

Exhibit 28

Email from Jessica Wentz, Non-resident Senior Fellow,
Sabin Center, to Beth Wiggins, Director of the Research
Division, FJC (Apr. 8, 2024)

Message

From: Radley Horton [REDACTED]
on behalf of Radley Horton [REDACTED]
Sent: 7/27/2024 8:02:46 PM
To: Jessica Wentz [REDACTED]
CC: Beth Wiggins [REDACTED]
Subject: Re: thoughts re: legal inputs for the Climate Science chapter

Hi Both,

I would suggest an edit to the Ensemble Model definition. How about:

Model Ensembles: Can refer to both 1) the full set of models, for example climate models developed by different modeling centers, used by the IPCC and other bodies for risk assessment, and 2) the averaging of results across multiple such models. The averaging of multiple models is generally considered more reliable than the use of a single model, although presenting the results separately from all the models is often considered superior to showing only the average across models, since the former gives a sense of the range of possible outcomes and important uncertainties.

Best wishes,
Radley

On Fri, Jul 26, 2024 at 2:59 PM Jessica Wentz [REDACTED] wrote:
Hi Beth,

That's great news, thanks for letting us know. The edits on the version you sent all look fine to me. I also added a definition for ensemble modeling, as per the comment in the glossary. Radley, can you confirm that this looks good?

"Ensemble modeling: A process whereby multiple models that are trained by different methods or algorithms are combined to produce findings or predictions. Model ensembles are used to improve accuracy and predictive performance, as compared with the use of a single model."

Regarding the judge's comment about climate science and whether it can be used to establish that a specific defendant has caused or contributed to a specific plaintiff's injury -- that is ultimately a case specific determination, and I think it would be incorrect to broadly assert that the science cannot currently support such claims at this time. To the contrary, existing scientific research could potentially support a *factual* finding that a defendant has contributed to specific climate change-related injuries (again, depending on the facts of the case). Whether that contribution would qualify as a *legally cognizable cause* of a plaintiff's injury is ultimately a legal determination, and I don't think we should opine on that topic given the nature of this chapter (and the lack of case law).

That said -- we can wait to fully respond to this comment until we receive further input from external reviewers on whether the chapter adequately addresses uncertainty, limitations, etc.

All best,

Jessica

On Thu, Jul 25, 2024 at 6:13 AM Beth Wiggins [REDACTED] wrote:

Hi Jessica and Radley,

I wanted to let you know that the Committee reviewed your revision and approved it for external review, and you should be hearing from NASEM about that process soon. Congratulations!

A couple of the committee members identified some typos and one identified some further smaller changes to eliminate possible perception of bias. I went ahead and made them in this document. Please let me know if you are not OK with the changes.

One judge member expressed some concern about the imbalance of the current state of the science and the “micro-level” claims that a particular defendant’s action caused particular plaintiffs’ injuries, which are likely to present themselves to the court in the future. And suggested that the chapter should make clear at the outset that the climate science it describes is focused primarily on “macro-level” causes and effects relevant to like APA, ESA, or CWA cases and, at present, does not support micro-level conclusions. The judge thought the science may get there some day, but it would disserve judges and litigants to suggest it’s there now.

Recognizing that climate science, like other areas of science is evolving, we will be asking external reviewers to comment on whether the chapter accurately describes the certainty/uncertainty associated with climate science and the limitations of climate models and appropriately caveats its relevance to potential litigation. We thought you might address that final comment with that information in hand. Please let us know if you would prefer to address it before external review. The Manual will have a long shelf life so we want to be sure it serves its purpose now as well as into the future.

Also, a judge raised an issue about the interpretation of rule 702 that has arisen in other chapters too. We are referring the question to the authors of the manual’s admissibility chapter so we can address it consistently throughout the manual.

Thanks!

Beth

From: Jessica Wentz [REDACTED]
Sent: Wednesday, June 19, 2024 9:45 PM
To: Beth Wiggins [REDACTED]
Cc: Radley Horton [REDACTED]
Subject: Re: thoughts re: legal inputs for the Climate Science chapter

CAUTION: This email originated from **outside** your organization. Exercise caution when opening attachments or clicking links, especially from unknown senders.

Hi Beth,

I was just composing an email with the revised draft when I saw your message arrive. Our scientist colleague (Vivien Gornitz) completed her review, and we just finished incorporating her edits and feedback into the chapter. The revised draft is attached -- both a clean version and a redline version. Note that the clean version has the correct FN numbering for supras and infras (my version of microsoft word doesn't revise FN numbers until after changes are accepted). I've also attached a document detailing responses to the committee's feedback.

All best,

Jessica

On Wed, Jun 19, 2024 at 6:31 PM Beth Wiggins <[REDACTED]> wrote:

Hi Jessica,

Just checking in to see if you've received the review from the climate scientist.

If not, and you're pretty sure it's forthcoming, I wonder if we should send the draft you have now to the committee, with the person's name or a placeholder in the acknowledgement. The Committee seemed most concerned with the legal aspects of the chapter and we could tell them the status.

Let me know what you think.

Beth

From: Jessica Wentz [REDACTED]
Sent: Monday, May 27, 2024 7:57 PM
To: Beth Wiggins [REDACTED]
Cc: Radley Horton [REDACTED]
Subject: Re: thoughts re: legal inputs for the Climate Science chapter

CAUTION: This email originated from **outside** your organization. Exercise caution when opening attachments or clicking links, especially from unknown senders.

Hi Beth,

The chapter is currently out for review with a climate scientist. But she said it may take her a couple of weeks to get back to us with her comments.

If the committee would like to look at the revisions in the meantime, I could send the chapter with current revisions and a document specifying how we responded to the committee's second round of feedback.

Best,

Jessica

On Mon, May 27, 2024 at 9:04 AM Beth Wiggins <[REDACTED]> wrote:

Hi Jessica,

Thanks again for getting Mike to review the chapter. Any more word on the scientific reviewer – I think even one would be helpful.

The clock is ticking though, so I'm going to check in to see what others think about moving forward without it.

Beth

From: Jessica Wentz <[REDACTED]>
Sent: Thursday, May 9, 2024 2:08 PM
To: Beth Wiggins <[REDACTED]>
Cc: Radley Horton <[REDACTED]>
Subject: Re: thoughts re: legal inputs for the Climate Science chapter

CAUTION: This email originated from **outside** your organization. Exercise caution when opening attachments or clicking links, especially from unknown senders.

Hi Beth,

Apologies if this is too late for your meeting, but I just spoke with Radley. The scientific reviewers haven't yet confirmed when/whether they will be able to provide comments.

My recollection is that there will also be scientists reviewing the chapter at the expert peer review stage. If the committee wants to expedite this process -- and is not concerned about getting more internal reviewers - we could finalize the current draft and submit it early next week.

Best,

Jessica

On Wed, May 8, 2024 at 8:44 AM Jessica Wentz [REDACTED] wrote:

Hi Beth,

We had Mike Gerrard review the chapter, and have revised the chapter based on his feedback as well as the feedback from the committee. However, we are still waiting for the scientific review of the chapter.

Radley -- can you provide an update on when you anticipate feedback from the climate scientists you contacted?

I think we can turn it around very quickly once we receive that feedback.

Best,

Jessica

On Wed, May 8, 2024 at 5:02 AM Beth Wiggins [REDACTED] wrote:

Hi Jessica and Radley,

I have a meeting with the Manual staff on Thursday and will be asked for an update on this chapter. Can you let me know where you are in the revision process.

Many thanks!

Beth

From: Beth Wiggins

Sent: Tuesday, April 9, 2024 9:40 AM

To: Jessica Wentz [REDACTED]

Cc: Radley Horton [REDACTED]

Subject: RE: thoughts re: legal inputs for the Climate Science chapter

Hi Jessica,

I checked with others, and we think Mike Gerrard along with a couple of scientists, would work.

That said, if we could find that person, for "diversity", it would be good to have someone of Mike's caliber with a similar background that is not associated with the Sabin Center. When you reach out to Mike, could you ask him if he knows of anyone? I haven't been able to identify anyone.

For various reasons (not to do with their expertise), we'd prefer not to use the attorneys from ELI. I know Sandy well and think very highly of her.

CJP0003862

Thank you so much for all your work and help on this.

Beth

From: Jessica Wentz [REDACTED]
Sent: Monday, April 8, 2024 2:21 PM
To: Beth Wiggins <[REDACTED]>
Cc: Radley Horton [REDACTED]
Subject: thoughts re: legal inputs for the Climate Science chapter

CAUTION: This email originated from **outside** your organization. Exercise caution when opening attachments or clicking links, especially from unknown senders.

Hi Beth,

Mike Burger got back to me very quickly about who might provide a neutral legal perspective on our climate science chapter. He had the same thought as me:

Mike Gerrard, the faculty director at the Sabin Center, is a meticulous lawyer and has the exact sort of expertise that would be relevant to this chapter (deep familiarity with U.S. climate litigation and evidentiary arguments raised therein). He also worked for Arnold & Porter for most of his career -- I believe he may still be "of counsel" to the firm -- and Arnold & Porter represents BP in climate litigation.

If we need to bring in someone who isn't affiliated with the Sabin Center, I could reach out to some people involved in the Environmental Law Institute's Climate Judiciary Project. In particular, I am thinking of Sandra Nichols Thiam, Jarryd C. Page, and John M. Doherty (John is not a lawyer but he has written on the law/science nexus).

Let me know if any of those people might work, and I can see if they are available to provide inputs on a short timeline.

Best,

Jessica

--
Radley Horton, Ph.D. (*he/him/his*)
Professor, Columbia Climate School
Lamont-Doherty Earth Observatory, Columbia University
61 Route 9W, P.O. Box 1000, Palisades, NY 10964

CJP0003863

Cell: **REDACTED**

Office: **REDACTED**

Twitter: **REDACTED**

Exhibit 29

Email from Jessica Wentz, non-resident senior fellow,
Sabin Center, et al., to Michael Burger, Executive
Director, Sabin Center (Apr. 18, 2024)

Message

From: Jessica Wentz [REDACTED]
on behalf of Jessica Wentz [REDACTED]
Sent: 4/18/2024 2:06:13 AM
To: Michael Gerrard [REDACTED]
CC: Michael Burger [REDACTED] [REDACTED]
Subject: Re: "Climate Science" chapter for the NAS Reference Manual on Scientific Evidence

Thanks so much for these comments and the quick turn around with this!

On Wed, Apr 17, 2024 at 5:58 PM Michael Gerrard <[REDACTED]> wrote:

Attached are my comments on pages 89-103 (the legal section in the pagination that I get when I print it; but it's p. 84 when I open it on the screen). In addition:

1. There are several cites to one of the trial court decisions in Juliana. But we have to acknowledge that it was reversed (or vacated or something -- I'm not sure what the proper signal is) by the Ninth Circuit.
2. Likewise, there are several cites to Coalition for Responsible Regulation v. EPA. But that was partially reversed on other grounds sub nom. Utility Air Regulatory Group v. EPA.
3. There has also been litigation about the Social Cost of Carbon.
4. Many of the cites are to fairly old cases, leaving the impression that some of this was mostly taken from an older document. There are much more recent decisions, especially under NEPA and the ESA. I suggest that you take a look [here](#) for our most recent monthly litigation updates, and see if you find more recent cases to cite.

On Mon, Apr 15, 2024 at 6:34 PM Jessica Wentz [REDACTED] wrote:
Hi Mike,

I mentioned last week that I am working on a "Climate Science" chapter for the National Academies' "Reference Manual on Scientific Evidence" (attached). If you have time in the next couple of weeks, it would be great to get your feedback on the legal section located on pp. 84 – 98. The goal of this section is to provide a neutral, high-level overview of federal climate litigation and the ways in which climate science factors into federal cases.

I know you are very busy, and in lieu of a text review, I could also send you a few key questions about this chapter via email.

Please let me know if one of those options might work for you. Thanks so much!

Best,

Jessica

--

Michael B. Gerrard

Andrew Sabin Professor of Professional Practice
Director, Sabin Center for Climate Change Law
Columbia Law School
435 West 116th Street
New York, New York 10027

A large black rectangular redaction box covering several lines of text.

Exhibit 30

Email from Michael Burger, Executive Director, Sabin Center, to Paul Hanle, founder, Climate Judiciary Project
(Oct. 11, 2019)

From: Sandra Nichols Thiam[/O=ELI/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=A1B4707E342B42B7BB655373408D63E4-SANDRA NICHOLS]

Sent: Fri 10/11/2019 10:18:42 AM Eastern Daylight Time

To: Michael Burger [REDACTED] Paul Hanle [REDACTED]

Cc: Paul Hanle [REDACTED]

Subject: RE: Event and follow up to conversation

Hi Michael,

It is wonderful to hear from you and we would certainly love to identify ways to maximize our potential impact.

Paul is away until the end of next week. We'll both be in on Monday of the following week (the 21st) and then I'll be gone from the 22nd to the 29th. We could certainly have a preliminary call without Paul and then continue the conversation when we're both in if that made sense.

On Tuesday I'm free 9:30 – 11 and from 1:30 – 3; Wednesday, 9:30 – 2:00.

Let me know what works for you!

Best,
Sandy

From: Michael Burger [REDACTED]

Sent: Friday, October 11, 2019 6:36 AM

To: Paul Hanle [REDACTED]

Cc: Sandra Nichols Thiam [REDACTED] Paul Hanle [REDACTED]

Subject: Re: Event and follow up to conversation

Paul and Sandy,

I am wondering if you have a few moments today, or perhaps next week, to touch base on the Climate Judiciary Project. We have some interest from a funder in supporting next steps in our work with Radley Horton on *the Law and Science of Climate Change Attribution*, and I would like, if possible, to seek ways to maximize our potential impact through leveraging strategic partnerships - potentially with you! It just seems like it could make all kinds of sense.

Let me know if you're open to the general idea, and if so some times we might hop on a call.

All best,
Mike

Michael Burger
Executive Director
Sabin Center for Climate Change Law
Senior Research Scholar and Lecturer-in-Law
Columbia Law School
[REDACTED]

The information contained in this email message may be privileged, confidential and protected from disclosure. If you are not the intended recipient, any dissemination, distribution or copying is strictly prohibited. If you think that you have received this email message in error, please notify the sender by reply email and delete the message and any attachments.

On Fri, Jun 7, 2019 at 11:35 AM Paul Hanle [REDACTED] wrote:
Michael,

As I think you know, we have asked Radley to be our keynote science speaker at the first judicial training session of the Climate Judiciary Project, to be held at Columbia on June 28. We'd love to catch up with you if you are in that afternoon or perhaps the afternoon before (27th). Having finished and reread your paper, Sandy and I had a couple follow up thoughts and questions. We also have an idea for a research project that we would greatly appreciate your advice on. Any chance you will have some time on one of those days?

Best,
Paul

Sent with [ProtonMail](#) Secure Email.

[Spam](#)
[Not spam](#)
[Forget previous vote](#)

Exhibit 31

Email from Michael Burger, Executive Director, Sabin Center, to Paul Hanle, founder, Climate Judiciary Project
(Oct. 24, 2024)

Redacted

----- Forwarded message -----

From: REDACTED

Date: Fri, Oct 25, 2024 at 5:45 PM

Subject: RE: CJI and Renewable Energy Siting

To: REDACTED Michael Burger <[REDACTED]>, Paul Hanle <[REDACTED]>,
Sandra Nichols Thiam <[REDACTED]>

Cc: Matthew B. Eisenson <[REDACTED]>

Hi again,

I worry I missed your call. Want to suggest a time to meet next week and we can schedule it. I might bring in a colleague or two then.

Best,

Paul

From: [REDACTED] [REDACTED]

Sent: Thursday, October 24, 2024 10:24 PM

To: 'Michael Burger' <[REDACTED]> 'Paul Hanle' <[REDACTED]>; 'Sandra Nichols Thiam' <[REDACTED]>

Cc: 'Matthew B. Eisenson' <[REDACTED]>

Subject: RE: CJI and Renewable Energy Siting

Let's discuss, Mike. We are aware of your work, of course. Why don't you give me a call when you can, perhaps tomorrow morning. [REDACTED]

Best,

Paul

From: Michael Burger <[REDACTED]>

Sent: Thursday, October 24, 2024 5:37 PM

To: Paul Hanle <[REDACTED]>; Sandra Nichols Thiam <[REDACTED]>

Cc: Matthew B. Eisenson <[REDACTED]>

Subject: CJI and Renewable Energy Siting

Hi Paul, Hi Sandy,

During a conversation today, Matt and I were informed that ELI's Climate Judiciary Project may be developing a module to address scientific questions, misinformation and other issues that come up around local siting battles for renewable energy facilities. We would welcome the chance to hear more about what you're up to, and see if there are any opportunities to collaborate. Our [Renewable Energy Legal Defense Initiative](#) has been very much focused on these issues for some time. See, eg, [here](#) and [here](#).)

Best,

Mike

Michael Burger

Executive Director

Sabin Center for Climate Change Law

Senior Research Scholar and Lecturer-in-Law

Columbia Law School

[REDACTED]
[REDACTED]
Pronouns: *he, him, his*

The information contained in this email message may be privileged, confidential and protected from disclosure. If you are not the intended recipient, any dissemination, distribution or copying is strictly prohibited. If you think that you have received this email message in error, please notify the sender by reply email and delete the message and any attachments.

CJP0000645

Exhibit 32

Douglas A. Kysar & Isabella Soparkar, *Applying Attribution: Impacts of Climate Attribution Science on Tort Litigation*, Env't L. Inst.: Climate Judiciary Project (Jan. 2023)

SHARE
↕[Home \(/\)](#) / [Curriculum \(https://cjp.eli.org/curriculum\)](https://cjp.eli.org/curriculum)

CLIMATE SCIENCE AND LAW FOR JUDGES

Part Two: Science in “Climate Cases”

Applying Attribution: Impacts of Climate Attribution Science on Tort Litigation

AUTHORS

Douglas A. Kysar (</experts/douglas-kysar>)

Yale Law School

Isabella Soparkar (</experts/isabella-soparkar>)

Yale Law School

Published January 2023 | [Download PDF \(/SITES/DEFAULT/FILES/ELI_CJP_APPLYINGATTRIBUTION_MAY2025.PDF\)](/SITES/DEFAULT/FILES/ELI_CJP_APPLYINGATTRIBUTION_MAY2025.PDF) |

[Executive Summary \(/SITES/DEFAULT/FILES/2023-07/ES_APPLYINGATTRIBUTION_JUNE2023.PDF\)](/SITES/DEFAULT/FILES/2023-07/ES_APPLYINGATTRIBUTION_JUNE2023.PDF)

Related Fact Sheets and Slide Presentations





MODULE OUTLINE

I. Introduction

II. Source Attribution

III. Impact Attribution

IV. Event Attribution

V. Conclusion

✓ skip to bottom

NEXT MODULE »

Government Action and Climate Science

(/curriculum/government-action-and-climate-science)

« PREVIOUS MODULE

Overview of European Climate Litigation

(/curriculum/overview-european-climate-litigation)

I. Introduction

Climate attribution science can be defined broadly as the scientific study and estimation of causal responsibility for the drivers and impacts of climate change. Distinguishing the different types of attribution may benefit judges as the number of climate change lawsuits in the United States continues to grow. Several related, but distinct questions arise within the field of climate attribution:

1. *Warming Attribution*: To what extent are observed and projected changes in the global climate system attributable to human activities as a whole?
2. *Source Attribution*: What portion of climate change and its impacts can be attributed to the choices and actions of specific individuals, companies, nations, or other separately identifiable human sources?
3. *Impact and Event Attribution*: To what extent has climate change caused or increased the likelihood of various impacts on social and natural systems, including extreme events such as hurricanes, wildfires, droughts, and floods?

Scientists and researchers are improving their capacity to answer all these questions with specificity and confidence.¹ Their work is beginning to affect the extent to which the public and policymakers perceive climate change as an urgent problem. These developments also have significant implications for climate change litigation. Over time, the science of climate change and its attendant harms will influence judicial reasoning and practice.

To some extent, it already has. Take *warming attribution* as an example. Within the scientific community, warming attribution is the most straightforward form of attribution. The Intergovernmental Panel on Climate Change (IPCC) has concluded that “[i]t is unequivocal that human influence has warmed the atmosphere, ocean and land. Widespread and rapid changes in the atmosphere, ocean, cryosphere and biosphere have occurred.”² The role of warming attribution in climate change litigation is also straightforward, albeit highly significant. When the empirical reality of human-caused climate change is at issue within a lawsuit—such as when climate impacts are asserted to establish injury for purposes of standing or when the adequacy of an environmental impact statement is challenged because it fails to consider a project’s greenhouse gas emissions—courts are asked to accept as an evidentiary matter the epistemic veracity of climate science. As the cases discussed in Box 1 illustrate, such judicial acceptance can occur without necessarily dictating results in the underlying legal action.

The litigation impacts of the other categories of climate attribution science—*source, impact, and event attribution*—are more speculative and will be the focus of this discussion. While touching briefly on constitutional law claims, this piece primarily addresses tort claims

arising under state law in the United States (although, as will be seen below, many of the most prominent state-law climate suits have been unsuccessfully removed to federal court by defendants, thereby delaying state judges' engagement with the suits).³ (#footnote3_oakyx2f) This subject matter and geographic limitation is regrettable, as much more could be said about how courts around the world are beginning to grapple with the challenge that climate change poses to the rule of law and judicial self-understanding. Still, even the humble subject of U.S. tort law will appear rather profound when refracted through a changed atmosphere.

Box 1: Supreme Court Acknowledgment of Warming Attribution

Two U.S. Supreme Court opinions illustrate the Court's continued adherence to the central finding of warming attribution, notwithstanding arguable shifts in the Court's position with respect to agency authority to address climate change.

- ***Massachusetts v. EPA***, 549 U.S. 497, 505 (2007): In the second sentence of the Supreme Court's majority opinion in *Massachusetts v. EPA*—the first Supreme Court opinion to directly address climate change—Justice John Paul Stevens pointedly emphasized that warming attribution is accepted by “[r]espected scientists.” Because the legitimacy of courts is premised on independence and responsiveness to reason and evidence, the Court's acceptance of core climate science findings in this manner offered potential to carry weight within larger societal and political discussions concerning the reality and significance of climate change. Given the continuing challenge of effectively communicating that reality and significance to laypeople, securing such independent judicial affirmations of climate science fundamentals remains a significant motivating factor behind much climate change litigation.
- ***West Virginia v. EPA***, 597 U.S. ___, 31 (2022): Importantly, courts may accept the premise of warming attribution without requiring them to rule in favor of pro-climate action litigants. It is of course possible for a litigant to be right about science but advance a losing legal argument. In *West Virginia v. EPA*, Chief Justice John Roberts held for the majority that the U.S. Environmental Protection Agency lacked statutory authority to devise the disputed emissions reduction system for power plants, but nevertheless wrote in the final paragraph of the opinion, “Capping carbon dioxide emissions . . . may be a sensible ‘solution to the crisis of the day’” (citing *New York v. United States*, 505 U.S. 144, 187 (1992)). In other words, the scientific reality that climate change must be addressed by reducing emissions may have begun to transcend legal and political disagreement.

II. Source Attribution

The most high-profile climate change tort suits in the United States seek to hold major fossil fuel companies responsible for present and anticipated costs relating to climate change. These

lawsuits allege public nuisance and related state-law claims, arguing the fossil fuel industry has known for decades that its products contribute to global climate change, while simultaneously foiling government action through misrepresentation, deceit, and aggressive lobbying tactics. The plaintiffs in these cases have included governments, such as cities and states,⁴ [\(#footnote1_3dgo32m\)](#) as well as private plaintiffs, such as a fishing industry trade group.⁵ [\(#footnote2_aaf3rye\)](#) To prevail on a public nuisance claim, plaintiffs must show that defendants unreasonably interfered with a right common to the general public via instrumentalities controlled by the defendants. A variety of doctrinal questions arise from the attempt to configure climate change as a public nuisance, including the question of whether a “climate system capable of sustaining human life” is a right common to the general public.⁶ [\(#footnote3_1lk8pw3\)](#) In this part, we focus on the scientific question of whether fossil fuel defendants control the relevant instrumentalities causing climate change. This control question directly implicates the source attribution field of study.

The legal theory underpinning “carbon majors” suits has changed over time. The early suits, filed in the 2000s, led with federal common-law claims. Those suits failed after the Supreme Court determined in *American Electric Power Co v. Connecticut* that federal common-law actions were displaced by the federal Clean Air Act (CAA), which, in *Massachusetts v. EPA*, had been interpreted to govern greenhouse gas emissions as air pollutants.⁷ [\(#footnote4_asrkiw8\)](#) The more recent suits allege state-law claims since the preemptive effect of the CAA on such claims remains an open question. The new suits also seek to capitalize on factual developments in two key areas of potential relevance to industry liability. First, a series of academic and journalistic investigations uncovered substantial evidence regarding the extent of the fossil fuel industry’s long-standing internal knowledge of climate change science and the human impact of greenhouse gas emissions.⁸ [\(#footnote5_4sxfc40\)](#) Second, just as scientific understanding and precision of harm attribution developed over time for areas of litigation such as asbestos and tobacco, the fields of climate source and impact attribution have developed such that plaintiffs can now portray fossil fuel defendants as being responsible for human-caused warming, slow-onset impacts, and even specific climate-related events with a precision previously unavailable.⁹ [\(#footnote6_8yhixsa\)](#)

To date, state-law climate nuisance suits have been mired in disputes over venue and other preliminary and procedural matters. Fossil fuel defendants have uniformly sought to remove to federal court despite the new wave of complaints asserting exclusively state-law claims.¹⁰ [\(#footnote7_hdvg2q4\)](#) Defendants anticipate a friendlier reception in federal court because of stringent Article III requirements on standing and justiciability,¹¹ [\(#footnote8_do2mjfo\)](#) making it challenging for plaintiffs to reach the substantive phases of litigation. Many of the carbon majors lawsuits involve strategic considerations about shifting societal perceptions of a deeply entrenched industry by focusing less on the harms it causes and more on the alleged callousness of those who profit by its prevalence. This tactic worked well for plaintiffs in historical anti-tobacco litigation, but similar success for climate change plaintiffs would require them to reach the discovery and trial phases of litigation.

In addition to its procedural benefits, defendants also tend to prefer federal court due to a perception that federal judges are more likely to view state tort law as an inappropriate body

of law to bring to bear on climate change. One case that avoided venue squabbles appears to confirm this perception. In *City of New York v. Chevron Corp.*,^{12 (#footnote9_u7o1tuu)} a panel of U.S. Court of Appeals for the Second Circuit judges addressed state tort law claims that were filed initially in federal court by the city of New York against five multinational oil companies seeking damages for harms and expenses suffered by the city due to climate change. The panel first held that “[g]lobal warming presents a uniquely international problem of national concern” that can only be addressed by federal or international law, rather than state common law.^{13 (#footnote10_uqjyfq5)} The panel then held that federal common law is displaced by the CAA, even when a litigant merely pursues a claim for damages rather than injunctive relief as had been sought in *Connecticut v. American Electric Power Co.* Central to the court’s reasoning was a concern that the plaintiff had ulterior policy motives in bringing suit: “Is this a clash over regulating worldwide greenhouse gas emissions and slowing global climate change, or is it a more modest litigation akin to a product liability suit . . .?”^{14 (#footnote11_ld0s0gg)} The court’s twin holdings have the effect of precluding entirely the application of judge-made law—i.e., federal or state tort law—in the Second Circuit to challenge activities which generate greenhouse gas emissions.

Maintaining the availability of tort adjudication would enable those who are suffering climate-related harm and those who have contributed to that harm to face one another through tort law’s mediating and dignifying discourse of mutual accountability. It would clarify through reasoned and evidence-based analysis whether the duty to avoid creating or contributing to a nuisance extends to emissions of greenhouse gases—thus providing clarity to potential tortfeasors about the scope of their obligations to others. Indeed, rather than counseling against common-law adjudication, the complexity and enormity of the climate change problem might be seen to counsel in its favor, simply in order that baseline norms of responsibility—whatever their content—may be more clearly specified as public and private actors embark on what undoubtedly will be a centuries-long struggle to deal with greenhouse gas emissions and their impacts. Finally, adjudication of climate nuisance plaintiffs’ tort claims on the merits would ensure the continued availability and operation of tort law as a critical forum for the articulation of public understandings of acceptable behavior. In so doing, it would afford courts an opportunity to raise for the political branches the aspects of climate change that implicate tort law’s rights and responsibilities, but that exceed the capacity of common-law adjudication when viewed from the perspective of “solving” policy problems.^{15 (#footnote12_u0wrh91)}

Nor would adjudication of climate tort suits prove judicially unmanageable, for tort law contains ample doctrinal resources with which to manage even an unfathomably vast and politically vexing issue such as climate change.^{16 (#footnote13_e9sajo3)} This should not be surprising, given that public law concepts such as the modern elements of standing doctrine were built largely from private law analogues that have long existed within tort law itself. For instance, the special injury rule, which requires plaintiffs in public nuisance suits to demonstrate harm distinct from that suffered by the general public, works to ensure plaintiffs have an adequate personal stake in the dispute to distinguish it from a generalized political grievance. Failure to acknowledge the common law’s resources in this respect can lead to a curtailment of judicial responsibility.^{17 (#footnote14_i3oz2ey)} In an opinion rejecting federal and

state common-law claims brought by North Carolina against the Tennessee Valley Authority and other entities for transboundary air pollution, a U.S. Court of Appeals for the Fourth Circuit panel dismissed nuisance law as lacking “any manageable criteria.”¹⁸ [\(#footnote15_km1uszp\)](#) Yet, the panel offered as an alternative ground for dismissal a rule from Alabama and Tennessee tort jurisprudence holding that heavily regulated and permitted activities cannot as matter of law constitute public nuisances. Thus, within the very body of law disparaged as unprincipled by the Fourth Circuit panel rested a principled doctrine responding precisely to the panel’s concerns.

If one or more of the carbon majors suits ever reaches the merits, a critical contested element will be how to assign and apportion liability, given the vast number of actors who might be considered to have “caused” climate change. This is where the field of source attribution comes in. A number of research groups are dedicating time and attention to determining which entities are responsible for which percentages of historical greenhouse gas emissions.¹⁹ [\(#footnote16_rg7e5kj\)](#) A groundbreaking study, for instance, concluded that nearly two-thirds of carbon dioxide emitted since the 1750s can be traced to the 90 largest fossil fuel and cement producers, most of which still operate today.²⁰ [\(#footnote17_gjjkpi6\)](#) A study using a similar methodological approach concluded that more than half of ocean acidification can be traced to the 88 largest industrial carbon producers.²¹ [\(#footnote18_nfuxy2o\)](#) Though its members have not yet been named as defendants in climate change lawsuits, the heavily concentrated industrial animal agriculture industry also has been subjected to source attribution analysis. Researchers estimate that the five largest global meat and dairy companies collectively are responsible for more annual greenhouse gas emissions than Exxon, Shell, or BP; 20 companies contribute more annual emissions together than Germany, Canada, Australia, the United Kingdom, or France.²² [\(#footnote19_ixdasjt\)](#)

Source attribution studies on corporate conduct take anthropogenic climate change—a collective action problem of breath-taking scale—and reduce it from a problem caused by several billion past and present human individuals to one driven by a few dozen companies. As such, they make climate change appear to be more amenable to traditional tort law adjudication. Multiple defendant cases are a familiar challenge in tort law, especially in the context of environmental harm, and the common law has developed a variety of methods for handling them. To begin with, it is clear that any contribution to a pollution nuisance above a de minimis threshold can give rise to damages liability or injunctive relief, notwithstanding the presence of numerous other contributors.²³ [\(#footnote20_xgf8i8y\)](#) Moreover, many courts have held that, where apportionment among contributors is infeasible, plaintiffs may hold defendants jointly and severally liable or may shift the burden of proof onto defendants to disaggregate their respective contributions.²⁴ [\(#footnote21_eou89nk\)](#) Of course, the legal importance of source attribution studies is precisely that they make disaggregation of responsibility for climate change appear to be feasible. Thus, if courts were persuaded by source attribution studies, they could utilize the field’s calculations of emissions responsibilities as a basis for apportioning damages for climate-caused harms. The approach would be analytically similar to market share apportionment, which has been utilized, for example, in groundwater contamination scenarios involving large numbers of defendants.²⁵ [\(#footnote22_jb92cdi\)](#) Rather than relying on market share as the basis for allocation, courts simply could rely upon the

metric of historical and continuing responsibility for greenhouse gas emissions.²⁶
[\(#footnote23_r9qglp1\)](#)

But will courts find the source attribution characterization of climate responsibility to be persuasive? Some analysts contend that climate change plaintiffs will meet with more success in the courtroom simply by “[f]illing the evidentiary gap” with up-to-date attribution science.²⁷ [\(#footnote24_e9ljc4i\)](#) Source attribution studies, however, raise normative questions that distinguish them from other categories of attribution science.²⁸ [\(#footnote25_98cfbs8\)](#) A critical matter of judgment concerns whether fossil fuel defendants should be held accountable for emissions occurring in the entirety of their company value chain or only for emissions more directly under their control. Within the emerging field of corporate climate reporting, emissions from owned or controlled sources such as oil and gas production equipment are considered Scope 1 emissions. Greenhouse gas releases attributable to purchased electricity, heating and cooling, and other energy services consumed by a reporting company are considered Scope 2 emissions. All other indirect emissions occurring along a company’s value chain are considered Scope 3 emissions, including those releases that occur when an end-user burns coal to run their power plant or gas to drive their car. For fossil fuel companies, Scope 3 emissions are especially significant since the vast majority of their total related emissions fall into this category. The question arises whether those emissions should be attributed to fossil fuel defendants rather than to their customers or to the government that authorized and supported their production.²⁹ [\(#footnote26_3421302\)](#)

Some published opinions in the climate litigation space appear to recognize this attribution conundrum. In *City of New York v. Chevron*, the panel noted pointedly that “every single person who uses gas and electricity—whether in travelling by bus, cab, Uber, or jitney, or in receiving home deliveries via FedEx, Amazon, or UPS—contributes to global warming.”³⁰
[\(#footnote27_m19ykg4\)](#) The court seemed to be asking why the city of New York singled out five multinational oil companies for climate responsibility when all humans have been participating in the fossil fuel economy that those companies enable. All humans are indeed embedded in systems that give rise to greenhouse gas emissions, and the United States government at the highest levels has promoted and supported these existing energy systems. Why are the corporate carbon majors more causally responsible for climate change than the governments that authorize and subsidize their activities, the manufacturers of vehicles, equipment, and other products that utilize fossil fuels, or the consumers and other end-users who benefit from them?³¹ [\(#footnote28_twaldmk\)](#)

Plaintiffs in the carbon majors lawsuits have at least two possible responses to this question.³² [\(#footnote29_e2unubu\)](#) First, plaintiffs have aimed to present evidence of fraudulent and deceptive practices by the fossil fuel defendants in order to lessen the perceived causal responsibility of end-users and lawmakers. Just as smokers may be seen as less responsible for the health hazards of tobacco use in light of industry efforts to manipulate public awareness and government policy, carbon majors plaintiffs hope to portray Scope 3 emissions as the natural and proximate effect of manipulative behavior by the fossil fuel industry. Indeed, climate change lawsuits premised on shareholder or consumer fraud might circumvent entirely this source attribution conundrum by focusing on harms caused directly

by industry deception, rather than harms caused by industry contributions to climate change.³³ (#footnote30_z6jcn51) Whether sounding in fraud or public nuisance, in either case the litigation strategy will depend critically on the narrative that industry defendants “concealed and/or misrepresented the dangers associated with the burning of fossil fuels despite having been aware of those dangers for decades.”³⁴ (#footnote31_4r8bj5w)

Second, plaintiffs may take a more pragmatic turn and draw on existing examples in the environmental context to demonstrate the potential for a liability-based response to the question of how to marshal capital toward underfunded environmental needs. Most notably, the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) established the liability scheme known as Superfund,³⁵ (#footnote32_eghwzfhf) which requires parties responsible for hazardous waste releases to pay cleanup costs and other associated damages. Superfund casts an extraordinarily wide net when defining responsible parties, including: (1) people and entities currently in control of a relevant facility, even if they were not in control at the time of hazardous waste release; (2) people and entities who were in control of a relevant facility at the time of hazardous waste release; (3) people and entities who arranged the transport and disposal of hazardous waste; and (4) transporting parties who chose the location for hazardous waste disposal. Superfund liability is joint and several when the harm caused by multiple parties cannot be disaggregated. The aim of the statute is to look broadly through a hazardous material’s value chain, including past and present property owners, producers, storers, and transporters, in order to identify a deep pocket that can help remediate a dangerously contaminated site. Notably, although Superfund was established by congressional statute, lawmakers drew heavily from common-law tort principles when crafting the liability scheme.

