

Vincent Lloyd, PH.D.

April 20, 2011

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

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

CIVIL ACTION FILE

Plaintiffs, NO. 1:08-CV-1425-ODE

vs.

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

Defendants.

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VIDEOTAPE DEPOSITION OF  
VINCENT WILLIAM LLOYD, Ph.D.

April 20, 2011

9:10 a.m.

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

S. Julie Friedman, CCR-B-1476

APPEARANCES OF COUNSEL

On behalf of the Plaintiffs:

BONDURANT, MIXSON & ELMORE, LLP  
EDWARD B. KRUGMAN, ESQ.  
Suite 3900, One Atlantic Center  
1201 West Peachtree Street, N.W.  
Atlanta, Georgia 30309-3417  
404.881-4106  
404.881.4111 Fax  
krugman@bmelaw.com

WEIL, GOTSHAL & MANGES  
JONATHAN BLOOM, ESQ.  
767 Fifth Avenue  
New York, New York 10153  
212.310.8775  
212.310.8007 Fax  
jonathanbloom@weil.com

On behalf of the Defendants:

KING & SPALDING LLP  
JOHN W. HARBIN, ESQ.  
1180 Peachtree Street, N.E.  
Atlanta, Georgia 30309-3521  
404.572.2595  
404.572.5100 Fax  
jharbin@kslaw.com

Also Present:

Henry Stewart, Videographer

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Vincent William Lloyd, Ph.D.

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Original Plaintiff's Exhibits 5 through 8 have been  
attached to the original transcript.)

Videotape Deposition of Vincent William Lloyd, Ph.D.  
April 20, 2011

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

THE VIDEOGRAPHER: This is Tape No. 1 to  
the videotape deposition of Professor Vincent  
Lloyd, in the matter of Cambridge Press versus  
Mark Becker. This deposition is being held at  
King & Spalding, 780 Peachtree Street in  
Atlanta, Georgia, on April 20th, 2011. The time  
is now 9:10 a.m.

We're on the record. My name is Henry  
Stewart. I'm the videographer. The court  
reporter is Julie Friedman.

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

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

MR. KRUGMAN: Edward Krugman of Bondurant,  
Mixson & Elmore for the plaintiffs.

MR. BLOOM: And I'm Jonathan Bloom, Weil,

1 Gotchal & Manges, for the plaintiffs.

2 VINCENT WILLIAM LLOYD, Ph.D., having been  
3 first duly sworn, was examined and testified as  
4 follows:

5 MR. KRUGMAN: Okay. Before we proceed  
6 with it, I want to state that the plaintiffs  
7 object to this deposition to the extent that it  
8 is intended to be offered as trial testimony.

9 We understand that the witness resides  
10 within subpoena range of the United States  
11 District Court for the Northern District of  
12 Georgia and is represented by counsel for the  
13 defendants; and presumably the defendants could,  
14 if they chose, subpoena the witness to appear at  
15 trial and provide live testimony.

16 In addition, presumably the -- certain of  
17 the individual defendants could -- could direct  
18 the witness to appear for trial, if they -- if  
19 they so chose.

20 In addition, this deposition was  
21 scheduled, along with several additional  
22 depositions, that the defendant has -- have  
23 described as testimonial in nature to  
24 accommodate the defendants and pursuant to an  
25 agreement that -- that each of the professors

1           that the defendants have expressed an intent to  
2           call at trial would be produced for -- for a  
3           discovery deposition in advance of trial.  
4           Several were taken last week, and many more have  
5           been scheduled for this week.

6           At approximately 11:30 last night,  
7           defendants received a -- an e-mail  
8           communication from -- from Steve Schaetzel at  
9           King & Spalding announcing that the defendants  
10          were unilaterally -- had unilaterally decided  
11          that they would not be producing any of the  
12          professors for discovery depositions, but fully  
13          intended to proceed with what they describe as  
14          testimonial depositions.

15          We reserve, you know, all rights where we  
16          don't -- We do not waive the right to object to  
17          any attempts by defendants to introduce the  
18          deposition testimony of Professor Lloyd, because  
19          he supposedly is not available within the  
20          meaning of the Federal Rules of Evidence or the  
21          Federal Rules of Civil -- Civil Procedure or our  
22          local rules, and we reserve all rights.

23          MR. HARBIN: Well, let me briefly stand up  
24          and get some water.

25          Just to briefly respond to the second

1 point and -- And we can take it up. As you  
2 think you know, I'm just a soldier in this war,  
3 but the --

4 Briefly the defendants, as has been  
5 reflected in the e-mail correspondence,  
6 understood there was agreement that the  
7 discovery depositions would be limited to an  
8 hour and a half; and the plaintiffs have said  
9 that now that they don't -- There is no such  
10 agreement, so that that is the basis for the  
11 decision not to produce these professors  
12 voluntarily for discovery depositions.

13 But also, it's my understanding, as  
14 reflected in the e-mail correspondence, that the  
15 plaintiffs said they did not want to take a  
16 discovery deposition of Professor Lloyd, and  
17 that we responded by e-mail saying just to be  
18 certain, we are planning to take a evidentiary  
19 deposition of him and that --

20 And the plaintiff's response after being  
21 told that was still, as I understand it, we're  
22 going to cross-examine him, not ask to do a  
23 discovery deposition first.

24 So that's my understanding as to Professor  
25 Lloyd.



1           MR. KRUGMAN: Yeah. We still -- We still  
2           object to his testimony being -- being taken and  
3           offered at trial; but obviously, that's an issue  
4           that the Court will determine irrespective --

5           MR. HARBIN: Right.

6           MR. KRUGMAN: -- really of the -- of the  
7           other issues.

8           MR. HARBIN: And I understand that, so you  
9           can deal with it a little bit, you can question  
10          him, if you wanted to.

11          MR. KRUGMAN: Yeah. And we -- which I  
12          will, but we had -- we had indicated that we  
13          were -- and I believe it's reflected in e-mail  
14          communications that -- that -- as well as  
15          conversations that I believe Randy Singer  
16          had with -- with Steve Schaetzel that it was our  
17          plan -- our -- our intent to -- to not present  
18          at trial the -- the -- Professor Lloyd's, I  
19          guess, the one works that was on the joint  
20          filing.

21          MR. HARBIN: Right. Right. Okay.

22          MR. KRUGMAN: But --

23          DIRECT EXAMINATION

24          BY MR. HARBIN:

25          Q.       With that, Professor Lloyd, we can get

1     started.

2                 Would you introduce yourself to the Court  
3     and state your full name, please.

4             A.     Vincent Lloyd.

5             Q.     Okay. And would you tell us what your --  
6     where you got your undergraduate degree and in what.

7             A.     At Princeton University in religion.

8             Q.     Okay. And summarize, please, your  
9     graduate education.

10            A.     I was a -- a graduate student at the  
11     University of Chicago and the University of  
12     California, Berkeley. At Berkeley I received a  
13     doctorate from the Rhetoric Department.

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

16            A.     I am finishing my third year now.

17            Q.     Okay. And what will you be -- Where will  
18     you be teaching in the -- in the fall?

19            A.     My employment at Georgia State is ending,  
20     and I'm starting a job at Syracuse University.

21            Q.     Okay. And in that regard, what are your  
22     plans during the second half of May, beginning the  
23     week of May 16th?

24            A.     I'm moving from Atlanta to Syracuse, New  
25     York, where I'll be starting a job at Syracuse --

1 Q. Okay.

2 A. -- and ending my employment at Georgia  
3 State.

4 Q. Okay. Did you teach a course in the fall  
5 of 2009, an Honors 1000 course titled, "Love,  
6 Religious and Philosophical Perspectives"?

7 A. Yes. That's correct.

8 Q. Let me hand you what's been marked as  
9 Lloyd Exhibit 1 and ask you if that is a syllabus,  
10 copy of the -- a copy of the syllabus for the course.

11 A. This is an overview of the course. Yes.

12 Q. Okay. Can you summarize what was covered  
13 in this course.

14 A. We were interested in thinking about the  
15 concept and practice of -- of love in works of  
16 literature, philosophy, and religion in western  
17 culture as broadly understood from ancient Greece to  
18 the present.

19 Q. Okay. What was the nature of this course  
20 as an honors course?

21 A. So this was for a freshmen in Georgia  
22 State's honors program. It was a one-credit,  
23 pass-fail course, which was intended to orient new,  
24 bright students at Georgia State to the university  
25 and to provide them with a small seminar that's

1 relatively informal in their first year.

2 Q. And how many students approximately were  
3 in the class in the fall of 2009?

4 A. There were about 15 students.

5 Q. Have you taught this course since the fall  
6 of 2009?

7 A. No. It was a one-off course.

8 Q. Well, how many -- how many -- How often  
9 did the course meet in the fall of 2009?

10 A. Once a week for one hour a week.

11 Q. Okay. And how many courses overall have  
12 you taught at Georgia State since the fall of 2009?

13 A. Two courses.

14 Q. Okay. In this course in the fall of 2009,  
15 did you use an excerpt of a book called, quote, "The  
16 Fragility of Goodness, Luck and Ethics in Greek  
17 Tragedy and Philosophy," closed quote?

18 A. That's correct.

19 Q. Let me hand you what's been marked as  
20 Lloyd Exhibit No. 3.

21 I can't even keep a certain number in  
22 order, but a small number. There you --

23 MR. KRUGMAN: Was -- The first one was  
24 one?

25 MR. HARBIN: Right.

1 MR. KRUGMAN: And this one's three?

2 MR. HARBIN: Correct.

3 Q. (By Mr. Harbin) Is this -- Do you  
4 recognize this as a title and including the index of  
5 that publication?

6 A. Yes.

7 Q. And if you look at the next to last page,  
8 I think it is, was the publication including, you  
9 know, bibliography and the index over 536 pages long?

