

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
ATHENS DIVISION

THE NATIONAL ASSOCIATION OF)	
BOARDS OF PHARMACY,)	CIVIL ACTION FILE
)	
Plaintiff,)	NO.: 307-CV-84
)	
vs.)	
)	
THE BOARD OF REGENTS OF THE)	
UNIVERSITY SYSTEM OF GEORGIA)	CONFIDENTIAL - UNDER
and FLYNN WARREN, JR.,)	SEAL BY ORDER OF THE
)	COURT
Defendants.)	

HEARING in the above-styled case came to be heard before the **HONORABLE CLAY D. LAND**, judge of the above-styled court, at the Federal Courthouse, Columbus, Georgia, on the **3rd day of August, 2007**.

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1 THE BAILIFF: All rise. United States
2 District Court for the Middle District of Georgia,
3 Columbus Division, is now in session.

4 THE COURT: Please be seated. Good morning.

5 MR. LUNSFORD: Good morning.

6 THE COURT: All right. You're Mr. Lunsford, I
7 take it?

8 MR. LUNSFORD: I am, Your Honor.

9 THE COURT: All right. This will be in the
10 case of National Association of Boards of Pharmacy
11 versus The Board of Regents of the University
12 System of Georgia and Flynn Warren, Jr.

13 The plaintiff is being represented by Mr. J.
14 Rogers Lunsford the III, who is present. This is
15 an Athens Division case.

16 The plaintiff has filed a motion to file this
17 case under seal. I have reviewed that motion,
18 along with all the accompanying paperwork, and I'm
19 going to grant that motion and allow the case to
20 remain under seal for the time being. I'll
21 readdress how long it should remain under seal as
22 the case continues. I do not intend to leave the
23 case under seal indefinitely.

24 So I'm going to sign this order allowing the
25 matter to be filed under seal. Today's date is

1 the 3rd?

2 MR. LUNSFORD: Correct, Your Honor.

3 THE COURT: August. So all of the materials,
4 Mr. Clerk, will be filed under seal.

5 THE CLERK: Yes, sir.

6 THE COURT: The other -- here's my order
7 allowing that to be done.

8 Plaintiff also filed a motion to exceed the
9 page limitations for the brief in support of the
10 motion for temporary restraining order. I have
11 read that brief and am permitting him to exceed
12 those page limitations. So I'll sign this order
13 to accomplish that, just so our record keeping
14 will be straight.

15 Now, with regard to the motion for a temporary
16 restraining order and an ex parte order of
17 impoundment, I've also read all of those
18 materials. And plaintiff makes a motion for oral
19 argument, which I am granting that motion. There
20 will be no written order for that. I'll just
21 grant it here from the bench.

22 THE CLERK: Motion for the --

23 THE COURT: Motion for oral argument on the
24 plaintiff's motion for restraining order. Since
25 that, I guess, will show up in our docket as a

1 motion, I'll go ahead and grant it. That way it
2 won't be hanging out there.

3 All right. With regard to the motion for ex
4 parte order of impoundment and temporary
5 restraining order, Mr. Lunsford, the concern I
6 have -- at this point, I do find that the
7 plaintiff has met its burden for obtaining a
8 temporary restraining order and an ex parte order
9 of confinement of -- of impoundment. My only
10 concern at this point, with regard to that, is
11 allowing you to seize Professor Flynn's personal
12 computer.

13 And is -- is your intention -- after -- after
14 you -- any of these items that are seized are
15 going to be in your custody and control. The
16 marshal will not maintain custody and control of
17 the seized items. They've informed me that they
18 will simply accompany you to the site to make sure
19 that the court order is complied with. But as far
20 as any items that you seize pursuant to the order,
21 they will stay in your custody and control.

22 Is your intention to do anything with those
23 before the Court sets a hearing to allow the
24 defendants to be heard on whether the seizure was
25 proper or not?

1 MR. LUNSFORD: Your Honor, to the -- we don't
2 need to examine those before the Court has a
3 hearing, as to the appropriateness of the seizure.

4 If the Court had a hearing on continuing the
5 TRO until the Court could hold a hearing on the
6 motion for preliminary injunction, you know, we
7 believe that it may be necessary to review some of
8 those materials, examine the contents of the hard
9 drive, things of that nature, in connection with
10 the motion for preliminary injunction. We do not
11 think it would be necessary for us to examine
12 those, the hard drive or any other electronic
13 data, you know, prior to a hearing on the
14 appropriateness of the impoundment.

15 And we intend to store the materials that are
16 seized in Athens at Drew Mitchell's law office.
17 And to the extent that we need to examine the hard
18 drive, or any other disk that may be seized when
19 the -- you know, when the marshal accompanies us
20 to obtain that information, we're going to keep in
21 Drew -- Drew Mitchell's office. And we'll hire an
22 expert just to simply duplicate the hard drive and
23 any disk, and then return those material as
24 promptly as we can to Mr. Warren.

