

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

DAVID RUDOVSKY and)	09-CV-0727
LEONARD SOSNOV,)	
)	
)	
Plaintiffs,)	
)	
vs.)	
)	
)	
WEST PUBLISHING)	
CORPORATION, WEST SERVICES,)	
INC., and THOMPSON LEGAL)	
AND REGULATORY, INC., t/a)	
THOMPSON WEST,)	Philadelphia, PA
)	December 14, 2010
Defendants.)	10:00 a.m.

TRANSCRIPT OF TRIAL
BEFORE THE HONORABLE JOHN P. FULLAM
UNITED STATES DISTRICT JUDGE

APPEARANCES:

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produced by transcription service.

1 A It does.

2 Q And it indicates that the authors are David Rudovsky and
3 Leonard Sosnov?

4 A Yes.

5 Q Now at this time that this advertisement is pending, are
6 either you or Professor Sosnov responsible for the current
7 pocket part that is supposed to contain the updates through
8 2009?

9 A We're not. We're not responsible for the 2009 pocket
10 part, which was the last one that was published. That was
11 published in-house by West.

12 Q Is there any indication in this advertisement that you are
13 not the authors or preparers of the present pocket part?

14 A There's nothing in here that would indicate that.

15 Q And you point out it says, last updated January 6, 2011,
16 which is a date sometime in the future. Do you have any
17 involvement in any future pocket part that West might publish
18 with respect to this treatise?

19 A We do not.

20 Q Would a reader of this advertisement have any way of
21 knowing that you and Professor Sosnov are not presently --

22 THE COURT: It calls for a conclusion. Objection
23 sustained.

24 BY MR. BAZELON:

25 Q Professor Rudovsky, can you identify any specific loss of

1 income which you have incurred as a result of the matters in
2 this case?

3 A No, I cannot.

4 Q Have you ever, to this time, apart from this case, ever
5 brought a lawsuit that is been a plaintiff in a lawsuit?

6 MR. RITTINGER: Objection.

7 THE COURT: Objection overruled. It doesn't hurt
8 anybody.

9 PROFESSOR RUDOVSKY: I have never brought a lawsuit
10 before in my life, no. Not even for a car accident.

11 MR. BAZELON: Your Honor, I'd like to move into
12 evidence Exhibit 3, which is the pocket part for 2008.

13 THE COURT: It will be received. Is that a joint
14 exhibit?

15 MR. RITTINGER: Your Honor, it's our understanding
16 that all of these have been admitted and we've acknowledged
17 that they're -- we have no objections to them so --

18 THE COURT: That's nice.

19 MR. BAZELON: Your Honor, I don't care what it's
20 called, if there's no objection, we can call it P, we can call
21 it joint, I don't care what it's called.

22 THE COURT: It's number 3. It's in evidence.

23 MR. BAZELON: Thank you. I have no further
24 questions.

25 THE COURT: Perhaps others do.

1 MR. RITTINGER: I'm sorry, Your Honor?

2 THE COURT: It's your turn.

3 MR. RITTINGER: Thank you, Your Honor.

4 CROSS-EXAMINATION

5 BY MR. RITTINGER:

6 Q Professor, it is true that West enjoys an excellent
7 reputation in the publishing -- legal publishing field,
8 correct?

9 A I'd say it enjoys a very good reputation, and is the
10 largest, as I understand, the largest law book publisher in
11 the country. Yes.

12 Q And it enjoys an excellent reputation for the quality of
13 its work, isn't that correct?

14 A I would say it enjoys a very good reputation, I wouldn't
15 necessarily say excellent.

16 Q Okay.

17 THE COURT: Especially when the work is done by
18 Professor Rudovsky.

19 PROFESSOR RUDOVSKY: Then it's excellent.

20 BY MR. RITTINGER:

21 Q And it's advantageous to someone in your profession to
22 author books for West, isn't that correct?

23 A Yes. If it's done properly, yes.

24 Q And it's prestigious, isn't that correct?

25 A Prestigious, it certainly helps to have a book published

1 and to have published work as an academic, absolutely.

2 Q And we had a little discussion, you have another book that
3 you published with West, correct, it's called Police Conduct.

4 And when did you first publish this book?

5 A That was first published by West in 1980.

6 Q So -- and were you the author in 1980?

7 A I was the co-author in 1980.

8 Q All right. So ninety, two thousand -- that's 30-year
9 relationship with West.

10 A Yes.

11 Q And a very favorable and good relationship, isn't that
12 correct?

13 A It's been a very good relationship.

14 Q Okay. And you continue to publish this book today and to
15 earn royalties as a result of it, isn't that correct?

16 A We earn royalties, West earns profits from that book,
17 that's correct.

18 Q A mutually beneficial relationship --

19 THE COURT: I think you've made the point. What else
20 do you want to get?

21 MR. RITTINGER: I have a number of things to go over,
22 Your Honor.

23 THE COURT: Any further questions? Do you have any
24 further questions?

25 MR. RITTINGER: Yes, I do, Your Honor.

1 "Use of authors names. Publisher shall have the
2 right to use authors' names in connection with the work and
3 upkeep of the work. If the work or upkeep is prepared by a
4 person other than authors, publisher may identify that person
5 on the new material in any related advertising, and give him
6 or her authorship credit, in addition to, or in lieu of credit
7 given to the authors."

