

IN THE UNITED STATES DISTRICT COURT

[REDACTED]

public high schools, stationing police officers known as School Resource Officers ("SRO") in each school, arming them with chemical weapons, and authorizing them to use those weapons to

while attending schools. Mace is used so frequently and so indiscriminately in Birmingham's public high schools that each Class Representative – and all RCS students – faces a real and

substantial risk of future and repeated injury.

3. Accordingly, Plaintiffs J.W., G.S., P.S., and T.L.P. bring this action on behalf of a class composed of all current and future students who are or will be enrolled in any high school in the Birmingham City School system – all of whom face and will continue to face a real and

immediate risk of repeated injury due to Defendants' unconstitutional policy practices and

5. Plaintiff G.S. is an 18-year-old girl residing in Birmingham, Alabama. She is currently

enrolled at Huffman High School in Birmingham, Alabama. She is currently

described below in paragraphs 87 through 104, she was enrolled as an 11th grader at Huffman High School and was subject to the Alabama compulsory school attendance law. Ala. Code § 16-28-3.

6. Plaintiff P.S. is a 16-year-old girl residing in Birmingham, Alabama. She is currently

his mother and legal guardian, Renee Howard. Plaintiff B.J. seeks damages only.

Defendants

10. Defendant Birmingham Board of Education (“BOE”) is a nine-member, elected legal

preservation of the peace and order of the city, the protection of all persons and property within the city, and the enforcement of all criminal ordinances and criminal laws of the city and the

state." General Code of the City of Birmingham, 1911, C. 11, § 1, B. 1, C. 1, D. 1, E. 1, F. 1, G. 1, H. 1, I. 1, J. 1, K. 1, L. 1, M. 1, N. 1, O. 1, P. 1, Q. 1, R. 1, S. 1, T. 1, U. 1, V. 1, W. 1, X. 1, Y. 1, Z. 1

Police Department. Under law, Defendant Roper is required to "direct, control and discipline all

JURISDICTION AND VENUE

18. The federal claims in this action arise under the Fourth and Fourteenth Amendments to the United States Constitution and 42 U.S.C. § 1983. Jurisdiction is invoked pursuant to 28

U.S.C. § 1331 and § 1343(a).

include the serious health risks posed by the development of mass transit systems.

T

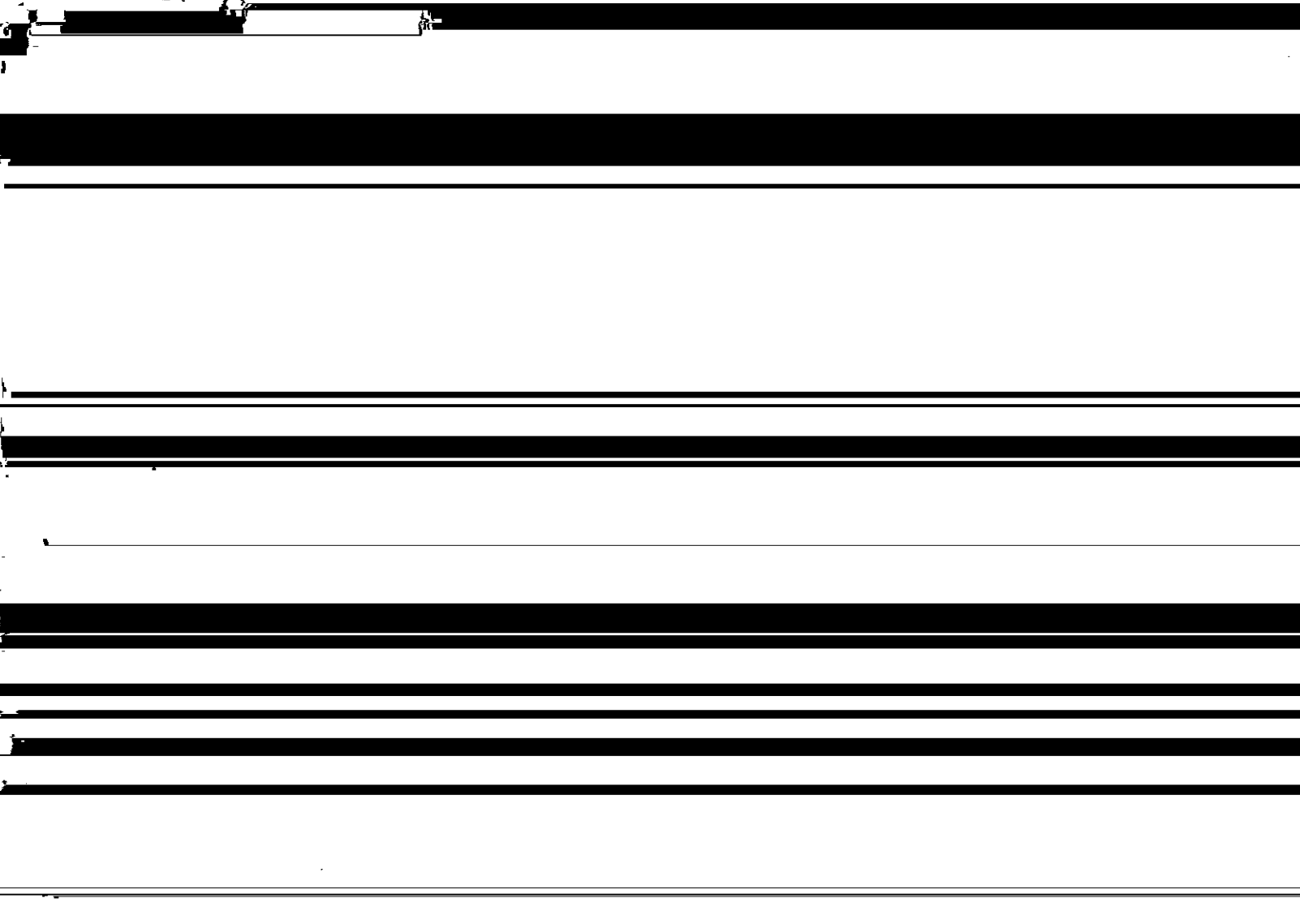
...multiplicity of related employment and health issues to be considered. (b) (5) - (D)

truancy and refer them to be prosecuted in the Jefferson County Family Court. Defendant Roper authorizes officers of the Birmingham Police Department (“BPD”) to locate and pick up students accused of truancy, and return them to their respective schools.


