

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

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

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Videotaped deposition of JENNIFER MCCOY, taken on behalf of the plaintiffs, pursuant to the stipulations contained herein, before Teresa Bishop, RPR, RMR, CCR No. B-307, at 104 Marietta Street, SB-2 Conference Room, Atlanta, Georgia, on Thursday, February 3, 2011, commencing at the hour of 12:08 p.m.

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I N D E X

Examinations Page

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E X H I B I T S

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1 bio from the GSU web site 8
2 printouts from the GoSolar system 22
for class schedules
3 syllabus for polysci 8550 from 22
fall 2009 semester
4 cover and table of contents for 26
"Democratic Accountability In
Latin America"
5 cover and table of contents for 24
"Regimes And Democracy In Latin
America, Theories And Methods"
6 checklist for Mainwaring excerpt 45

1	7	checklist for Munck excerpt	45
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3		works infringed at GSU fall 2009 with	
4		handwritten notes	

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

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ALSO PRESENT:

KENNITH DRAKE, VIDEOGRAPHER

1 THE VIDEOGRAPHER: This will be the
2 videotaped deposition of Jennifer McCoy
3 taken by the plaintiffs in the matter of
4 Cambridge University Press et al. versus
5 Mark P. Becker et al.

6 The date is February 3rd, 2011. We're
7 on the record at 12:08.

8 JENNIFER MCCOY,
9 having been first duly sworn, was examined and testified as
10 follows:

11 EXAMINATION

12 BY MR. LARSON:

13 Q. Good afternoon, Professor McCoy. If you would
14 just spell your full name and provide your address for
15 the record.

16 A. My home address?

17 Q. Yes.

18 A. Jennifer McCoy, J-e-n-n-i-f-e-r, M-c-c-o-y.
19 248 Connecticut Avenue, Atlanta, Georgia, 30307.

20 Q. Thank you. We met off the record. I'm Todd
21 Larson here representing the plaintiffs in this action.

22 Have you been deposed before?

23 A. No.

24 Q. I take it your counsel provided you with some
25 idea of what is going to happen here today?

1 A. Yes.

2 Q. Let me give you a few additional sort of
3 ground rules, if I could.

4 I'll ask you a series of questions, and I
5 would ask just that you let me finish your question
6 before you answer and I'll try to do the same for you,
7 mainly so we have a nice clear transcript.

8 Please answer verbally as opposed to with nods
9 when I ask questions. Ask for clarification at any time
10 if I ask a question you don't understand. Happy to
11 restate it for you. If you need a break, let me know,
12 happy to take a break.

13 Just so you know, your testimony that you
14 provide here today could be used at trial if this matter
15 goes to trial. Your counsel may object at various
16 points during the deposition. Generally that happens in
17 these. You can go ahead and answer unless he instructs
18 you not to. And that's basically it.

19 That sound clear?

20 A. Yes.

21 Q. Okay. What did you do for prepare for today's
22 deposition?

23 A. I reviewed the checklist and syllabus that I
24 used.

25 Q. Did you review the Georgia State copyright

1 policy?

2 A. Yes, I reviewed the copyright policy, too.

3 Q. And did you look at any legal filings from the
4 case, briefs?

5 A. No, I did not.

6 Q. Any prior deposition transcripts?

7 A. No, I did not.

8 Q. Did you speak with any of the other professors
9 who have been deposed in the matter?

10 A. I spoke with some of my colleagues, and I
11 think one of them was deposed.

12 Q. And who was that?

13 A. Jason Reifler.

14 Q. And what did you and Mr. Reifler discuss?

15 A. He told me he wasn't supposed to discuss it.

16 Q. Okay. So he didn't provide any information
17 about what happened in his deposition?

18 A. He did not.

19 Q. Anything else you reviewed or looked at other
20 than what you've told me?

21 A. I reviewed the books that I had on EReserve,
22 the materials that I had on EReserve --

23 Q. The actual --

24 A. -- to refresh my memory of what I put on.

25 Q. I see. Did you meet with counsel?

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A. Yes.

Q. When was that?

A. Two days ago.

Q. What is your understanding of what this case is about?

A. My understanding is that there's a question about the adequacy of GSU's policy on using EReserve.

Q. And you understand that certain practices that you have engaged in have been cited by plaintiffs as potentially violating copyright law?

A. I'm not really sure what my case involves.

Q. I'll provide you with what I've marked as McCoy Exhibit 1.

A. Uh-huh.

Q. This is just a copy of a page from the GSU web site. And a copy of your CV, which is linked to from the web site. If you can just take a look and confirm that that in fact is what that is.

A. Yes.

Q. And is the -- your CV accurate to the best of your knowledge?

A. Yes. Up until January 2010.

Q. Have there been any significant changes since January of 2010?

A. I have a couple other publications and

1 speeches and that kind of thing, yes, activities during
2 2010. But no change of job or that kind of thing.

3 Q. Your book, CV and bio indicate that you have a
4 book forthcoming "International Mediation in Venezuela",
5 is that right?

6 A. Yes.

7 Q. That's not out yet, I take it?

8 A. No.

9 Q. What's the Carter Center?

10 A. The Carter Center is a nonprofit center set up
11 by former President Jimmy Carter and his wife based here
12 in Atlanta.

13 Q. And you're the director of that?

14 A. I'm a director of one of the programs.

15 Q. And is that something you do -- well, let me
16 ask it this way.

17 Are you a full time faculty member or do you
18 split time between the two or do both or what?

19 A. I actually have a -- the Carter Center has a
20 service agreement with Georgia State so that they buy
21 half of my time to do that position at the Carter
22 Center, but I also teach here.

23 Q. And you're in the political science
24 department?

25 A. Correct.

1 Q. And when did you start at GSU?

2 A. 1984.

3 Q. And are you tenured?

4 A. Yes.

5 Q. Can you just give me a sense of the reporting
6 structure within the political science department?

7 A. The reporting --

8 Q. Is there a chair or --

9 A. Yes, we have a chair and above that we have an
10 associate dean and then a dean.

11 Q. And do those deans then report to the provost?

12 A. Yes.

13 Q. And the provost reports then to the president?

14 A. To the president, yes.

15 Q. And the deans you mentioned, what are they
16 deans of what particular --

17 A. My dean is arts and science.

18 Q. I see. Just tell me, if you would, the book
19 that you have coming out, "International Mediation In
20 Venezuela", what -- describe that briefly for me, what
21 that book involves or what it's about?

22 A. That book is actually a book analyzing a
23 particular experience that I was involved in with the
24 Carter Center mediating the political conflict in
25 Venezuela.

1 Q. So it's a nonfiction book, is that right?

2 A. Yes, uh-huh.

3 Q. Just describing a particular event that
4 happened?

5 A. Yes. And analyzing that event and the role of
6 the international community in that.

7 Q. So it contains some analysis by you other
8 than --

9 A. Yes.

10 Q. Would you describe that --

11 MR. ASKEW: Let him finish his question.

12 THE WITNESS: Okay.

13 BY MR. LARSON:

14 Q. Would you describe your contributions to that
15 work as being creative?

16 A. As being creative. Well, it's not creating
17 art, but it's creative in the sense of analysis, my
18 analysis and that of my co-author. I have a co-author
19 in that book.

20 It's creative in the sense of, yes, using our
21 analytical capacities and applying it to the event.

22 Q. So the analysis that you make in the book you
23 would consider to be creative?

24 A. I think so. I guess I think of creative as
25 artists, so that's why I'm hesitating a bit.

1 Q. I understand.

2 A. I think so.

3 Q. And it's written in your original expression,
4 right? You're not just sort of stringing together
5 facts, but it's your own expression, is that right?

6 A. That is correct.

7 Q. And you consider that expression to be
8 creative?

9 A. Yes.

10 Q. Let me show you what's been marked previously
11 as Dixon 2. Do you recognize this document?

12 A. Uh-huh. Yes.

13 Q. And can you identify it, please?

14 A. It's the policy on the use of copyrighted
15 works in education and research on the university system
16 of Georgia web site, it looks like this one came from.

17 Q. Do you understand this to be the operative
18 copyright policy for the university?

19 A. If it's -- one I've seen most recently was
20 updated in October of 2009. So if this is the same one,
21 then I would say yes. Oh, it says 2009 right there. So
22 I believe -- yes.

23 Q. I'm sorry. Go ahead.

24 A. Yes.

25 Q. You've read this policy before?

1 A. Yes.

2 Q. When did you first become aware of this
3 policy?

4 A. I don't know exactly the date.

5 Q. Is it your understanding that at a certain
6 point that this policy was created and implemented
7 relatively recently within the last couple years?

8 A. I understand this policy was updated, yes.
9 Well, whatever that was, 2009, a little less than two
10 years ago.

11 Q. And do you recall any sort of communications
12 from your department or from the university describing
13 or announcing this policy?