25 But we will work with Mr. Warren to the extent

1 that we -- that he has any personal information
2 that is --

3 THE COURT: Well, that's the concern. That's
4 one of the concerns, is one, I don't think you've
5 got the right at this point -- particularly before
6 he has the opportunity to contest the seizure --
7 to go through the personal items on his personal
8 computer.

9 I'm just trying to determine whether there's a
10 more limited way with regard to those computers.
11 I'm concerned about letting you seize the
12 computers before they have an opportunity to
13 respond to the seizure --

14 MR. LUNSFORD: The --

15 THE COURT: -- because of possibility of
16 damage. I know you'll say, we'll be careful, you
17 know. But you don't think an order that allows
18 you to seize all this other stuff, and orders them
19 to maintain all materials on the computer until
20 further order of the court, is sufficient?

21 MR. LUNSFORD: I'm not concerned about the --
22 about the Board of Regents or College of
23 Pharmacy. We're a little bit concerned about
24 Mr. Warren primarily based on the events that
25 transpired back in 1995 when he indicated he had

1 absolutely no records as to the identity of any of
2 the candidates that had taken his review course.

3 We believe that one of the issues that will
4 have to be addressed, you know, not only by our
5 client but by the boards of pharmacies of the
6 various states, you know, in which Mr. Warren has
7 conducted review courses, is to determine the
8 identity of the individuals who likely -- excuse
9 me -- received the compromised questions. And if
10 that information is removed from any -- from any
11 and all computers, you know, we think that the
12 ability of those Boards to obtain that information
13 will be compromised. You know, that's our
14 concern.

15 You know, we are entirely willing to, you
16 know, stipulate and to have the Court order us not
17 to examine, you know, the contents of any of the
18 computers prior to any hearing that may be held on
19 the appropriateness of the seizure.

20 THE COURT: All right. And the other concern
21 is, is that people these days often rely upon
22 their personal computer for everyday activities,
23 such as paying bills, communicating. If I let you
24 seize his computer, then for at least a ten day
25 period he's going to be unable to do that.

1 I mean, I'm just trying to find some
2 narrower -- and I don't have a problem ultimately
3 with doing that, if after he's been heard, I
4 conclude that he needs to turn that over and let
5 y'all make a copy of the hard drive, or whatever.
6 But just to deprive him of a computer that he may
7 use in everyday activities and him not have an
8 opportunity to be heard on that for ten days, is a
9 serious intrusion.

10 MR. LUNSFORD: Let me make a suggestion --

11 THE COURT: Yes, sir.

12 MR. LUNSFORD: -- in that regard, Your Honor.

13 Why don't -- one of the ways to attack that
14 would be to allow us to take the computer, have a
15 computer expert duplicate the contents of the hard
16 drive. We will not examine the duplication.
17 We'll just hold that.

18 THE COURT: Well, I've heard -- I've had that
19 done in some cases, and I've had contentions made
20 by the other side that that process can damage a
21 hard drive. I don't know if there's any validity
22 to that or not. But I have heard it in other
23 cases that there have been concerns expressed that
24 somebody duplicating somebody else's hard drive,
25 that there is the possibility of damage. I just

1 don't know.

2 But my concern is that when I order this to be
3 done -- without letting the other side be heard
4 about it, I want to make sure I'm careful in
5 limiting this intrusion.

6 I'm inclined to let you get all of the stuff
7 except for his personal computer, and then order
8 him, in the order, that he not destroy anything on
9 his hard drive. Now, that's not as good as you
10 getting his computer, but that puts him at risk of
11 violating a court order if he does do so.

12 MR. LUNSFORD: Your Honor, we -- we
13 contemplate that he is going to have multiple
14 computers.

15 Mr. Warren retired from the faculty at the
16 University of Georgia at the end of July -- at the
17 end of June. He has an office on the campus. It
18 may not be in the pharmacy building. We
19 understand that it's in a building that's close to
20 the pharmacy building. We understand that he has
21 a computer in that office, you know, because he's
22 no longer on the faculty.

23 What we would like to do would be to get the
24 computer that is -- that is in his office but with
25 the Court's instruction that he not erase anything

1 on any computer that he has at his home, if we get
2 the computer at his office, but not the computer
3 at his home.

4 THE COURT: All right.

5 MR. LUNSFORD: You know, that may be a
6 satisfactory compromise.

7 THE COURT: Okay. And the -- the proposed
8 temporary restraining order, and order of
9 impoundment, the hearing that is contemplated in
10 that order is the hearing on whether the TRO
11 should be extended. You -- you did not put a
12 provision in here for a hearing under the statute
13 for the propriety of the seizure; is that
14 correct?

