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

4 CAMBRIDGE UNIVERSITY

5 PRESS, et al.,

6 Plaintiffs, Case Number:

7 vs. 1:08-CV-1425-ODE

8 MARK BECKER, et al.,

9 Defendants.

10 ~~~~~

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12 Videotape deposition of JASON REIFLER, Ph.D.,
13 taken on behalf of the defendants, pursuant to the
14 stipulations contained herein, before Regina W. Hollis,
15 RPR, CCR-B-2306, at Georgia State University, Atlanta,
16 Georgia, on Wednesday, June 3rd, 2009, commencing at
17 the hour of 1:30 p.m.

18

19

20 Shugart & Bishop
 Certified Court Reporters

21 Suite 140

 13 Corporate Square

22 Atlanta, Georgia 30329

 770-955-5252

23 770-955-5211 (facsimile)

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INDEX TO EXHIBITS

1			
2			
	Plaintiffs'		
3	Exhibit	Description	Page
4			
	11	University of Georgia Copyright	13
5		Policy, Policy on the Use of	
6		Copyrighted Works in Education and	
7	12	University of Georgia Copyright	13
8		Policy, Additional Guidelines for	
9	13	University of Georgia Copyright	13
10		Policy, The Fair Use Exception	
11	14	University of Georgia Copyright	13
12		Policy, Introduction to the Fair	
13		Use Checklist	
14	242	Curriculum Vitae of Jason Reifler,	15
15		Ph.D.	
16	243	Dialogue Page for Studies in	36
17		American Politics, Spring Semester	
18		2009, Pols-8190	
19	244	Pols 1101 Fall 2008 uLearn	37
20		Roster.csv	
21	245	Pols 1101, Fall Semester Syllabus	46
22			
23	246	Pols 8101 Political Psychology	46
24		Spring 2009 Syllabus	
25	247	Fair Use Checklist, The Psychology	54
		of Emotion and Politics	
	248	The Psychology of Emotion and	54
		Politics by George E. Marcus	
	249	Table of Contents, Oxford Handbook	66
		of Political Science	
	250	Fair Use Checklist, Psychologies	78
		Underlying Political Psychology	

1	251	Oxford Handbook of Political Psychology, Sears, Huddy and Jervis	78
2		Chapter	
3	252	Fair Use Checklist, Models of Decision	85
4			
5	253	Fair Use Checklist, Social Cognition	87
6	254	Chapter 2, Dual Modes in Social Cognition	87
7			
8	255	Chapter 3, Attention and Encoding	87
9			
10	256	Chapter 4, Representation in Memory	87
11			
12	257	Fair Use Checklist, Reconsidering the Rational Public	99
13	258	Reconsidering the Rational Public Chapter, Elements of Reason	99
14			
15	259	Fair Use Checklist, Affect as Information, Elements of Reason, Wendy Rahn	100
16			
17	260	Affect as Information, Elements of Reason, Wendy Rahn	100
18	261	Elements of Reason, Table of Contents	102
19			
20	262	Fair Use Checklist, Public Opinion and Democratic Politics: The Problem of Nonattitudes and the Social Construction of Political Judgment	108
21			
22	263	Chapter 9, Public Opinion and Democratic Politics: The Problem of Nonattitudes and the Social Construction of Political Judgment	108
23	264	Fair Use Checklist, Nature and Origins of Mass Opinion	112
24			
25	265	The Nature and Origins of Mass Opinion	112

1	266	The Nature and Origins of Mass Opinion Table of Contents	112
2			
	267	Fair Use Checklist, The Poly-Psy Relationship	119
3			
4	268	Pols 4190, Political Psychology Syllabus	122
5			
	269	Studies in American Politics 1, Spring Semester, 4190 Dialogue Box	122
6			
7			
8			

(Original Exhibits 242 through 269 and previously
9 marked copies of 11 through 14 have been attached to
the original transcript.)

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1 APPEARANCES OF COUNSEL

2 On behalf of the Plaintiff:

3 TODD D. LARSON, Esq.

Weil, Gotshal & Manges, LLP

4 767 Fifth Avenue

New York, New York 10153-0119

5 212-310-8238

212-310-8007 (Facsimile)

6 todd.larson@weil.com

7 On behalf of the Defendants: Mark P. Becker, et al.:

8 SUZANNE JOHNSON, Esq.

LAURA GARY, Esq.

9 King & Spalding, LLP

1180 Peachtree Street, N.E.

10 Atlanta, Georgia 30309

404-572-2759

11 404-572-5100 (Facsimile)

suzanne.johnson@kslaw.com

12

13 On behalf of the Witness:

14 BHARATH PARTHASARATHY, Esq.

Assistant Legal Advisor

15 Georgia State University

10 Park Place Building, Suite 510

16 Atlanta, Georgia 30303

404-413-0500

17 404-413-0518 (Facsimile)

bparthasarathy@gsu.edu

18

19 Videographer:

20 Derrick Jones

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1 VIDEOTAPE DEPOSITION OF JASON REIFLER, Ph.D.

2 June 3rd, 2009

3

4 (Reporter disclosure made pursuant to Article
5 8.B. of the Rules and Regulations of the Board of Court
6 Reporting of the Judicial Council of Georgia.)

7 THE VIDEOGRAPHER: This will be the videotape
8 deposition of Jason Reifler taken by the Plaintiff in
9 the matter of Cambridge University Press et al. versus
10 Mark P. Becker, et al. The date is June 3rd, 2009. We
11 are on the record at 1:25 p.m.

12 JASON REIFLER, Ph.D., having been first duly
13 sworn, was examined and testified as follows:

14 EXAMINATION BY MR. LARSON:

15 Q. Good afternoon, Professor Reifler. Just for
16 the record, could you state your full name, please.

17 A. First, middle and last?

18 Q. Sure.

19 A. First is Jason, J-a-s-o-n, middle is Aaron,
20 A-a-r-o-n, and last is Reifler, R-e-i-f-l-e-r.

21 Q. Thank you. My name is Todd Larson. I'm from
22 Weil, Gotshal & Manges. It's a law firm in New York.
23 As you probably know, we're representing the Plaintiffs
24 in this action, Cambridge University Press, Oxford
25 University Press, and Sage Publications. Have you been

1 deposed before?

2 A. I have not.

3 Q. Okay. Did your counsel give you some sense of
4 how this was going to work today?

5 A. We had a preparatory session last week.

6 Q. I will just remind you of a few sort of ground
7 rules, then, based on that. The first is please just
8 answer verbally. You know, nods show up on the video
9 and don't show up on the transcript, so verbal answers
10 are best. Most important, if you don't understand a
11 question that I ask, please ask me for clarification so
12 make sure we're on the same page. If you need a break
13 at any point, too, just let me know. I'm happy to take
14 a pause. I would only ask that you not do that while
15 there's a question pending. And that should be it.

16 You mentioned that you met with counsel in
17 preparation?

18 A. I did.

19 Q. When was that?

20 A. That was last week.

21 Q. Last week. How long was the meeting?

22 A. Few hours. I don't recall specifically.

23 Q. And it was counsel that's here defending you
24 today?

25 A. Yes.

1 Q. Did you review any documents or records in
2 preparation for the deposition today?

3 A. I went back over Fair Use Checklist that I had
4 prepared.

5 Q. Any others?

6 A. And syllabi for one -- a syllabus for one
7 course.

8 Q. Which course was that?

9 A. 8190.

10 Q. Did you speak to anyone at Georgia State -- I
11 may use the term GSU today -- about the deposition?

12 A. Can you be more specific, please?

13 Q. Yeah. Did you discuss the fact that you were
14 going to be deposed with anyone, any employee of GSU, a
15 fellow professor or anyone else?

16 A. Yes.

17 Q. Who was that?

18 A. Probably most assistant professors in my
19 department. The only two that I know for sure are
20 Robert Howard and Jeffrey Lazarus.

21 Q. What was the nature of those conversations?

22 A. Just I'm being deposed in a copyright lawsuit.

23 Q. Did you speak with Professors Kaufmann or
24 Belcher about the deposition?

25 A. No. I do not know who they are.

1 Q. So I take it you didn't read the transcripts
2 of their depositions?

3 A. I have not.

4 Q. Did you read the transcripts of any previous
5 depositions in the matter?

6 A. I have not.

7 Q. When were you informed you were being deposed?

8 A. When I received the deposition notice, which I
9 don't remember the exact date, but that was less than a
10 week before the original deposition was scheduled.

11 Q. And who told you about the fact that you're
12 being deposed?

13 A. The deposition notice was attached to the
14 e-mail. I don't recall who sent the e-mail.

15 Q. Were you aware of this lawsuit prior to
16 getting that deposition notice?

17 A. Yes.

18 Q. How did you know about the suit?

19 A. In the original complaint that was filed, two
20 members of my department were mentioned in it.

21 Q. Who are they?

22 A. Jeffrey Lazarus and Kim Reimann.

23 Q. And how did it come to your attention that
24 they were named or that there had been a complaint
25 filed?

1 A. I don't recall exactly. I think just
2 conversation in the hallways.

3 Q. And did you have occasion to read the
4 complaint?

5 A. I've not read the complaint.

6 Q. Have you attended a training session for the
7 new copyright policy that's been passed at Georgia
8 State?

9 A. I have not.

10 Q. And you said that you did fill out some
11 checklists for the --

12 A. I filled out checklists after I received the
13 deposition notice.

14 Q. Did someone tell you that you should fill them
15 out?

16 A. No.

17 Q. How was it that you decided to fill them out
18 after getting the notice?

19 A. I was surprised to receive a deposition
20 notice, and I believe that everything that I've not
21 violated copyright law. And sought out the checklists
22 to make sure, and I'm as convinced as ever that I've
23 done absolutely nothing to violate copyright law.

24 Q. When you got the deposition notice, how did
25 you know that there were checklists out there that

1 existed that you could fill out?

2 A. I did not know that there were checklists. I
3 started searching the Internet, particularly GSU's Web
4 site, saw information on copyright policy and copyright
5 law more generally.

6 Q. And as a result of that search, you discovered
7 the checklists on the Web site?

8 A. Yes.

9 Q. And then what did you do?

10 A. Excuse me?

11 Q. What did you do after you found them on the
12 site?

13 A. I printed them out and completed them.

14 Q. And what did you do with them after you
15 completed them?

16 A. I put them on my shelf, on my bookcases.

17 Q. Did you read any other materials on the Web
18 site accompanying the checklists?

19 A. I'm sure that I did, but I don't have any
20 specific memory of content.

21 Q. Let me ask it another way. When you filled
22 out the checklists, did you do that essentially cold,
23 or had you read some background material to assist you
24 in filling them out?

25 A. I think I just filled them out.

1 Q. Did you consult anyone in the legal affairs
2 office or anyone at GSU to assist you in filling them
3 out?

4 A. No.

5 Q. So you held onto them in your files until they
6 were requested from you by counsel for this deposition?

7 A. Yes.

8 Q. Since that time, have you consulted any other
9 sources of information about fair use or copyright law?

10 A. Since the day that I first printed out the
11 checklists, no.

12 Q. When you say that you're convinced that you've
13 done nothing wrong, is that based on filling out the
14 checklists, or some other knowledge you have of fair
15 use or copyright law?

16 A. From the checklists, from guidelines as I
17 understood them from when I was a graduate student at
18 Duke.

19 Q. What kinds of things were those?

20 A. The guidelines I understood was 20 percent of
21 a work.

22 Q. You can use 20 percent and if -- or sorry.
23 Strike that. If you used 20 percent or less it's
24 considered fair use?

25 A. Yes.

1 Q. That was the policy at Duke?

2 A. That's what I understood the policy to be.

3 Q. Have you received any training, either at Duke
4 or at Loyola or at GSU, related to copyright or fair
5 use?

6 A. I haven't.

7 Q. And again --

8 A. Let me follow up.

9 Q. Uh-huh.

10 A. What do you mean by training?

11 Q. Courses, reading materials, really anything
12 that --

13 A. No.

14 Q. Is there something that you have read or are
15 familiar with that you were getting at?

16 A. I assume at some point in time somebody has
17 given me instructions or given me advice but --

18 Q. Do you recall any specifically?

19 A. I don't.

20 Q. And you said before, just correct me if I'm
21 wrong, you don't recall any particular instructional
22 information you read on the GSU Web site?

23 A. I do not recall any.

24 (Plaintiff's Exhibit-11, 12, 13 and 14 was
25 previously marked for identification.)

1 Q. Just mark something just to be sure. I'm
2 going to hand you what's previously been marked as
3 Plaintiff's Exhibits 11 through 14. Professor Reifler,
4 do you recall seeing any of these pages I just put in
5 front of you? Just for the record, note that
6 Exhibit 11, Plaintiff's 11, is entitled "Policy on use
7 of Copyright At Works in Education and Research."
8 Plaintiff's Exhibit 12 is headlined "Additional
9 Guidelines for Electronic Reserves." Plaintiff's
10 Exhibit 13 is entitled "The Fair Use Exception."
11 Plaintiff's Exhibit 14 is "Introduction to the Fair Use
12 Checklist." And these are from the University System
13 of Georgia Web site. Do you recall ever seeing these,
14 Professor?

15 A. They look familiar. I probably read them, but
16 again, I can't definitively say one way or another.

17 Q. You don't recall whether you read them or not?

18 A. I recall seeing them. I don't recall the
19 extent to which or how carefully I read them.

20 Q. And was it when you went to the Web site in
21 this process of filling out the checklists that you saw
22 them?

23 A. I assume so.

24 Q. Hand you what's been marked Plaintiff's
25 Exhibit 242. Do you recognize this?

1 (Plaintiff's Exhibit 242 was marked for
2 identification.)

3 A. It is my CV.

4 Q. Can you briefly summarize your educational
5 background for me?

6 A. I received my Bachelor's Degree from Colby
7 College in 1995. I received my Ph.D. from Duke
8 University in 2006.

9 Q. And you've been at Georgia State since the
10 Fall of 2007?

11 A. That's correct.

12 Q. And prior to that you were at Loyola?

13 A. That is correct.

14 Q. And prior to that was graduate school?

15 A. Yes.

16 Q. Currently you're an assistant professor?

17 A. Yes.

18 Q. Is that a tenure track position?

19 A. It is.

20 Q. Are you tenured?

21 A. I am not tenured currently.

22 Q. Have you taken any law classes in the course
23 of your educational training?

24 A. I briefly sat in one or two sessions of maybe
25 it was an administrative law class at Duke. I didn't

1 stay in the class. It was not more than one or two
2 sessions. I actually don't recall what the course was.

3 Q. What's your Doctorate in?

4 A. Political Science.

5 Q. And can you tell me just at a basic level what
6 your specialty is, your area of focus?

7 A. Public opinion, political psychology, and
8 political behavior.

9 Q. Focussing on any particular topics?

10 A. The primary topic is public opinion towards
11 the use of military force and how the public responds
12 to casualties experienced during wartime.

13 Q. You're in the Political Science Department?

14 A. That is correct.

15 Q. Tell me, who do you report to in the Political
16 Science Department?

17 A. To the -- report to anybody, it would be the
18 department chair.

19 Q. And do you report to the Provost in any
20 fashion, or does Provost have any supervisory authority
21 over you?

22 A. I have never met the Provost personally.

23 Q. How big is the department?

24 A. I think that we're 26 faculty members.

25 Q. And tell me about the courses you teach.

1 A. So far at GSU I've taught Introduction to
2 American Politics, course number POLS 1101, and I've
3 taught an upper level undergraduate course in Political
4 Psychology.

5 Q. Is that 4190?

6 A. That's 4190, which is a special topics course
7 designation. It's being added to the curriculum under
8 its own course number, and I'm not sure when that takes
9 effect. And a graduate course in Political Psychology.
10 Again, 8190 is a special topics designation, and it's
11 my understanding it's being added as its own course
12 designation in the future.

13 Q. Let me ask you this: Are you aware of any
14 stated departmental rules or policies that guide your
15 teaching or any of your employments?

16 A. Quality teaching and good research.

17 Q. Are there stated policies or written policies
18 that you are required to follow or that have ever been
19 provided to you?

