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

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

- - -

Videotaped deposition of JODI KAUFMANN, taken on behalf of the plaintiffs, pursuant to the stipulations contained herein, before Teresa Bishop, RPR, RMR, CCR No. B-307, at 104 Marietta Street, 6th floor, Room 3, Atlanta, Georgia, on Wednesday, May 6, 2009, commencing at the hour of 8:55 a.m.

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

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APPEARANCES OF COUNSEL:

FOR THE PLAINTIFFS:

R. BRUCE RICH
TODD D. LARSON
ATTORNEYS AT LAW
WEIL GOTSHAL & MANGES
767 FIFTH AVENUE
NEW YORK, NY 10153-0119
212.310.8238
TODD.LARSON@WEIL.COM

JOHN H. RAINS, IV
ATTORNEY AT LAW
BONDURANT, MIXSON & ELMORE
1201 WEST PEACHTREE
SUITE 3900
ATLANTA GA 30309-3417
404.881.4121

FOR THE DEFENDANTS:

LAURA GRAY
ATTORNEY AT LAW
KING & SPALDING
1180 PEACHTREE STREET, N.E.
ATLANTA, GA 30309-3521
404.572.2530
taskew@kslaw.com

BHARATH PARTHASARATHY
ATTORNEY AT LAW
GEORGIA STATE UNIVERSITY
OFFICE OF LEGAL AFFAIRS
P.O. BOX 3987
ATLANTA, GA. 30302-3987

ALSO PRESENT:

KENNITH DRAKE, VIDEOGRAPHER

- - -

1 THE VIDEOGRAPHER: This will be the
2 videotaped deposition of Jodi Kaufmann
3 taken by the plaintiffs in the matter of
4 Cambridge University Press et. al. versus
5 Mark P. Becker in his official capacity as
6 Georgia State University president et. al.

7 The date is May 6th, 2009. We are on
8 the record at 8:55:56.

9 JODI KAUFMANN,
10 having been first duly sworn, was examined and testified as
11 follows:

12 EXAMINATION

13 BY MR. RICH:

14 Q. Good morning. My name is Bruce Rich. I'm a
15 partner at the law firm of Weil, Gotshal & Manges and
16 our firm as I think you may know represents the
17 plaintiffs in this action. And I will be asking you
18 questions at today's deposition.

19 Would you state your name and address for the
20 record, please?

21 A. Jodi Kaufmann. 2219 Lake Park Drive.

22 Q. And Ms. Kaufmann, have you ever been through
23 the process of a deposition?

24 A. No.

25 Q. I take it, though, that you're being

1 represented today by counsel?

2 A. Yes.

3 Q. And has your lawyer or have your lawyers
4 explained to you the basic procedures for the
5 deposition?

6 A. Yes.

7 Q. Okay. And I won't belabor that, but the main
8 suggestion I'll make to you is speak as clearly as you
9 can and make sure you understand my questions. And if
10 ever you don't I hope you won't hesitate, I know your
11 counsel won't, to indicate that you don't and I'll be
12 happy to try to accommodate you.

13 What did you do to prepare for today's
14 deposition?

15 A. I met with them and that was it.

16 Q. And when did you meet -- who is them?

17 A. Counsel. I met with them Monday.

18 Q. Can you identify who you met with by name?

19 A. Laura, and I don't remember the other names.

20 Q. Was any inside counsel for the university
21 present at the preparation?

22 A. Yes. Cynthia Hall.

23 Q. Okay. And for how long did you meet?

24 A. Approximately three hours.

25 Q. I may ask you as we identify certain documents

1 today whether you were shown any of those documents in
2 your preparation and you can advise me at that point in
3 time if you did so.

4 What is your position at Georgia State
5 University?

6 A. Assistant professor.

7 Q. And for how long have you been employed by
8 Georgia State in that capacity or any capacity?

9 A. Two and a half years.

10 Q. Okay. Did you begin as an assistant
11 professor?

12 A. Yes.

13 Q. All right. And is that a tenured track
14 position?

15 A. Yes.

16 Q. Have you earned tenure?

17 A. Not yet.

18 Q. What's the -- is there a normal timeline for
19 that process?

20 A. Three more years.

21 Q. Three more years. And what is your area or
22 what are your areas of teaching specialization?

23 A. I teach in the college of education and I
24 teach qualitative research.

25 Q. Do you teach both undergraduate and graduate

1 students?

2 A. No. Only graduate.

3 Q. Only graduate students. And since you have
4 been on the faculty at Georgia State University how many
5 different courses, by that I don't mean how many times
6 you may have taught a particular course, but how many
7 different substantive courses have you taught in your
8 field?

9 A. I believe three.

10 Q. Can you identify those?

11 A. 8500, EPRS 8500, EPRS 8510, EPSF 91 something.

12 Q. Okay. Now, could you put names to those
13 numbers?

14 A. Qualitative 1 is 8500. Qualitative 2 is 8510.
15 I don't remember what the other one was.

16 Q. Do you remember the general subject matter?

17 A. It's qualitative research. It might have been
18 interpretive inquiry.

19 Q. And who enrolls in these courses in terms of
20 what kind of degree candidates?

21 A. Predominantly Ph.D. students. And for some
22 students it's required, for some students it's an
23 elective.

24 Q. I'm sorry, if you could lift your voice a
25 little.

1 A. Some students it's required, some students
2 it's an elective.

3 Q. And for which group of students is it
4 required?

5 A. I don't know. I don't know.

6 Q. And what are the fewest number of students
7 that have ever actually enrolled in, sat through and
8 completed one of these courses?

9 A. I do not know the exact number. Approximately
10 12, 16, 14.

11 Q. And what would you estimate the largest number
12 you've had enrolled in one of these courses?

13 A. Approximately 22.

14 Q. And you say predominately Ph.D. candidates,
15 are there sometimes candidates for a master's degree who
16 are in the class?

17 A. I've had a couple master's degrees.

18 Q. To a total lay person in terms of the
19 meaningfulness of qualitative research, could you very
20 generally describe, if possible, what the field entails
21 at least in terms of the teaching aspirations and
22 intentions of these courses. And if you want to do it
23 overall, that's fine. If you want to break it down by
24 the three different course offerings or the two that you
25 recall, that's fine.

1 A. Qualitative research predominately looks at
2 understanding the every day life world and culture,
3 people's experiences. And so what I teach are methods
4 for students to learn how to do this.

5 In qualitative 1, that's predominately
6 theoretical in terms of what are the theories that
7 underpin the field. And qualitative 2 looks at ways to
8 collect data for their study.

9 Q. Would it be overly simplistic to say that
10 qualitative 2 has an empirical aspect to it or is that
11 an incorrect way to think about it?

12 A. That's not the way I would categorize it.

13 Q. Now, you're teaching within the education
14 curriculum, correct?

15 A. (Nods head affirmatively.)

16 Q. Are the principles which you teach, for
17 example, in qualitative 1, the theory course, do those
18 transcend the discipline of education or are they
19 targeted completely or somewhat to the education field?

20 A. No, transcends education.

21 Q. Are there other faculty at Georgia State
22 University in one or more graduate programs who teach
23 courses that are substantively similar?

24 A. Yes. There's other people in my program who
25 teach 8500 and 8510.

1 Q. And can you identify those?
2 A. Dr. Janice Fournillier.
3 Q. Can you spell that, please, for the record?
4 A. F-O-U-R-N-I-L-L-I-E-R. And Dr. Esposito.
5 Q. Dr. Esposito have a first name that you know?
6 A. Jennifer.
7 Q. And what differences, if any, are there in
8 the -- in the nature of the courses, let's say the 85 --
9 does each of those individuals teach the 8500 course?
10 A. I believe they have.
11 Q. And is the, to your knowledge, is the
12 substance of the courses essentially the same
13 irrespective of whether you or any of the other two
14 individuals is teaching that course?
15 A. I do not know.
16 Q. You don't know. Are you familiar with the
17 syllabi used by either Professor Fournillier or
18 Professor Esposito?
19 A. No.
20 Q. You've never seen it?
21 A. No.
22 Q. Have you ever discussed with them the reading
23 materials that they would offer for the 8500 course?
24 A. No.
25 Q. So sitting here today, do you have any

1 knowledge whether there is any overlap in the reading
2 materials offered when they teach the 8500 course versus
3 when you teach it?

4 A. No.

5 Q. You have no knowledge of that whatsoever?

6 A. No. I don't know how they teach it.

7 Q. What position on the faculty does Professor
8 Fournillier have? You are an assistant professor, is
9 she -- what is her --

10 A. Assistant professor.

11 Q. And as for Dr. Esposito?

12 A. Assistant professor.

13 Q. And in relation to when you came to GSU, when
14 did they begin teaching at the university?

15 A. Dr. Fournillier and I came at the same time.
16 Dr. Esposito I believe had been here two years prior to
17 that.

18 Q. And is there a departmental chair in the
19 education department?

20 A. Yes.

21 Q. Who is that?

22 A. Sheryl Gowen.

23 Q. Would you spell that, please?

24 A. G-O-W-E-N. Sheryl with an S.

25 Q. And in relation to teaching any of the three

1 courses you identified, what interaction if any have you
2 had with Ms. Gowen?

3 A. She's my boss. Any questions that I have or
4 difficulties or anything that I have I go to her.
5 Reviews I get from her. And just incidental hall talk.

6 Q. Is it your practice -- strike that.

7 Is there an understanding within the faculty
8 in the Department Of Education that proposed syllabi for
9 a given course will be reviewed by one or more other
10 faculty members?

11 A. No.

12 Q. It's entirely in the discretion, in your case,
13 what you teach is entirely in your discretion, is that
14 correct?

15 A. Yes.

16 Q. Is the answer the same with respect to the
17 choice of reading materials for a course?

18 A. Yes.

19 Q. Has it been nonetheless your practice to --
20 prior to finalizing course syllabi to run that by either
21 Ms. Gowen or anybody else?

22 A. No.

23 Q. You first taught the 8500 course in 2006, is
24 that correct?

25 A. If you tell me so, yes.

1 Q. Whenever it was you first taught it, how did
2 you come to construct the course syllabus? What was
3 your process?

4 A. I constructed it predominantly on the way that
5 I was mentored at the University of Georgia to teach
6 qualitative research.

7 Q. And that triggers in my mind for the record
8 identifying the educational background you hold, please,
9 by institution and degree.

10 A. I got my Ph.D. from the University of Georgia.
11 And after that I taught there as an adjunct faculty
12 teaching qualitative 1 and qualitative 2, essentially
13 the same courses. And was mentored in teaching those.
14 And it was those syllabi that I brought with me and then
15 updated making some few changes to teach here.

16 Q. To what degree are the course -- and when you
17 say you brought those with you, was that both the 8500
18 and the 8510 courses?

19 A. Yes.

20 Q. And to what degree, if you were to compare the
21 syllabi for these courses from their most recent
22 offerings to those which you utilized at the University
23 of Georgia, to what degree have those changed over time?

24 A. I don't know. It's been continual and small
25 changes and continually tweaking things and adding

1 things. So I'd have to look back and see where it was.

2 Q. When did you teach at the University of
3 Georgia?

4 A. The two years prior to coming here after
5 graduation. I graduated in 2004, so 2006, 2006 I
6 assume.

7 Q. And the reason you moved from the University
8 of Georgia to Georgia State was?

9 A. Tenure.

10 Q. Opportunity for tenure?

11 A. (Nods head affirmatively.)

12 Q. Now, looking at a posting on the Georgia State
13 University web site what appears to be your degree
14 history -- and I'll just try to short circuit it.
15 You're welcome to see this but we don't need to mark it
16 unless necessary.

17 I see you graduated with a BA degree in 1983
18 from University of Washington in Seattle, is that
19 correct?

20 A. Yes.

21 Q. And thereafter attended the -- you received a
22 Washington State initial certificate from Seattle
23 Pacific University?

24 A. Yes.

25 Q. And what is that?

1 A. Teaching certificate.

2 Q. Teaching certificate. Did that entail some
3 graduate work on your part?

4 A. I don't remember.

5 Q. And then you received a master's in education
6 according to this in 1997 from Antioch University in
7 Seattle, correct?

8 A. Yes.

9 Q. And during that 12 year period were you also
10 employed?

11 A. Yes.

12 Q. And what were you doing?

13 A. Teaching.

14 Q. Where and what?

15 A. I taught several years at Waldorf, I taught at
16 the Islamic School, all private schools, and I tutored.

17 Q. And field of education?

18 A. Yes.

19 Q. And what level of students were involved?

20 A. Predominantly elementary school.

21 Q. You indicated a few minutes ago in terms of
22 curricular selection and course materials selection you
23 have autonomy, is that correct?

24 A. Yes.

25 Q. Are there nevertheless any other rules,

1 guidelines or strictures which inform how you go about
2 developing and/or teaching your courses?

3 A. Officially?

4 Q. Officially or unofficially.

5 A. I believe there's official rules or I assume
6 there are in terms of having to meet and what times we
7 meet. But what I put into the curriculum I'm not aware
8 of any rules.