10 A. That's correct. Yeah. This is a title  
11 and contents.

12 Q. And was the publication, if you focus just  
13 on the chapters, the substantive chapters,  
14 approximately 421 pages?

15 MR. KRUGMAN: Objection. Leading.

16 Q. (By Mr. Harbin) Yeah. I think that's --  
17 Plaintiff has said that, but go ahead.

18 A. Oh. Yes. That's correct.

19 Q. Okay. And so did -- In your excerpt, did  
20 you use less than 10 percent of the book by pages?

21 A. That's correct.

22 Q. Okay. What was your purpose in -- in  
23 assigning this excerpt, this chapter?

24 A. Uh-huh. In class we had read one of the  
25 seminal texts on love in western culture, Plato's

1 "Symposium"; and we were looking at critical  
2 responses to Plato's "Symposium."

3 This is one of several critical responses  
4 that we -- that we looked at, and this is an  
5 important and widely discussed piece of philosophy  
6 that's very central to recent discussions on love  
7 in -- by philosophers.

8 Q. Okay. And if you look at the index, was  
9 it Chapter 6, entitled, "The speech of Alcibiades"  
10 that you assigned?

11 A. Yes. In the contents of said Chapter 6.

12 Q. And let me hand you what's been marked as  
13 Lloyd Exhibit 4 and ask you if that is a copy of the  
14 excerpt that you assigned.

15 A. Yes. That's correct.

16 Q. Okay. And you may have already indicated  
17 this. But what was your purpose in assigning this  
18 chapter?

19 A. This was a important work of recent  
20 philosophy dealing with a classic text central to the  
21 course.

22 Q. And what was the classic text?

23 A. Plato's "Symposium."

24 Q. And --

25 A. And this is looking at Plato's "Symposium"

1 differently than most previous readers had -- had  
2 looked at it. Instead of focussing on the speech of  
3 Diotima which most -- most readers of Plato focus on,  
4 this is focussing on a different speech, Alcibiades'  
5 speech, to -- And the chapter makes us think about  
6 the -- think about Plato's text differently by  
7 changing that focus.

8 Q. Okay. And would you tell the Court  
9 whether or not you viewed this chapter as the heart  
10 of or the critical part of this book as a whole?

11 A. I did not view it --

12 MR. KRUGMAN: Objection.

13 THE WITNESS: -- as the --

14 MR. KRUGMAN: Leading.

15 Q. (By Mr. Harbin) You can answer.

16 A. I -- I did not view it as the -- the  
17 central part of the heart of this -- this book.

18 Q. Okay. And why do you say that?

19 A. Nussbaum's book is a collection of essays  
20 on a variety of topics in ancient Greek philosophy  
21 that are all -- Each essay is making a similar point  
22 about the significance of luck and fragility in  
23 different ways.

24 This is -- This chapter is one among  
25 many, many ways that Nussbaum is making that -- that

1 argument. There's not one chapter or one place, one  
2 essay which is central in this book or the heart of  
3 the book.

4 Q. And did you use a fair -- the fair use  
5 checklist provided by the university in deciding to  
6 use this excerpt in the course in the fall of 2009?

7 A. That's correct.

8 Q. And did you report to the library you had  
9 reviewed this work under the fair use checklist and  
10 concluded it would constitute fair use?

11 A. That's correct.

12 Q. Let me show you a -- what's been marked as  
13 Lloyd Exhibit No. 2. This appears to be a checklist  
14 about that excerpt of that "Fragility of Goodness"  
15 publication.

16 Is it dated November 18, 2010?

17 A. That's correct. Yes.

18 Q. And so did you prepare this written  
19 checklist on or about November 18, 2010?

20 A. That's correct.

21 Q. Obviously, after the class?

22 A. Uh-huh.

23 Q. Were you attempting to re-create what  
24 analysis you made or underwent as far as whether this  
25 was fair use --



1 MR. KRUGMAN: Objection.

2 Q. (By Mr. Harbin) -- for the course in the  
3 fall of 2009?

4 MR. KRUGMAN: Objection. Leading.

5 THE WITNESS: Yes. I was.

6 Q. (By Mr. Harbin) Let me ask you. What was  
7 your purpose in filing out this checklist in November  
8 of 2010?

9 A. I wanted -- My purpose was to re-create  
10 the reasoning that I -- I used when I was originally  
11 using the -- the fairness guidelines when I was  
12 putting the material on Ereserve.

13 Q. Do you recall if you actually filled out a  
14 checklist and stored it in the fall of 2009?

15 A. In the fall of 2009, I -- I used a  
16 checklist for the -- I -- I filled out a checklist  
17 for the first couple of readings for -- for the  
18 course and used the reasoning that the checklist lays  
19 out when deciding what excerpts to use for -- for the  
20 rest of the -- the selections on Ereserve.

21 Q. Okay. All right. And I just wanted to  
22 talk about a couple of entries on the checklist.

23 You determined that in your view it was a  
24 small portion of the work you were using on the  
25 second page?

1           A.     It's -- Yes.

2           Q.     Okay. You checked that the use stimulates  
3 the market, in your view would stimulate.

4                    You checked the box that says "Use  
5 stimulates market for original work." Do you see  
6 that?

7           A.     Yes.

8           Q.     And what was your meaning there in  
9 checking that?

10          A.     I thought that some students who read the  
11 excerpts that was placed on Ereserve might be  
12 interested in reading more of Nussbaum's work  
13 particularly and -- and possibly purchasing this --  
14 this book.

15          Q.     Have you ever had a student indicate he or  
16 she bought a book after you used an excerpt in a  
17 class?

18          A.     Yes. I have.

19                   MR. KRUGMAN: Objection. Hearing --  
20 Hearsay.

21          Q.     (By Mr. Harbin) And approximately how  
22 many times has that happened in your experience?

23                   MR. KRUGMAN: Same objection. Hearsay.

24                   THE WITNESS: Several times.

25          Q.     (By Mr. Harbin) Okay. You check user

1 owns lawfully acquired or purchased copy of the work?

2 A. That's correct. Yes.

3 Q. And why did you check that?

4 A. Because in the -- I own a copy of  
5 Nussbaum's book.

6 Q. Okay. And you check restricted access.  
7 And what did you -- What was your meaning or  
8 understanding there?

9 A. That the selection on Ereserve would be  
10 password-protected, and the password would only be  
11 available to the students in my course.

12 Q. Okay. And you checked on the second page  
13 under that "Factor 4: Effect on Market for  
14 Original," on the bottom lower right-hand rows,  
15 "Weighs Against Fair Use," you check "Required  
16 classroom reading"?

17 A. That's correct.

18 Q. Is it correct this was required classroom  
19 reading for this course?

20 A. Yes.

21 Q. It was pass-fail.

22 Okay. And overall what was your  
23 conclusion as to whether or not your use of this  
24 excerpt in fall of 2009 constituted fair use?

25 A. I concluded that my use of the excerpt did

1     constitute fair use.

2           Q.     Did the university ever encourage you to  
3     use Ereserve to post excerpts?

4           A.     No.   The university did not.

5           Q.     Did the university ever encourage you to  
6     use uLearn to post excerpts of reading material?

7           A.     No.

8           Q.     Do you use uLearn currently?

9           A.     No.   I don't.

10          Q.     Did you use uLearn in the fall of 2009?

11          A.     No.   I've never used uLearn.

12          Q.     Okay.  And have you ever had the library  
13     challenge your determination that the use of a  
14     particular excerpt would constitute fair use?

15          A.     Yes.

16          Q.     And when approximately was that?

17          A.     It was before fall of 2009.

18          Q.     Okay.  And to the best you can judge, what  
19     would you have done if you had determined in the fall  
20     of 2009 or the library had told you that using this  
21     excerpt, Chapter 6 of Miss Nussbaum's book, was not  
22     fair use?  What would you have done?

23          A.     I would have either -- either put the book  
24     on physical reserve; used a different version of the  
25     chapter, for example, the version that was published

1 in a -- in a journal a few years before the book, or  
2 I would have changed the syllabus that we were not  
3 reading -- reading the book, or two of the -- two of  
4 the above.

5 MR. HARBIN: Okay. That's all I have.

6 Thank you.

7 THE WITNESS: Uh-huh. Okay.

8 Q. (By Mr. Harbin) Well, let me ask one  
9 question.

10 Is it your understanding that the  
11 university has a license, authority to use that  
12 journal you're referring to --

13 A. Yes.

14 Q. It has?

15 MR. HARBIN: Okay. Thank you. That's all  
16 I have.

17 THE WITNESS: Uh-huh.

18 CROSS-EXAMINATION

19 BY MR. KRUGMAN:

20 Q. Okay. So I understand, with respect to  
21 the works, the Nussbaum work, if the library had  
22 instructed you to remove that from the Ereserve, you  
23 would have done so?

24 A. Yes.

25 Q. If the -- Who was the provost of Georgia

1 State University?

2 A. First, could I clarify. I don't have the  
3 capacity to remove -- remove works from Ereserve.  
4 The library does that, so I, I mean -- I --

5 Q. You would have requested the library to do  
6 so?

7 A. I mean, if the library told me that --  
8 Could -- Could you restate the question,  
9 sir.

10 Q. Yeah. If the library, if someone with the  
11 library indicated to you that they believed that the  
12 Nussbaum work -- that posting of the Nussbaum work  
13 would somehow violate copyright law, would you  
14 request the library to remove it from Ereserve?

15 A. Yes. I -- Yes.

16 Q. Who is currently the provost of the -- of  
17 Georgia State University?

18 A. I believe it's Risa Palm.

19 Q. Yeah. And she's also senior vice  
20 president for academic affairs at the university?

21 A. I would imagine that's the case.

22 Q. Yeah. If Provost Palm were -- were to  
23 direct you to remove any work from or -- or direct  
24 you to cause any work to be removed from the Ereserve  
25 system at Georgia State that you had caused to be

1 posted through the library, would you follow  
2 Provost's Palm's direction?

