

## Exhibit 4

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ROUGH DRAFT TRANSCRIPT DISCLAIMER IN THE MATTER OF  
DINNER TABLE ACTION

v.

WILLIAM J. SCHNEIDER

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ALL PARTIES APPEARING REMOTELY VIA ZOOM

FRIDAY, APRIL 4, 2025

8:49 A.M.

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THE VIDEOGRAPHER: Good morning we are on video record on April 4, 2025, the time is 8:49 a.m. My name is Cameron Tuttle I'm the legal videographer the court reporter today is Sarah Sage we are both here representing Lexitas this is the beginning of the video deposition of Jack Rakove in the matter of Dinner Table Action versus William J. Schneider the case number is 24-cv-00430-KFW. We are located today at 2100 Gang Road suite 210 Palo Alto California.

Counsel would you please identify yourselves for the record.

MR. MILLER: Good morning this is Charles Miller with the Institute for Free Speech.

MS. AUSTIN: Mackenzie Austin from Millbank on behalf of Intervenors.

MR. LOUVIS: Ezra Louvis also on behalf of Intervenors.

MS. HELLER: Nola Heller --

MR. KNOWLTON: Good morning --

MS. HELLER: -- also from Millbank on behalf of Intervenors.

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1 MR. KNOWLTON: Are we all set?

2 I'm Thomas Knowlton from the attorney general's  
3 office on behalf of the State defendants.

4 THE VIDEOGRAPHER: Will the court reporter  
5 please introduce herself and administer the oath to the  
6 witness.

7 (Reporter stated name and CSR number for  
8 the record.)

9 -- o0o --

10 JACK RAKOVE,  
11 having first been sworn by the Certified  
12 Shorthand Reporter, was examined and  
13 testified as follows:

14 -- o0o --

15 EXAMINATION

16 BY MR. MILLER:

17 Q. All right. Good morning sir. Could you just  
18 state your name for the record please?

19 A. I'm Jack N. Rakove.

20 Q. All right. And when you say you're  
21 Jack N. Rakove that would make me want to call you  
22 Mr. Rakove, but I think you might have another title.

23 So can you tell me what that is.

24 A. Well, my full title is Emeritus professor  
25 of -- William Robertson Coe professor of American -- of

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1 history and American studies, professor of political  
2 science and by courtesy of law Emeritus at Stanford  
3 University.

4 Q. All right. All right thank you professor.  
5 Thank you for being here today.

6 Is this your first time being deposed?

7 A. It's not the first time being deposed. It's  
8 not the first time I've testified.

9 Q. Okay. So a deposition, you know, is slightly  
10 different than you know standard testimony. Largely,  
11 what we're trying to do is create a written record here  
12 for our stenographer. So it's particularly important  
13 that you and I try to speak with words and not speak  
14 over each other so that she can take everything down.  
15 So it's just sort of a rule of Coe courtesy that we try  
16 to follow here.

17 In addition to that, you know, if for some  
18 reason there are objections there's no court here to  
19 rule upon it. So typically, you're after the counsel  
20 enters her objection you know you would answer the  
21 question anyway absent certain limiting instructions  
22 that she might provide to the contrary.

23 It -- if at any time you need to take a break  
24 just let me know. I -- I do ask though that if there's  
25 a question pending we just finish the question before we

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1 take a break.

2 And with that, are you ready to begin?

3 A. Yes.

4 Q. Okay. Great.

5 I'm just going to mark here as Exhibit 1 the  
6 Declaration of Jack Rakove entered in this matter I was  
7 going to hand you a copy but I see that you maybe have  
8 it in front of you already.

9 A. Yes I do.

10 (Exhibit 1 was marked for identification.)

11 BY MR. MILLER:

12 Q. And so if you want to use the one in your  
13 binder that's fine.

14 MR. MILLER: Did -- do you need copies? Or --

15 MS. AUSTIN: No.

16 MR. MILLER: Okay.

17 BY MR. MILLER:

18 Q. Seeing the binder I guess that makes me ask  
19 what other documents are in your binder there?

20 A. Well, I've only glanced at the other documents  
21 it's various motions relating to the proceedings.

22 Q. I -- I see so those are court documents those  
23 are not necessarily your background?

24 A. No the only thing I've done is the statement  
25 itself the declaration itself.

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1 Q. Okay. I'm going to remind you again we have  
2 to try not to speak over one another.

3 A. Sorry.

4 Q. It's okay. You know, it's you know in  
5 conversation we do it a lot but -- okay.

6 All right so that binder was not something you  
7 prepared. It was provided to you by Counsel with court  
8 filings; is that right?

9 A. Yes.

10 Q. All right. And you mentioned that you've  
11 testified before.

12 Can you tell me about the context of the past  
13 testimony.

14 A. Well, years ago, I worked for the American  
15 Civil Liberties Union in Chicago. I had a research  
16 project relating to people arrested during the 1968  
17 democratic convention I got involved in a trial that  
18 involved a group of delegates of the convention that  
19 were trying to make their way and others that were  
20 trying to make their way from downtown Chicago to the  
21 back of the yards area of Chicago. And my task was to  
22 find the -- they were stopped at 18th and Michigan.

23 Q. Okay.

24 A. South side of Chicago but I had to find a way  
25 that they could get to the convention so.

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1 Second time I was involved in Oneida Indian  
2 litigation the so called big -- big Oneida case which  
3 from 1983, 1984 we had an evidentiary hearing on a  
4 12(b)(6) motion to dismiss for failure to state a claim  
5 in Syracuse, New York in October 1984.

6 Q. And what was your role there?

7 A. I there it was a complicated case that  
8 involved the so called second Treaty of Fort Stanwix  
9 whose -- actually whose bicentennial we celebrated of  
10 1784 and a particular clause in the Articles of  
11 Confederation which were related to the authority of the  
12 Continental Congress over affairs related to Native  
13 American Peoples.

14 Q. And how did you provide testimony in that  
15 matter? Was it live in court?

16 A. It was live in court, yes.

17 Q. Okay. Any -- any time that you've provided  
18 testimony within the last decade?

19 A. No.

20 Q. All right. So looking at your declaration  
21 here, it appears that you're a historian and not a  
22 lawyer; is that accurate?

23 A. Yes.

24 Q. Okay. But you are on faculty at the law  
25 school here?

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1 A. I was a courtesy professor --

2 Q. And what is that?

3 A. -- of law.

4 It means you teach courses in the law school but  
5 you're not an active member of the department -- or in  
6 the -- in that case the school.

7 Q. And I take it you were teaching history  
8 courses there?

9 A. I'm sorry?

10 Q. You were teaching history courses at the law  
11 school?

12 A. Well, yeah. Most of my work is on -- much of  
13 my work is on the origin of the Constitution so when I  
14 taught at the law school it was -- and I've done a lot  
15 of -- let me back up.

16 I've done a lot of work on originalism as a  
17 historical project and how historians would think about  
18 it.

19 Q. Okay. How much were you paid for this  
20 declaration?

21 A. In this case, \$2,500.

22 Q. Okay.

23 A. But I see that more as opportunity cost.

24 Q. And are you being compensated for your  
25 testimony here today? Or is that \$2,500 for all of it?

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1 A. It's 2500 flat.

2 Q. Have you used this declaration or declaration  
3 like this in a previous case?

4 A. Yes it was used in the Alaska case that -- you  
5 know, part of Larry Lessig's project.

6 Q. All right. Any other cases?

7 A. This declaration no.

8 Q. Anything similar to it in other cases?

9 A. No.

10 Q. And how much were you paid for the original  
11 declaration?

12 A. 12,500.

13 Q. Okay. All right is there any significant  
14 change between the two documents?

15 A. Modest editing. But substantively, they're  
16 virtually identical.

17 Q. And were you called to testify in Alaska?

18 A. Yes. As best I can recall.

19 Q. Okay. So you did testify in that case?

20 A. You know, to be honest I don't remember --  
21 remember -- literally, I don't remember if I was on the  
22 stand or if we just all went up there for one of my  
23 colleagues Adam Bonica from political science also  
24 drafted a declaration and we went up there together.

25 MR. MILLER: Okay. I'm going to pause for just

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1 a second. I just want to check with the court reporter,  
2 making sure that you're hearing us.

3 (Reporter clarification.)

4 THE WITNESS: Okay.

5 (Reporter clarification.)

6 THE WITNESS: Okay.

7 MR. MILLER: All right. Thank you.

8 BY MR. MILLER:

9 Q. So did your colleague submit a declaration  
10 that was different than yours in that matter?

11 A. Our work is very different.

12 Q. That would be "Yes"?

13 A. Yes.

14 Q. Okay. So you did travel to Alaska for the  
15 case you just don't recall if you testified?

16 A. I feel embarrassed to say it but I don't  
17 recall. I'm fairly sure I did not because I would have  
18 a more vivid recollection.

19 Q. Sure. But I'm just trying to understand did  
20 you travel to Alaska for the case?

21 A. Yeah. Yeah.

22 Q. Okay. All right and do you recall what the  
23 result of -- of that matter was?

24 A. The theory of the case was as here was to  
25 weigh from my perspective was to lay a kind of

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1 conceptual background for how the founding generation  
2 would have thought about issues of political corruption  
3 and in the end, the court ruled -- you know, ruled on  
4 the case following a very different line of analysis  
5 that had really nothing to do with anything I testified  
6 to.

7 Q. Okay. And then following that, as you said,  
8 Larry Lessig -- and whoever the plaintiffs were in that  
9 matter attempted to obtain U.S. supreme court review of  
10 that case.

