

G. Professor Marni Davis

171. Professor Marni Davis is currently employed as a professor at Georgia State University.

172. Professor Marni Davis has encountered a situation where the library has rejected a request to place an excerpt on Georgia State University's ERes system because the portion Professor Marni Davis attempted to place on ERes was too large.

173. When determining whether to even consider performing the fair use analysis for an excerpt, Professor Marni Davis mentally performed a fair use analysis, and if she believed based on that preliminary analysis that her use would not constitute fair use, Professor Marni Davis did not perform further analysis, and did not attempt to place her chosen excerpt on ERes.

1) **HIST7010 – Issues and Interpretations in American History (Fall 2009)**

174. Professor Marni Davis taught Issues and Interpretations in American History during Fall 2009.

175. Seventeen students enrolled in Professor Marni Davis's section of Issues and Interpretations in American History.

176. Professor Marni Davis required her students to purchase the following works for Issues and Interpretations in American History: Manliness and

Civilization (Bederman); Nation Among Nations (Bender); Story of American Freedom (Foner); Roll, Jordan, Roll (Genovese); History of American People (Johnson); Known World (Jones); Amusing the Million (Kasson); White Flight (Kruse); American Slavery, American Freedom (Morgan); Wages of Whiteness (Roediger); Blood Done Sign My Name (Tyson); Search for Order 1877-1920 (Wiebe); Radicalism of American Revolution (Wood); Strange Career of Jim Crow (Woodward).

i. **The Unpredictable Past: Explorations in American Cultural History**

177. Professor Marni Davis used an excerpt from the work The Unpredictable Past: Explorations in American Cultural History while teaching Issues and Interpretations in American History during Fall 2009.

178. The Unpredictable Past: Explorations in American Cultural History is published by Oxford.

179. The Unpredictable Past: Explorations in American Cultural History is 394 pages long.

180. Professor Marni Davis mentally carried out the analysis required to prepare a fair use checklist, examining each factor and concluding that her use was fair prior to requesting that the library put the excerpt of The

Unpredictable Past: Explorations in American Cultural History on Georgia State University's ERes system.

181. Professor Marni Davis only mentally filled out her fair use checklist, and recreated a fair use checklist that fairly and accurately represents the initial fair use checklist that she filled out for the excerpt of The Unpredictable Past: Explorations in American Cultural History.

182. The excerpt of The Unpredictable Past: Explorations in American Cultural History that was placed on Georgia State University's ERes system was 394 pages long, and constituted one chapter and approximately 6.1% of the work.

183. The excerpt of The Unpredictable Past: Explorations in American Cultural History that was placed on Georgia State University's ERes system was used for a nonprofit, educational purpose. Namely, the excerpt was used as part of Professor Marni Davis's course materials for the purpose of teaching her class, and neither Professor Marni Davis, Georgia State University, nor the named defendants profited from the use of the excerpt of The Unpredictable Past: Explorations in American Cultural History.

184. The excerpt of *The Unpredictable Past: Explorations in American Cultural History* that was placed on Georgia State University's ERes system was not used for commercial purposes.

185. The excerpt of *The Unpredictable Past: Explorations in American Cultural History* that was placed on Georgia State University's ERes system was used by Professor Marni Davis for the purpose of teaching the students in her course.

186. Neither Georgia State University, Professor Marni Davis, nor the named Defendants profited from the use of the excerpt of *The Unpredictable Past: Explorations in American Cultural History* that was placed on Georgia State University's ERes system.

187. Professor Marni Davis did not use the excerpt of *The Unpredictable Past: Explorations in American Cultural History* that she placed on Georgia State University's ERes system for the purpose of entertainment.

188. Professor Marni Davis's use of the excerpt of *The Unpredictable Past: Explorations in American Cultural History* that she placed on Georgia State University's ERes system was necessary to achieve her intended educational purpose.

189. Professor Marni Davis did not publish or publicly distribute the excerpt of *The Unpredictable Past: Explorations in American Cultural History* that she placed on Georgia State University's ERes system.

190. Professor Marni Davis's use of the excerpt of *The Unpredictable Past: Explorations in American Cultural History* that she placed on Georgia State University's ERes system did not exceed her intended educational purpose.

191. *The Unpredictable Past: Explorations in American Cultural History* is a published work.

192. *The Unpredictable Past: Explorations in American Cultural History* is a factual work of nonfiction.

193. The excerpt of *The Unpredictable Past: Explorations in American Cultural History* that Professor Marni Davis used in her course was important to her educational objectives.

194. The excerpt of *The Unpredictable Past: Explorations in American Cultural History* that Professor Marni Davis used in her course amounts to 6.1% of the work, and as such, was a small portion of *The Unpredictable Past: Explorations in American Cultural History*.

195. The excerpt of *The Unpredictable Past: Explorations in American Cultural History* that Professor Marni Davis used in her course was not central to the work.

196. The excerpt of *The Unpredictable Past: Explorations in American Cultural History* that Professor Marni Davis used in her course was narrowly tailored for Professor Marni Davis's educational purpose.

