do you see that?

17 A. Yes.

18 Q. Is that the Pillow and Mayo chapter that was  
19 on your syllabus for the summer of 2009 on June 16th?

20 A. Yes.

21 Q. And again that assignment involved the entire  
22 chapter?

23 A. Yes.

24 MR. ASKEW: Which chapter was that?

25 MR. LARSON: Chapter 8.



1 BY MR. LARSON:

2 Q. If you could turn to the June 23rd entry on  
3 Esposito 3, the syllabus. Michelle Fine article  
4 "Working The Hyphens", you see that?

5 A. Yes.

6 Q. What book is that taken from, do you know?

7 A. Based on the syllabus I'm not sure.

8 Q. Sitting here you don't recall where it's from?

9 A. One of the "Handbooks Of Qualitative  
10 Research".

11 Q. The Sage "Handbook Of Qualitative Research"?

12 A. Yes.

13 Q. Not sure which edition?

14 A. That's correct.

15 Q. But it is from that handbook?

16 A. Yes.

17 Q. Let's go back to the Pillow and Mayo article  
18 on June 16th in the syllabus. Can you just tell me why  
19 did you select that particular article for use in your  
20 class?

21 A. The topic for the day was Critiques Of  
22 Anthropology, and the Pillow and Mayo article offered a  
23 critique of anthropology as it's traditionally been done  
24 and instead argue for a feminist ethnography.

25 Q. And did you consider using other readings in

1 the course besides those that are listed here including  
2 the Pillow entry that you didn't use?

3 A. Yes.

4 Q. And why did you choose the Pillow and Mayo  
5 entry as opposed to certain others?

6 A. I tried to -- I tried to offer students a wide  
7 range of different theorists, different writers from  
8 different books. And so there are other, you know, good  
9 examples of feminist ethnography, but this particular  
10 reading came from the "Handbook Of Feminist Research".

11 And the way that my relationship with my  
12 students is such that when I, you know, require a  
13 reading from a book generally if I -- you know, I'll  
14 bring the book to class and I'll show them and I'll talk  
15 about some other articles in the book. And generally  
16 they will go and purchase the book. And so this is one  
17 that I think is expensive, but I think it's really  
18 useful for students who want to do feminist research.

19 So that would be one of the main reasons, is  
20 to get them interested in the book for its collection  
21 of, you know, diverse feminist researchers.

22 Q. Do you have any examples you can point to of  
23 where -- of any students that actually bought that  
24 handbook as a result of using the Pillow and Mayo work?

25 A. My -- yeah, I mean, I know of one student. I

1 mean, I'll see them with the book maybe a few weeks  
2 later or sometimes they'll let me know, you know, Dr.  
3 Esposito, I bought such and such book, I love it. So  
4 yeah.

5 Q. Let me ask, just tell me who to your  
6 recollection bought the "Handbook Of Feminist Research"  
7 because you assigned the Pillow and Mayo chapter?

8 A. I don't -- I mean, I don't remember the name  
9 of the student. I just know that in this summer class  
10 there was a student who was very interested in feminist  
11 research, and she told me that she bought the handbook  
12 and talked to me about other articles that she had read.

13 Q. And she told you that she did that because of  
14 this -- having been assigned this Pillow and Mayo  
15 chapter?

16 A. She hadn't seen the book before I brought it  
17 into class.

18 Q. How do you know that?

19 A. She said so.

20 Q. And what was her name?

21 A. I don't remember.

22 Q. So some student in your class bought the book  
23 because you assigned this chapter, that's your  
24 testimony?

25 A. Yes. Yes.

1 Q. Any others?

2 A. I mean, throughout -- well from this handbook?  
3 No, none that I'm aware of.

4 Q. Any others that you can recall of other  
5 chapters you've assigned where it's caused the student,  
6 a student, to then purchase the entire book?

7 A. Yes. It's a common occurrence in a doctoral  
8 seminar.

9 Q. Let's look at the Gordon and Holland and  
10 Lahelma entry.

11 A. Uh-huh.

12 Q. Which is in the "Handbook Of Ethnography", is  
13 that right?

14 A. Okay.

15 Q. Are there experiences you can point to where  
16 your use of this chapter caused students in the class to  
17 purchase the "Handbook Of Ethnography"?

18 A. No.

19 Q. How about with the Tedlock chapter, are there  
20 situations that you can recall where someone bought the  
21 Sage "Handbook Of Qualitative Research" because you used  
22 this Tedlock chapter?

23 A. Yes.

24 Q. Who is that?

25 A. Again -- I mean, I can't name names, I'm

1       sorry.

2               Q.     How many times did it happen that you recall  
3       that someone bought the Sage handbook because of your  
4       use of this Tedlock chapter?

5               A.     The Sage handbook is very popular among my  
6       students, and so many -- I would say in this -- in the  
7       Handbook Of Feminist -- or the "Handbook Of Feminist  
8       Research" I know of one student, but the Sage "Handbook  
9       Of Qualitative Research" more than one student have  
10      bought that book. They've talked with me about the  
11      expense of it and whether or not I think it's worth  
12      buying.

13              Q.     And my question is a little more specific,  
14      have they -- do you have an understanding as to whether  
15      they bought the Sage handbook because it's a valuable  
16      book in this field or whether it was specifically  
17      because you provided a chapter to them from this Tedlock  
18      chapter?

19              A.     Well, if they hadn't heard of the book prior  
20      to taking the course and reading the chapter, it can be  
21      deduced that that is why they would buy the book.

22              Q.     The Sage "Handbook Of Qualitative Research" is  
23      a generally well known or popular book in your field,  
24      correct?

25              A.     Yes.

1 Q. And so --

2 A. In the field of established academics, yes.

3 Q. And these are graduate students in that field,  
4 correct?

5 A. That's correct.

6 Q. So it's possible, isn't it, that they could  
7 have heard of that book from any number of sources other  
8 than your class, right?

9 A. I would have to disagree with that.

10 Q. The only way they could find out about this  
11 book is from your course?

12 A. I'm not saying the only way that they can find  
13 out. But I'm saying many of them have said, you know, I  
14 hadn't heard of this, it's an expensive book, what do  
15 you think I should do.

16 Q. And then your testimony is that based on that  
17 conversation they've bought the book?

18 A. Yes.

19 Q. And would the Pillow and Mayo, the feminist  
20 research book that you described, is it possible that  
21 student could have heard of the feminist research book  
22 somewhere other than in your class?

23 A. I believe if she had she would have told me.

24 Q. Did she tell you that she bought the book  
25 because you used it in your class?

1           A.     She bought the book because she flipped  
2 through it in my class and saw the other articles that  
3 were in it.

4           Q.     And that was -- that was one student that you  
5 can recall, is that right?

6           A.     That's right.

7           Q.     And with the Tedlock, going back to the Sage  
8 handbook, how many students roughly do you recall having  
9 purchased the Sage handbook in its entirety after your  
10 course?

11          A.     I don't know. I can't give you a number.

12          Q.     Just -- is it less than 10?

13          A.     It's less than 10.

14          Q.     Less than five?

15          A.     Less than five. More than one.

16          Q.     More than one, less than five?

17          A.     More than two. I don't know.

18          Q.     And in each of those instances, is it your  
19 testimony that they didn't know about the Sage handbook  
20 prior to taking your class?

21          A.     That is correct.

22          Q.     They found out about it in your class and then  
23 went and bought it?

24          A.     Yes.

25          Q.     Why do you use the Tedlock chapter? Let me be

1 more specific than that. Sorry.

2 In the June 11th setting, why did you choose  
3 the Tedlock chapter as opposed to other works you might  
4 have used in that week?

5 A. It's a chapter that does a good job of going  
6 through the historical context of ethnography and  
7 ethnographic representation. So it gives students kind  
8 of a wide breadth of knowledge about that particular  
9 topic.

10 Q. And were there -- what's different about that  
11 chapter as opposed to others you might have used?

12 A. I haven't seen others like it.

13 Q. Let me show you what I've marked as Esposito  
14 12. This is a syllabus for the --

15 Well, let me ask you this. Can you identify  
16 this or confirm this is the syllabus from the same  
17 course that we were looking at in Esposito Exhibit 3  
18 just from two years earlier?

19 A. That's right.

20 Q. So this is from the summer 2007, correct? Can  
21 you just turn to the fourth page, please, the June 13th  
22 entry. You see that?

23 A. Yes.

24 Q. And I see there the Gordon, Holland and  
25 Lahelma entry?



1           A.    Yes.

2           Q.    Is that the same chapters you used in the  
3 summer 2009 course?

4           A.    Yes.

5           Q.    So with respect to that particular chapter,  
6 your practices stayed the same since the summer of 2007  
7 course, right?

8           A.    Yes.

9           Q.    Can you turn over to 6/25 for me.  You see  
10 there's an entry for the Michelle Fine chapter "Working  
11 The Hyphens"?

12          A.    Yes.

13          Q.    And that's the same chapter, Fine chapter,  
14 that you used in the summer 2009 version of the course,  
15 is that right?

