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IN THE DISTRICT COURT OF THE STATE OF WASHINGTON
FOR THE COUNTY OF SPOKANE

STATE OF WASHINGTON,

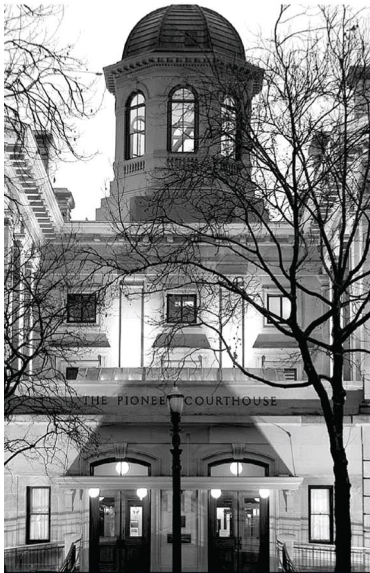
Plaintiff,

v.

Case No. 6Z0117975

GEORGE TAYLOR,

Defendant.



DEPOSITION AND TRIAL



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TRANSCRIPT OF HEARING

HELD ON
MONDAY, JUNE 26, 2017

BEFORE THE HONORABLE
DEBRA HAYES, DISTRICT COURT JUDGE

SPOKANE COUNTY DISTRICT COURT
1100 WEST MALLON
SPOKANE, WASHINGTON 99260

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7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

INDEX

Page

STEVE RUNNING

DIRECT EXAMINATION BY MS. OSBORN

14

CROSS-EXAMINATION BY MS. MACRAE

32

REDIRECT EXAMINATION BY MS. OSBORN

47

TOM HASTINGS

DIRECT EXAMINATION BY MS. OSBORN

48

CROSS-EXAMINATION BY MS. MACRAE

61

1	EXHIBITS		
2	Exhibit		Page
3			
4	1	STEVEN RUNNING CURRICULUM	13
5		VITAE	
6			
7	2	HISTORIC TRENDS IN CO2	18
8			
9	3	GLOBAL CARBON EMISSION TRENDS	19
10			
11	4	SOURCES OF GLOBAL FOSSIL	19
12		CARBON EMISSIONS	
13			
14	5	RADIATIVE FORCING CAUSED BY	19
15		HUMANS	
16			
17	6	GLOBAL TOTAL HEAT CONTENT	21
18			
19	7	GLOBAL TEMPERATURE RANGE	21
20			
21	8	WASHINGTON AVERAGE TEMPERATURE	22
22		TRENDS	
23			
24	9	TRENDS IN WESTERN US SNOWPACK	22
25		MELT ONSET DATES	

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

EXHIBITS

Exhibit		Page
10	WASHINGTON WILDFIRE TRENDS GREAT THAN 10,000 ACRES	23
11	TRENDS IN SEA LEVEL RISE	25
12	PROJECTED CHANGES IN SURFACE WATER RUNOFF PUGET SOUND	25
13	PROJECTED INCREASES IN AIR TEMPERATURE	26
14	PROJECTED WILDFIRE INCREASES IN WASHINGTON	27
15	PROJECTED SEA LEVEL RISE IN SEATTLE	27
16	CLIMATE REDUCTIONS NEEDED TO LIMIT GLOBAL TEMPERATURES TO 2 C	36

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

EXHIBITS

Exhibit		Page
17	HASTINGS CV	53
18	HASTINGS DOCUMENTS REVIEWED	53

1 **TRANSCRIPT OF HEARING**

2 **HELD ON**

3 **MONDAY, JUNE 26, 2017**

4
5 **THE COURT:** Okay. We are here. Mr. Christianson,
6 this is your motion.

7 **MR. CHRISTIANSON:** That's a good summary, Judge.
8 We are here.

9 Judge --

10 **THE COURT:** Are we resolving these instead of
11 having the motion today?

12 **MR. CHRISTIANSON:** No. We're resolving five of
13 those, three of those today. Two have their presence
14 excused today, so we're going to bring them in for an SOC
15 later. And we have one who is not resolving, so we will go
16 forward with the motion.

17 **THE COURT:** And which one are we going forward
18 with the motion on?

19 **MR. CHRISTIANSON:** Reverend George Taylor, Judge.

20 **MS. MACRAE:** And Your Honor, I've spoken with
21 defense counsel about this. The State's witnesses are not
22 available today. And given the length of the docket, we are
23 agreeing to bifurcate the motion. The State's witnesses
24 will testify at a date in September based on defense
25 counsel's availability. Given the fact that we've had to

1 reschedule this once, and when the State became aware of our
2 witness's unavailability, defense did not want to reschedule
3 their experts which the State understood. So I put at a
4 date to be determined by the court. We had been
5 anticipating a motion date in September.

6 **THE COURT:** Why September?

7 **MR. CHRISTIANSON:** Judge, I am scheduled to be
8 covering a public defender contract in Wenatchee, Chelan
9 County, for the next two months to cover somebody's
10 maternity leave as an emergency. So I'm kind of booked out.
11 If I have to, I can come back but --

12 **THE COURT:** And which of the State witnesses is
13 unavailable?

14 **MS. MACRAE:** Alan Dryer is the main officer from
15 the BNSF Railroad, who was present at all of these
16 incidents. He is -- his affidavit of unavailability is
17 attached there. He had a work conference in Montana. That
18 was -- I'm sorry, I'm not looking at the affidavit. I
19 believe it was -- that he traveled there yesterday and is
20 there through the end of this week, which was, of course,
21 exactly the day we had chosen to reschedule.

22 **MR. CHRISTIANSON:** And so as a roadmap, we're
23 going to put on our two experts this morning. If we have
24 time, we'll put on Mr. George Taylor. If not, we'll save
25 him for the next one along with the other witness. But

1 we'll start and try to get the experts out of the way today.

2 **THE COURT:** Okay. So in what order did you want -
3 - did you want to do the motion first probably would be the
4 best way to do it and then do the SOC's after the testimony?

5 **MR. CHRISTIANSON:** Either way the court wants. I
6 thought we'd just do the SOC's first, but either way the
7 court wants to do it.

8 **THE COURT:** Well, I was trying to be mindful, too,
9 of our news people.

10 **MR. CHRISTIANSON:** Okay.

11 **THE COURT:** And then they would be able to leave
12 after the motion hearing. I'm not sure that they're
13 interested in all of the SOC's.

14 **MR. CHRISTIANSON:** That works, Your Honor.

15 Your Honor, if I could ask a favor. I hate to
16 (inaudible) with this crowd here, but I have trouble
17 hearing, Judge.

18 **THE COURT:** You have trouble hearing me?

19 **MR. CHRISTIANSON:** I do.

20 **THE COURT:** Can you hear me now?

21 **MR. CHRISTIANSON:** I can, Your Honor.

22 **THE COURT:** I feel like a commercial.

23 **MR. CHRISTIANSON:** But I know there are a couple
24 other people here who also have hearing issues.

25 **THE COURT:** So I can use this and I will try to be

1 very good about using this. Does everyone hear me?

2 **SPEAKERS:** Yes.

3 **THE COURT:** All right. Thumbs up.

4 If you can't hear me, I'd like to say thumbs down,
5 but I'd rather not see that sign. So if you can't hear me,
6 can you just raise your hand? That will remind me that I
7 need to speak up and speak into my microphone. Okay?

8 **MR. CHRISTIANSON:** Thank you, Judge.

9 **THE COURT:** And if it gets super bad for counsel
10 here, we do have a hearing device you could wear, sir.

11 **MR. CHRISTIANSON:** Thank you, Your Honor.

12 One other preliminary matter. We have two other
13 attorneys who are going to join in on the case to help out
14 with it in various degrees. One is Ms. Rachael Osborn and
15 Mark Hodgson. I will hand the court a Notice of Appearance
16 for each of them, Judge.

17 **THE COURT:** Good afternoon, counsel.

18 **MR. CHRISTIANSON:** So when we do get started, Ms.
19 Osborn is going to put on both of our expert witnesses. I
20 will do Mr. -- Reverend Taylor when it's his turn, and Mr.
21 Hodgson will probably do our closing argument on the motion.

22 **THE COURT:** Okay. Ms. MacRae, are you ready to
23 proceed?

24 **MS. MACRAE:** Yes, I am ready.

25 **THE COURT:** Okay. So Mr. Christianson, this is

1 your motion. Please proceed.

2 **MR. CHRISTIANSON:** Which one do you want first?

3 Dr. Running, Your Honor.

4 **THE COURT:** Okay.

5 Doctor, if you'd like to come up here to the
6 witness stand and I'll have you raise your right hand and
7 I'll swear you in.

8 **(Whereupon, Steven Running was duly sworn.)**

9 **THE COURT:** Go ahead and have a seat, sir.

10 And would you like to use the podium, ma'am, and
11 stand down here? Would you like us to get the podium for
12 you?

13 **MS. OSBORN:** No, that's fine. I understand this
14 microphone is live for taping purposes.

15 **THE COURT:** Yes. It will work. But you could
16 also turn it a little bit towards the wall if you wanted to
17 step into the well and use the podium for your paperwork.

18 **MS. OSBORN:** No, I'm fine. I actually have bench
19 copies of exhibits.

20 **THE COURT:** Okay.

21 **MS. OSBORN:** May I bring them up?

22 **THE COURT:** You may.

23 **MS. OSBORN:** Thank you.

24 **THE COURT:** Thank you. And have these been marked
25 as identification yet?

1 **MS. OSBORN:** Only my own markings on them.

2 **THE COURT:** Okay. So how many exhibits are there
3 so Jessica can start preparing?

4 **MS. OSBORN:** I think there are 15 -- 16.

5 **THE COURT:** Okay. So you don't have to take them
6 right at this moment but if you could prepare 16 exhibit
7 tags. And then we will refer to them in the order that
8 they've been presented as Defense Exhibit 1 and so forth.
9 And as they're presented you can then put the tags on them.
10 That way we won't have to stop everything and wait.

11 **MS. OSBORN:** I also provided copies of exhibits
12 for Dr. Running, who is here. A number of these are
13 scientific charts that accompany his testimony and I propose
14 to Ms. MacRae that we go through them and then move for
15 admission for all of them.

16 Have you given any thought to them?

17 **MS. MACRAE:** I started to review them but didn't
18 get very far with everything else that was going on. I
19 think though that's probably the best way to go through it
20 at this time. And I'll review them as you go over them with
21 the doctor.

22 **MS. OSBORN:** Okay. Thank you very much.

23 I've just changed places so I need to --

24 **MS. OSBORN:** Thank you, Your Honor. Again, I'm
25 Rachael Osborne, representing the Defendant, Reverend George

1 Taylor.

2 **THE COURT:** And could you spell your last name for
3 the record?

4 **MS. OSBORN:** O-s-b-o-r-n.

5 **STEVEN RUNNING, PhD,** having been first duly sworn, was
6 examined and testified as follows:

7 **DIRECT EXAMINATION**

8 **BY MS. OSBORN:**

9 **Q. Dr. Running, could you please state your name and**
10 **spell it?**

11 A. My name is Steven Running, R-u-n-n-i-n-g.

12 **Q. And could you please describe for the court your**
13 **professional position and credentials?**

14 A. I'm a Regents professor of Ecology at the
15 University of Montana.

16 **Q. And have you published scientific articles?**

17 A. Yes. I've published about 300 scientific articles
18 over my career. I've published, I don't know, many dozens
19 of articles on climate change itself, and I've served on a
20 number of committees evaluating climate change.

21 **Q. And have you been honored with any awards?**

22 A. I have. Probably the most prominent activity I
23 served on is the Intergovernmental Panel on Climate Change
24 that I was a lead author on the chapter on North America in
25 2007 and the IPCC won the Nobel Peace Prize that year for

1 that document with Al Gore.

2 **Q. Have you been honored with any other awards?**

3 A. I've gotten an Edward O. Wilson Biotechnology
4 Pioneer Award because I write software for NASA satellites
5 and I calculate the global carbon cycle. Also, the -- I was
6 an author of the U.S. National Climate Assessment and I lead
7 the chapter on Forests in 2014.

8 **Q. Thank you. I put a set of exhibits in front of**
9 **you. If you'll look at Exhibit 1.**

10 **Is this a current and correct version of your**
11 **curriculum vitae?**

12 A. Yes. Yes.

13 **Q. And I would move for admission of Dr. Running's**
14 **CV.**

15 A. Yes. I guess there's some other awards. I don't
16 think we want to go through all those one by one.

17 **THE COURT:** Okay. So Exhibit 1. Ms. MacRae,
18 Defense Exhibit 1?

19 **MS. MACRAE:** No objection.

20 **THE COURT:** Okay. So Defense Exhibit 1 will be
21 admitted.

22 **(WHEREUPON, Defense Exhibit 1 was admitted into**
23 **the record.)**

24 **BY MS. OSBORN:**

25 **Q. Dr. Running, could you identify a few of your**

1 **recent climate change publications?**

2 A. I wrote a paper in the Journal of Science in 2012
3 where I proposed -- it was called A Measurable Planetary
4 Boundary for the Biosphere. What I was attempting to do is
5 from our satellite measurements calculate an aspect of the
6 global carbon cycle that influences directly how much CO2
7 stays in the atmosphere and how much is taken up by the
8 terrestrial synch. I wrote a paper in 2004, documenting our
9 algorithm for calculating net primary production of the
10 biosphere and that is a data product that NASA Earth Science
11 produces every day. They're producing it at NASA Goddard
12 right as we speak. I had a paper, actually, my first
13 climate change paper was in 1990, was a paper in the Journal
14 of Climatic Change where I analyzed how we perceived
15 Montana's forests would react to a doubling of carbon
16 dioxide and the attended warming that would go with it. And
17 so those are probably three of the most relevant papers to
18 this proceedings.

19 **Q. Thank you. What documents did you review to**
20 **prepare for this hearing?**

21 A. Certainly, the most important one was the newest
22 Intergovernmental Panel of Climate Change Report. I was on
23 the 2007 report. These occur every seven years, so there's
24 a 2013 report that I read. The National Climate Assessment
25 and the U.S. National Climate Assessment, which is

1 effectively an IUPCC report just for our country, that I
2 read the other chapters that I wasn't an author on for 2014.
3 There was -- there was a document on climate change in the
4 Pacific Northwest coming out of the Climate Impacts Group at
5 the University of Washington. That was 2015, if I remember
6 right. And so -- and then I read just two weeks ago the
7 State of the Climate Report for the country for 2016 and an
8 Oregon Climate Report that comes out of the Climate Science
9 Center at Oregon State University.

10 **Q. Thank you.**

11 **MS. OSBORN:** Your Honor, I would like at this time
12 to move to have Dr. Running qualified as an expert witness
13 on the topic of climate change science.

14 **THE COURT:** Any objection?

15 **MS. MACRAE:** No objection.

16 **THE COURT:** Okay. He is so qualified as an
17 expert.

18 **MS. OSBORN:** Thank you.

19 **THE COURT:** Certainly in this field.

20 **MS. OSBORN:** Thank you.

21 **BY MS. OSBORN:**

22 **Q. Can you provide us a summary of the testimony**
23 **you're about to provide?**

24 **A.** I'm going to try to simply go through really three
25 basic facts that we, as climate scientists see. First is

1 that the greenhouse gases and carbon dioxide in particular
2 are going up in the atmosphere, and we've been measuring
3 that quite accurately for over 50 years. Second, I'm going
4 to take us through that as a result of these increasing
5 greenhouses gases, the global air temperature has gone up,
6 and particularly gone up in an accelerating way over the
7 last 20 years. And then finally, I want to end with the
8 analysis that we, as climate scientists make of what sort of
9 reductions and carbon emissions would be necessary to
10 stabilize the global climate in the future.

11 **Q. All right. Thank you. And if you'll take a look**
12 **at Exhibit 2 titled Historic Trends in Atmospheric CO2**
13 **Concentrations, what does this exhibit show?**

14 A. This exhibit shows that the carbon dioxide in the
15 atmosphere is, in fact, going up. It has gone up every
16 single year since Charles David Keeling began the
17 measurements in 1958. And so it's been considered the most
18 important geophysical dataset of the century because it was
19 our first illustration that humans were having a global
20 impact.

21 **Q. What is the current concentration level in the**
22 **atmosphere?**

23 A. When we started the measurements, the atmospheric
24 CO2 was at about 320 parts per million. The graph that I
25 put in the record is at 401 parts per million. It turns out

1 that I was looking just last week at the newest measurement.
2 It's now 407 parts per million, and this isn't (inaudible).
3 These measurements are taken all over the world now.

4 **Q. If you'll take a look at Exhibit 3 titled Global**
5 **Carbon Emission Historic Trends, what does this exhibit**
6 **show?**

7 A. As climate scientists, it was clear that carbon
8 dioxide was going up in the atmosphere and we wanted to know
9 where it's coming from. And so this is a measure of carbon
10 emissions produced by human activity from 1990 to the
11 present. And this is taken by a group of scientists called
12 the Global Carbon Project. And it shows that every year,
13 except for the economic crash of 2008, every single year
14 global carbon emissions from human activity have gone up.

15 **Q. All right. If you'll take a look at Exhibit 4**
16 **titled Sources of Global Fossil Carbon Emissions, what does**
17 **this exhibit show?**

18 A. We certainly wanted to know where these carbon
19 emissions were coming from. This graph illustrates that by
20 far, the largest single source of CO2 emissions is burning
21 coal. The second largest source is burning oil. The third
22 largest source is burning natural gas. And that each one of
23 these emissions sources on a global basis is increasing.

24 **Q. All right. If you will take a look at Exhibit 5**
25 **titled Radiative Forcing Caused by Humans, what does this**

1 **exhibit show?**

2 A. This gets thicker. This is a summary of the
3 2,000 IPCC reports, and it illustrates what we basically do
4 as an energy balance of the world. All the energy sources
5 coming in to their system and all the energy systems being
6 radiated back out. And then analyze the components. You
7 can see there are changes in albedo or reflectivity of the
8 surface, like when there's more snow cover it reflects more,
9 for example, the changes in cloud cover, changes in
10 aerosols. And then, finally, the changes in the greenhouse
11 gases. And you see from this exhibit the carbon dioxide and
12 the secondary methane are by far the largest sources of
13 these greenhouse gases.

14 The net summary of all these different positive
15 and negative impacts is a measure of 2.3 watts per square
16 meter. And I like to, for my public audiences, explain what
17 that means because none of us relate to that directly.
18 Think of a little Christmas tree light. Not the new LED
19 ones but the old ones. That's about two watts. And you
20 think that a square meter is kind of a table top. So I'm
21 having a Christmas tree light here of two extra watts per
22 square meter and the next square meter is two more watts per
23 square meter, and all around the world every square meter is
24 now trapping 2.3 watts per square meter of additional
25 energy. And that is the fundamentals of global warming.

1 **Q. Let's take a look at Exhibit 6 titled Global Total**
2 **Heat Content. What does this exhibit show?**

3 A. Well, the next thing we wanted to know is where is
4 it going? And I think this graph is, at a glance, tells you
5 the answer. Over 90 percent of that additional two watts
6 per meter squared is going into oceans. And people follow
7 things like the glaciers and Antarctic ice sheets because we
8 can see them easily, but where all this energy is going, 90
9 percent plus, is into the oceans. And has been
10 accelerating, I would add, since about 1980, which we now
11 consider global warming really started around 1980 in a
12 measurable way.

13 **Q. Let's take a look at Exhibit 7 titled Global**
14 **Temperature Change. What does this exhibit show?**

15 A. This is a measure of the global air temperatures.
16 So the previous graph showed the heat content of the ocean.
17 These are -- this graph is simply the summary of air
18 temperatures from weather stations, like out at the Spokane
19 Airport and our normal surface weather stations. And what
20 it shows again, beginning in about 1980, that every single
21 decade has gotten progressively warmer over the last 30
22 years.

23 **Q. This exhibit also contains some text at the bottom**
24 **of it. Could you summarize this text?**

25 A. I went to the NOAA website, the National Oceanic

1 and Atmospheric Administration website for details of this.
2 And basically, it summarizes that the global air temperature
3 has set new records progressively in 2014, which was then
4 broken in 2015, which was then broken in 2016. In summary,
5 let's see, to get it right, all 16 years of the 21st Century
6 rank among the 17 warmest on record. And when they say on
7 record, that means over 137 years. So beginning in 1880, 16
8 of the years of this century have been all-time records.
9 And then the final summary is the overall annual temperature
10 has been increasing at .31 degrees per decade Fahrenheit
11 since 1970.

12 **Q. Thank you.**

13 A. Again, this is simply air temperature records from
14 weather stations.

15 **Q. Thank you. Please take a look at Exhibit 8 titled**
16 **Washington Average Temperature Trends. What does this**
17 **exhibit show?**

18 A. We all get -- in climate science, we look at the
19 global trends, but we're most curious about our own back
20 yard. And so I thought I'd bring this exhibit showing --
21 this is for the State of Washington as a whole. And this
22 shows, again, a temperature increase of about three-tenths
23 of a degree Fahrenheit for a decade since 1950. So the same
24 sort of trend seen globally is also seen here in Washington.