8 You agreed to that provision in 2000.

9 A We did.

10 Q And it goes on -- well let me ask you this question. You
11 had forgotten that that provision existed at the time that the
12 letter was written, isn't that correct?

13 A Absolutely not. It was my understanding from 1987 on,
14 that under the original contract, the 2000 contract, the 2007
15 contract, that we would do the volumes, we would do the
16 supplements.

17 If at some point we decided not to continue, we died,
18 incapacitated, or West decided they didn't want us anymore,
19 that would be fine for West to continue to publish the book.

20 What we did not agree to at anytime was the use of
21 our names on a sham, fraudulent product.

22 Q Okay. Let me just take that. So if it had not been a
23 sham product, you agree that West could have used your name on
24 a work that -- a new supplement that they had done?

25 A That's right. We absolutely anticipated that if the work

1 was adequate, West could use our names. Much of the work was
2 done by us and West could use our names.

3 Q All right. And --

4 A No problem.

5 Q -- there wouldn't be anything misleading about that,
6 because in that supplement you would have done 90 percent of
7 the work anyway. It would have been authored partially by you
8 and partially by West.

9 A That's correct.

10 Q So your complaint here isn't that they used your name on
11 the new supplement. It's they used your name on a supplement
12 that you say was a sham. That's your complaint.

13 A Our complaint, it's a sham and a fraud on the public, yes.

14 Q Right. But not that they couldn't use your names on a new
15 supplement?

16 A I've never made that claim.

17 Q Thank you. All right. I'd like to direct your attention
18 to 4(a), "Work made for hire." And I'll read that into the
19 record.

20 "The work has been specifically commissioned by the
21 publisher and will be considered a work made for hire within
22 the meaning of the United States Copyright Laws. Authors will
23 execute any documents publisher considers necessary or
24 appropriate to effectuate or record this agreement. Publisher
25 will have all rights to which an owner of a copyright is

1 questions.

2 MR. BAZELON: Objection to form.

3 THE COURT: Objection sustained.

4 BY MR. RITTINGER:

5 Q The question is that you understood that West has the
6 right to put out the supplement by itself when you didn't want
7 to do it, correct?

8 MR. BAZELON: Objection. Asked and answered.

9 THE COURT: Well he can answer it again.

10 PROFESSOR RUDOVSKY: They did, as long as it was not
11 a sham product. That's what I said before.

12 BY MR. RITTINGER:

13 Q All right. And at that time you had an 18-year
14 relationship with West with respect to this book, and a 28-
15 year relationship with respect to West with your other book,
16 correct?

17 A That's correct.

18 Q All right. And when you saw the new publication, you made
19 a determination not to talk to West, you didn't consult with
20 West, or ask West what it --

21 THE COURT: What's your question? Do you have a
22 question that's not a speech?

23 BY MR. RITTINGER:

24 Q You instead went to Mr. Bazelon, isn't that correct?

25 MR. BAZELON: Objection.

1 sustained the objection, we keep the letter out. Okay?

2 (Sidebar Ends)

3 MR. RITTINGER: I'd like to have marked -- I'd like
4 to have Joint Exhibit 30.

5 THE COURT: Until the exhibit is in evidence, it
6 doesn't get put up on the screen.

7 MR. RITTINGER: I believe it's already in evidence.

8 MR. BAZELON: Your Honor, we did not object to this,
9 Your Honor.

10 THE COURT: Okay. Go ahead.

11 BY MR. RITTINGER:

12 Q Professor, you made certain demands of West, isn't that
13 correct?

14 A We did.

15 Q And one of the demands was that they write a letter to
16 their customers explaining the circumstances of the writing of
17 the 2008 supplement, isn't that correct?

18 A That's correct.

19 Q And this letter was sent out by West, isn't that correct?

20 A West did send out this letter in March of 2009.

21 MR. RITTINGER: Your Honor, I'd like to have the jury
22 take a minute to read it --

23 THE COURT: Well, make it possible. It certainly
24 can't be read in that form.

25 MR. RITTINGER: I don't know can -- is it clear

1 enough to be able to read or -- let me read it into the
2 record.

3 "Dear Criminal Law Procedure Commentary Informed
4 Pennsylvania Practice subscriber."

5 BY MR. RITTINGER:

6 Q Professor, those are the people that got the publication,
7 isn't that correct?

8 A That's correct.

9 Q All right.

10 "In December 2008, our records indicate that we sent
11 you the 2008/2009 pocket part to Pennsylvania Practice. VII Pa.
12 Criminal Procedure 2D. The book and prior pocket parts was
13 authored by David Rudovsky and Leonard Sosnov. We wish to
14 bring to your attention the following. Although the title
15 page of the 2008/2009 pocket part references David Rudovsky
16 and Leonard Sosnov, neither author participated in any manner
17 in this pocket part, and they have discontinued their
18 involvement in the publication. Their names will therefore
19 not appear on future pocket part supplements. This
20 information will be noted as well, in the scope section of the
21 publication's Westlaw database.

