

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 CHARLES HANKLA, taken on behalf of the plaintiffs, pursuant to the stipulations contained herein, before Teresa Bishop, RPR, RMR, CCR No. B-307, at 1180 Peachtree Street, 16th Floor, Atlanta, Georgia, on Wednesday, April 20, 2011, commencing at the hour of 1:09 p.m.

Shugart & Bishop
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I N D E X

Examinations

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EXAMINATION BY MR. KRUGMAN

4

E X H I B I T S

No.

Description

Page

1 CV

8

2 GSU's copyright policy

16

3 printout from GoSolar political
science 3450 for fall semester
of 2009

24

4 syllabus for political science 3450

24

5 communication with library staff
about the reserve request

35

6 fair use checklist for the
Lantis and Moskowitz work

43

"Contemporary Cases In U.S.
Foreign Policy From Terrorism To Trade"

7 fair use checklist for "U.S.

69

Foreign Policy: The Paradox Of
World Power", Steven Hook, CQ Press,
chapter 6 pages 153 to 168

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ALSO PRESENT:

LIZ KEMP, 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).)

- - -

1 THE VIDEOGRAPHER: We're now on the
2 video record. This is the beginning of
3 tape number 1. The time is 1:09 p.m.

4 This is the videotaped deposition of --

5 THE WITNESS: Charles Hankla. I can
6 help out with that. I know that much.

7 THE VIDEOGRAPHER: Taken in the case of
8 Cambridge University Press, Oxford
9 University Press Incorporated and Sage
10 Publications Incorporated, versus Mark P.
11 Becker, in his official capacity as Georgia
12 State University president, et. al.

13 Madam Court Reporter, would you please
14 swear in the witness.

15 CHARLES ROBERT HANKLA,
16 having been first duly sworn, was examined and testified as
17 follows:

18 EXAMINATION

19 BY MR. KRUGMAN:

20 Q. If you could please state your full name?

21 A. Charles Robert Hankla.

22 Q. And where do you reside, Mr. Hankla?

23 A. 2330 Henderson Mill Court, Atlanta, Georgia,
24 30345.

25 Q. My name is Edward Krugman, and I'm with the

1 law firm Bondurant Mixson & Elmore here in Atlanta. And
2 we just met for the first time a few minutes ago,
3 correct?

4 A. That's right.

5 Q. And I'm representing Cambridge University
6 Press, Oxford University Press and Sage Publications in
7 the litigation involving the electronic reserve system
8 at Georgia State.

9 And have you ever been deposed before?

10 A. No.

11 Q. Well, I'll be asking -- during the deposition,
12 I'm sure as your counsel has advised, I'll be asking you
13 questions. It's important that you respond verbally to
14 the questions. We have the videographer, but the court
15 reporter here will be taking down the official
16 transcript so it's --

17 A. Okay.

18 Q. It's important to respond audibly. If you
19 don't understand my questions, please let me know and I
20 will do my best to rephrase it. If you need a break,
21 let me know. It's not an endurance test.

22 A. Okay.

23 Q. It's not the Bataan Death March. So if you
24 need a break, just let me know.

25 A. Okay, thank you.

1 Q. If you could, just describe very briefly what
2 you did to prepare for your deposition today.

3 A. Well, I met with Ms. Moffitt for about two
4 hours on Monday at Georgia State to discuss the basics.

5 MS. MOFFITT: Hold on. I'm going to
6 caution my witness not to reveal the
7 substance -- reveal in responding to the
8 question any attorney client communications
9 we may have had.

10 THE WITNESS: Okay. So I met with her
11 for about two hours.

12 BY MR. KRUGMAN:

13 Q. And did you review any documents when you met
14 with Ms. Moffitt?

15 A. We did.

16 Q. What did you review?

17 A. We reviewed the two syllabi or, sorry, the one
18 syllabus and the two fair use checklists that are
19 relevant to the case.

20 Q. At least vis-a-vis you?

21 A. Vis-a-vis me. Relevant to the case vis-a-vis
22 me, yes.

23 Q. Did you review Georgia State's copyright
24 policy?

25 A. No.

1 Q. Have you seen any transcripts of depositions
2 taken in the litigation?

3 A. No.

4 Q. Have you read any briefs or any other
5 materials about the lawsuit?

6 A. I read a couple of press reports, but no
7 actual documents from the lawsuit.

8 Q. Have you spoken with anyone other than counsel
9 regarding your deposition today?

10 A. Well, I've mentioned it to my wife and maybe
11 other members of my family. And I talked briefly with a
12 colleague who gave a deposition, two colleagues who gave
13 depositions, one recently and one before, but we didn't
14 talk about substance.

15 Q. And who are those colleagues?

16 A. John Duffield. And we specifically didn't
17 talk about what was asked or said. And another one from
18 the previous round before the 2009 period, Jason
19 Reifler.

20 Q. Were you at any time asked to preserve
21 documents relating to this litigation?

22 A. To preserve documents, no.

23 Q. Were you at any time asked to produce any
24 documents regarding this litigation?

25 A. I was asked to produce the fair use checklists

1 and also the syllabi, the syllabus, the relevant
2 syllabus.

3 Q. For the course the checklist related to?

4 A. Right. That's correct.

5 Q. Any other documents that you were asked to
6 produce or in fact produced?

7 A. Possibly my CV, but not that I recall. Yes,
8 my CV.

9 Q. Professor Hankla, I've handed you what's been
10 marked as Hankla Exhibit Number 1, and can you identify
11 this as a copy of your CV?

12 A. That is correct.

13 Q. Okay.

14 A. Current as of I think November of last year.

15 Q. Current as of November of 2010?

16 A. I believe that's correct.

17 Q. Have there been any changes to the CV?

18 A. Well, I'm happy to say I'm an associate
19 professor now, so that's a good change. That's as of
20 three or four weeks ago.

21 Q. Congratulations.

22 A. Thank you.

23 Q. Is that a tenured position?

24 A. That's a tenured position. That just recently
25 happened, so that's the only way I know this is an older

1 one. I can't believe it changed that immediately.
2 Other than that it looks relatively current.

3 Q. From August 2005 to a few weeks ago you were
4 an assistant professor in the department of political
5 science?

6 A. That's correct.

7 Q. And then within the last few weeks you've
8 become a tenured associate professor?

9 A. Yes. Yes.

10 Q. And you also are a director, or your CV
11 reflects director of graduate studies department of
12 political science January 2010 to the present. And what
13 is that position?

14 A. That's an administrative position in the
15 department. And my responsibility is running our MA and
16 Ph.D. programs.

17 Q. To whom do you report as now an associate
18 professor in the department of history?

19 A. Or political science.

20 Q. I'm sorry, political science.

21 A. No problem.

22 Well, my immediate supervisor would be the
23 department chair, currently William Downs but about to
24 be Carey Manning in about a week.

25 Q. And who do you understand -- do you know who

1 the provost of the university is?

2 A. I do. Risa Palm.

3 Q. And what do you understand the provost's
4 position to be?

5 MS. MOFFITT: Object to form.

6 THE WITNESS: My understanding is that
7 she's the chief academic officer of the
8 university. But I don't really know very
9 much detail about her day to day
10 responsibilities.

11 BY MR. KRUGMAN:

12 Q. And when we talked about depositions earlier,
13 you recognized the name of Mark Becker, who is the
14 president of the university?

15 A. That's correct.

16 Q. Your CV identifies a number of refereed
17 publications, but I'll first ask you if you've published
18 any books?

19 A. I haven't published any books, no.

20 Q. But you have published a number of refereed
21 publications?

22 A. That's correct.

23 Q. And is an article refereed when it's been
24 reviewed and examined by experts and scholars in a field
25 about the topic that the author is writing on?

1 A. Yes.

2 Q. And would I be correct that the publication in
3 which -- the publications in which your refereed
4 publications have appeared have high submission
5 standards for publication?

6 MS. MOFFITT: I object to the form as
7 vague.

8 BY MR. KRUGMAN:

9 Q. And you may answer the question.

10 A. Okay. I suppose it depends on what you would
11 classify as high. But I think they do reject a number
12 of articles. I don't know what the percentages would
13 be.

14 Q. But in your opinion would these publications
15 that you submitted the refereed works to have high
16 submission standards for publication?

17 MS. MOFFITT: Object to the form. It's
18 vague and it's been asked and answered.

19 THE WITNESS: Well, I think it would
20 depend on the precise definition of high.
21 But they do -- they do reject a number of
22 articles and I think -- I don't know what
23 the percentages would be. It would vary by
24 the individual journal. Some are more
25 difficult than others to get into.

1 BY MR. KRUGMAN:

2 Q. Would you consider each of the refereed
3 publications that are identified on your CV as works of
4 nonfiction?

5 A. Yes.

6 Q. And although works of nonfiction, do these
7 publications contain your original analysis on the
8 subject matter of each of the works?

9 A. Yes, they do.

10 Q. And they were certainly not simply a
11 recitation of facts, is that correct?

12 A. No. No.

13 Q. And would you describe your expression and
14 analysis in these publications as creative?

15 MS. MOFFITT: Object to the form of the
16 question as vague. I'm also going to
17 object to the form -- object on the grounds
18 it seems to be largely irrelevant for why
19 we're here today. But you can use your
20 time as you like.

