

**TIMOTHY JACKSON vs LAURA WRIGHT, ET AL.**  
**Dr. Philip Adrian Ewell on 09/19/2024**

1 UNITED STATES DISTRICT COURT  
2 FOR THE EASTERN DISTRICT OF TEXAS  
3 SHERMAN DIVISION

4 Case No. 4:21-cv-00033-ALM

5 - - - - -X  
6 TIMOTHY JACKSON, :  
7 Plaintiff :  
8 VS :  
9 LAURA WRIGHT, et al., :  
10 Defendants :  
11 - - - - -X

12  
13 Videotaped deposition of DR. PHILIP ADRIAN  
14 EWELL taken at the offices of Regus, 157 Church  
15 Street, 18th Floor, New Haven, Connecticut, before  
16 Clifford Edwards, Certified Shorthand Reporter and  
17 Notary Public, in and for the State of Connecticut  
18 on September 19, 2024, at 10:09 a.m. EDT.  
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20  
21  
22  
23  
24  
25

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1	A P P E A R A N C E S:	1	EXHIBITS
2	ON BEHALF OF THE PLAINTIFF:	2	(continued)
3	Michael Thad Allen, Esq.	3	
4	ALLEN LAW, LLC	4	PLAINTIFF'S PAGE
5	PO Box 404	5	
6	Quaker Hill, Connecticut 06375	6	Exhibit 6, Collection of Documents Submitted
7	m.allen@allen-lawfirm.com	7	by Timothy Jackson to Ad Hoc Panel
8	ON BEHALF OF THE DEFENDANTS:	8	Convened at University of
9	Benjamin S. Walton, AAG (via Zoom)	9	North Texas 179
10	Mary Quimby, AAG (via Zoom)	10	Exhibit 7, Facebook Exchange, One-Page
11	Office of the Attorney General	11	Document Dated July 25, 2020 191
12	General Litigation Division	12	Exhibit 8, Facebook Post by Levi Walls 205
13	State of Texas	13	Exhibit 9, Document Presented to Ad Hoc
14	P.O. Box 12548, Capitol Station	14	Review Panel 226
15	Austin, Texas 78711-2548	15	Exhibit 10, E-mail Exchange Between Philip
16	512.463.0447	16	Ewell and Rachel Gain 237
17	Benjamin.Walton@oag.texas.gov	17	
18	ON BEHALF OF THE WITNESS:	18	(Reporter's Note: Exhibits retained by the court
19	Richard Painter, Esq.	19	reporter and forwarded to Huseby for production.)
20	c/o UNIVERSITY OF MINNESOTA	20	
21	318 Mondale Hall	21	
22	229 19th Ave. South	22	
23	Minneapolis, Minnesota 55455	23	
24	rwpusal8@gmail.com	24	
25	ALSO PRESENT:	25	
	Alejandro Gomez, videographer		
	Timothy Jackson (via Zoom)		
	Cari Jacoby (via Zoom)		
	Renoldo Stowers (via Zoom)		
Page 3		Page 5	
1	EXAMINATION	1	THE VIDEOGRAPHER: This is the
2	PAGE	2	beginning of media number one in the
3	DIRECT EXAMINATION BY MR. ALLEN 7	3	deposition of Philip Ewell in the matter
4	CROSS-EXAMINATION BY MR. WALTON 244	4	of Timothy Jackson v. Laura Wright et
5	REDIRECT EXAMINATION BY MR. ALLEN 254	5	al., case number 4:21-cv-00033.
6	CROSS-EXAMINATION BY MR. PAINTER 256	6	Today's date is September 19, 2024.
7		7	The time on the monitor is 10:09 a.m.
8	EXHIBITS	8	My name is Alejandro Gomez and I'm
9		9	the videographer. The court reporter is
10	PLAINTIFF'S PAGE	10	Cliff Edwards. We are here with Huseby
11	Exhibit 1, Re-Notice of Deposition for	11	Global Litigation.
12	Philip Ewell 7	12	Counsel, please introduce yourself,
13	Exhibit 2, Theoria Volume 26, 2020 117	13	after which the court reporter will swear
14	Exhibit 3, Article Entitled "Music Theory	14	in the witness.
15	and the White Racial Frame" Written	15	MR. ALLEN: My name is Michael Thad
16	by Philip Ewell, Published in	16	Allen, attorney for Timothy Jackson, the
17	Music Theory Online 130	17	plaintiff.
18	Exhibit 4, Printout from Society of Music	18	MR. PAINTER: My name is Richard
19	Theory Website 158	19	Painter and I am attorney for Philip
20	Exhibit 5, Article Titled "A UNT Professor	20	Ewell, the deponent.
21	Challenged Claims of Racism in	21	MR. WALTON: My name is Ben Walton.
22	Music Theory and Now He's Facing	22	I'm an attorney for the defendants in the
23	the Music" by Lucinda Breeding	23	lawsuit.
24	Dated August 2, 2020 164	24	MS. QUIMBY: My name is Mary Quimby.
25		25	I'm also an attorney for the defendants

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1	in the lawsuit.	1	A Uh-huh.
2	MS. JACOBY: My name is Cari Jacoby.	2	Q -- just say so.
3	I'm an attorney for the University of	3	A Okay.
4	North Texas System.	4	Q Of course, no one in the room wants you
5	MR. STOWERS: My name is Renaldo	5	to be answering questions that you haven't examined
6	Stowers. I'm an attorney for the	6	the exhibit to answer and so forth.
7	University of North Texas System.	7	A So all the pages here?
8		8	Q If you could just look it over. I don't
9	PHILIP ADRIAN EWELL	9	have many questions about this one.
10	residing at 324 77th Street, Apartment 1C, Brooklyn,	10	A Uh-huh.
11	New York 11209, having first been duly sworn,	11	This is a copy of the subpoena that I
12	deposed and testified as follows:	12	received; right?
13		13	Q Well, that was going to be my question:
14	MR. ALLEN: Professor Ewell, the	14	Do you recognize this document as the subpoena and
15	first thing we are going to do is I'm	15	re-notice of your deposition?
16	going to introduce an exhibit.	16	A I think so, yeah. Yeah.
17	This will happen from time to time	17	Q And is it accurate to say you've appeared
18	during the deposition. There will be	18	to give testimony today in response to these
19	documents I'll ask you to examine and	19	subpoena -- this subpoena and this re-notice?
20	I'll ask you questions about them.	20	A Yes.
21	So I've marked as Exhibit Number 1,	21	Q And that's the only question I have about
22	which should be in front of you.	22	that document. You can put it to --
23	Do we have the marked	23	A Okay.
24	Exhibit Number 1?	24	Q -- the side.
25	COURT REPORTER: One moment, please.	25	At the end of the deposition the court
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1	(Whereupon, Plaintiff's Exhibit 1,	1	reporter will take all of the exhibits and will be
2	Re-Notice of Deposition for Philip	2	essentially the keeper of the record.
3	Ewell, was marked for	3	A Got it.
4	identification.)	4	Q So I wanted to ask you if you have been
5	MR. ALLEN: And I'm sorry, Richard,	5	deposed before?
6	I brought another copy. This is just the	6	A No.
7	notice of deposition, but the court	7	Q And before the deposition started, your
8	reporter has written on it.	8	attorney and I were discussing the nature of
9	MR. PAINTER: I --	9	depositions in your presence.
10		10	But, again, this is the making of a
11	DIRECT EXAMINATION	11	formal record for the court, so there are several
12		12	rules of the road we have to abide by precisely
13	BY MR. ALLEN:	13	because it is a very formal conversation.
14	Q This is the document -- I'm going to	14	So in normal conversation, things like
15	represent to you that this is the re-notice of	15	you just did to nod or say "uh-huh" or "uh-huh" are
16	deposition.	16	perfectly normal and understandable.
17	Could I ask you to examine the --	17	But for the purposes of creating the
18	A Uh-huh.	18	record today, I'm going to ask you to answer audibly
19	Q -- document?	19	"yes" or "no," not with partial words or nods of the
20	A Get -- get my glasses on here --	20	head to every question; is that clear?
21	Q And of course we want you to have your	21	A It's clear.
22	glasses on, too.	22	And I would like to ask a question of
23	And this is a good time to bring this up.	23	you; may I?
24	If at any time you need more time to examine an	24	Q Absolutely. You may ask me a question at
25	exhibit --	25	any time.

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<p>1           Although, I'm not here to testify</p> <p>2 obviously, but --</p> <p>3       A     Of course. Of course.</p> <p>4           If a question that you might want a yes</p> <p>5 or no is asked and it requires some equivocation,</p> <p>6 that's okay on my part to give such equivocation.</p> <p>7           Is that an accurate statement?</p> <p>8       Q     I will leave that to the advice of your</p> <p>9 counsel.</p> <p>10           For the purpose of this "deposition" --</p> <p>11 deposition, I would say you must answer a question</p> <p>12 "yes" or "no" if there's a yes or no answer.</p> <p>13       A     Yeah.</p> <p>14       Q     If you can't answer it "yes" or "no," you</p> <p>15 should just simply state that and that would give me</p> <p>16 an opportunity to ask you why.</p> <p>17       A     Perfect.</p> <p>18       Q     Is there anything that would interfere</p> <p>19 with your ability to answer questions truthfully</p> <p>20 today?</p> <p>21       A     No.</p> <p>22       Q     You are not on any drugs?</p> <p>23       A     No.</p> <p>24       Q     You are not suffering from any illness</p> <p>25 that would affect your memory?</p>	<p>1 used to use for professional Gmail,</p> <p>2 contact@PhilipEwell.com.</p> <p>3           I went through Facebook direct messages,</p> <p>4 all pertaining to the subpoena and the questions</p> <p>5 asked -- may I look here --</p> <p>6       Q     Please.</p> <p>7       A     -- at this document?</p> <p>8           MR. ALLEN: And I just -- let the</p> <p>9 record reflect the witness is consulting</p> <p>10 Exhibit 1.</p> <p>11       A     -- with respect to the documents</p> <p>12 requested --</p> <p>13 BY MR. ALLEN:</p> <p>14       Q     Okay.</p> <p>15       A     -- and listed at the end of the</p> <p>16 subpoena.</p> <p>17           So I looked for relevant items listed in</p> <p>18 the documents requested. I, on advice of counsel,</p> <p>19 put them into a PDF.</p> <p>20       Q     And let me interrupt you.</p> <p>21           I'm not going to ask you for anything</p> <p>22 you've discussed with your counsel.</p> <p>23       A     Uh-huh.</p> <p>24       Q     That would be privileged.</p> <p>25       A     Uh-huh.</p>
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<p>1       A     Nope.</p> <p>2       Q     Okay. You also understand the meaning of</p> <p>3 taking an oath; correct?</p> <p>4       A     Yup.</p> <p>5       Q     And that you are obligated to tell the</p> <p>6 truth?</p> <p>7       A     Yup.</p> <p>8       Q     As you just did, please ask me if you do</p> <p>9 not understand a question or you have a question</p> <p>10 about the question, so to speak.</p> <p>11           No one has an interest in answering --</p> <p>12 getting an answer to a question you didn't</p> <p>13 understand; is that clear?</p> <p>14       A     Yes.</p> <p>15       Q     Likewise, if you don't ask a question for</p> <p>16 clarification, I'm going to assume that you have</p> <p>17 understood the question as asked.</p> <p>18           Is that also clear?</p> <p>19       A     Yup.</p> <p>20       Q     Thank you.</p> <p>21           Can you explain for the record what you</p> <p>22 did to prepare for your depos- -- excuse me --</p> <p>23 deposition today?</p> <p>24       A     I went through personal e-mails from a</p> <p>25 Gmail account from an old defunct account that I</p>	<p>1       Q     The fact that you discussed something</p> <p>2 with your counsel, that is not necessarily</p> <p>3 privileged --</p> <p>4       A     Oh.</p> <p>5       Q     -- but the substance, any legal advice,</p> <p>6 just -- just so it's clear to you --</p> <p>7       A     Understood.</p> <p>8       Q     -- and for the record, I am not going to</p> <p>9 try to ask questions about that.</p> <p>10       A     Understood.</p> <p>11       Q     And you may hear your attorney object</p> <p>12 from time to time but --</p> <p>13       A     Understood.</p> <p>14       Q     -- I'm just asking what you did to</p> <p>15 prepare?</p> <p>16           If you met with him, that's fine.</p> <p>17 Obviously --</p> <p>18       A     Uh-huh.</p> <p>19       Q     -- most witnesses do --</p> <p>20       A     Uh-huh.</p> <p>21       Q     -- if they have attorneys.</p> <p>22       A     Uh-huh.</p> <p>23       Q     But -- but please continue. Sorry.</p> <p>24       A     So I put those into a PDF --</p> <p>25       Q     Uh-huh.</p>

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<p>1 A -- submitted them to my counsel.</p> <p>2 Let's see. In preparation, anything</p> <p>3 else?</p> <p>4 That would be it.</p> <p>5 Q And the documents you consulted, were</p> <p>6 those produced in response to the subpoena?</p> <p>7 A The PDF document, you are -- you are</p> <p>8 asking about?</p> <p>9 Q Uh-huh.</p> <p>10 A Yes.</p> <p>11 Q Okay. Were there any documents you</p> <p>12 consulted which you have not produced in this -- in</p> <p>13 response to the subpoena?</p> <p>14 A Not to my knowledge.</p> <p>15 Q Okay. Did you discuss your upcoming</p> <p>16 deposition with anyone besides your attorney?</p> <p>17 A With my wife.</p> <p>18 Q Which is also privileged, incidentally.</p> <p>19 So I'm just going to move on.</p> <p>20 Anyone else besides your wife?</p> <p>21 A When I first got the subpoena, I</p> <p>22 discussed it -- I discussed it with the chair of the</p> <p>23 Department of Music at Hunter College, Mark Spicer,</p> <p>24 to simply tell him that this had happened. And we</p> <p>25 had a phone conversation and that is the extent of</p>	<p>1 Music. And at that time I was applying to Ph.D.</p> <p>2 programs and DMA programs as a cellist, so I had a</p> <p>3 bit of a fork in the road: Will I become a</p> <p>4 professional cellist; will I become a music</p> <p>5 academician?</p> <p>6 I had offers for both DMA programs and</p> <p>7 Ph.D. programs --</p> <p>8 Q Can I interrupt you only briefly?</p> <p>9 Can you state for the record what a DMA</p> <p>10 is?</p> <p>11 A Uh-huh. Doctor of Musical Arts.</p> <p>12 Q Okay.</p> <p>13 A And that's generally for per- --</p> <p>14 classical performance people mostly in the United</p> <p>15 States. It's -- it's a degree that's not really</p> <p>16 offered in countries other than ours.</p> <p>17 Q And was there a degree you received from</p> <p>18 the Conservatory of St. Petersburg?</p> <p>19 A A certificate.</p> <p>20 Q How long did it take you to earn the</p> <p>21 certificate?</p> <p>22 A I was there for two -- over two years and</p> <p>23 it was something of the order of a -- of a special</p> <p>24 certificate for foreign students who'd come to do</p> <p>25 graduate work but it was really</p>
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<p>1 that conversation.</p> <p>2 Q Simply the existence of the subpoena that</p> <p>3 the deposition would take place?</p> <p>4 A Exactly.</p> <p>5 Q Did he give you any advice?</p> <p>6 A He did not.</p> <p>7 Q What did he say?</p> <p>8 A "Thanks for letting me know."</p> <p>9 Q Okay. That was a little bit of the</p> <p>10 preliminary necessit- -- necessities for a</p> <p>11 deposition.</p> <p>12 I'm going to move on to ask you some</p> <p>13 questions about the basic background to your career.</p> <p>14 So could you briefly describe your</p> <p>15 educational career starting with your undergraduate</p> <p>16 degree on up through the present?</p> <p>17 A Yeah, of course. I went to Stanford</p> <p>18 University undergrad, graduated in 1989 with a</p> <p>19 degree in music. I'm a cellist.</p> <p>20 So after that I was accepted to a masters</p> <p>21 program at Queens College, City University of New</p> <p>22 York. Moved to New York. That was a two-year</p> <p>23 program.</p> <p>24 And I then went to Russia to study cello</p> <p>25 in St. Petersburg, St. Petersburg Conservatory of</p>	<p>1 performance-oriented.</p> <p>2 Q Uh-huh.</p> <p>3 A So there wasn't a whole lot of classroom</p> <p>4 time as part of that certificate.</p> <p>5 And then I decided ultimately to enroll</p> <p>6 at Yale University.</p> <p>7 Q Uh-huh.</p> <p>8 A That was 1994. And I finished with a</p> <p>9 Ph.D. in music theory there in 2001.</p> <p>10 Q Okay. And so when did you return from</p> <p>11 St. Petersburg?</p> <p>12 A To start, in 1994.</p> <p>13 Q Okay. So you were starting in</p> <p>14 St. Petersburg in 1992?</p> <p>15 A Not quite. I first went in the summer of</p> <p>16 '91 --</p> <p>17 Q Uh-huh.</p> <p>18 A -- to study language in Leningrad USSR.</p> <p>19 Q Uh-huh.</p> <p>20 A I had a program to do language -- to</p> <p>21 continue language study that fall, but it was not a</p> <p>22 good program. This was CIEE, if I'm not mistaken,</p> <p>23 Council on International Educational Exchange.</p> <p>24 And I ended upcoming back to DeKalb,</p> <p>25 Illinois, which is -- was my hometown.</p>

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<p>1 And for the fall of '91, I was in DeKalb</p> <p>2 and I studied cello and I did some stuff at Northern</p> <p>3 Illinois University, studied cello with Marc</p> <p>4 Johnson. He was the cellist of the Vermeer Quartet.</p> <p>5 And then it was January of '92.</p> <p>6 That whole fall of '91 I was trying to</p> <p>7 get back to Russia because I knew I wanted to study</p> <p>8 cello in Russia. And I was able to -- it wasn't</p> <p>9 easy because you needed to get visas and it was</p> <p>10 still kind of a Soviet transitioning -- right -- to</p> <p>11 post-Soviet.</p> <p>12 Q Uh-huh.</p> <p>13 A But I did get a visa and I went back in</p> <p>14 January of '92 to study at the conservatory in</p> <p>15 St. Petersburg.</p> <p>16 Q So you lived along with the Russian</p> <p>17 people the collapse of the Soviet Union, it sounds</p> <p>18 like?</p> <p>19 A Yes, kind of. I -- I was not there in</p> <p>20 the fall of '91, which is when Leningrad became</p> <p>21 St. Petersburg. That --</p> <p>22 Q Uh-huh.</p> <p>23 A -- was October --</p> <p>24 Q Uh-huh.</p> <p>25 A -- when Gor- -- Gorbachev basically went</p>	<p>1 tenure. I left before I did that.</p> <p>2 I got a job in Naperville, Illinois,</p> <p>3 North Central College. I was a professor there for</p> <p>4 two years and wasn't so happy with the professional</p> <p>5 professorship there.</p> <p>6 And that's when I went back on the job</p> <p>7 market. I found a job at Hunter College, City</p> <p>8 University of New York. And fall of 2009 is when I</p> <p>9 began that position. And that's the position I</p> <p>10 still have.</p> <p>11 Q And did you achieve tenure at Hunter</p> <p>12 College?</p> <p>13 A I did.</p> <p>14 Q What year?</p> <p>15 A 2016.</p> <p>16 Q And are you a -- did -- were you promoted</p> <p>17 after that?</p> <p>18 A Well, tenure usually happens with</p> <p>19 promotion from assistant to associate professor, so</p> <p>20 I was -- I was both promoted and tenured --</p> <p>21 Q Uh-huh.</p> <p>22 A -- in 2016.</p> <p>23 Are you asking if I was promoted from</p> <p>24 associate to full professor?</p> <p>25 Q Yes.</p>
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<p>1 on air and said, Okay, peace out. I'm done.</p> <p>2 That was December. That was Christmas</p> <p>3 Eve --</p> <p>4 Q Uh-huh.</p> <p>5 A -- actually of '91 and I was in the</p> <p>6 States for that.</p> <p>7 But right after that in January -- first,</p> <p>8 second week of January, I was back in</p> <p>9 St. Petersburg.</p> <p>10 Q Okay. And -- and thank you for that.</p> <p>11 And I think you said you were from</p> <p>12 Illinois originally?</p> <p>13 A Yes.</p> <p>14 Q DeKalb, Illinois?</p> <p>15 A Uh-huh.</p> <p>16 Q Now, after you graduated from Yale with a</p> <p>17 Ph.D. in music theory, was it?</p> <p>18 A Uh-huh.</p> <p>19 Q Can you from that point on briefly</p> <p>20 describe your professional career?</p> <p>21 A Yeah. I got a job ultimately at the</p> <p>22 University of Tennessee, Knoxville.</p> <p>23 Q Uh-huh?</p> <p>24 A And from 2002 to 2007, I was an assistant</p> <p>25 professor of music theory there. Did not go up for</p>	<p>1 A And that did happen, yes, in 2021.</p> <p>2 Q Okay. And that brings us up to the</p> <p>3 present; correct?</p> <p>4 A In terms of my rank --</p> <p>5 Q Yes.</p> <p>6 A -- and professorship, yes.</p> <p>7 Q And I'm not interested in what you earn</p> <p>8 or when you got pay raises or anything like that.</p> <p>9 But that's -- in terms of your formal</p> <p>10 titles and your institutional affiliations --</p> <p>11 A Uh-huh.</p> <p>12 Q -- that is pretty -- pretty much</p> <p>13 encapsulates your career?</p> <p>14 A Yeah.</p> <p>15 Q Do you have any positions that are held</p> <p>16 across -- held at other institutions?</p> <p>17 A No.</p> <p>18 Q What --</p> <p>19 A Sorry. I am an affiliate faculty at the</p> <p>20 graduate center of the City University of New York.</p> <p>21 Q And just for the record, the City</p> <p>22 University of New York is also referred to as</p> <p>23 CUNY --</p> <p>24 A Uh-huh.</p> <p>25 Q -- and has many different colleges;</p>

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<p>1 correct?</p> <p>2 A Yes. CUNY is the way it's generally</p> <p>3 pronounced.</p> <p>4 Q And Hunter College is one of those?</p> <p>5 A Correct.</p> <p>6 Q Is that generally associated with</p> <p>7 graduate teaching?</p> <p>8 A At the graduate center? Yes, that's</p> <p>9 associated with graduate teaching.</p> <p>10 Q And when you say, "at the graduate</p> <p>11 center," is that part of Hunter College or that is</p> <p>12 the Hunter College?</p> <p>13 A It is not part of Hunter College. It is</p> <p>14 part of the City University of New York.</p> <p>15 Q Okay.</p> <p>16 A So it is -- the City University of New</p> <p>17 York is a consortium, I think they might call it, of</p> <p>18 roughly 24 different institutions.</p> <p>19 Q Okay.</p> <p>20 A And Hunter is one of them. There are</p> <p>21 about six four-year colleges, maybe more. There are</p> <p>22 two-year colleges, there's a nursing school, school</p> <p>23 of social work.</p> <p>24 And the graduate center is generally</p> <p>25 viewed as the doctoral granting institution within</p>	<p>1 Q So -- and if I say SMT, you'll know I'm</p> <p>2 referring to the Society for Music Theory?</p> <p>3 A Correct.</p> <p>4 Q So I believe it was in 2019 that you gave</p> <p>5 a plenary talk at the Society for Music Theory;</p> <p>6 correct?</p> <p>7 A Correct.</p> <p>8 Q And the title of that plenary talk was</p> <p>9 "Music Theory and the White Racial Frame."</p> <p>10 Did I get that right?</p> <p>11 A No.</p> <p>12 Q Can you --</p> <p>13 A It was --</p> <p>14 Q Can you --</p> <p>15 A It was --</p> <p>16 Q Okay. Can --</p> <p>17 A It was "Music Theory's White Racial</p> <p>18 Frame."</p> <p>19 Q Thank you. Can you, if you remember,</p> <p>20 tell me the exact date of that talk?</p> <p>21 A I can't tell you the exact date. I can</p> <p>22 only say that it was in November of 2019.</p> <p>23 Q Was it in the beginning of the month, the</p> <p>24 end of the month?</p> <p>25 A Well, SMT conferences are generally in</p>
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<p>1 the City University of New York. They do grants and</p> <p>2 terminal master's degrees, I think, as well.</p> <p>3 Q Okay. Do you belong to any academic</p> <p>4 societies, professional organizations?</p> <p>5 A I do. Society -- Society of Music Theory</p> <p>6 and American Musicological Society.</p> <p>7 Q Any others?</p> <p>8 A I was a member of the New Directions</p> <p>9 Cello Association for many years. I think that</p> <p>10 membership has lapsed.</p> <p>11 I was a member of -- I might still be a</p> <p>12 member of the Society for American Music. And I am</p> <p>13 a member of the Music Theory Society of New York</p> <p>14 State.</p> <p>15 Q Okay. That's an independent organization</p> <p>16 or is it part of the Society for Music Theory, which</p> <p>17 I believe you mentioned before; did I get that</p> <p>18 right?</p> <p>19 A That is cor- -- yes, you got that right.</p> <p>20 No, it is not a part of the Society of --</p> <p>21 for Music Theory. It's what we generally call a</p> <p>22 regional society.</p> <p>23 Q Okay. I -- I believe it was for the</p> <p>24 Society -- is it "for" or "of" Music Theory?</p> <p>25 A I think it's "for Music Theory."</p>	<p>1 the first or second week of November, so before</p> <p>2 November 15. I mean, the date is -- we can find it</p> <p>3 out pretty easily I think.</p> <p>4 Q Sure. And I also understand the limits</p> <p>5 of memory. That -- that -- that's fine. It's not</p> <p>6 about that. I'm trying to place it in time.</p> <p>7 A Uh-huh.</p> <p>8 Q And to the best of your knowledge, how</p> <p>9 was your talk received at the Society for Music</p> <p>10 Theory in 2019?</p> <p>11 A It was received very well.</p> <p>12 Q How were you selected to give the plenary</p> <p>13 talk?</p> <p>14 A There was a program committee and they</p> <p>15 wanted to have a session, I think already entitled</p> <p>16 "Reframing Music Theory."</p> <p>17 Q Uh-huh.</p> <p>18 A The two people on the program committee I</p> <p>19 remember speaking with at some point were Betsy</p> <p>20 Marvin and Danny Jenkins.</p> <p>21 And I think that Joe Straus, my colleague</p> <p>22 at the CUNY Graduate Center, had suggested my name</p> <p>23 to them at some point to be part of this</p> <p>24 multi-person plenary session.</p> <p>25 MR. ALLEN: I don't --</p>

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<p>1 COURT REPORTER: I can help you.</p> <p>2 MR. ALLEN: Can we go off the</p> <p>3 record?</p> <p>4 I'm sorry, there's a technical</p> <p>5 issue.</p> <p>6 THE VIDEOGRAPHER: We are going off</p> <p>7 the record. The time is 10:29.</p> <p>8 (Whereupon, there was a recess taken</p> <p>9 from 10:29 a.m. to 10:31 a.m.)</p> <p>10 THE VIDEOGRAPHER: We are going back</p> <p>11 on the record. The time is 10:31.</p> <p>12 BY MR. ALLEN:</p> <p>13 Q I apologize for the interruption for</p> <p>14 technical difficulties.</p> <p>15 I think you were in the middle of</p> <p>16 answering a question about how you had been selected</p> <p>17 to give the plenary talk in November of 2019 to the</p> <p>18 Society for Music Theory?</p> <p>19 A Right.</p> <p>20 Q Can you continue with your answer,</p> <p>21 please?</p> <p>22 A Yeah. So Joe Straus had suggested me to</p> <p>23 the program committee and as I mentioned, Betsy</p> <p>24 Marvin and -- Elizabeth Marvin and Daniel Jenkins</p> <p>25 were the two names I remember from the program</p>	<p>1 That in -- in fact is the -- the title of</p> <p>2 the long article --</p> <p>3 Q Uh-huh.</p> <p>4 A -- that I had published -- it looks like</p> <p>5 you have a copy of it there on the -- on the table.</p> <p>6 And -- and so "Music Theory's White Racial Frame"</p> <p>7 was the distilled version of that very long paper.</p> <p>8 I had been doing that work going back to,</p> <p>9 I would say, 2017, 2018.</p> <p>10 Q Uh-huh.</p> <p>11 A And I had shown it to some colleagues at</p> <p>12 CUNY and certainly Joe Straus was one of them.</p> <p>13 Q Uh-huh.</p> <p>14 A And he thought that this work was</p> <p>15 important, interesting, so that's why he presented</p> <p>16 it or suggested to the program committee that I be</p> <p>17 considered for this -- for this slot.</p> <p>18 Q And if you know, approximately how many</p> <p>19 members does the SMT have?</p> <p>20 A 1200 is the number that sticks in my head</p> <p>21 from back then.</p> <p>22 Q Uh-huh.</p> <p>23 A So plus or minus at this point. Maybe a</p> <p>24 hundred or two plus or minus 1200.</p> <p>25 Q Is it international in scope?</p>
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<p>1 committee.</p> <p>2 Q Uh-huh.</p> <p>3 A And there were four people who gave talks</p> <p>4 that day and I was one of them. And Betsy Marvin</p> <p>5 who is Elizabeth Marvin moderated that plenary</p> <p>6 session.</p> <p>7 Q And all of the people you just mentioned</p> <p>8 are members of the SMT; right?</p> <p>9 A I can't say that they are members now,</p> <p>10 but they certainly were at that moment. You needed</p> <p>11 to be a member in order to --</p> <p>12 Q Uh-huh.</p> <p>13 A -- present at the conf- -- at the</p> <p>14 conference.</p> <p>15 Q What did you submit to this committee or</p> <p>16 panel for them to evaluate when selecting speakers?</p> <p>17 A So I had been doing work that resulted in</p> <p>18 that plenary talk and ultimately in a very long</p> <p>19 article. The article is titled a little bit</p> <p>20 different and I wanted the difference between the</p> <p>21 talk and the article so that there could be a</p> <p>22 distinction between the two.</p> <p>23 Q Uh-huh.</p> <p>24 A You had mentioned "Music Theory and the</p> <p>25 White Racial Frame."</p>	<p>1 A The short answer is probably no in the</p> <p>2 sense that there are international societies.</p> <p>3 So there's an International Musicological</p> <p>4 Society --</p> <p>5 Q Uh-huh.</p> <p>6 A -- which is clearly international in</p> <p>7 scope. But the Society for Music Theory certainly</p> <p>8 has members who are not located in the United States</p> <p>9 or who are not U.S. citizens, so in that sense it is</p> <p>10 international.</p> <p>11 Q Okay. And approximately how long was the</p> <p>12 talk?</p> <p>13 A My talk was about -- I -- I think about</p> <p>14 22 minutes.</p> <p>15 Q Okay.</p> <p>16 A My portion of the plenary session was</p> <p>17 22 minutes.</p> <p>18 Q And all of these talks, you mentioned I</p> <p>19 think four in total, they were given at the same</p> <p>20 time?</p> <p>21 A Correct. Well, sequentially.</p> <p>22 Q By that I mean on the same day in the</p> <p>23 same session?</p> <p>24 A Correct.</p> <p>25 Q Okay. And after you had given the talk,</p>



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<p style="text-align: right;">Page 30</p> <p>1 and by your account it was well received, was it 2 available online? 3 A Yes. 4 Q And is it still available online? 5 A As far as I know, no. 6 Q Why has it been removed from its -- where 7 it was online before? 8 A At some point, I removed it myself 9 because I was getting hate mail based on people 10 having viewed the talk. 11 And at some point I contacted I think it 12 was Patricia Hall because the entire session was 13 online and available open, maybe on a YouTube 14 channel -- 15 Q Uh-huh. 16 A -- via the SMT website. 17 I contacted Patricia Hall or -- yes, I 18 think it was Patricia Hall as -- and she was the 19 then-president of the Society for Music Theory and I 20 said, Could you please remove my 22 minutes of the 21 talk because people are watching it and sending me 22 hate mail that got quite aggressive, the hate mail. 23 Q Uh-huh. 24 A And -- and she did. 25 Well, the Society for Music Theory did.</p> <p style="text-align: right;">Page 31</p> <p>1 Not immediately, but -- but in -- in a few days I 2 think that's when the talk was taken down. 3 Q When was this, again? 4 A Oh. 5 Q Within general terms, if you know? 6 A I would say -- well, it was in 2020. 7 That's the -- 8 Q That was the time the talk was up online; 9 right? 10 A Yes. It was online after -- after 11 November 2019, you know, maybe -- I -- I don't think 12 it was immediately online -- 13 Q Uh-huh. 14 A -- until I had asked her to take it off 15 from the main Society of Music Theory. 16 I should say here that I had clipped my 17 22 minutes and made it available on my own 18 professional website. 19 Q Uh-huh. 20 A And that was easy for me to take down. 21 Since I had put it up, I could take it down. 22 Q Uh-huh. 23 A But the entire session was still 24 available and because of the hate that I was 25 getting, I sent that e-mail to Patricia Hall -- and</p>	<p style="text-align: right;">Page 32</p> <p>1 it's going to be a ballpark -- in the spring or 2 summer, let's say, of 2020. 3 Q Okay. And who is Patricia Hall? 4 A She was -- was the president of the 5 Society for Music Theory at that time. 6 Q Is she a professor as well? 7 A She's a professor of music theory, yes. 8 Q Where? 9 A University of Michigan, I believe. 10 Q Okay. And you don't have any indication 11 that Timothy Jackson sent you hate mail as -- in 12 response to this, do you? 13 A I do not. 14 Q Or that he organized any of this hate 15 mail? 16 A That -- that I organized it? 17 Q No, my client, Timothy Jackson. 18 A Yeah. 19 Q You don't have any indication that he was 20 organizing some kind of hate mail? 21 A I do not, no. 22 Q Okay. And I think you already answered 23 this, but then a longer article based on this talk 24 was eventually published; right? 25 A Correct.</p> <p style="text-align: right;">Page 33</p> <p>1 Q And that article was titled "Music Theory 2 and the White Racial Frame." 3 Correct? 4 A Correct. 5 Q And when did that come out? 6 A I think that came out some time in June 7 of 2020. 8 Q And that was published by the Society for 9 Music Theory? 10 A Yes. 11 Q What's the name of their journal? 12 A Well, they have about five official 13 publications -- 14 Q Okay. Well, what's the -- what's the 15 name of the journal in which your article -- 16 A Music Theory Online. 17 Q Okay. Was it already agreed that the 18 plenary talks would be published as papers in this 19 Music Theory Online journal? 20 A Well, my plenary talk was not published 21 in Music Theory Online. That paper -- that paper, 22 as I've said, is -- oh, gosh -- five, six, seven 23 times longer than my plenary -- 24 Q Uh-huh. 25 A -- address.</p>
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<p>1           So that's not the same -- the paper --</p> <p>2 the article that I see printed out over there, that</p> <p>3 was a separate thing from the plenary.</p> <p>4           The actual plenary talks were in fact</p> <p>5 published in Music Theory Spectrum, which is another</p> <p>6 publication of the Society for Music Theory.</p> <p>7       <b>Q     Was your -- was your talk in print form</b></p> <p>8 <b>published in the Spectrum journal?</b></p> <p>9       A     Correct. Yes, it was.</p> <p>10      <b>Q     So before we go onto the longer</b></p> <p>11 <b>article --</b></p> <p>12      A     Uh-huh.</p> <p>13      <b>Q     -- what was the process for publishing in</b></p> <p>14 <b>Spectrum?</b></p> <p>15      A     I think the editor at that time was</p> <p>16 Marianne Wheeldon --</p> <p>17      <b>Q     Uh-huh.</b></p> <p>18      A     -- who was a professor of music theory at</p> <p>19 the University of Texas-Austin. And she -- somebody</p> <p>20 had gotten in touch with her to publish these four</p> <p>21 plenary talks --</p> <p>22      <b>Q     Uh-huh.</b></p> <p>23      A     -- as a package. It generally has</p> <p>24 happened -- I've been told; I've not really seen --</p> <p>25 I -- I -- I've never been privy to the</p>	<p>1 published in Spectrum, was that sent out for peer</p> <p>2 review before that publication?</p> <p>3       A     I -- I don't know.</p> <p>4       <b>Q     Wouldn't you know as the author that your</b></p> <p>5 <b>article was being sent out for -- for peer review?</b></p> <p>6       A     I -- one would think, yes, but I wasn't</p> <p>7 that involved. I essentially submitted what I had</p> <p>8 read at the plenary address --</p> <p>9       <b>Q     Uh-huh.</b></p> <p>10      A     -- probably -- probably to Marianne</p> <p>11 Wheeldon. What she did as editor, I do not know.</p> <p>12      <b>Q     Do you remember responding to reviewers?</b></p> <p>13      A     I do not, no.</p> <p>14      <b>Q     And just for the record, can you describe</b></p> <p>15 <b>what peer review means to an academic in music</b></p> <p>16 <b>theory?</b></p> <p>17      A     Yes. Peer review generally happens --</p> <p>18 it's often called singly-blind or double-blind.</p> <p>19      <b>Q     Uh-huh.</b></p> <p>20      A     I don't call it that because to use the</p> <p>21 word "blind" like that is ableist language, which I</p> <p>22 don't support.</p> <p>23            I call it single or doubly-anonymous</p> <p>24 review, as they do in Russia, for example.</p> <p>25            And a singly-anonymous review is one in</p>
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<p>1 conversations -- it's generally happened that</p> <p>2 plenary talks at the Society for Music Theory are</p> <p>3 published --</p> <p>4       <b>Q     Uh-huh.</b></p> <p>5       A     -- in one of those two journals. Those</p> <p>6 are the main academic journals.</p> <p>7            But how it actually came to pass, I think</p> <p>8 that was more Betsy Marvin and probably Joe Straus</p> <p>9 who were working with Marianne Wheeldon to actually</p> <p>10 see those plenary talks published in Music Theory</p> <p>11 Spectrum.</p> <p>12      <b>Q     And I -- just to clarify for the record:</b></p> <p>13 <b>Is Spectrum a journal that actually appears in</b></p> <p>14 <b>print, like in a hard copy, old fashioned journal</b></p> <p>15 <b>print?</b></p> <p>16      A     I think it no longer does.</p> <p>17      <b>Q     Uh-huh.</b></p> <p>18      A     It might still -- they might still be</p> <p>19 burning off print copies.</p> <p>20            Back then, I think they -- they still</p> <p>21 were.</p> <p>22      <b>Q     Okay.</b></p> <p>23      A     But I think it's more or less all online</p> <p>24 at this point.</p> <p>25      <b>Q     And was that plenary talk when it was</b></p>	<p>1 which the reviewers know the identity of the author</p> <p>2 of the article.</p> <p>3            And as you I'm sure know, the</p> <p>4 doubly-anonymous review is one in which all</p> <p>5 identities are withheld.</p> <p>6       <b>Q     Identities meaning the personal identity</b></p> <p>7 <b>of the --</b></p> <p>8       A     The personal identity of the reviewers --</p> <p>9       <b>Q     Uh-huh.</b></p> <p>10      A     -- and the author of the article.</p> <p>11      <b>Q     And so to the best of your recollection,</b></p> <p>12 <b>there was no double-blind peer review of the</b></p> <p>13 <b>Spectrum publication?</b></p> <p>14      A     I didn't say that I -- I didn't -- that</p> <p>15 there was no review. I said that I don't know.</p> <p>16      <b>Q     You don't recall ever getting a</b></p> <p>17 <b>reviewer's comments?</b></p> <p>18      A     That's correct.</p> <p>19      <b>Q     You don't recall ever responding to the</b></p> <p>20 <b>reviewer's comments?</b></p> <p>21      A     Yeah, correct. Of course.</p> <p>22      <b>Q     You don't recall ever discussing with the</b></p> <p>23 <b>editor peer reviews?</b></p> <p>24      A     That is correct, yes.</p> <p>25      <b>Q     And certainly, if there was such</b></p>