22 "Second, after thorough review, we have determined
23 that the 2008/2009 pocket part does not reflect all changes in
24 the law that have occurred since the prior year's update. Due
25 to this, all citations should be checked for later

1 developments. The scope section of the publication's database
2 on Westlaw will also reflect that the database is current
3 through the 2007/2008 edition, pending further
4 supplementation. We are in the process of preparing a new
5 2009 pocket part, which will be shipped to you free of charge.
6 If you are not satisfied with the information, please contact
7 customer service at 800-328-4880..."

8 THE COURT: You left out a word.

9 "If you're not satisfied with the information
10 provided..."

11 I think it says.

12 MR. RITTINGER: (Reading)

13 ...provided, please contact customer service at 800-
14 328-4880, and reference this letter to receive a credit for
15 the 2008/2009 pocket part. We apologize for any inconvenience
16 this may have caused you. Your continued business with
17 Thompson West is appreciated."

18 BY MR. RITTINGER:

19 Q Now you had asked for a letter like that to go out, isn't
20 that correct?

21 A We had asked for a letter to go out, we did not agree to
22 the terms of this letter. West sent that out on its own.

23 Q Now thereafter, West published the 2009 supplement, isn't
24 that correct?

25 A They did.

1 Q And that has been marked -- is that in here? That's Joint
2 Exhibit 4, and do you recognize this as 2009?

3 A Yes, that's it.

4 Q All right. And the 2009 -- that is the 2009 cover,
5 correct?

6 A Yes, sir.

7 Q And it clearly and unequivocally states --

8 MR. BAZELON: Objection, Your Honor, to form.

9 THE COURT: Objection to the form is sustained. You
10 may rephrase the question.

11 BY MR. RITTINGER:

12 Q It states in the parenthesis:

13 "(David Rudovsky and Leonard Sosnov prepared the main
14 volume and supplements issued prior to the 2008/2009 pocket
15 part)"

16 For the reader who got that new, if they read the
17 title page, that you had nothing to do with authoring the old
18 supplement, or this supplement, correct?

19 MR. BAZELON: Objection to the term reader in that --

20 THE COURT: Objection sustained, for heaven's sake.
21 You make your argument at the end of the case, you don't argue
22 with every witness that comes along. What else -- do you have
23 any questions?

24 MR. RITTINGER: Yes, Your Honor. I do. I'd like to
25 have marked -- I'd like to show the witness Joint Exhibit 52.

1 PROFESSOR RUDOVSKY: Joint Exhibit 52 is a document
2 sent by West, probably with that pocket part, the 2009
3 supplement, with instructions to the recipient of the
4 supplement on how to shelve it, how to put it in the book and
5 where to shelve it, just that kind of instructions, if I'm
6 reading this correctly. Yes.

7 BY MR. RITTINGER:

8 Q And did this card, the 2008 supplement, that was the
9 subject of your complaints, correct?

10 A Sure. That's right, every supplement comes, you discard
11 the old one, you put the new one in. That's right.

12 Q So that supplement that you complained about, the 2008, I
13 guess you complain about everything, but the -- withdrawn.

14 The 2008 supplement was out from sometime in December
15 until April, a period of 3 or 4 months, correct?

16 A About 4 months, that's correct.

17 Q It was then -- but West wrote a letter explaining you had
18 nothing to do with it, and sent it to subscribers, correct?

19 A They did, but I don't think it was an adequate letter, but
20 they did, yes.

21 Q And then they replaced that supplement, isn't that
22 correct?

23 A Also with a supplement that we think was not adequate.
24 That's correct.

25 Q Has anyone complained to you about the inadequacy of the

1 2009 supplement?

2 A No.

3 Q And, by the way, no one's complained to you about the
4 inadequacy of the 2008 supplement, the supplement that was
5 replaced, isn't that correct?

6 A That's correct.

7 Q And as far as you know, West never got a complaint about
8 the 2008 supplement, isn't that correct?

9 A I have no idea.

10 Q Well you took discovery in the case.

11 A I was told that West doesn't even have a process for
12 hearing complaints, but I'll take your word. If you say West
13 has never gotten a complaint, they never got a complaint.

14 MR. BAZELON: Objection.

15 THE COURT: Well your objection's to your own
16 client's answer.

17 MR. BAZELON: I withdraw it, Your Honor.

18 BY MR. RITTINGER:

19 Q Now West offered to take your names off of anything having
20 to do with the book in the future, isn't that correct?

21 A West offered at some point to take our names off the book,
22 but it didn't cure the problem. None of this cured the
23 problem.

24 The problem was that you created the problem that
25 really couldn't be cured. And that's why there's continuing

1 harm.

2 Q Okay. They did offer to take your names off and you have
3 never asked them to take your names off, isn't that correct?

4 A But there's no way they can take names off our book that's
5 already in somebody's library.

6 Q But they could take it off Westlaw, correct?

7 A They could, but I see with your advertisement, you're
8 still using our name.

9 Q And you've never told them to take it off Westlaw, isn't
10 that correct?

11 A We have made a series of suggestions as to what West
12 should have done. Some of which you did, and some of which
13 you didn't do.

14 Q Have you ever, in response to West telling you that they
15 would take your names off of any future editions, any future
16 advertising of the work, any future print editions, and off of
17 Westlaw immediately, have you ever responded to that offer?

