DRAFT 8.29.2019

CLIMATE SCIENCE FOR JUDGES

TOWARDS A CLIMATE SCIENCE CURRICULUM: PILOT PROGRAM LAUNCH

A Program of the Environmental Law Institute's Climate Judiciary Project
in collaboration with
The American Association for the Advancement of Science

Cosponsored by the Federal Judicial Center

Goldberg Room (297 Boalt Hall)
UC Berkeley, School of Law
2745 Bancroft Way, Berkeley, 94720
Berkeley, California

September 13, 2019









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CLIMATE JUDICIARY PROJECT

PURPOSE

To meet judges' need for a basic familiarity with current climate science to keep pace with the climate issues emerging in courtrooms and the law.

OBJECTIVES

- Gain an overview of how climate science issues may arise in litigation, including in environmental permitting and land use cases, and property damage and insurance cases, as well as litigation directly addressing climate change.
- Acquire a working knowledge of basic concepts, methods, and terminology of climate science.
- Learn about current research and issues in the science of climate-change attribution, and how it arises in litigation involving human activity and climate impacts.
- Discuss with other judges how climate science concepts, methods and terminology may come into play in various kinds of climate-related cases.
- Contribute to building the capacity of judges on these issues by informing the development of future climate-science judicial education sessions.

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AGENDA

8:30 am – 9:00 am	**Registration (light breakfast)**
9:00 am – 9:15 am	**Welcome and Opening Remarks** *Mr. John A Pendergrass, ELI* *Ms. Deborah Runkle, AAAS* *Honorable Jeremy Fogel, Berkeley Judicial Institute* *Ms. Jordan Diamond, UC Berkeley*
9:15 am – 9:45 am	**Overview of Climate Litigation Landscape** *Prof. Ann Carlson, UCLA*
9:45 am – 11:15 pm	**Climate Science for Judges** *Prof. Chris Field, Stanford University* **Questions and Answers**
11:15 am – 11:30 pm	**Coffee Break**
11:30 am – 12:45 pm	**Nexus of Climate Science & Litigation** **Facilitated Discussion** *Honorable Jeremy Fogel, Berkeley Judicial Institute* **Discussants** *Prof. Ann Carlson, UCLA* *Prof. Chris Field, Stanford University*
12:45 pm – 1:00 pm	**Feedback for Developing Climate Science Seminars for Judges** **Facilitated Discussion**
1:00 pm – 1:45 pm	**Lunch**

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SPEAKER BIOGRAPHIES

Prof. Ann Carlson

Ann Carlson is the Shirley Shapiro Professor of Environmental Law and the Faculty Co-Director of the Emmett Institute on Climate Change and the Environment at UCLA School of Law. She is a leading scholar of climate change and air pollution law and policy, the co-author of a top casebook on Environmental Law (with Dan Farber and William Boyd), and the co-editor, with Dallas Burtraw, of a book from Cambridge University Press, *Lessons from the Clean Air Act: Building Durability and Flexibility into U.S. Climate and Energy Policy*. She has published numerous articles in leading law reviews, including California, Harvard, Michigan, Northwestern, and UCLA. Carlson is currently serving as the Speaker of the California Assembly's representative to the Independent Emissions Market Advisory Committee. She is a frequent media commentator and blogs at *Legal Planet*. She is the recipient of the UCLA Distinguished Teaching Award, the Eby Award for the Art of Teaching and the Rutter Award for Excellence in Teaching, and is the 2017 University of California Sustainability Champion. Carlson is a *magna cum laude* graduate of both UC Santa Barbara and Harvard Law School.

Prof. Christopher Field

Chris Field is the Perry L. McCarty Director of the Stanford Woods Institute for the Environment and Melvin and Joan Lane Professor for Interdisciplinary Environmental Studies. His research focuses on climate change, ranging from work on improving climate models, to prospects for renewable energy systems, to community organizations that can minimize the risk of a tragedy of the commons. Field was the founding director of the Carnegie Institution's Department of Global Ecology, a position he held from 2002 to 2016. He was co-chair of Working Group II of the Intergovernmental Panel on Climate Change from 2008-2015, where he led the effort on the IPCC Special Report on "Managing the Risks of Extreme Events and Disasters to Advance Climate Change Adaptation" (2012) and the Working Group II contribution to the IPCC Fifth Assessment Report (2014) on Impacts, Adaptation, and Vulnerability. His widely cited work has earned many recognitions, including election to the US National Academy of Sciences, the Max Planck Research Award, and the Roger Revelle Medal. Field is a member of the Harvard University Board of Overseers, the Board of

Directors of World Wildlife Fund (US), and the Board of Trustees of the California Academy of Sciences. He is a fellow of the American Association for the Advancement of Science, the American Geophysical Union, and the Ecological Society of America.