3 A. So Provost Palm -- Just to understand  
4 your question, if Provost Palm instructed me to  
5 instruct the library staff to remove a work, then I  
6 would. Then, yes, I would follow Provost -- Provost  
7 Palm's instructions.

8 Q. And would the same be true if President  
9 Becker of the university made that direction to you?

10 A. That's correct.

11 Q. You had testified that the library has or  
12 had on one occasion, I guess, challenged or  
13 questioned one of the works that you had requested be  
14 posted on the Ereserve system at Georgia State?

15 A. I don't think I specified the number of  
16 times; but I did say that in the past, prior to fall  
17 of 2009, the -- the library had -- staff had objected  
18 to -- had raised concerns about material posted on  
19 Ereserve.

20 Q. Okay. What material was that?

21 A. I don't recall.

22 Q. How many times did that occur?

23 A. I don't recall precisely. I would imagine  
24 two or three times.

25 Q. Do you recall whether they were excerpts

1 of books that you had requested be posted?

2 A. I don't recall, but I -- I can also add  
3 something to clarify.

4 I mean, including in the fall of 2009, the  
5 library Ereserve staff had asked for further  
6 information about the material that I had posted on  
7 Ereserves, for example, title page of a work that I'd  
8 only put in excerpts -- that I'd put in excerpts  
9 without a title page.

10 I'd requested that an excerpt without a  
11 title page be put on Ereserves, and they -- They  
12 responded that I would have to put the title page as  
13 well on the Ereserves.

14 Q. And then --

15 A. So there was correspondence going back and  
16 forth with the library.

17 Q. And did you do that?

18 A. Yes.

19 Q. What were the concerns that the library  
20 staff had raised in the past with respect to works  
21 that you sought to have posted on Ereserve?

22 Were they of the similar nature, that they  
23 needed some additional information?

24 A. That was one set of concerns. There were  
25 concerns raised about the size of an excerpt. I



1 believe there were concerns raised about the size of  
2 an excerpt at one point.

3 Q. And do you recall what that work was?

4 A. No. I don't.

5 Q. Do you recall what class it had to do  
6 with?

7 A. No. I don't.

8 Q. Was it prior to the adoption of the new  
9 policy on copyright at Georgia State?

10 A. I believe it was prior to fall 2009. I  
11 don't remember when the new policy was adopted.

12 Q. Do you recall whether it was a work that  
13 you had completed a checklist for prior to submitting  
14 it to the library?

15 A. I don't recall.

16 Q. And you've never used the uLearn system at  
17 Georgia State?

18 A. I know nothing about uLearn. I mean, I --  
19 I have not used uLearn.

20 Q. Yeah. You've never used for it for any  
21 purpose including in connection with classes that  
22 you've taught?

23 A. That's correct.

24 Q. You testified in response to Mr. Harbin's  
25 question, that you -- that you concluded that the

1 Nussbaum work satisfied fair use; and therefore, you  
2 were permitted to request the library to post it on  
3 Ereserve; is -- is that right?

4 A. Based on the checklist that I completed,  
5 yes.

6 Q. Yeah. And that -- That determination was  
7 based on your completion of -- of Exhibit 2, which is  
8 the fair use checklist dated November 18th, 2010; is  
9 that correct?

10 MR. HARBIN: Object to the form of the  
11 question. Ambiguous.

12 But you -- You can answer.

13 THE WITNESS: My -- My determination was  
14 based on the -- on the -- the reasoning outlined  
15 in the checklist. That's correct.

16 Q. (By Mr. Krugman) Okay. It was not based  
17 on any -- any specialized knowledge of fair use?

18 A. That's correct.

19 Q. And you're not a lawyer; is that correct?

20 A. That's correct. I'm not a lawyer.

21 Q. You've had no legal training?

22 A. I mean --

23 Q. Certainly in reference to copyright law?

24 A. That's correct.

25 Q. Have you taken any courses on copyright?

1           A.     No.

2           Q.     Have you taken courses on any other type  
3 of intellectual property?

4           A.     Not that I recall, and probably not.

5           Q.     If you can, please take a look at Exhibit  
6 2, which is the -- the checklist.

7           A.     Yes.

8           Q.     Now -- Yeah. You completed this  
9 checklist in Exhibit 2 on November 18th of 2010; is  
10 that correct?

11          A.     I completed this checklist. Yes.

12          Q.     Yeah. Okay. Why -- Why did you complete  
13 this checklist on November 18th of 2010 when the  
14 course that it relates to was taught in the fall of  
15 2009?

16          A.     I completed the checklist following a  
17 conversation with Georgia State counsel.

18          Q.     Okay. And I don't -- I don't want you to  
19 reveal any confidential communications that you  
20 had with -- with counsel. But you had a conversation  
21 with counsel and then -- and then filled out this  
22 fair use checklist?

23          A.     I had communication with counsel, and then  
24 I followed up -- I filled out the checklist.

25          Q.     And it was filled out because you were

1 asked to do so, correct?

2 MR. HARBIN: Objection. Just to preserve  
3 to the extent it calls --

4 MR. KRUGMAN: Yes.

5 MR. HARBIN: -- for privilege.

6 But as long as you don't claim waiver --

7 MR. KRUGMAN: No. I'm not.

8 MR. HARBIN: -- you can answer.

9 THE WITNESS: Yes.

10 Q. (By Mr. Krugman) Now in connection with  
11 the fall 2009 class, if you look at Exhibit 1, which  
12 is the syllabus for this class --

13 A. The overview. Yes.

14 Q. The overview. And there are -- Okay.  
15 There are a -- There are a number of readings. Do  
16 you see that?

17 A. (Witness nods head affirmatively.)

18 Q. And this is on Page 1 --

19 A. Oh, excuse me.

20 Q. -- first of all.

21 A. Oh, yes.

22 Q. And it says readings are available through  
23 the GSU library's Ereserves, go to a certain link,  
24 and provides the -- the password. And then you must  
25 bring a paper copy of the readings to class during

1 the relevant weeks.

2 Do you see that?

3 A. I see that.

4 Q. And the -- the works that you're referring  
5 to then are listed on the second page of the  
6 syllabus, which provides a schedule for the course  
7 and a variety of readings for each week?

8 A. Yes. The second page lists works  
9 that were on Ereserve.

10 Q. And each -- And I take it each of those  
11 readings that are reflected on Page 2 were required  
12 readings for the -- for the course --

13 MR. HARBIN: Objection.

14 Q. (By Mr. Harbin) -- is that correct?

15 A. That's -- That's correct.

16 Q. And it was your expectation that the  
17 students would be able to obtain electronic copy of  
18 these works using Georgia State's Ereserve system; is  
19 that correct?

20 A. That's correct.

21 Q. And then it was your expectation that  
22 the -- that the students would then print out a copy  
23 of that work each week and bring it with them to  
24 class; is that correct?

25 A. As the course evolved, students -- Some

1 students printed out work. Some students brought  
2 laptop computers and read the -- read the works on  
3 their computers. Both of those were acceptable.

4 Q. Okay. So it worked both ways. Some  
5 students had hard copies that they had printed out.  
6 Others simply had their laptops in class and --

7 A. That's correct.

8 Q. -- accessed the works electronically --

9 A. Uh-huh.

10 Q. -- is that correct?

11 A. That's correct. Yes.

12 Q. Now in the -- I -- I believe in response  
13 to Mr. Harbin's question that you -- with respect to  
14 what you did in the fall of 2009, you -- you --

15 Am I correct that you completed in the  
16 fall of 2009 a fair use checklist for -- for perhaps  
17 two of the works that are listed on Page 2 of Exhibit  
18 1?

19 A. To the best of my recollection, that's  
20 correct.

21 Q. Okay. And that would be -- Would the  
22 first two be -- be the Augustine's "City of God"?

23 A. I -- I was not doing them sequentially as  
24 I was entering them into the Ereserve system.

25 Q. Okay. Do you recall which works that are

1 listed on Exhibit 1 on Page 2 you completed a fair  
2 use checklist in the fall of 2009?

3 A. I -- I don't recall.

4 Q. Did you retain copies of the fair use  
5 checklist that you completed for works in the fall of  
6 2009?

7 A. I -- I don't believe so.

8 Q. Okay. Now you -- on Page 2 --  
9 On -- on Exhibit 2 -- I'm sorry --

10 A. Uh-huh.

11 Q. -- the fair use checklist says, "Complete  
12 and retain a copy of this checklist for each 'fair  
13 use' of a copyrighted work in order to establish a  
14 'reasonable...good faith' attempt at applying fair  
15 should any dispute regarding such use arise."

16 You see that?

17 A. Oh. This is in the --

18 Q. Yeah.

19 A. Yes. I see that. Yeah.

20 Q. That's the last full paragraph --

21 A. Uh-huh.

22 Q. -- above Factor 1.

23 And I take it you did not comply with that  
24 direction to complete and retain a copy of the  
25 checklist for each fair use of a copyrighted work?

1           A.     And please keep a copy of this checklist.

2                     That's correct.

3           Q.     Why not?

4           A.     I -- I used the -- My understanding of  
5 the intention of the checklist was that it provided  
6 reasoning that should be used in deciding what was  
7 appropriate to place on electronic reserve.

8                     I used the -- the reasoning outlined in  
9 the checklist in each decision I made about placing  
10 material on electronic reserve, and I felt that using  
11 that reasoning fulfilled the intent of -- of the --  
12 of the checklist.

13          Q.     Even though the checklist directed you to  
14 complete it and keep a copy for your records?

15          A.     I felt that I was complying with the  
16 intent of the checklist.

17          Q.     Okay. And how you did discern what the  
18 intent of the checklist was?

19          A.     I read the document, and I acted in a way  
20 that I felt was following what the document was  
21 essentially asking for.

