

1 UNITED STATES DISTRICT COURT

2 SOUTHERN DISTRICT OF NEW YORK

3 -----x

4 DONALD GRAHAM,

5 Plaintiff,

6 V. Case No.

7 1:15-cv-10160-SHS

8 RICHARD PRINCE, GAGOSIAN GALLERY  
9 INC. and LAWRENCE GAGOSIAN,  
Defendants.

10 -----x  
ERIC McNATT

11 Plaintiff

12 V. Case No.

13 1:15-cv-28896-SHS

14 RICHARD PRINCE, GAGOSIAN GALLERY  
15 INC. and LAWRENCE GAGOSIAN  
Defendants.

16 -----x

17 10:30 a.m.  
18 July 12, 2018  
200 Park Avenue  
19 New York, New York

20 \* CONFIDENTIAL \*

21  
22 VIDEOTAPED DEPOSITION of ALLAN D.  
23 COLEMAN, an Expert Witness in the above  
entitled matter, pursuant to Notice,  
24 before Stephen J. Moore, a Registered  
Professional Reporter, Certified Realtime  
Reporter and Notary Public of the State of  
New York.

25

1 ALLAN COLEMAN

2 A P P E A R A N C E S:

3 CRAVATH SWAINE & MOORE, LLP

4 Attorneys for Plaintiffs

5 825 Eighth Avenue

6 New York, New York 10019.

7

8 BY: NICOLE PELES, ESQ.

9 GREENBERG TRAURIG, LLP

10 Attorneys for Richard Prince

11 And Blum & Poe

12 1840 Century Park East

13 Los Angeles, California 90067

14

15 BY: IAN C. BALLON, ESQ.

16 - and -

17 DALE GOLDSTEIN, ESQ.

18 DONTZIN NAGY & FLEISSIG LLP

19 Attorneys for Gagosian Gallery

20 980 Madison Avenue

21 New York, New York 10075.

22

23 BY: TRACY O. APPLETON, ESQ.

24 ALSO PRESENT:

25 BRIAN SEXTON, ESQ.

1	ALLAN COLEMAN				
2	EXAMINATION BY		PAGE		10:22:37
3	MR. BALLON		6		10:22:37
4	E X H I B I T S				10:22:37
5	210	Notice of Deposition	15	17	10:22:37
6	211	Rebuttal report of Allan	16	12	10:22:37
7		Douglas Coleman			10:22:37
8	212	Additional CV material	17	19	10:22:37
9	213	Settlement in the In re:	97	8	10:22:37
10		Literary Works in Electronic			10:22:37
11		Databases Copyright Litigation			10:22:37
12		case			10:22:37
13	214	Post from Mr. Coleman blog	153	5	10:22:37
14		entitled "The Photographer and			10:22:37
15		the Painting"			10:22:37
16	215	Twitter compendium	200	21	10:22:37
17					10:22:37
18	216 -	NOT MARKED			10:22:37
19	217	Blog post by Mr. Coleman	217	20	10:22:37
20	218	Compendium - NOT DISCUSSED ON THE RECORD			10:22:37
21	219 - 221	EXHIBITS NOT MARKED			10:22:37
22	222	Updated CV of Mr. Coleman	238	19	10:22:37
23					
24					
25					

1	ALLAN COLEMAN	
2	THE VIDEOGRAPHER: Good morning,	10:22:57
3	everyone.	10:22:57
4	This is the video operator	10:22:58
5	speaking, Robert Gibbs, of Epiq Court	10:22:59
6	Reporting, 240 West 35th Street, New York,	10:23:02
7	New York 10001.	10:23:05
8	Today is July 12, 2018, and the	10:23:08
9	time is 10:23 a.m.	10:23:10
10	We are at the offices of Greenberg	10:23:14
11	Traurig, 200 Park Avenue, New York, New	10:23:16
12	York, New York to take the videotaped	10:23:19
13	deposition of Mr. Allan D. Coleman in the	10:23:24
14	matter of multiple cases.	10:23:26
15	Case 1, Donald Graham versus	10:23:28
16	Richard Prince, et al., case number	10:23:30
17	KV-10160-SAS.	10:23:33
18	Case number 2, Eric McNatt versus	10:23:39
19	Richard Prince, et al., case number	10:23:43
20	CV-08896-SHS.	10:23:46
21	Both cases in the United States	10:23:52
22	District Court for the Southern District	10:23:54
23	of New York.	10:23:56
24	Will counsel please introduce	10:23:57
25	themselves for the record.	10:23:58

1 ALLAN COLEMAN

2 MR. BALLON: Ian Ballon, 10:24:00

3 Greenberg Traurig, for Defendants 10:24:02

4 Richard Prince and Blum & Poe. 10:24:03

5 MS. GOLDSTEIN: Dale Goldstein 10:24:06

6 from Greenberg Traurig for Defendants 10:24:07

7 Richard Prince and Blum & Poe. 10:24:09

8 MS. APPLETON: Tracy Appleton 10:24:11

9 from Dontzin, Nagy & Fleissig on behalf 10:24:12

10 of Gagosian Gallery, Inc. and Laurence 10:24:14

11 Gagosian. 10:24:16

12 MR. SEXTON: Brian Sexton, 10:24:17

13 general counsel for Richard Prince. 10:24:18

14 MS. PELES: Nicole Peles from 10:24:20

15 Cravath Swaine & Moore, on behalf of 10:24:22

16 Plaintiffs. 10:24:23

17 THE VIDEOGRAPHER: Thank you, 10:24:24

18 everyone. 10:24:25

19 Will the court reporter, Stephen 10:24:25

20 Moore of Epiq Court Reporting, please 10:24:27

21 swear the witness. 10:24:29

22 10:24:30

23 A L L A N D. C O L E M A N, called as 10:24:30

24 a witness, having been first duly sworn by 10:24:30

25 the Notary Public, was examined and 10:24:30

1	ALLAN COLEMAN	
2	testified as follows:	10:24:30
3		10:24:39
4	THE VIDEOGRAPHER: You may	10:24:39
5	proceed, counsel.	10:24:40
6		10:24:40
7	EXAMINATION BY	10:24:40
8	MR. BALLON:	10:24:40
9		10:24:40
10	Q Good morning, sir.	10:24:41
11	A Good morning.	10:24:41
12	Q Could you please state your name	10:24:42
13	for the record.	10:24:43
14	A Yes, my full name is Allan	10:24:43
15	Douglass Coleman, and I write professionally as	10:24:45
16	A.D. Coleman.	10:24:49
17	Q Thank you, Mr. Coleman.	10:24:51
18	And where do you currently live?	10:24:52
19	A Staten Island, New York.	10:24:54
20	Q How old are you?	10:24:56
21	A I am 74.	10:24:57
22	Q Have you been deposed before?	10:24:58
23	A Yes, I have.	10:24:59
24	Q How many times?	10:25:00
25	A Seven or eight.	10:25:04

1 ALLAN COLEMAN

2 Q Okay. Have you been deposed as 10:25:05  
3 an expert witness before? 10:25:08

4 A Yes, I have. 10:25:09

5 Q How many times? 10:25:10

6 A The same number. 10:25:12

7 Q Have you been deposed in any 10:25:14  
8 cases where you were not a designated as a 10:25:15  
9 potential expert? 10:25:18

10 A No. 10:25:19

11 Q So, tell me about the seven or 10:25:21  
12 eight times when you previously were deposed as 10:25:22  
13 an expert. 10:25:26

14 A They go back quite a ways. I 10:25:27  
15 gave a list to counsel for the Plaintiffs. 10:25:28

16 One was a case involving an 10:25:35  
17 accusation of child pornography, one was a 10:25:39  
18 case, a federal case brought by the friends of 10:25:44  
19 the earth and the Sierra Club against James 10:25:50  
20 Watt, who was then the Secretary of the 10:25:56  
21 Interior and the Department of the Interior. 10:25:57

22 One was a copyright case 10:26:04  
23 involving a photographer named Roy Schatt, 10:26:06  
24 S-c-h-a-t-t, and a publisher whose name I don't 10:26:08  
25 recall. 10:26:16

1 ALLAN COLEMAN

2 There were a couple of others, I 10:26:21  
3 don't recall the details of, but I gave the 10:26:22  
4 specifics to counsel. 10:26:25

5 Q To your lawyer. 10:26:26

6 MS. APPLETON: Mr. Coleman, it's 10:26:29  
7 difficult to hear you. If you could 10:26:30  
8 speak up I would appreciate it. 10:26:32

9 MR. BALLON: Counsel, do you have 10:26:36  
10 that list that your client just 10:26:37  
11 testified to? 10:26:38

12 MS. PELES: I have the list. 10:26:39  
13 None of the cases were within the last 10:26:40  
14 four years. 10:26:42

15 MR. BALLON: Is it possible you 10:26:43  
16 could provide us with the list? 10:26:44

17 MS. PELES: I'll take it under 10:26:45  
18 advisement. 10:26:47

19 MR. BALLON: If you could let us 10:26:47  
20 know at the first break. Obviously if 10:26:49  
21 he doesn't recall and you have the list, 10:26:50  
22 and we can't get it, it puts us at a 10:26:52  
23 disadvantage, and we will want to take 10:26:54  
24 that up. 10:26:56

25 Q Were any of those cases 10:26:58



1	ALLAN COLEMAN	
2	copyright cases?	10:26:59
3	A Only one of them.	10:27:00
4	Q Which one was that?	10:27:01
5	A That was Roy Schatt versus a	10:27:02
6	magazine publisher whose name I don't recall.	10:27:07
7	These were mostly in the New York District, so	10:27:09
8	that one I know was in New York.	10:27:14
9	Q Okay.	10:27:16
10	A That case.	10:27:16
11	Q Sorry?	10:27:17
12	A I know that one was a New York	10:27:18
13	case.	10:27:20
14	Q Right. And in that case, what	10:27:21
15	were you retained as an expert to address?	10:27:25
16	A To address the issue -- the case	10:27:27
17	involved a famous photograph by Mr. Schatt of	10:27:31
18	James Dean on Times Square that had been	10:27:35
19	reproduced without his knowledge or permission	10:27:38
20	by a -- by the publisher who was the Defendant	10:27:43
21	in the case.	10:27:46
22	Q And what was your opinion in	10:27:48
23	that case?	10:27:49
24	A I frankly don't recall. I mean,	10:27:50
25	I don't recall what I said, it was something	10:27:53

1 ALLAN COLEMAN

2 like 25 years ago.

10:27:56

3 Q I see. And do you recall who  
4 won that case?

10:27:57

10:27:58

5 A I actually don't, no.

10:27:59

6 Q In the other cases, what areas  
7 of expertise were you retained for, if not  
8 copyright?

10:28:02

10:28:04

10:28:08

9 A One of the cases involved a  
10 group of photographs that had been assembled  
11 by -- reproductions of photographs, I should  
12 say, that had been assembled by a convicted  
13 pedophile who was on parole and the nature of  
14 those photographs as published photographs.

10:28:11

10:28:15

10:28:19

10:28:22

10:28:26

10:28:33

15 Their place in the history of  
16 photography, their place in contemporary  
17 photography, et cetera, were at issue in the  
18 case, as I was given to understand.

10:28:38

10:28:39

10:28:42

10:28:46

19 So I was asked to comment on  
20 where one would find such photographs. Would  
21 they appear in museum collections, would they  
22 appear in private collections, would they  
23 appear in monographs on photography, et cetera.

10:28:48

10:28:50

10:28:52

10:28:55

10:28:57

24 Q And who did you represent in  
25 that case?

10:29:02

10:29:04

1 ALLAN COLEMAN

2 A I represented the -- the 10:29:05  
3 defense. 10:29:08

4 Q So the pedophile who had been 10:29:08  
5 accused of collecting the photos -- 10:29:10

6 A Yes. 10:29:13

7 Q Who prevailed in that case? 10:29:13

8 A I believe that the opposite -- 10:29:17  
9 the state. 10:29:19

10 Q The government? 10:29:20

11 A The government prevailed. 10:29:21

12 Q So he was convicted? 10:29:22

13 A He was -- he was remanded -- he 10:29:23  
14 had been out on parole, so he was remanded to 10:29:26  
15 custody. 10:29:31

16 Q I see. And what was the name of 10:29:31  
17 the pedophile that you represented? 10:29:33

18 A I do not recall. Again, I 10:29:35  
19 gave -- this is quite a while ago, I gave this 10:29:37  
20 information to -- 10:29:39

21 Q To counsel? 10:29:41

22 A To counsel. 10:29:41

23 MR. BALLON: Again, counsel, if 10:29:43  
24 we do could get that at the break I 10:29:43  
25 would certainly appreciate it. 10:29:45

1 ALLAN COLEMAN

2 Q What about in the case involving 10:29:47

3 James Watt, what party did you represent there? 10:29:48

4 A I represented the government. 10:29:53

5 Q The government? 10:29:54

6 A Yes. 10:29:54

7 Q And what were you retained as an 10:29:55

8 expert in? 10:29:56

9 A There was photographic evidence 10:29:59

10 submitted as part of the Plaintiff's case, and 10:30:00

11 there were also statements by several prominent 10:30:07

12 photographers, Ansel Adams and Joe Meyerowitz 10:30:11

13 in particular, about photography, about photo 10:30:14

14 history, about what is considered suitable 10:30:18

15 subject matter for photographs, et cetera. 10:30:21

16 And I was asked to comment on 10:30:25

17 and give an opinion on those matters. 10:30:27

18 Q And do you recall who prevailed 10:30:29

19 in that case? 10:30:32

20 A Actually the government 10:30:32

21 prevailed in that case, yes. 10:30:33

22 Q So you identified three cases, 10:30:36

23 the child porn case where you represented the 10:30:38

24 pedophile, the case involving James Watt, and 10:30:40

25 then the photography case. That's about three? 10:30:44

1	ALLAN COLEMAN	
2	A Right.	10:30:47
3	Q As you sit here now, do you	10:30:47
4	recall the other four or five cases?	10:30:48
5	A Not specifically, no.	10:30:52
6	Q Okay.	10:30:53
7	In this case, when were you	10:31:05
8	retained?	10:31:06
9	A About the current case?	10:31:09
10	Q Yes.	10:31:10
11	A About two months ago.	10:31:11
12	Q So, around May 12th?	10:31:13
13	A That sounds right.	10:31:16
14	Q Who first contacted you?	10:31:21
15	A I believe it was Dean Masuda at	10:31:24
16	Cravath, or someone on his behalf.	10:31:26
17	Q Okay.	10:31:29
18	What were you asked to do before	10:31:31
19	you were retained?	10:31:32
20	A Before I was retained?	10:31:34
21	Q Yes.	10:31:35
22	Someone contacted you, what did	10:31:36
23	they ask you to do?	10:31:38
24	A Oh, they asked me if I would	10:31:39
25	look at the documentation in this case and	10:31:41

1 ALLAN COLEMAN

2 comment on it; or consider commenting on it. 10:31:45

3 Q Were you asked more specifically 10:31:49  
4 what type of comments they were looking for? 10:31:51

5 A No. 10:31:53

6 Q How long did you consider the 10:31:55  
7 request before accepting it? 10:31:56

8 A Not very long, a few days. 10:32:00

9 Q A few days, okay. 10:32:01

10 Are you currently employed, 10:32:05  
11 other than in this case? 10:32:06

12 A I am self-employed. I've always 10:32:09  
13 been self-employed. 10:32:10

14 Q Self-employed. And what is the 10:32:11  
15 nature of your work? 10:32:13

16 A I produce -- I primarily produce 10:32:15  
17 writing about photography, critical, 10:32:17  
18 historical, theoretical writing about 10:32:19  
19 photography, for a diversity of publications, 10:32:21  
20 here and abroad. 10:32:25

21 I teach periodically courses, 10:32:27  
22 post-secondary level courses in photo 10:32:30  
23 criticism, history of photography, issues of 10:32:33  
24 contemporary photography. 10:32:36

25 I give public lectures, I 10:32:37

1 ALLAN COLEMAN

2 sometimes have consultancy jobs, assignments 10:32:39  
3 and do other -- and I curate exhibitions. 10:32:46

4 Q About how much do you earn each 10:32:50  
5 year from that work? 10:32:51

6 A It's varied. I am now 74 and 10:32:52  
7 semi-retired, so it's, at this point it's about 10:32:55  
8 \$15,000 a year, but at times when I have been 10:32:57  
9 much more active in the field it's been up to 10:33:07  
10 \$65,000, \$70,000 a year. 10:33:11

11 Q All right, I would like to show 10:33:15  
12 you what's been marked as Exhibit 1 and ask 10:33:15  
13 you, sir, if you recognize -- 10:33:18

14 MR. BALLON: Okay, we are doing 10:33:21  
15 different numbers, 210. 10:33:21

16 (The above described document was 10:33:22  
17 marked Exhibit 210 for identification, as 10:33:22  
18 of this date.) 10:33:22

19 Q You can ignore the first 209 10:33:24  
20 exhibits. 10:33:25

21 A Okay. I appreciate that. 10:33:26

22 Q So I will show you what has been 10:33:30  
23 marked as Exhibit 210 and ask you, sir, if you 10:33:31  
24 recognize this document? 10:33:35

25 A Yes, I do. 10:33:45

1 ALLAN COLEMAN

2 Q Is that the Notice of Deposition 10:33:47  
3 for today's deposition? 10:33:49

4 A Yes. 10:33:50

5 Q I would like to show you what 10:33:52  
6 has been marked as Exhibit 211 and -- 10:33:53

7 A Where do I -- 10:33:56

8 Q You can just leave that here. 10:33:57  
9 The court reporter will take those at the end 10:33:58  
10 of the deposition. 10:34:00

11 (The above described document was 10:34:01  
12 marked Exhibit 211 for identification, as 10:34:01  
13 of this date.) 10:34:01

14 Q So, I would like to show you 10:34:02  
15 what has been marked as Exhibit 211 and ask you 10:34:03  
16 if you can please confirm that that is the 10:34:07  
17 rebuttal report of Allan Douglass Coleman that 10:34:10  
18 you submitted in this case? 10:34:13

19 MS. PELES: Counsel, I will just 10:34:19  
20 advise last night we sent an updated 10:34:20  
21 version of his CV, so this version of 10:34:22  
22 the report only includes a partial 10:34:24  
23 version of his CV, but I think you have 10:34:26  
24 the full version. 10:34:28

25 MR. BALLON: Okay. Do we have 10:34:31



1 ALLAN COLEMAN

2 that?

10:34:33

3 MS. APPLETON: I didn't receive

10:34:34

4 that. You sent it last night?

10:34:35

5 MS. PELES: I sent it last night

10:34:37

6 by e-mail to the list of e-mails that

10:34:38

7 got the rebuttal reports, so if you were

10:34:40

8 not on it, I apologize, but --

10:34:42

9 MR. BALLON: Here, have a copy.

10:34:46

10 I haven't seen it either, so late

10:34:47

11 breaking developments.

10:34:51

12 A The answer is yes, I recognize

10:34:54

13 this.

10:34:56

14 Q And just for completeness, I'll

10:34:56

15 mark as Exhibit 212 the additional material

10:34:58

16 your counsel sent to us late last night, and if

10:35:02

17 you can verify if that's correct?

10:35:06

18 (The above described document was

10:35:08

19 marked Exhibit 212 for identification, as

10:35:08

20 of this date.)

10:35:08

21 A Yes, that's my current CV.

10:35:08

22 Q What's different in your current

10:35:13

23 CV, Exhibit 212, that is different from the one

10:35:14

24 that you submitted earlier in this case?

10:35:20

25 A What's different is not anything

10:35:24

1 ALLAN COLEMAN

2 that I submitted, what's different is that the 10:35:26  
3 CV in the -- in Exhibit 211 only includes the 10:35:31  
4 first page of this CV. 10:35:38

5 Q I see. 10:35:42

6 A For reasons that I don't know, I 10:35:42  
7 don't know how that happened, but this is the 10:35:45  
8 complete CV. 10:35:49

9 Q I see. Well, let's focus on 10:35:50  
10 your report, which is Exhibit 211, for the 10:35:52  
11 moment. 10:35:57

12 And I would like to ask you to 10:35:58  
13 look at paragraph 6 of your report, on the 10:35:59  
14 first page, under Introduction, where it 10:36:03  
15 identifies what you were asked by Plaintiffs' 10:36:07  
16 counsel to analyze. 10:36:11

17 Could you please take a look at 10:36:12  
18 that and read that into the record for me, 10:36:13  
19 please? 10:36:15

20 A Yes. "At the request of lawyers 10:36:18  
21 for Plaintiffs, I have analyzed the purpose and 10:36:29  
22 character of the Prince-Graham work, the amount 10:36:32  
23 and substantiality of the Graham work that was 10:36:35  
24 used in relation to the Prince-Graham work, the 10:36:37  
25 nature of the Graham work and the effect of the 10:36:40

1 ALLAN COLEMAN

2 Prince-Graham work on the market for or value 10:36:44  
3 of the Graham work. 10:36:47

4 "I have also analyzed the 10:36:48  
5 purpose and character of the Prince McNatt 10:36:50  
6 work, the amount and substantiality of the 10:36:53  
7 McNatt work that was used in relation to the 10:36:56  
8 Prince-McNatt work, the nature of the McNatt 10:36:58  
9 work and the effect of the Prince-McNatt work 10:37:02  
10 on the market for or value of the McNatt work." 10:37:04

11 Q Now, did you write that yourself 10:37:11  
12 or is that the specific request that you were 10:37:13  
13 given from Plaintiffs' counsel for this 10:37:17  
14 assignment? 10:37:18

15 A Well, that was what they 10:37:27  
16 requested of me after I had read the initial 10:37:30  
17 material and agreed to take part in this case. 10:37:32

18 Q Okay. And what initial material 10:37:36  
19 did you review before you agreed to take the 10:37:39  
20 case? 10:37:41

21 A Well, there is an itemized list 10:37:42  
22 attached to this deposition. 10:37:44

23 Q And those are the things that 10:37:46  
24 you read? 10:37:47

25 A Yes. 10:37:48

1 ALLAN COLEMAN

2 Q And you read those before you 10:37:48  
3 agreed to take the case? 10:37:49

4 A I think that there are a few 10:37:52  
5 items there that arrived after the materials I 10:37:53  
6 was initially sent that I have reviewed since, 10:37:58  
7 but I think that's indicated in the list. 10:38:03

8 Q Okay. 10:38:06

9 And then in paragraph 6, where 10:38:07  
10 you identify what you have analyzed, you 10:38:09  
11 recognize these elements as the elements of the 10:38:15  
12 fair use test under the copyright statute, do 10:38:18  
13 you not? 10:38:20

14 A Say that again? 10:38:21

15 MS. PELES: Objection to form. 10:38:22

16 Q The items that you analyzed in 10:38:25  
17 paragraph 6 -- 10:38:27

18 A Right. 10:38:29

19 Q -- do you recognize those as the 10:38:29  
20 elements of fair use under the copyright 10:38:33  
21 statute? 10:38:36

22 A I'm not a lawyer, I can't make 10:38:38  
23 that determination. 10:38:39

24 Q You write a blog on copyright 10:38:42  
25 issues, correct? 10:38:45

1	ALLAN COLEMAN	
2	A No.	10:38:46
3	Q On photograph issues?	10:38:47
4	A Yes.	10:38:49
5	Q And in the blog you opine on	10:38:50
6	copyright cases, correct?	10:38:52
7	A Yes.	10:38:53
8	Q And in that context you have	10:38:54
9	opined on fair use, have you not?	10:38:56
10	A Yes, I have.	10:38:57
11	Q And you have an understanding of	10:38:59
12	the doctrine or defense of fair use, do you	10:39:03
13	not?	10:39:06
14	A Yes, I do.	10:39:06
15	Q And do you recognize the	10:39:08
16	elements in paragraph 6 that you have been	10:39:09
17	asked to opine on as the elements of the fair	10:39:12
18	use test under the copyright act?	10:39:14
19	MS. PELES: Objection to form.	10:39:17
20	A I'm not sure I understand the	10:39:18
21	use of the word "elements" in this context.	10:39:20
22	Q Well, let's break it down.	10:39:22
23	In paragraph 6 you said, "At the	10:39:24
24	request of lawyers for the Plaintiffs I have	10:39:26
25	analyzed the purpose and character of the	10:39:29

1	ALLAN COLEMAN	
2	Prince-Graham work."	10:39:33
3	What's your understanding of	10:39:35
4	"purpose and character"?	10:39:36
5	A Okay, now I see what you're	10:39:39
6	saying.	10:39:40
7	Yes, then -- then yes, these --	10:39:41
8	repeat the question, if you would, the original	10:39:48
9	question.	10:39:50
10	Q Okay, so what I was asking was	10:39:50
11	in paragraph 6 you identify what you have been	10:39:58
12	asked to analyze.	10:40:01
13	And what you've been asked to	10:40:02
14	analyze are the elements of the fair use	10:40:03
15	defense under the copyright statute, correct?	10:40:08
16	MS. PELES: Objection to form.	10:40:10
17	A I would say yes.	10:40:14
18	Q And what is the basis for your	10:40:16
19	expertise to analyze the elements of the fair	10:40:18
20	use defense under the copyright statute?	10:40:21
21	MS. PELES: Objection to form.	10:40:24
22	A I have written about copyright	10:40:28
23	and copyright law as it pertains to	10:40:31
24	photographs.	10:40:33
25	I have reviewed cases over the	10:40:34

1 ALLAN COLEMAN

2 past 50 years involving copyright, and as it 10:40:36  
3 applies to photographs. 10:40:41

4 And I have been part of, both as 10:40:44  
5 audience member and participant, in various 10:40:48  
6 seminars and panels on copyright as it applies 10:40:51  
7 to photographs. 10:40:55

8 I am not, however, a lawyer, so 10:40:56  
9 my opinions are not legal opinions. 10:40:57

10 Q Okay. So what is the basis for 10:40:59  
11 your opinions, then, on whether the use in this 10:41:02  
12 case is a fair use if you're not a lawyer? 10:41:05

13 MS. PELES: Objection to form. 10:41:08

14 Q Your counsel is allowed to 10:41:13  
15 record objections for the record, that 10:41:15  
16 preserves a right so that later in the case 10:41:18  
17 they can argue whether questions and answers 10:41:20  
18 are admissible or not. 10:41:23

19 But don't let that break your 10:41:24  
20 flow. If your counsel notes an objection, you 10:41:26  
21 are required to answer the question unless your 10:41:30  
22 counsel instructs you not to do so. 10:41:32

23 MR. BALLON: So, I'll ask the 10:41:35  
24 court reporter to read back the 10:41:36  
25 question, please. 10:41:37

1 ALLAN COLEMAN

2 (The question requested was read 10:41:38  
3 back by the reporter.) 10:41:38

4 MS. PELES: Objection to form. 10:41:58

5 A The fair use exception to the 10:42:02  
6 copyright law includes a number of issues, 10:42:05  
7 including those stated here, that are in fact 10:42:09  
8 not hard and fast legal issues, and that 10:42:13  
9 require opinion about such things as aesthetic 10:42:19  
10 matters. 10:42:22

11 These are not matters of legal 10:42:24  
12 definition, these are matters that fall under 10:42:26  
13 the purview of interpretation, critical 10:42:29  
14 interpretation and analysis. 10:42:31

15 Q And so with respect to that, the 10:42:36  
16 first element of the test for fair use, you say 10:42:40  
17 that you have analyzed the purpose and 10:42:43  
18 character of the Prince-Graham work. 10:42:46

19 What do you -- what do you 10:42:49  
20 define as the purpose and character, or what do 10:42:52  
21 you understand that to mean? 10:42:55

22 MS. PELES: Objection to form. 10:42:57

23 Q What do you understand that term 10:42:58  
24 to mean? 10:42:59

25 A The purpose and character of the 10:43:00



1	ALLAN COLEMAN	
2	work?	10:43:01
3	Q Yes.	10:43:02
4	A I understand it to be a work of,	10:43:02
5	intended to be a work of postmodern critique of	10:43:05
6	contemporary communication systems.	10:43:14
7	Q But I actually meant something a	10:43:17
8	little bit differently, where you said, "At the	10:43:18
9	request of lawyers for Plaintiffs I have	10:43:20
10	analyzed the purpose and character of the	10:43:22
11	Prince-Graham work."	10:43:25
12	So, and you told me what your	10:43:26
13	conclusion was of what the work was.	10:43:28
14	What I am asking you is	10:43:30
15	something more basic. What do you understand	10:43:31
16	the purpose and character to mean when you say	10:43:34
17	you analyzed the purpose and character?	10:43:37
18	What is the purpose and	10:43:40
19	character of a work?	10:43:41
20	MS. PELES: Objection to form.	10:43:45
21	Q What do you understand that term	10:43:45
22	to mean?	10:43:46
23	A The purpose and character of the	10:43:47
24	work?	10:43:48
25	Q Yes, yes.	10:43:49

1 ALLAN COLEMAN

2 A The character of the work 10:43:50  
3 includes both its physical components, whatever 10:43:51  
4 those may be, and its content. 10:43:53

5 Q Okay. And what's the purpose? 10:43:59

6 A The purpose presumably of any 10:44:02  
7 kind of creative work is communication. 10:44:04

8 Q You referred to the fair use 10:44:08  
9 exception. Is your understanding that the fair 10:44:10  
10 use exception is a broad exception or a narrow 10:44:12  
11 exception? 10:44:15

12 MS. PELES: Objection to form. 10:44:17

13 A I think it's open to very many 10:44:19  
14 levels of interpretation, so I would not have 10:44:23  
15 an opinion on that. 10:44:27

16 Q In rendering an opinion in this 10:44:29  
17 case, did you apply a broad or narrow concept 10:44:30  
18 of fair use? 10:44:34

19 MS. PELES: Objection to form. 10:44:36

20 A I simply tried to apply what I 10:44:37  
21 understood the fair use law to be, and the 10:44:39  
22 exception, I should say, the fair use 10:44:43  
23 exception. 10:44:45

24 Q And again, based on your earlier 10:44:46  
25 testimony, that understanding was based on your 10:44:48

1 ALLAN COLEMAN

2 review of cases, your writing about copyright 10:44:51  
3 and your participation in seminars. 10:44:55

4 Was that a correct statement of 10:44:59  
5 the list? 10:45:00

6 A That was a correct statement, 10:45:01  
7 but not a complete statement. 10:45:01

8 MS. PELES: Objection. 10:45:03

9 A There is of course my own 50 10:45:04  
10 years of experience as a producer of 10:45:05  
11 intellectual property. 10:45:07

12 Q So, as a copyright owner? 10:45:10

13 A As a copyright owner, yes. 10:45:11

14 Q I see. 10:45:13

15 And -- so let's start with that. 10:45:14

16 In your experience as a copyright owner, what 10:45:18  
17 have you -- what experience as a copyright 10:45:21  
18 owner have you acquired that you believe makes 10:45:23  
19 you qualified to testify as an expert on fair 10:45:26  
20 use? 10:45:28

21 MS. PELES: Objection to form. 10:45:30

22 A I have created and licensed uses 10:45:31  
23 of some 25,000 -- excuse me, 2,500 essays under 10:45:38  
24 my name. 10:45:44

25 Q Approximately how many licenses 10:45:47

1	ALLAN COLEMAN	
2	have you granted as a copyright owner?	10:45:48
3	A Approximately 2,000.	10:45:53
4	Q 2,000 licenses.	10:45:54
5	And how many years did you say	10:45:58
6	you've been creating and licensing copyrighted	10:45:59
7	works?	10:46:02
8	A 50 years.	10:46:03
9	Q 50 years?	10:46:04
10	A Starting in -- 51, actually;	10:46:05
11	starting in 1967.	10:46:07
12	Q So in your 50 years of creating	10:46:08
13	and licensing over 2,000, or, sorry, in your 50	10:46:10
14	years as a creator of copyrighted works,	10:46:16
15	licensing over 2,000 works, were there	10:46:18
16	occasions where people used your copyrighted	10:46:21
17	works without permission?	10:46:24
18	A A few, yes.	10:46:26
19	Q How many approximately?	10:46:27
20	A No more than ten.	10:46:33
21	Q Okay. And in those ten	10:46:35
22	instances, did you send letters or otherwise	10:46:38
23	contact the people who were using your works	10:46:43
24	without permission?	10:46:44
25	A Yes, I did.	10:46:45

1 ALLAN COLEMAN

2 Q Were those cease and desist  
3 letters?

10:46:46

10:46:49

4 A Effectively, yes.

10:46:51

5 Q And in all of those ten  
6 instances, did the defendants agree to stop  
7 making use of the works?

10:46:53

10:46:55

10:46:58

8 A Yes, they did.

10:46:59

9 Q And in those instances, did  
10 anyone pay you damages for the unauthorized  
11 use?

10:47:00

10:47:02

10:47:06

12 A I did not demand damages in any  
13 of those cases, they were small scale cases,  
14 and so long as the situation was rectified  
15 promptly, I refrained from pursuing damages.

10:47:08

10:47:10

10:47:15

10:47:19

16 Q And in any of those instances  
17 was the situation not rectified promptly?

10:47:23

10:47:24

18 A No.

10:47:29

19 Q Okay. So in all of the  
20 instances you were able to resolve the dispute  
21 and the defendant stopped using the work?

10:47:30

10:47:31

10:47:33

22 A Right.

10:47:36

23 Q Or in some of those instances  
24 the defendant agreed to take a license?

10:47:37

10:47:38

25 A There was one instance in which

10:47:44

1 ALLAN COLEMAN

2 an essay of mine was reprinted in full, 10:47:46  
3 translated into Finnish in a Finnish anthology 10:47:50  
4 of essays about photography. 10:47:53

5 I didn't discover this until 10:47:56  
6 much later, at which point I wrote to the -- 10:47:58  
7 this was published by a museum of photography 10:48:02  
8 in Finland. 10:48:08

9 I wrote, when I discovered this 10:48:11  
10 I wrote to the museum asking them on what basis 10:48:12  
11 they had published this. 10:48:15

12 They indicated that they had 10:48:17  
13 done what I considered to be reasonable due 10:48:18  
14 diligence. 10:48:20

15 They had written to the English 10:48:21  
16 language publisher of a book in which the essay 10:48:23  
17 had appeared, in order to contact me, in order 10:48:26  
18 to seek permission. 10:48:29

19 They had not -- that letter 10:48:31  
20 apparently never got forwarded to me, they had 10:48:34  
21 not heard back, and they had proceeded to 10:48:36  
22 publish it on a good faith basis, that they 10:48:39  
23 would make things right with me if they heard 10:48:41  
24 from me, which they did. 10:48:44

25 And we resolved the case by them 10:48:45

1 ALLAN COLEMAN

2 sending me three or four copies of the book in  
3 question.

10:48:47

10:48:51

4 I should add, this was an  
5 educational, I considered this an educational  
6 publication.

10:48:53

10:48:54

10:48:58

7 Q And in any of the -- in any of  
8 your dealings over 50 years and creating about  
9 2,500 copyrighted works, did other people  
10 assert a fair use right to use your works?

10:49:03

10:49:06

10:49:12

10:49:17

11 A Not in toto, no.

10:49:21

12 Except I would say for the  
13 people, the people who I had to pursue.

10:49:24

10:49:25

14 Q So the people who you pursued,  
15 those ten people who used your works without a  
16 license, they asserted a fair use right to use  
17 your works?

10:49:30

10:49:31

10:49:33

10:49:38

18 A They assumed a fair use right to  
19 use the complete works.

10:49:39

10:49:42

20 And I would say, by the way,  
21 this museum that I just spoke of in Finland is  
22 an exception to that.

10:49:44

10:49:45

10:49:48

23 They did not assert that right.

10:49:49

24 They used it without permission, but they did

10:49:51

25 not assert that they had a fair use right to do

10:49:54

1 ALLAN COLEMAN

2 so.

