**In the Matter Of:**

*INDIANA CIVIL LIBERTIES UNION, ET AL.*

*-v-*

*MIKE BRAUN*

---

**Mark A. Chancey**

*September 04, 2026*

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

| | | |
|---|---|---|
| INDIANA CIVIL LIBERTIES UNION, et al. | ) | |
| Plaintiffs, | ) | |
| -v- | ) | No. 1:00-cv-00811-SEB-VSS |
| MIKE BRAUN, | ) | |
| Defendant. | ) | |

The deposition upon oral examination of MARK A. CHANCEY, a witness produced, and sworn by me, Sandra Marchky, RMR, CRR, Notary Public, in and for the County of Marion, State of Indiana, taken remotely, on behalf of the Defendant, on September 4, 2026, at 10:30 a.m. Eastern, pursuant to the Federal Rules of Civil Procedure.

A P P E A R A N C E S

(All participants appeared via Zoom videoconference)

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# I N D E X

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COURT REPORTER: Today is September 4, 2026. The time is 10:30 a.m. Eastern. My name is Sandy Marchky, in association with Stewart Richardson, Indianapolis, Indiana. This is the remote deposition of Mark A. Chancey.

Will counsel please identify themselves for the record and any persons present with you.

MR. FALK: Ken Falk and Josh Bleisch for the plaintiff and for Professor Chancey.

MR. FLESHMAN: Ben Fleshman on behalf of the defendant from The Becket Fund for Religious Liberty. I'm joined by my colleague, Amanda Salz. And we have one of our paralegals, Fillipe, in the room as well.

COURT REPORTER: Does counsel agree that I may swear the witness remotely?

MR. FALK: Plaintiffs agree.

MR. FLESHMAN: Yes.

MARK A. CHANCEY

having been first duly sworn/affirmed, was examined and testified as follows:

EXAMINATION

BY MR. FLESHMAN:

Q. Thank you, Professor Chancey. I'm going to be asking you some questions this morning. And I

just want to go over a few preliminary matters.

So have you ever been deposed before?

A. I have not.

Q. Okay. I'll go over just a few ground rules so that we're all operating on the same system.

So, first, I'll be asking you questions today. I tend to be a fast talker. So I'm going to try and slow down. I would ask if you have any fast talking tendencies to also slow down a little bit because Miss Marchky is going to be taking down everything that we say and we want to try to make sure that we are clear enough for her to understand and get everything down.

That also means that, you know, non-verbal responses, so nodding your head or shaking your head, things like that, don't really show up in a written transcript. So I'd just ask that you say yes or no, to give clear verbal answers.

Does that sound good?

A. Yes.

Q. Thank you. We'll also try -- and this is a little tougher over Zoom -- but I'll try not to talk over you and ask that you try not to talk over me so that we can make sure everything gets clearly

recorded in the transcript.

Sound good?

A. Yes.

Q. If I ask something that's not clear, just let me know and I'll try to restate or rephrase the question so that we can make sure that you understand everything. But if you don't ask for something to be rephrased or you don't say I don't understand what you're trying to say, I'll assume that you've understood my question.

Is that fair?

A. Yes.

Q. Okay. You're doing great. Thank you on the yeses. Those are good, clear yeses.

A. Okay. Good. Thank you.

Q. I don't anticipate that we'll be here for too terribly long. But if at any point you do need to take a break, I'm happy to wrap up the line of questions so that we can take a break at any point that you need. Okay?

A. Yes. I have one question.

Q. Yes, sir.

A. I have been drinking coffee. Is that appropriate or not?

Q. That should be perfectly fine, unless the

coffee affects you in a way that makes it difficult for you to function, I guess. But I don't anticipate that's the case.

A. Okay. Thanks for that clarification. I appreciate it.

Q. That's totally fine.

Is there -- I guess, on that topic, is there anything that would -- that you could think of that would make it difficult for you to testify completely and honestly today?

A. No.

Q. Okay. And you understand that you are legally obligated to tell the truth today in your testimony?

A. Yes.

Q. Okay. You said before you've never testified in a deposition before; is that right?

A. Yes.

Q. Have you ever testified in court before?

A. No.

Q. Okay. How did you prepare for your deposition today?

A. Well, several ways. One, I have been researching the topic of the Ten Commandments in the American public square since around 2023. So I have

a lot of prior experience. To prepare for this, I went through and looked extensively for primary sources about Ten Commandments postings at statehouses and state capitols. I did this by examining the work of reputable scholars, both in the forms of books and also in scholarly articles, in journal articles. I looked extensively for primary sources using especially newspaper databases, those types of articles. I also did extensive archival research. I tried to look at the history scholarship on the issue, to compare and to critically evaluate what scholars have said, which is actually -- well, which I can discuss later -- and to critically assess the primary sources that I discovered.

Q. Okay. I and those were all things that you did to prepare your report. I believe those are listed in your report that we'll get into; is that right?

A. Yes.

Q. Okay. Did you do anything between submitting your report and today to help prepare specifically for the deposition?

A. Yes. This is part of an ongoing research project. And so I continue to try to learn as much

about the topic that I can. I also went through the materials that I had developed to prepare my report and reviewed them extensively.

Q. Okay. Did you speak with anybody in preparation for your deposition today?

A. I was briefed on what to expect by Ken and his team.

Q. Okay. And I don't want to know anything about the subject matter of what they discussed with you. But, roughly, how many meetings did you have with the attorneys at the ACLU?

MR. FALK: And, Ben, excuse me, can I just clarify? Are you saying to prepare for the deposition or --

MR. FLESHMAN: Yes, to prepare for the deposition. Thank you for clarifying, Ken.

A. I can only recall one that was focused on the deposition. I can only recall one.

BY MR. FLESHMAN:

Q. Okay. And about how long did that one meeting last?

A. Approximately an hour.

Q. Okay. Did you speak with anybody other than the attorneys at the ACLU to prepare for your deposition today?

A. No.

Q. Okay. And you indicated that you conducted some additional research as part of an ongoing project that you think is relevant to the Ten Commandments displays; is that fair -- is that correct?

A. Yes.

Q. Okay. Did you review any other documents related to this case to prepare for your testimony today?

A. I read the four expert reports submitted advocating installation of the monument. I reviewed the amended complaint. I went back over my own report. I also went back and looked at some of the earlier court decisions in 2000, 2001.

Q. Okay. And so you said you reviewed the expert declarations or expert reports that were submitted by the defendant. That's what you mean by the ones supporting the installation of the monument; is that right?

A. Yes.

Q. Did you review the expert reports submitted by the plaintiffs -- the other expert reports submitted by the plaintiffs in this case?

A. I did not, no.

Q. Okay. Do you have any documents or notes with you as you're testifying today?

A. All that I have with me is the complaint and then a separate printout of the photographs of the monument that were from the complaint, and my report.

Q. Okay. And when you're mentioning the complaint, you mean the amended complaint that's been recently submitted -- most recently submitted?

A. Yes.

Q. Okay. And do you have any notes on any of those documents?

A. The only note I have is I have written down yes, no, which I wrote down when you were saying to say clearly yes, no.

Q. Okay. A good note. Thank you.

A. Thank you.

Q. Okay. And you provided a report in this case; is that right?

A. Yes.

(Thereupon, Exhibit No. 1 was marked for identification.)

BY MR. FLESHMAN:

Q. Okay. I'm going to share it on the screen here to make sure we're all looking at the same

document. And we'll submit this as Exhibit 1 to your deposition.

All right. Can you see that on the screen there?

A. Yes.

Q. Okay. Is this the report that you provided?

A. Yes.

Q. Does this report represent the full scope of your intended testimony in this case?

A. Yes.

Q. Okay. And you said you re-reviewed your report as part of your preparation for your testimony today?

A. Yes.

Q. Do you still stand by the report that you submitted in this case?

A. Yes.

Q. Roughly how much time did you spend drafting this report?

A. That is a difficult question to answer. I would say, given the research that I carried out after being contacted by the ICLU, that this report represents dozens of hours of work, building on what was already a substantial foundation of knowledge

about this subject.

Q. Okay. And so taking that prior knowledge that you had, how much time would you say you spent specifically drafting this report from the moment that you were asked to prepare it?

