

1 PROCEEDINGS

2 (ATLANTA, FULTON COUNTY, GEORGIA; MAY 23, 2011
3 IN OPEN COURT.)

4 THE COURT: READY TO PROCEED. LET ME BRING UP A
5 QUESTION WITH BOTH SIDES. DOES THE EVIDENCE SHOW OR WILL IT
6 SHOW THAT ALL OF THE -- WITH RESPECT TO ALL OF THE INSTANCES OF
7 CLAIMED INFRINGEMENT THAT THE MATERIAL WAS AVAILABLE THROUGH
8 CCC AT THE TIME IN QUESTION?

9 MR. RICH: YOUR HONOR, I BELIEVE, ALTHOUGH WE WILL
10 CHECK THE TRANSCRIPT REFERENCES, THAT EACH OF THE PLAINTIFF
11 WITNESSES HAVE TESTIFIED TO THE EFFECT SPECIFICALLY THAT EACH
12 OF THE WORKS HERE WAS AVAILABLE EITHER, EITHER OR BOTH THROUGH
13 CCC OR THROUGH THE PERMISSIONING PROCESS. I BELIEVE IN FACT
14 THE NARROWER QUESTION, THE RECORD WILL SAY THAT THEY WERE ALL
15 AVAILABLE THROUGH THE CCC.

16 THE COURT: THANK YOU.

17 MR. RICH: TO BE COMPLETELY ACCURATE, THERE MAY BE AN
18 INSTANCE WHERE THE AMOUNT OF A GIVEN TAKING MIGHT HAVE EXCEEDED
19 THE THRESHOLD LIMIT WHICH WOULD HAVE TRIGGERED THIS PROCESS
20 WHICH MS. ARMSTRONG DESCRIBED WHICH WOULD HAVE BEEN A NEED TO
21 GO BACK TO OXFORD WHO MR. PFUND SAID TENDS TO BE LIBERAL ABOUT
22 IT. SO IT MIGHT NOT HAVE BEEN ONE OF THOSE AUTOMATIC
23 CLEARANCES IN A FEW CASES, BUT CERTAINLY THE WORKS ARE
24 AVAILABLE FOR LICENSING.

25 THE COURT: THANK YOU.

1 MR. SCHAEZEL: ON BEHALF OF THE DEFENDANTS, WE, TOO,
2 WILL HAVE TO DOUBLE-CHECK TO BE CERTAIN WE HAVE AN ACCURATE
3 ANSWER TO THAT QUESTION.

4 WHAT CAN BE DIFFICULT IS THAT SOMETIMES A WORK MAY BE
5 AVAILABLE THROUGH EITHER THE PUBLISHER OR ONE OF THE CCC
6 LICENSING PROGRAMS BUT NOT ANOTHER OF THE CCC LICENSING
7 PROGRAMS, AND SO IT TAKES SOME SIFTING TO BE CERTAIN WE HAVE A
8 CORRECT ANSWER.

9 THE COURT: THANK YOU.

10 MR. SCHAEZEL: AND IF I MAY, YOUR HONOR, I MENTIONED
11 THE OTHER DAY, ALTHOUGH PEOPLE HAVE LEFT THE COURTROOM, THAT
12 WE WOULD HAVE OTHERS WHO WOULD HELP US. I'D LIKE TO
13 INTRODUCE YOU TO NATASHA MOFFITT WHO IS MY PARTNER AT KING &
14 SPALDING, AND ALSO A GRADUATE OF THE GEORGIA STATE UNIVERSITY
15 LAW SCHOOL.

16 THE COURT: ALL RIGHT. WELL, IT'S NICE TO HAVE YOU
17 HERE, MS. MOFFITT.

18 MS. MOFFITT: GOOD MORNING, YOUR HONOR.

19 THE COURT: YOU MAY PROCEED.

20 MS. SINGER: THE PLAINTIFFS CALL PAULA CHRISTOPHER.

21 THE CLERK: PLEASE RAISE YOUR RIGHT HAND TO TAKE THE
22 OATH.

23 PAULA CHRISTOPHER,

24 HAVING BEEN DULY SWORN, WAS EXAMINED AND TESTIFIED AS FOLLOWS:

25 THE CLERK: IF YOU WILL HAVE A SEAT, PLEASE, AND

1 STATE YOUR FULL NAME FOR THE RECORD AND SPELL YOUR LAST NAME
2 ALSO.

3 THE WITNESS: MY NAME IS PAULA ELIZABETH CHRISTOPHER
4 DIRECT EXAMINATION

5 BY MS. SINGER:

6 Q. GOOD MORNING, MS. CHRISTOPHER. BY WHOM ARE YOU CURRENTLY
7 EMPLOYED?

8 A. GEORGIA STATE UNIVERSITY.

9 Q. AND HOW LONG HAVE YOU BEEN AT GEORGIA STATE UNIVERSITY?

10 A. SINCE NOVEMBER 2009.

11 Q. AND WHAT IS YOUR --

12 A. I'M SORRY, 1999.

13 Q. OKAY.

14 THE COURT: NOVEMBER 1999?

15 THE WITNESS: NOVEMBER 1999.

16 BY MS. SINGER:

17 Q. AND WHAT IS YOUR CURRENT POSITION AT GSU?

18 A. I'M AN ENGINEER IN END-USER COMPUTER.

19 Q. NOW, THE PERIOD AT ISSUE IN THIS LAWSUIT IS 2009, SO MY
20 QUESTIONS TODAY ARE ALL GOING TO RELATE TO 2009, OKAY?

21 A. YES.

22 Q. WHAT WAS YOUR POSITION IN 2009?

23 A. I WAS A PROJECT MANAGER.

24 Q. AND WHAT WERE YOUR RESPONSIBILITIES AS PROJECT MANAGER?

25 A. I MANAGED SEVERAL PIECES OF SOFTWARE INCLUDING ULEARN, V-

1 CLASS, WHEN THE VOICE TOLLS AND SECOND LIFE. WE WERE ALSO
2 RESPONSIBLE FOR TRAINING AND SOME INSTRUCTIONAL DESIGN.

3 Q. AND WAS THERE A NAME FOR THE DEPARTMENT OR THE GROUP THAT
4 YOU WORKED IN?

5 A. AT THAT TIME IT WAS CALLED E-LEARNING.

6 Q. PRIOR TO BEING A PROJECT MANAGER, DID YOU HOLD ANY OTHER
7 POSITIONS AT GSU?

8 A. I'VE BEEN I THINK IT WAS AN ADMINISTRATOR AT ONE TIME THEY
9 CALLED IT. THERE WAS ALSO A TECHNOLOGY LEAD, BUT STUPID LITTLE
10 TITLES.

11 Q. AND WHO DO YOU REPORT TO?

12 A. CURRENTLY?

13 Q. LET'S START WITH CURRENTLY?

14 A. CURRENTLY IT'S JALLA KULCH.

15 Q. LET'S GO BACK TO 2009, WHO DID YOU REPORT TO?

16 A. DIRECTLY IT WAS TO MIKE RUSSELL.

17 Q. WHAT WAS HIS TITLE?

18 A. HE WAS DIRECTOR OF UATS, UNIVERSITY ACADEMIC TECHNOLOGY
19 SERVICES.

20 Q. AND WHO DID MIKE RUSSELL REPORT TO?

21 A. HE REPORTED TO J. L. ALBERTS WHO WAS THE CIO.

22 Q. NOW, DID YOU HAVE ANY RESPONSIBLE FOR THE ERES SYSTEM?

23 A. NO, MA'AM.

24 Q. BUT YOUR UNDERSTANDING AT THE TIME THAT THE LAWSUIT WAS
25 BROUGHT, YOUR UNDERSTANDING WAS THAT THE GSU LIBRARY OBTAINED

1 PERMISSIONS FOR ANYTHING THAT WAS PLACED ON ELECTRONIC
2 RESERVES, WASN'T IT?

3 A. THE LIBRARY HANDLED THAT, YES.

4 Q. AND THAT PROVED NOT TO BE THE CASE, RIGHT, THEY DIDN'T GET
5 PERMISSIONS?

6 A. I DON'T KNOW.

7 Q. YOU'RE AWARE, AREN'T YOU, MS. CHRISTOPHER, THAT GSU
8 PROFESSORS -- WE'RE TALKING 2009 HERE -- MADE COURSE READINGS
9 AVAILABLE TO THEIR STUDENTS THROUGH ULEARN, RIGHT?

10 A. SOME DID.

11 Q. OKAY. CAN YOU TELL US WHAT ULEARN IS?

12 A. ULEARN IS A SET OF WEB-BASED TOOLS THAT ALLOW A PROFESSOR
13 TO PUT ALL OR PART OF THEIR COURSE MATERIALS AND ACTIVITIES
14 ONLINE.

15 Q. OKAY. AND THE ULEARN SYSTEM RESIDES ON A SERVER THAT'S
16 MAINTAINED BY THE UNIVERSITY SYSTEM OF GEORGIA, RIGHT, IN
17 ATHENS?

18 A. CORRECT.

19 Q. AND THE WAY THE SYSTEM WORKS A ULEARN PAGE OR SECTION IS
20 AUTOMATICALLY GENERATED FOR EVERY OFFICIAL GSU COURSE, RIGHT?

21 A. EACH SECTION, YES.

22 Q. EACH SECTION. WHAT'S THE DIFFERENCE BETWEEN A COURSE AND
23 A SECTION?

24 A. THERE'S ONLY ONE LET'S SAY ENGLISH 1101 COURSE, BUT THERE
25 MAY BE 15 DIFFERENT SECTIONS. SO THE STUDENT WOULD ENROLL FOR

1 THE SECTIONS THEY NEED AT THE RIGHT DAY AND TIME AS TO WHAT
2 THEY NEED.

3 Q. OKAY. SO EACH OF THOSE SECTIONS WOULD AUTOMATICALLY HAVE
4 A ULEARN PAGE?

5 A. CORRECT.

6 Q. WHETHER OR NOT THE PROFESSOR USED IT?

7 A. CORRECT.

8 Q. OKAY. AND 2009 THERE WAS ABOUT 2500 SECTIONS ON ULEARN;
9 DOES THAT SOUND ABOUT RIGHT?

10 A. ACTIVE SECTIONS. SO THAT THERE WERE -- NEVER MIND.

11 Q. WHAT'S AN ACTIVE SECTION?

12 A. AN ACTIVE SECTION IS ONE IN WHICH SOMEBODY ACTUALLY GOES
13 IN UPLOADS THE MATERIALS AND STUDENTS START CLICKING IN IT.

14 Q. SO IN 2009 THERE WAS ABOUT 2500 OF THOSE ACTIVE SECTIONS?

15 A. WELL, FOR A FALL SEMESTER OR A SPRING SEMESTER. SUMMER
16 WOULD BE LESS.

17 Q. OKAY. AND THERE WAS ABOUT 150,000 TOTAL COURSE PAGES ON
18 ULEARN, RIGHT?

19 A. COULD BE, YES.

20 Q. AND THERE WAS MORE THAN 22,939 UNIQUE USERS IN ULEARN,
21 2009?

22 A. I DON'T KNOW THE FIGURE, BUT THAT COULD BE CORRECT.

23 Q. OKAY.

24 THE COURT: SO WHAT DO YOU MEAN; WHAT'S IN THAT
25 UNIQUE USER CATEGORY?

1 THE WITNESS: A UNIQUE USER IS, FOR INSTANCE, A
2 STUDENT MIGHT BE IN FIVE DIFFERENT SECTIONS, BUT INSTEAD OF
3 COUNTING THEM FIVE TIMES, YOU ONLY COUNT THEM ONCE. SO IT'S A
4 UNIQUE USER. ALTHOUGH THEY WOULD BE A USER IN EACH SECTION,
5 THEY ARE ONLY COUNTED ONCE.

6 THE COURT: SO ALL OF THE UNIQUE USERS ARE STUDENTS?

7 THE WITNESS: NOT NECESSARILY. IT COULD ALSO BE AN
8 INSTRUCTOR OR A STAFF MEMBER, BUT ANYBODY WHO HAS A USER NAME
9 IN THE ULEARN SYSTEM WOULD BE -- IF THEY CLICKED IN SOMETHING
10 THAT WAS A UNIQUE USER.

11 DID I EXPLAIN THAT WELL ENOUGH FOR YOU?

12 THE COURT: OKAY.

13 BY MS. SINGER:

14 Q. STUDENTS ACCESS THE ULEARN SYSTEM BY GOING TO THE GSU
15 WEBSITE AND THEY HAVE TO ENTER THEIR I.D. AND PASSWORD; IS THAT
16 CORRECT?

17 A. CORRECT.

18 Q. AND YOU NEED A PASSWORD TO ACCESS ULEARN, RIGHT?

19 A. YES, YOU DO.

20 Q. SO THE GENERAL PUBLIC OR THE LAWYERS IN THIS CASE ON OUR
21 SIDE, YOU CAN'T ACCESS ULEARN UNLESS SOMEBODY AT GSU MAKES
22 SPECIAL ARRANGEMENTS, RIGHT?

23 A. CORRECT.

24 Q. NOW, YOU SET UP OR YOU OR YOUR COLLEAGUES SET UP A SPECIAL
25 ACCOUNT SO THAT SOME MY COLLEAGUES COULD ACCESS ULEARN IN

1 FEBRUARY AND MARCH OF 2009; DO YOU REMEMBER THAT?

2 A. OH, YES.

3 Q. AND THEY CAME ON FOUR OCCASIONS. IT WAS FEBRUARY, MARCH
4 AND APRIL OF 2009; DO YOU REMEMBER THAT?

5 A. I DON'T REMEMBER THE DATES. I JUST KNOW YOU WERE THERE.

6 Q. OKAY. AND THEY DIDN'T HAVE ANY ACCESS AFTER THAT, RIGHT?

7 A. NO.

8 MS. SINGER: IF WE COULD TAKE A LOOK AT PLAINTIFFS'
9 EXHIBIT 858 TO WHICH THERE IS NO OBJECTION SO I WOULD MOVE THAT
10 INTO EVIDENCE.

11 THE COURT: IT'S ADMITTED.

12 MS. SINGER: MAY I APPROACH, YOUR HONOR?

13 THE COURT: YES.

14 BY MS. SINGER:

15 Q. MS. CHRISTOPHER, WE'RE LOOKING AT PLAINTIFFS' EXHIBIT 858
16 IN EVIDENCE, AND THIS IS AN EXAMPLE OF A HOME PAGE FOR ULEARN,
17 RIGHT?

18 A. YES.

19 Q. AND SO THIS WOULD BE THE FIRST PAGE WHEN A STUDENT ENTERS
20 THEIR PASSWORD THIS IS WHAT THEY WOULD SEE FOR THEIR SECTION?

21 A. NO. WHEN THEY FIRST LOGIN TO ULEARN, THEY WILL SEE THEIR
22 MY ULEARN PAGE, AND ON THAT PAGE IN THE CENTER IS A LIST OF
23 THEIR COURSES AND SECTIONS THAT THEY HAVE ENROLLED ON. ONCE
24 THEY CLICK ONE OF THOSE, THEY WILL COME TO THIS PAGE.

25 Q. OKAY. THIS IS THE FIRST PAGE THEY SEE FOR THE COURSE,

1 THOUGH?

2 A. RIGHT.

3 Q. OKAY. AND I BELIEVE YOU TOLD ME AT YOUR DEPOSITION
4 PLAINTIFFS' EXHIBIT 858 THIS IS ALSO WHAT'S CALLED AN ORGANIZER
5 PAGE?

6 A. YES.

7 Q. OKAY. SO IF WE COULD TAKE A LOOK -- WE'LL BLOW IT UP ON
8 THE SCREEN. IT'S A LITTLE HARD TO SEE BECAUSE THIS IS AN NTH
9 GENERATION PHOTOCOPY HERE, BUT IN THE TOP LEFT CORNER THERE,
10 YOU SEE THERE'S A COLUMN OF ICONS, AND THE TOP ONE THERE
11 SAYS -- WELL, IT'S A PICTURE OF A PAGE WITH THE CORNER FOLDED
12 DOWN. IT SAYS MCDERMITT 2002 DOT PDF; DO YOU SEE THAT?

13 A. YES.

14 Q. AND THAT ICON TELLS US IT'S A CONTENT PAGE, RIGHT?

15 A. YES.

16 Q. AND A CONTENT PAGE IS SOMETHING THAT WAS UPLOADED BY A
17 PROFESSOR?

18 A. YES.

19 Q. AND A COURSE READING WOULD BE A CONTENT PAGE, RIGHT?

20 A. EXCUSE ME?

21 Q. A COURSE READING, IF A PROFESSOR UPLOADED A READING THAT
22 WOULD SHOW UP AS A CONTENT PAGE, RIGHT?

23 A. YES.

24 Q. AND IF WE GO DOWN TO THE THIRD ICON IN THAT CORNER,
25 THERE'S A LITTLE PIECE OF PAPER AND IT HAS A THUMB TACK IN

1 FRONT OF IT; DO YOU SEE THAT, IT SAYS REACTION PAPERS?

2 A. YES.

3 Q. OKAY. AND THAT ICON WITH THE THUMB TACK TELLS US THAT'S A
4 DISCUSSION BOARD, RIGHT?

5 A. YES, FOR A DISCUSSION.

6 Q. SO IF WE COULD PULL BACK AND LOOK AT THE WHOLE OF
7 PLAINTIFFS' EXHIBIT 858, WE SEE THAT EVERYTHING ON THERE EXCEPT
8 THE REACTION PAPER, EVERYTHING THERE IS A CONTENT PAGE, RIGHT?

9 A. THE ICONS DOWN THERE, YES, BUT THERE ARE OTHER ICONS.

10 Q. OKAY. BUT ALL THOSE ICONS ARE CONTENT PAGES, RIGHT?

11 A. YES.

12 Q. AND ONCE A STUDENT HAS ENTERED THE ULEARN SECTION PAGE,
13 THEY CAN VIEW THESE PAGES, AND IF THEY CLICK ON ONE OF THOSE
14 ICONS, THEY CAN DOWNLOAD THE COURSE READING TO THEIR OWN
15 COMPUTER, RIGHT?

16 A. IF THEY WANT. MOST JUST READ THEM ONLINE.

17 Q. IF THEY WANTED TO THEY COULD PRINT IT ALSO, RIGHT?

18 A. YES.

19 Q. AND WHEN THEY CLICK ON IT, THESE ARE ALL JUST PDF FILES,
20 RIGHT, THE CONTENT ONES, THEY'RE ALL DOT PDF?

21 A. ACCORDING TO THE TITLE THEY SAY THEY ARE PDF.

22 Q. AND WHEN STUDENTS CLICK ON A PDF OF A COURSE READING, THEY
23 CAN DO ANYTHING WITH THAT PDF THEY COULD DO WITH A REGULAR PDF
24 OUTSIDE THE ULEARN SYSTEM, RIGHT?

25 A. YES.

1 Q. GSU ENCOURAGES THE FACULTY TO USE THE ULEARN SYSTEM,
2 DOESN'T IT?

3 A. YES.

4 Q. AND GSU ACTUALLY SENDS E-MAILS AND WEBPAGES AND HAS
5 CONSULTING SERVICES TO HELP FACULTY USE ULEARN, RIGHT?

6 A. WE DO OFFER SERVICES TO HELP FACULTY LEARN TO USE IT, AND
7 WE DO OFFER SOME INSTRUCTIONAL DESIGN HELP.

8 Q. AND THE NUMBER OF FACULTY USING ULEARN IN THE LAST FIVE
9 YEARS HAS INCREASED, HASN'T IT?

10 A. I DON'T KNOW.

11 Q. OKAY. DO YOU REMEMBER I TOOK YOUR DEPOSITION IN JUNE
12 2009?

13 A. YES.

14 Q. IF WE COULD --

15 MS. SINGER: MAY I APPROACH, YOUR HONOR?

16 THE COURT: YES.

17 BY MS. SINGER:

18 Q. IF WE COULD JUST TAKE A LOOK AT PAGE 28, AND IF WE TAKE A
19 LOOK AT LINE 19 THE QUESTION IS: OVER THE LAST FIVE YEARS, HAS
20 THE NUMBER OF FACULTY USING ULEARN INCREASED OR DECREASED?

21 ANSWER: INCREASED.

22 A. BUT THAT WOULD HAVE BEEN THE FIVE YEARS PREVIOUS FROM
23 2009. I WAS NOT AWARE THAT YOU WERE DOING 2009, BUT FROM NOW
24 FIVE YEARS AGO I DON'T KNOW WHAT THAT NUMBER IS.

25 Q. OKAY. I'M SORRY, ALL MY QUESTIONS ARE 2009, BUT I'LL TRY

1 TO CLARIFY THAT, AND THE REASON YOU DON'T KNOW IS BECAUSE
2 YOU'RE NO LONGER RESPONSIBLE FOR ULEARN?
3 A. NO, I DON'T READ THE REPORTS ANY MORE. I DON'T HAVE TIME.
4 Q. FAIR ENOUGH. OKAY.

5 BUT THE NUMBER OF FACULTY IN THE FIVE YEARS PRIOR TO
6 2009, THE NUMBER OF FACULTY USING ULEARN HAS INCREASED OVER
7 THAT PERIOD, RIGHT?

8 A. OH, YES.

9 Q. OKAY. MS. CHRISTOPHER, YOU WOULD AGREE WITH ME, WOULDN'T
10 YOU, THAT UPLOADING AN ENTIRE DISNEY MOVIE TO ULEARN WOULD BE A
11 COPYRIGHT VIOLATION, RIGHT?

12 A. NOT NECESSARILY.

13 MS. MOFFITT: OBJECTION, CALLS FOR A LEGAL
14 CONCLUSION.

15 THE COURT: SUSTAINED.

16 BY MS. SINGER:

17 Q. NOW, WHEN I TOOK YOUR DEPOSITION IN JUNE OF 2009, YOU
18 COULDN'T THINK OF ANY EXAMPLES OF COPYRIGHT VIOLATIONS SHORT OF
19 UPLOADING AN ENTIRE MOVIE OR AN ENTIRE BOOK; ISN'T THAT
20 CORRECT?

21 A. THAT I COULD NOT COME UP WITH ANY COPYRIGHT OF ANYTHING
22 THAT ANYBODY COULD DO OR WHAT MY FACULTY WERE DOING OR CAN YOU
23 CLARIFY THAT?

24 Q. I ASKED YOU FOR EXAMPLES AND THOSE WERE THE TWO YOU CAME
25 UP WITH, RIGHT?

1 A. RIGHT.

2 THE COURT: WHAT WAS THE QUESTION THAT YOU ASKED IN
3 THE DEPOSITION?

4 MS. SINGER: IT'S AT PAGE 159. THE QUESTION WAS
5 COULD YOU GIVE ME AN EXAMPLE OF A COPYRIGHT LIABILITY. WE WERE
6 TALKING ABOUT LIABILITY FOR COPYRIGHT INFRINGEMENT, AND THE
7 ANSWER WAS UPLOADING AN ENTIRE MOVIE, UPLOADING GONE WITH THE
8 WIND.

9 THE NEXT QUESTION WAS CAN YOU GIVE AN EXAMPLE OF A
10 COPYRIGHT VIOLATION SHORT OF UPLOADING AN ENTIRE MOVIE OR AN
11 ENTIRE BOOK, AND THE ANSWER WAS NOT AT THIS TIME.

12 BY MS. SINGER:

13 Q. MS. CHRISTOPHER, IT'S YOUR UNDERSTANDING THAT USING
14 COPYRIGHTED CONTENT FOR MULTIPLE SEMESTERS IS A COPYRIGHT
15 VIOLATION, RIGHT?

16 A. I DON'T KNOW.

17 Q. IF WE COULD TAKE A LOOK -- I'D LIKE TO PLAY A CLIP FROM
18 YOUR DEPOSITION. THIS IS STARTING AT PAGE 159, LINE 17 GOING
19 TO 160, LINE 4.

20 (VIDEOTAPED DEPOSITION WAS PLAYED IN OPEN COURT.)

21 BY MS. SINGER:

22 Q. MS. CHRISTOPHER, THERE IS A LIMIT ON THE SIZE OF FILES
23 THAT PROFESSORS CAN UPLOAD TO ULEARN, RIGHT?

24 A. RIGHT.

25 Q. AND THE LIMIT IS JUST THE SIZE OF ANY PARTICULAR FILE,

1 RIGHT?

2 A. CORRECT.

3 Q. SO IF A PROFESSOR WANTED TO -- I THINK THE EXAMPLE USED IN
4 YOUR DEPOSITION IF THE LIMIT WERE 500 MEGS, FOR EXAMPLE, AND I
5 DON'T KNOW WHAT IT IS, AND I'M NOT PUTTING INTO THE RECORD THAT
6 THAT'S THE LIMIT, BUT IF THE LIMIT WERE 500 MEGS, A PROFESSOR
7 COULD UPLOAD 500 FILES OF 500 MEGS EACH, BUT THEY COULDN'T
8 UPLOAD ONE FILE THAT WAS 501 MEGS; IS THAT CORRECT?

9 A. CORRECT.

10 Q. BUT IF A PROFESSOR WANTED TO UPLOAD A COURSE READING THAT
11 EXCEEDED THAT SIZE LIMIT, WHATEVER IT IS, THEY COULD JUST BREAK
12 THE READING UP INTO MULTIPLE SMALLER FILES, RIGHT?

13 A. IF THEY KNEW HOW.

14 Q. OKAY. AND AS LONG AS EACH INDIVIDUAL FILE DIDN'T EXCEED
15 THE SIZE LIMIT THAT WOULD BE OKAY, RIGHT?

16 A. CORRECT.

17 Q. AND THERE IS NO LIMIT --

18 THE COURT: WHAT DO YOU MEAN WHEN YOU SAY IT WOULD BE
19 OKAY? I THINK YOUR QUESTION IS A LITTLE UNCLEAR. ARE YOU
20 ASKING WHAT THE -- HOW IS THE SYSTEM SET UP OR --
21 BY MS. SINGER:

22 Q. THE SYSTEM IS SET UP SO THAT IF A PROFESSOR BROKE UP A
23 FILE THAT EXCEEDED THE SIZE LIMIT INTO MULTIPLE SMALLER FILES,
24 THEY WOULD BE ABLE TO UPLOAD ALL OF THOSE SMALLER FILES,
25 CORRECT?

1 A. CORRECT, AND I THOUGHT THAT'S WHAT YOU MEANT.

2 THE COURT: THANK YOU.

3 MS. SINGER: SORRY, YOUR HONOR.

4 THE COURT: GOT IT.

5 BY MS. SINGER:

6 Q. AND THERE'S NO LIMIT ON THE NUMBER OF FILES THAT A
7 PROFESSOR CAN UPLOAD TO ULEARN ON THEIR PAGE, IS THERE?

8 A. CURRENTLY, NO.

9 Q. HOW DOES A PROFESSOR UPLOAD A FILE TO ULEARN; WHAT'S THAT
10 PROCESS?

11 A. THEY LOGIN TO THE SOFTWARE. THEY GO TO WHAT IS CALLED THE
12 FILE MANAGER. THEY CLICK A BUTTON THERE WHICH OPENS UP ANOTHER
13 LITTLE WINDOW FOR THEIR COMPUTER. THEY CHOOSE THE FILE OFF OF
14 THEIR COMPUTER.

15 THEY CLICK A BUTTON THAT SAYS OPEN, AND THEN IT IS
16 uploaded INTO ULEARN OR ONTO THE SERVER, BUT IT STILL HAS TO BE
17 PLACED WHEREVER THEY WANT IT IN THE COURSE.

18 Q. OKAY. AND THAT'S SOMETHING THAT THE PROFESSORS DO
19 THEMSELVES, RIGHT?

20 A. YES.

21 Q. AND THE E-LEARNING GROUP, YOUR GROUP DIDN'T HELP THEM DO
22 THAT IN 2009 AS A MATTER OF COURSE?

23 A. AS A MATTER OF COURSE, NO.

24 Q. BUT IF THEY NEEDED HELP, THEY COULD ASK FOR HELP?

25 A. WE HAD TRAINING, AND WE ALSO DID SOME INSTRUCTIONAL DESIGN

1 WHICH WOULD BE UPLOADING THE MATERIALS.

2 Q. AND IN 2009 THERE WAS NO WAY TO TRACK WHAT PROFESSORS
3 UPLOADED THEMSELVES TO THEIR ULEARN SECTIONS, WAS THERE?

4 A. NO.

5 Q. AND ONE OF THE REASONS THAT YOUR GROUP DIDN'T UPLOAD FILES
6 FOR INSTRUCTORS IS THAT YOU WERE WORRIED IT MIGHT BE A
7 LIABILITY ISSUE FOR THE UNIVERSITY; ISN'T THAT CORRECT?

8 A. NO, BECAUSE WE WANT THE PROFESSORS TO HAVE MORE CONTROL
9 OVER THEIR OWN COURSES RATHER THAN JUST REFERRING THEM. IF
10 SOMETHING GOES WRONG WE WANT THEM TO BE ABLE TO HANDLE IT.

11 Q. OKAY. SO IN CASE THERE WAS LIABILITY IF SOMETHING WENT
12 WRONG, YOU'D WANT THE PROFESSOR TO HANDLE IT?

13 A. NO, IN CASE THE STUDENTS COULDN'T READ THE DOCUMENT THAT
14 WAS UPLOADED, THE PROFESSOR NEEDS TO KNOW HOW TO MAKE THE
15 CORRECTIONS.

16 Q. IF WE COULD TAKE A LOOK AT PLAINTIFFS' EXHIBIT 861, AND IF
17 YOU COULD BLOW THAT UP. WE SEE PLAINTIFFS' EXHIBIT 861 IS AN
18 E-MAIL FROM YOU, MS. CHRISTOPHER, RIGHT?

19 A. YES.

20 Q. AND YOU START OUT, YOU SAY EACH INSTRUCTORS --

21 MS. MOFFITT: YOUR HONOR, OBJECTION. WE OBJECT TO
22 THIS IN THAT THE EXHIBIT IS OUTSIDE THE TIMEFRAME AT ISSUE.
23 IT'S A 2008 E-MAIL.

24 MS. SINGER: I'M JUST USING IT FOR IMPEACHMENT, YOUR
25 HONOR.

1 MS. MOFFITT: THIS IS AN E-MAIL.
2 THE COURT: OKAY. SO THIS IS NOT IN EVIDENCE?
3 MS. MOFFITT: NO, NOT THAT I'M AWARE OF, YOUR HONOR.
4 MS. SINGER: RIGHT?
5 THE COURT: YOU CAN ASK HER IF IT REFRESHES HER
6 RECOLLECTION.
7 BY MS. SINGER:
8 Q. OKAY. MS. CHRISTOPHER, DOES THIS REFRESH YOUR
9 RECOLLECTION THAT AT LEAST ONE OF THE REASONS THAT INSTRUCTORS
10 WERE RESPONSIBLE FOR POSTING THEIR OWN MATERIALS WAS A
11 LIABILITY ISSUE?
12 A. THE LIABILITY THAT I MEANT THERE WAS I DID NOT WANT MY
13 GROUP TO TAKE RESPONSIBILITY FOR UPLOADING INCORRECT
14 MATERIALS. WE TRY NOT TO DO ANYTHING THAT AN INSTRUCTOR CAN
15 DO.
16 Q. OKAY.
17 A. AND SHE WAS ASKING US TO UPLOAD THINGS FOR HER PROFESSOR.
18 Q. OKAY. NOW, MS. CHRISTOPHER, THERE IS NO UNIVERSITY NAMING
19 CONVENTION FOR FILES THAT ARE uploaded TO ULEARN BY PROFESSORS,
20 IS THERE?
21 A. NO.
22 Q. SO PROFESSORS CAN JUST NAME IT WHATEVER THEY WANT, RIGHT?
23 A. CORRECT.
24 Q. AND THE PROCESS YOU DESCRIBED FOR PROFESSORS TO UPLOAD
25 SOMETHING TO ULEARN, IT'S POSSIBLE TO UPLOAD SOMETHING TO

1 ULEARN WITHOUT EVER LOOKING AT A COPYRIGHT POLICY; ISN'T THAT
2 POSSIBLE?

3 A. YES.

4 Q. AND YOU AREN'T AWARE OF ANY BUDGET TO PAY LICENSE OR
5 PERMISSIONS FEES FOR MATERIALS THAT ARE UPLOADED TO THE ULEARN
6 SYSTEM, CORRECT?

7 A. I'M SORRY?

8 Q. YOU AREN'T AWARE OF ANY UNIVERSITY BUDGET THAT WOULD BE
9 USED TO PAY FOR LICENSE OR PERMISSIONS FEES IF SOMETHING NEEDED
10 LICENSE OR PERMISSIONS TO POST IT ON THE ULEARN SYSTEM?

11 A. I'M NOT SPECIFICALLY -- NOT TO ULEARN SPECIFICALLY, BUT
12 THERE ARE BUDGETS FOR GETTING COPYRIGHT PERMISSIONS TO USE
13 MATERIALS FOR CLASSES.

14 Q. OKAY. BUT NOT FOR ULEARN SPECIFICALLY?

15 A. SPECIFICALLY, NO.

16 Q. IN 2009 THERE WAS NO WAY FOR YOU OR FOR YOUR GROUP TO
17 CHECK TO SEE WHAT PROFESSORS HAD UPLOADED OTHER THAN BY
18 MANUALLY CLICKING INTO THE SECTION AND OPENING THE PDF; ISN'T
19 THAT CORRECT?

20 A. OR WHATEVER FILE, CORRECT.

21 Q. SO NO ONE IN YOUR GROUP DID ANY RED FLAG REVIEWS OF
22 WHAT PROFESSORS UPLOADED TO ULEARN BEFORE THEY UPLOADED IT,
23 CORRECT?

24 A. THERE IS NO APPROVAL PROCESS.

25 Q. AND THERE WAS NO WAY FOR YOUR GROUP TO DETERMINE WHETHER

1 PROFESSORS WERE UPLOADING MATERIALS THAT DIDN'T COMPLY WITH THE
2 COPYRIGHT POLICY, WAS THERE?

3 A. NO.

4 Q. AND YOUR DEPARTMENT DIDN'T HAVE ANY PROCEDURES IN PLACE TO
5 MAKE SURE THAT PROFESSORS COMPLIED WITH THE COPYRIGHT POLICY
6 BEFORE UPLOADING THINGS TO ULEARN, CORRECT?

7 A. CORRECT.

8 Q. AND THERE WAS NO PLANS THAT YOU'RE AWARE OF TO DEVELOP ANY
9 PROCEDURES TO DETERMINE WHETHER A PROFESSOR COMPLIED WITH
10 COPYRIGHT POLICIES VIS-A-VIS ULEARN, CORRECT?

11 A. CORRECT.

12 Q. IN FACT WHEN I TOOK YOUR DEPOSITION IN JUNE 2009
13 THERE HADN'T EVEN BEEN ANY DISCUSSIONS ABOUT PLANS TO PUT
14 PROCEDURES IN PLACE TO MAKE SURE PROFESSORS COMPLIED WITH GSU'S
15 COPYRIGHT POLICIES BEFORE THEY UPLOADED SOMETHING TO ULEARN,
16 CORRECT?

17 A. CORRECT.

18 Q. AND IN JUNE OF 2009 YOU HADN'T NOTICED ANY CHANGES IN THE
19 WAY FACULTY USED THE ULEARN SYSTEM AS A RESULT OF THE NEW
20 POLICY, HAD YOU?

21 THE COURT: WHAT DO YOU MEAN? I DON'T UNDERSTAND
22 YOUR QUESTION.

23 MS. SINGER: FACULTY WERE USING THE ULEARN SYSTEM
24 AS BEST SHE COULD TELL THE SAME AS THEY HAD BEFORE THE
25 POLICY.

1 THE COURT: I DON'T KNOW WHAT MEANS. I DON'T
2 KNOW WHAT THE FOCUS OF YOUR QUESTION IS. I MEAN THEY WERE
3 STILL USING THE ULEARN SYSTEM, AND THE SAME MECHANISMS WERE IN
4 PLACE, BUT I DON'T THINK THAT'S WHAT YOU'RE REALLY TRYING TO
5 GET AT.

6 BY MS. SINGER:

7 Q. WAS ANYBODY THAT YOU COULD TELL DOING ANYTHING DIFFERENT
8 IN ULEARN AFTER THE NEW POLICY WENT INTO EFFECT?

9 A. FROM MY POSITION WHAT I DID, THE SYSTEM WAS STILL IN USE,
10 AND THAT'S ALL I COULD STATE.

11 Q. NOW, MS. CHRISTOPHER, ON AT LEAST ONE OCCASION YOU
12 INADVERTENTLY BECAME AWARE OF A PROFESSOR WHO WAS NOT COMPLYING
13 WITH HIS OR HER COPYRIGHT RESPONSIBILITIES?

14 A. YES.

15 Q. AND YOU DIDN'T DO ANYTHING; ISN'T THAT RIGHT?

16 A. NO.

17 THE COURT: YOU MEAN IT WASN'T RIGHT, OR NO YOU
18 DIDN'T DO ANYTHING?

19 THE WITNESS: I DID SOMETHING.

20 BY MS. SINGER:

21 Q. IF WE COULD TAKE A LOOK AT YOUR DEPOSITION, WE'RE PAGE ON
22 PAGE 112, LINE 19 TO 113, LINE 1.

23 (VIDEOTAPED DEPOSITION WAS PLAYED IN OPEN COURT.)

24 MS. SINGER: MAY I HAVE A MOMENT, YOUR HONOR?

25 THE COURT: YES.

1 (PAUSE IN THE PROCEEDINGS.)

2 MS. SINGER: NO FURTHER QUESTIONS, YOUR HONOR.

3 THE COURT: MS. MOFFITT.

4 CROSS-EXAMINATION

5 BY MS. MOFFITT:

6 Q. GOOD MORNING, MS. CHRISTOPHER.

7 A. GOOD MORNING.

8 Q. YOU INDICATED THAT YOU WERE THE PROJECT MANAGER FOR THE

9 E-LEARNING GROUP IN 2009, CORRECT?

10 A. CORRECT.

11 Q. HOW LONG TO YOUR KNOWLEDGE HAS ULEARN BEEN USED AT GEORGIA
12 STATE UNIVERSITY?

13 A. SINCE SPRING 1999.

14 Q. AND WITH RESPECT TO THE QUESTION THAT MS. SINGER JUST
15 PLAYED FOR YOU REGARDING THAT ONE INSTANCE OF SOME POTENTIAL
16 COPYRIGHT VIOLATION THAT SHE HAD ASKED YOU DURING YOUR
17 DEPOSITION, DO YOU RECALL SPECIFICALLY WHAT TIMEFRAME WITHIN
18 WHICH THAT QUESTION WAS BASED?

19 A. NO, I DON'T.

20 Q. WHO AT GEORGIA STATE USED ULEARN IN 2009?

21 A. ULEARN IS USED BY FACULTY, STAFF AND STUDENTS.

22 Q. OKAY. AND YOU INDICATED EARLIER THAT THE SYSTEM WAS
23 PASSWORD RESTRICTED; IS THAT CORRECT?

24 A. CORRECT.

25 Q. NOW IS THAT THE CASE WITH RESPECT TO PROFESSORS, STUDENTS

1 AND STAFF?

2 A. CORRECT.

3 Q. ALL RIGHT. HOW DID THE PROFESSORS USE ULEARN IN 2009?

4 A. THEY USED IT TO PUT ALL OR A PART OF THEIR COURSES AND
5 THEIR ACTIVITIES ONLINE FOR THE STUDENTS.

6 Q. AND WHAT DO YOU MEAN BY THAT; HOW DID THEY USE ULEARN TO
7 MAKE THEIR COURSES AVAILABLE ONLINE?

8 A. ULEARN IS A SET OF TOOLS, AND THERE ARE SEVERAL TOOLS THAT
9 THEY CAN USE IN DIFFERENT WAYS. THERE'S A SYLLABUS TOOL SO
10 THAT THEY DON'T HAVE TO HAND IT OUT IN THE CLASSROOM ANY MORE,
11 THE THREADED DISCUSSIONS WHICH SHE SHOWED UP THERE.

12 THEY CAN UPLOAD READINGS, HANDOUTS. THEY CAN DO
13 ASSESSMENTS. THOSE ARE ONLINE QUIZES AND EXAMS. STUDENTS CAN
14 TAKE THEM ONLINE. THEY'RE GRADED AUTOMATICALLY. THERE'S AN
15 ASSIGNMENT TOOL THAT ALLOWS STUDENTS TO WRITE THEIR PAPER,
16 SUBMIT IT ONLINE. THE PROFESSOR CAN MAKE COMMENTS ON IT AND
17 GRADE IT AND SEND IT BACK TO THE STUDENT.

18 THERE'S A GRADE BOOK FEATURE THAT LET'S THE STUDENT
19 SEE THEIR GRADES FOR THAT COURSE. THERE'S A CHAT ROOM WHERE
20 THEY CAN DO ONLINE TEXTING. PROFESSORS HAVE BEEN KNOWN TO
21 UPLOAD THEIR POWERPOINTS, LECTURE NOTES. LINKS TO OTHER
22 WEBSITES ARE USED IN THERE OCCASIONALLY. I THINK THAT'S ALMOST
23 EVERYTHING.

24 Q. COULD THE PROFESSORS USE ULEARN TO POST COURSE
25 ANNOUNCEMENTS, FOR EXAMPLE?

1 A. OH, YES, I FORGOT ABOUT THAT, AND THERE'S ALSO A CALENDAR
2 TOOL IN THERE SO THAT THE STUDENTS KNOW WHAT'S AVAILABLE WHEN.

3 Q. MS. SINGER SHOWED YOU AN EXHIBIT UP HERE ON THE SCREEN
4 THAT SHOWED ICONS RELATING TO CONTENT?

5 A. YES.

6 Q. WHAT TYPES OF CONTENT COULD THAT ICON RELATE TO?

7 A. YOU CAN UPLOAD ANY TYPE OF A DOCUMENT. IT COULD BE A WORD
8 FILE. IT COULD BE A HTML WHICH IS LIKE A WEBPAGE. THERE'S
9 ALSO YOU CAN UPLOAD A FLASH WHICH WOULD BE AN INTERACTIVE LIKE
10 A MOVIE. A LINK TO -- WELL, IN HERE THEY COULD ALSO UPLOAD AN
11 AUDIO FILE. IT COULD BE UNDER ONE OF THOSE CONTENTS. IT COULD
12 BE A HANDOUT. IT COULD HAVE BEEN NOTES. IT COULD HAVE BEEN A
13 POWERPOINT.

14 Q. SO THE CONTENT ICON ISN'T NECESSARILY LIMITED TO COURSE
15 READINGS?

16 A. CORRECT.

17 Q. COULD PROFESSORS IN 2009 MAKE ERESERVE READINGS OR
18 MATERIALS AVAILABLE TO STUDENTS THROUGH ULEARN?

19 A. YES.

20 Q. HOW DO THEY GO ABOUT DOING THAT?

21 A. THEY WOULD CREATE A LINK THAT WOULD SEND THE STUDENT OVER
22 TO THE ERES URL.

23 Q. AND HOW EASY OR DIFFICULT WAS IT FOR A PROFESSOR TO MAKE
24 AN ERESERVE READING MATERIAL AVAILABLE TO HIS OR HER STUDENTS
25 FOR ULEARN USING A LINK?

1 A. EASY.

2 Q. AND SPECIFICALLY HOW DOES A PROFESSOR GO ABOUT DOING THAT?

3 A. THEY WOULD CLICK ON THE TOOL THAT SAYS I WANT TO ADD A
4 LINK, AND IT WOULD SAY WHAT IS THAT LINK, AND YOU TYPE IT IN
5 HTTP COLON SLASH SLASH WHATEVER THE ADDRESS IS, CLICK ADD AND
6 IT'S THERE.

7 Q. ARE YOU AWARE OF ANY PROFESSORS WHO MADE ERESERVE
8 MATERIALS AVAILABLE THROUGH A LINK IN ULEARN IN 2009?

9 A. I REMEMBER ONE IN PARTICULAR BECAUSE I HAD TO WORK WITH
10 HER.

11 Q. NOW IF A STUDENT WAS LOOKING AT A COURSE PAGE IN ULEARN
12 THAT HAD A LINK TO ERESERVES, WHAT WOULD HAPPEN WHEN THE
13 STUDENT CLICKED ON THAT PARTICULAR ERESERVE LINK?

14 A. WHEN THEY WOULD CLICK ON THE ERES LINK, A NEW WINDOW WOULD
15 OPEN UP OVER THE TOP OF THE ULEARN PAGE, AND THAT WOULD BE THE
16 ERES PAGE WITH THE LINKS IN THERE WHERE THEY HAVE TO LOGIN TO
17 GET THEIR READINGS, THEY LOGIN AND THEN THEY WOULD BE ABLE TO
18 SEE THE ERES READINGS.

19 Q. AND WHEN YOU SAY THE STUDENT WOULD HAVE TO LOGIN TO GET
20 THEIR ERES READINGS, WAS THAT A PASSWORD THAT WAS DIFFERENT
21 FROM THE ULEARN PASSWORD THAT THEY HAD USED TO LOGIN TO ULEARN?

22 A. I'M NOT SURE BECAUSE WE COULD NEVER GET THE TWO SYSTEMS TO
23 WORK AUTOMATICALLY. SOMETIMES WE COULD MAKE A LINK FROM
24 ANOTHER SYSTEM AUTOMATICALLY LOGIN THE STUDENT, BUT ERES WOULD
25 NOT WORK THAT WAY.

1 Q. BUT THE STUDENT WOULD THEN BE PROMPTED TO ENTER ANOTHER
2 PASSWORD?

3 A. CORRECT.

4 Q. NOW WHEN THE STUDENT LOGGED IN TO ULEARN GENERALLY WITH A
5 PASSWORD IN 2009, COULD YOU DESCRIBE FOR US WHAT THE STUDENT
6 WOULD SEE WHEN HE ENTERED INTO ULEARN?