25 **Q. Please take a look at Exhibit 9 titled Trends in**

1 **Western U.S. Snowpack Melt Onset Dates. What does this**
2 **exhibit show?**

3 A. I think all of us that live around here know that
4 our snowpack is what carries our hydrology through our dry
5 summers. And so we have followed snow melt rates very
6 carefully for decades. This graph I chose is a summary of
7 what we're seeing all around the west, that over the last 50
8 years, snow pack is starting to melt earlier and earlier,
9 and on average, in the last 50 years, it's about two weeks
10 earlier than it was in the 1950s. So that just means the
11 winter snowpack starts its melt out about two weeks earlier
12 on average than it used to.

13 **Q. If you'll take a look at Exhibit 10 titled**
14 **Washington Wildfire Trends Greater than 1,000 Acres. What**
15 **does this exhibit show?**

16 A. This is data from the U.S. Forest Service. And
17 we, as climate scientists in the Northwest, we have
18 identified wildfires probably the single most -- how should
19 I say it? Highest human vulnerability for the Northwest
20 outside the coastal areas is accelerating wildfire. And
21 this graph shows that the number of large wildfires has
22 accelerated dramatically. This is only for Washington. We
23 do this same analysis for the Western United States as a
24 whole, and we see every way we slice and dice the statistics
25 we're seeing three and four and five times as many large

1 wildfires as we did 40-50 years ago.

2 **Q. Are there other forest disturbances resulting from**
3 **climate change?**

4 A. Probably the other most important one for the
5 Northwest are the major forest insect epidemics. The
6 Mountain Pine Beetle epidemics that we got very heavily in
7 Montana and I think have come -- yes, I know they've come
8 over into Washington. My entomology friend says these are
9 the biggest forest insect epidemics on earth, which I was
10 amazed to hear that myself.

11 **MS. MACRAE:** Objection; hearsay, Your Honor.

12 **THE COURT:** Sustained.

13 **MS. MACRAE:** Thank you. Move to strike the
14 statement as to what his etymology friend has said about
15 these infestations.

16 **THE COURT:** Okay. So stricken.

17 **MS. MACRAE:** Thank you.

18 **BY MS. OSBORN:**

19 **Q. Are insect infestations a big problem in the**
20 **Northwest?**

21 A. Yes. We have many research papers. I didn't put
22 them in this collection to make this shorter, but there are
23 many published peer-reviewed research papers documenting
24 these epidemics.

25 **Q. And just to clarify, your specialty is as a forest**

1 **researcher; is that correct?**

2 A. Not only. I'm really more of a global carbon
3 scientist. My original degrees were in forest ecology
4 though.

5 **Q. Could you take a look at Exhibit 11 titled Trends**
6 **in Sea Level Rise? What does this exhibit show?**

7 A. Climate scientists think sea level rise will be
8 the single most damaging impact of global warming, and right
9 now we quantify the rate of sea level rise at 3.4
10 millimeters per year on a worldwide average. I took data
11 more locally for Seattle and the rate in Seattle is about
12 2.1 millimeters per year. And as you can see, this dates
13 back to before the year 1900, so it's a long-running record.

14 **Q. Please take a look at Exhibit 12 titled Projected**
15 **Changes in Surface Water Runoff in the Puget Sound, Pacific**
16 **Ocean, and Columbia River Watersheds. What does this**
17 **exhibit show?**

18 A. I want to preface my statement on this by saying
19 every other graph I've showed so far are direct measurements
20 that have been taken by scientists worldwide. Now I'm
21 turning to projections for the future, which then involve
22 using various global climate models and regional climate
23 impact simulation models. So this particular graphic from
24 the National Climate Assessment Pacific Northwest Chapter
25 shows that due to earlier snowmelt and hotter, drier

1 summers, that the expected summertime runoff by the 2040s is
2 going to be on the order of 30 to 50 percent lower than it
3 is now. It's simply that the rivers are going to, by the
4 end of the summer, have much lower flows than what we've had
5 in the past. And this is a graphic showing Washington,
6 Oregon, Idaho, into Western Montana.

7 **Q. Please take a look at Exhibit 13 titled Projected**
8 **Increases in Air Temperatures for Montana Based on Various**
9 **Carbon Emission Scenarios. What does this exhibit tell us**
10 **about future climate?**

11 A. All right. Again, I'll emphasize that these are
12 computer-model projections of the future going from the --
13 starting in the year 1900 through the present and continuing
14 forward to the year 2100. What this shows for Montana and
15 the State of Washington, it would be virtually identical in
16 a global scale -- they're next to each other - is that with
17 the highest emissions, our best estimates are that local
18 temperatures would be 12 to 14 degrees Fahrenheit higher by
19 the end of the century with our highest emission of business
20 as usual scenarios. If humanity chooses to lower emissions,
21 we can take that 12 degree to even 14 degree temperature
22 increase down to, at best we hope two degrees, certainly
23 maybe four degrees. So the difference between doing nothing
24 about carbon emission reduction at 12 degrees or doing all
25 we can do at about three degrees is -- well, is a difference

1 between 12 and three degrees in annual air temperatures.

2 **Q. If you take a look at both Exhibits 14 and 15 --**
3 **Exhibit 14 is titled Projected Wildfire Increases in**
4 **Washington Based on Varying Carbon Emission Scenarios, and**
5 **Exhibit 15 is titled Projected Sea Level Rise in Seattle**
6 **Based on Varying Carbon Emission Scenarios, what do these**
7 **exhibits tell us about environmental changes that are**
8 **expected to be caused by climate change?**

9 A. Well, in both of these instances, and I chose
10 these particular impacts because they're most important for
11 the Pacific Northwest, we see with the wildfire projections
12 increases on the order of 100 percent up to even 300 percent
13 increase in our wildfire -- our wildfire -- pretend this is
14 -- particularly area burned that we've measured here or as
15 being calculated for the Northwest. So we see something
16 like a doubling, tripling or more of an area burning
17 wildfire every year with high emission scenarios. Likewise,
18 in Exhibit 15, looking in more detail at sea level around
19 the Puget Sound Basin, and I would say I grew up in Seattle
20 so I look at this with some level of knowledge. I was born
21 in Spokane. I'm a native. I was only here for about a
22 week. But this shows all through the Puget Sound Basin the
23 kind of flooding risks that the three feet to on the order
24 of 50 inches is the high scenario that they're using here.
25 So that's at a four feet higher sea level, how much of the

1 Puget Sound Basin is being flooded? And this we consider a
2 realistic potential with business as usual carbon emissions.
3 This is not some extreme scenario.

4 **Q. Dr. Running, can these rises as illustrated in**
5 **these exhibits be halted or reversed?**

6 A. Certainly. I mean, humans have chosen to use
7 fossil fuels for our fuel source in the past and we could
8 choose to continue to use these same fuel sources or we
9 could change to other ones that aren't carbon emissions. So
10 this is a choice humanity has.

11 **Q. If you'll take a look at Exhibit 1 titled Climate**
12 **Reductions Needed to Limit Global Temperatures to Two**
13 **Degrees Centigrade, what does this exhibit tell us about**
14 **reducing climate emissions?**

15 A. The Paris Climate Accord honed in on a target of
16 two degrees Centigrade, around four degrees Fahrenheit as
17 the most -- the most viable, optimum target we have for
18 increased temperatures by the end of the century. And we
19 then take our global climate models, and coupled with our
20 carbon cycle models, and we try to simulate what -- what
21 rate of reduction of carbon emissions would keep us at this
22 two degree centigrade temperature target. What this exhibit
23 shows are these computer model analyses carbon emission
24 reductions. And this shows the optimistic scenario of
25 carbon emissions beginning to go down right now, which of

1 course in reality they're not. And so this shows how steep
2 the carbon emission reduction needs to be from now till 2015
3 in order to hope for a temperature stabilization at around
4 four degrees Fahrenheit by the year 2100.

5 **Q. What do these people do to reduce carbon**
6 **emissions?**

7 A. Well, I think of this, given what I do for a
8 living, first, in the global collective sense, that clearly
9 the first thing the whole world has to do is quit burning
10 coal. The second thing after that is to quit or minimize
11 burning oil over the coming decades and then progressively
12 be moving to nonfossil fuel energy sources, like wind,
13 solar, hydropower, things like that. And I think then
14 drilling right down to the individual basis, it gives all of
15 us the, I guess, challenge of doing similar and using less
16 electric power, driving an electric car or taking from the
17 transport. Actually, one of the big carbon emission sources
18 is wasted food. And about a third of the food grown on
19 earth ends up being wasted and not eaten. So I think
20 there's -- I could go on for all too long on these various
21 things that on an individual level we could be doing and
22 some people are.

23 **Q. How does federal policy regarding climate change**
24 **fit in?**

25 A. Ideally, federal policy on climate sets in effect

1 the target for where we want as a nation to go, and it sets
2 some priorities of what things that the country should be
3 doing in priority order working towards those goals. The
4 Clean Power Plan that the previous administration put out,
5 which very clearly targeted closing down coal-fired power
6 plants as rapidly as possible is an example of that.

7 **Q. Where is federal policy going now with respect to**
8 **climate change?**

9 A. The new administration has quite clearly shown
10 that they would like to bring back and retain fossil fuel
11 energy sources to the maximum extent possible. So they seem
12 to have no interest in reducing carbon emissions.

13 **Q. Thank you, Dr. Running.**

14 **Can you sum up for the court?**

15 A. I think the summary that I and my climate science
16 colleagues see is that we've clearly documented both the
17 physical theory of greenhouse gases and the increases of
18 these gases in our atmosphere. We've clearly documented the
19 direct impacts on global temperatures and the second order
20 effects on things like wildfire and sea level rise and other
21 things that I haven't taken you through, like coral reef
22 bleaching. And we've clearly set the overall target of what
23 humanity needs to do in the next half century if we want to
24 stabilize the global climate. And now we have to wait and
25 see what humanity decides to do. We've kind of done all we

1 can do.

2 **Q. How would you characterize the threat?**

3 A. If we take the "business as usual," which what
4 that means is literally just keep on doing what we're doing
5 and that takes us to on the order of 10 or 12 degree
6 Fahrenheit increase in temperatures, we don't think we would
7 have a stable functioning society worldwide at those
8 temperatures. I'm not saying everybody would be dead, but I
9 think there would be so much disruption worldwide of all
10 societies that I think it would be absolute global chaos.

11 **Q. Thank you. That's all from the Defendant.**

12 **We would move for admission of Exhibits 2 through**
13 **16.**

14 **THE COURT:** Ms. MacRae?

15 **MS. MACRAE:** No objection for the purpose of this
16 hearing and motion.

17 **THE COURT:** Okay. Exhibits 2 through 16 are
18 admitted.

19 **(WHEREUPON, Defense Exhibits 2 through 16 were**
20 **admitted into the record.)**

21 **THE COURT:** Sir, if you'd like to hand those over
22 to my --

23 **MS. MACRAE:** Your Honor, may he keep those for the
24 purposes of cross-examination?

25 **THE COURT:** Of course. Never mind. Go ahead and

1 keep them because Ms. MacRae has some questions for you.

2 **THE WITNESS:** Oh, okay.

3 **THE COURT:** Whenever you're ready, Ms. MacRae.

4 **MS. MACRAE:** Thank you.

5 **CROSS-EXAMINATION**

6 **BY MS. MACRAE:**

7 **Q.** After having listened to you talk, Dr. Running, I
8 think it seems safe to say this is an important cause for
9 you, isn't it?

10 **A.** Yes, for 30 years.

11 **Q.** It's not just your profession, is it?

12 **A.** No.

13 **Q.** And your -- it sounds like you have strong
14 personal feelings about climate change.

15 **A.** Sure. I look at these numbers all day, every day.

16 **Q.** As a result, I'm guessing you take this as a very
17 serious matter?

18 **A.** Yeah.

19 **Q.** Okay. And correct me if I am wrong on this. I am
20 a lawyer and not a scientist. My lay understanding of what
21 you look at is the carbon cycle on a global level.

22 **A.** Mm-hmm.

23 **Q.** And in fact, analyzing the way that carbon
24 emissions in their totality affect the entire world.

25 **A.** Mm-hmm.

1 Q. Somewhat of a pun intended, you look at global
2 incidents and not at specific, quantifiable, individual --
3 I'm sorry. You don't look at an individual effect of a 30-
4 mile car ride to work every day. You're looking at the
5 effects of the use of cars for personal transportation on a
6 much larger level.

7 A. My own personal research, since I work with NASA
8 satellites, is the big scale. But other of my colleagues do
9 analyses.

10 Q. Absolutely.

11 A. Right down to the individual clear rides.

12 Q. Yeah. I understand that. But your personal area
13 of expertise is on a much more, as I keep saying, global or
14 it's on a magnitude of what we would describe as being more
15 looking at the full picture?

16 A. My Ph.D. is in tree physiology, so I did my Ph.D.
17 on 13 trees. So I've actually worked in scales all the way
18 down to pretty small. And so I don't think it's -- even
19 though NASA pays me to think globally, I've got expertise
20 right down to looking at single leaves.

21 Q. I appreciate that.

22 So, and yes, obviously, it's -- there are scalable
23 issues at hand in climate change.

24 A. Mm-hmm.

25 Q. And when you talk about the carbon cycle, and

1 again, correct me if I'm wrong, is it something that can be
2 analyzed on an individual, scalable basis to certain, very
3 specific actions, like again, I use -- and let's use my
4 personal commute of 34 miles which I drove today instead of
5 taking van pool, largely because I thought this was going to
6 take a while. Is that something that can -- that action, my
7 decision to take -- to drive today instead of take van pool,
8 is that something that can -- you can analyze its result on
9 the larger global climate change?

10 A. Certainly. We can calculate what the carbon
11 emissions were from you or anyone else taking a certain
12 distance in a car and how much fuel was burned. And so any
13 -- any specific activity, it's now pretty straightforward to
14 measure the carbon emissions from that activity.

15 Q. And I understand that you can measure those carbon
16 emissions, like when someone flies on a plane and they
17 choose to offset their carbon footprint for that decision to
18 say fly 3,000 miles, but what you -- what you're studying in
19 climate change and the larger carbon cycle and the
20 greenhouse gases are an effect that being seen globally, or
21 at least certainly more macro than those sort of micro
22 actions we are talking about.

23 A. Yes. So what I'm most interested in personally is
24 the collective global carbon cycle. The atmosphere
25 circulates the whole planet every two weeks and so I want to

1 understand how all these collective emissions from the land
2 and ocean surface end up in their final global atmospheric
3 carbon emissions.

4 **Q. When you look at that larger carbon cycle, can you**
5 **-- say my decision to take a van pool for a week versus**
6 **drive each day for the commute, is that going to noticeably**
7 **or quantifiably affect the carbon cycle as you monitor it?**

8 A. We can certainly quantify the emissions that were
9 generated.

10 **Q. I know you can quantify the emissions that I'm**
11 **generating.**

12 A. Yeah.

13 **Q. But can you say that that quantified number of my**
14 **emissions is reflective in the carbon cycle as you analyze**
15 **it and monitor it?**

16 A. Well, I think if you're asking about our precious
17 of atmospheric measurement, it is --

18 **Q. I'm not --**

19 A. -- four significant digits.

20 **Q. Okay. And I appreciate that. And I was obviously**
21 **-- my understanding of science is becoming more and more**
22 **precise.**

23 A. Absolutely.

24 **Q. The ability to both acknowledge the way climate**
25 **change affects the world is becoming easier and easier to**

1 record and notice.

2 A. Yes, I agree.

3 Q. I mean, I don't think that that's anything the
4 State is arguing with here.

5 A. Right.

6 Q. But what I'm trying to understand is, is my
7 personal decision to take van pool versus drive something
8 that has a truly noticeable effect on the larger carbon
9 cycle as you study it globally? It's quantifiable. As you
10 point out, we can go be so precise as to four digits, but is
11 that in itself going out to four digits of precision, I
12 mean, at that point is that something that's actually
13 noticeable, that one individual action on my part?

14 A. Yeah. Certainly, every one of our individual
15 actions is only a small contribution to the collective
16 whole.

17 Q. Yes.

18 A. I mean, there are seven billion people on earth.

19 Q. And you were somewhat referring to this when you
20 were looking at Exhibit 16, your last exhibit.

21 A. Yeah. Yeah.

22 Q. Which, correct me if I'm wrong, but those
23 projections are largely based on a belief that federal and
24 international policy would commit to lowering emission rates
25 to thus that we would slow climate change to this goal of

1 the two percent -- or the two degrees per year if I
2 understood correctly.

3 THE COURT: Is there a question there?

4 BY MS. MACRAE:

5 Q. So I guess my point is, you acknowledge that this
6 graph is reflective on a result of federal policy and
7 international policy activity working towards this goal.

8 A. The physical models make no assumption of how this
9 happens. They simply do the algorithms of what level of
10 emission reductions would be required for the climate
11 consequence, the climate target. So they have no idea
12 whether everybody dies or whether different countries make
13 big policy choices. The models don't care about any of
14 that. This is raw physics.

15 Q. Would these models be accurate if the changes were
16 the type of thing I was talking about earlier with my
17 decision to take van pool instead of drive to work each
18 week? Is that -- are we talking -- would this model be --
19 how -- let me clarify. How many individual actions would
20 you, in your experience and training and your expertise,
21 believe need to be seen to have this model be accurate?

22 A. I'm not doing well at deciphering your question.

23 Q. Okay.

24 A. We clearly, you know, we know what the carbon
25 emissions of the U.S. are. We know how many people, like

1 using your example, drive to work each day, approximately.
2 Some of the social impact models calculate those sort of
3 details -- number of miles, number of gallons of gas, all
4 those things. They could easily then represent if all the
5 commuters dropped to, you know, some other method that
6 dropped their emissions a great deal, they could certainly
7 make that calculation. And so the harder part for our
8 modeling is not the physics; it's figuring out what humanity
9 wants to do.

10 **Q. That actually makes me think a little bit of what**
11 **you were talking about in the graph, in Exhibit 3, that**
12 **graph of the increase of CO2 emissions globally, I believe.**

13 **THE COURT:** I'm sorry; which exhibit?

14 **MS. MACRAE:** Exhibit 3.

15 **THE WITNESS:** Oh, yeah. Global Carbon Emissions.
16 Yeah.

17 **BY MS. MACRAE:**

18 **Q. And my understanding is the only time since --**
19 **it's reflective on this graph and I don't know if it was**
20 **monitored before this -- that there has been a reduction in**
21 **the production of CO2 emissions on a yearly basis is in**
22 **2008.**

23 **A. Yeah.**

24 **Q. And as you noted, that was -- coincides with the**
25 **economic downturn; correct?**

1 A. Yes.

2 Q. I may be extrapolating here, but the economic
3 downturn I'm assuming had somewhat macro effects on the
4 consumption of fossil fuels.

5 A. Yeah. Absolutely.

6 Q. Substantially more effect than my decision to take
7 van pool versus drive for a week.

8 A. Well, a whole lot of people ended up unemployed so
9 they didn't commute. So they stayed home.

10 Q. And that -- that effect, that number of people not
11 driving was actually something that could be measured with
12 CO2 emissions according to this graph.

13 A. Yes.

14 Q. But other than that downturn in which there was a
15 reason why numerous people didn't drive, there hasn't been
16 any other decrease in CO2 emissions?

17 A. You see on a global basis, that's the only year
18 that's ever gone down. We find that just amazing to see.

19 Q. And it is. And it suggests, of course, that for
20 CO2 emissions to truly decrease, it would need to be
21 something that was a global -- that had a global impact.

22 A. Sure. Yeah, because, you know, the whole world is
23 in this together.

24 Q. Yeah. Just one minute. Sort of switching gears,
25 you mentioned other ways, of course, other large producers

1 of CO2 gas -- cement, if I remember correctly, produces
2 quite a bit of emissions.

3 A. Right.

4 Q. And as you noted, wasted food does; correct?

5 A. Mm-hmm.

6 Q. And would a more efficient use of food, a more
7 efficient food system potentially decrease CO2 emissions?

8 A. Certainly.

9 Q. In the case of cement, potentially making fewer
10 roads, would that decrease CO2 emissions?

11 A. Mm-hmm.

12 Q. Or building fewer dams out of cement, that would
13 decrease CO2 emissions. So there are many ways that CO2
14 emissions could be decreased.

15 A. Yes. You note in Exhibit 4 that by far the
16 biggest emission source is coal.

17 Q. Absolutely. I have a question looking at Exhibit
18 4. Looking at the graph of coal, it looks to me in
19 approximately -- so 2008, it looks like there was a slight
20 decrease in coal, in emissions due to coal, if I'm correct
21 at that, give or take, but I'm assuming that's 2008 based on
22 our earlier conversation.

23 A. Yeah, I think so.

24 Q. Okay. If the next point is 2009, there's a slight
25 increase. Then there's a large increase to 2010. And then

1 a much slighter increase to 2011. Do you know why that the
2 production of coal emissions was -- grew at a much slower
3 rate that year?

4 A. The biggest coal consumer by far is China. And so
5 we watch every year for the statistics on China's coal
6 burning. At that time, their coal burning was still
7 accelerating while the U.S. coal burning was starting to
8 decelerate. Since these are global numbers here, it's a
9 little hard for me to parse out by nation. This global
10 carbon project does do that.