15 MR. LUNSFORD: It was a little late --

16 THE COURT: As I understand -- as I understand
17 it --

18 MR. LUNSFORD: It was a little late last
19 night, Your Honor. We have no problem with --
20 with that being added. It was --

21 THE COURT: Well, it's my understanding under
22 the statute that the Court shall hold a hearing --

23 MR. LUNSFORD: That's correct.

24 THE COURT: -- on the seizure, on the ex parte
25 impoundment, no sooner than ten days and no later

1 than fourteen days.

2 MR. LUNSFORD: That's correct.

3 THE COURT: And I'm looking at this paragraph
4 5. And do you have the proposed TRO seizure order
5 in front of you?

6 MR. LUNSFORD: I do, Your Honor.

7 THE COURT: That paragraph 5 was really
8 contemplating a hearing on the TRO being continued
9 as opposed to a hearing on the seizure, wasn't
10 it?

11 MR. LUNSFORD: That's -- it's probably
12 correct. I don't know if we can just amend that.
13 Maybe we could interlineate, or change it, and say
14 that there will be a -- we just add a paragraph.

15 THE COURT: Well, why don't we have -- why
16 don't we have a combined hearing? And then if we
17 get it -- and then if we get it at that hearing
18 and you indicate that you need to study what's on
19 the computer to present your case for preliminary
20 injunction, then we could, I guess, continue the
21 hearing until you've had a chance to do that.

22 MR. LUNSFORD: That would be satisfactory.

23 THE COURT: All right. I have got a -- I can
24 do this in Athens on Tuesday, August the 14th,
25 which is within this ten to fourteen day window --

1 or ten to fifteen day window. And I think, as far
2 as the defendant's concern, I need to have it in
3 Athens so it's convenient for them. So does --
4 August the 14th at 1:00 p.m., is that going to be
5 all right with your schedule?

6 MR. LUNSFORD: We'll make it work, Your Honor.

7 THE COURT: All right. Let me see how we need
8 to amend this order. Where did you get this
9 language about employing reasonable force if
10 necessary to gain entry?

11 MR. LUNSFORD: I think we can delete that,
12 Your Honor.

13 THE COURT: All right. I'm going to strike
14 that and just leave it up to the marshal to
15 decide.

16 MR. LUNSFORD: Your Honor?

17 THE COURT: I'm going -- I'm going to take
18 that parenthetical and initial that I've taken it
19 out.

20 MR. LUNSFORD: Your Honor?

21 THE COURT: And my understanding -- and I've
22 talked with a marshal this morning. What they're
23 going to do is accompany you and basically stand
24 there while you -- to make sure that the order is
25 complied with.

1 MR. LUNSFORD: Your Honor?

2 THE COURT: Yes, sir.

3 MR. LUNSFORD: We -- we are unaware as to
4 whether there is a member of the marshal service
5 that's physically present in Athens.

6 THE COURT: There's not, I don't think. I'm
7 going to get to that in a minute.

8 I'm now looking at this TRO, and I don't see
9 where -- where the signature line is. Did I only
10 get -- I only got five pages.

11 MR. LUNSFORD: Well, we've made a mistake.

12 Let me look at the original, Your Honor, and
13 see if it has six pages.

14 THE COURT: I thought I had the original.

15 THE CLERK: No, sir.

16 THE COURT: Oh, I don't?

17 MR. LUNSFORD: We have it.

18 THE COURT: Oh, these are all copies?

19 THE CLERK: Yes, sir.

20 MR. LUNSFORD: We gave you a duplicate copy.

21 THE COURT: Oh, okay. Well, I guess that's
22 going to be an original.

23 The complaint is -- is a copy?

24 MR. LUNSFORD: May I approach, Your Honor?

25 THE COURT: Did I already give you the other

1 order that I signed?

2 THE CLERK: Yes, sir.

3 THE COURT: Okay. Yes, sir.

4 THE CLERK: It has six pages.

5 THE COURT: All right. Very good.

6 All right. I'm going to strike through the
7 reasonable force, and the marshal will know what's
8 appropriate.

9 We said this was the 3rd day of August; is
10 that correct?

11 THE CLERK: Yes, sir.

12 THE COURT: All right. I'm going to add a
13 subparagraph C on page C -- I mean, page 2 of the
14 order. I'm just going to hand-write it in.

15 All right. I'm going to add a subparagraph C
16 on page 2 that reads as follows: Plaintiff shall
17 not seize any personal computers located at
18 plaintiff's -- at Defendant Warren's -- plaintiff
19 shall not seize any personal computers located at
20 Defendant Warren's residence. However, plaintiff
21 shall be permitted to identify those computers,
22 and Defendant Warren is ordered that he shall not
23 delete or destroy any information or data
24 contained on those computers without permission
25 from the Court.

