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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

CAMBRIDGE UNIVERSITY PRESS,	)	
ET AL.,	)	DOCKET NO. 1:08-CV-1425-ODE
	)	
PLAINTIFFS,	)	ATLANTA, GEORGIA
	)	MAY 24, 2011
V.	)	
	)	
MARK P. BECKER, IN HIS	)	
OFFICIAL CAPACITY AS GEORGIA	)	
STATE UNIVERSITY PRESIDENT,	)	
ET AL.,	)	
	)	
DEFENDANTS.	)	

VOLUME 6  
TRANSCRIPT OF BENCH TRIAL  
BEFORE THE HONORABLE ORINDA D. EVANS  
SENIOR UNITED STATES DISTRICT JUDGE

APPEARANCES OF COUNSEL:

FOR THE PLAINTIFFS:	JONATHAN BLOOM
	EDWARD B. KRUGMAN
	TODD D. LARSON
	JOHN H. RAINS.
	R. BRUCE RICH
	RANDI W. SINGER
FOR THE DEFENDANTS:	ANTHONY B. ASKEW
	JOHN W. HARBIN
	RICHARD MILLER
	NATASHA H. MOFFIT
	KATRINA M. QUICKER
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ANDRE G. ASHLEY, O.C.R.



1 THE SYLLABUS ONLY REFLECTS THE SECOND CHAPTER PAGES  
2 733 TO 768, AND THAT'S THE ONLY CHAPTER I THINK THE PLAINTIFFS'  
3 COUNSEL ASKED HER ABOUT YESTERDAY. THE OTHER TWO WERE TAUGHT  
4 IN THE SUMMER SEMESTER, BUT I'VE REVIEWED IT WITH PLAINTIFFS'  
5 COUNSEL, AND THEY'VE AGREED THAT WAS A DUPLICATION OR AN  
6 OVERSIGHT. IT SHOULD PROPERLY REFLECT FOR MAYMESTER ONLY THAT  
7 ONE CHAPTER 733 TO 768.

8 THE COURT: NOW WHEN YOU SAY THE CURRENT JOINT  
9 FILING, WHAT EXHIBIT NUMBER ARE YOU REFERRING TO?

10 MR. KRUGMAN: THE CURRENT IS JOINT EXHIBIT 5, BUT  
11 WE'RE IN THE PROCESS UPDATING THAT TO PROVIDE THE COURT WITH A  
12 NEW ONE, AND WE'LL CONFIRM THAT TO BE THE FACT.

13 MR. HARBIN AND I TALKED ABOUT IT A FEW MINUTES AGO.  
14 IT'S NOT ON THE SYLLABUS. I JUST WANT TO BE ABLE TO CONFIRM  
15 FROM THE REPORTS THAT INDEED IT WAS NOT OFFERED OR NOT POSTED  
16 AND AVAILABLE TO STUDENTS AND NOT ACCESSED BY STUDENTS DURING  
17 THE MAYMESTER.

18 THE COURT: I WAS JUST SPEAKING TO CLARIFY FOR THE  
19 RECORD WHAT YOU MEANT BY CURRENT JOINT FILING, AND YOU SAY IT'S  
20 NUMBER 5?

21 MR. KRUGMAN: YES, YOUR HONOR, AND I WOULD ALSO  
22 CLARIFY FOR THE RECORD THAT IT'S THE HANDBOOK ON QUALITATIVE  
23 RESEARCH RATHER THAN QUANTITATIVE RESEARCH.

24 MR. HARBIN: I'M SORRY. LET ME JUST THEN IF THEY'RE  
25 NOT READY TO STIPULATE, I CAN VERY QUICKLY DEAL WITH IT WITH

1 THE WITNESS, YOUR HONOR.

2 BY MR. HARBIN:

3 Q. PROFESSOR KAUFMANN, LET ME REFER YOU TO PLAINTIFFS'  
4 EXHIBIT 516 AND THE HANDBOOK OF QUALITATIVE RESEARCH SECOND  
5 EDITION, ARE YOU FAMILIAR WITH THE CHAPTER OF THAT BOOK WHICH  
6 IS PLAINTIFFS' EXHIBIT 265 BEGINNING AT PAGE 717, CHAPTER 27 BY  
7 HARPER?

8 A. YES.

9 Q. AND DID YOU AT MY REQUEST REVIEW PLAINTIFFS' EXHIBIT 516,  
10 YOUR SYLLABUS FOR THE MAYMESTER 2009?

11 A. YES.

12 Q. DID YOU SEE THAT WORK ON IT?

13 A. NO.

14 Q. AND ARE YOU FAMILIAR WITH A WORK OR CHAPTER OF THIS BOOK  
15 THAT BEGINS AT PAGE 923, CHAPTER 36 WRITING AND METHOD OF  
16 INQUIRY BY RICHARDSON?

17 A. YES.

18 Q. AT MY REQUEST DID YOU REVIEW PLAINTIFFS' EXHIBIT 516, THE  
19 SYLLABUS FOR THE MAYMESTER 2009 SEMESTER?

20 A. YES.

21 Q. AND DID YOU FIND EITHER OF THOSE CHAPTERS ON YOUR  
22 SYLLABUS?

23 A. NO.

24 Q. DID YOU REVIEW AT MY REQUEST THE ERES SUBMISSION WHICH IS  
25 DEFENDANTS' EXHIBIT 512 IN EVIDENCE?

ANDRE G. ASHLEY, O.C.R.

1 A. YES.

2 Q. DID YOU SEE THOSE TWO CHAPTERS ON YOUR SUBMISSIONS TO THE  
3 LIBRARY FOR POSTING ON ERES FOR THE MAYMESTER 2009?

4 A. NO.

5 Q. WHAT DOES THAT INDICATE TO YOU AS TO WHETHER OR NOT YOU  
6 USED CHAPTER 27 OF THE SECOND EDITION OF THE HANDBOOK  
7 PLAINTIFFS' EXHIBIT 265 IN YOUR MAYMESTER COURSE?

8 A. THAT I DID NOT USE IT.

9 Q. ANY QUESTION ABOUT THAT?

10 A. NO.

11 Q. WHAT DOES THAT INDICATE TO YOU ABSENCE OF THOSE, THE FACT  
12 THAT IT DOESN'T APPEAR ON YOUR SYLLABUS OR IN THE ERES  
13 SUBMISSIONS CHAPTER 36 BEGINNING AT PAGE 23 OF PLAINTIFFS'  
14 EXHIBIT 265, WHAT DOES THAT ABSENCE OF THAT CHAPTER INDICATE AS  
15 TO WHETHER OR NOT YOU USED THAT CHAPTER IN YOUR MAYMESTER 2009  
16 COURSE?

17 A. THAT I DID NOT USE IT.

18 Q. ANY DOUBT ABOUT THAT?

19 A. NO.

20 Q. THANK YOU. YOU DID, I BELIEVE IF WE LOOK BACK AT  
21 PLAINTIFFS' EXHIBIT 516, YOUR SYLLABUS, USE A CHAPTER FROM  
22 ELLIS AND BOCHNER, THE AUTOETHNOGRAPHY CHAPTER IN THE MAYMESTER  
23 2009?

24 A. YES.

25 Q. AND THAT'S PAGES 733 TO 768?

1 A. YES.

2 Q. A LITTLE OVER 30 PAGES?

3 A. YES.

4 MR. HARBIN: AND THE PARTIES WILL RESUBMIT THE  
5 CALCULATION, YOUR HONOR, BUT THAT'S ROUGHLY 3 PERCENT OF THE  
6 WORK.

7 BY MR. HARBIN:

8 Q. WHAT WAS YOUR PURPOSE IN USING -- FIRST OFF, WHAT WERE YOU  
9 COVERING GENERALLY ON MAY 28TH IN THE CLASS AND THEN WHAT WAS  
10 YOUR PURPOSE IN USING THAT CHAPTER?

11 A. ONE OF THE OBJECTIVES OF THAT CLASS WAS THE INTRODUCE  
12 STUDENTS TO THE METHODOLOGY AUTOETHNOGRAPHY AND ALSO TALKING  
13 ABOUT INDIGENOUS EPISTEMOLOGIES, SO THIS CHAPTER SPOKE TO BOTH  
14 OF THOSE AND MET THOSE PURPOSES.

15 Q. YOU'VE ALREADY BEEN ASKED ABOUT PLAINTIFFS' EXHIBIT 572  
16 AND IT'S IN EVIDENCE YOUR CHECKLIST FOR THIS CHAPTER FOR THE  
17 MAYMESTER; DO YOU RECALL THAT?

18 A. YES.

19 Q. DOES THE CHECKLIST REFLECT GENERALLY THE ANALYSIS YOU WENT  
20 THROUGH?

21 A. YES.

22 Q. AND WHAT WAS YOUR CONCLUSION AS TO WHETHER USING THAT  
23 CHAPTER FROM PLAINTIFFS' EXHIBIT 265 IN THE MAYMESTER COURSE IN  
24 2009 WOULD CONSTITUTE FAIR USE?

25 A. THAT IT CONSTITUTED FAIR USE.

1 Q. NOW, THE NEXT WORK I WANT TO REVIEW WITH YOU THAT YOU USED  
2 IN THE MAYMESTER IS -- PORTIONS OF THE WORK IS PLAINTIFFS'  
3 EXHIBIT 267, THE SAGE HANDBOOK FOR QUALITATIVE ANALYSIS THE  
4 THIRD EDITION. NOW, DO YOU ALSO OWN THE THIRD EDITION AS WELL  
5 AS THE SECOND EDITION?

6 A. YES.

7 Q. AND THE ISSUE IS YOUR ASSIGNMENT FOR THE MAYMESTER IS YOUR  
8 ASSIGNMENT OF FOUR CHAPTERS PAGES 1 TO 32, 357 TO 375, 443 TO  
9 465 AND 651 TO 679 WHICH BY PLAINTIFFS' CALCULATION AND  
10 STIPULATION COMES THE 9.1 PERCENT.

11 IS THAT CONSISTENT WITH YOUR GOAL OF KEEPING UNDER 10  
12 PERCENT THAT YOU TESTIFIED ABOUT?

13 A. YES.

14 Q. LOOKING BACK AT PLAINTIFFS' EXHIBIT 516, THE SYLLABUS FOR  
15 THE MAYMESTER 2009 COURSE, YOU USED ONE CHAPTER THE DENZIN AND  
16 LINCOLN CHAPTER ON MAY 12; IS THAT RIGHT?

17 A. YES.

18 Q. AND THAT'S PAGES 1 TO 32?

19 A. YES.

20 Q. AND WHAT GENERALLY WERE YOU COVERING THAT DAY OF THE  
21 CLASS?

22 A. THAT WAS AN INTRODUCTION TO QUALITATIVE RESEARCH, AND THAT  
23 CHAPTER SPECIFICALLY GAVE A BROAD INTRODUCTION AND OVERVIEW OF  
24 QUALITATIVE RESEARCH.

25 Q. YOU MAY HAVE TESTIFIED TO THIS EARLIER BUT IS THAT BROAD

1 OVERVIEW OF THAT CHAPTER OF PLAINTIFFS' EXHIBIT 267 THE THIRD  
2 EDITION IS THAT INCLUDING IN PART SUMMARIZING OTHER SCHOLARS'  
3 WORK IN THE PAST?

4 A. YES.

5 Q. AND THEN ON MAY 20 YOU USED YOU STAKE CHAPTER THAT YOU  
6 HAVE BEEN ASKED ABOUT?

7 A. YES.

8 Q. WHAT WERE YOU COVERING IN THAT CLASS, AND WHAT WAS YOUR  
9 PURPOSE OF USING THAT CHAPTER ON MAY 20TH?

10 A. ONE OF THE GOALS OF THE OBJECTIVES OF THAT DAY WAS TO  
11 INTRODUCE STUDENTS TO THE METHODOLOGY OF CASE STUDIES AND THAT  
12 CHAPTER GAVE AN OVERVIEW OF CASE STUDIES.

13 Q. AND ON MAY 27TH YOU USED THE OTHER TWO CHAPTERS OF THIS  
14 WORK THAT WERE USED IN THE MAYMESTER COURSE, SPECIFICALLY THE  
15 CHASE CHAPTER AND THE PLUMMER CHAPTER; IS THAT RIGHT?

16 A. YES.

17 Q. AND WHAT WAS YOUR PURPOSE OF USING THE CHASE CHAPTER PAGES  
18 651 TO 679?

19 A. ONE OF THE TWO OBJECTIVES FOR THAT DAY WAS INTRODUCING THE  
20 STUDENTS TO THE METHODOLOGY OF NARRATIVE INQUIRY, AND CHASE  
21 GIVES AN OVERVIEW OF NARRATIVE INQUIRY SO IT SPECIFICALLY SPOKE  
22 TO THAT PURPOSE.

23 Q. AND WHAT WAS YOUR PURPOSE IN USING THE PLUMMER CHAPTER OF  
24 THIS WORK PLAINTIFFS' EXHIBIT 267 ON THAT COURSE?

25 A. THE OTHER OBJECTIVE OF THAT DAY WAS TO INTRODUCE STUDENTS



1 TO QUEER THEORY, AND PLUMMER SPECIFICALLY TALKS ABOUT QUEER  
2 THEORY, SO IT SPOKE TO THAT.

3 Q. WHAT BRIEFLY IS QUEER THEORY IN QUALITATIVE RESEARCH?

4 A. QUEER THEORY IS A THEORY, A PHILOSOPHY OF INTERPRETING AND  
5 LOOKING AT EXPERIENCES THROUGH DIVERSE GENDERED LENSES.

6 Q. NOW, YOU'VE ALREADY BEEN ASKED ABOUT AND I BELIEVE THEY  
7 HAVE BEEN INTRODUCED YOUR CHECKLIST FOR THESE EXCERPTS OF THE  
8 THIRD EDITION OF THE SAGE HANDBOOK OF QUALITATIVE ANALYSIS,  
9 PLAINTIFFS' EXHIBIT 267. PLAINTIFFS' TRIAL EXHIBIT 576 IS YOUR  
10 CHECKLIST FOR THE FIRST CHAPTER?

11 A. YES.

12 Q. AND DOES THAT CHECKLIST GENERALLY REFLECT THE ANALYSIS YOU  
13 WENT THROUGH?

14 A. YES.

15 Q. AND WHAT WAS YOUR CONCLUSION AS TO WHETHER OR NOT USING  
16 THIS CHAPTER WOULD CONSTITUTE FAIR USE?

17 A. IT CONSTITUTED FAIR USE.

18 Q. AND PLAINTIFFS' EXHIBIT 571 IS THAT YOUR CHECKLIST DONE IN  
19 MAY OF 2009 FOR THE PROPOSED USE OF PAGES 357 TO 375 OF THAT  
20 WORK?

21 A. YES.

22 Q. AND DOES THAT GENERALLY REFLECT YOUR ANALYSIS?

23 A. YES.

24 Q. AND WHAT WAS YOUR CONCLUSION AS TO WHETHER OR NOT THE USE  
25 OF THIS CHAPTER PAGES 357 TO 375 WOULD CONSTITUTE FAIR USE?

1 A. IT CONSTITUTED FAIR USE.

2 Q. LET ME SHOW YOU PLAINTIFFS' EXHIBIT 579. I BELIEVE  
3 IT'S ALREADY BEEN INTRODUCED INTO EVIDENCE. IF NOT, I'LL OFFER  
4 IT, BUT IS THIS YOUR CHECKLIST FILLED OUT IN MAY OR 2009 FOR  
5 YOUR PROPOSED USE OF PAGES 443 TO 456 OF PLAINTIFFS' EXHIBIT  
6 267?

7 A. YES.

8 Q. AND DOES THAT GENERALLY REFLECT THE ANALYSIS ABOUT FAIR  
9 USE THAT YOU WENT THROUGH?

10 A. YES.

11 Q. AND WHAT WAS YOUR CONCLUSION AS TO WHETHER OR NOT THE USE  
12 OF THIS CHAPTER WOULD CONSTITUTE FAIR USE?

13 A. IT CONSTITUTED FAIR USE.

14 Q. ALL RIGHT. AND LET ME SHOW YOU PLAINTIFFS' EXHIBIT 5-A,  
15 WHICH I BELIEVE HAS BEEN INTRODUCED, IS THAT A COPY OF YOUR  
16 CHECKLIST THAT YOU FILLED OUT IN MAY OF 2009 CONCERNING THE  
17 FOURTH CHAPTER OF THE SAGE HANDBOOK THIRD EDITION YOU USED OR  
18 PROPOSED TO USE IN THE MAYMESTER BEGINNING AT PAGE 651?

19 A. YES.

20 Q. AND DOES THAT GENERALLY REFLECT THE ANALYSIS YOU WENT  
21 THROUGH?

22 A. YES.

23 Q. AND WHAT WAS YOUR CONCLUSION AS TO WHETHER OR NOT THE USE  
24 OF THAT CHAPTER WOULD CONSTITUTE FAIR USE?

25 A. IT CONSTITUTED FAIR USE.

1 Q. AND LET ME TURN TO WORKS THAT YOU WERE QUESTIONED ABOUT IN  
2 THE SUMMER 2009 COURSE EPRS 8510. THE SYLLABUS HAS ALREADY  
3 BEEN INTRODUCED AS PLAINTIFFS' EXHIBIT 517.

4 NOW, IF YOU LOOK AT THE SECOND BATES STAMPED 65394 OF  
5 PLAINTIFFS' EXHIBIT 517, YOU REQUIRED YOUR STUDENTS TO PURCHASE  
6 THREE TEXTBOOKS IN THIS COURSE?

7 A. YES.

8 Q. ONE IS THE GUIDE FOR FIELDWORKERS. ONE IS DOCUMENTS IN  
9 SOCIAL RESEARCH, AND ONE IS QUALITATIVE INTERVIEWING?

10 A. YES.

11 Q. AND THOSE LAST TWO OF THE THREE ARE SAGE PUBLICATIONS?

12 A. YES.

13 Q. AND DO YOU RECALL APPROXIMATELY WHAT THOSE TEXTBOOKS COST?

14 A. NO, I MEAN I'VE LOOKED THEM UP AND I DON'T REMEMBER.  
15 THEY'RE ALL UNDER A HUNDRED DOLLARS.

16 Q. SOMETHING BETWEEN SEVENTY AND A HUNDRED DOLLARS?

17 A. YES.

18 Q. NOW TURNING BACK TO THE SECOND EDITION OF THE SAGE  
19 HANDBOOK OF QUALITATIVE ANALYSIS, PLAINTIFFS' EXHIBIT 265, WHEN  
20 YOU WERE QUESTIONED ABOUT THIS -- THIS, YOUR HONOR, IS THE TWO  
21 CHAPTERS THAT WERE INCORRECTLY LISTED IN THE MAYMESTER WERE  
22 COVERED, AND I'LL GO THROUGH THAT BRIEFLY.

23 IF YOU LOOK AT THE SYLLABUS FOR JUNE 23, FIRST OFF  
24 WHAT WERE YOU COVERING ON THAT DAY GENERALLY?

25 A. USING VISUAL METHODS IN QUALITATIVE RESEARCH AS A METHOD

1 OF COLLECTING DATA.

2 Q. OKAY. AND YOU USED THE HARPER CHAPTER PAGES 717 TO 732  
3 FROM PLAINTIFFS' EXHIBIT 265 THE SECOND EDITION OF THE  
4 HANDBOOK?

5 A. YES.

6 Q. AND WHAT WAS YOUR PURPOSE IN USING THAT CHAPTER?

7 A. BECAUSE HE SPECIFICALLY SPEAKS TO USING A CAMERA IN  
8 COLLECTING VISUAL DATA IN QUALITATIVE RESEARCH.

9 Q. AND THE SECOND CHAPTER AT ISSUE FOR THAT SUMMER SEMESTER  
10 OUT OF PLAINTIFFS' EXHIBIT 267 IS THE CHARMAZ, IF I'M  
11 PRONOUNCING THAT CORRECTLY, PROBABLY NOT, YOU USED THAT CHAPTER  
12 ON JULY 14; IS THAT RIGHT?

13 A. YES.

14 Q. WHAT WAS YOUR PURPOSE IN USING THAT CHAPTER?

15 A. BECAUSE CHARMAZ SPECIFICALLY SPEAKS TO USING INTERVIEW  
16 DATA AND HOW TO ANALYZE THAT COMING FROM A GROUNDED THEORY  
17 PERSPECTIVE. ALL THINGS WHICH WERE OBJECTIVES THAT I WAS  
18 HOPING THE STUDENTS WOULD LEARN.

19 Q. LET ME -- I BELIEVE THIS HAS ALREADY BEEN INTRODUCED. LET  
20 ME SHOW YOU PLAINTIFFS' EXHIBIT 628 WHICH IS THE CHECKLIST YOU  
21 FILLED OUT OR A RECREATION USING THAT EXCERPT IN THE SUMMER?

22 A. YES.

23 Q. TO YOUR RECOLLECTION DOES THIS GENERALLY REFLECT THE  
24 ANALYSIS YOU WENT THROUGH BACK IN MAY OF 2009?

25 A. YES.

1 Q. WHAT WAS YOUR CONCLUSION ABOUT WHETHER USING THIS CHAPTER  
2 BEGINNING AT PAGE 717 OF PLAINTIFFS' EXHIBIT 265 WOULD  
3 CONSTITUTE FAIR USE?

4 A. IT CONSTITUTED FAIR USE.

5 Q. AND I BELIEVE THIS HAS ALSO BEEN INTRODUCED IN EVIDENCE  
6 PLAINTIFFS' EXHIBIT 629; DO YOU RECALL THIS?

7 A. YES.

8 Q. ACTUALLY I'M SORRY THAT'S A DIFFERENT ONE. I'LL COME BACK  
9 TO THAT, YOUR HONOR.

10 AND DID YOU FILL OUT A CHECKLIST FOR THE SECOND  
11 EXCERPT YOU USED FOR THE CHAPTER THAT BEGAN AT PAGE 923?

12 A. YES.

13 Q. WHAT WAS YOUR CONCLUSION AS TO WHETHER OR NOT THE USE OF  
14 THAT CHAPTER IN THE SUMMER SEMESTER CONSTITUTED FAIR USE?

15 A. IT CONSTITUTED FAIR USE.

16 Q. LET'S TALK THEN ABOUT A WORK THAT YOU EXCERPTED FROM FOR  
17 THIS COURSE THE BOOK INSIDE INTERVIEWING, PLAINTIFFS' EXHIBIT  
18 293. DO YOU RECALL USING A CHAPTER OF THIS BOOK LOOKING BACK  
19 AT PLAINTIFFS' EXHIBIT 517 IN THE JULY 14TH CLASS, THE CHAPTER  
20 BY CHARMAZ?

21 A. YES.

22 Q. THIS IS FOR INSIDE INTERVIEWING?

23 A. YES.

24 Q. IT'S PAGES 415 TO 428?

25 A. YES.

1 MR. HARBIN: AND, YOUR HONOR, BY THE PLAINTIFFS'  
2 CALCULATION I'D REPRESENT THAT THE PLAINTIFFS CALCULATED THAT  
3 AS 2.8 PERCENT OF THE WORK.

4 BY MR. HARBIN:

5 Q. IS THAT CONSISTENT WITH YOUR GOAL OF STAYING WITHIN 10  
6 PERCENT?

7 A. YES.

8 Q. AND WHAT WAS YOUR PURPOSE -- FIRST, WHAT WERE YOU COVERING  
9 ON THE JULY 14TH, 2009 CLASS?

10 A. A VERY BEGINNING INTRODUCTION OF ANALYZING DATA AND  
11 REPRESENTING DATA.

12 Q. WHAT WAS YOUR -- THIS CHAPTER IS LABELED QUALITATIVE  
13 INTERVIEWING AND GROUNDED THEORY ANALYSIS, WHAT IS BRIEFLY  
14 QUALITATIVE INTERVIEWING?

15 A. IT'S INTERVIEWING PEOPLE WITHIN QUALITATIVE RESEARCH.

16 Q. WHAT WAS YOUR PURPOSE IN ASSIGNING THE STUDENTS THAT  
17 CHAPTER OF INSIDE INTERVIEWING?

18 A. IT GAVE THEM A BEGINNING UNDERSTANDING OF HOW TO BEGIN TO  
19 ANALYZE INTERVIEWS WITHIN GROUNDED THEORY.

20 Q. AND IF YOU LOOK BACK AT THE SECOND PAGE OF PLAINTIFFS'  
21 EXHIBIT 517, YOUR SYLLABUS FOR THAT SUMMER 2009 SEMESTER, ONE  
22 OF THE SAGE BOOKS YOU REQUIRED THE STUDENTS TO PURCHASE WAS ON  
23 QUALITATIVE INTERVIEWING; IS THAT RIGHT?

24 A. YES.

25 Q. AND LET'S LOOK BRIEFLY AGAIN AT PLAINTIFFS' EXHIBIT 627.

1 DO YOU RECALL THAT AS A CHECKLIST YOU RECREATED FOR YOUR  
2 PROPOSED USE FOR THIS CHARMAZ CHAPTER IN THE SUMMER 2009  
3 COURSE?

4 A. YES.

5 Q. AND DID YOU FILL IT OUT BACK IN MAY OF 2009 THAT YOU  
6 COULDN'T LOCATE?

7 A. YES.

8 Q. AND DOES THIS RECREATION GENERALLY REFLECT THE ANALYSIS  
9 YOU WENT THROUGH?

10 A. YES.

11 Q. WHAT WAS YOUR CONCLUSION IN MAY OF 2009 AS TO WHETHER OR  
12 NOT THE USE OF THIS CHAPTER OF PLAINTIFFS' EXHIBIT 293 INSIDE  
13 INTERVIEWING WOULD CONSTITUTE FAIR USE?

14 A. IT CONSTITUTED FAIR USE.

15 Q. LET'S TURN TO THE -- ONE QUESTION BEFORE I GET BACK. BACK  
16 ON THE SAGE HANDBOOK SECOND EDITION THAT YOU USED TWO CHAPTERS  
17 OF IN THE SUMMER SEMESTER OF 2009, LET ME SHOW YOU WHAT'S BEEN  
18 MARKED AS PLAINTIFFS' EXHIBIT 625. IS THIS A RECREATED  
19 CHECKLIST FOR THE USE OF THAT LAST CHAPTER 7, PAGES 923 TO 943  
20 OF PLAINTIFFS' EXHIBIT 265, THE SECOND EDITION OF THE HANDBOOK  
21 OF QUALITATIVE ANALYSIS?

22 A. YES.

23 Q. AND IS THIS A RECREATED CHECKLIST?

24 A. YES.

25 Q. AND DID YOU FILL OUT A CHECKLIST IN MAY OF 2009?

1 A. YES.

2 Q. TO YOUR RECOLLECTION DOES THIS RECREATED CHECKLIST  
3 GENERALLY REFLECT THE ANALYSIS THAT YOU WENT THROUGH IN MAY OF  
4 2009?

5 A. YES.

6 Q. AND WHAT WAS YOUR CONCLUSION AS TO WHETHER OR NOT THE USE  
7 OF THIS CHAPTER WOULD CONSTITUTE FAIR USE?

8 A. IT CONSTITUTED FAIR USE.

9 MR. HARBIN: YOUR HONOR, WE WOULD OFFER PLAINTIFFS'  
10 EXHIBIT 625 INTO EVIDENCE.

11 MR. KRUGMAN: YOUR HONOR, 625 SHOWS THAT THE COURSE  
12 AND TERM WAS SPRING OF 2009 RATHER THAN THE SUMMER OF 2009 --

13 MR. HARBIN: I CAN ADDRESS THAT, YOUR HONOR.

14 MR. KRUGMAN: -- WE'RE HAPPY TO GO BACK INTO PRIOR  
15 SEMESTERS, BUT WE DON'T THINK YOUR HONOR IS INTERESTED.

16 MR. HARBIN: I THINK PLAINTIFFS' COUNSEL WENT OVER IT  
17 WITH HER SOME WHERE SHE PUT A DATE WRONG.

18 BY MR. HARBIN:

19 Q. DO YOU BELIEVE THIS WAS A RECREATION FOR WHAT YOU TAUGHT  
20 IN THE SUMMER OF 2009?

21 A. YES.

22 THE COURT: WHICH SEMESTER?

23 MR. HARBIN: SUMMER SEMESTER.

24 THE COURT: SUMMER SEMESTER AS OPPOSED TO THE  
25 MAYMESTER?



1 MR. HARBIN: RIGHT.

2 THE COURT: BECAUSE SOMEBODY SAID THEY THOUGHT THE  
3 MAYMESTER WAS PART OF THE SUMMER SEMESTER.

4 MR. HARBIN: SHE SAID TECHNICALLY IT IS, BUT WE HAVE  
5 TWO SYLLABI. PLAINTIFFS' EXHIBIT 516 IS FOR THE MAYMESTER, AND  
6 PLAINTIFFS' EXHIBIT 517 WAS FOR THE SUMMER SEMESTER.

7 MR. KRUGMAN: WE WOULD CONTINUE TO OBJECT TO THIS  
8 BECAUSE IT APPEARS ON ITS FACE TO BE FROM THE SPRING SEMESTER  
9 IN 2009.

10 THE COURT: MS. HANNA SAYS IT'S ALREADY BEEN  
11 ADMITTED. WHAT'S THE EXHIBIT NUMBER?

12 MR. HARBIN: 625.

13 THE COURT: DO YOU ALL WANT TO DISPUTE THAT?

14 MR. KRUGMAN: I DON'T DISPUTE THAT IT'S ENTERED.  
15 ACTUALLY AS WE WERE GOING THROUGH THIS, I MADE A NOTE THAT  
16 THERE WERE ACTUALLY TWO IDENTICAL OR NEARLY IDENTICAL  
17 CHECKLISTS THAT WERE PREPARED FOR THIS WORK, ONE IN SPRING OF  
18 2009 AND ONE WAS SUMMER OF 2009 WITH A CROSS-THROUGH AND I  
19 THINK THE WRONG ONE MADE IT INTO MY NOTEBOOK.

20 I BELIEVE THERE IS A SUMMER 2009 RECREATED CHECKLIST  
21 THAT IS NOT IN MY NOTEBOOK.

22 THE COURT: I SEE. SO THIS EXHIBIT NUMBER IS WHAT  
23 NOW?

24 MR. HARBIN: 626.

25 THE COURT: AND TELL ME AGAIN WHAT DOES PLAINTIFFS'

1 EXHIBIT 626 REPRESENT; WHAT IS IT?

2 THE WITNESS: YOUR HONOR, YOU'RE ASKING ME?

3 THE COURT: YES.

4 THE WITNESS: I HAD LOST THE CHECKLIST SO THEY ASKED  
5 ME TO RECREATE IT, AND THE REASON IT SAYS SPRING IS BECAUSE  
6 THIS WAS THE SAME TIME I WAS FILLING THEM OUT FOR SPRING  
7 SEMESTER BECAUSE DECEMBER MEANS I'M PREPARING FOR SPRING. SO  
8 IT'S JUST A BRAIN SLIP THAT I PUT SPRING IN MY RECREATION  
9 RATHER THAN SUMMER.

10 MR. KRUGMAN: IS THIS 625 OR 626?

11 THE COURT: I THOUGHT YOU SAID 626.

12 MR. HARBIN: IT'S 625. THAT'S WHY YOU SAID IT WAS  
13 ADMITTED?

14 THE CLERK: YES.

15 MR. HARBIN: I MISSPOKE. IT'S 625. 626 IS FOR -- I  
16 CAN'T REMEMBER.

17 THE COURT: SO PLAINTIFFS' EXHIBIT 625 REPRESENTS  
18 WHAT?

19 THE WITNESS: THIS IS A RECREATION OF THE SUMMER  
20 CHECKLIST THAT I LOST.

21 THE COURT: THANK YOU.

22 MR. HARBIN: AND, YOUR HONOR, PLAINTIFFS' EXHIBIT 626  
23 WHICH I BELIEVE WAS INTRODUCED BY THE PLAINTIFFS WHICH -- NO?

24 THE CLERK: 625 WAS ENTERED YESTERDAY MORNING ALONG  
25 WITH OTHERS AND 626 IS NOT IN.

1 MR. HARBIN: OKAY.

2 BY MR. HARBIN:

3 Q. WELL, LET ME ASK YOU THEN CAN YOU TELL THE COURT WHAT  
4 PLAINTIFFS' EXHIBIT 626 IS? IT REFERS TO THE EARLIER CHAPTER,  
5 THE FIRST CHAPTER OF THE SECOND EDITION OF THE HANDBOOK  
6 PLAINTIFFS' EXHIBIT 256 THAT YOU USED IN THE SUMMER SEMESTER  
7 2009?

8 A. IS THIS A RECREATION? I CAN'T SEE THE DATE.

9 Q. THE DATE IS DECEMBER 2010?

10 A. YES, THIS IS A RECREATION FOR SUMMER OF THE FAIR CHECKLIST  
11 THAT I LOST.

12 Q. FOR THE CHAPTER THAT BEGINS AT PAGE 717 OF PLAINTIFFS'  
13 EXHIBIT 265?

14 A. YES.

15 Q. AND DO YOU BELIEVE THIS ACCURATELY -- TO YOUR RECOLLECTION  
16 DOES THIS ACCURATELY REFLECT THE ANALYSIS THAT YOU WENT THROUGH  
17 IN MAY OF 2009?

18 A. YES.

19 Q. AND WHAT WAS YOUR CONCLUSION AS TO WHETHER THE USE OF THE  
20 CHAPTER OF PLAINTIFFS' EXHIBIT 265 BEGINNING AT PAGE 717 WOULD  
21 CONSTITUTE FAIR USE?

22 A. IT CONSTITUTED FAIR USE.

23 Q. AND DOES THIS --

24 THE COURT: I THOUGHT THIS WAS NOT IN EVIDENCE.

25 MR. HARBIN: I WOULD OFFER IT INTO EVIDENCE.

1           MR. KRUGMAN: WE OBJECT. THE DOCUMENT ON ITS FACE  
2 SHOWS THAT IT WAS THE SPRING 2009 SEMESTER, AND I BELIEVE  
3 PROFESSOR KAUFMANN TAUGHT THIS SAME COURSE IN SPRING OF 2009.  
4 WE WOULD OBJECT TO IT ON THAT BASIS, AND ON THE BASIS THAT IT  
5 WAS RECREATED AND IT'S NOT THE ORIGINAL.

6           MR. HARBIN: YOUR HONOR, IF YOUR HONOR WISHES TO HEAR  
7 FROM ME ON THE MERITS ABOUT THE RECREATION --

8           THE COURT: NO, I DON'T. WHAT I'M INTERESTED IN IS  
9 JUST PINNING DOWN THE DATE OF THE SEMESTER THAT SHE WAS  
10 REFERRING TO WHEN SHE SAID SPRING OF 2009.

11           THE WITNESS: SUMMER 2009, YOUR HONOR.

12           THE COURT: I'LL ADMIT IT.

13 BY MR. HARBIN:

14 Q. NOW, LET'S TURN TO THE FALL 2009 SEMESTER, AND THE  
15 SYLLABUS IS MARKED 518. IT HAS ALREADY BEEN INTRODUCED INTO  
16 EVIDENCE.

17           DID YOU REQUIRE THE STUDENTS -- JUST TO REFER THE  
18 COURT BACK, IT'S ALREADY BEEN TESTIFIED TO, BUT THIS IS  
19 TEACHING AGAIN IN THE FALL OF 2009 THE EPRS 8500 COURSE THAT  
20 YOU TAUGHT IN THE MAYMESTER 2009?

21 A. YES.

22 Q. AND IN THE FALL OF 2009 YOU REQUIRED YOUR STUDENTS TO  
23 PURCHASE THREE TEXTBOOKS?

24 A. YES.

25 Q. ONE BY CROTTY WHICH IS THE FOUNDATIONS OF SOCIAL RESEARCH,

- 1 A SAGE PUBLICATION?
- 2 A. YES.
- 3 Q. AND ONE OF THOSE THREE WAS A SAGE PUBLICATION AUTHORED OR  
4 EDITED BY WALLACE AND WRAY, CRITICAL READING AND WRITING FOR  
5 POSTGRADUATES?
- 6 A. YES.
- 7 Q. AND WOULD THOSE HAVE COST IN THE RANGE OF WHAT YOU  
8 TESTIFIED EARLIER?
- 9 A. YES.
- 10 Q. EIGHTY TO A HUNDRED DOLLARS OR SEVENTY TO A HUNDRED  
11 DOLLARS?
- 12 A. YES.
- 13 Q. NOW, I WANT TO ASK YOU ABOUT AN EXCERPT THAT YOU USED OF A  
14 WORK HANDBOOK OF NARRATIVE INQUIRY.
- 15 A. YES.
- 16 Q. IF YOU LOOK AT THE SYLLABUS, YOU USED THAT IN THE OCTOBER  
17 26TH COURSE. THAT'S A CHAPTER BY CLANDININ AND ROSIEK, MAPPING  
18 A LANDSCAPE OF NARRATIVE INQUIRY?
- 19 A. YES.
- 20 Q. AND WHAT WAS YOUR PURPOSE IN USING AND INCORPORATING THIS  
21 CHAPTER INTO YOUR OCTOBER 26TH SESSION?
- 22 A. BECAUSE ONE OF THE OBJECTIVES OF THAT CLASS WAS TO  
23 INTRODUCE STUDENTS TO THE METHODOLOGY OF NARRATIVE INQUIRY  
24 AND THAT CHAPTER SPECIFICALLY SPOKE TO THAT.
- 25 Q. AND THE CHAPTER PAGES ARE 35 TO 75?

