

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 MARGARET F. MOLONEY,
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,
Subbasement Room 2, Atlanta, Georgia, on Friday, April
15, 2011, commencing at the hour of 1:55 p.m.

Shugart & Bishop
Certified Court Reporters
Suite 140
13 Corporate Square
Atlanta, Georgia 30329
(770) 955-5252

I N D E X

Examinations

Page

EXAMINATION BY MR. KRUGMAN

5

E X H I B I T S

No.

Description

Page

1 CV from Georgia State web site

11

Dixon 2 GSU copyright policy

29

3 printout from Georgia State's
GoSolar system for the fall semester 2009

51

4 syllabus for nursing 8035 course

53

5 confirmation from the library for
reserves request

72

6 report generated from Georgia
State's electronic reserve system
for fall of 2009 nursing 8035

80

7 fair use checklist completed
"Handbook Of Mixed Methods In
Social And Behavioral Research"
fall 2009 in nursing 8035

83

1	8	cover and table of contents for	83
2		"Handbook of Mixed Methods In	
3		Social & Behavioral Research	
4	9	fair use checklist for fall 2009	105
5		for Popper article	
6	10	cover and copy of the table of	105
7		contents for "Objective Knowledge:	
8		An Evolutionary Approach"	

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(Disclosure was made pursuant to O.C.G.A. Annotated 9-11-28

15

(c) and (d) and 15-14-37 (a), (b) and (c).)

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1 APPEARANCES OF COUNSEL:

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3 FOR THE PLAINTIFFS:

4
5 EDWARD B. KRUGMAN
6 ATTORNEY AT LAW
7 BONDURANT, MIXSON & ELMORE
8 1201 WEST PEACHTREE
9 SUITE 3900
10 ATLANTA GA 30309-3417
11 404.881.4121
12 KRUGMAN@BMELAW.COM

13 FOR THE DEFENDANTS:

14 KATRINA M. QUICKER
15 ATTORNEY AT LAW
16 BALLARD SPAHR LLP
17 SUITE 1000
18 999 PEACHTREE STREET
19 ATLANTA, GA. 30309-3915
20 678.420.9300
21 QUICKERK@BALLARDSPARH.COM

22 ALSO PRESENT:

23 KENNITH DRAKE, VIDEOGRAPHER
24
25

- - -

1 THE VIDEOGRAPHER: This will be the
2 videotaped deposition of Margaret Moloney
3 taken by the plaintiff in the matter of
4 Cambridge University Press, Oxford
5 University Press Inc., and Sage
6 Publications Inc. versus Mark P. Becker, in
7 his official capacity as Georgia State
8 University president, et. al.

9 The date is April 15th, 2011. We're
10 the record at 1:55.

11 MR. KRUGMAN: If you'll swear the
12 witness.

13 MARGARET F. MOLONEY,
14 having been first duly sworn, was examined and testified as
15 follows:

16 EXAMINATION

17 BY MR. KRUGMAN:

18 Q. Good afternoon. If you could first please
19 state your full name and where you reside?

20 A. Margaret Florence Moloney. And I reside in
21 Atlanta, Georgia.

22 Q. And what is your residence address?

23 A. 2351 Doreen Court northeast, Atlanta, 30345.

24 Q. And I'm Edward Krugman and we met for the
25 first time just a few moments ago, and I'm representing

1 Cambridge University Press, Oxford University Press and
2 Sage Publications in the matter that brings you here
3 today.

4 Have you ever been deposed before?

5 A. No.

6 Q. Let me tell you just a few of the ground rules
7 for the deposition. I'll be asking you questions
8 throughout the day. If at any time you do not
9 understand the question that I've asked, please tell me
10 and I will do my best to rephrase it to make it clearer.

11 It is important that you respond audibly to
12 questions. Even though we have a videographer, the
13 official transcript is taken down by the court reporter
14 and she cannot record nods. So if it's a yes, verbalize
15 it and the same with the no or I don't know.

16 If at any time you need a break during the
17 deposition, let me know and we will take a break to
18 accommodate you. It's not an endurance test or the
19 Bataan Death March.

20 Your counsel during the course of the
21 deposition may state objections to questions. If it's a
22 matter of privilege, then that's not something you would
23 respond to. If it's simply an objection to form, I may
24 ask you to go ahead and respond to the question as best
25 you can.

1 First of all, when did you first learn that
2 your deposition was being taken in this matter?

3 A. I don't remember. I mean, I think it was
4 maybe a month ago.

5 Q. Fairly recently, is that correct?

6 A. Yes.

7 Q. And what did you do to prepare for the
8 deposition?

9 A. Well, I met with my lawyer. That's all I've
10 done.

11 Q. Ms. Quicker, you met with her?

12 A. Yes.

13 Q. And when was that?

14 A. A couple days ago, Tuesday I guess. Well, I
15 guess it was Wednesday.

16 Q. Was that the first time that you had met with
17 anyone in connection with the preparation for your
18 deposition?

19 A. Yes.

20 Q. And approximately how long did you and Ms.
21 Quicker meet?

22 A. About two hours.

23 Q. And did you review any documents?

24 A. You mean during the meeting with her?

25 Q. Well, first of all during the meeting in

1 preparation for your deposition.

2 A. We looked at the fair use documents that I had
3 filled out.

4 Q. The checklist documents?

5 A. The checklist.

6 Q. Any other documents that you reviewed that you
7 can recall?

8 A. Not that I recall.

9 Q. Were there any documents you reviewed other
10 than when you met with Ms. Quicker to prepare for your
11 deposition?

12 A. No.

13 Q. Did you review the Georgia State University
14 policy on copyright?

15 A. Just -- you mean since I found out about this?

16 Q. Yes, ma'am.

17 A. No.

18 Q. Did you review any transcripts of depositions
19 taken of other individuals in this case?

20 A. No.

21 Q. Have you reviewed any briefs in the case?

22 A. No.

23 Q. Have you seen the complaint or amended
24 complaint or any pleadings in this case?

25 A. No.

1 Q. Other than your counsel, did you speak with
2 anyone about your deposition today?

3 A. No.

4 Q. Have you spoken with any other Georgia State
5 professors about depositions they have given in this
6 case?

7 A. No.

8 Q. At some time were you asked to preserve
9 documents in connection with this litigation?

10 A. Yes.

11 Q. And first of all, who made that request?

12 A. Legal affairs.

13 Q. The office of legal affairs for the
14 university?

15 A. Yes. Yes.

16 Q. You recall the individual who made the
17 request?

18 A. No.

19 Q. Do you remember when that request was made?

20 A. No.

21 Q. Was it --

22 A. It was quite a while ago.

23 Q. Was it -- during 2009 or 2010 if you recall?

24 A. No, I think it was in 2010, but I'm not sure.

25 Q. What documents were you requested to preserve?

1 A. I was requested to send in my fair use, copies
2 that I had used for a course in the fall of 2009. Send
3 them to legal affairs.

4 Q. And I take it you did that?

5 A. Yes.

6 Q. And you understand that the checklist -- I
7 take it you filled out checklists in connection with
8 requesting the library to post some works on the GSU
9 EReserve system, is that correct?

10 A. Yes.

11 Q. And did you have at the time the request was
12 made copies of all of the checklists that you had
13 completed in connection with requesting works be posted
14 on the EReserve system for the fall of 2009?

15 A. I did.

16 Q. Were you asked to provide any documents other
17 than the checklist?

18 A. I'm not absolutely sure, but I believe I might
19 have sent the syllabus for that course.

20 Q. Okay. When you say the syllabus for that
21 course, which course were you referring to?

22 A. 8035. Or is it 45. I can't remember.

23 Q. But it was a course you taught in the school
24 of nursing at Georgia State?

25 A. Yes.

1 Q. And the checklist concerned works that were
2 posted on the EReserve system for that course that you
3 taught in the fall of 2009?

4 A. Yes.

5 Q. Let me first hand you what's been marked as
6 Moloney Exhibit Number 1 and can you identify this
7 document, Professor Moloney?

8 A. Yes.

9 Q. What is it?

10 A. I believe this is the information that was
11 taken off the web, the school of nursing web site about
12 me.

13 Q. Is this information that you provided to the
14 web site?

15 A. Yes.

16 Q. Essentially your CV?

17 A. Yes, part of it.

18 Q. Or resume, a portion of your resume?

19 A. Yes.

20 Q. And what exactly is your position at the
21 university?

22 A. I'm associate professor.

23 Q. And do you have any particular areas of
24 expertise that you concentrate in?

25 A. You mean as far as what I teach?

1 Q. Yes, ma'am.

2 A. I teach in the doctoral program.

3 Q. And what is the doctoral program?

4 A. The Ph.D. in nursing program.

5 Q. And you've been on the doctoral program
6 faculty since -- since 2004, is that correct?

7 A. Yes.

8 Q. Under education, Exhibit 1, Moloney Exhibit 1
9 indicates that you were -- says coordinator family nurse
10 practitioner program 2004 to 2006. And what is that?

11 A. That's the family nurse practitioner program,
12 and I coordinated that.

13 Q. At the university?

14 A. Uh-huh. It's a nursing -- a master's program
15 in nursing.

16 Q. Okay. You received is that a bachelor of
17 nursing in 1972 from Illinois Wesleyan?

18 A. Yes.

19 Q. And then a master's in nursing from St. Louis
20 University in 1977?

21 A. Yes.

22 Q. And then you obtained your Ph.D. from Georgia
23 State University in 1993?

24 A. Yes.

25 Q. And that's a Ph.D. in nursing?

1 A. Nursing.

2 Q. Are you a tenured professor at Georgia State?

3 A. Yes.

4 Q. And how long have you been tenured?

5 A. Two weeks.

6 Q. Congratulations.

7 A. Thanks.

8 Q. I take it you are excited about that?

9 A. I'm relieved.

10 Q. Are you employed or do you work other than in
11 connection with your work at the university currently?

12 A. No.

13 Q. Have you since 2004 when you joined the
14 faculty?

15 A. Yes.

16 Q. And what did you do?

17 A. I did nurse practitioner work for Planned
18 Parenthood about one day a week while I was here. In
19 the capacity of part of my teaching responsibilities I
20 worked there as a nurse practitioner.

21 Q. Excellent. And when did you quit doing that?

22 A. 2007.

23 Q. And what did you do prior to -- prior to
24 joining the faculty at the university?

25 A. I taught at Emory for about eight years in the

1 nursing school there.

2 Q. Did you work other than in connection with
3 your teaching at Emory?

4 A. Yes. I worked at Planned Parenthood as a
5 nurse practitioner and I worked in several internal
6 medicine practices during my practice year over time.

7 Q. And prior to teaching nursing at Emory --

8 A. I worked as a nurse practitioner.

9 Q. In Atlanta?

10 A. In Atlanta. And in St. Louis before that.

11 Q. Who do you report to within the university?

12 A. Dr. Barbara Woodring.

13 Q. You can spell that for the court reporter.

14 A. W-o-o-d-r-i-n-g.

15 Q. And what is Dr. Woodring's position?

16 A. She's the director of the school of nursing.

17 Q. Do you know who Dr. Woodring's report is?

18 A. Dr. Susan Kelley, K-e-l-l-e-y. She's the dean
19 of the college of health and human sciences.

20 Q. And do you know who Susan Kelley reports to?

21 A. I'm not absolutely certain.

22 Q. Do you know who the provost is of the
23 university?

24 A. Yes.

25 Q. And who is that?

1 A. Risa Palm, R-i-s-a.

2 Q. And what do you understand the role of the
3 university provost to be, if you have an understanding?

4 A. I am quite sure I don't have a complete
5 understanding. But I believe that part of her role at
6 least involves being in charge of academic affairs. In
7 other words, she probably takes a good deal of the
8 responsibility for faculty affairs. And beyond that --
9 and besides general governance, I'm not sure what her
10 other responsibilities are.

11 Q. And who is the president of the university?

12 A. Mark Becker.

13 Q. And what is your understanding of Mark
14 Becker's responsibilities just in broad terms as
15 university president?

16 A. Well, I guess to summarize it I would say that
17 he is the chief administrator and that overall everyone
18 in one way or another directly or indirectly reports to
19 him. That would be my general understanding.

20 Q. And that would include you as a member of the
21 faculty?

22 A. Yes.

23 Q. And I take it that would include the head
24 librarian of the university as well?

25 A. I would assume so, but I don't know for sure.

1 Q. Have you published any books?

2 A. No, I have a section of a book that was
3 published, but I've not published any books myself.

4 Q. What was the section of the book?

5 A. It was a section on "Menopause And Migraines"
6 and it was published in a clinical handbook on menopause
7 by the North American Menopause Society.