A. That is extremely difficult for me to quantify because I have not considered it in those terms. All I know is that I put dozens of hours into it. I should also note that, while I've maintained a tally of time spent overall working on these -- working on this report, I've not added it up. I just have a running list of dates and times.

Q. Okay.

A. So several dozen hours.

Q. Several dozen hours. Okay.

Let's turn -- I'm going to scroll down to page 2 of your report. If it's easier for you to look at your paper copy, that's also fine, as long as they're both -- I'll just confirm. They're both the same, right, the paper copy you have is the same as this document here?

A. Yes.

Q. Okay. On page 2 here, in this first paragraph under summary -- or, sorry, it's -- okay, the first paragraph on the page, your report states

that you examined pertinent archival collections; is that right?

A. Yes.

Q. What do you mean by pertinent archival collections?

A. So since being contacted by the ICLU, I traveled to Brigham Young University and spent three days looking at the papers of Cecil B. DeMille. I also have done previous archival work on this subject prior to being contacted by the ICLU.

Q. Okay. How did you -- I mean, yeah, how did you -- sorry.

Apart from the archives at BYU, which other archives are you referencing here?

A. So I'm referencing specifically the Wisconsin Historical Society in Madison and also the -- a collection -- various collections at the state archive in St. Paul.

Q. The Minnesota state archiving?

A. Yes, the Minnesota state archive.

Q. Okay.

A. In addition to that, I have ordered documents from various archival collections.

Q. Okay. Which archival collections do you recall?

A. You know, at this point, I am citing both things that I ordered this summer, as well as those that I previously cited. But I have gotten papers from the Leo Pfeffer papers at Syracuse University. That one comes quickly to mind. I procured papers of E.J. Ruegemer from the Stearns County Public Library. I have ordered a document from the Scottish Rite Archive. I ordered a document from the, if I'm remembering correctly, Michigan State special collections library. I'm quite certain I'm not remembering everything here.

I know that I've ordered papers from the American Jewish Archive in Cincinnati. I have ordered papers from some different archives at the center for Jewish History in New York. That may not be a complete list.

Q. But it is quite extensive.

A. I have done extensive work and research.

Q. Thank you. How did you determine the pertinence of those archival collections?

A. Well, I began by examining previous scholarship on the issue by reputable scholars. So Jenna Weissman Joselit's book Set in Stone references some archival collections that was an invaluable starting point. Kevin Kruse's book Under

God also discusses Ten Commandments monuments. He cites archival collections. So both of those books pointed me towards the significance of the DeMille papers and also to the Leo Pfeffer papers, especially the Joselit Set in Stone book.

After that, I went to an online database of archives called ArchiveGrid and searched through it extensively, looking for any collections that might be related to Ten Commandments monuments.

Q. Okay. Your report further indicates that you examined numerous Fraternal Order of Eagles documents; is that right?

A. That is correct.

Q. And some of those are cited below in your report; is that right?

A. Yes.

Q. How many Fraternal Order of Eagles documents would you say you reviewed in preparing for your report?

A. I cannot quantify that. Dozens.

Q. Okay.

A. And those come from the archival collections.

Q. Okay. Do you recall generally what Fraternal Order of Eagles documents you reviewed?

A. Many of these are letters. It's correspondence between officials and members. So that's probably the largest single group among these dozens. But that being said, there are also official flyers, official publications, certainly the documents related to the Ten Commandments campaign, those sorts of things, publications and handbooks that were developed to be sent out to areas across the country, promotional materials. Those are examples.

Q. All right. Thank you. And you referenced some letters. Just to make sure I understand the letters, when you say they were from officials to members, do you mean officials within the Fraternal Order of Eagles and members of the order or are those public officials to the members of the Fraternal Order of Eagles?

A. Most of this was private correspondence. And I read a lot of those. Some are from Ruegemer. Some are from a particular Grand Worthy President named Robert Hansen. Some are related to other members of a committee called the Youth Guidance Committee, also called the Youth Guidance Commission. Many of these letters are to Cecil B. DeMille or to Paramount assistants as well. Some of

these letters are to other constituencies. Particularly when there were complaints about monuments, then those tended to produce correspondence as well to various people.

Q. Okay. Your report also states that you reviewed dozens of articles in the Eagle's magazine; is that right?

A. That is correct.

Q. Are those included -- when you're talking about numerous Fraternal Order of Eagles' documents, are the articles in the Eagle's magazine a separate entity that you're talking about?

A. They are a separate category.

Q. Okay. Do you recall which articles those were?

A. I looked through every issue from 1950 and the 1960s and examined every page. There might have been an occasional year in which a given issue was missing. But, otherwise, I manually flipped through physical copies of every single issue. And I did some later in the 1960s. I also did some years in the 1970s. But because my primary focus was on the 1950s, that is where I went through and did every issue. I think I -- well, I know that I also looked at some issues from the 1940s because I wanted a

baseline for comparison.

Q. Okay. Did anything in those articles concern the prior monument that was on the Indiana Statehouse grounds before the 1990s?

A. So there was only one reference to the Indiana monument. And it was a photograph with a caption. And that was the only mention of the Indiana monument specifically. It is, I believe, in a 1958 issue which would make sense.

Q. Okay. Your report also states here that you reviewed hundreds of newspaper articles to prepare your report; is that right?

A. Yes.

Q. Okay. And some of those are cited in your report; is that correct?

A. Yes.

Q. Okay. I realize this might be a tall ask when you're talking about hundreds of newspapers articles. But do you recall which newspapers those articles came from?

A. You are correct that that is a tall ask. So I looked at databases for, you know, major national newspapers, most notably Wall Street Journal, New York Times, Washington Post. But for the most part, far more relevant and useful for

historical research were all of the articles that show up in local newspapers across the country. So particularly helpful were articles from St. Cloud newspapers because that is the city in Minnesota where the architect of the Eagle's campaign came from. So St. Cloud articles were especially helpful. Other Minnesota -- Minneapolis newspapers had an occasional article that proved to be very, very helpful. But, otherwise, these are literally newspapers showing up across the country. So there's no -- no single news source that was the -- the nature of this research is that finding local reporting on local occurrences in those relatively few places where this became germane.

Q. And across the articles that you reviewed, do you recall seeing anything -- the newspaper articles I mean -- across those newspaper articles, do you recall seeing anything about the predecessor to the monument that's at issue in this case?

A. The predecessor specifically to the Indiana monument?

Q. Yes.

A. Okay. Only the beginning of the monument program in 1954.

Q. Okay.

A. The beginning of the Fraternal Order of Eagles monument program --

Q. Okay.

A. -- in 1954, and, you know, the ones that were placed before the Indiana monument.

Q. Okay. So just a reference to the fact that it was going up or was there more to that article?

A. It was often the case, if a monument went up, that a local newspaper would report on it.

Q. Okay. Are you -- switching gears just a little bit -- are you a member of the ACLU of Indiana?

A. No.

Q. Okay. I didn't think so given where you are located. But I wanted to double check.

A. Of course.

Q. And I should've asked this earlier. But you understand that this case concerns a proposed monument that contains the text of the Ten Commandments on one side of the monument; is that right?

A. That contains a text of the Ten Commandments on one side, yes.

Q. Okay. And you said that you have seen

photos of the monument; is that right? You have some with you today?

A. Yes.

Q. Have you ever seen the monument in person?

A. No.

Q. Okay. Do you know where that monument is intended to be placed on the Indiana Statehouse?

A. I know roughly on the property. But I've not visited the Indiana Statehouse. And so I cannot --

Q. Okay. We're going to shift a little bit to talk about your -- kind of where you work, just to get those things in the record. I'll stop sharing my screen right since this is -- I can try and stop sharing I mean. I think I figured it out.

Okay. Where do you work currently, Dr. Chancey?

A. I work in the Department of Religious Studies in Dedman College of Humanities and Sciences at Southern Methodist University. But all opinions reflect my own personal scholarly judgment and not those of my institution.