9 Q. What university policies guide you more
10 generally as a faculty member?

11 A. I don't know.

12 Q. For example, is there a -- do you perform
13 research as part of your roles in the faculty?

14 A. Uh-huh.

15 Q. Is that a requirement?

16 A. It's a -- no.

17 Q. I assume, though, it would be desirable if
18 you're on a tenure tract to pursue research?

19 A. Yes, or theoretical work.

20 Q. And in your circumstance does that entail
21 either preparing works for peer reviewed publication or
22 otherwise?

23 A. Yes.

24 Q. And have you in fact prepared such works?

25 A. Yes.

1 Q. Can you identify those and whether they've
2 been published?

3 A. I have publications in Qualitative Inquiry,
4 International Journal of Qualitative Studies In
5 Education, Adult Education Quarterly, Critical
6 Methodologies, Critical Studies. I think that's it.

7 Q. And why did you prepare the articles you've
8 identified?

9 A. It's my job.

10 Q. Could you say it a little more -- your job
11 meaning that you're required to do it or --

12 A. Required in the sense that if you want tenure
13 you publish. No one asked me are you publishing.

14 Q. And how did you determine the publications in
15 which you would seek to be published?

16 A. I look at journals that have low acceptance
17 rates, because the lower the acceptance rates the higher
18 the prestige you get for publishing in that journal.

19 Q. So by rough analogy that would mean, you get
20 into the most selective college that will admit you --

21 A. Exactly.

22 Q. -- same concept?

23 A. Exactly. And also a fit for that piece.

24 Q. And in your field which publishers and which
25 publications of those publishers are the most selective

1 in the sense of how you described that?

2 A. You mean in terms of the journals that I just
3 mentioned?

4 Q. Yes. Or any journals. In other words,
5 aspirationally, if you say if I could be published in my
6 field ideally I'd like such publisher with such
7 publication to publish me, what would that list be?

8 A. Qualitative Studies In Education, Qualitative
9 Inquiry and Critical Studies, Critical Methodologies.

10 Q. And do you know the publishers of those
11 publications?

12 A. No.

13 Q. Are you familiar with a publisher by the name
14 of Sage?

15 A. Yes.

16 Q. What is your opinion of the quality of the
17 works published by Sage?

18 A. Sage publishes quality work in Qualitative
19 Education, Qualitative Studies.

20 Q. Have you been published in Sage?

21 A. If those journals are published by Sage.

22 Q. Do you remember writing a piece called
23 Heteronarrative Analysis --

24 A. Uh-huh.

25 Q. -- for Qualitative Inquiry?

1 A. Yes.

2 Q. And I'll represent to you that that's a
3 journal published by Sage.

4 So assuming my representation is accurate, you
5 are a Sage contributor then, correct?

6 A. Okay.

7 Q. Do you have any recollection, any specific --
8 staying within Heteronarrative Analysis publication, do
9 you have any recollection of any specific interactions
10 with that publisher or with that journal, with the
11 editors of the journal?

12 A. With Norman Denzin.

13 Q. And could you identify who he is?

14 A. The editor of QI.

15 Q. And what was the nature of that interaction?

16 A. We're happy to accept your piece, those types
17 of letters, would you send this form, send back this
18 copy, that type of thing.

19 Q. Were you pleased to be published by that
20 journal?

21 A. Yes.

22 Q. Did you view that as potentially reputation
23 enhancing in your field?

24 A. Yes.

25 Q. Did you view that as promotive of your

1 interest in attaining tenure?

2 A. Yes.

3 Q. Would you say those instincts typically
4 reflect the instincts of similarly situated professors
5 whether at GSU or elsewhere who are interested in
6 obtaining tenure in their fields?

7 A. I can only assume. I don't know what other
8 people think.

9 Q. But from your knowledge and conversations with
10 peers, I take it that your own activity in that respect
11 is not unique, correct?

12 A. I would not think so.

13 Q. Okay. And do you have any understanding how
14 publishers like Sage stay in business?

15 A. No.

16 Q. Do you know them to be for profit?

17 A. I assume so, yes.

18 Q. Do you believe that without the ability to
19 earn a profit they would be able to provide a platform
20 for people like you to publish?

21 A. That makes sense.

22 Q. Pardon me?

23 A. That makes sense.

24 Q. Do you know the degree to which the journal
25 issue that -- in which your Heteronarrative Analysis was

1 published, the degree to which it found circulation?

2 A. No.

3 Q. What do you know about the publishing business
4 in general?

5 A. Little.

6 Q. What do you know about the journals publishing
7 business in particular?

8 A. Little.

9 Q. Anything you've ever investigated?

10 A. No.

11 Q. Do you have any knowledge of the degree of
12 success of any of the journals in which any of your
13 works has been published?

14 A. No.

15 Q. Do you have any idea of the volume of
16 circulation of any of the journals in which you've been
17 published?

18 A. No.

19 Q. What study of the literature in your field do
20 you make as a common practice?

21 A. What do you mean?

22 Q. What is your awareness of the range of
23 published literature in your field?

24 A. I read the handbooks, I read hard, regular
25 books, nonedited books that are specific to my interests

1 because the field is much broader than I can keep up
2 with. And I look at what's being published in mostly
3 the journals that I've already mentioned and keep track
4 of kind of what people are talking about.

5 Q. What would be the impact on your ability to
6 teach in your field of not having access to that range
7 of publications?

8 A. It would be problematic.

9 Q. How so?

10 A. If I did not have access to the journals then
11 I would not know what conversations were being had.

12 Q. And therefore what would it do to your
13 efficacy as a professor in your field?

14 A. It would diminish my ability to teach and also
15 enter into those conversations, theoretically.

16 Q. So the viability of publishing enterprises
17 that produce journals and other materials that inform
18 you in your field is important to you as an educator, is
19 that correct?

20 A. Yes.

21 Q. And what would be the impact on your ability
22 to teach students if you are unable to afford them
23 access to that range of reading materials?

24 A. It would be difficult to keep them abreast of
25 what was happening.

1 Q. What would you do in the absence of those
2 materials?

3 A. I have not thought about it.

4 Q. Would not be a good thing for the educational
5 process, would it?

6 A. No.

7 Q. Have you ever earned any royalties from any of
8 the -- from having any of your works published?

9 A. No.

10 Q. Were you ever entitled to receive any
11 royalties from any of those?

12 A. No.

13 Q. Did you sign any ever formal publishing
14 agreements with any of the journals?

15 A. Whatever they send I sign.

16 Q. You sign.

17 I take it the consideration for doing so in
18 your case was other than monetary --

19 A. Correct.

20 Q. -- as you've testified, correct?

21 A. Correct.

22 Q. And for you it was more important to have the
23 credentials, as it were, of those publications than
24 receiving whatever royalty check you might otherwise
25 have, correct?

1 A. Yes.

2 Q. What is your understanding of the consequences
3 if a faculty member at Georgia State University were
4 determined to have engaged in plagiarism?

5 A. I do not know.

6 Q. Are you aware whether there are university
7 policies that speak to that event?

8 A. I assume. I mean, we all know you don't do
9 it.

10 Q. Are you aware of any instances in which during
11 your time at Georgia State University such activity has
12 occurred or been alleged to have occurred?

13 A. No.

14 Q. And what policies exist at Georgia State
15 University to your knowledge in relation to proper
16 comportment between faculty members and students?

17 A. What does comportment mean?

18 Q. Behavior and direction.

19 A. Say the question again? Say the question
20 again?

21 Q. Are there policies that govern the limits of
22 proper interaction between faculty and students?

23 A. The only thing I can think of is sexual
24 harassment. Other than that I do not know.

25 Q. And what is the -- what is your understanding

1 of -- is there a policy involving that at Georgia State
2 University?

3 A. I would assume so.

4 Q. And do you know the consequences if a faculty
5 member is found --

6 A. No.

7 Q. -- to have engaged in such practice?

8 A. No.

9 Q. Where is that enforced in the University
10 System, do you know?

11 A. I do not know.

12 Q. Have you seen the complaint which our clients
13 filed which commenced this litigation?

14 A. No.

15 Q. Have you had it described to you in -- I'm not
16 asking you what conversations you might have had with
17 counsel, but have you had its contents generally
18 described to you?

19 A. I don't think so. I mean, I basically know
20 it's around copyright.

21 Q. Let me ask you more generally, sitting here
22 today do you have any understanding of why this lawsuit
23 is ongoing, what is involved, what issues are involved
24 in this lawsuit?

25 MS. GARY: I'd like to instruct the

1 witness to answer to the extent she can
2 without waiving attorney privilege.

3 MR. RICH: Absolutely.

4 BY MR. RICH:

5 Q. In other words, I don't want to know in
6 hyperbole what your counsel told you, but if without
7 doing that you are able to --

8 A. Tell you what I know.

9 Q. -- in a general sense of what you know, that's
10 what I want you to tell me.

11 A. What I know is that my understanding is that
12 Georgia State or the University System of Georgia is
13 being sued by publishers for copyright infringement.
14 That's what --

15 Q. Do you know the kinds of activities claimed to
16 have been engaged in by Georgia State that give rise to
17 this lawsuit?

18 A. No. I think it has something to do with
19 EReserves. Other than that, no.

20 Q. Okay. In the course of your education, your
21 own process of being educated and subsequently in the
22 course of your teaching career, what level of
23 understanding of copyright law have you developed?

24 A. Minimal. Well, prior to -- prior to the new
25 policies that have been put in place, I think there's --

1 Q. Fine. That's fair. Let's take that in
2 segments then, if you like.

3 Prior to the new policy my question is what
4 level of understanding of copyright law you've
5 developed?

6 A. Pretty minimal. The primary understanding
7 that I had and used was use less than 20 percent of a
8 work.

9 Q. Now, when did you develop that guideline?

10 A. I do not know.

11 Q. Did it precede or predate your arrival at
12 Georgia State University?

13 A. Yes.

14 Q. And is there any document or lecture or
15 guideline or anything that comes to mind which provided
16 you with that benchmark?

17 A. No. It's one of those things that I picked up
18 somewhere and I don't know where.

19 Q. Now, from the time you came to Georgia State
20 University and prior to the implementation of the new
21 policy, which we'll come to shortly, did you ever have
22 occasion to discuss any copyright law questions with
23 anybody?

24 A. No.

25 Q. And so when you developed your syllabi for

1 your courses and you selected the reading materials, was
2 that done in terms of copyright considerations, was that
3 done basically just based on your own level of knowledge
4 and understanding?

5 A. Yes.

6 Q. And guided by -- and the one precept you were
7 guided by was it shouldn't exceed 20 percent of the
8 work?

9 A. Yes. Yes.

10 Q. Now, in the case of an anthology, let's say
11 the Sage Handbook Of Qualitative Analysis -- Research,
12 what -- how did you interpret the 20 percent limitation
13 if at all?

14 A. I considered the work as a whole.

15 Q. So that if it was, let's say for discussion
16 sake 1,000 pages, and I think it exceeds 1,000 pages,
17 then it would be a maximum of 20 percent of that 1,000
18 pages?

19 A. Yes.

20 Q. Did you understand yourself prior to the new
21 policy, did you understand yourself to have any
22 obligations in developing and utilizing this rule of
23 checking in with university counsel?

24 A. No.

25 Q. Of checking in with any library staff?

1 A. No.

2 Q. Of checking in with any EReserves
3 coordinators?

4 A. No.

5 Q. Of checking in with any reserve desk personnel
6 in the library?

7 A. No.

8 Q. Of checking in with the provost's office?

9 A. No.

10 Q. In the time from when you arrived at GSU up
11 until the implementation of the new policy, did anyone
12 ever on their own instance comment to you about
13 copyright issues associated with the selection of course
14 reading materials you made?

15 A. No.

16 Q. And so I take it that in utilizing the
17 EReserves system, which we'll get to in a little more
18 detail, nobody, for example, who scanned those materials
19 or otherwise facilitated the creation of the course
20 pages either rejected specific excerpts or made any
21 inquiry of you, is that correct?

22 A. No. Yes, that is correct.

23 Q. And did you have any understanding that there
24 were any policies in place prior to the new policy that
25 guided your decision-making as a faculty member in terms

1 of the materials you could post without permission? By
2 without permission, I mean without getting permission of
3 the publisher.

4 A. Yes. My understanding was that I would create
5 that list and keep it under the 20 percent. And that I
6 thought that the university -- library would return it
7 to me if I was out of line.

8 Q. And what was the basis for that understanding
9 on your part?

10 A. Because it happened --

11 Q. Focusing on GSU.

12 A. Right. Because it had happened to me at UGA.

13 Q. Can you explain what occurred there?

14 A. They said you have exceeded 20 percent --
15 maybe that's where I got it. You have exceeded 20
16 percent, you know, you need to revise this before we'll
17 put it up.