10:49:56

3 Q I see. But the other nine

10:49:57

4 instances where you had disputes --

10:49:58

5 A Right.

10:50:00

6 Q -- the other party asserted fair

10:50:01

7 use?

10:50:04

8 A They asserted fair use right to

10:50:05

9 use the entirety of the essays.

10:50:07

10 There have been many cases in

10:50:09

11 which parts of my essays have been used under

10:50:11

12 the fair use exception appropriately, because

10:50:14

13 I'm frequently quoted by writers in my field

10:50:18

14 and other fields.

10:50:21

15 Q And in each of those instances

10:50:23

16 the other side asserted fair use and the

10:50:25

17 dispute was resolved by the defendant stopping

10:50:28

18 use of the work?

10:50:31

19 A No.

10:50:32

20 MS. PELES: Objection to form.

10:50:33

21 Q Okay, then, I'm sorry. How were

10:50:34

22 those other nine fair use disputes resolved?

10:50:36

23 A They were not disputes.

10:50:38

24 Q How were those other instances

10:50:40

25 where you contacted parties that had used your

10:50:42



1 ALLAN COLEMAN

2 works without license where the parties 10:50:45  
3 asserted fair use, how were those nine 10:50:47  
4 incidents resolved? 10:50:51

5 A Oh, those instances where they 10:50:54  
6 used my work in toto? 10:50:56

7 Q Well, you said that there were 10:50:58  
8 ten instances when you sent cease and desist 10:51:00  
9 letters. 10:51:03

10 A Okay. 10:51:03

11 Q You said in one of those ten 10:51:03  
12 instances there was an institution in Finland 10:51:05  
13 that was using the work, and in the other nine 10:51:07  
14 instances the other parties asserted fair use? 10:51:09

15 A Yes, okay. 10:51:12

16 And those instances were 10:51:14  
17 resolved by them taking down the material. 10:51:15

18 I think in all of these cases 10:51:16  
19 these were publications on-line, and the 10:51:19  
20 material was taken down promptly, either by 10:51:22  
21 them or by their internet service provider, 10:51:24  
22 their ISP. 10:51:28

23 Q So, in nine of the ten 10:51:29  
24 instances, the other side had asserted a fair 10:51:32  
25 use, and the dispute was resolved with either 10:51:35

1 ALLAN COLEMAN

2 the other party or their ISP taking the work 10:51:38

3 down and stopping to use it? 10:51:42

4 A Yes. 10:51:43

5 Q Now, we got into this discussion 10:51:48

6 by going through your experience in copyright 10:51:52

7 law. You mentioned that you've spoken on many 10:51:56

8 panels. 10:51:58

9 Approximately how many panels on 10:51:59

10 copyright law have you spoken on? 10:52:01

11 MS. PELES: Objection to form. 10:52:03

12 A A dozen. 10:52:05

13 Q A dozen. And is that over a 50 10:52:05

14 year period, or more recently? 10:52:08

15 A I would say that's probably 10:52:10

16 within the past 25 to 30 years. 10:52:11

17 Q I see. 10:52:15

18 Who are the sponsors of those 10:52:17

19 copyright panels? 10:52:18

20 A Organizations like the National 10:52:20

21 Writers' Union, organizations like the American 10:52:21

22 Society for Magazine Photographers, now called 10:52:24

23 the American Society of Media Photographers, 10:52:26

24 the Society for Photographic Education, some 10:52:28

25 other organizations of that sort. 10:52:37

1 ALLAN COLEMAN

2 Q Now, the National Writers Union 10:52:38  
3 was involved in a very large copyright suit 10:52:39  
4 brought by Jonathan Tasini. 10:52:42

5 Are you familiar with that case? 10:52:45

6 A Yes, I am. 10:52:46

7 Q Did you participate in that 10:52:47  
8 case? 10:52:48

9 A Yes, I did. 10:52:49

10 Q What was your role in the Tasini 10:52:49  
11 copyright litigation? 10:52:51

12 A I was simply one of many writers 10:52:52  
13 who signed on as Plaintiffs. 10:52:55

14 Q I see. So you were a Plaintiff 10:52:58  
15 in the Tasini class action copyright 10:52:59  
16 litigation? 10:53:05

17 A Yes. 10:53:05

18 Q How much -- if I understand it 10:53:09  
19 correctly, the payments of the settlement in 10:53:11  
20 that case haven't yet been disbursed, is that 10:53:13  
21 correct? 10:53:16

22 A That's correct, as far as I 10:53:16  
23 know, yes. 10:53:17

24 Q When those disbursements are 10:53:18  
25 made, which I believe should be within the next 10:53:20

1 ALLAN COLEMAN

2 year, how much money do you stand to make from  
3 that case?

10:53:22

10:53:25

4 A I don't recall.

10:53:28

5 Q How many articles did you have  
6 at issue in that lawsuit?

10:53:28

10:53:29

7 A I had an issue about 150  
8 articles.

10:53:31

10:53:34

9 Q 150 articles?

10:53:35

10 A Yes.

10:53:36

11 Q Now, as I recall in that case  
12 there were category A articles, which were ones  
13 that were timely registered, category B  
14 articles, which were articles that were  
15 registered but not necessarily timely, and  
16 category C, which were unregistered works.

10:53:36

10:53:38

10:53:42

10:53:45

10:53:47

10:53:50

17 Is that your recollection as  
18 well?

10:53:53

10:53:54

19 A Yes.

10:53:54

20 Q I'm sorry, how many articles did  
21 you say you had in that lawsuit?

10:53:57

10:53:58

22 A I believe it's about 150.

10:54:00

23 Q 150.

10:54:02

24 Are those all category A  
25 articles?

10:54:02

10:54:04

1 ALLAN COLEMAN

2 A No.

10:54:05

3 Q Are they -- how would you divide  
4 the 150 articles between categories A, B and C?

10:54:06

5 A These were all articles written  
6 for The New York Times. About 25 of those  
7 articles appear in a book of mine called Light  
8 Readings, which was published in 1979, which  
9 is, a copyright for which is registered.

10:54:23

10:54:25

10:54:32

10:54:36

10:54:38

10 The remaining articles were not  
11 registered either individually or collectively  
12 by me.

10:54:43

10:54:45

10:54:47

13 Q I see. So to your understanding  
14 25 of those articles were articles where there  
15 was a copyright registration?

10:54:51

10:54:53

10:54:56

16 A Right.

10:54:58

17 Q And 125 were articles where  
18 there was no copyright registration?

10:54:58

10:55:01

19 A That's a guess, yes, but yes.

10:55:03

20 Q So under the settlement in that  
21 case, you would be entitled to significant  
22 payments for the 25 articles and smaller  
23 payments for the 125 articles.

10:55:06

10:55:07

10:55:11

10:55:14

24 Is that your understanding?

10:55:17

25 MS. PELES: Objection to form.

10:55:18

1 ALLAN COLEMAN

2 A I don't know what the amounts 10:55:18  
3 are, so I don't know what significant means in 10:55:19  
4 this context. 10:55:21

5 Q Are you a Plaintiff in any other 10:55:24  
6 copyright cases? 10:55:26

7 A No. 10:55:27

8 Q Have you been a Plaintiff or 10:55:29  
9 Defendant in any other lawsuits? 10:55:30

10 A No. 10:55:33

11 Q Let's get back to your 10:55:37  
12 experience on panels. You mentioned several 10:55:38  
13 panels for different organizations. 10:55:42

14 Could you identify the other 10:55:44  
15 copyright panels that you spoke on? 10:55:46

16 A No. 10:55:49

17 Q With respect to the copyright 10:55:52  
18 panel that you spoke on at the conference 10:55:53  
19 sponsored by the National Writers' Union, do 10:56:00  
20 you recall what the focus of that panel was? 10:56:03

21 A Basically the intention was 10:56:10  
22 to -- the purpose was to convey to members of 10:56:11  
23 the National Writers' Union the basics of 10:56:14  
24 copyright law as they apply to writers. 10:56:19

25 Both in terms of what they 10:56:23

1 ALLAN COLEMAN

2 proscribe writers from doing, and what they 10:56:27  
3 permit writers to do with their own work and 10:56:31  
4 with other people's work. 10:56:33

5 Q And what was the -- what were 10:56:35  
6 the opinions that you expressed on that panel? 10:56:40

7 A They were many and diverse. 10:56:45

8 Q Can you identify some of them? 10:56:50

9 A Yes, certainly. 10:56:51

10 For example, there is a myth 10:56:53  
11 that floats around among not only writers, but 10:56:56  
12 makers of intellectual property, that there is 10:56:59  
13 such a thing as poor man's copyright. 10:57:02

14 Which consists of sending an 10:57:05  
15 example of the material, a copy of the material 10:57:10  
16 to yourself, by registered mail, in a 10:57:13  
17 self-addressed sealed envelope, and that this 10:57:17  
18 constitutes a form of proof that is legally 10:57:20  
19 binding, valid. 10:57:27

20 So I consider that part of my 10:57:29  
21 job to disabuse writers of that fantasy. 10:57:31

22 There is also a belief among 10:57:41  
23 many publishing writers, professional writers, 10:57:44  
24 that even if you sign a work made for hire 10:57:48  
25 contract, an all rights contract, you can 10:57:51

1 ALLAN COLEMAN

2 revise -- you can revise small portions of that 10:57:55  
3 essay and republish it under your own name. 10:58:00

4 And I had to disabuse them of 10:58:06  
5 that belief also, and make it clear that once 10:58:09  
6 you sign a work made for hire contract, you 10:58:12  
7 actually legally cease to be the author of the 10:58:14  
8 work, in effect. 10:58:15

9 And you can then only quote from 10:58:17  
10 your own work to the extent that the fair use 10:58:20  
11 exception would allow, which means small 10:58:23  
12 amounts. 10:58:25

13 Q I'm sorry, what other opinions 10:58:30  
14 did you address? 10:58:32

15 A It's been a long time, sir; I 10:58:34  
16 can't recall. 10:58:36

17 Q Getting back to that Tasini 10:58:39  
18 case, do you recall that -- I'm trying to 10:58:40  
19 remember his name, the head of the National 10:58:45  
20 Writers' Union at the time was Jonathan? 10:58:48

21 A Jonathan Tasini. 10:58:51

22 Q Jonathan Tasini, correct. 10:58:54

23 Do you recall Mr. Tasini telling 10:58:56  
24 The New Republic that he anticipated the 10:58:57  
25 damages in that case to be around \$300 billion? 10:59:00



1 ALLAN COLEMAN

2 A No, I don't. 10:59:04

3 MS. PELES: Objection to form. 10:59:05

4 Q Do you recall any discussion by 10:59:06

5 Mr. Tasini or the National Writers' Union about 10:59:07

6 how that class action suit was the largest 10:59:11

7 copyright class action suit ever brought? 10:59:13

8 A No. 10:59:17

9 Q You do recall that the Tasini 10:59:19

10 case was considered a very significant 10:59:21

11 copyright case? 10:59:24

12 A I do, yes. 10:59:25

13 Q At the time it was brought, it 10:59:26

14 got a lot of attention? 10:59:27

15 A Yes. 10:59:28

16 Q It was a very significant one. 10:59:28

17 And you do recall that it was 10:59:29

18 brought as a class action suit on behalf of the 10:59:31

19 National Writers' Union and the Authors' Guild, 10:59:35

20 and then a number of individually named 10:59:37

21 Plaintiffs, such as yourself, correct? 10:59:41

22 A Right. 10:59:43

23 Q You recall it got a lot of 10:59:48

24 attention in the press as well, correct? 10:59:49

25 A Yes. 10:59:51

1 ALLAN COLEMAN

2 Q On any of the panels, was there 10:59:55  
3 discussion of this case? Did you opine on the 10:59:57  
4 case? 11:00:01

5 A I'm sure there was discussion, 11:00:02  
6 yes. 11:00:04

7 Q And the case, the case was 11:00:06  
8 originally brought in the 1990s, correct? 11:00:08

9 A Correct. 11:00:11

10 Q And the copyright class action 11:00:11  
11 litigation is still ongoing, correct? 11:00:13

12 A As I understand it, yes. 11:00:17

13 Q The settlement -- there is a 11:00:19  
14 settlement, but it hasn't been disbursed, 11:00:21  
15 correct? 11:00:23

16 A As far as I know, yes. 11:00:24

17 Q And the case is pending before 11:00:25  
18 Judge Daniels here in the Southern District of 11:00:27  
19 New York, correct? 11:00:29

20 A I wouldn't know. 11:00:30

21 Q You don't know, okay. But you 11:00:31  
22 do remember that the lawsuit was filed here in 11:00:32  
23 New York? 11:00:34

24 A Actually I don't, but yes. I'll 11:00:35  
25 take your word for it. 11:00:38

1 ALLAN COLEMAN

2 Q But you remember, in any event, 11:00:41  
3 that the case has been going on for a long 11:00:42  
4 time? 11:00:44

5 A Yes, I do. 11:00:44

6 Q And I assume in the discussions 11:00:45  
7 that took place about the case there was 11:00:49  
8 discussions that this was a very significant 11:00:51  
9 copyright case, correct? 11:00:54

10 A Yes. 11:00:55

11 Q All right. So we talked about 11:00:57  
12 your experience in seminars, we talked about 11:00:59  
13 your experience writing, and your experience as 11:01:03  
14 a Plaintiff. So, written about copyright, 11:01:13  
15 created and licensed works. 11:01:23

16 Are there any other aspects from 11:01:25  
17 your 50 year career that you believe are 11:01:27  
18 relevant to your opinions in this case? 11:01:29

19 A My understanding of the history 11:01:35  
20 of photography as a creative medium and as a 11:01:37  
21 medium of cultural communication. 11:01:42

22 Q I see, I see. All right, so 11:01:44  
23 let's get back to your expert report. 11:01:51

24 We talked about the purpose and 11:01:58  
25 character, and you gave me your explanation of 11:02:01

1 ALLAN COLEMAN

2 what you thought the purpose and character of 11:02:07  
3 the works at issue in this case were, correct? 11:02:09

4 A Correct. 11:02:11

5 MS. PELES: Objection to form. 11:02:13

6 Q What is your understanding 11:02:13  
7 generally about what purpose and character 11:02:14  
8 refers to? 11:02:17

9 A My understanding generally would 11:02:20  
10 be that it refers to the nature of a given work 11:02:22  
11 within the context of medium in which it is 11:02:29  
12 produced and that medium's history and field of 11:02:35  
13 ideas. 11:02:38

14 And character would be 11:02:40  
15 everything from the manner of its execution to 11:02:45  
16 the -- its voice and tone and the content. 11:02:49

17 Q Okay. And then the next element 11:02:57  
18 that you said you were asked to analyze in 11:02:59  
19 paragraph 6 of your report is the amount and 11:03:01  
20 substantiality of the Graham work that was used 11:03:04  
21 in relation to the Prince-Graham work. 11:03:08

22 What is your understanding of 11:03:11  
23 what "the amount and substantiality" refers to? 11:03:12

24 A How many -- 11:03:17

25 MS. PELES: Objection to form. 11:03:18

1 ALLAN COLEMAN

2 A It's my understanding that this 11:03:19  
3 refers to the actual quantitative amount by 11:03:22  
4 measurement of how much of the original work is 11:03:30  
5 included in the work to which it has been 11:03:38  
6 added. 11:03:42

7 Q And what's your understanding of 11:03:43  
8 why that's relevant? 11:03:44

9 A It's my understanding that the 11:03:47  
10 fair use exception allows a certain proportion 11:03:48  
11 of a work to be quoted or otherwise used 11:03:54  
12 without permission, but that conversely, it 11:03:59  
13 prohibits the use of some amount over that. 11:04:03

14 Q And what's your understanding of 11:04:08  
15 what that dividing line is between the 11:04:09  
16 permitted and unpermitted use? 11:04:12

17 A Well, it's hard to say. 11:04:16

18 This one, I think the fair use 11:04:19  
19 exception is deliberately vague on this matter, 11:04:21  
20 but I assume there are, for example, there are 11:04:25  
21 poems that consist of a single word, and there 11:04:30  
22 would be no possible way that I could think of 11:04:35  
23 to quote that poem or excerpt from that poem, 11:04:37  
24 except by taking a single letter from it, let's 11:04:44  
25 say. 11:04:46

1 ALLAN COLEMAN

2 So there would be no way to 11:04:47  
3 refer to that poem in another work without 11:04:49  
4 quoting the entirety of that poem. 11:04:51

5 So, and there are short works 11:04:52  
6 that I think it would be very difficult to 11:04:56  
7 excerpt from. 11:04:59

8 In the visual arts we refer to 11:05:02  
9 such excerpts usually as details, for example, 11:05:03  
10 and in hard books, you will often find both a 11:05:06  
11 reproduction of a painting and a detail, which 11:05:11  
12 might be just a smaller portion of it. 11:05:15

13 So, it's very hard to give a 11:05:17  
14 specific demarcation line as a general rule for 11:05:19  
15 what you are asking. 11:05:25

16 Q You referred to some poems that 11:05:29  
17 include only one word. 11:05:31

18 Can you think of what those 11:05:34  
19 poems are, do you know the names? 11:05:35

20 A I know the name of a poet who 11:05:37  
21 produced -- several poets. One is Richard 11:05:38  
22 Castellaneta, and another one is Aram Saroyan. 11:05:41

23 Q Do you remember any of their 11:05:55  
24 poems? Do you remember the particular one word 11:05:57  
25 they used? 11:05:59

1 ALLAN COLEMAN

2 A I don't, no. 11:06:00

3 Q But in that example, if a poet 11:06:00

4 had a poem that consisted of just one word, 11:06:03

5 your understanding is you wouldn't be able to 11:06:07

6 use that one word because of -- because that 11:06:09

7 would be use of the full poem? 11:06:12

8 A No; I didn't say that. 11:06:14

9 Q I'm sorry, what is your 11:06:16

10 understanding, then? I apologize. 11:06:16

11 A My understanding is that there 11:06:18

12 are some works that are so small that there 11:06:20

13 would be no way of referring to them without 11:06:23

14 quoting the entirety of them, and that 11:06:26

15 therefore the fair use exception would allow 11:06:28

16 the quoting of the entirety of the poem. 11:06:30

17 Q I see. But your understanding 11:06:33

18 is that for larger works, the fair use 11:06:34

19 exception wouldn't permit full use if the work 11:06:38

20 is larger and more significant? 11:06:41

21 A Correct. 11:06:43

22 Q You also indicate that you were 11:06:47

23 asked to opine on the nature of the Graham 11:06:50

24 work. 11:06:55

25 What's your understanding of the 11:06:56

1 ALLAN COLEMAN

2 term nature, what does that refer to, for the  
3 fair use exception?

11:06:58

11:07:01

4 A I assume --

11:07:03

5 MS. PELES: Objection to form.

11:07:04

6 A I assume it refers to the  
7 content and purpose of that work.

11:07:05

11:07:07

8 Q And then you also say you were  
9 asked to opine on the effect of the  
10 Prince-Graham work on the market for or value  
11 of the Graham work.

11:07:14

11:07:16

11:07:19

11:07:23

12 What's your understanding of the  
13 effect of the work on the market for or value  
14 of another work?

11:07:24

11:07:28

11:07:32

15 MS. PELES: Objection.

11:07:37

16 Q What's your understanding of  
17 what that element refers to?

11:07:37

11:07:38

18 MS. PELES: Objection to form.

11:07:40

19 A It's my understanding that that  
20 refers to how much that -- how likely it would  
21 be that the -- that the work that the  
22 borrowed -- that the Prince work that borrowed  
23 this material would have an impact on the  
24 marketability of the original works.

11:07:42

11:07:43

11:07:47

11:07:55

11:07:56

11:08:01

25 Q I see. And what's your

11:08:04



1 ALLAN COLEMAN

2 qualifications -- what do you believe your 11:08:06  
3 qualifications are to opine on that particular 11:08:08  
4 element of the fair use test? 11:08:10

5 A I followed the photography 11:08:12  
6 market for half a century. 11:08:13

7 Q And when you say you followed 11:08:15  
8 the photography market, what do you mean 11:08:16  
9 exactly? 11:08:19

10 A Well, I speak to dealers, I 11:08:20  
11 speak to collectors, I speak to institutional 11:08:21  
12 collectors, private collectors, I go to gallery 11:08:24  
13 expositions, both solo gallery expositions and 11:08:29  
14 cumulative gallery fairs, art fairs, 11:08:34  
15 specialized in photography. 11:08:38

16 I read publications like The 11:08:40  
17 Photograph Collector, and other publications 11:08:41  
18 that are involved in the market for -- that 11:08:46  
19 cover the market for photography. 11:08:49

20 And I speak with photographers 11:08:50  
21 about their work and the market for their 11:08:51  
22 works. 11:08:55

23 Q Is it your view that if a 11:08:56  
24 photograph is used without permission in a work 11:08:58  
25 and then is subject to a lawsuit, that that can 11:09:03

1 ALLAN COLEMAN

2 adversely affect the market for the 11:09:07  
3 photographer's -- excuse me, for that 11:09:10  
4 photograph? 11:09:12

5 A Potentially. 11:09:13

6 Q Potentially. Could it also 11:09:14  
7 potentially enhance the market by providing 11:09:15  
8 publicity? 11:09:19

9 A I know of no instance when 11:09:20  
10 that's happened. 11:09:22

11 Q Okay. But you are aware that 11:09:23  
12 lawsuits generate publicity, potentially, 11:09:25  
13 correct? 11:09:27

14 A Yes. 11:09:28

15 Q And you are a Plaintiff in a 11:09:28  
16 lawsuit has generated a great deal of 11:09:29  
17 publicity, correct? 11:09:31

18 A Correct. 11:09:33

19 Q And from your personal 11:09:33  
20 experience as a Plaintiff in the Tasini 11:09:36  
21 lawsuit, did you find that publicity about that 11:09:38  
22 lawsuit got -- brought you personal attention? 11:09:41

23 A Absolutely not; none at all. 11:09:44

24 Q No one contacted you, you never 11:09:46  
25 had reporters contact you about the lawsuit? 11:09:48

1 ALLAN COLEMAN

2 A No, no. 11:09:49

3 Q None of the speaking engagements 11:09:51  
4 you got were as a result of the prominence of 11:09:53  
5 that lawsuit? 11:09:58

6 A No. 11:09:58

7 Q But you do accept that it would 11:10:01  
8 be possible that publicity from a lawsuit could 11:10:03  
9 make a photographer more famous, or the 11:10:06  
10 photographer's work more famous? 11:10:09

11 A If you say so. 11:10:12

12 Q Prior to this lawsuit, had you 11:10:18  
13 ever heard of Mr. McNatt? 11:10:19

14 A No. 11:10:22

15 Q Did you talk to Mr. McNatt in 11:10:30  
16 connection with your opinion in this case? 11:10:31

17 A No. 11:10:33

18 Q Prior to this lawsuit had you 11:10:35  
19 ever heard of Mr. Graham? 11:10:36

20 A I had. 11:10:38

21 Q You had. 11:10:38

22 Did you talk to Mr. Graham in 11:10:39  
23 connection with preparing your report in this 11:10:40  
24 case? 11:10:42

25 A No. 11:10:42

1 ALLAN COLEMAN

2 Q So, prior to this lawsuit, what 11:10:44  
3 did you know about Mr. Graham? 11:10:46

4 A I had only come across some 11:10:48  
5 examples of his work, and I knew very little 11:10:50  
6 about him. 11:10:52

7 Q Which examples of his work did 11:10:52  
8 you come across prior to being retained in this 11:10:53  
9 case? 11:10:56

10 A I can't recall. 11:10:56

11 Q So how do you know that you had 11:10:57  
12 heard of him, then? 11:10:59

13 A Because the name rings a bell. 11:11:00

14 Q The name rings a bell, but 11:11:02  
15 Graham is a fairly common name, isn't it? It's 11:11:03  
16 one of the probably top several hundred names 11:11:05  
17 in the world. 11:11:08

18 A It's not that common in 11:11:08  
19 photography. 11:11:10

20 MS. PELES: Objection to form. 11:11:11

21 Q So you had heard of him, but you 11:11:14  
22 can't really place how? 11:11:16

23 A Right. 11:11:17

24 Q And you weren't specifically 11:11:17  
25 familiar with his work prior to that time? 11:11:19

1 ALLAN COLEMAN

2 A Right. 11:11:21

3 Q Okay. So in preparing your 11:11:22  
4 reports, did you have occasion to search on the 11:11:23  
5 internet for any information on either 11:11:26  
6 Mr. Graham or Mr. McNatt? 11:11:28

7 A No; I relied on the documents 11:11:30  
8 supplied as documents in this case. 11:11:33

9 Q I see. 11:11:34  
10 So outside of preparing this 11:11:35  
11 report, have you ever Googled either Mr. Graham 11:11:37  
12 or Mr. McNatt's name? 11:11:41

13 A No. 11:11:42

14 Q You've never searched for them 11:11:43  
15 on-line? 11:11:44

16 A No, let me correct that. 11:11:47

17 What I did was I took examples, 11:11:49  
18 I took JPEGs of the two images that are at 11:11:53  
19 issue in this case, and I dropped them into 11:11:59  
20 Google Images to see what would come up. 11:12:02

21 Google Images is a search 11:12:05  
22 function of Google that allows to you search 11:12:07  
23 for other on-line -- for on-line instances of 11:12:09  
24 any given image. 11:12:12

25 And I did discover versions of 11:12:14

1 ALLAN COLEMAN

2 those images on-line that led me to their 11:12:19  
3 websites. 11:12:23

4 Q I see. So you actually have -- 11:12:23  
5 so in conducting the Google Image search for 11:12:25  
6 Mr. McNatt, for example -- 11:12:28

7 A Right. 11:12:31

8 Q -- did you find a lot of 11:12:31  
9 instances of his images on-line? 11:12:32

10 MS. PELES: Objection to form. 11:12:35

11 A These are -- Google Image, the 11:12:36  
12 Google Image search function searches for 11:12:40  
13 particular images. 11:12:43

14 Q Um-hum? 11:12:45

15 A So I found other instances of 11:12:45  
16 that particular image on-line. 11:12:49

17 Q And approximately how many 11:12:52  
18 instances? 11:12:54

19 A There were not many. I 11:12:55  
20 couldn't -- four or five, I think. 11:12:57

21 Q And were those, from your -- did 11:13:01  
22 those appear to be authorized or unauthorized 11:13:04  
23 instances? 11:13:06

24 A They appeared to be authorized. 11:13:07

25 Q Appeared to be authorized. So 11:13:09

1 ALLAN COLEMAN

2 instances where Mr. McNatt appeared to have 11:13:10  
3 licensed the photo, in your impression? 11:13:12

4 A Well, one, as I recall, was at 11:13:16  
5 his website. Several I recall were in 11:13:18  
6 conjunction with this case and publicity about 11:13:21  
7 this case, if I remember correctly. 11:13:23

8 Q I see. So it is fair to say, at 11:13:25  
9 least with respect to Mr. McNatt, you were able 11:13:27  
10 to verify that as a result of filing a lawsuit, 11:13:29  
11 his image got greater attention because of 11:13:33  
12 publicity about the lawsuit, correct? 11:13:36

13 MS. PELES: Objection to form. 11:13:38

14 A I -- that there were articles 11:13:40  
15 about the lawsuit, yes. I was able to verify 11:13:42  
16 that there were articles about the lawsuit. 11:13:44

17 Q But again, sir, I want to be 11:13:45  
18 clear, because you were very clear that you 11:13:46  
19 didn't search for articles, you did a much 11:13:49  
20 narrower Google search looking only for the 11:13:51  
21 photo? 11:13:53

22 A Right. 11:13:54

23 Q You didn't search for 11:13:54  
24 Mr. McNatt's name, you didn't search for his 11:13:55  
25 reputation, you didn't search for articles, you 11:13:57

1 ALLAN COLEMAN

2 just searched for the image.

11:13:59

3 And as a result of the search  
4 you said you found a number of instances where  
5 the image had been reproduced in articles about  
6 the lawsuit, correct?

11:14:01

11:14:03

11:14:05

11:14:07

7 A Correct.

11:14:08

8 Q So it is fair to say, at least  
9 with respect to Mr. McNatt, that by virtue of  
10 filing this lawsuit, there was publicity about  
11 Mr. McNatt and his work, correct?

11:14:09

11:14:10

11:14:13

11:14:17

12 A Correct.

11:14:20

13 MS. PELES: Objection to form.

11:14:21

14 Q With respect to Mr. Graham, what  
15 did your Google Image search reveal?

11:14:21

11:14:23

16 A More or less the same thing.

11:14:26

17 Q How many instances of  
18 Mr. Graham's work on-line did you find by  
19 performing the Google Image search?

11:14:29

11:14:30

11:14:32

20 A I seem to recall, again, half a  
21 dozen.

11:14:34

11:14:36

22 Q Half a dozen, okay.

11:14:37

23 A For the particular image.

11:14:38

24 Q And in conjunction with doing  
25 the Google Image search for Mr. Graham's work,

11:14:39

11:14:42



1 ALLAN COLEMAN

2 did you also find publicity about this lawsuit 11:14:46  
3 in which his works were reproduced? 11:14:51

4 A I'm not sure what you mean by 11:14:55  
5 publicity. 11:14:56

6 Q Articles about this lawsuit in 11:14:57  
7 which his photographs were reproduced? 11:14:59

8 A Yes. 11:15:01

9 Q So with respect to Mr. Graham, 11:15:03  
10 in addition to Mr. McNatt, there has been 11:15:04  
11 publicity about this lawsuit in which their 11:15:08  
12 works have been reproduced, correct? 11:15:10

13 A Correct. 11:15:12

14 Q And would you concede that that 11:15:14  
15 publicity helps provide greater name 11:15:15  
16 recognition or at least greater recognition of 11:15:18  
17 the works themselves? 11:15:20

18 MS. PELES: Objection to form. 11:15:23

19 A I don't have an opinion on that. 11:15:24

20 Q You don't have an opinion. 11:15:25

21 But prior to that lawsuit you 11:15:26  
22 had never heard of Mr. McNatt, correct? 11:15:27

23 A Correct. 11:15:29

24 Q But as a result of this lawsuit 11:15:30  
25 you did a search and you found that there are 11:15:31

1 ALLAN COLEMAN

2 news articles in which his works have been 11:15:33  
3 published, correct? 11:15:36

4 MS. PELES: Objection to form. 11:15:37

5 A Correct. 11:15:39

6 Q But you don't have an opinion of 11:15:40  
7 whether -- whether a publication of articles in 11:15:42  
8 which a person's work is reproduced would help 11:15:46  
9 generate publicity about the work itself? 11:15:50

10 A I would need a definition of 11:15:55  
11 what you mean by publicity. 11:15:56

12 Q Well, I mean, just by 11:15:57  
13 definition, if there are news articles in which 11:15:59  
14 a photographer's work is reproduced, wouldn't 11:16:02  
15 you agree that that means, that that helps make 11:16:04  
16 the work more widely known? 11:16:07

17 A I suppose. 11:16:14

18 Q Do you recall any of the 11:16:16  
19 publications in which the McNatt and Graham 11:16:17  
20 photographs were reprinted in connection with 11:16:20  
21 articles about this lawsuit? 11:16:22

22 A No, I don't recall the specific 11:16:23  
23 publications. 11:16:25

24 Q I'm sorry, I may have asked you 11:16:28  
25 this, approximately how many instances of 11:16:30

1 ALLAN COLEMAN

2 Mr. Graham's photos did you find on-line when 11:16:33  
3 you did this Google Image search? 11:16:36

4 A Of that particular image, again, 11:16:38  
5 I think it was about five or six. 11:16:39

6 Q And again, just to be clear, the 11:16:41  
7 Google Image search we were talking about, 11:16:43  
8 those were specific searches about the two 11:16:45  
9 photographs at issue in this case? 11:16:47

10 A Right. 11:16:48

11 Q The McNatt photo of Kim Gordon 11:16:49  
12 and the Graham photo of the Rastafarian smoking 11:16:52  
13 a joint? 11:16:55

14 A That's correct. 11:16:56

15 Q Thank you. 11:16:57

16 So let's get back to your expert 11:16:58  
17 report. 11:17:05

18 In paragraph 7 you summarize 11:17:06  
19 your opinions. Could you read into the record 11:17:08  
20 for me what you wrote in paragraph 7, please? 11:17:12

21 A Sure. 11:17:16

22 "In summary, my opinions are 11:17:17  
23 that 1, Plaintiffs' works are creative and 11:17:21  
24 expressive and constitute art. 11:17:25

25 "2, the Prince works use a 11:17:27

1 ALLAN COLEMAN

2 substantial portion of Plaintiffs' works, and 11:17:31  
3 the Prince works are not transformative of 11:17:33  
4 Plaintiffs' works. 11:17:36

5 "And 3, the Prince works are 11:17:38  
6 likely to have a substantially negative impact 11:17:39  
7 upon the potential market for or value of 11:17:42  
8 Plaintiffs' works. 11:17:46

9 "My opinions are based on my 11:17:47  
10 review of the materials in this case and my 11:17:49  
11 experience and specialized knowledge as a 11:17:52  
12 photography critic, historian, theorist and 11:17:54  
13 curator." 11:17:57

14 Q So let's start with that third 11:18:00  
15 opinion, "The Prince works are likely to have a 11:18:01  
16 substantial negative impact upon the market for 11:18:03  
17 or value of the Plaintiffs' works." 11:18:05

18 Now, we have already talked 11:18:07  
19 about how this lawsuit has generated publicity 11:18:08  
20 about both of those two images. 11:18:11

21 Could you tell me the basis for 11:18:14  
22 your opinion that the use of the Prince works 11:18:15  
23 was likely to have a substantially negative 11:18:18  
24 impact upon the potential market for or value 11:18:21  
25 of the works? 11:18:26

1 ALLAN COLEMAN

2 MS. PELES: Objection to form.

11:18:27

3 A Yes, all publicity is not  
4 necessarily beneficial publicity. Some  
5 publicity is negative publicity.

11:18:29

11:18:36

11:18:39

6 So there are several issues I  
7 think here that redound not to the benefit of  
8 the Plaintiffs.

11:18:42

11:18:46

11:18:52

9 First of all, the usage of --  
10 the unauthorized usage of their work and the  
11 Defendant's insistence on his right to do that  
12 could very easily persuade others that the  
13 works of these two photographers are available  
14 for their reuse as well.