21 We've got an agreement as to one and a
22 half hours, and you can spend it as you
23 like.

24 THE WITNESS: I suppose it would depend
25 on the definition of creative.

1 BY MR. KRUGMAN:

2 Q. How would you define creative?

3 A. I would say that -- you know, that's a very
4 difficult term to define. I need to reflect on that.
5 It would -- I suppose for me creative would mean that
6 you are producing new analysis, something that hasn't
7 been produced before.

8 And on the basis of that definition I'd say
9 that at least in my judgment they were creative.

10 Q. In your judgment the fact that these works
11 were nonfiction certainly does not exclude them from
12 being creative works?

13 MS. MOFFITT: Object to the form.

14 Vague.

15 THE WITNESS: Again, it would depend on
16 the definition. They're not creative in
17 the sense that work of art would be or work
18 of music. They're not artistically
19 creative. But they're new analyses,
20 arguments that haven't been made before.

21 BY MR. KRUGMAN:

22 Q. Do you receive any royalties for the sales of
23 the publications that your works appeared in?

24 A. Unfortunately not, no. No royalties.

25 Q. There's certainly benefits to being published?

1 A. There certainly are. There certainly are.

2 MS. MOFFITT: Let Mr. Krugman finish his
3 question.

4 BY MR. KRUGMAN:

5 Q. Yeah. Reputation is one benefit of
6 publishing, correct?

7 A. That's correct.

8 Q. And career advancement, correct?

9 A. That is correct.

10 Q. And obviously these publications enabled you
11 or certainly assisted you in gaining tenure at Georgia
12 State, correct?

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

15 BY MR. KRUGMAN:

16 Q. In your opinion.

17 A. Well, I wasn't privy to the actual discussions
18 of the tenure committee, which are secret, but the
19 tenure guidelines indicate the necessity of publishing.

20 Q. It's certainly your belief that these
21 publications promoted your obtaining tenure at the
22 university, correct?

23 MS. MOFFITT: I object again. The
24 question lacks foundation.

25 THE WITNESS: It's -- I don't know

1 precisely what -- on what basis the
2 decision was made given that I wasn't in
3 the discussions.

4 But my sense is that -- that
5 publications are important for tenure and
6 there was some discussion of the
7 publications in the released judgment of
8 the tenure committee.

9 BY MR. KRUGMAN:

10 Q. If you'll turn to page 7 of Exhibit 1.

11 A. Okay.

12 Q. And this identifies courses that you taught.
13 And are these all courses you taught at Georgia State
14 with the exception of the ones that reference Emory?

15 A. That's correct, yeah, all but two are Georgia
16 State.

17 Q. Okay. And one of the courses taught was
18 political science 3450 U.S. foreign policy, is that
19 correct?

20 A. That's correct, uh-huh.

21 Q. And your CV identifies this course as having
22 been taught in fall 2009 --

23 A. That is correct.

24 Q. -- semester?

25 A. Uh-huh.

1 Q. But also you taught it in spring '08,
2 Maymester 2007, fall 2006 two sessions, Maymester 2006,
3 spring 2006 two sessions and then fall 2004 two
4 sessions?

5 A. That is correct.

6 Q. I've handed you what's been marked as Hankla
7 Exhibit Number 2.

8 A. Okay.

9 Q. And at some point during 2009 did you learn
10 that Georgia State had adopted or the board of regents
11 had adopted a new policy on the use of copyrighted
12 works --

13 A. Yes.

14 Q. -- and educated works and education research?

15 A. Yes.

16 Q. And how did you learn about the adoption of
17 that new policy?

18 A. I don't recall for certain, but I believe it
19 was in an e-mail.

20 Q. Do you recall from whom the e-mail was
21 received?

22 A. No.

23 Q. Did you have, at the time have any
24 understanding as to why a new policy was adopted?

25 A. Well, I knew there was ongoing litigation, but

1 I can't recall whether I drew a connection between that
2 and the new policy.

3 Q. Okay. Did you read the new policy after its
4 adoption?

5 A. I read the summary of the policies that I
6 received from the e-mail. But I haven't read the entire
7 document here that's before me.

8 Q. Okay. So at the time you received an e-mail
9 advising of a new policy, and the e-mail contained a
10 summary of the new policy?

11 A. Yes.

12 Q. Did the e-mail provide a link to the policy on
13 the university's web site, if you recall?

14 A. I don't recall. I don't recall.

15 MS. MOFFITT: Make sure you let Mr.
16 Krugman finish his question.

17 THE WITNESS: Okay.

18 BY MR. KRUGMAN:

19 Q. But at the time and even today you had not
20 read the entire policy?

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

23 THE WITNESS: Is this the entire policy?
24 I'm not sure what constitutes the entire
25 policy.

1 BY MR. KRUGMAN:

2 Q. Do you recall what if anything you read in
3 reference to the new policy?

4 A. What I recall reading is a summary of it, and
5 of course the fair use checklist.

6 Q. Are you familiar with the ULearn system at
7 Georgia State?

8 A. Yes.

9 Q. And what is that system?

10 A. It's an online course page whereby, you know,
11 where I and also the students in a particular course
12 have access. And it allows me to communicate, post
13 items and assign grades and so forth, send e-mails with
14 students, a variety of other functions.

15 Q. I take it you use ULearn in your classes at
16 Georgia State?

17 A. I do.

18 Q. Have you ever used ULearn to provide copies of
19 works that you assigned to students to read?

20 MS. MOFFITT: I'm going to just note for
21 the record that this line of questioning is
22 again irrelevant to the issues at hand.
23 You can use your time as you like.

24 MR. KRUGMAN: You're also using up the
25 time by stating these objections.

1 MS. MOFFITT: And I'm permitted to
2 object and I need to make my record on the
3 basis of why I'm objecting. So if you want
4 to waste --

5 MR. KRUGMAN: You can object to the
6 form of the question, but you don't need to
7 object to issues of whether it's relevant
8 or anything like that.

9 MS. MOFFITT: Mr. Krugman, I'll make my
10 objections, you can make your response
11 however you like.

12 My objection is this is irrelevant and
13 we have a time limit, one and a half hours,
14 and if you continue to waste your time like
15 this, we're stopping at one and a half
16 hours period. Go ahead.

17 MR. KRUGMAN: Of complete testimony
18 excluding your --

19 MS. MOFFITT: Nope.

20 MR. KRUGMAN: Your objections.

21 BY MR. KRUGMAN:

22 Q. Have you -- I think going back to my question,
23 have you -- have you ever used ULearn to provide copies
24 of works that you assigned to students to read?

25 MS. MOFFITT: I object to the question.

1 BY MR. KRUGMAN:

2 Q. Go ahead and answer.

3 A. Okay. No. But I should note, though, that
4 there is a function within ULearn in which I can copy
5 the URL from the ERes system of the university and paste
6 it into ULearn as a web link. So I do link to ERez
7 through ULearn, but I don't post anything separate from
8 the ERes system, other than materials that I myself
9 make, including my syllabus and my review questions.

10 Q. Okay. Do you know whether the copyright
11 policy of Georgia State applies to materials that you
12 post on ULearn?

13 MS. MOFFITT: I object to the question.
14 Particularly to the extent it calls for a
15 legal conclusion.

16 THE WITNESS: I don't know.

17 BY MR. KRUGMAN:

18 Q. That's all. You don't know one way or
19 another?

20 A. No.

21 Q. Do you know whether the checklist applies to
22 materials that a professor would seek to post on ULearn?

23 MS. MOFFITT: Same objection.

24 THE WITNESS: I don't know. I've never
25 done that, don't intend to. So I haven't

1 researched it.

2 BY MR. KRUGMAN:

3 Q. You don't have an understanding one way or
4 another as to the application of the copyright policy to
5 postings on ULearn, would that be a fair statement?

6 MS. MOFFITT: The question has been
7 asked and answered.

8 BY MR. KRUGMAN:

9 Q. It's a different question. Would that be
10 a fair --

11 A. Could you repeat it?

12 Q. Yeah. So you don't have an understanding one
13 way or another as to the application of the copyright
14 policy to postings on ULearn?

15 MS. MOFFITT: Same objection.

16 THE WITNESS: No, I don't.

17 BY MR. KRUGMAN:

18 Q. Did you attend a training session following
19 the adoption of the new policy?

20 A. No.

21 Q. Did anyone recommend that you attend such a
22 training session?

23 A. I recall an e-mail or possible -- possibly
24 multiple e-mails, I don't recall precisely, detailing
25 the availability of the training sessions.

1 Q. But you opted not to attend?

2 A. I opted not to attend.

3 Q. Do you have any -- when we were talking
4 earlier, you indicated that you worked at Alston & Bird
5 at one time. And have you taken any courses in
6 copyright law?

