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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 DIANE BELCHER, 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 Thursday, May 7,
2009, commencing at the hour of 8:55 a.m.

Shugart & Bishop
Certified Court Reporters
Suite 140
13 Corporate Square
Atlanta, Georgia 30329
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26 ALSO PRESENT:

27 KENNITH DRAKE, VIDEOGRAPHER
28 - - -
29

1 THE VIDEOGRAPHER: This will be the
2 videotaped deposition of Diane Belcher
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 7th, 2009. We are on
8 the record at 9:14:23.

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

12 MS. GARY: Just like to state for the
13 record that this morning we produced to
14 Plaintiffs' counsel some documents that
15 were given to us by Jodi Kaufmann including
16 her completed various checklists.

17 EXAMINATION

18 BY MR. LAWSON:

19 Q. Good morning.

20 A. Good morning.

21 Q. Would you state your name and address for the
22 record before we get started.

23 A. Diane Belcher. 1191 Berkley Road, Avondale
24 Estates, Georgia.

25 Q. I'm Todd Lawson. I'm an attorney representing

1 the plaintiffs in this action who are Cambridge
2 University Press, Oxford University, Sage Publications.

3 Have you been deposed before?

4 A. No, never.

5 Q. First time. Did you meet with your counsel
6 prior to the deposition?

7 A. Yes. In fact just now.

8 Q. Did you meet earlier in the week or before
9 that?

10 A. Yes.

11 Q. For how long?

12 A. Gosh, I don't know.

13 Q. Approximately is fine.

14 A. A few hours.

15 Q. Okay. And who was in attendance?

16 A. Laura and -- it was mainly Laura. There was
17 another I think a partner who was there at the
18 beginning, but he left.

19 Q. Okay. So did they go through how this will
20 work generally?

21 A. Yes. They explained the procedures because it
22 was all new to me.

23 Q. Okay. Well, then I won't dwell on that. But
24 a couple things. If you need a break at some point,
25 just let me know and we can accommodate you. If you

1 don't understand the question I ask, please ask me to
2 clarify it, I'll be happy to do that.

3 A. I will.

4 Q. Let me ask you this. Have you seen the
5 complaint in this action?

6 A. No, I haven't.

7 Q. Okay. Are you aware that you were identified
8 in the complaint?

9 A. I am aware of that.

10 Q. Okay. And are you aware of the specifics of
11 what was alleged in terms of your course?

12 A. No. I don't know that.

13 Q. Okay. Did you review for this deposition any
14 of your old syllabi for your courses?

15 A. I did when I was asked to produce them.

16 Q. So you reviewed the ones that were produced to
17 us as part of the litigation?

18 A. Yes.

19 Q. Okay. And as part of that, did you go back
20 and look at any of the postings that you've made on the
21 university EReserve system?

22 A. The postings?

23 Q. The readings excerpts.

24 A. Actually I can't because they're not available
25 after the term ends.

1 Q. Okay. And you have --

2 A. They're not accessible to faculty or students.

3 Q. You have some that are currently being used on
4 the system, is that right?

5 A. This past semester I did, yes.

6 Q. You mentioned the syllabi that you reviewed.
7 Did you gather documents for this litigation in any way?

8 A. I gathered the documents that we were asked to
9 provide.

10 Q. So you --

11 A. Which was e-mail and -- with certain key
12 words.

13 Q. Right. Okay. So you did that search
14 yourself?

15 A. Actually I was assisted by a graduate research
16 assistant in the department because it was very time
17 consuming, and I actually didn't know how to do all the
18 searches.

19 Q. And you produced all the syllabi to us that
20 you could find for your courses?

21 A. Oh, yes.

22 (Plaintiffs' Exhibit No. 109
23 was marked for identification
24 by the reporter.)

25 BY MR. LAWSON:

1 Q. I'd like to mark or hand you what's been
2 marked Plaintiffs' Exhibit 109.

3 A. Okay.

4 Q. Do you recognize this as your CV?

5 A. Yes.

6 Q. Okay. Just want to ask you a few questions
7 about this.

8 A. Okay.

9 Q. And I will just for the record, this was taken
10 from the GSU web site.

11 A. Okay.

12 Q. Not something that was produced as part of the
13 litigation. Does this generally accurately lay out your
14 educational and professional experience?

15 A. Yes.

16 Q. Okay. Anything in it you're aware of that's
17 incorrect?

18 A. I don't know how up to date this one is.

19 Q. When did you last update it?

20 A. I'm always updating it. Last week probably.

21 Q. Okay. And then when you update it, do you
22 post the new updated version?

23 A. No. No. It only gets reposted about once a
24 year.

25 Q. Once a year. Okay. Do you recall when the

1 last time that happened?

2 A. I'm sorry, I don't.

3 Q. That's okay. If anything as we go through
4 just a few questions here, you know if there's been
5 updates or changes, just let me know as we discuss it.

6 So this is correct then that you got your
7 masters and Ph.D. from Ohio State?

8 A. Yes.

9 Q. And am I right that as a general matter you
10 taught at Ohio State after getting your Ph.D. for --

11 A. About two decades.

12 Q. And then came to Georgia State?

13 A. That's right.

14 Q. And started here in 200 --

15 A. '3.

16 Q. And your Ph.D. is in English?

17 A. That's right.

18 Q. And what department are you in now with
19 Georgia State?

20 A. It's called applied linguistics/English as a
21 second language.

22 Q. Can you just tell me generally what that
23 department teaches and does?

24 A. Applied linguistics is a field that takes
25 linguistic theory and applies it. And the application

1 usually has to do with the teaching and learning of
2 languages. So we teach people how to teach language.
3 And our courses involve linguistic theory and teaching
4 methodology, language teaching methodology.

5 Q. And is that a graduate department or an
6 undergraduate department or both?

7 A. It's both.

8 Q. And do you teach both under grads and graduate
9 students?

10 A. I sometimes teach undergraduates. I mainly
11 teach graduate students.

12 Q. And then those graduate students then go on
13 and --

14 A. The master's students go on to teach language,
15 usually English as a second language. The doctoral
16 students go on to become academics.

17 Q. It says here that you're the director of
18 graduate studies?

19 A. That's right.

20 Q. What's involved in that position?

21 A. I oversee recruitment to the master's program
22 and the Ph.D. program. Scheduling of courses. I assign
23 advisors, students to different advisors. I'm involved
24 in a faculty committee called the master's studies
25 committee and the Ph.D. studies committee and we make

1 decisions about the curricula for both the master's
2 program and the Ph.D. program.

3 Q. How many faculty are in the department?

4 A. Graduate faculty I think we have eight. I'm
5 not sure that's exactly right, but it's about that.

6 Q. And when you say graduate faculty, what are
7 you distinguishing?

8 A. We also have a number of lecturers in our
9 department. Those are not tenure track faculty.

10 Q. And do your graduate students also teach
11 undergraduate courses in the department?

12 A. Some of the doctoral students do, yes.

13 Q. And do you -- is your department distinct or
14 do you cross over, you know, are your courses cross
15 listed with other departments?

16 A. Some are. Some are cross listed. Some
17 education students take our classes and some modern and
18 classical languages students take our classes. Those
19 are the two main areas that we cross over with.

20 Q. Okay. And you are in addition to being the
21 director of graduate studies a professor, too?

22 A. Yes.

23 Q. And that's a tenured position?

24 A. Yes.

25 Q. When did you get tenure?

1 A. Actually last year.

2 Q. Congratulations.

3 A. I may have been the oldest person to get
4 tenure for the first time.

5 Q. In your role as director of graduate studies,
6 you mentioned some of the duties you have. Do you set
7 policies for the department in any way?

8 A. I can't set policy as director of graduate
9 studies. Policies would be set -- there's an executive
10 committee, which I've not been a member of, the
11 department executive committee. And policy is, for the
12 graduate program is there's -- we have graduate faculty
13 meetings and the entire graduate faculty would determine
14 policy.

15 Q. And this executive committee, who's on that?
16 I mean generally.

17 A. Three tenured faculty.

18 Q. And what types of policies does that executive
19 committee set?

20 A. You know, I've never been on that committee so
21 I actually don't know if policy is the right word for
22 what they do. They make merit recommendations for
23 raises. And they give policy advice to the chair. So I
24 don't --

25 I would have to look at our bylaws to see what

1 exactly the responsibilities and duties of the executive
2 committee are. And since I've never served on it I've
3 never read the bylaws for the executive committee.

4 Q. Let me ask you more directly. Let's talk
5 about copyright policy for example.

6 A. Okay.

7 Q. Would you or this executive committee be
8 involved in setting any type of copyright policy for the
9 department?

10 A. I've never heard of that happening.

11 Q. Okay. And are you aware that that happens
12 elsewhere in the university?

13 A. No.

14 Q. Okay. Have you ever dealt or read or been
15 involved with the university copyright policy in any
16 way?

17 A. Just recently.

18 Q. Okay. And when you say just recently, what
19 happened?

20 A. Well, you know, there's a revised copyright
21 policy that has been put together by the University
22 System of Georgia and we have received several e-mail
23 messages that have apparently gone to the entire
24 university about the revised policies with a link to the
25 new web site.

1 Q. And have you personally received one of those
2 e-mails?

3 A. Yes.

4 Q. Did you receive an e-mail -- was there an
5 e-mail in the nature of a general announcement that a
6 new policy had been --

7 A. Yes. That's what I remember it at any rate.

8 Q. And you read that e-mail?

9 A. Yes.

10 Q. And did you click the link?

11 A. The first time I saw it I didn't, but more
12 recently we've gotten a message and it mentioned the new
13 EReserves policy and I did look at that.

14 Q. Okay. You read through the policy?

15 A. I don't know how closely I read it, but I did
16 read it to some extent. Maybe not word for word.

17 Q. And was this subsequent e-mail that you just
18 mentioned, was it again an announcement of the new
19 policy or did it say something different?

20 A. It was saying from now on any time anything is
21 put on EReserves there's a whole new set of guidelines.

22 Q. So it's your understanding that that policy is
23 now in effect?

24 A. In effect.

25 MR. LAWSON: Can we mark as Plaintiff's

1 110 a document -- and it relates to our
2 back and forth yesterday. Just for the
3 record, this isn't marked, but this has
4 been produced back with the Bates number
5 GAstate 0041401.

6 (Plaintiffs' Exhibit No. 110
7 was marked for identification
8 by the reporter.)

9 BY MR. LAWSON:

10 Q. This is an e-mail from Cynthia Hall to various
11 people.

12 Now, Professor Belcher, you're not named
13 actually as one of the recipients. But did you receive
14 an e-mail like this at some point?

15 A. About the workshop?

16 Q. Yeah.

17 A. Yes.

18 Q. When did you receive that?

19 A. Actually I think I received two e-mails about
20 the workshop. One may have been for a workshop on the
21 20th, and I think there was another workshop on the
22 27th.

23 Q. April 20th?

24 A. Right.

25 Q. And did you attend --

1 A. I attended one of them, yes.

2 Q. Which one did you attend?

3 A. The first one.

4 Q. And who conducted the workshop?

5 A. Cynthia Hall.

6 Q. How many people were at the workshop?

7 A. A lot of people. It was a very full room.

8 There may have been 25 to 30 people.

9 Q. Across various departments?

10 A. From all over the university. Different

11 colleges in the university including the college of law.

12 Q. So to your knowledge there have been two of

13 these workshops that have been offered?

14 A. Yes.

15 Q. Okay. Did any of your colleagues in your

16 department attend with you?

17 A. Another colleague attended the second one.

18 Q. Who was that?

19 A. Susan Coleman. At least I was told that she

20 was planning to attend.

21 Q. Okay.

22 A. So I don't know if she actually did.

23 Q. Okay. And at that, at the training session

24 was there a PowerPoint presentation that was provided?

25 A. Yes.

1 Q. Did you have any questions when you
2 participated in this?

3 A. I did have questions.

4 Q. Do you recall what those were?

5 A. I don't recall specifically. But I do recall
6 one. One had to do with Cynthia was going over sort of
7 like a general overview of what copyright is and there
8 was something about authors usually having copyright.
9 And I asked about that because as an author I usually
10 don't own copyright. I usually end up signing it over
11 to the publisher. And Cynthia agreed that for many
12 academic publications in fact authors give copyright
13 ownership to the publisher, which was my experience.

14 Q. We'll talk about that in a minute. I know you
15 have quite a few publications listed on your CV.

16 Did you have other questions apart from that?

17 A. I did. And I can't remember exactly what they
18 were.

19 Q. Did you or have you since attending that
20 workshop taken a look at the materials that you
21 currently have posted on the EReserve system to see if
22 they comply with the new policy?

23 A. I really haven't done that. I posted for this
24 semester -- actually I had to get those materials ready
25 the previous semester. And what -- everything -- no, it

1 wasn't everything, but a great deal of what I posted had
2 already been archived.

3 Q. So just --

4 A. So I was reactivating what was already
5 archived.

6 Q. Just so the record is clear, you are talking
7 about spring 2009 semester?

8 A. Right. This semester that has just ended.

9 Q. So you didn't go back and review that material
10 to see if it was complying with the new policy?

11 A. No. No.

12 Q. And the reason is because that had been posted
13 some months before?

14 A. It had to be taken over to the library.
15 Actually they call for it in the preceding semester. So
16 in order to have it ready at the beginning of spring
17 semester which began in the beginning of January I had
18 to take it over well in advance.

19 Q. I see.

20 A. And at that time the policy was the old
21 policy.

22 Q. Got it. Was it suggested to you at this
23 meeting that you should for the current semester review
24 your postings to see if they comply with the policy?

25 A. No. And I'm sure the reason -- well, I don't

1 know the reason. But I would assume classes were
2 ending.

3 Q. When did the spring semester end or has it
4 ended?

5 A. At the end of April. It's over.

6 Q. Okay. And is it your understanding that your
7 spring 2009 EReserve page is now archived or is it still
8 available to students?

9 A. I don't know exactly when the access ends, but
10 I know that after this, whatever they consider the
11 actual end of the semester as soon as they consider it
12 over it's no longer available to students and it's not
13 available to me.