20 A. I'm not sure. Can you be more specific in
21 terms of what policies you might mean or what those
22 policies might apply to?

23 Q. Well, human resource policies, copyright
24 policies, code of conduct, any --

25 A. Human resources I'm not -- occasionally we get

1 information about, you know, insurance period
2 switchovers, and for code of conduct, they are very
3 forceful in communicating no inappropriate relations
4 with students. And as far as copyright, prior to the
5 Spring 2009 semester, I don't recall anything.

6 Q. We will talk about the new copyright policy.
7 What about, are there policies regarding academic
8 integrity, plagiarism, those sorts of things that are
9 disseminated?

10 A. I'm sure that policies exist. I don't know
11 that I've ever seen them.

12 Q. Is it fair to say that the copyright policy
13 that was recently disseminated is the lone instance of
14 someone sending you sort of an official policy at the
15 University that you're required to follow?

16 A. I'm willing to say it's the only policy that I
17 can specifically have note of receiving are from
18 inappropriate conduct with students.

19 Q. How did you receive that copyright policy?

20 A. I believe via e-mail.

21 Q. Do you know who the e-mail was from?

22 A. I think it was a mass University e-mail. I
23 don't recall.

24 Q. Was the policy itself appended to the e-mail?

25 A. I don't know. I tend not to read mass

1 e-mails.

2 Q. But you do recall receiving it?

3 A. I recall receiving it in terms of going back
4 through some old e-mail, but I don't recall really
5 receiving it at the time.

6 Q. Tell me about going back through old e-mail.
7 Was that in response to this deposition?

8 A. Yes.

9 Q. What did you do?

10 A. Printed out copies of e-mail.

11 Q. Did you go back and search for particular
12 topics or --

13 A. Whatever the term phrases were.

14 Q. Oh, I'm sorry. This was in response to
15 counsel asking you to gather documents?

16 A. Yes.

17 Q. I see. And in the course of that, you found
18 the e-mail from University with the policy attached?

19 A. Or at least announcing there was a new policy.

20 Q. Take a look at Exhibit 242, your CV, if you
21 could.

22 A. Uh-huh.

23 Q. I see here you are -- have a book about to
24 come out; is that right?

25 A. It came out in February.

1 Q. That's with Princeton University Press?

2 A. Yes.

3 Q. Did you sign a contract with the Princeton
4 University Press for that book?

5 A. Yes.

6 Q. How long ago did you sign the contract?

7 A. Maybe a year, 18 months ago. We signed one
8 contract, as I recall, and the page numbers or number
9 of tables and figures changed. And so then I think we
10 signed a new one.

11 Q. Was it a single contract that all three of you
12 signed?

13 A. Yes.

14 Q. By all three, I should just confirm you have
15 two coauthors; is that right?

16 A. I do.

17 Q. Do you know in the contract whether you own
18 the copyright or whether you assigned that to a
19 publisher?

20 A. I believe we transferred the copyright over,
21 but I don't recall specifically.

22 Q. Did you receive an advanced payment under the
23 contract?

24 A. We did not receive any advance payment.

25 Q. How are you paid under the contract?

1 A. We get a percentage of sales.

2 Q. And split three ways?

3 A. Yes.

4 Q. What's the percentage? Do you know?

5 A. The percentage that we receive from Princeton
6 or the percentage how we split?

7 Q. The percentage that -- what's the percent --
8 what percent do you end up receiving personally?

9 A. I'm not sure. We'll split it between the
10 three of us equally as we equally did the work.

11 Q. Do you know, is there a number specified in
12 the contract?

13 A. There is, but it's actually like four numbers
14 because it's percentage of paperback before a certain
15 number of percentage of paperbark, after a certain
16 number sold; a percentage of hard cover before a
17 certain number sold, percentage of hardback after a
18 certain number sold. I believe it's about -- it
19 averages out to about ten percent, and I don't recall
20 if that's of list price or of wholesale price.

21 Q. How many sales have you had so far?

22 A. I checked with the publisher about a month,
23 six weeks ago, and at that point we had sold 322
24 paperback copies and 88 hardback copies.

25 Q. Have you received any royalty payments?

1 A. No.

2 Q. Does the contract cover license and
3 information fees?

4 A. I don't know.

5 Q. Are you aware of any other sorts of payments
6 that you stand to receive for use of the book other
7 than sales of the book in hardback or paperback?

8 A. I'm not aware of any.

9 Q. So I take it you don't know if a professor at
10 a university included a chapter from the book in a
11 CoursePack and paid permission fees for that, you don't
12 know whether you would receive any cut from that?

13 A. I have absolutely no idea.

14 Q. If a professor did want to do that, would it
15 be your expectation that they would pay a permission's
16 fee to do so?

17 A. How much of the book?

18 Q. A chapter.

19 A. No.

20 Q. Two chapters?

21 A. Probably not.

22 Q. Three chapters?

23 A. At three, depending on which chapters and
24 length, maybe at that point they would think about
25 assigning, asking students to buy it.

1 Q. Tell me what changed between two and three
2 that caused you to change your answer.

3 A. At three it's starting to become a large
4 portion of the book, though it wouldn't necessarily
5 demand that they assign it at that point.

6 Ironically enough, in GSU's policies, it's my
7 understanding that I'm not allowed to benefit
8 financially from anything I assign in my classes. So
9 if I want to assign it in my classes, I either have to
10 give it to them for free in the form of PDFs or find
11 some way for the sales portion to be returned to the
12 students. The portion that would be --

13 Q. You understand that policy to include
14 royalties that you might receive from the use or sales
15 that you would -- royalties you would receive?

16 A. Yes. Yes.

17 Q. Not just profiting in the way that, you know,
18 if you were to charge a mark-up or something for a
19 CoursePack?

20 A. Yes.

21 Q. So three, you said that starts to become a
22 large portion. You also said --

23 A. It would depend on which three chapters.

24 Q. That was my next question. Tell me what you
25 meant by that.

1 A. The first chapter is an introduction that
2 covers a lot of literature review and outlines the core
3 of our argument. That content is available in other
4 ways, either in terms of some of our journal articles
5 or in terms of literature review. Other people work in
6 the same literature and have similar literature review.
7 I don't know that I would necessarily count the
8 introductory chapter or the conclusion chapter among
9 those as content. The ones that have new empirical
10 analyses that aren't available elsewhere. So there are
11 two chapters in the book that have similar content in
12 published journal articles, and if they wanted to
13 assign the book version, scan it to PDF or photocopy,
14 that wouldn't -- I wouldn't -- that wouldn't bother me.

15 So once you take away the introduction and
16 conclusion chapter and the two chapters that have
17 similar content published elsewhere, that only leaves
18 three chapters.

19 Q. So if it were those three chapters, you would
20 expect that professor to --

21 A. I would hope. I wouldn't necessarily go so
22 far as to say expect. I would hope that they would.

23 Q. Would have the students purchase the book for
24 use in the class?

25 A. Yes.

1 Q. What about, are you aware of the existence of
2 permissioning mechanisms whereby they could, rather
3 than having the book purchased, just get a license
4 essentially to use those three chapters?

5 A. I am told that those things exist.

6 Q. Were you aware of it prior to this deposition
7 process?

8 A. Not really. I know that CoursePacks exist,
9 and I know that they go through permission process but
10 I don't know exactly what it is.

11 Q. So in this example we have been talking about,
12 if a professor wanted to use those three chapters,
13 would it be, you know, okay with you if they used those
14 three chapters in a CoursePack as opposed to having the
15 students buy the book?

16 A. I don't see why not. To be completely honest,
17 if they used it just as scanned documents, it wouldn't
18 really bother me that much. I just would hope that
19 they would -- I won't actually benefit all that much
20 financially from this book. So for me, if the choice
21 were selling more copies, if the only way they could
22 put it on their syllabus was to assign books and they
23 felt that they didn't want to do it for whatever
24 reason, I benefit more as a scholar for my reputation
25 and getting tenure having the book on the syllabus. So

1 it would be my preference that they would distribute
2 the work, even without payment to me, because the real
3 payment for me is reputation, publishing success,
4 people reading my work, citing my work.

5 Q. So let me ask you, if Princeton University
6 Press or publishers weren't -- if it weren't
7 financially viable for them to publish your books,
8 would that reputational benefit you receive from being
9 published by them disappear?

10 A. It would change where I send manuscripts and
11 how manuscripts are organized.

12 Q. How would it change it?

13 A. Rather than going to university presses, if
14 all university presses folded, then I would go through
15 journals.

16 Q. And what if there weren't journals, if it
17 weren't financially viable for the journals to publish
18 your materials?

19 A. Then I assume that the academic market would
20 find another way.

21 Q. Any idea what that other way would be?

22 A. Internet-based journals that have a much lower
23 overhead and still have a peer review process.

24 Q. For your book that you've just published, are
25 you aware were there sales projections done as part of

1 the process of producing a book?

2 A. I assume that there were, but I'm not aware
3 that there were.

4 Q. Do you have any idea of the margin that
5 Princeton University Press earns on the sales of your
6 book?

7 A. I have absolutely no idea.

8 Q. Any idea of how many copies they need to sell
9 to be able to turn profit on the book?

10 A. The rule of thumb that I've been told in
11 academic publishing is 500 copies. Whether that's
12 accurate or not, how that varies across presses, I have
13 no ability don't know.

14 Q. Where is that rule coming from? Where have
15 you heard that?

16 A. I believe it was from Michael Munger, the
17 current Chair of Political Science at Duke and was my
18 advisor on my dissertation.

19 Q. Do you have any knowledge of the finances the
20 publishing, academic publishing industry generally?

21 A. No, I do not.

22 Q. Let me just ask on your CV, there is a book
23 chapter there.

24 A. Uh-huh.

25 Q. Just tell me what -- was that a chapter that

1 contributed to a compilation of some kind or what is
2 that?

3 A. Yes. The name of book as listed on the CV is
4 Life After Reform: When The Bipartisan Campaign Reform
5 Act Meets Politics, Michael Malbin edited, Published by
6 Rowman & Littlefield.

7 Q. This was a hard copy --

8 A. Soft copy, but it was --

9 Q. Different authors contributed different
10 chapters?

11 A. Yes.

12 Q. Your section called "Articles Under Review"?

13 A. Yes.

14 Q. What does that mean, "Articles Under Review"?

15 A. Those are completed manuscripts that I have
16 submitted to journals for the peer review process.

17 Q. What are the leading journals in your
18 particular field?

19 A. The top three general journals would be
20 considered the American Political Science Review, the
21 American Journal of Political Science and the Journal
22 of Politics.

23 Q. Do you know who the publishers of those
24 journals are?

25 A. I do not. Cambridge might be of PSR. I'm not

1 sure.

2 Q. One more question. You received a grant and
3 award for something called the Technology Fee Grant,
4 "Software for a Political Psychology Lab." What is
5 that?

6 A. It's software to be able to conduct surveys.

7 Q. You're teaching in the -- or you just taught
8 in the Maymester; is that right?

9 A. Yes.

10 Q. What course did you teach?

11 A. Another section of POLS 1101, Introduction to
12 American Politics.

13 Q. Are you teaching in the main Summer session?

14 A. Another section of 1101.

15 Q. And what about this Fall, do you know yet?

16 A. I'm teaching, I believe, another section of
17 1101 and upper level undergraduate class on War and
18 Public Opinion.

19 Q. Is that a new class?

20 A. It is a new class to Georgia State. It's the
21 second time I will have taught it.

22 Q. Where did you teach it before?

23 A. At Loyola.

24 Q. Will you be teaching the 4190 or 8190 courses
25 again?

1 A. It's my understanding that War and Public
2 Opinion has a 4190 designation, and is itself in the
3 process of being given its own designation course
4 number for the future. And I assume that I will be
5 teaching the graduate Political Psychology seminar
6 every year or every other year, and my hope is that the
7 graduate seminar War and Public Opinion every year or
8 every other year.

9 Q. Now, I'm correct that you used the uLearn
10 system for distributing materials to your class; is
11 that right?

12 A. That is correct.

13 Q. Did you start doing that as soon as you
14 started teaching at GSU?

15 A. Yes.

16 Q. And you use that to provide, among other
17 things, readings for the course?

18 A. Yes.

19 Q. Why was it, if you can recall, that you
20 decided to use the uLearn system for those purposes?

21 A. Loyola didn't have an E-Reserve system, so I
22 was just in the habit of --

23 Q. Just so I understand, that was what you were
24 used to using from your time at Loyola?

25 A. Yes.

1 Q. So when you started here, you stuck with it?

2 A. Yes.

3 Q. Did you consider using the E-Reserves system
4 at GSU?

5 A. I may have thought about it briefly, but I
6 don't think so.

7 Q. Did you consider using CoursePacks to
8 distribute your readings to your students?

9 A. I did not.

10 Q. Why not?

11 A. In my experience as a student, CoursePacks are
12 never ready on time.

13 Q. And is that a problem with using uLearn
14 instead?

15 A. No. I post them to uLearn. If it's late,
16 it's my fault.

17 Q. Did the University or anyone in your
18 department suggest any particular method over another
19 for distributing readings?

20 A. Not that I recall.

21 Q. So just tell me about the uLearn process, if
22 you can, when you start a class. I take it there is
23 some sort of course page or course area?

24 A. There's a course page that's automatically
25 created by Georgia State.

1 Q. Do you know who creates that?

2 A. I assume the IT Department, or more accurately
3 I assume that it's an automated process based on course
4 number.

5 Q. Is that communicated to you somehow that this
6 area or page exists?

7 A. I assume I must have been told it at some
8 point because I found it and used it, but I don't
9 recall that specific conversation.

10 Q. I mean, did you get an e-mail or something
11 saying your page is up and ready to go?

12 A. No. There's never any communication like
13 that. It's just -- at some point it shows up.

14 Q. Is there a particular, you know, password or
15 login that you are given to be able to get in?

16 A. It's the same as my campus user ID and
17 password.

18 Q. So what are the various functions on uLearn
19 that you are able to utilize, if you could tell me what
20 the options are?

21 A. The two primary functions that I use it for
22 are as a grade book so I can post grades and keep a
23 record of that and students can check their grades.
24 And if I need to post something for students to have
25 access to, a reading, a study guide. I rarely make my

1 PowerPoint slides available, but on occasion for some
2 reason or another I do.

3 Q. And is there a bulletin board or discussion
4 function available?

5 A. There is one, and in my 8190 course I asked
6 students to post response papers that they were
7 assigned to, to it, and I'm not sure how they went
8 about it.

9 Q. So when you post reading materials or study
10 guides, is there a particular page or area of the site
11 that --

12 A. When you log onto the uLearn site, generally
13 you have a home page for you, and then there are links
14 to various classes. So the classes that I have taught
15 or am currently teaching or depending on the point in
16 the semester and going to teach in the next term, and
17 then students have access to their classes. And you
18 click on a link for each particular course so you -- I
19 only have access to courses I teach. I assume my
20 students only have access to the courses that they
21 take. And you click on the link to the class, and then
22 that brings you up to a main page. And it has -- if
23 something is posted, there is a little section that
24 people can -- little icons for each document, not
25 unlike a folder or directory in the operating system.

1 Q. Take a look at a printout of that in a second.
2 You said courses you've taught in the past are
3 available to you when you login?

4 A. I think so. At Loyola and Duke they used a
5 product called Blackboard. uLearn is based on the
6 WebCT, which is a competitor of Blackboard, which I
7 think Blackboard has now purchased. And I know that I
8 can look at old classes in Blackboard, and I think that
9 I can in uLearn. But I don't 100 percent remember, and
10 I don't remember the adjustments, whether how to take
11 them off the front page or -- I assume that they must
12 be there, that they must be stored somehow, but I
13 honestly don't recall.

14 Q. So when you post, you know, reading materials
15 or study guides, who copies and scans the materials
16 that are --

17 A. Sometimes I do; sometimes the secretaries in
18 the department.

19 Q. And how do you actually post it to the system
20 and put it up for students to read?

21 A. It gets scanned into a PDF, and there's a
22 series of dialogue boxes to upload from your computer
23 to the course page.