7 A. No.

8 Q. Do you have an understanding as to who
9 enforces the copyright policy at Georgia State?

10 MS. MOFFITT: Object to the form.
11 Foundation.

12 THE WITNESS: No.

13 MS. MOFFITT: Also vague.

14 BY MR. KRUGMAN:

15 Q. Do you have any understanding as to what the
16 consequences would be for a professor who failed to
17 follow the policy?

18 MS. MOFFITT: Same objection. The
19 question is vague.

20 THE WITNESS: I don't recall hearing
21 information on that, so at the moment I
22 couldn't -- I don't know.

23 BY MR. KRUGMAN:

24 Q. That's perfectly okay. I simply want to try
25 to find out what you have an understanding of or don't.

1 A. I can't guarantee that it wasn't communicated
2 to me at some point, but I don't recall it at the
3 moment.

4 Q. But sitting here today, you cannot provide me
5 any understanding that you might have as to the
6 consequences that might flow from the failure to follow
7 Georgia State's policy on copyright?

8 MS. MOFFITT: Object to form.

9 THE WITNESS: No.

10 BY MR. KRUGMAN:

11 Q. Risa Palm is the provost of the university,
12 correct?

13 A. Yes.

14 Q. If Provost Palm were to contact you and
15 indicate that a particular work that you posted or
16 caused the library to post on the EReserve system in her
17 view violated the copyright law and she requested you to
18 direct the library to remove it, would you do it?

19 A. Yes.

20 Q. And what about if the president of the
21 university made that request of you?

22 A. Yes.

23 Q. Are you familiar with the GoSolar system at
24 Georgia State?

25 A. Yes.

1 Q. And can you identify what's been marked as
2 Hankla Exhibit 3 as a printout from that system for a
3 course political science 3450 that you taught for the
4 fall semester of 2009?

5 MS. MOFFITT: Question lacks foundation.

6 THE WITNESS: It appears to be a GoSolar
7 printout of my teaching schedule in that
8 semester.

9 BY MR. KRUGMAN:

10 Q. And did you teach political science 3450 in
11 the fall semester of 2009?

12 A. Yes.

13 Q. And that's the same class we looked at that's
14 referenced on your CV?

15 A. Yes.

16 Q. And Professor Hankla, can you identify Exhibit
17 4 as the syllabus for political science 3450?

18 A. Yes, it appears to be a copy of my syllabus
19 for political science 3450.

20 Q. For the fall 2009 semester at Georgia State?

21 A. Yes.

22 Q. And this is a course that you in fact taught
23 that semester, correct?

24 A. Yes.

25 Q. Your CV identified previous semesters that you

1 had taught this course?

2 A. That's correct.

3 Q. And did you generally use or were the syllabi
4 that you used in the prior semesters similar to Exhibit
5 4?

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

8 THE WITNESS: They were similar, but I
9 did change them every semester, so I can't
10 speak to any individual reading without
11 sort of referring back to my earlier
12 syllabi.

13 BY MR. KRUGMAN:

14 Q. Okay. So we would need to look at specific
15 readings for you to recall whether you taught those in
16 prior semesters or used those works in prior semesters?

17 A. That's correct, yeah. I do change every
18 semester to try to keep it current.

19 Q. On page 2 of the syllabus under exams you
20 wrote both the mid term and final will be based on
21 lecture content and readings. Anything I say in class
22 is fair game for exams along with anything in the
23 assigned readings.

24 Do you see that?

25 A. Yes.

1 Q. On the readings that were assigned that are --
2 and we'll get to those a little bit later in the
3 syllabus -- that you expected the students to read those
4 works, correct?

5 A. Yes.

6 Q. And those works were fair game for exams that
7 you gave in your class, correct?

8 A. That's correct.

9 Q. On the next page there's reference in the
10 middle to ULearn, and you see there will be a course
11 page on ULearn and everyone should check it regularly.
12 I will post on it a copy of the syllabus, review
13 questions for each topic readings and any important
14 announcements.

15 What were the readings that you were referring
16 to there?

17 A. I was referring to the link to the ERes system
18 that I mentioned earlier. I didn't post anything
19 independent of ERes, any readings independent of ERes.

20 Q. You simply provided to students a link to get
21 to the particular work on the ERes system?

22 A. That's correct. Yes.

23 MS. MOFFITT: Again, let Mr. Krugman
24 finish his question.

25 THE WITNESS: Okay.

1 BY MR. KRUGMAN:

2 Q. On page 4 of your syllabus there were two
3 required texts for the class which were available at the
4 GSU book store, McDougall, Walter A. McDougall, and is
5 that Eugene --

6 A. Oh, oops, that's a typo. Eugene.

7 Q. Eugene Wittkopf and McCormick?

8 A. That's correct.

9 Q. And students were -- you expected students to
10 purchase the two texts at the university bookstore?

11 A. Yes.

12 Q. But there were also addition equally important
13 readings that were required readings for the students in
14 your class, is that correct?

15 MS. MOFFITT: Object to form.

16 THE WITNESS: Correct.

17 BY MR. KRUGMAN:

18 Q. In fact you wrote --

19 A. I wrote that additional --

20 Q. -- a number of additional equally important
21 readings were required?

22 A. Correct.

23 Q. And you wrote they can be found online at the
24 library reserve desk and through a link on the course
25 ULearn page.

1 Is the library reserve desk that you wrote
2 there, is that the EReserve system for the library?

3 A. Yes.

4 Q. So it wasn't actually physically at the
5 library?

6 A. A metaphorical desk, yes.

7 Q. And were any -- were all of these readings
8 that begin on page 4 and go through page 7, all of those
9 were required readings for your course?

10 A. Yes.

11 Q. At any time to your knowledge has anyone at
12 Georgia State ever indicated to you that it is
13 inappropriate to use the EReserve system for required
14 readings?

15 A. Not that I recall.

16 MS. MOFFITT: Object to form.

17 BY MR. KRUGMAN:

18 Q. Do you recall whether students brought --
19 whether you observed students bringing copies of the
20 additional works that are contained in the -- or that
21 are identified in the course outline?

22 A. I don't recall.

23 Q. You don't know one way or another whether
24 physical copies were brought by students to your class?

25 A. I haven't seen it.

1 MS. MOFFITT: Object to form.

2 THE WITNESS: I don't recall seeing.

3 BY MR. KRUGMAN:

4 Q. Are students allowed to use laptops in your
5 courses?

6 A. Yes.

7 Q. On page 5 of the syllabus, this is part two
8 explanations, and you wrote that the case study for the
9 explanations section of the course will be the decision
10 to go to war in Iraq, and please read Jeffrey S. Lantis
11 and Eric Moskowitz, "The Return Of The Imperial
12 Presidency? The Bush Doctrine And U.S. Intervention In
13 Iraq" in "Contemporary Cases In U.S. Foreign Policy"
14 edited by Ralph G. Carter, Washington D.C. CQ Press.

15 And I take it that was one of the required
16 readings for this course, correct?

17 A. Yes.

18 Q. And why did you use this chapter or -- excuse
19 me. Why did you use this work for your course?

20 A. Well, the course essentially has three
21 sections. The first one is an historical section and we
22 rely on the McDougall reading that they purchase for
23 that one.

24 The second one is an explanation section or a
25 theoretical section where we look at a variety of

1 different explanations for U.S. foreign policy, the
2 international system, public opinion and interest
3 groups, congressional executive relations and
4 bureaucratic executive branch politics.

5 And I found through experience that the
6 theoretical section can seem rather abstract to students
7 without applying it to a particular case. But if I try
8 to apply it to cases they don't have very deep knowledge
9 about, that can also be confusing. And so at some point
10 I added this reading to my syllabus. I don't believe it
11 was there initially when I first started teaching the
12 class.

13 But at some point I added the reading to the
14 syllabus to give them a background on this particular
15 decision so that I could apply each of the various
16 explanations to that decision as an example.

17 Q. Do you recall when you added this reading to
18 your syllabus?

19 A. I don't recall. Sometime after the first time
20 I taught it and before, obviously before 2009, but I
21 don't recall exactly which year.

22 Q. Is it your recollection that this at least was
23 one of the required readings for several semesters that
24 you taught this course?

25 MS. MOFFITT: Object to the form of the

1 question. Vague.

2 THE WITNESS: I don't recall
3 specifically. I think it was probably on
4 there in a previous semester, but I'd have
5 to check to verify.

6 BY MR. KRUGMAN:

7 Q. Is it your recollection that it was -- that it
8 was certainly taught more than this one semester?

9 A. I don't recall precisely.

10 Q. And if you turn to the next page of your
11 syllabus, and there's reference on week 8, Executive
12 Branch Department, Roles, Tensions and Reform. Stephen
13 W. Hook, chapter 6 of "The Foreign-Policy Bureaucracy
14 And U.S. Foreign Policy", Washington D.C. CQ Press 2005
15 pages 153 to 186.

16 And this was a required reading for the course
17 that you taught in the fall of 2009, is that correct?

18 A. Yes.

19 Q. Why did you assign this reading?

20 A. Well, I'm very careful with my syllabi, and I
21 take a lot of time to try to find the best readings on
22 each particular topic. I'm not somebody who just
23 assigns a single textbook and uses a different chapter
24 each week. I think, you know, a class is better if you
25 try to seek out the best readings.