14 Q. And that is available, however, if I
15 understand this right, correct me if I'm wrong, if you
16 teach the class in a later semester they can reactivate
17 it?

18 A. They can reactivate it. That's my
19 understanding, too.

20 Q. And is that what you did in the spring 2009
21 semester?

22 A. For most of the readings, yes.

23 Q. Are you teaching in the Maymester?

24 A. No.

25 Q. Are you teaching in the summer semester?

1 A. No.

2 Q. Is that a change from past practice or do you
3 not usually teach in the summer?

4 A. I have taught in the summer, but I'm not
5 teaching in the summer here this year.

6 Q. Are you teaching somewhere else?

7 A. I'm teaching in Hong Kong.

8 Q. What about this fall?

9 A. I will be teaching here at GSU.

10 Q. What will you be teaching this fall?

11 A. I will be teaching a course called issues in
12 second language writing and a course called EFL, that's
13 English as a foreign language practicum.

14 Q. Do you happen to know the little code numbers
15 for those courses, AL and some number?

16 A. Oh --

17 Q. If you don't I don't want --

18 A. Yeah, the undergraduate course I think is
19 AL4161.

20 Q. That's the practicum?

21 A. Yes. Yes.

22 Q. Okay.

23 A. And I'm sorry, I don't remember the number for
24 issues in second language writing.

25 Q. Tell me more generally about the courses that

1 you teach on a regular basis, what are those courses?

2 A. The two courses that I just mentioned. I also
3 teach a graduate student practicum. I teach a doctoral
4 class called qualitative research methods. I teach
5 intercultural communication and --

6 Q. Actually if you want to pull out your CV, I
7 think there's a list and you don't need to go through
8 the whole list.

9 A. Okay. I teach the courses --

10 Q. Is that an accurate list of the courses?

11 A. Yes.

12 Q. And the practicum, is that AL8900?

13 A. That's the graduate practicum, yes.

14 Q. And that's a course you teach on a fairly
15 regular basis?

16 A. Sometimes it's once a year in consecutive
17 years and sometimes it's been every other year.

18 Q. But you've taught it several times?

19 A. Yes.

20 Q. Will you teach it again?

21 A. Probably.

22 Q. And am I right that there are some other
23 professors that teach that same practicum?

24 A. A number of other professors, it's offered
25 every semester.

1 Q. And who are those other professors?

2 A. John Murphy is one person. And the others are
3 rotating. They don't teach it on a regular basis.

4 Q. And is that taught by full time faculty or
5 lecturers?

6 A. Sometimes lecturers teach it.

7 Q. Is there a common syllabus used for the
8 course?

9 A. There is, to a large extent we all use
10 variations on the same syllabus.

11 Q. And what are -- the variations are in the
12 nature of what readings are assigned or what are the
13 variations?

14 A. Generally that. In fact I changed the
15 required textbooks this semester. But the EReserve
16 readings I used were things that were already archived
17 for the most part. I might have added one or two.

18 Q. We'll take a look at one of those in a little
19 bit.

20 A. Okay.

21 Q. When -- do you know when other professors
22 teach the class, is there a single or a common EReserves
23 course page that's used or does each professor teaching
24 it have their own course page?

25 A. I think we've been using essentially the same

1 EReserve readings. Or we choose from the same menu of
2 EReserve readings that have been archived.

3 Q. Let me -- I didn't ask that question very
4 well. Let me try again.

5 A. Okay.

6 Q. You are aware that there's something on the
7 EReserve system called the course reserves page, are you
8 familiar with that?

9 A. Not exactly sure what you mean by the course
10 reserves page.

11 Q. Let me hand you something that's been marked
12 before as Plaintiffs' Exhibit 64. You recognize this?

13 A. Okay. This looks like what you access when
14 you get into EReserve for a course.

15 Q. Right. Okay. Now, this is for a different
16 course, 8961, I recognize.

17 My question is with respect to the practicum
18 8900, if when say Professor Murphy teaches it, if he
19 essentially uses the same course reserves page that
20 looks like this that you would use when you teach it or
21 if there are four or five different ones for each
22 different professor that teaches the course?

23 A. I think it's -- it's essentially the same
24 works. But we choose whether or not to use them.

25 For instance, when I taught the practicum this

1 past semester I asked them to just reactivate what had
2 been used the previous semester, and that's what I used.

3 Q. And it's your understanding that, say, if
4 Professor Murphy taught it in the fall that he would
5 have them reactivate that same page?

6 A. I assume. But I really -- I've never checked
7 his course reserve page when he uses it.

8 Q. Okay. Now, is this course 8961 another course
9 that you teach fairly commonly?

10 A. I taught it twice.

11 Q. Twice. And is that one that you will be
12 teaching again at some point?

13 A. Probably in another year.

14 Q. Okay. If you could go back to Exhibit 109,
15 your CV.

16 A. Okay.

17 Q. And just put that one aside for now.

18 A. Okay.

19 Q. Turn to page 2, please.

20 A. Okay.

21 Q. There's a list here of your publications.

22 A. Uh-huh.

23 Q. And the first category is called edited books?

24 A. Right.

25 Q. Just tell me what's in that category?

1 A. These are you might call them anthologies,
2 they are books that I edited and each chapter is a
3 contribution from a different author.

4 Q. Okay. Were you the person who selected what
5 the contributions would be?

6 A. I invited the contributors to contribute.

7 Q. How did you decide who to invite?

8 A. It really varies. For instance for the 1995
9 book "Academic Writing In A Second Language", we
10 actually had a call for contributions and people sent us
11 abstracts and we chose from the abstracts.

12 For the 2001 "Linking Literacies" book that
13 came out of a conference. So we had a small conference
14 at Ohio State and the conference presenters were invited
15 to contribute to the book.

16 And another one, "The Oral/Literate
17 Connection" came out of a colloquium that I organized at
18 the TESOL, annual conference for Teachers of English to
19 Speakers of Other Languages.

20 Q. I wondered what that stood for.

21 So when you are involved in editing a book
22 like those in this category, do you have a contract with
23 the --

24 A. Yes.

25 Q. And are you paid under that contract?

1 A. Royalties.

2 Q. Okay. And by royalties, you mean you get a
3 certain percentage for sales of the book?

4 A. Right.

5 Q. And are you aware of whether you also get a
6 percentage of license fees or other uses that might
7 be --

8 A. I'm not aware of that.

9 Q. Just sales, to your knowledge?

10 A. As far as I know.

11 Q. So for example if the book, if a chapter of
12 the book were permissioned for use in a coursepack and a
13 license fee were paid, it's not your understanding that
14 you would get any share of that?

15 A. I never asked about that. So my statements
16 only mention books sold. So I'm assuming that my
17 royalties are only based on the numbers of books sold.

18 Q. Are you involved at all in the negotiations
19 with the contributors?

20 A. No.

21 Q. Okay. Do you know whether they're paid for
22 their contributions?

23 A. If they're paid it's a very small percentage
24 of the royalties. But they are sent their own letters
25 of agreement directly by the publisher.

1 Q. And your understanding is they're paid on a
2 percentage basis as opposed to, say, a flat fee of some
3 kind?

4 A. I think so, but I haven't looked at their
5 agreements.

6 Q. Well, let's look at page 3.

7 A. Okay.

8 Q. There's a section here called chapters in
9 edited books?

10 A. Yes.

11 Q. I take it these are situations where you've
12 contributed a chapter to the kind of books we were just
13 talking about?

14 A. Yes.

15 Q. So in those situations, have you had a
16 contract with the publisher or with the editor of these
17 books?

18 A. I don't know if it would be called a contract.
19 But it was some kind of -- some kind of statement that I
20 had to sign.

21 Q. Okay. And were you paid for these?

22 A. I wish I had been. A few of these chapters
23 are actually chapters in books that I edited and for
24 those I did receive royalties.

25 Q. Royalties separate from the royalties you

1 receive for being the editor?

2 A. No. No. I didn't receive separate royalties
3 for having contributed chapters.

4 For -- gosh, I'm trying to remember. It seems
5 to me what I often received has been something like a
6 discount, like I can buy books from that publisher at a
7 significant discount. Well, you know, 20 percent off or
8 something like that.

9 Q. So you don't recall for any of these
10 situations in which you've contributed a chapter being
11 paid a set amount or receiving a royalty payment for
12 those contributions?

13 A. If I did it was very small.

14 Q. By very small, what ballpark are you talking
15 about?

16 A. Less than \$50.

17 Q. On the edited books, which of those was the
18 most successful for you monetarily?

19 A. Gosh, it's really hard for me to say.
20 Probably "Academic Writing In A Second Language" just
21 because that's been out the longest.

22 Q. And just again ballpark, can you give me a
23 sense of the rough earnings that you've received from
24 that?

25 A. Since 1995 probably under \$200.

1 Q. So the others would be something less than
2 that?

3 A. Right. Unfortunately.

4 Q. And you mentioned before it's your
5 understanding that you may have assigned the copyright
6 to the publisher, is that right?

7 A. That's the usual case.

8 Q. Do you recall that from these edited books
9 signing something that gave the copyrights to --

10 A. I think that was part of the contract.

11 Q. And --

12 A. If you look at the books and you open them up
13 and you look at the copyright it will say University of
14 Michigan Press or whatever the publisher is.

15 Q. Are you aware in -- and let's stick with the
16 edited books category.

17 A. Okay.

18 Q. You mentioned the rough royalties that you
19 received. Are you aware of the income that the
20 publisher of these books received?

21 A. No, I'm not.

22 Q. Do you have any knowledge generally of the
23 economics of the publishing industry?

24 A. To some extent because I edit a book series
25 for the University of Michigan Press.

1 Q. Tell me about that. I'm looking to see if
2 that's here somewhere.

3 A. Yeah, it is somewhere. Under editorships,
4 look at page 8. And then look at page 9, series
5 co-editor with Jun Liu, "Michigan Series On Teaching
6 Multilingual Writers".

7 Q. Tell me what's involved in that effort?

8 A. We invite people to write small books on
9 topics on the teaching of second language writing. And
10 we review the proposals and we advise Michigan on who
11 should be awarded a contract. And then we also help vet
12 -- assuming somebody is awarded a contract, we help vet
13 the manuscript when it's in progress. We advise the
14 author.

15 Q. So when you say we, are you working with staff
16 members of the press?

17 A. My co-editor with the series, Jun Liu.

18 Q. And any business persons from the press
19 itself?

20 A. The acquisition center.

21 Q. And does that involve, that process involve
22 sales forecasting and budgeting and things like that for
23 the book?

24 A. Not on my part.

25 Q. So tell me about you said through this effort

1 you had some insight into the economics?

2 A. Because we get a report, an annual report on
3 how the books that have been published in the series are
4 doing.

5 Q. I see. And what's on those reports?

6 A. Tells us exactly how many copies have been
7 sold.

8 Q. And the amounts, dollar amounts?

9 A. And the amount of money generated, I think so.

10 Q. What is the range of number of sales of these
11 books?

12 A. Gosh, it's in the hundreds.

13 Q. And do you have a sense of whether they're
14 sold to libraries who then make them available to
15 students or are they the kind of books where students or
16 graduate students will buy them?

17 A. They're sold to libraries, university
18 libraries, but some of them are adopted for courses.

19 Q. So do you view that as a positive or a good
20 thing if it's adopted for use in a course?

21 A. It's very good for the sales of the book.

22 Q. And do you have certain targets that you need
23 to meet or you set in terms of how many sales?

24 A. No.

25 Q. So what would the result be if there were no

1 adoptions for these books, would you continue to be able
2 to publish them?

3 A. You mean would the series continue or --

4 Q. Yeah.

5 A. I'm not quite sure I understand.

6 Q. Let me ask it again. If -- I think you said,
7 and correct me if I'm wrong, that you sold them to
8 libraries, but they're also adopted for use for purchase
9 by students?

10 A. And also by individual professionals for
11 professional development.

12 Q. And my question is, if it were the case that
13 there were no longer -- professors stopped assigning
14 them for purchase by students in courses, would that
15 jeopardize the continuing existence of this series of
16 books?

17 A. That's a good question and it's very hard for
18 me to answer. Some of these books I know have been
19 adopted for courses and others have not.

20 Q. Okay.

21 A. And the publisher is still interested in
22 bringing out more books in this series.

23 Q. Do you have a sense generally of whether it's
24 economically feasible for -- let's use this series -- to
25 survive on library purchases alone? I guess that's the

1 gist of the question.

2 A. I don't know.

3 Q. Do you know whether with these books there are
4 payments made for permissions or licensing of excerpts
5 of the book?

6 A. I don't know.

7 Q. You've only seen reports that indicate sales
8 of the entire book?

9 A. The only thing I know about permissions is
10 that I got permission to use a chapter of one of these
11 books before it was published.

12 Q. And why did you -- you sought that permission?

13 A. Yes.

14 Q. And why did you seek permission to use that
15 chapter?

16 A. I was hoping that the book would come out in
17 time for the course I was teaching but it did not. And
18 I had access to the manuscript because I was editing it.
19 And I contacted Michigan and I said -- I asked if I
20 could have permission to use one chapter of the
21 manuscript. And they sent me sort of a formal agreement
22 that I had to agree to about limited access and only for
23 classroom use and that sort of thing.

24 Q. Was that agreement for use on EReserves or for
25 use in a hard copy coursepack?

1 A. I don't think it specified. It just --

2 Q. How were you using it?

3 A. And that's what I can't remember. I think I
4 either gave my students photocopies or I created a PDF.

5 Q. Now, you -- again we'll get into this in more
6 detail. But you place works on EReserves fairly
7 regularly, correct?

8 A. I have.

9 Q. And it's not always the case that you seek
10 permission from the publisher to put those works on
11 EReserves, right?

12 A. I have never sought permission except for --
13 but actually I didn't put that one particular thing on
14 EReserve, I think.

15 Q. Well, why in this case did you ask for
16 permission when you haven't asked in other cases?

17 A. It was an unpublished work.

18 Q. It was unpublished. Was there any other
19 reason or was it just that?

20 A. It was unpublished.

21 Q. Okay. And why does that matter?

22 A. My understanding is that generally for fair
23 use that involves published works, not unpublished
24 works. And --

25 Q. You're saying if it's unpublished it's less

1 likely to be a fair use?