Q. How long have you been employed by Southern Methodist University or -- is it all right if I refer to it as SMU?

A. Uh-huh, either is fine. Thank you.
Q. Okay.
A. I joined SMU in the fall of 2000.
Q. Is SMU your only employer?
A. Yes. Can you clarify what you mean by only employer? Do you mean am I holding multiple jobs at this present time or what -- can you clarify the question, please?
Q. Yes, sir. Are you employed by anybody else at this present time?
A. No.
Q. I understand from looking at your CV that you were employed prior to -- you've held other positions in the past.
What is your job title at SMU?
A. Professor of religious studies, also university distinguished professor.
Q. What does it mean to be a university distinguished professor?
A. It's a title given on the basis of research accomplishments.
Q. What is your role as a professor at SMU?
A. I teach courses in the Religious Studies Department.
Q. And that includes biblical study

courses; is that right?

A. Yes.

Q. Is that a comparative religion course or is it -- or what does that course look like?

A. I teach multiple courses on the New Testament. In the past, I've also taught courses on Hebrew Bible. These are courses that employ a non-sectarian approach, looking at the text in its ancient context, also discussing history of interpretation and how the text is interpreted and deployed in different communities.

Q. Okay. So is there a comparative aspect to it or is it more of a non -- when you say non-sectarian, what do you mean?

A. SMU's got a very diverse student body. So there are students that come from a variety of traditions. And there are many students that don't identify with any religious tradition at all. And so we approach the text in a way that does not try to privilege particular religious viewpoints. That's what I mean by non-sectarian.

Q. Okay.

A. There's not -- you know, the comparative dimension of the New Testament courses is primarily to look at them in their Greco-Roman context and

within that Greco-Roman context, within their Jewish context as well. So there's quite a bit of comparison in those senses.

In terms of comparing those texts with other sacred texts, that's not the point of those classes.

Q. Okay. And you also teach an overview of Judaism, Christianity and Islam; is that correct?

A. Yes.

Q. Is that more of a kind of comparative religion course or is that more of a non-sectarian deep dive into the doctrine of those particular religions?

A. Well, it is also a non-sectarian course. But, yes, it is explicitly comparative in nature.

Q. Okay. Do either of those courses include a history of those religions within the United States?

A. Yes.

Q. Okay. Do you teach any other courses at SMU?

A. Occasionally, I will do directed readings on various topics. I'm currently doing a directed reading, for example, with a master's level seminarian from the campus theology school on religion and public education. I have done directed

readings on other subjects. In the past, I regularly taught a Hebrew Bible course. We have a -- we picked up a colleague and he took over that course which allowed me to do other things. I have taught a course on the Greco-Roman world. At one point, I did a course on ethics and the Bible. I do not remember the topics of the various directed readings off the top of my head.

Q. Sure. I imagine there are various and quite a few to think through.

A. I could -- I could remember some, if needed. But I do not recall them off the top of my head. I mean, I can think about it if you want me to.

Q. Sure. No, that's all right.

Do you teach any courses in American history?

A. No.

Q. What about art history?

A. No.

Q. In your position at SMU, do you conduct any of your own research?

A. Yes. It is a research position, meaning research is an important component of the job. It is not just a teaching position. And the university distinguished professor title is a direct reflection

of the university's perception of the value of my research.

Q. That's wonderful.

A. Thank you.

Q. What topics do you typically research?

A. I research the Bible and the American public square. I have particular interests in the Bible and American public education, also how American public schools teach about religion more broadly, but with particular interests in the Bible. But from that has come a much broader interest on the Bible than the American public square.

Q. Okay. I'm going to pull up your report again just to make sure I've got all this correct. And I think what you just said lines up here. I just want to make sure we're looking at it here.

On this paragraph here, I'll highlight it -- or try to highlight it, if I can. Okay. On this first page it says -- you say that most of your published research has addressed two topics: how archeological data and ancient textual sources illuminate early Judaism and early Christianity, and how public schools teach about the Bible and about other aspects of religion. Is that correct?

A. Yes.

Q. Okay. And then you say in the next paragraph that you expanded your research to include the public displays of the Ten Commandments in 2023 when Texas was considering posting Ten Commandments displays in public schools; is that right?

A. Yes.

Q. Okay. And prior to 2023, your research had focused primarily -- as far as religion and the use of religious text in the public schools had focused on the use of religious text in public schools; is that correct?

A. I would say how public schools teach about religion.

Q. Okay. But you had not previously focused on Ten Commandments displays on other public property; is that fair?

A. Yes, that is correct.

Q. Okay. Or your research had also not included topics such as other religious symbols that might be displayed on public property; is that fair?

A. Yes.

Q. Does your current research include displays involving religious language beyond the Ten Commandments?

A. My primary focus of my current research is

on Ten Commandments displays.

Q. Would you say that the primary focus is on the Ten Commandments displays in public schools as it was prompted by the Texas laws that were passed?

A. That was my starting point in 2023. Of course, I had to immediately expand because the text that was in that bill, which later was passed into law, comes from a monument. So at that point, I became interested in monuments more broadly. That happened early in my research -- early in my -- that 2023 and forward research.

Q. Okay. And so I think, as you mentioned or said a moment ago, you've not studied religious displays generally, you focused on the Ten Commandments displays; is that fair?

A. Yes.

Q. Okay. Or your research has not focused on public monuments that include other quotations from religious text aside from the Ten Commandments; is that correct?

A. I have considered that issue in my research on Ten Commandments monuments.

Q. Okay. It hasn't been the primary focus of the research?

A. Correct.

Q. And you're not published on -- published any papers regarding religious displays generally; is that fair?

A. By papers you mean?

Q. Academic papers, books, anything of that nature?

A. I have a refereed forthcoming article about this --

Q. Okay.

A. -- about the Ten Commandments displays.

Q. Okay. And I think you had said in your report that you had submitted an article on the topic of the Fraternal Order of Eagles.

Is that the article that you're referencing that's now forthcoming?

A. Yes.

Q. Congratulations on getting it accepted. Where is it going to be forthcoming?

A. Thank you. Journal of Church and State.

Q. Okay. Very exciting. Congratulations.

A. Thank you.

Q. You said I believe on page 1 here that you're working on an additional article, a second article on this topic; is that right?

A. Yes.

Q. Okay. Have you submitted that one for publication?

A. I have not.

Q. Have you done any research related to American history?

A. Yes.

Q. Okay. In what context?

A. Prior to working on Ten Commandments issues, I had begun a long-term project on how public schools teach about the Bible. And as part of that research, I have done a lot of work in American history going back to the mid 1800s on this particular topic.

Q. On the topic of use of the Bible, in other words, how schools teach about religion?

A. Yes.

Q. Okay.

A. Specifically the Bible.

Q. Okay. Have you done any additional research related to the history of religious displays in America beyond the Ten Commandments?

A. No.

Q. Okay.

A. I've not done focused primary research. I've certainly examined and investigated the topic

as a part of my research on the Ten Commandments.

Q. Okay. But, again, the Ten Commandments was the primary focus of that research?

A. Yes.

Q. Okay. Have you done any research related to art history?

A. Yes.

Q. In what context?

A. Two primary contexts. One, as a part of this ongoing work on the Ten Commandments. Second, in an earlier phase of my scholarship, work on archeology of the Roman Near East.

Q. Okay. And so the --

A. I would note that some of that is discussed in my report.

Q. Okay. Thank you. Well, let's go down to page 3 of your report. I'll scroll down here.

At the end of this first paragraph, you say, the available evidence demonstrates instead that while some such displays -- meaning Ten Commandments displays on public property -- existed before the 1950s, they were uncommon, atypical, or even rare.

Did I read that correctly?

A. Yes.

Q. And then in the next paragraph, you

discuss several displays identified by Mark David Hall and Andrea by Picciotti-Bayer in their article; is that correct?

A. Yes.

Q. And in that article, they identify various depictions of Moses and the Ten Commandments; is that right?

A. Yes.

Q. And they say in that article that the list that they are providing is not comprehensive; is that right?

A. I believe so.

Q. Meaning that there may be others that didn't necessarily identify in that article; is that right?

A. I do not recall specifically whether they say that. But that certainly is a sensible read.

Q. Okay. And you acknowledge a little lower in your report that there at least some public displays of the Ten Commandments existed before 1950; is that correct?

A. I acknowledge that there are symbolic displays in a relatively limited number of cases of the Ten Commandments. But I'm not aware of many displays of a text of the Ten Commandments other

than the sort that I note in more detail in my report.

