

1 those features?

2 **A.** Yeah. Well, first of all, marriage, the ability to marry,
3 to say, "I do," it is a basic civil right. It expresses the
4 right of a person to have the liberty to be able to consent
5 validly.

6 And this can be seen very strikingly in American
7 history through the fact that slaves during the period, the
8 long period that American states had slavery, slaves could not
9 marry legally.

10 **Q.** Why were slaves barred from marrying?

11 **A.** Because as unfree persons, they could not consent. They
12 did -- they lacked that very basic liberty of person, control
13 over their own actions that enabled them to say, "I do," with
14 the force that "I do" has to have. Which is to say, I am
15 accepting the state's terms for what a valid marriage is.

16 A slave couldn't do that because the master had
17 overall rights over the slaves' ability to disport his person
18 or to make any claim. The slave could not obligate himself in
19 the way that a marriage partner does obligate himself or
20 herself.

21 **Q.** What happened when slaves were emancipated?

22 **A.** When slaves were emancipated, they flocked to get married.
23 And this was not trivial to them, by any means.

24 They saw the ability to marry legal.
25 informal unions in which they had formed families.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF
CALIFORNIA

Case number: 3:09-cv-02292-VRW

PLTF EXHIBIT NO. PX3004

Date admitted: _____

By: _____

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23 And this was not trivial to them, by any means.

24 They saw the ability to marry legally, to replace the
25 informal unions in which they had formed families and had

1 children, many of them, to replace those informal unions with
2 legal, valid marriage in which the states in which they lived
3 would presumably protect their vows to each other.

4 In fact, one quote that historians have drawn out
5 from the record, because many of these ex-slaves were
6 illiterate, of course, but one quotation that is the title of
7 an article a historian wrote, it was said by an ex-slave who
8 had also been a Union soldier, and he declared, "The marriage
9 covenant is the foundation of all our rights."

10 Meaning that it was the most everyday exhibit of the
11 fact that he was a free person. He could say, "I do" to his
12 partner.

13 And then in corollary with that -- because, of
14 course, the history of slavery is happily behind us -- there
15 are other ways in which this position of civil rights, of basic
16 citizenship, is a feature of the ability to marry and to choose
17 the partner you want to choose.

18 **Q.** What would be an example of another one of those features?

19 **A.** Well, I want to use an example of that, that again comes
20 from the period while slavery still existed. But it doesn't
21 have to do with the slave. It has to do with a black man,
22 Dred Scott, who tried to say, when he was in a
23 non-slave-holding state, that he was a citizen. And in an
24 infamous decision, the Supreme Court denied him that claim.

25 And why this is relevant here is that Justice Taney