

AO 88A (Rev. 01/09) Subpoena to Testify at a Deposition or to Produce Documents in a Civil Action

UNITED STATES DISTRICT COURT

for the
District of Massachusetts

Cambridge University Press, et al.)	
<i>Plaintiff</i>)	
v.)	Civil Action No. 1:08-CV-1425-ODE
Mark P. Becker, in his official capacity as Georgia State University President, et al.)	(If the action is pending in another district, state where:
<i>Defendant</i>)	Northern District of Georgia

SUBPOENA TO TESTIFY AT A DEPOSITION OR TO PRODUCE DOCUMENTS IN A CIVIL ACTION

To: Copyright Clearance Center, Inc.
222 Rosewood Dr, Danvers, MA 01923-4520

Testimony: **YOU ARE COMMANDED** to appear at the time, date, and place set forth below to testify at a deposition to be taken in this civil action. If you are an organization that is *not* a party in this case, you must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on your behalf about the following matters, or those set forth in an attachment:

See Schedule "A."

Place: Courtyard by Marriott 275 Independence Way, Danvers, MA 01923-3652 or another location mutually agreeable to both parties	Date and Time: 04/27/2009 9:00 am
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The deposition will be recorded by this method: Videotaped and stenographically recorded

Production: You, or your representatives, must also bring with you to the deposition the following documents, electronically stored information, or objects, and permit their inspection, copying, testing, or sampling of the material:

See Schedule "A."

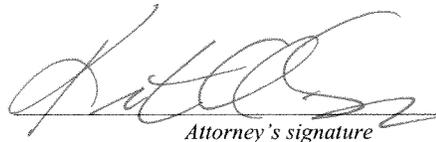
The provisions of Fed. R. Civ. P. 45(c), relating to your protection as a person subject to a subpoena, and Rule 45 (d) and (e), relating to your duty to respond to this subpoena and the potential consequences of not doing so, are attached.

Date: 03/31/2009

CLERK OF COURT

Signature of Clerk or Deputy Clerk

OR



Attorney's signature

The name, address, e-mail, and telephone number of the attorney representing (*name of party*) Defendants, who issues or requests this subpoena, are:

Kristen A. Swift
King & Spalding LLP, 1180 Peachtree St, NE, Atlanta, GA 30309
(404) 572-4762 kswift@kslaw.com

Civil Action No. 1:08-CV-1425-ODE

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

This subpoena for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

I personally served the subpoena on the individual at *(place)* _____
_____ on *(date)* _____; or

I left the subpoena at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the subpoena on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____; or

I returned the subpoena unexecuted because _____; or

Other *(specify)*:

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also
tendered to the witness fees for one day's attendance, and the mileage allowed by law, in the amount of
\$ _____.

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

Federal Rule of Civil Procedure 45 (c), (d), and (e) (Effective 12/1/07)

(c) Protecting a Person Subject to a Subpoena.

(1) *Avoiding Undue Burden or Expense; Sanctions.* A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The issuing court must enforce this duty and impose an appropriate sanction — which may include lost earnings and reasonable attorney’s fees — on a party or attorney who fails to comply.

(2) *Command to Produce Materials or Permit Inspection.*

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises — or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

(i) At any time, on notice to the commanded person, the serving party may move the issuing court for an order compelling production or inspection.

(ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party’s officer from significant expense resulting from compliance.

(3) *Quashing or Modifying a Subpoena.*

(A) *When Required.* On timely motion, the issuing court must quash or modify a subpoena that:

(i) fails to allow a reasonable time to comply;

(ii) requires a person who is neither a party nor a party’s officer to travel more than 100 miles from where that person resides, is employed, or regularly transacts business in person — except that, subject to Rule 45(c)(3)(B)(iii), the person may be commanded to attend a trial by traveling from any such place within the state where the trial is held;

(iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the issuing court may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information;

(ii) disclosing an unretained expert’s opinion or information that does not describe specific occurrences in dispute and results from the expert’s study that was not requested by a party; or

(iii) a person who is neither a party nor a party’s officer to incur substantial expense to travel more than 100 miles to attend trial.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(c)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

(i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

(ii) ensures that the subpoenaed person will be reasonably compensated.