11 Are you aware of that?

12 A. Off the top of my head I can't -- I don't  
13 recall.

14 Q. Okay.

15 A. I'm not surprised.

16 Q. Yeah. So -- and my question to you was going  
17 to be were you involved in any way in that --

18 A. No.

19 Q. -- petition?

20 A. No.

21 Q. Okay. All right. Have you submitted  
22 declarations elsewhere in other cases on matters of  
23 interpretation of the First Amendment?

24 A. No.

25 Q. Amicus briefs?

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1 A. I've written a number of amicus briefs but not  
2 on the First Amendment.

3 Q. Have you ever had to make any retractions of  
4 any declaration or anything you said in a declaration or  
5 amicus brief in any case?

6 A. No.

7 Q. Okay. Has there ever been a time that, you  
8 know, after a case was finalized you thought, gee, if  
9 that case was still going on I would go back and modify  
10 the brief or declaration that I filed in that case?

11 A. No.

12 Q. All right. All right. Can you explain to me  
13 how you were contacted by Mr. Less cigarette to provide  
14 testimony in this matter?

15 A. They sent me an email some weeks ago asking me  
16 if I'd want to participate and said it's basically the  
17 same set of issues as roughly the same set of issues as  
18 was true in Alaska.

19 Q. All right. And with -- how did you get  
20 involved in the Alaska case?

21 A. Pretty much the same way.

22 Q. How did he know to reach out to you for this  
23 issue?

24 A. I've known Lessig for a long time I'm a  
25 leading expert I mean this is a little vain on my part

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1 perhaps but I'm a leading expert in the field I've  
2 written a lot about the political theory and political  
3 practices of the founding era. I've written a lot about  
4 the origins of the Constitution and I'm pretty well  
5 versed in the history of political ideas. At least as  
6 it relates to the founding period of American history.

7 Q. Okay. All right. So I'm looking at your  
8 declaration and you list a few different historians'  
9 briefs that you were involved in. So just kind of going  
10 through here -- it's paragraph 2 -- so top of the next  
11 page there.

12 And so, with the -- the first case there -- is  
13 that I think it's pronounced Vieth -- can you explain  
14 what your role was in preparing that brief?

15 A. Well I was the main author of a brief dealing  
16 with partisan gerrymandering of congressional districts  
17 so it comes under article one section four of the  
18 Constitution. And the question of representation as it  
19 was thought of in the founding era. Founding era is  
20 something I'd discussed at great length in my book  
21 original meanings in terms that I think thought then and  
22 continue to think today are directly relevant to issues  
23 of the powers of gerrymandering as it relates to the  
24 House of Representatives.

25 Q. All right. And was the -- was any aspect of

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1 the brief that you submitted in that case based upon  
2 reconstruction amendments?

3 A. No. I'd have to go back to be honest I'd have  
4 to go back and reread it I don't believe so.

5 Q. Okay. All right. That's fair.

6 All right. Second case is -- I never know how  
7 to pronounce this -- Hamdan?

8 A. Hamdan.

9 Q. Hamdan.

10 And what did you argue there?

11 A. It had to do with the question of whether or  
12 not military commissions could be unilaterally  
13 constituted by the president.

14 Q. And so this would have been a brief on article  
15 two then?

16 A. Well, I would say more complicated than that  
17 it involved English history. It involves in a certain  
18 curious sense it involves the Third Amendment. You  
19 know, which relates to the quartering of the soldiers.  
20 But the --

21 Q. Not many cases involving that?

22 A. No it's a pretty well it's also true of my  
23 Articles of Confederation case with big Oneida no  
24 actually in that case you had to know something about  
25 the history of the Mutiny Act in English law and its

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1 legacy for American thinking about you could say civil  
2 military relations.

3 Q. Yeah. I guess I've never really sort of  
4 thought about historians' briefs so, like, in a  
5 technical sense. I don't mean you know I don't mean  
6 that pejoratively obviously you know when they're filed  
7 I -- I think about them and read them but as far as like  
8 how they're written.

9 So is the document like a -- it's filed as a  
10 brief and the brief is written by historians and then a  
11 lawyer signs off on it or how does that technically  
12 work?

13 A. You always need a lawyer to submit the brief.

14 Q. Sure?

15 A. If I remember correctly I think in the Hamdan  
16 case I think Pam Karlan from Stanford Law school was my  
17 assistant in the brief I did in *DC v. Heller* named  
18 Carl Bogus who's a law professor at Roger Williams  
19 university currently stuff I'm working on recently the  
20 Brennan Center NYU Law School.

21 Q. Sure.

22 A. I -- I could say much more about this but  
23 maybe you want to, you know...

24 Q. Yeah. I mean, I guess specifically so you  
25 would you draft the brief and then the attorney is sort

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1 of like local counsel and they sign it is that sort of  
2 what happens?

3 A. They're the intermediaries occasionally they  
4 will make suggestions as to what you ought to do.  
5 Curiously I discussed this I won't say at length but the  
6 other day I did a workshop at the -- a faculty workshop  
7 at Stanford Law School and I -- I do have certain norms  
8 for how historians should write briefs and it is mostly  
9 that we should write them ourselves and not among other  
10 things not sign on to what lawyers do.

11 Also it should be consistent with our  
12 scholarship we have a reputation to protect and our  
13 value as experts depends upon I think the correlation  
14 you know, the strict correlation between our scholarship  
15 and our testimony and if we're not confident about that  
16 we shouldn't sign on or we shouldn't -- and we certainly  
17 should not draft them.

18 Q. Yeah. Yeah. No that makes a lot of sense and  
19 so I'm just -- in -- in your view and I don't mean this  
20 is fine. I'm not critiquing this. But just like, you  
21 know, a his brief is essentially a pro se brief and you  
22 might need to be able to get a -- get an attorney to  
23 sign it just for the sake of having it done for whatever  
24 court purposes are necessary?

25 A. Yes.

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1 Q. Yeah. Okay.

2 All right. All right and what'd you say in  
3 Heller?

4 A. Heller I felt -- Heller of all the things I've  
5 done in my careers one of the things I'm proudest of is  
6 having written the brief in Heller for a whole variety  
7 of reasons I had not given much thought to the Second  
8 Amendment until the Chicago-Kent Law School hosted a  
9 symposium on the subject in December 20002001 push  
10 learned a long article in the Chicago-Kent Law Review  
11 under the title the Second Amendment the highest stage  
12 of originalism which actually cribs from Lenin -- if you  
13 know. I don't know how much Lenin you've read in your  
14 career?

15 Q. Not much?

16 A. But I'd -- I'd read certain that I was sort of  
17 trapped by him as a college freshman and I, you know,  
18 believed -- I'd -- I'd read things about the Second  
19 Amendment I'd never thought about previously.

20 So when *DC v. Heller* came up, I started to  
21 follow --

22 Q. Can you slow down just a little bit.

23 (Reporter admonition.)

24 THE WITNESS: Just go --

25 So when *DC v. Heller*, came up I felt it was

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1 important that historians should weigh in and having  
2 picked up a little experience on you know going back to  
3 the Vieth case and Hamdan, I felt I was the right guy to  
4 help organize, you know, a team of historians.

5 BY MR. MILLER:

6 Q. All right. And just briefly, what did you --  
7 what position did you articulate in that case?

8 A. Position I still believe very much in that the  
9 whole debate about the Second Amendment was about the  
10 militia and it had nothing at all to do with a common  
11 law right of self-defense or why you would  
12 Constitutionalize that.

13 Q. All right. The next case on your list there  
14 let's say another redistricting case is that right?

15 A. Right.

16 Q. Okay. And then -- I'm sorry. With each of  
17 these that we've talked about so far you were the  
18 principal author of each of these; is that right?

19 A. Yes I -- I -- I have contributed to others but  
20 in these cases I was the main author.

21 Q. Okay. *Moore v. Harper* that -- that's the  
22 independent state legislature?

23 A. Very good.

24 Q. Okay. All right and what did you argue there?

25 A. It's really an extension of the same argument

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1 but there's -- there's a particular set of issues coming  
2 out of how do you read the elections clause article one  
3 section four. Something that the supreme court in fact  
4 in more or less ignored in its decision. The basic  
5 argument if you want me to provide it in is that the  
6 real animus in terms of its legislative history the real  
7 animus in *Moore v. Harper* was not to endorse the  
8 independence of the state legislature it was really  
9 based on fears about what state legislatures might do  
10 and so the critical part of the provision is the part  
11 where it says Congress can override state legislation  
12 and you could do that for a variety of reasons.

13 Q. All right. The side of the case on behalf of  
14 whom you submitted the brief won the case?

15 A. Yes.

16 Q. But just under a different theory?

17 A. No. There was actually there's a deeper  
18 conceptual issue about the nature of the legislative  
19 power do the people as the delegating sources of the --

20 I'm going as slow as I can.

21 -- do the people as the delegating sources of  
22 legal authority in American constitutional history.  
23 They have a right to delegate particular legislative  
24 powers. To other bodies than the state legislature. So  
25 if they wish to set up an independent commission, to do

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1 reapportionment on the tenure cycle as necessary was  
2 that a legitimate exercise of their sovereign power and  
3 that argument you could actually run that argument back  
4 to John Locke in certain respects. There's -- so...

5 BY MR. MILLER:

6 Q. Yeah. These are all fascinating issues.

7 A. That's what I think.

8 Q. Yeah. All right. So you delineate crew  
9 versus trump separately so you participated in drafting  
10 that so what aspects of that Emoluments Clause brief did  
11 you draft?

12 A. Just -- just how the term and concept of  
13 emoluments was debated you know primarily 1787, 88.

14 Q. Okay. And was that primary for emoluments or  
15 what was the concept there?

16 A. I think in this case in this case it was both  
17 I -- I -- you know, I think both emoluments clauses were  
18 involved in one way or another.