2 A. I'm saying that you -- if I know that it's
3 unpublished and it's about to be published, then I'm
4 assuming the publisher will want to know and will want
5 to decide whether or not I should use it.

6 Q. Okay.

7 A. Which was why I contacted Michigan.

8 Q. Did you consider that your use despite the
9 fact that that work was unpublished at the time could
10 still be a fair use?

11 A. If they thought it was fair then I thought it
12 was fair.

13 Q. Let me --

14 A. Yes. Yes.

15 Q. You thought -- let me ask the question again.
16 And I think we may be miscommunicating.

17 A. Okay.

18 Q. You indicated that because it was unpublished
19 you thought you should contact them?

20 A. Right.

21 Q. Did it cross your mind or did you consider
22 whether you could have used the work in any case, that
23 it could have been a fair use despite the fact it was
24 yet to be published?

25 A. Oh, I see. I just assumed that I needed their

1 permission.

2 Q. Just for the record, let me --

3 (Plaintiffs' Exhibit Nos. 111

4 and 112 were marked

5 for identification by the reporter.)

6 BY MR. LAWSON:

7 Q. Can you take a look at these exhibits marked

8 Plaintiffs' 111 and 112 and confirm that this is the

9 permission that we've been talking about?

10 A. Yes. Yes.

11 Q. You can set that aside.

12 There's a category on your CV called articles
13 in refereed journals?

14 A. Yes.

15 Q. What's in that category?

16 A. Articles that have appeared in refereed
17 journals.

18 Q. And what does that mean, in referred journals?

19 A. It means that there are referees who determine
20 whether or not the article is accepted or rejected.

21 Q. And that's to be distinguished from a journal
22 that doesn't have people that do that or -- I mean --

23 A. Right.

24 Q. Are there not referred journals?

25 A. Some journals solicit articles and they don't

1 send them out for peer review. Referred journals use
2 peer review.

3 Q. And did you include this as a category
4 specifically because there's some value in having been
5 published in a referred journal?

6 A. Yes.

7 Q. And what is that value?

8 A. For tenure and promotion it's considered more
9 prestigious to have published in referred journals.

10 Q. When you publish in a referred journal, are
11 you paid for that?

12 A. No.

13 Q. The compensation comes in the form of your
14 reputation and your career advancement?

15 A. Right.

16 Q. And do you sign any sort of agreement when you
17 publish in one of these journals?

18 A. Yes.

19 Q. What's the nature of the agreement?

20 A. I think it involves copyright.

21 Q. Does it --

22 A. The journal then owns the copyright. Or the
23 publisher of the journal I should say.

24 Q. Are you aware of the economics of these types
25 of journals, how they earn their money?

1 A. Yes.

2 Q. Tell me what you know about that.

3 A. I was the editor of an Elsevier journal for 10

4 years. And Elsevier earns its money for the journals

5 through subscriptions.

6 Q. Subscriptions sold to universities?

7 A. Individuals and institutions.

8 Q. What was the journal that you edited?

9 A. English For Specific Purposes.

10 Q. What were the years that you edited that?

11 A. 1998 until last year.

12 Q. Are you editing any journals at the moment?

13 A. Yes.

14 Q. What are you editing now?

15 A. TESOL quarterly.

16 Q. Who's the publisher of that?

17 A. The TESOL organization. It's a professional

18 organization.

19 Q. And is that also offered through subscription?

20 A. Yes.

21 Q. Are any of the journals listed in this

22 referred journals category owned or operated by Sage or

23 Cambridge or Oxford, to your knowledge?

24 A. I don't know about some of these earlier

25 journals from like the late 80s and early 90s. But

1 everything since '94 I don't think any of them is a
2 Cambridge or Oxford journal.

3 Q. Okay.

4 A. They're mostly Elsevier journals.

5 Q. Let me ask, we've talked a bit about the
6 economics of the publishing industry here. When you've
7 provided your students with EReserve excerpts without
8 any sort of permission, did you consider whether that
9 would have any impact on the finances of either -- you
10 know, the publisher providing the work?

11 A. Are you talking about articles, excerpts from
12 articles, journal articles?

13 Q. Well, if there's a difference in how you
14 thought about it, please tell me.

15 A. That's what I'm not sure. I'm just trying to
16 clarify your question.

17 Q. Yeah, let's talk about excerpts from books.

18 A. From books.

19 Q. For example, the Sage handbook that I think
20 you've --

21 A. Yes.

22 Q. -- used.

23 A. Yes.

24 Q. When you provided chapters from the Sage
25 handbook without seeking permission from Sage or paying

1 a royalty fee, did you consider whether that would have
2 any impact on the economics of Sage's business?

3 A. At the time --

4 Q. Uh-huh.

5 A. -- I don't remember thinking very specifically
6 about that.

7 Q. Do you have a sense now of what the impact --

8 A. Yes.

9 Q. What is your sense now?

10 A. Oh, of the effect?

11 Q. Yeah.

12 A. Well, I have a sense now that as being
13 something I should think of.

14 Q. And have you --

15 A. Because of the new policy.

16 Q. Have you come to any conclusion on what that
17 effect is?

18 A. For those particular chapters?

19 Q. Yeah.

20 A. I don't think it had a major affect.

21 Q. Okay. And why not?

22 A. For one thing I was using chapters from the
23 second edition, the 2000 edition. This was in 2007, the
24 third edition had already come out in 2005.

25 Q. Okay.

1 A. So the second edition was no longer being
2 marketed by Sage.

3 Q. Was it no longer for sale?

4 A. I'm sure you could get used copies. I know
5 it's not now. The last time I looked on Amazon I saw
6 five used copies.

7 Q. And you were using excerpts from the third
8 edition?

9 A. I can't -- I didn't have it on my syllabus, so
10 I can't -- I don't think I had the third edition. I
11 think almost everything if not everything was from the
12 second edition. Because I had trouble obtaining a copy
13 of the third edition. I think our library didn't own it
14 at the time.

15 Q. Okay. Rather than having a memory test we'll
16 look at some syllabi in a bit and talk about that more.

17 A. Okay. I know my syllabus says 2000 for all
18 those chapters.

19 (Plaintiffs' Exhibit No. 113
20 was marked for identification
21 by the reporter.)

22 BY MR. LAWSON:

23 Q. We'll mark if we could as Plaintiffs' 113, a
24 document that has the Bates number Georgia State
25 0046249.

1 Professor Belcher, do you recognize this
2 document?

3 A. Yes.

4 Q. Can you tell me what it is?

5 A. It's a syllabus for a course I taught this
6 spring.

7 Q. And that course is?

8 A. Practicum in ESL/EFL teaching.

9 Q. This is the one we were talking about earlier,
10 the graduate?

11 A. This is the graduate level practicum that I
12 teach.

13 Q. How many students were in this course?

14 A. I think there were seven.

15 Q. Seven.

16 A. It's limited to 10.

17 Q. When you've taught this course in the past,
18 has the number of students been in that --

19 A. It's never been more than 10.

20 Q. You see there's a section here on the first
21 page called required reading materials?

22 A. Yes.

23 Q. And then there are two books listed?

24 A. Right.

25 Q. Are those books books that students purchase

1 for the course?

2 A. Yes.

3 Q. Okay. And do you coordinate with the
4 bookstore to have them made available for purchase?

5 A. Yes.

6 Q. I think you said you made a switch?

7 A. Yes.

8 Q. What was the switch that you made?

9 A. There had been a book by Richard & Lockhart
10 published by Cambridge which I replaced with instead I
11 use the Farrell book published by Continuum.

12 Q. Richards & Lockhart book was "Reflective
13 Teaching In Second Language Classrooms"?

14 A. Right.

15 Q. Why did you make that switch?

16 A. I consider it pretty much out of date now. It
17 was published in 1994, although I think there are still
18 some useful chapters, and I think I put two chapters on
19 EReserves.

20 Q. So when you used the book in the past did you
21 use more than those two chapters?

22 A. When I used it in the past I used the entire
23 book.

24 Q. And then this semester you replaced the entire
25 book for purchase and then instead put a couple of the

1 chapters on EReserves?

2 A. Right. Right.

3 Q. Did you seek permission from the publisher to
4 put those two chapters on?

5 A. No.

6 Q. So in the past students would buy the book for
7 use in the course and now they're getting excerpts for
8 free?

9 A. Through EReserves, they're getting access to
10 excerpts through EReserves.

11 Q. And by access they're able -- you
12 understand --

13 A. Password protected, limited access.

14 Q. Right. And it's limited how?

15 A. It's limited to that semester in which they're
16 in the course.

17 Q. But those students, is it your understanding
18 that those students can download and print out the
19 excerpts?

20 A. They can.

21 Q. And they could keep them as long as they
22 wanted, correct?

23 A. They could. But the tendency seems to be for
24 that to happen less often as students consider that an
25 ungreen thing to do. And they are also getting more

1 comfortable with reading things online. So I see less
2 downloading. When people download they often bring the
3 copy to class and I don't see as much of that any more.

4 Q. Has that been your experience in the past that
5 the works on EReserves that you offer, that students
6 have printed them out and have brought them?

7 A. I have seen that, yes.

8 Q. What was the frequency?

9 A. I don't know. I never took a count.

10 Q. Did you discuss the readings in class?

11 A. Yes.

12 Q. And so if students have just read them on
13 screen, then they have to discuss them from memory
14 basically?

15 A. Yes.

16 Q. And students are doing that now?

17 A. They do.

18 Q. Do some still print them out and bring them to
19 class?

20 A. Some do.

21 Q. So looking back at the syllabus here, there's
22 required reading materials, we talked about the two
23 books. And then there's a third category called ERes
24 course web page reserve materials?

25 A. Uh-huh.

1 Q. These are items made available through
2 EReserves?

3 A. That's right.

4 Q. And those include readings that are required
5 readings for the course?

6 A. Yes.

7 Q. Has it ever been suggested to you that
8 EReserves, that you should not place -- strike that.

9 Has it ever been suggested to you from anyone
10 at the university that you shouldn't put required
11 readings on EReserves?

12 A. No, it had not.

13 Q. And you've used it for required readings?

14 A. I've had it under this category that I call
15 required readings.

16 Q. If you could turn to page 4. And there's in
17 the middle a paragraph called weekly postings
18 guidelines?

19 A. Yes.

20 Q. And the first sentence indicates that students
21 should submit a written reaction/response tied to one or
22 more of the readings?

23 A. Uh-huh. Yes.

24 Q. Tell me what's involved there or what you're
25 asking them to do?

1 A. They have to -- they have to write a brief
2 posting on our discussion board for ULearn, used to be
3 called WebCT, and in that posting they have to reveal
4 that they've done some of the reading and that they have
5 thought about what it means to them in the context of
6 this course, what specifically it means with respect to
7 their future teaching or current teaching.

8 Q. So it's your expectation each week that
9 students will do the reading that's been assigned,
10 correct?

11 A. Right.

12 Q. And in fact they would need to to comply with
13 this course requirement?

14 A. Right. But they can be somewhat selective.

15 Q. If you could turn to page 6. Am I right that
16 is the weekly readings assignments for the course?

17 A. Yes, you are right.

18 Q. And where we see Farrell and HMV, those are
19 readings from the texts for purchase?

20 A. Required, yes.

21 Q. And where we see other entries, for example in
22 the January 14th week a reading by R. Day, that's a work
23 that's on EReserves?

24 A. That's right.

25 Q. And in January 28th, for example, there's a

1 book by or an excerpt by Crookes, Chapter 6?

2 A. That's right.

3 Q. That's on EReserves?

4 A. Yes.

5 Q. And in the February 4th and February 11th
6 weeks there's two chapters from the Richard & Lockhart
7 book?

8 A. That's right.

9 Q. Those were on EReserves?

10 A. Yes, that's right.

11 Q. Those were the two that we were talking about
12 before?

13 A. Yes.

14 Q. Could you just confirm for me that in the
15 February 18th week that you assigned a chapter by
16 Allwright and Bailey?

17 A. Yes.

18 Q. And that's from the book "Focus On The
19 Language Classroom", is that right?

20 A. I think that's what it's called.

21 Q. In general is there anything in here, any
22 inaccuracy or any reason to believe anything in here was
23 not in fact assigned?

24 A. Not in fact assigned, these were the assigned
25 readings.

1 Q. And it's the case that if the readings weren't
2 part of the two required texts that they were placed on
3 EReserves?

4 A. There were some other readings, and those
5 were -- if you look at for instance April 8th, week 14,
6 you'll see a URL. Those are journals that are online
7 journals, open access journals.

8 Q. Okay. So in some instances it wasn't placed
9 on EReserves, instead you gave the students a link?

10 A. Uh-huh.

11 Q. And if there's no link like that, then it was
12 something you placed on EReserves?

13 A. That should be the case.

14 (Plaintiffs' Exhibit No. 114
15 was marked for identification
16 by the reporter.)

17 BY MR. LARSON:

18 Q. Do you recognize this, Professor Belcher?

19 A. Yes, it looks familiar.

20 Q. If you look back at Exhibit 113.

21 A. Uh-huh.

22 Q. And look at the February 18th entry on the
23 syllabus on page 6. Is what I've just put in front of
24 you, Exhibit 114, the excerpt that you provided to
25 students?

1 A. It looks like it.

2 Q. I'll represent to you that this was produced
3 by your counsel in discovery in this litigation --

4 A. Okay.

5 Q. -- from the EReserve system.

6 Can you just take a look through and confirm
7 that this is the excerpt that you assigned?

8 A. It does look like it.

9 MR. LAWSON: If we can mark this as
10 115, Plaintiffs' 115.

11 (Plaintiffs' Exhibit No. 115
12 was marked for identification
13 by the reporter.)

14 BY MR. LAWSON:

15 Q. Do you recognize what I've marked as
16 Plaintiff's 115 as the excerpt from Plaintiffs' Exhibit
17 113 from RJT, the Allwright and Bailey chapter called
18 Receptivity - some relevant research?