7 A. WHEN THEY FIRST LOGIN, THEY LOGIN AND THEY WOULD SEE MY
8 ULEARN PAGE, AND THERE'S SEVERAL FRAMES CALLED CHANNELS ON THE
9 PAGE. IN THE VERY CENTER IS THE COURSE LISTING WITH ALL THE
10 SESSIONS THAT THEY'VE ENROLLED FOR.

11 IMMEDIATELY UNDERNEATH THERE IS ANOTHER FRAME WITH
12 ANNOUNCEMENTS. THERE COULD BE SPECIAL MAINTENANCE FOR THE
13 SERVER OR THERE'S GOING TO BE SOME DOWN TIME THEY NEED TO BE
14 AWARE OF.

15 THERE'S ALSO ANOTHER LITTLE FRAME THAT HAS CAMPUS
16 BOOKMARKS, ONE FOR LIBRARY, ONE FOR GALILEO AND SEVERAL OTHER
17 ONES THAT THEY MAY NEED.

18 THERE IS ANOTHER LITTLE CHANNEL FOR A CALENDAR, AND
19 ONE THAT THE STUDENTS LIKE IT WAS CALLED WHO'S ONLINE. SO THEY
20 COULD SEE IF THERE WERE OTHER PEOPLE FROM THEIR SECTIONS THAT
21 WERE LOGGED ON, THEY COULD GO IN THERE AND I-M AND CHAT WITH
22 THEM INSTANTLY AND QUESTIONS OR WHATEVER THEY MIGHT HAVE.

23 Q. NOW WITH RESPECT TO THE COURSES THAT WERE LISTED ON THIS
24 MY ULEARN PAGE, WOULD THE COURSE LIST INCLUDE THE COURSES IN
25 WHICH HE OR SHE THE STUDENT WAS CURRENTLY ENROLLED?

1 A. CORRECT.

2 Q. AND ONCE A COURSE WAS COMPLETED AT THE END OF A SEMESTER,
3 DID THERE COME A TIME WHEN A STUDENT NO LONGER HAD ACCESS TO
4 THE COURSE PAGE FOR THAT COURSE OR THOSE COURSES?

5 A. YES.

6 Q. WHEN WAS THAT?

7 A. ABOUT SIX WEEKS INTO THE FOLLOWING SEMESTER, THE ACCESS TO
8 THE PREVIOUS SEMESTER WOULD BE CUT OFF.

9 Q. AND WHAT WAS THE REASON FOR THE SIX WEEK WINDOW?

10 A. THAT'S FOR STUDENTS THAT HAVE INCOMPLETES. IT GIVES THEM
11 A CHANCE TO GO AND FINISH ANY ASSIGNMENTS OR ANY WORK THAT
12 NEEDS TO BE DONE SO THAT THEY CAN GET A GRADE.

13 Q. SO ONCE THAT SIX WEEK WINDOW HAD EXPIRED, THE STUDENT
14 WOULD NO LONGER HAVE ACCESS TO THEIR PREVIOUS COURSES?

15 A. CORRECT, THEY WOULD NOT HAVE ACCESS AFTER THAT SIX WEEKS.

16 Q. WOULD A STUDENT IN ULEARN EVER HAVE ACCESS TO COURSE PAGES
17 FOR COURSES IN WHICH HE HAD NOT BEEN ENROLLED?

18 A. NO.

19 Q. WOULD A STUDENT EVER HAVE ACCESS TO COURSE PAGES IN ULEARN
20 FOR COURSES THAT WERE NOT CURRENTLY BEING TAUGHT?

21 A. NO.

22 Q. AND WOULD A PROFESSOR TYPICALLY HAVE ACCESS TO A COURSE
23 PAGE IN ULEARN FOR A COURSE THAT HE OR SHE DID NOT TEACH?

24 A. NO.

25 Q. AND IN 2009 WERE YOU AWARE THAT THE UNIVERSITY SYSTEM OF

1 GEORGIA HAD ROLLED OUT A NEW COPYRIGHT POLICY EFFECTIVE
2 FEBRUARY OF THAT YEAR?

3 A. YES.

4 Q. AND HAD YOU BECOME FAMILIAR WITH THAT NEW COPYRIGHT POLICY
5 IN 2009?

6 A. I READ IT, YES.

7 Q. YOU READ THE ACTUAL POLICY IN 2009?

8 A. YES.

9 Q. WERE THERE OTHER WAYS IN WHICH YOU BECAME FAMILIAR WITH
10 THE NEW POLICY?

11 A. THERE WAS AN INFORMATIONAL SESSION IN WHICH THE LEGAL
12 AFFAIRS ATTORNEY CAME AND SHE TALKED TO US ABOUT IT AND POINTED
13 OUT HOW IT WAS GOING TO BE USED, THE CHECKLIST AND ALL.

14 Q. HOW SOON AFTER THE NEW POLICY WAS IMPLEMENTED DID YOU
15 ATTEND THIS SESSION?

16 A. IT WAS VERY SHORTLY AFTER. SHORTLY AFTER I LEARNED ABOUT
17 THE POLICY THAT CYNTHIA WAS THERE.

18 Q. WOULD YOU SAY A FEW WEEKS, A MONTH?

19 A. A COUPLE OF WEEKS.

20 THE COURT: YOU MEAN AFTER IT BECAME EFFECTIVE IN
21 FEBRUARY OF 2009?

22 THE WITNESS: YES, MA'AM.

23 BY MS. MOFFITT:

24 Q. AND WHO RAN THAT SESSION?

25 A. CYNTHIA HALL.

1 Q. AND CYNTHIA WAS WHO IN 2009?

2 A. SHE WAS AN ATTORNEY WITH THE LEGAL AFFAIRS AT GEORGIA
3 STATE.

4 Q. AND DO YOU RECALL HOW LONG THAT SESSION LASTED?

5 A. IT WAS ABOUT AN HOUR AND A HALF OR TWO HOURS LONG.

6 Q. DO YOU RECALL WHO ATTENDED THAT SESSION WITH YOU?

7 A. IT WAS ALL THE TECHNICAL ADMINS FROM ACROSS THE CAMPUS
8 FROM THE VARIOUS COLLEGES.

9 Q. AND WHAT GENERALLY WAS DISCUSSED DURING THAT SESSION?

10 A. SHE HAD A POWERPOINT WHERE SHE WENT OVER THE DIFFERENT
11 BULLETS THAT WERE THERE IN THE NEW POLICY. SHE SHOWED US THE
12 CHECKLIST THAT WAS THERE AND HOW AN INSTRUCTOR WOULD GO THROUGH
13 TO USE IT. SHE ALSO GAVE US SOME EXAMPLES OF HOW SHE HAD
14 OBTAINED SOME PERMISSIONS TO USE VARIOUS COPYRIGHTED MATERIALS.

15 Q. DID YOU HAVE AN UNDERSTANDING IN 2009 ABOUT WHETHER THE
16 NEW COPYRIGHT POLICY APPLIED TO ULEARN?

17 A. IT DID APPLY.

18 Q. AND WHAT DID YOU UNDERSTAND WITH RESPECT TO HOW THAT NEW
19 COPYRIGHT POLICY APPLIED TO ULEARN?

20 A. THAT THE INSTRUCTORS WERE TO GO THROUGH THE CHECKLIST AND
21 DETERMINE FAIR USE, AND THEN IT WAS -- ONCE THEY DECIDED, THEN
22 THEY COULD GO AHEAD AND UPLOAD.

23 Q. UPLOAD?

24 A. WHAT MATERIALS THEY NEEDED IF IT -- IF THE CHECKLIST
25 SHOWED THAT IT WAS FAIR USE, THEN THEY COULD USE IT IN ULEARN.

1 Q. THE MATERIALS?

2 A. THE MATERIALS.

3 Q. IF YOU HAD QUESTIONS IN 2009 ABOUT THE NEW COPYRIGHT
4 POLICY WAS THERE ANYONE AT THE UNIVERSITY WITH WHOM YOU WOULD
5 CONSULT?

6 A. I WOULD GO TO LEGAL AFFAIRS.

7 MS. MOFFITT: OKAY. MAY I HAVE A MINUTE, YOUR
8 HONOR?

9 THE COURT: YES.

10 (PAUSE IN THE PROCEEDINGS.)

11 BY MS. MOFFITT:

12 Q. MS. CHRISTOPHER, EARLIER WHEN MS. SINGER WAS ASKING YOU
13 A FEW QUESTIONS, SHE PLAYED ONE OF YOUR VIDEO EXCERPTS FROM
14 YOUR DEPOSITION ABOUT A SINGLE INSTANCE WHEN YOU THOUGHT
15 THERE MIGHT BE SOME SORT OF COPYRIGHT ISSUE WITH RESPECT TO
16 ONE OF THE PROFESSORS YOU WERE WORKING WITH, AND IF I
17 RECALL CORRECTLY YOU INDICATED THAT YOU THOUGHT YOU HAD
18 DONE SOMETHING IN RESPONSE TO THAT ISSUE WHEN IT PRESENTED
19 ITSELF.

20 DO YOU RECALL THAT SEQUENCE?

21 A. YES BUT I WAS THINKING OF A DIFFERENT INSTANCE NOT THE ONE
22 THAT SHOWED UP IN THE VIDEO, I'M SORRY.

23 Q. OKAY. WITH RESPECT TO THE PARTICULAR ISSUE THAT SHOWED UP
24 IN THE VIDEO, DO YOU RECALL THE TIMEFRAME WHEN THAT ISSUE
25 PRESENTED ITSELF?

1 A. NO, I DON'T IT'S BEEN SO LONG AGO.

2 MS. MOFFITT: NO FURTHER QUESTIONS.

3 MS. SINGER: VERY BRIEFLY, YOUR HONOR.

4 REDIRECT EXAMINATION

5 BY MS. SINGER:

6 Q. MS. CHRISTOPHER, YOU MENTIONED GALILEO. WHAT IS
7 GALILEO?

8 A. IT'S AN ACRONYM. IT STANDS FOR GEORGIA LIBRARY LEARNING
9 ONLINE.

10 Q. AND IT'S TRUE, ISN'T IT, THAT WHEN COPYRIGHTED WORKS ARE
11 MADE AVAILABLE TO STUDENTS THROUGH GALILEO THEY'RE MADE
12 AVAILABLE PURSUANT TO A LICENSE AGREEMENT, RIGHT?

13 A. I DON'T KNOW. I DON'T DO GALILEO.

14 MS. SINGER: THANK YOU. NO FURTHER QUESTIONS.

15 THE COURT: SHALL THE WITNESS BE EXCUSED?

16 MS. MOFFITT: YES, YOUR HONOR.

17 THE COURT: YOU ARE EXCUSED. THANK YOU.

18 MR. KRUGMAN: YOUR HONOR, I JUST HAVE ONE QUESTION, A
19 PROCEDURAL ONE. I KNOW THAT WHEN WE PLAY THE FULL TRANSCRIPTS
20 OF DEPOSITIONS THAT MR. ASHLEY IS NOT TAKING THOSE DOWN AND
21 PROVIDING --

22 THE COURT: RIGHT.

23 MR. KRUGMAN: WHEN CLIPS ARE BEING SHOWN DURING
24 CROSS-EXAMINATION, I ASSUME MR. ASHLEY IS TAKING THOSE DOWN,
25 BUT IF NOT, THEN WE WOULD OBVIOUSLY NEED TO PROVIDE THE COURT

1 WITH THE PAGE AND LINES.

2 THE COURT: WELL, USUALLY WHATEVER COMES OFF THE
3 SCREEN DOES NOT GO INTO THE TRANSCRIPT. ANDY, WERE YOU TAKING
4 DOWN -- HE'S SHAKING HIS HEAD. SO THE RECORD NEEDS TO BE
5 PERFECTED IN SOME WAY BY A FILING.

6 MR. KRUGMAN: WE WILL PUT THAT TOGETHER FOR EACH OF
7 THE WITNESSES THAT WE USE VIDEO FOR.

8 THE COURT: THANK YOU.

9 MR. KRUGMAN: THANK YOU, YOUR HONOR.

10 THE COURT: WHO'S NEXT?

11 MS. SINGER: BY AGREEMENT BETWEEN THE PARTIES, THE
12 NEXT IS GOING TO BE MORE MOVIES. IT GOING TO BE SOME EXCERPTS
13 FROM THE DEPOSITION OF JAMES D. PALMOUR.

14 THE COURT: AND THESE WILL COME IN ON THE VIDEO
15 SCREEN?

16 MS. SINGER: THESE WILL COME IN ON THE VIDEO SCREEN.
17 I'M GOING TO GIVE THE CLERK A COPY OF THE LINES AND PAGE
18 NUMBERS. I'VE GIVEN ONE TO OPPOSING COUNSEL, AND WE WILL PUT
19 THIS ON THE RECORD, AS WELL.

20 THE COURT: SOUNDS GREAT. BY THE WAY, I'VE BEEN
21 MEANING TO SAY I VERY MUCH APPRECIATE HOW ORGANIZED YOU ALL ARE
22 WITH ALL THE MATERIALS THAT ARE COMING INTO EVIDENCE. IT'S
23 REALLY BEEN QUITE WELL DONE.

24 MS. SINGER: THANK YOU, YOUR HONOR.

25 SO WITHOUT FURTHER ADO, HOPEFULLY, THE DEPOSITION OF

1 JAMES PALMOUR.

2 (VIDEOTAPED DEPOSITION WAS PLAYED IN OPEN COURT.)

3 THE COURT: COULD I STOP YOU FOR JUST A MINUTE --

4 MS. SINGER: THE BREAK THERE WAS -- I DIDN'T GIVE

5 YOU THE WHOLE THING. IT WAS A VERY, VERY LONG

6 INTRODUCTION TO MAINFRAME SERVERS AND VARIOUS OTHER THINGS THAT

7 HE DID.

8 THE COURT: I JUST WANTED TO KNOW WHO THIS MAN IS.

9 MS. SINGER: I'M SORRY. JAMES PALMOUR IS --

10 MR. LARSON: HE'S AN INFORMATION SYSTEMS SPECIALIST I
11 BELIEVE, YOUR HONOR.

12 MS. SINGER: HIS RESPONSIBILITY WAS COURSEPACKS, AND
13 WE'RE SHOWING THIS BECAUSE HE HAD SOMETHING TO DO WITH
14 COURSEPACKS. HE WAS THE PERSON DESIGNATED BY THE DEFENDANTS IN
15 THEIR INTERROGATORIES AS HAVING RESPONSIBILITY FOR COURSEPACKS
16 AT GSU.

17 THE COURT: SO THIS IS AN INDIVIDUAL WHO EITHER DOES
18 OR USED TO WORK FOR GSU?

19 MS. SINGER: YES, I BELIEVE HE STILL DOES.

20 MR. ASKEW: YOUR HONOR, HE'S RETIRED. HE HAS BEEN
21 FOR I THINK ABOUT A YEAR.

22 THE COURT: OKAY. AND DURING RELEVANT TIMES HE
23 WORKED FOR GSU AND HIS POSITION WAS INFORMATION SYSTEMS
24 SPECIALIST?

25 MS. SINGER: YES.

1 THE COURT: THANK YOU.

2 MS. SINGER: INFORMATION SPECIALIST LEAD
3 RESPONSIBILITY.

4 THE COURT: ALL RIGHT.

5 (VIDEOTAPED DEPOSITION WAS PLAYED IN OPEN COURT.)

6 MS. SINGER: THAT CONCLUDES THE EXCERPTS OF THE
7 DEPOSITION OF JAMES PALMOUR, AND OUR NEXT WITNESS WILL BE
8 HANDLED BY MY COLLEAGUE EDWARD KRUGMAN.

9 MR. KRUGMAN: WE CALL JODI KAUFMANN, YOUR HONOR.

10 THE CLERK: PLEASE RAISE YOUR RIGHT HAND TO TAKE THE
11 OATH.

12 JODI KAUFFMAN,

13 HAVING BEEN DULY SWORN, WAS EXAMINED AND TESTIFIED AS FOLLOWS:

14 THE CLERK: IF YOU WILL HAVE A SEAT, PLEASE, AND
15 STATE YOUR FULL NAME FOR THE RECORD AND SPELL YOUR LAST NAME
16 ALSO.

17 THE WITNESS: JODI JAN KAUFMANN.

18 THE COURT: YOU MAY PROCEED.

19 MR. KRUGMAN: THANK YOU, YOUR HONOR. BEFORE I BEGIN
20 THE EXAMINATION, WE WOULD LIKE TO MOVE INTO EVIDENCE CERTAIN
21 EXHIBITS THAT WE'LL BE USING WITH THE WITNESS THAT HAVE NOT
22 BEEN OBJECTED TO, AT LEAST THAT'S OUR UNDERSTANDING, 517 AND
23 518, 571 THROUGH 585, 587 THROUGH 591, 593 AND 594, 625, 628
24 AND 629.

25 THE COURT: THEY ARE ADMITTED.

1 MR. KRUGMAN: AND ALSO DEFENDANTS' EXHIBIT 512.

2 THE COURT: IT'S ADMITTED.

3 MR. KRUGMAN: THANK YOU, YOUR HONOR.

4 DIRECT EXAMINATION

5 BY MR. KRUGMAN:

6 Q. GOOD MORNING, MS. KAUFMANN. MY NAME IS EDWARD KRUGMAN
7 WITH THE LAW FIRM BONDURANT MIXSON & ELMORE, AND I'LL BE ASKING
8 YOU SOME QUESTIONS THIS MORNING.

9 YOU'RE AN ASSISTANT PROFESSOR AT GEORGIA STATE,
10 CORRECT?

11 A. YES.

12 Q. AND YOU'VE BEEN EMPLOYED AT GEORGIA STATE SINCE 2007, I
13 BELIEVE?

14 A. NO, I THINK 2004. THIS IS MY FIFTH YEAR.

15 Q. OKAY. YOU TEACH IN THE COLLEGE OF EDUCATION?

16 A. NO, THAT'S NOT RIGHT. FIVE. I'VE BEEN THERE FIVE YEARS,
17 WHATEVER THAT IS.

18 Q. THAT WOULD BE ABOUT 2006?

19 A. OKAY.

20 Q. OKAY. AND PRIOR TO THAT YOU WERE AT THE UNIVERSITY OF
21 GEORGIA?

22 A. YES.

23 Q. AND YOU MOVED TO GEORGIA STATE TO GET ON A TENURE TRACK;
24 IS THAT CORRECT?

25 A. YES.

1 Q. AND YOU TEACH IN THE COLLEGE OF EDUCATION?

2 A. YES.

3 Q. AND YOU TEACH QUALITATIVE RESEARCH; IS THAT CORRECT?

4 A. YES.

5 THE COURT: YOU NEED TO SPEAK UP.

6 THE WITNESS: YES.

7 BY MR. KRUGMAN:

8 Q. AND YOU TYPICALLY TEACH ONLY GRADUATE STUDENTS; IS THAT
9 CORRECT?

10 A. YES.

11 Q. SINCE YOU'VE BEEN ON THE FACULTY AT GEORGIA STATE, YOU'VE
12 TAUGHT APPROXIMATELY THREE SUBSTANTIVE COURSES PER YEAR; IS
13 THAT CORRECT?

14 A. I HAVE TWO-TWO. SO I HAVE TEACH TWO COURSES EACH
15 SEMESTER.

16 Q. AND SOME OF THOSE COURSES REPEAT THROUGHOUT THE YEAR IN
17 TERMS OF THE SUBJECT MATTER; IS THAT CORRECT?

18 A. YES.

19 Q. NOW ONE OF THE COURSES THAT YOU TEACH IS CALLED
20 QUALITATIVE 1, INTERPRETIVE RESEARCH IN EDUCATION?

21 A. YES.

22 Q. AND THE NUMBER FOR THAT COURSE IS EPRS 8500; IS THAT
23 CORRECT?

24 A. YES.

25 Q. WHAT DOES THE ACRONYM OR THE INITIALS STAND FOR?

- 1 A. EDUCATIONAL POLICIES STUDIES.
- 2 Q. AND THEN A SECOND COURSE THAT YOU TEACH IS QUALITATIVE
- 3 INTERPRETIVE RESEARCH IN EDUCATION 2, DATA COLLECTION; IS THAT
- 4 CORRECT?
- 5 A. YES.
- 6 Q. AND THAT COURSE IS EPRS 8510?
- 7 A. YES.
- 8 Q. AND PREDOMINANTLY PH.D. STUDENTS ENROLL IN THESE COURSES;
- 9 IS THAT CORRECT?
- 10 A. YES.
- 11 Q. AND ON AVERAGE YOU HAVE SOMEWHERE BETWEEN -- TYPICALLY YOU
- 12 HAVE SOMEWHERE 12 AND 22 STUDENTS IN THE CLASS, GIVE OR TAKE?
- 13 A. YES.
- 14 Q. QUALITATIVE RESEARCH PREDOMINANTLY LOOKS AT UNDERSTANDING
- 15 THE EVERYDAY LIFE WORLD AND CULTURE; IS THAT CORRECT?
- 16 A. YES.
- 17 Q. IT LOOKS AT PEOPLE'S EXPERIENCES IN LIFE; IS THAT CORRECT?
- 18 A. YES.
- 19 Q. AND WHAT YOU TEACH IN YOUR COURSES ARE METHODS FOR
- 20 STUDENTS TO LEARN HOW TO CONDUCT RESEARCH INTO THOSE AREAS; IS
- 21 THAT CORRECT?
- 22 A. YES.
- 23 Q. QUALITATIVE 1, THE 8500 COURSE IS PREDOMINANTLY
- 24 THEORETICAL IN TERMS OF WHAT THE THEORIES ARE THAT UNDERPIN
- 25 THAT FIELD, CORRECT?

1 A. YES.

2 Q. AND QUALITATIVE 2 LOOKS AT WAYS FOR STUDENTS TO COLLECT
3 DATA FOR THAT RESEARCH; IS THAT CORRECT?

4 A. YES.

5 Q. YOU TEACH WITHIN THE EDUCATION CURRICULUM?

6 A. YES.

7 Q. BUT THE PRINCIPLES YOU TEACH TRANSCEND THE DISCIPLINE OF
8 EDUCATION; IS THAT CORRECT?

9 A. YES.

10 Q. AS A PART OF YOUR WORK IN RESEARCH AT GEORGIA STATE, YOU
11 READ JOURNALS IN YOUR FIELD TO KEEP TRACK OF WHAT SCHOLARS IN
12 YOUR AREA ARE TALKING ABOUT, CORRECT?

13 A. YES.

14 Q. YOU ALSO READ BOOKS THAT ARE SPECIFIC TO YOUR INTERESTS IN
15 THIS FIELD, CORRECT?

16 A. YES.

17 Q. YOU WOULD AGREE, WOULD YOU NOT, THAT IT WOULD BE
18 PROBLEMATIC WITH RESPECT TO YOUR ABILITY TO TEACH IF YOU DID
19 NOT HAVE ACCESS TO PUBLICATIONS IN YOUR FIELD?

20 A. YES.

21 Q. IF YOU DID NOT HAVE ACCESS TO JOURNALS, ACADEMIC JOURNALS,
22 YOU WOULD NOT KNOW WHAT CONVERSATIONS WERE BEING HAD IN YOUR
23 FIELD, CORRECT?

24 A. YES.

25 Q. AND IT WOULD DIMINISH YOUR ABILITY TO TEACH STUDENTS?

1 A. YES.

2 Q. THE VIABILITY OF PUBLISHING ENTERPRISES THAT PRODUCE THE
3 JOURNALS AND OTHER MATERIALS THAT INFORM YOU IN YOUR FIELD,
4 THAT'S IMPORTANT TO YOU AS AN EDUCATOR, CORRECT?

5 A. THOSE ARTICLES AND CHAPTERS ARE IMPORTANT TO ME, YES.

6 Q. AND IF YOU WERE UNABLE TO AFFORD STUDENTS ACCESS TO THAT
7 RANGE OF READING MATERIALS, IT WOULD BE DIFFICULT TO KEEP YOUR
8 STUDENTS ABREAST OF WHAT'S HAPPENING?

9 A. YES.

10 Q. AND YOU WOULD AGREE THAT THAT WOULD NOT BE A GOOD THING
11 FOR THE EDUCATIONAL PROCESS, CORRECT?

12 A. YES.

13 Q. NOW YOU PERFORM RESEARCH AS PART OF YOUR ROLE ON THE
14 FACULTY AT GEORGIA STATE; IS THAT CORRECT?

15 A. YES.

16 Q. RESEARCH IS NOT REQUIRED, BUT IF YOU'RE ON A TENURE TRACK,
17 IT IS CERTAINLY DESIRABLE TO PRODUCE RESEARCH OR THEORETICAL
18 WORK, CORRECT?

19 A. I WOULD SAY IT'S REQUIRED.

20 Q. IF YOU WANT TO MAKE TENURE, YOU'VE GOT TO PUBLISH; IS THAT
21 CORRECT?

22 A. YES.

23 Q. SO PUBLISHING IS PART OF YOUR JOB AT GEORGIA STATE,
24 CORRECT?

25 A. YES.

1 Q. PUBLISHING ENTAILS PREPARING WORKS FOR PEER REVIEW AND
2 PUBLICATION; IS THAT CORRECT?

3 A. YES.

4 Q. AND YOU HAVE BEEN PUBLISHED IN A VARIETY OF JOURNALS
5 QUALITATIVE INQUIRY, INTERNATIONAL JOURNAL OF QUALITATIVE
6 STUDIES AND EDUCATION, ADULT EDUCATION QUARTERLY, CRITICAL
7 METHODOLOGIES, CRITICAL STUDIES ARE SOME OF THOSE JOURNALS THAT
8 YOU'VE BEEN PUBLISHED IN, CORRECT?

9 A. YES.

10 Q. AND YOU'VE NOT EARNED ANY ROYALTIES FROM HAVING YOUR WORKS
11 PUBLISHED IN THOSE JOURNALS, HAVE YOU?

12 A. NO.

13 Q. FOR YOU, AM I CORRECT, THAT IT'S MORE IMPORTANT TO HAVE
14 THE CREDENTIALS OF THOSE PUBLICATIONS THAN RECEIVING WHATEVER
15 ROYALTY CHECK YOU MIGHT OTHERWISE RECEIVE?

16 A. YES.

17 Q. YOUR WORK HAS ALSO APPEARED IN A JOURNAL PUBLISHED BY SAGE
18 CALLED QUALITATIVE INQUIRY; IS THAT CORRECT?

19 A. YES.

20 Q. AND THE ARTICLE WAS CALLED HETERO NARRATIVE ANALYSIS; IS
21 THAT CORRECT?

22 A. YES.

23 Q. AND YOU WERE PLEASED TO BE PUBLISHED IN THAT SAGE JOURNAL,
24 CORRECT?

25 A. YES.

1 Q. YOU VIEWED THAT AS POTENTIALLY REPUTATION ENHANCING IN
2 YOUR FIELD; IS THAT CORRECT?

3 A. YES.

4 Q. AND YOU VIEWED THAT AS PROMOTIVE OF YOUR INTEREST IN
5 OBTAINING TENURE?

6 A. YES.

7 Q. HAVE YOU OBTAINED TENURE AS OF TODAY?

8 A. NO. ONGOING.

9 Q. GOOD LUCK. THAT ARTICLE, WHAT WAS THE SUBJECT MATTER OF
10 THAT ARTICLE YOU WROTE FOR THE SAGE JOURNAL?

11 A. IT TALKS ABOUT A NARRATIVE THEORY OF ANALYZING GENDER
12 NARRATIVES.

13 Q. AND BASED ON WHAT YOU'VE DESCRIBED IN THE JOURNAL THAT
14 IT'S IN, AM I CORRECT THAT IT WAS A FACTUAL OR NONFICTION WORK?

15 A. YES.

16 Q. YOU WOULD AGREE, HOWEVER, THAT THE JOURNAL ARTICLE YOU
17 WROTE CONTAINS YOUR ORIGINAL ANALYSIS ON THE SUBJECT MATTER OF
18 THE WORK?

19 A. YES.

20 Q. THE ARTICLE WAS NOT SIMPLY A RECITATION OF FACTS, CORRECT?

21 A. CORRECT.

22 Q. YOU WOULD DESCRIBE YOUR EXPRESSION AND ANALYSIS IN THAT
23 ARTICLE AS CREATIVE, WOULD YOU NOT?

24 A. UH-HUH (AFFIRMATIVE), YES.

25 Q. AND THE FACT THAT THAT ARTICLE IS NONFICTION CERTAINLY

1 DOES NOT MEAN THAT IT IS NOT ALSO CREATIVE, CORRECT?

2 A. CORRECT.

3 Q. NOW, DURING YOUR TENURE AT GEORGIA STATE --

4 THE COURT: LET ME ASK YOU THIS QUESTION. DO YOU
5 CLAIM COPYRIGHT PROTECTION FOR THAT ARTICLE?

6 THE WITNESS: I DON'T KNOW, YOUR HONOR. THEY SEND ME
7 PAPERS AND I SIGN THEM. IT GETS PUBLISHED.

8 THE COURT: DID YOU GET ANY ROYALTIES FROM IT?

9 THE WITNESS: NO, MA'AM.

10 THE COURT: OKAY.

11 BY MR. KRUGMAN:

12 Q. DURING YOUR TIME AT GEORGIA STATE YOU HAVE USED THE
13 ERESERVE SYSTEM AT THE UNIVERSITY TO PROVIDE COPIES OF ASSIGNED
14 REQUIRED READINGS TO STUDENTS IN THE COURSES THAT YOU TEACH AT
15 THE UNIVERSITY; IS THAT CORRECT?

16 A. YES.

17 Q. AND EMPLOYEES IN THE LIBRARY AT GEORGIA STATE SCAN AND
18 UPLOAD THE WORKS THAT YOU REQUEST BE POSTED ON ERESERVE; IS
19 THAT CORRECT?

20 A. YES.

21 Q. NOW IN OR ABOUT FEBRUARY OF 2009 YOU RECEIVED NOTIFICATION
22 FROM THE UNIVERSITY THAT A NEW COPYRIGHT POLICY HAD BEEN
23 ADOPTED; IS THAT CORRECT?

24 A. YES.

25 Q. AND YOU LEARNED ABOUT THAT NEW POLICY VIA AN E-MAIL; IS

1 THAT CORRECT?

2 A. YES.

3 Q. IF YOU COULD BRING UP JOINT EXHIBIT 4, AND CAN YOU
4 IDENTIFY THIS AS A POLICY ON THE USE OF COPYRIGHTED WORKS IN
5 EDUCATION THAT WAS ADOPTED AT THE UNIVERSITY IN FEBRUARY OF
6 2009?

7 A. YES.

8 MR. HARBIN: YOUR HONOR, JUST FOR THE RECORD, I WOULD
9 OBJECT THAT IT'S NOT THE COMPLETE POLICY JUST FOR THE RECORD.
10 NO OBJECTION TO THE QUESTION ABOUT THIS SECTION.

11 MR. KRUGMAN: OKAY.

12 THE COURT: BUT THE EXHIBIT, WHAT'S THE EXHIBIT
13 NUMBER?

14 MR. KRUGMAN: IT'S JOINT EXHIBIT 4. IT'S A JOINT
15 EXHIBIT BY BOTH PLAINTIFF AND DEFENDANTS.

16 THE COURT: AND THAT IS THE FULL COPYRIGHT POLICY,
17 RIGHT?

18 MR. KRUGMAN: I BELIEVE IT IS.

19 MR. SCHAETZEL: YOUR HONOR, IF I MAY, MR. HARBIN WILL
20 HANDLE THE CROSS-EXAMINATION, BUT THE PARTIES HAVE A DISPUTE AS
21 TO WHAT CONSTITUTES THE COMPLETE COPYRIGHT POLICY.

22 FROM THE PLAINTIFFS' PERSPECTIVE WHAT IS AT JOINT
23 EXHIBIT 4 IS A COMPLETE POLICY. FROM THE DEFENDANTS'
24 PERSPECTIVE FOR EXAMPLE POLICY WILL INCLUDE CERTAIN LINKS.
25 THERE IS A LINK IN THE POLICY BY WHICH YOU CAN ACTUALLY TRAVEL

1 THROUGH A CLICK TO THE COPYRIGHT CLEARANCE CENTER WEBSITE.
2 THOSE TYPES OF MATERIALS WE BELIEVE ARE PART OF THE POLICY BUT
3 ARE NOT A PART OF JOINT EXHIBIT 4.

4 THE COURT: OKAY. I WAS NOT AWARE OF THAT ISSUE, BUT
5 REALLY THE ONLY THING I WANTED TO PIN DOWN WAS JUST THE MEANING
6 OF THE -- WE HAVE SOMETHING UP ON THE SCREEN WHICH IS OBVIOUSLY
7 EXTREMELY TRUNCATED, AND SO I DON'T KNOW WHETHER YOU AND THE
8 WITNESS ARE CONNECTING ON THIS OR NOT.

9 MR. KRUGMAN: I APOLOGIZE.

10 DR. KAUFMANN, IF YOU COULD TURN TO THE NOTEBOOK THAT
11 I'VE HANDED YOU. MY MISTAKE, YOUR HONOR, AND I BELIEVE --

12 THE WITNESS: DO I NEED THIS NOTEBOOK, TOO? THERE IS
13 TWO HERE.

14 MR. KRUGMAN: MAY I APPROACH?

15 THE COURT: YES.

16 BY MR. KRUGMAN:

17 Q. NO, YOU DO NOT NEED THAT ONE. THAT WAS WITH THE PRIOR
18 WITNESS.

19 A. OKAY.

20 Q. IF YOU COULD TAKE A LOOK IN THE NOTEBOOK AT JOINT EXHIBIT
21 NUMBER 4, AND I WILL ALLOW YOU TO REVIEW THE PAGES OF THAT, AND
22 IF YOU CAN TELL THE COURT WHETHER YOU UNDERSTAND THAT EXHIBIT
23 TO BE THE COPYRIGHT POLICY THAT WAS ADOPTED AT GEORGIA STATE
24 AND THE UNIVERSITY SYSTEM IN OR ABOUT FEBRUARY OF 2009?

25 A. THAT'S ACTUALLY BEYOND MY KNOWLEDGE. I KNOW THAT THIS IS

1 UP AND THIS IS WHAT I WAS ASKED TO READ AND I DID READ THIS.

2 MR. KRUGMAN: AND JUST FOR THE COURT'S BENEFIT, THIS
3 IS I BELIEVE WHAT WAS AN APPENDIX TO THE COURT SUMMARY JUDGMENT
4 ORDER.

5 BY MR. KRUGMAN:

6 Q. OKAY. AS A RESULT OF THIS NEW POLICY, YOU LEARNED YOU HAD
7 TO DO CERTAIN THINGS WHEN REQUESTING THAT WORK BE POSTED ON
8 ERESERVE THAT YOU HAD NOT BEEN REQUIRED TO DO PREVIOUSLY; IS
9 THAT CORRECT?

10 A. YES.

11 Q. YOU WERE ALSO ADVISED OF EDUCATIONAL SESSIONS THAT WERE
12 BEING OFFERED TO FACULTY MEMBERS ABOUT THE NEW POLICY; IS THAT
13 CORRECT?

14 A. YES.

15 Q. AND YOU ATTENDED ONE OF THOSE SESSIONS, INFORMATIVE
16 SESSIONS WITH CYNTHIA HALL, LED BY CYNTHIA HALL; IS THAT
17 CORRECT?

18 A. YES.

19 Q. AND ONE OTHER PROFESSOR ATTENDED THAT SESSION WITH YOU,
20 CORRECT?

21 A. YES.

22 Q. AND THAT SESSION OCCURRED THE WEEK BEFORE YOUR DEPOSITION
23 WAS TAKEN --

24 A. YES.

25 Q. -- IN THIS MATTER; IS THAT CORRECT?

1 A. YES.

2 Q. AND YOUR DECISION TO ATTEND THAT SEMINAR WAS BASED AT
3 LEAST IN PART ON THE FACT THAT YOUR DEPOSITION HAD BEEN
4 SCHEDULED; IS THAT CORRECT?

5 A. IN PART BUT ALSO MAYMESTER WAS COMING AND THE NEW POLICY
6 WAS PUT UP, AND SO I COULD NOT POST MY ARTICLES, MY READINGS
7 FOR MY COURSE UNLESS I TOOK THE CLASS.

8 THE COURT: AND WHAT WAS THE DEPOSITION?

9 MR. KRUGMAN: IT WAS ON MAY 6TH OF 2009, YOUR HONOR.
10 BY MR. KRUGMAN:

11 Q. THE SESSION WITH CYNTHIA HALL WHO YOU UNDERSTAND IS FROM
12 LEGAL AFFAIRS; IS THAT CORRECT?

13 A. YES.

14 Q. THAT SESSION WITH MS. HALL AND ONE OTHER PROFESSOR LASTED
15 ABOUT AN HOUR, CORRECT?

16 A. YES.

17 Q. AT THE SESSION YOU WERE SHOWN A POWERPOINT BY MS. HALL,
18 CORRECT?

19 A. CORRECT.

20 Q. AND YOU WERE ALSO SHOWN IN HARDCOPY THE SAME DOCUMENTS
21 THAT YOU SEE IN ELECTRONIC FORM WHEN YOU CLICK ON THE ERESERVE
22 WEBPAGE WHERE IT TAKES YOU TO THE NEW POLICY, CORRECT?

23 A. YES.

24 Q. IN THE SESSION YOU LEARNED ABOUT THE NEW CHECKLIST; IS
25 THAT CORRECT?

1 A. YES.

2 Q. AND THE CHECKLIST IS AT PAGE 7 AND 8 OF JOINT EXHIBIT 4;
3 IS THAT CORRECT, AND THERE'S PAGE NUMBERS BOTH AT THE BOTTOM
4 AND TOP?

5 A. YES.

6 Q. AND THIS IS THE FAIR USE CHECKLIST THAT YOU COMPLETE WITH
7 RESPECT TO WORKS THAT YOU REQUEST TO BE POSTED ON ERESERVE; IS
8 THAT CORRECT?

9 A. YES.

10 Q. AND THIS CHECKLIST HAS FOUR SEPARATE FACTORS; IS THAT
11 CORRECT?

12 A. YES.

13 Q. FACTOR 1 WHICH IS PURPOSE AND CHARACTER OF THE USE,
14 CORRECT?

15 A. YES.

16 Q. FACTOR 2 IS NATURE OF COPYRIGHTED WORK, CORRECT?

17 A. YES.

18 Q. AND FACTOR 3 IS THE AMOUNT AND SUBSTANTIALITY OF PORTION
19 USED; IS THAT CORRECT?

20 A. YES.

21 Q. AND THEN THE FOURTH FACTOR IS EFFECT ON MARKET FOR
22 ORIGINAL; IS THAT CORRECT?

23 A. YES.

24 Q. FROM YOUR SESSION WITH MS. HALL, YOU UNDERSTOOD THAT EACH
25 OF THOSE FOUR CHECKLIST FACTORS WERE TO BE GIVEN EQUAL WEIGHT;

1 IS THAT CORRECT?

2 A. YES.

3 Q. YOU DID NOT UNDERSTAND THAT SOME OF THOSE CHECKLIST
4 FACTORS WEIGHED MORE HEAVILY THAN OTHERS; IS THAT CORRECT?

5 A. THAT'S CORRECT.

6 Q. YOU ALSO UNDERSTOOD FROM YOUR SESSION THAT IT WAS SIMPLY A
7 PROCESS OF CHECKING --

8 THE COURT: LET ME ASK YOU THIS SINCE WE'RE AT THIS
9 JUNCTURE. YOUR QUESTION WAS YOU DIDN'T UNDERSTAND THAT SOME
10 MAY COUNT FOR MORE THAN OTHERS. WHAT IS THE PLAINTIFFS'
11 POSITION ABOUT HOW THOSE SHOULD BE WEIGHTED?

12 MR. KRUGMAN: YOUR HONOR, THE PLAINTIFFS' IS THAT
13 WITH RESPECT TO UNDER FACTOR 1 WHETHER A WORK IS TRANSFORMATIVE
14 OR NOT IS THE GUIDING PRINCIPLE WITH RESPECT TO THAT FACTOR.

15 THE COURT: BUT THAT FACTOR 1 IS PURPOSE AND
16 CHARACTER OF THE USE, AND YOU'RE SAYING WITHIN THAT CATEGORY WE
17 WOULD ONLY LOOK TO SEE IF IT'S TRANSFORMATIVE?

18 MR. KRUGMAN: YOU WOULD NOT, BUT IF A PARTICULAR USE
19 IS NONTRANSFORMATIVE BEING ABLE TO SATISFY A FAIR USE
20 DETERMINATION BECOMES EXTREMELY, EXTREMELY HARD.

21 THE COURT: LET'S ASSUME IT'S A NONTRANSFORMATIVE
22 USE, WHAT WEIGHT WOULD YOU GIVE FACTOR 1?

23 I MAY BE PICKING ON YOU UNFAIRLY. I DON'T KNOW WHAT
24 YOUR ASSIGNMENT IS WITHIN THIS GROUP --

25 MR. KRUGMAN: I WOULD SAY THAT IF IT'S

1 NONTRANSFORMATIVE IN VIRTUALLY ALL INSTANCES THAT FACTOR WILL
2 WEIGH AGAINST FAIR USE, AND YOU CAN'T LOOK TO THIS CHECKLIST TO
3 MAKE THAT DETERMINATION BECAUSE THE CHECKLIST IS LOADED WHERE
4 YOU HAVE UNDER FACTORS WEIGHS IN FAVOR OF FAIR USE FOR
5 NONPROFIT EDUCATIONAL AND TEACHING AT GEORGIA STATE THAT WILL
6 ALWAYS BE THE CASE.

7 THE COURT: SO LET'S GO THROUGH THESE DIFFERENT
8 FACTORS. WE'VE GOT FOUR FACTORS TO TALK ABOUT, AND YOU'RE
9 SAYING -- AND LET'S ASSUME THAT WE'RE NOT TALKING ABOUT ANY
10 TRANSFORMATIVE USES IN THIS CASE. YOU'RE SAYING THAT YOU WOULD
11 GIVE NO WEIGHT TO FACTOR 1?

12 MR. KRUGMAN: IT WOULD AGAINST FAIR USE, YOUR HONOR.

13 THE COURT: OKAY. KEEP GOING FACTOR 2.

14 MR. KRUGMAN: WELL, THE PROBLEM IS WE DON'T REALLY
15 BUY INTO THE CHECKLIST ANALYSIS BUT --

16 THE COURT: I'M NOT ASKING YOU ABOUT THE CHECKLIST
17 ANALYSIS. FACTOR 2, NATURE OF THE COPYRIGHTED WORK, DOES THAT
18 COUNT AND IF SO HOW MUCH?

19 MR. KRUGMAN: IT IS A FACTOR, BUT IN OUR VIEW IT IS A
20 LESS IMPORTANT FACTOR THAN THE FACTOR 1 -- IF THE USE OF FACTOR
21 1 IS -- IF THE USE IS NONTRANSFORMATIVE, AND FACTOR 1 ANALYSIS
22 WILL OUTWEIGH -- WILL BE A MORE IMPORTANT FACTOR THAN FACTOR 2
23 WHEN MAKING AN APPROPRIATE FAIR USE DETERMINATION.

24 AND WE ALSO BELIEVE THAT A WORK THAT, YOU KNOW, IF A
25 WORK IS CREATIVE, A CREATIVE WORK CAN BE BOTH FICTION AND

1 NONFICTION, AND I THINK YOU WILL HEAR REPEATED TESTIMONY FROM
2 THE PROFESSORS THAT THEIR WORK -- THEIR JOURNAL ARTICLES, THE
3 RESEARCH THEY DO, THE BOOKS THEY WRITE, THEY'RE ALL HIGHLY
4 CREATIVE AND AS WELL AS THE MATERIALS THAT THEY ASSIGN TO
5 STUDENTS, AND SO IF YOU'RE DEALING WITH A HIGHLY CREATIVE WORK
6 IN A NONTRANSFORMATIVE USE OF THAT, IN VIRTUALLY ALL INSTANCES
7 THERE WILL NOT BE A FINDING IN FAVOR OF FAIR USE.

8 IF YOU MOVE TO THE AMOUNT AND SUBSTANTIALITY OF THE
9 PORTION USED, YOU KNOW, THAT YOU DO HAVE TO LOOK AT WHAT IS THE
10 AMOUNT IS BEING USED, BUT YOU HAVE TO LOOK AT IT IN CONTEXT NOT
11 ONLY WITH RESPECT TO AN INDIVIDUAL WORK, SO LET'S SAY HALF OF
12 ONE CHAPTER OF A WORK IS BEING USED BY A PROFESSOR, THAT MAY BE
13 IN LOOKING AT THE AMOUNT IN SUBSTANTIALITY OF PORTION USED. IT
14 MAY BE THAT'S NOT THE HEART OF THE WORK AND THAT A SMALL
15 PORTION IS BEING USED.

16 BUT IF YOU COMBINE THAT WORK WITH SIX OR EIGHT OR TEN
17 OTHER EXCERPTS THAT THE PROFESSOR IS USING NOT SIMPLY FROM THAT
18 WORK BUT THE PROTECTIVE WORKS OF OTHER AUTHORS AND PUBLISHERS,
19 YOU'VE GOT TO LOOK AT IT IN CONTEXT, AND AT THAT POINT YOU'VE
20 REALLY GONE WAY OVER THE LINE, AND THE PROFESSOR HAS CREATED
21 WHAT IS IN ESSENCE A DIGITAL COURSEPACK FOR WHICH PERMISSIONS
22 MUST BE OBTAINED.