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<p style="text-align: right;">Page 38</p> <p>1 correspondence, that would be in your e-mail 2 somewhere? 3 A Correct. 4 Q Or other papers? 5 A Uh-huh. 6 Q Did you do a diligent search of your 7 records for those papers? 8 A Yes. 9 Q Did you turn any up? 10 A Excuse me. Can you repeat that question, 11 please? 12 Q Did you conduct a diligent search of your 13 records for peer review documents of the Spectrum 14 publication? 15 A I am now looking at the documents 16 requested at the end of the subpoena and I really 17 looked at this request number one, two, and three 18 and I don't recall seeing anything about peer review 19 here. 20 So I don't think that I specifically 21 looked for peer review in putting together the -- 22 that PDF that I talked about. 23 Q You would agree that a document that 24 discussed peer review of your paper that was 25 presented at the 219 -- 2019, excuse me, plenary</p>	<p style="text-align: right;">Page 40</p> <p>1 A May I ask -- may I confer with my counsel 2 on that? 3 Q You confer with your counsel -- well, 4 let's -- for the purposes -- 5 MR. ALLEN: Do you want to just 6 confer here or you want to go off the 7 record so he can confer with you? 8 MR. PAINTER: Well, I mean, it's a 9 legal question as to what's responsive. 10 MR. ALLEN: Yeah. 11 MR. PAINTER: I -- deponents usually 12 consult their counsel as to what is 13 responsive and what is not. 14 MR. ALLEN: Uh-huh. 15 MR. PAINTER: And there are a lot of 16 e-mails that are in the possession -- 17 MR. ALLEN: Sure. 18 MR. PAINTER: -- of Hunter 19 College -- 20 MR. ALLEN: I understand. 21 MR. PAINTER: -- that have not been 22 produced. And I don't believe he's gone 23 through those in preparation for this 24 deposition. 25 So if you are asking about those, I</p>
<p style="text-align: right;">Page 39</p> <p>1 address to the Society for Music Theory would be 2 information concerning your plenary address; 3 correct? 4 A Yes. 5 Q So that would be responsive to the first 6 request there, which asks for each record 7 constituting a communication that implements, 8 mentions, discusses, or contains any information 9 concerning your plenary address at the 2019 Society 10 for Music Theory's annual meeting; correct? 11 A Yes. 12 Q Okay. 13 MR. PAINTER: I'm going to ask for 14 clarification as to what you mean by 15 "record." 16 Are these records in his possession 17 or records in the possession of Hunter 18 College, which have not been produced? 19 MR. ALLEN: We can discuss that off 20 the record. 21 BY MR. ALLEN: 22 Q But I just want to make a record here for 23 the purposes of our deposition that if such a 24 document was in your possession, that it would be 25 responsive to the subpoena; do you agree?</p>	<p style="text-align: right;">Page 41</p> <p>1 think that just needs to be very clear on 2 the record that you are asking about 3 those and then he'd have an opportunity 4 to review those. 5 BY MR. ALLEN: 6 Q And my purpose here is to try to identify 7 whether or not any such documents exist? 8 A Uh-huh. 9 Q If we need to follow up, that's fine with 10 me. I'm not here to try to suggest you did anything 11 wrong. 12 In fact, this often happens in 13 depositions that you identify documents that someone 14 wants, the other person didn't know they should have 15 got, something like that. So it's really not about 16 trying to impugn your reputation. 17 I just want to identify whether any such 18 review of the Spectrum publication happened. 19 So if there are such documents they 20 certainly exist in one of two places, as far as I 21 can tell from what you've discussed so far: They 22 exist either in your own personal records or in the 23 records that are properly in -- in the control of 24 Hunter College; is that correct? 25 A In control of Hunter College, yes.</p>

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1	Q	Okay.	1		five articles that were going to appear in Music
2	A	Yes.	2		Theory Online on Kendrick Lamar's album, To Pimp a
3	Q	But as you sit here today, you don't	3		Butterfly.
4		remember seeing any such documents?	4		And there were a lot of things swirling
5	A	Correct.	5		in my head about music theory and how we have dealt
6	Q	Do you remember there being any	6		with race in the past. And I remember writing a
7		complaints that publications of these plenary	7		very long -- so I was contacted by Noriko Manabe.
8		sessions in Spectrum were not peer reviewed?	8		She's currently a music theory professor at Indiana
9	A	No.	9		University. She was one of the authors.
10	Q	Do you have any reason to believe that	10		And they said, Would you please write an
11		the Society for Music Theory would not keep such	11		introduction to these five papers?
12		documents themselves if they were generated in the	12		And I agreed. But the introduction that
13		process of peer review?	13		I originally wrote was very long, 12-, 14,000 words,
14	A	Can you repeat that question?	14		and it wasn't so much a traditional introduction to
15	Q	Do you have any reason to believe that	15		five papers on Kendrick Lamar.
16		the Society for Music Theory would not have these	16		But I -- I wrote that paper, that
17		peer review documents related to your article if	17		introduction, and ultimately I pulled it -- I wrote
18		they existed?	18		something completely different, which is available
19	A	I don't have any reason to believe that,	19		online now, 4,000 words, Hey, this is a great thing.
20		that they would not have them.	20		But that original response was the paper
21	Q	And I guess conversely, would you expect	21		that ultimately became "Music Theory and the White
22		the Society for Music Theory to maintain those	22		Racial Frame." So that I wrote Winter/Spring 2018.
23		records of past peer reviews?	23	Q	Let -- let me ask you a few questions
24	A	Sure. Yeah.	24		about that original -- what did you call it -- a
25	Q	Okay.	25		response to Kendrick Lamar?
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1		MR. PAINTER: I'd ask you to	1	A	It was an introduction --
2		clarify, are we asking about the article	2	Q	Introduction?
3		or the talk, the plenary session talk?	3	A	-- to five papers on Kendrick Lamar's
4		MR. ALLEN: I am talking about the	4		third studio album.
5		article that was published in Spectrum --	5	Q	I see.
6	BY MR. ALLEN:		6	A	It's called To Pimp a Butterfly.
7	Q	-- which you said was based on the print	7	Q	And you said that was published or it was
8		that was presented in oral form at the plenary	8		not published?
9		address.	9	A	It was.
10	A	I would say more than based on. I would	10		Oh, the original introduction, very
11		say it was virtually a verbatim --	11		long --
12	Q	Okay.	12	Q	Uh-huh.
13	A	-- replication of what I spoke.	13	A	-- 12-, 14,000 words, I completely pulled
14	Q	So I want to move on a little bit.	14		that.
15		Now, you've testified that there was a	15	Q	Uh-huh.
16		second paper which grew out of the research and	16	A	That was not part of it. I rewrote
17		presentation of the plenary talk which was published	17		something completely different --
18		in Music Theory Online; correct?	18	Q	Uh-huh.
19	A	Uh-huh.	19	A	-- which is published as the
20	Q	Can you describe how that paper came to	20		introduction --
21		be published in Music Theory Online?	21	Q	Okay.
22	A	Yeah. So I mentioned that I began that	22	A	-- to -- to that, I think it's called, "A
23		work probably 2017, 2018.	23		Symposium on Kendrick Lamar's To Pimp a Butterfly."
24	Q	Uh-huh.	24	Q	Where -- where was that published?
25	A	And strangely, it began as a response to	25	A	That was also in Music Theory Online.

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1	Q And was that article --	1	Adam, nor do I, quite frankly.
2	A If you --	2	A Sure.
3	Q -- an introduction --	3	Q So I think it helps to put it in
4	(Whereupon, the court reporter	4	context --
5	requests clarification.)	5	A I will --
6	BY MR. ALLEN:	6	Q -- without belaboring the point.
7	Q So we'll refer to it as "an	7	If they become relevant, Professor Ewell,
8	introduction"?	8	it will be my job to ask about that.
9	A Uh-huh.	9	A Uh-huh.
10	Q In its final form, approximately how many	10	Q But I do appreciate it when you give
11	words was it?	11	these descriptions in brief of who they are and
12	A 4,000 words.	12	where they are located.
13	Q And 4,000 words in ordinary journal pages	13	So with that said --
14	would be about how much, in your experience?	14	A Uh-huh.
15	A I have no idea.	15	Q -- please continue describing the process
16	Q Was that introduction peer reviewed?	16	of publishing "Music Theory and the White Racial
17	A Yes.	17	Frame" in Music Theory Online.
18	Q Who were the reviewers?	18	A Yeah, so the editor at the time was Jeff
19	A I do not know. It was -- it was	19	Perry.
20	anonymous.	20	Q Uh-huh.
21	Q It stands out in your mind that it was	21	A And there was some very interesting
22	reviewed and you received the reviewers' comments?	22	back-and-forth. And this is something that I
23	A Uh-huh.	23	actually outline in a monograph that I wrote --
24	Q And you remember responding to the	24	Q Uh-huh.
25	reviewers' comments?	25	A -- that came out last year. And that
Page 47		Page 49	
1	A Uh-huh.	1	monograph is entitled "On Music Theory and Making
2	Q Okay. Now, that is separate from an	2	Music More Welcoming for Everyone." And I'm happy
3	article that you eventually published in Music	3	to -- to -- to repeat some of those things here.
4	Theory Online called "Music Theory and the White	4	So the reviews came back positive as --
5	Racial Frame."	5	accept with revisions.
6	Correct?	6	Q Uh-huh.
7	A Correct.	7	A Jeff Perry and the Music Theory Online
8	Q So just focusing on that paper, explain	8	team e-mailed me, We are going to change this to a
9	the publication process in that case.	9	different decision.
10	A Uh-huh. So I submitted that to Music	10	And the decision was revise and resubmit.
11	Theory Online. And it took a fair bit of time for	11	And that --
12	reviews to come back.	12	Q And just for the record -- again, this
13	They came back. They were positive. But	13	may be presented to people who have no idea how --
14	the editor at the time, that was Jeff Perry. Jeff	14	A Uh-huh.
15	Perry is a music theory professor at Louisiana State	15	Q -- the publication in academic journal
16	University.	16	works, but a revise-and-resubmit recommendation
17	Q Uh-huh.	17	means, if I may summarize, We like it but we want
18	A Does it help for me to say that? Should	18	these revisions with these revisions; we'd like to
19	I be saying that, by the way? I -- you know,	19	see it again and then it will be published.
20	because you asked --	20	Is that fair?
21	Q I appreciate it because you have to	21	A Yup, that's fair.
22	understand, this is -- this is likely to be or could	22	Q Okay.
23	be shown to a jury --	23	A Yeah.
24	A Yeah, fair.	24	Q And so fast forward to the next phase.
25	Q -- and they won't know these people from	25	A Uh-huh.

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1	Q	What happened next?	1		correct?
2	A	Well, since you clarified what revised	2	A	Yes.
3		and resubmit means, we often just say "R&R."	3	Q	And in this case, you thought they did
4	Q	Which doesn't mean "rest and relaxation."	4		the right thing?
5	A	It does not mean --	5	A	Yes.
6	Q	It means more work for the professor?	6		I should also add that any society
7	A	Yeah, yeah.	7		honoring their own rules is important to me.
8		Oh, let me clarify what "accept with	8	Q	And I understand from your statement that
9		revisions" --	9		you consider yourself a -- basically, an honest
10	Q	Uh-huh.	10		academic; right?
11	A	-- at least meant at the time.	11	A	I don't understand that question.
12	Q	Uh-huh.	12	Q	Sure. You want societies to honor their
13	A	It meant this article will be published.	13		own rules; correct?
14		Music Theory Online said very clearly at	14	A	Yes.
15		the time in -- in their language, If you get to	15	Q	Professional societies that address
16		"accept with revisions," you can consider your	16		academic work; correct?
17		article published and you can list it on your CV.	17	A	Yes.
18	Q	Uh-huh.	18	Q	And you, yourself, consider yourself an
19	A	So that's what that meant vis-à-vis the	19		honorable academic in that sense?
20		"revise and resubmit" --	20	A	Yes.
21	Q	Uh-huh.	21	Q	Okay. And this is a perfect example of a
22	A	-- which is what you just outlined.	22		question being unclear and you ask for clarification
23	Q	Uh-huh.	23		and I appreciate that.
24	A	They changed the "accept with revisions"	24	A	I appreciate the clarification.
25		to "revise and resubmit."	25	Q	So I want to turn to -- so this article
Page 51			Page 53		
1		And I took issue with that. And I began	1		was peer reviewed. It came back, Accepted but we
2		to -- I drafted a memorandum to the chair of the	2		want a few changes.
3		publications committee at the time. That was Brian	3		Then the editorial board, it sounds like,
4		Alegant, who is now retired I think --	4		changed that to revise and resubmit; correct so far?
5	Q	Uh-huh.	5	A	No, it was not the editorial board. It
6	A	-- from Oberlin as a music theory	6		was the editors at Music Theory Online.
7		professor.	7		Specifically, Jeff Perry and probably David
8		And I had a phone call with Brian Alegant	8		Neumeyer --
9		regarding this case. And ultimately, I emerged	9		MR. ALLEN: Uh-huh.
10		victorious in this behind-the-scenes battle, let me	10	A	-- retired music theory professor,
11		say --	11		University of Texas-Austin, I think.
12	Q	-- uh-huh.	12		BY MR. ALLEN:
13	A	-- as to whether they were going to honor	13	Q	Uh-huh. And then you pushed back on
14		their own rules and not change the goal posts.	14		that; correct?
15	Q	Right.	15	A	Yes. Then I pushed back the editorial --
16	A	Right? Or change the goal posts and get	16		not the editorial board, but the publications
17		away with it.	17		committee was the next level.
18	Q	Uh-huh.	18	Q	Uh-huh.
19	A	So it was one of those two things.	19	A	And this is a publications committee, by
20		Frankly, I thought that they would get	20		the way, of the Society for Music Theory.
21		away with it. But I was a little surprised, happily	21	Q	Okay. And you eventually prevailed?
22		surprised, when in fact they decided to honor their	22	A	Uh-huh.
23		own rules and publish this article.	23	Q	They followed their own rules; right?
24	Q	And so the Society for Music Theory	24	A	Uh-huh.
25		honoring their own rules, that's important to you;	25	Q	And the article was eventually published

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<p style="text-align: right;">Page 54</p> <p>1 after, what I take to be, some few revisions?</p> <p>2 A Correct.</p> <p>3 Q So I want to turn now and ask a few</p> <p>4 questions about the substance of your article.</p> <p>5 I understand you may not have a verbatim</p> <p>6 memory of the article and it's been some time,</p> <p>7 but --</p> <p>8 A Uh-huh.</p> <p>9 Q -- I really want you to explain in -- in</p> <p>10 general terms that can be understand -- -stood by</p> <p>11 the Jury, if you could, what is the white racial</p> <p>12 frame in music theory?</p> <p>13 A Well, the right -- white racial frame is</p> <p>14 from sociologist Joe Feagin --</p> <p>15 Q Uh-huh.</p> <p>16 A -- who's written books called "White</p> <p>17 Racial Framing," who's talked about this concept</p> <p>18 from a sociological point of view for decades now.</p> <p>19 And within -- within music theory, the</p> <p>20 white racial frame is essentially an acknowledgment</p> <p>21 that American music theory historically is deeply,</p> <p>22 deeply rooted in our own country's historic white</p> <p>23 supremacy.</p> <p>24 Q So the white racial frame is about the</p> <p>25 historical background to music theory in the United</p>	<p style="text-align: right;">Page 56</p> <p>1 fact created by white men in the history of music</p> <p>2 theory going back, well, centuries, frankly.</p> <p>3 And when you look at it from a racialized</p> <p>4 perspective, as I have, you realize that whiteness</p> <p>5 plus maleness, the concepts of whiteness plus</p> <p>6 maleness, in fact give people who happen to be</p> <p>7 deemed white by society -- because, of course,</p> <p>8 whiteness as a concept is something that's been</p> <p>9 very, very flexible over -- over the centuries,</p> <p>10 since it was created by humans roughly 500 years</p> <p>11 ago, right -- it gives people who -- who might</p> <p>12 identify as such a great, great advantage because</p> <p>13 people by default believe that a person who presents</p> <p>14 as white and male are -- are more inclined to be</p> <p>15 like the great music -- so-called great music</p> <p>16 theorists of the past; right?</p> <p>17 And it in fact tells our students that</p> <p>18 this is the model for what music theory should be</p> <p>19 because quite literally 100 percent of the music</p> <p>20 theorists we put forth in study were in fact white</p> <p>21 men, rather than realizing that historically, going</p> <p>22 back hundreds of years, without question, the</p> <p>23 country that became known as the United States has</p> <p>24 valued whiteness over all other forms of races over</p> <p>25 non-whiteness, let's say.</p>
<p style="text-align: right;">Page 55</p> <p>1 States?</p> <p>2 A Yes, to a very large extent. Yes.</p> <p>3 Q Okay. And how does the white racial</p> <p>4 frame justify the great array of privileges and</p> <p>5 assets held by white Americans?</p> <p>6 I believe that's a quote from your</p> <p>7 article?</p> <p>8 A Can you repeat that again, please?</p> <p>9 Q Sure. How does the white racial frame in</p> <p>10 music theory "justify the great array of privileges</p> <p>11 and assets held by white Americans"?</p> <p>12 A In music theory -- in American music</p> <p>13 theory, it's manifested in many, many different ways</p> <p>14 from the curricula that we put forth in the music</p> <p>15 theory classroom to the music theorists who have</p> <p>16 been elevated to study and whose works we read to</p> <p>17 the performances and the -- the pieces and the</p> <p>18 repertoire that we tell our students are the most</p> <p>19 important in -- in their music educations.</p> <p>20 Q And how does that justify the great array</p> <p>21 of privileges and assets held by white Americans?</p> <p>22 A It justifies it in the sense that</p> <p>23 virtually all of the repertoire, until the last,</p> <p>24 say, five to ten years, all of the repertoire, all</p> <p>25 of the theorists, all of the ideas put forth were in</p>	<p style="text-align: right;">Page 57</p> <p>1 And it's only now that we are beginning</p> <p>2 to unpack some of the racialized histories of music</p> <p>3 education and music theory specifically, which is</p> <p>4 what I do, in order to unpack some of the -- as</p> <p>5 you -- as you quote from me, the array of</p> <p>6 privileges --</p> <p>7 Q Uh-huh.</p> <p>8 A -- that whiteness and male -- plus</p> <p>9 maleness -- I'm speaking about whiteness because I</p> <p>10 think that's where your -- your question is more</p> <p>11 focused on that.</p> <p>12 Of course, I very clearly link this to</p> <p>13 maleness and patriarchy in all of my work because if</p> <p>14 you actually study race, as I have over many years</p> <p>15 now, you realize that patriarchy is tied right at</p> <p>16 the hip to the history of white supremacy.</p> <p>17 Q Okay. And is this a fair summary -- and</p> <p>18 I'm not trying to put words in your mouths [sic] --</p> <p>19 but the fact that only white men have written,</p> <p>20 published the corpus of music theory up to the</p> <p>21 present in the United States, that that has propped</p> <p>22 up white supremacy in the United States?</p> <p>23 A No, that's not true. I -- I wouldn't say</p> <p>24 only white men because, in fact, people have</p> <p>25 theorized music all over the planet since there's</p>

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<p style="text-align: right;">Page 58</p> <p>1 been music; right?</p> <p>2           We've only put forth a select few in our</p> <p>3 country because historically, the -- the country</p> <p>4 that became known as the United States is rooted in</p> <p>5 two twin ideologies more than any other and those</p> <p>6 ideologies are white supremacy and patriarchy.</p> <p>7       Q     So these -- these doctrines of white</p> <p>8 supremacy and patriarchy were responsible for</p> <p>9 selecting the people in the United States who were</p> <p>10 considered music theorists?</p> <p>11       A     Well, when you say "responsible for</p> <p>12 selecting," it almost sounds as if there's, like, a</p> <p>13 fair egalitarian selection process that's going on</p> <p>14 behind the scenes.</p> <p>15           And that's never been the case; right?</p> <p>16 It's -- it has quite literally been white men</p> <p>17 writing the rules.</p> <p>18           It's not like in 1787 when the</p> <p>19 Constitutional convention was convened in</p> <p>20 Philadelphia that there were 55 people from all over</p> <p>21 the country and half of them were women and over</p> <p>22 here we have the Scots and over here we have the</p> <p>23 Cherokee and the Hopi.</p> <p>24           No. No. No. We all know, they were 55</p> <p>25 white propertied men, about half of whom who owned</p>	<p style="text-align: right;">Page 60</p> <p>1 literally, would have been three-fifths of a person</p> <p>2 because of the Three-Fifths Compromise; right?</p> <p>3           And --</p> <p>4       Q     And by that, you are referring to the</p> <p>5 fact that you identify as black?</p> <p>6       A     Correct.</p> <p>7       Q     And people at that time certainly would</p> <p>8 have identified you as black; right?</p> <p>9       A     Correct. Correct.</p> <p>10       Q     And keep in mind, this will be on video,</p> <p>11 so we are not making things up and they'll see you;</p> <p>12 right?</p> <p>13       A     That's great.</p> <p>14       Q     Okay. So then that's what you are</p> <p>15 referring to?</p> <p>16       A     Absolutely, yeah.</p> <p>17       Q     Uh-huh.</p> <p>18       A     And so I probably would ask a question:</p> <p>19 How could that not be seen as supporting whiteness</p> <p>20 if -- if the Fugitive Slave Clause, which was part</p> <p>21 of the original Constitution, and the Three-Fifths</p> <p>22 Compromise, which was part of the original</p> <p>23 Constitution, quite clearly were anti-black in</p> <p>24 nature?</p> <p>25           And the first naturalization law from</p>
<p style="text-align: right;">Page 59</p> <p>1 slaves, and they wrote a rulebook, the Constitution,</p> <p>2 which benefited themselves.</p> <p>3           And to be honest, do you blame them? I</p> <p>4 wouldn't do -- I -- I would have done the same</p> <p>5 thing. You had money, you had education, you had</p> <p>6 travel.</p> <p>7           I don't blame somebody 240 years ago for</p> <p>8 writing a rulebook that benefited themselves.</p> <p>9 That's human nature.</p> <p>10          This is -- there's not -- there's nothing</p> <p>11 about blame here.</p> <p>12       Q     And -- and let me ask a question about</p> <p>13 that specifically.</p> <p>14           And so in your view, the Constitution</p> <p>15 itself was written to support white male privilege?</p> <p>16       A     You keep coming back to the word</p> <p>17 "privilege" and that's not exactly the word I would</p> <p>18 use.</p> <p>19           White male supremacy, I would use --</p> <p>20       Q     Okay. Well, let's use your words.</p> <p>21           It was written to the support white male</p> <p>22 supremacy?</p> <p>23       A     Not explicitly to support white male</p> <p>24 supremacy, but it was written with white male</p> <p>25 supremacy in mind; right. I mean, I, quite</p>	<p style="text-align: right;">Page 61</p> <p>1 1790 very clearly said, If you want to be</p> <p>2 naturalized citizen, you have to be white.</p> <p>3       Q     Uh-huh.</p> <p>4       A     It also said you had to be -- you had to</p> <p>5 be a free white person, is the way they wrote the</p> <p>6 law.</p> <p>7           Well, that's a white supremacist</p> <p>8 structure; right. That's what --</p> <p>9           So if -- if you're -- if you're asking me</p> <p>10 whether the Constitution was written with white</p> <p>11 supremacy and patriarchy, by the way, in mind, my</p> <p>12 answer would be unequivocally yes, it was.</p> <p>13       Q     And that includes the First Amendment to</p> <p>14 the United States Constitution?</p> <p>15       A     The First Amendment of the Constitution</p> <p>16 to free speech, I think, is one of the high water</p> <p>17 marks of our Constitution --</p> <p>18       Q     Are you excepting that from the supports</p> <p>19 of white supremacy in your view?</p> <p>20       A     I --</p> <p>21       Q     Let me rephrase that.</p> <p>22       A     Yeah, yeah, please.</p> <p>23       Q     Are you excepting the First Amendment</p> <p>24 from the argument you just made about the sup- -- I</p> <p>25 guess you didn't say "support" --</p>



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1	MR. PAINTER: That	1	Q Yes?
2	mischaracterizes --	2	A -- in forming the Constitution of the
3	MR. ALLEN: Yeah, no, I'm trying to	3	United States?
4	get it right.	4	Q Yes. We've been talking about the
5	MR. PAINTER: He didn't say the	5	white --
6	entire Constitution, every provision.	6	A Uh-huh.
7	MR. ALLEN: Well, let me ask him a	7	Q -- racial frame of music theory; correct?
8	question.	8	A Yeah.
9	BY MR. ALLEN:	9	Q And you --
10	Q I'm asking if you except the First	10	MR. PAINTER: Correction. A lot of
11	Amendment which guarantees free speech from the	11	this has not been about the white racial
12	argument that you made about the 55, I believe,	12	frame of music theory. We have been
13	white men, half of them slave owners, who were	13	talking about the Constitution for at
14	advancing white supremacy at the time of the	14	least five minutes.
15	foundings?	15	BY MR. ALLEN:
16	A Yeah. This is a very interesting	16	Q And then we transitioned to talking about
17	conversation.	17	the Constitution when I asked you how did this, for
18	I -- I fully acknowledge some of the	18	lack of a better word, ideology of the white racial
19	beautiful parts of the United States Constitution.	19	frame justify the great array of privileges and
20	My personal favorite is the 14th Amendment written	20	assets held by white Americans; right?
21	by John Bingham, a Radical Republican --	21	A Uh-huh.
22	Q Which is, of course, after the Civil War;	22	Q Do you remember that question?
23	right?	23	A Uh-huh.
24	A Correct. One of the reconstruction	24	Q And then we transitioned based on your
25	amendments.	25	answer to a discussion of the Constitution and
Page 63		Page 65	
1	He was a Congressman from Ohio, a Radical	1	the -- the law in 1790?
2	Republican, and a white man, I'd like to point out	2	A Uh-huh.
3	for the record here.	3	Q Which I think we all agree is atrocious.
4	And the First Amendment I think is a	4	A Uh-huh.
5	great amendment. I think the Second Amendment is an	5	Q And my question then, returning to white
6	awful amendment, personally, but now we are just	6	racial framing of music theory, I wanted to know how
7	getting into speculation and --	7	those are connected. How is the white racial frame
8	Q And we don't need to --	8	in music theory connected to the 55 founders, half
9	A -- I --	9	of them slave owners, who drafted the Constitution?
10	(Whereupon, the court reporter	10	A Well, that's actually pretty easy to
11	requests clarification.)	11	answer. To race scholars like me, it's pretty easy
12	BY MR. ALLEN:	12	to connect dots to see how the white supremacist
13	Q Well, I -- I want to -- I don't	13	foundings of the country are manifested in music.
14	necessarily want to cut this short, but we have	14	Let's take the New York Philharmonic, for
15	other things to talk about and I -- I just wanted to	15	example. I think that's our oldest symphony
16	ask you the question about the first amendment since	16	orchestra. It was founded in 1842.
17	you had made those statements about the	17	The first non-white person to play and be
18	Constitution.	18	accepted into the orchestra was 120 years later.
19	I wanted to return to music theory, if	19	His name -- he's a black violinist. His name is
20	you don't mind?	20	Sanford Allen. He's still alive. He lives in New
21	A Please.	21	York City.
22	Q What role did music theory have in -- in	22	One hundred twenty years it took for them
23	forming the founders' drafting of the Constitution	23	to accept into the orchestra a person who was not
24	or the 1790 law that you mention?	24	white.
25	A What role did music theory have --	25	Since I know a lot about patriarchy and

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<p style="text-align: right;">Page 66</p> <p>1 the his- -- the patriarchal underpinnings of the 2 United States as well, I'll simply point out that 3 the first woman to be accepted to play in the New 4 York Philharmonic, not as just a per service player 5 but someone who is part of the group taken in as a 6 tenured member of the orchestra, that was Steffy 7 Goldner. She was a harpist and that was in 1922. 8 So it took 80 years for them to accept a woman into 9 the orchestra.</p> <p>10           So if the question is: How did the white 11 supremacist underpinnings of a Constitution or just 12 the founding of the count- -- of the country affect 13 society writ large and, in my case, music and music 14 theory, well, just look at -- look at the New York 15 Philharmonic.</p> <p>16           Look at the Metropolitan Opera founded in 17 1883. First opera written by a black composer 18 performed in 2021, four -- three years ago. That 19 was Fire Shut up in my Bones by Terence Blanchard, a 20 very fine composer and trumpeter.</p> <p>21       Q       So let me interject for a second. 22               I don't think anyone would seriously 23 question that there has been a racial discrimination 24 in the United States, at least -- not least of which 25 manifested in institutions like philharmonic</p>	<p style="text-align: right;">Page 68</p> <p>1           Music theory is a crucial part of music 2 education. It has been, of course.</p> <p>3       Q       So maybe -- let me ask my question 4 another way.</p> <p>5               Is -- is what you are saying or what you 6 were trying to advance in your article in Music 7 Theory Online that the -- the embedded racial 8 supremacy in our founding documents went on to 9 influence music theory for generations to come?</p> <p>10       A       It influenced absolutely every aspect of 11 American life up to and including music theory.</p> <p>12       Q       Okay.</p> <p>13       A       And it still influences these things 14 today.</p> <p>15       Q       Is it your -- also your argument that 16 this white racial frame in Western music theory has 17 the purpose of upholding white supremacy?</p> <p>18       A       Well, this is the first time you've used 19 the word "Western" and I -- I -- that's not a word I 20 really use anymore. This is something I unpack also 21 in my monograph from last year.</p> <p>22               The whole concept of the West, it -- it 23 never happened before 1860 roughly. It -- the -- 24 the West was created out of thin air.</p> <p>25               Why? Because Europe could no longer</p>
<p style="text-align: right;">Page 67</p> <p>1 orchestras and so forth, just as you have described.</p> <p>2       A       Uh-huh.</p> <p>3       Q       My question was different. 4               My question was: How did music theory 5 inform this white racial frame that you described? 6 How did that inform the -- what you've described as 7 the racial supremacy embedded in the Constitution 8 and other laws dating back to the 18th century?</p> <p>9       A       Uh-huh. Well, I -- I mentioned 10 performing institutions like New York Philharmonic 11 or the Metropolitan Opera.</p> <p>12               All of the people involved in those, they 13 went to school and they learned music theory; right. 14 It was very much a feedback loop in the world of 15 classical music. It still is to a very large 16 extent, although we are making some very interesting 17 steps forward, I think, in a -- in -- in positive 18 directions.</p> <p>19               If in fact a student goes to an 20 institution to learn music and they are told 21 explicitly that the -- that white people's brains 22 are bigger because racial phrenologists proved it, 23 if they are told that black people couldn't possibly 24 write good music because they are black, well, 25 that's part of music education.</p>	<p style="text-align: right;">Page 69</p> <p>1 ignore the money and the power that slave labor had 2 generated in the United States of America. In other 3 words, Europe could no longer ignore the United 4 States of America.</p> <p>5               So we needed a term to link the United 6 States to Europe. The Europeans needed a term, 7 frankly, and that term was "the West."</p> <p>8               And that linked up the -- what we now 9 call North America, which is usually considered to 10 be Canada and the United States, despite the fact 11 that North America is a continent that goes down to 12 the Panama-Colombia border; right.</p> <p>13               So I personally don't use "the West" in 14 talking about some of the structures of -- of -- of 15 music education.</p> <p>16               And now, I'm sorry, Mr. Allen, you'll 17 have to go back and repeat the -- the original 18 question because --</p> <p>19       Q       Sure.</p> <p>20       A       -- I lost it.</p> <p>21       Q       So let's leave any conceptions of the 22 West since that seems to be something you don't 23 like.</p> <p>24               So this white --</p> <p>25               MR. PAINTER: Correction. I -- I</p>