1 And on this particular topic, executive branch
2 politics, that chapter from the Hook book I thought in
3 my judgment after reviewing a number of possible
4 readings was the best substantive summary of how the
5 foreign policy bureaucracy works.

6 Q. And if you look down at week 9 there's
7 reference to a work by Bruce E. Moon, 2006, "The United
8 States And Globalization, Struggles With Hegemony" in
9 "Political Economy And The Changing Global Order",
10 Richard Stubbs and Geoffrey R.D. Underhill, editions New
11 York, Oxford University Press.

12 What was that work?

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

15 THE WITNESS: Do you mean what was it --
16 can you be more specific?

17 BY MR. KRUGMAN:

18 Q. Yeah. Well, first of all -- first of all why
19 was that assigned reading? First of all, was that
20 assigned reading for students in your course?

21 A. Yes.

22 Q. And why --

23 MS. MOFFITT: Object to the form.

24 BY MR. KRUGMAN:

25 Q. -- did you elect to use this?

1 A. Why this particular piece. Again, sort of for
2 the same reasons as before. I read a number of things,
3 a number of readings on globalization of political
4 economy, and which is my major field actually, and I've
5 had difficulty finding a good summary that's both
6 rigorous with the economics and also applies that from a
7 perspective of U.S. foreign policy. And this is one of
8 the few readings that did that.

9 I was actually inspired to use it because it
10 popped up in an assigned book for purchase in a global
11 issues class that I taught in 2004 and I remember liking
12 the reading at that point. And when I was thinking
13 about what to include in my own syllabus for this
14 particular course, I went back to that. Actually it was
15 in a different book back then, but it was the same or
16 revised version of the same chapter.

17 Q. Do you recall how this work was made available
18 to students?

19 MS. MOFFITT: I'm going to object to
20 this line of questioning. Outside the
21 scope of anything relevant.

22 THE WITNESS: How it was made
23 available? It would have been on the ERes
24 system.

25 BY MR. KRUGMAN:

1 Q. And I'm asking you because I don't see -- we
2 have a report and this work is not reflected on the
3 report that was produced by the defendants in this case.

4 And is it your best recollection that this was
5 provided on EReserve at Georgia State?

6 A. Well, I don't specifically recall whether it
7 was on the list. But normally anything that is on the
8 syllabus that's not in the purchased readings I would
9 have requested to be on the list.

10 But I don't have a specific recollection of
11 everything that's on the list. Occasionally things do
12 get dropped that are requested, but again, I don't
13 really recall back to that.

14 Q. Was this a reading that you recall discussing
15 with students in the fall of 2009 for this course?

16 A. We discussed the topic, but I don't recall
17 whether I discussed the specific reading. To be honest,
18 I don't recall whether I even discussed the specific
19 topic because sometimes I have to drop one or two topics
20 at the end of the semester because of time constraints,
21 if we take too much on a previous one. So I can't
22 absolutely guarantee we discussed the globalization
23 topic. But --

24 Q. But certainly it's on the syllabus?

25 A. It is on the syllabus. If, you know --

1 there's a chance, certainly a chance that we did, and
2 there's a chance that it was dropped.

3 Q. I've handed you what's been marked as Hankla
4 Exhibit Number 5.

5 A. Okay.

6 Q. And can you identify this as communication
7 that you had with the library reserve staff in reference
8 to the posting of works on Georgia State's EReserve
9 system for this course political science 3450 for the
10 fall of 2009?

11 A. It appears to be the communication with them.

12 Q. And I was asking you about this work by Bruce
13 Moon simply because I did not --

14 A. It's not on here?

15 Q. I did not see it on here, and --

16 A. I see it.

17 Q. Okay. Where --

18 A. It's right here on the bottom of the third
19 page, "Political Economy And The Changing Global Order".

20 Q. Okay. I guess I was simply looking for the
21 name Moon rather than --

22 A. Believe it or not, many of my students do
23 that --

24 Q. Do the same? Okay.

25 A. -- e-mail and say it's not there, but in fact

1 it was listed under the editors. That often happens.

2 Q. Okay. So this one was made available on
3 EReserves?

4 A. It would appear so from this.

5 Q. If you could, please, describe the procedure
6 by which -- that you went through following the adoption
7 of the new policy on copyright at Georgia State with
8 respect to requesting materials to be posted on
9 EReserve?

10 A. Well, when I went to request the postings on
11 the online system, I logged in and I looked at the fair
12 use checklist and read it carefully and determined
13 mentally that the readings abided by fair use, that the
14 majority of checks were in the left hand column, thereby
15 indicating that they were -- that the readings were fair
16 use. And then I entered all of the information and
17 clicked send.

18 Q. You said that you determined mentally that the
19 reading abided by fair use?

20 A. That's correct.

21 Q. What does that -- what do you mean when you
22 say you determined mentally?

23 A. Well, I neglected to actually print out the
24 list and store it. I filled it out sort of in my head
25 by looking at it.

1 Q. So you did not --

2 A. Prior to the submissions.

3 Q. So you did not actually complete a fair use
4 checklist for each of the works that are identified in
5 your syllabus for political science 3450?

6 MS. MOFFITT: Object to the form of the
7 question. The question is vague.

8 You can answer.

9 THE WITNESS: I did not complete a
10 physical fair use checklist. But I did
11 take the process seriously and fill it out
12 in my mind before -- to verify that the
13 readings were fair use.

14 And because the checks were
15 overwhelmingly in the left hand column, it
16 seemed a rather straight forward
17 determination in my judgment.

18 BY MR. KRUGMAN:

19 Q. Am I correct that the fair use determination
20 that you made prior to requesting the library to post
21 materials on Georgia State's EReserve system were based
22 on the fair use checklists?

23 A. Yes.

24 Q. Other than the fair use checklist, were there
25 any other considerations that went into your decision to

1 request that the library post a particular work?

2 A. Well, there was a substantive consideration
3 whether or not the work was relevant to the course and
4 so forth.

5 Q. But once you decided you wanted to use a
6 particular work in connection with a course, for
7 example, political science 3450, were there any
8 considerations that you considered in connection with a
9 fair use analysis other than the mental completion of a
10 fair use checklist?

11 A. Well, my understanding of university policy
12 has always been that a maximum of 20 percent of a book
13 can be posted, which I don't think is explicitly on the
14 checklist, but that's been my understanding of the
15 policy. And so I never actually request more than 20
16 percent of a book. I'm always very careful about that.

17 And basically when I'm doing an analysis of
18 what I can post, I look at the last numbered page of the
19 book, you know, divide it by five and then sort of round
20 down. And so that is -- so I never actually make a
21 request of anything that's above that.

22 And I guess I'll note that prior to 2009, I
23 can't remember the precise years, but soon after I was
24 hired I had heard of this 20 percent policy and
25 accidentally requested once or twice a reading that

1 went, you know, two or three pages above that and
2 actually had the reading rejected by the library. They
3 sent it back and said you need to remove X number of
4 pages, usually it was only a very small number, and
5 otherwise we won't post it.

6 My understanding of the university policy is
7 also that the book needs to be either owned by the
8 instructor or by the university. And I think that
9 there's something to that effect on the checklist. But
10 my understanding that's kind of a hard rule, if that's
11 not the case then that reading can't be posted. So when
12 I --

13 Those are the procedures that I've always
14 abided by since going to Georgia State since the fair
15 use checklist was created and I continued to abide by
16 those in addition to the fair use checklist once it was
17 introduced.

18 Q. Where did you gain your understanding of the
19 20 percent rule, if you recall?

20 A. I don't recall. I would have learned about it
21 back in 2004 when I started, but I don't recall exactly
22 how I learned about it.

23 There's also a time a number of years ago
24 prior to this new policy in which, you know, I was
25 ignorant of the ownership rule and I requested a book

1 through interlibrary loan to post and the university
2 library rejected that and said it couldn't be posted
3 because it wasn't owned either by myself or the
4 bookstore. So I simply didn't post that reading.

5 Q. But that was under the --

6 A. That was under the prior system. I assume
7 it's ongoing, but I don't know for certain.

8 Q. And you don't know because you haven't
9 actually read the entire policy?

10 MS. MOFFITT: Object to the form.

11 BY MR. KRUGMAN:

12 Q. Correct?

13 A. Well, I don't know what precisely the entire
14 policy is, but I don't know whether it's ongoing.

15 But in my own analysis I have assumed it was
16 ongoing, and therefore ever since I learned of that
17 policy, you know, a number of years ago, probably five
18 years ago, and the 20 percent policy, I've always very
19 carefully abided by them and continue to do so.

20 Q. Have you ever asked anyone if it's ongoing,
21 the ownership requirement?

22 A. No, because -- because I've I guess taken the
23 safer route and assumed it was.

24 Q. Have you asked anyone whether the 20 percent
25 rule still applies under the new policy?

1 A. No. Again, I've assumed that it did and
2 therefore haven't requested anything that exceeded that
3 maximum.

4 Q. Are those questions that perhaps could have
5 been answered for you had you elected to attend a
6 training session on the new policy following its
7 adoption?