24 Q. How long does it take you to do that?

25 A. A few minutes.

1 Q. So at the risk of oversimplifying, if you're
2 at your computer and you have a file sitting on the
3 hard drive on your own computer, you can basically load
4 it up to the uLearn server and that will be available
5 to students?

6 A. Yes, that's correct.

7 Q. Have you had any interface with the IT
8 Department or anyone at the library to help you with
9 this process?

10 A. I have not.

11 Q. Do they offer training sessions or materials,
12 instructional materials, as to how to use the system?

13 A. I believe they do.

14 Q. Have you taken advantage of any of those?

15 A. I have not.

16 Q. How did you know how to operate it?

17 A. I have reasonably good aptitude with
18 computers.

19 Q. Do you get reports of any kind from the uLearn
20 system as to activity on your course pages?

21 A. It is on the uLearn system, it's my
22 understanding that that information is not available.
23 When I used Blackboard at Loyola, I could keep track of
24 students accessing or downloading readings that I had
25 posted.

1 Q. And uLearn doesn't provide that to you, that
2 capability to you?

3 A. I don't think it does.

4 Q. Have you tried?

5 A. I have not tried.

6 Q. Have you asked anyone about that
7 functionality?

8 A. I have not.

9 Q. On what basis, then, do you say that you don't
10 think that functionality is available?

11 A. In Blackboard it's very easy to get to those
12 -- not super easy, but not especially difficult. That
13 there are -- there is a tab on usage statistics, and I
14 just don't see anything similar in uLearn .

15 (Plaintiff's Exhibit 243 was marked for
16 identification.)

17 Q. Mark this Plaintiff's Exhibit 243. This is a
18 document Bates stamped Georgia State 0033632. Do you
19 recognize this, Professor?

20 A. It appears to be the dialogue page that I
21 described before for, I think, my 8190 course.

22 Q. So how would you get to this particular page?
23 Is there a preliminary link from the course page that
24 gets you to an area where you would see this?

25 A. I don't think so. I think once you clicked

1 into the course, I think you see this.

2 Q. Okay.

3 A. The reason I'm not a hundred percent sure is
4 that uLearn has different dialogues for teachers and
5 students, and I can look at the student view but I
6 rarely do. So this doesn't look exactly like what I
7 see, but looks roughly the same.

8 Q. Set that aside for one second, although keep
9 it handy because we may be referring back to it.

10 (Plaintiff's Exhibit 244 was marked for
11 identification.)

12 Q. Hand you what I'm marking Plaintiff's
13 Exhibit 244. Now, this is a document that was produced
14 in discovery tests, I believe, from your files. It's
15 marked Georgia State 0049883. And I will represent to
16 you that it's been altered in one way, and that is we
17 have redacted out the information in the Last Name,
18 First Name columns because of concerns over the FERPA
19 law in the state.

20 A. Okay.

21 Q. But do you recognize -- acknowledging that we
22 redacted that information, do you recognize this
23 document?

24 A. It appears to be the roster from my Fall 2008
25 1101 course.

1 Q. And was this a document that you received or
2 generated in some way using the system?

3 A. I suppose it must be.

4 Q. Do you recall seeing it before?

5 A. I do not.

6 Q. You can put that aside.

7 A. What I imagine that it is was a list of the
8 students to prepare a grade book.

9 Q. How does this relate to preparing a grade
10 book?

11 A. In my 1101 courses I have a weekly current
12 events quiz, which I have my RA grade, and my RA
13 doesn't have access to my course page. So I imagine I
14 gave my RA the list of students to create a grade book
15 for him.

16 Q. I believe you said before that prior to the
17 new copyright policy at GSU being implemented, you
18 weren't aware of any prior policy; is that right?

19 A. I'm sorry. Could you repeat that?

20 Q. I will ask it in a more straight-forward
21 fashion. During the 2007-2008 course year, for
22 example, were you aware that there was any copyright
23 policy in place at Georgia State?

24 A. I don't recall ever being specifically told
25 what the copyright policy is or is not.

1 Q. Were you aware whether there was one?

2 A. I never gave it any thought. If you were to
3 have asked me then is there a policy, I probably would
4 have said I assume there is.

5 Q. So when you were in the 2007-2008 timeframe
6 putting materials on uLearn pages for your students,
7 did you do that -- were you following any guidelines or
8 policies as to what was fair use or not?

9 A. In 2007-2008 I only taught sections of 1101,
10 and I don't recall being able to post anything that
11 would come under the purview in any way of fair use.
12 There are only a handful of things I can remember
13 posting at all.

14 Q. And what were those?

15 A. An occasional study guide that I produced, a
16 study guide that was given to me by the textbook
17 company for distribution, occasional slides, PowerPoint
18 slides.

19 Q. You used the textbook in that course?

20 A. I did.

21 Q. So was Spring 2009 the first time that you
22 taught 4190 and 8190?

23 A. It is.

24 Q. And you posted materials for that class prior
25 to the new policy at GSU being promulgated, correct?

1 A. That is correct.

2 Q. So when you posted reading materials for 4190
3 and 8190 initially back in December or January, did you
4 follow any guidelines or policy as to what you could or
5 couldn't post?

6 A. The guideline I tried to follow was the
7 20 percent rule from Duke.

8 Q. Anything else?

9 A. I think that's really what I followed.

10 Q. Do you recall not posting because of that
11 20 percent rule that you would have liked to?

12 A. There certainly were a number of additional
13 chapters, book chapters, here and there that I probably
14 would have posted, especially for the 8190.

15 Q. The materials that you post on uLearn, do they
16 include readings for the class that are required
17 readings?

18 A. Can you be more specific what you mean by
19 "Required"?

20 Q. Readings that are part of the syllabus that
21 you expect the students to read.

22 A. Yes.

23 Q. I mean it as required versus optional.

24 A. There's only -- for the Spring semester
25 there's only one reading or set of readings that I can

1 think of that I would have considered optional.

2 Q. Was that -- well, we will look at the syllabus
3 and you can point those out to me. I take it you've
4 never, at least during your time at Georgia State,
5 sought any sort of permission to use excerpts of works
6 that you put on your uLearn, correct?

7 A. That would not be correct.

8 Q. What have you received permission to use?

9 A. There is a work in progress by John Bullock,
10 who is an assistant professor at Yale, and the work was
11 not published yet. I asked for his permission. He
12 said as long as it was in a gated environment that only
13 students of the class would have access to that he was
14 fine with it.

15 Q. Any others that you sought permission to use?

16 A. Not that I recall.

17 Q. And I assume for his, that permission was
18 granted without any requirement of paying a fee?

19 A. That's correct.

20 Q. You mentioned before that you are -- well,
21 correct me if I'm wrong. I don't want to put words in
22 your mouth, but you're aware that there are ways that
23 you can pay a permission fee or seek a permission and
24 pay a fee to use excerpts of works?

25 A. I'm not sure I know exactly how to answer

1 that.

2 Q. Okay. Are you aware that you could, if you
3 wanted -- pick a publisher, pick Oxford University
4 Press. That if you wanted to use two chapters of an
5 Oxford book, post it to uLearn for your students, are
6 you aware that you could go to Oxford University Press
7 and there's a mechanism in place for getting permission
8 to post those chapters and pay a royalty fee to do so?

9 A. I was not aware of that.

10 Q. Are you aware of it for any publisher?

11 A. Some textbook publishers occasionally say if
12 you like different chapters from different textbooks we
13 can put together a custom textbook for you. So
14 assuming they are drawing from different textbooks that
15 they have, but apart from that, no.

16 Q. So it's your understanding, then, if you want
17 to use a couple of chapters from a given work and put
18 them on uLearn for your students, that your choices are
19 either put them up without any sort of payment, don't
20 use them, or make the students buy the whole book?

21 A. Yes.

22 Q. Are you aware of an entity called Copyright
23 Clearance Center?

24 A. I'm not.

25 MR. LARSON: Probably a good time to break.

1 Why don't we switch the tapes.

2 THE VIDEOGRAPHER: We are off the record at
3 2:19 p.m.

4 (Recess from 2:19 p.m. to 2:30 p.m.)

5 THE VIDEOGRAPHER: This is videotape number
6 two. The time is 2:31 p.m., and we are back on the
7 record.

8 Q. (By Mr. Larson) Professor Reifler, just a
9 couple more questions about the new policy, the new
10 copyright policy at GSU. Is it your understanding that
11 it applies to material posted to uLearn?

12 A. I think it does.

13 Q. And what do you base that assumption on?

14 A. It's hard for me to believe that copyright law
15 doesn't apply in some form.

16 Q. So you would expect it to apply to whatever
17 format you used to distribute your readings to
18 students?

19 A. Yes.

20 Q. Are you aware of a requirement under the new
21 policy that professors complete checklists prior to
22 posting materials to the E-Res system or to the uLearn
23 system?

24 A. I am not aware of a policy that requires
25 filling that checklist.

1 Q. You did it, as you said before, as a result of
2 this deposition being noticed, right?

3 A. Yes.

4 Q. Are you --

5 A. Although as you pointed out, those checklists
6 didn't exist when the course started.

7 Q. Right. In the -- well, in the Maymester,
8 you're teaching the 1100 class?

9 A. 1101.

10 Q. 1101. Forgive me. Are there readings you
11 have posted to uLearn for that class?

12 A. No.

13 Q. If you were teaching, say, the 8190 class in
14 the Summer semester, am I right, then, that you as a
15 matter of normal course wouldn't have filled out
16 checklists for those readings?

17 A. Because of receiving the deposition, I
18 probably would have.

19 Q. You would now. Had you not received the
20 deposition notice?

21 A. I don't know.

22 Q. Are you aware under the new policy if there is
23 any limits to the total number of works you're allowed
24 to post?

25 A. No.

1 Q. Aware if there is any percentage limit as, you
2 know, for instance, the 20 percent, you know, rule that
3 you mentioned before?

4 A. I am -- I'm sorry. Can you clarify that
5 question?

6 Q. Are you aware the new policy, the new GSU
7 copyright policy, contains any percentage limit on the
8 amount of work that you can post and provide to
9 students?

10 A. I believe that it does not have a specific
11 percentage guideline.

12 Q. Any limit on the number of chapters that
13 you're aware of?

14 A. I believe there is not a specific chapter
15 guideline.

16 Q. For the 1100, 1101 class you are teaching, I
17 guess taught in the Maymester, was there a syllabus for
18 that class?

19 A. Yes.

20 Q. Did you use the similar syllabus to previous
21 incarnations of the class?

22 A. The syllabus would have been, except for
23 changing of dates and schedule, identical to the Fall
24 2008 syllabus.

25 Q. Just for the record, let's mark this as

1 Plaintiff's Exhibit 245.

2 (Plaintiff's Exhibit 245 was marked for
3 identification.)

4 Q. I'm putting before you a syllabus identified
5 as the Fall 2008 syllabus for 1101. Can you confirm
6 for me that's the syllabus you were just discussing?

7 A. Yes.

8 Q. The syllabus you used in the Maymester was
9 essentially identical to this with dates changed?

10 A. Yes.

11 Q. And so I'm clear, the book that you used, you
12 used a book called We the People?

13 A. Uh-huh.

14 Q. And that was an assigned text for purchase?

15 A. It was.

16 Q. And there weren't readings in addition to that
17 placed on uLearn for students?

18 A. No.

19 Q. Place that aside. Let me mark as Plaintiff's
20 Exhibit 246 a document that starts with Bates number
21 Georgia State 0024578.

22 (Plaintiff's Exhibit 246 was marked for
23 identification.)

24 Q. And do you recognize this document?

25 A. It appears to be my syllabus from my graduate

1 Political Psychology course in Spring 2009.

2 Q. Now, it says 8101 rather than 8190. Do you
3 know why?

4 A. I assume that's a typo.

5 Q. How many students were in the course?

6 A. Eight.

7 Q. And just to confirm, if you look back at
8 Exhibit 243, which was the uLearn, this is the syllabus
9 corresponding with the uLearn page we were looking at,
10 at 243?

11 A. It is.

12 Q. If you'll turn to page two of the syllabus,
13 please.

14 A. Should I keep 243 out as well?

15 Q. Yeah, just keep it handy. It says, "Course
16 Texts" in the second bold paragraph. There are two
17 assigned books for this course.

18 A. Yeah, that's a typo. I did my undergraduate
19 syllabus first.

20 Q. It's actually one book?

21 A. It's actually just one, Yeah.

22 Q. And that's the Daniel --

23 A. The Dan Ariely.

24 Q. The Dan Ariely. That was a book that was
25 required that you asked the students to purchase?

1 A. It is.

2 Q. And did you arrange --

3 A. Well, I asked them to read it.

4 Q. And you left it to them to figure out where to
5 get it?

6 A. Yes.

7 Q. Did you arrange with the bookstore or anyone
8 to have it ordered so that they could buy it?

9 A. Yes, I asked the bookstore to order copies.

10 Q. And then it says in the next sentence,
11 "Additional readings will be accessible via the GSU
12 library E-journals porta."

13 A. It's supposed to be portal.

14 Q. And what is that?

15 A. GSU subscribes to a number of academic
16 journals, actually a large number, and if you go to the
17 library Web page, there's a link that you can click on
18 that says, "E-journals". And you can search for
19 journals that the library has electronic access to.

20 Q. That sentence continues, "Or will be made
21 available on uLearn/WebCT." I take it that means that
22 made available by you in PDF form?

23 A. Yes.

24 Q. Turn for me to the page that's headlined
25 "Course Schedule" two or three pages along. And just

1 looking as an example the first two or three postings,
2 which I take it refer to journal articles,
3 International Security, Public Opinion Quarterly, and
4 another Public Opinion Quarterly?

5 A. Yes.

6 Q. Those are on that journal portal that you just
7 described?

8 A. They are.

9 Q. And then the next one is a book by -- or I'm
10 sorry, a work by Rose McDermott?

11 A. An article in the journal Annual Review of
12 Political Science.

13 Q. And that says available on uLearn?

14 A. Georgia State does not subscribe to the Annual
15 Review of Political Science.

16 Q. And so you photocopied the article and put it
17 up on the uLearn site?

18 A. I did not photocopy the article. I found a
19 copy elsewhere online. I downloaded it, and then
20 posted it to the site.

21 Q. So it wasn't one that you photocopied from the
22 journal, but one that you found somewhere else on the
23 Web?

24 A. Yes.

25 Q. And then you did post it to the uLearn site?

1 A. I did.

2 Q. If you turn to the next page for me, please.

3 And if you would just look at under the Tuesday,
4 January 27th entry, actually the second and third
5 entries there.

6 A. Uh-huh.

7 Q. The first one is identified as being by David
8 Sears and two other authors, and the second one by
9 Richard Lau?

10 A. Uh-huh.

11 Q. Am I correct those are chapters from the
12 Oxford Handbook of Political Psychology?

13 A. Yes.

14 Q. And those were posted to the uLearn site?

15 A. They were.

16 Q. Now, how come that one doesn't say available
17 on uLearn like the other entries, some of the other
18 entries do?

19 A. Sometimes I remember to put it; sometimes I
20 don't.

21 Q. Look for me at page -- two pages later under
22 March 17th. First entry is an entry identified as
23 George Marcus. You see where I am, under March 17th?

24 A. Yes.

25 Q. Is that another chapter from that same book?

1 A. It is.

2 Q. And was that also made available on uLearn?

3 A. It was.

4 Q. And finally one page later, under March 24th,
5 you see there's an entry by Stanley Feldman, 2003.

6 There is two entries by Feldman, but the second of the
7 two under that date March 24th is for -- looks to be a
8 chapter called, "Values, Ideology, and the Structure of
9 Political Attitudes."

10 A. Yeah. I eliminated that from the -- when we
11 got to the week, we did not do that chapter.

12 Q. So this one was never posted?

13 A. That is correct.

14 Q. The other three were?

15 A. The other three were not posted. The students
16 had access to them via the E-journal pages.

17 Q. I'm sorry. So let me make sure -- I misspoke.
18 I meant the other three chapters from this Oxford
19 Handbook of Political Psychology, not the other
20 chapters for that different week.