18 Q. And where did that communication come from at
19 the University of Georgia?

20 A. Via e-mail around electronic reserves.

21 Q. From someone involved in the --

22 A. From the library.

23 Q. From the library. I see. And so in that
24 situation how did you respond to that e-mail? What did
25 you do?

1 A. I revised the reading list and I turned it
2 back in.

3 Q. Do you recall at the time which work or works
4 was identified as exceeding the 20 percent guideline?

5 A. No.

6 Q. And in how many instances did you receive that
7 sort of communication?

8 A. One.

9 Q. Once. Did you prior to the new policy being
10 implemented, did you have occasion to seek out or read
11 or review any copyright guidelines in place governing
12 the use, faculty use of EReserve materials at Georgia
13 State University?

14 A. I read nothing.

15 Q. Were you aware they existed?

16 A. Probably nebulously somewhere.

17 Q. Did you ever attend a departmental meeting in
18 which the subject of copyright was discussed prior to
19 the new policy?

20 A. No.

21 Q. No. Did you ever attend any seminar offering
22 on that subject?

23 A. No.

24 Q. Were you ever made aware that such offerings
25 or educational processes were available at the

1 university?

2 A. No. Not prior to policy.

3 MR. RICH: Can I take two minutes off
4 the record, please.

5 (Brief recess.)

6 THE VIDEOGRAPHER: This is tape 2.

7 We're back on the record at 9:37:28.

8 BY MR. RICH:

9 Q. By the way, do you prefer to be called Dr.
10 Kaufmann or Professor Kaufmann?

11 A. It does not matter.

12 Q. Ms. Kaufmann?

13 A. It does not matter.

14 Q. Are you aware that in recent months Georgia
15 State University has begun to implement a new copyright
16 policy?

17 A. Yes.

18 Q. How did you become aware of that?

19 A. Via e-mails predominantly, and then when I had
20 turned in -- I am teaching a Maymester which starts next
21 week and when I turned in that list they also said you
22 need to do X, J and Z, and here's the link, go here,
23 read this, do that.

24 Q. Okay. Well, let's take that in pieces.

25 Who sent the e-mail or e-mails advising you?

1 A. There have been e-mails telling about the
2 classes that you can go to to learn about new copyright.

3 Q. Was that -- was it in one of those e-mails
4 that the new policy was itself announced or was there an
5 initial e-mail that said we want -- words to the effect,
6 we want to advise you there is a new policy, dot dot
7 dot?

8 A. I don't remember.

9 Q. And what you do remember is advice to faculty
10 members that there would be educational offerings?

11 A. Yes.

12 Q. And approximately when do you remember
13 receiving one or more of those e-mails, how long ago?

14 A. I'm very poor with time. At least maybe a
15 month, two months ago.

16 Q. And were there identified a series of dates
17 and places that one could go to attend these?

18 A. Yes.

19 Q. Do you remember how many offerings there were?

20 A. No. Multiple.

21 Q. Multiple. And did you in fact attend one or
22 more of those?

23 A. I did go to one. I did go to one.

24 Q. And when was that approximately?

25 A. Last week.

1 Q. So this was after you were aware that you were
2 going to have your deposition taken, correct?

3 A. Yes. But also prior to having to get my
4 course, new course list up, I knew I had to do that.

5 Q. If you're able to separate the two, was your
6 determination to attend the seminar -- let me ask the
7 question differently.

8 Was your determination to attend the seminar
9 related in any way to the fact that you were going to
10 have your deposition taken today?

11 A. Yes, but that was not the sole reason.

12 Q. Was it suggested to you by one or more people
13 that it would be advisable for you to attend the seminar
14 before your deposition was taken?

15 MS. GARY: To the extent you are not
16 revealing attorney client communications,
17 you can answer.

18 THE WITNESS: Then I guess I shouldn't
19 answer.

20 BY MR. RICH:

21 Q. Okay. And you did attend this seminar?

22 A. Yes.

23 Q. And who conducted it?

24 A. Cynthia Hall.

25 Q. Okay. And what form did it take? What was

1 the format of the seminar?

2 A. Another professor and I met Cynthia Hall in
3 legal affairs and she went through documents and told us
4 about the new policy. And we asked questions and she
5 answered those.

6 Q. Who was the other professor?

7 A. I don't remember. I believe he was from
8 sociology.

9 Q. Don't know his name?

10 A. No.

11 Q. And when you said she showed you documents, do
12 you recall what -- was this in the form of a PowerPoint
13 presentation?

14 A. That was one of them, yes.

15 Q. And what else did she show you?

16 A. Hard copies of things that are on the web
17 electronically.

18 Q. And can you describe what those are to your
19 memory?

20 A. They mirror -- they were the same documents
21 that when you click on EReserve and go to what's the new
22 copyright policy, they were some of those same pages.

23 Q. What did you learn from that session in terms
24 of other relevant considerations in making decisions as
25 to ERes postings beyond or different than your prior

1 understanding?

2 A. One of the most helpful devices was the new
3 checklist with the different categories and checking
4 where you stand in each one of these.

5 Q. Anything else?

6 A. I learned about the different concepts on
7 that. We went through line by line discussing what is
8 transformative, what is nontransformative, et cetera.
9 We did talk about issues of copyright in terms of
10 everything that is now copyrighted whereas it was not
11 previously. We talked about that if you ever come up
12 against issues that you're not clear about that you
13 would be free to call us and ask us your questions, get
14 guidance.

15 Q. How long did the session last approximately?

16 A. Maybe an hour.

17 Q. You said you had had some questions and the
18 other individual had some questions?

19 A. Uh-huh.

20 Q. What were your questions?

21 A. I was interested in the 20 percent. Other
22 questions were more clarifying questions of what she was
23 speaking of. I don't remember them specifically.

24 Q. What did you learn as to the current policies,
25 relationship or dictates in relation to the 20 percent

1 rule?

2 A. Cynthia advised that to be safe to keep it in
3 single digits. But that there's no hard and fast rule,
4 everything is contextual.

5 Q. As part of this session with Ms. Hall, was
6 reference made to -- specifically to any of the ERes
7 postings which you had been offering over a variety of
8 semesters to your students?

9 A. No.

10 Q. Either in preparation for that session or
11 since that session have you had occasion to apply
12 those -- the new policy and the interpretations of it
13 that you're gaining to those prior reading lists?

14 A. Yes.

15 Q. When did you go through that exercise?

16 A. I can't remember, was it Friday or Monday.

17 Q. Did you do that with counsel or independently?

18 A. No, independently, applying what we learned in
19 that workshop.

20 Q. And did you go through the process of filling
21 out a checklist as to the different works?

22 A. Yes, I did.

23 Q. And where does the work product of that
24 reside? Where does that series of analyses sit?

25 A. I handed them into the library, which was my

1 mistake. I thought they had to go in with the new list.
2 And they said, no, that I keep them. So they are
3 floating somewhere between me and the library. They're
4 sending it back.

5 MR. RICH: May we request copies of
6 that as soon as possible, please?

7 MS. GARY: Of course, we'll get copies.

8 BY MR. RICH:

9 Q. And bottom line, as a result of that how many
10 modifications if any did you determine were appropriate
11 to the lists of readings which you had most recently
12 afforded students on EReserves?

13 A. I can't tell you how many. I can tell you
14 that I got the Sage handbook down to single digit
15 percentages. And any articles that I had that I could
16 not find a direct link from GSU I took off and replaced
17 them with other articles. So that now everything is
18 single digit or direct link.

19 Q. And in terms of the numbers of excerpts from
20 the Sage handbook, as you described it, did you retain
21 the same numbers of takings but pare down the inclusive
22 pages utilized, is that what I'm understanding you to
23 have done?

24 A. No. I only used whole chapters and so then I
25 deleted or took out some chapters to get the numbers

1 down to whatever percentage.

2 Q. We can work from an actual example so this
3 doesn't become a memory test. But just so I can grab
4 the concept, am I understanding you to say you examined
5 each prior taking -- strike that.

6 You're saying on a cumulative basis again
7 instead of the 20 percent of the handbook you reduced
8 the totality of the excerpts from the handbook so that
9 you were down in single digits?

10 A. Yes.

11 Q. Okay. And what single digit did you determine
12 was appropriate?

13 A. That I did not. I just made sure that I was
14 under 10 percent.

15 Q. Did you do the math?

16 A. Yep.

17 Q. What did you end up at?

18 A. I don't remember.

19 Q. Okay. And have those -- are those, are any of
20 those materials being used for the Maymester?

21 A. Yes.

22 Q. And have those now been submitted through the
23 normal course through the EReserve process?

24 A. Almost. Not quite. I submitted them and as I
25 said I did it incorrectly because I gave them the

1 documents but they don't want those documents. But they
2 do want another list that's up on the web for their
3 counting and I have not filled out the new list.

4 Q. And what is the list that they want, how do
5 you describe it?

6 A. I don't know. I haven't done it yet.

7 Q. What does it look like?

8 A. I haven't done it. You have to click on
9 another -- I don't know.

10 Q. What information does it require, do you know?

11 A. I'm not sure.

12 Q. But they affirmatively did not want to keep
13 your checklist?

14 A. Yes.

15 Q. Did they tell you why?

16 A. There's -- I don't know. My understanding is
17 I just didn't follow the policy correctly. That's not
18 the way it's working right now.

19 Q. Who did you interact with?

20 A. They, they is some infamous person, I don't
21 know who this is. Someone from the library e-mailed me.

22 Q. Some staffer? Oh, this was not an in face
23 interaction, this was all by e-mail?

24 A. This was the e-mail.

25 Q. I see. So did you transmit the checklist by

1 e-mail as well?

2 A. No, I walked it over.

3 Q. And what happened after that? You got an
4 e-mail back saying they don't want it?

5 A. The next morning was that you don't need to
6 give me the fair use checklist but you do need to fill
7 out this other form.

8 Q. And what's come of the checklist you sent
9 them, do you know? Checklists. Have they sent them
10 back to you?

11 A. The fair use ones?

12 Q. Yes.

13 A. I'm not sure. They said they were going to
14 send them back. They were not in my box this morning so
15 they're floating around campus mail somewhere.

16 Q. Okay. I'm going to show you a document that
17 I'm advised has been previously marked as Exhibit 37 in
18 this case before another witness just to jog your
19 recollection. And I apologize, I don't have multiple
20 copies because I didn't know we were using it.

21 But it bares Georgia State production number
22 0031377. And I'm just going to show you this and ask
23 you to leaf through it.

24 A. Uh-huh.

25 Q. In looking at this document and the series of

1 pages, does this appear to you to reflect or within this
2 body of material the form you've been asked to supply
3 now to the library?

4 A. I don't know. I have not done the form so I
5 can't tell if this is that form.

6 Q. You haven't looked into it yet?

7 A. Yeah, I got the e-mail and it's like, oh, I've
8 got more work to do.

9 Q. It said go to this form but you haven't done
10 it yet?

11 A. And I don't have time now.

12 Q. Okay. When do you propose to do that, before
13 or after the course begins?

14 A. That's on this afternoon's agenda.

15 Q. Has the Maymester begun?

16 A. It begins on Monday.

17 Q. It begins on Monday?

18 A. Uh-huh.

19 Q. And has there been any other feedback to you
20 based on the checklist identification which you
21 performed concerning whether any of your outcomes, fair
22 use outcomes, are problematic from the standpoint of the
23 library?

24 A. No.

25 Q. Is it your assumption that your works in due

1 course are going to be posted on the course page?

2 A. Yes.

3 Q. That has not yet happened?

4 A. Yes.

5 Q. Yes?

6 A. Yes, that has not yet happened. They're not
7 up there.

8 Q. Is it going to happen by the start of the
9 course?

10 A. We sure hope so.

11 Q. Now, which course are you teaching the
12 Maymester?

13 A. I teach 8500 in Maymester.

14 Q. How does a Maymester work just physically in
15 terms of time and course hours and all?

16 A. Three weeks and you meet every night from 4 to
17 7:30. 4:30 to 7.

18 Q. Same number of credits as if it were a full
19 semester offering?

20 A. Yes.

21 Q. Just very compressed?

22 A. Exactly.

23 MR. RICH: Let's mark as 98 a syllabus
24 from the fall of 2008 for the EPRS 8500
25 course.

1 (Plaintiffs' Exhibit No. 98
2 was marked for identification
3 by the reporter.)

4 BY MR. RICH:

5 Q. Can you identify what we've put before you as
6 Plaintiffs' 98?

7 A. This is a syllabus for 8500 for fall 2008.

8 Q. And is this a document which you put together?

9 A. Yes.

10 Q. And in fact is this the syllabus that was used
11 in your teaching of this course in the fall of 2008?

12 A. I assume so.

13 Q. Is there anything on the face of it that looks
14 inaccurate to you?

15 A. No.

16 Q. Now, on page one of this document you indicate
17 two required texts?

18 A. Yes.

19 Q. Was it your intention that students enrolled
20 in this course would purchase those texts?

21 A. Yes.

22 Q. Where were they available for purchase?

23 A. Some students got them through the Internet
24 and some of the students got them through the bookstore.

25 Q. And what was the basis for your judgment and

1 determination that these two texts should be purchased
2 in their entirety by students?