1 MR. LUNSFORD: That's fine, Your Honor.

2 THE COURT: That way you can note in your log
3 what you found there but just leave them there.

4 MR. LUNSFORD: Yes, sir.

5 THE COURT: Okay.

6 MR. LUNSFORD: Your Honor, may I raise one
7 additional point?

8 THE COURT: Yes, sir.

9 MR. LUNSFORD: In paragraph 1 of the order, it
10 says that we can seize items that the College of
11 Pharmacy has.

12 As I informed the Court earlier, our
13 understanding is that Mr. Warren's present office
14 is not -- is no longer in the pharmacy building.
15 We want to have an understanding that we -- if his
16 office is located on the campus, other than at the
17 pharmacy building, that we should have access to
18 that office.

19 THE COURT: Well, how do you want to describe
20 that location? Statute requires that the place of
21 search needs to be specifically identified in the
22 order.

23 MR. LUNSFORD: I think we can state that, you
24 know, or any office to which we are directed by
25 the staff of the pharmacy school at the University

1 of Georgia.

2 THE COURT: It's getting messy. Now, why
3 couldn't y'all have done this earlier? Why is the
4 rush, rush here all of a sudden?

5 MR. LUNSFORD: The rush, rush, Your Honor, is
6 identified in paragraph 45 of Mr. Catizone's
7 declaration. There is a conference that's being
8 held in Orlando that's beginning this weekend.

9 THE COURT: Well, when did y'all first expect
10 he was doing this again? I mean, that conference,
11 obviously, has been scheduled for months. When --
12 when did y'all first suspect he was using --

13 MR. LUNSFORD: Mr. Catizone, in his
14 declaration, identifies when he first received
15 materials. I thought it was the 29th of July.

16 THE COURT: Okay, so just recently. All
17 right. I've inserted in here that --

18 MR. LUNSFORD: It's the 20th of July, Your
19 Honor.

20 THE COURT: Of this year?

21 MR. LUNSFORD: The 20th of July, 2007.

22 THE COURT: All right. I've inserted in here
23 that hereby directed to search defendant's
24 premises at 1081 Lane Creek, Bishop, Oconee
25 County, Georgia, and the University of Georgia

1 College of Pharmacy in Athens, Georgia, and any
2 office of Defendant Warren on the University of
3 Georgia campus as directed by the staff of the --
4 of the College of Pharmacy.

5 MR. LUNSFORD: I think that will do it, Your
6 Honor.

7 THE COURT: And seize and impound pending
8 further order of the Court.

9 All right. Now, the hearing section on
10 page -- on paragraph 5, on page 5, I'm just going
11 to put a hearing is scheduled before Clay D. Land,
12 United States District judge in -- at the Federal
13 Courthouse in Athens, Georgia.

14 Tim, can you find the address, street address?

15 THE CLERK: 115 East Hancock Avenue, sir.

16 THE COURT: 115 East Hancock?

17 THE CLERK: Yes, sir. Avenue. 30601, sir.

18 THE COURT: What did I say earlier?

19 THE CLERK: 1:30, I believe. On the --

20 MR. LUNSFORD: No. You said 1:00 p.m., Your
21 Honor.

22 THE CLERK: 1:00 p.m.

23 THE COURT: On what date did I say?

24 THE CLERK: August 14th.

25 MR. LUNSFORD: August the 14th.

1 THE COURT: That's a Tuesday; right?

2 THE CLERK: Yes, sir.

3 THE COURT: On August 14th, 2007, at
4 1:00 p.m. The hearing is scheduled before
5 Honorable Clay D. Land, United States District
6 judge, at the Federal Courthouse in Athens,
7 Georgia, 115 East Hancock Avenue, Athens, Georgia
8 on August 14th, 2007 at 1:00, or soon thereafter,
9 as counsel can be heard.

10 At that hearing, defendant shall have the
11 opportunity to challenge the seizure and shall
12 show cause. And then I'll leave the rest of it
13 the same.

14 MR. LUNSFORD: (nods head in the affirmative)

15 THE COURT: And then if we get there and we
16 need to continue that hearing on the -- continuing
17 on the preliminary injunction, then we'll address
18 that at that time.

19 MR. LUNSFORD: That'll be fine, Your Honor.

20 THE COURT: Because you're not going to be
21 able to get your discovery done before that
22 hearing, I don't think.

23 MR. LUNSFORD: No.

24 THE COURT: But am I -- am I reading the
25 statute correct, that this hearing on the seizure

1 order needs to be done within that ten to fourteen
2 day window, unless defendant consents or unless
3 you can show some reason it shouldn't be?