18 A We have never responded to -- directly to that offer.

19 Q Thank you. It is true, Professor Rudovsky, based upon
20 your direct testimony, that the internet and electronic
21 publishing has changed the way lawyers conduct research?

22 A Absolutely.

23 Q And it's true that print publications now are somewhat old
24 school, and to be current you always have to go to an
25 electronic publication, isn't that correct?

1 A You always had to do updating, even before the internet.
2 30 years ago, if you had a treatise, and you received a
3 supplement, there's always a lag time. The supplement may
4 have been prepared in August, you received the supplement in
5 December. There will be four months, and so, sure, any lawyer
6 will then want to check for those 2 or 3 months that haven't
7 been checked. You're right, today they can do it by the
8 internet.

9 Q Right. And the most current supplement, print supplement
10 is always going to be 3, 4, 5, 6 months out-of-date.

11 A A couple of months, to 7, 8, 9 months, that's correct.

12 Q And in fact you testified yesterday I think, that
13 sometimes things can change in a day, a week, a month, a year.

14 A Absolutely.

15 Q And a lawyer has to be ever diligent to make sure that he
16 keeps up. So a lawyer does not just rely upon a supplement
17 when they are working --

18 THE COURT: What's your question? Do you have a
19 question?

20 BY MR. RITTINGER:

21 Q Isn't that correct?

22 A Well it's actually a little more complicated than that.
23 They do rely on a supplement. The way we prepared the
24 supplement, it gave the lawyers something more than a new
25 case. It gave an explanation for the case. It gave a context

1 references, prior and later history, and comprehensive citator
2 information, including citations to other decisions and
3 secondary materials."

4 Now that appears in this supplement and every
5 supplement of late, isn't that correct?

6 A That's correct.

7 Q All right. So the likelihood of anyone -- first of all,
8 you can't identify anybody who looked at the supplement and
9 was misled, or didn't follow a case properly because of any
10 defect that you claim is in the supplement, isn't that
11 correct?

12 A Nobody's --

13 MR. BAZELON: Objection, Your Honor.

14 PROFESSOR RUDOVSKY: Nobody's contacted me about
15 that, that's correct.

16 MR. BAZELON: This has been asked and answered a
17 hundred times.

18 THE COURT: At least 12. You don't have to repeat
19 everything. Go ahead.

20 BY MR. RITTINGER:

21 Q And --

22 (Pause)

23 BY MR. RITTINGER:

24 Q Professor, in response to questions by Mr. Bazelon, you
25 acknowledged that you can't identify any loss of income, job,

1 any kind of revenue, not one cent that you have lost as a
2 result of the publication of a supplement, isn't that correct?

3 A I cannot identify any, that's correct.

4 Q And you can't identify one person who thinks less of you,
5 whose reputation -- who believes less of you or whose -- let
6 me rephrase the question.

7 You cannot identify one person who thought less of
8 you as a result of the publication of a supplement, isn't that
9 correct?

10 A I can't identify them, unless they self identified. There
11 my be people out there. I think there are, but I don't have
12 any names.

13 Q All right. And when you complained to West, West sent out
14 a letter immediately, as has been shown to the jury, correct?

15 MR. BAZELON: Objection, Your Honor. Asked and
16 answered.

17 THE COURT: It's been asked and answered a dozen
18 times. Do you have anything that's not repetition?

19 MR. RITTINGER: Your Honor, I'd like to just go
20 through a series of questions. I'm finishing up.

21 THE COURT: As long as they haven't been asked and
22 answered before.

23 MR. RITTINGER: Well I don't think they've been asked
24 and answered in this capacity.

25 THE COURT: What do you mean, in this capacity? He's

1 Q All right. You've acknowledged that West had the right to
2 publish the supplement, as long as it wasn't -- as long as it
3 didn't do something inaccurate, or what you call a sham,
4 correct?

5 A I've said that. Yes.

6 Q All right. And you continued to publish with West,
7 correct?

8 A I did.

9 Q All right. And yesterday there was some testimony that
10 you felt that West was unethical. Do you have any -- is this
11 the only situation that you have, in combined 50 years with
12 West, where they've done anything unethical?

13 A I haven't been with West in 50 years. I've been with West
14 for 30 years. The only information I have about West is my
15 own dealings with them.

16 Q Do you have any other examples, other than this supplement
17 which you claim was unethical for West to publish?

18 A No, this is the only thing that I think they've done
19 unethically to me, but it's a major unethical breach.

20 Q But -- and by the 50 years, I meant the combined 50 years.
21 20 years with this book, and 30 years with your police book.

22 A No. We've had minor disagreements over the years over
23 things, but nothing that I would call unethical.

24 Q And now despite no evidence of any -- let me ask you this
25 question, by the way, what is your income? What do you

1 MR. RITTINGER: No, Your Honor. We have no
2 objection.

3 MR. CHARLSON: Your Honor, Plaintiff's next -- for
4 plaintiff's next witness, I am going to read in a very short
5 portion of the deposition testimony of Karen Earley.