8 Q. If you take a look at the Exhibit 1, and can
9 you identify --

10 A. Yes, it's in various editions. It's the
11 second listing on my list of publications.

12 Q. Okay. So it's where it says Moloney M. F.
13 Headache --

14 A. Yeah.

15 Q. -- In Menopause Practice: A Clinician's
16 Guide --

17 A. Yes.

18 Q. -- second edition, Cleveland, the North
19 American Menopause Society. And that's actually in
20 press?

21 A. Well, it was then. I mean, this is old, so --

22 Q. When you say this is old, you mean Exhibit --

23 A. The publication, that publication has been
24 updated since then.

25 Q. Okay. It's been updated since the second

1 edition, is that --

2 A. Yes, that was the second edition, yeah.

3 Q. Okay. And do you have a section of this book
4 since it's been updated?

5 A. Yes.

6 Q. So simply a subsequent edition of the same
7 book?

8 A. Yes.

9 Q. What was the subject of the book?

10 A. Menopause.

11 Q. And I take it from the title the portion --
12 was the portion you wrote, did that deal with
13 headaches --

14 A. Yes.

15 Q. -- in menopause, so women and men going
16 through menopause and headaches they experience?

17 A. Women, women going through menopause, yes.

18 Q. What portion of that book did you contribute
19 to?

20 A. You mean percentage wise?

21 Q. Yeah. First of all, number of pages, if you
22 know?

23 A. Probably about two pages.

24 Q. So your portion of the book was a total of two
25 pages?

1 A. I think so, yeah.

2 Q. I take it both your portion of the book and
3 the entire book is a work of nonfiction rather than
4 fiction, is that correct?

5 A. Yes.

6 Q. Did the portion of the book that you
7 contributed to contain your original analysis on the
8 subject?

9 A. Yes.

10 Q. And the portion that you contributed to was
11 not simply a recitation of facts, but contained
12 expression and analysis by you, correct?

13 A. Yes.

14 Q. And did you consider the portion you
15 contributed to to be a creative product?

16 A. Yes.

17 Q. Did you sign a contract for the book with the
18 publisher?

19 A. By contract you mean was I going to get money
20 for it?

21 Q. Well, first of all, was there any papers that
22 you signed in connection with the contribution?

23 A. I am not certain that there was, but I believe
24 I just -- I signed a statement that said I would do the
25 work.

1 Q. Was it your expectation that you would be paid
2 anything for the contribution?

3 A. No.

4 Q. And have you received any payments whatsoever
5 for the contribution that you made to the book we're
6 speaking about?

7 A. No. They gave me a copy of the book.

8 Q. So obviously your contribution to the book was
9 not financially motivated in terms of direct payments
10 for the work that you did, is that correct?

11 A. Right.

12 Q. But there's certainly benefits to being
13 published apart from the income that one might earn from
14 the publication, is that correct?

15 A. Yes.

16 Q. Career enhancement?

17 A. Yes.

18 Q. Reputation?

19 A. Yes.

20 Q. And a contribution hopefully toward becoming a
21 tenured professor?

22 A. Yes.

23 Q. What was the role of the publisher of this
24 book, if any, in connection with the portion that you
25 contributed?

1 A. What -- I'm not sure what you mean.

2 Q. I assume you, first of all, you prepared a
3 draft of a manuscript?

4 A. Yes.

5 Q. And then to whom did you submit that
6 manuscript?

7 A. An editor, but I'm not sure who it was. It
8 may have gone to the publisher, but the publisher was
9 the president of the organization.

10 Q. And that organization was the North American
11 Menopause Society?

12 A. Yes.

13 Q. Other than the contribution that you made to
14 "Menopause Practice" that we've been speaking of, have
15 you contributed to any other books?

16 A. Not directly. I've had two chapters that were
17 published as papers that I had accidentally discovered
18 appeared in other books later on because of the
19 publisher's copyright.

20 So I had two papers that were published in
21 journals and then I accidentally found out about each
22 one of them that they had later been published as a
23 chapter in a book, each of them. So they were a chapter
24 in each of two books.

25 Q. Okay. First of all, what were the two papers,

1 first of all?

2 A. One was -- let's see, I'm trying to remember.
3 One of them is not on here. I didn't put it on this
4 list. It was an article entitled Women -- Older Women
5 And Inner Strength: A Hermeneutical Heideggerian Study
6 Of Inner Strengths Of Older Women. That appeared in a
7 geriatric anthology.

8 The other one --

9 Q. It appeared in the geriatric anthology --

10 A. In a book that was of geriatric articles. I
11 don't even know what the other ones were.

12 Q. What were the -- but that was originally an
13 article?

14 A. That I had published.

15 Q. Published for a journal. What journal was
16 that, if you remember?

17 A. Journal of Nursing Scholarship. The other
18 one -- I don't remember which one the other one was.

19 Q. You said you accidentally discovered --

20 A. Yes.

21 Q. -- that each of these two articles had been
22 published as chapters in a book?

23 A. Uh-huh.

24 Q. And how did you make that discovery?

25 A. I don't remember how I discovered the first

1 one. But the second one a friend of mine came to me
2 with a textbook she had gotten and said I was so amazed
3 to see that someone else had written an article in the
4 subject that you did your dissertation on. And I looked
5 at it and I thought, oh, that's Peggy.

6 So she brought me the book and said, this is
7 your article, right. And congratulations having it in
8 this book. And I said, I really had no idea but I think
9 I'll write to them and ask them for a copy of the book.
10 So I did.

11 Q. And did you get a copy?

12 A. I did.

13 Q. What was the subject matter of that -- of your
14 dissertation?

15 A. I was interested in older women and their
16 stories of surviving difficult events. And I
17 interviewed 12 older women, women over the age of 65,
18 and asked them to tell me stories about their lives.
19 Transcribed those and analyzed those.

20 Q. I may object to the describing someone over
21 the age of 65 as being old.

22 A. It seemed old to me then. It doesn't seem so
23 old now. I used the term older.

24 Q. I think you said earlier that it may have
25 occurred because the publisher of the journals owned the

1 copyright to the articles?

2 A. That was my assumption at the time. I don't
3 know how actual -- actually how it happened.

4 Q. It was not something you investigated?

5 A. No, so long as I had a copy of the book so
6 that I could show it off, you know.

7 Q. Again, to hopefully enhance your reputation?

8 A. Yes.

9 Q. And the other recent publications that are
10 listed on your CV, are all of those -- those articles
11 that you submitted?

12 A. Yes, they all are.

13 Q. And this reveals the various publishers for
14 those, or does it, the articles appeared in?

15 A. No, no, it does not, it just has the title of
16 the journal and title of the article.

17 Q. So the journal -- like one journal would be
18 Advances In Nursing Science, just as an example?

19 A. Uh-huh.

20 Q. And I take it you believe those journals to --
21 those journals provide a benefit to academia in the area
22 in which you teach?

23 A. Yes.

24 Q. Have you ever received any royalties or fees
25 of any sort for anything that you have published?

1 A. Yes.

2 Q. If you would, please, tell me about that.

3 A. Actually it was this year I had written an
4 article for a clinical nursing journal and when it was
5 completed and in, I received an honorarium to split with
6 my co-author of \$150.

7 Q. Was the 150 your portion or the total?

8 A. It was the total.

9 Q. Other than that, have you received any
10 payments for --

11 A. Not I recall.

12 Q. -- anything that you've written?

13 A. I don't think so.

14 Q. You've been teaching at Georgia State since I
15 think 2004?

16 A. Yes.

17 Q. Do you typically -- how many courses do you
18 typically teach in the year?

19 A. I teach -- this year I taught one course in
20 the fall, I'm teaching two courses this spring, and I
21 also coordinate the doctoral program.

22 Q. And is that a fairly standard case load?

23 A. For tenured or tenured track faculty, it is.

24 Q. And what about -- and how long has that
25 essentially been your class load?

1 A. Since I've been here. And I also do research,
2 so it's not been my full load.

3 Q. You teach and also research?

4 A. Yes.

5 Q. And is that research that leads to the
6 publications that are listed?

7 A. Primarily, although they're also clinically
8 relevant.

9 Q. And when you say clinically relevant, what do
10 you mean?

11 A. Useful for nurse practitioners in practice or
12 nurses in practice.

13 Q. Throughout your -- you're familiar with the
14 EReserve system at Georgia State?

15 A. Yes.

16 Q. And have you used that system throughout your
17 tenure at the university?

18 A. I don't remember how many times I've used it
19 or not. A couple of years. I'm not sure exactly how
20 long.

21 Q. You certainly used it in the fall of 2009?

22 A. Right.

23 Q. Have you used it subsequent to the course that
24 you taught in the fall of 2009?

25 A. I believe not, although I'm not absolutely

1 certain.

2 Q. Did you use it prior to the course that you
3 taught in the fall of 2009 for which you collected the
4 checklist and syllabus?

5 A. I don't remember. I may have, but I don't
6 remember.

7 Q. That's fine.

8 So sitting here today, you can only recall
9 having used it for one course?

10 A. Seems like I may have used it for another one,
11 but I can't remember when that was or what the
12 circumstances were.

13 Q. Are you also familiar with what's called the
14 ULearn system at Georgia State?

15 A. Yes.

16 Q. What is that, what's your understanding of
17 ULearn?

18 A. ULearn is a web based system for either
19 teaching or enhancing teaching so that you can have --
20 you can have classes on it as discussion board classes
21 and you can organize things like grades and assignments,
22 and also you can communicate with students using it.

23 Q. Have you used ULearn -- have you used the
24 ULearn system in connection with your teaching at
25 Georgia State?

1 A. I believe I did.

2 Q. And have you -- going back to the EReserve
3 system, you used that at least in the fall of 2009 --

4 A. At least.

5 Q. -- to have certain works posted on that system
6 that students could then access, correct?

7 A. Yes.

8 Q. Have you used the ULearn system in a similar
9 fashion, to post works in electronic format that
10 students could then access?

11 A. I may have used it earlier before -- before
12 2009. I believe I did. But when electronic reserves
13 came out, I believe that that's when I switched over.

14 Q. And what do you understand electronic
15 reserves, the EReserve system to be?

16 A. I understand it to be the electronic analog to
17 having books and articles on reserve, on real paper,
18 real time reserve.

19 Q. So instead of having a hard copy of a book or
20 article on reserve at the library that a student could
21 go in and check out for two hours, this is simply the
22 same information provided electronically, as you
23 understand it?

24 A. That's my understanding, yes.

25 Q. In 2009 you recall that Georgia State adopted

1 a new copyright policy?

2 A. I don't remember when that happened or if
3 there was. Yeah, I guess there must have been because
4 they stopped using ULearn, yeah.

5 Q. When you say there must have been, they
6 stopped using ULearn --

7 A. No, I'm sorry, the copyright statement has
8 nothing to do with that. So no, I don't recall when and
9 if the copyright policy was changed.

10 Q. Okay. You do recall at some point being
11 advised of the checklist that you would need --

12 A. Yes.

13 Q. -- to complete in order to have works posted
14 on the EReserve?

15 A. I do.

16 Q. And you recall that was a new development that
17 had -- one that had not previously existed at the
18 university?

19 A. Yes.

20 Q. Is it your understanding that this -- we'll
21 get to it, that the new policy and the checklist do not
22 apply to the ULearn system at Georgia State?

23 A. I'm sorry, I don't -- could you -- I'm not
24 sure what you mean.

25 Q. And I'm just following up on what you had said

1 when you said they stopped using ULearn and you said,
2 no, that the statement has nothing to do with that?

3 A. Well, I guess copyright doesn't have -- I'm
4 not sure what copyright applies to in terms of talking
5 about ULearn and the electronic reserves exactly, the
6 distinctions between those.

7 Q. Let me go ahead and hand you, this is what has
8 been previously marked as Dixon Exhibit Number 2. And
9 we'll take a quick look at this and perhaps you'll be
10 able to better understand my questions, or perhaps not.

11 Can you -- first of all, can you identify
12 what's been marked as Exhibit 2 as the University System
13 of Georgia copyright policy?

14 A. Well, that's what it says it is, so --

15 Q. Prior to today have you seen the policy?

16 A. If I have seen this whole policy at some time,
17 I don't recall that.

18 Q. Do you recall at some point learning that a
19 new policy on copyright had been adopted?

20 A. I don't recall that, although I do recall
21 learning about that there was something called fair use
22 that I needed to know about.

23 Q. And when was that?

24 A. It was I guess before 2009 or maybe 2009. I'm
25 not sure. But I mean, I don't remember if it was

1 earlier than that, I don't know.

2 Q. Okay. When you were -- you recall learning
3 that there was something called fair use that you needed
4 to know about?