11:18:55

11:18:59

11:19:06

11:19:11

11:19:13

11:19:17

15 Q Anything else?

11:19:20

16 A Yes.

11:19:20

17 There is implicitly an imbalance  
18 of power in the relationship between the  
19 Plaintiffs and the Defendant.

11:19:23

11:19:26

11:19:31

20 Mr. Prince is a very high  
21 profile artist, the Defendants are lower down  
22 on the scale, and the implicit disrespect for  
23 their authorship of their work that is implicit  
24 in his unauthorized usage of their work  
25 diminishes them, in my opinion, in the public

11:19:34

11:19:36

11:19:43

11:19:50

11:19:54

11:19:59

1 ALLAN COLEMAN

2 eye. 11:20:03

3 Q Anything else? 11:20:04

4 A That will do for now. 11:20:06

5 Q Okay. So when you said Prince's 11:20:08

6 insistence of his right to do this, what's the 11:20:13

7 basis for your opinion that Mr. Prince has 11:20:17

8 insisted he has a right to do this? 11:20:20

9 MS. PELES: Objection to form. 11:20:23

10 A His usage of the works and his 11:20:24

11 non-acknowledgment of the Defendants' -- of the 11:20:28

12 Plaintiffs' authorship of these works within 11:20:32

13 his own work as presented, that is, his 11:20:37

14 rendering them anonymous in his works, and the 11:20:41

15 very fact of this lawsuit itself, and his 11:20:46

16 defense of himself in this lawsuit. 11:20:50

17 Q Did you read the deposition of 11:20:52

18 Richard Prince that was given in this case? 11:20:54

19 A Yes, I did. 11:20:56

20 Q You did. 11:20:57

21 Now, in his deposition 11:20:57

22 Mr. Prince doesn't insist that he had the right 11:20:59

23 to take these works, does he? 11:21:03

24 MS. PELES: Objection to form. 11:21:05

25 A I think he does, yes. 11:21:11

1 ALLAN COLEMAN

2 Q You think he does, okay, we will 11:21:13  
3 get back to that. 11:21:15

4 Did you read -- how many volumes 11:21:17  
5 of a transcript did you read? 11:21:21

6 A Volumes? 11:21:25

7 Q Yes, how many pages was 11:21:26  
8 Mr. Prince's deposition transcript? 11:21:27

9 A What I received is listed in 11:21:31  
10 the -- in my deposition. 11:21:33

11 Q Right, but Mr. Prince was 11:21:36  
12 deposed in this case. 11:21:38

13 A Yes. 11:21:40

14 Q Just as I am deposing you today. 11:21:40

15 A Yes. 11:21:42

16 Q And there was a court reporter 11:21:42  
17 present who transcribed the deposition. 11:21:43

18 A Right. 11:21:46

19 Q And in that deposition, 11:21:47  
20 Mr. Prince was asked about his knowledge of 11:21:47  
21 these works, whether he knew who the authors 11:21:52  
22 were, why he used them. 11:21:54

23 Do you recall reading a 11:21:57  
24 transcript where he was asked those questions 11:21:58  
25 and talked about that? 11:22:01

1 ALLAN COLEMAN

2 A No.

11:22:04

3 Q You didn't read that, okay. I  
4 didn't think so.

11:22:05

11:22:07

5 Because --

11:22:09

6 MS. PELES: Objection to form.

11:22:10

7 Q -- in fact, Mr. Prince didn't  
8 insist that he had a right to do this.

11:22:11

11:22:13

9 So let me ask you this.

11:22:16

10 MS. PELES: Objection to form.

11:22:17

11 Q As an expert --

11:22:18

12 MR. BALLON: Strike that.

11:22:19

13 Q As an expert in this case, if I  
14 asked you to assume that Mr. Prince did not  
15 insist he had a right to use these works, and  
16 if he had testified that because these works  
17 had been posted in social media he assumed that  
18 the people who posted them wanted them to be  
19 disseminated, do you believe that that would  
20 have an impact on your opinion?

11:22:20

11:22:22

11:22:25

11:22:30

11:22:32

11:22:35

11:22:38

11:22:41

21 A No.

11:22:43

22 Q So, then, in fact, when you say  
23 that Mr. Prince insisted that he had a right to  
24 do so, that actually doesn't impact your  
25 opinion in this case one way or the other, does

11:22:45

11:22:46

11:22:49

11:22:51



1	ALLAN COLEMAN	
2	it?	11:22:53
3	A No.	11:22:53
4	MS. PELES: Objection to form.	11:22:54
5	Q Then you also talked about how	11:22:54
6	your opinion was based on what you said was an	11:22:56
7	imbalance, an implicit disrespect for these	11:22:58
8	photographers which you said diminished them in	11:23:03
9	the eyes of the public, is that correct?	11:23:05
10	A Yes.	11:23:07
11	Q And what is the basis for your	11:23:08
12	view that there was an imbalance and implicit	11:23:10
13	disrespect?	11:23:14
14	MS. PELES: Objection to form.	11:23:15
15	A The basis for the opinion that	11:23:17
16	it's an imbalance is, I think, self-evident in	11:23:21
17	Mr. Prince's prominence in the field and the	11:23:26
18	lower level of recognition that Mr. McNatt and	11:23:31
19	Mr. Graham enjoy.	11:23:36
20	Q Wouldn't that lower level of	11:23:39
21	recognition actually mean that the use by	11:23:40
22	Mr. Prince, if anything, would increase their	11:23:43
23	prominence and profile?	11:23:45
24	A No.	11:23:47
25	Q Why?	11:23:47

1 ALLAN COLEMAN

2 A Because he left them anonymous, 11:23:48  
3 he refused to identify them. 11:23:50

4 Q Now, why do you say he refused 11:23:52  
5 to identify them? 11:23:54

6 A Because he didn't identify them 11:23:55  
7 when he could have. I was readily able to 11:23:56  
8 identify the makers of both these photographs 11:23:58  
9 by dropping -- even if the image, even if he 11:24:00  
10 didn't know originally whose images they were, 11:24:02  
11 I was readily able to identify the makers of 11:24:04  
12 these images by dropping them into Google 11:24:07  
13 Search, Google Image Search. 11:24:09

14 Which Mr. McNatt -- excuse me, 11:24:12  
15 Mr. Prince is clearly well versed in digital 11:24:14  
16 issues and on-line issues. 11:24:20

17 Apparently he's able to 11:24:21  
18 construct a hack that enables him to affect the 11:24:23  
19 content of an Instagram post. 11:24:26

20 So I'm sure that he is aware of 11:24:30  
21 Google Search, and if not, could become aware 11:24:31  
22 of it, and could have found out who the makers 11:24:34  
23 of these two images were, and apparently did 11:24:36  
24 not. 11:24:42

25 Q But you don't actually know 11:24:42

1 ALLAN COLEMAN

2 whether Mr. Prince knew about Google Image 11:24:43

3 Search at the time he made these works, do you? 11:24:45

4 A No, I don't. 11:24:48

5 Q With respect to the 11:24:51

6 attribution -- did you read the depositions of 11:24:52

7 Mr. McNatt and Mr. Graham taken in this case? 11:24:58

8 MS. PELES: Objection to form. 11:25:04

9 A I don't think I read -- I read 11:25:05

10 the documents that counsel for the Defendant 11:25:07

11 submitted to me. 11:25:12

12 I don't think those were the 11:25:13

13 complete depositions. 11:25:14

14 Q Okay. 11:25:15

15 A I think those were reports. 11:25:15

16 Q Okay. 11:25:17

17 So, in this case Mr. McNatt was 11:25:18

18 deposed, and at his deposition it came out that 11:25:22

19 almost immediately after Mr. Prince posted his 11:25:30

20 work on-line that both Paper magazine and 11:25:37

21 Mr. McNatt identified himself as the 11:25:41

22 photographer of the original image. 11:25:46

23 Were you aware of that? 11:25:49

24 A No. 11:25:50

25 Q So this is the first time you're 11:25:50

1 ALLAN COLEMAN

2 hearing about it? 11:25:51

3 A Yes. 11:25:52

4 Q Does that impact your opinion? 11:25:55

5 You said that the publicity in 11:25:58

6 this case would be diminished in the eyes of 11:26:03

7 the public because people wouldn't know that 11:26:05

8 Mr. McNatt was the author. 11:26:07

9 But if I told you that 11:26:09

10 Mr. McNatt and Paper magazine immediately 11:26:10

11 identified Mr. McNatt as the author, would that 11:26:13

12 change your opinion of whether the publicity 11:26:16

13 from this use would diminish Mr. McNatt's 11:26:18

14 perception in the eyes of the public? 11:26:23

15 A Are you saying that Mr. Prince 11:26:26

16 immediately identified Mr. McNatt whenever he 11:26:28

17 presented these works? 11:26:30

18 Q Mr. McNatt and Paper magazine 11:26:32

19 identified Mr. McNatt as the author of the 11:26:35

20 original photo in comments when Mr. Prince 11:26:40

21 posted the work in social media. 11:26:45

22 So it became immediately known, 11:26:49

23 once the work was published, it became 11:26:50

24 immediately known that Mr. McNatt was the 11:26:52

25 original photographer. 11:26:55

1 ALLAN COLEMAN

2 If I ask you to assume that as a 11:26:56  
3 fact, wouldn't that undermine your opinion that 11:26:58  
4 the publicity diminished the -- diminished 11:27:01  
5 Mr. McNatt or his work in the eyes of the 11:27:09  
6 public? 11:27:10

7 A No. 11:27:11

8 Q Why? 11:27:11

9 A Because it does not demonstrate 11:27:14  
10 in any way that that indication of authorship 11:27:15  
11 enhanced Mr. McNatt's reputation or the market 11:27:23  
12 value of his work. 11:27:28

13 Q Okay. But conversely, I 11:27:29  
14 understand -- conversely, do you have any 11:27:30  
15 actual evidence you can point to that the uses 11:27:34  
16 by Mr. Prince in this case of the McNatt and 11:27:37  
17 Graham photos actually diminished the 11:27:39  
18 reputation of either photographer or their 11:27:42  
19 photos? 11:27:44

20 A No. 11:27:45

21 Q So this is really your theory, 11:27:46  
22 but it's not something where there is some 11:27:48  
23 evidence you can point to, correct? 11:27:51

24 MS. PELES: Objection to form. 11:27:52

25 A It's my opinion. 11:27:53

1 ALLAN COLEMAN

2 Q It's your opinion? 11:27:53

3 A I was asked to state my opinion. 11:27:55

4 Q Is there any way to test that 11:27:57  
5 opinion? 11:27:58

6 A I suppose the test would be to 11:28:06  
7 see if the sales of those images have risen by 11:28:08  
8 some considerable amount since the use of -- 11:28:21  
9 since the published use of them by Mr. Prince. 11:28:26

10 Q And what level do you consider a 11:28:31  
11 considerable amount? 11:28:33

12 A I don't know the individual 11:28:37  
13 sales track records of these photographers, so 11:28:38  
14 I couldn't give a quantity, a hypothetical 11:28:41  
15 quantity. 11:28:47

16 Q So wait a second, in opining in 11:28:47  
17 this case that Prince's use had an adverse 11:28:50  
18 impact on the market for these two photographs, 11:28:56  
19 you didn't actually look at the sales records 11:28:59  
20 for either of these photos? 11:29:02

21 MS. PELES: Objection to form. 11:29:04

22 A That was not my -- I did not say 11:29:05  
23 that it had had an adverse effect. That's a 11:29:07  
24 false statement. 11:29:10

25 Q So you really don't know either 11:29:11

1 ALLAN COLEMAN

2 way whether it's had a positive impact, a 11:29:12

3 negative impact or maybe no impact at all? 11:29:16

4 MS. PELES: Objection to form. 11:29:19

5 Q You don't know, do you, sir? 11:29:19

6 A No, I don't know. 11:29:20

7 Q So this is just your theory, but 11:29:21

8 it's a theory that wasn't based on review of 11:29:23

9 any actual sales records by either of the 11:29:26

10 Defendants in this case with respect to the two 11:29:28

11 photos at issue, was it? 11:29:30

12 MS. PELES: Objection to form. 11:29:32

13 A No. 11:29:32

14 But let me -- I need to clarify 11:29:36

15 this. It wasn't my theory that it had had, as 11:29:38

16 you put it, those are your words, an adverse 11:29:41

17 effect. 11:29:43

18 Q I'm sorry? 11:29:44

19 A I never stated that Mr. Prince's 11:29:45

20 uses of these photographs had had, these are 11:29:48

21 your words I'm repeating here, a negative 11:29:51

22 effect. 11:29:54

23 I never stated that. Those are 11:29:57

24 your words. 11:29:58

25 Q So then what is your opinion? 11:29:59

1	ALLAN COLEMAN	
2	I'm sorry.	11:30:00
3	A My opinion was that it could	11:30:02
4	have.	11:30:03
5	Q Could have?	11:30:04
6	A Yes, which is different than had	11:30:04
7	had.	11:30:05
8	Q So, it could, but then also	11:30:06
9	equally it could not; it actually might have	11:30:08
10	enhanced their reputations, correct?	11:30:10
11	MS. PELES: Objection to form.	11:30:13
12	A I wouldn't know.	11:30:13
13	Q You wouldn't know.	11:30:14
14	So --	11:30:16
15	A I haven't -- let's put it this	11:30:17
16	way, I have not seen anything that suggests	11:30:19
17	that their reputations have been enhanced,	11:30:21
18	including the articles that I found relative to	11:30:24
19	this case, they did not suggest that somehow	11:30:28
20	these photographers were -- that their profile,	11:30:30
21	that their reputations had been enhanced by	11:30:36
22	Prince's use of the work.	11:30:39
23	Q But you also haven't seen	11:30:40
24	anything to suggest that their reputations have	11:30:41
25	been impaired, have you?	11:30:43



1 ALLAN COLEMAN

2 A No. 11:30:45

3 Q So you really haven't seen any 11:30:45  
4 evidence either way? 11:30:47

5 A No. 11:30:48

6 MR. BALLON: Why don't we take a 11:30:53  
7 break, its 11:30; maybe a ten minute 11:30:54  
8 break. 11:30:57

9 MS. APPLETON: Before we go off 11:30:59  
10 the record, I would like to point out 11:31:00  
11 that it appears that the updated CV was 11:31:01  
12 sent perhaps to a mailing list for just 11:31:05  
13 the McNatt case, and that nobody on 11:31:08  
14 behalf of Gagosian Gallery, Inc. or 11:31:09  
15 Laurence Gagosian received the updated 11:31:11  
16 CV. 11:31:14

17 We now have a copy, but this is the 11:31:14  
18 first time that we have been able to see 11:31:15  
19 it. 11:31:17

20 MS. PELES: Okay, I apologize for 11:31:19  
21 that. 11:31:21

22 MS. APPLETON: We ask in the 11:31:22  
23 future the mailing list for the Graham 11:31:22  
24 case be used as well for anything like 11:31:24  
25 that. 11:31:26

1 ALLAN COLEMAN

2 MS. PELES: Understood. 11:31:27

3 THE VIDEOGRAPHER: One moment, 11:31:28

4 please. Watch your microphones. 11:31:29

5 Here now marks the end of video 11:31:31

6 file number 1. The time is now 11:31 a.m. 11:31:33

7 We are now off the record. 11:31:36

8 (At this point in the proceedings 11:31:38

9 there was a recess, after which the 11:31:38

10 deposition continued as follows:) 11:31:38

11 THE VIDEOGRAPHER: Here now marks 11:59:21

12 the beginning of video file number 2, 11:59:22

13 the time is 11:59 a.m. We are back on 11:59:24

14 the record. 11:59:27

15 Q Mr. Coleman, are you a member of 11:59:29

16 the National Writers' Union? 11:59:32

17 A I am not currently a member, but 11:59:34

18 I have been, I was a member for a number of 11:59:35

19 years, yes. 11:59:37

20 Q Have you held any executive 11:59:38

21 positions with the National Writers' Union? 11:59:39

22 A Not that I recall, no. 11:59:45

23 Q Are you a member of any other 11:59:46

24 unions or guilds? 11:59:47

25 A I am a past member of the 11:59:48

1 ALLAN COLEMAN

2 American Society of Journalists & Authors, the 11:59:50  
3 Authors' Guild, the International Association 11:59:53  
4 of Critics of Art, and I am a current member of 11:59:57  
5 the Society for Photographic Education. 12:00:02

6 Q I'm sorry, what was the last 12:00:06  
7 one? 12:00:07

8 A The Society for Photographic 12:00:07  
9 Education. 12:00:09

10 Q What is the Society for 12:00:12  
11 Photographic Education? I'm not familiar with 12:00:12  
12 that. 12:00:15

13 A The Society for Photographic 12:00:15  
14 Education was founded roughly 50 years ago, I 12:00:16  
15 think it's a little over 50 years now. 12:00:20

16 And it's basically an 12:00:23  
17 organization of photography teachers and other 12:00:24  
18 people involved in photo education, most of it 12:00:28  
19 post-secondary, meaning college level, art 12:00:31  
20 institute level, et cetera. 12:00:36

21 But there was some high school 12:00:37  
22 teachers and grade school teachers of 12:00:38  
23 photography in the organization, and there are 12:00:40  
24 other people, critics, curators, et cetera, 12:00:42  
25 whose work sort of overlaps with photo 12:00:44

1 ALLAN COLEMAN

2 education.

12:00:47

3 Q Can you tell me what's the  
4 International Association of Art Critics?

12:00:48

12:00:49

5 A It's what it says, it's an  
6 international association of art critics.

12:00:52

12:00:54

7 Q Okay, how long have you been a  
8 member of that organization?

12:01:00

12:01:02

9 A My membership in most of these  
10 organizations has lapsed in recent years,  
11 because I'm not as actively involved in  
12 publishing my work as I used to be.

12:01:04

12:01:06

12:01:08

12:01:11

13 But it's -- it was founded I  
14 believe in Europe, post World War II, and it  
15 has branches in different countries and holds  
16 annual national conferences and I think an  
17 international conference as well every year.

12:01:15

12:01:18

12:01:24

12:01:29

12:01:32

18 Q And you're less involved in  
19 these organizations because earlier you  
20 testified you're semi-retired, is that correct?

12:01:36

12:01:37

12:01:39

21 A Yeah, I'm less professionally  
22 involved in publishing and in the diversity in  
23 publications than I used to be.

12:01:41

12:01:43

12:01:46

24 I'm mostly publishing on my blog  
25 at this point.

12:01:47

12:01:49

1 ALLAN COLEMAN

2 Q I see. And when did you cut 12:01:50  
3 back on your involvement in organizations? 12:01:52

4 A In those organizations, probably 12:01:54  
5 over the -- within the last ten years. 12:01:55

6 Q Within the last ten years, okay. 12:01:59  
7 Do you use Instagram? 12:02:04

8 A No, I don't, but I look at it. 12:02:06  
9 I'm basically a writer, so Instagram is not as 12:02:08  
10 useful to me as it would be to somebody who 12:02:10  
11 makes a lot of pictures. 12:02:13

12 Q Do you use other social media 12:02:14  
13 platforms? 12:02:16

14 A Oh, yes. I am on Twitter, I am 12:02:16  
15 on, there is a new one called Alignable, I have 12:02:18  
16 a LinkedIn account, I had a Facebook account 12:02:23  
17 until very recently. 12:02:26

18 Once Mark Zuckerberg announced 12:02:28  
19 that he considered us fucking idiots for 12:02:30  
20 trusting us with that data, I promptly took my 12:02:34  
21 Facebook page down. 12:02:38

22 So yes, I'm aware of and 12:02:39  
23 involved in social media. 12:02:40

24 Q So, with respect to Facebook, 12:02:42  
25 what exactly was the incident that caused you 12:02:44

1 ALLAN COLEMAN

2 to cancel your Facebook account?

12:02:47

3 A It was recently revealed that at

12:02:49

4 the outset of Facebook, while he was still

12:02:50

5 developing it, Mark Zuckerberg was in

12:02:54

6 correspondence with I guess a friend of his who

12:02:56

7 was also involved in the project, maybe, and

12:02:58

8 who expressed surprise at the fact that people

12:03:01

9 were trusting him with all of this personal

12:03:04

10 data.

12:03:07

11 And he said yeah, "they are

12:03:07

12 fucking idiots," I think that's the quote,

12:03:08

13 something truly derogatory on that level, and I

12:03:11

14 thought okay, that's it for me, so I am out.

12:03:13

15 Q I see, okay.

12:03:17

16 And with respect to Twitter,

12:03:20

17 when did you first set up a Twitter account?

12:03:23

18 A Four or five years ago.

12:03:28

19 Q What's your handle?

12:03:29

20 A ADColeman1.

12:03:31

21 Q And there is an ADColeman

12:03:34

22 someone else has?

12:03:37

23 A No, I don't know why that -- I

12:03:38

24 put my own name in and they said taken or

12:03:41

25 whatever it was.

12:03:44

1 ALLAN COLEMAN

2 I never located another one, 12:03:45

3 but -- so I just added a 1 to it. 12:03:49

4 Q I see. And what do you -- how 12:03:54

5 active are you in terms of tweeting? 12:03:56

6 A Not hugely active. I haven't 12:03:59

7 done anything for a bit, but foremostly I use 12:04:01

8 it to make announcements of when I am giving a 12:04:06

9 lecture or making some kind of public 12:04:09

10 appearance or when a new post appears on my 12:04:13

11 blog, something, things of that nature. 12:04:15

12 Q Okay. 12:04:21

13 A Basically for professional 12:04:23

14 announcements, not for personal announcements. 12:04:24

15 Q Okay, all right. 12:04:29

16 Let's get back to your report, 12:04:30

17 sir, I want to go back to paragraph 7, the 12:04:33

18 summary of your opinions. 12:04:37

19 You opined that the Prince works 12:04:41

20 use a substantial portion of Plaintiffs' works 12:04:43

21 and the Prince works are not transformative of 12:04:47

22 Plaintiffs' works. 12:04:50

23 When you say substantial 12:04:52

24 portion, what do you mean? 12:04:53

25 A I mean the -- the larger amount 12:04:55

1 ALLAN COLEMAN

2 of the -- the total of the original images as I  
3 have seen them.

4 Q In your view is that significant  
5 to the issue of fair use?

6 A Yes.

7 Q Where do you draw the line  
8 between what would be a significant and a not  
9 significant portion -- sorry, substantial?

10 Where would you draw the line  
11 between substantial portion and insubstantial  
12 portion?

13 A Well, again, you would have to  
14 deal with that on a case by case basis. I  
15 think there is no overall line that can be  
16 drawn.

17 Q So, how do you know when that --  
18 when you are in the area of substantial; is it  
19 based on your judgment and experience?

20 A It's based on judgment and  
21 experience. It's also based on the fact that  
22 the major content of both of these images is  
23 included in the versions of them that  
24 Mr. Prince appropriated.

25 Q Did you review any case law on

12:05:01

12:05:06

12:05:10

12:05:12

12:05:15

12:05:17

12:05:18

12:05:25

12:05:29

12:05:30

12:05:33

12:05:35

12:05:36

12:05:38

12:05:42

12:05:43

12:05:46

12:05:48

12:05:50

12:05:52

12:05:54

12:06:00

12:06:03

12:06:08



1	ALLAN COLEMAN	
2	fair use in putting together this opinion?	12:06:11
3	A No.	12:06:14
4	Q Do you typically review fair use	12:06:16
5	opinions when they come out?	12:06:20
6	A When they pertain to	12:06:22
7	photography, often, yes.	12:06:23
8	Q Often.	12:06:25
9	Are you familiar with the Cariou	12:06:26
10	case?	12:06:28
11	A Yes.	12:06:28
12	Q Did you read the Cariou case	12:06:29
13	when it came out?	12:06:30
14	A If you mean did I read the	12:06:32
15	entirety, no? But I read summaries of it in	12:06:34
16	various publications.	12:06:37
17	Q And do you think that that's a	12:06:40
18	good opinion?	12:06:43
19	MS. PELES: Objection to form.	12:06:45
20	A Good is a value judgment.	12:06:48
21	Q Do you think it's a correct	12:06:49
22	opinion?	12:06:50
23	A No.	12:06:51
24	Q In what ways do you think the	12:06:52
25	Cariou opinion is not correct?	12:06:53

1 ALLAN COLEMAN

2 A I think that the majority of the 12:06:55  
3 content of the imagery was appropriated, and I 12:07:01  
4 think that goes against the fair use 12:07:06  
5 requirement that only small portions, 12:07:09  
6 comparatively small portions be used. 12:07:13

7 Q Did you read the District 12:07:15  
8 Court's opinion in this case denying the 12:07:17  
9 Defendant's motion to dismiss? 12:07:20

10 A In the Cariou case? 12:07:23

11 Q No, in this case, in this case 12:07:24  
12 involving Graham and McNatt. 12:07:27

13 A I don't believe that was in the 12:07:29  
14 documents that I was presented with. 12:07:31

15 Q I see, I see. 12:07:33

16 But the Cariou case was -- 12:07:34

17 A No, no, that is years before. 12:07:37

18 Q That's something that you read 12:07:40  
19 years before? 12:07:40

20 A Yes. 12:07:41

21 Q All right, so you didn't read 12:07:45  
22 independently about it. 12:07:46

23 Did you have an opinion about 12:07:48  
24 Mr. Prince or his works at the time you were 12:07:50  
25 contacted by the Cravath law firm to possibly 12:07:52

1 ALLAN COLEMAN

2 write a report in this case?

12:07:56

3 A I don't know Mr. Prince, I have  
4 no opinion about him.

12:07:58

12:08:00

5 Q Did you have an opinion of his  
6 work?

12:08:02

12:08:03

7 A I have seen various of his  
8 works, and have opinions about those works,  
9 depending on -- depending on the works. That's  
10 not an overall opinion.

12:08:05

12:08:07

12:08:13

12:08:18

11 Q But you have written about  
12 his -- you had written about his use of  
13 photography in art, hadn't you?

12:08:19

12:08:21

12:08:23

14 A Only really in passing. I've  
15 never really reviewed an exhibition or a  
16 publication of his work.

12:08:26

12:08:27

12:08:30

17 Q I see.

12:08:32

18 Did you inspect the Prince  
19 paintings at issue in this case in preparing  
20 your report?

12:08:32

12:08:36

12:08:38

21 A No.

12:08:39

22 Q Have you seen them at any time?

12:08:43

23 MS. PELES: Objection to form.

12:08:48

24 A Only in reproduction.

12:08:48

25 Q And by reproduction, do you mean

12:08:50

1 ALLAN COLEMAN

2 photocopied pages? 12:08:53

3 A Right, yeah. 12:08:55

4 Q Do you know what size they are? 12:08:58

5 A Not offhand, no, but I 12:09:00

6 understand that they are large. Bigger than a 12:09:01

7 breadbox. 12:09:05

8 Q Bigger than a breadbox, okay. 12:09:06

9 All right, and -- so with 12:09:13

10 respect to your opinion, the Prince works are 12:09:16

11 not transformative, what is the basis for that 12:09:19

12 opinion? 12:09:21

13 A Well, let me give you an example 12:09:24

14 from my own professional practice so that -- 12:09:26

15 because it's easier for me maybe to explain 12:09:31

16 that way. 12:09:33

17 I work on the Apple platform, so 12:09:35

18 I write on a Mac. 12:09:37

19 In writing on a Mac, I use Word 12:09:41

20 for Mac, which is a Microsoft program, and I 12:09:42

21 generally save my files as rich text format 12:09:47

22 files, because they are most easily readable by 12:09:51

23 all other word processing programs. 12:09:54

24 And in my files, I generally 12:09:56

25 work in the type font that's called Arial, 12:09:58

1 ALLAN COLEMAN

2 which is a sans serif font, because I find that 12:10:01  
3 easy to read, and I have a 12 point on my 12:10:05  
4 screen, 12 point font. 12:10:09

5 So my file, my rich text file is 12:10:13  
6 a Word for Mac rich text file, that is in arial 12:10:16  
7 12 point. 12:10:21

8 When I write an essay and I find 12:10:23  
9 an editor who is interested in, or a publisher, 12:10:25  
10 book publisher who is interested in publishing 12:10:28  
11 that essay, I send them that file. 12:10:30

12 Now, when they get that file, 12:10:34  
13 most often they are not necessarily anyhow, Mac 12:10:36  
14 users, so they will import that file into most 12:10:41  
15 probably Word for Windows which transforms it 12:10:44  
16 in some way. It changes it, certainly. 12:10:48

17 And they may very well not work 12:10:52  
18 in rich text format file. They are, most will 12:10:54  
19 be probably going to make that a Word .doc file 12:10:56  
20 or Word .docx file, which is most common in the 12:10:59  
21 publishing industry. 12:11:02

22 That editor may very well not 12:11:07  
23 appreciate reading in Arial 12 point, they may 12:11:10  
24 change it to a serif font, like Times New 12:11:12  
25 Roman, and they may bump up the type size to 14 12:11:15

1 ALLAN COLEMAN

2 point.

12:11:19

3 So they have already changed my  
4 file in those ways.

12:11:20

12:11:23

5 Then they and I are going to  
6 have a discussion in which we negotiate -- in  
7 which we negotiate editorial changes, and we  
8 will agree on a certain set of editorial  
9 changes.

12:11:26

12:11:27

12:11:33

12:11:38

12:11:41

10 And I will then license to them  
11 publication rights to that essay, whatever  
12 rights we have negotiated for English language  
13 publication rights, whatever.

12:11:41

12:11:44

12:11:47

12:11:51

14 They will then send that file to  
15 their -- the file, the edited version that we  
16 have created, they will send that to their  
17 in-house design or their outsourced design  
18 firm.

12:11:55

12:11:58

12:12:00

12:12:03

12:12:07

19 And that designer will drop that  
20 file into an InDesign template. So it will  
21 cease to be a Word file in either Word RTF for  
22 Mac or Word doc or docx for Windows, and it  
23 will become an InDesign file.

12:12:07

12:12:09

12:12:11

12:12:15

12:12:19

24 And then they will contextualize  
25 it, they will put a headline on it, which may

12:12:21

12:12:22

1 ALLAN COLEMAN

2 or may not be the title I gave the piece. 12:12:25

3 They will put surrounding 12:12:27

4 material, they may add an editor's note, they 12:12:29

5 may add illustrations, they may add other 12:12:33

6 things. 12:12:35

7 There will probably be ads 12:12:36

8 involved, and they will recontextualize it. 12:12:37

9 They will send that, the 12:12:44

10 designer will then send that final to their 12:12:45

11 printer, and their printer will print that out 12:12:48

12 as an actual printed page on paper. 12:12:52

13 That is a radically different 12:12:56

14 form from what I originally created, but as I 12:12:57

15 understand it, that is still my essay. 12:13:02

16 Even though it has been 12:13:06

17 radically transformed by all of these 12:13:08

18 technological changes, that is still my essay, 12:13:09

19 and that content is still exactly my content 12:13:11

20 covered by copyright. 12:13:15

21 Now, so when you as a subscriber 12:13:18

22 to this magazine, pick this up, you are reading 12:13:21

23 my essay, as I understand it. You are not 12:13:24

24 reading their essay, you are reading my essay. 12:13:27

25 Now, let's go -- this may go a 12:13:30

1 ALLAN COLEMAN

2 step further, because this magazine quite 12:13:32  
3 probably nowadays will have an on-line aspect, 12:13:35  
4 so they will post it on-line. 12:13:40

5 Well, to post it on-line, it has 12:13:42  
6 to be transformed yet again into hypertext 12:13:44  
7 markup language, HTML, and it will be 12:13:46  
8 transformed that way. 12:13:49

9 So you may read it that way or 12:13:50  
10 someone else may read it that way, further 12:13:51  
11 transformed. 12:13:53

12 But that is still, as I 12:13:55  
13 understand it, my essay. 12:13:56

14 Now, beyond that, you may 12:13:59  
15 decide, because you are a subscriber, you have 12:14:02  
16 access to the on-line version as well, and you 12:14:04  
17 really like a passage in my essay and you 12:14:06  
18 decide you want to put that passage on your 12:14:11  
19 wall. 12:14:13

20 So you copy and paste that text, 12:14:14  
21 and you put it into a program that enables you 12:14:16  
22 to change the font. 12:14:22

23 You happen to prefer, because I 12:14:24  
24 can see from your age and style of dress, what 12:14:26  
25 that would be you happen to prefer a 1960 12:14:29



1 ALLAN COLEMAN

2 psychedelic type font. 12:14:31

3 And you put my text into a 1960 12:14:33

4 psychedelic type font, and you add some 1960 12:14:37

5 style flower power images to it, and you blow 12:14:40

6 it up to a certain size, and you send it out to 12:14:45

7 a company. 12:14:49

8 And there are many such 12:14:49

9 companies that will take an image, you turn it 12:14:50

10 into a JPEG and you blow it up and you send to 12:14:54

11 it to a company that will turn that into a work 12:14:56

12 on canvas for your wall, and it comes back in 12:14:58

13 two weeks and you put it up on your wall. 12:15:02

14 And you have radically 12:15:06

15 transformed an excerpt of my text, and that is 12:15:06

16 still my text, as I understand it. 12:15:11

17 You haven't gained copyright to 12:15:15

18 it, you haven't gained authority to market it 12:15:16

19 in any way; that's still my text. 12:15:19

20 So that's how I understand this 12:15:23

21 as a maker of intellectual property. 12:15:25

22 Q But text is different than a 12:15:28

23 painting, isn't it? 12:15:29

24 A No, it's -- it can be, but it's 12:15:30

25 also a graphic element, and many designers 12:15:32

1 ALLAN COLEMAN

2 simply treat it as a graphic element, so it's 12:15:36  
3 not inherently different in that sense. 12:15:38

4 Q But a painting generally is 12:15:43  
5 different than the process of editing text, 12:15:45  
6 which doesn't involve the addition of new 12:15:49  
7 original creative material, correct? 12:15:51

8 MS. PELES: Objection to form. 12:15:53

9 A Not necessarily. There are 12:15:56  
10 people who paint texts. 12:15:57

11 Q How long have you been blogging 12:16:01  
12 about copyright and photography? 12:16:02

13 A I actually began publishing on 12:16:07  
14 the internet in 1995, publishing a website that 12:16:09  
15 eventually became called the Nearby Cafe, which 12:16:14  
16 included, among other content, a newsletter of 12:16:18  
17 mine. 12:16:23

18 This was pre-blogware, a 12:16:23  
19 newsletter of mine called C, the letter C, the 12:16:25  
20 speed of light. 12:16:28

21 And that eventually turned into 12:16:30  
22 a blog which I've been publishing since, 12:16:32  
23 roughly nine years, called Photo Critic 12:16:36  
24 International. 12:16:38

25 So that began in June, if I 12:16:40

1 ALLAN COLEMAN

2 recall, 2009.

12:16:42

3 Q So you've been writing a blog  
4 for about nine years, and you've been writing  
5 about photography and copyright issues for  
6 roughly 23 years?

12:16:45

12:16:46

12:16:48

12:16:51

7 A No, roughly 50 years.

12:16:53

8 Q 50 years, yes?

12:16:55

9 But writing on-line for 25  
10 years?

12:16:56

12:16:59

11 A Yes.

12:16:59

12 Q And writing in general in  
13 copyright issues for roughly 50 years?

12:17:00

12:17:02

14 A Roughly.

12:17:05

15 Q Can you think of any instance in  
16 that time when a photograph has been reused in  
17 a painting where you feel that that reuse was  
18 properly a fair use?

12:17:05

12:17:07

12:17:12

12:17:17

19 A You need to define photograph.  
20 Are you speaking of the image or are you  
21 speaking of the object?

12:17:23

12:17:24

12:17:27

22 Q Explain the difference.

12:17:29

23 A Well, a photograph, as we used  
24 to think of it, meaning a physical print,  
25 right, exists as both an image and an object.

12:17:31

12:17:40

12:17:45

1 ALLAN COLEMAN

2 There is a physical thing, 12:17:50  
3 right, which is the print, and there is the 12:17:51  
4 image, which is not -- it's embedded in that 12:17:56  
5 physical thing, but it can be embedded in other 12:18:01  
6 things, including nonmaterial things, for 12:18:04  
7 example a JPEG. 12:18:10

8 A JPEG is not in the -- do I 12:18:12  
9 need to explain JPEG? 12:18:16

10 Q No, I understand what a JPEG is. 12:18:18

11 A A JPEG is not, in a certain 12:18:21  
12 sense, a physical thing. It exists as a set 12:18:23  
13 of, you know, 1s and 0s on a drive somewhere. 12:18:26

14 But it's not a physical thing in 12:18:33  
15 the way that a gelatin silver print is a print. 12:18:34

16 So, there are paintings that 12:18:38  
17 include physical prints of photographs, and 12:18:43  
18 there are paintings that include or are derived 12:18:47  
19 from photographic images, and they are not one 12:18:52  
20 and the same thing, although they may be one 12:18:57  
21 and the same thing. 12:18:59

22 Q I see. Well, let's start more 12:19:00  
23 broadly. From either category, can you 12:19:02  
24 identify an instances in your 50 year career 12:19:04  
25 when a photograph has been reused in a painting 12:19:09

1 ALLAN COLEMAN

2 that you have considered to be properly a fair  
3 use?