19 Q. Okay. All right. All right so in paragraph  
20 3 -- I'm sorry. Are you --

21 A. No. No. Go ahead.

22 Q. Yeah. All right. So paragraph 3 you stated  
23 for this litigation I have been asked to discuss how  
24 issues of governmental corruption were viewed during the  
25 founding era of the American republic.

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1 Do you understand why you were asked to do that?

2 A. Yes.

3 Q. Okay. Why?

4 A. The assumption is that we live in an  
5 originalist age of jurisprudence. And while that often  
6 takes what's called a strict textualist perspective,  
7 having relevant knowledge about how the authors or I --  
8 I suppose one could say the adopters of the Constitution  
9 and its amendments thought about particular issues.  
10 Might well prove relevant to the jurisprudence.

11 Q. All right. Are you an adherent to  
12 originalism?

13 A. The best answer is yes and no. In fact I -- I  
14 discussed this at the Stanford Law School the other day.

15 Q. I should have been there.

16 A. It was fun.

17 Q. Yeah.

18 A. We talked about *Trump v. USA*.

19 I would say to this extent -- and, you know,  
20 this has been my position -- well, let me back up.

21 I've thought about originalism before the word  
22 existed going back to the early 1970 and I've always  
23 assumed if you want to ask the question what does a  
24 clause of a Constitution what did it originally mean,  
25 that that question was itself inherently historical in

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1 nature. If that were the case, there should be some  
2 historical method or sometimes they use the term model  
3 to describe and analyze how you would try to recover  
4 what I call carefully the original meaning of the text  
5 the original intention of its authors meaning primarily  
6 the delegates of the -- to the Federal Convention also  
7 members of the first federal Congress if you talk about  
8 the first ten amendments and the original understandings  
9 of the ratifiers. So it's -- it's a question I've  
10 thought about for a long time and it does seem to me  
11 more or less as an normative position that any inquiry  
12 into the original meaning of the text should have a  
13 historical component meaning you would want to ask how  
14 and why did this clause make its way into the  
15 Constitution. What did the framers think they were  
16 doing and what did the ratifiers understand them to have  
17 done? But that doesn't make me a --

18 (Reporter clarification.)

19 THE WITNESS: It doesn't make me an originalist  
20 because ignore can think of other criteria by which you  
21 would want to resolve cases and the classic example of  
22 this for me would be the Second Amendment.

23 BY MR. MILLER:

24 Q. I've got to ask explain why the Second  
25 Amendment is a classic example?

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1           A.    Because the technology of firearms is so  
2   radically different today with so many more devastating  
3   consequences than could ever have been the case in the  
4   17th century.  It's -- A, it's nonsensical in a certain  
5   sense, but also antidemocratic.

6           In others to reason under let's say the --  
7   the -- you know, the standards laid down in -- in the  
8   Bruen decision if you -- which is another by the way  
9   another you know opinion in which I contributed but you  
10   know, I was not the main author of it should be another  
11   amicus brief to which I contributed but was not the main  
12   author of.

13          Q.    Okay.  So if I can summarize what you said  
14   just so that I can understand you think that there is a  
15   proper way to do originalism that I think you're  
16   implying the courts do not do but even if they did, if  
17   you were deciding certain constitutional questions or  
18   normatively deciding how they should be decided you  
19   wouldn't necessarily apply originalism even the correct  
20   way?

21          A.    That begs the question what is the correct  
22   way.

23          Q.    What you would think the correct way is?

24          A.    Oh.  Well, look I'm just a working historian.  
25   You know, I'm not a lawyer I'm not a judge I'm in no

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1 position to decide anything. So my feeling nonetheless  
2 is that historians have both well an opportunity but  
3 also really an obligation of a civic nature to  
4 contribute to the discussion of constitutional issues.  
5 And the court often mangles -- or various courts,  
6 including the Supreme Court often mangle the historical  
7 record you know in various ways you'd have to sort the  
8 that out case by case.

9 Q. All right. So let me rephrase this and see if  
10 you agree with this.

11 You're not telling courts they have to do  
12 originalism but if they're going to do originalism you  
13 think there's a proper way to do it?

14 A. I would restate that and say I -- I it seems  
15 to me that any attempt to figure out the original  
16 meaning of the Constitution or its dispute of clauses,  
17 which does not make sense of why those clauses of were  
18 inserted and how they are understood --

19 Q. The how and why.

20 A. -- will be -- I won't say it's falsifiable --  
21 will be deeply problematic.

22 Q. All right. That's fair.

23 (Reporter requested recess.)

24 MR. MILLER: Yes. Sure. We'll go ahead and  
25 take couple minutes longer than that.

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1 THE VIDEOGRAPHER: We're going off the record  
2 the time is 9:18 a.m.

3 (Recess taken.)

4 THE VIDEOGRAPHER: We're back on the record the  
5 time is 9:22 a.m.

6 BY MR. MILLER:

7 Q. All right I guess before I sort of get into  
8 the substantive portions of this declaration, let me  
9 just ask you just to summarize what you did here?

10 A. I'm sorry.

11 Q. Summarize what you did here just kind of give  
12 me the overview of what's in here?

13 A. What I did in the declaration.

14 Q. Yes.

15 A. Right. So the basic task or challenge was to  
16 think about ways to summarize how the founding  
17 generation in general would have thought about issues of  
18 political corruption improper political influence. And  
19 as I thought about that, it seemed to me that there were  
20 two main ways two vectors if you want to use that term  
21 that would best describe their attitudes.

22 One is tied to the tradition of republican  
23 thinking which is a rich subject of historians of  
24 political theory essentially a body of police department  
25 call thinking if we run back to the early 16th century

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1 and continues on for obvious reasons into the American  
2 revolutionary period and indeed beyond and the other was  
3 a much more specific set of issues that revolve around  
4 the operations and the particularly the way in which the  
5 American colonists would have perceived them of the  
6 British Constitution especially in the period after the  
7 Glorious Revolution of 1688 and the accession of the  
8 Hanoverian monarchs. The Hanoverians are the -- the  
9 dynasty who replaced the Stuarts.

10 Q. Stuarts?

11 A. I could say the "execrable race of the  
12 Stuarts," to quote John Adams.

13 But in any case how the American revolutionary  
14 generation thought about issues of political corruption  
15 in the context of how they thought about the British  
16 Constitution in the 18th century.

17 Q. And you said you selected those two vectors.

18 Would there be other vectors that other scholars  
19 might use to analyze this issue?

20 A. Potentially though I'd have to think more  
21 about that. These are far and away the two most obvious  
22 ones the two most salient ones so I felt they were the  
23 ones that really deserved emphasis.

24 Q. So before preparing these declarations and I  
25 guess I mean, you know, for the Alaska case originally

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1 had you done any writing on the meaning of political  
2 corruption at the time of the founding?

3 A. No.

4 Q. And what is your understanding of why the  
5 meaning of political corruption is significant to the  
6 issues in this case?

7 A. Well, from the perspective I was dealing with  
8 here, the -- you know, the basic challenge was simply to  
9 describe a mentality or a way of thinking about a  
10 particular set of issues back in the 18th century I have  
11 not studied the details of this case in any -- to any  
12 great extent.

13 Q. Okay. Do you know what the case is about?

14 A. Roughly.

15 Q. All right. And what's your rough  
16 understanding?

17 A. There -- a commission has been established in  
18 the state of Maine and it -- it does have some legal  
19 authority to monitor and I suppose to restrict donations  
20 to candidates and so on.

21 Q. Okay. And what do you understand the nature  
22 of my client's challenge to that law to be?

23 A. To -- you know, to in effect to say it's  
24 constitutionally improper.

25 Q. Yeah. It's a -- under what provision of the

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1 Constitution?

2 A. Well, I suppose it'd be the First Amendment.

3 Q. All right. And so, does the term political  
4 corruption appear in the First Amendment?

5 A. No.

6 Q. All right. So then, why are you providing  
7 testimony on what political corruption was in this case?

8 A. Because I was asked to do so.

9 Q. Okay. And can you help me understand what the  
10 nexus is between political corruption and the First  
11 Amendment?

12 A. Well, it's -- you know, it's -- I -- I suppose  
13 it's a broad free speech issue.

14 Q. Political corruption is a?

15 MS. AUSTIN: Outside the scope of this expert's  
16 expertise.

17 THE WITNESS: I think, you know, the argument  
18 that I draw towards the -- towards the end of my  
19 statement pivots it seems to me on the extent to which  
20 legislators in general members of Congress in particular  
21 will be corrupted in a way that would be antagonistic to  
22 the views of the founding era predominant views of the  
23 founding era because of the importance of, you know,  
24 raising funds to continue campaigning in highly  
25 competitive environments and that the sources of funding

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1 will have a deleterious impact on their independence and  
2 their status as legislators.

3 BY MR. MILLER:

4 Q. And were those potential concerns of the  
5 founders about that potential political corruption  
6 expressed anywhere in the First Amendment?

7 A. Not directly.

8 Q. Okay. I'm going to take a step back away from  
9 this particular declaration for a moment and just, you  
10 know, ask you kind of a question about sort of the  
11 nature of what you're offering here. You know, in cases  
12 typically, I -- you know, will have witnesses who offer  
13 evidence based upon their firsthand knowledge and, you  
14 know, perceptions. You know, obviously you weren't at  
15 the founding so that's not -- this isn't your firsthand  
16 knowledge of what happened then; correct?

17 A. No. I wasn't at the founding.

18 Q. Yeah. Sorry for the assumption.

19 A. I was born in 1947.

20 Q. Yeah. So sorry for these silly lawyerly  
21 questions but we just have to kind of run through it I  
22 guess is a conceptual thing; right?