14 A. Yes. We receive e-mails regularly whenever
15 they do new policies.

16 Q. And so do you recall specifically getting some
17 sort of communication about this copyright policy?

18 A. I believe so. I don't recall specifically
19 when.

20 Q. Let me ask you to turn to what's identified as
21 page 7 out of 19.

22 A. Uh-huh.

23 Q. You recognize this as the fair use checklist
24 that's part of the policy?

25 A. Yes.

1 Q. And you've filled these out in the past for
2 your courses?

3 A. Yes.

4 Q. You see under instructions the third
5 paragraph, says complete and retain a copy of this
6 checklist for each fair use of a copyrighted work, and
7 it continues on.

8 Has it been your practice to complete a
9 checklist like this for any works that you wanted to
10 provide in your course through the ERes system?

11 A. Yes.

12 Q. And you've retained all those?

13 A. I can't say that I've retained all of them
14 because I did recently clean out my files.

15 Q. And do you do --

16 A. Trying to clean my office there.

17 Q. Understood. Have you completed them in hard
18 copy or in an electronic version?

19 A. Electronic.

20 Q. And so when you did this clean out, that
21 included cleaning out electronic files as well?

22 A. Uh-huh. Yes. I changed computers and --

23 Q. So it's possible that some of your older ones
24 at this point have been discarded?

25 A. It is possible.

1 Q. Do you have an understanding of why this
2 policy was revised?

3 A. Not really.

4 Q. If you look at page 13 of 19, looking at the
5 header up on top, it's a page entitled permissions. Is
6 that a page that you've reviewed before and read?

7 A. I don't recall this particular page.

8 Q. Maybe we -- let's just -- so we're clear let's
9 go back to the beginning. Maybe we can just flip and
10 you can tell me which pages you recall having reviewed
11 them fast.

12 Do you recall the first page?

13 A. Yes.

14 Q. And the second page?

15 A. Yes.

16 Q. The second and third actually. How about the
17 pages 4 and 5, which are the fair use exception?

18 A. Yes.

19 Q. And page 6 which is introduction to the fair
20 use checklist?

21 A. Yes.

22 Q. And how about page 9 which is additional
23 guidelines for electronic reserves?

24 A. Yes.

25 Q. And page 10, additional resources?

1 A. I remember seeing the link to that one, yes.

2 Q. A link to this page from another page?

3 A. Uh-huh. Uh-huh.

4 Q. Do you recall ever looking at this page
5 itself?

6 A. I'm not sure.

7 Q. Looking at page 11 and 12, which is a page
8 entitled other exceptions, is that the page you recall
9 reviewing and reading before?

10 A. I'm not sure about that one.

11 Q. And I think you said the same for permissions,
12 you don't recall?

13 A. That's correct.

14 Q. What about identifying the copyright owner,
15 page 14?

16 A. I don't recall.

17 Q. Do you recall looking at page 15, which is
18 collective licensing agencies?

19 A. I don't recall.

20 Q. You see there's a reference under works in
21 print on that page, the first bullet, to the Copyright
22 Clearance Center?

23 A. Uh-huh.

24 Q. Have you ever heard of the Copyright Clearance
25 Center?

1 A. Yes.

2 Q. And what's your experience with the Copyright
3 Clearance Center?

4 A. I don't -- I don't think I have experience
5 with it.

6 Q. How is it that you know about them, do you
7 recall?

8 A. I saw a reference to it.

9 Q. Do you know what they are?

10 A. I understood it was to be of help if we needed
11 help with getting copyrights.

12 Q. And by that do you mean --

13 A. Clearances, yeah, permission.

14 Q. But that's not something you've ever contacted
15 them about?

16 A. No, I don't think so.

17 Q. I guess the last page is 18 and 19, Orphan
18 Works. Is that a page you recall reading?

19 A. I don't recall.

20 Q. Do you use the ULearn system?

21 A. Yes.

22 Q. How do you use that? Let me ask a more
23 specific question.

24 Do you use that to provide students with
25 course readings?

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A. No.

Q. Do you use EReserves for that function?

A. Yes.

Q. Do you have understanding as to whether this policy would apply to the use of course readings on ULearn?

A. I presume it would.

Q. And what's that presumption based on?

A. Well, I mean, the policy on copyright would be the same. I mean, it's the same principles.

Q. Did you attend a training session related to the new or -- to this copyright policy?

A. I did not.

Q. Do you recall ever being informed of such sessions taking place?

A. I believe I do. But I was on leave, like professional leave in the year leading up to this, this semester that I used it. And I believe that trainings occurred during that time period when I was on leave, so I wasn't on campus.

Q. When were you on leave, during what period?

A. I was on leave -- let's see. August of 2008 to summer of 2009. I believe that's correct.

Q. And at no point since you've been back in summer of 2009 have you attended a training session

1 related to the copyright policy?

2 A. No, I have not.

3 Q. Do you know whether they've been offered
4 during that time period?

5 A. I don't remember.

6 Q. Do you have any knowledge as to whether there
7 is a person or office available to consult with if you
8 have questions about whether a particular use you're
9 making of a reading excerpt is or is not fair use?

10 A. Yes.

11 Q. And who is that?

12 A. Well, I think within -- I think I could ask
13 someone in the library or within the legal office of the
14 university.

15 Q. And do you know that or are you speculating,
16 or what's the basis of that statement?

17 A. On the library page where we go to do this it
18 says if you have questions contact so and so. I don't
19 recall the name of the person.

20 Q. Have you ever contacted people with questions?

21 A. No.

22 Q. Have you ever contacted anyone in the legal
23 affairs office with questions?

24 A. No.

25 Q. Is that because you haven't had questions or

1 that you've had questions but just decided not to --

2 A. I haven't had questions.

3 Q. And is that because when you filled out the
4 checklist it seemed pretty clearly to indicate that the
5 use you wanted to make was a fair use?

6 A. That's correct.

7 Q. If you found that it was a more borderline
8 situation, would you consult with the library or legal
9 counsel's office?

10 A. I believe I would.

11 Q. And why so?

12 A. To be clear, to make sure I was following the
13 right policy.

14 Q. Your understanding is that the people in those
15 departments have more copyright expertise than your sort
16 of lay understanding, is that right?

17 A. Yes, I would think they would. If they are
18 implementing it, yes. They would have a broader
19 perspective, you know, more experience and broader
20 perspective.

21 Q. Would you agree that a person in the legal
22 office would be better positioned to make the tough call
23 for a particular work that was a borderline fair use?

24 A. Perhaps if it were borderline. But I think
25 that it's -- most of the uses that we use are pretty

1 clear.

2 Q. Who enforces or how is the copyright policy
3 enforced, to your knowledge?

4 A. I don't know.

5 Q. If your department chair were to come to you
6 and indicate that a particular work you put on EReserves
7 was infringing copyright and you needed to take it down,
8 would you do so?

9 A. Yes.

10 Q. And if the provost's office were to contact
11 you with the same information, you know, the work you
12 were using was violating copyright, would you take it
13 down?

14 A. Yes.

15 Q. Same question with the president's office,
16 would you take it down if informed that that work was
17 infringing?

18 A. Yes.

19 Q. And what if the communication came from
20 someone in the Board Of Regents level, would you take it
21 down?

22 A. Yes.

23 Q. Are you familiar with the GoSolar
24 functionality on the Georgia State web site?

25 A. Yes.

1 Q. Let me show you what I've marked as McCoy 2.
2 There's probably more pages here than we need, but we'll
3 find the one that's appropriate.

4 These are just printouts that we made from the
5 GoSolar system on the GSU web site. If you turn to the
6 second to the last page, there's a printout for the fall
7 semester 2009.

8 A. Uh-huh.

9 Q. You see that?

10 A. Yep.

11 Q. And this indicates that you taught polysci
12 8250 in the fall semester, is that accurate?

13 A. That's correct.

14 Q. And this indicates that there were 12
15 students. Does that square with your recollection?

16 A. Yes. That looks right, uh-huh.

17 Q. Let me give you what's been marked as McCoy
18 Exhibit 3.

19 Do you recognize this as your syllabus for
20 polysci 8550 from the fall 2009 semester?

21 A. Yes.

22 Q. And I direct your attention to the reading
23 assignments paragraph on the first page.

24 A. Uh-huh.

25 Q. Which says in the middle sentence, in addition

1 we will have required and recommended articles located
2 on EReserve or otherwise noted with a web link?

3 A. Uh-huh.

4 Q. And that reflects the fact that you use the
5 university ERes system to provide certain readings to
6 the students?

7 A. Correct.

8 Q. Turning to page 2, under the 15 percent
9 paragraph.

10 A. Uh-huh.

11 Q. Couple sentences down it says contributions
12 should be based on your interpretation of the readings
13 and other evidence, not merely espousal of opinions.