3 A. Because they read the whole thing.

4 Q. Below that is listed a category saying own
5 choice book reviews, choose one of the following?

6 A. Yes.

7 Q. Can you describe the intent of what you were
8 doing there?

9 A. Each one of these is a full text study and the
10 student had a choice of choosing one of any of these and
11 buying that text, reading it and doing something with
12 it.

13 Q. That was the required part of the curriculum?

14 A. Yes.

15 Q. As was by definition what you define as
16 required texts?

17 A. Yes.

18 Q. And then if you flip down to where the week by
19 week offerings are listed beginning I believe at page 7
20 of this document. Yes?

21 A. Yes.

22 Q. There appear a series of other assigned
23 readings, correct?

24 A. Yes.

25 Q. And was it your intention that students

1 enrolled in this course would timely read those
2 additional readings?

3 A. Yes.

4 Q. And apart from the identified works on page 1
5 that we just described as required texts, how were these
6 additional readings made available to students in the
7 fall of 2008?

8 A. EReserves.

9 Q. And when -- at page 3 of this document under
10 the heading attendance and participation in the second
11 paragraph, you said I expect people to come to class
12 prepared having read all assigned reading. Do you see
13 that?

14 A. Yes.

15 Q. I take it that would have encompassed the
16 required texts on page 1, correct?

17 A. Yes.

18 Q. And the week by week assigned readings,
19 correct?

20 A. Yes.

21 Q. What were the consequences, if any, to
22 students who failed to keep up with the various assigned
23 readings?

24 A. I don't keep track in terms of on a daily
25 basis, but it becomes very evident when you write your

1 paper if you've read or not read.

2 Q. Is that the principal basis on which you came
3 to understand if a given student was actually performing
4 the readings?

5 A. Yes.

6 Q. Was it your experience to observe -- now, in
7 these offerings of between roughly 10 or 12 students on
8 the low end and 22 or so on the high end -- I take it
9 was this is a seminar type room?

10 A. We sit in a circle, yes. Is that what you
11 mean?

12 Q. Yes.

13 A. Uh-huh.

14 Q. So a room that would be compared to where
15 we're sitting in relation to where the videographer is,
16 how big a room would you say it is?

17 A. Probably from the videographer.

18 Q. So you have good, good visual contact with the
19 students, right?

20 A. Yes.

21 Q. And in your experience in teaching these
22 courses, would you see students with physical copies of
23 the required texts?

24 A. Yes.

25 Q. And would you see students with physical

1 copies, that is printed copies of EReserves readings?

2 A. Yes.

3 Q. And was that something that was common?

4 A. Yes.

5 Q. Okay. And prior to the new policy being
6 implemented, did anyone anywhere any time at Georgia
7 State University indicate to you that it was
8 inappropriate to use EReserves for other than optional
9 or supplemental reading?

10 A. No.

11 Q. And under the new policy including from your
12 session with Ms. Hall, has anyone at Georgia State
13 University or anything you've seen or read indicated to
14 you on a going forward basis that it is inappropriate to
15 use EReserves for other than optional or supplemental
16 reading?

17 A. No.

18 Q. Now, if you'll turn to page 7 please. I'd
19 like to jog your memory. And again we've asked your
20 counsel to provide us the checklist and so recognizing
21 this is not a memory test and that you may not have it
22 precisely, but since you went through this process quite
23 recently, to the best of your recollection I'd like you
24 to go through this week by week and tell me for the
25 Maymester what changes you made. Again, if you're wrong

1 in detail I understand. But as best you can recall,
2 please, what changes you made in light of the new
3 policy?

4 A. In some ways that's problematic because this
5 syllabus ended up not working as well because I put more
6 feminist readings from the feminist handbook which was
7 extremely resisted. And so in making the changes for
8 Maymester I went back to the previous syllabus and made
9 the changes from that one.

10 Q. By previous meaning --

11 A. One that I had used prior to this one.

12 Q. Because we have a whole series of these, if it
13 would help you to use a different one I'm happy to.

14 Do you recall which course offering you worked
15 from? I think we have them all the way back to 2006?

16 A. I don't remember. It might have been -- let's
17 see, this was fall --

18 Q. Why don't we give you a chance to peruse them.
19 Would it help you?

20 A. Yes.

21 Q. Give us a minute to assemble a set.

22 A. How about summer, maybe -- let me see the
23 summer.

24 Q. We'll pull these so you don't have to guess.
25 This is for qualitative 1, right?

1 A. Yes.

2 Q. I'll start feeding these through counsel to
3 you.

4 MS. GARY: Are we marking these as
5 exhibits then?

6 MR. RICH: Not yet. Right now let's
7 let the witness find one and we'll mark the
8 right one. Because those are the ones that
9 I think are relevant.

10 MS. GARY: Here's summer 2007.

11 THE WITNESS: I think it was close to
12 this one.

13 MS. GARY: Okay. So you think summer
14 2007?

15 THE WITNESS: Yeah. I'm guessing. I
16 think so.

17 MR. RICH: Why don't we have the
18 reporter mark Plaintiffs' 99 the syllabus
19 for EPRS 8500 for the summer of 2007.

20 (Plaintiffs' Exhibit No. 99
21 was marked for identification
22 by the reporter.)

23 BY MR. RICH:

24 Q. And for the record, Ms. Kaufmann, I ask you to
25 identify the document we've placed in front of you?

1 A. This is the syllabus for EPRS 8500, summer of
2 2007.

3 Q. Take your time going through it, and I would
4 ask you if this appears to be the document which you
5 marked up, as it were, to figure out your readings for
6 the Maymester?

7 A. I think so. I'm not positive, but I think so.

8 Q. Okay. On that assumption and subject to your
9 jogging your recollection further, why don't we turn to
10 page 7 of this document and if you could tell me what
11 changes you made in terms of EReserves postings for the
12 Maymester?

13 A. Okay. Bogdan and Biklen and Crotty stayed
14 because those are the books that they're reading.

15 Q. Right.

16 A. I believe this introductory chapter from
17 Denzin stayed.

18 Down to number 3, those three stayed.

19 4, Tisdale left. And I believe both Chaudhry
20 and Johnson Bailey stayed. Under 5 Schwsatdt was cut.

21 Under 6 Villenas was cut. Under 7 I think
22 Stake stayed. 8 --

23 Q. So that under 7 you don't recall anything
24 coming out?

25 A. I think that stayed the same to the best of my

1 remembrance.

2 Madison left. Van Maanen might be gone as
3 well. I'm not positive.

4 Q. I'm sorry? Okay.

5 A. Van Maanen might be gone. Tara Johnson's
6 article is gone because we don't have a link to that. I
7 think we have a link for St. Pierre.

8 Narrative Inquiry Beverley is gone on number
9 10. I'm not sure, Chase might be gone and I think what
10 I did was put in something from the Narrative Inquiry
11 Handbook. Plummer is still there. Bishop is gone under
12 11. Ellis stayed.

13 Number 12 I think those all stayed.

14 Q. Okay. I want to understand a little more the
15 basis on which you made these different judgments you've
16 just testified to. When you -- how did you come --

17 Other than quantitatively in terms of bringing
18 down the total takings from the Sage handbook to single
19 digits, were there other criteria you brought to bear in
20 making the determination under the new policy and going
21 through the checklist that informed your judgment which
22 chapters from the handbook to retain and which not to
23 retain?

24 A. Yes. What I did was I just took all of the
25 readings and put them under headings, this is Sage,

1 these are journals, this is -- and then speaking of Sage
2 specifically, I looked at -- I added up all the pages
3 and saw what I had and where I wanted to go. From there
4 I looked at pieces that worked well with students and
5 those pieces that didn't work as well with students.
6 And also looked at especially like with "Narrative
7 Inquiry", the "Narrative Inquiry" handbook is there
8 something that's more updated in that that would work
9 and supplement. Supplement is probably the wrong word,
10 but would work better in terms of the narrative article
11 I had from the handbook.

12 Q. Just so I understand the testimony about Sage,
13 did you add up all of the excerpted Sage works even if
14 they were not all simply from the handbook, in other
15 words, all Sage publications treated as one or within
16 each Sage publication?

17 A. No. Each -- I considered Sage handbook 2000
18 to be one source, Sage handbook 2005 to be another
19 because they're so different. They're not the same
20 articles.

21 Q. I just wanted to clarify that.

22 A. And a book, an edited volume would be
23 something, another source.

24 Q. In a couple of places a few minutes ago and
25 just now in reference to the Johnson piece you indicated

1 that you dropped certain materials because there was no
2 link present.

3 A. Yes.

4 Q. Can you describe what you mean by that?

5 A. If I go on E-Journals which connects to the
6 journals that the university has access to, that journal
7 is not -- won't come up, which means I can't get a link
8 to it. We don't have that journal in our database.

9 Q. So this is not related to whether there is a
10 license arrangement with that journal publisher, but
11 simply whether there is a physical or an electronic copy
12 available?

13 A. No. Those that have links when you go into
14 EReserves are those that we have bought the right to
15 use. So if that journal doesn't come up we don't have
16 the right to use it. Does that make sense?

17 Q. Well, I don't want to interpret you. Is it
18 your understanding that all the other journals that are
19 posted on EReserves the university already has in place
20 a license arrangement allowing use for EReserves
21 purposes?

22 A. My understanding is those journals I can
23 access through E-Journals the university has license to
24 use. And so if I put in a journal into E-Journals and
25 Galileo comes up that it's not available, that the

1 university has not -- does not have permission to use
2 that. Therefore the ones that I have in here are the
3 ones that I can get direct links to.

4 MR. RICH: Off the record for a moment.

5 THE VIDEOGRAPHER: Off the record at
6 10:10:24.

7 (Discussion off the record.)

8 THE VIDEOGRAPHER: Back on the record
9 at 10:11:18.

10 BY MR. RICH:

11 Q. I just want to be as clear as we can for the
12 record.

13 With respect to a book let's say like the
14 handbook, what you undertook here consistent with your
15 pedagogical needs obviously, was to buy work, assure
16 yourself that the cumulative takings of chapters that
17 was spread out over the syllabus did not exceed single
18 digits, correct?

19 A. Yes.

20 Q. And that it otherwise was educationally
21 suitable, correct?

22 A. Yes.

23 Q. Did you in going through the checklist, did
24 you say -- stay with the handbook -- did you treat as
25 relevant to the decision whether to include these

1 materials in ERes any of the other enumerated factors in
2 the checklist? And if it would be easier, we can
3 certainly put the checklist in front of you.

4 A. My process was to first consider what I
5 wanted, what worked for me in the syllabus. And then
6 once I got that list I went through each one of those
7 with the checklist to make sure that they followed --
8 they fell within fair use. And once that process was
9 done, then I constructed the final syllabus.

10 Q. Did you make judgments in going through the
11 checklist with respect to any of the materials appearing
12 in Exhibit 99 that they did not qualify for fair use?

13 A. No.

14 Q. Were any close in your estimation?

15 A. No.

16 Q. Did any warrant in your estimation consulting
17 with Ms. Hall or other university counsel?

18 A. I spoke with Ms. Hall about being confused
19 around the fourth category of is it market value or
20 something, my confusion around that, and asked her this
21 seems problematic to me, you know, this is how I'm
22 interpreting it, where am I.

23 Q. And what was her advice?

24 A. This was --

25 MS. GARY: Just objection if it calls

1 for attorney client privileged
2 communications. So to the extent you can
3 answer without revealing any privileged
4 communications between you and Ms. Hall --

5 THE WITNESS: Right, this was not, this
6 was not during that, it was specifically
7 just talking about outside of that. And
8 she said that she thought that what I was
9 doing was right. My interpretation of that
10 was right.

11 BY MR. RICH:

12 Q. And the interpretation you gave it was what?

13 A. That it seemed extremely subjective to
14 determine the market value. And if my -- if I read it
15 as that I would not require my students to buy the
16 handbook, it's very expensive and they don't have that
17 much money, and so if I do not put that reading in the
18 students are never going to become aware that that
19 handbook is out there and so there's no probability that
20 the students would buy it. But if I -- so am I
21 understanding that market value question value
22 correctly.

23 Q. And her response was?

24 A. I think you're doing okay or something to
25 that.

1 Q. So if I understand your own interpretation of
2 what we call factor 4, the market factor, you determined
3 that the handbook because of its cost to students would
4 be resisted in terms of a purchase by the students?

5 A. Yes.

6 Q. And that as a result if you were to assign it
7 what would your expectation be? In other words, if you
8 had added it to the required text section of the
9 syllabus, what would have happened in your estimation?

10 A. Well, two things are problematic. One I think
11 the students would have been extremely upset having to
12 spend that much money. And number two, in an
13 introductory class they don't need to read the whole
14 handbook.

15 Q. But is it your understanding that the only
16 time it would be appropriate for -- that the only time
17 that an educational use would exceed fair use would be
18 if the entirety of the work were being used?

19 A. No. No. I think there's all four factors.

20 Q. And so nonetheless you're saying that a
21 rationale for using -- for paying no permission fee for
22 the handbook is that since the entirety of it was not
23 being assigned it would be -- you would be uncomfortable
24 posting it as a required purchase for the students?