1 A. YES.

2 MR. HARBIN: AND BY THE PLAINTIFFS' CALCULATION, YOUR  
3 HONOR, THAT'S APPROXIMATELY 6.3 PERCENT OF THE WORK.

4 BY MR. HARBIN:

5 Q. NOW DO YOU RECALL THAT YOU USED A DIFFERENT SINGLE CHAPTER  
6 BUT A DIFFERENT ONE FROM THIS PLAINTIFFS' EXHIBIT 258, THE  
7 HANDBOOK OF NARRATIVE INQUIRY, IN THE MAY 8500 COURSE?

8 A. YES.

9 Q. WHY BRIEFLY DID YOU DECIDE TO USE A DIFFERENT EXCERPT IN  
10 THE 8500 COURSE YOU TAUGHT IN THE FALL OF 2009?

11 A. BECAUSE THERE ARE A LOT OF DIFFERENT ARTICLES OR DIFFERENT  
12 WAYS TO APPROACH THAT SUBJECT, AND BY CHANGING THEM OUT IT'S A  
13 WAY TO FORCE ME TO GET READING DONE AND SO I KEEP UP IN THE  
14 FIELD.

15 Q. SO YOU'RE TALKING ABOUT YOUR OWN READING?

16 A. YES.

17 Q. AND LET ME SHOW YOU PLAINTIFFS' EXHIBIT 592 WHICH IS  
18 ALREADY IN EVIDENCE I BELIEVE. DO YOU RECOGNIZE THIS AS THE  
19 CHECKLIST YOU CREATED IN THE SUMMER, JULY OF 2009 FOR THE  
20 PROPOSED USE OF THE CLANDININ CHAPTER FROM THE HANDBOOK  
21 PLAINTIFFS' EXHIBIT 258?

22 A. YES.

23 Q. AND DOES THIS GENERALLY REFLECT THE ANALYSIS YOU WENT  
24 THROUGH?

25 A. YES.

1 Q. AND WHAT WAS YOUR CONCLUSION ABOUT WHETHER OR NOT THE USE  
2 OF THAT CHAPTER FROM PLAINTIFFS' EXHIBIT 258 WOULD CONSTITUTE  
3 FAIR USE?

4 A. IT CONSTITUTED FAIR USE.

5 Q. OKAY. LOOKING AT YOUR SYLLABUS AGAIN PLAINTIFFS' EXHIBIT  
6 518 SPECIFICALLY PAGE 10, DID YOU USE -- AND WE'RE TALKING NOW  
7 ABOUT A WORK PLAINTIFFS' EXHIBIT 349, THE BOOK APPROACHES THE  
8 QUALITATIVE RESEARCH, DID YOU USE ONE CHAPTER OF THAT BOOK IN  
9 THE SUMMER 2009 SEMESTER?

10 A. YES.

11 Q. AND SPECIFICALLY YOU USED IT IN THE NOVEMBER 30 CLASS?

12 A. YES.

13 Q. AND IT TALKS ABOUT REPRESENTATION, WHAT DOES THAT  
14 GENERALLY REFER TO IN YOUR AREA?

15 A. REPRESENTATION IS REALLY HOW IT LOOKS ON THE PAGE. SO THE  
16 DIFFERENT WAYS THAT YOU WRITE IT UP OR PRESENT IT ON THE PAGE  
17 INFLUENCES HOW THAT TEXT MAKES MEANING.

18 Q. WHAT WAS YOUR PURPOSE IN USING THE CHAPTER, THE DENZIN  
19 CHAPTER AT ISSUE IN YOUR CLASS ON NOVEMBER 30?

20 A. BECAUSE DENZIN SPECIFICALLY SPOKE TO THAT ISSUE OF  
21 REPRESENTATION AND HOW THAT REPRESENTATION IS INFLUENCED BY  
22 YOUR POLITICS OR YOUR THEORIES WHERE YOU SITUATE YOURSELF.

23 Q. OKAY. LET ME SHOW YOU WHAT'S ALREADY BEEN INTRODUCED AS  
24 PLAINTIFFS' EXHIBIT 591, AND I'M JUST TRYING TO EXPEDITE THIS  
25 BECAUSE IT'S ALREADY BEEN COVERED. IS THIS THE CHECKLIST THAT

1 YOU COMPLETED IN JULY OF 2009 FOR THE USE OF THAT CHAPTER  
2 BEGINNING AT PAGE 447?

3 A. YES.

4 Q. AND THAT CHAPTER IS APPROXIMATELY 26 PAGES?

5 A. YES.

6 MR. HARBIN: BY THE PLAINTIFFS' CALCULATION, YOUR  
7 HONOR, THAT'S 4.8 PERCENT OF THE WORK.

8 BY MR. HARBIN:

9 Q. IS THAT CONSISTENT WITH YOUR GOAL OF BEING UNDER 10  
10 PERCENT?

11 A. YES.

12 Q. AND DOES THAT GENERALLY REFLECT THE FAIR USE ANALYSIS THAT  
13 YOU WENT THROUGH IN PROPOSING THE USE OF THIS CHAPTER?

14 A. YES.

15 Q. AND WHAT WAS YOUR CONCLUSION ABOUT WHETHER USING THIS  
16 CHAPTER FROM PLAINTIFFS' EXHIBIT 349 IN THE FALL OF 2009 COURSE  
17 WOULD CONSTITUTE FAIR USE?

18 A. IT CONSTITUTED FAIR USE.

19 Q. THANK YOU. LET ME TURN TO ANOTHER WORK COMPLAINED OF,  
20 YOUR USE OF AN EXCERPT THEREOF IS COMPLAINED OF REGARDING THE  
21 FALL 2009 SEMESTER, THAT'S PLAINTIFFS' EXHIBIT 372 WHICH IS THE  
22 CRAFT OF INQUIRY; DO YOU RECALL THAT BOOK?

23 A. YES.

24 Q. AND CAN YOU BRIEFLY EXPLAIN TO THE COURT JUST GENERALLY  
25 WHAT THAT BOOK IS ABOUT?



1 A. BASICALLY IT'S ABOUT HOW TO CONSTRUCT A QUALITATIVE  
2 RESEARCH STUDY.

3 THE COURT: IS THAT BOOK IN THE COURTROOM UP ON THE  
4 BENCH HERE -- I MEAN UP ON THE WITNESS STAND?

5 MR. HARBIN: I CAN GET A COPY. IT HAS BEEN --

6 THE COURT: IT'S BEEN ADMITTED AS PLAINTIFFS' EXHIBIT  
7 372 SO IT'S GOT TO BE LYING AROUND HERE SOMEWHERE, AND ALSO  
8 CRITICAL AND INDIGENOUS METHODOLOGIES, PLAINTIFFS' EXHIBIT 231,  
9 I'D LIKE TO SEE THAT ONE, TOO.

10 MR. HARBIN: I HAVE A DEFENSE COPY, YOUR HONOR.  
11 HERE'S THE CRITICAL AND INDIGENOUS METHODOLOGY PLAINTIFFS'  
12 EXHIBIT 231. HERE'S PLAINTIFFS' EXHIBIT 372, IF I MAY  
13 APPROACH?

14 THE COURT: GO AHEAD.

15 BY MR. HARBIN:

16 Q. AND YOU USED ONE CHAPTER OF THIS WORK IN THE AUGUST 31  
17 CLASS; IS THAT RIGHT?

18 A. YES.

19 Q. AND WHAT WAS YOUR PURPOSE IN USING THAT CHAPTER BY ALFORD?

20 A. ONE OF THE MAIN OBJECTIVES OF THAT CLASS WAS TO HELP THE  
21 STUDENTS LEARN HOW TO CONSTRUCT A RESEARCH QUESTION, AND ALFORD  
22 SPECIFICALLY SPEAKS TO THAT IN THAT CHAPTER.

23 Q. AND THE CHAPTER IS ABOUT 11 PAGES LONG?

24 A. YES.

25 MR. HARBIN: BY PLAINTIFFS' CALCULATION, YOUR HONOR,

1 THAT'S 8.2 PERCENT OF THE WORK.

2 BY MR. HARBIN:

3 Q. NOW, I BELIEVE REFERRING YOU TO PLAINTIFFS' EXHIBIT 593,  
4 WHICH I BELIEVE HAS ALREADY BEEN INTRODUCED INTO EVIDENCE, IS  
5 THIS THE CHECKLIST YOU FILLED OUT IN JULY 2009 PROPOSING THE  
6 USE OF THAT CHAPTER FROM PLAINTIFFS' EXHIBIT 372?

7 A. YES.

8 Q. AND DOES IT GENERALLY REFLECT THE ANALYSIS YOU WENT  
9 THROUGH?

10 A. YES.

11 Q. AND WHAT WAS YOUR CONCLUSION AS TO WHETHER OR NOT THE USE  
12 OF PAGES 21 OF 31 OF PLAINTIFFS' EXHIBIT 372 WOULD CONSTITUTE  
13 FAIR USE?

14 A. IT CONSTITUTED FAIR USE.

15 Q. OKAY. LET ME TURN YOU NOW TO A WORK THAT YOU EXCERPTED IN  
16 THE FALL OF 2009 CLASS PLAINTIFFS' EXHIBIT 243, THE HANDBOOK OF  
17 FEMINIST RESEARCH.

18 THE PLAINTIFFS COMPLAIN OF THE USE OF PAGES 71 TO  
19 106, 156 AND 172 AND 515 TO 534, AND IF YOU LOOK AT PLAINTIFFS'  
20 EXHIBIT 518, THE SYLLABUS AGAIN, PAGE 9 YOU USED THE GANNON AND  
21 DAVIES CHAPTER OF THAT WORK PLAINTIFFS' EXHIBIT 243 PAGES 71 TO  
22 106 IN THE OCTOBER 19TH CLASS?

23 A. YES.

24 Q. WHAT WERE YOU GENERALLY COVERING IN THE OCTOBER 19TH  
25 CLASS?

- 1 A. FEMINISM, POSTSTRUCTURALISM AND POSTMODERNISM.
- 2 Q. AND HOW WOULD YOU DESCRIBE GENERALLY THE CHAPTER THAT YOU  
3 USED?
- 4 A. SPECIFICALLY THEY'RE FEMINIST RESEARCHERS AND THEY WERE  
5 TALKING ABOUT FEMINIST RESEARCH IN RELATION TO OR COMING OUT OF  
6 POSTSTRUCTURAL AND POSTMODERN CRITICAL THEORIES.
- 7 Q. AND WHAT WAS YOUR PURPOSE IN USING THAT CHAPTER?
- 8 A. IT SPECIFICALLY ADDRESSED THAT OBJECTIVE THAT I WAS TRYING  
9 TO GET ACROSS TO THE STUDENTS.
- 10 Q. AND IF YOU LOOK AT PAGE 8 OF PLAINTIFFS' EXHIBIT 518  
11 CONCERNING SESSION 6 OF YOUR COURSE, YOU USED A CHAPTER FROM  
12 PILLOW AND MAYO TOWARD UNDERSTANDING THE FEMINIST ETHNOGRAPHY?
- 13 A. YES.
- 14 Q. PAGES 165 TO 172?
- 15 A. YES.
- 16 Q. AND CAN YOU GENERALLY DESCRIBE WHAT THAT CHAPTER IS ABOUT?
- 17 A. IT SPEAKS ABOUT FEMINIST ETHNOGRAPHY. SO IT'S TALKING  
18 ABOUT THE METHODOLOGY OF ETHNOGRAPHY COMING OUT OF THE  
19 THEORETICAL PERSPECTIVE OF FEMINISM WHICH WAS THE OBJECTIVE OF  
20 THAT COURSE OR ONE OF THE OBJECTIVES.
- 21 Q. AND IF YOU LOOK AT PAGE 7 FOR THE SEPTEMBER 14 COURSE AND  
22 YOU LOOK OVER TO THE TOP OF PAGE 8, YOU USED A CHAPTER FROM  
23 THAT WORK HANDBOOK OF FEMINIST RESEARCH, PLAINTIFFS' EXHIBIT  
24 243, THE PREISSLE CHAPTER?
- 25 A. YES.

1 Q. I THINK YOU'VE ALREADY DESCRIBED THAT USAGE?

2 MR. HARBIN: AND BY THE PLAINTIFFS' CALCULATION, YOUR  
3 HONOR, PER THE JOINT CALCULATION THEY CALCULATE THAT THREE  
4 CHAPTERS COMPRISE 10.4 PERCENT OF THE WORK.

5 BY MR. HARBIN:

6 Q. DO YOU KNOW SPECIFICALLY IF WHEN YOU DID YOUR CALCULATIONS  
7 DID YOU COME IN UNDER 10 PERCENT OR RIGHT AT 10 PERCENT OR DO  
8 YOU RECALL?

9 A. I DO NOT RECALL. I KNOW MY GOAL WAS TO STAY UNDER 10  
10 PERCENT.

11 Q. IS IT POSSIBLE YOU MADE AN ERROR AND WENT --

12 MR. KRUGMAN: OBJECTION, LEADING.

13 THE COURT: SUSTAINED.

14 BY MR. HARBIN:

15 Q. I BELIEVE THESE ARE ALL IN EVIDENCE, BUT TO JUST REFER  
16 BRIEFLY REFER -- YOU'VE ALREADY BEEN ASKED ABOUT THESE, BUT  
17 THIS IS PLAINTIFFS' EXHIBIT 588. IS THIS THE CHECKLIST YOU  
18 FILLED OUT IN JULY OF 2009 PROPOSING THE USE OF ONE OF THE  
19 CHAPTERS BEGINNING AT PAGE 71 OF PLAINTIFF'S EXHIBIT 243?

20 A. YES.

21 Q. AND DOES THIS GENERALLY REFLECT THE ANALYSIS THAT YOU WENT  
22 THROUGH?

23 A. YES.

24 Q. AND WHAT WAS YOUR CONCLUSION AS TO WHETHER OR NOT THE USE  
25 WOULD CONSTITUTE FAIR USE?

1 A. IT CONSTITUTED FAIR USE.

2 Q. AND IF YOU LOOK AT PLAINTIFFS' EXHIBIT 589, IS THAT THE  
3 FAIR USE CHECKLIST YOU FILLED OUT IN JULY OF 2009 CONCERNING  
4 YOUR PROPOSED USE OF THE SECOND OF THE THREE CHAPTERS FROM  
5 PLAINTIFFS' EXHIBIT 243 THAT YOU USED ULTIMATELY IN THE FALL  
6 2009 COURSE THE CHAPTER BEGINNING AT PAGE 155 AND 156?

7 A. YES.

8 Q. AND DOES THIS GENERALLY REFLECT PLAINTIFFS' EXHIBIT 589  
9 REFLECT THE ANALYSIS THAT YOU WENT THROUGH?

10 A. YES.

11 Q. AND WHAT WAS YOUR CONCLUSION AS TO WHETHER THE USE OF THAT  
12 CHAPTER BEGINNING AT PAGE 155 OF PLAINTIFFS' EXHIBIT 243 IN THE  
13 FALL 2009 WOULD CONSTITUTE FAIR USE?

14 A. IT CONSTITUTED FAIR USE.

15 Q. AND LET ME ASK YOU TO LOOK AGAIN AT PLAINTIFFS' EXHIBIT  
16 590. IS THIS THE CHECKLIST THAT YOU FILLED OUT IN JULY OF 2009  
17 CONCERNING THE PROPOSED USE IN THE FALL 2009 COURSE A THIRD OF  
18 THOSE CHAPTERS FROM PLAINTIFFS' EXHIBIT 243 BEGINNING AT PAGE  
19 515?

20 A. YES.

21 Q. AND DOES PLAINTIFFS' EXHIBIT 590 GENERALLY REFLECT THE  
22 ANALYSIS YOU WENT THROUGH?

23 A. YES.

24 Q. AND WHAT WAS YOUR CONCLUSION ABOUT WHETHER OR NOT THE USE  
25 OF THAT CHAPTER WOULD CONSTITUTE FAIR USE?

ANDRE G. ASHLEY, O.C.R.

1 A. IT CONSTITUTED FAIR USE.

2 Q. LET ME TURN YOU TO PLAINTIFFS' EXHIBIT 267, THE THIRD  
3 EDITION OF THE SAGE HANDBOOK OF QUALITATIVE RESEARCH USED IN  
4 THE FALL 2009 SEMESTER EXCERPTS THEREOF.

5 IF YOU LOOK AT PLAINTIFFS' EXHIBIT 518 AGAIN, THE  
6 SEMESTER FOR THE FALL 2009 -- THE SYLLABUS FOR THE FALL 2009  
7 SEMESTER COURSE, IF YOU LOOK AT PAGE 7, BATES STAMPED 65407,  
8 YOU USED A CHAPTER BEGINNING AT PAGE 1 OF THE THIRD EDITION OF  
9 THE SAGE HANDBOOK PLAINTIFFS' EXHIBIT 267, THE DENZIN AND  
10 LINCOLN CHAPTER?

11 A. YES.

12 Q. AND YOU USED ON AUGUST 24, AND YOU MAY HAVE ALREADY DONE  
13 THIS BUT JUST TO BE SURE, CAN YOU BRIEFLY DESCRIBE WHAT THAT  
14 CHAPTER IS ABOUT?

15 A. IT'S AN INTRODUCTION AND OVERVIEW OF THE FIELD OF  
16 QUALITATIVE RESEARCH.

17 Q. OKAY. IS IT IN PART SUMMARIZING THE WORK OF OTHER  
18 SCHOLARS AND PROFESSORS?

19 A. YES.

20 Q. AND IF YOU LOOK AT SESSION 7 OF PAGE 8 OF PLAINTIFFS'  
21 EXHIBIT 518, YOU HAVE BEEN ASKED ABOUT THIS, THE STAKE ARTICLE  
22 OR CHAPTER OF THAT WORK QUALITATIVE CASE STUDIES?

23 A. YES.

24 Q. WHAT WAS YOUR PURPOSE IN USING THAT -- FIRST, YOU USED  
25 THAT WORK IN THE OCTOBER 5 CLASS; IS THAT RIGHT?

1 A. YES.

2 Q. WHAT WAS YOUR PURPOSE IN USING THAT CHAPTER?

3 A. ONE OF THE OBJECTIVES OF THAT CLASS WAS TO INTRODUCE  
4 STUDENTS TO CASE STUDIES, AND STAKES' ARTICLE ON CASE STUDIES  
5 DID THAT AND MET THAT OBJECTIVE.

6 Q. OKAY. AND LET ME TURN YOU TO PAGE 9 OF PLAINTIFFS'  
7 EXHIBIT 518 IN THE FALL OF 2009 SYLLABUS CONCERNING THE 10TH  
8 SESSION. YOU USED A CHAPTER OF THE PLAINTIFFS' WORK FROM THE  
9 THIRD EDITION OF THE SAGE HANDBOOK PLAINTIFFS' EXHIBIT 267 THE  
10 PLUMMER CHAPTER SPECIFICALLY DURING THE OCTOBER 26TH CLASS?

11 A. YES.

12 Q. YOU'VE ALREADY -- I THINK YOU'VE ALREADY TALKED A COUPLE  
13 OF TIMES ABOUT THIS CHAPTER. SO I WON'T ASK YOU ANYTHING  
14 FURTHER ABOUT IT.

15 IF YOU LOOK AT THE NEXT SESSION SESSION 11, NOVEMBER  
16 2, YOU USED A CHAPTER, THE BISHOP CHAPTER FREEING OURSELVES  
17 FORM NEOCOLONIAL DOMINATION IN RESEARCH?

18 A. YES.

19 Q. AND WHAT WAS YOUR PURPOSE IN USING THAT CHAPTER IN THE  
20 FALL OF 2009 COURSE?

21 A. IT GAVE AN OVERVIEW OF AN INDIGENOUS WAY OF CONDUCTING  
22 QUALITATIVE RESEARCH WHICH WAS ONE OF THE PURPOSES OF THAT  
23 CLASS.

24 Q. AND THEN IF YOU LOOK AT PAGE 10, YOU USED A CHAPTER FROM  
25 THE WORK PLAINTIFFS' EXHIBIT 267 IN THE NOVEMBER 23 COURSE?

1 A. YES.

2 Q. THAT'S THE SMITH AND HODKINSON CHAPTER; IS THAT RIGHT?

3 A. YES.

4 Q. ON RELATIVISM, CRITERIA AND POLITICS?

5 A. YES.

6 Q. AND WHAT WAS YOUR PURPOSE IN USING THAT CHAPTER?

7 A. THE OBJECTIVE OF THAT CLASS WAS DEALING WITH ISSUES OF

8 QUALITY IN QUALITATIVE RESEARCH, AND SMITH'S ARTICLE DOES THAT

9 BY LOOKING AT THAT FROM DIFFERENT THEORETICAL PERSPECTIVES

10 SPECIFICALLY RELATIVISM.

11 Q. ON THE NOVEMBER 30 COURSE, SESSION 15, YOU USED A CHAPTER

12 OF THE WORK PLAINTIFF'S EXHIBITS 267 THE THIRD EDITION OF THE

13 SAGE HANDBOOK A RICHARDSON AND ST. PIERRE CHAPTER WRITING AS A

14 METHOD OF INQUIRY?

15 A. YES.

16 Q. AND I BELIEVE YOU TESTIFIED BUT BRIEFLY WHAT WAS YOUR

17 PURPOSE IN USING THAT EXCERPT?

18 A. RICHARDSON AND ST. PIERRE SPECIFICALLY SPEAK ABOUT THAT

19 WRITING IS A WAY OF MAKING MEANING OF DATA AND MAKING MEANING

20 OF A REPRESENTATION WHICH SPECIFICALLY SPOKE TO MY PURPOSE OF

21 THAT EVENING.

22 Q. OKAY. NOW, LET ME SHOW YOU PLAINTIFFS' EXHIBIT 581 WHICH

23 I BELIEVE HAS BEEN INTRODUCED. IS THIS THE FAIR USE CHECKLIST

24 YOU FILLED OUT IN JULY 2009 FOR THE PROPOSED USE IN THE FALL OF

25 2009 OF THE CHAPTER OF PLAINTIFFS' EXHIBIT 267 THE THIRD



1 EDITION OF THE HANDBOOK THAT'S ON PAGES 1 TO 32?  
2 A. YES.  
3 Q. DOES THIS PLAINTIFFS' EXHIBIT 581 GENERALLY REFLECT THE  
4 ANALYSIS YOU WENT THROUGH?  
5 A. YES.  
6 Q. AND WHAT WAS YOUR CONCLUSION AS TO WHETHER OR NOT THE USE  
7 OF THAT CHAPTER WOULD CONSTITUTE FAIR USE?  
8 A. IT CONSTITUTED FAIR USE.  
9 Q. I BELIEVE THIS HAS BEEN INTRODUCED PLAINTIFFS' EXHIBIT  
10 582. SO BRIEFLY IS THIS THE CHECKLIST YOU FILLED OUT IN JULY  
11 OF 2009 FOR THE PROPOSED USE OF A CHAPTER OF PLAINTIFFS'  
12 EXHIBIT 267, THE THIRD EDITION OF THE SAGE HANDBOOK IN THE FALL  
13 2009 COURSE?  
14 A. YES.  
15 Q. IT SAYS PAGES 11 TO 138. DO YOU RECALL THERE WAS A  
16 CHAPTER PAGES 109 TO 138?  
17 A. YES.  
18 Q. IS THAT TO YOUR KNOWLEDGE WHAT'S THAT REFERRING TO?  
19 A. YES.  
20 Q. DOES THIS GENERALLY REFLECT THE ANALYSIS YOU WENT THROUGH?  
21 A. YES.  
22 Q. AND WHAT WAS YOUR CONCLUSION ABOUT WHETHER OR NOT THE USE  
23 OF THAT CHAPTER CONSTITUTED FAIR USE?  
24 A. IT CONSTITUTED FAIR USE.  
25 Q. LET ME ASK YOU TO LOOK BRIEFLY AT PLAINTIFFS' EXHIBIT 583

1 WHICH HAS BEEN INTRODUCED INTO EVIDENCE. IS THIS A COPY OF THE  
2 CHECKLIST YOU FILLED OUT IN JULY 2009 FOR THE PROPOSED USE OF  
3 THE CHAPTER BEGINNING AT PAGE 357 OF THE THIRD EDITION OF THE  
4 HANDBOOK PLAINTIFFS' EXHIBIT 267?

5 A. YES.

6 Q. DOES GENERALLY REFLECT THE ANALYSIS THAT YOU WENT THROUGH?

7 A. YES.

8 Q. AND WHAT WAS YOUR CONCLUSION ABOUT WHETHER OR NOT THE USE  
9 OF THAT CHAPTER OF PLAINTIFFS' EXHIBIT 267 WOULD CONSTITUTE  
10 FAIR USE?

11 A. IT CONSTITUTED FAIR USE.

12 Q. LET ME SHOW YOU WHAT'S BEEN I BELIEVE PREVIOUSLY  
13 INTRODUCED AS PLAINTIFFS' EXHIBIT 584. IS THAT A COPY OF THE  
14 CHECKLIST YOU FILLED OUT IN JULY OF 2009 FOR THE PROPOSED USE  
15 OF THE CHAPTER BEGINNING AT PAGE 443 OF THE THIRD EDITION OF  
16 THE HANDBOOK PLAINTIFFS' EXHIBIT 267?

17 A. YES.

18 Q. AND DOES PLAINTIFFS' EXHIBIT 584, THE CHECKLIST, GENERALLY  
19 REFLECT THE ANALYSIS YOU WENT THROUGH?

20 A. YES.

21 Q. AND WHAT WAS YOUR CONCLUSION ABOUT WHETHER OR NOT THE USE  
22 OF THAT CHAPTER WOULD CONSTITUTE FAIR USE?

23 A. IT CONSTITUTED FAIR USE.

24 Q. LET ME REFER YOU TO PLAINTIFFS' EXHIBIT 585 WHICH I  
25 BELIEVE HAS ALREADY BEEN INTRODUCED. IS THIS A COPY OF THE

1 CHECKLIST YOU COMPLETED IN JULY OF 2009 CONCERNING THE PROPOSED  
2 USE OF THE CHAPTER BEGINNING AT 547 OF PLAINTIFFS' EXHIBIT 267?

3 A. YES.

4 Q. AND DOES PLAINTIFFS' EXHIBIT 585 GENERALLY REFLECT THE  
5 ANALYSIS YOU WENT THROUGH?

6 A. YES.

7 Q. AND WHAT WAS YOUR CONCLUSION ABOUT WHETHER OR NOT THE USE  
8 OF THAT CHAPTER BEGINNING AT PAGE 547 OF PLAINTIFFS' EXHIBIT  
9 267 IN THE FALL OF 2009 COURSE CONSTITUTED FAIR USE?

10 A. IT CONSTITUTED FAIR USE.

11 Q. LET ME SHOW YOU PLAINTIFFS' EXHIBIT 586. IS THIS THE  
12 CHECKLIST YOU FILLED OUT IN JULY OF 2009 FOR THE PROPOSED USE  
13 OF THE CHAPTER OF THE THIRD EDITION OF THE SAGE HANDBOOK  
14 PLAINTIFFS' EXHIBIT 267 IN THE FALL 2009 SEMESTER BEGINNING AT  
15 PAGE 733?

16 A. YES.

17 Q. AND DOES THIS GENERALLY REFLECT THE ANALYSIS THAT YOU WENT  
18 THROUGH IN JULY OF 2009?

19 A. YES.

20 MR. HARBIN: YOUR HONOR, I DON'T BELIEVE THIS WAS  
21 INTRODUCED. I WOULD OFFER IT NOW PLAINTIFFS' EXHIBIT 586 INTO  
22 EVIDENCE.

23 MR. KRUGMAN: NO OBJECTION, YOUR HONOR.

24 THE COURT: IT'S ADMITTED.

25 BY MR. HARBIN:

1 Q. AND WHAT WAS YOUR CONCLUSION ABOUT WHETHER OR NOT THE USE  
2 OF THIS CHAPTER IN THE FALL 2009 COURSE CONSTITUTED FAIR USE?

3 A. IT CONSTITUTED FAIR USE.

4 Q. AND LET ME SHOW YOU WHAT I BELIEVE HAS BEEN PREVIOUSLY  
5 ADMITTED PLAINTIFFS' EXHIBIT 578. IS THIS A COPY OF THE  
6 CHECKLIST YOU FILLED OUT IN JULY OF 2009 CONCERNING THE  
7 PROPOSED USE OF THE CHAPTER OF PLAINTIFFS' EXHIBIT 267, THE  
8 THIRD EDITION OF THE SAGE HANDBOOK OF QUALITATIVE ANALYSIS  
9 BEGINNING AT PAGE 959?

10 A. YES.

11 Q. AND DOES THIS PLAINTIFFS' EXHIBIT 587 GENERALLY REFLECT  
12 THE ANALYSIS THAT YOU WENT THROUGH?

13 A. YES.

14 Q. WHAT WAS YOUR CONCLUSION OF WHETHER OR NOT THE USE OF THAT  
15 CHAPTER WOULD CONSTITUTE FAIR USE?

16 A. IT CONSTITUTED FAIR USE.

17 Q. LET ME GO TO ONE MORE WORK THAT I THINK IS THE FINAL WORK  
18 AT ISSUE CONCERNING THE FALL 2009 SEMESTER PLAINTIFFS' EXHIBIT  
19 288, HANDBOOK OF SOCIAL THEORY, CAN YOU BRIEFLY DESCRIBE WHAT  
20 PLAINTIFFS' EXHIBIT 288 IS ABOUT?

21 A. THAT'S THE ONE THAT I HAVE NOT READ THE WHOLE BOOK, BUT IT  
22 BASICALLY DEALS WITH SOCIAL THEORY.

23 MR. HARBIN: THE ISSUE IS THE USE, YOUR HONOR, OF ONE  
24 CHAPTER PAGES 217 TO 228 IN THE FALL SEMESTER BY PLAINTIFFS'  
25 CALCULATION 2.2 PERCENT OF THE WORK.

1 BY MR. HARBIN:

2 Q. IS THIS THE SAME CHAPTER YOU USED IN THE MAYMESTER?

3 A. YES.

4 Q. LET ME SHOW YOU PLAINTIFFS' EXHIBIT 594 WHICH AGAIN I  
5 BELIEVE HAS BEEN INTRODUCED INTO EVIDENCE. IS THAT THE  
6 CHECKLIST THAT YOU FILLED OUT IN JULY OF 2009 CONCERNING THE  
7 PROPOSED USE OF THAT CHAPTER OF PLAINTIFFS' EXHIBIT 288, THE  
8 HANDBOOK OF SOCIAL THEORY BEGINNING AT PAGE 217?

9 A. YES.

10 Q. AND DOES PLAINTIFFS' EXHIBIT 594, THE CHECKLIST, GENERALLY  
11 REFLECT THE ANALYSIS THAT YOU WENT THROUGH?

12 A. YES.

13 Q. AND WHAT WAS YOUR CONCLUSION ABOUT WHETHER OR NOT THE USE  
14 OF THAT CHAPTER OF PLAINTIFFS' EXHIBIT 288 IN THE FALL OF 2009  
15 WOULD CONSTITUTE FAIR USE?

16 A. IT CONSTITUTED FAIR USE.

17 Q. I BELIEVE YOU WERE ASKED SOME QUESTIONS ABOUT -- A  
18 QUESTION ABOUT NOT EVER HAVING FILLED OUT A CHECKLIST ALL THE  
19 WAY IN REACHING A CONCLUSION THAT WAS NOT FAIR USE?

20 A. CORRECT.

21 Q. HAVE YOU CONSIDERED WORKS AND DETERMINED EXCERPTS OF WORKS  
22 FOR YOUR USE IN YOUR COURSES AND DETERMINED THE USE WITHIN YOUR  
23 ANALYSIS WOULD NOT BE FAIR USE OR AS CLOSE ENOUGH THAT YOU  
24 WEREN'T GOING TO USE IT?

25 A. YES.

ANDRE G. ASHLEY, O.C.R.

1 Q. WHAT DO YOU DO IN THOSE SITUATIONS GENERALLY REGARDING THE  
2 CHECKLIST; DO YOU FILL OUT THE CHECKLIST ALL THE WAY?

3 A. NO, IF IT DOESN'T CONSTITUTE FAIR USE, THEN I DON'T FILL  
4 OUT THE CHECKLIST.

5 MR. HARBIN: THAT'S ALL I HAVE, YOUR HONOR.

6 MR. KRUGMAN: I WILL BE BRIEF.

7 THE COURT: ALL RIGHT.

8 REDIRECT EXAMINATION

9 BY MR. KRUGMAN:

10 Q. MR. HARBIN JUST ASKED YOU A QUESTION ABOUT THE SAGE  
11 HANDBOOK OF SOCIAL THEORY WHICH IS PLAINTIFFS' EXHIBIT 288, AND  
12 I BELIEVE HE ASKED YOU TO PROVIDE AN OVERVIEW OF THAT BOOK AND  
13 YOU SAID YOU WERE NOT ABLE TO DO SO BECAUSE YOU SAID YOU  
14 HAVEN'T READ THE WHOLE BOOK; IS THAT CORRECT?

15 A. THAT'S CORRECT.

16 Q. AND YOU USED A CHAPTER OF THIS BOOK FOR ONE OF YOUR -- AT  
17 LEAST TWO OF YOUR COURSES, CORRECT?

18 A. CORRECT.

19 Q. AND YOU COMPLETED -- IF YOU CAN BRING UP PLAINTIFFS'  
20 EXHIBIT 594. THIS IS THE CHECKLIST THAT YOU COMPLETED FOR THAT  
21 WORK; IS THAT CORRECT?

22 A. CORRECT.

23 Q. AND THEN ON PAGE 2 UNDER FACTOR 3, YOU CHECKED THE BOX FOR  
24 PORTION USED IS NOT CENTRAL TO ENTIRE WORK AS A WHOLE; IS THAT  
25 CORRECT?

1 A. CORRECT.

2 Q. AND YOU DID NOT SELECT THE BOX ON THE OPPOSITE SIDE  
3 PORTION USED IS CENTRAL TO THE WORK OR HEART OF THE WORK?

4 A. CORRECT.

5 Q. AND I TAKE IT YOU MADE THAT DETERMINATION THAT THE PORTION  
6 USED IS NOT CENTRAL OR SIGNIFICANT TO THE ENTIRE WORK AS A  
7 WHOLE WITHOUT ACTUALLY HAVING READ THE ENTIRE WORK; IS THAT  
8 CORRECT?

9 A. THAT IS CORRECT, BECAUSE I KNOW ENOUGH ABOUT SOCIAL THEORY  
10 THAT SYMBOLIC INTERACTIONISM DOES NOT CONSTITUTE THE HEART OF  
11 SOCIAL THEORY.

12 Q. BUT YOU DIDN'T READ THE BOOK, DR. KAUFMANN, CORRECT?

13 A. NO, BUT I READ THE INDEX. I KNOW THAT SYMBOLIC  
14 INTERACTIONISM IS NOT THE HEART OF SOCIAL THEORY.

15 Q. YOU TESTIFIED BOTH YESTERDAY AND TODAY IN RESPONSE TO  
16 MAYBE A HANDFUL OF QUESTIONS FROM MR. HARBIN THAT PORTIONS OF  
17 CERTAIN OF THE ASSIGNED WORK SUMMARIZED THE WORKS OF OTHER  
18 SCHOLARS; IS THAT CORRECT?

19 A. CORRECT.

20 Q. WOULD YOU AGREE THAT AN ARTICLE THAT SYNTHESIZES AND  
21 SUMMARIZES PRIOR SCHOLARSHIP CAN BE A TRANSFORMATIVE USE OF  
22 THAT SCHOLARSHIP?