30. BPD is a municipal law enforcement agency “charged with the preservation of the peace

and order of [Birmingham], the protection of all persons and property of the city, and the enforcement of all criminal ordinances and all criminal laws of the city and state.” General Code of the City of Birmingham, Title 9: Public Safety and Protection, Ch. 1: Police Department.

31. In January 1996 BPD announced that it had officers in all BCS schools. _____



one magnet high school, and several middle schools with the formal consent and approval of



24 As set forth below, all Defendants and school personnel are aware that SDOs utilize

po lice practices, such as use of Freeze +P (a pepper spray product) and physical force, while
engaging in school discipline.

25 On June 20, 2011, PCE, 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000

"We put SROs (school resource officers) in there to manage the school and serious crimes. They are there if someone commits a felony or major crime," said interim Birmingham school Superintendent Barbara Allen. "But sometimes we

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

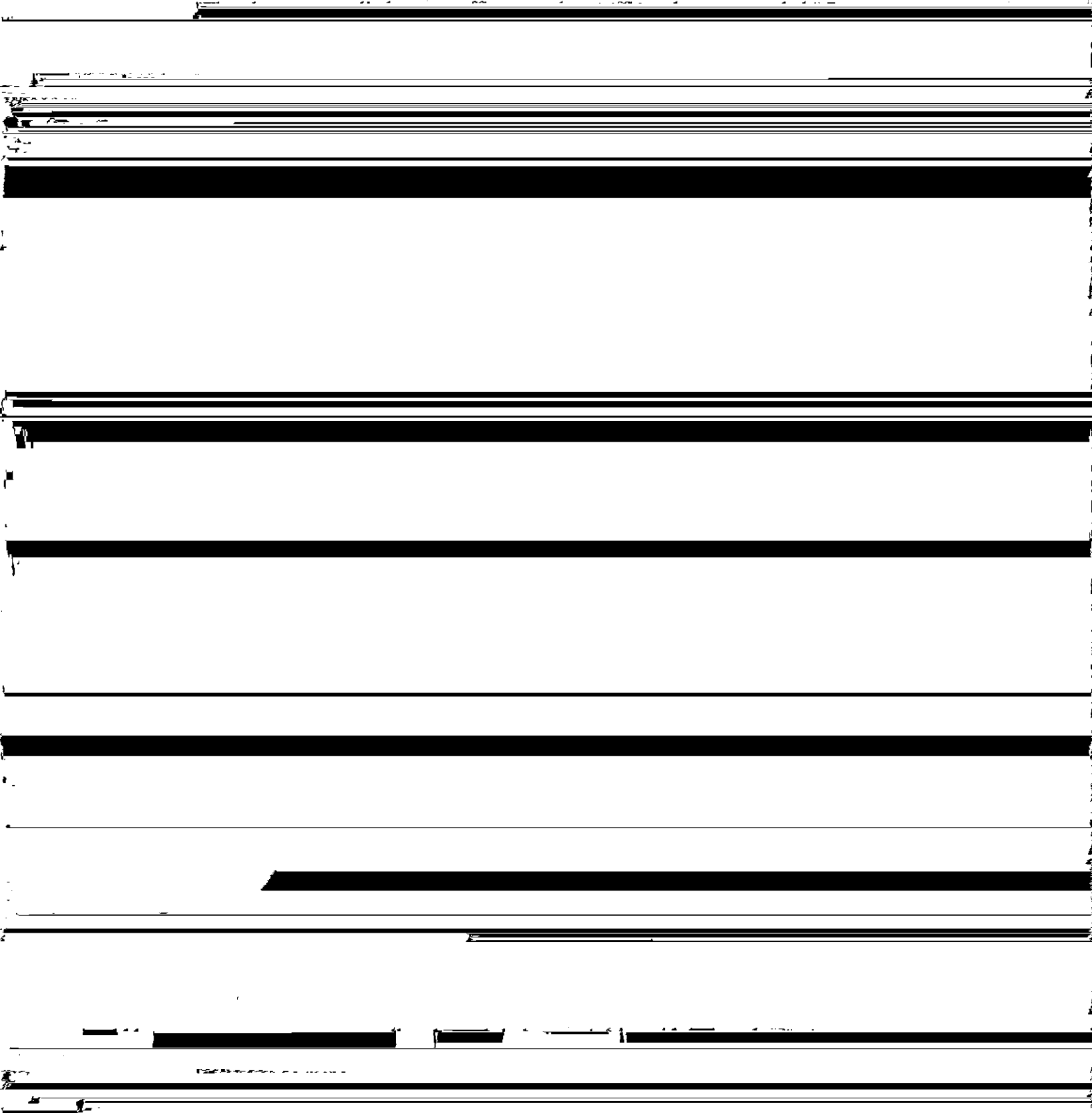
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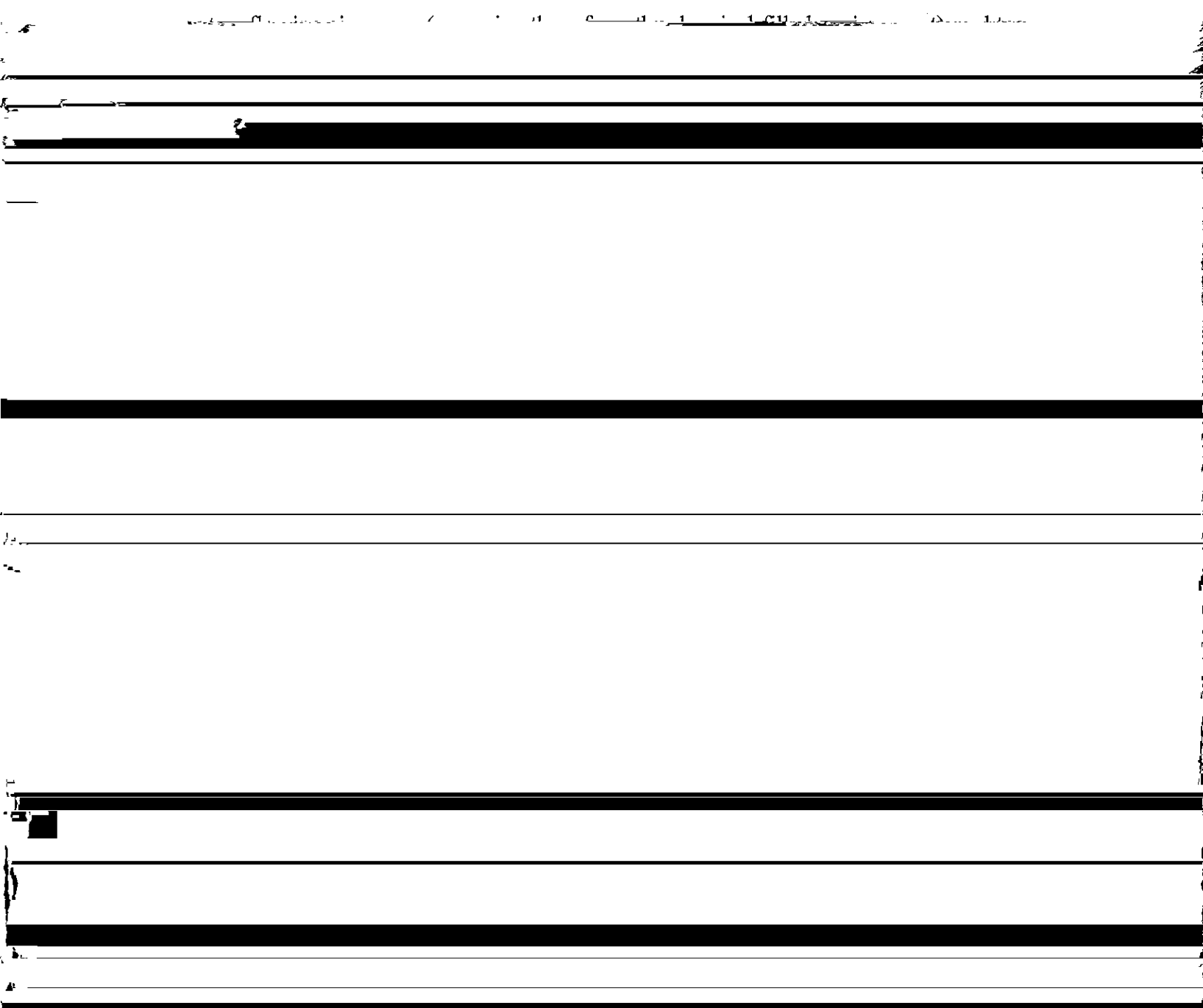
eye, (f) chemical injury to the eye, (g) blurred vision and redness in the eye, (h) blistering of the