25 A. No.

1 Q. I don't mean to misinterpret you. Could you
2 restate, please?

3 A. My rationale is that those articles going
4 through the fair use guidelines considering all four
5 factors to the best of my ability fell within fair use,
6 therefore it was okay to use them.

7 Q. But focusing on the fourth factor in terms of
8 market harm, what analysis did you make of what the
9 impact on Sage, the publisher of the handbook, would be
10 if every professor using the handbook as a teaching tool
11 made the same judgment you've made?

12 A. I did not think about that.

13 Q. What would your view be if every professor
14 teaching a course drawing on the handbook made the
15 judgment that because it was A, expensive and B, not all
16 of it was going to be used, C, I will assign some number
17 of chapters without obtaining a permission fee to the
18 viability of that handbook?

19 A. I honestly think that Sage would have more
20 likelihood of selling the handbook. As a student that's
21 how I came to purchase the handbook.

22 Q. How would that decision-making promote sales
23 of the handbook?

24 A. Because if my professors did not give me
25 articles from that handbook and let me know its

1 influence, then I would not as a student of qualitative
2 research have bought that.

3 Q. Are you suggesting that a number of students
4 in your course notwithstanding having unpermissioned
5 access via EReserves actually went out and purchased the
6 handbook?

7 A. I know as a student I purchased handbook.

8 Q. I'm asking whether you to your actual
9 knowledge from -- in the time of your teaching of this
10 course offering these excerpts on EReserves, how many
11 students to your knowledge have gone out and purchased
12 the book?

13 A. I do not know.

14 Q. Do you know of anyone who has?

15 A. I do not know for positive.

16 Q. And are you aware whether apart from
17 purchasing the handbook there are available to
18 universities and faculty members permissions fees for
19 licensing excerpts of the handbook?

20 A. No.

21 Q. Something you're totally unaware of?

22 A. Yes.

23 Q. Did you and Ms. Hall discuss that as an
24 alternative to the binary option of either having the
25 students buy the entire work or simply post portions of

1 it without permission on EReserves?

2 A. I can't answer that.

3 Q. Can't answer it because?

4 A. That was a different -- a conversation --

5 MS. GARY: Are you asserting attorney
6 client privilege?

7 THE WITNESS: Yes.

8 MR. RICH: Could you define for me
9 where you're drawing the line of privilege
10 with respect to Ms. Hall?

11 And the reason I ask is you all
12 produced to us the PowerPoint. Other
13 witnesses whom I deposed and we've deposed
14 have testified about the substance of the
15 seminar offerings. This witness testified
16 earlier about her conversation with Ms.
17 Hall with the other professor handy. What
18 is your position as to where the boundary
19 line is?

20 MS. GARY: Our position is that the
21 workshops that Cynthia Hall held with
22 professors are not privileged. They were
23 part of her general teaching capacity. But
24 any conversations that individual
25 professors may have had with Ms. Hall

1 outside of those workshops specifically
2 seeking legal advice from her with regards
3 to copyrighted materials would be
4 privileged.

5 So I believe the witness previously
6 testified as to conversations that took
7 place during part of this general workshop
8 that which were not privileged. But I
9 believe now this question is seeking
10 information which took place outside of the
11 workshop and is therefore privileged.

12 MR. RICH: We won't obviously test that
13 during this session. But it's something we
14 may want to consider further.

15 BY MR. RICH:

16 Q. Just so I understand it, this subject came up
17 but you're unable to testify to the substance of the
18 discussion?

19 A. Yes.

20 Q. And did that subject come up by your
21 requesting legal advice from Ms. Hall on the issue of
22 permissions fee or licensing?

23 A. No.

24 Q. Did it come up because Ms. Hall initiated a
25 discussion of that topic?

1 A. Yes.

2 MR. RICH: It's hard for me to know how
3 that could be privileged if this doesn't
4 reflect a request for legal advice.

5 MS. GARY: If I may have a moment to
6 confer with the witness off the record.

7 MR. RICH: Sure.

8 THE VIDEOGRAPHER: Off the record at
9 10:21:28.

10 (Discussion off the record.)

11 THE VIDEOGRAPHER: This is tape 3.
12 We're back on the record at 10:23:02.

13 MS. GARY: Thank you.

14 After consulting with the witness, it
15 is our position that there was this
16 workshop that took place that was not
17 attorney client privileged communications.
18 But at a certain point after the workshop
19 ended those conversations did become
20 attorney client privileged and Ms. Hall
21 indicated as such to the witness that these
22 conversations were now protected by the
23 attorney client privilege. And she was
24 providing legal advice to Professor
25 Kaufmann at that point.

1 So we're going to keep, if we can keep
2 a distinction between the workshop itself
3 and those attorney client communications
4 after the workshop ended. And Cynthia Hall
5 indicated this was indeed an attorney
6 client conversation where Cynthia Hall
7 would provide legal advice.

8 MR. RICH: All right. I hear the words
9 and I again will respect that for this
10 deposition because I can't force any
11 different outcome here.

12 I want to reserve our position because
13 I find that distinction a bit dicey and
14 artificial. But again, I don't think we're
15 going to resolve it here today.

16 BY MR. RICH:

17 Q. Let me ask you a different question. What is
18 your understanding about the availability of licensing
19 as a means for making course materials available to
20 students?

21 A. After the new policy changes?

22 Q. Let's -- let me ask the question more
23 generally. Well, let's break it.

24 Before the new policy did you have an
25 understanding whether it was at least potentially

1 available to faculty members to neither require students
2 to purchase full texts at a bookstore or place excerpts
3 on EReserves without any permissions, that at least a
4 third alternative at least in some instances could be to
5 secure licenses to use excerpts of those works within
6 the course curriculum?

7 A. No.

8 Q. You had no exposure to that concept. And now
9 post the new policy, am I correct that it was only in
10 the course of what your counsel has indicated or
11 regarded as privileged communications with Ms. Hall that
12 this third option was the subject of some discussion?

13 A. Again, yes. And I think it also came up in
14 the PowerPoint.

15 Q. And what in the PowerPoint do you recall?

16 A. That there is a certain cite, which I can't
17 remember the name of --

18 Q. Copyright Clearance Center?

19 A. Yes. Yes. That you can go to.

20 Q. And when you went through the checklist and
21 evaluated market harm and other possible adverse effects
22 on the -- strike that.

23 When you went through the checklist including
24 factor 4, did you give any consideration to the
25 availability of licensing for one or more of the works

1 you were offering for your courses?

2 A. No.

3 Q. And was that something that just didn't occur
4 to you or you didn't feel it relevant or what?

5 A. No. I thought about it. The reason I did not
6 was because it is my understanding that if it was --
7 came out as fair use according to the checklist then I
8 didn't need to go there.

9 Q. But I believe you testified a few minutes ago
10 that part of your fair use calculus on factor 4
11 involved the judgment that it would be too expensive for
12 students to purchase the entire works, correct?

13 A. Yes.

14 Q. Now, wouldn't it have been appropriate in that
15 situation in making a more fine tuned evaluation to have
16 asked, well, what if the students only had to pay
17 something less by way of a license fee for access to the
18 materials I want to use?

19 A. That was not my thought process. My thought
20 process was that I have altered the use of this textbook
21 to follow fair use, so now it is fair use and I don't
22 need to go there.

23 Q. What relevance did the -- you mentioned that
24 during your seminar, your educational seminar, the
25 nonprivileged part of the activity with Ms. Hall, among

1 other things a concept of transformativeness was
2 discussed, yes?

3 A. Uh-huh.

4 Q. What understanding did you arrive about that
5 concept and what it means relevant to the fair use
6 checklist?

7 A. I understand that anything I'm using is
8 nontransformative. Transformative within my
9 understanding is when you take a piece of work and you
10 transform it into another type of work.

11 Q. And why was that topic discussed, to your
12 understanding?

13 A. Because it is listed on the fair use
14 checklist. We went through the checklist line by line
15 by line.

16 Q. Did Ms. Hall indicate of you as to the
17 relative importance of that factor in a fair use
18 analysis?

19 A. We -- her example within the workshop was the
20 song of "Pretty Woman" that evidently there was a court
21 case when it was -- some of those words were taken and
22 transformed into a rap song which then constituted fair
23 use because it was transformative. So me it's an
24 interesting concept.

25 Q. Is it a concept that you regarded as

1 irrelevant at the end of the day going through your
2 checklist?

3 A. It was not one of the concepts that I thought
4 applied to what I was doing at this time.

5 Q. Because?

6 A. Because I don't understand copying directly a
7 chapter to be transformative. Transforming it to one
8 electronic or one mode of text to another does not
9 transform the piece.

10 Q. So that in evaluating that factor it would cut
11 against fair use, correct?

12 A. Yes.

13 Q. And so you checked that box --

14 A. Yes, I did.

15 Q. -- negatively.

16 A. Yes.

17 Q. But it was not in any way dispositive of your
18 analysis, correct?

19 A. There was enough on the other side to outweigh
20 it.

21 Q. Did Ms. Hall indicate that all fair use
22 checklist factors are equal as it were?

23 A. I did not understand them as being some
24 weighing more than the others.

25 Q. How did you evaluate the various checklist

1 factors that go to the issue of relevance to the course,
2 importance to your teaching objectives and the like, how
3 did you apply those criteria to these works? By that I
4 mean the works on Plaintiffs' 99.

5 A. I applied that the pieces were important to
6 what I wanted to teach. And the way I did that was
7 because I had made the categories of the theories or
8 concepts that I wanted to teach and then I found the
9 best pieces that I could to convey those concepts.
10 Therefore those pieces were important to teaching that
11 concept because that's why they were chosen.

12 Q. And by definition the pieces you selected by
13 taking the entirety of the chapter contribution, say in
14 the case of the Sage handbook, you took the heart of
15 those contributions, indeed you took the whole
16 contributions, correct?

17 A. No. I think that's -- it depends if you
18 understand the whole to be the chapter or the whole to
19 be the edited volume. And I understood the whole to be
20 the edited volume.

21 Q. Do you have any understanding as to whether
22 when you made a contribution to Sage -- I'll butcher the
23 name of that.

24 A. The CYT?

25 Q. Yes. Did you understand that to be a

1 copyrighted work?

2 A. My understanding from the workshop is that if
3 it's a journal then the article is a whole. If it's an
4 edited volume, then the edited volume is a whole.

5 Q. I'm asking a slightly different question. Do
6 you have any understanding whether individual
7 contributions by individual educators like yourself to
8 handbooks such as Sage handbook themselves are
9 copyrighted works? Do you know the answer to that?

10 A. No.

11 Q. Now, again, just so I understand the
12 methodology you employed here, if you would turn to page
13 8 of this document under section six, the first listed
14 work is an excerpt from something called "The Journal Of
15 Contemporary Ethnography", you see that?

16 MS. GARY: What exhibit are we looking
17 at?

18 MR. RICH: Sorry, I'm looking at fall
19 '08.

20 BY MR. RICH:

21 Q. Let's go to page 9, section 7 please, the
22 excerpt from Vanderstaay in "The Journal Of Contemporary
23 Ethnography".

24 A. Yes.

25 Q. If I understand you correctly that your

1 methodology there was to ascertain whether there was a
2 link to this in the E-Journals system?

3 A. Yes. I made sure that it was in the databases
4 paid for by GSU.

5 Q. And by paid for, your understanding was that
6 electronic use via EReserves fell within a licensed
7 arrangement between the university and the journal
8 publisher?

9 A. Yes.

10 MS. GARY: Objection. Asked and
11 answered. You may answer.

12 THE WITNESS: That was my understanding.

13 BY MR. RICH:

14 Q. And if you ascertained that that was not the
15 case as to a journal, you did not independently
16 undertake a fair use analysis?

17 A. No. If it was not there I switched to -- I
18 found another article.

19 Q. And what was your reason not to subject
20 journals not falling within that licensed category to
21 the checklist in any event, just so I understand that?

22 A. Because I wanted to be sure that I was safe,
23 that I was doing it -- that I was following the policy.
24 And if it was not -- if we didn't have rights to it and
25 I was using the whole, then I assumed that that was not

1 fair use and so I found another article.

2 Q. So if you were using the whole of a
3 contribution to a handbook that was okay so long as it
4 made the checklist, but if it was a contribution to a
5 journal that was the whole article you drew a different
6 distinction?

7 A. Yes. My understanding from the workshop was
8 that an edited volume is the whole, but if it's a
9 journal it's the article that's the whole.

10 MS. GARY: I think the witness needs a
11 break right now.

12 MR. RICH: Of course, please.

13 THE VIDEOGRAPHER: Off the record at
14 10:36:15.

15 (Brief recess.)

16 THE VIDEOGRAPHER: Back on the record
17 at 10 42:51.

18 BY MR. RICH:

19 Q. What is your understanding as to where dollars
20 would be located if you as the faculty member made a
21 decision that an item you wanted to use in the course
22 exceeded fair use but that it would be appropriate to
23 pay a permission fee or a license fee to use that item
24 from the publisher, where would the monies to do that
25 come from as you understand it?

