

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

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

CIVIL ACTION FILE

Plaintiffs,

NO. 1:08-CV-1425-ODE

vs.

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

Defendants.

~~~~~

VIDEOTAPE DEPOSITION OF

DAPHNE GREENBERG, Ph.D.

April 21, 2011

1:41 p.m.

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

S. Julie Friedman, CCR-B-1476



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APPEARANCES OF COUNSEL

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Also Present:

Henry Stewart, Videographer



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INDEX OF EXAMINATIONS

WITNESS:

Daphne Greenberg, Ph.D.

Page

DIRECT EXAMINATION

6

By Mr. Harbin

CROSS-EXAMINATION

26

By Mr. Bloom

INDEX TO EXHIBITS

Defendant's

Exhibit

Description

Page

1

Syllabus for Educational Psychology  
8070, Understanding and  
Facilitating Adult Learning, Fall  
Semester 2009, GaState0066231-241

9

2

Title Page, Table of Contents,  
Index for "Handbook of Adult  
Development and Learning"

10

3

Chapter 3, Research Design and  
Methodological Issues for Adult  
Development and Learning, by Caskie  
and Willis; Chapter 20, Advanced  
Avenues in Adult Development and  
Learning: The Role of Doctoral  
Study, by Stevens-Long and Barner

12

4

7-1-09 Fair Use Checklist, EPY  
8070, Understanding and  
Facilitating Adult Learning Fall 09

16

5

Curriculum Vitae

26



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INDEX TO EXHIBITS

Plaintiff's

| Exhibit | Description                                                      | Page |
|---------|------------------------------------------------------------------|------|
| 1       | Policy On the Use of Copyrighted Works in Education and Research | 39   |

(Original Defendant's Exhibits 1 through 5 and Original Plaintiff's Exhibit 1 have been attached to the original transcript.)



1 Videotape Deposition of Daphne Greenberg, Ph.D.  
2 April 21, 2011  
3

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

8 (Defendant's Exhibits 1 through 4 were  
9 marked for identification.)

10 THE VIDEOGRAPHER: This is Tape No. 1 to  
11 the videotape deposition of Professor Daphne  
12 Greenberg, in the matter of Cambridge University  
13 Press versus Mark Becker.

14 This deposition is being held at King &  
15 Spalding, 1180 Peachtree Street in Atlanta,  
16 Georgia on April 21st, 2011. The time is now  
17 1:41 p.m. We're on the record.

18 My name is Henry Stewart. I'm the  
19 videographer. The court reporter is Julie  
20 Friedman.

21 Counsel, will you please introduce  
22 yourselves and affiliations; and the witness  
23 will be sworn.

24 MR. BLOOM: Jonathan Bloom, Weil,  
25 Gotshal & Manges, LLP, for the plaintiffs.



1 MR. HARBIN: And John Harbin with King &  
2 Spalding for the defendants.

3 DAPHNE GREENBERG, Ph.D., having been first  
4 duly sworn, was examined and testified as  
5 follows:

6 DIRECT EXAMINATION

7 BY MR. HARBIN:

8 Q. Professor Greenberg, would you state your  
9 full name for the Court, please.

10 A. Daphne Greenberg.

11 Q. Great. Thank you. And you're a professor  
12 at Georgia State University?

13 A. Yes, sir.

14 Q. And how long approximately have you taught  
15 at Georgia State?

16 A. Since 2001.

17 Q. Could you tell the Court what your  
18 undergraduate degree is in and where you obtained it?

19 A. It's in psychology from Brandeis  
20 University.

21 Q. And what postgraduate education do you  
22 have?

23 A. A master's degree in general psychology  
24 from Yeshiva University, Ferkauf School, graduate  
25 school, of Psychology.



1                   And then a Ph.D. from the graduate center  
2 of the City University of New York in educational  
3 psychology.

4           Q.       And we'll mark a copy of your CV as an  
5 exhibit so the -- for the Court's reference.

6                   But have you published several articles  
7 and -- Well, first, you published several articles  
8 in your field?

9           A.       Yes, sir.

10          Q.       And what department do you teach in at  
11 Georgia State?

12          A.       Educational psychology and special  
13 education.

14                   MR. BLOOM: John, I'm sorry. If I can  
15 interrupt for a sec. This -- Sorry to throw  
16 you off. Let me just, if I could, just get my  
17 objection on the record. I think compared to  
18 the --

19                   MR. HARBIN: Oh, yeah. That's fine. Yes,  
20 yes.

21                   MR. BLOOM: Just for the record,  
22 plaintiffs object to the deposition of -- of  
23 Professor Greenberg to the extent it's intended  
24 to be offered as trial testimony.

25                   The witness resides within the subpoena



1 range of the United States District Court for  
2 the Northern -- Northern District of Georgia and  
3 is represented by counsel for the defendants,  
4 who presumably could subpoena the witness to  
5 appear at trial to provide live testimony.

6 And on that basis, plaintiffs expressly  
7 reserve and do not waive the right to object to  
8 any attempt by defendants to introduce Professor  
9 Greenberg's testimony at trial on the grounds  
10 that she's unavailable within the meaning of the  
11 Federal Rules of Evidence, the Federal Rules of  
12 Civil Procedure, or the applicable rules of the  
13 Northern District of Georgia.

14 Thank you. Sorry to interrupt.

15 MR. HARBIN: Sure.

16 Q. (By Mr. Harbin) In that regard, what are  
17 your plans during the second half of May this year?

18 A. The -- Between May 8th and May 24th, I'll  
19 be in Australia.

20 Q. Okay. And is that something that's been  
21 scheduled for some time?

22 A. Yes.

23 Q. Okay. And I think you describe -- You've  
24 named the department you teach in.

25 A. Yes.





1 Q. And are you presently the director for  
2 Georgia State University's Coalition for the Study of  
3 Adult Literacy?

4 A. Yes, sir.

5 Q. Was that previously the Center for the  
6 Study of Adult Literacy?

7 A. Yes.

8 Q. Okay. Did you teach a course in the fall  
9 of 2009 entitled "Understanding and Facilitating  
10 Adult Learning"?

11 A. Yes.

12 Q. Let me show you what's been marked as  
13 Defendant's Exhibit Greenberg 1 and ask if that is --  
14 I think you have a copy of it -- the syllabus for  
15 your course that -- in fall of 2009?

16 A. Yes, sir.

17 Q. Can you summarize what is covered in this  
18 course?

19 A. Sure. It -- It's basically to introduce  
20 students to the whole field of adult learning. We  
21 talk about the heterogeneity of adult learners. We  
22 talk about development of adults. We talk about  
23 theory of adult learning, and we talk about all types  
24 of adult learners and research issues in terms of  
25 adults.