16          A.    That is correct.

17          Q.    So with respect to that work, again, your  
18 practice hasn't changed from summer of 2007 to summer  
19 2009, is that right?

20          A.    By practice --

21          Q.    Your practice in terms of using this work and  
22 providing it on EReserves?

23          A.    That's right.  I used it in addition to, you  
24 know, changing other work with it.

25          Q.    If you could look back at Dixon (sic) 3, the

1 summer 2009 syllabus. The Tedlock chapter that you used  
2 or that's on the syllabus in 2009, that's actually  
3 something you added at some point after the fall 2007  
4 semester, is that right? I'm sorry. Strike that.

5 A. Yes.

6 Q. It's a chapter you added after the summer 2007  
7 semester, is that right?

8 A. Yes.

9 Q. And the Pillow and Mayo down in the June 16th  
10 entry, that also is something you added after the summer  
11 2007 course, right?

12 A. Yes. I try to change up the readings. So you  
13 see some have been removed from the '07 course and in  
14 '09 some have been added.

15 Q. Got it.

16 Let me ask you this. Why -- when did you  
17 start using the ERes system?

18 A. I believe my -- maybe my second or third year  
19 at Georgia State.

20 Q. So that would have been --

21 A. '05 or '06.

22 Q. And why did you decide to start using that for  
23 providing course readings?

24 A. Well, in the situation of "Anthropology Of  
25 Education", I require five textbooks that students must

1 purchase. That's a significant expense for them. You  
2 know, you're talking almost \$200 in textbooks. And in  
3 order to make other points and to teach other concepts,  
4 I utilized different theorists from different sources.

5 Q. And so I'm not totally following why you use  
6 EReserves for providing those other readings other than  
7 the texts that you require them to buy.

8 A. I don't know of any other --

9 Q. I mean -- tell me if I'm putting words in your  
10 mouth. But is what you're saying because you require  
11 them to buy these other textbooks that are expensive,  
12 for certain other readings you give them on EReserves  
13 because it's free?

14 A. No, that's not what I said.

15 Q. Okay. Well, tell me then why is it that you  
16 provide those other readings through EReserves as  
17 opposed to other options?

18 A. I was listing multiple reasons. First the  
19 students are required to buy five textbooks already for  
20 the course. My philosophy as an instructor is to offer  
21 them as wide of a range of exposure to different  
22 researchers and different theorists. If I was to do  
23 that they would be buying 100 textbooks for the course.  
24 That's not appropriate. So the next best thing is to  
25 expose them to different articles, different authors,

1 different researchers through EReserves.

2 Q. And by doing it through EReserve, they don't  
3 have to pay, correct?

4 A. That's correct.

5 Q. Do you use ULearn at all?

6 A. No.

7 Q. Have you ever secured any licensing or  
8 permission for any works you ever placed on EReserves?

9 A. No.

10 Q. Ever paid any fee of any kind for using it?

11 A. No.

12 Q. Did the university encourage you to use  
13 EReserves in any way?

14 A. No.

15 Q. How did you find out about it?

16 A. I most likely -- I mean, I think I just would  
17 have contacted the library.

18 Q. So EReserves provided you a way to provide  
19 articles or readings to students without their having to  
20 pay for those particular excerpts, is that right?

21 A. It provided me a way to meet the objectives  
22 that I have for the course.

23 Q. And to do so without requiring the students to  
24 have to pay any more than they were paying for their  
25 texts, right?

1           A.     They were buying books already.

2           Q.     And if you could answer my question. Providing  
3     the articles on EReserves provided -- allowed you to  
4     expose them to those articles without having to pay  
5     additional funds beyond the texts that they were buying,  
6     is that right?

7           A.     That would be one reason.

8           Q.     Do you know what a coursepack is?

9           A.     Yes.

10          Q.     What's your understanding of what a coursepack  
11     is?

12          A.     It's a bound photocopy of different articles.

13          Q.     And is that to your knowledge something that's  
14     handled or done through the bookstore?

15          A.     I have no idea.

16          Q.     Is it an option that you've ever considered  
17     for providing readings for your students?

18          A.     Not at Georgia State.

19          Q.     Did you use it or consider it prior to Georgia  
20     State?

21          A.     I've used it as a graduate student when I was  
22     in school.

23          Q.     You bought coursepacks?

24          A.     Yes.

25          Q.     But as a professor, have you ever considered

1 using coursepacks for these additional readings that  
2 you've been describing beyond the texts?

3 A. Not at Georgia State, no.

4 Q. And why not, if I can ask, did you -- you just  
5 didn't think of it or --

6 A. I didn't know --

7 Q. -- did you consider it and reject it?

8 A. Sorry. I didn't know that they even did  
9 coursepacks here.

10 Q. Is there any difference in your mind between  
11 providing the readings over ERes and providing readings  
12 through a coursepack?

13 A. I think so long as it's a fair use there is no  
14 difference.

15 Q. And how does fair use fit into the equation of  
16 whether an ERes use is the same or different than a  
17 coursepack?

18 A. Well, I guess I don't understand what you mean  
19 by different.

20 Q. Well, let me see if I can refine it for you.  
21 From the perspective of a student in a course, is there  
22 any functional difference between receiving a series of  
23 readings, you know, chapters and excerpts, through the  
24 EReserve system as opposed to getting them in a  
25 coursepack, other than the fact that one is digital and

1 one is hard copy?

2 MR. ASKEW: I object. The question is  
3 vague as to what you mean by functional  
4 difference.

5 BY MR. LARSON:

6 Q. You can answer.

7 A. The difference I would give is what you just  
8 said, one is digital and one is not.

9 Q. Other than that, any other differences?

10 A. No.

11 Q. Let me give you four exhibits that are marked  
12 as Esposito 14, 15, 16 and 17. And just --

13 MR. ASKEW: Which are which?

14 MR. LARSON: So the record is clear, 14  
15 has page counter 455 to 486, Bates number  
16 65192. 15 is Bates number 65196. 16 is  
17 Bates number 65194. And 17 is Bates number  
18 65190.

19 MR. ASKEW: What's the identification  
20 for 16?

21 MR. LARSON: 16 is 65194.

22 MR. ASKEW: What's 15 then?

23 MR. LARSON: 15 is 65196.

24 MR. ASKEW: What is 190?

25 MR. LARSON: 190 is 17.

1 BY MR. LARSON:

2 Q. Do you recognize these as the fair use  
3 checklists that you filled out for four works in May of  
4 2009?

5 A. Yes.

6 Q. And these would have been for the summer 2009  
7 semester of EPSF 8280, is that right?

8 A. Yes.

9 Q. Do you recall, was this -- would that have  
10 been the first time that you filled out checklists or  
11 would there have been semesters prior to that when you  
12 filled them out?

13 A. There were semesters prior.

14 Q. Was that the Maymester from 2009 or the spring  
15 semester?

16 A. I did not teach a Maymester in 2009, so I'm  
17 sure it was spring.

18 Q. And do you happen to recall whether these  
19 checklists that we're looking at here for the summer of  
20 2009 were completed after the sessions you described  
21 with your department and the copyright presentations  
22 that we talked about?

23 A. I -- it's safe to say that any checklist that  
24 I filled out occurred after my department chair  
25 announced that the policy was in place.



1 Q. Because the policy had just been put out,  
2 correct?

3 A. Yeah. Well, I don't know what year the policy  
4 was put into practice.

5 Q. But you don't know whether these checklists  
6 were filled out before or after that second training  
7 session you described?

8 A. I don't.

9 Q. And these would have been filled out prior to  
10 the start of this semester, is that right?

11 A. That's right.

12 Q. So let's look at Esposito 14. This is for  
13 "Ethnography And Ethnographic Representation" from the  
14 "Handbook Of Qualitative Research". That's the Tedlock  
15 chapter?

16 A. Tedlock.

17 Q. Take a look down at factor 1, if you would.  
18 Look in the weighs against fair use category. There's  
19 an entry for nontransformative. And then in the weighs  
20 in favor of fair use category there's an entry for  
21 transformative.

22 A. Uh-huh.

23 Q. Tell me, what is your understanding of whether  
24 a chapter, providing a chapter or excerpt of a work on  
25 EReserves is transformative or not?

1           A.    My understanding is that it has to change the  
2 nature of the article in question.

3           Q.    Change it in what respect?

4           A.    You know, so instead of -- instead of a print  
5 copy, you know, maybe someone makes -- I don't know,  
6 does something else with it, put it in a different form.

7           Q.    So would creating a digital copy, a PDF of a  
8 chapter and providing it to students, is that what you  
9 mean by putting it in a different form?

10          A.    No.  I meant taking it out of print form.  
11 Maybe performing it or speaking it.

12          Q.    I see.  And so would providing a copy of the  
13 chapter as a PDF to students, in your mind is that a  
14 transformative use?