19 A. I remember using two receptivity chapters.

20 Q. I'm sorry?

21 A. I remember using two chapters on receptivity.

22 Q. And this Plaintiffs' Exhibit 115 is a chapter
23 that you assigned to students and placed on EReserves?

24 A. Yes. Actually they were archived, they were
25 already there, so I didn't place them myself, myself.

1 They were on the archived reactivated course page.

2 Q. And then offered in this last semester to
3 students?

4 A. Yes.

5 MR. LAWSON: Let's take a break.

6 THE VIDEOGRAPHER: Off the record at
7 10:13:58.

8 (Brief recess.)

9 THE VIDEOGRAPHER: This is tape 2.

10 We're back on the record at 10:20:58.

11 BY MR. LAWSON:

12 Q. Professor Belcher, have you ever used a
13 coursepack?

14 A. Yes.

15 Q. How long ago was that?

16 A. Probably six years ago.

17 Q. Do you recall the course that you used it in?

18 A. It was a course called teaching ESL
19 composition.

20 Q. And why was it that you used a coursepack as
21 opposed to, say, EReserves?

22 A. That was when I was teaching at Ohio State
23 University and there was nothing like EReserves there.

24 Q. Okay. And for the spring 2009 syllabus of
25 AL8900 that we've been looking at, did you consider

1 using a coursepack for this course?

2 A. No, I didn't.

3 Q. Why not?

4 A. I haven't thought about coursepacks since I
5 came to Georgia State because of EReserves.

6 Q. So why do you use EReserves rather than a
7 coursepack? Let's put it that way.

8 A. It seems very convenient and it seemed to be
9 part of the culture of the university.

10 Q. Do you understand that there are professors
11 that use coursepacks?

12 A. I know that there are professors, I don't know
13 of any in my department who do, but I know that there
14 are some professors at the university who do.

15 Q. When you say it's part of the culture of the
16 university, what do you mean?

17 A. When I joined the university faculty in my
18 department told me -- they told me about EReserves when
19 I was putting together my first syllabi.

20 Q. Are you aware of whether when a coursepack is
21 used there are permission fees paid to publishers?

22 A. When I used them there were.

23 Q. And when you have used EReserves you've never
24 paid permissions fees, correct?

25 A. No.

1 Q. Are there differences between providing the
2 works to students in a coursepack versus on EReserves
3 apart from the fact that one is hard copy and one is
4 electronic?

5 A. And permissions are paid for coursepack,
6 printed coursepacks, and there are no permissions as far
7 as I know for EReserves.

8 Q. Right. Any other differences besides those
9 two, to your mind?

10 A. The student -- well, there's the involvement
11 of whoever produces the coursepack, that -- that
12 organization is making some kind of a profit if it's
13 Kinko's or the bookstore.

14 Q. And what about if it's the university
15 bookstore?

16 A. Where I used coursepacks at Ohio State there
17 were campus bookstores that were not owned by the
18 university, they were separate from the university, but
19 they carried the university's books.

20 Q. From the standpoint of the students, do you
21 see a difference between their getting readings on
22 EReserves versus getting them in the coursepacks, again,
23 apart from the hard copy electronic distinction?

24 A. They pay for the coursepacks and they don't
25 pay for the EReserve readings.

1 Q. Right. If you were to seek permission fees --
2 I'm sorry. If you were to seek permissions for the
3 articles that you place on EReserves and pay permissions
4 fees, do you have any sense of how you would go about
5 doing that?

6 A. How I would find out?

7 Q. No, how you would actually pay, how the
8 payment, how it would work if you wanted to pay?

9 A. I've never done it, so I don't really know how
10 it would work.

11 Q. Are you --

12 A. As far as I know -- if there was information
13 on the library web site about that I didn't see it.

14 Q. Are you aware that it's possible to get a
15 permission from a publisher for any EReserves excerpts
16 and pay a permission fee for that?

17 A. I am now. I wasn't in the past.

18 Q. What are you aware of now, what's your
19 understanding?

20 A. That you can do that.

21 Q. And do you know where you go to do that?

22 A. What I heard about was I think called
23 Copyright Clearinghouse. And I had looked up their web
24 site. I heard -- I think I heard about this in the fair
25 use workshop. And there's a web site at copyright.com.

1 Q. And you went and visited that web site?

2 A. Yes.

3 Q. What did you find?

4 A. I really didn't have a chance to check it out.
5 I just wanted to see how easy it was to find it. And I
6 just Googled it and was able to get to it right away.

7 Q. Do you have an understanding that EReserves
8 postings don't need to be permissioned legally?

9 A. That was my understanding.

10 Q. And has that changed?

11 A. My -- well, my understanding is the guidelines
12 have changed for posting.

13 Q. The guidelines at Georgia State?

14 A. And for the University System of Georgia.

15 Q. Uh-huh.

16 A. And that we need to think very carefully about
17 fair use and that they're giving us a checklist to help
18 us think through the fair use of items that we put on
19 EReserve or that we want to put on EReserves.

20 Q. We'll look at the checklist in a bit.

21 Let's assume that you determine that a given
22 use was not a fair use and that permission needed to be
23 sought. Is it your understanding that you could go
24 ahead and get that permission for use of the work on
25 EReserves?

1 A. I assume. I've never done it. I've never
2 tried it so I don't know what the mechanism is. But to
3 find out specifically about how that would work
4 specifically with EReserves, I would talk to the
5 EReserves librarian.

6 MR. LAWSON: I would like to mark as
7 Plaintiffs' 116 a document bearing the
8 Bates number Georgia State 0000168.

9 (P Plaintiffs' Exhibit No. 116
10 was marked for identification
11 by the reporter.)

12 MR. LAWSON: While I have a moment, I
13 should note for Plaintiffs' Exhibit 110
14 during the break we substituted in a
15 version that has the proper Bates number on
16 it as I indicated before in the record.

17 BY MR. LAWSON:

18 Q. Professor Belcher, do you recognize Exhibit
19 116?

20 A. Yes, sir, as a syllabus.

21 Q. And what syllabus is this?

22 A. A practicum syllabus from spring 2008.

23 Q. Okay. So this is the same course as the last
24 syllabus we were looking at, just from a previous
25 semester?

1 A. Yes.

2 Q. Okay. And under required reading materials,
3 on the first page --

4 A. Yes.

5 Q. -- there's the Richards & Lockhart book?

6 A. Yes.

7 Q. That's the one we were talking about before?

8 A. Yes.

9 Q. So in spring of 2008 that was a required
10 purchase?

11 A. Yes.

12 Q. Could you turn back to page 6. Is it the case
13 here that where -- anywhere R & L is indicated that
14 that's a reading from Richards & Lockhart?

15 A. Yes.

16 Q. And anywhere HMV is indicated that's a
17 required reading from the second text?

18 A. Yes.

19 Q. And that the other readings indicated here
20 were required readings as well?

21 A. They were assigned readings, yes.

22 Q. And those were placed on EReserves?

23 A. Yes.

24 Q. Just go to page 7, if you could, please. And
25 look down at the bottom, there's a list of what appear

1 to be books there without any sort of headings. Could
2 you tell me what that list is?

3 A. For instance, where you see for April 17th it
4 says Brown 2001, and then you look down at the bottom,
5 that's the title of the text that that chapter comes
6 from.

7 Q. Okay. But that wasn't a required text for
8 purchase in the way that those others were?

9 A. No. No. I was just giving the attribution.

10 Q. Got it.

11 In the previous syllabus from 2009 that we
12 looked at we discussed a reading by Allwright and
13 Bailey?

14 A. Yes.

15 Q. That wasn't part of the assigned readings in
16 the spring 2008 version?

17 A. I don't think it was.

18 Q. And why was that, do you recall?

19 A. It had something to do with my change in
20 textbooks. And when I was using the Richards & Lockhart
21 I felt that I didn't need Allwright and Bailey. But
22 when I replaced it I decided that I wanted to add
23 Allwright and Bailey.

24 Q. Okay. You can put that one aside.

25 (Plaintiffs' Exhibit No. 117)

1 was marked for identification
2 by the reporter.)

3 BY MR. LAWSON:

4 Q. We'll mark as Plaintiffs' Exhibit 117 a
5 document Bates labeled Georgia State 000158.

6 Do you recognize this?

7 A. This is another practicum syllabus from fall
8 of 2006.

9 Q. Okay. And again under the required readings
10 the Cambridge -- sorry. The Richards & Lockhart text
11 was assigned --

12 A. Yes.

13 Q. -- and required?

14 A. Yes.

15 Q. And the EReserves readings were required
16 reading for the class as well?

17 A. Yes.

18 Q. If you could go to page 6. Can you confirm
19 for me that what is on page 6 and 7 are the weekly
20 reading assignments?

21 A. Yes, they are.

22 Q. And again, those chapters that aren't part of
23 the two required texts were placed on EReserves?

24 A. Yes.

25 Q. Let's just take a look, for example, I see in

1 weeks 2, 3 and 4 there are various entries for a book by
2 someone named Crookes?

3 A. Yes.

4 Q. But why is it that you chose to use EReserves
5 for those rather than having someone purchase the book?

6 A. Probably because I had -- for one thing I was
7 requiring the students to buy the two other books and
8 when I require books I'm using the entire book.

9 Q. So if you use something less than the entire
10 book you would put it on EReserves instead?

11 A. Sometimes I have asked students to purchase
12 books that I'm not using the entire book for, but it
13 would be at least half.

14 Q. And what's the reason if you're using, say,
15 two chapters from a book, why wouldn't you have them
16 just purchase it?

17 A. Because they won't buy it.

18 Q. Why not?

19 A. Students tend to be very pragmatic and in fact
20 this is a common complaint on student evaluations, if
21 you don't use most of the book they say they see no
22 reason to purchase it.

23 Q. Even if it's assigned reading, they would just
24 bypass it is your sense?

25 A. They may.

1 Q. And is it important to you as a teacher to
2 consider those student concerns in deciding what to
3 assign for purchase?

4 A. It's important for me to have students do the
5 readings I want them to do and to find ways to encourage
6 them to do the readings.

7 Q. And is it the case that if you assign -- have
8 them purchase something where they only read -- where
9 they read something less than the entire book that that
10 can have a negative impact on your teacher evaluations?

11 A. Not in my overall teaching effectiveness, no.

12 Q. I want to make sure I understand. Because you
13 said a moment ago you see in evaluations at the end of
14 the semester --

15 A. I've seen that sort of thing. I've seen that
16 sort of comment before.

17 Q. Okay.

18 A. Actually not necessarily on my own, but I read
19 everybody's evaluations and at Ohio State I was the
20 director of a program and I read every teacher's
21 evaluation.

22 Q. And are those evaluations used in terms of
23 considering the faculty's continued employment and
24 tenure decisions and things like that?

25 A. They can have an impact.

1 Q. Looking again at page 6. Let's just stick
2 with our Crookes example.

3 A. Okay.

4 Q. So you made the determination I take it not to
5 have the students purchase this book but you put it on
6 EReserves?

7 A. That's right. That's right.

8 Q. At any point did you consider whether to seek
9 permission from the publisher of the book to place it on
10 EReserves?

11 A. No, it didn't occur to me.

12 Q. You can put that one aside. Let's mark as
13 Plaintiffs' Exhibit 118 a document that has the Bates
14 number Georgia State 0002809.

15 (Plaintiffs' Exhibit No. 118
16 was marked for identification
17 by the reporter.)

18 BY MR. LAWSON:

19 Q. Do you recognize this document?

20 A. Yes. It's another syllabus for qualitative
21 research methods, a course I taught in spring 2007.

22 Q. And you indicated I believe before that this
23 course you may teach again in the future?

24 A. Yes. I did teach it once after this.

25 Q. And when was that?

1 A. That was in fall 2008.

2 Q. Okay. Do you recall when you taught it in the
3 fall of 2008 whether you used the same syllabus?

4 A. I used a different syllabus, a very different
5 syllabus.

6 Q. Do you know whether that was produced in this
7 litigation?

8 A. I don't know. I think at some point I had to
9 provide all my syllabi to somebody.

10 Q. Okay. Take a look under the required text
11 section of the first page. You see that?

12 A. Yes.

13 Q. Okay. And again were the first two books
14 there the Silverman and Creswell books that were
15 required for purchase in the course?

16 A. Yes.

17 Q. And those were books where students were
18 assigned most if not all of the book to read over the
19 course of the semester?

20 A. Yes.

21 Q. And --

22 A. The entire book.

23 Q. Okay. The next line says supplemental
24 readings with an ERes password?

25 A. Yes.

1 Q. By supplemental, you mean supplemental to the
2 two texts?

3 A. Yes.

4 Q. Supplemental doesn't mean optional?

5 A. Those were also assigned readings.

6 Q. Okay. Just below that there's a mention of
7 WebCT?

8 A. Yes.

9 Q. How do you use WebCT or ULearn --

10 A. ULearn.

11 Q. -- in your courses?

12 A. I use the discussion board for all of my
13 courses. Students post weekly reader responses.

14 Q. Do you use it for anything else?

15 A. I have maybe two or three times posted PDFs on
16 ULearn.

17 Q. And what was the reason for doing that as
18 opposed to, say, putting them on the EReserve system?

19 A. I did it for this particular course because I
20 did not get my EReserve list ready in time for the term.
21 And in fact the EReserve course page was not available
22 for my students until I think the end of the second
23 week. So I created PDFs for the things that were going
24 to be on EReserve because they weren't available to my
25 students. I put them on the ULearn site.

1 Q. As a general matter, though, is it fair to say
2 that you use EReserves rather than WebCT?

3 A. Right. I almost never use WebCT.

4 Q. Do you have any intention going forward of
5 posting readings on ULearn as opposed to EReserves?

6 A. No.

7 Q. Is there a reason you chose EReserves over
8 WebCT if it has that capability?

9 A. I was in the habit of using EReserves and not
10 thinking of ULearn as a place to post readings.

11 Q. Okay. Can you turn to the third page of this
12 syllabus. And can you just confirm for me that what we
13 see here are the assigned readings for each week of the
14 course?