22          Q.     Did you complete a fair use checklist  
23 in -- you know, prior to the fall 2009 semester for  
24 the Martha Nussbaum work that has been marked as  
25 Exhibit 4?



1           A.       I -- I used the reasoning outlined in  
2       the -- in the checklist when deciding whether to put  
3       the Nussbaum work on Ereserve. I don't recall, and  
4       I -- whether I completed a physical checklist.

5                 If this happened to be one of the first  
6       couple of works that I was using, I may have. I  
7       don't recall whether I did or not.

8                 THE COURT REPORTER: One?

9                 MR. KRUGMAN: One. Yes.

10                (Discussion ensued off the record.)

11                MR. KRUGMAN: Well, actually, why don't  
12       we -- why don't we -- There's enough confusion  
13       with overlapping --

14                MR. HARBIN: I've got a --

15                MR. KRUGMAN: -- exhibit numbers.

16                MR. HARBIN: -- copy of that marked. If  
17       you want to --

18                Is that the communication with the ERes?

19                MR. KRUGMAN: Yeah. I have a --

20                MR. HARBIN: -- on it?

21                MR. KRUGMAN: Yeah. I mean, we can mark  
22       it; but it will be a Defendant's -- a  
23       Plaintiff's exhibit, I guess.

24                MR. HARBIN: Yeah. Is it marked --

25                MR. KRUGMAN: Yeah.

1 MR. HARBIN: -- as --

2 MR. KRUGMAN: Yeah. But let's mark it as  
3 5 since that's --

4 MR. HARBIN: Lloyd 5. There, is that it?

5 MR. KRUGMAN: Yeah. Well, actually,  
6 there --

7 THE COURT REPORTER: At the top?

8 MR. KRUGMAN: Yeah. Well, actually, mark  
9 that as -- Yeah. Mark this one as five, and  
10 then mark that one as six.

11 (Plaintiff's Exhibits 5 and 6 were marked  
12 for identification.)

13 MR. KRUGMAN: Okay. That's five.

14 MR. HARBIN: Thank you.

15 MR. KRUGMAN: Yours is easier to read,  
16 though.

17 Q. (By Mr. Krugman) Professor Lloyd, let me  
18 first hand you what's been marked as Plaintiff's  
19 Exhibit No. 5 for the -- for your deposition.

20 And can you identify this document.

21 A. This is correspondence with the library  
22 Ereserve system where they're noting that in order to  
23 be in compliance with copyright issues, I should  
24 provide additional information to the library  
25 Ereserve's people.

1           Q.     And that's at the top where it says on  
2     July 15th, 2009.

3                     And I take it this is relating to the  
4     materials that were -- that you used in the Love,  
5     Religious and Philosophical Perspectives course; is  
6     that correct?

7           A.     That's correct. The library Ereserves  
8     is -- was not satisfied with the copyright issues  
9     surrounding -- surrounding that.

10          Q.     Yeah. And the library at that point said,  
11     Hi Professor Lloyd. We're working on your page. Can  
12     you please bring over the title page and copyright  
13     page of Love's Work by Gillian Rose? We need to have  
14     that information before we can post to your page.  
15     Thanks, ERes staff.

16          A.     That's correct.

17          Q.     Did -- What was your understanding as to,  
18     if any, as to why the library needed the -- the title  
19     page and copyright page --

20          A.     I don't --

21          Q.     -- for that work?

22          A.     I have no idea.

23          Q.     Okay.

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

25          Q.     You don't know?

1           A.     I don't know.

2           Q.     And then Plaintiff's Exhibit No. 6.

3           MR. KRUGMAN:   Do you have another copy of  
4           that, John?

5           MR. HARBIN:   Yeah.   Yeah.

6           MR. KRUGMAN:   Yeah.   Thank you.

7           Q.     (By Mr. Krugman)   And Plaintiff's Exhibit  
8           No. 6 is a subsequent communication that you had with  
9           the library staff regarding your request that certain  
10          materials be posted on Ereserve; is that correct?

11          A.     Yes.   That's correct.

12          Q.     And here the library on July 17th, 2009,  
13          said, Professor Lloyd, the -- the password for  
14          Religion one, oh -- 1000 is 1h87wekeF.

15                 That's the library advising you of the  
16          password that you could then inform the students of,  
17          so they would be able to access the works that were  
18          being posted on Ereserve; is that correct?

19          A.     The library is advising me of the password  
20          and raising these copyright issues.

21          Q.     Okay.   The copyright issues were before we  
22          can post the chapter by Gillian Rose, we will -- we  
23          will need a copy of the title page and copyright page  
24          of the book:   Love's Work.

25                 And that's essentially the request that

1 had been made on the -- two days earlier on July  
2 15th; is that correct?

3 A. That's correct.

4 Q. That's the -- and -- And they said,  
5 "Please bring copies by, and we will scan them."

6 There were no other concerns expressed by  
7 the library other than they wanted a copy of the  
8 title page and copyright page of the work; is that  
9 correct?

10 A. Not in this correspondence. That's  
11 correct.

12 Q. Okay. And there are no other concerns  
13 expressed by the library with respect to any of the  
14 works that you requested be posted on Ereserve for  
15 the fall of 2009 other than the library's request  
16 that it be provided a copy of the title page and  
17 copyright page?

18 A. I don't recall other concerns.

19 Q. Okay. And why don't we -- We can look  
20 on -- focusing on Exhibit 6 and -- and if you'll look  
21 at Exhibit 1 --

22 A. (Witness complies with request of  
23 counsel.)

24 Q. -- as well, which -- on Page 2 --

25 A. Uh-huh.

1           Q.     -- on Exhibit 6, you -- you represented to  
2     the library in your -- in your communication  
3     requesting works be posted on Ereserve with respect  
4     to the work by George Bataille, which was to be --  
5     which was a required reading for September 23rd and  
6     September 30th, that -- that you -- you advised the  
7     library that, "It falls under fair use according to  
8     the Fair Use Checklist I completed."

9                     Do you see that?

10          A.     I see that.

11          Q.     Did you, in fact, at the time you made  
12     this submission to the library complete a fair use  
13     checklist for that work?

14          A.     I don't recall. I recall using the  
15     reasoning outlined in the fair use checklist in order  
16     to determine whether I believed the work -- the --  
17     the selection fell under the fair -- under fair use.

18          Q.     But when you advised the library that you  
19     had completed a check -- a fair use checklist, in  
20     fact, it's possible you had not done so, correct?

21          A.     I don't recall whether or not I had --

22          Q.     Yeah.

23          A.     -- physically completed the checklist.

24          Q.     Okay.

25          A.     I recall using the guidelines.

1           Q.     Okay. And you -- The next work, Gillian  
2     Rose, you reported to the library that you had  
3     completed a checklist.

4                     And are -- Sitting here today, are you  
5     able to testify that, in fact, you had completed a  
6     fair use checklist for that work?

7           A.     I don't recall whether I completed the  
8     physical checklist. I do recall using the rationale  
9     outlined in the checklist in determining whether the  
10    selection fell under the fair use guidelines.

11          Q.     If you turn to the next page of Exhibit  
12    6 --

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

15          Q.     -- electronic books, there's a work by  
16    Plato. You said that you completed a checklist for  
17    that work. And I take it you don't recall one way or  
18    another sitting here today?

19          A.     I don't recall whether I -- I completed  
20    the physical checklist, although I do recall using  
21    the rationale in that checklist to determine whether  
22    that selection fell under the fair use guidelines  
23    that the university put forth.

24          Q.     Okay. Under the -- The next entry is  
25    actually the -- for the Martha Nussbaum work, "The

1     Fragility of Goodness," publisher, Cambridge  
2     University Press.

3             And when you -- When you advised the  
4     library that you had completed a fair use checklist  
5     for that work, in -- in fact, it is possible, if not  
6     likely, you hadn't -- you had not actually completed  
7     one for that work, but you had gone through the  
8     reasoning?

9             A.     That's correct.

10            Q.     And -- And would your answer be the same  
11     for all of the other works that are listed on Exhibit  
12     6 where you represented and reported to the library  
13     that you had completed a fair use checklist for those  
14     works, that, in fact, all -- for most, if not all of  
15     those, you had only engaged in the -- the reasoning  
16     behind the fair use checklist without actually  
17     completing?

18            A.     I mean, I recall completing a fair use  
19     checklist. I recall using the reasoning behind that  
20     checklist, so I mean, depending on how one interprets  
21     the phrase, I completed a fair use checklist. I  
22     mean, I completed a fair use checklist.

23                    I used that reasoning. For each reading,  
24     I completed a fair use checklist for readings in this  
25     course.



1           Q.     But you did not complete a checklist for  
2 each and every work that you offered in this course,  
3 correct?

4           A.     I don't recall.

5           Q.     Now you've testified earlier that you've  
6 completed it for a couple of works --

7           A.     (Witness nods head affirmatively.)

8           Q.     And then you used the reasoning --

9           A.     (Witness nods head affirmatively.)

10          Q.     -- for the remaining works, correct?

11          A.     I -- I believe that's what I said. Yeah.

12          Q.     Yeah. So, in fact, you did not complete a  
13 fair use checklist for all of the works, correct?

14          A.     I believe that's the case.

15          Q.     When you completed Exhibit 2, which was  
16 the fair use checklist for the Nussbaum work, what  
17 were you attempting to do when you filled out this  
18 checklist?

19                 Were -- Were you attempting to put  
20 yourself in the -- your shoes at -- back -- as back  
21 in the fall of 2009 --

22          A.     I --

23          Q.     -- with this --

24          A.     I mean, I --

25          Q.     -- or -- or were you -- or were you

1 looking at it, analyzing it anew in -- in November of  
2 2010?