4 MR. LUNSFORD: That's my recollection, Your
5 Honor.

6 THE COURT: Okay.

7 MR. LUNSFORD: And if -- you know, we -- we
8 will contact counsel through the A.G.'s office or
9 the Board of Regents and see what we can work out
10 promptly. As soon as we conduct the seizure,
11 we'll be in touch with the A.G.'s office and
12 counsel for the University of Georgia.

13 THE COURT: Well, if they want an earlier
14 hearing, I may can do it here next week. If they
15 were willing to consent to a later hearing, I am
16 going to be in Athens the first part of the
17 following week, and we could schedule a time then.
18 I'll already be there for some other business.

19 So if -- if after you talk with these folks,
20 they want to continue it until that following week
21 in Athens, then we can talk about doing that.

22 If we don't get it done then, it's going to be
23 tough to get it done because we've got trial
24 calendar starting here in Columbus that's going to
25 last at least a month.

1 MR. LUNSFORD: The Copyright Act, Your Honor,
2 does not -- does not address the time period for a
3 hearing for seizure. Section 503 of the Copyright
4 Act says that an order for a seizure can be
5 entered.

6 Generally speaking, what --

7 THE COURT: I was looking at 15-1116

8 MR. LUNSFORD: Correct. Now, that's under the
9 Lanham Act. That deals with trademarks.

10 What -- what courts have generally done --
11 because the Copyright Act does not specifically
12 set forth terms and conditions for the seizure,
13 courts generally follow the mechanism that's set
14 forth in the Lanham Act.

15 And I just looked at section -- section 116
16 (D5) C. It says an order under this subsection
17 shall set forth the time period, which shall end
18 not later than seven days after the date on which
19 such order is issued during which seizure is to be
20 made. So I think we're looking at seven days.

21 THE COURT: Well, look -- look further in that
22 provision. I think there's a ten and fourteen.
23 That means you've got to serve this within seven
24 days of today.

25 MR. LUNSFORD: All right. We'll get that

1 done.

2 THE COURT: That was the seizure. But then
3 there's a provision for a hearing.

4 MR. LUNSFORD: I think you're correct, Your
5 Honor. You're correct. It's seven days within
6 which -- the seizure is to be made within seven
7 days. And it's -- it's ten to fourteen days on
8 the --

9 THE COURT: Hearing.

10 MR. LUNSFORD: -- on the hearing. You're
11 correct.

12 THE COURT: Okay. Well, this 14th of August
13 is within that time period. If the defendant -- I
14 think the defendant can waive that, and we can do
15 it the next week, if that ends up being more
16 convenient. But we'll be prepared on the 14th.

17 All right. What is -- what is your suggestion
18 with regard to the bond -- amount of the bond?

19 MR. LUNSFORD: Your Honor, we would -- we
20 would ask the Court not to require a monetary bond
21 based on the public health issues that are -- that
22 are at issue here.

23 THE COURT: Well, I'm going to require a
24 bond. Well, you're not going to be able to get a
25 bond, are you, today?

1 MR. LUNSFORD: If the clerk will take my
2 personal check, we will -- we'll file a cash
3 bond.

4 THE CLERK: There's no prohibition against
5 them taking a personal check, sir.

6 THE COURT: Okay. I mean, I think this --
7 particularly this individual defendant at least
8 needs to be covered as to what his attorney's fees
9 may be in responding to this seizure order if it
10 was issued improvidently. I mean, he could come
11 in and convince me that all this y'all say is bunk
12 and it should have never been issued. And he may
13 have to hire an attorney to do that.

14 MR. LUNSFORD: I suggest five thousand
15 dollars, Your Honor.

16 THE COURT: All right. I'm going to require a
17 five thousand dollar bond. Is it cash bond?

18 Let me see what this says. This is really the
19 same as a bond that would accompany a TRO, a
20 temporary restraining order.

21 Well, this cash bond -- I'm not really sure
22 what this pleading is, Mr. Lunsford, to tell you
23 the truth. Is this -- is this your view of the
24 cash bond? Isn't the cash bond just going to be
25 your check?

1 Give that to him.

2 MR. LUNSFORD: It -- it is. We were -- we
3 were using that just so, you know, the Court --
4 for the Court's convenience, that the Court could
5 fill that out.

6 THE COURT: Well, do I need to sign that or do
7 you need to sign it?

8 MR. LUNSFORD: We understand the -- I'll sign
9 it, Your Honor. We'll -- you know, we understand
10 that will be the case. But I'm willing to do it
11 by credit card or check, one way or the other.

12 THE COURT: For record keeping purposes, do
13 you want to put in -- it says plaintiff's bond, or
14 cash, and the sum of five thousand dollars be
15 posted by August 3, 2007. Do you want me to put
16 in there, and paid to the registry of the court?