5 A. Yeah, and I do read about copyright stuff. I
6 mean, I try to stay as up on the general principles as I
7 can.

8 Q. How did you learn, what were the circumstances
9 under which you learned that there was something called
10 fair use that you needed to know about?

11 A. As I recall we received some -- we received a
12 communication that we were to -- to upload, if we wanted
13 to have things on reserve for students that we do it via
14 electronic reserves and that -- and that this was a
15 piece of that, that the fair use checklist was a piece
16 of that.

17 Q. Okay. So you learned from someone that if you
18 wanted to make materials available electronically for
19 students that you were to use the --

20 A. Yes.

21 Q. -- electronic reserve, EReserve system for
22 that?

23 A. Yes.

24 Q. Okay. Do you recall who you learned that
25 from?

1 A. No, I don't.

2 Q. Do you recall how you learned it?

3 A. Probably e-mail. I mean, that's how most
4 things come. But I don't really recall.

5 Q. Do you recall whether you received a copy of
6 what's been marked as Dixon Exhibit 2 in --

7 A. This whole thing?

8 Q. First of all, let's start with the whole
9 thing.

10 A. If I received a copy of this, I don't remember
11 that.

12 Q. Do you recall being directed to a link on the
13 university web site that would take you to a copy of the
14 policy?

15 A. No, but I can't remember things. You know,
16 I'm -- I may very well, because I've read up several
17 times on things about copyright and plagiarism,
18 particularly with regard to being concerned about how we
19 train our students. So it's been very important to me
20 to be doing that in a way that works, that is
21 appropriate so that they learn how to do it.

22 I don't remember this specific handout. I can
23 say that we did -- we've had in-services from legal
24 affairs regarding copyright and the fair use policy.

25 Q. Okay, I missed. You said you've had --

1 A. In-services in the school from legal affairs
2 regarding fair use and copyright.

3 Q. And when you say in-services, what do you
4 mean?

5 A. Well, this was -- in 2009 I had questions,
6 real questions about how fair use worked and how that
7 was going to happen and I was really concerned about it
8 because I wanted to do it right and I felt that some of
9 it I wasn't -- I wasn't sure if I really understood it.
10 So I talked with Gwen in legal affairs. And then -- and
11 I talked with her several times in the spring about it
12 when I was still concerned about some of the questions,
13 just general questions I had about fair use.

14 And so she did, and came I believe it was this
15 past fall, came and did an in-service for the nursing
16 faculty, PowerPoint presentation and gave us handouts
17 about -- the fair use handout and talked about that.
18 But it may have been last spring. I don't remember
19 exactly when. But it was since the fall of 2009, she
20 came and did a whole in-service for us.

21 Q. So that was after -- after you had taught the
22 course in the fall of 2009?

23 A. Well, she had answered a lot of my questions
24 then, and then I said -- I said to her --

25 MS. QUICKER: Let me just caution you

1 not to reveal attorney client privilege.

2 Gwen is an attorney and if you --

3 THE WITNESS: Oh, oh, okay, I'm sorry.

4 BY MR. KRUGMAN:

5 Q. I'm not asking anything -- and I don't want
6 you to reveal anything that may be protected by the
7 attorney client privilege.

8 A. Oh, no.

9 Q. Although I'm not certain that these were --

10 A. Basically all I was going to say is I thought
11 it would be helpful for everybody to hear more about it.

12 Q. What were the concerns that you had about fair
13 use?

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

15 Q. I think you mentioned at least these would be
16 the students that you -- that you had been interested or
17 read about copyright as it related to plagiarism?

18 A. Yeah.

19 Q. And what was your concern there?

20 A. Just to say that it's the general area. I
21 mean, I see copyright issues and plagiarism, even though
22 they're not the same, but I see them as a general
23 ethical area. And I wanted to understand how this
24 worked because I wanted to be able to -- I wanted to
25 make sure I was setting -- I was doing it exactly right,

1 even though of course, you know, I read it and I
2 understood what the fair use policy was saying, but I
3 just wanted to know a little more about it in order to
4 demonstrate proper usage to the students.

5 Q. Now, you don't teach the students copyright
6 law?

7 A. No, but these are doctoral students, they
8 write papers, they write dissertations, they write
9 articles for publication, they write books, and so part
10 of it is modeling for them.

11 Q. And your concerns relative to the students
12 were that in connection with their dissertations and
13 papers and articles that they would not somehow be
14 violating someone else's rights?

15 A. Well, yes. But my major concern was I was
16 doing it right so they would see good modeling on how it
17 should be done.

18 Q. But you were doing it right in connection --
19 in conjunction with articles that you were writing and
20 publishing, is that what you mean?

21 A. That and also the way that they were getting
22 articles and their readings in class.

23 Q. So your concern was in conjunction with making
24 articles and other readings available to them, that you
25 wanted to make sure that you were not somehow running

1 a foul of federal copyright law?

2 A. Yes, yeah, I think so.

3 Q. Have you had any legal training?

4 A. No.

5 Q. Taken any legal courses?

6 A. No.

7 Q. Taken any courses on copyright?

8 A. No.

9 Q. Do you recall in conjunction with the new
10 copyright policy reading anything other than the fair
11 use checklist which is on pages 7 and 8 of Dixon Exhibit
12 Number 2?

13 A. Well, you mean, have I read any of the rest of
14 this handout?

15 Q. Yeah, that you recall.

16 A. I may very well have, but I don't recall.

17 Q. You just don't remember?

18 A. Yeah.

19 Q. Sitting here today, can you remember -- well,
20 you do remember reading the fair use checklist?

21 A. Oh, yes, yeah. I read it several times.

22 Q. Which is on pages 7 and 8. Do you recall
23 reading page 6 --

24 A. Yes.

25 Q. -- which is the introduction to the fair use

1 checklist?

2 A. Yes.

3 Q. Other than those three pages, and you can take
4 a moment to look through this document, can you tell me
5 whether you recall having read any other portions of
6 this exhibit?

7 A. Well, I can say that I may very well have
8 because I was reading everything I could find for a
9 while. I don't remember what I read where. And this is
10 not of course original content, all of these ideas are
11 in other places too. But I don't specifically remember
12 reading these pages. It doesn't mean I didn't.

13 Q. I understand. Did you have any understanding
14 as to why the university had adopted a new policy on
15 copyright?

16 A. I don't recall that I ever heard what the
17 rationale was. I mean, I had assumptions about it, but
18 I don't recall ever hearing what it was.

19 Q. What was the assumption? What were your
20 assumptions?

21 A. My assumption was that in line with everything
22 else going online and electronic, this was the
23 reasonable step toward making work available in a way
24 that was consistent with the way the rest of society is
25 moving with regard to education.

1 Q. Were you aware at the time the new policy was
2 adopted of any litigation?

3 A. No.

4 Q. When was the first time you heard of a lawsuit
5 brought by academic publishers against --

6 A. I don't recall exactly. I think it was
7 sometime last year.

8 Q. Was it at or about the time you were asked to
9 provide documents?

10 A. No, it was before that.

11 Q. Before that?

12 A. Yeah.

13 Q. Do you recall how you -- you know, how you
14 learned of the lawsuit?

15 A. No.

16 Q. Was it the lawsuit that prompted you to try to
17 learn more about fair use?

18 A. I had already read up on fair use before I did
19 that.

20 Q. What do you recall having read up on fair use?

21 A. I read the introduction and the sheets and
22 every time -- as I used it I read up on it.

23 Q. And the introduction which is on page 6, those
24 three pages?

25 A. Yes.

1 Q. Other than the introduction and the checklist,
2 do you recall having read anything else about fair use?

3 A. No.

4 Q. And just so I understand, other than the fall
5 of 2009, you have no specific recollection of having
6 used electronic reserve system for posting works?

7 A. I don't recall. I may have used it one other
8 time before that, but I don't recall the specific date.
9 I have not used it since then.

10 Q. Why is that?

11 A. Because I didn't need to.

12 Q. And if you could explain when you said you
13 didn't need to, what was the reason you didn't need to?

14 A. I had read fair use and so I felt like I had a
15 pretty good understanding of it. And so the articles
16 and chapters that I needed I PDF'd and mailed to my
17 students.

18 Q. Okay. So rather than providing the materials
19 in electronic form on the university's electronic
20 reserve system, you instead made copies, electronic
21 copies yourself?

22 A. Yes, I did.

23 Q. And then e-mailed those to students?

24 A. Yes.

25 Q. And that's been your practice since the fall

1 of 2009?

2 A. Yes.

3 Q. And had that been your practice before?

4 A. No.

5 Q. And what was the reason for utilizing that
6 practice rather than utilizing the university's
7 electronic reserve system?

8 A. It was primarily because it took forever to
9 fill out the fair use forms. You had to do one for each
10 article, you had to do them -- it -- you couldn't save
11 them, you had --

12 Only reason I had those is because I printed
13 them off because I was afraid if they lost it I would
14 have to do the whole thing again from scratch. So when
15 I -- when I filled out forms for fair use for that
16 course, it took me all day. Then I had to cart -- get
17 all the books together, cart everything over to the
18 library, wait for somebody to take the time to do it.
19 And it took sometimes a couple days to get it all done.

20 The first time I did it, I didn't realize it
21 didn't save and I lost it. I lost the whole chunk of
22 work I had worked on. So it was very cumbersome. And I
23 just decided it was fair use and I wasn't going to do
24 it.

25 Q. When you say you decided it was fair use and

1 you weren't going to do it --

2 A. Because I was using the same articles and
3 chapters I had before, so they were being used fairly
4 for education and it made sense and it was a waste of my
5 time.

6 Q. So rather than having to go through the
7 process of filling out the checklist, you simply made
8 the copies yourself --

9 A. Yes.

10 Q. -- and then distributed those --

11 A. I did, yeah.

12 Q. -- to students.

13 For the works that -- in the fall of 2009 that
14 were posted on the university's EReserve system, you
15 were required to provide all of the books to the
16 university?

17 A. Yes.

18 Q. You had to physically take them all over
19 there?

20 A. Yes.

21 Q. So the library did not use a copy of the book
22 that it may have had?

23 A. They had some of the copies of the books I
24 wanted, but there was at least one that I had a copy of
25 that the library didn't, and I think maybe more than

1 one. There may have been two or three books that I had
2 or newer editions that I had that the library didn't
3 have.

4 Q. Okay. So the library did have some of the
5 books?

6 A. Yeah.

7 Q. But you had one or two or three that you had
8 to take over, is that correct?

9 A. Yes.

10 Q. And it took you hours to complete the
11 checklist?

12 A. Yes.

13 Q. Do you recall how many checklists you
14 completed for the fall of 2009?

15 A. No, I -- the number of articles -- well, there
16 were at least 10 to 15 I would say checklists I had to
17 complete for that course.

18 Q. And that took you hours?

19 A. Getting it all together, yeah, getting the
20 books, taking them over there, yeah. Especially after I
21 lost the first batch and had to retype them all.

22 Q. When you say you lost the first batch, how did
23 you lose them?

24 A. It didn't save on my computer.

25 Q. Okay. Initially you did it electronically?

1 A. Each -- yes, well, that's -- yes, I did it all
2 electronically. So as each article entered if you
3 didn't print it and you went to the next article then
4 you lost the first one. So you typed in one and
5 completed it and then you printed it and then you went
6 to the next one, typed it all in, completed it and then
7 you went to the next one. So I had gone through and
8 typed them before I realized they were all disappearing.

9 Q. You understood you were supposed to retain a
10 copy of the checklist, is that correct?

11 A. I don't recall. I guess I did, yeah, but I
12 kept it -- yeah, I kept it so that I would have a copy.

13 Q. If you look on page 7 of Dixon Exhibit Number
14 2 you'll see right above factor 1, it says complete and
15 retain a copy of this checklist for each fair use of a
16 copyrighted work?

17 A. Yeah.

18 Q. And just so I understand, when you did it
19 initially you completed the checklist, you typed in the
20 information on the screen and then you went on and it
21 didn't save the first one?

22 A. Right. Yeah.

23 Q. When you did it the second time, did you type
24 in the information but then print it?

25 A. Yes.

1 Q. So it was not handwritten, it was typed?

2 A. Yes, that's my recollection of what happened.
3 That's been a while, of course.

4 Q. And I take it with respect to the materials
5 that you -- that subsequent to the fall of 2009 that
6 you've provided directly to the students and through
7 PDFs, you certainly are not completing a fair use
8 checklist for those works?

9 A. No, I didn't.

10 Q. Have there been any works that you have wanted
11 to provide to students electronically but decided, well,
12 you really can't do that consistent with federal
13 copyright law?