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<p>1 don't think he said he didn't like it.</p> <p>2 THE WITNESS: You are right. I did</p> <p>3 not say --</p> <p>4 BY MR. ALLEN:</p> <p>5 Q You don't like this term, "Western"? You</p> <p>6 said it's --</p> <p>7 A I didn't --</p> <p>8 Q -- something like it was invented out of</p> <p>9 think air or something?</p> <p>10 A Yeah, I didn't say I didn't like it. I</p> <p>11 said I don't use it.</p> <p>12 Q Okay. Well, I'm sorry if I interpreted</p> <p>13 something that you refuse to use as something you</p> <p>14 don't like, so I stand corrected.</p> <p>15 Let me ask the question a different way:</p> <p>16 This white racial frame in Wes- -- let me see --</p> <p>17 white racial frame in what is contemporary United</p> <p>18 States music theory has the purpose of upholding</p> <p>19 white supremacy; is that your argument?</p> <p>20 A No. No.</p> <p>21 Q Do you argue that the contemporary white</p> <p>22 racial frame in classical music theory as it's</p> <p>23 taught in the United States discriminates against</p> <p>24 black Americans?</p> <p>25 A Can you clarify what you mean by</p>	<p>1 Q And I asked if it keeps black Americans</p> <p>2 out of music theory education programs, such as the</p> <p>3 one you teach.</p> <p>4 So let's then move onto that question.</p> <p>5 A Are you --</p> <p>6 Q Is that an argument you would make, that</p> <p>7 this white racial frame discriminates against black</p> <p>8 Americans by keeping them out of music theory</p> <p>9 programs?</p> <p>10 A I don't understand what you mean by</p> <p>11 "keeping out of."</p> <p>12 You mean like not being admitted to</p> <p>13 study.</p> <p>14 Q Sure. It excludes them?</p> <p>15 A It excludes them as undergraduates or as</p> <p>16 masters or doctoral students?</p> <p>17 Q Let's take them in turn. As</p> <p>18 undergraduates?</p> <p>19 Do you know of any undergraduates who are</p> <p>20 black Americans who wanted to study in music theory</p> <p>21 who were excluded from a program in the United</p> <p>22 States because of the white racial frame of music</p> <p>23 theory?</p> <p>24 A Well, so I 00 I often refer to history in</p> <p>25 these terms and now I would refer to Paul Brent, who</p>
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<p>1 "discriminates against black Americans"?</p> <p>2 Q Let's start with some of the examples</p> <p>3 you've used.</p> <p>4 It denies black Americans access to, say,</p> <p>5 philharmonic orchestras?</p> <p>6 A You mean as members playing in the</p> <p>7 orchestra?</p> <p>8 Q Sure, let's start with that.</p> <p>9 A It has, yes.</p> <p>10 Q As students of music?</p> <p>11 A I don't understand the question.</p> <p>12 Q As students in graduate programs in music</p> <p>13 theory, such as you teach?</p> <p>14 A Could you give me a full question? I --</p> <p>15 I --</p> <p>16 Q Sure. I'm asking how -- or if music</p> <p>17 theory, as you've described it having this white</p> <p>18 racial frame, discriminates against black Americans,</p> <p>19 and you asked me to be more specific.</p> <p>20 A I asked you to -- to -- to explain what</p> <p>21 you mean by "discriminating black Americans," yes.</p> <p>22 Q And I said it keeps black Americans out</p> <p>23 of positions as performing artists in philharmonic</p> <p>24 orchestras, and you agreed?</p> <p>25 A Yeah.</p>	<p>1 is the first black student to study at Peabody.</p> <p>2 That was 1949. He was most certainly excluded</p> <p>3 because of his blackness but he did ultimately get</p> <p>4 in before that.</p> <p>5 It was quite routine to exclude black</p> <p>6 people from conservatories and from music education</p> <p>7 because -- quite explicitly because of their</p> <p>8 blackness.</p> <p>9 Carl Seashore was a music theorist at the</p> <p>10 University of Iowa who died years ago. He was</p> <p>11 essentially a musical eugenicist and he is -- his</p> <p>12 goal was to prove the inferiority of black musicians</p> <p>13 in the country.</p> <p>14 The reason I'm laying out the history</p> <p>15 here is because it sounds like you want me to answer</p> <p>16 something about today and I have a hard time</p> <p>17 answering such a question without laying out a</p> <p>18 little bit of --</p> <p>19 Q Sure.</p> <p>20 A -- the history as to exactly how and why</p> <p>21 blacks were in fact discriminated against in music</p> <p>22 educational settings in horrific ways, I might add,</p> <p>23 going back to the 19th century.</p> <p>24 But Paul Brent was 1949. That's not that</p> <p>25 old. My folks were alive in 1949. That's not that</p>

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<p>1 far in -- into the past.</p> <p>2 And it's not that much of a leap to think</p> <p>3 that such discrimination could have happened in the</p> <p>4 late 20th century.</p> <p>5 Now, if you are asking me if I know</p> <p>6 specifically, I'd have to think. I could probably</p> <p>7 come up with some instances where it actually has</p> <p>8 been part of the "do you get admitted or do you not</p> <p>9 get admitted" --</p> <p>10 Q Uh-huh.</p> <p>11 A -- "into this program as an</p> <p>12 undergraduate, as a masters student, as a doctoral</p> <p>13 student?"</p> <p>14 Q So this is still happening today is -- is</p> <p>15 what you believe?</p> <p>16 A If the question is racial discrimination</p> <p>17 is still happening --</p> <p>18 Q No, that --</p> <p>19 A -- in music --</p> <p>20 Q -- wasn't my question.</p> <p>21 Are students being excluded from</p> <p>22 undergraduate programs because they are black today?</p> <p>23 A In undergraduate music programs?</p> <p>24 I think that it -- not explicitly, but in</p> <p>25 fact implicitly yes, probably yes.</p>	<p>1 admission to undergraduate. You had also mentioned</p> <p>2 graduate schools.</p> <p>3 So I want to continue with that line of</p> <p>4 questioning, if you don't mind.</p> <p>5 Do you know of any black students who</p> <p>6 have been denied admission to the University of</p> <p>7 North Texas graduate program in music theory?</p> <p>8 A Nope.</p> <p>9 Q Do you know of any specific incident in</p> <p>10 which my client, Timothy Jackson, has discriminated</p> <p>11 against a black American?</p> <p>12 A No.</p> <p>13 Q Any black person, whether American or</p> <p>14 not?</p> <p>15 A No.</p> <p>16 Q While we are at it, do you know of any</p> <p>17 racist actions committed by my client?</p> <p>18 A No.</p> <p>19 I would ask, I guess, just to define</p> <p>20 "racist" because I -- could you define what you mean</p> <p>21 by "racist" as --</p> <p>22 Q Well, this is something he's accused of,</p> <p>23 so I don't know how graduate students or faculty at</p> <p>24 the University of North Texas define that. Maybe</p> <p>25 you could illuminate.</p>
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<p>1 MR. PAINTER: Take a break fairly</p> <p>2 soon?</p> <p>3 MR. ALLEN: You want a break?</p> <p>4 MR. PAINTER: Yeah, pretty soon.</p> <p>5 THE VIDEOGRAPHER: Okay.</p> <p>6 MR. PAINTER: Brief break.</p> <p>7 MR. ALLEN: Let's go off the record</p> <p>8 and take a break now. It's fine. It's</p> <p>9 11:18.</p> <p>10 THE VIDEOGRAPHER: We are going off</p> <p>11 the record.</p> <p>12 MR. PAINTER: Just go to the</p> <p>13 bathroom.</p> <p>14 MR. ALLEN: Yeah, sure.</p> <p>15 THE VIDEOGRAPHER: The time is</p> <p>16 11:18.</p> <p>17 (Whereupon, there was a recess taken</p> <p>18 from 11:18 a.m. to 11:31 a.m.)</p> <p>19 THE VIDEOGRAPHER: We are going back</p> <p>20 on the record. The time is 11:31.</p> <p>21 BY MR. ALLEN:</p> <p>22 Q Professor Ewell, I believe before our</p> <p>23 short break you were talking about -- we were</p> <p>24 answering questions about specific incidents of</p> <p>25 discrimination in the field of music theory and the</p>	<p>1 Do you -- you know the fac- -- you know</p> <p>2 some of the faculty at the University of North Texas</p> <p>3 in their school of music; right?</p> <p>4 A Yeah, a couple. The one that I knew best</p> <p>5 was Ellen Bakulina.</p> <p>6 Q Uh-huh.</p> <p>7 A She's also a Russianist --</p> <p>8 Q Uh-huh.</p> <p>9 A -- as am I -- who's no longer there.</p> <p>10 Q Uh-huh. Do you know what she means by</p> <p>11 "racism"?</p> <p>12 A And she's now associate professor of</p> <p>13 music theory at McGill University.</p> <p>14 Sorry, could you repeat that?</p> <p>15 Q Do you know what Ellen Bakulina means by</p> <p>16 racist?</p> <p>17 A No.</p> <p>18 Q Okay. So back to the -- to questions</p> <p>19 about the white racial frame in music theory, as</p> <p>20 you've described it in your article, how has the</p> <p>21 white racial frame in music theory impeded your</p> <p>22 career personally?</p> <p>23 A I -- before I answer that I just want to</p> <p>24 once again highlight -- because you've said "white</p> <p>25 racial frame" quite a bit, that's not my -- I didn't</p>

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<p style="text-align: right;">Page 78</p> <p>1 come up with this -- this phraseology.</p> <p>2 It's Joe Feagin who just retired from</p> <p>3 Texas A&amp;M University as a sociologist. He's</p> <p>4 85 years old. He's an American icon, as a matter of</p> <p>5 fact.</p> <p>6 And so I really have to just kind of say,</p> <p>7 I didn't come up with white racial framing. That's</p> <p>8 Joe Feagin. He's written many books on this topic.</p> <p>9 And, you know, so part of me wants to</p> <p>10 say, We should be reading his work because he's the</p> <p>11 expert on white racial framing.</p> <p>12 And I'm sorry, could you please repeat</p> <p>13 the question about the white racial frame of music</p> <p>14 theory?</p> <p>15 Q Well, by mentioning Joe Feagin you are</p> <p>16 not suggesting that your articles weren't developing</p> <p>17 the idea of the white racial frame as it applied to</p> <p>18 music theory taught in the United States; right?</p> <p>19 A No, they were very much --</p> <p>20 Q Okay.</p> <p>21 A -- using his ideas, yes.</p> <p>22 Q Okay. And I understand -- I think you</p> <p>23 would -- we all would agree that scholars build on</p> <p>24 the scholarship of others; correct?</p> <p>25 A Yes.</p>	<p style="text-align: right;">Page 80</p> <p>1 white racial frame in American music theory as</p> <p>2 you've described it impede your career as a black</p> <p>3 American man?</p> <p>4 A Oh, that's a vast, vast question.</p> <p>5 The first part I would say, it's hard for</p> <p>6 me to even know because much of anti-black -- much</p> <p>7 of anti-blackness happens behind the scenes. So</p> <p>8 if -- if something didn't happen for me, there's a</p> <p>9 chance that anti-blackness might be the reason why</p> <p>10 that happened.</p> <p>11 So that's unclear to me how that might</p> <p>12 have happened.</p> <p>13 In terms of how has it affected me, well,</p> <p>14 I've already mentioned the fact that the article</p> <p>15 under question was -- they changed decisions about</p> <p>16 the revision -- about the reviews from "accept with</p> <p>17 revisions" to "revise and resubmit."</p> <p>18 I believe that anti-blackness was, in</p> <p>19 part, part of the reason that happened; right?</p> <p>20 I believe that -- I had a very difficult</p> <p>21 tenure battle at Hunter College from 2014 to 2016 in</p> <p>22 which the chair of the music department at the time</p> <p>23 tried very, very vigorously to get me fired,</p> <p>24 something I just briefly mention in the introduction</p> <p>25 to my -- my monograph last year. That, I believe,</p>
<p style="text-align: right;">Page 79</p> <p>1 Q I'm most interested in the ideas that</p> <p>2 you've developed --</p> <p>3 A Uh-huh.</p> <p>4 Q -- defining, elaborating, identifying the</p> <p>5 white racial frame in music theory as it's taught in</p> <p>6 the United States; is that fair?</p> <p>7 A Fair, yes.</p> <p>8 Q And you've written on that in your</p> <p>9 article that grew out of your plenary talk in</p> <p>10 2019 --</p> <p>11 A Uh-huh.</p> <p>12 Q -- and it was eventually -- and please</p> <p>13 say "yes" or "no."</p> <p>14 Yes?</p> <p>15 A Yes.</p> <p>16 Q And that was eventually published in your</p> <p>17 article in Music Theory Online; correct?</p> <p>18 A Yeah. Yes.</p> <p>19 Q And in fact it has "white racial frame"</p> <p>20 in the title; correct?</p> <p>21 A Yes.</p> <p>22 Q Okay. So that's what I'm talking about;</p> <p>23 is -- can we agree on that?</p> <p>24 A Yes.</p> <p>25 Q All right. I'm asking: How did the</p>	<p style="text-align: right;">Page 81</p> <p>1 was most certainly driven by anti-blackness.</p> <p>2 So -- I even mentioned at some point in</p> <p>3 that book that it -- you know, this two-year tenure</p> <p>4 battle that I had to wage because this particular</p> <p>5 one person was essentially claiming I was</p> <p>6 incompetent at what I did, and I do believe driven</p> <p>7 by anti-blackness, nobody should have to do -- go</p> <p>8 through that; right. That's not something that a</p> <p>9 white person should go through, that a -- or any</p> <p>10 non-white person should go through.</p> <p>11 But to bring it back to anti-blackness,</p> <p>12 this is historically part of the fabric of the</p> <p>13 United States; part that we will continue to work</p> <p>14 through together, I hope, and -- and confront and</p> <p>15 make things better for our children and</p> <p>16 grandchildren.</p> <p>17 Q So you've given two examples, this SMT --</p> <p>18 A Decision on the --</p> <p>19 Q -- decision on your -- not the Spectrum</p> <p>20 article, but the -- the one we've been discussing in</p> <p>21 Music Theory Online; right?</p> <p>22 A Yes.</p> <p>23 Q In which you eventually got them, in your</p> <p>24 words, to follow their own rules?</p> <p>25 A Correct.</p>

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<p style="text-align: right;">Page 82</p> <p>1 Q Did anyone ever say they wanted you to be 2 converted to a "revise and resubmit" status because 3 you were black? 4 A No. 5 Q So that was just your surmise that it had 6 to do with anti-blackness? 7 A Correct. 8 Q In the tenure dispute, which was a second 9 example you gave from your personal life, you 10 mentioned, I believe, the chair -- 11 A The chair of the department. 12 Q -- campaigned to get you denied tenure? 13 A Correct. 14 Q Did he ever say that was because you were 15 black? 16 A No. 17 Q He said that was because you were 18 incompetent? 19 A Yes. 20 Q And you disagreed? 21 A Well, yeah, I disagree that I was 22 incompetent. 23 Q Correct. And it seems the school 24 eventually agreed and sided with you? 25 A Correct.</p>	<p style="text-align: right;">Page 84</p> <p>1 Q Let's use your word, "anti-black." 2 A Correct. Okay. 3 Q Is it fair to say "anti-black racism"? 4 A I prefer "anti-blackness." 5 Q Okay. Let's use your term. 6 There was no evidence that you know of 7 that anti-blackness led to individuals at Hunter 8 College to oppose your tenure? 9 A Correct. 10 Q So, again, that's your surmise? 11 A That you -- my surmise -- my -- yeah. 12 Surmise, my -- my -- my belief. 13 Q Okay. 14 A Yeah, my surmise. 15 Q And at the SMT plenary session, you were 16 received quite well? 17 A Yes. 18 Q That wasn't anti-black; right? 19 A That was not anti-black. Correct. 20 Q Incidentally, because you are a black 21 man, do you enjoy the benefits and privileges of 22 patriarchy? 23 A Yes. 24 Q But you -- 25 A I'm sorry, because I'm a man, not black</p>
<p style="text-align: right;">Page 83</p> <p>1 Q And you were granted tenure? 2 A Correct. 3 Q Do you know of white professors at Hunter 4 College who have gone through similar struggles with 5 tenure.? 6 A Not similar anti-black struggles, no. 7 Q Let me rephrase that then because you 8 yourself said you never heard anyone expressly say 9 they were trying to deny you tenure because you were 10 black; correct? 11 A Yes. And it's worth pointing out that 12 that's almost always the case with anti-blackness in 13 the United States. It's a very rare person who will 14 say, I'm doing this because you are black. 15 That's just not the way anti-blackness 16 works. I'm sure you understand that. 17 Q But nevertheless, you had no evidence 18 that there was specific racist ideas leading to 19 people arguing you were incompetent when you were up 20 for tenure? 21 A You used the word "racist." I'm using the 22 word "anti-black." 23 Yes, the answer if -- if you're going -- 24 Q Okay. 25 A Could you revise --</p>	<p style="text-align: right;">Page 85</p> <p>1 man. You said because I'm a black man. 2 Because I'm a man, cisgender, I enjoy the 3 privileges of patriarchy. 4 Q Okay. 5 A So -- so get rid of the word "black" 6 there, please. 7 Q I believe you've argued in your article 8 in Music Theory Online that a reformed American 9 music theory should be anti-racist; right? 10 A I'm not sure that's exactly how I put it, 11 but you are not entirely incorrect. 12 Q So what would an anti-music -- 13 anti-racist music theory look like? 14 A I wrote in my book, we cannot understand 15 what anti-racism will look like in music theory in 16 the future unless we understand what racist -- what 17 racism in music theory looked like in the past, 18 which is a slightly longer way of saying, I don't 19 really know what anti-racist music theory would look 20 like in the future. We are all still trying to 21 figure that out, in my opinion. 22 Q Okay. You are writing a textbook on 23 music theory now; correct? 24 A Yes. 25 Q Is that what -- something you state in</p>

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<p>1 your textbook, that you don't know what music theory</p> <p>2 will look like?</p> <p>3 A No.</p> <p>4 Q So you have some idea of what it should</p> <p>5 look like; correct?</p> <p>6 A Well, yes, of course, based on the</p> <p>7 textbook that I'm co-authoring, yes.</p> <p>8 Q So what would an anti-racist American</p> <p>9 music theory look like now, today in 2024?</p> <p>10 A Well, again, I don't know what the</p> <p>11 anti-racist music theory would look like.</p> <p>12 I can tell you what we are doing in our</p> <p>13 book which would certainly more align with</p> <p>14 anti-racism than music theory textbooks in the past.</p> <p>15 Should I say what the book is about?</p> <p>16 Q Tell me what your book argues is more in</p> <p>17 line with anti-racist music theory in the present?</p> <p>18 A Well, it's a music theory textbook, so we</p> <p>19 are not putting forth arguments about anti-racism</p> <p>20 and anti-blackness. That's just not something that</p> <p>21 usually happens in a -- in a music theory textbook.</p> <p>22 Q Okay. That's fine.</p> <p>23 Now, I want to transition to talk about</p> <p>24 someone I know you studied in depth, Heinrich</p> <p>25 Schenker.</p>	<p>1 Q Now, you argue in your article and</p> <p>2 elsewhere -- article in Music Theory Online that</p> <p>3 Heinrich Schenker has been very important in</p> <p>4 advancing this white racial frame in music theory;</p> <p>5 is that fair?</p> <p>6 A The -- yeah. I'll go ahead and say yes.</p> <p>7 Yes.</p> <p>8 Q Okay. And how did he contribute to the</p> <p>9 wait racial frame in music theory?</p> <p>10 A Well, of course since he died in 1935,</p> <p>11 and had virtually nothing, you know, directly to do</p> <p>12 with American music theory, you have to draw a lot</p> <p>13 of historical parallels, right.</p> <p>14 And so you first begin with his emigre</p> <p>15 students who came over here, Hans Weisse --</p> <p>16 Q Uh-huh.</p> <p>17 A -- would be the first name I would</p> <p>18 mention. But then Felix Salzer and Oswald Jonas and</p> <p>19 Ernst Oster.</p> <p>20 Q Can I interrupt to ask you a question</p> <p>21 about that group of scholars --</p> <p>22 A Uh-huh.</p> <p>23 Q -- you just mentioned?</p> <p>24 A Uh-huh.</p> <p>25 Q All of them were music theorists?</p>
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<p>1 You can assume that this case has</p> <p>2 Heinrich Schenker in its background in many regards,</p> <p>3 so I'm not going to ask you to describe who Heinrich</p> <p>4 Schenker was and is.</p> <p>5 But I can assume for the record that you</p> <p>6 are very familiar with the work of Heinrich</p> <p>7 Schenker?</p> <p>8 A Uh-huh. Yes.</p> <p>9 Q And he was an Austrian, Jewish music</p> <p>10 theorist born in the middle of the 19th century and</p> <p>11 lived into the early third of the 20th century;</p> <p>12 correct?</p> <p>13 A 1868 to 1935.</p> <p>14 Q Okay. And he ended his life in Vienna,</p> <p>15 in the center of the state of Austria?</p> <p>16 A He ended his life makes it sounds like he</p> <p>17 committed suicide.</p> <p>18 Q I'm not -- I mean his life came to an end</p> <p>19 in Austria; correct?</p> <p>20 A Correct.</p> <p>21 Q In Vienna?</p> <p>22 A As far -- as far as I know. I -- I'm --</p> <p>23 I'm not a -- really a Schenker historian like that.</p> <p>24 Q Uh-huh.</p> <p>25 A But I do believe he died in Vienna, yeah.</p>	<p>1 A Yeah -- yes.</p> <p>2 Q And were they all Jewish immigrants to</p> <p>3 the United States?</p> <p>4 A That I don't know.</p> <p>5 Q Okay.</p> <p>6 A The reason I hesitated about music</p> <p>7 theorists is because the term "music theorists" was</p> <p>8 not so well defined back then. They probably would</p> <p>9 have said that they were a -- their specialty was</p> <p>10 musikwissenschaft, which is --</p> <p>11 Q And that means "the science of music,"</p> <p>12 correct?</p> <p>13 A Exactly. Yeah. "Musicology," was what</p> <p>14 we say.</p> <p>15 Q You just used a German word --</p> <p>16 A For musicology --</p> <p>17 Q One of these impossible German words that</p> <p>18 is about longer than the alphabet?</p> <p>19 A Yes. Yes.</p> <p>20 Q Okay.</p> <p>21 A And you can keep making them longer by</p> <p>22 adding stuff at the end or the beginning. That's</p> <p>23 correct.</p> <p>24 Q Thank you.</p> <p>25 So please continue.</p>

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<p>1 I -- I had asked you how Heinrich</p> <p>2 Schenker contributed to the white racial frame and</p> <p>3 you were discussing his students who came to the</p> <p>4 United States?</p> <p>5 A Yeah. But the question, when you say how</p> <p>6 Heinrich Schenker contributed, it's a very active</p> <p>7 voice you are using.</p> <p>8 And in fact, you can't use that active</p> <p>9 voice at all because Heinrich Schenker himself</p> <p>10 didn't contribute to our white racial frame in the</p> <p>11 sense that we in America created a system of music</p> <p>12 theory which has, as Joe Feagin would say, a very</p> <p>13 pro-White subframe of the white racial frame.</p> <p>14 And -- and the ideas of tonal music were</p> <p>15 very often understood through some of the musical</p> <p>16 theories that Heinrich Schenker put forth.</p> <p>17 But to say, How did he contribute to the</p> <p>18 white racial frame, that's -- you are using the</p> <p>19 active voice there that I just disagree with.</p> <p>20 It's --</p> <p>21 Q Okay.</p> <p>22 A He didn't.</p> <p>23 Q So -- and thank you.</p> <p>24 You mentioned tonal music?</p> <p>25 A Uh-huh.</p>	<p>1 "tonal music" is in -- in ways that a -- an utter</p> <p>2 layperson can understand?</p> <p>3 A So if you had asked me that ten, 15 years</p> <p>4 ago, I would have said something like, tonal music</p> <p>5 is music written in a key like C major or D minor</p> <p>6 that moves -- that has what we in music theory call</p> <p>7 triads and harmonies and chords that move in a</p> <p>8 certain logical progression within a key of -- in</p> <p>9 music; right.</p> <p>10 Typical composers of such tonal music</p> <p>11 would be, for example, names that the Jury probably</p> <p>12 knows: Johann Sebastian Bach, Ludwig van Beethoven,</p> <p>13 Wolfgang Amadeus Mozart, for example.</p> <p>14 And tonal music represented a roughly</p> <p>15 200 -- let's call it, 250-year period from the late</p> <p>16 17th century, call it, 1650, with composers like</p> <p>17 with Arcangelo Corelli up through, let's say, 1900,</p> <p>18 roughly.</p> <p>19 Today I would give a different answer</p> <p>20 because that very much is part of music theory's</p> <p>21 hegemony in promoting what essentially is a white --</p> <p>22 white racially framed way of conceiving of tonal</p> <p>23 music or tonality; right.</p> <p>24 Q And by "hegemony," you mean a system that</p> <p>25 maintains its own power?</p>
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<p>1 Q Can you please describe for the Jury and</p> <p>2 for the Court here on this record what is -- in</p> <p>3 terms of absolute -- you know, someone with no</p> <p>4 knowledge of music theory would be able to</p> <p>5 understand, such as myself, for instance.</p> <p>6 What -- what does that mean? What is</p> <p>7 tonal music?</p> <p>8 A Well, that's a -- it's a great question</p> <p>9 and it's a very -- you know, do you -- do you want</p> <p>10 the short, middle, or long answer?</p> <p>11 I'm going to try to go for the --</p> <p>12 Q Well, please, a brief -- you know, just</p> <p>13 for the record --</p> <p>14 A Yeah. I'll try to go --</p> <p>15 Q -- again, for the --</p> <p>16 A I'll go --</p> <p>17 Q -- record, but again --</p> <p>18 A -- kind of middle -- middle length.</p> <p>19 Q It makes it hard on him. That's why we</p> <p>20 can't speak over each other.</p> <p>21 A Was it --</p> <p>22 Q I apologize. And it was my fault.</p> <p>23 But let me rephrase my question.</p> <p>24 A Uh-huh.</p> <p>25 Q So briefly describe for the record what</p>	<p>1 A It's own power, yes.</p> <p>2 Q Uh-huh.</p> <p>3 A Yeah. Of course we haven't mentioned --</p> <p>4 I haven't mentioned the term "colonial" or</p> <p>5 colonialization." That's often a term used in</p> <p>6 academic circles with --</p> <p>7 Q Well, let's leave that aside and get back</p> <p>8 to the definition of "tonal music" as you would</p> <p>9 define it today?</p> <p>10 A Yes, thank you.</p> <p>11 So as far as I know, all peoples on our</p> <p>12 planet have musics; right? And if music has</p> <p>13 frequencies -- frequencies are -- are in music what</p> <p>14 we call pitches; right?</p> <p>15 Q You mean the actual frequency of the</p> <p>16 sound?</p> <p>17 A Of the sound.</p> <p>18 Q Like the sound waves --</p> <p>19 A Exactly.</p> <p>20 Q Okay. Sorry, go ahead.</p> <p>21 A Any -- any -- any sound has a frequency.</p> <p>22 (Whereupon, the witness taps the</p> <p>23 table.)</p> <p>24 A That --</p> <p>25</p>



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<p>1 BY MR. ALLEN:</p> <p>2 Q I just want --</p> <p>3 A -- has a frequency.</p> <p>4 Q -- to be clear that you are not talking</p> <p>5 about the frequency with which music is heard or</p> <p>6 something like -- you know, the -- the oftenness, if</p> <p>7 that --</p> <p>8 A Correct.</p> <p>9 Q So let's -- now that we have cleared up</p> <p>10 that, I apologize --</p> <p>11 A Uh-huh.</p> <p>12 Q -- and I'll stop interrupting you. Go</p> <p>13 ahead.</p> <p>14 A Yeah, I'm talking about acoustics and</p> <p>15 physics and --</p> <p>16 Q Uh-huh.</p> <p>17 A -- in physics, frequency is called "Nu,"</p> <p>18 you know, the Greek letter --</p> <p>19 Q Uh-huh.</p> <p>20 A -- that goes like that?</p> <p>21 Q Yeah.</p> <p>22 A That's --</p> <p>23 Q Please --</p> <p>24 A So if somebody says, "What's new?"</p> <p>25 You say, "Frequency."</p>	<p>1 music theorists often talk about.</p> <p>2 Functional means that the chords have</p> <p>3 certain characteristics and -- and progressions that</p> <p>4 they follow. So it's a word that we just use in</p> <p>5 music theory.</p> <p>6 Rather than thinking that functional</p> <p>7 tonality is in fact the foundation for music theory</p> <p>8 in the United States of America, I now say that it</p> <p>9 is a foundation.</p> <p>10 Q Uh-huh.</p> <p>11 A And this simple grammatical shift from</p> <p>12 "the foundation" to "a foundation" --</p> <p>13 Q Uh-huh.</p> <p>14 A -- which it is --</p> <p>15 Q Uh-huh.</p> <p>16 A -- actually has caused a lot of panic</p> <p>17 behind the scenes because a lot of people don't want</p> <p>18 to acknowledge that there are many others, that they</p> <p>19 represent very interesting rich music theory</p> <p>20 traditions, potentially, and that we -- a country of</p> <p>21 30 -- 330 million people coming from all over the</p> <p>22 planet and some of whom were here before people</p> <p>23 started arriving, right, indigenous folks -- have</p> <p>24 ways of thinking about music that are all valid and</p> <p>25 very interesting.</p>
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<p>1 That's a joke.</p> <p>2 Q That's a music theory joke?</p> <p>3 A That's -- that's a music theory joke.</p> <p>4 Q Fair.</p> <p>5 A And when musics have freq- -- sounding</p> <p>6 frequencies, which vib- -- any vibrating body will</p> <p>7 produce, right? --</p> <p>8 Q Uh-huh.</p> <p>9 A -- it has potential tones and tonality;</p> <p>10 right?</p> <p>11 So in other parts of the world, the</p> <p>12 most -- two of the most developed such systems I</p> <p>13 could cite here would be ragas in the Indian</p> <p>14 subcontinent or different maqam systems in Turkey</p> <p>15 and the Middle East and Jordan in Arabic maqams --</p> <p>16 Turkish and Arabic maqams, for example.</p> <p>17 Q Uh-huh.</p> <p>18 A Many, many, many centuries of tonalities</p> <p>19 which are just not the same as the Bach,</p> <p>20 Beethoven --</p> <p>21 Q Uh-huh.</p> <p>22 A -- functional tonality.</p> <p>23 So in other words, rather than saying</p> <p>24 that -- you'll note that I put the word "functional"</p> <p>25 in front of "tonality," which is something that we</p>	<p>1 Q So everyone can have their own private</p> <p>2 music theory; is that what you mean?</p> <p>3 A If you got rid of the word "private," I</p> <p>4 would agree with that statement.</p> <p>5 Q Back to Heinrich Schenker, he is one of</p> <p>6 the primary music theorists of tonal music, as you</p> <p>7 described it, originally as -- let's say, this</p> <p>8 period from the enlightenment to the late 19th</p> <p>9 century that you described?</p> <p>10 Enlightenment being the 18th century,</p> <p>11 sorry?</p> <p>12 A And you said, One of the most</p> <p>13 important -- is that what you -- music theorists?</p> <p>14 Q Yes.</p> <p>15 A Yes, I think that Hugo Riemann would be</p> <p>16 slightly more important.</p> <p>17 Q Okay.</p> <p>18 A Heinrich Schenker was very much an</p> <p>19 American phenomenon. For most of the rest of the</p> <p>20 world --</p> <p>21 Q Uh-huh.</p> <p>22 A -- dealing with the Bach through Brahms,</p> <p>23 is what we sometimes call canonic composers or</p> <p>24 common practice composers. There's several ways --</p> <p>25 Q Uh-huh.</p>

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<p>1 A -- of talking about that -- those</p> <p>2 composers. Hugo Riemann and his theories actually</p> <p>3 were more important than Heinrich Schenker.</p> <p>4 American music theorists might not want</p> <p>5 to acknowledge that, but that's a true statement.</p> <p>6 Q And you examined his -- I think it's</p> <p>7 called Schenker Documents Online.</p> <p>8 Can you describe briefly what that is?</p> <p>9 A As far as I know -- I don't even know</p> <p>10 where it's housed -- but it is -- he was a very</p> <p>11 prolific writer --</p> <p>12 Q Uh-huh.</p> <p>13 A -- Heinrich Schenker was. And aside from</p> <p>14 his main works, Harmonielehre, and Kontrapunkt, and</p> <p>15 Freie Satz, Free Composition -- those are his three</p> <p>16 main works; Counterpoint is in two volumes --</p> <p>17 Q Uh-huh.</p> <p>18 A -- there are diaries and letters and</p> <p>19 correspondence and -- and essays and introductions</p> <p>20 and forwards and many other things.</p> <p>21 As far as I understand, Schenker</p> <p>22 Documents Online is a repository -- an online</p> <p>23 repository of many of those documents transcribed</p> <p>24 from German and then translated by several people</p> <p>25 into English.</p>	<p>1 Documents Online of the word "race"?</p> <p>2 A I believe so.</p> <p>3 Q And is 57 mentions out of thousands of</p> <p>4 pages representative of an intellectual's work over</p> <p>5 their lifetime?</p> <p>6 A In terms of talking about human race, I</p> <p>7 think it's significant.</p> <p>8 Q Okay.</p> <p>9 A And it -- I would add that I don't think</p> <p>10 every mention of the word "race" -- Rasse in</p> <p>11 German -- was necessarily about human race, but the</p> <p>12 vast majority -- you -- you could say, like, a race</p> <p>13 between a turtle and a tortoise or something; right?</p> <p>14 So that's -- it's not always human race, but it</p> <p>15 virtually always was.</p> <p>16 Q Correct.</p> <p>17 And you mention a -- a -- well, what is</p> <p>18 that? It's not a synonym.</p> <p>19 I mean, race -- running a race and "race"</p> <p>20 meaning --</p> <p>21 A Human race.</p> <p>22 Q -- Nineteenth century conceptions of skin</p> <p>23 color in race, those are the same word in English,</p> <p>24 but they're not in German, are they?</p> <p>25 A Correct.</p>
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<p>1 Q So a layperson could find this online?</p> <p>2 A I think so, yeah.</p> <p>3 Q And a layperson who didn't even speak</p> <p>4 German, which was Schenker's language, could also</p> <p>5 read these translations?</p> <p>6 A Correct.</p> <p>7 Q And they are in side by side, you have</p> <p>8 the original text and then the translation side by</p> <p>9 side?</p> <p>10 A Correct.</p> <p>11 Q Thank you.</p> <p>12 And approximately how many pages of</p> <p>13 Schenker's original writings are online in this -- I</p> <p>14 think it's called the Schenker Documents Online</p> <p>15 Archive?</p> <p>16 A I have no idea.</p> <p>17 Q If I said it was approximately 6,000</p> <p>18 pages, would that -- do you think that's inaccurate?</p> <p>19 A I really couldn't say.</p> <p>20 Q Do you have any reason to believe it's</p> <p>21 not thousands of pages?</p> <p>22 A I have no reason to believe that it is</p> <p>23 not thousands of pages.</p> <p>24 Q And I believe in your writings you said</p> <p>25 you'd identified 57 mentions in the Schenker</p>	<p>1 Q Wettrennen is the word in German for</p> <p>2 "race"; right?</p> <p>3 A I do not know.</p> <p>4 Q How well you know German?</p> <p>5 A I've got a reasonable reading knowledge.</p> <p>6 Q Were you reading the Schenker Documents</p> <p>7 Online in the original or were you relying on the</p> <p>8 translation?</p> <p>9 A I was relying on the translations, but I</p> <p>10 did check with the originals as I did that.</p> <p>11 Q And were all the mentions of race in</p> <p>12 Schenker's Schenker Documents Online negative?</p> <p>13 A I can't recall.</p> <p>14 Q Disparaging of black people?</p> <p>15 A I can't recall.</p> <p>16 Q But you still maintain that the 57</p> <p>17 mentions out of something like 6,000 pages, if</p> <p>18 that's accurate, is nevertheless very significant;</p> <p>19 correct?</p> <p>20 A I did not say "very significant." I said</p> <p>21 "significant."</p> <p>22 Q It's not cherry picking these 57 mentions</p> <p>23 out of all those pages?</p> <p>24 A I obviously was trying to find instances</p> <p>25 where Heinrich Schenker had mentioned race.</p>