12:19:12

12:19:15

4 A I am sure there are, yes.

12:19:18

5 Q Can you identify any?

12:19:19

6 A Reused specifically in a  
7 painting?

12:19:30

12:19:32

8 Q Yes.

12:19:32

9 A Yes, certainly.

12:19:36

10 Q Okay.

12:19:37

11 A There is a series by, of

12:19:37

12 paintings by Bob Dillon, the musician, that

12:19:41

13 have begun to be exhibited and published in

12:19:45

14 reproduction form in the last, I would say four

12:19:49

15 or five years.

12:19:52

16 And many of those paintings have  
17 been done from photographs.

12:19:57

12:19:58

18 Q And what is it about those  
19 paintings that make the use of photographs a  
20 fair use, in your view?

12:20:03

12:20:04

12:20:07

21 A He licensed the usage of any  
22 copyrighted photographs.

12:20:09

12:20:11

23 Q I see. So the fact that he got  
24 a license then makes it permissible, in your  
25 view?

12:20:12

12:20:14

12:20:18

1 ALLAN COLEMAN

2 A Yes. 12:20:18

3 Q So -- 12:20:19

4 A I understand that that's the 12:20:20  
5 legal fact. 12:20:21

6 Q Right. So let me ask, I want to 12:20:22  
7 make sure I'm clear, in your 50 year career 12:20:24  
8 writing about photographs and copyright, are 12:20:28  
9 you aware of any instance when an artist used a 12:20:30  
10 photograph in a painting without paying a 12:20:37  
11 licensee where you believe that use properly 12:20:40  
12 was a fair use? 12:20:43

13 A A copyrighted photograph? 12:20:45

14 Q Yes. 12:20:47

15 A Not if the entire photograph was 12:20:51  
16 used. 12:20:53

17 Q Okay. And is it your view that 12:20:54  
18 if an entire copyrighted photograph is used in 12:20:55  
19 a painting, it will never be a fair use? 12:20:58

20 A Well, again, this is -- this 12:21:02  
21 depends, it depends on the quality or the style 12:21:04  
22 of the painting, for example. 12:21:08

23 If it is radically transformed 12:21:10  
24 by the painting and is simply the basis for the 12:21:11  
25 painting, that would be different than if it's 12:21:13

1 ALLAN COLEMAN

2 pretty much replicated line for line, tone for 12:21:18  
3 tone. 12:21:21

4 Q When you say radically 12:21:21  
5 transformed by the painting, what do you mean? 12:21:22

6 Do you mean if the photographic 12:21:25  
7 image itself is radically transformed, or if 12:21:26  
8 the use surrounding the photograph is -- 12:21:29  
9 involves radical transformation? 12:21:33

10 A I would mean that the photograph 12:21:37  
11 itself would be radically transformed 12:21:39  
12 stylistically in some way. 12:21:42

13 If, let's say a 12:21:44  
14 photojournalistic image had been rendered by 12:21:49  
15 Picasso in one of his many styles, I would 12:21:52  
16 consider that a fair use of the image. 12:21:56

17 Q But your view is if a -- if a 12:22:01  
18 copyrighted photograph is used without radical 12:22:04  
19 transformation of the photograph itself, then 12:22:10  
20 by definition, regardless of how it's used in a 12:22:12  
21 painting, it wouldn't be a fair use? 12:22:15

22 A It would certainly be up for 12:22:18  
23 question. 12:22:20

24 Q Well, is it your opinion that it 12:22:26  
25 would be possible to use a photo without 12:22:30

1 ALLAN COLEMAN

2 modifying the photo in a painting where, 12:22:34  
3 because of the other artistic things about the 12:22:37  
4 painting, besides the photograph, that the use 12:22:41  
5 would be a fair use, in your view? 12:22:43

6 A No. 12:22:48

7 And again, we are -- we are 12:22:54  
8 speaking of the photographic image and not the 12:22:57  
9 photographic object. 12:23:00

10 I need this to be very clear. 12:23:01

11 Q Okay. And again, to be clear, 12:23:02  
12 the photographic image, you mean the 12:23:04  
13 copyrighted photo as opposed to the object 12:23:06  
14 represented in the photo? 12:23:09

15 A Right. Meaning that if a 12:23:10  
16 painter embeds a physical photo that he has 12:23:11  
17 legal possession of into a painting, physically 12:23:14  
18 embeds it in the surface of the painting in 12:23:18  
19 some way, I don't consider that to be a 12:23:20  
20 violation of fair use. 12:23:23

21 Q Okay. So in this case, if 12:23:27  
22 Mr. Prince had simply taken a copy of the 12:23:29  
23 Graham photo or the McNatt photo and pasted 12:23:35  
24 that in the center of each painting, rather 12:23:40  
25 than reprinting it, in your view that would be 12:23:43



1	ALLAN COLEMAN	
2	a fair use?	12:23:46
3	A Yes.	12:23:47
4	Q Let me show you what's been	12:23:51
5	marked as Exhibit 213.	12:23:52
6	(The above described document was	12:23:55
7	marked Exhibit 213 for identification, as	12:23:55
8	of this date.)	12:23:55
9	Q I will represent to you that	12:23:55
10	this is a settlement in the In re: Literary	12:23:56
11	Works in Electronic Databases Copyright	12:23:59
12	Litigation case.	12:24:01
13	That is the series of	12:24:03
14	consolidated and coordinated class action	12:24:05
15	suits.	12:24:07
16	A Can we meet again in a week so I	12:24:07
17	can read this?	12:24:09
18	Sorry.	12:24:12
19	Q Sorry, following on the original	12:24:13
20	suit brought by your friend, Jonathan Tasini.	12:24:14
21	Do you recognize this document	12:24:19
22	as the settlement of what we referred to	12:24:21
23	earlier as the Tasini litigation in which you	12:24:24
24	are a named Plaintiff?	12:24:27
25	A No.	12:24:28

1 ALLAN COLEMAN

2 Q I would like to ask you to look 12:24:30  
3 at page 16 of this document, which describes a 12:24:32  
4 payout and settlement of the In re: Literary 12:24:35  
5 Works in Electronic Databases Copyright 12:24:38  
6 Litigation case that lists category A subject 12:24:42  
7 works, category B subject works and category C 12:24:44  
8 subject works, and ask you if that looks 12:24:47  
9 generally familiar to you as the payout 12:24:53  
10 schedule in settlement of that litigation? 12:24:58

11 A I don't actually recall if I 12:25:00  
12 ever saw the schedule. 12:25:02

13 Q I see. 12:25:05  
14 So your knowledge about the 12:25:07  
15 case, would that have been based on what your 12:25:08  
16 lawyers told you, or that it might have been 12:25:09  
17 printed by the National Writers' Union in some 12:25:12  
18 publication? 12:25:14

19 A It's been -- no, I never 12:25:14  
20 consulted with lawyers on this, so it would be 12:25:16  
21 based on what I remember from back when this 12:25:21  
22 was filed umpteen years ago. 12:25:25

23 Q Okay. 12:25:29

24 So you are familiar that you are 12:25:31  
25 a named Plaintiff in a case that settled, but 12:25:32

1 ALLAN COLEMAN

2 you don't -- you can't recognize if this 12:25:35

3 particular payout is the payout schedule? 12:25:38

4 A No; I can't say that I do. 12:25:42

5 Q I will represent to you that it 12:25:45

6 is, but I appreciate you don't -- it doesn't 12:25:46

7 ring a bell for you. 12:25:51

8 A No. 12:25:52

9 Q I would like to ask you to look 12:25:59

10 at paragraph 10 of your declaration. 12:26:00

11 Actually, maybe, if you wouldn't 12:26:07

12 mind, if you could read that for me for the 12:26:08

13 benefit of the court reporter and not too 12:26:12

14 quickly, because he's an excellent typist, 12:26:15

15 but -- 12:26:17

16 A "Because postmodern theory 12:26:20

17 underpins the artistic practice of Richard 12:26:26

18 Prince, as manifested in this case, while also 12:26:29

19 buttressing Prince's own articulated defense 12:26:33

20 and the supporting arguments of his defenders, 12:26:36

21 and because most of the arguments in the 12:26:41

22 Defendants' expert reports I have reviewed are 12:26:42

23 premised on elements of what in the discourse 12:26:46

24 on art is generally referred to as 'postmodern 12:26:50

25 theory' I find it impossible to discuss the 12:26:54

1 ALLAN COLEMAN

2 particulars of this case without first setting 12:26:59  
3 forth and analyzing this theory itself (as I 12:27:02  
4 understand it), as well as the ways in which 12:27:06  
5 Prince and his advocates and supporters use the 12:27:08  
6 theory to justify his actions." 12:27:11

7 Q Now, sir, what is your 12:27:15  
8 background and experience that makes you an 12:27:17  
9 expert on postmodern theory? 12:27:22

10 A Well, postmodern theory is one 12:27:24  
11 of a number of theories in action in the field 12:27:27  
12 of art criticism, literary criticism, photo 12:27:36  
13 criticism, of course, and other areas. 12:27:40

14 I have taught this theory in 12:27:45  
15 courses at New York University, I have read a 12:27:46  
16 great deal, of course, since it began to emerge 12:27:50  
17 in the 1970s, because it impinged on my and 12:27:53  
18 entered my own field. 12:27:56

19 I have been on panels about it, 12:27:59  
20 I have published articles in relation to it, I 12:28:02  
21 have written about various postmodern works of 12:28:05  
22 art by various postmodern artists. 12:28:08

23 I have read a great deal of it, 12:28:12  
24 and I have discussed it with my colleagues in 12:28:14  
25 the field who do or don't or have various 12:28:16

1 ALLAN COLEMAN

2 relationships to postmodern theory. 12:28:20

3 Q What is the basis for your 12:28:24  
4 assertion that Prince and his advocates and 12:28:25  
5 supporters use postmodern theory to justify 12:28:29  
6 their actions? 12:28:32

7 MS. PELES: Objection to form. 12:28:34

8 MR. BALLON: Sorry, I couldn't 12:28:36  
9 hear. You what's the objection? 12:28:36

10 MS. PELES: I objected to form. 12:28:38  
11 I think he uses defenders, and you said 12:28:38  
12 advocates and supporters. 12:28:40

13 MR. BALLON: I am actually 12:28:42  
14 reading it word for word, verbatim, from 12:28:43  
15 his report. 12:28:45

16 So I don't -- I just ask you to 12:28:46  
17 refrain from objections, if you don't 12:28:48  
18 mind, when it comes literally from his 12:28:50  
19 report. 12:28:53

20 To avoid the confusion here, this 12:28:54  
21 is just discussion between lawyers. 12:28:56

22 I will ask the court reporter to 12:28:57  
23 kindly please read back the question. 12:28:58

24 (The question requested was read 12:29:00  
25 back by the reporter.) 12:29:00

1 ALLAN COLEMAN

2 A Because they use the language of 12:29:21  
3 postmodern discourse, the theory of post -- the 12:29:24  
4 language of postmodern discourse and theory 12:29:28  
5 frequently in their defense of Prince, and 12:29:31  
6 Prince himself does that. 12:29:35

7 Q And who are these people, these 12:29:37  
8 advocates and supporters, who are you referring 12:29:38  
9 to? 12:29:40

10 A Lisa Philips, Allan Schwartzman, 12:29:42  
11 Brian Wallace, Prince himself; I can't remember 12:29:45  
12 the whole list. 12:29:50

13 But the documents that I was 12:29:52  
14 provided as Defendants' reports on Defendants' 12:29:54  
15 case for Prince. 12:30:01

16 Q What did these experts actually 12:30:02  
17 say about postmodern theory? 12:30:04

18 A Well, they basically justify 12:30:05  
19 Prince's use of the Plaintiffs' work on the 12:30:08  
20 grounds that appropriation, which is a 12:30:14  
21 postmodern theory term, is basically a 12:30:17  
22 justification for Prince's actions in this case 12:30:23  
23 in regard to Plaintiffs' works. 12:30:28

24 Q Now, did you actually read the 12:30:32  
25 reports of the experts that you are referring 12:30:34

1	ALLAN COLEMAN	
2	to?	12:30:36
3	A Yes, I did.	12:30:36
4	Q And you are sure they refer to	12:30:39
5	postmodern theory?	12:30:40
6	A I'm sure they use the language	12:30:43
7	of postmodern theory, which suggests that yes,	12:30:44
8	they are referring to postmodern theory.	12:30:48
9	Q The language, and by the	12:30:50
10	language of postmodern theory, what do you	12:30:51
11	mean, exactly?	12:30:53
12	A Issues of concerns with or use	12:30:56
13	of terms like appropriation, for example, which	12:30:59
14	is a very specific postmodern theory term.	12:31:02
15	Q I see. Anything else, or just	12:31:08
16	appropriation?	12:31:11
17	A The basic assumptions stated and	12:31:12
18	implicit in reports that it is permissible to	12:31:17
19	take the work of other artists and use it for	12:31:22
20	your own purposes.	12:31:24
21	Q Okay. And Prince himself hasn't	12:31:27
22	said that, has he?	12:31:30
23	MS. PELES: Objection to form.	12:31:33
24	A I don't know.	12:31:34
25	Q But you say "Prince and his	12:31:36

1 ALLAN COLEMAN

2 advocates and supporters."

12:31:37

3 So that's sort of one person and  
4 two different groups, advocates, supporters,  
5 Prince.

12:31:39

12:31:42

12:31:45

6 Is there anything specifically  
7 that Mr. Prince has said that leads you to  
8 believe that his artistic practice is  
9 underpinned by postmodern theory?

12:31:45

12:31:48

12:31:51

12:31:54

10 A He has aligned himself regularly  
11 with postmodern artists in his exhibition  
12 practice, in various interviews, in the  
13 galleries in which he shows, and the  
14 exhibitions, group exhibitions in which he  
15 shows, and the people who he has selected to  
16 provide introductions to his exhibition  
17 catalogues, et cetera.

12:32:00

12:32:01

12:32:05

12:32:12

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12:32:24

18 All of them are, in fact, very  
19 committed to postmodern theory.

12:32:26

12:32:28

20 Q So this is your interpretation,  
21 it's not something specific that Mr. Prince has  
22 said that you can point to?

12:32:30

12:32:32

12:32:35

23 A It may well be. I can't -- I  
24 can't put -- I can't quote something  
25 specifically at this point. I would have to

12:32:36

12:32:38

12:32:40



1 ALLAN COLEMAN

2 look through his writings.

12:32:42

3 Q As you sit here today, there is  
4 nothing specifically you can recall Mr. Prince  
5 saying about postmodern theory underpinning his  
6 art?

12:32:43

12:32:44

12:32:46

12:32:49

7 A No.

12:32:51

8 Q And then with respect to the  
9 experts in this case, if I told you that  
10 actually none of the expert reports refer to  
11 postmodern theory except the Wallace report,  
12 where he refers to "so-called postmodern  
13 theory," would that change your view about  
14 whether the experts in this case use postmodern  
15 theory to justify Mr. Prince's actions?

12:32:53

12:32:54

12:32:57

12:32:59

12:33:03

12:33:06

12:33:09

12:33:16

16 A No.

12:33:19

17 Q How does postmodern theory --  
18 how is postmodern theory relevant to the issue  
19 of whether Mr. Prince's uses in this case are a  
20 fair use, in your view?

12:33:21

12:33:23

12:33:27

12:33:29

21 A Because postmodern theory  
22 rationalizes the -- and this is a postmodern  
23 term, appropriation, of work by other artists  
24 and the incorporation of that work of those  
25 works into one's own output, as justified on

12:33:32

12:33:36

12:33:41

12:33:46

12:33:49

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2 the grounds that there really is no such thing 12:33:55  
3 as originality in any case, that we are all 12:33:58  
4 basically composites of our culture. 12:34:02

5 And that all artworks, 12:34:06  
6 therefore, are composites of our culture, and 12:34:07  
7 that, on that basis, since there is no 12:34:12  
8 originality, there is no possible claim for 12:34:13  
9 originality on the part of the makers of the 12:34:17  
10 incorporated works, of the appropriated works 12:34:20  
11 and there is no, therefore, legal basis for 12:34:23  
12 those works and the fact, implicitly, that 12:34:26  
13 there is no basis for copyright. 12:34:30

14 Q So you believe that if an artist 12:34:32  
15 is a postmodern artist, that by definition, 12:34:35  
16 that artist doesn't believe in copyright 12:34:37  
17 protection? 12:34:41

18 A Not -- not automatically, but 12:34:44  
19 quite probably. 12:34:46

20 Q Could you look at what you wrote 12:34:47  
21 in paragraph 15 for me, please, and read that 12:34:48  
22 for me? 12:34:51

23 MS. PELES: Do you want him to 12:34:56  
24 read it out loud? 12:34:56

25 Q Yes, please, out loud. 12:34:58

1 ALLAN COLEMAN

2 A "With its fundamental 12:35:00  
3 proposition that originality is a myth, 12:35:02  
4 postmodern theory is per se inconsistent with 12:35:05  
5 the concept of ownership or copyright. 12:35:07

6 "This theory would effectively 12:35:10  
7 preempt any claim to ownership of and control 12:35:13  
8 over rights (even for limited periods) by any 12:35:16  
9 creator anywhere. 12:35:22

10 "If its advocates prevail, 12:35:23  
11 copyright as a legal, ethical and social 12:35:26  
12 construct will evaporate." 12:35:29

13 Q So you view postmodern art as a 12:35:33  
14 threat to copyright protection as a copyright 12:35:36  
15 owner, correct? 12:35:39

16 A I view postmodern theory and its 12:35:39  
17 approval by the legal system as a threat. 12:35:44

18 Q And to what extent do you 12:35:47  
19 believe the legal system has approved 12:35:49  
20 postmodern theory? 12:35:51

21 A I believe to a considerable 12:35:53  
22 extent. 12:35:55

23 Q Could you give me examples? 12:35:56

24 A Yeah, the Prince versus Cariou 12:35:58  
25 case, as one example. Yeah. 12:36:00

1 ALLAN COLEMAN

2 Q Okay. So that's an example 12:36:05  
3 where the court agreed with postmodern theory 12:36:07  
4 that you believe ultimately is a threat to 12:36:11  
5 copyright as a legal, ethical and social 12:36:14  
6 constraint? 12:36:16

7 A Right. 12:36:17

8 Q Other cases that you can point 12:36:19  
9 to? 12:36:21

10 A Not offhand, no; but there are 12:36:22  
11 others. 12:36:25

12 Q Are you familiar with the Google 12:36:27  
13 Books case? 12:36:27

14 A Yes. 12:36:30

15 Q Do you believe that that's also 12:36:32  
16 a threat to copyright as a legal, ethical and 12:36:33  
17 social constraint? 12:36:36

18 A I do. 12:36:37

19 Q Why is that? 12:36:39

20 A Because it removes from the 12:36:40  
21 copyright holders the right to authorize 12:36:42  
22 publication of their works, in the case of 12:36:46  
23 those books that were under copyright at the 12:36:52  
24 time. 12:36:54

25 Q Can you think of any other 12:36:55

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2 famous copyright cases that similarly undermine 12:36:56  
3 copyright as a legal, ethical and social 12:37:04  
4 constraint? 12:37:06

5 A Not offhand, no. 12:37:08

6 Q Now, you note in paragraph 16, 12:37:17  
7 the first sentence, you say, "It's important to 12:37:19  
8 point out that postmodern theory has not 12:37:22  
9 achieved the universal acceptance in the U.S. 12:37:24  
10 that would signify at least widespread cultural 12:37:26  
11 acceptance." 12:37:30

12 Why is that important? 12:37:32

13 A Well, because I believe that 12:37:34  
14 cultural usage suggests a cultural attitude 12:37:37  
15 towards certain kinds of activities, that is 12:37:44  
16 certainly not binding on any court, but that 12:37:50  
17 may have an influence on the court as an 12:37:53  
18 indication of contemporary cultural practice. 12:37:56

19 Q Now, how important is that to 12:38:02  
20 your opinion in this case? 12:38:04

21 A The fact that it hasn't become 12:38:07  
22 widespread? Not particularly important. 12:38:08

23 Q So why is it included in your 12:38:11  
24 report? Because you say, "it's important to 12:38:12  
25 point out." 12:38:14

1 ALLAN COLEMAN

2 Why is it important to point out 12:38:15  
3 if it's not important to your opinion? 12:38:16

4 A Well, because I wanted to make 12:38:18  
5 the point that there are alternatives to 12:38:23  
6 appropriation that in fact are already in 12:38:27  
7 practice and culturally widely culturally 12:38:32  
8 accepted and seem to be unproblematic in 12:38:36  
9 relation to the use of copyrighted materials. 12:38:40

10 And I wanted to preface that by 12:38:47  
11 suggesting that there are at least alternatives 12:38:49  
12 available that seem to have, enjoy widespread 12:38:53  
13 public acceptance, but -- and that do enable 12:38:59  
14 people to incorporate work by others into their 12:39:02  
15 own works. 12:39:07

16 Q But that's in the music 12:39:08  
17 industry, isn't it, not the photography or 12:39:09  
18 painting world? 12:39:11

19 A It's in the intellectual 12:39:13  
20 property industry, as I understand it, sir. 12:39:14

21 Q But in the music industry? 12:39:16

22 A In the music branch of the 12:39:17  
23 intellectual property industry, yes. 12:39:18

24 Q But not in the photography 12:39:20  
25 world? 12:39:21

1 ALLAN COLEMAN

2 A No. 12:39:21

3 Q Or in the world of painting? 12:39:22

4 A No, alas. 12:39:24

5 Q And you are also aware, are you 12:39:26

6 not, that many hip-hop artists sample other 12:39:27

7 music without paying a license fee asserting 12:39:31

8 fair use defense, are you not? 12:39:33

9 A I am, and I am also aware of 12:39:35

10 cases where that has been denied, as well as 12:39:37

11 cases where that's been accepted. 12:39:41

12 Q So you are aware that even 12:39:43

13 though there is the possibility to get 12:39:44

14 licenses, that actually even in the music area, 12:39:47

15 hip-hop artists are sampling copyrighted music 12:39:50

16 works without paying a license and asserting 12:39:54

17 fair use, correct? 12:39:56

18 A Right, but those are just their 12:39:58

19 assertions. 12:39:59

20 Q Now getting back to your 12:40:01

21 assertion from 15 that if advocates of 12:40:02

22 postmodern theory prevail, copyright as a 12:40:05

23 legal, ethical and societal constraint will 12:40:08

24 evaporate, do you view this case as an 12:40:10

25 opportunity to correct some of the past errors 12:40:13

1 ALLAN COLEMAN

2 that you have identified in fair use law? 12:40:15

3 A I think that -- as I understand 12:40:21

4 it, case law, which is what this would be, is 12:40:28

5 not determinative or binding. 12:40:37

6 Therefore this case will not 12:40:42

7 change the fair use law in any way. It will be 12:40:43

8 one of numerous precedents on various sides of 12:40:48

9 cases brought under the fair use law. 12:40:55

10 So I don't think that this will 12:40:59

11 serve as a corrective to anything except the 12:41:01

12 Plaintiffs' situation in this case. 12:41:06

13 Q But based on your views here of 12:41:10

14 how postmodern theory could undermine copyright 12:41:13

15 as a legal, ethical or societal constraint, you 12:41:18

16 would consider it bad policy, would you not, if 12:41:21

17 the court were to find that Mr. Prince's 12:41:23

18 paintings in this case were a fair use? 12:41:25

19 A Yes, I would. 12:41:29

20 Q Now -- 12:41:33

21 A Well, excuse me, I would have to 12:41:34

22 correct that. 12:41:35

23 I would consider it bad 12:41:36

24 precedent. I don't know what you mean by 12:41:37

25 policy. I don't know how policy -- how a court 12:41:39



1 ALLAN COLEMAN

2 sets policy. 12:41:43

3 Q Okay, I'm sorry, maybe policy 12:41:45  
4 isn't the right word. You would consider it a 12:41:48  
5 bad thing? 12:41:49

6 A I would consider it a bad 12:41:50  
7 precedent. I understand it would be a legal, 12:41:52  
8 my understanding is this would be a legal 12:41:54  
9 precedent that could be referred to in 12:41:56  
10 subsequent cases. 12:41:59

11 I would consider it a bad 12:42:00  
12 precedent using the term that way. 12:42:01

13 Q And you believe that would be 12:42:03  
14 harmful because it could imperil copyright as a 12:42:04  
15 legal, ethical or social constraint, correct? 12:42:08

16 A Yes. 12:42:11

17 Q Let me ask you to look at -- 12:42:23  
18 okay, could you look at paragraph 18, please. 12:42:40

19 In the first sentence you say, 12:42:43  
20 "While postmodern theory claims the status of 12:42:45  
21 theory, most of its uses are not subject in any 12:42:47  
22 way to either proof or disproof in the 12:42:51  
23 scientific or legal sense." 12:42:53

24 Do you see that? 12:42:54

25 A Yes. 12:42:55

1 ALLAN COLEMAN

2 Q Do you believe that to be a 12:42:56  
3 correct statement? 12:42:57

4 A Yes, I do. 12:42:58

5 Q Are your opinions in this case 12:42:59  
6 subject to either proof or disproof in the 12:43:01  
7 scientific or legal sense? 12:43:04

8 A My opinions are simply opinions. 12:43:08

9 Q So, like postmodern theory, 12:43:09  
10 isn't it fair to say that your opinions are not 12:43:11  
11 subject in any way to either proof or disproof 12:43:13  
12 in the scientific and/or legal sense? 12:43:16

13 A My opinions are theories. 12:43:22  
14 That's a very loose, that would be a very loose 12:43:25  
15 use of the word theory as it's understood in 12:43:29  
16 science. 12:43:32

17 But my ideas are certainly 12:43:33  
18 subject to proof an disproof. 12:43:35

19 Q In what way? How would -- how 12:43:37  
20 would someone go about proving or disproving 12:43:41  
21 the opinions that you express in your report 12:43:44  
22 here if they wanted to test your theories? 12:43:45

23 A They could show, for example, 12:43:51  
24 that postmodern theory does not, in fact, deny 12:43:53  
25 the concept of originality and authorship. 12:43:59

1 ALLAN COLEMAN

2 Q I'm sorry, I don't mean your 12:44:03  
3 views on postmodern theory, I mean your 12:44:05  
4 opinions in this case which you summarized 12:44:08  
5 earlier in the report in paragraph 7. 12:44:11

6 Your opinions that Plaintiffs' 12:44:18  
7 works are creative, and expressive, that the 12:44:19  
8 Prince works use a substantial portion of 12:44:21  
9 Plaintiffs' works and the Prince works are not 12:44:23  
10 transformative, and that the Prince works are 12:44:25  
11 likely to have a substantial negative impact 12:44:27  
12 upon the market for or value of Plaintiffs' 12:44:30  
13 works. That's what I'm talking about. 12:44:33

14 Isn't it fair to say that your 12:44:36  
15 opinions on those issues, like your 12:44:38  
16 characterization of postmodern theory in 18, 12:44:43  
17 are not subject in any way to either proof or 12:44:46  
18 disproof in the scientific and/or legal sense? 12:44:48

19 A No. 12:44:51

20 Q In what way could someone go 12:44:53  
21 about proving or disproving the opinions that 12:44:55  
22 you summarize in paragraph 7 and substantiate 12:44:59  
23 throughout this report in a scientific and/or 12:45:04  
24 legal sense? 12:45:07

25 A Well, for example, you could 12:45:08

1 ALLAN COLEMAN

2 measure the surface area of the image by -- the 12:45:09  
3 images by Mr. McNatt and Mr. Graham in their 12:45:18  
4 original form, and you could measure the 12:45:24  
5 surface area of the same images as appropriated 12:45:26  
6 by Mr. Prince. 12:45:33

7 You could determine what 12:45:37  
8 proportion of the original image was used in 12:45:38  
9 those appropriations by Mr. Prince. 12:45:44

10 And you could prove that I am 12:45:47  
11 either correct in saying that the amount used 12:45:50  
12 was substantial, or that the amount used was 12:45:51  
13 minimal. 12:45:56

14 That's scientific measurement, 12:45:59  
15 sir. That's very easy to prove or disprove. 12:46:02  
16 You could do it right now if you chose to. 12:46:05

17 Q Now, with respect to -- I'm 12:46:17  
18 trying to remember the terminology you use, you 12:46:20  
19 said if a photograph -- and these weren't your 12:46:22  
20 exact words, you said if a photograph was 12:46:25  
21 significantly modified or changed, then it 12:46:27  
22 could qualify as a fair use. 12:46:31

23 And again, I don't want to put 12:46:34  
24 words in your mouth, because I don't think 12:46:35  
25 those were the exact words. 12:46:37

1 ALLAN COLEMAN

2 Do you recall what you said and 12:46:38  
3 what your exact words were? 12:46:39

4 A I don't. 12:46:41

5 Q Is that a fair characterization, 12:46:42  
6 though, that if a photograph is significantly 12:46:44  
7 changed, then it could qualify as a fair use? 12:46:48

8 A I am not sure. I would have to 12:46:54  
9 have the quote read back to me. 12:46:55

10 Q Let me go back, let me go back 12:46:57  
11 and look earlier in your report and I will get 12:46:59  
12 the exact language. 12:47:01

13 Okay, well, I apologize, I can't 12:47:25  
14 find it. I'll find it during the break. 12:47:27

15 But let me ask you a different 12:47:31  
16 question. 12:47:33

17 You had indicated that you 12:47:36  
18 believe that Mr. Prince, as he has used the 12:47:38  
19 photographs in connection with his paintings in 12:47:43  
20 this case, that he used them in a way that was 12:47:45  
21 not fair use, and it's your opinion that the 12:47:51  
22 photographic elements are similar, correct? 12:47:55

23 A That the photographic elements? 12:47:59

24 Q The -- the image of the Graham 12:48:01  
25 photo, the image of the McNatt photo as used in 12:48:05

1 ALLAN COLEMAN

2 the Prince paintings are similar to the 12:48:08  
3 originals, in your view? 12:48:12

4 A Yes. 12:48:13

5 Q Would you say they are identical 12:48:14  
6 or would you say they are similar? 12:48:15

7 A I would say they are highly 12:48:17  
8 similar. 12:48:20

9 Q Highly similar. 12:48:20  
10 In what ways are they different, 12:48:24  
11 in your view? 12:48:26

12 A Well, again, we would have to 12:48:30  
13 talk about -- we would have to decide whether 12:48:32  
14 we are talking about the images or the objects. 12:48:34

15 I haven't seen the objects in 12:48:39  
16 either case, in either instance. I haven't 12:48:41  
17 seen the original, I haven't seen Prince's 12:48:45  
18 works in the flesh, so to speak, and I have not 12:48:49  
19 seen either McNatt's or Graham's prints. 12:48:52

20 So we are talking here about the 12:48:57  
21 images. I just want to make sure what we 12:48:58  
22 are -- of that terminology here. 12:49:01

23 Q So, if you actually inspected 12:49:04  
24 the originals of the two photographs and the 12:49:05  
25 two paintings, it's possible that might change 12:49:09

1 ALLAN COLEMAN

2 your opinion?

12:49:10

3 A No, I'm just qualifying my  
4 opinion by saying that I have not seen those.

12:49:11

5 I am not saying that would  
6 change my opinion. I don't know that that  
7 would change my opinion.

12:49:17

12:49:18

12:49:19

8 Q But without seeing the  
9 originals, how do you know that it couldn't  
10 change your opinion?

12:49:20

12:49:21

12:49:22

11 A I don't. I don't say that it  
12 wouldn't, I don't say that it would.

12:49:24

12:49:25

13 Q You just don't know either way?

12:49:27

14 A I just don't know.

12:49:28

15 Q All right. So getting back to  
16 based on what you have seen, the reproductions,  
17 the photocopies of the images, is your  
18 understanding that -- first of all, let's talk  
19 about the McNatt and the Graham photos.

12:49:29

12:49:31

12:49:35

12:49:40

12:49:43

20 A Right.

12:49:45

21 Q Are those black and white or  
22 color photos, to your understanding?

12:49:46

12:49:48

23 A To my understanding, they are  
24 black and white, but today people print black  
25 and white photographs on color printers using

12:49:49

12:49:51

12:49:55

1 ALLAN COLEMAN

2 colorings.

12:49:57

3 So this is -- it's a little

12:49:59

4 different than things used to be in the analog

12:50:01

5 days of photography, when a color print was a

12:50:04

6 color print and made with a very different kind

12:50:06

7 of process than a black and white print.

12:50:08

8 Q I see. And --

12:50:10

9 A They appear as black and white

12:50:13

10 or monochrome images in the versions that I

12:50:15

11 have seen, but those are JPEG versions.

12:50:18

12 Q I see. And to a reasonable

12:50:21

13 observer, would a monochrome print of a

12:50:23

14 photograph appear different from a black and

12:50:26

15 white print printed on a color printer?

12:50:29

16 A No, not -- I don't think so, not

12:50:34

17 to the average observer, no.

12:50:35

18 Q To you as a trained expert,

12:50:38

19 would you see a difference?

12:50:40

20 A If I used a loupe, you know, a

12:50:43

21 jeweler's loupe and actually looked at the

12:50:46

22 detail that closely, but just from an eyeball

12:50:49

23 perspective, not necessarily.

12:50:54

24 Q I mean, again, I'm certainly not

12:50:57

25 an expert, but when I look at a picture I can

12:50:59



1 ALLAN COLEMAN

2 certainly tell when a black and white picture 12:51:02  
3 has been printed in color and when a black and 12:51:04  
4 white picture has been printed using a 12:51:06  
5 monochrome photograph. 12:51:09

6 Are you saying you as an expert 12:51:10  
7 can't make that distinction? 12:51:12

8 MS. PELES: Objection to form. 12:51:14

9 A No, that's not what I said. 12:51:16

10 Q So, if you look -- let's assume 12:51:19  
11 these are high quality prints. 12:51:20

12 A Digital prints? 12:51:25

13 Q Okay, well, does it make a 12:51:28  
14 difference? 12:51:29

15 A I don't know, I'm asking you. 12:51:30  
16 You're using the term print as if it's 12:51:32  
17 generically understood. I am suggesting that 12:51:33  
18 it's not. 12:51:36

19 Q I mean, again, I'm not an 12:51:37  
20 expert. 12:51:38

21 A Right. 12:51:39

22 Q I know just for myself that when 12:51:40  
23 I look at a picture, I can see the difference 12:51:42  
24 between a traditional monochrome black and 12:51:45  
25 white print and a black and white photo that 12:51:48

1 ALLAN COLEMAN

2 has been printed in a color printing process. 12:51:53

3 To my eye, which is untrained, I 12:51:56

4 can see the difference. 12:51:57

5 So I'm just challenging you and 12:51:59

6 asking as an expert in this area, are you 12:52:02

7 saying that without using a jewelers microscope 12:52:04

8 you usually can't tell the difference? 12:52:10

9 A I am saying that I know many 12:52:12

10 photographers who have worked both analog -- in 12:52:16

11 analog forms, wet photography, as we call it, 12:52:19

12 or wet photography and digitally. 12:52:23

13 And some of them have made 12:52:26

14 prints that are pretty much indistinguishable 12:52:28

15 from their -- I mean, digital prints that are 12:52:33

16 pretty much indistinguishable from their 12:52:36

17 gelatin silver black and white prints. 12:52:37

18 And others have made prints that 12:52:41

19 have other qualities that indicate that they 12:52:42

20 have been made on a color printer. 12:52:48

21 So, there is no unitary quality 12:52:52

22 to digital prints that automatically signals 12:52:59

23 that they have been made on a digital printer. 12:53:02

24 Q I see. 12:53:05

25 Now, I understand you've not 12:53:06

1 ALLAN COLEMAN

2 seen the actual paintings at issue in this  
3 case?