14 A. I can't think of anything.

15 Q. Do you recall whether you completed any fair
16 use checklist for the course that you offered or the
17 course that you taught in the fall of 2009 where after
18 completing the checklist you concluded that you could
19 not satisfy the fair use requirement?

20 A. Well, I used the same readings that I did in
21 2009 when I taught in 2010, so there was one reading
22 that was in a journal that I couldn't get copies of and
23 I didn't make a copy of that. I required the students
24 to find that themselves.

25 Q. That was one you simply couldn't find the

1 journal?

2 A. Right. And we didn't own it and I didn't get
3 it and so -- and so I asked them to find it on their
4 own.

5 Q. And when you say we didn't own it, meaning --

6 A. The university.

7 Q. -- the university didn't have a copy and you
8 were not able to locate it and so you asked the students
9 to locate a copy on their own?

10 A. Right. Yeah.

11 Q. But with the exception of that, was there --
12 do you recall whether there was any instance where you
13 completed a fair use checklist where the factors weighed
14 against fair use rather than in favor of fair use?

15 A. No, because I wouldn't have used it if it had
16 been.

17 Q. I understand you wouldn't have used it. But
18 I'm asking you if there's any instance where you
19 completed -- there was a work you wanted to use and you
20 completed the fair use checklist and the factors weighed
21 against fair use and you therefore decided that you were
22 not able to use it?

23 A. No. I take that back, there was one. There
24 was a short book that I was going to use, but in order
25 to use it for what I needed I would have had to use

1 quite a lot of it, so I decided not to use that book and
2 I got an article instead.

3 Q. Did you complete a checklist for that?

4 A. I knew from having completed the list what it
5 was. I mean, I had just done a number of those.

6 Q. You knew from having --

7 A. From having completed -- I didn't fill out a
8 list, but I knew the elements of what was needed from
9 having done that.

10 Q. But you didn't complete the list because you
11 concluded that you were going to be using too much. Do
12 you recall how much of the book you wanted to use?

13 A. No, I don't.

14 Q. Was it more than half?

15 A. Oh, no, huh-uh.

16 Q. More than --

17 A. It would have been more in the range of maybe
18 20 percent.

19 Q. And because of that you simply didn't bother
20 to complete the checklist and instead decided to --

21 A. Right.

22 Q. -- find a replacement for the article?

23 A. Right.

24 MR. KRUGMAN: We're almost out of tape
25 so why don't we take about a five minute

1 break.

2 THE VIDEOGRAPHER: Off the record at
3 2:51.

4 (Brief recess.)

5 THE VIDEOGRAPHER: This is tape 2.
6 We're back on the record at 2:58.

7 BY MR. KRUGMAN:

8 Q. Now, Professor Moloney, so I understand, it's
9 your best -- do you recall having had any training
10 whatsoever in connection with the fair use checklist
11 prior to the fall of 2009 when you taught the one course
12 that we're going to be talking about?

13 A. I don't recall. We may have. I just don't
14 recall.

15 Q. You just don't recall?

16 A. Yeah.

17 Q. Do you have an understanding as to who is
18 responsible for enforcing the copyright policy at the
19 university?

20 A. No.

21 Q. Do you have any understanding as to what the
22 consequences would be for you personally in the event of
23 a violation?

24 A. I assume it's not good, but I don't know what
25 they would be.

1 Q. If in the fall of 2009 the university provost
2 had contacted you and advised you that --

3 THE VIDEOGRAPHER: Off the record at
4 3:00.

5 (Brief recess.)

6 THE VIDEOGRAPHER: Back on the record
7 at 3:00.

8 BY MR. KRUGMAN:

9 Q. Professor, if in the fall of 2009 the
10 university provost had contacted you and advised you
11 that one or more of the works in the provost's opinion
12 violated the copyright policy and needed to be removed,
13 would you have followed or complied with that direction?

14 A. Well, yes. But I would have wanted to know
15 why, because I think I have had a good understanding as
16 probably most people.

17 Q. But if directed to do so you would have
18 removed --

19 A. Yeah, I probably would.

20 Q. And certainly if the president of the
21 university --

22 A. I probably would have, yeah.

23 Q. What about if you had received a communication
24 from the board of regents of the University System of
25 Georgia, would you have followed the board's direction?

1 A. Yes.

2 Q. If you could, please, just describe briefly
3 the process by which you as a professor were able to
4 have particular works posted to the electronic reserve
5 system at Georgia State. What did you do, what was the
6 process by which you accomplished that?

7 A. Okay. I decided what I needed to use, I
8 looked to see what was available that the students might
9 already have access to. For example, if there were some
10 articles that might be available as full text online
11 that I would make note of that so that they knew they
12 could find them online. And then I would look to see
13 which of the journal articles and chapters of books I
14 needed were in the university, which ones I had first
15 and then which ones were in the university library. And
16 then I would go to the library, try to find those
17 readings, find them --

18 And what I had to do was find those pages,
19 take all my stack with everything I had marked with the
20 pages where they were with the fair use checklist, and
21 then I would take my whole list of everything, look up
22 where everything was in the library, go to the library,
23 find those books and journal articles. Once I had
24 ascertained they were there, if I could find them, and
25 then I would take the entire stack of everything down to

1 the reserves desk and give it over to the person who was
2 there. I also had to make a reservation for when I took
3 it to them.

4 Q. So you physically took all of the books
5 whether they were your own copies or copies that were on
6 deposit --

7 A. I think so.

8 Q. -- at the library?

9 A. Yeah. Yeah. I may have -- the stuff that
10 they have, I may have given them a list to find. But I
11 do recall that there were one or two things that I had
12 trouble finding and I wasn't sure if they had in them
13 what I needed, and so I went looking. So there was at
14 least one I had to go see if the book that I thought had
15 it had it.

16 So they may have found some of that for me,
17 but I spent time looking for at least part of it, I
18 think, as I recall.

19 Q. I thought you -- did you actually take the
20 fair use checklist with you to the library?

21 A. I think so.

22 Q. I'm just asking what your recollection is.

23 A. I think I took it. Either that or I sent it
24 electronically. But I'm pretty sure I took it.

25 Q. And did you provide the library with a copy of

1 the checklist?

2 A. I must have. I don't recall for sure, but I
3 must have if I kept a copy and made another copy to give
4 to them.

5 Q. So it's your recollection you physically left
6 a copy?

7 A. I believe so. I got them a copy somehow,
8 yeah. I think. I just don't remember how it worked.

9 Q. Who physically -- who physically copied or
10 scanned the works on to the --

11 A. The library did.

12 Q. That's not something you did?

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

14 Q. And it was the library, someone at the library
15 who was responsible for actually posting the materials
16 on to the electronic reserve system?

17 A. Yes. Yeah.

18 Q. What is the GoSolar system at Georgia State?

19 A. GoSolar is the mechanism for -- the online
20 mechanism for communicating courses, for students to
21 register. It also has information about students --
22 students' transcripts so that you can look up your
23 advisees and see what they've taken and what they
24 haven't, for example.

25 Let's see. I don't remember. I'm sure

1 there's more. And there's other things that get
2 communicated, like evaluations and things that like that
3 happen on GoSolar, also.

4 Q. One of the things it provides is a class
5 schedule listing, correct?

6 A. Oh, right. Yes, exactly.

7 Q. And I've handed you what we've marked as
8 Moloney Exhibit 3.

9 A. Okay, yeah.

10 Q. And can you identify this as a printout from
11 Georgia State's GoSolar system for the fall semester
12 2009 for a course that you taught that semester?

13 A. Yes, I think it is.

14 Q. And this is nursing -- subject nursing course,
15 the course is 8035, do you see that?

16 A. Yeah.

17 Q. And the title of the course was, and it's
18 abbreviated, theoretical and philosophical foundations
19 for nursing?

20 A. Right.

21 Q. And it was at least this indicates on Fridays
22 9 a.m. to 3 p.m.?

23 A. Yes.

24 Q. Is that consistent with your recollection?

25 A. Yes.

1 Q. And under capacity it has 12 students?

2 A. Yes.

3 Q. And it shows the actual number was 14, so --

4 A. Yes.

5 Q. So you actually had two more students than you
6 had hoped to have?

7 A. Yes.

8 Q. Then under comments it says web facilitated
9 course, online classes held at the same day and time as
10 on-site classes. What does that mean?

11 A. In the doctoral program we have students that
12 are from all over the southeast, and so we have
13 developed a web enhanced program. So that all of our
14 required courses in the doctoral program meet usually
15 about once a month on campus for class and the other
16 three weeks are held online on asynchronous --
17 asynchronous Internet based using software headphones
18 and students participate in a synchronous class that's
19 very much like being in class except you can't see the
20 other people.

21 Q. Are you able to speak?

22 A. Yes. And we have PowerPoint presentations
23 that we have up, people can put their little hands up
24 and make them make smiley faces and people can talk.
25 And it's just like being in class except that you can't

1 look at people's faces and tell what they're thinking.

2 Q. It says -- and that was utilized for this
3 course?

4 A. Yes.

5 Q. And so the students would meet, physically
6 meet once a month?

7 A. Uh-huh.

8 Q. And then the other three weeks they would
9 attend remotely?

10 A. Yeah.

11 Q. And it shows that you were the instructor for
12 this, correct?

13 A. Yes.

14 Q. And this exhibit shows the dates of it was
15 looks like August 17th through December 11th?

16 A. That sounds right.

17 Q. And that corresponds to the fall semester for
18 2009, is that correct?

19 A. Yes.

20 Q. I'm going to hand you what we've marked as
21 Moloney Exhibit Number 4. And can you identify this as
22 the syllabus for nursing, the nursing 8035 course that's
23 referenced on Exhibit 3?

24 A. Yes. It says -- okay. All right.

25 Q. Nursing 8035, it's the same course?

1 A. Yes.

2 Q. And this was the syllabus that you prepared in
3 connection with this course that would then be provided
4 to the students?

5 A. Yes.

6 Q. And I see where it says hours and location on
7 campus room 317. Once in August, September, October,
8 December and then all the others were remote, were done
9 remotely, is that correct?

10 A. Yes.

11 Q. Thanks, I was trying to understand that
12 earlier. Now I do.

13 And this was a graduate level, doctoral level
14 course, correct?

15 A. Yes.

16 Q. And under the description you said this course
17 is described to serve as a basis for doctoral studies --
18 for doctoral study in nursing, is that correct?

19 A. Yes.

20 Q. If you turn to the next page, and there's --
21 talks about methods of evaluation, written assignments,
22 and then below that there's -- at the bottom of the
23 second page of this exhibit there are written
24 assignments, short papers, 20 percent total, each
25 student will write two short essays at assigned times.

1 And then under number 2, theory analysis paper
2 30 percent. Review literature related to specific
3 theory assigned by the professor. And then use Chinn's
4 six criteria to describe the theory.

5 I take it readings were an important part of
6 this course?

7 A. Yes.

8 Q. And then if you can turn to page 4 of the
9 syllabus under critical thinking. We expect critical
10 thinking behavior of all students. The school of
11 nursing defines critical thinking as reflective and
12 informed thought focused on what to do or what to
13 believe. Student learning is enhanced when readings,
14 class discussion and experience-based applications are
15 conducted with this definition in mind.

16 Once again, the readings were really, as you
17 understood it, a critical part of the student's
18 education in this course, correct?

19 A. Yes.

20 Q. Now, there's course schedule, and why don't
21 we -- why don't we start with just week 1, which was
22 Friday, August 21st on campus. And then there was a
23 topic reading assignment, the topic being introduction
24 to the course, historical perspectives on nursing
25 scholarship and historical perspectives on the

1 philosophy of science and nursing.

2 Was that the topic for the first class of the
3 course?

4 A. Yes.

5 Q. Okay. And then underneath there there are a
6 series of readings. And were these readings that you
7 assigned to the students to read prior to that -- prior
8 to each class of the course?

9 A. Yes.

10 Q. So for example, under readings Godfrey 2003
11 chapter 1, that was an assigned reading --

12 A. Yes.

13 Q. -- required reading for the course, correct?

14 A. Yes.

15 Q. And as you go through each of these for each
16 of the weeks, the readings were works that you expected
17 the students to read in advance of the class for that
18 week, correct?

19 A. Yes.

20 Q. Now, on page 7 you had like there were
21 required textbooks, and those were textbooks that the
22 students were --

23 Were they required to purchase those textbooks
24 for the course?

25 A. Yes.

1 Q. And then below that there's recommended
2 textbooks that -- something that would provide them a
3 background reading and the philosophy of science, but
4 not required reading?

