

**EXHIBIT E**

**In The Matter Of:**

***EDITH SCHLAIN WINDSOR***

***v.***

***THE UNITED STATES OF AMERICA***

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***NANCY F. COTT, PH.D. - Vol. 1***

***July 6, 2011***

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**MERRILL CORPORATION**

**Legalink, Inc.**

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09:52:19 1 together.

09:52:24 2 Q I think you talked about the pair, in your  
09:52:31 3 previous answer. Did that pair ever include same-sex  
09:52:36 4 couples?

09:52:36 5 A Not to my knowledge, in the colonial part of  
09:52:41 6 the -- part of North America or at the time of the  
09:52:44 7 founding among those who consider themselves part of the  
09:52:47 8 new United States.

09:52:47 9 Q Has marriage been a national or federal issue  
09:53:02 10 at times during American history?

09:53:05 11 MR. EHRLICH: Objection to the form. Vague and  
09:53:08 12 ambiguous.

09:53:08 13 You can answer.

09:53:10 14 A You said a national or a --

09:53:13 15 Q Let me rephrase.

09:53:15 16 Has marriage been an issue of federal law at  
09:53:17 17 times during American history?

09:53:19 18 A Yes, marriage in federal territories.

09:53:23 19 Q What about marriage among native Americans?

09:53:29 20 A Yes, that's a good point, that in dealing with  
09:53:34 21 Indians, again, in federal territories and in certain  
09:53:43 22 states where the federal government was dealing with  
09:53:51 23 the -- with native Americans through the Bureau of  
09:53:56 24 Indian Affairs, the form of marriage observed by these  
09:53:59 25 populations was of concern to that federal agency, yes,

09:54:04 1 and to certain people in congress.

09:54:05 2 Q In the post civil war era, did the federal  
09:54:12 3 government involve itself in the question of the  
09:54:15 4 marriage between former slaves?

09:54:17 5 A During the civil war when the South was  
09:54:21 6 occupied and in the very beginning of the post civil war  
09:54:25 7 period when the southern states were not yet  
09:54:28 8 reconstituted, yes, the federal government through the  
09:54:32 9 Freedmen's Bureau concerned itself with marriages of the  
09:54:36 10 freed men and women.

09:54:37 11 Q I'd like you to turn to Paragraph 13, page 5 of  
09:54:55 12 Exhibit 2. This is your expert affidavit.

09:54:59 13 A I'm sorry. I didn't catch which page.

09:55:00 14 Q Page 5, Paragraph 13, right under Section B.

09:55:05 15 A Okay.

09:55:07 16 Q You write there, "What is seen as legitimate  
09:55:11 17 marriage in a given society may be, for instance,  
09:55:14 18 polygamous, monogamous, matrifocal or patrifocal,  
09:55:19 19 patrilineal or matrilineal, lifelong or temporary, open  
09:55:21 20 or closed to concubinage, divorce-prone or  
09:55:25 21 divorce-averse," and so on.

09:55:26 22 Are you an expert in marriage and world  
09:55:29 23 cultures?

09:55:30 24 A As I said at the outset, I am a specialist in  
09:55:34 25 the history of the United States, but that is studied in

10:15:59 1 where did the norm come from?

10:16:00 2 A Both from religious, i.e., Christian, sets of  
10:16:07 3 belief and from political theories that were built with  
10:16:13 4 that belief system as their base, although, again, that  
10:16:19 5 deals with settler populations and not with native  
10:16:22 6 Americans in that geographical range.

10:16:26 7 Q Would you turn to Paragraph 74 on page 18. In  
10:16:39 8 the first sentence you write, "The U.S. Congress has  
10:16:41 9 involved itself directly in making or breaking marriages  
10:16:44 10 only in exceptional situations."

10:16:49 11 What do you mean by "exceptional situations" in  
10:16:55 12 this line?

10:16:55 13 A I mean situations in which state governments  
10:16:58 14 were not functioning, since state governments have  
10:17:02 15 historically had jurisdiction over making and breaking  
10:17:05 16 marriages.

10:17:05 17 Q And what have those exceptional situations been  
10:17:10 18 where the federal government -- excuse me -- the  
10:17:13 19 U.S. Congress has involved itself directly in marriage?

10:17:15 20 A First of all, in the federal territories where  
10:17:20 21 congress has primary power; and secondly, as I describe  
10:17:25 22 here, in the period of the civil war and immediately  
10:17:33 23 after when areas that had been states were -- their  
10:17:39 24 state governments were crushed and not yet really  
10:17:43 25 assembled.