To date, most courts addressing climate change lawsuits have expressed concern that the actions raise deep and divisive policy questions better resolved by the legislative and executive branches. Though often framed in terms of standing, preemption, or displacement, rather than the political question doctrine, the common sentiment is that, however grave the climate crisis, “the plaintiffs’ impressive case for redress must be presented to the political branches of government.”³⁶ (#footnote33_pjq0zpn) The Superfund analogy offers an alternative way of understanding the relief being sought by climate change plaintiffs. In the carbon majors suits, plaintiffs disclaim any intent to use the judicial process to effectuate a greenhouse gas regulatory regime. Instead, they seek compensation for expenses stemming from the impacts of climate change and the need to adapt to those impacts. From the plaintiffs’ perspective, the fossil fuel defendants’ causal role in contributing to the harm marks them as potentially responsible parties who should help shoulder the massive public costs of climate change. Because Superfund was modelled on common-law principles, plaintiffs might argue courts need not wait for legislation in order to apply those same principles to the climate change context.

Whether courts will find persuasive the carbon majors plaintiffs’ characterization of their lawsuits is an open question. The returns to date suggest a great deal of skepticism, at least among federal judges. As the cases slowly make their way back to state court, however, plaintiffs remain hopeful that at least some judges will see the actions as good old-fashioned

tort suits, despite the extraordinary factual backdrop of climate change. As one state judge put it when denying a motion to dismiss on preemption grounds in the city of Honolulu's climate nuisance suit: "This is an unprecedented case for any court, let alone a state court trial judge. But it is still a tort case."³⁷ [\(#footnote34_fnd8oja\)](#) In the next part, we ask how will tort suits that really *are* old-fashioned change as the impacts of climate change become ever more pronounced and pervasive.

III. Impact Attribution

A central premise of American tort law is that actors hold a duty of care to guard against the reasonably foreseeable risks of their conduct. What constitutes "reasonable care" changes as the world does. For example, walking down the middle of a road might not have been unreasonable at a time before widespread use of motor vehicles, but it would certainly be considered unreasonable now. Putting aside the ultimate question of who bears liability for causing climate change, important insights can be gained by asking how the reality and severity of climate change will affect more garden-variety claims of wrongful behavior. The IPCC has recently summarized the "unequivocal" evidence that humans have warmed the planet by at least 1.1° Celsius (approximately 2° Fahrenheit) since the Industrial Revolution, as well as the myriad harmful impacts that we know have resulted and will result from that warming.³⁸ [\(#footnote35_m92fxbf\)](#) Impact attribution studies demonstrate with great confidence the likelihood that climate change is leading to increased heat waves, ocean warming, glacier loss, rising sea levels, flood events, droughts, more intense hurricanes, wildfires, and other harmful effects. As the state of climate attribution science grows in certainty, coverage, and detail, it becomes increasingly likely that, to avoid liability under tort law, actors will need to take account of climate change and its impacts in their decisions and actions. Climate change will expand the scope of reasonably foreseeable risks.

For instance, in the wake of the deadly collapse of a 12-story condominium building near Miami Beach in 2021, investigators and regulators focused on the potential role of climate change in making such disasters more likely. Sea-level rise, saltwater intrusion, flooding, and extreme weather combine to stress the structural integrity of coastal buildings. Under standard principles of premises liability, property owners owe a duty of care to invitees and licensees that includes guarding against hazardous conditions that the owner could discover through reasonably careful investigation. Though case law has yet to develop on this point, such investigation at present arguably includes consideration of how the present and foreseeable impacts of climate change threaten the safety of properties. In 2016, Miami-Dade County commissioned a comprehensive assessment of flooding and saltwater intrusion risks posed by anticipated sea-level rise, concluding that many billions of dollars' worth of property were vulnerable to loss under current projections.³⁹ [\(#footnote36_imu4gmp\)](#) To fulfill a standard of reasonable care, owners and operators might need to evaluate whether to reinforce, modify, or abandon their properties before disaster strikes.

In addition to premises liability, one can easily imagine the law of professional malpractice evolving to include consideration of climate-related risks as a routine aspect of exercising professional judgment. For instance, a lawsuit currently pending against Exxon challenges the

company *not* for its direct contributions to climate change, but for failing to comply with “good engineering practices” under the Clean Water Act.⁴⁰ [\(#footnote37_7e6020l\)](#) The plaintiff, Conservation Law Foundation, alleges Exxon failed to consider climate change impacts in its stormwater pollution prevention plan for the company’s petroleum storage and distribution terminal in Everett, Massachusetts, despite having taken steps to secure other company-owned property such as offshore drilling equipment in light of anticipated climate impacts. As a result of this dual standard within Exxon, the lawsuit alleges, the Everett terminal is vulnerable to climate-related flooding and toxic chemical releases that will harm surrounding poor and minority neighborhoods.

Such “failure-to-adapt”⁴¹ [\(#footnote38_0wmabq2\)](#) claims could also begin to be made under tort law against engineers, architects, planners, and others whose professional expertise concerns the built environment. Notably, it would not be a defense in any such malpractice action that the defendant relied on building codes, floodplain maps, or other official records that have not been updated to take account of present and projected impacts of climate change. In 2014, for instance, an Illinois insurance company filed suit against several municipalities arguing that the municipality’s failure to consider foreseeable climate-related heavy precipitation events in their stormwater management plans led to excess flooding payouts owed to the company’s policyholders.⁴² [\(#footnote39_yhh9ng1\)](#) The inadequacy of historical data such as rainfall records as a basis for future planning is now widely understood. Indeed, state and local governments are struggling mightily with the challenge of updating their infrastructure to ensure climate resiliency while having recourse only to government climate and weather records that are not only purely retrospective in orientation, but also in some cases decades out of date.

Lawyers, accountants, investment managers, and other financial professionals might also begin to incur liability for failing to incorporate climate impacts into their relevant areas of professional judgment. An intriguing example comes from Australia, where a worker sued his pension fund, arguing that the fund’s managers failed to provide information about and prudently guard against threats posed by climate change to the long-term value of the fund’s investments.⁴³ [\(#footnote40_t8c1p9p\)](#) The fund settled by adopting new climate risk disclosure practices, committing to a net zero emissions target by the year 2050 for its portfolio, and agreeing in a statement that “[c]limate change is a material, direct and current financial risk to the . . . fund across many risk categories, including investment, market, reputational, strategic, governance and third-party risks.”⁴⁴ [\(#footnote41_z4fph8d\)](#) As regulators and institutional investors around the world move toward a regime of more formalized and extensive climate change risk disclosure obligations for companies, the role of litigation in policing the adequacy and veracity of such disclosures will become significant. Companies—and, in some cases, their professional advisors—may face liability to investors, consumers, and others who rely on inadequate or misleading climate risk disclosures.

Premises liability and professional malpractice are but two examples of a broader phenomenon: The manner in which courts assess all tort duties will potentially be impacted by the fact that we live in an era of elevated risk due to climate change. Learned Hand famously conceptualized the duty of care in negligence law as a function of three variables: “if the probability be called P; the injury L; and the burden, B; liability depends upon whether B

is less than L multiplied by P: i.e., whether B [is] less than PL.”⁴⁵ In many areas of relevance to tort law, climate change is raising both the probability of an adverse event (P) and the magnitude of harm if the event occurs (L). For instance, consider the problem of wildfires in the American West, which have increased significantly in scale and duration, due in large part to climate-related impacts such as heat, drought, and lightning increases. As a result, both the P and the L associated with activities that might lead to fire outbreaks have increased, leading to a larger set of “burdens” (B) that defendants arguably must incur to avoid having their conduct deemed negligent.

Indeed, it is possible to imagine climate impacts shifting the risk level (PL) associated with an activity so significantly that the activity becomes seen as “abnormally dangerous,” and therefore appropriately subjected to a standard of strict liability rather than negligence. The Restatement (Third) of Torts: Physical & Emotional Harm provides in §20(b) that an abnormally dangerous activity exists when:

1. the activity creates a foreseeable and highly significant risk of physical harm even when reasonable care is exercised by all actors; and
2. the activity is not one of common usage.

Returning to the wildfire example, one might ask what kinds of activities might come to be seen as abnormally dangerous in the future, given the significant fire risk they pose even when reasonable care is undertaken. Fireworks displays, for instance, are not typically subjected to strict liability at present given the assumption that they can be undertaken safely through reasonable care.⁴⁶ Might that assumption change in the future, at least for states heavily threatened by wildfires? What about campfires and cigarette smoking, which may have been in “common usage” at one point in such areas but have become increasingly shunned as unnecessary fire hazards?

The point is not to answer such questions at present, but to begin to locate them on the horizon and to consider them as examples of a wider dawning of climate change awareness that will impact tort law in coming decades. Whatever may become of the high-profile climate liability suits that seek to hold fossil fuel companies or governments responsible for causing climate change, the pervasiveness of climate impacts will ensure that the tort system must grapple with how to adapt individual duties of care in a world of collective recklessness.

IV. Event Attribution

Of particular challenge in tort law’s reckoning with climate change will be events of vast destructive scope.⁴⁷ On the one hand, climate modeling is becoming ever more precise and rapid, allowing scientists to conclude extreme event attribution analyses within days of a potentially climate-related event’s occurrence.⁴⁸ For instance, when severe flooding struck Western Europe in the summer of 2021, scientists working in the World Weather Attribution network were able to quickly estimate that anthropogenic climate change made the event 1.2 to 9 times more likely to have occurred.⁴⁹

[\(#footnote46_h6wzr6u\)](#) More dramatically, extreme heat events in Siberia during 2020 and the Pacific Northwest of the United States and Canada were found by scientists to have been virtually impossible without the influence of human-caused climate change.⁵⁰ [\(#footnote47_dceyq19\)](#) Given tort law's preponderance of the evidence causation standard—which asks whether challenged conduct was more likely than not to have caused a harm—such scientific attribution analyses are almost tailor-made to support legal attribution of an extreme event to anthropogenic climate change.

➡ On the other hand, such analyses leave in place the source attribution problem discussed above in Part II, for they only identify “humanity” as the causal agent behind an extreme climate-related event, rather than some legally accountable sub-group of humanity. Even where an individual defendant is identifiable as the causal culprit behind an event of mass loss, tort law has been reluctant to hold defendants responsible for the outsized consequences of their shortcomings.

A prominent example is the case of *Strauss v. Belle Realty Co.*,⁵¹ [\(#footnote48_4nyjlhf\)](#) which arose from a massive electricity blackout suffered by New York City in the summer of 1977. After a lightning bolt struck a Consolidated Edison (ConEdison) transmission tower, a damaged relay prevented the affected line from re-opening, thus choking off one of the largest conduits to New York City.⁵² [\(#footnote49_4ja9boq\)](#) The faulty relay was followed by a series of faulty responses on the part of ConEdison, ultimately resulting in a two-day blackout that inflicted massive harm on New York City and its residents. Among those injured was 77-year-old Julius Strauss who ran out of water in his apartment building in Queens, which was supplied by an electric pump.⁵³ [\(#footnote50_2ltqi0o\)](#) Strauss fell and sustained severe injuries as he attempted to descend an unlit stairwell to fetch water from the basement of his building. Strauss brought suit against his landlord and ConEdison. Although straightforward on its face, Strauss's lawsuit seemed to rattle the New York Court of Appeals. Since earlier litigation had established ConEdison's negligence,⁵⁴ [\(#footnote51_d09jfbj\)](#) the court in *Strauss* had only to decide the extent of the utility's liability. In a remarkably candid opinion, the Court of Appeals dismissed the complaint “[o]n public policy grounds.”⁵⁵ [\(#footnote52_ocy1h9w\)](#) That is, in the face of “liability which could obviously be enormous,” the court made a decision not “strictly governed by tort or contract law principles.”⁵⁶ [\(#footnote53_4be2p92\)](#) What exactly did the judges of the Court of Appeals fear? A dissenter pointed out that ConEdison could easily distribute any costs among its consumers in the form of higher rates.⁵⁷ [\(#footnote54_457yd8h\)](#) In response, the majority alluded only vaguely to “the societal consequences of rampant liability.”⁵⁸ [\(#footnote55_yrqsfaz\)](#)

Turnabout is fair play, as the saying goes, and ConEdison received its due nearly a quarter century later when disaster again struck New York City. Seeking to recover damages for its electricity substation which was destroyed after the 7 World Trade Center building collapsed during the 9/11 tragedy, ConEdison alleged that the building had been negligently designed because applicable safety codes dictated that such structures should be able to withstand uncontrolled burning without collapse.⁵⁹ [\(#footnote56_xbyt9k6\)](#) The appellate panel, however, fixated on the fact that the particular fires at issue on 9/11 had been caused by an unprecedented terrorist attack on the nearby Twin Towers. Indeed, the court likened the events to a “a fire triggered by a nuclear attack on lower Manhattan,” clearly implying that

ordinary rules of negligence liability would be suspended in such an event.⁶⁰ (#footnote57_ca0t1tu) Although formally holding that ConEdison's claim failed "to raise a genuine issue of fact as to whether defendants' negligence was the cause-in-fact of Con Ed's injury,"⁶¹ (#footnote58_jl7qk35) the majority's decision appears to have been driven primarily by a sense that tort law was usurped by "the unprecedented etiology and severity of the cataclysm that engulfed lower Manhattan on September 11, 2001."⁶² (#footnote59_y7t1qst)

Judicial hesitancy in the face of such massive, unimaginable events is understandable. But climate change raises the prospect of catastrophe that becomes *routinized* and therefore in need of being incorporated into the ordinary operations of law. Eighteen of the 20 largest wildfires recorded in California history have happened in the most recent two decades, with nine happening in the most recent two years.⁶³ (#footnote60_5jnrifu) Each of the previous seven years have established new records for ocean temperature,⁶⁴ (#footnote61_eynia89) a critical reason why hurricanes are increasing in intensity and impact.⁶⁵ (#footnote62_2z8apu3) In 2017, Hurricane Harvey dropped as much as 60 inches of rain on Houston, causing damage to more than 200,000 homes and \$125 billion in total losses.⁶⁶ (#footnote63_y10gjby) ⁶⁷ (#footnote64_rpwhlwl) In 2021, at least 50 people died when the remnants of Hurricane Ida overwhelmed urban stormwater drainage systems in the Northeast. According to the National Oceanic and Atmospheric Administration, the United States in 2021 experienced 20 separate billion-dollar climate and weather disasters, second only in number to the record-setting year of 2020. Reflecting on historical trends, the agency noted that "[i]t is concerning that 2021 was another year in a series of years where we had a high frequency, a high cost, and large diversity of extreme events that affect people's lives and livelihoods—concerning because it hints that the extremely high activity of recent years is becoming the new normal."⁶⁸ (#footnote65_d9p3inq)

Negligence attends such tragedies, even if the role of climate change seems to overwhelm individual human agency. In Houston, for instance, city planners relied on rainfall records that were two decades old prior to Hurricane Harvey, despite clear awareness that urban flooding events had been rising for years.⁶⁹ (#footnote66_7dsupof) Tort law typically requires defendants to take reasonable actions based on reasonably attainable information in order to avoid liability. Yet, even when defendants do behave unreasonably in ways that cause or contribute to harm, other doctrines may serve to limit their exposure to liability, especially in the case of massive harm (Box 2).

Box 2: After the Storm: Post-Katrina Attempts to Attribute Responsibility for Loss

Two cases arising from the 2005 aftermath of Hurricane Katrina illustrate how climate-related tort law claims may fail, despite defendants' presumed contributions to harm.

- **Barasich v. Columbia Gulf Transmission Co.**, 467 F. Supp. 2d 676 (E.D. La. 2006): Residents of southern Louisiana sought damages for personal injury and property loss, alleging that the defendant corporations had destroyed millions of acres of marshland through their dredging and drilling operations, thus decimating a crucial protective barrier against storm surge. The court held that the plaintiffs failed to state a claim of

negligence under Louisiana law. The court proffered multiple reasons for its decision, all of which focused on notions of proximity. For instance, it narrowly construed the principle that trespass liability lies only among “neighbors” in Louisiana, viewing the plaintiffs as distant strangers to the defendants, whose activities had nevertheless powerfully shaped the entire coastal environment of the Gulf. Likewise, in fixing the orbit of duty for purposes of negligence, the court emphasized that the defendants “were physically and proximately remote from plaintiffs or their property.” *Barasich*, 467 F.2d at 693.

- **In re Katrina Canal Breaches Litig.**, 696 F.3d 436 (5th Cir. 2012): Plaintiffs sued the U.S. Army Corps of Engineers for negligently constructing and maintaining the Mississippi River-Gulf Outlet (“MR-GO”) canal, which “greatly aggravated the storm’s effects on the city and its environs.” *Katrina Canal Breaches*, 696 F.3d at 441. As one might expect, the case turned on the question of sovereign immunity. The Flood Control Act of 1928 had immunized the federal government from liability for most flood damages in order to promote levee construction. That court held that, although the Flood Control Act did not bar recovery, the Corps was separately immunized by the discretionary-function exception to the Federal Tort Claims Act. The Corps built New Orleans’ defenses to protect against a “standard project hurricane” that severely understated the actual risk facing the city. Yet, from the perspective of tort law and the sovereign’s prerogative to maintain its immunity, this history of arguable negligence creates no binding duty.

In each of the cases examined in this part, plausible paths of reasoning were available to the deciding judges that would have enabled tort law to continue to apply, notwithstanding the intimidating factual backdrop of catastrophe. Looking forward, there will be judicial opportunities to engage tort law’s norm-articulating function, as the problems associated with climate change are driven in substantial part by an absence of shared norms of responsibility over the stewardship of global commons like the atmosphere. Put plainly, the world’s greatest collective action problem stems from the assumption that no law, policy, or principle prevents the dumping of waste into the sky. Now, as the sky has begun striking back, we face a similar normative vacuum when addressing responsibility for the suffering induced by climate disasters. Confronted by that vacuum, tort law could—as it has for centuries in the Anglo-American legal tradition—play a role in the development and enunciation of norms of responsibility. The role need not be decisive, and legislatures can always choose to revise or repeal common-law pronouncements within constitutional limitations.⁷⁰ But, given the scope and scale of the problem, active judicial engagement with the challenge of developing norms of responsibility in the climate change space will become increasingly called for.

V. Conclusion

Even in the most optimistic scenario of climate change mitigation, we are destined—for at least the next three decades and likely much longer—to have continued warming with accompanying, mostly negative, impacts. Climate attribution science plays an important role in the question of who bears responsibility. This question will remain contested and is unlikely to be met with definitive judicial resolution in the United States. But our duties of care and regard for one another in an era of routine, predictable, and extreme harm will necessarily evolve. Whether by choice or by necessity, we will become accustomed to judging care in a reckless world.

[NEXT MODULE >>](#)

Government Action and Climate Science

[\(/curriculum/government-action-and-climate-science\)](/curriculum/government-action-and-climate-science)[<< PREVIOUS MODULE](#)

Overview of European Climate Litigation

[\(/curriculum/overview-european-climate-litigation\)](/curriculum/overview-european-climate-litigation)

NOTES

1. (#f
ootn
otere
f1_pf
sznn

- q) For a detailed discussion of recent innovations in modeling and attribution science, please refer to the module on **Drawing the Causal Chain** (<https://cjp.eli.org/curriculum/drawing-causal-chain-detection-and-attribution-climate-change>). The present chapter is focused on the potential tort litigation impacts of scientific advancements rather than extensive discussion of the advancements themselves.

2. (#
footn
otere
f2_5h
leec

- 3) Intergovernmental Panel on Climate Change, *Climate Change 2021: Summary for Policymakers* 4 (2021) (emphasis added).

3. (#

footn

otere

f3_oa

kyx2

- f) For a more comprehensive treatment of the interface between law and climate change attribution science, see Michael Burger et al., *The Law and Science of Climate Change Attribution*, 45 Colum. J. Env't L. 57 (2020).

4. (#

footn

otere

f1_3d

qo32

- m) Compl., City of Imperial Beach v. Chevron Corp., No. C17-01227 (Cal. Super. Ct. July 17, 2017); Compl., Cnty. of Marin v. Chevron Corp., No. CIV1702586 (Cal. Super. Ct. July 17, 2017); Compl., Cnty. of San Mateo v. Chevron Corp., No. 17CIV03222 (Cal. Super. Ct. July 17, 2017); Compl., Cnty. of Santa Cruz v. Chevron Corp., No. 17CV03242 (Cal. Super. Ct. July 17, 2017).

5. (#

footn

otere

f2_aa

- f3rye) Compl., Pac. Coast Fed'n of Fishermen's Ass'ns, Inc. v. Chevron Corp., No. CGC-18-571285 (Cal. Super. Ct. Nov. 14, 2018).

6. (#

footn

otere

f3_i1

k8pw

- 3) The quoted phrase comes from *Juliana v. United States*, 947 F.3d 1159, 1165 (2020), a case in which plaintiffs seek to establish the right as a matter of federal constitutional law.

7. (#f

ootn

otere

f4_as

rkiw

- 8) Am. Elec. Power Co. v. Connecticut, 564 U.S. 410 (2011). Also relevant is *Native Vill. of Kivalina v. ExxonMobil Corp.*, 663 F. Supp. 2d 863 (N.D. Cal. 2009), *aff'd*, 696 F.3d 849 (9th Cir. 2012) (holding that the Clean Air Act displaces a federal common law suit for damages as well as injunctive relief of the kind sought in *American Electric Power*). A third case had been dismissed earlier on the grounds that plaintiffs lacked standing and that their claims presented non-justiciable political questions. *Comer v. Murphy Oil USA, Inc.*, No. 1:05CV436(LG)(RHW), 2007 WL 6942285 (S.D. Miss. Aug. 30, 2007), *rev'd*, 585 F.3d 855 (5th Cir. 2009), *vacated and reh'g en banc granted*, 598 F.3d 208 (5th Cir. 2010), *appeal dismissed*, 607 F.3d 1049 (5th Cir. 2010) (declining to reinstate the panel opinion). A fourth also was dismissed on political question grounds. *California v. Gen. Motors Corp.*, No. C06-05755 MJJ, 2007 WL 2726871 (N.D. Cal. Sept. 17, 2007).

8. (#

footn

otere

f5_4s

x4c4

- 0) *E.g.*, Neela Banerjee et al., Inside Climate News, Exxon: The Road Not Taken (2015).

9. (#

footn

otere

f6_8y

hixsa) Rupert F. Stuart-Smith et al., *Filling the Evidentiary Gap in Climate Litigation*, 11 *Nature Climate Change* 651 (2021); Geetanjali Ganguly, Joana Setzer & Veerle Heyvaert, *If at First You Don't Succeed: Suing Corporations for Climate Change*, 38 *Oxford J. Legal Stud.* 841 (2018). For instance, source attribution studies can aid plaintiffs with respect to standing analysis, such as by helping to show that a litigant's alleged injuries are "fairly traceable" to the actions of defendants. See, e.g., *Connecticut v. American Electric Power*, 582 F.3d 309, 345-347 (2d Cir. 2009), *overruled on other grounds*. For more in-depth discussion of standing analysis, see the **Climate Litigation Overview** (<https://cjp.eli.org/curriculum/overview-climate-litigation>) and **Procedural Techniques** (<https://cjp.eli.org/curriculum/procedural-techniques-available-climate-litigation>) modules.

10.

(#foo

tnote

ref7_

hdzg

2q4) Federal appellate courts have broad jurisdiction to review district court denials of removal orders. *BP P.L.C. v. Mayor and City Council of Balt.*, 141 S. Ct. 1532 (2021) (holding that when appellate federal courts have proper jurisdiction to review denial of a removal order under the limited grounds of 28 U.S.C. §1447(d) they can review all grounds listed for denying removal in a district court's order). Appellate courts may of course still deny removal. *Bd. of Cnty. Comm'rs of Boulder Cnty. v. Suncor Energy (U.S.A.) Inc.*, 2022 WL 363986 (10th Cir. 2022) (affirming denial of the fossil fuel defendants' removal attempt on all grounds asserted).

11.

(#foo

tnote

ref8_

do2

mjfo) See, e.g., *Juliana*, 947 F.3d. at 1169-75.

12.

(#foo

tnote

ref9_

u7o1t

uu) 993 F.3d 81 (2d Cir. 2021).

13.

(#foo

tnote

ref10

_uqjy

fq5) *Id.* at 85-86.

14.

(#foo

tnote

ref11

_ld0s

Ogg) *Id.* at 91.

15.

(#foo

tnote

ref12

_u0w

rh91) Benjamin Ewing & Douglas A. Kysar, *Prods and Pleas: Limited Government in an Era of Unlimited Harm*, 121 Yale L.J. 350 (2011).

16.

(#foo

tnote

ref13

_e9s

ajo3) Douglas A Kysar, *What Climate Change Can Do About Tort Law*, 41 Env't L. 1 (2011).

17.

(#foo

tnote

ref14

_i3oz

2ey) Lee A. Albert, *Standing to Challenge Administrative Action: An Inadequate Surrogate for Claim for Relief*, 83 Yale L.J. 441 (1974). Lee Albert writes, "[O]ne cannot transform substantive rules of law, elements of a cause of action, into procedural or preliminary principles of access to a court. The natural common law method simply reveals that rules of standing are an integral part of a claim for relief."

18.

(#foo

tnote

ref15

_km1

uszp) North Carolina ex rel. Cooper v. Tenn. Valley Auth., 615 F.3d 291, 302 (4th Cir. 2010). Also relevant are *New Eng. Legal Found. v. Costle*, 666 F.2d 30, 33 (2d Cir. 1981) ("Courts traditionally have been reluctant to enjoin as a public nuisance activities which have been considered and specifically authorized by the government."); and Restatement (Second) of Torts §821B cmt. f. ("Although it would be a nuisance at common law, conduct that is fully authorized by statute, ordinance or administrative regulation does not subject the actor to tort liability.").

19.

(#foo

tnote

ref16

_rg7e

5kj) *E.g., Carbon Majors*, Climate Accountability Inst., <https://climateaccountability.org/carbon-majors/> (https://climateaccountability.org/carbon-majors/) (last visited Nov. 30, 2022).

20.

(#foo

tnote

ref17

_gjlk

pi6) Richard Heede, *Tracing Anthropogenic Carbon Dioxide and Methane Emissions to Fossil Fuel and Cement Producers, 1854-2010*, 122 Climatic Change 229 (2014).

21.

(#foo

tnote

ref18

_nflux

y2o) Rachel Licker et al., *Attributing Ocean Acidification to Major Carbon Producers*, 14 Env't Rsch. Letters 124060 (2019); see also Brenda Ekwurzel et al., *The Rise in Global Atmospheric CO₂, Surface Temperature, and Sea Level From Emissions Traced to Major Carbon Producers*, 144 Climatic Change 579 (2017).



22.

(#foo

tnote

ref19

_ixda

sjt) *Emissions Impossible*, Inst. for Agric. and Trade Pol'y Figure 5 (July 18, 2018), <https://www.iatp.org/emissions-impossible>  (<https://www.iatp.org/emissions-impossible>) .

23.

(#foo

tnote

ref20

_xgf8

i8y) Restatement (Second) of Torts §840E (1965) (stating with respect to both private and public nuisance that "the fact that other persons contribute to a nuisance is not a bar to the defendant's liability for his own contribution").

24.

(#foo

tnote

ref21

_eou

89nk) Restatement (Second) of Torts §875 (1965) ("[E]ach of two or more persons whose tortious conduct is a legal cause of a single and indivisible harm to the injured party is subject to liability to the injured party for the entire harm."); *id.* at §433B(2) ("Where the tortious conduct of two or more actors has combined to bring about harm to the plaintiff, and one or more of the actors seeks to limit his liability on the ground that the harm is capable of apportionment among them, the burden of proof as to the apportionment is upon each such actor.").

25.

(#foo

tnote

ref22

_jb92

cdi) *State v. Exxon Mobil Corp.*, 126 A.3d 266 (N.H. 2015); *Suffolk Cnty. Water Auth. v. Dow Chemical Co.*, 44 Misc. 3d 569, 987 N.Y.S.2d 819 (Sup. Ct. 2014); *In re Methyl Tertiary Butyl Ether (MTBE)*, 175 F. Supp. 2d 593 (S.D.N.Y. 2001).

26.

(#foo

tnote

ref23

_r9q

glp1) This approach is being taken by a Peruvian farmer who has sued a German electric utility seeking proportionate damages due to the utility's contribution to climate change and the melting of glaciers in the Andes which will harm the farmer and his town. *Lliuya v. RWE AG, VG Essen*

15.12.2016 (2 O 285/15) (Germany). See also Burger et al., *The Law and Science of Climate Attribution*, *supra* note 3, at 238–39, discussing market share and related proportionate liability approaches in the context of climate change attribution science.

27.

(#foo

tnote

ref24

_e9lj

c4i) Stuart-Smith et al., *Filling the Evidentiary Gap in Climate Litigation*, *supra* note 9.



28.

(#foo

tnote

ref25

_98c

fbs8) Burger et al., *The Law and Science of Climate Attribution*, *supra* note 3, at 76.

29.

(#foo

tnote

ref26

_342

1302) See, e.g., Friederike E.L. Otto et al., *Assigning Historic Responsibility for Extreme Weather Events*, 7 Nature Climate Change 757 (2017) (disaggregating historical responsibility for an extreme climate event by national and regional governments, rather than companies).

30.

(#foo

tnote

ref27

_m19

ykg4) 993 F.3d at 86; see also Native Vill. of Kivalina v. ExxonMobil Corp., 663 F. Supp. 2d 863, 876–77 (N.D. Cal. 2009), *aff'd*, 696 F.3d 849 (9th Cir. 2012).

31.

(#foo

tnote

ref28

_twal

dmk) Burger et al., *The Law and Science of Climate Attribution*, *supra* note 3, at 133–34.

32.

(#foo

tnote

ref29

_e2u

nub

u) David Hunter & James Salzman, *Negligence in the Air: The Duty of Care in Climate Change Litigation*, 155 U. PA. L. Rev. 1741 (2007).

33.

(#foo

tnote

ref30

_z6jc

n51) People by James v. Exxon Mobil Corp., 119 N.Y.S.3d 829 (N.Y. Sup. 2019) (determining that the New York State Attorney General failed to show by a preponderance of the evidence that defendant

Exxon Mobil had materially misled investors with regard to the company's climate change risks and disclosures). It bears noting that plaintiffs in investor or consumer fraud litigation still would need to demonstrate a causal link between defendant's alleged misconduct and a harm suffered by the plaintiffs. In most cases, this harm would take the form of economic loss occasioned by the fraud (e.g., a price premium paid for a product with misrepresented environmental attributes, a stock loss following revelation of deceptively concealed company climate risk) rather than harm from climate change impacts directly.

34.

(#foo

tnote

ref31

_4r8

bj5w) Bd. of Cty. Comm'rs of Boulder Cty. v. Suncor Energy (U.S.A.) Inc., 2022 WL 363986 (10th Cir. 2022).

35.

(#foo

tnote

ref32

_egh

wzhf) U.S. Environmental Protection Agency, *Superfund Liability* (last updated July 25, 2022), <https://www.epa.gov/enforcement/superfund-liability> (https://www.epa.gov/enforcement/superfund-liability) .

36.

(#foo

tnote

ref33

_pq0

zpn) *Juliana*, 947 F.3d at 1165.

37.

(#foo

tnote

ref34

_fnd

8oja) City & Cnty. of Honolulu and BWS v. Sunoco, LP et al., Civ. No. 1CCV-20-0000380 (Haw. 1st Cir. Ct. Feb. 22, 2022), Ruling on Defendants' Motion to Dismiss for Failure to State a Claim (motion filed 6/2/21; Dkt. 347).

38.

(#foo

tnote

ref35

_m92

fxbf) Intergovernmental Panel on Climate Change, *Climate Change 2021: The Physical Science Basis* (2021), <https://www.ipcc.ch/report/ar6/wg1/> (https://www.ipcc.ch/report/ar6/wg1/) .

39.

(#foo

tnote

ref36

_imu

4gm

p) Miami-Dade Cnty., Report on Flooding and Salt Water Intrusion: Final Report for Resolution R-48-15 in Support of the Sea Level Rise Task Force Final Recommendations (2016), <https://www.miamidade.gov/green/library/sea-level-rise-flooding-saltwater-intrusion.pdf> (https://www.miamidade.gov/green/library/sea-level-rise-flooding-saltwater-intrusion.pdf) .