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<p>1 Q If you searched some word like "tone" --</p> <p>2 what's the German word for "tone"?</p> <p>3 A Tone -- it's "ton," t-o-n -- but --</p> <p>4 Q If you searched the -- the Schenker</p> <p>5 Documents Online for the word "tone," just give a</p> <p>6 guesstimate of how many times that would appear in</p> <p>7 Schenker's work?</p> <p>8 A I really couldn't do that.</p> <p>9 Q Do you think it would be more than 57?</p> <p>10 A Probably.</p> <p>11 Q A lot more?</p> <p>12 A I couldn't say.</p> <p>13 Q You do argue that Schenker's music theory</p> <p>14 was anti-black; correct?</p> <p>15 A I argue that there are elements of</p> <p>16 anti-blackness in his music theories.</p> <p>17 Q What's the connection between Schenker's</p> <p>18 anti-black ideology, if we want to call it that, and</p> <p>19 his ideas of music theory as it applies to tonal</p> <p>20 music?</p> <p>21 A I don't think he thought that much about</p> <p>22 black music just for the simple reason that he</p> <p>23 didn't think that it was worth attention.</p> <p>24 So the --</p> <p>25 Q Let me ask my question again because I</p>	<p>1 relationship at all in -- with respect to Heinrich</p> <p>2 Schenker.</p> <p>3 Q Okay. So you would agree with Timothy</p> <p>4 Jackson in that regard?</p> <p>5 A I do not know.</p> <p>6 Q Have you argued that Heinrich Schenker</p> <p>7 had a very hierarchal theory of tones?</p> <p>8 A I've argued that he had a hierarchical</p> <p>9 theory of -- of understanding tonality and --</p> <p>10 Q Can you please describe that in terms</p> <p>11 that a layperson could understand, for the record?</p> <p>12 A Well, his entire system of music theory</p> <p>13 was extremely hierarchical; right? And he found</p> <p>14 levels of hierarchies in what he would consider to</p> <p>15 be master works; right?</p> <p>16 Q Like the great Bach, Beethoven, and so</p> <p>17 forth?</p> <p>18 A Exactly.</p> <p>19 Q Okay.</p> <p>20 A There were 12 on his list, 12 composers.</p> <p>21 And he would find these -- well, he</p> <p>22 called them Schichte -- these layers of -- of -- of</p> <p>23 hierarchies, right, and all great music would</p> <p>24 exhibit these layers and of course they were</p> <p>25 fundamental structures. We all know that.</p>
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<p>1 think that's a different -- that's an answer to a</p> <p>2 different question.</p> <p>3 I'm not implying that you are doing</p> <p>4 anything bad here; I just want an answer to a</p> <p>5 different question.</p> <p>6 What's the connection between his</p> <p>7 anti-blackness and his music theory?</p> <p>8 Not what's the -- you know, I don't know</p> <p>9 if he was hostile to black music or not, but I --</p> <p>10 you have argued that he was anti-black.</p> <p>11 A I --</p> <p>12 Q Correct?</p> <p>13 A I -- I'll just repeat what I said. I</p> <p>14 believe that there are strong elements of</p> <p>15 anti-blackness within his theories --</p> <p>16 Q Uh-huh.</p> <p>17 A -- and that he made comments as I</p> <p>18 cited --</p> <p>19 Q Right.</p> <p>20 A -- in my work that were unequivocally</p> <p>21 anti-black.</p> <p>22 Q Okay. And what's the relationship</p> <p>23 between his anti-blackness as it was expressed in</p> <p>24 his work and his music theory of tonal music?</p> <p>25 A I don't think that there's much</p>	<p>1 Just for the layperson, the fundamental</p> <p>2 structure is a struct- -- the tonal structure of a</p> <p>3 so-called great piece of music.</p> <p>4 Q Is that what some piece might refer to if</p> <p>5 they say it's written in C minor or whatever it --</p> <p>6 A No, that --</p> <p>7 Q It's not?</p> <p>8 A That's just a key; right. So C minor is</p> <p>9 a key.</p> <p>10 But if it's a C minor, a piece by</p> <p>11 Beethoven, well, then, a priori, it's going to be a</p> <p>12 great masterwork because he was one of the 12</p> <p>13 composers whom Heinrich Schenker elevated above all</p> <p>14 others.</p> <p>15 Q Uh-huh.</p> <p>16 A And it would then exhibit these</p> <p>17 structural layers, it would exhibit this fundamental</p> <p>18 structure that -- with a simple harmonic motion from</p> <p>19 a tonic to a dominant to a tonic with a melodic</p> <p>20 dissent of scale degrees above that.</p> <p>21 That's inside music theory baseball, but</p> <p>22 that is part of his -- well, it's some of the most</p> <p>23 basic parts of his music theory.</p> <p>24 And yes, hierarchy was extremely</p> <p>25 important.</p>

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<p style="text-align: right;">Page 106</p> <p>1 Q And so is it fair, I guess, from my -- my</p> <p>2 very uninformed understanding of music theory, is it</p> <p>3 fair to say that in his theory, certain tones were</p> <p>4 subordinate to others in the structure of an entire</p> <p>5 musical piece?</p> <p>6 A Yes.</p> <p>7 Q And would those vary from composition to</p> <p>8 composition, or was it always the case that there</p> <p>9 was a superior tone?</p> <p>10 A Well, it would always be the case that it</p> <p>11 would come down to one of three fundamental</p> <p>12 structures that he conceived.</p> <p>13 Q Okay. And how is that related to</p> <p>14 anti-blackness?</p> <p>15 A Well, you could read my book and you'd</p> <p>16 probably get some ideas of how it might be related.</p> <p>17 But you are asking a very specific</p> <p>18 question about Heinrich Schenker's music theories --</p> <p>19 Q And its hierarchy?</p> <p>20 A -- and its hierarchies.</p> <p>21 And the way that I would answer that</p> <p>22 question is to say, again, Heinrich Schenker died in</p> <p>23 1935 and he, as far as I know, never traveled to the</p> <p>24 United States of America.</p> <p>25 What we have done since then in the</p>	<p style="text-align: right;">Page 108</p> <p>1 Q So is it true that you have argued -- and</p> <p>2 I'm going to quote from your article in Music Theory</p> <p>3 Online -- "the notion of hierarchy of a strict</p> <p>4 ordering of the tones of composition is so</p> <p>5 thoroughly consistent with Schenker, his deeply</p> <p>6 conservative outlook on life and culture, that it is</p> <p>7 difficult to uncouple his theory entirely from two</p> <p>8 of his most consistently expressed ideological</p> <p>9 stances: One, the centrality of the German people</p> <p>10 in European culture; and two, the steady decline of</p> <p>11 culture and political order in Europe since the late</p> <p>12 18th century."</p> <p>13 A Those are not my words. Those are the</p> <p>14 words of William Drabkin, a very imminent Schenker</p> <p>15 scholar, so you should check your source there.</p> <p>16 I quoted --</p> <p>17 Q Did you quote him?</p> <p>18 A I'm quoting him but --</p> <p>19 Q Did you quote him positively? You agree</p> <p>20 with that?</p> <p>21 A Were you suggesting that I had written</p> <p>22 that?</p> <p>23 Q I think it's in your article; correct?</p> <p>24 A Yeah, but -- but I didn't write those</p> <p>25 words.</p>
<p style="text-align: right;">Page 107</p> <p>1 ensuing 85 -- yeah, 90 years is create a system of</p> <p>2 music theory that very much has relied on Heinrich</p> <p>3 Schenker's beliefs. His music theory -- music</p> <p>4 theoretical beliefs.</p> <p>5 And in that 90 years, there have been</p> <p>6 strains of, among other things, anti-blackness,</p> <p>7 anti-womanness. And it very much represents what,</p> <p>8 again, I'll call it, the pro-white subframe of music</p> <p>9 theory's white racial frame.</p> <p>10 Q So what's the relationship between the</p> <p>11 hierarchal nature of his theory of tones and this</p> <p>12 anti-blackness, anti-womanness that you've just</p> <p>13 sub -- described?</p> <p>14 A That's something that -- that, you know,</p> <p>15 one would need so long to explain that. I mean,</p> <p>16 this is a deposition.</p> <p>17 And I just have to fall back to the</p> <p>18 history and -- and simply say that over 90 years, we</p> <p>19 have created a system of tonal understanding based</p> <p>20 largely on Heinrich Schenker's theories in the</p> <p>21 United States of America in which the works of white</p> <p>22 men -- 12 for him -- but more broadly the concepts</p> <p>23 of whiteness and maleness are held in higher regard</p> <p>24 than those composers who may not have identified as</p> <p>25 both white and male.</p>	<p style="text-align: right;">Page 109</p> <p>1 Q Okay.</p> <p>2 A You are aware of that; right?</p> <p>3 Q I -- I don't know if you did or not.</p> <p>4 I'm certain that you included them in</p> <p>5 your article.</p> <p>6 So my question -- and this is a good</p> <p>7 chance for you to clarify for the Court -- you</p> <p>8 quoted another author's work; right?</p> <p>9 A I did.</p> <p>10 May I ask --</p> <p>11 Q Approvingly?</p> <p>12 A -- a question?</p> <p>13 May I ask a question?</p> <p>14 Q No.</p> <p>15 A Oh.</p> <p>16 Q I'm asking the question.</p> <p>17 A Oh, okay.</p> <p>18 Q I'm asking if you approve of that</p> <p>19 statement?</p> <p>20 A May I ask a clarification?</p> <p>21 Q Sure.</p> <p>22 A You just said you don't know whether I</p> <p>23 wrote those words or not.</p> <p>24 And I'm telling you that I did not</p> <p>25 write -- write the words that you just spoke.</p>

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<p>1           Therefore, the -- the clarification is:</p> <p>2 Do you actually not understand that those were not</p> <p>3 my words that you just --</p> <p>4       Q     I think I said --</p> <p>5       A     -- read?</p> <p>6       Q     And I'm not sure if I did say this -- I</p> <p>7 think I said, You argued; okay?</p> <p>8           And I'm not disputing that you wrote them</p> <p>9 or not.</p> <p>10       A     Uh-huh.</p> <p>11       Q     If you say you quoted another author's</p> <p>12 work, that's perfectly normal in academic</p> <p>13 scholarship.</p> <p>14           I'm arguing -- excuse me, I'm not</p> <p>15 arguing -- I'm asking if you agree with that</p> <p>16 statement?</p> <p>17           That's a very clear statement about the</p> <p>18 relationship with the -- between the hierarchy of</p> <p>19 tonal theory and ideologies of cultural supremacy of</p> <p>20 the German people?</p> <p>21       A     Could you --</p> <p>22       Q     Wouldn't you agree to that?</p> <p>23       A     Could you reread the --</p> <p>24       Q     Sure.</p> <p>25       A     -- the quote from William Drabkin?</p>	<p>1           quotation.</p> <p>2           MR. ALLEN: Let me -- let me do that</p> <p>3 after our next break.</p> <p>4           MR. PAINTER: Okay.</p> <p>5           MR. ALLEN: We will do that --</p> <p>6           MR. PAINTER: So it's a block</p> <p>7 quotation --</p> <p>8           MR. ALLEN: Correct.</p> <p>9           MR. PAINTER: It's very helpful if</p> <p>10 it were part of it --</p> <p>11           MR. ALLEN: Sure.</p> <p>12           MR. PAINTER: -- then we would</p> <p>13 as- -- dealt with this right away, this</p> <p>14 block quotation --</p> <p>15           MR. ALLEN: Sure.</p> <p>16           MR. PAINTER: -- from another</p> <p>17 author.</p> <p>18 BY MR. ALLEN:</p> <p>19       Q     I think the record shows that the witness</p> <p>20 remembers it accurately enough to know which author</p> <p>21 he quoted and know that it was accurate quote from</p> <p>22 the author; correct?</p> <p>23       A     Yes.</p> <p>24           MR. PAINTER: Yes, we've just got to</p> <p>25 reread the statement if you're going to</p>
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<p>1       Q     Can you spell his name, just for the</p> <p>2 record?</p> <p>3       A     D-r-a-b-k-i-n.</p> <p>4       Q     Thank you.</p> <p>5           MR. PAINTER: Can I ask for a</p> <p>6 clarification?</p> <p>7           Which document are we referring to?</p> <p>8           Is this in -- is this an article written</p> <p>9 by --</p> <p>10          MR. ALLEN: We are talking about</p> <p>11 the --</p> <p>12          MR. PAINTER: -- the school?</p> <p>13          MR. ALLEN: -- Music Theory Online</p> <p>14 article that the -- the deponent has</p> <p>15 testified that he published 2021.</p> <p>16          THE WITNESS: 2020.</p> <p>17          MR. ALLEN: 2020.</p> <p>18          MR. PAINTER: Can we make that an</p> <p>19 exhibit to the deposition so he can have</p> <p>20 it in front of him?</p> <p>21          Because that will also help. I</p> <p>22 assume it would have quotation marks.</p> <p>23          MR. ALLEN: It's also publically</p> <p>24 available online.</p> <p>25          THE WITNESS: It's a block</p>	<p>1           ask if he agrees with it --</p> <p>2           MR. ALLEN: Absolutely. But I don't</p> <p>3 want to now break and go get it.</p> <p>4           MR. PAINTER: Okay.</p> <p>5           MR. ALLEN: I want to ask him</p> <p>6 this -- this question and then we can</p> <p>7 come back to this.</p> <p>8 BY MR. ALLEN:</p> <p>9       Q     You asked me to reread the quotation.</p> <p>10           "The notion of hierarchy of a strict</p> <p>11 ordering of the tones of composition is so</p> <p>12 thoroughly consistent with -- Schenker -- his deeply</p> <p>13 conservative outlook on life and culture that it is</p> <p>14 difficult to uncouple his theory entirely from two</p> <p>15 of his most consistently expressed ideological</p> <p>16 stances: One, the centrality of the German people</p> <p>17 in European culture; and two, the steady decline of</p> <p>18 culture and political order in Europe since the late</p> <p>19 18th century."</p> <p>20           Now, to the best of your recollection,</p> <p>21 did I read that correctly?</p> <p>22       A     Yes.</p> <p>23       Q     And -- and we'll confirm. I want to get</p> <p>24 a clean copy of the article for you. I apologize</p> <p>25 for not do -- not doing that in advance.</p>

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<p>1           That's a relatively clear statement of</p> <p>2 the relationship between Schenker's theory of</p> <p>3 hierarchy and tones and what the author, Dubkin, is</p> <p>4 arguing is an ideological theory of the hierarchy of</p> <p>5 the German culture or people.</p> <p>6       A     Uh-huh.</p> <p>7       Q     Correct?</p> <p>8       A     Uh-huh. Yes.</p> <p>9       Q     Do you argue that that also expresses</p> <p>10 anti-blackness?</p> <p>11      A     I did not argue that in that article, no.</p> <p>12      Q     Is there no relationship between Heinrich</p> <p>13 Schenker's hierarchal theory of tones and theories</p> <p>14 of -- I don't know -- bogus phrenology, bogus</p> <p>15 theories of the hierarchy of the races?</p> <p>16      A     I don't know. I couldn't answer that</p> <p>17 question.</p> <p>18      Q     Okay. You can't answer it yes or no?</p> <p>19      A     Correct.</p> <p>20           MR. ALLEN: Can we go off the record</p> <p>21 briefly?</p> <p>22           THE VIDEOGRAPHER: We are going off</p> <p>23 the record. The time is 12:10.</p> <p>24           (Whereupon, there was a recess taken</p> <p>25 from 12:10 p.m. to 12:12 p.m.)</p>	<p>1 probably 2018ish.</p> <p>2           So I think that's the only time I met</p> <p>3 Frank Heidlberg -- -berg or -berger?</p> <p>4       Q     I believe it's Heidlberger?</p> <p>5       A     Heidlberger with an "e-r" at the end.</p> <p>6 Okay.</p> <p>7           Aside from that, at the -- at the impetus</p> <p>8 of, I think it was, Ellen Bakulina, I had a piece</p> <p>9 published in Theoria, the journal at the University</p> <p>10 of North Texas, in a short -- in a small little</p> <p>11 group of -- of three authors: Ellen Bakulina, whom</p> <p>12 we've mentioned, Chris Segall, who's a professor of</p> <p>13 music theory at the University of Cincinnati, and</p> <p>14 me.</p> <p>15           And this grew out of a -- of a session</p> <p>16 that we had given, I think it was for the Russian</p> <p>17 music theory interest group.</p> <p>18      Q     Uh-huh.</p> <p>19      A     And maybe it was in Vancouver. It was</p> <p>20 somewhere --</p> <p>21      Q     This is the 2018 conference that you</p> <p>22 mentioned?</p> <p>23      A     Don't quote me on the 2018. I'm pretty</p> <p>24 sure it was Vancouver, whenever that happened.</p> <p>25      Q     Is it fair to say it's a -- you met at a</p>
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<p>1           THE VIDEOGRAPHER: We are going back</p> <p>2 on the record. The time is 12:12.</p> <p>3 BY MR. ALLEN:</p> <p>4       Q     I want to make a transition,</p> <p>5 Professor Ewell, and talk about the University of</p> <p>6 North Texas.</p> <p>7           As you know, my client, Timothy Jackson,</p> <p>8 is a professor there; correct?</p> <p>9       A     Correct.</p> <p>10      Q     Are you familiar with another professor</p> <p>11 there named Frank Heidlberger?</p> <p>12      A     Yes.</p> <p>13      Q     Explain for the record how you know Frank</p> <p>14 Heidlberger.</p> <p>15      A     I cannot recall the first time I ever met</p> <p>16 Frank Heidlberger. I remember meeting him in person</p> <p>17 only once and I think it was in the Vancouver</p> <p>18 conference of the Society for Music Theory.</p> <p>19           I think I just ran into him on the</p> <p>20 street, as one does at these conferences, and I saw</p> <p>21 his name badge and just --</p> <p>22      Q     Uh-huh.</p> <p>23      A     -- introduced myself.</p> <p>24           The Vancouver conference -- well, we'd</p> <p>25 have to go to the record for that. That was</p>	<p>1 conference and it was before COVID?</p> <p>2       A     Yes. Oh, yes. Yes.</p> <p>3       Q     Before the 2020 academic year?</p> <p>4       A     Correct on both counts, yes.</p> <p>5       Q     I'm going to introduce for the record</p> <p>6 Exhibit 2, which I'm handing to the court reporter</p> <p>7 who will hand it to you.</p> <p>8           COURT REPORTER: One moment please.</p> <p>9           MR. ALLEN: Just for the record, for</p> <p>10 the people -- sorry --</p> <p>11           Sorry. Shall I let you mark the</p> <p>12 exhibit?</p> <p>13           I've got to tell them what it is.</p> <p>14           COURT REPORTER: One moment please.</p> <p>15 I can't take down -- once it's silent --</p> <p>16           MR. ALLEN: Some day I'll invent an</p> <p>17 octopus court reporter.</p> <p>18           (Whereupon, Plaintiff's Exhibit 2,</p> <p>19 Theoria Volume 26, 2020, was marked</p> <p>20 for identification.)</p> <p>21           MR. ALLEN: I'm introducing for the</p> <p>22 record Exhibit 2.</p> <p>23           And for those who have got the</p> <p>24 exhibit pack online, this is the exhibit</p> <p>25 which in my notes was 09, Theoria volume</p>

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<p>1 26, 2020.</p> <p>2 BY MR. ALLEN:</p> <p>3 Q And, Professor Ewell, is that an accurate</p> <p>4 description of what I've just handed you?</p> <p>5 A Yes.</p> <p>6 Q So I've introduced this exhibit because</p> <p>7 you were just mentioning publishing in a journal.</p> <p>8 Is this the journal which that discussion</p> <p>9 referred to?</p> <p>10 A Oh, yes, for Theoria, yes.</p> <p>11 Q And describe just briefly what is the</p> <p>12 journal Theoria?</p> <p>13 A It's a journal that's housed at the</p> <p>14 University of North Texas Press, I believe, and</p> <p>15 Frank Heidelberg is the editor, the -- the -- the</p> <p>16 lead. I -- you know, he's essentially -- well, does</p> <p>17 it say it here?</p> <p>18 Q He's listed on the --</p> <p>19 A Yeah, editor.</p> <p>20 Q -- first page --</p> <p>21 A Yeah.</p> <p>22 Q -- as the editor; correct?</p> <p>23 A Frank Heidelberg, yeah. Uh-huh.</p> <p>24 Q And that's the Frank Heidelberg you were</p> <p>25 referring to in your testimony?</p>	<p>1 you remembered.</p> <p>2 A I've got a good memory then.</p> <p>3 Q So with that said, can you describe the</p> <p>4 process of publishing these articles with Frank</p> <p>5 Heidelberg's journal, Theoria?</p> <p>6 A Yeah. I can recall -- again, I think</p> <p>7 the -- the -- the key -- Ellen may have been the</p> <p>8 chair of the Russian music theory interest group at</p> <p>9 that time.</p> <p>10 Q Uh-huh.</p> <p>11 A So she was almost certainly the</p> <p>12 go-between. She was of course teaching at the</p> <p>13 University of North Texas at the time.</p> <p>14 Q Uh-huh.</p> <p>15 A I think I mentioned that she moved to</p> <p>16 McGill.</p> <p>17 Q Yup.</p> <p>18 A Okay. So she was working with Frank,</p> <p>19 like the pivot between me and Chris -- Chris</p> <p>20 Segall -- and -- and -- and putting this together.</p> <p>21 Q Uh-huh.</p> <p>22 A And as far as I can recall, you know,</p> <p>23 we -- we worked on our articles, we, you know --</p> <p>24 turning a presentation into an article --</p> <p>25 Q Uh-huh.</p>
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<p>1 A Correct.</p> <p>2 Q And if you go the second page, there's a</p> <p>3 table of contents.</p> <p>4 A Uh-huh.</p> <p>5 Q Correct?</p> <p>6 A Yeah.</p> <p>7 Q And you were talking about publishing in</p> <p>8 a group of three some articles in Theoria; right?</p> <p>9 A Uh-huh.</p> <p>10 Q And in the title page where it says,</p> <p>11 "Russian Music Theory Panel SMT 2018," is that the</p> <p>12 series of articles you were referring to?</p> <p>13 A Yes.</p> <p>14 Q And you are listed here, I guess, the</p> <p>15 fourth article down in the table of contents, Philip</p> <p>16 Ewell, "Harmonic Functionalism in Russian Music</p> <p>17 Theory: A Primer."</p> <p>18 Did I read that correctly?</p> <p>19 A Correct.</p> <p>20 Q And your article started on page 61;</p> <p>21 right?</p> <p>22 A Yes.</p> <p>23 Q Okay. I just wanted to establish we were</p> <p>24 talking about the same thing and it turns out the</p> <p>25 SMT conference seems to have been in 2018, just as</p>	<p>1 A -- was, you know, something that we all</p> <p>2 do.</p> <p>3 And we submitted them together. I think</p> <p>4 we each read each other's work and just commented on</p> <p>5 it.</p> <p>6 Q Uh-huh.</p> <p>7 A And -- and then ultimately, I don't know</p> <p>8 what Frank Heidelberg did with -- with them. I</p> <p>9 pre- -- so yeah, I'll just stop there.</p> <p>10 Q And when you say, "We read each other's</p> <p>11 work," are you referring to Ellen -- please</p> <p>12 pronounce her last name? Bakulina?</p> <p>13 A Bakulina.</p> <p>14 Q Bakulina?</p> <p>15 A Yeah.</p> <p>16 Q I assume Russian?</p> <p>17 A That's Russian.</p> <p>18 Q In origin?</p> <p>19 A Yes, correct.</p> <p>20 Q Thank you.</p> <p>21 So Ellen Bakulina and Christopher Segall</p> <p>22 and you read each other's articles?</p> <p>23 A Uh-huh.</p> <p>24 Q That's what you were referring to?</p> <p>25 A Yes.</p>

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<p style="text-align: right;">Page 122</p> <p>1 Q And did Frank Heidlberger solicit these</p> <p>2 articles?</p> <p>3 A I'm not sure. I'm not sure how --</p> <p>4 solicitation, whether Ellen approached him, he</p> <p>5 approached Ellen. I can't even recall whether Frank</p> <p>6 Heidlberger was at that session where we</p> <p>7 delivered --</p> <p>8 Q I understand. It was 2018.</p> <p>9 A Yeah. Yeah.</p> <p>10 Q So do you remember these articles being</p> <p>11 peer reviewed in the processes we've discussed</p> <p>12 earlier?</p> <p>13 A If I could just go briefly back to the --</p> <p>14 the plenary because we talked about the plenary and</p> <p>15 the --</p> <p>16 Q Correct.</p> <p>17 A -- music theory Spectrum and then MTO.</p> <p>18 Q Right.</p> <p>19 A I didn't point out back then and I would</p> <p>20 just say it now because we are talking about peer</p> <p>21 review again, that as far as I can tell, as far as I</p> <p>22 recall, the plenary talks for music theory are never</p> <p>23 peer reviewed. So that didn't surprise me at all.</p> <p>24 The -- this, eight years -- or six years</p> <p>25 ago, however many years ago, I don't think that it,</p>	<p style="text-align: right;">Page 124</p> <p>1 Q Do you know if in this time period, 2018</p> <p>2 to 2020 while these articles were in the works,</p> <p>3 let's say --</p> <p>4 A Uh-huh.</p> <p>5 Q -- were they tenured then, to your</p> <p>6 knowledge?</p> <p>7 A I think they were both untenured.</p> <p>8 Q Okay. And you had tenure at this time;</p> <p>9 right?</p> <p>10 A 2016 is when I got tenure, yes.</p> <p>11 Q Okay. So, again, although you have a</p> <p>12 very clear memory of the Music Theory Online article</p> <p>13 being peer reviewed -- correct?</p> <p>14 A Yes.</p> <p>15 Q -- you have no memory of getting peer</p> <p>16 reviews for these articles?</p> <p>17 A Correct.</p> <p>18 Q And do you consider the vetting of a</p> <p>19 conference proposal to give a paper at the Society</p> <p>20 for Music Theory in any way comparable to, I think</p> <p>21 what you called, double-anonymous peer review?</p> <p>22 A Yes and no. It is usually anonymous.</p> <p>23 Q Uh-huh.</p> <p>24 A It is reviewed and -- and a decision is</p> <p>25 handed down. So yes.</p>
<p style="text-align: right;">Page 123</p> <p>1 like, was sent out for the doubly-anonymous peer</p> <p>2 review.</p> <p>3 Q Uh-huh.</p> <p>4 A I don't think so. I don't know how Frank</p> <p>5 Heidlberger dealt with the behind-the-scenes, but</p> <p>6 I'm pretty certain that I didn't see any reviewer</p> <p>7 one, reviewer two --</p> <p>8 Q Okay.</p> <p>9 A -- you know, which you normally see when</p> <p>10 you are doing that.</p> <p>11 So I do, of course, remember battling</p> <p>12 around these articles with Ellen and Chris.</p> <p>13 Q Correct. And they are close colleagues</p> <p>14 of yours; is that fair to say?</p> <p>15 A Yeah, yeah, yeah. They both went to the</p> <p>16 CUNY Graduate Center, but I -- well, I actually</p> <p>17 chaired Christopher Segall's dissertation committee.</p> <p>18 Q Uh-huh.</p> <p>19 A And -- and I -- I was also serving on</p> <p>20 Ellen -- Ellen's dissertation committee.</p> <p>21 Q Is she junior to you?</p> <p>22 A Yeah, they're both junior to me. They're</p> <p>23 both associate professors, both with tenure --</p> <p>24 Q Uh-huh.</p> <p>25 A -- and I'm a full professor, so --</p>	<p style="text-align: right;">Page 125</p> <p>1 No, in the sense that you are writing</p> <p>2 three- to 500 words about some ideas you want to</p> <p>3 present. So it's certainly different from -- from</p> <p>4 an article that appears in a -- in a journal.</p> <p>5 Q And just for the -- the sake of the</p> <p>6 record of a lay Jury that may not be involved in</p> <p>7 publication, three- to 400 words is basically a</p> <p>8 paragraph; right?</p> <p>9 A I would call it two paragraphs.</p> <p>10 Q Okay. And it's certainly not a article</p> <p>11 that spans 24 pages such as you published in --</p> <p>12 A Correct.</p> <p>13 Q -- Theoria?</p> <p>14 A Correct.</p> <p>15 Q So in that sense, the 24-page paper that</p> <p>16 was published in Theoria was not peer reviewed,</p> <p>17 correct, to the best of your recollection?</p> <p>18 A Yes, that's correct.</p> <p>19 Q So if -- well, I'll strike that.</p> <p>20 And do you have any reason to believe</p> <p>21 that the process for publishing the other two</p> <p>22 papers, the paper by Ellen Bakulina or Christopher</p> <p>23 Segall, which are also listed here, were subjected</p> <p>24 to any other process than -- or was it the same as</p> <p>25 yours?</p>



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<p>1 A I -- I don't know.</p> <p>2 Q Okay. Was there any controversy that you</p> <p>3 recall over the review process at UNT for the</p> <p>4 publication of these articles?</p> <p>5 A Any controversy, you --</p> <p>6 Q Yes?</p> <p>7 A -- said?</p> <p>8 No, not that I can recall.</p> <p>9 Q Was there any criticism, to the best of</p> <p>10 your knowledge, that these articles were not</p> <p>11 subjected to double-anonymous peer review?</p> <p>12 A Not that I recall, no.</p> <p>13 Q While we are at it -- and this will be</p> <p>14 the last few questions before we break for lunch --</p> <p>15 have you ever published -- besides this article,</p> <p>16 which we just talked about, and also the Spectrum</p> <p>17 article, which we talked about earlier, have you</p> <p>18 ever published articles that weren't subjected to</p> <p>19 peer review in any academic journal?</p> <p>20 A I think the short answer would be no.</p> <p>21 I could just elaborate a little bit and</p> <p>22 say that I have -- well, certainly over 30</p> <p>23 publications, somewhere between 30 and 40, let's</p> <p>24 say. The article is one genere, let's call it;</p> <p>25 right.</p>	<p>1 A No.</p> <p>2 Q Do you know if Theoria has ever had</p> <p>3 articles that cite Wikipedia?</p> <p>4 A I do not know.</p> <p>5 Q Is that a sign that a journal is of</p> <p>6 inferior qualify, in your mind as an academic</p> <p>7 scholar?</p> <p>8 A Well, it's highly unusual because of the</p> <p>9 open access, open nature of Wikipedia.</p> <p>10 Q Is it appropriate to -- to cite anything</p> <p>11 like social media in the same way?</p> <p>12 A It depends on the article, it depends on</p> <p>13 the journal, it depends on the editor, it depends on</p> <p>14 the topic --</p> <p>15 Q Uh-huh.</p> <p>16 A -- of -- of what's being written in what</p> <p>17 venue.</p> <p>18 So you'd -- you'd have to be more</p> <p>19 specific.</p> <p>20 Q Is it appropriate to cite, I don't know,</p> <p>21 content on YouTube in an academic article?</p> <p>22 A If in fact the author -- of course, all</p> <p>23 of these decisions would ultimately fall with the</p> <p>24 editor and the editorial team; right?</p> <p>25 And if in fact something is put up on</p>
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<p>1 Q Of course.</p> <p>2 A So a review essay, book chapters,</p> <p>3 review -- conference review, the introduction I</p> <p>4 mentioned earlier. So obviously they all come with</p> <p>5 different sets of guidelines --</p> <p>6 Q Uh-huh.</p> <p>7 A -- and expectations.</p> <p>8 The academic articles that I have</p> <p>9 published have all been peer reviewed with, I</p> <p>10 suppose, this exception.</p> <p>11 And in my own mind, if I could just</p> <p>12 elaborate a little bit, because I do recall that</p> <p>13 this was not peer reviewed. This almost in my --</p> <p>14 it's almost as if it wasn't an article in the same</p> <p>15 way that "Music Theory and the White Racial Frame"</p> <p>16 was, if that makes sense.</p> <p>17 Q The -- the one that was published in</p> <p>18 Music Theory Online?</p> <p>19 A Correct. Yeah.</p> <p>20 Q Okay. And -- well, we've already</p> <p>21 discussed the -- the difference between that and</p> <p>22 Spectrum.</p> <p>23 Okay. Just -- just one more question.</p> <p>24 So have you ever known academic articles</p> <p>25 to cite Wikipedia in any way?</p>	<p>1 YouTube with some type of, I don't know, gravitas</p> <p>2 behind it, and I don't even know what that would</p> <p>3 look like frankly, I imagine that there -- I don't</p> <p>4 know, a Ted talk or something, that there's</p> <p>5 something that's out there, that that would</p> <p>6 potentially be more acceptable to the editor of an</p> <p>7 academic journal than Wikipedia would be because of</p> <p>8 the open nature of Wikipedia.</p> <p>9 Q Would it be acceptable in an academic</p> <p>10 field to quote Wikipedia, for instance, as an</p> <p>11 example of what the state of common knowledge out</p> <p>12 there in the world may be?</p> <p>13 A Sure. That would be acceptable, yeah.</p> <p>14 Q Okay.</p> <p>15 A I mean, that's -- that's my opinion,</p> <p>16 obviously.</p> <p>17 Q Your opinion as an informed academic</p> <p>18 scholar?</p> <p>19 A Absolutely yeah. But I'm sure there</p> <p>20 would be people who would disagree with me.</p> <p>21 Q And, as you said, an author -- an author</p> <p>22 of at least 30 academic publications?</p> <p>23 A Thank you for the compliment.</p> <p>24 Q And how many books to date?</p> <p>25 A Oh, just one.</p>

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1	Q	Just one?	1		please?
2	A	Yeah.	2	Q	Yeah, the -- the second to last
3		MR. ALLEN: We'll go off the record.	3		sentence --
4		THE VIDEOGRAPHER: We are going off	4	A	Uh-huh.
5		the record. The time is 12:27.	5	Q	-- before that quote is introduced is
6		(Whereupon, there was a recess taken	6		your writing; correct?
7		from 12:27 p.m. to 1:28 p.m.)	7	A	Correct.
8		(Whereupon, Plaintiff's Exhibit 3,	8	Q	And it says, "In numerous writings,
9		Article Entitled "Music Theory and	9		he" -- meaning Schenker -- "insisted that his
10		the White Racial Frame" Written by	10		views" -- meaning Schenker's view -- "on racial and
11		Philip Ewell, Published in Music	11		national hierarchies were key to his beliefs on life
12		Theory Online, was marked for	12		and music."
13		identification.)	13		Correct?
14		THE VIDEOGRAPHER: We are going back	14	A	Correct.
15		on the record. The time is 1:28.	15	Q	And in fact, you introduced that
16	BY MR. ALLEN:		16		paragraph with the topic sentence, "I wish to
17	Q	Professor Ewell, I have taken the liberty	17		recouple this severed link between Schenker's
18		of marking as Exhibit Number 3 for the record. This	18		hierarchal beliefs about music and his hierarchal --
19		will be -- for the people who are remote, this will	19		hierarchical beliefs about people."
20		be sent to you as marked 023.	20		Did I read that correctly?
21		It's an article in Music Theory Online,	21	A	Yes.
22		which we've discussed earlier. And I'm going to ask	22	Q	So -- and this is the last question, just
23		you to confirm for the record that this is the	23		a yes or no question.
24		article that we discussed earlier?	24		So it's fair to say, as we discussed
25	A	Correct.	25		earlier, that you were quoting William Drabkin,
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1	Q	And it's titled, "Music Theory and the	1		which we read earlier into the record, with
2		White Racial Frame"?	2		approval?
3	A	Correct.	3	A	It's not just yes or no.
4	Q	And if I could ask you to turn to	4		It's -- it is his agreement with some of
5		section 4.4 in the article, I believe you'll find	5		the -- the basic elements of recoupling this -- this
6		that on page 11?	6		severed link.
7	A	Uh-huh.	7		With approval? Ye- -- yeah, I think it's
8	Q	Right above that is a subsection where	8		fair to just say with approval. Yeah, that's fair.
9		there's the quote that I had read aloud into the	9	Q	And you believe there's a link between
10		record earlier; correct?	10		this view of racial hierarchy, national hierarchies,
11	A	Correct.	11		and Schenker's belief about the hierarchy of tones?
12	Q	And just as you said, it's a block quote	12	A	Yes. I believe so because Heinrich
13		from William Drabkin?	13		Schenker was very explicit himself in --
14	A	Uh-huh.	14	Q	Okay.
15	Q	And prior to introducing that quote, you	15	A	-- in making those connections.
16		said, "In numerous writings, he" -- meaning	16	Q	And I have no further questions about
17		Schenker; correct? -- "insisted that his views" --	17		that article, which we've already discussed.
18		meaning Schenker's views -- "on racial and national	18		I -- I would like to turn to discussing
19		hierarchies were key to his beliefs on life and on	19		another journal called the Journal for [sic]
20		music."	20		Schenkerian Studies.
21		Right?	21		Are you familiar with that journal?
22	A	Right above the block quotation?	22	A	Yes. Is it "Journal of" or "Journal
23	Q	Yeah.	23		for"?
24	A	Oh, yeah.	24	Q	I believe you are right it's "for
25		Okay. Can you -- can you say that again,	25		Schenkerian Studies"?