1 A. I don't know.

2 Q. Is that anything you've given consideration
3 to?

4 A. No.

5 Q. It's not anything you've discussed with
6 anyone?

7 A. No.

8 Q. Including Ms. Hall?

9 A. No. Where the monies would go?

10 Q. Where the monies would be found, who would
11 make the payment, where the money to make the payment
12 would come from?

13 A. Students.

14 Q. You're assuming?

15 A. Yes. Yes. Was that talked about in the
16 workshop?

17 Q. Yes.

18 A. I'm not sure. Very likely.

19 Q. What's your recollection about what was said
20 about that?

21 A. I don't remember.

22 Q. Do you remember if this was part of the formal
23 presentation made by Ms. Hall or part of a Q & A?

24 A. It was talked about somewhere. I don't
25 remember where, in which context.

1 Q. And have you formed a view as to the
2 appropriateness of students making some payment to
3 accommodate the licensing of copyrighted works?

4 A. No. I have not come to that decision.

5 Q. Have any of your decisions going through the
6 checklist been influenced by the issue of where
7 resources would be identified whether at GSU, out of
8 your own pocket as it were or out of students in
9 determining whether or not a particular proposed use is
10 or should be a fair use?

11 A. My determination was specifically on did it
12 fall within fair use. And if it did not fall within
13 fair use according to the checklist I chose not to use
14 it.

15 Q. But as we'll get to shortly, do you recall
16 that a factor listed, a checklist factor under factor 4
17 as whether or not licensing or permission is available
18 for the work?

19 A. Yes.

20 Q. Is that something you considered in the case
21 of the works that you went through?

22 A. No.

23 Q. So what I'd like to do now is to -- do we want
24 to remark those?

25 MR. LARSON: Let's remark them because

1 the previously marked version had writing
2 on it and checks filled out.

3 MR. RICH: Let's mark as Plaintiffs' 100
4 a copy of what I believe is the fair use
5 checklist in use now and which we'll verify
6 is the document you used.

7 (Plaintiffs' Exhibit No. 100
8 was marked for identification
9 by the reporter.)

10 BY MR. RICH:

11 Q. Do you recognize this document?

12 A. Yes.

13 Q. Is this the document you used to go through
14 the process you testified to a bit earlier?

15 A. Yes.

16 Q. And this is the document which -- what did you
17 do, did you put Xs or checkmarks in the boxes, how did
18 you physically do this?

19 A. Yes, put lines through them.

20 Q. And you did one per course reading offering,
21 correct? You filled out a checklist for each separate
22 proposed offering, correct?

23 A. Not -- except for E-Journals that we had links
24 to.

25 Q. Fine. But with respect, for example, to each

1 chapter proposed to be used from the Sage handbook there
2 would be a separate checklist --

3 A. Yes.

4 Q. -- correct?

5 A. Yes.

6 Q. This was the body of material which you
7 forwarded to the library?

8 A. Yes.

9 Q. Now, if we had the actual checklist, which
10 unfortunately we don't, we could have short circuited
11 this examination a bit, but I'm going to ask you working
12 from the summer of '07 syllabus and with reference to
13 the checklist on a sample basis to walk me through the
14 process you went through in evaluating whether certain
15 proposed EReserve offerings qualified for a fair use.

16 Now, as you approached this for the Sage
17 handbook materials, am I correct that you initially went
18 through chapter by chapter?

19 A. Uh-huh.

20 Q. And then at the end of that process you saw
21 what the cumulative pages would be and then you, what,
22 as a phase two pared down, is that basically how you did
23 it?

24 A. Uh-huh.

25 Q. You have to speak for the record.

1 A. Yes. Sorry.

2 Q. Okay. So let's start then with the entry at
3 the top of page 8 of Exhibit 99, please, which is the
4 introduction I take it to the Sage handbook third
5 edition, correct?

6 A. Uh-huh.

7 Q. Pages 1 to 32.

8 A. Yes.

9 Q. Please walk us through in narrative fashion if
10 you're comfortable with it how you made the assessment
11 from this checklist.

12 A. Okay. I filled out the top, of course,
13 article, references, et cetera.

14 So under factor 1 on factors which weigh in
15 favor I checked it's nonprofit educational and also that
16 it's teaching and use is necessary to achieve intended
17 educational purpose.

18 Q. And on that factor how did you come to that
19 conclusion?

20 A. As I've discussed previously, that was the
21 reason the piece was chosen in the first place.

22 Q. Would that not almost be an automatic
23 checkmark having made a determination that you wanted to
24 use material for the course in your professional
25 judgment?

1 A. It becomes automatic in the sense that I made
2 that decision prior to the checklist because I
3 specifically had the theory or the concept, the category
4 to which I wanted to teach, and found those articles or
5 chapters which spoke to that purpose.

6 Q. Well, wouldn't it be your expectation that a
7 typical faculty member at GSU would initially select the
8 desired reading materials based on his or her
9 professional judgment of what suits the pedagogical
10 purpose of that course as opposed to back into that as
11 to what might meet a checklist?

12 A. I would assume.

13 Q. You can keep going.

14 A. Under --

15 Q. So you had three checkmarks I take it on the
16 weighs in favor of fair use on box -- on factor 1?

17 A. Yes.

18 Q. And on the right hand column?

19 A. Nontransformative.

20 Q. Any others?

21 A. No.

22 Q. So factor 1 would have been awarded to fair
23 use?

24 A. Yes.

25 Q. Factor 2.

1 A. Under weighs in favor, it's published, it's
2 factual or nonfiction, and it's important to educational
3 objectives.

4 Q. Did you regard that third objective as
5 meaningfully different from the last one at the bottom
6 of factor 1, use is necessary to achieve your
7 educational purpose?

8 A. I had problems differentiating the two.

9 Q. Okay. Go ahead.

10 A. Under 3 --

11 Q. Could you go to the right side of box 2?

12 A. Excuse me. I checked nothing on the right.
13 Pretty much opposites.

14 Q. So factor 2 would be awarded to fair use?

15 A. Yes.

16 Q. Factor 3?

17 A. Small portion used.

18 Q. How did you determine what small meant?

19 A. Being conservative it was single digit
20 percentages of the entire work.

21 Q. Notwithstanding in this case that this was the
22 entirety of the work of the contributor -- well, I take
23 it back.

24 This may not be the quintessential example of
25 the point I'm asking, but if there were a chapter

1 offering and it was from a contributor, a colleague of
2 yours in the field, notwithstanding that was the
3 entirety of the intellectual work product of that
4 contributor it would still be by your understanding of
5 the guidelines, as it were the policy, a small portion
6 of the work because the work you understand is to be
7 defined as the entirety of the compilation, correct?

8 A. Yes.

9 Q. Okay. Go ahead.

10 A. Small portion, it's not significant to the
11 whole. It's not the heart of the work is how I
12 interpreted that.

13 Q. How would you evaluate that factor in the
14 context of a handbook of 43 or so different excerpts,
15 would any single chapter in your estimation constitute
16 the heart of the work?

17 A. No. No.

18 Q. By definition would no contribution constitute
19 the heart of the work?

20 A. I did not understand any contribution within
21 the handbook constituting the heart of the work, but
22 much more illuminating the multifacets that constitute
23 qualitative research.

24 Q. Would you explain that last? I didn't
25 understand the last part of your answer. I'm sorry.

1 A. To me there was no piece within the handbook
2 or really within qualitative research that constitutes
3 the heart. It's too multifaceted.

4 Q. Would an introduction, if one were dealing
5 with an introduction that was the form of an executive
6 summary or an overall synopsis of the contents of a work
7 followed by a series of discrete works, could that in
8 your estimation ever constitute the heart of the work?

9 A. I don't think so considering that the example
10 that I have is "Singing In The Rain". So if you take 30
11 seconds of Gene Kelly singing "Singing In The Rain", you
12 have constituted the heart of that work regardless of
13 it's a very, very small portion.

14 I don't think qualitative research works in
15 that same manner. You don't have that something that
16 can grasp the concept of the whole of qualitative
17 research.

18 Q. In taking six or eight excerpts from the
19 handbook that meet the pedagogical needs of the course,
20 why weren't you taking the heart of that work as it
21 relates to the pedagogical needs of your course?

22 A. My understanding is if I am taking a single
23 digit percentage then -- and there is no heart, I am
24 neither taking more than my fair share nor am I taking
25 the heart because there is no heart. Something

1 unnarrative, something on this, something on that are
2 different facets, but they're not the heart.

3 Q. Is it accurate that in making the selections
4 you made from the handbook you selected those chapters
5 that were most centrally relevant to your teaching
6 objectives?

7 A. Yes.

8 Q. Okay. Keep going.

9 A. And amount taken is narrowly tailored to my
10 purpose.

11 Q. What do you understand that factor from your
12 education from Ms. Hall or otherwise to be looking to
13 determine?

14 A. I took it to mean that it is specific to my
15 purpose and it also is narrowly a small portion of the
16 whole. Speaking to both of those factors.

17 Q. Does it have any element beyond any of the
18 other independently stated objectives such as important
19 to educational objectives, use is necessary to achieve
20 your intended educational purpose, did you view it as
21 somewhat cumulative?

22 A. Yes.

23 Q. So you checked all three?

24 A. Yes.

25 Q. And then on the right side?

1 A. None.

2 Q. Okay. So the third factor is also awarded?

3 A. Yes.

4 Q. Okay. Factor 4?

5 A. I checked that there was not a significant
6 effect on the market.

7 Q. And again your reasoning was?

8 A. That I was not going to have them buy the
9 whole handbook and that -- so my choices were to
10 introduce them -- introduce them to that work or not use
11 that work. And by introducing them to the work the only
12 thing that I could see happening is having the
13 propensity that they may buy the work but not take away
14 from that.

15 Q. And did you make that judgment uniquely to the
16 handbook as opposed to your assessment of any other
17 works that you put through the fair use checklist?

18 A. I was making that judgment specifically on the
19 handbook in this case, yeah.

20 Q. And were there other works where you made the
21 judgment that affording students access to a portion of
22 the work without license fee could arguably stimulate
23 their purchase of the work at a later date?

24 A. Uh-huh. Alfred, for example.

25 Q. And were there works where you made the

1 determination that it was unlikely that that would
2 eventuate in a purchase of a work?

3 A. No. No.

4 Q. So is your basic premise that simply affording
5 students access on an unlicensed basis to excerpts of a
6 work which are pedagogically important to the field
7 can't almost by definition constitute market harm to the
8 publisher because it may eventuate in some unknown
9 number of cases in future purchases of the work?

10 A. I think you're saying a lot more than that I
11 said.

12 Q. How have I overstated or misstated your point?

13 A. Because you're good at this.

14 My thought process was not as thought through
15 as yours. My thought process was specifically what I
16 had stated without the added pieces that you put in.

17 Q. Why don't you keep going. So you checked the
18 first check box here, no significant effect on market?

19 A. Uh-huh. And also I think we discussed the
20 possibility of it stimulating.

21 Q. Did you interpret that as it suffices that
22 there's a possibility that it would stimulate, did that
23 suffice to check that box in your view?

24 A. Uh-huh. I did.

25 Q. What about the third box?

1 A. I did not check the third.

2 Q. What do you understand that to mean?

3 A. I was thinking of other pieces by the same
4 author or same publishers in other places which, you
5 know, I don't know everything that's out there, there
6 may be similar things. This at this time was what I had
7 and what I was working with.

8 Q. Any other boxes get checked on the left hand
9 column?

10 A. Restricted access.

11 Q. What did you understand that to mean?

12 A. That only the students within that class have
13 passwords to EReserves for a limited amount of time,
14 which was the time of the course.

15 Q. Do you own the handbook?

16 A. Yes.

17 Q. And licensing or permission unavailable, I
18 know we touched on this before I put this before you, am
19 I correct in recalling that you said it was not
20 something you gave particular consideration to in going
21 through the checklist?

22 A. Yes, that is true.

23 Q. So I count three checks on this side of the
24 ledger?

25 A. Yes.

1 Q. And what about on the right side?
2 A. Required classroom reading.
3 Q. What about licensing or permission reasonably
4 available?
5 A. No, I did not check that.
6 Q. Is that based on any investigation?
7 A. No.
8 Q. Numerous copies made or distributed, what was
9 your understanding of what that means?
10 A. No, I don't consider 16 to 20 to be numerous.
11 Q. What would you consider numerous?
12 A. I don't know. But I would think it would be
13 much more than that.
14 Q. What about repeated or long term use that
15 demonstrably affects the market for the work?
16 A. I did not check that.
17 Q. What was your understanding of what that's
18 intended to get at?
19 A. I did not consider it to be long term since it
20 was for the semester.
21 Q. How about repeated?
22 A. I didn't go there.
23 Q. Because?
24 A. Didn't compute.
25 Q. Wouldn't have fit, in other words, the fair

1 use outcome?