21 A. I believe I did, yes.

22 Q. And just to confirm that. Can you look back
23 at 243?

24 A. Uh-huh.

25 Q. And just can you confirm that the entries,

1 there is one in the top row called, "Lau Oxford
2 Handbook.pdf"?

3 A. Yes.

4 Q. That's the Lau chapter?

5 A. The Lau chapter.

6 Q. And then right next to it there's one called
7 "Sears Huddy Jervis.pdf"?

8 A. Yes.

9 Q. And then down in the last row there's one
10 called "Marcus (Handbook).pdf"?

11 A. Yes.

12 Q. And those are the PDFs of those chapters from
13 the Oxford Handbook we were just looking at?

14 A. Yes.

15 Q. If you look for me in the week for March 10th.

16 A. Uh-huh.

17 Q. There is a reading by Susan Fiske and Shelley
18 Taylor?

19 A. Uh-huh.

20 Q. And that's two chapters from a book called
21 Social Cognition: From Brains to Culture?

22 A. Yeah, three chapters.

23 Q. And that was required reading?

24 A. It was not.

25 Q. It was not required reading?

1 A. Yeah.

2 Q. How was that communicated to the students?

3 A. I told them. It's not on the syllabus as
4 such, but I told them.

5 Q. And so it was optional?

6 A. Yeah.

7 Q. What about those three chapters from the
8 Oxford Handbook that we were just talking about, were
9 those required reading?

10 A. Yes. Under the definition of required that we
11 established earlier, I would consider those required.

12 Q. And just so we are clear on that, that's --
13 what do you mean when you say that it's required? What
14 was the expectation with these particular readings by
15 the students?

16 A. That they would have read them and know the
17 content.

18 Q. And would it have harmed, potentially harmed
19 their performance in the class if they hadn't read
20 these and weren't prepared to discuss them?

21 A. In hindsight, I would probably not use the
22 Sears, Huddy, and Jervis or the Marcus articles. The
23 Sears, Huddy, Jervis I think doesn't have enough
24 specific content, and the Marcus is too jargony for
25 somebody who doesn't already know that literature.

1 Q. At the time, however, the expectation of
2 students should read this when they came to class?

3 A. Yes. Yes.

4 (Plaintiff's Exhibit 247 was marked for
5 identification.)

6 Q. Let me give you what I'm labelling as
7 Plaintiff's Exhibit 247.

8 A. Should I continue to keep out 243 and 246?

9 Q. That's okay. 246 keep nearby. We will be
10 returning to that. Also going to mark Exhibit 248.

11 (Plaintiff's Exhibit 248 was marked for
12 identification.)

13 Q. Could you look at 248 first?

14 A. Uh-huh.

15 Q. Can you just confirm for me that this is the
16 -- I'll represent to you this was produced to us in
17 discovery in this case. You see it has a Bates stamp
18 Georgia State 0033651. Is this the Marcus chapter that
19 you assigned to students in the 8190 course in the week
20 of March 17th?

21 A. It is. Yeah, I'm assuming you're correct
22 about March 17th.

23 Q. Yeah, it's in the syllabus if you want to
24 look. And this comprises pages 183 to 221?

25 A. Yes. 182 to 221.

1 Q. Can you tell me what -- the checklist is 247;
2 is that right?

3 MS. JOHNSON: Yes.

4 A. That is correct.

5 Q. So can you just identify what Exhibit 247 is?

6 A. It is the Fair Use Checklist that I completed
7 after receiving the deposition notice.

8 Q. Okay. So the date -- you didn't fill in the
9 date, I see, but that was after the deposition notice?

10 A. Correct.

11 Q. And the course and term you didn't fill in,
12 but this was for the 8190 class; is that right?

13 A. Yes.

14 Q. Now, under "Portion to Be Used," you say
15 chapter 6, pages 182 to 221.

16 A. Yes.

17 Q. And then there is some parens there saying
18 pages 206 to 221 are notes and bib?

19 A. Yeah.

20 Q. 208 to 221 is bib?

21 A. Yes.

22 Q. What was the -- what was the point of writing
23 that in there or did that impact your analysis in some
24 way?

25 A. It did not.

1 Q. Let's take a look down at Factor 1.

2 A. Okay.

3 Q. I apologize for the noise outside. So tell me
4 under the column "Weighs in Favor of Fair Use," it
5 looks like you've checked three boxes. Just take me
6 through why you checked those three boxes.

7 A. That's for educational purpose, reading
8 assigned for a course. GSU is a nonprofit institution.
9 I already said teaching, so that's the first two. And
10 the third is "Use is necessary to a achieve your
11 intended educational purpose." In hindsight I would
12 choose a different reading, but at the time I thought
13 this would be a good summary literature review of how
14 affective subsystems in the brain affect information
15 processing.

16 Q. Just tell me what -- do you view those three
17 factors that you just checked as getting at different
18 aspects of the use, or how are they different in your
19 mind as you check the three?

20 A. Seems to me that one who is engaged in
21 nonprofit educational mission may or may not include
22 teaching, and the use of something may or may not
23 achieve intended educational purpose. Teaching doesn't
24 necessarily have to be nonprofit.

25 Q. But in your position, would it ever be the

1 case that you would check teaching but not nonprofit
2 educational as a professor at GSU?

3 A. Me personally as a professor at GSU, most
4 likely not, unless our department started sponsoring
5 for-profit executive education programs.

6 Q. Apart from something like that, in the normal
7 course of your teaching duties, if you checked
8 teaching, you would also then check nonprofit
9 educational?

10 A. In the normal course of my teaching duties,
11 yes.

12 Q. Is there ever a case where you wouldn't check
13 the last box? I mean, isn't that automatic if you
14 choose to use it in a class that you would check that
15 it's necessary for educational purpose?

16 A. I -- personally, I don't know, but I can't
17 really --

18 Q. Would you pick something that wasn't necessary
19 to achieve your intended educational purpose?

20 A. Probably not but --

21 Q. Look at the second column. You didn't check
22 anything in the second column, the "Weighs Against Fair
23 Use" column?

24 A. Yes.

25 Q. What did you -- how did you interpret

1 commercial activity?

2 A. As something that I would be selling and
3 financially gaining from.

4 Q. And correct me if I'm wrong, but I think what
5 you said before is if this were your book at issue
6 here, you might actually check commercial activity?

7 A. No, I would not.

8 Q. Even if you were receiving royalties by virtue
9 of its use?

10 A. Well, as you may recall, at GSU, if I assign
11 my book here, I can't receive royalties.

12 Q. Tell me about non-transformative, what did you
13 -- how do you understand the requirement or the choice
14 here of whether something is transformative or not?

15 A. It's one in hindsight I probably should have
16 checked. I imagine there's probably some inconsistency
17 from form to form. I'm not sure what order I did them
18 in. The transformative would be something that would
19 usually be unlikely to apply to social science. That's
20 something seemed to me to be more limited to visual or
21 auditory arts, taking an imagine, changing it somehow.
22 It's hard for me to believe that I would ever be able
23 to check something as transformative in the type of
24 Poly Psy.

25 Q. And do you understand that transformative to

1 apply to the work itself or to your use of the work in
2 the course?

3 A. Since I don't think that how I would assign
4 work would ever be transformative, I'm not sure I
5 understand the question.

6 Q. I guess the question is, if the work was --
7 say the work was a very creative work of art or
8 something as you were just talking about, might you
9 check transformative, or is the issue whether you're
10 giving that work to students in the course to read
11 would be transformative?

12 A. I don't think that me assigning something
13 would be transformative.

14 Q. So were you to do this list again, you would
15 check "Non-transformative" for your assigning of this
16 Marcus chapter?

17 A. Yes, I would. Yeah. And I assume that we
18 will be going through more of these.

19 Q. Yeah.

20 A. On any of them that I have not checked
21 "Non-transformative" I would.

22 Q. Tell me about "For public distribution." You
23 didn't check that. Why not?

24 A. Because it was not distributed to the public
25 as a whole. It was on a gated Web page that only

1 members of my class had access to.

2 Q. So you don't consider distribution to the
3 students to be the public?

4 A. I do not.

5 Q. At the bottom there you haven't checked at the
6 very bottom of each column "Factor Weighs in Favor of
7 Fair Use" or "Factor Weighs Against Fair Use." Is
8 there a reason you didn't check either of those?

9 A. The main reason is when I first did these, it
10 was in response to receiving -- being very surprised to
11 receive a deposition notice, because I believe I did
12 everything consistent with fair use. And the main
13 reason I did these was just to reassure myself, and so
14 that's why there are some inconsistencies as to what I
15 checked and didn't check. And so looking back through,
16 three on one side and zero whereas there should be one,
17 I would check "Factor Weighs in Favor of Fair Use."

18 Q. Let's look at Factor 2. Let me ask you a
19 preparatory question before we do that.

20 A. Okay.

21 Q. When you filled out this list, this particular
22 sheet for the Marcus chapter --

23 A. Uh-huh.

24 Q. -- and then we'll look, I believe you filled
25 out sheets as well for the Lau chapter and for the

1 Sears, Huddy, Jervis chapter?

2 A. Yes.

3 Q. Why was it that you decided to fill out three
4 separate sheets for those chapters from Oxford Handbook
5 as opposed to just one list for all three chapters
6 combined?

7 A. I don't know. I think the main reason
8 probably is just that the topics says, "Title of
9 Copyrighted Work" and "Author and Publisher" that there
10 just was limited space and --

11 Q. No reason other than that?

12 A. Probably so. I'm not exactly sure how these
13 documents were turned over to you. As I prepared them,
14 all three chapters were paper-clipped together with a
15 total percentage, with a little post-it attached with
16 the total percentage of Oxford Handbook of Political
17 Psychology. So in terms of judging whether I was
18 within fair use guidelines as I understood them, the
19 20 percent guideline, I added all three together as
20 whether that was within the 20 percent and not
21 individually whether each one was 20 percent or less.
22 But I understood them as the whole.

23 Q. So you did -- you looked at the three
24 collectively.

25 MR. LARSON: I don't believe we got that

1 sticky, and I would ask just for the record if we get a
2 copy of that, that would be --

3 MS. JOHNSON: Yes, we will make sure that
4 those get to you.

5 A. Yeah. For the -- I don't remember the
6 percentages exactly, but for the Oxford Handbook it was
7 7 or 11 percent of the total.

8 Q. (By Mr. Larson) After I've given you all
9 three, maybe we will return to that question, and you
10 can show me how you added them up.

11 Just explain to me how the 20 percent figure came
12 into this. I think you said before you didn't
13 understand 20 percent to be a part of the policy at
14 this point.

15 A. As you may recall from our discussion before,
16 I filled these out in response to receiving the
17 deposition notice, and wanted to fill these out to
18 reassure myself that I'd done nothing wrong, which I'm
19 glad I did because I feel that more than ever. And so
20 I wanted to compare how well these stacked up against
21 the main decision rule that I was following.

22 Q. So that was to some degree a separate sort of
23 measure than what was in these checklists, that seeing
24 if what you used was under 20 percent from this book?

25 A. Yeah, whether I would have -- you know,

1 roughly is how I arrived at my decisions, did I arrive
2 at correct decisions. I believe that I did.

3 Q. Got you. Let's look at Factor 2.

4 A. Okay.

5 Q. You have all three here checked under the
6 "Weighs in Favor of Fair Use" column?

7 A. Yes.

8 Q. And none under "Weighs Against Fair Use"; is
9 that right?

10 A. That is correct.

11 Q. Just look at the third box, "Important to
12 educational objectives." Can you tell me whether you
13 see a difference, and if so, what that difference is
14 with the last box under Factor 1, which is, "Use is
15 necessary to achieve your educational purpose."

16 A. I think one way to think about it is imagine
17 you are on a shore, there is a row boat in front of
18 you. You want to get to the other side. The question
19 of whether or not you need oars, which is what I take
20 Factor 1 to be, the last item in Factor 1, compared to
21 whether it is a good idea to go across the body of
22 water to the other side is what I take the third item
23 of Factor 2 to mean, or something along those lines.

24 Q. Wouldn't given that analogy any work that you
25 choose to use in your class automatically lead you to

1 checking that third box under Factor 2?

2 A. Assuming I'm choosing readings wisely.

3 Q. And, in fact, wouldn't given your teaching
4 Political Science, the types of readings that we see
5 you assigning here, wouldn't you basically
6 automatically check all three of these Factor 2 boxes
7 in pretty much every situation, apart from maybe
8 assigning a novel or a play or something?

9 A. I imagine that item number two -- I don't
10 think I would always be assigning published work. As I
11 mentioned before, in this class I did seek permission
12 from a colleague at Yale whether I can present his
13 work, and it's not uncommon to assign, particularly in
14 graduate courses, stuff that's not yet officially
15 published. So I don't think that I would automatically
16 do published work. I think that the preponderance of
17 what I would assign would count as published work.

18 Yes, I imagine factual or nonfiction work would --
19 I would usually check, although as you mentioned, I
20 don't think that would be -- it's possible to imagine
21 situations in which I may choose to do something
22 fiction.

23 Q. Hasn't happened yet at GSU, though, right?

24 A. It has not happened at GSU.

25 Q. For your courses?

1 A. For my courses. And I like to think that I
2 choose my readings well and so that they would be
3 important to the educational objectives. At the same
4 time, I could imagine from time to time assigning
5 something that would be of more secondary importance
6 and less essential. I can't imagine I would ever
7 assign anything that would be genuinely unimportant.

8 Q. So when all is said and done, Factor 2 then
9 generally would be either 3-0 or 2-to-1 for the
10 preponderance of the readings you assign?

11 A. I assume so.

12 Q. Look at Factor 3. Well, Factor 2, you didn't
13 actually check the box at the bottom of each column
14 adding them up, but I assume you would have checked
15 "Factor Weighs in Favor of Fair Use"?

16 A. Yes.

17 Q. Factor 3, you've checked here under the Weighs
18 in Favor of Fair Use, "Small portion of work used."

19 A. Uh-huh.

20 Q. Tell me about how you arrived at that version.

21 A. Using the 20 percent guideline.

22 Q. And so under 20 percent, as you understand it,
23 would be small portion?

24 A. Yeah, more as, you know, a rough guideline. I
25 don't -- I think I also looked at how many of the --

1 versus the total number of chapters and the number of
2 topics that were covered in the Oxford Handbook.

3 Q. Tell me about that, what was your thought
4 process there?

5 A. I think that there were 15 or 16 different
6 chapters and covered a wide variety of topics relevant
7 to Political Psychology.

8 Q. Would it be helpful to look at the Table of
9 Contents?

10 A. Probably.

11 Q. I mark this as Exhibit 249.

12 (Plaintiff's Exhibit 249 was marked for
13 identification.)

14 Q. I will represent that this is copy of the
15 Table of Contents that I had printed out from the
16 Amazon site for the book. Take a look and tell me if
17 you recognize this from your experience with this book
18 as being --

19 A. Yes, it appears to be accurate.

20 Q. And so tell me now what you were referencing
21 in terms of --

22 A. Yeah. There are 21 chapters, of which I used
23 a total of three. It covers one, two, three, four,
24 five extremely broad topics within Political Science,
25 and I assigned readings from just one of those five

1 broad topics. And so to me that strikes me as a small
2 portion.

3 Q. And just the chapters you assigned were
4 chapters one, chapters two and --

5 A. Six.

6 Q. And six. So the introduction it looks like
7 and then two chapters from the Theoretical Approaches
8 section?

9 A. Yes.

10 Q. Now, the 20 percent, let's just -- tell me how
11 you arrived at that or what your thought process there
12 was in terms of the percentage that you used.

13 A. Again, that's a guideline I learned as a
14 graduate student at Duke.

15 Q. So just looking at the back page, if you can
16 confirm your process here to me, it looks like there
17 were around 795 pages in the book. The Index starts at
18 795; is that right?

19 A. Yeah. I think the front page sometimes, the
20 front page says. I imagine for page numbers, I
21 probably looked at -- like you did, looked at the
22 Amazon page and said how many pages are there.