6 THE COURT: Proceed.

7 MR. CHARLSON: And this is from the deposition -- the
8 videotaped deposition of Karen Early on March 3rd --

9 THE COURT: Of whom? Karen who?

10 MR. CHARLSON: Karen Earley, E-A-R-L-E-Y. And if
11 Your Honor would like to read along, it's in the binder.

12 THE COURT: No, that's all right. I don't care -- I
13 don't see it here.

14 MR. CHARLSON: It is -- it is within the binder. I
15 believe it's the first deposition, Your Honor.

16 THE COURT: Earley, it says. And you -- either you
17 misspelled Earley or it's misspelled here.

18 MR. CHARLSON: I believe it's E-A-R-L-E-Y. My tab
19 must be misspelled, Your Honor.

20 THE COURT: That's not how it's spelled here. Okay.

21 MR. CHARLSON: The first -- I'm going to be reading
22 from pages nine and ten, and page -- pages 37 and 38.

23 Page nine, line 14. Question: "Are you --

24 THE COURT: Talk into the microphone. The jury has
25 to hear you. You're too far away from it. Get closer to it.

1 MR. CHARLSON: Question: "Are you an attorney?"

2 Answer: "Yes."

3 Question: "And when were you admitted to the Bar?"

4 Answer: "I have a JD. I'm not admitted to the Bar."

5 Question: "Where and when did you get your JD?"

6 Answer: "Syracuse University, 2001."

7 Question: "And were you ever admitted to the Bar?"

8 Answer: "No."

9 Question: "What was your first legal job out of law
10 school?" Answer: "West, 2001."

11 Question: "Sometime in the fall?" Answer: "August
12 2001."

13 Question: "August 2001. Were you hired as an
14 attorney editor?" Answer: "Yes, I was."

15 Question: "And is that still your position?" Answer:
16 "Yes."

17 Question: "What group do you currently work in?"

18 Answer: "Currently I am a product delivery management -- I am
19 in product delivery management as an attorney editor."

20 The next excerpt is on page 37, line 11.

21 Question: "When Sara Redzic started at West, she
22 shadowed you, correct? Answer: "I don't recall her shadowing
23 me specifically, no. I don't recall her shadowing me."

24 Question: "Were you responsible for her training?"

25 Answer: "I was not responsible for her training."

1 Question: "Who was?" Answer: "I believe Andrea Natel
2 (phonetic). I don't recall specifically."

3 Question: "Do you have any idea if Sara Redzic was
4 ever certified as trained?" Answer: "I don't have any
5 knowledge regarding that."

6 That's the conclusion of the portion that we'll be
7 reading, Your Honor.

8 Plaintiff's next witness will be Leonard Sosnov.

9 LEONARD SOSNOV, PLAINTIFF'S WITNESS, SWORN

10 COURTROOM DEPUTY: Please state your name and spell
11 your last name for the record, please.

12 THE WITNESS: Leonard Sosnov, S-O-S-N-O-V.

13 COURTROOM DEPUTY: Thank you, sir.

14 THE WITNESS: Thank you.

15 COURTROOM DEPUTY: You're welcome.

16 DIRECT EXAMINATION

17 BY MR. CHARLSON:

18 Q Professor Sosnov, how are you presently employed?

19 A I'm presently employed at Widener Law School. I'm a
20 professor of law.

21 Q Do you have any other current occupation?

22 A Yes. As part of my public service as -- as an academic,
23 you're expected to do public service. And the public service
24 that I've chosen is to do work with my main focus being try to
25 free people that are imprisoned for serious crimes who, I've

1 super lawyer. There's a magazine that comes out annually
2 called Super Lawyers Magazine, and I was named a super lawyer
3 in the criminal law category. And three years ago, at my law
4 school, the graduating seniors voted me the best teacher on
5 the faculty.

6 Q Now, Professor, did there come a time that you were asked
7 to author a book on criminal procedure?

8 A Yes.

9 Q And can you explain how that came about?

10 A That was 1987. And Dave Rudovsky approached me and said
11 that West had approached him, and that there was this, what he
12 thought would be a very worthwhile project for lawyers, for
13 judges, and it was going to be a big project with a lot of
14 work. And he felt that he'd like to do it if he had somebody
15 that he thought could do a good job on it to work on it with
16 him. And I agreed that it was a very worthwhile project, and
17 I was proud that he came to me. He selected me as the one to
18 -- to work with him. Dave already had a big reputation, and
19 that, to me, you know, was flattering. And --

20 Q What was it -- what was it, Professor, about the project
21 that interested you?

22 A Two things. One is, I thought at that point, given our
23 experience and knowledge, that we could put out something that
24 would be useful to people, that would really -- that really
25 would be something that it would be -- that people could use

1 and -- and get real benefit from in the practice of law, and
2 judges as well.

3 And the second thing was, that I knew by then in 1987
4 that I probably wanted to transition, if I could, into the
5 academic world. So, this would be a publication that, you
6 know, if I could get this successfully published, and it was
7 good, this would be something that would help me as far as
8 getting started in -- in the academic world.

9 Q And so did you, in fact, participate in the project?

10 A Yes, I did, for many, many years.

11 Q And it was first published in 1990?

12 A Yes.

13 Q And as -- as the years went on, did the book remain
14 important to you?

15 A Very important to me.

16 Q How so?

17 A First of all, it's my only book I've ever been involved
18 in, so it was my baby. I mean, as far as -- I cared -- I
19 cared -- I cared a lot about it. I cared about the quality of
20 it. I thought it was useful for people. And also it was, as
21 far as my standing in the academic world, the fact that I had
22 this book, and ongoing. People knew about the book, and it
23 meant that I, by having this book that was ongoing, it
24 increased my -- my esteem, my reputation as far as
25 practitioners, and in the academic world.

