

Patricia Dixon PH.D.

April 20, 2011

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

CAMBRIDGE UNIVERSITY  
PRESS, OXFORD UNIVERSITY  
PRESS, INC., and SAGE  
PUBLICATIONS, INC.,

CIVIL ACTION FILE

Plaintiffs,

NO. 1:08-CV-1425-ODE

vs.

MARK P. BECKER, in his  
official capacity as  
Georgia State University  
President, et al.,

Defendants.

~~~~~

VIDEOTAPE DEPOSITION OF  
PATRICIA DIXON, Ph.D.

April 20, 2011

1:09 p.m.

Conference Room 16-K  
1180 Peachtree Street, N.E.  
Atlanta, Georgia

S. Julie Friedman, CCR-B-1476

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Also Present:

Mary Jo Volkert, Esq.  
Henry Stewart, Videographer

## INDEX OF EXAMINATIONS

WITNESS:

Patricia Dixon, Ph.D.

|                                     | Page |
|-------------------------------------|------|
| DIRECT EXAMINATION<br>By Mr. Harbin | 7    |
| CROSS-EXAMINATION<br>By Mr. Bloom   | 33   |

## INDEX TO EXHIBITS

Defendant's

| Exhibit   | Description                                                                                                                                                             | Page      |
|-----------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------|
| <u>21</u> | <u>Chapter 7, African-American<br/>Children in Single-Mother Families,<br/>pp. 117 to 145</u>                                                                           | <u>12</u> |
| <u>22</u> | <u>Chapter 6, Racial Identity<br/>Development in African American<br/>Children, Cognitive and<br/>Experiential Antecedents, by Murray<br/>and Mandara, pp. 73 to 96</u> | <u>15</u> |

## INDEX TO PREVIOUSLY MARKED EXHIBITS

Plaintiff's

| Exhibit  | Description                                                                                | Page      |
|----------|--------------------------------------------------------------------------------------------|-----------|
| <u>1</u> | <u>Curriculum Vitae of Patricia Dixon</u>                                                  | <u>8</u>  |
| <u>2</u> | <u>Policy on the Use of Copyrighted<br/>Works in Education and Research</u>                | <u>20</u> |
| <u>4</u> | <u>The African American Family, AAS<br/>3600 SOCI 3162, Fall 2009</u>                      | <u>9</u>  |
| <u>8</u> | <u>Title Page and Table of Contents<br/>from "The Slave Community," by<br/>Blassingame</u> | <u>10</u> |

| INDEX TO PREVIOUSLY MARKED EXHIBITS |                                                                                                            |      |
|-------------------------------------|------------------------------------------------------------------------------------------------------------|------|
| Plaintiff's Exhibit                 | Description                                                                                                | Page |
| 10                                  | "African-American Single Mothers: Understanding Their Lives and Families" Title Page and Table of Contents | 12   |
| 11                                  | "Black Families" Title Page and Table of Contents                                                          | 16   |
| 12                                  | "Black Children" Title Page and Table of Contents                                                          | 14   |
| 14                                  | 11-22-10 Fair Use Checklist for "The Slave Community," GaState0065299-300                                  | 21   |
| 15                                  | 11-29-10 Fair Use Checklist for "The Slave Community," GaState0065301-302                                  | 22   |
| 16                                  | 11-29-10 Fair Use Checklist for "Black Families," GaState0065303-304                                       | 23   |
| 17                                  | 2-23-09 Presentation, Copyright in instruction the New USC Copyright Policy, GaState0021120-21148          | 19   |
| 17b                                 | 11-29-10 Fair Use Checklist, "Black Families: Black Children"                                              | 23   |
| 18                                  | P-18 11-29-10 Fair Use Checklist for "African American Single Mothers Understanding their Families"        | 24   |

(Original Defendant's Exhibits 20 through 22 and photocopies of previously marked Plaintiff's Exhibits 1 through 2, 4, 8, 10 through 12, and 14 through 18 have been attached to the original transcript.)

1 Videotape Deposition of Patricia Dixon, Ph.D.

2 April 20, 2011

3  
4 (Reporter disclosure made pursuant to  
5 Article 10.B. of the Rules and Regulations of  
6 the Board of Court Reporting of the Judicial  
7 Council of Georgia.)

8 (Defendant's Exhibits 20 through 23 were  
9 marked for identification.)

10 THE VIDEOGRAPHER: This is Tape No. 1 to  
11 the videotape deposition of Patricia Dixon in  
12 the matter of Cambridge University Press versus  
13 Mark Becker.

14 This deposition is being held at King &  
15 Spalding, 1180 Peachtree Street in Atlanta,  
16 Georgia, on April 20th, 2011. The time is now  
17 1:09 p.m. We're on the record.

18 My name is Henry Stewart, and I'm the  
19 videographer. The court reporter is Julie  
20 Friedman.

21 Counsel, will you please introduce  
22 yourselves and affiliations; and our witness  
23 will be sworn.

24 MR. BLOOM: Jonathan Bloom, Weil,  
25 Gotshal & Manges, for the plaintiffs.

1           MR. HARBIN: John Harbin, King & Spalding,  
2 for the defendants.

3           PATRICIA DIXON, Ph.D., having been first  
4 duly sworn, was examined and testified as  
5 follows:

6           MR. BLOOM: John, before we start --

7           MR. HARBIN: Sure. Go ahead. Fine.

8           MR. BLOOM: -- I'd like to make an  
9 objection on the record.

10           Plaintiffs object to the deposition that's  
11 about to be taken to the extent it's to be  
12 offered as trial testimony. The witness resides  
13 within the subpoena range of the United States  
14 District Court for the Northern District of  
15 Georgia and is represented by counsel for the  
16 defendants, who presumably could subpoena the  
17 witness to appear at trial and provide live  
18 testimony.

19           And on that basis, the plaintiffs  
20 expressly reserve and do not waive the right to  
21 object to any attempt by the defendants to  
22 introduce the deposition testimony of -- of  
23 Professor Dixon on the ground that she's not  
24 available or is unavailable within the meaning  
25 of the Federal Rules of Evidence, the Federal

1 Rules of Civil Procedure, and any applicable  
2 local rules of this district.

3 MR. HARBIN: Thank you.

4 DIRECT EXAMINATION

5 BY MR. HARBIN:

6 Q. Professor Dixon, would you introduce  
7 you -- yourself to the Court by stating your full  
8 name, please.

9 A. Patricia Dixon.

10 Q. Okay. And you are presently a professor  
11 at Georgia State University?

12 A. Yes.

13 Q. And how long have you been teaching at  
14 Georgia State University approximately?

15 A. I think I'm going into my seventeenth  
16 year.

17 Q. Okay. And can you summarize where you got  
18 your undergraduate degree and what degree you  
19 received?

20 A. Howard University.

21 Q. And what about postgraduate, where did you  
22 attend and what -- what degree did you receive?

23 A. Howard University. I got a Master's in  
24 Business Administration; and then Temple University,  
25 I got a Ph.D. in African-American studies.

1 Q. Okay. And let me hand you a copy of  
2 what's been previously marked as Defendant's Exhibit  
3 Dixon 1 and ask you if that's a true copy of your  
4 curriculum vitae?

5 A. Yes. It is. It's not the most updated  
6 one, but it is one.

7 Q. It's accurate up to the point it goes; is  
8 that right?

9 A. Yeah. It's accurate. Yes.

10 Q. And you've published -- If you look at  
11 the third page, you've published yourself. You've  
12 authored three books?

13 A. Yes. I have.

14 Q. And numerous articles listed in this -- in  
15 this CV, correct?

16 A. Uh-huh. Yes.

17 Q. Okay. And at what department do you teach  
18 at Georgia State?

19 A. The Department of African American  
20 studies.

21 Q. Okay. And what is your -- What are your  
22 plans and availability during the second half of May  
23 of this year?

24 A. Well, I had planned to travel. I have  
25 a -- a family member who has just been diagnosed with



1 cancer, and so I was trying to make the travel plans  
2 to go deal with that.

3 Q. Okay. All right. Did you teach a course  
4 in the fall of 2009 AAS3000 titled "African-American  
5 Family"?

6 A. Yes. I did.

7 Q. Okay. Let me show you a copy of what's  
8 been previously marked as Plaintiff's Exhibit Dixon 4  
9 and ask if that is a copy of this -- of the -- a  
10 syllabus for the course that you taught --

11 A. Yes.

12 Q. -- in the fall of 2009?

13 A. Uh-huh. Yes.

14 Q. Okay. Can you summarize what was covered  
15 in this course.

16 A. Well, actually, we look at the history of  
17 the African-American family. We kind of start with  
18 the African experience, and then we bring it through  
19 slavery, emancipation, organization up into the  
20 present.

21 So we kind of look at the history. Then  
22 we look at socioeconomic issues as they affect  
23 African American families.

24 Q. All right. And the plaintiffs in this  
25 case are challenging your use of four excerpts or

1 four works in that course, which I want to talk to  
2 you about.

3 Did you use in the course, in this course  
4 in the fall of 2009 an excerpt of a book called "The  
5 Slave Community"?

6 A. Yes. I did.

7 Q. Let me show you a copy of what was  
8 previously marked as Plaintiff's Exhibit Dixon 8 and  
9 ask if that is a copy of the title page to that work  
10 by John Blassingame --

11 A. Yes.

12 Q. -- and the index?

13 So is it correct that counting the  
14 bibliography index, the work is -- The publication's  
15 over 400 pages; is that right?

16 A. Yes.

17 Q. And if you -- if you count just the sub --  
18 the chapters through the eight chapters and  
19 appendices, it's something like 382 pages; is that  
20 right?

21 A. Yes. As I recall, yes.

22 Q. And is it correct you use one chapter  
23 beginning at Page 249 on plantation realities?

24 A. Yes.

25 Q. Okay. And that chapter went from Pages

1 249 to 283 --

2 A. Yes.

3 Q. -- approximately 35 pages?

4 A. Uh-huh.

5 Q. Let me hand you a copy of what -- Let me  
6 hand you what's been marked as Defendant's Exhibit  
7 Dixon 20 and ask you if that is the excerpt that you  
8 used in the course?

9 A. Yes.

10 Q. Okay.

11 A. Don't remember being this long.

12 Q. So you used something less than 10 percent  
13 of the book by number of pages in this excerpt?

14 A. Yes. Yes. I think I -- it is.

15 Q. And what was your purpose in using this  
16 chapter?

17 A. I just wanted the -- the students to get a  
18 sense of what it was like to live on a plantation.

19 Q. All right. Did you view this chapter as  
20 the heart or critical part of that entire  
21 publication?

22 A. No. I didn't.

23 Q. Did you own a copy of this book --

24 A. Yes.

25 Q. -- at the time?

1                   And second, in this course in the fall of  
2 2009, did you use an excerpt of a book called  
3 "African American Single Mothers: Understanding  
4 Their Lives and Families"?

5           A.     Yes.

6           Q.     And let me hand you what's -- a copy of  
7 what's been previously marked as Plaintiff's Exhibit  
8 Dixon 10 and ask you if that is a copy of the title  
9 page for the work and the index.

10          A.     Yes.

11          Q.     So the work totals over two -- 197,  
12 approximately 197 pages; is that right?