3 A. I was attempting to re-create -- or in --  
4 In November of 2010, I was attempting to re-create  
5 the reasoning that I had used and the thinking that  
6 had gone into filling out this form when I originally  
7 filled it out -- or when I originally was -- was  
8 using -- using the reasoning.

9 Q. Using the reasoning, 'cause you didn't  
10 fill out the form for -- for Nussbaum back in the  
11 fall of --

12 MR. HARBIN: Objection.

13 Q. (By Mr. Krugman) -- 2009?

14 MR. HARBIN: Asked and answered several  
15 times.

16 Your answer again.

17 THE WITNESS: I mean, I don't recall.

18 Q. (By Mr. Krugman) On -- On Exhibit 2, the  
19 fair use checklist, under purpose and character of  
20 the use, you checked nonprofit educational and  
21 teaching, including multiple -- multiple copies  
22 for -- for classroom use.

23 Do you see that?

24 A. I see that. Yes.

25 Q. What, is -- What do you understand the

1 difference, if any, to be between those two factors?

2 A. I would imagine that nonprofit -- I mean,  
3 at the time I --

4 I mean, I believe that at the time I  
5 interpreted nonprofit educational to be in contrast  
6 to, for example, a for-profit college and teaching  
7 use to be in contrast to, say, research use or some  
8 other sort of nonteaching -- nonteaching use.

9 Not distinguishing the sort of  
10 institution, but rather, distinguishing the sort  
11 of -- sort of activity.

12 Q. Okay. So for -- for works that you wanted  
13 students -- or that for works that you wanted to make  
14 available to students on Georgia State's Ereserve  
15 system, because Georgia State is a nonprofit  
16 educational institution and you were a professor, an  
17 instructor at Georgia State, you would always check  
18 nonprofit educational and teaching; is that correct?

19 A. If the work was to be used in -- in a  
20 classroom setting, I would -- for instructional  
21 purposes, I would -- I would check teaching.

22 If it was to be used at Georgia State  
23 University, I would check nonprofit educational.

24 Q. And teaching?

25 A. I mean, I would --

1 MR. HARBIN: He said that. Yeah.

2 Q. (By Mr. Krugman) Okay. I -- I didn't  
3 hear the teaching.

4 You would always check those two boxes --

5 A. Uh-huh.

6 Q. -- if you were using it for a -- for a  
7 course taught at Georgia State, correct?

8 A. Yes. I mean, if I was using it in an --  
9 in an instructional -- like instructional way in a  
10 course, I would check teaching.

11 If I using it at Georgia State, I would  
12 check nonprofit educational.

13 Q. You also -- well, can you think of any  
14 instance where -- If you were using a particular  
15 work for a course you were teaching at Georgia State,  
16 can you think of any instance where you would not  
17 check both of those boxes?

18 A. I cannot think of an instance where I  
19 would not check nonprofit educational.

20 There are scenarios where teaching, I  
21 might find ambiguous; and I --

22 So, for example, if there was a -- a final  
23 project that students were assigned to do and they  
24 were to look at, you know, one of, you know, 10 or 15  
25 different works as part of a research project, I

1 mean, there -- there are cases where I would be sort  
2 of uncertain about whether to check teaching.

3 But I -- I would definitely be -- check --  
4 I would -- I would in all cases teach nonprofit  
5 educational.

6 Q. Yeah. And the possible exception for  
7 teaching, that is if the -- if there were multiple  
8 works that the students were to utilize for research?

9 A. Yeah. For research, yes.

10 Q. And if that were the case, presumably you  
11 would then check the third box research --  
12 research or -- or scholarship?

13 A. That's correct.

14 I -- I should say, I mean, my -- one --  
15 The exception that I stated to the teaching, it was  
16 not exhaustive. I might think of --

17 I mean, if I were to think about it  
18 longer, there might be other scenarios where teaching  
19 was not the primary purpose; but that was one  
20 example.

21 Q. Okay. Now sitting here today, that's only  
22 the example you can think of --

23 A. Well --

24 Q. -- okay, if you were using a particular  
25 work for a course that you were teaching at Georgia

1 State and wanted that work to be available to  
2 students on Georgia State's electronic reserve  
3 system?

4 A. Now there -- there are cases where in  
5 graduate courses, I want to provide students with a  
6 background information that might not be part of the  
7 teaching of that class. It might be related to  
8 broader topics than -- than the specific material of  
9 the class, which would not necessarily be  
10 teaching-related and not necessarily be research- or  
11 scholarship-related.

12 So that would be another case where it --  
13 I would think it would be ambiguous, right, whether I  
14 would check teaching.

15 Q. Have you ever completed a fair -- a fair  
16 use checklist or gone through the reasoning behind  
17 the fair use checklist and not concluded that a  
18 particular work was both for nonprofit educational  
19 and for teaching, including multiple copies for  
20 classroom use?

21 A. I don't recall a case where that's --  
22 where that's so --

23 Q. You also checked under Factor 1 "Use is  
24 necessary to achieve your intended educational  
25 purpose."

1                   Why did you check that box?

2           A.     I thought about the goals of the course  
3     and how the Nussbaum selection tied in with the goals  
4     of the course and concluded that the Nussbaum  
5     selection was -- and the other selections were --

6                   Well, the Nussbaum selection, because this  
7     is -- this -- this checklist is relating to the  
8     Nussbaum selection, was necessary to achieve the  
9     intended educational purpose.

10          Q.     Okay. There are boxes on the left, one  
11     for "Transformative, use changes work for new utility  
12     or purpose"; and on the right, "Non-Transformative."

13                   What do you understand the term  
14     "transformative" to mean?

15          A.     That my use of -- of the -- the selection  
16     would do something with it other than what Nussbaum  
17     intended when she was writing -- writing the work.

18          Q.     Was -- was --

19          A.     Yeah, yeah. That -- That it would be  
20     sort of significantly altering the way that Nussbaum  
21     intended that -- that her -- that Nussbaum could  
22     envision her work being -- being used.

23          Q.     Do you believe simply providing a copy of  
24     the -- of that chapter from Nussbaum's work, that --  
25     for which this fair use checklist relates was

1 transformative of the work?

2 A. I -- I don't believe it would reach that  
3 threshold of significantly changing the purpose for  
4 which Nussbaum thought it would be used.

5 Q. Is Exhibit 4 -- I mean, Exhibit 4 was  
6 what was provided to students, correct, at least in  
7 electronic form?

8 A. I believe so.

9 Q. All right. This is simply a copy of that  
10 chapter from Nussbaum's book, correct?

11 A. Yes.

12 Q. Yeah. Is there any way that simply  
13 providing a copy of a chapter from Professor  
14 Nussbaum's work could be anything other than  
15 nontransformative?

16 MR. HARBIN: Object to the extent it calls  
17 for a legal conclusion, but you can answer.

18 THE WITNESS: While I concluded that there  
19 was not a significant change in the way that  
20 Nussbaum intended her chapter to be used, I also  
21 do not conclude that there was absolutely no  
22 change in the way that the -- the work was being  
23 used.

24 Nussbaum's project as a whole in -- in  
25 "Fragility of Goodness" is a wide-ranging



1 re-evaluation of ancient Greek ethics. In our  
2 course we were not thinking about the context of  
3 ancient Greek ethics. We were not thinking  
4 about the context of -- of Plato's work.

5 We were only thinking about very  
6 specific -- specific work that Nussbaum talks  
7 about in a different context than Nussbaum  
8 was -- was envisioning. We were thinking about  
9 the tradition of reflection on love in -- in  
10 western thought, which was not Nussbaum's  
11 purpose in writing that chapter.

12 So while I -- I didn't think that the --  
13 the change was significant, I also did not think  
14 that there was no change whatsoever, so I  
15 neither checked transformative nor  
16 nontransformative.

17 Q. (By Mr. Krugman) Do you know what  
18 Nussbaum's intention was with respect to the use of  
19 that work?

20 A. I mean, I -- I can -- I -- I have views  
21 about that. I don't -- I don't know for certain.

22 Q. You don't know. So you really were not  
23 able, at least under your definition of whether a  
24 particular work was transformative or  
25 nontransformative, you -- you really don't --

1           It's all speculation on your part as to  
2       what Nussbaum's intention was?

3           MR. HARBIN: Object to the form of the  
4       question.

5           You can answer.

6           THE WITNESS: I mean, as an academic who  
7       publishes with university presses, who publishes  
8       in the same field as Nussbaum, I felt confident  
9       that I could reasonably understand Nussbaum's  
10      intention in this chapter.

11           (Plaintiff's Exhibit 7 was marked for  
12      identification.)

13           THE WITNESS: Thank you.

14           Q.       (By Mr. Krugman) Okay. Is Exhibit 7 a  
15      copy of your CV?

16           A.       Yes.

17           Q.       And I -- I show -- I show it to you only  
18      because of what you just mentioned, that you've --  
19      you've -- You have published a great deal; is that  
20      correct?

21           A.       I mean, I have published a number of  
22      academic works. That's correct.

23           Q.       Yeah. Two books that are referenced on  
24      the first page, "The Problem With Grace:  
25      Reconfiguring Political Theology."

1                   And what's -- What's the subject of that  
2 work?

3           A.     I -- That work deals with the philosophy  
4 of religion and specifically how issues raised in the  
5 philosophy of religion can address contemporary  
6 religious and political concerns.

7           Q.     And -- And then there's another book,  
8 "Law and Transcendence on the Unfinished Project of  
9 Gillian Rose." And that's a work that was published  
10 two years ago.

11          A.     That's correct.

12          Q.     And what was the subject matter of that  
13 book?

14          A.     I was examining the work of Gillian Rose,  
15 a British philosopher and social theorist, against  
16 the background of more recent work in contemporary  
17 philosophy.