44. Exposure to a pepper spray product such as Freeze +P also has severe respiratory effects. Among the many physical reactions to Freeze +P is an immediate inflammation and swelling in

48. African American children comprise approximately 96% of the Birmingham City School System.

49. Applicable safety standards for use of chemical agents, such as mace or pepper spray, warn that directing the chemical directly into the eyes and face increases the risk of injury to the eyes and that the stream from chemical agents should be directed towards the clothing on the chest.

50. The standard of care for individuals affected by pepper spray is to immediately ensure



decontamination procedures:

3. The chemical spray is not to be used by officers unless they have a

intended target committed the crime.

E. Any time chemical spray is used for controlling an offender[,] the application of the chemical spray will end when the subject discontinues resistance or aggression.

F. The chemical spray is best employed in one to two second bursts. The spray must be directed to the facial area of the assailant with the bridge of

56. The BPD's Use of Force policy defines control as "[t]he force an officer uses to influence or neutralize the unlawful, physical actions of a subject under arrest."

57. The expansive language contained in paragraph "C" of BPD's policy on Chemical Spray Subject Restraint: Non-Deadly Use of Force permits and encourages BPD officers, including SROs, to recklessly deploy chemical weapons against individuals, including children, in

CC - [REDACTED]

with BPD policy, practices, and/or customs. In his capacity as Chief of Police, and as the official

CC - [REDACTED]

As provided below, these practices and systems have resulted in injuries to the named

Plaintiffs and other BCS students and violated their Fourth and Fourteenth Amendment rights

64. All Defendants are aware that SROs routinely use Freeze +P against students in the

yelling a curse word, and that a 17-year-old BCS high school student was sprayed with mace and arrested for being “loud and boisterous.” Defendant Roper was quoted extensively in the article, and there is no question that he read it. Despite his awareness that SROs routinely use Freeze +P against schoolchildren who pose no threat to officers, to BCS staff, to other children, or to themselves, Defendant Roper has failed to take action to prohibit – or even limit – the use of Freeze +P on schoolchildren.

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71 On or about September 16, 2010, DOE and Superintendent Witherspoon were served

with a copy of an Order by the Honorable Scott Vowell, Presiding Judge of the Jefferson County Circuit Court. That Order provided, in pertinent part:

1. A copy of this Order shall be served by the Clerk of the Family Court [by]

10 enablers and in school environments, nor do these efforts constitute a

Neither policy addresses any of the following issues:

- a. The appropriate distance to stand from a subject when administering the spray;

1. Appropriate distance of Person B and other chemical

75 [REDACTED]

practices and systems to provide specific evidence to effectuate the purpose of [REDACTED]

from the room. I W. was towards the back of the room. I was somewhat later. I was

from the altercation.