1 Q What happened -- what happened then?

2 A In the mail I received a supplement labeled 2008-2009 with
3 our names largely on the cover, in small print, and
4 publisher's staff.

5 Q And what did you do? Did you -- did you read it?

6 A Nothing. I guess my -- my initial reaction was since we
7 had nothing to do with that supplement, it bothered me that --
8 and publisher's staff was real small compared --

9 THE COURT: Do you know who sent -- do you know who
10 sent --

11 THE WITNESS: Sorry. Pardon?

12 THE COURT: Do you know who sent that supplement to
13 you?

14 THE WITNESS: Yes, West.

15 THE COURT: Thank you.

16 BY MR. CHARLSON:

17 A And so that, that -- it bothered me, you know, but that's
18 -- that's all -- that was the initial reaction was that it was
19 in small print, and publisher's staff. Since we didn't do it,
20 it seemed to me it should be at least as prominent as our
21 names on there. So that was initially, and then --

22 Q Did you read through it at that time?

23 A The supplement?

24 Q Yes.

25 A I didn't read through the whole thing. I -- I -- I was

1 interested in how, and seeing about the quality of it.
 2 Initially, I think I pulled -- I looked at one chapter that I
 3 knew there had been a lot of action in the courts over the
 4 year, the appellate courts, a lot of decisions. And I looked
 5 at it, and I saw there was nothing new. There was nothing,
 6 literally nothing, the one chapter I looked at. So now I am
 7 upset and angry.

8 And then, I talked to Dave Rudovsky, you know, and he
 9 said that he had noticed that it didn't look like there was
 10 anything new. And then finally, I think it was Dave, I'm not
 11 sure, but I think it was Dave who then, in another
 12 conversation, said to me --

13 MR. RITTINGER: Your Honor. It's hearsay.

14 THE COURT: Pardon?

15 MR. RITTINGER: I say it's hearsay.

16 THE COURT: Couldn't hear it.

17 MR. RITTINGER: He's already testified, he's
 18 repeating a conversation with the other plaintiff.

19 THE COURT: That's nice. Go ahead. If that was an
 20 objection, it's overruled.

21 BY MR. CHARLSON:

22 A I think it was Dave who said to me, you won't believe
 23 this, I looked in the -- I looked in the table of cases, and
 24 there are three new cases in the entire supplement, and
 25 they're from 2007. There's three 2007 cases. And I can't

1 describe how livid I was. I mean, I just -- it was
2 unbelievable to me. First of all, I've never heard about that
3 for any publication. In other words, I've never heard of a
4 supplement being published that was completely worthless. It
5 didn't -- it didn't have anything in it.

6 So at that -- you know, before that, I was just
7 angry, somewhat upset, because I took out a sample chapter,
8 and now I realize this complete, worthless thing came out
9 under our names, associated with our names at large on this
10 cover. And -- and it's a ripoff to the consumer, anybody that
11 got this, anybody that paid for this. I mean, it's -- it's
12 virtually worthless.

13 THE COURT: I think you've answered the question at
14 least once. Let's wait for another question.

15 BY MR. CHARLSON:

16 Q Professor, why were you so angry?

17 A That's -- that's why I was so angry. And I was also upset
18 by -- my initial reaction really was -- was being livid. I
19 mean, I just, like I say, I was just shocked and incredibly
20 angry. And then, you know, when I calmed down a little bit, I
21 started --

22 THE COURT: His question was why were you so angry.
23 You're telling us again how angry you were, but not why.

24 BY MR. CHARLSON:

25 A Oh, I was so -- because I was so angry, like I said, first

1 of all, I was shocked because it was totally alien to -- to --
2 to the way a supplement should be. And in comparison to the
3 work that we usually did on a supplement, I mean, I put so
4 much work into this, so much care, and just -- one of the
5 reasons it bothered me so much is because whatever reputation
6 I had as a -- as a lawyer and as an academic, what I pride
7 myself the most in is that I do honest, careful work. I put
8 in the time to be as thorough as I can in whatever I do.

9 So, for example, when I was trying cases when I was
10 in the courts and I was doing trials, which I haven't done in
11 a long time, but when I was doing trials, or if I was doing an
12 appeal, I knew when I walked into the courtroom that I had
13 worked harder than the person who was my opponent. I might
14 not be better, and I wasn't better sometimes, but I knew that
15 I had outworked the person on the other side.

16 And I put the same kind of devotion into this book.
17 And it's incredibly offensive to put this out under our names,
18 this worthless product after all these years of us doing
19 careful work. And I was upset a lot about this.

20 And one of the -- one of the reasons I was upset is
21 not because as far as readers would know what we knew. Most
22 readers are not going to know. I don't want to exaggerate.
23 Most readers are not going to know that this is a complete
24 sham. Because if you're a reader of -- of the supplement,
25 you're not going to read the entire supplement. This is

1 something that lawyers and judges use. So you go and you look
2 at a particular topic. You're not going to read the whole
3 thing. They're not going to know that it's completely
4 deficient unless for some reason they get upset enough to read
5 the whole table of cases like we did. You know, so they're
6 not -- they're not going to know how bad it is.