5 A. Yes.

6 Q. But then when you move down lower to the page
7 for the readings, these readings correspond to -- you
8 can tie these readings to specific assigned readings for
9 each of the weeks of the class, is that correct?

10 A. Pretty much.

11 Q. And just by way of example, the first one is
12 Austin J. L. 1970, and if you look at week 6 on page 5
13 under readings, there's a reference to Austin, and that
14 would be that assigned reading for the class for that
15 week, is that correct?

16 A. Yes.

17 Q. And at the bottom of page 7 there's reference
18 to Chinn P. L. and Kramer M. K.

19 A. Yes.

20 Q. And that's the same Chinn that was referenced
21 on page 2 of the syllabus for the theory analysis paper
22 where the students were to use Chinn 6 criteria?

23 A. Yes.

24 Q. And where it says chapter 8 handout, was that
25 something that you physically copied and then provided

1 to the students?

2 A. I don't recall. I think that because we were
3 using electronic reserves the word handout was left.

4 I mean, I use the same syllabus from year to
5 year and I am almost certain that I had that put on
6 electronic reserves and sometimes I don't edit the
7 syllabus as well as I should. So I'm not sure. But I'm
8 almost certain that that was on electronic reserves.

9 Q. You had been -- do you recall how many years
10 you had been teaching this course prior to 2009?

11 A. Yes. I taught it since I arrived here in 2007
12 once a year. And I taught it for about four years that
13 I was at Emory before that.

14 Q. Okay. Did you use, if not the identical, a
15 comparable syllabus?

16 A. Comparable. Not the same, but comparable.

17 Q. From year to year would the readings generally
18 carry over for each of the classes?

19 A. Not all of them, but a lot of them do.

20 Q. Prior to using electronic reserves, had you
21 provided an actual handout of the chapter to the
22 students?

23 A. I know it says that, but I think that -- I
24 can't remember. I mean, I think maybe if we were using
25 ULearn then I may have uploaded a PDF of some of those

1 things to ULearn.

2 Q. And after the fall of 2009, is this chapter 8
3 something that you would provide to the students
4 directly via e-mail?

5 A. Well, actually I teach this once a year, so
6 the only time I've taught it since then is the past fall
7 in 2010. So I decided there was more in that book I
8 wanted to use, so that's now a required book.

9 Q. Did you use the Austin readings this past
10 fall?

11 A. Yes. Yes.

12 Q. And how was that provided to the students?

13 A. I PDF'd -- I made a copy of it and sent it to
14 them. All three of my students.

15 Q. Would it be correct that to the extent that in
16 the fall of 2009 these readings were made available to
17 the students on electronic reserve, that the page
18 references or the chapters would correspond to what was
19 actually provided to them electronically?

20 A. It should. It should. There may be a
21 mistake, but generally it should correspond.

22 Q. Okay. The Austin work, which is referenced on
23 page 7 --

24 A. Yes.

25 Q. -- why did you use that for this course, that

1 particular work?

2 A. In that particular part of the course we're
3 talking about concepts and how concepts are identified
4 and how we think about them and how we decide what
5 belongs with what, like how do we know what makes a bird
6 a bird. And that's -- and it's a big -- it's a part of
7 philosophy.

8 And the reason I like that Austin reading is
9 because it's very funny and it's interesting and they
10 get it when they read that. So that's why I use it.
11 It's a good example of what I'm talking about.

12 Q. And this Austin reading, is that part -- the
13 chapter 8, is chapter 8, that's what Austin contributed
14 to the work, or do you recall?

15 A. I don't recall. When I -- that was a book I
16 had to go and find at the library. I wasn't sure it was
17 going to have what I wanted in it. And as I recall,
18 there were a lot of other readings and I don't know what
19 they were.

20 The only thing I was interested in was this.
21 So I really don't know what else was in the book.

22 Q. But you considered at least that portion that
23 you used to be important for the course you were
24 teaching?

25 A. Yes. I mean, I liked it. I could have found

1 something else to use instead, but I like them reading
2 about the philosophers, I think it encourages them to
3 read more about philosophers, more real philosophers,
4 instead of just reading about what philosophers say.

5 Q. If you can turn over to page 9, and there's
6 reference to K. Popper. You see that, "Objective
7 Knowledge: An Evolutionary Approach", chapter one,
8 Oxford, Clarendon Press pages 1 to 31?

9 Do you recall whether that was a work that was
10 provided to the students on EReserve?

11 A. Yes, I'm sure it was.

12 Q. And is that a work that you had used
13 previously before the fall of 2009?

14 A. Yes.

15 Q. And is that a work you used this past
16 semester?

17 A. Yes.

18 Q. In the fall?

19 A. Yes.

20 Q. And why have you used that work?

21 A. Because --

22 Q. First of all, the work and why that particular
23 chapter.

24 A. Okay. Because Popper had some things to say
25 that are important when you think about philosophy of

1 science and how we got to where we are with how we think
2 about how science is, and that's important for research.

3 And that chapter, again, illustrates that in a
4 way that is not real difficult to read, but also makes
5 the point that I wanted to make.

6 Q. And what was the point?

7 A. The point was that there's more than one way
8 to think about how we decide what's true and what's not.
9 That's general. I mean, that's generally what that's
10 about.

11 Q. Okay.

12 A. It's to raise questions.

13 Q. And if you look at page 5 of this exhibit
14 you'll see that the Popper work is referenced under the
15 readings for the week 6, September 25th, and where the
16 subject of that or the topic of that class was structure
17 and confirmation of theory, theory practice and research
18 relationships, is that correct?

19 A. Yes. Yes.

20 Q. And it was chapter 8 or, excuse me, chapter 1
21 of that book that was utilized in the class?

22 A. Yes.

23 Q. Do you recall whether chapter 1 of that book
24 provided an overview of the entire book?

25 A. No, I haven't read the entire book, so I don't

1 know.

2 Q. You just don't know one way or another?

3 A. (Shakes head negatively.)

4 Q. Do you own the book?

5 A. No.

6 Q. How was it that you came to read a portion but
7 not all of the book by K. Popper?

8 A. When I first taught this course at Emory I
9 taught it with a philosopher, and these were the
10 readings that he used. And everything -- I mean, they
11 worked fine, they do what I want them to do so I still
12 use them.

13 Q. If you turn to page 10 of the syllabus, and
14 there's a reference to S. Twinn.

15 A. Yes.

16 Q. "Status Of Mixed Methods Research And
17 Nursing", Tashakkori A. and Teddlie C., "Handbook Of
18 Mixed Methods And Social Behavioral Research", Thousand
19 Oaks, California, Sage Publications.

20 And that's a work that students were required
21 to read for your course, is that correct?

22 A. Yes.

23 Q. And if you I think turn to page 6 of the
24 syllabus you'll see reference to that in week 14, "Mixed
25 Methods, Approaches To Theory And Research".

1 A. Yes.

2 Q. And why were the students -- or first of all,
3 why did you select that work, number one? And then --

4 Well, first of all, why did you select that
5 work?

6 A. I owned that book because I do mixed methods
7 research and I like the book a lot. And this article
8 was a good overview of mixed method research. So that
9 it worked for what I was doing.

10 There was another reason, too, and that is
11 that this is a topic that students don't get a lot of
12 exposure to and I think it's very important. I think
13 it's very important that they see that there are
14 references that they can use.

15 And so some of the things that I like to use
16 are so they can see what there is out there because
17 they're going to be looking for their own books and
18 reference, too. So that's one of the reasons I like
19 this is because this book has a lot of other things in
20 it that don't have anything to do with that, but it's a
21 good reference to have, and I like them to see what kind
22 of references are available.

23 Q. When you physically -- when you had the
24 physical classes, in-person classes, do you recall
25 whether students brought the works that were to be

1 discussed or considered in connection with that class
2 physically with them?

3 A. Yes, I believe they do.

4 Q. So if the materials had been provided or
5 posted on the university's electronic reserve system,
6 those materials students would print out and then bring
7 with them to the class?

8 A. Yes.

9 Q. Did the university encourage use of the
10 electronic reserve system for providing works to
11 students?

12 A. I'm not sure what you mean by encourage.

13 Q. Well, I think earlier I think you had
14 understood that -- ULearn may have been used before and
15 then --

16 A. Yes.

17 Q. -- the direction, the -- someone, at least you
18 understood the university's preference was to use --

19 A. Yes, definitely. I mean, we were -- I knew
20 that we weren't using ULearn for that, and electronic
21 reserves was the way that we were going to be getting
22 materials to students instead of -- instead of using a
23 real time book reserve in the library. Which was
24 important for us, because our students can't get in here
25 and copy stuff, you know, so it was -- it actually

1 worked out well because we were -- because of doing
2 these web enhanced classes.

3 Q. So it would have been inconvenient if not
4 extremely difficult for students to come in and go to
5 the library and copy the materials if they were on
6 reserve at the library?

7 A. Especially for a large class. Because when
8 our students come in for class once a month, they're
9 taking classes back to back the whole time they're
10 there. And if I had 30 students in class and I had a
11 book on reserve and there was one book in the library,
12 which is the case with some of the stuff I use, it would
13 be -- that would be all they'd be doing. And there's
14 really only -- hardly any time between classes because
15 we're packing it all in while they're here. So it made
16 it much more feasible to us teaching that way.

17 Q. Are you familiar with coursepacks?

18 A. Yes, I am.

19 Q. And what are -- what do you understand
20 coursepacks to be?

21 A. Coursepacks, my understanding of coursepacks
22 is that they are compilations of articles or chapters
23 from different places that the faculty person puts
24 together and the students buy them. That's my
25 understanding of coursepacks.

1 Q. Is there any reason you could not have used
2 that approach for the classes, the class nursing 8035
3 that you taught in the fall of 2009, assembled the
4 materials --

5 A. Well --

6 Q. -- printed them and then had the students
7 purchase them?

8 A. Well, I don't know. I mean, I never -- it
9 didn't come up as an issue.

10 Q. Are you aware of any payments that the
11 students had to make other than what may have been
12 encompassed within their tuition for accessing the works
13 that were posted on the electronic reserve system at
14 Georgia State?

15 A. I don't know. I would assume that that -- if
16 there is a charge that it is encompassed in their
17 student activity fees, but I don't know.

18 Q. Are you aware of any payments that were made
19 to the publishers or others who own the copyrights to
20 the various works --

21 A. I don't know.

22 Q. -- that were posted?

23 A. I'm not aware. I don't know.

24 Q. Other than the fact one can be accessed
25 electronically and the other in paper format, do you see

1 any -- is there any difference in your mind between
2 providing readings using the electronic reserve system
3 and providing readings through a coursepack?

4 A. Well, I think that -- that electronic readings
5 are -- because of the way it's set up as a reference
6 then that you get it through the reference desk from the
7 library, it's much more like having reserves -- the
8 system of having reserves at the library with real time
9 paper and books. I mean, I see it as fitting that model
10 a little better.

11 Q. Yeah, but functionally do you see any
12 difference between the students purchasing the
13 coursepack that has each of the -- that has a printout
14 of each of the materials that you required the students
15 to read and posted electronically versus a coursepack
16 where the materials were printed out and then the
17 students purchased them?

18 A. By functionally, you mean is there any
19 difference in how -- I'm not sure what you mean.

20 Q. In how students would use them.

21 A. Well, if you're saying do they still get the
22 articles and the chapters, yes. They still get the
23 articles and the chapters either way, right.

24 Q. And other than the fact that one may be free
25 and the other one may not be, is there any -- do you see

1 any difference?

2 A. I wouldn't say it's free. I mean, because the
3 librarians do the work, they are paid for that.

4 My time, if it takes me a day or two to do
5 electronic reserves, how much money that. And if every
6 professor across the university is doing that, how much
7 is that. And that winds up costing the students because
8 they're paying for our time with that.

9 I mean, there's overhead, there's all the
10 things that go with that. And so I don't see that as
11 being free.

12 Plus which we own -- we own the work that
13 we're using. It isn't like -- I mean, I last year
14 subscribed to a nursing research journal just because
15 then I would have it so that I could share it with the
16 students. That's not free. That was not a cheap
17 subscription for me.

18 Q. So you -- you bought, you subscribed to a
19 nursing research journal --

20 A. That I would not have subscribed to otherwise
21 because I thought there might be articles in that that I
22 could use.

23 Q. That you could copy and provide to the
24 students?

25 A. Yes, under fair use.

1 Q. Let's talk a bit -- we'll make reference to
2 your syllabus still, but you testified earlier that you
3 in fact filled out checklists for courses during 2009?

4 A. Yes.

5 Q. And were they done -- did you fill out the
6 checklist prior to the beginning of the semester?

7 A. Yes.

8 Q. And the reason is because those materials were
9 to be available, needed to be available to the students?

10 A. Yeah, there was a deadline for getting stuff
11 in.

12 Q. And I believe you said earlier that you
13 initially completed them but then lost them because you
14 failed to print them out?