15 A. Yes.

16 Q. And that apart from those identified as
17 Silverman and Creswell that the readings were placed on
18 EReserves?

19 A. Yes. Except that some were also -- I think
20 there were three that were also on the ULearn site.

21 Q. Do you know which three those were by any
22 chance?

23 A. The -- for week 3, Tedlock, Mackey & Gass and
24 Canagarajah.

25 Q. Now, do you remember that from back in 2007 or

1 do you remember that because you've reviewed your
2 records recently and saw something that indicated that?

3 A. I recently was asked to provide this syllabus
4 again, so I looked at it again.

5 Q. I see.

6 A. Maybe a week ago or something like that.

7 Q. Now, there are some entries, if you look, for
8 example, at week 3, the Tedlock entry you just
9 mentioned.

10 A. Yes.

11 Q. Are you aware that's a chapter from the Sage
12 "Handbook Of Qualitative Research"?

13 A. Yes.

14 Q. And it says 2000 there. That's a second
15 edition.

16 A. Yes.

17 Q. That's what you were telling me about?

18 A. Yes.

19 Q. You used the second.

20 If you look down to week 14. There's an entry
21 for Silverman that says parenthesis doing after it.
22 That's a different Silverman book?

23 A. Yes.

24 Q. Give me a moment, if you would.

25 Can you go back to Plaintiffs' Exhibit 64,

1 which was the course reserves page that we looked at
2 before.

3 A. Uh-huh.

4 Q. Is Plaintiffs' Exhibit 64 the course reserves
5 page for AL8961 syllabus we're looking at right now?

6 A. Yes. Yes.

7 Q. And if you look at week 2 on Exhibit 64.

8 A. Yes.

9 Q. You'll see it says Lincoln and Guba 2000, the
10 first entry?

11 A. Uh-huh.

12 Q. And if you look at your syllabus --

13 A. It's different.

14 Q. Yeah, which one is the correct one?

15 A. Because I had three different syllabi. I
16 changed the syllabus several times. And just before the
17 term started I switched from Lincoln and Guba 2000 to
18 Lincoln and Guba 1985.

19 Q. So the entry that's in the syllabus is the
20 reading that you used for the course?

21 A. Yes.

22 Q. Okay. And how did students get that if what's
23 posted on the EReserve system is Lincoln and Guba 2000?

24 A. I sent them a PDF.

25 Q. Turn to the last page of this syllabus.

1 There's a list here headlined E-articles?

2 A. Yes.

3 Q. Can you tell me what's in this list?

4 A. These are articles that I required my students
5 to read, and they're all in electronic journals that the
6 GSU library has electronic subscriptions to.

7 Q. So these are works that they, from the
8 information you gave here, could look up somehow through
9 the library and get access to?

10 A. Very easily.

11 Q. So these weren't on EReserves?

12 A. No. I don't know if there were links on
13 EReserves, but there was no reason to post those
14 articles on EReserve.

15 Q. Is it ever the case that you put material on
16 EReserves that may be reading in addition to the
17 assigned readings for the course?

18 A. What do you mean?

19 Q. Other sort of optional or, you know,
20 recommended readings for the students?

21 A. What I put on EReserve was what was in the
22 syllabus as assigned reading. It is the case that I
23 sometimes ended up making something optional after the
24 term got underway.

25 MR. LAWSON: Okay. We'll mark as

1 Plaintiffs' Exhibit 119 a document with a
2 Bates number Georgia State 0002796.

3 (Plaintiffs' Exhibit No. 119
4 was marked for identification
5 by the reporter.)

6 BY MR. LARSON:

7 Q. Do you recognize this?

8 A. Yes.

9 Q. Can you just tell me what it is?

10 A. It's syllabus for practicum, the graduate
11 practicum class in ESL/EFL teaching from fall 2004.

12 Q. And again this is the same course where we've
13 looked at several syllabi previously?

14 A. Yes.

15 Q. This one appears to be laid out a little
16 differently on the front. There are two required texts,
17 correct?

18 A. Yes.

19 Q. Including the Richards & Lockhart that we
20 talked about before?

21 A. Yes.

22 Q. And then there are -- there's an indication
23 that there's some readings on EReserves, is that right?

24 A. Yes.

25 Q. And then there's another category here called

1 journal articles/chapters in reserve?

2 A. Yes.

3 Q. What's that category?

4 A. I'm assuming it's EReserves. I was using --
5 this was the first time I taught the course. I was
6 using somebody else's template for the syllabus. So for
7 instance, the Murphy article would have been on
8 EReserves.

9 Q. Is it possible that what this category of
10 articles was was hard copy reserves at the library?

11 A. I don't remember that being the case.

12 Q. Okay. And can you just confirm for me,
13 turning to page 7, that these are, pages 7, 8 and 9,
14 list the required readings for the course?

15 A. Yes, they do.

16 Q. And those other than the Richards and -- well,
17 Wajnryb?

18 A. Wajnryb.

19 Q. Are readings that were placed on EReserves?

20 A. That's my memory, yes.

21 MR. LAWSON: Can we just go off the
22 record for five minutes or so.

23 THE VIDEOGRAPHER: Off the record at
24 10:52:06.

25 (Brief recess.)

1 THE VIDEOGRAPHER: Back on the record
2 at 10:55.

3 MR. LAWSON: We'll mark as Plaintiffs'
4 Exhibit 120 document with Bates number
5 Georgia State 0005843.

6 (Plaintiffs' Exhibit No. 120
7 was marked for identification
8 by the reporter.)

9 BY MR. LAWSON:

10 Q. Do you recognize this document?

11 A. Yes. It's another syllabus for another
12 course. This was the seminar in language teaching and
13 specifically genre theory from fall 2007.

14 Q. Could you turn to page 4, please. You'll see
15 in week 2 and week 3 there are entries for Swales 1990?

16 A. Yes.

17 Q. Indicating chapters 2 and 3 and chapters 7.4.
18 Were those readings placed on EReserves?

19 A. I assume they were, but I can't remember.

20 Q. Do you recall having assigned the Swales book
21 or using that Swales book previously? Strike that.

22 Let me ask a previous question, which is do
23 you know what the Swales book is that's referred to
24 here?

25 A. It's his book called "Genre Analysis"

1 published in 1990.

2 Q. Okay. And do you recall having used that book
3 in other courses?

4 A. I might have used it once before.

5 Q. Did you teach a course called AL9370 seminar
6 in language cognition and communication?

7 A. Did it have the subtitle of Genre Theory?

8 Q. It did.

9 A. Yes. The title was somewhat changed.

10 Q. Do you recall whether you used the Swales book
11 as a required text in that course?

12 A. I can't remember. I would have to look at the
13 syllabus.

14 Q. All right. Fortunately that's the copy I was
15 just searching for. We'll see if we can find it at a
16 break.

17 A. I know I used readings. I don't remember if I
18 required the book or not.

19 Q. Okay. Just talk a bit about the process of
20 using EReserves.

21 A. Uh-huh.

22 Q. When you've had items used on EReserves, who
23 is it that's done the copying and the scanning of the
24 actual excerpts that are placed on the system?

25 MS. GARY: Objection. Vague. What time

1 period are we talking about?

2 BY MR. LAWSON:

3 Q. I'm talking about prior to the new policy. I
4 mean, if it's been different at different times, tell
5 me. But say for the 2009 semester, who did the copying,
6 scanning of the excerpts that you used?

7 A. For 2009 since I was using mostly reactivated
8 things they were already there. The few things that I
9 added I photocopied and took to the EReserves place in
10 library south and they do the scanning. The GSU library
11 does the scanning to actually put it on the EReserves
12 course page.

13 Q. So you took them a photocopy?

14 A. Right.

15 Q. And then they scanned that photocopy?

16 A. That's my understanding.

17 Q. And did you ever provide them with the actual
18 book from which you did the scanning?

19 A. No.

20 Q. I'm sorry, the book from which you did the
21 photocopying?

22 A. No. No.

23 Q. Did they ask you or did anyone ask you whether
24 you owned a copy of the book?

25 A. No.

1 Q. Okay. Is it your understanding that there was
2 a requirement that you own the book to use it on
3 EReserves?

4 A. I either owned the book or it was a library
5 book.

6 Q. My question is a little different.

7 A. Right. Right.

8 Q. But was it your understanding that it was a
9 component of the policy at the time --

10 A. Right.

11 Q. -- that you owned a copy?

12 A. I don't have any awareness of that.

13 Q. When you went to library south, did you fill
14 out any sort of forms?

15 A. Yes.

16 Q. Okay. And what were those forms that you
17 filled out?

18 A. They -- they were asking for a list of the
19 items that I wanted to put on EReserve.

20 Q. Let's do it this way. I'll show you what's
21 been marked previously as Plaintiffs' Exhibit 19.

22 Was it a form that looked like this?

23 A. Yes.

24 Q. You can set that aside actually.

25 So when you submitted works in the past to the

1 library, you filled out something that looked like this?

2 A. Yes.

3 Q. And do you recall signing the box in the
4 middle?

5 A. I must have.

6 Q. Okay. You see in the middle it says -- in the
7 box in the middle, second sentence or third sentence,
8 for book selections you may place one chapter or less
9 than 20 percent of a content from a book?

10 A. Yes.

11 Q. It's the case, is it not, that for some of
12 your courses you used more than one chapter from a book,
13 right?

14 A. Yes.

15 Q. And did you do that knowing that there was a
16 rule stating that you could place only one chapter?

17 A. No. My understanding is as it says, one
18 chapter or less than 20 percent.

19 Q. So if it's two chapters but less than 20
20 percent --

21 A. That was my understanding.

22 Q. And did you actually tally the pages of the
23 selections you were using to see if you were under the
24 20 percent?

25 A. Usually I did. And if I didn't the librarian

1 did it for me and let me know.

2 Q. Were there situations where they told you that
3 you were over 20 percent?

4 A. Yes. And then those things did not go on
5 EReserve.

6 Q. When was it if you recall that that happened?

7 A. It happened once. One specific instance that
8 I remember was an undergraduate practicum course I think
9 in 2007.

10 Q. Okay. Do you remember the work that was at
11 issue?

12 A. It was a Michigan book on teaching English as
13 a foreign language.

14 Q. And the library told you that the excerpt that
15 you had selected was more than 20 percent?

16 A. Too much, right.

17 Q. And what did you do?

18 A. I didn't put all of it on EReserves.

19 Q. So you cut some pages?

20 A. Cut some chapters.

21 Q. You see the second to the last sentence says
22 for digitized items the original item must be owned
23 either by the GSU library or by the instructor placing
24 the item on reserve?

25 A. (Nods head affirmatively.)

1 Q. Do you have any memory of whether the library
2 checked with you to see whether you owned the items that
3 you were submitting?

4 A. No.

5 Q. Do you understand that to be a component of
6 the new policy?

7 A. I assume that it is.

8 Q. And what's that assumption based on?

9 A. I haven't read specifically this, but
10 ownership is part of fair use. I know in the fair use
11 checklist that's one of the items.

12 Q. Is whether or not you own a copy of the work
13 from which you're making copies?

14 A. Right. Right. Right.

15 Q. Do you have a sense of whether the 20 percent
16 or one chapter limitation is part of the new policy?

17 A. My understanding is that it is not worded that
18 way. There's no amount specified as a percentage.

19 Q. Okay. So it could be 50 percent but if it
20 passes the fair use checklist then you're okay?

21 A. I can't imagine how that would pass.

22 Q. Why not?

23 A. 50 percent sounds like more than a small
24 amount.

25 Q. Where would you draw the line on what's a

1 small amount?

2 A. Well, that's where it's becoming much more
3 complicated because deciding what is significant, it
4 seems like we're being given a lot more factors, a lot
5 more information about how to make these decisions and
6 it's not strictly a percentage issue.

7 Q. Do you find --

8 A. So it would depend on the work.

9 Q. Do you find the new checklist complicated?

10 A. I would say it certainly gives you much, much
11 more to think about. And in that sense it's certainly
12 more complicated than this.

13 Q. In the past prior to the new policy being put
14 in place, say last year for example, were you aware
15 apart from this 20 percent and what was stated in the
16 box we were just looking at of any more general
17 university policy on copyright?

18 A. Not really. No.

19 Q. Okay. So you had never read any previous --
20 any previous policy?

21 A. Only with respect to EReserve, that's all that
22 I'm aware of.

23 Q. And it was just what's in this box here?

24 A. I think so. Yes.

25 Q. When you submitted things in the past using

1 this form, again apart from the 20 percent one chapter
2 limitation here, did you do any sort of fair use
3 analysis?

4 A. I didn't.

5 Q. Do you have an understanding that if a use is
6 educational that it's basically automatically fair use?

7 A. I understand educational, the purpose being
8 educational as a significant part of the determination
9 of fair use.

10 Q. Okay. But not --

11 A. But not the only consideration.

12 Q. Okay. Prior to the new policy being
13 promulgated, were you aware of fair use law or the
14 concept of fair use?

15 A. I had some awareness, but not a very great
16 awareness of it.

17 Q. Okay. Do you have an understanding of why the
18 new policy was promulgated?

19 A. Apparently the university or the University
20 System of Georgia decided that they needed to revisit
21 their policy and come up with something that was much
22 more specific.

23 Q. Have you discussed the new policy with any
24 people in your department?

25 A. Yes.

1 Q. What has been the nature of those
2 conversations?

3 A. I went, as I mentioned earlier, I went to the
4 first workshop on copyright and fair use and several
5 teachers, faculty members who were teaching in the
6 summer asked me if what they wanted to do in the summer
7 was fair use.

8 Q. They asked -- oh, did they show you what they
9 were planning to post?

10 A. No. No. They asked me if putting 20 percent
11 of the works that they wanted to use on EReserves was
12 okay.

13 Q. And what did you tell them?

14 A. I told them they needed to talk to the
15 librarian.

16 Q. And who is the librarian?

17 A. I don't know the name. But there is a
18 librarian assigned to EReserve.

19 Q. Just so I'm clear, the people that asked you
20 these questions were people that attended the --

21 A. No, they did not.

22 Q. They had not attended. Okay.

23 A. That's why they asked me.

24 Q. So you referred them to the librarian?

25 A. Right.

1 Q. Is it your understanding that there's other
2 resources available apart from the librarian to answer
3 those sorts of issues?