11 Q. Yes.

12 A. If you want to go to their website, they slice and
13 dice the carbon numbers every which way.

14 Q. Yeah. But correct me if I'm wrong here, this
15 information in Exhibit 4, as you pointed out, is for the
16 production of CO2 emissions from coal globally.

17 A. Mm-hmm.

18 Q. It could be substantially less. Those emissions
19 could be substantially less based on the United States on
20 burning of coal than that of China's it sounds like.

21 A. Oh, yeah. The U.S. is much more than China now -
22 nowadays.

23 Q. And I am pulling this out of my head. So that
24 could also be less than say the Netherlands, just to use
25 another country as an example.

1 A. Right.

2 Q. Yeah. So again, what the CO2 emissions here is
3 showing is on a global level but not necessarily reflective
4 of actual policy and production and consumption of coal here
5 in the United States.

6 A. Right.

7 Q. Just a minute. You said at one point that global
8 warming started to be, I believe, quantifiable or able to be
9 monitored in 1980.

10 A. I use that as a simplifying statement for my
11 public talks.

12 Q. Okay.

13 A. And so if you wanted to get exceedingly rigorous
14 you could maybe argue that point a bit. But I find with
15 public audiences, it's important for them to know this
16 didn't just start in the last couple years.

17 Q. Of course. So I was going to ask, I assume coal
18 was burned before 1980.

19 A. Yeah.

20 Q. And it had some effect on the climate prior to
21 that.

22 A. Mm-hmm.

23 Q. So obviously -- sorry, yeah, I was just curious
24 about that because the consumption of coal isn't the only
25 thing that has led to climate change or CO2 emissions, is

1 **it?**

2 A. All right, if you look at Exhibit 4, in 1960,
3 well, starting in 1970 till about 1985, oil was actually a
4 larger carbon emission there for about 15 years. Then they
5 were about equal for about 20 years. And then that final
6 burst of the last 15 years has been almost all China.

7 **Q. And correct me again if I'm wrong, it sounds like**
8 **largely China is the main producer of CO2 emissions from**
9 **coal right now.**

10 A. Right.

11 **Q. And when, as you put it earlier, we're all in this**
12 **together. Does -- and I can see absolutely that China's**
13 **burning of coal has some effect here in Washington of**
14 **climate change.**

15 A. Some of our fine sunsets in the summer,
16 unfortunately, are Chinese air pollution.

17 **Q. Yes.**

18 A. I'm sorry.

19 **Q. Yeah, no, it's true. I grew up in Southern**
20 **California and the forest fires always led to the most**
21 **beautiful sunsets.**

22 A. Okay, yes.

23 **Q. But the reality is that a person, an individual**
24 **here in Washington, doesn't really have any control over the**
25 **coal being burned in China, do they?**

1 **MS. OSBORN:** Objection; I think this may be
2 outside the scope of the direct and possibly the witness's
3 expertise.

4 **THE COURT:** Go ahead, Ms. MacRae.

5 **MS. MACRAE:** When -- at the end of his testimony,
6 he went into the various things that humanity needed to do
7 and has been talking about this as a collective whole. But
8 my question is focused on the individual action.

9 **THE COURT:** Okay. So overruled. I'll allow it.

10 **BY MS. MACRAE:**

11 **Q. An individual's actions here in Washington have**
12 **little to no effect on the fact that China is the largest**
13 **producer of coal as far as I can tell from what you've bene**
14 **testifying to.**

15 A. Largest consumer of coal. And so they buy a lot
16 of coal from Montana and Wyoming that's shipped through here
17 and then goes to China. And so we're part of their coal
18 burning over here.

19 **Q. Market principles would suggest that if China**
20 **wasn't burning the coal it wouldn't be --**

21 **MR. HODGSON:** Objection; supposes things that are
22 simply not in evidence. We do not have the market --

23 **THE COURT:** Okay. I think we need to have one
24 attorney, one witness. Right?

25 **MR. HODGSON:** Sorry, Your Honor.

1 **THE COURT:** I could tell you had a real objection
2 there though.

3 **MR. HODGSON:** If I may. Excuse me.

4 **THE COURT:** You can certainly counsel with the
5 attorney who is actually handling this witness.

6 **MS. OSBORN:** We're objecting to the reference to
7 market forces.

8 **THE COURT:** Sustained. Go ahead and move on.

9 **BY MS. MACRAE:**

10 **Q. So China is the largest consumer of coal?**

11 A. Mm-hmm.

12 **Q. Does China produce all the coal it consumes?**

13 A. Oh, no. No.

14 **Q. So they're --**

15 A. In fact, their latest five year national strategy,
16 they're committing to quit importing coal by the end of this
17 year. Now, that still means they'll burn coal that they
18 produce themselves, but as they are trying to wind down
19 their carbon emissions, they're trying to quit buying it and
20 where they buy it from first is the U.S. and Australia.

21 **Q. But China is, in fact, it sounds like, actually**
22 **concerned about CO2 emissions from coal.**

23 A. Mm-hmm.

24 **Q. And China as a country is trying to regulate its**
25 **CO2 emissions.**

1 **MS. OSBORN:** Objection, Your Honor. We really
2 didn't get into Chinese policy in our direct.

3 **THE COURT:** How does it relate to what your cross
4 is?

5 **MS. MACRAE:** Well, he's saying that the coal being
6 consumed by China is somewhat being produced in Montana and
7 transported through here, but if China is itself tackling
8 that issue, for whatever own internal policy reasons, I was
9 just trying to clarify that regardless of whether or not
10 coal is being produced in Montana and transported through
11 Spokane, China, the largest CO2 emission producing country
12 is trying to stop its importing of that potential coal.

13 **THE WITNESS:** Yes.

14 **THE COURT:** Okay. So hold on. Hold on. It's got
15 minor relevance. So I'll go ahead and allow that one
16 question but we are kind of getting into some weeds here.
17 Go ahead.

18 **THE WITNESS:** I study this all day, every day, so
19 have at it.

20 **BY MS. MACRAE:**

21 **Q.** But just to clarify, to wrap up what I said in a
22 much lengthier way, China is consciously trying to reduce
23 its CO2 emissions.

24 **A.** Yes.

25 **Q.** And its consumption of coal that's produced

1 **outside of China.**

2 A. Yes.

3 **MS. MACRAE:** I have no further questions at this
4 time.

5 **THE COURT:** Okay. So State has finished their
6 cross-exam. Counsel?

7 **MS. OSBORN:** Thank you. I just have one question
8 follow-up.

9 **REDIRECT EXAMINATION**

10 **BY MS. OSBORN:**

11 **Q. Dr. Running, are the conclusions and information**
12 **you provide today derived from your personal belief?**

13 A. No; they're derived from climate science
14 publications and government statistics that I read every
15 day.

16 **Q. Is there scientific consensus among the**
17 **(inaudible)?**

18 A. Yes, there certainly is an overwhelming consensus
19 of all these different measurements that I showed in these
20 exhibits are direct measurements from instruments. So this
21 is quite air tight.

22 **MS. OSBORN:** Okay, thank you. That's all I have.

23 **THE COURT:** Did that bring up anything, Ms.
24 MacRae?

25 **MS. MACRAE:** No further questions from the State.

1 **THE COURT:** Jessica, if you would, please take
2 those. And so this witness may be excused for now. But
3 you're not going to be flying back right away, are you? Are
4 you leaving us right this minute?

5 **THE WITNESS:** No, no. No, I'll be here all the
6 rest --

7 **THE COURT:** Okay, because I have a question for
8 you.

9 **THE WITNESS:** Okay.

10 **THE COURT:** Not relevant to this. Okay.

11 **MS. OSBORN:** Thank you, Your Honor. We'll call
12 Professor Tom Hastings.

13 **THE COURT:** And I have been reminded. Thank you,
14 gentlemen.

15 Please raise your right hand.

16 **MR. HASTINGS:** Just to let you know, I am very
17 hard of hearing. I will do my very best.

18 **TOM HASTINGS**, having been first duly sworn, was examined and
19 testified as follows:

20 **THE COURT:** Go ahead and have a seat, sir.

21 And whenever you are ready, please proceed.

22 **DIRECT EXAMINATION**

23 **BY MS. OSBORN:**

24 **Q.** Good afternoon. Could you please state your name
25 and spell your last name?

1 A. Tom Hastings, H-a-s-t-i-n-g-s.

2 **Q. And could you describe your professional position**
3 **and credentials and qualifications?**

4 A. I'm assistant professor of Conflict Resolution at
5 Portland State University, and I'm coordinator of the
6 undergraduate major and minor programs. I do serve on
7 graduate committees and chair some of them. And I also
8 teach occasionally through Rutgers University and through
9 other various courses, including I'm a founding faculty
10 member of the James Lawson Institute. My research has
11 fallen to this area of specialization over the years. I've
12 got a number of peer-reviewed publications, several books,
13 and my professional association governance activities
14 include being a board member of the Oregon Peace Institute.
15 I served three times -- three terms, rather, on the Peace
16 and Conflict Studies Consortium, which is a regional
17 academic association, and then four terms, two of which I
18 was co-chair of the Binational U.S.-Canada Academic
19 Association for our field, which is the Peace and Justice
20 Studies Association. And I have three international
21 organizations I serve -- the International Peace Research
22 Association. I served two terms on their governing council
23 and the International Peace Research Association Foundation
24 which funds that activity. And in that context, I review
25 research proposals from around the world that specialize in

1 nonviolence, in particular. And finally, in terms of
2 governance, I'm on the Academic Advisory Council and have
3 been for 14 or 15 years of the International Center on
4 Nonviolent Conflict in Washington, D.C. That's all I can
5 think of right now.

6 **SPEAKER:** Your Honor, if we could -- is there any
7 way to turn this microphone up? I know a lot of people out
8 here are having trouble hearing. Can you speak just a
9 little closer?

10 **THE WITNESS:** Is this better?

11 **THE COURT:** Jessica is going to see if she can
12 adjust that at all.

13 **THE WITNESS:** Is this better? No.

14 **SPEAKER:** We still have a lot of people with their
15 hands up, so if we can get more volume, if you could, sir.

16 **THE WITNESS:** Is this better?

17 **SPEAKER:** Yeah. Yes.

18 **THE WITNESS:** Okay. Thank you.

19 **THE COURT:** It's almost like you have to hold it
20 and speak right into it and then everybody is happy; right?
21 I figured that out. So if I don't move and I have to talk,
22 here we go. So you get to do the same thing.

23 **THE WITNESS:** Thank you, Your Honor.

24 **THE COURT:** You're welcome, sir.

25 **MS. OSBORN:** I just note that Professor Hastings

1 has a broken wrist. And are you comfortable there? Are you
2 going to do all right there?

3 **THE WITNESS:** I'm okay, thank you.

4 **THE COURT:** I don't think he's comfortable.

5 (Inaudible); right?

6 **THE WITNESS:** Yes.

7 **THE COURT:** Okay.

8 **BY MS. OSBORN:**

9 **Q. Okay, thank you. And just to clarify, when you**
10 **said "this specialization," could you please describe what**
11 **your specialization is?**

12 **A. Sure. I look primarily at civil resistance, civil**
13 **disobedience, strategic nonviolent conflict.**

14 **Q. Okay, thank you. If you'll take a look at Exhibit**
15 **1. Excuse me, I need to provide you with Exhibit 1, if I**
16 **may.**

17 **MR. CHRISTIANSON:** Just to clarify, Your Honor,
18 this would be Exhibit 17, even though it's Exhibit 1 to his
19 paper.

20 **THE COURT:** Correct. So Jessica, this will be
21 Exhibit 17.

22 **MS. OSBORN:** Thank you.

23 **THE COURT:** You're welcome.

24 **BY MS. OSBORN:**

25 **Q. Is this a current and accurate copy of your**

1 **curriculum vitae?**

2 A. It was when I gave it to you recently, but since
3 then there's been one more award and one more publication.
4 But yes, other than that.

5 **Q. All right, thank you. And you mentioned that you**
6 **have written some books?**

7 A. Yes.

8 **Q. Could you tell us the names of the books that**
9 **you've published?**

10 A. The first one was called Ecology of War and Peace,
11 which went through some of our environmental challenges in
12 using nonviolent resistance to help -- to remedy those
13 problems. One was called Meek Ain't Weak: Nonviolent Power
14 in People with Color. It looked at the roots of resistance,
15 nonviolent resistance from around the world. One was called
16 Power and it was about the nature of power and how it is not
17 all done at the barrel of a gun. One is called Nonviolent
18 Response to Terrorism and it looked at the elements -- it
19 was after a year of doing elicitive workshops around the
20 country with both activist groups and academic association -
21 - I'm sorry, academic conferences, to find out what people
22 thought would be a multilevel response to terrorism.
23 Another book is Conflict Transformation, which is peer-
24 reviewed -- I ran -- did a blind peer review process for
25 that. So it's an edited compilation. And then another one

1 called A New Era of Nonviolence, which looks at very
2 specifically how civil society can help (inaudible) civil
3 war. That's a pretty good roundup of most of them.

4 **Q. Would you take a look at what I've marked as**
5 **Exhibit 2, but which is actually Exhibit 18, and tell us**
6 **what that document is?**

7 A. This is the literature I consulted in preparation
8 of the testimony that I'm going to be giving.

9 **Q. All right, thank you. And I would like to move**
10 **for introduction of Exhibits 17 and 18.**

11 **MS. MACRAE:** No objection.

12 **THE COURT:** Okay. So Exhibits 17 and 18 will be
13 admitted for purposes of this hearing.

14 **(WHEREUPON, Defense Exhibits 17 and 18 were**
15 **admitted into the record.)**

16 **MS. OSBORN:** Thank you. And I would also ask the
17 court to move to have the court qualify Professor Hastings
18 as an expert in the area of nonviolent civil resistance.

19 **THE COURT:** Ms. MacRae?

20 **MS. MACRAE:** No objection.

21 **THE COURT:** Okay. He is so certified to be an
22 expert.

23 **THE WITNESS:** Thank you.

24 **BY MS. OSBORN:**

25 **Q. Can you provide a, excuse me, a summary of the**

1 **testimony you're about to give?**

2 A. I want to look at the nature of a nonviolent
3 resistance. I want to look at the empirical studies that
4 have been done on the efficacy of civil disobedience or
5 civil resistance. And then I want to look at what our
6 defendant has done that lines up with that.

7 **Q. Thank you. Can you define the term "civil**
8 **resistance"?**

9 A. It's used interchangeably and one term goes in and
10 out of fashion and then another, but it's basically civil
11 disobedience, nonviolent resistance, strategic nonviolence
12 and civil resistance are all used. And what they mean is
13 that the activities undertaken by those resisters are
14 nonviolent, they are accountable, and they are transparent.

15 **Q. Is civil resistance effective in bringing about**
16 **social change?**

17 A. Yes, it is. The case studies go back a long way,
18 and that case study research has been very interesting, but
19 in the past 12 years, there's been a lot more empirical
20 research, first done by Freedom House in 2005 looked at 67
21 regime changes from around the world in the past 35 years
22 and looked at metrics of human rights, civil rights, and
23 democracy that resulted. And they were statistically in
24 favor of nonviolence over violent insurgency. Then a very
25 large end study was undertaken beginning in 2006 with a

1 publication of a journal article in International Security
2 Studies by Drs. Erica Chenoweth and Maria Stephan that
3 looked at 323 cases of maximal global struggle, both violent
4 and nonviolent around the world between 1900 and 2006. And
5 what they found was that nonviolent insurgency very
6 counterintuitively was successful about twice as often as
7 was violent insurgency. And it was -- nonviolent insurgency
8 was successful slightly more than half the time. Violent
9 insurgency was successful barely more than a quarter of the
10 time. This was really countervailing research that flew
11 straight in the face of what we had assumed for pretty much
12 forever. So this is game-changing research and it's widely
13 known now amongst pretty much all levels of activists on
14 most issues.

15 **Q. (Inaudible) publications, are they listed in**
16 **Exhibit 18?**

17 A. They are, both the journal article and the book
18 that followed.

19 **Q. Were the actions of defendant Reverend Taylor what**
20 **you would call civil resistance?**

21 A. Yes. Reverend Taylor acted as a -- in a classic
22 sense of the nonviolent civil resistor. Everything that he
23 did was calm. He was peaceful. He was open, transparent,
24 cared for everybody's physical and psychological well-being,
25 submitted to arrest peacefully, and --

1 **MS. MACRAE:** Objection; speculation. I don't
2 believe that the witness was at the protest in question.

3 **MS. OSBORN:** That is correct.

4 **THE COURT:** Which part of the answer are you
5 objecting to?

6 **MS. MACRAE:** He's describing the Defendant's
7 behavior at the protest. He's speculating since he was not
8 there. He doesn't have personal knowledge.

9 **THE COURT:** Okay. So as to --

10 **MS. OSBORN:** May I ask the witness a couple of
11 questions?

12 **THE COURT:** Yes. I'm going to hold that for a
13 moment and you're going to help clarify what's going on;
14 right?

15 **MS. OSBORN:** Yes.

16 **THE COURT:** Okay.

17 **MS. OSBORN:** Thank you.

18 **BY MS. OSBORN:**

19 **Q.** Can you tell us how you knew what happened with
20 respect to the arrest of the Defendant?

21 **A.** Talking to the Defendant and reading the newspaper
22 articles.

23 **THE COURT:** Ms. MacRae?

24 **MS. MACRAE:** No objection to testifying to his
25 understanding based on that information.

1 **THE COURT:** Okay. So the objection then is
2 overruled as to those two types of communication or
3 something that he's reviewed personally.

4 **MS. OSBORN:** All right. Thank you.

5 **BY MS. OSBORN:**

6 **Q. So to complete your response, (inaudible) to the**
7 **question were the actions of the Defendant what you would**
8 **call civil resistance?**

9 A. Yes, because part of that classic nonviolent
10 resistance campaign goes to outreach to the media to try to
11 help educate fellow citizens because that is the way
12 ultimately the public policy will be changed.

13 **Q. What are examples of the use of civil resistance**
14 **in the United States?**

15 A. They're innumerable, but just the short list would
16 actually begin in Colonial America, beginning, let's say,
17 with the Boston Tea Party with boycotts of British goods.
18 Going forward, women attempted to be able to vote from the
19 beginning of the creation of the United States of America
20 and it was not until they engaged in nonviolent civil
21 resistance that women's suffrage resulted in the vote and
22 getting women to vote. In the 1910s, '20s, and '30s were
23 many labor actions that ultimately resulted in gaining
24 collective bargaining rights and the creation of units. The
25 most iconic example, obviously, is the civil rights moment

1 in the United States. That was a movement full of different
2 campaigns, each one of which was waged with nonviolence,
3 each one of which would up with public policy change that
4 had been waiting since really the late 19th Century at least
5 to occur, and it was not until nonviolent resistance was put
6 into play that those changes began. Then we also had the
7 Native American treaty rights. We see victory after victory
8 when nonviolent resistance has been used. Same thing for
9 environmental protection, in many cases. Same thing for
10 rights of LGBTQ people and migrant workers. So we have
11 innumerable examples in America of the success of nonviolent
12 resistance producing those changes and institutional and
13 corporate and public policy changes.

14 **Q. Thank you. What do you conclude from all of these**
15 **examples of successful civil resistance campaigns?**

16 A. Well, my conclusion is that there is hope that
17 when a longstanding and really (inaudible) social issue
18 exists, that quite often that's the only hope is to continue
19 into the realm of nonviolent resistance.

20 **Q. What is the purpose of nonviolent resistance?**

21 A. To basically to come into the courts, to approach
22 -- to go beyond the other means that had been exhausted. To
23 go beyond dealing with, for example, the other two branches
24 of government. To go beyond what the Defendant and his
25 allies have done, which is to lobby, which is to write

1 letters to the editor, write letters to their senators, to
2 their representatives. To visit the offices of the elected
3 representatives. Also, to stage public events to educate
4 fellow citizens and to continue these activities which
5 unfortunately have failed.

6 **Q. How does the judicial branch of government fit in?**

7 A. It is the last best hope in most cases. That's
8 why nonviolent resistance turns to the judicial branch for
9 relief.

10 **Q. Can you give examples?**

11 A. Well, probably the iconic example is Brown v.
12 Board of Education. So very brave African-American
13 families, for example, would bring their children to the
14 (inaudible) public segregated school, attempt to enroll
15 them, and the NAACP would carry that case forward for them.
16 Ultimately, that resulted in Brown v. Board of Education in
17 1954, but other examples from the Civil Rights Movement
18 include the case that preceded or rather than followed --
19 the Rosa Parks 1955 action, sitting on the bus in
20 Montgomery, Alabama, and there was a nonviolent campaign
21 that went on all that year while the case wound its way up
22 to the United States Supreme Court, which affirmed the lower
23 court ruling, which upheld the desegregation of public
24 transport.

25 **Q. Okay. You've been here this morning listening to**

1 **the testimony of Dr. Running. Do you think that the**
2 **(inaudible) climate change is conducive to a civil**
3 **resistance campaign?**

4 A. I do. I do because the -- the information that
5 Dr. Running very credibly gave us would really indicate how
6 imminent this -- and gathering this threat is. It also
7 showed that it is (inaudible). And especially when
8 considered in the sense of our new administration basically
9 removing a lot of the protections, so yes. I think that
10 it's amenable to this kind of action. It's true that
11 there's no end to opportunities to write more letters to the
12 editor, and those letters to the editor, for example, simply
13 have not succeeded so far. The next step needs to be taken.