15          A.    No.

16          Q.    And so my question then, going back to the  
17 page, is why didn't you check nontransformative?

18          A.    I'm not sure.  I mean, because I -- I guess I  
19 didn't think it was nontransformative, either.

20          Q.    So you didn't think it was transformative but  
21 you didn't think it was nontransformative?

22          A.    Right.  I thought that was something that  
23 didn't apply in my situation in looking at these  
24 articles.

25          Q.    All right.  So just -- I want to make sure I'm

1 understanding.

2 Your providing articles to students in your  
3 mind is neither transformative nor nontransformative?

4 A. Of the work, yes.

5 Q. Is there a -- when would nontransformative, in  
6 your mind, if you have an understanding, when would that  
7 be checked, in what sort of use?

8 A. I -- I don't know.

9 Q. The first two boxes under weighs in favor of  
10 fair use are nonprofit educational and teaching both of  
11 which are checked here. Do you see any difference  
12 between those two boxes?

13 A. I mean, given that it is in parenthesis and  
14 says multiple copies for classroom use, yeah, I checked  
15 both because I teach with the material, but I'm also,  
16 you know, part of a nonprofit or -- I mean, I'm a  
17 nonprofit educational entity passing on information to  
18 students, so that's why both are checked.

19 Q. Can you think of any instance where if you  
20 selected a work to use in your course that you wouldn't  
21 check both of those?

22 A. Not -- no, not if it's required reading for my  
23 students.

24 Q. If it were non-required reading, would you not  
25 check one of those boxes?

1           A.    I guess it depends on what I intended them to  
2 do with the article.

3           Q.    And what do you mean by that?  What would --

4           A.    I mean, I guess I can't hypothesis about the  
5 multiple ways I could use the article, so I don't really  
6 know how to answer your question.

7           Q.    My question -- sorry.

8           A.    In this situation I used it for teaching and,  
9 you know, I felt like I was a nonprofit educational  
10 entity.  So that's why both are checked.

11          Q.    Let me ask it a slightly different way.  If  
12 you choose a work, an excerpt to use in your course, and  
13 you want to put it on EReserves and it's a reading from  
14 your syllabus like we've been talking about, and in that  
15 situation you're going to check nonprofit and teaching  
16 pretty much every time, correct?

17          A.    I'll look at how I'm using the work, yes.  I  
18 mean, so I'm not saying yes to your question, I'm saying  
19 I will exam the work, I'll exam how I'm using it, what  
20 the objective is to even require the reading and then  
21 I'll look at the checklist and decide.

22          Q.    And so then what I'm trying to understand is  
23 what kind of use would you be making in a course of a  
24 reading where you would not check nonprofit educational  
25 or teaching?

1           A.    I believe I would always check nonprofit  
2           educational.  I may not check teaching if -- you know,  
3           maybe if I wasn't -- I don't --

4                    I really can't answer that.  I'm sorry.  I  
5           mean, I think you're asking me to do something that I  
6           didn't do because I checked teaching.

7           Q.    Right.  And my question is, if it's a work  
8           that you're assigning on your syllabus like the Tedlock  
9           and the Gordon and the Pillow, then you're going to  
10          check teaching also, correct?

11          A.    In this situation I checked teaching, that's  
12          correct.

13          Q.    Sitting here now you can't think of a  
14          situation where you wouldn't check teaching, is that  
15          right?

16                   MR. ASKEW: I'll object to that as  
17          contrary to her testimony.

18                   You can go ahead and answer it.

19                   THE WITNESS: Can you say it again?

20          BY MR. LARSON:

21          Q.    Yeah.  Sitting here you haven't provided or  
22          can't think of any example where you wouldn't check  
23          teaching, again in the context of filling out a fair use  
24          checklist for using a work on the EReserve system in  
25          your course?

1           A.    I feel like you're asking me to imagine  
2 something that is not in front of me.

3           Q.    I am.

4           A.    Right.  Well --

5           Q.    I'm asking you to -- for your understanding of  
6 this checklist what type of situation would exist where  
7 you wouldn't check teaching?  That's all.

8           A.    I can't answer that.

9           Q.    For -- you also checked at the bottom use is  
10 necessary to achieve your intended educational purpose.

11          A.    Yes.

12          Q.    Why did you check that box?

13          A.    Any reading that I require for my students,  
14 generally it has a purpose.  I mean, there's usually an  
15 objective that I'm trying to meet through them reading  
16 the article and us discussing it.

17          Q.    So -- and how is that different than teaching,  
18 in the second box?

19          A.    This box causes me to really articulate what  
20 it is I intend to do with each reading specifically.

21          Q.    Would you ever choose readings for your course  
22 that aren't necessary?

23          A.    No.

24          Q.    So if you choose a work and you start filling  
25 out the checklist and it's a work that you want to

1 provide to your students to read in addition to their  
2 texts that you've assigned, you would -- that would  
3 cause you to check nonprofit educational, teaching and  
4 use is necessary to achieve your intended educational  
5 purposes, right?

6 A. You're going back to the original question  
7 that I said I wasn't going to answer because I don't  
8 know how to answer that.

9 In this situation I checked off those three  
10 boxes.

11 Q. Let me try again. You can't say --

12 MR. ASKEW: Todd, I think you're just  
13 arguing with the witness. I'm going to  
14 object to you doing this.

15 MR. LARSON: I'm just trying to  
16 understand, Tony.

17 MR. ASKEW: Well, I think you're arguing  
18 with her, but --

19 BY MR. LARSON:

20 Q. In filling out your checklists, all the ones  
21 that you've done, do you ever recall a situation where  
22 you haven't checked all three of the boxes we're talking  
23 about, nonprofit educational, teaching and use is  
24 necessary to achieve your purpose?

25 A. I can't recall.

1           Q.    Look at factor 2 for me, if you would, on page  
2           2.  You checked here important to educational  
3           objectives.  It's the third box under weighs in favor of  
4           fair use.

5           A.    Yes.

6           Q.    Just tell me, what's your understanding of the  
7           difference between that factor and the last factor  
8           under -- or the last line under factor 1, which is use  
9           is necessary to achieve your intended educational  
10          purpose?

11          A.    An objective for me is something that is  
12          smaller than an educational purpose.  So an objective  
13          happens each class.  I mean, perhaps each moment in  
14          class.  Whereas an educational purpose is what do I want  
15          the students to overall gain.

16          Q.    And what do you mean by overall gain?

17          A.    At the end of the course what is it that I  
18          want them to have learned, what was my purpose for  
19          holding the class.

20          Q.    And so you understand use is necessary to  
21          achieve your intended educational purpose to be about  
22          what students gain by your having taught the class?

23          A.    It's a larger -- I mean, it's the larger  
24          purpose.  So why -- what are they gaining from dialogue  
25          about all of these readings.



1 Q. Well, this checklist is about a particular  
2 reading, correct?

3 A. Uh-huh.

4 MR. ASKEW: That is yes?

5 THE WITNESS: Yes.

6 BY MR. LARSON:

7 Q. So the purpose of -- the educational purpose  
8 of providing this reading in your mind is different from  
9 the educational objective of providing this reading, is  
10 that what you're saying?

11 A. Yes.

12 Q. And just tell me again, I'm sorry, I think I'm  
13 missing it, what the difference is between the purpose  
14 of the reading and the educational objective of the  
15 reading?

16 A. The objective is where I look at how -- it's  
17 when I look at, okay, this reading will be used to  
18 accomplish which like narrow -- I hate to use the term  
19 objectives, but which narrow objectives, learning  
20 objectives I want the student to gain from.

21 Q. And purpose by contrast is this reading  
22 will --

23 A. What overall course gains do I want them --  
24 you know, does this reading contribute to my purpose in  
25 teaching the course.

1 Q. I see. And again, is there -- I take it that  
2 if the work satisfies the educational objective for the  
3 particular week or unit or whatever you're doing,  
4 wouldn't it also be the case then that it would achieve  
5 the educational purpose for the course?

6 A. It might contribute to it.

7 Q. Is there -- I mean, can you imagine a  
8 situation where you would say yes, this work meets my  
9 educational objective but it doesn't achieve my  
10 educational purpose?

11 A. I'm not sure why you keep asking me to imagine  
12 when, you know, again, we're talking about this one  
13 reading.

14 Q. I just want to understand how -- to understand  
15 how you are parsing these different factors, if there's  
16 a situation where you would check one and not the other  
17 just to help me figure out how you fill this checklist  
18 out and how you understand it to work. That's all.

19 MR. ASKEW: I'm going to object to the  
20 question as vague and indefinite.

21 BY MR. LARSON:

22 Q. So the question is, given your understanding  
23 of this checklist, is there any difference you can  
24 imagine where you would check educational purpose but  
25 not objective or vice versa?

1           A.    Again, I can't answer that. I can tell you  
2 why I checked that it was intended for an educational  
3 purpose and why I checked that it was important to  
4 educational objectives for this reading.

5           Q.    And tell me for this reading, for the Tedlock  
6 chapter, what was the educational purpose that this use,  
7 this work was necessary, that caused this work to be  
8 necessary?