23 AND THE FACT THAT THE MEDIA -- IT'S A DIFFERENT
24 MEDIA. THE FACT THAT IT IS ELECTRONIC AS CONTRASTED WITH PAPER
25 IS NOT A DETERMINATIVE FACTOR. IT IS OUR POSITION THAT IN BOTH

1 INSTANCES PERMISSIONS ARE NEEDED.

2 AND THEN FACTOR 4, WE BELIEVE THAT FACTOR 4 IS ALONG
3 WITH WHETHER THE USE IS TRANSFORMATIVE OR NONTRANSFORMATIVE IS
4 A MORE IMPORTANT FACTOR, AND YOU'VE GOT TO LOOK AT THE, REALLY
5 THE POTENTIAL IMPACT ON THE RIGHTSHOLDERS.

6 AND HERE WHAT WE SAY, WHAT WE CONTEND THAT THE
7 POSITION OF THE INTEREST OF THE RIGHTSHOLDERS IS ARE THEY NOT
8 NECESSARILY FOR BOOK SALES BUT FOR PERMISSIONS, YOU KNOW, IT'S
9 NOT ENORMOUS, BUT THERE'S A LONGSTANDING VIABLE AND IMPORTANT
10 MARKET TO PUBLISHERS WITH RESPECT TO PERMISSIONS.

11 AND WHEN YOU WERE IN THE NONDIGITAL AGE, THOSE
12 PERMISSIONS WERE BEING OBTAINED EITHER AS A RESULT OF
13 COURSEPACKS OR INDIVIDUAL WORKS THAT PROFESSORS WERE COPYING
14 AND DISTRIBUTING IN THEIR CLASSES.

15 NOW THAT YOU'VE MOVED INTO THE ELECTRONIC AGE AND AS
16 YOU HEARD MR. PALMOUR JUST TESTIFY ON VIDEO, THAT MARKET IS
17 ALREADY DECLINING AND FRANKLY MAY COMPLETELY EVAPORATE IF THE
18 TYPE OF CONDUCT THAT IS ONGOING AT GEORGIA STATE IS CONTINUED
19 TO -- IS ALLOWED TO CONTINUE AND MORE SO IF THAT SAME CONDUCT
20 IS FOUND TO OCCUR AT MORE UNIVERSITIES.

21 THE COURT: SO WHAT I HEAR YOU SAYING IS THAT YOU
22 CANNOT SAY IN GENERAL WHICH FACTORS ARE MORE IMPORTANT BUT THAT
23 DETERMINATION IS THE RESULT OF A FACT INTENSIVE ANALYSIS OF A
24 PARTICULAR SITUATION.

25 MR. KRUGMAN: IN SOME CASES IT MAY BE A VERY SIMPLE

1 FACT ANALYSIS THAT WHEN YOU'RE TALKING ABOUT COPYING CHAPTERS
2 OF BOOKS WHICH IS THE PRACTICE THAT HAS OCCURRED HERE AND IN
3 MOST INSTANCES MULTIPLE COPIES, THAT'S NOT A SIMPLE --

4 THE COURT: RIGHT, BUT YOUR QUESTION TO THE WITNESS
5 EARLIER WAS SOMETHING ABOUT, YOU KNOW, YOU DIDN'T REALIZE, DID
6 YOU, THAT NOT ALL OF THESE ARE ENTITLED TO THE SAME WEIGHT OR
7 SOMETHING ALONG THOSE LINES AND --

8 MR. KRUGMAN: YES, YOUR HONOR.

9 THE COURT: -- I'M KIND OF DIGGING. I DON'T REALLY
10 THINK -- I HAVEN'T ASKED WHAT THE DEFENDANTS' APPROACH IS, BUT
11 MY SUSPICION IS THAT YOU CAN'T REALLY GENERALIZE ABOUT -- WELL,
12 I DON'T KNOW.

13 I GUESS MY SUSPICION IS THAT A FACT INTENSIVE
14 ANALYSIS IS REQUIRED AT SOME LEVEL. YOU CAN'T SAY IN THE
15 ABSTRACT WHICH OF THESE FACTORS IS MORE IMPORTANT OR CAN YOU?

16 MR. KRUGMAN: I THINK OUR POSITION IS THAT WHETHER
17 THE USE OF A WORK IS TRANSFORMATIVE OR NOT AND THE EFFECT ON
18 THE MARKET AS WELL AS THE AMOUNT OF MATERIAL USED, THAT THOSE
19 REALLY ARE THE MOST IMPORTANT FACTORS.

20 THE COURT: BUT GOING BACK TO FACTOR NUMBER 1, THAT
21 FACTOR IS NOT TRANSFORMATIVE USE. THE FACTOR IS PURPOSE AND
22 CHARACTER OF THE USE, AND JUST BY WAY OF EXAMPLE, I THINK YOU
23 WOULD HAVE TO LOOK AT THE PARTICULAR WORK TO MAKE AN ANALYSIS
24 OF THAT FACTOR, WOULDN'T YOU?

25 MR. KRUGMAN: YOU WOULD LOOK AT THE WORK, YOUR HONOR,

1 THAT IS CORRECT, BUT YOU CAN HAVE -- I MEAN, FOR EXAMPLE, YOU
2 CAN HAVE A NONTRANSFORMATIVE USE OF A WORK THAT WOULD BE MERELY
3 LET'S SAY INSTEAD OF COPYING --

4 THE COURT: I UNDERSTAND THE POINT ABOUT
5 TRANSFORMATIVE.

6 MR. KRUGMAN: -- THAT MAY BE NONTRANSFORMATIVE AND
7 OBVIOUSLY IN IS THAT SITUATION THIS FACTOR MAY NONETHELESS --
8 OR CONSIDERATION OF THIS FACTOR MAY NONETHELESS ALLOW FOR FAIR
9 USE.

10 THE COURT: RIGHT.

11 MR. KRUGMAN: BUT IT'S OUR POSITION THAT WHEN YOU'RE
12 DEALING WITH COMPLETE CHAPTERS IN MANY -- REALLY COMPLETE WORKS
13 OF ANTHOLOGIES.

14 THE COURT: I UNDERSTAND WHAT YOUR POSITION IS ABOUT
15 THAT, AND -- I DO UNDERSTAND WHAT YOUR POSITION IS ABOUT THAT.

16 ALL RIGHT. LET ME PICK ON YOU JUST A LITTLE BIT
17 MORE. I THINK THE PLAINTIFFS WERE HINTING IN THEIR OPENING,
18 MR. SCHÄTZEL'S OPENING STATEMENT THAT --

19 MR. KRUGMAN: THE DEFENDANTS.

20 THE COURT: EXCUSE ME, THE DEFENDANTS. HE WAS, I
21 THOUGHT, SUGGESTING THAT THE STATUTE IS OF UTMOST IMPORTANCE.
22 I FORGET WHICH SECTION 107, 108, SOMEWHERE ALONG IN THERE, AND
23 IT DOES SPEAK OF SPECIAL TREATMENT FOR TEACHING USES, AND IT
24 DOES GO ON I THINK TO SAY YOU'RE SUPPOSED TO CONSIDER THE FOUR
25 FACTORS.

1 BUT HE WAS SAYING THAT SINCE THE STATUTE SPECIFICALLY
2 CARVES OUT TEACHING USES THAT THAT OUGHT TO HAVE SOME
3 SIGNIFICANT IMPACT ON A COURT'S ANALYSIS OF WHAT IS A FAIR USE,
4 AND I WOULD LIKE AT SOME POINT --

5 MR. KRUGMAN: I MAY DEFER ON THAT ONE, BUT IT'S OUR
6 POSITION MERELY BECAUSE IT'S AN TEACHING ENVIRONMENT THAT DOES
7 NOT GIVE ANYONE A FAIR USE WAIVER --

8 THE COURT: RIGHT.

9 MR. KRUGMAN: -- AND IT IS SOMETHING TO BE
10 CONSIDERED, BUT IT'S OUR BELIEF AND POSITION THAT MERELY
11 BECAUSE IT'S IN A TEACHING ENVIRONMENT THAT DOESN'T OUTWEIGH
12 THE OTHER CONSIDERATIONS WHICH WOULD GO TO WHETHER ITS
13 TRANSFORMATIVE OR NOT, THE IMPACT ON THE MARKET, THOSE
14 CONVERSATIONS, YOU KNOW, THE VOLUME BEING TAKEN AND SIMPLY
15 BECAUSE A TEACHER IS DOING IT DOESN'T -- THAT DOESN'T GIVE THEM
16 A PASS.

17 FOR EXAMPLE IN THE COURSEPACK AREA, THE CASES DEALT
18 WITH COPYSHOPS AND ITS COMMERCIAL SITUATION, BUT IF THE
19 UNIVERSITY SAY GEORGIA STATE IN-HOUSE, YOU KNOW, BASICALLY
20 PRINTS OUT AND BINDS THE COURSEPACK MATERIALS, SELLS IT TO THE
21 STUDENTS NOT FOR A PROFIT, IT'S BASICALLY HERE IS EXACTLY WHAT
22 IT COST THEM, SIMPLY BECAUSE THE UNIVERSITY IS DOING THAT THAT
23 DOESN'T GIVE THE UNIVERSITY A COPYRIGHT PASS, AND THAT'S
24 ESSENTIALLY WHAT'S GOING ON HERE EXCEPT IT'S BEING DONE --

25 THE COURT: I UNDERSTAND THAT'S YOUR POSITION. LET'S

1 TAKE A SHORT BREAK, AND IF ANYBODY ELSE WANTS TO MAKE SHORT
2 STATEMENT ON THIS ISSUE, YOU MAY BUT LET'S TAKE A BREAK.
3 WE'LL TAKE A 15-MINUTE BREAK.

4 (RECESS)

5 THE COURT: WE HAVE NOT FORGOTTEN ABOUT YOU, MS.

6 KAUFMANN. WE'LL GET BACK TO YOU IN A MINUTE.

7 MR. RICH: YOUR HONOR, TAKING YOUR INVITATION I DO
8 HAVE SEVERAL COMMENTS. I'M SURE THE DEFENSE WANTS TO SPEAK.
9 I'LL BE VERY BRIEF.

10 I THINK IT'S CRITICAL IN TERMS OF HOW YOUR HONOR
11 THINKS ABOUT THIS VERY CHALLENGING ISSUE OF FAIR USE. IT IS
12 VERY CASE SPECIFIC. IT'S WHY WE'RE HERE, BUT IF YOU STEP BACK
13 AND THINK ABOUT WHAT THE CORE OF THE FAIR USE DOCTRINE IS
14 INTENDED TO ACCOMPLISH, I THINK IT HELPS IN SORTING OUT THE
15 WHEAT FROM THE CHAFF.

16 IF YOU'RE LOOKING AT A COPYING ACT, THE QUESTION THE
17 COURTS REGULARLY ASK IS WHAT IS THE SOCIETAL BENEFIT, WHAT'S
18 BEING ADDED TO THE ACT OF COPYING BEYOND SIMPLY SUPERSEDED THE
19 FUNCTION THAT THE ORIGINAL ITSELF WOULD SERVE.

20 AS A GENERAL PROPOSITION IF THE USE IS NOT DOING
21 SOMETHING BEYOND WHAT THE ORIGINAL WOULD ACCOMPLISH, THERE'S A
22 RIGHTFUL CONCERN THAT YOU'RE JUST SUPPLANTING THE MARKET FOR
23 THE ORIGINAL, AND SO THAT'S, OF COURSE, THE ROOT OF THE
24 TRANSFORMATIVENESS DOCTRINE.

25 NOW FACTOR 1 --

1 THE COURT: I'M LISTENING.

2 MR. RICH: FACTOR 1 ADDRESSES THAT AT ITS CORE WITH
3 THE TRANSFORMATIVENESS INQUIRY AS MR. KRUGMAN SAID; ALTHOUGH,
4 IT IS ALSO TRUE THAT THE SECOND ELEMENT ENCOMPASSED IN FACTOR 1
5 IS COMMERCIAL/NONCOMMERCIAL. WHERE THE COURTS THINK OF THAT IS
6 ALL OTHER THINGS EQUAL IF IT'S A COMMERCIAL USE IT'S GOING TO
7 BE A THUMB AGAINST FAIR USE IN THAT BALANCE.

8 BUT THE OPPOSITE PROPOSITION IS NOT THE CASES MAKE
9 CLEAR TRUE WHICH IS THE SIMPLE FACT THAT IT IS A NONCOMMERCIAL
10 USE IS NOT A FACTOR TYPICALLY FAVORING OR CERTAINLY
11 PRESUMPTIVELY FAVORING FAIR USE, THE COURTS STILL SAY IT MUST
12 STILL MAKE THE GRADE AGAINST ALL OF THE MEASUREMENT OF ALL THE
13 FOUR FAIR USE FACTORS.

14 AS TO THE PREAMBLE LANGUAGE, YOUR HONOR, YOU'RE RIGHT
15 IN NOTING THAT EDUCATIONAL USE INCLUDING MULTIPLE COPIES IS
16 MENTIONED, BUT IT'S CRITICAL TO PARSE THAT SECTION WHICH IS
17 THAT NOTWITHSTANDING THE PROVISIONS OF SECTION 106 AND 106(A),
18 THE FAIR USE OF A COPYRIGHTED WORK IN THOSE SETTINGS, NOT ANY
19 USE, THE FAIR USE IN THOSE SETTINGS IS AN EXCUSED ACTIVITY.

20 AND THEN THE VERY NEXT SENTENCE SAYS IN DETERMINING
21 WHETHER THE USE MADE OF A WORK IN PARTICULAR CASE IS A FAIR USE
22 THE FACTOR SHALL INCLUDE, SO IT'S CRITICAL THAT IT DOESN'T HAVE
23 A PER SE OR PRESUMPTIVE WEIGHT, BUT IT DOES CHALLENGE ONE TO
24 THINK ABOUT WELL, IT'S THERE, IT SHOULD HAVE SOME MEANING.

25 AND HERE'S WHERE I THINK COMING BACK TO THE CLASSROOM

1 GUIDELINES REALLY FITS INTO THE ENTIRE PICTURE. BECAUSE I
2 THINK IT'S REASONABLE TO ASSUME, IN FACT MORE THAN THAT IF ONE
3 LOOKS AT THE LEGISLATIVE HISTORY TO THE ACT, THAT THERE WAS A
4 REAL CONCERN ON THE PART OF CONGRESS THAT SOMEBODY MIGHT TAKE
5 THAT PREAMBLE TYPE LANGUAGE AND SAY WELL I CAN JUST DO ERES
6 SYSTEMS -- I'M MAKING THAT UP -- AND MAKE NO PAYMENT FOR IT.

7 AND SO BECAUSE WE'RE DEALING WITH A SITUATION OF
8 SIMPLE ACTUAL COPYING WITH TREMENDOUS POTENTIAL DISPLACEMENT
9 EFFECTS, WHAT THE CLASSROOMS GUIDELINES SEEMS TO US DO AND WHAT
10 COURTS HAVE NOTICED AND NOTED IN THE COURSEPACK CASES FOR
11 EXAMPLE THEY DO IS HELP GIVE A SENSE OF CALIBRATION, HOW MUCH
12 IS PROMOTIVE OF AN EDUCATIONAL PURPOSE WHILE STILL NOT BEING SO
13 MUCH OR TOO MUCH TO DISPLACE THE MARKET.

14 AND WHILE NOBODY WOULD SAY THAT THE GUIDELINES IS A
15 BRIGHT LINE, MUST DO TEST, WHAT WAS OBSERVED IN KINKO'S AND
16 WHAT WAS OBSERVED IN PRINCETON UNIVERSITY PRESS WAS THAT THE
17 MAGNITUDE OF THE COPYING THERE WAS SO FAR REMOVED FROM THE
18 GUIDELINES THAT IT WAS ANOTHER INDICATION THAT THE RISK
19 OUTWEIGHED THE BENEFIT IN TERMS OF --

20 THE COURT: BUT THOSE CASES DO INVOLVE COMMERCIAL
21 COURSEPACK CREATION.

22 MR. RICH: THEY DID, INDEED, AND AS I SAID THAT WAS
23 ONE ELEMENT IN THE BALANCE, BUT WHEN ONE THINKS ABOUT THE HARM
24 TO OUR CLIENTS TO THE PUBLISHERS HERE, THAT HARM IS VERY MUCH
25 THE SAME WHETHER THAT COPYING ACTIVITY ACTUATED BY SELECTIONS

1 BY FACULTY FOR THE PURPOSE OF TEACHING IN THE CLASSROOM, IT'S A
2 REALLY ALMOST NO CONSEQUENCE TO THE HARM INQUIRY THAT THE
3 ACTIVITY MAY BE OCCURRING PHYSICALLY INSIDE A UNIVERSITY FOR NO
4 PROFIT OR SENT OUT TO SOMEBODY WHO MAKES A PROFIT OFF OF IT AS
5 A COPYSHOP FROM THE STANDPOINT OF OUR CLIENT IS NO DIFFERENT,
6 AND CERTAINLY IN THE ELECTRONIC ENVIRONMENT AS MR. PFUND SAID
7 WHAT YOU HAVE IS SIMPLY THE NOW TECHNOLOGICAL ABILITY TO MOVE
8 THAT COURSEPACK TYPE OPERATION INSIDE AND CHARGE STUDENTS A
9 NICKEL A PAGE, BUT ON THE IMPACT ON SUBSTITUTED SALES FROM THE
10 STANDPOINT OF OUR CLIENTS IS REALLY MATERIAL.

11 I JUST WOULD OFFER THOSE FEW ADDITIONAL THOUGHTS.

12 THE COURT: WHEN I LOOK AT THE PROPOSED INJUNCTIVE
13 RELIEF THAT YOU ALL WOULD PREFER --

14 MR. RICH: YES.

15 THE COURT: -- I DON'T SEE ANYTHING IN IT THAT
16 ACCOMMODATES ANY FAIR USE DETERMINATIONS. WHAT YOU COME DOWN
17 ON IS IF EVERYTHING THAT IS BEING USED IN A COURSE THAT IS NOT
18 COPYRIGHTED BUT WHICH IS OTHERWISE ENTITLED TO COPYRIGHT
19 PROTECTION IS LESS THAN 10 PERCENT OF THE TOTAL MATERIAL
20 PRESCRIBED FOR THE COURSE, THEN IT'S AN EXCEPTION.

21 I MEAN YOU DON'T HAVE ANYTHING THAT'S EXPRESSLY
22 SPELLED OUT IN THE PROPOSED INJUNCTIVE RELIEF THAT PERTAINS IN
23 ANY WAY TO THE FOUR FACTORS. IT'S LIKE YOU KIND OF JUMPED OVER
24 THAT.

25 MR. RICH: I MEAN AS IS OBVIOUS IT'S DESIGNED TO BE A

1 REMEDIAL DOCUMENT, YOUR HONOR, AND WHILE THE BASIC BOOKS CASE
2 AND THE PRINCETON UNIVERSITY CASE PARSED VERY CAREFULLY THE
3 FACTORS, THE INJUNCTIONS IN THOSE CASES WHICH WE PROVIDED FOR
4 YOUR HONOR'S INFORMATION, WE DON'T PROPOSE TO ADOPT THOSE
5 LIMITED UNPERMISSIONED COPYING IN THE CONTEXT OF COURSEPACKS OF
6 NOT MORE THAN A PAGE PER CONTRIBUTION.

7 WE TRYING TO BE SOLICITOUS TO THE EDUCATIONAL
8 ENVIRONMENT AND THE SETTING HERE THAT THIS IS GEORGIA STATE
9 UNIVERSITY AND NOT A COPY SHOP HAVE SAID NO, WE WOULD RECOMMEND
10 RELAXING THAT TEST EVEN ON A PER WORK BASIS WITHIN THE GUIDANCE
11 OF A THOUSAND WORDS OR 10 PERCENT OF A WORK, FOR EXAMPLE,
12 WHICHEVER MAY BE LESS.

13 NOW A THOUSAND WORDS IS NOT A TRIVIAL TAKING AS AN
14 EXCERPT --

15 THE COURT: BUT I DON'T THINK THAT PART OF YOUR
16 PROPOSED INJUNCTIVE ORDER IT SAYS A THOUSAND WORDS. I THINK
17 IT'S SAY LESS THAN 10 PERCENT OR 10 PERCENT OR LESS.

18 MR. RICH: AND, I APOLOGIZE, I'M JUST REACHING FOR MY
19 COPY. THANK YOU. YOUR HONOR, IF IT'S NOT CLEAR WE CAN
20 CERTAINLY WORK TO CLARIFY IT.

21 THE COURT: I THINK IT'S CLEAR ENOUGH.

22 MR. RICH: JUST TO TELL YOU WHAT'S INTENDED --

23 THE COURT: I'M LOOKING AT THE PAGE IN YOUR FILING
24 THAT YOU MADE ON MAY 11TH.

25 MR. RICH: YES, PARAGRAPH ROMAN 3(B)(1), YOUR

1 HONOR --

2 THE COURT: I'M LOOKING AT -- WELL, YOU MAY BE
3 RIGHT. I WAS LOOKING AT 3(B)(2).

4 MR. RICH: YES, SO THERE ARE TWO TESTS.

5 THE COURT: SO IT'S CONJUNCTIVE ALL RIGHT.

6 MR. RICH: YES, IT'S CONJUNCTIVE. (A) IS EACH WORK
7 AND (B) IS CUMULATIVE, AND WHAT (A) DOES IS IMPORT PARTS BUT
8 NOT ALL OF THE CLASSROOM GUIDELINE TESTS. FOR EXAMPLE, THE
9 PART DEALING WITH BREVITY AND THAT'S WHERE, YOUR HONOR, UNDER
10 THE BREVITY TEST THE ATTACHMENTS IT INDICATES FOR PROSE EITHER
11 A COMPLETE ARTICLE, STORY OR ESSAY OF LESS THAN 2500 WORDS OR
12 AN EXCERPT FROM PROSE WORK OF NOT MORE THAN A THOUSAND WORDS OR
13 10 PERCENT OF THE WORK WHICHEVER IS LESS AND NOT LESS THAN A
14 MINIMUM OF 500 WORDS --

15 THE COURT: YOU ARE ABSOLUTELY RIGHT. THANK YOU.

16 MR. HARBIN: YOUR HONOR, JOHN HARBIN FOR THE
17 DEFENDANTS. I WOULD LIKE TO RESPOND TO SOME OF THESE POINTS
18 AND I THINK MR. SCHAEZEL OR MR. ASKEW WOULD LIKE TO FOLLOW ME
19 UP.

20 THE COURT: JUST VERY BRIEFLY.

21 MR. HARBIN: THE IMMEDIATE ANSWER TO YOUR QUESTION,
22 YOUR HONOR, IS THE DEFENDANTS FEEL AS MR. SCHAEZEL I THINK
23 COMMENTED IN OPENING IS THAT THERE IS NO ONE OVERWHELMING OR
24 CONTROLLING FACTOR. THE COURT DOES HAVE TO APPLY THE FOUR
25 FACTORS AND LOOK AT THE SPECIFIC CONTEXT.

1 BUT THAT UNDER THE STATUTE AND CASE LAW, EDUCATION
2 GOES TO THE HEART OF FAIR USE, AND THAT IS WHY FAIR USE IS
3 CLEARLY IN THE STATUTE MORE BROAD THAN THAT. IT DOESN'T GIVE A
4 PROFESSOR FREE RIDE TO DO ANYTHING OR A UNIVERSITY POTENTIALLY,
5 BUT IT IS AT THE HEART OF FAIR USE.

6 AND WE BELIEVE SOME OF THE FATAL FLAWS OF THE
7 PLAINTIFFS'S ARGUMENTS IS THEY WANT TO UNFAIRLY RESTRICT THOSE
8 PROTECTIONS. THE SPECIFIED PROTECTIONS IN THE ACT ARE
9 CRITICISM, COMMENTS, TEACHING, SCHOLARSHIP AND RESEARCH, ALL
10 FIVE OF THOSE. IN OTHER WORDS, PURELY TEACHING A GRADE SCHOOL,
11 A HIGH SCHOOL, AN UNDERGRAD, A GRADUATE COURSE WITHOUT
12 COMMENTING ON A WORK, WITHOUT TRANSFORMING IT IS RECOGNIZED IN
13 THE STATUTE AND UNDER THE CASE LAW WE SUBMITTED IT'S GOING TO
14 THE PART FAIR USE.

15 WHAT THE PLAINTIFFS ARE REALLY TRYING TO DO IS LIMIT
16 THESE TO A SUBSET, AND I THINK SOME OF THEIR PUBLISHER
17 WITNESSES HAVE TESTIFIED TO THIS EFFECT WELL, IF YOU ADVANCE
18 THE FIELD, IF YOU MAKE INTERESTING COMMENTARY, IF YOU SOMEHOW
19 TRANSFORM THE WORK.

20 NOW I SUBMIT SOME OF THESE USES IN GEORGIA STATE
21 CLASSROOMS ARE OR COULD BE CHARACTERIZED AS TRANSFORMATIVE, BUT
22 AGAIN THAT'S ONLY ONE FACTOR. THE STATUTE AND THE LAW PROTECTS
23 PURELY TEACHING. BECAUSE THEY MAY BE -- EVEN IF YOU'RE
24 CRITIQUING OR COMMENTING IN THE CLASS THAT UNDERGRAD OR
25 GRADUATE STUDENT MAY BE THE FUTURE COMMENTATOR.

1 YOUR HONOR, IT ALSO IS REFLECTED IN ANOTHER ASPECT OF
2 THIS ISSUE, AND, THAT IS, IN REGARD TO WORKS BEING ORIGINAL OR
3 FICTIONAL OR FACTUAL. CERTAINLY THESE SCHOLARLY WORKS HAVE
4 SOME ORIGINALITY, SOME CREATIVITY, BUT THERE'S A QUESTION OF
5 HOW MUCH. NUMBER 1, SOME OF THEM ARE LARGELY REPRINTS OF PRIOR
6 WORK PAGES THAT REPRINT 200-YEAR-OLD SHEET MUSIC THAT THE
7 PLAINTIFFS ARE NOT CLAIMING COPYRIGHT, SO --

8 THE COURT: LET INTERRUPT YOU JUST A MINUTE. I
9 DIDN'T ASK AND PERHAPS I SHOULD HAVE IF YOU ALL WANT THE
10 WITNESS TO STEP OUT WHILE WE'RE DISCUSSING THIS. I KNOW YOU'VE
11 COMPLETED YOUR CROSS.

12 MR. KRUGMAN: NO, I'M NOWHERE NEAR THE COMPLETION.

13 THE COURT: I DON'T KNOW WHY I THOUGHT YOU HAD
14 FINISHED. WOULD YOU LIKE FOR THE PROFESSOR TO STEP OUT?

15 MR. KRUGMAN: I DON'T THINK IT MATTERS, YOUR HONOR.

16 THE COURT: ALL RIGHT. GO AHEAD.

17 MR. KRUGMAN: MAYBE SHE'S ENJOYING THE DIALOGUE.

18 THE COURT: MAYBE.

19 MR. HARBIN: YOU KNOW, IF A SCHOLAR IS COMMENTING AS
20 IS OFTEN THE CASE IN THESE WORKS ON PRIOR SCHOLARSHIP, ON
21 SUMMARIZING WHAT PRIOR SCHOLARS DID, THERE MAY BE ORIGINALITY
22 THERE, BUT THERE IS ALSO SOME PURELY FACTUAL ELEMENTS, AND THAT
23 GOES NOT JUST -- IT GOES TO THE DEGREE -- IN THE INITIAL
24 QUESTION THE DEGREE TO WHICH THE WORK IS ENTITLED TO PROTECTION
25 HOW MUCH, BUT ALSO IT GOES BACK TO THE FAIR USE BECAUSE IT IS

1 RECOGNIZED -- THIS IS ONE OF THE REASONS TEACHING IS
2 RECOGNIZED.

3 IN THE CASE, YOUR HONOR, OF HARPER & ROWE V. THE
4 NATION, THE COURT HELD THE LAW GENERALLY RECOGNIZES A GREATER
5 NEED TO DISSEMINATE FACTUAL WORKS THAN WORKS OF FICTION OR
6 FANTASY, NOT DISTINGUISHING ON WHETHER THOSE FACTUAL WORKS HAVE
7 ORIGINALITY OR CREATIVITY, BUT IT'S FOR THE PURPOSE OF WHY WE
8 HAVE EVEN AN UNDERLYING COPYRIGHT ACT.

9 IF YOUR HONOR REMEMBERS IN THE CONSTITUTION, IT IS IN
10 ORDER TO PROMOTE PROGRESS IN THE SCIENCES AND THE USEFUL ARTS.
11 THAT IS WHY AUTHORS ARE GIVEN EXCLUSIVE RIGHTS TO THEIR WORKS
12 AS A WHOLE FOR A LIMITED PERIOD OF TIME, BUT THAT IS ALSO WHY
13 YOU HAVE THE FAIR USE DOCTRINE. IN SCIENCES BACK THEN MEANT
14 TEACHING, EDUCATION, THAT'S WHAT IT MEANT NOT JUST SCIENTIFIC
15 ANALYSIS.

16 SO THERE'S A RECOGNIZED PUBLIC PURPOSE IN ALLOWING
17 THE PUBLIC TO DISSEMINATE SCHOLARLY AND FACTUAL WORKS, AND IT
18 ALSO, YOUR HONOR, AFFECTS THEIR ANALYSIS -- YOU KNOW, WE SUBMIT
19 THE PRIMARY QUESTION ON THE MARKET IS THE MARKET FOR THE WORK
20 WHICH IS THE BOOKS AS A WHOLE. THE PERMISSIONS INCOME IS
21 RELEVANT, BUT, YOUR HONOR, IT'S A DANGEROUS TRACK.

22 I MEAN THEY WOULD SAY THAT THE GUIDELINES GIVES SOME
23 CREDENCE TO THIS WHICH AGAIN CONGRESS HAS NEVER ADOPTED INTO
24 LAW THAT IF YOU USE A PAGE YOU SHOULD PAY SOMETHING FOR IT.

25 WELL CLEARLY, YOUR HONOR, IN A SCHOLARLY AND TEACHING

1 CONTEXT USING PAGES AND MULTIPLE PAGES OF WORKS ARE
2 RECOGNIZED. IN THAT REGARD WE SUBMIT THAT THE THOUSAND WORD
3 LIMIT IS ITSELF MUCH TOO RESTRICTIVE. THAT'S BASICALLY LIKE
4 THREE PAGES. THAT'S ONE OF THE UNREASONABLE RESTRICTIONS
5 APPLIED TO AN EDUCATIONAL SETTING.

6 AND IN THAT REGARD, YOUR HONOR, THE FACT THAT THE CCC
7 AND THE PUBLISHERS MAY PUT TOGETHER COURSEPACKS AND WANT TO
8 DERIVE INCOME IS IN THE EDUCATIONAL CONTEXT, WE SUBMIT, CLOSE
9 TO IF NOT IRRELEVANT. BECAUSE IF A PROFESSOR, ANY PROFESSOR
10 GOES THROUGH A FAIR USE ANALYSIS FOR AN INDIVIDUAL WORK, IT'S A
11 WORK-BY-WORK ANALYSIS AND IT IS A FAIR USE TO USE EACH OF THESE
12 WORKS AND COMBINE THEM INTO A TEACHING MODULE, THEN THE FACT
13 THAT SOMEBODY MAY OFFER THESE DIFFERENT WORKS AS A COURSEPACK
14 IS LEGALLY IRRELEVANT TO THE FAIR USE ANALYSIS.

15 AND, IN FACT, I THINK YOUR HONOR MAY FIND THAT SOME
16 OF THOSE COMBINATIONS ARE THEMSELVES TRANSFORMATIVE, BUT I
17 THINK THE AVAILABILITY OF WELL, IT ONLY COSTS LIKE 12 CENTS A
18 PAGE IS AGAIN ANOTHER WAY TO UNDERCUT THE STRENGTH, THE
19 PROTECTION GIVEN TO EDUCATION IN THE FAIR USE ENVIRONMENT.

20 THE COURT: DOES THAT ABOUT DO IT, MR. SCHAEZEL?

21 MR. SCHAEZEL: ABOUT, YOUR HONOR. VERY BRIEFLY AND
22 I DO NOT NEED THE MICROPHONE FOR THIS. I WANT TO MAKE CERTAIN
23 THAT WE ARE CLEAR WE CERTAINLY UNDERSTAND MR. RICH'S POINT
24 ABOUT COMMERCIALISM AND WHAT IS COMMERCIAL, AND WHAT I BELIEVE
25 AS THE COURT EVALUATES THE CHECKLIST YOU'LL SEE THAT WE DON'T

1 VIEW THE OPPOSITE OF COMMERCIAL AS NONCOMMERCIAL.

2 UNDER FACTOR 1 THE OPPOSITE OF COMMERCIAL IS

3 NONPROFIT EDUCATIONAL USE, AND THAT IS WHAT IS IN FACT THE

4 FIRST TWO BOXES UNDER FACTOR 1 IS IS IT COMMERCIAL OR IS IT

5 NONPROFIT EDUCATIONAL USE. IT'S NOT MERELY A COMMERCIAL AND

6 NONCOMMERCIAL DISTINCTION.

7 OUR VIEW OF THEIR ANALYSIS OF FACTOR 1 INCLUDES THE

8 NOTION THAT IN VIEW OF THE CAMPBELL CASE A COMMERCIAL PARODY

9 CASE, THEY ARE TRYING TO ELEVATE TRANSFORMATIVE BEYOND THE

10 STATUTORY LANGUAGE OF COMMERCIAL VERSUS NONPROFIT EDUCATIONAL

11 USE. WE DON'T THINK THAT'S APPROPRIATE.

12 BUT OTHER THAN THAT, I THINK WE WILL HAVE OTHER

13 OPPORTUNITIES TO TRY TO PERSUADE YOUR HONOR AND WE'LL AVAIL

14 OURSELVES --

15 THE COURT: RIGHT, YEAH, YOU WILL. GO AHEAD.

16 MR. KRUGMAN: I'M NOT SURE IF I NEED TO INTRODUCE

17 MYSELF AGAIN.

18 BEFORE I PICK UP, I WOULD LIKE TO MOVE INTO EVIDENCE

19 JOINT EXHIBIT NUMBER 4 WHICH I DON'T BELIEVE HAS BEEN ADMITTED.

20 MR. HARBIN: NO OBJECTION, YOUR HONOR.

21 THE COURT: IT'S ADMITTED.

22 BY MR. KRUGMAN:

23 Q. DR. KAUFMANN, GOING BACK TO WHERE WE WERE, SIMPLY JUST

24 YOUR TAKEAWAY FROM YOUR SESSION WITH CYNTHIA HALL WAS THAT IT

25 WAS SIMPLY A PROCESS OF CHECKING BOXES AND THEN ADDING THEM UP,

1 AND IF THE NUMBERS WEIGHED IN FAVOR OF FAIR USE, THEN IT WAS
2 PERMISSIBLE TO HAVE THE WORK POSTED ON ERESERVE, AND IF THE
3 FACTORS WEIGHED AGAINST, THEN YOU COULD NOT; IS THAT CORRECT?

4 A. NOT EXACTLY. I WOULDN'T SAY IT WAS SIMPLY A MATTER OF
5 CHECKING BOXES. WE WENT THROUGH LINE BY LINE AND TRIED --
6 LEARNED HOW TO ANALYZE A TEXT ACCORDING TO WHAT THAT WAS.

7 Q. I DIDN'T MEAN TO SUGGEST OTHERWISE, BUT AT THE END OF THE
8 DAY, YOU WOULD LOOK AT THE NUMBER OF BOXES THAT HAD BEEN
9 CHECKED TO DETERMINE WHETHER THE USE WAS PERMISSIBLE OR NOT; IS
10 THAT CORRECT?

11 A. YES.

12 Q. NOW IN YOUR SESSION WITH MS. HALL, YOU AND SHE DID NOT
13 DISCUSS ANY OF THE WORKS THAT YOU HAD BEEN PROVIDING TO
14 STUDENTS IN PRIOR SEMESTERS OF THE COURSES YOU HAD BEEN
15 TEACHING; IS THAT CORRECT?

16 A. CORRECT.

17 Q. YOU AND MS. HALL DID NOT REVIEW ANY OF THE SYLLABI FOR
18 THOSE COURSES; IS THAT CORRECT?

19 A. CORRECT.

20 Q. NOW YOU HAVE ASSIGNED THROUGHOUT YOUR TEACHING CAREER AT
21 GEORGIA STATE A VARIETY OF CHAPTERS FROM VARIOUS SAGE
22 HANDBOOKS; IS THAT CORRECT?

23 A. YES.

24 Q. AND AM I CORRECT THAT YOU AND SHE DID NOT DISCUSS THE
25 SPECIFICS OF YOUR EXCERPTING PRACTICES FROM THE SAGE HANDBOOK?

1 A. CORRECT.

2 Q. AND, THEREFORE, AS A RESULT MS. HALL DID NOT INDICATE TO
3 YOU ANYTHING ABOUT YOUR PRACTICE THAT IT COULD BE DANGEROUS
4 WITH RESPECT TO COPYRIGHT LAW, CORRECT?

5 A. CORRECT.

6 Q. IN YOUR SESSION WITH MS. HALL, SHE DID NOT INDICATE THAT
7 UNDER THE NEW POLICY IT WOULD BE INAPPROPRIATE TO USE ERESERVES
8 FOR OTHER THAN OPTIONAL OR SUPPLEMENTAL READINGS; IS THAT
9 CORRECT?

10 A. MY UNDERSTANDING WAS ERESERVES WAS FOR THOSE READINGS THAT
11 WE HAD DETERMINED PASSED THE FAIR CHECKLIST.

12 Q. AND THERE WAS NO DISTINCTION DRAWN AS YOU UNDERSTOOD IT
13 BETWEEN WHETHER A SPECIFIC WORK WAS REQUIRED ASSIGNED READING
14 IN THE COURSE OR ALTERNATIVELY WHETHER IT WAS SIMPLY A
15 RECOMMENDED READING; IS THAT CORRECT?

16 A. WELL, I UNDERSTAND THAT THAT'S ONE OF THE FACTORS THAT
17 WEIGHS AGAINST, BUT THAT WAS PART OF THE WHOLE ANALYSIS IN MY
18 UNDERSTANDING.

19 Q. AND, IN FACT, THE READINGS IN YOUR COURSES THAT YOU
20 ASSIGNED TO STUDENTS WERE REQUIRED READINGS?

21 A. YES.

22 Q. AND AM I CORRECT THAT AT NO TIME HAVE YOU SEEN OR READ
23 ANYTHING INDICATING TO YOU ON A GOING FORWARD BASIS UNDER THE
24 NEW POLICY THAT IT'S INAPPROPRIATE TO USE ERESERVES FOR
25 REQUIRED ASSIGNED READINGS?

1 A. NOT IF THEY PASS THE FAIR USE.

2 Q. NOW YOU TAUGHT THE EPRS 8500 COURSE DURING THE 2009
3 MAYMASTER; IS THAT CORRECT?

4 A. YES.

5 Q. AND THAT'S AN ABBREVIATED SEMESTER THAT LASTS ROUGHLY
6 THREE WEEKS; IS THAT CORRECT?

7 A. YES.

8 Q. IF YOU CAN TAKE A LOOK AT PLAINTIFFS' EXHIBIT 516, DR.
9 KAUFMANN, IT'S IN YOUR BINDER, BUT I'VE ALSO HANDED YOU UP SOME
10 LOOSE COPIES OF THAT WHICH MAY HELP YOU AS WE GO THROUGH THE
11 VARIOUS READINGS AND OTHER DOCUMENTS.

12 THE COURT: IS THIS A ONE-PAGE EXHIBIT?

13 MR. KRUGMAN: NO, YOUR HONOR, IT IS --

14 THE COURT: LET ME FLASH THE SECOND PAGE UP, IF YOU
15 COULD?

16 MR. KRUGMAN: AND THIS IS IN EVIDENCE.

17 THE COURT: YEAH, I RECALL, YOU'RE RIGHT.

18 MR. KRUGMAN: THIS DOCUMENT IS SEVERAL PAGES.

19 THE COURT: OKAY. I GOT YOU.

20 MR. KRUGMAN: IT IS THE SYLLABUS FOR THAT COURSE.

21 THE COURT: WHAT I WAS REALLY WONDERING ABOUT WAS
22 WHETHER THE ADDITIONAL READINGS WERE SPELLED OUT ANYWHERE ON
23 THE EXHIBIT.

24 MR. KRUGMAN: THEY ARE, AND I WILL GET TO THOSE WITH
25 THIS WITNESS.

1 THE COURT: OKAY.

2 BY MR. KRUGMAN:

3 Q. NOW THIS IS THE SYLLABUS FOR THE QUALITATIVE
4 INTERPRETATIVE RESEARCH IN EDUCATION 1 COURSE THAT YOU TAUGHT
5 DURING THE MAYMASTER OF 2009; IS THAT CORRECT?

6 A. CORRECT.

7 Q. AND EVEN THOUGH IT SAYS SUMMER 2009 IF YOU FLIP THROUGH TO
8 THE SPECIFIC ASSIGNMENTS, YOU SEE THAT THEY ARE ACTUALLY -- THE
9 CLASSES WERE ACTUALLY IN MAY OF 2009, CORRECT?

10 A. YES, TECHNICALLY MAYMASTER IS PART OF SUMMER SEMESTER.

11 Q. NOW THERE WERE APPROXIMATELY 13 STUDENTS ENROLLED IN THIS
12 CLASS; IS THAT CORRECT?

13 A. YES.

14 Q. AND IF YOU GO TO PAGE 1 OF THE SYLLABUS UNDER REQUIRED
15 TEXT, YOU HAD TWO REQUIRED TEXT FOR THE COURSE BY BOGDAN AND
16 BIKLEN, QUALITATIVE RESEARCH FOR EDUCATION, AN INTRODUCTION TO
17 THEORIES AND METHODS; IS THAT CORRECT?

18 A. CORRECT.

19 Q. AND THEN A SEPARATE REQUIRED TEXT BY CROTTY, THE
20 FOUNDATIONS OF SOCIAL RESEARCH MEANING AND PERSPECTIVE IN THE
21 RESEARCH PROCESS; IS THAT CORRECT?

22 A. CORRECT.

23 Q. AND IT WAS YOUR INTENTION IN THIS COURSE THAT THE STUDENTS
24 ENROLLED IN THE COURSE WOULD LIKELY PURCHASE THOSE TWO TEXTS;
25 IS THAT CORRECT?

1 A. CORRECT.

2 Q. AND YOU EXPECTED THEM TO PURCHASE THE TEXTS BECAUSE YOU
3 EXPECTED THEM TO READ THE ENTIRE MATERIAL, CORRECT?

4 A. CORRECT.

5 Q. NOW, BELOW THAT IS A CATEGORY STATING OWN CHOICE BOOK
6 REVIEWS?

7 A. YES.

8 Q. SCROLL DOWN JUST A LITTLE. THERE. OWN CHOICE BOOK
9 REVIEWS, AND THEN THERE'S SEVERAL WORKS DOWN, AND EACH OF THOSE
10 WAS A FULL TEXT STUDY; IS THAT CORRECT?

11 A. CORRECT.

12 Q. AND THE STUDENTS IN YOUR COURSE HAD A CHOICE OF CHOOSING
13 ANY ONE OF THEM TO PURCHASE AND READ; IS THAT CORRECT?

14 A. CORRECT.

15 Q. AND THAT, TOO, WAS A REQUIRED PART OF THE CURRICULUM?

16 A. CORRECT.

17 THE COURT: ARE YOU SAYING THAT THESE ITEMS ARE
18 THEMSELVES BOOK REVIEWS?

19 MR. KRUGMAN: I BELIEVE THOSE ARE SEPARATE BOOKS,
20 CORRECT?

21 THE COURT: ARE THESE BOOKS OR BOOK REVIEWS, THAT'S
22 WHAT I'M GETTING AT?

23 THE WITNESS: THEY ARE BOOKS, YOUR HONOR. THEY ARE
24 FULL-LENGTH STUDIES.

25 BY MR. KRUGMAN:

1 Q. AND I BELIEVE THE STUDENTS WERE REQUIRED TO WRITE A REVIEW
2 ON THOSE BOOKS; IS THAT CORRECT?

3 A. WELL, THEY DIDN'T WRITE ON IT, BUT WE DID IT IN CLASS,
4 CORRECT.

5 Q. OKAY. AND THAT WAS A REQUIRED PART OF THE CURRICULUM,
6 CORRECT?

7 A. CORRECT.

8 Q. AND YOU EXPECTED STUDENTS TO READ ONE OF THOSE WORKS --

9 A. CORRECT.

10 Q. -- FOR DISCUSSION IN CLASS?

11 A. CORRECT.

12 Q. NOW IF YOU COULD TURN TO THE COURSE OUTLINE BEGINNING ON
13 PAGE 7 OF PLAINTIFFS' EXHIBIT 516, FOR EACH SESSION OF THE
14 COURSE THERE IS A SERIES OF ASSIGNED READINGS; IS THAT CORRECT?

15 A. CORRECT.

16 Q. AND IT WAS YOUR INTENTION, WAS IT NOT, THAT STUDENTS
17 ENROLLED IN THIS COURSE WOULD READ EACH OF THOSE WORKS ON A
18 TIMELY BASIS?

19 A. CORRECT.

20 Q. THE ASSIGNED READINGS WERE IN YOUR VIEW AN INTEGRAL PART
21 OF THIS CLASS, CORRECT?

22 A. YES.

23 Q. NOW SOME OF THE READINGS WERE FROM TWO TEXTBOOKS THAT WE
24 LOOKED AT THAT YOU REQUIRED STUDENTS TO PURCHASE; IS THAT
25 CORRECT?