40.

(#foo

tnote

ref37

_7e6

020l) Conservation Law Found., Inc. v. Exxon Mobil Corporation, 578 F. Supp. 3d 119 (D. Mass. 2021) (refusing to dismiss suit on standing or mootness grounds).

41.

(#foo

tnote

ref38

_0w

mabq

2) Burger et al., *The Law and Science of Climate Attribution*, *supra* note 3, at 216.

42.

(#foo

tnote

ref39

_yhh

9ng1) Illinois Farmers Ins. Co. v. Metro. Water Reclamation Dist. of Greater Chi., No. 14-CV-03251 (N.D. Ill. 2014); Illinois Farmers Ins. Co. v. Cnty. of Lake, No. 14L281 (Ill. Cir. Ct. 2014); Illinois Farmers Ins. Co. v. Cnty. of McHenry, No. 2014LA116 (Ill. Cir. Ct., 2014); Illinois Farmers Ins. Co. v. Cnty. of Will, No. 14L00314 (Ill. Cir. Ct. 2014); Illinois Farmers Ins. Co. v. Cnty. of DuPage, No. 2014L00385 (Ill. Cir. Ct. 2014).

43.

(#foo

tnote

ref40

_t8c1

p9p) McVeigh v. Retail Employees Superannuation Trust [2019] FCA 14 (17 January 2019) (AustL).

44.

(#foo

tnote

ref41

_z4fp

h8d) The settlement agreement resulted in a public statement from the fund. Press Release, Rest, Statement from Rest (Nov. 2, 2020), <https://climatecasechart.com/non-us-case/mcveigh-v-retail-employees-superannuation-trust/>  (https://climatecasechart.com/wp-content/uploads/non-us-case-documents/2020/20201102_NSD13332018_settlement-agreement.pdf) .

45.

(#foo

tnote

ref42

_9ea

whw

s) United States v. Carroll Towing Co., 159 F.2d 169, 173 (2d Cir. 1947).

46.

(#foo

tnote

ref43

_k1p

q46f) See, e.g., *Toms v. Calvary Assembly of God, Inc.*, 132 A.3d 866 (Md. 2016).

47.

(#foo

tnote



ref44

_c02i

dsz) Portions of this part draw from R. Henry Weaver & Douglas A. Kysar, *Courting Disaster: Climate Change and the Adjudication of Catastrophe*, 93 Notre Dame L. Rev. 295 (2017).

48.

(#foo

tnote

ref45

_7s1f

hd5) Isabelle Gerretsen, *Timeline: How the Science Linking Climate Change to Extreme Weather Took Off*, Climate Home News (Apr. 8, 2021), <https://www.climatechangenews.com/2021/08/04/timeline-science-linking-climate-change-extreme-weather-took-off/>  (<https://www.climatechangenews.com/2021/08/04/timeline-science-linking-climate-change-extreme-weather-took-off/>) .

49.

(#foo

tnote

ref46

_h6w

zr6u) Frank Kreienkamp et al., *World Weather Attribution, Rapid Attribution of Heavy Rainfall Events Leading to the Severe Flooding in Western Europe During July 2021 2* (2021).

50.

(#foo

tnote

ref47

_dce

yq19) Quirin Schiermeier, *Climate Change Made North America's Deadly Heatwave 150 Times More Likely*, Nature (July 8, 2021), <https://doi.org/10.1038/d41586-021-01869-0>  (<https://doi.org/10.1038/d41586-021-01869-0>) ; Andrew Ciavarella et al., *Prolonged Siberian Heat of 2020 Almost Impossible Without Human Influence*, 166 Climatic Change (2021), <https://doi.org/10.1007/s10584-021-03052-w>,  (<https://doi.org/10.1007/s10584-021-03052-w>)

51.

(#foo

tnote

ref48

_4nyj

lhf) 482 N.E.2d 34, 35 (N.Y. 1985).

52.

(#foo

tnote

ref49

_4ja9

boq) *Id.* at 37.

53.

(#foo

tnote

ref50

_2ltqi

0o) *Id.* at 35.

54.

(#foo

tnote



ref51

_d09j

fzj) Food Pageant, Inc. v. Consolidated Edison Co., 429 N.E.2d 738 (N.Y. 1981); Koch v. Consolidated Edison Co. of New York, 468 N.E.2d 1 (N.Y. 1984).

55.

(#foo

tnote

ref52

_ocy

1h9

w) *Strauss*, 482 N.E.2d at 35.

56.

(#foo

tnote

ref53

_4be

2p92)*Id.* at 35.

57.

(#foo

tnote

ref54

_457

yd8h)*Id.* at 39 (Meyer, J., dissenting).

58.

(#foo

tnote

ref55

_yrqs

faz) *Id.* at 38.

59.

(#foo

tnote

ref56

_xbyt

9k6) Aegis Ins. Servs., Inc. v. 7 World Trade Co., L.P., 737 F.3d 166 (2d Cir. 2013).

60.

(#foo

tnote

ref57

_ca0t

1tu) *Id.* at 179-80.

61.

(#foo

tnote

ref58

_jl7q

k35) *Id.* at 179.

62.

(#foo

tnote

ref59

_y7t1

qst) *Id.* at 180.

63.

(#foo

tnote

ref60

_5jnr

fju) California Department of Forestry and Fire Protection, *Top 20 Largest California Wildfires* (Oct. 24, 2022), https://www.fire.ca.gov/media/4jandlhh/top20_acres.pdf  (https://www.fire.ca.gov/media/4jandlhh/top20_acres.pdf) .

64.

(#foo

tnote

ref61

_eyni

a89) Kisei R. Tanaka & Kyle S. Van Houtan, *The Recent Normalization of Historical Marine Heat Extremes*, 1 PLOS Climate (2022).

65.

(#foo

tnote

ref62

_2z8

apu3) Kerry Emanuel, *Atlantic Tropical Cyclones Downscaled From Climate Reanalyses Show Increasing Activity Over Past 150 Years*, 12 Nature Commc'ns 7027 (2021).

66.

(#foo

tnote

ref63

_y10

gjby) Monique Welch, *Hurricane Harvey by the Numbers: 5 Years Later, See the Storm's Lasting Toll on Houston*, Hous. Chron. (Aug. 23, 2022), <https://www.houstonchronicle.com/news/houston-weather/hurricanes/article/harvey-by-the-numbers-17384825.php#photo-22831555>  (<https://www.houstonchronicle.com/news/houston-weather/hurricanes/article/harvey-by-the-numbers-17384825.php#photo-22831555>) .

67.

(#foo

tnote

ref64

_rpw

hlwl) *Hurricane Ida Death Toll in the U.S. Northeast Rises to at Least 50 Victims*, Reuters (Sept. 5, 2021), <https://www.cnbc.com/2021/09/05/hurricane-ida-death-toll-in-the-us-northeast-rises-to-at-least-50-victims.html>

0-victims.html <https://www.cnn.com/2021/09/05/hurricane-ida-death-toll-in-the-us-northeast-rises-to-at-least-50-victims.html> .

68.

(#foo

tnote

ref65

_d9p

3inq) Adam B. Smith, *2021 U.S. Billion-Dollar Weather and Climate Disasters in Historical Context*, NOAA, <https://www.climate.gov/news-features/blogs/beyond-data/2021-us-billion-dollar-weather-and-climate-disasters-historical> .

69.

(#foo

tnote

ref66

_7ds

upof) U.S. Global Change Research Program, *Climate Science Special Report: NCA4 Volume I* (2017), Chapter 2: Our Changing Climate, Figure 2.6, <https://nca2018.globalchange.gov/chapter/2/> .

70.

(#foo

tnote

ref1_

kyrwf

5p) John C.P. Goldberg, *The Constitutional Status of Tort Law: Due Process and the Right to a Law for the Redress of Wrongs*, 115 Yale L.J. 524 (2005).

^ back to top

CJP

About

About CJP

Our Team

Testimonials

Contact Us

Curriculum

Summary

Meet the Experts

News & Events



Latest News

Upcoming Events

Past Events

Resources

Resource Library

Invite

Search



Environmental Law Institute

1730 M Street, NW
Suite 700
Washington, DC 20036
202-939-3800 tel

< back to eli.org

Copyright © 2026 Environmental Law Institute® Washington, D.C.

Site Map | Copyright and Legal Disclaimer

Exhibit 33

Deposition of Roger Worthington, H. Comm. on the
Judiciary (July 15, 2026)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

COMMITTEE ON THE JUDICIARY,
U.S. HOUSE OF REPRESENTATIVES,
WASHINGTON, D.C.

DEPOSITION OF: ROGER G. WORTHINGTON

Wednesday, July 15, 2026

Washington, D.C.

The deposition in the above matter was held in room 2237, Rayburn House Office Building,
commencing at 10:00 a.m.

Appearances:

For the COMMITTEE ON THE JUDICIARY:

DEPUTY GENERAL COUNSEL

COUNSEL

SENIOR SPECIAL COUNSEL

PROFESSIONAL STAFF MEMBER

DIGITAL DIRECTOR

CHIEF COUNSEL FOR OVERSIGHT

PROFESSIONAL STAFF MEMBER

RESEARCH ASSISTANT

MINORITY LEGAL INTERN

MINORITY COUNSEL

MINORITY OVERSIGHT COUNSEL

MINORITY COUNSEL

MINORITY CHIEF COUNSEL AND SENIOR ADVISOR

MINORITY LEGAL CLERK

MINORITY LEGAL INTERN

1

2

3

4

5 For ROGER G. WORTHINGTON:

6 Andrew D. Herman, Esq.

7 The Law Firm of Andrew D. Herman, PLLC

8 1099 - 14th Street, NW

9 Washington, DC 20005

1 [REDACTED] We'll go on the record.

2 Good morning. This is a deposition of Mr. Roger Worthington.

3 Chairman Jordan has requested this deposition as part of the committee's oversight of the
4 Federal courts and the adequacy of existing safeguards to prevent improper influence on Federal
5 judges.

6 To advance the oversight and inform potential legislation, the committee is examining
7 whether the Environmental Law Institute and its Climate Judiciary Project coordinated with law firms
8 representing plaintiffs in climate change-related litigation while ELI and CJP provided legal training to
9 judges on these topics.

10 On May 15th, 2026, the House Judiciary Committee issued a subpoena for Mr. Worthington
11 to appear at a deposition on June 4th, 2026.

12 After conferring with counsel, and by agreement of the parties, the committee agreed to
13 move the deposition to today, July 15th.

14 I've marked the May 15th, 2026, subpoena as exhibit No. 1.

15 [Worthington Exhibit No. 1
16 was marked for identification.]

17 [REDACTED] On July 8th, the committee noticed today's deposition. I've marked the
18 July 8th notice as exhibit No. 2.

19 [Worthington Exhibit No. 2
20 was marked for identification.]

21 [REDACTED] Would the witness please state your name for the record?

22 The Witness. Roger Worthington.

23 [REDACTED] And I understand that you're represented today by personal counsel.
24 Counsel, can you please state your name for the record?

25 Mr. Herman. Andrew Herman.

1 [REDACTED] My name is [REDACTED] and I'm with Chairman Jordan's staff. I'll now
2 have everyone else from the committee who is here in the room introduce themselves as well.

3 [REDACTED] [REDACTED] with Chairman Jordan's staff.

4 [REDACTED] [REDACTED] with Chairman Jordan's staff.

5 [REDACTED] [REDACTED] with Ranking Member Raskin's staff.

6 [REDACTED] with Ranking Member Raskin's staff.

7 [REDACTED] [REDACTED] with Ranking Member Raskin's staff.

8 [REDACTED] [REDACTED] with Mr. Jordan's staff.

9 [REDACTED] [REDACTED] with Mr. Jordan's staff.

10 [REDACTED] [REDACTED] with Chairman Jordan's staff.

11 [REDACTED] [REDACTED] Ranking Member Raskin's staff.

12 [REDACTED] [REDACTED] Congressman Jordan's staff.

13 [REDACTED] [REDACTED] Chairman Jordan's staff.

14 [REDACTED] I'll now review the ground rules and guidelines that we'll follow during today's
15 deposition.

16 The committee will conduct today's deposition in accordance with the House's regulations for
17 the use of deposition authority, which has been provided to your counsel.

18 Our questioning will proceed in rounds. The majority will ask questions first for 1 hour.
19 Then the minority will have an opportunity to ask questions for an equal period of time if they
20 choose.

21 There will be two staff counsel per side asking the questions. To the extent members have
22 questions for the witness, they will be propounded during their side's respective round.

23 The clock will stop if the witness needs to confer with counsel, when counsel for the witness
24 is speaking, and when members are speaking during the opposite side's round.

25 We'll alternate back and forth until there are no more questions and the deposition is over.

1 We ordinarily take a short break at the end of each hour, but if you would like to take a break
2 apart from that, please just let us know.

3 As you can see, there is an official court reporter taking down everything we say to make a
4 written record, so we ask that you could give verbal responses to our questions.

5 Do you understand?

6 The Witness. Yes.

7 [REDACTED] So the court reporter can take down a clear record, please try and speak clearly
8 so the court reporter can understand and the people at the end of the table can hear you.

9 It is important that we do not talk over one another or interrupt each other if we can help it.
10 That goes for everybody present at today's deposition.

11 As you know, we are also video recording the proceeding here today, and the committee's
12 official videographer will make that video.

13 We want you to answer our questions in a complete and truthful manner. If you do not
14 understand one of our questions or need clarification about what we are seeking, please let us know.

15 If you do not know the answer to a question or do not remember, please tell us what you do
16 know and remember. It is okay to tell us if you learned information from someone else. Just
17 indicate how you came to know the information.

18 If there are things you do not know or cannot remember, just say so, and please inform us
19 who, to the best of your knowledge, might be able to provide a more complete answer to the
20 question.

21 By law, you are required to answer questions from Congress truthfully.

22 Do you understand that?

23 The Witness. Yes.

24 [REDACTED] This also applies to questions posed by congressional staff in a deposition.

25 Do you understand this?

1 The Witness. Yes.

2 [REDACTED] Witnesses that knowingly provide false testimony could be subject to criminal
3 prosecution for perjury. This includes, for example, stating that you do not recall or remember
4 something when, in fact, you do.

5 Do you understand this?

6 The Witness. Yes.

7 [REDACTED] Furthermore, you cannot tell half-truths or exclude information necessary to
8 make statements accurate. You are required to provide all information that would make your
9 response truthful. A deliberate failure to disclose information can constitute a false statement.

10 Do you understand this?

11 The Witness. Yes.

12 [REDACTED] Is there any reason you are unable to provide truthful answers to today's
13 questions?

14 The Witness. No.

15 [REDACTED] The Federal Rules of Evidence, Criminal and Civil Procedure are not applicable
16 for today's deposition. Under the House deposition regulations, a witness' attorney may not
17 instruct a witness to refuse to answer a question except to preserve a privilege. The House
18 recognizes constitutionally based privileges and not necessarily those privileges derived from
19 common law.

20 Finally, I will make note for the members and staff here today that the content of what we
21 discuss here is confidential under the House deposition regulations.

22 Under the rules, the chairman and ranking minority member shall consult before any release
23 of testimony transcripts, including portions thereof. This means it is a violation of House and
24 committee rules to disclose contents of the deposition prior to its official release.

25 For this reason, the marked exhibits that we will use today will remain with the court reporter

1 so that they can go in the official transcript, and any copies of those exhibits will be returned to us
2 when we wrap up.

3 Before we begin the first round of questions, we will afford the minority, the witness, and
4 counsel for the witness the opportunity to offer any preliminary remarks.

5 [REDACTED] We just want to thank the witness for traveling so far to be here today.

6 Mr. Herman. Can I make one inquiry?

7 [REDACTED] Yes.

8 [REDACTED] Will we have an opportunity to review the transcript at the conclusion of this?

9 [REDACTED] Yes. After we get the transcript from the court reporters, I will send you an
10 email, and you can come in to review the transcript.

11 Mr. Herman. Thank you.

12 [REDACTED] Of course.

13 We will have the court reporter swear the witness in now.

14 The Reporter. Will you please raise your right hand to be sworn?

15 Do you promise and declare under penalty of perjury the testimony you are about to give will
16 be the truth, the whole truth, and nothing but the truth?

17 The Witness. I do.

18 The Reporter. Thank you.

19 [REDACTED] Mr. Worthington, I understand that you have an opening statement. Please
20 proceed.

21 The Witness. My name is Roger Worthington. I am one of the attorneys representing
22 Multnomah County in a climate accountability lawsuit that we filed 3 years ago in the county circuit
23 court in Portland, Oregon.

24 The county alleges that the oil and gas defendants, along with trade associations and others,
25 have for decades lied about the dire consequences of using their fossil fuel products, resulting in

1 carbon pollution in and around the State of Oregon that has increased the probability, intensity, and
2 duration of extreme weather events, such as the mass casualty 2021 Pacific Northwest Heat Dome, a
3 rash of devastating wildfires, and a severe drought.

4 These extreme events have cost the county dearly in terms of blood and treasure. We are
5 asking the parties responsible, not the taxpayers, to pay for the damages and fund efforts to prevent
6 and mitigate future catastrophic losses.

7 The defendants in our case have filed numerous motions to dismiss over the past 3 years, as
8 well as an anti-SLAPP motion to strike. They have yet to file an answer in our case.

9 Why has this committee subpoenaed me to appear here today? As I understand it, your
10 overarching objective is the preservation of a fair and impartial judiciary, one that scrupulously
11 follows the rule of law, especially with respect to the admissibility of scientific evidence.

12 The committee is concerned that certain litigants have sought to improperly influence Federal
13 judges with fake or biased climate attribution science in order to serve their own financial interest.
14 I share that concern.

15 Have litigants in climate tort cases sought to influence Federal judges with untested or bogus
16 pseudoscience in an effort to tip the scales of justice? The answer, probably.

17 Which litigants? Well, to fully answer that question, I would offer up three documents that
18 are already before this committee which together, in my view, provide a useful roadmap for getting
19 at the truth.

20 First, please see the letter by Senator Sheldon Whitehouse to Robert Conrad dated May 19th,
21 2026. Senator Sheldon poses a number of questions.

22 First, were fossil fuel litigants responsible for striking the climate chapter from the Federal
23 Judicial Center's Reference Manual on Scientific Evidence? Did they do so not because climate
24 attribution science was invalid but because it could help juries and judges allocate fault among
25 multiple major carbon polluters?

1 Second, have fossil fuel litigants funded and orchestrated junkets and seminars at George
2 Mason University Law School designed unabashedly to influence judges to dismiss or doubt the
3 legitimacy of peer-reviewed empirical science?

4 Second, I would point to the letter from attorney William Pittard to this committee dated
5 May 26th, 2026. Mr. Pittard raises a concern -- shared by this committee -- that litigants have,
6 indeed, sought to use the Environmental Law Institute as a platform to fund, govern, and influence
7 judges on climate science.

8 He posits that several fossil fuel litigants have made substantial donations to the ELI, including
9 Shell, British Petroleum, Chevron, and Koch Industries. Who else have they funded, how much, and
10 for what purpose?

11 Pittard asserts that the ELI has celebrated the donations from 25 law firms who presently
12 represent fossil fuel litigants in pending litigation. How much? Why the donations?

13 Finally, Pittard writes that the ELI's board of directors includes lawyers from Chevron, British
14 Petroleum, and Koch Industries. What is their role? If ELI does pose any sort of threat to the
15 integrity of the judiciary -- and that's a big "if" -- who exactly is financing their agenda and curricula?

16 Third, please see the joint staff report from 2024 entitled "Denial, Disinformation, and
17 Doublespeak: Big Oil's Evolving Efforts to Avoid Accountability for Climate Change," end quote.

18 The report by the Democratic staff of a House and Senate committee details how the fossil
19 fuel industry at first denied the science, then they spread disinformation about what causes global
20 warning, and then through, quote, "an armada of trade associations," end quote, they peddled lies
21 about their resolve to solve the problem by pretending to shift to renewables, deploying fantastical
22 carbon capture technologies that don't exist, and bolstering fossil gas as a, quote, "clean and
23 sustainable," end quote, low-carbon fuel.

24 The staff report noted that just like with big tobacco, Exxon, Chevron, Shell, British Petroleum,
25 and others, quote, "obstructed and delayed the committee's investigation," end quote, in their

1 campaign to reap billions in profits by keeping the United States dependent on their polluting
2 products.

3 I submit that the investigation should start there, and we should ask: What is the fossil fuel
4 industry hiding? And how do we unearth the truth?

5 Just as with tobacco, asbestos, opioids, social media, thalidomide, lead paint, Ford Pinto, and
6 so on, the process of civil discovery, in my view, is the best way to harvest authentic corporate
7 documents and trustworthy testimony under oath.

8 Multnomah County is standing by to share with you what we learn when we learn it.

9 Finally, I would stress that Chevron has, in our case, filed a motion, in our civil tort case, to
10 take my deposition. They accuse me of perpetrating a fraud on the court. Their evidence included
11 the allegation that because my law firm posted on our website a draft of a, quote, "module," end
12 quote, on attribution science, because we posted that, and that module was authored by a renowned
13 physicist at Lawrence Berkeley National Laboratory, which makes him a Federal employee, that by
14 my simple possession and posting of a scientific treatise on our website, that this was in their mind
15 evidence of a nefarious effort to improperly influence our State court judge.

16 I provided in response an affidavit asserting that I had nothing to do with ELI. I didn't even
17 know what the Judicial Project was. I've never sponsored the ELI. I've never been to a meeting.
18 And I never had any opportunity to edit the content of that science module.

19 The judge in our case denied Chevron's highly unusual motion.

20 So, in summary, I look forward to helping this committee ferret out any improper conduct
21 that would threaten our revered judge and jury system and the rule of law.

22 Thank you.

23 [REDACTED] Thank you, Mr. Worthington.

24 The clock now reads 10:16 a.m. I'm going to turn it over to my colleague, [REDACTED] who
25 will start our first hour of questioning.

EXAMINATION

- 1
- 2
- 3 Q You ready, Mr. Worthington?
- 4 A Good morning.
- 5 Q Good morning.
- 6 So could you please state your current occupation?
- 7 A I am an attorney for Worthington & Caron law firm. I am the owner of a brewery and a
- 8 restaurant. And I own a hop breeding and mill company in Willamette Valley, Oregon.
- 9 Q Okay. Is it a restaurant and a brewery or are those two separate businesses?
- 10 A They are the same.
- 11 Q Okay.
- 12 A Worthy Brewing and Restaurant.
- 13 Q All right.
- 14 And so as far as practicing law, how long have you been practicing?
- 15 A I've been practicing law since 1988.
- 16 Q And where were you first licensed?
- 17 A State of Texas.
- 18 Q And when was that? You said 1988?
- 19 A 1988, yes, sir.
- 20 Q Where else are you licensed to practice law?
- 21 A Licensed in Texas, and then licensed in California and licensed in the State of Oregon.
- 22 Q So you still are licensed in Texas?
- 23 A I am no longer licensed in Texas.
- 24 Q Is there an area of law that you specialize in?
- 25 A Toxic torts.

1 Q Toxic torts.

2 When did you -- are you the founding member of Worthington and -- is it Caren, Carin?

3 A Caron.

4 Q Caron?

5 A Yeah.

6 Q Are you the managing partner and founding partner?

7 A I'm the owner.

8 Q Oh, the owner. Okay.

9 And when did you all start Worthington & Caron?

10 A Well, the Worthington law firm I believe began in about 1996. I could be wrong. And
11 then John Caron became a partner. I don't remember exactly when. Maybe 2018 or so. I could
12 be wrong.

13 Q That's all right.

14 And did you start in California, or was it Oregon first?

15 A The Worthington law firm began in Texas.

16 Q Okay.

17 A And then we moved to California in about 1996.

18 Q Did you always practice toxic torts from the beginning of Worthington?

19 A Well, in the beginning, I was offered a job by the attorney general in Texas in the
20 Environmental Protection Division, but then there was a hiring freeze. So I went to work for a local
21 regulatory law firm in Austin, Texas. So the first year and a half or so I was doing environmental
22 law, regulatory law, administrative law.

23 Q Okay.

24 How many attorneys are currently at your law firm practicing?

25 A Two.

1 Q Two? Just you and Mr. Caron?

2 A Correct.

3 Q And so as far as your other business ventures, you said it's Worthy Brewing. Is that it?

4 A That's right.

5 Q And Indie Hops?

6 A Indie Hops.

7 Q And then there's a Worthy Garden Club?

8 A Yes.

9 Q Okay.

10 When did you start those businesses?

11 A Let me think. So starting with Worthy Brewing, I launched that business in 2012.

12 And with Indie Hops, which is an entity in Oregon that breeds aroma hops and contracts with
13 growers in Oregon and Washington, harvests, and then we mill the hop cones into pellets, store
14 them, package them, and then sell. That company I believe we started in 2009.

15 And the Worthy Garden Club, I'm the president of that nonprofit, and I don't exactly
16 remember when Worthy Garden Club incorporated. I'd have to look at that.

17 Q So you're the president. Did you also found it? Is it your nonprofit, essentially?

18 A It's not my nonprofit. I'm the president of it. It's owned by the board of directors.

19 But I think the garden club has been around for at least 10 years. I'd have to check.

20 Q Okay. The "Worthy" in Worthy Garden Club is, obviously, Worthington, right?

21 A It's kind of a play on "Worthy," correct.

22 Q Okay.

23 A On my last name.

24 Q Got it.

25 So where is Worthy Garden Club? Like, where is it located?

1 A It's located in Bend, Oregon, at 495 Northeast Bellevue.

2 Q Okay. And is Worthy Brewing also in Bend?

3 A That's correct.

4 Q And Indie Hops?

5 A Indie Hops is located in Portland, Oregon, and our mill is in a place called Hubbard,
6 Oregon.

7 Q Okay. And do those three entities cover it, outside of Worthington & Caron, as far as
8 your businesses and ventures, or do you have others?

9 A No, that covers it.

10 Q Okay.

11 And so what is your title or role in Worthy Brewing? Are you the CEO? President?

12 A I'm the owner.

13 Q Just the owner?

14 A Yeah.

15 Q How many employees?

16 A Good question. I think in our heyday we had well over 100, 110. I'd have to check
17 now, but approximately 60.

18 Q Okay. So it's quite an operation. Putting out a lot of beer?

19 A Well, we have a lot of fun. We have a lot of banquets, and we have live music. We
20 have an observatory with a research grade telescope. And we do a lot of educational programs for
21 soil regeneration and pollination and that sort of thing.

22 Q Okay. So someone can rent out Worthy Brewing, like, for a wedding or something?

23 A Absolutely.

24 Q Okay. So it's like a venue as well?

25 A Exactly.

1 Q Okay.

2 Do any of your employees, either at Indie Hops or Worthy Brewing or Worthy Garden Club,
3 do they work -- is there any transfer? Does someone work at Worthy Brewing also work at Worthy
4 Garden Club, or are they all separate employees to separate entities? Is there any crossover, I
5 guess is my question.

6 A I guess crossover? My CEO -- excuse me, my chief financial officer of Worthy Brewing
7 is also the treasurer of the Worthy Garden Club, and I believe the CEO of Indie Hops, Jim Solberg, I
8 believe he's on the board of directors at the Worthy Garden Club.

9 Q Okay.

10 A I think that's the crossover that comes to mind.

11 Q What about with Worthington & Caron? Is there any employees that work there that
12 also work at any of the other entities?

13 A Yes. George Stapish (ph) is also the CFO of my law firm.

14 Q Okay. And how many, roughly, how many employees are at the law firm?

15 A Now we have four.

16 Q Okay. And who are they?

17 A Myself, John Caron, George Stapish (ph), and Cindy Adams.

18 Q What does Cindy Adams do?

19 A She's my legal assistant, paralegal.

20 Q Okay.

21 How long has she been with you or with the firm?

22 A I'm going to say 15 years.

23 Q Okay.

24 Are there any -- how many -- and you're going to have to bear with me on this word, I've been
25 practicing all day -- philanthropic groups are you involved with? How many environmental

1 philanthropic groups are you involved with?

2 A I guess you'd have to say, involved? What do you mean?

3 Q On the board of directors, maybe donating money, setting up events. Maybe you
4 personally are -- like, do you -- I guess outside of Worthy Garden, that's the only one that you're the
5 president of, but are there any other groups that you're a part of, like, you're on the board?

6 A With respect to that, being on the board, the answer is I am not on the board of any
7 other nonprofits. I don't -- and I don't -- I'm not an officer in any other nonprofit.

8 [REDACTED] Has your law firm sponsored any events for an environmental philanthropic
9 group?

10 The Witness. Many events.

11 [REDACTED] And can you just give us, like, a sampling of the organizations that you have
12 sponsored events for?

13 The Witness. Well, University of Oregon. Their football team comes out every year.
14 They're a nonprofit. Coach Lanning, I encourage him, in the fine tradition of Oregon sports, being a
15 dual-sport athlete, I encourage him to not only pursue a national championship but also run for
16 governor.

17 So Oregon State has come out. Their athletic program has come out. I have had
18 professors from University of Oregon and Oregon State come to Worthy for events.

19 I don't have a detailed list of nonprofits who have utilized Worthy Brewing's banquet hall, but
20 there are many. Central Oregon LandWatch.

21 I'd have to come up with a list. There are a lot of them.

22 [REDACTED]

23 Q Okay.

24 Do you know if ELI or the Climate Judiciary Project has used any of your facilities for any
25 banquets or anything to that nature?

1 A Do I know if they have?

2 Q Yeah. Have they?

3 A They have not.

4 Q They have not. Okay.

5 A Nor have they asked.

6 Q So you're familiar with the Environmental Law Institute, or ELI?

7 A I am now.

8 Q You are now. Okay.

9 So when did you first learn of ELI?

10 A I guess the first time it came across my mind was in the correspondence I had in 2023
11 with Dr. Michael Wehner. And I say it came across my mind, but it never really registered until
12 there was a motion filed by Chevron in the lawsuit that addressed who ELI was and what the Climate
13 Judicial Project was. So originally I did see the words ELI in, approximately, March of 2023.

14 Q And so in what context?

15 A The context was I was, as an attorney, conducting due diligence on the science behind
16 climate change. Portland, Oregon, had just endured a mass casualty heat dome, and we were
17 investigating whether the heat dome and the wildfire smoke and drought was causally connected to
18 atmospheric concentrations of carbon pollution.

19 And so in answering the question is there a connection between extreme weather events and
20 carbon pollution, I reached out to the author of a study by Dr. Sjoukje Philip who wrote a
21 peer-reviewed article, published, that basically said that the 2021 heat dome was virtually impossible
22 absent the influence of carbon pollution.

23 I emailed him asking if he would be willing to talk to me about his report. He responded
24 that he would not be able to do so. I think he was in a foreign country, by the way. And then I
25 asked him via email, well, is there any other co-authors on your study who might be available to

1 discuss climate attribution science with me? And he said sure, and he gave me the name of Michael
2 Wehner.

3 Within hours of that email communication, Michael Wehner sent me an email which attached
4 the module, he called it, regarding the causal chain between emissions and extreme events.

5 Q Okay.

6 And then at that point, he brought up ELI somehow?

7 A Right. He said words to the effect that he -- that this module might help you
8 understand the science of climate change. And he did mention it was for the Environmental Law
9 Institute.

10 Q Okay. And that was March 2023, correct?

11 A That's correct.

12 Q Okay.

13 So you said that you haven't participated in any ELI-sponsored judicial training events.
14 That's correct?

15 A That is correct.

16 Q Has any of your employees at your law firm participated in any judicial events through
17 ELI or CJP?

18 A Negative.

19 Q Negative.

20 What about employees at your other businesses? Have they been involved?

21 A No.

22 Q No. Okay.

23 [REDACTED] Go ahead.

24 [REDACTED] In your correspondence regarding the module that may have been helpful that
25 was created for ELI, you had referenced a module that was posted on your website in your opening

1 statement. Is that the same module or a different module?

2 The Witness. The module that I posted on my website was the very same one that
3 Dr. Wehner emailed me from March of 2023.

4 [REDACTED] Okay.

5 [REDACTED]
6 Q Okay. So just outside of ELI, have you, like -- not affiliated with ELI -- have you
7 participated in any other judicial training events or judicial education programs?

8 A No.

9 Q No. So not even with ELI? Just none in general? You haven't spoken at any events?
10 You haven't -- I mean, nothing? No judicial training?

11 A That's correct.

12 Q Okay.

13 Is the same true for your employees at the law firm?

14 A Correct.

15 Q Have you ever sponsored any programs, whether ELI or other judicial training
16 programs?

17 A Never.

18 Q Has your law firm ever sponsored any judicial training programs, whether ELI or anyone
19 else?

20 A No.

21 Q Okay.

22 Have you visited ELI's website at all, went through their webinars or maybe some articles that
23 they've written, papers?

24 A In preparation for this, I did look at the website, and I did see that professor or
25 Dr. Wehner's module was posted on their website.

1 Q In preparation for this, as in this deposition?

2 A This deposition. That's the only time I've ever looked at their website.

3 Q So do you know anyone that works for ELI or has worked for ELI in the past?

4 A No.

5 Q And so what is -- I guess, what is your current relationship with the Environmental Law
6 Institute? It sounds like no relationship at all?

7 A None at all.

8 Q None? Don't know any contacts there? They haven't helped on any cases that
9 you've worked on or prepared for? Just zero contact or relationship with ELI or any of their
10 employees?

11 A I have never spoken knowingly to anyone from the ELI. No, I've not had any contact.
12 I don't even know if Dr. Wehner -- I don't know what his association, if any, is with the ELI.

13 Q Okay.

14 So the Climate Judiciary Project, which is a part of ELI -- it's ELI's program to train judges in
15 climate change -- are you familiar with that?

16 A I am now.

17 Q Now? Just right at this moment or in the past?

18 A When Chevron filed their motion accusing me of perpetrating a fraud, then I began to
19 pay attention to ELI. That was the first time.

20 Q And CJP as well? That was mentioned in Chevron's motion?

21 A Right. That's when I was, like, what is this all about? Who is the ELI? What is the
22 Climate Judicial -- Judiciary Project?