9           A.    Anthropology Of Education, you can look at the  
10 syllabus and see the course description here.  
11 Generally, you know, anthropology uses the methodology  
12 of ethnography, which is what this article, the Tedlock  
13 article, dealt with. So by requiring them to read  
14 the -- this Tedlock piece which looked at the -- kind of  
15 the historical --

16                    It was an historical look at ethnography, so  
17 what has occurred in ethnography over the course of 100  
18 years and how these ethnographies get represented. So  
19 it enables students here to -- you know, they're  
20 engaging in an exploration of different theories.

21                    It's also, you know, one of the larger  
22 introductions to the field because she again takes a  
23 historical look, so she's looking at 100 years of what  
24 has happened in the field. That would be my educational  
25 purpose.

1           The educational objective for that day -- I  
2 think that's the wrong syllabus. The '09 syllabus.

3           Q.   Exhibit 3.

4           A.   On 6/11 the topic was ethnography in  
5 education. So my purpose in that was to show how  
6 ethnography has entered into the conversation of  
7 educational research.

8           So in the article along with her history she  
9 talks a little bit about that. So that helped me meet  
10 the course objective of teaching students that, you  
11 know, anthropology was not originally part of  
12 educational research and over the course of 100 years  
13 it's made its way in.

14          Q.   In the weighs against fair use column, you did  
15 not check highly creative work. Just tell me why not.

16          A.   I mean, it says art, music, novels. It didn't  
17 fit. It was factual. She's looking at, you know, the  
18 history of ethnography. She's looking at facts.

19          Q.   Now, I think you indicated earlier when we  
20 were discussing some of your writings that you didn't  
21 view nonfiction as being sort of mutually exclusive from  
22 being creative, is that right?

23          A.   That's right.

24          Q.   So is it just that this particular Tedlock  
25 work you don't view as being creative or is it that it

1 says art, music, novels and so it didn't seem that it  
2 would fit?

3 A. You asked me to define creative early on and I  
4 told you that it was -- I mean, I can't remember my  
5 exact words. But I think I said that it's something  
6 that no one has done before.

7 Well, Tedlock, this is a secondary piece,  
8 she's looking at the history of what happened in the  
9 field. So she is looking at what other people have done  
10 before. There was nothing creative about it. It was,  
11 you know, a glorified lit review, but was important for  
12 the educational objectives of my students.

13 Q. Are there works that you assign that are  
14 nonfiction but you would also consider to be creative?

15 A. All right. I mean, I don't know. I'd have  
16 to -- are you saying of these four?

17 Q. Sure, we'll limit it to that for now.

18 I'm not asking whether you checked it when you  
19 filled it out, but just sitting here now do you consider  
20 any of those four to be creative?

21 A. No.

22 Q. How about looking at syllabus Dixon 3 -- I'm  
23 sorry, Esposito 3, are there any works that you've  
24 assigned there that would meet your criteria of  
25 creativity as you've defined it?

1           A.    No.

2           Q.    Okay.  What's your understanding of -- putting  
3           aside your definition you gave me before of what  
4           creativity means to you, what's your view of this factor  
5           and how it's interpreted or how -- you know, when you're  
6           filling out the checklist?

7                   MR. ASKEW:  Objection.  Which factor are  
8           we talking about now?

9                   MR. LARSON:  The highly creative work  
10          under factor 2.

11                   THE WITNESS:  I can tell you how I  
12          determined whether it's factual or  
13          nonfiction.  So if I determine it's factual  
14          or nonfiction and then look at highly  
15          creative work and look at how it's defined,  
16          then I feel pretty comfortable that the  
17          work that I'm requiring students to read is  
18          factual or nonfictional work.

19          BY MR. LARSON:

20                  Q.    So do you view those as an either or, if it's  
21          factual or nonfiction then it wouldn't be creative?

22                  A.    Yes.

23                  Q.    Let's look at factor 3.  You've checked small  
24          portion of work used.

25                          How did you determine that it was a small

1 portion?

2 A. The handbooks are, you know, thousands of  
3 pages, so one chapter is a small portion.

4 Q. All right. So when the work as defined here  
5 you view as the entire handbook from which it's taken?  
6 In other words, the work is not the article, the work is  
7 the book?

8 A. Yes.

9 Q. And what's the dividing line for you between  
10 what's small and what's a large portion?

11 A. I don't have a dividing line.

12 Q. Well, you said -- this particular chapter you  
13 used of about 30 pages you determined was small. Is  
14 that right?

15 A. You're talking about Tedlock?

16 Q. Yeah.

17 A. Yeah, the last chapter in that handbook starts  
18 on page 1047 so you can assume it must end at about,  
19 what, 1100. There must be 1100 pages. And that doesn't  
20 count, you know, references, the author index. So yeah,  
21 I think one chapter of however many pages you just  
22 stated is a small portion of the work.

23 Q. And so you're basically looking at the  
24 percentage of your -- the excerpt you're using to the  
25 length of the entire book?

1           A.    No, I don't work in percentages.  I don't --  
2   no, I don't do that.  I look at it among other factors,  
3   so --

4           Q.    What other factors?

5           A.    Whether I'm using it for teaching, whether  
6   it's necessary to achieve my educational purpose.

7           Q.    And those factors influence whether or not  
8   it's a small or large portion?

9           A.    Those -- those factors I guess influence  
10   whether or not I use it.

11          Q.    And my question is more narrow, which is how  
12   you determine whether it's small or large.  If not by  
13   looking at the percentage, as you just said you don't do  
14   percentages, what's the measure you use to determine if  
15   it's small or large?

16          A.    There's no number, if that's what you're  
17   asking me.

18          Q.    So how do you decide then?

19          A.    The opposite of whether it's a small portion  
20   of work is that it's a large portion or the entire work  
21   is used.

22                So what I'm saying, if this handbook is 1100  
23   pages and I used only 15 pages, that's a small portion.  
24   No matter what percent you calculate, it's a small  
25   portion of the work.



1 Q. And my question is where would it tip in to  
2 becoming in your mind a large portion?

3 A. The way that I decide on these readings, I've  
4 never been forced to make that determination as to, you  
5 know, is this too much. Because if -- you know, as I  
6 told you upfront, I sample from a wide variety of  
7 different authors, different books.

8 Q. And so is it that the chapters that you've  
9 used in particular in your mind have always been so far  
10 on the side of small that it just hasn't come up now,  
11 they've just been clearly small in your mind?

12 A. Yes.

13 Q. And what if -- let's just take this Sage  
14 handbook we're looking at, this Tedlock chapter. Your  
15 front page indicates it's about 31, 32 pages. What if  
16 it was 100 pages, would you consider that to be small?

17 A. I would have to look at the work that it was  
18 taken from.

19 So you're saying assume it was taken from the  
20 handbook?

21 Q. Well, assume 100 pages from the handbook.

22 A. It was 31 pages, as you said, that's why I  
23 checked off small.

24 Q. My question is what if it were 100?

25 A. I'm not comfortable with assuming that because

1       it's not, it's 31 pages.

2           Q.     So you -- in terms of whether you choose large  
3     or small, I'm just trying to understand where you would  
4     draw the line as to what is small or large.

5                     Sitting here you just can't say?

6           A.     I haven't been in that situation.

7           Q.     And so sitting here you can't say what your  
8     line is, is that right?

9                     MR. ASKEW: I object to this. I think,  
10                    again, you're just arguing with the  
11                    witness. You've asked this question I  
12                    think 10 times now. And I think you've  
13                    gotten an answer from her. You're just  
14                    arguing with her about the subject.

15     BY MR. LARSON:

16           Q.     Let me try again. Sitting here -- I just want  
17     to make sure we're clear.

18                     You can't say specifically what the line would  
19     be for you between a small and a large portion, is that  
20     right?

21           A.     I have not been put in the position of needing  
22     to check off large portion.

23           Q.     Every work you've used has been small?

24           A.     Yes.

25           Q.     You checked portion used is not central or

1 significant to entire work as a whole. Tell me why you  
2 checked that one?

3 A. The handbook is a collection of different  
4 topics, so it's chapters on all different topics of  
5 qualitative research. There's not one that's central.

6 Q. So in your mind no chapter in that Sage  
7 handbook could be considered central?

8 A. That's correct.

9 Q. You checked amount taken is narrowly tailored  
10 to educational purpose such as criticism, comment,  
11 research or subject being taught. Why did you check  
12 that one?

13 A. Again, I think it helps me -- it helps me  
14 achieve the goal that I wanted to achieve with my class  
15 that day.

16 Q. And is that the same then essentially as  
17 important to educational objectives, up above in factor  
18 2?

19 A. No, it can be -- you know, because it's so  
20 narrow it can be part of an educational objective. It  
21 may not be an educational objective.

22 Q. So this is -- is there a difference -- what's  
23 the difference between being narrowly tailored to your  
24 educational purpose and being important to educational  
25 objectives?