12:53:07

12:53:09

4 A Right.

12:53:09

5 Q But from the photocopies you  
6 have looked at, do you have an understanding of  
7 whether the photographic elements of those  
8 paintings are monochrome or printed from a  
9 color printer?

12:53:09

12:53:11

12:53:15

12:53:18

12:53:22

10 A They appear to be monochrome in  
11 the JPEGs. But since I understand that  
12 Mr. Prince -- Mr. Prince -- sorry, Prince,  
13 Mr. Prince outsourced the digital printing of  
14 those, and since some of the other elements of  
15 the prints works are in color, I assume that  
16 the entirety of them is in color.

12:53:26

12:53:28

12:53:31

12:53:36

12:53:41

12:53:45

12:53:49

17 That is, I assume he didn't  
18 isolate the photographic element and have that  
19 printed in monochrome and have the rest of it  
20 printed in color.

12:53:56

12:53:58

12:53:59

12:54:03

21 If that's clear.

12:54:06

22 Q In paragraph 18 you also say,  
23 "The claim of postmodern theories, ideas to any  
24 sort of validity and authority is arguable at  
25 best.

12:54:17

12:54:19

12:54:24

12:54:27

1 ALLAN COLEMAN

2 The ideas have only whatever 12:54:27  
3 credibility high profile cultural figures, such 12:54:29  
4 as those providing expert reports on 12:54:33  
5 Mr. Prince's behalf, have granted them. 12:54:35

6 Is that a back-handed way of 12:54:41  
7 saying that the experts supporting Mr. Prince 12:54:42  
8 in this case are high profile cultural figures? 12:54:46

9 A I suppose. 12:54:59

10 I don't think it's necessarily 12:55:05  
11 back-handed. It's fairly straightforward. It 12:55:06  
12 says "such as these people," right? 12:55:09

13 Q So you know of these people and, 12:55:12  
14 I mean, do you respect these people? 12:55:13

15 A I know of them, and I consider 12:55:16  
16 them colleagues in the field in a broad sense, 12:55:18  
17 yes. 12:55:21

18 Q And you consider them experts in 12:55:25  
19 this field? 12:55:26

20 A Reasonably as expert as I am. 12:55:29

21 Q So now, that's interesting. So 12:55:34  
22 they are colleagues who are as expert as you 12:55:37  
23 are, but they have come to very different 12:55:38  
24 conclusions. 12:55:41

25 To what do you attribute that? 12:55:42

1 ALLAN COLEMAN

2 A There are many ways to skin a 12:55:53  
3 cat as there are differences of opinion in the 12:55:55  
4 field, as in any field. 12:55:57

5 Q So is it possible in your view 12:56:05  
6 they are right and you are wrong? 12:56:06

7 A It's always possible that 12:56:08  
8 someone else is right and I'm wrong. 12:56:09

9 Q What about the credibility -- 12:56:14  
10 I'm sorry. 12:56:21

11 Just to be clear, proof or 12:56:24  
12 disproof of postmodern theory doesn't have any 12:56:26  
13 impact on -- 12:56:30

14 MR. BALLON: Well, I'm sorry, let 12:56:31  
15 me retract that. 12:56:32

16 Q Let's go to 19. You say, "In 12:56:35  
17 the minds of those who embrace postmodern 12:56:36  
18 theory, claiming to be an artist who subscribes 12:56:38  
19 to postmodern theory, and endorsement as such 12:56:41  
20 by assorted art-world luminaries, apparently 12:56:44  
21 constitutes a license to 'appropriate'." 12:56:48

22 Is that intended as a serious or 12:56:50  
23 a sarcastic observation? 12:56:53

24 A No, that's a serious 12:56:55  
25 observation. 12:56:56

1 ALLAN COLEMAN

2 Q And who specifically are you 12:56:58  
3 talking about, anyone in particular? 12:56:59

4 A Both the critical and curatorial 12:57:06  
5 advocates of postmodern art and the artists who 12:57:09  
6 have variously grouped themselves under the 12:57:18  
7 umbrella of postmodernism. 12:57:21

8 Q So later in that paragraph you 12:57:24  
9 refer to "Prince's claim that he has the right 12:57:26  
10 to 'appropriate' the work of others." 12:57:29

11 What claim are you referring to? 12:57:34

12 A Well, there is a claim implicit 12:57:37  
13 in the works themselves that he has a right to 12:57:39  
14 make them, and that he has a right to use the 12:57:43  
15 materials with which he has made them. 12:57:46

16 Q Why do you -- 12:57:48

17 A That claim seems to me to be 12:57:49  
18 implicit in any work of art. 12:57:50

19 Q Well, I mean, isn't it possible 12:57:58  
20 that -- well, actually in this case Mr. Prince 12:58:00  
21 has testified that these were images that were 12:58:05  
22 widely disseminated on social media. 12:58:06

23 He believed that the people who 12:58:09  
24 created the photos took them and took them with 12:58:11  
25 a view of wanting them to be disseminated. 12:58:16

1 ALLAN COLEMAN

2 He thought that the Rastafarian 12:58:21  
3 picture was a picture of rastajay92. 12:58:22

4 Does that change your view that 12:58:26  
5 simply by using these photos he is making a 12:58:28  
6 claim that he has a right to appropriate them? 12:58:32

7 A No. 12:58:36

8 Q So the fact that at the time 12:58:38  
9 Mr. Prince made these photos he did not know 12:58:40  
10 that either Mr. Graham or Mr. McNatt claimed 12:58:44  
11 rights in these photos, does that change that 12:58:48  
12 view? 12:58:51

13 A No. 12:58:51

14 Q So you believe simply by -- 12:58:56  
15 simply by using a photo in a painting, 12:58:58  
16 regardless of the author's subjective intent or 12:59:00  
17 knowledge, the painter is claiming a right to 12:59:04  
18 appropriate the photo, if it turns out, whether 12:59:08  
19 he knew it or not, the photo is copyrighted by 12:59:11  
20 someone else? 12:59:14

21 A Would you say that again? 12:59:15

22 MR. BALLON: I will ask the court 12:59:17  
23 reporter to read it back. 12:59:17

24 (The question requested was read 12:59:18  
25 back by the reporter.) 12:59:18

1 ALLAN COLEMAN

2 A I don't deal with intent as a 12:59:45  
3 critic, it's not a concern of mine. 12:59:46

4 Q No, I understand, but you are 12:59:49  
5 making a pretty big assumption here. 12:59:50

6 You are saying that by including 12:59:54  
7 a photograph in a painting, that a photographer 12:59:56  
8 is making a claim that they have the right to 13:00:02  
9 appropriate the work of others? 13:00:04

10 A You mean a painter? 13:00:06

11 Q Painter, yes. 13:00:07

12 A You said photographer. 13:00:08

13 Q I'm sorry, I apologize, painter, 13:00:09  
14 that by including a photograph in a painting, 13:00:11  
15 regardless of whether the painter knows that 13:00:13  
16 the work is copyrighted or belongs to someone 13:00:16  
17 else, you've said that the painter is making a 13:00:19  
18 claim just by virtue of using it. 13:00:25

19 A Yes. 13:00:27

20 Well, by virtue of using it and 13:00:29  
21 putting it, making it public. I would have to 13:00:31  
22 qualify that. 13:00:33

23 If he does this in the privacy 13:00:35  
24 of his studio, that's a different thing. 13:00:36

25 Q And then beyond that, you say, 13:00:40



1 ALLAN COLEMAN

2 "Prince and his defenders trot out all the 13:00:42  
3 predictable tropes of postmodern jargon, which 13:00:47  
4 adds up to the assertion that because Richard 13:00:51  
5 Prince is an a claimed artist who sells at very 13:00:54  
6 high prices, and in whom many individuals and 13:00:57  
7 institutions are heavily invested, both 13:01:01  
8 financially and reputationally, his assertion 13:01:04  
9 of entitlement to the output of others is not 13:01:07  
10 to be questioned and he gets what he pleases." 13:01:10

11 MS. PELES: Objection to form. 13:01:15

12 Q Is that intended as a sarcastic 13:01:16  
13 observation or -- is that intended as a 13:01:19  
14 sarcastic observation? 13:01:23

15 A No, that's intended as analysis. 13:01:24

16 Q So what predictable tropes of 13:01:27  
17 postmodern jargon has Prince trotted out? 13:01:30

18 A The assumption that 13:01:37  
19 appropriation is permissible, that the -- I'm 13:01:38  
20 sorry, I am getting a little foggy, I think I 13:01:52  
21 need lunch -- that authorship is not a 13:01:54  
22 significant issue, that works by other artists 13:02:03  
23 are raw material for one's own work, including 13:02:11  
24 exact quotation of that work or comparatively 13:02:19  
25 exact quotation of that work, even in total, et 13:02:23

1 ALLAN COLEMAN

2 cetera.

13:02:28

3 Q And is that based, again, just  
4 on the assumption that if a photograph is  
5 included in a painting, regardless of whether  
6 the painter knew that someone else claimed a  
7 copyright in it, that that act alone is the  
8 claim that you are referring to here?

13:02:34

13:02:36

13:02:39

13:02:42

13:02:45

13:02:55

9 A Again, we have to specify if we  
10 are talking about a photographic image and not  
11 a physical photograph.

13:02:56

13:02:59

13:03:01

12 Q Yes.

13:03:02

13 A Yes, yes.

13:03:02

14 Q Is there anything else, anything  
15 else that you base this comment on?

13:03:04

13:03:08

16 Beyond the use in a photo, is  
17 there any particular quote by Mr. Prince that  
18 you can point to?

13:03:14

13:03:16

13:03:19

19 A No.

13:03:21

20 Q In paragraph 20 --

13:03:24

21 MS. PELES: If you are going to  
22 move on to a new paragraph, maybe we  
23 should take a break now.

13:03:25

13:03:26

13:03:27

24 We have been going about an hour  
25 and ten minutes.

13:03:29

13:03:30

1 ALLAN COLEMAN

2 MR. BALLON: What I would like to 13:03:31  
3 do, if we can, if it's okay with the 13:03:31  
4 witness, is I want to finish this issue 13:03:33  
5 of postmodern theory, which is 13:03:37  
6 paragraphs 20 and 21, so we just finish 13:03:40  
7 this line of questioning. 13:03:43

8 MS. PELES: About how long do you 13:03:45  
9 think that will be? 13:03:46

10 MR. BALLON: I hope it's pretty 13:03:47  
11 quick. There is only so much postmodern 13:03:48  
12 theory any of us can take before or 13:03:51  
13 after lunch. 13:03:53

14 MS. PELES: Is that okay with 13:03:54  
15 you, Mr. Coleman? 13:03:55

16 THE WITNESS: It's okay with me, 13:03:57  
17 yes. 13:03:58

18 MR. BALLON: Thank you. 13:04:00

19 Q So in paragraph 20 you refer to 13:04:00  
20 assorted art world figures. Who do you mean 13:04:02  
21 specifically? 13:04:05

22 A Well, I would certainly say that 13:04:12  
23 the art world deponents or reporters in this 13:04:14  
24 case, including Brian Wallace and others. 13:04:17

25 Q So, I mean, assorted art world 13:04:24

1 ALLAN COLEMAN

2 figures means the experts who have submitted 13:04:26  
3 reports in this case? 13:04:28

4 A Yes. 13:04:29

5 Q Anyone else? 13:04:30

6 A No one I can think of 13:04:33  
7 specifically, but there have been other such 13:04:34  
8 cases, like the Cariou case, and other cases 13:04:36  
9 involving appropriation, where arguably the 13:04:40  
10 same arguments have been made. 13:04:45

11 Q I see, I see. 13:04:46

12 So you are referring to any 13:04:47  
13 case, any instance where -- 13:04:49

14 MR. BALLON: Okay, all right, 13:04:53  
15 never mind. I withdraw the question. 13:04:54

16 Q You state in the first sentence 13:04:59  
17 of that paragraph, "I note in this regard that 13:05:01  
18 most challenges to artistic 'appropriation' of 13:05:03  
19 the work of others involve a high profile 13:05:08  
20 artist taking the work of lesser known artists 13:05:11  
21 and claiming the right to do so by dint of art 13:05:14  
22 world stature." 13:05:17

23 What is the basis for that 13:05:20  
24 opinion? 13:05:22

25 A Most of the cases that I have 13:05:23

1 ALLAN COLEMAN

2 seen have been -- well, we need to take a step 13:05:24  
3 back here. 13:05:28

4 Photography has long, enjoyed is 13:05:29  
5 the wrong word, has long experienced second 13:05:33  
6 class status within the art world from the very 13:05:36  
7 inception of the medium. 13:05:40

8 And therefore there is a 13:05:43  
9 hierarchy in the art world in which 13:05:45  
10 photographers rank lower almost generically, 13:05:49  
11 almost by definition, than painters and 13:05:53  
12 sculptors and others who define themselves not 13:05:56  
13 as photographers, but as artists. 13:05:59

14 So with that as kind of a 13:06:02  
15 background, most of the cases that I have seen 13:06:04  
16 that involve appropriation of works of art, of 13:06:10  
17 photographs, have involved painters, and in a 13:06:16  
18 few cases I suppose sculptors, but I can't 13:06:21  
19 think of anything specifically; painters using 13:06:23  
20 images by photographers. 13:06:26

21 Q But it's not always the case 13:06:29  
22 that appropriation involves the use of a high 13:06:30  
23 profile artist taking the work of a lesser 13:06:33  
24 known artist, is it? 13:06:36

25 A I can't think of cases -- I 13:06:39

1 ALLAN COLEMAN

2 can't offhand think of a case in which a lesser 13:06:42  
3 known artist used the work of a higher profile 13:06:45  
4 photographer. 13:06:49

5 Q Okay. 13:06:51

6 A I mean, I'm not saying there are 13:06:52  
7 no such cases. I can't think of one. 13:06:53

8 Q Are you familiar with some of 13:06:57  
9 the works of Picasso and Matisse where each of 13:06:59  
10 them copied paintings by the other artist? 13:07:02

11 A Yes. 13:07:05

12 Q And both of those were very high 13:07:05  
13 profile painters, weren't they? 13:07:07

14 A Yes, they were. 13:07:09

15 Q But in each instance they were 13:07:10  
16 appropriating the painting of a famous 13:07:12  
17 author -- famous painter, correct? 13:07:14

18 A Well, I'm not sure that even 13:07:16  
19 they would agree with that term, since they 13:07:18  
20 knew each other, and had cordial relationships 13:07:19  
21 with each other. 13:07:22

22 And Picasso and Bracht basically 13:07:23  
23 invented Cubism together and shared elements of 13:07:26  
24 that approach, and maybe even shared elements 13:07:29  
25 of their imagery, but I'm not sure either of 13:07:32

1 ALLAN COLEMAN

2 them would have said I have appropriated my 13:07:34  
3 friend George's style for this corner. They 13:07:37  
4 would not use that language. 13:07:43

5 And it was usually done with at 13:07:46  
6 least tacit consent. 13:07:47

7 Q And I mean, it's fair to say 13:07:50  
8 also a lot of artists don't use the term 13:07:52  
9 appropriation, they consider it an homage or a 13:07:54  
10 tribute to the other artist. 13:07:57

11 Isn't that true? 13:07:59

12 A Well, as a friend of mine once 13:08:02  
13 said, imitation is the sincerest form of theft. 13:08:04

14 Q You are making an assumption 13:08:09  
15 that Mr. Prince views this as appropriation as 13:08:12  
16 opposed to homage or attribute, correct? 13:08:15

17 A Well, appropriation in general 13:08:20  
18 in postmodern jargon, discourse, refers to the 13:08:21  
19 taking of work from another source without 13:08:25  
20 permission. 13:08:28

21 Q And so from your perspective, 13:08:30  
22 permission is key? 13:08:32

23 A Yes. 13:08:34

24 Q And that's relevant to whether 13:08:34  
25 something is a fair use? 13:08:35

1 ALLAN COLEMAN

2 A Yes.

13:08:37

3 Q Are you familiar with

13:08:39

4 Mr. Prince's painting where he repaints a de  
5 Kooning work?

13:08:39

13:08:46

6 A Not particularly, no.

13:08:49

7 Q But if I told you he had done  
8 so, you would concede that that's an instance  
9 of one painter repainting a work of an even  
10 more famous painter; wouldn't you agree?

13:08:50

13:08:51

13:08:54

13:09:01

11 A I would have to see them, and  
12 see what differences and similarities existed  
13 before I came to a conclusion that this was an  
14 appropriation.

13:09:03

13:09:05

13:09:11

13:09:14

15 Q Do you view de Kooning as a  
16 lesser known artist than Richard Prince?

13:09:17

13:09:20

17 A No.

13:09:22

18 Q He's perhaps better known,  
19 correct?

13:09:23

13:09:24

20 A Perhaps, yes.

13:09:25

21 Q So those are at least some  
22 examples of artists using or appropriating the  
23 art of better known artists, correct?

13:09:26

13:09:28

13:09:35

24 A I would -- I would, again, be  
25 unlikely to use the word appropriating with the

13:09:42

13:09:46



1 ALLAN COLEMAN

2 case of Picasso and Matisse. So that's your 13:09:48  
3 word for it, but it's not mine. 13:09:53

4 Q Well, actually, it's your word, 13:09:54  
5 sir. 13:09:55

6 A No, I never referred to Picasso 13:09:56  
7 and Matisse -- 13:09:58

8 Q I'm using the word that you put 13:09:59  
9 in your report. 13:10:01

10 A But you are using it in a very 13:10:02  
11 different case than I would not use it and have 13:10:03  
12 not used it in. 13:10:06

13 You are using it in the case of 13:10:07  
14 Picasso painting in the style of Matisse. 13:10:08

15 I never made that reference. I 13:10:11  
16 am making very clear on the record that this is 13:10:13  
17 your words, they are not my words. 13:10:16

18 Q So the fact that they are 13:10:17  
19 friends means it's not appropriation when they 13:10:19  
20 do that? 13:10:21

21 A The fact that they are friends 13:10:22  
22 and sharing ideas, yes. 13:10:23

23 Q Now, the example you gave -- 13:10:24

24 A It may mean that, I don't know. 13:10:26  
25 I don't actually know how Matisse felt about 13:10:27

1 ALLAN COLEMAN

2 that.

13:10:31

3 Q A moment ago you talked about  
4 how photography is viewed by some people as a  
5 lesser form of art, and that you're familiar  
6 with more instances of photographs being used  
7 by painters.

13:10:33

13:10:34

13:10:37

13:10:42

13:10:45

8 A Um-hum.

13:10:46

9 Q I mean, is that an issue that  
10 you're aware of photographers commonly  
11 complaining about?

13:10:49

13:10:51

13:10:54

12 A I wouldn't say commonly. It  
13 doesn't exactly happen commonly, but it happens  
14 regularly.

13:10:57

13:10:59

13:11:02

15 Q Are you familiar with instances  
16 where photographers may take pictures of  
17 paintings?

13:11:06

13:11:07

13:11:13

18 A Oh, of course.

13:11:14

19 Q And would that be an  
20 appropriation, or is that permissible?

13:11:15

13:11:16

21 A Well, assuming that the  
22 paintings are under copyright, it depends on --  
23 and there are different kinds of photographs  
24 that incorporate paintings.

13:11:19

13:11:21

13:11:28

13:11:30

25 There are pictures that people

13:11:31

1 ALLAN COLEMAN

2 make in museums, for example, of museum-goers 13:11:32  
3 in front of paintings. 13:11:35

4 Apparently that is permissible 13:11:36  
5 to the museums or not, depending on the 13:11:38  
6 museum's policies. 13:11:41

7 So I would say that would depend 13:11:44  
8 entirely on the policies of the institutions 13:11:46  
9 that are housing those works. 13:11:49

10 Q But putting aside the issue of 13:11:52  
11 license or permission, if a photographer took a 13:11:53  
12 photograph of a copyrighted painting -- 13:11:57

13 A Right. 13:12:01

14 Q -- without permission, would 13:12:01  
15 that be a form of appropriation, in your view, 13:12:04  
16 that was not permissible? 13:12:08

17 A What would they be doing with 13:12:10  
18 that photograph? 13:12:11

19 Q I don't know. 13:12:15

20 A Making the photograph? No, that 13:12:16  
21 would not be a violation of fair use, it would 13:12:18  
22 not be a violation of fair use for a painter to 13:12:20  
23 do that in the studio. 13:12:23

24 Q What if they showed it in a 13:12:26  
25 gallery? 13:12:29

1 ALLAN COLEMAN

2 A That's publication; that changes 13:12:29  
3 things. 13:12:31

4 Q And that would be copyright 13:12:31  
5 infringement, in your view? 13:12:33

6 A Yes. 13:12:34

7 Q But you see this primarily as a 13:12:34  
8 problem of painters reusing photographs, not of 13:12:36  
9 photographers reusing paintings, is that 13:12:43  
10 correct? 13:12:46

11 A I think that it happens in both 13:12:46  
12 directions, I have written about it happening 13:12:49  
13 in both directions, and have raised the issue 13:12:51  
14 in some of my writings of the fact that it 13:12:56  
15 happens in the other direction as well. 13:12:59

16 And that photographers need to 13:13:02  
17 examine that practice at their end, because, in 13:13:04  
18 my opinion, it is no less a fair use issue. 13:13:09

19 Q And it's your opinion, is it 13:13:15  
20 not, that photographers seem to be more 13:13:16  
21 litigious than painters, that -- let me stop 13:13:19  
22 there. 13:13:23

23 It's your opinion, is it not, 13:13:25  
24 that photographers are more litigious than 13:13:27  
25 painters on the issue of reuse? 13:13:29

1 ALLAN COLEMAN

2 A Most of the cases that I am 13:13:38  
3 familiar with are cases of painters using the 13:13:40  
4 work of photographers and that resulting in a 13:13:47  
5 lawsuit. 13:13:49

6 But I don't have any 13:13:51  
7 quantitative opinion about whether 13:13:52  
8 photographers are truly more litigious in this 13:13:56  
9 matter than painters are. 13:14:00

10 Q But you did write a blog, did 13:14:01  
11 you not, asserting that it seems like 13:14:03  
12 photographers are -- you know, are quicker to 13:14:06  
13 file a lawsuit over use of a photograph in a 13:14:11  
14 painting than the other way around? 13:14:16

15 A I did write something to that 13:14:20  
16 effect, and it's possible in terms of the cases 13:14:21  
17 that have come to my attention, but I don't 13:14:24  
18 know that this is -- I mean, I don't -- I don't 13:14:25  
19 track the entirety of those cases, even in the 13:14:30  
20 United States. 13:14:36

21 So I can't speak authoritatively 13:14:36  
22 to how many more photographers are involved in 13:14:37  
23 such cases than painters are. 13:14:43

24 Q Do you think some photographers 13:14:46  
25 have a chip on their shoulder about the use of 13:14:47

1 ALLAN COLEMAN

2 paintings -- of photographs by painters?

13:14:50

3 A I don't -- I wouldn't say so; I  
4 don't know.

13:14:56

13:14:58

5 Q Do they have a chip on their  
6 shoulder about photography not being viewed as  
7 an art form by painters?

13:14:59

13:15:00

13:15:05

8 A Again, I think you would have to  
9 go on a case by case basis.

13:15:11

13:15:12

10 Q But earlier you talked about the  
11 phenomenon, if you will, that maybe  
12 photographers don't get the same degree of  
13 respect in the art world as painters.

13:15:16

13:15:20

13:15:24

13:15:25

14 Is that a fair characterization?

13:15:27

15 A That's a fair characterization,  
16 yes.

13:15:29

13:15:31

17 Q And do you think that that's a  
18 reason there is more litigation in this area?

13:15:31

13:15:32

19 A I don't know, you would have to  
20 talk to the photographers involved and see what  
21 their motives were.

13:15:36

13:15:37

13:15:39

22 I don't deal particularly with  
23 intent, and I'm not particularly concerned with  
24 motivation.

13:15:41

13:15:42

13:15:44

25 Q Is that something that troubles

13:15:45

1 ALLAN COLEMAN

2 you, though, that photography isn't really 13:15:46  
3 given the respect it deserves? 13:15:50

4 A It's inevitably a concern of I 13:15:54  
5 think any critic who concentrates on 13:15:56  
6 photography. 13:15:59

7 Q It's a concern. 13:16:00

8 And do you see a way that that 13:16:01  
9 can be addressed? 13:16:03

10 A I actually think that's most 13:16:07  
11 likely a permanent status quo. 13:16:08

12 Q Permanent status quo. 13:16:13

13 Do you think lawsuits like this 13:16:14  
14 can help correct that imbalance? 13:16:16

15 A No, not particularly. 13:16:18

16 Q In paragraph 21, you make an 13:16:23  
17 observation that you say is both 13:16:26  
18 self-contradictory and hypocritical. 13:16:27

19 Could you explain that to me, 13:16:30  
20 please? 13:16:32

21 A Yes. A number of the 13:16:39  
22 respondents in this case on the Defendants' 13:16:41  
23 side have argued very forthrightly that 13:16:44  
24 Mr. Prince puts what I call a distinctive 13:16:50  
25 creative imprimatur on the work. 13:16:54

1 ALLAN COLEMAN

2 Whereas the theory that they 13:16:58  
3 refer to or cite variously in their reports 13:17:00  
4 suggests that this is fundamentally impossible, 13:17:04  
5 because there really is no such thing as 13:17:07  
6 creativity, there is only kind of a remixing of 13:17:10  
7 existing materials, but there is no distinctive 13:17:14  
8 originality or creativity possible, because we 13:17:20  
9 are all basically creatures of culture. 13:17:22

10 Q But that's not your view. You 13:17:26  
11 believe that if you mix and remix things there 13:17:28  
12 can be creativity and originality, don't you? 13:17:32

13 A Well, not simply by mixing and 13:17:35  
14 remixing, no, I haven't said that. 13:17:37

15 Q Well, you talked about music 13:17:39  
16 sampling, you believe that's creative, don't 13:17:41  
17 you, when hip-hop artists sample other works to 13:17:43  
18 create new works? 13:17:46

19 A But that's not all they do. 13:17:47

20 Q Do you believe that sampling -- 13:17:51  
21 that sampling by hip-hop artists is creative? 13:17:53

22 A I believe it can be an aspect of 13:17:56  
23 a creative process. 13:17:59

24 Q In what way would sampling be 13:18:01  
25 created? 13:18:04



1 ALLAN COLEMAN

2 A Because it creates a reference 13:18:06  
3 to a previous work, very often a known previous 13:18:07  
4 work, that is, a work whose maker is known and 13:18:14  
5 whose original meaning in culture, original 13:18:18  
6 position in culture is known. 13:18:21

7 And therefore it serves as kind 13:18:24  
8 of a historical footnote that is inserted into 13:18:25  
9 a contemporary work, and that that becomes a 13:18:30  
10 component, then, of the work. 13:18:36

11 Just as a quote on a footnote in 13:18:38  
12 an academic paper serves to contextualize and 13:18:40  
13 inform what the author has written himself or 13:18:45  
14 herself. 13:18:48

15 Q But couldn't that be the same 13:18:49  
16 with the Graham photograph, for example, which 13:18:50  
17 was widely available on-line going back to, I 13:18:54  
18 believe, 1984, when Mr. Graham first posted it 13:18:57  
19 on his website? 13:19:02

20 Assuming -- I will ask you to 13:19:04  
21 assume, assuming that that photograph was 13:19:06  
22 widely known and widely disseminated on-line, 13:19:08  
23 wouldn't including it in a painting involve 13:19:13  
24 that same kind of cultural reference that you 13:19:15  
25 talked about in the context of hip-hop? 13:19:17

1 ALLAN COLEMAN

2 A No, because what I was 13:19:20  
3 specifying in hip-hop is it's only a reference 13:19:22  
4 if one knows what it refers to. 13:19:26

5 If one doesn't know what it 13:19:29  
6 refers to, and whose work it is originally, 13:19:30  
7 it's not a reference. 13:19:35

8 Q Right. 13:19:38

9 A It's a floating quotation with 13:19:39  
10 no source. 13:19:40

11 Q Right. And I appreciate that 13:19:41  
12 you were not familiar with the Graham picture 13:19:45  
13 before this case, but let me ask you to assume 13:19:47  
14 that that image was widely known in social 13:19:53  
15 media. 13:19:55

16 I have a good faith belief that 13:19:56  
17 we can prove that at trial, that there is 13:19:58  
18 evidence in this case that the image was widely 13:20:00  
19 disseminated. 13:20:03

20 A By Mr. Graham? 13:20:05

21 Q Initially by Mr. Graham, and 13:20:07  
22 then by others. 13:20:08

23 A With his name attached? 13:20:11

24 Q No, not with his name attached, 13:20:13  
25 in fact. 13:20:15

1 ALLAN COLEMAN

2 A Um-hum. 13:20:16

3 Q Just as when music is sampled, 13:20:17  
4 you hear the music, but you don't hear this 13:20:20  
5 song was by this particular artist, you just 13:20:23  
6 hear the music; in the same way. 13:20:26

7 A But you do quickly find out, 13:20:28  
8 because social media and the music industry 13:20:30  
9 will be very -- and reviewers will be very 13:20:33  
10 quick to point out this beat was taken from 13:20:35  
11 this, this beat was taken -- this snippet was 13:20:38  
12 taken from that, et cetera. 13:20:40

13 So if that information is not 13:20:41  
14 embedded in the song itself, it's usually 13:20:43  
15 embedded in the copyright information of the 13:20:46  
16 song which accompanies it on its label and in 13:20:49  
17 its C D release, et cetera. 13:20:53

18 Because all of that, usually, if 13:20:55  
19 it's done legally, has to be specified in all 13:20:57  
20 cases. 13:21:00

21 And then it's usually identified 13:21:00  
22 very quickly within social media, so that the 13:21:02  
23 original artist is, who is quoted, is very 13:21:05  
24 quickly recognized. 13:21:08

25 Q Isn't that the same thing here? 13:21:09

1 ALLAN COLEMAN

2 Because both for Mr. McNatt and Mr. Graham, 13:21:10  
3 they were identified as the original 13:21:12  
4 photographers in social media, on Instagram, 13:21:15  
5 very quickly after these works disseminated. 13:21:17

6 How is that different? 13:21:22

7 A Because they weren't identified 13:21:23  
8 by the -- by Mr. Prince. 13:21:24

9 Q Well, when you listen to a 13:21:27  
10 hip-hop song, you don't have an announcement, 13:21:28  
11 this song came from somewhere else. 13:21:30

12 It's a reference, and you can 13:21:32  
13 look at the reference, and as you said, other 13:21:34  
14 people will identify it quickly in social 13:21:36  
15 media, but that's exactly what happened in this 13:21:38  
16 case, isn't it? 13:21:40

17 How is that different? 13:21:41

18 A No, it's different, because when 13:21:42  
19 hip-hop samples are licensed, the licensing 13:21:44  
20 almost always includes a requirement that the 13:21:49  
21 source be indicated on any accompanying 13:21:51  
22 publication materials, such as the insert in 13:21:55  
23 the CD ROM. 13:21:57

24 And therefore anybody who buys 13:21:58  
25 that music has immediate access to the source 13:22:00

1 ALLAN COLEMAN

2 provided by legal requirement by the hip-hop 13:22:04  
3 artist who has published that song and his or 13:22:13  
4 her publishers. 13:22:16

5 That's very different from 13:22:17  
6 people maybe finding out or maybe not finding 13:22:18  
7 out on social media who made a particular 13:22:21  
8 picture that someone has appropriated. 13:22:24

9 Q But that's a different case, 13:22:26  
10 because you are talking about a license, and 13:22:27  
11 I'm not talking about a license, I'm talking 13:22:29  
12 about the reuse of an image that's widely 13:22:31  
13 disseminated. 13:22:36

14 So you talked about the 13:22:37  
15 reference to an earlier song in hip-hop. 13:22:40

16 What I asked you to assume for 13:22:45  
17 purposes of a hypothetical, which I have a good 13:22:46  
18 faith belief we can prove at trial, that the 13:22:48  
19 Graham image was widely disseminated and widely 13:22:51  
20 known in social media on the same basis. 13:22:53

21 Mr. Prince's use of that, widely 13:22:57  
22 disseminated, widely known image in a painting, 13:22:59  
23 wouldn't that be the same as the reference that 13:23:02  
24 you talked about in a hip-hop song? 13:23:04

25 A I -- I don't know what we mean 13:23:08

1 ALLAN COLEMAN

2 here by widely. I don't know what kind of 13:23:10  
3 numbers we are talking about. 13:23:12

4 Q Assume it's widely disseminated. 13:23:13  
5 If I can't prove that at trial, 13:23:17  
6 then I can't use this testimony. 13:23:18

7 But assume that I can prove that 13:23:20  
8 it's widely disseminated in the same way that 13:23:22  
9 you meant that a song is widely disseminated. 13:23:25  
10 Wouldn't that then be the same 13:23:28  
11 way that an artist like Richard Prince is 13:23:29  
12 referring to a widely disseminated image that 13:23:32  
13 is widely known on social media when he 13:23:36  
14 includes it in his painting? 13:23:39

15 A I have no idea -- I have an 13:23:40  
16 understanding of what it means for a hip-hop 13:23:42  
17 song to become widely known. We are talking 13:23:45  
18 about millions of listeners. 13:23:48

19 I have no idea what you're 13:23:50  
20 talking about when you say widely disseminated 13:23:51  
21 and widely known, so I do not accept this 13:23:54  
22 analogy. 13:23:57

