

**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.  
19  
20  
21  
22  
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25

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

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21       Timothy Jackson (via Zoom)  
22       Cari Jacoby (via Zoom)  
23       Renoldo Stowers    (via Zoom)

24

25

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1           THE VIDEOGRAPHER: This is the  
2 beginning of media number one in the  
3 deposition of Philip Ewell in the matter  
4 of Timothy Jackson v. Laura Wright et  
5 al., case number 4:21-cv-00033.

6           Today's date is September 19, 2024.  
7 The time on the monitor is 10:09 a.m.

8           My name is Alejandro Gomez and I'm  
9 the videographer. The court reporter is  
10 Cliff Edwards. We are here with Huseby  
11 Global Litigation.

12          Counsel, please introduce yourself,  
13 after which the court reporter will swear  
14 in the witness.

15          MR. ALLEN: My name is Michael Thad  
16 Allen, attorney for Timothy Jackson, the  
17 plaintiff.

18          MR. PAINTER: My name is Richard  
19 Painter and I am attorney for Philip  
20 Ewell, the deponent.

21          MR. WALTON: My name is Ben Walton.  
22 I'm an attorney for the defendants in the  
23 lawsuit.

24          MS. QUIMBY: My name is Mary Quimby.  
25 I'm also an attorney for the defendants

1 in the lawsuit.

2 MS. JACOBY: My name is Cari Jacoby.  
3 I'm an attorney for the University of  
4 North Texas System.

5 MR. STOWERS: My name is Renaldo  
6 Stowers. I'm an attorney for the  
7 University of North Texas System.

8

9 PHILIP ADRIAN EWELL  
10 residing at 324 77th Street, Apartment 1C, Brooklyn,  
11 New York 11209, having first been duly sworn,  
12 deposed and testified as follows:

13

14 MR. ALLEN: Professor Ewell, the  
15 first thing we are going to do is I'm  
16 going to introduce an exhibit.

17 This will happen from time to time  
18 during the deposition. There will be  
19 documents I'll ask you to examine and  
20 I'll ask you questions about them.

21 So I've marked as Exhibit Number 1,  
22 which should be in front of you.

23 Do we have the marked  
24 Exhibit Number 1?

25 COURT REPORTER: One moment, please.

1 (Whereupon, Plaintiff's Exhibit 1,  
2 Re-Notice of Deposition for Philip  
3 Ewell, was marked for  
4 identification.)

5 MR. ALLEN: And I'm sorry, Richard,  
6 I brought another copy. This is just the  
7 notice of deposition, but the court  
8 reporter has written on it.

9 MR. PAINTER: I --

10

11 DIRECT EXAMINATION

12

13 BY MR. ALLEN:

14 Q This is the document -- I'm going to  
15 represent to you that this is the re-notice of  
16 deposition.

17 Could I ask you to examine the --

18 A Uh-huh.

19 Q -- document?

20 A Get -- get my glasses on here --

21 Q And of course we want you to have your  
22 glasses on, too.

23 And this is a good time to bring this up.

24 If at any time you need more time to examine an

25 exhibit --

1           A           Uh-huh.

2           Q           -- just say so.

3           A           Okay.

4           Q           Of course, no one in the room wants you  
5 to be answering questions that you haven't examined  
6 the exhibit to answer and so forth.

7           A           So all the pages here?

8           Q           If you could just look it over. I don't  
9 have many questions about this one.

10          A           Uh-huh.

11                   This is a copy of the subpoena that I  
12 received; right?

13          Q           Well, that was going to be my question:  
14 Do you recognize this document as the subpoena and  
15 re-notice of your deposition?

16          A           I think so, yeah. Yeah.

17          Q           And is it accurate to say you've appeared  
18 to give testimony today in response to these  
19 subpoena -- this subpoena and this re-notice?

20          A           Yes.

21          Q           And that's the only question I have about  
22 that document. You can put it to --

23          A           Okay.

24          Q           -- the side.

25                   At the end of the deposition the court



1 reporter will take all of the exhibits and will be  
2 essentially the keeper of the record.

3 A Got it.

4 Q So I wanted to ask you if you have been  
5 deposed before?

6 A No.

7 Q And before the deposition started, your  
8 attorney and I were discussing the nature of  
9 depositions in your presence.

10 But, again, this is the making of a  
11 formal record for the court, so there are several  
12 rules of the road we have to abide by precisely  
13 because it is a very formal conversation.

14 So in normal conversation, things like  
15 you just did to nod or say "uh-huh" or "uh-huh" are  
16 perfectly normal and understandable.

17 But for the purposes of creating the  
18 record today, I'm going to ask you to answer audibly  
19 "yes" or "no," not with partial words or nods of the  
20 head to every question; is that clear?

21 A It's clear.

22 And I would like to ask a question of  
23 you; may I?

24 Q Absolutely. You may ask me a question at  
25 any time.

1                   Although, I'm not here to testify  
2 obviously, but --

3           A       Of course. Of course.

4                   If a question that you might want a yes  
5 or no is asked and it requires some equivocation,  
6 that's okay on my part to give such equivocation.

7                   Is that an accurate statement?

8           Q       I will leave that to the advice of your  
9 counsel.

10                   For the purpose of this "deposition" --  
11 deposition, I would say you must answer a question  
12 "yes" or "no" if there's a yes or no answer.

13          A       Yeah.

14          Q       If you can't answer it "yes" or "no," you  
15 should just simply state that and that would give me  
16 an opportunity to ask you why.

17          A       Perfect.

18          Q       Is there anything that would interfere  
19 with your ability to answer questions truthfully  
20 today?

21          A       No.

22          Q       You are not on any drugs?

23          A       No.

24          Q       You are not suffering from any illness  
25 that would affect your memory?

1           A       Nope.

2           Q       Okay. You also understand the meaning of  
3 taking an oath; correct?

4           A       Yup.

5           Q       And that you are obligated to tell the  
6 truth?

7           A       Yup.

8           Q       As you just did, please ask me if you do  
9 not understand a question or you have a question  
10 about the question, so to speak.

11                   No one has an interest in answering --  
12 getting an answer to a question you didn't  
13 understand; is that clear?

14          A       Yes.

15          Q       Likewise, if you don't ask a question for  
16 clarification, I'm going to assume that you have  
17 understood the question as asked.

18                   Is that also clear?

19          A       Yup.

20          Q       Thank you.

21                   Can you explain for the record what you  
22 did to prepare for your depos- -- excuse me --  
23 deposition today?

24          A       I went through personal e-mails from a  
25 Gmail account from an old defunct account that I

1 used to use for professional Gmail,  
2 contact@PhilipEwell.com.

3 I went through Facebook direct messages,  
4 all pertaining to the subpoena and the questions  
5 asked -- may I look here --

**6 Q Please.**

7 A -- at this document?

8 MR. ALLEN: And I just -- let the  
9 record reflect the witness is consulting  
10 Exhibit 1.

11 A -- with respect to the documents  
12 requested --

13 BY MR. ALLEN:

**14 Q Okay.**

15 A -- and listed at the end of the  
16 subpoena.

17 So I looked for relevant items listed in  
18 the documents requested. I, on advice of counsel,  
19 put them into a PDF.

**20 Q And let me interrupt you.**

**21 I'm not going to ask you for anything**  
**22 you've discussed with your counsel.**

23 A Uh-huh.

**24 Q That would be privileged.**

25 A Uh-huh.

1           Q       The fact that you discussed something  
2 with your counsel, that is not necessarily  
3 privileged --

4           A       Oh.

5           Q       -- but the substance, any legal advice,  
6 just -- just so it's clear to you --

7           A       Understood.

8           Q       -- and for the record, I am not going to  
9 try to ask questions about that.

10          A       Understood.

11          Q       And you may hear your attorney object  
12 from time to time but --

13          A       Understood.

14          Q       -- I'm just asking what you did to  
15 prepare?

16                   If you met with him, that's fine.  
17 Obviously --

18          A       Uh-huh.

19          Q       -- most witnesses do --

20          A       Uh-huh.

21          Q       -- if they have attorneys.

22          A       Uh-huh.

23          Q       But -- but please continue. Sorry.

24          A       So I put those into a PDF --

25          Q       Uh-huh.

1           A           -- submitted them to my counsel.

2                    Let's see. In preparation, anything  
3 else?

4                    That would be it.

5           Q           And the documents you consulted, were  
6 those produced in response to the subpoena?

7           A           The PDF document, you are -- you are  
8 asking about?

9           Q           Uh-huh.

10          A           Yes.

11          Q           Okay. Were there any documents you  
12 consulted which you have not produced in this -- in  
13 response to the subpoena?

14          A           Not to my knowledge.

15          Q           Okay. Did you discuss your upcoming  
16 deposition with anyone besides your attorney?

17          A           With my wife.

18          Q           Which is also privileged, incidentally.  
19 So I'm just going to move on.

20                    Anyone else besides your wife?

21          A           When I first got the subpoena, I  
22 discussed it -- I discussed it with the chair of the  
23 Department of Music at Hunter College, Mark Spicer,  
24 to simply tell him that this had happened. And we  
25 had a phone conversation and that is the extent of

1   that conversation.

2           Q       Simply the existence of the subpoena that  
3   the deposition would take place?

4           A       Exactly.

5           Q       Did he give you any advice?

6           A       He did not.

7           Q       What did he say?

8           A       "Thanks for letting me know."

9           Q       Okay. That was a little bit of the  
10   preliminary necessit- -- necessities for a  
11   deposition.

12                   I'm going to move on to ask you some  
13   questions about the basic background to your career.

14                   So could you briefly describe your  
15   educational career starting with your undergraduate  
16   degree on up through the present?

17           A       Yeah, of course. I went to Stanford  
18   University undergrad, graduated in 1989 with a  
19   degree in music. I'm a cellist.

20                   So after that I was accepted to a masters  
21   program at Queens College, City University of New  
22   York. Moved to New York. That was a two-year  
23   program.

24                   And I then went to Russia to study cello  
25   in St. Petersburg, St. Petersburg Conservatory of

1 Music. And at that time I was applying to Ph.D.  
2 programs and DMA programs as a cellist, so I had a  
3 bit of a fork in the road: Will I become a  
4 professional cellist; will I become a music  
5 academician?

6 I had offers for both DMA programs and  
7 Ph.D. programs --

8 Q Can I interrupt you only briefly?

9 Can you state for the record what a DMA  
10 is?

11 A Uh-huh. Doctor of Musical Arts.

12 Q Okay.

13 A And that's generally for per- --  
14 classical performance people mostly in the United  
15 States. It's -- it's a degree that's not really  
16 offered in countries other than ours.

17 Q And was there a degree you received from  
18 the Conservatory of St. Petersburg?

19 A A certificate.

20 Q How long did it take you to earn the  
21 certificate?

22 A I was there for two -- over two years and  
23 it was something of the order of a -- of a special  
24 certificate for foreign students who'd come to do  
25 graduate work but it was really



1 performance-oriented.

2 Q Uh-huh.

3 A So there wasn't a whole lot of classroom  
4 time as part of that certificate.

5 And then I decided ultimately to enroll  
6 at Yale University.

7 Q Uh-huh.

8 A That was 1994. And I finished with a  
9 Ph.D. in music theory there in 2001.

10 Q Okay. And so when did you return from  
11 St. Petersburg?

12 A To start, in 1994.

13 Q Okay. So you were starting in  
14 St. Petersburg in 1992?

15 A Not quite. I first went in the summer of  
16 '91 --

17 Q Uh-huh.

18 A -- to study language in Leningrad USSR.

19 Q Uh-huh.

20 A I had a program to do language -- to  
21 continue language study that fall, but it was not a  
22 good program. This was CIEE, if I'm not mistaken,  
23 Council on International Educational Exchange.

24 And I ended up coming back to DeKalb,  
25 Illinois, which is -- was my hometown.

1                   And for the fall of '91, I was in DeKalb  
2 and I studied cello and I did some stuff at Northern  
3 Illinois University, studied cello with Marc  
4 Johnson. He was the cellist of the Vermeer Quartet.  
5 And then it was January of '92.

6                   That whole fall of '91 I was trying to  
7 get back to Russia because I knew I wanted to study  
8 cello in Russia. And I was able to -- it wasn't  
9 easy because you needed to get visas and it was  
10 still kind of a Soviet transitioning -- right -- to  
11 post-Soviet.

12           Q           Uh-huh.

13           A           But I did get a visa and I went back in  
14 January of '92 to study at the conservatory in  
15 St. Petersburg.

16           Q           So you lived along with the Russian  
17 people the collapse of the Soviet Union, it sounds  
18 like?

19           A           Yes, kind of. I -- I was not there in  
20 the fall of '91, which is when Leningrad became  
21 St. Petersburg. That --

22           Q           Uh-huh.

23           A           -- was October --

24           Q           Uh-huh.

25           A           -- when Gor- -- Gorbachev basically went

1 on air and said, Okay, peace out. I'm done.

2 That was December. That was Christmas

3 Eve --

4 Q Uh-huh.

5 A -- actually of '91 and I was in the  
6 States for that.

7 But right after that in January -- first,  
8 second week of January, I was back in  
9 St. Petersburg.

10 Q Okay. And -- and thank you for that.

11 And I think you said you were from  
12 Illinois originally?

13 A Yes.

14 Q DeKalb, Illinois?

15 A Uh-huh.

16 Q Now, after you graduated from Yale with a  
17 Ph.D. in music theory, was it?

18 A Uh-huh.

19 Q Can you from that point on briefly  
20 describe your professional career?

21 A Yeah. I got a job ultimately at the  
22 University of Tennessee, Knoxville.

23 Q Uh-huh?

24 A And from 2002 to 2007, I was an assistant  
25 professor of music theory there. Did not go up for

1 tenure. I left before I did that.

2 I got a job in Naperville, Illinois,  
3 North Central College. I was a professor there for  
4 two years and wasn't so happy with the professional  
5 professorship there.

6 And that's when I went back on the job  
7 market. I found a job at Hunter College, City  
8 University of New York. And fall of 2009 is when I  
9 began that position. And that's the position I  
10 still have.

11 Q And did you achieve tenure at Hunter  
12 College?

13 A I did.

14 Q What year?

15 A 2016.

16 Q And are you a -- did -- were you promoted  
17 after that?

18 A Well, tenure usually happens with  
19 promotion from assistant to associate professor, so  
20 I was -- I was both promoted and tenured --

21 Q Uh-huh.

22 A -- in 2016.

23 Are you asking if I was promoted from  
24 associate to full professor?

25 Q Yes.

1           A           And that did happen, yes, in 2021.

2           Q           Okay. And that brings us up to the  
3 present; correct?

4           A           In terms of my rank --

5           Q           Yes.

6           A           -- and professorship, yes.

7           Q           And I'm not interested in what you earn  
8 or when you got pay raises or anything like that.

9                   But that's -- in terms of your formal  
10 titles and your institutional affiliations --

11          A           Uh-huh.

12          Q           -- that is pretty -- pretty much  
13 encapsulates your career?

14          A           Yeah.

15          Q           Do you have any positions that are held  
16 across -- held at other institutions?

17          A           No.

18          Q           What --

19          A           Sorry. I am an affiliate faculty at the  
20 graduate center of the City University of New York.

21          Q           And just for the record, the City  
22 University of New York is also referred to as  
23 CUNY --

24          A           Uh-huh.

25          Q           -- and has many different colleges;

1 correct?

2 A Yes. CUNY is the way it's generally  
3 pronounced.

4 Q And Hunter College is one of those?

5 A Correct.

6 Q Is that generally associated with  
7 graduate teaching?

8 A At the graduate center? Yes, that's  
9 associated with graduate teaching.

10 Q And when you say, "at the graduate  
11 center," is that part of Hunter College or that is  
12 the Hunter College?

13 A It is not part of Hunter College. It is  
14 part of the City University of New York.

15 Q Okay.

16 A So it is -- the City University of New  
17 York is a consortium, I think they might call it, of  
18 roughly 24 different institutions.

19 Q Okay.

20 A And Hunter is one of them. There are  
21 about six four-year colleges, maybe more. There are  
22 two-year colleges, there's a nursing school, school  
23 of social work.

24 And the graduate center is generally  
25 viewed as the doctoral granting institution within

1 the City University of New York. They do grants and  
2 terminal master's degrees, I think, as well.

3 Q Okay. Do you belong to any academic  
4 societies, professional organizations?

5 A I do. Society -- Society of Music Theory  
6 and American Musicological Society.

7 Q Any others?

8 A I was a member of the New Directions  
9 Cello Association for many years. I think that  
10 membership has lapsed.

11 I was a member of -- I might still be a  
12 member of the Society for American Music. And I am  
13 a member of the Music Theory Society of New York  
14 State.

15 Q Okay. That's an independent organization  
16 or is it part of the Society for Music Theory, which  
17 I believe you mentioned before; did I get that  
18 right?

19 A That is cor- -- yes, you got that right.

20 No, it is not a part of the Society of --  
21 for Music Theory. It's what we generally call a  
22 regional society.

23 Q Okay. I -- I believe it was for the  
24 Society -- is it "for" or "of" Music Theory?

25 A I think it's "for Music Theory."

1           Q       So -- and if I say SMT, you'll know I'm  
2 referring to the Society for Music Theory?

3           A       Correct.

4           Q       So I believe it was in 2019 that you gave  
5 a plenary talk at the Society for Music Theory;  
6 correct?

7           A       Correct.

8           Q       And the title of that plenary talk was  
9 "Music Theory and the White Racial Frame."

10                   Did I get that right?

11          A       No.

12          Q       Can you --

13          A       It was --

14          Q       Can you --

15          A       It was --

16          Q       Okay. Can --

17          A       It was "Music Theory's White Racial  
18 Frame."

19          Q       Thank you. Can you, if you remember,  
20 tell me the exact date of that talk?

21          A       I can't tell you the exact date. I can  
22 only say that it was in November of 2019.

23          Q       Was it in the beginning of the month, the  
24 end of the month?

25          A       Well, SMT conferences are generally in



1 the first or second week of November, so before  
2 November 15. I mean, the date is -- we can find it  
3 out pretty easily I think.

4 Q Sure. And I also understand the limits  
5 of memory. That -- that -- that's fine. It's not  
6 about that. I'm trying to place it in time.

7 A Uh-huh.

8 Q And to the best of your knowledge, how  
9 was your talk received at the Society for Music  
10 Theory in 2019?

11 A It was received very well.

12 Q How were you selected to give the plenary  
13 talk?

14 A There was a program committee and they  
15 wanted to have a session, I think already entitled  
16 "Reframing Music Theory."

17 Q Uh-huh.

18 A The two people on the program committee I  
19 remember speaking with at some point were Betsy  
20 Marvin and Danny Jenkins.

21 And I think that Joe Straus, my colleague  
22 at the CUNY Graduate Center, had suggested my name  
23 to them at some point to be part of this  
24 multi-person plenary session.

25 MR. ALLEN: I don't --

1 COURT REPORTER: I can help you.

2 MR. ALLEN: Can we go off the  
3 record?

4 I'm sorry, there's a technical  
5 issue.

6 THE VIDEOGRAPHER: We are going off  
7 the record. The time is 10:29.

8 (Whereupon, there was a recess taken  
9 from 10:29 a.m. to 10:31 a.m.)

10 THE VIDEOGRAPHER: We are going back  
11 on the record. The time is 10:31.

12 BY MR. ALLEN:

13 Q I apologize for the interruption for  
14 technical difficulties.

15 I think you were in the middle of  
16 answering a question about how you had been selected  
17 to give the plenary talk in November of 2019 to the  
18 Society for Music Theory?

19 A Right.

20 Q Can you continue with your answer,  
21 please?

22 A Yeah. So Joe Straus had suggested me to  
23 the program committee and as I mentioned, Betsy  
24 Marvin and -- Elizabeth Marvin and Daniel Jenkins  
25 were the two names I remember from the program

1 committee.

2 Q Uh-huh.

3 A And there were four people who gave talks  
4 that day and I was one of them. And Betsy Marvin  
5 who is Elizabeth Marvin moderated that plenary  
6 session.

7 Q And all of the people you just mentioned  
8 are members of the SMT; right?

9 A I can't say that they are members now,  
10 but they certainly were at that moment. You needed  
11 to be a member in order to --

12 Q Uh-huh.

13 A -- present at the conf- -- at the  
14 conference.

15 Q What did you submit to this committee or  
16 panel for them to evaluate when selecting speakers?

17 A So I had been doing work that resulted in  
18 that plenary talk and ultimately in a very long  
19 article. The article is titled a little bit  
20 different and I wanted the difference between the  
21 talk and the article so that there could be a  
22 distinction between the two.

23 Q Uh-huh.

24 A You had mentioned "Music Theory and the  
25 White Racial Frame."

1                   That in -- in fact is the -- the title of  
2 the long article --

3           **Q       Uh-huh.**

4           A       -- that I had published -- it looks like  
5 you have a copy of it there on the -- on the table.  
6 And -- and so "Music Theory's White Racial Frame"  
7 was the distilled version of that very long paper.

8                   I had been doing that work going back to,  
9 I would say, 2017, 2018.

10          **Q       Uh-huh.**

11          A       And I had shown it to some colleagues at  
12 CUNY and certainly Joe Straus was one of them.

13          **Q       Uh-huh.**

14          A       And he thought that this work was  
15 important, interesting, so that's why he presented  
16 it or suggested to the program committee that I be  
17 considered for this -- for this slot.

18          **Q       And if you know, approximately how many**  
19 **members does the SMT have?**

20          A       1200 is the number that sticks in my head  
21 from back then.

22          **Q       Uh-huh.**

23          A       So plus or minus at this point. Maybe a  
24 hundred or two plus or minus 1200.

25          **Q       Is it international in scope?**

1           A           The short answer is probably no in the  
2 sense that there are international societies.

3                       So there's an International Musicological  
4 Society --

5           Q           Uh-huh.

6           A           -- which is clearly international in  
7 scope. But the Society for Music Theory certainly  
8 has members who are not located in the United States  
9 or who are not U.S. citizens, so in that sense it is  
10 international.

11          Q           Okay. And approximately how long was the  
12 talk?

13          A           My talk was about -- I -- I think about  
14 22 minutes.

15          Q           Okay.

16          A           My portion of the plenary session was  
17 22 minutes.

18          Q           And all of these talks, you mentioned I  
19 think four in total, they were given at the same  
20 time?

21          A           Correct. Well, sequentially.

22          Q           By that I mean on the same day in the  
23 same session?

24          A           Correct.

25          Q           Okay. And after you had given the talk,

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.

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

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.



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.

1                   So that's not the same -- the paper --  
2   the article that I see printed out over there, that  
3   was a separate thing from the plenary.

4                   The actual plenary talks were in fact  
5   published in Music Theory Spectrum, which is another  
6   publication of the Society for Music Theory.

7           **Q       Was your -- was your talk in print form**  
8   **published in the Spectrum journal?**

9           A       Correct. Yes, it was.

10          **Q       So before we go onto the longer**  
11 **article --**

12          A       Uh-huh.

13          **Q       -- what was the process for publishing in**  
14 **Spectrum?**

15          A       I think the editor at that time was  
16 Marianne Wheeldon --

17          **Q       Uh-huh.**

18          A       -- who was a professor of music theory at  
19 the University of Texas-Austin. And she -- somebody  
20 had gotten in touch with her to publish these four  
21 plenary talks --

22          **Q       Uh-huh.**

23          A       -- as a package. It generally has  
24 happened -- I've been told; I've not really seen --  
25 I -- I -- I've never been privy to the

1 conversations -- it's generally happened that  
2 plenary talks at the Society for Music Theory are  
3 published --

4           **Q           Uh-huh.**

5           A           -- in one of those two journals. Those  
6 are the main academic journals.

7                       But how it actually came to pass, I think  
8 that was more Betsy Marvin and probably Joe Straus  
9 who were working with Marianne Wheeldon to actually  
10 see those plenary talks published in Music Theory  
11 Spectrum.

12           **Q           And I -- just to clarify for the record:**  
13 **Is Spectrum a journal that actually appears in**  
14 **print, like in a hard copy, old fashioned journal**  
15 **print?**

16           A           I think it no longer does.

17           **Q           Uh-huh.**

18           A           It might still -- they might still be  
19 burning off print copies.

20                       Back then, I think they -- they still  
21 were.

22           **Q           Okay.**

23           A           But I think it's more or less all online  
24 at this point.

25           **Q           And was that plenary talk when it was**

1 published in Spectrum, was that sent out for peer  
2 review before that publication?

3 A I -- I don't know.

4 Q Wouldn't you know as the author that your  
5 article was being sent out for -- for peer review?

6 A I -- one would think, yes, but I wasn't  
7 that involved. I essentially submitted what I had  
8 read at the plenary address --

9 Q Uh-huh.

10 A -- probably -- probably to Marianne  
11 Wheelodon. What she did as editor, I do not know.

12 Q Do you remember responding to reviewers?

13 A I do not, no.

14 Q And just for the record, can you describe  
15 what peer review means to an academic in music  
16 theory?

17 A Yes. Peer review generally happens --  
18 it's often called singly-blind or double-blind.

19 Q Uh-huh.

20 A I don't call it that because to use the  
21 word "blind" like that is ableist language, which I  
22 don't support.

23 I call it single or doubly-anonymous  
24 review, as they do in Russia, for example.

25 And a singly-anonymous review is one in

1 which the reviewers know the identity of the author  
2 of the article.

3 And as you I'm sure know, the  
4 doubly-anonymous review is one in which all  
5 identities are withheld.

6 Q Identities meaning the personal identity  
7 of the --

8 A The personal identity of the reviewers --

9 Q Uh-huh.

10 A -- and the author of the article.

11 Q And so to the best of your recollection,  
12 there was no double-blind peer review of the  
13 Spectrum publication?