15 A. Yes. Possibly I need to read instructions
16 more carefully sometimes.

17 Q. How soon after you completed them initially
18 did you discover that you had lost the work that you had
19 done?

20 A. It was the next day or that day when I tried
21 to save everything and realized that nothing was saving.
22 Yeah, it was the same day.

23 Q. So you went back either that day or the next
24 day --

25 A. Yes.

1 Q. -- and completed the checklist as you had just
2 done it?

3 A. Yes.

4 Q. When you, I don't want to say recreated, but
5 when you completed the process of completing the
6 checklist, what was the process, did you -- you
7 completed it and then printed it out?

8 A. And then checked things off, yeah.

9 Q. Okay. So you physically checked it off rather
10 than -- you didn't type in the information?

11 A. Right.

12 Q. The first time you did it, had you typed the
13 information in?

14 A. You know, I don't remember. I think you
15 couldn't. I think you had to do it as a paper check,
16 but I don't remember.

17 Q. And I'm asking only because earlier you had
18 indicated that --

19 A. I'm thinking that and I thought -- well, no, I
20 don't remember. It seems like -- it was the top part
21 that was time consuming because it had the name and all
22 this other information and et cetera, et cetera.

23 Q. It was your recollection you had typed the top
24 portion in the first time?

25 A. I think so, yeah, yeah, at least that time.

1 Q. Did you the second time?

2 A. I assume so, but I don't remember.

3 Q. Professor Moloney, I'm handing you what has
4 been marked as Moloney Exhibit Number 5. And this is a
5 printout of electronic communication from library
6 reserves to you. You see that?

7 A. Yes.

8 Q. And dated September 9th, 2009 at 2:27 p.m.

9 A. Okay.

10 Q. Have you seen this before today?

11 A. Well, since it was sent to me I must have.
12 But I don't recall.

13 Q. Okay. Do you recall receiving some
14 communication via e-mail from the library relating to
15 the materials that you requested be posted
16 electronically for the fall semester 2009?

17 A. Well, looking at this makes me think I must
18 have, but again, I don't recall it. Although I would
19 have checked to make sure they had them, so -- and
20 apparently I had an error in there, so I probably would
21 have.

22 Q. Okay. Because the e-mail says it's from the
23 ERes staff, is that correct?

24 A. That's -- yes.

25 Q. And do you know who was on the ERes staff --

1 A. No.

2 Q. -- in 2009?

3 A. No.

4 Q. Says hi, we have added all the files below
5 except one. Is it possible that the chapter by Twinn is
6 chapter 20 instead of chapter 2.

7 If you'll look at the last page of this
8 exhibit, that's where there's a reference to Twinn. You
9 see that?

10 A. Yes.

11 Q. And the chapter that you had requested was 2,
12 is that correct?

13 A. It looks like it.

14 Q. But the library was indicating that perhaps it
15 was chapter 20.

16 A. That sounds like a mistake I might have made.

17 Q. They said please check your page and see if
18 the correct article is posted, otherwise we will have to
19 wait until the book, "Handbook Of Mixed Methods And
20 Social And Behavioral Research", is returned. It is
21 checked out, but has been recalled. And then it says,
22 please stop by and pick up your two books.

23 Do you see that?

24 A. Oh, so they must have had a copy. I thought I
25 had used my own copy but I guess I didn't.

1 Q. As you move down there's personal information,
2 that's for you --

3 A. Uh-huh.

4 Q. -- and the department of the school of
5 nursing, and then the course information is for the
6 nursing 8035 that we've been discussing. And this is
7 the request that you made for the fall of 2009?

8 A. Yes.

9 Q. On the first page, the first two entries it
10 says material not owned by the library. Do you see
11 that?

12 A. Yes.

13 Q. And then there are references to author
14 Jacqueline Fawcett and then Chinn and Kramer.

15 Is it your understanding that those were two
16 books that the library did not own?

17 A. Yes.

18 Q. Is it also your understanding that although
19 the library didn't own those books you were still able
20 to electronically or have those materials electronically
21 posted on the university's electronic reserve system?

22 A. I own both those books, so yes, that was my
23 understanding.

24 Q. So even though the university didn't own those
25 books, you were allowed to post the materials on the

1 electronic reserve system?

2 A. Yes.

3 Q. And then on the next two pages you have a
4 series of materials that says material owned by the
5 library.

6 A. Yes.

7 Q. And is it your best recollection today that
8 those materials, that the library obtained those
9 materials from the copies that the library owned?

10 A. Yes.

11 Q. And on that page 2 there's reference to, kind
12 of in the middle there's an author, Urmson and Warnock
13 and place of publication, Oxford, publisher Clarendon
14 Press and then pages 175 to 204 of that with the author
15 Austin.

16 A. Yes.

17 Q. And that's the same Austin that we looked at
18 earlier --

19 A. Yes.

20 Q. -- on the syllabus, is that correct?

21 A. Yes.

22 Q. And then at the bottom of this page there's
23 author called Popper, again, Oxford Clarendon Press
24 chapter one. And this is the same Popper book that we
25 had looked at, talked about previously, correct?

1 A. Yes.

2 Q. And then on the last page there is -- the last
3 entry is for the author Twinn chapter 2 title "Handbook
4 Of Mixed Methods And Social Behavioral Research" and
5 publisher was Sage. And that's the Twinn that we talked
6 about earlier as well, is that correct?

7 A. Yes.

8 Q. I counted I think in terms of what was
9 submitted by you to the library for posting on the
10 university ERes system for this fall 2009 course, I
11 think there were 12 different -- I think there are 12
12 different or maybe 11 different materials. Actually on
13 this there are I think nine?

14 A. Actually I didn't know at the time, however
15 the first one on the second page, the Rudner article,
16 was available full text online because it was so old.
17 So I had it included in electronic reserves for the
18 students, but I didn't need to have done that because I
19 discovered later that it was online full text.

20 Q. But Exhibit 9 at least -- excuse me. Exhibit
21 5 references nine different works?

22 A. Okay.

23 Q. If you look back at your -- at the syllabus
24 for this course, Moloney Exhibit Number 4, and there are
25 under the readings the textbooks the students were

1 required to purchase, and then you had the various
2 readings. The Austin work was provided on EReserve as
3 was I believe the Chinn and Kramer work at the bottom of
4 that, of page 7, is that correct?

5 A. Yes, yes.

6 Q. How were the other works, there's Beck and
7 Brilowski and Campbell and Carper and Carter, how were
8 students to gain access to those works if they were not
9 provided on the electronic reserve system at the
10 university?

11 A. Well, at least two of those, the Campbell and
12 Bunting and the Reed were chapters in their text,
13 they're required texts. And several of the others were
14 available as full text online via university online
15 subscriptions.

16 Q. So you understood the university had a license
17 to provide --

18 A. Yes.

19 Q. -- copies of those works electronically?

20 A. Or I had discovered that some of them may be
21 available because of their age through publishers' web
22 sites.

23 Q. If you turn to -- going to page 8 of the
24 syllabus, and the Jacqueline, J. Fawcett material for
25 1999, "The Relationship Of Theory And Research", that

1 was a material that you had posted to the EReserve
2 system, is that correct?

3 A. Yes.

4 Q. And how were the materials above that provided
5 to the students?

6 A. Well, the Cowling paper and the other Fawcett
7 papers were in the book that they had, the book of
8 readings. The Descartes never did have copyright and
9 it's available online. And the other articles are
10 available on the Internet.

11 Q. What about the two Fawcett, the '78 Fawcett
12 and the '80 Fawcett and the Finnstrom and the Fox-Keller
13 works?

14 A. Okay. The Fawcett readings were from the
15 texts that they had. The Finnstrom reading was
16 available online. And the Fox-Keller was in one of
17 their books, also.

18 Q. Okay. The C. Geertz, that was provided on
19 EReserves, is that correct?

20 A. Yes.

21 Q. And that's referenced on the last page of
22 Moloney 5?

23 A. Yes.

24 Q. And what about the Godfrey-Smith work, 2003,
25 "Theory And Reality: An Introduction To The Philosophy

1 Of Science", that was provided on EReserve, correct?

2 A. Yes.

3 Q. What about the remaining works on this page?

4 A. Gibson was available online. Ginzberg was in
5 their book. Giorgi was available online. So was Good.
6 And Harding was in their textbook.

7 Q. Was that true for all of the other --

8 A. Yes.

9 Q. The same?

10 A. All along the same avenues.

11 Q. On page 9 of the syllabus, was the Liehr and
12 Smith work "Middle Range Theory: Spinning Research", was
13 that on EReserve?

14 A. No, that was in their book.

15 Q. That was in one of the textbooks?

16 A. Yes. The Reed textbook.

17 Q. And that was in the Reed textbook. Okay.

18 A. Yes.

19 Q. I got it.

20 And then at the bottom of page 9, the K.
21 Popper and Putnam were on EReserve, is that correct?

22 A. Yes.

23 Q. And were the others either in textbooks or
24 available online or available through a license that the
25 university had?

1 A. Yes.

2 Q. On page 10, the Rudner, Twinn and Wittgenstein
3 works were provided on electronic reserves, is that
4 correct?

5 A. Well, I'm not sure about the Rudner. I think
6 I found the Rudner -- the Rudner is available online,
7 too, because of its age, I think. I can't remember for
8 sure.

9 The other two, the Twinn and what was the
10 other one, the Wittgenstein?

11 Q. Yes, Wittgenstein.

12 A. Yes, those were all -- those two were on
13 electronic reserves.

14 Q. I'm handing you what's been marked as Moloney
15 Exhibit 6. And I'll represent to you this is a report
16 that was generated from Georgia State's electronic
17 reserve system for the fall of 2009.

18 A. Okay.

19 Q. And if you can turn to the -- and what I
20 understand this is -- it's nursing 8035. You see that's
21 the same course that we've been talking about?

22 A. Yes.

23 Q. And it identifies the document, the page, the
24 date range for the course and then there's a hit count,
25 which we understand is the number of times the work was

1 accessed.

2 A. Interesting.

3 Q. And you'll see on the second page there's
4 reference to Richard Rudner, "The Scientist Qua
5 Scientist Makes Value Judgments", which seems to
6 correspond to the same Rudner work that is referenced on
7 page 10 of the syllabus, and it shows 19 hits.

8 Does that -- and if you look on page 2 of
9 Exhibit Number 5 you'll also see reference to the same
10 Rudner.

11 A. Exhibit 5. Oh, this is Exhibit -- what's
12 Exhibit 5?

13 Q. It's this one. Right on top, I think.

14 A. Page 2. Okay. Rudner. Okay.

15 Q. Does that help refresh your recollection that
16 that was in fact provided to students?

17 A. Yes, it was. It was just later I found out I
18 didn't need to have done it that way, I think.

19 Q. Okay. That's fine.

20 And I think we talked a little bit about the
21 process. You completed a checklist for each work that
22 was posted, you initially completed it and then lost it
23 and then did it over again and you printed it out, you
24 printed out a copy each time that you prepared a
25 checklist?

1 A. I think so, yeah.

2 Q. At any time did you print out a checklist
3 without the information filled in in terms of the --

4 A. I may have. I just don't remember.

5 Q. Did you have occasion to print out a copy of
6 the checklist, check the boxes and then photocopy that
7 list and then fill in the information at the top of the
8 checklist? Did you ever do that?

9 A. I'm not sure I understand what you're saying.

10 Q. Why don't you take a look at page 7 of Exhibit
11 2, which is the policy.

12 A. Okay.

13 Q. Do you recall whether there was any instance
14 at any time in connection with the preparation of
15 checklists for the works that were submitted for the
16 fall of 2009 where you printed out a copy of the
17 checklist, filled in without filling in the top
18 information, checked the boxes and then made a photocopy
19 of that document and then used the same document for the
20 other works that were being submitted for that course?

21 A. No.

22 Q. That's not something you did?

23 A. I would never do that.

24 MR. KRUGMAN: Why don't we take a break
25 and then I'll go through the checklists and

1 then we'll be done.

2 THE VIDEOGRAPHER: Off the record at
3 3:56.

4 (Brief recess.)

5 THE VIDEOGRAPHER: This is tape 3.
6 We're back on the record at 4:02.

7 BY MR. KRUGMAN:

8 Q. Okay. Professor Moloney, I've handed you
9 what's been marked as Moloney Exhibit Number 7. And can
10 you identify this as the fair use checklist that you
11 completed for the work by Twinn that we were talking
12 to -- talking about earlier, "Handbook Of Mixed Methods
13 In Social And Behavioral Research" fall 2009 in nursing
14 8035?