1 Q. Okay. And approximately how many students  
2 were in the class, if you recall?

3 A. The -- The classes are capped at about  
4 20, so give or take a few.

5 Q. Do you recall if there was approximately  
6 15 in the fall of '09?

7 A. It would probably be between 15 and 20.

8 Q. Okay.

9 A. Yeah.

10 Q. And if you look at the syllabus on the  
11 second page, were there books that the students were  
12 required to purchase in the course?

13 A. Yes. Those two books, the Merriam text  
14 and the King text.

15 Q. Okay. The plaintiffs are challenging your  
16 use of one excerpt of a publication in that class,  
17 and I want to ask you in this course in the fall of  
18 2009, did you use an excerpt of a book called "The  
19 Handbook of Adult Development and Learning"?

20 A. Yes. I believe so.

21 Q. And let me hand you what's been marked as  
22 Defendant's Exhibit Greenberg 2 --

23 A. Yeah.

24 Q. -- and ask if you recognize that as the  
25 title page of that book --



1 A. Uh-huh.

2 Q. -- and some of the contents, including  
3 particularly the table of content -- contents and the  
4 index of what's in the book.

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

6 Q. So is this -- Is it correct this book is  
7 approximately over -- over 563 pages long if you  
8 include the author and subject indexes?

9 A. That's what it says. Yes.

10 Q. And it's about 536 pages of material  
11 overall if you exclude the author and subject index;  
12 is that right?

13 A. That looks like that's correct. Yes.

14 Q. Okay. And can you briefly describe what  
15 this handbook is.

16 A. Sure. It's -- At the time that it was  
17 written, it would be the -- represent the different  
18 researchers at that time in terms of different areas  
19 of adult learning, both development and learning, in  
20 fact, and different chapters regarding different  
21 aspects of adult learning and -- and development.

22 Q. Okay. And is it a compilation of articles  
23 or essays by different authors?

24 A. Yes. It's a compilation of different  
25 chapters by different authors.



1 Q. Okay. And it looks like there are 22  
2 chapters; is that right?

3 A. I believe so. Yes.

4 Q. And did you use two chapters -- all or  
5 part of two chapters of this book, if you recall?

6 A. Yeah.

7 Q. Okay. And let me hand you what's been  
8 marked together as Defendant's Exhibit Greenberg 3  
9 and ask you if this comprises the excerpts that you  
10 used.

11 And I'll show you here that you have --  
12 The first page is chapter -- is the title page for  
13 Chapter 3 and the first page of Chapter 3, and then  
14 here there's a first page and continuing thereafter  
15 of Chapter 20?

16 A. Uh-huh.

17 Q. You see that?

18 So do you recall that's the excerpt of  
19 this book that you used?

20 A. I believe --

21 MR. BLOOM: Object.

22 THE WITNESS: -- so.

23 MR. BLOOM: Object to the form of the  
24 question.

25 MR. HARBIN: Sorry?



1 MR. BLOOM: I just objected to the form.  
2 You can answer.

3 THE WITNESS: Oh.

4 MR. HARBIN: Okay.

5 THE WITNESS: So I ignore that objection?  
6 Oh.

7 MR. BLOOM: Yes.

8 THE WITNESS: Okay. So yeah.

9 Q. (By Mr. Harbin) Okay. So if you look at  
10 the pages, did you use Pages 52 to 70 of Chapter 3?

11 A. Uh-huh.

12 Q. And Pages 455 to 475 of Chapter 20?

13 A. Yes.

14 Q. So you used approximately 39 pages  
15 total --

16 A. Uh-huh.

17 Q. -- of that publication?

18 A. Yes.

19 Q. So is it correct that you used something  
20 less than 8 percent of the book by pages?

21 A. Uh-huh.

22 Q. And what was your purpose in using these  
23 chapters?

24 A. Well, the Chapter 3 was a nice  
25 introduction to the students for learning about



1 methodological issues when you Windows research in  
2 adult learning.

3 And the second chapter on the doctoral, I  
4 believe -- what was it, Chapter 20 --

5 Q. 20.

6 A. -- yeah, was an example of adult  
7 learners -- of a type of adult learner, which would  
8 be doctoral students.

9 Q. Okay. Did you view -- Did you view  
10 either chapter as the heart or critical part of the  
11 book?

12 A. No.

13 Q. And why do you say that?

14 A. Because this is a handbook of many  
15 different aspects of adult learning. It was just two  
16 out of many chapters, and it definitely was not  
17 the heart. The heart of it is really learning theory  
18 and -- and development.

19 And the two chapters that I picked was,  
20 one, introduction to research; and the other one was  
21 just one aspect of adult learning, of learners, a  
22 type of adult learner, which was the doctoral  
23 students. Those are considered pretty minor aspects  
24 of the book in my opinion.

25 Q. Okay. Did you own a copy of this book?



1 A. Yes, sir.

2 Q. And do you know if the library also owned  
3 a copy?

4 A. Yes, sir.

5 Q. In -- In making your decision to use this  
6 excerpt in the class, there -- these two excerpts in  
7 the class in fall of 2009, did you utilize the fair  
8 use checklist provided by Georgia State University?

9 A. Yes, sir.

10 Q. At the time you were preparing the reading  
11 list for the class, the fall 2009 class, had you been  
12 trained in the university's copyright policy that  
13 encompasses the use of the checklist?

14 A. Yes.

15 Q. So did you attend a training session, one  
16 or more training sessions about that?

17 A. You know, I don't remember completely.  
18 I -- I know that there was, I believe, a training  
19 session at the library and a training session in my  
20 department. I believe I actually went to both, but  
21 they're kind of fuzzy in my memory.

22 But I know that I must have -- that  
23 received training, 'cause I wouldn't have known how  
24 to do it. I wouldn't have even known anything about  
25 it.



1 Q. Okay. Did you understand there were  
2 resources available, if you had questions, you could  
3 look at on-line?

4 A. Yes. And I did.

5 Q. And did you understand there were  
6 personnel available --

7 A. Absolutely.

8 Q. -- to consult if you had questions?

9 A. Absolutely.

10 Q. Let me hand you what's been marked as  
11 Defendant's Exhibit Greenberg No. 4 and ask you if  
12 you could identify what this document is.

13 A. It's the fair use checklist that I  
14 used for -- for this book for this class.

15 Q. Okay. And it says -- It's kind of small  
16 print, but it says portions. You say two chapters  
17 total of -- I think you said 38 or 39 pages. I  
18 can't read it.