14 A. Yes.

15 Q. Is it your experience when you assign readings
16 for the course that the students do the reading?

17 A. Is it my experience that they do it?

18 Q. Yeah.

19 A. Not always. But -- but I do try to encourage
20 it with things like this, yes.

21 Q. It's your expectation if you assign a reading
22 students will do the reading and come prepared to
23 discuss it in class?

24 A. Yes, that's the expectation.

25 Q. If you could turn to the next page. This is a

1 graduate class or an undergrad?

2 A. Graduate.

3 Q. If you look at the August 31st entry.

4 A. Uh-huh.

5 Q. There's an entry there for what looks to be an
6 article or, I'm sorry, some chapters from a book edited
7 by Geraldo Munck.

8 A. Uh-huh.

9 Q. Does this reflect the fact that you put on
10 EReserves an excerpt of the book comprising the intro
11 and first two chapters?

12 A. Yes.

13 Q. Giving you what I've marked as McCoy Exhibit
14 5.

15 A. Uh-huh.

16 MR. ASKEW: What's the exhibit number?

17 MR. LARSON: 5.

18 BY MR. LARSON:

19 Q. If you turn -- this is a photocopy of the book
20 "Regimes And Democracy In Latin America, Theories And
21 Methods" along with the table of contents. Turn to the
22 second page.

23 Just to confirm, is it the case that what you
24 assigned is what we see here on the second page of the
25 table -- of Exhibit 5 as the introduction, chapter 1

1 called "The Study Of Politics And Democracy", and
2 chapter 2 called "Reconceptualizing Democratization"?

3 A. Yes.

4 Q. So it's essentially pages 1 to 50 it looks
5 like?

6 A. Yes.

7 Q. Go back to the syllabus.

8 A. Uh-huh.

9 Q. If you could turn over to the entry for
10 September 21st?

11 A. Uh-huh.

12 Q. There's a reading by Schedler, Andreas
13 Schedler editor, chapters 1 and 2.

14 A. Yes.

15 Q. From "Electoral Authoritarianism"?

16 A. Uh-huh.

17 Q. That was provided to students on EReserves?

18 A. Uh-huh.

19 Q. Chapters 1 and 2 from that book?

20 A. Yes.

21 Q. If you turn over to the October 12th entry,
22 please. And there's a reading listed there from Scott
23 Mainwaring from the book "Democratic Accountability In
24 Latin America" pages 33 to 33?

25 A. Yes.

1 Q. Give you McCoy Exhibit 4, which is the cover
2 page and table of contents from that book. And just
3 turning to the table of contents, can you just confirm
4 for me that the assignment that we see on the syllabus
5 is this introduction here "Democratic Accountability In
6 Latin America" by Scott Mainwaring?

7 A. Yes, chapter 1.

8 Q. And that was a required reading?

9 A. Yes, I believe. Wait, let me check. Yes.

10 Q. And the two chapters, the introduction from
11 the Geraldo Munck book that we looked at before from
12 August 31st --

13 A. Uh-huh.

14 Q. -- those were -- that was required reading as
15 well?

16 A. Yes.

17 Q. Just tell me, why did you choose the intro,
18 chapter 1 and chapter 2 from the Munck book for reading
19 for the class?

20 A. Let's see. Yes, well, because they help to
21 explicate the concepts that I wanted them to study for
22 that week, the study of democracy in Latin America.

23 Q. And were there other readings that you
24 considered using as opposed to the Munck?

25 A. Well, I did use additional readings.

1 Q. But others other than those listed here?

2 A. I don't recall exactly what all I looked at to
3 choose to decide for those readings. But I thought
4 those were good readings.

5 Q. And good why, specifically with regards to
6 this?

7 A. Because the purpose of that week was to look
8 at the evolution of the literature on the study of
9 democracy in Latin America and they fulfilled that
10 objective.

11 Q. Are there other works that you're aware of
12 that you could have used rather than these Munck
13 chapters?

14 A. There probably are, but I thought these were
15 particularly good.

16 Q. And explain to me your reasoning for using the
17 introduction?

18 A. Because particularly in that introduction he
19 would -- he did go over the history of the development
20 of the field.

21 Q. Let's turn over to October 12th again. And
22 look at the Mainwaring --

23 A. Uh-huh.

24 Q. -- book or excerpt that you provided. Tell me
25 why you chose that one?

1 A. Oh, that one because he -- that was a chapter
2 outlining different concepts of accountability, which is
3 one of the main objectives for that week.

4 Q. And again, were there other -- are there other
5 chapters or articles that you could have used instead of
6 the Mainwaring?

7 A. Probably. There are -- of course I did use
8 additional ones in there. But there are various people
9 who have written on the topic, but this one I wanted to
10 get his, you know, particular conceptualization.

11 Q. And why, is there something particularly
12 unique about his conceptualization or valuable about it
13 in your mind?

14 A. Well, he was reviewing some -- he was
15 reviewing a number of authors' uses, and so it was, you
16 know, a succinct presentation.

17 Q. Is this a course you've taught in the past?

18 A. Yes.

19 Q. And in the past instances of the course, did
20 you use the Mainwaring readings, do you recall?

21 A. I update my syllabus every time I use it, and
22 so I may have used it recently, but that would have
23 been, let's see, 2003. It's possible I used it between
24 2003 and 2009. I don't -- I have to look back. I don't
25 recall.

1 Q. You don't recall on that one. And the two
2 Munck chapters and the introduction from August 31st, do
3 you recall if those are excerpts you've used in prior
4 instances of the class?

5 A. I doubt it because that was just published
6 2007 and I was on leave the year before. So I think
7 this was the first time.

8 Q. The maiden voyage for that one.

9 In your experience in using the EReserve
10 system, do your students print these out, excerpts like
11 these and bring them to class?

12 A. I'm not sure what they all do. But I've seen
13 them sometimes with their computers. I think they, you
14 know, they just read them on the computer. And
15 sometimes they're reading them taking notes and they
16 bring their notes. Sometimes they print them out. I'm
17 not sure because they usually --

18 I don't know what the normal practice is. I
19 think they use a variety of practices.

20 Q. So you have experience of some of them
21 printing them out and bringing them to class?

22 A. I think so.

23 Q. And some bring their laptops in and look at
24 them on the laptop within class?

25 A. Well, they're not supposed to be looking at

1 them in class. But I think that they have read them,
2 you know, electronic as opposed to printing them out is
3 my impression. But my impression with the students is
4 that they're liking to do that.

5 Q. When did you start using EReserves?

6 A. I don't recall exactly when the university
7 started that practice because I've been here a while and
8 they've used a number of different practices. So I
9 don't remember the first year that it came online.

10 Q. Did you start using it as soon as it was
11 available?

12 A. I think so.

13 Q. And why did you decide to use it?

14 A. Well, it's convenient for me and for the
15 students and it provides a nice system for the students
16 to have access to the materials. But it's just -- you
17 know, they get the password and they get to use it just
18 for that course. So it's also protected in that sense.

19 Q. And tell me about the convenience, what do you
20 see as the convenience of the ERes system?

21 A. Because prior to that they would have to go
22 into the library and sit there and read a copy of
23 whatever was on reserve and not able to take it out.
24 And that's difficult for our students, particularly the
25 working students that don't necessarily live on campus

1 or spend all day here.

2 Q. So is it your view that putting a copy on the
3 shelf in the library would be more burdensome to
4 students than providing them copies through the ERes
5 system?

6 A. Oh, yes.

7 Q. Have you had experience in the past using the
8 hard copy reserve?

9 A. Yes.

10 Q. Okay. And just when you did that, that would
11 involve putting basically one copy of the work or two
12 copies --

13 A. Uh-huh.

14 MR. ASKEW: Again, let him finish his
15 question.

16 BY MR. LARSON:

17 Q. And was it your experience that students
18 tended to actually go in and read them in the library or
19 did the burden prevent some of them from doing that?

20 A. I don't believe they all were able to do it.

21 Q. And do you have a sense when you use the hard
22 copy reserves of whether students would go in and, you
23 know, sort of sit in the reading room and read the
24 excerpts or would they go in and throw it on the
25 photocopy machine and make themselves a copy, or do you

1 know how that worked?

2 A. I don't know. I used the system where they
3 had to stay in the library, where they couldn't take it
4 out, so I don't know what they did once they went into
5 the library.

6 Q. So in your view is providing the materials
7 through the ERes system different than putting the copy
8 on hard copy reserve?

9 A. I think it's more accessible for the students,
10 yes.

11 Q. And is it your understanding with ERes that
12 when the students access the work that they're able to
13 save it to their hard drive or make themselves a copy if
14 they want to?

15 A. You know, I haven't actually tried it. I
16 haven't actually tried to know whether you can save it
17 or not. I don't actually know.