7 But, the problem is -- the problem is a reader is
8 going to see they missed this, they missed that. In other
9 words, they used the book once. They find a case is not in
10 there that should have been in there. The analyses is not
11 there that should have been there. They say, see it another
12 time maybe. So maybe they see three/four times. And what
13 that means is they think less of us. They think that we're
14 potentially slipping up. They don't know it's a complete sham
15 like we do, but they know that they've gotten an inferior
16 product, and they think maybe that we're slipping up.

17 And -- and for me, at least, part of this feeling is
18 the -- the added issue of me worrying about, as somebody who's
19 65 years old now -- I'm the oldest member of the Widener Law
20 School faculty -- and worrying that people might think, oh
21 well, he's getting older, he's slipping. And that's just
22 something that entered my, you know, that entered my mind as
23 far as my emotional reaction to this.

24 Q And did Professor Rudovsky express the same sorts of
25 reactions to you that you had?

1 MR. RITTINGER: Objection.

2 THE COURT: Objection overruled.

3 BY MR. CHARLSON:

4 A About being shocked and upset and humiliated? Yes. I
5 mean that -- but --

6 MR. RITTINGER: We'll concede that, Your Honor.

7 We've had his testimony.

8 THE COURT: That's nice.

9 BY MR. CHARLSON:

10 A He didn't say anything about the age issues that I've
11 testified to. That's my own -- that's my own thing.

12 Q Now, Professor, at some point, did you learn that West had
13 released yet another supplement that we've heard a little bit
14 about today in around April of 2009?

15 A Yes.

16 Q And did you review it?

17 A Yes.

18 Q Did you have occasion to -- well, what did you find when
19 you reviewed the 2009 supplement?

20 MR. RITTINGER: Objection.

21 THE COURT: Overruled.

22 BY MR. CHARLSON:

23 A 2009 supplement is not acceptable as -- as something
24 that's a competent, legal work.

25 Q Why not?

1 Q And are you still angry and upset by the April 2009
2 supplement, Professor?

3 A Yes. I'm still worried about the effects of this as far
4 as -- as far as people who noticed multiple deficiencies and
5 thinks somewhat less of -- of me because -- because that's out
6 there.

7 Q And, Professor, the Exhibit 4, which is on the screen,
8 says prepared by publishers editorial staff. And as -- as
9 Professor Rudovsky also talked about, there's a -- the
10 disclaimer about your involvement. Why is that not sufficient
11 in your view?

12 A It's not sufficient in my view because -- I believe this
13 was testified to before -- many people are not going to look
14 at the cover. And I haven't any surveys, so I can't say. I
15 imagine some people do look at the cover, but many people do
16 not look at the cover. They would go to the main volume of
17 the book. And after going to the main volume of the book with
18 our names on the cover, and they look at whatever section it
19 is they're looking at, some point of law in section 4.9, they
20 would then open up the supplement at section 4.9 and look at
21 the particular section. So a reader of the book might never
22 look at that cover for the supplement.

23 MR. CHARLSON: Just a moment, Your Honor.

24 THE COURT: Any questions? Did you say that's all
25 you have?

1 MR. CHARLSON: Just -- just one moment. I have one
2 more question, Your Honor.

3 BY MR. CHARLSON:

4 Q One more question, Professor. Have you ever sued anybody
5 in a court of law before?

6 A Never.

7 MR. RITTINGER: Objection.

8 MR. CHARLSON: I have no further questions, Your
9 Honor.

10 THE COURT: Any questions?

11 MR. RITTINGER: I'll try to be very quick, Your
12 Honor.

13 CROSS-EXAMINATION

14 BY MR. RITTINGER:

15 Q Good afternoon, Professor.

16 A Good afternoon.

17 Q I want -- I want to try to understand this. This is the
18 cover of the 2008 supplement --

19 A Right.

20 Q -- which has your name on it.

21 A Right.

22 Q Right. And this is what has caused all the damage, having
23 your name on this, correct?

24 A No, no.

25 Q Well, that's how people know that you wrote the

1 supplement.

2 A No.

3 Q All right.

4 A That's not my testimony.

5 Q All right. Do people look at the front page of
6 supplements?

7 A I think sometimes people do, and I -- I think, for the
8 most part, just like the other -- I think, for the most part,
9 people do not.

10 Q Well, then --

11 MR. RITTINGER: If you could put up -- could you put
12 up --

13 BY MR. RITTINGER:

14 Q Did they look at the front page, according to your
15 understanding, this page of the supplement?

16 A I can't answer what any particular person did. What I
17 said before is, I think that some people do and most people
18 don't, the way the book is normally used. That's all I'm
19 saying.

20 Q All right. All right. So most people don't look at this
21 either, is that correct?

22 A I would say that most people do not, right.

23 Q Thank you. Your relationship with West up until the
24 publication of the -- of the 2008 supplement was mutually
25 beneficial, is that fair to say?