10:17:44 1 Q Turn to Paragraph 79, page 19 of Exhibit 2.

10:18:13 2 You write, Dr. Cott, "Congress acted not only because  
10:18:16 3 the presence of polygamy on the North American continent  
10:18:20 4 seemed loathsome but because Utah's intent to apply for  
10:18:24 5 statehood loomed on the horizon."

10:18:25 6 What do you mean by "loathsome"?

10:18:27 7 A There was with an American political theory  
10:18:34 8 since the founding, an opposition understood between  
10:18:37 9 monogony and polygamy that aligned with the difference  
10:18:41 10 between a government of laws in alignment with monogony  
10:18:52 11 and a despotic government, which to American founders  
10:18:56 12 and many Americans through the 19th century aligned with  
10:18:59 13 polygamy. So that polygamy was not only foreign to  
10:19:04 14 their religious beliefs of Christianity but also foreign  
10:19:09 15 to their political intents.

10:19:16 16 Q If one finds something loathsome, does she  
10:19:19 17 demonstrate an animus towards the things she finds  
10:19:22 18 loathsome?

10:19:22 19 MR. EHRLICH: Objection to the form. Vague as  
10:19:27 20 to "animus."

10:19:27 21 You can answer.

10:19:28 22 A Well, I don't understand why "animus" as a word  
10:19:33 23 is so important to you in this question, but I would say  
10:19:36 24 that just using the word as I do, yes, that 19th century  
10:19:40 25 Americans in general and certainly members of congress

10:19:45 1 who are involved in this action and a series of  
10:19:49 2 presidents exhibited great animus against polygamy.  
10:19:57 3 They associated it with barbarism. That was the word  
10:20:02 4 most used to describe polygamy.

10:20:05 5 Q And as a historical matter, congress had the  
10:20:15 6 power to ban polygamy, correct?

10:20:17 7 A Only in the territories.

10:20:23 8 Q And in Paragraph 78 right above the last  
10:20:43 9 paragraph we were looking at, you say that bigamy was a  
10:20:46 10 crime in every state. Is it fair to say that polygamy  
10:20:52 11 was an exceptional situation because it departed from  
10:20:54 12 the understanding of monogony that Americans had  
10:20:58 13 embraced?

10:20:59 14 MR. EHRLICH: Objection to the form.

10:21:01 15 A I don't understand the question. Polygamy was  
10:21:04 16 an exceptional situation? Whose polygamy?

10:21:08 17 Q Well, you write that "U.S. Congress has  
10:21:10 18 involved itself directly in making or breaking marriages  
10:21:12 19 only in exceptional situations."

10:21:14 20 What made polygamy an exceptional situation?

10:21:17 21 MR. EHRLICH: Objection to the form. I think  
10:21:18 22 she already described exceptional situations, and it  
10:21:21 23 didn't relate to polygamy.

10:21:22 24 But you can answer.

10:21:23 25 A Well, I mean, exceptional in the general course

**Name of Cases:**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

EDITH SCHLAIN WINDSOR,  
in her capacity as Executor of the Estate of THEA CLARA SPYER,  
Plaintiff,

v.

THE UNITED STATES OF AMERICA,  
Defendant.

(10 Civ. 8435) (BSJ) (JCF)

UNITED STATES DISTRICT COURT  
DISTRICT OF CONNECTICUT

JOANNE PEDERSEN & ANN MEITZEN, GERALD V. PASSARO II, LYND  
DEFORGE & RAQUEL ARDIN, JANET GELLER & JOANNE MARQUIS,  
SUZANNE & GERALDINE ARTIS, BRADLEY KLEINERMAN & JAMES GEHRE,  
and DAMON SAVOY & JOHN WEISS,  
Plaintiffs,

v.

OFFICE OF PERSONNEL MANAGEMENT, TIMOTHY F. GEITHNER, in his official  
capacity as the Secretary of the Treasury, and HILDA L. SOLIS, in her official capacity  
as the Secretary of Labor, MICHAEL J. ASTRUE, in his official capacity as the  
Commissioner of the Social Security Administration, UNITED STATES POSTAL  
SERVICE, JOHN E. POTTER, in his official capacity as The Postmaster General of the  
United States of America, DOUGLAS H. SHULMAN, in his official capacity as the  
Commissioner of Internal Revenue, ERIC H. HOLDER, JR., in his official capacity as  
United States Attorney General, JOHN WALSH, in his official capacity as Acting  
Comptroller of the Currency, and THE UNITED STATES OF AMERICA,  
Defendants.