14 A I didn't say that I -- I didn't -- that  
15 there was no review. I said that I don't know.

16 Q You don't recall ever getting a  
17 reviewer's comments?

18 A That's correct.

19 Q You don't recall ever responding to the  
20 reviewer's comments?

21 A Yeah, correct. Of course.

22 Q You don't recall ever discussing with the  
23 editor peer reviews?

24 A That is correct, yes.

25 Q And certainly, if there was such

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

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?

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



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.

1 Q Okay.

2 A Yes.

3 Q But as you sit here today, you don't  
4 remember seeing any such documents?

5 A Correct.

6 Q Do you remember there being any  
7 complaints that publications of these plenary  
8 sessions in Spectrum were not peer reviewed?

9 A No.

10 Q Do you have any reason to believe that  
11 the Society for Music Theory would not keep such  
12 documents themselves if they were generated in the  
13 process of peer review?

14 A Can you repeat that question?

15 Q Do you have any reason to believe that  
16 the Society for Music Theory would not have these  
17 peer review documents related to your article if  
18 they existed?

19 A I don't have any reason to believe that,  
20 that they would not have them.

21 Q And I guess conversely, would you expect  
22 the Society for Music Theory to maintain those  
23 records of past peer reviews?

24 A Sure. Yeah.

25 Q Okay.

1                   MR. PAINTER: I'd ask you to  
2                   clarify, are we asking about the article  
3                   or the talk, the plenary session talk?

4                   MR. ALLEN: I am talking about the  
5                   article that was published in Spectrum --

6 BY MR. ALLEN:

7           Q       -- which you said was based on the print  
8           that was presented in oral form at the plenary  
9           address.

10          A       I would say more than based on. I would  
11          say it was virtually a verbatim --

12          Q       Okay.

13          A       -- replication of what I spoke.

14          Q       So I want to move on a little bit.

15                   Now, you've testified that there was a  
16          second paper which grew out of the research and  
17          presentation of the plenary talk which was published  
18          in Music Theory Online; correct?

19          A       Uh-huh.

20          Q       Can you describe how that paper came to  
21          be published in Music Theory Online?

22          A       Yeah. So I mentioned that I began that  
23          work probably 2017, 2018.

24          Q       Uh-huh.

25          A       And strangely, it began as a response to

1 five articles that were going to appear in Music  
2 Theory Online on Kendrick Lamar's album, To Pimp a  
3 Butterfly.

4 And there were a lot of things swirling  
5 in my head about music theory and how we have dealt  
6 with race in the past. And I remember writing a  
7 very long -- so I was contacted by Noriko Manabe.  
8 She's currently a music theory professor at Indiana  
9 University. She was one of the authors.

10 And they said, Would you please write an  
11 introduction to these five papers?

12 And I agreed. But the introduction that  
13 I originally wrote was very long, 12-, 14,000 words,  
14 and it wasn't so much a traditional introduction to  
15 five papers on Kendrick Lamar.

16 But I -- I wrote that paper, that  
17 introduction, and ultimately I pulled it -- I wrote  
18 something completely different, which is available  
19 online now, 4,000 words, Hey, this is a great thing.

20 But that original response was the paper  
21 that ultimately became "Music Theory and the White  
22 Racial Frame." So that I wrote Winter/Spring 2018.

23 **Q Let -- let me ask you a few questions**  
24 **about that original -- what did you call it -- a**  
25 **response to Kendrick Lamar?**

1           A           It was an introduction --

2           Q           **Introduction?**

3           A           -- to five papers on Kendrick Lamar's  
4   third studio album.

5           Q           **I see.**

6           A           It's called To Pimp a Butterfly.

7           Q           **And you said that was published or it was**  
8   **not published?**

9           A           It was.

10                    Oh, the original introduction, very  
11   long --

12          Q           **Uh-huh.**

13          A           -- 12-, 14,000 words, I completely pulled  
14   that.

15          Q           **Uh-huh.**

16          A           That was not part of it. I rewrote  
17   something completely different --

18          Q           **Uh-huh.**

19          A           -- which is published as the  
20   introduction --

21          Q           **Okay.**

22          A           -- to -- to that, I think it's called, "A  
23   Symposium on Kendrick Lamar's To Pimp a Butterfly."

24          Q           **Where -- where was that published?**

25          A           That was also in Music Theory Online.

1           Q           And was that article --

2           A           If you --

3           Q           -- an introduction --

4                       (Whereupon, the court reporter  
5                       requests clarification.)

6 BY MR. ALLEN:

7           Q           So we'll refer to it as "an  
8 introduction"?

9           A           Uh-huh.

10          Q           In its final form, approximately how many  
11 words was it?

12          A           4,000 words.

13          Q           And 4,000 words in ordinary journal pages  
14 would be about how much, in your experience?

15          A           I have no idea.

16          Q           Was that introduction peer reviewed?

17          A           Yes.

18          Q           Who were the reviewers?

19          A           I do not know. It was -- it was  
20 anonymous.

21          Q           It stands out in your mind that it was  
22 reviewed and you received the reviewers' comments?

23          A           Uh-huh.

24          Q           And you remember responding to the  
25 reviewers' comments?

1           A           Uh-huh.

2           Q           Okay. Now, that is separate from an  
3 article that you eventually published in Music  
4 Theory Online called "Music Theory and the White  
5 Racial Frame."

6                       Correct?

7           A           Correct.

8           Q           So just focusing on that paper, explain  
9 the publication process in that case.

10          A           Uh-huh. So I submitted that to Music  
11 Theory Online. And it took a fair bit of time for  
12 reviews to come back.

13                       They came back. They were positive. But  
14 the editor at the time, that was Jeff Perry. Jeff  
15 Perry is a music theory professor at Louisiana State  
16 University.

17          Q           Uh-huh.

18          A           Does it help for me to say that? Should  
19 I be saying that, by the way? I -- you know,  
20 because you asked --

21          Q           I appreciate it because you have to  
22 understand, this is -- this is likely to be or could  
23 be shown to a jury --

24          A           Yeah, fair.

25          Q           -- and they won't know these people from

1 Adam, nor do I, quite frankly.

2 A Sure.

3 Q So I think it helps to put it in  
4 context --

5 A I will --

6 Q -- without belaboring the point.

7 If they become relevant, Professor Ewell,  
8 it will be my job to ask about that.

9 A Uh-huh.

10 Q But I do appreciate it when you give  
11 these descriptions in brief of who they are and  
12 where they are located.

13 So with that said --

14 A Uh-huh.

15 Q -- please continue describing the process  
16 of publishing "Music Theory and the White Racial  
17 Frame" in Music Theory Online.

18 A Yeah, so the editor at the time was Jeff  
19 Perry.

20 Q Uh-huh.

21 A And there was some very interesting  
22 back-and-forth. And this is something that I  
23 actually outline in a monograph that I wrote --

24 Q Uh-huh.

25 A -- that came out last year. And that



1 monograph is entitled "On Music Theory and Making  
2 Music More Welcoming for Everyone." And I'm happy  
3 to -- to -- to repeat some of those things here.

4 So the reviews came back positive as --  
5 accept with revisions.

6 Q Uh-huh.

7 A Jeff Perry and the Music Theory Online  
8 team e-mailed me, We are going to change this to a  
9 different decision.

10 And the decision was revise and resubmit.  
11 And that --

12 Q And just for the record -- again, this  
13 may be presented to people who have no idea how --

14 A Uh-huh.

15 Q -- the publication in academic journal  
16 works, but a revise-and-resubmit recommendation  
17 means, if I may summarize, We like it but we want  
18 these revisions with these revisions; we'd like to  
19 see it again and then it will be published.

20 Is that fair?

21 A Yup, that's fair.

22 Q Okay.

23 A Yeah.

24 Q And so fast forward to the next phase.

25 A Uh-huh.

1           Q           **What happened next?**

2           A           Well, since you clarified what revised  
3 and resubmit means, we often just say "R&R."

4           Q           **Which doesn't mean "rest and relaxation."**

5           A           It does not mean --

6           Q           **It means more work for the professor?**

7           A           Yeah, yeah.

8                       Oh, let me clarify what "accept with  
9 revisions" --

10          Q           **Uh-huh.**

11          A           -- at least meant at the time.

12          Q           **Uh-huh.**

13          A           It meant this article will be published.  
14                       Music Theory Online said very clearly at  
15 the time in -- in their language, If you get to  
16 "accept with revisions," you can consider your  
17 article published and you can list it on your CV.

18          Q           **Uh-huh.**

19          A           So that's what that meant vis-à-vis the  
20 "revise and resubmit" --

21          Q           **Uh-huh.**

22          A           -- which is what you just outlined.

23          Q           **Uh-huh.**

24          A           They changed the "accept with revisions"  
25 to "revise and resubmit."

1                   And I took issue with that. And I began  
2 to -- I drafted a memorandum to the chair of the  
3 publications committee at the time. That was Brian  
4 Alegant, who is now retired I think --

5           Q           Uh-huh.

6           A           -- from Oberlin as a music theory  
7 professor.

8                   And I had a phone call with Brian Alegant  
9 regarding this case. And ultimately, I emerged  
10 victorious in this behind-the-scenes battle, let me  
11 say --

12          Q           -- uh-huh.

13          A           -- as to whether they were going to honor  
14 their own rules and not change the goal posts.

15          Q           Right.

16          A           Right? Or change the goal posts and get  
17 away with it.

18          Q           Uh-huh.

19          A           So it was one of those two things.

20                   Frankly, I thought that they would get  
21 away with it. But I was a little surprised, happily  
22 surprised, when in fact they decided to honor their  
23 own rules and publish this article.

24          Q           And so the Society for Music Theory  
25 honoring their own rules, that's important to you;

1 correct?

2 A Yes.

3 Q And in this case, you thought they did  
4 the right thing?

5 A Yes.

6 I should also add that any society  
7 honoring their own rules is important to me.

8 Q And I understand from your statement that  
9 you consider yourself a -- basically, an honest  
10 academic; right?

11 A I don't understand that question.

12 Q Sure. You want societies to honor their  
13 own rules; correct?

14 A Yes.

15 Q Professional societies that address  
16 academic work; correct?

17 A Yes.

18 Q And you, yourself, consider yourself an  
19 honorable academic in that sense?

20 A Yes.

21 Q Okay. And this is a perfect example of a  
22 question being unclear and you ask for clarification  
23 and I appreciate that.

24 A I appreciate the clarification.

25 Q So I want to turn to -- so this article

1 was peer reviewed. It came back, Accepted but we  
2 want a few changes.

3 Then the editorial board, it sounds like,  
4 changed that to revise and resubmit; correct so far?

5 A No, it was not the editorial board. It  
6 was the editors at Music Theory Online.  
7 Specifically, Jeff Perry and probably David  
8 Neumeyer --

9 MR. ALLEN: Uh-huh.

10 A -- retired music theory professor,  
11 University of Texas-Austin, I think.

12 BY MR. ALLEN:

13 Q Uh-huh. And then you pushed back on  
14 that; correct?

15 A Yes. Then I pushed back the editorial --  
16 not the editorial board, but the publications  
17 committee was the next level.

18 Q Uh-huh.

19 A And this is a publications committee, by  
20 the way, of the Society for Music Theory.

21 Q Okay. And you eventually prevailed?

22 A Uh-huh.

23 Q They followed their own rules; right?

24 A Uh-huh.

25 Q And the article was eventually published

1 after, what I take to be, some few revisions?

2 A Correct.

3 Q So I want to turn now and ask a few  
4 questions about the substance of your article.

5 I understand you may not have a verbatim  
6 memory of the article and it's been some time,  
7 but --

8 A Uh-huh.

9 Q -- I really want you to explain in -- in  
10 general terms that can be understand -- -stood by  
11 the Jury, if you could, what is the white racial  
12 frame in music theory?

13 A Well, the right -- white racial frame is  
14 from sociologist Joe Feagin --

15 Q Uh-huh.

16 A -- who's written books called "White  
17 Racial Framing," who's talked about this concept  
18 from a sociological point of view for decades now.

19 And within -- within music theory, the  
20 white racial frame is essentially an acknowledgment  
21 that American music theory historically is deeply,  
22 deeply rooted in our own country's historic white  
23 supremacy.

24 Q So the white racial frame is about the  
25 historical background to music theory in the United

**1 States?**

**2 A Yes, to a very large extent. Yes.**

**3 Q Okay. And how does the white racial**  
**4 frame justify the great array of privileges and**  
**5 assets held by white Americans?**

**6 I believe that's a quote from your**  
**7 article?**

**8 A Can you repeat that again, please?**

**9 Q Sure. How does the white racial frame in**  
**10 music theory "justify the great array of privileges**  
**11 and assets held by white Americans"?**

**12 A In music theory -- in American music**  
**13 theory, it's manifested in many, many different ways**  
**14 from the curricula that we put forth in the music**  
**15 theory classroom to the music theorists who have**  
**16 been elevated to study and whose works we read to**  
**17 the performances and the -- the pieces and the**  
**18 repertoire that we tell our students are the most**  
**19 important in -- in their music educations.**

**20 Q And how does that justify the great array**  
**21 of privileges and assets held by white Americans?**

**22 A It justifies it in the sense that**  
**23 virtually all of the repertoire, until the last,**  
**24 say, five to ten years, all of the repertoire, all**  
**25 of the theorists, all of the ideas put forth were in**

1 fact created by white men in the history of music  
2 theory going back, well, centuries, frankly.

3           And when you look at it from a racialized  
4 perspective, as I have, you realize that whiteness  
5 plus maleness, the concepts of whiteness plus  
6 maleness, in fact give people who happen to be  
7 deemed white by society -- because, of course,  
8 whiteness as a concept is something that's been  
9 very, very flexible over -- over the centuries,  
10 since it was created by humans roughly 500 years  
11 ago, right -- it gives people who -- who might  
12 identify as such a great, great advantage because  
13 people by default believe that a person who presents  
14 as white and male are -- are more inclined to be  
15 like the great music -- so-called great music  
16 theorists of the past; right?

17           And it in fact tells our students that  
18 this is the model for what music theory should be  
19 because quite literally 100 percent of the music  
20 theorists we put forth in study were in fact white  
21 men, rather than realizing that historically, going  
22 back hundreds of years, without question, the  
23 country that became known as the United States has  
24 valued whiteness over all other forms of races over  
25 non-whiteness, let's say.



1           And it's only now that we are beginning  
2 to unpack some of the racialized histories of music  
3 education and music theory specifically, which is  
4 what I do, in order to unpack some of the -- as  
5 you -- as you quote from me, the array of  
6 privileges --

7           **Q       Uh-huh.**

8           A       -- that whiteness and male -- plus  
9 maleness -- I'm speaking about whiteness because I  
10 think that's where your -- your question is more  
11 focused on that.

12           Of course, I very clearly link this to  
13 maleness and patriarchy in all of my work because if  
14 you actually study race, as I have over many years  
15 now, you realize that patriarchy is tied right at  
16 the hip to the history of white supremacy.

17           **Q       Okay. And is this a fair summary -- and**  
18 **I'm not trying to put words in your mouths [sic] --**  
19 **but the fact that only white men have written,**  
20 **published the corpus of music theory up to the**  
21 **present in the United States, that that has propped**  
22 **up white supremacy in the United States?**

23           A       No, that's not true. I -- I wouldn't say  
24 only white men because, in fact, people have  
25 theorized music all over the planet since there's

1    been music; right?

2                    We've only put forth a select few in our  
3    country because historically, the -- the country  
4    that became known as the United States is rooted in  
5    two twin ideologies more than any other and those  
6    ideologies are white supremacy and patriarchy.

7            Q        So these -- these doctrines of white  
8    supremacy and patriarchy were responsible for  
9    selecting the people in the United States who were  
10   considered music theorists?

11           A        Well, when you say "responsible for  
12   selecting," it almost sounds as if there's, like, a  
13   fair egalitarian selection process that's going on  
14   behind the scenes.

15                    And that's never been the case; right?  
16   It's -- it has quite literally been white men  
17   writing the rules.

18                    It's not like in 1787 when the  
19   Constitutional convention was convened in  
20   Philadelphia that there were 55 people from all over  
21   the country and half of them were women and over  
22   here we have the Scots and over here we have the  
23   Cherokee and the Hopi.

24                    No. No. No. We all know, they were 55  
25   white propertied men, about half of whom who owned

1 slaves, and they wrote a rulebook, the Constitution,  
2 which benefited themselves.

3 And to be honest, do you blame them? I  
4 wouldn't do -- I -- I would have done the same  
5 thing. You had money, you had education, you had  
6 travel.

7 I don't blame somebody 240 years ago for  
8 writing a rulebook that benefited themselves.  
9 That's human nature.

10 This is -- there's not -- there's nothing  
11 about blame here.

12 Q And -- and let me ask a question about  
13 that specifically.

14 And so in your view, the Constitution  
15 itself was written to support white male privilege?

16 A You keep coming back to the word  
17 "privilege" and that's not exactly the word I would  
18 use.

19 White male supremacy, I would use --

20 Q Okay. Well, let's use your words.

21 It was written to the support white male  
22 supremacy?

23 A Not explicitly to support white male  
24 supremacy, but it was written with white male  
25 supremacy in mind; right. I mean, I, quite

1 literally, would have been three-fifths of a person  
2 because of the Three-Fifths Compromise; right?

3 And --

4 Q And by that, you are referring to the  
5 fact that you identify as black?

6 A Correct.

7 Q And people at that time certainly would  
8 have identified you as black; right?

9 A Correct. Correct.

10 Q And keep in mind, this will be on video,  
11 so we are not making things up and they'll see you;  
12 right?

13 A That's great.

14 Q Okay. So then that's what you are  
15 referring to?

16 A Absolutely, yeah.

17 Q Uh-huh.

18 A And so I probably would ask a question:  
19 How could that not be seen as supporting whiteness  
20 if -- if the Fugitive Slave Clause, which was part  
21 of the original Constitution, and the Three-Fifths  
22 Compromise, which was part of the original  
23 Constitution, quite clearly were anti-black in  
24 nature?

25 And the first naturalization law from

1 1790 very clearly said, If you want to be  
2 naturalized citizen, you have to be white.

3 Q Uh-huh.

4 A It also said you had to be -- you had to  
5 be a free white person, is the way they wrote the  
6 law.

7 Well, that's a white supremacist  
8 structure; right. That's what --

9 So if -- if you're -- if you're asking me  
10 whether the Constitution was written with white  
11 supremacy and patriarchy, by the way, in mind, my  
12 answer would be unequivocally yes, it was.

13 Q And that includes the First Amendment to  
14 the United States Constitution?

15 A The First Amendment of the Constitution  
16 to free speech, I think, is one of the high water  
17 marks of our Constitution --

18 Q Are you excepting that from the supports  
19 of white supremacy in your view?

20 A I --

21 Q Let me rephrase that.

22 A Yeah, yeah, please.

23 Q Are you excepting the First Amendment  
24 from the argument you just made about the sup- -- I  
25 guess you didn't say "support" --

1 MR. PAINTER: That

2 mischaracterizes --

3 MR. ALLEN: Yeah, no, I'm trying to  
4 get it right.

5 MR. PAINTER: He didn't say the  
6 entire Constitution, every provision.

7 MR. ALLEN: Well, let me ask him a  
8 question.

9 BY MR. ALLEN:

10 Q I'm asking if you except the First  
11 Amendment which guarantees free speech from the  
12 argument that you made about the 55, I believe,  
13 white men, half of them slave owners, who were  
14 advancing white supremacy at the time of the  
15 founding?

16 A Yeah. This is a very interesting  
17 conversation.

18 I -- I fully acknowledge some of the  
19 beautiful parts of the United States Constitution.  
20 My personal favorite is the 14th Amendment written  
21 by John Bingham, a Radical Republican --

22 Q Which is, of course, after the Civil War;  
23 right?

24 A Correct. One of the reconstruction  
25 amendments.

1                   He was a Congressman from Ohio, a Radical  
2 Republican, and a white man, I'd like to point out  
3 for the record here.

4                   And the First Amendment I think is a  
5 great amendment. I think the Second Amendment is an  
6 awful amendment, personally, but now we are just  
7 getting into speculation and --

8           Q           And we don't need to --

9           A           -- I --

10                               (Whereupon, the court reporter  
11                               requests clarification.)

12 BY MR. ALLEN:

13           Q           Well, I -- I want to -- I don't  
14 necessarily want to cut this short, but we have  
15 other things to talk about and I -- I just wanted to  
16 ask you the question about the first amendment since  
17 you had made those statements about the  
18 Constitution.

19                   I wanted to return to music theory, if  
20 you don't mind?

21           A           Please.

22           Q           What role did music theory have in -- in  
23 forming the founders' drafting of the Constitution  
24 or the 1790 law that you mention?

25           A           What role did music theory have --

1           Q           **Yes?**

2           A           -- in forming the Constitution of the  
3 United States?

4           Q           **Yes. We've been talking about the**  
5 **white --**

6           A           Uh-huh.

7           Q           **-- racial frame of music theory; correct?**

8           A           Yeah.

9           Q           **And you --**

10                   MR. PAINTER: Correction. A lot of  
11 this has not been about the white racial  
12 frame of music theory. We have been  
13 talking about the Constitution for at  
14 least five minutes.

15 BY MR. ALLEN:

16           Q           **And then we transitioned to talking about**  
17 **the Constitution when I asked you how did this, for**  
18 **lack of a better word, ideology of the white racial**  
19 **frame justify the great array of privileges and**  
20 **assets held by white Americans; right?**

21           A           Uh-huh.

22           Q           **Do you remember that question?**

23           A           Uh-huh.

24           Q           **And then we transitioned based on your**  
25 **answer to a discussion of the Constitution and**



1 the -- the law in 1790?

2 A Uh-huh.

3 Q Which I think we all agree is atrocious.

4 A Uh-huh.

5 Q And my question then, returning to white  
6 racial framing of music theory, I wanted to know how  
7 those are connected. How is the white racial frame  
8 in music theory connected to the 55 founders, half  
9 of them slave owners, who drafted the Constitution?

10 A Well, that's actually pretty easy to  
11 answer. To race scholars like me, it's pretty easy  
12 to connect dots to see how the white supremacist  
13 foundings of the country are manifested in music.

14 Let's take the New York Philharmonic, for  
15 example. I think that's our oldest symphony  
16 orchestra. It was founded in 1842.

17 The first non-white person to play and be  
18 accepted into the orchestra was 120 years later.  
19 His name -- he's a black violinist. His name is  
20 Sanford Allen. He's still alive. He lives in New  
21 York City.

22 One hundred twenty years it took for them  
23 to accept into the orchestra a person who was not  
24 white.

25 Since I know a lot about patriarchy and

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.

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.

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.

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

1   orchestras and so forth, just as you have described.

2           A       Uh-huh.

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?

9           A       Uh-huh. Well, I -- I mentioned  
10  performing institutions like New York Philharmonic  
11  or the Metropolitan Opera.

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.

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.

1 Music theory is a crucial part of music  
2 education. It has been, of course.

3 Q So maybe -- let me ask my question  
4 another way.

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?

10 A It influenced absolutely every aspect of  
11 American life up to and including music theory.

12 Q Okay.

13 A And it still influences these things  
14 today.

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?

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.

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.

25 Why? Because Europe could no longer

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.

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."

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.

13 So I personally don't use "the West" in  
14 talking about some of the structures of -- of -- of  
15 music education.

16 And now, I'm sorry, Mr. Allen, you'll  
17 have to go back and repeat the -- the original  
18 question because --

19 Q Sure.

20 A -- I lost it.

21 Q So let's leave any conceptions of the  
22 West since that seems to be something you don't  
23 like.

24 So this white --

25 MR. PAINTER: Correction. I -- I

1 don't think he said he didn't like it.

2 THE WITNESS: You are right. I did  
3 not say --

4 BY MR. ALLEN:

5 Q You don't like this term, "Western"? You  
6 said it's --

7 A I didn't --

8 Q -- something like it was invented out of  
9 think air or something?

10 A Yeah, I didn't say I didn't like it. I  
11 said I don't use it.

12 Q Okay. Well, I'm sorry if I interpreted  
13 something that you refuse to use as something you  
14 don't like, so I stand corrected.

15 Let me ask the question a different way:  
16 This white racial frame in Wes- -- let me see --  
17 white racial frame in what is contemporary United  
18 States music theory has the purpose of upholding  
19 white supremacy; is that your argument?

20 A No. No.

21 Q Do you argue that the contemporary white  
22 racial frame in classical music theory as it's  
23 taught in the United States discriminates against  
24 black Americans?

25 A Can you clarify what you mean by

1 "discriminates against black Americans"?

2 Q Let's start with some of the examples  
3 you've used.

4 It denies black Americans access to, say,  
5 philharmonic orchestras?

6 A You mean as members playing in the  
7 orchestra?

8 Q Sure, let's start with that.

9 A It has, yes.

10 Q As students of music?

11 A I don't understand the question.

12 Q As students in graduate programs in music  
13 theory, such as you teach?

14 A Could you give me a full question? I --  
15 I --

16 Q Sure. I'm asking how -- or if music  
17 theory, as you've described it having this white  
18 racial frame, discriminates against black Americans,  
19 and you asked me to be more specific.

20 A I asked you to -- to -- to explain what  
21 you mean by "discriminating black Americans," yes.

22 Q And I said it keeps black Americans out  
23 of positions as performing artists in philharmonic  
24 orchestras, and you agreed?

25 A Yeah.

1           Q           And I asked if it keeps black Americans  
2 out of music theory education programs, such as the  
3 one you teach.

4                       So let's then move onto that question.

5           A           Are you --

6           Q           Is that an argument you would make, that  
7 this white racial frame discriminates against black  
8 Americans by keeping them out of music theory  
9 programs?

10          A           I don't understand what you mean by  
11 "keeping out of."

12                       You mean like not being admitted to  
13 study.

14          Q           Sure. It excludes them?

15          A           It excludes them as undergraduates or as  
16 masters or doctoral students?

17          Q           Let's take them in turn. As  
18 undergraduates?

19                       Do you know of any undergraduates who are  
20 black Americans who wanted to study in music theory  
21 who were excluded from a program in the United  
22 States because of the white racial frame of music  
23 theory?