2 A. No, that's not what I said. I said --

3 Q. You just read through it?

4 A. No. What I said was it didn't compute. It
5 didn't register in my mind in that way.

6 Q. Sitting here today would you have checked that
7 box?

8 A. That multiple semesters counted repeated, yes.

9 Q. And sitting here today, if I were to represent
10 to you that licensing or permission or you were to
11 determine that licensing or permission was reasonably
12 available through say a Copyright Clearance Center would
13 you have checked that box if you had that knowledge?

14 A. Yes. Yes.

15 Q. So you did check required classroom reading,
16 right?

17 A. Yes.

18 Q. Anything else?

19 A. No.

20 Q. So how did you award the fourth factor?

21 A. The way that I did it it was in favor.

22 Q. And sitting here today with the benefit of any
23 of our discussion, might you have made that evaluation
24 differently if you were doing it again today?

25 A. What were the tallies?

1 Q. Well, I have three on the left, I'm
2 hypothesizing or asking you to hypothesize that
3 licensing or permission is reasonably available. I'm
4 asking you to adopt that as true.

5 A. Yes, and repeated.

6 Q. And repeated?

7 A. Uh-huh. So it's three to three.

8 Q. And required. Three to three.

9 A. So that would be against for me.

10 Q. And then what would happen as you understand
11 the process if the factor 4 was a tie or even I'm
12 hypothesizing if factor 4 cut against but your first
13 three factors favored, what's your understanding of what
14 happens there?

15 A. My understanding according to the front up
16 here under instructions, where factors -- where fewer
17 than half of the factors are in favor of fair use,
18 instructors should seek -- or factors are evenly split
19 consider, but if they're three to one, then it is
20 considered fair use.

21 Q. And did Ms. Hall or anyone else indicate to
22 you that factor 4 among the factors should be given any
23 different weight than any of the first three factors?

24 A. No.

25 Q. Now, in going through this process with each

1 of the Sage excerpts, just so I'm clear, in determining
2 small portion used, that was done looking at each
3 chapter excerpt as against the whole?

4 A. Yes, edited, in an edited book, yes.

5 Q. Yes. And so that small portion determination
6 was made there and that as you've testified to the
7 ultimate determination of how many chapters to use
8 was -- am I correct that it wasn't driven by the
9 checklist per se but by other considerations?

10 A. No. I think that the checklist very much has
11 something to do with how much I would consider using.

12 Q. How did you use the checklist in making the
13 ultimate determination of how many chapters to use from
14 the Sage handbook?

15 A. By making sure that it was a single digit
16 percentage.

17 Q. And what in the checklist dictated you doing
18 that?

19 A. But that was only one factor. I cut them down
20 to single digit and once I had a single digit amount I
21 went through the checklist with each article that I had
22 on my list for possible use.

23 Q. I thought earlier you testified it may have
24 occurred the opposite way. And maybe I wasn't clear
25 enough with my questioning.

1 Just so I'm clear about methodologically what
2 you did, having had your discussion with Ms. Hall, did
3 you go back before employing the checklist and pare down
4 to single digits the total proposed takings from the
5 handbook?

6 A. Yes. I took everything off the syllabus,
7 everything that was Sage 2005 constituted a list. I
8 pared that list down to single digit. Then I went
9 through with this and evaluated each piece that was on
10 that possible list to use.

11 Q. Okay. If we were to have the checklist in
12 front of us with respect to each of the Sage chapters,
13 would the checkmarks be identical?

14 A. Uh-huh.

15 Q. Process didn't result in any differentiation
16 between those chapters as you did it for each?

17 A. Within this context, no.

18 Q. All right. And did you -- was it a meaningful
19 process to go chapter by chapter or was it pretty
20 obvious to you once you had done it for one that all of
21 the others would sort of follow as a course?

22 A. I think within the same context then they all
23 pretty much fell within the same checklist.

24 MR. RICH: Give us a second.

25 (Discussion off the record.)

1 BY MR. RICH:

2 Q. If you could turn to page 9 of this syllabus,
3 please.

4 You indicated some uncertainty whether on the
5 last excerpt under session 8 the Van Maanen piece,
6 whether that was in or out --

7 A. Uh-huh.

8 Q. -- according to my notes. What was your
9 thought process there? And was that a product of going
10 through the checklist?

11 A. No. No.

12 Q. What was the reason then for the decision,
13 whatever it was?

14 A. Primarily it's a piece that confused students
15 because theoretically it presented issues that they had
16 read about that were presented theoretically different
17 and they were not able to deconstruct the differences
18 between the two. So it hindered their learning more
19 than it helped.

20 Q. Are you familiar with the concept of
21 coursepacks?

22 A. I have bought coursepacks as a student.

23 Q. And what do you understand coursepacks to be?

24 A. You go to the copy store and buy a coursepack.

25 Q. And when you bought them, what did they

1 comprise typically?

2 A. Articles and readings.

3 Q. Do you have a recollection that their contents
4 were in any way or materially different from the sorts
5 of compiled readings which constitute the EReserve
6 offerings that you have been giving to your students at
7 Georgia State University?

8 A. No, I've not thought about any differences or
9 similarity.

10 Q. So in theory another technique by which
11 substantially similar materials could be offered to
12 students, your students, would be through a coursepack,
13 correct?

14 A. Yes.

15 Q. Have you ever used that vehicle?

16 A. No.

17 Q. Have you considered using it?

18 A. No.

19 Q. Is there a reason that you didn't view that as
20 a viable alternative to posting works on EReserves?

21 A. No, I think it's more that with the electronic
22 turn everything becoming electronic and it's just a
23 newer way to do it.

24 Q. Do you have an understanding with respect to
25 the practice at GSU in seeking and obtaining copyright

1 permission when works are offered through -- for
2 distribution to students through coursepacks?

3 A. No.

4 Q. If I were to represent to you that in each and
5 every instance permission is sought with respect to each
6 material contributed in coursepacks, sitting here today
7 is there any logical basis for distinguishing that
8 practice for affording students access to materials in
9 physical bound coursepack form versus offering
10 potentially the same materials through the EReserve
11 system without securing copyright permission?

12 A. Are you asking if I would consider that?

13 Q. I'm asking whether sitting here today you can
14 draw any logical conclusion as an educator and as
15 someone who puts together and offers course materials
16 for that distinction in the practice at GSU?

17 A. No.

18 Q. Does it seem logical to you?

19 A. No.

20 Q. If it were the case that materials were
21 offered to students in coursepacks and license income
22 were flowing to publishers and the only reason that
23 practice and that income stream stopped was because of
24 the migration of those materials to EReserves, would you
25 believe that to be a fair and appropriate outcome?

1 A. I don't think that I am educated enough to
2 make that determination. At this point I do not
3 understand if it constitutes fair use why I would do a
4 coursepack.

5 Q. Have you become aware of any communications
6 within Georgia State University discussing the relative
7 attributes of using coursepacks to provide reading
8 materials to students versus using the EReserve system?

9 A. No.

10 Q. Have you had occasion to discuss that with any
11 of your colleagues on the faculty?

12 A. No.

13 Q. Have you ever had any feedback from your
14 students about the cost of educational materials?

15 A. Yes.

16 Q. Tell me about the tenor of those discussions.

17 A. It's not unusual at the beginning of the
18 semester to hear students mumbling about the cost of
19 books for their courses.

20 Q. And what if any impact has that had on your
21 determination of how to provide materials to your
22 students for course work?

23 A. It makes me very conscious of the cost of
24 textbooks.

25 Q. And have you ever -- have you ever expressed

1 to students that they might think of any countervailing
2 considerations including that the cost of creating these
3 very materials and a reasonable profit needs to be found
4 somehow?

5 A. No.

6 Q. You do believe that, don't you?

7 A. I have not thought about it.

8 Q. Can you tell me what courses you will be
9 teaching this coming summer term as well as in the fall
10 for '09?

11 A. Yes, I'm teaching 8500 Maymester. I'm
12 teaching 8510 for summer short session. In the fall I'm
13 teaching 8500 and I'll be teaching one other course but
14 I'm not sure what it is yet.

15 Q. And in constructing the reading materials for
16 those courses starting with 8500, is it your intention
17 to use essentially the same if not identically the same
18 materials as you now created for the Maymester?

19 A. Yes. Yes. The ones that I have gone through
20 the checklist, yes.

21 Q. Yes. And have you gone through a similar
22 process using the checklist with respect to materials
23 intended to be used for the 8510 course?

24 A. Not yet.

25 Q. When do you expect in the normal course of

1 things you would do that?

2 A. Within the next couple weeks.

3 Q. And do you have any preliminary sense knowing
4 the range of materials offered in that course by you
5 whether certain modifications will also be appropriate?

6 A. I need to go through that. I don't know at
7 this time.

8 Q. If I were to show you the last such syllabus,
9 would that assist you in making at least a preliminary
10 judgment?

11 A. Uh-huh.

12 MR. RICH: Why don't we mark that.
13 We'll mark as Plaintiffs' 101 what I
14 believe is a course syllabus for EPRS 8510
15 for spring '09.

16 (Plaintiffs' Exhibit No. 101
17 was marked for identification
18 by the reporter.)

19 BY MR. RICH:

20 Q. And Professor Kaufmann, can you identify what
21 we marked as Plaintiffs' 101?

22 A. The syllabus for EPRS 8510 from spring '09.

23 Q. Thank you. And this is the term just ending?

24 A. Yes.

25 Q. And how many students are in this course

1 presently?

2 A. Oh, shoot. 16 approximately.

3 Q. And does that accurately reflect the assigned
4 readings for the course?

5 A. Yes.

6 Q. Including the week by week readings?

7 A. Yes.

8 Q. And were these readings determined at the time
9 they were determined, that is the EReserves postings,
10 under your prior 20 percent rule?

11 A. This was before the new policy, yes.

12 Q. Yes. And so now with an eye to the new
13 policy, I would appreciate it if you would course
14 through the list which is generally shorter than I see
15 the other in terms of numbers of works, anyway, and what
16 you feel might or might not warrant modification in the
17 future offering under the new policy.

18 A. Well, what I'd have to do is go back to my
19 categorizations and make sure that the readings that I
20 took out of the handbook constituted single digits. I
21 would also make sure that each journal article that was
22 listed was -- the link was provided, that we had
23 licensing for that.

24 Q. So in week 5 --

25 A. Yes.

1 Q. -- Coover, that's a -- is that a chapter from
2 a --

3 A. An edited book.

4 Q. An edited book?

5 A. Uh-huh.

6 Q. Would you see any reason to modify the offer
7 of that?

8 A. I would go back and see how long the book was.

9 Q. And if it met the single digit --

10 A. Then I would keep it if it were the only work
11 out of that book.

12 Q. Okay. And with respect to the handbook
13 selections, I think you've testified what your practice
14 would be?

15 A. Uh-huh.

16 Q. Similar to what we've discussed, yes?

17 A. Yes.

18 Q. And the Harper contribution?

19 A. I would make -- talking about pictures, I
20 would make sure that "Visual Studies" was a journal that
21 we have access to.

22 Q. And the contribution of S. Pink to the
23 "Qualitative Research Practice"?

24 A. I'd make sure that constituted less than 10
25 percent of the total.

1 Q. Coursing the rest of this list do you see any
2 other works subject to the two factors you identified,
3 namely percentage of the whole and whether there were
4 links to the electronic journal database that you would
5 either take out or modify as to --

6 A. Well, I would do that first. And then after
7 doing that everything that was left that I wanted to
8 keep I would go through the fair use list, checklist
9 with. But there's no reason to do the checklist if it's
10 out of the game from the start.

11 Q. Right. Henceforth, do you anticipate in
12 adopting the checklist investigating the availability of
13 licenses or permissions to use any of the works that you
14 would propose to offer by EReserves?

15 A. I believe at this moment what I would do is
16 contact legal affairs and talk to them about if it fails
17 the checklist, where does that weigh in, what do I need
18 to do.

19 Q. Now, did you understand the single digit
20 guidance from Ms. Hall to be a hard practice limitation?

21 A. No.

22 Q. What's the fairest way to characterize that?

23 A. My understanding from her discussion was that
24 it has not been directly stated by law what the
25 percentage is that constitutes a small portion. And

1 that there was this 20 percent floating around but that
2 perhaps to be really safe to use single digits. But
3 that was only her judgment and not hard and fast law.

4 Q. Did you develop any understanding that if even
5 taking account of that advice you were to determine that
6 it was pedagogically desirable to offer in toto some
7 double digit percentage from, say, the Sage handbook,
8 whether that would create some red flag or trigger some
9 review mechanism where someone else would say, well,
10 let's take another look at it?

11 A. I do not know if -- I knew it was supposed to
12 be a red flag for me and I needed to change that. I
13 don't know what the external mechanisms for control or
14 if there are.

15 Q. In this session with Ms. Hall, did she
16 indicate to you that your preexisting practice of taking
17 the quantity of excerpts from the Sage handbook which
18 you did was a dangerous or unlawful or unwise practice
19 to continue?

20 A. No.

21 Q. Did you discuss the specifics of the
22 excerpting practices from the Sage handbook?

23 A. No.

24 Q. Do you have any knowledge of what percent of
25 GSU faculty have signed up for or have actually taken

1 any of these seminar offerings on the new policy?