Defendants BOE, Witherspoon, and Roper, Plaintiff J.W. suffered emotional, psychological, and

94 G.S.'s sister Plaintiff P.S. had been approaching G.S. when Defendant Clark snarled

G.S. for the first time. When P.S. was about five feet away from G.S., an unknown SRO

physical state and threatened to arrest her if she continued to ask about her daughter's well-being.

100. Eventually, a Huffman faculty member escorted Ms. Stearnes into the school's office, where she sat for 45 minutes before finally being allowed to see G.S. While she was forced to

wait, Ms. Stearnes heard G.S. screaming "I can't breathe!" from the next room.

101. Neither school personnel nor Defendant Clark advised or allowed G.S. or P.S. to rinse their eyes, wash their faces, or change out of their contaminated clothing.

102. Nearly an hour after the incident on the school lawn, Defendant Clark took G.S. to Cooper Green Hospital, but it was too late to provide any effective treatment or pain relief. Hospital personnel informed G.S. that they could not provide her with any medical treatment and

requested that she sign a form. Upon information and belief, the form was a medical release

Plaintiff T.L.P.

stature.

106 Defendant Nevitt is an approximately six-foot-tall male, weighs approximately 200

Jefferson County Family Court where she was placed in a holding cell at the G Ross Bell Youth

Detention Center (YDC) to wait for her mother. Because no one provided her with a change of clothes, T.L.P. continued to wear the contaminated clothing while she waited at YDC. The

Pursuant to BCS policy, Defendant BOE "does not allow the use of corporal punishment as an

instrument of discipline." As superintendent, Defendant Williams has a duty

to enforce this policy and ensure that BCS personnel refrain from engaging in corporal punishment

backpack accidentally bumped Tarrant in the chest. T.A.P. then saw Tarrant reach for his belt. Because she did not know what he was reaching for, T.A.P. panicked and ran.

109 Tarrant reached for his belt and T.A.P. panicked and ran.

wear the contaminated clothing until she was released to her mother, Barbara Pettaway, at 5:00 p.m. that evening.

reckless and dangerous use of Freeze +P against T.A.P. A BOE representative told Ms. Pettaway that they could not take any action against the school or Tarrant because Ms. Pettaway

137 Gaston ordered D. I. out of the classroom. Although the substitute teacher's order

complaints were that D. I.'s shirt had been untucked and that he might have used his fingers

138. Officer Benson did not immediately seek medical attention for B.J., nor did she contact

before Officer Benson escorted him to the hospital. Officer Benson did not permit B.J. to wash

143. As a direct and proximate result of Officer Benson's actions, B.J. suffered emotional,

than five hours, numbness and burning in his face for more than 24 hours, severe head pains for

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

COUNT I

Declaratory and Injunctive Relief to Protect Plaintiffs' Fourth and Fourteenth

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Amendment Rights to be Free from Excessive Force

[REDACTED]

[REDACTED]

file complaints against students for truancy while BPD officers not only file

complaints, but also physically transport truant students back to school.

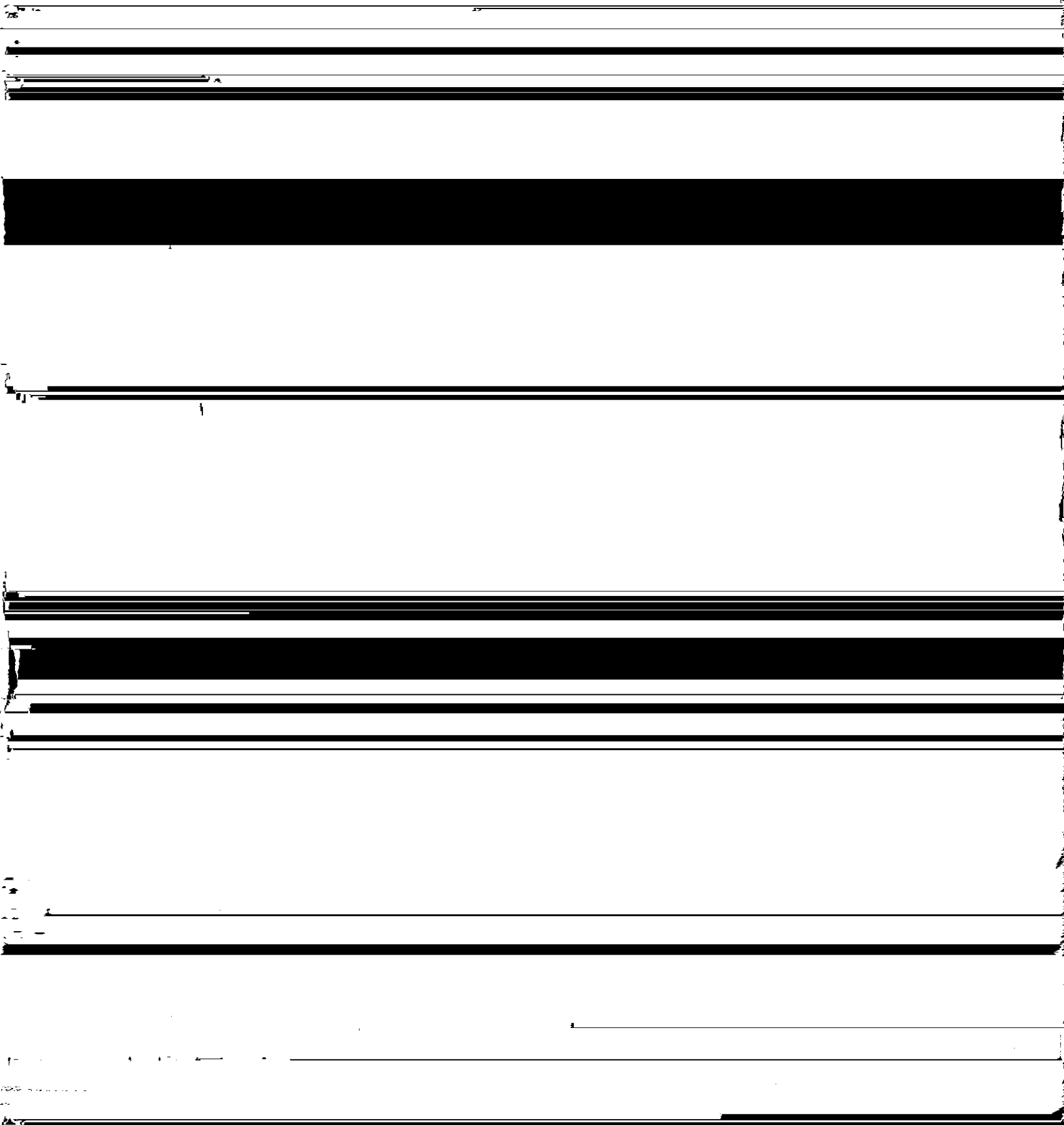
154. As a result of that custodial environment, Defendants BOE and Witherspoon have a constitutional duty under the Fourteenth Amendment to protect BCS high school students from