23 So, then, the nature of what you're providing  
24 here is based upon what you as an academic have garnered  
25 over the course of your career?

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1 A. Yes.

2 Q. All right. And within the academic realm and  
3 in history, scholars sometimes disagree about the  
4 significance of different formative events even at the  
5 time of the founding; correct?

6 A. Sure.

7 Q. Okay. So then, are the -- the -- the items  
8 that are contained in this declaration -- is this your  
9 interpretation of -- of history or is it the fact of  
10 history that's being set forth here?

11 A. That's quite a philosophical question. I  
12 would, you know, claim and be prepared to defend the  
13 proposition that I've actually done a pretty good job of  
14 synthesizing the large body of scholarship which relates  
15 to the particular themes I discuss here. So there is a  
16 sense in which I think what I'm saying is I wouldn't --  
17 you know, it would not be all that provocative to other  
18 historians, you know, or would not shock them but you'd  
19 have to ask them I mean, I -- I do believe that history,  
20 like other disciplines, proceeds but are criticizing  
21 each other's work.

22 Q. Yeah. And so, in that sense, when you offer  
23 testimony through this declaration, do you consider your  
24 testimony to be authoritative?

25 A. Personally, yes.

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1 Q. And why do you say yes?

2 A. Well, look, I -- I've been in this field for,  
3 you know, I started graduate school in 1969 I've worked  
4 primarily on the late 18th century. As I'd like to tell  
5 my students I spend most of my waking hours in the 18th  
6 century and a good part of that thinking about  
7 James Madison I am probably the nation's leading Madison  
8 scholar and whether or not you think of him as the  
9 father of the Constitution he's clearly most important  
10 or arguably the most creative political thinker in  
11 America in the late 18th century.

12 Q. Do you think of him as a father of the  
13 Constitution?

14 A. I'm actually involved in a set of scholarly  
15 debates about this with among others Akhil Amar.

16 Q. Sure.

17 A. Who is a very well known scholar at Yale. And  
18 actually we have an -- an exchange on this in the  
19 journal of American constitutional history I don't think  
20 father is actually a very useful term. Analytically.  
21 What does it mean to say you're the father of a  
22 collective document that comes out of four months of  
23 deliberation but I will say that I've written this in a  
24 couple of other places I think Madison is the leading  
25 strategist of constitutional reform. In fact, I'm in

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1 the middle of writing yet another passage on this today  
2 so I think that's a broader way to think about his  
3 contribution.

4 Q. And does that apply to the Bill of Rights as  
5 well?

6 A. Without a doubt the word from Madison, we my  
7 feeling is we wouldn't have it Madison more or less  
8 forces what he call -- actually calls the nauseous  
9 project of amendments down the throats of his colleagues  
10 in the first Congress. He didn't mean nauseous to  
11 himself. He was committed to getting it done he meant  
12 it was a difficult task to get them to agree on its  
13 importance.

14 Q. And why was it important?

15 A. To Madison or to -- or to others.

16 Q. To Madison.

17 A. My personal view is Madison felt it was  
18 important to bring the whole process of Constitution  
19 making to a satisfactory political conclusion. He  
20 wasn't fully convinced that a Bill of Rights was  
21 absolutely necessary he had some reservations about the  
22 problem of enumerating rights tied to the Ninth  
23 Amendment also the problem of textualizing rights what  
24 happens if you have to textualize them and your the  
25 formula end up with is not as ample as the formula you'd

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1 like to have would be one concern.

2 But he felt there was a body of moderate  
3 anti-Federalist -- anti-Federalists, of course, were the  
4 opponents of the constitution. And the proper spelling  
5 is A-N-T-I- capital F -- anti-Federalist -- you know,  
6 F -- Federalists -- he felt there was a moderate body of  
7 moderate anti federal is who felt very strongly in this  
8 issue this had come out of the ratification debates over  
9 the Constitution 1777, 1788 and if you adopted these  
10 amendments even though Madison had some residual qualms  
11 about them they would become essential parts of they  
12 would be essential politically they would put a period  
13 to the constitutional discussions and you could go on  
14 and get the government up and running without worrying  
15 that there was a dissident group out there who were  
16 still opposed to its adoption.

17 Q. And why did the anti-Federalists want the Bill  
18 of Rights?

19 A. You know, well, how long do you want me to go  
20 on about this?

21 Q. 20 seconds.

22 A. You know, it was -- it -- writing -- writing  
23 Bills of Rights had become a part of American  
24 constitutionalism in 1776. I think rating of the new  
25 state constitutions had Bills of Rights accompanied

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1     them. The Bills of Rights were not necessarily part of  
2     the first state constitutions that was true in  
3     Pennsylvania it was true in Massachusetts elsewhere  
4     particularly in Virginia they are kind of companion  
5     documents. Which many Americans seeing themselves as  
6     republicans and revolutionaries felt a new government  
7     should have when it was being formed so, you know, it's  
8     a novel -- the idea of writing a Constitution in a  
9     historical moment is a great historical novelty it's  
10    exactly what I'm writing about literally this week.

11           And, you know, but then people think about the,  
12    you know, what does it mean to if I -- if you want to  
13    clarify the authority of statements of rights, it might  
14    be advantageous to include them directly in the text of  
15    the Constitution Madison actually did not actually want  
16    to have the amendments we now think of the Bill of  
17    Rights as separate articles he wanted them inserted in  
18    the text of the Constitution at the points he deemed  
19    most relevant. But Roger Sherman --

20           Q. He actually wanted to actually amend the  
21    Constitution line by line?

22           A. Well you're amending it one way or the other.

23           Q. Sure.

24           A. The question is -- it's the question of I  
25    think the term uses.

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1 Q. Lineal?

2 A. Interlineal.

3 Q. Yeah.

4 A. Yeah. I think interlineal is -- is the  
5 relevant term so I actually -- Madison was thinking and  
6 I think perhaps not incorrectly that the statements of  
7 rights might be legally more authoritative if they were  
8 right there in the text and not there as supplemental  
9 articles but Roger Sherman who was a political veteran  
10 as well from Connecticut, had different thoughts and  
11 Sherman's view prevailed in the House of  
12 Representatives.

13 Q. All right. You -- you stated that Madison had  
14 some concerns about -- about delineating the rights and  
15 that's why there was the Ninth Amendment.

16 Can you explain more to that.

17 MS. AUSTIN: Objection. Outside the scope.

18 THE WITNESS: Well, there are two concerns here  
19 I mean Ninth Amendment means what happens if you can't  
20 get a right adopted. And there -- you could have  
21 *expressio unius exclusio alterius*, I suppose aspect of  
22 that. I think Madison also worried about, you know, so  
23 there was a human racial problem which is a serious  
24 problem if you want to say that the Bill of Rights, you  
25 know, that excuse me if you want to say that

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1 incorporating the text of an amendment or -- excuse  
2 me -- incorporating the text of a right incorporating  
3 your concept of right into a text will become its  
4 primary source of authority, preeminent. What happens  
5 if you -- if you leave it out?

6 Some people I think Benjamin Rush said, you  
7 know, we don't know what all our rights are. So what  
8 happens if you leave it out will that right be relegated  
9 to an inferior authority because it's not incorporated  
10 in text?

11 Then Madison also worries I think about the  
12 proper textualization I think you see this in terms of  
13 the revision clause. There were different, you know, if  
14 you look at the state constitutions I've actually  
15 written a book on the subject. Now if you look at the  
16 state constitutions, there's -- their religious Liberty  
17 clauses are modeled more on the First Amendment but on  
18 actually on the new Pennsylvania Constitution of 1790  
19 Madison worries that religion is a controversial issue  
20 you might not be able to get as full a statement of it  
21 in the federal text or in any text as you find.

22 And if you think about the religion clause, it's  
23 the most concise and therefore ambiguous or open ended  
24 statement of right of religious freedom that we have.

25 ///

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1 BY MR. MILLER:

2 Q. Okay. Thank you for that.

3 I want to go off on a tangent there but I won't.

4 All right. So I guess returning to your  
5 declaration here, again paragraph 4. So you state  
6 there, there is obviously no question that they  
7 understood overt forms of bribery to be blatant forms of  
8 corruption and then you talk about the Impeachment  
9 Clause.

10 And so there it was bribery, treason?

11 A. Other high crimes and misdemeanors.

12 Q. Other high crimes and misdemeanors?

13 A. I've written about that at length.

14 Q. I have no doubt but here you wrote offenses.

15 What did you mean by "offenses"?

16 A. Well, the basis of charging impeachment or the  
17 basis literally the basis of impeaching.

18 Q. Okay.

19 A. There's a big difference in American practice  
20 from the British practice.

21 (Reporter clarification.)

22 THE WITNESS: There's a big difference in  
23 American practice from British practice.

24 BY MR. MILLER:

25 Q. All right. And then there the next sentence

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1 you talk about the Foreign Emoluments Clause and the  
2 well established historical knowledge that the founders  
3 had of the Treaty of Dover of 1670?

4 A. The second Treaty of Dover.

5 Q. The second?

6 A. Or the secret Treaty of Dover.

7 Q. Secret -- secret treaty?

8 A. Yeah. Yeah. Secret treaty.

9 Q. Right.

10 So one thing I was curious about is, you know,  
11 if that was a hundred years prior to them how did they  
12 have established historical knowledge of for the  
13 founders?