2 A. No.

3 Q. Have you discussed with your colleagues
4 whether they either have or intend to participate in
5 those?

6 A. No.

7 Q. Do you have any expectation knowing faculty as
8 you do what percentage are going to avail themselves of
9 this?

10 A. No.

11 Q. Is there any adverse consequence to a faculty
12 member in terms of good standing in the university if he
13 or she fails to attend one of these sessions?

14 A. I do not know.

15 Q. Are they mandatory?

16 A. I do not know.

17 Q. What did the e-mail say?

18 A. I don't remember. I remember -- I do not know
19 if it's mandatory.

20 Q. Who sent the e-mail, Cynthia Hall?

21 A. I do not know.

22 Q. Did you view it as mandatory?

23 A. I viewed it extremely necessary for the
24 practice that I do.

25 Q. Meaning by the practice that you do,

1 meaning --

2 A. That I needed to do that for me.

3 MR. RICH: Why don't you take this time
4 to change the tape.

5 THE VIDEOGRAPHER: Off the record at
6 11:26:23.

7 (Brief recess.)

8 THE VIDEOGRAPHER: This is tape 4.

9 We're back on the record at 11:33:36.

10 BY MR. RICH:

11 Q. Just a general question. Do you have an
12 understanding whether the new copyright policy applies
13 simply to course materials offered on EReserves or more
14 broadly across all platforms on which such course
15 materials may be offered?

16 A. All platforms.

17 Q. So it would include coursepacks?

18 A. I would assume.

19 Q. And it would include materials posted on
20 ULearn?

21 A. Yes.

22 Q. Let's now, I'm just going to mark for purposes
23 of your identifying a series of prior syllabi of courses
24 that you offered. I won't have a lot of specific
25 questions about them.

1 102 is the syllabus for the fall 2006 offering
2 of EPSF 9280 called interpretive inquiry.

3 (Plaintiffs' Exhibit No. 102
4 was marked for identification
5 by the reporter.)

6 BY MR. RICH:

7 Q. Can you able to identify this document?

8 A. Yes.

9 Q. What is it?

10 A. The syllabus for EPSF 9280 from fall 2006.

11 Q. And how did this course relate substantively
12 to the subsequently offered 8500 and 8510 courses?

13 A. This was the first course that I taught when I
14 came here. And I was told to teach this course but
15 there was no direction for it. And so I constituted the
16 course as I wanted it to be.

17 Then this was a special course that I don't
18 think is really offered much and I took -- because it
19 worked so well I really took this as the ground work for
20 8500.

21 Q. So you've not taught this course in this form
22 again, is that correct?

23 A. No.

24 Q. And does this syllabus accurately set forth
25 the assigned readings for the course?

1 A. Yes.

2 Q. And to the extent constituting other than
3 required texts, those readings were made available to
4 students via the EReserve system?

5 A. Yes.

6 MR. RICH: We'll mark as Plaintiffs' 103
7 the spring 2007 syllabus for the 8500
8 course.

9 (Plaintiffs' Exhibit No. 103
10 was marked for identification
11 by the reporter.)

12 BY MR. RICH:

13 Q. Ask you to identify this document?

14 A. Oh, sorry. EPRS 8500, qual 1, syllabus from
15 spring '07.

16 Q. And once again I'll ask you whether the
17 reading materials set forth in this were -- accurately
18 reflect the assigned readings for this course in the
19 spring 2007?

20 A. Yes.

21 Q. If I were -- well, strike that.

22 And the listed course readings apart from
23 required texts were made available to students via the
24 EReserve system, correct?

25 A. Yes.

1 MR. RICH: Next is Plaintiffs' 104,
2 which is the summer 2007 syllabus for the
3 8510 course.

4 (Plaintiffs' Exhibit No. 104
5 was marked for identification
6 by the reporter.)

7 BY MR. RICH:

8 Q. And I'll ask you to identify this document.

9 A. EPRS 8510 syllabus for summer 2007.

10 Q. And am I correct that the assigned readings
11 for this course, that this accurately sets forth the
12 assigned readings that were used in this course?

13 A. Yes.

14 Q. And again, those assigned readings to the
15 extent not required texts to be purchased were made
16 available via EReserves?

17 A. Yes.

18 MR. RICH: Plaintiffs' 105 is the fall
19 2007 syllabus for the 8500 course.

20 (Plaintiffs' Exhibit No. 105
21 was marked for identification
22 by the reporter.)

23 BY MR. RICH:

24 Q. Can you identify this document?

25 A. Syllabus for EPRS 8500, fall 2007.

1 Q. Does this accurately set forth the assigned
2 readings for this course?

3 A. Yes.

4 Q. And apart from required texts, is it correct
5 that those readings were available to students and
6 accessed by students from the EReserve system?

7 A. Yes.

8 MR. RICH: Plaintiffs' 106 is the spring
9 2008 offering of the 8510 course.

10 (Plaintiffs' Exhibit No. 106
11 was marked for identification
12 by the reporter.)

13 BY MR. RICH:

14 Q. I'll ask you to identify this document.

15 A. The syllabus for EPRS 8510 spring 2008.

16 Q. Does this syllabus accurately set forth the
17 assigned readings for this course?

18 A. Yes.

19 Q. And were those assigned readings to the extent
20 not required texts made available to students and
21 accessed by students and copied as they wished by
22 students from EReserves?

23 A. Yes.

24 MR. RICH: Plaintiffs' 107 is the
25 summer 2008 8510 offering.

1 (Plaintiffs' Exhibit No. 107
2 was marked for identification
3 by the reporter.)

4 THE WITNESS: This is the syllabus for
5 EPRS 8510 summer '08.

6 BY MR. RICH:

7 Q. Thank you. And does it accurately set forth
8 the assigned readings for this course?

9 A. Yes.

10 Q. And were those readings apart from required
11 texts offered on EReserves?

12 A. Yes.

13 Q. Thank you.

14 MR. RICH: Next mark as Plaintiffs' 108
15 a syllabus of one of your colleagues, Ms.
16 Fournillier, for summer 2008. This is for
17 the 8500 course.

18 (Plaintiffs' Exhibit No. 108
19 was marked for identification
20 by the reporter.)

21 BY MR. RICH:

22 Q. Have you ever seen this document?

23 A. No.

24 Q. How were these documents physically prepared?

25 A. How did she prepare hers, I don't know.

1 Q. There seems to be a fairly standard format to
2 them in other words. How do they get generated?

3 A. Each professor makes their own.

4 Q. Okay. If you would pull out Plaintiffs' 105
5 from your pile, please. And I'd ask you to -- 103,
6 they're both similar, and compare the descriptive
7 language from both documents as well as the actual
8 course offerings, I'll ask you a question or two about
9 them.

10 A. Uh-huh.

11 Q. It's been suggested that you focus on 103 for
12 this purpose.

13 A. Okay.

14 Q. Do you notice the substantial similarity
15 between the two?

16 A. Yes.

17 Q. Does that surprise you?

18 A. No.

19 Q. What accounts for it?

20 A. Because I gave her my syllabus so she could
21 teach the course and do with it what she wanted.

22 Q. I believe when I asked you earlier this
23 morning if you had any knowledge of similarity or not
24 and you indicated no.

25 A. I don't know what she did with it. I gave her

1 the syllabus and she could take or not take what she
2 wanted. I never saw what she did.

3 Q. Were you the original author of the text about
4 course structure and the listed course objectives and
5 all?

6 A. Some of it comes from my experience being
7 mentored at UGA, as I talked about before. And so it's
8 all a takeoff from that. Some remains the same, much
9 remains changed.

10 Q. And you invited her to use as much of this as
11 she felt comfortable doing if she wanted to?

12 A. Yes.

13 Q. And what do you make of the fact that in her
14 selection of course readings they likewise mirror
15 closely if not identically the readings which you had
16 assembled for the course?

17 A. What do I make of that?

18 Q. Yes.

19 A. It worked for her I guess.

20 MS. GARY: Which pages are you looking
21 at for the course reading?

22 MR. RICH: I was just comparing
23 Plaintiffs' 108 with Plaintiffs' 103.

24 MS. GARY: Okay.

25 MR. RICH: I mean, we're not going line

1 by line, but there's obviously a lot --
2 what appears to us a lot of similarity.

3 BY MR. RICH:

4 Q. Have you ever discussed with Ms. Fournillier
5 any aspects of copyright law as they related to this
6 course reading list?

7 A. No.

8 Q. And under the new policy what expectation do
9 you have as to what Ms. Fournillier will or is likely to
10 do in terms of her own determinations of fair use?

11 A. I have not discussed with her what she will
12 do.

13 Q. Is it conceivable that she will make different
14 determinations as to the same materials than you make?

15 A. I would think so.

16 Q. Would that make sense to you?

17 A. Yes.

18 Q. How so?

19 A. Well, if I made different determinations then
20 I would assume that she may make different
21 determinations, but as I said, I can't know what she
22 will do.

23 Q. But you have no plans to coordinate with her
24 on that?

25 A. We do not normally coordinate.

1 Q. Is she continuing to teach the 8500 course?

2 A. I believe she's slotted to teach it this
3 summer.

4 Q. I just want to review my notes and see if I
5 have anything else.

6 Have you ever used the ULearn system to post
7 course readings?

8 A. When I first came I attempted to use WebCT, it
9 was before they changed to ULearn. I used it a little.
10 It was more of a time intensive and learning curve than
11 I was willing to use and I don't think I posted readings
12 on there, but I'm not positive.

13 Q. And do you have any intention to use ULearn
14 for that purpose on a going forward basis?

15 A. No.

16 Q. If you did do you understand it would be
17 subject to the same guidelines of copyright law?

18 A. Yes.

19 MR. RICH: I have no further questions.

20 MS. GARY: I have just a few clarifying
21 questions.

22 EXAMINATION

23 BY MS. GARY:

24 Q. If you could, Professor Kaufmann, turn to
25 Exhibit 99 which is the EPRS 8500 summer 2007 syllabus.

1 And I believe this is the one you said you revised for
2 use in the Maymester course?

3 A. Yes. That I used for the revisions, uh-huh.

4 Q. If you could to the best of your knowledge --
5 let's turn to page 7, and let us know which of these
6 works were journal articles that were licensed through
7 GSU through the library?

8 A. I don't remember all. Let me see.

9 Q. Okay. Just if you can identify any.

10 A. Down through 3 I don't think there's any
11 journal articles. Chaudhry is a book, Johnson Bailey is
12 a book, Tisdale is a book, Crotty, Schwesatdt, those are
13 books. Through this page there's no journals. And
14 Sandstrom is not. Vanderstaay page 9 is a journal
15 article.

16 Q. And was that one that was licensed, that you
17 were able to obtain through GSU?

18 A. Yes. Yes. Tara Johnson week 9 was not. It
19 is a journal article but we did not have access.

20 Q. Okay.

21 A. I don't even know how to pronounce it, the
22 sociology, qualitative sociology on week 11, we have
23 that. That's it.

24 Q. And then one more question. Let's flip to
25 Exhibit 101, Plaintiffs' Exhibit 101 which is EPRS 8510

1 spring 2009 syllabus. And you mentioned that you were
2 going to determine whether the journal articles listed
3 here were available through the GSU library?

4 A. Yes.

5 Q. What will you do with those articles if you
6 determine that they're not available through GSU?

7 A. Then I will not use them and I'll find
8 replacements in other journals that I have access to.

9 MS. GARY: That's all my questions.

10 MR. RICH: Just a couple follow-up
11 questions.

12 FURTHER EXAMINATION

13 BY MR. RICH:

14 Q. You understand with respect to journal
15 articles that are licensed through the library that
16 royalty payments are made by Georgia State University to
17 the publishers for the purpose of allowing their
18 electronic usage, correct?

19 A. Yes.

20 Q. And you also understand that when a professor
21 such as yourself uses a chapter from a handbook such as
22 Sage on EReserves without making a permissions payment
23 that no royalties are flowing with respect to that
24 authorial contribution, correct?

25 A. Yes.

1 Q. Does that make any sense to you?

2 A. Under this, yes.

3 Q. By this you're referring to the --

4 A. The checklist for fair use.

5 MR. RICH: I have no further questions.

6 MS. GARY: That's all for me.

7 THE VIDEOGRAPHER: This concludes the
8 deposition. We're off the record at

9 11:52:29

10 (Deposition concluded at 11:52 a.m.)

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E R R A T A S H E E T

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

PAGE / LINE CORRECTION

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NOTARY PUBLIC SIGNATURE

DATE-----

MY COMMISSION EXPIRES:

C E R T I F I C A T E

G E O R G I A :

FULTON COUNTY :

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

This, the 12th day of May, 2009.

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

1 DISCLOSURE

2
3 STATE OF GEORGIA

4 COUNTY OF DEKALB

5 Deposition of Jodi Kaufmann

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

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

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

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

14 Shugart & Bishop will not be taking this deposition
15 under any contract that is prohibited by O.C.G.A. 15-14-37
(a) and (b).

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

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

20
21 Teresa Bishop
22 RPR, RMR, CCR B-307
23
24
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