13          A.     Yes.

14          Q.     And if you go up -- up to the point of the  
15 index, the work is 192 pages?

16          A.     Yes.

17          Q.     And you used one chapter, I believe, in  
18 the course of the -- in your course in fall of 2009;  
19 is that correct?

20          A.     Yes.

21          Q.     Was that Chapter 7 on "African American  
22 Children and Single-Mother Families"?

23          A.     Yes.

24          Q.     Let me hand you what's been marked as  
25 Defendant's Exhibit Dixon 21 and ask you if that is

1 the -- a copy of the excerpt of that publication you  
2 used in a course.

3 A. Yes.

4 Q. So you used something -- something less  
5 than 20 percent of that publication --

6 A. Yes.

7 Q. -- represented by this chapter in your  
8 course?

9 A. Uh-huh. Yes.

10 Q. I believe for the record the plaintiffs  
11 have calculated 15.9 percent. We take issue with  
12 that, but I think that's the plaintiffs' calculation.

13 What was your purpose in using this  
14 chapter?

15 A. The purpose was to get a sense of what  
16 children -- the experience of children in -- in  
17 single-parent homes, as well as to --

18 One of the reasons I like this chapter is  
19 there's a lot written on single mothers, but this  
20 chapter talks about their strengths, and so that's  
21 one of the reasons I thought this one stood out from  
22 among the others.

23 MR. HARBIN: Okay. Let's go off the  
24 record for a minute.

25 THE VIDEOGRAPHER: 1:19 p.m. Off the

1 record.

2 (Whereupon, the record was read by the  
3 reporter as requested.)

4 THE VIDEOGRAPHER: 1:22 p.m. Back on the  
5 record.

6 Q. (By Mr. Harbin) And, Professor Dixon, did  
7 you view this chapter as the heart or critical part  
8 of the "African American Single Mothers" publication?

9 A. No. I didn't.

10 Q. Okay. Did you own a copy of this book?

11 A. Yes.

12 Q. Okay. In this course in the fall of 2009,  
13 did you use an excerpt of a book called "Black  
14 Children"?

15 A. Yes.

16 Q. Let me hand you what's been previously  
17 marked as the Plaintiff's Exhibit Dixon 12 and ask  
18 you if that is a copy or -- of the title page of that  
19 book and the index.

20 A. Yes.

21 Q. So the publication totals something over  
22 235 pages or approximately 235 pages; is that right?

23 A. Yes.

24 Q. Did you use Chapter 1 of this book, Pages

25 73 --

1 A. No.

2 Q. I mean one chapter. Not Chapter 1.

3 Did you use a chapter --

4 A. Yes.

5 Q. -- starting at Page 73?

6 A. Yes. Starting -- Yes, yes.

7 Q. Okay. And that's the "Racial Identity  
8 Development..." chapter?

9 A. Yes.

10 Q. Let me hand you what's been marked as  
11 Defendant's Exhibit Dixon 22.

12 Is that a copy of the excerpt you used of  
13 the --

14 A. Yes.

15 Q. -- of that book?

16 What was your purpose in using that  
17 chapter in your course?

18 A. To give the students some idea as to how  
19 children have developed racial identity.

20 Q. Okay.

21 A. And kind of to -- I guess the importance  
22 of teaching them about racial, so that children are  
23 real clear about where they stand in this culture.

24 Q. Okay. And so you used so -- 10 percent or  
25 less of this book by number of pages in your

1 course --

2 A. Yes.

3 Q. -- in that excerpt?

4 Did you own a copy of this book?

5 A. Yes.

6 Q. Did you view that chapter as the heart or  
7 critical part of the book?

8 A. No.

9 Q. Okay. And then in the course in the fall  
10 of 2009 we're discussing, did you use an excerpt of a  
11 book called "Black Families"?

12 A. Yes.

13 Q. Let me hand you what's been previously  
14 marked as Plaintiff's Exhibit Dixon 11. And ask you  
15 if that is the title page and index for that  
16 publication.

17 A. Yes.

18 Q. So if you look at the index, this  
19 publication totals something -- approximately 380  
20 pages or more?

21 A. Yes.

22 Q. And if you look just at the publication,  
23 the written portions prior to the start of the index,  
24 it's approximately 363 pages?

25 A. Yes.



1 Q. And did you use one chapter beginning at  
2 Pages 214, Chapter 12, "Out There Stranded? --

3 A. Yes.

4 Q. -- "Black Families in White Communities"?  
5 Is it correct that you used approximately  
6 20 pages of this publication for less than 6 percent  
7 of the book by pages?

8 A. Yes.

9 Q. Okay. And what was your purpose in using  
10 this chapter?

11 A. Just to convey the experience of -- of  
12 black families, of the isolation they feel by living  
13 in white communities.

14 Q. Did you -- Did you own a copy of this  
15 book at the time?

16 A. Yes.

17 Q. Did you view this chapter --  
18 single-chapter excerpt you used as the heart or  
19 critical part of the book?

20 A. No.

21 Q. Well, why do you say that you didn't view  
22 these different excerpts as the heart or critical  
23 part of the publications?

24 A. Well, for three of the publications,  
25 they're edited volumes, which means you have a number

1 of -- of writers or scholars who make a contribution  
2 to the -- to the volume; and so each of them give you  
3 something different, a different perspective on the  
4 topic or the issue; and so none of the particular --

5           Particularly in the edited volume, none of  
6 them would be the heart of the work because the works  
7 give different perspectives --

8           Q.     Okay.

9           A.     -- on this actual issue.

10          Q.     Okay. And what about the unedited volume?

11          A.     That one, I felt -- didn't think that that  
12 was the heart of the -- the work. Because when you  
13 talk about the community, then they're talking about  
14 the -- what the slave community was like.

15                 Plantation reality was just one aspect of  
16 what it was like to be in a community of people who  
17 are enslaved, so I didn't think that that was the  
18 heart of the chapter. It was just one aspect of  
19 being a member of a slave community.

20          Q.     So did you utilize the fair use checklist  
21 provided by Georgia State University in making your  
22 decision to use each of the four excerpts --

23          A.     Yes.

24          Q.     -- that we've talked about?

25          A.     Yes.

1 Q. Okay. At the time you were getting -- you  
2 were preparing your reading list for this fall 2009  
3 class, had you been trained in the university's  
4 copyright policy that encompassed the use of a  
5 checklist?

6 A. Yes.

7 Q. And did you attend an in-person training?

8 A. Yes.

9 Q. How -- How would you characterize the  
10 attendance at that?

11 A. It was full. It was wall to wall like.  
12 They didn't -- they -- We actually didn't have  
13 enough seats. People had to sit around the wall.

14 Q. Did you have any understanding about  
15 whether or not the training was mandatory?

16 A. I thought it was. Yeah.

17 Q. Okay.

18 A. I thought so.

19 Q. You understood it was?

20 A. (Witness nods head affirmatively.)

21 Q. Let me hand you a copy of what's been  
22 previously marked as Plaintiff's Exhibit 17 --

23 MR. HARBIN: Jon.

24 Q. (By Mr. Harbin) -- and ask if you -- if  
25 that appears to be the written presentation that was

1 used at the training you attended.

2 A. Yes. It looks like the presentation.

3 Q. Okay. Let me hand you what's -- a copy of  
4 what's been previously marked as Plaintiff's Exhibit  
5 Dixon 2 and ask you if you've seen that before.

6 A. Yes.

7 Q. And does this appear to you to be the  
8 copyright policy that Georgia State adopted --

9 A. Yes.

10 Q. -- and you were getting trained on?

11 A. Yes.

12 Q. Regarding your fair use checklist for the  
13 four excerpts, book excerpts you used in this fall  
14 2000 course -- 2009 course, excuse me, that we've  
15 talked about, to your recollection, did you fill out  
16 and save checklists for each of these courses?

17 A. Yes.

18 Q. Were you able to retrieve the checklists?

19 A. No. I wasn't.

20 Q. What happened?

21 A. My -- I think my -- My drive broke, and I  
22 don't know what I did with it after that, but it --  
23 The thing came off the top of it, so I wasn't able to  
24 find the checklists in any of my other --

25 Q. Okay. Are you referring -- What kind of

1 drive are you referring to?

2 A. A USB drive.

3 Q. Okay. Thank you.

4 Let me hand you -- I want to go through  
5 just briefly some written checklists. Let me hand  
6 you a copy of what's been marked as Plaintiff's  
7 Exhibit Dixon 14.

8 MR. HARBIN: I know you like getting more  
9 copies of all this, Jonathan.

10 Q. (By Mr. Harbin) Is that a -- it's dated  
11 November -- It appears to be dated November 22,  
12 2010; is that right?

13 A. Yes.

14 Q. Is that approximately when you filled out  
15 this checklist?

16 A. Yes.

17 Q. And what were you attempting to do?

18 Was -- Was this concerning the course you  
19 taught in the fall of 2009, the course we've been  
20 discussing?

21 A. Yes.

22 Q. And what was your purpose in filling out  
23 this checklist?

24 A. I had -- they -- Someone had requested  
25 that we give them the checklist that we really

1 needed; and since I couldn't find it, then she said  
2 that -- to fill it out again.

3 Q. Okay.

4 A. Try to recall based on how we did it the  
5 first time.

6 Q. All right. Now let me hand you a copy of  
7 what's been previously marked as Plaintiff's Exhibit  
8 Dixon 15.

9 Is this another copy of the checklist that  
10 you filled out after the course for the same excerpt  
11 on "The Slave Community"?

12 A. Yes.

13 Q. This one's dated November 29, 2010?

14 A. Right. Yes.

15 Q. Did you fill it out, to your recollection,  
16 on or about that date?

17 A. Yeah. Yeah. I did it again. Yes.

18 Q. And why did you fill out a second  
19 checklist for that excerpt?

20 A. Because I was filling it out again; and  
21 the original version that I sent her, somehow I was  
22 trying to send them all together; and it -- it only  
23 save --

24 I tried to do a PDF file to save them all  
25 together; and she only got the first, so I had to

1 send it again. So I filled it out again.

2 Q. Okay. Let me hand you what's -- a copy of  
3 what's been previously marked as Plaintiff's Exhibit  
4 Dixon 16 --

5 A. Excuse me.

6 Q. -- and ask if you -- Sure.

7 A. Take my jacket off. These chairs are  
8 pretty big. Okay.

9 Q. And is this a checklist that you filled  
10 out for one of the excerpts you used in the course  
11 from the black -- "Black Families" publication?

12 A. Yes.

13 Q. Okay. And did you fill this out on or  
14 about November 29th, 2010?

15 A. Yes.

16 Q. Okay. Let me hand you, Professor Dixon, a  
17 copy of what's been previously marked as Plaintiff's  
18 Exhibit Dixon 17 and ask if this is a fair use  
19 checklist you filled out for the "Black Children"  
20 excerpt --

21 A. Yes.

22 Q. -- one of the excerpts you used in the  
23 course?