23 Q. And then took the total length of the three
24 chapters combined?

25 A. Uh-huh.

1 Q. And put it over 795?

2 A. Or some number. If not 795, close to 795.

3 Q. And what do you recall the percentage you got
4 for that?

5 A. It was either 7 or 11. I can't remember
6 which.

7 Q. In either event, would you consider that to be
8 a small portion?

9 A. Yes. Yes.

10 Q. Looking under Factor 3 in the third box,
11 "Amount taken is narrowly tailored to educational
12 purpose." Just tell me again how do you distinguish
13 that from the last box under Factor 1 and the last box
14 under Factor 2?

15 A. To extend my row boat metaphor, I would take
16 it to mean that would oars, you know, sort of the
17 minimal thing necessary to get you across versus
18 getting an outboard motor and trying to use more than
19 is necessary.

20 Q. And that's factor -- that's how you understand
21 Factor 1?

22 A. Yes.

23 Q. The "Use is necessary to achieve your intended
24 educational purpose"?

25 A. Factor 3. So again with the rowboat metaphor,

1 oars would be necessary. That would be Factor 1. In
2 Factor 3, it would be a consideration of, say, oars
3 versus outboard motor.

4 Q. I see. And in what case would a reading that
5 you would assign be the outboard motor? I mean, would
6 you assign, you know, essentially something not
7 narrowly tailored to the educational purpose?

8 A. I don't think that I would, but, again, as I
9 mentioned before, I felt as I assigned readings,
10 everything I did was consistent with fair use under
11 copyright law. So since I believe that I behaved
12 consistently with that, I can't -- yes, I would not
13 imagine veering from narrowly tailored.

14 Q. Under the "Weighs Against Fair Use" column,
15 you didn't check anything. Is it right that if the
16 large portion -- you would have checked "Large portion
17 or entire work used" if used over 20 percent?

18 A. Probably, yes.

19 Q. Tell me about the "heart of the work" box.
20 You didn't check that. What do you understand that to
21 mean?

22 A. I take it to mean the core central argument,
23 that the reason any -- the original content left after
24 you use that, original or novel or interesting or
25 important. That there's still -- if you've read -- if

1 I have assigned one chapter that makes reading the rest
2 of it futile or pointless, but as long as there is
3 reason to continue reading the rest, I would consider
4 that not carving out the "heart of the work."

5 Q. So is that -- just help me. Is it the case
6 that you can imagine where a single chapter or two
7 chapters of a work with ten or twelve chapters would
8 ever meet that criteria as being the heart? In other
9 words, two chapters would render the rest superfluous?

10 A. I don't have any specific examples off the top
11 of my head, but I believe that could be the case.

12 Q. What about in this Oxford example we are
13 looking at here where it is a compilation of articles
14 by different authors, would it ever be the case that,
15 you know, one or two or even three or four chapters
16 from a 15-chapter compilation would pass the test of
17 being the heart as you just defined it?

18 A. From the 21 chapters of this book that is
19 designed to be a broad overview of the subdiscipline of
20 clinical psychology, I do not think that selecting any
21 three or four articles would likely be in violation of
22 fair use.

23 Q. Well --

24 A. Or taking out the heart of the work.

25 Q. I mean, could you imagine if we used 20 out of

1 21, that wouldn't the 21st chapter still be something
2 different or unique, as you defined it, to the
3 compilation?

4 A. I think taking out 20 of 21 would be cutting
5 out the heart of the work.

6 Q. Where would you draw the line?

7 A. I don't know. I would have to do it case by
8 case.

9 Q. So this factor, again, you didn't necessarily
10 add them up in the bottom of each column, but I take it
11 this one would be 3-to-0 and you would check "Factor
12 Weighs in Favor of Fair Use"?

13 A. Yes.

14 Q. And I think you said this, but just so I'm
15 clear. When you determine a small portion, that was
16 adding the three chapters together, even though this
17 particular form just identifies one chapter at a time,
18 correct?

19 A. That is how I -- at the end of the process of
20 doing this, I reflected on what small portion should
21 be. Whether at the time I was doing this -- I'm not
22 exactly sure what order I did these in, for which
23 reading, so I can't say for absolute certain that when
24 I checked small portion here that I was thinking about
25 all three chapters combined and not just the one. The

1 only thing that I know for sure is that after doing all
2 of them and putting them together, I did calculate the
3 proportion of all three as a total amount, and judged
4 those to be consistent with a small portion.

5 Q. Sitting here now, putting aside what you were
6 thinking at the time, if you were to fill this out for
7 these same three chapters and you were confronted with
8 the small portion question, would you look at all three
9 chapters combined in filling that out?

10 A. Yes.

11 Q. Under Factor 4, in fact, I mark it for
12 original.

13 A. Uh-huh.

14 Q. You checked the first box, "No significant
15 effect on market or potential market for copyrighted
16 work." What did you understand that factor to mean?

17 A. I wasn't entirely sure how to do one and two,
18 and so I thought of it in terms of does my making these
19 three chapters available to the eight students in my
20 Political Psychology course significantly hinder sales
21 of the book as a whole. Then I said No. Then I also
22 said for "Use stimulates market for original work" I
23 clicked yes, because since it was a small portion of
24 the work as a whole, students who have chosen to take
25 Political Psychology course, that they may decide that

1 they would like to purchase the handbook themselves and
2 have access to the remaining chapters.

3 Q. Has it been your experience with any of the
4 books you've used that students have, in fact,
5 purchased the entire book based on your giving them
6 some smaller excerpt in your course via uLearn?

7 A. I think so. I don't remember students ever
8 coming up to me and saying I bought this because you
9 assigned a smaller portion.

10 Q. Are you aware of any students in this
11 particular class who bought the book?

12 A. This particular book, I don't.

13 Q. Did you consider the impact more broadly if,
14 you know, basically if every professor who used --
15 wanted to use the Oxford Handbook were to provide it to
16 students without charge as opposed to making them buy
17 it when you considered the impact on the market?

18 A. I do not think that I did.

19 Q. The third box says, "No similar product
20 marketed by the copyright holder." What did you
21 understand that box to mean?

22 A. I'm not aware of any other broad overview of
23 the subdiscipline of Political Psychology to be
24 published by Oxford.

25 Q. Did you limit this to -- you did limit this to

1 Oxford when you made that consideration?

2 A. I'm actually not aware of anything similar at
3 all, but I think that when I did it, I made it specific
4 to Oxford.

5 Q. And tell me about "Licensing or permission
6 unavailable." You didn't check that or on the other
7 side, in the Weighs Against Fair Use column, "Licensing
8 or permission reasonably available." Did you consider
9 checking either of those boxes?

10 A. I don't remember. I may have thought about
11 clicking -- clicking, checking unavailable just because
12 I don't particularly know if it is or not, but then
13 decided that isn't exactly what's being asked.

14 Q. What do you understand it to be being asked
15 there?

16 A. Whether I personally know the availability of
17 licensing or permission programs.

18 Q. Let me just make sure I'm clear. You just
19 said that you actually don't know whether there are
20 licensing or permission programs, then why didn't you
21 check it?

22 A. I'm sorry. I may have misspoke. That it's --

23 Q. If I could, let me start over with a new
24 question. Be a little more clear. Did you consider
25 this objective or subjective?

1 A. I would only be able to check either the left
2 column or the right column if I knew affirmatively one
3 way or the other. As I don't know either way
4 affirmatively, I checked nothing.

5 Q. I see. And so just to be clear, then, but it
6 was based on your knowledge one way or the other, not
7 objectively, whether these licensing or commission
8 mechanisms may exist out there independent of your
9 knowledge of them?

10 A. Yes, I believe that's how I felt on that.

11 Q. The next line "Supplemental classroom
12 reading," and I will ask you to tell me how you
13 understood that as compared to the check box in the
14 second column which is "Required classroom reading,"
15 which you checked?

16 A. It's something that I expected students to
17 read and that we would be talking about the reading in
18 class, so if I cold-called on them.

19 Q. They could answer the question?

20 A. Yeah.

21 Q. You checked the last two boxes. I take it the
22 second to last is because -- well, because you own a
23 copy or because the library?

24 A. It's because I personally own a copy.

25 Q. Did you understand that to mean you particular

1 owned the copy?

2 A. I understood it to mean either me or the
3 institution. Although I may have learned that later,
4 because of all of the ones that we're going to go
5 through, there's only one that I didn't personally own
6 a copy. And I actually can't remember if I checked it
7 in that or not when I first filled it out. I may have
8 checked it later.

9 Q. Just looking back at the first, significant
10 effect on market, at what point would you say with this
11 Oxford work that we're looking at here, 21 chapters, at
12 what point would you say that there would be -- you
13 know, looking over to the fair use,
14 Weighs Against Fair Use column, a significant
15 impairment of the market? Where would you draw that
16 line?

17 A. I'm not sure.

18 Q. If you used ten chapters, would you consider
19 that to significantly impair the market?

20 A. I don't understand "impairs the market" to be
21 a part of amount.

22 Q. Explain.

23 A. You're saying the quantity that I assigned of
24 a particular work would affect market, and I don't -- I
25 did not understand Factor 4 to be asking about the

1 quantity of any particular work that would be assigned.

2 Q. I see. What do you understand it to be
3 asking?

4 A. The number of copies.

5 Q. And where would you draw the line there? How
6 many students would be enough for you to consider to be
7 impairing the market?

8 A. I know this is a wide range. Somewhere
9 between 8 and 48. Eight being the standard graduate
10 course, and 48 being standard in an undergraduate,
11 upper level undergraduate course.

12 Q. And so --

13 A. But that's off the top of my head right now.

14 Q. Let me make sure I understand. So if it was a
15 course of 30 students that you provided these works to,
16 you would check "Significantly impairs market"?

17 A. Thirty I'm not sure. The threshold is
18 somewhere between 8 and 48.

19 Q. Well, let's say it's 50 students. For 50
20 students then for sure you would check "Significantly
21 impairs market"?

22 A. I think that I probably would.

23 Q. And what if it was only a couple of pages
24 rather than four chapters?

25 A. Well, it's my understanding that Factor 4 is

1 separate from Factor 3, and you take all four factors
2 as a whole and that any one particular factor doesn't
3 rule in or rule out whether something is allowed under
4 fair use. So that one could check "Significantly
5 impairs market" and through the other three factors
6 still, especially if it's a small quantity under Factor
7 3, fairly post that under fair use.

8 Q. I see.

9 (Plaintiff's Exhibit 250 was marked for
10 identification.)

11 Q. Let me show you what I will mark as
12 Plaintiff's Exhibit 250.

13 A. Are there any things that you want me to
14 currently keep out?

15 Q. Maybe the Table of Contents, but other than
16 that, I don't think so. Also give you what I will mark
17 as 251.

18 (Plaintiff's Exhibit 251 was marked for
19 identification.)

20 Q. Now, 250 is a document marked GSU 008675, and
21 251 is a document Bates stamped Georgia State 0033642.
22 Actually, let's look at the second one first, at 251.
23 Can you just confirm for me that is the Sears, Huddy,
24 and Jervis chapter that you provided the students?

25 A. It is.

1 Q. Put that one aside. And then looking back at
2 250. If you would start on this one for me by looking
3 at the last page, which appears to be a printout from
4 Amazon.com.

5 A. Yes.

6 Q. What was -- what is that or why is that there?

7 A. Oh, just to show that it shows the date that I
8 purchased this item just to show that I personally
9 owned a copy.

10 Q. And where did you get this page from?

11 A. From Amazon.com.

12 Q. So when you filled out the checklist, you went
13 into Amazon and found this old record and printed it
14 up?

15 A. Yes.

16 Q. Let's go back to page one. Again, date and
17 course and term aren't completed, but I take it the
18 date is the same as we discussed before?

19 A. Yeah.

20 Q. And your course was 8190 course?

21 A. Yeah.

22 Q. Now, here under Factor 1, you've got the same
23 box that's checked in the first column, "Weighs in
24 Favor of Fair Use"?

25 A. Uh-huh.

1 Q. And then in the second column, you have in the
2 "Weighs Against Fair Use" column you have
3 "Non-transformative" checked?

4 A. Yes.

5 Q. And for the reasons we discussed with
6 reference to the previous checklist --

7 A. Yes.

8 Q. -- you hadn't checked it there, but would have
9 if you were to do it again?

10 A. I'm sorry. Say that again.

11 Q. Strike that question. That's -- and the first
12 factor, again, for this one is 3-to-1 in favor of fair
13 use; is that it?

14 A. Yes.

15 Q. And why is it that you checked here that
16 "Factor Weighs in Favor of Fair Use" at the bottom,
17 whereas you didn't before?

18 A. I don't remember for sure. My guess is that
19 the previous one we did was one that I either did
20 earlier or late in the process or I was just
21 inconsistent.

22 Q. That's okay. Factor 2, again, this looks,
23 just so I'm clear, it was 3-0 in favor of weighs in
24 favor of fair use; is that right?

25 A. Yes.

1 Q. And, again, Factor 3 also 3-0?

2 A. It is.

3 Q. And just here again, when you were looking at
4 small portion, were you considering all three chapters
5 from this handbook combined, or were you looking at
6 just the particular chapter on this checklist?

7 A. The same answer as before. In terms of
8 filling out this particular checklist, as I was doing
9 -- I did them in succession, and I honestly don't
10 recall as I was going through and filling it out
11 whether I judged small portion of work as this
12 particular chapter or the totality of everything I
13 selected from the -- from the book. But I did make
14 sure that at the end of the process that I added
15 everything from any particular work together and wanted
16 to make sure I felt comfortable I was using a small
17 portion in relation of everything I assigned from a
18 work in relation to the total of a work.

19 Q. And as you sit here now, were you to do it
20 again, you would consider all three chapters when
21 looking at this small portion versus large portion
22 choice under Factor 3?

23 A. Yes. Yes.

24 Q. Would you do the same for the second choice,
25 whether portion used is central or not to the entire

1 work?

2 A. Yes. Yes. Yeah, absolutely. As I mentioned
3 before, this is a reading that I actually would be
4 unlikely to use again in the future.

5 Q. My question gets more to the process of
6 filling out than these particular -- the particular
7 reading edition here.

8 A. But I'm answering these questions in relation
9 to specific readings.

10 Q. I understand. For choice three, same
11 question, as you sit here now, you understand or would
12 you approach your answering the third box by looking at
13 the three chapters total and considering whether that
14 amount taken is narrowly tailored, or would you check
15 that based just on the single chapter identified on
16 this checklist?

17 A. I think all three.

18 Q. All three. You would base on looking at the
19 chapters you wanted to use collectively?

20 A. Again, if I do these checklists in the future,
21 which I assume that I will, I imagine that the process
22 I would go through would be similar to what I'm
23 describing, which is I would go through individual
24 readings and then I would group. If there was more
25 than one reading from one particular source, then I

1 would group those together and make an overall judgment
2 as to whether it's small or central or narrowly
3 tailored. But in terms of the process of filling it
4 out, I think that I may do one reading at a time and
5 then make an overall judgment of all of them together
6 at the end.

7 So it's possible that I can imagine checking small
8 portion of work used individually for multiple chapters
9 and then arriving at a decision that that whole -- that
10 the whole set would be too large an amount, at which
11 point I would either have to change the amount or
12 consider asking students to purchase the book.

13 MR. LARSON: I think we're at the end of our
14 tape, so why don't we take a quick break.

15 THE VIDEOGRAPHER: We're off the record at
16 3:31 p.m.

17 (Recess from 3:30 p.m. to 3:33 p.m.)

18 THE VIDEOGRAPHER: This is the beginning of
19 tape number three. The time is 3:35 p.m., and we are
20 back on the record.

21 Q. (By Mr. Larson) Let's turn to Factor 4 on
22 the chart, the checklist we were just looking at,
23 Plaintiff's Exhibit 250. Here you haven't checked the
24 first box, "No significant effect on market or
25 potential market for copyrighted work." Was that just

1 an oversight or --

2 A. I think it was an oversight. I don't recall
3 why I did or did not.

4 Q. Sitting here now would you check that box?

5 A. I think that I would, yes.

6 Q. Well, giving the class had eight students,
7 would you check that box?

8 A. Yeah.

9 Q. And this factor, although you didn't check the
10 box at the bottom, I take it this factor you would
11 check "Factor Weighs in Favor of Fair Use"?