23 Q But it's a hypothetical, and I 13:23:57  
24 am allowed to ask a hypothetical question -- 13:23:59

25 A Yes. 13:24:01

1 ALLAN COLEMAN

2 Q -- of an expert. 13:24:01

3 So just assume, which I will 13:24:04

4 have to prove at trial, but assume for purposes 13:24:05

5 of this hypothetical that the Graham image was 13:24:08

6 widely disseminated, if the Graham image was 13:24:13

7 widely disseminated, that people in social 13:24:16

8 media would recognize it. 13:24:20

9 Mr. Prince's use of that 13:24:21

10 reference of a widely disseminated image, 13:24:23

11 couldn't that have the same kind of referential 13:24:28

12 impact that you talked about in the context of 13:24:31

13 hip-hop? 13:24:34

14 A Yes, but that has nothing to do 13:24:35

15 with fair use. 13:24:36

16 Q Similarly, with the McNatt 13:24:40

17 image, the McNatt image involved a portrait of 13:24:42

18 a widely known singer. 13:24:47

19 Couldn't that have the same 13:24:51

20 referential context if used in a painting that 13:24:53

21 you referred to in the context of a hip-hop 13:24:59

22 song? 13:25:02

23 A Yes, but again, that has nothing 13:25:02

24 to do with fair use. 13:25:04

25 MR. BALLON: Why don't we take a 13:25:06

1 ALLAN COLEMAN

2 lunch break, this is a good time for a 13:25:07

3 break, and I appreciate the discussion. 13:25:09

4 It's a very interesting discussion. 13:25:11

5 THE VIDEOGRAPHER: One moment, 13:25:15

6 please. Watch your microphones. 13:25:15

7 Here now marks the end of video 13:25:17

8 file number 2. The time is 1:25 p.m. We 13:25:18

9 are now off the record. 13:25:21

10 (At this point in the proceedings 13:25:23

11 there was a luncheon recess, after which 13:25:23

12 the deposition continued as follows:) 13:25:23

13 THE VIDEOGRAPHER: Here now marks 14:24:49

14 the beginning of video file number 3. 14:24:50

15 The time is 2:24 p.m. We are back on 14:24:52

16 the record. 14:24:55

17 14:24:56

18 CONTINUED EXAMINATION BY 14:24:56

19 MR. BALLON: 14:24:56

20 14:24:56

21 Q Good afternoon. 14:24:56

22 A Good afternoon. 14:24:57

23 Q I would like to show you what 14:24:59

24 has been marked as Exhibit 214. It is a blog 14:25:01

25 post from your blog, NearbyCafe.com, entitled 14:25:05



1 ALLAN COLEMAN

2 "The Photographer and the Painting." 14:25:10

3 (The above described document was 14:25:12

4 marked Exhibit 214 for identification, as 14:25:12

5 of this date.) 14:25:12

6 Q Is that an article or blog post 14:25:13

7 that you wrote? 14:25:16

8 A Yes, it is. 14:25:17

9 Q Have you written all of the 14:25:22

10 articles on your blog? 14:25:23

11 A No, I publish periodic guest 14:25:25

12 posts by invited guests. 14:25:27

13 Q But this one was written by you? 14:25:30

14 A Yes. 14:25:32

15 Q And is there anyone else besides 14:25:33

16 yourself who would have authority to upload a 14:25:35

17 post, for example, if you have a guest blogger? 14:25:38

18 A No, I do that uploading myself. 14:25:41

19 Q I would like to ask you to look 14:25:45

20 at paragraph 29 of your expert report, please. 14:25:46

21 In there you say, "Photography 14:25:53

22 performed by Mr. Graham and Mr. McNatt involves 14:25:54

23 a set of both conscious and intuitive decisions 14:25:58

24 that inherently qualify as interpretive and 14:26:01

25 thus creative." 14:26:05

1 ALLAN COLEMAN

2 Do you see that? 14:26:20

3 A Yes, I see that. 14:26:21

4 Q Now, what is the basis for that 14:26:24  
5 opinion? 14:26:32

6 A The basis for that opinion is 50 14:26:34  
7 years of observing how photographers work, 14:26:37  
8 reading them write about how they work and 14:26:40  
9 discussing with them how they work. 14:26:44

10 Q Now, if a photographer was to 14:26:49  
11 take a photo while drunk, for example, would it 14:26:55  
12 also necessarily be the case that there would 14:27:01  
13 be conscious and intuitive decisions that 14:27:04  
14 inherently qualify as interpretive and thus 14:27:06  
15 creative? 14:27:10

16 A I would think so, yes. 14:27:10

17 Q So even if someone is under the 14:27:11  
18 influence of alcohol, there would still be, if 14:27:13  
19 a photographer was taking a photo, there would 14:27:18  
20 still be intuitive decisions that qualify as 14:27:21  
21 interpretive and thus creative? 14:27:23

22 A Many artists have written under 14:27:25  
23 the influence of many substances and 14:27:27  
24 consciousness-altering experiences, let's say. 14:27:30

25 Q Are there any type of photos 14:27:35

1 ALLAN COLEMAN

2 that are taken that don't involve conscious and 14:27:37  
3 intuitive decisions that inherently qualify as 14:27:41  
4 interpretive and thus creative? 14:27:43

5 A Sure. 14:27:48

6 Q Can you give me some examples? 14:27:48

7 A Well, for example, if you have 14:27:50  
8 in your car a device that, either on a timer or 14:27:51  
9 continuously records your travels, I would say 14:28:00  
10 that that's not particularly conscious and 14:28:05  
11 intuitive. 14:28:08

12 The cameras in a bank or the 14:28:11  
13 cameras at your front desk, for example, that 14:28:14  
14 took our picture as we came in and got our 14:28:17  
15 passes, I would say that those are not 14:28:20  
16 particularly conscious and intuitive made 14:28:23  
17 photographs. 14:28:27

18 And I'm sure there are many 14:28:27  
19 other kinds made by mechanical devices, et 14:28:29  
20 cetera, somebody makes the decision where to 14:28:32  
21 position those devices, but -- and what the 14:28:35  
22 timing is, but they are not conscious and 14:28:38  
23 deliberated decisions as to when the picture 14:28:42  
24 gets made or exactly how it's framed, et 14:28:44  
25 cetera. 14:28:46

1 ALLAN COLEMAN

2 Q I see. What about in instances 14:28:48  
3 when a photo is commissioned? 14:28:50

4 So, for example, if someone were 14:28:52  
5 to commission a photograph and provide a list 14:28:54  
6 of instructions, the subject needs to appear in 14:28:57  
7 this manner and that background, would that 14:29:00  
8 type of photo necessarily involve interpretive 14:29:05  
9 and creative aspects? 14:29:10

10 A It would have to involve some, 14:29:14  
11 unless the person who was doing the 14:29:16  
12 commissioning was actually handling the camera, 14:29:18  
13 him or herself, and let's say the other party 14:29:23  
14 was just loading and unloading the film or 14:29:27  
15 something like that. 14:29:30

16 Because there are any number of 14:29:31  
17 decisions that have to be made in the making of 14:29:32  
18 any photograph. 14:29:34

19 Q Are you familiar with the monkey 14:29:37  
20 selfie case? 14:29:39

21 A Yes, I am. 14:29:40

22 Q So in that instance, you had a 14:29:41  
23 photographer who was trying to take a picture 14:29:44  
24 of a precocious primate, who actually took 14:29:45  
25 control and took the picture himself, correct? 14:29:51

1 ALLAN COLEMAN

2 A In a sense correct, yes; in a 14:29:55  
3 sense not. 14:29:57

4 Q In what way is that not a 14:29:57  
5 correct? 14:29:59

6 A If you are suggesting that the 14:30:01  
7 monkey, whose name is Naruto, actually 14:30:03  
8 understood the instrument involved and took 14:30:06  
9 control of it, I would reject that assumption 14:30:10  
10 out of hand. 14:30:14

11 Q Fair point. 14:30:16  
12 I don't know want to get into 14:30:18  
13 the monkey's subjective understanding, but that 14:30:19  
14 was a photo where the photo was actually taken 14:30:21  
15 by the monkey of himself, correct? 14:30:24

16 A The exposure was made by the 14:30:26  
17 monkey, yes. I don't know that the monkey 14:30:27  
18 understood that he was making an exposure of 14:30:29  
19 himself. 14:30:31

20 I would doubt that very much, in 14:30:33  
21 fact. 14:30:34

22 Q I would suspect he probably 14:30:35  
23 didn't. 14:30:36

24 But it nonetheless was quite an 14:30:38  
25 attractive picture. 14:30:39

1 ALLAN COLEMAN

2 A Yes, it was. 14:30:41

3 Q Would that, the monkey selfie, 14:30:41  
4 does that picture qualify as interpretive and 14:30:45  
5 thus creative? 14:30:49

6 A No. 14:30:51

7 Q So, if someone were to provide 14:30:58  
8 enough instructions in terms of composition, 14:31:00  
9 layout, the way the photo must appear, so that 14:31:04  
10 it has to be essentially a standard type of 14:31:06  
11 photo, does it reach a point where there are 14:31:08  
12 enough instructions that even though there is a 14:31:14  
13 human taking a picture, the photo itself 14:31:17  
14 wouldn't qualify as interpretive and thus 14:31:21  
15 creative? 14:31:22

16 A I'm not sure that I would say -- 14:31:27  
17 that I would say yes to that. 14:31:30

18 I would say that there is a 14:31:31  
19 point at which it becomes a collaboration 14:31:32  
20 between the person doing the commissioning and 14:31:36  
21 providing those instructions and the person 14:31:37  
22 carrying out those instructions. 14:31:40

23 Q I see, so -- I see. 14:31:43

24 So that the person giving the 14:31:46  
25 instructions was actually contributing to the 14:31:48

1 ALLAN COLEMAN

2 creativity and might be a joint author? 14:31:50

3 A Right, right; yes. 14:31:53

4 Q All right, so that -- so let's, 14:32:00

5 if you could please take a look at paragraph 34 14:32:03

6 of your report. 14:32:09

7 And in there you say, "In 14:32:11

8 evaluating whether a reasonable observer would 14:32:12

9 view the Prince works as having transformed 14:32:15

10 Plaintiffs' works, I take account of all the 14:32:17

11 works in question and circumstances surrounding 14:32:20

12 that creation." 14:32:23

13 What is your understanding of a 14:32:28

14 reasonable observer? 14:32:30

15 A I would say the average, well 14:32:35

16 informed citizen. 14:32:38

17 Q The average, well informed 14:32:41

18 citizen. 14:32:42

19 How would you define -- how 14:32:43

20 would you determine who an average, well 14:32:45

21 informed citizen is? 14:32:47

22 A In this particular instance I 14:32:53

23 would say it would need to be someone with some 14:32:55

24 awareness of the field of contemporary art 14:32:59

25 practice, because they are going to be asked to 14:33:02

1 ALLAN COLEMAN

2 determine something in relation to contemporary 14:33:04  
3 art practice. 14:33:08

4 Q I see. So when you say like the 14:33:09  
5 average, well informed citizen, so that 14:33:10  
6 wouldn't be someone like you, because you are 14:33:13  
7 considerably more informed? 14:33:17

8 A I am a specialist in the field. 14:33:18

9 Q Right, right, so -- but it would 14:33:20  
10 be someone with some knowledge of contemporary 14:33:24  
11 art? 14:33:26

12 A I think it would have to be in 14:33:27  
13 order to make this determination. The word 14:33:28  
14 transformation is -- is a term that requires 14:33:30  
15 some interpretation. 14:33:35

16 Q And so, would that include 14:33:37  
17 people such as art collectors? 14:33:38

18 A Oh, yes. 14:33:40

19 Q And in looking at the reasonable 14:33:44  
20 observer test, does the way in which art 14:33:49  
21 collectors value particular photographs or 14:33:54  
22 paintings suggest or evidence to you whether a 14:33:57  
23 work is likely to be transformative or not? 14:34:03

24 MS. PELES: Objection to form. 14:34:07

25 A I don't understand the question. 14:34:08



1 ALLAN COLEMAN

2 Q Sure, sure. 14:34:10

3 So, all right, so you've said a 14:34:11  
4 reasonable observer would include an art 14:34:14  
5 collector? 14:34:17

6 A Potentially, yes. Reasonable is 14:34:18  
7 of course a loaded and judgmental word. 14:34:20

8 I'm not -- I don't know how we 14:34:24  
9 exactly determine whether an individual is 14:34:26  
10 reasonable, but it certainly could include an 14:34:28  
11 art collector. 14:34:30

12 Q Well, how did you, then -- I 14:34:31  
13 mean, how did you determine who was a 14:34:34  
14 reasonable observer? 14:34:35

15 A I try in the same way that I try 14:34:39  
16 to understand who my average reader might be, 14:34:41  
17 and my informed reader might be, I try to talk 14:34:45  
18 about photographs, as I do over my professional 14:34:51  
19 life with all kinds of people, including just 14:34:56  
20 general people who are interested in 14:35:00  
21 photography on some level, on through the 14:35:02  
22 specialists with whom I interact in my field. 14:35:05

23 Q So that average, well informed 14:35:10  
24 consumer, would they have the kind of 14:35:15  
25 understanding that you described in this report 14:35:18

1 ALLAN COLEMAN

2 about postmodern theory? 14:35:20

3 A Probably not. 14:35:21

4 Q So with respect to an average, 14:35:25

5 well informed consumer, if you are looking at 14:35:27

6 two works and if -- 14:35:32

7 MR. BALLON: Well, let's strike 14:35:40

8 that. 14:35:41

9 Q Are you aware that the Prince 14:35:43

10 paintings at issue in this case sold for more 14:35:46

11 money than the original photographs are offered 14:35:50

12 for sale? 14:35:53

13 A Yes, I am aware of that. 14:35:54

14 Q And there is actually a fair 14:35:56

15 difference, is there not? The paintings are in 14:35:58

16 the thousands of dollars and the photos are 14:36:00

17 valued at a lower dollar number? 14:36:06

18 A Yes, I am aware of that. 14:36:08

19 Q So, does that price difference 14:36:12

20 reflect or possibly reflect the fact that 14:36:14

21 average, well informed consumers value the 14:36:21

22 Prince paintings more, and that to them, at 14:36:27

23 least, they see there is something added there 14:36:30

24 that doesn't exist in the original? 14:36:33

25 A It certainly indicates that they 14:36:37

1 ALLAN COLEMAN

2 value the Prince paintings more. 14:36:38

3 It does not necessarily mean 14:36:43  
4 that they see something added in there. You 14:36:44  
5 would have to ask them. 14:36:46

6 Q Right. But in looking at 14:36:51  
7 transformation, you would agree, wouldn't you, 14:36:54  
8 that if the Prince paintings were identical to 14:36:57  
9 the Graham and McNatt photographs, that a 14:37:01  
10 reasonable or an average, well informed 14:37:09  
11 consumer would value them the same if they were 14:37:11  
12 identical, wouldn't they? 14:37:14

13 A No. 14:37:16

14 Q Well, how would it be reasonable 14:37:16  
15 for a consumer, if two items are identical, how 14:37:18  
16 would it be reasonable for a consumer to value 14:37:25  
17 them as different? 14:37:28

18 A Because if one has Richard 14:37:30  
19 Prince's signature on it, it's automatically 14:37:31  
20 more valuable in the art market than if it does 14:37:32  
21 not. 14:37:35

22 Q I see, so the signature. 14:37:36  
23 And is that in the same way 14:37:39  
24 that, for example, Marcel Duchamps with a 14:37:41  
25 urinal, by signing the urinal, it became 14:37:46

1 ALLAN COLEMAN

2 valuable as a work of art?

14:37:49

3 A No, because he didn't sign it,  
4 actually, with his own name, as I'm sure you  
5 know.

14:37:51

14:37:52

14:37:54

6 He signed it R. Mutt, which was  
7 his kind of pseudonym. And R. Mutt's name had  
8 no value whatsoever in the art world at the  
9 time.

14:37:55

14:37:57

14:38:00

14:38:03

10 Q But it was the act of claiming  
11 it as art that made it more valuable, is that  
12 right?

14:38:05

14:38:07

14:38:12

13 A Actually there is no evidence it  
14 made it more valuable at the time. It made it  
15 controversial at the time.

14:38:12

14:38:14

14:38:16

16 Q And the controversy made it have  
17 some artistic merit?

14:38:18

14:38:21

18 A It was eventually -- it  
19 eventually came to be seen that way in the art  
20 world, yes.

14:38:23

14:38:24

14:38:26

21 Q Do you believe that the Prince  
22 paintings have come to be seen that way in the  
23 art world, as having some significance?

14:38:29

14:38:31

14:38:33

24 A Due to the controversy of this  
25 case?

14:38:37

14:38:40

1 ALLAN COLEMAN

2 Q No, just is it your 14:38:40  
3 understanding that Prince's New Portraits have 14:38:42  
4 come to be recognized as having some kind of 14:38:48  
5 value in the art world? 14:38:51

6 A I can certainly see that in 14:38:53  
7 terms of the prices that they command and the 14:38:56  
8 comments, for example, of the other deponents 14:38:58  
9 on Defendants' side here, that there are people 14:39:02  
10 in the art world who consider them important, 14:39:04  
11 yes. 14:39:07

12 Q And do you believe that it's 14:39:08  
13 perhaps more than just the signature that 14:39:09  
14 counts for that? 14:39:11

15 A I would have no way of 14:39:14  
16 determining that. 14:39:15

17 If these works were suddenly to 14:39:17  
18 appear on a gallery wall without Prince's name 14:39:18  
19 on them, would they have sold for the thousands 14:39:22  
20 of dollars you indicate that they have sold 14:39:24  
21 for? 14:39:26

22 I have no way of determining 14:39:27  
23 that. Either do you, I think, sir. 14:39:29

24 Q But I am asking you as an expert 14:39:32  
25 opining on how a reasonable observer would 14:39:37

1 ALLAN COLEMAN

2 view, which you have identified as an average 14:39:39  
3 consumer -- 14:39:42

4 A Right. 14:39:45

5 Q Now I have lost track, that the 14:39:46  
6 average consumer -- anyway, the reasonable 14:39:47  
7 observer, let's go with that, so certainly a 14:39:52  
8 reasonable observer would consider it has some 14:39:59  
9 value? 14:40:00

10 A I'm sorry, you have to give me 14:40:02  
11 the whole question in one piece. 14:40:04

12 Q I'm sorry, that was perhaps more 14:40:06  
13 confusing than it needed to be. 14:40:08

14 You said there is no way of 14:40:13  
15 knowing whether it's the signature or the name 14:40:15  
16 that adds the value or something else. 14:40:20

17 I'm suggesting that because you 14:40:23  
18 are opining as an expert on the reasonable 14:40:25  
19 observer test, I am asking if you have an 14:40:28  
20 opinion, but maybe -- 14:40:31

21 MR. BALLON: Let me back up on 14:40:32  
22 that. 14:40:33

23 Q Are you opining as an expert on 14:40:35  
24 the reasonable observer test as an 14:40:37  
25 understanding -- excuse me, based on your 14:40:39

1 ALLAN COLEMAN

2 understanding of the photography market, but 14:40:42  
3 perhaps not the art market, or are you opining 14:40:46  
4 also on the -- on how consumers of paintings 14:40:48  
5 would perceive the work? 14:40:53

6 A I am opining on how both would 14:40:58  
7 perceive the work, depending on whether or not 14:41:02  
8 Richard Prince's name was -- the works, whether 14:41:05  
9 or not Richard Prince's name was attached to 14:41:09  
10 it. 14:41:11

11 Q I see. So you believe that a 14:41:12  
12 reasonable observer places greater value on the 14:41:16  
13 Prince paintings because of the name and 14:41:20  
14 signature, but you can't opine one way or the 14:41:24  
15 other whether there are other factors that also 14:41:28  
16 might account for the higher value? 14:41:31

17 A What other factors are we 14:41:36  
18 speaking of? 14:41:37

19 Q Well, I asked you if there were 14:41:39  
20 other factors. I asked you if there were other 14:41:40  
21 factors besides name and signature that 14:41:45  
22 accounted for the greater value and you said 14:41:47  
23 you didn't know. 14:41:50

24 I think you said neither of us 14:41:51  
25 really know. 14:41:54

1 ALLAN COLEMAN

2 A No, because I can't enter the 14:41:55  
3 minds of the buyers of art, so I don't know 14:41:57  
4 what would the -- what else would determine 14:42:02  
5 their decisions to purchase or not purchase one 14:42:05  
6 of these works by Prince if they did not know 14:42:09  
7 it was by Prince. 14:42:11

8 I have no way of guessing that. 14:42:12

9 Q I see. 14:42:14

10 So, you acknowledge that they 14:42:15  
11 value the Prince paintings higher, but you 14:42:17  
12 don't really know why? 14:42:19

13 A Aside from the fact that they 14:42:22  
14 have Prince's name on it, correct. 14:42:23

15 Q And purchasers of art are 14:42:29  
16 included in that category of reasonable 14:42:30  
17 observer, correct? 14:42:35

18 A Absolutely. 14:42:37

19 Q Now, you also in paragraph 34 14:42:42  
20 talk, say that you were evaluating "whether the 14:42:45  
21 Prince works change the composition, 14:42:48  
22 presentation, scale, color pallet and media 14:42:51  
23 originally used and whether comment 14:42:56  
24 automatically constitutes alteration." 14:42:59

25 What do you mean by 14:43:02



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2 automatically?

14:43:03

3 A I am referring here to various  
4 points in the documents that I was shown in  
5 which reference was made by Brian Wallace and  
6 others to Mr. Prince's additions, textual  
7 additions to the works and the appropriated  
8 texts from all the people that are included in  
9 the works.

14:43:07

14:43:10

14:43:15

14:43:18

14:43:24

14:43:33

14:43:36

10 That they refer to these  
11 regularly as comments, and they refer regularly  
12 to Mr. Prince commenting on -- on the social  
13 construction we know of social media and so  
14 forth.

14:43:39

14:43:40

14:43:45

14:43:55

14:43:58

15 So I'm referring to various  
16 usages of the term comment and commenting in  
17 the documents that I was shown.

14:43:59

14:44:01

14:44:04

18 Q Now, some of those comments, in  
19 fact, are authorized by Mr. Prince, are they  
20 not?

14:44:06

14:44:07

14:44:10

21 A As I understand it, yes.

14:44:11

22 Q But I still don't understand  
23 what you mean by automatically.

14:44:15

14:44:16

24 You said one of the things you  
25 value is whether comment automatically

14:44:17

14:44:19

1 ALLAN COLEMAN

2 constitutes alteration. 14:44:22

3 What do you mean by that? 14:44:23

4 A Well, the usages of the terms 14:44:24

5 comment and commenting in the various documents 14:44:29

6 that I reviewed suggest that the comment in 14:44:33

7 itself, the commenting in itself constitutes an 14:44:36

8 alteration of the work that justifies the fair 14:44:42

9 use exception. 14:44:46

10 Q And do you have an opinion on 14:44:48

11 that? 14:44:50

12 A Yes, I would say that it would 14:44:59

13 depend entirely on the nature and quality of 14:45:00

14 the comment. 14:45:03

15 Q Now, based on your 50 years 14:45:05

16 as -- in the photography industry, do you have 14:45:07

17 expertise to opine on the transformative value 14:45:11

18 of text? 14:45:16

19 MS. PELES: Objection to form. 14:45:20

20 A I'm not -- can you put that 14:45:23

21 another way? 14:45:24

22 Q Sure. 14:45:25

23 You have talked extensively 14:45:26

24 about your expertise in the area of 14:45:27

25 photography. 14:45:30

1 ALLAN COLEMAN

2 Do you have -- do you believe 14:45:33  
3 that you have expertise in what type of written 14:45:35  
4 word would -- would satisfy creativity for 14:45:41  
5 purposes of copyright? 14:45:49

6 Let me ask you a different 14:45:56  
7 question. 14:45:57

8 A I'm not still sure I understand. 14:45:57

9 Q Because again, I see you're 14:45:59  
10 struggling, and it's not a trick question. I 14:46:01  
11 want to -- 14:46:03

12 A I don't feel that it's such. I 14:46:05  
13 just don't understand it. 14:46:06

14 Q Right, exactly. Let me see if I 14:46:07  
15 can put it in a better context. 14:46:08

16 Are you familiar with Richard 14:46:11  
17 Prince's Joke paintings? 14:46:13

18 A I have seen some of them. I 14:46:15  
19 wouldn't say I'm familiar with them, but yes. 14:46:16

20 Q You do know that Mr. Prince has 14:46:18  
21 some paintings where the painting has nothing 14:46:20  
22 on the canvas except a joke painted in some 14:46:23  
23 color? 14:46:28

24 A Yes. 14:46:28

25 Q And you know that these sell for 14:46:30

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2 some amount of money, correct? 14:46:31

3 A Yes. 14:46:33

4 Q Do you consider yourself an 14:46:34

5 expert on what type of written word by 14:46:35

6 Mr. Prince would be creative enough to be 14:46:40

7 viewed by a reasonable observer as being 14:46:46

8 transformative? 14:46:49

9 A In relation to those paintings? 14:46:51

10 Q Yes. 14:46:53

11 A No, I don't have an opinion on 14:46:55

12 that in relation to those paintings. 14:46:57

13 Q Okay. 14:46:59

14 A I mean the Joke paintings. 14:47:00

15 Q Right. And then with respect to 14:47:03

16 the paintings at issue in this case, I 14:47:04

17 understand that you have many opinions about 14:47:08

18 the -- whether the photographic elements of the 14:47:11

19 Prince paintings are transformative. 14:47:15

20 Do you feel you have any 14:47:18

21 expertise to be able to evaluate whether the 14:47:20

22 comments that Richard Prince has added to these 14:47:23

23 paintings is transformative? 14:47:27

24 A I have 50 years' experience with 14:47:33

25 captioning, with related -- responding 14:47:35

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2 critically as a historian to the captioning of 14:47:38  
3 photographs. 14:47:41

4 And in a broad sense, those 14:47:43  
5 comments and those Instagram comments fall into 14:47:47  
6 the category of caption. 14:47:50

7 Q But they are not really 14:47:52  
8 captions, are they? Because aren't both of 14:47:53  
9 these works called "Untitled"? 14:47:55

10 MS. PELES: Objection. 14:48:00

11 A What does that have to do with 14:48:00  
12 there being captions or not? 14:48:01

13 Q Well, the caption of a painting 14:48:03  
14 would be the title, wouldn't it? 14:48:04

15 A Of course not. 14:48:05

16 Q Okay. So what is the caption of 14:48:06  
17 a painting? 14:48:08

18 A A painting doesn't have a 14:48:08  
19 caption, usually. 14:48:09

20 Q So I'm confused. 14:48:11

21 You testified that you don't 14:48:14  
22 have expertise in evaluating the potential 14:48:15  
23 transformative nature of text by Richard Prince 14:48:18  
24 in the Joke paintings, but -- 14:48:21

25 A Right. 14:48:23

1 ALLAN COLEMAN

2 Q But you said with respect to the 14:48:24  
3 text that appears in the two paintings at issue 14:48:25  
4 in this lawsuit, you believe you have expertise 14:48:29  
5 because they are captions? 14:48:32

6 A Right. 14:48:34

7 Q How are they captions if 14:48:35  
8 paintings don't have captions? 14:48:37

9 A Photographs often come to us, 14:48:39  
10 usually come to us, as a matter of fact, with 14:48:41  
11 some kind of caption. 14:48:44

12 You pick up a newspaper, you 14:48:45  
13 pick up a magazine, you even see a photograph 14:48:46  
14 on a TV news show, and it usually has 14:48:51  
15 underneath it what we call in the trade a 14:48:53  
16 caption. 14:48:56

17 That is, some textual comment 14:48:57  
18 that will, in box terms, both anchor and relay 14:49:02  
19 the photograph, that pinpoint what the editor 14:49:07  
20 involved wants the viewer to concentrate on 14:49:13  
21 within the photograph and its many components. 14:49:18

22 And potentially, if it's a 14:49:22  
23 series of images, that connect that photograph 14:49:24  
24 to the next photograph and the previous 14:49:26  
25 photograph. 14:49:29

1 ALLAN COLEMAN

2 So those are captions. And you 14:49:29  
3 will find them commonly under photographs in 14:49:31  
4 newspapers and magazines and books. 14:49:34

5 Q What is the basis for your 14:49:36  
6 opinion that Mr. Prince's writings in these two 14:49:38  
7 paintings qualify as captions? 14:49:43

8 A They appear under the photograph 14:49:46  
9 in -- I would say that I would consider them as 14:49:49  
10 captions, they appear in the paintings, under 14:49:51  
11 the photographs, in the position in which 14:49:56  
12 captions frequently appear under photographs. 14:49:58

13 So, these texts, including not 14:50:01  
14 only Mr. Prince's, but the usually the 14:50:03  
15 preceding text, as I understand it, which was 14:50:07  
16 put up there by the person who posted the 14:50:10  
17 original Instagram post, function as a kind of 14:50:12  
18 caption to those images, simply because they 14:50:17  
19 resemble stylistically, in terms of the textual 14:50:20  
20 position and relation to the image, they 14:50:24  
21 resemble stylistically what we commonly call 14:50:26  
22 captions in published images. 14:50:29

23 Q So, speaking of the comments, do 14:50:33  
24 you know whether Mr. Prince selected which 14:50:37  
25 comments by third parties to include or 14:50:40

1 ALLAN COLEMAN

2 exclude? 14:50:42

3 A As I understand it he chose to 14:50:47  
4 include the ones that were included. I don't 14:50:49  
5 know which ones he excluded, almost by 14:50:51  
6 definition, because they are not there. 14:50:57

7 Q Did you examine the original 14:50:59  
8 posts in connection with your opinion of this 14:51:00  
9 case? 14:51:03

10 A No, I did not. 14:51:03

11 Q So, if you don't know which 14:51:04  
12 comments he excluded, and you're only looking 14:51:06  
13 at the comments he included, at least with 14:51:09  
14 respect to the Graham painting, how do you know 14:51:12  
15 whether there is a transformational component 14:51:16  
16 to that? 14:51:19

17 A To the comments that he 14:51:20  
18 included? 14:51:22

19 Q Yeah. How would you know if 14:51:23  
20 there is creativity in the selection, 14:51:25  
21 arrangement or organization of comments that 14:51:28  
22 were selected from a much larger body of 14:51:31  
23 comments if you didn't inspect the full body of 14:51:34  
24 comments? 14:51:39

25 A Normally when you deal as a 14:51:41



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2 critic with a work of art, you deal with the 14:51:42  
3 work of art itself, whatever that is, including 14:51:45  
4 everything that it includes. 14:51:48

5 You don't deal with what the 14:51:50  
6 artist has excluded, because it's not part of 14:51:51  
7 the work. 14:51:54

8 Q But in this instance you are not 14:51:55  
9 critiquing the painting in the sense of saying 14:51:57  
10 this is a good painting or a bad painting, you 14:52:00  
11 are doing something different, you are opining 14:52:02  
12 on whether Mr. Prince's decision to include or 14:52:04  
13 exclude particular comments was transformative. 14:52:08

14 A No, I have not made any such 14:52:14  
15 statement. 14:52:16

16 Q Okay, all right. 14:52:18

17 So, then, is your opinion -- so 14:52:19  
18 then you have no opinion on whether the 14:52:23  
19 comments add a transformational component to 14:52:26  
20 the paintings? 14:52:29

21 A Whether the comments, the 14:52:30  
22 original comments that are included? 14:52:31

23 Q Both paintings include a number 14:52:35  
24 of different features, including photographic 14:52:37  
25 elements and written text. 14:52:42

1 ALLAN COLEMAN

2 A Right. 14:52:44

3 Q Are you saying you have no 14:52:45  
4 opinion on whether the written text has any 14:52:48  
5 transformational quality? 14:52:52

6 A Both the written texts that were 14:53:01  
7 originally part of the post and Mr. Prince's 14:53:03  
8 texts, or separately? 14:53:06

9 Q Well, for now I'm just talking 14:53:09  
10 about the text that's there. You said as a 14:53:10  
11 critic you could only look at what's there. 14:53:12

12 A Right. 14:53:15

13 Q So then I asked you, I said 14:53:15  
14 well, how can you form an opinion about whether 14:53:17  
15 the process of including and excluding certain 14:53:19  
16 comments was itself creative and 14:53:23  
17 transformational, and you said you can't, 14:53:26  
18 that's not your opinion. 14:53:28

19 A Right. 14:53:29

20 Q So then -- so then, so now I'm 14:53:31  
21 saying looking simply at the paintings and the 14:53:34  
22 text that appears there, are you saying that 14:53:39  
23 you have no opinion on whether the text itself 14:53:44  
24 adds a transformational quality to the 14:53:47  
25 paintings? 14:53:49

1 ALLAN COLEMAN

2 A I have no opinion as to whether  
3 it adds a transformational quality to the  
4 paintings.

14:53:52

14:53:53

14:53:56

5 I do have an opinion about  
6 whether or not it adds a transformational  
7 quality to the photographs that are included in  
8 the paintings.

14:53:58

14:54:00

14:54:02

14:54:04

9 Q Okay.

14:54:05

10 And what's the basis for that  
11 opinion?

14:54:07

14:54:09

12 A The basis for that opinion is  
13 considering them, those textual elements as  
14 components -- as captions, effectively, or  
15 commentary on the photographs themselves, the  
16 photographic images themselves.

14:54:11

14:54:14

14:54:18

14:54:21

14:54:26

17 Q Now, in making that analysis,  
18 though, is it relevant to your analysis that  
19 there is no evidence that Mr. Prince intended  
20 those comments to be captions?

14:54:29

14:54:31

14:54:35

14:54:38

21 A No; because I'm not concerned  
22 with his intent.

14:54:39

14:54:41

23 Q And explain again why the  
24 particular comments in each painting qualify in  
25 your view as captions?

14:54:45

14:54:47

14:54:51

1 ALLAN COLEMAN

2 A Because they -- 14:54:53

3 MS. PELES: Objection to form. 14:54:54

4 A They occupy, I think this is 14:54:55

5 asked and answered, but they occupy the 14:54:56

6 position in which we culturally are normally 14:54:58

7 habituated to textual caption relating to 14:55:02

8 visual images, and in particular, photographic 14:55:08

9 images. 14:55:10

10 Q But are you saying that as an 14:55:11

11 art critic, or is that your opinion about a 14:55:12

12 reasonable observer? 14:55:15

13 A I am saying that in both senses. 14:55:17

14 Q Wouldn't a reasonable observer 14:55:22

15 view those as comments that you would see 14:55:23

16 typically in social media, rather than captions 14:55:26

17 that an art critic would look at? 14:55:28

18 A Well, captions are a form of 14:55:30

19 comment on the pictures that they caption. 14:55:35

20 Q But a reasonable observer -- I 14:55:42

21 mean, you would agree, wouldn't you, that most 14:55:43

22 people, looking at the Prince paintings at 14:55:46

23 issue in this case, would consider them to be 14:55:48

24 paintings representing social media posts on 14:55:52

25 Instagram, would they not? 14:55:58

1 ALLAN COLEMAN

2 A Yes, yes. 14:55:59

3 Q And most users of Instagram 14:56:02  
4 would recognize the content, the textual part, 14:56:03  
5 as comments by users, would you not? 14:56:08

6 A Yes. 14:56:10

7 Q So isn't it fair to say that 14:56:13  
8 most -- that a reasonable observer looking at a 14:56:15  
9 painting that represents a post on Instagram, 14:56:19  
10 would view text that appears in the comment 14:56:26  
11 section as comments, and not what an art critic 14:56:30  
12 would call a caption? 14:56:34

13 A Yes, I would. 14:56:35

14 Q So in terms of the images 14:56:38  
15 themselves, what -- did you observe any 14:56:42  
16 alteration of the images? 14:56:49

17 MS. PELES: Objection to form. 14:56:52

18 A I would have to ask for a 14:56:57  
19 definition of alteration. 14:56:59

20 Q Okay. In your expert report you 14:57:02  
21 say in paragraph 34 that in evaluating whether 14:57:08  
22 a reasonable observer would view the Prince 14:57:13  
23 works as having transformed Plaintiffs' works, 14:57:15  
24 you considered whether the addition of 14:57:18  
25 Mr. Prince's comments constitute an alteration 14:57:23

1 ALLAN COLEMAN

2 of the work and -- I'm sorry, that's the wrong  
3 place.

14:57:27

14:57:31

4 Yeah, you considered whether  
5 Prince's works changed the composition,  
6 presentation, scale, color, pallet and media  
7 originally used in Plaintiffs' works, correct?