8 MS. MOFFITT: Objection. Foundation,
9 calls for speculation.

10 THE WITNESS: I don't know what would
11 have been in the training session. But in
12 any case, I erred on the side of caution in
13 abiding by the policies.

14 BY MR. KRUGMAN:

15 Q. At least the old policies as you understood
16 them?

17 MS. MOFFITT: Object to form.

18 THE WITNESS: The policies that I
19 understood as being ongoing.

20 BY MR. KRUGMAN:

21 Q. If you look briefly back at -- before going to
22 6 -- Exhibit 5.

23 A. Okay. Yes.

24 Q. And there's reference under -- on the first
25 page electronic book copyright status for author Jeffrey

1 Lantis and Eric Moskowitz, and that's "Contemporary
2 Cases In U.S. Foreign Policy" CQ Press. And that's one
3 of the works at issue as you understand it, is that
4 correct?

5 A. As I understand it, uh-huh.

6 Q. And under copyright status it states it falls
7 under fair use according to the fair use checklist I
8 completed. Do you see that?

9 A. I do.

10 Q. In fact as of July of 2009 you had not at
11 least physically completed a fair use checklist for that
12 work, correct?

13 MS. MOFFITT: Object to the form.

14 THE WITNESS: I had not physically
15 completed the checklist. I had mentally
16 completed the checklist before posting all
17 of the readings.

18 BY MR. KRUGMAN:

19 Q. If you turn to the next page for Stephen Hook,
20 "U.S. Foreign Policy", CQ Press, chapter 6, pages 153 to
21 186. Again, you had not physically completed a fair use
22 checklist for that work?

23 MS. MOFFITT: Object to form.

24 THE WITNESS: I had not physically
25 completed the checklist.

1 BY MR. KRUGMAN:

2 Q. Once again, it was a mental completion,
3 correct?

4 A. That's correct. I've since done so, which I
5 think you have in your possession. But that was I
6 believe in November 2010.

7 Q. Okay. Exhibit --

8 A. The physical completion.

9 Q. Exhibit 6 is a fair use checklist for the
10 Lantis and Moskowitz work "Contemporary Cases In U.S.
11 Foreign Policy From Terrorism To Trade", is that
12 correct?

13 A. It appears to be, uh-huh.

14 Q. And can't really -- it's hard to read, but
15 that's "The Return Of The Imperial Presidency? The Bush
16 Doctrine"?

17 A. Yes, it automatically shrunk the --

18 Q. And this, you completed this checklist it
19 appears on November 16th of 2010?

20 A. That's correct.

21 Q. And why did you complete a checklist on
22 November 16th, 2010 for a course that you had taught in
23 the fall of 2009?

24 A. I was requested to recreate the mental
25 checklist that I had initially created in July of 2009

1 by the university legal office.

2 Q. Okay. And how did you go about recreating the
3 mental checks or the checklist that you had completed
4 mentally in 2009 prior to the fall of 2009 semester?

5 A. Well, I took another look at the reading and
6 answered the questions to the best of my ability.

7 Q. Did you try to put yourself in your shoes as
8 of 2009 when you mentally completed the checklist?

9 A. Yes, to the -- yes.

10 Q. Do you know whether the physical -- checklist
11 that you completed physically in November of 2010 was
12 completed identical to the mental checklist from the
13 previous year?

14 A. I believe so. Because I don't believe
15 anything has changed in terms of the nature of the
16 reading or the course.

17 Q. Looking at factor 1 on Exhibit 6, on the -- if
18 you go down five boxes, there's a box for
19 transformative, use changes work for new utility or
20 purpose, and on the right nontransformative. Do you see
21 that?

22 A. I do.

23 Q. Do you have any understanding of the meaning
24 of the terms transformative and nontransformative?

25 A. Well, my sense is that a transformative use of

1 a work would be, as it says there, a use that changes
2 the work for new utility or purpose, so a transformative
3 use would be to use the work for something for which it
4 was not intended, would be my understanding.

5 Q. And what would nontransformative be?

6 A. Oh, the inversus of that, using the work in a
7 way in which it was intended to be used.

8 Q. Was your use of this work identified on
9 Exhibit 6, was that in any way transformative?

10 A. Well, I think -- I would --

11 MS. MOFFITT: Let me object to the form
12 of the question as vague. But you can
13 answer.

14 THE WITNESS: Okay. I would say that I
15 used the work for the most part in the way
16 in which it was intended in the sense that
17 the work makes a theoretical argument
18 concerning whether the imperial presidency
19 which characterized U.S. foreign policy, in
20 other words a dominant executive, which
21 characterized foreign policy making during
22 the Cold War, but which went away at the
23 end of the Cold War with Congress
24 reasserting itself, it makes a theoretical
25 argument as to whether or not executive

1 dominance came back with the Bush
2 administration and the invasion of Iraq,
3 with the acquiescence of Congress.

4 So there's a theoretical argument there
5 and there's also a lot of empirical detail
6 there about how the actual decision was
7 made.

8 The primary purpose for which I
9 assigned the reading was to communicate the
10 empirical detail of the decision so that I
11 could use it as an example to explain the
12 various theoretical perspectives. I was
13 less interested in communicating the
14 theoretical argument.

15 And so for that reason I suppose one
16 could make the argument that it was --
17 there was an element that was
18 transformative and an element that was
19 nontransformative.

20 BY MR. KRUGMAN:

21 Q. So it's your belief simply providing a copy of
22 chapter of a book for students to read can under the
23 fair use checklist and Georgia State's policy be
24 transformative?

25 MS. MOFFITT: Object to the form.

1 THE WITNESS: I don't know how to
2 answer that.

3 BY MR. KRUGMAN:

4 Q. I see you checked nonprofit educational. Why
5 did you check that box?

6 A. Because I received no profit from -- personal
7 profit from assigning the reading. In fact it would be
8 easier to just use the single textbook.

9 So I assigned the reading for educational
10 purposes because in my judgment it benefitted the
11 students to do that reading and to have access to that
12 reading and to the variety of readings on the syllabus.
13 And also I suppose because the university is a nonprofit
14 university.

15 Q. Yeah, so for any, certainly for any works that
16 you assign as a professor at Georgia State, you would
17 check nonprofit educational because the university is a
18 nonprofit university?

19 MS. MOFFITT: Object to form.

20 THE WITNESS: I don't know. I could
21 imagine a situation where if I were
22 receiving royalties on a book and assigned
23 my own book it could be for profit. But
24 that's never been the situation in my case.

25 BY MR. KRUGMAN:

1 Q. Yeah. And also you checked teaching including
2 multiple copies for classroom use. And you checked that
3 box because you were utilizing this particular work for
4 teaching?

5 A. That's correct.

6 Q. For courses that you have taught at Georgia
7 State, can you think of any instance where for works
8 assigned in connection with those courses you would not
9 check both nonprofit educational and teaching?

10 A. Well, I'm not really qualified to say how it
11 would work with, you know, in general. I would say
12 that, you know, as I said before, if you were receiving
13 royalties on a book, I suppose that could be considered
14 for profit, but --

15 Q. Setting that --

16 A. -- I wouldn't do that.

17 Q. But for all the courses you've taught to date
18 at Georgia State, and if you were asked to fill out a
19 fair use checklist for each of the works that you
20 assigned to students to read, can you think of a single
21 instance where if you had completed a checklist you
22 would not have checked nonprofit educational and
23 teaching?

24 MS. MOFFITT: Object to the form.

25 THE WITNESS: I think that all of the

1 readings that I have assigned up to this
2 point would probably all qualify as
3 nonprofit educational and teaching, but I
4 would have to go back and review them all.

5 But I couldn't really say for certain
6 that would always be the case in every
7 possible reading that I might assign.

8 BY MR. KRUGMAN:

9 Q. Okay. Sitting here today, you can't think of
10 an instance where that would not be true, correct?

11 MS. MOFFITT: Question has been asked
12 and answered.

13 THE WITNESS: I think I'd have to
14 reflect more in order to be certain of
15 that. I can't think of an instance in the
16 past where I personally have assigned a
17 reading where it wouldn't check. But I
18 imagine there could be other instances
19 where I or someone else might not check
20 them. I'd have to reflect on that more.

21 BY MR. KRUGMAN:

22 Q. Have you completed a fair use checklist for
23 any work that you wanted to use at Georgia State and
24 concluded that the -- that you were unable to use it
25 because the factors weighed against fair use?

1 A. Well, there were circumstances in the past
2 prior to the fair use policy where I --

3 Q. I'm talking about under the current policy.

4 A. The current -- well, even since the fair use
5 checklist was released there are readings that I haven't
6 assigned because they would have required assigning more
7 than 20 percent of a book or assigning a book that I or
8 the university didn't own.

9 So those two, following those two policies has
10 certainly restricted what I've been able to assign, and
11 I've had to not assign things I wanted to to abide by
12 those policies.