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<p>1 A Oh, no, no.</p> <p>2 You said "for" and I thought it was "of,"</p> <p>3 but --</p> <p>4 Q You know what, I don't want to make a</p> <p>5 mistake for the record here, so I --</p> <p>6 So you were correct to point that out.</p> <p>7 It is the Journal of Schenkerian Studies.</p> <p>8 A Good.</p> <p>9 Q Thank you.</p> <p>10 And so I -- I take from your answer that</p> <p>11 you are familiar with it?</p> <p>12 A Of course.</p> <p>13 Q Have you published in it?</p> <p>14 A Yes.</p> <p>15 Q When did you publish an article in the</p> <p>16 Journal of Schenkerian Studies?</p> <p>17 A Oh, when? 2004 or '05. It was one of my</p> <p>18 very first published articles.</p> <p>19 Q Was that journal article handled by</p> <p>20 Timothy Jackson?</p> <p>21 A I have no idea.</p> <p>22 Q Was there any suggestion at that time</p> <p>23 that the Journal of Schenkerian Studies was</p> <p>24 publishing racist articles?</p> <p>25 A What do you mean by "racist articles"?</p>	<p>1 context.</p> <p>2 Q Did you ever hear anyone say the journal</p> <p>3 was racist?</p> <p>4 A No.</p> <p>5 Q Thank you.</p> <p>6 What was your understanding of Timothy</p> <p>7 Jackson's relationship to the Journal of Schenkerian</p> <p>8 Studies from the time you published in it back in --</p> <p>9 in the -- you know, sounds like the 2000s, to 2020?</p> <p>10 A Well, in that time, I have to be honest,</p> <p>11 I basically never thought of that journal.</p> <p>12 Q Uh-huh.</p> <p>13 A I published in it and then I -- then</p> <p>14 20 years -- well, I don't know how many years, but</p> <p>15 almost 20 years passed.</p> <p>16 Q Uh-huh.</p> <p>17 A And if you were to say that Timothy</p> <p>18 Jackson was part of the original -- my original</p> <p>19 thing, I would -- I wouldn't be surprised.</p> <p>20 But I just don't recall 20 years ago what</p> <p>21 his relationship was, if there was a relationship,</p> <p>22 to the journal at that point.</p> <p>23 Q By "your thing," you mean your article?</p> <p>24 A My article and it was in Volume 1, the</p> <p>25 very first issue of the journal.</p>
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<p>1 Q Well, I don't -- I don't mean anything by</p> <p>2 it, but what I'm asking: Was anyone accusing the</p> <p>3 journal of being racist at that time, whatever they</p> <p>4 meant by it?</p> <p>5 A I don't understand the question when you</p> <p>6 used -- if -- you'd have to define what "racist"</p> <p>7 means.</p> <p>8 Q Do you recall anyone ever accusing the</p> <p>9 Journal of Schenkerian Studies at the time you</p> <p>10 published it -- in it of being racist?</p> <p>11 A Again, race -- "racism" and "racist" are</p> <p>12 in -- as I state, very clearly in my monograph. I</p> <p>13 consider those words trip wires, which is why I</p> <p>14 don't often use them in my own work. They've become</p> <p>15 everything and nothing, specifically "racist."</p> <p>16 So if you are asking me -- the question</p> <p>17 is if a journal is racist --</p> <p>18 Q I'm not asking you if the Journal of</p> <p>19 Schenkerian Studies is racist, so please don't</p> <p>20 misunderstand my question. Let me rephrase it.</p> <p>21 Did you hear of anyone else accusing the</p> <p>22 journal at the time you published in it of being</p> <p>23 racist, whatever they may have meant by that?</p> <p>24 A It's hard to answer that question yes or</p> <p>25 no if you can't clarify what "racist" means in this</p>	<p>1 And then up until Volume 12, which had</p> <p>2 the symposium of responses to my plenary talk --</p> <p>3 Q Uh-huh.</p> <p>4 A -- that -- it was at that time that it</p> <p>5 was kind of -- my memory was jogged that, Oh yes,</p> <p>6 Timothy Jackson has something to do with this</p> <p>7 journal, in fact.</p> <p>8 Q Okay. So you anticipated my next</p> <p>9 question is that you were aware of a special</p> <p>10 symposium meant to be published in Volume 12 of the</p> <p>11 Journal of Schenkerian Studies?</p> <p>12 A I was -- the clarification. I was aware</p> <p>13 when exactly?</p> <p>14 Q Well, why don't you answer your own</p> <p>15 question.</p> <p>16 When were you aware that there was a</p> <p>17 symposium to be published in Volume 12?</p> <p>18 A Good. Okay. That's a question I can</p> <p>19 answer.</p> <p>20 I think -- and I wrote about this in my</p> <p>21 book -- I think somewhere or somehow I heard that</p> <p>22 there might be a symposium in the fall of -- oh,</p> <p>23 God, this would have been the -- right -- some time</p> <p>24 the fall, winter of 2019 --</p> <p>25 Q Uh-huh.</p>

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<p>1 A I'm sorry, 2019 -- yes, 2019.</p> <p>2 But then I for sure became aware of it</p> <p>3 when there was a call for papers announced. And I</p> <p>4 think, if I'm not mistaken, that was on</p> <p>5 December 31st, 2019.</p> <p>6 And it had a very quick turnaround, which</p> <p>7 everybody was like, Wait, what's going on with this?</p> <p>8 So it was a strange three-week</p> <p>9 turnaround, like, sub- -- submit this by then.</p> <p>10 Q Uh-huh.</p> <p>11 A So when that call for papers was</p> <p>12 announced, whatever date it was, but late -- call it</p> <p>13 late December 2019, I was of course aware --</p> <p>14 Q Uh-huh.</p> <p>15 A -- that this was happening.</p> <p>16 Q Do you remember who you heard that from?</p> <p>17 A I think it was the SMT Listserv where</p> <p>18 call- -- where such calls are usually put out.</p> <p>19 Q Okay. And so you were a subscriber to</p> <p>20 the SMT list -- Listserv?</p> <p>21 A Correct.</p> <p>22 Q And you had already testified today, I</p> <p>23 believe, you were -- you were at that time a member</p> <p>24 of the Society for Music Theory, SMT?</p> <p>25 A Yes.</p>	<p>1 Q Okay.</p> <p>2 A -- on the Journal -- Volume 12 of the</p> <p>3 Journal of Schenkerian Studies.</p> <p>4 Q And just to be clear, by "monograph," we</p> <p>5 understand I mean an ac- -- an academic book?</p> <p>6 A Correct.</p> <p>7 Q All right. So I want to take you back to</p> <p>8 the time before you had read the responses published</p> <p>9 in the symposium and when you heard about it.</p> <p>10 And what was your criticism of the</p> <p>11 symposium in that time window before you had</p> <p>12 actually read the symposium papers?</p> <p>13 A I had seen on Twitter and probably</p> <p>14 Facebook -- I've -- I left Twitter between one and</p> <p>15 two years ago; I deleted my account.</p> <p>16 But I was on Twitter and Facebook and I</p> <p>17 saw some of the quotations, and they were very</p> <p>18 strange, I thought to myself.</p> <p>19 Q Uh-huh.</p> <p>20 A And of course, I knew that I had not been</p> <p>21 contacted to be part of this symposium, which struck</p> <p>22 me as strange. So I knew about some of those</p> <p>23 things.</p> <p>24 Most of what I was -- any -- if you are</p> <p>25 asking me what my opinion was of what was going on</p>
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<p>1 Q Did you ever read any of the articles in</p> <p>2 the symposium which appeared in Volume 12, published</p> <p>3 in 2020?</p> <p>4 A Not when it came out.</p> <p>5 Q Have you since read them?</p> <p>6 A Yes.</p> <p>7 Q When did you read them?</p> <p>8 A As I was writing my book, because that's</p> <p>9 when I actually did respond to ten of the authors</p> <p>10 of -- of that symposium.</p> <p>11 And -- well, the book came out in</p> <p>12 2023 April, so I would guess if I would say when I</p> <p>13 actually read the 15 responses -- and I have to put</p> <p>14 the "responses" in scare quotes because it didn't</p> <p>15 seem to me that they were really responses to what I</p> <p>16 had said in the plenary -- I would guess -- let me</p> <p>17 think here -- fall -- fall of '21, early 2022.</p> <p>18 Q Okay.</p> <p>19 A Some time in 2022 probably.</p> <p>20 Q Okay. And this was the time leading up</p> <p>21 to the publication of your monograph; is that fair?</p> <p>22 A Correct, yeah.</p> <p>23 Q Okay.</p> <p>24 A During the process. Because chapter</p> <p>25 three or four is in fact --</p>	<p>1 not having read the actual responses, it was</p> <p>2 probably based on what I was seeing on social media.</p> <p>3 Q What was based on what you were seeing on</p> <p>4 social media? What do you mean by that?</p> <p>5 A My opinions about what the --</p> <p>6 Q Okay.</p> <p>7 A -- symposium was about.</p> <p>8 Q And your opinions were that this seemed</p> <p>9 strange?</p> <p>10 A Yes.</p> <p>11 Q And stuff.</p> <p>12 Do you think it was improper for the</p> <p>13 Journal of Schenkerian Studies to publish the</p> <p>14 symposium before you read it?</p> <p>15 A I believe it was improper to do so</p> <p>16 without any participation by me.</p> <p>17 Q Any other reason you thought it was</p> <p>18 improper for the Journal of Schenkerian Studies to</p> <p>19 publish the symposium besides not contacting you?</p> <p>20 A The anonymous submission. One of the</p> <p>21 submissions was written anonymously, and that struck</p> <p>22 me as very strange also.</p> <p>23 Q So we have -- there was -- you allege</p> <p>24 there was no contact to you. There's also an</p> <p>25 anonymous publication in the symposium.</p>

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<p style="text-align: right;">Page 142</p> <p>1           Was there anything else that you</p> <p>2 criticized about the Journal of Schenkerian Studies</p> <p>3 publishing the symposium?</p> <p>4       A     I wouldn't say there was no contact. I</p> <p>5 mentioned in my book that two professors at the</p> <p>6 University of North contact -- North Texas contacted</p> <p>7 me as it was being put together.</p> <p>8           One was Ellen Bakulina. The other was</p> <p>9 Stephen Slottow --</p> <p>10       Q     Okay.</p> <p>11       A     -- who I think is an associate professor</p> <p>12 of music theory --</p> <p>13       Q     Uh-huh.</p> <p>14       A     -- at the University of North Texas, also</p> <p>15 one of the managing editors, along with Timothy</p> <p>16 Jackson, of that -- of that volume.</p> <p>17           Separately, they contacted me. Stephen</p> <p>18 Slottow wanted to know where he could find the</p> <p>19 slides to the presentation I had given.</p> <p>20       Q     The -- the plenary talk at the SMT --</p> <p>21       A     Correct.</p> <p>22       Q     -- in 2019?</p> <p>23       A     Correct. Yeah.</p> <p>24           And at that point the slides were on my</p> <p>25 website --</p>	<p style="text-align: right;">Page 144</p> <p>1 there were another 13 minutes that had nothing to do</p> <p>2 with Heinrich Schenker that I spoke about at that</p> <p>3 plenary session, so Heinrich Schenker was roughly</p> <p>4 nine minutes -- that responses would be put together</p> <p>5 without having the person to whom they were</p> <p>6 responding have a chance to address the issues</p> <p>7 brought up in the responses, which is industry</p> <p>8 standard for such colloquies or symposiums in</p> <p>9 academia.</p> <p>10       Q     What made you think you were being</p> <p>11 excluded from commenting on the symposium responses</p> <p>12 to your plenary address?</p> <p>13       A     I have no idea.</p> <p>14       Q     Did anyone tell you you would not be</p> <p>15 allowed to respond to them?</p> <p>16       A     No.</p> <p>17       Q     And you now said that you actually were</p> <p>18 contacted both by Professor Slottow and Ellen</p> <p>19 Bakulina; correct?</p> <p>20       A     Yeah, but that was not to ask me to be</p> <p>21 part of this --</p> <p>22       Q     And you were --</p> <p>23       A     -- symposium.</p> <p>24       Q     -- you received the SMT call for papers;</p> <p>25 correct?</p>
<p style="text-align: right;">Page 143</p> <p>1       Q     Uh-huh.</p> <p>2       A     -- so I told him where to get them.</p> <p>3       Q     Uh-huh.</p> <p>4       A     And then Ellen Bakulina wrote an e-mail</p> <p>5 simply asking me if I had any questions about these</p> <p>6 responses that were being put together, to which I</p> <p>7 responded, No, I don't have any questions.</p> <p>8       Q     Did anything prevent Ellen Bakulina from</p> <p>9 inviting you to participate in the Journal of</p> <p>10 Schenkerian Studies symposium?</p> <p>11       A     I have no idea.</p> <p>12       Q     But she didn't invite you?</p> <p>13       A     No.</p> <p>14       Q     You don't know of anything that prevented</p> <p>15 her from inviting you to participate?</p> <p>16       A     No.</p> <p>17       Q     So let me again summarize: You -- you've</p> <p>18 identified the, I guess, failure of the journal to</p> <p>19 contact you in the way you wanted to be contacted;</p> <p>20 is that fair?</p> <p>21       A     No. It -- the way I want to be contacted</p> <p>22 is -- well, it's not really up to me.</p> <p>23           I'm -- I am taking issue with the notion</p> <p>24 that somebody would respond to what effectually was</p> <p>25 nine minutes of a discussion of Heinrich Schenker --</p>	<p style="text-align: right;">Page 145</p> <p>1       A     I did.</p> <p>2       Q     But it's your testimony today that that</p> <p>3 also wasn't an appropriate way to contact you?</p> <p>4       A     Yes, it was not appropriate.</p> <p>5       Q     And can you just explain for the record</p> <p>6 what would have been the most appropriate way to</p> <p>7 contact you in your experience as an academic?</p> <p>8       A     Well, I've never been a respondent like</p> <p>9 that so I would only be speculating.</p> <p>10           But it would -- I -- I presume that it</p> <p>11 would be one of the lead editors who would reach out</p> <p>12 to the person who was -- who -- who originally gave</p> <p>13 the talk to which people were responding to invite</p> <p>14 them to be part of a colloquy or symposium.</p> <p>15       Q     Did you reach out to anyone on the</p> <p>16 editorial board to ask them about that?</p> <p>17       A     No.</p> <p>18       Q     Why not?</p> <p>19       A     It's not my place to invite myself to a</p> <p>20 party thrown in my honor.</p> <p>21       Q     Was there any criticism of your paper</p> <p>22 aired at the plenary talk you gave in 2019?</p> <p>23       A     Not to my knowledge.</p> <p>24       Q     Was that proper?</p> <p>25       A     A lack of criticism?</p>

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<p style="text-align: right;">Page 146</p> <p>1 Q That there wouldn't be any invitation to 2 criticism of your paper at the symposium that you 3 gave -- not symposium, the plenary talk you gave in 4 2019?</p> <p>5 A The question is: Would that have been 6 proper, you said?</p> <p>7 Q Was it proper that there was no form for 8 criticism of your plenary address?</p> <p>9 A Yeah, plenary addresses never really --</p> <p>10 Q Okay.</p> <p>11 A -- have Q&amp;As afterward. In music theory, 12 I should say.</p> <p>13 Q So, again, I'm trying to get a -- the 14 universe of things that you thought was improper 15 about the publication of the symposium in 2020 by 16 the Journal of Schenkerian Studies.</p> <p>17 It's not improper that it addressed your 18 plenary talk; right?</p> <p>19 A No.</p> <p>20 Q But you've said that they didn't contact 21 you in the way that you have argued is industry 22 standard?</p> <p>23 A Correct.</p> <p>24 Q You've also identified the publication of 25 an anonymous author?</p>	<p style="text-align: right;">Page 148</p> <p>1 of 2020 when that appeared?</p> <p>2 A I can't recall.</p> <p>3 Q Okay. You don't know of any other ad hoc 4 panel that addressed the Journal for Schenkerian 5 Studies, though; correct?</p> <p>6 A Correct.</p> <p>7 Q Okay. What were the things that you read 8 in the ad hoc panel's report that stand out to you 9 as improper?</p> <p>10 A I think the two that I've mentioned: 11 The -- the inclusion of an anonymous --</p> <p>12 Q Uh-huh.</p> <p>13 A -- author, and the lack -- oh, the lack 14 of peer review that's -- that we hadn't talked about 15 that. So three things.</p> <p>16 The lack of peer review, the anonymous 17 author, and the one that we just said, the fact that 18 I was not part of the colloquy.</p> <p>19 Q Okay. Any other things that you 20 remember?</p> <p>21 A No.</p> <p>22 Q Okay. So as you sit here today, you only 23 have identified the lack of peer review, the 24 anonymous author's publication, and that you weren't 25 contacted in the way that you feel was an industry</p>
<p style="text-align: right;">Page 147</p> <p>1 A Correct.</p> <p>2 Q Are there any other things you found to 3 be improper about the Journal for -- of Schenkerian 4 Studies publication of the symposium?</p> <p>5 A Only -- I -- I would say only what I've 6 read in what was ultimately called, I think, an ad 7 hoc panel that some UNT professors had convened to 8 look into how this journal issue was put together.</p> <p>9 That is something I did read --</p> <p>10 Q Uh-huh.</p> <p>11 A -- and I think I've hit on the points 12 that they made. And that's what I'm basing this on 13 because I hadn't read --</p> <p>14 Q Okay.</p> <p>15 A -- the contents.</p> <p>16 Q When did you read the ad hoc panel 17 report?</p> <p>18 A Probably shortly after it came out and I 19 can't remember when that was.</p> <p>20 Q And just for the record, is this the ad 21 hoc panel that was published by the University of 22 North Texas on its website on November 25th, 2020?</p> <p>23 A You -- probably but, you know, I would 24 need to see that document.</p> <p>25 Q Do you remember it being around the end</p>	<p style="text-align: right;">Page 149</p> <p>1 standard?</p> <p>2 A Yes.</p> <p>3 Q Okay. Did you ever argue that the 4 Journal for Schenkerian Studies should be censored?</p> <p>5 A I think I used in my book kind of as a 6 question, Is there no reason for condemnation, or 7 possibly I used the word "censure."</p> <p>8 In other words, it seems so out of the 9 ordinary, that anonymous authorship and just to not 10 invite the person, that it -- that, you know, I 11 prob- -- think in my book I used, Is there -- is 12 there no situation in which condemnation is -- is -- 13 is appropriate for out of the ordinary or as I just 14 said, not industry standard aspects of the 15 publication of this issue.</p> <p>16 Q Do you approve of the censorship of the 17 Journal of Schenkerian Studies?</p> <p>18 A I don't know enough about it, frankly, 19 to -- to say that I approve of it.</p> <p>20 Q Are you aware that the Journal of 21 Schenkerian Studies is no longer published by the 22 University of North Texas Press?</p> <p>23 A I was unaware of that.</p> <p>24 Q Now that you do know of that, assuming 25 that it's true, do you approve of that?</p>

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<p>1 A I don't know enough about it to make a 2 judgment on that.</p> <p>3 Q Do you think a journal should be ordered 4 to cease publication for pub- -- for publishing the 5 symposium that was published in the Journal of 6 Schenkerian Studies that was published in 2020?</p> <p>7 A I would need to know more information. I 8 really couldn't say.</p> <p>9 Q What more information do you need to 10 know? It stopped publication; right?</p> <p>11 A You just said, "allegedly stopped 12 publication," so --</p> <p>13 Q No, I said it did stop publication.</p> <p>14 A Well, you added -- you added the word 15 "allegedly."</p> <p>16 Q Let me do this.</p> <p>17 A But that's okay. That's okay.</p> <p>18 Q Assume that that's true.</p> <p>19 A Okay.</p> <p>20 Q Is that appropriate?</p> <p>21 A I don't know enough about it to make a 22 comment on it.</p> <p>23 Q You commented earlier that you thought 24 the First Amendment was a benefit to the United 25 States; correct?</p>	<p>1 MR. PAINTER: Yes.</p> <p>2 MR. ALLEN: That's not a legal issue 3 in this case.</p> <p>4 The First Amendment is something 5 he's already testified to.</p> <p>6 MR. PAINTER: Yes, but he's not 7 provided legal opinion on that and you 8 are not asking him --</p> <p>9 MR. ALLEN: I'm not asking for a 10 legal opinion.</p> <p>11 BY MR. ALLEN:</p> <p>12 Q So, Professor Ewell, I'm just asking in 13 your experience as an academic professional and 14 assuming it's true that the University of North 15 Texas has instructed the University of North Texas 16 Press to stop publishing the Journal of Schenkerian 17 Studies, is that appropriate in your view?</p> <p>18 A I don't have enough information to make 19 that judgment.</p> <p>20 Q And what more information would you need?</p> <p>21 A Well, I could imagine I would need to 22 know some more of the particulars about what 23 actually happened behind the scenes and I'm just not 24 privy to that information.</p> <p>25 Q You've read the University of North</p>
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<p>1 A Yes.</p> <p>2 Q And you do though -- know that the 3 University of North Texas is a public institution --</p> <p>4 A I do, yes.</p> <p>5 Q -- of the State of Texas?</p> <p>6 Let me finish.</p> <p>7 So is it appropriate in your view as an 8 academic professional for a state institution to 9 order the publication of a journal to cease over the 10 publication of the symposium of a --</p> <p>11 MR. PAINTER: Objection.</p> <p>12 Are with you asking for a legal 13 opinion interpreting the First Amendment 14 or are you simply asking for an opinion 15 generally as an academic --</p> <p>16 MR. ALLEN: I believe I prefaced the 17 question: In his experience as an 18 academic professional.</p> <p>19 MR. PAINTER: So you are not asking 20 for First Amendment interpretation and 21 the fact that it's a state institution 22 and the legal questions are not a factor 23 in your --</p> <p>24 MR. ALLEN: Well, the state 25 institution is a simple fact.</p>	<p>1 Texas, quote, ad hoc panel report; correct?</p> <p>2 A Yes.</p> <p>3 Q That wasn't enough information for you?</p> <p>4 A Correct. It was not enough information.</p> <p>5 Q Were you ever aware that Timothy Jackson 6 also replied -- wrote a reply to that so-called ad 7 hoc panel report?</p> <p>8 A I was not.</p> <p>9 Q Do you know of anywhere his response to 10 the ad hoc panel report has been published?</p> <p>11 A No.</p> <p>12 Q To your knowledge, is that available on 13 the University of North Texas' website?</p> <p>14 A I have no idea.</p> <p>15 Q Is that industry standard to issue a 16 report condemning an academic and not allowing his 17 response to be published on the website?</p> <p>18 A I have no idea.</p> <p>19 Q How long have you been a professor?</p> <p>20 A Twenty-two years.</p> <p>21 Q But you have no idea?</p> <p>22 A I have no idea about the question you 23 just asked me, yeah.</p> <p>24 Q Did you feel personally demeaned by the 25 symposium published in the University of North Texas</p>

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<p style="text-align: right;">Page 154</p> <p>1 Press' Journal of Schenkerian Studies?</p> <p>2 A Only in the sense that I was not invited</p> <p>3 to this process.</p> <p>4 Q If you were invited, would you have</p> <p>5 responded?</p> <p>6 A I would have needed to see the outlines</p> <p>7 of the symposium, who was saying what.</p> <p>8 I wouldn't have agreed immediately, but I</p> <p>9 would have been interested in being part of it.</p> <p>10 Q Did you ever speak with Ellen Bakulina</p> <p>11 about her failure to invite you to respond to</p> <p>12 symposium?</p> <p>13 A No.</p> <p>14 Q Why didn't you raise this issue with her?</p> <p>15 A It wasn't my place, I felt.</p> <p>16 Q Did you talk to any of the editors of the</p> <p>17 Journal of Schenkerian Studies about the failure to</p> <p>18 invite you?</p> <p>19 A No.</p> <p>20 Q Did you ever feel dehumanized by the</p> <p>21 Journal of Schenkerian Studies?</p> <p>22 A Well, you used the word "demeaned" and</p> <p>23 now you are saying "dehumanized." So I guess I</p> <p>24 would ask for a little clarification.</p> <p>25 What's the difference between those two</p>	<p style="text-align: right;">Page 156</p> <p>1 MR. ALLEN: If he's going to testify</p> <p>2 that he has no idea --</p> <p>3 MR. PAINTER: Yeah.</p> <p>4 MR. ALLEN: -- what "dehumanize"</p> <p>5 means, he can put that on the record.</p> <p>6 MR. PAINTER: Okay. But you are not</p> <p>7 asking about a specific time which he</p> <p>8 said "dehumanized" in the past? You are</p> <p>9 not asking him that, are you?</p> <p>10 MR. ALLEN: Richard, I'm conducting</p> <p>11 my deposition and there's a question</p> <p>12 before him and I want him to answer it.</p> <p>13 BY MR. ALLEN:</p> <p>14 Q If you don't know the definition of</p> <p>15 "dehumanize" or if you don't understand that word,</p> <p>16 you can just say so.</p> <p>17 But I want to know what you understand by</p> <p>18 "dehumanize"?</p> <p>19 A And I just am pointing out that you used</p> <p>20 whether I felt demeaned and then you asked whether I</p> <p>21 felt dehumanized.</p> <p>22 And I think it's perfectly reasonable for</p> <p>23 me to say -- to ask you for -- as a point of</p> <p>24 clarification, and that's all it is really, what the</p> <p>25 difference is between demeaning and dehumanizing.</p>
<p style="text-align: right;">Page 155</p> <p>1 things to you?</p> <p>2 Q Well, I'm not testifying today,</p> <p>3 Professor Ewell. So why don't we start with what</p> <p>4 you understand by "dehumanized"? You can put that</p> <p>5 in the record.</p> <p>6 A May I ask for points of clarification of</p> <p>7 you?</p> <p>8 Q No. I'm asking you what you understand</p> <p>9 by "dehumanized"?</p> <p>10 A I'd like a -- a minute just to consult</p> <p>11 with my counsel.</p> <p>12 MR. ALLEN: He has to answer the</p> <p>13 question that's on the record.</p> <p>14 MR. PAINTER: Okay. Are you saying,</p> <p>15 did he use the word "dehumanize"?</p> <p>16 MR. ALLEN: I want him to explain</p> <p>17 what he understands by "dehumanize."</p> <p>18 That's a perfectly normal question in a</p> <p>19 deposition.</p> <p>20 MR. PAINTER: Yeah. When he used</p> <p>21 it? Are you referring --</p> <p>22 MR. ALLEN: He's an academic with</p> <p>23 20 years-plus experience. If he's --</p> <p>24 MR. PAINTER: But if you're</p> <p>25 referring --</p>	<p style="text-align: right;">Page 157</p> <p>1 If you are asking me -- so I'll go ahead.</p> <p>2 We don't need to --</p> <p>3 Q Yes.</p> <p>4 A -- to go further down that rabbit hole --</p> <p>5 whether I know what the word "dehumanizing" means, I</p> <p>6 have some ideas, yeah.</p> <p>7 Q Well, please explain for the Court what</p> <p>8 you understand by the word "dehumanized"?</p> <p>9 A To be treated less than human.</p> <p>10 Q And did you feel that the Journal treated</p> <p>11 you less than human in this time period before you</p> <p>12 read the actual article?</p> <p>13 A Only in the sense that they didn't reach</p> <p>14 out to me to simply make me part of the process.</p> <p>15 Q So that, to you, is dehumanizing?</p> <p>16 A I think I would prefer to say it's</p> <p>17 demeaning, the way that you said earlier, and not</p> <p>18 dehumanizing.</p> <p>19 Q Okay. Incidentally, are you aware of an</p> <p>20 open letter -- or let me put it this way -- an open</p> <p>21 letter by the Society for Music Theory condemning</p> <p>22 the symposium published in the Journal of</p> <p>23 Schenkerian Studies in 2020?</p> <p>24 A I was aware of that, yeah.</p> <p>25 Q Do you believe that open letter was</p>



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<p>1 consistent -- well, let me back up and strike that</p> <p>2 question.</p> <p>3           What did the open letter say, to your</p> <p>4 knowledge?</p> <p>5       A     Oh, to my recollection, yeah, it was</p> <p>6 condemning -- it was an open letter on anti-racism</p> <p>7 in the Society for Music Theory.</p> <p>8           It was drafted by eight music theorists.</p> <p>9 It had over 900 signatories because it was an open</p> <p>10 letter. I was one of the signatories.</p> <p>11       Q     Uh-huh.</p> <p>12       A     It -- it mentioned the Journal of</p> <p>13 Schenkerian Studies, Volume 12, although I don't</p> <p>14 think it mentioned Timothy Jackson's name.</p> <p>15           And it essentially raised some points</p> <p>16 about how we can think about anti-racism in the</p> <p>17 field in the Society for Music Theory moving</p> <p>18 forward.</p> <p>19       Q     Do you think that was consistent with the</p> <p>20 SMT statement of -- on ethics?</p> <p>21       A     I don't know what you are talking about,</p> <p>22 the statement on ethics.</p> <p>23       Q     Sure.</p> <p>24           (Whereupon, Plaintiff's Exhibit 4,</p> <p>25           Printout from Society of Music Theory</p>	<p>1       Q     Sure.</p> <p>2       A     Okay.</p> <p>3       Q     So you testified earlier that you believe</p> <p>4 strongly in academic societies like the Society for</p> <p>5 Music Theory honoring its own policies; right?</p> <p>6       A     Yes.</p> <p>7       Q     They should follow their own rules;</p> <p>8 right?</p> <p>9       A     Correct.</p> <p>10       Q     This SMT policy on ethics should be</p> <p>11 followed by the Society for Music Theory; correct?</p> <p>12       A     Correct.</p> <p>13       Q     It "upholds and promotes the following</p> <p>14 basic principles of ethical conduct in our</p> <p>15 profession," in the first line; correct?</p> <p>16       A     Correct.</p> <p>17       Q     And they are numbered one through seven?</p> <p>18       A     Correct.</p> <p>19       Q     The first is, "Freedom of inquiry and the</p> <p>20 widest possible access to information of use to</p> <p>21 scholars."</p> <p>22           Right?</p> <p>23       A     Correct.</p> <p>24       Q     Can we both agree that the censorship of</p> <p>25 an academic journal is not consistent with that</p>
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<p>1           Website, was marked for</p> <p>2 identification.)</p> <p>3       MR. ALLEN: I want to introduce in</p> <p>4 the record as Exhibit 4 a printout from</p> <p>5 the website of the Society for Music</p> <p>6 Theory.</p> <p>7           For the people online, this was</p> <p>8 marked in the exhibit pack as "07 SMT</p> <p>9 statement."</p> <p>10          And I'm handing a copy to</p> <p>11 Professor Ewell's counsel.</p> <p>12       MR. PAINTER: Do we have the letter</p> <p>13 too as an exhibit so he can look at that</p> <p>14 letter?</p> <p>15       MR. ALLEN: I don't. Not right now.</p> <p>16       MR. PAINTER: So his recoll- --</p> <p>17 he'll just have to try to remember what</p> <p>18 was in that letter.</p> <p>19       MR. ALLEN: Uh-huh. That's fine at</p> <p>20 this time.</p> <p>21       MR. PAINTER: Okay.</p> <p>22 BY MR. ALLEN:</p> <p>23       Q     Have you had a chance to review this,</p> <p>24 Professor Ewell?</p> <p>25       A     One second.</p>	<p>1 policy number one?</p> <p>2       A     Can I ask what you mean by "censor- --</p> <p>3 censorship"?</p> <p>4       Q     Sure. Ordering an academic publication</p> <p>5 to cease and suppressing its publication?</p> <p>6       A     And now the original question, please?</p> <p>7       Q     Is suppressing the publication of an</p> <p>8 academic journal consistent with the principle</p> <p>9 number one in the SMT policy on ethics?</p> <p>10       A     I -- I would say no.</p> <p>11       Q     I want to skip down to number three.</p> <p>12           "Respect for diverse points of view and</p> <p>13 the potential worth of scholarship on any aspect of</p> <p>14 music theory or any related subject."</p> <p>15           Did I read that correctly?</p> <p>16       A     Uh-huh. Yes.</p> <p>17       Q     Is the -- I'm sorry.</p> <p>18           Is the suppression of a journal, an</p> <p>19 academic journal, by a state institution such as the</p> <p>20 University of North Texas consistent -- consistent</p> <p>21 with principle number three?</p> <p>22       A     One second. I'm going to read it again,</p> <p>23 please.</p> <p>24       Q     Uh-huh.</p> <p>25       A     It's not consistent only in the sense</p>