Q. Okay. That's what I mentioning there. You mention a couple in Pennsylvania. There are a few where you note that the text of the Ten Commandments is displayed on those framed posters or however they were.

A. Okay.

Q. Is that fair?

A. Okay. Can you repeat the question?

Q. Yeah. Just you acknowledge a little bit lower discussing some of those displays about Pennsylvania, etc., that there were public displays of the Ten Commandments that contained the text of the Ten Commandments prior to the 1950s; is that right?

A. That contained a text of the Ten Commandments, yes. Not the text, a text, yes.

Q. Thank you. One of your objections to Hall's and Picciotti-Bayer's examples is that the depictions they reference include little or none of the text of the Ten Commandments itself; is that right?

A. Yes.

Q. But you don't disagree that the displays

that Hall and Picciotti-Bayer reference are, in fact, depictions of the Ten Commandments, do you?

A. Symbolic depictions.

Q. Okay. They are clearly depicting the Ten Commandments in a symbolic manner; is that fair?

A. In a symbolic manner, yes.

Q. Even if they include little or none of the text?

A. Yes.

Q. For purposes of analyzing the historical practice of creating public displays about the Ten Commandments, is there a reason to distinguish between those with text and those with little or no text?

A. Yes.

Q. What would be the basis for that?

A. The amount of interpretive work that goes into the presentation and the message conveyed by the presentation to the viewer.

Q. Okay. So, in your opinion, would it be -- if Indiana -- if the Indiana Capitol had a statue of Moses holding two blank tablets, would you consider that to be a display of the Ten Commandments or would you consider that to be -- would you count that in your historical analysis?

A. Well, the first thing that I would do is ask more information about context, right, context and details. I would not consider it a predecessor of a display of the text of the Ten Commandments. It sounds like that would be the sort of symbolic display like some of the other examples noted.

Q. Okay. What if the tablets -- what context -- sorry, what context would you need to consider it a display of the Ten Commandments as part of your historical analysis?

A. Well, as my report makes clear, I am primarily interested in displays of a text of the Ten Commandments.

Q. Okay. So the context really is just does it have a text on the tablets or no?

A. You know, some of these questions seem to be veering into legal territory. And I'm not a lawyer. In general, when considering these images, I want to, at minimum, know at least are there other lawmakers depicted, right --

Q. Okay.

A. -- what is the broader context for this or is it singled out. But, you know, at that point, again, we're talking about historical conclusions. I'm not in a position to assess what a lawyer or

judge would say about these things.

Q. Yeah. And that's a fair point. I'm not trying to get you to say anything kind of legal or say whether that would be permissible or not.

I'm trying to understand, when you're talking about displays of the Ten Commandments, you're isolating ones that have some text of the Ten Commandments, a text on it, as opposed to just a symbolic display with no text; is that right?

A. Yes.

Q. And so if you had -- not as a legal matter but as a historical matter -- as you're thinking about the history, the tradition of displaying Ten Commandments -- displaying the Ten Commandments on public property, you would not consider it to be part of that history to have a statue of Moses holding two blank tablets; is that fair?

A. I would distinguish these types of displays, that is correct.

Q. Okay. And if the display, same statue, but the tablets just had Roman numerals I through X, is that still something you would say that doesn't count as part of this history of displaying the Ten Commandments on public property?

A. I would distinguish between that type of

display and the display of a text of the Ten Commandments.

Q. Okay. What if the tablets included a text of the Ten Commandments written in Hebrew?

A. Here, I would want to know about context. I would say that that does not communicate the same sort of message to the viewer that a monument -- a display with the English text does. But it's hard to answer this in the abstract.

Q. When you say that --

A. Again --

Q. Sorry, go ahead.

A. No, I'm done.

Q. Okay. I didn't mean to cut you off. I apologize.

A. That's Okay.

Q. Would you still say that the monument with Hebrew text on it doesn't communicate the same message to a viewer who can read Hebrew?

A. That is a very interesting question. It definitely communicates a different message to a reader who can read Hebrew than it does to a viewer that cannot read Hebrew.

Q. So if it has that potential to communicate a message, assuming the reader or the viewer can

read Hebrew, would you consider that to be a part of the history of displaying the Ten Commandments on public property if you had the stature of Moses with the tablets, Ten Commandments written in Hebrew?

A. I would say that that is an interesting topic for discussion that also merits analysis in a concrete and particular case. But that is still categorically different from displaying an English text. It presents its own issues. It raises its own questions. It has its own implications. But however one judges those issues, it is a different category from the display of an English text.

Q. Why is -- is it a different category just because it's in a different language?

A. The difference is that most Americans can read English and relatively few Americans can read Hebrew.

Q. Suppose the text were in Spanish then. There's a large percentage of American population can read Spanish either as a native tongue or as a second language. Would you still consider that to be a different category because it's not the predominant language?

A. That is a different category because it is a more widely-spoken and read language.

Q. Okay.

A. It's a different category from display of a Hebrew text.

Q. Okay. Is it in the same category as the display of an English text?

A. It is certainly worthy of serious discussion in a nuanced way depending on the particulars, yes.

Q. What particulars do you think would cause that kind of a distinction?

A. Are we talking about displays on public property?

Q. Yes, yes.

A. Yes? May I ask if you have specific examples in mind?

Q. Not in the Spanish. But let's go back to the Hebrew for a moment.

Are you aware that since 1935 the Supreme Court's frieze -- one of the friezes up on the wall has a -- contained a depiction of Moses holding two tablets representing the Ten Commandments?

A. So I don't frequent these spaces. I looked up every image that I could find online referenced in the expert reports.

But can you remind me of exactly what that

depiction of the Ten Commandments looks like? I am aware that there are symbolic depictions at the Supreme Court. But can you give me in more detail what the text you're mentioning looks like?

Q. Yeah, so it's -- Moses is there, he's facing the side, he's holding the tablets. On one tablet contains portions of the Ten Commandments written in Hebrew. So it's not the full text of the Ten Commandments. I believe it's 6th, 7th, 8th. So there's some of the text there. But it's written in Hebrew.

Would you count that among the pre-1950s Ten Commandments displays --

A. I would not.

Q. Okay.

A. At that point, when you've got a fragmentary text in a language that most Americans do not read, that is for the purposes of my analysis categorically different from presenting a lengthier text, a lengthier English text of the Ten Commandments. Those are both interesting displays. But they are categorically different, especially for my purposes, as I think the report makes clear.

Q. Okay. And again the different is just that it has the text; is that fair? The difference

between displays that you're counting and ones that you're not counting is the presence of the text?

A. Right, the presence of a text in a way that is accessible to people is the issue that's at stake with the Indiana monument.

Even if we were to talk about the Hebrew, that is a fragmentary text. It's not even a full Hebrew text. But -- so the fragmentary nature of it underscores the symbolic nature of that depiction.

Q. And if it's clear that the display is referencing Moses and the Ten Commandments, why does the symbolic nature of the display mean that it's in a different historical category as far as kind of a practice of displaying religious symbols on public property?

A. One -- I have two responses to that. One, can you remind me of the broader context of that display? What symbols are around it?

Q. So on the Supreme Court's frieze, there are various other lawmakers that are presented.

A. Yes, that is what I thought. So I would note there that it is part of a larger context about various figures rather than a single focused depiction of the Ten Commandments.

But the second part of my answer to that

question is that display of any text of the Ten Commandments requires interpretive decisions with theological ramifications.

So posting a text that is accessible to a broad audience poses issues that symbolic depictions do not, precisely because, when they are on state property, you have interpretive decisions that are being made that are being displayed by the state.

Q. Okay. A little bit lower down, on pages 3 and 4 here, you quote from the Hall and Picciotti-Bayer article where they say that most of the examples of religious monuments were not -- of religious monuments were not created until the 20th century; and no one has claimed that governments were routinely erecting such symbols on public land in the 18th and 19th centuries. Is that right?

A. Yes, that is what the article says and that I quote.

Q. Scrolling down so you can see the full quote on the scene at the same time. It splits across the page. So I forgot to scroll down for you. Okay.

Are you aware that there are other religious displays on public property throughout the United States besides Ten Commandments displays?

A. Yes.

Q. For example, you're aware of various crosses on public land; is that right?

A. Yes.

Q. But as we discussed earlier, you haven't studied the history of religious displays at large on public property; is that fair?