4 A. Legal affairs.

5 Q. Do you know whether those people that asked
6 you those questions are going to be taking the same
7 class that you took?

8 A. The workshop?

9 Q. Yeah.

10 A. I don't know. I'm assuming that there will be
11 more, but there were only two and they were given at the
12 end of the term. So I would -- I assume there will be
13 more in the future.

14 Q. Do you know that for sure?

15 A. No, I don't.

16 Q. Just show you some documents that have been
17 marked previously as Plaintiffs' Exhibits 11 through 14.
18 Do you recognize these documents?

19 A. Yes, I've seen them online.

20 Q. Okay. This is the new policy that you --

21 A. Yes.

22 Q. -- said before you looked at. Okay. And you
23 read through these?

24 A. I did read them. Again, I felt like I got the
25 gist of them.

1 Q. And when was that?

2 A. These were actually presented at the workshop
3 that I went to.

4 Q. You can keep those handy, but why don't you
5 just set them to the side.

6 A. Okay.

7 Q. Have you mark as 121, Plaintiffs' 121 a copy
8 of the fair use checklist. And this has been previously
9 marked but because I may ask you to actually write on
10 it, I'm going to mark it with a new number.

11 (Plaintiffs' Exhibit No. 121
12 was marked for identification
13 by the reporter.)

14 BY MR. LAWSON:

15 Q. Do you recognize this?

16 A. Yes, I have seen this.

17 Q. Okay. And this is the fair use checklist
18 that's part of the new policy?

19 A. Yes.

20 Q. Let's take a look. You see factor 1, purpose
21 and character of the use?

22 A. Yes.

23 Q. Do you have an understanding of what
24 transformative means?

25 A. I have some idea.

1 Q. And what is your understanding?

2 A. That the work has changed in some way and also
3 used for a purpose other than what the author originally
4 intended.

5 Q. And is it your understanding that a posting on
6 EReserves would be transformative?

7 A. No.

8 Q. Okay. How about there's a line that says
9 nonprofit educational, is it your understanding that an
10 EReserve posting would be considered nonprofit
11 educational?

12 A. Yes.

13 Q. Would it be considered teaching?

14 A. Yes.

15 Q. And research or scholarship?

16 A. No.

17 Q. Criticism, comment and news reporting or
18 parody?

19 A. Not as I have used them.

20 Q. Personal study?

21 A. No.

22 Q. Use is necessary to achieve your intended
23 educational purpose?

24 A. Yes.

25 Q. Tell me about that. What is your

1 understanding of that factor?

2 A. I see this as tied to what my learning
3 objectives are for a course and whether or not the
4 readings would advance the learning objectives.

5 Q. Is there a situation where a reading that you
6 chose for the course wouldn't have this box checked?

7 A. I wouldn't use it if I didn't think it was
8 necessary.

9 Q. Right. So by virtue of you choosing to use it
10 in the course this box gets checked, correct?

11 A. Having this box here makes me think it is
12 necessary. So if I checked the box and used the work,
13 then I would be making the decision or the determination
14 that it's necessary for the course.

15 Q. But you generally -- well, let me ask you.
16 Would you generally start by choosing the works you want
17 to use and then completing the checklist for those
18 works?

19 A. I've never used this checklist.

20 Q. Okay.

21 A. I probably would come up with a group of
22 readings and the readings would be chosen to supplement.
23 And my use of the term supplement, the required
24 textbooks that are purchased. And if I were going to
25 put them on or if I was thinking of putting them on

1 EReserve now, then I would go through the checklist for
2 the individual works.

3 Q. Okay. And so having done that, isn't it the
4 case that when you got to this last factor, last checked
5 box under factor number 1 that you would check that
6 because the work would be one that you had chosen to use
7 in the class?

8 A. It would make me think, do I really need this.

9 Q. Let's look at the column on the right.

10 A. Uh-huh.

11 Q. What is your understanding of commercial
12 activity?

13 A. My sense of that is that there is some profit
14 involved, financial profit.

15 Q. Profit to --

16 A. Whoever is engaged in the activity.

17 Q. The activity of copying -- well, let's say in
18 the case --

19 A. Of using the work. If, for instance if my
20 students were paying me to give them copies then I would
21 consider that commercial.

22 Q. Okay. Let me ask more specifically. For use
23 of articles on EReserves as you've used them in the past
24 and I think you indicated you will in the future, would
25 you check the box for commercial activity?

1 A. No.

2 Q. Would you check profiting from use?

3 A. No.

4 Q. Would you check entertainment?

5 A. Probably -- I can't imagine a situation in
6 which I would.

7 Q. What's your understanding of what that factor
8 means?

9 A. The way this is -- this is configured here it
10 looks like entertainment is something separate from
11 something that's educational, which is what seems a
12 little strange to me because I think something can be
13 educational and entertaining at the same time. So this
14 seems to be saying if it's educational it can't possibly
15 be entertaining.

16 Q. What gives you the idea that those are sort of
17 an either/or choice?

18 A. Mutually exclusive. Just the fact that
19 they're in these different columns.

20 Q. Okay. So sitting here it's not clear to
21 you -- well, I don't want to put words in your mouth.

22 A. There's only one work that I can think of that
23 I put on EReserves that I could consider entertaining as
24 well as educational.

25 Q. And what is that?

1 A. And that was two chapters from a David Sedaris
2 book.

3 Q. So would you check entertainment if you were
4 putting that book on EReserves?

5 A. See, I think I would want to talk to somebody
6 to find out exactly what's meant by entertainment here.
7 Because I used the David Sedaris chapters in my
8 Intercultural Communication class because of the points
9 he makes in those essays.

10 One was about taking French lessons in Paris
11 and another one was about riding on the Metro in Paris
12 and running into some obnoxious American tourists. And
13 there was some very interesting messages that came
14 across in those texts about Americans abroad and how
15 they relate with others, other people who are not
16 American.

17 And my students on ULearn when they posted
18 about it said these were the funniest things they had
19 read in a long time. But they thought there was a
20 really serious subtext, which is what -- that was
21 exactly what I wanted them to get from those essays.

22 Q. So let's just say apart from that particular
23 Sedaris excerpt, though, generally am I right that you
24 probably would not check entertainment for --

25 A. Right.

1 Q. -- your usual EReserve postings?
2 A. Right.
3 Q. What about nontransformative?
4 A. I don't think putting anything on EReserve is
5 transformative.
6 Q. Meaning you would check nontransformative or
7 not?
8 A. Yeah, it's nontransformative.
9 Q. Okay. What about for publication?
10 A. It's not publication.
11 Q. I'm sorry, what do you mean?
12 A. It's not for publication.
13 Q. Okay. So you would not check that box?
14 A. Right.
15 Q. What about for public distribution?
16 A. It's -- there would be no public distribution.
17 Q. So you don't consider distribution to your
18 class to be public distribution?
19 A. Not as I understand public distribution.
20 Q. What do you understand it to be?
21 A. I would understand it as making the access
22 much broader than for a specific class for a specific
23 period of time.
24 Q. Okay. And then what about the use exceeds
25 that which is necessary to achieve your intended

1 educational purpose? What do you understand that to
2 include or mean?

3 A. See, I understand that as causing me to think
4 about whether or not this is really necessary. So if I
5 determined that it was really necessary then I would not
6 be checking that box.

7 Q. Let me ask it this way. If you had an excerpt
8 where filling out this checklist caused you to conclude
9 that maybe you had included some stuff that you maybe
10 didn't need, would you include all of it and then check
11 this box or would you just cut the stuff you didn't
12 need?

13 A. I think it would depend on the entire
14 analysis.

15 Q. Okay. How so?

16 A. But that seems to me a really important factor
17 or subfactor or whatever this is. And if it seemed to
18 me this was more than I really needed I probably would
19 cut the parts that seemed nonessential.

20 Q. Okay. And so if you did that then you would
21 check over in the weighs in favor of fair use column,
22 you would check the use was necessary?

23 A. Yes.

24 Q. And so just so I'm clear, and correct me if
25 I'm wrong, as I tally these up for this factor I think

1 you indicate three checks that you would make in terms
2 of weighs in favor of fair use for EReserve postings
3 that the first and the second, nonprofit and teaching,
4 and then use as necessary at the bottom of that column?

5 A. Yes. Yes.

6 Q. And then on the weighs against fair use side I
7 think you said you would check nontransformative?

8 A. Yes.

9 Q. And then I think that was it, correct?

10 A. I think so.

11 Q. And so what would you conclude then at the
12 bottom of factor 1 in terms of whether the factor weighs
13 in favor of or weighs against?

14 A. It seems to weigh in favor of.

15 Q. Okay. And would that, the analysis we just
16 did, would that change depending on the particular
17 EReserves work we were talking about or would the
18 analysis essentially be the same for any EReserves
19 posting?

20 A. I assume it would be essentially the same.
21 But as I said, I've never actually gone through this.

22 MR. LAWSON: I understand. Why don't
23 we break here. I think our tape is almost
24 over.

25 THE VIDEOGRAPHER: Off the record at

1 11:22:56.

2 (Brief recess.)

3 THE VIDEOGRAPHER: This is tape 3. We
4 are back on the record at 11:32:38.

5 BY MR. LAWSON:

6 Q. Okay. Professor Belcher, if you could, take
7 out Plaintiffs' Exhibit 113. It's the 209 syllabus from
8 AL8900.

9 A. Okay.

10 Q. And if you turn to page 6, please. I thought
11 we'd make this a little more specific.

12 If you look at page 6, the February 18th week,
13 and then page 7, the March 18th week, there were two
14 chapters there by Allwright and Bailey --

15 A. Yes.

16 Q. -- that you provided to students. And those
17 were on EReserves, correct?

18 A. Yes.

19 Q. And we actually looked at the excerpts before,
20 is that right?

21 A. Yes.

22 Q. The PDFs. So why don't we just again to focus
23 this a little bit, let's talk about those as an example.

24 If you were specifically to offer or complete
25 a checklist with respect to those two chapters, would

1 anything from what you just told me in terms of your
2 factor 1 analysis change on the checklist?

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

4 Q. Talk about factor 2. It's on page two of the
5 checklist. And let's look at the left hand column,
6 weighs in favor of fair use.

7 For these two particular chapters, would you
8 check published work?

9 A. Yes.

10 Q. Would you check factual nonfiction work?

11 A. Yes.

12 Q. And would you check important to educational
13 objectives?

14 A. Yes.

15 Q. Tell me what's your understanding of that
16 factor?

17 A. That -- well, my understanding of factor 2 in
18 general is that it's referring to the nature of the work
19 itself. And I see this as a work that is educational
20 and I chose it because it fit in with the educational
21 objectives of the course that were not being met as well
22 by the required purchased textbooks alone.

23 Q. What's your understanding of the difference if
24 any between the third check box under factor 2 and the
25 last check box under factor 1?

1 A. They seem similar, but in factor 2 it seems to
2 being referring to the nature of the work itself whereas
3 in factor 1 this is putting more emphasis on the
4 purpose, the reason why you're using the work.

5 Q. Well, isn't important to educational
6 objectives going to the use to which you're putting it?
7 You don't mean to suggest -- sorry.

8 A. They're certainly related. I don't see them
9 as mutually exclusive, right.

10 Q. I mean, do you understand that factor and the
11 last one in factor 2 to mean the work just in general is
12 important to educational objectives apart from how
13 you're using it?

14 A. No, I would think of it in the context of the
15 course.

16 Q. In the right hand column under factor 2 --

17 A. Yes.

18 Q. -- is there anything that you would check
19 for --

20 A. No. For these, no.

21 Q. And so how would you come out on this factor?

22 A. In favor of fair use.

23 Q. And that would be basically 3 to zero here?

24 A. Yes.

25 Q. Okay. So having seen that factor 1 and factor

1 1 tilt in favor of fair use, would you continue to
2 factor 3 if you were filling this out?

3 A. Yes.

4 Q. Let's look at the first box, small portion of
5 work used. Would you check that box?

6 A. For the two chapters?

7 Q. Yes.

8 A. Yes.

9 Q. Okay. And what about the next one, portion
10 used is not central or significant to entire work as a
11 whole?

12 A. You know, that one is hard for me to judge
13 partly because I didn't originally put these on
14 EReserve, I was -- this is something that somebody --
15 another teacher of the course did and I just -- it was
16 part of what I reactivated. So I haven't looked at the
17 entire work.

18 I would have to go -- I'd have to get a copy
19 of the entire work to make that determination.

20 Q. And can you say at a general level what you
21 understand this factor to mean or to be measuring?

22 A. I think it would vary from book to book. I
23 think in some single author books it may be easier to
24 determine than in, say, an edited anthology where every
25 chapter is completely different and by different authors

1 and they're addressing somewhat different topics.

2 Q. Can you imagine a situation in that latter
3 scenario, an edited book with multi chapters by
4 different authors where any single chapter would be
5 considered the heart? I'm sorry, you didn't use the
6 word heart so let me ask the question again.

7 A. Yeah, I didn't use the word heart.

8 Q. Can you imagine where a given chapter would be
9 considered central or significant to the entire work as
10 a whole?

11 A. Perhaps an introduction.

12 Q. And why the introduction?

13 A. It would certainly be significant. Whether or
14 not it's central I'm not sure. So I don't see -- if
15 something is central I would also see it as significant.
16 But it seems like things could be significant but not
17 necessarily central.

18 Q. Okay. Do you understand that this factor you
19 checked this, though, if it were -- well, you would
20 check this if it were neither central nor significant,
21 right?

22 A. Right.

23 Q. Okay. What about factor 3 here -- again,
24 let's --

25 Well, sticking with factor 2, your testimony

1 is that for the Allwright and Bailey chapters at least
2 that you wouldn't know how to check this without going
3 back to the book?

4 A. I'd have to look at the book.

5 Q. Okay. For the third box, amount taken is
6 narrowly tailored to educational purpose, would you
7 check that with respect to these two chapters?