23 When the motion was filed, then, of course, I had to take an interest because they were
24 making accusations.

25 Q And you haven't participated in any CJP-sponsored judicial training events?

1 A That is correct.

2 Q Neither have your employees at Worthington or any of your other ventures?

3 A That is correct.

4 Q In any of your cases, have you referenced CJP documents in any petitions or filings?

5 A There's only one case. That's the case Multnomah County v. Exxon, et al., pending in
6 Multnomah County. And to my knowledge, there has never been any citation to anything from the
7 ELI in our complaint or any of our briefs. The only time we've mentioned ELI is in response to the
8 Chevron motion to strike witnesses and take my deposition.

9 Q Are you familiar with the Sabin Center?

10 A When I think Sabin, I think of football for some reason.

11 Q Yeah, that's arguably the best football coach in history.

12 So the Sabin Center is out of Columbia Law School. It's Sabin Center for Climate Change
13 Law.

14 A I think I've heard of them.

15 Q Okay. What do you know about the Sabin Center?

16 A Are they at Columbia?

17 Q Yes.

18 A Well, I know that Columbia has a climate education program. They have a website.
19 And I think -- I don't know if it's Sabin, but Columbia had a team of researchers evaluate how to best
20 account for emissions from particular Carbon Majors where they tried to add up scope 1, scope 2,
21 and scope 3 emissions, which I thought was pretty elegant and ambitious. I don't know if that was
22 Sabin, but it was Columbia.

23 Q Okay.

24 A But, no, I don't have a specific recollection of any programs by Sabin.

25 Q Have you worked with anyone from the Sabin Center?

1 A Well, I'd have to know who "anyone" are. Like, if you give me names, I could say
2 whether I worked with them or not, because I don't ask my friends who do you work -- I don't know
3 their affiliations.

4 Q Yeah. Okay.

5 [REDACTED]
6 Q Are you aware that the Sabin Center, they have this climate litigation database that
7 tracks ongoing climate litigation, and it's tracking your case, County of Multnomah? Are you aware
8 of that at all?

9 A Yes. Now I am, yes. Yes, I am.

10 Q And what can you tell us about your knowledge of their litigation tracker?

11 A Well, I think back in 2023, when I was conducting my due diligence on whether there
12 was a factual and legal foundation for pursuing a possible case, I did look at that website. I did see
13 that there were other cases pending throughout the country. And I remember that they had
14 inventoried all the briefing and pleadings from other occasions.

15 But once Multnomah County filed its case, I've been pretty focused on our own case. I
16 haven't really looked at the Sabin website.

17 Q And did the Sabin Center just proactively put the Multnomah case up on their litigation
18 tracker, or did you have to submit it for inclusion on their database?

19 A I would have to speculate on that. I don't talk to Sabin. These are public pleadings,
20 public documents. I'm sure they snatched them from the docket in Multnomah County. But, no, I
21 never coordinated that or facilitated that or even knew about it.

22 Q Okay.

23 [REDACTED]
24 Q Are you familiar with the name Michael Gerrard?

25 A I think I've seen his name in media articles as someone who's offered quotations. I

1 think I've seen his name and quotes attributed to him in the area of climate accountability lawsuits.

2 But I don't know him. I've never met him, never talked to him.

3 Q Okay. Never talked to him.

4 Are you familiar with Michael Burger?

5 A I've heard the name.

6 Q Have you ever spoken with, connected, communicated with Mr. Burger?

7 A Negative. I've never spoken to him. I've never emailed him. I would like to. But I
8 don't know him.

9 Q What would you like to email him about?

10 A Apparently, he's involved in climate accountability lawsuits. So we have that shared
11 interest.

12 Q What about Jessica Wentz? Are you familiar with that name?

13 A I read her name in connection with, I think, ELI. I've read her name in media reports,
14 but I can't remember exactly what she said.

15 Q So you've never spoken with Ms. Wentz?

16 A True. I've never spoken to her, never emailed, never contacted.

17 Q She's never worked on any of your cases or helped prepare research for you?

18 A That's true. No, none of the above.

19 Q And so then Michael Wehner, is it?

20 A Michael Wehner.

21 Q Dr. Wehner?

22 A Yes, sir.

23 Q We've spoken a little bit about him already, but you said -- could you just run through
24 again how you first connected with Mr. Wehner? You reached out to one of his colleagues,
25 Dr. Philipe (sic)?

1 A Philip.

2 Q Philip. And then did Dr. Philip put you in contact with Dr. Wehner?

3 A Yes.

4 Q So you reached out to Dr. Wehner, or did Dr. Wehner reach out to you?

5 A So the transaction was email to Dr. Philip. "Can I talk to you about your peer-reviewed
6 published article connecting anthropogenic climate change to the Pacific Northwest Heat Dome?"
7 He said he was unable to talk to me.

8 I then asked him, via email, "Is there another coauthor who might be available?" He said,
9 "Yes, his name is Michael Wehner."

10 And within an hour or two, I got an email from Michael Wehner, someone I didn't know, and
11 he literally said, "You may find this helpful." And the attachment was this so-called module that
12 explained the methodology, datasets, and conclusions on climate detection and attribution science
13 that he had written.

14 Q Okay. And how often did you and Dr. Vehner -- Vehner, I think it is -- Dr. Vehner
15 communicate?

16 A Wehner. Wehner.

17 Q Wehner?

18 A Yes. W-e-h-n-e-r.

19 Q How often did you all communicate?

20 A Well, at that point, I don't know how to describe how often. We had several
21 exchanges about climate change attribution science.

22 Q Over what period of time?

23 A I think we started mid-March. And as I recall, by June of that same year, 2023, we had
24 stopped communicating. I think I was able to get from him the information that we sought. And
25 he was very helpful, very professorial, because I was truly a student trying to learn about climate

1 science, and I thought he was a very good tutor, if you will.

2 And I think we ceased communications in around June 2023.

3 Q Why did you stop talking?

4 A Well, he was -- he's a Federal employee at the Berkeley National Laboratory, Lawrence
5 Berkeley National Laboratory, and I was interested in securing his professional expertise as a
6 consultant. And he advised me that he was at retirement age but didn't want to retire. But he
7 didn't, as a Federal employee, want to engage on a contract basis for now with my law firm. So
8 after that, I didn't contact Dr. Wehner.

9 Q After he said he couldn't work with you?

10 A Yeah.

11 Q Okay. And what timing? When was that?

12 A I think it was in June, June of 2023.

13 Q And when you communicated, how were you all communicating? Telephone?
14 Email?

15 A Email.

16 Q Just strictly email?

17 A No. We had a couple of phone calls.

18 Q So from March to June 2023, several conversations.

19 Is that 10?

20 A Not that many.

21 Q No?

22 A Maybe three.

23 Q Okay.

24 A Maybe two, I mean, in terms of, like, telephone.

25 Q And you were mostly just talking about climate science?

1 A Not mostly. I was 100 percent. He was trying to educate me on attribution science.

2 He did a good job.

3 Q Okay.

4 This is going to be exhibit 3.

1 [Worthington Exhibit No. 3
2 was marked for identification.]

3 [REDACTED]

4 Q Have you had time to look at the exhibit?

5 A Yes.

6 Q Do you recognize that document?

7 A I do.

8 Q What is that document?

9 A This is the module that was prepared by Michael Wehner. And since it includes some
10 yellow highlighted language with some comments, then this must be also the same document that I
11 posted on my website.

12 Q And is this the document that you received from Dr. Wehner?

13 A Correct.

14 Q And when did you first obtain this draft?

15 A From Dr. Wehner?

16 Q Yes.

17 A I think it was March 16th of 2023.

18 Q Did you request it?

19 A No.

20 Q So why was it provided to you by Dr. Wehner?

21 A Because I asked Dr. Philip if there were any coauthors who were willing to talk, and he
22 said there was, and the next thing that popped up on my inbox was an email from Michael Wehner
23 attaching this document.

24 Q Did Dr. Philip coauthor that?

25 A This?

1 Q That module.

2 A No, not to my knowledge. It says it's by Michael Wehner.

3 Q And so what do you think -- what were you expected to do with that document once
4 you received it?

5 A I don't think there was any expectation. I think he offered it up as an educational
6 treatise to help me understand climate change.

7 [REDACTED] Did you receive this module from anyone other than Dr. Wehner?

8 The Witness. Negative.

9 [REDACTED]
10 Q Did you provide any comments or feedback to Dr. Wehner after you received this
11 document?

12 A None at all.

13 Q Did you give this document to any other scientist that worked for you or that were
14 contracted by you?

15 A No. Well, eventually, at some point I put it on my website. So I don't know who read
16 it after that.

17 Q So throughout this draft, on page 63.3, we've got comments and highlights, 63.22 and
18 63.23. We'll just go with page 63.3 first.

19 Do you know what the comment highlighted in red or pink, do you know who made that
20 comment?

21 A In pink? No, I don't. It says here Michael Wehner, actually.

22 Q MFW? Oh, at the bottom here, Michael Wehner?

23 A In the pink box, there's some language, and then below it there's a name, Michael
24 Wehner.

25 Q And so do you know who he's -- who made this -- or who asked this question or made

1 this comment and highlighted that the comment is responding to? It says: "Add something here
2 to acknowledge ENSO too."

3 A I have no idea who wrote that. I have no idea who highlighted that language as well.

4 Q Okay. And then on 63.22, there's a highlighted paragraph at the top of the page. Do
5 you see that? And then there's a comment by Mr. Wehner. I'll read it. "I left this paragraph in
6 for now, but I don't really see the relevance to attribution. Michael Wehner."

7 So it seems like he's responding to or at least there's someone else contributing to this paper.
8 Do you agree?

9 A No.

10 Q What do you --

11 A You're asking me to speculate. I don't know who he's talking to. It's a phantom to
12 me.

13 Q Okay.

14 
15 Q Did you have any involvement with any of the review process or any comments? Did
16 you provide feedback on this module?

17 A No.

18 Q Did you ask anyone else to provide feedback on this module?

19 A No.

20 Q And so to the extent that Dr. Wehner was liaising with another person to review this
21 module, you had no -- you have no information on that?

22 A That is correct.

23 Q And was this the format that the module was placed on the website? Did it have the
24 comments and the highlights? Or was there a different version that you had placed on the website?

25 A To my understanding, we posted the module exactly in the form that you see before

1 you now.

2 [REDACTED] I'm going to give you another exhibit, which will be exhibit 4. It's "Expert
3 Opinions on Attributing GHG Emissions." Number 15 for us.

4 [Worthington Exhibit No. 4
5 was marked for identification.]

6 [REDACTED]
7 Q Do you recognize this document?
8 A I've never seen this document in the form it is now.
9 Q Do you see on page 1, 60.1, at the top of the page, "To: Climate Attribution Scientist.
10 From Roger Worthington, Esq."?

11 A Absolutely. That's my document.

12 Q But you've never seen it?

13 A No, in this form with --

14 Q With the edits?

15 A With the commentary. Those are on page 60.3.

16 Q Did you provide Mr. -- or Dr. Wehner -- with this document?

17 A Yes.

18 Q Why did you do that?

19 A This was in April of 2023, and I was educating myself on attribution science, and in doing
20 so I was seeking opinions from experts who had published on the subject matter. And as part of
21 that effort, I was putting together in my mind the basis for -- the scientific basis for attributing the
22 Pacific Northwest Heat Dome to carbon pollution.

23 And as you see, there's citations to multiple articles that had already been published. For
24 example, on page 60.3, there's the Bartusek article, and there is the Philip article, the White article.
25 All of those articles dealt directly with the heat dome and the attribution of those severe events to

1 atmospheric concentrations of carbon dioxide and greenhouse gases.

2 And so Philip, we talked about Philip earlier, that's the article that prompted me to reach out
3 to him to seek education that resulted in Michael Wehner responding with the causal chain
4 document.

5 Q Did you personally prepare this document? Did you author it?

6 A Yes.

7 Q Did anyone assist in authoring it? Did you hire any outside help?

8 A No, I did that myself.

9 Q You did all this yourself?

10 A Yeah.

11 Q And then so when you gave this to Dr. Wehner, what were you -- were you expecting
12 him to go through? Were you asking for his edits? Is this what this is, these comments on 60.3?
13 Is this what you expected him to do?

14 A I didn't really expect that he would -- again, he was someone I had just been introduced
15 to.

16 Q Okay.

17 A I didn't expect him to do anything. I was hoping that he would help educate me.

18 Q On page 60.6 of the same exhibit, there's several questions that are embedded in these
19 paragraphs, and then there are answers that are also embedded in the paragraph.

20 Who is asking those questions?

21 A On 60.6?

22 Q Yes, sir.

23 A Okay. For example, "Is there a methodology generally accepted by the scientific
24 community for attributing extreme heat events to anthropogenic climate change?" All those
25 questions were posed by me.

1 Q And who answered them?

2 A I would assume the answer is from Michael, Michael Wehner.

3 Q And is that just -- instead of going through every single question here, is that consistent
4 throughout? Every question that's asked in this document was asked by you, and every answer is
5 answered by Mr. Wehner -- Dr. Wehner. Is that correct? There's several pages, but take your
6 time.

7 A Yeah, I have not -- it's been a long time since I looked at this. This is from April of 2023.

8 Q Did you cite this document in any of your petitions or filings for the Multnomah case?

9 A No. Well, I mean -- wait a minute. Let me just backtrack on that.

10 Q Okay. Yeah, take your time.

11 A Our complaint is over 200 pages, and we assert a number of facts, and we attribute a lot
12 of our theories and concepts to published articles. So I can almost assure you that we did -- when I
13 say "we," Multnomah County did cite to the published peer-reviewed articles by Bartusek, Philip,
14 White, and others.

15 And we did make assertions regarding the levels of emissions from particular defendants we
16 sued, and we did cite to the IPCC a number of times, and we did cite to the increase in global mean
17 surface temperature a number of times. We did assert economic damages. All of the quotations
18 on page 60.5 are attributed to the IPCC AR6. I'm sure that we cited to those in our complaint.

19 On the substantial factor test, I believe we asserted language in our complaint that laid out
20 the elements of causation for each of the four claims we allege: public nuisance, negligent
21 marketing, fraud/conspiracy, and trespass.

22 We did cite to the Multnomah County charter in terms of its responsibilities for the health,
23 safety, and welfare of its residents, including protection of assets and infrastructure.

24 Q Was Dr. Wehner paid for his work on this, on exhibit 4?

25 A Well, just so you know, I could go through the entire document.

1 Mr. Herman. Yeah, that's not what he asked. You don't have to.

2 

3 Q Yeah, that's okay.

4 A I'm sorry.

5 Q Did Dr. Wehner receive any income from you for his participation on this exhibit --

6 A No.

7 Q -- exhibit 4? No.

8 Did you offer to pay him for this?

9 A I offered him a role as a consultant.

10 Q For this specific document?

11 A No, for future.

12 When I first talked to Michael Wehner, we had not filed a lawsuit. It wasn't until June 22nd
13 or 21st of 2023 that we actually filed the lawsuit. At that point, he would have been a consultant.

14 But I did offer him a chance to become a consultant on the case and he declined. And that
15 was, I think, in June, well before we filed the lawsuit.

16 Q Okay.

1 [11:00 a.m.]

2 [REDACTED]
3 Q Were you aware at the time that you were engaging with Dr. Wehner that he was
4 affiliated with ELI?

5 A No.

6 Q Did you ever become aware of Dr. Wehner's affiliation with ELI?

7 A I'm not sure there is an affiliation. I don't know -- I don't know that to be true.

8 Q Okay.

9 A All I do know is that this cause of change was posted by ELI on their website.

10 Q Okay. And did Dr. Wehner ever inform you that the Lawrence Berkeley National
11 Laboratory attorney wanted to speak to him about the -- his ELI piece, his module?

12 A There was an email from him about talking to lawyers. I don't know who they worked
13 for or who they were.

14 Q Did you ever discuss with Dr. Wehner his role with training judges?

15 A No.

16 Q Did you ever become aware that Dr. Wehner had a role in training judges?

17 A Well, I guess I've learned from, you know, the date that Chevron filed this motion
18 against me that there was this accusation about some involvement by Dr. Wehner and the ELI, but I
19 don't know the details. I don't know what the transactions were. I don't know what his role was.
20 I don't know if he was paid or not. I don't know.

21 Q To use your words, have you ever discussed with Dr. Wehner the accusations that
22 Chevron made regarding his involvement with ELI?

23 A No.

24 [REDACTED] What was your last -- or I'm sorry. That's not right. I'm a little lost here.

25 [REDACTED] Right here on Page 18.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Q Have you ever suggested any topics that Mr. Wehner should train judges on?

A No.

Q Did you suggest that he should include any of your work in any of his papers that he's written to provide ELI or CJP, maybe, your cases or exhibit?

A That would be like a novice budding scientist trying to tell Einstein the theory of relativity. No, I different make any suggestions to him on the cause of chain.

Q Did Dr. Wehner ever elicit information from you regarding judicial training topics?

A Negative.

Q Have you produced all documents and communications between or among you, Worthington & Caron, P.C., including all firm employees regardless of whether acting in official or personal capacity and Michael Wehner?

A We provided everything responsive to the letters that you wrote myself and my attorney.

Q When you communicated with Dr. Wehner, did you -- you said that you used email generally?

A Correct.

Q Which email address did you generally use? Was it through the law firm?

A Correct.

Q Did you use any other email addresses when communicating with him?

A I might. I might have. I have at least three emails, Indie Hops, Worthy Brewing, and my law firm.

All right. Are you ready to move on?

Go ahead.

1 Q So what can you tell us about the lawsuit county Multnomah v. ExxonMobil
2 Corporation?

3 A Can you be more specific.

4 Q Yeah. What was a -- what causes of actions? What were the facts behind the case?
5 Let's start with that.

6 A Well, it's a 200-plus page complaint, and the facts are that in June of 2021, the
7 temperature in Portland, Oregon spiked about 40 degrees Fahrenheit above the normal mean high,
8 resulted in temperatures at around 116 degrees Fahrenheit for about 3, 4 days in certain parts of the
9 city the temperature soared to 125 degrees Fahrenheit, and the town literally baked. And as a
10 result of extreme weather that at least 69 folks in Multnomah county perished. And that Pacific
11 Northwest heat dome went all the way up into Canada and it resulted in the deaths of hundreds of
12 humans.

13 That prompted a search for whether the heat dome was exacerbated, intensified by climate
14 change. And the lawsuit alleges that there was a connection that that event would not have
15 happened as it did, how it did, but for the deception by the fossil fuel industry and promoting a
16 product, the use of which would result in carbon pollution at a level that eventually would super heat
17 the planet, and increase the likelihood and severity of these extreme events like heat, like wildfire,
18 which generates wildfire smoke which is extremely dangerous to human health, as well as droughts.

19 So based on a number of facts that we alleged in our complaint, we brought four causes of
20 actions under common law tort theories in the State of Oregon which include public nuisance,
21 trespass, negligent marketing, and conspiracy/fraud, and we sought damages. When I say we,
22 Multnomah county has sought damages for past harms, present, and then future harms that require
23 the county to take proactive measures to basically weatherproof the county, to bring the
24 temperature down in order to save lives, and to protect infrastructure and property.

25 Q How did you come about being retained for the county? This is -- you generally do

1 asbestos?

2 A Yeah.

3 Q This. And now you have a gigantic climate change lawsuit. How did that come
4 about?

5 A The county contacted me. One of the attorneys for the Multnomah County contacted
6 me and asked me if I was interested in pursuing the case.

7 Q Do you know why they contacted you specifically? Again, you know, just --

8 A Me in particular?

9 Q Yeah. Like in the past you doing asbestos cases, and now this -- there's a large,
10 possibly giant damages, why would they choose an asbestos lawyer to handle these climate change
11 law -- climate change lawsuit instead of, maybe, someone that's had several climate change lawsuits
12 under their belt?

13 I don't mean any offense. Do you understand my question? You know, if I'm doing
14 criminal law for 20 years and, you know, you're not going to come to me for a family law, like a
15 divorce case. You're probably going to go to someone that has a little history in family law. So I'm
16 just curious why the county would choose you if you never really played ball in that field before.

17 A I'd have to defer to the county, but I think they wanted an attorney who could build a
18 team of very serious and competent trial lawyers who could examine the question and offer a
19 solution.

20 Q You don't know if you were referred by somebody who were in the organization?

21 A The only possible connection that I could think of is at University of Oregon there was a
22 law professor who has taken a keen interest in which he calls it oil spill in the sky, carbon pollution,
23 and remedies to reduce emissions and carbon pollution. And I -- because I appreciated her
24 scholarship, I did provide a grant to the University of Oregon Law School to help her write a series of
25 articles about climate change. And her name is Mary Wood.

1 Q And so you think possibly Mary Wood may have referred you to the county?

2 A She might have suggested to the county that Worthington is a lawyer, and Worthington
3 is an Oregonian, and Worthington is concerned.

4 Q What's her connection to the county? Why would they -- why would she have their
5 ear?

6 A She's a well-known professor.

7 Q Okay. Okay. Has there -- has there been any, like, referral fee for this case at all?

8 A No.

9 Q No?

10 A No, no, no.

11 Q Did you provide those donations before or after you were retained by the county?

12 A Oh, yeah. I made a grant to the University of Oregon Law School well, well before
13 pursuing this climate case.

14 Q Okay. So who is the judge that presided over the case, or is presiding over the case?

15 A In Multnomah County?

16 Q Yes, sir.

17 A The original judge was Benjamin Souede, Souede. It's S-o-u-e-d-e?

18 Q Was this the first time before Judge Souede?

19 A Correct.

20 Q Have you had any other cases after?

21 A No.

22 Q Present?

23 A Negative.

24 Q Did you conduct judicial research on Judge Souede?

25 A Did I look at his biography?

1 Q Yeah, bio maybe, past verdicts, how he's --

2 A Sure.

3 Q Were you provided any analysis or information of any kind related to Judge Souede by
4 third party or a third person?

5 A No.

6 Q No. So you and your team conducted all the research yourself?

7 A That's correct.

8 Q Okay. And you didn't obviously pay a third party to conduct any research for the case
9 or for -- on the Judge?

10 A Correct.

11 Q Are you -- you're co-counsel for the Multnomah case, correct?

12 A Correct.

13 Q Is there another law firm on --

14 A There are several law firms.

15 Q For the Plaintiffs?

16 A For the Plaintiff, yes.

17 Q Who are they?

18 A Simon Greenstone and Panatier is one. Law office of Richard Schecter, S-c-h-e-c-t-e-r;
19 the firm the Reich Binstock. That's R-e-i-c-h Binstock. Law Office of Jim Coon, C-o-o-n, and then
20 lawyer Tim Williams whose law firm is Dwyer Williams and something. I can't remember.

21 Q Okay. Who was retained first? Were you all retained at the same time? Were any
22 of these attorneys on the case before you were brought in?

23 A Nope. No.

24 Q Just all at the same time?

25 A Yeah.

1 Q Have you worked with any of these attorneys before in these law firms?

2 A Yes.

3 Q On asbestos cases and toxic tort stuff?

4 A Yes, sir.

5 Q Okay. So what --

6 [REDACTED] Okay. Yeah. We'll take a break.

7 [Recess.]

8 [REDACTED]

9 Q Good morning, Mr. Worthington. Thank you for traveling from across the country to
10 be here today and answer our questions. My name is [REDACTED] I'm an oversight counsel with
11 the minority staff, and I'm joined today by my colleague, our chief counsel, [REDACTED] I'll do my
12 best not to be overly repetitive, but I may ask you to repeat a few things here and there as I try to get
13 a clear record. So I appreciate your patience.

14 In the prior hour, you spoke a lot about how you came to meet Dr. Wehner, speak with him
15 about the science as you did your due diligence, pre-suit work, to understand the attribute in science
16 there. Was he the only scientist you spoke to in the course of your representation of Multnomah
17 County?

18 A No.

19 Q How many other scientists were you communicating with regarding the litigation, or
20 were you trying to educate yourself on the relevant science?

21 A I don't have an exact number, many, multiple.

22 Q More than five?

23 A Yes.

24 Q Maybe a dozen?

25 A Possibly, yeah.

1 Q Okay. But several others? Dr. Wehner was certainly not the only scientist you had
2 reached out to educate yourself?

3 A That's true.

4 Q And were you communicating with these other scientists whether the five, ten, however
5 many, the multiple scientists, for the same reason you had reached out to Dr. Wehner?

6 A True.

7 Q Were you able to connect with any of them and discuss the scientific basis of your case
8 with them. Did you connect with these other scientists?

9 A Yes, I did.

10 Q And what did you discuss with them?

11 A We discussed the discipline of detection and attribution science which is a growing
12 discipline. And the scientists I spoke to were respected scholars in that field who had published
13 extensively on climate attribution science, and because of their scholarship and their respect in the
14 community, I found it worthwhile to reach out to them in order to learn what I needed to learn as an
15 attorney representing Multnomah County with the burden of proof to show that the deception
16 leading to the emissions made certain extreme weather events more likely, more intense, and would
17 last longer. So all of those -- any expert I spoke to would address issues relating to the causation of
18 extreme events in the State of Oregon.

19 Q So your outreach to Dr. Wehner and your conversations with him were substantively
20 similar to your conversations and outreach to all these other scientists?

21 A Yeah. And just not to quibble, but outreach, I mean, he contacted me. I didn't really
22 reach out to him until Dr. Philip suggested that he reach out to me, which he did, which then spurned
23 a very healthy and robust dialogue with Dr. Wehner.

24 Q Understood. But any conversations with these other scientists, whoever did the initial
25 outreach, would have been substantively somewhat similar to your conversations with Dr. Wehner?

1 A Yes.

2 Q So I understand that this might be your first climate change-related lawsuit, but you've
3 had many years in practice, correct?

4 A True.

5 Q How many years have you been a practicing attorney?

6 A Well, I used to have hair on my head. Now I started in 1988, so --

7 Q And how many trials have you argued?

8 A Well, I haven't been directly involved in the actual argument to juries. I've been -- I
9 work with other law firms who do the bulk of the trial work.

10 Q How many case -- how many trials have you worked on?

11 A Hundreds.

12 Q Hundreds?

13 A Yeah.

14 Q What are some of the highlights of your career there? What are some of the other
15 major trials that you worked on?

16 A Well, I'm very honored and privileged to represent some of the greatest Americans who
17 helped build this country and our Navy who are exposed to asbestos, and who then develop
18 mesothelioma and lung cancer. So it's hard to pick out any particular clients that I had that really
19 touched me, but I can -- if you really want to hear, I could tell you some stories that will make you
20 cry.

21 But like I said, it's been an honor and a privilege. I've always said that asbestos does not
22 respect the color of the collar (ph). I've represented judges. I've represented accountants,
23 athletes, schoolteachers who were poisoned by asbestos and developed tumors, and all worthy,
24 wonderful humans whose life was cut short by the reckless misconduct of companies that knew the
25 product was dangerous, didn't tell anything, suppressed that knowledge, and allowed consumers and

1 bystanders to be exposed to a deadly toxin.

2 So it's a -- it's been a privilege for me to help those people get the compensation they
3 deserve, and hold the tortfeasors responsible. It's been a good run. I thank my lucky stars for
4 being able to be in a position where I could help people with that disease.

5 [REDACTED] Are there similarities between asbestos litigation and the climate change litigation
6 that you're engaged in now?

7 The Witness. Well, I think the answer is yes, but I don't really know exactly because we have
8 not yet been allowed to engage in discovery in our case. It is my hunch that the answer is yes,
9 because there has -- in the asbestos world, there were incidents where the companies did doctor
10 scientific and medical information, and they paid for research that would help serve their corporate
11 interest that were false. In fact, most business ethics courses in college talks about the asbestos
12 experience as exactly what you don't do with the company. You don't knowingly hide the truth.
13 You don't suppress important knowledge that consumers need to know.

14 I think in the case of the climate change we already see evidence that the scientists for the
15 fossil fuel companies knew exactly that their product would emit carbon, that would concentrate,
16 that would super heat the planet, and lead to the disasters that we're experiencing now. So I think
17 there is a lot of analogy between my experience in the asbestos litigation with what we think will
18 happen with the climate change litigation.

19 [REDACTED]
20 Q So based on your decades of experience as a litigator including in these asbestos cases,
21 is it common to speak with subject-matter experts when you're pursuing litigation where expert
22 opinions will be required? Is this -- is it a common practice, whether in asbestos cases, or climate
23 change cases, or any kind of case where there is this a scientific basis underlying any potential claims,
24 for you to speak with subject matter experts to educate yourself?

25 A Absolutely.

1 Q And why is that? Why absolutely? What purpose does that serve?

2 A Causation. There's a lot of things that cause cancer. How am I able to carry my
3 burden of proof with the jury that it was this asbestos exposed over this period of time by this
4 particular plaintiff that resulted in this type of tumor? You need to have verifiable, reliable,
5 trustworthy scientific expertise to carry that burden of proof, with published peer review literature to
6 support the contention that these fibers caused this disease.

7 Q So you spoke to subject matter experts in those asbestos cases as part of your pre-suit
8 due diligence which through the course of the different litigation?

9 A Absolutely.

10 Q And you did the same with this climate change case in Multnomah County?

11 A Even more so.

12 Q And you said earlier that you spoke to Dr. Wehner and I assume these other scientist as
13 part of your pre-suit due diligence obligations. Is that right?

14 A That's correct.

15 Q How was it a due diligence obligation to speak to these scientists?

16 A The science of climate change is highly technical, highly complex, and in order to pursue
17 a case, you have to know that there is a nexus between the damages and the conduct. And in order
18 to answer that question, you need to talk to the experts who publish on the subject matter who
19 address the particular -- in this case, there were at least six published articles, peer review, that
20 attributed the Pacific Northwest heat dome to anthropogenic climate change. That's a pretty good
21 foundation to bring a civil claim.

22 Q And would you consider speaking to subject matter experts in this way to be a routine
23 part of litigation of this kind where there is a scientific underpinning to the claims that you're
24 bringing?

25 A If you want to win, yes.

1 Q In the prior hour my colleagues introduced exhibit 4. It seemed to be a memorandum
2 that you sent to Dr. Wehner for his thoughts on it or for -- to answer some questions. Is this kind of
3 memorandum also something you would routinely do ahead of litigation to prepare yourself and
4 understand the science that underpins your claims? If that's unclear I could ask it differently.

5 A Well, it's -- in an asbestos case, I'm going to need to show causation. I'm going to need
6 to show that the tumor my client has is connected to exposure. And so generally, I would not
7 pursue the case without first making sure I had experts lined up in advance to help me carry my
8 burden of proof. So in that sense, they're a little bit similar.

9 But asbestos litigation is very, very mature. I mean, it began in the late 1960s. So do I
10 actually prepare a memo to every expert before I file a mesothelioma case, no. The literature is so
11 strong, the connection is so solid, I don't need to do that.

12 But with climate, since it's all so new, of course, to bring a big case like this against very
13 serious defendants you're going to need to know the science is on your side.

14 Q But you wrote -- oh, I'm sorry. Excuse me.

15 A So in my effort to understand the science, I did prepare this memo, and I sought help
16 from experts in trying to answer these questions.

17 Q As part of your due diligence operations ahead of the lawsuit?

18 A Absolutely.

19 Q Sir, I'd like to turn to Dr. Wehner sending you the prepublication draft of the module
20 which you talked about extensively in the prior hour. To confirm, you originally reached out to Dr.
21 Philip and he put you in connection with Dr. Wehner, correct?

22 A Correct.

23 Q When Dr. Wehner reached out to you, did he identify himself as being part of the
24 Environmental Law Institute?

25 A No.

1 Q And prior to your communications with Dr. Wehner, you testified that you were not
2 aware of the Environmental Law Institute, correct?

3 A That's true.

4 Q In fact, I'll introduce for the record an email between you and Dr. Wehner from May
5 31st to June 1st, 2023. Our intern will pass that out. Give him a moment to get that together.
6 This will be exhibit 5.

7 [Worthington Exhibit No. 5
8 was marked for identification.]

9 
10 Q I'll give you a moment to review that email. So in the email referring to this
11 prepublication draft of the module, Dr. Wehner referred to the Environmental Law Institute as,
12 quote, "ELI," end quote. And according to this email you didn't recognize the institute by its
13 common abbreviation and had to ask Mr. Wehner what ELI was. Am I understanding this exchange
14 correctly that you didn't know ELI stood for Environmental Law Institute?

15 A That's correct.

16 Q So you weren't familiar with the Environmental Law Institute at the time of this email
17 exchange?

18 A That's correct.

19 Q To the best of your recollection, you have never heard of ELI before you connected with
20 Dr. Wehner, correct?

21 A That's correct.

22 Q Were you involved in the decision to develop this training module?

23 A No.

24 Q Did you have any input or influence on the content of the training module?

25 A No.

1 Q Do you have any knowledge that Dr. Wehner created this training module in order to
2 influence the litigation in Oregon?

3 A No.

4 Q To the best of your understanding why was this training module developed?

5 A Well, in retrospect looking back at who the ELI is and what they do, apparently it's a
6 non-profit. It goes back to 1968 whose role is to help the judiciary understand complex,
7 environmental, scientific issues. And so I could just assume that Dr. Wehner was providing scientific
8 background information on a very technical topic for judges and any other policy maker to review to
9 understand climate change.

10 Q And after you received the prepublication draft, did you communicate with Dr. Wehner
11 or any of the articles reviewers about changes that needed to be made to the training module?

12 A No, none whatsoever.

13 Q As my colleagues pointed out in the previous hour, the prepublication drafts contains
14 comments suggesting edits. You testified you did not make these comments, correct?

15 A That is correct.

16 Q And none of the employee of your office made those comments, correct?

17 A That's correct.

18 Q Would you, at the time, considered yourself qualified to even make such comments on a
19 draft of a scientific training module?

20 A No.

21 Q And you testified that you did not offer Dr. Wehner your thoughts or opinions about the
22 comments of the prepublication draft, correct?

23 A That's correct.

24 Q Did you dictate what scientific conclusion should be drawn within the training module?

25 A Negative.

1 Q Did you fund any part of the creation of the training module?

2 A Nope.

3 Q Did you oversee any aspect of creating this training module?

4 A Nope.

5 Q Did you have any influence over the creation or content of the module?

6 A Nope.

7 Q In fact, the training module was developed and prepared before you became aware of
8 it, correct?

9 A That's true.

10 Q Did you send this training module to any judges to influence how they should rule on a
11 case?

12 A No.

13 Q Did you suggest to Dr. Wehner, or anyone else at ELI, or its Climate Judiciary Project that
14 they should use this module to train the judge who presided over your case, whether that was Judge
15 Souede or otherwise?

16 A No.

17 Q Has there been any allegation that a judge presiding over your case took place in an ELI
18 trainings to the best of your knowledge?