18          Q.     Okay. Were the -- Are these books  
19 considered nonfiction?

20          A.     I hope so. Yes.

21          Q.     Yes. That although nonfiction these books  
22 contain your original analysis on the subject matter  
23 of the books; is that correct?

24          A.     That's correct.

25          Q.     And they're -- The books are not simply a

1 recitation of facts; is that correct?

2 A. That's correct.

3 Q. And would you consider the -- the -- your  
4 expression and analysis in these books to be  
5 creative?

6 A. I -- I -- Can you say more about what you  
7 mean by creative.

8 Q. Well, I mean, it's -- It's not simply a  
9 recitation of facts. You've -- You've undertaken  
10 some analysis; and hopefully, in a way that others in  
11 the past have not thought about?

12 A. That's correct.

13 Q. In -- In fact, it's your hope that --  
14 that scholars reading these books would consider them  
15 to be highly creative?

16 A. Creative is a difficult term in academia.  
17 Right. In one sense one wants to be faithful to the  
18 works one is analyzing, but also to offer novel  
19 interpretations, so I'm not sure -- I am not sure  
20 whether I would embrace the word "creative," but I  
21 think the spirit of your question.

22 Q. Certainly novel, was your -- was your --  
23 that was your goal?

24 A. To -- I mean, again, novel is a -- is a  
25 complicated word. Right. In the sense that if one

1 is writing a book about Gillian Rose, who's a, you  
2 know, a significant figure from twentieth century  
3 British philosophy, one, you know, wants to be  
4 faithful to interpreting what she -- she was saying  
5 and the significance of her work.

6 You know, if that interpretation is  
7 novel -- I mean, if that interpretation was not  
8 offered before, that would be praiseworthy.

9 Q. And you've also -- Turning to the second  
10 page, you've -- you've authored many articles and  
11 chapters as well --

12 A. That's correct.

13 Q. -- that are referenced on Page 2 of  
14 Exhibit 7.

15 And would it be fair to say that these  
16 articles and chapters also were works of nonfiction  
17 as distinguished from fiction?

18 A. Yes. That's correct.

19 Q. And -- And I -- I take it, it was your at  
20 least hope that's these -- these works contain your  
21 original analysis on the -- on the subject matters of  
22 each of the works?

23 A. Yes.

24 Q. Now okay. There -- There are certainly a  
25 number of benefits to having -- as a -- you know, as

1 a -- as a scholar having your works published and  
2 then made available to the others in the field of  
3 your expertise.

4 A. There -- There are benefits to having  
5 your work disseminated.

6 Q. Yeah. One is that it benefits your  
7 reputation, is that correct, hopefully?

8 A. That's correct. Yeah.

9 Q. It's beneficial for career advancement; is  
10 that correct?

11 A. The dissemination of one's works is  
12 beneficial to career advancement.

13 Q. It's hopefully promotive of gaining tenure  
14 at a university?

15 A. That's often the case.

16 Q. Yeah. Did you obtain tenure at Georgia  
17 State?

18 A. I -- I'm only in my third year. At  
19 Georgia State I would not go for tenure for  
20 another --

21 Q. All right. Okay. And your -- when --  
22 When does your employment with Georgia State end?

23 A. We're in negotiations for -- between the  
24 two institutions as to when the date of employment  
25 will end at one and start at the other.

1           Q.     Okay. Okay. So the Georgia State and  
2           Syracuse University are in negotiations as to when  
3           your employment with Georgia State will end and --

4           A.     The three parties are in discussions, me  
5           being one of the parties.

6           Q.     With you being one of the three parties?

7           A.     Yes.

8           Q.     What is your expectation as to when  
9           your --

10          A.     I mean --

11          Q.     -- employment will end?

12          A.     -- the negotiations are at somewhat of an  
13          impasse at the moment; but I mean, Syracuse wants me  
14          to start, wants me to be teaching in the fall. There  
15          are just issues like health insurance and so on; and  
16          we have to figure out when they -- when one stops and  
17          when the other starts.

18          Q.     Okay. So -- So Syracuse wants you there  
19          to teach in the fall --

20          A.     As soon as possible.

21          Q.     -- 2011 semester?

22          A.     They want me to -- They want me in  
23          Syracuse as soon as possible. Georgia State would  
24          prefer for me to be at Georgia State as long as  
25          possible.

1           Q.     Okay.  So there's currently an impasse  
2     between -- among the three on -- on --

3           A.     We --

4           Q.     -- the issue?

5           A.     We have not as yet reached a resolution.

6           Q.     When do -- When do you anticipate a  
7     resolution?

8           A.     Next week.

9           Q.     Okay.  So even though there's an impasse,  
10    you expect that to be resolved next week?

11          A.     I mean, I -- I expect that the date of the  
12    end of employment will be determined quite soon.  
13    Well, probably next week.

14          Q.     What is your expectation as to what the  
15    end of your employment at Georgia State will be, if  
16    you have an expectation?

17          A.     I mean, Georgia -- I -- I do not  
18    currently have an expectation, that it is unclear to  
19    me.  These, you know, legal and financial issues are  
20    opaque to me.

21          Q.     So it's certainly possible that you'll --  
22    that -- You're currently employed by Georgia State?

23          A.     I'm currently on leave from Georgia State.  
24    I'm not currently teaching at Georgia State, and I'm  
25    not currently in residence or have any administrative



1 obligations at Georgia State.

2 I'm currently on leave teaching at Emory  
3 University.

4 Q. Okay. Who provides your health  
5 insurance --

6 A. Georgia --

7 Q. -- currently?

8 A. -- State currently does. I mean, my -- my  
9 contract with Georgia State is -- Well, I don't know  
10 how much detail we need about this, but my --

11 Georgia State employs people -- does not  
12 employ people over the summer, so my contract with  
13 Georgia State is ending at the end of -- I believe  
14 it's a nine-month or a ten-month contract.

15 So my Georgia contract is ending and will  
16 not be renewed; but the summer is a sort of  
17 ambiguous, administratively ambiguous period.

18 Q. Yeah. When does the contract end?

19 A. I -- my -- I believe it's either early  
20 May or mid-May, but I'm not absolutely sure.

21 Q. Do you have a copy of the contract?

22 A. Not with me.

23 Q. I take it you could provide counsel with a  
24 copy?

25 A. I believe counsel could obtain a copy.

1 Yes. We could provide.

2 Q. What's your -- Where do you reside?  
3 What's your -- what -- What's your residence  
4 address?

5 A. 215-A Mitchell Street, Apartment 9,  
6 Atlanta, Georgia 30303.

7 Q. And that's in downtown Atlanta?

8 A. That's correct.

9 Q. Located close to the university or  
10 relatively close to the university; is that --

11 A. Yes.

12 Q. -- correct?

13 A. That's correct.

14 Q. Is that an apartment?

15 A. Yes. That's correct.

16 Q. And do you have a lease for that  
17 apartment?

18 A. Yes.

19 Q. When does that lease --

20 A. May 1st.

21 Q. It expires May 1st?

22 A. That's correct.

23 Q. Why are you leaving Georgia State for  
24 Syracuse?

25 A. A combination of -- I mean, the -- the

1 opportunity -- Syracuse has a very strong religion  
2 department, and I'm looking forward to joining that  
3 department.

4 Q. If you go back to Exhibit 2 --

5 A. Plaintiff's or Defendant's?

6 Q. Yeah. Defendant's Exhibit 2. I'm sorry.

7 A. Okay. So going back. Well --

8 Q. It's the fair -- fair use checklist --

9 A. Uh-huh.

10 Q. -- again; and for Factor 1, there were  
11 three in favor and -- in favor of fair use and none  
12 against; is that correct?

13 A. That's correct.

14 Q. Okay. On Factor No. 2, you checked  
15 published work?

16 A. That's correct.

17 Q. And factual or nonfiction work, you -- you  
18 checked both those two boxes?

19 A. That's correct.

20 Q. And could there -- Could you envision any  
21 instance where you were using a published work of --  
22 of nonfiction where you would not check both of those  
23 two boxes in connection with a fair use determination  
24 utilizing the fair use checklist?

25 A. If I understood the word -- work to be

1 published, I would check published. If I understood  
2 the work to be factual or nonfiction, I would check  
3 factual --

4 Q. Okay.

5 A. -- or nonfiction.

6 Q. So for a published nonfiction work, you  
7 would always check those two boxes, correct?

8 A. That's correct.

9 Q. All right. And -- And I take it you  
10 would also not -- you would not check unpublished  
11 work, which is on the right, because it was  
12 published, correct?

13 A. If a work was --

14 Q. Yeah.

15 A. -- published, I would check published.

16 Q. Would you check -- What do you understand  
17 the highly creative work factor to mean on the  
18 right -- right-hand column of Factor 2?

19 A. I mean, I -- I take the examples art,  
20 music, novels, films, plays, poetry, fiction to be  
21 illustrative, but not exhaustive of what that would  
22 mean; and I mean, I find them fairly straightforward.

23 Q. Okay. Is it your understanding under  
24 the -- under this checklist that a work of nonfiction  
25 could never satisfy the highly creative work

1 criterion?

2 A. No. I could imagine in a case where I  
3 would check both nonfiction and highly creative.

4 Q. Did you do that with any of the fair use  
5 checklists you -- that you either physically  
6 completed or considered in connection with any works  
7 that you made available to students?

8 A. Not that I recall.

9 Q. Okay. Is there any reason that you  
10 concluded the Nussbaum work not to be highly  
11 creative?

12 A. Given the examples provided of highly  
13 creative works, I did not see -- I did not understand  
14 Nussbaum's work to be -- to have a family resemblance  
15 or to be generally similar to -- to those.