24          A           Well, so I 00 I often refer to history in  
25 these terms and now I would refer to Paul Brent, who



1 is the first black student to study at Peabody.  
2 That was 1949. He was most certainly excluded  
3 because of his blackness but he did ultimately get  
4 in before that.

5 It was quite routine to exclude black  
6 people from conservatories and from music education  
7 because -- quite explicitly because of their  
8 blackness.

9 Carl Seashore was a music theorist at the  
10 University of Iowa who died years ago. He was  
11 essentially a musical eugenicist and he is -- his  
12 goal was to prove the inferiority of black musicians  
13 in the country.

14 The reason I'm laying out the history  
15 here is because it sounds like you want me to answer  
16 something about today and I have a hard time  
17 answering such a question without laying out a  
18 little bit of --

**19 Q Sure.**

20 A -- the history as to exactly how and why  
21 blacks were in fact discriminated against in music  
22 educational settings in horrific ways, I might add,  
23 going back to the 19th century.

24 But Paul Brent was 1949. That's not that  
25 old. My folks were alive in 1949. That's not that

1 far in -- into the past.

2 And it's not that much of a leap to think  
3 that such discrimination could have happened in the  
4 late 20th century.

5 Now, if you are asking me if I know  
6 specifically, I'd have to think. I could probably  
7 come up with some instances where it actually has  
8 been part of the "do you get admitted or do you not  
9 get admitted" --

10 Q Uh-huh.

11 A -- "into this program as an  
12 undergraduate, as a masters student, as a doctoral  
13 student?"

14 Q So this is still happening today is -- is  
15 what you believe?

16 A If the question is racial discrimination  
17 is still happening --

18 Q No, that --

19 A -- in music --

20 Q -- wasn't my question.

21 Are students being excluded from  
22 undergraduate programs because they are black today?

23 A In undergraduate music programs?

24 I think that it -- not explicitly, but in  
25 fact implicitly yes, probably yes.

1 MR. PAINTER: Take a break fairly  
2 soon?

3 MR. ALLEN: You want a break?

4 MR. PAINTER: Yeah, pretty soon.

5 THE VIDEOGRAPHER: Okay.

6 MR. PAINTER: Brief break.

7 MR. ALLEN: Let's go off the record  
8 and take a break now. It's fine. It's  
9 11:18.

10 THE VIDEOGRAPHER: We are going off  
11 the record.

12 MR. PAINTER: Just go to the  
13 bathroom.

14 MR. ALLEN: Yeah, sure.

15 THE VIDEOGRAPHER: The time is  
16 11:18.

17 (Whereupon, there was a recess taken  
18 from 11:18 a.m. to 11:31 a.m.)

19 THE VIDEOGRAPHER: We are going back  
20 on the record. The time is 11:31.

21 BY MR. ALLEN:

22 Q Professor Ewell, I believe before our  
23 short break you were talking about -- we were  
24 answering questions about specific incidents of  
25 discrimination in the field of music theory and the

1 admission to undergraduate. You had also mentioned  
2 graduate schools.

3 So I want to continue with that line of  
4 questioning, if you don't mind.

5 Do you know of any black students who  
6 have been denied admission to the University of  
7 North Texas graduate program in music theory?

8 A Nope.

9 Q Do you know of any specific incident in  
10 which my client, Timothy Jackson, has discriminated  
11 against a black American?

12 A No.

13 Q Any black person, whether American or  
14 not?

15 A No.

16 Q While we are at it, do you know of any  
17 racist actions committed by my client?

18 A No.

19 I would ask, I guess, just to define  
20 "racist" because I -- could you define what you mean  
21 by "racist" as --

22 Q Well, this is something he's accused of,  
23 so I don't know how graduate students or faculty at  
24 the University of North Texas define that. Maybe  
25 you could illuminate.

1                   Do you -- you know the fac- -- you know  
2   some of the faculty at the University of North Texas  
3   in their school of music; right?

4           A       Yeah, a couple. The one that I knew best  
5   was Ellen Bakulina.

6           Q       Uh-huh.

7           A       She's also a Russianist --

8           Q       Uh-huh.

9           A       -- as am I -- who's no longer there.

10          Q       Uh-huh. Do you know what she means by  
11   "racism"?

12          A       And she's now associate professor of  
13   music theory at McGill University.

14                   Sorry, could you repeat that?

15          Q       Do you know what Ellen Bakulina means by  
16   racist?

17          A       No.

18          Q       Okay. So back to the -- to questions  
19   about the white racial frame in music theory, as  
20   you've described it in your article, how has the  
21   white racial frame in music theory impeded your  
22   career personally?

23          A       I -- before I answer that I just want to  
24   once again highlight -- because you've said "white  
25   racial frame" quite a bit, that's not my -- I didn't

1    come up with this -- this phraseology.

2                    It's Joe Feagin who just retired from  
3    Texas A&M University as a sociologist.  He's  
4    85 years old.  He's an American icon, as a matter of  
5    fact.

6                    And so I really have to just kind of say,  
7    I didn't come up with white racial framing.  That's  
8    Joe Feagin.  He's written many books on this topic.

9                    And, you know, so part of me wants to  
10   say, We should be reading his work because he's the  
11   expert on white racial framing.

12                   And I'm sorry, could you please repeat  
13   the question about the white racial frame of music  
14   theory?

15            Q           Well, by mentioning Joe Feagin you are  
16   not suggesting that your articles weren't developing  
17   the idea of the white racial frame as it applied to  
18   music theory taught in the United States; right?

19            A           No, they were very much --

20            Q           Okay.

21            A           -- using his ideas, yes.

22            Q           Okay.  And I understand -- I think you  
23   would -- we all would agree that scholars build on  
24   the scholarship of others; correct?

25            A           Yes.

1 Q I'm most interested in the ideas that  
2 you've developed --

3 A Uh-huh.

4 Q -- defining, elaborating, identifying the  
5 white racial frame in music theory as it's taught in  
6 the United States; is that fair?

7 A Fair, yes.

8 Q And you've written on that in your  
9 article that grew out of your plenary talk in  
10 2019 --

11 A Uh-huh.

12 Q -- and it was eventually -- and please  
13 say "yes" or "no."

14 Yes?

15 A Yes.

16 Q And that was eventually published in your  
17 article in Music Theory Online; correct?

18 A Yeah. Yes.

19 Q And in fact it has "white racial frame"  
20 in the title; correct?

21 A Yes.

22 Q Okay. So that's what I'm talking about;  
23 is -- can we agree on that?

24 A Yes.

25 Q All right. I'm asking: How did the

1 white racial frame in American music theory as  
2 you've described it impede your career as a black  
3 American man?

4 A Oh, that's a vast, vast question.

5 The first part I would say, it's hard for  
6 me to even know because much of anti-black -- much  
7 of anti-blackness happens behind the scenes. So  
8 if -- if something didn't happen for me, there's a  
9 chance that anti-blackness might be the reason why  
10 that happened.

11 So that's unclear to me how that might  
12 have happened.

13 In terms of how has it affected me, well,  
14 I've already mentioned the fact that the article  
15 under question was -- they changed decisions about  
16 the revision -- about the reviews from "accept with  
17 revisions" to "revise and resubmit."

18 I believe that anti-blackness was, in  
19 part, part of the reason that happened; right?

20 I believe that -- I had a very difficult  
21 tenure battle at Hunter College from 2014 to 2016 in  
22 which the chair of the music department at the time  
23 tried very, very vigorously to get me fired,  
24 something I just briefly mention in the introduction  
25 to my -- my monograph last year. That, I believe,



1 was most certainly driven by anti-blackness.

2           So -- I even mentioned at some point in  
3 that book that it -- you know, this two-year tenure  
4 battle that I had to wage because this particular  
5 one person was essentially claiming I was  
6 incompetent at what I did, and I do believe driven  
7 by anti-blackness, nobody should have to do -- go  
8 through that; right. That's not something that a  
9 white person should go through, that a -- or any  
10 non-white person should go through.

11           But to bring it back to anti-blackness,  
12 this is historically part of the fabric of the  
13 United States; part that we will continue to work  
14 through together, I hope, and -- and confront and  
15 make things better for our children and  
16 grandchildren.

17           Q       So you've given two examples, this SMT --

18           A       Decision on the --

19           Q       -- decision on your -- not the Spectrum  
20 article, but the -- the one we've been discussing in  
21 Music Theory Online; right?

22           A       Yes.

23           Q       In which you eventually got them, in your  
24 words, to follow their own rules?

25           A       Correct.

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.

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 --

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

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

1 your textbook, that you don't know what music theory  
2 will look like?

3 A No.

4 Q So you have some idea of what it should  
5 look like; correct?

6 A Well, yes, of course, based on the  
7 textbook that I'm co-authoring, yes.

8 Q So what would an anti-racist American  
9 music theory look like now, today in 2024?

10 A Well, again, I don't know what the  
11 anti-racist music theory would look like.

12 I can tell you what we are doing in our  
13 book which would certainly more align with  
14 anti-racism than music theory textbooks in the past.

15 Should I say what the book is about?

16 Q Tell me what your book argues is more in  
17 line with anti-racist music theory in the present?

18 A Well, it's a music theory textbook, so we  
19 are not putting forth arguments about anti-racism  
20 and anti-blackness. That's just not something that  
21 usually happens in a -- in a music theory textbook.

22 Q Okay. That's fine.

23 Now, I want to transition to talk about  
24 someone I know you studied in depth, Heinrich  
25 Schenker.

1                   You can assume that this case has  
2   Heinrich Schenker in its background in many regards,  
3   so I'm not going to ask you to describe who Heinrich  
4   Schenker was and is.

5                   But I can assume for the record that you  
6   are very familiar with the work of Heinrich  
7   Schenker?

8           A       Uh-huh.   Yes.

9           Q       And he was an Austrian, Jewish music  
10   theorist born in the middle of the 19th century and  
11   lived into the early third of the 20th century;  
12   correct?

13          A       1868 to 1935.

14          Q       Okay.   And he ended his life in Vienna,  
15   in the center of the state of Austria?

16          A       He ended his life makes it sounds like he  
17   committed suicide.

18          Q       I'm not -- I mean his life came to an end  
19   in Austria; correct?

20          A       Correct.

21          Q       In Vienna?

22          A       As far -- as far as I know.   I -- I'm --  
23   I'm not a -- really a Schenker historian like that.

24          Q       Uh-huh.

25          A       But I do believe he died in Vienna, yeah.

1           Q       Now, you argue in your article and  
2 elsewhere -- article in Music Theory Online that  
3 Heinrich Schenker has been very important in  
4 advancing this white racial frame in music theory;  
5 is that fair?

6           A       The -- yeah. I'll go ahead and say yes.  
7 Yes.

8           Q       Okay. And how did he contribute to the  
9 wait racial frame in music theory?

10          A       Well, of course since he died in 1935,  
11 and had virtually nothing, you know, directly to do  
12 with American music theory, you have to draw a lot  
13 of historical parallels, right.

14                   And so you first begin with his emigre  
15 students who came over here, Hans Weisse --

16          Q       Uh-huh.

17          A       -- would be the first name I would  
18 mention. But then Felix Salzer and Oswald Jonas and  
19 Ernst Oster.

20          Q       Can I interrupt to ask you a question  
21 about that group of scholars --

22          A       Uh-huh.

23          Q       -- you just mentioned?

24          A       Uh-huh.

25          Q       All of them were music theorists?



1           A           Yeah -- yes.

2           Q           And were they all Jewish immigrants to  
3 the United States?

4           A           That I don't know.

5           Q           Okay.

6           A           The reason I hesitated about music  
7 theorists is because the term "music theorists" was  
8 not so well defined back then. They probably would  
9 have said that they were a -- their specialty was  
10 musikwissenschaft, which is --

11          Q           And that means "the science of music,"  
12 correct?

13          A           Exactly. Yeah. "Musicology," was what  
14 we say.

15          Q           You just used a German word --

16          A           For musicology --

17          Q           One of these impossible German words that  
18 is about longer than the alphabet?

19          A           Yes. Yes.

20          Q           Okay.

21          A           And you can keep making them longer by  
22 adding stuff at the end or the beginning. That's  
23 correct.

24          Q           Thank you.

25                       So please continue.

1                   I -- I had asked you how Heinrich  
2 Schenker contributed to the white racial frame and  
3 you were discussing his students who came to the  
4 United States?

5           A       Yeah. But the question, when you say how  
6 Heinrich Schenker contributed, it's a very active  
7 voice you are using.

8                   And in fact, you can't use that active  
9 voice at all because Heinrich Schenker himself  
10 didn't contribute to our white racial frame in the  
11 sense that we in America created a system of music  
12 theory which has, as Joe Feagin would say, a very  
13 pro-White subframe of the white racial frame.

14                   And -- and the ideas of tonal music were  
15 very often understood through some of the musical  
16 theories that Heinrich Schenker put forth.

17                   But to say, How did he contribute to the  
18 white racial frame, that's -- you are using the  
19 active voice there that I just disagree with.  
20 It's --

21           Q       Okay.

22           A       He didn't.

23           Q       So -- and thank you.

24                   You mentioned tonal music?

25           A       Uh-huh.

1           Q       Can you please describe for the Jury and  
2 for the Court here on this record what is -- in  
3 terms of absolute -- you know, someone with no  
4 knowledge of music theory would be able to  
5 understand, such as myself, for instance.

6                   What -- what does that mean? What is  
7 tonal music?

8           A       Well, that's a -- it's a great question  
9 and it's a very -- you know, do you -- do you want  
10 the short, middle, or long answer?

11                   I'm going to try to go for the --

12          Q       Well, please, a brief -- you know, just  
13 for the record --

14          A       Yeah. I'll try to go --

15          Q       -- again, for the --

16          A       I'll go --

17          Q       -- record, but again --

18          A       -- kind of middle -- middle length.

19          Q       It makes it hard on him. That's why we  
20 can't speak over each other.

21          A       Was it --

22          Q       I apologize. And it was my fault.

23                   But let me rephrase my question.

24          A       Uh-huh.

25          Q       So briefly describe for the record what

1 "tonal music" is in -- in ways that a -- an utter  
2 layperson can understand?

3 A So if you had asked me that ten, 15 years  
4 ago, I would have said something like, tonal music  
5 is music written in a key like C major or D minor  
6 that moves -- that has what we in music theory call  
7 triads and harmonies and chords that move in a  
8 certain logical progression within a key of -- in  
9 music; right.

10 Typical composers of such tonal music  
11 would be, for example, names that the Jury probably  
12 knows: Johann Sebastian Bach, Ludwig van Beethoven,  
13 Wolfgang Amadeus Mozart, for example.

14 And tonal music represented a roughly  
15 200 -- let's call it, 250-year period from the late  
16 17th century, call it, 1650, with composers like  
17 with Arcangelo Corelli up through, let's say, 1900,  
18 roughly.

19 Today I would give a different answer  
20 because that very much is part of music theory's  
21 hegemony in promoting what essentially is a white --  
22 white racially framed way of conceiving of tonal  
23 music or tonality; right.

24 Q And by "hegemony," you mean a system that  
25 maintains its own power?

1           A           It's own power, yes.

2           Q           Uh-huh.

3           A           Yeah. Of course we haven't mentioned --  
4 I haven't mentioned the term "colonial" or  
5 colonialization." That's often a term used in  
6 academic circles with --

7           Q           Well, let's leave that aside and get back  
8 to the definition of "tonal music" as you would  
9 define it today?

10          A           Yes, thank you.

11                    So as far as I know, all peoples on our  
12 planet have musics; right? And if music has  
13 frequencies -- frequencies are -- are in music what  
14 we call pitches; right?

15          Q           You mean the actual frequency of the  
16 sound?

17          A           Of the sound.

18          Q           Like the sound waves --

19          A           Exactly.

20          Q           Okay. Sorry, go ahead.

21          A           Any -- any -- any sound has a frequency.  
22                    (Whereupon, the witness taps the  
23                    table.)

24          A           That --

25

1 BY MR. ALLEN:

2 Q I just want --

3 A -- has a frequency.

4 Q -- to be clear that you are not talking  
5 about the frequency with which music is heard or  
6 something like -- you know, the -- the oftenness, if  
7 that --

8 A Correct.

9 Q So let's -- now that we have cleared up  
10 that, I apologize --

11 A Uh-huh.

12 Q -- and I'll stop interrupting you. Go  
13 ahead.

14 A Yeah, I'm talking about acoustics and  
15 physics and --

16 Q Uh-huh.

17 A -- in physics, frequency is called "Nu,"  
18 you know, the Greek letter --

19 Q Uh-huh.

20 A -- that goes like that?

21 Q Yeah.

22 A That's --

23 Q Please --

24 A So if somebody says, "What's new?"

25 You say, "Frequency."

1                   That's a joke.

2           Q       **That's a music theory joke?**

3           A       That's -- that's a music theory joke.

4           Q       **Fair.**

5           A       And when musics have freq- -- sounding  
6 frequencies, which vib- -- any vibrating body will  
7 produce, right? --

8           Q       **Uh-huh.**

9           A       -- it has potential tones and tonality;  
10 right?

11                   So in other parts of the world, the  
12 most -- two of the most developed such systems I  
13 could cite here would be ragas in the Indian  
14 subcontinent or different maqam systems in Turkey  
15 and the Middle East and Jordan in Arabic maqams --  
16 Turkish and Arabic maqams, for example.

17          Q       **Uh-huh.**

18          A       Many, many, many centuries of tonalities  
19 which are just not the same as the Bach,  
20 Beethoven --

21          Q       **Uh-huh.**

22          A       -- functional tonality.

23                   So in other words, rather than saying  
24 that -- you'll note that I put the word "functional"  
25 in front of "tonality," which is something that we

1 music theorists often talk about.

2 Functional means that the chords have  
3 certain characteristics and -- and progressions that  
4 they follow. So it's a word that we just use in  
5 music theory.

6 Rather than thinking that functional  
7 tonality is in fact the foundation for music theory  
8 in the United States of America, I now say that it  
9 is a foundation.

10 Q Uh-huh.

11 A And this simple grammatical shift from  
12 "the foundation" to "a foundation" --

13 Q Uh-huh.

14 A -- which it is --

15 Q Uh-huh.

16 A -- actually has caused a lot of panic  
17 behind the scenes because a lot of people don't want  
18 to acknowledge that there are many others, that they  
19 represent very interesting rich music theory  
20 traditions, potentially, and that we -- a country of  
21 30 -- 330 million people coming from all over the  
22 planet and some of whom were here before people  
23 started arriving, right, indigenous folks -- have  
24 ways of thinking about music that are all valid and  
25 very interesting.



1           Q       So everyone can have their own private  
2 music theory; is that what you mean?

3           A       If you got rid of the word "private," I  
4 would agree with that statement.

5           Q       Back to Heinrich Schenker, he is one of  
6 the primary music theorists of tonal music, as you  
7 described it, originally as -- let's say, this  
8 period from the enlightenment to the late 19th  
9 century that you described?

10                   Enlightenment being the 18th century,  
11 sorry?

12          A       And you said, One of the most  
13 important -- is that what you -- music theorists?

14          Q       Yes.

15          A       Yes, I think that Hugo Riemann would be  
16 slightly more important.

17          Q       Okay.

18          A       Heinrich Schenker was very much an  
19 American phenomenon. For most of the rest of the  
20 world --

21          Q       Uh-huh.

22          A       -- dealing with the Bach through Brahms,  
23 is what we sometimes call canonic composers or  
24 common practice composers. There's several ways --

25          Q       Uh-huh.

1           A           -- of talking about that -- those  
2 composers. Hugo Riemann and his theories actually  
3 were more important than Heinrich Schenker.

4                   American music theorists might not want  
5 to acknowledge that, but that's a true statement.

6           Q           And you examined his -- I think it's  
7 called Schenker Documents Online.

8                   Can you describe briefly what that is?

9           A           As far as I know -- I don't even know  
10 where it's housed -- but it is -- he was a very  
11 prolific writer --

12          Q           Uh-huh.

13          A           -- Heinrich Schenker was. And aside from  
14 his main works, Harmonielehre, and Kontrapunkt, and  
15 Freie Satz, Free Composition -- those are his three  
16 main works; Counterpoint is in two volumes --

17          Q           Uh-huh.

18          A           -- there are diaries and letters and  
19 correspondence and -- and essays and introductions  
20 and forwards and many other things.

21                   As far as I understand, Schenker  
22 Documents Online is a repository -- an online  
23 repository of many of those documents transcribed  
24 from German and then translated by several people  
25 into English.

1 Q So a layperson could find this online?

2 A I think so, yeah.

3 Q And a layperson who didn't even speak  
4 German, which was Schenker's language, could also  
5 read these translations?

6 A Correct.

7 Q And they are in side by side, you have  
8 the original text and then the translation side by  
9 side?

10 A Correct.

11 Q Thank you.

12 And approximately how many pages of  
13 Schenker's original writings are online in this -- I  
14 think it's called the Schenker Documents Online  
15 Archive?

16 A I have no idea.

17 Q If I said it was approximately 6,000  
18 pages, would that -- do you think that's inaccurate?

19 A I really couldn't say.

20 Q Do you have any reason to believe it's  
21 not thousands of pages?

22 A I have no reason to believe that it is  
23 not thousands of pages.

24 Q And I believe in your writings you said  
25 you'd identified 57 mentions in the Schenker

1 Documents Online of the word "race"?

2 A I believe so.

3 Q And is 57 mentions out of thousands of  
4 pages representative of an intellectual's work over  
5 their lifetime?

6 A In terms of talking about human race, I  
7 think it's significant.

8 Q Okay.

9 A And it -- I would add that I don't think  
10 every mention of the word "race" -- Rasse in  
11 German -- was necessarily about human race, but the  
12 vast majority -- you -- you could say, like, a race  
13 between a turtle and a tortoise or something; right?  
14 So that's -- it's not always human race, but it  
15 virtually always was.

16 Q Correct.

17 And you mention a -- a -- well, what is  
18 that? It's not a synonym.

19 I mean, race -- running a race and "race"  
20 meaning --

21 A Human race.

22 Q -- Nineteenth century conceptions of skin  
23 color in race, those are the same word in English,  
24 but they're not in German, are they?

25 A Correct.

1           Q       Wettrennen is the word in German for  
2 "race"; right?

3           A       I do not know.

4           Q       How well you know German?

5           A       I've got a reasonable reading knowledge.

6           Q       Were you reading the Schenker Documents  
7 Online in the original or were you relying on the  
8 translation?

9           A       I was relying on the translations, but I  
10 did check with the originals as I did that.

11          Q       And were all the mentions of race in  
12 Schenker's Schenker Documents Online negative?

13          A       I can't recall.

14          Q       Disparaging of black people?

15          A       I can't recall.

16          Q       But you still maintain that the 57  
17 mentions out of something like 6,000 pages, if  
18 that's accurate, is nevertheless very significant;  
19 correct?

20          A       I did not say "very significant." I said  
21 "significant."

22          Q       It's not cherry picking these 57 mentions  
23 out of all those pages?

24          A       I obviously was trying to find instances  
25 where Heinrich Schenker had mentioned race.

1           Q       If you searched some word like "tone" --  
2 what's the German word for "tone"?

3           A       Tone -- it's "ton," t-o-n -- but --

4           Q       If you searched the -- the Schenker  
5 Documents Online for the word "tone," just give a  
6 guesstimate of how many times that would appear in  
7 Schenker's work?

8           A       I really couldn't do that.

9           Q       Do you think it would be more than 57?

10          A       Probably.

11          Q       A lot more?

12          A       I couldn't say.

13          Q       You do argue that Schenker's music theory  
14 was anti-black; correct?

15          A       I argue that there are elements of  
16 anti-blackness in his music theories.

17          Q       What's the connection between Schenker's  
18 anti-black ideology, if we want to call it that, and  
19 his ideas of music theory as it applies to tonal  
20 music?

21          A       I don't think he thought that much about  
22 black music just for the simple reason that he  
23 didn't think that it was worth attention.

24                   So the --

25          Q       Let me ask my question again because I

1 think that's a different -- that's an answer to a  
2 different question.

3 I'm not implying that you are doing  
4 anything bad here; I just want an answer to a  
5 different question.

6 What's the connection between his  
7 anti-blackness and his music theory?

8 Not what's the -- you know, I don't know  
9 if he was hostile to black music or not, but I --  
10 you have argued that he was anti-black.

11 A I --

12 Q Correct?

13 A I -- I'll just repeat what I said. I  
14 believe that there are strong elements of  
15 anti-blackness within his theories --

16 Q Uh-huh.

17 A -- and that he made comments as I  
18 cited --

19 Q Right.

20 A -- in my work that were unequivocally  
21 anti-black.

22 Q Okay. And what's the relationship  
23 between his anti-blackness as it was expressed in  
24 his work and his music theory of tonal music?

25 A I don't think that there's much

1 relationship at all in -- with respect to Heinrich  
2 Schenker.

3 Q Okay. So you would agree with Timothy  
4 Jackson in that regard?

5 A I do not know.

6 Q Have you argued that Heinrich Schenker  
7 had a very hierarchal theory of tones?

8 A I've argued that he had a hierarchical  
9 theory of -- of understanding tonality and --

10 Q Can you please describe that in terms  
11 that a layperson could understand, for the record?

12 A Well, his entire system of music theory  
13 was extremely hierarchical; right? And he found  
14 levels of hierarchies in what he would consider to  
15 be master works; right?

16 Q Like the great Bach, Beethoven, and so  
17 forth?

18 A Exactly.

19 Q Okay.

20 A There were 12 on his list, 12 composers.

21 And he would find these -- well, he  
22 called them Schichte -- these layers of -- of -- of  
23 hierarchies, right, and all great music would  
24 exhibit these layers and of course they were  
25 fundamental structures. We all know that.



1                   Just for the layperson, the fundamental  
2 structure is a struct- -- the tonal structure of a  
3 so-called great piece of music.