(310-CV-1750) (VLB)

**Date of Deposition:** Wednesday, July 6, 2011

**Name of Witness:** Nancy F. Cott, Ph.D.



Nancy Cott Errata Sheet for July 6, 2011 Deposition

I wish to make the following changes, for the following reasons:

PAGE LINE: 7:7

CHANGE FROM: “disciplines in history”

CHANGE TO: “disciplines than history”

REASON: Transcription error

PAGE LINE: 9:4

CHANGE FROM: “Federalism”

CHANGE TO: “federalism”

REASON: Typographical error

PAGE LINE: 11:17

CHANGE FROM: “It may”

CHANGE TO: “These may”

REASON: Transcription error

PAGE LINE: 11:21–22

CHANGE FROM: “the church, or various churches and individuals”

CHANGE TO: “the church (or various churches), and individuals”

REASON: Typographical error

PAGE LINE: 11:24

CHANGE FROM: “marriage is or central purpose is.”

CHANGE TO: “marriage is.”

REASON: Transcription error

Nancy Cott Errata Sheet for July 6, 2011 Deposition

PAGE LINE: 15:10

CHANGE FROM: "consanguine."

CHANGE TO: "consanguinity."

REASON: Transcription error

PAGE LINE: 15:15-17

CHANGE FROM: "I would say that there are certain native American societies in which such a pairing would have been accepted and considered customary."

CHANGE TO: "I would say that there are certain native American societies in which such a pairing [a couple of the same-sex] would have been accepted and considered customary."

REASON: Clarification

PAGE LINE: 16:17

CHANGE FROM: "what essentials are."

CHANGE TO: "what the essentials are."

REASON: Transcription error

PAGE LINE: 18:22

CHANGE FROM: "marriage and world"

CHANGE TO: "marriage in world"

REASON: Transcription error

PAGE LINE: 26:6-7

CHANGE FROM: "The husband was assumed just to take one major differentiation, to be"

Nancy Cott Errata Sheet for July 6, 2011 Deposition

CHANGE TO: "The husband was assumed (just to take one major differentiation) to be"

REASON: Typographical error

PAGE LINE: 27:17, 24, 25

CHANGE FROM: "complimentary"

CHANGE TO: "complementary"

REASON: Typographical error

PAGE LINE: 28:9

CHANGE FROM: "be"

CHANGE TO: "been"

REASON: Transcription error

PAGE LINE: 28:3, 9, 11, 18, 20, 22; 29:6, 11, 14, 15, 23; 30:4, 18; 32:9, 10

CHANGE FROM: "monogony"

CHANGE TO: "monogamy"

REASON: Transcription error

PAGE LINE: 35:3

CHANGE FROM: "historians, that"

CHANGE TO: "historians, about"

REASON: Transcription error

Nancy Cott Errata Sheet for July 6, 2011 Deposition

PAGE LINE: 35:4  
CHANGE FROM: "polygamy really"  
CHANGE TO: "polygamy, which really"  
REASON: Transcription error

PAGE LINE: 35:20  
CHANGE FROM: "fight, but"  
CHANGE TO: "fight, that"  
REASON: Transcription error

PAGE LINE: 37:4  
CHANGE FROM: "monogamist's"  
CHANGE TO: "monogamous"  
REASON: Transcription error

PAGE LINE: 44:21  
CHANGE FROM: "succession"  
CHANGE TO: "secession"  
REASON: Transcription error

PAGE LINE: 44:23  
CHANGE FROM: "cessation"  
CHANGE TO: "secession"  
REASON: Transcription error

Nancy Cott Errata Sheet for July 6, 2011 Deposition

PAGE LINE: 54:25

CHANGE FROM: "triable"

CHANGE TO: "tribal"

REASON: Transcription error

PAGE LINE: 60:6

CHANGE FROM: "state the jurisdiction"

CHANGE TO: "state jurisdiction"

REASON: Transcription error

PAGE LINE: 60:10

CHANGE FROM: "authorities"

CHANGE TO: "authority"

REASON: Transcription error

Nancy Cott Errata Sheet for July 6, 2011 Deposition

Nancy F. Cott

Nancy F. Cott, Ph.D

Subscribed and sworn to before me

this 3 day of August, 2011.

[Signature]  
(NOTARY PUBLIC)

9.3.15  
(MY COMMISSION EXPIRES)

CERTIFICATE

STATE OF Massachusetts

: ss.

COUNTY OF Middlesex