16 Q. And the examples are listed  
17 parenthetically --

18 A. Yes.

19 Q. -- art, music, novels, films, plays,  
20 poetry, fiction?

21 A. That's correct. I did not consider it to  
22 be creative nonfiction. I did not consider it to be  
23 highly creative nonfiction either.

24 Q. Perhaps creative, but not highly creative?

25 A. As I mentioned when we were speaking about

1 the term "creative" earlier, creative is a very  
2 difficult term and -- in academic and especially  
3 philosophical writings, and it's one that would only  
4 be used in sort of special cases in referring to a  
5 philosophical work, for example.

6 Q. You also checked important to educational  
7 objectives. You see that under -- under Factor 2?

8 A. Yes. I see that.

9 Q. And why did you check that box?

10 A. When I was considering specific to this  
11 course and the design of this course and my stated  
12 description of this course how I -- what I wanted the  
13 students to understand at the end of the day, at the  
14 end of -- at the end of the semester, I understood  
15 Nussbaum's work to be important to achieving that.

16 Q. Okay. You had -- you -- We noted earlier  
17 that you had -- that when you completed this in  
18 November of 2009, you checked use is necessary to  
19 achieve your intended educational purpose under  
20 Factor 1?

21 A. November of 2010?

22 Q. I'm sorry. 2010. Yes.

23 A. Use is necessary to achieve your intended  
24 educational purpose. That's correct.

25 Q. Yeah. Can you -- Can you think of an

1 instance in which you would not check important to  
2 educational objectives under fair -- under Factor 2  
3 if you had checked use is necessary to achieve your  
4 intended educational purpose under chapter -- under  
5 Factor 1?

6 A. As I stated when we were discussing the  
7 important -- what important to educational objectives  
8 means, I interpret this as being specific to the  
9 course description and the constellation of issues  
10 laid out in the course, whereas when we were speaking  
11 about use is necessary to achieve your intended  
12 educational purpose, I believe I said or I intended  
13 to say something more like, you know, the broad goals  
14 that might be achieved in -- in this course.

15 So, for example, if -- you know, this --  
16 This course specifically, you know, is about love;  
17 but it's also a part of a -- a honors freshman  
18 seminar which is intended to provide the students  
19 with a orientation to what it means to take a  
20 university class.

21 So if there are -- were sort of background  
22 readings about, say, you know, students, what it  
23 means to be in your first year at a university,  
24 right, I might consider that, you know, part of the  
25 educational purpose of the course, because the course

1 is this broader scope educational purpose, but not  
2 the narrow scope of the objectives, which sometimes  
3 in my syllabi, I state explicitly. This time,  
4 they're more implicit in the description of the  
5 course.

6 Q. With -- with -- that was a long -- long  
7 answer that I'm not quite sure --

8 A. Broad scope versus narrow scope. Right.

9 Q. -- responded to the question.

10 But can you -- Sitting here today, can  
11 you think of any instance where you -- for any fair  
12 use checklist that you either physically or mentally  
13 completed where you checked use is necessary to  
14 achieve your intended educational purpose, but did  
15 not check important to educational --

16 A. I don't --

17 Q. -- objectives?

18 A. -- recall one way or the other.

19 Q. Under Factor 3 you checked small portion  
20 of work used.

21 Well, first of all, before we go on, under  
22 Factor 2 it was three -- three ways in favor of fair  
23 use and zero against; is that correct?

24 A. That's what I checked. That's correct.

25 Q. Under Factor 3 you checked small portion



1 of work used. How did you make that determination?

2 A. I -- I considered that one chapter of  
3 a -- of Nussbaum's quite weighty book would be a  
4 small portion. I didn't -- Yeah.

5 Q. Yeah. What if you had used two chapters,  
6 would that have qualified as a small portion?

7 A. I --

8 MR. HARBIN: Object to the extent it calls  
9 for speculation.

10 You can answer.

11 THE WITNESS: Yeah. I'm not sure.

12 Q. (By Mr. Krugman) Did -- do you know  
13 what -- Is there any threshold above which the use  
14 of a particular work is no longer a small portion at  
15 least as you understand the fair use checklist and  
16 the policy on copyright at Georgia State?

17 A. I -- I was aware of the previous  
18 guidelines; and I mean, I was generally aware. I  
19 didn't remember the specifics -- specifics of the  
20 previous guidelines, but I mean, I -- I mean, I -- I  
21 wouldn't imagine if I was putting a third of a work  
22 on reserve, that would not be a small portion.

23 Q. What were the previous guidelines?

24 A. I believe it was something like one  
25 chapter or a percentage.

1           Q.     All right. Do you know what the  
2 percentage or do you recall what the percentage was?

3           A.     I don't recall precisely. It was greater  
4 than 10 percent.

5           Q.     Okay. Was it your understanding that the  
6 previous guidelines did not apply under the new  
7 policy and fair use checklist?

8           A.     My understanding was that the fair use  
9 checklist was what should be used in determining  
10 whether materials should be put on Ereserve or not.

11          Q.     And that if you completed it and it -- the  
12 factors weighed in favor of fair use, then you were  
13 allowed to use --

14          A.     Yes.

15          Q.     -- the work?

16          A.     That was my understanding.

17          Q.     You also checked amount taken as narrowly  
18 tailored to educational purpose such as criticism,  
19 comment, research, or subject being taught. What do  
20 you understand that subfactor to mean?

21          A.     There was a lot of material in Nussbaum's  
22 book which was not related to the topic of the  
23 course. I only chose the material which was related  
24 to the topic of the course.

25          Q.     And under Factor 3, there were two for --

1 two weighing in favor of fair use and zero against;  
2 is that correct?

3 A. That's what I checked. That's correct.

4 Q. Okay. Under Factor 4, effect on market  
5 for original, in response to Mr. Harbin's questions,  
6 you've indicated that you had checked that use  
7 stimulates market for original work.

8 Do you see that?

9 A. Yes.

10 Q. What was the market for the original work  
11 that you considered?

12 A. I imagine that students in my course might  
13 be introduced to Nussbaum's work in the course, and  
14 it was possible that they could purchase -- that they  
15 might purchase Nussbaum's book either during the  
16 course or at a later point.

17 Q. Do you know of any student who purchased  
18 Nussbaum's work?

19 A. I am not aware of -- of any student who  
20 purchased Nussbaum's work.

21 Q. I think you had testified earlier that you  
22 believe that some students may have purchased works  
23 that --

24 A. I -- I said generally in my teaching  
25 career; and specifically, you know, this semester,

1 I've had a student who has purchased a book based  
2 on -- after having read an excerpt in -- in course.

3 Q. Yeah. Do you know of any student that  
4 purchased any of the works that were posted on  
5 Ereserve for the Religion 1000 class that you taught  
6 during the fall semester of 2009?

7 A. No student spoke with me about their book  
8 purchases.

9 Q. Yeah. Does the market that you considered  
10 include a market for licensing or permissions for  
11 works?

12 A. That was not a primary factor in my -- in  
13 my thinking.

14 Q. Did you -- Did you undertake any  
15 investigation to determine whether licensing or  
16 permissions were available for the Nussbaum work that  
17 you requested the library to make available to  
18 students on the electronic reserve system?

19 A. I did not investigate licensing  
20 possibilities.

21 Q. So when you didn't check the licensing or  
22 permission reasonably available box, that was because  
23 you had undertook no investigation to determine  
24 whether that factor might apply; is that correct?

25 A. I -- I did not. I mean, as an academic

1 at Georgia State, I'm generally aware of what's  
2 happening in the academic community; and I was not  
3 aware of easy -- Or I was not aware of reasonably  
4 available licensing or permission opportunities  
5 for -- for this work.

6 Q. Did you -- But you didn't -- You didn't  
7 ask anyone whether licensing or permissions for this  
8 work were reasonably available?

9 A. I -- I did not go beyond my understanding  
10 as a -- a academic working in the academic community  
11 in investigating that. No, no.

12 Q. Did you ask anyone at the library?

13 A. I did not go beyond my general  
14 understanding as a member of the academic community.

15 Q. When -- how did -- During 2009 you  
16 learned that Georgia State had adopted a new policy  
17 on copyright that included the checklist that's been  
18 marked as Exhibit 2; is that correct?

19 A. I don't recall when I learned that.

20 Q. You -- You do recall at some time  
21 learning of a new policy --

22 A. Yes.

23 Q. -- that included the fair use checklist --

24 A. Yeah.

25 Q. -- which had not been a part of the policy

1 in the past?

2 A. That's correct.

3 Q. How did you learn about that new policy?

4 A. I believe there was a -- I mean, it's  
5 likely that there was an e-mail. I don't recall  
6 exactly.

7 Q. Were you provided a copy of the new  
8 policy?

9 A. It's likely that there was a link to the  
10 new policy in the e-mail, but I don't recall exactly.

11 Q. And do you recall who told you? I mean,  
12 who -- who sent the e-mail that you recall?

13 A. I don't recall. Yeah.

14 Q. Did you undergo any training with respect  
15 to the new policy?

16 A. I don't recall any sort of in-service  
17 training.

18 Q. Okay. Do you recall meeting with anyone  
19 within the legal affairs department at Georgia State  
20 in reference to the new policy --

21 A. I --

22 Q. -- at or about the time it was adopted?

23 A. I don't recall that.

24 Q. Did you read a copy of the policy when it  
25 was --

1           A.     I mean, I recall --

2           Q.     -- enacted?

3           A.     -- following the links in the -- I mean,  
4     to my -- To the best of my recollection, I -- I  
5     remember seeing an e-mail, following the links, and  
6     taking a look at -- at what was posted on the website  
7     regarding the new policy.

8           THE COURT REPORTER:   Eight.

9           MR. HARBIN:   Yeah.

10           (Plaintiff's Exhibit 8 was marked for  
11     identification.)