18 Q. Have you ever used coursepacks?

19 A. I don't know exactly if there's a specific
20 legal term for coursepack, but I have used a system when
21 I first came to the university a long time ago of making
22 copies and taking them to a copy center like a shop.

23 Q. That's what I'm talking about.

24 A. Okay.

25 Q. So go ahead. You did use those?

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A. Yes.

Q. And what did you do?

A. Made copies of the articles or the chapters that I wanted them to read and took it to the copy shop and then they would compile it and students would go there and purchase the package.

Q. And when was it chronologically that you used coursepacks?

A. About 20 years ago.

Q. And did you stop at a certain point?

A. Yes.

Q. And what was your reason for stopping?

A. Because the library made available systems here.

Q. The ERes system?

A. I believe we had something prior to that, another kind of -- I think before it was ERes it was something else. I think there was some other prior system.

Q. But the intermediate system was the same general idea as the ERes system?

A. Yes, to make the materials available to the students.

Q. In an electronic form through the web site?

A. I can't remember if it was -- I don't remember

1 if they could access it like from home or if they had to
2 go into the library to get it. There was some
3 intermediate system where I would provide the
4 photocopies and I think they scanned them in in some
5 way. But I'm not actually remembering how the students
6 accessed it.

7 Q. So was it the system -- did you take materials
8 that you had provided in a coursepack and then rather
9 than providing them through the coursepack put them on
10 this new system that the library made available?

11 A. I would -- you know, what I've tended to do
12 over time is use fewer materials like that. And now I
13 use, as much as possible I use books, whether they're
14 compilations of readings, edited volumes or single
15 author books and then I use additional things like a
16 chapter from a book or -- now it's much easier to also
17 use journal articles that I can just put, you know, the
18 link on here for -- to access the university copy of the
19 journal article.

20 So no, I wouldn't say I just -- I didn't just
21 take the same materials from the coursepack and put them
22 on EReserve, it's much, much more succinct. It's
23 fewer -- I use fewer materials on EReserve.

24 Q. Were there instances, though, where there were
25 materials that you previously provided in a coursepack

1 that you later provided through the ERes system or
2 whatever this predecessor system was to the ERes system
3 at the library?

4 MR. ASKEW: I want to object to the
5 question as vague. You talking about
6 individual works, Todd, or are you talking
7 about a collection of works?

8 BY MR. LARSON:

9 Q. The question was as to individual works.

10 A. As to individual works, it's possible.

11 Uh-huh.

12 Q. And do you recall any in particular?

13 A. No, because I've -- you know, I've changed the
14 courses I teach and I update each syllabus every time
15 and it changes every time, so I don't recall.

16 Q. So I'm clear, it wasn't the case that you took
17 an entire coursepack that you've been providing in a
18 coursepack and then offered the exact same set of
19 readings through this library system, but there may have
20 been some individual articles that had been in
21 coursepacks before that you've then provided through the
22 system, is that right?

23 A. It's correct I did not take an entire
24 coursepack and put it on the EReserve. It's possible
25 there may have been some individual articles.

1 Q. I see. And when you use the coursepacks, that
2 was through the university bookstore?

3 A. No. We had -- there was a copy center near
4 here named Alpha Graphics that I recall. Again, this
5 was like 20, 25 years ago, so --

6 Q. Not a memory test. Well, maybe a little.

7 Do you recall whether when you used
8 coursepacks that either you or that copy center secured
9 permissions from the publishers or authors for the
10 articles that were in the coursepack?

11 A. I recall, again my memory is a little fuzzy on
12 the timing how this all evolved, but I can recall
13 writing letters to get copyright permission to use.

14 Q. And you did that yourself?

15 A. Yes. Yes, yes, exactly.

16 Q. And in the end -- and in cases where -- well,
17 were there instances where permission was granted and
18 there was a certain licensing fee that had to be paid?

19 A. I don't recall paying any fees.

20 Q. So it was either -- the request was can I use
21 it without charge basically?

22 A. Well, for educational purposes for the class.

23 Q. The letters you recall, just so I'm
24 understanding, were letters asking the publisher if you
25 could use a particular article or chapter in your

1 coursepack, is that right?

2 MR. ASKEW: Objection, asked and
3 answered. But you can answer again.

4 I think he's already asked you that
5 question, but you can answer it again.

6 THE WITNESS: The letters as I recall
7 were to ask for permission to use for that
8 particular class, for just for the students
9 in the class.

10 BY MR. LARSON:

11 Q. In a coursepack?

12 A. I don't recall using those terms.

13 Q. And when you shifted to putting works on the
14 library system, electronic system, and then the ERes
15 system, have you sent similar requests for permission to
16 publishers?

17 A. No. No, I've used the checklist system and --

18 Q. But the checklist system has, if I -- well,
19 I'll represent that the checklist has been in place
20 since the spring of 2009.

21 I take it there was some period of time prior
22 to the spring of 2009 when you were using the library
23 systems and providing works through those, is that
24 right?

25 A. Yes.

1 Q. And during that period of time, did you ever
2 send letters to publishers asking for permission to use
3 the works on those systems?

4 A. I may have. This is what I can't recall, the
5 exact progression of the systems that we've used and
6 exactly what time period I was writing those letters. I
7 can't recall under which system exactly.

8 Q. So the letters you were telling me about
9 before, you can't recall whether those letters related
10 to putting works in coursepacks, hard copy coursepacks,
11 or whether they involved putting works on the library
12 electronic system?

13 A. That's correct. I don't recall if they were
14 for both or just for one.

15 Q. Do you recall instances where you put works on
16 the ERes system or the predecessor at the library prior
17 to the spring of 2009 where you did not send such a
18 letter to a publisher requesting permission?

19 A. Yes.

20 Q. And in those instances, what was your reason
21 for not seeking permission?

22 A. Because a lot of times I would just put the
23 library copy of the book on reserve for students, or a
24 film that the library owned, put those on reserve so
25 they could go in and see it.

1 Q. Let me -- my question may not have been clear.
2 I'm talking about there were instances where you put
3 individual articles or excerpts from books provided
4 those to students in electronic format through the
5 library ERes system or its predecessor, is that right?

6 A. Yes.

7 Q. And in those instances, I'm not talking
8 about -- not hard copy on the shelf or films, but those
9 instances, are there times you can recall when you made
10 those available in that fashion without seeking
11 permission from the publisher to do so?

12 A. Yes.

13 Q. And why was it in those instances that you
14 determined not to seek permission to provide the
15 excerpts in that fashion?

16 A. Because it was my understanding that for
17 educational purposes it was allowable to use for your
18 class materials that were, you know, a small portion of
19 a publication if it pertained directly to your class
20 purposes.

21 Q. So your understanding was that in those
22 situations you didn't need to seek permission?

23 A. Correct.

24 Q. And did you have a similar understanding with
25 respect to putting the work in hard copy coursepacks?

1 A. You know, for -- I can't recall. I'm not
2 really sure. If something changed or -- I don't really
3 recall.

4 Q. All right. In the instances where you did
5 seek permission from the publisher, why did you do it in
6 those instances? What caused you to seek permission in
7 some instances and not to seek permission in others?

8 A. Because there were some guidelines and
9 instructions I think from the university that we needed
10 to do it under certain circumstances. So I must have
11 been following those guidelines.

12 Q. Do you recall any particular -- was it because
13 the excerpts were too big, for example, in your view or
14 for some other reason?

15 A. I don't recall specifically.

16 Q. You indicated a minute ago that it was your
17 understanding that providing the copies through the
18 library system, the electronic excerpts, was acceptable
19 if it was for educational purposes and if the portions
20 were small I think you said?

21 A. Uh-huh.

22 Q. And it pertained to the class purposes?

23 A. Uh-huh.

24 Q. Right? Tell me what your understanding of
25 small was in that situation.

1 A. In which time period are you talking about?

2 Q. This is prior to the spring of 2009 policy.

3 A. Generally like, you know, one or two chapters
4 from a book.

5 Q. And you also said that it needed to pertain to
6 class purposes. What did you mean by that?

7 A. Well, you know, it had to have an educational
8 use, it had to be related to the concepts I was trying
9 to get across.

10 Q. Would you ever use a work in class that didn't
11 meet that criteria?

12 A. I don't think so.

13 Q. And is it your understanding the policy that's
14 now been put out and is in place is somehow different or
15 changes the criteria that are necessary to determine
16 whether a work can be used in class?

17 A. I think that this policy kind of expands my
18 understanding of it so it's not so focused on just the
19 size. I think before I was focused primarily on the
20 size of the excerpt, keeping it, whatever, below 25 or
21 20 percent, something like that. And that this one
22 seems to have, you know, additional factors.

23 Q. Did the university encourage you in any way to
24 use these electronic systems at the library when they
25 were introduced?