19 Do you see that?

20 A. Yeah. It's hard to say. Maybe 38  
21 but it's --

22 Q. You say the entire book has 20-something  
23 chapters and 537 pages, I think you wrote; is that  
24 right?

25 A. Right. I obviously did not include the





1 subject index.

2 Q. Right.

3 A. Yeah.

4 MR. BLOOM: John. I'm sorry. Did you  
5 mark this?

6 MR. HARBIN: Yes. It's -- It's Exhibit  
7 4, Greenberg Exhibit 4.

8 Q. (By Mr. Harbin) And when did you fill  
9 this out?

10 A. It would have been the summer before the  
11 fall --

12 Q. Was --

13 A. -- 'cause that's when I prepare my  
14 classes.

15 Q. Okay. Was it on or about July 1, 2009,  
16 the date up at the top --

17 A. Oh.

18 Q. -- first page?

19 A. There you go. I did do it. Okay. July  
20 1st, yeah, 2009.

21 Q. And the handwriting at the top of the  
22 first page, is that your handwriting?

23 A. Yes, sir.

24 Q. What does that say?

25 A. It was a note to myself that I should not



1 throw this out; and I should just basically keep  
2 forever because it was something I was supposed to  
3 keep forever; and I was worried that I would throw it  
4 out, so I wrote that little note to myself.

5 Q. Okay. And that's what it says, keep  
6 forever?

7 A. Yes.

8 Q. And it was your understanding from the  
9 instructions from GSU you were to retain the  
10 checklist that you filled out?

11 A. Yes, sir. That's why I wrote that.

12 Q. Okay.

13 MR. BLOOM: Just object to the form of the  
14 last question.

15 Q. (By Mr. Harbin) And I'm not going to go  
16 through every factor, but just a couple of them.

17 If you look at the second page, the third  
18 factor, you checked a small portion of the work  
19 used -- of work used?

20 A. Yes.

21 Q. And you checked -- You checked portion  
22 used is not central or significant to entire work as  
23 a whole?

24 A. Yes.

25 Q. And was that for the reason you testified



1 to earlier?

2 A. Yes.

3 MR. HARBIN: Excuse me. Let's go off the  
4 record one second.

5 THE VIDEOGRAPHER: 1:54 p.m. Off the  
6 record.

7 (Discussion ensued off the record.)

8 (Defendant's Exhibit 5 was marked for  
9 identification.)

10 THE VIDEOGRAPHER: 1:55 p.m. Back on the  
11 record.

12 Q. (By Mr. Harbin) And you checked the box  
13 under that amount taken as narrowly tailored to  
14 educational purpose, et cetera?

15 A. Uh-huh.

16 Q. And what was your thinking about that?

17 A. Well, the specific chapters that I picked,  
18 they were directly related to -- to a few points that  
19 I wanted them to get from the course.

20 Q. And then under Factor 4, just a couple  
21 questions. You checked use stimulates market for  
22 original work.

23 A. Uh-huh.

24 Q. What was your thinking in checking that  
25 box?



1           A.       That if students found the chapters  
2 interesting, they may want to purchase the book to  
3 read the other chapters.

4           Q.       Okay. And the handwriting on -- lower  
5 down on the Factor 4 on that second page, what  
6 appears to say "mistake" beside supplemental  
7 classroom reading and then checked required classroom  
8 reading --

9           A.       Yes.

10          Q.       -- is that your handwriting?

11          A.       Yes. It is.

12          Q.       And what does it say on the right-hand  
13 side? Does that say --

14          A.       "Correct answer."

15          Q.       Okay. And so you checked -- In the form  
16 you checked it's -- it is required classroom  
17 reading --

18          A.       Yes.

19          Q.       -- under Weighs Against Fair Use?

20          A.       Uh-huh.

21          Q.       Okay. And what was your overall  
22 conclusion in 2009 about whether or not the use of  
23 this excerpt or these two chapter excerpts in your  
24 class would constitute fair use, as --

25          A.       I --



1 Q. -- you understood it?

2 A. I believed that it was fine to use under  
3 the fair use guidelines because it only had one  
4 checkmark in -- in one of the factors --

5 Q. Okay.

6 A. -- and --

7 Q. And --

8 A. -- that was against fair use, so I -- I  
9 believed it met the fair use.

10 Q. And you checked several that were in favor  
11 of fair use?

12 A. Yes. Uh-huh. And there were -- there  
13 were quite a few in the -- the fair use category.

14 Q. Okay. Is this something you did lightly,  
15 or did you take time to do this and analyze this?  
16 How would you --

17 A. Oh.

18 Q. -- characterize your evaluation of fair  
19 use?

20 A. Yeah.

21 MR. BLOOM: Objection to form.

22 You can answer.

23 When I object, unless your counsel  
24 instructs you not to answer, you can --

25 THE WITNESS: Oh.



1 MR. BLOOM: -- go ahead.

2 THE WITNESS: Okay. Thank you.

3 I'm sorry. What was the question again?

4 Q. (By Mr. Harbin) Let me just -- How would  
5 you characterize your deliberations about this, these  
6 excerpts, and whether or not they're fair use?

7 A. Oh, I took it extremely seriously. I  
8 mean, that -- That's why when there was a mistake, I  
9 pointed out the correct answer, and I wrote keep  
10 forever, and so forth.

11 Q. Okay. In that regard, if you look back at  
12 the syllabus that is Greenberg Exhibit 1 --

13 A. (Witness complies with request of  
14 counsel.)

15 Q. -- do you have -- if you look at -- Do  
16 you give instructions about not copying --

17 A. Yeah.

18 Q. -- copyrighted materials, not duplicating  
19 necessarily or -- or selling such materials on the  
20 first page --

21 A. Yeah. Yes. I do.

22 Q. -- under professional behavior?

23 A. Exactly.

24 Q. And do you give oral -- Did you give oral  
25 instructions in your class about that?



1           A.       Yes.  I go over the syllabus, and there  
2           are a few things that I highlight orally; and that's  
3           one of them, because students are generally  
4           surprised.  They don't know this, so I make sure that  
5           they understand it.

6           Q.       And did you do that in this class in the  
7           fall of 2009, to your recollection?

8           A.       Yes, sir.

9           Q.       Do you generally do that?

10          A.       I -- Yeah.  I do it every class.  It's --

11          Q.       Okay.

12          A.       -- one of the things I always do.

13          Q.       All right.  Have you had occasions where  
14          you've undertaken an analysis of a work using this  
15          checklist and determined that in your view at least  
16          it would not be fair use --

17          A.       Yes, sir.

18          Q.       -- or -- or was close enough call that  
19          caused you concern?