14:57:36

14:57:37

14:57:39

14:57:42

8 Do you see that reference,  
9 whether the Prince works changed the  
10 composition?

14:57:45

14:57:46

14:57:49

11 A Where are you?

14:57:49

12 Q Sure, paragraph 34. One of the  
13 criteria you looked at --

14:57:50

14:57:53

14 A Right, okay.

14:57:54

15 Q Yeah, so, with respect to the  
16 Prince work, is there a change in media?

14:57:55

14:58:06

17 MS. PELES: Objection to form.

14:58:15

18 MR. BALLON: Counsel, the

14:58:20

19 statement in the report is whether

14:58:20

20 Prince, the Prince work changed the

14:58:22

21 composition, presentation, scale, color,

14:58:24

22 pallet and media originally used in

14:58:26

23 Plaintiffs' works.

14:58:28

24 This is what the witness has said

14:58:30

25 his charge was, and so I don't think it's

14:58:32

1 ALLAN COLEMAN

2 objectionable to ask whether there was a 14:58:35  
3 change in the media. 14:58:37

4 A Yes, there was a change in the 14:58:46  
5 media. 14:58:47

6 Q Okay. 14:58:49

7 And what was that change in the 14:58:50  
8 media, to your understanding? 14:58:54

9 A To my understanding, Mr. Prince 14:58:56  
10 made screen shots of the digital versions of 14:58:58  
11 those images on Instagram after he had hacked 14:59:04  
12 and altered the text, and then had those screen 14:59:10  
13 shots digitally printed on canvas. 14:59:14

14 Q And did the Prince works change 14:59:21  
15 the composition? 14:59:23

16 A No. 14:59:26

17 MS. PELES: Of the original 14:59:28  
18 works? 14:59:28

19 MR. BALLON: Yes. 14:59:29

20 MS. PELES: Just collecting. 14:59:30

21 A No. 14:59:31

22 Q And why is that? 14:59:31

23 A Because they basically replicate 14:59:35  
24 the composition of the original works. 14:59:38

25 Q What about the presentation, is 14:59:42

1	ALLAN COLEMAN	
2	the presentation different?	14:59:43
3	A Yes.	14:59:46
4	Q And is the scale different?	14:59:49
5	A As I understand it, yes.	14:59:52
6	Q Was the color pallet different?	14:59:53
7	A I haven't seen the originals, I	14:59:56
8	can't comment on that.	14:59:57
9	Q If the originals were black and	14:59:59
10	white and if the Prince paintings were Inkjet	15:00:01
11	printed in color, would that be a different	15:00:06
12	color pallet?	15:00:08
13	A Not necessarily to the naked	15:00:11
14	eye, but yes, it would be a different color	15:00:12
15	pallet in the production method.	15:00:15
16	Q And it could, in fact, be	15:00:16
17	different to the naked eye, correct?	15:00:17
18	A It might be.	15:00:19
19	Q It might be, but you don't know.	15:00:19
20	You don't know, correct, because	15:00:21
21	you haven't seen the originals?	15:00:22
22	A Correct.	15:00:24
23	Q The final point is whether the	15:00:38
24	addition of Mr. Prince's comments constitute an	15:00:39
25	alteration of the images.	15:00:42



1 ALLAN COLEMAN

2 Would there ever be an instance 15:00:45  
3 where comments could alter an image? 15:00:46

4 A I can't imagine how, unless one 15:00:52  
5 were spitting while commenting. 15:00:57

6 Q Were what? 15:00:59

7 A Unless one were spitting in 15:00:59  
8 proximity to the image and had a physical 15:01:01  
9 effect on the image. 15:01:03

10 Q I understand. So unless 15:01:04  
11 comments were literally pasted over an image? 15:01:06

12 A Right. 15:01:09

13 Q As you have defined this 15:01:09  
14 criteria, there would never be a possibility of 15:01:10  
15 comments altering an image? 15:01:13

16 A No. 15:01:15

17 Q How do you define 15:01:17  
18 transformation? 15:01:18

19 A I would say that there has to be 15:01:24  
20 a visible change in the form.and/or content of 15:01:26  
21 the work in question. 15:01:36

22 Q And what do you mean by that? 15:01:42

23 A With -- going back to the 15:01:55  
24 example of Bob Dillon's paintings from 15:01:56  
25 photographs, he reproduced -- he didn't 15:02:01

1 ALLAN COLEMAN

2 reproduce, he interpreted the content in his 15:02:07  
3 own brush stroke style and his own -- actually, 15:02:10  
4 in most cases he added color to what were 15:02:15  
5 initially black and white images and the 15:02:18  
6 paintings were of a different scale. 15:02:25

7 And they have their own, I don't 15:02:29  
8 know how to describe it, but they have their 15:02:31  
9 own mood, let's say, which is not necessarily 15:02:33  
10 the mood of the original photographs. 15:02:35

11 So he used them as kind of a 15:02:38  
12 springboard for his own versions of those 15:02:40  
13 scenes. 15:02:44

14 Q In paragraph 36 you say, at the 15:02:48  
15 top of page 10, "Someone, without Mr. Graham's 15:02:50  
16 authorization, downloaded that low resolution 15:02:53  
17 digital derivation of Mr. Graham's image of 15:02:57  
18 this Rastafarian man and uploaded it to 15:03:00  
19 Instagram, adding to it a caption." 15:03:03

20 Now, how do you know that this 15:03:06  
21 was downloaded without Mr. Graham's 15:03:09  
22 authorization? 15:03:11

23 A I believe that I read that in 15:03:14  
24 Mr. Graham's -- in the report from 15:03:15  
25 Mr. Graham's, the synopsis of Mr. Graham's 15:03:19

1 ALLAN COLEMAN

2 position.

15:03:23

3 Q You mean the synopsis provided  
4 to you by counsel?

15:03:24

15:03:25

5 A Yes.

15:03:26

6 Q Why do you say that what was  
7 downloaded was a low resolution digital  
8 derivation? How do you know that?

15:03:33

15:03:36

15:03:38

9 A Well, because the images that  
10 are posted on-line generally, although not  
11 always, are posted as very low resolution  
12 images, 72 DPI.

15:03:40

15:03:41

15:03:48

15:03:50

13 And that's partly to protect  
14 against various kinds of unauthorized reusages  
15 of those images.

15:03:53

15:03:55

15:03:59

16 You can't upload images of a  
17 reproduction quality to sites like Instagram.

15:04:01

15:04:05

18 They actually have a size limit  
19 to the files that you can upload.

15:04:09

15:04:11

20 And so most people who upload to  
21 sites like that upload what we generally call  
22 low resolution images, which are usually 72  
23 DPI, which look good on a computer screen, but  
24 lose a lot of detail.

15:04:14

15:04:19

15:04:23

15:04:25

15:04:30

25 Q How do you know about that size

15:04:32

1	ALLAN COLEMAN	
2	limitation on Instagram?	15:04:34
3	A Simply because Instagram has	15:04:39
4	rules for the uploading of photographs.	15:04:43
5	Q And are you sure that's true	15:04:45
6	today?	15:04:46
7	A Today, no; on this date, no.	15:04:50
8	Q And Instagram is owned by	15:04:54
9	Facebook, correct?	15:04:55
10	A Correct.	15:04:58
11	Q And you are aware you can upload	15:04:59
12	high definition photos to Facebook, correct?	15:05:01
13	A Yes.	15:05:04
14	Q Is it possible that you would be	15:05:06
15	able to upload high definition photos to	15:05:08
16	Instagram?	15:05:10
17	A I suppose.	15:05:13
18	Q And when a photo is called high	15:05:15
19	definition, do you know what the resolution	15:05:17
20	likely would be?	15:05:20
21	A Much higher. A TIF file is, I	15:05:23
22	forget how many DPI; it's in the thousands, I	15:05:25
23	believe.	15:05:29
24	Q So -- and that would qualify as	15:05:30
25	high resolution, wouldn't it?	15:05:31

1 ALLAN COLEMAN

2 A Yes.

15:05:33

3 Q So as you sit here today, do you  
4 really know whether the image that was  
5 downloaded really was low resolution versus  
6 high resolution?

15:05:35

15:05:36

15:05:38

15:05:40

7 A No.

15:05:44

8 Q Now, you say that --

15:05:48

9 A Although, excuse me, Mr. Graham  
10 indicated in one of the documents that I read  
11 that he had not uploaded high resolution images  
12 to his website.

15:05:49

15:05:51

15:05:55

15:05:58

13 So I am making the assumption  
14 that this image came from his website.

15:06:01

15:06:02

15 Q But you are aware that  
16 Mr. Graham also uploaded the image to Facebook,  
17 Instagram and Twitter, correct?

15:06:06

15:06:07

15:06:11

18 A Right.

15:06:13

19 Q And you don't know whether he  
20 uploaded low resolution or high definition  
21 photos, do you?

15:06:13

15:06:14

15:06:18

22 A No.

15:06:21

23 Q So it is possible that what was  
24 downloaded in fact was a high definition?

15:06:21

15:06:23

25 A I suppose; yes.

15:06:26

1 ALLAN COLEMAN

2 Q And then you note that it was 15:06:28  
3 uploaded to Instagram, adding to it a caption. 15:06:31

4 What caption do you mean? 15:06:34

5 A I am referring there to the 15:06:36  
6 comments that I consider a caption. 15:06:38

7 Q Is it the comments or the user 15:06:41  
8 name rastajay92 you are talking about? 15:06:42

9 A It's the comments that I am 15:06:52  
10 talking about. 15:06:53

11 Q Okay. So, you are saying that 15:06:54  
12 someone uploaded Mr. -- an image of the 15:06:58  
13 Rastafarian man to Instagram, adding to it a 15:07:05  
14 caption, and by a caption, you mean, plural, 15:07:09  
15 comments? 15:07:13

16 A Well, initially I would assume 15:07:14  
17 the uploader simply added a comment, after 15:07:16  
18 which other people added comments. 15:07:22

19 Q Now, why do you assume that? 15:07:25  
20 Because of course when you upload a photo to 15:07:26  
21 Instagram you don't have to add any comment, 15:07:28  
22 you can just upload it? 15:07:30

23 A True. 15:07:32

24 Q I mean, most photos that I look 15:07:33  
25 at, I see on Instagram, don't have any comment. 15:07:35

1 ALLAN COLEMAN

2 MS. PELES: Objection to form. 15:07:38

3 Q What caption are you referring 15:07:39  
4 to here? 15:07:40

5 A I am referring to the comment 15:07:41  
6 that's included in the -- in the Prince work, 15:07:43  
7 the comment not by Prince. 15:07:49

8 Q So when you say someone 15:07:55  
9 downloaded that low resolution digital 15:07:59  
10 derivation of Mr. Graham's image of this 15:08:01  
11 Rastafarian man and uploaded it to Instagram, 15:08:03  
12 adding to it a caption, what you really mean is 15:08:06  
13 more than one person. 15:08:10

14 Someone -- someone downloaded -- 15:08:12  
15 someone uploaded, various people captioned, 15:08:14  
16 because what you say is a caption, you are 15:08:18  
17 talking about comments, there are multiple 15:08:20  
18 comments, correct? 15:08:23

19 A Correct, I am talking about the 15:08:24  
20 initial comment that was -- 15:08:25

21 Q The initial comment, what was 15:08:26  
22 the initial comment? 15:08:27

23 A I assume -- I assume that that 15:08:28  
24 was the one or one of the ones that, from which 15:08:30  
25 Mr. Prince made his selection. 15:08:34

1 ALLAN COLEMAN

2 Q But you have no way of knowing 15:08:36  
3 whether the person who uploaded it even added a 15:08:38  
4 comment, do you? 15:08:40

5 A No, I don't. 15:08:41

6 Q Now, in paragraph 37, you say, 15:08:46  
7 "Paper published the image under license from 15:08:53  
8 Mr. McNatt." 15:08:56

9 Have you seen a license in this 15:08:58  
10 case? 15:09:01

11 A No. 15:09:01

12 Q Do you know whether there in 15:09:03  
13 fact was a license? 15:09:04

14 A I have been so informed, but no. 15:09:07

15 Q Would it be material to your 15:09:12  
16 decision if in fact it was published without 15:09:13  
17 any license from Mr. McNatt? 15:09:15

18 A You mean published in an 15:09:19  
19 unauthorized fashion? 15:09:20

20 Q No, I don't mean without 15:09:21  
21 authorization. 15:09:22

22 In this case Paper magazine paid 15:09:24  
23 Mr. McNatt to take the photograph, correct? 15:09:26

24 A Right, as I understand it. 15:09:29

25 Q So what if Paper magazine owned 15:09:32



1 ALLAN COLEMAN

2 the photograph, would that change your opinion 15:09:34  
3 here? 15:09:38

4 A You mean if he had signed a work 15:09:38  
5 made for hire? 15:09:40

6 Q Not necessarily. 15:09:41

7 A How else would they own it? 15:09:42

8 Q Well, under copyright law, 15:09:44  
9 something can be a work for hire either if 15:09:45  
10 there is a written agreement or if by operation 15:09:48  
11 of law it is a work made for hire. 15:09:50

12 So you don't need a written 15:09:55  
13 agreement for something to be owned by the 15:09:58  
14 company that pays for the photograph. 15:10:01

15 So, you say, "In each case, 15:10:06  
16 Paper published the image under license from 15:10:08  
17 Mr. McNatt." 15:10:10

18 Now, would it be material to 15:10:13  
19 your -- so again, let's assume a hypothetical. 15:10:15

20 A Um-hum. 15:10:19

21 Q If, in fact, Paper magazine 15:10:21  
22 published the image and owned the copyright to 15:10:25  
23 the Kim Gordon picture, would that change your 15:10:29  
24 analysis in this case about whether the use in 15:10:32  
25 this case was fair? 15:10:37

1 ALLAN COLEMAN

2 A It wouldn't change my analysis. 15:10:41

3 It would change my understanding of who was -- 15:10:42

4 who held the rights to these photographs and 15:10:50

5 whose image and whose rights had been 15:10:51

6 potentially breached by this usage. 15:10:56

7 Q I see. 15:10:58

8 So if Mr. McNatt didn't own the 15:10:58

9 photograph, he wouldn't be entitled to claim 15:11:01

10 copyright infringement, in your understanding? 15:11:04

11 A That's my understanding. 15:11:06

12 Q Then you say that Mr. McNatt 15:11:08

13 subsequently licensed the digital version. 15:11:10

14 What's the basis for your 15:11:13

15 assertion that he had licensed the digital 15:11:14

16 version? 15:11:17

17 A Again, I have been informed of 15:11:17

18 this. 15:11:20

19 Q So, you have never seen a 15:11:20

20 license? 15:11:21

21 A I have never seen a license. 15:11:21

22 Q You don't, in fact, know whether 15:11:23

23 there was a license? 15:11:24

24 A No. 15:11:25

25 Q And if Mr. McNatt in fact -- 15:11:26

1 ALLAN COLEMAN

2 let's assume another hypothetical.

15:11:29

3 Let's assume Mr. McNatt owns the  
4 photo, and let's assume he allowed other people  
5 to publish it in social media.

15:11:31

15:11:33

15:11:36

6 Would that change your analysis  
7 about whether subsequent uses were permissible  
8 or fair?

15:11:38

15:11:40

15:11:42

9 A No.

15:11:43

10 Q Why?

15:11:44

11 A Because he would have granted  
12 those permissions in those cases, and would  
13 have not granted that permission in the case of  
14 Mr. Prince.

15:11:46

15:11:48

15:11:50

15:11:53

15 Q But you are not a lawyer,  
16 correct?

15:12:01

15:12:03

17 A I am not a lawyer.

15:12:03

18 Q And you don't know the actual  
19 contours of licensing law, do you?

15:12:04

15:12:06

20 A Not as a lawyer would, no, sir.

15:12:09

21 Q In paragraph 38 you say,  
22 "Mr. Prince, via a hack, added his own  
23 self-described gobbledygook."

15:12:12

15:12:12

15:12:16

24 What do you mean by a hack?

15:12:18

25 A It's my understanding from the

15:12:22

1 ALLAN COLEMAN

2 various documents that I looked at that 15:12:23  
3 Mr. Prince figured out a method to digitally 15:12:26  
4 intervene with the commentary posted on 15:12:33  
5 Instagram and remove assorted comments 15:12:37  
6 according to his purposes and add his own 15:12:42  
7 comments to it. 15:12:47

8 Q So that hack, in other words, 15:12:50  
9 was what we talked earlier about, the process 15:12:51  
10 of adding comments and selecting or excluding 15:12:54  
11 other comments, correct? 15:12:56

12 A Right. 15:12:58

13 Q You refer here to him 15:13:03  
14 downloading the result to his own computer. Do 15:13:04  
15 you see that? 15:13:07

16 A Yes, I do. 15:13:10

17 Q Do you have any basis to know 15:13:11  
18 that it in fact was downloaded to a computer, 15:13:12  
19 as opposed to some other device? 15:13:15

20 A Excuse me? 15:13:22

21 Q You said that this was then 15:13:23  
22 downloaded to Mr. Prince's computer. How do 15:13:24  
23 you know that? 15:13:26

24 A He had to make a screen grab of 15:13:31  
25 the altered post. I assume he downloaded it to 15:13:33

1 ALLAN COLEMAN

2 his own computer. He might have downloaded it 15:13:37  
3 to a different computer. 15:13:40

4 Q Or he could have done something 15:13:41  
5 else with that besides downloading it to any 15:13:42  
6 computer, correct? 15:13:45

7 A No, because a screen grab 15:13:46  
8 automatically downloads to the screen -- to the 15:13:48  
9 computer to which the screen that is grabbed is 15:13:53  
10 connected. 15:13:57

11 Q No, I mean, I could take a -- I 15:13:58  
12 could pull out my iPhone right now as we sit 15:14:01  
13 here, put something there, press a button, and 15:14:04  
14 I would have a screen shot. 15:14:07

15 I could then save it on my 15:14:08  
16 phone. I wouldn't have to do anything with a 15:14:09  
17 computer, would I? 15:14:11

18 A I'm using computer in the broad 15:14:13  
19 sense. Your cell phone is, in fact, sir, a 15:14:14  
20 computer. 15:14:16

21 Q I see. So when you say 15:14:17  
22 computer, you mean computer or mobile device or 15:14:18  
23 some other device? 15:14:21

24 A Right. 15:14:22

25 Q In paragraph 40 you say, 15:14:31

1 ALLAN COLEMAN

2 "Plaintiffs' works are the dominant images in 15:14:33  
3 the Prince work." 15:14:38

4 How did you make that judgment? 15:14:43

5 A In terms of the visual power of 15:14:47  
6 those images, their placement and their scale. 15:14:50

7 Q Based on your experience as an 15:14:56  
8 expert? 15:14:58

9 A Yes. 15:14:58

10 Q In terms of an average consumer, 15:15:02  
11 do you concede that an average consumer, 15:15:06  
12 particularly an Instagram user, might look at 15:15:07  
13 that same image and might instead focus on the 15:15:11  
14 comments more than the image? 15:15:14

15 A Well, that they might focus on 15:15:17  
16 the comments, that would not make the comments 15:15:18  
17 the dominant visual component. 15:15:21

18 Q Well, taking them as an 15:15:23  
19 observer, perhaps for those people that would 15:15:26  
20 be the dominant factor, maybe their eyes are 15:15:30  
21 more attracted to the comments than the image; 15:15:33  
22 possibility? 15:15:35

23 A Possibility. But those 15:15:39  
24 comments -- but the question of whether those 15:15:41  
25 comments constitute an image, even though they 15:15:43

1 ALLAN COLEMAN

2 are included in a painting, in the eye of the 15:15:45  
3 average person, or whether they constitute 15:15:47  
4 text, I think is an open question. 15:15:51

5 I would suggest that they 15:15:55  
6 constitute text in the eye of the average 15:15:56  
7 reasonable observer, and that the image 15:15:59  
8 constitutes, the image by McNatt or Graham, 15:16:02  
9 constitutes the actual image in each piece. 15:16:06

10 Q Okay, fair. 15:16:09

11 So your opinion would be that 15:16:10  
12 they are the dominant image, but not 15:16:11  
13 necessarily the dominant feature of the 15:16:14  
14 paintings, depending on who the observer is? 15:16:17

15 A Right. 15:16:20

16 Q And you are 74 years old. In 15:16:20  
17 terms of Instagram users, do you have an 15:16:28  
18 opinion about whether Instagram users tend to 15:16:30  
19 be younger people or older people? 15:16:33

20 A I would imagine they are mostly 15:16:36  
21 younger people. 15:16:37

22 Q Mostly younger people. 15:16:38

23 So, at least with respect to 15:16:39  
24 users of social media, you do concede that when 15:16:42  
25 they view the paintings, the dominant feature 15:16:47

1	ALLAN COLEMAN	
2	for them might be the text?	15:16:49
3	MS. PELES: Objection to form.	15:16:52
4	A It's possible.	15:16:55
5	Q But your opinion is really	15:17:00
6	limited to what is the dominant image, not what	15:17:01
7	is the dominant feature of the paintings,	15:17:04
8	correct?	15:17:07
9	A Correct.	15:17:07
10	Q In paragraph 40 you talk about	15:17:14
11	the Twitter compendium.	15:17:16
12	MR. BALLON: Do we have that?	15:17:19
13	Q We will provide it as an	15:17:21
14	exhibit, see if we are talking about the same	15:17:23
15	thing.	15:17:25
16	A Um-hum.	15:17:26
17	MR. BALLON: All right, so we	15:17:44
18	will mark this as 215.	15:17:45
19	(The above described document was	15:17:49
20	marked Exhibit 215 for identification, as	15:17:49
21	of this date.)	15:17:49
22	Q And this, I believe, is what you	15:17:49
23	mean, at least with respect to the image for	15:17:51
24	the Twitter compendium, is that correct?	15:17:54
25	A Yes.	15:17:56



1 ALLAN COLEMAN

2 Q All right. 15:17:58

3 A And that term is not mine, that 15:17:59

4 term came in the documents that I -- Twitter 15:18:01

5 compendium came. 15:18:04

6 Q So, it's terminology from your 15:18:08

7 lawyers? 15:18:10

8 A Yes. 15:18:10

9 Q But at least in your report you 15:18:11

10 call it the Twitter compendium? 15:18:13

11 A Right. 15:18:15

12 Q Now, in here, you have an image 15:18:17

13 on the left. What is that image of? 15:18:22

14 A It appears to be a man holding 15:18:25

15 the back of a skirt of a woman; that's my 15:18:30

16 guess. 15:18:33

17 Q Is it a cartoon or a photograph? 15:18:34

18 A I am reasonably sure it's a 15:18:36

19 photograph. 15:18:37

20 Q Photograph, okay. Is it out of 15:18:38

21 focus? 15:18:40

22 A It is. 15:18:41

23 Q Is it blurred? 15:18:41

24 A Yes, it is. 15:18:43

25 Q Do you think that's intentional? 15:18:44

1	ALLAN COLEMAN	
2	A On the part of the photographer?	15:18:49
3	Q Well, on the part of whoever	15:18:50
4	created this compendium.	15:18:52
5	A I have no way of knowing.	15:18:54
6	Q And then the photograph on the	15:18:57
7	right, what is that?	15:18:58
8	A That appears to be Rastafarian	15:19:00
9	smoking a pipe.	15:19:03
10	Q Now, are you sure that it's --	15:19:07
11	are you sure what it is?	15:19:10
12	A No.	15:19:11
13	Q So it could be some other work?	15:19:12
14	A Wait a minute, am I sure?	15:19:17
15	Q Are you sure this is a	15:19:19
16	Rastafarian smoking a pipe?	15:19:20
17	A No.	15:19:23
18	Q You have opined here that, first	15:19:26
19	of all, you've said, "In his derivations,	15:19:32
20	Mr. Prince has appropriated the entirety of	15:19:34
21	both Plaintiffs' works in the Twitter	15:19:38
22	compendium."	15:19:40
23	Now --	15:19:42
24	A No, that's not what I said.	15:19:42
25	Q Okay. So what did you say?	15:19:43

1 ALLAN COLEMAN

2 Maybe I am misreading it. 15:19:45

3 A That actually should read as 15:19:47

4 follows: "In his derivations of the Instagram 15:19:48

5 posts, Mr. Prince has appropriated the entirety 15:19:51

6 of both Plaintiffs' works; in the Twitter 15:19:54

7 compendium he has appropriated the cropped 15:19:58

8 central section of the Graham photograph," et 15:20:01

9 cetera. 15:20:03

10 Q I see. So that's a typo there, 15:20:03

11 there is a comma, but you believe it should be 15:20:06

12 a semicolon? 15:20:08

13 A Yes. 15:20:10

14 Q So then your opinion with 15:20:10

15 respect to the Twitter compendium is that 15:20:11

16 Prince has appropriated the cropped central 15:20:14

17 section of the Graham photo? 15:20:17

18 A Right. 15:20:18

19 Q First of all, what is the basis 15:20:22

20 for your belief that this compendium was 15:20:23

21 created by Mr. Prince? 15:20:26

22 A It was submitted as one of 15:20:30

23 the -- submitted as one of the, I believe, as 15:20:31

24 one of the documents in the case. 15:20:36

25 Q You mean by your lawyers? 15:20:44

1 ALLAN COLEMAN

2 A Yes.

15:20:45

3 Q I am going to show you a version  
4 from your lawyers' Complaint, this is document  
5 30-7, page 2 of 2, Exhibit G from the Cravath  
6 Complaint in this lawsuit.

15:20:48

15:20:51

15:20:57

15:21:03

7 And this is that image included  
8 in the Twitter post from Mr. Prince. I would  
9 like to ask you to look at that.

15:21:08

15:21:11

15:21:14

10 Have you seen that before?

15:21:15

11 MS. PELES: This is the Complaint  
12 in the Graham case?

15:21:17

15:21:18

13 MR. BALLON: Yes.

15:21:20

14 A Yes, I believe it is.

15:21:25

15 Q There is some text there. Would  
16 you call that a caption?

15:21:29

15:21:30

17 A I would think of it as a  
18 caption, although I am aware from a Twitter  
19 standpoint it's called a comment.

15:21:32

15:21:34

15:21:37

20 Q Now, in there Mr. Prince says,  
21 "I did not take, make, create this montage."

15:21:40

15:21:42

22 Do you see that?

15:21:48

23 A I do see that.

15:21:49

24 Q So, based on the caption, is it  
25 still your opinion that this image was created

15:21:50

15:21:53

1 ALLAN COLEMAN

2 by Mr. Prince?

15:21:56

3 A I actually don't have an opinion  
4 on that. I assume that it was, because he  
5 posted it, and I believe made a painting of it;  
6 although I could be wrong about it.

15:22:08

15:22:10

15:22:14

15:22:18

7 Q I mean, you are aware that many  
8 of the posts that appear on Twitter are simply  
9 repostings of things that other people have  
10 posted, correct?

15:22:20

15:22:23

15:22:26

15:22:28

11 A Yes.

15:22:29

12 Q So why is it you assume that  
13 this image, where Mr. Prince expressly says, "I  
14 did not take, make, create this montage," is an  
15 image that he made?

15:22:31

15:22:33

15:22:37

15:22:43

16 A I could be wrong.

15:22:52

17 Q All right.

15:22:55

18 Now, with respect to this image,  
19 how do you know that the image on the right  
20 side is taken from the Graham photograph as  
21 opposed to from one of millions of other  
22 photographs of Rastafarians?

15:22:56

15:22:58

15:23:00

15:23:04

15:23:09

23 A I have seen the Graham  
24 photograph, and even out of focus, it's  
25 unmistakably from that photograph.

15:23:12

15:23:13

15:23:16

1 ALLAN COLEMAN

2 Q So you recognize that? 15:23:18

3 A Yes. 15:23:20

4 Q Now, in this particular you can 15:23:21  
5 see a montage or collage, a couple of images 15:23:24  
6 out of focus. 15:23:28

7 Is it your view that this would 15:23:29  
8 be transformative? 15:23:30

9 A Not necessarily, no. 15:23:38

10 Q Why? 15:23:39

11 A Because the simple fact of 15:23:43  
12 combining two images does not transform 15:23:44  
13 automatically either image. 15:23:49

14 Q It doesn't automatically, but it 15:23:57  
15 could, combining two images, especially when 15:23:58  
16 they are out of focus, that could be a fair use 15:24:00  
17 under copyright law, could it not? 15:24:03

18 A It could be considered 15:24:06  
19 transformative. I don't know whether it would 15:24:07  
20 be transformative enough to constitute fair 15:24:09  
21 use. 15:24:12

22 I'm not a lawyer, I can't opine 15:24:12  
23 on that. 15:24:13

24 Q So you don't have an opinion 15:24:14  
25 about whether this is transformative or not? 15:24:15

1 ALLAN COLEMAN

2 A No. 15:24:17

3 MS. PELES: Objection to form. 15:24:18

4 MR. BALLON: What was the 15:24:23  
5 objection, counsel? 15:24:24

6 MS. PELES: That's not what he 15:24:25  
7 said. You are mischaracterizing what he 15:24:26  
8 testified to. 15:24:28

9 MR. BALLON: I didn't make any 15:24:28  
10 characterization. In asking questions 15:24:29  
11 of a witness, of an adverse witness, I 15:24:33  
12 am allowed to ask questions in that 15:24:36  
13 form. 15:24:39

14 That's fine, you can preserve that 15:24:39  
15 objection for a later time. 15:24:41

16 Q All right, now, did you read the 15:24:49  
17 report of Ms. Sussman? 15:24:51

18 A Refresh my memory of who she is. 15:24:58

19 Q She's another expert retained by 15:25:00  
20 Cravath in this case in support of the 15:25:02  
21 Defendants -- I mean the Plaintiffs. 15:25:07

22 A I don't believe that I did. 15:25:10

23 MS. PELES: I can represent that 15:25:12  
24 he did not read any of the reports by 15:25:12  
25 any of our other experts. 15:25:14

1 ALLAN COLEMAN

2 Q Are you familiar with Barbara 15:25:15  
3 Sussman? 15:25:21

4 A Not offhand. 15:25:23

5 Q All right. So then in 41, you 15:25:34  
6 say, "Mr. Wallace and others claim that 15:25:37  
7 Mr. Prince sufficiently transformed the 15:25:45  
8 photographs in question via changes in scale, 15:25:48  
9 medium, et cetera. 15:25:50

10 "I consider this argument 15:25:51  
11 specious." 15:25:53

12 Why? 15:25:55

13 A Because while I cannot determine 15:25:58  
14 the exact extent, if any, to which Plaintiffs' 15:25:59  
15 works have been cropped around their edges, in 15:26:02  
16 the process of posting them to Instagram, it is 15:26:04  
17 clear to me that this cropping is minimal. 15:26:08

18 Further, it is apparent that any 15:26:11  
19 such cropping occurred during original posting 15:26:12  
20 of these images by whichever Instagram 15:26:15  
21 subscribers put them on-line. 15:26:17

22 Mr. Prince has screen grabbed, 15:26:21  
23 deliberately captured the entirety of those 15:26:23  
24 posts, including the substantial borders that 15:26:25  
25 the Instagram posting process automatically 15:26:27



1 ALLAN COLEMAN

2 places around posted images.

15:26:29

3 I detect no other alteration of  
4 Plaintiffs' works themselves as they appeared  
5 in those Instagram posts.

15:26:31

15:26:33

15:26:36

6 Q So the basis for that opinion is  
7 what's written here in 41?

15:26:38

15:26:40

8 Because the question was why you  
9 considered this specious, and you're reading to  
10 me --

15:26:42

15:26:43

15:26:47

11 A I'm reading to you my  
12 explanation of why I consider it specious.

15:26:48

15:26:48

13 Q So, just to save time, you  
14 consider it specious for the reasons written in  
15 paragraph 41?

15:26:50

15:26:52

15:26:54

16 A Yes, that's correct.

15:26:56

17 Q Okay, all right.

15:26:57

18 Now, in 41 you say, "It is  
19 apparent that any such cropping occurred during  
20 the original posting of these images by which  
21 Instagram subscribers put them on-line."

15:27:01

15:27:03

15:27:07

15:27:10

22 What's the basis for your  
23 knowledge about the cropping process when  
24 images are uploaded to Instagram?

15:27:13

15:27:14

15:27:18

25 A I have watched people post

15:27:20

1 ALLAN COLEMAN

2 photographs to Instagram.

15:27:22

3 Q Have you ever had that yourself,  
4 where you posted a photo and it was cropped?

15:27:24

15:27:25

5 A Basically Instagram drops the  
6 pictures into a -- and the picture you upload  
7 into a template.

15:27:30

15:27:32

15:27:36

8 And, depending on the  
9 proportions of your photograph, Instagram  
10 conforms the proportions to its template.

15:27:37

15:27:41

15:27:48

11 Q Do you consider this somehow  
12 relevant to whether the use of these images is  
13 a fair use?

15:27:53

15:27:54

15:28:00

14 A It's relevant in the sense that  
15 radical cropping, for example, to create what,  
16 as I said earlier, we call it detail in  
17 historical and art publication language, that  
18 act of radical cropping suggests a decision to  
19 use only a portion of the image and only a  
20 relevant portion of the image.

15:28:15

15:28:23

15:28:26

15:28:32

15:28:41

15:28:44

15:28:48

21 Whereas moderate cropping of an  
22 image around the edge does not suggest that one  
23 is trying in any significant way to transform  
24 the work.