23 A. YES, BUT I THINK THOSE ARE TWO DIFFERENT THINGS. I THINK  
24 THERE IS A DIFFERENCE BETWEEN SUMMARIZING WHAT IS HAPPENING IN  
25 THE FIELD AND CATERGORIZING THAT THAN TAKING PEOPLE'S WORK AND

1 TRANSFORMING IT INTO SOMETHING ELSE.

2 Q. NOW, IF YOU COULD BRING UP PLAINTIFFS' TRIAL EXHIBIT 626,  
3 AND THIS IS THE FAIR USE CHECKLIST THAT YOU COMPLETED FOR THE  
4 HARPER WORK FROM THE HANDBOOK OF QUALITATIVE ANALYSIS SECOND  
5 EDITION FOR THE 8510 COURSE?

6 A. IT'S A RECREATION, YES.

7 Q. IT'S A RECREATED CHECKLIST?

8 A. YES.

9 Q. AND SAYS COURSE AND TERM SPRING OF 2009; DO YOU SEE THAT?

10 A. YES.

11 Q. AND DO YOU TEACH THIS COURSE IN THE SPRING OF 2009 --

12 A. YES.

13 Q. -- OR DID YOU IN THAT SEMESTER?

14 A. YES.

15 Q. AND I BELIEVE EVEN THOUGH IT SAYS SPRING OF 2009, YOU ARE  
16 CERTAIN THAT THIS WAS THE CHECKLIST THAT YOU COMPLETED IN  
17 DECEMBER OF 2010 FOR THE SUMMER 2009 SEMESTER THAT YOU TAUGHT  
18 THIS COURSE?

19 A. YES.

20 MR. KRUGMAN: IF YOU CAN BRING UP PLEASE PLAINTIFFS'  
21 TRIAL EXHIBIT 628, AND IF I MAY APPROACH THE WITNESS, YOUR  
22 HONOR?

23 THE COURT: YOU MAY.

24 BY MR. KRUGMAN:

25 Q. AND CAN YOU IDENTIFY PLAINTIFFS' TRIAL EXHIBIT 628 AS A



1 CHECKLIST THAT YOU COMPLETED ON DECEMBER 10, 2010 FOR THE WORK  
2 BY HARPER --

3 A. YES.

4 Q. -- FROM THE SECOND EDITION OF THE HANDBOOK OF QUALITATIVE  
5 ANALYSIS FOR THE SUMMER SEMESTER OF 2009?

6 A. YES.

7 MR. KRUGMAN: YOUR HONOR, I WOULD MOVE TO EXCLUDE  
8 FROM EVIDENCE PLAINTIFFS' TRIAL EXHIBIT 626 WHICH WAS ON ITS  
9 FACE PREPARED FOR THE SPRING 2009 SEMESTER RATHER THAN THE  
10 SUMMER 2009 SEMESTER.

11 THE WITNESS: I THINK YOU COULD KNOW WHICH ONE WAS  
12 CREATED FOR SPRING BY GOING BACK AND LOOKING AT THE DATES THAT  
13 THEY WERE CREATED BECAUSE ALL OF THE RECREATIONS FOR THAT  
14 COURSE WERE CREATED ON DECEMBER 10TH, BUT THOSE THAT I TURNED  
15 IN ACTUALLY FOR SPRING SEMESTER WOULD NOT HAVE BEEN CREATED ON  
16 DECEMBER 10.

17 THE COURT: IS THERE ANY OPPOSITION TO THE MOTION TO  
18 STRIKE?

19 MR. HARBIN: I DON'T BELIEVE SO. THE POINT TO US IS  
20 THAT IT WAS RECREATED.

21 THE COURT: ALL RIGHT. I'LL GRANT THE MOTION AND  
22 WE'RE STRIKING 626?

23 MR. KRUGMAN: 626, YES, YOUR HONOR.

24 BY MR. KRUGMAN:

25 Q. NOW, MR. HARBIN ASKED YOU FOR EACH OF THE SEMESTERS THAT

1 YOU TAUGHT COURSES AT ISSUE HERE TO ESTIMATE THE COST OF A  
2 STUDENT PURCHASING CERTAIN OF THE ASSIGNED TEXTBOOKS, CORRECT?  
3 A. CORRECT.  
4 Q. NOW, IN PUTTING TOGETHER THE COURSE, THE SYLLABI FOR THE  
5 COURSE, YOU DID NOT BELIEVE THAT THOSE TEXTBOOKS WOULD SUFFICE  
6 IN AND OF THEMSELVES TO ACHIEVE YOUR TEACHING OBJECTIVES, DID  
7 YOU?  
8 A. NO, SUPPLEMENTS WERE NEEDED.  
9 Q. AND THAT'S WHY YOU ASSIGNED THE REMAINING WORKS THAT YOU  
10 DID THAT ARE REFLECTED ON THE VARIOUS SYLLABI, CORRECT?  
11 A. CORRECT.  
12 Q. NOW YOU ON THE VARIOUS CHECKLISTS THAT YOU FILLED OUT, YOU  
13 INDICATED THAT IT WAS YOUR BELIEF IN MOST INSTANCES THAT USE OF  
14 THESE SAGE WORKS WAS NECESSARY TO ACHIEVE YOUR INTENDED  
15 EDUCATIONAL PURPOSE; IS THAT TRUE?  
16 A. YES.  
17 Q. SO WOULD YOU AGREE, DR. KAUFMANN, THAT YOUR INABILITY TO  
18 USE THOSE WORKS FOR THE VARIOUS COURSES WOULD IMPAIR YOUR  
19 ABILITY TO ACHIEVE YOUR TEACHING OBJECTIVE FOR THOSE COURSES?  
20 A. NO, I THINK THAT SAGE VERY MUCH HELPED ME TEACH THOSE  
21 COURSES, BUT I BELIEVE THAT THERE ARE LOTS OF RESOURCES OUT  
22 THERE TO HELP ME TEACH THOSE SAME OBJECTIVES.  
23 Q. WERE THOSE SAGE WORKS, WERE THEY OR WERE THEY NOT  
24 NECESSARY TO ACHIEVE YOUR TEACHING OBJECTIVE AS YOU INDICATED  
25 ON THE CHECKLIST?

ANDRE G. ASHLEY, O.C.R.

1 A. I THINK IT DEPENDS HOW YOU DEFINE NECESSARY. THEY WERE  
2 HELPFUL TO ME TO TEACH THOSE GOALS, BUT I COULD TEACH THOSE  
3 SAME OBJECTIVES WITHOUT HAVING USED THOSE ARTICLES.

4 Q. SO ARE YOU NOW SAYING THAT THE USE OF THOSE WORKS WAS  
5 HELPFUL BUT NOT REALLY NECESSARY AS YOU INDICATED ON THE  
6 CHECKLIST?

7 A. I THINK IT DEPENDS, AS I SAID, HOW YOU DEFINE NECESSARY.  
8 COULD I HAVE DONE THAT WITHOUT THE SAGE PIECES? YES, I COULD  
9 HAVE FOUND JOURNAL ARTICLES OR I COULD HAVE LECTURED, I COULD  
10 HAVE DONE OTHER WAYS, BUT WERE THEY VERY HELPFUL AND DID THEY  
11 GIVE THINGS TO MY STUDENTS? MOST DEFINITELY.

12 Q. SO, IN OTHER WORDS, YOU BELIEVE THAT THEY WERE HELPFUL BUT  
13 REALLY NOT NECESSARY TO ACHIEVE YOUR TEACHING OBJECTIVES; WOULD  
14 THAT BE A FAIR STATEMENT?

15 A. WELL, AGAIN, WHAT DO YOU MEAN BY NECESSARY? DO YOU MEAN  
16 BY NECESSARY THAT I COULD NOT HAVE DONE IT WITHOUT SAGE, OR DO  
17 YOU MEAN BY NECESSARY THAT THEY FACILITATED ME GETTING TO THE  
18 OBJECTIVES THAT I WANTED? HOW ARE YOU DEFINING NECESSARY?

19 Q. LET ME ASK YOU THIS SINCE I'M THE ONE WHO GETS TO ASK THE  
20 QUESTIONS. WHEN YOU COMPLETED THE CHECKLIST AND YOU INDICATED  
21 IN VIRTUALLY EVERY INSTANCE THAT USE OF A PARTICULAR WORK WAS  
22 NECESSARY, WHAT WAS YOUR UNDERSTANDING OF THAT TERM?

23 A. MY UNDERSTANDING OF NECESSARY WAS THAT IT GREATLY  
24 FACILITATED AND HELPED ME GET TO WHERE I WANTED TO GO. THEY  
25 MET THOSE OBJECTIVES, BUT BY NECESSARY I DO NOT UNDERSTAND THAT

1 I COULD NOT DO IT WITHOUT THEM, OR I COULD NOT HAVE DONE THAT  
2 OTHER WAYS.

3 Q. AND IN EACH OF THESE COURSES, AND WE CAN FOCUS ON THE FALL  
4 OF 2009 SEMESTER, WHERE YOU USED A LARGE NUMBER OF CHAPTERS  
5 FROM THE VARIOUS SAGE BOOKS THAT WE'VE TALKED ABOUT PROBABLY  
6 LONGER THAT YOU HAD ANTICIPATED OVER THE LAST DAY OR SO --

7 A. YES.

8 Q. -- IF STUDENTS IN THAT FALL 2009 COURSE COULD HAVE USED  
9 ALL OF THOSE SAGE WORKS AND PAID ROUGHLY 28 DOLLARS IN  
10 PERMISSION FEES, THAT WOULD HAVE BEEN THE COST, WOULD YOU  
11 NONETHELESS HAVE PULLED THEM FROM THE SYLLABI BECAUSE THE  
12 STUDENTS WOULD HAVE BEEN REQUIRED TO PAY THAT 28 DOLLARS?

13 A. THAT WASN'T A QUESTION THAT EVER ENTERED MY MIND BECAUSE  
14 THEY MET THE FAIR USE CHECKLIST FOR ME.

15 Q. SO YOU DIDN'T THINK ONE WAY OR ANOTHER ABOUT THE POTENTIAL  
16 COST TO STUDENTS OF PURCHASING OR PAYING PERMISSIONS FOR USING  
17 THOSE WORKS?

18 MR. HARBIN: YOUR HONOR, IF I MAY OBJECT, I THINK  
19 THIS HAS BEEN -- THE WITNESS HAS BEEN QUESTIONED BY PLAINTIFFS'  
20 COUNSEL REPEATEDLY ABOUT THIS ISSUE, AND SHE'S TESTIFIED ABOUT  
21 IT, AND I DIDN'T ASK HER -- IT'S OUTSIDE THE SCOPE OF RECROSS  
22 OF MY QUESTIONING.

23 BY MR. KRUGMAN:

24 Q. LET ME ASK IT JUST A LITTLE BIT DIFFERENTLY, AND IT MAY BE  
25 NOT ALL THAT DIFFERENTLY, BUT ASSUMING THAT THE STUDENTS COULD

1 HAVE USED ALL OF THOSE WORKS FOR 28 DOLLARS IN PERMISSIONS,  
2 WOULD YOU HAVE ASSIGNED, CONTINUED TO ASSIGN THOSE WORKS TO  
3 STUDENTS, OR WOULD YOU HAVE PULLED THEM FROM THE SYLLABI?

4 MR. HARBIN: SAME OBJECTIONS, YOUR HONOR.

5 THE COURT: OVERRULED. YOU CAN ANSWER THE QUESTION.

6 THE WITNESS: THANK YOU, YOUR HONOR. THAT DID NOT  
7 ENTER MY MIND. IT WAS NOT SOMETHING I THOUGHT ABOUT BECAUSE IT  
8 PASSED FAIR USE SO THAT WAS THE END OF THE THOUGHT PROCESS.

9 BY MR. KRUGMAN:

10 Q. SITTING HERE TODAY, LET'S ASSUME THE COURT OR THE  
11 UNIVERSITY PRESIDENT OR THE PROVOST ADVISED YOU THAT IN ORDER  
12 TO USE THOSE WORKS YOU WOULD HAVE TO OBTAIN PERMISSION AND IT  
13 WOULD COST THE STUDENTS TO USE THOSE WORKS 28 DOLLARS, WOULD  
14 YOU CONTINUE TO ASSIGN THOSE WORKS TO STUDENTS?

15 MR. HARBIN: I WOULD OBJECT IT'S COMPOUND, YOUR  
16 HONOR, GIVEN THE NUMBER OF WORKS.

17 THE COURT: OVERRULED.

18 THE WITNESS: I CANNOT TELL YOU EXACTLY WHAT I WOULD  
19 DO, BUT I DO KNOW THAT IF I WAS MADE TO MAKE STUDENTS TO PAY  
20 FOR THOSE WORKS, I WOULD DEFINITELY THINK TWICE ABOUT USING  
21 THEM AND LOOK AT OTHER RESOURCES SUCH AS E-JOURNALS.

22 BY MR. KRUGMAN:

23 Q. EVEN THOUGH YOU HAD ALREADY ASSIGNED TEXTBOOKS TO THE  
24 STUDENTS COSTING PERHAPS TWO OR THREE HUNDRED DOLLARS?

25 A. CORRECT.

1 MR. KRUGMAN: THAT'S ALL I HAVE, YOUR HONOR.

2 THE COURT: SHALL THE WITNESS BE EXCUSED?

3 MR. HARBIN: I'VE GOT A LITTLE REDIRECT BECAUSE WE'RE  
4 ALSO DOING OUR DIRECT. IT WILL BE VERY SHORT.

5 THE COURT: VERY SHORT.

6 REDIRECT EXAMINATION

7 BY MR. HARBIN:

8 Q. YOU WERE JUST ASKED A QUESTION, PROFESSOR KAUFMANN, ABOUT,  
9 IF I UNDERSTOOD IT, TO THE EFFECT THAT THE IMPLICATION WAS WHY  
10 NOT HAVE THE STUDENTS PAY ANOTHER 28 DOLLARS IF THEY'VE PAID  
11 TWO OR THREE HUNDRED DOLLARS FOR TEXTBOOKS.

12 WAS THE COST OF THE TEXTBOOKS A CONCERN OF YOURS FOR  
13 THE STUDENTS?

14 A. YES.

15 Q. OR WAS IT TO YOU HEY, THEY'VE ALREADY PAID THIS MUCH,  
16 LET'S JUST HAVE THEM PAY A LITTLE BIT MORE --

17 MR. KRUGMAN: OBJECTION, LEADING.

18 THE COURT: IT IS A LEADING QUESTION, AND I JUST  
19 DON'T THINK WE'RE GETTING MUCH INFORMATION HERE.

20 MR. HARBIN: I WILL WITHDRAW IT, YOUR HONOR.

21 BY MR. HARBIN:

22 Q. YOU WERE ASKED ABOUT THE HANDBOOK OF SOCIAL THEORY AND  
23 YOUR FAMILIARITY OR LACK OF FAMILIARITY OR YOUR LACK OF READING  
24 ALL OF THE ENTIRE BOOK?

25 A. YES.

1 Q. IS THIS HANDBOOK LOOKING AT THE INDEX --

2 THE COURT: SHE'S ALREADY MADE HER POINT ABOUT THE  
3 INDEX. WHY DO YOU WANT TO GO OVER IT AGAIN?

4 MR. HARBIN: I HAVE AN ADDITIONAL POINT THAT IS  
5 RELEVANT TO THE CROSS-EXAMINATION AND THE QUESTION OF USING THE  
6 WORKS.

7 THE COURT: IT'S BEEN ESTABLISHED SEVERAL TIMES THAT  
8 SHE HASN'T READ THE WHOLE WORK, BUT SHE MAINTAINS THAT  
9 NONETHELESS THAT SHE LOOKED AT THE INDEX AND SHE'S VERY  
10 FAMILIAR WITH THIS SUBJECT AREA AND SHE COULD TELL FROM LOOKING  
11 AT THE INDEX THAT THE CHAPTER THAT SHE ASSIGNED WAS NOT THE  
12 HEART OF THE WORK.

13 SO WHAT ELSE IS THERE TO GO INTO HERE?

14 MR. HARBIN: I DON'T WANT TO PUT WORDS IN THE  
15 WITNESS' MOUTH. IT WILL ONLY BE A COUPLE OF QUESTIONS.

16 THE COURT: ALL RIGHT.

17 BY MR. HARBIN:

18 Q. IS THIS -- YOU WERE ASKED QUESTIONS ABOUT ANTHOLOGIES. IS  
19 THIS A SERIES OF ESSAYS OR ARTICLES BY DIFFERENT AUTHORS?

20 A. YES.

21 Q. ARE YOU FAMILIAR IN YOUR SCHOLARSHIP WITH SOME OF THE  
22 AUTHORS THAT APPEAR IN THIS BOOK?

23 A. YES.

24 Q. DO THEY PUBLISH ESSAYS ELSEWHERE THAN IN THE HANDBOOK OF  
25 SOCIAL THEORY?

1 A. YES.

2 Q. HAVE YOU USED AN ESSAY BY PROFESSOR SANDSTROM, ANOTHER  
3 ESSAY IN A DIFFERENT WORK BY PROFESSOR SANDSTROM?

4 A. NO.

5 Q. WOULD SOME OF THESE PROFESSORS HAVE PUBLICATIONS TO YOUR  
6 KNOWLEDGE OF THE WORKS YOU USED IN OTHER WORKS THAT MAKE  
7 SIMILAR POINTS IF NOT THE IDENTICAL POINT; DOES THAT MAKE  
8 SENSE?

9 A. YES, THAT MAKES SENSE. I DON'T KNOW IF THE WORKS THAT I  
10 WOULD USE WOULD DEFINITELY BE FROM THAT AUTHOR OR NOT.

11 MR. KRUGMAN: OBJECTION, THERE HAS BEEN NO FOUNDATION  
12 LAID.

13 THE COURT: SUSTAINED.

14 MR. HARBIN: YOUR HONOR, I BELIEVE SHE TESTIFIED  
15 SHE'S FAMILIAR WITH MANY OF THE SCHOLARS WHO WROTE THESE WORKS  
16 SEPARATE FROM READING THE BOOK.

17 THE QUESTION IS HOW IMPORTANT THESE WORKS ARE, AND  
18 I'M TRYING TO RESPOND TO THAT. I THINK I COULD TRY --

19 THE COURT: YOU'RE JUST LOOKING TO SHOW FROM A  
20 DIFFERENT PERSPECTIVE HOW SHE MIGHT HAVE FIGURED OUT THAT WHAT  
21 SHE COPIED WAS NOT THE HEART OF THE WORK, RIGHT?

22 MR. HARBIN: NO, IT'S NOT WHETHER IT'S THE HEART OF  
23 THE WORK. WHAT I'M TRYING TO ADDRESS IS THE QUESTION ABOUT HOW  
24 NECESSARY THESE WORKS WERE TO THE COURSE.

25 THE COURT: BUT I THOUGHT SHE ONLY ASSIGNED ONE



1 CHAPTER OUT OF THIS WORK, THE SOCIAL THEORY WORK.

2 MR. HARBIN: CORRECT, I WAS TRYING TO ADDRESS IT  
3 GENERALLY USING THIS AS AN EXAMPLE, NOT TO GET TO THE HEART OF  
4 THE WORK ISSUE BUT TO GET TO THE ISSUE OF WHAT WOULD YOU DO IF  
5 YOU DIDN'T USE THIS WORK, WHAT OTHER AVENUES ARE AVAILABLE.

6 THE COURT: AGAIN, I DON'T SEE WHY -- WHAT'S THE  
7 UTILITY IN TALKING ABOUT PARTS SHE DIDN'T ASSIGN.

8 MR. HARBIN: I COULD FOCUS ON A WORK THAT SHE USED AS  
9 A CROSS-EXAMINATION QUESTION. I WAS TRYING TO ASK A GENERAL  
10 QUESTION TO RESPOND TO THAT TO SHORTCUT IT.

11 THE COURT: MOVE ON.

12 MR. HARBIN: THAT'S IT, YOUR HONOR.

13 THE COURT: LET'S GO TO LUNCH. YOU'RE EXCUSED,  
14 MA'AM. WE'LL TAKE A LUNCH BREAK UNTIL 1:15.

15 (NOON RECESS)

16 THE COURT: YOU MAY PROCEED.

17 MR. KRUGMAN: WE JUST HAVE A FEW HOUSEKEEPING MATTERS  
18 BEFORE I TURN IT OVER. FIRST OF ALL, WE WOULD LIKE TO AGAIN  
19 OFFER INTO EVIDENCE THE INFAMOUS PLAINTIFFS' EXHIBIT 975 WHICH  
20 ARE THE DEFENDANTS' OBJECTIONS AND RESPONSES TO PLAINTIFFS'  
21 FIRST SET OF REQUESTS FOR ADMISSIONS THAT WE DID NOT HAVE A  
22 COMPLETE COPY OF, AND I UNDERSTAND THERE IS NO OBJECTION.

23 MR. SCHAETZEL: NO OBJECTION.

24 THE COURT: IT'S ADMITTED.

25 MR. KRUGMAN: AND I'M GOING TO PROVIDE THE ORIGINAL

1 OF THE EXHIBIT FOR THE COURT. ALSO, PLAINTIFFS MOVE INTO  
2 EVIDENCE JOINT EXHIBITS 1, 2 AND 3 WHICH ARE THE REPORTS FROM  
3 THE ERESERVE SYSTEM, AND WE UNDERSTAND THERE'S NO OBJECTION.

4 MR. SCHAETZEL: NO OBJECTION.

5 THE COURT: THEY ARE ADMITTED.

6 MR. KRUGMAN: AND WE ALSO MOVE INTO EVIDENCE SOME  
7 EXHIBITS THAT WERE FROM THE PALMOUR DEPOSITION THAT WE PLAYED  
8 YESTERDAY, AND THESE ARE PLAINTIFFS' EXHIBITS 675, 758, 763,  
9 764 AND 776, AND THERE ARE NO OBJECTIONS TO THOSE ON THE  
10 PRETRIAL ORDER.

11 THE COURT: THEY ARE ADMITTED. THESE ARE  
12 LIKE EXHIBITS THAT WERE DISCUSSED DURING THE  
13 DEPOSITION?

14 MR. KRUGMAN: YES, YOUR HONOR. AND THEN FINALLY WE  
15 FILED WITH THE CLERK TODAY WHAT WE HAVE STYLED AN EVIDENTIARY  
16 PROFFER AND SUPPORT OF THE TRIAL TESTIMONY OF PROFESSOR  
17 KAUFMANN, JODI KAUFMANN, AND WHAT THIS FILING HAS ARE COPIES OF  
18 THE EXHIBITS THAT WE WOULD HAVE OFFERED INTO EVIDENCE WITH MS.  
19 KAUFMANN, AND WE JUST -- WE DID THAT SO THE RECORD CAN BE  
20 COMPLETE AS TO WHAT WOULD HAVE GONE ON HAD WE BEEN PERMITTED TO  
21 DO SO, AND YOU ALL SHOULD HAVE A SERVICE COPY ON PACER, AND I  
22 DON'T KNOW IF THE COURT WOULD WANT ONE OF THESE OR YOU'LL GET  
23 IT OFF PACER.

24 THE COURT: YOU ARE OFFERING IT IN EVIDENCE?

25 MR. KRUGMAN: NO, YOUR HONOR. WE SOUGHT TO GET THESE

1 IN THROUGH MS. KAUFMANN. THE COURT ACCEPTED THE PROFFER BUT  
2 SAID YOU'RE NOT GOING TO ALLOW THE EXHIBITS IN.

3 THE COURT: RIGHT.

4 MR. KRUGMAN: BUT WHAT THOSE EXHIBITS WERE ARE  
5 NOWHERE IN THE RECORD --

6 THE COURT: RIGHT, AND IF IT WAS PROFFERED AND I  
7 DECLINED IT, THEN IT GOES WITH MS. HANNA'S GROUP OF DOCUMENTS  
8 TO SHOW WHAT I KEPT OUT.

9 MR. KRUGMAN: EXACTLY. I'LL GIVE YOU A COPY. THANK  
10 YOU, YOUR HONOR.

11 MR. RICH: MR. LARSON WILL EXAMINE OUR NEXT WITNESS.

12 THE COURT: ALL RIGHT.

13 MR. LARSON: GOOD AFTERNOON, YOUR HONOR. THE  
14 PLAINTIFFS CALL JENNIFER ESPOSITO.

15 THE CLERK: PLEASE RAISE YOUR RIGHT HAND TO TAKE THE  
16 OATH.

17 JENNIFER ESPOSITO,  
18 HAVING BEEN DULY SWORN, WAS EXAMINED AND TESTIFIED AS FOLLOWS:

19 THE CLERK: IF YOU WILL HAVE A SEAT, PLEASE, AND  
20 STATE YOUR FULL NAME FOR THE RECORD AND SPELL YOUR LAST NAME  
21 ALSO.

22 THE WITNESS: JENNIFER ESPOSITO.

23 MR. LARSON: YOUR HONOR, MAY I APPROACH WITH A  
24 WITNESS BINDER?

25 THE COURT: YOU MAY.

1 DIRECT EXAMINATION

2 BY MR. LARSON:

3 Q. GOOD AFTERNOON, MS. ESPOSITO.

4 A. GOOD AFTERNOON.

5 Q. YOU ARE A PROFESSOR IN THE EDUCATIONAL POLICY STUDIES  
6 DEPARTMENT; IS THAT CORRECT?

7 A. YES.

8 Q. AND YOU TAUGHT A CLASS LABELED EPSF 8280 DURING THE SUMMER  
9 2009 SEMESTER; IS THAT CORRECT?

10 A. YES.

11 Q. AND THAT CLASS HAD 22 STUDENTS, CORRECT?

12 A. YES.

13 Q. AND IF YOU LOOK AT YOUR BINDER UNDER THE FIRST TAB,  
14 PLAINTIFFS' EXHIBIT 546 SHOULD BE FIRST. DO YOU RECOGNIZE THAT  
15 AS THE SYLLABUS FOR THE COURSE?

16 A. YES.

17 MR. LARSON: IF WE COULD GET ON THE SCREEN PLEASE?

18 YOUR HONOR, I WOULD MOVE EXHIBIT 547 INTO EVIDENCE.

19 MR. ASKEW: NO OBJECTION.

20 THE COURT: IT'S ADMITTED.

21 BY MR. LARSON:

22 Q. AND IF YOU CAN TURN TO THE FOURTH PAGE OF THE DOCUMENT AND  
23 WE'LL HAVE IT ON THE SCREEN HERE, TOO, IF YOU FIND THAT  
24 EASIER.

25 SO THE FOURTH PAGE REFLECTS THE READING SCHEDULE FOR

ANDRE G. ASHLEY, O.C.R.

1 THE CLASS; IS THAT CORRECT?

2 A. YES.

3 Q. AND THE READING LIST CONTAINS EXCERPTS THAT WERE PROVIDED

4 TO STUDENTS IN THE CLASS IN ELECTRONIC FORM THROUGH THE

5 ERESERVE SYSTEM; IS THAT RIGHT?

6 A. YES.

7 Q. AND THOSE WERE ALL REQUIRED READINGS; IS THAT CORRECT?

8 A. YES.

9 Q. AND THERE WAS NO PAYMENT MADE TO THE PUBLISHER OR AUTHOR

10 OF THOSE WORKS FOR THE USE OF ANY OF THOSE ERESERVE READINGS,

11 CORRECT?

12 A. CORRECT.

13 Q. AND YOU'VE NEVER SECURED ANY LICENSING OR PERMISSION OR

14 PAID ANY FEE FOR ANY WORKS THAT YOU HAVE PLACED ON ERESERVES,

15 CORRECT?

16 A. CORRECT.

17 Q. AND PROVIDING THESE ARTICLES ON ERESERVES ALLOWED YOU TO

18 EXPOSE YOUR STUDENTS TO THESE ARTICLES WITHOUT HAVING TO PAY

19 ADDITIONAL FUNDS BEYOND THE TEXT THAT THEY ARE BUYING, CORRECT?

20 A. CORRECT.

21 Q. LET'S TAKE A LOOK AT THE JUNE 11 ENTRY AND MAYBE WE CAN

22 BLOW THAT UP A LITTLE BIT.

23 NOW THIS REFLECTS THE FACT THAT YOU ASSIGNED A

24 CHAPTER BY BARBARA TEDLOCK CALLED ETHNOGRAPHY AND ETHNOGRAPHIC

25 REPRESENTATION; IS THAT RIGHT?

- 1 A. YES.
- 2 Q. AND THAT'S FROM THE SAGE HANDBOOK OF QUANTITATIVE  
3 RESEARCH?
- 4 A. QUALITATIVE, YES.
- 5 Q. AND THAT'S THE SECOND EDITION OF THAT BOOK?
- 6 A. YES.
- 7 Q. AND WHAT YOU ASSIGNED WE SEE HERE WAS THE ENTIRE CHAPTER;  
8 IS THAT RIGHT?
- 9 A. THAT'S THE ENTIRE ARTICLE THAT TEDLOCK WROTE, YES.
- 10 Q. RIGHT. UP ON THE STAND THERE YOU'LL SEE THERE IS A COPY OF  
11 THE WORK THAT'S PLAINTIFFS' EXHIBIT 267 WHICH IS IN EVIDENCE.  
12 IF YOU COULD COULD YOU JUST TAKE A LOOK AT THE TABLE  
13 OF CONTENTS FOR ME. I GUESS WE'RE GETTING IT ON THE SCREEN,  
14 TOO, IF THAT'S EASIER.
- 15 IF YOU COULD TAKE A LOOK AT YOUR COPY THERE WHICH IS  
16 THE SECOND EDITION, CORRECT?
- 17 A. YES.
- 18 Q. AND CAN YOU CONFIRM THAT THE TEDLOCK CHAPTER WAS PAGES 456  
19 TO 486?
- 20 A. YES.
- 21 Q. AND THAT WAS REQUIRED READING, CORRECT?
- 22 A. IT WAS REQUIRED.
- 23 Q. AND THAT WAS PROVIDED VIA ERESERVES, RIGHT?
- 24 A. YES.
- 25 Q. STAYING WITH JUNE 11TH ON THE SYLLABUS, IF WE COULD, THAT

1 REFLECTS THAT YOU ASSIGNED ANOTHER CHAPTER OF A DIFFERENT BOOK  
2 ETHNOGRAPHIC RESEARCH IN EDUCATIONAL SETTINGS, CORRECT?  
3 A. YES.  
4 Q. AND THAT'S FROM THE SAGE HANDBOOK OF ETHNOGRAPHY?  
5 A. YES.  
6 Q. AND THAT WAS THE FULL CHAPTER THAT YOU ASSIGNED; IS THAT  
7 RIGHT?  
8 I SEE THE WITNESS FOR THE RECORD IS LOOKING AT  
9 PX-239. THAT'S THE HANDBOOK OF ETHNOGRAPHY?  
10 A. YEAH, THEY'RE NOT CALLED CHAPTERS IN HERE. SO I ASSIGNED  
11 THE ENTIRE ARTICLE.  
12 Q. ARTICLE. THANK YOU. AND, AGAIN, THAT ARTICLE WAS  
13 REQUIRED READING?  
14 A. YES.  
15 Q. AND THAT WAS PLACED ON ERESERVES?  
16 A. YES.  
17 Q. AND THAT WAS POSTED TO ERESERVES WITHOUT MAKING ANY  
18 PAYMENT TO THE AUTHOR OR PUBLISHER, CORRECT?  
19 A. THAT'S RIGHT.  
20 Q. I SEE ON THE 11TH THERE ARE TWO OTHER READINGS LISTED  
21 THERE. NEITHER OF THOSE WERE THE BOOK THAT WAS -- A BOOK THAT  
22 WAS REQUIRED FOR PURCHASE FOR THE CLASS; IS THAT RIGHT?  
23 MR. ASKEW: I AM GOING TO OBJECT, YOUR HONOR. THOSE  
24 ARE GOING INTO THINGS THAT ARE NOT ON OUR AGREED LIST OF  
25 ACCUSED INFRINGEMENTS.

ANDRE G. ASHLEY, O.C.R.

1           MR. LARSON: YOUR HONOR, I'M JUST TRYING TO SHOW THE  
2 CONTEXT IN WHICH THIS PRACTICE WAS TAKING PLACE AND THAT THERE  
3 WERE OTHER CHAPTERS OFFERED OR INCLUDED ALONG WITH THOSE THAT  
4 WE'RE DISCUSSING HERE. THAT'S ALL.

5           THE COURT: OBJECTION SUSTAINED.

6 BY MR. LARSON:

7 Q. LET ME JUST ASK THIS QUESTION. ON THE JUNE 11TH ENTRY,  
8 NONE OF THE READINGS ON JUNE 11 ARE FROM A BOOK THAT STUDENTS  
9 WERE REQUIRED TO PURCHASE; IS THAT CORRECT?

10 A. FOR JUNE 11, THAT'S CORRECT.

11 Q. LET'S MOVE DOWN TO THE JUNE 16TH ENTRY ON PAGE 4. NOW  
12 THAT REFLECTS THAT YOU ASSIGNED A CHAPTER OR AN ARTICLE BY  
13 PILLOW AND MAYO CALLED TOWARD UNDERSTANDINGS OF FEMINIST  
14 ETHNOGRAPHY; IS THAT CORRECT?

15 A. YES.

16 Q. AND THAT'S FROM THE HANDBOOK OF FEMINIST RESEARCH?

17 A. YES.

18 Q. AND AGAIN YOU ASSIGNED THE ENTIRE ARTICLE; IS THAT  
19 CORRECT?

20 A. THAT'S CORRECT.

21 Q. AND LOOKING AT PLAINTIFFS' EXHIBIT 243 WHICH IS IN  
22 EVIDENCE, CAN YOU TAKE A LOOK AT THE TABLE OF CONTENTS AND  
23 CONFIRM THAT THAT WAS PAGES 155 TO 172?

24 A. YES.

25 Q. AND THAT WAS REQUIRED READING, CORRECT?



1 A. YES.

2 Q. AGAIN PROVIDED VIA ERESERVES?

3 A. YES.

4 Q. AND WITHOUT PAYMENT, CORRECT?

5 A. YES.

6 Q. AND NONE OF THE READINGS FROM THE JUNE 16TH CLASS SESSION

7 ARE FROM A BOOK THAT STUDENTS WERE REQUIRED TO PURCHASE; IS

8 THAT RIGHT?

9 A. THAT'S RIGHT.

10 Q. LET'S GO TO PAGE 5 OF THE SYLLABUS AND LOOK AT THE JUNE

11 23RD CLASS ENTRY. LET'S LOOK AT THE JUNE 23RD ENTRY WHICH IS

12 UP AT THE TOP. THAT REFLECTS THAT YOU ASSIGNED A CHAPTER BY

13 MICHELLE FINE CALLED WORKING THE HYPHENS; IS THAT CORRECT?

14 A. YES.

15 Q. AND THAT'S FROM THE SAGE HANDBOOK OF QUALITATIVE RESEARCH,

16 CORRECT?

17 A. YES.

18 Q. THAT'S THE FIRST EDITION?

19 A. YES.

20 MR. LARSON: DO WE HAVE DEFENDANTS' EXHIBIT 739

21 HERE? MAY I APPROACH, YOUR HONOR?

22 THE COURT: YOU MAY.

23 BY MR. LARSON:

24 Q. PROFESSOR ESPOSITO, DO YOU RECOGNIZE WHAT I'VE HANDED YOU

25 AS THE FIRST EDITION OF THE SAGE HANDBOOK OF QUALITATIVE

1 RESEARCH?

2 A. YES.

3 Q. CAN YOU TAKE A LOOK AT THE TABLE OF CONTENTS FOR ME, AND  
4 JUST CONFIRM, IF YOU WOULD, THAT THE CHAPTER BY MICHELLE FINE  
5 IS -- COULD YOU PROVIDE THE PAGE RANGE FOR ME FOR THAT CHAPTER?

6 A. THE ARTICLE STARTS ON PAGE 70 AND ENDS ON PAGE 82.

7 Q. THANK YOU, THE ARTICLE.

8 THE COURT: TELL ME AGAIN THE EXHIBIT NUMBER?

9 MR. LARSON: THAT WAS DEFENDANTS' EXHIBIT 739, YOUR  
10 HONOR. I'D MOVE IT INTO EVIDENCE IF IT HASN'T BEEN.

11 MR. ASKEW: WE HAVE NO OBJECTION.

12 THE COURT: IT'S ADMITTED.

13 BY MR. LARSON:

14 Q. NOW THAT FINE CHAPTER WAS ALSO POSTED TO ERES WITHOUT  
15 MAKING ANY PAYMENT TO THE AUTHOR OR PUBLISHER, CORRECT?

16 A. YES.

17 Q. AND NONE OF THE READINGS ON JUNE 23RD ARE READINGS FROM A  
18 BOOK THAT STUDENTS WERE REQUIRED TO PURCHASE; IS THAT RIGHT?