19 A Not to the best of my knowledge.

20 Q So I want to take a step back from the module and your communications with Dr.
21 Wehner and discuss your general relationship with the Environmental Law Institute and its Climate
22 Judiciary Project. I'll refer to it as ELI and CJP. How would you describe your connection to ELI?

23 A Doesn't exist.

24 Q Do you work with ELI researchers to discuss which research topics should be explored?

25 A I don't know who the ELI researchers are other than Michael Wehner, and I think I've

1 exhausted my knowledge of my communications with him today.

2 Q And I believe you've already testified to this, but for the record, you've never funded an
3 ELI or CJP training event, material creation, or any other event or program, correct?

4 A That's true.

5 Q And you've never spoken at an ELI-sponsored training or event, correct?

6 A That's true.

7 Q And you never authored or edited a training module for ELI or CJP, correct?

8 A That's true.

9 Q To the best of your knowledge, have you ever attended an ELI fundraiser?

10 A Nope.

11 Q Do you hold a seat on the board of ELI?

12 A No, I don't.

13 Q Does anyone in your law firm?

14 A No.

15 Q So I'll turn to the motion that defense counsel in the Multnomah County litigation filed
16 when they found the prepublication draft on your website that we discussed earlier. They accused
17 you of perpetrating a fraud on the court; is that correct?

18 A Yes.

19 Q And how long after you posted the draft module to your website did defense counsel
20 file this motion approximately?

21 A Two years.

22 Q And through their motion what information did defense counsel seek to obtain?

23 A They wanted to take my deposition so -- for a number of reasons, part theater, part
24 substantive. The State of Oregon, our rules of civil procedure prevent the disclosure and the
25 identity of experts and the reports, so by using the Anti-SLAPP statute and abusing the Anti-SLAPP

1 statue statute the defendants were able to force us to disclose experts and the reports, and that
2 opened the door for them to challenge admissibility and credibility. And so, they were able to
3 circumvent the rules of civil procedure to find out more about our strategy and who our experts
4 were. And I don't know if I'm answering your question now at this point.

5 Q Yeah. But to confirm, their motion was denied, correct?

6 A The motion was denied.

7 Q In your response letter to the majority dated January 28th, 2026, sent by your attorney,
8 your attorney wrote that, quote, Furthermore, Chevron, a defendant in the pending
9 litigation -- excuse me, pending action in Multnomah County filed a motion to strike on
10 September 12th, 2025 seeking the same information sought by this committee and the court denied
11 same. What information is the committee seeking that overlapped, or may have overlapped, with
12 information sought by Chevron in the motion we just discussed?

13 A To my knowledge, this committee is seeking the same information that Chevron sought
14 when they filed their motion to my civil lawsuit.

15 Q And could this congressional investigation, including seeking information defense
16 counsel apparently tried and failed to obtain, interfere with the ongoing litigation?

17 A Yes. I mean, certainly if they were wanting to conduct an inquiry into how I -- we
18 intend to prove our case, and which experts we use, and what our strategy is, that would completely
19 undermine the authority we have as counsel to keep our confident -- keep our strategy confidential
20 and pursue our case.

21 Q In your response to Chevron's motion accusing you of fraud, it reads on page 12, "that
22 even more puzzling is why defense counsel find a motion citing serious concerns about the neutrality
23 of ELI, which Chevron's counsel failed to disclose and highlight for the court is that some of Chevron's
24 counsel, along with counsel representing other defendants in the litigation, or at this very moment,
25 helping fund ELI," end quote.

1 What specifically did your opposition disclose to the court that Chevron's own attorneys failed
2 to disclose about their ties to ELI?

3 A What -- I'm sorry. I don't understand that last part.

4 Q So what did you highlight for the court --

5 A Oh.

6 Q -- about Chevron's attorneys ties to ELI that they have not disclosed themselves?

7 A Well, when we got the motion, we've -- again, having no knowledge of what the ELI was
8 and what their objectives or what, we did our research and discovered that the ELI served many
9 functions, but more interestingly, in, you know -- from my point of view, what's wrong, even
10 theoretically, if I did belong to the ELI, so what? Why is that somehow seditious, if you will, or
11 wrong.

12 And we -- we discovered that the law firms representing the fossil fuel companies in our case,
13 many of them had made substantial donations to the ELI, and that a couple of the defendants
14 actually served on the board of directors for the ELI, so we were puzzled.

15 Even if I was a member of the ELI, a card-carrying member of the ELI, why is that somehow
16 evidence of some nefarious collusion with that -- between that entity and Federal judges. So we
17 were -- you know, we were ourselves gobsmacked and flabbergasted to learn that the very
18 defendants, like Chevron who bringing this motion had had speakers -- had lawyers speak at ELI
19 symposia. They had made substantial -- their law firms had made substantial donations to the ELI,
20 and that also they were fossil fuel defendants who served on the board of directors.

21 Q Would you say that someone who serves on the board of ELI makes or had some degree
22 of control or influence over ELI?

23 A Absolutely.

24 Q Would you say that defense counsel is doing exactly what they accused climate groups
25 of doing?

1 A 100 percent.

2 Q And I'd like to introduce three documents for the record. I don't have a lot of extra
3 copies, but I'm happy to print some for you if you'd like a copy.

4 [Worthington Exhibits Nos. 6,7 and 8
5 were marked for identification.]

6 [REDACTED]

7 Q The first is the 2019 annual report of the Environmental Law Institute; the second is the
8 2020 annual report of the Environmental Law Institute; and the third is the 2021 annual report of the
9 Environmental Law Institute.

10 On page 18 of the 2019 report, quote, Chevron corporation, end quote, is listed under
11 foundation and corporate support. In the 2020 annual report on page 21, Chevron is listed under
12 the corporate members; and on the 2021 annual report on page 21, Chevron is listed under the
13 corporate members. And these are all public annual reports that are available online.

14 Were you aware that Chevron itself funded ELI as a corporate sponsor or a corporate
15 member?

16 A After we received their motion, we discovered the connection between Chevron and the
17 ELI, as well as other law firms representing defendants in our case.

18 Q And you, yourself, have never funded ELI, correct?

19 A Correct. Yeah, I could go through this list. It's amazing to me. This is the first time
20 I've ever seen this. Virtually every defendant in our case is represented by a law firm who
21 contributed, at least 2019 at the award dinner, these are star sponsors of the ELI, corporate partner,
22 Chevron corporation.

23 Q All right. Well, we can go off the record. That's all I have for now.

24 [Discussion off the record.]

25 [REDACTED]

1 Q Okay. So back to the Multnomah case where I left off on my last hour, we were
2 discussing who you hired, or how you were hired, who you spoke with to be hired and all of that.
3 While you were representing the county, who's your main of contact -- your point -- your main
4 point -- I'm sorry. Your main point of contact throughout the case?

5 A The county attorney.

6 Q And who's the county attorney?

7 A Jenny Madkour.

8 Q I'm sorry. What's --

9 A Madkour.

10 Q Adkour.

11 A Mad -- M-a-d-k-o-u-r.

12 Q Did you have a relationship with her prior to being retained?

13 A No.

14 Q And when did you first meet Jenny Madkour?

15 A I'd have to look at my notes, but early 2023.

16 Q Okay. And how were you introduced?

17 A I don't -- I mean, I met her at the office building in Portland, Oregon, the county office
18 building. She invited me to come in and talk.

19 Q Okay. And how were you connected with her? Did someone specifically introduce
20 y'all?

21 A There was an attorney for the county, her name is Courtney Lords, L-o-r-d-s, who
22 introduced me, who invited me to the Multnomah County building in Portland, Oregon where I met
23 Jenny and the other members of the county.

24 Q And how do you know Courtney?

25 A Courtney reached out to me as the first representative of the county interested in

1 finding lawyers who would be interested in representing the county in a climate accountability
2 lawsuit.

3 Q Okay. Are you familiar with the name Kristie Ebi, E-b-i?

4 A Yes.

5 Q You are? How are you familiar with her?

6 A She's published on -- she's an epidemiologist, I believe, at the University of Washington,
7 who published on the connection especially between particulate matter from wildfire smoke and
8 increased incidents of mortality and health problems.

9 Q I'm going to show you an email between Ms. Ebi and some of the authors, Dr. Philip and
10 Dr. Burger.

11 [Worthington Exhibit No. 9

12 was marked for identification.]

13 [REDACTED] We're on exhibit 9?

14 [REDACTED] Yes, this will be exhibit 9. Thanks.

15 [REDACTED]
16 Q So this email was sent by Ms. Ebi on March 16th. It looks like she sent to a good
17 number of people, but it's on page 3.1 of the exhibit is where I'm looking. She said to the team for
18 the heat dome attribution article, "I spoke with an attorney. This is a growing area of litigation and
19 put him in contact with other attorneys with the same goal." Did Ms. Ebi put you in contact with
20 any -- with any attorneys?

21 A Not to my knowledge.

22 Q In the last hour our colleagues showed you what was exhibit, I believe, 5, an email from
23 Mr. Wehner or Dr. Wehner when you said it was the first time you've learned of ELI. I want to show
24 you an exhibit -- or exhibit 10, an email from March 16th. It's an email between you and Mr.
25 Wehner regarding the heat dome attribution.

1 [Worthington Exhibit No. 10
2 was marked for identification.]

3 [REDACTED]
4 Q Have you had a chance to review? Do you remember this email from Mr. Wehner? It
5 looks like on March 16th he says, "Roger et al. You may find this draft module on attribution of
6 climate change useful. It was prepared by" -- "it was prepared for the Environmental Law Institute.
7 I have not received a final version or comments back from them yet, Michael." Is this when you
8 first received the chapter prepared by Mr. Wehner?

9 A I don't see where it's on there.

10 Mr. Herman. Yeah, I think you gave him the wrong one.

11 [REDACTED] I need 26.1.

12 The Witness. Okay. Got it.

13 Mr. Herman. Thank you.

14 [REDACTED] Thank you.

15 [REDACTED]
16 Q Okay. So you've had -- have you had a chance to review?

17 A Yes.

18 Q Is this the first time that you received the chapter, the climate chapter, from Mr.
19 Wehner?

20 A Right. As I've testified, on March 16.

21 Q Right. Correct. Yeah, but I just wanted to clarify that said in this also would be the
22 first time that you've learned of Environmental Law Institute?

23 A The first time that I -- the words Environmental Law Institute came across the monitor
24 on my screen.

25 Q Okay.

1 A Didn't really register in my head.

2 Q Okay. So it looks like you received the chapter on March 16. At what point did you
3 post the chapter on your law firm website?

4 A I don't remember exactly when.

5 Q Was it before you filed the lawsuit on behalf of the county, Multnomah County?

6 A Multnomah.

7 Q Multnomah County. Thank you.

8 A It's almost like -- I don't want to guess, but it was -- I don't know. It was either right
9 before or right after. I don't remember.

10 Q Right before or right after you filed? So around that timeframe?

11 A Yeah.

12 Q Okay.

13 A It was -- I do remember just roughly that Chevron's motion was about two years after
14 we posted the module and a bunch of other articles about climate change on our website.

15 Q You filed the initial pleading in June, 2023, correct?

16 A That's right.

17 Q Okay. So were you -- did anyone ask you or request that you post the chapter on your
18 website, any third party?

19 A No, I feel like it's my obligation --

20 Q Okay.

21 A -- as an officer of the court to educate the people.

22 Q Got it. So when did you take though the article or the chapter off of your website?

23 A I don't know exact date. Sometime after Chevron filed their motion we just said -- we
24 just took it off our website.

25 Q Is there a reason just because they filed the motion or is there -- was there some other

1 reason that obligation no longer existed, or --

2 A Well, we just felt like it was the appropriate thing to do because this issue had become
3 contentious, the subject of litigation, and I made the decision at this point just to remove that from
4 my website.

5 Q Okay. There was -- was there any third party that requested you to remove it from the
6 website?

7 A No.

8 Q The court didn't request you? It was strictly on your own doing, your own volition?

9 A [No verbal response.]

10 Q Okay. And then just to -- all right. So the -- did you have two prepublished versions
11 of an April 20 -- April 2025 nature article titled, Carbon Majors and the Scientific Case for Climate
12 Liability on your website?

13 A Did I have two?

14 Q Yeah, prepublished versions. So the same article, but two different versions,
15 prepublished?

16 A Can you show me a copy of the article? Who is it by?

17 Q By Benjamin Franta?

18 A I don't recall ever posting any prepublication article from Dr. Ben Franta.

19 Q Okay.

20 A I posted an affidavit that he provided in response to defendant's anti-strap -- Anti-SLAPP
21 motion to strike, but that was an affidavit that we -- part of the public record.

22 Q Okay. Did your -- are you familiar with the heat dome article that was authored
23 by -- I'm sorry. Did you author an article titled, Guest -- it was a Guest column: Did Big Oil cause
24 the 2021 heat dome? That was published by The Bulletin?

25 A Yes.

1 Q Yeah. What can you tell me about that article?

2 A I wrote it.

3 Q You wrote it. What compelled you to write that article?

4 A Well, a number of reasons. I -- I'm a human being on a planet that's in -- that's in
5 turmoil. That's in trouble. And we can -- we can exactly pinpoint why we're in trouble and we can
6 also outline ways to solve this crisis. So I feel like as an attorney, as a business owner, as a parent,
7 as a world citizen, it's my obligation to help people understand complex issues and raise awareness
8 about the existence of a problem, because I speak for a lot of people when I'm concerned about the
9 climate crisis.

10 Q In the article, did you refer to the Multnomah County case?

11 A I don't remember. You'd have to show me the article.

12 [REDACTED] This will be exhibit 11.

13 [Worthington Exhibit No. 11

14 was marked for identification.]

15 [REDACTED]

16 Q So at the time -- you recognize this article?

17 A Yes, I do.

18 Q At the time you published the article were you the lead counsel representing
19 Multnomah County in the lawsuit, County of Multnomah v. ExxonMobil Corporation?

20 A Yes.

21 Q In the article did you disclose that you were lead counsel representing Multnomah
22 County? If it helps at the bottom of the -- bottom of the second page, starting with Roger
23 Worthington owns Worthy Brewing in Bend?

24 A And Indie Hops in Portland, Oregon. He served as an attorney for Multnomah County
25 on the case alluded to in this column, though he said he wrote this as a private citizen.

1 Q And then, so when did you make your -- again, I may have asked this earlier, but just
2 to -- just to get it straight, when was the last contact you had with Mr. Wehner?

3 A I think I've tried to answer that before.

4 Q Yeah. Sorry.

5 A I think it goes back to June/July of 2023. I don't recall ever speaking with him again.

6 Q Okay. Let me just check through here quickly.

1 [12:12 p.m.]

2 [REDACTED] Do you have anything?

3 [REDACTED] No.

4 I think we'll probably go off the record now. We may have some more questions. So let us
5 confer. But we'll go off the record.

6 [Discussion off the record.]

7 [REDACTED]
8 Q Mr. Worthington, in the prior hour you were asked a number of questions about posting
9 the pre-publication draft of the training module to your website. Do you recall those questions?

10 A Yes.

11 Q You stated that you posted this pre-publication draft because, quote, your "obligation as
12 an officer of the court is to educate the people," end quote.

13 Do you often post information like this to your website?

14 A All the time.

15 Q Approximately how many articles have you posted to your website?

16 A Well, in the asbestos world, hundreds -- well, maybe not hundreds, dozens. And in the
17 climate sphere, I'd have to look for the answer, but I would say dozens.

18 Q So it wasn't out of the ordinary for you to post information like this to your website?

19 A Not at all.

20 Q And you posted it with the intention of simply educating the public on the issue?

21 A Exactly.

22 Q Did you substantively edit this draft module before it was posted to your website?

23 A No.

24 Q Do you know or have control over who has access to your public website?

25 A No, I don't.

1 [REDACTED] That's the end of my questioning. We can go off the record. Thank you.

2 [Whereupon, at 12:16 p.m., the deposition was concluded.]

Certificate of Deponent/Interviewee

I have read the foregoing ____ pages, which contain the correct transcript of the answers made by me to the questions therein recorded.

Witness Name

Date

Exhibit 34

Transcribed Interview of Paul Hanle, H. Comm. on the
Judiciary (July 21, 2026)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

COMMITTEE ON THE JUDICIARY,
U.S. HOUSE OF REPRESENTATIVES,
WASHINGTON, D.C.

INTERVIEW OF: PAUL HANLE

Tuesday, July 21, 2026

Washington, D.C.

The interview in the above matter was held in room 2237, Rayburn House Office Building,
commencing at 10:01 a.m.

1 Appearances:

2
3
4
5 For the COMMITTEE ON THE JUDICIARY:

6
7 [REDACTED], DEPUTY DIGITAL DIRECTOR

8 [REDACTED], COUNSEL

9 [REDACTED], SENIOR SPECIAL COUNSEL

10 [REDACTED], PROFESSIONAL STAFF MEMBER

11 [REDACTED], CHIEF COUNSEL FOR OVERSIGHT

12 [REDACTED], PROFESSIONAL STAFF MEMBER

13 [REDACTED], RESEARCH ASSISTANT

14 [REDACTED], MINORITY COUNSEL

15 [REDACTED], MINORITY OVERSIGHT COUNSEL

16 [REDACTED], MINORITY COUNSEL

17 [REDACTED] MINORITY CHIEF COUNSEL AND SENIOR ADVISOR

18 [REDACTED], MINORITY FELLOW

19 [REDACTED], MINORITY LEGAL INTERN
20
21
22
23
24
25

1 For PAUL HANLE:

2

3 Susanne S. Grooms

4 Heather C. Sawyer

5 Cooley

6 1299 Pennsylvania Ave, NW

7 Suite 700

8 Washington, DC 20004-2400

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 [REDACTED]. Good morning. This is a transcribed interview of Mr. Paul Hanle. Chairman
2 Jordan has requested this interview as part of the committee's oversight of Federal courts and the
3 adequacy of existing safeguards to prevent improper influence on Federal judges.

4 Would the witness please state your name for the record?

5 Mr. Hanle. Paul Hanle.

6 [REDACTED]. We encourage witnesses who appear before the committee to freely consult
7 with counsel if they so choose. And it's my understanding that you're appearing today with
8 personal counsel. Is that correct?

9 Mr. Hanle. That's correct, yes.

10 [REDACTED]. Would counsel please state your name for the record.

11 Ms. Grooms. My name is Susanne Grooms. I'm at Cooley.

12 Ms. Sawyer. Heather Sawyer. I'm at Cooley.

13 [REDACTED]. On behalf of the committee, I want to thank you for appearing here today to
14 answer our questions. The chairman also appreciates your willingness to appear voluntarily.

15 My name is [REDACTED], and I am with Chairman Jordan's staff. I'm going to have
16 everyone from the committee who is here in the room introduce themselves as well.

17 [REDACTED] [REDACTED] with Chairman Jordan's staff.

18 [REDACTED] [REDACTED] with Ranking Member Raskin's staff.

19 [REDACTED] [REDACTED] with Ranking Member Raskin's staff.

20 [REDACTED] [REDACTED] with Ranking Member Raskin's staff.

21 [REDACTED] [REDACTED] with Ranking Member Raskin's staff.

22 [REDACTED] [REDACTED] with Ranking Member Raskin's staff.

23 [REDACTED] [REDACTED] with Ranking Member Jordan's staff.

24 [REDACTED] [REDACTED], Ranking Member Jordan's staff.

25 [REDACTED] [REDACTED], Ranking Member Jordan's staff.

1 [REDACTED], Chairman Jordan's staff.

2 [REDACTED] I'd like to now go over the ground rules and guidelines that we'll follow during
3 today's interview.

4 Our questioning will proceed in rounds. The majority will ask questions first for one hour.
5 Then the minority will have an opportunity to ask questions for an equal period of time, if they
6 choose. We'll alternate back and forth until there are no more questions and the interview is over.

7 Typically, we take a short break at the end of each hour. But if you'd like to take a break
8 apart from that, please just let us know.

9 As you can see, there's an official court reporter taking down everything we say to make a
10 written record. So we ask that you give verbal responses to all questions. Do you understand
11 that?

12 Mr. Hanle. I do.

13 [REDACTED]. So the court reporter can take down a clear record, we'll do our best to limit the
14 number of people directing questions at you during any given hour to just those people on the staff
15 whose turn it is.

16 Please try and speak clearly so the court reporter can understand and so the folks down at
17 the end of the table can hear you too.

18 Mr. Hanle. Okay.

19 [REDACTED]. It's important that we don't talk over one another or interrupt each other if we
20 can help it. That goes for everybody present at today's interview.

21 Also, as you will notice, there is the committee's official videographer who is taking a video
22 recording of this proceeding.

23 We want you to answer our questions in the most complete and truthful manner as possible,
24 so we'll take our time. If you have any questions or if you do not understand one of our questions,
25 please just let us know.

1 Mr. Hanle. Okay.

2 [REDACTED]: Our questions may cover a wide range of topics, so if you need clarification at
3 any point, just say so.

4 If you honestly don't know the answer to a question or do not remember, it is best not to
5 guess. Please give us your best recollection, and it is okay to tell us if you learned information from
6 someone else. Just indicate how you came to know that information.

7 If there are things you don't know or can't remember, just say so, and please inform us who,
8 to the best of your knowledge, might be able to provide a more complete answer to that specific
9 question.

10 You should also understand that by law you are required to answer questions from Congress
11 truthfully. Do you understand that?

12 Mr. Hanle. I do.

13 [REDACTED]: This also applies to questions posed by congressional staff in an interview. Do
14 you understand this?

15 Mr. Hanle. I do.

16 [REDACTED]: Witnesses that knowingly provide false testimony could be subject to criminal
17 prosecution for making false statements under 18 U.S.C. Section 1001. Do you understand that?

18 Mr. Hanle. I do.

19 [REDACTED]: Is there any reason you are unable to provide truthful answers to today's
20 questions?

21 Mr. Hanle. No, there is not.

22 [REDACTED]: Finally, I'd like to make note that the content of what we discuss here today is
23 confidential. We ask that you not speak about what we discuss in this interview to any outside
24 individuals to preserve the integrity of our investigation.

25 For that same reason, the marked exhibits we will use today will remain with the court

1 reporter so they can go in the official transcript. Any copies of those exhibits will be returned to us
2 when we wrap up.

3 That's the end of my preamble.

4 Is there anything my colleagues from the minority would like to add?

5 [REDACTED]. We'd just like to thank Dr. Hanle for taking the time to be here today.

6 Mr. Hanle. Thank you.

7 [REDACTED]. Any comments from counsel?

8 Ms. Grooms. No.

9 [REDACTED] The clock now reads 10:05 a.m. We'll start the first hour of questioning and
10 turn it over to my colleague [REDACTED].

11 EXAMINATION

12 BY [REDACTED]:

13 Q Good morning.

14 A Good morning.

15 Q What is your current occupation?

16 A I'm a visiting scholar at the Environmental Law Institute.

17 Q And what positions do you hold there?

18 A Well, visiting scholar is the position. That's a volunteer, but also I'm on contract there.

19 Q Okay. And how long have you been a visiting scholar with ELI?

20 A About eight years.

21 Q And what are your responsibilities in that position?

22 A Well, as a visiting scholar I contribute to the Climate Judiciary Project, and that includes
23 being a part of a team of approximately five people.

24 Q Okay. Do you do anything else for ELI other than the Climate Judiciary Project?

25 A Once in a rare while I'll give advice about some topic, but not frequently.

1 Q Can you give me an example?

2 A If there's something that has to do with climate, since I'm knowledgeable of climate
3 science, I might give an opinion about or a fact about climate science.

4 Q Okay. Who supervises your work?

5 A Let's see, Sandra Thiam is the vice president for policy, I believe.

6 Q Okay.

7 A Policy and -- you'll have to check that. I don't know exactly her title. But Sandra Thiam,
8 who is the vice president.

9 Q Okay.

10 A Thank you.

11 Q Do you supervise a team or any employees?

12 A No, I don't.

13 Q No? Okay.

14 Prior to joining ELI, did you play any role in advising the Obama administration?

15 A I did. It was informal.

16 Q Okay. Can you describe those duties or that relationship?

17 A Yeah. It wasn't duties, but I would occasionally visit with the President's science
18 advisor about climate matters.

19 Q Okay. Since you started with the ELI, have your responsibilities changed over time
20 from maybe from when you started to now?

21 A They evolved. Yes, they did.

22 Q Can you describe that?

23 A Yes. So when I started, we began the Climate Judiciary Project, and I was the principal
24 together with a staff member, Sandra Thiam, the person I mentioned. And that was -- we worked
25 jointly as a team with some support people.

1 Over time, the staff has evolved and others have taken many of those responsibilities that we
2 shared at that time.

3 Q Okay. How did you come to join ELI? Were you recruited by someone? Or how did
4 that relationship start?

5 A Well, I had -- was introduced to ELI because the person who introduced me knew that
6 ELI did judicial training and was interested in climate science.

7 Q Who was it that introduced you?

8 A His name is David Van Hoogstraten.

9 Q Is he still at ELI?

10 A No, and he was not with ELI. He had recently retired from BP petroleum Company.

11 Q Okay. What email address do you use with your work with ELI?

12 A It's [REDACTED]. [REDACTED].

13 Q Is that the only email address you use?

14 A No, there's an ELI email address also.

15 Q Do you know what that is?

16 A Yes. [REDACTED], which I use very infrequently.

17 Q Okay. Why is that?

18 A Because my personal email address, [REDACTED], is the one that I have used.

19 Q Okay. Do you use your ELI email address to communicate with individuals associated
20 with ELI, such as like maybe individuals with the Sabin Center or Sher Edling or FJC? What would
21 you always use your [REDACTED] -- was it [REDACTED]?

22 A [REDACTED].

23 Q Yeah.

24 A Yes. Not always, but most, overwhelming majority of the time I would use [REDACTED].
25 Once in a while ELI.

1 Q Was there a time where you used the ELI email address more and then you've kind of
2 continued? No?

3 A No, no.

4 Q Okay.

5 A I came with [REDACTED] and that was my principal.

6 Q Okay. When was the Climate Judiciary Project created?

7 A So I came up with the idea in 2018 before I was with ELI. I was coming out of my
8 previous job at Climate Central.

9 Q So you came up with the idea. What was the idea, I guess?

10 A The idea was to educate an important audience, judges, about the science of climate
11 change and how it arises in law.

12 Q Did you collaborate with anyone in coming up with this idea?

13 A Not collaborate. I did get input from a whole range of advisors. But I
14 wrote -- principally wrote what we call -- what I call the prospectus.

15 Q The prospectus?

16 A Yes.

17 Q Just if you can ballpark it, when did you first start coming up with this idea for the
18 Climate Judiciary Project?

19 A Well, as I said, when I came out of Climate Central. So the date would have been
20 about spring of 2018.

21 Q Okay. And do you remember the names of any of these folks that advised you?

22 A There were scores of people that I spoke to, and they were just a range of people in
23 climate science and legal scholars.

24 Q Okay. Are any of those people with the firm -- the law firm Sher Edling?

25 Ms. Grooms. To the extent that you know.

1 [REDACTED]:

2 Q Yeah.

3 A I am just thinking for a moment. To the best of my recollection, the answer is no.

4 Q What about with the Sabin Center?

5 A Yes, I spoke with Michael Gerrard, whom I had known before.

6 Q And that's as far as the Sabin Center folks?

7 A I believe so, yeah.

8 Q What about with the Federal Judicial Center?

9 A That depends on what time you're asking me about.

10 Q Just when you're -- yeah, when you're coming up with this idea, you're collaborating,
11 you're talking to these advisors about the Climate Judiciary Project. Is anyone at the FJC or anyone
12 at the time at the FJC that helped you or advised you in coming up with the Climate Judiciary Project?

13 A No, not in creating the project itself at FJC.

14 Q Okay. Were any of those conversations with these advisors documented?

15 A No, I would speak to people getting their impressions and their ideas.

16 Q Is this via telephone?

17 A Usually, yes. Once in a while in person.

18 Q Okay. So you've talked a little bit about your introduction to ELI, but it sounds like you
19 had this Climate Judiciary Project idea, and then you chose ELI.

20 A Uh-huh.

21 Q Why ELI?

22 A I mentioned David Van Hoogstraten had been -- was aware of ELI. I believe he had
23 done some volunteer work with them. And he introduced me to it.

24 Q Did he also advise on the project?

25 A He did a little bit at the beginning. It was a very short duration involvement with

1 David.

2 Q Okay. Did someone at ELI approve the Climate Judiciary Project?

3 A Absolutely.

4 Q Who would that have been?

5 A It was a set of conversations. But I discussed it certainly with the president of ELI.

6 Q And that was Mr. Fulton?

7 A Yes, Scott Fulton.

8 Q Was there a written proposal that you provided ELI and Mr. Fulton to go over?

9 A Let me think about that.

10 Initially, there was a conversation or two.

11 Q Okay.

12 A Eventually, we had to have some kind of written proposal.

13 Q And would you have authored that proposal?

14 A Yeah, I was principal author, right.

15 Q Do you have a copy of that proposal anywhere?

16 A I'm not sure we do. It was a long time ago.

17 Q Okay. Do you remember anyone opposing the project, whether at ELI or anywhere
18 else?

19 A Remarkably I don't -- to the best of my recollection, I didn't hear any opposition to it.

20 Q Okay.

21 A To the best of my recollection.

22 Q What kind of financial support did the project receive when it was created?

23 A Well, at the beginning it was me volunteering, and there was no -- you know, it as just --

24 Q Just man-hours?

25 A Just me, man-hours.

1 Q And then as it progressed?

2 A Over time, I raised funds for it.

3 Q Okay. Did ELI fund some of the projects?

4 A Eventually they did.

5 Q But most of the money came from other donors that you raised?

6 A Yes.

7 Q Were the individual donors -- were they individuals or organizations?

8 Ms. Grooms. So I think we've discussed this before, but we're not going to get into details
9 about donors. We have confirmed that none of CJP's donors are involved in editing or commenting
10 on the CJP curriculum or presentation materials. And if you want, he'll confirm that.

11 BY [REDACTED]:

12 Q Okay. So for the team, project's team, did you -- do you recruit the personnel
13 personally for people that work on the project?

14 A Over time, when some people were brought in, I had a role. But I'm not staff, so I
15 didn't have responsibility.

16 Q Okay. So what does the Climate Judiciary Project look for, for ideal candidates that
17 maybe work on the program?

18 Ms. Grooms. For employees?

19 BY [REDACTED]:

20 Q For employees, yes.

21 A It's hard for me to say that, and the reason is that, as I said, I'm not staff there. ELI has
22 certain requirements for hiring. So I would probably just leave it at that, unless there's some
23 specific thing.

24 Q Yeah, so you're not questioned or asked, you don't do any of the interviews, you're
25 not -- you don't have anything to do with the employment of the people at --

1 A I'm sorry, as I said, I do have a role, and I have been involved in interviews, yes.

2 Q Okay. Maybe just go into a little more depth of what your role is to help me
3 understand.

4 A Sure. Sure.

5 So if we felt that we needed staff that were not already on ELI -- and some of them were in
6 fact there and supporting the project -- we would -- I would speak with my colleagues and with
7 Thiam, who did have responsibility, and we would discuss what the criteria would be for what we
8 were looking for.

9 And there were different -- there were only two or three hires that we did. At one point, we
10 wanted to have a scientific expert, and so we decided to put that as one of the criteria for hiring a
11 person.

12 Q Okay. So in those examples, like that example you just gave me, what is that criteria?

13 A That they have scientific expertise. That they had some kind of education or
14 experience in climate science.

15 Q And that's it?

16 A That would be the principal criterion for that position, that particular position.

17 Q Would you review some of their other work?

18 A Sorry, what do you mean by that?

19 Q Like, let's say you have five options. Would you review those candidates? Would you
20 review their prior published work, see what they've written, see what their opinions are on certain
21 topics?

22 A Well, typically for an appointment there would be a resume and some associated
23 material that might be an essay or some publication. And I had access to whatever ELI was asking
24 the candidates to provide.

25 Q Okay. And then you would review those?

1 A Then I would.

2 Q Okay. Do you know whether or not one of the criteria for hiring for the project, do you
3 consider political affiliation?

4 A I don't know, but I doubt very much. I think ELI is a nonpolitical, nonpartisan
5 organization. So I would say no.

6 Q Okay. So when recruiting advisors to the project, do you have a role in that?

7 A I did have a role in that, yes.

8 Q Okay. When did that role end for you?

9 A Well, we have been bringing -- so we had advisors early in the project, and that role
10 for recruiting would have been as we decided who would come onto the advisory group. And I
11 don't know if we can say it ended, but it ended when we recruited those advisors.

12 Q Okay. And is political affiliation considered when recruiting advisors?

13 A Absolutely not.

14 Q Okay. What about --

15 A What we did consider was expertise. That was the number one criterion.

16 Q Okay. What about recruiting authors or speakers for educational materials and give
17 presentations at ELI and CJP events, did you have anything to do with that?

18 A I did, yes.

19 Q Okay. Can we talk about that a little bit? What was your role?

20 A Well, typically, I would provide advice -- and, again, on what we're talking about here,
21 the criterion was expertise. So whether they were familiar with climate science, understood it,
22 could present it, these are the things that my role was to advise on.

23 Q Okay. Could you approve -- or could you reject speakers or authors?

24 A We worked as a team, so I never really either had to or acted to reject. We agreed by
25 consensus.

1 Q And so can you walk me through that a little bit? You review the speakers, the
2 authors -- or the potential speakers and authors -- and then you as a group discuss whether or not
3 they are the right fit?

4 A Correct.

5 Q Are those meetings -- are there minutes from those meetings? Are they documented
6 in any way?

7 A They're typically conversations. And early they were largely between Sandra Thiam
8 and myself. We worked as partners.

9 Q Okay. Were there any instances that you can remember where you did reject a
10 speaker, an author?

11 A We didn't think that way. There was a very large number of possibilities, and we
12 would try to identify what was the best match for whatever the role was, whether it was
13 presentation or writing.

14 Q Okay. So can you give me an example of maybe a time that you can remember where
15 you did not choose one speaker over another?

16 A Well, again, I'm trying to clarify. When we were looking -- and it depends on -- it's
17 important to understand there's presenters and there are authors, and they have different roles.

18 But for presenters, we would think what is the field of possible presenters in a particular area,
19 and then we would decide what's the best one to present. And we used criteria for those decisions.

20 Q And what is specific criteria?

21 A Criteria were, number one, expertise. We also thought it was important in the
22 presentations that they have high standing in their profession. And we thought that they should be
23 able to make fair and objective presentations and speak well in those presentations.