13 Q. Other than the ownership issue and the 20
14 percent rule, can you think of a single instance where
15 you completed either physically or mentally a fair use
16 checklist for a work that you wanted to use and then
17 concluded you could not use it because the factors
18 weighed against fair use?

19 A. I don't recall a specific instance where I
20 filled out a fair use checklist and concluded that I
21 couldn't use the work other than those two instances,
22 the 20 percent rule and the ownership rule.

23 Q. And in those instances you never even got to
24 the point of either physically or mentally completing a
25 checklist?

1 A. Right. In those instances I wouldn't have
2 completed the checklist.

3 Q. The instructions on Exhibit 6 were to complete
4 and retain a copy of this checklist for each fair use of
5 a copyrighted work in order to establish a reasonable
6 and good faith attempt at applying fair use should any
7 dispute regarding such use arise. And you see that?

8 A. I do.

9 Q. And I take it that you did not do that at
10 least in connection with this course that you taught in
11 the spring or for the fall of 2009?

12 A. I did not.

13 Q. And when did you begin complying with that
14 portion of the or that directive on the checklist?

15 A. The printing out, I haven't printed it out
16 any, but I certainly will going forward.

17 Q. So --

18 A. I've been completing them mentally.

19 Q. You're still completing them mentally?

20 A. Yes.

21 Q. You also checked under factor one use a
22 necessary to achieve your intended educational purpose.

23 A. Yes.

24 Q. And why did you check that box?

25 A. Because, you know, as I mentioned before, I'm

1 very careful in developing my syllabi to choose readings
2 that I think are the best readings available on each
3 particular topic. Which is one reason why, you know, as
4 you can see from the syllabus, the readings are drawn
5 from a wide variety of sources. There isn't really a
6 single text that I rely on enough to think that that's
7 the ideal text.

8 And so for any topic I read a variety of books
9 and select the topic -- sorry, the reading that I think
10 is the best one to complete the or to fulfill the
11 intended educational purpose.

12 Q. So you concluded that using this work "Return
13 Of The Imperial Presidency" was necessary to achieve
14 your intended educational purpose for this course?

15 A. Yes. In order that the students would have an
16 understanding, an empirical understanding of the
17 decision to go to war in Iraq so it would make sense
18 when I applied the theoretical perspectives to that
19 decision.

20 Q. So when you completed this checklist
21 physically in November of 2010 and mentally in 2009
22 there were three checks in favor of fair use and none
23 against, is that correct?

24 A. That's correct.

25 Q. Under factor 2, nature of copyrighted work,

1 you checked published work?

2 A. Yes.

3 Q. And I take it because this work had been
4 published?

5 A. Yes.

6 Q. Correct? You also checked factual or
7 nonfiction work?

8 A. Yes.

9 Q. And that's because this was a work of
10 nonfiction as distinguished from fiction, is that
11 correct?

12 A. Yes.

13 Q. For any nonfiction -- strike that.

14 You did not check highly creative work,
15 although you would agree that nonfiction works can be
16 creative, correct?

17 MS. MOFFITT: Object to form.

18 THE WITNESS: Well, they can be
19 creative as I define them in that they are
20 producing new perspectives and new
21 arguments that didn't exist before.

22 But the fair use checklist, you know,
23 as you see there next to highly creative
24 work lists more traditionally creative work
25 such as art, music, novels, films, plays,

1 poetry and fiction. And so by that that
2 particular definition of creative, in my
3 judgment it didn't accord with that
4 particular definition of creative.

5 BY MR. KRUGMAN:

6 Q. The definition for highly creative work
7 contained on the nature of the copyrighted work would
8 necessarily exclude the works of nonfiction?

9 A. That was my understanding.

10 MS. MOFFITT: Object to the form.

11 THE WITNESS: That was my understanding.

12 BY MR. KRUGMAN:

13 Q. Okay. For any published nonfiction work that
14 you have used in any course that you've taught at
15 Georgia State since adoption of the new policy, have you
16 failed either mentally or physically to check both
17 published work and factual or nonfiction work?

18 A. For past assignments, no.

19 Q. So by checking those two, this factor number
20 2, nature of copyrighted work, would necessarily always
21 then weigh in favor of fair use?

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

24 THE WITNESS: Unless one could
25 simultaneously check items on the right.

1 BY MR. KRUGMAN:

2 Q. But obviously a work cannot be both published
3 and unpublished?

4 A. That's true.

5 Q. And as you understand the definition of highly
6 creative, it would exclude works of nonfiction of the
7 type that you assign, correct?

8 MS. MOFFITT: Object to form.

9 THE WITNESS: Based on my understanding
10 of the reading of it and the listing of
11 art, music, novels and so forth, my sense
12 is -- you know, was in filling it out that
13 factual nonfiction work wouldn't apply
14 there.

15 BY MR. KRUGMAN:

16 Q. You also checked important to educational
17 objectives. And why did you check that book -- check
18 that box? Excuse me.

19 A. Because my sense was that this reading would
20 facilitate the learning process of the students and help
21 them to understand the theoretical perspectives and how
22 they would apply to an actual decision.

23 Q. How do you understand that factor differs from
24 use is necessary to achieve your intended education
25 purpose under factor 1?

1 A. Well, it strikes me that -- I have to reflect
2 more to think about what the significant differences
3 were.

4 The primary difference it seems to me is that
5 the first statement, the necessary statement, is a
6 somewhat stronger statement of importance as opposed to
7 the important statement.

8 Q. Okay.

9 A. I kind of got befuddled on that response. But
10 yeah, necessary would be at least in my reading a higher
11 bar to meet than important. There may be other
12 differences. I'd have to reflect on them.

13 Q. Can you think of an instance where if you were
14 to check the box for use is necessary to achieve your
15 intended educational purpose that you would also not
16 check the box for important to educational objectives?

17 A. I'd have to reflect on that or think about or
18 have a specific case, specific reading.

19 Q. Can you think of any of the readings that you
20 have completed either physically or mentally on the fair
21 use checklist that you checked use is necessary to
22 achieve your intended educational purpose but did not
23 conclude that it was important to educational
24 objectives?

25 A. As I recall, in past readings I've always

1 checked both. That may be because, you know, I'm very
2 careful to ensure that everything on there is necessary
3 and important. But I believe in past instances it's
4 been the case that I've checked both.

5 Q. Okay. And under factor 2 there were three
6 weighing in favor and zero against fair use, correct?

7 A. That's correct.

8 Q. Factor 3, amount and substantiality of portion
9 used, you checked small portion of work used. And was
10 that determination based on the 20 percent rule that you
11 testified to?

12 A. That's what I was thinking of when I checked
13 it, yes.

14 Q. So if you were using less than 20 percent,
15 that would be a small portion of the work used?

16 A. That's how I was defining it in my mind. I
17 believe this reading is less than 10 percent of the
18 book, but that would be the standard that I would use.

19 Q. And you also checked portion used is not
20 central or significant to entire work as a whole. And
21 why did you check that box?

22 A. Well, the entire work essentially has analyses
23 of a variety of different U.S. foreign policy decisions,
24 and each chapter is an analysis of a different decision
25 by a different author. And so in my judgment no single

1 chapter represented -- was absolutely central to the
2 overall structure of the work.

3 In my mind as I was thinking about it I was
4 thinking of a, you know, a single monograph, for
5 example, sometimes has a summary of the entire argument
6 in the introduction or conclusion of the book, and to
7 assign that would be to assign a portion that's central
8 or significant to the entire work.

9 But this was a collection of separate analyses
10 without an overarching theme, in my judgment.

11 Q. Do you recall completing any fair use
12 checklist where you did not check the box for portion
13 used is not central or significant to entire work as a
14 whole either physically or mentally?

15 A. I'm not certain. But I believe there were
16 readings in other semesters, especially in my graduate
17 courses where I assign portions of, you know, more
18 technical monographs where I would have checked that the
19 portion was central to the work if it was a summary of
20 the entire argument.

21 Q. But you could still use it, or factor 3 would
22 still weigh in favor of fair use if you were to check
23 only a small portion of work used and the third box,
24 amount taken is narrowly tailored to educational purpose
25 such as criticism, comment, research or subject being

1 taught, correct?

2 MS. MOFFITT: Object to form.

3 THE WITNESS: I mean, it would depend on
4 the individual work, what I would check in
5 those boxes.

6 But yes, as a matter of mathematics if
7 the other two were checked, then it would
8 still weigh in that direction. But it
9 would depend, how I would check those boxes
10 would depend on the individual work.

11 BY MR. KRUGMAN:

12 Q. Do you recall whether you've completed any
13 fair use checklist where you did not conclude that all
14 four factors weighed in favor of fair use?

15 A. All four or all three?

16 MS. MOFFITT: Object to the form.

17 BY MR. KRUGMAN:

18 Q. All four factors --

19 A. Oh, overall.

20 Q. Overall, yes.

21 A. Like big factors.

22 Q. The big factors. The purpose and character,
23 the nature of copyrighted work, amount and
24 substantiality of portion used and effect on market for
25 original.

1 A. I don't recall a specific instance.

2 Q. Now, you also checked amount taken is narrowly
3 tailored to education purpose such as criticism,
4 comment, research or subject being taught.