19 MR. ASKEW: YOUR HONOR, I'M GOING TO OBJECT TO THESE  
20 OTHER READINGS ON THIS ASSIGNED DATE IF THEY'RE NOT ON THE LIST  
21 OF ACCUSED INFRINGEMENTS.

22 MR. LARSON: I'M NOT GOING INTO THEM, YOUR HONOR.

23 I'M JUST ESTABLISHING THAT THERE WAS NO PURCHASED TEXT FOR THAT  
24 PARTICULAR COURSE PERIOD.

25 THE COURT: YOU SAID THE OTHER READINGS ASSIGNED.

1 WHAT YOU'RE GETTING AT IS THAT THERE WAS NO ASSIGNED TEXT?

2 MR. LARSON: CORRECT. MY QUESTION IS THAT THERE WAS  
3 NO READING FOR JUNE 23RD THAT WAS FROM A TEXT REQUIRED FOR  
4 PURCHASE.

5 THE COURT: WAS THERE A TEXT REQUIRED FOR THE  
6 COURSE?

7 THE WITNESS: THERE WERE FIVE REQUIRED.

8 BY MR. LARSON:

9 Q. IN LATER SESSIONS THERE WERE SOME TEXT REQUIRED FOR  
10 PURCHASE, CORRECT?

11 A. FIVE.

12 Q. BUT NOT ON JUNE 23RD?

13 THE COURT: THE OBJECTION IS SUSTAINED.

14 BY MR. LARSON:

15 Q. NOW THE READING MATERIALS ARE IMPORTANT TO YOUR CLASS,  
16 CORRECT?

17 A. SAY THAT AGAIN?

18 Q. THE READING MATERIALS THAT YOU ASSIGN ARE IMPORTANT TO  
19 YOUR CLASS, CORRECT?

20 A. YES.

21 THE COURT: WHEN YOU SAY READING MATERIALS YOU'RE NOT  
22 TALKING ABOUT THE TEXT?

23 MR. LARSON: I'M TALKING ABOUT ALL OF THEM.

24 THE COURT: YOU'RE TALKING ABOUT EVERYTHING THAT WAS  
25 ASSIGNED FOR THE COURSE IS IMPORTANT?

1 MR. LARSON: THAT'S CORRECT.

2 BY MR. LARSON:

3 Q. THEY'RE IMPORTANT TO YOUR CLASS, CORRECT?

4 A. YES.

5 Q. AND THE PLAINTIFFS' WORKS THAT WE JUST WALKED THROUGH ARE  
6 ALSO IMPORTANT TO YOUR CLASS; IS THAT RIGHT?

7 THE COURT: I THOUGHT ALL OF THE PLAINTIFFS'  
8 MATERIALS WERE PART OF THE READING MATERIALS YOU WERE ASKING  
9 ABOUT. NOW YOU'RE SAYING ALSO LIKE IT'S SOMETHING DIFFERENT.

10 MR. LARSON: I WAS ASKING FOR THE READINGS IN GENERAL  
11 FOR THE COURSE, BUT I'M FOCUSING NOW ON THE PLAINTIFFS'  
12 MATERIALS. THAT'S REALLY WHERE I'M GOING.

13 THE COURT: OKAY.

14 THE WITNESS: SO YOU'RE SAYING THE FOUR ARTICLES THAT  
15 WE JUST LOOKED AT?

16 BY MR. LARSON:

17 Q. YES.

18 A. THEY ARE NO MORE IMPORTANT THAN THE OTHER READING. ALL  
19 THE READING IS IMPORTANT.

20 Q. RIGHT, AND THOSE ARE IMPORTANT AS WELL, CORRECT?

21 A. THEY ARE ALL IMPORTANT.

22 Q. AND, IN FACT, AS WE'LL SEE ON THE CHECKLIST THAT YOU  
23 FILLED OUT, YOU ROUTINELY CHECK THE BOX INDICATING THAT THE  
24 READINGS ARE NECESSARY FOR YOUR CLASS; IS THAT CORRECT?

25 A. THAT'S CORRECT.

1 Q. LET'S LOOK AT PAGE 2 OF YOUR SYLLABUS, IF WE COULD. THE  
2 SECOND PARAGRAPH UNDER COURSE ASSIGNMENTS DOWN AT THE BOTTOM,  
3 YOU NOTE THERE THAT YOU EXPECT THAT STUDENTS WILL COME TO CLASS  
4 HAVING READ AND REFLECTED ON THE ASSIGNED MATERIAL, CORRECT?

5 A. YES.

6 Q. AND I BELIEVE YOU INDICATED AT SEVERAL POINTS IN YOUR  
7 DEPOSITION THAT YOUR STUDENTS GENERALLY COMPLETE THE ASSIGNED  
8 MATERIALS, CORRECT?

9 A. YES.

10 Q. IN FACT, YOU'VE SEEN STUDENTS BRING PRINTED COPIES OF  
11 ERESERVES MATERIALS TO CLASS; IS THAT CORRECT?

12 A. THEY BRING THEIR LAPTOPS, THEIR IPADS. I MEAN I HAVE SEEN  
13 VARIOUS ITERATIONS OF WAYS TO ACCESS THE ARTICLES.

14 Q. BUT MY QUESTION TO YOU IS YOU'VE SEEN STUDENTS BRING  
15 PRINTED COPIES OF ERESERVE MATERIALS TO CLASS?

16 A. A FEW DO.

17 Q. YES. IS WHAT YOU'RE SAYING WHEN YOU MENTION LAPTOPS IS  
18 THAT YOU'VE NOTICED A SHIFT IN BEHAVIOR FROM STUDENTS USING  
19 PRINTED COPIES TO ELECTRONIC FORMS?

20 A. THAT'S CORRECT.

21 Q. YOU TAUGHT A CLASS CALLED EPRS 8520 DURING THE FALL  
22 SEMESTER OF 2009; IS THAT CORRECT?

23 A. YES.

24 Q. AND THAT CLASS HAD 14 STUDENTS?

25 A. YES.

1 Q. AND PLAINTIFFS' EXHIBIT 513 WHICH IS IN YOUR BINDER,  
2 THAT'S THE SYLLABUS FOR THAT COURSE, CORRECT?

3 A. YES.

4 MR. LARSON: YOUR HONOR, I MOVE PLAINTIFFS' EXHIBIT  
5 513 INTO EVIDENCE.

6 MR. ASKEW: NO OBJECTION.

7 THE COURT: IT'S ADMITTED.

8 BY MR. LARSON:

9 Q. AND IF YOU TURN TO THE FOURTH PAGE OF THAT DOCUMENT, IS  
10 THAT THE READING SCHEDULE FOR THE CLASS?

11 A. YES, IT'S THE COURSE SCHEDULE.

12 Q. AND THOSE ENTRIES WHERE IT SAYS, FOR EXAMPLE, GRBICH 1 TO  
13 36 OR SALDANA 1 TO 44, THOSE ARE READINGS FROM A REQUIRED TEXT?

14 A. A TEXT THAT STUDENTS PURCHASED, YES.

15 Q. AND ANY OTHER READINGS THEN ARE ERES READINGS; IS THAT  
16 RIGHT?

17 A. YES.

18 Q. AND THOSE ERESERVES READING WERE REQUIRED READINGS?

19 A. YES.

20 Q. AND THOSE WERE PROVIDED TO STUDENTS WITHOUT ANY PAYMENT TO  
21 THE PUBLISHER OR THE AUTHOR?

22 A. YES.

23 Q. TAKE A LOOK AT THE DECEMBER 3RD ENTRY, IT'S ON THE LAST  
24 PAGE. NOW THE SYLLABUS AT LEAST REFLECTS THAT THERE IS AN  
25 ASSIGNMENT FOR THE INTRODUCTION CHAPTER 2 AND THE CONCLUSION

1 FROM THEORETICAL FRAMEWORKS IN QUALITATIVE RESEARCH BY ANFARA  
2 AND MERTZ; IS THAT CORRECT?

3 A. YES.

4 Q. AND DO YOU HAVE PLAINTIFFS' EXHIBIT 305 THERE?

5 A. YES.

6 Q. AND CAN YOU TAKE A LOOK AT THE TABLE OF CONTENTS AND JUST  
7 CONFIRM FOR ME THAT THE INTRODUCTION STARTS AT PAGE ROMANETTE  
8 13?

9 A. BUT THAT'S NOT WHAT I REQUIRED. IF YOU LOOK AT MY  
10 CHECKLIST, I STARTED IT AT A DIFFERENT PAGE.

11 Q. WE'LL GET THERE. IF YOU COULD JUST CONFIRM FOR ME NOW  
12 THAT THE INTRODUCTION STARTS AT ROMANETTE 13, CORRECT?

13 A. THE INTRODUCTION STARTS THERE. THAT'S NOT WHAT THE  
14 STUDENTS READ.

15 Q. PROFESSOR, I UNDERSTAND.

16 A. OKAY.

17 Q. THAT'S WHERE I'M GOING HERE.

18 AND CHAPTER 2 IS PAGES 23 TO 38?

19 MR. ASKEW: I'M GOING TO OBJECT, YOUR HONOR, CHAPTER  
20 2 IS NOT ONE OF THE ITEMS THAT'S ON THE ACCUSED LIST OF  
21 INFRINGEMENTS. THEY ACCUSE THE LIST OF INTRODUCTION AND THEY  
22 ACCUSE THE USE OF THE CONCLUSION, AND THERE'S NO ACCUSATION AS  
23 TO CHAPTER 2.

24 THE COURT: YOUR RESPONSE?

25 MR. LARSON: I'LL MOVE ON TO THE NEXT ONE. I WAS

1 JUST ESTABLISHING --

2 THE COURT: I WILL SUSTAIN THE OBJECTION.

3 BY MR. LARSON:

4 Q. THE CONCLUSION IS PAGES 189 TO 196; IS THAT CORRECT?

5 A. YES.

6 Q. WE DISCUSSED THIS EXCERPT AT YOUR DEPOSITION; DO YOU  
7 RECALL?

8 A. I DON'T RECALL.

9 Q. BUT I'LL REPRESENT TO YOU THAT THERE WAS SOME QUESTIONS AT  
10 THE TIME AS TO WHETHER THESE EXCERPTS HAD BEEN PLACED ON THE  
11 ERES SYSTEM.

12 IT'S THE CASE, IS IT NOT, THAT YOU FILLED OUT A FAIR  
13 USE CHECKLIST AND ASKED THE LIBRARY TO POST PIECES OF THIS  
14 WORK; IS THAT RIGHT?

15 A. YES.

16 Q. AND YOU SUBMITTED THE CHECKLIST AND ASKED THE LIBRARY TO  
17 POST IT, BUT I THINK YOU TESTIFIED BEFORE YOU COULDN'T REMEMBER  
18 FOR SURE WHETHER THEY DID OR DID NOT ACTUALLY POST THE  
19 MATERIAL; IS THAT RIGHT?

20 A. YES, IF THE LIBRARY DIDN'T HAVE THE BOOK, I DID NOT BRING  
21 THE BOOK TO THE LIBRARY. SO I JUST REMOVED IT FROM THE  
22 SYLLABUS.

23 Q. AND WITH THIS WORK DO YOU RECALL WHAT ACTUALLY HAPPENED  
24 WITH THIS ONE, WHETHER THEY DID OR DID NOT POST IT?

25 A. I DON'T RECALL.



1           MR. LARSON:   AND JUST SO THE RECORD IS CLEAR, I NOTE  
2   THAT THE DEFENDANTS' PROPOSED FINDINGS OF FACT AT PARAGRAPHS  
3   542 TO 571 DISCUSS THIS WORK --

4           THE COURT:   WE DON'T HAVE TIME FOR THIS.   SHE DOESN'T  
5   KNOW WHAT'S IN THE STUFF YOU ALL AGREED UPON.

6   BY MR. LARSON:

7   Q.   SO SITTING HERE TODAY YOU DON'T KNOW WHETHER THIS ONE WAS  
8   USED OR NOT, CORRECT?

9   A.   NO.

10   Q.   COULD YOU TAKE A LOOK AT TABS PX-564, 65, 66 AND 67 IN  
11   YOUR BINDER?

12   A.   565?

13   Q.   564, 565, 566 AND 567 DO YOU SEE THOSE?

14   A.   YES.

15   Q.   AND DO YOU RECOGNIZE THOSE AS CHECKLISTS THAT YOU FILLED  
16   OUT FOR THE FOUR EXCERPTS THAT WE WERE JUST DISCUSSING FOR THE  
17   SUMMER 2009 SEMESTER?

18   A.   YES.

19   Q.   LET'S LOOK AT -- TURN TO 567, IF YOU COULD.   NOW THIS  
20   CHECKLIST IS DATED MAY OF 2009; DO YOU SEE THAT?

21   A.   YES.

22           MR. LARSON:   NOW, YOUR HONOR, I HATE TO CONTRADICT  
23   WHAT YOU JUST SAID, BUT THE DEFENDANTS' FINDING SUGGEST THAT  
24   THIS IS A RECREATED CHECKLIST.

25           THE COURT:   WHAT THE DEFENDANTS' PROPOSED FINDINGS OF

1 FACT ARE HAS NOTHING TO DO WITH THE QUESTIONS THAT ARE  
2 PERMISSIBLE FOR THIS WITNESS.

3 WHAT YOU'RE REALLY TRYING TO DO IS JUST CREATE A  
4 RECORD BY LITTLE COMMENTS ON THIS AND THAT, AND I DON'T HAVE  
5 TIME FOR IT.

6 MR. LARSON: I APOLOGIZE, YOUR HONOR. I'M JUST  
7 TRYING TO UNDERSTAND WHEN THIS ONE WAS CREATED.  
8 BY MR. LARSON:

9 Q. LET ME JUST ASK THE WITNESS, WAS THIS CHECKLIST ACTUALLY  
10 CREATED IN MAY OF 2009?

11 A. YES, I BELIEVE IT WAS. LEGAL AFFAIRS HAD ASKED ME TO SEND  
12 ALL OF MY ORIGINAL CHECKLISTS, AND I DID THAT.

13 Q. LEGAL AFFAIRS ASKED YOU TO DO THIS ONE?

14 A. I DON'T REMEMBER.

15 Q. SO THIS WHAT WE'RE LOOKING AT HERE UNDER 566 IS ACTUALLY A  
16 CHECKLIST THAT YOU FILLED OUT IN MAY OF 2009?

17 A. YES.

18 Q. IT'S NOT A RECREATION?

19 A. NO.

20 Q. OKAY. THIS IS A CHECKLIST FOR THE GORDON, HOLLAND AND  
21 LEHELMA CHAPTER FROM THE SAGE HANDBOOK OF ETHNOGRAPHY; IS THAT  
22 CORRECT?

23 A. YES.

24 Q. AND THIS WAS A WORK FROM ERESERVES, CORRECT?

25 A. YES.

- 1 Q. LET'S LOOK AT FACTOR 1, IF WE COULD? NOW YOU DID NOT  
2 SELECT TRANSFORMATIVE IN THE LEFT-HAND COLUMN; IS THAT CORRECT?
- 3 A. THAT'S CORRECT.
- 4 Q. AND THAT'S BECAUSE PROVIDING A COPY OF THE CHAPTER AS A  
5 PDF TO STUDENTS IS NOT IN YOUR MIND TRANSFORMATIVE; IS THAT  
6 RIGHT?
- 7 A. YES.
- 8 Q. NOW DESPITE THAT VIEW YOU DIDN'T CHECK NONTRANSFORMATIVE  
9 ON THE RIGHT-HAND SIDE; IS THAT RIGHT?
- 10 A. THAT'S RIGHT.
- 11 Q. TURNING BACK TO THE LEFT, YOU CHECKED TEACHING BECAUSE  
12 THIS WORK WAS USED IN YOUR COURSE TO TEACH YOUR STUDENTS; IS  
13 THAT RIGHT?
- 14 A. YES.
- 15 Q. AND YOU CHECKED NONPROFIT EDUCATIONAL BECAUSE GSU IS A  
16 NONPROFIT INSTITUTION; IS THAT RIGHT?
- 17 A. YEAH, I WAS LOOKING AT IT IN TERMS OF MY CLASSROOM BUT  
18 YES.
- 19 Q. RIGHT. AND THEN LOOKING DOWN TO THE BOTTOM OF FACTOR 1 ON  
20 THE LEFT-HAND SIDE, YOU CHECKED USE IS NECESSARY TO ACHIEVE  
21 YOUR INTENDED EDUCATIONAL PURPOSE, AND THAT WAS BECAUSE THE  
22 READING YOU ASSIGNED TO YOUR STUDENTS HAD THE PURPOSE AND AN  
23 OBJECTIVE THAT YOU'RE TRYING TO MEET BY HAVING THEM DO THE  
24 READING FOR THE COURSE; IS THAT RIGHT?
- 25 A. YES.

1 Q. AND YOU WOULDN'T ASSIGN SOMETHING TO YOUR STUDENTS THAT  
2 WASN'T NECESSARY, CORRECT?

3 A. YES.

4 Q. SO YOU HAD THREE CHECKS IN FAVOR OF FAIR USE UNDER FACTOR  
5 1; IS THAT RIGHT?

6 A. YES.

7 Q. AND, IN FACT, YOU CHECKED THOSE THREE BOXES FOR EVERY ONE  
8 OF THE CHECKLISTS THAT YOU COMPLETED FOR THE SUMMER OF 2009; IS  
9 THAT RIGHT?

10 A. I'D HAVE TO LOOK.

11 Q. CAN YOU JUST FLIP THROUGH THE NEXT THREE CHECKLISTS THERE  
12 AND CONFIRM THAT FOR ME?

13 A. YES.

14 Q. SO EVEN IF YOU HAD CHECKED NONTRANSFORMATIVE ON THE  
15 RIGHT-HAND SIDE, FACTOR 1 WOULD STILL ACCORDING TO YOUR  
16 CHECKLIST HAVE TIPPED IN FAVOR OF FAIR USE; IS THAT RIGHT?

17 A. GIVEN THAT I CHECKED OFF NONPROFIT EDUCATIONAL TEACHING  
18 AND THE USE IS NECESSARY TO ACHIEVE MY INTENDED EDUCATIONAL  
19 PURPOSE; IS THAT WHAT YOU'RE ASKING ME?

20 Q. YES.

21 A. YES.

22 Q. IT WOULD HAVE BEEN THREE TO ONE RATHER THAN THREE TO ZERO?  
23 A. IS THAT A QUESTION?

24 Q. YES.

25 A. YOU'RE ASKING ME WOULD I HAVE DETERMINED THAT THERE WERE

1 THREE ON THE RIGHT AND ONE ON THE RIGHT AND THAT IT WOULD BE IN  
2 FAVOR OF FAIR USE?  
3 Q. YES.  
4 A. YEAH, GIVEN THE FACT THAT IT'S NECESSARY TO ACHIEVE MY  
5 EDUCATIONAL PURPOSE AND I'M USING IT FOR TEACHING, I THINK  
6 THOSE WEIGH IN FAVOR OF FAIR USE, AND, YES, I WOULD HAVE.  
7 Q. LET'S LOOK AT FACTOR 2, YOU CHECKED PUBLISHED AND  
8 NONFICTION, CORRECT?  
9 A. PUBLISHED WORK AND FACTUAL OR NONFICTION WORK, YES.  
10 Q. THE FIRST TWO BOXES. YOU WOULD AGREE THAT A NONFICTION  
11 ARTICLE CAN ALSO BE CREATIVE, CORRECT?  
12 A. IT DEPENDS.  
13 Q. BUT YOU WOULD AGREE THAT IN SOME INSTANCES IT CAN BE?  
14 A. I DON'T WANT TO MAKE A BLANKET STATEMENT AND AGREE TO  
15 THAT. I THINK IT DEPENDS ON THE CONTEXT.  
16 Q. WOULD YOU AGREE THAT A NONFICTION ARTICLE -- BEING  
17 NONFICTION AND BEING CREATED ARE NOT MUTUALLY EXCLUSIVE?  
18 A. SAY THAT AGAIN?  
19 Q. YOU'D AGREE THAT IT'S NOT MUTUALLY EXCLUSIVE FOR A  
20 NONFICTION ARTICLE TO ALSO BE CREATIVE, CORRECT?  
21 A. YEAH, I MEAN AGAIN IT DEPENDS ON THE CONTEXT. I WOULD  
22 RATHER TALK ABOUT A SPECIFIC ARTICLE.  
23 Q. LET'S TALK ABOUT THE CHECKLIST ITSELF. YOU UNDERSTAND  
24 THAT THE CHECKLIST PRESENTS THOSE TWO OPTIONS AS AN EITHER OR  
25 CHOICE HERE; IN OTHER WORDS, IF YOU CHECK FACTUAL OR

1 NONFICTION, THEN YOU DON'T CHECK CREATIVE, CORRECT?

2 A. I DON'T KNOW THAT THE INSTRUCTIONS SAY THEY'RE EITHER OR.

3 Q. BUT THAT'S HOW YOU UNDERSTAND IT; ISN'T THAT RIGHT?

4 A. YEAH, I MIGHT. ON THE CHECKLIST THAT WE HAVE HERE, I  
5 DON'T KNOW THAT I WOULD HAVE CHECKED OFF CREATIVE AND FACTUAL,  
6 BUT I'M NOT SAYING THAT THAT CAN'T HAPPEN.

7 Q. LET ME SHOW YOU YOUR DEPOSITION.

8 MR. LARSON: MAY I APPROACH, YOUR HONOR?

9 THE COURT: YES.

10 BY MR. LARSON:

11 Q. COULD YOU TURN TO PAGE 78 OF YOUR DEPOSITION, AND I'LL  
12 DIRECT YOUR ATTENTION TO LINE 20; ARE YOU WITH ME?

13 A. YES.

14 Q. YOU'LL SEE I ASKED YOU THE QUESTION: SO DO YOU VIEW THOSE  
15 AS AN EITHER OR, IF IT'S FACTUAL OR NONFICTION THEN IT WOULDN'T  
16 BE CREATIVE? THE ANSWER IS YES.

17 WAS THAT YOUR TESTIMONY?

18 A. WELL THAT WAS AFTER YOU HAD LED ME DOWN THAT ROAD AND  
19 ASKED ME A MILLION QUESTIONS ABOUT THE SAME THINGS. SO I MAY  
20 HAVE CHANGED WHAT I SAID. BECAUSE I THINK IF YOU TURN BACK A  
21 FEW PAGES EARLIER, I SAY SOMETHING.

22 Q. THAT WAS YOUR TESTIMONY WHAT I JUST SAID, RIGHT?

23 A. THAT ONE LINE, YES.

24 Q. OKAY. LET'S LOOK AT FACTOR 3 -- ACTUALLY BEFORE I DO  
25 THAT, LET'S GO BACK TO FACTOR 2, SORRY. ON THIS CHECKLIST

1 WE'RE LOOKING AT, YOU HAD THREE CHECKS IN FAVOR OF FAIR USE AND  
2 ZERO CHECKS WEIGHS AGAINST FAIR USE, CORRECT?

3 A. ALL THREE FACTORS ARE CHECKED THERE THAT WEIGH IN FAVOR OF  
4 FAIR USE.

5 Q. AND THAT SECOND FACTOR WAS THREE TO ZERO ON ALL FOUR OF  
6 THE CHECKLISTS FROM THE SEPTEMBER 2009 CHECKLIST; IS THAT  
7 RIGHT?

8 A. YES.

9 Q. TURNING TO FACTOR 3, YOU CHECKED SMALL PORTION; IS THAT  
10 RIGHT?

11 A. YES.

12 Q. AND THAT'S NOT BASED ON A PERCENTAGE MEASURE, CORRECT?

13 A. THAT'S RIGHT.

14 Q. AS YOU SAID IN YOUR DEPOSITION, YOU DON'T WORK IN  
15 PERCENTAGES, CORRECT?

16 A. THAT'S CORRECT.

17 Q. AND THERE IS NO SPECIFIC NUMBER FOR YOU THAT DIVIDES LARGE  
18 FROM SMALL; IS THAT RIGHT?

19 THE COURT: COME ON, LET'S GET MOVING.

20 BY MR. LARSON:

21 Q. AND YOU CHECKED SMALL PORTION ON EVERY ONE OF THE  
22 CHECKLISTS YOU CREATED FOR THE SUMMER 2009 SEMESTER; IS THAT  
23 RIGHT?

24 A. YES.

25 Q. AND YOU NEVER CHECKED THE PORTION WAS CENTRAL TO THE WORK

1 ON THE RIGHT-HAND SIDE FOR ANY OF THE SUMMER 2009 ARTICLES; IS  
2 THAT CORRECT?  
3 A. RIGHT, NONE WERE.  
4 Q. AND ON EVERY CHECKLIST YOU COMPLETED FOR THE SUMMER 2009  
5 SEMESTER, THIS FACTOR FACTOR 3 TIPPED THREE TO ZERO IN FAVOR OF  
6 FAIR USE, CORRECT?  
7 A. YES.  
8 Q. TURNING TO FACTOR 4, THE FIRST OPTION HERE ON FACTOR 4  
9 ASKS ABOUT THE EFFECT ON THE MARKET OR POTENTIAL MARKET FOR THE  
10 COPYRIGHTED WORK; DO YOU SEE THAT?  
11 A. YES.  
12 Q. AND WHEN YOU CONSIDERED THIS FACTOR, YOU WEREN'T THINKING  
13 ABOUT THE IMPACT OF YOUR USE OF THE WORK ON THE MARKET FOR  
14 PERMISSIONS, CORRECT?  
15 A. I WAS THINKING ABOUT IT IN TERMS OF BOOK SALES.  
16 Q. OKAY. AND LOOKING OVER ON THE RIGHT-HAND SIDE THE SECOND  
17 BOX DOWN, YOU DID NOT CHECK LICENSING OR PERMISSIONING  
18 REASONABLY AVAILABLE, CORRECT?  
19 A. YES.  
20 Q. AND THAT'S BECAUSE YOU DIDN'T KNOW WHETHER IT WAS OR IT  
21 WASN'T, RIGHT?  
22 A. THAT'S CORRECT.  
23 Q. AND YOU DIDN'T FEEL THAT IT WAS INCUMBENT UPON YOU TO  
24 CHECK WHETHER IT WAS AVAILABLE, CORRECT?  
25 A. RIGHT, IT WAS A FAIR USE.

ANDRE G. ASHLEY, O.C.R.



1 Q. YOU CHECKED OFF SO MANY FACTORS IN FAVOR OF FAIR USE ON  
2 FACTOR 1, FACTOR 2 AND FACTOR 3 THAT YOU HAD ALREADY DETERMINED  
3 THAT YOU WERE USING IT FAIRLY, CORRECT?

4 A. THAT'S NOT TRUE. BECAUSE IF YOU LOOK AT FACTOR 4, I  
5 CONTINUED CHECKING OFF BOXES EVEN AS I WENT PAST THAT LICENSING  
6 OR PERMISSION REASONABLY AVAILABLE.

7 Q. I UNDERSTAND THAT YOU DID KEEP CHECKING THEM OFF UNDER  
8 FOUR, BUT YOU HAD ALREADY DETERMINED FROM FACTOR 1, 2 AND 3 IT  
9 WAS A FAIR USE, CORRECT?

10 A. THAT'S NOT CORRECT. I DON'T MAKE THE DETERMINATION UNTIL  
11 I'M DONE WITH THE CHECKLIST.

12 Q. LET'S LOOK BACK TO THE DEPOSITION. IF WE CAN GO TO THE  
13 CLIP FROM PAGE 88?

14 (EXCERPT OF VIDEOTAPED DEPOSITION WAS PLAYED IN OPEN  
15 COURT.)

16 BY MR. LARSON:

17 Q. IS THAT YOUR TESTIMONY?

18 A. YES.

19 Q. AT THE TIME OF YOUR DEPOSITION IN FEBRUARY OF THIS YEAR  
20 YOU DIDN'T KNOW ANYTHING ABOUT COPYRIGHT CLEARANCE CENTER; IS  
21 THAT CORRECT?

22 A. THAT'S RIGHT.

23 Q. AND AS WE DISCUSSED EARLIER THIS READING WAS REQUIRED; IS  
24 THAT RIGHT?

25 A. THAT'S RIGHT.

1 Q. IF WE COULD GET EXHIBIT 566 BACK UP ON THE SCREEN, AND IF  
2 WE COULD GO TO PAGE 2. CAN WE BLOWUP FACTOR 4 PLEASE?  
3 NOW REQUIRED READING WASN'T CHECKED HERE, CORRECT?  
4 A. YES.  
5 Q. YES, IT WASN'T CHECKED?  
6 A. IT WAS NOT CHECKED.  
7 Q. YOU ALSO DIDN'T CHECK REPEATED OR LONG-TERM USE, CORRECT?  
8 A. YEAH, I DON'T BELIEVE IT WAS A REPEATED OR LONG-TERM USE.  
9 Q. OKAY. NOW DID YOU CONSIDER WHEN YOU CHECKED THIS BOX THE  
10 FACT THAT YOU HAD USED THE EXCERPT BEFORE IN A PRIOR VERSION OF  
11 THE CLASS?  
12 A. I DID CONSIDER THAT, BUT WITH EACH NEW GROUP OF STUDENTS,  
13 I DON'T THINK I'M REPEATEDLY USING IT. I'M USING IT WITH A NEW  
14 GROUP OF STUDENTS NEW.  
15 Q. SO IT'S YOUR VIEW BECAUSE IT'S DIFFERENT STUDENTS --  
16 THE COURT: I THINK SHE'S ALREADY TESTIFIED TO THAT.  
17 THERE'S NO NEED TO REPEAT HER ANSWERS AS A PREFACE TO YOUR NEXT  
18 QUESTION.  
19 BY MR. LARSON:  
20 Q. LET'S LOOK AT THE CHECKLIST IN TOTAL, AND CAN YOU JUST  
21 CONFIRM FOR ME THAT THERE WERE 13 BOXES CHECKED IN THE WAY OF  
22 IN FAVOR OF FAIR USE COLUMN AND ZERO BOXES CHECKED IN THE WAYS  
23 AGAINST FAIR USE COLUMN?  
24 A. THAT'S CORRECT.  
25 Q. LOOKING AT 564, EXHIBIT 564 WHICH IS THE FINE ARTICLE, CAN

1 YOU CONFIRM THAT THAT'S ALSO IDENTICAL TO THE CHECKLIST WE WERE  
2 JUST LOOKING AT WITH 13 CHECKS IN FAVOR OF FAIR USE AND ZERO  
3 AGAINST FAIR USE?

4 A. THAT'S CORRECT.

5 Q. AND LOOKING AT PLAINTIFFS' EXHIBIT 565 WHICH IS THE  
6 CHECKLIST FOR THE TEDLOCK CHAPTER, DOES THAT ALSO HAS 13  
7 CHECKS, 13 IDENTICAL CHECKS IN FAVOR OF FAIR USE AND ZERO  
8 AGAINST FAIR USE?

9 A. YES.

10 Q. AND LOOKING AT PLAINTIFFS' EXHIBIT 566, CAN YOU CONFIRM  
11 THERE THAT AGAIN THERE ARE THE SAME 13 CHECKS IN FAVOR OF FAIR  
12 USE AND ZERO AGAINST FAIR USE?

13 A. YES.

14 Q. IF YOU COULD TAKE A LOOK AT PLAINTIFFS' EXHIBIT --

15 MR. LARSON: BEFORE WE DO THAT, YOUR HONOR, I'D MOVE  
16 PLAINTIFFS' EXHIBITS 564, 565, 566 AND 567 INTO EVIDENCE.

17 MR. ASKEW: NO OBJECTION, YOUR HONOR.

18 THE COURT: THEY'RE ADMITTED.

19 BY MR. LARSON:

20 Q. IF YOU COULD LOOK JUST QUICKLY AT 639, 640, 641 AND 642 IN  
21 THE BINDER; DO YOU SEE THOSE?

22 A. YES.

23 Q. CAN YOU CONFIRM THOSE ARE CHECKLISTS -- I'M SORRY, 639  
24 THROUGH 643, CAN YOU CONFIRM THAT THOSE FIVE CHECKLISTS ARE  
25 CHECKLISTS FOR THE FALL 2009 COURSE THAT WE LOOKED AT EARLIER?

1 A. YES.

2 Q. NOW LOOKING AT PLAINTIFFS' EXHIBIT 642, THAT'S DATED 3-20;  
3 DO YOU SEE THAT?

4 A. YES.

5 Q. DOES THAT INDICATE THAT THAT CHECKLIST WAS RECREATED IN  
6 MARCH OF THIS YEAR?

7 A. I DON'T BELIEVE SO -- YOU KNOW, I THINK WE DISCUSSED THIS  
8 AT MY DEPOSITION, AND I TOLD YOU I WASN'T SURE. THE ARTICLES  
9 THAT ARE IN QUESTION HERE WERE NEVER REQUIRED. THE LIBRARY DID  
10 NOT MAKE THEM AVAILABLE TO STUDENTS. SO I CAN'T REMEMBER IF  
11 THIS WAS AN ORIGINAL CHECKLIST.

12 Q. I'M JUST ASKING WHEN IT WAS CREATED; IT SAYS 3-20 ON IT?

13 A. YEAH, I DON'T KNOW WHAT YEAR. I MAY HAVE MEANT 3 SLASH  
14 2009. I DON'T KNOW.

15 MR. ASKEW: YOUR HONOR, I THINK WE'RE GOING INTO  
16 ITEMS THAT ARE NOT ON THE AGREED LIST OF ACCUSED INFRINGEMENTS.

17 THE COURT: WHAT IS YOUR RESPONSE?

18 MR. LARSON: I'LL FOCUS ON THE ONE THAT IS ON THE  
19 LIST OF THIS GROUP.

20 BY MR. LARSON:

21 Q. IF YOU COULD LOOK AT EXHIBIT 639, THAT'S A CHECKLIST FOR  
22 THE ANFARA AND MERTZ INTRODUCTION; IS THAT RIGHT?

23 A. YES.

24 Q. DO YOU KNOW WHEN THIS CHECKLIST WAS COMPLETED?

25 A. I DON'T.

- 1 Q. YOU'RE FAMILIAR WITH COURSEPACK, CORRECT?
- 2 A. YES.
- 3 Q. THAT'S A BOUND COLLECTION OF PHOTOCOPIED READINGS FOR
- 4 STUDENTS IN A CLASS; IS THAT RIGHT?
- 5 A. YES.
- 6 Q. IS IT CONSISTENT WITH YOUR UNDERSTANDING THAT WITH A
- 7 COURSEPACK A PROFESSOR COULD TAKE SAY TEN READINGS AND PROVIDE
- 8 THEM TO STUDENTS IN BOUND FASHION?
- 9 A. I THINK THAT'S A POSSIBILITY.
- 10 Q. AND THAT PROFESSOR COULD ALSO PROVIDE THOSE TEN READINGS
- 11 VIA ERESERVES, CORRECT?
- 12 A. YEAH, IF THEY DETERMINE THAT IT'S A FAIR USE, YES.
- 13 Q. THE ONLY DIFFERENCE BETWEEN THOSE TWO OPTIONS IS THAT ONE
- 14 IS DIGITAL AND ONE IS NOT, CORRECT?
- 15 A. THERE ARE OTHER DIFFERENCES.
- 16 Q. YOU REMEMBER WE SPOKE ABOUT THIS AT YOUR DEPOSITION AS
- 17 WELL?
- 18 A. YES.
- 19 Q. MAYBE WE CAN PLAY THE CLIP FROM PAGE 62?
- 20 (EXCERPT OF VIDEOTAPED DEPOSITION WAS PLAYED IN OPEN
- 21 COURT.)
- 22 BY MR. LARSON:
- 23 Q. WAS THAT YOUR TESTIMONY?
- 24 A. BUT IT CONTINUED.
- 25 Q. RIGHT, AFTER A BREAK IN THE DEPOSITION, MR. ASKEW ELICITED

1 SOME OTHER TESTIMONY FROM YOU ABOUT SOME DIFFERENCES, CORRECT?

2 A. YES, I MEAN THAT WASN'T MY ONLY TESTIMONY ABOUT THE  
3 DIFFERENCES.

4 Q. UNDERSTOOD. YOU NOTED LATER THAT IN ORDER TO OBTAIN A  
5 COURSEPACK A STUDENT NEEDS TO GO TO THE BOOKSTORE, WHEREAS WITH  
6 ERESERVES IT'S OVER A COMPUTER, CORRECT?

7 A. YES.

8 Q. AND YOU ALSO NOTED THAT ERES POSTINGS HAVE A PASSWORD,  
9 WHEREAS IN A BOOKSTORE THERE IS NO PASSWORD, ANYONE CAN BUY IT?