14 A. It's a funny story.

15 Q. Yeah.

16 A. I don't know how much of it you want.

17 Q. 15 seconds?

18 A. A friend of David Hume somehow was doing  
19 research in the in the royal archives of the French  
20 monarchy and he discovered there was a secret treaty  
21 between Louis XIV and Charles II which, you know, as  
22 stated here had to do with, you know, I think among  
23 other things Charles got yet another mistress out of --  
24 out of the equation but it would, you know, provide for  
25 his conversion to Catholicism and provide, you know,

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1 French troops might be sent to -- sent -- sent to  
2 England to support his reign.

3 And so, this was discovered -- I think it -- I  
4 think in 1778. I forget sometime in the early 1770s so  
5 it was a relatively hot story in the Anglo-American  
6 political world and a couple of the framers referred to  
7 it at the convention.

8 Q. I -- I see. So it was like -- it was breaking  
9 historical knowledge?

10 A. Breaking news 18th century style, yeah.

11 Q. Yeah. All right. All right. That's great.

12 A. It's a great story.

13 Q. Yeah, it is.

14 All right. So with respect to the Impeachment  
15 Clause wasn't there thoughts of including sort of, you  
16 know, other categories of offenses such as malpractice  
17 or neglect of duty or maladministration?

18 A. The -- what specifically happened is the  
19 Committee of Detail which meets in late August -- excuse  
20 me late July, early August 1787 refines the Impeachment  
21 Clause. You could be impeached in England for anything  
22 it's really the judgment of the House of Commons so the  
23 Americans in effect are trying to legalize, you know, in  
24 a certain sense -- sense of defining what you can be  
25 impeached for. So treason and bribery were the only two

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1 explicit bases of impeachment as the Committee of Detail  
2 proposed it -- proposed the clause to the Federal  
3 Convention.

4 And then George Mason, who was one of Madison's  
5 colleagues from Virginia colleagues in the Virginia  
6 delegation says maladministration. Maladministration as  
7 you think about it is as open ended a term or well maybe  
8 there are others. But it's about as open ended a term  
9 as one can come up with and, you know, so the so Madison  
10 objects and, you know, -- you know, because in a sense,  
11 you know, Madison wanted to preserve the constitutional  
12 independence of the Executive to be subject for  
13 impeachment for specific causes maladministration would  
14 open up almost anything.

15 So someone I can't remember who if it's mason  
16 says accommodation up with other high crimes and  
17 misdemeanors which is, you know, it's actually a  
18 venerable term runs back I believe to the 14th century  
19 in English usage it's hard for Americans to understand  
20 because we think misdemeanors involve, you know,  
21 crossing the street against the white or something like  
22 that. But, you know, high crime -- high crimes and  
23 misdemeanors and the problem is they don't debate it so,  
24 you know, it's a venerable phrase as a, you know, it has  
25 its own history. But it's not very well defined that's

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1 what Gerald ford eventually said you can be impeached  
2 for whatever the House of representatives wants to I  
3 mean peach you for.

4 Q. All right. Returning to that Treaty of Dover  
5 I'm kind of curious why did you say that Louis the 14th  
6 effectively bribed Charles II why did you call that  
7 bribery?

8 A. Well, he's -- he's offering him material  
9 benefits of the serving kind raising from a very  
10 attractive mistress who I think rose to some fame in the  
11 English court and then also the promise of, you know,  
12 providing French troops to sustain his reign and I think  
13 I have to go back and check this but I believe there's  
14 also financial support that goes to the Crown directly  
15 and, you know, this is a period in English history  
16 where --

17 Q. Yeah. But see -- see my question is -- is  
18 like when we look at that geopolitically, like why isn't  
19 that just like forming an alliance? Like, why is it  
20 bribery?

21 A. Well, the -- because you'd have to get into a  
22 kind of complicated narrative between the relations  
23 between Britain, France and the Protestant parts of  
24 the -- the low countries -- Holland the Netherlands. So  
25 you get into grand questions of strategy but -- you

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1 know, but he is offering material inducements, you know,  
2 including funding for the monarchy itself at a time when  
3 negotiations or I should say conflicts between the House  
4 of Commons and the monarchy over the adequacy of the  
5 funds it provides are a recurring issue as they've been  
6 throughout the 17th century in English politics.

7 Q. So an aspect of this is that he was receiving  
8 money personally not just for the state?

9 A. Yeah.

10 Q. All right. So, like, when American sort of  
11 client states now, you know, where we see it in our  
12 political interest to do so, that's not necessarily  
13 bribery; that's just state craft?

14 MS. AUSTIN: Objection outside the scope.

15 THE WITNESS: Yeah. No. I -- I -- I don't  
16 think it's bribery. I mean, giving -- giving foreign  
17 aid -- you know, take the -- the USAID -- USAID issues.  
18 That's not -- I mean, that's not bribery. You know,  
19 it's certainly intent to influence foreign policy. You  
20 wouldn't say it's bribery.

21 BY MR. MILLER:

22 Q. All right. Okay. And then, like, the --

23 A. You know, not to say that you can't -- not to  
24 say that some parts of its don't become bribes de facto,  
25 which may well be the case.

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1 Q. Right. But France didn't bribe the Americans  
2 during the revolution. They were just --

3 A. No they gave us a treaty of alliance.

4 Q. All right. Let's see. At the end of that  
5 paragraph you say this is the top of the next page back  
6 in the 1760s Virginia politics had been wracked by the  
7 charges of financial corruption directed against  
8 John Robinson the speaker of the lower house.

9 How was that manifest?

10 A. Look, I'd have to go back to the record, which  
11 I haven't looked at but it's a -- it's a well known  
12 scandal. I mean, Robinson's reputation was ruined and  
13 he had been a dominant figure I'd have to go back it may  
14 have revolved around land grants.

15 Q. Okay. Do you know what the case *Buckley v.*  
16 *Valeo* is?

17 A. I know it roughly but I haven't -- I haven't  
18 gone back and looked at it recently.

19 Q. Okay. Do you know the significance of the  
20 term *quid pro quo* corruption in *Buckley*?

21 A. This for that.

22 Q. Yeah. Right. That's what it means.

23 But do you know the significance of that term  
24 and how it's utilized in campaign finance cases?

25 A. Well, I haven't studied it directly I -- I

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1 have a general concept of what it means.

2 Q. Have you studied whether Buckley and its  
3 progeny are original list style cases?

4 A. No.

5 Q. All right. So the next couple sections of  
6 your declaration sort of lay out a long historical  
7 record of -- of what corruption was at various times in  
8 the past; right?

9 A. Yes.

10 Q. All right. And that was sort of one of the  
11 approaches that you delineated earlier going back to the  
12 1600s or something to kind of -- to see how the framers  
13 viewed things; right?

14 A. In general, yeah.

15 Q. Yeah. Okay. I'm going to try to avoid  
16 getting, you know, too much into the weeds of all of  
17 this. But like, how do we know how much, you know,  
18 Machiavelli and -- and others, you know, informed the  
19 founders understanding of what corruption was?

20 A. I think historians in general -- I mean, look  
21 it's very tricky and difficult to measure quantitatively  
22 the influence of given writers. But there is a fairly  
23 substantial body of scholarship which has evolved really  
24 over the last have century or even -- even more which  
25 traces in some detail the origins and the

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1 characteristics of republican thinking in early modern  
2 political thought. And my underlying assumption is that  
3 the -- because they were well read particularly the guys  
4 we're most interested in -- you know, people like  
5 Madison, John Adams, Alexander Hamilton. They did have  
6 a kind of classical education and that -- that did  
7 include extensive readings in ancient history in the  
8 classics as well as in, you know, the, you know, more  
9 modern political writers, you know, Machiavelli, you  
10 know, they -- well, in the American tradition, certainly  
11 Hobbes and Locke and other figures less well known to  
12 us.

13 And Machiavellian is customarily seen by  
14 scholars as far as I say in, you know, my statement  
15 really as the first modern political scientist in a  
16 certain, you know, not in the rigid academic sense but  
17 in terms of, you know, the organization of his thought.  
18 He breaks with so many of the conventions of, you know,  
19 political treatises as -- as -- as they had been done  
20 before then. And his work is absorbed and -- and  
21 reacted against by -- by other writers.

22 Q. All right. So was this something that, you  
23 know, simply sort of, you know, the class of people that  
24 we think of as the founders would have been  
25 knowledgeable in or would this have been sort of like

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1 common knowledge and understanding of what corruption  
2 was, you know, by you know, by the people at the time?

3 A. Well, by the people -- if by the people at the  
4 time means the mass of the citizenry, it's hard to get  
5 at the --

6 (Reporter clarification.)

7 THE WITNESS: Oh. Sorry. I covered -- I  
8 covered the mic.

9 You know, by the mass of the people -- you know,  
10 by the mass of people, you mean the citizenry, you know,  
11 historians work from documents. You know, we work from  
12 text the logic of history is you should be able to run  
13 most statements back to some documentary source so, you  
14 know, the evidence we have for the founders, you know,  
15 there are volumes after volumes after volumes of their  
16 papers and of course there's also a lot of evidence in  
17 public political writing about the fragility of  
18 republics, you know, about their history ancient and  
19 early and modern going back -- back both to antiquity,  
20 you know, knowledge of ancient Athens and Sparta which  
21 was a Republic of sorts and then the it, you know, the  
22 early modern Italian city states like Machiavelli's in  
23 accordance, you know, figure prompt innocently or a part  
24 of that story and, you know, a lot of the framers knew  
25 that history pretty well.

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1 BY MR. MILLER:

2 Q. Okay. And, again, I guess -- I guess this  
3 maybe sounds like a silly question or maybe -- maybe  
4 naive, but when -- when we say political corruption  
5 here, can you tell me what we mean because I want to  
6 make sure that I'm -- you know that this doesn't have a  
7 particular definition that was different back then than  
8 what we're using now when we think political corruption.