5 Why did you check that factor?

6 A. Because I believed that, you know, that -- as
7 I mentioned before, the primary purpose of that
8 particular reading was to convey the empirical details
9 of the decision to invade Iraq. And those empirical
10 details were -- you know, constituted the bulk of the
11 reading. There was some additional analysis that I was
12 less interested in, but it was interweaved with the
13 empirical details.

14 So in my judgment that constituted a narrow
15 tailoring to the educational purpose because the
16 analysis was not separable from the empirical detail
17 that I needed to fulfill the purpose.

18 Any reading is going to have some additional
19 material that is not specifically part of an educational
20 purpose. But in my judgment that amount of material was
21 fairly small and also interwoven within the necessary
22 material for this particular reading.

23 Q. So for factor 3 there were three in favor of
24 fair use and zero against, correct?

25 A. That's correct.

1 Q. Factor 4, effect on market for the original.
2 First of all, what do you understand to be the market
3 for the original work?

4 A. I suppose it would be mostly an educational
5 market. In other words, students, if that's what you
6 mean.

7 Q. Yeah, I'm just trying to find out what your
8 understanding was of that.

9 So your understanding is that the market under
10 factor 4 is the educational market?

11 A. Oh, no, sorry. Could you be more specific in
12 your question?

13 Q. Yeah. Factor 4 was effect on market for
14 original.

15 Why don't we move to the checked boxes. You
16 checked no significant effect on market or potential
17 market for copyrighted work.

18 A. Okay.

19 Q. When you completed this --

20 A. Right. Okay.

21 Q. -- both mentally and physically, what do you
22 understand to be the market or the potential market for
23 this work?

24 A. Oh, I see what you mean. I'm sorry. Okay.
25 No, broadly speaking the market is just whoever would

1 purchase it. That was my understanding of it.

2 For this particular work, in my judgment, and
3 I'm not, you know, a marketing guru, but in my judgment
4 it would be most likely students who would purchase this
5 particular work, whereas other works of a more academic
6 nature would, you know, also include -- you know, other
7 works might have different markets. Put it that way.

8 I checked that particular box -- well, I think
9 I guess you didn't ask that, so --

10 Q. Yeah, so the market was those who potentially
11 would purchase this book?

12 A. That was my understanding.

13 Q. And why did you check that box?

14 A. I checked that box because I would not likely
15 have assigned the entire book for purchase in the class
16 had I not been able to assign that particular chapter
17 because the chapter that I wanted to use was a small
18 portion of the book, I believe it was less than 10
19 percent, and I didn't want to assign the entire book
20 because, you know, as I'm sure you know, Georgia State
21 students are very cost sensitive, many of them are
22 paying their own way through college and so forth, and
23 I've had experience at Georgia State and in contrast to
24 when I taught at Emory, for example, as a graduate
25 student, where students have been concerned about their

1 ability to purchase readings. And so I've become sort
2 of sensitive to that issue.

3 And so I checked that because in my judgment I
4 would not likely have assigned the entire book. And so
5 I didn't see assigning this portion as being -- as
6 removing the possibility of assigning the entire book
7 for purchase. That's why I checked it.

8 Q. Did you consider licensing or permissions as a
9 potential market for this work?

10 A. Could you be more specific?

11 Q. Yeah. Students can, you could --

12 One way to obtain the book is to buy the book?

13 A. Uh-huh.

14 Q. And another way would be to obtain a license
15 or permission for use of a portion of the book?

16 A. Uh-huh.

17 Q. Did you -- and all I'm asking is if you
18 considered that at all in -- when you completed this
19 checklist?

20 A. The checklist.

21 MS. MOFFITT: Object to form.

22 THE WITNESS: I don't recall considering
23 that specific question in this checklist.

24 I have used coursepacks in the past.

25 BY MR. KRUGMAN:

1 Q. And when you say coursepacks, those are
2 physical copies?

3 A. Physical copies, yeah. But I've -- I don't
4 believe that that was in my mind in checking that. I
5 was thinking about the contrast between these two,
6 between assigning it or not.

7 Q. Why did you not use a coursepack for this
8 course?

9 A. Again, the cost sensitivity issue. Most
10 students -- in the past long before this policy was
11 implemented I had a coursepack, two coursepacks, one of
12 them --

13 I mean, you know, so basically you're talking
14 about photocopied material and one of them was priced
15 above \$90, as I recall. And I had a lot of complaints
16 from students for that. And there's also the timing
17 issue. I believe that coursepack was only delivered two
18 or three weeks when the course had begun and obviously
19 causing the students to miss some critical reading. So
20 it was -- so for that reason I shied away from them.

21 Again, when I was filling this out, I don't
22 believe that that was in my mind. My analysis here was
23 about the -- whether -- the question of whether or not
24 assigning this was preventing me from assigning the book
25 for purchase.

1 Q. You checked licensing or permission not
2 available. Did you investigate whether licensing or
3 permissions were in fact available or not available for
4 this work?

5 A. I don't recall whether I -- I don't recall
6 whether I -- well, I do -- I didn't check. I don't
7 recall what I was basing that analysis on.

8 Q. But you decided to check it nonetheless?

9 MS. MOFFITT: Object to form.

10 THE WITNESS: I don't recall what the
11 analysis was. I do believe there was an
12 analysis because I was thinking through it.

13 It's possible that it related back to
14 my prior experience with coursepacks and
15 the difficulty that I had then receiving
16 licensing. But I don't actually recall
17 what was going through my head. I'm sure
18 there was some judgment or basis, but I
19 don't recall what it was now.

20 BY MR. KRUGMAN:

21 Q. Did you contact Copyright Clearance Center to
22 determine whether a license or permission was available
23 for this particular work?

24 A. No.

25 Q. And I see you checked user owns lawfully

1 acquired or purchased copy of original work?

2 A. Yes.

3 Q. And that kind of ties into the consideration
4 that you testified to earlier that you had to own?

5 A. That's correct.

6 Q. Own the book. So you would always check that
7 box in completing a fair use checklist for any work that
8 you intended to use?

9 A. Well, I --

10 MS. MOFFITT: Let him finish the
11 question. Object to form.

12 THE WITNESS: I would -- to me that is a
13 real restriction because I don't own all
14 the books and the library doesn't own all
15 the books that I would want to assign.

16 But I would not get to the fair use
17 checklist if I didn't or the library didn't
18 own the book. I would simply take it off
19 my syllabus before considering the
20 checklist.

21 BY MR. KRUGMAN:

22 Q. That would be a matter of your own practice as
23 opposed to something dictated by the fair use checklist,
24 correct?

25 MS. MOFFITT: Object to form.

1 THE WITNESS: My understanding was that
2 it was university policy. That's the basis
3 on which I was making that judgment.

4 But so whether that's part of the fair
5 use checklist, I don't know, but that to my
6 understanding, that was the overall policy
7 at the university.

8 BY MR. KRUGMAN:

9 Q. But you would agree that if you had failed to
10 check the box for user owns lawfully acquired or
11 purchased copy of original work, that under factor 4
12 those factors would still weigh in favor of fair use on
13 the checklist that you completed?

14 A. Well, as a matter of addition.

15 Q. It was five to one in favor and if you --

16 A. The others would add up -- of course, I
17 suppose you would have to check the other side if you
18 did that.

19 But you know, as I mentioned before, it was
20 before the fair use checklist was introduced, but I did
21 have a case, ignorant of the policy, I requested a book
22 that I acquired through interlibrary loan, I believe it
23 was Gourevitch's book on "Politics In Hard Times", I
24 remember because I really wanted to use it, and the
25 university said no. So I think that's probably what put

1 in my mind that that was the policy.

2 MS. MOFFITT: We've been going well over
3 an hour.

4 MR. KRUGMAN: Do you want to take a
5 break?

6 MS. MOFFITT: Yes.

7 MR. KRUGMAN: Okay.

8 THE VIDEOGRAPHER: Going off the video
9 record at 2:31.

10 (Brief recess.)

11 THE VIDEOGRAPHER: Back on the record
12 at 2:47.

13 BY MR. KRUGMAN:

14 Q. Professor Hankla, I've handed you what's been
15 marked as Hankla Exhibit Number 7. And can you identify
16 this as the fair use checklist that you physically
17 completed on or about November 16th, 2010 for "U.S.
18 Foreign Policy: The Paradox Of World Power", Steven
19 Hook, CQ Press, chapter 6 pages 153 to 168?

20 A. That's what it appears to be.

21 Q. This is one of the assigned readings for
22 political science 3450 that you taught in the fall of
23 2009?

24 A. Yes.

25 Q. Do you recall whether there was an assigned

1 reading in prior semesters that you taught this course?

2 A. I don't recall.

3 Q. Okay. And I take it this is -- that you had
4 mentally completed this checklist in 2009, but then
5 physically completed it November of 2010?

6 A. That's correct.

7 Q. And I take it -- well, you can correct me --
8 that the boxes that you checked on Exhibit 7 are the
9 identical boxes that you checked on Exhibit 6?