14 **Q. Has the Defendant attempted reasonable legal**
15 **alternatives to civil resistance?**

16 A. I'm sorry; can you repeat?

17 **Q. Has Reverend Taylor attempted reasonable legal**
18 **alternatives to civil resistance?**

19 A. Yes. Reverend Taylor and the couple he's
20 associated with have attempted innumerable activities to try
21 to deal with this problem that, as we've heard from Dr.
22 Running, has been in the public eye since at least 1988. So
23 almost 30 years. And when they -- his colleagues and he
24 have been attempting for a long time to seek progress on
25 this.

1 Q. Do you think that civil resistance will resolve
2 the problem with climate change?

3 A. It's our last best hope at this point, yes. I
4 mean, I study social movements and what I tell students is
5 you show me a social movement that wins and I will show you
6 a multi-prong approach. It is not to say that Reverend
7 Taylor just decided one day to march out on the railroad
8 tracks. This is something that, you know, doesn't come
9 first. It comes later. But it comes in coordination with
10 many other things.

11 MS. OSBORN: All right. Thank you. That's all we
12 have.

13 THE COURT: Ms. MacRae, cross-exam?

14 MS. MACRAE: Yes, Your Honor.

15 **CROSS-EXAMINATION**

16 **BY MS. MACRAE:**

17 Q. You mentioned the Boston Tea Party as potentially
18 the first act of civil resistance in the United States.

19 A. One of the first, yes.

20 Q. Yes. Correct me if I'm wrong, but wasn't private
21 property destroyed in the Boston Tea Party?

22 A. Probably.

23 Q. In fact, the act of civil resistance in that case
24 was to, again, going back to my elementary school history
25 classes, dump a bunch of tea into the Boston Harbor.

1 A. Yes.

2 Q. So while it may have been nonviolent in the sense
3 that no person was harmed, it was -- property was destroyed,
4 wasn't it?

5 A. Correct.

6 Q. Okay. And to look at another example you gave, in
7 the case of Rosa Parks, and not getting into the fact that
8 the law she broke was certainly unconscionable, but correct
9 me if I'm wrong, she did, in fact, break a law in that case.

10 A. Yes.

11 Q. And I believe she was either convicted or plead
12 guilty to breaking that law.

13 A. Yes, she was given a \$14 fine.

14 Q. And again, I'm not defending the nature of the law
15 itself, but I'm trying to understand, in cases of
16 nonviolence, the law may be broken.

17 A. The attempt is usually to bring the local, state,
18 or even sometimes federal law into residence with the
19 Constitution. So that is the basis of much of nonviolent
20 civil resistance. I take your point in the Boston Tea
21 Party. That's a very good point, but as Gandhi said, later
22 in his life, that nonviolence at his stage, he said it's
23 like when Edison invented the light bulb. We're still in
24 the experimental stage. So that -- the model continues to
25 improve. We continue to learn how to be more transparent,

1 how to be more accountable, and how to work basically within
2 the system.

3 Q. That makes sense to me. It's a practice it sounds
4 like is what you're saying.

5 In the case of the Boston Tea Party, the protest
6 was as to the tariff on tea.

7 A. Yes.

8 Q. Yes. And again, in the case of Rosa Parks it was
9 to the segregation of the bus -- the Montgomery bus system.

10 A. Yes. So it was the complete disassociation of
11 local law with the Constitution.

12 Q. And you used Brown v. Board of Education again.
13 Again, the -- not only -- the civil act -- the acts of
14 nonviolence that led to that case were, of course,
15 protesting laws that segregated children in public schools.

16 A. Yes.

17 Q. And you're aware that Reverend Taylor is charged
18 with two misdemeanors in this case.

19 A. Yes.

20 Q. One is Criminal Trespass in the Second Degree and
21 the other is blocking the trains.

22 A. Yes.

23 Q. As to the Criminal Trespass in the Second Degree,
24 are you contesting that he somehow didn't break that law?

25 A. No.

1 **MS. OSBORN:** Objection, Your Honor. I'm not sure
2 this witness is the correct person to have the prosecutor
3 determine whether the elements of the crime have been met.

4 **THE COURT:** Okay. Your response?

5 **MS. MACRAE:** Let me back up.

6 **THE COURT:** Okay. So are you withdrawing that
7 question?

8 **MS. MACRAE:** I'll withdraw the question. Yes.

9 **THE COURT:** Okay. So the prosecutor just withdrew
10 that question and is going to ask a different question.

11 **BY MS. MACRAE:**

12 **Q. So you spoke with the Reverend about his actions**
13 **in question here. And so you understood that he entered**
14 **private property.**

15 A. Yes.

16 **Q. Without permission to be there.**

17 A. Correct.

18 **Q. That he stayed after he was told to leave.**

19 A. Yes.

20 **Q. And was subsequently charged with a criminal act.**

21 A. Yes.

22 **Q. What I -- I'm struggling to understand is it seems**
23 **that the foundation of these acts of nonviolence do**
24 **frequently break the law.**

25 A. Yes.

1 Q. I'm correct that --

2 A. That's what resistance means. Before that is
3 protest. Then when you break a law, Dr. King framed it as
4 you're either breaking a bad law or you're breaking a good
5 law for a good reason.

6 Q. I mean, I guess in the case of Rosa Parks we'd be
7 talking about a bad law for a good reason.

8 A. Right.

9 Q. Yeah. And the Boston Tea Party, who knows if it
10 was a bad law or a good law. I don't know what the tariff
11 was.

12 A. Sorry, right, I'm with you there.

13 Q. Yeah. But regardless if you're breaking a bad law
14 for a good reason or a good law for a good reason, you're
15 still breaking the law.

16 A. You're breaking a law.

17 Q. A law.

18 A. You may be upholding a different one.

19 Q. When you say upholding a different one, are you
20 referencing sort of -- what do you mean? I'm sorry.

21 A. So -- so when Rosa Parks sat down on the bus, she
22 was upholding the Constitution. She was upholding a much
23 higher law than the local Jim Crow segregation law. And
24 when the Reverend sat down on the tracks to block the train,
25 then he was breaking the law that you referred to and he was

1 upholding, I would say, his right to life, liberty, and the
2 pursuit of happiness. But not just for himself. This is
3 very altruistic. Like him, I'm a senior citizen. We don't
4 do these things because we're afraid of the weather in 2050
5 or the year 2100. We do it for, and the Reverend did it for
6 children and grandchildren and future generations and their
7 life, liberty, and the pursuit of happiness.

8 **Q. I take your point, but fundamentally, it doesn't**
9 **change that the Reverend intentionally broke a law in this**
10 **case.**

11 A. All nonviolent resisters stipulate to that, yes.

12 **Q. Okay.**

13 A. Historically and currently.

14 **MR. CHRISTIANSON:** Your Honor, I'm not sure if it
15 will help, but Mr. Taylor will admit that he went to the
16 tracks out there. He will make those admissions.

17 **MS. MACRAE:** Yes.

18 **THE COURT:** Thank you.

19 **BY MS. MACRAE:**

20 **Q. You mentioned when discussing civil resistance, I**
21 **believe sort as a larger theory, that it's a multi-pronged**
22 **approach.**

23 A. Yes.

24 **Q. And it requires certain actions and coordination.**

25 A. Hopefully.

1 Q. And based on your testimony, correct me if I am
2 wrong on this, but I'm thinking that you thought that some
3 of those acts are letters to the editor.

4 A. Sure.

5 Q. A public protest.

6 A. Yes.

7 Q. Writing letters to your legislator.

8 A. Yes.

9 Q. Going to your legislator's office.

10 A. Yes.

11 Q. So these are --

12 A. And excuse me, but also attending the public
13 hearings that those governing bodies are holding so that you
14 weigh in on the EIS, the environmental impact statement,
15 permit hearings, et cetera, all of which the Reverend has
16 done.

17 Q. Yes. And just to clarify, all of those are legal
18 actions.

19 A. Absolutely.

20 Q. Legally valid actions.

21 A. Yeah.

22 Q. They're -- he's not breaking a law when he does
23 any of them.

24 A. Correct.

25 Q. And it sounds like, if I'm correctly understanding

1 **nonviolent resistance, that as you proceed through the**
2 **process you make a conscious decision to break the law at**
3 **some point.**

4 A. Well, breaking a law, yes. And again, maybe
5 uphold a higher law. That's the -- that's not the first
6 thing that happens. In actual, what I would call civil
7 resistance, but it is at some point down the road when you
8 see that the threat is now imminent and everything else has
9 not achieved the policy and remedy that you seek.

10 **Q. And you're acknowledging that part of this**
11 **progression through sort of the hierarchy of civil**
12 **resistance acts, I don't know how to put it better, is that**
13 **those other acts have not led to the outcome you want.**

14 A. Yes.

15 **Q. And okay. It doesn't mean that those acts aren't**
16 **still available to a person who's participating in some type**
17 **of nonviolent resistance.**

18 A. Yes. And you know, if somebody is stuck in the
19 snow in the ditch, they can spin their wheels forever or
20 they can figure out a way to get out of that ditch. And
21 this is what nonviolent resistance is meant to do at some
22 point.

23 One of the things that nonviolent resistance does
24 is to do exactly what you're getting at, is to show to the
25 general public, and to the court even, that this (inaudible)

1 that yes, I'm willing to take the risk of the consequences
2 involved. It's not a desire to suffer, but it is a
3 statement of the seriousness of this issue, saying that the
4 risk is worth the chance that this will have some effect.
5 Maybe I'll go to jail, maybe I'll go to prison, but maybe I
6 will inspire some others to get involved at the level that
7 they can get involved. That's a really common supposition
8 that I've heard for decades from nonviolent resisters. It
9 seems to work.

10 **Q. I don't disagree with the value and long-term**
11 **effect of civil resistance. I think what I'm trying to get**
12 **at and you reference here is that ultimately it's an action**
13 **that people choose to do, that they understand may have**
14 **serious repercussions, that they are choosing those**
15 **repercussions because of the potential ability to cause**
16 **change.**

17 A. Yes. And sometimes they go to court and the court
18 will rule that, in fact, what they've done is legal.
19 Sometimes not and that's the risk that the resisters take.

20 I do want to take one little point though that you
21 just said that the sort of long run of resistance, actually,
22 there are many, many cases where, as I indicated with
23 women's suffrage, for example, and with Plessy v. Ferguson
24 all the way to Brown v. Board of Education, you have decades
25 and decades of protest and other activities, and all of a

1 sudden when a nonviolent resistance kicks in, the timeline
2 speeds up dramatically. This happened -- and this happens
3 globally as well. I can give -- I will not do my
4 professorial thing and bore you for hours with this but it
5 is quite common, that that is -- that's the sprint to the
6 goal line.

7 **Q. So in the case of women's suffrage, so to speak,**
8 **the difference between say Susan B. Anthony and what was a**
9 **largely basis of lobbying legislatures, it varies from say**
10 **the work of the suffragettes in the post-World War I area**
11 **when they were doing sit-ins and protesting by refusing to**
12 **eat.**

13 A. Yeah.

14 **Q. You're saying that that's what was effective?**

15 A. Yeah. Actually, and that's not to denigrate
16 earlier efforts at all. That was the foundation of
17 everything. But then it was actually during World War I.
18 The women were out every single day in front of the White
19 House with signs like "What about democracy at home, Mr.
20 Wilson."

21 **Q. Well, and didn't, and correct me if I'm wrong,**
22 **it's been a while since my Women's Studies classes. But**
23 **didn't those efforts arise out of an anti-war protest as**
24 **well, just in the same way that the initial first wage of**
25 **suffragism arose out of protest of the Civil War and**

1 **slavery?**

2 A. Actually, no. I'm sorry to part company with you
3 on this, but the women's movement actually split over that
4 issue. That the women who said, no, we cannot go out and do
5 resistance and protest during a war because we have to be --
6 we have to be loyal during the war. And then there was
7 Alice Paul and other women who said, no, we need these
8 rights. You know, this is the time to press them even more.
9 And the anti-war position of the suffragettes was kind of a
10 secondary thing. It did play a big part in it but it was
11 actually to diminish the movement for -- at least for the
12 duration of the war.

13 **Q. And I see the point you're making, but the reality**
14 **is there was numerous other issues going around in the --**
15 **when you talk about Alice Paul and protesting, she was**
16 **protesting obviously nonviolent acts for a woman's right to**
17 **vote. But we're also assessing the United States was in**
18 **World War I; correct?**

19 A. She was a peace activist, too, yes.

20 **Q. Yes.**

21 A. She did -- she refused to back out of the
22 movement, out of what she regarded as a false loyalty. So
23 yeah, but her first issue was always the women's vote until
24 that succeeded.

25 **Q. And I'm probably getting into the weeds here.**

1 **THE COURT:** I think you are.

2 **BY MS. MACRAE:**

3 **Q.** Yeah. Ultimately, my point is it comes back to
4 you're talking about these acts of protest as having gone
5 through a progression of other -- of other legal efforts.

6 **A.** Yes.

7 **Q.** Before they break off into an action that breaks
8 the law. But nowhere in any of these other previous
9 examples of nonviolent resistance did the nonviolent
10 resister refuse to admit that they broke the law.

11 **A.** Well, I guess if they would say in many cases that
12 they broke a lesser law to uphold a greater law. That's
13 actually pretty common.

14 **Q.** And I get the point you're making, but they're
15 still breaking a law; correct?

16 **A.** Yes. Yes.

17 **Q.** And they still accept the repercussions of that
18 decision.

19 **A.** Yes.

20 **Q.** And that is in part, in fact, part of the action
21 and why they have broken the law.

22 **A.** Yes.

23 **MS. MACRAE:** I have no further questions.

24 **THE COURT:** Okay, thank you. Any redirect?

25 **MS. OSBORN:** No redirect. Thank you.

1 **THE COURT:** Okay.

2 **MR. CHRISTIANSON:** Your Honor, can we -- can we
3 take a five-minute afternoon break?

4 **THE COURT:** We can. And I will let you all know
5 that we can take a break now and I think that we can go till
6 about, well, 5 o'clock, obviously. And so I'm not exactly
7 certain -- we can come back here and then do the SOCs.

8 **MS. MACRAE:** That's what I was going to ask is if
9 we just do the SOCs, and if the Reverend testifies --

10 **THE COURT:** The Reverend can testify at the next
11 hearing date.

12 **MR. CHRISTIANSON:** Your Honor, if we can take a
13 five-minute break, I will then present one declaration on
14 behalf of an expert that couldn't be here and then we can do
15 the SOCs --

16 **THE COURT:** Okay.

17 **MR. CHRISTIANSON:** -- along with the date.

18 **THE COURT:** Okay. Great. We'll be in a short
19 recess.

20 **MS. MACRAE:** And Your Honor, I need to talk to you
21 about the trial.

22 **THE BAILIFF:** Please rise.

23 **(WHEREUPON, a short recess was taken.)**

24 **THE COURT:** Go ahead and be seated, everyone.

25 **THE CLERK:** We are on the record.

1 **THE COURT:** Okay. So we are back on the record.
2 And Mr. Christianson, if you will proceed, please.

3 **MR. CHRISTIANSON:** Before we get to the SOCs, Your
4 Honor, we have one third expert who we had scheduled to come
5 out. He's coming all the way from the other side of the
6 country. Yesterday he told me there's just no way he can
7 make it. So we are going to submit a declaration from him.
8 We have, on our motion for -- motion to allow the
9 affirmative defense, we have a CD attached as Exhibit 1, or
10 Exhibit A, I mean, and I have a Declaration of Fred Millard
11 (phonetic) that I'll hand forward. We would enter this as
12 an offer of proof, Your Honor, as to what his testimony
13 would be.

14 We're going on two grounds of necessity. One is
15 the climate change and the other is train safety. If a
16 train derailed in downtown Spokane, falling off a 30-foot
17 track and spilling right below the hospital, right below the
18 school, what would occur? And so that was his area of
19 expertise. And if we do go get to trial and have a defense,
20 he's willing to come out. He just couldn't make it today at
21 the last minute. So we enter this as an offer of proof with
22 his CV attached as Exhibit A in our motion.

23 **THE COURT:** Okay. Ms. MacRae, as for the motion
24 only, obviously --

25 **MS. MACRAE:** Yes.

1 **THE COURT:** -- do you have a problem accepting his
2 CV and his declaration? And of course, this is going to be
3 continued to another hearing date to finish up, but do you
4 have any problem with the declaration?

5 **MS. MACRAE:** No. And defense counsel informed me
6 that they would be submitting his declaration in lieu of
7 testimony.

8 **THE COURT:** Okay. So with the State's agreement
9 or lack of objection, if you want to present one with his
10 signature on it.

11 **MR. CHRISTIANSON:** Your Honor, what I'd like to do
12 is file this and then I will get his signature in the next
13 couple of days.

14 **THE COURT:** Okay.

15 **MR. CHRISTIANSON:** And will file that also, or
16 file just the signature page with his signature.

17 **THE COURT:** Okay. And I think you also wanted the
18 CV to be in the court file as well.

19 **MR. CHRISTIANSON:** It should be attached to the
20 motion allowing the defense that we filed two or three
21 months ago.

22 **THE COURT:** Okay. So it's in the motion
23 paperwork?

24 **MR. CHRISTIANSON:** That's Exhibit A.

25 **THE COURT:** Okay. So I have it.

1 **MR. CHRISTIANSON:** I didn't want to double it up
2 in the file and make the file thick, you know.

3 **THE COURT:** Okay. So it's going to be in what's
4 already filed, the CV, and somehow refer to it with the
5 declaration, kind of link them together so that they're both
6 in there.

7 Okay. So we'll take care of that. We'll file
8 this today and then expect the signed original, at least a
9 signature page to be presented sometime before the end of
10 this week.

11 **MR. CHRISTIANSON:** Correct.

12 **THE COURT:** You said two days. I give you until
13 the end of the week.

14 **MR. CHRISTIANSON:** No, I'm gone -- I'm gone next
15 week for the next two months, so I will get it there this
16 week.

17 With that, Your Honor, we've also come up with
18 dates to continue everything to. I will be working on
19 scheduling orders while we talk.

20 **THE COURT:** Okay. First of all -- first of all, I
21 want to just briefly kind of go over what I have here. I
22 have SOCs on Romoff, Heller, and --

23 **MS. OSBORN:** Aeolus.

24 **THE COURT:** Aeolus. I knew how to say it for a
25 minute and I forgot. And Aeolus. And then Mr. Taylor is

1 the Reverend who is going to go forward. And then what's
2 happening with the other two files, with the Nelsons?

3 **MR. CHRISTIANSON:** When we -- when we ended up at
4 the last minute continuing the motion hearing date, they'd
5 already had this 200 person family reunion that they were
6 sponsoring back in Georgia for today, so we excused their
7 presence today. So we're going to continue their case to I
8 think it's August 2nd, and I will sign some scheduling
9 orders on their behalf. And they're going to come in and do
10 an SOC.

11 **THE COURT:** Okay. They're going to do an SOC.

12 **MR. CHRISTIANSON:** Yeah. And Mr. Hodgson will
13 come over and facilitate that.

14 **THE COURT:** Okay. So I'm going to need
15 continuance orders to August 2nd on both of those.

16 **MR. CHRISTIANSON:** I'm filling those out.

17 **THE COURT:** Okay. And that's at 9 a.m. And then
18 the rest of the motion?

19 **MR. CHRISTIANSON:** August 21st at 1:30. And I
20 will get a scheduling order on that.

21 **MS. MACRAE:** Your Honor, can we put a limit on the
22 bench warrant recalls on the August 21st date? It's also a
23 bench warrant recall motion date, like today is.

24 **THE COURT:** Okay. So let's talk about the motion.
25 And that was the 21st, which I'm going to be back from

1 vacation. Happy to be here and proud to serve.

2 Okay. So tell me about day two of the motions.

3 So what do you anticipate timewise?

4 **MR. CHRISTIANSON:** We're going to put on Reverend
5 Taylor for about a half hour I'd imagine and then we're
6 going to turn it over to the State.

7 **MS. MACRAE:** And the State is --

8 **THE COURT:** And you're going to cross-examine a
9 Reverend. I did that once as a prosecutor. Awkward.

10 **MS. MACRAE:** Well, I'll take that up. Yes. The
11 State is going to call -- is planning on calling Alan Dryer,
12 who is the main officer for BNSF. And likely, someone from
13 BNSF about train safety based on the second basis of the
14 necessity defense. Given the lack of date for the
15 continuance, I wasn't sure who was going to be available for
16 it. I don't think we'll have any problem getting someone.
17 I'll get a witness list for the defense.

18 **THE COURT:** Okay. So we're anticipating three
19 witnesses, one for the defense, two for the State.

20 **MS. MACRAE:** Yes.

21 **THE COURT:** And then there's going to be obviously
22 the closing arguments. How much time realistically do you
23 need? You all are in control of this. I am just the
24 referee.

25 **MR. CHRISTIANSON:** Half hour. Half hour from my

1 end.

2 **MS. MACRAE:** That seems reasonable.

3 **THE COURT:** And how many for your witnesses? You
4 know the issue now.