12 A. Yes, I would.

13 Q. So in total, each factor, I think, on this
14 chart would weigh in favor of fair use, right?

15 A. Yes.

16 Q. Do you understand this checklist to work
17 additively? By that I mean that if you have three in
18 favor of fair use and one weighing against fair use,
19 that the conclusion is that it's a fair use?

20 A. It's my understanding that that's a guideline,
21 but that it is not guaranteed or set in stone. That if
22 it's 3 to 1, that it probably is consistent with fair
23 use, but there may be instances in which the one would
24 outweigh the other three. I can't think of specific
25 examples. That's just my general understanding of what

1 the factors mean.

2 Q. Do you have any sense of whether there's a
3 priority among the factors?

4 A. I do not.

5 Q. So it's possible that it could be that Factor
6 2 was so egregiously in favor or against fair use that
7 it wouldn't matter that one, three, and four were in
8 favor of fair use?

9 A. In thinking about it now, Factor 3 perhaps
10 should take precedence over the others. I don't know.
11 You ask me on a different day, I might give a different
12 answer.

13 Q. Put that one aside.

14 (Plaintiff's Exhibit 252 was marked for
15 identification.)

16 Q. Let me give you what I'm marking Plaintiff's
17 Exhibit 252.

18 A. Do I need to keep out 249 still?

19 Q. No. This is a document that's Bates stamped
20 GSU 008671. Can you identify Plaintiff's Exhibit 252
21 for me?

22 A. It appears to be the checklist I filled out
23 for the third chapter that I assigned from the Oxford
24 Handbook of Political Psychology.

25 Q. And Factor 1 is three in favor of fair use; is

1 that correct?

2 A. It is.

3 Q. And you would, based on your prior testimony,
4 if you were to fill this form out now, you would check
5 "Non-transformative"; is that right?

6 A. Yes, I would.

7 Q. Factor 2 is 3-0 in favor of fair use?

8 A. Yes.

9 Q. For the same reasons as the last chapter we
10 discussed?

11 A. Yes.

12 Q. And same in Factor 3, 3-0 in favor of fair
13 use?

14 A. Yes.

15 Q. Any change in analysis from the last chapter
16 we discussed?

17 A. No.

18 Q. And Factor 4, any difference in your analysis
19 here from the last chapter we discussed from this
20 handbook?

21 A. No.

22 Q. And that one, if I'm correct here, is five
23 factors to one in favor of fair use?

24 A. Yes.

25 Q. So the bottom line on this, if I'm not

1 mistaken, is that for using three chapters from a book,
2 that amounts to somewhere in the range of 11 percent --

3 A. Seven to eleven.

4 Q. -- of the book? Essentially for all three
5 factors, every factor comes out in favor of fair use.

6 And most of them are -- looking at the entire chart,
7 there were only one to two checks total weighing
8 against fair use; is that right?

9 A. Yes.

10 Q. Put that one aside.

11 MR. LARSON: Go off the record for just a
12 minute. Mark several records just to save some time.

13 THE VIDEOGRAPHER: We're off the record at
14 3:41 p.m.

15 (Recess from 3:40 p.m. to 3:41 p.m.)

16 THE VIDEOGRAPHER: We're back on the record at
17 3:42 p.m.

18 (Plaintiff's Exhibit-253, 254, 255 and 256 was
19 marked for identification.)

20 Q. (By Mr. Larson) I put four exhibits in front
21 of you. Can you identify for me what I've marked as
22 Plaintiff's Exhibit 253, Bates number GSU 008678?

23 A. Fair Use Checklist that I filled out for three
24 chapters from the book Social Cognition by Fiske and
25 Taylor.

1 Q. And can you just verify for me that what I've
2 marked as Plaintiff's Exhibits 254, 255, and 256, which
3 were produced to us in discovery from the uLearn
4 system, are those three chapters?

5 A. Yes.

6 Q. And those three chapters comprise pages 25 to
7 102 of the book?

8 A. Yes.

9 Q. And do you know how many pages the book has?

10 A. Off the top of my head, I do not. Although I
11 think this was about 15 percent of the total, and since
12 it's about 80 pages, that would make it, I guess,
13 approximately 480.

14 Q. And you recall from doing this that you
15 calculated to be in the range of 15 percent?

16 A. I believe so. I don't have the post-its in
17 front of me, but I believe it was 15. It may have been
18 a little bit less, 11 to 15 but --

19 Q. Now, let's look at Plaintiff's 253, which is
20 the checklist.

21 A. Uh-huh.

22 Q. Just tell me here why is it that this one you
23 completed a single checklist for three chapters rather
24 than doing an individual checklist for each of the
25 three chapters as you did with the Oxford Handbook that

1 we looked at?

2 A. Because it's same authors for all three. The
3 reason I divided them up was file size.

4 Q. File size?

5 A. Yeah, as a scanned PDF so that the file would
6 not be too large.

7 Q. The reason you divided them up when you gave
8 them to students, you mean?

9 A. Yeah, into the chapters two, three and four
10 from the Fiske and Taylor. So I think of it as one
11 general background reading. It's part of an
12 undergraduate psychology textbook, and I don't assume
13 that my graduate students or really any of my students
14 in Political Psychology necessarily have a psych
15 background. So I gave this to them in case they wanted
16 to read it.

17 Q. See, my question's slightly different, though.
18 You just filled out one Fair Use Checklist for all
19 three of the chapters here, and I'm trying to
20 understand why you didn't -- why the different approach
21 on the checklist.

22 A. I'm sorry. I thought I had answered this.

23 Q. You may have. I may be missing.

24 A. Because I think of chapters two, three and
25 four as one reading. And the only reason that they are

1 in separate files on the uLearn system was so that the
2 file size of the scanned images -- scanned images tend
3 to be large -- was not too big for the -- I don't know
4 if there is a limit that uLearn will handle, but so
5 that it was easier for students to deal with in terms
6 of downloading in case they had slow Internet
7 connection.

8 Q. Given all that, why then the previous three
9 chapters we looked at from the Oxford Handbook wouldn't
10 the same reasoning apply, and why did you do three
11 checklists there rather than just one like you did
12 here?

13 A. Again, because those are distinct readings
14 from different authors, and as I also explained, that
15 when making the final judgments, I considered all three
16 in total.

17 Q. Now, let's take a look at Factor 1.

18 A. Yes.

19 Q. Here you did not check the last box under
20 Weighs in Favor of Fair Use, "Use is necessary to
21 achieve your educational purpose." Why is that not
22 checked here whereas it was before?

23 A. It was a background supplemental reading.
24 Didn't plan to talk about it in class. We didn't talk
25 about it in class. It was for their -- in case they

1 wanted access to it.

2 Q. And that --

3 A. I have no idea if they read it or not.

4 Q. That's not indicated on the syllabus, right?

5 A. That is correct, which we -- yeah, we

6 discussed before.

7 Q. You communicated that to them verbally?

8 A. Yes, I did.

9 Q. Despite that, Factor 1 still weighs in favor
10 of fair use, though, right?

11 A. Yes.

12 Q. And it's 2-to-0?

13 A. Yes.

14 Q. Now, let me ask, you didn't -- given what you
15 just told me about the use being supplemental and not
16 required, you didn't check in the "Weighs Against Fair
17 Use" column, "Use exceeds that which is necessary to
18 achieve your educational purpose." Why is that?

19 A. I don't know. I don't recall. I didn't --
20 it's hard for me to say. Although I think that there's
21 probably -- there's middle ground between necessary and
22 exceeds.

23 Q. So sitting here now, would you still keep that
24 box unchecked?

25 A. I think that I would, yeah. It's not

1 necessary, but at the same time I don't think that it
2 is in excess of what would be necessary. That it's
3 helpful, but not essential.

4 Q. Got you. So even sitting here now, even if
5 you were to check the "Non-transformative" box in
6 "Weighs Against Fair Use," this factor overall would be
7 2-to-1 in favor of fair use?

8 A. I'm not sure that I would assign it again.

9 Q. The factor --

10 A. But make it available.

11 Q. Factor 2 is 3-0 in favor of fair use, right?

12 A. Yes.

13 Q. Tell me about Factor 3. Here you haven't
14 checked anything with respect to the size of the
15 portion. Why was that left blank?

16 A. I assume because I hadn't done the percentage
17 calculation yet, or it was less than 20 but closer to
18 20 than some of the other readings. I think that it is
19 a small portion. If I were to do it again, I think I
20 would check small portion, but at the same time I don't
21 -- I think that I would be unlikely to ever make
22 supplemental readings available to students again.

23 Q. Why is that?

24 A. This has been an unpleasant process.

25 Q. I don't follow.

1 A. Being deposed in the lawsuit.

2 Q. What does that have to do with whether a
3 reading is supplemental or not?

4 A. That since I feel that I have done nothing
5 wrong, I don't fully understand why I'm being deposed,
6 and so I'm going to go out of my way to go well beyond
7 what I think would be reasonable under fair use.

8 Q. I just want to make sure I'm clear because
9 we're talking about small portion versus large portion.
10 And I'm not -- I don't understand how supplemental fits
11 into this particular factor that we're talking about.

12 A. We can postpone that until we get to Factor 4.

13 Q. But sitting here now you would check small
14 portion?

15 A. I believe that I would, or here's how I can
16 bring it back in fully. Why I went off and jumped to
17 Factor 4 is if I'm thinking about what would I do
18 again, I'm saying that I don't think I would be
19 confronted with the same situation again because I
20 would be unlikely to --

21 Q. To use this particular --

22 A. To use this particular reading, and one of the
23 main reasons I would be unlikely to use, or make it
24 available. I may put it on a syllabus but not make it
25 available, is because of the supplemental nature.

1 Q. I see. You also didn't check under Factor 3
2 either that it -- that the portion is central to the
3 work or not central to the work. Tell me about your
4 decision process there.

5 A. I'm not sure that I gave this one as much sort
6 of careful thought. I think the extent to which I
7 clicked that -- I'm sorry, checked that. Used to
8 online stuff -- is when I took a graduate political
9 psych course, these three chapters were given as
10 supplemental readings for that, and I sort of copied
11 what I had already done. And to be honest, I'm not
12 sure that I've read the rest of the book.

13 Q. And so you didn't check that sort of the
14 summary boxes for this factor, but I take it that they
15 add up that the factor weighs in favor of fair use; is
16 that right?

17 A. Yes, I think so.

18 Q. Zero checks on the "Weighs Against Fair Use"
19 side?

20 A. Yes.

21 Q. And under Factor 4, looks to me to be five
22 checks in favor of fair use and none weighing against
23 fair use?

24 A. Yes.

25 Q. With respect to the licensing or permission

1 reasonably available or licensing or permission not
2 available, you didn't check either there. Why was
3 that?

4 A. Because I don't know if it's unavailable or
5 reasonably available.

6 Q. And "Numerous copies made or distributed," you
7 didn't check that in "Weighs Against Fair Use." Why
8 not?

9 A. Because I put one scanned copy on a gated Web
10 site for eight students.

11 Q. Why didn't you check one or few copies made or
12 distributed on the other side in "Weighs in Favor of
13 Fair Use"?

14 A. I'm not sure. My guess is I got to five and
15 once at 5-0, that the scholasticism of arguing what is
16 or is not a few copies.

17 Q. This one is you have "Supplemental classroom
18 reading" checked?

19 A. Yes.

20 Q. I take it for the reasons we've been
21 discussing?

22 A. Yes.

23 Q. With respect to the numerous copies or one or
24 few copies, is it the same test that you told me
25 before, somewhere between 8 and 48?

1 A. Yeah, I suppose so.

2 Q. So if it were 50, say, you would check

3 "Numerous copies made or distributed"?

4 A. In the abstract now, I will agree that I think
5 that I would.

6 Q. And also significantly impairs market or
7 potential market?

8 A. I think probably. Again, as a supplemental
9 reading, it's a little bit harder for me to say because
10 I think the calculus that I would make would be if I
11 think that I'm significantly impairing the market for a
12 supplemental reading, then I would be unlikely to.

13 Q. Let's assume just for this question that it's
14 required reading. If it were required, under your
15 test, the first box under "Weighs Against Fair Use,"
16 and the third box are essentially the same thing,
17 right? Your test is the same? Has to do with the
18 number of students in the class that you're providing
19 copies to?

20 A. I'm not exactly sure. I'm not sure. This is
21 outside of my area of expertise. So if I make one
22 scanned copy and put that on a gated Web site, I don't
23 know if that -- and multiple people can download it,
24 I'm not sure if that is one copy or if that is however
25 many copies are downloaded or if they are not

1 downloaded and people just access and read that one
2 particular copy. My guess is that's probably why I
3 chose not to check those, but I'm not sure that I --

4 Q. Well, let me just ask, the first box,
5 "Significantly impairs market," when you talked about
6 the number of students somewhere 8 and 48, would it
7 matter if they were downloading it and keeping a copy
8 or just reading it and viewing it on screen and not
9 keeping a copy or --

10 A. I think for the first one probably not. When
11 I think of the "One or few copies made or distributed,"
12 I'm thinking pre-Internet. How I did reserve readings,
13 I imagine probably similar how you did reserve readings
14 in college, which was go to the library. There was one
15 photocopy there or maybe three photocopies, and you
16 could check it out for two hours. If you wanted to go
17 make a copy, you could, or if you just wanted to read
18 it, you could. So I was thinking that those sort of
19 questions are more along the lines of number of
20 physical copies. Did you make a bunch of copies and
21 hand it out, rather than making it available online.
22 To the extent that's the same or different than market
23 affect, I'm not sure. They do seem -- there may be
24 similarities, but they do seem to me to be slightly
25 different questions.

1 Q. And what do you understand the next one to
2 mean, "Repeated or long-term that demonstrably affects
3 the market for the work"?

4 A. If I were to do the same set of readings
5 semester after semester after semester, that that
6 potentially could be a problem of fair use.

7 Q. And, again, where would you draw the line?
8 How many semesters is too many, or how many semesters
9 would lead you to check this box?

10 A. I'm not sure. I haven't been confronted with
11 that situation yet.

12 Q. If you teach 4190 or 8190 this Fall, say,
13 would you check this box, and use the same readings, I
14 should say?

15 A. It's a hypothetical. It's difficult for me to
16 answer because I'm not sure -- there are a lot of
17 changes I would make from the syllabus from the first
18 time to the next time.

19 Q. Let me ask you to assume that you would use
20 the same work again in the Fall semester for this same
21 class. Would that second -- would that use the second
22 semester be enough to check this box?

23 A. If it were the second time teaching the course
24 overall I would probably still not check it.

25 Q. Third time?

1 A. Possibly.

2 Q. So, again, just to summarize, then, looking at
3 this chart over all, this is a work of three chapters
4 totaling over 75 pages, pages 25 to 102, and all four
5 factors as you filled this out were in favor of fair
6 use, correct?

7 A. Yes.

8 Q. And there are no checks in the "Weighs Against
9 Fair Use" side; is that right?

10 A. It appears that way in terms of how I filled
11 it out. Again, I did this as, you know, for me. So if
12 I were to fill this out and had to hand it to somebody
13 for review, as we discussed before in Factor 1, I would
14 check "Non-transformative".

15 Q. That was the only one on that side of all of
16 them, correct?

17 A. Most likely.

18 Q. Put that one aside.

19 (Plaintiff's Exhibit 257 was marked for
20 identification.)

21 Q. Let me mark as Plaintiff's 257 the document
22 that has the Bates number GSU 008668.

23 (Plaintiff's Exhibit 258 was marked for
24 identification.)

25 Q. Mark as Plaintiff's 258 document starting with

1 Georgia State 0033721.

2 Mr. Reifler, can you just identify for me

3 Plaintiff's Exhibit 257?

4 A. It appears to be the Fair Use Checklist that I

5 filled out for the Kuklinski and Quirk chapter of the

6 Lupia, McCubbins and Popkin book.

7 Q. And Plaintiff's Exhibit 258 is the PDF of that

8 chapter; is that correct?