4           **Q       Is that what some piece might refer to if**  
5 **they say it's written in C minor or whatever it --**

6           A       No, that --

7           **Q       It's not?**

8           A       That's just a key; right. So C minor is  
9 a key.

10                   But if it's a C minor, a piece by  
11 Beethoven, well, then, a priori, it's going to be a  
12 great masterwork because he was one of the 12  
13 composers whom Heinrich Schenker elevated above all  
14 others.

15           **Q       Uh-huh.**

16           A       And it would then exhibit these  
17 structural layers, it would exhibit this fundamental  
18 structure that -- with a simple harmonic motion from  
19 a tonic to a dominant to a tonic with a melodic  
20 dissent of scale degrees above that.

21                   That's inside music theory baseball, but  
22 that is part of his -- well, it's some of the most  
23 basic parts of his music theory.

24                   And yes, hierarchy was extremely  
25 important.

1           Q       And so is it fair, I guess, from my -- my  
2 very uninformed understanding of music theory, is it  
3 fair to say that in his theory, certain tones were  
4 subordinate to others in the structure of an entire  
5 musical piece?

6           A       Yes.

7           Q       And would those vary from composition to  
8 composition, or was it always the case that there  
9 was a superior tone?

10          A       Well, it would always be the case that it  
11 would come down to one of three fundamental  
12 structures that he conceived.

13          Q       Okay. And how is that related to  
14 anti-blackness?

15          A       Well, you could read my book and you'd  
16 probably get some ideas of how it might be related.

17                   But you are asking a very specific  
18 question about Heinrich Schenker's music theories --

19          Q       And its hierarchy?

20          A       -- and its hierarchies.

21                   And the way that I would answer that  
22 question is to say, again, Heinrich Schenker died in  
23 1935 and he, as far as I know, never traveled to the  
24 United States of America.

25                   What we have done since then in the

1 ensuing 85 -- yeah, 90 years is create a system of  
2 music theory that very much has relied on Heinrich  
3 Schenker's beliefs. His music theory -- music  
4 theoretical beliefs.

5 And in that 90 years, there have been  
6 strains of, among other things, anti-blackness,  
7 anti-womanness. And it very much represents what,  
8 again, I'll call it, the pro-white subframe of music  
9 theory's white racial frame.

10 Q So what's the relationship between the  
11 hierarchal nature of his theory of tones and this  
12 anti-blackness, anti-womanness that you've just  
13 sub -- described?

14 A That's something that -- that, you know,  
15 one would need so long to explain that. I mean,  
16 this is a deposition.

17 And I just have to fall back to the  
18 history and -- and simply say that over 90 years, we  
19 have created a system of tonal understanding based  
20 largely on Heinrich Schenker's theories in the  
21 United States of America in which the works of white  
22 men -- 12 for him -- but more broadly the concepts  
23 of whiteness and maleness are held in higher regard  
24 than those composers who may not have identified as  
25 both white and male.

1           Q           So is it true that you have argued -- and  
2 I'm going to quote from your article in Music Theory  
3 Online -- "the notion of hierarchy of a strict  
4 ordering of the tones of composition is so  
5 thoroughly consistent with Schenker, his deeply  
6 conservative outlook on life and culture, that it is  
7 difficult to uncouple his theory entirely from two  
8 of his most consistently expressed ideological  
9 stances: One, the centrality of the German people  
10 in European culture; and two, the steady decline of  
11 culture and political order in Europe since the late  
12 18th century."

13           A           Those are not my words. Those are the  
14 words of William Drabkin, a very imminent Schenker  
15 scholar, so you should check your source there.

16                       I quoted --

17           Q           Did you quote him?

18           A           I'm quoting him but --

19           Q           Did you quote him positively? You agree  
20 with that?

21           A           Were you suggesting that I had written  
22 that?

23           Q           I think it's in your article; correct?

24           A           Yeah, but -- but I didn't write those  
25 words.

1           Q       **Okay.**

2           A       You are aware of that; right?

3           Q       **I -- I don't know if you did or not.**

4                   I'm certain that you included them in  
5 your article.

6                   So my question -- and this is a good  
7 chance for you to clarify for the Court -- you  
8 quoted another author's work; right?

9           A       I did.

10                   May I ask --

11          Q       **Approvingly?**

12          A       -- a question?

13                   May I ask a question?

14          Q       **No.**

15          A       Oh.

16          Q       **I'm asking the question.**

17          A       Oh, okay.

18          Q       **I'm asking if you approve of that**  
19 **statement?**

20          A       May I ask a clarification?

21          Q       **Sure.**

22          A       You just said you don't know whether I  
23 wrote those words or not.

24                   And I'm telling you that I did not  
25 write -- write the words that you just spoke.

1                   Therefore, the -- the clarification is:

2   Do you actually not understand that those were not  
3   my words that you just --

4           Q       I think I said --

5           A       -- read?

6           Q       And I'm not sure if I did say this -- I  
7   think I said, You argued; okay?

8                   And I'm not disputing that you wrote them  
9   or not.

10          A       Uh-huh.

11          Q       If you say you quoted another author's  
12   work, that's perfectly normal in academic  
13   scholarship.

14                   I'm arguing -- excuse me, I'm not  
15   arguing -- I'm asking if you agree with that  
16   statement?

17                   That's a very clear statement about the  
18   relationship with the -- between the hierarchy of  
19   tonal theory and ideologies of cultural supremacy of  
20   the German people?

21          A       Could you --

22          Q       Wouldn't you agree to that?

23          A       Could you reread the --

24          Q       Sure.

25          A       -- the quote from William Drabkin?

1           Q       Can you spell his name, just for the  
2 record?

3           A       D-r-a-b-k-i-n.

4           Q       Thank you.

5                   MR. PAINTER: Can I ask for a  
6 clarification?

7                   Which document are we referring to?  
8 Is this in -- is this an article written  
9 by --

10                  MR. ALLEN: We are talking about  
11 the --

12                  MR. PAINTER: -- the school?

13                  MR. ALLEN: -- Music Theory Online  
14 article that the -- the deponent has  
15 testified that he published 2021.

16                  THE WITNESS: 2020.

17                  MR. ALLEN: 2020.

18                  MR. PAINTER: Can we make that an  
19 exhibit to the deposition so he can have  
20 it in front of him?

21                   Because that will also help. I  
22 assume it would have quotation marks.

23                  MR. ALLEN: It's also publically  
24 available online.

25                  THE WITNESS: It's a block

1 quotation.

2 MR. ALLEN: Let me -- let me do that  
3 after our next break.

4 MR. PAINTER: Okay.

5 MR. ALLEN: We will do that --

6 MR. PAINTER: So it's a block  
7 quotation --

8 MR. ALLEN: Correct.

9 MR. PAINTER: It's very helpful if  
10 it were part of it --

11 MR. ALLEN: Sure.

12 MR. PAINTER: -- then we would  
13 as- -- dealt with this right away, this  
14 block quotation --

15 MR. ALLEN: Sure.

16 MR. PAINTER: -- from another  
17 author.

18 BY MR. ALLEN:

19 Q I think the record shows that the witness  
20 remembers it accurately enough to know which author  
21 he quoted and know that it was accurate quote from  
22 the author; correct?

23 A Yes.

24 MR. PAINTER: Yes, we've just got to  
25 reread the statement if you're going to



1 ask if he agrees with it --

2 MR. ALLEN: Absolutely. But I don't  
3 want to now break and go get it.

4 MR. PAINTER: Okay.

5 MR. ALLEN: I want to ask him  
6 this -- this question and then we can  
7 come back to this.

8 BY MR. ALLEN:

9 Q You asked me to reread the quotation.

10 "The notion of hierarchy of a strict  
11 ordering of the tones of composition is so  
12 thoroughly consistent with -- Schenker -- his deeply  
13 conservative outlook on life and culture that it is  
14 difficult to uncouple his theory entirely from two  
15 of his most consistently expressed ideological  
16 stances: One, the centrality of the German people  
17 in European culture; and two, the steady decline of  
18 culture and political order in Europe since the late  
19 18th century."

20 Now, to the best of your recollection,  
21 did I read that correctly?

22 A Yes.

23 Q And -- and we'll confirm. I want to get  
24 a clean copy of the article for you. I apologize  
25 for not do -- not doing that in advance.

1                   That's a relatively clear statement of  
2 the relationship between Schenker's theory of  
3 hierarchy and tones and what the author, Dubkin, is  
4 arguing is an ideological theory of the hierarchy of  
5 the German culture or people.

6           A       Uh-huh.

7           Q       Correct?

8           A       Uh-huh. Yes.

9           Q       Do you argue that that also expresses  
10 anti-blackness?

11          A       I did not argue that in that article, no.

12          Q       Is there no relationship between Heinrich  
13 Schenker's hierarchal theory of tones and theories  
14 of -- I don't know -- bogus phrenology, bogus  
15 theories of the hierarchy of the races?

16          A       I don't know. I couldn't answer that  
17 question.

18          Q       Okay. You can't answer it yes or no?

19          A       Correct.

20                   MR. ALLEN: Can we go off the record  
21 briefly?

22                   THE VIDEOGRAPHER: We are going off  
23 the record. The time is 12:10.

24                   (Whereupon, there was a recess taken  
25 from 12:10 p.m. to 12:12 p.m.)

1 THE VIDEOGRAPHER: We are going back  
2 on the record. The time is 12:12.

3 BY MR. ALLEN:

4 Q I want to make a transition,  
5 Professor Ewell, and talk about the University of  
6 North Texas.

7 As you know, my client, Timothy Jackson,  
8 is a professor there; correct?

9 A Correct.

10 Q Are you familiar with another professor  
11 there named Frank Heidelberger?

12 A Yes.

13 Q Explain for the record how you know Frank  
14 Heidelberger.

15 A I cannot recall the first time I ever met  
16 Frank Heidelberger. I remember meeting him in person  
17 only once and I think it was in the Vancouver  
18 conference of the Society for Music Theory.

19 I think I just ran into him on the  
20 street, as one does at these conferences, and I saw  
21 his name badge and just --

22 Q Uh-huh.

23 A -- introduced myself.

24 The Vancouver conference -- well, we'd  
25 have to go to the record for that. That was

1 probably 2018ish.

2 So I think that's the only time I met  
3 Frank Heidelberg -- -berg or -berger?

**4 Q I believe it's Heidelberger?**

5 A Heidelberg with an "e-r" at the end.  
6 Okay.

7 Aside from that, at the -- at the impetus  
8 of, I think it was, Ellen Bakulina, I had a piece  
9 published in Theoria, the journal at the University  
10 of North Texas, in a short -- in a small little  
11 group of -- of three authors: Ellen Bakulina, whom  
12 we've mentioned, Chris Segall, who's a professor of  
13 music theory at the University of Cincinnati, and  
14 me.

15 And this grew out of a -- of a session  
16 that we had given, I think it was for the Russian  
17 music theory interest group.

**18 Q Uh-huh.**

19 A And maybe it was in Vancouver. It was  
20 somewhere --

**21 Q This is the 2018 conference that you**  
**22 mentioned?**

23 A Don't quote me on the 2018. I'm pretty  
24 sure it was Vancouver, whenever that happened.

**25 Q Is it fair to say it's a -- you met at a**

1 conference and it was before COVID?

2 A Yes. Oh, yes. Yes.

3 Q Before the 2020 academic year?

4 A Correct on both counts, yes.

5 Q I'm going to introduce for the record  
6 Exhibit 2, which I'm handing to the court reporter  
7 who will hand it to you.

8 COURT REPORTER: One moment please.

9 MR. ALLEN: Just for the record, for  
10 the people -- sorry --

11 Sorry. Shall I let you mark the  
12 exhibit?

13 I've got to tell them what it is.

14 COURT REPORTER: One moment please.  
15 I can't take down -- once it's silent --

16 MR. ALLEN: Some day I'll invent an  
17 octopus court reporter.

18 (Whereupon, Plaintiff's Exhibit 2,  
19 Theoria Volume 26, 2020, was marked  
20 for identification.)

21 MR. ALLEN: I'm introducing for the  
22 record Exhibit 2.

23 And for those who have got the  
24 exhibit pack online, this is the exhibit  
25 which in my notes was 09, Theoria volume

1                   26, 2020.

2   BY MR. ALLEN:

3           Q       And, Professor Ewell, is that an accurate  
4   description of what I've just handed you?

5           A       Yes.

6           Q       So I've introduced this exhibit because  
7   you were just mentioning publishing in a journal.

8                   Is this the journal which that discussion  
9   referred to?

10          A       Oh, yes, for Theoria, yes.

11          Q       And describe just briefly what is the  
12   journal Theoria?

13          A       It's a journal that's housed at the  
14   University of North Texas Press, I believe, and  
15   Frank Heidelberger is the editor, the -- the -- the  
16   lead. I -- you know, he's essentially -- well, does  
17   it say it here?

18          Q       He's listed on the --

19          A       Yeah, editor.

20          Q       -- first page --

21          A       Yeah.

22          Q       -- as the editor; correct?

23          A       Frank Heidelberger, yeah. Uh-huh.

24          Q       And that's the Frank Heidelberger you were  
25   referring to in your testimony?

1           A           Correct.

2           Q           And if you go the second page, there's a  
3 table of contents.

4           A           Uh-huh.

5           Q           Correct?

6           A           Yeah.

7           Q           And you were talking about publishing in  
8 a group of three some articles in Theoria; right?

9           A           Uh-huh.

10          Q           And in the title page where it says,  
11 "Russian Music Theory Panel SMT 2018," is that the  
12 series of articles you were referring to?

13          A           Yes.

14          Q           And you are listed here, I guess, the  
15 fourth article down in the table of contents, Philip  
16 Ewell, "Harmonic Functionalism in Russian Music  
17 Theory: A Primer."

18                   Did I read that correctly?

19          A           Correct.

20          Q           And your article started on page 61;  
21 right?

22          A           Yes.

23          Q           Okay. I just wanted to establish we were  
24 talking about the same thing and it turns out the  
25 SMT conference seems to have been in 2018, just as

1    **you remembered.**

2           A        I've got a good memory then.

3           Q        **So with that said, can you describe the**  
4   **process of publishing these articles with Frank**  
5   **Heidlberger's journal, Theoria?**

6           A        Yeah. I can recall -- again, I think  
7   the -- the -- the key -- Ellen may have been the  
8   chair of the Russian music theory interest group at  
9   that time.

10          Q        **Uh-huh.**

11          A        So she was almost certainly the  
12   go-between. She was of course teaching at the  
13   University of North Texas at the time.

14          Q        **Uh-huh.**

15          A        I think I mentioned that she moved to  
16   McGill.

17          Q        **Yup.**

18          A        Okay. So she was working with Frank,  
19   like the pivot between me and Chris -- Chris  
20   Segall -- and -- and -- and putting this together.

21          Q        **Uh-huh.**

22          A        And as far as I can recall, you know,  
23   we -- we worked on our articles, we, you know --  
24   turning a presentation into an article --

25          Q        **Uh-huh.**



1           A           -- was, you know, something that we all  
2 do.

3                   And we submitted them together. I think  
4 we each read each other's work and just commented on  
5 it.

6           Q           Uh-huh.

7           A           And -- and then ultimately, I don't know  
8 what Frank Heidelberger did with -- with them. I  
9 pre- -- so yeah, I'll just stop there.

10          Q           And when you say, "We read each other's  
11 work," are you referring to Ellen -- please  
12 pronounce her last name? Bakulina?

13          A           Bakulina.

14          Q           Bakulina?

15          A           Yeah.

16          Q           I assume Russian?

17          A           That's Russian.

18          Q           In origin?

19          A           Yes, correct.

20          Q           Thank you.

21                   So Ellen Bakulina and Christopher Segall  
22 and you read each other's articles?

23          A           Uh-huh.

24          Q           That's what you were referring to?

25          A           Yes.

1           Q           And did Frank Heidelberger solicit these  
2 articles?

3           A           I'm not sure. I'm not sure how --  
4 solicitation, whether Ellen approached him, he  
5 approached Ellen. I can't even recall whether Frank  
6 Heidelberger was at that session where we  
7 delivered --

8           Q           I understand. It was 2018.

9           A           Yeah. Yeah.

10          Q           So do you remember these articles being  
11 peer reviewed in the processes we've discussed  
12 earlier?

13          A           If I could just go briefly back to the --  
14 the plenary because we talked about the plenary and  
15 the --

16          Q           Correct.

17          A           -- music theory Spectrum and then MTO.

18          Q           Right.

19          A           I didn't point out back then and I would  
20 just say it now because we are talking about peer  
21 review again, that as far as I can tell, as far as I  
22 recall, the plenary talks for music theory are never  
23 peer reviewed. So that didn't surprise me at all.

24                    The -- this, eight years -- or six years  
25 ago, however many years ago, I don't think that it,

1 like, was sent out for the doubly-anonymous peer  
2 review.

3 Q Uh-huh.

4 A I don't think so. I don't know how Frank  
5 Heidelberger dealt with the behind-the-scenes, but  
6 I'm pretty certain that I didn't see any reviewer  
7 one, reviewer two --

8 Q Okay.

9 A -- you know, which you normally see when  
10 you are doing that.

11 So I do, of course, remember batting  
12 around these articles with Ellen and Chris.

13 Q Correct. And they are close colleagues  
14 of yours; is that fair to say?

15 A Yeah, yeah, yeah. They both went to the  
16 CUNY Graduate Center, but I -- well, I actually  
17 chaired Christopher Segall's dissertation committee.

18 Q Uh-huh.

19 A And -- and I -- I was also serving on  
20 Ellen -- Ellen's dissertation committee.

21 Q Is she junior to you?

22 A Yeah, they're both junior to me. They're  
23 both associate professors, both with tenure --

24 Q Uh-huh.

25 A -- and I'm a full professor, so --

1 Q Do you know if in this time period, 2018  
2 to 2020 while these articles were in the works,  
3 let's say --

4 A Uh-huh.

5 Q -- were they tenured then, to your  
6 knowledge?

7 A I think they were both untenured.

8 Q Okay. And you had tenure at this time;  
9 right?

10 A 2016 is when I got tenure, yes.

11 Q Okay. So, again, although you have a  
12 very clear memory of the Music Theory Online article  
13 being peer reviewed -- correct?

14 A Yes.

15 Q -- you have no memory of getting peer  
16 reviews for these articles?

17 A Correct.

18 Q And do you consider the vetting of a  
19 conference proposal to give a paper at the Society  
20 for Music Theory in any way comparable to, I think  
21 what you called, double-anonymous peer review?

22 A Yes and no. It is usually anonymous.

23 Q Uh-huh.

24 A It is reviewed and -- and a decision is  
25 handed down. So yes.

1           No, in the sense that you are writing  
2 three- to 500 words about some ideas you want to  
3 present. So it's certainly different from -- from  
4 an article that appears in a -- in a journal.

5           Q       And just for the -- the sake of the  
6 record of a lay Jury that may not be involved in  
7 publication, three- to 400 words is basically a  
8 paragraph; right?

9           A       I would call it two paragraphs.

10          Q       Okay. And it's certainly not a article  
11 that spans 24 pages such as you published in --

12          A       Correct.

13          Q       -- Theoria?

14          A       Correct.

15          Q       So in that sense, the 24-page paper that  
16 was published in Theoria was not peer reviewed,  
17 correct, to the best of your recollection?

18          A       Yes, that's correct.

19          Q       So if -- well, I'll strike that.

20                 And do you have any reason to believe  
21 that the process for publishing the other two  
22 papers, the paper by Ellen Bakulina or Christopher  
23 Segall, which are also listed here, were subjected  
24 to any other process than -- or was it the same as  
25 yours?

1           A           I -- I don't know.

2           Q           Okay. Was there any controversy that you  
3 recall over the review process at UNT for the  
4 publication of these articles?

5           A           Any controversy, you --

6           Q           Yes?

7           A           -- said?

8                       No, not that I can recall.

9           Q           Was there any criticism, to the best of  
10 your knowledge, that these articles were not  
11 subjected to double-anonymous peer review?

12          A           Not that I recall, no.

13          Q           While we are at it -- and this will be  
14 the last few questions before we break for lunch --  
15 have you ever published -- besides this article,  
16 which we just talked about, and also the Spectrum  
17 article, which we talked about earlier, have you  
18 ever published articles that weren't subjected to  
19 peer review in any academic journal?

20          A           I think the short answer would be no.

21                       I could just elaborate a little bit and  
22 say that I have -- well, certainly over 30  
23 publications, somewhere between 30 and 40, let's  
24 say. The article is one genere, let's call it;  
25 right.

1           Q       Of course.

2           A       So a review essay, book chapters,  
3 review -- conference review, the introduction I  
4 mentioned earlier. So obviously they all come with  
5 different sets of guidelines --

6           Q       Uh-huh.

7           A       -- and expectations.

8                   The academic articles that I have  
9 published have all been peer reviewed with, I  
10 suppose, this exception.

11                   And in my own mind, if I could just  
12 elaborate a little bit, because I do recall that  
13 this was not peer reviewed. This almost in my --  
14 it's almost as if it wasn't an article in the same  
15 way that "Music Theory and the White Racial Frame"  
16 was, if that makes sense.

17           Q       The -- the one that was published in  
18 Music Theory Online?

19           A       Correct. Yeah.

20           Q       Okay. And -- well, we've already  
21 discussed the -- the difference between that and  
22 Spectrum.

23                   Okay. Just -- just one more question.

24                   So have you ever known academic articles  
25 to cite Wikipedia in any way?

1           A           No.

2           Q           Do you know if Theoria has ever had  
3   articles that cite Wikipedia?

4           A           I do not know.

5           Q           Is that a sign that a journal is of  
6   inferior qualify, in your mind as an academic  
7   scholar?

8           A           Well, it's highly unusual because of the  
9   open access, open nature of Wikipedia.

10          Q           Is it appropriate to -- to cite anything  
11   like social media in the same way?

12          A           It depends on the article, it depends on  
13   the journal, it depends on the editor, it depends on  
14   the topic --

15          Q           Uh-huh.

16          A           -- of -- of what's being written in what  
17   venue.

18                      So you'd -- you'd have to be more  
19   specific.

20          Q           Is it appropriate to cite, I don't know,  
21   content on YouTube in an academic article?

22          A           If in fact the author -- of course, all  
23   of these decisions would ultimately fall with the  
24   editor and the editorial team; right?

25                      And if in fact something is put up on



1 YouTube with some type of, I don't know, gravitas  
2 behind it, and I don't even know what that would  
3 look like frankly, I imagine that there -- I don't  
4 know, a Ted talk or something, that there's  
5 something that's out there, that that would  
6 potentially be more acceptable to the editor of an  
7 academic journal than Wikipedia would be because of  
8 the open nature of Wikipedia.

9 Q Would it be acceptable in an academic  
10 field to quote Wikipedia, for instance, as an  
11 example of what the state of common knowledge out  
12 there in the world may be?

13 A Sure. That would be acceptable, yeah.

14 Q Okay.

15 A I mean, that's -- that's my opinion,  
16 obviously.

17 Q Your opinion as an informed academic  
18 scholar?

19 A Absolutely yeah. But I'm sure there  
20 would be people who would disagree with me.

21 Q And, as you said, an author -- an author  
22 of at least 30 academic publications?

23 A Thank you for the compliment.

24 Q And how many books to date?

25 A Oh, just one.

1           Q           Just one?

2           A           Yeah.

3                       MR. ALLEN: We'll go off the record.

4                       THE VIDEOGRAPHER: We are going off  
5           the record. The time is 12:27.

6                       (Whereupon, there was a recess taken  
7           from 12:27 p.m. to 1:28 p.m.)

8                       (Whereupon, Plaintiff's Exhibit 3,  
9           Article Entitled "Music Theory and  
10          the White Racial Frame" Written by  
11          Philip Ewell, Published in Music  
12          Theory Online, was marked for  
13          identification.)

14                      THE VIDEOGRAPHER: We are going back  
15          on the record. The time is 1:28.

16 BY MR. ALLEN:

17           Q           Professor Ewell, I have taken the liberty  
18   of marking as Exhibit Number 3 for the record. This  
19   will be -- for the people who are remote, this will  
20   be sent to you as marked 023.

21                      It's an article in Music Theory Online,  
22   which we've discussed earlier. And I'm going to ask  
23   you to confirm for the record that this is the  
24   article that we discussed earlier?

25           A           Correct.

1 Q And it's titled, "Music Theory and the  
2 White Racial Frame"?

3 A Correct.

4 Q And if I could ask you to turn to  
5 section 4.4 in the article, I believe you'll find  
6 that on page 11?

7 A Uh-huh.

8 Q Right above that is a subsection where  
9 there's the quote that I had read aloud into the  
10 record earlier; correct?

11 A Correct.

12 Q And just as you said, it's a block quote  
13 from William Drabkin?

14 A Uh-huh.

15 Q And prior to introducing that quote, you  
16 said, "In numerous writings, he" -- meaning  
17 Schenker; correct? -- "insisted that his views" --  
18 meaning Schenker's views -- "on racial and national  
19 hierarchies were key to his beliefs on life and on  
20 music."

21 Right?

22 A Right above the block quotation?

23 Q Yeah.

24 A Oh, yeah.

25 Okay. Can you -- can you say that again,

1 please?

2 Q Yeah, the -- the second to last  
3 sentence --

4 A Uh-huh.

5 Q -- before that quote is introduced is  
6 your writing; correct?

7 A Correct.

8 Q And it says, "In numerous writings,  
9 he" -- meaning Schenker -- "insisted that his  
10 views" -- meaning Schenker's view -- "on racial and  
11 national hierarchies were key to his beliefs on life  
12 and music."

13 Correct?

14 A Correct.

15 Q And in fact, you introduced that  
16 paragraph with the topic sentence, "I wish to  
17 recouple this severed link between Schenker's  
18 hierarchal beliefs about music and his hierarchal --  
19 hierarchical beliefs about people."