1 A. Well, I'm not sure about encouraged. Well,
2 they certainly let us know about them.

3 Q. But other than that you don't recall any
4 particular encouragement to adopt them or use them?

5 A. Not particularly.

6 Q. Since the new policy has been in place since
7 early 2009, have you ever sought permission from a
8 publisher to use a work on the EReserve system?

9 A. No.

10 Q. And why not?

11 A. I didn't think it was necessary.

12 Q. And that's because you determined from the
13 checklists that the use was a fair use?

14 A. Correct.

15 Q. Have there been instances where you went
16 through the checklists and determined that a work you
17 wanted to use was not a fair use?

18 A. Well, I have used -- I have decided to use
19 books, to assign books for them to purchase when I
20 haven't -- even when I'm not assigning all of the
21 chapters in the book, because I felt like it was, you
22 know, a predominate use of the book and wouldn't meet
23 the checklist criteria. And so in that case then I have
24 put it on the assigned texts for them to read, to
25 purchase rather than putting it on -- yes, and that I've

1 not put it on reserve.

2 Q. And in those instances, did you actually run
3 through the checklists for that work or did you just
4 look at it and say, look, I want to use -- this is a big
5 chunk, I should probably have them buy the book?

6 A. Well, I knew what was in the checklist and I
7 knew, it was in my mind, I didn't actually have to fill
8 it out, so yes.

9 Q. Are there particular examples on the syllabus
10 from the fall 2009 that fall into that category?

11 A. I'd have to look. I don't recall if I
12 assigned every chapter in each one of these books. I
13 can recall one from some other classes. And it's very
14 possible on this one that I didn't assign every single
15 chapter.

16 Q. And where -- what was sort of the cut off
17 point for you as to when you decided I should have the
18 students purchase the book as opposed to using the ERes
19 system?

20 A. Well, I can recall, for example, this book
21 starting with Millett here on this book, I wanted my
22 undergraduates to read some of those and so in a
23 different class I was looking at, but I didn't think
24 they needed to read all of it. But I realized I wanted
25 them to read more than about half.

1 I'd have to look. I don't recall the exact
2 number, but -- anyway, it was probably about half, 50,
3 60 percent of the articles, perhaps. So I thought,
4 well, they better buy that book. That was one
5 particular instance.

6 Q. And was that a situation where prior to that
7 determination you've been making those, whatever the 50
8 percent, the number of chapters available on ERes and
9 you changed and decided now I need to make them buy it
10 or was this a new --

11 A. No, no, I don't think I've ever put that much
12 on any kind of reserve system.

13 Q. Have there been instances where you actually
14 went through the checklist for a given use and concluded
15 that the use wasn't a fair use?

16 A. Well, I think I just explained, I went through
17 it in my head --

18 Q. Okay.

19 A. -- and decided that I needed to have them buy
20 the book.

21 Q. But you haven't filled out -- actually filled
22 out a checklist in those situations, correct?

23 A. I don't believe I did for that one.

24 Q. And so my question is, have you ever -- has
25 there ever been a situation where you've literally

1 filled out a checklist and gotten to the bottom and said
2 this is not a fair use?

3 A. I don't think so.

4 Q. When you used the ERes system, does the
5 library make the copies or do you make them and provide
6 them to the library?

7 A. I can't remember how I did that. I really
8 don't remember. I think -- no, I tell them -- I think I
9 tell them the books, I think they make the copies, yeah.

10 Q. You provide the book and the page range?

11 A. Or the book is in the library, I think. I
12 don't remember how I did this.

13 Q. I'll give you what's been marked as McCoy 6
14 and McCoy Exhibit 7.

15 A. Uh-huh.

16 Q. And McCoy 6 ends in Bates number or begins in
17 Bates number 65272.

18 A. Uh-huh.

19 Q. McCoy 7 begins with Bates number 65274.

20 Do you recognize these as the checklists that
21 you filled out for the fall 2009 semester for the
22 Mainwaring and Munck excerpts that we were discussing
23 earlier in the deposition?

24 A. Yes, uh-huh.

25 Q. And you filled these out it looks like August

1 15th of 2009?

2 A. Uh-huh.

3 Q. That was before the semester started, is that
4 right?

5 A. Yes. I think so. I don't remember when the
6 semester started. I can probably tell -- yeah.

7 Q. But it's your recollection of it you do this
8 at the beginning of the semester?

9 A. Yes.

10 Q. Let's look at the first factor, if you would.

11 MR. ASKEW: Which exhibit?

12 MR. LARSON: McCoy 6.

13 BY MR. LARSON:

14 Q. And this is the checklist for the Mainwaring
15 and Welms excerpt pages 1 to 33.

16 A. Uh-huh.

17 Q. I see under weighs in favor of fair use you've
18 checked it looks to be one box on that side. Is that
19 right?

20 A. Uh-huh. Correct.

21 Q. And that's teaching?

22 A. Yes.

23 Q. Nonprofit educational is the first box. You
24 did not check it. Can you tell me why you passed on
25 that particular box?

1 A. I think on that one I was thinking we were
2 supposed to choose which of the -- which of the uses
3 that we were doing, and I thought teaching was the most
4 relevant one.

5 Q. It was your understanding of the five or six
6 boxes here under weighs in favor of fair use that you
7 were to pick the best one of those?

8 A. I think that must be what I was thinking. Or
9 I was thinking nonprofit educational, I might have been
10 thinking that that was some other form of education as
11 opposed to teaching in the classroom. Like a training
12 seminar kind of thing.

13 Q. So do you view what you do at Georgia State as
14 being nonprofit educational?

15 A. Yes, I guess it is. But I probably was
16 thinking, it was a while ago so I'm not sure, but I may
17 have been thinking that that was, you know, other forms
18 of education, like I said, training kinds of things,
19 something like that.

20 But no, I guess it would apply. Yes, I think
21 we're -- well, we're obviously a nonprofit institution.
22 So yes. Yeah. Probably I should have checked that one,
23 too.

24 Q. And teaching you checked because you were
25 using it --

1 A. Yeah, that was the primary reason, yeah.

2 Q. Looking down to the last box, use is necessary
3 to achieve your intended educational purpose. Tell me
4 what you understand that factor to mean?

5 A. Well, looks like I should have checked that
6 one. Obviously it was necessary for my educational
7 purpose or I wouldn't have assigned it.

8 Q. You wouldn't assign something that wasn't
9 necessary?

10 A. Right. Yeah.

11 Q. So if you were to do this again you would
12 check --

13 A. I probably would.

14 Q. Let's look over on the weighs against fair use
15 side.

16 A. Uh-huh. Oh, oh, sorry. Uh-huh.

17 Q. Yeah, right hand column.

18 A. Uh-huh.

19 Q. You see there's a choice for
20 nontransformative?

21 A. Uh-huh.

22 Q. And then actually on the other side to weighs
23 in favor of fair use there's a box for transformative?

24 A. Uh-huh.

25 Q. Tell your understanding of what the means for

1 a use to be transformative.

2 A. Somehow, yeah, somehow changing the work, I
3 guess. I think I'm not really sure. I'm not really
4 sure how that applies to written products, you know,
5 written materials.

6 Q. Do you have an understanding of how it works
7 with respect to other types of copyrighted material?

8 A. Well, I think like an art or something you can
9 use it in a different way or use it as a -- you know, I
10 don't know. Paint over it or, you know, change it in
11 some way.

12 And I'm not sure how that could apply -- you
13 couldn't do that to a photocopy of a book.

14 Q. Right. And so is there a reason then that you
15 didn't check nontransformative, if that's your
16 understanding?

17 A. Well, could have been an oversight or I just
18 may not have clearly understood what that meant.

19 Q. All right. And so did you come to some
20 conclusion looking at factor 1 as to --

21 So you didn't check either box at the bottom
22 for either weighs in favor or weighs against fair use.
23 Let me ask --

24 A. Well, I just thought it was obvious because it
25 was for teaching purposes. Yeah, I guess I just

1 neglected to fill in the bottom categories, but it
2 seemed -- my conclusion was it weighed in favor of fair
3 use.

4 Q. And that's because you had one check on the
5 left side and no checks on the right side?

6 A. Correct.

7 Q. And what if you had checked nontransformative
8 and it had been one to one, what's your understanding of
9 what you would do with this chart in that situation?

10 A. Well, I think I would have evaluated it under
11 that particular circumstance.

12 MR. LARSON: I see that our tape is
13 about to end so why don't we take a break
14 here and we'll keep going.

15 THE VIDEOGRAPHER: Off the record at
16 1:09.

17 (Brief recess.)

18 THE VIDEOGRAPHER: This is tape 2.
19 We're back on the record at 1:16.

20 BY MR. LARSON:

21 Q. Could you turn to the second page of McCoy 6.

22 A. Uh-huh.

23 Q. And let's look at factor number 2 here, nature
24 of the copyrighted work. You checked there important
25 to educational objective. Do you see that?