being injured by third parties while the students are on school property for the purpose of obtaining an education. Defendants BOE and Witherspoon have breached this constitutional duty by authorizing, approving, and failing to take any action to prevent the students and

158. Defendants Roper, BOE, and Witherspoon willfully and maliciously conspired among themselves to deprive the Class Representatives and the other members of the class of their rights under the Fourth and Fourteenth Amendments to the U.S. Constitution. As provided

deemed justified at its inception, which it was not, the use of a chemical weapon against Plaintiff

137

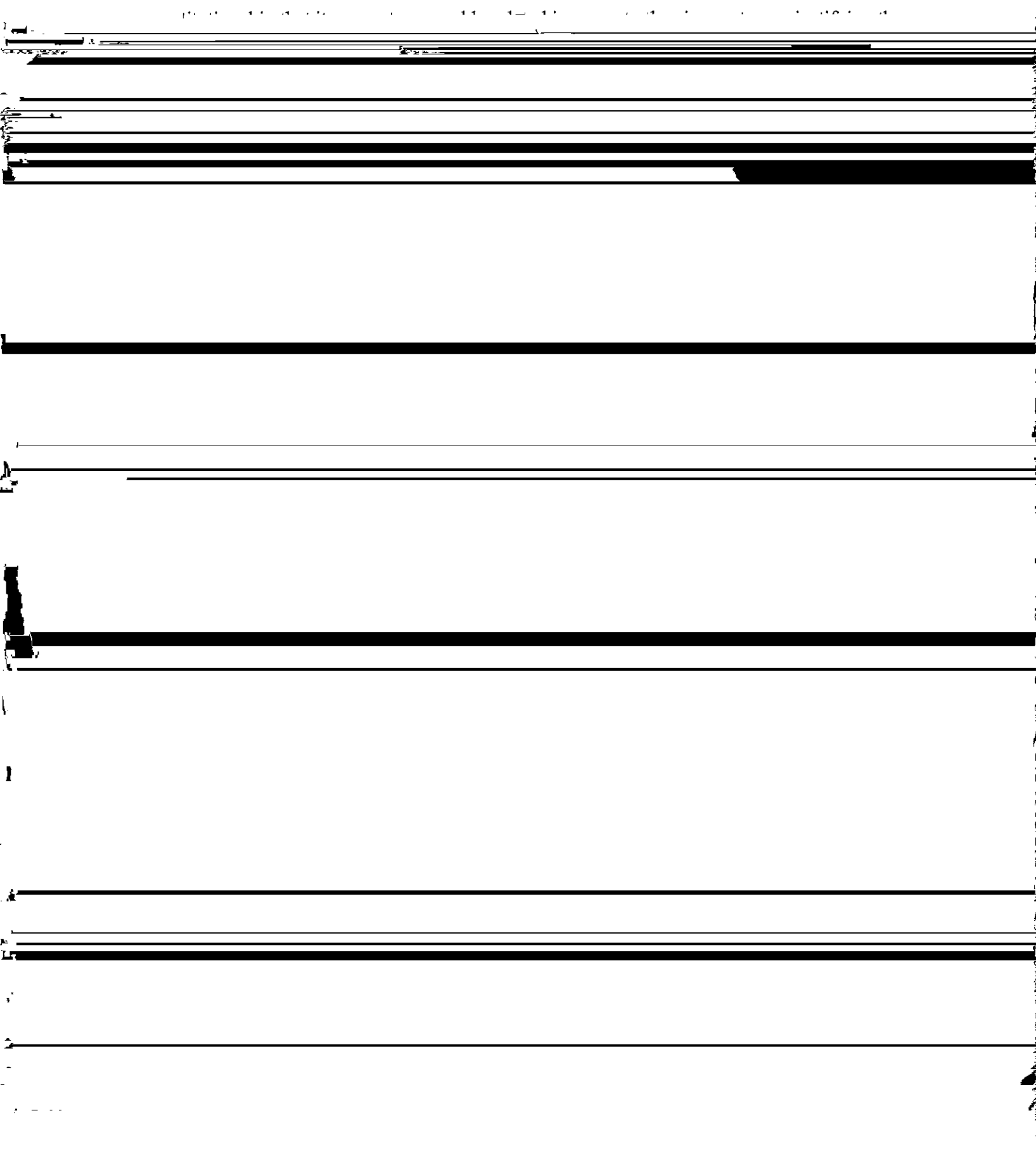


interference in the first place, and were calculated to injure, punish, humiliate, and intimidate

Plaintiff G.S. Accordingly, Defendant Clark's actions constitute an excessively intrusive seizure in violation of the Fourth and Fourteenth Amendments of the United States Constitution.