10 A. YES.

11 Q. BUT YOU AGREED STICKING WITH OUR EXAMPLE THAT A STUDENT IN  
12 THE COURSE WHO HAD THE ERES PASSWORD WOULD END UP GETTING  
13 ACCESS TO THE TEN WORKS EITHER WAY, CORRECT?

14 A. SAY THAT AGAIN?

15 Q. YOU AGREED WITH ME AT THE DEPOSITION AFTER THAT  
16 CONVERSATION THAT A STUDENT IN THE COURSE WITH THE ERES  
17 PASSWORD WOULD END UP GETTING ACCESS TO THE TEN ARTICLES EITHER  
18 THROUGH A COURSEPACK OR THROUGH ERESERVES; IS THAT RIGHT?

19 MR. ASKEW: YOUR HONOR, I'M GOING TO OBJECT TO THE  
20 QUESTION. WE DON'T HAVE TEN ARTICLES AT ISSUE. WE'VE GOT FOUR  
21 ARTICLES OUT THE FIRST CLASS, ONE ARTICLE OUT OF THE SECOND  
22 CLASS. THERE ARE NOT TEN ARTICLES ON THE ACCUSED LIST OF  
23 INFRINGEMENTS.

24 THE COURT: OBJECTION SUSTAINED.

25 BY MR. LARSON:

1 Q. PROFESSOR ESPOSITO, IF THE PRESIDENT'S OFFICE AT GSU  
2 INSTRUCTED YOU TO REMOVE A COURSE READING FROM ERESERVES OR  
3 ULEARN BECAUSE IT WAS INFRINGING, YOU'D DO SO IMMEDIATELY,  
4 CORRECT?

5 A. YES.

6 Q. AND IF THE PROVOST OFFICE INSTRUCTED YOU TO DO SO, YOU  
7 WOULD REMOVE IT IMMEDIATELY, CORRECT?

8 A. YES.

9 Q. AND IF THE DEAN LIBRARIES --

10 THE COURT: CAN'T YOU JUST ROLL ALL OF THESE INTO ONE  
11 QUESTION?

12 MR. LARSON: I'M ON THE LAST ONE, YOUR HONOR.

13 BY MR. LARSON:

14 Q. SAME QUESTION FOR THE DEAN OF LIBRARIES?

15 A. YES.

16 MR. LARSON: THAT CONCLUDES MY EXAMINATION.

17 CROSS-EXAMINATION

18 BY MR. ASKEW:

19 Q. MS. ESPOSITO, I'M TONY ASKEW. I'M REPRESENTING THE  
20 UNIVERSITY SYSTEM. I THINK I MET YOU EARLIER?

21 A. YES.

22 Q. IF YOU WOULD LOOK AT YOUR SYLLABUS FOR YOUR 8280 COURSE,  
23 PROFESSOR ESPOSITO, DID YOU HAVE TEXTBOOKS THAT WERE ASSIGNED  
24 TO YOUR STUDENTS THAT THEY WERE TO PURCHASE FOR READING?

25 A. YES, I HAD FIVE.

1 Q. CAN YOU IDENTIFY THOSE FOR US FROM THE SYLLABUS?

2 A. AMY BEST'S PROM NIGHT YOUTH SCHOOLS AND POPULAR CULTURES,  
3 VENUS EVANS-WINTERS' TEACHING BLACK GIRLS, RESILIENCY IN URBAN  
4 CLASSROOMS, AMANDA LEWIS' RACE IN THE SCHOOLYARD, NEGOTIATING  
5 THE COLOR LINE IN CLASSROOMS AND COMMUNITIES, NANCY LOPEZ'  
6 HOPEFUL GIRLS, TROUBLED BOYS, RACE AND GENDER DISPARITY IN  
7 URBAN EDUCATION AND NORMA MENDOZA-DENTON'S HOMEGIRLS, LANGUAGE  
8 AND CULTURAL PRACTICE AMONG LATINA YOUTH GANGS.

9 Q. DO YOU HAVE ANY UNDERSTANDING, PROFESSOR ESPOSITO, AS TO  
10 THE APPROXIMATE COST FOR EACH ONE OF THOSE TEXTBOOKS?

11 MR. LARSON: YOUR HONOR, I OBJECT THIS IS OUTSIDE THE  
12 SCOPE OF THE WORKS AT ISSUE ON THE JOINT FILING.

13 MR. ASKEW: I THOUGHT IT WOULD BE NICE TO KNOW WHAT  
14 TEXTBOOKS THE STUDENTS WERE PURCHASING AND HOW MUCH MONEY THEY  
15 WERE SPENDING.

16 THE COURT: I'LL ALLOW THE QUESTION.

17 THE WITNESS: IT DEPENDS ON IF THEY BUY THEM USED OR  
18 NEW. SO NEW I WOULD SAY IT COULD RUN THEM ABOUT 150 DOLLARS.

19 BY MR. ASKEW:

20 Q. 150 DOLLARS EACH?

21 A. NO, I'M SORRY, FOR ALL FIVE.

22 Q. THANK YOU. WHAT I'D LIKE TO DO NOW WITH YOU, PROFESSOR  
23 ESPOSITO, IS I'D LIKE TO TAKE A LOOK AT THESE FOUR EXCERPTS  
24 THAT YOU HAD FOR YOUR FIRST CLASS, AND I WANT YOU TO FIRST TELL  
25 ME WHAT THAT COURSE WAS ABOUT; YOUR 8280 COURSE THAT YOU TAUGHT



1 IN THE SUMMER OF 2009, WHAT WAS THE SUBJECT OF THAT COURSE?

2 A. IT'S ANTHROPOLOGY OF EDUCATION, SO EXPLORE THE METHODOLOGY  
3 OF ETHNOGRAPHY WHICH IS THE STUDY OF CULTURE IN SCHOOL  
4 SETTINGS, IN SCHOOLS AND CLASSROOMS.

5 Q. WHAT DOES THE WORK ETHNOGRAPHY MEAN?

6 A. IT'S A RESEARCH METHODOLOGY, AND IT'S GENERALLY THE STUDY  
7 OF CULTURE THROUGH NARRATIVE RESEARCH SO THROUGH PARTICIPANT  
8 OBSERVATION AND INTERVIEWING PEOPLE.

9 Q. ALL RIGHT. YOUR FIRST EXCERPT THAT WAS ASSIGNED I THINK  
10 CAME FROM THE SAGE HANDBOOK OF QUALITATIVE RESEARCH THAT WAS  
11 THE ETHNOGRAPHY AND ETHNOGRAPHIC REPRESENTATION. COULD YOU  
12 LOOK AT YOUR BOOK THERE, AND I WANT YOU TO TELL THE COURT WHAT  
13 THAT EXCERPT IS ABOUT; WHAT ITS SUBJECT IS, AND THEN IN THE  
14 COURSE OF DOING THAT, EXPLAIN HOW THAT RELATED TO THE CLASS  
15 THAT YOU WERE TEACHING THAT DAY?

16 A. OKAY. THE ARTICLE ITSELF IS WHAT I WOULD CONSIDER A  
17 LITERATURE REVIEW, AND WHAT THAT MEANS IS THE AUTHOR HAS  
18 EXAMINED PREVIOUS RESEARCH THAT'S BEEN DONE ON THIS TOPIC, AND  
19 THEY SUMMARIZE THE TOPIC.

20 SO WHEN YOU TALK ABOUT -- I TEACH MY STUDENTS THAT  
21 THIS IS A SECONDARY SOURCE. BARBARA TEDLOCK HAS NOT DONE ANY  
22 RESEARCH OF HER OWN IN THIS ARTICLE. IT'S ALL REVIEW OF WHAT  
23 OTHER RESEARCHERS HAVE DONE.

24 SO IT EXAMINES -- IT'S A HISTORICAL LOOK AT HOW  
25 ETHNOGRAPHY HAS BEEN UTILIZED IN ANTHROPOLOGY AND ALSO HOW IT'S

1 BEEN REPRESENTED.

2 AND THEN YOU HAD ASKED ME TO EXPLAIN HOW IT RELATES  
3 TO WHAT I DO IN THE CLASS?

4 Q. YES. WHY DID YOU CHOSE THAT EXCERPT TO PRESENT TO YOUR  
5 CLASS ON THAT DAY?

6 A. THE TOPIC FOR THAT DAY WAS ETHNOGRAPHY AND EDUCATION, AND  
7 SO I FELT THAT THE TEDLOCK ARTICLE DID A GREAT JOB OF PROVIDING  
8 STUDENTS WITH KNOWLEDGE OF WHAT HAS PREVIOUSLY BEEN DONE IN THE  
9 FIELD OF ANTHROPOLOGY.

10 IT WAS NOT NECESSARILY SPECIFIC TO EDUCATION, BUT IT  
11 GAVE THEM AN INTRODUCTION INTO THE METHODOLOGY OF ETHNOGRAPHY.

12 Q. AND YOU DID COMPLETE A CHECKLIST WITH RESPECT TO THAT  
13 EXCERPT?

14 A. YES.

15 Q. WHEN YOU DID THAT, DID YOU CONSIDER EACH OF THE FACTORS  
16 THAT WERE PRESENTED IN THAT CHECKLIST?

17 A. I WENT THROUGH ONE BY ONE.

18 Q. AND WHEN YOU CONCLUDED IT, WHAT WAS YOUR CONCLUSION WITH  
19 RESPECT TO WHETHER THAT EXCERPT WAS A FAIR USE?

20 A. THAT IT WAS A FAIR USE.

21 Q. LET'S LOOK AT THE NEXT EXCERPT THAT YOU USED WHICH I THINK  
22 IS FROM THE HANDBOOK OF ETHNOGRAPHY. I THINK IT'S THE --

23 A. THE GORDON --

24 Q. THE TUULA GORDON --

25 A. THIS ONE IS SIMILAR TO THE TEDLOCK ARTICLE IN THAT IT'S A

1 LITERATURE REVIEW. SO, AGAIN, THESE AUTHORS EXAMINED WORKS  
2 THAT HAD PREVIOUSLY BEEN DONE IN THE FIELD AND JUST DID A  
3 REVIEW OF THAT.

4           THEY SEPARATED THEIRS AROUND DIFFERENT THEMES. SO  
5 THEY HAVE SOCIAL INTERACTION, CULTURAL STUDIES, CRITICAL  
6 ETHNOGRAPHY, FEMINISM. THESE ARE ALL TYPES OF ETHNOGRAPHIC  
7 RESEARCH.

8           THE REASON I CHOSE THIS FOR THE SPECIFIC CLASS ON  
9 ETHNOGRAPHY AND EDUCATION IS BECAUSE IT REVIEWS SPECIFIC  
10 LITERATURE ON DOING ETHNOGRAPHY IN SCHOOL SETTINGS; WHEREAS,  
11 THE TEDLOCK PIECE REVIEWED ETHNOGRAPHY IN GENERAL. THIS WAS  
12 SPECIFIC TO EDUCATION.

13 Q.   AND DID YOU COMPLETE A CHECKLIST WITH RESPECT TO THIS  
14 EXCERPT?

15 A.   YES.

16 Q.   DID YOU CONSIDER EACH AND EVERY ONE OF THE FACTORS THAT  
17 WERE PRESENTED IN THAT CHECKLIST?

18 A.   YES, I DID.

19 Q.   WHEN YOU FINISHED THAT ANALYSIS, WHAT WAS YOUR CONCLUSION  
20 WITH RESPECT TO WHETHER THIS EXCERPT WAS A FAIR USE?

21 A.   THAT IT WAS A FAIR USE.

22 Q.   LET'S LOOK AT YOUR NEXT EXCERPT WHICH I THINK IS THE WANDA  
23 PILLOW AND CRIS MAYO ARTICLE OUT OF THE HANDBOOK OF FEMINIST  
24 RESEARCH.

25 A.   THIS ARTICLE -- HOLD ON, I'M TURNING TO THAT PAGE. THIS

1 ARTICLE IS ALSO A LITERATURE REVIEW. SO, AGAIN, THE AUTHORS  
2 EXAMINE PREVIOUS RESEARCH THAT HAS BEEN DONE IN THE FIELD, AND  
3 THIS IS SPECIFICALLY ON ETHNOGRAPHY THAT HAS A FEMINIST LENSES.

4 AND SO IF YOU LOOK AT THE TOPIC FOR THE DAY, IT SAYS  
5 CRITIQUES OF ANTHROPOLOGY, AND ANTHROPOLOGY HAS OFTEN BEEN  
6 CRITIQUED AS BEING RACIST AND SEXIST.

7 SO ONE OF THE THINGS THAT I DID FOR THIS DAY IS TO  
8 OFFER READINGS THAT ILLUSTRATE HOW THAT MIGHT BE A VALID  
9 CRITIQUE OF THE FIELD, AND SO THIS ONE IN PARTICULAR FOCUSES ON  
10 GENDER.

11 Q. HOW MANY PAGES WERE IN THAT BOOK?

12 A. IN THE HANDBOOK?

13 Q. YES.

14 A. 758.

15 Q. HOW MANY PAGES WAS THE EXCERPT THAT YOU TOOK OR THAT YOU  
16 USED?

17 A. I THINK ABOUT 18. FROM PAGE 155 TO 172, 17.

18 MR. ASKEW: I THINK THE PLAINTIFFS REPORTED THAT AS 2  
19 AND A HALF PERCENT, YOUR HONOR.

20 BY MR. ASKEW:

21 Q. LET'S LOOK AT THE NEXT EXCERPT THAT YOU USED. THAT'S THE  
22 MICHELLE FINE ARTICLE FROM THE SAGE HANDBOOK OF QUALITATIVE  
23 RESEARCH THE FIRST EDITION.

24 A. THIS ARTICLE IS CONSIDERED SEMINAL IN THE FIELD. SO  
25 MICHELLE FINE IS A VERY WELL RESPECTED QUALITATIVE RESEARCHER,

1 AND SHE DOES A CRITIQUE OF HOW WE WRITE ABOUT THE PEOPLE THAT  
2 WE RESEARCH, AND I FELT THAT IT WAS IMPORTANT IN -- THESE  
3 ARE -- YOU KNOW, I TEACH DOCTORAL STUDENTS, AND SO THEY ARE  
4 BUDDING RESEARCHERS THEMSELVES, AND I FELT IT WAS IMPORTANT FOR  
5 THEM TO CONSIDER THE FACTORS THAT SHE RAISES ABOUT WHAT IT  
6 MEANS TO HAVE THE AUTHORITY TO ACTUALLY REPRESENT SOMEONE'S  
7 LIFE OR SOMEONE'S EXPERIENCE.

8 Q. IS THAT WHY YOU CHOSE TO PRESENT THIS TO YOUR STUDENTS IN  
9 THAT CLASS?

10 A. YES.

11 Q. HOW MANY PAGES IN THAT BOOK, PROFESSOR ESPOSITO?

12 A. 643.

13 Q. AND HOW MANY PAGES IN THE EXCERPT THAT YOU CHOSE?

14 A. 12.

15 MR. ASKEW: I THINK THAT'S REPORTED AS 2.2 PERCENT,  
16 YOUR HONOR.

17 BY MR. ASKEW:

18 Q. DID YOU COMPLETE A FAIR USE CHECKLIST FOR THIS EXCERPT?

19 A. YES.

20 Q. DID YOU CONSIDER EACH AND EVERY ONE OF THE FACTORS IN THAT  
21 CHECKLIST?

22 A. YES, I DID.

23 Q. WHEN YOU FINISHED THAT ANALYSIS, DID YOU REACH A  
24 CONCLUSION AS TO FAIR USE?

25 A. IT WAS A FAIR USE.

1 Q. LET'S GO BACK TO THE PREVIOUS WORK FROM THE HANDBOOK OF  
2 FEMINIST RESEARCH. I THINK I FORGOT TO ASK WHETHER YOU HAD  
3 DONE A CHECKLIST FOR THAT.

4 DID YOU DO A FAIR USE ANALYSIS FOR YOUR EXCERPT FROM  
5 THE HANDBOOK OF FEMINIST RESEARCH AND COMPLETE A CHECKLIST IN  
6 DOING THAT?

7 A. YES, I DID.

8 Q. AND DID YOU CONSIDER EACH AND EVERY ONE OF THE FACTORS IN  
9 COMPLETING THAT CHECKLIST?

10 A. YES, I DID.

11 Q. WHAT WAS YOUR CONCLUSION WITH RESPECT TO WHETHER THAT USE  
12 WAS A FAIR USE?

13 A. IT WAS A FAIR USE.

14 Q. LET'S GO NOW TO YOUR COURSE IN THE FALL OF 2009. THAT WAS  
15 THE EPRS 8520 CLASS THAT I THINK IS IDENTIFIED AS QUALITATIVE  
16 RESEARCH AND EDUCATION. DID YOU HAVE ASSIGNED TEXTBOOKS FOR  
17 THAT CLASS, PROFESSOR ESPOSITO?

18 A. YES, TWO.

19 Q. WHAT WERE THOSE?

20 MR. LARSON: OBJECTION, YOUR HONOR, OUTSIDE THE  
21 IDENTIFIED WORKS ON THE JOINT FILING.

22 THE COURT: ON THE JOINT FILING, DID YOU SAY?

23 MR. LARSON: YES.

24 THE COURT: WHAT'S YOUR RESPONSE?

25 MR. ASKEW: I'M PRESENTING THESE AS THE TEXTBOOKS

1 THAT WERE ASSIGNED TO STUDENTS FOR WHICH THEY PAID. THESE ARE  
2 THE REQUIRED TEXTBOOKS FOR THE CLASS.

3 THE COURT: I'LL ALLOW THE QUESTION.

4 BY MR. ASKEW:

5 Q. WHAT WERE THE REQUIRED TEXTBOOKS IN THE CLASS?

6 A. CAROL GRBICH, QUALITATIVE DATA ANALYSIS, AN INTRODUCTION  
7 PUBLISHED BY SAGE; JOHNNY SALDANA, THE CODING MANUAL FOR  
8 QUALITATIVE RESEARCHERS ALSO PUBLISHED BY SAGE.

9 Q. DO YOU HAVE AN UNDERSTANDING OF THE APPROXIMATE COST FOR  
10 THOSE TWO TEXTBOOKS THAT YOU ASSIGNED TO YOUR CLASS?

11 A. THESE ARE ACTUALLY PRICEY COMPARED TO THE PREVIOUS CLASS,  
12 AND SO IF STUDENTS BOUGHT THESE NEW, IT WOULD BE -- I THINK  
13 THEY'RE ABOUT 60 DOLLARS EACH. SO MAYBE 120 BRAND NEW.

14 Q. NOW WOULD YOU TELL THE COURT, EXPLAIN TO THE COURT WHAT  
15 WAS THIS COURSE ABOUT; WHAT WAS THE SUBJECT MATTER OF THIS  
16 COURSE, PROFESSOR?

17 A. THIS IS THE THIRD IN A SERIES THAT WE HAVE. SO IT'S  
18 QUALITATIVE RESEARCH AND EDUCATION 3, AND IN THIS COURSE WE  
19 FOCUS ON DATA ANALYSIS. SO IT'S A COURSE FOR DOCTORAL  
20 STUDENTS, AND ALL OF THEM ARE ENTERING DISSERTATION PHASE. SO  
21 THEY WILL EVENTUALLY COLLECT DATA THEMSELVES AND ANALYZE DATA.  
22 SO THIS IS A CLASS THAT PREPARES THEM FOR THAT PROCESS.

23 Q. THERE'S ONE EXCERPT THAT HAS BEEN IDENTIFIED THAT REALLY  
24 CONSTITUTES TWO ITEMS FROM ONE SOURCE. I'VE IDENTIFIED THAT ON  
25 YOUR SYLLABUS. CAN YOU IDENTIFY THAT WORK FOR US?

1 A. SAY WHAT IT IS?

2 Q. YES.

3 A. IT'S VINCENT ANAFARA AND NORMA MERTZ THEORETICAL  
4 FRAMEWORKS IN QUALITATIVE RESEARCH.

5 Q. YOU CHOSE TO PRESENT TO THE STUDENTS A PORTION OF THE  
6 INTRODUCTION AND THE CONCLUSION; IS THAT CORRECT?

7 A. YES, THE INTRODUCTION STARTS ON PAGE 13, BUT THE REQUIRED  
8 READING STARTS ON PAGE 23. SO I DIDN'T REQUIRE THE ENTIRE  
9 INTRODUCTION. I STARTED THEM OUT ON PAGE 23 UNDER THE HEADING  
10 OF THEORY AS MORE.

11 Q. WHY DIDN'T YOU ASK THEM TO READ THE FIRST SEVERAL PAGES OF  
12 THAT INTRODUCTION?

13 A. THEY'RE DOCTORAL STUDENTS AND I FELT THAT THE FIRST FEW  
14 PAGES WEREN'T NECESSARY TO MY EDUCATIONAL PURPOSE BECAUSE THEY  
15 KNEW WHAT THEORY -- THEY KNOW WHAT THEORY IS. THEY KNOW THE  
16 BUILDING BLOCKS OF THEORY. SO I FELT THAT THIS WAS TOO  
17 ELEMENTARY FOR THEM.

18 Q. AND WHY DID YOU ELECT THE PORTION THAT YOU DID FROM THE  
19 INTRODUCTION THAT YOU WANTED THEM TO READ?

20 A. I THINK THAT DOCTORAL STUDENTS STRUGGLE WITH THEORETICAL  
21 FRAMEWORKS. THEY KNOW WHAT THEORY IS, BUT THEY DON'T KNOW HOW  
22 TO APPLY THEORY IN THEIR OWN RESEARCH DESIGN.

23 SO I FELT THAT THE FEW PAGES OF THE INTRODUCTION GAVE  
24 THEM SOME IDEA AND -- SOME IDEA OF HOW TO DO THAT, HOW TO  
25 UTILIZE A THEORETICAL FRAMEWORK, BUT IT ALSO GAVE THEM NAMES OF



1 REFERENCES THAT THEY COULD THEN LOOK UP THEMSELVES FOR FURTHER  
2 STUDY.

3 Q. WHAT ELSE DID YOU ASSIGN FROM THIS BOOK FOR THE STUDENTS  
4 TO REVIEW AS AN EXCERPT?

5 A. THE CONCLUSION.

6 Q. WHERE DOES THAT START?

7 A. PAGE 189.

8 Q. AND WHY DID YOU ASSIGN THE CONCLUSION TO YOUR STUDENTS,  
9 AND WHAT RELATIONSHIP WAS THERE BETWEEN THAT EXCERPT AND THE  
10 OBJECTIVE OF YOUR COURSE?

11 A. IN ORDER FOR STUDENTS TO WRITE A DISSERTATION, THEY HAVE  
12 TO WHAT WE CALL FIND A THEORETICAL FRAMEWORK, AND NO MATTER HOW  
13 TIMES A PROFESSOR, YOU KNOW, TELLS THEM THAT EVENTUALLY THEY  
14 WILL FIND ONE AND THEY MAY ALREADY HAVE ONE, IT'S SOMETHING  
15 THAT CAUSES THEM A LOT OF ANXIETY.

16 AND SO IN THE CONCLUSION, ONE OF THE HEADINGS HERE IS  
17 HOW DO I FIND A THEORETICAL FRAMEWORK, AND IT REALLY ONLY SPANS  
18 A PAGE AND A HALF, BUT I FELT THAT THIS WOULD BE HELPFUL TO  
19 STUDENTS TO READ BECAUSE IT'S IN CONJUNCTION WITH WHAT I'VE  
20 BEEN TEACHING.

21 Q. WHAT PAGES ARE YOU REFERRING TO THERE?

22 A. IT STARTS ON PAGE 191.

23 Q. WILL YOU SHOW THAT TO THE COURT WHAT YOU WERE GESTURING TO  
24 ME?

25 A. SORRY, IT STARTS HERE.

1 Q. HOW MANY PAGES ARE THERE IN THE TWO SECTIONS OF THAT BOOK  
2 THAT YOU ASKED THE STUDENTS TO READ AS AN EXCERPT?

3 A. THERE'S SEVEN PAGES IN THE CONCLUSION AND THEN NINE PAGES  
4 OF THE INTRODUCTION, SO SIXTEEN PAGES.

5 Q. AND HOW MANY PAGES ARE THERE IN THE BOOK AS A WHOLE?

6 A. THE BOOK ENDS AT PAGE 207.

7 Q. SOMETHING LESS THAN 10 PERCENT WAS ASSIGNED; IS THAT  
8 RIGHT?

9 A. YES.

10 Q. I DON'T THINK I ASKED YOU ABOUT THE NUMBER OF PAGES THAT  
11 WERE ENCOMPASSED BY THE EXCERPTS IN THE FIRST TWO BOOKS THAT  
12 YOU USED. COULD YOU LOOK AT THOSE TWO AND TELL ME THE NUMBER  
13 OF PAGES THAT YOU ASSIGNED FROM THE SAGE HANDBOOK OF  
14 QUALITATIVE RESEARCH THE SECOND EDITION --

15 MR. LARSON: COULD WE HAVE CLARIFICATION IS THIS THE  
16 TEDLOCK CHAPTER YOU'RE ASKING ABOUT FROM BACK IN THE SUMMER?  
17 BY MR. ASKEW:

18 Q. ARE YOU LOOKING AT THE TEDLOCK CHAPTER?

19 A. YES.

20 Q. HOW MANY PAGES WERE IN THAT CHAPTER?

21 A. 32.

22 Q. HOW MANY PAGES IN THE BOOK AS A WHOLE?

23 A. FOR THIS BOOK THEY DIDN'T INCLUDE THE INFORMATION ABOUT  
24 THE CONTRIBUTORS OR THE SUBJECT INDEX WITH THE ACTUAL PAGE  
25 NUMBERS, SO THE TEXT ENDS -- THE ARTICLES END AT PAGE 1065, BUT

1 THEN THERE IS AN ADDITIONAL INDEX AND AUTHOR INFORMATION WHICH  
2 IS SEPARATELY NUMBERED.

3 I MEAN I CAN COUNT -- I COULD ADD THAT UP.

4 MR. ASKEW: YOUR HONOR, THAT'S REPORTED AS 3 PERCENT.  
5 BY MR. ASKEW:

6 Q. AND IF YOU'D LOOK AT THE TUULA GORDON ARTICLE, HOW MANY  
7 PAGES ARE REPRESENTED BY THAT EXCERPT?

8 A. 15.

9 Q. AND HOW MANY PAGES IN THE BOOK AS A WHOLE?

10 A. 507.

11 MR. ASKEW: I THINK AGAIN, YOUR HONOR, BY THE  
12 PLAINTIFFS' CALCULATION IS REPRESENTED AS 2.5 PERCENT.

13 BY MR. ASKEW:

14 Q. JUST A FEW MORE QUESTIONS, PROFESSOR ESPOSITO. HAVE YOU  
15 HAD ANY EXPERIENCE IN YOUR CLASS WITH STUDENTS WHO HAVE EITHER  
16 INDICATED TO YOU OR DISCUSSED WITH YOU THE IDEA OF PURCHASING  
17 THE BOOKS FROM WHICH EXCERPTS HAVE BEEN ASSIGNED TO THEM IN THE  
18 CLASS?

19 A. YES. WHEN I REQUIRE AN EXCERPT THAT COMES FROM A BOOK, I  
20 ALWAYS BRING THE BOOK TO CLASS. I TEACH DOCTORAL STUDENTS, AND  
21 THEY -- MANY OF THEM WILL DO A DISSERTATION AND MAY BECOME  
22 PROFESSORS THEMSELVES.

23 SO THEY ARE INTERESTED IN BUILDING A LIBRARY.  
24 THEY'RE INTERESTED IN BECOMING EXPERTS IN THE FIELD, AND SO I  
25 WILL PASS AROUND THE BOOK. I USUALLY GO THROUGH AND I NAME

1 SOME OF MY FAVORITE ARTICLES THAT ARE IN THE BOOK. I FLIP  
2 THROUGH THE TABLE OF CONTENTS. I TELL THEM WHICH ARE THE MORE  
3 IMPORTANT PIECES, AND I HAVE STUDENTS WHO WILL ASK ME IS IT  
4 WORTH IT BECAUSE THESE ARE PRETTY EXPENSIVE, AND SO THEY WILL  
5 ASK ME DO I THINK IT'S WORTH IT. I SAY YES --

6 MR. LARSON: YOUR HONOR, I OBJECT, THIS IS HEARSAY  
7 TALKING ABOUT WHAT STUDENTS TELL HER IN CLASS.

8 THE COURT: OBJECTION SUSTAINED.

9 BY MR. ASKEW:

10 Q. JUST TELL ME THE EXPERIENCE THAT YOU'VE HAD WITH RESPECT  
11 TO WHAT YOU'VE SEEN THE STUDENTS DO?

12 A. I KNOW IN THE SUMMER OF 2009 A STUDENT MADE MENTION THAT  
13 SHE HAD NEVER HEARD OF THIS BOOK --

14 MR. LARSON: OBJECT, IT'S HEARSAY.

15 THE COURT: LET ME HEAR THE REST OF THE ANSWER. GO  
16 AHEAD.

17 THE WITNESS: SHE HAD NEVER HEARD OF THE BOOK, AND  
18 TWO WEEKS LATER SHE SHOWED UP IN CLASS TO SHOW ME THAT SHE HAD  
19 BOUGHT THE BOOK. SHE BROUGHT IT TO CLASS.

20 BY MR. ASKEW:

21 Q. HAVE YOU SEEN ANY OTHER --

22 THE COURT: I'LL OVERRULE THE OBJECTION. GO AHEAD.

23 BY MR. ASKEW:

24 Q. HAVE YOU SEEN ANY OTHER INDICATIONS IN THE CLASS SUCH AS  
25 STUDENTS COMING TO CLASS WITH THE BOOK THAT WOULD INDICATE TO

1 YOU THAT THEY MAY HAVE PURCHASED THE WORK AS A RESULT OF AN  
2 EXCERPT YOU HAD ASSIGNED?

3 A. YES.

4 Q. EXPLAIN THOSE SITUATIONS FOR US PLEASE?

5 MR. LARSON: OBJECTION, LEADING.

6 THE COURT: OVERRULED.

7 THE WITNESS: FOR THE HANDBOOK THE SECOND EDITION,  
8 THERE HAVE BEEN TWO STUDENTS THAT I KNOW OF WHO HAVE, YOU KNOW,  
9 SHOWN UP WITH THE BOOK SAYING IT WAS GREAT, AND, YOU KNOW,  
10 THANK YOU FOR INTRODUCING ME TO IT.

11 MR. LARSON: OBJECTION, HEARSAY.

12 THE COURT: OVERRULED.

13 MR. ASKEW: YOUR HONOR, I HAVE NO FURTHER QUESTIONS  
14 FOR THE WITNESS.

15 THE COURT: ANYTHING ELSE FOR THIS WITNESS?

16 MR. LARSON: JUST A COUPLE OF QUESTIONS, YOUR HONOR.

17 REDIRECT EXAMINATION

18 BY MR. LARSON:

19 Q. PROFESSOR ESPOSITO, YOU INDICATED, IF I HEARD YOU RIGHT,  
20 THAT ONE STUDENT IN YOUR SUMMER CLASS PURCHASED THE HANDBOOK OF  
21 FEMINIST RESEARCH; IS THAT RIGHT?

22 A. YES.

23 Q. SO THAT MEANS THAT 21 STUDENTS DID NOT BUY IT, CORRECT?

24 A. PERHAPS.

25 Q. TWENTY-ONE STUDENTS DIDN'T PAY A PERMISSION FEE FOR THE

1 EXCERPT THAT YOU PROVIDED, CORRECT?

2 A. I CAN'T GUARANTEE THAT 21 STUDENTS DIDN'T PURCHASE IT.  
3 WHAT I CAN GUARANTEE IS THAT ONE SHOWED UP IN CLASS WITH THE  
4 BOOK IN HER HAND TO SAY THAT SHE DID PURCHASE IT.

5 Q. AND YOU HAVE NO KNOWLEDGE OF WHETHER THE OTHER 21 DID  
6 THAT, CORRECT?

7 A. THAT'S RIGHT, BUT I HAVE NO KNOWLEDGE THAT THEY DIDN'T.

8 Q. AND YOU KNOW YOU DIDN'T PAY A PERMISSION FEE FOR ANY OF  
9 THOSE 21 STUDENTS TO USE THAT EXCERPT, CORRECT?

10 A. CORRECT.

11 Q. BUT YOU DETERMINED IT WAS A FAIR USE TO PROVIDE THE  
12 CHAPTER WITHOUT PERMISSION FOR ALL OF THE STUDENTS; IS THAT  
13 RIGHT?

14 A. IT WAS A FAIR USE, YES.

15 MR. LARSON: I HAVE NO MORE QUESTIONS.

16 THE COURT: SHALL THE WITNESS BE EXCUSED?

17 MR. ASKEW: YES.

18 THE COURT: YOU ARE EXCUSED. THANK YOU.

19 LET'S TAKE A 15-MINUTE BREAK NOW.

20 (RECESS)

21 MR. ASKEW: I WANTED TO MOVE THE ADMISSION OF THE TWO  
22 CHECKLISTS FOR THE SECOND COURSE EXCERPT THAT WAS OFFERED.

23 THAT WAS THE INTRODUCTION AND THE CONCLUSION FROM THAT ONE BOOK  
24 THAT WAS PLAINTIFFS' EXHIBIT 639 AND PLAINTIFFS' EXHIBIT 643.

25 MR. LARSON: YOUR HONOR, WE OBJECT TO THOSE. THEY'RE

1 UNDATED, AND THERE'S NO FOUNDATION AS TO WHEN THE WITNESS  
2 FILLED THOSE OUT. IN FACT I ASKED HER ON DIRECT WHEN SHE  
3 FILLED THEM OUT AND SHE DIDN'T KNOW.

4 MR. ASKEW: I THOUGHT HER TESTIMONY WAS THAT SHE  
5 FILLED THEM OUT AS SHE WAS MAKING HER DECISION TO POST THESE.

6 THE COURT: I'LL ADMIT BOTH OF THEM.

7 MR. LARSON: YOUR HONOR, PLAINTIFFS CALL YOUJIN KIM  
8 AS THE NEXT WITNESS.

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

11 YOUJIN KIM,  
12 HAVING BEEN DULY SWORN, WAS EXAMINED AND TESTIFIED AS FOLLOWS:

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

16 THE WITNESS: YOUJIN KIM.

17 THE COURT: AND SPELL YOUR FIRST NAME?

18 THE WITNESS: Y O U J I N.

19 THE COURT: AND KIM IS K I M?

20 THE WITNESS: YES.

21 MR. LARSON: MAY I APPROACH WITH THE WITNESS BINDER?

22 THE COURT: YES.

23 DIRECT EXAMINATION

24 BY MR. LARSON:

25 Q. GOOD AFTERNOON, PROFESSOR KIM.

ANDRE G. ASHLEY, O.C.R.

1 A. GOOD AFTERNOON.

2 Q. WE MET AT YOUR DEPOSITION; DO YOU RECALL?

3 A. YES.

4 Q. YOU'RE A PROFESSOR IN THE APPLIED LINGUISTICS DEPARTMENT;  
5 IS THAT CORRECT?

6 A. YES, APPLIED LINGUISTICS AND ESL.

7 Q. ESL IS ENGLISH AS A SECOND LANGUAGE?

8 A. YES.

9 Q. AND YOU TAUGHT A CLASS AL 8550 DURING THE FALL 2009  
10 SEMESTER; IS THAT RIGHT?

11 A. YES.

12 Q. AND THAT CLASS HAD APPROXIMATELY 16 STUDENTS, CORRECT?

13 A. YES.

14 Q. AND PLAINTIFFS' EXHIBIT 519, IF YOU LOOK IN YOUR BINDER,  
15 IT SHOULD BE THE FIRST TAB; DO YOU SEE THAT?

16 A. YES.

17 Q. DO YOU RECOGNIZE THAT AS THE SYLLABUS FOR AL 8550?

18 A. YES.

19 MR. LARSON: I'D OFFER THAT INTO EVIDENCE, YOUR  
20 HONOR.

21 MR. ASKEW: NO OBJECTION.

22 THE COURT: IT'S ADMITTED.

23 BY MR. LARSON:

24 Q. AND WE'VE GOT IT ON THE SCREEN HERE, TOO, IF THAT'S EASIER  
25 FOR YOU.



1                   TURNING TO PAGE 2, SECTION 5 OF THE SYLLABUS, THAT  
2 REFLECTS READINGS THAT WERE PROVIDED TO STUDENTS IN THE CLASS  
3 IN ELECTRONIC FORM THROUGH THE ULEARN SYSTEM; IS THAT RIGHT?