5 **MS. MACRAE:** I know the issues now. I would
6 assume 45 minutes to an hour for Officer Dryer, and probably
7 a little bit less than that for the expert on the train
8 safety.

9 **MR. CHRISTIANSON:** And then some argument.

10 **MS. MACRAE:** Yeah, and I was including cross-
11 examination time in that.

12 **MR. CHRISTIANSON:** And closing argument to the
13 motion.

14 **MS. MACRAE:** Yes.

15 **THE COURT:** Of course closing argument.

16 **MR. CHRISTIANSON:** And it will be Mr. Hodgson, so
17 it may go long.

18 **THE COURT:** And so Tonya, do we have bench warrant
19 recalls already set for that day?

20 **THE CLERK:** No, not at this point we do not.

21 **THE COURT:** Okay. So I don't want to see any
22 other motions. I don't want to see any pleas. And I think
23 we can probably do five bench warrant recalls from 1:30 to
24 2:00 and then start these hearings at 2:00. Is that going
25 to give you enough time or do you want me just to close it

1 to bench warrant recalls? I can do that as well.

2 **MS. OSBORN:** That would be easier.

3 **MS. MACRAE:** Yes.

4 **THE COURT:** All right. We're going to close bench
5 warrant recalls and give you all my afternoon. My entire
6 afternoon.

7 **MR. CHRISTIANSON:** So 1:30?

8 **THE COURT:** Yes, sir.

9 **MR. CHRISTIANSON:** Okay.

10 **MS. MACRAE:** Thank you, Your Honor.

11 **MR. CHRISTIANSON:** August 21, 1:30 for the second
12 half of the motion.

13 **(WHEREUPON, a discussion was held off the record.)**

14 **THE COURT:** Okay. Motion part two, August 21st,
15 1:30.

16 Other two -- Ms. Nelson's SOC entry August 2nd.

17 **MR. CHRISTIANSON:** I'm getting those orders,
18 Judge.

19 **THE COURT:** Okay. And then I think it might work
20 out just fine if we kind of do the SOC's all together. We'll
21 do a group SOC since you're group protestors. We'll just
22 keep grouping people together.

23 And on your motion, Ms. MacRae, for bifurcating
24 and continuing the hearing, I didn't have an order on that.

25 **MS. MACRAE:** Oh, I'm sorry.

1 **THE COURT:** I'm happy to grant it but I just don't
2 have an order.

3 **MS. MACRAE:** I will get you an order tomorrow
4 morning if that's okay.

5 **THE COURT:** Okay. And continuing the hearing to
6 the date we've selected.

7 **MS. MACRAE:** Yes.

8 **THE COURT:** Okay. So I will put this in the file
9 and then expect an order tomorrow.

10 And as to the other issue, I have procured a jury
11 for tomorrow morning so we will go to trial day one
12 tomorrow.

13 **MS. MACRAE:** And I emailed both Mr. Johnson and my
14 witnesses already.

15 **THE COURT:** So no further conversation from
16 anybody about the trial? It will start tomorrow morning.

17 **MS. MACRAE:** Yes, Your Honor.

18 **THE COURT:** So while we're waiting for those
19 orders, I might ask attorney Ms. Osborn and the Reverend, if
20 you want to have a seat somewhere else, I'm going to call up
21 the people who are entering the SOC and have them use those
22 seats, if you don't mind.

23 And I thank our expert witnesses for traveling
24 here and providing testimony. I feel like I have been given
25 a real basic education on global warming and the effects of

1 the emissions and a lot to think about. Thank you.

2 **MR. CHRISTIANSON:** So the three ladies can come
3 up. And I believe the lady has the SOC paperwork?

4 **THE COURT:** I do.

5 **MR. CHRISTIANSON:** Good.

6 **THE COURT:** Okay. So starting on my left, ma'am,
7 hello. I'm sorry, your name?

8 **MS. ROMOFF:** Deena Romoff.

9 **THE COURT:** All right. I'm just going to get you
10 all in order here.

11 And you are? Your name, ma'am? Uh-huh.

12 **MS. HELLER:** Margie Heller.

13 **THE COURT:** All right. And your name?

14 **MS. AEOLUS:** Maevea Aeolus.

15 **THE COURT:** Okay. So each one of you, I'm going
16 to ask you, I hate to do this but I do it for everybody.
17 I'm going to ask your date of birth for the record.

18 **MS. ROMOFF:** June 15, 1947.

19 **THE COURT:** And yours?

20 **MS. HELLER:** March 1, 1929.

21 **MS. AEOLUS:** June 22, 1947.

22 **THE COURT:** Okay. So for the three of you I have
23 been handed up a stipulated order continuance for 18 months.
24 And what that means is you're entering into a contract with
25 the State of Washington and this case will be continued out

1 for the 18 months. You have agreed on this contract that
2 you will comply with a couple of things and at the end of 18
3 months, if you do comply, this case will be dismissed.

4 So the first thing you have all agreed to is that
5 you will have no subsequent similar criminal law violations.
6 You will have no contact with Burlington Northern Railroad
7 and will pay \$150 stipulated order continuance monitoring
8 fee.

9 And you all agree to those conditions?

10 **SPEAKERS:** Yes.

11 **THE COURT:** Do you agree, ma'am? You have to
12 speak up because I'm recording you.

13 **MR. CHRISTIANSON:** You have to speak.

14 **SPEAKER:** Yes.

15 **THE COURT:** Thank you. All right. So what's
16 going to happen is hopefully I'll be signing a dismissal
17 order at the end of 18 months. However, if you fail to
18 comply, what will happen is there will be a show cause
19 hearing set. You will be notified, and at that hearing
20 there would be -- the State would have to reasonably satisfy
21 the court that you violated one or more of the conditions of
22 this SOC. And if that were to be true then you would each
23 be facing a maximum sentence of 90 days in jail and a \$1,000
24 fine on each of the two counts. Count one for no
25 trespassing. The second, count two, obstructing or delaying

1 a train.

2 So in a hearing, a show cause hearing, what
3 happens is based on your agreement in this paperwork, to
4 stipulate to the accuracy and admissibility to the facts in
5 the police reports. If there's a violation, the prosecutor
6 would just read those reports into the record and I will
7 determine whether or not you committed a crime based on just
8 those reports. So by entering into this agreement, you are
9 giving up several important constitutional rights. You are
10 giving up the right to a jury trial. You are giving up the
11 right to testify. You are giving up the right to hear and
12 question witnesses who may testify against you. And you
13 will be giving up the right to present any evidence on your
14 own behalf and you are giving up the right to a speedy trial
15 because a speedy trial will be continued 30 days beyond the
16 expiration of this order.

17 All right. So, Ms. Romoff, are you prepared to
18 give up those rights and enter into this agreement with the
19 State of Washington?

20 **MS. ROMOFF:** Yes.

21 **THE COURT:** Okay. And as far as the \$150
22 administrative fee, when would you be able to pay that?

23 **MS. ROMOFF:** Can I put it on a card?

24 **THE COURT:** You can now. We just switched over to
25 accept cards.

1 **MR. CHRISTIANSON:** Downstairs at the window.

2 **THE COURT:** So within five days?

3 **MS. ROMOFF:** Today.

4 **THE COURT:** I don't know that you're going to make
5 it downstairs.

6 And Ms. Heller, are you agreeing to the conditions
7 and giving up those important constitutional rights, and you
8 want me to sign this agreement?

9 **MS. HELLER:** Yes.

10 **THE COURT:** Okay. And when would you be able to
11 pay your \$150 fee?

12 **MS. HELLER:** Today by check or within the five
13 days.

14 **THE COURT:** I'm sorry; within how many days?

15 **MS. HELLER:** Five.

16 **MR. CHRISTIANSON:** Within five. She has it with
17 her, Judge.

18 **THE COURT:** Five.

19 And Ms. Aeolus? I'm not quite saying --

20 **MS. AEOLUS:** Aeolus.

21 **THE COURT:** Aeolus.

22 **MS. AEOLUS:** There you go.

23 **THE COURT:** Ms. Aeolus?

24 **MS. AEOLUS:** Yes.

25 **THE COURT:** All right. And are you prepared to

1 give up those important constitutional rights and comply
2 with these conditions, and you want me to sign this order?

3 **MS. AEOLUS:** Yes, Judge.

4 **THE COURT:** Okay. And when will you be able to
5 pay the \$150 fee?

6 **MS. AEOLUS:** Today. I have my checkbook with me.

7 **MR. CHRISTIANSON:** So within five days, Judge.

8 **THE COURT:** Within five days.

9 **MR. CHRISTIANSON:** They're probably closed
10 downstairs.

11 **MS. AEOLUS:** Okay.

12 **THE COURT:** Okay. So I am making a finding that
13 you are all voluntarily and intelligently waiving your
14 rights, your constitutional rights as I've outlined to you,
15 and that you want to knowingly and involuntarily and
16 intelligently enter into this contract. So I will sign the
17 contract for each one of you. And we will get you a copy.
18 And that will end your case but I have a feeling it's not
19 going to be the last time I probably see you all.

20 **SPEAKER:** You won't see me again, Judge. I'm
21 moving to Montana.

22 **THE COURT:** Oh, no. So you don't get to stay for
23 all of this.

24 **SPEAKER:** Probably not.

25 **THE COURT:** Okay.

1 **SPEAKER:** I'll be a good girl. I promise.

2 **THE COURT:** Well, it's an interesting case, and
3 the other two, are you going to be here for the other
4 hearings?

5 **SPEAKERS:** Yes.

6 **THE COURT:** Okay. Okay. So here at the SOC's,
7 Jessica, ready to be copied. And I have all the continuance
8 orders as well. And I'll get those signed as quickly as
9 possible so everyone will be able to get on out of here.

10 **MR. CHRISTIANSON:** I assume the windows are open
11 till 5:00 downstairs, Judge?

12 **SPEAKER:** Yes.

13 **MR. CHRISTIANSON:** Yes. If you hurry you might -

14 **THE COURT:** Hey, we're going to get your copy
15 really fast.

16 Jessica, and will you let them know at the cashier
17 window that there's three people coming down to pay their
18 SOC fee? We're just making copies of their paperwork.
19 Okay, we're going to work really fast and we've already told
20 the cashiers you're coming.

21 **SPEAKER:** Thank you, Judge.

22 **THE COURT:** You're welcome. And I believe we can
23 go off the record, Jessica.

24 **(WHEREUPON, the hearing concluded.)**

25

1 CERTIFICATE

2
3 I, Valerie J. Morrison, do hereby certify
4 that the proceeding named herein was professionally
5 transcribed on the date set forth in the certificate
6 herein; that I transcribed all testimony adduced and other
7 oral proceedings had in the foregoing matter; and that the
8 foregoing transcript pages constitute a full, true, and
9 correct record of such testimony adduced and oral
10 proceeding had and of the whole thereof.

11
12 IN WITNESS HEREOF, I have hereunto set my
13 hand this 25th day of August, 2017.

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19 _____
20 Valerie J. Morrison
21
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\$1,000 83:23	13:6 22:5	2 18:12 31:12	20s 57:22
\$14 62:13	22:7	31:17 31:19	21 80:11
\$150 83:7	31:13 31:17	53:5	2100 26:14
84:21 85:11	31:19 36:20	2,000 20:3	29:4 66:5
86:5	17 22:6 51:18	2.1 25:12	21st 22:5
<u> </u> 1	51:21 53:10	2.3 20:15	77:19 77:22
1 13:8 15:9	53:12 53:14	20:24	77:25 80:14
15:17 15:18	18 53:5 53:10	2:00 79:24	22 82:21
15:20 15:22	53:12 53:14	79:24	26 8:3
28:11 51:15	55:16 82:23	20 18:7 43:5	2nd 77:8
51:15 51:18	83:1 83:2	200 77:5	77:15 80:16
74:9 82:20	83:17	2004 16:8	<u> </u> 3
1,000 23:14	1880 22:7	2005 54:20	3 19:4
1:30 77:19	1900 25:13	2006 54:25	38:11 38:14
79:23	26:13 55:4	55:4	3,000 34:18
80:7	1910s 57:22	2007 14:25	3.4 25:9
80:11 80:15	1929 82:20	16:23	30 21:21 26:2
10 23:13 31:5	1947 82:18	2008 19:13	32:10
100 27:12	82:21	38:22 40:19	33:3
11 25:5	1950 22:23	40:21	60:23 84:15
12 25:14	1950s 23:10	2009 40:24	300 14:17
26:18 26:21	1954 59:17	2010 40:25	27:12
26:24	1955 59:19	2011 41:1	30-foot 74:16
27:1 31:5	1958 18:17	2012 16:2	30s 57:22
54:19	1960 43:2	2013 16:24	31 22:10
13 26:7 33:17	1960 43:2	2014 15:7	320 18:24
137 22:7	1970 22:11	17:2 22:3	323 55:3
14 26:18	43:3	2015 17:5	34 34:4
26:21	1980 21:10	22:4 29:2	35 54:21
27:2 27:3	21:11 21:20	2016 17:7	<u> </u> 4
50:3	42:9 42:18	22:4	4 19:15 40:15
15 13:4	1985 43:3	2017 8:3	40:18 41:15
27:2 27:5	1988 60:22	2040s 26:1	43:2
27:18	1990 16:13		
43:4 43:6	19:10		
50:3 82:18	19th 58:4		

401 18:25	absolutely	Acres 23:14	68:6
40-50 24:1	33:10 35:23	act 61:18	actually
407 19:2	39:5	61:23 63:13	12:18 16:12
45 79:6	40:17 43:12	64:20	29:17 33:17
<hr/>	67:19	acted 55:21	36:12 38:10
5	academic	action 34:6	39:11
<hr/>	49:17 49:18	36:13	43:3 45:5
5 19:24 73:6	50:2	44:8	45:21
5:00 87:11	52:20 52:21	59:19 60:10	53:5
50 18:3	accelerated	69:12	57:16 69:21
23:7 23:9	23:22	72:7 72:20	70:15 70:17
26:2 27:24	accelerating	actions	71:2 71:3
<hr/>	18:6	34:3	71:11 72:13
6	21:10 23:20	34:22 36:15	add 21:10
<hr/>	41:7	37:19 44:11	additional
6 21:1	accept	55:19	20:24 21:5
67 54:20	72:17 84:25	57:7	adjust 50:12
<hr/>	accepting	57:23 64:12	administratio
7	75:1	66:24 67:18	n 22:1 30:4
<hr/>	accompany	67:20	30:9 60:8
8	13:13	activist	administrativ
<hr/>	Accord 28:15	52:20 71:19	e 84:22
8 22:15	according	activists	admissibility
<hr/>	39:12	55:13	84:4
9	accountable	activities	admission
<hr/>	54:14 63:1	49:13 54:13	13:15 15:13
9 22:25 77:17	accuracy 84:4	59:4	31:12
90 21:5	accurate	60:20 69:25	admissions
21:8 83:23	37:15 37:21	activity	66:16
<hr/>	51:25	14:22 19:10	admit 66:15
A	accurately	19:14 34:13	72:10
<hr/>	18:3	34:14	admitted
a.m 77:17	achieved 68:9	37:7 49:24	15:21 15:22
ability 35:24	acknowledge	acts 63:13	31:18 31:20
69:15	35:24 37:5	64:23	53:13 53:15
able 10:11	acknowledging	67:3	Advisory 50:2
42:8	68:10	68:12 68:13	Aeolus
57:18 84:22		68:15 71:16	76:23 76:24
85:10		72:4	76:25 82:14
86:4 87:9		actual 42:4	
absolute			
31:10			

82:14 82:21	44:4 45:8	11:24 32:19	9:5 78:18
85:19 85:20	46:15 46:17	32:19 41:23	anti-war
85:20 85:21	48:20 73:24	48:16	70:23 71:9
85:22 85:23	Ain't 52:13	67:1	anybody 81:16
85:24	air 18:5	78:23 86:12	anyone 34:11
86:3 86:6	21:15 21:17	amazed 24:10	anything 36:3
86:11	22:2	amazing 39:18	47:23
aerosols	22:13	amenable	Appearance
20:10	26:8 27:1	60:10	11:15
affect	43:16 47:21	America 14:24	appreciate
32:24 35:7	Airport 21:19	57:16 57:19	33:21 35:20
affects 35:25	Al 15:1	58:11	approach
affidavit	Alabama 59:20	American 58:7	58:21
9:16 9:18	Alan 9:14	among 22:6	61:6 66:22
affirmative	78:11	47:16	approximately
74:9	albedo 20:7	amongst 55:13	38:1 40:19
affirmed	algorithm	analyses	area 27:14
59:22	16:9	28:23 33:9	27:16 33:12
afraid 66:4	algorithms	analysis 18:8	49:11 53:18
African=American	37:9	23:23	70:10 74:18
can 59:12	Alice 71:7	analyze	areas 23:20
afternoon	71:15	20:6 34:8	aren't 28:9
11:17 48:24	allies 58:25	35:14	68:15
73:3 80:5	allow 44:9	analyzed	argue 42:14
80:6	46:15 74:8	16:14 34:2	arguing 36:4
against 84:12	allowing	analyzing	argument
ago 17:6 24:1	75:20	32:23	11:21
75:21	all-time 22:8	annual 22:9	79:9
agreed 83:1	already	27:1	79:12 79:15
83:4	76:4 77:5	answer 21:5	arguments
agreeing 8:23	79:19 81:14	56:4	78:22
85:6	87:19	Antarctic	arise 70:23
agreement	alternatives	21:7	arose 70:25
75:8 84:3	60:15 60:18	Anthony 70:8	arrest
84:8	altruistic	anticipate	55:25 56:20
84:18 85:8	66:3	78:3	article
ahead 12:9	am 9:7	anticipating	
31:25			

55:1 55:17	74:9	52:3	38:21 39:17
articles	74:22 75:19	awards	62:19
14:16 14:17	attempt 59:14	14:21	70:9 78:13
14:19 56:22	62:17	15:2 15:15	beautiful
aspect 16:5	attempted	aware 9:1	43:21
assessing	57:18 60:14	63:17	became 9:1
71:17	60:17 60:20	away 48:3	becoming
Assessment	attempting	Awkward 78:9	35:21 35:25
15:6	16:4 60:24		Beetle 24:6
16:24 16:25	attended	<hr/>	begin 57:16
25:24	16:16	B	beginning
assistant	attending	bad 11:9 65:4	21:20
49:4	67:12	65:7	22:7
associated	attorney	65:10 65:13	28:25 54:25
60:20	44:24	BAILIFF 73:22	57:16 57:19
association	45:5 81:19	balance 20:4	behalf
49:13 49:17	attorneys	barely 55:9	73:14
49:19 49:20	11:13	bargaining	77:9 84:14
49:22 49:23	audiences	57:24	behavior 56:7
52:20	20:16 42:15	barrel 52:17	belief
assume	August 77:8	based 8:24	36:23 47:12
42:17	77:15 77:19	26:8 27:4	believe
79:6 87:10	77:22 80:11	27:6	9:19
assumed 55:11	80:14 80:16	36:23 40:21	37:21 38:12
assuming 39:3	Australia	41:19 56:25	42:8 56:2
40:21	45:20	67:1	62:11 66:21
assumption	author	78:13	82:3 87:22
37:8	14:24	84:3 84:7	bench 12:18
atmosphere	15:6 17:2	basic 17:25	77:22 77:23
16:7 18:2	availability	81:25	79:18 79:23
18:15 18:22	8:25	basically	80:1 80:4
19:8	available	20:3 22:2	bene 44:13
30:18 34:24	8:22	54:10 58:21	best 10:4
atmospheric	68:16 78:15	60:8 63:1	13:19 26:17
18:12 18:23	average 22:16	Basin 27:19	26:22 48:17
22:1 35:2	23:9	27:22 28:1	59:7 61:3
35:17	23:12 25:10	basis 19:23	better
attached 9:17	award 15:4	29:14 34:2	50:10 50:13

50:16 68:12	booked 9:10	54:15	45:20
beyond	books 49:12	British 57:17	buying 45:19
58:22 58:23	52:6 52:8	broke 62:8	<hr/>
58:24 84:15	bore 70:4	66:9	<hr/> C <hr/>
bifurcate	born 27:20	72:10 72:12	calculate
8:23	Boston	broken 22:4	15:5 16:5
bifurcating	57:17 61:17	22:4 51:1	34:10 38:2
80:23	61:21 61:25	62:16 72:21	calculated
biggest	62:20	Brown 59:11	27:15
24:9	63:5 65:9	59:16 63:12	calculating
40:16 41:4	bottom 21:23	69:24	16:9
billion 36:18	Boundary 16:4	building	calculation
Binational	boycotts	40:12	38:7
49:18	57:17	bulb 62:23	California
biosphere	branch 59:6	bunch 61:25	43:20
16:4 16:10	59:8	Burlington	calm 55:23
Biotechnology	branches	83:6	campaign
15:3	58:23	burn 45:17	57:10 59:20
birth 82:17	brave 59:12	burned	60:3
bit 12:16	break 62:9	27:14 34:12	campaigns
38:10	63:24 64:24	42:18 43:25	58:2 58:15
40:2	65:3 68:2	burning 19:20	car 29:16
42:14 79:7	72:7 73:3	19:21 19:22	33:4 34:12
bleaching	73:5 73:13	27:16	carbon 15:5
30:22	breaking	29:9	16:6
blind 52:24	62:12	29:11	16:15
block 65:24	65:4 65:4	41:6 41:6	18:1 18:9
blocking	65:13 65:15	41:7	18:14
63:21	65:16 65:25	41:20 43:13	19:5 19:7
BNSF 9:15	67:22	44:18 44:20	19:9
78:12 78:13	68:4 72:15	burst 43:6	19:12 19:14
board 49:14	breaks 72:7	bus 59:19	19:16 19:18
59:12 59:16	briefly 76:21	63:9 63:9	20:11
63:12 69:24	bring 8:14	65:21	25:2 26:9
bodies 67:13	12:21 22:20	business	26:24
book 52:23	30:10 47:23	26:19	27:4 27:6
55:17	59:13 62:17	28:2 31:3	28:2 28:9
	bringing	buy 44:15	28:20 28:21
			28:23 28:25
			29:2 29:5