165 As described herein, Defendants Deane and Clark are liable for the same 10 ILCS

Plaintiff P.S. in the face. The deployment of Freeze +P against Plaintiff P.S. was also



171. By the forgoing actions and inactions, Defendants Roper and Nevitt are liable pursuant to

42 U.S.C. § 1983 for conspiring to enforce and implement a policy that is

[REDACTED]

174. By the forgoing actions and inactions, Defendants Roper and Tarrant are liable pursuant

Fourteenth Amendments. The deployment of Freeze +P against Plaintiff B.J. was both unjustified and unreasonable in that that B.J. was already being physically restrained by two adult men and posed no threat to the safety of others or the school environment. This seizure was calculated to punish, humiliate and intimidate B. I. Even after he had been blinded and

incapacitated by the chemical sprayed into his nose and mouth, Defendant Benson continued to use excessive force by forcing B. I. to the ground and holding him down with her knee as he

clearly established rights under the Fourteenth Amendment. Defendants BOE and Witherspoon have created a custodial environment within the BCS system for all students subject to the compulsory school attendance law. That custodial environment imposes a constitutional duty on Defendants BOE and Witherspoon to ensure J.W.'s safety and well-being while he attends BCS. Defendants BOE and Witherspoon breached that duty by authorizing and approving the use of chemical weapons against BCS students, and by failing to take action to protect Plaintiff J.W.

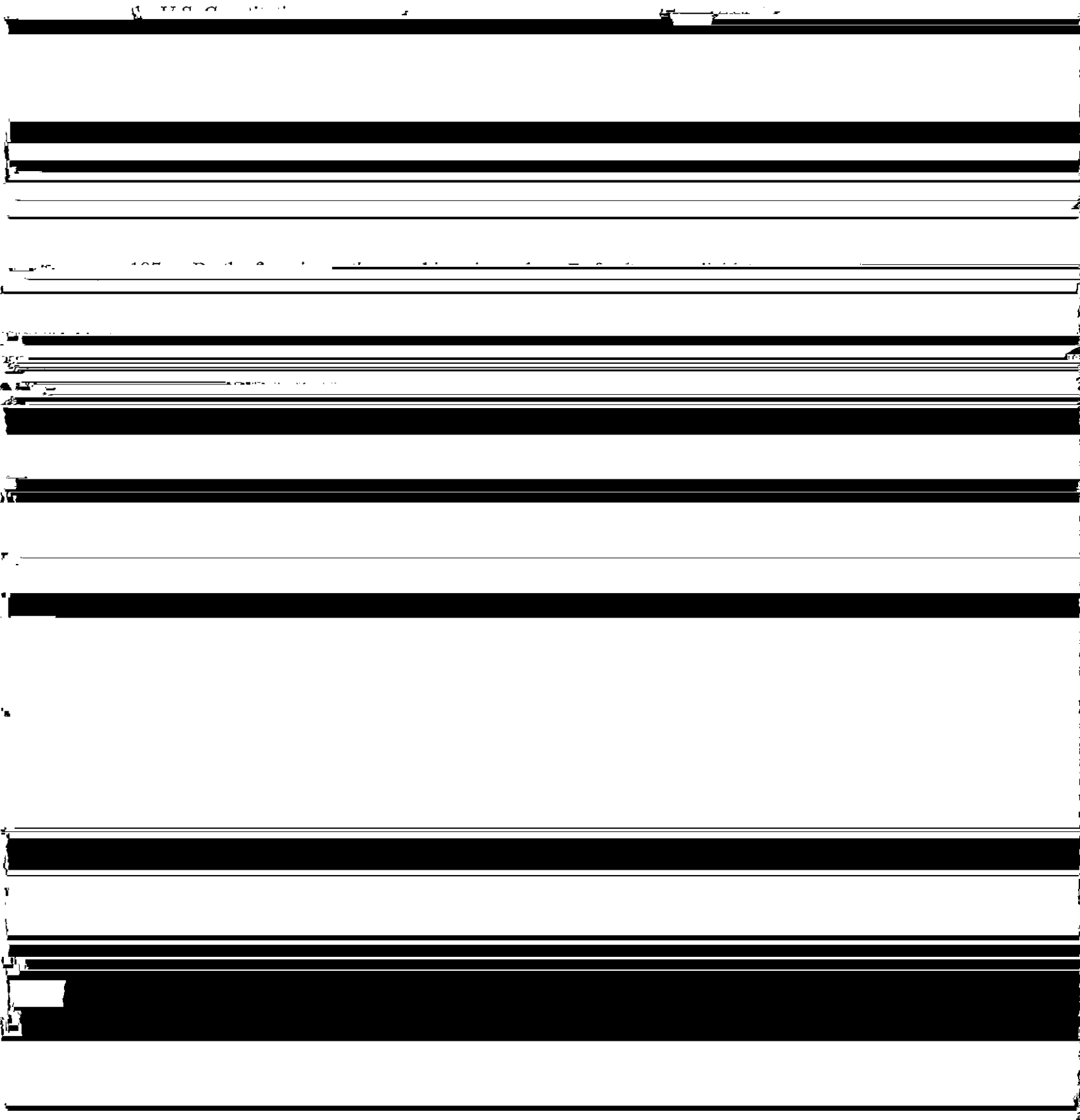
pp/ protect students against the use of chemical weapons. Accordingly, Defendants BOE and

Defendants BOE and Witherspoon to ensure G.S.'s safety and well-being while she attends BCS.