4 A.     SOME OF THEM ARE THROUGH ERESERVE.

5 Q.     RIGHT. SO EVEN THOUGH IT SAYS ULEARN THERE, SOME OF THEM  
6 YOU PLACED ON THE ULEARN SYSTEM, BUT SOME OTHERS WERE ON  
7 ERESERVES; IS THAT RIGHT?

8 A.     YES.

9                   THE COURT: AND THE EXHIBIT WE'RE LOOKING AT IS STILL  
10 EXHIBIT 519?

11                  MR. LARSON: THAT'S RIGHT, YOUR HONOR, PAGE 2.

12 BY MR. LARSON:

13 Q.     AND THE ISSUE THERE, WASN'T IT, WHEN YOU DIDN'T HAVE --  
14 WHEN YOU DIDN'T PERSONALLY HAVE A COPY THAT YOU COULD SCAN AND  
15 PUT ON ULEARN, YOU ASKED THE LIBRARY INSTEAD TO PUT THE EXCERPT  
16 ON ERES?

17 A.     YES.

18 Q.     AND WHERE YOU OWNED THE BOOK YOURSELF, YOU JUST UPLOADED A  
19 DIGITAL COPY STRAIGHT TO THE ULEARN SYSTEM, CORRECT?

20 A.     YES, IF I HAD THE COPY.

21 Q.     AND IN THAT INSTANCE NO ONE FROM THE LIBRARY WAS INVOLVED  
22 IN THAT PROCESS; IS THAT RIGHT?

23 A.     NO.

24 Q.     THERE WAS NO PAYMENT MADE TO THE PUBLISHER OR THE AUTHOR  
25 FOR ANY OF THE EXCERPTS THAT WE SEE LISTED HERE IN SECTION 2;

1 IS THAT RIGHT?

2 A. NO PAYMENT --

3 MR. ASKEW: YOUR HONOR, I'M GOING TO OBJECT. THAT  
4 LIST OBVIOUSLY HAS A NUMBER OF WORKS THAT ARE NOT ON THE  
5 ACCUSED LIST OF INFRINGEMENTS.

6 THE COURT: STATE YOUR QUESTION AGAIN.

7 BY MR. LARSON:

8 Q. MY QUESTION IS THERE WAS NO PAYMENT MADE FOR ANY OF THE  
9 WORKS THAT YOU PLACED ON ERES OR ULEARN; IS THAT CORRECT?

10 A. YES.

11 THE COURT: THE OBJECTION IS SUSTAINED.

12 BY MR. LARSON:

13 Q. FOR THE WORKS ON THE LIST THAT ARE INVOLVED IN THE SUIT  
14 THERE WAS NO PAYMENT MADE TO THE PUBLISHERS; IS THAT CORRECT?

15 A. YES.

16 Q. LET'S TURN TO PAGE 7 OF THE SYLLABUS, IF WE COULD, AND  
17 THIS SHOWS THE SCHEDULE OF THE READING ASSIGNMENTS FOR THE  
18 COURSE; IS THAT RIGHT?

19 A. YES, THAT'S RIGHT.

20 Q. LET'S LOOK AT WEEK 2, AND THAT REFLECTS THERE THAT YOU  
21 ASSIGNED CHAPTERS 2 AND 3 FROM A BOOK BY BACHMAN AND PALMER TO  
22 STUDENTS IN YOUR COURSE, CORRECT?

23 A. YES.

24 Q. AND THEN WE NEED TO FLIP BACK AND FORTH A LITTLE HERE, BUT  
25 FLIPPING BACK TO PAGE 2, THE BACHMAN AND PALMER BOOK IS A BOOK

1 CALLED LANGUAGE TESTING AND PRACTICE; IS THAT RIGHT?

2 A. YES.

3 Q. AND THAT'S A BOOK BY OXFORD UNIVERSITY PRESS?

4 A. YES.

5 MR. LARSON: YOUR HONOR, MAY I APPROACH?

6 THE COURT: YOU MAY.

7 BY MR. LARSON:

8 Q. DO YOU SEE PLAINTIFFS' EXHIBIT 418 WHICH IS THE BOOK ON  
9 TOP OF THE STACK THAT I JUST GAVE YOU; IS THAT LANGUAGE TESTING  
10 AND PRACTICE?

11 A. YES.

12 Q. AND JUST TURNING TO THE TABLE OF CONTENTS, CAN YOU CONFIRM  
13 FOR THE COURT THAT CHAPTERS 2 AND 3 ARE PAGES 17 THROUGH 60?

14 A. YES.

15 Q. AND THAT WAS REQUIRED READING, CORRECT?

16 A. YES.

17 Q. AND THAT WAS PROVIDED VIA ULEARN?

18 A. YES.

19 Q. THAT WAS WITHOUT ANY PAYMENT TO THE AUTHORS OR PUBLISHERS  
20 OF THE BOOK; IS THAT CORRECT?

21 A. YES.

22 Q. LET'S GO BACK TO PAGE 7, IF WE COULD, TO THE GRID.  
23 LOOKING AT WEEK 4 ON THE LIST, THAT REFLECTS THAT YOU ASSIGNED  
24 CHAPTER 5 FROM THE SAME BOOK BY BACHMAN AND PALMER TO STUDENTS  
25 IN THE CLASS; IS THAT CORRECT?

- 1 A. YES.
- 2 Q. AND THAT WAS ALSO PROVIDED VIA ULEARN?
- 3 A. YES.
- 4 Q. AND THAT WAS PROVIDED OR POSTED WITHOUT MAKING ANY PAYMENT
- 5 TO THE AUTHORS OR PUBLISHERS; IS THAT CORRECT?
- 6 A. YES, THAT'S CORRECT.
- 7 Q. AND IF YOU CAN LOOK AT THE TABLE OF CONTENTS AGAIN AND
- 8 JUST CONFIRM FOR ME THAT CHAPTER 5 IS PAGES 85 TO 94?
- 9 A. CAN YOU SAY THE PAGES AGAIN?
- 10 Q. JUST TELL ME WHAT THE PAGES ARE.
- 11 A. 85 TO 93.
- 12 Q. THANK YOU. RETURNING TO WEEK 3 OF THE READING SCHEDULE,
- 13 THAT REFLECTS THAT YOU ASSIGNED CHAPTER 2 FROM A BOOK BY
- 14 DOUGLAS TO STUDENTS IN THE CLASS; IS THAT CORRECT?
- 15 A. YES.
- 16 Q. AND LOOKING BACK AGAIN AT THE LIST ON PAGE 2, THE DOUGLAS
- 17 BOOK IS CALLED ASSESSING LANGUAGES FOR SPECIFIC PURPOSES; IS
- 18 THAT RIGHT?
- 19 A. YES.
- 20 Q. THAT'S A BOOK BY CAMBRIDGE UNIVERSITY PRESS?
- 21 A. YES.
- 22 Q. IF YOU COULD TURN TO PX-20 WHICH IS A COPY OF THE BOOK,
- 23 CAN YOU JUST CONFIRM FOR ME THAT THE PAGE RANGE OF CHAPTER 2
- 24 WAS 22 TO 40?
- 25 A. YES.

- 1 Q. AND AT LEAST CERTAIN PAGES FROM THAT EXCERPT WERE REQUIRED  
2 READING; IS THAT CORRECT?
- 3 A. YES.
- 4 Q. AND THAT CHAPTER WAS PROVIDED VIA ULEARN; IS THAT CORRECT?
- 5 A. YES.
- 6 Q. AND THAT WAS AGAIN WITHOUT MAKING ANY PAYMENT, CORRECT?
- 7 A. YES.
- 8 Q. LET'S GO BACK TO PAGE 7 AGAIN. LOOKING AGAIN AT WEEK 3,  
9 THIS REFLECTS THAT YOU ASSIGNED CHAPTER 4 FROM A BOOK BY  
10 BACHMAN TO STUDENTS IN THE CLASS; IS THAT RIGHT?
- 11 A. CAN YOU REPEAT YOUR QUESTION PLEASE?
- 12 Q. YES, LOOKING AT WEEK 3, THIS REFLECTS THAT YOU ASSIGNED  
13 CHAPTER 4 FROM A BOOK BY BACHMAN TO STUDENTS IN THE CLASS,  
14 CORRECT?
- 15 A. YES, THIS WAS OPTIONAL READING.
- 16 Q. IS THAT WHAT THE STAR MEANS THAT IT WAS OPTIONAL?
- 17 A. YES.
- 18 Q. AND THAT CHAPTER WAS PROVIDED VIA ULEARN, CORRECT?
- 19 A. YES.
- 20 Q. AND LOOKING BACK TO PAGE 2, THE BACHMAN BOOK IS A BOOK  
21 CALLED FUNDAMENTAL CONSIDERATIONS IN LANGUAGE TESTING; IS THAT  
22 RIGHT?
- 23 A. YES.
- 24 Q. AND THAT'S A BOOK BY OXFORD UNIVERSITY PRESS?
- 25 A. YES.

1 Q. THEN IF YOU COULD LOOK AT PLAINTIFFS' EXHIBIT 406. THERE  
2 SHOULD BE A COPY OF THE BOOK THERE; IS THAT RIGHT?

3 A. YES.

4 Q. AND CAN YOU CONFIRM FOR ME THAT CHAPTER 4 IS PAGES 81 TO  
5 110?

6 A. YES, THAT'S RIGHT.

7 Q. AND THAT WAS POSTED TO ULEARN WITHOUT MAKING ANY PAYMENT  
8 TO THE AUTHOR OR PUBLISHER, CORRECT?

9 A. YES.

10 Q. LOOKING BACK TO THE READING SCHEDULE ON PAGE 7, LOOKING AT  
11 WEEK 6 ON THAT LIST, THAT SHOWS THAT YOU ASSIGNED CHAPTERS 3  
12 AND 5 FROM A BOOK BY PURPURA TO STUDENTS IN THE CLASS; IS THAT  
13 CORRECT?

14 A. YES.

15 Q. AND THEN FLIPPING BACK TO PAGE 2, CAN YOU CONFIRM THAT THE  
16 PURPURA BOOK IS A BOOK CALLED ASSESSING GRAMMAR?

17 A. YES.

18 Q. I'M SORRY, PAGE 3 IS WHERE THAT'S LISTED; IS THAT RIGHT?

19 A. YES.

20 Q. THAT'S A CAMBRIDGE UNIVERSITY PRESS BOOK?

21 A. YES.

22 Q. OKAY. IN FRONT OF YOU SHOULD BE A COPY OF ASSESSING  
23 GRAMMAR PX-15. IT'S IN EVIDENCE. CAN YOU CONFIRM THAT  
24 CHAPTERS 3 AND 5 ARE PAGES 49 TO 82 AND 100 TO 145?

25 A. 49 TO 82 THAT'S CHAPTER 3 AND --

- 1 Q. CHAPTER 5 IS THE OTHER ONE WE'RE LOOKING AT.
- 2 A. YES, 100 TO 145.
- 3 Q. SO 80 PAGES TOTAL; IS THAT RIGHT?
- 4 A. I CANNOT DO MATH.
- 5 Q. I'LL REPRESENT THAT IT'S 80, AND WE CAN MOVE ON.
- 6 THAT WAS REQUIRED READING, CORRECT?
- 7 A. WHEN I DESIGNED THE SYLLABUS IT WAS REQUIRED.
- 8 Q. AND THAT WAS ACTUALLY -- THAT ONE WAS ACTUALLY PROVIDED
- 9 VIA ERES; IS THAT RIGHT?
- 10 A. YES.
- 11 Q. AND THAT'S BECAUSE YOU DIDN'T HAVE A COPY OF THE BOOK
- 12 YOURSELF TO MAKE A COPY FOR ULEARN; IS THAT RIGHT?
- 13 A. YES.
- 14 Q. JUST WHILE WE'RE ON THAT SUBJECT, WHEN YOU PLACE READINGS
- 15 ON ULEARN DO YOU ACTUALLY CREATE THE SCANS OF THE BOOK
- 16 YOURSELF?
- 17 A. NO, I ASK STUDENT WORKER TO SCAN IT, OR SOMETIMES I HAD
- 18 SOME COPIES FROM MY GRADUATE CLASSES THAT I TOOK AS A STUDENT.
- 19 Q. I SEE, AND YOU MAKE THOSE INTO A PDF FILE, A DIGITAL PDF?
- 20 A. YES.
- 21 Q. AND THEN UPLOAD THEM TO ULEARN; IS THAT RIGHT?
- 22 A. YES.
- 23 Q. LET'S TURN TO WEEK 7 ON THE READING LIST ON PAGE 7, THAT
- 24 REFLECTS THAT YOU ASSIGNED CHAPTER 6 FROM A BOOK BY READ TO
- 25 STUDENTS IN THE CLASS; IS THAT RIGHT?

1 A. YES.

2 Q. AND TURN BACK TO PAGE 3, THE READ BOOK IS A BOOK CALLED  
3 ASSESSING VOCABULARY; IS THAT RIGHT?

4 A. YES.

5 Q. THAT'S A CAMBRIDGE UNIVERSITY PRESS BOOK; IS THAT RIGHT?

6 A. YES.

7 MR. LARSON: YOUR HONOR, MAY I APPROACH?

8 THE COURT: YES.

9 BY MR. LARSON:

10 Q. IF YOU COULD LOOK AT THE BOOK ON THE TOP OF THE STACK,  
11 IT'S PX-44; IS THAT ASSESSING VOCABULARY?

12 A. YES.

13 Q. CAN YOU JUST CONFIRM FOR ME THAT THE PAGE RANGE OF CHAPTER  
14 6 IS 150 TO 187?

15 A. YES.

16 Q. THAT'S 38 PAGES?

17 A. YES.

18 Q. AND THAT WAS REQUIRED READING, CORRECT?

19 A. WHEN I DESIGNED THE SYLLABUS, YES.

20 Q. AND THAT EXCERPT WAS PROVIDED VIA ULEARN; IS THAT CORRECT?

21 A. YES.

22 Q. AND YOU PROVIDED THE ENTIRE CHAPTER; IS THAT RIGHT?

23 A. YES, CHAPTER 6.

24 Q. AND THAT WAS WITHOUT MAKING ANY PAYMENTS TO THE AUTHOR OR  
25 PUBLISHER, CORRECT?



- 1 A. YES.
- 2 Q. LET'S LOOK BACK AT WEEK 7 ON THE READING LIST AGAIN. THAT  
3 REFLECTS THAT YOU ASSIGNED CHAPTER 10 FROM A BOOK BY NATION TO  
4 STUDENTS IN THE CLASS; IS THAT RIGHT?
- 5 A. YES.
- 6 Q. AND LOOKING BACK TO PAGE 2, THE BOOK BY NATION WAS A BOOK  
7 CALLED LEARNING VOCABULARY IN ANOTHER LANGUAGE; IS THAT RIGHT?
- 8 A. YES.
- 9 Q. AND LOOKING AT PX-125 WHICH IS A COPY OF THE BOOK IN FRONT  
10 OF YOU.
- 11 A. YES.
- 12 Q. DO YOU HAVE THE BOOK THERE? CAN YOU CONFIRM THAT CHAPTER  
13 10 WAS PAGES 344 TO 379?
- 14 A. YES.
- 15 Q. AND THAT WAS PROVIDED VIA ULEARN; IS THAT CORRECT?
- 16 A. YES.
- 17 Q. AT LEAST SOME SUBSET OF THOSE PAGES WERE REQUIRED READING,  
18 CORRECT?
- 19 A. YES.
- 20 Q. AND THAT WAS POSTED TO ULEARN WITHOUT MAKING ANY PAYMENT  
21 TO THE AUTHOR OR PUBLISHER; IS THAT RIGHT?
- 22 A. YES.
- 23 Q. RETURNING TO WEEK 8 ON THE READING LIST, THAT REFLECTS  
24 THAT YOU ASSIGNED CHAPTER 7 FROM A BOOK BY ALDERSON TO STUDENTS  
25 IN THE CLASS; IS THAT RIGHT?

- 1 A. YES.
- 2 Q. AND THEN COMING BACK TO PAGE 2, THE BOOK BY ALDERSON IS A  
3 BOOK CALLED ASSESSING READING; IS THAT RIGHT?
- 4 A. YES.
- 5 Q. THAT'S A CAMBRIDGE UNIVERSITY PRESS BOOK?
- 6 A. YES.
- 7 Q. THAT WAS REQUIRED READING?
- 8 A. A SUBSET OF IT.
- 9 Q. A SUBSET WAS, OKAY, BUT THE EXCERPT THAT YOU PROVIDED WAS  
10 THE ENTIRE CHAPTER, CORRECT?
- 11 A. YES.
- 12 Q. CAN YOU LOOK AT PX-29, A COPY OF THE BOOK?
- 13 A. YES.
- 14 Q. CAN YOU CONFIRM THAT CHAPTER 7 IS PAGES 202 TO 270?
- 15 A. YES.
- 16 Q. SIXTY-NINE PAGES?
- 17 A. YES.
- 18 Q. AND THAT WAS POSTED WITHOUT MAKING ANY PAYMENT TO THE  
19 AUTHOR OR PUBLISHER, CORRECT?
- 20 A. YES.
- 21 Q. GOING BACK TO THE READING LIST PAGE 7, LET'S GO TO WEEK 9  
22 ON THE LIST, AND THAT REFLECTS THAT YOU ASSIGNED CHAPTER 5 FROM  
23 THE BOOK BY BUCK TO STUDENTS IN THE CLASS; IS THAT RIGHT?
- 24 A. YES.
- 25 Q. GOING BACK TO PAGE 2, THE BUCK BOOK IS ASSESSING

- 1 LISTENING; IS THAT RIGHT?
- 2 A. YES.
- 3 Q. LOOKING AT PX-24, A COPY OF THE BOOK, CAN YOU CONFIRM THAT
- 4 CHAPTER 5 IS PAGES 116 TO 153?
- 5 A. YES.
- 6 Q. AND THAT WAS PROVIDED TO STUDENTS VIA ULEARN, CORRECT?
- 7 A. YES.
- 8 Q. AND SOME SUBSET OF THOSE PAGES WERE REQUIRED READING; IS
- 9 THAT RIGHT?
- 10 A. YES.
- 11 Q. AND THE EXCERPT THAT YOU PROVIDED WAS IN FACT THE ENTIRE
- 12 CHAPTER; IS THAT RIGHT?
- 13 A. YES.
- 14 Q. AND THAT WAS DONE WITHOUT MAKING ANY PAYMENT TO THE
- 15 PUBLISHER OR AUTHOR OF THE BOOK?
- 16 A. YES.
- 17 Q. GOING BACK TO PAGE 7, LOOKING AT WEEK 10 THAT REFLECTS
- 18 THAT YOU ASSIGNED CHAPTERS 4 AND 7 FROM A BOOK BY LUOMA TO
- 19 STUDENTS IN THE CLASS; IS THAT CORRECT?
- 20 A. YES.
- 21 Q. AND THEN TURNING BACK TO PAGE 2, CAN YOU CONFIRM THAT THE
- 22 LUOMA BOOK IS A BOOK CALLED ASSESSING SPEAKING?
- 23 A. YES.
- 24 Q. THAT'S A CAMBRIDGE UNIVERSITY PRESS BOOK?
- 25 A. YES.

1 Q. CAN YOU LOOK AT PX-34 AND CONFIRM THAT'S A COPY OF  
2 ASSESSING SPEAKING CAN YOU CONFIRM THAT CHAPTERS 4 AND 7 ARE  
3 PAGES 59 TO 95 AND 139 TO 169?

4 A. YES.

5 MR. LARSON: AND I DON'T BELIEVE PX-34 WAS MOVED INTO  
6 EVIDENCE. SO, YOUR HONOR, I WOULD OFFER THAT.

7 MR. ASKEW: NO OBJECTION.

8 THE COURT: IT'S ADMITTED.

9 BY MR. LARSON:

10 Q. AND THESE TWO EXCERPTS CHAPTERS 4 AND 7 WERE PROVIDED VIA  
11 ULEARN?

12 A. YES.

13 Q. AND SOME SUBSET AT LEAST OF THOSE PAGES WERE REQUIRED  
14 READING; IS THAT RIGHT?

15 A. YES.

16 Q. AND THE EXCERPTS THAT YOU PROVIDED WERE THE ENTIRE  
17 CHAPTERS; IS THAT RIGHT?

18 A. YES.

19 Q. AND AGAIN THOSE WERE POSTED TO ULEARN WITHOUT MAKING ANY  
20 PAYMENT TO THE AUTHOR OR PUBLISHER, CORRECT?

21 A. YES.

22 Q. LET'S GO BACK TO PAGE 8, IF WE COULD. LOOKING AT WEEK 11  
23 ON THE READING LIST, THIS REFLECTS THAT YOU ASSIGNED CHAPTERS 5  
24 AND 6 FROM A BOOK BY WEIGLE TO STUDENTS IN THE CLASS; IS THAT  
25 RIGHT?

1 A. YES.

2 Q. AND TURNING BACK TO PAGE 2 -- SORRY, PAGE 3, THE BOOK BY  
3 WEIGLE WAS A BOOK CALLED ASSESSING WRITING; IS THAT RIGHT?

4 A. YES.

5 Q. A CAMBRIDGE UNIVERSITY PRESS BOOK?

6 A. YES.

7 Q. IT'S ACTUALLY A BOOK BY ONE OF YOUR COLLEAGUES AT GSU; IS  
8 THAT RIGHT?

9 A. YES, SHE'S OUR DEPARTMENT CHAIR.

10 Q. AND LOOKING AT THE TABLE OF CONTENTS OF PX-39, CAN YOU  
11 CONFIRM THAT CHAPTERS 5 AND 6 REPRESENT PAGES 77 TO 139 OF THE  
12 BOOK?

13 A. YES.

14 Q. AND THAT EXCERPT WAS PROVIDED TO YOUR STUDENTS VIA ULEARN,  
15 CORRECT?

16 A. YES.

17 Q. AND AT LEAST SOME SET OF THOSE PAGES WAS REQUIRED READING;  
18 IS THAT RIGHT?

19 A. YES.

20 Q. AND THOSE CHAPTERS WERE POSTED TO ULEARN WITHOUT MAKING  
21 ANY PAYMENT TO THE PUBLISHER OR AUTHOR, CORRECT?

22 A. YES.

23 Q. RETURNING TO THE READING LIST ON PAGE 8, IF WE COULD LOOK  
24 AT WEEK 14, THAT REFLECTS THAT YOU ASSIGNED CHAPTER 4 FROM A  
25 BOOK BY BROWN AND HUDSON TO STUDENTS IN THE CLASS; IS THAT

- 1 CORRECT?
- 2 A. YES.
- 3 Q. AND THEN RETURNING BACK TO PAGE 2, THE BROWN AND HUDSON  
4 BOOK IS A BOOK CALLED CRITERION REFERENCED LANGUAGE TESTING; IS  
5 THAT RIGHT?
- 6 A. YES.
- 7 Q. A CAMBRIDGE UNIVERSITY PRESS BOOK?
- 8 A. YES.
- 9 Q. LOOKING AT PX-85 IN FRONT OF YOU, CAN YOU CONFIRM THAT  
10 CHAPTER 4 IS PAGES 101 TO 148?
- 11 A. YES.
- 12 Q. AND THIS IS AN EXCERPT THAT WAS PROVIDED VIA THE ERESERVE  
13 SYSTEM RATHER THAN ULEARN; IS THAT RIGHT?
- 14 A. YES.
- 15 Q. AND SOME SUBSET AT LEAST OF THESE PAGES WAS ALSO REQUIRED  
16 READING; IS THAT RIGHT?
- 17 A. YES.
- 18 Q. AND THOSE CHAPTERS WERE POSTED TO ERES WITHOUT MAKING ANY  
19 PAYMENT TO THE PUBLISHER OR AUTHOR; IS THAT RIGHT?
- 20 A. YES.
- 21 Q. NOW LOOKING BACK AT THE READING LIST AGAIN, SO WE'RE CLEAR  
22 THE ENTRY FOR LA THAT WE SEE FOR EXAMPLE IN WEEK 11, THAT  
23 REPRESENTS A READING FROM THE ASSIGNED TEXTBOOK; IS THAT RIGHT?
- 24 A. YES, THAT WAS THE REQUIRED TEXTBOOK.
- 25 Q. SO OTHER THAN THE EXCERPTS IDENTIFIED AS LA, THE REST OF

1 THE ENTRIES THERE WERE ASSIGNED VIA ULEARN OR ERES; IS THAT  
2 RIGHT?  
3 A. YES.  
4 Q. AND NO PUBLISHING FEES WERE PAID TO THE PUBLISHER OR  
5 AUTHOR FOR ANY OF THOSE, CORRECT?  
6 A. YES.  
7 Q. NOW STUDENTS IN YOUR CLASS WERE EXPECTED TO DO THE  
8 READING; IS THAT RIGHT?  
9 A. YES.  
10 Q. IF WE COULD LOOK AT PAGE 4 OF THE SYLLABUS, AGAIN THAT'S  
11 PX-519, LOOKING AT SECTION 7, YOU INSTRUCTED STUDENTS THAT THEY  
12 COMPLETE ALL ASSIGNED READINGS BEFORE EACH CLASS MEETING; IS  
13 THAT RIGHT?  
14 A. YES.  
15 Q. AND THEN DOWN BELOW IN SECTION 8, SECTION 1 OF SECTION 8,  
16 YOU INDICATE THAT STUDENTS WERE EXPECTED TO COME TO CLASS WITH  
17 QUESTIONS AND COMMENTS ABOUT THE READINGS, CORRECT?  
18 A. YES.  
19 Q. SO THE READING ASSIGNMENTS WERE AN IMPORTANT PART OF THE  
20 COURSE; IS THAT RIGHT?  
21 A. YES, FOR THE REQUIRED READINGS.  
22 Q. AND JUST FOCUSING IN ON THE 12 OR 13 EXCERPTS THAT WE WERE  
23 LOOKING AT FROM THE PLAINTIFFS' WORKS, IT'S TRUE, IS IT NOT,  
24 THAT ON THE CHECKLIST YOU COMPLETED THAT YOU IDENTIFIED THOSE  
25 WORKS AS BEING NECESSARY TO YOUR COURSE?

ANDRE G. ASHLEY, O.C.R.

- 1 A. CAN YOU REPEAT YOUR QUESTION?
- 2 Q. YES. FOR THE PLAINTIFFS' WORKS THAT WE JUST WALKED  
3 THROUGH THE LIST, YOU COMPLETED SOME FAIR USE CHECKLISTS  
4 RELATED TO THOSE WORKS, CORRECT?
- 5 A. YES.
- 6 Q. AND ON THOSE CHECKLISTS YOU INDICATED THAT THOSE READINGS  
7 WERE NECESSARY TO YOUR EDUCATIONAL PURPOSE IN YOUR COURSE; IS  
8 THAT RIGHT?
- 9 A. YES.
- 10 Q. YOUR ABILITY TO TEACH YOUR COURSE WOULD BE COMPROMISED  
11 WITHOUT THOSE READINGS; ISN'T THAT RIGHT?
- 12 A. COULD YOU REPEAT YOUR QUESTION?
- 13 Q. YES. I TAKE IT IF THE WORKS, IF YOU IDENTIFIED THEM AS  
14 BEING NECESSARY THAT YOUR ABILITY TO TEACH THE COURSE WOULD BE  
15 COMPROMISED IN SOME FASHION IF THOSE READINGS WEREN'T AVAILABLE  
16 TO YOU; IS THAT RIGHT?
- 17 A. YES.
- 18 Q. LET'S TALK ABOUT THE CHECKLIST THAT YOU COMPLETED. YOU  
19 FILLED OUT FAIR USE CHECKLISTS IN AUGUST OF 2009 FOR WORKS FOR  
20 THIS COURSE; IS THAT RIGHT?
- 21 A. YES.
- 22 Q. BUT YOU MAY HAVE MISSED ONE OF TWO OF THOSE BECAUSE THERE  
23 WERE SO MANY READINGS OUTSIDE YOUR TEXTBOOK; IS THAT CORRECT?
- 24 A. YES.
- 25 Q. LET'S LOOK AT PLAINTIFFS' EXHIBIT 595. IT SHOULD BE THE



1 NEXT TAB IN YOUR BOOK. DO YOU RECOGNIZE THIS AS A CHECKLIST  
2 THAT YOU FILLED OUT FOR CRITERION REFERENCED LANGUAGE TESTING?

3 A. YES.

4 Q. AND THIS IS ONE THAT YOU PLACED ON THE ERES SYSTEM; IS  
5 THAT RIGHT?

6 A. YES.

7 Q. YOU PROVIDED STUDENTS WITH 48 PAGES OF THIS WORK?

8 A. YES.

9 Q. NOW IN THE CHECKLIST THERE IS NO DESCRIPTION FOR EACH OF  
10 THE CRITERIA; IS THAT RIGHT?

11 A. FOR THE CHECKLIST? CAN YOU REPEAT YOUR QUESTION PLEASE?

12 Q. YES. FOR EACH OF THE BOXES THAT ARE INCLUDED IN THE  
13 CHECKLIST UNDER FACTOR 1, DO YOU SEE THAT?

14 A. YES.

15 Q. THERE'S NO DESCRIPTION AS TO WHAT EACH OF THOSE BOXES  
16 MEAN; IS THAT RIGHT?

17 A. THAT'S RIGHT.

18 Q. AND BECAUSE OF THAT LACK OF DESCRIPTION YOU HAD TO GUESS  
19 WHETHER SOME OF THE BOXES SHOULD BE CHECKED, CORRECT?

20 A. YEAH, I TRIED TO COME UP WITH EXAMPLES RATHER THAN  
21 GUESSING, YEAH.

22 Q. BUT AS YOU INDICATED IN YOUR DEPOSITION, YOU HAD TO GUESS  
23 ON CERTAIN OF THEM; IS THAT RIGHT?

24 A. YES.

25 Q. AND YOUR TRAINING ON THIS CHECKLIST WAS LIMITED TO A SHORT

1 20 TO 30 MINUTE SESSION AT A NEW FACULTY ORIENTATION; IS THAT  
2 RIGHT?

3 A. YES.

4 Q. LET'S LOOK AT FACTOR 1. YOU DID NOT SELECT  
5 TRANSFORMATIVE; IS THAT RIGHT?

6 A. YES.

7 Q. AND THEN LOOKING ON THE RIGHT-HAND SIDE, YOU ALSO DIDN'T  
8 CHECK NONTRANSFORMATIVE; IS THAT RIGHT?

9 A. YES.

10 Q. AND THAT'S BECAUSE YOU DIDN'T KNOW WHICH ONE TO CHOOSE,  
11 CORRECT?

12 A. YES.

13 Q. AND RATHER SEEKING GUIDANCE FROM LEGAL AFFAIRS, YOU MOVED  
14 ONTO THE NEXT SET OF FACTORS; IS THAT RIGHT?

15 A. CAN YOU REPEAT YOUR QUESTION?

16 Q. YOU DIDN'T CALL OR CONSULT WITH LEGAL AFFAIRS AS TO THE  
17 QUESTION OF WHETHER YOU SHOULD CHECK TRANSFORMATIVE OR  
18 NONTRANSFORMATIVE, RIGHT?

19 A. YEAH, I DID NOT.

20 Q. HAVE YOU EVER SOUGHT GUIDANCE FROM LEGAL AFFAIRS -- STRIKE  
21 THAT.

22 IN THE 2009 SEMESTER DID YOU AT ANY POINT SEEK ANY  
23 GUIDANCE FROM LEGAL AFFAIRS AS TO HOW TO FILL OUT THE  
24 CHECKLIST?

25 A. NO.

1 Q. YOU CHECKED TEACHING ON THE LEFT-HAND SIDE BECAUSE THIS  
2 WORK WAS USED IN YOUR COURSE TO TEACH YOUR STUDENTS, CORRECT?

3 A. YES.

4 Q. AND THAT WOULD BE THE CASE FOR ANY WORK THAT YOU ASSIGNED  
5 TO STUDENTS IN ONE OF YOUR COURSES, CORRECT?

6 A. YES.

7 Q. YOU ALSO CHECKED NONPROFIT EDUCATIONAL BECAUSE GSU IS A  
8 NONPROFIT INSTITUTION, CORRECT?

9 A. YES.

10 Q. THAT WOULD ALSO BE THE CASE FOR ANY COURSE THAT YOU TEACH  
11 WHERE YOU ASSIGN READINGS IN A COURSE, RIGHT?

12 A. YES.

13 Q. AND YOU CHECKED LOOKING DOWN TO THE LAST ENTRY ON THE  
14 LEFT-HAND SIDE USE IS NECESSARY TO ACHIEVE YOUR INTENDED  
15 EDUCATIONAL PURPOSE; DO YOU SEE THAT?

16 A. YES.

17 Q. AND THAT WAS BECAUSE IT WAS NECESSARY FOR YOUR STUDENTS TO  
18 READ THIS PIECE TO UNDERSTAND THE CONCEPTS YOU WERE TEACHING  
19 THAT WEEK; IS THAT CORRECT?

20 A. CAN I TAKE A LOOK AT THE EXAMPLE?

21 Q. SURE.

22 A. YES.

23 Q. AND AS YOU INDICATED IN YOUR DEPOSITION, YOU WOULDN'T  
24 ASSIGN SOMETHING TO YOUR STUDENTS THAT WASN'T NECESSARY; IS  
25 THAT RIGHT?

1 A. BUT I CANNOT REALLY GENERALIZE TO EVERY STUDENT BECAUSE  
2 THIS COURSE IS REALLY PRACTICE ORIENTED. SOME STUDENTS REALLY  
3 NEED THOSE CHAPTERS FOR THEIR FINAL PROJECT. SOME STUDENTS  
4 DON'T. SO NOT EVERYBODY.

5 Q. BUT BECAUSE IT'S NECESSARY FOR SOME, YOU SELECTED  
6 NECESSARY ON THE CHECKLIST; IS THAT RIGHT?

7 A. YES.

8 Q. SO MERELY BY SELECTING THIS WORK FOR STUDENTS TO READ IN  
9 YOUR COURSE, YOU HAD AT LEAST THESE THREE CHECKS OR THREE BOXES  
10 CHECKED IN EVERY INSTANCE, RIGHT, NONPROFIT, TEACHING AND USE  
11 IS NECESSARY?

12 A. YES.

13 Q. AND IN FACT YOU CHECKED THOSE THREE BOXES IN EVERY  
14 CHECKLIST THAT YOU COMPLETED FOR THE FALL 2009 SEMESTER; IS  
15 THAT RIGHT?

16 A. YES.

17 Q. SO EVEN IF YOU HAD CHECKED NONTRANSFORMATIVE OVER ON THE  
18 RIGHT-HAND SIDE, FACTOR 1 WOULD HAVE STILL TIPPED IN FAVOR OF  
19 FAIR USE; IS THAT RIGHT?

20 A. YES.

21 Q. YOU ALSO CHECKED RESEARCH AND SCHOLARSHIP ON THE LEFT-HAND  
22 SIDE, AND THAT'S BECAUSE SOME SUBSET OF THE STUDENTS IN THE  
23 CLASS MIGHT HAVE USED THE WORK FOR THEIR FINAL PROJECT IN THE  
24 CLASS; IS THAT RIGHT?

25 A. YES.

1 Q. AND YOU CHECKED CRITICISM, COMMENT, NEWS REPORTING OR  
2 PARODY BECAUSE YOU WERE COMMENTING ON THE ISSUES RAISED BY THE  
3 ARTICLES IN THE CLASS, CORRECT?

4 A. YES.

5 Q. SO YOU ENDED UP WITH FIVE CHECKS UNDER FACTOR 1 IN FAVOR  
6 OF FAIR USE, RIGHT?

7 A. YES.

8 Q. AND JUST LOOKING AT THE NEXT THREE TABS IN YOUR BINDER IF  
9 YOU WANT TO, YOU ACTUALLY CHECKED ALL FIVE OF THOSE FACTORS  
10 THAT YOU CHECKED HERE ON ALL OF YOUR CHECKLISTS; ISN'T THAT  
11 RIGHT?

12 A. WHICH ONES?

13 Q. I'M LOOKING AT THE NEXT THREE TABS IN YOUR BINDER WHICH  
14 ARE 596, 647 AND 648.

15 A. YES.

16 Q. STICKING WITH EXHIBIT 595 AND LET'S LOOK AT FACTOR 2 ON  
17 THE NEXT PAGE, YOU SEE HERE YOU CHECKED PUBLISHED WORK AND YOU  
18 CHECKED FACTUAL OR NONFICTION WORK?

19 A. YES.

20 Q. AND NEARLY EVERY WORK THAT YOU CHOOSE TO HAVE YOUR  
21 STUDENTS READ IN ONE OF YOUR CLASSES IS GOING TO BE PUBLISHED  
22 NONFICTION, CORRECT?