A. I have studied it along the way in relation to the Ten Commandments project.

Q. So it's been more of a tangential learning rather than the focus of your study?

A. It has not been a focus in the same way that Ten Commandments monuments have been. It has been a part of learning about the context for Ten Commandments monuments.

Q. Are you aware of when religious displays on public property began to show up in the United States?

A. I cannot give you a date.

Q. So you don't know whether the emergence of public Ten Commandments displays came significantly later or earlier than emergence of other types of religious displays in the United States; is that right?

A. If we are talking about displays of an

English text of the Ten Commandments on public property, those are a very late phenomenon.

Q. Necessarily in -- I guess, historically, as a comparison with other displays, do you have an opinion on -- never mind, scratch that one.

Down on page 6 of your report, on the first line here, you say, it is thus clear that large monuments bearing a text of the Ten Commandments on public property were unknown before the Fraternal Order of Eagles began creating them; is that correct?

A. Yes.

Q. And then in the next couple of paragraphs, you discuss some smaller displays of the Ten Commandments put up in Pennsylvania courthouses in 1918 and 1920; is that right?

A. Plaques, yes.

Q. Pardon?

A. Yes. I said plaques. But the answer to the question is yes.

Q. Oh, plaques?

A. Yes.

Q. Okay. I'm sorry. I thought something had gotten garbled. I was like I don't --

A. Yeah. My apologies for not being clear.

Q. You were great. I just was not listening properly.

So is it fair to say that you are distinguishing here between monuments and smaller displays?

A. Yes.

Q. And your statement that large monuments containing the text of the Ten Commandments were unknown doesn't mean that there were no public displays containing the text of the Ten Commandments on public property prior to the 1950s; correct?

A. Yes.

Q. Let's go down to page 15 of your report. Take a moment to scroll down there. Play the elevator music.

All right. Under section IV here, you write, because only Jews and Christians regard Exodus and Deuteronomy a sacred scripture, any display of the Ten Commandments showcases Jewish and/or Christian religious material, depending on the particulars of the version displayed.

Did I read that correctly?

A. Yes.

Q. In your opinion, would it also showcase Jewish and/or Christian religious material to pose

quotations from other portions of the Bible on public property?

A. Yes.

Q. So, for example, a monument that had a quotation from Leviticus would fall into this category, wouldn't it?

A. Yes.

Q. And a monument that had a quotation from Psalms would also fall into that category, right?

A. Yes.

Q. Then on page 16, this first line here, you write, posting the Ten Commandments on public property thus promotes the sectarian views of Jews, Christians, or both groups above the views of other sects as well as above those of people who identify with no religious tradition.

Did I read that correctly?

A. Yes.

Q. And so, in your opinion, would it also promote the sectarian views of Jews, Christians, or both groups to post quotations from other portions of the Bible on public property?

A. I would say generally yes. But I would want to pay attention to the particulars. One thing that historians are very aware of is that context

matters. And so talking about this in the abstract doesn't allow for engagement of issues of the context. Generally speaking, however, I would say yes.

Q. So, in your view, a monument quoting Leviticus would promote -- generally speaking, would promote the sectarian views of Jews and/or Christians; is that right?

A. I want to know about context.

Q. What context would you like -- I mean, what context would you need to know to be able to determine whether it promotes?

A. What is the passage, what is the purpose, what is the context of the display, what else is displayed around it, these are all issues that I would want to know before I could offer full assessment. It's difficult to offer a hypothetical.

Q. And so if -- if a display contained the text of the Ten Commandments alongside other significant historical legal documents, would you consider that still to be promoting or -- sorry, what was the word -- promote the sectarian views of Jews, Christians, or both groups if it were displayed alongside the text of other significant legal documents?

A. You know, some of this begins to get into legal issues which I would rather defer to legal authorities.

Q. I'm not asking about a legal question.

I'm asking, based on what you've written here in your report, if you posted the Ten Commandments on public property alongside other significant legal documents in the same -- part of the same display, so you've got that additional context, does that still promote the sectarian views of Jews, Christians, or both groups?

A. I think it certainly can. I think, in the case of the Indiana monument, it certainly does.

Q. So you said it can. What --

A. So I don't think -- these are abstractions. And as a historian, I'm interested in concrete and particulars.

Q. So I'm trying to understand. I'm not -- I'm just trying to understand your answer.

Are you saying -- when you say that they can still promote, does that mean that they will always promote or that there are some contexts in which posting the Ten Commandments alongside other significant documents might not necessarily promote the views of Christians, Jews, or both groups?

A. Well, since we are staying on the question of hypotheticals, let us consider a situation in which at the Indiana State Capitol we wanted to have a text of the Ten Commandments, a text of the Code of Hammurabi, a text of the Code of Ur-Nammu, a text of the Hittite law codes, passages from the Koran, various passages from other legal contexts in different cultures, various passages about the importance of law from different secular thinkers, different cultures. We had an extensive plaza of legal passages, some coming from religious text drawn from across the centuries, from across countries, juxtaposed also with the various thoughts from people who are not religious, not operating from a religious framework, or even from some who are anti-religion and yet nonetheless have opinions about law. We have a broad display of a variety of legal passages from a variety of cultures, time periods, figures offering different perspectives. I could understand an argument that that was not promoting a particular religion or view of religion.

Q. And as far as that panoply, that large group of documents, which of the other documents is reducing the promotion of the sectarian view? Is it the presence of the other legal documents or the

presence of other religious documents that are displayed alongside the Ten Commandments?

A. I am talking about a massive display.

Q. Sure.

A. I am not talking about a handful of documents, right.

Q. So short of this massive display where you've got the Code of Hammurabi, you've got Magna Carta, you've got all of these different things from religious and secular views, short of a display like that, is it your opinion that the text of the Ten Commandments will always promote the views -- promote the sectarian views of Jews, Christians, or both groups?

A. The text of the Ten -- one, there is no single the text of the Ten Commandments. A text of the Ten Commandments always promotes religious teachings associated with Judaism, Christianity, and only with Judaism, Christianity. It is inherently religious material. It is religious in nature. It claims to be from God. It has imperatives that are portrayed as coming directly from God. This is inherently religious material that is associated only with Judaism and Christianity. There is no way to sidestep the religious nature of this message.

Q. Okay. So understanding that it's a religious text and that -- my question is, is there anything short of that massive display that you've described where you can display a text of the Ten Commandments and not promote the sectarian views of Jews, Christians, or both groups?

A. To me, this really feels like we are getting into very complicated legal terrain. And I am not a lawyer.

Q. Not as a legal question. I'm asking --

A. I'm a historian. And we're asking about hypotheticals that don't exist. And so I'm not well-equipped to value such things as a historian. What I can evaluate is what is conveyed by this particular monument viewed in a historical context of American views of the Ten Commandments and displays of the Ten Commandments. That's what I'm equipped to evaluate.

Q. Right. I'm trying to understand your evaluation, as you've articulated it here, where you've said that posting the Ten Commandments on public property thus promotes the sectarian views of Jews, Christians, or both groups above the views of other sects as well as above the views that those of -- of those people who don't -- who identify with

no religious tradition. I'm not asking for a legal conclusion.

I'm asking, based on what you've written here, is there -- apart from that broad display that you've described, is there a context in which one could display, the state could display a text of the Ten Commandments alongside any other documents that would not do what you've described here, in your opinion?

MR. FALK: And I guess I'm just going to object to say the question's been asked and answered. I think he described the large what you called panoply. So are you asking for what lesser than that because you are --

BY MR. FLESHMAN:

Q. Yes, yes. I'm sorry. I'm trying to understand where the line there is. I think we've got -- you know, on the one hand, you have a display of the Ten Commandments by itself. And then you've got the -- a text of the Ten Commandments alongside hundreds of other documents. I'm trying to understand where in between that range you would say it starts to shift from promoting the sectarian views to that's not promoting the sectarian views?

A. So thank you for asking the question that

way.

Displaying the Ten Commandments in any context is always displaying religious teachings that are accepted as such only by Jews and Christians. Every display of a text of the Ten Commandments is displaying religious material, period. It is always a display of a religious message, understood from that perspective.