9 A. Yes. The printout of it, yes.

10 Q. And that comprises pages 153 to 182?

11 A. It does.

12 Q. And you actually provided two chapters from

13 this, from this book, right?

14 A. I did. I also provided a chapter by Wendy

15 Rahn.

16 Q. Mark Plaintiff's Exhibit 259, document with

17 Bates number 008666.

18 (Plaintiff's Exhibit 259 was marked for

19 identification.)

20 Q. Can you identify this document for me?

21 A. Fair Use Checklist for the Rahn chapter,

22 Lupia, McCubbins and Popkin.

23 Q. Okay. And mark Plaintiff's Exhibit 260.

24 (Plaintiff's Exhibit 260 was marked for

25 identification.)

1 Q. Which is document starting with Bates number
2 Georgia State 0033710. Can you just confirm for me
3 that's the PDF of the Rahn chapter that's described in
4 the checklist in Exhibit 259?

5 A. Yes, the printout of the PDF.

6 Q. Let's go back to the checklist, Kuklinski and
7 Quirk checklist if we could.

8 A. Okay.

9 Q. Just for the record, this was also completed
10 at the same time that you completed the others that
11 we've been discussing?

12 A. Yes.

13 Q. And this was from the course --

14 A. 8190 course.

15 Q. 8190 course. And looking back, if you would,
16 at Exhibit 243, which is the -- doing a good job
17 keeping track. These two, the Kuklinski and Quirk PDF
18 is what we see at the end of the second row in
19 Exhibit 243; is that right?

20 A. Uh-huh.

21 Q. And the Rahn chapter is the one we see at the
22 end of the bottom row?

23 A. Yes.

24 Q. Okay. Now, again, here you did two
25 checklists, although two chapters are from the same

1 book, correct?

2 A. Yes.

3 Q. And why was that?

4 A. I looked at them each individually, and then,
5 again, as I mentioned before, I put them together and
6 looked at the total amounts from the two of them.

7 Q. Now, the --

8 A. I want to say seven percent.

9 Q. Well --

10 A. The total.

11 Q. The Kuklinski and Quirk chapter is 30 pages;
12 is that right?

13 A. Yes.

14 Q. And the Rahn chapter is 20 pages; is that
15 right?

16 A. Yes.

17 Q. So we've got 50 total?

18 A. Yes.

19 Q. And the book, do you recall the length of the
20 book?

21 A. I do not. We may be able to look it up.

22 Q. Yeah, I think we can. Mark as Plaintiff's
23 261.

24 (Plaintiff's Exhibit 261 was marked for
25 identification.)

1 Q. A document which I represent is a printout we
2 made from the Amazon listing for this book. Do you
3 recognize the cover page there of this book and Table
4 of Contents?

5 A. I do.

6 Q. If you look at the last page of Exhibit 261,
7 how many pages do you see that the book has?

8 A. The subject index starts on page 329, so has a
9 handful of pages more than 329.

10 Q. So in total you used 50 out of roughly 330?

11 A. Yeah, so that would make it approximately
12 14 percent.

13 Q. Okay. I'll take your word on that. And did
14 you -- when you completed the checklist, again, did you
15 consider -- take the two works together using that
16 14 percent figure or --

17 A. In going through individually I did not, but
18 then put them together. Again, I'm not exactly sure
19 how the documents were sent to you, but they were --
20 and how I handed them over to GSU they were clipped
21 together and had the little post-it treating it as a
22 total work.

23 Q. Let's look at the checklist for the Kuklinski
24 and Quirk, 257.

25 A. Okay.

1 Q. So here we have three checks in favor of fair
2 use under Factor 1 and none under "Weighs Against Fair
3 Use"; is that right?

4 A. Yes. And as before, I would click
5 "Non-transformative". Check "Non-transformative".

6 Q. 3-1 rather than 3-0?

7 A. Yes.

8 Q. And under Factor 2, it's, again, 3-0?

9 A. It is.

10 Q. And under Factor 3, 3-0?

11 A. It is.

12 Q. Would that change adding the two works
13 together, I'm sure somewhere in the range of 13,
14 14 percent?

15 A. No, I still think it would be small.

16 Q. And Factor 4 is looks like 4-to-1?

17 A. Yes.

18 Q. In favor of fair use?

19 A. Yes.

20 Q. And, again, here I assume you didn't check the
21 licensing or permission boxes because you just weren't
22 aware of whether or not there was licensing or
23 permission available?

24 A. Correct.

25 Q. Any other differences here between what we've

1 been discussing before in terms of how you did or would
2 check the boxes for Factor 4?

3 A. I can't think of any.

4 Q. So just to summarize, for 50 pages of an
5 approximately 330-page book, we've got all four factors
6 weighing in favor of fair use?

7 A. Yes.

8 Q. And by my count, two checks on the "Weights
9 Against Fair Use" side in the whole page, namely
10 "Non-transformative" and "Required classroom reading"?

11 A. Yes.

12 Q. Let me ask you a question. Given there are
13 eight people in the class, even if you use the whole
14 book, such that Factor 3 perhaps weighed against fair
15 use, wouldn't you still come out with the same result
16 on Factor 1, 2 and 4, and hence a finding of fair use?

17 A. It would come out, I think, to 3 to 1, but as
18 we discussed previously that it's not a simple being a
19 counting exercise of three versus one. It's the
20 totality of all of the parts of the checklist and using
21 the entirety of the work. If I were to assign an
22 entire book, I don't think that I would even go through
23 the checklist because I would just assign the whole
24 book.

25 Q. So --

1 A. More abstract, I don't know.

2 Q. But let's walk through these if we could just
3 quickly. Factor 1, would any of your checked boxes
4 change if you used the whole book?

5 A. Yes, I think that necessary would go to
6 excessive or technically exceeds.

7 Q. And why would that be the case if you felt the
8 whole book was necessary?

9 A. Assigning a whole book would be in terms of if
10 the factor's title purpose and character of use, sort
11 of the character of the use of the entire book would
12 strike me as excessive.

13 Q. I'm not clear I understand that. If you felt
14 that you wanted the students to read every chapter of
15 the work, why is it that you wouldn't check that the
16 "Use is necessary to achieve your intended educational
17 purpose"?

18 A. I don't know.

19 Q. Just wouldn't?

20 A. Idiosyncratic to me.

21 Q. Would anything under Factor 2 change if you
22 used the whole?

23 A. Factor 2, no, I don't think so.

24 Q. And what about Factor 4, and, again, in a
25 class with eight students?

1 A. Factor 4 I don't think so, but in Factor 3, at
2 least two of the three, large portion and central,
3 would change from in favor to disfavor. And given the
4 abstract questions of educational and intent, I
5 probably would check more than necessary, but I'm not
6 sure that we're interpreting those to mean the same
7 thing.

8 Q. Okay. Let's look at the Rahn checklist.

9 A. May I put this away?

10 Q. Yes. Help me out with the exhibit number on
11 that one for the record.

12 MS. JOHNSON: 259.

13 Q. So looking at this checklist, again, just for
14 the record, this was filled out at the same time as the
15 previous one?

16 A. Yes. Yeah. Again, I don't know exactly what
17 order. I may have been to lunch or class in between,
18 but approximately the same time.

19 Q. Any difference in Factor 1, your reasons for
20 filling out the boxes you did on Factor 1 from the
21 previous list?

22 A. No.

23 Q. And that's again 3-to-0 is listed here, but
24 potentially 3-to-1 if you checked "Non-transformative"?

25 A. Yes.

1 Q. Any difference in Factor 2 from the last list?

2 A. No.

3 Q. Any difference in your answers or
4 understanding of Factor 3 as compared to the last list?

5 A. No.

6 Q. And same question for Factor 4?

7 A. No difference from the Kuklinski and Quirk.

8 Q. Okay.

9 (Plaintiff's Exhibit 262 and 263 was marked
10 for identification.)

11 Q. 262 is Bates labeled GSU 008681. 263 is
12 labeled Georgia State 0033737.

13 A. Thank you.

14 Q. Can you identify Exhibit 262 for me?

15 A. This is the Fair Use Checklist for the
16 Sniderman, Tetlock and Elms chapter in the Kuklinski
17 Edited volume.

18 Q. This was required reading for the course?

19 A. It was.

20 Q. And 263 is the PDF of that reading?

21 A. It is the -- yeah, the printout of the PDF,
22 yes.

23 Q. And that's comprised of pages 254 to 288?

24 A. I assume that it does.

25 Q. That's what you identify here on the

1 checklist?

2 A. Yes.

3 Q. So that's 35 pages?

4 A. Yeah.

5 Q. Do you recall the percentage of this book that
6 you calculated?

7 A. I think six or seven.

8 Q. Now, Factor 1, as we've seen before, there are
9 three checks for "Weighs in Favor of Fair Use" and no
10 checks weighing against fair use; is that right?

11 A. Yeah, although I would change to
12 "Non-transformative".

13 Q. Factor 2 again is 3-0 in favor of fair use?

14 A. It is. I'm sorry. You said Factor 2,
15 correct?

16 Q. Yeah. Factor 3 is also 3-0?

17 A. It is.

18 Q. Did you also assign another chapter from this
19 book by someone named Birksted?

20 A. I'm sorry.

21 Q. I want to turn back to the syllabus for the
22 8190 course.

23 A. Can you tell me what exhibit that is?

24 MR. PARTHASARATHY: 246.

25 A. Sure it's not 245?

1 MR. PARTHASARATHY: 245 is 1101.

2 Q. If you look at the April 7th week, there's a
3 listing for an article by Jennifer Hochschild?

4 A. It was originally assigned. We decided not --
5 I didn't make it available so that we wouldn't go over
6 it.

7 Q. So I'm sorry. So that you wouldn't what?

8 A. So that we wouldn't -- it was already I
9 decided that the other four readings were plenty for
10 one week.

11 Q. Got it. You didn't go over in terms of number
12 of pages for that particular --

13 A. Yeah, I just meant -- I didn't make it
14 available and I didn't -- so that we wouldn't cover
15 that material in class.

16 Q. So returning to the checklist for the
17 Sniderman, Tetlock, and Elms chapter.

18 A. Yes.

19 Q. I take it when you -- Factor 3 was just based
20 on that chapter alone?

21 A. It was, yes.

22 Q. And Factor 4, if I'm correct here, there were
23 four checks in favor of fair use and one check against?

24 A. Yes.

25 Q. And your conclusion here then was this was

1 fair use?

2 A. Yes.

3 Q. All four factors counted, added up or came out
4 in favor of fair use, correct?

5 A. Yes.

6 Q. And, again, just two checks total on the
7 right-hand side for "Non-Transformative" and "Required
8 classroom reading"?

9 A. Yes.

10 Q. Tell me, look at the third page there on that
11 exhibit.

12 A. Uh-huh.

13 Q. Again, is this an Amazon page showing this is
14 a book that you purchased?

15 A. Yes.

16 Q. Did you have an understanding prior to going
17 through this checklist that your ownership of the work
18 mattered or not to the fair use analysis?

19 A. I think I had a vague sense that it maybe made
20 a small difference, but to be honest, I don't really
21 recall. The main criteria that I used was the
22 20 percent guideline I learned from Duke.

23 Q. Give you what I'll mark as Plaintiff's
24 Exhibits 264 and 265.

25

1 (Plaintiff's Exhibit 264 and 265 was marked
2 for identification.)

3 Q. 264 is Bates number GSU 008641. 265 is Bates
4 stamped Georgia State 0033671. Can you identify 264
5 for me?

6 A. 264 is the checklist for the reading I
7 assigned from John Zaller, "The Nature and Origin of
8 Mass Opinion." And 265 is the printout of the PDF.

9 Q. Pages 1 to 75, is that a single chapter or
10 multiple chapters?

11 A. It's four or five chapters, I believe. I
12 don't recall which.

13 Q. Take a look, flip through 265 if you would and
14 see if you can confirm how many chapters it is.

15 (Plaintiff's Exhibit 266 was marked for
16 identification.)

17 Q. Let me just mark as 266 what I will represent
18 to you is a printout from Amazon of the cover page and
19 Table of Contents for Mr. Zaller's book. Do you
20 recognize 266 as being that?

21 A. Yes. Would be the first four chapters.

22 Q. And what's the total number of pages from
23 Exhibit 266?

24 A. 75.

25 Q. I'm sorry. The total number of pages from the

1 book.

2 A. Oh, it would be about 375. I don't know
3 exactly. Oh, by looking at it, the index starts on
4 page 359, so little bit longer than 359.

5 Q. You would count the index in terms of
6 calculating the 20 percent?

7 A. I think so.

8 Q. So we are looking at 75 pages out of 375?

9 A. Yeah.

10 Q. If my math is right, that's right on the
11 20 percent figure?

12 A. I believe when I calculated it, it was
13 slightly over. It was like 21 point something percent.

14 Q. Let's look at the checklist.

15 A. Okay.

16 Q. 264. Now, here you've got two check boxes,
17 the first two boxes under Factor 1, and then one check
18 box "Non-transformative" under Factor 1 on the "Weights
19 Against Fair Use"?

20 A. Yes.

21 Q. Tell me about you don't have the last box
22 under Factor 1 checked, "Use is necessary to achieve
23 your intended educational purpose." Is that
24 intentional or oversight?

25 A. It is because there's a -- we can talk about

1 it now or when we get to Factor 3, but there's an
2 uncertainty I have in terms of this reading that I
3 assigned in particular and how it relates to copyright
4 law.

5 Q. Tell me. If you want to refer to Factor 3 in
6 answering, that's fine.

7 A. Yeah. What makes it difficult is the portion
8 of this book that I assigned is substantially similar
9 to an article published in the American Journal of
10 Political Science, John Zaller and Stanley Feldman are
11 authors. I believe that was turned over to you. I
12 turned it over to GSU as a part of all this. And the
13 content of that journal article is essentially
14 identical to the 75 pages of this book that I assigned.
15 So while I think that the content is essential -- what
16 was the exact wording -- is necessary, that it became
17 difficult for me to answer that specific question of
18 this particular reading of pages 1 through 75 versus
19 the journal article.

20 Q. Okay. Now, is the journal article, you said
21 it's from the AJPS?

22 A. It is.

23 Q. Is that a journal that Georgia State ascribes
24 to?

25 A. It is.

1 Q. Why isn't it, then, that you just -- why did
2 you not do the journal article rather than giving them
3 this page 1 to 75 of this book?

4 A. Because this actually relates to, I think,
5 Factor 4 and the question of stimulating the market.
6 The first section --

7 Q. Before you answer that, my question isn't
8 about what you filled out on the list.

9 A. But that's part of the --

10 Q. Okay. Sorry. Go ahead, sir.

11 A. So the first section of this book and that
12 journal article is a theory of how people answer survey
13 questions. Now, what this book is most known for is
14 not that first section of the book pages 1 through 75.
15 It's more known for the section that follows, 76
16 through the end, which has to do with information flows
17 and communication and persuasion. And I ultimately
18 decided to use this rather than the journal article so
19 that students would -- so that I could tell them how
20 important this book is overall in political science,
21 and let them know that there are, in fact, two separate
22 sections to the book. That the second section is
23 something that they would have to know the material in
24 order to pass their comprehensive exams, if they were
25 to test in American Politics or Political Behavior. So

1 I wanted them to think about this in terms of this
2 particular book and sort of stress the importance of
3 that second section of the book.

4 Now, the other thing, my course this time didn't
5 really cover that second portion of the book, which is
6 really what I think that book is most known for. In
7 part because a fair number of scholars see part one as
8 to some degree contradictory to part two.

9 Q. So given that, I take it the journal, using
10 the journal article wouldn't have fulfilled that
11 purpose you just described?

12 A. Yes.

13 Q. So given that, then why -- wouldn't that lead
14 you to check under Factor 1 that the "Use is necessary
15 to achieve your intended educational purpose"?