24 Q How would you determine whether or not the speaker could speak fair and objectively?

25 A Well, I knew many, if not most of those in the science community and had a sense of

1 that.

2 Q Who --

3 A And my -- sorry?

4 Q I'm sorry. So based on --

5 A My knowledge.

6 Q Like, you say your subjective belief whether or not they're objective?

7 A My knowledge of the network of and community of climate scientists, which is
8 extensive.

9 Q Did you have any role in creating the curriculum?

10 A Yes, I did.

11 Q Can you go through that role, please, what you did? What was your role?

12 A Well, that's a pretty broad question. I can address the steps that we went through, if you
13 wish.

13 Q Yeah, I'd like that.

14 A So my role was to think about what were the topics that ought to be covered in the
15 curriculum. And then, in discussion with my colleagues on this team, we would decide the full
16 range. Mine was about science, in particular.

17 Q Okay. Was there ever a time where you rejected or overruled someone else's
18 recommendation for topics in the curriculum?

19 A Well, as I said, we didn't really work that way. We worked mostly by consensus and
20 came to an agreement.

21 Q Was there ever a time where the group overruled or rejected someone's
22 recommendation for the curriculum?

23 A What do you mean by someone's recommendation?

24 Q Someone within the group, whoever is creating the curriculum. Someone ever say, "I
25 want topic X," and as a group you decided, "No, that topic does not fit in our curriculum"?

1 A That wasn't the dynamic. The dynamic was a discussion about who would be the best
2 to speak, and we would come to agreement, typically, without disagreement in the conversations.

3 BY [REDACTED]:

4 Q You had mentioned that your role with that curriculum was focused. You thought
5 about the science perspective?

6 A Yes.

7 Q Were there other perspectives that other individuals thought about when it came to the
8 curriculum?

9 A Well, how science arises in the law was an important aspect of this, which I'm not a
10 lawyer and I was not expert in.

11 Q Okay. So it was just the science and the law that were considered perspectives during
12 the creation of a curriculum?

13 A Yes.

14 Q Okay.

15 [REDACTED]: Who has the ultimate authority over the Climate Judiciary Project?

16 Ms. Grooms. Can you explain what that means? I'm not sure what --

17 BY [REDACTED]:

18 Q Who is heading it in the hierarchy? Who's number one, top of the pyramid?

19 A I believe the best way to -- I keep coming back to this team approach that we had. I
20 think the best way to answer that is to say we came to consensus decisions and the team's decisions
21 were those that were applied, that were accepted.

22 Q Who is "we"? Who is the team?

23 A So the team is --

24 Ms. Grooms. At what time period are we talking about? Maybe that would be helpful.

25 Mr. Hanle. Yes, that is a very important point.

1 BY [REDACTED]:

2 Q Yeah, I mean, in relation to -- I guess let's start from the beginning.

3 At the start of the Climate Judiciary Project, who has the ultimate authority over the
4 program? Who says yes to approve speakers and authors? Who says yes to approve the
5 curriculum? Who says yes to approve educational program and written materials? Who's
6 the -- where does the buck stop?

7 A Well, that would have been a shared responsibility of myself and my counterpart,
8 Sandra Thiam, on staff.

9 Q Okay.

10 A With input from the rest of the team, which included three or four staff.

11 Q And what are their names?

12 A Well, they changed over time.

13 Q Okay. So at the beginning?

14 A Well, there were --

15 Q If you don't remember, that's okay.

16 A Yeah, it's eight years ago, and, honestly, I can't remember. I can tell you categories.
17 There were a couple of research associates and at least one lawyer.

18 Q Do you remember who the lawyer was?

19 A No, I don't, because they changed over that period.

20 Q Okay. And so --

21 BY [REDACTED]:

22 Q Has it always been research associates and lawyers that have made up the team besides
23 you and Sandra?

24 A Not always, no.

25 Q What other positions have there been?

1 A Well, we decided that we should bring a fellow, a science fellow in as an expert in the
2 science.

3 Q And when did that take place?

4 A So I can't -- I don't remember that exactly. Let me think. It would have been maybe
5 three or four years into the project. I'm not sure exactly to the best I can recall.

6 Q And do you still have that science fellow?

7 A We don't have that science fellow. He did a fine job and stayed on staff, but he is not a
8 fellow.

9 Q Okay. And right now what is the makeup of the team?

10 A So it is -- we have a director.

11 Q And who's the director?

12 A Helene Krasnoff.

13 And then we have science advisors or science experts. And we have legal scholars and
14 research associates.

15 Q Okay. How many science experts are there?

16 A You know, it depends on who we bring in at a particular time. The fellow who was the
17 fellow often provides scientific advice to us now.

18 Q Okay. And does the number of legal experts vary as well throughout?

19 A It does. It depends on a whole range of things, about questions we might want to ask.

20 Q And research associates, does that number vary?

21 A Yes, it does. And people change.

22 Q And how many people are currently on the team for CJP?

23 A You know, it's interesting. I think -- I can't tell you the exact number because the
24 director is responsible for that and brings people in, so they come and go at different times.

25 Q Okay.

1 BY [REDACTED]:

2 Q So when the team is making these decisions on speakers and authors, written materials,
3 education programs, is there any type of documentation? Is there any notes in the meetings or are
4 the decisions written down on paper? Is there some sort of documentation?

5 A I'm sure that people, various members of the team, have taken notes. But to my
6 recollection, we did not write down -- and I'm thinking about this -- write down what -- the basis for
7 decisions like this. It was a small group, and we worked by consensus.

8 Q Okay. So we're going to move a little bit towards the -- just like the mission of CJP.
9 In your words, what is the mission of the Climate Judiciary Project?

10 A It's to provide education for judges about climate science and how it arises in
11 the law.

12 Q So can you go in a little more detail about judicial education, what that means to you,
13 what is the -- or the project? What do you all consider judicial education?

14 A So judicial education is an established undertaking. We work together with those who
15 were judicial educators -- the Federal Judicial Center, for example, and National Judicial
16 College -- and worked with them to provide the information that judges needed according to their
17 education standards. And so that was sort of a broad approach that we took.

18 Q Okay. Does the CJP distinguish between education and advocacy?

19 A It does indeed.

20 Q How?

21 A We do not push for any particular solutions or policy, which I would consider advocacy.

22 Q Okay. Are CJP employees trained regarding that distinction?

23 A We certainly all share that view and discuss it.

24 Q Are speakers instructed regarding that distinction?

25 A Yes. When speakers were selected, we would often give them pointers to that effect.

1 Q Are authors instructed regarding that distinction?

2 A Yes.

3 Q What safeguards exist to ensure neutrality within the CJP and the materials and the
4 presenters and the authors?

5 A Well, you have to understand the whole process. But neutrality is something that we
6 value a lot. And so Sandy, Sandra Thiam and I review presentations and writing closely for
7 neutrality. Again, it depends on which particular thing you're talking about, what safeguards we
8 use.

9 Q So that's it. That's how you ensure neutrality, you and Ms. Thiam review presentations
10 and materials. And if there is some bias that's obvious, then you would what?

11 A Well, as I said, it depends. We also have a group of -- if there's any question about
12 neutrality, we have advisors, and we might ask for their views.

13 Q Okay. Has there --

14 A I should add, though, that there rarely is a question of neutrality because we lead at the
15 beginning by urging and insisting that the work product be neutral, that it not be attempting to bias
16 or advocate any position.

17 Q I'm not sure I understand. So you mean -- I don't understand that answer. When you
18 lead at the beginning with whom?

19 A When we ask for a speaker --

20 Q Okay.

21 A -- we will talk to them about not advocating for any particular position or decision
22 coming from the judiciary.

23 Q Okay. And you do that with every speaker, every author?

24 A Well, to the best of my recollection, every author. Certainly we're very careful with
25 setting that up.

1 Q Okay. And then after that, then you'll review all of the materials by those authors and
2 speakers to determine whether or not there's some bias that's obvious. That's like the second step
3 in the safeguard to ensure neutrality?

4 A So, again, it depends on what we're talking about. On the curriculum, we will review
5 that numerous times, and we will also ask our advisors to review it for us.

6 Q Okay. And what about with speakers and authors?

7 A Speakers, we look carefully by asking for their presentations in advance. And Sandra
8 and I examine those, take a look at those.

9 Q Has there ever been a time where you've removed or didn't publish a speaker and
10 author's material because you found that it was biased?

11 A Well, in the case of presentations that we were just talking about, there were occasions
12 when scientists, say, would slip into a place of appearing to be advocating something, and then we
13 would advise them that that might not be a good idea.

14 Q And then what, have them remove it?

15 A Typically. And then they would typically volunteer to remove it. I don't recall any
16 resistance to that.

17 Q There's never been a time where someone you just canceled their entire slide or
18 presentation or written material?

19 A Well, some slides. When observing this possibility you might say this particular slide
20 may be construed as advocating for something and it might be a better idea to change it or delete it.
21 And both things have happened.

22 BY [REDACTED]:

23 Q And when you talked about the CJP's mission of providing judicial education
24 opportunities on climate science and how it arises in the law, how did you become aware that there
25 was a need for judges to have a greater understanding of climate science?

1 A So that was actually a part of what I learned in the process of conferring with outside
2 advisors at the beginning of the program. We would ask what they think about that, and we
3 would try to weigh whether that was the case.

4 I knew, particularly, also I had seen in my previous job that cases were beginning to develop.
5 And so it appeared that there was a need emerging that I might want to help fill.

6 Q And what were the issues that were arising in those cases that you thought the judges
7 needed to be educated on?

8 A So let me just remind you that I'm not a lawyer.

9 Q Yeah.

10 A But I'd seen that there was a very wide range of issues that were being looked at where
11 climate science would play a role. And the legal terms are not familiar to me, but things like
12 constitutional, statutory, and regulatory laws, for example.

13 Q And so what were the specific aspects of climate science that judges needed to be
14 trained on from a scientist perspective?

15 A Yeah. So basic facts of climate science were the most important, that climate change
16 is understood by the scientific community, it's real, and it's largely human caused.

17 Q Is that the only aspect, or were there more?

18 A Well, there's a whole curriculum, a full range of climate science that is actually publicly
19 available on our website.

20 Q Okay. So beyond the fact that climate change is real and human caused, were there
21 other things that judges needed to be trained on?

22 A Well, the highest level is that. And then there's, if you look at the modules for the
23 curriculum, a question, for example, that I had a personal role in was explaining how climate science
24 works, what are the methods, approaches, uncertainty; understanding when a statement about
25 climate science is more certain than when sometimes it isn't. That kind of thing.

1 Q And were there any training modules, to the best you can remember, that focused on
2 specific human causes of climate change?

3 A Well, the general and top line for the education is that climate change is principally
4 caused by greenhouse gas emissions, which is a universal, is a consensus view of the climate
5 science community, I should say.

6 BY [REDACTED]:

7 Q Is it important that judges perceive the Climate Judiciary Project as neutral?

8 A Yes. I wanted to ask you what you mean by "neutral"?

9 Q I guess just not one-sided, not -- I guess not -- I guess there's a kind of a spectrum of
10 climate science and the outcomes of -- or in the causes of climate change. Would you agree with
11 that?

12 A It's an overstatement.

13 Q An overstatement. Okay. So how?

14 A Yeah, I think that the vast majority of -- overwhelming majority of climate scientists
15 understand that climate change is real, human caused, caused largely by greenhouse gas emissions.

16 Q Do you think that there are judges that don't believe in climate change?

17 Ms. Grooms. Climate change science? Climate change.

18 [REDACTED]. Climate change science, I guess.

19 Do you think that there are judges that don't believe humans cause climate change?

20 Ms. Grooms. To the extent you know.

21 Mr. Hanle. To the extent I know, I will just say that I believe that judges, like general -- most
22 general audiences with which I have experience at Climate Central -- have a range of views, and some
23 of them don't understand that climate change is real --

24 [REDACTED]. Okay.

25 Mr. Hanle. -- and human caused.

1 [REDACTED]: Okay.

2 [REDACTED]: So are the trainings viewed with the goal of not -- convincing judges is not the
3 right word -- but educating judges on the fact that climate change is real and that it's human caused.
4 Is that the goal of the training?

5 Mr. Hanle. Explaining climate science, its basis, understanding for it. And one of the
6 consequences of all of that is that they would see that climate change is what I just said -- real,
7 human caused.

8 BY [REDACTED]:

9 Q Okay. Going back to authors and presenters that you all have chosen, if there were
10 undisclosed conflicts or conflicts of some bias that you didn't find out, do you think that would have a
11 negative effect on the climate change -- or on the CJP -- like how it's viewed by judges as far as
12 neutrality?

13 A I can't speculate on how the judges are going to view something.

14 Q If you were taught material and the person teaching you that material had an interest in
15 the outcome of the way that you took into education or the material, would that affect how you'd
16 look at the materials that you've been presented? Let me think of a better way to word that.

17 If someone has an undisclosed conflict or an undisclosed -- they haven't disclosed that they're
18 on a certain side of advocacy or that they have pending litigation, that they're an expert in a litigation
19 case, and they're presenting this material to you, teaching you what the correct science is, would
20 then later finding out that they had those interests or those undisclosed conflicts, would that affect
21 the way that you look at the material that they presented?

22 Ms. Grooms. I think that's just a hypothetical, which is --

23 [REDACTED]: Yeah, I mean --

24 Ms. Grooms. -- hard to address.

25 BY [REDACTED]:

1 Q Can you walk us through how CJP determines whether or not an individual who is going
2 to present at one of these judicial trainings has a conflict of interest, whether it be involved in
3 litigation?

4 A Sure. So the number one criterion for selection of any presenter was expertise. And
5 I would put great emphasis on that. One, two, and three expertise is the criterion.

6 We also felt that it was important that they be able to present a fair, objective presentation.
7 And the objectivity and fairness of it was something that we evaluated.

8 We couldn't know and in some cases wouldn't know if there was any kind of -- let me modify
9 that a little bit. What I'm trying to say is that we tried as hard as we could to involve people who
10 were not involved in litigation.

11 Q Okay.

12 A And that was an important aspect of it.

13 Q And how do you make sure that no one is involved in litigation?

14 A I didn't always ask that question--

15 Q Okay.

16 A --but there were -- if there's a possibility that we thought -- if there was a possibility, we
17 would ask and make sure that the answer was that they were not.

18 Q And why does CJP -- I am going to use the word "screen" -- but why does CJP screen
19 individuals who are involved in litigation from being a presenter?

20 A I think the feeling was that we didn't really want to put anyone in an awkward position.

21 Q Okay.

22 A And that would be the presenters, the judges, anyone involved in the program.

23 Q And from your perspective, has CJP been successful in screening its presenters for
24 anyone who may be involved in pending litigation?

25 A Well, in screening its presenters for giving solid, unbiased presentations, I think we've

1 been very successful. I stand by that, and I'm proud of that.

2 I think that we -- to the best of my knowledge, and I'm not sure, but to the best of my
3 knowledge -- we have been successful at not bringing in anyone who is directly involved in litigation
4 to present to the judges.

5 BY [REDACTED]:

6 Q So I want to get a little more in-depth about the curriculum development.

7 Does the Climate Judiciary Project follow a standard process for developing educational
8 materials?

9 A Not a standard process, but we certainly have a way of thinking and developing those
10 materials.

11 Q Is that way of thinking documented on anything? Is there something that's given to
12 the Curriculum Committee or people that are coming up with the process?

13 A Yes, yes. So there is a document or a number of documents, but one particular where
14 we lay out in the curriculum what topics we think are appropriate and seek advice on that.

15 Q Does that document have a title by chance?

16 A I can't remember what the title would be, sorry.

17 Q That's okay.

18 Ms. Grooms. And were you asking whether there's a document that describes the process
19 for which they develop the curriculum, or whether there is -- I am not sure I am figuring out what.

20 BY [REDACTED]:

21 Q So I asked does the Climate Judiciary Project follow a standard process for developing
22 educational materials. Then I asked if that process is documented, if there is a document that lays
23 out the process -- here are our standards, here are our criteria -- something you can refer back to,
24 discuss, maybe in the meetings.

25 A Well, you mentioned advisors, I believe, and there is a document that lays out what

1 we're looking for from our advisors.

2 Q Okay. Perfect.

3 How does the Climate Judiciary Project decide which topics should be included in its
4 educational programming?

5 Ms. Grooms. The curriculum that we're talking about?

6 BY [REDACTED]:

7 Q Just, I mean, any of the topics. There's modules, all of that, the chapters, or the
8 curriculum, just educational programming, educational materials, the topics that are discussed.
9 Who decides those topics?

10 A So I'll answer for the curriculum.

11 Q Okay.

12 A Which is that it began -- and this was perhaps a two-year process -- began with
13 discussions among myself and my colleague about what are the main top line topics that ought to be
14 covered; and then talking through what some of the areas of interest would be for the science being
15 presented and how it arises in the law, meeting our goal.

16 Q Okay.

17 A That was the principal first step in the process.

18 Q But how did you all come up with those topics? You say you guys need to discuss, but
19 what was the --

20 A Well, I mean, honestly, Sandy and I both are experts. She's expert in the climate law
21 and I'm expert in climate science.

22 Q Okay.

23 A But we don't claim to know everything, and that's why we have advisors.

24 Q Right. Okay.

25 Can advisors propose a topic?

1 A Well, yes, absolutely. And there were plenty of informal conversations with advisors
2 about what ought to be included.

3 Q Okay. Can outside organizations propose a topic?

4 A I'm not sure what that means.

5 Q Like maybe you have a working relationship with another environmental organization,
6 you discuss the project. Can someone from that organization propose a topic?

7 Ms. Grooms. Are you asking whether someone did?

8 [REDACTED]: I'm asking if they can, if it's permitted, if the CJP --

9 Ms. Grooms. I'm not sure --

10 Mr. Hanle. Well, that's not what happened.

11 [REDACTED]: Okay.

12 Ms. Grooms. I'm not sure what "can" means.

13 BY [REDACTED]:

14 Q Are there guidelines where you can propose topics?

15 A No, there are no written guidelines that we relied on in our conversations and thinking
16 ourselves and then putting those topics down.

17 Q So does CJP seek advice on what topics should be discussed at judicial training?

18 A Yes, we do.

19 Q And who do you seek that advice from?

20 A So we -- early on we felt it was important to have a Curriculum Advisory Committee, and
21 we constituted that.

22 Q Okay. And who's on the Curriculum Advisory Committee?

23 A Well, it depends on when. It's evolved.

24 Q Let's talk about now.

25 A Now?

1 Q Uh-huh.

2 A There are 14 members. They all have senior standing. They're advisors in science,
3 law, as climate applies to it. And we have judges on it as well.

4 BY [REDACTED]:

5 Q When was the Advisory Committee -- its curriculum, the Advisory Committee?
6 Whatever you call it.

7 A The name has been used variably. Sometimes we call it Curriculum Advisory
8 Committee. Sometimes we'll call them as an Advisory Committee.

9 Q Okay. So for the purposes of today, let's just do Advisory Committee. Is that okay?

10 A Fine.

11 Q All right. When was the Advisory Committee established?

12 A When we began to develop the written curriculum, which would have been in, I believe,
13 early 2020, to the best of my recollection.

14 Q And is that why the Advisory Committee was established, to develop the curriculum?

15 A To help us develop the curriculum, yes.

16 Q Did they have any other -- the committee, did it have any other role?

17 A Not at the beginning, no.

18 Q Okay. What about now?

19 A Well, over time it evolved. We wanted it to evolve to be advisors, first to help us
20 identify possible authors, leading authors of the curriculum modules.

21 Q Okay. Is everyone -- is there any hierarchy on the committee? Is there someone that
22 has more say or more authority?

23 A No, there isn't.

24 Q No? Okay.

25 Who -- do you know the names of the current Advisory Committee members?

1 A That's a lot of people.

2 Q Yeah.

3 A I mean, I know them. I would recognize them.

4 Q Okay. We can get to that in a second.

5 A Okay.

6 Q So can you go through, I guess, today what are some of the responsibilities of the
7 Curriculum Committee?

8 A Yes.

9 Q Okay.

10 A Advisory Committee, I think you wanted to --

11 Q Yes, Advisory Committee.

12 A So it hasn't met in, I think, a year. And the responsibilities the last time that it met
13 were largely for reviewing the status of the curriculum and its use. We also talked broadly about
14 the entire Climate Judiciary Project and how it was going, some of the issues associated with that.

15 Q Okay. So does the committee, the Advisory Committee, review speakers?

16 A Only -- no, not as a committee. And once in a while I would call a committee member
17 and ask them for suggestions. That's all.

18 Q Okay. But not in the role as a committee member --

19 A No.

20 Q -- just in their expertise otherwise?

21 A No. As an advisor broadly.

22 Q And is the same true for reviewing authors? Does the committee review authors?

23 A The committee does not review authors. We did tell the committee who the authors
24 were after they were selected.

25 Q Okay. Does the committee have any role in checking bias or neutrality in the

1 educational materials?

2 A I think that it's fair to say that if there were apparent bias, that they would provide
3 feedback to us.

4 Q Okay. Can you remember a time that that was the case?

5 A I cannot.

6 Q Okay. And so you said that the last time the committee met was a year ago?

7 A About, I think.

8 Q How often does the committee meet?

9 A Well, the committee was actually created at the beginning to review the curriculum.
10 We then didn't meet again for, I think, it was two -- I think it was three years approximately.

11 Q Okay. So it's not a regular thing?

12 A No.

13 Q It's when something comes up?

14 A Yes.

15 Q Okay.

16 BY [REDACTED]:

17 Q And you said "when we met." Are you considered part of the committee?

18 A No, I'm not considered.

19 Q Do you just attend committee meetings?

20 A And I function as staff to it, yes.

21 Q And who selects the committee members?

22 A So, as I mentioned before, Sandy and I put our heads together and came up with the list
23 of the committee members.

24 [REDACTED]: Are individuals who are not on the committee permitted to attend meetings?

25 Mr. Hanle. Well, we've had -- I am trying to think --

1 Ms. Grooms. Do you mean other CJP staff?

2 BY [REDACTED]:

3 Q Just anyone. I mean, sure, CJP staff, maybe people from other organizations.

4 A Yeah. CJP staff.

5 Q Any lawyers that aren't connected?

6 A No, not other organizations, and not -- I mean, to the best of my knowledge, not
7 organizations -- other organizations or people outside. These were involved in the CJP only.

8 Q Okay. So people that -- only people that are involved in CJP can attend the committee
9 meetings?

10 A I think that's fair to say, yes. I believe so.

11 Q Okay. And is there a certain circumstance where that would happen where someone
12 that's not on the committee would need to come in and attend the meeting?

13 Ms. Grooms. What if you had a presenter -- would you have presenters to the meeting?

14 Mr. Hanle. Thank you for the cue.

15 I don't think we had any presenters to the meeting other than the committee members
16 themselves or staff, to the best of my recollection.

17 [REDACTED]. Okay. And then, to the best of your recollection, there hasn't ever been like
18 outside legal counsel attend one of the meetings?

19 Mr. Hanle. No.

1
2 [10:58 am].

3 BY [REDACTED]:

4 Q Okay. So I think we touched on this a little bit, but does the committee approve -- the
5 committee approves the curriculum?

6 A The committee was not asked formally to approve the curriculum. We asked them for
7 comment on the outline of the curriculum.

8 Q Okay.

9 A And then we provided the curriculum for them to see.

10 Q Okay. And then if -- does anyone have the power or the authority to override a
11 committee decision in regards to curriculum or anything else?

12 A Well, this is an Advisory Committee.

13 Q Right.

14 A We hear their advice and we take it into consideration, the leadership --

15 Q So really, they don't have authority to --

16 A That's correct. They don't.

17 Q Okay. So in talking about the development an educational module. What is the first
18 step of developing a new educational module?

19 A Good question. So the module, the first step is that the module outline more or less is
20 developed by staff and then reviewed -- was reviewed in toto by the Curriculum Advisory Committee.
21 That's the first step.

22 Q So does staff propose a topic, and then --and then after you -- the topic is chosen, do
23 you seek authors or presenters to develop the material?

24 A The process of getting -- of recruiting authors typically and may always,
25 to the best of my recollection was after the outline was provided.

1 Q Okay. And then staff creates the outline?

2 A Yes.

3 Q Okay. Once an author is selected is the author given written guidance?

4 A There's a discussion with the author first just describing in a letter or an email what
5 would -- what would be asked of the person, and a request to consider doing it.

6 Q Okay.

7 A After that, there's conversation.

8 Q Is the scope of the -- of the -- the -- is the scope defined what you want the author to
9 write, like the topic, is the scope of that given to the author?

10 A When?

11 Q In -- I guess, in the intro email or after conversations come up.

12 A In broadest scope possibly.

13 Q And then is the author provided deadlines?

14 A Authors are usually asked for it in a particular time and we negotiate a deadline.

15 Q Okay. Are the authors paid?

16 A They receive stipends, so they're not -- the stipend is an honorarium and it's -- yes.

17 Q Yeah. Okay. Are there -- are there authors giving -- given sources that they're
18 required to use?

19 A Absolutely not. I shouldn't say absolutely at all, but, no, to the best of my knowledge.

20 Q Okay. Does anyone supervise the drafting process?

21 A No. If a draft is a little slow we might ask how things are going. That's it.

22 Q Yeah. Just to check in?

23 A Yeah.

24 Q Okay. Once the draft is completed, who first reviews it?

25 A It's -- it comes into the staff team, and members of the team are invited to review and

1 comment.

2 Q Okay. Does legal review occur?

3 A Well, implicitly, certainly my counterpart, but it's not a formal legal review.

4 Q Okay. And that's Ms. Thiam?

5 A Yes.

6 Q And then there's scientific review?

7 A Yes. And I help to lead that.

8 Q Okay. Is there any review, like an ethical review?

9 A Well, as I said, as we work as a team, we're always aware of this and actually put that as
10 an important thing to pay attention to. So I would say that implicitly there is an ethical review by
11 the team.

12 BY [REDACTED]:

13 Q Is the outline the staff creates provided to the author at any point in time?

14 A Yes, it is.

15 Q And so beyond the -- providing the outline is the author given free license.

16 A Yes.

17 Q -- to create the written work product however that author sees fit?

18 A Yes. We invite the author to revise the outline, and sometimes they will submit it to us
19 in advance, and sometimes they won't.

20 BY [REDACTED]:

21 Q How many reviewers typically participate in reviewing an author's work?

22 A So there's staff reviewers, and that might be four or five readers.

23 Q Okay.

24 A And then we also do peer review, which we think is important.

25 Q Yeah, can you go into the peer review a little bit.

A So we identify leading scholars who are experts, and that's the criteria for selection of them to review the modules.

Q Are they already affiliated with ELI and CJP, or they, like, outside experts that you ask to come in and review?

A They're usually outside experts. Once in a while, someone who knows CJP will do that.

Q Okay. And so then, after the comments are given and there's a review, then what happens? Does the author revise the draft?

A So the reviews then come back to us. These are what we call anonymous reviews.

Q Okay.

A And we look at those, and mostly forward those to the authors for their consideration. We don't direct them to change because of it but give them this as anonymous peer reviews, the usual standards for academic writing.

[REDACTED]: We'll go off the record.

[Recess.]

██████████. Anyone who came in, place your name on the record.

██████████, Counsel, Ranking Member Raskin's staff.

██████████, Senior Special Counsel, Chairman Jordan's staff.

[REDACTED]. We're off the record.

[Recess.]

EXAMINATION

BY [REDACTED] :

Q Dr. Hanle, I want to thank you again for coming in today. My name is [REDACTED]
I'm an oversight counsel with House Judiciary minority, and I'm joined today by my colleague, [REDACTED]
[REDACTED], who is a counsel with our courts and IP subcommittee.

I'm going to try not to be too repetitive, but I might ask you to repeat a few things here and

1 there as I try to get a clean record so I appreciate your patience in advance.

2 A Sure.

3 Q So I want to take a few steps back and just kind of ask a bit about your background. So
4 could you tell me a little bit about your education, where you went to undergrad, your graduate
5 degrees that you hold, your educational background?

6 A So I was an undergraduate at Princeton University, majored in physics, and then I went
7 to graduate school at Yale University, where I began in physics and switched to history of science,
8 history of physics. And there I received degrees in master's in physics, master's in history of
9 science, and a Ph.D. in history of science, physics.

10 Q And what is your specific area now of scientific expertise?

11 A Well, I don't hold myself out as a working scientist, but I believe that I have expertise in
12 climate science and have brought that to the Climate Judiciary Project.

13 Q You mentioned in the prior hour that your knowledge of the network and community in
14 climate science is extensive.

15 A Yes.

16 Q Can you elaborate on that, your experience in this area with this particular scientific
17 community?

18 A Yeah. I became chief executive of a group called Climate Central, which is responsible
19 for communicating the science of climate to general public and connecting to the research
20 community. So we were research and communications group.

21 And, in that role, I had responsibility for knowing the climate science community and got to
22 know most of those who are -- I shouldn't say most, but many of those who are in leadership in
23 climate science in the Nation and in the world.

24 Q When did you begin that position?

25 A 2011.

1 Q So you have about 15 years of experience --

2 A That's right.

3 Q -- in this particular space within the climate change community?

4 A Correct. 15 years is fine.

5 Q And you touched on some of this in the prior hour. So, again, thank you for your
6 patience. Why did you decide to found CJP?

7 A It seemed like it was an important need.

One of the most important climate general audiences is judges in decisionmaking positions, and I
felt it was important to convey the facts of climate change to the judiciary.

10 Q And, before you created CJP, had you heard from any judges that there was a gap they
11 hoped would be filled in terms of trainings available to them on climate change?

12 A Not directly from judges to the best of my recollection.

13 Q Okay. So I'll actually introduce the --

14 Ms. Grooms. Are we marking this?

15 [REDACTED]. Yes, this will be exhibit 1 I believe, yeah, and we'll get you guys a copy of that.

16 I apologize.

17 [Hanle Exhibit No. 1.

18 was marked for identification.]

19 Mr. Hanle. This is a long document, isn't it?

20 [REDACTED] Yes, we don't need to read the whole thing.

21 BY [REDACTED]:

22 Q I'm just going to point out on Page 4 of the prospectus so after the cover letter -- we're
23 on Page 4 -- and it noted that this is -- do you recognize this document?

24 Ms. Grooms. Take a minute and look.

25 Mr. Hanle. Yeah, let me just take a second because initial seeing it I didn't recognize it.

1 BY [REDACTED]:

2 Q So this a letter that you wrote for the record to Mr. John Cooke, who is the director of
3 the Federal Judicial Center, on January 17th, 2019, and after the cover letter, you included what I've
4 been calling a prospectus. So it was a draft of your proposal for what appears to be the Climate
5 Judiciary Project and kind of explains, you know, why you think this project is important and the
6 concept for the project as a whole, which was sent to Mr. Cooke at the Federal Judicial Center?

7 A Good. Yeah. I do recognize it now.

8 Q Great.

9 Ms. Grooms. Do you need a moment to review that?

10 Mr. Hanle. I could spend 20 minutes reading it. I think I'm okay.

11 BY [REDACTED]:

12 Q Okay. I could make sure I point you to the exact paragraph.

13 A Thank you.

14 Q On page 4 of the prospectus, the fourth paragraph down.

15 A The fourth down?

16 Q Yeah.

17 A Okay.

18 Q So it says: At the judicial symposium noted above, which was a 2018 Global
19 Symposium on Judiciary and the Environment referred to earlier in the prospectus, we heard
20 repeated calls from leading State environmental judges, appellate, and State Supreme Court Justices
21 for climate science education. We also heard endorsement of our intention to provide that
22 education, especially through existing judicial education programs and without political tilt.

23 So, not to correct you, of course. This is -- this was many years ago. You may not
24 remember this, but I just want us to state for the record that it seems you did have judges at the time
25 who were very much in support --

1 A Yes.

2 Q -- of this kind of training. Does that refresh your recollection at all?

3 A Well, my initial idea was before the event that I'm referring to here.

4 Q I see.

5 A The event that I'm referring to here, indeed, there were State court judges present, and
6 I asked whether they thought that would be important, and they said yes.

7 Q So there was support from judges --

8 A There was.

9 Q -- to create this kind of training?

10 A Yeah.

11 Q They felt there was a gap in this training available to them?

12 A They did feel that, and to my recollection and impression, they felt strongly about that.

13 Q Thank you. And sorry to run you through this document. I just thought it was
14 important to highlight that judges had, in fact, called for this kind of training. So you testified in the
15 prior hour that Mr. David Van Hoogstraten -- am I saying his name correctly?

16 A Von Hoogstraten.

17 Q Hoogstraten. I apologize. Introduced you to ELI. Is that right?

18 A Correct. That is correct.

19 Q And you ultimately decided to propose your Climate Judiciary Project to ELI to take it on
20 under their umbrella. Is that right?

21 A That is correct.

22 Q And Mr. Van Hoogstraten --

23 A Yes.

24 Q -- was with BP. Is that right?

25 A He had just retired from BP, or might even still had been retiring, but he was -- yes.

1 Q And BP is an oil and gas company. Is that fair to say?

2 A It is.

3 Q And did ELI have a reputation in the scientific community or from other players in the
4 space for being trustworthy and professional?

5 A Absolutely, and that was one of the principal reasons I felt it was important to bring this
6 project to ELI.

7 Q So the organization was very well-respected in the scientific community?

8 A Very well respected in both the -- in the scientific community for sure, yes.

9 Q And you testified that ELI is a nonpartisan, nonpolitical organization?

10 A Correct. And that was another reason we wanted to come there.

11 Q And, based on your experience with ELI over these past 8 years or so, have you
12 observed them to remain nonpolitical?

13 A Yes.

14 Q And nonpartisan?

15 A I have not had any change in my opinion.

16 [REDACTED]. When you say that they're respected in the scientific community is that the -- in
17 the United States, international?

18 Mr. Hanle. I would say probably United States, as the United States largely. Well, it's an
19 international group, too, so -- let me modify that. I think it's probably international as well as
20 national.

21 BY [REDACTED]:

22 Q When you created CJP, was there an express intention to make sure that this training
23 program would be nonpolitical?

24 A Very much so. The whole idea was not biasing, not bringing politics into it at all.

25 Q So, in other words, it wasn't meant to benefit just Democrats or just Republicans or just

1 Liberals or just Progressives?

2 A It was meant to benefit all judges, all the judiciary.

3 Q So, when you're training, you're speaking to judges who were appointed to the bench.

4 Does your interaction with them change depending on whether they were appointed by a Republican
5 or Democrat?

6 A Not at all.

7 Q Or whether they have an Liberal or Conservative ideology?

8 A Not at all.

9 Q And you did not create CJP to benefit judges of a certain ideological background?

10 A That is correct.

11 Q In fact, I'll read from the prospectus on page 5. So, under "Safeguard to Assure
12 Integrity and Credibility," do you see where I'm at?