Q. Understood from that perspective?

A. From the perspective in which you asked it, right. Is it always promoting? Well, it's certainly always displaying religious material associated with particular religions.

Q. Okay.

A. What one does with it, that becomes a legal question that I'm not equipped to answer. But as a biblical scholar, I can say any display of a text of the Ten Commandments is the display of a religious message, of religious scripture that's only accepted by two traditions. That, as a religious study scholar, as a biblical scholar, as someone who also studies American religion, that I can say with confidence. It is always the display of religious instruction associated with only two religious traditions.

Q. Okay. And what about a display containing text from the book of Leviticus, would that also be a display of religious scripture that is only recognized by two religions?

A. Yes.

Q. Okay. And would the same be true of a display that quoted the Book of Psalms?

A. Yes.

Q. Okay. Are you familiar with the Liberty Bell in Philadelphia?

A. Yes.

Q. Are you aware that the Liberty Bell has a quotation from the book of Leviticus on it?

A. Yes.

Q. Do you know what that inscription says?

A. It's a verse about the Jubilee. It doesn't have the whole passage about freedom of debts for everybody. It's a verse about, you know, freedom and the Jubilee.

Q. I understand the inscription reads, proclaim liberty throughout all the land unto all the inhabitants thereof, which comes from Leviticus Chapter 25.

In your opinion, does the Liberty Bell promote the sectarian views of Jews, Christians, or both

groups because it contains a biblical command to proclaim the liberty throughout all the land that is only recognized by two religions?

A. These are all questions of context. And I think I've emphasized the importance of understanding context, right, and of considering context. But, yes, this bears scripture that is accepted by only two religious traditions.

Q. Okay.

A. I would note, in terms of context, that the Liberty Bell is in a different context, was produced in a different context, exists today in a different context from the monument's issue that we are -- that I discussed in my report.

Q. Thank you for that note.

Are you familiar with the Lincoln Memorial in Washington, D.C.?

A. I'm familiar that there are places where scripture is displayed in public contexts.

Q. So are you familiar with the Lincoln Memorial?

A. Yes.

Q. Are you aware that the Lincoln Memorial includes a quotation from the Book of Psalms on it?

A. Yes.

Q. Do you know what that inscription says?

A. No.

Q. It reads, the judgments of the Lord are true and righteous altogether, which comes from Psalm 19.

In your opinion, does the Lincoln Memorial promote the sectarian views of Jews, Christians, or both groups by displaying this song of praise that's only recognized by two religions?

A. It displays a religious text that is accepted by two religions.

Q. And in your opinion, does the fact that it contains that scripture -- or displays that scripture for all to see promote the sectarian views of Jews, Christians, or both groups?

MR. FALK: And again I would object to the extent you're asking for a legal conclusion by the word promote. I realize that's something that professionals --

MR. FLESHMAN: Yeah, I --

MR. FALK: -- use as well. But I just want to caution him that -- to remind him, although he probably doesn't need to be reminded at this point, that he's not an attorney nor does he probably want to be an attorney at this point.

MR. FLESHMAN: Who would?

BY MR. FLESHMAN:

Q. No, I'm not asking for a legal conclusion. I'm asking for the -- as far as -- as you've used it in your report, this language about promotes the sectarian views of Jews, Christians, or both groups, and I believe you said yes; is that right?

A. It sure feels like you're asking me for a legal conclusion.

Q. No.

A. You keep saying that you're not asking for a legal question. But it -- I'm having a difficult time understanding how these are not legal questions.

Q. I'm just --

A. My thoughts on this matter are fairly clear.

Q. Yeah. I'm simply asking whether you consider, in your personal opinion, that the Lincoln Memorial by containing this text from Psalm 19 promotes the sectarian views of Jews, Christians, or both groups as you've used that language in your report?

A. That is a display of a religious passage that is accepted in two religious traditions.

Q. And --

A. There is religious dimension to that display.

Q. And does it promote, as you've used the word in your report, the sectarian views of those two religions?

A. I did not write a report on whether all citations of scripture everywhere are -- you know, promote religious viewpoints or another. I wrote a focused report on a single topic. I went into it in great detail. I'm not in a position to answer legal questions about other things. You know, I wrote a historical report on a particular topic which I fully stand by.

Q. You keep coming back to this legal point when I'm quoting your language.

Are you offering a legal conclusion here when you say that the Ten Commandments on public -- posting the Ten Commandments on public property thus promotes the sectarian views of Jews, Christians, or both groups above the views of other sects?

A. As I have said several times, I am not a lawyer. I did not make any legal opinions there. What I can say, as a religious study scholar who studies the Bible and the American public square,

I'm well aware of how different religious groups use displays to promote their own positions in that scholarly sense, sure, right. Certainly I can talk about that as a historian, as a religious study scholar. These questions do not strike me as being of that nature.

Q. That's the nature, that's the context I'm trying to ask these questions in.

A. Well, I've answered that.

Q. If you are not offering a legal opinion in this particular --

A. I'm not offering a legal opinion. I'm sorry. I apologize.

Q. You're all right. I'm not asking you to offer any legal opinions about whether the Lincoln Memorial is illegal or whether it as a legal matter does anything. I'm asking in this historical context that you've offered as the basis for your opinion in your report whether that applies in this one. But I believe you have answered the question. So --

A. In the sense that I mean it, inherently, yes.

Q. Okay.

A. There's not a verse from the Book of

Aggadah. There's not a verse from the Koran. So in this limited technical sense, as I've said, it is literally a verse of scripture associated with two religions and not with others. That is a part of, that is a dimension of every such display. That's the sense in which I meant in my report. That's what I've tried to emphasize in our comments, right. It's not from the Upanishads. It's not a quote from the Book of Mormon, right, in that sense. It is a display of something that's accepted by only two religions which I think is a rather obvious, non-controversial point.

MR. FLESHMAN: Okay. We've been going for a little over an hour. Would it be all right if we took a quick maybe five-minute break, and then we can come back and have a few more questions?

THE WITNESS: Certainly.

MR. FLESHMAN: Great. So let's come back -- why don't we do seven minutes, come back at 11:50.

THE WITNESS: That sounds good.

(Recess taken)

BY MR. FLESHMAN:

Q. All right. Professor Chancey, down on -- I think on page 17 of your report and going a little

bit further down, you start a discussion of the way the Ten Commandments are numbered, translated and presented; is that correct?

A. Yes.

Q. And for the numbering, is it fair to say that you've identified kind of three basic ways that you -- three basic traditions for numbering the Ten Commandments?

A. That's how I discuss it here for the sake of simplicity because that makes the point. We could divide it into Roman Catholic, Lutheran, Eastern Orthodox, and there may be some variety between different Eastern Orthodox Churches and Oriental Orthodox, but they're certainly a majority tradition, Protestants other than Lutherans, and Jews. So, you know, one could talk about it in terms of five. I don't discuss it that way here because it's not necessary.

Q. In your report, you discuss what you've called kind of the Catholic and Lutheran way of doing it as one bucket and the non-Lutheran Protestant version and then the Jewish version. So just those three are the ones you identified in your report.

A. Well, for the specific points I was

making, I sometimes lumped together Roman Catholic and Lutheran. Although, if I'm remembering correctly, in one passage, I refer only to either Catholics or Lutherans because there actually are differences there. They're not identical. They are similar. The Lutheran numbering is closer to the Roman Catholic numbering than is the numbering of other Protestants. But they are not actually identical.

Q. How did the Lutheran numbering differ from the -- or how does the Lutheran numbering differ from the Catholic numbering?

A. So the initial declaration of God, I'm the Lord who brought you out of bondage in Egypt is not a part of the first commandment according to Luther's Small Catechism in 1529. It's still the basis of Lutheran numberings today. Also, Luther's numbering followed the -- when you get to the coveting commands, Luther followed Exodus rather than Deuteronomy. So there are two coveting commands in the Lutheran system as part of the Catholic system. But house is listed first as a commandment as nine. And then wife and everything else is in ten for Luther. As opposed to the Roman Catholic numbering which at this point follows

Deuteronomy which puts no coveting of wife in nine and then everything else in ten.

So it's at the initial part, whether or not to include the I am the Lord your God and in the handling of the coveting material that Lutheran and Catholic numberings depart from each other.

Q. Okay. And then you mentioned two other kind of subcategories or groups beyond the three that you reference in the report.