1           A.     Well, the amount taken is narrowly tailored,  
2     so if you, you know, go to the "Handbook Of Qualitative  
3     Research" I might want to have -- you know, look at  
4     chapter 6, Lincoln and Guba. I might have wanted to  
5     include chapter 15, "Performance Ethnography". I might  
6     have wanted to include "Autoethnography", chapter 28,  
7     but I chose the Tedlock article because it was narrowly  
8     tailored.

9           Q.     And what does that mean, narrowly tailored?

10          A.     It means that it looked at one segment of  
11     ethnography, one segment of what it is that I wanted to  
12     teach. I could have included a lot of these articles  
13     about ethnography that were in addition to Tedlock, but  
14     I chose only the Tedlock.

15          Q.     And just looking back to factor 1, is that the  
16     same in your mind as saying that the use was necessary  
17     to achieve your intended educational purpose?

18          A.     Is what the same?

19          Q.     It being narrowly tailored to your educational  
20     purpose.

21          A.     No.

22          Q.     And what's the difference between the Tedlock  
23     chapter being narrowly tailored to your educational  
24     purpose as opposed to being necessary to achieve your  
25     educational purpose?

1           A.    I've just told you the difference.

2           Q.    I think you just described what it meant to be  
3 narrowly tailored.  What I want to understand is how  
4 that's different than what you understand to be the  
5 reason for checking necessary to achieve your intended  
6 educational purpose?

7           A.    To put it simply, one is large and conceptual  
8 and one is small.  So narrowly tailored means it's a  
9 small segment of what I want to accomplish versus a  
10 large conceptual overview.

11          Q.    And how does that small segment differ from  
12 your educational objective that you described in factor  
13 2?

14                   MR. ASKEW: I object.  It's been asked  
15 and answered several times a few minutes  
16 ago.

17                   MR. LARSON:  I don't believe it has, so  
18 I'm going to ask it again.

19                   MR. ASKEW: You've asked her questions  
20 about comparing those two subtexts numerous  
21 times.

22                           But answer again, please, if you can.

23 BY MR. LARSON:

24           Q.    So do you have the question in mind?

25           A.    How about I just do this.  So education

1 purpose large, educational objective medium, narrowly  
2 tailored education purpose small.

3 Q. So just smaller subsets of the overall  
4 purposes and objectives for the class as you work down  
5 through the factors?

6 A. Say that again?

7 Q. Is a -- well, narrowly tailored you said  
8 small, I believe, right? Objective was medium.

9 Is the educational purpose and the narrowly  
10 tailoring sort of a subset of the educational objective  
11 in factor 2?

12 MR. ASKEW: I object. Your question is  
13 misstating her testimony.

14 BY MR. LARSON:

15 Q. I'm actually just asking a question to make  
16 sure I understand.

17 A. Well, I didn't use the word subset so I  
18 don't --

19 Q. Well, that's my question, when you said large,  
20 medium and small, again, I'm just trying to understand  
21 what the difference is between the educational purpose  
22 in factor 3 and the educational objective in factor 2?

23 A. I think I told you what it was and I just  
24 didn't say what you wanted me to say, so now I feel like  
25 you're harassing me and trying to force me to say

1 something that I'm not comfortable saying. I didn't  
2 call it a subset.

3 Q. And I'm not -- I'm not -- I'm asking if that's  
4 how you understand it. I'm not suggesting that's what  
5 you said.

6 We can move on. It's fine. I'm certainly not  
7 attempting to harass you.

8 Let's look at factor 4. There's a column for  
9 weighs in favor of fair use and you checked no  
10 significant effect on market or potential market for  
11 copyrighted work. Why did you check that?

12 A. Because I don't believe that the use in my  
13 classroom has a significant effect on market.

14 Q. And what do you understand the market to be  
15 that this factor is hitting on?

16 A. Money loss I guess for the publisher.

17 Q. Well, did you understand this to mean that  
18 your use in the class wouldn't impact sales of the book?

19 A. It's more so that I looked at the second one,  
20 use stimulates market for original work. And I know  
21 that when I bring in the books to class and students,  
22 you know, look at them and order them, I'm stimulating  
23 market so therefore there's no significant negative  
24 effect on the market.

25 Q. My question -- and that's the conversation we

1 had before. My question is, by market are you thinking  
2 about purchases of the book?

3 A. Yes.

4 Q. So you're not -- market, you're not thinking  
5 about the impact of your use on licenses for the book or  
6 permissions for the book, right?

7 A. That's right.

8 Q. In weighs against fair use you chose --  
9 there's no check in licensing or permission reasonably  
10 available. Tell me why you did not check that one?

11 A. I don't know anything -- I mean, I don't know  
12 whether it is or it's not.

13 Q. Did you feel that as part of filling out this  
14 checklist that it was incumbent upon you to check?

15 A. No. I felt like, you know, the fact that I  
16 had so many factors that weighed in favor of fair use  
17 that I was using it fairly.

18 Q. So even if you were to check it out and  
19 determine that licensing was available, it wouldn't  
20 impact the overall conclusion, anyway?

21 A. Considering that I've checked off so many on  
22 factor 1, you know, there's three checked off there,  
23 there's three checked off for factor 2, three checked  
24 off for factor 3, it's a fair use.

25 Q. So by the time you got to this check it had



1 basically already been established that it was a fair  
2 use and there was no need to see whether licensing or  
3 permission was available, is that right?

4 A. No, that's not what I said. But as I got to  
5 factor 4, I continued checking.

6 Q. But you didn't check to see whether licensing  
7 or permission was available, right?

8 A. That's right. Because I'd checked off that  
9 use stimulates market for original work.

10 Q. Are those an either or?

11 A. Well, I guess they're not.

12 Q. So again you -- there were enough -- you  
13 didn't check for whether licensing or permission was  
14 available, if I hear you, because there are already  
15 enough checks over on the weighs in favor of fair use  
16 side that this use was clearly a fair use, is that  
17 right?

18 MR. ASKEW: Todd, I'm going to object  
19 to your question because you are using the  
20 word check in that questioning and I think  
21 you might mean investigate as opposed to  
22 check the box.

23 MR. LARSON: I'm sure, yes. Thank you.

24 MR. ASKEW: And I'm not sure she  
25 understands.

1 BY MR. LARSON:

2 Q. You didn't investigate whether licensing or  
3 permission was available because there were already  
4 enough checks on the other side that it essentially  
5 wouldn't matter even if it was, is that right?

6 A. I didn't investigate whether it was reasonably  
7 available because I felt like it was a fair use, and so  
8 I didn't think that I needed to investigate that.

9 Q. And you thought it was a fair use because of  
10 all the checks that you had already placed in the other  
11 side, right?

12 A. Yeah. Overall, yes.

13 Q. You didn't check numerous copies made or  
14 distributed. Why not?

15 A. I teach small classes, 20 students. To me  
16 that's not numerous.

17 Q. What would numerous be for you?

18 A. I mean, I don't have a number in my head, but  
19 I know that I -- you know, a classroom is not numerous  
20 copies. You're dealing with a small amount of students.

21 Q. So it would need to be copies made or  
22 distributed to some number larger than are sitting in  
23 your class for it to be numerous in your mind?

24 A. Even more so than that.

25 Q. And how many more so?

1           A.    I don't have a number in mind.

2           Q.    Well, what would be -- let me ask it this way.  
3    Even for the largest class of undergrads with 200 or 300  
4    undergrads or 500 or whatever it is, would you consider  
5    that to be numerous?

6           A.    I don't teach undergrads and I don't have  
7    large classes like that.

8           Q.    So none of your classes would ever get into  
9    the territory of numerous, is basically what you're  
10   saying?

11          A.    For me, for how I define numerous, yes.  I  
12   teach -- the most I would have in my class would be 25  
13   students.

14          Q.    You didn't check repeated or long term use  
15   that demonstrably affect the market for the work.  Can  
16   you just tell me why not?

17          A.    Again, because I don't think I'm having an  
18   effect on the market and I'm using it in class for a  
19   semester.

20          Q.    Now, the Tedlock I think you used in prior  
21   semesters, is that right?

22          A.    Yes.

23          Q.    So would you consider that to be repeated use?

24          A.    No.

25          Q.    And why not?

1           A.     It's two separate groups of students.

2           Q.     All right.  So repeated, using the same work  
3 over multiple semesters in your mind isn't repeated use,  
4 is that right?

5           A.     That's right.

6                     MR. LARSON:  I think we need the tape  
7 break here.

8                     THE VIDEOGRAPHER:  Off the record at  
9 11:08.

10                                     (Brief recess.)

11                     THE VIDEOGRAPHER:  This is tape 3.

12                     We're back on the record at 11:19.

13 BY MR. LARSON:

14           Q.     Professor Esposito, just looking at Exhibit  
15 14, do I have it right that there's not a single check  
16 mark on the entire list in the weighs against fair use  
17 category?

18           A.     Yes.

19           Q.     And that's the case also for Esposito 15, 16  
20 and 17, is that right?

21           A.     Yes.

22           Q.     And Esposito 15, 16 and 17 are in fact  
23 identical in terms of what's checked on Esposito 14, is  
24 that right?