10 A. Let me check and see just to verify.

11 That appears to be the case, yes.

12 Q. And I take it the same considerations went
13 into your completion of this checklist Exhibit 7 as you
14 testified to with respect to Exhibit 6?

15 MS. MOFFITT: Object to form.

16 THE WITNESS: That's correct. They're
17 similar readings, so the considerations
18 would have been distinct yet, you know,
19 fairly similar because the readings are
20 similar readings for the same class.

21 BY MR. KRUGMAN:

22 Q. Yeah, but certainly the same considerations
23 for nonprofit educational and teaching?

24 A. Yes.

25 Q. And for published work, factual or nonfiction

1 work, those would be the identical considerations?

2 A. Yes.

3 Q. And under factor 3, I take it you used the
4 same guideline, the 20 percent guideline to conclude
5 that a small portion of the work was used?

6 A. Yes, I did.

7 Q. What about the check portion used is not
8 central or significant to entire work as a whole?

9 A. Uh-huh. Yes.

10 Q. Why did you check that box for this work?

11 A. Well, this is a work that covers a wide
12 variety of aspects of foreign policy making from, you
13 know, public opinion to executive branch politics, which
14 is what I used it for, to Congressional legislative
15 relations. I believe there's a history section and so
16 forth.

17 And so in my judgment the particular portion
18 that I assigned on executive branch politics was not
19 absolutely central to the entire work. It didn't
20 summarize an overarching theme or anything of that
21 nature.

22 Q. I take it with respect to this work, you did
23 not investigate to determine whether licensing or
24 permissions were available?

25 A. No.

1 Q. On both you checked use stimulates market for
2 original work. And why did you check that box on each
3 of these?

4 A. Well, because my sense is that if the students
5 did the reading and liked what they read that it might
6 cause them to go and purchase the original book.

7 And in particular I was thinking about the
8 term paper assignment for this class. It's a -- the
9 requirement of the term paper is that they essentially
10 select any foreign policy decision and then apply the
11 various theories and perspectives to that decision. And
12 given that this work and even more so the other work on
13 the Iraq war would provide nice fodder for analyzing a
14 particular decision, I thought that they might be
15 inspired to go and refer to the rest of the works
16 without assigning them.

17 Q. Do you know of any students in your political
18 science 3450 class that purchased either of the two
19 works for which you completed the fair use checklist on
20 Exhibits 6 and 7?

21 A. I don't personally recall. Or I don't -- I
22 wouldn't have known. I don't know.

23 Q. On Exhibit 6 you checked also no similar
24 product marketed by the copyright holder?

25 A. Uh-huh.

1 Q. And you checked that as well for Exhibit 7.
2 Why did you check that box on each?

3 A. Right. Well, because of the care that I take
4 in looking at a variety of possible sources when
5 complying a syllabus.

6 In my judgment there was no other product that
7 had the level of quality and the same content that I
8 wanted for this particular assignment.

9 Q. And who did you understand the copyright
10 holder to be for "The Contemporary Cases In U.S. Foreign
11 Policy"?

12 A. The publisher.

13 Q. And did you investigate to determine whether
14 the publisher of that work had similar products?

15 A. I have a lot of books on the topic on my
16 bookshelf, so I went through all the books that I have
17 and I don't recall that -- I may well have looked at
18 some holdings from the library, I often do that when
19 compiling my syllabus. I don't recall specifically
20 targeting only readings by that -- by those specific
21 publishers. I would have looked at a wide variety of
22 publishers publishing on the same topic. But it's quite
23 possible I would have looked at more than one reading
24 from the publisher, from this specific publisher,
25 because oftentimes there are several readings on U.S.

1 foreign policy by the same publisher.

2 Now, they would be distinct and different. In
3 my judgment this would have been the preferable
4 assignment.

5 Q. Did you contact the publisher?

6 A. No.

7 Q. And the publisher was CQ Press?

8 A. Yes.

9 Q. And I take it you did not contact the
10 publisher in reference -- for the work referenced on
11 Exhibit 7, either, which is CQ Press?

12 A. No.

13 Q. To determine whether there were similar
14 products marketed by that publisher?

15 A. I didn't contact the publishers to do that. I
16 would have looked at a variety of possible sources for
17 this reading.

18 Q. If you concluded a particular work that you
19 considered or were considering using for class was not
20 fair use, what do you understand your choices to be in
21 terms of assigning that work to students in your class?

22 MS. MOFFITT: Object to form.

23 THE WITNESS: Well, my understanding is
24 that I could either -- I guess it would
25 depend on the specific work and the reasons

1 why it wasn't permitted. I guess it would
2 depend on the specific reasons why it
3 wasn't permitted and what the work was.

4 BY MR. KRUGMAN:

5 Q. Well, obviously one choice would be to have
6 students buy the book?

7 A. Yes, that would be a choice.

8 Q. And another option --

9 A. That would always be an option.

10 Q. Go ahead.

11 A. No, that would always be an option. But
12 again, it's an option that I frequently wouldn't turn to
13 because I'm using a fairly narrow, small portion of the
14 book. And as I said before, the students are quite
15 price sensitive, so I try to limit what they actually
16 need to purchase.

17 Q. And because of that price sensitivity, as I
18 understand your testimony, you would not elect, at least
19 that's one of the reasons you would not elect to use a
20 coursepack to provide the materials?

21 A. That's one negative of a coursepack.

22 Q. Is that someone --

23 A. In my judgment, in my prior experience.

24 Q. Someone has to pay for it?

25 A. Well, I would say that in my judgment someone

1 is also paying for the online ERes, but in a somewhat
2 different manner.

3 What is specific about the coursepack is that
4 the students are directly paying for purchasing the
5 coursepack, but I think that there are other costs
6 associated with the ERes that are perhaps less obvious
7 and probably less directly borne by the students.

8 Q. Is it your understanding that with respect to
9 coursepacks that the publishers of the works whose works
10 are reproduced in the physical coursepack receive fees
11 for either permissions or licenses for use of those
12 works?

13 MS. MOFFITT: Object to form.

14 THE WITNESS: I don't know the specific
15 details of when or why that happens because
16 when I've done the coursepacks in the past
17 I haven't actually been the one dealing
18 with that side of it. So I don't know
19 exactly -- I don't know exactly when or in
20 what amount fees might exist through the
21 coursepack.

22 BY MR. KRUGMAN:

23 Q. So you don't have an understanding one way or
24 another whether -- as to whether the publisher of a
25 particular work would receive some compensation for that

1 work being reproduced in a coursepack?

2 A. For a coursepack, not for any individual
3 reading. My sense is that at times there are fees that
4 are paid through a coursepack, but I don't know whether
5 that's the case with all readings or when -- or where
6 that -- that would be sort of a legal issue that I
7 would -- that I don't know specifically the answer to.

8 Q. But as you said, your sense is that at least
9 for a collection of materials that the publishers of the
10 works would receive some fee for the reproduction of
11 those works?

12 A. It's possible.

13 MS. MOFFITT: Object to form.

14 THE WITNESS: It's possible. I don't
15 know.

16 BY MR. KRUGMAN:

17 Q. And that's not true with respect to materials
18 that you -- that you request the library to post on
19 Georgia State's EReserve system, is that correct?

20 MS. MOFFITT: Object to form.

21 Foundation.

22 THE WITNESS: I don't know precisely
23 what the rules are for ERes. I know that
24 the university purchases books and so
25 forth, so there's compensation there.

1 There may be other forms of compensation
2 that I'm not aware of.

3 BY MR. KRUGMAN:

4 Q. Okay. But other than books that the
5 university may purchase, sitting here today you're not
6 aware of any other forms of compensation that publishers
7 receive for works that are posted on the ERes system at
8 Georgia State?

9 MS. MOFFITT: Object to form.

10 THE WITNESS: Kind of a complex
11 question. I suppose there's potential
12 market stimulus. There's a variety of
13 factors that I may not be aware of.

14 BY MR. KRUGMAN:

15 Q. All I'm asking is what you're --

16 A. What I'm aware of. I don't really know what
17 they receive, no.

18 Q. Do you know whether Georgia State has any
19 budget that would allow you as a professor to seek
20 permissions from publishers to utilize a work?

21 A. I know there's -- I know there's a budget
22 whereby we can request that the library purchase items.
23 But I don't know if that's --

24 Q. If you wanted to use a particular work and
25 provide it electronically to students on the EReserve

1 system, are you aware of any --

2 A. I'm not aware of one.

3 MR. KRUGMAN: That's all I have.

4 MS. MOFFITT: I don't have any
5 questions.

6 THE VIDEOGRAPHER: Off the video record
7 at 3 p.m.

8 (Deposition concluded at 3:00 p.m.)

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E R R A T A S H E E T

I, the undersigned, Charles Hankla, 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

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MY COMMISSION EXPIRES:

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C E R T I F I C A T E

G E O R G I A :

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

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

This, the 24th day of April, 2011.

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

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DISCLOSURE

STATE OF GEORGIA

COUNTY OF DEKALB

Deposition of Charles Hankla

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Teresa Bishop
RPR, RMR, CCR B-307

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