Defendants BOE and Witherspoon breached that duty by authorizing and approving the use of

[REDACTED]

chemical weapons against BCS students, and by failing to take action to protect Plaintiff P.S. and other students against the use of chemical weapons. Accordingly, Defendants BOE and Witherspoon have violated Plaintiff P.S.'s rights in violation of the Fourteenth Amendment to



Accordingly, Defendants BOE and Witherspoon have violated Plaintiff T.L.P.'s rights in

violation of the Fourteenth Amendment to the U.S. Constitution.

100 Under the Fourteenth Amendment to the United States Constitution for failing to protect

1083 under the Fourteenth Amendment of the United States Constitution for failing to protect

193. By the forgoing actions and inactions, these Defendants are liable pursuant to 42 U.S.C. §

[REDACTED]

Fourth and Fourteenth Amendments of the United States Constitution. Because Defendants Roper, BOE, and Witherspoon conspired to subject J.W. to unlawful seizures and excessive force, and acted in clear violation of well-established law, of which a reasonable person would

201 LW seeks compensatory damages from these Defendants

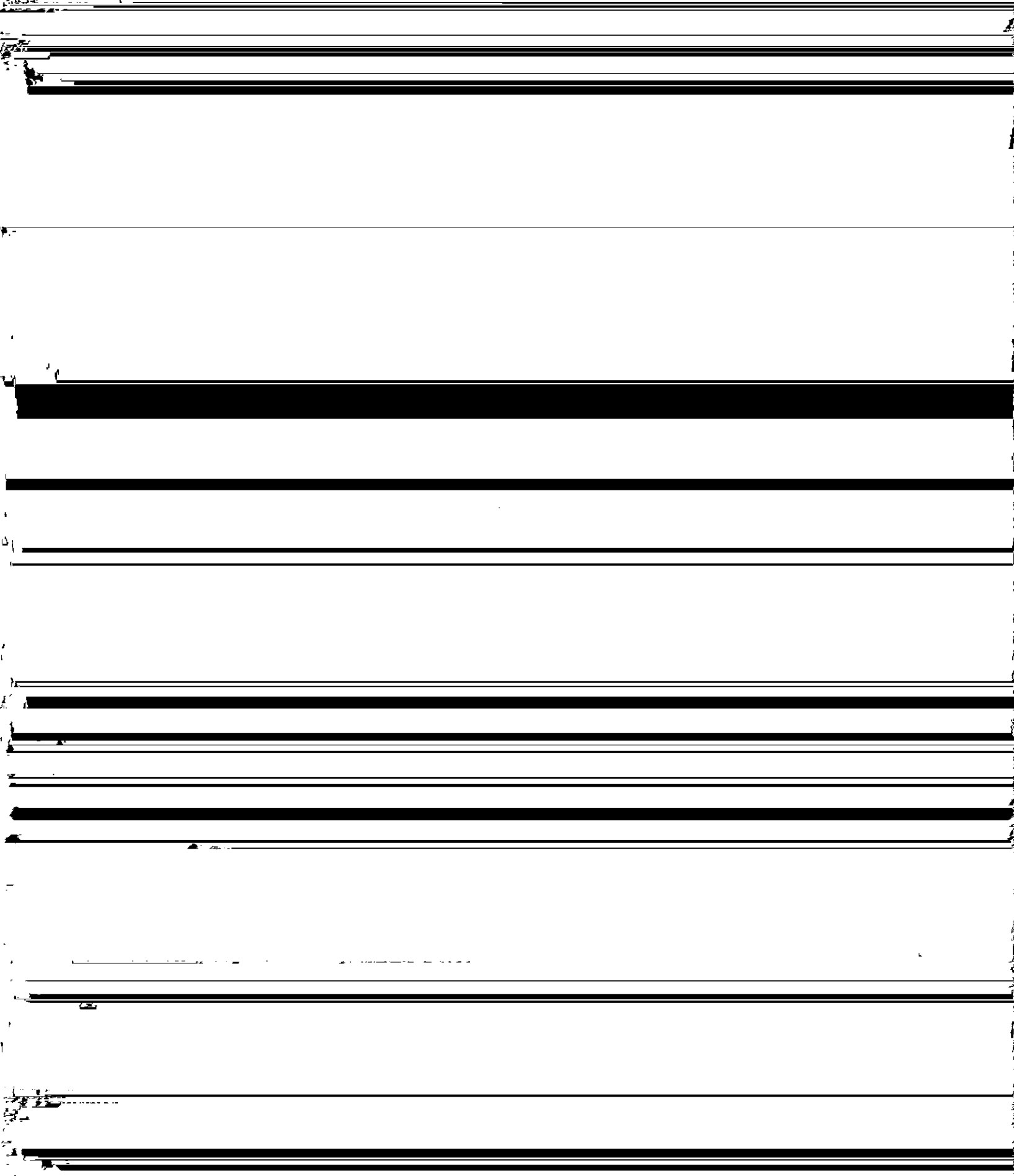
304 By the foregoing actions and inactions, Defendants Roper, BOE, and Witherspoon are

liable pursuant to 42 U.S.C. § 1983 for conspiring to violate Plaintiff G.S.'s rights under the Fourth and Fourteenth Amendments of the United States Constitution. Because Defendants Roper, BOE, and Witherspoon conspired to subject G.S. to unlawful seizures and excessive

708 By the foregoing notions and inactions, Defendants' Paper, ROE, and Witherenson are

Liability pursuant to 40 U.S.C. § 1092 for conspiracy to violate Plaintiff's rights under the

Page 55 of 65



216 By the foregoing actions and inactions, Defendants Borer, DOE, and Witherspoon are

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

220. By the forgoing actions and inactions, Defendants Roper, BOE, and Witherspoon are

liable pursuant to 42 U.S.C. § 1983 for conspiring to violate Plaintiff D's rights under the

Fourth and Fourteenth Amendments of the United States Constitution. Because Defendants

Individual Claims for Damages under Alabama Law

COUNT XXIII

Damages for Assault and Battery on Plaintiff G.S., in Violation of Alabama Law

Defendant Danon in his official and individual capacities and

Defendant Clark

774 By twice deploying chemical spray against Plaintiff G.S. as a means of intimidation

warning while she was restrained by an adult man. Defendant Nevitt's actions were intended to

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

rights. Because Defendants Townsend and Rosen acted willfully and maliciously, they are not

entitled to discretionary function immunity provided by Alabama law.