24 A. Yes.

25 Q. Okay. And you filled this out on or about

1 November 29, 2010?

2 A. Yes.

3 Q. Okay. Let me hand you a copy of what's  
4 been previously marked as Plaintiff's Exhibit 18.

5 Is this a fair use -- fair use checklist  
6 you filled out concerning one of the excerpts you  
7 used in that course from "African American Single  
8 Mothers"?

9 A. Yes.

10 Q. And did you fill this out on or about  
11 November 29th, 2010?

12 A. Yes.

13 Q. Okay. With each of these fair -- fair use  
14 checklists you filled out in 2010, were you -- were  
15 you attempting to re-create what your analysis was in  
16 preparing for the fall 2009 course?

17 A. Yes.

18 Q. Let me review just a few items of the  
19 checklist with you. In each of the checklists, if  
20 you look, for example, at Exhibit 16, I believe you  
21 checked on the second page under this third group of  
22 factors, have you using a small portion of the work?

23 A. Yes.

24 Q. You believe that was appropriate for each  
25 of the -- an appropriate conclusion for each of the



1 works we're talking about, each of the four excerpts?

2 A. Yes.

3 Q. And you checked for each of them that the  
4 portion used is not central or significant to the  
5 entire work as a whole?

6 A. Yes.

7 Q. Did you believe when you undertook this  
8 analysis in 2009 that that was the case, that the  
9 portion used was not central or significant to the  
10 entire work?

11 A. Yes.

12 Q. And that -- was that for the reasons  
13 you've already testified about?

14 A. Yes. Uh-huh.

15 Q. Okay. You checked on these, if you'll  
16 look, for example, at -- I think it's on any of  
17 them; but I'm looking at 14 and 15 right now, the two  
18 versions of the first checklist on -- on The Slave  
19 Community excerpt.

20 You believe that the use would not have a  
21 significant effect on the market or potential market  
22 for the work?

23 A. Which -- what -- which factor are we --

24 Q. It's under the Factor 4, the last  
25 factors --

1 A. Okay.

2 Q. -- last group of factors. The first  
3 box --

4 A. Right.

5 Q. -- on the left-hand side.

6 And you checked that use stimulates market  
7 for original work?

8 A. Yes.

9 Q. And what did you mean by that?

10 A. That I thought that -- that I encouraged  
11 the students to buy this, to buy the book.

12 And which one is this? The Slave  
13 Community.

14 Yeah. I encouraged the students to buy  
15 the book, because I think it's a good read; and so I  
16 thought that that would simulate the market.

17 Q. Okay. Have you had any students to your  
18 recollection indicate they're considering buying a  
19 book after you use an excerpt in a class?

20 MR. BLOOM: Objection. Calls for hearsay.

21 Q. (By Mr. Harbin) You can answer.

22 A. Are we talking any time? Are we  
23 talking --

24 Q. Any time.

25 A. Well, actually, I have a -- a written -- a

1 paper from a student this semester who said they're  
2 going to purchase the book.

3 Q. If you look on some of the forms, for  
4 example -- and I can show you my copy if it's  
5 easier -- on Plaintiff's Exhibit Dixon 14, the  
6 initial checklist you recreated for The Slave  
7 Community excerpt, you checked user owns lawfully  
8 acquired or purchased copy of the work.

9 And then on Exhibit 15, your -- the one  
10 you did a week later, you did not check that.

11 A. Yes. That part is an oversight.

12 Q. What --

13 A. -- 'cause that --

14 Q. -- was, the failure to check it?

15 A. The failure to check it, because I  
16 actually have several copies of the book.

17 Q. Okay. And to your knowledge, does the  
18 library also have some or all of these books?

19 A. I don't think the library has several of  
20 them. I have --

21 Q. Some or all of them. Not several.

22 A. Oh. Some -- Some or all the books.  
23 Maybe have "Slave Community."

24 Q. Do you remember?

25 A. I just don't remember. I just don't --

1 Q. Okay.

2 A. -- recall. Yeah.

3 Q. And similarly, if you look at Plaintiff's  
4 Exhibit Dixon 16, you did not check that box, user  
5 owns lawfully acquired or purchased copy of the  
6 original work.

7 Was that correct, or was that an  
8 oversight?

9 A. That's an oversight.

10 Q. And then on 17, Dixon Exhibit 17 and 18,  
11 you also did not check that box about user owning a  
12 lawfully acquired or purchased copy to work with.

13 Were those --

14 A. Now that's --

15 Q. -- not entered exactly, or was that an  
16 oversight?

17 A. It's oversight.

18 Q. All right. Thank you. And you checked I  
19 believe in each case that the access was restricted.  
20 And the -- It's under the final fourth category, the  
21 last entry on the lower left-hand row on the second  
22 page --

23 A. Yes.

24 Q. -- Factor 4 --

25 MR. BLOOM: Sorry, Counsel --

1 Q. (By Mr. Harbin) -- restricted access.

2 A. Right.

3 MR. BLOOM: Wait. Which exhibit are you  
4 looking at? I'm sorry.

5 Q. (By Mr. Harbin) I think it's -- She  
6 checked them on all of them, is that right, 14  
7 through 18?

8 A. (Witness nods head affirmatively.)

9 Q. And you checked restricted access?

10 A. Yes.

11 Q. And what did you mean by that?

12 A. That only the students who take the course  
13 have access to it. They have to have a user name and  
14 password in order to have access to the course, and  
15 to have access to the Ereserves, so only the students  
16 who have access to it.

17 Q. And for each of these four works that you  
18 used in this course that the plaintiffs are  
19 complaining about, the ones we reviewed, did you make  
20 a conclusion as to whether your use of the excerpt in  
21 the course was or was not fair use?

22 A. Yeah. I made a determination that it was  
23 fair use.

24 Q. Okay. And that's reflected in your  
25 re-creation of the checklist?

1 A. Yes.

2 Q. Okay. Prior to the -- Well, did the  
3 university encourage you to use Ereserve to post  
4 excerpts of work?

5 A. No.

6 Q. Did -- Do you ever use uLearn to post  
7 reading material excerpts for classes?

8 A. No.

9 Q. Prior to the adoption of Ereserve, how did  
10 you make excerpts available to students?

11 A. I put -- by putting the books on reserve  
12 in the library.

13 Q. Putting a hard copy on reserve?

14 A. Putting a hard copy. Yes.

15 Q. And that's a hard copy that either you or  
16 the library had legally owned?

17 A. If the library didn't legally own it, I  
18 gave them a copy of mine.

19 Q. Okay. The one you -- The one you own --

20 A. Right.

21 Q. -- as you said?

22 A. Yes.

23 Q. Okay. If you had determined that any of  
24 these four excerpts you used in the fall 2009 class  
25 was not fair use -- Let me start that question over.

1           If you had determined that any of the four  
2 excerpts you wanted to use in the fall of 2009 class  
3 we reviewed would not constitute fair use, what would  
4 you have done?

5           A.     Put the book on reserve in the library.

6           Q.     Put a -- Put a hard copy on reserve?

7           A.     Put a hard copy of the book. Uh-huh.

8           Q.     Okay. Well, following the university's  
9 adoption of the current copyright policy which we  
10 marked as Defendant's Exhibit -- or Plaintiff's  
11 Exhibit Dixon 2 --

12          A.     Okay. Yes.

13          Q.     -- did your practice about putting  
14 excerpts on Ereserve change in any way?

15          A.     Yes. It did.

16          Q.     How did it change?

17          A.     I actually, for the most part, just  
18 started putting all my books, most of the books on --  
19 on E -- on Ereserve -- on reserve in the library.

20          Q.     I'm sorry. You started putting books,  
21 most of the books --

22          A.     Yeah. Most of the -- the chapters that --

23                 But before 2009, I had a lot of chapters  
24 that were from books; and in 2009 it -- it got back  
25 down to four; and then by 2010, almost all of my

1 chapters are now on reserve in hard copy.

2 MR. BLOOM: I'm going -- John, I just  
3 want to object to the extent that her testimony  
4 is addressing practice in 2010, as per the  
5 parties' prior understanding in that regard and  
6 the Court's ruling in that regard.

7 MR. HARBIN: Okay. Thank you.

8 Q. (By Mr. Harbin) So you're saying after  
9 this policy's adopted, you put fewer excerpts on  
10 Ereserve?

11 A. A lot fewer.

12 Q. And more on hard-copy reserve?

13 A. Exactly. Correct.

14 Q. Okay. And why did you do that?

15 A. Just to get away from the -- This got to  
16 be complicated; and I had found out that Georgia  
17 State was facing a lawsuit, so I thought it was just  
18 better to just do that, easier.

19 And then Georgia State requires you every  
20 semester now to go through this whole process, and so  
21 it's easier just to put the books on reserve and have  
22 the students go and get the book themselves.

23 Q. So following up on your answer there --

24 A. Uh-huh.

25 Q. -- if you teach a course, say, the fall



1 semester and then you're teaching it in the following  
2 spring semester, do you get to keep the excerpts on  
3 Ereserve, whatever you put on Ereserve; or do you  
4 have to redo the proces?

5 A. You have to go through the process every  
6 semester.

7 MR. HARBIN: Okay. All right. That's all  
8 I have. Thanks.

9 MR. BLOOM: Can we go off the record for a  
10 few minutes.

11 MR. HARBIN: Sure.

12 MR. BLOOM: I'd like to take a break.

13 MR. HARBIN: Sure, sure.

14 THE VIDEOGRAPHER: 1:44 p.m. Off the  
15 record.

16 (Discussion ensued off the record.)

17 THE VIDEOGRAPHER: 1:49 p.m. Back on the  
18 record.

19 CROSS-EXAMINATION

20 BY MR. BLOOM:

21 Q. Professor Dixon, my name is Jonathan  
22 Bloom. I'm with the law firm Weil, Gotshal & Manges.  
23 I represent the plaintiffs. I'm just going to ask  
24 you a few further questions.

25 Do you recall giving deposition testimony

1 previously in this case?

2 A. Yes.

3 Q. All right. And Mr. Larson asked you  
4 questions. You recall that?

5 A. Yes.

6 Q. Okay. And you -- You recall that you  
7 were under oath at the time you gave that deposition,  
8 correct?

9 A. Yes.

10 Q. Okay. I'm going to read you a question  
11 and answer from that deposition. This is at Page 113  
12 of the transcript, and this was a deposition given on  
13 February 2, 2011.

14 And the question is the following: And  
15 sitting here, you can't say whether either of the  
16 November 22nd or the November 29th version, referring  
17 to the checklists that we've just discussed, is  
18 identical to the original version you created back at  
19 the beginning of the semester in 2009, correct?

20 And your response was correct.

21 My question to you now is whether you  
22 stand by that testimony.

23 MR. HARBIN: Just for the record, it's a  
24 bench trial; but I would object that that's not  
25 proper impeachment or use of the deposition.

1                   But you can go ahead and answer.

2                   THE WITNESS:  You're going to have to ask  
3                   your question again because it -- it's --

4                   Q.       (By Mr. Bloom)  Okay.

5                   A.       I --

6                   Q.       Okay.  I'm going to reread the question  
7                   and answer.  My question to you is --

8                   A.       Uh-huh.

9                   Q.       -- whether you stand by your prior  
10                  testimony.