20 Did I read that correctly?

21 A Yes.

22 Q So -- and this is the last question, just  
23 a yes or no question.

24 So it's fair to say, as we discussed  
25 earlier, that you were quoting William Drabkin,

1   which we read earlier into the record, with  
2   approval?

3           A       It's not just yes or no.

4                   It's -- it is his agreement with some of  
5   the -- the basic elements of recoupling this -- this  
6   severed link.

7                   With approval?  Ye- -- yeah, I think it's  
8   fair to just say with approval.  Yeah, that's fair.

9           Q       And you believe there's a link between  
10   this view of racial hierarchy, national hierarchies,  
11   and Schenker's belief about the hierarchy of tones?

12          A       Yes.  I believe so because Heinrich  
13   Schenker was very explicit himself in --

14          Q       Okay.

15          A       -- in making those connections.

16          Q       And I have no further questions about  
17   that article, which we've already discussed.

18                   I -- I would like to turn to discussing  
19   another journal called the Journal for [sic]  
20   Schenkerian Studies.

21                   Are you familiar with that journal?

22          A       Yes.  Is it "Journal of" or "Journal  
23   for"?

24          Q       I believe you are right it's "for  
25   Schenkerian Studies"?

1           A           Oh, no, no.

2                    You said "for" and I thought it was "of,"

3   but --

4           Q           You know what, I don't want to make a  
5   mistake for the record here, so I --

6                    So you were correct to point that out.

7   It is the Journal of Schenkerian Studies.

8           A           Good.

9           Q           Thank you.

10                   And so I -- I take from your answer that  
11   you are familiar with it?

12          A           Of course.

13          Q           Have you published in it?

14          A           Yes.

15          Q           When did you publish an article in the  
16   Journal of Schenkerian Studies?

17          A           Oh, when? 2004 or '05. It was one of my  
18   very first published articles.

19          Q           Was that journal article handled by  
20   Timothy Jackson?

21          A           I have no idea.

22          Q           Was there any suggestion at that time  
23   that the Journal of Schenkerian Studies was  
24   publishing racist articles?

25          A           What do you mean by "racist articles"?

1           Q       Well, I don't -- I don't mean anything by  
2 it, but what I'm asking: Was anyone accusing the  
3 journal of being racist at that time, whatever they  
4 meant by it?

5           A       I don't understand the question when you  
6 used -- if -- you'd have to define what "racist"  
7 means.

8           Q       Do you recall anyone ever accusing the  
9 Journal of Schenkerian Studies at the time you  
10 published it -- in it of being racist?

11          A       Again, race -- "racism" and "racist" are  
12 in -- as I state, very clearly in my monograph. I  
13 consider those words trip wires, which is why I  
14 don't often use them in my own work. They've become  
15 everything and nothing, specifically "racist."

16                   So if you are asking me -- the question  
17 is if a journal is racist --

18          Q       I'm not asking you if the Journal of  
19 Schenkerian Studies is racist, so please don't  
20 misunderstand my question. Let me rephrase it.

21                   Did you hear of anyone else accusing the  
22 journal at the time you published in it of being  
23 racist, whatever they may have meant by that?

24          A       It's hard to answer that question yes or  
25 no if you can't clarify what "racist" means in this

1 context.

2 Q Did you ever hear anyone say the journal  
3 was racist?

4 A No.

5 Q Thank you.

6 What was your understanding of Timothy  
7 Jackson's relationship to the Journal of Schenkerian  
8 Studies from the time you published in it back in --  
9 in the -- you know, sounds like the 2000s, to 2020?

10 A Well, in that time, I have to be honest,  
11 I basically never thought of that journal.

12 Q Uh-huh.

13 A I published in it and then I -- then  
14 20 years -- well, I don't know how many years, but  
15 almost 20 years passed.

16 Q Uh-huh.

17 A And if you were to say that Timothy  
18 Jackson was part of the original -- my original  
19 thing, I would -- I wouldn't be surprised.

20 But I just don't recall 20 years ago what  
21 his relationship was, if there was a relationship,  
22 to the journal at that point.

23 Q By "your thing," you mean your article?

24 A My article and it was in Volume 1, the  
25 very first issue of the journal.



1                   And then up until Volume 12, which had  
2 the symposium of responses to my plenary talk --

3           **Q       Uh-huh.**

4           A       -- that -- it was at that time that it  
5 was kind of -- my memory was jogged that, Oh yes,  
6 Timothy Jackson has something to do with this  
7 journal, in fact.

8           **Q       Okay. So you anticipated my next**  
9 **question is that you were aware of a special**  
10 **symposium meant to be published in Volume 12 of the**  
11 **Journal of Schenkerian Studies?**

12          A       I was -- the clarification. I was aware  
13 when exactly?

14          **Q       Well, why don't you answer your own**  
15 **question.**

16                   When were you aware that there was a  
17 symposium to be published in Volume 12?

18          A       Good. Okay. That's a question I can  
19 answer.

20                   I think -- and I wrote about this in my  
21 book -- I think somewhere or somehow I heard that  
22 there might be a symposium in the fall of -- oh,  
23 God, this would have been the -- right -- some time  
24 the fall, winter of 2019 --

25          **Q       Uh-huh.**

1           A           I'm sorry, 2019 -- yes, 2019.

2                   But then I for sure became aware of it  
3 when there was a call for papers announced. And I  
4 think, if I'm not mistaken, that was on  
5 December 31st, 2019.

6                   And it had a very quick turnaround, which  
7 everybody was like, Wait, what's going on with this?

8                   So it was a strange three-week  
9 turnaround, like, sub- -- submit this by then.

10          Q           Uh-huh.

11          A           So when that call for papers was  
12 announced, whatever date it was, but late -- call it  
13 late December 2019, I was of course aware --

14          Q           Uh-huh.

15          A           -- that this was happening.

16          Q           Do you remember who you heard that from?

17          A           I think it was the SMT Listserv where  
18 call- -- where such calls are usually put out.

19          Q           Okay. And so you were a subscriber to  
20 the SMT list -- Listserv?

21          A           Correct.

22          Q           And you had already testified today, I  
23 believe, you were -- you were at that time a member  
24 of the Society for Music Theory, SMT?

25          A           Yes.

1           Q       Did you ever read any of the articles in  
2 the symposium which appeared in Volume 12, published  
3 in 2020?

4           A       Not when it came out.

5           Q       Have you since read them?

6           A       Yes.

7           Q       When did you read them?

8           A       As I was writing my book, because that's  
9 when I actually did respond to ten of the authors  
10 of -- of that symposium.

11                   And -- well, the book came out in  
12 2023 April, so I would guess if I would say when I  
13 actually read the 15 responses -- and I have to put  
14 the "responses" in scare quotes because it didn't  
15 seem to me that they were really responses to what I  
16 had said in the plenary -- I would guess -- let me  
17 think here -- fall -- fall of '21, early 2022.

18          Q       Okay.

19          A       Some time in 2022 probably.

20          Q       Okay. And this was the time leading up  
21 to the publication of your monograph; is that fair?

22          A       Correct, yeah.

23          Q       Okay.

24          A       During the process. Because chapter  
25 three or four is in fact --

1           Q           Okay.

2           A           -- on the Journal -- Volume 12 of the  
3 Journal of Schenkerian Studies.

4           Q           And just to be clear, by "monograph," we  
5 understand I mean an ac- -- an academic book?

6           A           Correct.

7           Q           All right. So I want to take you back to  
8 the time before you had read the responses published  
9 in the symposium and when you heard about it.

10                   And what was your criticism of the  
11 symposium in that time window before you had  
12 actually read the symposium papers?

13           A           I had seen on Twitter and probably  
14 Facebook -- I've -- I left Twitter between one and  
15 two years ago; I deleted my account.

16                   But I was on Twitter and Facebook and I  
17 saw some of the quotations, and they were very  
18 strange, I thought to myself.

19           Q           Uh-huh.

20           A           And of course, I knew that I had not been  
21 contacted to be part of this symposium, which struck  
22 me as strange. So I knew about some of those  
23 things.

24                   Most of what I was -- any -- if you are  
25 asking me what my opinion was of what was going on

1 not having read the actual responses, it was  
2 probably based on what I was seeing on social media.

3 Q What was based on what you were seeing on  
4 social media? What do you mean by that?

5 A My opinions about what the --

6 Q Okay.

7 A -- symposium was about.

8 Q And your opinions were that this seemed  
9 strange?

10 A Yes.

11 Q And stuff.

12 Do you think it was improper for the  
13 Journal of Schenkerian Studies to publish the  
14 symposium before you read it?

15 A I believe it was improper to do so  
16 without any participation by me.

17 Q Any other reason you thought it was  
18 improper for the Journal of Schenkerian Studies to  
19 publish the symposium besides not contacting you?

20 A The anonymous submission. One of the  
21 submissions was written anonymously, and that struck  
22 me as very strange also.

23 Q So we have -- there was -- you allege  
24 there was no contact to you. There's also an  
25 anonymous publication in the symposium.

1                   Was there anything else that you  
2 criticized about the Journal of Schenkerian Studies  
3 publishing the symposium?

4           A        I wouldn't say there was no contact. I  
5 mentioned in my book that two professors at the  
6 University of North contact -- North Texas contacted  
7 me as it was being put together.

8                   One was Ellen Bakulina. The other was  
9 Stephen Slottow --

10          Q        Okay.

11          A        -- who I think is an associate professor  
12 of music theory --

13          Q        Uh-huh.

14          A        -- at the University of North Texas, also  
15 one of the managing editors, along with Timothy  
16 Jackson, of that -- of that volume.

17                   Separately, they contacted me. Stephen  
18 Slottow wanted to know where he could find the  
19 slides to the presentation I had given.

20          Q        The -- the plenary talk at the SMT --

21          A        Correct.

22          Q        -- in 2019?

23          A        Correct. Yeah.

24                   And at that point the slides were on my  
25 website --

1           Q       Uh-huh.

2           A       -- so I told him where to get them.

3           Q       Uh-huh.

4           A       And then Ellen Bakulina wrote an e-mail  
5 simply asking me if I had any questions about these  
6 responses that were being put together, to which I  
7 responded, No, I don't have any questions.

8           Q       Did anything prevent Ellen Bakulina from  
9 inviting you to participate in the Journal of  
10 Schenkerian Studies symposium?

11          A       I have no idea.

12          Q       But she didn't invite you?

13          A       No.

14          Q       You don't know of anything that prevented  
15 her from inviting you to participate?

16          A       No.

17          Q       So let me again summarize: You -- you've  
18 identified the, I guess, failure of the journal to  
19 contact you in the way you wanted to be contacted;  
20 is that fair?

21          A       No. It -- the way I want to be contacted  
22 is -- well, it's not really up to me.

23                 I'm -- I am taking issue with the notion  
24 that somebody would respond to what effectually was  
25 nine minutes of a discussion of Heinrich Schenker --

1 there were another 13 minutes that had nothing to do  
2 with Heinrich Schenker that I spoke about at that  
3 plenary session, so Heinrich Schenker was roughly  
4 nine minutes -- that responses would be put together  
5 without having the person to whom they were  
6 responding have a chance to address the issues  
7 brought up in the responses, which is industry  
8 standard for such colloquies or symposiums in  
9 academia.

10 Q What made you think you were being  
11 excluded from commenting on the symposium responses  
12 to your plenary address?

13 A I have no idea.

14 Q Did anyone tell you you would not be  
15 allowed to respond to them?

16 A No.

17 Q And you now said that you actually were  
18 contacted both by Professor Slottow and Ellen  
19 Bakulina; correct?

20 A Yeah, but that was not to ask me to be  
21 part of this --

22 Q And you were --

23 A -- symposium.

24 Q -- you received the SMT call for papers;  
25 correct?



1           A           I did.

2           Q           But it's your testimony today that that  
3 also wasn't an appropriate way to contact you?

4           A           Yes, it was not appropriate.

5           Q           And can you just explain for the record  
6 what would have been the most appropriate way to  
7 contact you in your experience as an academic?

8           A           Well, I've never been a respondent like  
9 that so I would only be speculating.

10                    But it would -- I -- I presume that it  
11 would be one of the lead editors who would reach out  
12 to the person who was -- who -- who originally gave  
13 the talk to which people were responding to invite  
14 them to be part of a colloquy or symposium.

15           Q           Did you reach out to anyone on the  
16 editorial board to ask them about that?

17           A           No.

18           Q           Why not?

19           A           It's not my place to invite myself to a  
20 party thrown in my honor.

21           Q           Was there any criticism of your paper  
22 aired at the plenary talk you gave in 2019?

23           A           Not to my knowledge.

24           Q           Was that proper?

25           A           A lack of criticism?

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?

5           A       The question is: Would that have been  
6 proper, you said?

7           Q       Was it proper that there was no form for  
8 criticism of your plenary address?

9           A       Yeah, plenary addresses never really --

10          Q       Okay.

11          A       -- have Q&As afterward. In music theory,  
12 I should say.

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.

17                   It's not improper that it addressed your  
18 plenary talk; right?

19          A       No.

20          Q       But you've said that they didn't contact  
21 you in the way that you have argued is industry  
22 standard?

23          A       Correct.

24          Q       You've also identified the publication of  
25 an anonymous author?

1           A           Correct.

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?

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.

9                   That is something I did read --

10          Q           Uh-huh.

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 --

14          Q           Okay.

15          A           -- the contents.

16          Q           When did you read the ad hoc panel  
17 report?

18          A           Probably shortly after it came out and I  
19 can't remember when that was.

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?

23          A           You -- probably but, you know, I would  
24 need to see that document.

25          Q           Do you remember it being around the end

1 of 2020 when that appeared?

2 A I can't recall.

3 Q Okay. You don't know of any other ad hoc  
4 panel that addressed the Journal for Schenkerian  
5 Studies, though; correct?

6 A Correct.

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?

10 A I think the two that I've mentioned:  
11 The -- the inclusion of an anonymous --

12 Q Uh-huh.

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.

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.

19 Q Okay. Any other things that you  
20 remember?

21 A No.

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

1    **standard?**

2           A        Yes.

3           Q        **Okay. Did you ever argue that the**  
4    **Journal for Schenkerian Studies should be censored?**

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."

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.

16          Q        **Do you approve of the censorship of the**  
17   **Journal of Schenkerian Studies?**

18          A        I don't know enough about it, frankly,  
19   to -- to say that I approve of it.

20          Q        **Are you aware that the Journal of**  
21   **Schenkerian Studies is no longer published by the**  
22   **University of North Texas Press?**

23          A        I was unaware of that.

24          Q        **Now that you do know of that, assuming**  
25   **that it's true, do you approve of that?**

1           A           I don't know enough about it to make a  
2 judgment on that.

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?

7           A           I would need to know more information. I  
8 really couldn't say.

9           Q           What more information do you need to  
10 know? It stopped publication; right?

11          A           You just said, "allegedly stopped  
12 publication," so --

13          Q           No, I said it did stop publication.

14          A           Well, you added -- you added the word  
15 "allegedly."

16          Q           Let me do this.

17          A           But that's okay. That's okay.

18          Q           Assume that that's true.

19          A           Okay.

20          Q           Is that appropriate?

21          A           I don't know enough about it to make a  
22 comment on it.

23          Q           You commented earlier that you thought  
24 the First Amendment was a benefit to the United  
25 States; correct?

1           A       Yes.

2           Q       And you do though -- know that the  
3   University of North Texas is a public institution --

4           A       I do, yes.

5           Q       -- of the State of Texas?

6                   Let me finish.

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 --

11                   MR. PAINTER:  Objection.

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 --

16                   MR. ALLEN:  I believe I prefaced the  
17   question:  In his experience as an  
18   academic professional.

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 --

24                   MR. ALLEN:  Well, the state  
25   institution is a simple fact.

1 MR. PAINTER: Yes.

2 MR. ALLEN: That's not a legal issue  
3 in this case.

4 The First Amendment is something  
5 he's already testified to.

6 MR. PAINTER: Yes, but he's not  
7 provided legal opinion on that and you  
8 are not asking him --

9 MR. ALLEN: I'm not asking for a  
10 legal opinion.

11 BY MR. ALLEN:

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?

18 A I don't have enough information to make  
19 that judgment.

20 Q And what more information would you need?

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.

25 Q You've read the University of North



1 Texas, quote, ad hoc panel report; correct?

2 A Yes.

3 Q That wasn't enough information for you?

4 A Correct. It was not enough information.

5 Q Were you ever aware that Timothy Jackson  
6 also replied -- wrote a reply to that so-called ad  
7 hoc panel report?

8 A I was not.

9 Q Do you know of anywhere his response to  
10 the ad hoc panel report has been published?

11 A No.

12 Q To your knowledge, is that available on  
13 the University of North Texas' website?

14 A I have no idea.

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?

18 A I have no idea.

19 Q How long have you been a professor?

20 A Twenty-two years.

21 Q But you have no idea?

22 A I have no idea about the question you  
23 just asked me, yeah.

24 Q Did you feel personally demeaned by the  
25 symposium published in the University of North Texas

**1 Press' Journal of Schenkerian Studies?**

2           A           Only in the sense that I was not invited  
3 to this process.

4           Q           If you were invited, would you have  
5 responded?

6           A           I would have needed to see the outlines  
7 of the symposium, who was saying what.

8                   I wouldn't have agreed immediately, but I  
9 would have been interested in being part of it.

10          Q           Did you ever speak with Ellen Bakulina  
11 about her failure to invite you to respond to  
12 symposium?

13          A           No.

14          Q           Why didn't you raise this issue with her?

15          A           It wasn't my place, I felt.

16          Q           Did you talk to any of the editors of the  
17 Journal of Schenkerian Studies about the failure to  
18 invite you?

19          A           No.

20          Q           Did you ever feel dehumanized by the  
21 Journal of Schenkerian Studies?

22          A           Well, you used the word "demeaned" and  
23 now you are saying "dehumanized." So I guess I  
24 would ask for a little clarification.

25                   What's the difference between those two

1 things to you?

2 Q Well, I'm not testifying today,  
3 Professor Ewell. So why don't we start with what  
4 you understand by "dehumanized"? You can put that  
5 in the record.

6 A May I ask for points of clarification of  
7 you?

8 Q No. I'm asking you what you understand  
9 by "dehumanized"?

10 A I'd like a -- a minute just to consult  
11 with my counsel.

12 MR. ALLEN: He has to answer the  
13 question that's on the record.

14 MR. PAINTER: Okay. Are you saying,  
15 did he use the word "dehumanize"?

16 MR. ALLEN: I want him to explain  
17 what he understands by "dehumanize."  
18 That's a perfectly normal question in a  
19 deposition.

20 MR. PAINTER: Yeah. When he used  
21 it? Are you referring --

22 MR. ALLEN: He's an academic with  
23 20 years-plus experience. If he's --

24 MR. PAINTER: But if you're  
25 referring --

1                   MR. ALLEN: If he's going to testify  
2                   that he has no idea --

3                   MR. PAINTER: Yeah.

4                   MR. ALLEN: -- what "dehumanize"  
5                   means, he can put that on the record.

6                   MR. PAINTER: Okay. But you are not  
7                   asking about a specific time which he  
8                   said "dehumanized" in the past? You are  
9                   not asking him that, are you?

10                  MR. ALLEN: Richard, I'm conducting  
11                  my deposition and there's a question  
12                  before him and I want him to answer it.

13 BY MR. ALLEN:

14                  Q        If you don't know the definition of  
15                  "dehumanize" or if you don't understand that word,  
16                  you can just say so.

17                  But I want to know what you understand by  
18                  "dehumanize"?

19                  A        And I just am pointing out that you used  
20                  whether I felt demeaned and then you asked whether I  
21                  felt dehumanized.

22                  And I think it's perfectly reasonable for  
23                  me to say -- to ask you for -- as a point of  
24                  clarification, and that's all it is really, what the  
25                  difference is between demeaning and dehumanizing.

1                   If you are asking me -- so I'll go ahead.

2   We don't need to --

3           **Q       Yes.**

4           A       -- to go further down that rabbit hole --  
5   whether I know what the word "dehumanizing" means, I  
6   have some ideas, yeah.

7           **Q       Well, please explain for the Court what**  
8   **you understand by the word "dehumanized"?**

9           A       To be treated less than human.

10          **Q       And did you feel that the Journal treated**  
11 **you less than human in this time period before you**  
12 **read the actual article?**

13          A       Only in the sense that they didn't reach  
14 out to me to simply make me part of the process.

15          **Q       So that, to you, is dehumanizing?**

16          A       I think I would prefer to say it's  
17 demeaning, the way that you said earlier, and not  
18 dehumanizing.

19          **Q       Okay. Incidentally, are you aware of an**  
20 **open letter -- or let me put it this way -- an open**  
21 **letter by the Society for Music Theory condemning**  
22 **the symposium published in the Journal of**  
23 **Schenkerian Studies in 2020?**

24          A       I was aware of that, yeah.

25          **Q       Do you believe that open letter was**

1 consistent -- well, let me back up and strike that  
2 question.

3 What did the open letter say, to your  
4 knowledge?

5 A Oh, to my recollection, yeah, it was  
6 condemning -- it was an open letter on anti-racism  
7 in the Society for Music Theory.

8 It was drafted by eight music theorists.  
9 It had over 900 signatories because it was an open  
10 letter. I was one of the signatories.

11 Q Uh-huh.

12 A It -- it mentioned the Journal of  
13 Schenkerian Studies, Volume 12, although I don't  
14 think it mentioned Timothy Jackson's name.

15 And it essentially raised some points  
16 about how we can think about anti-racism in the  
17 field in the Society for Music Theory moving  
18 forward.

19 Q Do you think that was consistent with the  
20 SMT statement of -- on ethics?

21 A I don't know what you are talking about,  
22 the statement on ethics.

23 Q Sure.

24 (Whereupon, Plaintiff's Exhibit 4,  
25 Printout from Society of Music Theory

1 Website, was marked for  
2 identification.)

3 MR. ALLEN: I want to introduce in  
4 the record as Exhibit 4 a printout from  
5 the website of the Society for Music  
6 Theory.

7 For the people online, this was  
8 marked in the exhibit pack as "07 SMT  
9 statement."

10 And I'm handing a copy to  
11 Professor Ewell's counsel.

12 MR. PAINTER: Do we have the letter  
13 too as an exhibit so he can look at that  
14 letter?

15 MR. ALLEN: I don't. Not right now.

16 MR. PAINTER: So his recoll- --  
17 he'll just have to try to remember what  
18 was in that letter.

19 MR. ALLEN: Uh-huh. That's fine at  
20 this time.

21 MR. PAINTER: Okay.

22 BY MR. ALLEN:

23 Q Have you had a chance to review this,  
24 Professor Ewell?

25 A One second.

1 Q Sure.

2 A Okay.

3 Q So you testified earlier that you believe  
4 strongly in academic societies like the Society for  
5 Music Theory honoring its own policies; right?

6 A Yes.

7 Q They should follow their own rules;  
8 right?

9 A Correct.

10 Q This SMT policy on ethics should be  
11 followed by the Society for Music Theory; correct?

12 A Correct.

13 Q It "upholds and promotes the following  
14 basic principles of ethical conduct in our  
15 profession," in the first line; correct?

16 A Correct.

17 Q And they are numbered one through seven?

18 A Correct.

19 Q The first is, "Freedom of inquiry and the  
20 widest possible access to information of use to  
21 scholars."

22 Right?

23 A Correct.

24 Q Can we both agree that the censorship of  
25 an academic journal is not consistent with that



1 policy number one?

2 A Can I ask what you mean by "censor- --  
3 censorship"?

4 Q Sure. Ordering an academic publication  
5 to cease and suppressing its publication?

6 A And now the original question, please?

7 Q Is suppressing the publication of an  
8 academic journal consistent with the principle  
9 number one in the SMT policy on ethics?

10 A I -- I would say no.

11 Q I want to skip down to number three.

12 "Respect for diverse points of view and  
13 the potential worth of scholarship on any aspect of  
14 music theory or any related subject."

15 Did I read that correctly?

16 A Uh-huh. Yes.

17 Q Is the -- I'm sorry.

18 Is the suppression of a journal, an  
19 academic journal, by a state institution such as the  
20 University of North Texas consistent -- consistent  
21 with principle number three?

22 A One second. I'm going to read it again,  
23 please.

24 Q Uh-huh.

25 A It's not consistent only in the sense

1 that the diverse points of view to which they claim  
2 they -- they followed should have included a  
3 response the person to whom they were responding.

4 So they did not respect the diverse  
5 points of view because that --

6 Q "They" being?

7 A "They," the -- the Journal of Schenkerian  
8 Studies, Volume 12, did not respect the diverse  
9 points of view.

10 If they had, I would have been invited --  
11 and I shouldn't have to respond to a call for  
12 papers -- invited to be part of a colloquy because  
13 this is academic freedom and inquiry.

14 Q So that really wasn't my question.

15 Was suppressing the publication of the  
16 Journal of Schenkerian Studies consistent with  
17 principle number three?

18 A I don't know in the sense that -- in the  
19 sense that I don't believe that they completely  
20 followed point number three, whether --

21 Q "They" being the SMT?

22 A No, "they" being Volume 12 of the Journal  
23 of Schenkerian Studies.

24 And how exactly authorities at the  
25 University of North Texas deal with that, well, I

1 don't know. I can't comment on that. I just don't  
2 know enough.

3 Q Do you believe the SMT open letter  
4 condemning the Journal of Schenkerian Studies as you  
5 remember it was consistent with these policies on  
6 ethics that they have promulgated here?

7 A That's a tough one because I don't  
8 rec- -- remember it, obviously, verbatim. I -- I  
9 just -- I -- I -- that's too hard for me to answer  
10 because I just don't recall what -- what's written  
11 there.

12 Q If you believed the SMT had violated this  
13 policy on ethics at the time, would you have spoken  
14 up about it?