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<p>1 that the diverse points of view to which they claim</p> <p>2 they -- they followed should have included a</p> <p>3 response the person to whom they were responding.</p> <p>4           So they did not respect the diverse</p> <p>5 points of view because that --</p> <p>6       <b>Q       "They" being?</b></p> <p>7       A       "They," the -- the Journal of Schenkerian</p> <p>8 Studies, Volume 12, did not respect the diverse</p> <p>9 points of view.</p> <p>10           If they had, I would have been invited --</p> <p>11 and I shouldn't have to respond to a call for</p> <p>12 papers -- invited to be part of a colloquy because</p> <p>13 this is academic freedom and inquiry.</p> <p>14       <b>Q       So that really wasn't my question.</b></p> <p>15               <b>Was suppressing the publication of the</b></p> <p>16 <b>Journal of Schenkerian Studies consistent with</b></p> <p>17 <b>principle number three?</b></p> <p>18       A       I don't know in the sense that -- in the</p> <p>19 sense that I don't believe that they completely</p> <p>20 followed point number three, whether --</p> <p>21       <b>Q       "They" being the SMT?</b></p> <p>22       A       No, "they" being Volume 12 of the Journal</p> <p>23 of Schenkerian Studies.</p> <p>24               And how exactly authorities at the</p> <p>25 University of North Texas deal with that, well, I</p>	<p>1 open letter. They certainly raised it.</p> <p>2       <b>Q       No. No. I mean, did they raise this</b></p> <p>3 <b>policy on ethics?</b></p> <p>4       A       Oh. Raise -- I don't recall anyone, no.</p> <p>5       <b>Q       Okay. Were you aware of this policy on</b></p> <p>6 <b>ethics in 2020?</b></p> <p>7       A       I don't think I was, no.</p> <p>8               MR. ALLEN: I'm going to introduce</p> <p>9 in the record a document I've marked as</p> <p>10 Exhibit Number 5.</p> <p>11               And for people who are viewing the</p> <p>12 deposition virtually, this was originally</p> <p>13 in your packet, 012, the Denton Record</p> <p>14 Chronicle article.</p> <p>15               And I'm handing a copy to</p> <p>16 Professor Ewell's counsel.</p> <p>17               (Whereupon, Plaintiff's Exhibit 5,</p> <p>18 Article Titled "A UNT Professor</p> <p>19 Challenged Claims of Racism in Music</p> <p>20 Theory and Now He's Facing the Music"</p> <p>21 by Lucinda Breeding Dated August 2,</p> <p>22 2020, was marked for identification.)</p> <p>23 BY MR. ALLEN:</p> <p>24       <b>Q       So, Professor Ewell, I -- I'm going to</b></p> <p>25 <b>give you some time to look at this, but I want to</b></p>
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<p>1 don't know. I can't comment on that. I just don't</p> <p>2 know enough.</p> <p>3       <b>Q       Do you believe the SMT open letter</b></p> <p>4 <b>condemning the Journal of Schenkerian Studies as you</b></p> <p>5 <b>remember it was consistent with these policies on</b></p> <p>6 <b>ethics that they have promulgated here?</b></p> <p>7       A       That's a tough one because I don't</p> <p>8 rec- -- remember it, obviously, verbatim. I -- I</p> <p>9 just -- I -- I -- that's too hard for me to answer</p> <p>10 because I just don't recall what -- what's written</p> <p>11 there.</p> <p>12       <b>Q       If you believed the SMT had violated this</b></p> <p>13 <b>policy on ethics at the time, would you have spoken</b></p> <p>14 <b>up about it?</b></p> <p>15       A       If I believed that they had violated it?</p> <p>16               I believe that it would have been</p> <p>17 virtually impossible for me to know that at the</p> <p>18 time. So that's a very hypothetical question that I</p> <p>19 would rather not answer yes to because of its</p> <p>20 hypothetical nature.</p> <p>21       <b>Q       That's fair enough.</b></p> <p>22               <b>Do you remember anyone in the SMT raising</b></p> <p>23 <b>the policy on ethics at that time in reference to</b></p> <p>24 <b>the Journal of Schenkerian Studies?</b></p> <p>25       A       Well, there were the eight authors of the</p>	<p>1 just represent for the record that this is an</p> <p>2 article with the title "A UNT professor challenged</p> <p>3 claims of racism in music theory and now he's facing</p> <p>4 the music" by Lucinda Breeding, a journalist, and</p> <p>5 it's dated August 2, 2020.</p> <p>6               Did I read that correctly?</p> <p>7       A       Yes.</p> <p>8       <b>Q       Now please examine it.</b></p> <p>9               But I really don't want to discuss -- the</p> <p>10 whole article isn't that relevant to the entire</p> <p>11 discussion we are having today.</p> <p>12               But I do want to address points in the</p> <p>13 article where she quotes you.</p> <p>14       A       Uh-huh.</p> <p>15       <b>Q       So before we do that, do you remember</b></p> <p>16 <b>being interviewed by Cindy Breeding?</b></p> <p>17       A       Lucinda, yeah?</p> <p>18       <b>Q       Correct.</b></p> <p>19       A       Yeah. Yeah, I think so, yes.</p> <p>20       <b>Q       Do you have any reason to think that she</b></p> <p>21 <b>would misquote you in this article?</b></p> <p>22       A       No, other than it wasn't recorded, as far</p> <p>23 as I can recall so it's taking notes.</p> <p>24       <b>Q       Did you make any objection to any of the</b></p> <p>25 <b>quotations of you in this article to the paper?</b></p>

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<p>1 A Can I -- may I read it?</p> <p>2 Q You may, but I just want to get these --</p> <p>3 some -- some general questions out of the way first.</p> <p>4 A Please, go ahead. Ask again.</p> <p>5 Q Did you ever object to the journalist or</p> <p>6 to the paper that you were misquoted?</p> <p>7 A No.</p> <p>8 Q Okay. So please go ahead and read. I --</p> <p>9 and feel free to read the whole thing, but --</p> <p>10 A Uh-huh. Uh-huh.</p> <p>11 Q -- on page three of this document, I</p> <p>12 believe you are mentioned --</p> <p>13 A Uh-huh.</p> <p>14 Q -- and quotes by you?</p> <p>15 A Uh-huh.</p> <p>16 Q And then -- and so on it goes.</p> <p>17 THE WITNESS: Can I use this pen?</p> <p>18 MR. ALLEN: I'm going to ask you not</p> <p>19 to mark on the exhibit.</p> <p>20 Perhaps -- I don't want to keep him</p> <p>21 from making notes, Richard --</p> <p>22 MR. PAINTER: Okay.</p> <p>23 MR. ALLEN: -- but I don't want him</p> <p>24 to mark on the exhibit.</p> <p>25 THE WITNESS: Can I just --</p>	<p>1 journalist, Ms. Breeding.</p> <p>2 You are talking about the -- quote, a</p> <p>3 white racial frame of music theory; correct?</p> <p>4 A Yes.</p> <p>5 Q And there's a relatively lengthy quote</p> <p>6 from you.</p> <p>7 A Uh-huh.</p> <p>8 Q It says, "'In its most abstract form,</p> <p>9 music theory is not racist,' Ewell said. 'It's</p> <p>10 talking about music in an analytical way. But I</p> <p>11 look at this question from the angle of the United</p> <p>12 States and its history. It takes something as a</p> <p>13 simple Google search of the country's Naturalization</p> <p>14 Act of 1790, which is the very first citizenship act</p> <p>15 in the country and I can sum it up: The</p> <p>16 Naturalization Act of 1790 said in order to be a</p> <p>17 citizen of these United States, you've got to be</p> <p>18 white. Have a nice day.'"</p> <p>19 Did I read that accurately?</p> <p>20 A Yes.</p> <p>21 Q And then it goes on to quote you still</p> <p>22 further, "'If you think about it from that angle, if</p> <p>23 you think of American music theory, then it has to</p> <p>24 be part of that white racial frame,' Ewell said."</p> <p>25 It goes on, "Quite literally, the people</p>
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<p>1 MR. ALLEN: If you want -- do you</p> <p>2 mind --</p> <p>3 MR. PAINTER: You can mark on my</p> <p>4 copy.</p> <p>5 THE WITNESS: Can I?</p> <p>6 MR. ALLEN: And we are actually</p> <p>7 going to take your notes and enter them</p> <p>8 into the record, too, just so you know.</p> <p>9 MR. PAINTER: Yeah.</p> <p>10 THE WITNESS: I've just got to</p> <p>11 circle something.</p> <p>12 MR. ALLEN: Yeah, please.</p> <p>13 MR. PAINTER: Yeah.</p> <p>14 THE WITNESS: Okay.</p> <p>15 MR. ALLEN: Again, this is a</p> <p>16 conversation for the record. That's why</p> <p>17 we are doing this.</p> <p>18 MR. PAINTER: Okay.</p> <p>19 THE WITNESS: Okay.</p> <p>20 BY MR. ALLEN:</p> <p>21 Q So I just want to call your attention to</p> <p>22 page three --</p> <p>23 A Uh-huh.</p> <p>24 Q -- where I believe you're -- you're</p> <p>25 mentioned with some extensive quotations by the</p>	<p>1 in the U.S. at that time, the people of color, they</p> <p>2 weren't important because they weren't white. We</p> <p>3 shouldn't be fooling ourselves that music theory</p> <p>4 can't be part of that history. That's as structural</p> <p>5 and institutional as it gets."</p> <p>6 Did I read that correctly?</p> <p>7 A Yes.</p> <p>8 Q And is it fair to say that's more or less</p> <p>9 similar to what you've testified to today, this link</p> <p>10 between the Naturalization Act of 1790 and the white</p> <p>11 racial frame of music theory?</p> <p>12 A Not quite.</p> <p>13 So you -- it seems to me you are trying</p> <p>14 to draw a direct line between 1790 and 2024 when you</p> <p>15 say those two things. And --</p> <p>16 Q I'm just trying to understand what you</p> <p>17 are saying?</p> <p>18 A And I'm going to explain that.</p> <p>19 So without weigh stations every ten to</p> <p>20 20 years, it's -- it's hard to make that. It -- it</p> <p>21 doesn't sound -- it sounds nonsensical to say that</p> <p>22 the first Naturalization Act of 1790 is directly</p> <p>23 related to music theory's white racial frame. And</p> <p>24 that is inaccurate.</p> <p>25 So if you are asking me that it is, my</p>

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<p>1 answer is no, it's not. It's --</p> <p>2 Q But here you say, "That's as structural</p> <p>3 and institutional as it gets."</p> <p>4 Right?</p> <p>5 MR. PAINTER: He should be allowed</p> <p>6 to finish --</p> <p>7 THE WITNESS: Yeah.</p> <p>8 MR. PAINTER: -- the question --</p> <p>9 answer.</p> <p>10 THE WITNESS: Yeah.</p> <p>11 A And so the -- what's structural and</p> <p>12 institutional is how over decades and centuries all</p> <p>13 of these ideas of white superiority --</p> <p>14 BY MR. ALLEN:</p> <p>15 Q Uh-huh.</p> <p>16 A -- and non-white inferiority manifested</p> <p>17 themselves in many, many ways in our country, as I'm</p> <p>18 sure we all know here.</p> <p>19 And ultimately, in my field, music</p> <p>20 theory, which really became a well defined field in</p> <p>21 the United States only in the 1960s, obviously very</p> <p>22 hard for something in 1790 to directly affect</p> <p>23 something that happened in the 1960s.</p> <p>24 Absolutely is part of the same white</p> <p>25 supremacist structures and institutions that have</p>	<p>1 Twitter; right?</p> <p>2 A Yes. And also I can recall when -- this</p> <p>3 was kind of blowing up, I think, in July, August of</p> <p>4 20-- --</p> <p>5 Q Uh-huh?</p> <p>6 A -- '20. 2020?</p> <p>7 Q Yeah.</p> <p>8 A Yeah. Yeah. The pandemic was just</p> <p>9 starting, yeah. And I can recall I spoke with one</p> <p>10 journalist, and it might have been this person,</p> <p>11 actually --</p> <p>12 Q Uh-huh.</p> <p>13 A -- when I was unplugged and I was</p> <p>14 literally upstate with my wife and son.</p> <p>15 Q And you say here -- or it says here in</p> <p>16 the article, "He hasn't read the rebuttals and</p> <p>17 doesn't plan to."</p> <p>18 Correct?</p> <p>19 A Uh-huh.</p> <p>20 Q Is that -- was that accurate at that</p> <p>21 time?</p> <p>22 A Yeah.</p> <p>23 Q And then you are quoted saying, "I won't</p> <p>24 read them because I will not participate in my own</p> <p>25 dehumanization."</p>
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<p>1 happened long before, frankly, 1790 in the United</p> <p>2 States of Am- -- well, in the country that became</p> <p>3 known as the United States of America.</p> <p>4 Q Do you have any reason to think that that</p> <p>5 was misquoted, what Cindy Breeding wrote in this</p> <p>6 article?</p> <p>7 A No.</p> <p>8 Q Can we skip forward to page -- at the</p> <p>9 bottom, you'll see five of five?</p> <p>10 A Uh-huh.</p> <p>11 Q In the middle of that page there's</p> <p>12 another quote by you and it -- it begins the</p> <p>13 paragraph before.</p> <p>14 "Ewell said he has seen some of the</p> <p>15 tweets about the journal before he 'unplugged.' He</p> <p>16 hasn't read the rebuttals and doesn't plan to, he</p> <p>17 said."</p> <p>18 Did I read that correctly?</p> <p>19 A Correct.</p> <p>20 Q Do you understand that to be referring to</p> <p>21 your engagement with the Twitter comments about the</p> <p>22 Journal of Schenkerian Studies?</p> <p>23 A Among other comments, Facebook, and yeah.</p> <p>24 Q And that's more or less consistent with</p> <p>25 what you discussed today about your getting off</p>	<p>1 Did I read that right?</p> <p>2 A Yeah.</p> <p>3 Q Is that something you told to the</p> <p>4 journalist?</p> <p>5 A Yes.</p> <p>6 Q And you also say here, "They were</p> <p>7 incensed by my blackness challenging their</p> <p>8 whiteness. The Journal of Schenkerian Studies has</p> <p>9 done far more to damage Schenkerian studies than</p> <p>10 Schenkerian studies."</p> <p>11 Did I read that correctly?</p> <p>12 A You did and that's a bit of a misquote.</p> <p>13 It doesn't quite read. But --</p> <p>14 Q But --</p> <p>15 A -- you get the idea.</p> <p>16 Q -- what is misquoted?</p> <p>17 A Well, the Journal of Schenkerian Studies</p> <p>18 has done -- done far more to damage the field of</p> <p>19 Schenkerian studies than the field of Schenkerian</p> <p>20 studies itself.</p> <p>21 Q That's a good clarification.</p> <p>22 All right. And did anyone who was</p> <p>23 connected to the journal ever criticize you for your</p> <p>24 blackness?</p> <p>25 A Anyone connected to the journal? So if I</p>

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<p style="text-align: right;">Page 174</p> <p>1 take comments, for instance, from David Beach, who</p> <p>2 said, "Philip -- my suggestion to Philip Ewell is</p> <p>3 that he stop complaining about us white guys."</p> <p>4 Q Who is Philip Beach?</p> <p>5 A I'm sorry, David Beach --</p> <p>6 Q David Beach?</p> <p>7 A -- wrote in response to my nine minute</p> <p>8 plenary talk, "My advice to Philip Ewell is that he</p> <p>9 stop complaining about us white guys."</p> <p>10 That would probably fall under the rubric</p> <p>11 of being incensed by my blackness.</p> <p>12 Q Did he mention your blackness or just</p> <p>13 said you shouldn't complain about his whiteness?</p> <p>14 A Did David Beach mention my blackness? I</p> <p>15 would have to go back to his actual report.</p> <p>16 Q And at that time you hadn't read those</p> <p>17 reports, had you?</p> <p>18 A Correct.</p> <p>19 Q At this time had anyone from the journal</p> <p>20 expressly criticized you for being black?</p> <p>21 A No.</p> <p>22 Q And you did say that you would not</p> <p>23 participate in your own dehumanization; right?</p> <p>24 A Correct.</p> <p>25 Q You didn't say "demeaning" you or</p>	<p style="text-align: right;">Page 176</p> <p>1 that is -- I'm uninterested in.</p> <p>2 Q And yet you didn't raise that with Ellen</p> <p>3 Bakulina?</p> <p>4 A I -- I already said that when I responded</p> <p>5 to Ellen Bakulina, I simply said -- she said, Do you</p> <p>6 have any questions about these responses?</p> <p>7 I said, No, I have no questions. Have a</p> <p>8 nice day.</p> <p>9 Q Did you raise the issue of not being</p> <p>10 invited with the journalist?</p> <p>11 A No. To my knowledge, no.</p> <p>12 Q If that was so important to you at the</p> <p>13 time, why didn't you raise that with the journalist</p> <p>14 when you were explaining your dehumanization?</p> <p>15 A You know, back in 2020 a lot of things</p> <p>16 were happening so it wasn't like I was laser focused</p> <p>17 on one thing.</p> <p>18 This one little aspect of a lack of</p> <p>19 industry -- industry standard following the -- the</p> <p>20 rules of inviting people to whom you are responding.</p> <p>21 So in a brief ten-minute phone call</p> <p>22 probably with this journalist, no, I did not bring</p> <p>23 that up.</p> <p>24 Q Did you bring up your other complaint</p> <p>25 that there were articles that weren't peer reviewed,</p>
<p style="text-align: right;">Page 175</p> <p>1 anything like that here?</p> <p>2 A Correct.</p> <p>3 Q So you seem to know what that word meant</p> <p>4 at this time; right?</p> <p>5 A I've always known what dehumanization</p> <p>6 means, Mr. Allen.</p> <p>7 Q Did you equivocate about the meaning of</p> <p>8 that word with the journalist at this time?</p> <p>9 A No.</p> <p>10 Q And you basically said you weren't going</p> <p>11 to read the Journal of Schenkerian Studies symposium</p> <p>12 in 2020; right?</p> <p>13 A Correct.</p> <p>14 Q So that would suggest that had they</p> <p>15 reached out to you personally, you wouldn't have</p> <p>16 participated; right?</p> <p>17 A No. Because that's kind of -- you are</p> <p>18 conflating, like, the timeline here.</p> <p>19 Had they reached out to me in a -- in a</p> <p>20 expedient fashion before publication of this journal</p> <p>21 issue, I most likely would have been very interested</p> <p>22 in being part of a colloquy because I believe in</p> <p>23 collegiality and -- and respect among colleagues.</p> <p>24 To post factum, after the journal comes</p> <p>25 out, to try to engage me in a response of sorts,</p>	<p style="text-align: right;">Page 177</p> <p>1 to your knowledge?</p> <p>2 A To my knowledge, no. I don't think so.</p> <p>3 Q How about the anonymous publication?</p> <p>4 A I don't think so. I don't think so.</p> <p>5 Q You were aware that people published in</p> <p>6 the symposium who supported your point of view in</p> <p>7 your plenary talk of 2019; correct?</p> <p>8 A Only in the sense that two of them had</p> <p>9 reached out to me to -- to let me know that they</p> <p>10 were going to submit something and I -- I read it</p> <p>11 before it was even approved for publication.</p> <p>12 And those are the pieces by Richard</p> <p>13 Beaudoin and Chris Seegal.</p> <p>14 Q Uh-huh.</p> <p>15 A And it was clear from what I wrote that</p> <p>16 they were supportive of some of the points I was</p> <p>17 making.</p> <p>18 Q Did that dehumanize you?</p> <p>19 A I don't think so, no.</p> <p>20 Q And was that in any way improper as an</p> <p>21 academic professional?</p> <p>22 A No.</p> <p>23 Q Your full length article --</p> <p>24 (Whereupon, the court reporter</p> <p>25 requests clarification.)</p>

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<p>1 BY MR. ALLEN:</p> <p>2 Q Your full length article in Music Theory</p> <p>3 Online, I think you've said this before but if you</p> <p>4 could just remind us, when did that come out?</p> <p>5 A I'm going to say June 2020.</p> <p>6 Q So it came out right before the Journal</p> <p>7 of Schenkerian Studies published the symposium in</p> <p>8 July of 2020, to your knowledge?</p> <p>9 A To be honest, I don't know which came out</p> <p>10 first.</p> <p>11 Q Okay. Do you have any reason to believe</p> <p>12 that Timothy Jackson was solely responsible for not</p> <p>13 inviting you to participate?</p> <p>14 A No, I have no reason to believe that.</p> <p>15 Q You were aware that more than one person</p> <p>16 worked on the journal's editorial staff; correct?</p> <p>17 A Yes.</p> <p>18 Q Do you know of any reason that Timothy</p> <p>19 Jackson alone should have been made responsible for</p> <p>20 the whole editorial staff?</p> <p>21 A No.</p> <p>22 MR. ALLEN: Now, I'm going to mark</p> <p>23 for the record, the next exhibit is</p> <p>24 Exhibit 6. This will fit in the</p> <p>25 category -- and I obviously don't want</p>	<p>1 North Texas to basically investigate Timothy Jackson</p> <p>2 and his role in the Journal of Schenkerian Studies?</p> <p>3 MR. WALTON: Mr. Allen, what --</p> <p>4 MR. ALLEN: Yes, Ben.</p> <p>5 MR. WALTON: What document did you</p> <p>6 end up labeling Exhibit 6 here?</p> <p>7 MR. ALLEN: Appreciate the</p> <p>8 clarification and I apologize. This was</p> <p>9 011UNT2645.</p> <p>10 MR. WALTON: Thank you.</p> <p>11 MR. ALLEN: No, thank you, Ben.</p> <p>12 BY MR. ALLEN:</p> <p>13 Q So you'll look at the bottom,</p> <p>14 Professor Ewell.</p> <p>15 Do you see there's a page marking</p> <p>16 UNT02645?</p> <p>17 A -002645, yes.</p> <p>18 Q Correct. I'm just going to tell you,</p> <p>19 those are Bates numbers.</p> <p>20 A Uh-huh.</p> <p>21 Q These are numbers that attorneys assign</p> <p>22 to documents produced in discovery. It's a</p> <p>23 continuous series throughout the record in this</p> <p>24 case.</p> <p>25 A Uh-huh.</p>
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<p>1 you to read all of these -- we'll go to</p> <p>2 selective portions of it and I'll explain</p> <p>3 what this is --</p> <p>4 THE WITNESS: Uh-huh.</p> <p>5 MR. ALLEN: -- in a second.</p> <p>6 I'm going to give this to you also,</p> <p>7 Richard.</p> <p>8 I'm marking for the record</p> <p>9 Exhibit 6.</p> <p>10 (Whereupon, Plaintiff's Exhibit 6,</p> <p>11 Collection of Documents Submitted by</p> <p>12 Timothy Jackson to Ad Hoc Panel</p> <p>13 Convened at University of North</p> <p>14 Texas, was marked for</p> <p>15 identification.)</p> <p>16 BY MR. ALLEN:</p> <p>17 Q Now, I'm going to direct your attention</p> <p>18 to the cover page -- or the first page, I should</p> <p>19 say.</p> <p>20 A Uh-huh.</p> <p>21 Q And I'm just going to represent to you --</p> <p>22 because obviously this is not an e-mail to you --</p> <p>23 this is a collection of documents which was</p> <p>24 submitted by Timothy Jackson to the, quote, ad hoc</p> <p>25 panel which was convened at the University of</p>	<p>1 Q I will be referring to them as basically</p> <p>2 equivalent of page numbers.</p> <p>3 A Okay.</p> <p>4 Q On the other hand, that's the sole</p> <p>5 alteration of this document by the attorneys.</p> <p>6 A Okay.</p> <p>7 Q It's a -- it's a document that was</p> <p>8 produced by the University of North Texas, thus the</p> <p>9 abbreviation "UNT."</p> <p>10 So with that understood, I'm just going</p> <p>11 to call your attention to various parts of this</p> <p>12 record.</p> <p>13 These were documents that were disclosed</p> <p>14 to the ad hoc panel by Timothy Jackson to disclose</p> <p>15 simply the internal workings of the journal that led</p> <p>16 to the publication of the symposium?</p> <p>17 A Uh-huh.</p> <p>18 Q I'm not asking you to comment on whether</p> <p>19 that's true, but I'm just going to ask you to assume</p> <p>20 that for the record. All right?</p> <p>21 So can I direct your attention to</p> <p>22 page UNT2663, please?</p> <p>23 This is a copy of an e-mail dated</p> <p>24 December 31st, 2019.</p> <p>25 Did I read that correctly?</p>

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<p style="text-align: right;">Page 182</p> <p>1 A The second one, yeah.</p> <p>2 Q Sorry, the one at the bottom of the page?</p> <p>3 A Uh-huh.</p> <p>4 Q Correct?</p> <p>5 A Uh-huh.</p> <p>6 Q And it seems to be from someone named Bob</p> <p>7 Kosovsky?</p> <p>8 A Uh-huh.</p> <p>9 Q The thing I want to ask you about is the</p> <p>10 "to" line, SMT-announce@societymusictheory.org.</p> <p>11 Do you recognize that e-mail?</p> <p>12 A Yes.</p> <p>13 Q Can you explain for the record what that</p> <p>14 e-mail is?</p> <p>15 A It's a Listserv where music theorists</p> <p>16 make announcements.</p> <p>17 Q And would you have received that e-mail?</p> <p>18 A Yes.</p> <p>19 Q And in fact I think you've testified you</p> <p>20 did receive that e-mail?</p> <p>21 A Correct.</p> <p>22 Q And this has the caption in the first</p> <p>23 line, "The Journal of Schenkerian Studies Volume 12</p> <p>24 2019 Call for Papers."</p> <p>25 Right?</p>	<p style="text-align: right;">Page 184</p> <p>1 to Philip Ewell, a direct invitation to</p> <p>2 Philip Ewell, that that is a very strange thing</p> <p>3 indeed.</p> <p>4 Q Now, I never said that it was a --</p> <p>5 somehow a direct invitation to you, but you did</p> <p>6 receive it; right?</p> <p>7 A I received it.</p> <p>8 Q It's an invitation to participate;</p> <p>9 correct?</p> <p>10 A Not to me specifically.</p> <p>11 Q You specifically received it on a</p> <p>12 Listserv that you subscribe to; correct?</p> <p>13 A Yeah, but thousands of people probably</p> <p>14 received that.</p> <p>15 Q And you didn't respond to it, in fact;</p> <p>16 right?</p> <p>17 A Along with -- along with other thousands</p> <p>18 of people that didn't respond, yeah. In fact, if I</p> <p>19 could say, Listservs aren't meant to be responded</p> <p>20 to.</p> <p>21 Q The statement that you never received an</p> <p>22 invitation to participate in the Journal of</p> <p>23 Schenkerian Studies, which was made repeatedly at</p> <p>24 this time, was false, however; correct?</p> <p>25 A No, I disagree.</p>
<p style="text-align: right;">Page 183</p> <p>1 A Correct.</p> <p>2 Q If I could ask you to just review that</p> <p>3 through the next page.</p> <p>4 And I was just going to ask if this is</p> <p>5 the call for papers that was sent out over the SMT</p> <p>6 Listserv, to the best of your knowledge?</p> <p>7 A Yes, to the best of my knowledge. Yeah.</p> <p>8 Q So to the extent that you've testified</p> <p>9 today that you didn't receive an invitation to</p> <p>10 participate in the Journal of Schenkerian Studies</p> <p>11 Volume 12, it's not because you weren't asked</p> <p>12 through this Listserv; it's because you weren't</p> <p>13 asked in the way that you would have preferred and</p> <p>14 thought of as industry standards?</p> <p>15 A Well, when you say, "would have preferred</p> <p>16 or thought of," I would go a step further and say in</p> <p>17 22 years, I've never heard of a general Listserv</p> <p>18 announcement making a call for papers tried to be</p> <p>19 substituted for a specific invitation to a person</p> <p>20 who -- whose work has been under scrutiny in</p> <p>21 responses as my work was with the Journal of</p> <p>22 Schenkerian Studies Volume 12.</p> <p>23 In fact, I would go so far as to say is</p> <p>24 that is so far outside of industry standards to --</p> <p>25 to think that this somehow represents an invitation</p>	<p style="text-align: right;">Page 185</p> <p>1 Q You disagree that this announcement was</p> <p>2 an invitation which you received to participate in</p> <p>3 the Journal of Schenkerian Studies?</p> <p>4 A Not --</p> <p>5 MR. PAINTER: Could you clarify who</p> <p>6 the announcement came from? Did this</p> <p>7 come from the Journal of Schenkerian</p> <p>8 Studies?</p> <p>9 BY MR. ALLEN:</p> <p>10 Q Do you see where it says, "forwarded</p> <p>11 message from" on page -2663?</p> <p>12 This is a question for you, Professor</p> <p>13 Ewell.</p> <p>14 A Oh, I see. Yes, I --</p> <p>15 Q Do you see the cc line, Levi Walls,</p> <p>16 LeviWalls@MyUNT.edu?</p> <p>17 A Uh-huh.</p> <p>18 Q And it says, "Forwarded message from:</p> <p>19 Levi Walls," the same e-mail, "LeviWalls@MyUNT.edu.</p> <p>20 Correct? Did I read that right?</p> <p>21 A Yes.</p> <p>22 Q Do you know who Levi Walls is?</p> <p>23 A He was one of the student editors, I</p> <p>24 believe, of the journal issue.</p> <p>25 Q And do you know who Bob Kosovsky is?</p>

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<p style="text-align: right;">Page 186</p> <p>1       A       I -- I know the name. I think he's</p> <p>2       somebody at SMT. He might have been a -- like an</p> <p>3       executive director of the Society for Music Theory,</p> <p>4       but I --</p> <p>5       Q       And do you --</p> <p>6       A       -- I don't think I've ever met him.</p> <p>7       Q       And do you have any reason to believe</p> <p>8       that this wasn't a message, the call for papers,</p> <p>9       forwarded to the SMT-announce list by Levi Walls?</p> <p>10      A       I think it was such a message.</p> <p>11      Q       Okay. And you received it, which we've</p> <p>12      already discussed?</p> <p>13      A       Yes.</p> <p>14      Q       And it is an invitation to participate in</p> <p>15      the journal; correct?</p> <p>16      A       Yes.</p> <p>17      Q       It's just not the one that you wanted?</p> <p>18      A       It's not the one that anybody who</p> <p>19      actually -- whose work is under scrutiny would</p> <p>20      expect. It's just not what happens. It never</p> <p>21      happens that way.</p> <p>22      Q       Did this call for papers dehumanize you?</p> <p>23      A       I can't comment on that.</p> <p>24      Q       Does that -- you can't comment on it</p> <p>25      because it's not true or it is true and you don't</p>	<p style="text-align: right;">Page 188</p> <p>1       A       Ben Graf was the other student -- to my</p> <p>2       knowledge, to my recollection, the other student</p> <p>3       editor of the journal issue, Levi Walls and Ben</p> <p>4       Graf.</p> <p>5              I think that they were both mentioned in</p> <p>6       that ad hoc panel, which is when I found out, if --</p> <p>7       if I remember correctly, that they were in fact the</p> <p>8       student editors.</p> <p>9              And, of course, Timothy Jackson and</p> <p>10      Stephen Slottow were also mentioned in that ad hoc</p> <p>11      panel as the editorial advisors, I think, the</p> <p>12      faculty, and the editors, the -- the two graduate</p> <p>13      students, Levi Walls and Ben Graf.</p> <p>14              And what else about Ben Graf? He -- I</p> <p>15      presumed that both students were graduate students</p> <p>16      working with Schenkerian studies, potentially with</p> <p>17      one of two faculty advisors.</p> <p>18      Q       Uh-huh.</p> <p>19      A       Excuse me.</p> <p>20              That's my recollection of -- of Ben Graf.</p> <p>21      Q       So did you know Ben Graf before this</p> <p>22      episode in late 2020?</p> <p>23      A       I do not think so, no.</p> <p>24      Q       Were you aware that Benjamin Graf was on</p> <p>25      faculty at University of North Texas at this time?</p>
<p style="text-align: right;">Page 187</p> <p>1      want to comment on it?</p> <p>2      A       Just because I -- it's a very difficult</p> <p>3      thing to think about. I'd have to think about</p> <p>4      whether it dehumanized me.</p> <p>5              I -- I hesitate to say whether it</p> <p>6      dehumanized me.</p> <p>7              What I would prefer to say is that this</p> <p>8      is not the way colloquies or symposia happen in</p> <p>9      academia.</p> <p>10     Q       Do you find anything objectionable --</p> <p>11     objectionable about the call for papers itself?</p> <p>12     A       Actually, if I remember, they just had</p> <p>13     mis- -- mis- -- misquoted something I said, but it's</p> <p>14     so -- it's so minimal that -- that I don't -- I</p> <p>15     wouldn't really raise any objection.</p> <p>16              Something here written is not exactly</p> <p>17     what I said at that plenary session. And that's</p> <p>18     what happens of course when you take a plenary</p> <p>19     session.</p> <p>20     Q       I want to talk about the role of two</p> <p>21     individuals at the University of North Texas: One</p> <p>22     is a defendant named Benjamin Graf and the other is</p> <p>23     someone we've already discussed in -- a little bit</p> <p>24     named Levi Walls. Let me start with Mr. Graf.</p> <p>25              Who is Benjamin Graf?</p>	<p style="text-align: right;">Page 189</p> <p>1      A       No, I thought he was a grad student.</p> <p>2      Q       And had you had any contact with him when</p> <p>3      he was the editor of the Journal of Schenkerian</p> <p>4      Studies?</p> <p>5      A       Somebody sent me -- after the issue came</p> <p>6      out, I think one of those two people, Levi Walls or</p> <p>7      Ben Graf, sent me a PDF of the journal issue because</p> <p>8      I had not been sent a copy --</p> <p>9      Q       Uh-huh.</p> <p>10     A       -- physical or otherwise.</p> <p>11              And I do remember, I think -- I think on</p> <p>12     a Twitter direct message hearing from one or both of</p> <p>13     them just kind of explaining, saying, I'm sorry this</p> <p>14     happened.</p> <p>15              Because it, you know, it had blown up, to</p> <p>16     a large extent.</p> <p>17              And -- and me replying, It's okay.</p> <p>18              I mean, it's --</p> <p>19     Q       Uh-huh.</p> <p>20     A       These things happen, I guess, yeah.</p> <p>21     Q       Do you remember the exact words that</p> <p>22     either of them used?</p> <p>23     A       No, I do not.</p> <p>24     Q       Okay. And I believe from your testimony</p> <p>25     today you've deleted your Twitter account?</p>



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1	A	Yes.	1		Dated July 25, 2020, was marked for
2	Q	So those are no longer retrievable?	2		identification.)
3	A	Not by me.	3		COURT REPORTER: Thank you.
4	Q	Now, I asked -- I asked you about	4	BY MR. ALLEN:	
5		Benjamin Graf.	5	Q	And while you are reviewing that, it's a
6		But let me ask the same question about	6		one-page document which seems to be the printout of
7		Levi Walls, although I know you've answered some of	7		a Facebook exchange; is that correct?
8		that.	8	A	Uh-huh. Uh-huh.
9		What was your understanding of the role	9	Q	And it's dated July 25th, 2020.
10		in -- of Levi Walls in the journal in July of 2020?	10		MR. ALLEN: I'm going to inform the
11	A	I -- i thought he was a graduate student	11		people online here that it's marked in
12		editor of the Journal of Schenkerian Studies, as I	12		your exhibit pack as 03UNT0441.
13		thought Ben Graf was, too.	13		And you'll see that Bates stamp in
14	Q	Have you met with Benjamin Graf since	14		the lower right-hand corner but it may
15		that time?	15		not be legible because it's printed black
16	A	I saw Ben Graf at the Pedagogy into	16		on black.
17		Practice conference that happened not too long ago.	17	BY MR. ALLEN:	
18		And as far as I know, that's the first	18	Q	So is this a message you remember getting
19		time I've ever met him in person. And we had lunch	19		via Facebook?
20		with a big group of people.	20	A	I certainly do now, yes. Uh-huh.
21	Q	Did he talk about the Journal of	21	Q	And that's your, I guess, avatar there,
22		Schenkerian Studies with you at all at that lunch?	22		the -- the charming fellow playing the cello?
23	A	He did not.	23	A	Correct. Yeah.
24	Q	What did you talk about, if I may ask?	24	Q	And Benjamin Graf said to you, "At this
25	A	Music theory pedagogy. There were six of	25		time, the JSS would likely welcome a response from
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1		us at a table and we had a nice lunch.	1		you."
2		We talked about these issues -- I	2		Right?
3		imagine -- I mean, I knew the name from the ad hoc	3	A	Yes.
4		panel and also he -- he -- he's still at University	4	Q	And JSS stands for Journal of Schenkerian
5		of North Texas, I think, Ben Graf.	5		Studies?
6		So -- but I think he knew that he, you	6	A	Uh-huh.
7		know, wasn't to -- I -- I -- I presume that he was	7	Q	Was that dehumanizing?
8		told by someone, Don't talk with people about this	8	A	No.
9		and with Philip Ewell either.	9	Q	And then he says he felt -- or, "We felt
10		So that's not something I pried and I	10		uneasy about the situation from the beginning."
11		wouldn't want to.	11		Do you see where he says that in the next
12	Q	Did he tell you that?	12		sentence after --
13	A	Oh, I can't recall. I can't recall	13	A	Uh-huh.
14		whether we even mentioned the Journal of Schenkerian	14	Q	Did you have any discussion with him
15		Studies, to be honest.	15		about how he felt so-called uneasy from this
16		But I do remember that there was no	16		beginning?
17		substantive conversation.	17	A	No.
18	Q	Okay.	18	Q	He also claimed to get, quote,
19		MR. ALLEN: I'm going to mark for	19		significant pressure from the advisory board.
20		the record Exhibit 7.	20		Do you see that?
21		COURT REPORTER: One moment.	21	A	I'd like to find it here.
22		If I could, sir.	22		MR. PAINTER: In the middle here.
23		MR. ALLEN: Uh-huh.	23		THE WITNESS: Uh-huh. Okay.
24		(Whereupon, Plaintiff's Exhibit 7,	24	A	Uh-huh. Yes. Go.
25		Facebook Exchange, One-Page Document	25		