11                  A.       Okay.

12                  Q.       So the question, this is Mr. --  This is  
13                  Mr. Larson's question.

14                               And sitting here, you can't say whether  
15                               either of the November 22nd or the November 29th  
16                               version is identical to the version you created back  
17                               at the beginning -- beginning of the semester in  
18                               2009, correct?

19                               MR. HARBIN:  The same objections.

20                               Go ahead.

21                  Q.       (By Mr. Bloom)  And you responded correct.

22                  A.       Yeah.  And so you're asking me --

23                  Q.       I'm asking you if -- if you stand by that  
24                  response.

25                  A.       Yes.  I do.

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MR. BLOOM: Okay. I have no further questions.

MR. HARBIN: All right.

THE VIDEOGRAPHER: This concludes the videotape deposition of Professor Patricia Dixon, April 20, 2011, 1:52 p.m.

We're off the record.

(Whereupon, the deposition was concluded at 1:52 p.m.)

(Pursuant to Rule 30(e) of the Federal Rules of Civil Procedure and/or O.C.G.A. 9-11-30(e), neither a party nor the deponent having requested right of review of the deposition, the reading and signing of the deposition is waived.)

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C E R T I F I C A T E

STATE OF GEORGIA:

COUNTY OF FULTON:

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 36 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.

This, the 25th day of April, 2011.

S. JULIE FRIEDMAN, CCR-B-1476

## 1 COURT REPORTER DISCLOSURE

2  
3 Pursuant to Article 10.B of the Rules and  
4 Regulations of the Board of Court Reporting of the  
5 Judicial Council of Georgia which states: "Each court  
6 reporter shall tender a disclosure form at the time  
7 of the taking of the deposition stating the  
8 arrangements made for the reporting services of the  
9 certified court reporter, by the certified court  
10 reporter, the court reporter's employer or the  
11 referral source for the deposition, with any party to  
12 the litigation, counsel to the parties, or other  
13 entity. Such form shall be attached to the  
14 deposition transcript," I make the following  
15 disclosure:

16 I am a Georgia Certified Court Reporter. I am  
17 here as a representative of Esquire Deposition  
18 Solutions. Esquire Deposition Solutions was contacted  
19 to provide court reporting services for the  
20 deposition. Esquire Deposition Solutions will not be  
21 taking this deposition under any contract that is  
22 prohibited by O.C.G.A. 9-11-28(c).

23 Esquire Deposition Solutions has no  
24 contract/agreement to provide reporting services with  
25 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.  
Esquire Deposition Solutions 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.

21 S. Julie Friedman, CCR-1476  
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|------------------------|--------------------|---------------------|---------------------|--------------------|
| <b>A</b>               | <b>American</b>    | 19:25 21:11         | <b>attendance</b>   | <b>big</b>         |
| <b>AAS</b>             | 3:10 4:3 7:25      | <b>appendices</b>   | 19:10               | 23:8               |
| 3:21                   | 9:4,17             | 10:19               | <b>attended</b>     | <b>Black</b>       |
| <b>AAS3000</b>         | <b>agency</b>      | <b>applicable</b>   | 20:1                | 4:6,7,13,17        |
| 9:4                    | 38:15              | 7:1                 | <b>authored</b>     | 14:13 16:11        |
| <b>able</b>            | <b>ahead</b>       | <b>appropriate</b>  | 8:12                | 17:4,12            |
| 20:18,23               | 6:7 35:1,20        | 24:24,25            | <b>availability</b> | 23:11,19           |
| <b>access</b>          | <b>al</b>          | <b>approximatel</b> | 8:22                | <b>Blassingame</b> |
| 28:19 29:1,9,          | 1:10               | <b>y</b>            | <b>available</b>    | 3:23 10:10         |
| 13,14,15,16            | <b>already</b>     | 7:14 11:3           | 6:24 30:10          | <b>BLOOM</b>       |
| <b>accurate</b>        | 25:13              | 12:12 14:22         | <b>Avenue</b>       | 2:3 3:6 5:24       |
| 8:7,9                  | <b>Also</b>        | 16:19,24 17:5       | 2:4                 | 6:6,8 26:20        |
| <b>acquired</b>        | 2:13 27:18         | 21:14               | <b>B</b>            | 28:25 29:3         |
| 27:8 28:5,12           | 28:11              | <b>April</b>        | <b>Back</b>         | 32:2 33:9,12,      |
| <b>ACTION</b>          | <b>American</b>    | 1:17 5:2,16         | 14:4 31:24          | 20,22 35:4,21      |
| 1:5                    | 3:12,21 4:19       | 36:6 37:18          | 33:17 34:18         | 36:1               |
| <b>actual</b>          | 8:19 9:23          | <b>around</b>       | 35:16               | <b>Board</b>       |
| 18:9                   | 12:3,21 14:8       | 19:13               | <b>based</b>        | 5:6 38:3           |
| <b>addressing</b>      | 24:7               | <b>arrangements</b> | 22:4                | <b>book</b>        |
| 32:4                   | <b>among</b>       | 38:5                | <b>basis</b>        | 10:4 11:13,23      |
| <b>Administrati</b>    | 13:22              | <b>Article</b>      | 6:19                | 12:2 14:10,        |
| <b>on</b>              | <b>analysis</b>    | 5:5 38:3            | <b>BECKER</b>       | 13,19,24           |
| 7:24                   | 24:15 25:8         | <b>articles</b>     | 1:8 5:13            | 15:15,25           |
| <b>adopted</b>         | <b>and/or</b>      | 8:14                | <b>beginning</b>    | 16:4,7,11          |
| 20:8 32:9              | 36:11              | <b>asked</b>        | 10:23 17:1          | 17:7,15,19         |
| <b>adoption</b>        | <b>another</b>     | 34:3                | 34:19 35:17         | 20:13 26:11,       |
| 30:9 31:9              | 22:9               | <b>asking</b>       | <b>behalf</b>       | 15,19 27:2,16      |
| <b>affect</b>          | <b>answer</b>      | 35:22,23            | 2:2,7               | 31:5,7 32:22       |
| 9:22                   | 26:21 32:23        | <b>aspect</b>       | <b>being</b>        | <b>books</b>       |
| <b>affiliations</b>    | 34:11 35:1,7       | 18:15,18            | 5:14 11:11          | 8:12 27:18,22      |
| 5:22                   | <b>answers</b>     | <b>ATLANTA</b>      | 18:19               | 30:11 31:18,       |
| <b>affirmativel</b>    | 37:8               | 1:2,22 2:10         | <b>believe</b>      | 20,21,24           |
| <b>y</b>               | <b>Antecedents</b> | 5:15                | 12:17 13:10         | 32:21              |
| 19:20 29:8             | 3:13               | <b>attached</b>     | 24:20,24            | <b>box</b>         |
| <b>African</b>         | <b>anywise</b>     | 4:25 38:8           | 25:7,20 28:19       | 26:3 28:4,11       |
| 3:12,21 4:19           | 37:16              | <b>attempt</b>      | <b>bench</b>        | <b>break</b>       |
| 8:19 9:18,23           | <b>appear</b>      | 6:21                | 34:24               | 33:12              |
| 12:3,21 14:8           | 6:17 20:7          | <b>attempting</b>   | <b>better</b>       | <b>briefly</b>     |
| 24:7                   | <b>APPEARANCES</b> | 21:17 24:15         | 32:18               | 21:5               |
| <b>A f r i c a n -</b> | 2:1                | <b>attend</b>       | <b>bibliography</b> | <b>bring</b>       |
| <b>appears</b>         | <b>appears</b>     | 7:22 19:7           | 10:14               | 9:18               |
|                        |                    |                     |                     | <b>broke</b>       |

|                      |                     |                    |                     |                    |
|----------------------|---------------------|--------------------|---------------------|--------------------|
| 20:21                | <b>central</b>      | 19 24:5,19         | <b>concludes</b>    | <b>Copyrighted</b> |
| <b>Business</b>      | 25:4,9              | 25:18 27:6         | 36:4                | 3:19               |
| 7:24                 | <b>certified</b>    | 29:25              | <b>conclusion</b>   | <b>correct</b>     |
| <b>buy</b>           | 38:6,10             | <b>checklists</b>  | 24:25 29:20         | 8:15 10:13,22      |
| 26:11,14             | <b>certify</b>      | 20:16,18,24        | <b>Conference</b>   | 12:19 17:5         |
| <b>buying</b>        | 37:6,13             | 21:5 24:14,19      | 1:21                | 28:7 32:13         |
| 26:18                | <b>chairs</b>       | 34:17              | <b>considering</b>  | 34:8,19,20         |
| <hr/> <b>C</b> <hr/> | 23:7                | <b>Children</b>    | 26:18               | 35:18,21           |
| <b>C</b>             | <b>challenging</b>  | 3:10,13 4:7,       | <b>constitute</b>   | 37:11              |
| 37:1                 | 9:25                | 17 12:22           | 31:3                | <b>couldn't</b>    |
| <b>calculated</b>    | <b>change</b>       | 13:16 14:14        | <b>contacted</b>    | 22:1               |
| 13:11                | 31:14,16            | 15:19,22           | 38:11               | <b>Council</b>     |
| <b>calculation</b>   | <b>Chapter</b>      | 23:19              | <b>Contents</b>     | 5:7 38:4           |
| 13:12                | 3:10,12             | <b>CIVIL</b>       | 3:22 4:5,6,8        | <b>COUNSEL</b>     |
| <b>called</b>        | 10:22,25            | 1:5 7:1 36:11      | <b>contract</b>     | 2:1 5:21 6:15      |
| 10:4 12:2            | 11:16,19            | <b>class</b>       | 38:12               | 28:25 37:13,       |
| 14:13 16:11          | 12:17,21            | 19:3 26:19         | <b>contract/agr</b> | 15 38:7,15         |
| <b>Calls</b>         | 13:7,14,18,         | 30:24 31:2         | <b>eement</b>       | <b>count</b>       |
| 26:20                | 20 14:7,24          | <b>classes</b>     | 38:14               | 10:17              |
| <b>CAMBRIDGE</b>     | 15:2,3,8,17         | 30:7               | <b>contribution</b> | <b>counting</b>    |
| 1:4 5:12             | 16:6 17:1,2,        | <b>clear</b>       | 18:1                | 10:13              |
| <b>came</b>          | 10,17 18:18         | 15:23              | <b>convey</b>       | <b>COUNTY</b>      |
| 20:23                | <b>chapters</b>     | <b>Cognitive</b>   | 17:11               | 37:4               |
| <b>cancer</b>        | 10:18 31:22,        | 3:13               | <b>copies</b>       | <b>course</b>      |
| 9:1                  | 23 32:1             | <b>Communities</b> | 21:9 27:16          | 9:3,10,15          |
| <b>capacity</b>      | <b>characterize</b> | 17:4,13            | <b>copy</b>         | 10:1,3 11:8        |
| 1:9                  | 19:9                | <b>Community</b>   | 8:1,3 9:7,9         | 12:1,18 13:2,      |
| <b>caption</b>       | <b>charge</b>       | 3:23 4:9,11        | 10:7,9 11:5,        | 8 14:12 15:17      |
| 37:8                 | 38:16               | 10:5 18:13,        | 23 12:6,8           | 16:1,9 20:14       |
| <b>case</b>          | <b>check</b>        | 14,16,19           | 13:1 14:10,18       | 21:18,19           |
| 9:25 25:8            | 27:10,14,15         | 22:11 25:19        | 15:12 16:4          | 22:10 23:10,       |
| 28:19 34:1           | 28:4,11             | 26:13 27:7,23      | 17:14 19:21         | 23 24:7,16         |
| 37:14,17             | <b>checked</b>      | <b>complaining</b> | 20:3 21:6           | 29:12,14,18,       |
| 38:15,17             | 24:21 25:3,15       | 29:19              | 22:6,9 23:2,        | 21 32:25           |
| <b>category</b>      | 26:6 27:7           | <b>complete</b>    | 17 24:3 27:4,       | <b>courses</b>     |
| 28:20                | 28:18 29:6,9        | 37:11              | 8 28:5,12           | 20:16              |
| <b>CCR-1476</b>      | <b>Checklist</b>    | <b>complicated</b> | 30:13,14,15,        | <b>COURT</b>       |
| 38:21                | 4:9,11,13,          | 32:16              | 18 31:6,7           | 1:1 5:6,19         |
| <b>CCR-B-1476</b>    | 17,18 18:20         | <b>concerning</b>  | 32:1                | 6:14 7:7           |
| 1:24 37:20           | 19:5 20:12          | 21:18 24:6         | <b>Copyright</b>    | 38:1,3,4,6,        |
|                      | 21:15,23,25         | <b>concluded</b>   | 4:15 19:4           | 10,11              |