25           A.     Yes.

1 Q. Can you look back at Esposito 4 for me.  
2 That's the syllabus for the fall 2009 course.

3 A. Yes.

4 Q. Do you know whether you completed -- I'm  
5 sorry. If you could turn to page 5.

6 Do you know whether you completed the  
7 checklist for the Charmaz excerpts that are identified  
8 here?

9 A. I did.

10 Q. You did. And do you still -- is that still in  
11 your possession?

12 A. I don't believe it is. I removed that from  
13 the course reserves, so because I didn't require it I  
14 may have discarded it.

15 Q. You say you may have. Do you know whether you  
16 did or didn't discard it?

17 A. I'm not sure.

18 Q. So you did do a checklist, but you don't know  
19 sitting here whether you have it or not?

20 A. Yes.

21 MR. LARSON: All right. We'd request a  
22 copy of that, Tony, if it does exist.

23 MR. ASKEW: You can include that in your  
24 letter to me about what you'd like to have.

25 BY MR. LARSON:

1 Q. If you can flip to page 8. There are entries  
2 there we discussed for the 11/19 column or row for the  
3 "Handbook Of Mixed Methods" and the Creswell and Clark  
4 entries, do you see those?

5 A. Yes.

6 Q. Did you complete checklists for those works?

7 A. Yes.

8 Q. And do you know whether you have those in your  
9 possession or not?

10 A. Again, these were, as I said, removed from my  
11 requirement, my required reading, so they were not put  
12 on reserve so I don't think I have the checklists.

13 Most likely if I did not send my checklist to  
14 legal affairs, then I don't have those checklists. If I  
15 removed it from the syllabus, you know, there was no  
16 point to continue holding on to it because they weren't  
17 made available to students.

18 Q. Do you recall actually affirmatively deleting  
19 your copy of those checklists?

20 A. I don't recall.

21 Q. Okay. So you may have and you may not?

22 A. Well, when you say delete, I don't do it  
23 online. I print them out and do hard copies.

24 Q. So do you recall affirmatively throwing away  
25 your hard copies of the checklists for those two works?

1           A.    I don't recall.

2           Q.    So you may have them or you may not, you just  
3 don't know?

4           A.    Most likely I don't because when I was asked  
5 to send my checklists to legal affairs, I looked through  
6 my files.

7           Q.    And they -- these checklists had you retained  
8 them would be in those files?

9           A.    Most likely. I mean, my office is a mess,  
10 they could be other places.

11          Q.    And if you could turn to page 9, Anfara,  
12 Vincent and Mertz entry there. Did you complete a  
13 checklist for those works?

14          A.    Yes.

15          Q.    And same question, do you have that in your  
16 possession?

17          A.    Not with me, no.

18          Q.    I mean your possession at your office or home  
19 or wherever.

20          A.    Again, I'm not sure.

21          Q.    Same, for the same reason you've described for  
22 the others?

23          A.    Yes. Those were not -- this was not required  
24 by the students, so I removed it from course reserves.

25          Q.    And possibly then discarded the checklist you

1 had filled out?

2 A. I might have.

3 Q. Or you might still have it?

4 A. (Nods head affirmatively.)

5 Q. Okay. Let me give you what's been marked as  
6 Exhibit 18. Do you recognize this as the -- sorry.  
7 Strike that.

8 Do you recognize this as the declaration you  
9 completed in this case last April?

10 A. Yes.

11 Q. Tell me how did it come about that you  
12 submitted this declaration?

13 A. I was asked to by someone from legal affairs.

14 Q. Who was that?

15 A. I don't remember.

16 Q. And then what happened, did you sit down and  
17 draft it or have a conversation or how did the process  
18 work?

19 A. I honestly don't remember.

20 Q. Did you write this declaration or was it  
21 drafted and then you signed off on it?

22 A. I think it was -- I don't think I -- yeah, I  
23 think I signed off on it after I was asked questions and  
24 asked to make statements about my answers to the  
25 questions. So I think someone was, you know, like



1 recording it the way that she's doing it. But I'm not  
2 sure. I have no idea.

3 Q. You don't remember how the process worked?

4 A. I don't remember. No.

5 Q. You don't remember, I take it, sitting at your  
6 computer and writing it yourself?

7 A. No, I don't.

8 Q. Look for me, if you would, at paragraph 3.

9 The first sentence says each course reading assignment  
10 I've made available on EReserves since adoption of the  
11 policy has been narrowly tailored to support a specific  
12 teaching point and constitutes less than 10 percent of  
13 the entire work.

14 How was that 10 percent measured?

15 A. I don't -- I don't know. I mean, I don't  
16 remember what I meant by that. But maybe by number of  
17 pages and how many pages were utilized.

18 Q. Are you saying that's what it is or are you  
19 speculating?

20 A. I don't -- I don't really have a memory of  
21 this. I'm sorry. I don't even know when I did this,  
22 what year it was.

23 Q. Well, look on -- if you look on the next page  
24 it says it was signed on April 2nd of last year?

25 A. Uh-huh.

1 Q. About eight or nine months ago, is that right?

2 A. I guess so.

3 Q. You don't remember what you meant by 10  
4 percent here?

5 A. No, I don't.

6 Q. Was that a figure suggested by counsel?

7 A. No, nothing was suggested. I was asked  
8 questions and I gave answers.

9 Q. Now, before when we were talking about a large  
10 versus a small portion you indicated that you don't do  
11 percentages. It appears that you did a percentage here.  
12 Do you know why?

13 A. I don't know why.

14 Q. It says for each --

15 A. Oh, I'm sorry. The old -- before the fair use  
16 checklist, I had been stopped by library reserves once  
17 for having gone over 10 percent of a work and so I might  
18 have been mixing up the policies. I'm not sure.

19 Q. I see. Continuing along in paragraph 3. It  
20 says for each course I have taught following adoption of  
21 the policy, total course reading assignments available  
22 on EReserves have been less than 10 percent of the total  
23 reading assignments for the course.

24 Same question, how is that 10 percent in that  
25 sentence measured?

1           A.    Again, I don't know.

2           Q.    Do you have a sense of whether that is, in  
3 terms of number of assignments or total number of pages,  
4 over the scope of the course?

5           A.    Well, the way it's worded here is not -- I  
6 must have missed that, because I don't mean it's been 10  
7 percent of the total reading assignments for the course.  
8 It's -- so I don't know what was meant here.

9                    But I mean, this looks like a mistake.  The  
10 total course reading assignments available on EReserves  
11 have been less than 10 percent of the total reading  
12 assignments for the course.

13          Q.    You think that might be a mistake?

14          A.    Yes.

15          Q.    Okay.  The next sentence says, in addition to  
16 the supplemental reading material I have placed on  
17 EReserves, I also require my students, and then it goes  
18 on.

19          A.    To purchase books.

20          Q.    Right.  What does the phrase supplemental  
21 reading mean?

22          A.    All of the readings that I place on course  
23 reserve is required, so I most likely substituted  
24 supplemental for additional because to me supplemental  
25 would mean that I don't require it.  But I do require --

1       you can see from my syllabi it's all required reading.  
2       So I think it should say additional.

3             Q.     The paragraph 4 says my completion of the fair  
4     use checklist has changed my understanding of how the  
5     fair use analysis works.

6             Tell me how it's changed your understanding of  
7     how the analysis works?

8             A.     Before I never really had to think about it.  
9     I could put whatever I wanted to on course reserve. And  
10    now sitting with the checklist I've had to, you know,  
11    make determinations as to whether it is a fair use  
12    and --

13            Q.     So is this saying it's caused you to consider  
14    fair use, that is the gist of this, and whether or not a  
15    work is fair use?

16            A.     Yes.

17            Q.     And are there specifics about the fair use  
18    determination and the factors that have changed as a  
19    result of the new list?

20            A.     Say that again?

21            Q.     Yeah. Is there -- I guess what I'm trying to  
22    understand is whether there are particulars about the  
23    relevant factors to a fair use analysis, where your  
24    understanding has changed as a result of the new policy?

25            A.     Before the fair use policy was put in place,

1 my understanding of Georgia State's policy was that so  
2 long as -- so long as it was 10 percent or less of a  
3 book -- so what that meant is if you look at the  
4 handbook, you know, 10 percent of this book is over 100  
5 pages. And you can see that I'm not putting 100 pages  
6 online any more using the checklist because -- you know,  
7 I'm not trying to say there's a particular number, but  
8 if you looked at the old policy, there was a particular  
9 number. If you look at the new policy, there are  
10 factors that I might be forced to have to check off on  
11 the other side of the column here, weighs against fair  
12 use, which means I wouldn't even put it on reserve.

13 Q. So you've gone -- what you're saying, you've  
14 gone from a situation where there was basically a  
15 percentage cutoff to a situation where you now have a  
16 variety of factors you consider as listed on the  
17 checklist?

18 A. Yeah, but the factors make it more difficult.  
19 You know, as I'm saying, that 10 percent -- before the  
20 fair use checklist I could put two chapters of this  
21 handbook online. Now I couldn't do that necessarily. I  
22 mean, I'd have to fill out the checklist to see. But I  
23 haven't even attempted. I mean, I put the one Tedlock  
24 and then moved on in another body of work.