15 A. Yes.

16 Q. And is Moloney 8, can you identify this as a
17 copy of the cover and table of contents for the work
18 that the Twinn piece came from?

19 A. Yes.

20 Q. And that's on page the Status Of Mixed Methods
21 Research In Nursing by Sheila Twinn on page 541?

22 A. Yes.

23 Q. Okay. You checked on -- let's start on page 1
24 of Exhibit 7. You first of all checked nonprofit
25 educational.

1 And why did you check that box under factor 1,
2 purpose and character of the use?

3 A. Because Georgia State University is a state
4 institution that my understanding is that it's nonprofit
5 and it's for education.

6 Q. And you also checked teaching (including
7 multiple copies for classroom use). And why did you
8 check that box?

9 A. Because that's what I was using it for.

10 Q. At Georgia State can you think of any instance
11 where you would not check both boxes for a work that you
12 were seeking to have posted on electronic reserve for a
13 class that you teach at the university?

14 A. No.

15 Q. You also checked research or scholarship?

16 A. Yes.

17 Q. Why did you check that box?

18 A. Because one of the purposes of this course are
19 to develop students' understanding of research methods.
20 They develop scholarship by writing papers and the
21 papers that they read provide background for that.

22 Q. Are there any courses that you teach at
23 Georgia State where that would not be true?

24 A. Well, I can't think of anything. I mean, it
25 all relates to that.

1 Q. So if you were to complete a fair use
2 checklist for, you know, for materials that you use in
3 classes, it would be certainly one of -- the research or
4 scholarship would apply in all instances?

5 A. Yeah, I think so.

6 Q. And you also checked use is necessary to
7 achieve your intended educational purpose. And why did
8 you check that box?

9 A. Because I had specific reasons why I wanted to
10 use articles that made the points that the authors made
11 in order to enhance the students' learning.

12 Q. Is that -- has that been always the case for
13 the works that you use?

14 A. It is. But let me back up a little bit to
15 research and scholarship.

16 One of the courses that I've taught in the
17 university is an assessment course for nurse
18 practitioner students in which they learn how to do
19 physical exams. And I suppose that you could say in the
20 long run that there -- maybe perhaps because they become
21 more intelligent people and they develop their -- not
22 scholarship but their education they might be better at
23 doing research and scholarship. But I don't know that
24 these particular kinds of articles would address
25 research and scholarship, so that might not apply to a

1 course like that.

2 You know, I'd have to really think about. But
3 I think there may be courses that it doesn't.

4 Q. But for most of the courses that you teach?

5 A. For most courses that I teach, I would say
6 yes.

7 Q. And for most courses you teach, you would say
8 yes for all four of those factors?

9 A. For most doctoral courses, for sure.

10 Q. I see that you did not check transformative,
11 either transformative or nontransformative. And what do
12 you understand those terms to mean?

13 A. Well, when I read the definition, use changes
14 work for new utility or purpose, there are courses that
15 I teach in which that kind of definition would
16 definitely be appropriate. But in this particular
17 course my major -- my major goal is to get them to
18 understand what we're reading. And it's not -- we do
19 some critique, so I could have checked that. But I
20 wouldn't say that it changes the work. Although I think
21 for some -- for some articles it would.

22 Q. But at least for this chapter of this book it
23 did not?

24 A. Right. I just want them to understand
25 something that they haven't seen before.

1 Q. Is there any reason that you did not check the
2 box for nontransformative?

3 A. No.

4 Q. Certainly --

5 A. Except I can say that I didn't check -- I
6 looked -- as I recall, as I've been doing these, I check
7 what weighs on that side in the column for fair use. I
8 look at the others, if it looks like it's not going to
9 outweigh it, I haven't checked them.

10 Q. So you don't even bother if you have so
11 many --

12 A. I do look at them. But I look down the list,
13 that doesn't fit, that doesn't fit. So I don't bother
14 to check them because I know I have a preponderance on
15 this side that overwhelms the other side.

16 Q. Okay. So on factor one you had four boxes
17 checked or X'd and so even though you looked at the
18 factors on the right, there was no need to check the
19 box --

20 A. Yeah.

21 Q. -- because there was no way you were going to
22 exceed even or even meet the four on the left?

23 A. Well, because I looked at those and they
24 clearly -- I looked down the list, profiting from use or
25 entertainment, for publication. I mean, you just have

1 to look at them so, you know, yeah, I looked at the list
2 and so I didn't bother to check them. They weren't
3 relevant, because I looked at them and they didn't --
4 they weren't relevant.

5 Q. Yeah, but certainly the single chapter that
6 you used from "The Handbook Of Mixed Methods In Social
7 Behavioral Research", having a copy of that chapter
8 posted was certainly nontransformative of the work,
9 correct?

10 A. I probably should have checked it. But it
11 certainly would not outweigh the others in my mind.

12 Q. And that's based on your use of this checklist
13 that the university provided you, correct?

14 A. Yeah.

15 Q. Factor 2 which is -- involves the nature of
16 copyrighted work, you checked all three boxes under for
17 weighs in favor of fair use?

18 A. Yes.

19 Q. And first one was published work I think. You
20 checked that because the work had been published,
21 correct?

22 A. Yes.

23 Q. And then factual or nonfiction work?

24 A. Yes.

25 Q. You checked that. And then you also checked

1 important to educational objectives. Is that correct?

2 A. Yes.

3 Q. Okay. Can you think of an instance where you
4 would check the box or cross the box important to
5 educational objectives and not check the boxes that are
6 under factor 1 for nonprofit educational, the teaching
7 and then use is necessary to achieve your intended
8 educational purpose?

9 A. Wait, say that again?

10 Q. Can you think of an instance where you would
11 check -- maybe we'll say where you would check use is
12 necessary to achieve your intended educational purpose
13 but you would not check the box important to educational
14 objectives?

15 A. No.

16 Q. You agree that -- well, let me ask --

17 A. No, no, let me go back. Because this says
18 important to educational, this one says necessary. But
19 there may be other articles I could have used instead.
20 So that it says it's necessary, but that doesn't mean
21 that I have to have it. I could have used something
22 else.

23 Q. Yeah, I think when I asked you the second time
24 a little different.

25 If you were check use is necessary to achieve

1 your intended educational purpose, if you concluded that
2 it was necessary to achieve your educational purpose,
3 can you think of an instance where you would not also
4 conclude that it was important to educational
5 objectives?

6 A. No.

7 Q. Do you consider the chapter by Twinn to be
8 creative?

9 A. I haven't read that actually in quite a while,
10 all the way through. I would say that any written work
11 is creative. So yes, it's creative. I don't know that
12 I would have called it highly creative.

13 Q. You just don't remember since it's been a
14 while?

15 A. No, I would not call that kind of a chapter
16 highly creative. I would call it creative.

17 Q. And what's the distinction?

18 A. A creative work, I think anything that people
19 write and put together that has any of their own ideas
20 in it is creative. But you can compile lots of things
21 of other people's work and put that together and draw
22 some basic conclusions and it's creative because you've
23 pulled some things together.

24 But when this gives examples like art, music,
25 film, plays, poetry, fiction, that is more like work

1 that comes out of -- totally out of your mind and your
2 imagination, not that you're organizing and pulling
3 things together.

4 And so I think a lot of -- not all, but a lot
5 of written works that we use in education are
6 compilations of things that are more like craftsmanship
7 and not so much like what I consider to be creativity.

8 And that would be how I would define that
9 based on how they have it here.

10 Q. Would you describe any of the works that,
11 under that definition, would you describe any of the
12 works that you used in teaching the nursing 8035 course
13 in the fall of 2009 as highly creative?

14 A. Well, some of the philosophy might be. Some
15 of the philosophy might be, yeah.

16 Q. Any of the -- would you consider any of the
17 works that you requested to be posted to the electronic
18 reserve system as being highly creative?

19 A. Yes, I think, for example, that the Austin
20 work is highly creative.

21 Q. For that work do you recall whether you
22 checked the box --

23 A. I believe I didn't because I believe that to
24 be out balanced by the checks I had on the other side.

25 Q. So for the reasons that you described

1 before --

2 A. Yes.

3 Q. -- that you -- there were so many on the left
4 that there was no reason to check on the right?

5 A. Yes.

6 Q. Okay. Under amount and substantiality of
7 portion used, which is factor 3, and you checked small
8 portion of work used?

9 A. Yes.

10 Q. And why did you check that?

11 A. Because it was just one chapter in a book that
12 contained lots of other chapters and was a really large
13 book with lots of work and lots of other kinds of ideas.

14 Q. Would there be some number of chapters over
15 which it would -- that you would have to conclude that
16 it would not be a small portion of the work used?

17 A. I guess overall I would say that if I were
18 looking at using two or three chunks, two or three
19 chapters, for example, of something then I'd have to be
20 starting to think about whether that was too much. But
21 I guess -- I think it would depend on the work.

22 Q. Has that issue come up for you while you've
23 been teaching at Georgia State?

24 A. Yes.

25 Q. Have you consulted anyone about whether it

1 would be appropriate under those circumstances to use
2 the number of chapters or the chunks that you would like
3 to use for a class?

4 A. I considered using -- there was several
5 chapters that I knew I wanted to use in another
6 textbook, and I decided myself that, first of all, that
7 it was too much to use and I would either have to assign
8 the book or I would have to not use but a small portion
9 of it.

10 And I also thought if it had been mine I
11 wouldn't have been happy about using that much. So that
12 it was either cut way back, and that was what I did, I
13 used one chapter. And I also tried to keep -- you know,
14 I know that --

15 Well, I try to keep it under about 10 percent,
16 if I can. So I wouldn't use more than that or I
17 wouldn't use more than a couple chapters depending on
18 partly using those guidelines and partly on how I felt
19 about it.

20 Q. So your kind of personal threshold would be 10
21 percent?

22 A. It would. But again, it would also -- it
23 would sort of depend. If it were mine would I be okay
24 with somebody using this much. So that enters into it,
25 too. But it would be around 10 percent would be -- I

1 wouldn't want to use more than that in most cases.

2 Q. Are you aware of anything in the policy that
3 establishes a 10 percent threshold?

4 A. No, but I just recall that from other things
5 I've read before. And for me that sort of makes sense.
6 So it may be in there, but I just don't remember.

7 Q. Going back to my earlier question, when this
8 issue arose for you where you wanted to use two or three
9 chunks of a book, did you consult anyone about it?

10 A. No.

11 Q. You just on your own decided not to do it?

12 A. That it was too much.

13 Q. Under factor 3 you did not check the box
14 portion used not central or significant to entire work
15 as a whole, nor did you check the corresponding kind of
16 the opposite box on the right that the work used is
17 central.

18 Is there any reason you did not check either
19 of those two boxes?

20 A. Well, I assumed that not checking the not
21 central -- same reasons. I read down there, don't need
22 to check that, don't need to check that, so I don't.

23 But the reason that I marked that it was not
24 central or significant to the work as a whole is because
25 it's a whole book of a lot of different kinds of

1 chapters. It's in the same big area, but this is just
2 one and there's a lot of other kinds of things in this
3 book.

4 So I would definitely -- this is one chapter
5 that makes up a whole, but I would not say at all that
6 it was the heart of the book by any stretch.

7 Q. So just so I understand. Are you saying you
8 could have checked that box on the left but simply
9 didn't?

10 A. Yeah. Yeah, I could have. I'm not sure why I
11 didn't.

12 Q. Then you did check the box amount taken is
13 narrowly tailored to educational purpose such as
14 criticism, comment, research or subject being taught.
15 Why did you check that?

16 A. I don't remember. It's about -- it's narrowly
17 tailored I guess because it's about nursing. And it's
18 about -- it's a discussion of --

19 Mixed method research has been a very
20 controversial topic in nursing, as it has with some
21 other disciplines, and so this is a recent discussion of
22 that discussion. So it's a discussion of critique and
23 it's a discussion of an argument that's been going on
24 for a while, but it's also about nursing. And so that's
25 why I would say it's fairly narrow to that particular

1 area.

2 There are other disciplines who might read
3 this book who wouldn't be interested in that chapter at
4 all, I guess is what I'm saying.

5 Q. The fourth factor, effect on market for
6 original, do you see that?

7 A. Yes.

8 Q. What do you understand the market for original
9 to be?

10 A. I understand that to mean that whether or not
11 your use of this in class affects, significantly affects
12 people buying the original copy instead of getting a
13 copy of it.

14 Q. Okay. And you checked no significant effect
15 on market or potential market for copyrighted book, is
16 that correct?