|                      | 22:9,19 23:9,       | 36:8               | 20:8 31:9           | <b>Court's</b>     |



|                      |                     |                      |                     |                     |
|----------------------|---------------------|----------------------|---------------------|---------------------|
| 32:6                 | 8:2 11:6            | 3:4 7:4              | <b>each</b>         | <b>entity</b>       |
| <b>cover</b>         | 12:25 15:11         | <b>direction</b>     | 18:2,22 20:16       | 38:8                |
| 38:16                | 31:10               | 37:9                 | 24:13,19,24,        | <b>entry</b>        |
| <b>covered</b>       | <b>degree</b>       | <b>disclosure</b>    | 25 25:1,3           | 28:21               |
| 9:14                 | 7:18,22             | 5:4 38:1,4,9         | 28:19 29:17         | <b>Ereserve</b>     |
| <b>created</b>       | <b>department</b>   | <b>discount</b>      | 38:4                | 30:3,9 31:14,       |
| 34:18 35:16          | 8:17,19             | 38:17                | <b>easier</b>       | 19 32:10 33:3       |
| <b>critical</b>      | <b>deponent</b>     | <b>discussed</b>     | 27:5 32:18,21       | <b>Ereserves</b>    |
| 11:20 14:7           | 36:12               | 34:17                | <b>edited</b>       | 29:15               |
| 16:7 17:19,22        | <b>DEPOSITION</b>   | <b>discussing</b>    | 17:25 18:5          | <b>ESQ</b>          |
| <b>C R O S S -</b>   | 1:14 5:1,11,        | 16:10 21:20          | <b>Education</b>    | 2:3,9,14            |
| <b>EXAMINATION</b>   | 14 6:10,22          | <b>Discussion</b>    | 3:20                | <b>Esquire</b>      |
| 3:5 33:19            | 33:25 34:7,         | 33:16                | <b>effect</b>       | 38:10,11,12,        |
| <b>culture</b>       | 11,12,25            | <b>DISTRICT</b>      | 25:21               | 14,16               |
| 15:23                | 36:5,8,14,15        | 1:1 6:14 7:2         | <b>eight</b>        | <b>et</b>           |
| <b>current</b>       | 38:5,7,8,10,        | <b>DIVISION</b>      | 10:18               | 1:10                |
| 31:9                 | 11,12,14,16         | 1:2                  | <b>either</b>       | <b>Evidence</b>     |
| <b>Curriculum</b>    | <b>Description</b>  | <b>DIXON</b>         | 30:15 34:15         | 6:25 37:12          |
| 3:18 8:4             | 3:9,17 4:2          | 1:15 3:2,18          | 35:15               | <b>exactly</b>      |
| <b>customary</b>     | <b>determinatio</b> | 5:1,11 6:3,23        | <b>emancipation</b> | 28:15 32:13         |
| 38:17                | <b>n</b>            | 7:6,9 8:3 9:8        | 9:19                | <b>EXAMINATION</b>  |
| <b>CV</b>            | 29:22               | 10:8 11:7            | <b>employ</b>       | 3:4 7:4             |
| 8:15                 | <b>determined</b>   | 12:8,25 14:6,        | 37:15               | <b>EXAMINATIONS</b> |
| <hr/> <b>D</b> <hr/> | 30:23 31:1          | 17 15:11             | <b>employer</b>     | 3:1                 |
| <b>date</b>          | <b>developed</b>    | 16:14 20:5           | 38:6                | <b>examined</b>     |
| 22:16                | 15:19               | 21:7 22:8            | <b>encompassed</b>  | 6:4                 |
| <b>dated</b>         | <b>Development</b>  | 23:4,16,18           | 19:4                | <b>example</b>      |
| 21:10,11             | 3:12                | 27:5 28:4,10         | <b>encourage</b>    | 24:20 25:16         |
| 22:13                | <b>Development.</b> | 31:11 33:21          | 30:3                | 27:4                |
| <b>day</b>           | .                   | 36:6                 | <b>encouraged</b>   | <b>excerpt</b>      |
| 37:18                | 15:8                | <b>down</b>          | 26:10,14            | 10:4 11:7,13        |
| <b>deal</b>          | <b>diagnosed</b>    | 31:25 37:7           | <b>enough</b>       | 12:2 13:1           |
| 9:2                  | 8:25                | <b>drive</b>         | 19:13               | 14:13 15:12         |
| <b>decision</b>      | <b>didn't</b>       | 20:21 21:1,2         | <b>enslaved</b>     | 16:3,10 17:18       |
| 18:22                | 11:22 14:9          | <b>duly</b>          | 18:17               | 22:10,19            |
| <b>Defendants</b>    | 17:21 18:11,        | 6:4                  | <b>ensued</b>       | 23:20 25:19         |
| 1:11 2:7 6:2,        | 17 19:12            | <b>during</b>        | 33:16               | 26:19 27:7          |
| 16,21                | 30:17               | 8:22                 | <b>entered</b>      | 29:20               |
| <b>Defendant's</b>   | <b>different</b>    | <hr/> <b>E</b> <hr/> | 28:15               | <b>excerpts</b>     |
| 3:8 4:23 5:8         | 17:22 18:3,7        | <b>E</b>             | <b>entire</b>       | 9:25 17:22          |
|                      | <b>DIRECT</b>       | 31:19 37:1           | 11:20 25:5,10       | 18:22 20:13         |
|                      |                     |                      |                     | 23:10,22 24:6       |

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 25:1 30:4,7,<br>10,24 31:2,14<br>32:9 33:2<br><b>excuse</b><br>20:14 23:5<br><b>Exhibit</b><br>3:9,17 4:2<br>8:2 9:8 10:8<br>11:6 12:7,25<br>14:17 15:11<br>16:14 19:22<br>20:4 21:7<br>22:7 23:3,18<br>24:4,20 27:5,<br>9 28:4,10<br>29:3 31:10,11<br><b>EXHIBITS</b><br>3:7,16 4:1,<br>23,24 5:8<br><b>experience</b><br>9:18 13:16<br>17:11<br><b>Experiential</b><br>3:13<br><b>expressly</b><br>6:20<br><b>extent</b><br>6:11 32:3<br><hr/> <b>F</b> <hr/> <b>F</b><br>37:1<br><b>facing</b><br>32:17<br><b>factor</b><br>25:23,24<br>28:24<br><b>factors</b><br>24:22 25:25<br>26:2<br><b>failure</b><br>27:14,15<br><b>Fair</b> | 4:9,11,13,<br>17,18 18:20<br>20:12 23:18<br>24:5,13<br>29:21,23<br>30:25 31:3<br><b>Fall</b><br>3:21 9:4,12<br>10:4 12:1,18<br>14:12 16:9<br>19:2 20:13<br>21:19 24:16<br>30:24 31:2<br>32:25<br><b>Families</b><br>3:10 4:4,6,<br>13,17,20 9:23<br>12:4,22 16:11<br>17:4,12 23:11<br><b>Family</b><br>3:21 8:25<br>9:5,17<br><b>Fax</b><br>2:5,11<br><b>February</b><br>34:13<br><b>Federal</b><br>6:25 36:10<br><b>feel</b><br>17:12<br><b>felt</b><br>18:11<br><b>fewer</b><br>32:9,11<br><b>Fifth</b><br>2:4<br><b>FILE</b><br>1:5 22:24<br><b>fill</b><br>20:15 22:2,<br>15,18 23:13<br>24:10 | <b>filled</b><br>21:14 22:10<br>23:1,9,19,25<br>24:6,14<br><b>filling</b><br>21:22 22:20<br><b>final</b><br>28:20<br><b>financial</b><br>38:17<br><b>find</b><br>20:24 22:1<br><b>Fine</b><br>6:7<br><b>firm</b><br>33:22<br><b>first</b><br>6:3 22:5,25<br>25:18 26:2<br><b>following</b><br>31:8 32:23<br>33:1 34:14<br>38:8<br><b>follows</b><br>6:5<br><b>foregoing</b><br>37:6,10<br><b>form</b><br>38:4,8<br><b>forms</b><br>27:3<br><b>found</b><br>32:16<br><b>four</b><br>9:25 10:1<br>18:22 20:13<br>25:1 29:17<br>30:24 31:1,25<br><b>fourth</b><br>28:20<br><b>Friedman</b> | 1:24 5:20<br>37:20 38:21<br><b>full</b><br>7:7 19:11<br><b>FULTON</b><br>37:4<br><b>further</b><br>33:24 36:1<br>37:12<br><hr/> <b>G</b> <hr/> <b>GaState00211</b><br><b>20-21148</b><br>4:16<br><b>GaState00652</b><br><b>99-300</b><br>4:10<br><b>GaState00653</b><br><b>01-302</b><br>4:12<br><b>GaState00653</b><br><b>03-304</b><br>4:14<br><b>gave</b><br>30:18 34:7<br><b>GEORGIA</b><br>1:1,9,22 2:10<br>5:7,16 6:15<br>7:11,14 8:18<br>18:21 20:8<br>32:16,19 37:3<br>38:4,10<br><b>getting</b><br>19:1 20:10<br>21:8<br><b>give</b><br>15:18 18:2,7<br>21:25<br><b>given</b><br>34:12 37:12<br>38:17<br><b>giving</b> | 33:25<br><b>Go</b><br>6:7 9:2 12:14<br>13:23 21:4<br>32:20,22<br>33:5,9 35:1,<br>20<br><b>goes</b><br>8:7<br><b>going</b><br>7:15 27:2<br>32:2 33:23<br>34:10 35:2,6<br><b>good</b><br>26:15<br><b>GOTSHAL</b><br>2:3 5:25<br>33:22<br><b>ground</b><br>6:23<br><b>group</b><br>24:21 26:2<br><b>guess</b><br>15:21<br><hr/> <b>H</b> <hr/> <b>half</b><br>8:22<br><b>hand</b><br>8:1 11:5,6<br>12:6,24 14:16<br>15:10 16:13<br>19:21 20:3<br>21:4,5 22:6<br>23:2,16 24:3<br><b>happened</b><br>20:20<br><b>HARBIN</b><br>2:9 3:4 6:1,7<br>7:3,5 13:23<br>14:6 19:23,24<br>21:8,10 26:21<br>29:1,5 32:7,8 |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 33:7,11,13<br>34:23 35:19<br>36:3<br><b>hard</b><br>30:13,14,15<br>31:6,7 32:1<br><b>hard-copy</b><br>32:12<br><b>head</b><br>19:20 29:8<br><b>hearing</b><br>37:12<br><b>hearsay</b><br>26:20<br><b>heart</b><br>11:20 14:7<br>16:6 17:18,22<br>18:6,12,18<br><b>held</b><br>5:14<br><b>Henry</b><br>2:14 5:18<br><b>her</b><br>22:21 32:3<br><b>hereby</b><br>37:6<br><b>history</b><br>9:16,21<br><b>homes</b><br>13:17<br><b>Howard</b><br>7:20,23<br><hr/> <b>I</b> <hr/> <b>idea</b><br>15:18<br><b>identical</b><br>34:18 35:16<br><b>identificati</b><br><b>on</b><br>5:9 | <b>Identity</b><br>3:12 15:7,19<br><b>impeachment</b><br>34:25<br><b>importance</b><br>15:21<br><b>INDEX</b><br>3:1,7,16 4:1<br>10:12,14<br>12:9,15 14:19<br>16:15,18,23<br><b>indicate</b><br>26:18<br><b>initial</b><br>27:6<br><b>in-person</b><br>19:7<br><b>instruction</b><br>4:15<br><b>interested</b><br>37:16<br><b>introduce</b><br>5:21 6:22 7:6<br><b>isolation</b><br>17:12<br><b>issue</b><br>13:11 18:4,9<br><b>issues</b><br>9:22<br><b>items</b><br>24:18<br><hr/> <b>J</b> <hr/> <b>jacket</b><br>23:7<br><b>jharbin@ksla</b><br><b>w.com</b><br>2:11<br><b>Jo</b><br>2:14<br><b>JOHN</b> | 2:9 6:1,6<br>10:10 32:2<br><b>Jon</b><br>19:23<br><b>JONATHAN</b><br>2:3 5:24 21:9<br>33:21<br><b>jonathanbloo</b><br><b>m@weil.com</b><br>2:6<br><b>Judicial</b><br>5:6 38:4<br><b>Julie</b><br>1:24 5:19<br>37:20 38:21<br><b>just</b><br>8:25 10:17<br>11:17 16:22<br>17:11 18:15,<br>18 21:5 24:18<br>27:25 31:17<br>32:2,15,17,<br>18,21 33:23<br>34:17,23<br><hr/> <b>K</b> <hr/> <b>keep</b><br>33:2<br><b>kin</b><br>37:13<br><b>kind</b><br>9:17,21 15:21<br>20:25<br><b>KING</b><br>2:8 5:14 6:1<br><b>know</b><br>20:22 21:8<br><b>knowledge</b><br>27:17<br><hr/> <b>L</b> <hr/> <b>Larson</b><br>34:3 | <b>Larson's</b><br>35:13<br><b>last</b><br>25:24 26:2<br>28:21<br><b>later</b><br>27:10<br><b>law</b><br>33:22<br><b>lawfully</b><br>27:7 28:5,12<br><b>lawsuit</b><br>32:17<br><b>left-hand</b><br>26:5 28:21<br><b>legally</b><br>30:16,17<br><b>less</b><br>11:12 13:4<br>15:25 17:6<br><b>Let's</b><br>13:23<br><b>library</b><br>27:18,19<br>30:12,16,17<br>31:5,19<br><b>list</b><br>19:2<br><b>listed</b><br>8:14<br><b>litigation</b><br>38:7,18<br><b>live</b><br>6:17 11:18<br><b>Lives</b><br>4:4 12:4<br><b>living</b><br>17:12<br><b>LLP</b><br>2:8 | <b>local</b><br>7:2<br><b>long</b><br>7:13 11:11<br><b>look</b><br>8:10 9:16,21,<br>22 16:18,22<br>24:20 25:16<br>27:3 28:3<br><b>looking</b><br>25:17 29:4<br><b>looks</b><br>20:2<br><b>lot</b><br>13:19 31:23<br>32:11<br><b>lower</b><br>28:21<br><hr/> <b>M</b> <hr/> <b>making</b><br>18:21<br><b>Mandara</b><br>3:14<br><b>mandatory</b><br>19:15<br><b>MANGES</b><br>2:3 5:25<br>33:22<br><b>MARK</b><br>1:8 5:13<br><b>MARKED</b><br>3:16 4:1,24<br>5:9 8:2 9:8<br>10:8 11:6<br>12:7,24 14:17<br>15:10 16:14<br>19:22 20:4<br>21:6 22:7<br>23:3,17 24:4<br>31:10<br><b>market</b> |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

|                 |                   |                     |                     |                     |
|-----------------|-------------------|---------------------|---------------------|---------------------|
| 25:21 26:6,16   | <b>neither</b>    | 15:7,20,24          | 1:8                 | 1:15 3:2,18         |
| <b>Mary</b>     | 36:12             | 16:9 17:9           | <b>p.m</b>          | 5:1,11 6:3          |
| 2:14            | <b>New</b>        | 18:8,10 19:1,       | 36:9                | 7:9 36:5            |
| <b>Master's</b> | 2:4 4:15          | 17 20:3,25          | <b>P-18</b>         | <b>PDF</b>          |
| 7:23            | <b>nods</b>       | 21:3 22:3           | 4:18                | 22:24               |
| <b>material</b> | 19:20 29:8        | 23:2,8,13,          | <b>Page</b>         | <b>Peachtree</b>    |
| 30:7            | <b>NORTHERN</b>   | 16,25 24:3,13       | 3:3,9,17,22         | 1:21 2:9 5:15       |
| <b>matter</b>   | 1:1 6:14          | 25:15 26:1,17       | 4:2,4,6,7           | <b>people</b>       |
| 5:12            | <b>November</b>   | 27:17 28:1          | 8:11 10:9,23        | 18:16 19:13         |
| <b>mean</b>     | 21:11 22:13       | 29:24 30:2,         | 12:9 14:18          | <b>percent</b>      |
| 15:2 26:9       | 23:14 24:1,11     | 19,23 31:8,12       | 15:5 16:15          | 11:12 13:5,11       |
| 29:11           | 34:16 35:15       | 32:7,14 33:7        | 24:21 28:22         | 15:24 17:6          |
| <b>meaning</b>  | <b>number</b>     | 34:6,10 35:4,       | 34:11               | <b>perspective</b>  |
| 6:24            | 11:13 15:25       | 6,11 36:1           | <b>pages</b>        | 18:3                |