23 A. YES.

24 Q. LOOKING AT THE LAST BOX ON THE LEFT-HAND SIDE, I SEE YOU  
25 CHECKED IMPORTANT TO EDUCATIONAL OBJECTIVE; DO YOU SEE THAT?

1 A. YES.

2 Q. AND YOU CHECKED THAT FOR ESSENTIALLY THE SAME REASON AS  
3 YOU CHECKED NECESSARY TO EDUCATIONAL PURPOSE UNDER FACTOR 1,  
4 CORRECT?

5 A. YES.

6 Q. AND THIS SECOND FACTOR WAS THREE CHECKS ON THE LEFT-HAND  
7 SIDE AND ZERO CHECKS ON THE RIGHT-HAND SIDE IN EVERY CHECKLIST  
8 THAT YOU FILLED OUT FOR THE FALL 2009 SEMESTER; IS THAT RIGHT?  
9 IF YOU NEED TO FLIP AGAIN, FEEL FREE TO.

10 A. EXCEPT ONE PAGE IS MISSING. EVERYTHING I CHECKED, YEAH.

11 Q. JUST SO THE RECORD IS CLEAR, THE ONE WITH THE PAGE MISSING  
12 IS WHICH EXHIBIT NUMBER?

13 A. 653 THE SECOND PAGE IS MISSING.

14 Q. AND I'LL REPRESENT IT WAS PRODUCED THAT WAY. I THINK  
15 NEITHER PLAINTIFFS NOR DEFENDANTS HAVE BEEN ABLE TO FIND THAT  
16 SECOND PAGE, BUT OTHER THAN THAT THEY WERE ALL THREE TO ZERO  
17 FOR FACTOR 2?

18 A. YES.

19 Q. IF YOU CAN GO BACK TO EXHIBIT 595. LOOKING AT FACTOR 3,  
20 YOU CHECKED SMALL PORTION; IS THAT CORRECT?

21 A. YES.

22 Q. ALL RIGHT. AND YOU DID SO BECAUSE YOU FELT THE EXCERPT  
23 WAS NECESSARY TO MEET YOUR COURSE OBJECTIVE, CORRECT?

24 A. IT WAS ALSO WHEN I HAD THE SHORT TRAINING I WAS NOT GIVEN  
25 ANY NUMBER WHAT MEANS SMALL, WHAT MEANS LARGE, SO I HAD TO USE

1 SOME RELATIVE CRITERIA TO MAKE THAT DECISION.

2 Q. AND THAT INVOLVED YOUR SENSE THAT THE EXCERPT WAS

3 NECESSARY FOR YOUR COURSE PURPOSES, RIGHT?

4 A. THAT WAS ONE FACTOR THAT I USED WHEN I MADE THE DECISION.

5 Q. AND YOU'VE NEVER ON ANY OF THE CHECKLISTS YOU FILLED OUT

6 HAVE CHECKED THAT IT'S A LARGE EXCERPT, CORRECT?

7 A. YES, THAT'S CORRECT.

8 Q. LOOKING AT THE LAST --

9 A. CAN I CHANGE? I DIDN'T CHECK EVERYTHING WAS SMALL PORTION

10 BECAUSE SOME OF THE BOXES WERE MISSING BECAUSE I COULDN'T MAKE

11 THAT DECISION SO I LEFT SOME BOXES EMPTY.

12 Q. I SEE SO YOU DIDN'T CHECK SMALL OR LARGE?

13 A. THAT'S RIGHT, YEAH.

14 Q. LOOKING ON THE LEFT-HAND SIDE UNDER FACTOR 3 AT THE LAST

15 BOX, AMOUNT TAKEN IS NARROWLY TAILORED FOR EDUCATIONAL PURPOSE,

16 YOU CHECKED THAT ONE, RIGHT?

17 A. YES.

18 Q. AND AGAIN THAT WAS ESSENTIALLY FOR THE SAME REASON THAT

19 YOU CHECKED NECESSARY TO EDUCATIONAL PURPOSE IN FACTOR 1; IS

20 THAT RIGHT?

21 A. YES.

22 Q. AND ON EVERY CHECKLIST YOU COMPLETED FOR FACTOR 3, THAT

23 FACTOR 3 TIPPED EITHER TWO-ZERO OR THREE-ZERO IN FAVOR OF FAIR

24 USE; IS THAT RIGHT?

25 A. YES.

1 Q. LET'S LOOK AT FACTOR 4. NOW THE FIRST CHECKED BOX HERE  
2 INVOLVED THE IMPACT ON THE MARKET, DO YOU SEE THAT ON THE  
3 LEFT-HAND SIDE, OR EFFECT ON THE MARKET?  
4 A. YES.  
5 Q. YOU INTERPRETED THAT TO INCLUDE THE IMPACT OF YOUR USE OF  
6 THIS EXCERPT ON SALES OF THE BOOK, CORRECT?  
7 A. YES.  
8 Q. AND IT DIDN'T OCCUR TO YOU WHEN YOU FILLED OUT THIS LIST  
9 THAT YOUR USE OF THE WORK IN THIS CLASS WOULD HAVE AN EFFECT ON  
10 THE MARKET FOR PERMISSIONS OR LICENSING FEES TO THE PUBLISHER;  
11 IS THAT CORRECT?  
12 A. YES.  
13 Q. I SEE ON THE RIGHT-HAND SIDE YOU DIDN'T CHECK LICENSING OR  
14 PERMISSION REASONABLY AVAILABLE, RIGHT?  
15 A. YES.  
16 Q. THAT'S BECAUSE YOU DIDN'T KNOW WHETHER LICENSING OR  
17 PERMISSIONING WAS AVAILABLE, CORRECT?  
18 A. IT WAS MY FIRST SEMESTER, SO I WAS NOT AWARE OF THE  
19 OPTION.  
20 Q. AND I TAKE IT AT THE TIME YOU FILLED OUT THE CHECKLIST YOU  
21 DIDN'T CHECK WITH ANYONE AS TO WHETHER LICENSING OR PERMISSION  
22 WAS AVAILABLE; IS THAT RIGHT?  
23 A. YES.  
24 Q. AND AT LEAST AS OF THE TIME OF YOUR DEPOSITION IN FEBRUARY  
25 OF THIS YEAR, YOU HAD NEVER HEARD OF THE COPYRIGHT CLEARANCE



1 CENTER; IS THAT RIGHT?

2 A. AT THE TIME I DID NOT.

3 Q. LOOKING BACK ON THE LEFT-HAND SIDE, IF WE COULD, I SEE

4 YOU'VE CHECKED SUPPLEMENTAL CLASSROOM READING; DO YOU SEE THAT?

5 A. YES.

6 Q. AND THAT JUST MEANT THAT THE READING WAS SUPPLEMENTAL TO A

7 TEXTBOOK, RIGHT?

8 A. YES.

9 Q. AS WE DISCUSSED EARLIER, IT WAS ACTUALLY REQUIRED READING,

10 THOUGH, CORRECT?

11 A. YES, ONLY SOME SECTIONS.

12 Q. RIGHT, SOME PARTS OF IT, AND YOU DIDN'T CHECK REQUIRED

13 READING ON THE RIGHT-HAND SIDE; IS THAT RIGHT?

14 A. YES.

15 Q. SO INSTEAD OF GETTING A CHECK ON THE RIGHT-HAND SIDE FOR

16 REQUIRED, IT GOT A CHECK ON THE LEFT-HAND SIDE FOR

17 SUPPLEMENTAL?

18 A. ANOTHER REASON THAT I DID THAT WAY WAS -- SO I MOVED TO

19 ATLANTA, AND THEN WHEN I TOOK ORIENTATION, MY CORE SYLLABUS WAS

20 NOT READY, BUT I NEEDED THOSE CHAPTERS. SO AT THE TIME I

21 DIDN'T DECIDE WHETHER IT WOULD BE REQUIRED OR NOT.

22 Q. I SEE. THIS WAS COMPLETED BEFORE YOU DECIDED?

23 A. YES.

24 Q. BUT THIS READING AT LEAST SOME PART OF IT ENDED UP

25 BECOMING REQUIRED?

1 A. YES.

2 Q. SO LET'S LOOK AT THIS CHECKLIST IN TOTAL. IF YOU COULD  
3 CONFIRM FOR ME THAT THERE WERE 16 BOXES IN THE WAYS IN FAVOR OF  
4 FAIR USE COLUMN AND ZERO BOXES IN THE WAYS AGAINST FAIR USE  
5 COLUMN?

6 A. YES.

7 Q. COULD YOU TURN OVER TO PLAINTIFFS' EXHIBIT 596? CAN YOU  
8 JUST CONFIRM FOR ME THAT THIS IS THE CHECKLIST FOR THE EXCERPT  
9 FROM THE BOOK ASSESSING GRAMMAR BY JAMES PURPURA?

10 A. YES.

11 Q. CHAPTERS 3 AND 5?

12 A. YES.

13 Q. AND I THINK IT INDICATES HERE THAT THAT'S PAGES 49 TO 82  
14 AND 100 TO 145?

15 A. YES.

16 Q. SO I BELIEVE THAT'S 79 OR 80 PAGES. DESPITE IT BEING THAT  
17 NUMBER OF PAGES, YOU STILL CHECKED SMALL PORTION UNDER FACTOR  
18 3; IS THAT CORRECT?

19 A. YES.

20 Q. CAN YOU JUST CONFIRM FOR ME, DR. KIM, THAT ON THIS  
21 CHECKLIST THERE ARE 17 CHECKS IN THE WAYS IN FAVOR OF FAIR USE  
22 COLUMN AND ZERO IN THE WAYS AGAINST FAIR USE COLUMN?

23 A. YES.

24 Q. AND TURNING TO THE NEXT CHECKLIST, THIS IS AT 647,  
25 PLAINTIFFS' EXHIBIT 647, THIS IS A CHECKLIST FOR CHAPTER 7 OF

1 THE ALDERSON BOOK; IS THAT RIGHT?  
2 A. YES.  
3 Q. AND THIS WAS CREATED ALSO AT THE BEGINNING OF THE FALL  
4 2009 SEMESTER; IS THAT CORRECT?  
5 A. YES.  
6 Q. AND LOOKING AT EXHIBIT 647, CAN YOU CONFIRM FOR ME THAT ON  
7 THIS ONE THERE ARE 19 CHECKS IN THE WAYS IN FAVOR OF FAIR USE  
8 COLUMN AND ZERO CHECKS IN THE WAYS AGAINST FAIR USE COLUMN?  
9 A. YES.  
10 Q. TURNING TO THE NEXT EXHIBIT WHICH IS 648, THIS IS THE  
11 CHECKLIST YOU FILLED IN THE FALL OF 2009 SEMESTER FOR THE BUCK  
12 CHAPTER 5; IS THAT RIGHT?  
13 A. YES.  
14 Q. AND CAN YOU CONFIRM FOR ME THAT ON THIS CHECKLIST THERE  
15 ARE 18 CHECKS IN THE WAYS IN FAVOR OF FAIR USE COLUMN AND ZERO  
16 CHECKS IN THE WAYS AGAINST FAIR USE COLUMN?  
17 A. YES.  
18 Q. TURNING TO PLAINTIFFS' EXHIBIT 654, THIS IS A CHECKLIST  
19 YOU FILLED OUT FOR THE BACHMAN WORK CHAPTER 4; IS THAT RIGHT?  
20 A. YES.  
21 Q. FROM THE FALL 2009 SEMESTER?  
22 A. YES.  
23 Q. CAN YOU CONFIRM FOR ME THAT THERE ARE 19 CHECKS IN THE  
24 WAYS IN FAVOR FAIR USE COLUMN AND ZERO CHECKS IN THE WAYS  
25 AGAINST FAIR USE COLUMN?

1 A. YES.

2 Q. AND, FINALLY, TURNING TO 655, THIS IS THE CHECKLIST FROM  
3 FALL 2009 FOR THE BACHMAN AND PALMER WORK CHAPTERS 2, 3 AND 5;  
4 IS THAT RIGHT?

5 A. YES.

6 Q. AND CAN YOU CONFIRM FOR ME THAT ON THIS CHECKLIST THERE  
7 ARE 17 CHECKS WEIGHING IN FAVOR OF FAIR USE AND ZERO WEIGHING  
8 AGAINST FAIR USE?

9 A. YES.

10 MR. LARSON: YOUR HONOR, I'D OFFER INTO EVIDENCE  
11 PLAINTIFFS' EXHIBITS 595, 647, 648, 654 AND 655.

12 MR. ASKEW: DID YOU SAY 596 ALSO?

13 MR. LARSON: I DIDN'T BUT I MOVE IT NOW.

14 MR. ASKEW: NO OBJECTIONS.

15 THE COURT: THEY ARE ADMITTED.

16 BY MR. LARSON:

17 Q. LOOKING AT THE FOLLOWING CHECKLISTS IN YOUR BOOK, THIS IS  
18 EXHIBITS 649 TO 653, IF YOU CAN JUST QUICKLY SKIM THROUGH THOSE  
19 FOR ME, YOU'LL SEE THAT THESE CHECKLISTS INDICATE AT THE TOP  
20 RIGHT-HAND CORNER THAT THEY ARE RECREATED; IS THAT RIGHT?

21 A. YES.

22 Q. AND THOSE WERE RECREATED IN MARCH OF THIS YEAR; IS THAT  
23 RIGHT?

24 A. YES.

25 Q. THIS WAS ACTUALLY AFTER YOUR DEPOSITION IN THE CASE; IS

1 THAT RIGHT?

2 A. YES.

3 Q. NOW WERE THESE RECREATIONS OF CHECKLISTS THAT YOU  
4 COMPLETED FOR THE FIRST TIME BACK IN AUGUST OF 2009?

5 A. TO THE BEST OF MY KNOWLEDGE I FOLLOWED THE SAME VOTES WHEN  
6 I RECREATED IT.

7 Q. AND MY QUESTION, THOUGH, IS JUST THAT THESE REPRESENT  
8 CHECKLISTS THAT YOU DID DO FOR THE FIRST TIME BACK IN 2009?

9 A. YES.

10 Q. THANK YOU. AND IT WAS JUST THE CASE THAT YOU COULDN'T  
11 FIND THEM?

12 A. YES.

13 Q. NOW YOU ACKNOWLEDGED AT YOUR DEPOSITION AND I THINK  
14 EARLIER IN THIS EXAMINATION THAT WHEN YOU ARE FILLING OUT  
15 CHECKLISTS IN AUGUST OF 2009 YOU MAY HAVE MISSED A COUPLE; IS  
16 THAT RIGHT?

17 A. YES.

18 Q. AND IS IT POSSIBLE THAT FOR SOME OF THESE FIVE THE REASON  
19 YOU COULDN'T FIND THEM IS BECAUSE THEY WERE ONES THAT YOU  
20 DIDN'T FILL OUT THE FIRST TIME AROUND?

21 A. BECAUSE I DON'T REMEMBER WHICH ONES I MISSED, SO I DON'T  
22 KNOW.

23 Q. YOU CAN'T SAY FOR SURE WHETHER ANY OF THESE IN PARTICULAR  
24 IS ONE THAT YOU MISSED BACK IN 2009; IS THAT RIGHT?

25 A. SO I DIDN'T KNOW WHETHER THIS WAS MISSING ONES, AND I

1 DIDN'T KNOW WHETHER I MISSED --

2 Q. ALL RIGHT. AND I TAKE IT FOR 649 THROUGH 653 YOU CAN'T  
3 SAY FOR SURE THAT THE CHECKS ON THESE CHECKLISTS ARE EXACTLY  
4 THE CHECKS THAT YOU FILLED OUT BACK IN 2009, CORRECT?

5 A. YEAH BUT, YOU KNOW, I WAS PRETTY CONSISTENT, AND THE WAY I  
6 INTERPRETED THESE ITEMS WERE PRETTY MUCH THE SAME. SO, YOU  
7 KNOW, I CAN SAY THAT, YOU KNOW, IT'S VERY SIMILAR TO WHAT I DID  
8 ORIGINALLY.

9 Q. NOW IN THE FOUR CHECKLISTS THAT WE LOOKED AT BEFORE FROM  
10 FALL OF 2009, IT WAS TRUE THAT YOU DIDN'T CHECK TRANSFORMATIVE  
11 UNDER FACTOR 1 FOR ANY OF THOSE, RIGHT?

12 A. NO.

13 Q. BUT AT THE FIVE WE'RE LOOKING AT NOW YOU DID CHECK  
14 TRANSFORMATIVE, CORRECT?

15 A. WHAT ARE THE FIVE ONES?

16 Q. THOSE ARE 649 THROUGH 653.

17 A. YES.

18 Q. AND I TAKE IT THAT'S BECAUSE WHEN YOU FILLED THESE OUT IN  
19 MARCH THAT YOU HAD A DIFFERENT VIEW PERHAPS AS TO WHETHER THESE  
20 USES WERE TRANSFORMATIVE; IS THAT RIGHT?

21 A. THAT'S ONE OF THE REASONS, AND THE OTHER REASON CAN BE  
22 THAT THESE CHAPTERS DELIVER DIFFERENT TYPES OF INFORMATION. SO  
23 TRANSFORMATIVE THE WAY THAT I UNDERSTOOD AND I GUESSED AS I  
24 USED DEPENDS ON WHETHER STUDENTS CITED THIS WORK IN THEIR  
25 ORIGINAL RESEARCH PAPER, IT COULD BE TRANSFORMATIVE THAT WAY.

1 SO THAT'S ANOTHER FACTOR.

2 Q. SO THAT APPLIED TO YOUR STUDENTS USING THE WORKS FOR ONE  
3 OF THEIR PAPERS AS OPPOSED TO YOUR JUST USING THE READINGS TO  
4 DISCUSS IN CLASS, CORRECT?

5 A. YES.

6 Q. NOW, YOU CHOSE TO PUT READINGS ON ULEARN AND ERES RATHER  
7 THAN ON HARDCOPY RESERVES BECAUSE IT WAS MORE CONVENIENT; IS  
8 THAT RIGHT?

9 A. I ALSO HAD HARDCOPIES AT THE LIBRARY.

10 Q. RIGHT. SO YOU PUT SOME READINGS ON HARDCOPY AND THEN YOU  
11 PUT EXCERPTS ON ERES AND ULEARN BECAUSE THAT WAS MORE  
12 CONVENIENT FOR THE STUDENTS, RIGHT?

13 A. ANOTHER REASON WAS ONE OF THE ASSIGNMENTS THAT I PROVIDED  
14 WAS GROUP PRESENTATION. SO STUDENTS HAD TO CHOOSE ONE OF THE  
15 AREAS AND PRESENT THE BOOK OR RELEVANT INFORMATION. SO IF  
16 THOSE BOOKS ARE RELATED TO THEIR GROUP PRESENTATION, THAT'S HOW  
17 I DECIDED TO PUT THEM IN HARDCOPY.

18 Q. AND THAT WAS A SITUATION WHERE THE STUDENT NEEDED ACCESS  
19 TO THE WHOLE BOOK FOR THEIR PRESENTATION, SO YOU PUT THE WHOLE  
20 BOOK HARDCOPY ON RESERVE?

21 A. YES.

22 Q. AND FOR THE EXCERPTS THAT YOU WANTED THE WHOLE CLASS TO  
23 READ, YOU PUT THOSE ON ERES OR ULEARN, RIGHT?

24 A. YES.

25 Q. PROFESSOR KIM, IF THE GSU PRESIDENT'S OFFICE INSTRUCTED

1 YOU TO REMOVE A COURSE READING FROM ERES OR ULEARN BECAUSE IT  
2 WAS INFRINGING COPYRIGHT, YOU'D DO SO IMMEDIATELY, CORRECT?

3 A. YES.

4 Q. AND SAME QUESTION FOR THE PROVOST OFFICE OR THE DEAN OF  
5 LIBRARIES?

6 A. YES.

7 MR. LARSON: I HAVE NO MORE QUESTIONS, YOUR HONOR.

8 THE COURT: COULD I SEE THOSE BOOKS THAT ARE IN FRONT  
9 OF PROFESSOR KIM?

10 MR. LARSON: ABSOLUTELY.

11 CROSS-EXAMINATION

12 BY MR. ASKEW:

13 Q. PROFESSOR KIM, I'M TONY ASKEW. I'M REPRESENTING THE  
14 UNIVERSITY SYSTEM AND GEORGIA STATE. I THINK I HAVE MET YOU  
15 EARLIER.

16 A. YES.

17 Q. BEFORE I START WITH WHAT I WAS GOING TO DO ORIGINALLY, LET  
18 ME GO INTO THESE CHECKLISTS. JUST A SECOND, YOUR HONOR.

19 PROFESSOR KIM, WOULD YOU TURN TO PLAINTIFFS' EXHIBIT  
20 648 IN YOUR BOOK, AND THIS IS AN EXHIBIT. DO YOU SEE WHAT I'M  
21 LOOKING AT HERE; DO YOU SEE THE BOX MARKED TRANSFORMATIVE,  
22 PROFESSOR KIM?

23 A. YES.

24 Q. YOU'VE MADE A MARK ON THAT BOX. CAN YOU TELL US WHAT YOU  
25 MEANT BY THAT MARK THAT YOU PLACED?

ANDRE G. ASHLEY, O.C.R.



1 A. ORIGINALLY I MARKED -- I CHECKED AND I CHANGED MY MIND,  
2 AND I WAS THINKING ABOUT -- CAN I TELL YOU LIKE LITTLE  
3 BACKGROUND OF THIS COURSE? I WAS THINKING ABOUT THE COURSE  
4 THAT I TOOK AS A STUDENT, AND I WAS THINKING ABOUT THE COURSE  
5 PROJECT THAT I DID AND MY CLASSMATES DID, AND SO I CAME UP  
6 WITH -- I MEAN I HAD SOME EXAMPLES FROM MY CLASSMATES WHERE  
7 THEY MODIFIED SOME OF THE EXAMPLES IN THE TEXTBOOKS. SO I  
8 ENDED UP MARKING TRANSFORMATIVE. SO ORIGINALLY I CHECKED YES,  
9 THEN UNCHECKED AND THEN CHECKED.

10 Q. YOU CHANGED YOUR MIND?

11 A. YES.

12 Q. BUT YOU DID CONSIDER WHETHER THIS WORK WAS TRANSFORMATIVE  
13 OR NOT; IS THAT RIGHT?

14 A. YES.

15 Q. NOW LET'S LOOK TO PLAINTIFFS' EXHIBIT 654. I BELIEVE THIS  
16 ALSO HAS BEEN MOVED IN, YOUR HONOR. ON THIS CHECKLIST WHICH IS  
17 THE CHECKLIST FOR THE BACHMAN BOOK CHAPTER 4, YOU CHECKED THE  
18 BOX FOR TRANSFORMATIVE, DIDN'T YOU?

19 A. YES.

20 Q. CAN YOU EXPLAIN FOR THE COURT WHY YOU CHECKED THE BOX FOR  
21 TRANSFORMATIVE ON THIS CHECKLIST?

22 A. BECAUSE THE ONE EXAMPLE BEFORE, THOSE CHAPTERS PROVIDED A  
23 LOT OF EXISTING EXAMPLES FOR TESTING MATERIALS. SO STUDENTS  
24 MODIFIED EXAMPLES. SO, YOU KNOW, THERE'S KIND OF BOTH PARTS,  
25 BUT FOR THIS BACHMAN CHAPTER 4, IT WAS MORE THEORY BASED. SO

1 STUDENTS NEED A REALLY IMPORTANT PIECE. SO AS THE STUDENTS  
2 INCLUDING MYSELF WHENEVER WE WRITE WE CITED THIS WORK. SO I  
3 WAS THINKING ABOUT THE PAPERS THAT THEY WRITE BECAUSE THIS IS  
4 NOT THE PRACTICE ORIENTED CHAPTER. SO IT WAS EASIER FOR ME TO  
5 MAKE A DECISION IT WAS TRANSFORMATIVE.

6 Q. AND THAT'S THE CHECKLIST THAT YOU RECALL HAVING ACTUALLY  
7 FILLED OUT BEFORE YOU ASKED THAT THIS MATERIAL BE POSTED EITHER  
8 ON ULEARN OR ERES; IS THAT CORRECT?

9 A. YES.

10 Q. LET'S LOOK AT PLAINTIFFS' TRIAL EXHIBIT 655 -- THAT'S NOT  
11 THE ONE I'M THINKING ABOUT.

12 SO IT TURNS OUT THAT IN FACT YOU HAD CHECKED  
13 TRANSFORMATIVE ON ONE OF THE CHECKLISTS THAT YOU DID NOT  
14 RECREATE THAT YOU CREATED; YOU CHECKED TRANSFORMATIVE ON A  
15 CREATED CHECKLIST, DIDN'T YOU?

16 A. YES.

17 Q. NOW WITH RESPECT TO THESE FIVE CHECKLISTS 649 THROUGH 653  
18 THAT YOU RECREATED, IS IT YOUR RECOLLECTION, PROFESSOR KIM,  
19 THAT YOU DID IN FACT CREATE A CHECKLIST FOR EACH ONE OF THOSE  
20 EXCERPTS BEFORE YOU POSTED THEM TO EITHER ERES OR ULEARN?

21 A. YES, I GAVE ENOUGH THOUGHT TO THE INDIVIDUAL CHAPTER  
22 THINKING THAT THE NATURE OF THE CHAPTER, SO I FILLED OUT ALL  
23 THE INDIVIDUAL CHECKLISTS BEFORE I POSTED THEM ON ULEARN.

24 Q. WAS IT YOUR UNDERSTANDING THAT THE COPYRIGHT POLICY  
25 APPLIED TO ULEARN AS WELL AS TO ELECTRONIC RESERVES?

1 A. YES.

2 Q. AND DID YOU INTEND AND DID YOU IN FACT FILL OUT A  
3 CHECKLIST FOR EACH INSTANCE IN WHICH YOU POSTED AN EXCERPT  
4 EITHER TO ELECTRONIC RESERVES OR TO ULEARN?

5 A. YES.

6 Q. AND WITH RESPECT TO EACH OF THESE CHECKLISTS THAT YOU  
7 RECREATED, DID YOU DO THAT IN AN EFFORT TO RECREATE THE  
8 CHECKLIST AS ACCURATELY AS YOU COULD AS YOU RECALL HAVING  
9 CREATED THAT CHECKLIST AT THE OUTSET?

10 MR. LARSON: OBJECTION, LEADING, YOUR HONOR.

11 THE COURT: SUSTAINED.

12 BY MR. ASKEW:

13 Q. CAN YOU DESCRIBE FOR ME HOW YOU RECREATED THE CHECKLIST,  
14 PROFESSOR KIM?

15 A. YES.

16 Q. PLEASE DESCRIBE FOR ME HOW YOU DID THAT?

17 A. SO WHEN I RECREATED, I WENT BACK TO THE CHAPTERS, AND THEN  
18 I LOOKED THROUGH THE CHAPTER AND TRIED TO REMEMBER WHAT I DID  
19 ABOUT TWO YEARS AGO -- SORRY, ONE AND A HALF YEARS AGO, AND  
20 THEN I RECREATED TO THE BEST OF MY KNOWLEDGE MY MEMORY.

21 Q. AND DO YOU BELIEVE NOW THAT THESE RECREATED CHECKLISTS  
22 ACCURATELY REFLECT WHAT YOU RECALL HAVING DONE WITH RESPECT TO  
23 THE CHECKLIST WHEN YOU CREATED THEM ORIGINALLY?

24 A. YES.

25 MR. ASKEW: YOUR HONOR, I'D MOVE THE ADMISSION OF

1 PLAINTIFFS' EXHIBITS 649 THROUGH 653 WHICH ARE THE RECREATED  
2 CHECKLISTS THAT HAVE BEEN RECREATED BY PROFESSOR KIM.

3 MR. LARSON: YOUR HONOR, WE OBJECT. I DON'T THINK  
4 THEY HAVE BEEN AUTHENTICATED AS ACCURATE REPRESENTATIONS OF THE  
5 ORIGINALS, AND THE WITNESS SAID SHE COULDN'T EVEN REMEMBER  
6 WHETHER SHE COMPLETED A CHECKLIST FOR EVERY WORK OR NOT.

7 MR. HARBIN: I'M OFFERING THEM AS THE RECREATED  
8 CHECKLISTS NOT AS THE ORIGINAL CHECKLISTS.

9 THE COURT: I'LL ADMIT THEM.

10 BY MR. ASKEW:

11 Q. PROFESSOR KIM, WHEN DID YOU JOIN THE FACULTY AT GEORGIA  
12 STATE?

13 A. FALL OF 2009.

14 Q. AND THIS LAWSUIT THAT YOU'RE INVOLVED IN NOW WAS ALREADY  
15 UNDERWAY WHEN YOU JOINED THE SCHOOL FACULTY; IS THAT CORRECT?

16 A. THAT'S WHAT I HEARD DURING THE NEW FACULTY ORIENTATION.

17 Q. AND AS YOU BEGAN TO PUT YOUR SYLLABUS TOGETHER, THE  
18 LAWSUIT WAS ALREADY UNDERWAY; IS THAT CORRECT?

19 A. YES.

20 MR. LARSON: OBJECT, LEADING.

21 THE COURT: OVERRULED.

22 BY MR. ASKEW:

23 Q. WHEN YOU BEGAN TO PUT YOUR SYLLABUS TOGETHER FOR YOUR 8550  
24 COURSE FOR THE FALL OF 2009, HAD YOU HAD A COURSE LIKE THAT,  
25 PROFESSOR KIM, WHEN YOU HAD BEEN A STUDENT?

1 A. YES.

2 Q. CAN YOU DESCRIBE FOR ME THE COURSE THAT YOU HAD WHEN YOU  
3 WERE A STUDENT AND HOW IT COMPARES TO THE COURSE THAT YOU WERE  
4 PUTTING TOGETHER CALLED 8550 THAT WAS OFFERED TO STUDENTS IN  
5 THE FALL OF 2009?

6 A. SO I GOT MY PH.D. DEGREE FROM NORTHERN ARIZONA UNIVERSITY,  
7 AND ACTUALLY LANGUAGE ASSESSMENT COURSE WAS A REQUIRED COURSE  
8 AS A MASTERS STUDENTS, BUT AS A PH.D. STUDENT I TOOK THAT  
9 COURSE, AND ACTUALLY WHEN I GOT THIS JOB, THE JOB DESCRIPTION  
10 SAYS I WILL BE ASKED TO TEACH THIS VERY SIMILAR COURSE.

11 SO BEFORE I LEFT FLAGSTAFF, I EVEN HAD A MEETING WITH  
12 MY PROFESSOR WHO TAUGHT THE VERY SIMILAR COURSE, AND SHE AND I  
13 WENT OVER THE SYLLABUS THAT SHE USED WHEN I TOOK THE COURSE,  
14 AND THAT'S HOW I DECIDED ALL THE READINGS, AND PLUS MY  
15 DEPARTMENT CHAIR SARAH WEIGLE USED TO TEACH THIS ASSESSMENT  
16 COURSE. SO SHE ALSO GAVE ME THE SYLLABUS.

17 SO ALL THE READINGS THAT I USED FOR THIS COURSE WAS  
18 INFLUENCED BY THE COURSE THAT I TOOK AT NORTHERN ARIZONA  
19 UNIVERSITY AND THE DISCUSSION BASED ON OUR DEPARTMENT CHAIR.

20 Q. WERE MANY OF THE EXCERPTS THAT YOU USED IN YOUR 8550  
21 COURSE EXCERPTS THAT HAD BEEN PROVIDED TO YOU AS A STUDENT AT  
22 NORTHERN ARIZONA?

23 A. YES.

24 Q. IS THAT HOW YOU BECAME FAMILIAR WITH MANY OF THESE BOOKS  
25 THAT YOU OWNED AND THEREFORE WERE ABLE TO POST DIRECTLY INTO

1 THE ULEARN SYSTEM?

2 MR. LARSON: I OBJECT TO THE RELEVANCE OF THIS AND  
3 IT'S LEADING.

4 THE COURT: WHAT'S THE RELEVANCE?

5 MR. ASKEW: IT JUST SHOWS HOW SHE LEARNED OF THESE  
6 EXCERPTS AND WHAT WAS BEING DONE AT NORTHERN ARIZONA WHERE SHE  
7 GOT HER PH.D. AND HOW SHE BECAME AWARE OF THESE BOOKS AS A  
8 STUDENT AND THEN PURCHASED THEM.

9 THE COURT: WHAT DOES THAT PROVE?

10 MR. ASKEW: SHE LEARNED OF THESE BOOKS AND THE IDEA  
11 OF EXCERPTING FROM THEM AT NORTHERN ARIZONA AS A STUDENT, AND  
12 THEN SHE PURCHASED THE BOOKS AS A RESULT OF HAVING BEEN EXPOSED  
13 TO THEM IN HER CLASS AT NORTHERN ARIZONA AND THEN HAS NOW USE  
14 THEM HERE.

15 THE COURT: YOU'RE SAYING SHE PURCHASED THEM WHILE  
16 SHE WAS A STUDENT OR THAT SHE PURCHASED THEM WHEN SHE GOT TO  
17 GEORGIA STATE?

18 MR. ASKEW: I'LL BE GLAD TO ASK HER.

19 BY MR. ASKEW:

20 Q. DID YOU PURCHASE THESE BOOKS THAT YOU USED FOR EXCERPTING  
21 WHILE YOU WERE A STUDENT AT NORTHERN ARIZONA, OR DID YOU  
22 PURCHASE THEM WHEN YOU GOT TO GEORGIA STATE?

23 A. NOT ALL OF THEM MY PROFESSOR -- I MEAN MY SYLLABUS IS VERY  
24 SIMILAR TO WHAT MY PROFESSOR USED. SO AS A STUDENT SHE ALSO  
25 USED EXCERPTS THAT I USED. SO I READ A COUPLE OF CHAPTERS AND

1 THAT'S HOW I BOUGHT SEVERAL BOOKS BEFORE I CAME TO GEORGIA  
2 STATE, AND THAT'S HOW I GOT ACQUAINTED WITH THESE CHAPTERS, AND  
3 I BOUGHT A COUPLE OF BOOKS WHEN I WAS A STUDENT.

4 THE COURT: I'LL SUSTAIN THE OBJECTION.

5 BY MR. ASKEW:

6 Q. I WANT TO SHOW YOU YOUR SYLLABUS FOR THIS CLASS. WHAT WAS  
7 THE REQUIRED TEXTBOOK FOR THIS CLASS, PROFESSOR KIM?

8 MR. LARSON: OBJECTION, YOUR HONOR, OUTSIDE THE SCOPE  
9 OF THE --

10 MR. ASKEW: I'M JUST TRYING TO SHOW THAT THERE WAS A  
11 REQUIRED TEXTBOOK.

12 THE COURT: I WILL ALLOW IT.

13 BY MR. ASKEW:

14 Q. WHAT WAS THE REQUIRED TEXTBOOK FOR THIS CLASS?

15 A. LANGUAGE ASSESSMENT, PRINCIPLES OF CLASSROOM PRACTICES.

16 Q. DO YOU HAVE AN IDEA OF THE APPROXIMATE COST OF THAT BOOK?

17 A. NEW VOLUME IS ABOUT 55 AND USED IS BETWEEN 30 TO 50.

18 Q. DID YOU ALSO IN ADDITION TO PLACING READINGS ON ELECTRONIC  
19 RESERVES OR ULEARN, DID YOU ALSO PLACE MANY OF THE BOOKS WHICH  
20 THOSE EXCERPTS WERE TAKEN ON COURSE RESERVES OR LIBRARY  
21 RESERVES IN THE LIBRARY?

22 A. YES.

23 Q. ARE THOSE IDENTIFIED ON THE SYLLABUS THAT'S BEEN PLACED IN  
24 FRONT OF YOU?

25 A. YES.

1 Q. WOULD YOU IDENTIFY FOR THE RECORD THE BOOKS THAT YOU  
2 PLACED ON LIBRARY RESERVES FROM WHICH YOU ALSO POSTED EXCERPTS  
3 FOR READING BY YOUR STUDENTS?

4 MR. LARSON: OBJECT, IT'S BEYOND THE SCOPE OF THE  
5 PRIOR EXAMINATION.

6 MR. ASKEW: I THINK HE DID GET INTO THE SUBJECT --  
7 THE COURT: STATE YOUR QUESTION AGAIN.

8 MR. ASKEW: I WANTED HER TO JUST IDENTIFY THE BOOKS  
9 THAT SHE PLACED ON LIBRARY RESERVES FROM WHICH SHE ALSO TOOK  
10 EXCERPTS FOR USE FOR THE CLASS.