17 A. Yes.

18 Q. And why did you check that box?

19 A. Well, I have 14 students in the class. It's
20 not a cheap book, but it's not that expensive. That's
21 one.

22 But I would say actually -- let's see. So I
23 would say that having -- in fact I guess my other --
24 this goes back to what I was saying before. I would not
25 expect at all this would have a negative impact on

1 buying this book. If anything I would say that it might
2 stimulate some of these students to buy this book later,
3 which would be one of the reasons I was assigning that
4 article.

5 Q. Do you have any knowledge -- do you have
6 knowledge of any students having purchased that book?

7 A. No, because I had them in the first year and I
8 don't see them again after that unless I'm doing their
9 dissertations.

10 And I have one -- actually, yes, I do have one
11 student who told me she bought it when she was in
12 dissertation.

13 Q. Who was that?

14 A. I believe it was Kate Fuqua. If not it was
15 Wimson Stevenson. One of those students told me that.
16 I don't recall for sure.

17 Q. In connection with the market you talked about
18 the impact -- or the negative impact that it might have
19 on buying of the book. Did you -- that was the market
20 that you considered.

21 Did you consider the impact that your use of
22 the book in connection with this course would have on
23 fees that the publisher or other copyright owner might
24 receive if your use of the book had been licensed with
25 fees being paid for the license?

1 A. So paying fees by whom?

2 Q. Well, students.

3 A. Students.

4 Q. Did you take that into account, that if
5 permission had been obtained from the publisher to use
6 the portion of the book, did you consider the impact
7 your use of the book had on the market for permissions?

8 A. Well, that didn't come up as an issue because
9 if there had been a factor like that I would have found
10 an article somewhere else that was available online to
11 use instead of that chapter.

12 Q. So that's not something you considered?

13 A. No, because I wouldn't -- no, I can say it was
14 never an issue because I wouldn't have done it that way.

15 Q. You wouldn't have --

16 A. I wouldn't have used it at all.

17 Q. You wouldn't have used it if either you or a
18 student had been required to pay anything --

19 A. Right.

20 Q. -- for the use?

21 A. Exactly.

22 Q. No amount of payment?

23 A. Exactly.

24 Q. Even if it required a payment of 25 cents you
25 wouldn't have used it?

1 A. That adds up and our students don't have extra
2 money, so I wouldn't do it that way.

3 Q. You checked use stimulates market for original
4 work. Do you see that?

5 A. Yes. And that's what I meant, that I thought
6 that perhaps my students would be interested in using
7 that book later, as I did when I was a student, read
8 articles and then went out and bought the books later
9 when I was doing my work.

10 Q. You checked the box no similar product
11 marketed by the copyright holder. And why did you check
12 that?

13 First of all, how did you make that
14 determination?

15 A. I had not seen anything in Sage's work -- I
16 own a lot of Sage books, I have in the past bought a lot
17 of Sage books and I've never seen any articles in any
18 chapters for any articles in their books that were about
19 the mixed methods. I have not seen -- at that point I
20 had not seen any other books about mixed methods that
21 Sage was selling.

22 Q. Prior to completing this checklist, did you
23 investigate beyond what your own knowledge was at the
24 time to determine whether Sage marketed a similar
25 product?

1 A. Well, every year when I'm looking at books, I
2 go on -- Sage is one of the places I look for books like
3 this, and I go on there to see what they got. I get
4 their catalogues. I look to see what they have that's
5 relevant to what I'm doing. If I can I get desk copies,
6 which they don't usually do. Like I had to buy -- ones
7 I have I've bought.

8 But I always go online to see what they've got
9 when I'm considering new books.

10 Q. But I guess my question is a little bit
11 different.

12 Before completing this fair use checklist, did
13 you conduct --

14 A. Right before that?

15 Q. Yeah.

16 A. No.

17 Q. You conducted no investigation to determine
18 that?

19 A. No. I assumed that.

20 Q. You checked user owns lawfully acquired or
21 purchased copy of original book?

22 A. Right.

23 Q. And who in this instance, who did you
24 understand the user --

25 A. Me.

1 Q. -- to be?

2 A. And the library I found out after that, but me
3 and the library.

4 Q. Okay. And then you checked restricted access
5 to students or other appropriate group. Why do you
6 check that?

7 A. Because it was going to be on electronic
8 reserves and therefore it would only be accessible to my
9 students.

10 Q. You did not -- on the right there's licensing
11 or permission reasonably available. Do you see that,
12 under the weighs against fair use?

13 A. Yes, I see that.

14 Q. Did you conduct any investigation to determine
15 whether licensing or permission for the work was
16 reasonably available?

17 A. No, I assumed it would be difficult to get.

18 Q. Why did you make that assumption?

19 A. Because I always had difficulty getting
20 licensing or copyright approval from publishers without
21 paying tons of money. Or even difficult. You go
22 through weeks and weeks of letters back and forth.

23 So that was my assumption based on my own
24 experience.

25 Q. Okay. Where -- tell me about the difficulty,

1 instances where you've had difficulty getting licenses
2 from publishers.

3 A. Not licenses, but I guess copyright permission
4 is what I would say. Licensing is not something I've
5 tried to get.

6 Q. What about permissions, when --

7 A. When I've been writing articles and I wanted
8 to reproduce tables. I had an instance where I had
9 three tables I wanted to use from different -- different
10 publishers and I wrote requesting information as to what
11 it would cost if I did do it. Two of the publishers
12 sent me back fees that I thought were exorbitant for
13 what I wanted to use. And the third one sent me an
14 invoice and when I didn't respond or I finally called
15 sent it to a collections agency.

16 Q. Even though you didn't use --

17 A. Right.

18 Q. -- the work?

19 A. Right. I had to call the collections agency
20 and stop that.

21 Q. Have you ever sought permission from a
22 publisher for use of a work in the teaching of a class?

23 A. I don't think I have actually.

24 Q. Who were the two publishers that -- or who are
25 the three publishers that you referenced?

1 A. One was Lippincott. I don't remember who the
2 other two were. They weren't any of these three.

3 Q. Okay.

4 A. The one that sent to a collections agency was
5 Lippincott.

6 Q. That one you remember?

7 A. I do.

8 Q. You also -- you didn't check numerous copies
9 made or distributed under the weighs against fair use?

10 A. Right.

11 Q. Any reason you didn't check that box?

12 A. I guess it depends on how you define numerous.

13 Q. How would you define it?

14 A. I would say if I had a class of -- well, you
15 know, I don't know. I guess I would just say that I
16 didn't consider 14 to be numerous. But I also --
17 numerous copies made or distributed.

18 When you keep it confined to a single class,
19 that's not numerous. It's also just one factor.

20 Q. So if it's a single class, then that won't be
21 numerous?

22 A. I wouldn't think so. But then, again, it's
23 only one factor of many.

24 Q. And once again, you had so many on the left
25 that --

1 A. Yeah.

2 Q. -- really --

3 A. It balanced out.

4 Q. Really bothering with the factors on the right
5 wouldn't have changed the outcome?

6 A. Well, I did read them and --

7 Q. Repeated or long term use that demonstrably
8 affects the market for the work.

9 This is -- the Twinn piece is something you
10 had been using for your class for a number of years, is
11 that correct?

12 A. Well, it's not that old a book. And I
13 suppose -- I mean, I could have chosen something else.
14 However, again, it depends on how you define repeated or
15 long term use.

16 So I used it for three students this year. I
17 used it for 14 last year. The class before that I think
18 I had eight students. So --

19 Q. So you've been using it year after year?

20 A. Well, for three years maybe.

21 Q. And did you use it this year, 2010?

22 A. Three students, yes.

23 Q. At some point can you -- at some point could
24 it become, for courses that you teach year in and year
25 out, repeated or long term use as you understand the

1 term?

2 A. I suppose. I suppose, if I -- but the other
3 half of that sentence is demonstrably affects the
4 market. And so I mean, it isn't just the repeated or
5 long term use, it's demonstrably affects the market.
6 And that would be a major reason why I wouldn't check
7 that because I don't think this meets that criteria.

8 Q. Although you really have no personal knowledge
9 of the impact on the market for the --

10 A. No, but does somebody else?

11 Q. This was required classroom reading, although
12 you didn't check the box, right?

13 A. Yes.

14 Q. And why not?

15 A. Because I wasn't bothering to check the box
16 when it looked to me like the other side had outweighed
17 it.

18 Q. Moloney Exhibit 9, is this the checklist you
19 completed again for the same course for the Popper work
20 that we've been discussing?

21 A. Yes.

22 Q. And this is -- the portions here to be used
23 was chapter 1 pages 1 through 31, is that correct?

24 A. Yes.

25 Q. And this is Moloney 10. Is that the cover and

1 copy of the table of contents for "Objective Knowledge:
2 An Evolutionary Approach"?

3 A. I assume so.

4 Q. And is chapter 1 of this, "Conjectural
5 Knowledge: My Solution of the Problem of Induction", is
6 that the chapter that you used for this course and had
7 posted on electronic reserve?

8 A. Yes.

9 Q. For the Popper book you again checked the same
10 boxes that you had checked for the Twinn book?

11 A. Yes.

12 Q. Nonprofit educational, teaching, research or
13 scholarship and use is necessary?

14 A. Yes.

15 Q. And again, you checked none of the boxes on
16 the right?

17 A. Right.

18 Q. Again, for the factor 2, nature of copyrighted
19 work you checked all three on the left and none on the
20 right again?

21 A. Yes.

22 Q. And that would be for the same reasons you
23 discussed in connection with the Twinn book?

24 A. Yes.

25 Q. And then under factor 3, you checked again

1 small portion of work used and amount taken is narrowly
2 tailored to educational purpose and checked none on the
3 right. Is that correct?

4 A. Yes.

5 Q. And would your explanation for both small
6 portion of work and amount taken is narrowly tailored to
7 be similar to what you described for the Twinn --
8 explained for the Twinn book?

9 A. Yes, basically yes.

10 Q. And then effect on market for original, you
11 checked the top three boxes and then the bottom box.
12 And would your explanation be the same for those?

13 A. Yes.

14 Q. Okay. But you did not check user owns
15 lawfully acquired or purchased copy of original work?

16 A. Well, you know, the university owned it. I
17 should have checked it. I must have missed it.

18 Q. Okay. If you would, maybe you can explain
19 this to me.

20 If you look -- let's look on, compare the
21 first page of Exhibit 7 to the first page of Exhibit 9.
22 And if you look at each of the checks or the Xs in the
23 boxes.

24 A. Yes.

25 Q. At least --

1 A. Yeah.

2 Q. -- they look identical?

3 A. It does look it, doesn't it?

4 Q. They look absolutely identical.

5 A. Okay, maybe I was wrong. I mean, that's how I
6 remembered it. But I would say -- you know, I guess I
7 did do that. So --

8 Q. And when you say you did that, that you --

9 A. That I marked them, I marked them on one
10 sheet.

11 Q. And photocopied?

12 A. I assume I must have when I look at this. And
13 what I would say is the reasons apply to all of them. I
14 mean, if you look at this, the reasons apply. So
15 that's --

16 Yeah, I was sure I had done it, but apparently
17 I didn't.

18 Q. Apparently because if you look at page 2 with
19 the exception of that one, you would agree that they
20 appear to be mirror images of one another?

21 A. Yes. And I would say in my own defense since
22 it looks to me like I did do that, that the articles
23 that I use for this particular course all fall into that
24 area.

25 Q. When you say all fall --

1 A. Into the areas that I marked. And it's a
2 preponderance of evidence for that side.

3 Q. Do you recall whether you in all likelihood
4 did the same thing for the other checklists that were
5 completed?

6 A. I may have. If I look at this -- I don't
7 remember.

8 Q. But sitting here today, you don't have any
9 reason to believe you didn't do the same thing?

10 A. No, I think I probably did.

11 Q. Other than what you published or had posted
12 for the fall 2009 course, you don't have any specific
13 recollection of using the electronic reserve system at
14 the university in any other system?

15 A. I may have, but I don't remember if and when.
16 I don't remember when if I did.

17 MR. KRUGMAN: Okay. That's all I have.

18 MS. QUICKER: I don't have anything.

19 THE VIDEOGRAPHER: That concludes the
20 deposition. We're off the record at 4:39.

21 (Deposition concluded at 4:39 p.m.)
22
23
24
25

ERRATA SHEET

I, the undersigned, Margaret F. Moloney, 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:

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 21st day of April, 2011.

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

DISCLOSURE

STATE OF GEORGIA

COUNTY OF DEKALB

Deposition of Margaret F. Moloney

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

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

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

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Teresa Bishop
RPR, RMR, CCR B-307

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MARGARET MOLONEY

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