1 A. YES.

2 Q. FOR EXAMPLE, ON MAY THE 12TH -- BRING THAT BACK UP --
3 THERE WERE READINGS FROM BOGDAN AND BIKLEN THAT WE JUST LOOKED
4 AT, AND THEN CROTTY THE FOUNDATIONS OF SOCIAL RESEARCH, AND
5 THOSE WERE THE TWO ASSIGNED TEXTS THAT THE STUDENTS WERE
6 EXPECTED TO PURCHASE AND READ, CORRECT?

7 A. YES.

8 Q. AND THEN THERE WERE OTHER WORKS THAT WERE ASSIGNED
9 REQUIRED READINGS THAT DID NOT COME FROM THOSE TEXT THAT BUT
10 WERE AVAILABLE TO STUDENTS IN ELECTRONIC FORMAT ON GEORGIA
11 STATE'S ERESERVE SYSTEM; IS THAT CORRECT?

12 A. YES.

13 THE COURT: I WOULD LIKE TO SEE THE LISTING OF THE
14 ADDITIONAL READINGS; COULD YOU SCROLL ON THROUGH AND SHOW THAT
15 TO ME?

16 MR. KRUGMAN: WE CAN DO THAT. LET ME BRING UP AN
17 EXAMPLE OF --

18 THE COURT: I WASN'T ASKING FOR EXAMPLES. YOU
19 INDICATED THERE WAS SOMEPLACE ON THIS THING THAT HAD THE
20 ADDITIONAL READINGS LISTED.

21 MR. KRUGMAN: YOUR HONOR, THEY'RE ALL INTERSPERSED SO
22 IF WE CAN BRING UP --

23 THE COURT: SO THERE IS NO LIST IN THIS EXHIBIT OF
24 THE ADDITIONAL READINGS?

25 MR. KRUGMAN: THE ADDITIONAL READINGS ARE ON THIS,

1 BUT THEY'RE NOT IN A SEPARATE CATEGORY. FOR EACH SESSION OF
2 THE COURSE --

3 THE COURT: I UNDERSTAND WHAT YOU'RE SAYING. I JUST
4 WANT TO PIN YOU DOWN ON WHAT IS AND WHAT ISN'T IN THIS
5 EXHIBIT.

6 THERE IS A LIST OF ADDITIONAL READINGS PER SE WHERE
7 YOU GO TO EXHIBIT 516 AND YOU LOOK TO THE PART THAT SAYS
8 ADDITIONAL READINGS, AND THEN IT HAS THEM LISTED 1, 2, 3, 4?

9 MR. KRUGMAN: NO, YOUR HONOR, THE ADDITIONAL --

10 THE COURT: WHAT YOU HAVE TO DO IS LOOK IN THE PART
11 OF THE EXHIBIT THAT'S CAPTIONED COURSE OUTLINE, AND WHAT YOU'RE
12 SAYING IS THAT THERE ARE ADDITIONAL READINGS LISTED IN HERE,
13 OKAY.

14 MR. KRUGMAN: AND I'LL GO THROUGH WITH THE WITNESS
15 AND IT WILL BECOME APPARENT TO YOUR HONOR --

16 THE COURT: I THINK IT'S ALREADY BECOME APPARENT
17 WHERE YOU'RE GOING WITH THIS. GO AHEAD.

18 MR. KRUGMAN: AT LEAST IN TERMS OF WHAT THE
19 ADDITIONAL READINGS ARE.

20 BY MR. KRUGMAN:

21 Q. NOW ON PAGE -- IF YOU GO BACK JUST QUICKLY TO PAGE 1 OF
22 THE SYLLABUS UNDER ADDITIONAL READINGS, THERE YOU'RE ADVISING
23 THE STUDENTS THAT THOSE ADDITIONAL READINGS ARE ALL AVAILABLE
24 IN ELECTRONIC FORMAT, AND EACH ARTICLE HAS BEEN SCANNED AND IS
25 AVAILABLE ELECTRONICALLY AS A PDF AND TO ACCESS IT GO TO COURSE

1 RESERVES LOCATED IN THE LIBRARY HOMEPAGE, AND THESE WERE THE
2 KIND OF ADDITIONAL READINGS THAT DID NOT COME FROM THE
3 TEXTBOOKS; IS THAT CORRECT?

4 A. YES.

5 Q. NOW, IT'S BEEN YOUR GENERAL PRACTICE TO ASSIGN AND PROVIDE
6 COPIES OF ENTIRE CHAPTERS OF EITHER BOOKS OR JOURNALS ON
7 ERESERVE AS DISTINGUISHED FROM EXCERPTS OF CHAPTERS?

8 A. I BELIEVE THAT THERE'S ONLY CHAPTERS IN HERE. YOU WILL
9 NOT FIND JOURNAL ARTICLES EXCEPT IF THEY ARE ON E-JOURNALS
10 THROUGH THE LIBRARY, NOT ON ERESERVES.

11 Q. OKAY. THAT'S MY POINT. SOME OF THE WORKS ON HERE COME
12 FROM JOURNALS; IS THAT CORRECT?

13 A. YES.

14 Q. AND SOME COME FROM BOOKS?

15 A. YES.

16 Q. AND YOU UNDERSTAND THAT WITH RESPECT TO JOURNAL ARTICLES
17 THAT ARE LICENSED THROUGH THE LIBRARY THAT ROYALTY PAYMENTS ARE
18 MADE BY GEORGIA STATE UNIVERSITY TO THE PUBLISHERS FOR THE
19 PURPOSE OF ALLOWING THEIR ELECTRONIC USAGE, CORRECT?

20 A. FOR JOURNALS?

21 Q. YES, MA'AM.

22 A. YES, THAT ARE AVAILABLE THROUGH E-JOURNALS, YES.

23 Q. AND YOU ALSO UNDERSTAND THAT WHEN A PROFESSOR SUCH AS
24 YOURSELF USES A CHAPTER FROM A HANDBOOK SUCH AS THE SAGE
25 HANDBOOK ON QUALITATIVE RESEARCH, PUTS THAT CHAPTER ON

1 ERESERVES WITHOUT A PERMISSION THAT THERE ARE NO ROYALTIES

2 FLOWING TO THE PUBLISHER WITH RESPECT TO THAT WORK?

3 A. CORRECT.

4 Q. AND LET'S LOOK AT SESSION 6 ON PAGE 8, AND THIS BY WAY OF

5 EXAMPLE, THERE'S A WORK BY NUKAGA THE UNDERLIFE OF KIDS'

6 SCHOOLS LUNCH TIME, NEGOTIATING ETHNIC BOUNDARIES AND IDENTITY

7 IN FOOD EXCHANGE, THAT WAS A COMPLETE ARTICLE FROM THE JOURNAL

8 OF CONTEMPORARY ETHNOGRAPHY THAT THE LIBRARY HAD A LICENSE FOR;

9 IS THAT CORRECT?

10 A. CORRECT.

11 Q. AND THEN IF GO JUST RIGHT ABOVE THAT FOR THE REQUIRED

12 READING BY PREISSLE AND GRANT THAT WAS A COMPLETE CHAPTER FROM

13 A BOOK ENTITLED FIELDWORK TRADITIONS, ETHNOGRAPHY AND

14 PARTICIPANT OBSERVATION EDITED BY MARRAIS AND LAPAN AND

15 PUBLISHED BY LAWRENCE ERLBAURN AND ASSOCIATES, AND THAT WAS A

16 CHAPTER FROM A BOOK; IS THAT CORRECT?

17 A. YES.

18 Q. AM I CORRECT THAT FIELDWORK TRADITIONS IS A COMPILATION OF

19 WORKS FROM VARIOUS AUTHORS MUCH LIKE THE VARIOUS SAGE HANDBOOKS

20 THAT YOU'VE USED IN YOUR COURSE?

21 A. YES.

22 Q. OKAY. IF YOU CAN GO BACK TO PAGE 3 OF THE SYLLABUS AND GO

23 TO THE HEADING UNDER ATTENDANCE AND PARTICIPATION, IN THE

24 SECOND PARAGRAPH OF THIS SECTION OF THE SYLLABUS YOU WROTE THAT

25 I EXPECT PEOPLE TO COME TO CLASS PREPARED HAVING READ ALL

1 ASSIGNED READING AND COMPLETING ALL COURSE ACTIVITIES AND TO
2 CONTRIBUTE TO CLASS DISCUSSIONS AND ACTIVITIES. FREQUENT LACK
3 OF PREPARATION OR FAILURE TO COMMUNICATE -- FAILURE TO
4 CONTRIBUTE, EXCUSE ME, WILL BE TAKEN INTO ACCOUNT IN THE FINAL
5 COURSE GRADE; DO YOU SEE THAT?

6 A. YES.

7 Q. NOW THOSE READINGS THAT WE'RE TALKING ABOUT ENCOMPASS THE
8 REQUIRED TEXT ON PAGE 1, CORRECT?

9 A. CORRECT.

10 Q. AND IT ALSO ENCOMPASSED THE ADDITIONAL READINGS --

11 A. YES.

12 Q. -- THAT MAKE THEIR WAY INTO VARIOUS SESSIONS OF THE
13 SYLLABUS; IS THAT CORRECT?

14 A. YES.

15 Q. NOW IF STUDENTS IN YOUR CLASSES DO NOT READ THE VARIOUS
16 ASSIGNED READINGS, HAVEN'T READ WHEN THEY COME TO CLASS, IT
17 BECOMES VERY EVIDENT TO YOU WHEN THEY WRITE THEIR PAPERS; DOES
18 IT NOT?

19 A. PREDOMINANTLY. I THINK YOU CAN GET AWAY WITHOUT READING
20 CERTAIN THINGS AND I WON'T KNOW. I MEAN THEY'RE ADULTS. I'M
21 NOT GOING TO KEEP TRACK OF EVERYTHING THEY DO, BUT, YES, IF YOU
22 HAVEN'T DONE A LARGE PORTION OF THE READINGS, I WILL KNOW IN
23 YOUR FINAL PAPER.

24 Q. THANK YOU. AND IF STUDENTS ARE NOT READING, HAVE NOT READ
25 THE ASSIGNED WORKS, YOU WOULD EXPECT THAT TO HAVE A NEGATIVE

1 IMPACT ON THEIR FINAL GRADE IN THE COURSE; WOULD YOU NOT?

2 A. YES.

3 Q. ACADEMIC HONESTY IS AN ISSUE THAT GEORGIA STATE AND YOU AS

4 A PROFESSOR TAKE VERY SERIOUSLY, CORRECT?

5 A. YES.

6 Q. LET'S SEE, IF YOU CAN GO TO PAGE 4 OF THE SYLLABUS, THERE

7 IS ACTUALLY A SECTION OF THE SYLLABUS DEALING WITH ACADEMIC

8 HONESTY; IS THAT CORRECT?

9 A. YES.

10 Q. AND ON THE THIRD LINE OF THIS, YOU WROTE IN YOUR SYLLABUS

11 THAT ACADEMIC HONESTY IS DEFINED BROADLY AND SIMPLY THE

12 PERFORMANCE OF ALL ACADEMIC WORK WITHOUT CHEATING, LYING,

13 STEALING OR RECEIVING ASSISTANCE FROM ANY OTHER PERSON OR USING

14 ANY SOURCE OF INFORMATION NOT APPROPRIATELY AUTHORIZED OR

15 ATTRIBUTED; DO YOU SEE THAT?

16 A. YES.

17 Q. AND I TAKE IT IF A STUDENT WERE FOUND TO HAVE USED ANY

18 INFORMATION IN YOUR COURSE THAT HAD NOT BEEN APPROPRIATELY

19 AUTHORIZED, YOU WOULD UNDERSTAND THAT TO BE A VIOLATION OF THIS

20 POLICY, CORRECT?

21 A. YES.

22 Q. NOW WITH ROUGHLY 13 STUDENTS IN THIS COURSE, YOU AND THE

23 STUDENTS WERE ABLE TO SIT IN A CIRCLE?

24 A. YES.

25 Q. AS A RESULT YOU HAD GOOD VISUAL CONTACT WITH THE STUDENTS

1 IN YOUR COURSE, CORRECT?

2 A. YES.

3 Q. AND YOU WOULD OBSERVE STUDENTS IN YOUR COURSE ATTENDING
4 WITH PHYSICAL COPIES OF THE TWO REQUIRED TEXTS; IS THAT
5 CORRECT?

6 A. YES.

7 Q. AND YOU ALSO OBSERVED STUDENTS IN YOUR COURSE WITH COPIES
8 OF THEIR ERESERVE READINGS THAT THEY HAD PRINTED OUT FROM THE
9 VARIOUS ASSIGNMENTS THROUGHOUT THE SEMESTER?

10 A. OR READING THEM OFF THEIR LAPTOPS.

11 Q. BUT YOU DID IN FACT OBSERVE SOME STUDENTS WITH PRINTED
12 COPIES, CORRECT?

13 A. YES.

14 Q. AND THAT HAS BEEN COMMON IN THE COURSES YOU'VE TAUGHT AT
15 GEORGIA STATE UNIVERSITY, CORRECT?

16 A. YES.

17 Q. NOW LET'S GO BACK TO PAGE 7 OF PLAINTIFFS' EXHIBIT 516,
18 AND LET'S GO TO THE MAY 12 CLASS. THE TOPIC WAS CONSIDERING
19 QUALITATIVE RESEARCH FOR -- EXCUSE ME, CONSIDERING QUALITATIVE
20 RESEARCH. THAT WAS THE TOPIC OF THAT SESSION, CORRECT?

21 A. YES.

22 Q. AND ONE OF THE REQUIRED READINGS WAS A WORK BY DENZIN AND
23 LINCOLN WHICH IS FROM 2005 INTRODUCTION, THE DISCIPLINE AND
24 PRACTICE OF QUALITATIVE RESEARCH PAGES 1 TO 32; IS THAT
25 CORRECT?

1 A. YES.

2 Q. AND THIS CAME FROM THE SAGE HANDBOOK OF QUALITATIVE
3 RESEARCH THIRD EDITION, AND DENZIN AND LINCOLN WERE THE EDITORS
4 OF THAT; IS THAT CORRECT?

5 A. YES.

6 MR. KRUGMAN: IF I MAY APPROACH, YOUR HONOR?

7 THE COURT: YES.

8 BY MR. KRUGMAN:

9 Q. DR. KAUFMANN, I'VE HANDED YOU WHAT'S BEEN MARKED AND IN
10 EVIDENCE WHICH IS PLAINTIFFS' EXHIBIT 267. THIS IS A BOOK
11 YOU'RE VERY FAMILIAR WITH, I TAKE IT?

12 A. YES.

13 Q. THE SAGE HANDBOOK OF QUALITATIVE RESEARCH THIRD EDITION.
14 NOW YOU'VE TAUGHT THE 8500 COURSE AT GEORGIA STATE FROM
15 THE TIME YOU STARTED TEACHING AT THE UNIVERSITY; IS THAT
16 CORRECT?

17 A. YES.

18 Q. AND WORKS FROM THIS HANDBOOK THE SAGE HANDBOOK OF
19 QUALITATIVE RESEARCH HAVE BEEN A STAPLE OF YOUR COURSE
20 TEACHINGS FROM THE BEGINNING?

21 A. YES.

22 Q. NOW, WHAT IS THE DISCIPLINE OF QUALITATIVE RESEARCH; IF
23 YOU CAN FOR A LAYPERSON JUST TELL US VERY BRIEFLY WHAT THAT IS?

24 A. COMING TO UNDERSTAND OR LEARNING TO UNDERSTAND THE
25 EXPERIENCES OF PEOPLE IN THE LIFE, WORLD AND CULTURE.

1 Q. WAS THAT DISCIPLINE DEVELOPED RELATIVELY RECENTLY AS A
2 SUBJECT MATTER FOR EDUCATION?

3 A. NO, I DON'T THINK SO. I THINK QUALITATIVE RESEARCH HAS
4 BEEN AROUND SINCE THE 1800'S AT LEAST.

5 Q. NOW, YOU'VE USED IN YOUR COURSES A LARGE NUMBER OF -- A
6 RELATIVELY LARGE NUMBER OF SAGE PUBLICATIONS; IS THAT CORRECT?

7 A. YES.

8 Q. AND SAGE IS WELL KNOWN AS A PUBLISHER IN THIS DISCIPLINE;
9 IS THAT CORRECT?

10 A. YES.

11 Q. WOULD IT BE PROBLEMATIC, DIFFICULT FOR YOU TO FIND
12 SUBSTITUTES FOR THE WORKS THAT YOU ASSIGN IN YOUR COURSE FROM
13 THESE SAGE HANDBOOKS?

14 A. NO, NO.

15 Q. NOW YOU ASSIGNED PAGES 1 TO 32 OF PLAINTIFFS' EXHIBIT 267;
16 IS THAT CORRECT?

17 A. YES. DID YOU SAY 1 TO 32?

18 Q. YES, PAGES 1 TO 32 OF THE BOOK?

19 A. YES.

20 Q. AND IF YOU COULD LOOK AT THE TABLE OF CONTENTS OF THE
21 BOOK?

22 A. YES.

23 Q. AND CAN YOU CONFIRM THAT PAGES 1 TO 32 COMPRIZE THE ENTIRE
24 FIRST CHAPTER OF THE BOOK WHICH IS CALLED THE INTRODUCTION?

25 A. YES.

1 Q. AND I THINK WE'VE SEEN THAT THIS WAS AUTHORED BY THE
2 EDITORS OF THE BOOK?

3 A. CORRECT.

4 Q. AND AM I CORRECT THAT THIS CHAPTER IN PART PROVIDES AN
5 OVERVIEW OF THE ENTIRE BOOK AND WHAT FOLLOWS?

6 A. NO, NO. I THINK IT PREDOMINANTLY GIVES YOU AN OVERVIEW OF
7 THE HISTORY OF THE FIELD AND THE STAGES THAT THE FIELD HAS GONE
8 THROUGH.

9 Q. NOW A COPY OF THIS WORK WAS PROVIDED TO THE STUDENTS IN
10 YOUR CLASS ON ERESERVE, CORRECT?

11 A. OF CHAPTER 1 --

12 MR. HARBIN: OBJECT TO THE FORM OF THE QUESTION.

13 BY MR. KRUGMAN:

14 Q. I APOLOGIZE. A COPY OF CHAPTER 1 PAGES 1 TO 32 THE
15 INTRODUCTORY CHAPTER WAS PROVIDED TO STUDENTS IN YOUR CLASS ON
16 ELECTRONIC RESERVE?

17 A. YES.

18 Q. AND YOU FILLED OUT CHECKLISTS FOR THE 2009 MAYMESTER,
19 CORRECT?

20 A. CORRECT.

21 Q. AND AFTER FILLING THEM OUT YOU DELIVERED THOSE CHECKLISTS
22 TO THE GSU LIBRARY?

23 A. CORRECT.

24 Q. AND THE NEXT DAY YOU RECEIVED AN E-MAIL FROM THE LIBRARY
25 ADVISING YOU THAT THE LIBRARY DIDN'T WANT THEM; IS THAT

1 CORRECT?

2 A. CORRECT.

3 Q. I KNOW AT THE TIME OF YOUR DEPOSITION YOU HAD NOT RECEIVED
4 THE CHECKLIST BACK FROM THE LIBRARY. I TAKE IT YOU DID RECEIVE
5 THEM OR -- LET ME ASK YOU DID YOU EVER RECEIVE THEM BACK?

6 A. I BELIEVE SO.

7 Q. IF YOU CAN LOOK IN THE NOTEBOOK AT PLAINTIFFS' EXHIBIT 576
8 WHICH IS IN EVIDENCE?

9 A. THEY'RE NOT IN NUMBERED ORDER.

10 Q. TO HOPEFULLY MAKE THE PROCESS EASIER, IT SHOULD BE THE
11 THIRD TAB IN YOUR NOTEBOOK.

12 A. GOT IT.

13 Q. WHICH IS WHY I GAVE YOU THE SEPARATE SYLLABI SO YOU DON'T
14 HOPEFULLY HAVE TO FLIP BACK AND FORTH.

15 OKAY. IS PLAINTIFFS' EXHIBIT 576 THE CHECKLIST THAT
16 YOU COMPLETED FOR THE DENZIN AND LINCOLN WORK?

17 A. YES, IT APPEARS TO BE, YES.

18 Q. AND IS THIS THE CHECKLIST THAT YOU -- SAME CHECKLIST THAT
19 WAS DELIVERED -- THAT YOU DELIVERED TO THE LIBRARY AND THEN
20 CAME BACK TO YOU?

21 A. I BELIEVE SO.

22 Q. AND IT SHOWS A DATE OF MAY 1, 2009 AND THAT'S WHEN YOU
23 FILLED OUT THE CHECKLIST?

24 A. EVIDENTLY.

25 Q. NOW FACTOR 1, IF YOU CAN SCROLL DOWN, IS PURPOSE AND

1 CHARACTER OF THE USE, AGAIN, AND THIS FIRST PAGE HAS BOXES FOR
2 TRANSFORMATIVE, USE CHANGES WORK FOR NEW UTILITY OR PURPOSE,
3 AND NONTRANSFORMATIVE; DO YOU SEE THAT?

4 A. YES.

5 Q. AND AS YOU TESTIFIED JUST BRIEFLY A MOMENT AGO, YOUR
6 PRACTICE HAS BEEN TO HAVE ENTIRE CHAPTERS POSTED ON ERESERVE,
7 CORRECT?

8 A. CORRECT.

9 Q. NOW AS A RESULT OF YOUR SESSION WITH CYNTHIA HALL, YOU
10 UNDERSTOOD THAT YOUR USE OF WORKS WAS NONTRANSFORMATIVE,
11 CORRECT?

12 A. CORRECT.

13 Q. YOU UNDERSTOOD THAT DIRECTLY COPYING AN ENTIRE CHAPTER WAS
14 NOT TRANSFORMATIVE, CORRECT?

15 A. CORRECT, THIS IS NOT TRANSFORMATIVE, YES.

16 Q. AND YOU ALSO UNDERSTOOD THAT TRANSFERRING A WORK INTO AN
17 ELECTRONIC MODE WAS NOT TRANSFORMATIVE FOR PURPOSES OF FAIR
18 USE, CORRECT?

19 A. CORRECT.

20 Q. NOW, I NOTE ON THIS WORK THAT YOU DID NOT CHECK THE BOX
21 FOR NONTRANSFORMATIVE?

22 A. YES, AND I WOULD SAY THAT'S JUST ERROR. I ALSO DIDN'T
23 CHECK TRANSFORMATIVE.

24 Q. AND I WILL REPRESENT TO YOU THAT WHEN WE GET TO OTHER
25 CHECKLISTS, WE WILL SEE THAT THAT BOX WAS CHECKED, BUT IT'S MY

1 IMPRESSION FROM THAT THAT THIS WAS SIMPLY JUST A MISTAKE BY
2 YOU; IS THAT CORRECT?

3 A. CORRECT.

4 Q. AND YOU WOULD AGREE THAT YOUR USE OF THIS PARTICULAR WORK
5 WAS IN FACT NONTRANSFORMATIVE?

6 MR. HARBIN: OBJECTION, YOUR HONOR, ASKED AND
7 ANSWERED.

8 THE COURT: OVERRULED.

9 THE WITNESS: AM I SUPPOSED TO TALK?

10 THE COURT: YEAH, GO AHEAD.

11 THE WITNESS: YES, I THINK IT'S NONTRANSFORMATIVE.

12 BY MR. KRUGMAN:

13 Q. EVEN THOUGH YOUR USE OF THE WORK WAS NONTRANSFORMATIVE,
14 FACTOR 1 UNDER THE CHECKLIST THAT YOU COMPLETED STILL WEIGHED
15 IN FAVOR OF FAIR USE; IS THAT CORRECT?

16 A. CORRECT.

17 Q. AND THAT IS BECAUSE YOU CHECKED THE TWO BOXES AT THE TOP,
18 ONE FOR NONPROFIT EDUCATIONAL?

19 A. YES.

20 Q. AND ALSO TEACHING INCLUDING MULTIPLE COPIES FOR CLASSROOM
21 USE?

22 A. CORRECT.

23 Q. NOW GEORGIA STATE IS A NONPROFIT EDUCATIONAL INSTITUTION
24 OF HIGHER LEARNING; IS IT NOT?

25 A. CORRECT.

1 Q. AND ALL OF THE WORKS THAT ARE POSTED ON ERESERVES FOR THE
2 COURSES YOU TEACH ARE USED FOR TEACHING AT THAT NONPROFIT
3 EDUCATIONAL INSTITUTION; IS THAT CORRECT?

4 A. CORRECT.

5 Q. CAN YOU CONCEIVE, DR. KAUFMANN, OF ANY SITUATION WHERE YOU
6 WOULD BE USING A WORK FOR TEACHING AT GEORGIA STATE AND IN
7 COMPLETING THE FAIR USE CHECKLIST FACTOR 1 WOULD NOT WEIGH IN
8 FAVOR OF FAIR USE?

9 A. NOT FOR WHAT I DO IN THE CLASSROOM.

10 Q. IF YOU CAN TURN THE PAGE PLEASE, AND FACTOR 2 IS THE
11 NATURE OF THE COPYRIGHTED WORK; IS THAT CORRECT?

12 A. CORRECT.

13 Q. NOW, YOU CHECKED PUBLISHED WORK AND CHAPTER 1 IS FROM THE
14 SAGE HANDBOOK AS A PUBLISHED WORK, CORRECT?

15 A. CORRECT.

16 Q. IT IS ALSO A FACTUAL OR NONFICTION WORK; IS THAT CORRECT?

17 A. CORRECT.

18 Q. AND FOR THAT REASON YOU CHECKED THOSE TWO BOXES FOR WEIGHS
19 IN FAVOR OF FAIR USE PUBLISHED FACTUAL OR NONFICTION WORK?

20 A. CORRECT.

21 Q. NOW YOU DID NOT CHECK THE BOX FOR HIGHLY CREATIVE WORK; IS
22 THAT CORRECT?

23 A. CORRECT.

24 Q. NOW THAT'S NOT BECAUSE A WORK OF NONFICTION CANNOT BE
25 HIGHLY CREATIVE, CORRECT?

1 A. CORRECT.

2 Q. RATHER AM I CORRECT THAT YOU DID NOT CHECK THAT BOX
3 BECAUSE A WORK OF NONFICTION IS NOT ONE OF THE ENUMERATED
4 EXAMPLES IN THE PARENTHETICAL THERE?

5 A. OH, I WOULD SAY THAT THERE'S A THEORETICAL DIFFERENCE
6 BETWEEN CREATIVE ENDEAVORS THAT ARE FICTION AND CREATIVE
7 ENDEAVORS THAT ARE NONFICTION.

8 Q. BUT YOU WOULD AGREE THAT A WORK OF NONFICTION AS YOU JUST
9 TESTIFIED CAN BE HIGHLY CREATIVE?

10 A. IT CAN BE CREATIVE, BUT YOU ASKED ME -- MY UNDERSTANDING
11 OF YOUR QUESTION WAS THAT I DON'T SEE THEM AS BEING THE SAME.

12 Q. YOU SEE THE PARENTHETICAL -- OR THE TYPES OF WORKS THAT
13 ARE ON THE CHECKLIST WITHIN THE PARENTHETICAL AREN'T MUSIC,
14 NOVELS, FILMS, PLAYS, POETRY AND FICTION BEING KIND OF IN A
15 DIFFERENT CATEGORY THAN WORKS OF NONFICTION; WOULD THAT BE A
16 FAIR STATEMENT?

17 A. CORRECT.

18 Q. SO AM I CORRECT THEN THAT WHEN FILLING OUT THE FAIR USE
19 CHECKLIST FOR WORKS THAT YOU ASSIGNED TO STUDENTS AS REQUIRED
20 READINGS, IF THAT WORK IS ONE OF NONFICTION IT WOULD BE HIGHLY
21 UNLIKELY THAT YOU WOULD EVER CHECK THE BOX FOR HIGHLY CREATIVE
22 WORK?

23 A. CORRECT.

24 Q. NOW, WITHOUT GETTING TO THE IMPORTANT TO EDUCATIONAL
25 OBJECTIVES BOX WHICH WE'LL GET TO IN A MOMENT, YOU KNOW, WE'VE

1 ESTABLISHED THAT EVERYTHING YOU POST ON ERESERVES FOR YOUR
2 COURSES ARE PUBLISHED WORKS OF NONFICTION.

3 CAN YOU CONCEIVE OF ANY SITUATION WHERE YOU WOULD BE
4 USING A PUBLISHED WORK OF NONFICTION AND FACTOR 2 WOULD NOT
5 ALWAYS WEIGH IN FAVOR OF FAIR USE?

6 A. NO.

7 Q. I NOTE THAT YOU DID CHECK IMPORTANT TO EDUCATIONAL
8 OBJECTIVES; IS THAT CORRECT?

9 A. CORRECT.

10 Q. AND THAT'S ONE OF THE REASONS YOU SELECTED THIS PARTICULAR
11 WORK AS AN ASSIGNED READING BECAUSE YOU FELT IT WAS IMPORTANT
12 TO THE EDUCATIONAL OBJECTIVES THAT YOU SAW FOR THIS COURSE,
13 CORRECT?

14 A. CORRECT.

15 Q. IF YOU CAN TURN BACK JUST BRIEFLY TO THE FIRST PAGE AND
16 UNDER FACTOR 1 WHERE AT THE BOTTOM USE IS NECESSARY TO ACHIEVE
17 YOUR INTENDED EDUCATIONAL PURPOSES; DO YOU SEE THAT?

18 A. YES, IT WOULD HAVE BEEN WISE IF I CHECKED THAT.

19 Q. AND I WILL REPRESENT TO YOU THAT IT'S CHECKED IN OTHER
20 SITUATIONS, BUT MY QUESTION FOR YOU IS THAT IF YOU -- UNDER
21 FACTOR 1 IF YOU CONCLUDED THAT USE OF A PARTICULAR WORK WAS
22 NECESSARY TO ACHIEVE YOUR INTENDED EDUCATIONAL PURPOSE, GO TO
23 THE NEXT PAGE AGAIN, WOULD IT BE FAIR TO SAY THAT YOU WOULD
24 ALSO IN ALMOST ALL CIRCUMSTANCES CONCLUDE THAT USE OF THE WORK
25 WAS IMPORTANT TO EDUCATIONAL OBJECTIVES?

1 A. YES.

2 Q. SO UNDER FACTOR 2 IT WAS THREE, ZERO IN FAVOR OF FAIR USE;
3 IS THAT CORRECT?

4 A. CORRECT.

5 Q. NOW FACTOR 3 IS AMOUNT AND SUBSTANTIALITY OF PORTION USED,
6 AND YOU CHECKED THE FIRST BOX FOR SMALL PORTION OF WORK USED;
7 DO YOU SEE THAT?

8 A. YES.

9 Q. NOW PRIOR TO THE ADOPTION OF THE NEW POLICY AT GEORGIA
10 STATE, IT WAS YOUR UNDERSTANDING OF COPYRIGHT LAW THAT YOU WERE
11 PERMITTED TO USE NOT MORE THAN 20 PERCENT OF A WORK?

12 A. CORRECT.

13 Q. IF YOU USED MORE THAN 20 PERCENT, IT WAS A PROBLEM, BUT
14 YOU COULD USELESS THAN 20 PERCENT; IS THAT CORRECT?

15 A. CORRECT.

16 Q. AND THAT WAS SOMETHING YOU'D PICKED UP OVER THE YEARS AS
17 AN EDUCATOR?

18 A. YES, AND ALSO WHEN I WAS AT UGA, I GAVE SOME WORK TO THE
19 LIBRARY AND THEY RETURNED IT AND TOLD ME, NO, WE COULDN'T DO IT
20 BECAUSE IT WAS OVER 20 PERCENT.

21 Q. SO THAT'S HOW YOU KIND OF PICKED UP THAT 20 PERCENT
22 THRESHOLD UNDERSTANDING?

23 A. CORRECT.

24 Q. AND WHEN YOU DEVELOP SYLLABI FOR YOUR COURSES AND READING
25 MATERIALS YOU WERE GUIDED BY THAT 20 PERCENT CONCEPT?

1 A. PRIOR TO THIS?

2 Q. PRIOR TO THE NEW POLICY?

3 A. YES.

4 Q. DO YOU UNDERSTAND AN ANTHOLOGY TO BE A COLLECTION OF WORKS
5 GENERALLY BY DIFFERENT AUTHORS COLLECTED BY AN EDITOR INTO A
6 SINGLE PUBLICATION?

7 A. YES.

8 Q. IN THE CASE OF AN ANTHOLOGY WHERE YOU HAVE WORKS BY
9 DIFFERENT AUTHORS, FOR PURPOSES OF DETERMINING THE PERCENTAGE
10 YOU'VE ALWAYS CONSIDERED THE ENTIRE BOOK AS A WHOLE; IS THAT
11 CORRECT?

12 A. CORRECT.

13 Q. SO IF UNDER THE OLD POLICY IF THE WORK WAS A THOUSAND
14 PAGES, YOU UNDERSTOOD THAT YOU COULD USE A MAXIMUM OF 200 PAGES
15 OR MAYBE A 199 TO BE UNDER THE 20 PERCENT THRESHOLD?

16 A. CORRECT.

17 Q. IN YOUR SESSION WITH MS. HALL THAT YOU'VE TESTIFIED TO YOU
18 WERE INTERESTED IN THAT 20 PERCENT GUIDELINE THAT YOU HAD BEEN
19 USING PRIOR TO ADOPTION OF THE NEW POLICY; IS THAT CORRECT?

20 A. CORRECT.

21 Q. AND YOUR TAKEAWAY FROM YOUR SESSION WITH MS. HALL WAS THAT
22 TO BE SAFE YOU SHOULD PERHAPS KEEP THE PERCENTAGE USE OF A WORK
23 TO SINGLE DIGITS; IS THAT CORRECT?

24 A. THE CONVERSATION WAS ALONG THE LINES OF I ASKED HER WHAT
25 IT SHOULD BE, AND SHE SAID UNDER 15 PERCENT TO BE SAFE, AND I

1 SAID TO BE REALLY SAFE THEN SHOULD I BE UNDER TEN, AND SHE SAID
2 IF YOU WANT TO BE SUPER SAFE THAT MIGHT BE A GOOD IDEA BUT
3 THERE WAS NO LAW THAT ACTUALLY DICTATED THE EXACT PERCENTAGE.

4 Q. SO YOUR UNDERSTANDING WAS THERE WAS NO HARD AND FAST RULE
5 THAT DICTATED WHAT THE PERCENTAGE SHOULD BE, AND THAT
6 UNDERSTANDING WAS GAINED FROM YOUR SESSION WITH MS. HALL,
7 CORRECT?

8 A. CORRECT.

9 Q. AND MS. HALL INDICATED WELL TO BE SAFE KEEP PERHAPS KEEP
10 IT UNDER 15 PERCENT, CORRECT?

11 A. YES, TO BE SUPER SAFE.

12 Q. AND THEN YOU SAID TO BE SUPER SAFE LET'S USE 10 PERCENT?

13 A. YES, SO THAT BECAME MY GOAL.

14 Q. AM I CORRECT THAT IN -- SUBSEQUENT TO THE NEW POLICY IT
15 HAS ALWAYS BEEN YOUR PRACTICE NOT TO USE MORE THAN 10 PERCENT
16 OF A PARTICULAR WORK?

17 A. YES.

18 Q. SO I TAKE IT YOU CHECKED THE BOX FOR SMALL PORTION OF WORK
19 USED BASED ON THE GUIDANCE THAT YOU HAD RECEIVED FROM MS. HALL?

20 A. CORRECT.

21 Q. AND WAS THAT -- AND DID YOU ACTUALLY CALCULATE, USE THE
22 MATH FOR CALCULATING THIS PARTICULAR CHAPTER OF 92 PAGES --
23 HOW MANY PAGES ARE IN THE BOOK IN THE SAGE HANDBOOK THIRD
24 EDITION?

25 A. 1210.

1 Q. SO YOU KNEW THAT USING 32 PAGES YOU WERE SAFE?

2 A. YES.

3 Q. AND THAT NUMBER THE 1210 THAT YOU READ, DOES THAT INCLUDE
4 THE INDEX?

5 A. THAT'S THE LAST NUMBER IN THE BOOK.

6 Q. SO IT INCLUDES ALL THE AFTER NOTES AND INDICES IN THE
7 BOOK?

8 A. CORRECT.

9 Q. AND YOU ALSO CHECKED THE BOX FOR PORTION USED AS NOT
10 CENTRAL OR SIGNIFICANT TO ENTIRE WORK AS A WHOLE; IS THAT
11 CORRECT?

12 A. CORRECT.

13 Q. AND I TAKE IT YOU DIDN'T -- IN MAKING THAT DETERMINATION
14 IT WAS NOT BASED ON THE INDIVIDUAL WORK BY THE TWO EDITORS OF
15 THE BOOK, BUT INSTEAD WAS BASED ON THE BOOK IN ITS ENTIRETY?

16 A. YES, I CONSIDER THIS WHOLE THING AS THE WORK, YES.

17 Q. EVEN THOUGH THE INTRODUCTORY CHAPTER OF THAT BOOK IS THE
18 ONLY PORTION OF THE BOOK AUTHORED BY THE TWO EDITORS; IS THAT
19 CORRECT?

20 A. CORRECT.

21 Q. AND YOU ALSO CHECKED AMOUNT TAKEN IS NARROWLY TAILORED TO
22 EDUCATIONAL PURPOSE SUCH AS CRITICISM, COMMENT, RESEARCH OR
23 SUBJECT BEING TAUGHT?

24 A. CORRECT.

25 Q. AND BASED ON YOUR CHECKING THAT FACTOR, IT WAS AGAIN THREE

1 ZIP IN FAVOR OF FAIR USE; IS THAT CORRECT?

2 A. CORRECT.

3 Q. NOW FACTOR 4 IS EFFECT ON MARKET FOR ORIGINAL, AND I
4 BELIEVE YOU HAD A QUESTION FOR MS. HALL ABOUT THE FOURTH FACTOR
5 EFFECT ON MARKET FOR ORIGINAL?

6 A. REMIND WHAT IT WAS?

7 Q. OKAY. AM I CORRECT YOU CONSIDERED THIS FACTOR TO BE
8 EXTREMELY SUBJECTIVE?

9 A. PERHAPS. I DON'T REMEMBER.

10 MR. KRUGMAN: OKAY. LET ME REFRESH YOUR
11 RECOLLECTION. IF I MAY APPROACH, YOUR HONOR?

12 THE COURT: YOU MAY.

13 BY MR. KRUGMAN:

14 Q. DR. KAUFMANN, I'VE HANDED YOU A COPY OF THE DEPOSITION
15 THAT WAS TAKEN IN THIS CASE ON MAY 6TH, 2009 --

16 A. UH-HUH (AFFIRMATIVE).

17 Q. -- AND YOU RECALL THAT YOU WERE UNDER OATH IN THAT
18 DEPOSITION THE SAME AS YOU ARE TODAY?

19 A. UH-HUH (AFFIRMATIVE).

20 Q. I WOULD ASK THAT YOU TURN TO PAGE 57 AT LINES 12 TO 14.

21 (EXCERPT OF VIDEOTAPED DEPOSITION WAS PLAYED IN OPEN
22 COURT.)

23 BY MR. KRUGMAN:

24 Q. IN FACT YOU CONSIDERED THAT VERY SUBJECTIVE, CORRECT?

25 A. YES, EVIDENTLY.

1 Q. NOW, YOU DETERMINED THAT CERTAIN WORKS BECAUSE OF THEIR
2 COSTS WOULD BE RESISTED IN TERMS OF A PURCHASE BY STUDENTS; IS
3 THAT CORRECT?

4 A. CORRECT.

5 Q. AND YOU FELT THAT STUDENTS WOULD BE UPSET BY THE COST OF
6 PURCHASING AN ENTIRE BOOK?

7 A. YES.

8 Q. AND YOU FELT STUDENTS IN AN INTRODUCTORY CLASS DIDN'T HAVE
9 TO READ THE ENTIRE BOOK, FOR EXAMPLE THE SAGE HANDBOOK ON
10 QUALITATIVE RESEARCH?

11 A. CORRECT.

12 Q. AND IN YOUR DISCUSSIONS WITH MS. HALL, I THINK YOU
13 INDICATED TO HER ESSENTIALLY THAT WELL, IF YOU DIDN'T INCLUDE
14 THE READING THERE WOULD BE NO PROBABILITY THE STUDENTS WOULD
15 BUY IT; IS THAT CORRECT?

16 A. CORRECT, I BELIEVE THAT IF I DID NOT INTRODUCE THEM TO THE
17 SAGE HANDBOOK THEY WOULD NOT EVEN KNOW IT EXISTED.

18 Q. YEAH AND THAT'S SOMETHING YOU DISCUSSED WITH MS. HALL,
19 CORRECT?

20 A. DID I DISCUSS THAT WITH MS. HALL? IF YOU SAY SO, I
21 BELIEVE YOU, YES. I MEAN THAT WAS TWO YEARS AGO.

22 Q. AND I TOTALLY UNDERSTAND, AND I DON'T WANT TO PUT WORDS IN
23 YOUR MOUTH, BUT IF YOU CAN TURN TO PAGE 57, AND FROM 57
24 BEGINNING AT LINE 12 THROUGH LINE 25 WHICH ARE ACTUALLY TWO
25 CLIPS.

1 (EXCERPT OF VIDEOTAPED DEPOSITION WAS PLAYED IN OPEN
2 COURT.)

3 BY MR. KRUGMAN:

4 Q. DOES THAT REFRESH --

5 A. YES.

6 (EXCERPT OF VIDEOTAPED DEPOSITION WAS PLAYED IN OPEN
7 COURT.)

8 BY MR. KRUGMAN:

9 Q. AND THAT WAS THE RESPONSE FROM MS. HALL; IS THAT CORRECT?

10 A. CORRECT.

11 Q. NOW YOU UNDERSTAND THAT APART FROM PURCHASING A BOOK
12 UNIVERSITIES AND FACULTY MEMBERS MAY PAY PERMISSION FEES FOR
13 LICENSING EXCERPTS OF A BOOK, CORRECT?

14 A. YES.

15 Q. AND ONE OF THE CHECKLIST FACTORS UNDER FACTOR 4 ON THE
16 RIGHT IS LICENSING OR PERMISSION REASONABLY AVAILABLE; DO YOU
17 SEE THAT?

18 A. YES.

19 Q. NOW WHEN YOU WENT THROUGH THE CHECKLIST FOR FACTOR 4, YOU
20 DID NOT GIVE ANY CONSIDERATION TO THE AVAILABILITY OF LICENSING
21 FOR ONE OR MORE OF THE WORKS THAT YOU WERE ASSIGNING TO
22 STUDENTS IN YOUR CLASS AS REQUIRED READING, CORRECT?

23 A. NO, THAT'S NOT QUITE CORRECT. TO ME THAT WASN'T A
24 QUESTION BECAUSE IT PASSED THE FAIR USE. IF IT HAD -- IF IT
25 WAS FAIR USE, I DID NOT NEED TO DECIDE IF I COULD GET

1 LICENSING.

2 Q. BUT THE AVAILABILITY OF LICENSING WAS ONE OF THE FACTORS,
3 ONE OF THE SUBFACTORS FOR DETERMINING WHETHER FAIR USE
4 EXISTED. SO MY QUESTION IS, LET ME REPEAT, WHEN YOU WENT
5 THROUGH THE CHECKLIST INCLUDING FACTOR 4, YOU GAVE NO
6 CONSIDERATION TO THE AVAILABILITY OF LICENSING FOR ONE OR MORE
7 OF THE WORKS YOU'RE OFFERING FOR YOUR COURSES, CORRECT?

8 A. NOT QUITE. MY UNDERSTANDING IS THAT THAT'S NOT TRUE.
9 BECAUSE IF IT'S PASSING THE FAIR USE, THE LICENSING IS NOT A
10 QUESTION FOR ME. SO THAT'S NOT BLATANTLY NOT CONSIDERING IT.
11 BY THE TIME I GOT TO THAT, I'VE ALREADY PASSED THE FAIR USE
12 TEST.

13 Q. IF YOU COULD TURN BACK TO YOUR DEPOSITION, DR. KAUFMANN,
14 AT PAGE 65 BEGINNING ON LINE 23 AND CARRYING OVER TO PAGE 66
15 LINE 2?

16 A. UH-HUH (AFFIRMATIVE).

17 Q. AND WE'LL LISTEN TO YOUR TESTIMONY.

18 (EXCERPT OF VIDEOTAPED DEPOSITION WAS PLAYED IN OPEN
19 COURT.)

20 BY MR. KRUGMAN:

21 Q. I BELIEVE THAT WAS TRUE THEN?

22 MR. HARBIN: EXCUSE ME, IN THE RULE OF COMPLETENESS
23 MAY I ASK THAT THE NEXT QUESTION AND ANSWER AT PAGE 66 LINES 3
24 TO 8 BE READ?

25 MR. KRUGMAN: YEAH, I'LL BE HAPPY.

1 THE COURT: ALL RIGHT.

2 MR. KRUGMAN: IT GOES ON TO SAY AND WAS THAT
3 SOMETHING THAT JUST DIDN'T OCCUR TO YOU OR YOU DIDN'T FEEL IT
4 RELEVANT OR WHAT, AND THAT WAS THAT THE QUESTION. THEN THE
5 ANSWER NO, I THOUGHT ABOUT IT. THE REASON I DID NOT WAS
6 BECAUSE IT WAS MY UNDERSTANDING THAT IF IT CAME OUT AS FAIR USE
7 ACCORDING TO THE CHECKLIST THEN I DIDN'T NEED TO GO THERE.

8 BY MR. KRUGMAN:

9 Q. NOW, YOU DID NOTHING TO INVESTIGATE WHETHER PERMISSION WAS
10 AVAILABLE TO USE THE INTRODUCTORY CHAPTER OF THE SAGE HANDBOOK;
11 IS THAT CORRECT?