| <b>means</b>    | 17:25             | <b>ones</b>         | 10:15,19,25         | <b>perspectives</b> |
| 17:25           | <b>numerous</b>   | 29:19               | 11:3,13             | 18:7                |
| <b>member</b>   | 8:14              | <b>one's</b>        | 12:12,15            | <b>Ph.D</b>         |
| 8:25 18:19      | <u>O</u>          | 22:13               | 14:22,24            | 1:15 3:2 5:1        |
| <b>mine</b>     | <b>O.C.G.A</b>    | <b>order</b>        | 15:25 16:20,        | 6:3 7:25            |
| 30:18           | 36:11 38:13       | 29:14               | 24 17:2,6,7         | <b>photocopies</b>  |
| <b>minute</b>   | <b>oath</b>       | <b>organization</b> | 37:10               | 4:24                |
| 13:24           | 34:7              | 9:19                | <b>paper</b>        | <b>Plaintiffs</b>   |
| <b>minutes</b>  | <b>object</b>     | <b>Original</b>     | 27:1                | 1:6 2:2 5:25        |
| 33:10           | 6:10,21 32:3      | 4:23,25 22:21       | <b>part</b>         | 6:10,19 9:24        |
| <b>most</b>     | 34:24             | 26:7 28:6           | 11:20 14:7          | 13:10 29:18         |
| 8:5 31:17,18,   | <b>objection</b>  | 34:18               | 16:7 17:19,23       | 33:23               |
| 21,22           | 6:9 26:20         | <b>over</b>         | 27:11 31:17         | <b>Plaintiff's</b>  |
| <b>Mothers</b>  | <b>objections</b> | 10:15 12:11         | <b>particular</b>   | 3:17 4:2,24         |
| 4:3,19 12:3     | 35:19             | 14:21 30:25         | 18:4                | 9:8 10:8 12:7       |
| 13:19 14:8      | <b>offered</b>    | <b>oversight</b>    | <b>Particularly</b> | 14:17 16:14         |
| 24:8            | 6:12              | 27:11 28:8,9,       | 18:5                | 19:22 20:4          |
| <b>Murray</b>   | <b>official</b>   | 16,17               | <b>parties</b>      | 21:6 22:7           |
| 3:13            | 1:9               | <b>owned</b>        | 37:14,15            | 23:3,17 24:4        |
| <u>N</u>        | <b>Oh</b>         | 30:16               | 38:7,17             | 27:5 28:3           |
| <b>N.E</b>      | 27:22             | <b>owning</b>       | <b>parties'</b>     | 31:10               |
| 1:21 2:9        | <b>Okay</b>       | 28:11               | 32:5                | <b>plaintiffs'</b>  |
| <b>name</b>     | 7:10,17 8:1,      | <b>owns</b>         | <b>party</b>        | 13:12               |
| 5:18 7:8        | 17,21 9:3,7,      | 27:7 28:5           | 36:12 38:7,         | <b>planned</b>      |
| 29:13 33:21     | 14 10:25          | <b>OXFORD</b>       | 15,17               | 8:24                |
| <b>needed</b>   | 11:10 13:23       | 1:4                 | <b>password</b>     | <b>plans</b>        |
| 22:1            | 14:10,12          | <u>P</u>            | 29:14               | 8:22 9:1            |
|                 |                   | <b>P</b>            | <b>PATRICIA</b>     | <b>plantation</b>   |

|                                                 |                                                                            |                                                             |                                                                                   |                                                      |
|-------------------------------------------------|----------------------------------------------------------------------------|-------------------------------------------------------------|-----------------------------------------------------------------------------------|------------------------------------------------------|
| 10:23 11:18<br>18:15                            | <b>pretty</b><br>23:8                                                      | <b>published</b><br>8:10,11                                 | <b>reading</b><br>19:2 30:7<br>36:14                                              | <b>referral</b><br>38:7,15                           |
| <b>please</b><br>5:21 7:8                       | <b>PREVIOUSLY</b><br>3:16 4:1,24                                           | <b>purchase</b><br>27:2                                     | <b>real</b><br>15:23                                                              | <b>referring</b><br>20:25 21:1<br>34:16              |
| <b>point</b><br>8:7 12:14                       | 8:2 9:8 10:8<br>12:7 14:16<br>16:13 19:22                                  | <b>purchased</b><br>27:8 28:5,12                            | <b>realities</b><br>10:23                                                         | <b>reflected</b><br>29:24                            |
| <b>Policy</b><br>3:19 4:16<br>19:4 20:8<br>31:9 | 20:4 22:7<br>23:3,17 24:4<br>34:1                                          | <b>purpose</b><br>11:15 13:13,<br>15 15:16 17:9<br>21:22    | <b>reality</b><br>18:15                                                           | <b>regard</b><br>32:5,6                              |
| <b>policy's</b><br>32:9                         | <b>prior</b><br>16:23 30:2,9<br>32:5 35:9                                  | <b>pursuant</b><br>5:4 36:10<br>38:3                        | <b>really</b><br>21:25                                                            | <b>Regarding</b><br>20:12                            |
| <b>portion</b><br>24:22 25:4,9                  | <b>Procedure</b><br>7:1 36:11                                              | <b>put</b><br>30:11 31:5,6,<br>7 32:9,21<br>33:3            | <b>reasons</b><br>13:18,21<br>25:12                                               | <b>regular</b><br>37:14                              |
| <b>portions</b><br>16:23                        | <b>proces</b><br>33:4                                                      | <b>putting</b><br>30:11,13,14<br>31:13,18,20                | <b>recall</b><br>10:21 22:4<br>28:2 33:25<br>34:4,6                               | <b>Regulations</b><br>5:5 38:3                       |
| <b>post</b><br>30:3,6                           | <b>process</b><br>32:20 33:5                                               | <b>Q</b>                                                    | <b>receive</b><br>7:22                                                            | <b>remember</b><br>11:11 27:24,<br>25                |
| <b>postgraduate</b><br>7:21                     | <b>Professor</b><br>6:23 7:6,10<br>14:6 23:16<br>33:21 36:5                | <b>question</b><br>30:25 34:10,<br>14,21 35:3,6,<br>7,12,13 | <b>received</b><br>7:19                                                           | <b>Reporter</b><br>5:4,19 14:3<br>38:1,4,6,10,<br>15 |
| <b>potential</b><br>25:21                       | <b>prohibited</b><br>38:13                                                 | <b>questions</b><br>33:24 34:4<br>36:2 37:8                 | <b>recollection</b><br>20:15 22:15<br>26:18                                       | <b>reporter's</b><br>38:6                            |
| <b>pp</b><br>3:11,14                            | <b>proper</b><br>34:25                                                     | <b>R</b>                                                    | <b>record</b><br>5:17 6:9<br>13:10,24<br>14:1,2,5<br>33:9,15,16,<br>18 34:23 36:7 | <b>Reporting</b><br>5:6 38:3,5,<br>11,14,15          |
| <b>practice</b><br>31:13 32:4                   | <b>provide</b><br>6:17 38:11,14                                            | <b>R</b><br>37:1                                            | <b>recreate</b><br>24:15                                                          | <b>represent</b><br>33:23 37:10                      |
| <b>preparing</b><br>19:2 24:16                  | <b>provided</b><br>18:21                                                   | <b>Racial</b><br>3:12 15:7,19,<br>22                        | <b>recreated</b><br>27:6                                                          | <b>representati<br/>ve</b><br>38:10                  |
| <b>Present</b><br>2:13 9:20                     | <b>publication</b><br>11:21 13:1,5<br>14:8,21<br>16:16,19,22<br>17:6 23:11 | <b>range</b><br>6:13                                        | <b>re-creation</b><br>29:25                                                       | <b>represented</b><br>6:15 13:7                      |
| <b>Presentation</b><br>4:15 19:25<br>20:2       | <b>PUBLICATIONS</b><br>1:5 17:23,24                                        | <b>rates</b><br>38:17                                       | <b>redo</b><br>33:4                                                               | <b>requested</b><br>14:3 21:24<br>36:13              |
| <b>presently</b><br>7:10                        | <b>publication'</b><br><b>s</b><br>10:14                                   | <b>read</b><br>14:2 26:15<br>34:10                          | <b>reduced</b><br>37:9                                                            | <b>requires</b><br>32:19                             |
| <b>President</b><br>1:10                        |                                                                            |                                                             |                                                                                   | <b>reread</b><br>35:6                                |
| <b>PRESS</b><br>1:4,5 5:12                      |                                                                            |                                                             |                                                                                   |                                                      |
| <b>presumably</b><br>6:16                       |                                                                            |                                                             |                                                                                   |                                                      |

|                                                                                                                                                   |                                                          |                                                                              |                                                                    |                                                                          |
|---------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------|------------------------------------------------------------------------------|--------------------------------------------------------------------|--------------------------------------------------------------------------|
| <b>Research</b><br>3:20                                                                                                                           | <b>ruling</b><br>32:6                                    | <b>side</b><br>26:5                                                          | 9:22                                                               | 17:2                                                                     |
| <b>reserve</b><br>6:20 30:11,13<br>31:5,6,19<br>32:1,12,21                                                                                        | <hr/> <b>S</b> <hr/><br><b>s</b><br>1:24 37:20<br>38:21  | <b>significant</b><br>25:4,9,21                                              | <b>Solutions</b><br>38:11,12,14,<br>16                             | <b>Street</b><br>1:21 2:9 5:15                                           |
| <b>resides</b><br>6:12                                                                                                                            | <b>SAGE</b><br>1:5                                       | <b>signing</b><br>36:14                                                      | <b>Sorry</b><br>28:25 29:4<br>31:20                                | <b>strengths</b><br>13:20                                                |
| <b>responded</b><br>35:21                                                                                                                         | <b>save</b><br>20:16 22:23,<br>24                        | <b>similarly</b><br>28:3                                                     | <b>source</b><br>38:7                                              | <b>student</b><br>27:1                                                   |
| <b>response</b><br>34:20 35:24                                                                                                                    | <b>saying</b><br>32:8                                    | <b>simulate</b><br>26:16                                                     | <b>SPALDING</b><br>2:8 5:15 6:1                                    | <b>students</b><br>11:17 15:18<br>26:11,14,17<br>29:12,15<br>30:10 32:22 |