15 A If I believed that they had violated it?  
16 I believe that it would have been  
17 virtually impossible for me to know that at the  
18 time. So that's a very hypothetical question that I  
19 would rather not answer yes to because of its  
20 hypothetical nature.

21 Q That's fair enough.

22 Do you remember anyone in the SMT raising  
23 the policy on ethics at that time in reference to  
24 the Journal of Schenkerian Studies?

25 A Well, there were the eight authors of the

1 open letter. They certainly raised it.

2 Q No. No. I mean, did they raise this  
3 policy on ethics?

4 A Oh. Raise -- I don't recall anyone, no.

5 Q Okay. Were you aware of this policy on  
6 ethics in 2020?

7 A I don't think I was, no.

8 MR. ALLEN: I'm going to introduce  
9 in the record a document I've marked as  
10 Exhibit Number 5.

11 And for people who are viewing the  
12 deposition virtually, this was originally  
13 in your packet, 012, the Denton Record  
14 Chronicle article.

15 And I'm handing a copy to  
16 Professor Ewell's counsel.

17 (Whereupon, Plaintiff's Exhibit 5,  
18 Article Titled "A UNT Professor  
19 Challenged Claims of Racism in Music  
20 Theory and Now He's Facing the Music"  
21 by Lucinda Breeding Dated August 2,  
22 2020, was marked for identification.)

23 BY MR. ALLEN:

24 Q So, Professor Ewell, I -- I'm going to  
25 give you some time to look at this, but I want to

1 just represent for the record that this is an  
2 article with the title "A UNT professor challenged  
3 claims of racism in music theory and now he's facing  
4 the music" by Lucinda Breeding, a journalist, and  
5 it's dated August 2, 2020.

6 Did I read that correctly?

7 A Yes.

8 Q Now please examine it.

9 But I really don't want to discuss -- the  
10 whole article isn't that relevant to the entire  
11 discussion we are having today.

12 But I do want to address points in the  
13 article where she quotes you.

14 A Uh-huh.

15 Q So before we do that, do you remember  
16 being interviewed by Cindy Breeding?

17 A Lucinda, yeah?

18 Q Correct.

19 A Yeah. Yeah, I think so, yes.

20 Q Do you have any reason to think that she  
21 would misquote you in this article?

22 A No, other than it wasn't recorded, as far  
23 as I can recall so it's taking notes.

24 Q Did you make any objection to any of the  
25 quotations of you in this article to the paper?

1           A           Can I -- may I read it?

2           Q           You may, but I just want to get these --  
3   some -- some general questions out of the way first.

4           A           Please, go ahead. Ask again.

5           Q           Did you ever object to the journalist or  
6   to the paper that you were misquoted?

7           A           No.

8           Q           Okay. So please go ahead and read. I --  
9   and feel free to read the whole thing, but --

10          A           Uh-huh. Uh-huh.

11          Q           -- on page three of this document, I  
12   believe you are mentioned --

13          A           Uh-huh.

14          Q           -- and quotes by you?

15          A           Uh-huh.

16          Q           And then -- and so on it goes.

17                      THE WITNESS: Can I use this pen?

18                      MR. ALLEN: I'm going to ask you not  
19   to mark on the exhibit.

20                      Perhaps -- I don't want to keep him  
21   from making notes, Richard --

22                      MR. PAINTER: Okay.

23                      MR. ALLEN: -- but I don't want him  
24   to mark on the exhibit.

25                      THE WITNESS: Can I just --

1 MR. ALLEN: If you want -- do you  
2 mind --

3 MR. PAINTER: You can mark on my  
4 copy.

5 THE WITNESS: Can I?

6 MR. ALLEN: And we are actually  
7 going to take your notes and enter them  
8 into the record, too, just so you know.

9 MR. PAINTER: Yeah.

10 THE WITNESS: I've just got to  
11 circle something.

12 MR. ALLEN: Yeah, please.

13 MR. PAINTER: Yeah.

14 THE WITNESS: Okay.

15 MR. ALLEN: Again, this is a  
16 conversation for the record. That's why  
17 we are doing this.

18 MR. PAINTER: Okay.

19 THE WITNESS: Okay.

20 BY MR. ALLEN:

21 Q So I just want to call your attention to  
22 page three --

23 A Uh-huh.

24 Q -- where I believe you're -- you're  
25 mentioned with some extensive quotations by the

1     journalist, Ms. Breeding.

2                     You are talking about the -- quote, a  
3     white racial frame of music theory; correct?

4             A         Yes.

5             Q         And there's a relatively lengthy quote  
6     from you.

7             A         Uh-huh.

8             Q         It says, "'In its most abstract form,  
9     music theory is not racist,' Ewell said. 'It's  
10    talking about music in an analytical way. But I  
11    look at this question from the angle of the United  
12    States and its history. It takes something as a  
13    simple Google search of the country's Naturalization  
14    Act of 1790, which is the very first citizenship act  
15    in the country and I can sum it up: The  
16    Naturalization Act of 1790 said in order to be a  
17    citizen of these United States, you've got to be  
18    white. Have a nice day.'"

19                     Did I read that accurately?

20             A         Yes.

21             Q         And then it goes on to quote you still  
22     further, "'If you think about it from that angle, if  
23     you think of American music theory, then it has to  
24     be part of that white racial frame,' Ewell said."

25                     It goes on, "Quite literally, the people



1 in the U.S. at that time, the people of color, they  
2 weren't important because they weren't white. We  
3 shouldn't be fooling ourselves that music theory  
4 can't be part of that history. That's as structural  
5 and institutional as it gets."

6 Did I read that correctly?

7 A Yes.

8 Q And is it fair to say that's more or less  
9 similar to what you've testified to today, this link  
10 between the Naturalization Act of 1790 and the white  
11 racial frame of music theory?

12 A Not quite.

13 So you -- it seems to me you are trying  
14 to draw a direct line between 1790 and 2024 when you  
15 say those two things. And --

16 Q I'm just trying to understand what you  
17 are saying?

18 A And I'm going to explain that.

19 So without weigh stations every ten to  
20 20 years, it's -- it's hard to make that. It -- it  
21 doesn't sound -- it sounds nonsensical to say that  
22 the first Naturalization Act of 1790 is directly  
23 related to music theory's white racial frame. And  
24 that is inaccurate.

25 So if you are asking me that it is, my

1 answer is no, it's not. It's --

2 Q But here you say, "That's as structural  
3 and institutional as it gets."

4 Right?

5 MR. PAINTER: He should be allowed  
6 to finish --

7 THE WITNESS: Yeah.

8 MR. PAINTER: -- the question --  
9 answer.

10 THE WITNESS: Yeah.

11 A And so the -- what's structural and  
12 institutional is how over decades and centuries all  
13 of these ideas of white superiority --

14 BY MR. ALLEN:

15 Q Uh-huh.

16 A -- and non-white inferiority manifested  
17 themselves in many, many ways in our country, as I'm  
18 sure we all know here.

19 And ultimately, in my field, music  
20 theory, which really became a well defined field in  
21 the United States only in the 1960s, obviously very  
22 hard for something in 1790 to directly affect  
23 something that happened in the 1960s.

24 Absolutely is part of the same white  
25 supremacist structures and institutions that have

1 happened long before, frankly, 1790 in the United  
2 States of Am- -- well, in the country that became  
3 known as the United States of America.

4 Q Do you have any reason to think that that  
5 was misquoted, what Cindy Breeding wrote in this  
6 article?

7 A No.

8 Q Can we skip forward to page -- at the  
9 bottom, you'll see five of five?

10 A Uh-huh.

11 Q In the middle of that page there's  
12 another quote by you and it -- it begins the  
13 paragraph before.

14 "Ewell said he has seen some of the  
15 tweets about the journal before he 'unplugged.' He  
16 hasn't read the rebuttals and doesn't plan to, he  
17 said."

18 Did I read that correctly?

19 A Correct.

20 Q Do you understand that to be referring to  
21 your engagement with the Twitter comments about the  
22 Journal of Schenkerian Studies?

23 A Among other comments, Facebook, and yeah.

24 Q And that's more or less consistent with  
25 what you discussed today about your getting off

**1    Twitter; right?**

2            A            Yes.    And also I can recall when -- this  
3    was kind of blowing up, I think, in July, August of  
4    20- --

**5            Q            Uh-huh?**

6            A            -- '20.    2020?

**7            Q            Yeah.**

8            A            Yeah.    Yeah.    The pandemic was just  
9    starting, yeah.    And I can recall I spoke with one  
10    journalist, and it might have been this person,  
11    actually --

**12          Q            Uh-huh.**

13          A            -- when I was unplugged and I was  
14    literally upstate with my wife and son.

**15          Q            And you say here -- or it says here in  
16    the article, "He hasn't read the rebuttals and  
17    doesn't plan to."**

**18                      Correct?**

19          A            Uh-huh.

**20          Q            Is that -- was that accurate at that  
21    time?**

22          A            Yeah.

**23          Q            And then you are quoted saying, "I won't  
24    read them because I will not participate in my own  
25    dehumanization."**

1                   Did I read that right?

2           A       Yeah.

3           Q       Is that something you told to the  
4   journalist?

5           A       Yes.

6           Q       And you also say here, "They were  
7   incensed by my blackness challenging their  
8   whiteness. The Journal of Schenkerian Studies has  
9   done far more to damage Schenkerian studies than  
10   Schenkerian studies."

11                   Did I read that correctly?

12          A       You did and that's a bit of a misquote.  
13   It doesn't quite read. But --

14          Q       But --

15          A       -- you get the idea.

16          Q       -- what is misquoted?

17          A       Well, the Journal of Schenkerian Studies  
18   has done -- done far more to damage the field of  
19   Schenkerian studies than the field of Schenkerian  
20   studies itself.

21          Q       That's a good clarification.

22                   All right. And did anyone who was  
23   connected to the journal ever criticize you for your  
24   blackness?

25          A       Anyone connected to the journal? So if I

1 take comments, for instance, from David Beach, who  
2 said, "Philip -- my suggestion to Philip Ewell is  
3 that he stop complaining about us white guys."

4 Q Who is Philip Beach?

5 A I'm sorry, David Beach --

6 Q David Beach?

7 A -- wrote in response to my nine minute  
8 plenary talk, "My advice to Philip Ewell is that he  
9 stop complaining about us white guys."

10 That would probably fall under the rubric  
11 of being incensed by my blackness.

12 Q Did he mention your blackness or just  
13 said you shouldn't complain about his whiteness?

14 A Did David Beach mention my blackness? I  
15 would have to go back to his actual report.

16 Q And at that time you hadn't read those  
17 reports, had you?

18 A Correct.

19 Q At this time had anyone from the journal  
20 expressly criticized you for being black?

21 A No.

22 Q And you did say that you would not  
23 participate in your own dehumanization; right?

24 A Correct.

25 Q You didn't say "demeaning" you or

1 anything like that here?

2 A Correct.

3 Q So you seem to know what that word meant  
4 at this time; right?

5 A I've always known what dehumanization  
6 means, Mr. Allen.

7 Q Did you equivocate about the meaning of  
8 that word with the journalist at this time?

9 A No.

10 Q And you basically said you weren't going  
11 to read the Journal of Schenkerian Studies symposium  
12 in 2020; right?

13 A Correct.

14 Q So that would suggest that had they  
15 reached out to you personally, you wouldn't have  
16 participated; right?

17 A No. Because that's kind of -- you are  
18 conflating, like, the timeline here.

19 Had they reached out to me in a -- in a  
20 expedient fashion before publication of this journal  
21 issue, I most likely would have been very interested  
22 in being part of a colloquy because I believe in  
23 collegiality and -- and respect among colleagues.

24 To post factum, after the journal comes  
25 out, to try to engage me in a response of sorts,

1   that is -- I'm uninterested in.

2           **Q       And yet you didn't raise that with Ellen**  
3   **Bakulina?**

4           A       I -- I already said that when I responded  
5   to Ellen Bakulina, I simply said -- she said, Do you  
6   have any questions about these responses?

7                   I said, No, I have no questions.   Have a  
8   nice day.

9           **Q       Did you raise the issue of not being**  
10   **invited with the journalist?**

11          A       No.   To my knowledge, no.

12          **Q       If that was so important to you at the**  
13   **time, why didn't you raise that with the journalist**  
14   **when you were explaining your dehumanization?**

15          A       You know, back in 2020 a lot of things  
16   were happening so it wasn't like I was laser focused  
17   on one thing.

18                   This one little aspect of a lack of  
19   industry -- industry standard following the -- the  
20   rules of inviting people to whom you are responding.

21                   So in a brief ten-minute phone call  
22   probably with this journalist, no, I did not bring  
23   that up.

24          **Q       Did you bring up your other complaint**  
25   **that there were articles that weren't peer reviewed,**



1 to your knowledge?

2 A To my knowledge, no. I don't think so.

3 Q How about the anonymous publication?

4 A I don't think so. I don't think so.

5 Q You were aware that people published in  
6 the symposium who supported your point of view in  
7 your plenary talk of 2019; correct?

8 A Only in the sense that two of them had  
9 reached out to me to -- to let me know that they  
10 were going to submit something and I -- I read it  
11 before it was even approved for publication.

12 And those are the pieces by Richard  
13 Beaudoin and Chris Seegal.

14 Q Uh-huh.

15 A And it was clear from what I wrote that  
16 they were supportive of some of the points I was  
17 making.

18 Q Did that dehumanize you?

19 A I don't think so, no.

20 Q And was that in any way improper as an  
21 academic professional?

22 A No.

23 Q Your full length article --

24 (Whereupon, the court reporter  
25 requests clarification.)

1 BY MR. ALLEN:

2 Q Your full length article in Music Theory  
3 Online, I think you've said this before but if you  
4 could just remind us, when did that come out?

5 A I'm going to say June 2020.

6 Q So it came out right before the Journal  
7 of Schenkerian Studies published the symposium in  
8 July of 2020, to your knowledge?

9 A To be honest, I don't know which came out  
10 first.

11 Q Okay. Do you have any reason to believe  
12 that Timothy Jackson was solely responsible for not  
13 inviting you to participate?

14 A No, I have no reason to believe that.

15 Q You were aware that more than one person  
16 worked on the journal's editorial staff; correct?

17 A Yes.

18 Q Do you know of any reason that Timothy  
19 Jackson alone should have been made responsible for  
20 the whole editorial staff?

21 A No.

22 MR. ALLEN: Now, I'm going to mark  
23 for the record, the next exhibit is  
24 Exhibit 6. This will fit in the  
25 category -- and I obviously don't want

1           you to read all of these -- we'll go to  
2           selective portions of it and I'll explain  
3           what this is --

4           THE WITNESS: Uh-huh.

5           MR. ALLEN: -- in a second.

6           I'm going to give this to you also,  
7           Richard.

8           I'm marking for the record  
9           Exhibit 6.

10           (Whereupon, Plaintiff's Exhibit 6,  
11           Collection of Documents Submitted by  
12           Timothy Jackson to Ad Hoc Panel  
13           Convened at University of North  
14           Texas, was marked for  
15           identification.)

16 BY MR. ALLEN:

17           Q       Now, I'm going to direct your attention  
18           to the cover page -- or the first page, I should  
19           say.

20           A       Uh-huh.

21           Q       And I'm just going to represent to you --  
22           because obviously this is not an e-mail to you --  
23           this is a collection of documents which was  
24           submitted by Timothy Jackson to the, quote, ad hoc  
25           panel which was convened at the University of

1 North Texas to basically investigate Timothy Jackson  
2 and his role in the Journal of Schenkerian Studies?

3 MR. WALTON: Mr. Allen, what --

4 MR. ALLEN: Yes, Ben.

5 MR. WALTON: What document did you  
6 end up labeling Exhibit 6 here?

7 MR. ALLEN: Appreciate the  
8 clarification and I apologize. This was  
9 011UNT2645.

10 MR. WALTON: Thank you.

11 MR. ALLEN: No, thank you, Ben.

12 BY MR. ALLEN:

13 Q So you'll look at the bottom,  
14 Professor Ewell.

15 Do you see there's a page marking  
16 UNT02645?

17 A -002645, yes.

18 Q Correct. I'm just going to tell you,  
19 those are Bates numbers.

20 A Uh-huh.

21 Q These are numbers that attorneys assign  
22 to documents produced in discovery. It's a  
23 continuous series throughout the record in this  
24 case.

25 A Uh-huh.

1 Q I will be referring to them as basically  
2 equivalent of page numbers.

3 A Okay.

4 Q On the other hand, that's the sole  
5 alteration of this document by the attorneys.

6 A Okay.

7 Q It's a -- it's a document that was  
8 produced by the University of North Texas, thus the  
9 abbreviation "UNT."

10 So with that understood, I'm just going  
11 to call your attention to various parts of this  
12 record.

13 These were documents that were disclosed  
14 to the ad hoc panel by Timothy Jackson to disclose  
15 simply the internal workings of the journal that led  
16 to the publication of the symposium?

17 A Uh-huh.

18 Q I'm not asking you to comment on whether  
19 that's true, but I'm just going to ask you to assume  
20 that for the record. All right?

21 So can I direct your attention to  
22 page UNT2663, please?

23 This is a copy of an e-mail dated  
24 December 31st, 2019.

25 Did I read that correctly?

1           A           The second one, yeah.

2           Q           Sorry, the one at the bottom of the page?

3           A           Uh-huh.

4           Q           Correct?

5           A           Uh-huh.

6           Q           And it seems to be from someone named Bob

7   Kosovsky?

8           A           Uh-huh.

9           Q           The thing I want to ask you about is the

10   "to" line, SMT-announce@societymusictheory.org.

11                    Do you recognize that e-mail?

12          A           Yes.

13          Q           Can you explain for the record what that

14   e-mail is?

15          A           It's a Listserv where music theorists

16   make announcements.

17          Q           And would you have received that e-mail?

18          A           Yes.

19          Q           And in fact I think you've testified you

20   did receive that e-mail?

21          A           Correct.

22          Q           And this has the caption in the first

23   line, "The Journal of Schenkerian Studies Volume 12

24   2019 Call for Papers."

25                    Right?

1           A           Correct.

2           Q           If I could ask you to just review that  
3 through the next page.

4                   And I was just going to ask if this is  
5 the call for papers that was sent out over the SMT  
6 Listserv, to the best of your knowledge?

7           A           Yes, to the best of my knowledge. Yeah.

8           Q           So to the extent that you've testified  
9 today that you didn't receive an invitation to  
10 participate in the Journal of Schenkerian Studies  
11 Volume 12, it's not because you weren't asked  
12 through this Listserv; it's because you weren't  
13 asked in the way that you would have preferred and  
14 thought of as industry standards?

15          A           Well, when you say, "would have preferred  
16 or thought of," I would go a step further and say in  
17 22 years, I've never heard of a general Listserv  
18 announcement making a call for papers tried to be  
19 substituted for a specific invitation to a person  
20 who -- whose work has been under scrutiny in  
21 responses as my work was with the Journal of  
22 Schenkerian Studies Volume 12.

23                   In fact, I would go so far as to say is  
24 that is so far outside of industry standards to --  
25 to think that this somehow represents an invitation

1 to Philip Ewell, a direct invitation to  
2 Philip Ewell, that that is a very strange thing  
3 indeed.

4 Q Now, I never said that it was a --  
5 somehow a direct invitation to you, but you did  
6 receive it; right?

7 A I received it.

8 Q It's an invitation to participate;  
9 correct?

10 A Not to me specifically.

11 Q You specifically received it on a  
12 Listserv that you subscribe to; correct?

13 A Yeah, but thousands of people probably  
14 received that.

15 Q And you didn't respond to it, in fact;  
16 right?

17 A Along with -- along with other thousands  
18 of people that didn't respond, yeah. In fact, if I  
19 could say, Listservs aren't meant to be responded  
20 to.

21 Q The statement that you never received an  
22 invitation to participate in the Journal of  
23 Schenkerian Studies, which was made repeatedly at  
24 this time, was false, however; correct?

25 A No, I disagree.



1           Q       You disagree that this announcement was  
2 an invitation which you received to participate in  
3 the Journal of Schenkerian Studies?

4           A       Not --

5                   MR. PAINTER: Could you clarify who  
6 the announcement came from? Did this  
7 come from the Journal of Schenkerian  
8 Studies?

9 BY MR. ALLEN:

10          Q       Do you see where it says, "forwarded  
11 message from" on page -2663?

12                   This is a question for you, Professor  
13 Ewell.

14          A       Oh, I see. Yes, I --

15          Q       Do you see the cc line, Levi Walls,  
16 LeviWalls@MyUNT.edu?

17          A       Uh-huh.

18          Q       And it says, "Forwarded message from:  
19 Levi Walls," the same e-mail, "LeviWalls@MyUNT.edu.  
20 Correct? Did I read that right?

21          A       Yes.

22          Q       Do you know who Levi Walls is?

23          A       He was one of the student editors, I  
24 believe, of the journal issue.

25          Q       And do you know who Bob Kosovsky is?

1           A           I -- I know the name. I think he's  
2   somebody at SMT. He might have been a -- like an  
3   executive director of the Society for Music Theory,  
4   but I --

5           Q           And do you --

6           A           -- I don't think I've ever met him.

7           Q           And do you have any reason to believe  
8   that this wasn't a message, the call for papers,  
9   forwarded to the SMT-announce list by Levi Walls?

10          A           I think it was such a message.

11          Q           Okay. And you received it, which we've  
12   already discussed?

13          A           Yes.

14          Q           And it is an invitation to participate in  
15   the journal; correct?

16          A           Yes.

17          Q           It's just not the one that you wanted?

18          A           It's not the one that anybody who  
19   actually -- whose work is under scrutiny would  
20   expect. It's just not what happens. It never  
21   happens that way.

22          Q           Did this call for papers dehumanize you?

23          A           I can't comment on that.

24          Q           Does that -- you can't comment on it  
25   because it's not true or it is true and you don't

**1 want to comment on it?**

2           A           Just because I -- it's a very difficult  
3 thing to think about. I'd have to think about  
4 whether it dehumanized me.

5                   I -- I hesitate to say whether it  
6 dehumanized me.

7                   What I would prefer to say is that this  
8 is not the way colloquies or symposia happen in  
9 academia.

**10           Q           Do you find anything objectionable --**  
**11 objectionable about the call for papers itself?**

12           A           Actually, if I remember, they just had  
13 mis- -- mis- -- misquoted something I said, but it's  
14 so -- it's so minimal that -- that I don't -- I  
15 wouldn't really raise any objection.

16                   Something here written is not exactly  
17 what I said at that plenary session. And that's  
18 what happens of course when you take a plenary  
19 session.

**20           Q           I want to talk about the role of two**  
**21 individuals at the University of North Texas: One**  
**22 is a defendant named Benjamin Graf and the other is**  
**23 someone we've already discussed in -- a little bit**  
**24 named Levi Walls. Let me start with Mr. Graf.**

**25                   Who is Benjamin Graf?**

1           A           Ben Graf was the other student -- to my  
2 knowledge, to my recollection, the other student  
3 editor of the journal issue, Levi Walls and Ben  
4 Graf.

5                   I think that they were both mentioned in  
6 that ad hoc panel, which is when I found out, if --  
7 if I remember correctly, that they were in fact the  
8 student editors.

9                   And, of course, Timothy Jackson and  
10 Stephen Slottow were also mentioned in that ad hoc  
11 panel as the editorial advisors, I think, the  
12 faculty, and the editors, the -- the two graduate  
13 students, Levi Walls and Ben Graf.

14                  And what else about Ben Graf? He -- I  
15 presumed that both students were graduate students  
16 working with Schenkerian studies, potentially with  
17 one of two faculty advisors.

18           Q           **Uh-huh.**

19           A           Excuse me.

20                  That's my recollection of -- of Ben Graf.

21           Q           **So did you know Ben Graf before this**  
22 **episode in late 2020?**

23           A           I do not think so, no.

24           Q           **Were you aware that Benjamin Graf was on**  
25 **faculty at University of North Texas at this time?**

1           A           No, I thought he was a grad student.

2           Q           And had you had any contact with him when  
3 he was the editor of the Journal of Schenkerian  
4 Studies?

5           A           Somebody sent me -- after the issue came  
6 out, I think one of those two people, Levi Walls or  
7 Ben Graf, sent me a PDF of the journal issue because  
8 I had not been sent a copy --

9           Q           Uh-huh.

10          A           -- physical or otherwise.

11                   And I do remember, I think -- I think on  
12 a Twitter direct message hearing from one or both of  
13 them just kind of explaining, saying, I'm sorry this  
14 happened.

15                   Because it, you know, it had blown up, to  
16 a large extent.

17                   And -- and me replying, It's okay.

18                   I mean, it's --

19          Q           Uh-huh.

20          A           These things happen, I guess, yeah.

21          Q           Do you remember the exact words that  
22 either of them used?

23          A           No, I do not.

24          Q           Okay. And I believe from your testimony  
25 today you've deleted your Twitter account?

1           A           Yes.

2           Q           So those are no longer retrievable?

3           A           Not by me.

4           Q           Now, I asked -- I asked you about  
5 Benjamin Graf.

6                   But let me ask the same question about  
7 Levi Walls, although I know you've answered some of  
8 that.

9                   What was your understanding of the role  
10 in -- of Levi Walls in the journal in July of 2020?

11          A           I -- i thought he was a graduate student  
12 editor of the Journal of Schenkerian Studies, as I  
13 thought Ben Graf was, too.

14          Q           Have you met with Benjamin Graf since  
15 that time?

16          A           I saw Ben Graf at the Pedagogy into  
17 Practice conference that happened not too long ago.

18                   And as far as I know, that's the first  
19 time I've ever met him in person. And we had lunch  
20 with a big group of people.

21          Q           Did he talk about the Journal of  
22 Schenkerian Studies with you at all at that lunch?

23          A           He did not.

24          Q           What did you talk about, if I may ask?

25          A           Music theory pedagogy. There were six of

1 us at a table and we had a nice lunch.