1 A. Uh-huh.

2 Q. Tell me why you checked that.

3 A. Because it was important to the objectives of
4 my class, how to use that.

5 Q. And just looking back to factor 1, there's a
6 factor at the bottom we were talking about before called
7 use is necessary, or which says use is necessary to
8 achieve your intended educational purpose.

9 A. Uh-huh.

10 Q. Is there -- do you see a distinction between
11 that and important to educational objectives under
12 factor 2?

13 A. I think they're pretty similar, although
14 another interpretation of necessary means, yeah, that
15 you wouldn't be able to achieve it without it or there
16 wouldn't be an alternative.

17 But important would mean important but
18 possibly there could be an alternative use maybe. I
19 guess that's the only difference I would see.

20 Q. I think before you indicated on reflection
21 that you would have checked the use is necessary to
22 achieve your intended educational purpose under factor
23 1, is that right?

24 A. I think so. I think I would looking at it
25 again probably.

1 Q. And can you imagine a situation where you
2 picked out an article or a chapter to use in your class
3 where you wouldn't check both of these boxes we're
4 looking at, where you would check one and not the other?

5 A. No, I think they would both probably come into
6 play in most cases.

7 Q. In other words, if the use is necessary to
8 achieve your intended educational purpose, then it would
9 also be important to your educational objectives?

10 A. Well, if it's necessary it is obviously
11 important. But the question is could it be important
12 and not necessary.

13 Q. And am I understanding from what you said
14 before is that you wouldn't pick a work if it wasn't
15 necessary, is that right?

16 A. Well, let's -- I think -- you know, in logic
17 there is a specific distinction for necessary, and that
18 it's -- it can't happen without it. So I suppose
19 there's a possibility that I could view something as
20 important and not absolutely necessary. I suppose
21 that's possible.

22 Q. Possible.

23 Putting aside sort of logical theorems, is it
24 a more practical matter in filling out this checklist,
25 if you select a work for use in your class, would you

1 agree it's generally the case that you would view that
2 work both as being important and necessary?

3 A. I think so. Yes.

4 Q. And looking down under factor 3, the last box
5 there weighs in favor of fair use, amount taken is
6 narrowly tailored to educational purpose.

7 A. Well, I think that one applies as well. That
8 looks like a mistake in not checking that.

9 Q. You would also generally if you selected an
10 article check that box as well?

11 A. Yes.

12 Q. You checked small portion of work is used
13 under factor 3.

14 A. Uh-huh.

15 Q. Just tell me how you made that determination.

16 A. Well, just looking at -- you know, in two of
17 the cases I used it it was one chapter out of whatever,
18 10 or 11 in the book. And in the other case I had three
19 out of -- I can't remember how many there were, nine or
20 10 or 11. However many chapters. So you know, I think
21 something like 25 percent, 20 percent or something like
22 that would be small.

23 Q. 20 or 25 percent would be the line you
24 generally draw as to small versus large?

25 A. In my mind. I mean, it's not defined exactly

1 right here, but in my mind, yeah.

2 Q. It looks to me looking at the Munck book, I'm
3 doing a dangerous thing which is doing math on the fly,
4 but it looks like you used --

5 A. I've lost it. Oh, here it is, uh-huh.

6 Q. -- about 50 pages out of what looks to be
7 about a 250 page book?

8 A. Uh-huh.

9 Q. Which is about 20 percent?

10 A. Yeah.

11 Q. Is that right?

12 A. Yeah, so that's -- yeah. That's my general
13 calculous.

14 Q. So that's -- what I'm hearing you say is that
15 this particular use is up against the line of what you
16 would consider to be large, is that fair?

17 A. Well, large I would say would be probably over
18 50 percent. I mean, there's no category of middle,
19 medium.

20 Q. I see. So it's possible for -- these aren't
21 either/or in your mind on the checklist, the small and
22 large?

23 A. I'm sorry, I didn't understand.

24 Q. The small and large choices here are not
25 either/or to you? In other words, it could be -- you

1 might not check small because it's, say, 30 percent but
2 you wouldn't then necessarily check large?

3 A. Well, I'm not sure what I would do if I didn't
4 consider it small.

5 No, I think -- yeah, I think large would be,
6 yeah, probably 40, 50 percent or more.

7 Q. So there is some middle ground where you might
8 not check either box, is that right?

9 A. There may be. But -- yeah, there may be. But
10 I think if it were bigger than --

11 Well, you know, my upbringing was always that
12 this was focusing on the size on this thing until I was
13 focusing on the rest of it, so I think if it were larger
14 than small then I probably would not use it because I
15 think it needs to be small to be able to use it on the
16 reserve list.

17 Q. So in your mind if you don't check small
18 portion under factor 3, that's determinative of use of
19 the work overall?

20 A. I think it's important. I think it's pretty
21 important. I don't think it's completely determinative,
22 but I think it's pretty important. And probably I
23 would.

24 I don't know. I haven't had an instance like
25 you're saying of where it was larger which one I would

1 check, because I haven't really had another instance to
2 use these things.

3 Q. So you're not quite sure what you'd do until
4 faced with that particular situation?

5 A. Yes.

6 Q. You did not check here portion used is not
7 central or significant to the entire work as a whole.
8 Just tell me -- you'll see that over to the right
9 there's a choice for portion used is central to work or
10 heart of the work.

11 Tell me about your decision not to check
12 either of those.

13 A. Oh, I think it's because I thought significant
14 I think, I think every -- I think probably I was
15 focusing on the word significant in there, because I
16 think every -- you know, everything in the book is
17 significant to a book or every chapter is going to be
18 significant, but it's not necessarily the central
19 chapter. So that's why I didn't check it on the left
20 hand side because I wouldn't say it wasn't significant.
21 But didn't want to --

22 I look at the right hand side and I see
23 central to the work or heart of the work. That makes it
24 sound like it's the key piece of the work and I don't
25 think that that applies, either. So I actually didn't

1 think that either one of those applied.

2 Q. So looking at the right hand one, weighs
3 against fair use. If it said portion used is central or
4 significant to work, would you have checked it?

5 A. I might have.

6 Q. I think what I just heard you say is that you
7 view each of the chapters in the book as being
8 significant --

9 A. Uh-huh.

10 Q. -- which is why you didn't check the left
11 side?

12 A. Yeah, I think -- I mean, I don't think a
13 publisher would include something if it weren't
14 significant. That doesn't mean --

15 It wouldn't necessarily be significant to my
16 class, but significant to the work is the way I read
17 that. So I presume that they're not publishing things
18 that aren't significant to the work.

19 Q. And then I think what you said was looking at
20 the right hand column is that that inquiry is limited --
21 you didn't check it because that inquiry on that side is
22 limited to central to the work as opposed to --

23 A. Correct.

24 Q. -- central or significant?

25 A. Right. I'm thinking of significant as

1 important.

2 Q. And so if -- just so the record is clear, if
3 on the right hand side the choice was portion used is
4 central or significant to work, then you would have
5 considered checking that box?

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

8 Are you asking her is it central or it
9 significant? You're using those
10 alternatively and I think that question is
11 vague and indefinite.

12 BY MR. LARSON:

13 Q. Do you understand the question?

14 A. Well, I think you're sort of asking me a
15 hypothetical, if it were worded differently what would I
16 do.

17 Q. That's exactly what I'm doing.

18 A. Okay. Can I answer a hypothetical like that?

19 MR. ASKEW: If you understand it.

20 THE WITNESS: Well, I think that the
21 confusing thing is what you're asking is
22 something that I would interpret as, like I
23 said, significant -- it wouldn't make sense
24 to me to see both of those because it's
25 going --

1 Like I said, everything is significant
2 to the book, but that would combine more
3 than one criteria because heart of the work
4 would be, you know, saying that there's
5 some crucial section of the book as opposed
6 to all the chapters are important to the
7 book. So I think it would be very hard to
8 interpret a criteria with all of those
9 together.

10 BY MR. LARSON:

11 Q. Let me ask it this way. Maybe this will
12 simplify it a little.

13 If there was a choice on the right hand side
14 that said portion used is significant to work for this
15 chapter we're talking about here, would you check that?

16 A. Probably, yes, uh-huh. If it just said that.

17 Q. Let me just ask you, you didn't identify that
18 the piece that you took -- forgive me -- the piece that
19 you provided to your students as being the heart of the
20 work, central to the work or the heart of the work?

21 A. Uh-huh. Correct.

22 Q. I take it you don't believe that this
23 particular excerpt is the heart of the work?

24 A. Correct.

25 Q. And why not?

1 A. I think it's difficult in an edited volume to
2 have a heart of the work. It usually is not a heart of
3 the work.

4 Q. What about the introduction to an edited
5 volume?

6 A. Well, the introduction in these cases was --
7 they were each like another chapter that they introduced
8 their own subject matter.