12 A. I DID NOT NEED TO DO THAT IN MY UNDERSTANDING BECAUSE IT
13 PASSED THE FAIR USE TEST.

14 Q. AND THE REASON YOU SAID IT PASSED THE FAIR USE TEST --
15 ISN'T IT TRUE THAT YOU KNEW BY THE TIME YOU GOT TO FACTOR 4
16 THAT YOU ALREADY HAD THREE FACTORS WEIGHING IN FAVOR OF FAIR
17 USE?

18 A. NO, THAT ONCE -- THAT QUESTION ASKS ME TO GO OUTSIDE AND
19 DO EXTRA WORK. SO IF I FINISHED THE CHECKLIST AND I FAILED THE
20 CHECKLIST, THEN I COULD DETERMINE THAT FACTOR, BUT IF I
21 COMPLETE THE CHECKLIST, I'M NOT GOING TO MAKE EXTRA WORK FOR
22 MYSELF AND GO FIND OUT IN LICENSING IS AVAILABLE WHEN THAT'S
23 NOT NECESSARY.

24 Q. NOW YOU'VE NEVER COMPLETED A CHECKLIST THAT FAILED THE
25 TEST, HAVE YOU?

1 A. NO, BECAUSE I ONLY COMPLETE THE CHECKLIST AFTER I'VE
2 ALREADY RUN THROUGH ALL OF THOSE IN MY MIND.

3 Q. OKAY.

4 THE COURT: LET ME ASK THIS QUESTION. AT THE BOTTOM
5 OF THE FORM THAT'S UP ON THE SCREEN, WHAT'S THIS EXHIBIT
6 NUMBER?

7 MR. KRUGMAN: IT IS --

8 MR. SCHAETZEL: PORTION OF JOINT EXHIBIT 4, YOUR
9 HONOR.

10 MR. KRUGMAN: THANK YOU.

11 MR. SCHAETZEL: I MAY HAVE MISSPOKE.

12 MR. KRUGMAN: IT'S PLAINTIFFS' EXHIBIT 576.

13 THE COURT: AT THE BOTTOM OF THE PART THAT'S UP ON
14 THE SCREEN WHICH DEALS WITH EFFECT ON THE MARKET FOR THE
15 ORIGINAL, TOWARD THE BOTTOM OF THAT I SEE A LITTLE X THAT'S
16 HALFWAY IN BETWEEN WEIGHS IN FAVOR OF AND WEIGHS AGAINST; IS
17 THAT -- DID YOU PUT THAT X ON THERE?

18 THE WITNESS: PROBABLY. I THINK I WAS JUST DOING IT
19 REALLY QUICKLY, YOUR HONOR.

20 THE COURT: DOES IT HAVE ANY SIGNIFICANCE IF YOU
21 RECALL?

22 THE WITNESS: NO, I DON'T KNOW, YOUR HONOR.

23 THE COURT: THANK YOU.

24 MR. KRUGMAN: I HADN'T NOTICED THAT.

25 BY MR. KRUGMAN:

1 Q. NOW, YOU'RE FAMILIAR WITH THE COPYRIGHT CLEARANCE CENTER?

2 A. SINCE THIS, YES, SINCE THE TRAINING.

3 Q. SINCE THE TRAINING. YOU UNDERSTAND THAT THE COPYRIGHT
4 CLEARANCE CENTER IS A COLLECTIVE LICENSING AGENCY THAT LICENSES
5 PERMISSIONS FOR THE RIGHTSHOLDERS OF COPYRIGHTED WORKS?

6 A. YES.

7 Q. AND DO YOU RECALL THAT IT'S ACTUALLY SPECIFICALLY
8 MENTIONED IN THE COPYRIGHT POLICY ITSELF?

9 A. YES.

10 Q. NONETHELESS, WHEN COMPLETING THE CHECKLIST YOU DID NOT
11 CONTACT EITHER THE PUBLISHER SAGE OR THE COPYRIGHT CLEARANCE
12 CENTER TO DETERMINE WHETHER LICENSING OR PERMISSIONS WAS
13 REASONABLY AVAILABLE; IS THAT CORRECT?

14 A. BECAUSE IT HAD PASSED THE FAIR USE TEST I DID NOT NEED TO
15 DO THAT.

16 Q. OKAY. YOU CHECKED THE BOX FOR NO SIGNIFICANT EFFECT ON
17 MARKET OR POTENTIAL MARKET FOR COPYRIGHTED WORK. AM I CORRECT
18 THERE THAT THE MARKET YOU CONSIDERED WAS THE MARKET FOR SALES
19 OF THE BOOK?

20 A. YES.

21 Q. YOU DID NOT CONSIDER THE PERMISSIONS MARKET, CORRECT?

22 A. CORRECT.

23 Q. IN TERMS OF THE --

24 THE COURT: LET ME ASK THIS QUESTION. WHEN SHE
25 FILLED OUT THIS FORM, WAS THIS BEFORE OR AFTER THE TRAINING

1 WITH MS. HALL?

2 THE WITNESS: AFTER, YOUR HONOR.

3 THE COURT: YOU FILLED OUT THE FORM AFTER YOU HAD HAD
4 THE TRAINING SESSION WITH MS. HALL?

5 THE WITNESS: YES, YOUR HONOR.

6 THE COURT: OKAY. THANK YOU.

7 BY MR. KRUGMAN:

8 Q. NOW IN TERMS OF THE FOURTH FACTOR, YOU GAVE NO
9 CONSIDERATION AT ALL TO THE IMPACT ON SAGE, THE PUBLISHER, OF
10 THE HANDBOOK ON QUALITATIVE RESEARCH.

11 IF EVERY PROFESSOR USING THE SAGE HANDBOOK OF
12 QUALITATIVE RESEARCH MADE THE SAME JUDGMENT THAT YOU MADE IN
13 TERMS OF THE MARKET AFFECT OF YOUR USE --

14 A. IT IS MY BELIEF THAT THAT DID NOT NEGATIVELY AFFECT SAGE.

15 IF ANYTHING, IT POSITIVELY AFFECTED SAGE BECAUSE STUDENTS
16 BECOME INTRODUCED TO THAT HANDBOOK AND ARE MORE LIKELY TO BUY
17 IT.

18 THAT'S HOW I GOT INTRODUCED AND BOUGHT SAGE WAS FROM
19 MY GRADUATE PROFESSORS ASSIGNING THOSE WORKS, AND THEN I WENT
20 OUT AND BOUGHT THE BOOK.

21 Q. NOW YOUR THINKING WAS THAT STUDENTS WOULD BE MORE LIKELY
22 TO PURCHASE THE BOOK IF YOU ASSIGNED READINGS TO THEM WITHOUT
23 PAYING A PERMISSION FEE, CORRECT?

24 A. WELL THAT'S NOT QUITE MY THINKING. I DIDN'T -- MY
25 THINKING WAS IT PASSED FAIR USE. I COULD USE THAT BECAUSE IT'S

1 FAIR USE, AND I ALSO BELIEVED THAT THAT DID NOT NEGATIVELY
2 AFFECT SAGE.

3 Q. AND THE FOCUS WAS ON SALES OF THE BOOK?

4 A. CORRECT.

5 Q. BUT YOUR THINKING WAS THAT STUDENTS WILL BE MORE LIKELY TO
6 PURCHASE THE BOOK IF YOU ASSIGNED READINGS THAN IF YOU DIDN'T,
7 CORRECT?

8 A. THAT'S TRUE.

9 Q. NOW, IF YOU BELIEVE STUDENTS AS YOU'VE TESTIFIED WOULD
10 HAVE RESISTED BUYING THE SAGE HANDBOOK ON QUALITATIVE ANALYSIS
11 BECAUSE OF ITS COST, YOU WOULD AGREE THAT IT IS EXTREMELY
12 UNLIKELY THAT ANY OF THOSE STUDENTS WOULD HAVE GONE OUT AND
13 VOLUNTARILY PURCHASED THE BOOK SIMPLY BECAUSE YOU ASSIGNED
14 PORTIONS OF IT IN YOUR CLASS?

15 A. NO, I BELIEVE THERE ARE SOME STUDENTS WHO MAY DO THAT.
16 ARE THE NUMBERS HIGH, NO, BUT IS IT POSSIBLE, VERY, YES.

17 Q. IN FACT YOU'RE NOT AWARE OF A SINGLE STUDENT EVER
18 PURCHASING A BOOK THAT YOU PROVIDED COPIES OF EXCERPTS ON
19 ERESERVE, CORRECT?

20 A. CORRECT.

21 Q. ON THE RIGHT SIDE OF THE COLUMN UNDER FACTOR 4, YOU DID
22 CHECK THE BOX FOR REQUIRED CLASSROOM READING?

23 A. CORRECT.

24 Q. BUT YOU DID NOT CHECK THE BOXES FOR REPEATED OR LONG-TERM
25 USE THAT DEMONSTRABLY AFFECTS THE MARKET FOR THE WORK, NOR DID

1 YOU CHECK THE BOX FOR NUMEROUS COPIES MADE OR DISTRIBUTED?

2 A. CORRECT.

3 Q. IN COMPLETING THE CHECKLIST WHAT DID YOU UNDERSTAND

4 REPEATED OR LONG-TERM USE TO MEAN?

5 A. USED MANY TIMES OVER A LONG PERIOD OF TIME, AND FOR ME

6 THIS WAS NOT BECAUSE IT WAS USED ONLY FOR A SEMESTER.

7 Q. OKAY. SO YOU'RE USING IT FOR THIS SEMESTER, SO IT

8 WOULDN'T COME UNDER REPEATED OR LONG-TERM USE?

9 A. CORRECT.

10 Q. BUT IF YOU WERE TO USE IT FOR NUMEROUS SEMESTERS, THEN IT

11 WOULD, CORRECT?

12 A. THAT'S NOT HOW I UNDERSTOOD IT, NO.

13 Q. EXCUSE ME, I DIDN'T UNDERSTAND --

14 A. THAT'S NOT HOW I UNDERSTOOD IT, NO.

15 Q. WOULD ASSIGNING AND PROVIDING DIGITAL COPIES OF A WORK

16 OVER, LET'S SAY, THREE YEARS AND FIVE DIFFERENT SEMESTERS IN

17 YOUR VIEW CONSTITUTE REPEATED OR LONG-TERM USE?

18 A. I HAVE BEEN THINKING ABOUT IT IN TERMS OF EACH SEMESTER

19 BEING ONE TIME. BECAUSE EACH TIME I HAVE TO REDO THE CHECKLIST

20 AND RESUBMIT THEM TO ERESERVES, SO THE PROCESS STARTS OVER. SO

21 TO ME THAT'S A BEGINNING AND AN END OF THAT USAGE.

22 Q. OKAY. SO YOU DIDN'T TAKE INTO ACCOUNT WHAT YOU HAD DONE

23 IN THE PRIOR SEMESTERS THAT YOU TAUGHT THIS 8500 COURSE IN

24 CONNECTION WITH COMPLETING THE FAIR USE CHECKLIST, CORRECT?

25 A. I DID NOT THINK THAT WAS REPEATED OR LONG-TERM USE THAT

1 NEGATIVELY AFFECTS THE MARKET. AS I'VE ALREADY TOLD YOU, I
2 THOUGHT THAT, IF ANYTHING, THAT WOULD POSITIVELY AFFECT SAGE.
3 Q. NOW YOU'VE TAUGHT THIS COURT SINCE YOU BEGAN TEACHING AT
4 GEORGIA STATE?

5 A. CORRECT.

6 Q. AND IT'S BEEN OFFERED TWICE A YEAR BY YOU, CORRECT?

7 A. YES.

8 MR. KRUGMAN: YOUR HONOR, I WANT TO -- I KNOW THAT WE
9 HAD THE JUDGE'S IN LIMINE, BUT I WANT TO JUST QUICKLY GO
10 THROUGH THIS WITH THIS WITNESS SHOWING THAT THIS WORK HAD BEEN
11 ASSIGNED REPEATEDLY IN PRIOR SEMESTERS OF THE COURSE TO
12 DEMONSTRATE --

13 THE COURT: CAN'T YOU JUST MAKE A PROFFER?

14 MR. KRUGMAN: I CERTAINLY CAN, AND THEN WE CAN -- IF
15 I CAN GET THE UNDERLYING DOCUMENTS INTO EVIDENCE I THINK --
16 WE'LL SEE IF THEY COME IN, BUT I'LL MAKE A PROFFER FIRST.

17 THE COURT: ALL RIGHT.

18 MR. KRUGMAN: AND THEN I WILL MOVE FOR THEIR
19 ADMISSION, AND THEN OBVIOUSLY YOUR HONOR WILL RULE.

20 PLAINTIFFS' EXHIBIT 806 IS THE SYLLABUS FOR THE 8500
21 COURSE FOR THE SPRING SEMESTER OF 2007, AND THERE ARE
22 APPROXIMATELY 15 STUDENTS IN THE CLASS, AND IF YOU GO TO PAGE
23 4, SESSION 2 -- I'M SORRY, GO TO SESSION 2, GO TO PAGE 8, I'M
24 SORRY, OF SESSION 2 THAT SHE ASSIGNED BASICALLY THE SAME
25 INTRODUCTORY CHAPTER FROM THE SAGE HANDBOOK AND COPIES OF THAT

1 WERE PROVIDED ON ERESERVE TO STUDENTS.

2 IF YOU GO TO PLAINTIFFS' EXHIBIT 804, AND THIS IS THE
3 SYLLABUS FOR EPRS 8500 FOR MAYMESTER 2007. BASED ON EXHIBIT
4 996 THERE WERE 15 STUDENTS WHO TOOK THIS COURSE, AND IF YOU GO
5 TO PAGE 8 OF PLAINTIFFS' EXHIBIT 804 FOR SESSION 2 PROFESSOR
6 KAUFMANN ASSIGNED THE SAME CHAPTER, THE INTRODUCTORY CHAPTER
7 FROM THE SAGE HANDBOOK.

8 PLAINTIFFS' EXHIBIT 723 WHICH IS THE SYLLABUS FOR THE
9 8500 COURSE FOR THE FALL OF 2007, AND IF YOU BRING UP EXHIBIT
10 997, PLAINTIFFS' EXHIBIT 997, IT SHOWS THERE WERE ACTUALLY TWO
11 SECTIONS OF THE COURSE THAT SEMESTER. IT'S KIND OF HARD TO
12 READ, BUT ONE ON THE MAIN CAMPUS AND ONE OFF CAMPUS --

13 THE COURT: I DON'T THINK YOU NEED ALL THIS DETAIL IN
14 YOUR PROFFER, DO YOU?

15 MR. KRUGMAN: IT'S JUST IN TERMS OF THE SHEAR NUMBER
16 OF STUDENTS. I'LL GO QUICKLY THROUGH THIS. WELL, THERE WERE
17 20 STUDENTS FOR THIS ON CAMPUS COURSE AND 27 OFF CAMPUS.

18 AND THEN GO TO PAGE 7 OR PLAINTIFFS' EXHIBIT 723 FOR
19 SESSION 2, THE SAME DENZIN AND LINCOLN WORK CHAPTER 1 OF THE
20 SAGE HANDBOOK WAS ASSIGNED AND COPIES WERE PROVIDED TO THE 47
21 STUDENTS WHO TOOK IT THAT SEMESTER.

22 WE DON'T SEEM TO HAVE A COPY OF THE SYLLABUS FOR THE
23 8500 COURSE FOR THE 2008 MAYMESTER. PLAINTIFFS' EXHIBIT 998
24 SHOWS THAT THE COURSE WAS TAKEN THAT SEMESTER, AND MY PROFFER
25 WOULD BE WITH DR. KAUFMANN TO ACKNOWLEDGE THAT SHE TAUGHT THE

1 COURSE THAT SEMESTER AND ALSO USED THE INTRODUCTORY CHAPTER
2 FROM THE SAGE HANDBOOK AS SHE HAD USED IN THE PREVIOUS
3 SEMESTERS THAT SHE TAUGHT IT.

4 PLAINTIFFS' EXHIBIT 803, THIS IS THE SYLLABUS FOR THE
5 8500 COURSE FOR THE FALL OF 2008. PLAINTIFFS' EXHIBIT 999
6 WOULD SHOW TWO SECTIONS, AGAIN 21 STUDENTS ON MONDAYS, 14 ON
7 WEDNESDAYS, AND IF YOU GO BACK TO 803 TO PAGE 7 FOR SESSION 2
8 THERE YOU SEE THE SAME DENZIN AND LINCOLN WORK CHAPTER 1 OF THE
9 SAGE HANDBOOK.

10 AND THE PROFFER IS THAT AT THE TIME THAT SHE
11 COMPLETED THE CHECKLIST FOR THE MAYMASTER OF THIS COURSE SHE
12 HAD TAUGHT THIS CLASS OVER THREE YEARS TO APPROXIMATELY SIX OR
13 SEVEN DIFFERENT SECTIONS TO APPROXIMATELY 157 STUDENTS WHO HAD
14 TAKEN THE COURSE OVER THOSE YEARS, AND IT WAS THAT AND MANY OF
15 THE OTHER WORKS THAT I'LL BE GETTING TO IN A BIT WERE ALL
16 ASSIGNED TO STUDENTS FROM THE SAGE HANDBOOKS AND OTHER
17 MATERIALS FOR EACH AND EVERY ONE OF THOSE PRIOR SEMESTERS AND
18 COPIES HAD BEEN PROVIDED TO THE 157 STUDENTS WHO TOOK IT, AND
19 WE THINK THAT, A, DEMONSTRATES -- NUMBER 1, DEMONSTRATES
20 REPEATED AND LONG-TERM USE AND --

21 THE COURT: I THINK I'M JUST LOOKING FOR A FACTUAL
22 PROFFER FROM YOU WHICH I CAN EITHER ACCEPT OR REJECT. HAVEN'T
23 YOU ABOUT COVERED IT?

24 MR. KRUGMAN: I THINK I HAVE. THAT THIS AND OTHER
25 WORKS IS REFLECTED ON THE EXHIBITS THAT WE WOULD OFFER INTO

1 EVIDENCE SHOW THAT THE WORKS AT ISSUE IN THIS LITIGATION WERE
2 PROVIDED OR WERE USED BY PROFESSOR KAUFMANN AND COPIES PROVIDED
3 TO STUDENTS ON ERESERVE FOR SEVERAL SEMESTERS PRIOR TO THE
4 MAYMASTER OF 2009 AND WITHOUT HER --

5 THE COURT: ANY REASON WHY I SHOULD NOT ACCEPT THAT
6 FACTUAL PROFFER TO THE EXTENT THAT IT IS FACTUAL?

7 MR. HARBIN: YOUR HONOR, WE WOULD JUST MAINTAIN OUR
8 OBJECTIONS, AND UNDER THE COURT'S RULING IT'S IRRELEVANT --

9 THE COURT: I UNDERSTAND THAT AND THAT'S WHY WE'RE
10 DOING IT AS A PROFFER. THEY CONTEND IT HAS SOME RELEVANCE IN
11 DETERMINING EFFECT ON THE MARKET, AND I'VE RULED OUT THE STUFF
12 THAT CAME BEFORE THE POLICY. SO I'M RULING THIS OUT, TOO.
13 I'LL ACCEPT THE PROFFER, BUT I WILL NOT ADMIT INTO EVIDENCE THE
14 EXHIBITS THAT YOU JUST ENUMERATED.

15 MR. KRUGMAN: LET ME MAKE SURE -- I'LL PROVIDE A LIST
16 OF ALL THE EXHIBITS WITHOUT GOING THROUGH THEM NOW TO MAKE SURE
17 THAT ALL WERE COVERED IN THE NOTEBOOK.

18 THE COURT: OKAY.

19 I THINK THIS MIGHT BE A GREAT PLACE FOR A LUNCH
20 BREAK. LET'S TAKE A LUNCH BREAK UNTIL 1:45.

21 (NOON RECESS)

22 THE COURT: YOU MAY PROCEED.

23 BY MR. KRUGMAN:

24 Q. GOOD AFTERNOON. THE INTRODUCTORY CHAPTER TO THE SAGE
25 HANDBOOK WAS NOT THE ONLY PORTION OF THE THIRD EDITION THAT WAS

1 ASSIGNED TO STUDENTS FOR THE MAYMESTER 2009 8500 COURSE; IS
2 THAT CORRECT?
3 A. THAT'S CORRECT.
4 Q. IF YOU COULD PLEASE TURN BACK TO PLAINTIFFS' EXHIBIT 516
5 AND YOU SHOULD HAVE A LOOSE COPY OF THAT AND THIS IS THE
6 SYLLABUS FOR THE COURSE, AND IF YOU'LL TURN TO PAGE 8, GOING TO
7 PAGE 8 OF THAT SESSION 7 WHICH WAS ON MAY 20TH YOU ASSIGNED
8 PAGES 443 TO 465 OF A WORK AUTHORED BY STAKE ENTITLED
9 QUALITATIVE CASE STUDIES; IS THAT CORRECT?
10 A. YES.
11 Q. AND IF YOU LOOK AT THE BOOK TO THE TABLE OF CONTENTS WHICH
12 IS EXHIBIT 267, AM I CORRECT THAT THOSE PAGES REPRESENT CHAPTER
13 17 OF THE HANDBOOK?
14 A. YES.
15 Q. AND THAT IS THE ONLY WORK IN THE HANDBOOK AUTHORED BY
16 ROBERT STAKE, CORRECT?
17 A. CORRECT.
18 Q. AND YOU USED THAT ENTIRE CHAPTER AND HAD COPIES OF THAT
19 CHAPTER PROVIDED TO STUDENTS ON ERESERVE, CORRECT?
20 A. CORRECT.
21 Q. PLAINTIFFS' EXHIBIT 579, CAN YOU IDENTIFY THIS AS THE
22 CHECKLIST THAT YOU COMPLETED FOR THIS WORK IN CONJUNCTION WITH
23 REQUESTING THAT A COPY BE PROVIDED TO STUDENTS ON ERESERVE?
24 A. YES.
25 Q. IF YOU'LL SCROLL DOWN TO THE BOTTOM, IN THIS INSTANCE YOU

1 DID CHECK THE BOX FOR NONTRANSFORMATIVE UNDER FACTOR 1,
2 CORRECT?

3 A. CORRECT.

4 Q. AND YOU, NONTHELESS, STILL CONCLUDED THAT IT WAS WEIGHED
5 IN FAVOR OF FAIR USE BECAUSE IT WAS NONPROFIT EDUCATIONAL
6 TEACHING AT GEORGIA STATE, CORRECT?

7 A. CORRECT.

8 Q. AND JUST FLIP THE PAGE TO THE NEXT OF PAGE PX-579, FACTOR
9 2 WAS FILLED IN THE SAME AS THE PREVIOUS FAIR USE CHECKLIST,
10 CORRECT?

11 A. CORRECT.

12 Q. FACTOR 3 FOR AMOUNT AND SUBSTANTIALITY OF PORTION OF WORK
13 USED, YOU'VE SAID SMALL PORTION OF WORK USED, AND AS I
14 UNDERSTAND IT, THE PERCENTAGE CALCULATION WAS BASED ON THE
15 ENTIRE BACK EVEN THOUGH YOU WERE PROVIDING A COPY OF THE ENTIRE
16 WORK BY STAKE; IS THAT CORRECT?

17 A. CORRECT.

18 Q. AND YOU AGAIN CHECKED PORTION USED IS NOT CENTRAL OR
19 SIGNIFICANT TO WORK AS A WHOLE; DO YOU SEE THAT?

20 A. CORRECT.

21 Q. NOW, DID YOU IN CHECKING THOSE TWO BOXES CONSIDER THAT YOU
22 WERE ALSO ASSIGNING STUDENTS OTHER PORTIONS OF THE SAGE
23 HANDBOOK OR WERE YOU FOCUSED ON THIS PARTICULAR READING?

24 A. IN TERMS OF SMALL PORTION, THAT DEFINITELY HAS TO DO WITH
25 THE WHOLE. SO FOR ME ALL OF THE CHAPTERS FROM SAGE ONE EDITION

1 WERE -- I TRIED TO THE BEST OF MY ABILITY TO KEEP IT TO 10
2 PERCENT OR LESS.

3 THE COURT: COULD I JUST HAVE A LOOK AT THE SAGE
4 HANDBOOK; CAN YOU JUST HAND IT UP TO ME?

5 MR. KRUGMAN: IF I MAY APPROACH?

6 THE COURT: OKAY.

7 MR. KRUGMAN: I DIDN'T WANT TO OFFEND THE PROFESSOR,
8 BUT I HAVEN'T READ IT.

9 THE WITNESS: SO SAD.

10 MR. KRUGMAN: I DON'T THINK IT'S LIGHT BEDTIME
11 READING.

12 THE COURT: I WON'T GET TOO FOCUSED ON IT.

13 BY MR. KRUGMAN:

14 Q. SO FOR THE SMALL PORTION OF WORK USED, THE PERCENTAGE WAS
15 THE ENTIRE BOOK?

16 A. CORRECT.

17 Q. OKAY. BUT FOR THE PORTION USED IS NOT CENTRAL OR
18 SIGNIFICANT TO THE ENTIRE WORK AS A WHOLE, AM I CORRECT THAT
19 FOR THAT DETERMINATION YOU'RE LOOKING AT -- YOU'RE CONSIDERING
20 THE SPECIFIC READING ASSIGNMENT TO THE STUDENTS --

21 A. CORRECT.

22 Q. -- IN THIS CASE THE STAKE WORK?

23 A. YES.

24 Q. AND HERE YOU ALSO CHECKED AMOUNT TAKEN IS NARROWLY
25 TAILORED TO EDUCATIONAL PURPOSE SUCH AS CRITICISM, ET CETERA.

1 AM I CORRECT FOR PURPOSES OF CHECKING THAT BOX YOU WERE LOOKING
2 AT THE INDIVIDUAL WORK BY STAKE AND NOT THE OTHER WORKS THAT
3 YOU WERE ASSIGNING TO STUDENTS FROM THE HANDBOOK?

4 A. CORRECT.

5 Q. GOING DOWN TO THE FACTOR 4 ANALYSIS IN THIS EXHIBIT, IT
6 WAS I THINK LARGEMLY, IF NOT IDENTICAL, TO THE FACTOR 4 ANALYSIS
7 THAT WE LOOKED AT IN EXHIBIT 576; IS THAT CORRECT?

8 A. CORRECT.

9 Q. AND JUST SO I UNDERSTAND, WITH RESPECT TO NUMEROUS COPIES
10 MADE OR DISTRIBUTED AND REPEATED OR LONG-TERM USE, THOSE BOXES
11 THAT -- IN DECIDING NOT TO CHECK THOSE BOXES, YOU WERE FOCUSED
12 ON THIS PARTICULAR SEMESTER RATHER THAN PRIOR SEMESTERS IN
13 WHICH YOU MAY HAVE OFFERED THIS COURSE --

14 A. CORRECT.

15 Q. -- AND ASSIGNED THE READINGS, CORRECT?

16 A. CORRECT.

17 Q. BACK TO PLAINTIFFS' EXHIBIT 516, PAGE 9 OF THE SYLLABUS,
18 FOR SESSION 10 ON MAY 27TH YOU ASSIGNED ANOTHER CHAPTER OF THE
19 SAGE HANDBOOK AS REQUIRED READING PAGES 651 TO 679; IS THAT
20 CORRECT?

21 A. CORRECT.

22 Q. AND THIS WORK WAS AUTHORED BY CHASE AND IS ENTITLED
23 NARRATIVE INQUIRY, MULTIPLE LENS, APPROACHES, VOICES; IS THAT
24 CORRECT?

25 A. CORRECT.

1 Q. AND EXHIBIT 267, AND WE'LL JUST BRING THIS UP ON THE
2 SCREEN, IS THE TABLE OF CONTENTS OF THE HANDBOOK, AND AM I
3 CORRECT THAT THOSE PAGES REPRESENT THE ENTIRETY OF CHAPTER 25
4 OF THE HANDBOOK?

5 A. CORRECT.

6 Q. AND THAT WORK BY CHASE IS THE ONLY WORK IN THE HANDBOOK
7 AUTHORED BY HER, CORRECT?

8 A. I BELIEVE SO, BUT I'M NOT CERTAIN.

9 Q. I'LL REPRESENT TO YOU THAT AT LEAST I'VE LOOKED AT TABLE
10 OF CONTENTS --

11 A. I BELIEVE YOU.

12 Q. AND IF YOU'LL GO TO BRING UP EXHIBIT 580, AND IS THIS THE
13 CHECKLIST THAT YOU COMPLETED FOR THIS WORK?

14 A. YES.

15 Q. AND LOOK AT IT QUICKLY, AND, AGAIN, THIS CHECKLIST IS
16 FILLED OUT IDENTICALLY TO THE OTHER CHECKLIST PERHAPS WITH THE
17 MINOR OMISSION WHERE YOU FAILED TO CHECK SOMETHING; IS THAT
18 CORRECT?

19 A. CORRECT.

20 Q. AND COPIES OF THAT WORK WERE PROVIDED ON ERESERVE TO THE
21 STUDENTS WHO HAD TAKEN -- WHO TOOK THIS CLASS, CORRECT?

22 A. CORRECT.

23 Q. AND THIS IS THE LAST TIME I'LL ASK THIS ONE. JUST TO
24 CONFIRM YOU DIDN'T CONSIDER THE FACT THAT THIS WORK HAD BEEN
25 MADE AVAILABLE TO STUDENTS IN PREVIOUS SEMESTERS IN DETERMINING

1 WHETHER NUMEROUS COPIES HAD BEEN MADE OR DISTRIBUTED OR

2 REPEATED OR LONG-TERM USE HAD OCCURRED?

3 A. CORRECT.

4 Q. RETURNING TO PLAINTIFFS' EXHIBIT 516 AND THIS IS FOR THE

5 SAME CLASS ON MAY 27TH, THERE IS A WORK BY PLUMMER CRITICAL

6 HUMANISM AND QUEER THEORY, LIVING WITH THE TENSIONS, AT PAGES

7 357 TO 375, AND BRING UP EXHIBIT 267 WHICH IS THE TABLE OF

8 CONTENTS FOR THE HANDBOOK, AND AM I CORRECT THAT THOSE PAGES

9 REPRESENT CHAPTER 14 OF THE HANDBOOK --

10 A. YES.

11 Q. -- AND IS THE ONLY PORTION OF THE HANDBOOK AUTHORED BY

12 PLUMMER?

13 A. YES.

14 Q. EXHIBIT 571 IS THE CHECKLIST THAT YOU COMPLETED FOR THIS

15 CHAPTER BY PLUMMER?

16 A. YES.

17 Q. AND IF YOU CAN JUST SCROLL THROUGH IT AND JUST CONFIRM

18 THAT ONCE AGAIN THIS CHECKLIST WAS FILLED OUT IDENTICALLY TO

19 THE OTHER ONES THAT YOU COMPLETED?

20 A. CORRECT.

21 Q. AND IN EACH YOU CONCLUDED THAT FAIR USE HAD BEEN

22 SATISFIED?

23 A. CORRECT.

24 Q. SO FOR THE MAYMASTER 2009 8500 COURSE, YOU HAD PROVIDED OR

25 CAUSED TO BE PROVIDED COPIES OF FOUR CHAPTERS OF THE THIRD

1 EDITION OF THE SAGE HANDBOOK TO STUDENTS IN YOUR CLASS WITH
2 THOSE COPIES AVAILABLE ON ERESERVE, CORRECT?
3 A. CORRECT.
4 Q. LET'S GO BACK NOW TO 516, PLAINTIFFS' EXHIBIT 516 AT PAGE
5 7, AND THIS IS FOR THE FOURTH SESSION OF THE COURSE ON MAY
6 14TH, YOU ASSIGNED AS REQUIRED READING A WORK BY JUDITH
7 PREISSLE ENTITLED FEMINIST RESEARCH ETHICS THAT WAS AT PAGES
8 515 TO 534 OF THE HANDBOOK OF THE HANDBOOK OF FEMINIST
9 RESEARCH.

10 MR. KRUGMAN: IF I MAY APPROACH, YOUR HONOR?

11 THE COURT: YOU MAY.

12 BY MR. KRUGMAN:

13 Q. I'VE HANDED YOU WHAT'S BEEN MARKED AS PLAINTIFFS' EXHIBIT
14 243 WHICH IS IN EVIDENCE, AND IF WE BRING UP THE TABLE OF
15 CONTENTS FOR THIS BOOK, THEN YOU CAN CONFIRM WITH THE BOOK, IF
16 YOU WOULD LIKE, BUT AM I CORRECT THAT THESE PAGES 515 TO 534
17 REPRESENT CHAPTER 26 OF THIS HANDBOOK?

18 A. YES.

19 Q. AND AM I CORRECT THAT THAT WORK IS THE ONLY WORK OF
20 PREISSLE IN THAT SAGE HANDBOOK?

21 A. YES.

22 Q. PLAINTIFFS' EXHIBIT 573 IS THE CHECKLIST THAT YOU
23 COMPLETED FOR THE PREISSLE WORK?

24 A. YES.

25 Q. AND IF YOU CAN SCROLL THROUGH IT AGAIN AND CONFIRM THAT

1 THIS CHECKLIST WAS FILLED OUT VIRTUALLY IDENTICALLY, IF NOT
2 IDENTICALLY, TO THE OTHER CHECKLISTS WE LOOKED AT?

3 A. CORRECT.

4 Q. GOING BACK TO PLAINTIFFS' EXHIBIT 516 AT PAGE 8 FOR THE
5 7TH SESSION OF THIS COURSE ON MAY 20TH, YOU ALSO ASSIGNED AS
6 REQUIRED READING A WORK BY SANDSTROM, MARTIN AND FINE, SYMBOLIC
7 INTERACTION AT THE END OF THE CENTURY CONTAINED IN THE HANDBOOK
8 OF SOCIAL THEORY FROM SAGE AND EDITED BY RITZER AND SMART; IS
9 THAT CORRECT?

10 A. CORRECT.

11 Q. AND PAGES 217 TO 228 OF THE HANDBOOK, RIGHT?

12 A. CORRECT.

13 MR. KRUGMAN: AND IF I MAY APPROACH, YOUR HONOR?

14 THE COURT: YOU MAY.

15 BY MR. KRUGMAN:

16 Q. AND IS EXHIBIT 288 THE HANDBOOK OF SOCIAL THEORY FROM
17 WHICH YOU ASSIGNED A WORK TO STUDENTS IN YOUR 8500 CLASS FOR
18 THE MAYMASTER OF 2009?

19 A. CORRECT.

20 Q. AND LOOKING AT THE TABLE OF CONTENTS PAGES 217 TO 228 THAT
21 REPRESENTED THE ENTIRETY OF CHAPTER 17 OF THE BOOK; IS THAT
22 CORRECT?

23 A. CORRECT.

24 Q. AND IT IS ALSO THE ONLY WORK IN THAT HANDBOOK BY THOSE
25 AUTHORS, CORRECT?

1 A. CORRECT.

2 Q. BRING UP PLAINTIFFS' EXHIBIT 578, AND IS 578 THE CHECKLIST
3 YOU COMPLETED FOR THIS WORK FOR THE 2009 MAYMESTER?

4 A. YES.

5 Q. AND SCROLLING THROUGH IT, FACTORS 1 AND 2 ARE IDENTICAL TO
6 THE ONES THAT WE LOOKED AT PREVIOUSLY, CORRECT?

7 A. CORRECT.

8 Q. I NOTICED THAT UNDER FACTOR 3 THERE ARE NO CHECKS. WAS
9 THAT SIMPLY IN THE RUSH OF GETTING IT DONE YOU JUST MISSED
10 FILLING OUT FACTOR 3?

11 A. CORRECT.

12 Q. BUT FACTOR 4 WAS COMPLETED AND IN FAVOR OF FAIR USE IN THE
13 SAME MANNER AS THE OTHERS THAT WE'VE LOOKED AT?

14 A. CORRECT.

15 Q. SO AT LEAST IN THIS INSTANCE, YOUR FAILURE TO COMPLETE
16 FACTOR 3 WAS IRRELEVANT TO THE FINAL DETERMINATION SINCE AT
17 LEAST ON THE CHECKLIST THREE OF THE FOUR FACTORS WEIGHED IN
18 FAVOR OF FAIR USE, CORRECT?

19 A. CORRECT.

20 Q. GOING BACK TO THE PLAINTIFFS' EXHIBIT 516 AT PAGE 8, YOU
21 ASSIGNED AS REQUIRED READING A WORK BY DUNBAR, CRITICAL RACE
22 THEORIES AND INDIGENOUS METHODOLOGIES; IS THAT CORRECT?

23 A. CORRECT.

24 Q. AND THIS WORK IS AT PAGES 85 TO 99 OF THE HANDBOOK OF
25 CRITICAL AND INDIGENOUS METHODOLOGIES EDITED BY DENZIN, LINCOLN

1 AND SMITH AND PUBLISHED BY SAGE, CORRECT?

2 A. CORRECT.

3 MR. KRUGMAN: IF I MAY APPROACH?

4 THE COURT: YOU MAY. COULD I TAKE A LOOK AT THAT

5 LAST THE HANDBOOK OF SOCIAL THEORY, AND I'LL GIVE YOU BACK

6 QUALITATIVE RESEARCH.

7 BY MR. KRUGMAN:

8 Q. AND PLAINTIFFS' EXHIBIT 231 IN EVIDENCE THAT IS THE

9 HANDBOOK OF CRITICAL AND INDIGENOUS METHODOLOGIES; IS THAT

10 CORRECT?

11 A. CORRECT.

12 Q. AND LOOKING AT THE TABLE OF CONTENTS PAGES 85 TO 99, AM I

13 CORRECT THAT THOSE PAGES MAKE UP THE ENTIRETY OF CHAPTER 5 OF

14 THIS HANDBOOK?

15 A. CORRECT.

16 Q. AND IT IS THE ONLY WORK IN THE HANDBOOK BY DUNBAR; IS THAT

17 CORRECT?

18 A. YES.

19 Q. IF YOU LOOK AT THE FRONT OF THIS BOOK, THIS BOOK WAS

20 PUBLISHED FOR THE FIRST TIME IN 2008; IS THAT CORRECT?

21 A. YES.

22 Q. SO BECAUSE OF THAT YOU WOULD NOT HAVE ASSIGNED THIS IN

23 PRIOR COURSES THAT YOU TAUGHT AT THE UNIVERSITY; IS THAT

24 CORRECT?

25 A. CORRECT.

1 Q. NOW DID YOU COMPLETE A FAIR USE CHECKLIST FOR THAT
2 COURSE -- I'M SORRY, FOR THIS WORK?

3 A. YES.

4 Q. AND I ASK ONLY BECAUSE -- AND I MAY HAVE MISSED IT -- AT
5 LEAST IN REVIEWING THE DOCUMENTS I DIDN'T FIND ONE FOR THIS,
6 BUT I TAKE IT YOU WOULD HAVE GONE THROUGH THE SAME ANALYSIS
7 THAT YOU DID WITH THE OTHER ONES?

8 A. CORRECT, YES.

9 Q. GOING BACK TO PLAINTIFFS' EXHIBIT 516 AT PAGE 9, YOU USED
10 OR YOU ASSIGNED AS REQUIRED READING A SECOND CHAPTER FROM THE
11 HANDBOOK OF CRITICAL AND INDIGENOUS METHODOLOGIES; IS THAT
12 CORRECT?

13 A. YES.

14 Q. AND YOU ASSIGNED AS REQUIRED READING KINCHOLE AND
15 STEINBERG, INDIGENOUS KNOWLEDGE AND EDUCATION?

16 A. YES.

17 Q. AND THAT'S FOUND AT PAGES 135 TO 156 OF THE SAGE HANDBOOK;
18 IS THAT CORRECT?

19 A. YES.

20 Q. AND IF YOU GO BACK TO PLAINTIFFS' EXHIBIT 231, THE TABLE
21 OF CONTENTS, THOSE PAGES 135 TO 156 COMprise THE ENTIRETY OF
22 CHAPTER 7; IS THAT CORRECT?

23 A. YES.

24 Q. AND IT IS THE ONLY WORK IN THAT HANDBOOK BY THOSE TWO
25 AUTHORS, CORRECT?

1 A. CORRECT.

2 Q. BRING UP PLAINTIFFS' EXHIBIT 575, AND IS THIS THE
3 CHECKLIST THAT YOU COMPLETED FOR THAT WORK?

4 A. YES.

5 Q. AND IF YOU'LL SCROLL THROUGH, AND WITH THE EXCEPTION OF AT
6 LEAST THE ONE WE LOOKED AT BEFORE WHERE YOU MAY HAVE NEGLECTED
7 TO FILL OUT A BOX, THIS ONE IS COMPLETED IDENTICALLY TO THE
8 PREVIOUS ONES; IS THAT CORRECT?

9 A. YES.

10 Q. GOING BACK TO PLAINTIFFS' EXHIBIT 516 FOR SESSION 10
11 ON MAY 27TH, YOU ASSIGNED AS REQUIRED READING LOCATING
12 NARRATIVE INQUIRY HISTORICALLY BY PINNEGAR AND DAYNES; IS THAT
13 CORRECT?

14 A. YES.

15 Q. THAT IS AT PAGES 3 TO 34 OF THE HANDBOOK OF NARRATIVE
16 INQUIRY EDITED BY JEAN CLANDININ AND PUBLISHED BY SAGE?

17 A. YES.

18 MR. KRUGMAN: IF I MAY APPROACH, YOUR HONOR?

19 THE COURT: YOU MAY.

20 BY MR. KRUGMAN:

21 Q. PLAINTIFFS' EXHIBIT 258 IN EVIDENCE IS THE HANDBOOK OF
22 NARRATIVE INQUIRY?

23 A. YES.

24 Q. AND IF YOU GO TO THE TABLE OF CONTENTS FOR THESE PAGES,
25 IT'S THE ENTIRETY OF CHAPTER 1 OF THIS HANDBOOK?

1 A. YES.

2 Q. AND CHAPTER 1 IS THE ONLY WORK IN THE HANDBOOK AUTHORED BY
3 PINNEGAR AND DAVIS?

4 A. YES.

5 Q. PLAINTIFFS' EXHIBIT 574 PLEASE, AND IS THIS THE CHECKLIST
6 THAT YOU COMPLETED FOR THIS WORK?

7 A. YES.

8 Q. AND IF YOU'LL SCROLL THROUGH IT AND, DR. KAUFMANN, IF YOU
9 CAN CONFIRM THAT IT WAS COMPLETED IDENTICALLY TO THE OTHER ONES
10 THAT WE JUST LOOKED AT MAYBE WITH A COUPLE OF EXCEPTIONS WE
11 JUST DISCUSSED?

12 A. YES.

13 Q. BACK TO PLAINTIFFS' EXHIBIT 516 FOR SESSION 11 ON MAY
14 28TH, YOU ASSIGNED AS A REQUIRED READING FOR STUDENTS A WORK BY
15 ELLIS AND BOCHNER AUTOETHNOGRAPHY, PERSONAL NARRATIVE,
16 REFLEXIVITY, RESEARCHER AS SUBJECT; IS THAT CORRECT?

17 A. YES.

18 Q. AND THAT'S FOUND AT PAGES 733 TO 768 OF THE SAGE HANDBOOK
19 OF QUALITATIVE RESEARCH SECOND EDITION; IS THAT CORRECT?

20 A. YES.

21 MR. KRUGMAN: IF I MAY APPROACH?

22 THE COURT: YOU MAY.

23 BY MR. KRUGMAN:

24 Q. AND IS PLAINTIFFS' EXHIBIT 265 THE SECOND EDITION OF THE
25 SAGE HANDBOOK FROM WHICH THIS WORK CAME?

1 A. YES.

2 Q. AND LOOKING AT THE TABLE OF CONTENTS, THOSE PAGES 733
3 TO 768 DO THEY COMPRIZE THE COMPLETE CHAPTER 28 OF THE
4 HANDBOOK?

5 A. YES.

6 Q. AND THAT IS THE ONLY WORK BY THOSE TWO AUTHORS IN THE
7 HANDBOOK, CORRECT?

8 A. CORRECT.

9 Q. EXHIBIT 572 CAN YOU IDENTIFY THIS AS THE CHECKLIST THAT
10 YOU COMPLETED FOR THIS WORK?

11 A. YES.

12 Q. I NOTICED THAT THIS CHECKLIST IS NOT DATED. DO YOU RECALL
13 WHETHER IT WAS COMPLETED AT THE SAME TIME AS THE OTHER ONES
14 THAT WE HAVE EXAMINED?

15 A. I DON'T KNOW. I DID THEM ALL BEFORE I PUT THEM ON
16 ERESERVES. SOME OF THEM BECAUSE I'M A VERY BAD FILER I DON'T
17 KNOW WHERE THEY ARE, AND SO HE ASKED ME TO RECREATE THEM, BUT I
18 HONESTLY DON'T KNOW WHICH ONES THEY WERE.

19 Q. SOME YOU WERE ASKED BY LEGAL AFFAIRS TO RECREATE?

20 A. CORRECT.

21 Q. AND YOU'RE NOT CERTAIN IF THIS FALLS INTO THAT CATEGORY?

22 A. YEAH, I DON'T REMEMBER WHICH ONES THEY WERE.

23 Q. IN SCROLLING DOWN, NONETHELESS, EXCEPT FOR THE DATE IT'S
24 IDENTICAL, VIRTUALLY IDENTICAL TO THE OTHER ONES THAT WE'VE
25 LOOKED AT; IS THAT CORRECT?

1 A. CORRECT.

2 Q. RETURNING TO PLAINTIFFS' EXHIBIT 516 FOR SESSION 3 ON
3 MAY 13TH, YOU ASSIGNED AS REQUIRED READING A WORK BY ALFORD,
4 THE CRAFT OF INQUIRY, THEORIES, METHODS, EVIDENCE; IS THAT
5 CORRECT?