16 A. I suppose so.

17 Q. Under Factor 3, you -- the same issue came up.
18 You have a note here saying it's difficult to say, and
19 I take it that's a reference to the issue of whether or
20 not this is the heart of the work?

21 A. That mainly has to do with -- the arrow is
22 mainly to enforce clicking the large, and then the
23 question mark is on the whether it's central to the
24 work or not.

25 Q. Let's take the "portion" question first.

1 A. Okay.

2 Q. On this one you've checked large portion
3 rather than small portion?

4 A. Yes.

5 Q. What led you to check large portion?

6 A. That it's slightly above the 20 percent
7 guideline.

8 Q. And the question mark next to -- well, you
9 have checked that it's not central or significant to
10 the entire work as a whole. Why is that checked?

11 A. Because the same content is available via the
12 journal article.

13 Q. So because it's -- because that content is
14 available in some other form, then its use in this
15 particular book means that it's not central to this
16 book?

17 A. That and the fact that I think the second
18 portion of the book, the communication flow arguments,
19 which is not available in journals, to really be the
20 core. That's what I think the book is more known for.
21 If one wants that content, they have to buy the book.
22 If people want the theory of survey response, they can
23 read the AJPS article. There's, in fact, an additional
24 article that's also substantially similar that's
25 published in, I want to say, Political Analysis, which

1 is another journal.

2 Q. So given all this that we've just talked
3 about, the upshot is that under Factor 1 you still came
4 out in favor of fair use after that factor, despite not
5 checking the last box; is that right?

6 A. Yes.

7 Q. And Factor 3, it still came out 2-1 in favor
8 of fair use despite having checked the large portion
9 box, right?

10 A. Yeah, I -- yeah, I think so.

11 Q. That's what it says here, right?

12 A. Yeah.

13 Q. You have "Factor Weighs in Favor of Fair Use"
14 checked, right?

15 A. Yes, I do.

16 Q. Okay. And then in Factor 4, we've got five
17 boxes checked in favor of fair use, the first three and
18 the last two?

19 A. Yes.

20 Q. And one checked in the "Weighs Against Fair
21 Use," which is "Required classroom reading."

22 A. Yes.

23 Q. So that one is 5-to-1 in favor?

24 A. It is.

25 Q. So all four factors came out in favor of fair

1 use, right?

2 A. Yes, although as the question mark that's
3 attached to the second item in the right column of
4 Factor 3, it's conceivable that other people would
5 disagree with my assessment of whether this is central
6 or not. I think that it's not. Although even if it
7 were, I think the sort of stimulative effect of making
8 sure the students understood two different sections
9 that may be in conflict with one other would have still
10 outweighed Factor 3. So even if I had changed my mind
11 on that second item of Factor 3 and checked against
12 fair use, I still think that overall it would have been
13 in favor of fair use.

14 Q. Got it. And just to be clear, that's despite
15 the fact that we're over 20 percent and you've checked
16 large portion of entire work used?

17 A. Yeah.

18 MR. LARSON: Break here.

19 THE VIDEOGRAPHER: Off the record at 4:34 p.m.

20 (Recess from 4:33 p.m. to 4:41 p.m.)

21 THE VIDEOGRAPHER: This is the beginning of
22 tape number four. The time is 4:41 p.m., and we are
23 back on the record.

24 (Plaintiff's Exhibit-267 was marked for
25 identification.)

1 Q. (By Mr. Larson) Mr. Reifler, I'm handing you
2 what I've marked as Plaintiff's Exhibit 267. Could you
3 identify that for me?

4 A. It appears to be the checklist that I filled
5 out for the William McGuire chapter and the Shanto
6 Lyengar, Edited Volume.

7 Q. You provided a PDF of this to the students in
8 the 8190 course?

9 A. I believe I did, yes.

10 Q. Why don't we look at Exhibit 243, which is the
11 screen print. You see in the upper right-hand corner
12 McGuire.pdf?

13 A. Yes.

14 Q. Is that what's referenced in this checklist
15 here?

16 A. It is.

17 Q. And this is Chapter 2 comprising pages 9 to
18 35?

19 A. Uh-huh.

20 Q. And, again, this list was filled out at the
21 time of these others we've been discussing?

22 A. Yeah.

23 Q. And Factor 1 is, again, three checks for in
24 favor of fair use and no checks against?

25 A. Yeah, with --

1 Q. All right.

2 A. -- our standard caveat that I would check

3 "Non-transformative."

4 Q. Exactly. And Factor 2 is 3-0 in favor of fair
5 use; is that right?

6 A. Yes.

7 Q. Factor 3 is 3-0 in favor of fair use?

8 A. It is.

9 Q. Factor 4 is 4-to-1 in favor of fair use?

10 A. Yes.

11 Q. Looking at the entire list for what is a
12 27-page chapter?

13 A. Yes.

14 Q. 27-page chapter, total of two checks against
15 fair use?

16 A. Uh-huh.

17 Q. And none of the factors are against fair use,
18 correct?

19 A. Correct.

20 Q. And this was required reading for the
21 students?

22 A. It was.

23 Q. Okay. You can put that one aside. Show you
24 what I'm marking Plaintiff's 268.

25

1 (Plaintiff's Exhibit 268 was marked for
2 identification.)

3 Q. Which is Bates stamped Georgia State 0024570.
4 Do you recognize this document?

5 A. It is the syllabus for my undergraduate
6 Political Psychology course.

7 Q. How many students were in this class?

8 A. 48, I believe. That's I think were originally
9 enrolled. How many stayed in after enrollment, I --

10 (Plaintiff's Exhibit-269 was marked for
11 identification.)

12 Q. Let me mark as Plaintiff's Exhibit 269,
13 document that is a screen print we were provided from
14 University System. Do you recognize this?

15 A. It is, yes, I do. It's the readings made
16 available for my undergraduate course.

17 Q. For the course that's on the syllabus we are
18 looking at for Exhibit 268?

19 A. Yes. Yes.

20 Q. And if you could turn to the second page of
21 the syllabus, please.

22 A. Yes.

23 Q. Again, the case you had students purchase or
24 assigned to them this book Predictable Irrationality?

25 A. I did.

1 Q. And also a book by Kuklinski, Citizens and
2 Politics?

3 A. Yes, edited volume.

4 Q. And that's the same book that we -- that you
5 assigned portions of in the 8190 class?

6 A. One chapter. The second was on the syllabus
7 but --

8 Q. The one you didn't end up having them read?

9 A. Yeah.

10 Q. And then this says here, "Additional readings
11 will be made available on uLearn/WebCT"?

12 A. Yes.

13 Q. Those are the readings we see in Exhibit 269,
14 correct?

15 A. Yes.

16 Q. Turn to page -- well, the Bates stamp is
17 33383, says, "Course Schedule" at the top, and if you
18 look at the January 13th week, you see a chapter
19 identified as by David Sears from the Oxford Handbook
20 of Political Psychology. You see that?

21 A. I do.

22 Q. Is that the same chapter that you assigned in
23 the 8190 class?

24 A. It is.

25 Q. If you turn to three pages later, April 7th,

1 there is a reference to a chapter by George Marcus from
2 the Oxford Handbook?

3 A. Yes.

4 Q. Is that the same chapter that you assigned in
5 the 8190 class?

6 A. In the syllabus it is the same. In terms of
7 -- I decided that was too hard because we had done that
8 chapter previously in the graduate course, that I
9 changed it to a chapter by Marcus in the Kuklinski
10 Citizens and Politics.

11 Q. Which was one of the required texts?

12 A. Yes.

13 Q. So in the end you just used the Sears chapter
14 from the Oxford Handbook of Political Psychology?

15 A. Yes.

16 Q. When you were going through the checklist
17 exercise, did you complete a separate checklist for use
18 of that excerpt in this course?

19 A. I did not.

20 Q. Would there be any difference in how you would
21 fill that out for this course as opposed to the first
22 course?

23 A. I don't think so.

24 Q. If you look at February 12th on the syllabus,
25 on the page Georgia State 33384.

1 A. Yes.

2 Q. There's a reference to some readings from John
3 Zaller. Is that the same excerpts that were provided
4 in the 8190 class that we discussed before?

5 A. Yes.

6 Q. And, again, did you do a separate checklist
7 for use of those chapters in this course?

8 A. I did not.

9 MS. JOHNSON: Sorry. Which -- what is the
10 Bates number on the bottom that you're looking at?

11 MR. LARSON: 33384, that's the specific page.
12 The document starts with 33380.

13 A. Not what we have.

14 MS. JOHNSON: That's not what we have.

15 MR. LARSON: Maybe we should go off the record
16 for one second.

17 THE VIDEOGRAPHER: Off the record at 5:48 p.m.

18 (Discussion off the record from 4:48 p.m. to
19 4:49 p.m.)

20 THE VIDEOGRAPHER: We are back on the record
21 at 4:49 p.m.

22 MR. LARSON: So just so we are clear on the
23 record, the exhibit marked as 268 bears Bates numbers
24 Georgia State 0024570 to 0024577.

25 Q. If you could, the Zaller excerpt from

1 February 12th that we were looking at, you see that?

2 A. Yes.

3 Q. Just to be clear, that's on page Georgia State
4 0024574?

5 A. Yes.

6 Q. Not the page I indicated earlier. You said
7 you did not fill out a separate checklist for that
8 excerpt?

9 A. That's correct.

10 Q. Would there be any difference filling out for
11 this course as there was for filling out for 8190?

12 A. I don't think so. Possibly because of the
13 larger enrollment.

14 Q. And what would the -- what impact would that
15 have?

16 A. I might change the market, the impact on
17 market.

18 Q. Why don't you take a look at, pull back out
19 Exhibit 264. 264 is the checklist you filled out for
20 Zaller for the 8190 class; is that right?

21 A. Yes.

22 Q. Just tell me what you view as possibly
23 changing if you would have filled this out for the use
24 in the 4190 class rather than 8190 class.

25 A. Because there are 48 that I might change to or

1 at least -- I wouldn't say significantly impairs the
2 market, but I might uncheck "No significant effect."
3 I'm not sure.

4 Q. Were you to do that, however, you would still
5 have four checks in favor of fair use and only one
6 against fair use; is that right?

7 A. Or possibly two.

8 Q. And so that factor would still weigh in favor
9 of fair use?

10 A. Yes, I believe that it would.

11 Q. And would that change that you just mentioned
12 cause you not to offer the work to students in 4190?

13 A. I'm not sure what I would do in the future.

14 Q. Well, let me ask it a different way. Would
15 your conclusion that the use of the work is a fair use
16 overall change based on that, not clicking that box or
17 checking that box in Factor 4?

18 A. I do not think so.

19 Q. The Zaller work on February 12th in the 4190
20 syllabus was a required reading; is that right?

21 A. It was.

22 Q. If you could flip back to the page that has
23 January 22nd on it.

24 A. Yes.

25 Q. Just tell me the Berinsky and Druckman work

1 that's listed first there, what is that reading?

2 A. It's a journal article from Public Opinion
3 Quarterly.

4 Q. Is Public Opinion Quarterly something that
5 Georgia State subscribes to?

6 A. It is.

7 Q. And you gave students in the course a printout
8 of that in uLearn; is that right?

9 A. I posted the PDF, yes.

10 Q. Why did you do that if that's something that
11 students can get through GSU subscription?

12 A. Undergraduates are less skillful in getting
13 the right journal articles, so I made it easy for them.

14 Q. And do you know who publishes Public Opinion
15 Quarterly?

16 A. I do not.

17 Q. Give me one moment, if you would. Is it your
18 experience that -- let's talk about the 8190 class.

19 That's a small seminar, correct?

20 A. Yes.

21 Q. Is it your experience that when students come
22 into class, they've generally printed the works that
23 you have put on uLearn and bring them to class with
24 them for discussion?

25 A. In the graduate class?

1 Q. Uh-huh.

2 A. Usually.

3 Q. What about in the undergraduate class?

4 A. No.

5 Q. You say you are familiar with CoursePacks or
6 you used them when you were a student; is that right?

7 A. Uh-huh.

8 Q. So just tell me in your opinion, what's the
9 difference between your providing students readings in
10 this fashion through uLearn and giving them a
11 CoursePack, other than the fact that the CoursePack is
12 obviously a hard copy rather than an electronic copy?

13 A. Not much.

14 MR. LARSON: That's all I've got.

15 MS. JOHNSON: Okay. I have no questions. We
16 just want to reserve our right to review and correct
17 the transcript.

18 THE VIDEOGRAPHER: We're off the record at
19 4:55 p.m.

20 (Whereupon, the deposition was concluded at
21 4:55 p.m.)

22 (Pursuant to Rule 30(e) of the Federal Rules
23 of Civil Procedure and/or O.C.G.A. 9-11-30(e),
24 signature of the witness has been reserved.)

25

1

2

C E R T I F I C A T E

3

4 STATE OF GEORGIA:

5 COUNTY OF DEKALB:

6

7

I hereby certify that the foregoing transcript
was taken down, as stated in the caption, and the
questions and answers thereto were reduced to
typewriting under my direction; that the foregoing
pages 1 through 129 represent a true, complete, and
correct transcript of the evidence given upon said
hearing, and I further certify that I am not of kin or
counsel to the parties in 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.

17

This, the 9th day of June, 2009.

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REGINA W. HOLLIS, CCR-B-2306

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DISCLOSURE

STATE OF GEORGIA:

COUNTY OF DEKALB:

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

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

I am not disqualified for a relationship of interest under the provisions of O.C.G.A. 9-11-28.

Shugart & Bishop was contacted by the offices of Holland & Knight, LLP to provide court reporting services for this deposition.

Shugart & Bishop will not be taking this deposition under any contract that is prohibited by O.C.G.A. 15-14-37 (ab) and (b).

Shugart & Bishop has no exclusive contract to provide reporting services with any party to the case, any counsel in the case, or any reporter or reporting agency from whom a referral might have been made to cover this deposition.

Shugart & Bishop will charge its usual and customary rates to all parties in the case, and a financial discount will not be given to any party to this litigation.

REGINA W. HOLLIS, CCR-B-2306

1 DEPOSITION OF JASON REIFLER, Ph.D. /RH

2 I do hereby certify that I have read all questions
3 propounded to me and all answers given by me on the 3rd
4 day of June, 2009, taken before Regina W. Hollis, and
5 that:

6

_____1) There are no changes noted.

7

_____2) The following changes are noted:

8

Pursuant to Rule 30(e) of the Federal Rules of
Civil Procedure and/or the Official Code of Georgia
Annotated 9-11-30(e), both of which read in part: Any
changes in form or substance which you desire to make
shall be entered upon the deposition...with a statement
of the reasons given...for making them. Accordingly,
to assist you in effecting corrections, please use the
form below:

10

11 Page No. _____ Line No. _____ should read: _____

12

Page No. _____ Line No. _____ should read: _____

13

14 Page No. _____ Line No. _____ should read: _____

15

Page No. _____ Line No. _____ should read: _____

16

17 Page No. _____ Line No. _____ should read: _____

18

Page No. _____ Line No. _____ should read: _____

19

20 Page No. _____ Line No. _____ should read: _____

21

Page No. _____ Line No. _____ should read: _____

22

23 Page No. _____ Line No. _____ should read: _____

24

Page No. _____ Line No. _____ should read: _____

25

1 DEPOSITION OF JASON REIFLER, Ph.D. /RH
2 Page No. _____ Line No. _____ should read: _____

3
4 Page No. _____ Line No. _____ should read: _____

5 Page No. _____ Line No. _____ should read: _____

6
7 Page No. _____ Line No. _____ should read: _____

8 Page No. _____ Line No. _____ should read: _____

9
10 Page No. _____ Line No. _____ should read: _____

11 Page No. _____ Line No. _____ should read: _____

12
13 Page No. _____ Line No. _____ should read: _____

14
15 If supplemental or additional pages are necessary,
16 please furnish same in typewriting annexed to this
17 deposition.

18
19 _____
20 JASON REIFLER, Ph.D.

21 Sworn to and subscribed before me,
22 This the _____ day of _____, 20____.
23 _____

24 Notary Public
25 My commission expires: _____