17 THE CLERK: Please, sir. That tells her to
18 open up an account, interest bearing account.

19 THE COURT: Okay. What is your suggestion as
20 to what should go into your paragraph 7? That
21 sufficient cause -- cause having been shown, let
22 service of the order be made upon defendants by
23 delivering copies on or before -- it's got to be
24 seven days. But y'all plan on doing it in the
25 next few days; right?

1 MR. LUNSFORD: We plan on doing it this
2 afternoon, Your Honor.

3 THE COURT: What -- what would you -- what do
4 you want me to put in here just to give you a
5 little cushion in case the --

6 MR. LUNSFORD: Let's just say seven days.
7 That's what the statute gives us.

8 THE COURT: All right. That will be August
9 the 10th?

10 MR. LUNSFORD: That's correct, Your Honor.

11 THE COURT: All right. What about paragraph
12 8?

13 MR. LUNSFORD: I'm working at a little bit of
14 a disability. I don't have page 6.

15 THE COURT: Okay. It says, defendants
16 responses to the complaint shall be served by
17 delivering copies thereof to your offices. I'm
18 just going to put on or before the date of that
19 hearing. I know that doesn't give you much time
20 to prepare, but it's an emergency hearing.

21 MR. LUNSFORD: I would say August 14th. At
22 least we'd know what their position is going to
23 be.

24 THE COURT: Okay. Let me look back over this.
25 As I understand it, these exams are not

1 given -- they're given more regularly than say
2 once or twice a year. So it's not as if a big
3 exam is coming up where there will be hundreds of
4 people taking it or not?

5 How many people are going to be affected by
6 this order, those that were planning to attend his
7 review session prior to the next exam?

8 MR. LUNSFORD: Let me answer your question in
9 two ways.

10 Number one, the test is given daily, Monday
11 through Saturday, depending on the testing center.
12 One makes an appointment at a testing center and
13 goes in for the -- for the test whenever one wants
14 to set his or her examination. That's the first
15 answer.

16 The second answer, at the course that begins
17 on the 8th, it is estimated that those in
18 attendance will be 30, three zero. At the last
19 two review courses, those in attendance were about
20 three hundred. So that the next course that's on
21 the 8th is -- is a very small number. And given
22 the fact that we were able to purchase materials
23 for that particular course the day before
24 yesterday, or thereabouts, we doubt that very many
25 people are going to be affected.

1 We believe that what can be accomplished is
2 that we can replace the disk on which the
3 offending material is contained with the disk that
4 doesn't have it on it, and therefore no one will
5 be inconvenienced. You know, they just won't have
6 copies of the questions in advance, which they're
7 not supposed to have.

8 THE COURT: Does this Professor Flynn give the
9 review course? Does he lecture it?

10 MR. LUNSFORD: Yes, he does. He and another
11 professor from the Pharmacy School at Georgia.

12 THE COURT: Well, if you take his computers
13 and have his materials, even the ones that are not
14 in violation, he may not be able to give the
15 course.

16 MR. LUNSFORD: We don't want to interfere with
17 his ability to be able to teach the course.

18 THE COURT: So if he -- if he indicates that
19 there are materials on those computers that he
20 needs to teach the course, you'll let him have
21 those if you're satisfied that they're not --

22 MR. LUNSFORD: Well, if he's ordered to not
23 remove anything, if he has to have a computer to
24 teach the course, it's not our intent to
25 disadvantage the students that are taking the

1 exam.

2 THE COURT: All right. When would the next --
3 so the -- but the next course, when would it be
4 available?

5 MR. LUNSFORD: After the 8th. It's sometime
6 in the fall. I would guess October, maybe
7 November, something like that.

8 We're going to do all that we can to get this
9 matter resolved before he starts this course on
10 the 8th, Your Honor.

11 THE COURT: Well, that's just next week.

12 MR. LUNSFORD: We understand.

13 THE COURT: All right. Is -- so your client
14 is not involved at all in giving any of these
15 courses?

16 MR. LUNSFORD: Our client directly is not
17 involved at all in giving any of these courses.

18 THE COURT: Well, I guess what I'm trying to
19 find out is Mr. Warren, by him giving these
20 courses, does he compete with your client?

21 MR. LUNSFORD: No, sir.

22 THE COURT: Your client has no interest in
23 whether he does or does not do these review
24 courses, other than they want to make sure he's
25 not using questions that have been improperly

1 taken from your exams?

2 MR. LUNSFORD: That's correct. As long as he
3 does not compromise the integrity of the exam, he
4 can teach as many courses as he would like.

5 THE COURT: So is it your contention that he
6 is going in and taking the exams to lift the exam
7 questions or he's hiring test takers to do that?

8 MR. LUNSFORD: He does it primarily through
9 students, Your Honor.

10 What -- the way the procedure works, he
11 encourages students that take his review course to
12 reduce to writing as many of the questions as they
13 can remember when they exit the exam. Send those
14 questions to him. He has done that in the past.
15 And then he compiles the test questions and
16 disseminates them.