20          A.       Yes.

21          Q.       And what did you do in those cases?

22          A.       Did not use the readings.

23          Q.       Okay.  And what would you have done in  
24          this case if you determined that these excerpts,  
25          Chapters 3 and 20, would not have constituted fair



1 use?

2 A. I would not have used them.

3 Q. Okay. Did the university encourage you to  
4 use Ereserve to post excerpts of works?

5 A. No.

6 Q. Did you ever use uLearn in this class in  
7 posting excerpts of books for the class?

8 A. No.

9 Q. Following the university's adoption of the  
10 copyright policy including the use of the fair use  
11 checklist, did your practice about putting excerpts  
12 on Ereserve change in any way?

13 A. Absolutely.

14 MR. BLOOM: I'm sorry.

15 Q. (By Mr. Harbin) How did it change?

16 MR. BLOOM: Could I just have that  
17 question and answer read back.

18 (Whereupon, the record was read by the  
19 reporter as requested.)

20 MR. HARBIN: Let me rephrase the question  
21 if you've got stopping, 'cause that's not what I  
22 intended to ask.

23 THE COURT REPORTER: Excuse me. Adoption.

24 MR. HARBIN: Right. Yeah. That's it.

25 THE COURT REPORTER: Do you want me to --





1 MR. HARBIN: I'll just reask it. I'll  
2 just reask it.

3 Q. (By Mr. Harbin) Following the  
4 university's adoption of the current copyright policy  
5 that incorporates the use of the fair use checklist,  
6 did your practice about putting excerpts on Ereserve  
7 change in any way?

8 A. Yes.

9 Q. How did it change?

10 A. I was a lot more careful. I realized it  
11 wasn't just a matter of pages, but I had to go  
12 through this checklist.

13 And over time I started to use fewer and  
14 fewer and fewer chapters, to the point that today,  
15 like if you looked at my syllabus for this semester,  
16 I have zero chapters.

17 Q. And why is that?

18 A. Because, to be quite honest, this is very  
19 onerous; and I take it seriously; and so it's --  
20 It's just not worth it to me to -- to have to do this  
21 for every single thing that I want to assign to them,  
22 so I don't.

23 Q. Okay.

24 MR. BLOOM: I just move to strike the last  
25 two answers to the extent that they address



1 Professor Greenberg's practice following the  
2 fall of 2009.

3 Q. (By Mr. Harbin) Okay. And let me just --  
4 As I said, I wanted to put this in the record.

5 Let me hand you what's been marked as  
6 Green -- Defendant's Greenberg Exhibit 5 and ask you  
7 if that is a copy of your CV that -- your curriculum  
8 vitae with names of students that appeared on Pages 2  
9 through 4 redacted.

10 A. Yes.

11 MR. BLOOM: Can I get a copy of that,  
12 John.

13 MR. HARBIN: Oh, yes, yes. I'm sorry.

14 MR. BLOOM: Thanks.

15 MR. HARBIN: That's all I have right now.  
16 Thank you, ma'am.

17 CROSS-EXAMINATION

18 BY MR. BLOOM:

19 Q. Okay. Good afternoon, Professor  
20 Greenberg. I'm Jonathan Bloom with Weil, Gotshal &  
21 Manges on behalf of the plaintiffs. I'll be asking  
22 you some additional questions.

23 Can you give me your best guess as to how  
24 many individual readings you've completed a checklist  
25 for in your career at GSU?



1 A. I really don't know. No.

2 All I can say is that since the fair use  
3 checklist became something that we were supposed to  
4 do, I did it for every reading from a book that I was  
5 thinking of assigning.

6 Q. Okay. So would -- you -- You can't give  
7 me a ballpark guess?

8 A. (Witness shakes head negatively.)

9 Q. Okay. And you testified a moment ago, I  
10 think, that there were a few instances in which you  
11 determined that a reading that you were contemplating  
12 posting on the reserves was not fair use; is that  
13 correct?

14 A. Uh-huh.

15 Q. Okay. Do you recall when that occurred --

16 A. No.

17 Q. -- specifically?

18 A. No.

19 Q. You don't. Okay. Do you recall the year?

20 A. No.

21 Q. Okay. Can you tell me a little bit more  
22 specifically with respect to those instances why you  
23 concluded that the use would not be fair use?

24 A. I do not know. All I know is that I would  
25 do this checklist, and it would become apparent that



1 there were too -- either not enough factors in favor  
2 of fair use and/or too many against fair use.

3 Q. Okay. Do you have a recollection as to  
4 any of the specific readings that you decided would  
5 not be fair use?

6 A. No.

7 Q. Okay. Do you recall how long they were  
8 in -- in, you know, in length?

9 A. (Witness shakes head negatively.)

10 Q. Okay.

11 MR. HARBIN: If you could, answer audibly.

12 THE WITNESS: Oh, sorry.

13 MR. HARBIN: Even though it's being  
14 videotaped --

15 THE WITNESS: Okay.

16 MR. HARBIN: -- it will be more clear.

17 THE WITNESS: Okay.

18 Q. (By Mr. Bloom) Okay.

19 A. So the answer to that was no.

20 Q. (By Mr. Bloom) Okay. Do you recall with  
21 respect to those works any of the factors on the  
22 weighs against fair use side of the ledger on  
23 Greenberg Exhibit 4 that you checked?

24 A. Can you repeat that one more time, please.

25 Q. Yeah. With respect to these works that



1 you concluded would not be fair use --

2 A. Uh-huh.

3 Q. -- I'm wondering which of the boxes on the  
4 weighs against fair use side of the checklist you  
5 checked when you were completing the checklist for  
6 those works.

7 A. It's not really an easily answerable  
8 question, because I don't remember what works they  
9 were, so I don't see how I could really know what I  
10 would have checked or what I checked. I can't.  
11 Yeah.

12 Q. Okay. If you don't remember, that's fine.  
13 Were there ever any -- Was there ever an  
14 occasion where you presented a proposed reading to  
15 the library staff to be posted on a reserve where  
16 they informed you that the reading would not be fair  
17 use?

18 A. For 2009?

19 Q. Yes. Let's stick to 2009.

20 A. Okay. And so what's the question again?

21 Q. The question is whether during 2009 there  
22 was ever a situation where you presented a reading to  
23 the library for posting on Ereserves where they told  
24 you it would not be fair use?

25 A. I believe that the answer would be no; but



1 that would be because I did this so carefully and  
2 seriously, that it wouldn't have been an issue.