(d) Duties in Responding to a Subpoena.

(1) *Producing Documents or Electronically Stored Information.* These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) *Claiming Privilege or Protection.*

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

(i) expressly make the claim; and

(ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the court under seal for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(e) *Contempt.* The issuing court may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena. A nonparty’s failure to obey must be excused if the subpoena purports to require the nonparty to attend or produce at a place outside the limits of Rule 45(c)(3)(A)(ii).

SCHEDULE “A” TO COPYRIGHT CLEARANCE CENTER, INC.

DEFINITIONS

As used herein:

A. “Defendants” mean defendants MARK P. BECKER, in his official capacity as Georgia State University President, RON HENRY, in his official capacity as Georgia State University Provost, NANCY SEAMANS, in her official capacity as Georgia State University Dean of Libraries, J.L. ALBERT, in his official capacity as Georgia State University Associate Provost for Information Systems and Technology, KENNETH R. BERNARD, JR., in his official capacity as member of the Board of Regents of the University System of Georgia, JAMES A. BISHOP, in his official capacity as member of the Board of Regents of the University System of Georgia, HUGH A. CARTER, JR., in his official capacity as member of the Board of Regents of the University System of Georgia, WILLIAM H. CLEVELAND, in his official capacity as member of the Board of Regents of the University System of Georgia, ROBERT F. HATCHER, in his official capacity as Vice Chair of the Board of Regents of the University System of Georgia, FELTON JENKINS, in his official capacity as member of the Board of Regents of the University System of Georgia, W. MANSFIELD JENNINGS, JR., in his official capacity as member of the Board of Regents of the University System of

Georgia, JAMES R. JOLLY, in his official capacity as member of the Board of Regents of the University System of Georgia, DONALD M. LEEBERN, JR., in his official capacity as member of the Board of Regents of the University System of Georgia, ELRIDGE MCMILLAN, in his official capacity as member of the Board of Regents of the University System of Georgia, WILLIAM NESMITH, JR., in his official capacity as member of the Board of Regents of the University System of Georgia, DOREEN STILES POITEVINT, in her official capacity as member of the Board of Regents of the University System of Georgia, WILLIS J. POTTS, JR., in his official capacity as member of the Board of Regents of the University System of Georgia, WANDA YANCEY RODWELL, in her official capacity as member of the Board of Regents of the University System of Georgia, KESSEL STELLING, JR., in his official capacity as member of the Board of Regents of the University System of Georgia, BENJAMIN J. TARBUTTON, III, in his official capacity as member of the Board of Regents of the University System of Georgia, RICHARD L. TUCKER, in his official capacity as Chair of the Board of Regents of the University System of Georgia, and ALLAN VIGIL, in his official capacity as member of the Board of Regents of the University System of Georgia (“Defendants”), and only in said capacities, and all other persons presently acting or purporting to act on behalf of Defendants.

B. “Copyright Clearance Center,” “CCC,” “you,” and “your” mean Copyright Clearance Center, Inc. and all its subsidiaries, affiliates, and divisions, both U.S. and foreign, collectively and individually, and all other persons presently acting or purporting to act on behalf of Copyright Clearance Center.

C. “Works” or “Works at Issue” mean the following titles:

- 1) Ethan Schiener, Democracy without Competition in Japan.
Cambridge University Press.
- 2) Patrick Russill, “Catholic Germany and Austria,” Cambridge Companion to the Organ. Cambridge University Press.
- 3) Geoffrey Webber, “The North German Organ School,”
Cambridge Companion to the Organ. Cambridge University
Press.
- 4) Theda Skocpal, States and Social Revolutions: A Comparative Analysis of France, Russia, and China. Cambridge University
Press.
- 5) Gwyneth Fox, “Using corpus data in the classroom,” Materials Development in Language Teaching. Cambridge University
Press.