17 THE COURT: And those questions are used over
18 in -- in future exams?

19 MR. LUNSFORD: That's correct. There's a pool
20 of about thirteen hundred questions that are
21 accessed. And we -- we know that there are at
22 least a hundred and fifty questions that have been
23 compromised. You know, that's as a result of
24 twenty percent -- of a review of twenty percent of
25 Mr. Warren's materials.

1 THE COURT: And you've got all these questions
2 protected in some way?

3 MR. LUNSFORD: Yes, sir.

4 THE COURT: Your materials are copyrighted?

5 MR. LUNSFORD: They're copyrighted. They're
6 copyrighted under procedure by which the copyright
7 office does not maintain the questions. The
8 questions are returned to our client. The exams
9 are maintained in secrecy. They are not
10 disclosed.

11 THE COURT: Do test takers acknowledge that
12 they will not copy the questions?

13 MR. LUNSFORD: Correct. When the test taker
14 registers for the examination and pays the
15 registration fee, there is an undertaking -- an
16 undertaking by the candidate, or statement by the
17 candidate, that the candidate will not compromise
18 the integrity of the exam. The candidate is told
19 that the questions are copyrighted and cannot be
20 copied or reproduced in any form.

21 THE COURT: All right. And he does this
22 through the University of Georgia or is he just
23 doing this on his own?

24 MR. LUNSFORD: He does it both ways, Your
25 Honor. He does -- he has taught a course at

1 Sanford University for -- for at least two years.
2 He teaches courses at other universities. He does
3 it on his own, and he does it through the
4 University of Georgia. He does it in a -- in a
5 number of different ways.

6 THE COURT: All right. Here's the order on
7 temporary restraining order and seizure.

8 Look at my handwriting modifications to make
9 sure you can read them.

10 MR. LUNSFORD: Yes, sir.

11 THE COURT: Go ahead and let him see that
12 after you do what you need to do, Tim.

13 MR. LUNSFORD: We'll have no trouble with your
14 handwriting, Your Honor.

15 THE COURT: All right. Well, some people do.

16 MR. LUNSFORD: You have to see mine, Your
17 Honor. This is very good.

18 THE COURT: All right. The other outstanding
19 motion is your motion for expedited discovery. Of
20 course, you're not going to be able to do that
21 expedited discovery before the 14th hearing.

22 MR. LUNSFORD: I don't think there's a
23 pragmatic way in which we can -- we can do that.
24 What we would like --

25 THE COURT: Can we just address that at the

1 hearing on the 14th; or what do you -- what's your
2 request?

3 MR. LUNSFORD: I would like to have
4 documents -- documents produced and responses to
5 interrogatories fifteen days from the date on
6 which they're served, and the right to take two
7 depositions within seven days after the production
8 of those documents.

9 That would mean that the responses to
10 interrogatories, if they're served today, would be
11 due on the -- no later than the 18th. And then
12 depositions would be taken no later than the 25th.

13 And we'll just have to address, at the hearing
14 on the 14th, whether we will need that information
15 prior to further proceedings on the substantive
16 issues, other than the seizure.

17 THE COURT: All right. So that's consistent
18 with this proposed order you've provided to me?

19 MR. LUNSFORD: It is, Your Honor.

20 THE COURT: All right. I'm going to sign that
21 order.

22 Okay. That should take care of all the
23 pending motions, should it not?

24 MR. LUNSFORD: I believe it does, Your Honor.

25 THE COURT: Mr. Frost, what orders have I --

1 just state, so he can hear you, what orders I have
2 signed, so we'll make sure there's nothing else
3 that needs to ruled upon.

4 THE CLERK: Sir, the order to file the case
5 under seal was signed directing the motion.

6 The order granting the leave to file a brief
7 exceeding the page limit was granted.

8 The temporary restraining order and procedure
9 on common order was signed.

10 And the order granting expedited discovery.

11 THE COURT: All right. That's all of them.

12 MR. LUNSFORD: That's all of them, Your Honor.

13 THE COURT: Now, with regard to the
14 involvement of the marshal service.

15 I'm told by the marshal -- they are
16 headquartered in Macon. And the marshal that's in
17 charge of the area that would handle this type of
18 seizure -- you may want to write this down -- is
19 W.S. -- W.S. -- he goes by his initials --
20 Robertson. W.S. Robertson. His cell phone number
21 is (478)955-0173. And he is expecting a call from
22 you to coordinate how this seizure will occur.

23 You know, he might -- I don't know if he's
24 going to have somebody available to go with you
25 this afternoon or not, but he's the person that

1 would coordinate any search involvement of the
2 U.S. Marshal Service with regard to the seizure.
3 So he's got your name and he knows you're going to
4 be calling him.