| <b>restricted</b><br>28:19 29:1,9                                                                                                                 | <b>scholars</b><br>18:1                                  | <b>Single</b><br>4:3,19 12:3<br>13:19 14:8<br>24:7                           | <b>spring</b><br>33:2                                              | <b>studies</b><br>7:25 8:20                                              |
| <b>result</b><br>37:16                                                                                                                            | <b>seats</b><br>19:13                                    | <b>s i n g l e -</b><br><b>c h a p t e r</b><br>17:18                        | <b>stand</b><br>15:23 34:22<br>35:9,23                             | <b>sub</b><br>10:17                                                      |
| <b>retrieve</b><br>20:18                                                                                                                          | <b>second</b><br>8:22 12:1<br>22:18 24:21<br>28:21       | <b>S i n g l e -</b><br><b>M o t h e r</b><br>3:10 12:22                     | <b>start</b><br>6:6 9:17<br>16:23 30:25                            | <b>subpoena</b><br>6:13,16                                               |
| <b>review</b><br>24:18 36:13                                                                                                                      | <b>seen</b><br>20:5                                      | <b>s i n g l e -</b><br><b>p a r e n t</b><br>13:17                          | <b>started</b><br>31:18,20                                         | <b>summarize</b><br>7:17 9:14                                            |
| <b>reviewed</b><br>29:19 31:3                                                                                                                     | <b>semester</b><br>27:1 32:20<br>33:1,2,6<br>34:19 35:17 | <b>s i t</b><br>19:13                                                        | <b>starting</b><br>15:5,6                                          | <b>Sure</b><br>6:7 23:6<br>33:11,13                                      |
| <b>right</b><br>6:20 8:8 9:3,<br>24 10:15,20<br>11:19 12:12<br>14:22 21:12<br>22:6,14 25:17<br>26:4 28:18<br>29:2,6 30:20<br>33:7 34:3<br>36:3,13 | <b>send</b><br>22:22 23:1                                | <b>s i t t i n g</b><br>34:15 35:14                                          | <b>State</b><br>1:9 7:11,14<br>8:18 18:21<br>20:8 32:17,19<br>37:3 | <b>sworn</b><br>5:23 6:4                                                 |
| <b>Room</b><br>1:21                                                                                                                               | <b>sense</b><br>11:18 13:15                              | <b>Slave</b><br>3:23 4:9,11<br>10:5 18:14,19<br>22:11 25:18<br>26:12 27:6,23 | <b>stated</b><br>37:7                                              | <b>syllabus</b><br>9:10                                                  |
| <b>row</b><br>28:21                                                                                                                               | <b>sent</b><br>22:21                                     | <b>slavery</b><br>9:19                                                       | <b>STATES</b><br>1:1 6:13 38:4                                     | <hr/> <b>T</b> <hr/>                                                     |
| <b>Rule</b><br>36:10                                                                                                                              | <b>services</b><br>38:5,11,14                            | <b>small</b><br>24:22                                                        | <b>stating</b><br>7:7 38:5                                         | <b>T</b><br>37:1                                                         |
| <b>Rules</b><br>5:5 6:25 7:1,<br>2 36:11 38:3                                                                                                     | <b>seventeenth</b><br>7:15                               | <b>SOCI</b><br>3:21                                                          | <b>Stewart</b><br>2:14 5:18                                        | <b>Table</b><br>3:22 4:4,6,8                                             |
|                                                                                                                                                   | <b>shall</b><br>38:4,8                                   | <b>socioeconomi</b>                                                          | <b>stimulates</b><br>26:6                                          | <b>take</b><br>13:11 23:7<br>29:12 33:12                                 |
|                                                                                                                                                   | <b>show</b><br>9:7 10:7 27:4                             | <b>c</b>                                                                     | <b>stood</b><br>13:21                                              | <b>taken</b><br>6:11 37:7                                                |
|                                                                                                                                                   |                                                          |                                                                              | <b>Stranded</b>                                                    | <b>taking</b><br>38:5,12                                                 |
|                                                                                                                                                   |                                                          |                                                                              |                                                                    | <b>talk</b><br>10:1 18:13                                                |

|                                                             |                                                                       |                                                                     |                                                                                                                                                                                                    |                                                                    |
|-------------------------------------------------------------|-----------------------------------------------------------------------|---------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------|
| <b>talked</b><br>18:24 20:15                                | 17 20:21<br>25:16 26:15<br>27:19 29:5                                 | <b>tried</b><br>22:24                                               | 1:1 6:13                                                                                                                                                                                           | <b>Videographer</b><br>2:14 5:10,19<br>13:25 14:4<br>33:14,17 36:4 |
| <b>talking</b><br>18:13 25:1<br>26:22,23                    | <b>third</b><br>8:11 24:21                                            | <b>true</b><br>8:3 37:11                                            | <b>UNIVERSITY</b><br>1:4,9 5:12<br>7:11,14,20,<br>23,24 18:21<br>30:3                                                                                                                              | <b>VIDEOTAPE</b><br>1:14 5:1,11<br>36:5                            |
| <b>talks</b><br>13:20                                       | <b>thought</b><br>13:21 19:16,<br>18 26:10,16<br>32:17                | <b>Try</b><br>22:4                                                  | <b>university's</b><br>19:3 31:8                                                                                                                                                                   | <b>view</b><br>11:19 14:7<br>16:6 17:17,21                         |
| <b>Tape</b><br>5:10                                         | <b>three</b><br>8:12 17:24                                            | <b>trying</b><br>9:1 22:22                                          | <b>updated</b><br>8:5                                                                                                                                                                              | <b>Vitae</b><br>3:18 8:4                                           |
| <b>taught</b><br>9:10 21:19                                 | <b>time</b><br>5:16 11:25<br>17:15 19:1<br>22:5 26:22,24<br>34:7 38:4 | <b>two</b><br>12:11 25:17                                           | <b>USB</b><br>21:2                                                                                                                                                                                 | <b>Volkert</b><br>2:14                                             |
| <b>teach</b><br>8:17 9:3<br>32:25                           | <b>Title</b><br>3:22 4:4,6,7<br>10:9 12:8<br>14:18 16:15              | <b>typewriting</b><br>37:9                                          | <b>USC</b><br>4:15                                                                                                                                                                                 | <b>volume</b><br>18:2,5,10                                         |
| <b>teaching</b><br>7:13 15:22<br>33:1                       | <b>titled</b><br>9:4                                                  | <hr/> <b>U</b> <hr/>                                                | <b>Use</b><br>3:19 4:9,11,<br>13,17,18 9:25<br>10:3,22 12:2<br>14:13,24 15:3<br>16:10 17:1<br>18:20,22 19:4<br>20:12 23:18<br>24:5,13 25:20<br>26:6,19<br>29:20,21,23<br>30:3,6,25<br>31:2,3 34:25 | <b>volumes</b><br>17:25                                            |
| <b>Temple</b><br>7:24                                       | <b>together</b><br>22:22,25                                           | <b>Uh-huh</b><br>8:16 9:13<br>11:4 13:9<br>25:14 31:7<br>32:24 35:8 | <b>user</b><br>27:7 28:4,11<br>29:13                                                                                                                                                               | <b>vs</b><br>1:7                                                   |
| <b>tender</b><br>38:4                                       | <b>top</b><br>20:23                                                   | <b>uLearn</b><br>30:6                                               | <b>unavailable</b><br>6:24                                                                                                                                                                         | <hr/> <b>W</b> <hr/>                                               |
| <b>testified</b><br>6:4 25:13                               | <b>topic</b><br>18:4                                                  | <b>under</b><br>24:21 25:24<br>28:20 34:7<br>37:9 38:12             | <b>undergraduat</b><br>e<br>7:18                                                                                                                                                                   | <b>w</b><br>2:9                                                    |
| <b>testimony</b><br>6:12,18,22<br>32:3 33:25<br>34:22 35:10 | <b>totals</b><br>12:11 14:21<br>16:19                                 | <b>understood</b><br>19:19                                          | <b>usual</b><br>38:16                                                                                                                                                                              | <b>Wait</b><br>29:3                                                |
| <b>Thank</b><br>7:3 21:3<br>28:18 32:7                      | <b>trained</b><br>19:3 20:10                                          | <b>undertook</b><br>25:7                                            | <b>utilize</b><br>18:20                                                                                                                                                                            | <b>waive</b><br>6:20                                               |
| <b>Thanks</b><br>33:8                                       | <b>training</b><br>19:7,15 20:1                                       | <b>unedited</b><br>18:10                                            | <hr/> <b>v</b> <hr/>                                                                                                                                                                               | <b>waived</b><br>36:15                                             |