3 Q. And hypothetically --

4 A. Okay.

5 Q. -- if the university provost were to tell  
6 you that a reading that you wanted to post on  
7 Ereserves would violate fair use --

8 A. Uh-huh.

9 Q. -- would you -- and -- and asked you to  
10 take remedial action, i.e., not post it on Ereserves,  
11 would you follow that instruction --

12 A. Yes.

13 Q. -- from the provost?

14 A. Yes. I would not post anything that  
15 violated fair use.

16 Q. Okay. And if the head of the library had  
17 told you the same thing, that posting an excerpt  
18 would not be fair use, would you follow that  
19 instruction?

20 A. Yes.

21 Q. Okay. The same question with respect to  
22 the university president?

23 A. Yes.

24 Q. Same question with respect to the Board of  
25 Regents?



1 A. Yes.

2 Q. Okay. Turning back to the -- Oh, strike  
3 that.

4 Just if you would, refer to Exhibit 1,  
5 which is the -- the syllabus. We were looking a  
6 moment ago at the paragraph on the first page on  
7 professional behavior.

8 A. Uh-huh.

9 Q. Right. You see about halfway down the --  
10 or actually, I guess the second to last sentence --  
11 I'm sorry -- third to last sentence in the paragraph  
12 says, "Duplicating copyrighted materials is illegal,  
13 and copying and selling such material is a felony."

14 Do you see that?

15 A. Yes, sir.

16 Q. Okay. Do you have an understanding as to  
17 whether copying is involved in the process of -- is  
18 involved with the Ereserve -- Ereserves system?

19 A. What do you mean?

20 Q. Strike that.

21 Do you have an understanding as to whether  
22 when you instruct a -- when you select a reading for  
23 posting on Ereserves and the library staff posts it  
24 on Ereserves at your direction, do you have an  
25 understanding as to whether copying is involved in



1 that process, posting the work on Ereserves?

2 A. I'm not involved with the process of how  
3 it gets on Ereserves, but it would have followed the  
4 fair use act (indicating).

5 Q. Okay. But do you have an understanding  
6 one way or the other as to whether there are acts of  
7 copying involved in the posting of the reading on  
8 Ereserves?

9 A. I've never asked nor -- I don't -- Huh.  
10 I mean -- I mean I -- I guess copying would be  
11 involved but -- But I don't know that for a fact.

12 Q. Okay. Do you have any understanding as to  
13 whether copying is involved when a student accesses a  
14 reading on Ereserves?

15 A. I do not know.

16 Q. Okay. In your experience when -- And  
17 let's talk specifically with respect to this course.

18 A. Okay.

19 Q. In your experience do students in this  
20 class sometimes print out the readings from Ereserves  
21 and bring them to class?

22 A. They do sometimes print out readings.  
23 Which readings they print out, I do not remember.

24 Q. Do you make a recommendation to them that  
25 they should print out readings and bring them to





1 class?

2 A. Yes.

3 Q. Okay. And what do you tell them?

4 A. That sometimes students find it helpful to  
5 bring copies of the readings to the class.

6 Q. Okay. So do you tell them that it's  
7 something that they may want to do?

8 A. Like I say, sometimes it's helpful.

9 Q. Okay.

10 A. Yeah.

11 Q. Okay. Would you say most students in --  
12 in this class follow that advice?

13 A. No. Not necessarily, because there are a  
14 lot of readings and a lot of articles; and this  
15 generation of students are very comfortable reading  
16 off the screen.

17 Q. Okay.

18 A. And they don't necessarily need to bring  
19 hard copies of anything.

20 Q. Okay. And when a student prints a copy of  
21 a reading off of Ereserve, do you have an  
22 understanding one way or the other as to whether an  
23 act of copying is involved in that process?

24 A. It -- It feels like you're trying to  
25 trick me into something 'cause --



1 Q. No.

2 A. I mean, you know. I mean --

3 Q. I assure you I'm not.

4 A. -- if -- if they're bringing a -- a  
5 copy -- I mean, this is a copy (indicating), right?

6 So I -- I'm not sure exactly how to  
7 answer your question; but if they're bringing a copy,  
8 then yes. I guess it's a copy.

9 Q. Well, let -- Let me rephrase the  
10 question. If -- If a student downloads --

11 A. Yes.

12 Q. -- a reading from Ereserve and prints it  
13 out --

14 A. Okay.

15 Q. -- and brings it to class, is it your  
16 understanding one way or the other as to whether a --  
17 a copy is made?

18 A. I would have to say yes, a copy has been  
19 made.

20 Q. Okay. Mr. Harbin asked you, I believe,  
21 whether GSU encouraged you to use Ereserves. Do you  
22 remember that?

23 A. Uh-huh.

24 Q. Okay. And your answer was no. Am I --  
25 Is that right?



1           A.     No.  He -- He asked about -- specifically  
2 about excerpts from chapters.

3           Q.     Okay.

4           A.     We were encouraged, if we had readings  
5 which could include articles -- I mean, we were  
6 encouraged to use Ereserves --

7           Q.     Okay.

8           A.     -- as a place; but, you know, that -- He  
9 specifically asked about book chapters.

10          Q.     Okay.  And just following up on that,  
11 what -- what do you recall you were told with --  
12 Strike that.

13                    So at some point, I take it, you were  
14 advised that Ereserves was an alternative way for you  
15 to make readings available to students; is that  
16 correct?

17          A.     Yes, sir.

18          Q.     And do you recall when that was?

19          A.     No, sir.

20          Q.     Okay.  Do you recall -- Do you recall  
21 anyone in the university administration ever saying  
22 to you either one on one or as a part of a meeting of  
23 some kind that it was a good idea to use Ereserves?

24          A.     To be honest, I don't -- I don't remember  
25 how I learned about Ereserves in general.  I -- I



1 know that at some point I learned that Ereserves was  
2 a good place to put materials for classes.

3 Q. Okay. And I believe for this course,  
4 according to the syllabus, the readings for Ereserves  
5 were articles. The -- the readings that were placed  
6 on Ereserves were articles; is that correct?

7 A. It would be whatever is on the syllabus  
8 with -- except for the physical books that were  
9 physically available to the students, so it included  
10 mainly articles. You're correct.

11 Q. Okay.

12 A. But it did include, as you know, these two  
13 chapters.

14 Q. Okay. When did you start teaching at GSU?

15 A. About 2001. It's possible that --

16 I -- I taught I think one class as a  
17 staff member, and that would have been in the late  
18 1990s, but I became a faculty member in 2001.

19 Q. Okay. What was your position at the time  
20 when you were -- in 2001?

21 A. Two -- You mean where did I come from as  
22 staff?

23 Q. No. I mean what was your title?

24 A. Oh. Assistant professor.

25 Q. Okay. And your title today is?



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1 A. Associate.