Was that Eastern Orthodox and -- and what was the other one?

A. Eastern Orthodox, Jews, and most Protestants, Protestants other than Lutherans.

Q. Okay. And how would you describe the Eastern Orthodox numbering?

A. So Eastern Orthodox numbering typically does include the I am the Lord thy God in the first commandment. But it also has a separate commandment about Isles. And it combines the coveting commandments rather than separating them as Catholics and Lutherans do.

Q. Okay. So it doesn't necessarily align neatly onto either the broader Protestant numbering, as you've described, or the Catholic view or the Jewish numbering, there's just -- there's some

slight differences?

A. Right.

Q. Thinking about the Catholic numbering first, is it your opinion that the Catholic church explicitly rejects what you've described as the Protestant numbering?

A. It is fact that the Roman Catholic Church, especially for the Latin part of the church, explicitly affirms a particular numbering. That goes back to the Council of Trent.

Q. Okay.

A. I will leave it to others to, you know, discuss whether the term reject is appropriate or not. But certainly there is an official numbering that's been used for catechetical purposes, you know, since the Council of Trent, and there was catechetical material before that as well.

Q. Okay. So maybe reject isn't the right word. But do you consider the Catholic Church position to be -- in your opinion, does the church consider that what you've described as the Protestant numbering to be an illegitimate numbering?

A. No, I'm going to leave that to Catholics to have an internal conversation. Again, what I

would note is that there is an official numbering for catechetical purposes and that certainly historically affirmation of that numbering. These two groups have insisted on their own numbering at different times as a part of their own projects and self-identification, right. Among the many ways, what are things that makes us Catholic, we number the commandments this way. What are things that make us Protestant, we number the commandments that way. This is not necessarily spelled out -- well, it's not spelled out, as you all may know better than I, in current catechetical material. But it's certainly a part of the historical discussion.

Q. Okay.

A. I'm sorry. I'm talking fast. I'll slow down.

Q. Thank you. I appreciate that. I'll try to slow down too.

You mentioned earlier that you reviewed the expert reports submitted by the defendants in this case.

Did that include the expert report of Monsignor John Paul Kimes that was submitted on behalf of the defendants?

A. Yes.

Q. Okay. Do you recall seeing in his report that he stated that the Catholic Church sees both the numberings as legitimate, both the Catholic and the Protestant numberings?

A. The example he gave for that -- he sometimes -- I appreciated the report and learn from it. I would note that sometimes -- that was a place where I thought he generalized because his primary point of discussion was actually about Eastern Rite Catholics and how the church for -- you know, what are often called Eastern Rite Catholics affirms the use of Eastern Orthodox numbering. I would note that Eastern Orthodox numbering is not exactly the same as Protestant numbering, although it's close. So he did make a point of saying, you know, within the larger community of the church, we have that associated with the traditional, you know, for lack of a better word, Western origin church, but we also recognize Eastern Rite Catholics.

Now, I will have to defer to scholars of Catholicism and to people having internal conversations within the Catholic community how the Catholic Church navigates all the various differences and particularities of Eastern Rite Catholics. But, yes, I'm aware of that general

observation, right, that Catholics that follow Eastern rituals by definition are following Eastern rituals. And in that gets concluded for some a distinct numbering of the Ten Commandments.

Q. Okay.

A. And again I apologize that when I get excited about a topic, I talk fast. It is something I will continue to work on.

Q. I think you're doing great. I guess I'll leave it to Miss Marchky to tell you if you are going to fast.

A. Okay.

Q. But thank you. It's a very interesting topic and it's a lot of like nuance things that are going into it. So I appreciate your detailed analysis there.

On page 22 of your report, if you turn to the Jewish -- or sorry, you say -- let me get down there and we'll read it.

The monument -- you say at the top of this paragraph here, the monument also deviates from Jewish understandings of the Ten Commandments; is that right?

A. Yes.

Q. Okay.

A. Traditional Jewish understandings, traditional majority widely-held, right. We can nuance it, but yes.

Q. Yeah. Okay. And one of the ways that you identify is that is abbreviates the text of Exodus; is that right?

A. Yes.

Q. And you say here that the content that was left out is content that, quote, Judaism traditionally considers essential to the meaning of the Ten Commandments; is that right?

A. Yes.

Q. Is it your opinion that only Jews believe that the content that was left out of the monument is essential to the meaning of the Ten Commandments?

A. No. Many Christians would also agree with that.

Q. Okay. So including Catholics and Protestants would also -- many of those different denominations would also consider this content essential to the meaning of the Ten Commandments in a religious context; is that true?

A. Many, yes, many.

Q. And would you agree that leaving some of this language off of the monument does not reflect

the theology of any particular religion, as we noted, Catholics, Protestants, and Jews, many of them would still consider it to be essential scripture?

A. I think this monument -- the text on this monument clearly privileges majority Protestant tradition, meaning Protestants not Lutherans. I think that's very explicit. And as my report points out in detail, I mean, I think that is factually incontestable.

Q. I'm asking more about this particular piece, the piece -- the argument that the text that was left out is essential to Judaism and therefore promotes -- or does not reflect the theology of any -- let me see if I can find the language here, sorry -- privileges a Protestant version of the Ten Commandments by leaving out some of this language.

And I believe you just testified that many Protestants would also consider that language to be essential in a religious context; is that correct?

A. So thank you for the question.

So the paragraph about Jewish understandings, the primary focus there is that it privileges general Christian understandings over Jewish understandings. My specific point about

Protestantism are made in other paragraphs which explicitly mention Protestantism, right. This is a more general observation about the ways in which the monument reflects an abbreviation that omits content that Judaism traditionally considers important. And first and foremost, among those is the statement I am the Lord your God who brought you out of bondage in Egypt, right, which is the first of the statements of the ten statements. That's absolutely, positively fundamental to Jewish practice and belief. It connects the passage directly over to the larger story of God's deliverance of Hebrews from slavery. It connects the passage explicitly over to the context of covenant that's folding out. And there's a -- you know, it is literally, right, the first of the ten statements, of the ten words, as the Hebrew phrase might be translated.

So leaving that statement out, you don't have the Jewish Ten Commandments without that statement. That is an important part. I remember -- well, it doesn't matter. That's enough. I'll stand by what I said the way I said it.

Q. Okay. Fair enough.

So then given that those same context, the

context of I'm the God that led you out of Israel, that delivered you from slavery, that that same context is also important to Protestants, would you agree that leaving some of this language off does not necessarily reflect a preference for Protestant theology given that it's also important to Protestants as a theological matter?

A. The biblical material is important to Protestants. But it is not a part of the Protestant Ten Commandments. So in leaving off that line, one, it's material that's especially important to Jews. But also, as you may know, right, that material is part of the Catholic first commandment, it's part of the Eastern Orthodox first commandment. So leaving off that line gives this a distinctively Protestant step. And on that point, Lutherans and other Protestants agree that that material is not one of the Ten Commandments. So that's one of the places where the monument is unambiguously Protestant in leaving that off.

Q. I believe you testified earlier that you did not review any of the reports that were submitted by the ACLU in this case; is that correct?

A. That's correct.

Q. Okay. Another -- in this same paragraph,

another way that you identify the monument's deviation from Jewish understandings of the Ten Commandments is the use of the word "kill" in the monument's sixth commandment; is that right?

A. Yes.

Q. And you say that this differs from how most modern Jewish translations render the underlying Hebrew term which is murder; is that right?

A. Yes.

Q. Are you aware of any modern Jewish translations that render the term as kill rather than murder?

A. Some editions of the ArtScroll Torah use kill. And that deviates from the larger pattern translation which since 1917 has been murder. So it's the exception that shows the pattern, right. It breaks this otherwise very clear pattern. And originally -- originally ArtScroll Torah did have murder. And for reasons that I've not been able to determine, at some point it was changed over to kill. But in at least one -- well, in the one edition of ArtScroll Torah that I've seen, which was a 1994 edition, by that point it had kill. But then down in the explanatory notes, it made clear that

what it meant was murder. So even with the ArtScroll Torah, there's a little confusion. I'd love to look at different editions to see how they handle it. But in any case, that's an exception that flies in the face of the overwhelming trajectory of preferring murder. And, you know, some Jewish observers have made clear that this is a point that is important to them.