13 A I am. I do.

14 Q I'll read the beginning of that paragraph right under that heading: A key to success will
15 be our ability to cultivate interest of judges from a wide range of ideological points of view. We will
16 take great care to appeal to shared judicial values of both Conservative and Liberal Judges: the rule of
17 law, protection of the institution of the courts, judicial independence, and, most importantly,
18 reliance on rational, objective, evidence-based reasoning -- the value that law and science hold most
19 in common, end quote.

20 A I'm proud of having written that.

21 Q So it's fair to say that this was your goal from the very beginning of this project?

22 A It is.

23 Q And you still enact that belief today?

24 A Absolutely.

25 Q Do judges from a wide array of ideological backgrounds participate in the trainings

1 provided by CJP?

2 A Yes, they do.

3 Q And did you establish CJP to influence particular court cases or to influence those court
4 cases in favor of plaintiffs with the climate change-related claim?

5 A We did not want to influence anything -- any particular court cases or any
6 particular decisions.

7 Q And, once again I'm going to refer back to this prospectus, because I think it's important
8 that this was written at the start of this project and kind of identifies a lot of the goals and values that
9 you brought into the project. So that's why I keep referring back to it.

10 But I'll look at page 4 of the prospectus, the very top of the page: Our purpose is not to
11 influence outcomes of specific court cases. This effort is solely in aid of science-informed
12 decisionmaking intended to benefit sound judicial processes and, therefore, good governance.

13 Do you still believe that today?

14 A I do indeed, as I did then.

15 Q So I want to switch gears a little bit. And we -- we talked a lot in the prior hour about
16 neutrality, the neutrality of your presenters, the neutrality of your material. Can you explain to me
17 what in your mind neutrality means in this particular space?

18 A Well, I think -- I ask that question, the question for me, neutrality means not trying to
19 bias any outcomes of court cases. It also means not political and not advocacy --
20 advocating particular solutions or positions--

21 Q And why was --

22 A --other than I should say the basic understanding of climate science and the reality of
23 climate change.

24 Q And why was it so important to you to bring the value of neutrality to CJP, whether it be
25 through the presenters that are presenting at conferences, or the training modules, or other papers

1 and documents that are created through the program?

2 A Well, first of all, because I believe in it, and I think it is very important. And, secondly, I
3 thought that the judges would care very much about receiving neutral perspective, not -- not
4 attempt -- attempting to be biased.

5 Q Why do you think it's so important to maintain neutrality?

6 A Because that's the fundamental process of the rule of law in this Nation I believe.

7 Q And do you think that most well-established and well-respected scientists and
8 academics would also agree that it's important to present this kind of information in a neutral,
9 nonbiased way?

10 A I think that's true, yes.

11 Q And is that, generally speaking, important to the work being taken seriously?

12 A That they believe it?

13 Q That -- that the work is neutral. That it is presented --

14 A Absolutely.

15 Q -- in a objective way?

16 A Yes, indeed.

17 Q And you testified that you reviewed -- reviewed all writing from presentations for
18 neutrality because you, quote, value that a lot, correct?

19 A Yes.

20 Ms. Grooms. To the best of your recollection.

21 Mr. Hanle. To the best -- yes, to the best of my recollection.

22 BY [REDACTED]:

23 Q You made an effort to do so?

24 A Yes, and it was part of the ethos of the team reviewing it, too, I might add.

25 Q And you advised authors and speakers on the importance of remaining neutral and

1 nonpolitical as a general rule?

2 A We did.

3 Q And you specifically tried to review presentations in advance to ensure that they were
4 neutral?

5 A Absolutely we did.

6 Q And you reviewed writings before they were published on your website or in other
7 materials for neutrality?

8 A Yes, we did.

9 BY [REDACTED]:

10 Q Does CJP lobby Members of Congress?

11 A No.

12 Q What about their staff?

13 A No. No, I would just say no.

14 Q What about State lawmakers, local?

15 A Lawmakers, no. To the best of my recollection, no.

16 Q What about any policymakers in the executive branch?

17 A We've had conversations with people in the executive branch, but never lobbying, never
18 attempting to push for a particular position.

19 Q Are you involved in any litigation?

20 A No.

21 Q Do you file amicus briefs?

22 A So that's a question for ELI. I'm not the lawyer here.

23 Q CJP does not?

24 A No, certainly not.

25 Q Okay. Do you hold rallies?

1 A Rallies?

2 Q Uh-huh.

3 A No, we don't hold rallies.

4 Q Do you advocate for any specific outcomes in cases?

5 A No, we do not advocate for specific outcomes of cases.

6 [REDACTED]: Okay.

7 [REDACTED]: Sure.

8 Ms. Grooms. You were speaking for CJP?

9 Mr. Hanle. I am speaking for CJP, right.

10 BY [REDACTED]:

11 Q So, in your letter to Mr. Cooke that was the cover page, so to speak, of the prospectus
12 from January 2019, I'll read a quote from that. So, in that block, quote, the final two sentences or
13 so: Such education -- and you're referring to judicial education I believe -- must be without political
14 tilt, intended as it is to separate fact from fiction, wherever on the ideological spectrum such fiction
15 may exist. The purpose of this project is to benefit society as a whole by aiding objective
16 science-informed decisionmaking and sound judicial process and, thus, good governance.

17 I think I partly quoted before.

18 Why is it so important that these trainings be without political tilt? And that speaks to what
19 you testified to before on a neutrality. But, specifically talking about political tilt, policymaking, why
20 is it so important that the trainings be without political tilt?

21 A Well, in my view and in our view, politics should not influence decisionmaking in a court
22 of law, and this -- our effort was to help judges receive the objective, fair, balanced information
23 about science, not politics.

24 Q I'm going to turn to the training curriculum that was developed for a moment. So I'd
25 like to introduce for the record a document produced by ELI titled "Climate Judiciary Project, Climate

1 Science and Law, Course Curriculum, Discussion Draft." Just give her a moment to pass that out.

2 [REDACTED]: This will be exhibit 2.

3 [Hanle Exhibit No. 2.

4 was marked for identification.]

5 Mr. Hanle. Yes, I recognize this.

6 BY [REDACTED]:

7 Q You recognize this document?

8 A I do.

9 Q Can you explain what it is in your own words?

10 A It's a document that was put together for our Curriculum Advisory Committee to read in
11 advance.

12 Q So this document was sent to the folks that were part of your Curriculum Advisory
13 Committee?

14 A That's correct.

15 Q And no surprise I'm going to read from the document again.

16 A Okay.

17 Q So, at the top of the second paragraph, it starts with the course is, quote: The course
18 is not intended to influence the outcome of any particular cases; rather to help judges meaningfully
19 understand how climate science is applied to the law. The course will introduce judges to key
20 cases, litigation trends, and thorny aspects of cases involving science.

21 Is it still the case for the curriculum that it's not intended to influence the outcome of specific
22 court cases?

23 A It is. It is absolutely still true.

24 Q And you have advised your Advisory Committees that the curriculum is not meant to
25 influence specific court cases?

1 A Yes, we have. In this document particularly, but subsequent conversations, too.

2 Q So you advised them verbally. You advised them in writing that the goal of this project
3 is not to influence specific court cases?

4 A That is correct.

5 Q That's essential tenet of the curriculum?

6 A It is essential, the central idea, the central tenet.

7 Q The third paragraph reads: The course avoids raising policy questions as much as
8 possible, but in discussing the science of climate change, the impacts, and the jurisprudence, issues
9 of policy will inevitably arise. The course will be presented from a fact-based stance and is designed
10 not to influence policy decisions.

11 Is it still the case that the curriculum is not intended to influence policy decisions?

12 A It is still the case.

13 Q And you once again in writing advised your Advisory Committee that this curriculum was
14 not meant to influence policy decisions?

15 A We did.

16 Q And have you reiterated that in discussions as well?

17 A I would say so, to the best of my recollection on that.

18 Q You talked a little bit earlier -- I'm switching gears again, about consensus science.

19 A Yes.

20 Q Can you explain what that is to me?

21 A Yeah, so, I mean, the best way to understand it is look at the leading scientific
22 institutions in the world. Maybe, in my view, one of the leading institutions is the National
23 Academy of Sciences. The academy evaluates certain scientific questions, and it brings scientists in
24 who represent a broad range of views, and it writes consensus reports. And those reports
25 represent the broad understanding of the scientific community, and are represented -- are presented

1 that way by the national academy.

2 "Consensus" means the shared view of -- and usually in -- the scientific community,
3 and consensus such as the academy has put together.

4 Q And, in your trainings and materials, do you present scientific consensus to judges?

5 A Yes. We are -- for the most part, we try to present the scientific consensus science to
6 judges.

7 Q And, if you present or give any information that isn't consensus science, in other words,
8 there still might be some uncertainty or debate around the scientific premise that's being presented,
9 do you identify those potential uncertainties to your audience?

10 A Absolutely. It's -- it's an important part. And sometimes we will talk about
11 nonconsensus science. But always with the caveat of what the scientific community
12 understands, how it takes those.

13 Q And would you say that it's your ethical obligation to identify the strength of the
14 premise that you're presenting to them? So, in other words, if there's uncertainty do you feel an
15 ethical obligation to tell your audience there's some uncertainty here. This is not consensus
16 science?

17 A I feel an ethical obligation. I also feel that's a scientific obligation to say both what we
18 know and the degree of confidence we have in that.

19 Q And you would never suggest that a premise or concept has broad consensus if there
20 was actually substantially conflicting data or science around it?

21 A I would not.

22 Q Just give me one moment. We talked a little about your criteria for selecting
23 employees, members of your Advisory Committee, and you said, "I believe expertise is numbers one,
24 two, and three" --

25 A Yes.

1 Q -- on the list of things that you look for.

2 A Yes.

3 Q What would constitute expertise?

4 A So --

5 Q What does that mean?

6 A Expertise in science would have a number of indicators. One is, first, their academic
7 degrees. Also, whether they are active in research and publishing. The third is their
8 acknowledged leadership or standing in the scientific community in a particular area. I think
9 those are probably the three biggest ones.

10 Q And are you confident that every member whose been selected to serve on your
11 Advisory Committees for your curriculums has the -- has the expertise required to contribute
12 meaningfully and neutrally to the curriculum?

13 A I am very -- I'm very confident of that, yes.

14 Q And do you feel --

15 A I'm proud of what we've come up with.

16 Q And do you feel that members of these Advisory Committees share your commitment to
17 keeping these trainings, objective, neutral, and, quote, without political tilt?

18 A Members of the Advisory Committee particularly share that, yes, they do, very much.

19 [REDACTED]. That's all my questions for now. We can go off the record.

20 [Recess.]

21 BY [REDACTED]:

22 Q Did the Climate Judiciary Project maintain a written conflict of interest policy?

23 A I don't believe so.

24 Q Generally, what happens when a conflict of -- when a conflict is identified, if there has
25 been?

1 Ms. Grooms. And sorry. Just to clarify. You don't mean, like -- can you clarify what kind
2 of conflict you're talking about because there are financial conflicts of interest that I assume ELI as
3 a nonprofit -- like ELI has for its board and stuff like that, but I assume you're talking about
4 something different than that?

5 BY [REDACTED]:

6 Q Yeah, if there's a conflict, like a legal conflict, if there's legal counsel that's
7 providing -- sorry. I was choking on water before this. If there's a -- if there's let's say someone
8 from the plaintiff's bar is providing written material to provide judges at some CJP event and that
9 conflict is identified, what's the process? What's happens?

10 A We try to the best of our ability to avoid conflicts like that, and I think also, to the best
11 of our ability, we didn't have those conflicts for our -- for the authors of the curriculum or the presenters.

12 Q Okay. I'd like to turn now to judicial outreach, and just within the CJP educational
13 programs, who's -- who's eligibility to attend a CJP program?

14 A So "eligible" might be a little strong, but we -- typically, the staff of the CJP would, the
15 senior staff of CJP would attend. And, beyond that, I think there were no others who would attend
16 these events typically.

17 Q So I could attend an event?

18 A No. That's not what I was saying. Sorry if I wasn't clear.

19 Q Okay. That's what I mean. Like who are these --

20 A No, outside people were not generally invited to attend those events.

21 Q To attend the educational programs.

22 A That's correct.

23 Ms. Sawyer. Can we just identify the timeframe and what events you're talking about?

24 [REDACTED]: All CJP events from the beginning of CJP to today.

25 Mr. Hanle. Does that apply to the States as well?

1 Ms. Grooms. No, we're not talking about State court events so --

2 [REDACTED]: I mean could a Federal judge attend a State court event?

3 Mr. Hanle. Let me think about that.

4 Ms. Grooms. I think we gave you a list of events for which we thought Federal judges
5 attended.

6 [REDACTED] You did.

7 Ms. Grooms. So, if we could keep this to the Federal judge list. But I also think it's just -- I
8 think the question is also just generally confusing.

9 [REDACTED] Okay. So --

10 Ms. Grooms. So, if we could --

11 [REDACTED] Who comes up with a list of attendees for the event?

12 Ms. Grooms. And do you mean outside attendees? Do you mean particular like -- do you
13 mean the judges? Is that what we're talking about?

14 [REDACTED] Correct.

15 [REDACTED] Yes.

16 Ms. Grooms. Okay.

17 Mr. Hanle. So those invitees were in the hands of the Federal Judicial Center. That's their
18 responsibility.

19 BY [REDACTED]:

20 Q So do you -- does CJP contact the FJC and ask them to invite judges on your -- on your
21 behalf or --

22 A Yeah, I think it depends on which events, but I will say, it -- early in our partnership of
23 FJC, that was the case.

24 Q So the --

25 Ms. Grooms. Wait. Can you explain what was the case because I think you misunderstood

1 his question.

2 Mr. Hanle. Oh. Okay. Sorry.

3 Ms. Grooms. You partnered with FJC and explained how judges were invited by FJC.

4 Mr. Hanle. Yeah. Shall I do that?

5 Ms. Grooms. Go ahead.

6 Mr. Hanle. Okay. So FJC was charged with inviting the judges. We were not. To the
7 best of my knowledge, we did not invite the Federal judges to come.

8 BY [REDACTED]:

9 Q Okay. To the best of your knowledge, does the -- does the CJP contact judges for any
10 case in any example, like, for followup, maybe, feedback on how the presentation went, or is there
11 no contact between the CJP and Federal judicials or Federal judges?

12 A Oh, I think that we certainly had contact with Federal judges. We were present at the
13 events and had conversations sometimes.

14 Q Okay. So Federal judges attend the events. Is that correct, these CJP events?

15 A No. Sorry.

16 Q No?

17 A What I'm -- let's start over again. You asked me the question about Federal Judicial
18 Center events. Is that correct?

19 Q I guess is there --

20 Ms. Grooms. I think it'd be easier if we stick to like one category of events and then --

21 [REDACTED]. Yeah, I'm talking about the CJP events that Federal judges attend for
22 in -- have those presentations and all -- do we agree we're on the same page with the CJP events?

23 Ms. Grooms. So I think -- I think the way he would think about this is --

24 [REDACTED] Yeah.

25 Ms. Grooms. The Federal Judicial Center events is a category for him.

1 [REDACTED]: I guess --

2 Ms. Grooms. If I'm making sense.

3 [REDACTED]: Okay. So I -- can you explain that relationship. There are CJP events in
4 connection with the FJC, the Federal Judicial Center. Do you have events together? I'm confused
5 why that's a separate category.

6 Mr. Hanle. Yeah.

7 Ms. Grooms. Go ahead.

8 Mr. Hanle. We worked out with the FJC that they would be a -- I believe the term they use
9 was sponsor, a cosponsor of the programs, and their responsibility was to recruit the judges to come
10 to the events.

11 [REDACTED]: Okay. And what are these events? Are these CJP events?

12 Mr. Hanle. These were with the Federal Judicial Center. These were a set of seminars we did in
13 2019 and early 2020 that were events that we helped with our partner, The American Association for
14 the Advancement of Science, to recruit speakers to, and organize those.

15 [REDACTED]: Okay.

16 BY [REDACTED]:

17 Q Beyond the events that FJC cosponsored, and I know you're talking about a specific
18 timeframe 2019 to 2020. Is that correct?

19 A Yes.

20 Q Has FJC cosponsored any other events that CJP has held?

21 A I don't think so, to the best of my knowledge.

22 Q Beyond the events that are cosponsored by FJC, are there any other CJP events that
23 judges attend?

24 A That --

25 Q That Federal judges attend.

1 A That Federal judges attend. I think that there were -- so we have a partnership with
2 NJC, The National Judicial College, and Federal judges were -- could have attended those, but I don't
3 know which ones.

4 Q Okay. Does CJP host any events individually, or is there typically a cosponsor of the
5 event?

6 A Almost. Typically for sure there's a cosponsor that's one of the judicial education
7 organizations.

8 Q Okay. So, beyond NJC and FJC, when they cosponsor CJP events, are there any other
9 events that Federal judges attend?

10 A In the most recent time, there have been with other partners, judicial education
11 partners.

12 Q And those most recent times, when were those years?

13 A '25 and this year.

14 Q So 2025?

15 A Uh-huh.

16 Q And 2026?

17 A Uh-huh.

18 Q So, between 2020 and 2025, were there any events that CJP held in connection with
19 another organization that Federal judges attended?

20 A Not to my recollection.

21 Q Okay.

22 Ms. Grooms. I think he said that there were NJC events. Federal judges could have
23 attended. He just doesn't know.

24 Mr. Hanle. Thank you.

25 Ms. Grooms. And I think we gave you a list of which ones.

1 BY [REDACTED]:

2 Q And so, to the extent that the FJC invites the judges to their cosponsored events with
3 CJP, does NJC do the same? Do they invite the judges to cosponsored events?

4 A They did, yes, for those two main things they did.

5 Q Okay. And, just thinking about the FJC partnership here for those -- when they
6 cosponsored events, was there any interaction before the event between CJP staff and judges?

7 A So I'm not -- I'm not aware that that happened. It's possible, but I'm not aware.

8 Q Okay. And, post event, this is the FJC-partnered events with CJP that Federal judges
9 attended --

10 A Yes.

11 Q -- was there any contact between CJP staff and Federal judges following the event?

12 A There might have been, might have been followup from judges or some kind of
13 follow-up.

14 Q And, when you say "followup," what do you mean by "followup"? If the judges had
15 questions, are there like surveys that are filled out on how the presentation was?

16 A Yeah. So there was one followup that was very important to us, which was that we did
17 ask for an evaluation of the program.

18 Q Okay. And, when you do those evaluations, is it CJP interacting with the judges to pass
19 along the evaluation, or does that go through the FJC?

20 A No. Actually, I mentioned The American Association for the Advancement of Science.
21 We asked -- tasked them, asked them to develop and perform evaluations.

22 Q And did -- so the judges I'm assuming turned those evaluations into the other entity. Is
23 that correct?

24 A That's right.

25 Q Okay. And then how did CJP obtain those evaluations?

A We received them -- we received summaries as I recall. This was some time ago, as I recall, summaries of them from AAAs.

Q And then I know you were talking to my colleague, [REDACTED], about CJP staff attending the events with the Federal judges, and maybe there was some sort of conversation that took place. Can you tell us what context that would have been in?

A Breaks I would suspect. We -- the FJC seminars usually included some food in events, and so passing social graces.

Q So you would say those conversations are organic if they occurred?

A They were informal and organic.

Q Okay.

[REDACTED]: Has there ever been a time where someone from the SJP has personally contacted --

Mr. Hanle. CJP.

██████████. I'm sorry. CJP. I keep doing that. From the CJP to contact a specific judge to try to get them to come to a CJP event?

Ms. Grooms. To the extent that you recall.

[REDACTED]. Yeah.

Mr. Hanle. Yeah.

Ms. Grooms. And Federal judges.

Mr. Hanle. And Federal judges?

Ms. Grooms. Yes.

Mr. Hanle. It's possible, but I really don't recall.

[REDACTED]. Okay. This will be exhibit 3. I'm going to show you an email from June 11, 2019 between yourself and Michael Gerrard.

[Hanle Exhibit No. 3.

1 was marked for identification.]

2 Ms. Grooms. June 11, 2019?

3 [REDACTED]. June 11, 2019.

4 [REDACTED]. It's an email chain. It starts on the second page, Bates stamp 966, an email
5 from you to Michael.

6 [REDACTED]. Take your time. No rush.

7 [REDACTED]. Just let me know when you're ready.

8 Mr. Hanle. Okay.

9 BY [REDACTED]:

10 Q Okay. So, on the page that's Bates 967, I believe it's the second to last page.

11 A Yes.

12 Q The top paragraph starts as "we are looking." We can focus on the second paragraph
13 that starts with we have been organizing.

14 A Uh-huh.

15 Q There's a line 3 from the bottom that says: There's also a back-channel effort to have
16 one or more Supreme Court Justices attend.

17 Do you see that line.

18 A I do see it.

19 Q Who is conducting that back-channel effort?

20 Ms. Grooms. Well, can we pause? Is this State Supreme Court Justices or Federal Supreme
21 Court Justices?

22 [REDACTED]. I mean, it just --

23 Ms. Grooms. To the extent that you recall. I'm just trying to get people from --

24 Mr. Hanle. You're asking me?

25 Ms. Grooms. Yes. Yes.

1 Mr. Hanle. So this is just a refresh right now. I think there's a good chance that what we
2 were talking about is State Supreme Court Justices here.

3 BY [REDACTED]:

4 Q Why do you think that?

5 A Because I had met a couple at an earlier event before I was with CJP and ELI.

6 Q Okay. And so can you talk about what those back-channel efforts were?

7 A No. Honestly, I don't recall.

8 Q Okay.

9 BY [REDACTED]:

10 Q Are there similar back-channel efforts that are used to get Federal judges to attend
11 events?

12 A No, not to my recollection. I'm surprised to -- I'm thinking I don't know what this really
13 is.

14 Q Okay. Are specific judges targeted to attend -- targeted in a sense of are there specific
15 judges that you're aware of that the FJC reaches out to to attend certain events, or is it broadly
16 wide -- or broadly kind of -- the invite is broad, and they reach out to multiple jurisdictions, or is it
17 one jurisdiction that's targeted?

18 A So it was my sense that they would send messages out to entire districts, circuits,
19 whole groups, and those who wished to attend would choose.

20 Q And how is the circuit selected for -- for which judges would be invited? Was it where
21 the CJP, FJC event was held, or was there an effort to target specific jurisdictions?

22 A No, it was actually pretty close to what you were talking about. We had five locations
23 in the pilot programs each around the country. And the FJC and we together identified what
24 would be the circuits from which the judges would be drawn so that we could -- so that all circuits
25 could be covered.

1 [REDACTED]: Has the Climate Judiciary Project ever invited judges because they were
2 assigned to climate-related litigation?

3 Mr. Hanle. Not to my knowledge.

4 [REDACTED]: Okay. So I'm going to show you another document. This will be exhibit 4.
5 It is an email from you to Michael Wehner dated May 12th, 2022.

6 [Hanle Exhibit No. 4.

7 was marked for identification.]

8 Mr. Hanle. Good.

9 BY [REDACTED]:

10 Q Okay. Who's Claudia Tebaldi?

11 A Claudia was a former staffer at -- staff member of Climate Central.

12 Q Okay. Does she -- does she work at CJP or ELI?

13 A No.

14 Q Do you know where she currently works?

15 A No, I don't.

16 Q Okay. In the second paragraph, starting "I'm writing today at the recommendation of,"
17 you say: I'd like to tell you how we are going about reaching key judges, and I have a specific idea
18 for attribution for your consideration that could make a great difference in the final outcome of
19 cases.

20 Do you see that?

21 A Uh-huh.

22 Q Do you remember how you -- what you were talking about? How you -- what -- how
23 you were going about reaching key judges?

24 A How I was going about reaching key judges?

25 Q Yeah, what did you --

1 A That's the question?

2 Q Yeah. What -- can you tell us what you meant by "reaching key judges" in that
3 sentence?

4 A Well, I think it refers to the ongoing program that we have that this fellow Wehner did
5 not know about. So it would have been at that time, looking at the day, it would have been about
6 how our judicial education program was going forward.

7 Q To reach key judges?

8 A Yes.

9 Q What --

10 A And that would have been in cooperation with the National Judicial College.

11 Q Okay. What is -- what makes a key -- what makes a judge a key judge? Who are we
12 referring to here in the judiciary?

13 A Broadly speaking and in the overall picture, it was judges who would have one way or
14 another an interest in climate science.

15 Q And what did you mean by you have specific -- quoting you: I have a specific idea
16 about attribution for your consideration that could make a great difference in the final outcomes of
17 cases.

18 Can you explain that, what you meant by the "final outcome of cases"?

19 A Well, and again, this is about the entirety, not any one case. Okay. And the -- the
20 specific idea about attribution is that we would develop a module on the state of attribution science,
21 which I knew to be coming up in cases and being used.

22 Q And did you believe that that specific module you're referring to right now would have a
23 difference -- would make a great difference in the final outcome of cases?

24 A Well, our -- our objective was to provide the best science about climate change and that
25 included attribution science. So our hope was that judges would make better informed decisions by

1 the science that we were providing.

2 Q And then those better informed decisions would have -- would make a difference in the
3 final outcome of cases?

4 A Well, in total -- in totality if judges are better informed, hopefully they would be able to
5 make better-informed decisions.

6 Q Okay.

7 [REDACTED]. And what makes a decision a better-informed decision?

8 Mr. Hanle. Well, if the judge has -- our philosophy in what we've written down is, if judges
9 have the context and tools that they need to evaluate evidence, and that context and tools are what
10 we're providing in climate science.

11 [REDACTED] Okay. And the information that you're providing in that context, I know we
12 talked about this earlier, is that the, you know, that climate change is real, that it's caused by
13 humans, is that the -- was that the goal of this attribution?

14 Mr. Hanle. Well, attribution is a part of the entire curriculum that we offer, and, like all of it
15 in the curriculum, the idea was that we would enable judges to understand how the climate science
16 works, the method, and some of the conclusions that climate science has brought.

17 [REDACTED]. So has the -- has the CJP ever considered pending cases when determining
18 who to invite to any events?

19 Mr. Hanle. Not to the best of my knowledge or recollection.

20 [REDACTED]. Does CJP ever consider pending cases in the context of what events to hold,
21 what should be included in the curriculum?

22 Mr. Hanle. We didn't think of it that way. What we would think of is what were the
23 climate issues of the time that might come into consideration in court cases.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

[12:16 p.m.]

[REDACTED]: And how do you determine what the climate issues at the time are?

Mr. Hanle. By impacts of climate change, for example. If there's a hurricane that's coming through and it causes damage, this might come into consideration.

[REDACTED]: Does the CJP target State judges?

Ms. Grooms. What do you mean by "target"? Do you mean like programming of State judges.

[REDACTED]: Yeah, like do they target certain judges to come to certain events or programs?

Mr. Hanle. Not certain judges. No, not specific judges.

[Hanle Exhibit No. 5.

was marked for identification.]

BY [REDACTED]:

Q Okay. I am going to show you another document which will be exhibit 5. It is an email from June 28th, 2022, from you to Kristie Ebi, I believe?

A Ebi.

Q Ebi?

A That's okay. It took me years to get that right.

Q And getting Thiam right. For the last six months I've been saying it wrong.

A Thank you.

Q You ready?

A Give me a second on the last paragraph.

Q No problem.

A I'm ready.

1 Q Okay. So the second paragraph, starting with "Among the many threads," the second
2 sentence starting with, "We engaged."

3 You wrote: "We engaged NJC to reach out to the Chief Justices of every state and asked
4 each to nominate one judge to be a 'Judicial Leader in Climate Science.' 21 states and Puerto Rico
5 decided to participate, and we were very pleased that all but one of our target states (where cases
6 were being brought) opted in."

7 Do you see that sentence?

8 A I do.

9 Q Okay. So do you -- does the CJP target State judges?

10 A No.

11 Q Can you explain what this -- what is being said here?

12 A What we're talking about is State representation, entire States. And as you can see,
13 it's defined as where cases were being brought.

14 BY [REDACTED]:

15 Q What cases?

16 A A whole range of cases, presumably. I can tell you that this effort was to find
17 representative judges from States where there would be some climate impact and therefore some
18 likelihood of cases being brought.

19 Q So there was a likelihood that cases would be brought in that specific State that would
20 involve some sort of component of climate science? Is that correct?

21 A I think that's fair to say, the way you said it.

22 [REDACTED] And so these judges that you're speaking about here, these are, you said,
23 "Judicial Leaders in Climate Sciences."

24 Can you describe that relationship with the CJP? Are they -- I guess, what is a judicial leader.
25 What do you base that on? What role are they playing?

Ms. Grooms. Yeah, this is entirely a State court judge program. So like you can explain the general program, but I think we probably will stop it there.

Mr. Hanle. So our partner -- one of our partners in judicial education is -- was the National Judicial College. And they had a program of judicial leaders, which we applied to climate science. That's how we carried it out.

BY [REDACTED] :

Q Okay. So in addition to the judicial leaders for State judges, did you also have a similar program with any other organization for Federal judges?

A No.

Q Were there any -- were you targeting any specific States for Federal cases, like you were here for the State cases?

Ms. Grooms. I think he said he was not targeting here, but --

BY [REDACTED] :

Q The target State. I guess, let's -- I mean, just taking what you wrote, target States, are there any -- does that apply in the Federal realm at all?

A We didn't distinguish Federal and State in that respect. The question was whether there were States where there would be climate impacts and whether those climate impacts might likely end up in court proceedings.

[Hanle Exhibit No. 6.

was marked for identification.]

[REDACTED]. Exhibit 6, I believe, is another email from September 22nd, 2022, from you to Kristie Ebi.

Mr. Hanle. Are we talking this --

Ms. Grooms. He hasn't given it to you yet.

Mr. Hanle. Totally confused.

1 [REDACTED]: We'll get to that.

2 Ms. Grooms. Is this highlighting from the -- I don't know where this is from, but is the
3 highlighting from the original? Do you know?

4 [REDACTED]: Yeah, I didn't -- it's not my highlighting. I don't believe this is my
5 highlighting. The last one has it as well. But we just pulled these from your production.

6 Ms. Grooms. I don't think these are from my production. They're not --

7 [REDACTED]: Maybe this one isn't from your production.

8 Ms. Grooms. They're not our Bates numbers.

9 [REDACTED]: Yeah, these are public documents.

10 Ms. Sawyer. You don't know who provided the highlighting?

11 [REDACTED]: No.

12 Ms. Sawyer. They appear this way online?

13 [REDACTED]: Uh-huh.

14 Mr. Hanle. May I ask where online?

15 Ms. Grooms. You can ask anything you want.

16 [REDACTED]: Yeah, it's just public online.

17 Mr. Hanle. Okay. Anyway.

18 [REDACTED]: Where Climate Judiciary Watch (sic) is an organization that follows --

19 Ms. Grooms. You don't know if they provided the highlighting?

20 [REDACTED]: Yeah, this is from -- yeah, I mean, this is from their website. We did not do
21 the highlighting. I am not sure if they pulled it from or there's a source that gave it to them that did
22 the highlighting. This is from their website, Climate Litigation Watch.

23 Ms. Grooms. Have you had a chance to review this now?

24 Mr. Hanle. I have.

25 Ms. Sawyer. It's also true, just for the record, that is also the case on exhibit 5.

1 [REDACTED]: That's right.

2 Ms. Sawyer: So I assume it's from the same source.

3 [REDACTED]: Correct.

4 Ms. Sawyer: Again. That wasn't your highlighting. It's on some public document. And
5 you don't know who highlighted it or why.

6 [REDACTED]: No, I mean, I would -- I could just speculate, but since it's what I'll be asking
7 about as well.

8 Ms. Grooms: We won't ask you to speculate if you don't ask.

9 BY [REDACTED]:

10 Q Again, the first paragraph, second to last sentence starts with: "One judge let us know
11 that he had begun as a skeptic about the effects on health but was turned around by your
12 presentation."

13 Is this -- I guess I'm curious to know about what -- if you recall, which Kristie Ebi presentation
14 you are discussing here?

15 A I do.

16 Q Okay. And do you recall this event that was -- took place in Woods Hole?

17 A I do, yes.

18 Q Okay. What event was that?

19 A Well, this was a State judge event.

20 Q It was? Okay. That was it. All right.

21 And do you know if there are any Federal judges that attended?

22 A To the best of my recollection, there were none.

23 Q Okay. I am trying to move through these documents as fast as I can.

24 [Hanle Exhibit No. 7.

25 was marked for identification.]

1 [REDACTED]: We've got another exhibit, exhibit 7. This is the Climate Judiciary Progress
2 Report. We'll give you a copy here in just a second.

3 Mr. Hanle. Okay.

4 Ms. Grooms. Take your time.

5 Is there an email right before this? We're just trying to put it in context.

6 [REDACTED]: I am not sure if there was an email before this. This is just part of your
7 production.

8 Ms. Grooms. Do you know who is this a report to?

9 Mr. Hanle. I don't know to whom this was written.

10 Ms. Grooms. Sorry.

11 Mr. Hanle. And I don't really remember it.

12 Ms. Grooms. Okay.

13 [REDACTED]: Yeah, I just have a couple questions about just a couple things contained in
14 the document, if you're ready.

15 Mr. Hanle. Well, it's kind of long.

16 [REDACTED]: I don't know that it's necessary to read the whole thing, but of course you
17 can. I can just point you to specific --

18 [REDACTED]: I think we can ask the questions without the document, and then if it's helpful
19 to refer to the specifics of the document.

20 BY [REDACTED]:

21 Q Yeah, first of all, how many -- how often are you providing progress reports or creating
22 progress reports?

23 A Well, I'm not remembering to whom.

24 Q Okay. And so this isn't just something that is posted throughout the -- for everyone in
25 the CJP, this is probably sent to a specific person?

1 A It could be, or it could be through an Advisory Committee.

2 Q Okay. So do you record the number of judges who attend the seminars?

3 A We try to, yes.

4 Q Okay. So on 2444, which is the second page of this document, the bottom of the first
5 paragraph, it says: "Together in 2022, we'll have reached over 400 judges, delivered six seminars
6 and four short-courses, and completed the entire 13-module curriculum."