2 Q. Associate. Okay. And are you a  
3 tenured --

4 A. Yes.

5 Q. -- faculty member?

6 Okay. And do you recall when you began  
7 using Ereserves --

8 A. No.

9 Q. -- at GSU?

10 You don't?

11 A. No.

12 Q. Was it sometime after 2001?

13 A. Yes. It wasn't immediately at 2001.

14 Q. Okay. And -- And how did you make  
15 articles available to your students prior to the time  
16 you started using Ereserves?

17 A. Through a course packet.

18 Q. Do you recall just roughly sort of over  
19 how many years you used course packs?

20 A. I do have a recollection of using it  
21 twice. It's possible I used it more.

22 Q. Okay. Twice meaning for two classes?

23 A. Yes, sir.

24 Q. Okay. And would you say -- is it a --  
25 and -- and --



1                   So now do you continue to use course  
2 packs?

3           A.     No.

4           Q.     Okay. And do you have an understanding as  
5 to whether with respect to those course packs any  
6 fees were paid to the publishers of the materials you  
7 used in the course packs?

8           A.     I do not know.

9           Q.     Okay. You don't know one way or the  
10 other?

11          A.     No.

12          Q.     Okay. Okay. And with respect to the  
13 readings that have been posted on Ereserves at your  
14 direction, do you have an understanding as to whether  
15 any fees were paid for any of those readings to the  
16 publisher?

17          A.     I do not know.

18          Q.     Okay. Okay. And when did you first  
19 become aware of the -- of the new GSU copyright  
20 policy?

21          A.     Whenever they told us we were supposed to  
22 use it. Sorry. I don't remember.

23          Q.     Okay. It was prior to the fall of 2009?

24          A.     No. I don't remember.

25          Q.     Okay. Do you recall reading the policy?



1 A. I would have. Yes.

2 Q. Okay.

3 A. I don't have a strong memory of it, but I  
4 would have read it in order to -- to understand what  
5 I'm supposed --

6 Q. Okay.

7 A. -- to be doing.

8 Q. Do you today have a physical copy of the  
9 GSU copyright policy?

10 A. I don't know for a fact, but my guess is  
11 that in the same place that I keep all these things  
12 (indicating), I probably have that copyright.

13 Q. Okay.

14 A. A memo whatever it's called.

15 Q. Okay. I'm just going to show you a  
16 document.

17 (Plaintiff's Exhibit 1 was marked for  
18 identification.)

19 Q. (By Mr. Bloom) Oops.

20 Let me show you a document that I've  
21 marked as Greenberg Plaintiff's Exhibit 1 and ask you  
22 if you recall having seen this before.

23 A. It looks familiar.

24 Q. Okay.

25 A. So yes. I believe it --



1 Q. And what -- What is this?

2 A. It's -- Well, it says a whole bunch of  
3 different things; but it's basically all the things  
4 that can help me know how to do this. It's the  
5 actual policy, the general policy; and let's see.  
6 It's all about fair use and how to use the fair use  
7 checklists and so forth.

8 Q. Okay. For the record, the first page of  
9 this document is titled, "Policy on the Use of  
10 Copyrighted Works in Education and Research."

11 Okay. So do you -- Do you recall reading  
12 the -- reading this document?

13 A. It looks very familiar, so yes. I believe  
14 I did read it.

15 Q. Okay. If I could direct your attention to  
16 Page 15.

17 A. Okay.

18 Q. You'll see toward the bottom there,  
19 there's a -- Under the heading "Online Works," there  
20 are two bullets, and the first one says, "Copyright  
21 Clearance Center."

22 A. Uh-huh.

23 Q. Do you see that?

24 Do you know what the Copyright Clearance  
25 Center is?





1 A. No. I don't.

2 Q. Okay. Have you ever heard of it before?

3 A. I don't think so.

4 Q. Okay. So given that answer, I take it  
5 the -- Strike that.

6 So you don't recall anyone from GSU ever  
7 explaining to you what the Copyright Clearance Center  
8 is?

9 A. It's possible they did. I don't remember.

10 Q. Okay. And you said you've -- You  
11 testified earlier I think that you -- you believe you  
12 attended a training session --

13 A. Uh-huh.

14 Q. -- at least one --

15 A. Right.

16 Q. -- correct?

17 Okay. Do you recall whether there were  
18 any materials distributed at --

19 A. Yeah.

20 Q. -- at a meeting?

21 A. I have a vague memory of PowerPoint stuff  
22 and some stuff from this packet.

23 Q. Okay. Now turning for a moment to the  
24 fair use checklist --

25 A. Okay.



1 Q. -- this was Exhibit 4. Looking at the  
2 first page under Factor 1, you did not check on the  
3 left-hand side transformative use, correct?

4 A. Uh-huh.

5 Q. And on the right-hand side, you didn't  
6 check nontransformative either, correct?

7 A. Uh-huh.

8 Q. Okay. Do you have an understanding as to  
9 what transformative means in the context of copyright  
10 law?

11 A. I believe it means that you are -- are  
12 doing something to the actual document that changes  
13 it.

14 Q. And with respect to these excerpts from  
15 adult development and learning, do you have an  
16 understanding as to whether they -- whether your use  
17 of them in connection with Ereserves is  
18 transformative?

19 A. I don't believe they are.

20 Q. Okay. Okay. Is there a reason you didn't  
21 check nontransformative?

22 A. Don't remember.

23 Q. Okay. And by the way, you did not for any  
24 of the factors check either factor weighs in favor of  
25 fair use or factor weighs against fair use. Is that



1 a -- Was that an oversight on your part?

2 A. I'm not sure what you're saying.

3 Q. If you look at, for example, in Factor

4 1 --

5 A. Uh-huh.

6 Q. -- at the bottom, on -- there's a box on  
7 the left --

8 A. Oh.

9 Q. -- that says, "...Weighs in Favor...", and  
10 one on the right that says "... Weighs Against Fair  
11 Use."

12 Do you see that?

13 A. Yes. I do.

14 Q. Okay. I -- and I take it you -- that  
15 was -- Was that an oversight on your part not to  
16 check one of the two?

17 A. Yeah. My guess is that I did it in my  
18 head and --

19 Q. Okay.

20 A. -- didn't think about it at that time --

21 Q. Okay.

22 A. -- of marking it.

23 Q. Okay. But is -- Did you conclude with  
24 respect to each of the four factors that they weighed  
25 in favor of fair use?



1           A.       I don't remember if I concluded that for  
2 every factor, but I do know that I would have  
3 concluded that overall. It qualified as fair use.