29:17 30:12	58:9 59:7	cetera 67:15	chapters 17:2
32:21 32:23	62:15 69:22	chair 49:7	characterize
33:25 34:10	72:11	challenge	31:2
34:14 34:15	cashier 87:16	29:15	charged 63:17
34:17 34:19	cashiers	challenges	64:20
34:24	87:20	52:11	Charles 18:16
35:3 35:4	cause 32:8	chance 69:4	charts 13:13
35:7	69:15 83:18	change	check 85:12
35:14	84:2	14:19 14:20	checkbook
36:8	caused	14:23	86:6
37:24 38:15	19:25 27:8	16:1	Chelan 9:8
41:10 41:13	CD 74:9	16:13 16:14	Chenoweth
43:4 45:19	cement 40:1	16:22	55:2
card 84:23	40:9 40:12	17:3	children
cards 84:25	Center 17:9	17:13 21:14	59:13 63:15
care 37:13	50:3	24:3 27:8	66:6
76:7	centigrade	28:9	China 41:4
cared 55:24	28:13 28:16	29:23	41:21
career 14:18	28:22	30:8	43:6 43:8
carefully	century 18:18	32:14 33:23	43:25 44:12
23:6	22:5 22:8	34:9	44:17 44:19
carries 23:4	26:19 28:18	34:19 35:25	45:10 45:12
carry 59:15	30:23 58:4	36:25 42:25	45:21 45:24
cars 33:5	certain	43:14 54:16	46:6 46:7
case 11:13	34:2	58:3 60:2	46:11 46:22
40:9	34:11 66:24	61:2 66:9	47:1
54:17 54:18	73:7	69:16 74:15	China's
59:15 59:18	certainly	changed 13:23	41:5
59:21 61:23	16:21 17:19	57:12	41:20 43:12
62:7 62:9	19:18 26:22	changes	Chinese 43:16
63:5 63:8	28:6	20:7 20:9	46:2
63:14 63:18	34:10 34:21	20:9	choice 28:10
65:6	35:8	20:10 25:15	choices 37:13
66:10	36:14	27:7	choose 28:8
70:7 77:7	38:6 40:8	37:15 54:21	34:17 69:13
82:25	45:4	58:6	chooses 26:20
83:3	47:18 62:8	58:12 58:13	choosing
86:18 87:2	certified	chaos 31:10	
cases 55:3	53:21	chapter 14:24	
		15:7 25:24	

69:14	circulates	33:11	80:4
chose 23:6	34:25	clearly	closed 86:9
27:9	citizen 66:3	29:8 30:5	closer 50:9
chosen 9:21	citizens	30:9	closing 11:21
28:6	57:11 59:4	30:16 30:18	30:5
Christianson	civil 51:12	30:22 37:24	78:22 79:12
8:5 8:7	51:12	CLERK 73:25	79:15
8:12 8:19	53:2 53:2	79:20	cloud 20:9
9:7 9:22	53:18	climate 14:19	CO2 16:6
10:5	54:4 54:5	14:20 14:23	18:12 18:24
10:10 10:14	54:7	15:6 16:1	19:20 38:12
10:19 10:21	54:10 54:12	16:13 16:22	38:21 39:12
10:23	54:15 54:22	16:24 16:25	39:16 39:20
11:8	55:20 55:22	17:3 17:4	40:1 40:7
11:11 11:18	57:8	17:7 17:8	40:10 40:13
11:25	57:13 57:20	17:8	40:13 41:16
12:2	57:25 58:15	17:13 17:25	42:2
51:17 66:14	59:17	18:8	42:25
73:2	60:2	18:10	43:8
73:12 73:17	60:15 60:18	19:7	45:22 45:25
74:2 74:3	61:1	22:18 23:17	46:11 46:23
75:11 75:15	61:18 61:23	24:3 25:7	
75:19 75:24	62:20 63:13	25:22 25:22	coal 19:21
76:1	66:20	25:24 26:10	29:10 40:16
76:11 76:14	68:6	27:8	40:18 40:20
77:3	68:11 69:11	28:11 28:14	40:20
77:12 77:16	70:25	28:15 28:19	41:2 41:4
77:19	clarify 24:25	29:23 29:25	41:5 41:6
78:4	37:19	30:8	41:7
78:25	46:9	30:15 30:24	41:16 41:20
79:9	46:21	32:14 33:23	42:4
79:12 79:16	51:9	34:9	42:17 42:24
80:7 80:9	51:17 56:13	34:19 35:24	43:9
80:11 80:17	67:17	36:25 37:10	43:13 43:25
82:2 82:5	classes 61:25	37:11 42:20	44:13 44:15
83:13	70:22	42:25 43:14	44:16 44:17
85:1	classic 55:21	47:13	44:20 45:10
85:16	57:9	60:2 61:2	45:12 45:16
86:7 86:9	Clean 30:4	74:15	45:17 45:22
87:10 87:13	clear 19:7	Climatic	46:5
Christmas		16:14	46:10 46:12
20:18 20:21		close 79:25	46:25

coal-fired 30:5	committed 84:7	concluded 87:24	65:22
coastal 23:20	committees 14:20 49:7	conclusion 58:16	constitutiona 1 84:9 85:7 86:1 86:14
co-chair 49:18	committing 45:16	conclusions 47:11	consulted 53:7
coincides 38:24	common 69:7 70:5 72:13	conditions 83:9 83:21 85:6 86:2	consumed 46:6
colleagues 30:16 33:8 60:23	communication 57:2	conducive 60:2	consumer 41:4 44:15 45:10
collection 24:22	commute 34:4 35:6 39:9	conference 9:17	consumes 45:12
collective 29:8 34:24 35:1 36:15 44:7 57:24	commuters 38:5	conferences 52:21	consumption 39:4 42:4 42:24 46:25
Colonial 57:16	company 71:2	conflict 49:4 49:16 50:4 51:13 52:23	contact 83:6
Color 52:14	complete 57:6 63:10	conscious 68:2	contains 21:23
Columbia 25:16	comply 83:2 83:3 83:18 86:1	consciously 46:22	content 21:2 21:16
comes 17:8 61:9 61:9 72:3	components 20:6	consensus 47:16 47:18	contesting 63:24
comfortable 51:1 51:4	computer 28:23	consequence 37:11	context 49:24
coming 17:4 19:9 19:19 20:5 29:11 74:5 87:17 87:20	computer- model 26:12	consequences 69:1	continuance 77:15 78:15 82:23 83:7 87:7
commercial 10:22	concentration 18:21	consider 21:11 28:1	continue 28:8 58:18 59:4 62:25 76:18 77:7
commit 36:24	Concentration s 18:13	considered 18:17 60:8	continued 75:3 82:25 84:15
	concerned 45:22	Consortium 49:16	continues 62:24
	conclude 58:14	Constitution 62:19 63:11	continuing 26:13

77:4	64:2	coupled 28:19	48:10 48:13
80:24 81:5	64:17	course 9:20	48:20 50:11
contract	65:1 67:1	29:1	50:19 50:24
9:8 82:24	67:24 70:21	31:25 39:19	51:4 51:7
83:1	71:18 72:15	39:25 42:17	51:20 51:23
86:16 86:17	76:11	63:14	53:12 53:17
contribution	correctly	75:2 79:15	53:17 53:19
36:15	37:2 40:1	courses 49:9	53:21
control 43:24	67:25	court 8:5	56:4 56:9
78:23	council 49:22	8:10 8:17	56:12 56:16
conversation	50:2	9:4 9:6	56:23
40:22 81:15	counsel	9:12 10:2	57:1
convicted	8:21 11:9	10:5 10:7	59:22 59:23
62:11	11:17	10:8	61:13
coordination	45:4 47:6	10:11 10:18	64:4 64:6
61:9 66:24	75:5	10:20 10:22	64:9
coordinator	counsel's	10:25	66:18 68:25
49:5	8:25	11:3 11:9	69:17 69:17
copied 87:7	count 83:24	11:15 11:17	72:1
copies	83:25	11:22 11:25	72:24
12:19 13:11	counterintuit	12:4 12:9	73:1 73:4
87:18	ively 55:6	12:15 12:20	73:10 73:16
copy 51:25	countervailin	12:22 12:24	73:18 73:24
86:17 87:14	g 55:10	13:2 13:5	74:1
coral 30:21	countries	14:2	74:23
corporate	37:12	14:12 15:17	75:1 75:8
58:13	country	15:20 17:14	75:14 75:17
correct 15:10	17:1 17:7	17:16 17:19	75:18 75:22
25:1	30:2	24:12 24:16	75:25
32:19	41:25 45:24	30:14 31:14	76:3
34:1	46:11 52:20	31:17 31:21	76:12 76:20
36:22 38:25	74:6	31:25	76:24 77:11
40:4	counts 83:24	32:3 37:3	77:14 77:17
40:20 41:14	County 9:9	38:13	77:24
43:7	couple	44:4 44:9	78:8
51:20	10:23 42:16	44:23	78:18 78:21
56:3	56:10 60:19	45:1 45:4	79:3
61:20	75:13 83:2	45:8 46:3	79:15 79:18
62:5 62:8		46:14	79:21
		47:5	80:4 80:8
		47:23	80:14 80:19
		48:1 48:7	81:1 81:5
			81:8

81:15 81:18	32:5 61:15	81:6 82:17	37:22
82:4 82:6	cross-examine	dates 23:1	decision 34:7
82:9	78:8	25:12 76:18	34:17
82:13 82:15	Crow 65:23	David 18:16	35:5 36:7
82:19 82:22	crowd 10:16	day 9:21	37:17
83:11 83:15	curious 22:19	16:11 32:15	39:6 68:2
83:21 84:21	42:23	32:15	72:18
84:24	current 15:10	33:4 35:6	declaration
85:2 85:4	18:21 51:25	38:1	73:13
85:10 85:14	currently	46:18 46:18	74:7
85:18 85:21	66:13	47:15	74:10
85:23 85:25	curriculum	61:7	75:2 75:4
86:4 86:8	15:11 52:1	70:18	75:6 76:5
86:12 86:22	CV 15:14	78:2	decrease
86:25	74:22	79:19 81:11	39:16 39:20
87:2 87:6	75:2	days 75:13	40:7
87:14 87:22	75:18 76:4	76:12 83:23	40:10 40:13
courts 58:21	cycle 15:5	84:15	40:20
cover 9:9	16:6	85:2	decreased
20:8 20:9	28:20 32:21	85:13 85:14	40:14
covering 9:8	33:25 34:19	86:7 86:8	Deena 82:8
crash 19:13	34:24	dead 31:8	defendant
creation	35:4 35:7	deal 38:6	13:25 31:11
57:19 57:24	35:14 36:9	60:21	54:6
credentials		dealing 58:23	55:19 56:20
14:13 49:3		decade	56:21
credibly 60:5		21:21 22:10	57:7
crime 64:3		22:23	58:24 60:14
84:7		decades	Defendant's
criminal		23:6	56:6
63:20 63:23		29:11	defender 9:8
64:20 83:5		69:8	defending
cross 46:3		69:24 69:25	62:14
79:10		decelerate	defense
cross-exam		41:8	8:21 8:24
47:6 61:13		decided 61:7	9:2 13:8
cross-		decides 30:25	15:18 15:20
examination		deciphering	15:22 31:19
31:24			53:14 74:9

74:19	61:21 62:3	disassociatio	double 76:1
75:5	detail 27:18	n 63:10	doubling
75:20 78:14	details	discussing	16:15 27:16
78:17 78:19	22:1 38:3	66:20	downstairs
define 54:7	determine	discussion	85:1 85:5
degree	64:3 84:7	80:13	86:10 87:11
22:23 26:21	determined	dismissal	downtown
26:21 28:22	9:4	83:16	74:16
31:5	device 11:10	dismissed	downturn
63:20 63:23	dice 23:24	83:3	38:25
degrees 11:14	41:13	disobedience	39:3 39:14
22:10	dies 37:12	51:13	dozens 14:18
25:3	difference	54:4 54:11	Dr 12:3 13:12
26:18 26:22	26:23 26:25	disruption	14:9
26:23 26:24	70:8	31:9	15:13 15:25
26:25	different	distance	17:12
27:1	20:14 37:12	34:12	28:4
28:13 28:16	47:19	disturbances	30:13
28:16	58:1	24:2	32:7
29:4 37:1	64:10 65:18	ditch 68:19	47:11
delaying	65:19	68:20	60:1 60:5
83:25	digits	docket 8:22	60:21 65:3
democracy	35:19 36:10	doctor 12:5	dramatically
54:23 70:19	36:11	13:21	23:22 70:2
denigrate	diminish	document 15:1	drier 25:25
70:15	71:11	17:3 53:6	drilling
derails 74:16	dioxide 16:16	documented	29:14
derived 47:12	18:1	30:16 30:18	drive 34:7
47:13	18:14	documenting	35:6 36:7
describe	19:8 20:11	16:8 24:23	37:17
14:12 33:14	direct 14:7	documents	38:1 39:7
49:2 51:10	25:19 30:19	16:19	39:15
describing	44:2 46:2	done 30:25	driving 29:16
56:6	47:20 48:22	52:17	39:11
desegregation	directly 16:6	54:4 54:6	dropped
59:23	20:17	54:20 58:25	38:5 38:6
desire 69:2	disagree	67:16 69:18	drove 34:4
destroyed	69:10		Drs 55:2

dry 23:4	editor 59:1	61:24	40:2 40:7
Dryer 9:14	60:12 60:12	elements	40:10 40:13
78:11 79:6	67:3	52:18 64:3	40:14 40:20
due 25:25	educate 57:11	elicitive	41:2
40:20	59:3	52:19	41:16 41:18
duly 12:8	education	else 13:18	42:2
14:5 48:18	59:12 59:16	34:11	42:25
dump 61:25	63:12 69:24	68:8 81:20	43:8
duration	81:25	emailed 81:13	45:19 45:22
71:12	Edward 15:3	emergency	45:25 46:23
during	effect	9:10	82:1
70:17	29:25	emission 19:5	emphasize
71:5 71:6	33:3	26:9	26:11
<hr/>	34:20	26:19 26:24	empirical
E	36:8 39:6	27:4 27:6	54:3 54:19
<hr/>	39:10 42:20	27:17 28:23	energy 20:4
earlier	43:13 44:12	29:2	20:4 20:5
23:8 23:8	69:4 69:11	29:17 36:24	20:25
23:10 23:11	effective	37:10 40:16	21:8
25:25 37:16	54:15 70:14	43:4 46:11	29:12 30:11
40:22 43:11	effectively	emissions	engaged 57:20
70:16	17:1	18:9	enroll 59:14
earth 16:10	effects 30:20	19:10 19:14	enter 74:11
24:9	33:5 39:3	19:16 19:19	74:21 84:18
29:19 36:18	81:25	19:20 19:23	86:16
easier	efficacy 54:4	26:17 26:20	entered 64:13
35:25 35:25	efficient	28:2 28:9	entering
80:2	40:6 40:7	28:14 28:21	81:21 82:24
easily 21:8	efforts 70:16	28:25	84:8
38:4	70:23 72:5	29:6	entire
eat 70:12	EIS 67:14	30:12 32:24	32:24 80:5
eaten 29:19	either 10:5	34:11 34:14	entomology
ecology 14:14	10:6	34:16	24:8
25:3 52:10	62:11 65:4	35:1 35:3	entry 80:16
economic	elected 59:2	35:8	environmental
19:13 38:25	electric	35:10 35:14	27:7
39:2	29:16 29:16	37:25	52:11
Edison 62:23	elementary	38:6	58:9 67:14
edited 52:25		38:12 38:15	epidemics
		38:21 39:12	
		39:16 39:20	

24:5 24:6 24:9 24:24 equal 43:5 Era 53:1 Erica 55:2 especially 60:7 estimates 26:17 et 67:15 etymology 24:14 evaluating 14:20 events 59:3 everybody 31:8 37:12 50:20 82:16 everybody's 55:24 everyone 11:1 73:24 87:9 everything 13:10 13:18 55:22 68:8 70:17 76:18 evidence 44:22 84:13 exactly 9:21 68:24 73:6 examination 14:7 47:9 48:22 79:11 examined 14:6	48:18 example 20:9 30:6 38:1 41:25 57:25 58:23 59:11 59:13 60:12 62:6 69:23 examples 57:13 58:11 58:15 59:10 59:17 72:9 exceedingly 42:13 except 19:13 excuse 45:3 51:15 53:25 67:12 excused 8:14 48:2 77:6 exhausted 58:22 exhibit 13:6 13:8 15:9 15:17 15:18 15:20 15:22 18:12 18:13 18:14 19:4 19:5 19:15 19:17 19:24 20:1 20:11 21:1 21:2 21:13 21:14 21:23 22:15 22:17 22:20 22:25 23:2	23:13 23:15 25:5 25:6 25:14 25:17 26:7 26:9 27:3 27:5 27:18 28:11 28:13 28:22 36:20 36:20 38:11 38:13 38:14 40:15 40:17 41:15 43:2 51:14 51:15 51:18 51:18 51:21 53:5 53:5 55:16 74:9 74:10 74:22 75:24 exhibits 12:19 13:2 13:11 15:8 27:2 27:7 28:5 31:12 31:17 31:19 47:20 53:10 53:12 53:14 exists 58:18 expect 76:8 81:9 expected 26:1 27:8 experience 37:20 experimental 62:24 expert 11:19 17:12	17:17 53:18 53:22 73:14 74:4 79:7 81:23 expertise 33:13 33:19 37:20 44:3 74:19 experts 9:3 9:23 10:1 expiration 84:16 explain 20:16 extent 30:11 extra 20:21 extrapolating 39:2 extreme 28:3 eye 60:22 <hr/> F <hr/> face 55:11 facilitate 77:13 facing 83:23 fact 8:25 18:15 32:23 44:12 45:15 45:21 61:23 62:7 62:9 69:18 72:20 facts 17:25 84:4 faculty 49:9 Fahrenheit 22:10 22:23 26:18 28:16 29:4 31:6
---	---	--	--

fail 83:17	figure 68:20	83:4	forests
failed 59:5	figured 50:21	fit 29:24	15:7 16:15
fallen 49:11	figuring 38:8	59:6	forever 55:12
falling 74:16	file 75:12	five 8:12	68:19
false 71:22	75:15 75:16	23:25 45:15	forgot 76:25
families	75:18	79:23	forth 13:8
59:13	76:2 76:2	85:2	forward
family 77:5	76:7 81:8	85:12 85:15	8:16 8:17
fashion 54:10	filed 75:20	85:16 85:18	26:14 57:18
fast 87:15	76:4	86:7 86:8	59:15 74:11
87:19	files 77:2	five-minute	77:1
favor 10:15	filling 77:16	73:3 73:13	fossil
54:24	final 22:9	flew 55:10	19:16
federal 29:23	35:2 43:5	flies 34:16	28:7
29:25	finally	flooded 28:1	30:10 39:4
30:7	18:7	flooding	foundation
36:23	20:10 50:1	27:23	49:23 64:23
37:6 62:18	finding 86:12	flows 26:4	70:16
fee 83:8	fine 12:13	fly 34:18	founding 49:9
84:22 85:11	12:18 43:15	flying 48:3	framed 65:3
86:5 87:18	62:13 80:20	focused 44:8	Fred 74:10
feel 10:22	83:24	follow-up	Freedom 54:20
81:24	finish 75:3	47:8	frequently
feeling 86:18	finished 47:5	food 29:18	64:24
feelings	fires 43:20	29:18	friend 24:8
32:14	first 10:3	40:4 40:6	24:14
feet 27:23	10:6 12:2	40:7	front 15:8
27:25	14:5	footprint	70:18
fellow	16:12 17:25	34:17	fuel 28:7
57:11 59:4	18:19	forces 45:7	28:8
Ferguson	29:8 29:9	Forcing 19:25	29:12 30:10
69:23	45:20 48:18	forest	34:12
fewer 40:9	52:10 54:20	23:16	fuels 28:7
40:12	61:9	24:2 24:5	39:4
field 17:19	61:18 61:19	24:9	full 33:15
49:19	68:5	24:25	58:1
	70:24 71:23	25:3 43:20	functioning
	76:20 76:20		