- 6) David Jolly & Rod Bolitho, “A framework for materials writing,” Materials Development in Language Teaching. Cambridge University Press.
- 7) Philip Prowse, “How writers write: testimony from authors,” Materials Development in Language Teaching. Cambridge University Press.
- 8) Richard Allwright & Kathleen M. Bailey, Focus on the Language Classroom. Cambridge University Press.
- 9) Gary Cox & Matthew McCubbins, Legislative Leviathan. Cambridge University Press.
- 10) Christopher Simpson, Science of Coercion: Communication Research and Psychological Warfare 1945-1960. Oxford University Press.
- 11) George M. Frederickson, White Supremacy: A Comparative Study of American and South African History. Oxford University Press.
- 12) Laura E. Berk, Awakening Children’s Minds: How Parents and Teachers Can Make a Difference. Oxford University Press (2001).

- 13) John W. Blassingame, The Slave Community: Plantation Life in the Antebellum South. Oxford University Press.
- 14) Susan Chase, “Narrative Inquiry,” Sage Handbook of Qualitative Research, 3d ed. SAGE Publications.
- 15) Russell Bishop, “Freeing Ourselves from Neocolonial Domination in Research,” Sage Handbook of Qualitative Research, 3d ed. SAGE Publications.
- 16) Joe L. Kincheloe & Peter McLaren, “Rethinking Critical Theory and Qualitative Research,” Sage Handbook of Qualitative Research, 3d ed. SAGE Publications.
- 17) Kenneth Plummer, “Critical Humanism and Queer Theory: Living with the Tensions,” Sage Handbook of Qualitative Research, 3d ed. SAGE Publications.
- 18) Robert Stake, “Qualitative Case Studies,” Sage Handbook of Qualitative Research, 3d ed. SAGE Publications.
- 19) John Beverley, “Testimonio, Subalternity, and Narrative Authority,” Sage Handbook of Qualitative Research, 3d ed. SAGE Publications.

- 20) John Smith & Phil Hodkinson, "Relativism, Criteria, and Politics," Sage Handbook of Qualitative Research, 3d ed. SAGE Publications.
- 21) Laurel Richardson & Elizabeth Adams St. Pierre, "Writing: A Method of Inquiry," Sage Handbook of Qualitative Research, 3d ed. SAGE Publications.
- 22) Micheal Angrosino & Kimberly A. mays de Perez, "Rethinking Observation: From Method to Context," Sage Handbook of Qualitative Research, 2d ed. SAGE Publications.
- 23) Yvonna S. Lincoln & Egon G. Guba, "Paradigmatic Controversies, Contradictions, and Emerging Confluences," Sage Handbook of Qualitative Research, 2d ed. SAGE Publications.
- 24) Robert Stake, "Case Studies," Sage Handbook of Qualitative Research, 2d ed. SAGE Publications.
- 25) Barbara Tedlock, "Ethnography and Ethnographic Representation," Sage Handbook of Qualitative Research, 2d ed. SAGE Publications.

- 26) Kathy Charmaz, “Grounded Theory: Objectivist and Constructivist Methods,” Sage Handbook of Qualitative Research, 2d ed. SAGE Publications.
- 27) Andrea Fontana & James H. Frey, “The Interview: From Structured Questions to Negotiated Text,” Sage Handbook of Qualitative Research, 2d ed. SAGE Publications.
- 28) Liesbet van Zoonen, Feminist Media Studies. SAGE Publications.
- 29) Milan J. Dluhy, Changing the Political System. SAGE Publications.

D. “Annual Copyright License” means the CCC’s academic Annual Copyright License described at

<http://www.copyright.com/ccc/viewPage.do?pageCode=ac12>.

E. “Fair Use Checklist” means the Fair Use Checklist posted on CCC’s website, available at

http://www.copyright.com/Services/copyrightoncampus/basics/fairuse_list.html.

F. “Fair Use” means the doctrine of fair use as codified in 17 U.S.C. § 107.

G. "Document(s)" has the broadest meaning intended under Fed. R. Civ. P. 34 and includes, by way of illustration only and not by way of limitation, every writing or record of every type and description including those existing in all manner of memory means or devices used in connection with electronic computers or word processors that is or has been in your possession, control or custody, or of which you have knowledge, including without limitation: papers, contracts, correspondence, memoranda, tapes, communications, invoices, accounts, stenographic or handwritten notes, studies, publications, books, pamphlets, pictures, photographs, films, videotapes, sound or voice recordings, maps, reports, surveys, minutes, graphs, statistical compilations, charts, calculations, projections, plans, data processing cards, tapes or disks of computer records or printouts; a copy of every such writing or record where such copy is not an identical copy of the original or where such copy contains any commentary or notation whatsoever that does not appear on the original.