12           THE WITNESS:   Yeah.   Thank you.

13           MR. KRUGMAN:   You're welcome.   Just hand  
14     you there.

15           Q.     (By Mr. Krugman)   Can you identify Exhibit  
16     8 as the policy on the use of copyrighted works in  
17     education and research that -- that the university  
18     adopted at least or was adopted, at least, sometime  
19     prior to your fall 2009 course?

20           A.     Yes.   This is it.

21           Q.     And did you review the policy at or about  
22     the time it was adopted?

23           A.     Yes.

24           Q.     If you turn to page -- up at the top, Page  
25     13 of 19.

1           A.     (Witness complies with request of  
2 counsel.)

3           Q.     And there's a page on permissions.

4           A.     Uh-huh.

5           Q.     And do you recall reviewing that page in  
6 connection or -- or following the adoption of the new  
7 policy?

8           A.     Now I -- I recall generally looking at  
9 this document. I don't recall more than that.

10          Q.     Yeah. If you turn over two pages to Page  
11 15 of 19 --

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

14          Q.     -- and the reference to collective  
15 licensing agencies, and you see for works in print a  
16 copyright clearance center, that the CCC should be  
17 your starting point. If you're looking to get  
18 permission for a text-based work, the CCC can grant  
19 permission for thousands of work -- works, many  
20 instantly on-line.

21                   Do you see that?

22          A.     I see that on this document.

23          Q.     Yeah. Did you undertake to contact the  
24 copyright clearance center to determine whether a  
25 license -- a license or permission was available for



1 the Nussbaum work?

2 A. I did not.

3 Q. And did you do that for any of the works  
4 that you requested?

5 A. No. I did not.

6 Q. And why not?

7 A. I was following general academic practice  
8 which I had seen as an undergraduate at Princeton and  
9 as a graduate student at Chicago and Berkley and as a  
10 instructor in the Indiana University system and the  
11 University of California system where that was not  
12 part of the standard procedure.

13 Q. Okay. So you didn't do it because it  
14 wasn't done at other universities?

15 A. I was following the standard academic  
16 procedure as I understood it.

17 MR. HARBIN: Can we go off the record for  
18 a second.

19 THE WITNESS: Sure.

20 MR. HARBIN: If you've got much longer,  
21 could we take a short break. Oh.

22 THE VIDEOGRAPHER: I'm sorry. 10:30 a.m.  
23 Off the record.

24 (Discussion ensued off the record.)

25 THE VIDEOGRAPHER: 10:30 a.m. Back on the

1 record.

2 Q. (By Mr. Krugman) Professor Lloyd, you did  
3 not check numerous copies made or distributed under  
4 Factor 4, effect on market for original.

5 A. Yes. That's --

6 Q. Now --

7 A. -- correct.

8 Q. Now -- Now these copies, there were  
9 certainly numerous copies made available at least  
10 electronically to all of the students in your -- in  
11 your class on the Ereserve system; is that correct?

12 A. I would not characterize 15 as numerous  
13 but --

14 Q. What -- What would you characterize as  
15 numerous?

16 A. I don't have a fixed number in mind, but I  
17 would not characterize a small seminar as numerous  
18 copies.

19 Q. Okay. So that whether that -- At least  
20 as you understand the policy, whether that box would  
21 be checked would depend upon the size of the class?

22 A. That would depend on the size of -- the  
23 number of individuals who had access to the  
24 documents. That would be my understanding.

25 Q. Okay. So at some point, it would be --

1 It would become numerous, but you just -- You have  
2 no understanding as to what that number is?

3 A. I mean, I have an understanding as to what  
4 numerous is. I don't have a specific number in mind.

5 Q. And what would be numerous?

6 A. Again, I don't have a specific number in  
7 mind. I would become concerned if there were a  
8 thousand people. I would not be concerned if there  
9 were five people. Beyond that I -- I mean, I don't  
10 have a specific number in mind.

11 Q. Do you know what a course pack is?

12 A. Yes. I do.

13 Q. And what is a course pack?

14 A. It is a compilation of articles or  
15 readings put together for a specific class.

16 Q. And those are actually physical copies of  
17 the readings?

18 A. Physical copies. That's correct.

19 Q. Yeah. And at least with respect to the  
20 Religion 1000 class, there were numerous readings  
21 that were provided to students, but not --

22 A. I -- I would not characterize the number  
23 of readings as numerous. Again, the number of  
24 readings is perhaps 15 or so --

25 Q. Okay.

1           A.     -- which as we stated earlier, I don't  
2 consider numerous.

3           Q.     Okay. I think we were talking numerous in  
4 terms of the number of students in -- in the class,  
5 but I was -- Here I was talking about the number of  
6 works --

7           A.     Right.

8           Q.     -- that were made?

9           A.     And I was saying 15, in general, I don't  
10 consider numerous.

11          Q.     Okay. There were a number -- number of  
12 works made available electronically?

13          A.     That's correct.

14          Q.     And these works could have been provided  
15 to the students as a course pack; is that correct?

16          A.     That -- I believe so.

17          Q.     Yeah. And the difference would have been  
18 one would be in electronic form and the other in  
19 paper form --

20          A.     That's --

21          Q.     -- is that correct?

22          A.     -- one of the differences. Yeah.

23          Q.     Is it your understanding the students  
24 would purchase the course pack --

25          A.     I mean --

1 Q. -- from the bookstore?

2 A. Or read it in the library or however they  
3 were going to do it. I have not used a course pack  
4 at Georgia State.

5 Q. Okay. All right. You understand -- have  
6 any understanding with respect to the use of course  
7 packs whether the -- whether the publisher of the  
8 book or the -- or other owner of the copyright  
9 receives any -- any fees with connection with the use  
10 of the course pack materials?

11 A. I have not used course packs at Georgia  
12 State. I -- I don't know the -- the policies for  
13 course packs.

14 Q. So you have no understanding one way or  
15 another whether any fees or permissions are paid for  
16 use of the works that are compiled as a part of the  
17 course pack material?

18 A. I wouldn't want to speculate.

19 Q. So the answer is no?

20 MR. HARBIN: Yeah. Just say. If you  
21 don't know, say you don't know.

22 THE WITNESS: No.

23 Q. (By Mr. Krugman) Which is fine. Which is  
24 fine. I'm not asking you to -- to speculate.

25 Now did you teach this course only once?

1           A.     Yes.

2           Q.     Okay. And earlier you testified that  
3 you -- you checked the -- the last two boxes on  
4 Factor 4 so -- and, also, the check for required  
5 classroom reading. So in this instance there were  
6 three in favor of fair use, and one's against?

7           A.     That's what I checked.

8           Q.     Yeah. Now by the time you -- you got to  
9 the fourth factor, you had already concluded three  
10 factors weighed factor -- in favor of fair use, is  
11 that correct -- Factors 1, 2, and 3?

12          A.     That's correct.

13          Q.     So the -- Whatever conclusions you reach  
14 under the fourth -- fourth factor would not impact  
15 your overall conclusions in any event as to whether  
16 the work could be used?

17          A.     I mean, it -- I'd have to review the  
18 guidelines here to see how they wanted us to -- to  
19 decide that.

20          Q.     Yeah. Well, to help you, see under the  
21 instruction where the factors favoring fair use  
22 outnumber those against it, reliance on fair use is  
23 justified.

24          A.     Okay.

25          Q.     So if you --

1           A.     Uh-huh.

2           Q.     So if Factors 1, 2, and 3 weigh in favor  
3 of fair use, what you conclude with respect to the  
4 fourth -- fourth factor is irrelevant to your overall  
5 conclusion, at least as you understand the fair use  
6 checklist to operate?

7           A.     That does appear to be what -- Yeah.  
8 Yes.

9           Q.     Have you ever completed either physically  
10 or mentally a fair use checklist where you concluded  
11 that use of the particular use -- use of the  
12 particular work was not fair use?

13          A.     No. I haven't.

14          Q.     Did you consult with anyone about the fair  
15 use checklist that you completed?

16          A.     No.

17          Q.     And just -- I know you -- I believe you  
18 answered this, but just so I -- Just to make it  
19 clear, you -- you undertook no training in the new  
20 copyright policy with anyone at Georgia State after  
21 it was adopted?

22          A.     I don't recall that. Yeah.

23          Q.     Does -- Has anyone attempted to serve you  
24 with a subpoena to appear at trial in this case  
25 beginning in May -- beginning on May 16th of 2011?

1           A.       Not that I'm aware of.

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

3           REDIRECT EXAMINATION

4           BY MR. HARBIN:

5           Q.       Well, Professor, I just have one  
6           logistical detail question about the library and the  
7           Ereserve system.

8                   You were asked some questions about if the  
9           library had determined -- If the library staff had  
10          determined in their view a proposed excerpt did not  
11          fall within fair use, would you request that they  
12          take it off. Now is it --

13                   In your understanding, if the library  
14          staff determined that one of your proposed excerpts  
15          for a class did not constitute fair use, what would  
16          happen?

17                   Specifically would it ever be uploaded to  
18          the Ereserve system?

19          A.       They would not post it.

20                   MR. HARBIN:   Okay.   That's all I have.

21          Thank you.

22          ///

23          ///

24          ///

25          ///



1                   THE VIDEOGRAPHER: This concludes the  
2 videotape deposition of Professor Vincent Lloyd,  
3 April 20th, 2011, 10:38 a.m. We're off the  
4 record.

5                   (Whereupon, the deposition was concluded  
6 at 10:38 a.m.)

7                   (Pursuant to Rule 30(e) of the Federal  
8 Rules of Civil Procedure and/or O.C.G.A.  
9 9-11-30(e), neither a party nor the deponent  
10 having requested right of review of the  
11 deposition, the reading and signing of the  
12 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 81 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

## COURT REPORTER DISCLOSURE

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| <b>A</b>           |                     |                    |                    |                     |
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