31:7	18:18	25:22 26:16	government
fundamentally	George 8:19	28:12 28:19	47:14 58:24
66:8	9:24 13:25	29:8	59:6
fundamentals	Georgia 77:6	30:19 30:24	graduate 49:7
20:25	gets 11:9	31:10 32:21	grandchildren
funds 49:24	20:2	33:1	66:6
future	getting 46:16	33:13	grant 81:1
18:10 25:21	57:22	34:9	graph 18:24
26:10 26:12	62:7	34:24	19:19
66:6	68:24 71:25	35:2	21:4
	78:16 80:17	38:15 39:17	21:16 21:17
		39:21 39:21	23:6
<hr/>		41:8 41:9	23:21 25:19
<u>G</u>	girl 87:1	42:3 42:7	37:6
gaining 57:23	given 8:22	55:3 81:25	38:11 38:12
gallons 38:3	8:25	globally	38:19 39:12
game-changing	13:16	22:24 33:19	40:18
55:12	29:7	34:20	graphic 25:23
Gandhi 62:21	62:13 78:14	36:9	26:5
gas 19:22	81:24	38:12 41:16	great 38:6
38:3 40:1	gives 29:14	70:3	73:18
gases 18:1	giving 53:8	goal 36:25	greater 23:14
18:5	84:9	37:7 70:6	72:12
20:11 20:13	84:10 84:10	goals 30:3	greenhouse
30:17 30:18	84:11 84:13	Goddard 16:11	18:1
34:20	84:14 85:7	gone 18:5	20:10 20:13
gathering	glaciers 21:7	18:6	30:17 34:20
60:6	glance 21:4	18:15 19:14	greenhouses
gears 39:24	global 15:5	39:18	18:5
general 68:25	16:6 18:5	72:4	grew 27:19
generated	18:10 18:19	76:14 76:14	41:2 43:19
35:9	19:4	goods 57:17	grounds 74:14
generating	19:12 19:14	Gore 15:1	group 17:4
35:11	19:16 19:23	gotten 15:3	19:11 80:21
generations	20:25	21:21	80:21
66:6	21:1	governance	grouping
gentlemen	21:11 21:13	49:13 50:2	80:22
48:14	21:15	governing	groups 52:20
geophysical	22:2	49:22 67:13	
	22:19		
	25:2 25:8		

grown 29:18	48:17	87:24	Historically
guess 15:15	harder 38:7	hearings	66:13
29:15	harmed 62:3	67:13 67:15	history 61:24
37:5 65:6	Hastings	79:24 87:4	Hodgson 11:15
72:11	48:12	hearsay 24:11	11:21 44:21
guessing	49:1	heat 21:2	44:25
32:16	50:25 53:17	21:16	45:3
guilty 62:12	H-a-s-t-i-n-	heavily 24:6	77:12 79:16
gun 52:17	g-s 49:1	held 8:2	hold 46:14
	HASTINGS	80:13	46:14 50:19
	48:16 48:18	Heller	56:12
<hr/> H <hr/>	hate 10:15	76:22 82:12	holding 67:13
half 30:23	82:16	82:12 82:20	home 39:9
55:8 78:5	haven't 30:21	85:6 85:9	70:19
78:25 78:25	having 8:11	85:12 85:15	honed 28:15
80:12	14:5	hello 82:7	Honor 8:20
halted 28:5	18:19 20:21	help 11:13	10:14 10:15
hand 11:6	32:7	52:12	10:21 11:11
11:15	48:18	53:2	12:3
12:6	50:8 72:4	56:13 57:11	13:24 17:11
31:21 33:23	head 41:23	66:15	24:11 31:23
48:15 74:11	hear 10:20	he's 46:5	44:25
handed 82:23	11:1 11:4	51:4 56:6	46:1
handling 45:5	11:5	56:7 57:3	48:11
hands 50:15	24:10 84:11	60:19 67:22	50:6
happen	heard 60:21	74:5 74:20	50:23 51:17
83:16 83:18	69:8	Hey 87:14	61:14
happened	hearing 8:1	hierarchy	64:1
56:19 70:2	10:12 10:17	68:11	66:14
happens	10:18 10:24	high 27:17	73:2
37:9 68:6	11:10 16:20	27:24	73:12 73:20
70:2 84:3	31:16 48:17	higher	74:4
happiness	50:8	26:18 27:25	74:12 75:11
66:2 66:7	53:13 73:11	65:23 68:5	76:17 77:21
happy 50:20	75:3 77:4	highest 23:19	80:10 81:17
78:1 81:1	80:24	26:17 26:19	honored 14:21
Harbor 61:25	81:5	Historic	15:2
hard 41:9	83:19 83:19	18:12 19:5	hope 26:22
	84:2 84:2		29:3
			58:16 58:18

59:7 61:3	Ideally 29:25	36:22 37:22	impact
hopefully	identical	38:13	18:20
66:25 83:16	26:15	39:3	25:8
hospital	identificatio	40:20 40:21	25:23
74:17	n 12:25	41:14	38:2
hotter 25:25	identified	43:7	39:21 67:14
hour 78:5	23:18	43:18	impacts
78:25 78:25	identify	49:4 49:5	17:4
79:6	15:25	49:9 50:2	20:15 27:10
hours 70:4	I'll 12:6	51:3	30:19
House 54:20	12:7	52:21	important
70:19	13:20 26:11	53:8	16:21 18:18
human 19:10	44:9	56:12 60:16	24:4
19:14 23:19	46:15	61:20	27:10
54:22	48:5 64:8	62:9	32:8
humanity	69:5 69:5	62:14 62:15	42:15
26:20 28:10	74:11 78:10	64:1	84:9 85:7
30:23 30:25	78:17 83:16	64:22	86:1
38:8 44:6	87:1 87:8	65:1	importing
humans	illustrated	65:12 65:20	45:16 46:12
18:19 19:25	28:4	66:3	improve 62:25
28:6	illustrates	66:14	inaudible
hurry 87:13	19:19 20:3	67:2	10:16
hydrology	illustration	67:25	19:2
23:4	18:19	69:1	47:17
hydropower	I'm 9:10 9:18	69:11 70:21	51:5 53:2
29:13	9:18	71:2	55:15
<hr/>	10:12 12:18	71:25	57:6
I	13:24 14:14	73:6	58:17 59:14
<hr/>	17:24	76:14 76:14	60:2 60:7
ice 21:7	18:3	77:14 77:16	68:25
iconic	20:20	77:25 80:17	inches 27:24
57:25 59:11	25:2	80:25	incidents
I'd 11:4 11:5	25:20 27:21	81:1	9:16 33:2
22:20 75:11	31:8	81:20	include 49:14
78:5	32:16	82:7 82:9	59:18
Idaho 26:6	33:3 34:1	82:15 82:17	including
idea 37:11	34:23 35:10	83:12 85:14	49:9 79:10
	35:18 36:6	85:19 86:20	increase
		imagine 78:5	22:22 26:22
		imminent 60:6	
		68:8	

27:13 31:6 38:12 40:25 40:25 41:1 increased 28:18 increases 26:8 27:3 27:12 30:17 increasing 18:4 19:23 22:10 indicate 60:5 indicated 69:22 individual 29:14 29:21 33:2 33:3 33:11 34:2 36:13 36:14 37:19 43:23 44:8 individual's 44:11 infestations 24:15 24:19 influences 16:6 information 41:15 47:11 56:25 60:4 informed 75:5 initial 70:24 innumerable 57:15 58:11 60:20 insect 24:5	24:9 24:19 inspire 69:6 instances 27:9 instead 8:10 34:4 34:7 37:17 Institute 49:10 49:14 institutional 58:12 instruments 47:20 insurgency 54:24 55:5 55:7 55:7 55:9 intelligently 86:13 86:16 intended 33:1 intentionally 66:9 interchangeably 54:9 interest 30:12 interested 10:13 34:23 interesting 54:18 87:2 Intergovernmental 14:23 16:22 internal 46:8 international 36:24 37:7	49:20 49:21 49:23 50:3 55:1 introduction 53:10 invented 62:23 involuntarily 86:15 involve 25:21 involved 69:2 69:6 69:7 IPCC 14:25 20:3 isn't 19:2 32:9 42:24 issue 46:8 58:17 69:3 71:4 71:23 79:4 81:10 issues 10:24 33:23 55:14 71:14 79:5 IUPCC 17:1 I've 8:20 13:23 14:17 14:18 14:19 15:3 25:19 33:17 33:19 49:11 53:4 69:8 86:14 <hr/> J <hr/> jail 69:5 83:23 James 49:10	Jessica 13:3 48:1 50:11 51:20 87:7 87:16 87:23 Jim 65:23 Johnson 81:13 join 11:13 journal 16:2 16:13 55:1 55:17 Judge 8:7 8:9 8:19 9:7 10:17 11:8 11:16 80:18 85:17 86:3 86:7 86:20 87:11 87:21 judicial 59:6 59:8 June 8:3 82:18 82:21 jury 81:10 84:10 Justice 49:19 <hr/> K <hr/> Keeling 18:16 kicks 70:1 King 65:3 knew 56:19 76:24 knowingly 86:15 knowledge
--	--	---	--

27:20 56:8	61:9 62:21	63:14 68:13	lieu 75:6
known 55:13	latest 45:15	legal 60:14	life 62:22
<hr/>	law 62:8 62:9	60:17 67:17	66:1 66:7
<hr/> L <hr/>	62:12 62:14	69:18 72:5	light 20:18
labor 57:23	62:16 62:18	Legally 67:20	20:21 62:23
lack 75:9	63:11 63:24	legislator	likely 78:12
78:14	64:24	67:7	Likewise
ladies 82:2	65:3 65:4	legislator's	27:17
lady 82:3	65:5 65:7	67:9	limit 28:12
land 35:1	65:10 65:10	legislatures	77:21
large 23:21	65:13 65:14	70:9	line 70:6
23:25 39:25	65:15 65:16	length 8:22	lines 54:6
40:25 54:25	65:17 65:23	lengthier	link 76:5
largely	65:23 65:25	46:22	list 57:15
34:5	66:9	less 29:15	78:17
36:23	67:22	41:18 41:19	listed 55:15
43:8 70:9	68:2 68:4	41:24 79:7	listened 32:7
larger 33:6	68:5 72:8	lesser 72:12	listening
34:9	72:10 72:12	let's 21:1	59:25
34:19	72:12 72:15	21:13	literally
35:4 36:8	72:21 83:5	22:5 34:3	31:4
43:4 66:21	laws 63:15	57:16 77:24	literature
largest 19:20	Lawson 49:10	letters	53:7
19:21 19:22	lawyer 32:20	59:1 59:1	little
20:12 44:12	lay 32:20	60:11 60:12	12:16 20:18
44:15 45:10	lead 14:24	67:3 67:7	38:10
46:11	15:6	level 18:21	41:9
last 14:2	learn 62:25	25:6 25:7	44:12
18:7 19:1	least 34:21	25:9 27:5	50:9
21:21	58:4	27:18 27:20	69:20 79:7
23:7 23:9	60:22 71:11	27:25 29:21	live 12:14
36:20 42:16	76:8	30:20 32:21	23:3
43:6	leave 9:10	33:6 37:9	living 29:8
48:25	10:11 64:18	42:3 69:6	lobby 58:25
59:7 61:3	leaves 33:20	levels 55:13	lobbying 70:9
74:21	leaving 48:4	LGBTQ 58:10	local 26:17
77:4 86:19	led 20:18	liberty	
late 58:4	42:25 43:20	66:1 66:7	
later 8:15			

met 64:3	63:18	months 9:9	moving
meter 20:16	Mm-hmm	75:21 76:15	29:12 86:21
20:20 20:22	32:22 32:25	82:23	multilevel
20:22 20:23	33:24	83:1 83:3	52:22
20:23 20:24	40:5	83:17	multi-prong
21:6	40:11 41:17	morning	61:6
methane 20:12	42:22 45:11	9:23	multi-pronged
method 38:5	45:23	59:25	66:21
metrics 54:22	model 28:23	81:4	myself 24:10
micro 34:21	37:18 37:21	81:11 81:16	
microphone	62:24	motion 8:6	
11:7	modeling 38:8	8:11 8:16	
12:14 50:7	models	8:18 8:23	
migrant 58:10	25:22 25:23	9:5 10:3	
mile 33:4	28:19 28:20	10:12 11:21	
miles 34:4	37:8	12:1	
34:18 38:3	37:13 37:15	31:16	
Millard 74:10	38:2	74:8 74:8	
millimeters	moment 13:6	74:22 74:23	
25:10 25:12	56:13 57:25	75:20 75:22	
million 18:24	MONDAY 8:3	77:4	
18:25 19:2	monitor	77:18 77:23	
mind 31:25	35:7 35:15	77:24 79:13	
81:22	monitored	80:12 80:14	
mindful 10:8	38:20 42:9	80:23	
minimize	monitoring	motions	
29:10	83:7	78:2 79:22	
minor 46:15	Montana	Mountain 24:6	
49:6	9:17	move 13:14	
minute	14:15	15:13 17:12	
39:24	24:7 26:6	24:13 31:12	
42:7 48:4	26:8	45:8	
74:21 76:25	26:14 44:16	50:21	
77:4	46:6	53:9 53:17	
minutes 79:6	46:10 86:21	movement 58:1	
misdemeanors	Montana's	59:17	
	16:15	61:5 71:3	
	Montgomery	71:11 71:22	
	59:20 63:9	movements	
		61:4	

80:16	62:19 66:11	objection	Oh 32:2 38:15
net 16:9	68:1	15:19 17:14	41:21 45:13
20:14	68:17 68:21	17:15 24:11	80:25 86:22
Netherlands	68:23	31:15	oil 19:21
41:24	69:8 70:1	44:1	29:11 43:3
newest	71:16	44:21	okay 8:5 10:2
16:21 19:1	72:9 72:9	45:1 46:1	10:10
news 10:9	normal 21:19	53:11 53:20	11:7
newspaper	North 14:24	56:1	11:22 11:25
56:21	Northern 83:6	56:24	12:4
NOAA 21:25	Northwest	57:1 64:1	12:20
Nobel 14:25	17:4	75:9	13:2 13:5
none 20:17	23:17 23:19	obstructing	13:22 15:17
nonfossil	24:5	83:25	15:20 17:16
29:12	24:20 25:24	obviously	24:16 31:17
nonviolence	27:11 27:15	33:22 35:20	32:2
50:1 53:1	note 40:15	42:23 57:25	32:19 35:20
54:11 54:24	50:25	71:16	37:23 40:24
58:2	noted 38:24	73:6	42:12 43:22
62:16 62:22	40:4	74:24 78:21	44:9
63:14 64:23	nothing 26:23	occasionally	44:23 46:14
nonviolent	notice	49:8	47:5
50:4	11:15 36:1	occur 16:23	47:22
51:13 52:12	noticeable	58:5 74:18	48:7 48:9
52:13 52:15	36:8 36:13	ocean 21:16	48:10 50:18
52:17 53:18	noticeably	25:16 35:2	51:3 51:7
54:2	35:6	Oceanic 21:25	51:9
54:11 54:14	notified	21:9	51:14 53:12
55:4 55:5	83:19	oceans 21:6	53:21
55:7	nowadays	21:9	56:9
55:22	41:22	o'clock 73:6	56:16
57:9	nowhere 72:8	offer 74:12	57:1
57:20	numerous	74:21	59:25
58:5 58:8	39:15 71:14	office 67:9	62:6 64:4
58:11 58:19	<hr/>	officer	64:6 64:9
58:20	<hr/>	9:14	66:12 68:15
59:8	<hr/>	78:12 79:6	72:24
59:20 62:2	objecting	offices 59:2	73:1
	45:6 56:5	offset 34:17	73:16 73:18
			74:1
			74:23
			75:8
			75:14 75:17

75:22 75:25	86:2	64:1	82:3 84:3
76:3 76:7	orders	72:25 76:23	87:18
76:20 77:11	76:19	80:2	Paris 28:15
77:14 77:17	77:9	Osborne 13:25	Parks 59:19
77:24	77:15 80:17	others 69:6	62:7 63:8
78:2	81:19 87:8	outcome 68:13	65:6 65:21
78:18 79:21	Oregon 17:8	outlined	parse 41:9
80:9	17:9 26:6	86:14	participating
80:14 80:19	49:14	outreach	68:16
81:4 81:5	organizations	57:10	particular
81:8 82:6	49:21	outside 23:20	18:1
82:15 82:22	original 25:3	44:2 47:1	25:23 27:10
84:21 85:10	76:8	overall	50:1
86:4	Osborn	22:9 30:22	particularly
86:11 86:12	11:14 11:19	overruled	18:6 27:14
86:25	81:19	44:9 57:2	Party 57:17
87:6 87:6	O-s-b-o-r-n	overwhelming	61:17 61:21
87:19	14:4	47:18	62:21
old 20:19	OSBORN		63:5 65:9
ones 20:19	12:13 12:18	<hr/>	past 26:5
20:19 28:9	12:21 12:23	<hr/> P <hr/>	28:7
Onset 23:1	13:1 13:4	Pacific	54:19 54:21
open 55:23	13:11 13:22	17:4	Paul 71:7
87:10	13:24	25:15 25:24	71:15
opportunities	14:4 14:8	27:11	pay 83:7
60:11	15:24 17:11	pack 23:8	84:22 85:11
optimistic	17:18 17:20	page 75:16	86:5 87:17
28:24	17:21 24:18	76:9	pays 33:19
optimum 28:17	44:1 45:6	Panel 14:23	peace 14:25
order 10:2	46:1 47:7	16:22	49:14 49:15
13:7 26:2	47:10 47:22	paper 16:2	49:19 49:21
27:12 27:23	48:11 48:23	16:8	49:23 52:10
29:3 30:3	50:25	16:12 16:13	71:19
30:19	51:8	16:13 51:19	peaceful
31:5	51:22 51:24	papers	55:23
77:20 80:24	53:16 53:24	16:17 24:21	peacefully
81:2 81:3	56:3	24:23	55:25
81:9	56:10 56:15	paperwork	peer 52:23
82:10 82:23	56:17 56:18	12:17 75:23	
83:7	57:4 57:5		
83:17 84:16	61:11		

52:24	33:12	22:25 25:14	34:7 35:5
peer-reviewed	34:4 36:7	26:7 48:1	36:7
24:23 49:12	47:12 56:8	48:15 48:21	37:17 39:7
people 10:9	personally	48:24 51:10	Portland 49:5
10:24	34:23 57:3	73:22 74:2	position
21:6 29:5	Ph.D 33:16	Plessy 69:23	14:13
29:22 36:18	33:16	plus 21:9	49:2 71:9
37:25	PhD 14:5	podium	positive
39:8	phonetic	12:10 12:11	20:14
39:10 39:15	74:11	12:17	possible 30:6
50:7	physical	point 36:10	30:11 87:9
50:14 52:14	30:17	36:12	possibly 44:2
52:21 58:10	37:8 55:24	37:5	post-World
69:13 80:22	physics 37:14	40:24	70:10
81:21 87:17	38:8	42:7	potential
per 18:24	physiology	42:14	28:2
18:25	33:16	61:3	46:12 69:15
19:2	picture 33:15	62:20 62:21	potentially
20:15 20:21	Pine 24:6	66:8 68:3	40:7 40:9
20:22 20:24	Pioneer 15:4	68:7	61:17
21:6	places 13:23	68:22 69:20	power 29:16
22:10 25:10	Plan 30:4	71:13	30:4 30:5
25:12 37:1	plane 34:16	72:3	52:13 52:16
perceived	planet 34:25	72:14 79:20	52:16
16:14	Planetary	pointed 41:15	practice 63:3
percent	16:3	police 84:5	preceded
21:5 21:9	planning	policy	59:18
26:2	78:11	29:23 29:25	precious
27:12 27:12	plants 30:6	30:7	35:16
37:1	play 58:6	36:24	precise 35:22
permission	71:10	37:6 37:7	36:10
64:16	plead 62:11	37:13	precision
permit 67:15	pleas 79:22	42:4 46:2	36:11
person	please 12:1	46:8	preface 25:18
43:23	14:9	57:12	preliminary
62:3 64:2	14:12 22:15	58:3	11:12
68:16 77:5		58:13 68:9	preparation
personal		pollution	
32:14		43:16	
33:5 33:7		pool 34:5	

53:7	private 61:20	39:25	25:21 26:12
prepare	64:14	produces	27:11 36:23
13:6 16:20	Prize 14:25	16:11 40:1	prominent
prepared	probably 10:3	producing	14:22
84:17 85:25	11:21 13:19	16:11 46:11	promise 87:1
preparing	14:22 16:17	58:12	proof 74:12
13:3	23:18	product 16:10	74:21
presence 8:13	24:4	production	property
77:7	59:11 61:22	16:9	61:21
present	71:25	38:21	62:3 64:14
9:15	79:6	41:2	proposals
19:11 26:13	79:23	41:16 42:4	49:25
73:13	86:9	profession	propose 13:13
75:9 84:13	86:19 86:24	32:11	proposed 16:3
presented	problem 24:19	professional	prosecutor
13:8 13:9	60:21	14:13	64:2 64:9
76:9	61:2 75:1	49:2 49:13	78:9 84:5
press 71:8	problems	professor	protection
pretend 27:13	52:13	14:14 48:12	58:9
pretty	proceed 11:23	49:4	protections
33:18 34:13	12:1	50:25 53:17	60:9
53:3	48:21	professorial	protest
55:11 55:13	68:1 74:2	70:4	56:2 56:7
72:13	proceedings	programs 49:6	63:5 65:3
previous	16:18	progress	67:5
21:16	process 52:24	60:24	69:25 70:23
30:4 72:8	68:2	progression	70:25
primarily	procured	68:11 72:5	71:5 72:4
51:12	81:10	progressively	protesting
primary 16:9	produce 45:12	21:21	63:15 70:11
principles	45:18	22:3 29:11	71:15 71:16
44:19	produced	project 19:12	protestors
prior 42:20	19:10	41:10	80:21
priorities	46:6	Projected	proud 78:1
30:2	46:10 46:25	25:14	provide 17:22
priority 30:3	producer 43:8	26:7 27:3	17:23 47:12
prison 69:5	44:13	27:5	51:15 53:25
	producers	projections	provided