25 Q. I see. You say in the next sentence it has

1 made me aware of the stakes involved in posting on  
2 EReserves a substantial portion from any particular  
3 book.

4 What do you mean by the stakes involved?

5 A. I meant, you know, just here I'm having to  
6 give up my time as part of this lawsuit, so I mean, I  
7 didn't want to do anything that violated Georgia State  
8 policy.

9 You asked me in the beginning, you know, would  
10 I take something down if the president asked me, if the  
11 provost asked me. You know, I'm a rule follower, so  
12 yes, I would.

13 Q. So by mistakes involved, you mean your  
14 becoming involved in a lawsuit?

15 A. I didn't want to violate Georgia State policy,  
16 no. You know, I don't -- so because we have the fair  
17 use checklist I'm obligated to use them to follow the  
18 policy.

19 Q. Okay. I understand that. I'm having a hard  
20 time understanding what you mean by the stakes involved.  
21 I understand that you have to do the policy.

22 MR. ASKEW: She will answer that one  
23 more time, Todd. She's answered it twice  
24 now.

25 THE WITNESS: For me it meant -- you

1           know, by stakes I meant personal -- my  
2           personal relationship with Georgia State  
3           and Georgia State policy.

4       BY MR. LARSON:

5           Q.    I see. Does that sentence include any  
6           consideration of the interest of the publishers who own  
7           the work and their interest in whether you use it or  
8           not?

9           A.    Say that again? Does it include --

10          Q.    When you say that you've become aware of the  
11          stakes involved in posting on EReserves a substantial  
12          portion from any particular book, does that in your  
13          mind -- do the stakes include the interests of the  
14          publisher who owns the work?

15          A.    Well, let me tell you this. I mean, I still  
16          don't know how that works in terms of, you know, in  
17          terms of a larger process. But I know as an author I've  
18          signed away, you know, copyright of my articles to  
19          publishers. So did I consider the --

20                All I can say is by stakes I don't think I  
21          meant publisher. I think I meant Georgia State, Georgia  
22          State policy. I mean, because it's my understanding  
23          that all authors sign away their rights, so to me once  
24          I've signed the paper and given it to Sage or whoever  
25          I'm publishing with, it's out of my hands.

1 Q. Let's look at paragraph 5. You say I have  
2 determined, in the second sentence, that certain  
3 proposed uses were not fair uses after completing the  
4 fair use checklist and accordingly have required less  
5 course reading material for that course in order to  
6 ensure the use was a fair use.

7 Tell me when you recall that happening?

8 A. I can't give you a specific example. I mean,  
9 it has happened to me. Now, do I remember with what  
10 particular article or what class I was doing it for, no.  
11 I don't.

12 Q. But you have a recollection that you filled  
13 out the checklist and actually it came out that you had  
14 more checks on the right hand side than the left hand  
15 side?

16 A. More so that I had -- I didn't feel like I had  
17 enough in favor of fair use to consider it fair.

18 Q. So the situations that you're talking about  
19 here, this says you determined after completing the  
20 checklist that --

21 A. Right.

22 Q. -- the use was not fair.

23 A. That's right.

24 Q. And was it the case in these instances that  
25 you actually had more checks on the weighs against fair



1 use side than you had checks on the weighs in favor of  
2 fair use side?

3 A. No. It's more so that, for instance, weighs  
4 in favor of fair use, use is necessary to achieve your  
5 intended educational purpose, you know, I can't -- I'm  
6 sorry, I can't remember what was checked and what  
7 wasn't. But I do know that I have had to say, okay, I  
8 better not put that on EReserves and I have, you know,  
9 decided to just cut it out completely.

10 Q. And that's come as a result of literally -- of  
11 completing a fair use checklist or just looking and  
12 saying this looks like it's too much, I just probably  
13 shouldn't do it?

14 A. No, of completing a fair use checklist.

15 Q. And has it ever been the case in these  
16 situations where you actually -- the checklist suggested  
17 that it weighs in favor of fair use in the terms of the  
18 number of checks but you still decided not to do it?

19 A. Well, there have been examples on my syllabus  
20 that it has weighed in favor of fair use but I just  
21 didn't want to go bring the book to the library, so  
22 therefore it was removed from my syllabus.

23 Q. That's not my question. What you say here is  
24 that you determined that the use was not a fair use.  
25 And I'm just trying to understand if that came as a

1 result --

2 What happened when you filled out the  
3 checklist, were there more checks weighing against, were  
4 there more checks weighing in favor?

5 A. I can't remember.

6 MR. ASKEW: I'm going to object to that  
7 question, Todd, because she did answer the  
8 question that you asked, which was have you  
9 filled out a checklist, found that it was  
10 in favor of fair use and you still didn't  
11 put the material up. She answered that  
12 question and you then criticized her for  
13 not answering the question. But I think  
14 she answered the exact question that you  
15 asked. But let's go ahead.

16 (The record was read by  
17 the court reporter.)

18 BY MR. LARSON:

19 Q. In these situations that you're talking about  
20 here in paragraph 5.

21 A. And I said I'm not sure.

22 Q. You just don't remember.

23 Do you have those checklists?

24 A. Ones that I rejected?

25 Q. Yes.

1           A.    Most likely not.

2           Q.    And you can't remember what particular work  
3 was involved in these situations?

4           A.    Not particular articles.

5           Q.    Do you remember the semester?

6           A.    No.

7           Q.    And just so we're clear, you can't recall how  
8 you came to the conclusion that it wasn't a fair use and  
9 specifically with respect to the result of the  
10 checklists?

11          A.    Say that again?

12          Q.    Yeah, I just -- strike that.

13                The next sentence you say I believe -- though  
14 I believe students' education has suffered as a result,  
15 I had to make the tough decision to drop those  
16 assignments --

17          A.    Uh-huh.

18          Q.    -- because it would be too expensive to  
19 require students to purchase the book on top of the  
20 other books they must purchase for my course.

21          A.    Yes.

22          Q.    So this is a situation, I take it, where  
23 you've completed the checklist, you came to the  
24 conclusion that the use was not a fair use that you  
25 wanted to make, and then determined that you didn't want

1 to make the students buy the book, is that right?

2 A. Yeah. If for whatever reason a particular  
3 book I couldn't use multiple chapters from because it  
4 wouldn't be a fair book -- a fair use, then yes, I  
5 wouldn't require an additional, you know, 30 or \$40 for  
6 them. I just removed the assignment completely from my  
7 syllabi.

8 Q. Right. So you opted not to have them buy the  
9 book, you opted to just not use the assignment at all.

10 Did you consider hard copy reserve as a  
11 possibility, putting the book in the library on the  
12 shelf?

13 A. No. I want to clarify.

14 My students always purchase books for the  
15 class so we're talking about additional purchases. You  
16 know, we're dealing with working students who, you know,  
17 have a job, have -- are paying for school. So for this  
18 qual 3 class they're already buying two books published  
19 by Sage.

20 So yes, would I include a third and a fourth,  
21 no, I think that creates economic hardships for them.

22 MR. LARSON: I move to strike that last  
23 response as nonresponsive to my question.

24 MR. ASKEW: I object to that  
25 characterization.

1 BY MR. LARSON:

2 Q. I understand from your testimony before that  
3 you opted not to make them buy the book. My question  
4 was did you consider placing a copy of the book on  
5 reserves in the library and having them access and read  
6 the assignment there?

7 A. Well, all I was doing was clarifying that the  
8 first part of your question was not what I said. So I  
9 was clarifying the way that you asked the question.

10 You set up something that wasn't true and then  
11 you asked me would I consider a hard copy. So my  
12 response was trying to clarify that if I'm answering  
13 your question I'm not agreeing to the first part of your  
14 question because that was untrue.

15 Q. It was untrue that you didn't require them to  
16 buy the book?

17 A. The way that you said it, I don't remember  
18 what you said, but how you said it didn't fit with what  
19 I said and what the situation was.

20 Q. Let me just ask it in a way that hopefully  
21 won't do that then.

22 Did you consider in these situations putting  
23 the book on hard copy reserve and having the students do  
24 the reading assignment there?

25 A. I did not.

1 Q. Why not?

2 A. We're a commuter school, students have to pay  
3 \$7 to park each day. I thought it would be unfair to  
4 require them to go to the library and secure this,  
5 therefore I just completely removed it from the  
6 requirements.

7 Q. And in your view is it more burdensome or  
8 difficult to access the work in hard copy reserves as  
9 opposed to, say, getting it on EReserves?

10 A. Yes.

11 Q. Did you consider using the work on EReserves  
12 and seeking a permission or a license from the publisher  
13 in order to do so?

14 A. If it's fair use, you know, I didn't need to  
15 do that.

16 Q. No, I'm building on what we were talking about  
17 here which is where you determined it was not a fair use  
18 and then you said you dropped the assignment.