2 We talked about these issues -- I  
3 imagine -- I mean, I knew the name from the ad hoc  
4 panel and also he -- he -- he's still at University  
5 of North Texas, I think, Ben Graf.

6 So -- but I think he knew that he, you  
7 know, wasn't to -- I -- I -- I presume that he was  
8 told by someone, Don't talk with people about this  
9 and with Philip Ewell either.

10 So that's not something I pried and I  
11 wouldn't want to.

**12 Q Did he tell you that?**

13 A Oh, I can't recall. I can't recall  
14 whether we even mentioned the Journal of Schenkerian  
15 Studies, to be honest.

16 But I do remember that there was no  
17 substantive conversation.

**18 Q Okay.**

19 MR. ALLEN: I'm going to mark for  
20 the record Exhibit 7.

21 COURT REPORTER: One moment.

22 If I could, sir.

23 MR. ALLEN: Uh-huh.

24 (Whereupon, Plaintiff's Exhibit 7,  
25 Facebook Exchange, One-Page Document

1 Dated July 25, 2020, was marked for  
2 identification.)

3 COURT REPORTER: Thank you.

4 BY MR. ALLEN:

5 Q And while you are reviewing that, it's a  
6 one-page document which seems to be the printout of  
7 a Facebook exchange; is that correct?

8 A Uh-huh. Uh-huh.

9 Q And it's dated July 25th, 2020.

10 MR. ALLEN: I'm going to inform the  
11 people online here that it's marked in  
12 your exhibit pack as 03UNT0441.

13 And you'll see that Bates stamp in  
14 the lower right-hand corner but it may  
15 not be legible because it's printed black  
16 on black.

17 BY MR. ALLEN:

18 Q So is this a message you remember getting  
19 via Facebook?

20 A I certainly do now, yes. Uh-huh.

21 Q And that's your, I guess, avatar there,  
22 the -- the charming fellow playing the cello?

23 A Correct. Yeah.

24 Q And Benjamin Graf said to you, "At this  
25 time, the JSS would likely welcome a response from



1   you."

2                   Right?

3           A       Yes.

4           Q       And JSS stands for Journal of Schenkerian  
5   Studies?

6           A       Uh-huh.

7           Q       Was that dehumanizing?

8           A       No.

9           Q       And then he says he felt -- or, "We felt  
10   uneasy about the situation from the beginning."

11                   Do you see where he says that in the next  
12   sentence after --

13          A       Uh-huh.

14          Q       Did you have any discussion with him  
15   about how he felt so-called uneasy from this  
16   beginning?

17          A       No.

18          Q       He also claimed to get, quote,  
19   significant pressure from the advisory board.

20                   Do you see that?

21          A       I'd like to find it here.

22                   MR. PAINTER:   In the middle here.

23                   THE WITNESS:   Uh-huh.   Okay.

24          A       Uh-huh.   Yes.   Go.

25

1 BY MR. ALLEN:

2 Q Did he ever explain what he meant by  
3 that?

4 A No, not to my recollection, no.

5 Q If you skip down a few sentences, do you  
6 see the sentence that says, "I really enjoy  
7 reading"?

8 A Uh-huh.

9 Q It says -- he said to you here, "I really  
10 enjoy reading your blog post and the JSS advisors  
11 mentioned asking you about a response after your  
12 planned visit to UNT."

13 Did I read that right?

14 A Correct.

15 Q Were you planning to visit the University  
16 of North Texas around this time?

17 A Not around this time.

18 Q What is he referring to when he says,  
19 "your planned visit"?

20 A The planned visit was to have happened a  
21 year roughly beyond this. I think the fall -- if  
22 this is 2020, this -- I think the fall of 2021,  
23 perhaps, it was planned.

24 Q The -- your visit, you mean?

25 A Correct.

1           Q           **Ah.**

2           A           And it was -- it was about Russian music  
3 theory, which is -- I'm a Russianist. That's  
4 what --

5           Q           **Sure. Sure.**

6           A           -- that's my field.

7           Q           **And did that visit take place?**

8           A           It did not.

9           Q           **Why is that?**

10          A           I cancelled it.

11          Q           **Why did you cancel it?**

12          A           Because I didn't want to go down to the  
13 University of North Texas.

14          Q           **Why?**

15          A           Because this was blowing up and I didn't  
16 want to be part of it.

17          Q           **It was specifically because of the**  
18 **publication of the Journal of Schenkerian Studies**  
19 **Volume 12?**

20          A           Among other things happening around this,  
21 yeah.

22          Q           **So there was no opportunity for JSS**  
23 **advisors to ask you about a response at that visit?**

24          A           After the journal issue had come out, no.

25          Q           **And your response here in the gray bubble**

1 is, "Thanks, Ben. I understand the difficult  
2 position you were in. Yes, the next time we meet,  
3 I'd be happy to get a coffee. Best, Phil."

4 Right?

5 A Correct.

6 Q And it sounds like you actually did meet  
7 for dinner?

8 A Lunch, yeah.

9 Q Lunch? Okay.

10 A Uh-huh.

11 Q What did you understand by the difficult  
12 position that Benjamin Graf was in?

13 A Well, graduate students -- and I thought  
14 he was a graduate student -- I think he had been a  
15 graduate student at the University of North Texas  
16 right prior to this.

17 But even so, I thought he was a graduate  
18 student, like Levi Walls, are under enormous  
19 pressure if they are caught between the faculty  
20 and -- and outward-facing scholarship, such as a  
21 journal.

22 So it's very difficult to walk that line.  
23 That's what I was referring to.

24 Q And having met Benjamin Graf in person,  
25 do you think of him as a weak person?

1           A           I don't know him well enough to comment  
2 on that.

3           Q           Do you think of him as in any way an  
4 uncourageous person?

5           A           Again, I -- I just don't know him well  
6 enough -- well enough to comment on that.

7           Q           In your experience of meeting him in  
8 person, did you have any reason to believe that he  
9 was lacking in courage in any way?

10          A           It was one lunch with five other people  
11 at the table. I really can't comment on that.

12          Q           And you've already testified that you  
13 thought he was a graduate student, not on faculty;  
14 right?

15          A           Correct.

16          Q           The fact that he was on faculty, does  
17 that change any of your testimony?

18          A           No. Because there are, as you know,  
19 many, many levels of faculty rank and levels of  
20 vulnerability.

21                   And I was presuming at the time, and I  
22 think accurately, that he was a graduate student.

23                   But if he were in fact faculty, I'm  
24 pretty sure that he was not a tenured faculty,  
25 because tenure is what actually gives you power at a

1 university. So anyone who is not tenured walks a  
2 very fine line.

3 Q Do you know if Benjamin Graf benefited  
4 from editing the Journal of Schenkerian Studies in  
5 terms of advancing his career?

6 A I imagine that there's some small  
7 benefits, yeah, of -- of being listed as an editor  
8 of a journal, yeah.

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."

15 Did I read that correctly into the  
16 record?

17 A Yes.

18 Q What did you understand by this phrase,  
19 "silence is complicity"?

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?

1           Q       Uh-huh.

2           A       And I presume that's what Ben is talking  
3 about when he says, "silence is complicity."

4           Q       Was keeping silence about these  
5 supposedly improper methods for contacting you also  
6 complicity in the Journal of Schenkerian Studies?

7           A       No.

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 --

13          A       No.

14          Q       -- give a talk?

15          A       No.

16          Q       If I could refer you back to Exhibit  
17 Number 6, that's the rather thick packet?

18          A       Uh-huh.

19                   THE WITNESS: I'm sorry, Mr. Allen,  
20 could I get a bathroom break?

21                   MR. ALLEN: Oh, absolutely.

22                   THE WITNESS: Yeah.

23                   MR. ALLEN: And there's no question  
24 on --

25                   THE WITNESS: Uh-huh.

1 MR. ALLEN: -- so let's go off the  
2 record.

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.)

7 THE VIDEOGRAPHER: We are going back  
8 on the record. The time is 2:48.

9 BY MR. ALLEN:

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.

17 A Uh-huh.

18 Q So I'm going to ask that you look at  
19 2657, UNT2657?

20 A Uh-huh.

21 Q This is an e-mail by your colleague, the  
22 defendant, Ellen Bak- -- Bakulina --

23 A Uh-huh.

24 Q -- on December 1st, 2019.

25 Do you see that?



1           A           Uh-huh.

2           Q           And I just want to direct your attention  
3 to the first sentence.

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."

11                   Did I read that correctly?

12          A           Yes.

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?

16          A           No, I did actually -- I did not know that  
17 back in 2019.

18          Q           So that, as you understood it, is not an  
19 accurate statement?

20          A           Well, accurate for Ellen. Let me reread  
21 it, what -- what you just wrote [sic].

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.

1           Q       So if you skip down to -2657 at the  
2 bottom there --

3           A       Uh-huh.

4           Q       -- there's some sort of "from Ellen  
5 Bakulina"?

6           A       Uh-huh.

7           Q       Then it goes forward.

8                   It says, "Dear Ellen, hyphen" -- or,  
9 excuse me -- "comma, colleagues, comma."

10                   And that appears to be an e-mail signed  
11 by Timothy Jackson.

12                   Do you see that one that spills over to  
13 the next page, UNT02658?

14           A       To Levi Walls, to Timothy Jackson,  
15 Benjamin Graf, Stephen Slottow, Diego Cubero, and  
16 it's from Timothy Jackson?

17           Q       Well, it's -- it's not entirely clear  
18 here, but if you see at the bottom, it says, "Best,  
19 Tim," at the bottom of the e-mail?

20           A       Of the next page, yeah.

21           Q       Yes.

22           A       Okay. Yeah.

23           Q       So this message, "All things considered,  
24 JSS" --

25           A       Uh-huh.

1 Q -- "should go forward with the call as  
2 planned"?

3 Right?

4 A Okay.

5 Q Now, if we -- if we look up to the  
6 previous e-mail which we were just talking about,  
7 Ellen Bakulina says in her last sentence, "Does the  
8 prospective Spectrum publication means that" -- I  
9 guess that's a typo -- "means that perhaps we should  
10 wait with our call for responses until after that  
11 publication appears."

12 Did I read that right?

13 A Yes.

14 Q So they are addressing that within the  
15 journal?

16 A Uh-huh.

17 Q Timothy writes this next e-mail, "The JSS  
18 should go forward with the call as planned"?

19 A Uh-huh.

20 Q Right?

21 And then do you see right under that,  
22 Benjamin Graf on December 2nd, 2019, in the morning,  
23 9:14 a.m. --

24 A Uh-huh.

25 Q -- writes, "I agree with Tim"?

1           A           Uh-huh.

2           Q           Right?

3           A           Uh-huh.

4           Q           Did Benjamin Graf ever discuss with you  
5 agreeing that the call should go forward?

6           A           No.

7           Q           Is that consistent in your view with him  
8 being pressured?

9           A           No, not pressured.

10          Q           Does it look like he's opposing the  
11 publication --

12          A           No.

13          Q           -- of some special symposium?

14          A           No.

15          Q           And, again, these were records disclosed  
16 to the so-called ad hoc panel.

17          A           Uh-huh.

18          Q           That's why I'm presenting it to you. All  
19 right.

20                      Do you remember in July 27, 2020 an  
21 apology posted by Levi Walls on Facebook?

22          A           I -- I'm -- I wouldn't deny it existed.  
23 I don't recall it.

24          Q           Let me ask it this way: Do you have no  
25 memory of it now as you sit here today because you

**1 think you didn't read it?**

2 A I -- if it were posted as a general  
3 Facebook post, it's entirely possible I did not read  
4 it.

5 If it were a direct message to me which I  
6 would have found because I did -- I digged -- dug --  
7 I dug -- digged -- I dug in my Facebook direct  
8 messages --

**9 Q Yes.**

10 A -- and I would have found it, I presume.  
11 So the -- I rarely read Facebook posts.

**12 Q Okay.**

13 A Although back then I was reading them  
14 slightly more often than I -- certainly than I do  
15 now.

**16 Q Yes.**

17 MR. ALLEN: I'm going to mark for  
18 the record -- record as Exhibit 8 a  
19 Facebook post by Levi Walls.

20 (Whereupon, Plaintiff's Exhibit 8,  
21 Facebook Post by Levi Walls, was  
22 marked for identification.)

23 BY MR. ALLEN:

**24 Q And I just have one question, given your**  
**25 previous answers to my questions.**

1                   I just want you to look at this, maybe  
2 briefly, and tell me if you remember reading this at  
3 the time?

4           A       Sure.

5                   MR. WALTON: Which document is this,  
6 Mr. Allen?

7                   MR. ALLEN: Thank you. I was going  
8 to just say that.

9                   This is also marked 08 Jackson 0234.

10                  MR. WALTON: Thanks.

11                  THE WITNESS: Okay.

12 BY MR. ALLEN:

13           Q       So just, again, did you ever read this at  
14 the time?

15           A       I think I did.

16           Q       And in that case, you knew at that time,  
17 this date being dated July 27th, 2020; correct?

18           A       Uh-huh. Yeah.

19           Q       -- that Levi Walls, who you formerly  
20 testified you knew, was a graduate student working  
21 on the journal --

22           A       Uh-huh.

23           Q       -- was claiming to have no control over  
24 the content of the journal; right?

25           A       That's what it says here, yeah. I kind

1 of skimmed through it, yes.

2 Q If you skip down to Jackson -235, that's  
3 the second page of this Exhibit Number 8?

4 A Uh-huh.

5 Q There's a second sentence that begins on  
6 the page, "However, after Philip Ewell's SMT  
7 presentation, Timothy Jackson decided that it was  
8 the responsibility of the journal to 'protect  
9 Schenkerian analysis.'"

10 Then he says, "Although, after serious  
11 thought, I essentially agreed with Ewell's talk, it  
12 was not up to me what did or did not go into the  
13 journal."

14 Did I read that correctly?

15 A Yes.

16 Q Is that your understanding at the time of  
17 what had happened inside the journal?

18 A Among other things.

19 Q Okay. Well, and I just want to focus on  
20 this thing for now.

21 A Uh-huh.

22 Q So now if I could get you to go back to  
23 Exhibit 6, that's the big packet?

24 A Uh-huh.

25 Q And go to UNT2705.

1                   There's an e-mail at the bottom of that  
2 page that says, "Walls, Levi," it gives his e-mail.  
3 And it says, "to me," meaning to Timothy Jackson.

4                   Do you see that?

5           A       Uh-huh.

6           Q       Could I ask you to review that e-mail?

7           A       Uh-huh.

8                   This is -2705, Bates number?

9           Q       UNT02705?

10          A       Uh-huh.

11          Q       An e-mail beginning on the bottom of that  
12 page dated November 15th, 2019?

13          A       Uh-huh.

14                   Okay.

15          Q       So this e-mail says in the second  
16 sentence that begins in that e-mail addressing  
17 Timothy Jackson, "You've likely heard about it" --  
18 referring to a particular Schenker paper from SMT --  
19 "as it caused quite a stir. I was very ambivalent  
20 about it because it suggested that analysis that  
21 utilizes levels of hierarchy is inherently racist  
22 which strikes me as naive."

23                   Did I read that correctly?

24          A       Yes.

25          Q       Do you understand this to be referring to



1    your paper at the SMT?

2            A            I think so.

3            Q            Does that sound like someone who agreed  
4    with your paper?

5            A            Agreed but misunderstood. "Inherently  
6    racist" is not something I would say, but yeah.

7            Q            So does that seem to suggest that he was  
8    lying in his Facebook post on July 27th, 2020?

9            A            No, because this is November 2019, after  
10   my talk -- a week after my talk. And the 2020  
11   Facebook that you just referenced was after the  
12   publication of the Journal of Schenkerian Studies.

13                    And apparently, Levi Walls had worked on  
14   that so had been kind of deeply involved in it. So  
15   clearly he changed some opinions.

16            Q            Don't you think he changed his opinions  
17   because the journal was attacked by almost every  
18   single academic in the SMT?

19            A            I disagree. I don't think every single  
20   academic attacked the journal.

21                    So that's -- that's -- to answer your  
22   question -- can you state the question again?

23            Q            You don't think that Levi Walls was  
24   posting an apologia on Facebook because the journal  
25   was being attacked as racist?

1           A           No.

2           Q           You don't think Levi Walls was  
3   misrepresenting his actual true feelings about your  
4   work because the entire Society for Music Theory had  
5   published an open letter condemning the Journal of  
6   Schenkerian Studies?

7           A           You say "entire Society for Music Theory"  
8   and it wasn't. It was 900 signatories. So they  
9   don't speak for absolutely 100 percent of the  
10   membership, obviously.

11                   And I don't believe that Levi Walls was  
12   misrepresenting his beliefs. I believe that they  
13   had changed, just from the two documents you showed  
14   me.

15          Q           He never said he changed his beliefs, did  
16   he?

17          A           Well, something changed, did they -- did  
18   they not -- did it not?

19          Q           Yeah, the thing that changed was the  
20   Journal of Schenkerian Studies came under attack;  
21   right?

22                   MR. PAINTER: Do you have a  
23                   question?

24          A           Yeah, is there a question there?

25

1 BY MR. ALLEN:

2 Q Did you understand my question?

3 MR. ALLEN: Could you read back the  
4 question to the witness?

5 (Whereupon, the referred-to text was  
6 read back by the court reporter.)

7 BY MR. ALLEN:

8 Q Is that question unclear to you?

9 A No, it's not unclear. It's just a  
10 question of whether I agree with it or not.

11 The Journal of Schenkerian Studies came  
12 under attack -- okay. Fair. I'll go ahead and say  
13 yes.

14 Q Thank you.

15 Could I direct your attention to  
16 UNT02707? That's the -- the next -- I want -- I  
17 know this is causing you to jump around.

18 A Uh-huh.

19 Q But, again, these were documents provided  
20 to the so-called ad hoc panel convened to --

21 A Uh-huh.

22 Q -- investigate my client.

23 A Uh-huh.

24 Q Do you see an e-mail at the bottom of  
25 that page from Monday, November 18th, 2019?

1           A           Yes.

2           Q           And, again, this would have been within  
3 plus or minus a week of your talk; right?

4           A           A week, two weeks, yeah.

5           Q           Okay. And again it's by Levi Walls?

6           A           Uh-huh.

7           Q           Okay.

8           A           After -- after the talk. Let's not --  
9 not plus or minus. It's after, plus.

10          Q           Correct.

11                   Levi Walls writes to Dr. Jackson.

12                   Did I characterize that correctly?

13          A           It just says to me.

14          Q           Do you see it says, "Dear Dr. Jackson"?

15          A           Correct. Okay. Yes.

16          Q           And it says at the end, "Regards, Levi"?

17          A           Yes.

18          Q           And then he goes on in the second  
19 paragraph that begins in this e-mail, "Yes, the  
20 paper's willful ignorance of Schenker's Jewish  
21 identity is indeed troubling. That seems to mark it  
22 as implicitly antisemitic at the very least. I  
23 think that had he limited his criticisms to  
24 Schenker, the man, it would have been slightly less  
25 problematic. But his claim that the entire

1 theoretical world view and, by extension, those who  
2 help spread it, is racist becomes very problematic  
3 when we consider the intimate connection between  
4 Schenkerian analysis and the Jewish identity."

5 And then he ends that paragraph, "Ewell's  
6 talk certainly failed in that regard."

7 Do you see that?

8 A Uh-huh.

9 Q So, again, is this consistent with a  
10 graduate student who agrees with your talk?

11 A In November of 2019, it is.

12 Q You think this indicates his agreement  
13 with your talk?

14 A Oh no. No. No. No. I think that this  
15 does not in- -- indicate agreement.

16 Q Okay.

17 A I think that he had some qualms about my  
18 talk in November of 2019.

19 I also would just point out the  
20 misreading that the entire theoretical world view is  
21 racist.

22 It's a common misquotation attributed to  
23 me. I've seen it many times. But it's not true.  
24 I've never said that.

25 And -- it -- I would love to see somebody

1 actually point to where I wrote that because they  
2 would be looking for a very long time.

3 Q Have you ever sought out Mr. Walls to  
4 discuss your work?

5 A No.

6 Q Has he ever sought out you to discuss  
7 your work?

8 A Again, a direct message?

9 There were a lot of -- a lot of  
10 communications going back and forth.

11 I don't remember seeing -- I mean, in my  
12 Facebook direct messages, I searched.

13 Q Uh-huh.

14 A And that was a search term. So I -- did  
15 I have something in my Facebook direct messages?

16 I mean, you -- you looked at it. I -- I  
17 can't recall.

18 And it's possible that if it's not there,  
19 that it -- there was a Twitter direct message.  
20 Probably it would have happened in one of those two  
21 places if I had any contact with Levi Walls.

22 Q And so to sum up, you don't recall that  
23 ever happening?

24 A Correct.

25 Q Okay. Let me ask you to jump to --

1           A           May I -- may I -- may I --

2           Q           **Please.**

3           A           -- qualify?

4                    I gave a talk -- a remote talk in Florida  
5 and -- and Levi Walls was also giving a talk at some  
6 point.

7                    And I recall, I -- it must have been from  
8 my Hunter e-mail because virtually all of these  
9 communications were professional and from my Hunter  
10 e-mail.

11                   I recall writing Levi Walls just saying,  
12 I see you are giving a talk in Florida.

13          Q           **Uh-huh.**

14          A           I look forward to listening to it.

15                    I don't think I was actually able to  
16 attend his --

17          Q           **Uh-huh.**

18          A           -- his virtual talk.

19          Q           **Uh-huh.**

20          A           And I also don't know whether he attended  
21 my virtual talk because it -- it wasn't one -- I  
22 don't think it was one where all the Zoom windows  
23 were available.

24          Q           **Right.**

25          A           Even if it was, as a -- as a keynote

1 speaker I don't pay attention --

2 Q Of course.

3 A -- to the -- the Zoom gallery.

4 But I just want -- since we are talking  
5 about Levi Walls, I did have -- I think I instigated  
6 an e-mail saying, I see you're giving a talk. I  
7 look forward to hearing your talk.

8 And that's what it was.

9 Q There was no more substantive discussion  
10 between you about that?

11 A About -- that's correct.

12 Q Okay. Could I ask you to skip to  
13 UNT02708?

14 There's an e-mail here from Timothy  
15 Jackson to Mr. Levi Walls dated November 19th, 2019?

16 A Uh-huh.

17 Q And it appears to be from Timothy  
18 Jackson?

19 He says, "Dear Levi, It occurred to me  
20 that it might be appropriate for the journal to  
21 solicit responsible -- responses to Ewell from a  
22 number of prominent Schenkerians."

23 Did I --

24 A Correct.

25 Q -- read that --



1 Now, it's relatively long and I don't  
2 want to spend that time on it.

3 But if we skip down to the next page,  
4 there's a response from Levi Walls; right?

5 And this is November 19th, 2019 at  
6 3:16 p.m.?

7 A Yes.

8 Q And he writes, "Dear Dr. Jackson, I agree  
9 that a response in the JSS would be very  
10 appropriate. It would be nice to have it for the  
11 upcoming issue, although it is very forthcoming  
12 around mid-December. A response in Issue 13 would  
13 of course be quite late. Did you have any  
14 particular Schenkerians in mind? Dr. Graf and I can  
15 discuss some candidates tomorrow at our weekly  
16 meeting and get requests out as early as tomorrow  
17 evening."

18 Did I read that right?

19 A Yes.

20 Q Does that sound like someone who has no  
21 control over the content of the journal?

22 A No.

23 Q One of Levi Walls' claims was that he was  
24 instructed by Timothy Jackson, something like, to --  
25 to censor people who were in favor of your paper.

1 Do you recall anything to that effect?

2 A No.

3 Q Let me direct your attention to UNT02758.

4 This time we'll be looking to the top of the page.

5 But before I ask you a question about  
6 this communication internal to the journal, I want  
7 to ask if you remember in the UNT so-called ad hoc  
8 panel report --

9 A Uh-huh.

10 Q -- a kind of very graphic description of  
11 Mr. Walls being forced into Timothy Jackson's car  
12 and coerced to basically publish something he didn't  
13 want to publish?

14 A I do remember something about a car,  
15 yeah.

16 Q Okay. But you don't remember that in  
17 detail?

18 A No, I don't.

19 Q Right? Its connection to censorship?

20 A I do not, no.

21 Q Okay. So if we look at the top of  
22 page -- sorry, UNT2758, do you see how that e-mail  
23 is signed by Levi Walls?

24 A Uh-huh.

25 Q And if we look at the very bottom of the

1 previous page, it states from February 13th,  
2 10:54 a.m.?

3 A Very bottom --

4 Q Of the -- of the page -02757?

5 A Two seven --

6 Q I'm sorry to jump around but the e-mail  
7 spills over --

8 A Uh-huh.

9 Q -- from one page to the next --

10 A Okay.

11 Q -- in an inconvenient way.

12 A Yeah. Could you say what you just said  
13 again?

14 Q So the e-mail is from Levi Walls; right?

15 A Uh-huh.

16 Q It's dated February 13th?

17 A 10:54 a.m.

18 Q Yes.

19 A Uh-huh.

20 Q It says, "To me" -- meaning Timothy  
21 Jackson -- "and Benjamin Graf."

22 Did I read that right?

23 A Correct.

24 Q He writes, "Dear Dr. Jackson," he copies  
25 some other people who are working on the journal?

1           A           Uh-huh.

2           Q           But not Dr. Slottow?

3           A           Uh-huh.

4           Q           He says, "Dr. Graf and I were wondering

5 what your thoughts were concerning the submission

6 from Clark Beaudoin" --

7           A           Beaudoin.

8           Q           Beaudoin.

9           A           Uh-huh.

10          Q           Thank you.

11                    -- "and Lett. As you may have seen,

12 these responses are, at least implicitly,

13 anti-Schenkerian. Despite disagreeing with much of

14 what they have to say, Dr. Graf and I think it is

15 important to publish these responses."

16                    Did I read that right?

17          A           Yes.

18          Q           So it sounds like he was in favor of

19 publishing responses that were favorable to you;

20 right?