22:13	regarded	20:3 84:5	58:19 58:20
redirect 47:9	71:22	84:6 84:8	59:8 60:3
72:24 72:25	regarding	represent	60:15 60:18
reduce 29:5	29:23	38:4	61:1
46:22	regardless	representativ	61:18 61:23
reducing	46:9 65:13	es 59:2	62:20
28:14 30:12	Regents 14:14	59:3	65:2
reduction	regime 54:21	representing	66:20
26:24 28:21	regional	13:25	68:1 68:7
29:2 38:20	25:22 49:16	required	68:12 68:17
reductions	regulate	37:10	68:21 68:23
18:9	45:24	requires	69:11 69:21
28:12 28:24	relate	66:24	70:1 71:5
37:10	20:17 46:3	reschedule	72:9
reef 30:21	relevance	9:1 9:2	resister
refer 13:7	46:15	9:21	72:10
76:4	relevant	research	resisters
referee 78:24	16:17 48:10	24:21 24:23	66:11 69:19
reference	relief 59:9	33:7	resistor
45:6 69:12	remedy	49:10 49:21	55:22
referencing	52:12 68:9	49:23 49:25	resistors
65:20	remember 17:5	54:18 54:20	54:13 69:8
referred	40:1	55:10 55:12	Resolution
65:25	remind 11:6	researcher	49:4
referring	48:13	25:1	resolve 61:1
36:19	reminded	residence	resolving
reflective	48:13	62:18	8:10 8:12
35:14	removing 60:9	resistance	8:15
37:6	repeat 60:16	51:12 52:12	respect
38:19 42:3	repercussions	52:14 52:15	30:7 56:20
reflectivity	69:14 69:15	53:18	response
20:7	72:17	54:3 54:5	52:18 52:22
reflects 20:8	report	54:8	57:6 64:4
refuse 72:10	16:22 16:23	54:11 54:12	rest 48:6
refused 71:21	16:24	54:15 55:20	77:18
refusing	17:1 17:7	57:8	result 18:4
70:11	17:8	57:10 57:13	32:16
	reports	57:21	34:8 37:6
		58:5 58:8	resulted
		58:12 58:15	

54:23 57:21	rise 25:6	60:22	74:4
57:23 59:16	25:7 25:9	R-u-n-n-i-n-g	scheduling
resulting	27:5	14:11	76:19
24:2	30:20 73:22	RUNNING 14:5	77:8 77:20
retain 30:10	rises 28:4	Running's	school
reunion 77:5	risk 69:1	15:13	59:14 61:24
Reverend 8:19	69:4 69:19	runoff	74:18
11:20 13:25	risks 27:23	25:15 26:1	schools 63:15
55:19 55:21	River 25:16	Rutgers 49:8	science
60:17 60:19	rivers 26:3	<hr/>	16:2
61:6	road 68:7	S	16:10
63:17 64:12	roadmap 9:22	safe 32:8	17:8
65:24	roads 40:10	safety	17:13 22:18
66:5 66:9	Romoff	74:15 78:13	30:15 35:21
67:15	76:22	79:8	47:13
73:9	82:8 82:8	sat 65:21	scientific
73:10	82:18 84:17	65:24	13:13 14:16
77:1 78:4	84:20 84:23	satellite	14:17 47:16
78:9 81:19	85:3	16:5	scientist
reversed 28:5	roots 52:14	satellites	25:3 32:20
review	Rosa 59:19	15:4 33:8	scientists
13:17 13:20	62:7 63:8	satisfy 83:20	17:25
16:19 49:24	65:6 65:21	save 9:24	18:8 19:7
52:24	roundup 53:3	scalable	19:11 23:17
reviewed	rule 69:18	33:22 34:2	25:7 25:20
52:24 57:3	ruling 59:23	scale 26:16	scope 44:2
ride 33:4	run 69:21	33:8	sea 25:6 25:7
rides 33:11	Running	scales 33:17	25:9 27:5
rights	12:3 12:8	scenario	27:18 27:25
54:22 54:22	13:12	27:24	30:20
57:24 57:25	14:9	28:3 28:24	seat 12:9
58:7	14:11 15:25	scenarios	48:20 81:20
58:10 59:17	17:12	26:9	seated 73:24
71:8 84:9	28:4	26:20	seats 81:22
84:18	30:13	27:4 27:6	Seattle 25:11
85:7 86:1	32:7	27:17	25:11
86:14 86:14	47:11	scheduled 9:7	27:5 27:19
rigorous	60:1 60:5		second 18:3
42:13			

19:21 29:10	69:3	signed 76:8	slighter 41:1
30:19 63:20	serve 49:6	87:8	slightly 55:8
63:23 78:13	49:21 78:1	significant	slow 36:25
80:11 83:25	served	35:19	slower 41:2
secondary	14:19 14:23	signing 83:16	small 33:18
20:12 71:10	49:15 49:22	signs 70:19	36:15
Security 55:1	Service 23:16	similar 29:15	snow 20:8
seeing 23:7	sets 29:25	83:5	23:5 23:8
23:25	30:1	simplifying	68:19
seek 60:24	seven 16:23	42:10	snowmelt
68:9	36:18	simply	25:25
seem 30:11	several 49:12	17:24 21:17	snowpack 23:1
seems 32:8	84:9	22:13	23:4 23:11
64:22	sheets 21:7	26:3 37:9	SOC 8:14
69:9 79:2	shipped 44:16	44:22 60:12	77:10 77:11
seen 22:24	short 57:15	simulate	80:16 80:21
22:24 34:20	73:18 73:23	28:20	81:21
37:21	shorter 24:22	simulation	82:3
segregated	showed	25:23	83:22 87:18
59:14 63:15	21:16 25:19	single	social 38:2
segregation	47:19 60:7	18:16 19:13	54:16 58:17
63:9 65:23	showing 22:20	19:20 21:20	61:4 61:5
selected 81:6	26:5 42:3	23:18	societies
senators 59:1	shown 30:9	25:8	31:10
senior 66:3	shows 18:14	33:20 70:18	society
sense 29:8	19:12 21:20	sir 11:10	31:7 53:2
55:22	22:22 23:21	12:9	SOCs 10:4
60:8 62:2	25:25 26:14	31:21 48:20	10:6
63:3	27:22 28:23	50:15 50:24	10:13
sentence	28:24 29:1	80:8	73:7 73:9
83:23	sign 11:5	sit-ins 70:11	73:15
September	77:8 85:8	sitting 59:19	74:3
8:24 9:5	86:2 86:16	slavery 71:1	76:22 80:20
9:6	signature	slice 23:24	87:6
serious 32:17	75:10 75:12	41:12	software 15:4
69:14	75:16 75:16	slight	solar 29:13
seriousness	76:9	40:19 40:24	somebody
			68:18

somebody's 9:9	sources 19:16 19:23 20:4 20:12 28:8 29:12 29:17 30:11	56:1	81:16
somehow 63:24 76:4	Southern 43:19	speeds 70:2	started 11:18 13:17 18:23 21:11 42:8
someone 34:16 78:12 78:16	speak 11:7 11:7 16:12 50:8 50:20 70:7 83:12 83:13	speedy 84:14 84:15	starting 23:8 26:13 41:7 43:3 82:6
sometime 76:9	SPEAKER 50:6 50:14 50:17 83:14 86:20 86:24 87:1 87:12 87:21	spell 14:2 14:10 48:25	starts 23:11
somewhat 33:1 36:19 39:3 46:6	SPEAKERS 11:2 83:10 87:5	spilling 74:17	state 9:1 9:3 9:12 14:9 17:7 17:9 22:21 26:15 36:4 47:5 47:25 48:24 49:5 62:17 78:6 78:7 78:11 78:19 82:25 83:20 84:19
somewhere 81:20	specializatio n 49:11 51:10 51:11	spin 68:19	statement 24:14 25:18 42:10 67:14 69:3
sorry 9:18 33:3 38:13 42:23 43:18 44:25 52:21 60:16 65:12 65:20 71:2 80:25 82:7 85:14	specialize 49:25	Spokane 21:18 27:21 46:11 74:16	States 23:23 41:19 42:5 57:14 57:19 58:1 59:22 61:18 71:17
sort 18:8 22:24 34:21 38:2 39:24 65:20 66:21 68:11 69:21	specialty 24:25	spoke 64:12	State's 8:21 8:23 75:8
Sound 25:15 27:19 27:22 28:1	specific 33:2 34:3 34:13	spoken 8:20	stations 21:18 21:19 22:14
sounds 32:13 41:20 43:7 45:21 63:3 67:25	specifically 53:2	sponsoring 77:6	statistically 54:23
source 19:20 19:21 19:22 28:7 40:16	speculating 56:7	sprint 70:5	
	speculation	square 20:15 20:20 20:22 20:22 20:23 20:23 20:24	
		squared 21:6	
		stabilization 29:3	
		stabilize 18:10 30:24	
		stable 31:7	
		stage 59:3 62:22 62:24	
		stand 12:6 12:11	
		start 10:1 13:3 42:16 79:24	

statistics 23:24 41:5 47:14	studies 49:16 49:20 54:3 54:17 55:2 70:22	sum 30:14	24:12 45:8
stay 86:22	studying 34:18	summarize 21:24	swear 12:7
stayed 39:9 64:18	submit 74:7	summarizes 22:2	switched 84:24
stays 16:7	submitted 55:25	summary 8:7 17:22 20:2 20:14 21:17 22:4 22:9 23:6 30:15 53:25	switching 39:24
steep 29:1	submitting 75:6	summer 26:4 43:15	sworn 12:8 14:5 48:18
step 12:17 60:13	subsequent 83:5	summers 23:5 26:1	synch 16:8
Stephan 55:2	subsequently 64:20	summertime 26:1	system 20:5 40:7 63:2 63:9
Steven 12:8 14:5 14:11	substantially 39:6 41:18 41:19	sunsets 43:15 43:21	systems 20:5
stipulate 66:11 84:4	succeeded 60:13 71:24	super 11:9	<hr/> T <hr/>
stipulated 82:23 83:7	success 58:11	supposes 44:21	table 20:20
stop 13:10 46:12	successful 55:6 55:8 55:9 58:15	supposition 69:7	tackling 46:7
straight 55:11	sudden 70:1	Supreme 59:22	tags 13:7 13:9
straightforwa rd 34:13	suffer 69:2	sure 10:12 32:15 39:22 51:12 64:1 66:14 67:4 78:15	taking 29:16 34:5 34:11
strategic 51:13 54:11	suffrage 57:21 69:23 70:7	surface 20:8 21:19 25:15 35:2	talk 32:7 33:25 50:21 71:15 73:20 76:19 77:24
strategy 45:15	suffragettes 70:10 71:9	Susan 70:8	talking 34:22 37:16 37:18 38:11 44:7 56:21 65:7 72:4
stricken 24:16	suffragism 70:25	Sustained	talks 42:11
strike 24:13	suggest 44:19		taping 12:14
strong 32:13	suggests 39:19		target 28:15 28:17 28:22 30:1
struggle 55:3			
struggling 64:22			
stuck 68:18			
students 61:4			

30:22 37:11	16:8	53:16 53:23	thick 76:2
targeted 30:5	terrorism	54:7	thicker 20:2
tariff 63:6	52:18 52:22	56:17	third 19:21
65:10	testified	57:4	29:18 74:4
Taylor 8:19	14:6 48:19	58:14 61:11	threat 31:2
9:24	testifies	66:18 72:24	60:6 68:8
11:20	73:9	72:25 80:10	three-
14:1	testify	81:23	tenths
55:19 55:21	8:24	82:1	22:22
60:17 60:19	73:10 84:11	83:15 87:21	thumbs 11:3
61:7	84:12	themselves	11:4
63:17 66:15	testifying	45:18	thus 36:25
76:25 78:5	44:14 56:24	theory	tight 47:21
tea 57:17	testimony	30:17 66:21	till 29:2
61:17 61:21	10:4	there's 15:15	43:3 73:5
61:25 62:20	13:13 17:22	16:23	87:11
63:5 63:6	44:5 53:8	20:8	timeline 70:1
65:9	54:1 60:1	29:20 40:24	timewise 78:3
teach 49:8	54:1 60:1	40:25	titled
temperature	67:1	52:3	18:12
18:5	74:12	54:19 60:11	19:4
21:14	75:7 81:24	74:6	19:16 19:25
22:2 22:9	text 21:23	78:21	21:1
22:13 22:16	21:24	84:5 87:17	21:13 22:15
22:22 26:21	thank 11:8	they'd 77:4	22:25 23:13
28:22 29:3	11:11 12:23	they'll 45:17	25:5
temperatures	12:24 13:22	they're 10:12	25:14
21:15 21:18	13:24	13:9	26:7 27:3
26:8	15:8	16:11 26:16	27:5 28:11
26:18	16:19 17:10	27:10 27:24	today 8:11
27:1	17:18 17:20	29:1	8:13 8:14
28:12 28:18	18:11 22:12	45:14 45:16	8:22 10:1
30:19	22:15 24:13	45:19 47:13	34:4 34:7
31:6 31:8	24:17 30:13	57:15 67:22	47:12 74:20
term 54:7	31:11	72:14	76:8 77:6
54:9	32:4 47:7	76:5 77:9	77:7
terms 49:15	47:22 48:11	77:11 86:9	77:23
49:17 49:22	48:13 50:18	they've	85:3
50:1	50:23	13:8 24:7	85:12 86:6
terrestrial	51:3 51:9	69:18	
	51:14 51:22		
	52:5 53:9		

Tom 48:12 48:18 49:1	trapping 20:24	45:18 45:19 45:24	understand 12:13 33:12
tomorrow 81:3 81:9 81:11 81:12 81:16	traveled 9:19 traveling 81:23	46:9 46:12 46:22 62:15 69:11	34:15 35:1 36:6 62:15 64:22 69:13
Tonya 79:18	treaty 58:7	turn 11:20 12:16	understanding 32:20 35:21
top 20:20	tree 20:18 20:21 33:16	50:7 78:6	38:18 56:25 67:25
topic 17:13	trees 33:17	turning 25:21	
Total 21:1	trend 22:24	turns 18:25 59:8	understood 9:3 37:2 64:13
totality 32:24	trends 18:12 19:5 22:16 22:19 22:25 23:14 25:5	twice 55:6	undertaken 54:13 54:25
towards 12:16 30:3 37:7		type 37:16 68:16	unemployed 39:8
track 74:17		types 57:2	
tracks 61:8 65:24 66:16	Trespass 63:20 63:23	<hr/> U <hr/>	unfortunately 43:16 59:5
train 65:24 74:15 74:16 78:13 79:7 84:1	trespassing 83:25	U.S 15:6 16:25 23:1 23:16 37:25 41:7 41:21 45:20	United 23:23 41:19 42:5 57:14 57:19 58:1 59:22 61:18 71:17
training 37:20	trial 73:21 74:19 81:11 81:16 84:10 84:14 84:15	U.S.-Canada 49:18	
trains 63:21	tripling 27:16	Uh-huh 82:11	units 57:24
TRANSCRIPT 8:1	trouble 10:16 10:18 50:8	ultimately 57:12 57:23 59:16 69:12 72:3	University 14:15 17:5 17:9 49:5 49:8
Transformatio n 52:23	true 43:19 60:10 83:22	unavailabilit y 9:2 9:16	upheld 59:23
transparent 54:14 55:23 62:25	truly 36:8 39:20	unavailable 9:13	uphold 68:5 72:12
transport 29:17 59:24	try 10:1 10:25 17:24 28:20 57:10 60:20	unconscionabl e 62:8	upholding 65:18 65:19 65:22 65:22 66:1
transportatio n 33:5	trying 10:8 36:6	undergraduate 49:6	usual 26:20
transported 46:7 46:10			

28:2 31:3	52:1	22:24 23:14	27:22
usually 62:17	volume 50:15	23:22	35:5
<hr/>	voluntarily	24:8 26:5	37:18
V	86:13	26:15	39:7
vacation 78:1	vote 57:18	27:4	76:10 76:13
valid 67:20	57:21 57:22	43:13 43:24	76:15 76:16
value 69:10	71:17 71:23	44:11	weeks 17:6
van 34:5 34:7	vulnerability	50:4	23:9
35:5 36:7	23:19	82:25 84:19	23:11 34:25
37:17 39:7	<hr/>	wasn't 17:2	weigh 67:14
varies 70:9	W	44:20 61:20	welcome 50:24
various 11:14	wage 70:24	62:4 78:15	51:23 87:22
25:22	waged 58:2	wasted	we'll 9:24
26:8	wait 13:10	29:18 29:19	9:24 10:1
29:20	30:24	40:4	48:11 73:18
44:6 49:9	waiting	watch 41:5	76:7 76:7
Varying	58:4 81:18	Water 25:15	78:16 80:20
27:4 27:6	waiving 86:13	Watersheds	80:21
version 15:10	wall 12:16	25:16	well-being
versus 35:5	war 52:10	watts 20:15	55:24
36:7 39:7	53:3	20:19 20:21	Wenatchee 9:8
viable 28:17	70:10 70:17	20:22 20:24	we're 8:12
victory	70:25	21:5	8:14 9:22
58:7 58:7	71:5 71:6	ways 39:25	22:19
violated	71:12 71:18	40:13	23:7
83:21	warmer 21:21	Weak 52:13	23:25
violation	warmest 22:6	wear 11:10	31:4
84:5	warming 16:16	weather 21:18	43:11 44:17
violations	20:25 21:11	21:19 22:14	45:6
83:5	42:8 81:25	66:4	62:23
violent 54:24	warning 25:8	website 21:25	66:4
55:3 55:7	warrant 77:22	22:1 41:12	71:17 74:14
55:8	77:23 79:18	we'd 10:6	77:7 78:4
virtually	79:23	65:6	78:5
26:15	80:1 80:5	weeds 46:16	78:18
visit 59:2	Washington	71:25	80:4
vitae 15:11	17:5	week 9:20	81:18 87:14
	22:16 22:21	19:1	87:18 87:19
			west 23:7
			Western

23:1 23:23 26:6 we've 8:25 18:2 26:4 27:14 30:16 30:18 30:22 30:25 60:21 76:17 81:6 87:19 whatever 46:8 wheels 68:19 whenever 32:3 48:21 Whereupon 12:8 15:22 31:19 53:14 73:23 80:13 87:24 whether 37:12 37:12 46:9 64:3 84:7 White 70:18 whole 22:21 23:24 29:9 34:25 36:16 39:8 39:22 44:7 who's 68:16 widely 55:12 wildfire 23:14 23:20 27:3 27:11 27:13 27:13 27:17 30:20 wildfires 23:18 23:21	24:1 willing 69:1 74:20 Wilson 15:3 70:20 wind 29:12 45:18 window 85:1 87:17 windows 87:10 wins 61:5 winter 23:11 withdraw 64:8 withdrawing 64:6 withdrew 64:9 witness 9:25 12:6 17:12 32:2 38:15 44:24 45:5 46:13 46:18 48:2 48:5 48:9 50:10 50:13 50:16 50:18 50:23 51:3 51:6 53:23 56:2 56:10 64:2 78:17 witnesses 8:21 8:23 9:12 11:19 78:19 79:3 81:14 81:23	84:12 witness's 9:2 44:2 woman's 71:16 women 57:18 57:22 70:18 71:4 71:7 women's 57:21 69:23 70:7 70:22 71:3 71:23 won 14:25 work 9:17 12:15 33:4 33:7 37:17 38:1 63:1 69:9 70:10 80:19 87:19 worked 33:17 workers 58:10 working 30:3 37:7 76:18 works 10:14 workshops 52:19 world 19:3 20:4 20:23 29:9 32:24 35:25 39:22 49:25 52:15 54:21 55:4 70:17 71:18 worldwide	25:10 25:20 31:7 31:9 worth 69:4 wound 59:21 wrap 46:21 wrist 51:1 write 15:4 58:25 59:1 60:11 Writing 67:7 written 52:6 wrong 32:19 34:1 36:22 41:14 43:7 61:20 62:9 67:2 70:21 wrote 16:2 16:8 Wyoming 44:16 <hr/> Y <hr/> yard 22:20 yearly 38:21 yesterday 9:19 74:6 yet 12:25 you'll 15:9 18:11 19:4 19:15 23:13 28:11 51:14 yours 82:19 you've 44:13 52:9 59:25
--	---	---	---