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<p style="text-align: right;">Page 194</p> <p>1 BY MR. ALLEN:</p> <p>2 Q Did he ever explain what he meant by</p> <p>3 that?</p> <p>4 A No, not to my recollection, no.</p> <p>5 Q If you skip down a few sentences, do you</p> <p>6 see the sentence that says, "I really enjoy</p> <p>7 reading"?</p> <p>8 A Uh-huh.</p> <p>9 Q It says -- he said to you here, "I really</p> <p>10 enjoy reading your blog post and the JSS advisors</p> <p>11 mentioned asking you about a response after your</p> <p>12 planned visit to UNT."</p> <p>13 Did I read that right?</p> <p>14 A Correct.</p> <p>15 Q Were you planning to visit the University</p> <p>16 of North Texas around this time?</p> <p>17 A Not around this time.</p> <p>18 Q What is he referring to when he says,</p> <p>19 "your planned visit"?</p> <p>20 A The planned visit was to have happened a</p> <p>21 year roughly beyond this. I think the fall -- if</p> <p>22 this is 2020, this -- I think the fall of 2021,</p> <p>23 perhaps, it was planned.</p> <p>24 Q The -- your visit, you mean?</p> <p>25 A Correct.</p>	<p style="text-align: right;">Page 196</p> <p>1 is, "Thanks, Ben. I understand the difficult</p> <p>2 position you were in. Yes, the next time we meet,</p> <p>3 I'd be happy to get a coffee. Best, Phil."</p> <p>4 Right?</p> <p>5 A Correct.</p> <p>6 Q And it sounds like you actually did meet</p> <p>7 for dinner?</p> <p>8 A Lunch, yeah.</p> <p>9 Q Lunch? Okay.</p> <p>10 A Uh-huh.</p> <p>11 Q What did you understand by the difficult</p> <p>12 position that Benjamin Graf was in?</p> <p>13 A Well, graduate students -- and I thought</p> <p>14 he was a graduate student -- I think he had been a</p> <p>15 graduate student at the University of North Texas</p> <p>16 right prior to this.</p> <p>17 But even so, I thought he was a graduate</p> <p>18 student, like Levi Walls, are under enormous</p> <p>19 pressure if they are caught between the faculty</p> <p>20 and -- and outward-facing scholarship, such as a</p> <p>21 journal.</p> <p>22 So it's very difficult to walk that line.</p> <p>23 That's what I was referring to.</p> <p>24 Q And having met Benjamin Graf in person,</p> <p>25 do you think of him as a weak person?</p>
<p style="text-align: right;">Page 195</p> <p>1 Q Ah.</p> <p>2 A And it was -- it was about Russian music</p> <p>3 theory, which is -- I'm a Russianist. That's</p> <p>4 what --</p> <p>5 Q Sure. Sure.</p> <p>6 A -- that's my field.</p> <p>7 Q And did that visit take place?</p> <p>8 A It did not.</p> <p>9 Q Why is that?</p> <p>10 A I cancelled it.</p> <p>11 Q Why did you cancel it?</p> <p>12 A Because I didn't want to go down to the</p> <p>13 University of North Texas.</p> <p>14 Q Why?</p> <p>15 A Because this was blowing up and I didn't</p> <p>16 want to be part of it.</p> <p>17 Q It was specifically because of the</p> <p>18 publication of the Journal of Schenkerian Studies</p> <p>19 Volume 12?</p> <p>20 A Among other things happening around this,</p> <p>21 yeah.</p> <p>22 Q So there was no opportunity for JSS</p> <p>23 advisors to ask you about a response at that visit?</p> <p>24 A After the journal issue had come out, no.</p> <p>25 Q And your response here in the gray bubble</p>	<p style="text-align: right;">Page 197</p> <p>1 A I don't know him well enough to comment</p> <p>2 on that.</p> <p>3 Q Do you think of him as in any way an</p> <p>4 uncourageous person?</p> <p>5 A Again, I -- I just don't know him well</p> <p>6 enough -- well enough to comment on that.</p> <p>7 Q In your experience of meeting him in</p> <p>8 person, did you have any reason to believe that he</p> <p>9 was lacking in courage in any way?</p> <p>10 A It was one lunch with five other people</p> <p>11 at the table. I really can't comment on that.</p> <p>12 Q And you've already testified that you</p> <p>13 thought he was a graduate student, not on faculty;</p> <p>14 right?</p> <p>15 A Correct.</p> <p>16 Q The fact that he was on faculty, does</p> <p>17 that change any of your testimony?</p> <p>18 A No. Because there are, as you know,</p> <p>19 many, many levels of faculty rank and levels of</p> <p>20 vulnerability.</p> <p>21 And I was presuming at the time, and I</p> <p>22 think accurately, that he was a graduate student.</p> <p>23 But if he were in fact faculty, I'm</p> <p>24 pretty sure that he was not a tenured faculty,</p> <p>25 because tenure is what actually gives you power at a</p>

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<p>1 university. So anyone who is not tenured walks a 2 very fine line.</p> <p>3 Q Do you know if Benjamin Graf benefited 4 from editing the Journal of Schenkerian Studies in 5 terms of advancing his career?</p> <p>6 A I imagine that there's some small 7 benefits, yeah, of -- of being listed as an editor 8 of a journal, yeah.</p> <p>9 Q He also says something here, you know, in 10 the middle of this post or exchange with you, "We 11 tried to distance ourselves from some of the content 12 of the responses as a result, but as you well know, 13 silence is complicity and I sincerely apologize for 14 that."</p> <p>15 Did I read that correctly into the 16 record?</p> <p>17 A Yes.</p> <p>18 Q What did you understand by this phrase, 19 "silence is complicity"?</p> <p>20 A I imagine since I had only seen a few of 21 the postings like on -- like on Twitter about some 22 of the content, that someone could have been saying 23 something at some point about some of the commentary 24 that was getting some pushback that we shouldn't be 25 publishing X, Y, or Z; right?</p>	<p>1 MR. ALLEN: -- so let's go off the 2 record.</p> <p>3 THE VIDEOGRAPHER: We are going off 4 the record. The time is 2:41. 5 (Whereupon, there was a recess taken 6 from 2:41 p.m. to 2:48 p.m.)</p> <p>7 THE VIDEOGRAPHER: We are going back 8 on the record. The time is 2:48.</p> <p>9 BY MR. ALLEN:</p> <p>10 Q So, Professor Ewell, I'm going to ask you 11 some questions about things that are in the 12 contemporaneous documents of the journal only for 13 the purpose of asking what you know about things 14 that are said about either your talk or the 15 individual's relationships to you and things like 16 that.</p> <p>17 A Uh-huh.</p> <p>18 Q So I'm going to ask that you look at 19 2657, UNT2657?</p> <p>20 A Uh-huh.</p> <p>21 Q This is an e-mail by your colleague, the 22 defendant, Ellen Bak- -- Bakulina --</p> <p>23 A Uh-huh.</p> <p>24 Q -- on December 1st, 2019. 25 Do you see that?</p>
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<p>1 Q Uh-huh.</p> <p>2 A And I presume that's what Ben is talking 3 about when he says, "silence is complicity."</p> <p>4 Q Was keeping silence about these 5 supposedly improper methods for contacting you also 6 complicity in the Journal of Schenkerian Studies?</p> <p>7 A No.</p> <p>8 Q So about this engagement that you, I 9 guess, cancelled to visit the University of 10 North Texas, is that a -- is that standard 11 professional comportment to cancel an engagement 12 you've already made to visit another school and --</p> <p>13 A No.</p> <p>14 Q -- give a talk?</p> <p>15 A No.</p> <p>16 Q If I could refer you back to Exhibit 17 Number 6, that's the rather thick packet?</p> <p>18 A Uh-huh.</p> <p>19 THE WITNESS: I'm sorry, Mr. Allen, 20 could I get a bathroom break?</p> <p>21 MR. ALLEN: Oh, absolutely.</p> <p>22 THE WITNESS: Yeah.</p> <p>23 MR. ALLEN: And there's no question 24 on --</p> <p>25 THE WITNESS: Uh-huh.</p>	<p>1 A Uh-huh.</p> <p>2 Q And I just want to direct your attention 3 to the first sentence.</p> <p>4 It says, "I just had a conversation with 5 a colleague about the SMT plenary session of which 6 Ewell's talk was a part and he told me that I should 7 have known all along -- told me what I should have 8 known all along because this was announced right 9 before the presentations that the plenary talks will 10 be published in Music Theory Spectrum."</p> <p>11 Did I read that correctly?</p> <p>12 A Yes.</p> <p>13 Q And is -- does that comport with your 14 memory of how that worked, that they were always 15 meant to be published in Spectrum from the get go?</p> <p>16 A No, I did actually -- I did not know that 17 back in 2019.</p> <p>18 Q So that, as you understood it, is not an 19 accurate statement?</p> <p>20 A Well, accurate for Ellen. Let me reread 21 it, what -- what you just wrote [sic].</p> <p>22 Not an accurate statement from me. I 23 didn't know that it was going to be published in 24 Music Theory Spectrum in 2019. I had never given a 25 plenary talk before November 2019.</p>

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1	Q So if you skip down to -2657 at the	1	A Uh-huh.
2	bottom there --	2	Q Right?
3	A Uh-huh.	3	A Uh-huh.
4	Q -- there's some sort of "from Ellen	4	Q Did Benjamin Graf ever discuss with you
5	Bakulina"?	5	agreeing that the call should go forward?
6	A Uh-huh.	6	A No.
7	Q Then it goes forward.	7	Q Is that consistent in your view with him
8	It says, "Dear Ellen, hyphen" -- or,	8	being pressured?
9	excuse me -- "comma, colleagues, comma."	9	A No, not pressured.
10	And that appears to be an e-mail signed	10	Q Does it look like he's opposing the
11	by Timothy Jackson.	11	publication --
12	Do you see that one that spills over to	12	A No.
13	the next page, UNT02658?	13	Q -- of some special symposium?
14	A To Levi Walls, to Timothy Jackson,	14	A No.
15	Benjamin Graf, Stephen Slottow, Diego Cubero, and	15	Q And, again, these were records disclosed
16	it's from Timothy Jackson?	16	to the so-called ad hoc panel.
17	Q Well, it's -- it's not entirely clear	17	A Uh-huh.
18	here, but if you see at the bottom, it says, "Best,	18	Q That's why I'm presenting it to you. All
19	Tim," at the bottom of the e-mail?	19	right.
20	A Of the next page, yeah.	20	Do you remember in July 27, 2020 an
21	Q Yes.	21	apology posted by Levi Walls on Facebook?
22	A Okay. Yeah.	22	A I -- I'm -- I wouldn't deny it existed.
23	Q So this message, "All things considered,	23	I don't recall it.
24	JSS" --	24	Q Let me ask it this way: Do you have no
25	A Uh-huh.	25	memory of it now as you sit here today because you
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1	Q -- "should go forward with the call as	1	think you didn't read it?
2	planned"?	2	A I -- if it were posted as a general
3	Right?	3	Facebook post, it's entirely possible I did not read
4	A Okay.	4	it.
5	Q Now, if we -- if we look up to the	5	If it were a direct message to me which I
6	previous e-mail which we were just talking about,	6	would have found because I did -- I dugged -- dug --
7	Ellen Bakulina says in her last sentence, "Does the	7	I dug -- digged -- I dug in my Facebook direct
8	prospective Spectrum publication means that" -- I	8	messages --
9	guess that's a typo -- "means that perhaps we should	9	Q Yes.
10	wait with our call for responses until after that	10	A -- and I would have found it, I presume.
11	publication appears."	11	So the -- I rarely read Facebook posts.
12	Did I read that right?	12	Q Okay.
13	A Yes.	13	A Although back then I was reading them
14	Q So they are addressing that within the	14	slightly more often than I -- certainly than I do
15	journal?	15	now.
16	A Uh-huh.	16	Q Yes.
17	Q Timothy writes this next e-mail, "The JSS	17	MR. ALLEN: I'm going to mark for
18	should go forward with the call as planned"?	18	the record -- record as Exhibit 8 a
19	A Uh-huh.	19	Facebook post by Levi Walls.
20	Q Right?	20	(Whereupon, Plaintiff's Exhibit 8,
21	And then do you see right under that,	21	Facebook Post by Levi Walls, was
22	Benjamin Graf on December 2nd, 2019, in the morning,	22	marked for identification.)
23	9:14 a.m. --	23	BY MR. ALLEN:
24	A Uh-huh.	24	Q And I just have one question, given your
25	Q -- writes, "I agree with Tim"?	25	previous answers to my questions.

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<p>1 I just want you to look at this, maybe</p> <p>2 briefly, and tell me if you remember reading this at</p> <p>3 the time?</p> <p>4 A Sure.</p> <p>5 MR. WALTON: Which document is this,</p> <p>6 Mr. Allen?</p> <p>7 MR. ALLEN: Thank you. I was going</p> <p>8 to just say that.</p> <p>9 This is also marked 08 Jackson 0234.</p> <p>10 MR. WALTON: Thanks.</p> <p>11 THE WITNESS: Okay.</p> <p>12 BY MR. ALLEN:</p> <p>13 Q So just, again, did you ever read this at</p> <p>14 the time?</p> <p>15 A I think I did.</p> <p>16 Q And in that case, you knew at that time,</p> <p>17 this date being dated July 27th, 2020; correct?</p> <p>18 A Uh-huh. Yeah.</p> <p>19 Q -- that Levi Walls, who you formerly</p> <p>20 testified you knew, was a graduate student working</p> <p>21 on the journal --</p> <p>22 A Uh-huh.</p> <p>23 Q -- was claiming to have no control over</p> <p>24 the content of the journal; right?</p> <p>25 A That's what it says here, yeah. I kind</p>	<p>1 There's an e-mail at the bottom of that</p> <p>2 page that says, "Walls, Levi," it gives his e-mail.</p> <p>3 And it says, "to me," meaning to Timothy Jackson.</p> <p>4 Do you see that?</p> <p>5 A Uh-huh.</p> <p>6 Q Could I ask you to review that e-mail?</p> <p>7 A Uh-huh.</p> <p>8 This is -2705, Bates number?</p> <p>9 Q UNT02705?</p> <p>10 A Uh-huh.</p> <p>11 Q An e-mail beginning on the bottom of that</p> <p>12 page dated November 15th, 2019?</p> <p>13 A Uh-huh.</p> <p>14 Okay.</p> <p>15 Q So this e-mail says in the second</p> <p>16 sentence that begins in that e-mail addressing</p> <p>17 Timothy Jackson, "You've likely heard about it" --</p> <p>18 referring to a particular Schenker paper from SMT --</p> <p>19 "as it caused quite a stir. I was very ambivalent</p> <p>20 about it because it suggested that analysis that</p> <p>21 utilizes levels of hierarchy is inherently racist</p> <p>22 which strikes me as naive."</p> <p>23 Did I read that correctly?</p> <p>24 A Yes.</p> <p>25 Q Do you understand this to be referring to</p>
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<p>1 of skimmed through it, yes.</p> <p>2 Q If you skip down to Jackson -235, that's</p> <p>3 the second page of this Exhibit Number 8?</p> <p>4 A Uh-huh.</p> <p>5 Q There's a second sentence that begins on</p> <p>6 the page, "However, after Philip Ewell's SMT</p> <p>7 presentation, Timothy Jackson decided that it was</p> <p>8 the responsibility of the journal to 'protect</p> <p>9 Schenkerian analysis.'"</p> <p>10 Then he says, "Although, after serious</p> <p>11 thought, I essentially agreed with Ewell's talk, it</p> <p>12 was not up to me what did or did not go into the</p> <p>13 journal."</p> <p>14 Did I read that correctly?</p> <p>15 A Yes.</p> <p>16 Q Is that your understanding at the time of</p> <p>17 what had happened inside the journal?</p> <p>18 A Among other things.</p> <p>19 Q Okay. Well, and I just want to focus on</p> <p>20 this thing for now.</p> <p>21 A Uh-huh.</p> <p>22 Q So now if I could get you to go back to</p> <p>23 Exhibit 6, that's the big packet?</p> <p>24 A Uh-huh.</p> <p>25 Q And go to UNT2705.</p>	<p>1 your paper at the SMT?</p> <p>2 A I think so.</p> <p>3 Q Does that sound like someone who agreed</p> <p>4 with your paper?</p> <p>5 A Agreed but misunderstood. "Inherently</p> <p>6 racist" is not something I would say, but yeah.</p> <p>7 Q So does that seem to suggest that he was</p> <p>8 lying in his Facebook post on July 27th, 2020?</p> <p>9 A No, because this is November 2019, after</p> <p>10 my talk -- a week after my talk. And the 2020</p> <p>11 Facebook that you just referenced was after the</p> <p>12 publication of the Journal of Schenkerian Studies.</p> <p>13 And apparently, Levi Walls had worked on</p> <p>14 that so had been kind of deeply involved in it. So</p> <p>15 clearly he changed some opinions.</p> <p>16 Q Don't you think he changed his opinions</p> <p>17 because the journal was attacked by almost every</p> <p>18 single academic in the SMT?</p> <p>19 A I disagree. I don't think every single</p> <p>20 academic attacked the journal.</p> <p>21 So that's -- that's -- to answer your</p> <p>22 question -- can you state the question again?</p> <p>23 Q You don't think that Levi Walls was</p> <p>24 posting an apologia on Facebook because the journal</p> <p>25 was being attacked as racist?</p>

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<p style="text-align: right;">Page 210</p> <p>1 A No.</p> <p>2 Q You don't think Levi Walls was</p> <p>3 misrepresenting his actual true feelings about your</p> <p>4 work because the entire Society for Music Theory had</p> <p>5 published an open letter condemning the Journal of</p> <p>6 Schenkerian Studies?</p> <p>7 A You say "entire Society for Music Theory"</p> <p>8 and it wasn't. It was 900 signatories. So they</p> <p>9 don't speak for absolutely 100 percent of the</p> <p>10 membership, obviously.</p> <p>11 And I don't believe that Levi Walls was</p> <p>12 misrepresenting his beliefs. I believe that they</p> <p>13 had changed, just from the two documents you showed</p> <p>14 me.</p> <p>15 Q He never said he changed his beliefs, did</p> <p>16 he?</p> <p>17 A Well, something changed, did they -- did</p> <p>18 they not -- did it not?</p> <p>19 Q Yeah, the thing that changed was the</p> <p>20 Journal of Schenkerian Studies came under attack;</p> <p>21 right?</p> <p>22 MR. PAINTER: Do you have a</p> <p>23 question?</p> <p>24 A Yeah, is there a question there?</p> <p>25</p>	<p style="text-align: right;">Page 212</p> <p>1 A Yes.</p> <p>2 Q And, again, this would have been within</p> <p>3 plus or minus a week of your talk; right?</p> <p>4 A A week, two weeks, yeah.</p> <p>5 Q Okay. And again it's by Levi Walls?</p> <p>6 A Uh-huh.</p> <p>7 Q Okay.</p> <p>8 A After -- after the talk. Let's not --</p> <p>9 not plus or minus. It's after, plus.</p> <p>10 Q Correct.</p> <p>11 Levi Walls writes to Dr. Jackson.</p> <p>12 Did I characterize that correctly?</p> <p>13 A It just says to me.</p> <p>14 Q Do you see it says, "Dear Dr. Jackson"?</p> <p>15 A Correct. Okay. Yes.</p> <p>16 Q And it says at the end, "Regards, Levi"?</p> <p>17 A Yes.</p> <p>18 Q And then he goes on in the second</p> <p>19 paragraph that begins in this e-mail, "Yes, the</p> <p>20 paper's willful ignorance of Schenker's Jewish</p> <p>21 identity is indeed troubling. That seems to mark it</p> <p>22 as implicitly antisemitic at the very least. I</p> <p>23 think that had he limited his criticisms to</p> <p>24 Schenker, the man, it would have been slightly less</p> <p>25 problematic. But his claim that the entire</p>
<p style="text-align: right;">Page 211</p> <p>1 BY MR. ALLEN:</p> <p>2 Q Did you understand my question?</p> <p>3 MR. ALLEN: Could you read back the</p> <p>4 question to the witness?</p> <p>5 (Whereupon, the referred-to text was</p> <p>6 read back by the court reporter.)</p> <p>7 BY MR. ALLEN:</p> <p>8 Q Is that question unclear to you?</p> <p>9 A No, it's not unclear. It's just a</p> <p>10 question of whether I agree with it or not.</p> <p>11 The Journal of Schenkerian Studies came</p> <p>12 under attack -- okay. Fair. I'll go ahead and say</p> <p>13 yes.</p> <p>14 Q Thank you.</p> <p>15 Could I direct your attention to</p> <p>16 UNT02707? That's the -- the next -- I want -- I</p> <p>17 know this is causing you to jump around.</p> <p>18 A Uh-huh.</p> <p>19 Q But, again, these were documents provided</p> <p>20 to the so-called ad hoc panel convened to --</p> <p>21 A Uh-huh.</p> <p>22 Q -- investigate my client.</p> <p>23 A Uh-huh.</p> <p>24 Q Do you see an e-mail at the bottom of</p> <p>25 that page from Monday, November 18th, 2019?</p>	<p style="text-align: right;">Page 213</p> <p>1 theoretical world view and, by extension, those who</p> <p>2 help spread it, is racist becomes very problematic</p> <p>3 when we consider the intimate connection between</p> <p>4 Schenkerian analysis and the Jewish identity."</p> <p>5 And then he ends that paragraph, "Ewell's</p> <p>6 talk certainly failed in that regard."</p> <p>7 Do you see that?</p> <p>8 A Uh-huh.</p> <p>9 Q So, again, is this consistent with a</p> <p>10 graduate student who agrees with your talk?</p> <p>11 A In November of 2019, it is.</p> <p>12 Q You think this indicates his agreement</p> <p>13 with your talk?</p> <p>14 A Oh no. No. No. No. I think that this</p> <p>15 does not in- -- indicate agreement.</p> <p>16 Q Okay.</p> <p>17 A I think that he had some qualms about my</p> <p>18 talk in November of 2019.</p> <p>19 I also would just point out the</p> <p>20 misreading that the entire theoretical world view is</p> <p>21 racist.</p> <p>22 It's a common misquotation attributed to</p> <p>23 me. I've seen it many times. But it's not true.</p> <p>24 I've never said that.</p> <p>25 And -- it -- I would love to see somebody</p>

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<p style="text-align: right;">Page 214</p> <p>1 actually point to where I wrote that because they</p> <p>2 would be looking for a very long time.</p> <p>3 Q Have you ever sought out Mr. Walls to</p> <p>4 discuss your work?</p> <p>5 A No.</p> <p>6 Q Has he ever sought out you to discuss</p> <p>7 your work?</p> <p>8 A Again, a direct message?</p> <p>9 There were a lot of -- a lot of</p> <p>10 communications going back and forth.</p> <p>11 I don't remember seeing -- I mean, in my</p> <p>12 Facebook direct messages, I searched.</p> <p>13 Q Uh-huh.</p> <p>14 A And that was a search term. So I -- did</p> <p>15 I have something in my Facebook direct messages?</p> <p>16 I mean, you -- you looked at it. I -- I</p> <p>17 can't recall.</p> <p>18 And it's possible that if it's not there,</p> <p>19 that it -- there was a Twitter direct message.</p> <p>20 Probably it would have happened in one of those two</p> <p>21 places if I had any contact with Levi Walls.</p> <p>22 Q And so to sum up, you don't recall that</p> <p>23 ever happening?</p> <p>24 A Correct.</p> <p>25 Q Okay. Let me ask you to jump to --</p>	<p style="text-align: right;">Page 216</p> <p>1 speaker I don't pay attention --</p> <p>2 Q Of course.</p> <p>3 A -- to the -- the Zoom gallery.</p> <p>4 But I just want -- since we are talking</p> <p>5 about Levi Walls, I did have -- I think I instigated</p> <p>6 an e-mail saying, I see you're giving a talk. I</p> <p>7 look forward to hearing your talk.</p> <p>8 And that's what it was.</p> <p>9 Q There was no more substantive discussion</p> <p>10 between you about that?</p> <p>11 A About -- that's correct.</p> <p>12 Q Okay. Could I ask you to skip to</p> <p>13 UNT02708?</p> <p>14 There's an e-mail here from Timothy</p> <p>15 Jackson to Mr. Levi Walls dated November 19th, 2019?</p> <p>16 A Uh-huh.</p> <p>17 Q And it appears to be from Timothy</p> <p>18 Jackson?</p> <p>19 He says, "Dear Levi, It occurred to me</p> <p>20 that it might be appropriate for the journal to</p> <p>21 solicit responsible -- responses to Ewell from a</p> <p>22 number of prominent Schenkerians."</p> <p>23 Did I --</p> <p>24 A Correct.</p> <p>25 Q -- read that --</p>
<p style="text-align: right;">Page 215</p> <p>1 A May I -- may I -- may I --</p> <p>2 Q Please.</p> <p>3 A -- qualify?</p> <p>4 I gave a talk -- a remote talk in Florida</p> <p>5 and -- and Levi Walls was also giving a talk at some</p> <p>6 point.</p> <p>7 And I recall, I -- it must have been from</p> <p>8 my Hunter e-mail because virtually all of these</p> <p>9 communications were professional and from my Hunter</p> <p>10 e-mail.</p> <p>11 I recall writing Levi Walls just saying,</p> <p>12 I see you are giving a talk in Florida.</p> <p>13 Q Uh-huh.</p> <p>14 A I look forward to listening to it.</p> <p>15 I don't think I was actually able to</p> <p>16 attend his --</p> <p>17 Q Uh-huh.</p> <p>18 A -- his virtual talk.</p> <p>19 Q Uh-huh.</p> <p>20 A And I also don't know whether he attended</p> <p>21 my virtual talk because it -- it wasn't one -- I</p> <p>22 don't think it was one where all the Zoom windows</p> <p>23 were available.</p> <p>24 Q Right.</p> <p>25 A Even if it was, as a -- as a keynote</p>	<p style="text-align: right;">Page 217</p> <p>1 Now, it's relatively long and I don't</p> <p>2 want to spend that time on it.</p> <p>3 But if we skip down to the next page,</p> <p>4 there's a response from Levi Walls; right?</p> <p>5 And this is November 19th, 2019 at</p> <p>6 3:16 p.m.?</p> <p>7 A Yes.</p> <p>8 Q And he writes, "Dear Dr. Jackson, I agree</p> <p>9 that a response in the JSS would be very</p> <p>10 appropriate. It would be nice to have it for the</p> <p>11 upcoming issue, although it is very forthcoming</p> <p>12 around mid-December. A response in Issue 13 would</p> <p>13 of course be quite late. Did you have any</p> <p>14 particular Schenkerians in mind? Dr. Graf and I can</p> <p>15 discuss some candidates tomorrow at our weekly</p> <p>16 meeting and get requests out as early as tomorrow</p> <p>17 evening."</p> <p>18 Did I read that right?</p> <p>19 A Yes.</p> <p>20 Q Does that sound like someone who has no</p> <p>21 control over the content of the journal?</p> <p>22 A No.</p> <p>23 Q One of Levi Walls' claims was that he was</p> <p>24 instructed by Timothy Jackson, something like, to --</p> <p>25 to censor people who were in favor of your paper.</p>

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1	Do you recall anything to that effect?	1	A Uh-huh.
2	A No.	2	Q But not Dr. Slottow?
3	Q Let me direct your attention to UNT02758.	3	A Uh-huh.
4	This time we'll be looking to the top of the page.	4	Q He says, "Dr. Graf and I were wondering
5	But before I ask you a question about	5	what your thoughts were concerning the submission
6	this communication internal to the journal, I want	6	from Clark Beaudoin" --
7	to ask if you remember in the UNT so-called ad hoc	7	A Beaudoin.
8	panel report --	8	Q Beaudoin.
9	A Uh-huh.	9	A Uh-huh.
10	Q -- a kind of very graphic description of	10	Q Thank you.
11	Mr. Walls being forced into Timothy Jackson's car	11	-- "and Lett. As you may have seen,
12	and coerced to basically publish something he didn't	12	these responses are, at least implicitly,
13	want to publish?	13	anti-Schenkerian. Despite disagreeing with much of
14	A I do remember something about a car,	14	what they have to say, Dr. Graf and I think it is
15	yeah.	15	important to publish these responses."
16	Q Okay. But you don't remember that in	16	Did I read that right?
17	detail?	17	A Yes.
18	A No, I don't.	18	Q So it sounds like he was in favor of
19	Q Right? Its connection to censorship?	19	publishing responses that were favorable to you;
20	A I do not, no.	20	right?
21	Q Okay. So if we look at the top of	21	A Correct.
22	page -- sorry, UNT2758, do you see how that e-mail	22	Q Do you know if those three responses were
23	is signed by Levi Walls?	23	in fact published?
24	A Uh-huh.	24	A They -- so Beaudoin, Lett, and Clark,
25	Q And if we look at the very bottom of the	25	yes. We're talking about Suzannah Clark, Harvard
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1	previous page, it states from February 13th,	1	University; Richard Beaudoin, Dartmouth College --
2	10:54 a.m.?	2	Q Uh-huh.
3	A Very bottom --	3	A -- Stephen Lett, who is no longer, I
4	Q Of the -- of the page -02757?	4	think, in the field.
5	A Two seven --	5	Q Is that consistent with someone who is
6	Q I'm sorry to jump around but the e-mail	6	being pressured not to publish these pro-Ewell
7	spills over --	7	papers?
8	A Uh-huh.	8	A Again, I would take issue with the
9	Q -- from one page to the next --	9	conflation of this timeline.
10	A Okay.	10	Q Uh-huh.
11	Q -- in an inconvenient way.	11	A Because we started with Levi Walls in
12	A Yeah. Could you say what you just said	12	July --
13	again?	13	Q Uh-huh.
14	Q So the e-mail is from Levi Walls; right?	14	A -- after the publication of Volume 12,
15	A Uh-huh.	15	and you've gone back to November.
16	Q It's dated February 13th?	16	Q Correct.
17	A 10:54 a.m.	17	A Now we are in February; right?
18	Q Yes.	18	So I think that it's quite reasonable to
19	A Uh-huh.	19	presume that once all of the journal responses were
20	Q It says, "To me" -- meaning Timothy	20	collated into an issue, it seems that Levi Walls
21	Jackson -- "and Benjamin Graf."	21	read it and then began to take issue with some of
22	Did I read that right?	22	the points that were being raised there and so
23	A Correct.	23	essentially -- well, as I said, changing his
24	Q He writes, "Dear Dr. Jackson," he copies	24	opinion.
25	some other people who are working on the journal?	25	Which, over the course of eight months,



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Page 222	1 is not so unreasonable, I think. 2 Q Isn't the simpler explanation that at the 3 moment it appeared there was a massive social media 4 attack on the journal and they, quote, changed their 5 mind? 6 MR. PAINTER: Asks for speculation. 7 BY MR. ALLEN: 8 Q That's all right. You can answer. 9 THE WITNESS: Do I have to? 10 MR. PAINTER: You should give some 11 answer, whatever answer you think 12 is the -- 13 THE WITNESS: Okay. 14 A Can you repeat the question, please? 15 BY MR. ALLEN: 16 Q Isn't the simplest explanation that they 17 were attacked on social media and by the SMT and by 18 everyone claiming the journal was racist and they, 19 quote, changed their mind then? 20 A No. 21 Q You don't find that plausible at all, do 22 you? 23 A I wouldn't say plausible at all. I would 24 say that's not the actual issue, though. 25 Q Somehow they are saying at the time the	Page 224	1 to JSS authors and advisory board; do you see that? 2 A Yeah, start- -- 3 Q Oh, sorry, I should say, the bottom of 4 the page? 5 A Uh-huh. Yeah. 6 Q March 14th, 2020? 7 A Uh-huh. 8 Q And I'm just going to represent to you 9 this was the time when the special volume -- the 10 special symposium and the entire Volume 12 went to 11 the press. 12 A Okay. 13 Q So it was finished in its editorial phase 14 and it was just going into production. 15 A Uh-huh. 16 Q Just going to skip down past the numeral 17 three on that bottom of that page; do you see that? 18 A Uh-huh. 19 Q "Levi Walls has done excellent work on 20 this volume and the journal will be in good hands as 21 he takes over sole editorship of the JSS. In my 22 view, the additional content that we collected this 23 winter following Ewell's SMT plenary makes a great 24 addition to an already remarkable publication." 25 Did I read that correctly?
Page 223	1 journal articles are being gathered and published, 2 they -- Levi Walls disagrees with your work? 3 A Uh-huh. 4 Q They want to solicit these papers, they 5 want to solicit others. 6 And then all of a sudden, they change 7 their mind after the journal comes out? 8 A I think it's probably a little bit of 9 both, don't you? 10 Q Well, I'm not the one testifying. 11 A That's true. I apologize. 12 I think it's entirely reasonable, 13 however, to think that two things can be true at 14 once. 15 Q Do you know that after the attack on the 16 journal, Levi Walls openly expressed his fear for 17 his career? 18 A I do not know that. 19 Q Just one last example here. If you could 20 skip to UNT02697? 21 A Six, nine -- six, nine, seven. I'm in 22 the sevens... 23 Q -2697? 24 A -2697, yes. 25 Q And this is an e-mail from Benjamin Graf	Page 225	1 A Yes. 2 Q Is that consistent with Benjamin Graf 3 telling you in his Facebook message to you that, I 4 don't know, he was complicit in some sort of 5 silence? 6 A Huh. 7 Q Or he didn't want to do it or -- 8 A No. 9 Q Okay. He says, "Cheers getting this to 10 press." 11 Right? 12 A Uh-huh. Yes. 13 Q Then on March 20, there's another message 14 from Ben Graf to Barry Wiener, maybe pronounced it 15 Wiener. 16 You would know? 17 A I don't know. 18 Q You don't know. 19 Was Barry Wiener critical of you or in 20 favor of you? 21 A Critical. 22 Q Ben Graf writes to a critical respondent, 23 I suppose we'll call him, "Thank you, Barry. I 24 should note that I enjoyed reading your response to 25 Ewell."

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1	Did I read that correctly?	1	A Correct.
2	A Yes.	2	Q And I understand she's no longer there.
3	Q Do you have any reason to believe that	3	So if you skip down a few pages, you'll
4	Benjamin Graf would lie about that?	4	see that there's an attachment that says, "Dear Dean
5	A No.	5	Richmond"?
6	MR. ALLEN: I think I have one last	6	A Uh-huh. "Dear Dr. Richmond," yeah.
7	document to present to you and I think we	7	Q Uh-huh. And you'll see -- I just want
8	will probably be able to wrap this up.	8	to -- you see how there's a subheading A, close
9	I can't promise that Benjamin Walton	9	paren?
10	won't have some questions for you.	10	A Uh-huh.
11	THE WITNESS: Sure.	11	Q I guess it's the third paragraph.
12	MR. ALLEN: But let me move on.	12	A Uh-huh.
13	I'm going to -- we're done talking	13	Q She gives a little bit of a history of
14	about Mr. Walls and Mr. Graf.	14	her participation in the journal?
15	I want to ask you some additional	15	A Uh-huh.
16	questions about your colleague, Ellen	16	Q And then she also says -- I'm just going
17	Bakulina.	17	to begin with the sentence, "The e-mails were an
18	THE WITNESS: Bakulina.	18	exchange."
19	MR. ALLEN: So if I could mark this	19	Do you see that?
20	for the record. We are introducing here	20	A One second.
21	Exhibit Number 9. This is marked in the	21	Q Third sentence?
22	exhibit folder 06 UNT2559.	22	A Yes. Go.
23	(Whereupon, Plaintiff's Exhibit 9,	23	Q "The e-mails were an exchange of opinions
24	Document Presented to Ad Hoc Review	24	on Ewell's keynote talk. They led to another string
25	Panel, was marked for	25	of e-mails which were directly related to the call

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1	identification.)	1	for responses. The string was initiated by Levi
2	MR. ALLEN: Sorry.	2	Walls whose initial e-mail, November 25th, 2019, was
3	BY MR. ALLEN:	3	sent to several theory faculty, included some that
4	Q Now, before you look at this, again, I'm	4	are not on the JSS editorial board. The second
5	not suggesting that you know anything about this	5	e-mail exchange led to the formulation of the call.
6	document.	6	I discussed the formulation with the editors but
7	It's because some things are represented	7	didn't make any substantive suggestions."
8	about you in the document that I want to ask you	8	A You said "editors" when it said "others,"
9	questions about it.	9	but aside from that, yes.
10	A Sure.	10	Q I apologize for misspeaking and thanks
11	Q This is also a document that was	11	for catching that.
12	presented to the so-called ad hoc journal review	12	A Uh-huh.
13	panel that UNT convened to investigate solely	13	Q Now, did Ellen Bakulina ever talk to you
14	Timothy Jackson for the supposed whatever they	14	about her role on the journal?
15	thought the journal of Schenkerian studies did	15	A No.
16	wrong, I suppose.	16	Q So you don't know whether she's
17	And you can see that in the header; do	17	representing this accurately or not?
18	you see that in the first message?	18	A Correct.
19	A "Talk with UNT ad hoc journal review	19	Q If you could skip down to UNT02560.
20	panel"?	20	And this is one of the infelicities of
21	Q Yes?	21	electronic documents.
22	A Yes.	22	A Uh-huh.
23	Q And that's Ellen Bakulina --	23	Q But do you see there's a page number
24	A Uh-huh.	24	smack in the middle of the page number three?
25	Q -- and her e-mail at UNT?	25	A Uh-huh.