8 A. I think that I would.

9 Q. And again, same question as I asked before,
10 how would you view this check box or this subfactor as
11 differing from the last factor of -- the last subfactor
12 under factor 1 and the last subfactor under factor 2?

13 A. I see the difference, the main difference
14 between this one and the previous having to do with
15 amount being narrowly tailored, so this would make me
16 think about do I really need two chapters, do I really
17 need to use the entire chapters. Could I just achieve
18 the same purpose by using part of each chapter or one of
19 the chapters. So it would force me to think about the
20 exact amount that I'm using.

21 Q. Now, how is that different from what you told
22 me under factor 1, looking at the last two boxes on each
23 side under factor 1 where use is necessary or use
24 exceeds that which is necessary to achieve your
25 educational purpose?

1 A. Yeah, they seem related. I don't see a huge
2 difference.

3 Q. Okay. Going back to factor 3.

4 Again with respect to the Allwright and Bailey
5 chapters, would you check any of the boxes on the right
6 hand side?

7 A. I wouldn't, but again with the second one I
8 would need to look at the whole book.

9 Q. All right. So let's say even if you looked at
10 the whole book and determined that what you were taking
11 was in fact the heart, it's the case, is it not, that
12 you would still be two to one in favor of fair use under
13 this factor?

14 A. No, I'm not -- I think I need more direction
15 in determining what heart of the work means. And that
16 was something that was addressed at the fair use
17 workshop but not in great detail. So I think I could
18 use more guidance in making that determination.

19 Q. Would you agree that what the heart of the
20 work is to some degree lies in the opinion of the person
21 making that determination?

22 A. I'm sure that there's always going to be
23 subjectivity, but I think that it could also be the case
24 that more than one person would agree that the same part
25 of the book is the heart of the work.

1 Q. So just to return to my question from before,
2 regardless of what you checked for whether these
3 chapters do or don't constitute something central or
4 significant or the heart, it's correct, is it not, that
5 you would come down for this factor in favor of fair
6 use?

7 A. From my understanding of these chapters I
8 think I would still decide in favor of fair use.

9 Q. It would either be 3 zero or the 2 to 1
10 basically, right?

11 A. Yes.

12 Q. And let's look at factor 4. Again, just as a
13 reference point let's use these two chapters.

14 Would you check the first box no significant
15 effect on market or potential market for copyrighted
16 work?

17 A. Yes.

18 Q. Tell me about why you would check that?

19 A. You know, I don't see the copyright date on
20 this but I think these are not recent books. I mean,
21 this is not a recent book.

22 Q. I've actually got a copy of the book here if
23 you'd like to take a look.

24 A. Okay.

25 Q. I don't know if we want to mark that as

1 exhibit or -- if you want to check the, you know, the
2 PDFs against the chapters in the book, please do.

3 MS. GARY: If she is going to be
4 testifying as to the copyright date, let's
5 mark it as an exhibit.

6 MR. LAWSON: Okay. What's our next
7 number? Can we mark that as 122.

8 (Plaintiffs' Exhibit No. 122
9 was marked for identification
10 by the reporter.)

11 THE WITNESS: It's 1991. I think I
12 would have to do a little bit of research.

13 BY MR. LAWSON:

14 Q. And what would that research entail?

15 A. I might go to a couple of web sites, one would
16 be Amazon to see if they're still selling this.

17 Q. And if you discovered that Amazon was selling
18 this --

19 A. As new copies.

20 Q. Uh-huh.

21 A. Again, I need to -- I think that this whole
22 sequence works together.

23 Q. Okay.

24 A. So since I haven't really looked at the whole
25 book, my assumption is that these two chapters are not

1 the heart of the book. So I think that they would
2 not -- using them -- putting them on EReserve would not
3 have a significant effect on the marketability of the
4 book.

5 Q. Okay. And just tell me what the chapters
6 being the heart or not have to do with the impact on the
7 market so I understand your reasoning.

8 A. Yeah, I'm assuming that the heart question
9 could have to do with whether or not people decide to
10 buy the work. So if you've already given them the heart
11 of the book they may decide, well, I don't need the rest
12 of the book.

13 Q. Okay. So is your assumption there that if you
14 give them something that's not the heart of the book
15 then they might go out and buy it?

16 A. Yes.

17 Q. Okay.

18 A. My students have done such things.

19 Q. So in this case, let's assume that your
20 determination were that it's not the heart, then you
21 would say no significant effect on --

22 A. Yes.

23 Q. Now, in considering that factor, that
24 subfactor, would you consider only your particular use
25 in terms of the impact or would you consider use by

1 other professors if they were to offer these chapters as
2 well?

3 A. Using this checklist I would only be thinking
4 about my use.

5 Q. What about the second box, use stimulates
6 market for original work?

7 A. Again, if it's still in print I think it's
8 entirely possible that the use could stimulate interest
9 in buying the book.

10 Q. Again, is that subject to the limitation that
11 if you've given them the heart in your excerpts then it
12 might not?

13 A. Yes, that could have an affect.

14 Q. What about the third box, no similar product
15 marketed by the copyright holder?

16 A. I don't know of a similar product.

17 Q. What do you understand that factor to mean?

18 A. A book that covers the same topics in a very
19 similar way.

20 Q. And do you understand that to mean a book by
21 the same publisher, for example?

22 A. Not necessarily. It could be competing
23 publishers.

24 Q. So you would check that box then?

25 A. Yes.

1 Q. What about no longer in print?

2 A. That's what I don't know.

3 Q. That you'd have to go to Amazon or somewhere
4 online to see?

5 A. Or to Cambridge, the Cambridge web site.

6 Q. What about licensing or permission not
7 available?

8 A. Certainly right now I can't say if it's
9 unavailable.

10 Q. You can't say that it's unavailable?

11 A. Well, I don't know what the availability --
12 okay. I guess I'm using too many negatives.

13 I don't know about the availability of
14 licensing for use on EReserves of this work.

15 Q. Okay. So not knowing, what would you do
16 confronted with this box?

17 A. I guess I would need to find out what it is
18 you would need licensing for. I need some guidance on
19 what you need to get permission for and then find out
20 how I would go about doing that.

21 Q. Where would you seek out that information?

22 A. Again, my first resource would be the
23 EReserves librarian.

24 Q. So am I to understand that for any time you
25 fill out this checklist you would have to go to a

1 librarian to find out if licensing or permission is
2 available or not for the particular work you're filling
3 out the list for?

4 A. No, no. I think I'm not explaining myself
5 very well.

6 Q. That's okay. That's why we're here.

7 A. I think the very first time I ever used this
8 there would be a lack of clarity and there would be some
9 things I would need to check with somebody to get some
10 clarification on. I think after I learned how to use it
11 that would be less and less the case. And if I wanted
12 to check on the availability of licensing I guess I
13 would go to copyright.com. I haven't used that site so
14 I don't know how that works.

15 Q. But again, for each, at least for the first
16 time that you used a given excerpt you would need to go
17 outside the checklist to see whether permission was or
18 was not available for the work?

19 A. Right.

20 Q. And so sitting here now you can't say how you
21 would check this necessarily with respect to this
22 Allwright and Bailey book as our example?

23 A. I'm assuming that I can go to copyright.com
24 and find this out.

25 Q. Would you check supplemental classroom use?

1 A. If supplemental means optional, no.

2 Q. What is your understanding of what
3 supplemental means here?

4 A. I think they mean not required so I would not
5 check that.

6 Q. Okay. How about one or few copies made or
7 distributed?

8 A. Yes, I would check that.

9 Q. What's your view of what would -- of the
10 number of copies that would put you over the more than
11 few?

12 A. Well, EReserves is putting one PDF online. So
13 I don't know, it's one copy that they're making
14 available to a limited number of students. So how that
15 counts as copies I'm not sure. But is a copy a view, a
16 downloading?

17 But my understanding is EReserve is one copy
18 made -- that students are given access to so it seems
19 like one or few to me.

20 Q. So it seems like one to you is what you're
21 saying, right?

22 A. In one sense it seems like one.

23 Q. Well, what is your understanding technically
24 when students view that PDF, do you view that as copy
25 being distributed to them?

1 A. It could be viewed that way.

2 Q. What's your view?

3 A. I see it as one copy that's made available to
4 more than one person.

5 Q. Let me ask the question again. When a student
6 clicks on the link on EReserves and views that PDF, do
7 you understand that to be a distribution of a copy to
8 that student?

9 MS. GARY: Objection. Asked and
10 answered.

11 MR. LAWSON: I don't think it's been
12 answered. But I'll ask it again.

13 THE WITNESS: I guess I'm having trouble
14 with the term copy, what copy really means.

15 BY MR. LAWSON:

16 Q. Okay. What if the student downloads the PDF
17 to their hard drive of their computer, do you understand
18 that to be the distribution of a copy to them?

19 A. That sounds like a copy.

20 Q. Okay. And if they print it out?

21 A. That sounds like a copy.

22 Q. Okay. If every student in the class
23 downloaded and printed out the copy, would that change
24 your answer to this box we're looking at?

25 A. I think I would still see it as few copies.

1 Q. Even if there were, say, 50 students in the
2 class?

3 A. Well, I've never taught a class of that size.

4 Q. So for your classes it would be few even if
5 everyone --

6 A. It would be few.

7 Q. What about the next check box, user owns
8 lawfully acquired?

9 A. I would check that.

10 Q. You own the book?

11 A. I or the library.

12 Q. And what about restricted access to students
13 or other appropriate group?

14 A. Yes.

15 Q. Okay. So just so we're clear, if I have this
16 right, I have six boxes that you would have checked for
17 sure, the first three and the last three?

18 A. Okay.

19 Q. Well, I don't want to --

20 A. Yeah. Yeah.

21 Q. And then a couple in the middle that you would
22 need to do a little investigation for, correct?

23 A. Right.

24 Q. Okay. Let's look at the right hand side.

25 Step back for one second and ask a different question.

1 A. Okay.

2 Q. Given that the first three factors all weighed
3 in favor of fair use, would you still complete factor 4?

4 A. Yes.

5 Q. You would. How come?

6 A. I think it's one of the most important
7 factors.

8 Q. And why is that?

9 A. I guess it ties in with my -- I'm not sure why
10 I do, but it seems important in terms of copyright and
11 ownership and affecting the rights of ownership. I
12 don't know. I don't have a specific enough
13 understanding of copyright. I just instinctively feel
14 that effect on market seems to be an important issue.

15 Q. If you determined that your use for whatever
16 reason would have a significant impact on the market,
17 can you imagine a situation where you would not use the
18 work even if the first three factors tilted towards fair
19 use?

20 A. Yes.

21 Q. Let's take a look at the second column here.
22 The first box, significantly impairs market or potential
23 market for copyrighted work or derivative.

24 Again, using our Allwright and Bailey example,
25 would you check that box?

1 A. No.

2 Q. How about the second box, licensing or
3 permission reasonably available?

4 A. After having done research I might check that
5 because it may be available.

6 Q. Okay. So you just don't know sitting here,
7 you'd have to do some work?

8 A. Right.

9 Q. How about numerous copies made or distributed?

10 A. I would say no.

11 Q. How about repeated or long term use that
12 demonstrably affects the market for the work?

13 A. I would not check that.

14 Q. What's your understanding of that factor or
15 when that would be checked?

16 A. If there were no limit on the access to the
17 work online, if it were just available without any term
18 limits at all.

19 Q. Do you mean no limits -- if it were just left
20 up you mean?

21 A. Right. Right. Right. Right. Right.

22 Q. Not archived?

23 A. If it were on a web site and always available.

24 Q. Now, what about -- so strike that.

25 If you teach the same class every year or two

1 and reactivate your page and use the same work again, if
2 you did that, say, for example, this fall for this
3 Allwright and Bailey example, would you consider that to
4 be repeated?

5 A. It would be repeated. I don't know that it
6 would affect the market for the work.

7 Q. Required classroom reading?

8 A. Yes.

9 Q. User does not own lawfully acquired or
10 purchased copy of original work?

11 A. I wouldn't check.

12 Q. Unrestricted access?

13 A. I would not check that.

14 Q. So overall on this factor by my count it would
15 be six to one putting aside the couple of boxes that
16 you'd need to investigate?

17 A. Yes.

18 Q. So this factor would weigh in favor of fair
19 use for you?

20 A. Yes.

21 Q. And so overall if you wanted to use this work
22 again in a subsequent semester, is it your feeling that
23 you could use it based on this?

24 A. It seems to be the case. That doesn't mean I
25 would use it again.

1 Q. And if you didn't, though, it would be for
2 pedagogical reasons, not for fair use reasons, right?

3 A. Right. Although that becomes tied to fair
4 use, too.

5 Q. How so?

6 A. Well, if I just -- if I determined that
7 because of, for instance, other books that I was
8 requiring students to purchase, if they covered this
9 material then there would be no necessity for it. So
10 that wouldn't work well with fair use.

11 Q. I see. I just want to look at one other
12 example and see if it impacts your analysis or your view
13 of the checklist. Can you take out 118.

14 A. What is 118?

15 Q. It's the syllabus from the spring of 2007 from
16 AL8961.

17 And if you could turn on that to the third
18 page.

19 Can we go off the record for just one moment?

20 THE VIDEOGRAPHER: Off the record at
21 12:00.

22 (Brief recess.)

23 THE VIDEOGRAPHER: Back on the record
24 at 12:01:32.

25 BY MR. LAWSON:

1 Q. Actually would you turn to what is the Bates
2 number in lower right hand corner 2812 of this document.

3 A. Okay.

4 Q. And take a look at weeks 1, 14 and 15.

5 A. Yes.

6 Q. And you see there, and just correct me if I'm
7 wrong, that you assigned over the course of those three
8 weeks chapters 22, 11 to 13, 23 and 24 of Silverman's --
9 of what's identified as Silverman Doing?

10 A. Yes.

11 Q. And am I correct that that book is "Doing
12 Qualitative Research" by David Silverman?

13 A. Yes.

14 Q. So let's just -- with that in mind, that
15 example, looking at the checklist, let's go back to
16 factor 1 and just tell me if you were to apply the
17 checklist to these six chapters of Silverman being
18 placed on EReserves, would any of the previous analysis
19 you've given me for factor 1 change at all?