15:28:51

15:28:52

15:28:56

15:28:59

25 Q So in your view there is a

15:29:01

1 ALLAN COLEMAN

2 difference between cropping and radical 15:29:02

3 cropping? 15:29:03

4 A I would say so, yes, or to put 15:29:04

5 it more -- the selection of a detail. 15:29:07

6 Q But is there any relevance to 15:29:11

7 your opinion on fair use of the fact that -- 15:29:13

8 that the cropping occurred during the original 15:29:19

9 posting, as opposed to some other way, for 15:29:24

10 example, taking a scissors and just cutting off 15:29:27

11 the top? 15:29:30

12 A Well, if Mr. Prince had chosen 15:29:31

13 to exhibit or include in his work a detail of 15:29:35

14 the work of Mr. Graham or Mr. McNatt, that 15:29:42

15 would to me signify that he was abiding by what 15:29:46

16 I understand to know the restrictions of the 15:29:49

17 fair use exception. 15:29:53

18 Q So, what you consider to be 15:29:56

19 material is that -- that the cropping was not 15:29:59

20 radical enough? 15:30:04

21 A Yes, and did not affect the 15:30:06

22 actual content of the images. 15:30:07

23 Q Okay, I understand your opinion. 15:30:10

24 But there is no particular 15:30:12

25 significance to the fact that the cropping 15:30:14

1 ALLAN COLEMAN

2 occurred during the original posting of these 15:30:16  
3 images by whichever Instagram subscriber put 15:30:20  
4 them on-line, is there? 15:30:23

5 A Only to indicate that it wasn't 15:30:27  
6 done by Mr. Prince himself. 15:30:28

7 Q Again, I want to understand the 15:30:32  
8 significance of that, because you know for 15:30:33  
9 centuries artists have had assistants, other 15:30:35  
10 people have helped them with their art, 15:30:38  
11 correct? 15:30:40

12 A Right. 15:30:40

13 Q Michelangelo created the Sistine 15:30:41  
14 Chapel, and a number of other people who helped 15:30:43  
15 him at his direction, he indicated what to 15:30:46  
16 paint. 15:30:49

17 A Right. 15:30:49

18 Q You are familiar with that, are 15:30:49  
19 you not? 15:30:51

20 A Yes, I am. 15:30:51

21 Q So, would there be a difference 15:30:52  
22 between, let's say, Mr. Prince asking one of 15:30:54  
23 the people who work in his art studio to take a 15:30:57  
24 scissors and crop a photo or whether the 15:31:00  
25 cropping occurs automatically by computer? 15:31:03

1 ALLAN COLEMAN

2 A There would be a difference 15:31:10  
3 between those -- there wouldn't be a difference 15:31:11  
4 between Mr. Prince doing it himself and 15:31:13  
5 Mr. Prince instructing his assistant to do it. 15:31:15

6 Q And what is the difference, in 15:31:18  
7 your view? 15:31:19

8 A The difference is that one is a 15:31:20  
9 mechanical and automatic procedure for resizing 15:31:22  
10 a photograph to fit a given template, and the 15:31:26  
11 other is a conscious creative or communicative 15:31:30  
12 decision. 15:31:36

13 Q Well, whether the cropping is 15:31:37  
14 done by a computer or done by a pair of 15:31:38  
15 scissors, isn't it ultimately the artist who 15:31:43  
16 chooses what image to include? 15:31:46

17 A Yes, but I don't understand the 15:31:54  
18 relevance of that point. 15:31:55

19 Q Mr. Prince could have chosen to 15:31:58  
20 use an uncropped version of these photos, 15:32:00  
21 correct? 15:32:02

22 A No, because Instagram has 15:32:05  
23 templates that automatically conform uploaded 15:32:07  
24 images to their dimensions. 15:32:11

25 Q Okay, but these images existed 15:32:16

1 ALLAN COLEMAN

2 elsewhere. Mr. Graham uploaded the images to 15:32:19  
3 his own website and to Facebook and Twitter, 15:32:21  
4 correct? 15:32:23

5 A Correct. 15:32:24

6 Q And the McNatt images existed in 15:32:24  
7 places other than Instagram, correct? 15:32:28

8 A Correct. 15:32:30

9 Q So, based on your assumptions, 15:32:32  
10 Mr. Prince, or for that matter any artist, 15:32:35  
11 could have chosen to use an uncropped version 15:32:37  
12 or could have chosen to use the cropped 15:32:41  
13 version, correct? 15:32:43

14 A If he had access to the 15:32:44  
15 uncropped version, absolutely, yes. 15:32:45

16 Q So, assuming that those images 15:32:47  
17 were available on the internet at that time, 15:32:49  
18 which I have a good faith belief I can prove at 15:32:50  
19 trial, he could have used the uncropped version 15:32:53  
20 or the cropped version, correct? 15:32:58

21 A He could have uploaded an 15:33:02  
22 uncropped version or a cropped version to 15:33:04  
23 Instagram, but Instagram would once again have 15:33:06  
24 conformed whatever version he uploaded to its 15:33:08  
25 templates. 15:33:11

1 ALLAN COLEMAN

2 Q Right. But he could have used 15:33:15  
3 an uncropped version -- he could have digitally 15:33:16  
4 altered, he could have used the Instagram frame 15:33:21  
5 and superimposed an uncropped version of this 15:33:26  
6 photo, couldn't he? 15:33:31

7 A Presumably. 15:33:32

8 Q Pretty easy thing to do, isn't 15:33:33  
9 it? 15:33:34

10 A I would think so. 15:33:35

11 Q So there was some selection that 15:33:36  
12 went into this process? 15:33:38

13 A I don't know that. 15:33:44

14 Q But you don't know that there 15:33:44  
15 wasn't any? 15:33:46

16 A No. 15:33:47

17 Q Now, in paragraph 42 -- 15:33:54

18 MS. PELES: If you are moving on 15:33:59  
19 to a new section, can we just take a 15:33:59  
20 quick break? 15:34:02

21 MR. BALLON: Okay. I can 15:34:04  
22 continue asking questions from the 15:34:04  
23 prior -- no, I'm just kidding. 15:34:07

24 Let's take a break. About ten 15:34:10  
25 minutes? 15:34:12

1 ALLAN COLEMAN

2 MS. PELES: Yes, that would be 15:34:12  
3 great. 15:34:13

4 THE VIDEOGRAPHER: Here now marks 15:34:15  
5 the end of video file number 3. The 15:34:16  
6 time is 3:34 p.m. We are now off the 15:34:19  
7 record. 15:34:21

8 (At this point in the proceedings 15:53:25  
9 there was a recess, after which the 15:53:25  
10 deposition continued as follows:) 15:53:25

11 MS. PELES: Here now marks the 16:09:39  
12 beginning of video file number 4. The 16:09:40  
13 time is 4:09 p.m. We are back on the 16:09:42  
14 record. 16:09:45

15 Q Mr. Coleman, do you know Nate 16:09:46  
16 Harrison? 16:09:49

17 A No. 16:09:50

18 Q Do you know who Nate Harrison 16:09:51  
19 is? 16:09:53

20 A Not to the best of my 16:09:54  
21 recollection. 16:09:55

22 Q Do you know June Besek? June 16:09:58  
23 Besek? 16:10:01

24 A Not to -- again, I don't think 16:10:02  
25 so. 16:10:03



1 ALLAN COLEMAN

2 Q Michelle Bogle? 16:10:03

3 A I know the name, but I don't 16:10:08

4 know -- I don't place it. 16:10:11

5 Q Amy Whitaker? 16:10:16

6 A Not to the best of my knowledge. 16:10:18

7 Q I would like to show you what 16:10:21

8 has been marked as Exhibit 216 and ask you if 16:10:22

9 you recognize this as a blog post that you 16:10:28

10 created about a series. 16:10:32

11 MS. PELES: I think we already 16:10:38

12 have a 216, the compendium. 16:10:38

13 MR. BALLON: We can call it 217 16:10:44

14 or 216 B, 216 C. Let me take that back, 16:10:45

15 we will make it 217. 16:10:50

16 And 217 looks exactly like the one 16:10:57

17 I just gave you. Here is 217. 16:10:59

18 (The above described document was 16:11:01

19 marked Exhibit 217 for identification, as 16:11:01

20 of this date.) 16:11:01

21 Q Could you tell me, please, if 16:11:02

22 you recognize this as a blog post that you had 16:11:03

23 posted in or around March of 2015? 16:11:05

24 A Yes. 16:11:11

25 Q And this concerns an exhibit by 16:11:12

1 ALLAN COLEMAN

2 John Malkovich where certain photographs were 16:11:17  
3 restaged, does it not? 16:11:22

4 A The photographer is not John 16:11:24  
5 Malkovich, but John Malkovich is the subject of 16:11:26  
6 the photographs. 16:11:30

7 Q Right, okay. So the 16:11:31  
8 photographer is who? 16:11:34

9 A The photographer is Mr. Miller. 16:11:35

10 Q Sandro Miller? 16:11:42

11 A Sandro Miller, yes. 16:11:44

12 Q So, for example, as you can see 16:11:47  
13 on the first page of this exhibit, there is a 16:11:48  
14 picture on the bottom left, Dorothea Lange, 16:11:51  
15 Migrant Mother? 16:11:55

16 A Right. 16:11:56

17 Q And then the restaging of that 16:11:57  
18 you can see on the right in the middle part, 16:12:00  
19 correct? 16:12:02

20 A Correct. 16:12:03

21 Q In this post you opined that 16:12:06  
22 this use was not fair use, is that correct? 16:12:08

23 A No. 16:12:11

24 Q What did you opine? 16:12:12

25 A I opined that this use was in 16:12:13

1 ALLAN COLEMAN

2 fact -- was in fact fair use, because the 16:12:15  
3 Dorothea Lange photograph is in the public 16:12:19  
4 domain. 16:12:21

5 Q I see, okay. So I -- 16:12:22

6 A So it was a very precise 16:12:25  
7 distinction that I made. 16:12:27

8 Q But if the Dorothea Lange photo 16:12:27  
9 was not in the public domain, you would view 16:12:29  
10 this use as not being fair use? 16:12:31

11 A I would view this as potentially 16:12:33  
12 not being fair use. 16:12:35

13 Q Potentially not being fair use. 16:12:36

14 There is a comment I want to 16:12:38  
15 draw your attention to on page 2 at the bottom. 16:12:39

16 Someone named Colleen Thornton 16:12:42  
17 posted a comment suggesting that maybe this 16:12:44  
18 could be parody. 16:12:48

19 And you responded at 1:12 p.m. 16:12:50  
20 on March 9, "Because Miller claims repeatedly 16:12:54  
21 to have homage and respect as his motivation 16:12:57  
22 for this series, I don't see how he could claim 16:13:01  
23 parody as his intent, even if you or others or 16:13:06  
24 the court read the pieces as parodic." 16:13:10

25 Do you see that? 16:13:15

1 ALLAN COLEMAN

2 A Yes.

16:13:16

3 Q Do you agree that intent can be  
4 used to negate an inference of fair use?

16:13:16

16:13:19

5 A No.

16:13:27

6 Q What was your observation there  
7 when you said that you don't -- that you didn't  
8 think that the work could be viewed as parody?

16:13:30

16:13:31

16:13:34

9 A Because the work does not really  
10 exhibit any parodic aspects, it simply tries as  
11 best as possible to replicate every detail of  
12 the original work.

16:13:44

16:13:46

16:13:52

16:13:54

13 Q But in support of that also you  
14 note that the photographer didn't cite parody  
15 as the intention, correct?

16:13:57

16:14:01

16:14:09

16 A Right.

16:14:11

17 Q And so you feel that bolsters  
18 the view that it couldn't be characterized as a  
19 fair use parody?

16:14:12

16:14:14

16:14:16

20 A Correct.

16:14:18

21 Q Now, earlier today you said, in  
22 connection with Prince, that you felt that his  
23 stated intention was not relevant to whether  
24 the uses in this case were transformative or a  
25 fair use, correct?

16:14:19

16:14:22

16:14:26

16:14:29

16:14:33

1 ALLAN COLEMAN

2 A Right. 16:14:34

3 Q So how is it that intent can be 16:14:37

4 used to negate an inference of fair use -- 16:14:39

5 well, or is it your view that intent can be 16:14:42

6 used to negate an inference of fair use, but 16:14:44

7 not to support an inference of fair use? 16:14:47

8 A It is my understanding that the 16:14:49

9 courts will consider intent in that regard. 16:14:50

10 Q So, it's your understanding that 16:14:55

11 courts will consider intent to negate a finding 16:14:58

12 of fair use? 16:15:00

13 A Or affirm. 16:15:01

14 Q Or affirm, I see. 16:15:02

15 But in your opinion, you said 16:15:04

16 you hadn't considered Prince's intent -- 16:15:06

17 A Right. 16:15:08

18 Q -- in determining that this was 16:15:09

19 not a fair use here? 16:15:10

20 A Right, I don't use intent as a 16:15:11

21 qualifier in my critical work. 16:15:14

22 Q I see, I see. 16:15:18

23 A I deal with the finished work 16:15:19

24 itself as de facto a statement of intent. 16:15:20

25 Q I see. So courts will look at 16:15:25

1 ALLAN COLEMAN

2 intent, but you don't feel intent is relevant, 16:15:26  
3 at least for your opinion here? 16:15:29

4 A Right. 16:15:31

5 Q All right. So I would like to 16:15:33  
6 ask you to go back to your report, and let's 16:15:34  
7 focus this time on paragraph 42. 16:15:38

8 A That's where we were. 16:15:46

9 Q Well, I moved to 42, and your 16:15:47  
10 lawyer quite reasonably suggested that if we -- 16:15:49

11 A You moved to 43, and my lawyer 16:15:53  
12 suggested we stop at 42. 16:15:55

13 Q We will go back to 42. 16:15:56

14 A I'm fine with it. I'm trying to 16:15:59  
15 keep things straight for the record. 16:16:01

16 Q Yes, yes, I agree. 16:16:02

17 All right, so in paragraph 42 16:16:05  
18 you talk about, you say Mr. Prince -- you said 16:16:08  
19 that the comment comprises nothing more than 16:16:13  
20 what Mr. Prince acknowledges is gobbledygook. 16:16:17

21 Do you see that? 16:16:22

22 A Yes, I see that. 16:16:23

23 Q Now, what do you understand 16:16:24  
24 gobbledygook to mean? 16:16:26

25 A I understand it to mean 16:16:28

1 ALLAN COLEMAN

2 nonsense, basically, babble.

16:16:29

3 Q Do you know whether that's the  
4 intent that Mr. Prince has for the term  
5 gobbledygook?

16:16:35

16:16:35

16:16:38

6 A No.

16:16:42

7 Q So at his deposition, Mr. Prince  
8 explained what he means by the term  
9 gobbledygook.

16:16:43

16:16:46

16:16:47

10 I am guessing you didn't -- you  
11 weren't provided with that information?

16:16:49

16:16:51

12 A No, I didn't receive the  
13 deposition.

16:16:53

16:16:54

14 Q Now, if I were to tell you to  
15 assume that in this context Mr. Prince uses the  
16 term gobbledygook to mean something other than  
17 gibberish, if it has some specific defined  
18 meaning, would that impact your opinion here in  
19 paragraph 42?

16:16:54

16:16:58

16:17:03

16:17:07

16:17:09

16:17:11

20 A No, because the prose itself  
21 qualifies in my opinion as gobbledygook,  
22 whether Mr. Prince considers it such or not.

16:17:24

16:17:29

16:17:30

23 Q Well, I understand that to you,  
24 based on your experience, it doesn't mean  
25 anything to you, perhaps.

16:17:36

16:17:37

16:17:39

1 ALLAN COLEMAN

2 But if it was intended to have 16:17:43  
3 meaning to people who understood it, would that 16:17:45  
4 change your view? 16:17:47

5 A People who understood it other 16:17:54  
6 than Mr. Prince himself? 16:17:55

7 Q Yes. 16:17:56

8 A It would still appear to me as 16:18:02  
9 gobbledygook. 16:18:04

10 Q Well, okay. So what if 16:18:06  
11 Mr. Prince -- do you speak Arabic? 16:18:08

12 A No. 16:18:12

13 Q So what if Mr. Prince wrote out 16:18:13  
14 several sentences in Arabic and they appeared 16:18:15  
15 to you to be meaningless because you don't read 16:18:19  
16 Arabic. 16:18:21

17 Does that necessarily mean that 16:18:22  
18 because you don't read Arabic that what he 16:18:24  
19 wrote was incomprehensible prose inherently as 16:18:26  
20 such and not commenting on the work? 16:18:31

21 A No, I don't assume that Arabic 16:18:33  
22 is meaningless, so I'm challenging the question 16:18:35  
23 or questioning the question. 16:18:40

24 You're asking me to say that I 16:18:42  
25 would take Arabic to be meaningless. I don't 16:18:44



1 ALLAN COLEMAN

2 take Arabic to be meaningless. It is simply a 16:18:46  
3 language I don't speak or read. 16:18:49

4 Q Certainly. So if he were 16:18:51  
5 writing in a certain style that might be 16:18:52  
6 understandable to, for example, to social media 16:18:54  
7 users, but it nonetheless didn't mean anything 16:18:59  
8 to you, would you still call it 16:19:02  
9 incomprehensible prose because it doesn't have 16:19:03  
10 meaning to you, even if it does have meaning to 16:19:05  
11 other people? 16:19:08

12 A Certainly in that sense, in that 16:19:10  
13 condition, that situation, I would qualify it 16:19:13  
14 as meaningless to me. 16:19:15

15 Q All right, but simply because it 16:19:18  
16 it's meaningless to you doesn't mean that it 16:19:19  
17 would necessarily be meaningless to a 16:19:21  
18 reasonable observer if the reasonable observer 16:19:24  
19 understood what the prose meant? 16:19:27

20 A True. 16:19:30

21 Q Okay, that's fair enough. 16:19:31

22 Are you a fan of rock music? 16:19:41

23 A Some of it. 16:19:44

24 Q Some of it? 16:19:45

25 A Yes. 16:19:46

1 ALLAN COLEMAN

2 Q Have you heard of the group 16:19:46

3 Sonic Youth? 16:19:48

4 A I have heard of it, yes. 16:19:49

5 Q Are you familiar with any of 16:19:50

6 their songs? 16:19:51

7 A Not particularly, no. 16:19:52

8 Q So, for example, the text in the 16:19:55

9 McNatt painting, if I told you that the text in 16:19:59

10 the McNatt painting included some lyrics from a 16:20:02

11 Sonic Youth song, would that change your 16:20:05

12 opinion it was incomprehensible prose? 16:20:10

13 A I would simply say it was 16:20:13

14 incomprehensible to me. I didn't recognize 16:20:15

15 that reference. 16:20:16

16 Q But a reasonable observer who is 16:20:17

17 familiar with Sonic Youth, to such a person the 16:20:19

18 prose would have meaning, wouldn't it? 16:20:22

19 A Presumably. 16:20:25

20 Q And it would relate to the photo 16:20:27

21 of Kim Gordon, who was a member of that band, 16:20:28

22 wouldn't it? 16:20:31

23 A Yes, in that case it would, yes. 16:20:32

24 Q And did you know that she was a 16:20:34

25 member of Sonic Youth before today? 16:20:35

1 ALLAN COLEMAN

2 A No.

16:20:37

3 Q In paragraph 43 you talk about  
4 image-text works, and you say, "As a critic, I  
5 find this distinction significant, because the  
6 Instagram posts themselves constitute what I  
7 refer to as image-text works."

16:20:40

16:20:41

16:20:45

16:20:47

16:20:50

8 What do you mean by image-text  
9 works?

16:20:52

16:20:55

10 A Any work of art that combines  
11 visual imagery and textual material.

16:20:55

16:21:00

12 Q And is it fair to say that the  
13 Prince paintings at issue in this case then are  
14 image-text works, by that definition?

16:21:03

16:21:06

16:21:08

15 A Yes.

16:21:10

16 In fact it's not only fair to  
17 say, I say it.

16:21:26

16:21:27

18 Q Even more fair.

16:21:31

19 All right. Now, why do you say  
20 that Mr. Prince appropriated the comments at  
21 the end of paragraph 43?

16:21:36

16:21:45

16:21:52

22 A I don't say he appropriated the  
23 comments, I say he appropriated the entire  
24 Instagram post, posts.

16:22:04

16:22:06

16:22:09

25 Q Well, let's start with the

16:22:13

1 ALLAN COLEMAN

2 Graham -- well, let's start with the Portrait 16:22:14  
3 of Rastajay92, which includes a photographic 16:22:20  
4 element from the Graham photo. 16:22:26

5 You earlier testified that it 16:22:31  
6 was your understanding that Mr. Prince 16:22:32  
7 selected -- used certain hacks to pick and 16:22:35  
8 choose to include or exclude certain comments, 16:22:38  
9 correct? 16:22:44

10 A Correct. 16:22:44

11 Q So he was able to exclude those 16:22:46  
12 comments that he didn't want to include for 16:22:48  
13 whatever reason, correct? 16:22:50

14 A Correct. 16:22:51

15 Q And then he took a screen shot, 16:22:54  
16 which was essentially an edited selection of 16:22:55  
17 comments, including his own, correct? 16:23:01

18 A As I understand. 16:23:03

19 Q So isn't it true, then, at least 16:23:05  
20 with respect to that painting, that Mr. Prince 16:23:06  
21 didn't appropriate the whole, and not separate 16:23:09  
22 elements, he appropriated separate elements, he 16:23:12  
23 picked and chose certain comments and included 16:23:16  
24 his own, correct? 16:23:19

25 A I would say he appropriated the 16:23:24

1 ALLAN COLEMAN

2 entirety of it, which included elements that he 16:23:26  
3 had added, an element at least that he had 16:23:28  
4 added to it. 16:23:30

5 Q But you earlier acknowledged 16:23:31  
6 that he had excluded certain comments, correct? 16:23:33

7 A As I understand it, yes. 16:23:36

8 Q And you earlier also 16:23:37  
9 acknowledged that you never looked at the 16:23:39  
10 original Instagram post on the internet, so you 16:23:41  
11 don't really know what was excluded, correct? 16:23:44

12 A Correct. 16:23:46

13 Q So, but as you sit here today, 16:23:47  
14 when you say he appropriated the whole, that 16:23:50  
15 really isn't correct, is it, he appropriated 16:23:54  
16 some comments, not the entire posting? 16:23:56

17 A I was not asked to review the 16:24:05  
18 entire posting, I was asked to review the 16:24:07  
19 posting as it appears in the Instagram pieces 16:24:09  
20 by Mr. Prince. 16:24:15

21 Q But knowing, as you now know, 16:24:16  
22 that Mr. Prince selected certain posts and 16:24:18  
23 excluded others, the process that you referred 16:24:25  
24 to as hacking, you now acknowledge, don't you, 16:24:27  
25 that when you say he appropriated the whole, 16:24:30

1 ALLAN COLEMAN

2 that's not true with respect to Portrait of 16:24:32  
3 Rastajay92? 16:24:34

4 A Well, you can't really 16:24:38  
5 appropriate your own material. 16:24:39

6 Q I'm focusing on the whole, as 16:24:44  
7 opposed to you said he appropriated the whole, 16:24:46  
8 not just separate elements. 16:24:49

9 But you yourself acknowledge 16:24:52  
10 that using what you called a hack, he excluded 16:24:54  
11 certain comments and included -- he picked and 16:24:56  
12 chose which comments to include. 16:25:00

13 So as you sit here today, you 16:25:03  
14 have to acknowledge that when you say he 16:25:04  
15 appropriated the whole, that wouldn't be 16:25:06  
16 accurate, correct? 16:25:08

17 A He appropriated the entirety of 16:25:12  
18 what was on the screen when he made the screen 16:25:14  
19 grab, which included something that he had 16:25:16  
20 added in the comments section. 16:25:19

21 Q Right, but before taking that 16:25:21  
22 rephotograph of what was on the screen, using 16:25:24  
23 this hack, he deleted and eliminated certain 16:25:28  
24 comments, correct? 16:25:31

25 A That's irrelevant to me as a 16:25:32

1 ALLAN COLEMAN

2 critic. What's not in a work is not relevant 16:25:34  
3 to me. 16:25:37

4 Q I understand your view. 16:25:39

5 Again, I'm just trying to get 16:25:40  
6 back to where you say he appropriated the whole 16:25:41  
7 and not just separate elements, because you 16:25:43  
8 have now acknowledged that he appropriated some 16:25:46  
9 but not all the comments, correct? 16:25:50

10 A I'm not sure what you're 16:26:00  
11 referring to as the whole. 16:26:00

12 You seem to be referring to some 16:26:01  
13 version of the Instagram posts that existed 16:26:05  
14 prior to his making the screen grab. 16:26:08

15 Q Yes, right, the whole, exactly, 16:26:13  
16 the whole Instagram post with all of the 16:26:15  
17 comments as they existed on the internet. 16:26:18

18 That's not what he printed. 16:26:20  
19 There was some creative process involving the 16:26:21  
20 selection and exclusion of particular comments. 16:26:24

21 So when you say Mr. Prince 16:26:28  
22 appropriated the whole and not just separate 16:26:29  
23 elements, what I'm asking is as you sit here 16:26:32  
24 today, you now recognize, don't you, that this 16:26:35  
25 statement is not correct, because he did not 16:26:39

1 ALLAN COLEMAN

2 include every single comment, he only included 16:26:41  
3 the ones he thought, for whatever reason, he 16:26:43  
4 only included the ones he wanted to include? 16:26:46

5 A But every single comment was 16:26:48  
6 not -- is not present in the -- in the works 16:26:49  
7 themselves. 16:26:57

8 Q But you say he appropriated the 16:26:59  
9 whole. If he appropriated the whole, then 16:27:01  
10 there would have been some number of comments, 16:27:03  
11 40, 50? 16:27:06

12 A No, after he deleted them there 16:27:07  
13 were not, and then what was left after he 16:27:08  
14 deleted them was the whole, of which he made a 16:27:10  
15 screen grab. 16:27:13

16 Q I see. So when you say he 16:27:15  
17 appropriated the whole, you don't mean he 16:27:17  
18 appropriated the whole Instagram -- 16:27:18

19 A Stream or thread. 16:27:20

20 Q He didn't appropriate the whole 16:27:23  
21 stream, you just mean once he made certain 16:27:25  
22 selections of what to include and what to 16:27:29  
23 exclude, once he was satisfied with the final 16:27:32  
24 product, at that point he took a screen shot of 16:27:34  
25 that? 16:27:38



1 ALLAN COLEMAN

2 A Right; exactly. 16:27:39

3 Q Okay, I understand now. 16:27:40

4 So, at the end of paragraph 44 16:28:28

5 you say, "One must address Mr. Prince's use of 16:28:31

6 the images in assessing the purportedly 16:28:33

7 transformative aspect of his derivative work." 16:28:36

8 And actually -- never mind, I 16:28:41

9 think we have gone over that. 16:28:45

10 All right, let's go on to 45. I 16:28:47

11 think we covered that as well. 16:28:56

12 In paragraph 49 you refer to 16:29:16

13 Mr. Prince's disrespect for Mr. Graham and 16:29:18

14 Mr. McNatt as fellow artists. 16:29:21

15 What is the basis for that 16:29:25

16 conclusion? Is it just the fact that the 16:29:26

17 photos appear in the paintings, as you had 16:29:30

18 testified to earlier, or is there any other 16:29:33

19 basis for believing that he disrespects 16:29:35

20 Mr. Graham and Mr. McNatt? 16:29:38

21 A Well, I believe that the taking, 16:29:39

22 the appropriating and use of someone else's 16:29:43

23 work without acknowledgment and permission is a 16:29:46

24 fundamental sign of disrespect to any maker of 16:29:49

25 intellectual property. 16:29:52

1 ALLAN COLEMAN

2 Q Now, is that true even if 16:29:57  
3 Mr. Prince didn't know who Mr. Graham and 16:29:58  
4 Mr. McNatt were? 16:30:00

5 A Yes. 16:30:01

6 Q And so with respect to the 16:30:02  
7 McNatt photo, which Mr. Prince has testified he 16:30:06  
8 understood was a photo that belonged to Kim 16:30:12  
9 Gordon, assuming for these purposes that 16:30:16  
10 Mr. Prince, in fact, assumed that the McNatt 16:30:24  
11 photo belonged to Kim Gordon and not 16:30:27  
12 Mr. McNatt, do you still believe that 16:30:30  
13 Mr. Prince using that photo in some fashion in 16:30:33  
14 his painting constitutes disrespect for 16:30:38  
15 Mr. McNatt? 16:30:42

16 A I believe it's incumbent on any 16:30:44  
17 maker of intellectual property, whether a 16:30:47  
18 scholar or an artist, to discover the sources 16:30:50  
19 and acknowledge the sources of the material 16:30:53  
20 that one uses and to give credit where credit 16:30:55  
21 is due. 16:30:59

22 Q And what if Mr. Prince thought 16:31:03  
23 that the photo was owned by Kim Gordon, to whom 16:31:05  
24 he did give credit, would that constitute 16:31:07  
25 disrespect? 16:31:09

1 ALLAN COLEMAN

2 A It would certainly constitute 16:31:17  
3 extreme laziness, because it's very rare that 16:31:20  
4 the subject of a photograph owns the rights to 16:31:22  
5 a photograph, and has the licensing rights. 16:31:27

6 It happens, but it's reasonably 16:31:30  
7 rare. It's usually the photographer who owns 16:31:33  
8 those rights. 16:31:37

9 Q Now, the comments in the 16:31:39  
10 untitled portrait of Kim Gordon by Richard 16:31:42  
11 Prince, are those comments by Instagram users 16:31:45  
12 or by Mr. Prince, do you know? 16:31:47

13 A It's my understanding that one 16:31:51  
14 of them is by one of the Instagram users and 16:31:53  
15 one of them is by Mr. Prince. 16:31:56

16 Q For the McNatt -- for the Kim 16:31:58  
17 Gordon painting? 16:32:01

18 A That's my understanding. 16:32:02

19 Q Now, would it make a difference 16:32:05  
20 if all of the comments -- would it make a 16:32:07  
21 difference to your analysis if all of the 16:32:09  
22 comments were written by Mr. Prince? 16:32:11

23 A No. 16:32:13

24 Q And why is that? 16:32:15

25 A Because my analysis is based on 16:32:17

1 ALLAN COLEMAN

2 the images and not on the comments. 16:32:20

3 Q I see, okay. 16:32:23

4 Are you familiar with the 16:32:31

5 photographer Manny Garcia? 16:32:32

6 A No. 16:32:34

7 Q Are you familiar with the Hope 16:32:37

8 work of art by Shepard Ferry depicting 16:32:45

9 President Obama? 16:32:49

10 A Yes. 16:32:50

11 Q And do you know who the 16:32:50

12 photographer was whose AP photograph was used 16:32:51

13 as the basis for that Shepard Ferry work? 16:32:56

14 A I do know, and I have written 16:32:58

15 about it, and I have forgotten his name. 16:32:59

16 Q Could it be Manny Garcia? 16:33:02

17 A Yes. 16:33:04

18 Q And had you heard of Manny 16:33:07

19 Garcia before this lawsuit arose with Shepard 16:33:09

20 Ferry? 16:33:14

21 A I had seen the by-line on some 16:33:15

22 published photos, because as a critic of 16:33:17

23 photography, I tend to read by-lines, which 16:33:20

24 most people don't, but only as a by-line. 16:33:22

25 Q So it wasn't a name that meant 16:33:25

1 ALLAN COLEMAN

2 much to you before that? 16:33:27

3 A No, it wasn't. 16:33:28

4 Q But I bet you know an awful lot 16:33:31  
5 more about his work today, don't you? 16:33:33

6 A Not a lot, no. 16:33:35

7 Q But certainly more than you used 16:33:36  
8 to? 16:33:37

9 A Some. 16:33:37

10 Q Some. So in that instance the 16:33:38  
11 fact that Shepard Ferry had used this photo 16:33:42  
12 actually enhanced the public's awareness of 16:33:44  
13 Manny Garcia, did it not? 16:33:48

14 A I wouldn't really know about the 16:33:54  
15 public's awareness. It raised my awareness of 16:33:55  
16 his work to some extent, but very modestly. It 16:33:58  
17 didn't -- 16:34:01

18 Okay, fair enough. 16:34:03

19 MR. BALLON: Why don't we take a 16:34:10  
20 five minute break at this point. 16:34:14

21 THE WITNESS: Okay. 16:34:16

22 THE VIDEOGRAPHER: One moment, 16:34:16  
23 please. 16:34:17

24 The time is 4:34 p.m. We are now 16:34:19  
25 off the record. 16:34:23

1 ALLAN COLEMAN

2 (At this point in the proceedings 16:34:24  
3 there was a recess, after which the 16:34:24  
4 deposition continued as follows:) 16:34:24

5 THE VIDEOGRAPHER: The time is 16:39:55  
6 4:39 p.m. We are back on the record. 16:39:57

7 Q Okay, Mr. Coleman, last night 16:40:00  
8 your lawyers sent a new CV to at least to those 16:40:04  
9 of us representing Mr. Prince and Blum & Poe, 16:40:12  
10 not to counsel for Gagosian, which is a 16:40:15  
11 curriculum vitae updated January 2018. 16:40:20

12 I'm going to mark it as Exhibit 16:40:24  
13 222 and ask you if you can please -- we are 16:40:25  
14 going to mark it again as 222 and ask you if 16:40:30  
15 you can confirm that is the new CV that was 16:40:34  
16 produced today, correct? 16:40:38

17 (The above described document was 16:40:39  
18 marked Exhibit 222 for identification, as 16:40:39  
19 of this date.) 16:40:39

20 A Produced by counsel here today. 16:40:40  
21 The CV has actually existed for some months 16:40:43  
22 now. 16:40:46

23 Q And can you tell me what is 16:40:48  
24 different about this from what we previously 16:40:50  
25 had received? 16:40:51

1 ALLAN COLEMAN

2 A As I noticed, all that you were 16:40:53  
3 sent, and I believe this was an oversight, was 16:40:58  
4 the first page of this CV. 16:41:00

5 And so having noticed that, I 16:41:06  
6 needed to notify counsel that this was only the 16:41:08  
7 first page, and she asked me to send my current 16:41:11  
8 CV, which is this, full CV, which is this. 16:41:16

9 Q Okay. 16:41:20

10 Well, I appreciate that. I have 16:41:21  
11 not seen anything today that I have questions 16:41:24  
12 about, but obviously not receiving it until 16:41:28  
13 today, we weren't able to do any due diligence 16:41:30  
14 or look up any articles that might have been 16:41:33  
15 listed here that weren't on our -- 16:41:34

16 A There actually aren't any 16:41:38  
17 articles listed there. There are books, and 16:41:39  
18 books in which I have essays, books by others, 16:41:42  
19 or monographs or anthologies in which I have 16:41:46  
20 essays. 16:41:48

21 But there is a list of my 16:41:49  
22 publications for I think the last ten years or 16:41:51  
23 so as part of the original report that you did 16:41:53  
24 receive. 16:41:58

25 Q I see. So this new one includes 16:41:58

1 ALLAN COLEMAN

2 portions of books that we weren't aware of? 16:42:01

3 A No, it includes listings of 16:42:02

4 books of mine and books by others in which 16:42:06

5 essays of mine appear, periodicals with which 16:42:08

6 I've had long term relationships, other 16:42:13

7 periodicals in which I have published, various 16:42:15

8 teaching -- teaching positions I have held, 16:42:18

9 awards I have received, et cetera, et cetera. 16:42:22

10 Q I see, okay, perfect. 16:42:24

11 MR. BALLON: So again, we weren't 16:42:27

12 able to do any due diligence on that in 16:42:28

13 terms of reviewing these materials. 16:42:30

14 I don't know that that would be 16:42:32

15 material, but because we didn't have a 16:42:34

16 chance before today, what I'm going to do 16:42:36

17 at this point is suspend the deposition, 16:42:38

18 reserving the right to retake in the event 16:42:40

19 there is some new material listed here 16:42:43

20 that we consider to be relevant and would 16:42:45

21 want to ask you questions about. 16:42:47

22 But subject to that, I would end 16:42:50

23 the deposition for today. 16:42:51

24 MS. APPLETON: I would join in 16:42:55

25 that reservation, suspension of the 16:42:55



1 ALLAN COLEMAN

2 deposition, but I have no questions at  
3 this time.

16:42:58

16:42:59

4 THE VIDEOGRAPHER: Counsel for  
5 the witness?

16:43:00

16:43:00

6 MS. PELES: I have no questions.

16:43:01

7 THE VIDEOGRAPHER: One moment,  
8 everyone.

16:43:02

16:43:03

9 Here now marks the end of video  
10 file number 4 and concludes this  
11 deposition today.

16:43:04

16:43:06

16:43:07

12 The time is 443 p.m. We are now  
13 off the record.

16:43:08

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ALLAN COLEMAN

[illegible]

I, the undersigned, a Certified Shorthand Reporter of the State of New York, do hereby certify:

That the foregoing proceedings were taken before me at the time and place herein set forth; that any witnesses in the foregoing proceedings, prior to testifying, were duly sworn; that a record of the proceedings was made by me using machine shorthand which was thereafter transcribed under my direction;

That the foregoing transcript is a true record of the testimony given.

Further, that if the foregoing pertains to the original transcript of a deposition in a federal case before completion of the proceedings, review of the transcript [ ] was [x] was not requested.

I further certify I am neither financially interested in the action nor a relative or employee of any attorney or party to this action.

IN WITNESS WHEREOF, I have this  
date subscribed my name.

Dated: ~~July 13, 2018~~

Stephen J. Moore  
RPR, CRR

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ALLAN COLEMAN  
DECLARATION UNDER PENALTY OF PERJURY  
Case Name: GRAHAM v. PRINCE  
Date of Deposition: July 12,  
2018

I, ALLAN D. COLEMAN, hereby  
certify under penalty of perjury under the  
laws of the State of New York that the  
foregoing is true and correct.

Executed this \_\_\_\_\_ day of  
\_\_\_\_\_, 2018, at  
\_\_\_\_\_.

\_\_\_\_\_

ALLAN D. COLEMAN

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1	ALLAN COLEMAN				
2	DEPOSITION ERRATA SHEET				16:43:12
3	Case Name: GRAHAM v. PRINCE				16:43:12
4	Name of Witness: ALLAN D. COLEMAN				16:43:12
5	Date of Deposition: July 12,				16:43:12
6	2018				16:43:12
7	Reason Codes: 1. To clarify the				16:43:12
8	record.				16:43:12
9	2. To conform to the facts.				16:43:12
10	3. To correct transcription errors.				16:43:12
11	Page _____	Line _____	Reason _____		16:43:12
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12	Page _____	Line _____	Reason _____		16:43:12
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13	Page _____	Line _____	Reason _____		16:43:12
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23	Page _____	Line _____	Reason _____		16:43:12
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1	ALLAN COLEMAN			
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17	_____ Subject to the above			16:43:12
18	changes, I certify that the transcript is			16:43:12
19	true and correct			16:43:12
20	_____ No changes have been			16:43:12
21	made. I certify that the transcript is			16:43:12
22	true and correct.			16:43:12
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