9 A. Well, that's what my statement tries to do.

10 Q. Yeah.

11 A. One argument is the Machiavellian theme or  
12 motif or strain of thinking tries to imagine republics  
13 has an entire polity, you know, as a community. And the  
14 question is what -- you know, what -- what kind of  
15 traits and characteristics do they need to possess to  
16 preserve their lives as republics.

17 So for example the whole question of the  
18 militia, which ties into the Second Amendment quite  
19 directly -- our Second Amendment quite directly would be  
20 one dimensional -- how is it the republics maintain  
21 their stability? So that's the main theme of the first  
22 big part of my declaration.

23 Second theme is the more specific use that  
24 arises in post -- primarily in post 1714 England but,  
25 you know, with some earlier antecedents as well, which

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1 has to do with, you know, the corruption of the  
2 legislative branch -- or more specifically, the House of  
3 Commons. Since the aristocracy's inherently corrupt  
4 because it's already tied to the monarchy. But, you  
5 know, the House of Commons is supposed to be the  
6 independent voice and representative of the people and  
7 so the question of what techniques of political  
8 manipulation and influence of a corrupting nature were  
9 available to the ministerial governments that become the  
10 effective wielders of executive power after 1714  
11 although the king -- the king himself, George III, could  
12 still intervene in this process.

13 Q. Okay.

14 MR. MILLER: Should we take a break now? Or  
15 should we keep going?

16 THE WITNESS: It's up to you.

17 MS. AUSTIN: Sure. A break sounds good if it's  
18 a good stopping point for you.

19 MR. MILLER: It is yeah.

20 THE VIDEOGRAPHER: We're going off the record.  
21 The time is 9:58 a.m.

22 (Recess taken.)

23 THE VIDEOGRAPHER: Okay. We're back on the  
24 record the time is 10:04 a.m.

25 ///

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1 BY MR. MILLER:

2 Q. All right professor, I'm going to I think skip  
3 over most of sort of the historical analysis that you  
4 have here and skip forward to the American perception  
5 which starts on page 17.

6 And to try to -- to summarize this, say, I --  
7 I -- I think what you do here is initially sort of lay  
8 out what the American perception of political corruption  
9 was at the time based upon sort of everything that they  
10 knew and understand and what has had been going on in  
11 prison is that fair?

12 A. That's essentially the starting point.

13 Q. Yeah. And then you go through and kind of  
14 delineate certain examples of corruption in here that  
15 they were -- could have been concerned with; correct?

16 A. Yes.

17 Q. Okay. And I guess, one of the examples here  
18 is you were talking about rotten --

19 A. Rotten prudence.

20 Q. Is that malapportionment is that what that is?

21 A. Well, it's not malapportionment as we would  
22 use the term under the Constitution. It just -- you  
23 know, I mean rotten borough means literally a  
24 constituency with few if any voters. I visited the most  
25 famous one once it's known as Old Sarum, S-A-R-U-M, it's

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1 near Salisbury --

2 Q. Mm-hmm?

3 A. -- consisting mostly of sheep and not people  
4 so there's just a handful of voters and -- but not just  
5 a -- it's hardly a population to represent.

6 Q. All right. And so, in the modern era, you  
7 know, people complain about the -- the Senate, you know,  
8 is it similar to that? And not as extreme but is it a  
9 similar concept?

10 I'm just trying to understand what we're talking  
11 about.

12 A. Metaphorically, you could say yes. You could  
13 say North -- you could say North Dakota is a rotten  
14 borough created by the republicans in the late 19th  
15 century. But since it's constitutionally prescribed,  
16 each state has two senators, you know, it rests on a  
17 valid principle of representation.

18 Q. I guess never really thought about that there  
19 was really no reason to split the Dakotas is that what  
20 you're saying?

21 A. My understanding is that the -- the House was  
22 highly competitive in the 19th century that's why we got  
23 a lot of gerrymandering. And, you know, to make sure  
24 they held on to the Senate the republic republicans took  
25 areas they thought they could control whose population

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1 was scant.

2 Q. All right. And with respect to the rotten  
3 boroughs was anything done in the U.S. Constitution to  
4 prevent those things from happening?

5 A. Well, sure. The -- I mean, the whole -- well,  
6 I mean yes and no. I mean there are no rotten boroughs  
7 in American representation and there's certainly, you  
8 know, the 18th century.

9 Q. All right.

10 A. The -- you know, the right -- the right to be  
11 represented was routinely almost unthinkable -- almost  
12 unthinkable extended to communities as they were  
13 organized. So that would be townships in new England  
14 counties in, you know, most of the other colonies.

15 So when Americans think about this but -- but in  
16 England there was substantial criticism of the existence  
17 of both rotten and pocket boroughs.

18 Q. Yeah I guess my question simply was is, you  
19 know, did they try to address that issue in the American  
20 Constitution through, you know, census and  
21 reapportionment.

22 A. Yeah. That's why we have the census.

23 Q. And reapportionment?

24 A. Yeah. And reapportionment.

25 Q. And in here a little before that you sort of

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1 talk about it sign of curious and the like?

2 A. And the.

3 Q. Sign curious sign curious and the like. And  
4 that also was the attempted to address in the  
5 Constitution; correct?

6 A. Right. I -- there was well, I could give a  
7 long answer to this but the short answer is yes.

8 Q. All right. And same thing with ineligibility  
9 for certain offices for legislators?

10 A. Could you be more specific.

11 Q. Well, I'm sorry. Yes. So in here you  
12 discuss, you know, concern about the Crown corrupting,  
13 you know, members of the House?

14 A. Oh.

15 Q. By giving them?

16 A. Right.

17 Q. Executive offices?

18 A. Yeah.

19 Q. And that issue was addressed in the U.S.  
20 Constitution?

21 A. Or pensions or military yeah. You -- the term  
22 they used was placement and so a recurring theme is  
23 that, you know, is to put restrictions on the ability of  
24 the Crown to, kind of, in effect buy off or let's say  
25 obtain the political loyalty of members of the House of

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1 Commons because other benefits could be given to them.

2 Q. All right. This was a -- this was a concept  
3 I'd not heard of before in paragraph 37 you discuss  
4 ministerial domination.

5 Can you explain what you mean by that?

6 A. Let me just take a look at the paragraph  
7 first.

8 Q. Sure.

9 A. So the concept of ministerial domination of  
10 parliament runs something like this. You know, the  
11 great normative conceptual legacy of the Glorious  
12 Revolution was that the House of Commons should be  
13 independent of royal control and manipulation. It  
14 should be an independent -- fully independent  
15 Constitution of government. It's an assent should be  
16 necessary for most acts of the Crown to take effect to  
17 be honest it's -- it should be back in our discussions  
18 today because the whole issue of does the Crown have the  
19 right to suspend laws, which is very -- actually, very  
20 much in our own political agenda is tied in with this.

21 And so, you know, the basic question is what  
22 happens after 1714 is when you have a monarchy, the --  
23 you know, the English monarchy passed from the Stuarts  
24 who were originally a Scottish family to the Hanoverians  
25 meaning the electors of Hanover, which is a German

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1     principality -- or whatever -- you know, one of, you  
2     know, many small German dominions.

3             The great advantage was they were Protestants.  
4     And they weren't all that interested in royal government  
5     in Britain. They weren't the most active monarchs.  
6     George III who was the actually the fourth generation  
7     because his father died before he acceded the monarchy.  
8     So George III was the grandson was of George II.  
9     George III was probably the most active monarch of all  
10    politically.

11            So you have the rise of ministerial government.  
12    Sir Robert Walpole was the first of the great ministers,  
13    the Duke of Newcastle, Lord North serving George III so  
14    you had the rise of ministerial government to -- to --  
15    that meant you had to be able to control you had to be a  
16    figure who could control or who could put together a  
17    coalition representing a majority of the House of  
18    Commons.

19            And one way you did that was by wielding all the  
20    techniques of influence that, you know, on be -- in a  
21    sense, on behalf of the Crown. But the "Crown" here  
22    means the royal branches as much as the king himself so  
23    the Parliament, which in theory is supposed to be  
24    independent as a check but in fact the working  
25    majorities are always, you know, by definition almost by

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1 definition are loyal to the government.

2 Q. Okay. All right. So then here you say that  
3 the constitutions that the new American states began  
4 adopting in 1776 illustrate the underlying political  
5 conception and commitment that shaped American  
6 constitutionalism?

7 A. Right.

8 Q. I -- can -- can you marry those two concepts?  
9 Because I don't quite understand.

10 A. Let's take so one of the main complaints  
11 against Parliament is, you know, after, you know, I cite  
12 a actually very influential book J.H. Plumb called --  
13 two editions -- either the origins of the growth of  
14 political stability in England. He talks about all the  
15 techniques that developed, you know, both before and  
16 particularly after the Glorious Revolution which would  
17 allow the British politics to restabilize on the basis  
18 of having strong ministerial governments.

19 One of those techniques is you go from having a  
20 triannual act -- meaning, Parliament would be -- the  
21 House of Commons would be elected every three years to a  
22 centennial act. Second, was you would actually you  
23 worked hard to reduce the suffering, which actually had  
24 grown in the 17th century because of inflation. If you  
25 have -- you know, if you have a -- a property

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1 requirement, inflation is going to, by definition, you  
2 know, enlarge that.

3 So to take one example -- you know, probably the  
4 best one all -- the American legislatures created under  
5 the new state constitutions which replaced the old  
6 colonial regimes had annual elections for at least  
7 members of the lower house which would be seen as the  
8 predominant branch of government. There's actually a  
9 popular saying where annual elections end slavery begins  
10 1718th country did not just mean channel slavery it's a  
11 term that also notes the contempt ration of political  
12 rights and so on you have annual election of governors  
13 usually by the Legislature. That's, you know, so in a  
14 sense the -- the power of the Executive was eviscerated.