19 My question is whether you considered in that  
20 situation continuing to use it on EReserves and seeking  
21 a license?

22 A. I had my graduate student look into it. I  
23 don't know how she did that or who she called, but she  
24 told me it would be expensive so I said let's just drop  
25 it.

1 Q. And do you recall where she went to find out  
2 that information?

3 A. No.

4 Q. Do you know what the cost was that she was  
5 told?

6 A. No.

7 Q. Was it your understanding that that was a cost  
8 that, whatever it was, that you would be paying or the  
9 school or the students?

10 A. The students.

11 Q. So that she checked out what it would cost for  
12 on a per student basis to get a license and permission?

13 A. I believe so. I didn't go into detail with  
14 her. She told me it's way too much, so let's just drop  
15 it. And I agreed.

16 Q. Is there any amount that you would consider in  
17 that situation, a situation like that where you  
18 considered a license, is there any amount that you would  
19 consider to be acceptable for students to pay for, you  
20 know, a license to access a chapter?

21 A. I know nothing about it. I don't know what  
22 the amounts range from so I can't -- I can't answer  
23 that.

24 Q. Well, let me just say, if the amount was a  
25 frequent -- I'll represent to you it was fairly common

1 in these situations for publishers to charge a licensing  
2 fee of 15 cents per page, so for a 30 page article it  
3 would be \$4.50 roughly.

4 If each student had to pay \$4.50 to access a  
5 chapter, is that something you consider too expensive  
6 and not worth it or would you consider it?

7 A. I would remove the reading and not require it.

8 Q. And why is that?

9 A. You can see from my syllabi I require multiple  
10 readings each day. That would be a tremendous expense  
11 on students in addition to the books that they've  
12 already purchased.

13 Q. So even if it's 4 or \$5 for a particular  
14 chapter, that's still then too much basically in your  
15 view?

16 A. If they have to read four chapters for one  
17 week, that's \$16 in addition to the books that they've  
18 already bought.

19 Q. Is there any level that you would view as  
20 reasonable for them to do? I mean, if it was a couple  
21 cents a page instead of 15 or is there some --

22 A. I'd have to look at it in terms of each class  
23 and the books that I've already required and how much  
24 those cost.

25 Q. What if the -- if the expense or those



1 licensing fees were covered by the library or by the  
2 university in some way, would you consider using them  
3 with permission?

4 A. I guess it would depend. I mean, obviously I  
5 don't want to make my students put out a huge amount of  
6 money, I mean, therefore I don't require hard cover  
7 books. You know, if it's brand new it won't be on my  
8 syllabus. So if the library told me, you know, the  
9 students would not have to pay, this would be a free  
10 service, I might agree to that. I mean, it depends on  
11 how much it would cost Georgia State. I mean, I'm  
12 not --

13 So you're asking me -- I don't know. I mean,  
14 you're asking me to hypothesis about something that I  
15 don't believe is happening.

16 Q. All right. There's no, to your knowledge,  
17 there's no funds available from the university or from  
18 the library to cover the permissions of the sort we're  
19 talking about, right?

20 A. I mean, I don't know.

21 MR. LARSON: All right. That's all the  
22 questions I have.

23 EXAMINATION

24 BY MR. ASKEW:

25 Q. Dr. Esposito, Mr. Larson had asked you a

1 question about an hour or so ago about whether the  
2 functional difference between a coursepack and EReserve  
3 material was that one is digital and one is not.

4 You recall that general subject that he  
5 discussed with you?

6 A. Yes.

7 Q. What did you understand him to mean when he  
8 said the functional difference in that question?

9 A. Well, I mean, he went on to define it as, you  
10 know, one is digital and one is not, so I took it to  
11 mean how the students use it.

12 So in other words, you know, for EReserves the  
13 students can go and access the material online versus  
14 the coursepack they would have to go to Kinko's or  
15 somewhere to purchase.

16 Q. Do you believe there are differences between a  
17 coursepack and EReserve materials?

18 A. Yes.

19 Q. What are those differences?

20 A. Well, I think I said that the coursepack is  
21 bound and it's a collection of all different material  
22 generally --

23 I know from when I was in grad school they  
24 would put tons of material in these coursepacks, tons of  
25 chapters from books versus the EReserve where we have to

1 make really careful decisions about which chapters we're  
2 excerpting from or excerpting.

3 The coursepack is for sale, the EReserve is  
4 not. It's available to students, but it's only  
5 available to students in the course because of the  
6 password that's not made public. It's password  
7 protected. And the library shuts down, it's only  
8 available for a segment of students because then the  
9 library removes the page at the end of the semester.  
10 It's not made available any more even to the students  
11 who have the password.

12 And I don't know what happens with  
13 coursepacks, but I assume they sit on the shelves until  
14 they're sold.

15 Q. Can anyone purchase a coursepack?

16 MR. LARSON: I object on foundation  
17 grounds.

18 BY MR. ASKEW:

19 Q. Do you believe anyone can purchase a  
20 coursepack?

21 A. Yes.

22 Q. Where would they generally be available for  
23 purchase?

24 A. Well, I mean, I know from my previous  
25 university they were always available at Kinko's, when I

1 was in school they were available at Kinko's. So here  
2 at Georgia State, I don't know where they're available.

3 MR. ASKEW: I have no further questions  
4 for the witness.

5 MR. LARSON: Just a couple more.

6 FURTHER EXAMINATION

7 BY MR. LARSON:

8 Q. I just want you to assume that a coursepack of  
9 10 articles, Professor, is one option versus EReserves  
10 distribution of those same 10 articles for a given  
11 student in the class. What's the difference in your  
12 mind between the student getting the 10 articles on  
13 EReserves versus the student getting the 10 articles in  
14 coursepack, other than that one is digital and one's  
15 hard copy?

16 A. What is the difference?

17 Q. Uh-huh. From the standpoint of a student in  
18 the class.

19 A. You mean you're asking me to imagine what  
20 students think about coursepacks?

21 Q. No. No. I'm asking you from -- in a  
22 situation where a professor could use a coursepack for  
23 10 articles, just as an example, or distribute those  
24 same 10 articles or use EReserves to provide those same  
25 10 articles, for students and for a given student in the

1 class, what's the difference between getting them via  
2 EReserve getting them in coursepack?

3 MR. ASKEW: I'm going to object to the  
4 question again as vague again by what do  
5 you mean by getting them.

6 THE WITNESS: So do you mean how they --  
7 so they would have to go to Kinko's --

8 BY MR. LARSON:

9 Q. Or however a coursepack is distributed, sure.

10 A. Well, that would be a difference.

11 Q. All right. So there's a difference in the  
12 fact that you have to go to Kinko's versus getting it on  
13 your computer?

14 A. Uh-huh.

15 Q. Any others?

16 A. With the -- EReserves they have to have the  
17 password, so not just any student could get it.

18 Q. My question just to -- sorry to interrupt. My  
19 question is for a student in the class who has the  
20 password, not for --

21 MR. ASKEW: I'm going to object to your  
22 question. You already interrupted the  
23 witness. Let her answer the question.

24 THE WITNESS: So I was going to say, the  
25 student would have to get the password in

1           order to be able to access it versus the  
2           coursepack where, you know, a student from  
3           any class could get it.

4       BY MR. LARSON:

5           Q.    Other than that, any differences?

6           A.    They would be heavier for the student to carry  
7           around the coursepack than it is to access it online.

8           Q.    All right.  Because the coursepack is hard  
9           copy and the EReserves is a digital copy, correct?

10          A.    Yes.

11          Q.    Any other differences?

12          A.    No.

13          Q.    In either situation the student ends up  
14          getting access to the 10 works, correct?

15          A.    Yes.

16                   MR. LARSON:  No further questions.

17                   MR. ASKEW:  That will conclude the  
18                   deposition.

19                   THE VIDEOGRAPHER:  Off the record at  
20                   11:53.

21                   (Deposition concluded at 11:53 a.m.)

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E R R A T A S H E E T

I, the undersigned, Jennifer Esposito, Ph.D., 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:

FULTON COUNTY:

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 9th day of February, 2011.

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



1 DISCLOSURE

2  
3 STATE OF GEORGIA

4 COUNTY OF DEKALB

5 Deposition of Jennifer Esposito, Ph.D.

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

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

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

12 Shugart & Bishop was contacted by the offices of Weil  
13 Gotshal & Manges to provide court reporting services for  
this deposition.

14 Shugart & Bishop will not be taking this deposition  
15 under any contract that is prohibited by O.C.G.A. 15-14-37  
(a) and (b).

16 Shugart & Bishop has no exclusive contract to provide  
17 reporting services with any party to the case, any counsel  
in the case, or any reporter or reporting agency from whom  
a referral might have been made to cover this deposition.

18 Shugart & Bishop will charge its usual and customary  
19 rates to all parties in the case, and a financial discount  
will not be given to any party to this litigation.

20  
21 Teresa Bishop  
22 RPR, RMR, CCR B-307  
23  
24  
25

|          |   |   |   |  |
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