| <b>themselves</b><br>32:22                                  | <b>transcript</b><br>4:25 34:12<br>37:7,11 38:8                       | <b>UNITED</b>                                                       | <b>version</b><br>22:21 34:16,<br>18 35:16                                                                                                                                                         | <b>wall</b><br>19:11,13                                            |
| <b>thereto</b><br>37:8                                      | <b>travel</b><br>8:24 9:1                                             |                                                                     | <b>versions</b><br>25:18                                                                                                                                                                           | <b>want</b><br>10:1 21:4<br>32:3                                   |
| <b>thing</b><br>20:23                                       | <b>trial</b><br>6:12,17 34:24                                         |                                                                     | <b>versus</b><br>5:12                                                                                                                                                                              | <b>wanted</b><br>11:17 31:2                                        |
| <b>think</b><br>7:15 11:14<br>13:12 18:11,                  |                                                                       |                                                                     |                                                                                                                                                                                                    | <b>wasn't</b><br>20:19,23                                          |
|                                                             |                                                                       |                                                                     |                                                                                                                                                                                                    | <b>way</b><br>31:14                                                |

|                                                                                                    |                                                                      |                                                  |                                                                                                                                   |                                           |
|----------------------------------------------------------------------------------------------------|----------------------------------------------------------------------|--------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------|
| <b>week</b><br>27:10                                                                               | <b>writers</b><br>18:1                                               | <b>11-22-10</b><br>4:9                           | <b>17</b><br>4:15 19:22<br>23:18 28:10                                                                                            | 34:13 36:6<br>37:18                       |
| <b>WEIL</b><br>2:3 5:24<br>33:22                                                                   | <b>written</b><br>13:19 16:23<br>19:25 21:5<br>26:25                 | <b>11-29-10</b><br>4:11,13,17,<br>18             | <b>17b</b><br>4:17                                                                                                                | <b>20th</b><br>5:16                       |
| <b>went</b><br>10:25                                                                               | <hr/> <b>Y</b> <hr/>                                                 | <b>113</b><br>34:11                              | <b>18</b><br>4:18,24 24:4<br>28:10 29:7                                                                                           | <b>21</b><br>3:10 4:9<br>12:25            |
| <b>We're</b><br>5:17 16:10<br>25:1 36:7                                                            | <b>Yeah</b><br>8:9 19:16<br>22:17 26:14<br>28:2 29:22<br>31:22 35:22 | <b>117</b><br>3:11                               | <b>19</b><br>4:15                                                                                                                 | <b>212.310.8007</b><br>2:5                |
| <b>we've</b><br>18:24 20:14<br>21:19 34:17                                                         | <b>year</b><br>7:16 8:23                                             | <b>1180</b><br>1:21 2:9 5:15                     | <b>192</b><br>12:15                                                                                                               | <b>212.310.8775</b><br>2:5                |
| <b>whatever</b><br>33:3                                                                            | <b>York</b><br>2:4                                                   | <b>119</b><br>13:25                              | <b>197</b><br>12:11,12                                                                                                            | <b>214</b><br>17:2                        |
| <b>Whereupon</b><br>14:2 36:8                                                                      | <b>yourself</b><br>7:7 8:11                                          | <b>12</b><br>3:10 4:3,7,24<br>14:17 17:2         | <hr/> <b>2</b> <hr/>                                                                                                              | <b>22</b><br>3:12 4:11,23<br>15:11 21:11  |
| <b>whether</b><br>19:15 29:20<br>34:15,21<br>35:9,14                                               | <b>yourself</b><br>7:7 8:11                                          | <b>122</b><br>14:4                               | <b>2</b><br>3:19 4:24<br>20:5 31:11<br>34:13                                                                                      | <b>2-23-09</b><br>4:15                    |
| <b>White</b><br>17:4,13                                                                            | <b>yourself</b><br>7:7 8:11                                          | <b>14</b><br>4:7,9,24 21:7<br>25:17 27:5<br>29:6 | <b>20</b><br>1:17 3:19<br>4:23 5:2,8<br>11:7 13:5<br>17:6 36:6                                                                    | <b>22nd</b><br>34:16 35:15                |
| <b>whole</b><br>25:5 32:20                                                                         | <hr/> <b>1</b> <hr/>                                                 | <b>144</b><br>33:14                              | <b>2000</b><br>20:14                                                                                                              | <b>23</b><br>4:13,17 5:8                  |
| <b>within</b><br>6:13,24                                                                           | <b>1</b><br>3:18 4:24<br>5:10 8:3<br>14:24 15:2<br>37:10             | <b>145</b><br>3:11                               | <b>2009</b><br>3:21 9:4,12<br>10:4 12:2,18<br>14:12 16:10<br>19:2 20:14<br>21:19 24:16<br>25:8 30:24<br>31:2,23,24<br>34:19 35:18 | <b>235</b><br>14:22                       |
| <b>WITNESS</b><br>3:2 5:22<br>6:12,17 19:20<br>29:8 35:2                                           | <b>10</b><br>3:22 4:3,24<br>11:12 12:8<br>15:24                      | <b>149</b><br>33:17                              | <b>2010</b><br>21:12 22:13<br>23:14 24:1,<br>11,14 31:25<br>32:4                                                                  | <b>24</b><br>4:18                         |
| <b>work</b><br>10:9,14 12:9,<br>11,15 18:6,12<br>24:22 25:5,<br>10,22 26:7<br>27:8 28:6,12<br>30:4 | <b>10.B</b><br>5:5 38:3                                              | <b>15</b><br>3:12 4:11<br>22:8 25:17<br>27:9     | <b>2010</b><br>21:12 22:13<br>23:14 24:1,<br>11,14 31:25<br>32:4                                                                  | <b>249</b><br>10:23 11:1                  |
| <b>Works</b><br>3:20 10:1<br>18:6 25:1<br>29:17                                                    | <b>10153</b><br>2:4                                                  | <b>15.9</b><br>13:11                             | <b>2011</b><br>1:17 5:2,16                                                                                                        | <b>25th</b><br>37:18                      |
|                                                                                                    | <b>108-CV-1425-</b>                                                  | <b>152</b><br>36:6,9                             |                                                                                                                                   | <b>283</b><br>11:1                        |
|                                                                                                    | <b>ODE</b><br>1:6                                                    | <b>16</b><br>4:6,13 23:4<br>24:20 28:4           |                                                                                                                                   | <b>29</b><br>22:13 24:1                   |
|                                                                                                    | <b>109</b><br>1:18 5:17                                              | <b>16-K</b><br>1:21                              |                                                                                                                                   | <b>29th</b><br>23:14 24:11<br>34:16 35:15 |
|                                                                                                    | <b>11</b><br>4:6 16:14                                               |                                                  |                                                                                                                                   | <hr/> <b>3</b> <hr/>                      |
|                                                                                                    |                                                                      |                                                  |                                                                                                                                   | <b>30309-3521</b><br>2:10                 |



|                      |                      |  |
|----------------------|----------------------|--|
| <b>30e</b>           | <hr/> <b>8</b> <hr/> |  |
| 36:10                | <b>8</b>             |  |
| <b>3162</b>          | 3:18, 22 4:24        |  |
| 3:21                 | 10:8                 |  |
| <b>33</b>            | <hr/> <b>9</b> <hr/> |  |
| 3:5                  | <b>9</b>             |  |
| <b>35</b>            | 3:21                 |  |
| 11:3                 | <b>9-11-28c</b>      |  |
| <b>36</b>            | 38:13                |  |
| 37:10                | <b>9-11-30e</b>      |  |
| <b>3600</b>          | 36:12                |  |
| 3:21                 | <b>96</b>            |  |
| <b>363</b>           | 3:14                 |  |
| 16:24                | <hr/> <b>,</b> <hr/> |  |
| <b>380</b>           | <b>'cause</b>        |  |
| 16:19                | 27:13                |  |
| <b>382</b>           |                      |  |
| 10:19                |                      |  |
| <hr/> <b>4</b> <hr/> |                      |  |
| <b>4</b>             |                      |  |
| 3:21 4:24 9:8        |                      |  |
| 25:24 28:24          |                      |  |
| <b>400</b>           |                      |  |
| 10:15                |                      |  |
| <b>404.572.2595</b>  |                      |  |
| 2:10                 |                      |  |
| <b>404.572.5100</b>  |                      |  |
| 2:11                 |                      |  |
| <hr/> <b>6</b> <hr/> |                      |  |
| <b>6</b>             |                      |  |
| 3:12 17:6            |                      |  |
| <hr/> <b>7</b> <hr/> |                      |  |
| <b>7</b>             |                      |  |
| 3:4, 10 12:21        |                      |  |
| <b>73</b>            |                      |  |
| 3:14 14:25           |                      |  |
| 15:5                 |                      |  |
| <b>767</b>           |                      |  |
| 2:4                  |                      |  |