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<p>1 Q I want you to look at the paragraph right 2 before that? 3 A "In retrospect"? 4 Q Correct. 5 A Uh-huh. 6 Q This is Ellen Bakulina in a letter to her 7 dean, who is Dean Richmond. 8 "In retrospect, I regret that I did not 9 contact Ewell to ask if he would like to write a 10 response to the responses or to simply inform him 11 about what is happening in JSS. A lack of such 12 timely contact with Ewell on part -- on the part of 13 JSS editorship is part of what is currently being 14 condemned on social media. In fact, I did think of 15 contacting him in December 2019, partly because he 16 is a long-time friend and a former mentor of mine." 17 Did I read that correctly? 18 A Yes. 19 Q Now, you've testified today that she did 20 contact you in around that timeframe; right? 21 A Yes. I would say it was probably 22 February 2020. 23 Q But at that time she expressed no concern 24 that you hadn't been personally invited? 25 A The only thing that was stated in her</p>	<p>1 Q Uh-huh. 2 A And to be honest, I didn't know if Ellen 3 Bakulina, who is a Russianist -- 4 Q Uh-huh. 5 A -- like me, whether she was involved with 6 journal at all in any capacity, whatsoever. And -- 7 Q If she -- 8 A If I may. 9 Q Please. 10 A And therefore it didn't even strike me 11 to -- to wait for an invitation from Ellen Bakulina 12 because I just didn't think she was involved with 13 the production of this journal. 14 Q Right. And does this message to the dean 15 of her school of music clarify that she was indeed 16 involved in the production of the journal, at least 17 in the fall and winter of 2020? 18 A Well, what you've read confirms that she 19 regrets that she did not contact me. 20 It doesn't really clarify what role she 21 played, if any, in the journal's structure. And she 22 may have had a role, maybe on the editorial board. 23 I don't know. 24 Q And also, I believe I misspoke. I meant 25 fall and winter of 2019, not fall and winter of</p>
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<p>1 e-mail was -- it was maybe one sentence and it 2 was -- the title of the -- the subject title was 3 "JSS responses." 4 Q Uh-huh. 5 A And it was of the order, "Dear Phil, Do 6 you have any questions about" -- 7 Q Uh-huh. 8 A -- "these JSS responses," because the 9 call for papers had gone out. 10 So I was aware at that point that -- 11 Q Uh-huh. 12 A -- that this was being put together. 13 And as I said earlier, I responded, No, I 14 have no questions. 15 Q And she doesn't say anything about that 16 here, does she? 17 A She does not. 18 Q Do you know of any reason that she lacked 19 the power to invite you personally? 20 A I presume I -- I presume that she was not 21 part of the backbone of the Journal of Schenkerian 22 Studies. 23 As it -- as it was shown in the ad hoc 24 report, Steven Slottow and Timothy Jackson were the 25 editorial advisors.</p>	<p>1 2020. That was when -- 2 A Uh-huh. Nineteen going into '20. 3 Q Yes. 4 Do you -- this is true that -- what she 5 says here that you were long-time friends and she 6 was a former mentee of yours; right? 7 A Yeah, I -- I mentioned that she -- that I 8 was on her dissertation committee -- 9 Q Uh-huh. 10 A -- when she was at the graduate center, 11 yes. 12 Q Are you still in regular contact with 13 her? 14 A Regular, no. I haven't heard from her in 15 a while. 16 Q Okay. 17 A If I could try to say when, it would 18 be -- it actually was some -- let's call it, five, 19 six months ago because she's working on a project -- 20 this is irrespective of the Journal of Schenkerian 21 Studies or the University of North Texas -- Thomas 22 Christensen, Carmel Raz, and one other person are 23 putting together this big, thick, multi-volume work 24 on music theory. 25 And Ellen is kind of spearheading some of</p>

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<p>1 the Russian music theory aspects. And she and</p> <p>2 Thomas Christensen, a music theorist -- music</p> <p>3 theorist at the University of Chicago, invited me to</p> <p>4 write a section on -- on the music theorist Modest</p> <p>5 Rezvoi, who was a Russian music theorist who in</p> <p>6 198 -- sorry, 1830 translated some very significant</p> <p>7 terms.</p> <p>8 Q And can I just interrupt you to say that</p> <p>9 she's involved in a very significant work of</p> <p>10 scholarship?</p> <p>11 A Yes.</p> <p>12 Q Do you know her to be an especially</p> <p>13 fragile individual?</p> <p>14 A I -- I can say with a little bit more</p> <p>15 certainty than -- because you asked the same</p> <p>16 questions of Ben Graf, I think.</p> <p>17 She -- could you clarify "fragile</p> <p>18 individual," in what respect?</p> <p>19 Q Well, do you know that she is afraid to</p> <p>20 speak her mind?</p> <p>21 A Yeah. Yeah. Occasionally, yes.</p> <p>22 Q And do you think she's particularly</p> <p>23 cowardly?</p> <p>24 A I wouldn't use the word "cowardly," but I</p> <p>25 also wouldn't say "forceful" and -- and "ambitious"</p>	<p>1 A Correct. She did not.</p> <p>2 Q Do you know of any reason she couldn't</p> <p>3 have spoken up if she really did object to that at</p> <p>4 the time?</p> <p>5 A Other than the fact that she's pre-tenure</p> <p>6 and pre-tenure people are in fact, as you know,</p> <p>7 vulnerable and often hesitant to speak up.</p> <p>8 Q She wasn't hesitant to speak up when she</p> <p>9 condemned Timothy Jackson, was she?</p> <p>10 A I don't know how she condemned --</p> <p>11 condemned Timothy Jackson.</p> <p>12 Q Do you know that the faculty circulated a</p> <p>13 petition condemning -- condemning Timothy Jackson</p> <p>14 after the publication in July 25, 2020?</p> <p>15 A I think I have a recollection of that.</p> <p>16 I -- I can't specifically say.</p> <p>17 Q Her lack of tenure didn't prevent her</p> <p>18 from signing onto that, did it?</p> <p>19 A And 900 people signed an anti-racist</p> <p>20 letter to SMT, most of whom I would presume were</p> <p>21 un-tenured also, so...</p> <p>22 Q So she had at least enough civil courage</p> <p>23 to do that; right?</p> <p>24 A Civil courage?</p> <p>25 Yeah, let's just say that she signed the</p>
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<p>1 and I wouldn't say the opposite of "cowardly"</p> <p>2 either.</p> <p>3 Q Do you know of any reason she couldn't</p> <p>4 have spoken up and said you needed to be invited,</p> <p>5 for instance?</p> <p>6 A I think probably because she was</p> <p>7 pre-tenure, if I'm not mistaken. I think she was at</p> <p>8 this time.</p> <p>9 Q Do you know that she was threatened with</p> <p>10 a denial of tenure if she spoke up in some way?</p> <p>11 A No, I do not know that.</p> <p>12 Q And in fact, she did feel at least</p> <p>13 comfortable enough to reach out to you?</p> <p>14 A Correct.</p> <p>15 Q But she didn't mention any of these three</p> <p>16 concerns at the time that you said were hallmarks of</p> <p>17 the improper publication of Volume 12?</p> <p>18 And let me list them: The anonymous</p> <p>19 publication, right; the failure to invite you in</p> <p>20 person; and I believe you said the failure to have</p> <p>21 peer review of the article; right?</p> <p>22 A Uh-huh. Yeah.</p> <p>23 I didn't use the word "hallmarks," but</p> <p>24 yes, you remembered the three points, correct.</p> <p>25 Q She didn't mention any of those things?</p>	<p>1 letter, yes, she did.</p> <p>2 Q So just to close this off, the things</p> <p>3 that she's representing here to her dean and by</p> <p>4 extension, the so-called ad hoc panel investigating</p> <p>5 the journal and Timothy Jackson, you didn't discuss</p> <p>6 this with her?</p> <p>7 A No.</p> <p>8 Q And you haven't discussed it since?</p> <p>9 A No.</p> <p>10 Q Okay.</p> <p>11 MR. ALLEN: Can we go off the</p> <p>12 record?</p> <p>13 THE VIDEOGRAPHER: We are going off</p> <p>14 the record. The time is 3:28.</p> <p>15 (Whereupon, there was a recess taken</p> <p>16 from 3:28 p.m. to 3:32 p.m.)</p> <p>17 (Whereupon, Plaintiff's Exhibit 10,</p> <p>18 E-mail Exchange Between Philip Ewell</p> <p>19 and Rachel Gain, was marked for</p> <p>20 identification.)</p> <p>21 THE VIDEOGRAPHER: We are going back</p> <p>22 on the record. The time is 3:32.</p> <p>23 BY MR. ALLEN:</p> <p>24 Q Professor Ewell, I'm marking for the</p> <p>25 purposes of the record Exhibit Number 10.</p>

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<p>1 This is an e-mail exchange with what 2 appears to be you and a defendant named Rachel Gain. 3 It is Bates-stamped UNT1146. 4 Do you recognize this document? 5 A Yes. 6 Q Do you remember sending this document? 7 A Yes. 8 Q Do you know who Rachel Gain is? 9 A She was a graduate student at UNT. I 10 believe she's at Yale University now. 11 Q Your alma mater? 12 A My alma mater. That's right. Not -- 13 Q Have you had -- 14 A -- far from here. 15 Q Have you had any further contact with 16 her? 17 A I gave a talk at Yale -- two things: The 18 same talk in Florida, the virtual talk I gave -- 19 Q Uh-huh. 20 A -- was also attended, probably virtually, 21 by Rachel Gain. And when I e-mailed -- I think I 22 may have e-mailed from my Hunter e-mail both Levi 23 Walls and Rachel Gain and -- essentially saying hi. 24 You know, I had had this e-mail -- this 25 Facebook exchange with Levi Walls -- Walls or Wall?</p>	<p>1 circumstances of the publication of Volume 12 of the 2 JSS? 3 A No. 4 Q Did she discuss with you any of her 5 criticisms of Timothy Jackson? 6 A No. 7 Q And this e-mail seems to have been 8 initiated by her; correct? 9 A Correct. 10 Q And she e-mails you on July 27th, 2020, 11 at 7:30 in the evening, an apology from the UNT 12 graduate students; right? 13 A Correct. 14 Q Do you know why she was claiming to speak 15 on behalf of the UNT graduate students? 16 A I thought at the time -- I think that she 17 had some type of student counsel leaders position 18 where she -- I don't know if it's elected or 19 something, but, you know, there was a student body, 20 graduate student alliance. You know, graduate 21 students have organizations among them. 22 And I think that she was contacting me 23 kind of on -- maybe it's even said here that -- the 24 graduate student -- 25 Yeah, so that's my -- my recollection</p>
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<p>1 Q Walls. 2 A With an "S"? 3 Q Yeah. 4 A Okay. With -- yeah. 5 Q To interrupt you, just for the record, 6 you were -- when you said, "this," you were 7 referring to the exhibit -- 8 A Exhibit 7. 9 Q Thank you. 10 A Uh-huh. And this note from -- in -- in 11 Exhibit 10 from Rachel Gain. And I had sent an 12 e-mail essentially saying the same thing that I said 13 to Levi Walls, which is, I look forward to your 14 talks. I'm giving a talk. I hope to see you there. 15 Q Uh-huh. 16 A And then I gave an in-person talk at Yale 17 University fall of '22. 18 Q Uh-huh. 19 A It was whenever Rachel Gain moved. She 20 was there at the talk. 21 Q Uh-huh. 22 A And along with maybe a hundred other 23 people and -- and I saw her. It was the first time 24 I've ever physically met Rachel Gain. 25 Q Did she discuss with you any of the</p>	<p>1 is -- the MHTE graduate student body -- oh, and she 2 was the vice president. There it is. 3 So I'm looking at the third page. 4 Q Yes. 5 A I don't want to do your job for you 6 but -- 7 Q No, go ahead. 8 A But yeah, on the third page the actual 9 apology that they were writing was from the 10 president -- it seems there are two presidents and 11 then a vice president, Rachel Gain, of the MHTE 12 graduate student body. 13 I do not know what MHTE stands for. 14 Q Just for the record, do you see where it 15 says "Division of Music History, Theory, and 16 Ethnomusicology" in the top of that letter? 17 A In the -- I see actually in the top of 18 the email on the very first page that that's listed, 19 so that must be MHTE. 20 Q Correct. 21 A Uh-huh. 22 Q All right. So in this letter of apology 23 that I suppose these MHTE graduate students sent to 24 you, do they discuss anything about the three 25 objections that you had to the Journal of</p>

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<p style="text-align: right;">Page 242</p> <p>1 Schenkerian Studies in Volume 12?</p> <p>2 Again, the anonymous publication, the</p> <p>3 failure to peer review, and the failure to reach out</p> <p>4 to you individually?</p> <p>5 A Well, I -- I don't recall, but the actual</p> <p>6 apology is on the third page of your exhibit.</p> <p>7 And I don't know if they -- may I read</p> <p>8 this and --</p> <p>9 Q Please.</p> <p>10 A -- and then we can actually just put --</p> <p>11 put some teeth onto that question.</p> <p>12 Okay. It seems they did not mention any</p> <p>13 of those three specific things.</p> <p>14 Q They are just engaging with what we might</p> <p>15 call viewpoints; correct?</p> <p>16 A Yeah, I would say opinions but yeah,</p> <p>17 sure, viewpoints.</p> <p>18 Q Fine. And in fact, they say in her cover</p> <p>19 e-mail to you: "I would also like to offer my</p> <p>20 personal apologies for everything that has happened.</p> <p>21 There are no excuses for the views published,</p> <p>22 platform [sic], and encouraged by our department's</p> <p>23 publication and faculty members. I am sincerely</p> <p>24 sorry."</p> <p>25 Right?</p>	<p style="text-align: right;">Page 244</p> <p>1 the record. The time is 3:39.</p> <p>2 (Whereupon, there was a recess taken</p> <p>3 from 3:39 p.m. to 3:47 p.m.)</p> <p>4 THE VIDEOGRAPHER: We are going back</p> <p>5 on the record. The time is 3:47.</p> <p>6 MR. WALTON: Dr. Ewell, we are back</p> <p>7 after a brief break and it's now my turn</p> <p>8 to ask a few questions.</p> <p>9 I'll try -- try to keep these as --</p> <p>10 as targeted as possible.</p> <p>11</p> <p>12 CROSS-EXAMINATION</p> <p>13</p> <p>14 BY MR. WALTON:</p> <p>15 Q Just, first off, it's nice to meet you</p> <p>16 remotely. Sorry I couldn't be there in person.</p> <p>17 But to clarify for the record, you and I</p> <p>18 have never spoken before right now; correct?</p> <p>19 A That is correct.</p> <p>20 Q Okay. Could you -- I -- I know there's</p> <p>21 been a lot of talk back and forth throughout the</p> <p>22 day.</p> <p>23 I was wondering if you could give me</p> <p>24 something as a handle to just as -- as clearly and</p> <p>25 succinctly as you could, summarize what you see as</p>
<p style="text-align: right;">Page 243</p> <p>1 A Correct.</p> <p>2 Q And she also -- jumping back to the</p> <p>3 letter -- says something about structural racism.</p> <p>4 Do you see that?</p> <p>5 A Can you give me a line number? First</p> <p>6 paragraph, second paragraph?</p> <p>7 Q First paragraph, seven lines down?</p> <p>8 A Uh-huh. Okay. Hold on.</p> <p>9 Yes, okay. Got it.</p> <p>10 Q Did you ever lecture Rachel Gain on the</p> <p>11 meaning or not of racism?</p> <p>12 A No, I don't lecture anyone on the meaning</p> <p>13 of racism. Never have, never will.</p> <p>14 Q So you didn't bring up the lack of</p> <p>15 meaning of that term that you've kind of testified</p> <p>16 to today with her?</p> <p>17 A No.</p> <p>18 Q Okay.</p> <p>19 MR. ALLEN: Okay. Ben, I have no</p> <p>20 further questions for this witness.</p> <p>21 MR. WALTON: All right. Can we go</p> <p>22 off the record and take a brief break?</p> <p>23 MR. ALLEN: Yes. And I've been</p> <p>24 instructed to change chairs.</p> <p>25 THE VIDEOGRAPHER: We are going off</p>	<p style="text-align: right;">Page 245</p> <p>1 the relationship, if any, between Heinrich</p> <p>2 Schenker's ideas and music theory as it has</p> <p>3 developed in the United States?</p> <p>4 A Yeah. So the second part of what you</p> <p>5 just -- what you just ended with is extremely</p> <p>6 important, "music theory as it's been developed in</p> <p>7 the United States."</p> <p>8 Because Mr. Allen had asked about</p> <p>9 Heinrich Schenker and then almost immediately</p> <p>10 followed it up with the white racial frame.</p> <p>11 And I essentially pushed back on that in</p> <p>12 the sense that the direct connection between</p> <p>13 Heinrich Schenker and music theory's white racial</p> <p>14 frame, well, there is none. That's 1935 and now</p> <p>15 it's 2024. So one must make connections; right?</p> <p>16 And the reason -- I often will say not</p> <p>17 just Heinrich Schenker, but the legacy of Heinrich</p> <p>18 Schenker. That's really the main point of -- of my</p> <p>19 crit- -- my criticism of Heinrich Schenker.</p> <p>20 It's really not so much about the person,</p> <p>21 it's very much about the legacy that he left via</p> <p>22 these emigres to -- first to the east coast and</p> <p>23 Chicago -- there was one person there. That might</p> <p>24 have been Oswald Jonas. And -- and then what</p> <p>25 happened in the ensuing 90 years after Heinrich</p>

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<p style="text-align: right;">Page 246</p> <p>1 Schenker died.</p> <p>2           So if -- if one studies race scholarship</p> <p>3 as virtually no music theorists do, it need be said,</p> <p>4 right, it's not a common thing, then it actually</p> <p>5 becomes pretty clear to see how and why a figure</p> <p>6 like Heinrich Schenker could become so extremely</p> <p>7 popular, especially in the 1930s and '40s where</p> <p>8 racial segregation and the Jim Crow racism were just</p> <p>9 on fire in our country.</p> <p>10           So when the -- the -- the writings, the</p> <p>11 pseudoscientific writings of Schenker, the</p> <p>12 anti-black racist writings, the anti-Asian racist</p> <p>13 writings, the anti-Islam writings -- he -- he mocked</p> <p>14 the Arabic language in one very interesting,</p> <p>15 poignant footnote, for example -- then we can begin</p> <p>16 to see how in the 1930s in the United States and the</p> <p>17 1940s, well, that just fit perfectly -- it fit</p> <p>18 perfectly with the American mind; right? It wasn't</p> <p>19 just music theory, it -- it was America.</p> <p>20           We were living in the 1930s and '40s</p> <p>21 through a virulently racist -- and now I will just</p> <p>22 say that word, a word I generally don't say -- a</p> <p>23 virulently racist period of our country, thousands</p> <p>24 upon thousands of African Americans slaughtered in</p> <p>25 lynchings and mass race occurs -- sorry, mass --</p>	<p style="text-align: right;">Page 248</p> <p>1 those of us who aren't either sociologists, race</p> <p>2 scholars, or music theory scholars, how would you</p> <p>3 describe your -- your thesis, as it were, in a</p> <p>4 nutshell?</p> <p>5           A       Uh-huh. Yeah, well, the thesis is that</p> <p>6 the -- the historic white supremacy -- and</p> <p>7 patriarchy, by the way, it's something I always</p> <p>8 hasten to add -- of the United States of America</p> <p>9 have manifested themselves in the field of music</p> <p>10 theory. Obviously they've manifested themselves</p> <p>11 from top to bottom in any academic field, in any</p> <p>12 walk of life.</p> <p>13           And that's something that most people</p> <p>14 would concede, they would acknowledge that -- that</p> <p>15 historically the country does have a white</p> <p>16 supremacist and patriarchal past; right? That's not</p> <p>17 an open question.</p> <p>18           The question for me as an American</p> <p>19 citizen and as a Ph.D. holder in music theory is --</p> <p>20 who hap -- who happens to be a black person, is how</p> <p>21 those things have come together to create a</p> <p>22 situation in which, as I put in that article that we</p> <p>23 talked about earlier, out of about 1200 people,</p> <p>24 there were two associate professors who were black.</p> <p>25 I was one of them. Now I'm a full professor.</p>
<p style="text-align: right;">Page 247</p> <p>1 mass massacres, race massacres; right.</p> <p>2           So when I start -- you're asking about</p> <p>3 the connections of Heinrich Schenker and how I'm</p> <p>4 putting these things together now.</p> <p>5           Well, one must really tell the story in</p> <p>6 great detail going through the years and one cannot</p> <p>7 distill and say, How does Heinrich Schenker, the</p> <p>8 person, connect to today's music theory's white</p> <p>9 racial frame?</p> <p>10           The short answer to that question is,</p> <p>11 well, in almost no way, actually, if you are going</p> <p>12 to ask me that specifically.</p> <p>13           But that's not how I answered a question</p> <p>14 that was very similar put to me by Mr. Allen because</p> <p>15 I have to relate this history of how these things</p> <p>16 actually happened.</p> <p>17           It's very common among race scholars to</p> <p>18 do that and I think I did it pretty effectively in</p> <p>19 music theory.</p> <p>20           I don't know if I answered that</p> <p>21 question -- did I answer that question, Mr. Walton?</p> <p>22       Q       I -- I think so. And, you know, my</p> <p>23 question was not coming from a request to clarify a</p> <p>24 specific thing from earlier today.</p> <p>25           It was just more of a broad question for</p>	<p style="text-align: right;">Page 249</p> <p>1           That's an unacceptable percentage. It's</p> <p>2 an unacceptable percentage to have two black</p> <p>3 associate professors, out of -- associate out of</p> <p>4 1200 -- 200 people, maybe, let's say, that would be</p> <p>5 one percent; right?</p> <p>6           Black Americans are roughly 14 percent of</p> <p>7 the country. I'd like to see 14 percent associate</p> <p>8 professors in my field. That would be a fair</p> <p>9 system.</p> <p>10           But apparently there are people who don't</p> <p>11 want that.</p> <p>12           We all know that what we are living</p> <p>13 through in the United States of America, we will get</p> <p>14 through it and we will get through it together.</p> <p>15 Together. We will fight through these racial</p> <p>16 problems, our racial past.</p> <p>17           If I can go down one small rabbit hole, I</p> <p>18 spent some time in Norway this summer and I gave a</p> <p>19 talk -- a couple of talks: One at the University of</p> <p>20 Oslo, the other at the Music Academy in Oslo.</p> <p>21           And you all probably know, I'm sure</p> <p>22 you've all been to Europe, you probably know that</p> <p>23 Europeans are really good at pointing the fingers at</p> <p>24 Americans when it comes to racism; right.</p> <p>25           And I tell my colleagues in Norway and I</p>

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<p style="text-align: right;">Page 250</p> <p>1 tell anyone else who will listen, you know what, I'm</p> <p>2 a black American. We're fine. Leave me and leave</p> <p>3 us out of this.</p> <p>4 Look at yourselves in the mirror, my</p> <p>5 Norwegian colleagues. You look at yourselves in the</p> <p>6 mirror and you ask yourselves about your own views</p> <p>7 about black people, for example, or about your</p> <p>8 Somali immigrants, about your own anti-blackness;</p> <p>9 right.</p> <p>10 So I'm going to climb back out of my</p> <p>11 rabbit hole and simply say that these -- these</p> <p>12 anti-black elements, these anti-woman elements,</p> <p>13 these anti-Jewish elements, these anti-Islam</p> <p>14 elements, anti-Asian elements are in fact part of</p> <p>15 contemporary music theory.</p> <p>16 In part, why? Because they are part of</p> <p>17 our American society. It's not all about our</p> <p>18 country. Our country has many beautiful, great</p> <p>19 things about it and I do, in fact, highlight those</p> <p>20 things.</p> <p>21 I don't get credit for that and I'm fine</p> <p>22 with that. People don't want to talk about Phil</p> <p>23 Ewell actually praising the United States, which I</p> <p>24 do. I'm okay with that.</p> <p>25 And if people want to criticize me</p>	<p style="text-align: right;">Page 252</p> <p>1 music theory's development?</p> <p>2 A Not at all. That's -- that -- that --</p> <p>3 I -- I was about to say, that's a silly question. I</p> <p>4 don't mean to say that. I'm sorry, Mr. Walton. I</p> <p>5 don't want to say that.</p> <p>6 But no, of course not. I believe that</p> <p>7 white men should have absolutely a seat at the table</p> <p>8 right here, whether we are in a -- in a table in --</p> <p>9 in New Haven.</p> <p>10 But for my purposes, a table of</p> <p>11 discussions of music theory moving forward. I'm</p> <p>12 honored and humbled that hundreds -- hundreds of</p> <p>13 white men have reached out to me from high school</p> <p>14 students who are literally 14 years old who are</p> <p>15 Zooming with me for an interview or -- or just</p> <p>16 asking for some -- some questions, you know, to my</p> <p>17 colleague John Snyder, who finished my book a few</p> <p>18 weeks ago and just wrote me -- he's at the</p> <p>19 University of Houston as a professor of musicology.</p> <p>20 And he's certainly in his seventies, a</p> <p>21 white man. He just said, Thank you for your</p> <p>22 thought-provoking book. It was very, well,</p> <p>23 thoughtful.</p> <p>24 To which I said, Thank you for reading</p> <p>25 it, John. I look forward to seeing you at the next</p>
<p style="text-align: right;">Page 251</p> <p>1 because -- and they call me a racist and a sexist</p> <p>2 and an anti-Semite because of something I -- fine.</p> <p>3 You know, I'm -- I'm a big boy. I can handle the</p> <p>4 pressure.</p> <p>5 But I do -- I do think it's extremely</p> <p>6 important to make the connections to show how some</p> <p>7 of the structural anti-black, structural white</p> <p>8 supremacist elements, and structural patriarchal</p> <p>9 elements in music theory have manifested themselves</p> <p>10 in the United States.</p> <p>11 And let me just end by that very same</p> <p>12 statistic. You are asking, how?</p> <p>13 I'm like, well, I've explained how in</p> <p>14 lots of writings. One result would be two black</p> <p>15 associate professors. The numbers don't lie. The</p> <p>16 numbers do not lie.</p> <p>17 There are 94 percent white people who</p> <p>18 have power in music theory. Tenure. That's the</p> <p>19 result of the racial segregationism, the</p> <p>20 anti-blackness, etc., of -- of Heinrich Schenker's</p> <p>21 American legacy, among other problems that we have</p> <p>22 in music theory. Heinrich Schenker was obviously</p> <p>23 not alone.</p> <p>24 Q Do you -- just to clarify, do you believe</p> <p>25 that white males today should not have a say in</p>	<p style="text-align: right;">Page 253</p> <p>1 conference; right.</p> <p>2 I welcome white men with open arms and</p> <p>3 I'm really honored and humbled that so many have</p> <p>4 taken me up on these calls.</p> <p>5 Q I'm -- I'm going to jump around just a</p> <p>6 little bit and these questions will appear</p> <p>7 disjointed just because I'm trying to save time.</p> <p>8 Do you -- you were asked at some point</p> <p>9 during the day about the idea of censorship.</p> <p>10 Do you have any personal reason to</p> <p>11 believe that UNT censored any material that was</p> <p>12 presented for publication in any of its academic</p> <p>13 journals?</p> <p>14 A I have no reason to believe that</p> <p>15 happened, no.</p> <p>16 Q Okay. Moving to Levi Walls, do you have</p> <p>17 any personal knowledge as to why he appeared to</p> <p>18 change his opinions regarding your presentation?</p> <p>19 A Personal knowledge, no.</p> <p>20 Q And did you ever talk with Dr. Benjamin</p> <p>21 Graf about any pressures he may or may not have been</p> <p>22 feeling in his position?</p> <p>23 A No.</p> <p>24 Q And did you ever talk with Dr. Graf about</p> <p>25 why he said or wrote any of the specific things that</p>



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<p>1 you've -- you've looked at earlier today?</p> <p>2 A No.</p> <p>3 MR. WALTON: All right. Well, I</p> <p>4 hope that was less than 15 minutes.</p> <p>5 I'll pass the witness.</p> <p>6 Thank you for your time, Dr. Ewell.</p> <p>7 THE WITNESS: My pleasure. Thank</p> <p>8 you.</p> <p>9</p> <p>10 REDIRECT EXAMINATION</p> <p>11</p> <p>12 BY MR. ALLEN:</p> <p>13 Q Let me just ask two brief questions.</p> <p>14 Do you consider Timothy Jackson to be a</p> <p>15 white man?</p> <p>16 A I've never met Timothy Jackson and I've</p> <p>17 only seen a profile picture in The New York Times</p> <p>18 because Michael Powell published something. And he</p> <p>19 certainly looked like he presented as white.</p> <p>20 Q Did you embrace Timothy Jackson's</p> <p>21 viewpoints because he expressed criticism of you?</p> <p>22 A I don't understand that question.</p> <p>23 Q Let me strike it.</p> <p>24 You just testified in response to</p> <p>25 Attorney Walton's questions that you embraced white</p>	<p>1</p> <p>2 CROSS-EXAMINATION</p> <p>3</p> <p>4 BY MR. PAINTER:</p> <p>5 Q I think we are going to clarify one issue</p> <p>6 on -- and I guess I would ask the question as your</p> <p>7 counsel -- about the peer review.</p> <p>8 There was some confusion with your</p> <p>9 plenary talk.</p> <p>10 A Uh-huh.</p> <p>11 Q And the plenary talk you were invited to</p> <p>12 give and I believe there was testimony about how</p> <p>13 that process worked.</p> <p>14 But then you gave the plenary talk and</p> <p>15 then they republished your plenary talk.</p> <p>16 Did they republish that word for word?</p> <p>17 A Yes, more or less.</p> <p>18 There might have -- you know, when you</p> <p>19 give a plenary, maybe there's something on a slide</p> <p>20 that doesn't make it into the text, maybe there's a</p> <p>21 comma that you want to add.</p> <p>22 So I can't say verbatim exactly what I --</p> <p>23 what I spoke. But, you know, 98, 99 percent</p> <p>24 verbatim and more or less no change in the content</p> <p>25 of the talk itself.</p>
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<p>1 men who had contacted you, something to that effect.</p> <p>2 Did I misrepresent that testimony?</p> <p>3 A Slightly. I've -- I've welcomed white</p> <p>4 men who contact me to have discussions, adult</p> <p>5 conversations, about race and music theory,</p> <p>6 patriarchy, etc.</p> <p>7 Q Have you welcomed Timothy Jackson's</p> <p>8 criticism of your work?</p> <p>9 A No.</p> <p>10 Q In fact, you've said it's dehumanizing;</p> <p>11 right?</p> <p>12 A I'm thinking about the chapter that I</p> <p>13 responded to Timothy Jackson. I do not believe I</p> <p>14 used the word "dehumanizing" in that chapter. And</p> <p>15 that's the most rigorous unpacking of his particular</p> <p>16 response, so no.</p> <p>17 Q You did say it was dehumanizing to the</p> <p>18 journalist of the Denton Record Chronicle, however;</p> <p>19 correct?</p> <p>20 A Yeah.</p> <p>21 Q So isn't it true that you only welcome</p> <p>22 white people who agree with you?</p> <p>23 A That's not true, no.</p> <p>24 MR. ALLEN: I'll pass the witness.</p> <p>25 MR. WALTON: We'll reserve.</p>	<p>1 Q Did they do that from a tape recording</p> <p>2 or -- or from the -- a piece of paper that you --</p> <p>3 because you read the talk that you give them a copy</p> <p>4 of the paper?</p> <p>5 A A piece of paper. And, in fact, Marianne</p> <p>6 Wheeldon, the editor at the journal at the time, had</p> <p>7 asked us to reproduce the -- the PDF word text of</p> <p>8 those talks.</p> <p>9 So it -- it wasn't up to them. We</p> <p>10 basically went -- I had put in a comma if I needed</p> <p>11 one and I essentially handed over the PDF of what I</p> <p>12 had read in front of the -- in front of the plenary.</p> <p>13 And I should also say that sometimes</p> <p>14 people extemporize a little bit in addition to</p> <p>15 speaking from script.</p> <p>16 My particular talk, since I knew it would</p> <p>17 be, well, let's say, controversial -- speaking about</p> <p>18 whiteness as a black person is almost always</p> <p>19 controversial in a white supremacist system; right?</p> <p>20 I literally had scripted every word that</p> <p>21 I read that day. So the plenary talk was in fact</p> <p>22 the PDF that I had sent for publication.</p> <p>23 Q And you sent it after you gave the talk?</p> <p>24 A Correct. Yeah.</p> <p>25 Q And is this common with plenary talks</p>

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<p style="text-align: right;">Page 258</p> <p>1 that when -- if they are published, they are 2 published word for word what was said, with that 3 exception that some people give some extemporaneous 4 comments, but that it's a set talk and then it's 5 published. 6 And have you ever heard of any type of 7 peer review process ever be used really for 8 republication of plenary talks? 9 A No. Plenary talks are not peer reviewed 10 generally in -- in -- in music academia. 11 MR. PAINTER: Okay. No further 12 questions. 13 MR. ALLEN: I have no further 14 questions. 15 MR. WALTON: Nothing further here 16 either. 17 THE VIDEOGRAPHER: Okay. This is 18 the end on the video deposition of Philip 19 Ewell. The time is 4:04. 20 MR. WALTON: Dr. Ewell, thank you 21 for your time. 22 THE WITNESS: Thank you. 23 (Whereupon, there was a discussion 24 off the record.) 25 MR. WALTON: Cliff, we will take an</p>	<p style="text-align: right;">Page 260</p> <p style="text-align: center;">C E R T I F I C A T E</p> <p>1 I hereby certify that I am a Notary Public, 2 in and for the State of Connecticut, duly 3 commissioned and qualified to administer oaths. 4 I further certify that the deponent named in 5 the foregoing deposition was by me duly sworn, and 6 thereupon testified as appears in the foregoing 7 deposition; that said deposition was taken by me 8 stenographically in the presence of counsel and 9 reduced to typewriting under my direction, and the 10 foregoing is a true and accurate transcript of the 11 testimony. 12 I further certify that I am neither of 13 counsel nor attorney to any of the parties to said 14 suit, nor am I an employee of any party to said 15 suit, nor of any counsel in said suit, nor am I 16 interested in the outcome of said cause. 17 Witness my hand and seal as Notary Public 18 this 3rd day of October, 2024. 19  20 21 22 Clifford Edwards 23 Connecticut Notary Public No. SNPC.0129714 24 My commission expires: 9/30/2026 25</p>
<p style="text-align: right;">Page 259</p> <p>1 electronic only copy of the transcript. 2 No need to order a paper copy but I would 3 like a PDF. 4 COURT REPORTER: Okay. Thank you. 5 (Thereupon, the deposition was 6 concluded at 4:04 p.m. EDT.) 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p style="text-align: right;">Page 261</p> <p style="text-align: center;">J U R A T</p> <p>1 I have read the foregoing 260 pages and hereby 2 acknowledge the same to be a true and correct record 3 of the testimony. 4 5 6 7 8 9 10 PHILIP ADRIAN EWELL 11 12 Subscribed and sworn to 13 _____. 14 Before me this ____ day of _____, 15 2024. 16 17 18 19 20 _____ 21 Notary Public 22 My Commission Expires: 23 24 25</p>

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