232. Defendant Moss intentionally tripped T.A.P., causing her to fall to the ground, and ground his foot her in back. Defendant Moss also held T.A.P. to the ground as Defendant

236. Plaintiff B.J. seeks compensatory damages from these Defendants.

COUNT XXVII

Damages for the Tort of Outrage against Plaintiff G.S. in Violation of Alabama Law

*Defendant Roper, in his official and individual capacities and
Defendant Clark*

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

244. Defendants Borer and Tarrant are liable pursuant to Alabama law for participating in

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

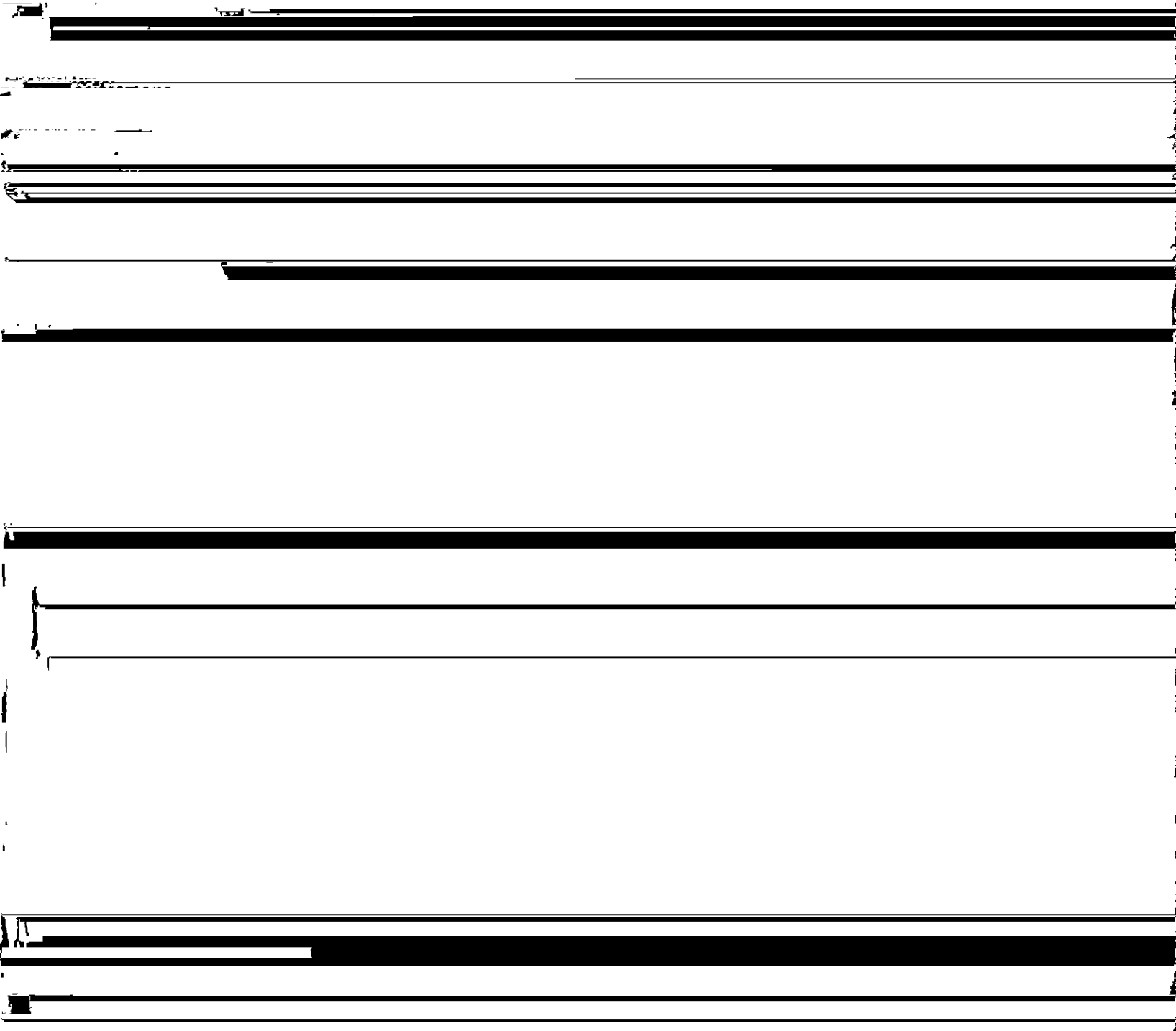
[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

248. Defendants Roper and Benson are liable pursuant to Alabama law for sanctioning, enforcing, and implementing policies, customs, and practices that subject BCS students, including B.J., to extreme and intentional emotional distress in violation of Alabama law. Defendants Benson and Roper acted willfully, maliciously, and with a callous disregard or indifference to B.J.'s rights. Because Defendants Benson and Roper acted willfully and



8. Grant any other relief the Court shall deem just and proper.

Respectfully submitted this 14th day of February, 2011.

/s/ Ebony Glenn Howard
Ebony Glenn Howard (ASB-7247-O76H)
Mary C. Bauer (ASB-1181-R76B)
SOUTHERN POVERTY LAW CENTER

Montgomery, Alabama 36104
334-956-8200
334-956-8481 (fax)
Counsel for Plaintiffs

CERTIFICATE OF SERVICE

1. I hereby certify that on the 14th day of February, 2011, I electronically filed the