5 The procedure for the marshal service is that
6 in private civil litigation like this, your --
7 your client will be charged for their service.

8 MR. LUNSFORD: We understand.

9 THE COURT: And I'm told you'll have to pay
10 that in advance. So I suggest you just call
11 Marshal Robertson and see what can be arranged.

12 MR. LUNSFORD: What we have done in prior
13 cases, Your Honor, and what we propose to do in
14 this one, in prior seizures we have used one of
15 the deputy marshals to supervise it, and we've
16 used other local law enforcement officers that are
17 either off duty, such as a deputy sheriff,
18 something of that nature. You know, we have made
19 arrangements with the -- you know, the deputy
20 sheriff -- with the Sheriff of Oconee County and
21 of Clark County. Clark County in Athens is a
22 united government.

23 You know, we've made arrangements with the
24 sheriffs of both Clark County and Oconee County to
25 assist in this, if that meets the approval of the

1 Court.

2 THE COURT: And you're going to have a U.S.
3 Marshal -- deputy marshal there also?

4 MR. LUNSFORD: That's our contemplation.
5 If -- if Mr. Robertson -- if Deputy Marshal
6 Robertson, you know, wants to be there, we'll
7 accommodate him. If he says that we can just use
8 the deputy sheriffs, and gives us permission to do
9 that, then we'll proceed in that fashion.

10 You know, we'll leave that up to Deputy
11 Marshal Robertson with the permission of the
12 Court.

13 THE COURT: Well, you discuss it with Marshal
14 Robertson, and he'll decide if -- he's going to
15 want to see a copy of the Court's order. In fact,
16 I told him that we would fax that over there to
17 them.

18 So if you will take care of that, Mr. Frost.

19 THE CLERK: Yes, sir.

20 THE COURT: I think it needs to be supervised
21 by the Federal Marshal.

22 MR. LUNSFORD: We have no problem with that.
23 We'll coordinate that with Deputy Robertson.

24 THE COURT: All right. You may want to call
25 him right when we finish here.

1 MR. LUNSFORD: We will, Your Honor.

2 THE COURT: I don't think they have marshals
3 -- well, I know they don't have marshals up there
4 in the Athens Courthouse. I don't think.

5 MR. LUNSFORD: We've been told that they do
6 not.

7 THE COURT: They'll probably have to come from
8 Macon.

9 All right. Anything else?

10 Oh, you need to, at some point in the next few
11 days, get registered on our CMECF system here
12 because we have all electronic filing.

13 MR. LUNSFORD: We understand.

14 THE COURT: So you need to get registered with
15 Mr. Frost to make sure that any future filings in
16 the case are done through that system.

17 MR. LUNSFORD: We will, Your Honor.

18 THE COURT: All right. Now, these matters are
19 going to be under seal, meaning that they're not
20 going to be filed ex parte. They're going to be
21 filed under seal, which means that once the
22 complaint, as I understand it -- Mr. Frost, you
23 correct me -- once the complaint is served and we
24 are notified of representation of the defendant,
25 then the defendant will have access to all of the

1 documents that have been filed.

2 MR. LUNSFORD: Correct.

3 THE COURT: And -- but no one else will. It
4 will just be the parties, their attorneys, and the
5 Court.

6 MR. LUNSFORD: Correct.

7 THE COURT: All right. But you understand
8 that once they're served and once their attorney
9 makes an appearance, they'll be able to review all
10 of the materials under seal.

11 MR. LUNSFORD: Absolutely. And when we serve
12 them, Your Honor, we'll serve them, you know, with
13 all the -- all the documents. Our intention is
14 when we serve the TRO, to give all the pleadings
15 to the person who is served.

16 THE COURT: Okay. Very good.

17 All right, anything else?

18 MR. LUNSFORD: No, Your Honor.

19 THE COURT: All right. And you've got all of
20 the originals, so all this I've got, I can just
21 keep here?

22 MR. LUNSFORD: Those are your copies, and I
23 have the originals. With the -- well, there's
24 only one original order, so we're -- we're okay on
25 it.

1 THE COURT: Okay. Very good.

2 We're adjourned.

3 MR. LUNSFORD: Thank you very much, Your
4 Honor.

5 THE COURT: Yes, sir.

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7 (HEARING CONCLUDED)

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1 STATE OF GEORGIA
2 COUNTY OF MUSCOGEE

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5 **C E R T I F I C A T E**

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7

8 The forgoing transcript of the proceedings
9 was taken before me as a Certified Court Reporter
10 in and for the State of Georgia and reduced to
11 typewriting under my direction and supervision, and
12 I certify that it is a true and correct transcript
13 to the best of my ability of the proceedings.

14
15

16 **This 5th day of August, 2007.**

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Eric Cavanaugh
Certified Court Reporter
No. 2560

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