6 A. CORRECT.

7 Q. PAGES 21 TO 31?

8 A. CORRECT.

9 MR. KRUGMAN: IF I MAY APPROACH, YOUR HONOR?

10 THE COURT: YOU MAY.

11 BY MR. KRUGMAN:

12 Q. AND IS PLAINTIFFS' EXHIBIT 372 WHICH IS IN EVIDENCE IS
13 THAT THE CRAFT OF INQUIRY, METHODS, THEORIES, EVIDENCE FROM
14 WHICH THIS WORK ASSIGNMENT CAME?

15 A. YES.

16 Q. AND PAGES 21 TO 31 OF THIS BOOK, AM I CORRECT IT'S CHAPTER
17 2 ENTITLED DESIGNING A RESEARCH PROJECT?

18 A. CORRECT.

19 THE COURT: TELL ME THE EXHIBIT NUMBER AGAIN?

20 MR. KRUGMAN: 372, IT'S THE BOOK, YOUR HONOR.

21 BY MR. KRUGMAN:

22 Q. IF WE CAN BRING UP PLAINTIFFS' EXHIBIT 577 AND IS
23 PLAINTIFFS' EXHIBIT 577 THE FAIR USE CHECKLIST THAT YOU
24 COMPLETED FOR THIS WORK --

25 A. YES.

1 Q. -- FOR THE 2009 MAYMASTER, AND IF YOU'LL SCROLL DOWN ON
2 THIS DOCUMENT, AND CAN YOU CONFIRM THAT IT WAS COMPLETED
3 VIRTUALLY IDENTICALLY TO ALL THE OTHER CHECKLISTS THAT WE'VE
4 LOOKED AT TODAY?

5 A. YES.

6 Q. NOW, FOR THE MAYMASTER OF 2009 FOR EPRS 8500, I'LL
7 REPRESENT TO YOU BASED ON WHAT YOU'VE TESTIFIED TO THAT COPIES
8 OF TEN CHAPTERS OF WORKS PUBLISHED BY SAGE AND ONE CHAPTER OF A
9 WORK PUBLISHED BY OXFORD WERE PROVIDED ON ERES TO STUDENTS WHO
10 TOOK THIS COURSE; DOES THAT SEEM CONSISTENT WITH YOUR
11 RECOLLECTION?

12 A. YES.

13 Q. AND ALSO I WILL REPRESENT THAT WAS 251 PAGES IN TOTAL BY
14 MY COUNT. AM I CORRECT THAT NOT A SINGLE PENNY WAS PAID TO
15 SAGE OR OXFORD, THE PUBLISHERS OF THOSE WORKS, AS PERMISSIONS
16 FOR THE USE AND COPYING OF ANY OF THOSE WORKS --

17 A. YES.

18 Q. -- IN YOUR CLASS? NOW IF YOU CAN GO BACK TO PLAINTIFFS'
19 EXHIBIT 516 AGAIN, THE SYLLABI, IN ADDITION TO THE WORKS OF
20 SAGE AND OXFORD, I WOULD LIKE TO QUICKLY IDENTIFY SOME
21 ADDITIONAL WORKS THAT YOU ASSIGNED AS REQUIRED READING THAT
22 WERE NEITHER REQUIRED TEXT NOR FROM A JOURNAL CONTAINED IN A
23 DATABASE LICENSED BY THE GEORGIA STATE LIBRARY.

24 IF YOU'LL TURN TO PAGE 7 OF THE SYLLABUS AND SESSION
25 4, YOU ASSIGNED A WORK BY CHAUDHRY RESEARCHING MY PEOPLE,

1 RESEARCHING MYSELF, FRAGMENTS OF A REFLEXIVE IN ST. PIERRE AND
2 PILLOW, WORKING THE RUINS, FEMINIST POSTSTRUCTURAL THEORY AND
3 METHODS IN EDUCATION PAGES 96 TO 113, NEW YORK AND ROUTLEDGE,
4 THAT CAME FROM A BOOK AS DISTINGUISHED FROM A JOURNAL ARTICLE;
5 IS THAT CORRECT.

6 MR. HARBIN: JUST A MINUTE. YOUR HONOR, WE WOULD
7 OBJECT TO THE QUESTION AS IRRELEVANT AND EXCEEDING THE COURT'S
8 MOTION IN LIMINE ORDER LIMITING THE EVIDENCE TO THE WORKS AT
9 ISSUE, AND THERE HAS BEEN NO SHOWING THAT THERE'S ANY
10 PROTECTABLE RIGHTS IN THIS WORK AS WELL.

11 WE BELIEVE THE LISTED WORKS AT ISSUE HAVE BEEN
12 NARROWED AND WE HOPE TO PRESENT A JOINT LIST BY TOMORROW TO
13 YOUR HONOR. THE PLAINTIFFS HAVE GIVEN US THEIR REDUCED LIST.

14 MR. KRUGMAN: IF I MAY RESPOND, YOUR HONOR, WE'RE NOT
15 SUING OBVIOUSLY FOR INFRINGEMENT OF THESE WORKS, BUT YESTERDAY
16 OR FRIDAY IT WAS IN CROSS-EXAMINATION OF TRACEY ARMSTRONG, MR.
17 SCHAETZEL REFERRED TO WHAT IS DEFENDANTS' EXHIBIT 908 WHICH WAS
18 THE COPYRIGHT CLEARANCE CENTER GUIDELINES AND BEST PRACTICES
19 FOR COPYRIGHTS COMPLIANCE, AND IN THE CROSS-EXAMINATION HE MADE
20 THE POINT UNDER POINT 2 WHERE IT SAYS LIMIT ERESERVE MATERIALS
21 TO SMALL EXCERPTS AND MADE THE ARGUMENT MOST EXPERTS ADVISE
22 USING A SINGLE ARTICLE OR CHAPTER OR LESS OF A COPYRIGHTED WORK
23 BUT EVEN BRIEF EXCERPTS MUST BE VIEWED IN THE OVERALL CONTEXT
24 OF OTHER READINGS OFFERED IN THE COURSE.

25 HE DIDN'T THEN GO ON WITH THE WITNESS TO READ THE

1 REST OF THAT PARAGRAPH WHICH MR. RICH DID IN REDIRECT WHICH
2 SAYS THAT IF THE TOTAL AFFECT IS TO CREATE A COMPILATION OR
3 DIGITAL COURSEPACK OF UNLICENSED MATERIALS, THE CASE FOR
4 TREATING INDIVIDUAL EXCERPTS AS FAIR USE IS SIGNIFICANTLY
5 WEAKENED AND PERMISSION SHOULD BE SOUGHT.

6 I WILL REPRESENT TO THE COURT THAT I THINK THERE ARE
7 TWO WORKS ON THIS SYLLABUS THAT WERE NOT PUBLISHED BY EITHER
8 SAGE OR OXFORD THAT COME FROM COPYRIGHTED BOOKS THAT PROFESSOR
9 KAUFMANN ASSIGNED TO STUDENTS IN THE CLASS, AND WE THINK IT
10 APPROPRIATE FOR THE COURT IN CONSIDERING WHETHER FAIR USE
11 EXISTS TO LOOK NOT ONLY FOR THE PARTICULAR COURSE AT THE WORKS
12 PUBLISHED BY SAGE AND OXFORD BUT ALSO TO CONSIDER OTHER WORKS
13 THAT ARE BEING ASSIGNED TO STUDENTS AS REQUIRED READING, COPIES
14 OF WHICH ARE BEING PROVIDED TO STUDENTS ON ERESERVE, THE AFFECT
15 OF WHICH IS TO ESSENTIALLY CREATE A DIGITAL COURSEPACK.

16 THE COURT: THE OBJECTION IS SUSTAINED.

17 MR. KRUGMAN: THANK YOU, YOUR HONOR.

18 THE COURT: BY THE WAY, COULD I TAKE A LOOK AT THE
19 HANDBOOK OF NARRATIVE INQUIRY AND ALSO THE CRAFT OF INQUIRY,
20 AND I'LL GIVE YOU BACK THE HANDBOOK OF SOCIAL THEORIES.

21 MR. KRUGMAN: THE HANDBOOK OF NARRATIVE INQUIRY AND
22 CRAFT INQUIRY?

23 THE COURT: CORRECT. THANK YOU.

24 BY MR. KRUGMAN:

25 Q. PROFESSOR KAUFMANN, YOU'RE FAMILIAR WITH THE CONCEPT OF

1 COURSEPACKS, CORRECT?

2 A. YES.

3 Q. AND IN FACT YOU BOUGHT COURSEPACKS AS A STUDENT?

4 A. YES.

5 Q. AND COURSEPACKS TYPICALLY COMPROMISE JOURNALS ARTICLES AND
6 READINGS FROM BOOKS; IS THAT CORRECT?

7 A. YES.

8 Q. AND COURSEPACKS ARE NOT MATERIALLY DIFFERENT FROM THE
9 SORTS OF COMPILED READINGS THAT YOUR STUDENTS AT GEORGIA STATE
10 UNIVERSITY HAVE BEEN PROVIDED ON ERESERVE, IS THAT CORRECT,
11 EXCEPT FOR THE FORMAT, ONE IS IN PAPER, THE OTHER IS DIGITAL?

12 A. I WOULDN'T TOTALLY AGREE WITH THAT FOR WHAT I PUT UP. MY
13 UNDERSTANDING IS WHAT I PUT UP WAS UNDER FAIR USE, AND I DON'T
14 KNOW IF THAT ALWAYS GOES TRUE FOR A COURSEPACK.

15 Q. BUT YOU'VE NEVER USED COURSEPACKS AS A PROFESSOR, CORRECT?

16 A. NO, BECAUSE I'VE ALWAYS MADE SURE IT'S FAIR USE.

17 Q. YOU'VE NOT EVEN CONSIDERED USING THEM, CORRECT?

18 A. NO, BECAUSE THEY'RE FAIR USE.

19 Q. NOW, YOU AGREE THAT ANOTHER WAY YOU COULD HAVE PROVIDED
20 COPIES OF THOSE TEN CHAPTERS OF SAGE WORKS AND ONE CHAPTER OF
21 OXFORD WORKS SO STUDENTS WHO TOOK YOUR COURSE IN THE 2009
22 MAYMESTER WOULD HAVE BEEN THROUGH A COURSEPACK, CORRECT?

23 A. THAT WOULD HAVE BEEN AN OPTION, YES.

24 Q. BUT YOU CHOSE TO USE THE ELECTRONIC VERSION, CORRECT?

25 A. CORRECT.

1 Q. AND THAT WAS DONE WITHOUT OBTAINING PERMISSION FROM
2 PUBLISHERS, CORRECT?

3 A. YES, BECAUSE IT WAS UNDER FAIR USE.

4 Q. NOW IF I REPRESENT TO YOU WITH RESPECT TO COURSEPACKS THAT
5 PERMISSION SOUGHT WITH RESPECT TO EACH MATERIAL IN THE
6 COURSEPACK, SITTING HERE TODAY AS AN EDUCATOR AND SOMEONE WHO
7 PUTS TOGETHER AND OFFERS COURSE MATERIALS TO STUDENTS YOU CAN
8 DRAW NO LOGICAL CONCLUSION FOR THE DISTINCTION AND THE PRACTICE
9 AT GEORGIA STATE BETWEEN OFFERING STUDENTS ACCESS TO MATERIALS
10 IN PHYSICAL BOUND COURSEPACK FORM WHERE PERMISSIONS ARE PAID
11 VERSUS OFFERING THE SAME MATERIALS THROUGH THE ERESERVE SYSTEM
12 WITHOUT SECURING COPYRIGHT PERMISSION, CORRECT?

13 A. NO, TO ME THE DISTINCTION WOULD BE IF I GOT FAIR USE OR
14 NOT.

15 Q. IF YOU COULD LOOK AT YOUR DEPOSITION, DR. KAUFMANN, AT
16 PAGE 93 BEGINNING AT LINE 4 AND THEN GOING THROUGH LINE 19.
17 THIS WILL BE TWO CLIPS.

18 (EXCERPT OF VIDEOTAPED DEPOSITION WAS PLAYED IN OPEN
19 COURT.)

20 BY MR. KRUGMAN:

21 Q. THAT WAS YOUR TESTIMONY WHEN YOUR DEPOSITION WAS TAKEN IN
22 THIS CASE?

23 A. SO I WOULD TELL YOU THAT THAT WAS MY OPINION TWO YEARS
24 AGO, AND TODAY THIS IS WHAT I BELIEVE.

25 Q. NOW, REFERRING BACK TO FACTOR 4 OF THE CHECKLIST, EFFECT

1 ON MARKET, YOU UNDERSTAND THAT IF THESE 11 WORKS HAD COMPRISED
2 A COURSEPACK IN YOUR COURSE 8500 IN THE MAYMESTER 2009 THAT
3 PERMISSION FEES WOULD HAVE BEEN PAID FOR THE USE OF THAT WORK,
4 CORRECT?

5 MR. HARBIN: YOUR HONOR, MAY I ASK UNDER THE RULE OF
6 COMPLETENESS ON THE PRIOR QUESTION THAT PAGE -- AND IF NOT I
7 CAN DO IT I GUESS ON DIRECT -- 93 LINE 20 TO PAGE 94 LINE 4 BE
8 READ TO THE RECORD?

9 THE COURT: ANY OBJECTION?

10 MR. KRUGMAN: NO, I THINK HE CAN DO IT. I THINK IT'S
11 COMPLETE, BUT I'LL READ IT. IF IT WERE THE CASE OF MATERIALS
12 WERE OFFERED TO STUDENTS AND COURSEPACKS AND LICENSE INCOME
13 WERE FLOWING TO PUBLISHERS AND THE ONLY REASON THAT PRACTICE
14 AND THAT INCOME STREAM STOPPED WAS BECAUSE OF THE MIGRATION OF
15 THOSE MATERIALS TO ERESERVES WOULD YOU BELIEVE THAT TO BE A
16 FAIR AND APPROPRIATE OUTCOME.

17 I DON'T THINK THAT I AM EDUCATED ENOUGH TO MAKE THAT
18 DETERMINATION AT THIS POINT. I DO NOT UNDERSTAND IF IT
19 CONSTITUTES FAIR USE WHY I WOULD DO A COURSEPACK.

20 IS THAT IT?

21 MR. HARBIN: YEAH, IN THE BEGINNING I DON'T THINK I
22 AM EDUCATED ENOUGH TO MAKE THAT DETERMINATION AT THIS POINT --

23 MR. KRUGMAN: I READ THAT.

24 MR. HARBIN: YOU DIDN'T SAY ANSWER. AT THIS POINT I
25 DO NOT UNDERSTAND IF IT CONSTITUTES FAIR USE WHY I WOULD DO A

1 COURSEPACK IS THE WITNESS' ANSWER.

2 MR. KRUGMAN: OKAY.

3 BY MR. KRUGMAN:

4 Q. GOING BACK TO, I GUESS, MY QUESTION REFERRING TO FACTOR 4,
5 YOU DO UNDERSTAND THAT IF THESE 13 WORKS HAD COMPRISED A
6 COURSEPACK FOR THIS COURSE PERMISSION FEES WOULD HAVE BEEN PAID
7 FOR USE OF THE WORK, CORRECT?

8 A. I DON'T KNOW HOW COURSEPACK WORKS. I DON'T KNOW. I KNOW
9 THAT STUDENTS PAY FOR COURSEPACKS. I DON'T KNOW HOW THAT WHOLE
10 SYSTEM WORKS.

11 Q. YOU COMMUNICATE ELECTRONICALLY WITH THE LIBRARY WHEN YOU
12 REQUEST WORKS TO BE POSTED ON ERESERVE; IS THAT CORRECT?

13 A. CORRECT.

14 Q. AND YOU HAVE HAD COMMUNICATIONS WITH THE LIBRARY ABOUT
15 SOME OF THE WORKS THAT YOU'VE REQUESTED BE POSTED ON ERESERVE;
16 IS THAT CORRECT?

17 A. CORRECT.

18 Q. IF YOU CAN LOOK AT DEFENDANTS' EXHIBIT 512 WHICH IS IN
19 YOUR NOTEBOOK WHICH IS IN EVIDENCE, TELL ME WHEN YOU'RE THERE?

20 A. GOT IT.

21 Q. THIS IS A SERIES OF COMMUNICATIONS BETWEEN YOU AND THE
22 LIBRARY REGARDING MATERIALS THAT YOU'VE REQUESTED BE POSTED ON
23 ERESERVE FOR COURSES THAT YOU'VE TAUGHT AT GEORGIA STATE; IS
24 THAT CORRECT?

25 A. CORRECT.

1 Q. IF YOU'LL TURN PLEASE TO THE PAGE DOWN AT THE BOTTOM PAGES
2 65565 AND KIND OF FOCUSING ON THE BOTTOM THERE, THERE WAS --
3 BEGINNING AT WHERE IT SAYS UNDER THERE JODI KAUFMANN, 5-8-2009,
4 THERE'S SOME PERSONAL INFORMATION. THERE'S INFORMATION
5 REGARDING THIS COURSE THAT WE'VE BEEN TALKING ABOUT EPRS 8500
6 FROM MAY 2009; DO YOU SEE THAT?

7 A. UH-HUH (AFFIRMATIVE).

8 Q. AND THEN BELOW THAT BEGINNING AT THE BOTTOM OF THAT PAGE
9 AND CARRYING OVER FOR THE NEXT SEVERAL PAGES ARE EACH OF THE
10 WORKS THAT WE'VE BEEN -- MOST OF WHICH WE'VE BEEN TALKING ABOUT
11 THAT YOU HAD COPIES PROVIDED TO STUDENTS ON ELECTRONIC RESERVE
12 FOR THE MAYMESTER 2009; IS THAT CORRECT?

13 A. CORRECT.

14 Q. WE SEE THE ALFORD BOOK THAT WE'VE LOOKED AT, PINNEGAR AND
15 DAYNES AND SO FORTH, AND AM I CORRECT THAT YOU WERE REQUESTING
16 THE LIBRARY TO HAVE ALL OF THESE MATERIALS POSTED ON ELECTRONIC
17 RESERVES FOR STUDENTS ENROLLED IN YOUR COURSE?

18 A. EVERYTHING THAT WE TALKED ABOUT UP TO NOW, YES.

19 Q. AND JUST OUT OF FAIRNESS GO TO 65567, AND THERE'S A BOOK
20 NEAR THE TOP BY JOHNSON-BAILEY FOUNDATIONS FOR RESEARCH,
21 METHODS OF INQUIRY IN EDUCATION AND THE SOCIAL SCIENCES, WHILE
22 THAT WORK WAS IN THIS LIST IT WAS NOT ASSIGNED TO STUDENTS FOR
23 THE MAYMESTER 2009; IS THAT CORRECT?

24 A. IF IT'S NOT ON THE SYLLABUS, THEN NO.

25 Q. I'LL REPRESENT TO YOU THAT I BELIEVE IT'S NOT, AND ALSO DO

1 YOU RECALL SUBMITTING A DECLARATION IN THIS CASE TO THAT
2 EFFECT?

3 A. OKAY, YES.

4 Q. NOW, THE LIBRARY STAFF E-MAILED YOU AND GO BACK TO PAGE
5 65565, AND THERE'S AN E-MAIL FROM THE LIBRARY RESERVE STAFF TO
6 YOU MAY 11TH, 2009 AT 1:27 P.M.; DO YOU SEE THAT?

7 A. YES.

8 Q. IT'S IN THE MIDDLE, AND THEY PROVIDE YOU THE PASSWORD FOR
9 THE 8500 COURSE FOR THE SUMMER 2009; IS THAT CORRECT?

10 A. YES.

11 Q. THEN THEY SAY TWO OF YOUR REQUESTS ARE FROM THE HANDBOOK
12 OF CRITICAL AND INDIGENOUS METHODOLOGIES, THIS BOOK IS CHECKED
13 OUT, WE HAVE RECALLED IT SO THAT WE CAN SCAN THE PAGES WHEN IT
14 IS RETURNED, AND THEN FOUR OF THE FILES ARE IN A FOLDER THAT
15 SAYS NEEDS COPYRIGHT STATEMENT, WE HAVE TO ADD THE COPYRIGHT
16 STATEMENT TO THE FILES SO WE WILL TAKE THEM OUT OF THE FOLDER
17 ONCE THAT'S DONE; DO YOU SEE THAT?

18 A. YES.

19 Q. AND THEN YOU RESPONDED TO THE STAFF AT 1:42 P.M. SAYING
20 HELLO. THANK YOU. I GAVE THOSE TWO ARTICLES TO THE MAN AT THE
21 DESK WHEN I GAVE YOU THE FAIR USE CHECKLIST -- CHECKSHEETS ALL
22 OF THE ARTICLES YOU HAD NOT PREVIOUSLY PUT UP WERE IN THAT
23 FOLDER, AND THEN YOU WROTE I OWN THE BOOK, SO IT WAS COPIED
24 ACCORDING TO FAIR USE?

25 A. CORRECT.

1 Q. YOUR UNDERSTANDING THAT IF YOU MADE A FAIR USE
2 DETERMINATION THEN YOU COULD PROVIDE THE LIBRARY WITH A COPY OF
3 THE BOOK OR PORTIONS OF THE BOOK RATHER THAN THE BOOK ITSELF?

4 A. MY UNDERSTANDING IS YES, I COULD DO THAT IF I OWNED THE
5 BOOK OR IF THEY OWNED THE BOOK.

6 Q. AND WHAT YOU WERE TELLING THE LIBRARY WAS THAT YOU OWNED
7 THE BOOK?

8 A. CORRECT.

9 Q. AND YOU SIMPLY PROVIDED THE LIBRARY WITH PHOTOCOPIES OF
10 THOSE CHAPTERS RATHER THAN THE ACTUAL BOOK ITSELF; IS THAT
11 CORRECT?

12 A. CORRECT.

13 Q. AND THEN YOU GOT A RESPONSE FROM THE LIBRARY RESERVES AT
14 1:58 SAYING OKAY, WE HAVE THE FILES FROM NARRATIVE INQUIRY AND
15 HANDBOOK OF CRITICAL AND INDIGENOUS METHODOLOGIES BUT WE ALSO
16 NEED THE COPYRIGHT STATEMENT PAGES. IT'S THE PAGE THAT USUALLY
17 SAYS ALL RIGHTS RESERVED, ET CETERA, CAN YOU DROP THAT OFF OR
18 SEND IT TO US, AND I TAKE IT YOU COMPLIED WITH THE LIBRARY'S
19 REQUEST?

20 A. CORRECT.

21 Q. NOW, I TAKE IT THAT NO ONE FROM THE LIBRARY ERESERVES
22 ADVISED YOU THAT THERE WAS ANY PROBLEM WHATSOEVER WITH YOUR
23 REQUEST TO POST 14 CHAPTERS OF VARIOUS WORKS ON ERESERVES?

24 A. NO.

25 Q. NO ONE FROM THE LIBRARY INDICATED THAT THERE WAS ANY

1 CONCERN WITH THE NUMBER OF PAGES THAT YOU HAD REQUESTED BE
2 COPIED AND POSTED ON ERESERVE FOR ACCESS BY STUDENTS IN YOUR
3 CLASS?

4 A. CORRECT, THEY HAVE TALKED TO ME BEFORE AND SAID THERE WAS
5 A PROBLEM IF THEY DIDN'T OWN THE BOOK OR IF I DIDN'T OWN THE
6 BOOK.

7 Q. RIGHT, THE ISSUE WOULD BE ABOUT OWNERSHIP OF THE BOOK, BUT
8 NO ONE FROM THE LIBRARY INDICATED ANY CONCERN ABOUT THE VOLUME
9 OF WORKS YOU WERE REQUESTING BE POSTED ON ERESERVE, CORRECT?

10 A. NO, PROBABLY BECAUSE IT WAS ALL CLOSE TO 10 PERCENT.

11 Q. AND NO ONE FROM THE LIBRARY INDICATED THAT YOUR REQUEST
12 HAD RAISED ANY SORT OF RED FLAG WITHIN THE LIBRARY; IS THAT
13 CORRECT?

14 A. CORRECT.

15 Q. I WANT TO TALK BRIEFLY, JUST VERY BRIEFLY ABOUT THE
16 PROCESS THAT YOU GO THROUGH WITH RESPECT TO ERESERVES, AND IF
17 YOU CAN -- IN YOUR NOTEBOOK IS DEFENDANTS' EXHIBIT 160 WHICH IS
18 IN EVIDENCE, AND THIS IS AN EXHIBIT CONTAINING A SERIES OF
19 SCREENSHOTS THAT A PROFESSOR MAY SEE WHEN REQUESTING A WORK TO
20 BE PLACED ON ERESERVE?

21 A. YES.

22 Q. THAT'S THE SCREENSHOT THAT YOU'RE FAMILIAR WITH?

23 A. YES.

24 Q. AND PAGE 1 IS THE ELECTRONIC RESERVES REQUEST FORM WHICH
25 TELLS YOU THAT BEFORE SUBMITTING A REQUEST YOU MUST DETERMINE

1 UNDER WHAT CIRCUMSTANCES EACH ITEM CAN BE PLACED ON ELECTRONIC
2 RESERVE; IS THAT CORRECT?

3 A. YES.

4 Q. THE FIRST ONE IS TO SEE IF THE LIBRARY ALREADY HAS A
5 LICENSE FOR THE ELECTRONIC VERSION OF THE JOURNAL OR BOOK, AND
6 I THINK, AS YOU TESTIFIED EARLIER, MANY OF THE WORKS YOU ASSIGN
7 TO STUDENTS IN COURSES THAT YOU TEACH ARE ARTICLES FROM
8 JOURNALS TO WHICH THE LIBRARY HAS A LICENSE TO USE THE
9 ELECTRONIC VERSION; IS THAT CORRECT?

10 A. CORRECT.

11 Q. YOU ALSO ASSIGN STUDENTS CHAPTERS FROM BOOKS FOR WHICH THE
12 LIBRARY DOES NOT HAVE A LICENSE TO USE THE ELECTRONIC VERSION,
13 CORRECT?

14 A. CORRECT.

15 Q. AND IF THE WORK IS NOT IN THE PUBLIC DOMAIN AS REFERENCED
16 IN PARAGRAPH 2, THE FORM THEN DIRECTS YOU TO USE THE BOARD
17 OF REGENTS' FAIR USE CHECKLIST TO DETERMINE YOUR USE OF THE
18 ITEM?

19 A. CORRECT.

20 Q. AND THOSE ARE THE CHECKLISTS THAT WE'VE LOOKED AT?

21 A. YES.

22 Q. THEN BELOW IT STATES THAT YOU MAY NOT SUBMIT SECOND
23 GENERATION COPIES TO BE PLACED ON PHYSICAL RESERVE; DO YOU SEE
24 THAT?

25 A. UH-HUH (AFFIRMATIVE).

1 Q. YOU UNDERSTAND THAT TO MEAN THAT YOU CANNOT PLACE ON
2 PHYSICAL RESERVE A PHOTOCOPY OF A WORK, THAT YOU HAVE TO USE
3 THE ORIGINAL OF THE WORK?

4 A. CORRECT.

5 Q. BUT AT LEAST IN THE INSTANCE OF THE TWO CHAPTERS FROM THE
6 HANDBOOK THAT WE LOOKED AT, IN THAT CASE YOU WERE ALLOWED TO
7 PROVIDE THE LIBRARY WITH A SECOND GENERATION COPY OF THOSE
8 WORKS; IS THAT CORRECT?

9 A. CORRECT.

10 Q. WHICH WERE THEN PLACED ON ELECTRONIC RESERVE?

11 A. CORRECT.

12 Q. NOW GO TO PAGE 9 OF THIS EXHIBIT AND IS THIS THE SCREEN
13 THAT YOU FILL IN FOR EACH PORTION OF A BOOK YOU'RE REQUESTING
14 TO BE POSTED ON ERESERVE?

15 A. CORRECT.

16 THE COURT: WHICH EXHIBIT IS THIS?

17 MR. KRUGMAN: THIS IS DEFENDANTS' EXHIBIT 160, YOUR
18 HONOR, WHICH IS IN EVIDENCE.

19 BY MR. KRUGMAN:

20 Q. UP AT THE TOP YOU FIRST HAVE TO CLICK WHETHER THE LIBRARY
21 OWNS IT, AND IF NOT, THE DATE THAT YOU'LL BE DROPPING IT OFF;
22 IS THAT CORRECT?

23 A. CORRECT.

24 Q. AND I TAKE IT IN SOME INSTANCES YOU'VE USED PORTIONS OF
25 BOOKS THAT YOU BUT NOT THE LIBRARY OWNS AND YOU'VE PROVIDED

1 THEM TO THE LIBRARY?

2 A. CORRECT.

3 Q. AND YOU CHECK ONE OF THE BOXES FOR WHY YOU -- FOR WHY A
4 COPY OF THE WORK CAN BE PLACED ON ERESERVE WHICH TIES BACK TO
5 WHAT WE LOOKED AT PREVIOUSLY?

6 A. CORRECT.

7 Q. AND THEN YOU'RE REQUIRED TO PROVIDE CERTAIN INFORMATION
8 THAT'S IN BOLD ON THE BOXES SUCH AS THE AUTHOR, TITLE,
9 PUBLISHER AND YEAR OF PUBLICATION; DO YOU SEE THAT?

10 A. CORRECT.

11 Q. NOW FOR THE 2009 MAYMESTER, I THINK WE'VE ESTABLISHED THAT
12 COPIES OF FOUR CHAPTERS FROM THE THIRD EDITION OF THE SAGE
13 HANDBOOK ON QUALITATIVE RESEARCH WERE PROVIDED ON ERESERVE TO
14 STUDENTS; IS THAT CORRECT?

15 A. CORRECT.

16 Q. NOW IN COMPLETING THE ELECTRONIC REQUEST FORM, YOU DID NOT
17 COMPLETE A SINGLE FORM FOR ALL FOUR WORKS FROM THE SAGE
18 HANDBOOK; IS THAT CORRECT?

19 A. NO, EACH CHAPTER GETS ITS OWN PAGE; IS THAT WHAT YOU
20 MEAN?

21 Q. YES, SO YOU COMPLETED A SEPARATE FORM FOR EACH CHAPTER IN
22 THE SAGE HANDBOOK; IS THAT CORRECT?

23 A. CORRECT.

24 Q. AND IS THAT BECAUSE EACH OF THOSE CHAPTERS WAS AUTHORED OR
25 WRITTEN BY A DIFFERENT AUTHOR AT A DIFFERENT TITLE, DIFFERENT

1 AUTHOR?

2 A. THAT'S A VERY GOOD QUESTION. I NEVER CONSIDERED DOING IT
3 ANY OTHER WAY.

4 Q. HAVE YOU USED MULTIPLE CHAPTERS OF A WORK AUTHORED BY A
5 SINGLE AUTHOR?

6 A. NO.

7 Q. YOU TAUGHT -- I WANT TO GO NOW TO THE SUMMER SEMESTER
8 COURSE THAT YOU TAUGHT, AND THIS IS EPRS 8510, AND THAT WAS
9 DURING THE SUMMER SEMESTER OF 2009; IS THAT CORRECT?

10 A. CORRECT.

11 Q. AND THIS IS THE COURSE THAT LOOKS AT DATA COLLECTION AS
12 OPPOSED TO THE THEORETICAL ASPECTS THAT THE 8500 COURSE
13 EXAMINES; IS THAT CORRECT?

14 A. CORRECT.

15 Q. DO YOU RECALL THAT FOR THE 8510 COURSE THAT YOU TAUGHT
16 DURING THE SUMMER SEMESTER OF 2009 THAT NINE STUDENTS WERE
17 ENROLLED IN THAT COURSE?

18 A. CORRECT.

19 Q. AND IF YOU CAN --

20 THE COURT: 8510 IS THE COURSE NUMBER?

21 BY MR. KRUGMAN:

22 Q. EPRS 8510 IS THE COURSE NUMBER, AND THE COURSE NAME IS
23 QUALITATIVE INTERPRETIVE RESEARCH IN EDUCATION 2, DATA
24 COLLECTION; IS THAT CORRECT?

25 A. CORRECT.

1 Q. IF YOU CAN BRING UP PLAINTIFFS' EXHIBIT 517, AND THIS IS
2 THE SYLLABUS FOR THE 8510 COURSE FOR THE SUMMER OF 2009?

3 A. CORRECT.

4 Q. AND THE SUMMER SEMESTER ALSO LASTS ROUGHLY ABOUT SIX
5 WEEKS?

6 A. YES.

7 Q. AND WITHOUT GOING THROUGH IN DETAIL THE SYLLABI FOR THIS
8 IS SET UP IN A SIMILAR FORMAT TO THE SYLLABUS THAT WE LOOKED AT
9 FOR THE 8500 COURSE; IS THAT CORRECT?

10 A. CORRECT.

11 Q. YOU STILL HAVE -- SCROLLING DOWN, YOU HAVE REQUIRED TEXT
12 ON PAGE 1 -- EXCUSE ME, I GUESS, YEAH, ON PAGE 2, YOU HAVE THE
13 REQUIRED TEXT FOR THE COURSE, AND THEN YOU HAVE AGAIN
14 ADDITIONAL READINGS THAT ARE ON ERESERVE, AND I'M CORRECT THAT
15 ALL OF THOSE ADDITIONAL READINGS THAT ARE LISTED ON THE CLASS
16 SCHEDULE ARE ALL REQUIRED READINGS FOR THIS COURSE?

17 A. CORRECT.

18 Q. OKAY. IF YOU'LL TURN TO PAGE 7 OF PLAINTIFFS' EXHIBIT
19 517, FOR THE WEEK OF JUNE 23RD YOU ASSIGNED A WORK BY HARPER
20 FROM THE SECOND EDITION OF THE SAGE HANDBOOK OF QUALITATIVE
21 ANALYSIS; IS THAT CORRECT?

22 A. CORRECT.

23 Q. AND THIS IS PAGES 717 TO 732, AND IT'S ENTITLED
24 REIMAGINING VISUAL METHODS, GALILEO TO NEUROMANCER, AND THIS
25 WAS IN THE SECOND EDITION OF THE SAGE HANDBOOK; IS THAT

1 CORRECT?

2 A. CORRECT.

3 Q. AND LOOKING AT THE SAGE HANDBOOK EXHIBIT 265, SECOND
4 EDITION, TABLE OF CONTENTS THOSE PAGES MAKE UP ALL OF CHAPTER
5 27; AM I CORRECT?

6 A. CORRECT.

7 Q. AND THAT IS THE ONLY WORK BY HARPER IN THE SECOND EDITION
8 OF THE HANDBOOK, CORRECT?

9 A. CORRECT.

10 Q. AND A COPY OF THIS WORK WAS PROVIDED TO STUDENTS ON
11 ERESERVE WITHOUT THE PAYMENT OF COMMISSIONS TO SAGE, CORRECT?

12 A. CORRECT.

13 Q. AND DID YOU COMPLETE A CHECKLIST FOR THIS WORK?

14 A. YES.

15 Q. AND WHEN DID YOU COMPLETE IT?

16 A. PRIOR TO PUTTING IT ON ERESERVES.

17 Q. OKAY. DID YOU MISFILE THE CHECKLIST?

18 A. IF YOU DON'T HAVE IT, IT COULD BE IN THE MISFILED FILE,
19 YES.

20 Q. OKAY. SO AT SOME POINT IN DECEMBER OF 2010 THE OFFICE
21 OF -- THE LEGAL FOLKS AT GEORGIA STATE ASKED YOU TO PRODUCE ALL
22 OF THE CHECKLISTS THAT YOU HAD COMPLETED FOR THE SAGE AND
23 OXFORD WORKS FOR THE COURSES THAT YOU TAUGHT AT GEORGIA STATE
24 DURING THE MAY, SUMMER AND FALL SEMESTERS?

25 A. WOULD YOU SAY THAT AGAIN?

1 Q. I'LL TRY TO.

2 AM I CORRECT THAT SOMETIME IN DECEMBER OF 2010 OF
3 LAST YEAR, LEGAL AFFAIRS, SOMEONE REQUESTED YOU TO PROVIDE
4 COPIES OF ALL OF THE CHECKLISTS THAT YOU HAD COMPLETED FOR THE
5 8500 AND 8510 COURSES THAT YOU HAD TAUGHT AT GEORGIA STATE
6 DURING THE MAY, SUMMER AND FALL SEMESTERS?

7 A. YES.

8 Q. AND I TAKE IT THEN IN LOOKING FOR THOSE CHECKLISTS THAT
9 YOU DISCOVERED THAT YOU WERE UNABLE TO FIND SOME THAT YOU HAD
10 COMPLETED PREVIOUSLY; IS THAT CORRECT?

11 A. ACTUALLY THEY FOUND IT FOR ME. I JUST TOOK THE PILE THAT
12 I HAD AND SENT IT TO THEM, AND THEY CONTACTED ME AND SAID WHERE
13 ARE THESE, AND I SAID IN MY FILING SYSTEM SOMEWHERE.

14 Q. BRING UP PLAINTIFFS' EXHIBIT 628, AND THIS IS A FAIR USE
15 CHECKLIST FOR THE WORK BY HARPER AT PAGES 717 TO 752?

16 A. CORRECT.

17 Q. AND THIS IS THE CHECKLIST THAT YOU COMPLETED FOR THE WORK
18 BY HARPER WE JUST LOOKED AT, AND UP AT THE TOP THE DATE IS
19 DECEMBER 10, 2010?

20 A. CORRECT.

21 Q. THAT'S THE DATE THAT YOU COMPLETED THIS CHECKLIST?

22 A. WELL THAT'S THE RECREATION. I SIT DOWN AND DO ALL OF THE
23 CHECKLISTS AT THE SAME TIME. SO BEFORE MAYMASTER, I DO ALL OF
24 THEM FOR MAYMASTER. SO THIS IS THE RECREATION OF THE ONE THAT
25 I DIDN'T KNOW WHERE I PUT IT.

1 Q. OKAY. SO BEFORE THE SUMMER SEMESTER, YOU HAD COMPLETED
2 CHECKLISTS FOR THE WORKS?

3 A. ALL OF THE WORKS FOR SUMMER.

4 Q. YOU COULDN'T FIND THOSE, AND AM I CORRECT THAT LEGAL
5 AFFAIRS THEN REQUESTED YOU TO RECREATE THE CHECKLIST?

6 A. CORRECT.

7 Q. AND THAT'S WHAT PLAINTIFFS' EXHIBIT 628 REPRESENTS?

8 A. CORRECT.

9 Q. DID YOU RECREATE THE CHECKLIST FOR THE SUMMER 2009 8510
10 COURSE FOR WORKS PUBLISHED BY PUBLISHERS OTHER THAN SAGE OR
11 OXFORD?

12 A. I DON'T KNOW. WHATEVER THEY ASKED ME TO RECREATE I DID.

13 Q. AND I WON'T GO IN DETAIL ON THESE, BUT JUST SCROLLING
14 THROUGH PLAINTIFFS' EXHIBIT 628 AM I CORRECT THAT THIS IS
15 COMPLETED LARGELY IDENTICALLY TO THE CHECKLIST THAT WE LOOKED
16 AT FOR THE 8500 COURSE THAT YOU TAUGHT IN THE MAYMESTER OF
17 2009?

18 A. YES.

19 Q. EXCEPT I SEE YOU ADDED RESTRICTED ACCESS TO STUDENTS OR
20 OTHER APPROPRIATE GROUP THAT YOU HAD NOT INCLUDED ON THE
21 PREVIOUS CHECKLIST; IS THAT CORRECT?

22 A. YES, I SHOULD HAVE CHECKED THE ONE ABOVE IT, TOO.

23 Q. IS IT YOUR TESTIMONY THAT WHEN YOU COMPLETED THIS
24 CHECKLIST PRIOR TO THE SUMMER OF 2009 SEMESTER WHEN YOU WERE
25 REQUESTING WORKS TO BE POSTED THAT YOU, IN FACT, CHECKED THE

1 BOX FOR RESTRICTED ACCESS AT THAT TIME?

2 A. I DON'T KNOW.

3 Q. SO IT IS POSSIBLE THAT THIS CHECKLIST HAS NOT BEEN
4 RECREATED IDENTICALLY TO THE CHECKLIST THAT YOU COMPLETED IN
5 THE SUMMER OF 2009?

6 A. CORRECT, IT COULD BE DIFFERENT, BUT TO THE BEST OF MY
7 KNOWLEDGE IT WAS THE SAME AS WHEN I DID IT.

8 Q. BUT IT DOESN'T ALTER THE OVERALL CONCLUSION BECAUSE YOU
9 HAD ONLY ONE CHECK ON THE RIGHT FOR REQUIRED CLASSROOM READING,
10 CORRECT?

11 A. CORRECT.

12 Q. AND JUST TO CONFIRM FOR THE SUMMER SEMESTER 2009, YOU DID
13 NOT MAKE INQUIRY OF EITHER THE PUBLISHER OR COPYRIGHT CLEARANCE
14 CENTER TO DETERMINE WHETHER LICENSING OR PERMISSIONS WAS
15 REASONABLY AVAILABLE?

16 A. NO.

17 Q. NOR DID YOU CONSIDER WHETHER YOU MAY HAVE ASSIGNED AS
18 REQUIRED READING THE SAME MATERIAL IN PRIOR SEMESTERS THAT YOU
19 MAY HAVE TAUGHT THIS COURSE FOR PURPOSES OF DETERMINING WHETHER
20 NUMEROUS COPIES WERE MADE OR DISTRIBUTED OR REPEATED LONG-TERM
21 USE APPLIED; IS THAT CORRECT?

22 A. YES, BUT I THINK THERE'S TWO PARTS TO THAT QUESTION. IT'S
23 NOT JUST REPEATED. IT'S REPEATED AND HAS NEGATIVE AFFECTS ON
24 THE MARKET. SO I THINK THERE'S TWO CLAUSES.

25 Q. OKAY. I APOLOGIZE. I'M JUST SIMPLY ASKING FOR PURPOSES

1 OF THOSE TWO BOXES YOU DID NOT TAKE INTO CONSIDERATION WHETHER
2 THIS WORK HAD BEEN USED IN PRIOR SEMESTERS. YOU WERE LOOKING
3 AT THIS SEMESTER?

4 A. I WAS LOOKING AT THIS SEMESTER.

5 Q. THAT'S ALL. I DON'T WANT TO HAVE TO GO THROUGH IT AGAIN.

6 IF YOU GO BACK TO PLAINTIFFS' EXHIBIT 517 AND PAGE 8
7 OF THE SYLLABUS, ON JULY 14TH YOU ASSIGNED ANOTHER WORK FROM
8 THE SECOND EDITION OF THE SAGE HANDBOOK OF QUALITATIVE
9 ANALYSIS; IS THAT CORRECT?

10 A. YES.

11 Q. AND IT'S AT PAGES 923 TO 943?

12 A. YES.

13 MR. HARBIN: I'M SORRY, WHICH EXCERPT ARE YOU
14 REFERRING TO?

15 BY MR. KRUGMAN:

16 Q. 923 TO 943, AND YOU HAVE PLAINTIFFS' EXHIBIT 265 WHICH IS
17 THE SECOND EDITION OF THE HANDBOOK, AND THOSE PAGES MAKE UP ALL
18 OF CHAPTER 36; IS THAT CORRECT?

19 A. CORRECT.

20 Q. AND IT'S THE ONLY WORK BY RICHARDSON IN THE HANDBOOK?

21 A. CORRECT.

22 Q. AND PLAINTIFFS' EXHIBIT 625 IS THE CHECKLIST THAT YOU
23 RECREATED IN DECEMBER OF 2010 --

24 A. CORRECT.

25 Q. -- FOR THIS WORK?

1 A. CORRECT.

2 Q. SCROLLING DOWN HERE YOU DIDN'T CHECK USE AS NECESSARY, BUT
3 OTHER THAN SOME MINOR INSTANCES, IT'S LARGELY IDENTICAL TO WHAT
4 WE LOOKED AT PREVIOUSLY, CORRECT?

5 A. CORRECT.

6 Q. AND, FINALLY, FOR THE SUMMER SEMESTER GO BACK TO
7 PLAINTIFFS' EXHIBIT 517 AT PAGE 8 AND YOU ASSIGNED A WORK BY
8 CHARMAN, QUALITATIVE INTERVIEWING AND GROUNDED THEORY ANALYSIS?

9 A. CORRECT.

10 Q. AND THIS WAS FROM INSIDE INTERVIEWING, NEW LENSES,
11 NEW CONCERNS PUBLISHED BY SAGE AND EDITED BY HOLSTEIN AND
12 GUBRIUM?

13 A. YES.

14 Q. AND IS PLAINTIFFS' EXHIBIT 293 THAT WORK?

15 A. YES.

16 Q. INSIDE INTERVIEWING, NEW LENSES, NEW CONCERNS, AND AM I
17 CORRECT THAT THE CHARMAN WORK IS AT PAGES 311 TO 330 AND
18 COMPROMISE ALL OF CHAPTER 15 OF THIS WORK?

19 A. CORRECT.

20 Q. AND PLAINTIFFS' EXHIBIT 629 IS THIS THE CHECKLIST YOU
21 COMPLETED ON DECEMBER 10TH, 2010?

22 A. CORRECT.

23 Q. AND THIS WAS A RECREATED CHECKLIST, CORRECT?

24 A. CORRECT.

25 Q. AND AM I CORRECT THAT THIS WAS COMPLETED LARGELY

1 IDENTICALLY TO ALL THE OTHERS?

2 A. CORRECT.

3 Q. AND YOUR THOUGHT PROCESS IN COMPLETING THIS CHECKLIST WAS
4 COMPARABLE TO THE THOUGHT PROCESS THAT YOU USED WHEN COMPLETING
5 THE PRIOR ONES AS WELL?

6 A. RIGHT.

7 Q. OKAY. LET'S GO NOW TO THE FALL SEMESTER OF 2009, AND YOU
8 TAUGHT THE 8500 COURSE AGAIN IN THE FALL SEMESTER OF 2009; IS
9 THAT CORRECT?