11 MR. LARSON: I OBJECT TO THE EXTENT IT GOES BEYOND  
12 THE PLAINTIFFS' EXCERPTS THAT WE WERE LIMITED TO ON OUR CROSS.

13 THE COURT: OVERRULED.  
14 BY MR. ASKEW:

15 Q. CAN YOU IDENTIFY FOR THE RECORD, PROFESSOR KIM, THE BOOKS  
16 THAT YOU PLACED ON LIBRARY RESERVE THAT WERE ALSO THE SOURCE OF  
17 THE EXCERPTS THAT YOU POSTED FOR STUDENTS TO REVIEW?

18 A. YES, BECAUSE THOSE ARE REALLY IMPORTANT REFERENCES FOR MY  
19 STUDENTS TO UNDERSTAND THE CONCEPT OF HOW TO MAKE CLASSROOM  
20 BASED TESTS, AND AS A TEACHER I REALLY WANTED THEM TO READ ALL,  
21 BUT BECAUSE OF TIME CONSTRAINT BECAUSE OF THEIR SCHEDULE, I HAD  
22 TO CHOOSE CERTAIN CHAPTERS THAT ARE REALLY IMPORTANT FOR THEM  
23 TO LEARN, AND ALSO FOR THOSE STUDENTS WHO ARE REALLY INTERESTED  
24 IN THE TOPIC, I WANT TO HAVE THESE AVAILABLE TO THEM SO THAT  
25 THEY CAN TAKE A LOOK AT THEM.



- 1 Q. CAN YOU JUST READ FOR THE RECORD THE NAMES OF THE BOOKS  
2 THAT YOU PLACED ON COURSE RESERVE FROM WHICH YOU ALSO DID USE  
3 EXCERPTS FROM THE UNITS? I THINK THEY ARE ON THE SCREEN THERE?
- 4 A. BACHMAN AND PALMER, I USED THREE CHAPTERS FROM THAT BOOK,  
5 AND MILLER, LINN AND GRONLUND, I USED SOME CHAPTERS FROM THAT  
6 BOOK FOR THE COURSE.
- 7 Q. THE BACHMAN BOOK IS THE LANGUAGE TESTING IN PRACTICE?
- 8 A. YEAH, I USED CHAPTERS 2, 3 AND 5.
- 9 Q. WHAT'S THE NEXT BOOK?
- 10 A. MILLER, LINN AND GRONLUND BECAUSE IT WAS NOT RELATED TO  
11 THESE ISSUES, BUT I USED FOUR OR FIVE CHAPTERS FROM THE BOOK,  
12 AND THE OTHER BOOKS IT'S VERY SIMILAR FORMAT ASSESSING READING,  
13 LISTENING, SPEAKING, GRAMMAR VOCABULARY AND WRITING. THOSE  
14 BOOKS INVOLVE ALL THE REVIEW OF THE EXISTING TEST ITEMS. SO I  
15 REALLY WANTED THEM TO TAKE A LOOK AT THE EXISTING TEST ITEMS SO  
16 THEY LEARN HOW TO MAKE EFFECTIVE TEST ITEMS. SO THAT'S WHY I  
17 PUT THEM ON COURSE RESERVES IN HARDCOPIES.
- 18 Q. DID YOU PUT THE BOOK LANGUAGE TESTING IN PRACTICE, DID YOU  
19 PUT THAT ON COURSE RESERVE?
- 20 A. YES. YOU MEAN THE HARDCOPY?
- 21 Q. IN HARDCOPY?
- 22 A. YES.
- 23 Q. AND YOU ALSO HAD AN EXCERPT FROM THAT FOR YOUR CLASS?
- 24 A. YES, BECAUSE I WAS AWARE THAT I COULDN'T PUT THE ENTIRE  
25 BOOK ON ULEARN.

1 Q. DID YOU PLACE ON LIBRARY HARDCOPY RESERVE THE BOOK  
2 ENTITLED ASSESSING READING?  
3 A. YES.  
4 Q. AND YOU ALSO HAD EXCERPTS FROM THAT BOOK FOR THE CLASS TO  
5 READ; IS THAT CORRECT?  
6 A. YES.  
7 Q. DID YOU PLACE ON LIBRARY RESERVE ASSESSING LISTENING, AND  
8 THEN ALSO HAVE EXCERPTS FOR THE STUDENTS TO READ FROM THAT  
9 BOOK?  
10 A. YES.  
11 Q. DID YOU PLACE ASSESSING LANGUAGE FOR SPECIFIC PURPOSES,  
12 DID YOU PLACE THAT BOOK ON HARDCOPY RESERVE IN THE LIBRARY IN  
13 ADDITION TO POSTING EXCERPTS FOR THE STUDENTS TO READ?  
14 A. YES.  
15 Q. DID YOU POST OR PLACE ON LIBRARY RESERVES --  
16 THE COURT: AGAIN I'D LIKE TO ASK YOU THE SAME  
17 QUESTION I ASKED YOUR OPPONENT. ISN'T THERE SOME WAY THESE  
18 QUESTIONS CAN KIND OF BE COMBINED?  
19 MR. ASKEW: I WAS JUST TRYING TO GET THE NAMES OF THE  
20 BOOKS INTO THE RECORD.  
21 THE COURT: BUT IT WASN'T VERY QUICK.  
22 MR. ASKEW: THE BOOKS ARE PLACED THERE IN LIBRARY  
23 RESERVES.  
24 THE COURT: I'M TRYING TO CRACK THROUGH THE RATHER  
25 LITMUS PHRASEOLOGY OF SOME OF THESE QUESTIONS. I MEAN YOU ALL

1 ARE BOTH ADDRESSING THINGS THAT ARE OTHERWISE IN THE RECORD.

2 MR. ASKEW: LET ME MOVE TO THE BOOKS THAT HAVE BEEN  
3 USED BY YOU --

4 THE COURT: LET ME ASK YOU THIS QUESTION FIRST. YOU  
5 REFERRED ABOUT HARDCOPIES BEING PUT IN THE LIBRARY, HARDBACK  
6 BOOKS?

7 THE WITNESS: YES.

8 THE COURT: DO YOU INCLUDE THESE SOFTBACKS IN THE  
9 TERM HARDBACK, THE STUFF THAT WENT IN THE LIBRARY?

10 THE WITNESS: YES.

11 THE COURT: WERE ANY OF THEM SOFTBACK BOOKS? THIS IS  
12 WHAT I WOULD CALL A SOFTBACK.

13 THE WITNESS: YES, THEY ALSO.

14 THE COURT: YOU CONSIDER THEM HARDBACKS OR  
15 HARDCOPIES; IS THIS A HARDCOPY?

16 THE WITNESS: YES, THAT'S A HARDCOPY, YEAH.

17 THE COURT: SO A SOFTBACK WOULD BE --

18 THE WITNESS: OH, YEAH, YEAH, A HARDCOPY, YEAH.

19 BY MR. ASKEW:

20 Q. WHAT I WANT TO DO NOW, PROFESSOR KIM, I WANT TO MOVE  
21 THROUGH THESE ELECTRONIC POSTINGS THAT YOU'VE MADE, AND I WANT  
22 YOU TO DESCRIBE FOR THE COURT WHAT WAS IN THOSE MATERIALS, WHY  
23 YOU WANTED THE STUDENT TO LOOK AT THOSE MATERIALS AND HOW THEY  
24 RELATED TO YOUR COURSE, AND IN SPECIFICS I WANT YOU TO IDENTIFY  
25 FOR US MATERIALS IN THOSE SECTIONS OR CHAPTERS THAT APPEARS TO

1 HAVE BEEN CREATED BY SOMEONE ELSE, IT'S NOT ORIGINAL WITH THE  
2 AUTHOR; DO YOU UNDERSTAND?

3 A. YES.

4 Q. JUST GENERALLY WHAT WAS YOUR COURSE ABOUT THAT YOU WERE  
5 TEACHING THE 8550 COURSE?

6 A. AL 8550, OUR PROGRAM OFFERS DEGREE TO IN-SERVICE AND PRE-  
7 SERVICE TEACHERS WHO WANT TO BE A SECOND LANGUAGE TEACHER  
8 INCLUDING ENGLISH, FRENCH AND SPANISH, AND THIS COURSE IS ONE  
9 OF THE OPTIONAL COURSES, ELECTIVE COURSES.

10 THE PURPOSE OF THIS COURSE IS TO HELP THESE  
11 IN-SERVICE AND PRE-SERVICE TEACHERS TO BE ACQUAINTED WITH  
12 EXISTING TESTING ITEMS AND HELP THEM TO DESIGN EFFECTIVE  
13 CLASSROOM BASED TESTS AND SCORE THEM AND AT THE SAME TIME  
14 INTERPRET THE TESTING RESULTS. SO BASICALLY THE COURSE IS FOR  
15 TEACHER TRAINING.

16 Q. AND WHEN YOU SAY IN-SERVICE BY THAT DO YOU MEAN THAT'S A  
17 STUDENT THAT IS ALREADY A TEACHER?

18 A. YES, I DID HAVE A COUPLE OF K THROUGH 12 TEACHERS WHO WORK  
19 AT EITHER HIGH SCHOOL OR MIDDLE SCHOOL TARGETING ENGLISH AS A  
20 SECOND LANGUAGE LEARNERS AT THEIR SCHOOL.

21 Q. AND YOUR PRE-SERVICE STUDENTS WOULD BE STUDENTS WHO ARE  
22 PLANNING TO BECOME TEACHERS; IS THAT CORRECT?

23 A. YES.

24 Q. SO LET'S LOOK AT THIS FIRST WORK THAT WAS DISCUSSED THAT'S  
25 ASSESSING LANGUAGE FOR SPECIFIC PURPOSES. I THINK THAT'S THE

1 SUBJECT OF THE WEEK 2 ASSIGNMENT, IS THAT CORRECT, IS THAT THE  
2 BACHMAN AND PALMER WORK?

3 A. WHAT IS THE TITLE AGAIN PLEASE?

4 Q. WHERE IS THE BACHMAN AND PALMER BOOK?

5 THE COURT: YOU ALL CAN HAVE ALL THESE BACK NOW IF  
6 YOU LIKE. I'M THROUGH WITH THEM.

7 THE WITNESS: BACHMAN AND PALMER IS LANGUAGE TESTING  
8 IN PRACTICE, YES.

9 BY MR. ASKEW:

10 Q. DO YOU HAVE THAT BOOK IN FRONT OF YOU?

11 A. NO.

12 THE COURT: I'M THROUGH IF YOU ALL WANT THEM. I'M  
13 NOT SUGGESTING NECESSARILY THAT YOU GO THROUGH EACH OF THEM,  
14 BUT HERE THEY ARE.

15 BY MR. ASKEW:

16 Q. YOU ASSIGNED CHAPTERS 2 AND 3; IS THAT RIGHT?

17 A. YES.

18 Q. WHAT DID THOSE CHAPTERS CONCERN, PROFESSOR KIM?

19 A. CHAPTER 2 AS I MENTIONED THIS CLASS IS VERY PRACTICE  
20 ORIENTED FOR THREE WEEKS, AND IN WEEKS ONE THROUGH THREE, I  
21 INTRODUCE THEORETICAL BACKGROUND OF HOW TO MAKE TESTS.

22 SO CHAPTER 2 EXPLAINS WHAT MAKES TESTS USEFUL, AND SO  
23 THE AUTHOR DESCRIBES DIFFERENT FACTORS WHICH IDENTIFY DIFFERENT  
24 LEVELS OF TESTS USED, AND IN CHAPTER 3 THE AUTHOR DESCRIBES HOW  
25 TO DISCUSS TASKS, THE ACTIVITIES THAT IS INCLUDED IN THE

1 TESTS.

2 Q. AND THE BOOK THAT YOU'RE LOOKING AT CARRIES PLAINTIFFS'  
3 EXHIBIT 20; IS THAT CORRECT?

4 A. EXHIBIT NUMBER 418?

5 Q. 480?

6 A. 418.

7 Q. ALL RIGHT. THANK YOU. AND HOW DID THE SUBJECTS OF THOSE  
8 EXCERPTS RELATE TO THE CLASS THAT YOU WERE TEACHING THAT DAY?

9 A. BECAUSE THE PURPOSE OF THIS CLASS IS TO MAKE EFFECTIVE  
10 TESTS, STUDENTS SHOULD UNDERSTAND WHAT'S USEFUL TESTS. SO BY  
11 READING THIS CONTENT, THEY UNDERSTAND DIFFERENT FACTORS WHICH  
12 THEY NEED TO USE WHEN IDENTIFYING EFFECTIVE TESTS.

13 Q. BEFORE YOU POSTED THAT EXCERPT -- AND I THINK YOU POSTED  
14 THAT TO ULEARN; IS THAT CORRECT?

15 A. YES.

16 Q. BEFORE YOU POSTED THAT EXCERPT, DID YOU DO A FAIR USE  
17 ANALYSIS, PROFESSOR KIM?

18 A. YES.

19 Q. DID YOU COMPLETE A CHECKLIST?

20 A. YES.

21 Q. DID YOU CONSIDER EACH AND EVERY ONE OF THE FACTORS IN THAT  
22 CHECKLIST IN MAKING YOUR DECISION?

23 A. THAT WAS THE DIRECTIONS THAT I GOT DURING ORIENTATION, AND  
24 I FOLLOWED THE DIRECTIONS WHEN I COMPLETED THE CHECKLIST.

25 Q. AND WHAT WAS YOUR CONCLUSION WITH RESPECT TO YOUR FAIR USE

1 ANALYSIS AS TO THAT EXCERPT THAT YOU TOOK OUT OF THAT BOOK; DID  
2 YOU CONCLUDE THAT IT WAS A FAIR USE?

3 A. MAY I TAKE A LOOK AT THE FAIR USE CHECKLIST THAT I  
4 COMPLETED FOR THOSE TWO CHAPTERS?

5 Q. YOU CERTAINLY MAY DO THAT.

6 A. I FOUND IT -- YES, SO WHEN I COMPLETED THE CHECKLIST, I  
7 CONSIDERED FACTORS 1, 2, 3 AND 4, AND I CONCLUDED THAT IT  
8 WEIGHS IN FAVOR OF FAIR USE.

9 Q. I JUST REMEMBERED SOMETHING I WANTED TO COVER WITH YOU.  
10 IF I CAN DIGRESS FOR JUST A SECOND TO COVER THAT.

11 IN YOUR EXAMINATION BY MR. LARSON, YOU HAD MENTIONED  
12 THAT ON OCCASION SOMETIMES THE READING WAS REQUIRED AND  
13 SOMETIMES IT WAS A SUBSET OF BEING REQUIRED?

14 A. YES.

15 Q. WHEN IT WAS A SUBSET OF REQUIRED, WHAT WAS THE  
16 RELATIONSHIP OR WHAT WAS YOUR INSTRUCTION AS TO THE OTHER  
17 PORTION OF THAT READING; WHAT WERE THE STUDENTS TO DO WITH  
18 THAT?

19 A. SO AS I SAID IT WAS MY FIRST SEMESTER. I DIDN'T  
20 UNDERSTAND GEORGIA STATE'S STUDENT POPULATION. SO WHEN I MADE  
21 THE SYLLABUS AT THE BEGINNING OF THE SEMESTER, I MADE ALMOST  
22 EVERYTHING REQUIRED EXCEPT THOSE WITH STAR MARK, AND AS CLASS  
23 GOES BY, I ORALLY ANNOUNCED IN CLASS THESE ARE THE OPTIONAL  
24 PAGES. SO WHEN YOU READ THESE PAGES THESE ARE THE REQUIRED  
25 PAGE NUMBERS.

1                   AND A LOT OF CHAPTERS THAT I ASSIGNED INVOLVES  
2   EXAMPLES, AND DURING MANY WEEKS STUDENTS ACTUALLY DID GROUP  
3   PRESENTATIONS. SO IN ORDER TO FACILITATE GROUP PRESENTATIONS,  
4   I JUST PINPOINTED OUT CERTAIN EXAMPLES IN THE CHAPTER SO THAT  
5   THEY CAN BE MORE STRATEGIC WHEN THEY FINISHED THE READING  
6   ASSIGNMENT.

7   Q. AS WE GO THROUGH THESE SECTIONS IDENTIFY FOR ME IN WHICH  
8   INSTANCE WAS THE ENTIRE EXCERPT REQUIRED AND IN WHICH INSTANCE  
9   WAS ONLY SOME OF IT REQUIRED AND OTHER PORTIONS WERE OPTIONAL;  
10  IDENTIFY THOSE FOR THE COURT, RIGHT?

11  A. OKAY.

12  Q. LET'S LOOK AT YOUR SECOND ASSIGNMENT WHICH I THINK IS THE  
13  DOUGLAS 2000, WEEK 3, WHICH BOOK DID THAT COME FROM?

14  A. YES.

15  Q. WHAT'S THE NAME OF THE BOOK?

16  A. ASSESSING LANGUAGE FOR TESTING PURPOSES, EXHIBIT NUMBER  
17  20.

18  Q. WHAT WAS THE CHAPTER THAT YOU CHOSE -- WHAT WAS THE  
19  SUBJECT OF THE CHAPTER THAT YOU CHOSE FOR THE STUDENTS TO READ?

20  A. SO HERE I DIDN'T REMEMBER THE EXACT PAGES, BUT I WENT BACK  
21  TO THE CHAPTERS AND --

22  Q. THE SYLLABUS HAS THE SECOND CHAPTER?

23  A. SECOND CHAPTER, YES. SO, FOR INSTANCE, I ASKED THEM TO  
24  READ PAGES 25, 26, 27, 28 AND SOME PARTS OF 29 AND PAGES 34,  
25  35, AND 36.



1 Q. WHAT WAS THE SUBJECT OF THOSE CHAPTERS, PROFESSOR KIM, AND  
2 HOW DID THAT RELATE TO THE CLASS THAT YOU WERE TEACHING THAT  
3 DAY?

4 A. THE TITLE OF THE CHAPTER IS SPECIFIC PURPOSES, LANGUAGE  
5 ABILITY. AS A TEACHER IN ORDER TO MAKE TESTS, THEY HAVE TO  
6 UNDERSTAND WHAT THEY ARE TESTING. SO I REALLY WANT THEM TO  
7 UNDERSTAND WHAT IS LANGUAGE ABILITY. SO THE ENTIRE CHAPTER IS  
8 ABOUT WHAT IS LANGUAGE ABILITY, IS IT SPEAKING OR UNDERSTANDING  
9 AND THAT KIND OF CONCEPT.

10 Q. AND WAS THAT CHAPTER ASSIGNED AS A REQUIRED READING OR WAS  
11 IT PARTIALLY REQUIRED AND PARTIALLY OPTIONAL?

12 A. IT WAS ORIGINALLY REQUIRED BECAUSE I FOUND THIS CHAPTER  
13 MORE READER FRIENDLY COMPARED TO OTHER CHAPTERS, BUT AFTER MY  
14 SECOND CLASS, I REALIZED THAT THESE READINGS WERE A LOT FOR MY  
15 STUDENTS. SO THAT'S WHY I CHOSE A COUPLE OF PAGES FOR THEM TO  
16 FOCUS ON.

17 Q. YOU DON'T RECALL NOW, THOUGH, WHICH PORTIONS YOU HAD  
18 ASSIGNED AS REQUIRED AND WHICH PORTIONS YOU ASSIGNED AS  
19 OPTIONAL?

20 A. THE PAGES NUMBERS THAT I ADDRESSED BEFORE, THOSE ARE THE  
21 REQUIRED PAGES LIKE 25 -- I THINK I ALREADY SAID 25, 26, 27 AND  
22 29 AND THEN 34, 35, 36. THOSE ARE THE REQUIRED.

23 Q. THOSE WERE REQUIRED, AND THE REMAINDER WAS OPTIONAL?

24 A. THE REMAINING WAS OPTIONAL.

25 Q. AND BEFORE YOU ASSIGNED THIS PORTION TO THE STUDENTS FOR

1 REVIEW AS AN EXCERPT, DID YOU DO A FAIR USE ANALYSIS, PROFESSOR  
2 KIM?  
3 A. YOU MEAN BEFORE I UPLOADED THE CHAPTER?  
4 Q. YES.  
5 A. YES.  
6 Q. BEFORE YOU UPLOADED THIS AS AN EXCERPT, DID YOU DO A FAIR  
7 USE ANALYSIS?  
8 A. YES.  
9 Q. OKAY. IN THAT ANALYSIS DID YOU CONSIDER EACH AND EVERY  
10 ONE OF THE FACTORS FROM THE CHECKLIST IN MAKING YOUR DECISION  
11 WHETHER THIS WAS A FAIR USE OR NOT?  
12 A. YES.  
13 Q. AND AS A RESULT OF MAKING THAT ANALYSIS, WHAT WAS YOUR  
14 CONCLUSION AS TO WHETHER THIS EXCERPT WAS A FAIR USE?  
15 A. IT WEIGHS UNDER FAIR USE.  
16 Q. LET'S GO TO THE NEXT ASSIGNMENT IN YOUR SYLLABUS WHICH  
17 WOULD BE THE BACHMAN 1990 PUBLICATION, CHAPTER 4. WHICH BOOK  
18 DID THAT COME FROM?  
19 A. THE TITLE OF THE BOOK IS FUNDAMENTAL CONSIDERATIONS IN  
20 LANGUAGE TESTING.  
21 Q. DO YOU HAVE THE EXHIBIT NUMBER THERE?  
22 A. 406.  
23 Q. THANK YOU. NOW, WOULD YOU EXPLAIN FOR US WHAT'S THE  
24 SUBJECT MATTER OF THE CHAPTER THAT YOU WERE ASSIGNING TO THE  
25 STUDENTS FROM THE BACHMAN ARTICLE CHAPTER 4?

ANDRE G. ASHLEY, O.C.R.

1 A. AS I MENTIONED BEFORE, DURING THAT WEEK THE PURPOSE OF THE  
2 CLASS WAS TO UNDERSTAND WHAT MEANS LANGUAGE ABILITY, AND  
3 CHAPTER 4 THE TITLE IS COMMUNICATIVE LANGUAGE ABILITY. SO THIS  
4 CHAPTER DESCRIBES VERY SIMILAR CONTENT, BUT THIS IS ONE OF THE  
5 ORIGINAL WORKS.

6 SO THAT'S WHY I MADE IT OPTIONAL BECAUSE I FOUND THEM  
7 TO BE RATHER REPETITIVE TO HAVING IT AS A REQUIRED READING. SO  
8 THAT'S THE REASON WHY I HAD THIS AS AN OPTIONAL READING BECAUSE  
9 IT COVERS THE SAME TOPIC WHICH IS ABOUT LANGUAGE ABILITY.

10 Q. EVEN THOUGH IT'S OPTIONAL, DID YOU PERFORM A FAIR USE  
11 ANALYSIS BEFORE UPLOADING THIS MATERIAL?

12 A. YES.

13 Q. AND WHEN YOU DID THAT FAIR USE ANALYSIS, DID YOU CONSIDER  
14 EACH AND EVERY ONE OF THE FACTORS FOR A FAIR USE ANALYSIS  
15 BEFORE REACHING YOUR DECISION?

16 A. YES.

17 Q. AND WHAT WAS YOUR CONCLUSION WITH RESPECT TO WHETHER YOUR  
18 USE OF THIS MATERIAL WAS A FAIR USE OR NOT?

19 A. IT WEIGHS IN FAVOR OF FAIR USE.

20 Q. LET'S LOOK AT THE NEXT ASSIGNMENT WHICH IS THE WEEK 6  
21 PURPURA ARTICLE CHAPTERS 3 AND 5; WHAT BOOK IS THAT FROM?

22 A. ASSESSING GRAMMAR.

23 Q. WOULD YOU EXPLAIN FOR THE COURT WHY YOU CHOSE THESE TWO  
24 CHAPTERS FOR THE STUDENTS TO REVIEW IN YOUR COURSE AND WHAT  
25 THAT RELATION -- AND THE RELATIONSHIP OF THAT MATERIAL TO THE

1 SUBJECT THAT YOU WERE TEACHING ON WEEK 6?

2 A. SO WEEK 6 WE STARTED TALKING ABOUT MORE PRACTICAL ISSUES.  
3 SO AS YOU CAN SEE THERE, WE WENT THROUGH GRAMMAR, VOCABULARY,  
4 READING, LISTENING AND SPEAKING.

5 THE REASON WHY I CHOSE THOSE TWO CHAPTERS WAS THE  
6 REQUIRED TEXTBOOK WHICH WAS BROWN 2004 DIDN'T HAVE ANY  
7 DISCUSSION ON THIS TOPIC. SO IT WAS REALLY IMPORTANT FOR ME TO  
8 CHOOSE EXTRA EXCERPTS SO THAT MY STUDENTS CAN READ MORE ABOUT  
9 HOW TO WRITE GRAMMAR TEST ITEMS.

10 Q. WOULD YOU REVIEW THOSE TWO CHAPTERS FOR ME, PROFESSOR KIM,  
11 AND IDENTIFY MATERIAL IN THERE THAT YOU BELIEVE IS NOT ORIGINAL  
12 WITH THE AUTHOR AS YOU UNDERSTAND THE BOOK?

13 MR. LARSON: YOUR HONOR, I OBJECT ON FOUNDATION  
14 GROUNDS. I DON'T KNOW HOW THIS WITNESS WOULD KNOW THAT OR NOT.

15 MR. ASKEW: I WILL ASK HER TO EXPLAIN HOW SHE REACHES  
16 THAT CONCLUSION.

17 THE COURT: GO AHEAD. OVERRULED.

18 BY MR. ASKEW:

19 Q. COULD YOU IDENTIFY THE PAGES THAT YOU'RE REFERRING TO?

20 THE COURT: THE EXHIBIT NUMBER IS?

21 MR. ASKEW: PLAINTIFFS' EXHIBIT 15.

22 THE COURT: THE BOOK?

23 MR. ASKEW: THE BOOK, YES.

24 THE WITNESS: ASSESSING GRAMMAR, AND ON PAGE 114

25 THERE ARE LOT OF EXAMPLES, BUT I WOULD LIKE TO USE THIS

1 EXAMPLE. STARTING FROM 113, AS I DESCRIBED THESE ASSESSING  
2 SERIES AND A LOT OF CHAPTERS FOLLOWS VERY SIMILAR WAY, SO IF  
3 YOU LOOK AT 113, THE BACHMAN AND PALMER FRAMEWORK, AND I USED  
4 THE BOOK CALLED LANGUAGE TESTING AND PRACTICE. THE AUTHOR  
5 REVIEWED WHAT BACHMAN AND PALMER DISCUSSED IN THIS CHAPTER.

6 SO IF YOU MOVE TO 114, THE ENTIRE TABLE TABLE 5.3  
7 REVIEWS WHAT BACHMAN AND PALMER DISCUSSED IN THE CHAPTER, AND  
8 THEN IF YOU TAKE A LOOK AT PAGE 119, THE TABLE TITLE IS UCLA  
9 RATING SCALE. THIS IS A PUBLICLY AVAILABLE SCALE. SO THE  
10 AUTHOR BASICALLY DESCRIBES HOW TO ASSESS GRAMMAR, HOW TO ASSESS  
11 STUDENT'S ABILITY. SO BASICALLY IT REVIEWS OR SYNTHESIZE FOR  
12 THE EXISTING PUBLICLY AVAILABLE SAMPLES IN THESE CHAPTERS.

13 THE REASON WHY I CHOSE THOSE CHAPTERS IS THEY CAN  
14 TAKE A LOOK AT DIFFERENT EXAMPLES IN ONE CHAPTER, AND THEN  
15 REVIEW WHAT'S AVAILABLE OUT THERE.

16 Q. DO YOU HAVE OTHER EXAMPLES FROM THIS SECTION OF THE BOOK  
17 THAT ILLUSTRATE WHAT YOU BELIEVE IS MATERIAL THAT'S NOT IN THE  
18 ORIGINAL WORK BY THE AUTHOR?

19 A. IF I YOU TAKE A LOOK AT LIKE 127, EXAMPLES OF TASK TYPES,  
20 THIS EXAMPLE IS IN OUR ORIGINAL TEXTBOOK AS WELL. SO THE  
21 AUTHOR GOES THROUGH DIFFERENT TASK TYPES, AND ALL THE EXAMPLES  
22 THE AUTHOR PROVIDE LIKE MULTIPLE CHOICE QUESTIONS, MATCHING  
23 TASKS, AND IN ALL THE EXAMPLES THAT HE DISCUSSES IN THE  
24 CHAPTER, NOT ALL BUT A LOT OF THEM ARE FROM THE EXISTING  
25 TEXTBOOKS, FOR INSTANCE, PAGE 145, GAP FILLING TASK.

1                   SO A LOT OF THE CHAPTERS JUST GO THROUGH THESE  
2 INDIVIDUAL EXAMPLES, AND THESE EXAMPLES ARE FROM DIFFERENT  
3 RESOURCES, EITHER PUBLICLY AVAILABLE WEBSITE, STANDARDIZED  
4 TESTS LIKE EDUCATIONAL TESTING SERVICE, OR IF YOU TAKE A LOOK  
5 AT 147 --

6 Q.    YOU SAID THE EDUCATION TESTING SERVICE?

7 A.    YEAH, ETS WHICH IS EDUCATIONAL TESTING SERVICE.

8 Q.    THAT'S A GROUP THAT ADMINISTERS THE SCHOLASTIC APTITUDE  
9 TEST?

10 A.    YES, THAT COMPANY MAKES ALL THE STANDARDIZED SECOND  
11 LANGUAGE TESTS OR GRE WHICH IS REQUIRED TO GET INTO PH.D.  
12 PROGRAMS OR MASTERS PROGRAMS.

13                   SO IF YOU GO TO THAT WEBSITE, THEY PUBLICIZE ALL  
14 THESE SAMPLE MATERIALS, AND THEN WHAT THESE AUTHORS ARE DOING  
15 IN THESE ASSESSING SERIES IS COMPILE THOSE SAMPLES AND DESCRIBE  
16 DIFFERENT TYPES OF MATERIALS IN THOSE CHAPTERS.

17                   AND LIKE ON PAGE 137, THAT'S AN EXAMPLE FROM A  
18 DIFFERENT BOOK, AND I DO NOT WANT TO TAKE MUCH TIME, BUT IF YOU  
19 TAKE A LOOK AT ALL THE SAMPLES PROVIDED IN THIS TEXTBOOK, IT  
20 TAKES A LOT OF SPACE.

21 Q.    THANK YOU. LET'S GO TO THE NEXT EXCERPT THAT YOU USED.  
22 IT CAME FROM THE READ BOOK CHAPTER 6 FOR WEEK 7; WHAT WAS  
23 THAT?

24 A.    ASSESSING VOCABULARY.

25 Q.    CAN YOU EXPLAIN FOR THE COURT WHY YOU CHOSE THAT CHAPTER

1 FOR YOUR CLASS TO READ, AND HOW IT RELATED TO THE COURSE THAT  
2 YOU WERE TEACHING TO THE CLASS ON THAT DAY?

3 A. IT'S VERY SIMILAR TO ASSESSING GRAMMAR WEEK. THE PURPOSE  
4 OF THE PARTICULAR CLASS SESSION WAS TO HELP MY STUDENTS HOW TO  
5 MAKE A VOCABULARY TEST IN CLASS.

6 SO THE TITLE OF THE CHAPTER WAS THE DESIGN OF  
7 DISCRETE VOCABULARY TESTS. SO THIS CHAPTER, VERY SIMILAR TO  
8 THE ONE I JUST DESCRIBED, PROVIDED EXAMPLES FROM EXISTING  
9 STANDARDIZED TESTS IN PUBLISHED WORK ALREADY.

10 SO, FOR INSTANCE, PAGE 166, AS I SAID LIKE MY  
11 STUDENTS WERE EITHER IN-SERVICE TEACHERS OR PRE-SERVICE  
12 TEACHERS, AND THIS PARTICULAR TOPIC WHICH IS ABOUT ASSESSMENT  
13 WILL INTIMIDATE THEM TO MAKE EFFECTIVE TESTS. BECAUSE  
14 SOMETIMES MAKING CLASSROOM BASED ASSESSMENT CAN BE REALLY HIGH  
15 RISK ACTIVITY BECAUSE THEY HAVE TO GIVE SCORE GRADES TO THEIR  
16 OWN STUDENTS.

17 SO FOR THIS PARTICULAR CLASS I INTRODUCED DIFFERENT  
18 TYPES OF VOCABULARY TEST ITEMS, AND AS YOU CAN SEE THERE ON  
19 PAGE 166 THE ENTIRE PAGE IS A SAMPLE OF A VOCABULARY SIZED TEST  
20 FOR NATIVE SPEAKERS OF ENGLISH.

21 SO I DO NOT WANT TO REPEAT MYSELF; HOWEVER, THIS  
22 ENTIRE CHAPTER PROVIDES EXAMPLES, EXAMPLES AND EXAMPLES, AND  
23 THE AUTHOR DESCRIBES HOW THESE EXAMPLES WORK IN DIFFERENT  
24 EDUCATIONAL CONTEXT.

25 Q. BEFORE POSTING AN EXCERPT FROM ASSESSING VOCABULARY, DID

1 YOU CONDUCT A FAIR USE ANALYSIS?

2 A. YES.

3 Q. AND IN THAT ANALYSIS DID YOU CONSIDER EACH AND EVERY ONE  
4 OF THE FACTORS WITH RESPECT TO HOW TO DETERMINE WHETHER  
5 SOMETHING IS A FAIR USE?

6 A. YES.

7 Q. AND WHAT WAS YOUR CONCLUSION AS TO WHETHER THE USE OF THE  
8 CHAPTER BY READ OUT OF ASSESSING VOCABULARY WAS A FAIR USE OR  
9 NOT?

10 A. IT WEIGHS IN FAVOR OF FAIR USE.

11 Q. AND I DON'T THINK I COVERED THAT SUBJECT WITH ASSESSING  
12 GRAMMAR BY PURPURA. DID YOU CONDUCT A FAIR USE ANALYSIS  
13 WITH RESPECT TO THE ARTICLE BY PURPURA BEFORE YOU POSTED IT  
14 ONLINE?

15 A. YES.

16 Q. AND DID YOU CONSIDER EACH AND EVERY ONE OF THE FACTORS  
17 CONCERNING FAIR USE BEFORE YOU REACHED A CONCLUSION AS TO  
18 WHETHER THE SUBJECT WAS A FAIR USE OR NOT?

19 A. YES.

20 Q. AND WHAT WAS YOUR CONCLUSION AS TO WHETHER YOUR USE OF THE  
21 CHAPTER BY PURPURA WAS A FAIR USE?

22 A. IT WEIGHS IN FAVOR OF FAIR USE.

23 MR. ASKEW: YOUR HONOR, I HAVE GOT A FEW MORE BOOKS  
24 TO GO THROUGH. IT'S ALMOST 4:30. I DON'T THINK I'M GOING TO  
25 BE FINISHED IN THE NEXT FIVE OR TEN MINUTES.

ANDRE G. ASHLEY, O.C.R.



1 THE COURT: LET'S STOP. I'LL SEE YOU ALL AT 9:30.

2 (PROCEEDINGS ADJOURNED)

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6

7

INDEX

8

JODI KAUFMANN

9 CROSS-EXAMINATION (CONTINUED)

BY MR. HARBIN:..... 2

10 REDIRECT EXAMINATION

BY MR. KRUGMAN:..... 38

11 REDIRECT EXAMINATION

BY MR. HARBIN:..... 46

12

JENNIFER ESPOSITO

13 DIRECT EXAMINATION

BY MR. LARSON:..... 52

14 CROSS-EXAMINATION

BY MR. ASKEW:..... 79

15 REDIRECT EXAMINATION

BY MR. LARSON:..... 93

16

YOUJIN KIM

17 DIRECT EXAMINATION

BY MR. LARSON:..... 95

18 CROSS-EXAMINATION

BY MR. ASKEW:..... 128

19

20

21

22

23

24

25

1  
2  
3  
4  
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C-E-R-T-I-F-I-C-A-T-E

UNITED STATES OF AMERICA  
NORTHERN DISTRICT OF GEORGIA

I, ANDRE G. ASHLEY, DO HEREBY CERTIFY THAT I AM A  
U.S. DISTRICT REPORTER FOR THE NORTHERN DISTRICT OF GEORGIA,  
THAT I REPORTED THE FOREGOING AND THE SAME IS A TRUE AND  
ACCURATE TRANSCRIPTION OF MY MACHINE SHORTHAND NOTES AS TAKEN  
AFORESAID.

IN TESTIMONY WHEREOF I HAVE HEREUNTO SET MY HAND ON  
THIS 16TH DAY OF JUNE, 2011.

ANDRE G. ASHLEY  
OFFICIAL COURT REPORTER  
NORTHERN DISTRICT OF GEORGIA