H. "Person(s)" shall mean any individual(s), firm(s), partnership(s), corporation(s), proprietorship(s), association(s), governmental body or bodies, or any other organization(s) or entity(ies).

I. "Date(s)" shall mean the exact day, month and year if ascertainable, or, if not, the best available approximation (including relationship to other events).

J. “Identify” or “specify,” or any permutation thereof, when used in reference to a Person who is an individual, shall mean to state the full name, present or last known address, telephone number, and present or last known position or business affiliation.

K. “Identify” or “specify,” or any permutation thereof, when used in reference to a Person who is a firm, partnership, corporation, proprietorship, association, or other organization or entity, shall mean to state its full name, the legal form of such entity or organization, its present or last known address, and the identity of its chief executive officer, partners, or persons in equivalent positions.

L. “Identify” or “specify,” or any permutation thereof, when used in reference to a communication shall mean to state the persons involved, the date, and the substance of the communication.

M. “Identify” or “specify,” or any permutation thereof, when used in reference to a meeting shall mean to state the Persons involved, the dates, and the substance of the meeting.

N. “Relating,” “concerning” or “regarding,” or any permutation thereof, mean that which is constituting, comprising, disclosing, reflecting, recording, assessing, describing, discussing, concerning, supporting, contradicting,

embodying, evidencing, mentioning, pertaining or in any other manner touching upon.

O. “All” means any and all, and “any” likewise means any and all, unless the context requires otherwise.

P. “And” and “or” shall be construed both conjunctively and disjunctively and the singular shall be deemed to also refer to the plural and vice versa.

Q. “Entity” means any individual, firm, partnership, corporation, proprietorship, association, governmental body, or any other organization.

R. “Each” shall be construed to include the word “every.” “Every” shall be construed to include the word “each.”

S. Masculine pronouns do not connote any particular gender but are to be taken to mean masculine, feminine, or neuter gender, as the case may be.

T. “Thing(s)” has the broadest meaning allowable under Federal Rule of Civil Procedure 34 and means every kind of physical specimen or tangible item, other than a document.

U. “Communication(s)” means any verbal or written transmission of information by any means including, but not limited to, telephone, letter, telegram,

teletype, telex, telecopy, computer linkup, electronic mail (e-mail), written memorandum, and face-to-face communication.

I. REQUEST FOR PRODUCTION OF DOCUMENTS

A. INSTRUCTIONS

For purposes of these Requests for Documents, you shall produce your documents as they are kept in the usual course of business, and pursuant to the following instructions.

A. All documents responsive to Defendants' requests shall be produced for inspection and copying at the offices of King & Spalding LLP, 1180 Peachtree Street NE, Atlanta, GA 30309, by or before April 13, 2009, or at some other time and place as mutually agreed by the parties.

B. Unless otherwise specified, the time period covered by these requests is the period from April 1, 2005, to the date of service of your responses to these requests.

C. These requests shall be continuing to the fullest extent permitted under the applicable provisions of the Federal Rules of Civil Procedures, and you are requested to promptly provide supplemental responses as additional information becomes known or available to you after the date of your initial

written responses to these requests in accordance with Rule 26(e) of the Federal Rules of Civil Procedure.

D. If any request is objected to as overly broad or unduly burdensome, produce those documents and/or things that are unobjectionable and specifically identify the respect in which the request is allegedly overly broad or unduly burdensome, respectively.

E. All questions regarding the meaning or interpretation of these requests should be directed to the undersigned counsel.

F. Produce each requested document in its entirety, including all attachments and enclosures, even if only a portion of the document is responsive to the request.

G. If you contend that you are entitled on the basis of any claim of privilege to withhold any information or documents in response to these requests for production, provide the following information with respect to such documents:

- 1) State the basis or the grounds for the claim of privilege;
- 2) Identify the person on whose behalf the claim of privilege is being asserted;

- 3) State the subject matter of the information or document; and
- 4) Specify the requests to which the information is responsive.