9 Q. When you say these cases, do you mean the two
10 checklists that we're looking at here?

11 A. No, the two books we're looking at here.

12 Q. So looking at McCoy 7, this is the Munck
13 chapters, just tell me what you mean. The introduction
14 there was introducing a particular chapter, is that
15 what --

16 A. The Munck -- let me remember that one. That
17 is the one -- I downloaded that one. I can't remember
18 which is which. The Munck is -- that was the one with
19 the past and the current research in the field.

20 Q. What is it you're looking at there?

21 A. Yeah. Just some notes that I made on the list
22 of my books that I'm using.

23 Q. Could I see what you're looking at?

24 A. Can I show him this?

25 MR. ASKEW: Yeah.

1 MR. LARSON: Why don't we mark this as
2 an exhibit for the deposition. Let's mark
3 this as McCoy 8.

4 BY MR. LARSON:

5 Q. And could you just tell me what your notes are
6 there?

7 A. Uh-huh. I just wanted to remember what was in
8 these things.

9 Q. Sure.

10 A. Let's see. The first one is "Democratic
11 Accountability". That's the Mainwaring.

12 Q. Uh-huh.

13 A. I wrote down it's Mainwaring's only chapter in
14 the book. It's a literature review and his arguments.
15 It includes review of the authors in the book and other
16 authors.

17 And the second one is --

18 Q. Let's pause there if we could.

19 A. Uh-huh.

20 Q. And just so -- so in this situation, the
21 introduction actually is itself the chapter, it's not a
22 separation introduction to the book?

23 A. Correct.

24 Q. I see. And then for the second, go ahead.

25 A. And the second one is "Regimes In Democracy",

1 and I wrote down -- this is the reason why I wanted to
2 use the book, that's why I was writing in each case.
3 Past and current research on Latin America, development
4 of the field.

5 Q. And in this situation, looking back at McCoy
6 Exhibit 5, the introduction that you used or that you
7 provided to the students appears at least from the table
8 of contents to be an introduction to the entire book, is
9 that right?

10 A. That's the way it appears here. But he
11 actually put in there a lot of additional material that
12 I wanted them to get that was specifically looking -- as
13 I just said, describing the evolution of the field of
14 study of Latin America politics.

15 Q. And in your view would that introduction
16 comprise the heart of the work for this volume?

17 A. No, huh-uh.

18 Q. And in an edited volume like this, generally
19 it's your view that there wouldn't be -- you couldn't
20 call any particular piece the heart, is that right?

21 A. That's correct. I don't think so.

22 Q. Let's look at factor 4, returning back to
23 McCoy 6, the checklist.

24 A. Uh-huh.

25 Q. I see the first box you did not check, no

1 significant effect on market or potential market for
2 copyrighted work. Just tell me there why you did not
3 check that one?

4 A. Because I checked the second one, which is
5 stimulates the market, which means it had some effect.

6 Q. Okay. So there was an effect, but in your
7 mind the effect was positive?

8 A. Yes.

9 Q. Tell me about choosing use stimulates market
10 for original work, why did you check that one?

11 A. Because I've seen students buy the books after
12 they've read one or two chapters that I've assigned,
13 then they want to buy it. Particularly when they're
14 studying for their comprehensive exams and they want to
15 get additional preparation or additional literature or
16 if they learn it's appropriate for their research topic,
17 their theses or their dissertation, then they will often
18 buy it after afterwards. And I've seen that happen so
19 that's why I checked that.

20 Q. And when is that happening? Do you have
21 specific instances of that that you can recall?

22 A. I've had students that I've advised on their
23 dissertation or that have come in to see me on their
24 comprehensive readings, and I've seen them sometimes
25 actually carrying the books or referring to the books.

1 Q. And these are books -- this has occurred
2 after --

3 A. After taking my course.

4 Q. And after taking your course and having had a
5 particular chapter in that book assigned to the class?

6 A. Correct.

7 Q. And have they told you that they bought the
8 book because you assigned the chapter in class?

9 A. Yes.

10 Q. And how many times has that happened?

11 A. How many times. I don't know if I could say
12 how many times.

13 Q. You know, four or five, 15 or 20?

14 A. You know, over 25 years more than that. You
15 know --

16 Q. How many in the last -- how many times in the
17 last two years say?

18 A. Maybe 10 to 20.

19 Q. Okay. And just to be clear, those are
20 instances specifically where you've used a chapter and
21 then the student has bought the book and told you that
22 they bought the book because you used that chapter?

23 A. I don't know that they always say that
24 specifically to me. But they would, you know, come in,
25 talk about their project or their exam and say, well, we

1 used that in -- you know, remember that book, whatever,
2 the chapter we used in the course, you know, reading the
3 book or something.

4 Q. I'm sorry, they would say --

5 A. That I'm reading the whole book. I'm using
6 the whole book to prepare.

7 Q. So they would say they bought the whole book
8 because you used it in the class?

9 A. I don't know if they would use those exact
10 words, but they would often refer -- that they were
11 introduced to the book in the class.

12 Q. And that was my question. Is it in these
13 situations you're recounting, do you know that the
14 reason they bought the book or found out about the book
15 was specifically because you used it or is it possible
16 that they knew about the book for some other reason?

17 A. I know in some instances because they learned
18 about it in my class. I know in other instances they
19 have -- afterwards they made the decision, so I can't
20 necessarily attribute causality.

21 Q. In the former instances, how do you know that
22 it was particularly because you introduced them to it?

23 A. Because, like I said, they would come in and
24 they would refer to it.

25 Q. Refer to what?

1 A. To the class and the book that they, you know,
2 read a couple chapters and thought they were good so
3 they wanted to use the whole book in their preparation
4 or that this book was particularly relevant to their
5 research.

6 Q. And how many in that category we're just
7 talking about, how many instances of that have occurred
8 in the last two years?

9 A. It's hard to give -- I don't know. Five to
10 15.

11 Q. Okay. And in those instances, is it your
12 sense that they purchased the whole book because it had
13 some relevance to their dissertation topic or other
14 research they're doing, is that the reason they buy it?

15 A. Usually it's for one of two purposes. Either
16 relevant to their research project or preparation for
17 comprehensive exams.

18 Q. And just explain that part to me, how a
19 particular book would play into preparing for
20 comprehensive exams?

21 A. Because we expect them to know the literature
22 and to know even beyond what they've read in the class,
23 so they know the expectation is larger than that.

24 Q. So in these instances that we're talking about
25 here, these are generally in graduate courses that

1 you've had this happen?

2 A. Yes.

3 Q. Do you teach undergraduate courses?

4 A. Yes.

5 Q. Have you had a similar, any similar situations
6 you can recall in undergraduate courses where an
7 undergrad went and bought the book after learning about
8 it in your class?

9 A. Undergraduates I tend to just assign the
10 books. I don't tend to use the EReserves. And also I
11 don't have as much contact afterwards with them, so I
12 don't have specific examples.

13 Q. And when this -- the checklist uses the term
14 the market or potential market for the copyrighted work.
15 You see that?

16 A. Uh-huh.

17 Q. What's your understanding of the market that's
18 being referred to there for the work?

19 A. Well, anyone who would buy the book. In these
20 cases it's generally students and other scholars for the
21 most part, libraries.

22 Q. So the market as you understand it here is the
23 market for purchases of the book?

24 A. Yes.

25 Q. Did you consider the market for permissions,

1 licensing permissions for the excerpt when you were
2 filling out the checklist?

3 A. I'm not sure I understand that.

4 Q. Did you consider when you were filling this
5 out the impact that your use might have on the market
6 for permissions of the work as opposed to purchases of
7 the work?

8 A. No, I don't think so, because I didn't think
9 permissions were required.

10 Q. Well, you're filling this form out in order to
11 determine whether a permission is required, isn't that
12 right?

13 A. Uh-huh. Uh-huh.

14 MR. ASKEW: What was your answer to
15 that? You just nodded your head.

16 THE WITNESS: Oh, yes. Wait a minute,
17 now, I'm sorry, I'm a little confused on
18 what the question is now.

19 MR. ASKEW: Just try to verbalize your
20 answer.

21 THE WITNESS: Oh, yeah, okay. All
22 right.

23 BY MR. LARSON:

24 Q. I believe you just said that you didn't
25 consider the permissions as being part of the market

1 because you didn't understand a permission to be
2 required, is that correct?

3 A. I guess my answer to your question is no, I
4 didn't consider permissions as part of the market.

5 Q. Over on the weighs against fair use side, the
6 second box --

7 A. Uh-huh.

8 Q. -- licensing of permission reasonably
9 available, you didn't check that. Just tell me why not?

10 A. Maybe I didn't know. I'm really not sure why
11 I didn't check it.

12 Q. Do you know sitting here whether licensing or
13 permission is available for the Mainwaring, for the work
14 at issue here in this checklist?