15 So American constitutional reform in 1776 which  
16 was self-consciously republican -- lower case "R"  
17 republican in nature implements, you know, changes that,  
18 you know, in a certain sense they -- they rest upon the  
19 critique of how British constitutional practice had  
20 evolved particularly after the accession of the  
21 Hanoverians in 1714.

22 Q. Okay. And then what made the U.S. Federal  
23 Constitution, I guess, less direct in addressing those  
24 issues?

25 A. Well, you create a federal senate that's

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1 elected by the state legislatures. You have a house --  
2 I mean this -- it's not that big a deal but you have a  
3 house that's elected every two years so they -- they  
4 depart Madison.

5 Q. There's a lot more travel?

6 A. Well, that's part of the reason. The other  
7 thing that went out and this is a behavioral thing is,  
8 you know, very few members of the mean term of service  
9 in the House of representatives for roughly its first  
10 century plus or minus was three years meaning the vast  
11 majorities of members of the House served only one or  
12 two terms.

13 So you -- it -- you know, so you -- so, I mean,  
14 in a sense, you know, the Constitution makes some  
15 departures from -- you know, from 1776. But I mean  
16 other -- other factors intervene.

17 Q. All right. So it sort of sounds like that  
18 when drafting the American Constitution, they were  
19 careful to try to address these forms of corruption that  
20 they were concerned about; is that true?

21 A. Yes I think it's true. I mean, you know, the  
22 barrier on members of Congress holding offices under the  
23 Executive would be one, you know, what would be one  
24 example but it doesn't apply to the Supreme Court when  
25 John Jay is sent overseas to negotiate the Jay Treaty

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1 when he's chief justice.

2 So it's particularly Congress where you want to  
3 create that barrier between the Executive and its --  
4 and -- and, you know, members -- members of either  
5 house.

6 Q. On paragraph 45, you're talking I guess about  
7 impeachment and emoluments and I think that there was  
8 some concern here articulated about the Legislative  
9 department as well. So I just want to kind of --

10 Is there an Emoluments Clause that applies to  
11 the Legislature?

12 A. I would need to get the text of the  
13 Constitution in front of me to look at the -- the --  
14 both clauses.

15 Q. Okay. You don't recall that.

16 All right. Did -- what about impeachment? Did  
17 impeachment apply to Congress?

18 A. No there was, you know, there's an early  
19 excuse me there was an early attempt to impeachment one  
20 senator.

21 Q. Mm-hmm?

22 A. I think I'd have to go back and check this I  
23 think that one of the North Carolina senators but no  
24 it's always understood to apply yes.

25 Q. It makes sense it would be a senator; right?

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1 That way -- 'cause it was the House that was upset about  
2 it? So --

3 (Audio interruption.)

4 BY MR. MILLER:

5 Q. Okay.

6 (Reporter admonition and clarification.)

7 MR. MILLER: It was probably not significant. I  
8 think I said it made sense that it was the House because  
9 if it was the senators that were concerned they could  
10 have removed him on their own I think it's probably what  
11 I said something like that.

12 THE WITNESS: Well, each House couldn't expel  
13 its own members.

14 BY MR. MILLER:

15 Q. Exactly.

16 Okay. All right. And then, you discuss the  
17 idea of overt bribery directed by foreign powers that  
18 the president or senators remained part of the  
19 ratification discussion.

20 A. Mm-hmm.

21 Q. Why were they concerned about that?

22 A. Well, I think in -- you know, as in the case  
23 of this paragraph, the idea of overt bribery directed by  
24 foreign powers -- powers that the president or senators  
25 remain part of the ratification discussions because, you

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1 know, the treaty power, you know, under the advice  
2 under -- under the two an advice and consent clauses is  
3 shared between the president and the Senate that was  
4 actually a very much a last minute change in the  
5 convention.

6 It was another one of those subjects I keep  
7 working on in my -- in my scholarship. Though, I --  
8 actually I first started writing about this literally  
9 40 years ago.

10 So, you know, the idea -- the idea that members  
11 of -- you know, you have to remember the Senate was a  
12 small body. So there are actually the first senate  
13 originally had 22 members then 26 once Rhode Island and  
14 North Carolina belatedly ratify the Constitution you  
15 have a quorum and so on a lot of concern was expressed  
16 in 1777 and 1778 because of travel issues you might have  
17 a, you know, that you have a small number of senators  
18 you need two-thirds of them to ratify a treaty. But you  
19 have a small number there had been at least one  
20 experience of the French ministers bribing, you know,  
21 one of the members of the Continental Congress. There  
22 are these wealthy urine ministers that might have an  
23 interest in American foreign policy so yeah. So, you  
24 know, so that concern was -- it was not implausible.

25 And there's also -- there was I think some

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1 residual authority what's the relative balance of  
2 authority between the -- the president and the Senate in  
3 negotiating treaties so you have to start working that  
4 out in practice.

5 Q. Okay. And then, in paragraph 47, you sort of  
6 discuss contemporary understanding of the ambitions of  
7 politicians?

8 A. Yeah.

9 Q. And then sort of discuss the -- the tenures of  
10 at the time of the founding which you just sort of  
11 mentioned.

12 A. Right.

13 Q. But, like, I -- when they were -- when the  
14 founders were drafting the Constitution, were they  
15 concerned about ambitions of men?

16 A. Not in the way we are.

17 Q. Yeah. Please -- yeah so when they talk about  
18 ambitions because they did right?

19 A. That could be my second book something else.  
20 Well, they -- they still assumed, you know, I think  
21 correctly that political life was more avocational in  
22 nature. Particularly elective office. There's -- you  
23 know, there's high turn over in both -- as I said a few  
24 minutes ago there's high turn over both in Congress and  
25 also the state legislatures for a long period of time.

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1 So the desire to be reelected which now dominates  
2 American politics, and when we think about elective  
3 office holders, you know, particularly in Congress and  
4 to some extent I think in the states as well the idea  
5 that politics has become professionalized since the  
6 early 20th century that's become a kind of major theme  
7 in -- in -- in -- in how we think about the nature of  
8 politics. It was not a concern of the framers. And I  
9 think the point I'm trying to make here is that, you  
10 know, there's a limit on the extent to which they would  
11 have anticipated or understood what's happened to  
12 political ambition since I would say the turn of the  
13 20th century.

14 Madison, you know, who I sometimes describe as  
15 my alter ego -- Madison would have welcomed having more  
16 people like himself in Congress. I mean Madison was  
17 kind of foundering in terms of a career when the  
18 revolution came along and taught him that actually he  
19 would have a real career in public life. He didn't  
20 really want to be a planter back in Montpelier his  
21 plan -- in the family plantation.

22 Q. Wasn't he just like 16 at the time? Wasn't he  
23 young?

24 A. Well, he he's born in 1751.

25 Q. Okay.

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1           A.    So he's -- no.   He's -- so he -- when he goes  
2   off to the -- the fifth Virginia provincial convention  
3   and place a role in the religion clause of its  
4   declaration of rights and altering he had just turned  
5   25.   And then, you know, he lost one election to the  
6   Virginia Legislature but then he, you know, he served  
7   consistently in public life, you know, for the really  
8   for the next, you know, 20 some years and then, you  
9   know, and then a short break and then he's back in okay  
10   but yeah but he -- he would have welcomed the idea of  
11   having more people like himself people who would learn  
12   how to legislate on the basis of experience.   He -- he  
13   felt that would be a net good.

14           But he understood -- I -- again, I think  
15   correctly -- that you would still have high turn -- high  
16   turnover, particularly in Congress, you know, because,  
17   you know, I hate to use a word not used by the framers  
18   it was a big schlep to go back and forth to your home to  
19   the national capitol two or three times it took a whole  
20   year after you were elected before you'd actually go to  
21   Congress for your first session so they assumed it was  
22   going to be a big inconvenience so in that sense, the  
23   concerns we have about the legislative about the  
24   Legislature being corrupted not, you know, in the manner  
25   of Lord North or, you know, Walpole or, you know, the

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1 Duke of Newcastle -- or whatever -- but, you know, in  
2 the modern sense by outside, you know, what we call  
3 outside interests becoming so important. To, you know,  
4 one's campaigns for reelection. And, of course, that's  
5 in some ways that's probably multiplied by the  
6 importance of party primaries in elections, you know,  
7 depending on how gerrymander -- districts are  
8 effectively gerrymandered or not so that -- that concern  
9 would have been novel our modern concern would not have  
10 been one in general that the framers would have shared  
11 just because the nature of political ambition in the  
12 late 18th and 19th century was different you're -- I  
13 go -- I may -- stop me. One last thing.

14 If you're a politician in the 19th century you  
15 probably would serve a two in Congress like Abraham  
16 Lincoln right but then you go back, you know, either you  
17 think it would enhance your career as a lawyer and  
18 lawyers become and I'm sure as you well know, you know,  
19 become a main, you know, source for recruitment actually  
20 Hamilton wrote about that in Federalist 35 or you --  
21 you'd -- you'd find some other office closer to home and  
22 family and, you know, whatever your -- you know, your  
23 plantation or your legal practice was that would give  
24 you additional fees but without the inconvenience of  
25 national service.

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1           So there's the desire for reelection which is so  
2           dominant in modern politics and by modern I mean  
3           essentially the early 20th century on was not really  
4           part of their political world.