4           Q.       And just in -- in general, did you have an  
5 understanding as to whether each -- each of the  
6 subfactors, that is, each -- each box was to be given  
7 equal weight in the fair use analysis?

8           A.       You know, it's been such a long time since  
9 I've done these checklists. I -- I guess I would --  
10 I would have gone by whatever the instructions say.

11          Q.       So sitting here today, you don't recall;  
12 is that correct?

13          A.       Right.

14          Q.       Okay. And do -- do you -- Let me ask  
15 you. Sitting here today --

16          A.       Uh-huh.

17          Q.       -- do you have any understanding as to  
18 whether Factors 1, 2, 3, and 4 are each to be given  
19 equal weight in the fair use analysis?

20          A.       That feels a little bit like an unfair  
21 question, because I don't put -- I don't assign  
22 chapters from books anymore that -- unless I require  
23 students to buy them, so it's been a really long time  
24 since I've studied the fair use checklist, so I don't  
25 know.



1 I mean, if you want me to study, you know,  
2 this stuff now, I can tell you what I think.

3 Q. Okay.

4 A. But I just don't remember.

5 MR. BLOOM: Okay. Well, recognizing that  
6 my question invited it, I'm going to move to  
7 strike the answer to the -- prior answer to the  
8 extent it addresses your current practice, which  
9 is not something I'm faulting you for.

10 THE WITNESS: Okay.

11 Q. (By Mr. Bloom) But let's -- Let's cast  
12 your mind back --

13 A. Okay.

14 Q. -- to the fall of 2009. Do you recall if  
15 at the time --

16 A. Uh-huh.

17 Q. -- you had an understanding as to whether  
18 each of the Factors 1 through 4 was to be weighed  
19 equally?

20 A. I really don't remember.

21 Q. Okay. That's fine.

22 Referring you to your curriculum vitae --

23 A. Okay.

24 Q. -- it's Exhibit 5. You note that  
25 beginning on Page 10, there's a list of what is



1 called refereed journal articles.

2 A. Yes, sir.

3 Q. Can you explain what a refereed journal  
4 article is.

5 A. Sure. It's an article that's published in  
6 a journal; and in order to be accepted into the  
7 journal, blind reviewers review the -- the  
8 manuscript. I don't know who's reviewing the  
9 manuscript. They don't know who's written the  
10 manuscript.

11 And then based on their reviews, it either  
12 gets accepted; or you have to make changes; or it  
13 gets rejected for publication.

14 Q. Okay. And why is it that you list these  
15 articles as a sort of separate category on the -- on  
16 your curriculum vitae?

17 A. Because that's what we do in academia. I  
18 guess it's also for promotion and tenure purposes.  
19 It -- It served, I guess, many different purposes.

20 But having a journal article that has been  
21 refereed is considered higher status, higher  
22 scientific value than an article that is not, so  
23 you're expected to differentiate the types of  
24 publications you have.

25 Q. All right. And how -- how does the



1 referee -- refereeing process work? Is that  
2 something that is organized by the publisher of the  
3 journal --

4 A. I believe --

5 Q. -- if you know?

6 A. -- it's the editor; and -- and what the  
7 interaction is between editor and publisher, I do not  
8 know.

9 Q. Okay. And so is a refereed journal  
10 article considered a -- an important credential for  
11 the academic promotion process?

12 A. Yes.

13 Q. Okay. And have you published books?

14 A. I have published chapters, two chapters in  
15 two different books, but I have not edited or  
16 published a whole book.

17 Q. Okay.

18 A. They're on Page 13, the top of Page 13.

19 Q. Okay. And were -- Were those refereed,  
20 those chapters?

21 A. The first one, "Tales from the field," was  
22 invited.

23 The second one, I do not know. It's a  
24 long time ago.

25 Q. Okay.



1 A. I was still a student.

2 Q. Okay. And have you ever published a --  
3 either a journal article or a book chapter where the  
4 publisher played a role in helping you shape the  
5 content of the --

6 A. No.

7 Q. -- article?

8 Okay. With respect to these book  
9 chapters, did you -- did you sign a -- a contract  
10 with the publisher?

11 A. Wow. The second one, I was still a  
12 student. I do not remember. I was a second  
13 coauthor, so my guess is probably not. Probably the  
14 first author did it.

15 The first one, I vaguely remember signing  
16 something, but I don't know if that was with the  
17 editor or the publisher or what it was.

18 Q. Okay. Okay. So do you endeavor to  
19 publish regularly in your field of expertise?

20 A. Yes.

21 Q. Okay. Why is that?

22 A. I guess for two reasons. One is that  
23 that's the only way to move the field forward is by  
24 getting your work out there, and then from the  
25 selfish reason I need it for my job.





1 Q. Okay. Why do you need it for your job?

2 A. Because that's -- I -- I guess I don't  
3 strictly need it at this point; but that's how you're  
4 valued on your job, by what you produce.

5 Q. Okay. How important are publications  
6 in -- in the tenure evaluation process at GSU?

7 A. Refereed article publications are  
8 important.

9 Q. Okay. And what about -- What about  
10 books?

11 A. I -- I do not know for a fact, but my  
12 understanding is that books are given lower currency  
13 than articles.

14 Q. And -- And do you have an understanding  
15 as to why that is the case?

16 A. Because they don't go through as -- the  
17 more -- as more of a -- as much of a vigorous  
18 refereeing process as articles do --

19 Q. Okay.

20 A. -- or as refereed articles do. There  
21 isn't that blind review.

22 Q. Okay.

23 A. But I could be wrong. I've never been  
24 involved. That's what I mean.

25 Q. Yeah. I was just going to ask you.



1 Have you -- have you ever served as a referee for --

2 A. Oh, yeah.

3 Q. -- someone else's scholarly work?

4 A. Yes.

5 Q. Okay.

6 A. Oh, for articles.

7 Q. For articles. But never for a book.

8 A. No.

9 Q. Okay. And who asked you to participate as  
10 a referee with respect to the -- let's just --

11 A. It really varies. You know, for instance,  
12 a -- a journal will -- will not specialize, let's  
13 say, in adult literacy, which is my area of  
14 expertise; and all of a sudden, someone submits an  
15 article -- a manuscript for possible publication in  
16 their journal on adult literacy.

17 So they know of my name; and they'll  
18 contact me, asking me if I can review this one  
19 manuscript.

20 In other situations I'm actually on their  
21 editorial board, so I routinely get manuscripts from  
22 them.

23 Q. Okay. Going back for a moment to course  
24 packs --

25 A. Uh-huh.



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1 Q. -- just a couple of questions. Comparing  
2 a course pack to a reading on Ereserve from the  
3 student's perspective, can you identify any -- any  
4 differences between the two types of reading  
5 materials?