Q. When you're talking about the widespread trajectory, are you discussing the number of translations or the widespread use of those translations?

A. I'm discussing the number of translations.

Q. Okay. Have you studied the use of different translations within Judaism as far as the -- how widespread each particular translation might be?

A. Yes, yes.

Q. You testified earlier that you reviewed the expert report of Rabbi Dr. Stuart Halpern that was submitted in this case; is that correct?

A. Yes.

Q. All right. And he discusses the ArtScroll Stone Edition in his report. Is that -- do you recall seeing that?

A. Yes.

Q. Do you also recall that he stated that the ArtScroll Stone Edition is the, quote, dominant translation of the Torah in Orthodox Jewish synagogues today?

A. Yes.

Q. Do you have any reason to disagree with that statement?

A. To disagree? No. I would add nuance.

My understanding is that it is still enormously influential. It's been widely used in Orthodox synagogues for a while. The fact that they like this very attractively-packaged and accessible edition for worship usage does not mean they're choosing it on the basis of its translation of any one particular word or passage.

So that is a nuance that I would add, meaning I don't think it's -- we can't conclude that they are choosing it because they like that particular translation, especially when some of their own editions make clear that the actual meaning is murder. So that's one thing that I would note.

I would also note that even in Orthodox circles this particular edition has been criticized heavily. And so not all Orthodox Jews embrace it. It

received actually some devastating criticism very early on. And that there are also other editions that are used in Orthodox circles as well. So it's not -- it's by no means the only one, right. There's the Steinsaltz one. There is the Rabbi Sacks one that's used. So, you know, ArtScroll is not the only Orthodox choice.

But in answer to the original question, my understanding is that, yes, it remained widely used, but I would add those nuances.

Q. Of course. Nuances can be important.

But I suppose the bottom line is that there are some Jewish translations that use kill, some that may even be widely used, and others that use murder; is that right?

A. Most translations use murder. And that is the trajectory of translation since 1917 for the translations I have been able to look at. So we see that in 1917 Jewish Publication Society Bible which was the most widely used English translation for much of the early 20th century. We see it in later Jewish Publication Society Bibles. We see it in I think most editions produced by Koren which is a standard publisher. So, you know, I've examined many translations and -- well, as many as I could

get my hands on, including online. And there is a clear trend towards murder. But --

Q. Okay.

A. But again a clear -- I want to be nuanced in my wording. It is a clear trend is how I would describe it in translation preference.

Q. Okay. So some on both sides, some on others, your opinion is that they just trend towards murder rather than kill; is that fair?

A. Yes. And this is important for some Jewish people. The distinction is important for some Jewish people.

Q. Okay. Are you aware of any English translations used by Christians that use murder instead of kill?

A. Yes. So among Christian translations, you find most -- you know, what I noted was that Catholic translations tend to use kill. And this is consistent I think with an overall ethical stance towards, you know, what some call a pro-life ethic. So it doesn't really surprise me. Although, I might have some questions about it on linguistic grounds.

On translations produced by Protestants or by ecumenical bodies, it varies. It varies between murder and kill. So, you know, I would say based on

what I've seen, the preference in Catholic translations is kill, although I have seen murder in Catholic-produced translations. But the preference is kill. And with other translations and those -- including those embraced by Protestants, it varies. So there's not -- it varies. But I think you find murder more often than you -- there's a trend towards using murder rather than kill in those other translations. But there's not as clear a trend as we see with the Jewish translations. That's how I would put it.

Q. So if you were to see that commandment in isolation, you know, you're looking at you shall not kill or you shall not murder, it's not totally clear just that which religious tradition it would come from, whether it would be Catholic, Protestant, or Jewish because any of those traditions might use kill or murder; is that fair?

A. If I saw kill, I would think that it was unlikely to be a Jewish translation.

Q. But there wouldn't be a clear way to know whether it were Protestant, Catholic, Jewish based solely on kill versus murder?

A. In isolation? You mean, if someone literally said I'm going to this Bible, I'm not

going to tell you which Bible it is, I'm cutting and pasting this phrase from the Bible, I'm putting it in this document, so you don't know which Bible I cut and pasted it from, is that the question?

Q. Yes.

A. I would have no idea.

MR. FLESHMAN: Okay. All right. I think those are just about everything. Why don't we take a five-minute break. I'll just make sure that I don't have anything else for you. And then we'll let -- Ken may have some additional questions. But we'll take five minutes. Sound good?

THE WITNESS: All right. Thank you for your questions and for your careful reading for my report.

MR. FLESHMAN: Thank you for sitting through my deposition. We're not quite done yet. But we'll be done in a few minutes.

THE WITNESS: Okay.

(Recess taken)

MR. FLESHMAN: We have no further questions at this time.

MR. FALK: Thank you. I just have a few.

EXAMINATION

BY MR. FALK:

Q. Professor, you indicated that the article that is going to be published is in a refereed journal?

A. That's correct.

Q. Is that the same as peer-reviewed?

A. Yes, peer-reviewed and refereed are the same thing. And that's the normal review process for the highest caliber academic articles.

Q. And you have cited a number of academic articles in your CV as well as some books or book chapters.

Have they all been reviewed by peers, whether it's called peer-reviewed or refereed?

A. The journal articles are all peer-reviewed. The books that I authored and co-authored on the ancient world were peer-reviewed. And the review process varies for articles that are in edited collections. But many of those were also peer-reviewed.

Q. Thank you.

A. They all went -- at least the review of the editor, but some went through more rigorous review as well. So, yes, that's -- I'm proud of my list of peer-reviewed publications.

Q. And in reaching the conclusions that you

reached in your report and that you discussed today, did you apply the mode of analysis that's customary and accepted in your field of study and work?

A. Yes.

MR. FLESHMAN: Objection to the extent it calls for a legal conclusion. But sorry, go ahead.

BY MR. FALK:

Q. And are your conclusions, in your mind, the product of a reliable principle and methods that's acceptable in your field?

A. Yes.

MR. FLESHMAN: Same objection.

BY MR. FALK:

Q. And did you rely on your work on recognized and well-accepted scholars in your field?

A. Yes.

MR. FALK: I have no further questions. Thank you.

THE WITNESS: Thank you.

MR. FLESHMAN: We don't have any additional questions.

MR. FALK: Okay. Great. And we'll take signature.

(Deposition concluded at 12:30 p.m.)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

| | | |
|---|---|---|
| INDIANA CIVIL LIBERTIES UNION, et al. | ) | |
| Plaintiffs, | ) | |
| -v- | ) | No. 1:00-cv-00811-SEB-VSS |
| MIKE BRAUN, | ) | |
| Defendant. | ) | |

Job No. 209983

I, MARK A. CHANCEY, state that I have read the foregoing transcript of the testimony given by me at my deposition on September 4, 2026, and that said transcript constitutes a true and correct record of the testimony given by me at said deposition except as I have so indicated on the errata sheets provided herein.

_____
MARK A. CHANCEY

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COUNTY OF MARION )

I, Sandra Marchky, a Notary Public in and for the county and state, do hereby certify that the deponent herein was by me first duly sworn to tell the truth, the whole truth, and nothing but the truth in the aforementioned matter;

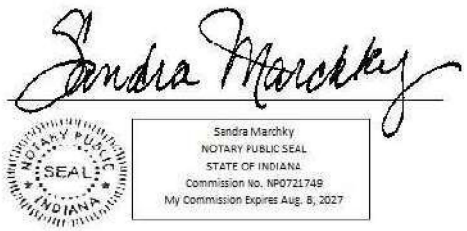
That the foregoing deposition was taken on behalf of the Defendants; that said deposition was taken at the time and place heretofore mentioned between 10:30 a.m. and 12:30 p.m.;

That said deposition was taken down in stenograph notes and afterwards reduced to typewriting under my direction; and that the typewritten transcript is a true record of the testimony given by said deponent;

And thereafter presented to said witness for signature; that this certificate does not purport to acknowledge or verify the signature hereto of the deponent.

I do further certify that I am a disinterested person in this cause of action; that I am not a relative of the attorney for any of the parties.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal this 9th day of September, 2026.




My Commission Expires:
August 8, 2027

Job No. 209983

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