15 A. Well, I think I know it's possible to apply
16 for or request it. What I don't know is if it's easy to
17 get for it, you know, in a case where you would need it,
18 I don't know if it's easy or not.

19 Q. That's not something you've investigated?

20 A. Well, like I said before, a long time ago we
21 used to write the permission letters, but now I've
22 only -- no, I haven't recently tried to get permission
23 other than the only time I've tried to get permissions
24 are not for EReserves but for having one of my own
25 publications -- let me think. Published in a journal to

1 then be reprinted in an edited volume. And then we've
2 had to get permissions for that.

3 So that's really my experience, because
4 otherwise I don't -- I mean, I haven't put things on the
5 EReserve that I thought required permission, so I have
6 not tried to get them.

7 Q. Again, though, in the process of filling out
8 the checklist when you're considering this factor, how
9 would you know whether or not you had to get permission
10 if you haven't finished the checklist?

11 A. Well, I wouldn't know. But the question there
12 that you asked me is it reasonably available, I may not
13 have checked it because I didn't know if it was
14 reasonably available. I didn't know.

15 Q. Just didn't know one way or the other?

16 A. I didn't know how the publisher would ask or
17 answer it if I had to make a request.

18 Q. And you didn't view this checklist as
19 requiring you to go find out in order to decide whether
20 or not to check this box?

21 A. You mean to actually go ahead and write the
22 letter and ask for it?

23 Q. Well, I don't want to say necessarily write
24 the letter.

25 A. That's how I would find out I guess is to

1 actually try it.

2 Q. And your understanding to actually do so you'd
3 have to write a letter to the publisher?

4 A. I think to know whether they would answer it
5 is or not, yes, probably.

6 Q. All right. So are you aware -- I take it
7 you're not aware then by that answer that you are able
8 to find out that information on the CCC web site?

9 A. No, I guess not.

10 Q. The next box is numerous copies made or
11 distributed which you did not check. Just tell me about
12 your decision not to check that one.

13 A. Because I was not making numerous copies.

14 Q. And what for you would be numerous?

15 A. Well, I was just providing it -- I mean, one
16 copy for the -- to put on the library. I wasn't handing
17 it out in the class or to other outside people.

18 Q. And so your understanding is that when you
19 provided this to the or when you made it available on
20 the EReserve system that was a single copy?

21 A. Yeah, that's what I was providing. I'm not
22 sure -- and it was available only to the students in my
23 class, which were 12. Didn't seem very numerous.

24 Q. Let me ask again. I'm not sure that I got an
25 answer.

1 What number of copies would you consider to be
2 numerous?

3 A. I don't know that I have a specific number.

4 Q. If you had a class of 100, would you consider
5 that to be numerous copies?

6 A. Probably.

7 Q. How about a class of 50?

8 A. Maybe.

9 Q. The next box is repeated or long term use that
10 demonstrably affects the market for the work. You did
11 not check that. Tell me why not?

12 A. Because I was using it just in this one course
13 and then it goes away.

14 Q. Now, if you were to use it -- some works you
15 use over the course of -- some works you use semester
16 after semester, is that right?

17 A. Well, the way I teach, I alternate courses and
18 I only teach one course a semester so I don't teach
19 semester after semester the same course.

20 Q. There are courses that you repeat, though, is
21 that right?

22 A. Correct.

23 Q. And when you repeat the course, is it the case
24 that you sometimes use the same -- put the same readings
25 on ERes as you did in the prior semester?

1 A. Sometimes. But as I said I usually update, so
2 it's never exactly the same.

3 Q. Understood. But for those readings that are
4 the same the next time you teach the class, would you
5 view that as being repeated use of that particular work?

6 A. Well, I suppose that could be. But in this
7 case when I was filling this out it was the first time I
8 used it so it wasn't repeated.

9 Q. I see. If it had been the second or the third
10 time, would you have checked this box?

11 A. I might have.

12 Q. And required classroom reading you checked I
13 assume because it was required reading?

14 A. It was required, yeah.

15 Q. So just to correct me if I'm wrong, I think
16 any --

17 A. Oh, I'm sorry, if I go back to that one.

18 Q. Uh-huh.

19 A. Repeated -- the demonstrably affects the
20 market for the work, I would -- I may not have checked
21 it because of the entire phrase, either.

22 Q. And that's having to do with the reason we
23 discussed about the effect on the market before?

24 A. Correct. Uh-huh.

25 MR. ASKEW: Was that a yes?

1 THE WITNESS: Yes. You know, presuming
2 that that means, you know, negatively
3 affects the market.

4 BY MR. LARSON:

5 Q. So just looking over the chart as a whole, it
6 appears to me that you have just one check in the weighs
7 against fair use column, is that right?

8 A. Yes, that's correct.

9 Q. And that's the same on McCoy 7?

10 A. Yes.

11 Q. And am I right that the two checklists are
12 identical in terms of which boxes are checked?

13 A. Yes.

14 Q. How -- when you fill this out, if you recall,
15 how long do you spend on each checklist roughly?

16 A. Probably 10 to 15 minutes.

17 Q. You described before that I think there's been
18 a situation where you wanted to use enough chapters of a
19 particular book, I don't remember if you gave number,
20 but a significant number of chapters where you decided
21 just to have the students purchase the book, am I
22 remembering that right?

23 A. Uh-huh. Uh-huh.

24 MR. ASKEW: Is that again --

25 THE WITNESS: Yes, I'm sorry, yes.

1 BY MR. LARSON:

2 Q. Thank you.

3 Is it your understanding that those several
4 chapters that wanted to use would have been allowed
5 under the old GSU policy?

6 A. Which policy? We've had --

7 Q. Well, prior to the current regem where there's
8 the checklist, you know, let's say in 2007, if you had
9 wanted to put those five chapters or whatever number of
10 chapters it was on the library system, would you have
11 been able to do so?

12 A. No. My understanding would be -- was in the
13 past that it should be a small amount.

14 Q. So put another way, your decision to make them
15 buy the book in this particular situation we're talking
16 about is not necessarily a result of the change in
17 policy in 2009, is that right?

18 A. That -- well, I understand that it's always
19 been that it should be a small amount so, correct, not a
20 change in that policy of small or large.

21 Q. In the situation where if you determine that a
22 work was not a fair use after doing the checklist, and
23 maybe not a situation where it was so many chapters that
24 they had to buy the book but was in your view too much,
25 would you ever consider putting the work on EReserve but

1 seeking permission from the publisher to do so?

2 A. Yes, that could be another option.

3 Q. Is that something that you've -- well, strike
4 that.

5 I think you've answered this before. I think
6 you said that's not something you've actually looked
7 into, though, right?

8 A. Correct.

9 Q. And is it your understanding that if you were
10 to seek a permission from a publisher that you'd have to
11 pay for that permission or that the students would
12 somehow pay or that the school would, do you have a view
13 on that?

14 A. I'm not sure. I don't think I would have to
15 pay. But I'm not actually sure how the payments work.

16 Q. Okay. So you don't know whether the students
17 would or the school would?

18 A. I don't know.

19 Q. And is it your view that if it were the case
20 that the permission fee -- permission fee could be
21 charged to each student, is that something that you
22 would consider?

23 A. I think it really depends on how much it is
24 and how important it is to the course that they read it.

25 Q. Okay.

1 A. But I don't know how much it would be.

2 Q. That's just not something you've ever
3 investigated?

4 A. Right.

5 MR. LARSON: Give me just one moment.
6 I think we may be about ready to wrap up.

7 That's all the questions I have for
8 you.

9 MR. ASKEW: That will conclude the
10 deposition.

11 THE VIDEOGRAPHER: Off the record at
12 1:52.

13 (Deposition concluded at 1:52 p.m.)

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E R R A T A S H E E T

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

PAGE / LINE CORRECTION

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NOTARY PUBLIC SIGNATURE

DATE-----

MY COMMISSION EXPIRES:

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C E R T I F I C A T E

G E O R G I A:

FULTON COUNTY:

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

This, the 9th day of February, 2011.

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

1 DISCLOSURE

2
3 STATE OF GEORGIA

4 COUNTY OF DEKALB

5 Deposition of Jennifer McCoy

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

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

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

12 Shugart & Bishop was contacted by the offices of Weil
13 Gotshal & Manges to provide court reporting services for
this deposition.

14 Shugart & Bishop will not be taking this deposition
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(a) and (b).

16 Shugart & Bishop has no exclusive contract to provide
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in the case, or any reporter or reporting agency from whom
a referral might have been made to cover this deposition.

18 Shugart & Bishop will charge its usual and customary
19 rates to all parties in the case, and a financial discount
will not be given to any party to this litigation.

20
21 Teresa Bishop
22 RPR, RMR, CCR B-307
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25

A				C
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