1 A Yes.

2 Q And it was good for your career?

3 A Yes.

4 Q All right. And West enjoys an excellent reputation,
5 correct?

6 A I don't know that. I -- really, I -- I don't know -- I
7 know that West is the biggest publishing company. I don't
8 know what they're reputation is because I don't discuss that
9 with other people. We don't sit around talking about
10 reputation of publishers.

11 Q Okay. Well, at least having a book published by West was
12 prestigious to you, is that correct?

13 A It was prestigious, not because it was published by West.
14 It was prestigious because of the -- the nature of the book
15 itself and what we did with it.

16 Q All right. Let me -- let me ask you these questions. Can
17 you identify one person who read the 2008 supplement and
18 concluded that it had any inaccuracy in it or that it was out
19 of date, other than yourself and Professor Rudovsky?

20 A I cannot identify anybody who complained to me.

21 Q Okay. Can you identify one person who read the 2009
22 supplement and concluded that it was either inaccurate or out
23 of date?

24 A I cannot identify a person who complained to me.

25 Q You have suffered not -- let me ask -- let me -- before

1 that, you were here for Professor Rudovsky's testimony
 2 concerning West's ability to publish the 2009 supplement
 3 without your consent. In other words, they had the right to
 4 the -- to the book, and they had the right to publish the 2009
 5 supplement --

6 MR. CHARLSON: Objection.

7 BY MR. RITTINGER:

8 Q -- pursuant to their contractual rights. You heard his
 9 testimony in that regard.

10 MR. CHARLSON: Objection, Your Honor.

11 THE COURT: He has very good hearing, yes.

12 BY MR. RITTINGER:

13 A Yes, I heard the testimony.

14 Q Do you disagree with that?

15 A I believe that West had to -- I'm not sure which aspect
 16 you mean of his testimony. I guess, basically, the essence I
 17 agree with. West had --

18 Q They had the right to publish it, and assuming --

19 A And not -- but not to publish a completely worthless sham
 20 product.

21 Q Right, but if it was --

22 A An incompetent and unacceptable product under our names.
 23 That's not a contractual right.

24 Q Right.

25 A That's why we're here. It's not a contractual right to

1 do. That's my understanding.

2 THE COURT: Okay. Let's calm down. Any further
3 questions you want to ask to provoke argument?

4 BY MR. RITTINGER:

5 Q I understand that they didn't -- they had the right to
6 publish it. Did they have the right to publish it with your
7 names on it, assuming that it was of appropriate quality?

8 A Yes.

9 Q Now, when you complained, you saw the letter that West
10 wrote, and you -- you saw what they did with that letter,
11 correct?

12 A I don't know --

13 MR. CHARLSON: Objection.

14 THE COURT: What letter?

15 MR. CHARLSON: Objection.

16 MR. RITTINGER: Let me have -- let me have joint
17 Exhibit -- joint Exhibit 30, the letter to the customers,
18 where they inform the customers, as previously read into the
19 record during Professor's Rudovsky's testimony, correct?

20 BY MR. RITTINGER:

21 A Correct? What -- what is the question?

22 Q They sent this out --

23 THE COURT: You're holding it 15 feet away from him.
24 He can't read it for heaven's sake.

25 BY MR. RITTINGER:

1 A Yes. This is the letter I understand that West sent out.

2 Q And it's your position -- it's up there now -- it's your
3 position that that letter is not -- is not adequate, correct?

4 A Yes.

5 Q And then West sent out the 2009 publication, correct?

6 A I understand, yes.

7 Q And they sent out instructions to destroy the 2008
8 publication, is that correct?

9 A That's the usual shelving instructions you referred to.

10 Q And you agree that that all happened?

11 A Yes.

12 Q All right. And then, time went on and -- by the way, West
13 offered to take your name -- to take your names off any future
14 editions and off of West Law, correct?

15 A I heard about that at some point.

16 Q You learned about that at the -- at your deposition, is
17 that correct?

18 A I think I did. I think so.

19 Q No one had told you about that offer before, is that
20 correct?

21 A I don't recall hearing about it before.

22 Q All right. And now, you come into court and you claim
23 that this sham publication has caused you presumed damages, is
24 that correct?

25 A Presumed damages? Whatever the legal term is.

1 Q You can't identify one person who thought less of you as a
2 result of that publication, isn't that correct?

3 A Yes. I cannot identify a single person.

4 Q And you can't identify one red penny that you lost as a
5 result of that publication, isn't that correct?

6 A That's correct.

7 Q You want this jury to award you money for presumption,
8 isn't that correct?

9 A I want the jury to award me money because I believe
10 there's been damage done to my reputation. And I also, I
11 think it's important that West not do this again. That West
12 -- that West not put out a sham publication like this, and
13 with somebody -- under somebody's name, and do this to the
14 consumers.

15 Q You want them to award the money to you, is that correct?

16 A Well, I'm the plaintiff in this case, so that --

17 Q Thank you.

18 A -- it couldn't be awarded to anybody else.

19 MR. RITTINGER: One second, Your Honor.

20 I have no further questions.

21 MR. CHARLSON: Nothing from us, Your Honor.

22 THE COURT: Any further questions of this witness?

23 You may step down. Thank you, sir.

24 MR. CHARLSON: Our next witness, Your Honor, will be
25 the videotaped deposition of Catherine Smith of West.