20 A. I think the entire analysis of all of this
21 would change.

22 Q. Okay. Well, let's go through it then.

23 A. My view of using it --

24 Q. Okay. Let's walk through it then.

25 A. -- that much of the book.

1 Q. I'm sorry.

2 A. I don't think I would use as much as I did.

3 Q. Let's walk through it and see how it would
4 work.

5 Let's go to factor 1. Would you check for the
6 six chapters nonprofit educational?

7 A. Yes.

8 Q. Teaching?

9 A. Teaching. And use is necessary to achieve
10 intended educational purpose. That's part of what I
11 think I would have to revisit.

12 Q. And what would be your consideration there?

13 A. I would look at all of those chapters again
14 more carefully and I might decide -- and this has more
15 to do with amount. I might decide that I either didn't
16 need all of those chapters or didn't need complete
17 chapters. But this is hypothetical.

18 Q. Yeah, understood.

19 So you would -- what you're saying you might
20 potentially cut some chapters?

21 A. Right. I'm saying I would analyze them in a
22 way that I didn't when I put them on EReserve --

23 Q. Okay.

24 A. -- for 2007.

25 Q. Okay. And so for in terms of the weighs in

1 favor of fair use column, use is necessary to achieve
2 your intended educational purpose, you can't say sitting
3 here whether or not you would check that box because you
4 might in fact not use all six chapters, is that right?

5 A. I would probably go through -- I guess this is
6 what partly what I need some -- will need some guidance
7 on if and when I use this, assuming I use EReserves
8 again, if we should look at chapters individually or if
9 you're using more than one take that as a single unit.

10 Q. Okay. Sitting here now do you have an
11 understanding of what the proper analysis is, which way
12 to do it?

13 A. It seems that it's as a unit because it's from
14 the same work.

15 Q. Okay. And what about in the case of --

16 A. But it also seems that this encourages you to
17 think about each component. So you may be shrinking the
18 unit.

19 Q. So just so I'm clear. So you would take the
20 six chapters together and compare them to the entire
21 book, not each chapter individually?

22 A. No, I might do that, too, as well. But --

23 Q. Would you fill out a checklist, just very
24 practically, again recognizing that just as you're
25 sitting here now, would you fill out a checklist, an

1 individual checklist for each Silverman chapter or would
2 you fill out one checklist for the five or six or
3 whatever?

4 A. Yeah, my initial understanding, but again I
5 haven't used the checklist yet --

6 Q. Understood.

7 A. -- was that for every single item you put on
8 EReserve we're supposed to go through the checklist.
9 But thinking about it now, it would make more sense if
10 there are several items from the same book to look at
11 them all together because then especially for some of
12 these other items, if you're thinking of the effect on
13 the market.

14 Q. Are you aware of anything in the policy that
15 suggests one way of doing it or the other?

16 A. The current, the new policy?

17 Q. Yeah. Are you aware that it's anywhere in
18 there that tells you you should do a list for each --

19 A. I haven't read it carefully enough. So I'm
20 unclear on that.

21 Q. What about if there's a situation where you've
22 got an edited book with multiple chapters by different
23 authors?

24 A. Right.

25 Q. How would you view -- how would you do it in

1 that situation, what's your understanding?

2 A. Yeah, then it becomes complicated and I
3 think -- I think that maybe there needs to be some more
4 specificity in the guidelines in how to use the
5 checklist. Because I think you do need to think about
6 each chapter and its necessity in terms of meeting
7 intended educational purposes. But you also need to
8 look at, if you're using multiple chapters you need to
9 look at whether or not that's -- that together composes
10 the heart of the work.

11 Q. Okay. Let's just look -- going back to the R6
12 Silverman chapters. So let's --

13 My understanding then is for the last
14 subfactor it would be hard to say until you determined
15 if you wanted to use all of these chapters or some
16 subset, right?

17 A. Right. Right. Since I wasn't at the time
18 thinking of all of these factors.

19 Q. Right. Now, let's look at the other column.
20 Is there any box on the right hand side that you would
21 check?

22 A. You know, the only one -- the one that I need
23 to -- would need to revisit is the last one.

24 Q. Right. And -- correct me if I'm wrong, but
25 what you said before I think was that if you determined

1 that your use exceeded what you -- was suitable for your
2 purpose that you would scale back your use, right?

3 A. Right, right.

4 Q. And then that box wouldn't get checked, right?

5 A. Right.

6 Q. Whatever number of chapters you might use,
7 wouldn't factor 1 as you analyzed here come out in favor
8 of fair use even if you checked --

9 A. Whatever number of chapters? I'm sorry.

10 Q. It was a poorly phrased question. I
11 apologize.

12 Even if you were to check the bottom right
13 hand box on the weighs against fair use category --

14 A. Oh, okay.

15 Q. -- your overall tally for factor 1 would still
16 weigh in favor of fair use, correct?

17 A. In terms of the number of boxes checked, it
18 would seem to.

19 Q. It would be either 3 to zero or 2 to 1,
20 correct?

21 A. I guess then the question is should the
22 determine -- should these be weighted equally.

23 Q. What's your understanding of how they're
24 weighted?

25 A. The checklist doesn't indicate a difference in

1 weighting.

2 Q. And do you have any reason to believe that you
3 should weigh them differently?

4 A. Well, in my mind some of these items seem
5 weightier than others.

6 Q. And which ones?

7 A. For instance, in the left hand column, use is
8 necessary to achieve intended educational purpose seems
9 especially important.

10 Q. And the same for use exceeds that?

11 A. Yes.

12 Q. So is it the case then -- would it ever be the
13 case that if you found that your use exceeded that which
14 is necessary to achieve your intended educational
15 purpose that you might say factor 1 tilts against fair
16 use even if you had two checks in the left hand column
17 and only one check in the right?

18 A. In that case I would rethink what I was going
19 to put on EReserves so that it wouldn't exceed.

20 Q. All right. And then --

21 A. And that's what I see is the value of this
22 checklist.

23 Q. And so then factor 1 would favor fair use?

24 A. Then if I scaled back.

25 Q. Let's look at factor 2. Again, using these

1 Silverman chapters, would you check published work?

2 A. Yes.

3 Q. Fiction or nonfiction work?

4 A. Yes.

5 Q. And important to educational objectives?

6 A. Yes.

7 Q. And what about on the right hand side?

8 A. None.

9 Q. Okay. So this factor would weigh in favor of

10 fair use?

11 A. Yes.

12 Q. Is that regardless of whether you used all six

13 or scaled it back to some lessor number of chapters?

14 A. If we're looking only at this factor it's fair

15 use.

16 Q. I'm just asking about this factor, not the

17 overall.

18 A. Yeah.

19 Q. On factor 3 small portion of work used, how

20 would you approach that?

21 A. See, from my old understanding it was small.

22 Q. Tell me about that.

23 A. From my new understanding it doesn't seem

24 small.

25 Q. What was your old understanding?

1 A. My old understanding was 20 percent is okay.

2 Q. And those chapters --

3 A. It's about 20 percent.

4 Q. At some point you did the math on that?

5 A. At some point library reserves did the math.

6 Q. Okay. And now your new understanding is that
7 the six chapters would not be a small portion?

8 A. Well, this is what I took from the workshop I
9 went to. And actually Cynthia was saying she thought
10 that 10 percent was more reasonable.

11 Q. Okay.

12 A. Although she also said that that's -- that
13 percentage is not what should determine the decision.

14 Q. Well, let's -- let me ask it this way. If you
15 did determine that you wanted to use all six chapters of
16 this book, would you say that's a small portion? Would
17 you check this box?

18 A. Now?

19 Q. Uh-huh.

20 A. I wouldn't use all six chapters.

21 Q. Okay. I'm asking a slightly different
22 question, which is if you used all six?

23 A. If I used all six --

24 Q. Yeah.

25 A. That still seems relatively small so probably

1 yes. But this is a situation that I don't think I would
2 be in.

3 Q. Because you would cut back the number of
4 chapters?

5 A. Now I think so.

6 Q. Okay.

7 A. Now that I have a better understanding and
8 there are different guidelines.

9 Q. Okay. But again, recognizing that -- well,
10 strike that.

11 What about portion used is not central or
12 significant to the entire work as a whole?

13 A. I don't think they were central. I wouldn't
14 say they were insignificant, but I wouldn't call them
15 central.

16 Q. So would you say they're significant?

17 A. Well, it would be hard to say that there's a
18 chapter that isn't significant in the book. I mean, it
19 would be hard to say there are -- to call certain
20 chapters insignificant.

21 Q. So you wouldn't check this box then, is that
22 right?

23 A. Well, I would say it's not central.

24 Q. Okay. So you would check it because it's
25 not -- I just want to -- okay.

1 A. Yeah. But I do find this problematic, the
2 central or significant.

3 Q. Okay. And again the third box, how would you
4 approach the third box, amount taken is narrowly
5 tailored to educational purpose?

6 A. I am assuming that I would revisit the amount
7 and what I would end up with would be narrowly tailored.

8 Q. So you would, whatever amount you ended up
9 with of the six chapters --

10 A. (Nods head affirmatively.)

11 Q. Let's look at factor 4.

12 Well, on factor 3 then recognizing that we
13 don't know how many chapters you would end up with, you
14 would cut in some way that would end up with you
15 checking all three of these boxes?

16 A. That would be the goal.

17 Q. Okay. Do you have a view under factor 4
18 whether using all six chapters would have a significant
19 effect on the market or potential market for the
20 copyrighted work?

21 A. I think given the size of the book it probably
22 would not.

23 Q. Okay.

24 A. So I would say no significant effect.

25 Q. And what about again, let's assume you used

1 all six, use stimulates market for original work?

2 A. I think so, yes.

3 Q. What about no similar product marketed by the
4 copyright holder?

5 A. I know of no similar products, so I would
6 check that.

7 Q. What about no longer in print?

8 A. It is in print as far as I know.

9 Q. What about licensing or permission
10 unavailable?

11 A. I would have to do the research.

12 Q. For the reasons discussed before?

13 A. Right. I couldn't say it's unavailable
14 without looking into it.

15 Q. And then supplemental classroom reading?

16 A. I couldn't check that.

17 Q. Okay. One or few copies made or distributed?

18 A. I would check that.

19 Q. And user owns lawfully acquired or purchased
20 copy?

21 A. Yes.

22 Q. Okay. And restricted access?

23 A. Yes.

24 Q. About what the right hand side, again assuming
25 you used all six, would you say -- check anything on the

1 right?

2 A. Well, it could be that licensing or permission
3 is available.

4 Q. Okay.

5 A. That would have to be determined.

6 Q. Uh-huh.

7 A. Required classroom reading. I think that's
8 it.

9 Q. Okay. So that even if you used all six
10 chapters factor 4 would weigh in favor of fair use?

11 A. I think --

12 Q. As you would fill it out sitting here now?

13 A. Yeah. Well, this is just hypothetical in a
14 way because you're asking me about something that I
15 would probably not now put on EReserve given my
16 understanding, more complex and fuller understanding of
17 fair use. So in the context of how I had understood
18 fair use it seemed like it would not affect the market.

19 Q. But isn't what you just told me even assuming
20 you used all six chapters that factor 4 would come out
21 with six checks on one side?

22 A. Yeah, I think so. I think so. I think so.

23 Q. Okay.

24 A. With the addendum that I think now I would not
25 use as much as I used because this checklist would make

1 me rethink exactly how much is essential in terms of
2 amount.

3 Q. Understood. But isn't it the case that even
4 though you might do that that under this checklist as
5 you've analyzed it that it would allow you to use all
6 six chapters and would come out with a conclusion of
7 fair use?

8 A. That's a good question. But you know, I can
9 only speak for myself and I know that using this --
10 becoming familiar with this checklist is changing me to
11 rethink how I choose things for EReserve.

12 MR. LAWSON: Why don't we take a couple
13 minutes. That's probably it.

14 THE VIDEOGRAPHER: Off the record at
15 12:20:09.

16 (Brief recess.)

17 THE VIDEOGRAPHER: Back on the record
18 at 12:23:05.

19 MR. LAWSON: I have no further
20 questions.

21 MS. GARY: I have no questions at this
22 time.

23 MR. LAWSON: Thank you, Professor
24 Belcher.

25 THE WITNESS: Oh, can I add something?

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MR. LAWSON: If you'd like, sure.

THE WITNESS: Okay. I did teach this course again in this past fall and I was able not to use EReserves again and --

BY MR. LAWSON:

Q. You're talking about AL8961?

A. Yes.

Q. Taught in the fall of 2008?

A. Uh-huh, uh-huh.

Q. And when you taught it in that semester you didn't use EReserves?

A. Right.

Q. Why not?

A. I found three books that were much more effective at covering the material. And I also discovered that the library has electronic journals that had articles that covered all of the material that I needed. So I'm -- what I learned was that through using the electronic subscriptions that the library has I can -- and because of -- and keeping abreast of new publications it will -- it looks like it's becoming easier to find other ways to make things available to students.

Q. You taught AL8900 in the spring 2008 semester, correct? Or I'm sorry, the spring 2009 semester.

1 A. Oh, I'm sorry, I was talking about the
2 qualitative research course.

3 Q. I understood. I'm asking you a different
4 question.

5 A. Yes.

6 Q. You taught AL8900 this past spring, right?

7 A. Right. Right.

8 Q. And you used EReserves for that?

9 A. Yes.

10 MR. LAWSON: No more questions.

11 MS. GARY: No questions.

12 THE VIDEOGRAPHER: Off the record at
13 12:25:03.

14 (Deposition concluded at 12:25 p.m.)
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E R R A T A S H E E T

I, the undersigned, Diane Belcher, 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:

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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 Diane Belcher

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
10 representative of Shugart & Bishop.

11 I am not disqualified for a relationship of interest
12 under the provisions of O.C.G.A. 9-11-28.

13 Shugart & Bishop was contacted by the offices of Weil
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15 this deposition.

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18 (a) and (b).

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24 rates to all parties in the case, and a financial discount
25 will not be given to any party to this litigation.

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