7 So reading that, I assume that you do record the judges that attend the events. Is that fair?

8 A Oh, yes, we keep a running tab --

9 Q Okay --

10 A -- numbers of judges.

11 Q Numbers of judges.

12 A Uh-huh.

13 Q But you don't keep judges' names?

14 A Not typically.

15 Q Okay.

16 Ms. Grooms. To the best of your recollection.

17 Mr. Hanle. To the best of my recollection, but a lot of that information was not accessible to
18 us.

19 [REDACTED]. Does this apply at both the State level and the Federal level? If they send it to
20 a State-level judge event do you record how many State level judges attend. And then if it's a
21 Federal event, do you record how many Federal judges?

22 Mr. Hanle. That's correct. To the best of my ability we do that.

23 Ms. Grooms. To the best of your recollection.

24 Mr. Hanle. And to the best of my recollection.

25 BY [REDACTED]:

1 Q So you are unaware if there is a roster with judges' names who have attended or
2 Federal judges who have attended events? I know you're saying --

3 A A roster of names?

4 Q But are there also -- is there also a roster of names?

5 A To the best of my knowledge, there is no such roster.

6 Q Okay. All right.

7 Does the Climate Judiciary Project track climate litigation?

8 A We don't track it specifically, to my knowledge or recollection. We don't.

9 Q I'm sorry. You don't track it specifically?

10 A We don't track climate litigation.

11 [REDACTED]: Do you keep abreast of the active ongoing litigation that involves climate
12 science?

13 Mr. Hanle. We need sources for that. There's a database for that, for example.

14 [REDACTED]: What database is that?

15 Mr. Hanle. The Sabin Center keeps a database.

16 [REDACTED]: Does the database identify judges assigned to specific cases.

17 Ms. Grooms. If you know.

18 Mr. Hanle. No, I don't think so. But I don't know for sure.

19 [REDACTED]: Okay. Does it identify the parties to the cases.

20 Ms. Grooms. Do you recall?

21 Mr. Hanle. Yeah, I don't follow this very closely myself, and so I don't recall.

22 [REDACTED]: What do you remember about the Sabin Center tracker?

23 Mr. Hanle. I remember that it has a list of cases. There are short summaries, as I recall,
24 about what the arguments are.

25 BY [REDACTED]:

1 Q Is the database public?

2 A Oh, yes.

3 Q Okay. How does CJP use the information they gain from the Sabin Center database?

4 A I think we use it broadly, in my experience, as mostly as background that is
5 understanding where cases are. I have checked it from time to time to see how science arises in
6 cases.

7 Q Does it -- does the information you gain from the Sabin Center database, does it
8 influence educational programming that the CJP may hold?

9 A I wouldn't say so. I don't believe so.

10 Q What about speaker selection?

11 A No, I don't believe so.

12 Q Does it influence curriculum development?

13 A No, I wouldn't say so, to the best of my understanding.

14 BY [REDACTED]:

15 Q So if you're going to the Sabin Center tracker to learn what climate issues are arising in
16 litigation, once you go to the Sabin Center tracker and determine that, does it play any sort of role in,
17 well, maybe it would be helpful if judges understood this nuanced piece of climate science?

18 A Well, that's kind of hypothetical. I don't recall that conversation at all.

19 Q Okay. So there's no -- you don't go to the tracker to see what issues are before judges
20 and say, well, maybe this would be helpful to have this sort of information?

21 A Not typically --

22 Q That's not a calculation at all?

23 A Not typically, no. And I can't recall it ever being.

24 BY [REDACTED]:

25 Q Okay. Are you familiar with the Federal Judicial Center's climate science chapter for

1 the Reference Manual on Scientific Evidence?

2 A I am.

3 Q Did the Climate Judiciary Project participate in its
4 drafting? Ms. Grooms. Of the published chapter?

5 [REDACTED]: Of the chapter.

6 Ms. Grooms. It went up and got pulled down.

7 [REDACTED]: Yeah, that's right.

8 Ms. Grooms. Yeah.

9 Mr. Hanle. No, we had no role in that.

10 BY [REDACTED]:

11 Q No role in drafting, review, or preparation?

12 A No role at all.

13 Q No role at all. Okay.

14 Are you familiar with Jessica Wentz?

15 A Yes.

16 Q What about Radley Horton?

17 A Yes.

18 Q Did they participate in the education through CJP?

19 A Yes, they did.

20 Q Did they present?

21 A Radley Horton presented science. Jessica Wentz wrote a chapter -- sorry, we call it a
22 module -- in the curriculum.

23 Q Okay. Have they ever provided any materials that you felt were biased in one way or
24 another and asked them to change the material?

25 A No.

1 Q No?

2 A Not to my recollection.

3 [Hanle Exhibit No. 8.

4 was marked for identification.]

5 BY [REDACTED]:

6 Q Okay. We have another email, from Michael Burger, exhibit 8, an October 24th, 2024,
7 email from Michael Burger to Mr. Hanle and Sandy Thiam.

8 A Okay.

9 Q Do you know Mr. Burger?

10 A I do know him.

11 Q Do you work often with Mr. Burger?

12 A Not often.

13 Q He works with the Sabin Center?

14 A Yeah. It says here he is senior research scholar and lecturer in law.

15 Q Is it often that Sabin Center and ELI or the Climate Judiciary Project contribute on each
16 other's work or maybe collaborate? It seems like Mr. Burger here is wanting to collaborate with CJP
17 on a chapter. Is that something that --

18 A It's not frequent.

19 Q It's not frequent?

20 A No.

21 Q Do you remember what this specific chapter is -- or module -- that he's asking to
22 collaborate with or collaborate on?

23 A I need the date here.

24 Q October 24th, 2024.

25 A So there's a couple of possibilities here that I'm trying to sort out. But what he is

1 writing me about is that we were wanting to understand regarding the -- one of the databases that
2 the Sabin Center had put together.

3 Q Do you remember if you have -- if you did collaborate with him on --

4 A I am quite sure. I am fairly sure, to the best of my recollection, we did not collaborate
5 with him.

6 Q Okay. Have you ever collaborated with Michael Burger on any CJP materials?

7 A We didn't collaborate with him. We asked -- let me think about this. We asked
8 Michael Burger -- so there were -- you recall a number of mailings of a large paper that we sent to
9 some of the judges, and Michael Burger was the lead author on that. So that's the only
10 main -- that's the only use that I recall with Burger from that time. There was -- so --

11 Ms. Grooms. To the best of your recollection.

12 Mr. Hanle. Yeah, to the best of my recollection.

13 BY [REDACTED]:

14 Q Were you aware that Michael Burger was removed from and conflicted out of
15 participating in the drafting of the Federal Judicial Center's climate science chapter?

16 A No.

17 Q Had you known that, would you have collaborated with Mr. Burger?

18 Ms. Grooms. I think that's a hypothetical. We still don't know that now, I assume.

19 Mr. Hanle. Yeah, I just learned.

20 [REDACTED]. So you had no prior knowledge that he was conflicted out?

21 Mr. Hanle. Not at all.

22 [REDACTED]. Okay.

23 BY [REDACTED]:

24 Q Did you know that Jessica Wentz and Radley Horton wrote the climate science chapter?

25 A Yes, I did. After the fact, I saw it.

1 Q Okay. Does the CJP have written policies governing drafting or draft materials?

2 A Governing draft materials?

3 Q Yeah.

4 A I don't know what that means.

5 Q Are authors permitted to share their drafts with whomever, wherever, whenever, or is
6 there some kind of guidelines that CJP likes the authors to follow?

7 A We haven't put out any guidelines and expect them to behave in normal scholarly
8 standards.

9 Q So drafts aren't confidential? I don't know what scholars call scholarly standards. I
10 am not --

11 A Well, typically, drafts may not be confidential.

12 Q Are CJP drafts?

13 A Sometimes they are. It depends on the author. But not typically. And our -- no.

14 Q Did CJP request permission from -- or did CJP ask authors to request permission before
15 sharing their drafts with others?

16 A No, it never -- it didn't come up.

17 Q It never came up. Okay. Are you aware of any time when --

18 A And to the best of my recollection, I think not.

19 Q Okay. Yes, sir.

20 Do you know Dr. Wehner?

21 A I do.

22 Q Did Dr. Wehner provide drafts of an educational module titled "Drawing the Causal
23 Chain: The Detection and Attribution of Climate Change" to anyone outside the formal CJP drafting
24 team?

25 A I don't know that.

1 Q You don't know that?

2 A I -- let me think if I know.

3 Ms. Grooms. Are you asking whether he has personal knowledge of it, or that he's aware
4 from reading the reports?

5 BY [REDACTED]:

6 Q Let's go personal knowledge first. Did you have personal knowledge before reading
7 any sort of media report that Dr. Wehner shared a draft educational module with another individual?

8 A I did not.

9 Q You did not. Did you become aware, subsequently, that he had shared a draft module
10 with an outside individual?

11 A Not directly.

12 Q How did you become aware?

13 A From media.

14 [REDACTED]. When did you first learn that he shared -- that Wehner shared a draft?

15 Ms. Sawyer. Can I just make a clarification?

16 What he testified is he has read in the media.

17 [REDACTED]. Okay.

18 Ms. Sawyer. I don't think he has personal knowledge as to whether or not that actually
19 happened.

20 [REDACTED]. Okay.

21 Mr. Hanle. That's right.

22 Ms. Sawyer. To the extent.

23 [REDACTED]. When CJP read in the media that a draft was shared, were there any changes
24 made to the author guidelines?

25 Ms. Grooms. He said that there were no author guidelines.

1 [REDACTED]: There's been no change at all.

2 Mr. Hanle. We didn't change our operating practices, no.

3 [REDACTED]: Okay.

4 Go ahead.

5 [REDACTED]: And you talked about sharing materials in a scholarly way. So when a scientist
6 is working on a paper and they share it with an outside individual or maybe another scholar or
7 someone who's in the same field, what are they typically looking for when they share those
8 documents?

9 Mr. Hanle. Usually, it's about content and whether or not there is a sense that there needs
10 to be some factual correction.

11 [REDACTED]: Okay.

12 BY [REDACTED]:

13 Q How were you introduced to Michael Burger?

14 A That's a long time ago, and I don't really remember exactly.

15 Q Okay. Has he served as a speaker, an author, or reviewer, or advisor for CJP?

16 A He was not an author or a speaker for CJP. He was asked to be a peer reviewer of one
17 of the modules.

18 Q Has he participated in the curriculum development or on the Curriculum Committee or
19 Advisory Committee?

20 A No.

21 Q Okay. Do you know Michael Gerrard?

22 A I do. We talked about him before.

23 Q Yeah. How do you know Michael Gerrard?

24 A Well, I met Michael Gerrard when I was running Climate Central. But I don't know,
25 more than a decade ago.

1 Q Has he had any role in the Climate Judiciary Project?

2 A He has, as an advisor on the Advisory Committee.

3 Q Has he served as a speaker?

4 A He has also, yeah.

5 Q Has he served as an author?

6 A Michael Gerrard, no, I don't believe he is an author of ours.

7 Q Has he been -- has he reviewed -- like has he been in a peer-review sector or the section.

8 Has he peer-reviewed any of the materials?

9 Ms. Grooms. To the extent that you recall.

10 Mr. Hanle. Yeah, to the extent I recall. So that's fuzzy. I'm not sure. He might have
11 been, and he would have been considered an appropriate peer reviewer, but I don't know.

12 BY [REDACTED]:

13 Q Okay. Did he participate in the curriculum development or on the committee?

14 A He was on the committee, so he had comments about the outline.

15 Q Okay. And then we briefly spoke about Jessica Wentz. How did you meet Ms.
16 Wentz?

17 A I believe I became aware of her from the large paper that I was speaking about a
18 moment ago. She was a coauthor with two others, and that's the first time I heard of her.

19 Q And that was -- was that Mr. Burger and Horton?

20 A Burger, Wentz, and Horton, I believe.

21 Q Okay. Has she been a speaker, an author, reviewer, or adviser for the CJP?

22 A She was an author of one of the modules, and I can't say for sure if she was a speaker.
23 I don't recall.

24 Q Did she serve on the Advisory Committee?

25 A No.

1 Q Did she participate in curriculum development?

2 A Well, she wrote a module. So in that sense she did.

3 Q Okay. But not the -- okay.

4 A Not the overall.

5 Q Do you know Anne Carlson?

6 A Yes.

7 Q How were you connected with Anne?

8 A She had been a board member of ELI, and I was first introduced to her that way.

9 Q Okay. Did she have any role in the Climate Judiciary Project?

10 A She did, yes.

11 Q What was her role?

12 A She was one of the members -- original members -- of the Curriculum Advisory
13 Committee.

14 Q Okay. So then did she also participate in curriculum development?

15 A Well, to the extent most of the committee members did, that is, advising on the overall
16 organization of the curriculum.

17 Q Okay. Has she served as a speaker or an author, reviewer, or advisor?

18 A She did serve as a speaker to one of our seminars.

19 Q Okay. Do you know Jenny Madkour, M-a-d-k-o-u-r?

20 A I don't believe I know that name.

21 Q She is an attorney in Oregon?

22 A No.

23 Q Okay. What about Courtney Lords?

24 A No. I don't believe I know that name.

25 Q Do you know a Mary Wood?

1 A I know of Mary Wood. She is a legal scholar, I believe.

2 Q At the University of Oregon?

3 A I don't know that for sure.

4 Q You haven't worked with her?

5 A No, I have not.

6 Q She hasn't had any part in the CJP?

7 A She has not.

8 Q Okay.

9 Ms. Grooms. To the best of your knowledge.

10 Mr. Hanle. To the best of my knowledge and memory, yes. I am not responsible for the
11 legal side of things.

12 BY [REDACTED]:

13 Q Okay. And are you familiar with the law firm Sher Edling?

14 A I am.

15 Q Does the Climate Judiciary Project have any relationship with Sher Edling?

16 A Not to the best of my knowledge. We have not, as far as I understand, been in touch
17 with them.

18 Q How are you aware of them?

19 A I'm aware because their name appears in a lot of cases.

20 Q Okay. Climate-related cases?

21 A Some, yeah.

22 Q And where do you see those cases? Via Sabin Center database or --

23 A Their cases are often described in the mass media, and I'll see their name cited there.

24 Q Okay. And we've talked a little bit about the Sabin Center. When did the relationship
25 with the CJP and the Sabin Center kind of start?

1 A I do want to make a distinction, a slight distinction. Our relationship probably with
2 Sabin Center started with Michael Gerrard, who was the founder and director of the Sabin Center.
3 So our relationship really was with individuals as academic leaders rather than an entity called the
4 Sabin Center.

5 Q Okay. And so then your relationship started with Michael Gerrard prior to the CJP?

6 A Yes.

7 Q Okay. Has the Sabin Center and the CJP, have they had meetings together?

8 A No, not to my knowledge.

9 Q Any joint programs or events?

10 A I don't believe so.

11 Q Do you often share educational materials between the two organizations?

12 A No, we don't, other than what is publicly available often. Now, that doesn't exclude
13 the possibility we shared something, but I don't recall that we did.

14 Q Okay. Do they ever recommend speakers or authors or advisors to --

15 Ms. Grooms. Do you mean the Sabin Center or you mean Gerrard?

16 [REDACTED]. I mean if Gerrard is working in -- at the Sabin Center and he is acting on the
17 Sabin Center's behalf, then I am talking Michael Gerrard with the Sabin Center, but if they're just
18 having like a conversation.

19 Ms. Grooms. I think what he has explained is that he saw his relationship with Gerrard or
20 the other individuals, right, Wentz, obviously, authored a chapter, so --

21 [REDACTED]. Right. I'm wondering --

22 Ms. Grooms. Not the entity writ large.

23 Mr. Hanle. But as academics --

24 [REDACTED]. So the answer is all --

25 Mr. Hanle. -- and experts.

1 Ms. Grooms. Well, I just want the record to be clear. Like, obviously, they were -- he was
2 talking to Gerrard about all of those things.

3 BY [REDACTED]:

4 Q Was Gerrard acting in his capacity as a member of the Sabin Center or was he just acting
5 as a fellow scholar?

6 A Well, I can't say what he was acting in. I can say that I approached him as a scholar.

7 Q And not due to his affiliation with the Sabin Center?

8 A That's right.

9 Q Okay. Have you ever approached anyone because of their affiliation with the Sabin
10 Center?

11 A Not to my recollection. I think not. I think that everyone that I have approached one
12 way or another was because of their scholarship.

13 [REDACTED]. We can go off the record.

14 [Discussion off the record.]

15 [REDACTED] We'll go back on the record.

16 BY [REDACTED]:

17 Q Turning to your relationship with the FJC, or the Federal Judicial Center, when did that
18 relationship begin?

19 A So it would have been -- it had to be '18, late '18, I think.

20 Q Okay. And do you remember --

21 A Well, so "relationship." What do you mean by relationship?

22 Q With them inviting judges, you guys have an event -- cosponsor events together --

23 A That would have been 2019.

24 Q Okay. And do you remember who initiated the relationship? Did you reach out to
25 them, or did they reach out to you?

1 A I was responsible. I reached out to them.

2 Q Okay. Have there been joint meetings with FJC in the past?

3 Ms. Grooms. What do you mean by joint meetings?

4 BY [REDACTED]:

5 Q Meetings between two parties coming up with an idea together.

6 A I don't think so. We had conversations with FJC, but they were mostly logistical and
7 practical.

8 Q Okay. Have they ever recommended speakers for events?

9 A No, I don't believe so, to the best of my recollection.

10 BY [REDACTED]:

11 Q I'm going to ask a couple of broad questions.

12 Do you have any involvement with donors to CJP?

13 A Do I?

14 Q Correct.

15 A Yes, I do.

16 Q You do. Okay.

17 And to the extent that CJP listed donors on its website, is that a complete list of donors, to
18 your knowledge? Not asking for specific donor information, just asking whether or not they're fully
19 listed on the CJP website, to your knowledge.

20 Ms. Grooms. Just to clarify, they're listed on the ELI website. So these are donors to ELI,
21 the entity.

22 Does that make sense?

23 Mr. Hanle. Yes, it does. It makes sense.

24 So I don't really know. I didn't review that.

25

1 [REDACTED]. We can go off the record.

2 [Recess.]

3 BY [REDACTED]:

4 Q All right. In the prior hour your talked about CJP's work with FJC. Do you recall --

5 A Yes.

6 Q -- some of what you spoke about there.

7 Do you know if FJC provides resources on a wide variety of scientific topics for judges or
8 judicial staff to become educated?

9 A Yes, I believe they do. And I remembered the reason we brought AAAS into the
10 program was because they had done something on neuroscience previously.

11 Q So neuroscience. Do you know any of the other topics that they provide training or
12 resources on?

13 A I think I do, yes.

14 Q Could you list a few of them, if you know, off the top of your head?

15 A Yes, top of the head. Technology. I think that there are forensics, I believe, is one of
16 them as well.

17 Q So why are these trainings or resources on these scientific topics helpful for judges?

18 A Well, judges, generally speaking, are generalists. They don't typically have scientific
19 training. And cases come before them where scientific issues come into the cases, arise in the
20 cases. And they benefit from having the general knowledge, context, and tools to be able to weigh
21 what they have to and come to informed decisions.

22 Q So, to the best of your knowledge, judges frequently undergo training to review
23 scientific resources related to, like you said, forensics or neuroscience. There is also, I believe,
24 trainings on artificial intelligence or dementia, the opioid crisis or DNA technology. Does that all
25 sound right to you?

1 A Yes, that does sound right to me, and that's correct.

2 Q And when you present to judges on climate science or develop training materials for
3 judges on climate science, is it in the same vein as these other presentations on these other scientific
4 fields trying to educate judges on this body of science?

5 A Yeah, I think so. I have not firsthand seen some of these others. But we try to bring
6 the objective facts of climate science to the judges without bias, without any politics.

7 Q Thank you.

8 BY [REDACTED]:

9 Q A few questions on the trainings, in addition to what she just said.
10 So CJP, would it be fair to say, routinely works with leading both national and State judicial
11 education institutions to provide judicial education?

12 A Yes, we purposely do that.

13 Q And is it correct to say that CJP provides the subject matter expertise for these events?

14 A Yes. We provide the content.

15

16 Q And for the event, specifically, that you hosted or cosponsored with the Federal Judicial
17 Center, who decided who received an invite?

18 A The Federal Judicial Center managed that.

19 Q And I believe you testified to this in the prior hour, but who keeps track of the judges
20 who attend these events?

21 A By that you mean who exactly?

22 Q Correct. Yeah, who exactly attends by name?

23 A Okay. That surely would be the Federal Judicial Center.

24 Q And it's fair that at least some of the events you guys kept a number tally?

25 A Well, we did. When we worked with the Federal Judicial Center in the early going we

1 did have names of judges. That was the first pilot program. But after that number, tallies
2 were what we kept.

3 Q And does CJP have the authority to approve or reject any attendees?

4 A No.

5 Q And who selected the presenters at the events you hosted with FJC?

6 A We did at the Climate Judiciary Project.

7 Q And just to drive it home, who determined which judges would be invited?

8 A The Federal Judicial Center determined which judges would be invited.

9 BY [REDACTED]

10 Q Sorry to ping-pong. I have a few more questions.

11 So could you or anyone at ELI or CJP force a judge to partake in your trainings or read your
12 materials?

13 A Certainly not. These were, to my -- best of my understanding, these were all voluntary
14 selections and judges chose whether they wanted to come or not.

15 Q So, in other words, it was entirely optional for a judge to participate in either a training
16 or even reading or reviewing your materials online?

17 A Yes, that's correct.

18 Q And can CJP punish or penalize a judge for not participating in a training program?

19 A I would say of course not.

20 Q And even if a judge does participate in a training or looks at your materials, does that
21 mean the judge then has to believe everything you present?

22 A It's a very good question. And we -- of course, judges are free to decide and accept
23 what they wish.

24 Q So if a judge comes to your training and decides they don't believe one word of what
25 you present, there's nothing you can do about it?

1 A That's correct.

2 Q And would these judges be free to do their own research or undergo other trainings to
3 question the validity of your modules and trainings if they chose to?

4 A Yeah, absolutely.

5 Q So nothing is stopping these judges from fact-checking CJP's presentations if they
6 wanted to?

7 A That's also true.

8 Q And, generally speaking, judges are presented with information all the time, and they
9 have to decide whether or not they think that information is valid or truthful. Is that fair to say?

10 A I think so. I think that's correct.

11 Q So do you think judges should be well-equipped to broadly question the validity of
12 evidence presented to them?

13 A Certainly, I do believe that, yes.

14 Q And can CJP force a judge to rule a certain way in a case or admit certain evidence
15 because you want them to?

16 A We cannot do that.

17 Q And has CJP ever tried to instruct a judge on how they should rule in a specific case?

18 A We do not do that.

19 Q Have it ever tried to instruct a judge on what evidence the judge should admit or throw
20 out in a specific case?

21 A So, no, we do not.

22 Q And has CJP ever weighed into a judge on the strength of a party's argument in a
23 particular case?

24 A Never, to the best of my understanding -- recollection.

25 Q Thank you.

1 I am going to turn back to some of the questions that you were asked in the prior hour. You
2 were asked a series of questions about, quote, "targeting judges." Do you recall the point of
3 questioning?

4 A I do, yes.

5 Q And you testified that CJP doesn't target, so to speak, or select to try to get particular
6 judges?

7 A That's correct.

8 Q You said that you instead want to bring training to judges in areas where there is a
9 climate impact?

10 A That's correct.

11 Q Could you explain a little bit more about what that means?

12 A Yeah. Climate change has many effects, impacts, such things as intensified storms,
13 heat waves, drought, significant contribution to wildfires. Those events typically lead to damages
14 -- or damage, I should say, broadly speaking -- and often may end up coming in to court cases.

15 What we were looking for is places where the climate impacts would be significant, such that
16 they might end up being in court cases.

17 Q So you weren't looking for judges that were presiding over individual cases, individual
18 pieces of litigation?

19 A We were very specific that we were not targeting individual cases or litigation.

20 Q So you never, for example, said, "Oh, there's some litigation there against that fossil fuel
21 company, let's make sure we get that judge into training"?

22 A We didn't do that.

23 Q You would never have done anything to that effect?

24 A We did not do that.

25 Q And to the extent that you reviewed any information that was on the Sabin Center

1 tracker that you were asked about in the prior hour, it was to identify what kind of issues were
2 coming up, broadly speaking, in cases. Is that correct?

3 A I think that's right. Different people look at that database for different reasons. But
4 that certainly was my focus.

5 Q So you weren't looking at it to identify particular judges to try to get in for training?

6 A No, we weren't -- I was not doing that.

7 Q Okay. You were also in the prior hour asked a series of questions about particular
8 individuals that you have worked different capacities, whether that was Ms. Carlson or Mr. Burger or
9 Mr. Gerrard. Do you recall that line of questioning?

10 A I do, yeah.

11 Q When you decided to work with any of these individuals, in the different capacities that
12 you worked with them in, what brought you to want to work with these individuals? Why did you
13 choose to work with them?

14 A The number one criterion was their expertise. If they had something, some knowledge
15 and expert contribution to be made, and that rose to the top for us. That was why we recruited
16 these people.

17 Q So you didn't seek out individuals to work with based on their affiliation with a
18 particular entity?

19 A No.

20 Q It was based on their expertise?

21 A Yes, it was based on their expertise.

22 Now, let me think about the categories of scientists, legal scholars, and the judges. It was
23 based on expertise.

24 Q Anything else? All right.

25 Thank you. We can go off the record.

1 [Whereupon, at 1:21 p.m., the interview was concluded.]

Certificate of Deponent/Interviewee

I have read the foregoing ____ pages, which contain the correct transcript of the answers made by me to the questions therein recorded.

Witness Name

Date

Exhibit 35

Letter from Hon. Robin L. Rosenberg, Dir., Fed. Jud. Ctr.,
to John B. McCuskey, Att'y Gen. of W. Va. (Feb. 24,
2026)

THE FEDERAL JUDICIAL CENTER
THURGOOD MARSHALL FEDERAL JUDICIARY BUILDING
ONE COLUMBUS CIRCLE, N.E.
WASHINGTON, DC 20002-8003

HONORABLE ROBIN L. ROSENBERG
DIRECTOR

TEL.: [REDACTED]
Email: [REDACTED]

February 24, 2026

The Honorable John B. McCuskey
Attorney General
1900 Kanawha Blvd. E.
Building 1, Room E-26
Charleston, WV 25305

Dear Attorney General McCuskey,

I received your letter of February 17, 2026 following up on the Federal Judicial Center's omission of the climate science chapter from the *Reference Manual on Scientific Evidence*, Fourth Edition (RMSE).

The Center has not distributed any hard copies of the RMSE. All hard copies of the RMSE distributed by the Federal Judicial Center to federal judges or anyone else will omit the climate science chapter consistent with the online version now on the Center's website.

The Center discussed with the National Academies the Center's decision to omit the climate science chapter. We understand that the Academies will include asterisked language in its web and printed versions of the RMSE indicating that the FJC has omitted the chapter from its version of the manual. Further questions concerning decisions made by the National Academies should be directed to the National Academies.

The RMSE was developed under the guidance of a committee of judges and scientists that determined which chapters to include in the manual. The Committee sought to capture scientific topics that federal judges might encounter in their cases. In its thorough discussions of possible chapter topics, the Committee considered input from more than 1,000 federal judges who responded to the Center's request to all judges for input on the RMSE.

Once the Committee determined the appropriate chapters to include in the RMSE, it then identified authors with appropriate expertise for each chapter. The Committee carefully reviewed each chapter, including comments from external peer review, to ensure that the science was accurately portrayed, that the chapter would be helpful to judges, and that it was objectively written.

Sincerely,

Robin L. Rosenberg

Judge Robin L. Rosenberg
Director, Federal Judicial Center

Exhibit 36

Email from Jessica Wentz, Non-resident Senior Fellow, Sabin Ctr. for Climate Change L., to Beth Wiggins, Dir. of Research Division, Federal Judicial Center (Nov. 3, 2023)

Message

From: Jessica Wentz [REDACTED]
on behalf of Jessica Wentz [REDACTED]
Sent: 11/8/2023 8:54:13 PM
To: Beth Wiggins [REDACTED]
CC: Radley M. Horton [REDACTED]
Subject: Re: Comments on your chapter for the RMSE

Hi Beth,

Thanks -- that all makes sense. I'll be back in touch once we have a better sense of when we can finish the revisions.

All best,

Jessica

On Sat, Nov 4, 2023 at 6:52 PM Beth Wiggins <[REDACTED]> wrote:

Hi again Jessica,

I got my answer more quickly that I thought I would. It's fine to share the sense of the comments but not the comments verbatim.

Beth

From: Beth Wiggins
Sent: Saturday, November 4, 2023 9:27 PM
To: Jessica Wentz [REDACTED]
Cc: Radley M. Horton <[REDACTED]>
Subject: RE: Comments on your chapter for the RMSE

Hi Jessica,

Congratulations on your [REDACTED] and I am so sorry [REDACTED] Please take good care of yourself.

I was glad to hear you and Radley think you'll will be able to respond to the comments effectively, and happy to talk at any point as you work through them. I think writing a response document is a really good idea.

I've attached the Word document you wanted.

Re your third question: The Committee did not mention specific areas – but generally made point that when issues re admissibility come before judges, the expert evidence was not one-sided and understanding what they might hear would be useful. When I read the chapter the first time, I was struck by your effort to talk about the areas in which science is more uncertain and where genuine factual disputes may arise. Repeating the general finding about the established link between carbon emissions and global warming at the beginning of so many discussions may have undermined this effort. Also, I think to some extent, these points didn't come through to all readers because of the focus on findings, rather than on methods. It might be helpful to say more straightforwardly how the scientific uncertainties (and thus factual disputes) stem from insufficiency of data, tools to acquire that data, difficulty/impossibility of modelling complex systems, etc. – and how this manifests itself with the different issues. All this might go a long way to addressing this point. More specifically, I'm not sure mentioning old debates would be helpful. I would focus on science debates the judges may currently hear – and the counter arguments (even if not supported by most scientists) that might be raised. As you move along, let's talk about this more.

I need to check on Monday about your sharing the comments. My thought is that it would be OK to share the sense of the comments with people from whom you'd like to seek advice, but not share the comments verbatim as a whole, but I need to check.

Again, best wishes that all goes well for you personally, and let's keep in touch with your progress on the chapter.

Beth

From: Jessica Wentz [REDACTED]
Sent: Friday, November 3, 2023 5:48 PM
To: Beth Wiggins [REDACTED]
Cc: Radley M. Horton [REDACTED]
Subject: Re: Comments on your chapter for the RMSE

CAUTION: This email originated from **outside** your organization. Exercise caution when opening attachments or clicking links, especially from unknown senders.

Hi Beth,

Radley and I conferred about the Climate Science chapter. We appreciate the Committee's feedback. We agree that we can shorten the chapter substantially, in large part through cuts to the "scientific findings" sections. We also think that we can respond effectively to essentially all of these comments (although we may contact you with questions as we work through this). We will plan to send a "responses to comments" document where we explain how we've addressed each item of feedback, in addition to the track changes version of the Chapter.

We do have a few questions as we get started:

1 - Would it be possible for you to send the word version of the re-formatted chapter (with the line numbers)?

2 - Regarding the comment about Michael Burger: we included the acknowledgement because we drew so heavily on our past work with him. We did not have time to do an internal peer review process because the timeline for the initial drafting of this chapter was so short. But we are definitely on board with adding acknowledgements to other peer reviewers.

3 - Did the Committee have any specific topics in mind when it said: "it would be helpful to understand what the rejoinder to some of the points made in the chapter would be, that is, what opposing experts might say." We did try to be explicit about areas of scientific consensus and areas where genuine factual disputes may arise (e.g., whether a specific impact is attributable to climate change). Outside of those contexts, we are not sure what "contrary scientific findings" should be included in this report. We could discuss old debates that have now been settled, e.g., the debate regarding satellite observations and the "hiatus" in warming during the 1990s; we could debunk common myths about climate change (e.g., that warming is caused by solar radiation or water vapor); or we could go into more detail re: areas of scientific uncertainty, such as uncertainty about climate equilibrium and the fact that some scientists view IPCC findings as too conservative.

4 - Would it be alright if we share the Committee's feedback with other lawyers and scientists?

Please let us know if you think a zoom or phone call would be helpful to discuss other aspects of the comments.

Regarding the timeline for review: the Committee's feedback arrived at a very challenging time [REDACTED]. [REDACTED] I intend to work on the revisions during my medical leave, but it is very difficult to predict how long these revisions will take. We will aim to get something to you in January but cannot say for sure. We can keep you posted on progress, if that would help.

All best,

Jessica

On Wed, Oct 25, 2023 at 5:25 PM Jessica Wentz [REDACTED] wrote:

Hi Beth,

Thank you for getting the comments back to us. Radley and I will be meeting next week to review the comments and then we will be able to get back to you about timing and any questions as we get started on revisions.

Best,

Jessica

On Fri, Oct 20, 2023 at 6:22 PM Beth Wiggins [REDACTED] wrote:

Hello Jessica and Radley,

Thank you for the draft of a climate science chapter for the new edition of the *Reference Manual on Scientific Evidence*. Attached are the Committee's comments, as well as a line-

numbered PDF of your chapter to which the comments are keyed. I apologize for the delay in getting the Committee's comments to you. As you will see, the committee appreciated the chapter's thoroughness and straightforward tone, though offered a number of overarching and specific comments to guide your revising it.

After you've had a chance to review the comments, could you let me know when you might be able to provide the revision? It'd probably be helpful for us to discuss the comments as you start revising.

Thanks again.

Best regards,

Beth

Exhibit 37

Email from Jessica Wentz, Non-resident Senior Fellow,
Sabin Ctr. for Climate Change L., to Radley Horton,
Associate Research Professor Sabin Ctr. for Climate
Change L. (Apr. 15, 2024)

Message

From: Jessica Wentz [REDACTED]
on behalf of Jessica Wentz [REDACTED]
Sent: 4/15/2024 10:26:06 PM
To: Radley Horton [REDACTED]
Attachments: Wentz and Horton - Climate Science Chapter - 4-15-24 clean.docx

Hi Radley,

Here is a clean copy of the climate science chapter.

I'm emailing Mike Gerrard now to see if he has time to review this.

Let's hold off on sending to your reviewers until we hear back from Mike Gerrard. I noticed that most of the chapters in the previous version of the edition of the manual don't even include acknowledgements. So I'm now wondering if we could alleviate the committee's concerns by simply deleting the "acknowledgements" section in our chapter. I don't think Mike Burger will be offended but I'd confirm with him of course.

Best,

Jessica