5           Q.    All right.  So --

6           A.    So their fear -- their fear of corruption had  
7           other sources.

8           Q.    All right.  So if that's the case, does the  
9           original Constitution including with the Bill of Rights  
10          do anything to address that modern issue?

11          A.    Well, so --

12          MS. AUSTIN:  Objection.  Outside the scope.

13          THE WITNESS:  Yeah.  Certainly not in the Bill  
14          of Rights.

15          No.  I mean, you know, the term limits are --  
16          you know, we have no term limits; right?  And, you know,  
17          it's -- as I'm sure you know, the Thornton case from I  
18          think it's early 1992 -- *Term Limits v. Thornton*.  I --  
19          I think -- I think that's --

20          BY MR. MILLER:

21          Q.    I think that's right, yeah.

22          A.    Bears on this.  I mean I -- I think that case  
23          was correctly decided you can't allow the states to  
24          restrict the access of the people to choose whoever they  
25          want to choose.  You know, so that would be a

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1 qualification. And you can't -- you know, you can't do  
2 that legislatively you'd have to do it by amendment.

3 Q. You talk about how originally, you know, for  
4 election, there's -- there was little if anything they  
5 could obtain by spending money.

6 My question for you is this: How -- how did  
7 the -- the presses at the time kind of play -- play into  
8 that?

9 A. Presses were very important. I mean, it's not  
10 a subject I've studied intensely.

11 Q. Yeah.

12 A. Because they become much more important in the  
13 kind of as party politics teed up and the intensity of  
14 party politics waxes and wanes over the 19th century  
15 it's not a steady state condition, you know, parties  
16 form they break up they reform, they break up, you know,  
17 the Federalist party breaks up. The Whig party broke up  
18 and so on and so on.

19 But yes. You know, presses are an important  
20 part of I don't want to say of campaigning but of  
21 mobilizing the public and so have lots of other  
22 activities I mean it's not something I've worked on  
23 directly but, you know, but I, you know, there's  
24 intensity kind of waxes and wanes having lots of  
25 elections, you know, at different levels of government

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1 actually it was, you know, some scholars have argued was  
2 a great mobilizing technique in 17th century politics  
3 instead of concentrating your elections, so we, you  
4 know, we for efficiency, you know, having different  
5 elections they actually might have a beneficial impact  
6 on maintaining civic loyalty.

7 Q. Right. Like, Wisconsin just had an election  
8 for their judges.

9 A. Right.

10 Q. And it's just like kind of what they just do  
11 when it's on as separate schedule. So --

12 A. Right. Right.

13 Q. -- something like that --

14 A. Right.

15 Q. -- or you -- okay.

16 But, like, Were presses expensive to operate?  
17 Do you know?

18 A. You know, I don't think so. But it -- it's  
19 not -- it's not something I've studied directly.

20 Q. Okay.

21 A. Of course there is the franking privilege,  
22 which, you know, congressmen take -- you know, take  
23 advantage of I'm sorry. That's -- that's beside the  
24 point.

25 Q. Right?

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1           A.    It's not the -- it's the fact that I think  
2   newspapers circulate a lot among, you know, copies are  
3   sent off to other presses so there's a lot of  
4   borrowing --

5           Q.    And reprinting.

6           A.    -- stories.

7           Q.    Yeah.  Because I -- I'm sort of fascinated  
8   about how that -- how that worked?

9           A.    Yeah.

10          Q.    And, you know, what were these -- because, you  
11   know, my understanding is there were some presses that  
12   were more Federalist?

13          A.    Yeah of course.

14          Q.    Anti-Federalist?

15          A.    Yeah.  Party oriented newspapers and some  
16   newspapers have short cycles.

17          Q.    But your understanding is there was not a lot  
18   of cost associated with that?

19          A.    It's not something identify studied.

20          Q.    You just don't know yeah okay that's fair.

21                And then, yeah.  Is it despite being sort of a,  
22   you know, Madison's second persona, like I mean how can,  
23   you know, like, how they would -- how the founders would  
24   react to sort of the modern era?

25          A.    Yeah.  That's a great question and, you know,

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1 when I'm asked it in general, my first response is that,  
2 you know, I think particularly Madison they were deeply  
3 empirical thinkers so you cannot simply -- you know,  
4 it's tricky difficult to project how they would react to  
5 some modern phenomenon that they could not have  
6 anticipated without giving them the same data and I use  
7 the term data here quite broadly, you know, both  
8 historical and contemporary that we have.

9 So in one sense there is a kind of I don't want  
10 to say foolishness but, you know, -- you know, there's a  
11 limit on what you can reasonably predict.

12 On the other hand I think there were some things  
13 that they believed quite strongly, you know, at a  
14 normative level. That would, you know, that -- that --  
15 you know, that once when you were working the materials,  
16 you know, pretty consistently you -- you would  
17 understand and see. So, -- you know, so you can't try  
18 to -- for example I and this is tricky and I've written  
19 a little bit about this in terms of the free exercise  
20 clause, you know, to think about underlying values. I  
21 mean, it -- I just -- I published a book a few years ago  
22 called "Beyond Belief Beyond Conscience the Radical  
23 Significance of the Free Exercise of Religion," and I  
24 end the book with what I call Madison's razor. I -- I  
25 don't -- do you -- do you --

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1 Q. I know Occam's razor?

2 A. Yeah. It's my version of Occam's razor -- the  
3 simpler explanation works better than the more  
4 complicated one.

5 Q. All right.

6 A. And I think Madison's razor is you want to do  
7 as much as possible to preserve an individual right of,  
8 you know, belief and expression and you also want to do  
9 as much as possible to keep religion out of public  
10 affairs you want religion get -- so you want religion to  
11 be as privatized as possible. Religion was the first  
12 thing -- religion was the first issue that Madison cared  
13 about even more I think than the overt political stuff.  
14 I mean, he came back from Princeton, he went to college  
15 in New Jersey now Princeton he came back from there  
16 deeply attached to ideas of religious freedom and  
17 exactly how his ideas coalesced are a little hard to say  
18 but the evidence for their coalesce sense was pretty  
19 strong I think at that point I think Madison would be  
20 fairly consistent. I think.

21 Q. On the religion point?

22 A. I'm sorry.

23 Q. On the religion point?

24 A. On the religion point.

25 Q. Yeah.

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1 A. On the Second Amendment I don't think he'd  
2 follow my point of view.

3 Q. Let's see. On the -- on the religion point,  
4 let's see Madison was from Virginia?

5 A. Yeah.

6 Q. Did Virginia have an established church?

7 A. Well, it's a -- it's a big struggle. The  
8 church -- the church of England had been established.  
9 The Anglican Church retained some privileges after 1776  
10 that are kind of embedded in state law. And Madison's  
11 one of Madison's big projects was to get Jefferson's --  
12 the -- the bill of -- the Statute of Religious Freedom  
13 that Jefferson had drafted in the late 1770s, you know,  
14 Virginia constituted a commit -- the Virginia  
15 Legislature in the House of Delegates had constituted a  
16 committee to refer to a comprehensive reform of Virginia  
17 legislation Madison was -- Jefferson was the main guy on  
18 that committee and the thing he was proudest of doing  
19 was drafting the Statute of Religious Freedom, which did  
20 effectively -- for all intents of purposes, did  
21 effectively thoroughly disestablished religion in  
22 Virginia.

23 But, you know, they're a little bit busy during  
24 the revolutionary war with the war.

25 Q. Right?

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1           A.    So they didn't have time to work on the reform  
2   of, you know, the Virginia law code so gerrymandering  
3   went off to France in 1784 and Madison was actually term  
4   limited out of Congress in Congress in 17831785, 86  
5   where he becomes a dominant figure until he's -- you  
6   know, until a certain point he's working the other  
7   legislators so hard they get upset with him but one of  
8   the projects was to get the Statute of Religious Freedom  
9   finally enacted.

10          Q.    I'd love to talk about -- I'd love to talk  
11   about gerrymandering and his religion but we'll save  
12   that for another time?

13          A.    It's a great subject.

14          Q.    So how does the concept of political  
15   corruption that you articulate here in this declaration  
16   inform the formation and creation of the free speech  
17   clause in the First Amendment? If at all?

18          A.    Well, I wouldn't say I mean given any of the  
19   circumstances of the drafting of the First Amendment be  
20   the brevity of its text as I talked about earlier.

21          Q.    Yeah.

22          A.    I'd say the link would be fairly thin.

23          Q.    Okay.

24          A.    But I think that there's a general concern  
25   about -- well, sorry. I'll -- I'll stop there.

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1 Q. Okay.

2 MR. MILLER: I have no further questions. Okay.  
3 Thank you.

4 Are you going to ask anything?

5 MS. AUSTIN: No. Nothing from me.

6 MR. MILLER: All right. And I'll ask for the  
7 court reporter -- read and sign? Or not read and sign  
8 do you know what I mean? Like does -- do you want to  
9 like does he need to read and sign the transcript to  
10 review it in advance or no?

11 MS. AUSTIN: Yes.

12 MR. MILLER: Okay.

13 THE WITNESS: Do I need to read and sign it?  
14 (Reporter inquired about transcript  
15 purchase orders.)

16 MR. MILLER: Yes. I definitely want that.

17 MR. KNOWLTON: The state of Maine would also  
18 like a transcript.

19 MS. AUSTIN: Yes so would we Mackenzie Austin.

20 THE VIDEOGRAPHER: Can I also get video orders  
21 from everyone as well.

22 MR. MILLER: Yeah. I -- can we get the  
23 transcript linked?

24 MS. AUSTIN: We'll do the same.

25 THE VIDEOGRAPHER: Okay we're going off the

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record. The time is 10:39 a.m.

(Proceedings conclude at 10:39 a.m.)

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