10 A. CORRECT.

11 Q. AND 21 STUDENTS ENROLLED IN THE COURSE?

12 A. CORRECT.

13 Q. AND WHEN DID YOU CONSTRUCT THE SYLLABUS FOR THE FALL OF
14 2009 COURSE; DO YOU RECALL?

15 A. I WOULD ASSUME DURING THE SUMMER BUT I'M NOT POSITIVE.

16 Q. SO SOMETIME DURING THE SUMMER YOU CONSTRUCTED THE SYLLABUS
17 FOR THE COURSE THAT YOU TAUGHT BEGINNING IN THE FALL OF 2009
18 WHICH REALLY --

19 A. SOMETIME PRIOR TO THE FALL I CREATED THIS.

20 Q. -- ACTUALLY BEGINS IN AUGUST?

21 A. CORRECT.

22 Q. AND BY THAT TIME YOU HAD -- THE NEW POLICY HAD BEEN IN
23 EFFECT FOR FOUR OR FIVE MONTHS?

24 A. CORRECT.

25 Q. AND YOU HAD ATTENDED A TRAINING SESSION ON THE NEW POLICY,

1 CORRECT?

2 A. CORRECT.

3 Q. YOUR DEPOSITION HAD BEEN TAKEN IN THIS CASE?

4 A. CORRECT.

5 Q. AND YOU HAD HAD EXPERIENCE WITH THE POLICY DURING BOTH THE
6 MAYMASTER AND THE SUMMER SEMESTER --

7 A. CORRECT.

8 Q. -- OF 2009?

9 NOW LET'S BRING UP PLAINTIFFS' EXHIBIT 518 IN
10 EVIDENCE, AND THIS IS THE SYLLABUS FOR EPRS 8500 FOR THE FALL
11 SEMESTER 2009; IS THAT CORRECT?

12 A. CORRECT.

13 Q. AND TWO OF THE REQUIRED READINGS FOR THE COURSE WERE THE
14 SAME AS BEFORE THE BOGDAN, BIKLEN AND CROTTY WORKS?

15 A. YES.

16 Q. AND YOU ALSO ADDED A THIRD REQUIRED TEXT THAT PREVIOUSLY
17 HAD JUST BEEN A RECOMMENDED TEXT AND THIS WAS WALLACE AND WRAY;
18 IS THAT CORRECT?

19 A. CORRECT.

20 Q. AND THEN AS BEFORE YOU HAD THE OWN CHOICE BOOK REVIEWS
21 WHERE THE STUDENTS WOULD SELECT A WORK THAT WOULD BE DISCUSSED
22 IN CLASS?

23 A. CORRECT.

24 Q. AND THEN SCROLLING DOWN TO ADDITIONAL READINGS, THESE ARE
25 THE SAME REQUIRED READINGS FOR THE COURSE THAT WERE EITHER

1 JOURNAL ARTICLES OR WORKS FROM BOOKS THAT WERE MADE AVAILABLE
2 TO STUDENTS ON ERESERVE; IS THAT CORRECT?
3 A. CORRECT.
4 Q. AND, LET'S SEE, IF YOU GO TO SESSION 2 OF THIS AND --
5 THANK YOU. SESSION 2 IS THE SAME DENZIN AND LINCOLN WORK THAT
6 WE LOOKED AT BEFORE THAT YOU HAD ASSIGNED FOR THE MAYMASTER AND
7 PREVIOUS SEMESTERS THAT YOU TAUGHT THIS COURSE, CORRECT?
8 A. CORRECT.
9 Q. AND THIS AGAIN WAS FROM THE SAGE HANDBOOK OF QUALITATIVE
10 RESEARCH THIRD EDITION, AND BRING UP PLAINTIFFS' EXHIBIT 581,
11 AND THIS IS THE CHECKLIST THAT YOU COMPLETED FOR THE DENZIN AND
12 LINCOLN WORK FOR THE FALL OF 2009 SEMESTER?
13 A. CORRECT.
14 Q. AND IT SHOWS A DATE OF JULY 17TH, 2009?
15 A. CORRECT.
16 Q. AND IS THAT THE DATE ON WHICH YOU COMPLETED THE CHECKLIST?
17 A. CORRECT.
18 Q. AND YOU WOULD AGREE, WOULD YOU NOT, THAT IT'S FILLED OUT
19 VIRTUALLY IDENTICALLY TO ALL THE OTHER CHECKLISTS THAT WE'VE
20 LOOKED AT?
21 A. YES.
22 Q. AND ONCE AGAIN FOR THE FALL COURSE YOU WENT THROUGH THE
23 SAME THOUGHT PROCESS THAT YOU DID FOR THE MAYMASTER AND SUMMER
24 SEMESTER IN COMPLETING THE CHECKLIST?
25 A. CORRECT.

1 Q. GOING BACK TO PLAINTIFFS' EXHIBIT 518, AND I'M GOING TO
2 KEEP A TALLY. RIGHT NOW WE HAVE ONE CHAPTER FROM THE SAGE
3 HANDBOOK ON QUALITATIVE RESEARCH THIRD EDITION; IS THAT
4 CORRECT?

5 A. CORRECT.

6 Q. ON SESSION 11 ON NOVEMBER 2 ON PAGE 9 YOU ADDED AS
7 REQUIRED READING A WORK AUTHORED BY BISHOP FREEING OURSELVES
8 FROM NEOCOLONIAL DOMINATION IN RESEARCH, KAUPAPA MAORI APPROACH
9 TO CREATING KNOWLEDGE AND THIS IS PAGES 119 TO 138 OF THE THIRD
10 EDITION OF THE SAGE HANDBOOK; IS THAT CORRECT?

11 A. CORRECT.

12 Q. AND LOOKING AT PLAINTIFFS' EXHIBIT 267, THE SAGE HANDBOOK,
13 LOOK AT THE FIFTH CHAPTER OF THE BOOK WHERE THERE IS THE WORK
14 BY BISHOP FREEING OURSELVES FROM NEOCOLONIAL DOMINATION AND
15 RESEARCH, AND THIS IS THE CHAPTER YOU ASSIGNED TO STUDENTS?

16 A. CORRECT.

17 Q. NOW THE BOOK SHOWS THAT THE WORK -- THE CHAPTER BEGINS ON
18 PAGE 109 AND GOES THROUGH 138 BUT YOUR SYLLABUS INDICATED THAT
19 YOU HAD ASSIGNED PAGES 119 TO 138 OF THE WORK.

20 AM I CORRECT THAT YOUR INTENTION WAS TO ASSIGN THE
21 COMPLETE WORK TO STUDENTS?

22 A. CORRECT.

23 Q. AND STUDENTS WERE NOT TO PICK UP ON PAGE 10 OF THAT WORK?

24 A. CORRECT.

25 Q. PLAINTIFFS' EXHIBIT 582 IN EVIDENCE, IS THIS THE CHECKLIST

1 THAT YOU COMPLETED FOR THIS WORK BY BISHOP?

2 A. CORRECT.

3 Q. AND I SEE THE PAGE NUMBERS APPEAR INCORRECT. IT LOOKS
4 LIKE SOMETHING IS LEFT OFF, BUT THE ENDING PAGES IS THE SAME?

5 A. CORRECT.

6 Q. AND AM I CORRECT THAT THIS CHECKLIST IS LARGEY IDENTICAL
7 TO THE ONES WE'VE LOOKED AT PREVIOUSLY EXCEPT HERE YOU DID NOT
8 CHECK NONTRANSFORMATIVE?

9 A. CORRECT.

10 Q. AND THAT WAS JUST AN OVERSIGHT ON YOUR PART?

11 A. CORRECT.

12 Q. SO WE HAVE TWO CHAPTERS FROM THE SAGE HANDBOOK; IS THAT
13 CORRECT?

14 A. CORRECT.

15 Q. GOING BACK NOW TO THE SYLLABUS PLAINTIFFS' EXHIBIT 518 AT
16 PAGE 9 FOR SESSION 10 ON OCTOBER 26TH YOU ASSIGNED AS A
17 REQUIRED READING PLUMMER, CRITICAL HUMANISM AND QUEER THEORY,
18 LIVING WITH THE TENSIONS. THIS CAME FROM THE THIRD EDITION OF
19 THE SAGE HANDBOOK AT PAGES 367 TO 373; IS THAT CORRECT?

20 A. CORRECT.

21 Q. AND THIS IS A COMPLETE WORK BY PLUMMER, CHAPTER 14 OF THE
22 HANDBOOK; IS THAT CORRECT?

23 A. CORRECT.

24 Q. AND BRING UP PLAINTIFFS' EXHIBIT 583 AND IS THIS THE
25 CHECKLIST YOU COMPLETED --

1 A. CORRECT.

2 Q. -- FOR THIS WORK? AND IT'S VIRTUALLY IDENTICAL IF NOT
3 IDENTICAL TO THE ONES WE'VE LOOKED AT PREVIOUSLY, CORRECT?

4 A. CORRECT.

5 Q. AND THIS BRINGS US NOW TO THREE CHAPTERS OF THE THIRD
6 EDITION OF THE SAGE HANDBOOK THAT YOU'VE ASSIGNED AS REQUIRED
7 READINGS FOR THE FALL 8500 COURSE, CORRECT?

8 A. CORRECT.

9 Q. AND I'LL TELL YOU THIS ALSO BRINGS THE PAGE TOTAL TO 79.

10 AGAIN EXHIBIT 518 AT PAGE 8 FOR THE SESSION ON
11 OCTOBER 5 YOU ASSIGNED AS A REQUIRED READING A WORK BY STAKE,
12 QUALITATIVE CASE STUDIES, THAT I BELIEVE WE'VE LOOKED AT AND
13 THAT'S PAGES 443 TO 465; IS THAT CORRECT?

14 A. CORRECT.

15 Q. THAT'S CHAPTER 17 OF THE HANDBOOK, AND 584 IS THE
16 CHECKLIST THAT YOU COMPLETED FOR THIS WORK; IS THAT CORRECT?

17 A. CORRECT.

18 Q. AND ONCE AGAIN COMPLETED LARGELY IDENTICALLY TO ALL THE
19 OTHERS?

20 A. CORRECT.

21 Q. AND THEN THIS BRINGS US NOW TO FOUR CHAPTERS OF THE THIRD
22 EDITION OF THE HANDBOOK AND 102 PAGES.

23 GO BACK TO THE SYLLABUS 518 AT PAGE 9 FOR SESSION 10
24 ON OCTOBER 26TH YOU ASSIGNED AS A REQUIRED READING ANOTHER WORK
25 FROM THE SAGE HANDBOOK THIRD EDITION BY BEVERLEY, IT'S

1 TESTIMONIO SUBALTERNITY AND NARRATIVE AUTHORITY --
2 THE COURT: IS THERE A PENDING QUESTION?
3 MR. KRUGMAN: THE WITNESS I THINK HAD A QUESTION --
4 THE WITNESS: NO, I'M LOOKING. I'M LISTENING TO YOU.
5 MR. KRUGMAN: I THOUGHT YOU HAD A QUESTION ABOUT
6 THAT. I APOLOGIZE.
7 BY MR. KRUGMAN:
8 Q. AND THIS WORK COMPRISES -- IF YOU GO TO PLAINTIFFS'
9 EXHIBIT 267, THESE PAGES COMPRISE CHAPTER 22 OF THE HANDBOOK;
10 IS THAT CORRECT?
11 A. CORRECT.
12 Q. AND IT'S THE ONLY WORK BY BEVERLEY IN THE HANDBOOK; IS
13 THAT CORRECT?
14 A. CORRECT.
15 Q. AND PLAINTIFFS' EXHIBIT 585 IS THE CHECKLIST FOR THIS
16 WORK; AM I CORRECT?
17 A. CORRECT.
18 Q. AND IT'S IDENTICAL, LARGELY IDENTICAL TO THE PREVIOUS
19 CHECKLISTS; IS THAT CORRECT?
20 A. CORRECT.
21 Q. THAT BRINGS US TO FIVE CHAPTERS FROM THE SAGE HANDBOOK
22 THIRD EDITION AND 114 PAGES, CORRECT?
23 A. CORRECT.
24 Q. NOW GOING BACK TO PLAINTIFFS' EXHIBIT 518 AT PAGE 10 FOR
25 SESSION 14 ON NOVEMBER 23RD YOU ASSIGNED AS A REQUIRED READING

1 FROM THE THIRD EDITION OF THE SAGE HANDBOOK A WORK BY SMITH AND
2 HODKINSON, RELATIVISM, CRITERIA AND POLITICS; IS THAT CORRECT?

3 A. CORRECT.

4 Q. AND THAT WORK IS AT PAGES 915 TO 932 OF THE HANDBOOK?

5 A. CORRECT.

6 Q. AND IF YOU BRING UP PLAINTIFFS' EXHIBIT 267, CAN YOU
7 CONFIRM THAT IT IS CHAPTER 36 OF THE HANDBOOK; IS THAT CORRECT?

8 A. CORRECT.

9 Q. AND DID YOU COMPLETE A CHECKLIST OR DID YOU RECREATE A
10 CHECKLIST FOR THIS WORK IN DECEMBER OF 2010?

11 A. I EITHER CREATED ONE OR RECREATED ONE OR DID BOTH.

12 Q. AND PERHAPS YOU DID, BUT I HAVEN'T BEEN ABLE TO LOCATE
13 ONE, BUT THERE ARE A LOT OF DOCUMENTS IN THIS CASE, BUT THAT
14 BRINGS US UP TO SIX CHAPTERS AND 132 PAGES, CORRECT?

15 A. CORRECT.

16 THE COURT: WOULD YOU REMIND ME THERE WERE SEVERAL
17 DIFFERENT VERSIONS OF THE HANDBOOK -- OR SEVERAL EDITIONS THAT
18 WERE IN EVIDENCE I GUESS. WHAT IS 265, IS THAT THE ORIGINAL?

19 MR. KRUGMAN: 265 IS THAT THE THIRD EDITION? 267 IS
20 THE THIRD EDITION AND I BELIEVE 265 IS THE SECOND EDITION.

21 THE COURT: AND 266?

22 MR. KRUGMAN: GIVE ME ONE SECOND, YOUR HONOR. WE
23 THINK IT'S ONE OF THE AGREEMENTS.

24 THE COURT: OKAY. SO JUST THE SECOND AND THIRD
25 EDITIONS ARE IN EVIDENCE?

1 MR. KRUGMAN: THAT'S CORRECT, YOUR HONOR. THERE IS
2 NO FIRST EDITION IN EVIDENCE. IT'S JUST THE SECOND AND THIRD.

3 THE COURT: THANK YOU.

4 MR. HARBIN: EXHIBIT 266 THE PLAINTIFFS INTENTIONALLY
5 OMITTED.

6 BY MR. KRUGMAN:

7 Q. GOING BACK NOW TO THE SYLLABUS PLAINTIFFS' EXHIBIT 518 AT
8 PAGE 10 FOR SESSION 15 ON NOVEMBER 30TH YOU ASSIGNED AS A
9 REQUIRED READING FROM THE THIRD EDITION OF THE SAGE HANDBOOK A
10 WORK BY RICHARDSON AND ST. PIERRE, WRITING AS A METHOD OF
11 INQUIRY FROM THE SAGE HANDBOOK OF QUALITATIVE RESEARCH.

12 NOW THE SYLLABUS SAYS PAGES 9523 TO 48; DO YOU SEE
13 THAT?

14 A. I THINK THAT'S A TYPO.

15 Q. YEAH, IF WE COULD TURN TO PLAINTIFFS' EXHIBIT 267 WHICH IS
16 THE THIRD EDITION OF THE SAGE HANDBOOK, AND THE TABLE OF
17 CONTENTS CHAPTER 38 IS WRITING AS A METHOD OF INQUIRY, DO YOU
18 SEE THAT BY RICHARD AND ST. PIERRE, AND IT'S AT PAGES -- IT
19 BEGINS AT PAGE 959 AND RUNS THROUGH 978, AND THAT WAS THE WORK
20 THAT YOU ASSIGNED FROM THE THIRD EDITION OF THE SAGE HANDBOOK,
21 CORRECT?

22 A. CORRECT.

23 Q. AND IT'S THE ONLY WORK AUTHORED BY RICHARDSON AND ST.
24 PIERRE IN THE HANDBOOK?

25 A. CORRECT.

1 Q. AND PLAINTIFFS' EXHIBIT 587 IS THAT THE CHECKLIST THAT YOU
2 COMPLETED LARGELY IDENTICALLY TO THE OTHER CHECKLISTS FOR THIS
3 WORK BY RICHARDSON AND ST. PIERRE?

4 A. CORRECT.

5 Q. AND THAT BRINGS US TO SEVEN CHAPTERS OF THE THIRD EDITION
6 OF THE SAGE HANDBOOK THAT YOU REQUESTED THE LIBRARY TO POST ON
7 ELECTRONIC RESERVE, AND I WILL REPRESENT TO YOU THAT IT ALSO
8 BRINGS THE TOTAL NUMBER OF PAGES FROM THE THIRD EDITION OF THE
9 SAGE HANDBOOK TO 153?

10 A. YES.

11 Q. SO FOR THE FALL OF 2009 YOU ASSIGNED AS REQUIRED READING
12 SEVEN CHAPTERS AND 153 PAGES?

13 A. CORRECT.

14 Q. AND WHAT ARE THE TOTAL -- YOU INDICATED EARLIER, BUT WHAT
15 ARE TOTAL NUMBER OF PAGES?

16 A. 1210.

17 Q. YEAH, I THINK YOU SAID OVER 1200 IF YOU INCLUDE ALL THE
18 INDICES?

19 A. 1210.

20 Q. USING EVEN THAT NUMBER, AM I CORRECT THAT YOU ASSIGNED TO
21 STUDENTS FROM THE SAGE HANDBOOK OF QUALITATIVE RESEARCH THIRD
22 EDITION FOR THE FALL 2000 SEMESTER MORE THAN 10 PERCENT OF THE
23 HANDBOOK?

24 A. CORRECT, IT WAS MY INTENTION TO STAY AT 10 PERCENT, BUT
25 OBVIOUSLY I MADE A MISTAKE.

1 Q. AND MORE THAN 10 PERCENT WAS COPIED AND PROVIDED TO
2 STUDENTS ON ELECTRONIC RESERVES?

3 A. CORRECT.

4 Q. WITHOUT THE PAYMENT OF ANY PERMISSIONS TO SAGE, CORRECT?

5 A. CORRECT.

6 Q. I TAKE IT YOU WERE NOT AWARE BEFORE TODAY THAT YOU HAD
7 EXCEEDED THE 10 PERCENT?

8 A. NO, I WAS NOT.

9 Q. AM I CORRECT --

10 THE COURT: DID YOU SAY FALL OF 2009?

11 MR. KRUGMAN: DID I MISSPEAK?

12 THE COURT: I'M NOT SURE. THAT'S WHAT I THOUGHT.

13 MR. KRUGMAN: ANDY'S SHAKING HIS HEAD. YES, I
14 APOLOGIZE. 2009.

15 BY MR. KRUGMAN:

16 Q. SO AM I CORRECT THAT FOR THIS SEMESTER AS YOU DID
17 PREVIOUSLY THAT WHEN YOU WERE ON THE CHECKLISTS FOR CONSIDERING
18 THE BOXES FOR WHETHER THE USE WAS CENTRAL OR SIGNIFICANT FOR
19 THE WORK AS A WHOLE OR WHETHER THE AMOUNT WAS NARROWLY
20 TAILORED, YOU LOOKED AT EACH INDIVIDUAL CHAPTER FOR PURPOSES OF
21 THAT CHAPTER AS YOU'D DONE BEFORE?

22 A. CORRECT.

23 Q. NOW IN ADDITION TO THE WORKS FROM THE THIRD EDITION OF THE
24 SAGE HANDBOOK OF QUALITATIVE RESEARCH, YOU ALSO ASSIGNED
25 REQUIRED READINGS FROM OTHER WORKS BY SAGE; IS THAT CORRECT?

1 A. CORRECT.

2 Q. NOW LET'S GO BACK TO PLAINTIFFS' EXHIBIT 518 AT PAGE 8 FOR
3 SESSION 4 ON SEPTEMBER 14TH YOU ASSIGNED AS A REQUIRED READING
4 ONCE AGAIN PREISSLE'S FEMINIST RESEARCH ETHICS THAT WAS IN THE
5 HANDBOOK OF FEMINIST RESEARCH, THEORY AND PRAXIS PAGES 515 TO
6 534?

7 A. CORRECT.

8 Q. AND EXHIBIT 243 WHICH IS IN EVIDENCE IS THAT HANDBOOK,
9 CORRECT?

10 A. CORRECT.

11 Q. AND THIS WORK IS THE COMPLETE CHAPTER 26 FROM THE
12 HANDBOOK, CORRECT?

13 A. CORRECT.

14 Q. AND EXHIBIT 590 THIS IS THE CHECKLIST THAT YOU COMPLETED
15 ON JULY 17TH FOR THIS WORK?

16 A. CORRECT.

17 Q. AND IT'S COMPLETED LARGELY IDENTICALLY TO THE OTHERS,
18 CORRECT?

19 A. CORRECT.

20 Q. WE'RE NOW -- IF YOU ADD THAT CHAPTER TO THE OTHER
21 CHAPTERS, WE'RE NOW UP TO EIGHT CHAPTERS OF SAGE WORKS,
22 CORRECT?

23 A. YOU'RE TALKING ABOUT A DIFFERENT BOOK.

24 Q. I REALIZE THAT, BUT IN TERMS OF WORKS FROM SAGE, THERE'S
25 SEVEN FROM THE PREVIOUS HANDBOOK AND NOW WE HAVE EIGHT CHAPTERS

1 OF SAGE WORKS THAT YOU ASSIGNED FROM DIFFERENT BOOKS, CORRECT?

2 A. FROM DIFFERENT BOOKS.

3 THE COURT: WE NEED TO TAKE A BREAK. I THINK THE

4 TIME HAS KIND OF GOTTON AWAY FROM ME. LET'S TAKE A 15-MINUTE

5 BREAK.

6 (RECESS)

7 BY MR. KRUGMAN:

8 Q. GOING BACK TO PLAINTIFFS' EXHIBIT 518 AND -- BEFORE WE GO,

9 I WANT TO CLARIFY ONE THING THAT MY MATH WAS NOT PERFECT.

10 INSTEAD OF 153 PAGES, I'M ADVISED THAT -- WHICH WAS FROM THE

11 SYLLABUS -- THAT THE ACTUAL NUMBER OF PAGES ARE 151 RATHER THAN

12 153.

13 WHAT THAT DOES WE'RE CURRENTLY AT EIGHT CHAPTERS AND

14 A TOTAL OF 170 PAGES FROM THE SAGE WORKS?

15 THE COURT: YOU MEAN FROM ALL THREE EDITIONS --

16 EXCUSE ME, BOTH EDITIONS?

17 MR. KRUGMAN: RIGHT NOW WE HAVE SEVEN CHAPTERS FROM

18 THE SAGE HANDBOOK THIRD EDITION AND THEN ONE CHAPTER FROM THE

19 SAGE HANDBOOK OF FEMINIST RESEARCH. SO THIS IS COLLECTIVELY

20 THE SAGE WORKS BUT TWO DIFFERENT BOOKS NOW.

21 BY MR. KRUGMAN:

22 Q. PLAINTIFFS' EXHIBIT 518 AT PAGE 8 FOR SESSION 6 ON

23 SEPTEMBER 28TH YOU ASSIGNED AS A REQUIRED READING A WORK BY

24 PILLOW AND MAYO TOWARD UNDERSTANDINGS OF FEMINIST ETHNOGRAPHY,

25 AND THIS WAS AGAIN IN THE HANDBOOK OF FEMINIST RESEARCH, THEORY

1 AND PRAXIS; IS THAT CORRECT?

2 A. CORRECT.

3 Q. AND THIS WAS AT PAGES 155 TO 172 OF THE HANDBOOK; IS THAT
4 CORRECT?

5 A. CORRECT.

6 Q. AND LOOKING AT EXHIBIT 243 THAT IS THE COMPLETE
7 CHAPTER 8 --

8 A. CORRECT.

9 Q. -- FROM THE HANDBOOK? AND ALSO IS THE ONLY WORK AUTHORED
10 BY PILLOW AND MAYO IN THE HANDBOOK, CORRECT?

11 A. CORRECT.

12 Q. LET'S GO TO PLAINTIFFS' EXHIBIT 589 WHICH IS THE CHECKLIST
13 THAT YOU COMPLETED FOR THIS WORK FOR THE FALL SEMESTER 2009
14 COURSE?

15 A. CORRECT.

16 Q. AND IT'S COMPLETED LARGELY IDENTICALLY TO ALL THE OTHER
17 CHECKLISTS WE'VE LOOKED AT, CORRECT?

18 A. CORRECT.

19 Q. AND IN TERMS OF NUMBER OF CHAPTERS, WE NOW HAVE NINE
20 CHAPTERS FROM SAGE WORKS, CORRECT?

21 A. FROM TWO DIFFERENT BOOKS.

22 Q. FROM TWO DIFFERENT BOOKS, YES, MA'AM.

23 A. YES.

24 Q. AND ADDING THESE PAGES, 18 PAGES TO THE PREVIOUS ONES
25 WE'RE NOT AT 188 TOTAL PAGES?

1 THE COURT: THAT'S WITH THE TWO BOOKS COMBINED?

2 MR. KRUGMAN: YES, YOUR HONOR.

3 THE COURT: IT'S HARD TO KEEP THESE BOOKS SEPARATE.

4 YOU'RE TALKING ABOUT THE THIRD EDITION OF THE HANDBOOK OF

5 QUALITATIVE RESEARCH?

6 MR. KRUGMAN: YES, YOUR HONOR.

7 THE COURT: WHAT WAS THE OTHER ONE?

8 MR. KRUGMAN: IT IS THE HANDBOOK OF FEMINIST RESEARCH

9 THEORY AND PRAXIS AND THAT IS PLAINTIFFS' EXHIBIT 243.

10 THE COURT: ALL RIGHT.

11 BY MR. KRUGMAN:

12 Q. NOW IF WE GO BACK TO THE SYLLABUS PLAINTIFFS' EXHIBIT 518

13 AT PAGE 8 AND THIS IS AGAIN FOR THE SEPTEMBER 28TH SESSION, YOU

14 ASSIGNED AS REQUIRED READING A WORK BY SANDSTROM, MARTIN AND

15 FINE ENTITLED SYMBOLIC INTERACTIONISM AT THE END OF THE

16 CENTURY, AND THIS IS IN THE SAGE HANDBOOK OF SOCIAL THEORY

17 EDITED BY RITZER AND SMART AND FOUND AT PAGES 217 TO 228; IS

18 THAT CORRECT?

19 A. CORRECT.

20 Q. AND WE LOOK AT THE SAGE HANDBOOK OF SOCIAL THEORY

21 PLAINTIFFS' EXHIBIT 288, THESE PAGES COMPRISE CHAPTER 17 OF THE

22 HANDBOOK; IS THAT CORRECT?

23 A. CORRECT.

24 Q. AND IS THE ONLY WORK IN THE HANDBOOK BY THOSE AUTHORS,

25 CORRECT?

1 A. CORRECT.

2 Q. AND PLAINTIFFS' EXHIBIT 594 AND THIS IS -- IS THIS THE
3 FAIR USE CHECKLIST THAT YOU COMPLETED FOR THIS WORK?

4 A. YES.

5 Q. AND ONCE AGAIN IDENTICAL TO THE OTHER ONES?

6 A. CORRECT.

7 Q. AND WE'RE NOW AT TEN CHAPTERS FROM THREE DIFFERENT SAGE
8 HANDBOOKS, CORRECT?

9 A. CORRECT.

10 Q. AND TOTAL PAGES ARE 202 FROM SAGE PUBLICATIONS?

11 THE COURT: WHICH SAGE PUBLICATIONS ARE WE LOOKING AT
12 NOW?

13 MR. KRUGMAN: OKAY. THIS IS THE HANDBOOK OF SOCIAL
14 THEORY WHICH IS PLAINTIFFS' EXHIBIT 288, AND WE CURRENTLY HAVE
15 ONE CHAPTER FROM THAT HANDBOOK.

16 THE COURT: SO WHERE YOU'RE HEADED WITH THIS IS
17 YOU'RE GOING TO LOOK AT THE TOTAL NUMBER OF PAGES COPIED FROM
18 ALL OF THE SAGE WORKS VERSUS THE TOTAL OF NUMBER OF PAGES IN
19 ALL OF THE SAGE WORKS?

20 MR. KRUGMAN: NO, YOUR HONOR. I'M LOOKING AT
21 PROFESSOR KAUFMANN HAS CREATED A DIGITAL COURSEPACK OF WORKS.
22 IT'S REALLY IRRELEVANT IF THEY COME FROM THE SAME BOOK,
23 ALTHOUGH SEVEN OF THE WORKS CAME FROM A SINGLE HANDBOOK.

24 THE COURT: WHAT DIFFERENCE DOES IT MAKE THAT SEVEN
25 OF THE WORKS CAME FROM THE HANDBOOK OF QUALITATIVE RESEARCH?

1 MR. KRUGMAN: I THINK IT MAKES A DIFFERENCE IN TERMS
2 OF ONE OF THE FACTORS IN TERMS OF SIMPLY THE AMOUNT OF A SINGLE
3 WORK THAT WAS BEING USED BUT YOU CAN'T --

4 THE COURT: BUT IF YOU TAKE THE CHAPTERS THAT CAME
5 OUT OF THE HANDBOOK OF QUALITATIVE RESEARCH, AND I'M NOT
6 SUGGESTING THAT 10 PERCENT IS A MAGIC CUTOFF, BUT DO YOU COME
7 IN UNDER THE 10 PERCENT IF YOU LOOK AT THE TOTAL PAGES IN THAT
8 HANDBOOK VERSUS THE NUMBER OF PAGES COPIED?

9 MR. KRUGMAN: FOR THE FALL SEMESTER IF YOU LOOK ONLY
10 AT THE HANDBOOK OF QUALITATIVE RESEARCH THIRD EDITION, THE
11 TOTAL NUMBER OF PAGES THAT WERE COPIED FROM THAT WORK AND
12 POSTED ON ELECTRONIC RESERVE EXCEED 10 PERCENT, BUT, YOU KNOW,
13 WITHOUT REPEATING MYSELF, WE THINK THAT EACH INDIVIDUAL WORK
14 OFFERED --

15 THE COURT: WHAT DO YOU MEAN BY WORK?

16 MR. KRUGMAN: EACH CHAPTER IS AN INDIVIDUAL WORK.

17 THE COURT: WHAT'S YOUR BASIS FOR THAT?

18 MR. KRUGMAN: THEY ARE DIFFERENT SUBJECT MATTERS
19 WRITTEN BY DIFFERENT AUTHORS. THE ELECTRONIC RESERVE SYSTEM
20 THE WAY PROFESSORS ARE REQUIRED TO REQUEST MATERIALS BE POSTED
21 TREATS THOSE EFFECTIVELY AS SEPARATE WORKS.

22 THE COURT: THERE'S NO WAY A PROFESSOR COULD TELL,
23 THOUGH, BY LOOKING AT THE HANDBOOK OF QUALITATIVE RESEARCH THAT
24 THESE ARTICLES OR CHAPTERS ARE ENTITLED TO ANY SPECIAL
25 PROTECTION ON THEIR OWN AS SEPARATE WORKS, IS THERE?

1 MR. KRUGMAN: LET ME SEE IF I FOLLOW YOUR HONOR'S
2 QUESTION COULD THE PROFESSORS THEMSELVES MAKE THAT --
3 THE COURT: NO, COULD THEY TELL BY LOOKING AT THE
4 HANDBOOK OF QUALITATIVE RESEARCH ITSELF THAT THE SEPARATE
5 CHAPTERS ARE ENTITLED TO SPECIAL CREDIT EACH ONE ON THEIR OWN?
6 MR. KRUGMAN: I THINK THEY COULD, YOUR HONOR, TO THE
7 EXTENT THAT IT'S AN ANTHOLOGY OF SEPARATE WORKS CREATED BY
8 DIFFERENT AUTHORS AND I THINK --
9 THE COURT: SEE HERE'S WHERE I'M FUZZING OUT ON YOU,
10 WHEN YOU SAY AN ANTHOLOGY -- WELL, I DON'T KNOW WHAT IT MEANS
11 WHETHER IT'S AN ANTHOLOGY OR NOT. I THINK IT COULD BE
12 IMPORTANT WHETHER THE PROFESSOR WHO IS SAYING I WANT ALL THESE
13 DIFFERENT CHAPTERS PUT ON ELECTRONIC RESERVES THIS FALL, COULD
14 THAT PROFESSOR TELL BY EXAMINING THE HANDBOOK OF QUALITATIVE
15 RESEARCH THAT ANY -- THAT THERE IS ANY SPECIAL PROTECTION
16 AFFORDED TO INDIVIDUAL CHAPTERS ON THEIR OWN, AND JUST GLANCING
17 AT WHICHEVER EDITION OF THE HANDBOOK I LOOKED IT, I DON'T KNOW
18 WHETHER IT WAS THE SECOND OR THIRD, I DON'T SEE HOW THEY COULD
19 TELL THAT BECAUSE THERE'S NOTHING TO ALERT THEM TO IT.
20 MR. KRUGMAN: AND I GUESS I'M NOT CERTAIN LIKE HOW
21 THEY WOULD BE ALERTED --
22 THE COURT: THEY CAN CERTAINLY SAY THAT THERE'S SOME
23 COPYRIGHT PROTECTION IN THESE INDIVIDUAL CHAPTERS, IF INDEED
24 THERE IS, RIGHT?
25 MR. KRUGMAN: WE BELIEVE THERE IS, YOUR HONOR, FOR

1 PURPOSES OF A FAIR USE ANALYSIS.

2 THE COURT: I DON'T KNOW WHAT YOU MEAN BY THAT?

3 MR. KRUGMAN: EACH OF THESE CHAPTERS IN EACH OF THE
4 SAGE PUBLICATIONS WERE CREATED BY DIFFERENT AUTHORS, AND WE
5 THINK THAT IN AND OF ITSELF PROVIDES SOME ADDITIONAL PROTECTION
6 OR SOME PROTECTION TO THAT INDIVIDUAL CHAPTER.

7 THE COURT: WHY DO YOU THINK THAT?

8 MR. KRUGMAN: BECAUSE THEY'RE ORIGINALLY CREATED BY
9 DIFFERENT INDIVIDUALS WHO WERE THE CONTRIBUTING AUTHORS TO THE
10 WORK.

11 THE COURT: RIGHT, BUT THE QUESTION IS COULD
12 PROFESSOR KAUFMANN OR SOME OTHER PROFESSOR TELL BY LOOKING AT
13 THIS HANDBOOK OF QUALITATIVE RESEARCH THAT THE INDIVIDUAL
14 CHAPTERS ARE ENTITLED TO ANY SPECIAL COPYRIGHT PROTECTION ON
15 THEIR OWN, AND IT SEEMS TO ME THEY COULD IF IT SAID SO AT THE
16 BEGINNING OF THE BOOK, AND I THINK ONE OF THE BOOKS DOES SAY
17 THAT. THE HANDBOOK OF SOCIAL THEORY HAS SOMETHING THAT TENDS
18 TO SUGGEST THAT TO ME.

19 MR. KRUGMAN: I WOULD HAVE TO LOOK AT THAT.

20 THE COURT: RIGHT, BUT ON THE QUALITATIVE RESEARCH I
21 DON'T SEE HOW A PROFESSOR LIKE PROFESSOR KAUFMANN WOULD BE ABLE
22 TO TELL THAT JUST BY LOOKING AT THE HANDBOOK.

23 DID YOU WANT TO SAY SOMETHING, MR. RICH?

24 MR. RICH: SORRY, YOUR HONOR, THERE IS A PROVISION OF
25 THE COPYRIGHT LAW WHICH SPEAKS DIRECTLY TO YOUR HONOR'S

1 QUESTION. IT'S SECTION 404 OF THE ACT, AND IT DEALS IN A
2 COLLECTIVE WORK OF THIS TYPE WHAT SUFFICES FOR NOTICE OF
3 COPYRIGHT AS A MATTER OF LAW.

4 IT PROVIDES THAT IF YOU HAVE A SITUATION LET'S JUST
5 TAKE A HYPOTHETICAL BOOK WITH FIVE CONTRIBUTORS EACH OF WHOM
6 RETAINS HER OWN COPYRIGHT TO A CONTRIBUTION, AND THEN THERE IS
7 THE COLLECTIVE WORK AND THE COLLECTIVE WORK IS PUBLISHED LET'S
8 SAY BY SAGE.

9 IT SUFFICES UNDER SECTION 404 THAT THE ONLY COPYRIGHT
10 NOTICE FOR THE WORK BE A COPYRIGHT NOTICE IN SAGE'S NAME AS THE
11 EDITOR OF THE COMPILATION OF THE COLLECTIVE WORK. THERE IS NO
12 REQUIREMENT LEGALLY IN ORDER TO SEPARATELY PROTECT THE
13 COPYRIGHTS OF EACH CONTRIBUTOR THAT THERE ALSO BE LISTED
14 SEPARATE COPYRIGHTS PROTECTED.

15 SO IT WOULD SEEM TO US CERTAINLY THAT ANY INSTITUTION
16 WHICH PROPOSES TO MAKE SIGNIFICANT UNPERMISSIONED TAKINGS
17 SHOULD HAVE A CYNTHIA HALL OR ANY LEGAL OFFICER WITH THE MOST
18 RUDIMENTARY KNOWLEDGE OF COPYRIGHT LAW ADVISE FACULTY MEMBERS
19 THAT IF THEY ARE PROPOSING TO TAKE EXCERPTS OUT OF COLLECTIVE
20 WORKS THEY SHOULD NOT MISTAKENLY MAKE THE ASSUMPTION THAT JUST
21 BECAUSE THERE DOES NOT APPEAR A NOTICE OF COPYRIGHT SEPARATELY
22 ATTESTING EACH CONTRIBUTION THAT IT IS HORNBOOK COPYRIGHT LAW
23 THAT THE PRESUMPTION IS THAT THEY ARE OR MAY BE SEPARATELY
24 COPYRIGHTED AND THAT IT SUFFICES THAT THERE IS JUST ONE
25 OVERARCHING COPYRIGHT NOTICE.

1 THIS IS REALLY NOT ESOTERIC COPYRIGHT LAW FOR THOSE
2 WHO ARE --

3 THE COURT: I ASSUME THAT YOU'RE CORRECT THAT IT'S
4 NOT ESOTERIC, AND I ASSUME YOU'RE RIGHT ABOUT THE PROCESS FOR
5 PROTECTING THE INDIVIDUAL WORKS AND COLLECTIVE WORKS, BUT THAT
6 WAS NOT THE THRUST OF MY QUESTION.

7 MR. RICH: I APOLOGIZE.

8 THE COURT: THE THRUST OF MY QUESTION WENT TO THE
9 PAGE COUNT BUSINESS, AND YOU ALL ARE SAYING WELL A CERTAIN
10 PROFESSOR COPIED A HUNDRED PERCENT OF THIS CHAPTER AND SO
11 THAT'S A 100 PERCENT COPYING THAT IS DISALLOWED BY THE FAIR USE
12 DOCTRINE.

13 WELL, I CAN SEE HOW YOU COULD MAKE THAT ARGUMENT IF
14 THE PROFESSOR WHO'S MAKING THE DECISION ABOUT IS THIS TOO MUCH
15 OR NOT IS ON NOTICE THAT THERE IS AN INDIVIDUAL COPYRIGHT IN
16 THIS PARTICULAR WORK.

17 AND MY IMPRESSION FROM LOOKING AT THESE BOOKS QUICKLY
18 AS YOU ALL HAVE BEEN PUTTING THEM IN IS THAT, FOR EXAMPLE, WITH
19 THE HANDBOOK OF QUALITATIVE RESEARCH, ONE EDITION OR THE OTHER,
20 THAT THERE WAS NOTHING THAT WOULD PLACE A PROFESSOR OR AN
21 INSTRUCTOR ON NOTICE THAT IF CHAPTER 8 WAS COPIED THAT THAT
22 WOULD BE AN IMPERMISSIBLE 100 PERCENT COPYING.

23 I HEAR WHAT YOU'RE SAYING, YOU KNOW, YOU'RE SAYING
24 THAT AN EDUCATOR SHOULD BE SMART ENOUGH TO REALIZE THAT IF YOU
25 SEE A BOOK WHERE ONE CHAPTER IS WRITTEN BY ONE PERSON AND ONE

1 BY ANOTHER THAT MAYBE YOU OUGHT TO CALL THE PUBLISHER AND CHECK
2 BEHIND WHAT'S IN THE FRONT PART OF THE BOOK TO SEE IF THERE IS
3 SOME ADDITIONAL COPYRIGHT WORKS, BUT THAT IS NOT OBVIOUS TO ME
4 WHAT THE RIGHT ANSWER TO THAT IS.

5 MR. RICH: I APPRECIATE THAT, YOUR HONOR, AND YOU'RE
6 RIGHT TO A LAYPERSON LOOKING AT IT IT WOULDN'T MAKE SENSE, AND
7 I WOULDN'T PRESUME THAT PROFESSOR KAUFMANN SHOULD KNOW THAT
8 RULE IN HER PRACTICE, LET'S SAY.

9 BUT, AGAIN, IF AN INSTITUTION IS GOING TO MAKE VERY
10 LIBERAL USE AS WE BELIEVE GEORGIA STATE UNIVERSITY HAS A FAIR
11 USE AND CLAIMS TO HAVE A COMPREHENSIVE EDUCATION POLICY, IT
12 WOULD BE PROBABLY ONE OF THE FIRST TEN THINGS THAT ANY LAWYER
13 KNOWING COPYRIGHT LAW WOULD INSTRUCT.

14 IF I MAY BE -- I DON'T MEAN TO BE PRESUMPTUOUS. I
15 MEAN THIS -- I PRACTICE IN THIS AREA. IT'S MY CAREER -- IS TO
16 SAY BY NATURE COLLECTIONS COMPRISING A COLLECTIVE WORK, THE
17 CONTRIBUTIONS IN A COLLECTIVE WORK ARE AUTOMATICALLY
18 COPYRIGHTABLE IN THE NAME OF THE CONTRIBUTORS UNLESS THERE IS
19 SOME OTHER ARRANGEMENT, AND THE FACT THAT THERE IS BUT A SINGLE
20 COPYRIGHT NOTICE COVERING THE WORK SHOULDN'T SUGGEST AND
21 DOESN'T SUGGEST THAT IT'S OTHERWISE.

22 IT'S SOMETHING AGAIN THAT THE QUESTION IS THAT'S
23 STANDARD PUBLISHING PRACTICE AND SHOULD THAT PRACTICE BE
24 ALTERED OR SHOULD THOSE WHO WOULD MAKE PRESUMPTIVE USE WITHOUT
25 PERMISSION BE ALERTED TO IT I THINK IS A REASONABLE QUESTION

1 FOR YOUR HONOR TO THINK ABOUT IT.

2 MR. ASKEW: YOUR HONOR, IF I MIGHT MAKE ONE
3 OBSERVATION? YOU CAN LOOK AT THE AGREED LIST OF
4 INFRINGEMENTS, YOUR HONOR, AND YOU ARE NOT GOING TO SEE ONE,
5 NOT ONE ALLEGATION OF A 100 PERCENT TAKING.

6 THEY REFERENCED THE SAGE HANDBOOK AND THEY REFERENCED
7 CHAPTERS TAKEN, THEY WILL REFERENCE THE SAGE HANDBOOK AS THE
8 WORK AND IDENTIFY THAT CHAPTER AS A 2 PERCENT TAKING OR 3
9 PERCENT TAKING. NOT ONCE DID THEY EVER MENTION THAT THAT
10 CHAPTER IS TO BE TREATED SEPARATELY AS A 100 PERCENT TAKING.

11 THE COURT: WELL, I MAY HAVE PICKED UP ON SOMETHING
12 THAT WAS NOT ACTUALLY THERE. I DON'T KNOW. BUT I WAS
13 LISTENING TO THESE QUESTIONS, AND IT SEEMED TO ME THAT'S WHERE
14 YOU ALL WERE GOING WITH THIS BUT MAYBE NOT.

15 LET'S GO ON.

16 MR. KRUGMAN: THANK YOU, YOUR HONOR.

17 BY MR. KRUGMAN:

18 Q. GOING BACK TO PLAINTIFFS' EXHIBIT 518 AT PAGE 9 FOR
19 SESSION 9 ON OCTOBER 19TH YOU ASSIGNED AS A REQUIRED READING A
20 WORK BY GANNON AND DAVIES ENTITLED POSTMODERN, POSTSTRUCTURAL
21 AND CRITICAL THEORIES; IS THAT CORRECT?

22 A. CORRECT.

23 Q. AND IT'S FROM THE HANDBOOK OF FEMINIST RESEARCH, THEORY
24 AND PRAXIS THAT WE LOOKED AT BEFORE, IT'S PLAINTIFF'S EXHIBIT
25 243 AND PAGES 71 TO 106 WERE ASSIGNED, CORRECT?