21          A           Correct.

22          Q           Do you know if those three responses were

23 in fact published?

24          A           They -- so Beaudoin, Lett, and Clark,

25 yes. We're talking about Suzannah Clark, Harvard

1 University; Richard Beaudoin, Dartmouth College --

2 Q Uh-huh.

3 A -- Stephen Lett, who is no longer, I  
4 think, in the field.

5 Q Is that consistent with someone who is  
6 being pressured not to publish these pro-Ewell  
7 papers?

8 A Again, I would take issue with the  
9 conflation of this timeline.

10 Q Uh-huh.

11 A Because we started with Levi Walls in  
12 July --

13 Q Uh-huh.

14 A -- after the publication of Volume 12,  
15 and you've gone back to November.

16 Q Correct.

17 A Now we are in February; right?

18 So I think that it's quite reasonable to  
19 presume that once all of the journal responses were  
20 collated into an issue, it seems that Levi Walls  
21 read it and then began to take issue with some of  
22 the points that were being raised there and so  
23 essentially -- well, as I said, changing his  
24 opinion.

25 Which, over the course of eight months,

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

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

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?



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."

1                   Did I read that correctly?

2           A       Yes.

3           Q       Do you have any reason to believe that  
4 Benjamin Graf would lie about that?

5           A       No.

6                   MR. ALLEN: I think I have one last  
7 document to present to you and I think we  
8 will probably be able to wrap this up.

9                   I can't promise that Benjamin Walton  
10 won't have some questions for you.

11                  THE WITNESS: Sure.

12                  MR. ALLEN: But let me move on.

13                  I'm going to -- we're done talking  
14 about Mr. Walls and Mr. Graf.

15                  I want to ask you some additional  
16 questions about your colleague, Ellen  
17 Bakulina.

18                  THE WITNESS: Bakulina.

19                  MR. ALLEN: So if I could mark this  
20 for the record. We are introducing here  
21 Exhibit Number 9. This is marked in the  
22 exhibit folder 06 UNT2559.

23                  (Whereupon, Plaintiff's Exhibit 9,  
24 Document Presented to Ad Hoc Review  
25 Panel, was marked for

1 identification.)

2 MR. ALLEN: Sorry.

3 BY MR. ALLEN:

4 Q Now, before you look at this, again, I'm  
5 not suggesting that you know anything about this  
6 document.

7 It's because some things are represented  
8 about you in the document that I want to ask you  
9 questions about it.

10 A Sure.

11 Q This is also a document that was  
12 presented to the so-called ad hoc journal review  
13 panel that UNT convened to investigate solely  
14 Timothy Jackson for the supposed whatever they  
15 thought the journal of Schenkerian studies did  
16 wrong, I suppose.

17 And you can see that in the header; do  
18 you see that in the first message?

19 A "Talk with UNT ad hoc journal review  
20 panel"?

21 Q Yes?

22 A Yes.

23 Q And that's Ellen Bakulina --

24 A Uh-huh.

25 Q -- and her e-mail at UNT?

1           A           Correct.

2           Q           And I understand she's no longer there.

3                    So if you skip down a few pages, you'll  
4 see that there's an attachment that says, "Dear Dean  
5 Richmond"?

6           A           Uh-huh. "Dear Dr. Richmond," yeah.

7           Q           Uh-huh. And you'll see -- I just want  
8 to -- you see how there's a subheading A, close  
9 paren?

10          A           Uh-huh.

11          Q           I guess it's the third paragraph.

12          A           Uh-huh.

13          Q           She gives a little bit of a history of  
14 her participation in the journal?

15          A           Uh-huh.

16          Q           And then she also says -- I'm just going  
17 to begin with the sentence, "The e-mails were an  
18 exchange."

19                    Do you see that?

20          A           One second.

21          Q           Third sentence?

22          A           Yes. Go.

23          Q           "The e-mails were an exchange of opinions  
24 on Ewell's keynote talk. They led to another string  
25 of e-mails which were directly related to the call

1 for responses. The string was initiated by Levi  
2 Walls whose initial e-mail, November 25th, 2019, was  
3 sent to several theory faculty, included some that  
4 are not on the JSS editorial board. The second  
5 e-mail exchange led to the formulation of the call.  
6 I discussed the formulation with the editors but  
7 didn't make any substantive suggestions."

8 A You said "editors" when it said "others,"  
9 but aside from that, yes.

10 Q I apologize for misspeaking and thanks  
11 for catching that.

12 A Uh-huh.

13 Q Now, did Ellen Bakulina ever talk to you  
14 about her role on the journal?

15 A No.

16 Q So you don't know whether she's  
17 representing this accurately or not?

18 A Correct.

19 Q If you could skip down to UNT02560.

20 And this is one of the infelicities of  
21 electronic documents.

22 A Uh-huh.

23 Q But do you see there's a page number  
24 smack in the middle of the page number three?

25 A Uh-huh.

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

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.

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



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

1 the Russian music theory aspects. And she and  
2 Thomas Christensen, a music theorist -- music  
3 theorist at the University of Chicago, invited me to  
4 write a section on -- on the music theorist Modest  
5 Rezvoi, who was a Russian music theorist who in  
6 198 -- sorry, 1830 translated some very significant  
7 terms.

8 Q And can I just interrupt you to say that  
9 she's involved in a very significant work of  
10 scholarship?

11 A Yes.

12 Q Do you know her to be an especially  
13 fragile individual?

14 A I -- I can say with a little bit more  
15 certainty than -- because you asked the same  
16 questions of Ben Graf, I think.

17 She -- could you clarify "fragile  
18 individual," in what respect?

19 Q Well, do you know that she is afraid to  
20 speak her mind?

21 A Yeah. Yeah. Occasionally, yes.

22 Q And do you think she's particularly  
23 cowardly?

24 A I wouldn't use the word "cowardly," but I  
25 also wouldn't say "forceful" and -- and "ambitious"

1 and I wouldn't say the opposite of "cowardly"  
2 either.

3 Q Do you know of any reason she couldn't  
4 have spoken up and said you needed to be invited,  
5 for instance?

6 A I think probably because she was  
7 pre-tenure, if I'm not mistaken. I think she was at  
8 this time.

9 Q Do you know that she was threatened with  
10 a denial of tenure if she spoke up in some way?

11 A No, I do not know that.

12 Q And in fact, she did feel at least  
13 comfortable enough to reach out to you?

14 A Correct.

15 Q But she didn't mention any of these three  
16 concerns at the time that you said were hallmarks of  
17 the improper publication of Volume 12?

18 And let me list them: The anonymous  
19 publication, right; the failure to invite you in  
20 person; and I believe you said the failure to have  
21 peer review of the article; right?

22 A Uh-huh. Yeah.

23 I didn't use the word "hallmarks," but  
24 yes, you remembered the three points, correct.

25 Q She didn't mention any of those things?

1           A       Correct. She did not.

2           Q       Do you know of any reason she couldn't  
3 have spoken up if she really did object to that at  
4 the time?

5           A       Other than the fact that she's pre-tenure  
6 and pre-tenure people are in fact, as you know,  
7 vulnerable and often hesitant to speak up.

8           Q       She wasn't hesitant to speak up when she  
9 condemned Timothy Jackson, was she?

10          A       I don't know how she condemned --  
11 condemned Timothy Jackson.

12          Q       Do you know that the faculty circulated a  
13 petition condemning -- condemning Timothy Jackson  
14 after the publication in July 25, 2020?

15          A       I think I have a recollection of that.  
16 I -- I can't specifically say.

17          Q       Her lack of tenure didn't prevent her  
18 from signing onto that, did it?

19          A       And 900 people signed an anti-racist  
20 letter to SMT, most of whom I would presume were  
21 un-tenured also, so...

22          Q       So she had at least enough civil courage  
23 to do that; right?

24          A       Civil courage?

25                   Yeah, let's just say that she signed the

1 letter, yes, she did.

2 Q So just to close this off, the things  
3 that she's representing here to her dean and by  
4 extension, the so-called ad hoc panel investigating  
5 the journal and Timothy Jackson, you didn't discuss  
6 this with her?

7 A No.

8 Q And you haven't discussed it since?

9 A No.

10 Q Okay.

11 MR. ALLEN: Can we go off the  
12 record?

13 THE VIDEOGRAPHER: We are going off  
14 the record. The time is 3:28.

15 (Whereupon, there was a recess taken  
16 from 3:28 p.m. to 3:32 p.m.)

17 (Whereupon, Plaintiff's Exhibit 10,  
18 E-mail Exchange Between Philip Ewell  
19 and Rachel Gain, was marked for  
20 identification.)

21 THE VIDEOGRAPHER: We are going back  
22 on the record. The time is 3:32.

23 BY MR. ALLEN:

24 Q Professor Ewell, I'm marking for the  
25 purposes of the record Exhibit Number 10.

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?

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**

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



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

1    **Schenkerian Studies in Volume 12?**

2                    **Again, the anonymous publication, the**  
3    **failure to peer review, and the failure to reach out**  
4    **to you individually?**

5            A            Well, I -- I don't recall, but the actual  
6    apology is on the third page of your exhibit.

7                    And I don't know if they -- may I read  
8    this and --

9            Q            **Please.**

10           A            -- and then we can actually just put --  
11   put some teeth onto that question.

12                    Okay. It seems they did not mention any  
13   of those three specific things.

14           Q            **They are just engaging with what we might**  
15   **call viewpoints; correct?**

16           A            Yeah, I would say opinions but yeah,  
17   sure, viewpoints.

18           Q            **Fine. And in fact, they say in her cover**  
19   **e-mail to you: "I would also like to offer my**  
20   **personal apologies for everything that has happened.**  
21   **There are no excuses for the views published,**  
22   **platform [sic], and encouraged by our department's**  
23   **publication and faculty members. I am sincerely**  
24   **sorry."**

25                    **Right?**

1           A       Correct.

2           Q       And she also -- jumping back to the  
3 letter -- says something about structural racism.

4                   Do you see that?

5           A       Can you give me a line number? First  
6 paragraph, second paragraph?

7           Q       First paragraph, seven lines down?

8           A       Uh-huh. Okay. Hold on.

9                   Yes, okay. Got it.

10          Q       Did you ever lecture Rachel Gain on the  
11 meaning or not of racism?

12          A       No, I don't lecture anyone on the meaning  
13 of racism. Never have, never will.

14          Q       So you didn't bring up the lack of  
15 meaning of that term that you've kind of testified  
16 to today with her?

17          A       No.

18          Q       Okay.

19                   MR. ALLEN: Okay. Ben, I have no  
20 further questions for this witness.

21                   MR. WALTON: All right. Can we go  
22 off the record and take a brief break?

23                   MR. ALLEN: Yes. And I've been  
24 instructed to change chairs.

25                   THE VIDEOGRAPHER: We are going off

1 the record. The time is 3:39.

2 (Whereupon, there was a recess taken  
3 from 3:39 p.m. to 3:47 p.m.)

4 THE VIDEOGRAPHER: We are going back  
5 on the record. The time is 3:47.

6 MR. WALTON: Dr. Ewell, we are back  
7 after a brief break and it's now my turn  
8 to ask a few questions.

9 I'll try -- try to keep these as --  
10 as targeted as possible.

11

12 CROSS-EXAMINATION

13

14 BY MR. WALTON:

15 Q Just, first off, it's nice to meet you  
16 remotely. Sorry I couldn't be there in person.

17 But to clarify for the record, you and I  
18 have never spoken before right now; correct?

19 A That is correct.

20 Q Okay. Could you -- I -- I know there's  
21 been a lot of talk back and forth throughout the  
22 day.

23 I was wondering if you could give me  
24 something as a handle to just as -- as clearly and  
25 succinctly as you could, summarize what you see as

1 the relationship, if any, between Heinrich  
2 Schenker's ideas and music theory as it has  
3 developed in the United States?

4 A Yeah. So the second part of what you  
5 just -- what you just ended with is extremely  
6 important, "music theory as it's been developed in  
7 the United States."

8 Because Mr. Allen had asked about  
9 Heinrich Schenker and then almost immediately  
10 followed it up with the white racial frame.

11 And I essentially pushed back on that in  
12 the sense that the direct connection between  
13 Heinrich Schenker and music theory's white racial  
14 frame, well, there is none. That's 1935 and now  
15 it's 2024. So one must make connections; right?

16 And the reason -- I often will say not  
17 just Heinrich Schenker, but the legacy of Heinrich  
18 Schenker. That's really the main point of -- of my  
19 crit- -- my criticism of Heinrich Schenker.

20 It's really not so much about the person,  
21 it's very much about the legacy that he left via  
22 these emigres to -- first to the east coast and  
23 Chicago -- there was one person there. That might  
24 have been Oswald Jonas. And -- and then what  
25 happened in the ensuing 90 years after Heinrich

1 Schenker died.

2           So if -- if one studies race scholarship  
3 as virtually no music theorists do, it need be said,  
4 right, it's not a common thing, then it actually  
5 becomes pretty clear to see how and why a figure  
6 like Heinrich Schenker could become so extremely  
7 popular, especially in the 1930s and '40s where  
8 racial segregation and the Jim Crow racism were just  
9 on fire in our country.

10           So when the -- the -- the writings, the  
11 pseudoscientific writings of Schenker, the  
12 anti-black racist writings, the anti-Asian racist  
13 writings, the anti-Islam writings -- he -- he mocked  
14 the Arabic language in one very interesting,  
15 poignant footnote, for example -- then we can begin  
16 to see how in the 1930s in the United States and the  
17 1940s, well, that just fit perfectly -- it fit  
18 perfectly with the American mind; right? It wasn't  
19 just music theory, it -- it was America.

20           We were living in the 1930s and '40s  
21 through a virulently racist -- and now I will just  
22 say that word, a word I generally don't say -- a  
23 virulently racist period of our country, thousands  
24 upon thousands of African Americans slaughtered in  
25 lynchings and mass race occurs -- sorry, mass --

1 mass massacres, race massacres; right.

2 So when I start -- you're asking about  
3 the connections of Heinrich Schenker and how I'm  
4 putting these things together now.

5 Well, one must really tell the story in  
6 great detail going through the years and one cannot  
7 distill and say, How does Heinrich Schenker, the  
8 person, connect to today's music theory's white  
9 racial frame?

10 The short answer to that question is,  
11 well, in almost no way, actually, if you are going  
12 to ask me that specifically.

13 But that's not how I answered a question  
14 that was very similar put to me by Mr. Allen because  
15 I have to relate this history of how these things  
16 actually happened.

17 It's very common among race scholars to  
18 do that and I think I did it pretty effectively in  
19 music theory.

20 I don't know if I answered that  
21 question -- did I answer that question, Mr. Walton?

22 Q I -- I think so. And, you know, my  
23 question was not coming from a request to clarify a  
24 specific thing from earlier today.

25 It was just more of a broad question for

1 those of us who aren't either sociologists, race  
2 scholars, or music theory scholars, how would you  
3 describe your -- your thesis, as it were, in a  
4 nutshell?

5 A Uh-huh. Yeah, well, the thesis is that  
6 the -- the historic white supremacy -- and  
7 patriarchy, by the way, it's something I always  
8 hasten to add -- of the United States of America  
9 have manifested themselves in the field of music  
10 theory. Obviously they've manifested themselves  
11 from top to bottom in any academic field, in any  
12 walk of life.

13 And that's something that most people  
14 would concede, they would acknowledge that -- that  
15 historically the country does have a white  
16 supremacist and patriarchal past; right? That's not  
17 an open question.

18 The question for me as an American  
19 citizen and as a Ph.D. holder in music theory is --  
20 who hap -- who happens to be a black person, is how  
21 those things have come together to create a  
22 situation in which, as I put in that article that we  
23 talked about earlier, out of about 1200 people,  
24 there were two associate professors who were black.  
25 I was one of them. Now I'm a full professor.



1                   That's an unacceptable percentage. It's  
2 an unacceptable percentage to have two black  
3 associate professors, out of -- associate out of  
4 1200 -- 200 people, maybe, let's say, that would be  
5 one percent; right?

6                   Black Americans are roughly 14 percent of  
7 the country. I'd like to see 14 percent associate  
8 professors in my field. That would be a fair  
9 system.

10                  But apparently there are people who don't  
11 want that.

12                  We all know that what we are living  
13 through in the United States of America, we will get  
14 through it and we will get through it together.  
15 Together. We will fight through these racial  
16 problems, our racial past.

17                  If I can go down one small rabbit hole, I  
18 spent some time in Norway this summer and I gave a  
19 talk -- a couple of talks: One at the University of  
20 Oslo, the other at the Music Academy in Oslo.

21                  And you all probably know, I'm sure  
22 you've all been to Europe, you probably know that  
23 Europeans are really good at pointing the fingers at  
24 Americans when it comes to racism; right.

25                  And I tell my colleagues in Norway and I

1 tell anyone else who will listen, you know what, I'm  
2 a black American. We're fine. Leave me and leave  
3 us out of this.

4 Look at yourselves in the mirror, my  
5 Norwegian colleagues. You look at yourselves in the  
6 mirror and you ask yourselves about your own views  
7 about black people, for example, or about your  
8 Somali immigrants, about your own anti-blackness;  
9 right.

10 So I'm going to climb back out of my  
11 rabbit hole and simply say that these -- these  
12 anti-black elements, these anti-woman elements,  
13 these anti-Jewish elements, these anti-Islam  
14 elements, anti-Asian elements are in fact part of  
15 contemporary music theory.

16 In part, why? Because they are part of  
17 our American society. It's not all about our  
18 country. Our country has many beautiful, great  
19 things about it and I do, in fact, highlight those  
20 things.

21 I don't get credit for that and I'm fine  
22 with that. People don't want to talk about Phil  
23 Ewell actually praising the United States, which I  
24 do. I'm okay with that.

25 And if people want to criticize me

1 because -- and they call me a racist and a sexist  
2 and an anti-Semite because of something I -- fine.  
3 You know, I'm -- I'm a big boy. I can handle the  
4 pressure.

5 But I do -- I do think it's extremely  
6 important to make the connections to show how some  
7 of the structural anti-black, structural white  
8 supremacist elements, and structural patriarchal  
9 elements in music theory have manifested themselves  
10 in the United States.

11 And let me just end by that very same  
12 statistic. You are asking, how?

13 I'm like, well, I've explained how in  
14 lots of writings. One result would be two black  
15 associate professors. The numbers don't lie. The  
16 numbers do not lie.

17 There are 94 percent white people who  
18 have power in music theory. Tenure. That's the  
19 result of the racial segregationism, the  
20 anti-blackness, etc., of -- of Heinrich Schenker's  
21 American legacy, among other problems that we have  
22 in music theory. Heinrich Schenker was obviously  
23 not alone.

24 Q Do you -- just to clarify, do you believe  
25 that white males today should not have a say in

1    **music theory's development?**

2            A            Not at all.    That's -- that -- that --  
3    I -- I was about to say, that's a silly question.    I  
4    don't mean to say that.    I'm sorry, Mr. Walton.    I  
5    don't want to say that.

6                      But no, of course not.    I believe that  
7    white men should have absolutely a seat at the table  
8    right here, whether we are in a -- in a table in --  
9    in New Haven.

10                     But for my purposes, a table of  
11    discussions of music theory moving forward.    I'm  
12    honored and humbled that hundreds -- hundreds of  
13    white men have reached out to me from high school  
14    students who are literally 14 years old who are  
15    Zooming with me for an interview or -- or just  
16    asking for some -- some questions, you know, to my  
17    colleague John Snyder, who finished my book a few  
18    weeks ago and just wrote me -- he's at the  
19    University of Houston as a professor of musicology.

20                     And he's certainly in his seventies, a  
21    white man.    He just said, Thank you for your  
22    thought-provoking book.    It was very, well,  
23    thoughtful.

24                     To which I said, Thank you for reading  
25    it, John.    I look forward to seeing you at the next

1 conference; right.

2 I welcome white men with open arms and  
3 I'm really honored and humbled that so many have  
4 taken me up on these calls.

5 Q I'm -- I'm going to jump around just a  
6 little bit and these questions will appear  
7 disjointed just because I'm trying to save time.

8 Do you -- you were asked at some point  
9 during the day about the idea of censorship.

10 Do you have any personal reason to  
11 believe that UNT censored any material that was  
12 presented for publication in any of its academic  
13 journals?

14 A I have no reason to believe that  
15 happened, no.

16 Q Okay. Moving to Levi Walls, do you have  
17 any personal knowledge as to why he appeared to  
18 change his opinions regarding your presentation?

19 A Personal knowledge, no.

20 Q And did you ever talk with Dr. Benjamin  
21 Graf about any pressures he may or may not have been  
22 feeling in his position?

23 A No.

24 Q And did you ever talk with Dr. Graf about  
25 why he said or wrote any of the specific things that

1    you've -- you've looked at earlier today?

2           A       No.

3                   MR. WALTON: All right. Well, I

4                   hope that was less than 15 minutes.

5                   I'll pass the witness.

6                   Thank you for your time, Dr. Ewell.

7                   THE WITNESS: My pleasure. Thank

8                   you.

9

10                   REDIRECT EXAMINATION

11

12   BY MR. ALLEN:

13           Q       Let me just ask two brief questions.

14                   Do you consider Timothy Jackson to be a  
15   white man?

16           A       I've never met Timothy Jackson and I've  
17   only seen a profile picture in The New York Times  
18   because Michael Powell published something. And he  
19   certainly looked like he presented as white.

20           Q       Did you embrace Timothy Jackson's  
21   viewpoints because he expressed criticism of you?

22           A       I don't understand that question.

23           Q       Let me strike it.

24                   You just testified in response to

25   Attorney Walton's questions that you embraced white

1 men who had contacted you, something to that effect.

2 Did I misrepresent that testimony?

3 A Slightly. I've -- I've welcomed white  
4 men who contact me to have discussions, adult  
5 conversations, about race and music theory,  
6 patriarchy, etc.

7 Q Have you welcomed Timothy Jackson's  
8 criticism of your work?

9 A No.

10 Q In fact, you've said it's dehumanizing;  
11 right?

12 A I'm thinking about the chapter that I  
13 responded to Timothy Jackson. I do not believe I  
14 used the word "dehumanizing" in that chapter. And  
15 that's the most rigorous unpacking of his particular  
16 response, so no.

17 Q You did say it was dehumanizing to the  
18 journalist of the Denton Record Chronicle, however;  
19 correct?

20 A Yeah.

21 Q So isn't it true that you only welcome  
22 white people who agree with you?

23 A That's not true, no.

24 MR. ALLEN: I'll pass the witness.

25 MR. WALTON: We'll reserve.

1

2

CROSS-EXAMINATION

3

4 BY MR. PAINTER:

5

Q I think we are going to clarify one issue  
6 on -- and I guess I would ask the question as your  
7 counsel -- about the peer review.

8

There was some confusion with your  
9 plenary talk.

10

A Uh-huh.

11

Q And the plenary talk you were invited to  
12 give and I believe there was testimony about how  
13 that process worked.

14

But then you gave the plenary talk and  
15 then they republished your plenary talk.

16

Did they republish that word for word?

17

A Yes, more or less.

18

There might have -- you know, when you  
19 give a plenary, maybe there's something on a slide  
20 that doesn't make it into the text, maybe there's a  
21 comma that you want to add.

22

So I can't say verbatim exactly what I --  
23 what I spoke. But, you know, 98, 99 percent  
24 verbatim and more or less no change in the content  
25 of the talk itself.



1           Q       Did they do that from a tape recording  
2 or -- or from the -- a piece of paper that you --  
3 because you read the talk that you give them a copy  
4 of the paper?

5           A       A piece of paper. And, in fact, Marianne  
6 Wheeldon, the editor at the journal at the time, had  
7 asked us to reproduce the -- the PDF word text of  
8 those talks.

9                   So it -- it wasn't up to them. We  
10 basically went -- I had put in a comma if I needed  
11 one and I essentially handed over the PDF of what I  
12 had read in front of the -- in front of the plenary.

13                   And I should also say that sometimes  
14 people extemporize a little bit in addition to  
15 speaking from script.

16                   My particular talk, since I knew it would  
17 be, well, let's say, controversial -- speaking about  
18 whiteness as a black person is almost always  
19 controversial in a white supremacist system; right?

20                   I literally had scripted every word that  
21 I read that day. So the plenary talk was in fact  
22 the PDF that I had sent for publication.

23           Q       And you sent it after you gave the talk?

24           A       Correct. Yeah.

25           Q       And is this common with plenary talks

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

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.)

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1 C E R T I F I C A T E

2 I hereby certify that I am a Notary Public,  
3 in and for the State of Connecticut, duly  
4 commissioned and qualified to administer oaths.

5 I further certify that the deponent named in  
6 the foregoing deposition was by me duly sworn, and  
7 thereupon testified as appears in the foregoing  
8 deposition; that said deposition was taken by me  
9 stenographically in the presence of counsel and  
10 reduced to typewriting under my direction, and the  
11 foregoing is a true and accurate transcript of the  
12 testimony.

13 I further certify that I am neither of  
14 counsel nor attorney to any of the parties to said  
15 suit, nor am I an employee of any party to said  
16 suit, nor of any counsel in said suit, nor am I  
17 interested in the outcome of said cause.

18 Witness my hand and seal as Notary Public  
19 this 3rd day of October, 2024.

20



21

22

Clifford Edwards

23 Connecticut Notary Public No. SNPC.0129714

24 My commission expires: 9/30/2026

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J U R A T

I have read the foregoing 260 pages and hereby  
acknowledge the same to be a true and correct record  
of the testimony.

\_\_\_\_\_  
PHILIP ADRIAN EWELL

Subscribed and sworn to

\_\_\_\_\_.

Before me this \_\_\_\_\_ day of \_\_\_\_\_,  
2024.

\_\_\_\_\_  
Notary Public

My Commission Expires:

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## TIMOTHY JACKSON vs LAURA WRIGHT, ET AL.

Dr. Philip Adrian Ewell on 09/19/2024

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