B. DOCUMENT REQUESTS

1. All documents sufficient to show requests by any person for permission to use, copy, reproduce, post, or display any of the Works at Issue.
2. All documents evidencing grants of any requests for permission given by CCC to use, copy, reproduce, post, or display any of the Works at Issue and the terms of such grants, including invoices and/or agreements.
3. All documents evidencing refusals by the CCC to give permission to use, copy, reproduce, post or display any of the Works at Issue.
4. All documents concerning CCC's academic Annual Copyright License, including the terms of the Annual Copyright License, the content that is covered by the Annual Copyright License, and how many schools, colleges, universities, and/or other academic institutions subscribe to the Annual Copyright License.
5. All documents evidencing or constituting any agreement or business arrangement, whether written or oral, between CCC and Plaintiffs Cambridge University Press, Oxford University Press, Inc., and/or SAGE Publications, Inc.

6. All documents constituting guidelines or requirements for when academic institutions, academic professors, or individuals should request a license from CCC concerning the use of materials for which CCC grants licenses.

7. All documents concerning the creation and purpose of CCC's Fair Use Checklist.

II. 30(b)(6) DEPOSITION

A. INSTRUCTIONS

Pursuant to Rule 30(b)(6) of the Federal Rules of Civil Procedure, CCC is hereby instructed to designate for deposition one or more of its officers, directors, agents, employees, or other persons duly authorized to testify on its behalf, who is or are knowledgeable regarding the subjects listed below in Section B, on April 27, 2009, at 9:00 a.m. at the Courtyard by Marriott, 275 Independence Way, Danvers, MA 01923-3652, or at such other time, date or location, as mutually agreed by the parties. The deposition will be videotaped and may be stenographically recorded before a notary public or other officer authorized to administer oaths and will continue from day to day thereafter until completed.

B. TOPICS FOR EXAMINATION

1. Requests by any academic institution, academic professor, or other person for permission to use, copy, reproduce, post, or display academic works.
2. Grants of any requests for permission given by CCC to use, copy, reproduce, post, or display academic works and the terms of such grants.
3. Refusals by CCC to give permission to use, copy, reproduce, post or display academic works and the reasons behind such refusals.

4. CCC's academic Annual Copyright License, including but not limited to the terms of the Annual Copyright License, the content that is covered by the Annual Copyright License, and how many schools, colleges, universities, and/or other academic institutions subscribe to the Annual Copyright License.

5. CCC's Fair Use Checklist, including but not limited to its creation and purpose.

6. CCC's "The Campus Guide to Copyright Compliance," available at <http://www.copyright.com/Services/copyrightoncampus/>, including but not limited to its creation and purpose.

7. CCC's "Using Electronic Reserves," available at <http://www.copyright.com/media/pdfs/Using-Electronic-Reserves.pdf>, including but not limited to its creation and purpose.

8. The procedures, processes, and/or policies governing CCC's determination of whether a given request for permission qualifies as Fair Use, including but not limited to the frequency with which CCC determines that a request for permission qualifies as Fair Use.

9. CCC's involvement in this lawsuit, including but not limited to the persons involved, the nature of each person's involvement, and any financial

assistance CCC may be providing to Plaintiffs Cambridge University Press, Oxford University Press, Inc. and SAGE Publications, Inc.

10. Any financial impact Georgia State University's use of copyrighted material on electronic reserves or other course management systems has had on CCC.

11. How CCC is compensated by copyright holders, including Plaintiffs Cambridge University Press, Oxford University Press, Inc., and SAGE Publications, Inc., for approving and/or denying requests for permission to use the works of such copyright holders and facilitating the transaction(s) resulting from any such approval or denial.

12. The terms of any agreement or business arrangement, whether written or oral, between CCC and Plaintiffs Cambridge University Press, Oxford University Press, Inc., and SAGE Publications, Inc. regarding Plaintiffs' copyrights.

13. CCC'S guidelines or requirements for when academic institutions, academic professors, or individuals should request a license from CCC concerning the use of materials for which CCC grants licenses.