1 A. YES.

2 Q. AND THAT IS CHAPTER 4 OF THE HANDBOOK?

3 A. YES.

4 Q. AND PLAINTIFFS' EXHIBIT 588 IS THE CHECKLIST THAT YOU
5 COMPLETED, CORRECT --

6 A. YES.

7 Q. -- FOR THIS ASSIGNMENT, AND IT'S LARGEY IDENTICAL TO THE
8 ONES WE'VE LOOKED AT, CORRECT?

9 A. YES.

10 Q. WE'RE NOW AT ELEVEN SAGE CHAPTERS AND 236 PAGES, CORRECT?

11 THE COURT: OUT OF WHICH WORK?

12 MR. KRUGMAN: THIS WAS FROM THE HANDBOOK OF SOCIAL
13 THEORY.

14 THE COURT: ALL OF THOSE 236 PAGES?

15 MR. KRUGMAN: NO, YOUR HONOR, FROM SAGE PUBLICATIONS
16 IN THEIR ENTIRETY.

17 THE COURT: JUST NAME THE WORKS.

18 MR. KRUGMAN: THE SAGE HANDBOOK OF QUALITATIVE
19 RESEARCH, THE HANDBOOK OF FEMINIST RESEARCH, THEORY AND PRAXIS,
20 AND THE HANDBOOK OF SOCIAL THEORY.

21 BY MR. KRUGMAN:

22 Q. EXHIBIT 518, PAGE 10 FOR SESSION 11 ON NOVEMBER 2 YOU
23 ASSIGNED AS REQUIRED READING A WORK BY ELLIS AND BOCHNER
24 AUTOETHNOGRAPHY, PERSONAL NARRATIVE, REFLEXIVITY, RESEARCHER AS
25 SUBJECT; IS THAT CORRECT?

1 A. CORRECT.

2 Q. AND THAT'S PAGES 733 TO 768 OF THE SECOND EDITION OF THE
3 SAGE HANDBOOK; IS THAT CORRECT?

4 A. YES.

5 Q. THIS HANDBOOK OF QUALITATIVE RESEARCH, AND THE WORK IS
6 CHAPTER 28 OF THE HANDBOOK, CORRECT?

7 A. YES.

8 Q. AND IS EXHIBIT 572 THE CHECKLIST THAT YOU COMPLETED,
9 PLAINTIFFS' EXHIBIT 572 THE CHECKLIST THAT YOU COMPLETED?

10 A. YES.

11 Q. AND COMPLETED LARGELY IDENTICAL TO THE OTHERS, CORRECT?

12 MR. HARBIN: EXCUSE ME, I OBJECT, YOUR HONOR. I
13 UNDERSTOOD THE PLAINTIFFS WERE WITHDRAWING THAT ALLEGATION BUT
14 WE'LL DEAL WITH THAT WHEN I GET BACK TO THE COURT.

15 MR. KRUGMAN: I'M NOT CERTAIN, YOUR HONOR, I WOULD --

16 THE COURT: LET ME DO THIS. I'LL SUSTAIN THE
17 OBJECTION AT THIS POINT, AND WE'LL TALK ABOUT IT FURTHER UNLESS
18 YOU ALL HAVE A DIFFERENT RECOLLECTION FROM MR. HARBIN ABOUT
19 THAT.

20 MR. KRUGMAN: GIVE ME ONE MOMENT, YOUR HONOR.

21 THE COURT: OKAY.

22 (PAUSE IN THE PROCEEDINGS.)

23 MR. KRUGMAN: WE'LL COME BACK TO IT. I'M ADVISED WE
24 NEED TO WORK IT OUT.

25 BY MR. KRUGMAN:

1 Q. SO WITHOUT REFERENCE TO THAT, FOR THE FALL 2009 SEMESTER
2 IT BROUGHT THE TOTAL NUMBER OF SAGE WORKS FROM SAGE
3 PUBLICATIONS TO 236 PAGES AND 11 CHAPTERS.

4 NOW ARE YOU FAMILIAR WITH THE PRODUCT THAT SAGE
5 PUBLICATIONS OFFERS CALLED CUSTOM PUBLISHING?

6 A. IS IT LIKE ONLINE FIRST?

7 Q. IT'S CALLED CUSTOM PUBLISHING THAT ALLOWS PROFESSORS SUCH
8 AS YOURSELF OR OTHERS TO CREATE A CUSTOM BOOK CONTAINING
9 EXCERPTS OF WORKS PUBLISHED BY SAGE?

10 A. NO.

11 Q. SO YOU'RE NOT AWARE YOU COULD HAVE OBTAINED PERMISSION
12 FROM SAGE TO CREATE A CUSTOM BOOK CONTAINING EACH OF THOSE
13 CHAPTERS FROM THE SAGE PUBLICATIONS THAT YOU ASSIGNED TO
14 STUDENTS FOR THE FALL OF 2009 SEMESTER; IS THAT CORRECT?

15 A. CORRECT.

16 Q. RETURNING TO THE SYLLABUS PAGE 518 ON PAGE 7, YOU AGAIN
17 ASSIGNED THE ALFORD WORK THE CRAFT OF INQUIRY, THEORIES,
18 METHODS EVIDENCE, AND THAT'S ALL OF CHAPTER 2 OF THAT BOOK,
19 CORRECT?

20 A. CORRECT.

21 Q. AND PLAINTIFFS' EXHIBIT 593 IS THE CHECKLIST; IS THAT
22 CORRECT?

23 A. CORRECT.

24 Q. AND THIS IS LARGEY IDENTICAL TO THE OTHERS WITH ONE
25 EXCEPTION. IF YOU'LL TURN TO FACTOR 4 ON PAGE 2, YOU INITIALLY

1 CHECKED THE BOX FOR REPEATED OR LONG-TERM USE THAT DEMONSTRABLY
2 EFFECTS THE MARKET FOR THE WORK, BUT THEN YOU CROSSED THAT OUT;
3 IS THAT CORRECT?

4 A. THAT WAS AN ACCIDENT.

5 Q. YOU CROSSED IT OUT EVEN THOUGH YOU HAD ASSIGNED THE SAME
6 READING IN THE SAME COURSE YOU HAD BEEN TEACHING SINCE YOU
7 BEGAN AT GEORGIA STATE, CORRECT?

8 MR. HARBIN: OBJECTION, RELEVANCE. I THOUGHT HE
9 WASN'T GOING TO ASK ANY MORE --

10 THE COURT: I CAN'T HEAR YOU, MR. HARBIN.

11 MR. HARBIN: I WITHDRAW IT, YOUR HONOR.

12 BY MR. KRUGMAN:

13 Q. NOW GOING BACK TO THE SYLLABUS PLAINTIFFS' EXHIBIT 518 ON
14 PAGE 10 YOU ASSIGNED A WORK BY DENZIN THE ART OF POLITICS AND
15 INTERPRETATION; IS THAT CORRECT?

16 A. UH-HUH (AFFIRMATIVE), YES.

17 Q. AND IT'S IN APPROACHES TO QUALITATIVE RESEARCH, A READER
18 ON THEORY AND PRACTICE AT PAGES 447 TO 472?

19 A. CORRECT.

20 MR. KRUGMAN: IF I MAY APPROACH, YOUR HONOR?

21 THE COURT: YOU MAY.

22 BY MR. KRUGMAN:

23 Q. PLAINTIFFS' TRIAL EXHIBIT 349 IS THE BOOK APPROACHES TO
24 QUALITATIVE RESEARCH, A READER ON THEORY AND PRACTICE FROM
25 WHICH THAT WORK WAS ASSIGNED?

1 A. CORRECT.

2 Q. AND IF YOU LOOK AT THE TABLE OF CONTENTS, PAGES 447 TO 472
3 THAT COMPRISES THE ENTIRETY OF CHAPTER 21 OF THIS BOOK; IS THAT
4 CORRECT?

5 A. CORRECT.

6 Q. AND THAT CHAPTER WAS COPIED ONTO ERESERVE AND PROVIDED
7 WITHOUT THE PAYMENT OF PERMISSIONS, CORRECT?

8 A. CORRECT.

9 Q. AND PLAINTIFFS' EXHIBIT 591 IS THIS THE CHECKLIST THAT YOU
10 COMPLETED ON JULY 17TH OF 2009 FOR THIS WORK?

11 A. CORRECT.

12 Q. AND IT'S LARGELY IDENTICAL TO THE ONES THAT WE'VE LOOKED
13 AT PREVIOUSLY; IS THAT CORRECT?

14 A. YES.

15 Q. SO IF WE ADD THE ELEVEN SAGE CHAPTERS AND TWO OXFORD
16 CHAPTERS THAT BRINGS US TO A TOTAL OF THIRTEEN CHAPTERS OF
17 WORKS THAT YOU ASSIGNED TO STUDENTS FOR THE FALL 2000 SEMESTER
18 FOR THE 8500 COURSE; IS THAT CORRECT?

19 A. CORRECT.

20 Q. AND I'M NOT GOING TO ASK ABOUT THEM, BUT THIS DOESN'T
21 INCLUDE WORKS OF OTHER PUBLISHERS THAT WERE ASSIGNED AND ON
22 YOUR SYLLABUS?

23 THE COURT: I'M SORRY, I'M JUST CONFUSED. I THOUGHT
24 WE WERE TALKING ABOUT SAGE PUBLICATIONS.

25 MR. KRUGMAN: THIS IS BOTH SAGE AND OXFORD, YOUR

1 HONOR. I'M JUST -- I'LL WITHDRAW THE QUESTION. ONCE AGAIN
2 THERE WERE WORKS ON THE SYLLABI FROM OTHER PUBLISHERS, AND I'M
3 NOT GOING TO GET INTO THOSE AT ALL. THAT WAS SIMPLY THE POINT
4 OF THE QUESTION.

5 THAT COMPLETES MY EXAMINATION, YOUR HONOR.

6 THE COURT: WHAT ARE PLAINTIFFS' EXHIBITS 243 AND
7 349? I THINK THEY ARE BOOKS THAT ARE UP THERE. ONE IS
8 HANDBOOK OF FEMINIST RESEARCH AND THE OTHER IS -- I THINK IT'S
9 APPROACHES TO QUALITATIVE RESEARCH.

10 MR. KRUGMAN: YES, YOUR HONOR.

11 THE COURT: YOU MAY PROCEED.

12 MR. HARBIN: THANK YOU, YOUR HONOR.

13 CROSS-EXAMINATION

14 BY MR. HARBIN:

15 Q. PROFESSOR KAUFMANN, YOU'RE NOT QUITE DONE YET. YOU TALKED
16 ABOUT -- YOU WERE ASKED ABOUT SEVERAL JOURNAL ARTICLES YOU'VE
17 WRITTEN. HAVE YOU FOCUSED ON WRITING ANY BOOKS?

18 A. NO, I HAVE NOT. IN MY FIELD ARTICLES ARE RATED MUCH
19 HIGHER THAN BOOKS, AND SO I FOCUS ON JOURNAL ARTICLES.

20 Q. OKAY. AND ARE OTHER PROFESSORS TEACHING THE SAME OR
21 SIMILAR COURSES IN YOUR DEPARTMENT AT GEORGIA STATE?

22 A. YES.

23 Q. WHO IS THAT?

24 A. DR. FINNELIA AND DR. ESPOSITO.

25 Q. AND YOU WERE THERE WITH TWO OTHER PROFESSORS IN 2009; IS

1 THAT RIGHT?

2 A. YES.

3 Q. LET ME TURN YOU BACK TO WHAT'S BEEN MARKED AS PLAINTIFFS'
4 EXHIBIT 516, THE SYLLABUS FOR THE -- IT SAYS SUMMER, BUT THIS
5 IS THE MAYMASTER FIRST PART OF THE SUMMER SEMESTER COURSE, AND
6 ONE OF THE TEXTS THAT WAS REQUIRED READING AND YOU ASSUME WAS
7 GOING TO BE PURCHASED WAS A SAGE PUBLICATION AND THAT WAS
8 FOUNDATIONS OF SOCIAL RESEARCH?

9 A. YES.

10 Q. AND THEN YOU REQUIRED THEM TO BUY -- YOU RECOMMENDED A
11 THIRD BOOK AND THEN REQUIRED THEM TO BUY ONE MORE. SO THEY HAD
12 TO BUY THREE, AND IF THEY FOLLOWED YOUR RECOMMENDATIONS FOUR
13 TEXTBOOKS --

14 A. CORRECT.

15 Q. -- BEFORE THEY GET TO THESE ADDITIONAL EXCERPT READINGS?

16 A. CORRECT.

17 Q. DO YOU KNOW ABOUT HOW MUCH EACH OF THESE TEXTBOOKS COST?

18 A. NOT EXACTLY. I LOOKED THEM UP AT THE TIME. AROUND 50, 60
19 DOLLARS.

20 Q. OKAY. AND HOW WOULD THE STUDENTS GENERALLY ACCESS THE
21 JOURNAL ARTICLES YOU PUT ON YOUR LIST?

22 A. THROUGH E-JOURNALS.

23 Q. AND HOW WOULD THEY ACCESS THE ASSIGNED READINGS THAT ARE
24 EXCERPTS OF BOOKS?

25 A. ERESERVES.

1 Q. NOW THERE'S A QUESTION -- SEVERAL QUESTIONS ABOUT PUTTING
2 COPIES ON ERESERVE. IS IT YOUR UNDERSTANDING THAT THE SCHOOL
3 PUTS ONE PDF ON ERESERVE PER STUDENT PER READING?

4 A. YES.

5 Q. DID YOU POST ANY READING MATERIAL ON ULEARN?

6 A. NO.

7 Q. HAVE YOU EVER DONE THAT?

8 A. NO.

9 Q. I WANT TO TURN YOUR ATTENTION TO PLAINTIFFS' EXHIBIT 258,
10 THIS IS -- YOU ASSIGNED IN THE FALL ONE CHAPTER OF THIS BOOK,
11 IS THAT RIGHT, PAGES 3 TO 34?

12 A. CORRECT.

13 MR. HARBIN: AND FOR THE RECORD, YOUR HONOR, THE
14 PARTIES JOINT SUBMISSION PROVIDES THAT THIS IS 32 PAGES OR 4.5
15 PERCENT OF THE WORK, AND I WAS GOING TO QUESTION HER ABOUT
16 THIS, BUT I WOULD PROPOSE JUST TO REFER TO THE JOINT
17 STIPULATION AS TO A FEW OF THOSE OTHER WORKS.

18 PLAINTIFFS' EXHIBIT 243, A HANDBOOK OF FEMINIST
19 RESEARCH IN THE MAYMESTER 2009 SEMESTER, THE PLAINTIFFS
20 COMPLAIN OF THE USE OF ONE CHAPTER PAGES 515 TO 534, 20 PAGES,
21 AND BY THE PLAINTIFFS' CALCULATION 2.8 PERCENT OF THE WORK.

22 ALSO THAT MAYMESTER 2009 SEMESTER, THERE'S AN ISSUE
23 ABOUT PAGES 217 TO 228, CHAPTER 17, THAT THE WITNESS WAS
24 QUESTIONED ABOUT, THAT'S 12 PAGES AND BY THE PLAINTIFFS'
25 CALCULATION THAT'S 2.2 PERCENT OF THE WORK, AND AS YOUR HONOR

1 MAY REMEMBER, THE DEFENDANTS HAVE CALCULATED WHERE THE
2 PERCENTAGE IS SLIGHTLY LESS --

3 THE COURT: ARE WE STILL TALKING ABOUT THE HANDBOOK
4 OF FEMINIST RESEARCH?

5 MR. HARBIN: NO, I'M GOING THROUGH THE LIST THAT SHE
6 WAS ASKED ABOUT. I CAN GET THE HANDBOOK OF -- THAT LAST ONE
7 WAS THE HANDBOOK OF SOCIAL THEORY PLAINTIFFS' EXHIBIT 288, AND
8 IN REGARD TO THE HANDBOOK OF -- THE SAGE HANDBOOK OF
9 QUALITATIVE ANALYSIS SECOND EDITION WHEREIN THE MAYMESTER, AND
10 I THINK THIS IS THE GREATEST QUANTITY OF USE IN ANY OF THE
11 THREE SEMESTERS AT ISSUE, THE PLAINTIFFS COMPLAIN OF THE USE OF
12 THREE CHAPTERS, 78 PAGES, OR BY THE PLAINTIFFS' CALCULATION 7.3
13 PERCENT OF THE WORK.

14 THE COURT: I'M AFRAID I'M FINDING IT DIFFICULT TO
15 FOLLOW YOU. IT SOUNDS LIKE THIS IS A LITTLE MINI CLOSING
16 ARGUMENT ABOUT WHAT REALLY IS IN HERE.

17 MR. HARBIN: I WAS GOING TO QUESTION HER, BUT WE
18 CAN -- I MAY ASK HER SOME QUESTIONS, BUT WE CAN PRESENT THAT.
19 IT IS IN THE STIPULATION, YOUR HONOR, AND I WANTED -- BECAUSE
20 THERE HAS BEEN QUESTIONS ABOUT THE 10 PERCENT I WANTED TO GET
21 THAT INTO EVIDENCE. I STARTED TO QUESTION HER --

22 THE COURT: YOU MIGHT ASK THE QUESTIONS.

23 MR. HARBIN: THANK YOU.

24 BY MR. HARBIN:

25 Q. NOW, I BELIEVE YOU TESTIFIED TO THIS BUT TO JUMP AHEAD,

1 YOU WERE QUESTIONED ABOUT IN THE FALL OF 2009 -- I'LL COME BACK
2 TO THAT, YOUR HONOR.

3 GOING BACK TO THIS HANDBOOK OF NARRATIVE INQUIRY, CAN
4 YOU BRIEFLY DESCRIBE TO THE COURT WHAT THE NATURE OF THAT
5 OVERALL WORK IS?

6 A. CAN YOU READ ME THE TITLE?

7 Q. OVERALL WORK, THE BOOK?

8 A. IT IS AN OVERVIEW OF OR A NARRATIVE INQUIRY WHICH IS A
9 METHODOLOGY, AND EACH CHAPTER DEALS WITH DIFFERENT ISSUES OR
10 DIFFERENT THEORETICAL PERCEPTIONS OF NARRATIVE INQUIRY.

11 Q. AND YOU ASSIGNED ONE CHAPTER -- LOOKING BACK AT
12 PLAINTIFFS' EXHIBIT 516 PAGE 9, THERE IS A REFERENCE YOU SEE IN
13 THE MIDDLE OF THE PAGE SESSION ON MAY 27 PAGES 30 TO 34?

14 A. UH-HUH (AFFIRMATIVE).

15 Q. WHAT WAS YOUR PURPOSE IN ASSIGNING THAT TEACHING FOR THAT
16 DAY; HOW DID THAT RELATE TO YOUR COURSE?

17 A. THE COURSE WANTED I HOPE TO TEACH STUDENTS ABOUT DIFFERENT
18 METHODOLOGIES BECAUSE THERE'S MANY DIFFERENT METHODOLOGIES, AND
19 THIS WAS AN ARTICLE THAT SPOKE SPECIFICALLY TO NARRATIVE
20 INQUIRY AND GAVE THEM AN OVERVIEW OF WHAT NARRATIVE INQUIRY
21 WAS.

22 Q. WAS THE ARTICLE IN PART SUMMARIZING OTHER SCHOLARS
23 DISCUSSIONS OF NARRATIVE --

24 A. YES, IN PART, YES, IT WAS.

25 Q. AND TO MAKE THIS ACCESSIBLE YOU APPLIED TO THE LIBRARY TO

1 PUT THIS UP ON ERES?

2 A. YES.

3 Q. AND PART OF THAT WAS FILLING OUT THE CHECKLIST?

4 A. YES.

5 Q. LET'S LOOK AGAIN BRIEFLY AT PLAINTIFFS' EXHIBIT 574. IS
6 THAT THE CHECKLIST FOR THAT USE OF THAT EXCERPT?

7 A. YES.

8 Q. THAT YOU FILLED OUT IN MAY OF 2009?

9 A. YES.

10 Q. NOW, I BELIEVE YOU TESTIFIED ABOUT CHANGING THE -- YOU
11 KNOW, GOING FROM A BELIEF THAT ANYTHING UNDER 20 PERCENT WAS
12 GENERALLY OKAY TO I BELIEVE THAT NO FIXED PERCENTAGE WAS OKAY
13 BUT YOU WERE SAFE OR SUPER SAFE IF YOU KEPT IT UNDER 10
14 PERCENT?

15 A. CORRECT.

16 Q. DID THE TRAINING YOU RECEIVED AT GEORGIA STATE CHANGE YOUR
17 PRACTICES IN ANY OTHER WAY?

18 A. IT CHANGED DEFINITELY MAKING SURE THAT I OWNED IT OR THE
19 LIBRARY OWNED IT, THAT IT FIT ALL OF THESE CATEGORIES UNDER
20 FAIR USE, THE PERCENTAGES, YES.

21 Q. AND DID IT CHANGE HOW YOU DEALT WITH JOURNALS, JOURNAL
22 ARTICLES?

23 A. YES.

24 Q. HOW IS THAT?

25 A. I UNDERSTOOD AFTER THIS THAT A JOURNAL ARTICLE WAS A

1 COMPLETE WORK, AND SO UNLESS IT'S ON E-JOURNAL I REPLACED IT
2 WITH A DIFFERENT JOURNAL ARTICLE.

3 Q. OKAY. AND USING THE CHECKLIST, FOR EXAMPLE, THE FACTOR
4 AMOUNT TAKEN -- UNDER FACTOR 3 THE SUBFACTOR AMOUNT TAKEN IS
5 NARROWLY TAILORED TO THE EDUCATIONAL PURPOSE?

6 A. YES.

7 Q. FIRST OFF LET ME ASK YOU. I THINK YOUR TESTIMONY IS
8 CLEAR, BUT DID YOU ALWAYS FILL OUT A CHECKLIST FOR EACH OF THE
9 EXCERPTS YOU WANTED TO USE IN A COURSE IN 2009?

10 A. YES, I FILLED THEM OUT BEFORE I WOULD SUBMIT THE REQUEST
11 TO ERESERVES.

12 Q. FROM YOUR UNDERSTANDING COULD YOU HAVE GOTTEN THE EXCERPT
13 POSTED ON ERES WITHOUT FILLING OUT THE CHECKLIST?

14 A. NO.

15 Q. AND INFORMING THE LIBRARY YOU FILLED IT OUT?

16 A. CORRECT.

17 Q. USING THE CHECKLIST, FOR EXAMPLE, THE SUBFACTOR ABOUT
18 AMOUNT TAKEN IS NARROWLY TAILORED TO THE EDUCATIONAL PURPOSE,
19 DID THAT ASSIST YOU IN FOCUSING ON ISSUES SUCH AS MAKING SURE
20 YOUR USE WAS AS NARROW AS IT COULD BE?

21 A. CORRECT.

22 Q. AND IN REGARD TO THIS CHECKLIST -- I DON'T WANT TO GO OVER
23 EVERY FACTOR, BUT YOU DID CONCLUDE FOR THIS CHECKLIST THAT THE
24 USE OF THIS EXCERPT OF THE HANDBOOK OF NARRATIVE INQUIRY
25 PLAINTIFFS' EXHIBIT 258 WOULD CONSTITUTE FAIR USE?

1 A. CORRECT.

2 Q. AND IF YOU LOOK AT THE SECOND PAGE OF THE CHECKLIST THE
3 FOURTH FACTOR, YOU GENERALLY ON THESE FACTORS DID NOT CHECK
4 RESTRICTED ACCESS; DO YOU SEE THAT?

5 A. CORRECT.

6 Q. WAS IT YOUR UNDERSTANDING THAT ACCESS TO ARTICLES ON ERES
7 WAS RESTRICTED?

8 A. YES.

9 Q. AND HOW WAS IT RESTRICTED.

10 A. IT WAS RESTRICTED BY AFTER YOU SUBMIT THEM AND IT'S
11 APPROVED, THEY SEND YOU A PASSWORD, AND YOU ONLY CAN ACCESS
12 THOSE ARTICLES OR CHAPTERS IF YOU HAVE THAT PASSWORD, AND THEN
13 IT DISAPPEARS AT THE END OF THE SEMESTER.

14 Q. OKAY. AND YOU DID NOT CHECK USER OWNS, LAWFULLY ACQUIRED
15 OR PURCHASED COPY OF ORIGINAL WORK, YOU GENERALLY DID NOT CHECK
16 THAT ON FACTOR 4; DO YOU REMEMBER THAT?

17 A. CORRECT.

18 Q. IS THAT ACCURATE OR IS THAT AN OVERSIGHT?

19 A. NO, I SHOULD HAVE CHECKED BOTH OF THOSE. I OWN ALL OF
20 THESE BOOKS EXCEPT FOR THIS ONE.

21 Q. WHICH ONE IS THAT?

22 A. HANDBOOK OF SOCIAL THEORY.

23 Q. AND IS IT YOUR UNDERSTANDING THAT THE LIBRARY OWNS THAT
24 WORK?

25 A. YES.

1 Q. OKAY. AND, IN FACT, IS IT YOUR UNDERSTANDING THAT THE
2 PLAINTIFF HAS COMPLAINED ABOUT YOUR ALLEGED USE IN THE 2009
3 MAYMASTER OF THE WORK QUALITATIVE RESEARCH PRACTICE?

4 A. YES.

5 Q. DO YOU RECALL THAT ALLEGATION? TO YOUR RECOLLECTION DID
6 YOU ASSIGN ANY PORTION OF THAT WORK IN THE 2009 MAYMASTER?

7 A. THAT WAS THE PINK ARTICLE?

8 Q. I BELIEVE THAT'S RIGHT.

9 A. YEAH, THAT WAS THE ONE THAT NEITHER I NOR THE LIBRARY
10 OWNED, AND SO I HAD TO DELETE IT OFF MY SYLLABUS.

11 Q. SO YOU DID NOT ASSIGN ANY PORTION OF THAT WORK IN YOUR MAY
12 SEMESTER OR YOUR SUMMER OR FALL SEMESTERS OF 2009?

13 A. NO, BECAUSE IT DID NOT FALL UNDER FAIR USE.

14 Q. OKAY. IF YOU LOOK AT DEFENDANTS' EXHIBIT 512 THAT YOU'VE
15 BEEN ASKED ABOUT, SPECIFICALLY PAGES BATES STAMPED 65561 TO --
16 65571 -- DO YOU SEE THAT THERE'S A LIBRARY EXCHANGE WHERE YOU
17 SENT -- AN E-MAIL EXCHANGE BETWEEN YOU AND THE LIBRARY IN MAY
18 OF 2009?

19 A. YES.

20 Q. AND YOU SENT THE LIBRARY A LIST OF BOOKS OR EXCERPTS OF
21 BOOKS AND ARTICLES THAT YOU WANTED TO PUT ON ERES?

22 A. UH-HUH (AFFIRMATIVE).

23 Q. AND IF YOU LOOK ON THE PAGE BATES STAMPED 65572 OF DEFENSE
24 EXHIBIT 512, ONE OF THEM YOU CONCLUDED THAT YOU THOUGHT THE
25 LIBRARY OWNED WAS QUALITATIVE RESEARCH PRACTICE, AUTHOR PINK?

1 A. YES.

2 Q. AND IF YOU LOOK BACK ON THE PRIOR PAGE BATES STAMPED 65571
3 OF THE DEFENSE EXHIBIT 512 --

4 A. YES.

5 Q. -- THE LIBRARY TOLD YOU WE DON'T OWN THE PINK, SO I
6 REMOVED IT FROM THE PAGE?

7 A. CORRECT.

8 Q. IS THAT THE EXCHANGE YOU'RE REFERRING TO?

9 A. YES.

10 Q. NOW GOING BACK TO PLAINTIFFS' EXHIBIT 574, THE CHECKLIST
11 FOR THE HANDBOOK OF NARRATIVE INQUIRY, LOOKING AT THE FACTOR 3
12 AS HAS BEEN DISCUSSED YOU CHECKED A PORTION USED IS NOT CENTRAL
13 OR SIGNIFICANT TO THE ENTIRE WORK AS A WHOLE, AND YOU WERE
14 ASKED AND YOU CONSIDERED THE WORK, THE ENTIRE BOOK, CORRECT?

15 A. CORRECT.

16 Q. WHY DID YOU CONCLUDE THAT THE PORTION YOU USED WAS NOT
17 CENTRAL OR SIGNIFICANT TO THE ENTIRE WORK AS A WHOLE?

18 A. BECAUSE I DON'T THINK THERE IS A CENTRAL PIECE TO THE
19 HANDBOOK. THE FIELD IS SO WIDE AND SO DIVERSE IT'S GIVING YOU
20 DIFFERENT THEORETICAL PERSPECTIVES OR VIEWPOINTS AND ISSUES
21 WITHIN THE FIELD. THERE ISN'T A CORE.

22 Q. THE RECORD WILL SHOW HOW MANY, BUT IS IT CORRECT THE BOOK
23 HAS MULTIPLE CHAPTERS?

24 A. CORRECT.

25 Q. AND ARE YOU SAYING THAT EACH CHAPTER HAS A DISTINCT ISSUE

1 IT DEALS WITH?

2 A. CORRECT.

3 THE COURT: NOW WHICH BOOK IS THIS?

4 MR. HARBIN: IT IS THE HANDBOOK OF NARRATIVE INQUIRY
5 WHICH I BELIEVE IS PLAINTIFFS' EXHIBIT 258.

6 BY MR. HARBIN:

7 Q. AND THAT ANALYSIS ABOUT -- LET ME ASK YOU SOME SPECIFIC
8 QUESTIONS BUT TO EXPEDITE IT, THAT ANALYSIS ABOUT WHETHER THE
9 EXCERPTS YOU CHOSE WERE THE HEART OF THE WORK, DOES THAT HOLD
10 TRUE TO GENERALLY ALL OF THE WORKS YOU'VE BEEN QUESTIONED
11 ABOUT?

12 A. YES.

13 Q. THAT IN YOUR VIEW THE EXCERPT WAS NOT THE HEART OR THE
14 CENTRAL PART OF THE WORK?

15 A. CORRECT.

16 Q. YOU TESTIFIED ABOUT POTENTIALLY, YOU KNOW, CHECKING ON
17 FACTOR 4 THE USE STIMULATES MARKET FOR ORIGINAL WORK, AND YOU
18 WERE BASING THAT ON YOUR EXPERIENCE IN PART AS A GRADUATE
19 STUDENT; IS THAT RIGHT?

20 A. CORRECT.

21 Q. AND YOU TESTIFIED, I BELIEVE, THAT YOU PURCHASED THE SAGE
22 HANDBOOK OF QUALITATIVE RESEARCH?

23 A. CORRECT.

24 Q. BECAUSE A PROFESSOR ASSIGNED AN EXCERPT IN CLASS?

25 A. CORRECT.

1 Q. BUT HE DIDN'T MAKE YOU BUY THE TEXT, HE OR SHE?

2 A. SHE DID NOT.

3 Q. BUT AS A RESULT OF THAT CLASS YOU BOUGHT THE TEXTBOOK?

4 A. CORRECT.

5 Q. IS THAT THE COPY YOU STILL OWN?

6 A. YES.

7 Q. OF WHICH EDITION, SECOND EDITION?

8 A. THIS ONE IS 2000.

9 Q. THAT'S THE SECOND EDITION?

10 A. SECOND.

11 Q. THANK YOU. NOW AS I BELIEVE YOU TESTIFIED YOU FOLLOWED

12 THE SAME GENERAL ANALYSIS WITH THE OTHER CHECKLISTS THAT YOU

13 FILLED OUT THAT ARE AT ISSUE IN THIS CASE?

14 A. CORRECT.

15 Q. AND YOU'VE BEEN ASKED ABOUT WHETHER THE ANALYSES AND THE

16 CHECKLISTS ARE BASICALLY SUBSTANTIALLY THE SAME OR IDENTICAL,

17 AND IS IT CORRECT ALL OF THESE ANALYSES JUST FOR THE RECORD ARE

18 A RESULT OF YOUR TEACHING GRADUATE COURSES AT GEORGIA STATE, A

19 PUBLIC UNIVERSITY?

20 A. CORRECT.

21 Q. AND ALL OF THEM YOU DEEMED YOU'RE USING A SMALL PORTION OF

22 THE WORK?

23 A. YES.

24 Q. AS YOU JUST TESTIFIED NOT ALL OF THEM YOU DEEMED YOU WERE

25 NOT USING THE HEART OR ESSENTIAL PART OF THE WORK?

1 A. CORRECT.

2 MR. KRUGMAN: YOUR HONOR, I WOULD OBJECT TO THE KIND
3 OF PERHAPS A LITTLE TOO MUCH LEADING.

4 THE COURT: I HAVE TO AGREE. SUSTAINED.

5 MR. HARBIN: THANK YOU, YOUR HONOR.

6 BY MR. HARBIN:

7 Q. DID YOU IN THIS CHECKLIST THAT IS PLAINTIFFS' EXHIBIT 574,
8 DID YOU ATTEMPT TO FILL IT OUT IN GOOD FAITH?

9 A. YES.

10 Q. ACCORDING TO GEORGIA STATE'S POLICY?

11 A. YES.

12 MR. KRUGMAN: OBJECTION, LEADING.

13 THE COURT: SUSTAINED.

14 BY MR. HARBIN:

15 Q. DID YOU ATTEMPT TO BE OBJECTIVE IN FOLLOWING THE FACTORS?

16 A. I DID.

17 Q. OKAY. LET ME TURN YOU TO ANOTHER WORK PLAINTIFFS' EXHIBIT
18 243 WHICH IS THE HANDBOOK OF FEMINIST RESEARCH, A SAGE WORK.

19 CAN YOU BRIEFLY DESCRIBE THE GENERAL NATURE OF THIS WORK?

20 A. IT TALKS ABOUT FEMINIST RESEARCH, AND THEN MULTIPLE ISSUES
21 AND PRACTICES, THEORIES OF FEMINIST RESEARCH.

22 Q. AND IF YOU LOOK BACK AT PLAINTIFFS' EXHIBIT 516, PAGE 7,
23 YOU ASSIGNED THIS EXCERPT FOR THE MAY 14TH CLASS?

24 A. YES.

25 Q. AND THIS IS -- IS IT PRONOUNCED PREISSLE?

1 A. YES.

2 Q. AND BRIEFLY FOR THE COURT WHAT WAS YOUR PURPOSE IN
3 ASSIGNING THIS EXCERPT OF PLAINTIFFS' EXHIBIT 243, HANDBOOK OF
4 FEMINIST RESEARCH?

5 A. IT GAVE AN OVERVIEW OF FEMINIST ETHICS TALKING ABOUT
6 DIFFERENT TRENDS AND DIFFERENT WAYS THAT THAT INFLUENCES
7 QUALITATIVE RESEARCH.

8 THE COURT: OVERVIEW OF FEMINIST WHAT?

9 THE WITNESS: ETHICS.

10 THE COURT: AND IS THIS THE ONE THAT'S ON PAGES 71 TO
11 106? I CAN'T SEE WHAT'S UP ON THE SCREEN.

12 MR. HARBIN: I BELIEVE, YOUR HONOR, THIS IS PAGES 515
13 TO 534 IS THE CHAPTER THAT WAS USED IN THE MAY CLASS, 20 PAGES;
14 IS THAT RIGHT?

15 THE WITNESS: YES.

16 THE COURT: THANK YOU.

17 BY MR. HARBIN:

18 Q. NOW, DO YOU RECALL FILLING OUT THE CHECKLIST THAT IS
19 PLAINTIFFS' EXHIBIT 573 FOR THE EXCERPT OF THAT WORK --

20 A. YES.

21 Q. -- FOR THE MAY CLASS?

22 A. YES.

23 Q. WHAT WAS YOUR CONCLUSION ABOUT WHETHER OR NOT THE USE OF
24 THAT EXCERPT IN THE MAYMASTER OF 2009 WOULD CONSTITUTE FAIR
25 USE?

1 A. IT CONSTITUTED FAIR USE.

2 Q. AND THAT'S GENERALLY FOR THE REASONS YOU'VE STATED?

3 A. CORRECT.

4 Q. AND LET'S LOOK AT PLAINTIFFS' EXHIBIT 288, THE HANDBOOK OF
5 SOCIAL THEORY, CAN YOU BRIEFLY DESCRIBE FOR THE COURT WHAT THE
6 NATURE OF THIS WORK IS?

7 A. THE BOOK AS A WHOLE?

8 Q. BY THE WAY, I FORGOT TO ASK YOU ABOUT THE PRIOR EXCERPT OF
9 PLAINTIFFS' EXHIBIT 243, THE HANDBOOK OF FEMINIST RESEARCH, THE
10 CHAPTER 514, WAS THE AUTHOR IN PART SUMMARIZING OTHER SCHOLARS'
11 WORK IN THE OVERVIEW OF FEMINIST ETHICS?

12 A. YES.

13 Q. NOW, HOW WOULD YOU DESCRIBE THIS BOOK AS A WHOLE?

14 A. I HAVE NOT READ THAT BOOK AS A WHOLE.

15 Q. OKAY. AND THE CHAPTER YOU ASSIGNED THAT'S COMPLAINED OF
16 THE CHAPTER THAT WAS ASSIGNED IN THE MAYMESTER 2009, DO YOU
17 RECALL IT WAS PAGES 217 TO 228, CHAPTER 17?

18 A. CORRECT.

19 Q. AND IF YOU RECALL IF YOU LOOK AT PLAINTIFFS' EXHIBIT 516
20 AT THE PAGE 8, YOU ASSIGNED THAT FOR THE MAY 20TH SESSION?

21 A. YES.

22 Q. THAT'S THE FIRST EXCERPT THERE, THE SANDSTROM CHAPTER?

23 A. YES.

24 Q. WHAT WAS YOUR PURPOSE IN ASSIGNING THAT PARTICULAR CHAPTER
25 OF THAT BOOK TO THIS CLASS IN MAY OF 2009?

1 A. BECAUSE SYMBOLIC INTERACTIONISM IS ONE OF THE TRADITIONAL
2 THEORETICAL PERSPECTIVES THAT UNDERPINS QUALITATIVE RESEARCH.

3 Q. AND WHAT DOES THIS CHAPTER DO SYMBOLIC INTERACTIONISM AT
4 THE END OF THE CENTURY?

5 A. IT SUMMARIZES SYMBOLIC INTERACTIONISM AND THEN HOW IT HAS
6 SHIFTED THROUGHOUT THE HISTORY.

7 Q. SO THE ARTICLE IN PART IS SUMMARIZING THE ANALYSES OF
8 OTHER SCHOLARS OF SYMBOLIC INTERACTIONISM?

9 A. CORRECT.

10 Q. PLAINTIFFS' EXHIBIT 578 IS YOUR FAIR USE CHECKLIST FOR
11 THAT EXCERPT?

12 A. YES.

13 Q. AND WHAT DID YOU CONCLUDE AS TO WHETHER OR NOT THE USE OF
14 THAT EXCERPT IN THIS CLASS IN MAY OF 2009 WOULD CONSTITUTE FAIR
15 USE?

16 A. IT CONSTITUTED FAIR USE FOR ME.

17 Q. OKAY. AND TO BRIEFLY LOOK BACK AT DEFENDANTS' EXHIBIT
18 512, DO YOU SEE FOR EXAMPLE -- IF YOU LOOK AT THE HANDBOOK OF
19 NARRATIVE INQUIRY, THIS IS THE FIRST PAGE BATES STAMPED GEORGIA
20 STATE 65561 OF DEFENSE 512, THERE'S A STATEMENT IT FALLS UNDER
21 FAIR USE ACCORDING TO THE FAIR USE CHECKLIST I COMPLETED?

22 A. CORRECT.

23 Q. THAT'S A REPORT THAT YOU MADE TO THE LIBRARY?

24 A. YES.

25 Q. LET'S TURN BRIEFLY TO A WORK PLAINTIFFS' EXHIBIT 231, THAT

1 IS THE HANDBOOK OF CRITICAL AND INDIGENOUS METHODOLOGIES THAT
2 YOU HAVE BEEN ASKED ABOUT?

3 A. YES.

4 Q. THE PLAINTIFFS' COMPLAINT CONCERNS YOUR ASSIGNING TWO
5 CHAPTERS PAGES 85 TO 99 AND 135 TO 156 IN THE MAYMASTER CLASS.
6 IF YOU LOOK BACK AT PAGES -- CAN YOU BRIEFLY DESCRIBE THE
7 OVERALL NATURE OF THIS OVERALL BOOK?

8 A. IT TALKS ABOUT THE INFLUENCE OF CRITICAL THEORIES AND
9 INDIGENOUS THEORIES ON QUALITATIVE RESEARCH.

10 THE COURT: WHAT'S THE EXHIBIT NUMBER?

11 MR. HARBIN: PLAINTIFFS' EXHIBIT 231, I'M SORRY, YOUR
12 HONOR.

13 BY MR. HARBIN:

14 Q. AND IF YOU LOOK AT THE INDEX TO PLAINTIFFS' EXHIBIT 231,
15 THE CHAPTER BEGINNING AT PAGE 85 CRITICAL RACE THEORY AND
16 INDIGENOUS METHODOLOGIES, COULD YOU BRIEFLY TELL THE COURT WHY
17 YOU ASSIGNED THAT TO YOUR CLASS?

18 A. BECAUSE THEY LEARN ABOUT CRITICAL RACE THEORY, AND THEY
19 LEARN ABOUT INDIGENOUS THEORIES, AND THIS CHAPTERS TALKS ABOUT
20 THE TENSIONS BETWEEN THE TWO AND THE POSSIBILITIES OF COMBINING
21 THE TWO.

22 Q. OKAY. AND THE SECOND CHAPTER BEGINNING AT 135, IS THAT
23 CHAPTER 7 INDIGENOUS KNOWLEDGES IN EDUCATION?

24 A. YES.

25 Q. CAN YOU SUMMARIZE BRIEFLY WHAT THAT CHAPTER IS ABOUT AND

1 WHY YOU USE IT IN YOUR COURSE?

2 A. IT GIVES A SUMMARY OF AND A DESCRIPTION OF INDIGENOUS
3 PRACTICES AND ITS INFLUENCES ON QUALITATIVE RESEARCH.

4 Q. OKAY. SO IS THAT IN PART SUMMARIZING THE PRIOR WORK OF
5 OTHER SCHOLARS?

6 A. A LITTLE BIT, BUT LESS SO BECAUSE THE FIELD IS SO NEW.

7 Q. AND LET'S LOOK BRIEFLY AT PLAINTIFFS' EXHIBIT 372, THAT IS
8 THE WORK THE CRAFT OF INQUIRY, PLAINTIFFS' EXHIBIT 372; DO YOU
9 SEE THAT?

10 A. YES.

11 Q. CAN YOU BRIEFLY DESCRIBE THE NATURE OF THIS BOOK, THE
12 OVERALL BOOK?

13 A. IT TALKS ABOUT CONSTRUCTING A RESEARCH PROJECT.

14 Q. OKAY. AND I BELIEVE YOU ALREADY TESTIFIED THE CHAPTER YOU
15 ASSIGNED PAGES 21 TO 31 WAS ON DESIGNING A RESEARCH PROJECT?

16 A. CORRECT.

17 Q. AND WHAT WAS YOUR PURPOSE IN ASSIGNING THAT TO YOUR CLASS?

18 A. SPECIFICALLY IT TALKS ABOUT HOW TO CONSTRUCT A QUALITATIVE
19 RESEARCH QUESTION.

20 THE COURT: WHAT'S THE EXHIBIT NUMBER?

21 MR. HARBIN: PLAINTIFFS' EXHIBIT 372 IS THE BOOK,
22 YOUR HONOR.

23 BY MR. HARBIN:

24 Q. AND IF YOU LOOK BACK AT THE SYLLABUS PLAINTIFFS' EXHIBIT
25 516, YOU ASSIGNED THAT IN THE MAY 13TH CLASS --

1 A. YES.

2 Q. -- WHERE YOUR TOPIC WAS RESEARCH TOPICS AND DESIGN?

3 A. YES.

4 Q. BRIEFLY HOW DID THAT RELATE TO WHAT YOU WERE TEACHING THAT
5 DAY?

6 A. THE TOPIC OF THAT DAY WAS WHAT IS A QUALITATIVE RESEARCH
7 TOPIC AND HOW DO YOU DESIGN IT. SO ALFORD'S CHAPTER IS TEN
8 PAGES SPECIFICALLY SPEAKING ABOUT THAT AND FIT VERY WELL INTO
9 THAT CONVERSATION.

10 Q. ALL RIGHT. AND BRIEFLY PLAINTIFFS' EXHIBIT 577 IS A COPY
11 OF THE FAIR USE CHECKLIST THAT YOU FILLED OUT?

12 A. YES.

13 Q. AND IN YOUR ANALYSIS WHAT DID YOU CONCLUDE ABOUT WHETHER
14 OR NOT THE USE OF THAT CHAPTER OF THE CRAFT OF INQUIRY,
15 PLAINTIFFS' EXHIBIT 372, WOULD OR WOULD NOT CONSTITUTE FAIR
16 USE?

17 A. IT CONSTITUTED FAIR USE.

18 THE COURT: HOW MUCH LONGER ARE YOU GOING TO BE WITH
19 THIS WITNESS?

20 MR. HARBIN: I THINK ABOUT 15 MINUTES, YOUR HONOR, NO
21 LONGER THAN 30 MINUTES.

22 THE COURT: I THINK WE NEED TO STOP FOR TODAY. YOU
23 ALL HAVE A NICE EVENING, AND I'LL SEE YOU TOMORROW MORNING AT
24 ELEVEN O'CLOCK.

25 (PROCEEDINGS ADJOURNED)

1	INDEX
2	
3	PAULA CHRISTOPHER DIRECT EXAMINATION
4	BY MS. SINGER: 4
	CROSS-EXAMINATION
5	BY MS. MOFFITT: 22
	REDIRECT EXAMINATION
6	BY MS. SINGER: 31
7	JODI KAUFFMAN DIRECT EXAMINATION
8	BY MR. KRUGMAN: 35
	CROSS-EXAMINATION
9	BY MR. HARBIN: 171
10	
11	
12	
13	
14	REPORTER'S CERTIFICATION
15	
16	
17	I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE
18	RECORD OF PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.
19	
20	
21	ANDRE G. ASHLEY
22	OFFICIAL COURT REPORTER
	UNITED DISTRICT COURT
23	NORTHERN DISTRICT OF GEORGIA
24	DATE:
25	