6 A. I don't know. Well, that's probably  
7 because I was never a student that had access to --  
8 When I was a student, things were not  
9 electronic yet, so yeah.

10 Q. But I mean other -- other than the fact  
11 that one is paper and one is --

12 A. Yeah.

13 Q. -- digital, are -- can you identify any  
14 distinction?

15 A. No.

16 Q. Were you asked to collect any documents in  
17 collect -- in connection with this litigation?

18 A. No.

19 Q. Okay. Did you provide any documents to  
20 counsel in connection with this litigation?

21 A. Just my vitae (indicating).

22 Q. Okay. How about the fair use checklist?

23 A. Oh, yes. This was awhile ago, though. I  
24 don't -- I don't remember when but -- so I'm  
25 guessing it was with this case.



1                   But yeah. At some point I got an e-mail  
2 from -- from I think one of the GSU lawyers asking me  
3 for my fair use checklists of some --

4           Q.       Okay.

5           A.       -- year or something.

6           Q.       Okay. And what, if anything, did you do  
7 to prepare for this deposition?

8           A.       Look up when I first started at GSU,  
9 because I never remember.

10          Q.       Okay.

11          A.       But that's it.

12                   Oh. And I met -- I met with him  
13 (indicating). Last week.

14          Q.       Okay. And did you look at any documents  
15 with John?

16          A.       Oh, with John, yes. He showed me my  
17 syllabus, and he showed me the fair use checklist,  
18 and he showed me the two readings.

19          Q.       Okay. I don't want you to tell me  
20 anything that the two of you discussed. I'm not  
21 asking for that.

22          A.       Oh, okay.

23          Q.       Did you speak to anyone other than --  
24 other than John about this deposition?

25          A.       I -- I did speak to -- I -- I think



1 they're called GSU lawyers in terms of practicalities  
2 like scheduling and stuff like that.

3 Q. Okay. And I don't want to know anything  
4 else --

5 A. Okay.

6 Q. -- any substance of what you talked about  
7 with them either.

8 Have you read anything about this case in  
9 the press or the blogosphere?

10 A. No.

11 Q. Okay. Did you ever ask for help from  
12 anyone in completing a fair use checklist?

13 A. I don't have specific examples, but I  
14 would have -- I do remember talking to librarian  
15 staff, whether it was for this particular class or  
16 not.

17 But there -- there would sometimes be  
18 occasions where that -- where I would get to some  
19 item, and I wouldn't know how to fill it out, and I  
20 would call and ask for help.

21 Q. Okay. And do you have any specific  
22 recollection of -- of any of those conversations?

23 A. No. I just know that I had them.

24 Q. Okay. Do you recall who specifically you  
25 spoke to?



1           A.       Whoever was assigned to help me, 'cause I  
2 don't remember who --

3           Q.       It was --

4           A.       -- it was.

5           Q.       -- someone in the library --

6           A.       Yes.

7           Q.       -- correct?

8           A.       I believe so.

9           Q.       Okay.

10          A.       Or it might have been somebody in the  
11 legal department. I -- I don't remember.

12          Q.       You don't recall?

13          A.       It would be one of those two.

14          Q.       Okay.

15          A.       Or maybe both.

16          Q.       Okay. And is it your testimony that you  
17 had a question about a specific item on the  
18 checklist?

19          A.       No. My testimony is that I remember  
20 having questions, but I don't remember what they  
21 were, and I remember seeking help about --

22          Q.       Okay.

23          A.       -- about them.

24          Q.       And do you remember getting the help that  
25 you were seeking?



1 A. Yes.

2 MR. BLOOM: Okay. Go off the record for a  
3 minute.

4 THE VIDEOGRAPHER: 2:37 p.m. Off the  
5 record.

6 (Discussion ensued off the record.)

7 THE VIDEOGRAPHER: 2:39 p.m. Back on the  
8 record.

9 Q. (By Mr. Bloom) Okay. Professor  
10 Greenberg, if I could direct your attention back to  
11 fair use checklist --

12 A. Uh-huh.

13 Q. -- on the second page, Factor -- Factor 4,  
14 on the right-hand side, the second box is "Licensing  
15 or permission reasonably available."

16 Do you see that?

17 A. Uh-huh.

18 Q. And you didn't check that, correct?

19 A. Uh-huh.

20 Q. Can you tell me why not?

21 A. I don't remember.

22 Q. Okay. Do -- do you have -- Strike that.

23 Do you recall whether you investigated  
24 whether licensing or permission was reasonably  
25 available for use of portions of -- of this text?



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

2 Q. Okay. And you concluded that use of these  
3 excerpts would not have a significant effect on the  
4 market or potential market for the copyrighted work,  
5 correct?

6 A. Yes, sir.

7 Q. Okay. And can you just explain to me what  
8 your thinking was on that factor.

9 A. I thought that two chapters or 30-some-odd  
10 pages from such a big book would not impact the  
11 selling of the book in -- in any kind of major way.

12 Q. Okay. And in evaluating that subfactor,  
13 did you take into consideration the market for the --  
14 the licensing of excerpts from the book?

15 A. I do not know.

16 Q. Okay. You don't recall doing so?

17 A. No. I don't -- I don't remember one way  
18 or the other.

19 MR. BLOOM: Okay. I have no further  
20 questions.

21 MR. HARBIN: All right. Thank you, ma'am.  
22 I don't have anything else.

23 THE VIDEOGRAPHER: This --

24 MR. HARBIN: You're done.

25 THE WITNESS: Cool.





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THE VIDEOGRAPHER: This concludes the videotape deposition of Professor Daphne Greenberg, April 21, 2011, 2:42 p.m. We're off the record.

(Whereupon, the deposition was concluded at 2:43 p.m.)

(Pursuant to Rule 30(e) of the Federal Rules of Civil Procedure and/or O.C.G.A. 9-11-30(e), neither a party nor the deponent having requested right of review of the deposition, the reading and signing of the deposition is waived.)



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C E R T I F I C A T E

STATE OF GEORGIA:  
COUNTY OF FULTON:

I hereby certify that the foregoing transcript was taken down, as stated in the caption, and the questions and answers thereto were reduced to typewriting under my direction; that the foregoing pages 1 through 57 represent a true, complete, and correct transcript of the evidence given upon said hearing, and I further certify that I am not of kin or counsel to the parties in the case; am not in the regular employ of counsel for any of said parties; nor am I in anywise interested in the result of said case.

This, the 25th day of April, 2011.

S. JULIE FRIEDMAN, CCR-B-1476



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