197. Professor Marni Davis's use of the excerpt of *The Unpredictable Past: Explorations in American Cultural History* did not have a significant effect on the market or potential market for the copyrighted work because the ERes excerpt was restricted to his/her class.

198. Professor Marni Davis's use of the excerpt of *The Unpredictable Past: Explorations in American Cultural History* stimulated the market for the original work.

199. The publisher of *The Unpredictable Past: Explorations in American Cultural History* does not market any similar product.

200. Professor Marni Davis assigned the excerpt of *The Unpredictable Past: Explorations in American Cultural History* as supplemental classroom reading the class had 14 books as required reading.

201. A small number of copies of the excerpt of *The Unpredictable Past: Explorations in American Cultural History* were distributed—specifically, the ERes records indicate that the work was accessed 15 times.

202. Access to the excerpt of *The Unpredictable Past: Explorations in American Cultural History* was limited to the students in the class by a password protected website.

203. The excerpt of *The Unpredictable Past: Explorations in American Cultural History* was removed from the ERes system after the semester ended.

204. The Georgia State University library lawfully owns a copy of *The Unpredictable Past: Explorations in American Cultural History*.

(b) Region, Race and Reconstruction

205. Professor Marni Davis used an excerpt from the work *Region, Race and Reconstruction* while teaching *Issues and Interpretations in American History* during Fall 2009.

206. *Region, Race and Reconstruction* is published by Oxford.

207. *Region, Race and Reconstruction* is 450 pages long.

208. Professor Marni Davis mentally carried out the analysis required to prepare a fair use checklist, examining each factor and concluding that

her use was fair prior to requesting that the library put the excerpt of Region, Race and Reconstruction on Georgia State University's ERes system.

209. Professor Marni Davis only mentally filled out her fair use checklist, and recreated a fair use checklist that fairly and accurately represents the initial fair use checklist that she filled out for the excerpt of Region, Race and Reconstruction.

210. The excerpt of Region, Race and Reconstruction that was placed on Georgia State University's ERes system was 450 pages long, and constituted one chapter and approximately 7.8% of the work.

211. The excerpt of Region, Race and Reconstruction that was placed on Georgia State University's ERes system was used for a nonprofit, educational purpose. Namely, the excerpt was used as part of Professor Marni Davis's course materials for the purpose of teaching her class, and neither Professor Marni Davis, Georgia State University, nor the named defendants profited from the use of the excerpt of Region, Race and Reconstruction.

212. The excerpt of Region, Race and Reconstruction that was placed on Georgia State University's ERes system was not used for commercial purposes.

213. The excerpt of Region, Race and Reconstruction that was placed on Georgia State University's ERes system was used by Professor Marni Davis for the purpose of teaching the students in her course.

214. Neither Georgia State University, Professor Marni Davis, nor the named Defendants profited from the use of the excerpt of Region, Race and Reconstruction that was placed on Georgia State University's ERes system.

215. Professor Marni Davis did not use the excerpt of Region, Race and Reconstruction that she placed on Georgia State University's ERes system for the purpose of entertainment.

216. Professor Marni Davis's use of the excerpt of Region, Race and Reconstruction that she placed on Georgia State University's ERes system was necessary to achieve her intended educational purpose.

217. Professor Marni Davis did not publish or publicly distribute the excerpt of Region, Race and Reconstruction that she placed on Georgia State University's ERes system.

218. Professor Marni Davis's use of the excerpt of Region, Race and Reconstruction that she placed on Georgia State University's ERes system did not exceed her intended educational purpose.

219. Region, Race and Reconstruction is a published work.

220. Region, Race and Reconstruction is a factual work of nonfiction.

221. The excerpt of Region, Race and Reconstruction that Professor Marni Davis used in her course was important to her educational objectives.

222. The excerpt of Region, Race and Reconstruction that Professor Marni Davis used in her course amounts to 7.8% of the work, and as such, was a small portion of Region, Race and Reconstruction.

223. The excerpt of Region, Race and Reconstruction that Professor Marni Davis used in her course was not central to the work.

224. The excerpt of Region, Race and Reconstruction that Professor Marni Davis used in her course was narrowly tailored for Professor Marni Davis's educational purpose.

225. Professor Marni Davis's use of the excerpt of Region, Race and Reconstruction did not have a significant effect on the market or potential market for the copyrighted work because the ERes excerpt was restricted to her class.

226. Professor Marni Davis's use of the excerpt of Region, Race and Reconstruction stimulated the market for the original work.

227. The publisher of Region, Race and Reconstruction does not market any similar product.

228. Professor Marni Davis assigned the excerpt of *Region, Race and Reconstruction* as supplemental classroom reading the class had 14 books as required reading.

229. A small number of copies of the excerpt of *Region, Race and Reconstruction* were distributed—specifically, the ERes records indicate that the work was accessed 12 times.

230. Access to the excerpt of *Region, Race and Reconstruction* was limited to the students in the class by a password protected website.

231. The excerpt of *Region, Race and Reconstruction* was removed from the ERes system after the semester ended.

232. The Georgia State University library lawfully owns a copy of *Region, Race and Reconstruction*.