Honorable Jeremy Fogel (ret.)

Judge Jeremy Fogel is the first Executive Director of the Berkeley Judicial Institute, a center at Berkeley Law School whose mission is to build bridges between judges and academics and to promote an ethical, resilient and independent judiciary. Prior to his appointment at Berkeley, he served as Director of the Federal Judicial Center in Washington, DC (2011-2018), as a United States District Judge for the Northern District of California (1998-2011), and as a judge of the Santa Clara County Superior (1986-1998) and Municipal (1981-1986) Courts. He was the founding Directing Attorney of the Mental Health Advocacy Project from 1978 to 1981.

Judge Fogel has served as a faculty member for the Federal Judicial Center since 2002 and was a lecturer at Stanford Law School from 2003 until his relocation to Washington. He taught for the California Continuing Judicial Studies Program and California Judicial College from 1987 to 2010 and has served as a faculty member for legal exchanges in more than a dozen foreign countries. He received his B.A. from Stanford University in 1971 and his J.D. from Harvard Law School in 1974.

Judge Fogel has received numerous accolades, including the President's Award for Outstanding Service to the California Judiciary from the California Judges Association and the Vanguard Award for notable contributions to intellectual property law from the State Bar of California. In 2002, he received special recognition from the Santa Clara County Bar Association for exemplifying the highest standards of professionalism in the judiciary.

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PARTICIPANTS

Honorable Cynthia Bashant
Southern District of California

Honorable Peter Carroll
Central District of California

Honorable Mariano-Florentino Cuéllar
California Supreme Court

Honorable Miranda Du
District of Nevada

Honorable William Fletcher
U.S. Court of Appeals for the Ninth Circuit

Honorable Theresa Fricke
Western District of Washington

Honorable Michael Hegarty
District of Colorado

Honorable Elizabeth Laporte
Northern District of California

Honorable Robert Lasnik
Western District of Washington

Honorable Jeremiah Lynch
District of Montana

Honorable Ramona Manglona
District of Northern Mariana Islands

Honorable William Orrick
Northern District of California

Honorable Ronald B. Robie
California 3rd District Court of Appeals

Honorable Michael Seabright
District of Hawaii

Honorable Suzanne Segal
Central District of California

Honorable William Shubb
Eastern District of California

Honorable Michael Simon
District of Oregon

Honorable Deborah Smith
District of Alaska

Honorable Nina Wang
District of Colorado

Honorable Eileen Willett
District of Arizona

Honorable Michael Wilner
Central District of California

Honorable Michael Wilson
Hawaii Supreme Court

Honorable Frank Zapata
District of Arizona



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SPEAKERS AND PARTNERS

Mr. Jay Austin
Environmental Law Institute

Professor Ann Carlson
UCLA School of Law

Ms. Jordan Diamond
UC Berkeley School of Law

Professor Chris Field
Stanford University

Honorable Jeremy Fogel (ret.)
Berkeley Judicial Institute

Dr. Paul Hanle
Environmental Law Institute

Mr. John A. Pendergrass
Environmental Law Institute

Ms. Deborah Runkle
American Association for the Advancement of Science

Ms. Sandra Nichols Thiam
Environmental Law Institute

SUPPLEMENTAL READING

Burger, Michael and Horton, Radley and Wentz, Jessica, The Law and Science of Climate Change Attribution (April 5, 2019). Forthcoming, Columbia Journal of Environmental Law (January 2020). Available at SSRN: [HYPERLINK "https://ssrn.com/abstract=3051178"]

Gerrard, Michael B. What Litigation of a Climate Nuisance Lawsuit Might Look Like, 121 Yale L.J. Online, 135 (2011). Available at: [HYPERLINK "https://www.arnoldporter.com/-/media/files/perspectives/publications/2011/09/what-litigation-of-a-climate-nuisance-suit-might__/files/publication/fileattachment/arnoldporterllptheyalelawjournal091311.pdf?"]

HISTORY OF THE PROJECT

In 2018, two climate and energy leaders—Paul Hanle, the former president of Climate Central, and David van Hoogstraten, a former BP senior executive—conceived the Climate Judiciary Project to provide neutral, objective information to judges about the science of climate change. The partners brought the project to the preeminent center for environmental law and judicial education, the Environmental Law Institute, and we approached the American Association for the Advancement of Science, the leading organization of scientists, and the Federal Judicial Center, the agency responsible for federal judicial education, to join the Project as partners. Inspired by earlier efforts in scientific judicial education including in biotechnology, information technology, and neuroscience, we focus on the science relevant to issues emerging in climate cases. The project offers information about what is and is not known about climate science, the range of uncertainty for that which is known, degrees of acceptance of various scientific conclusions within the expert community, areas at the forefront of research, and other topics that are or will be of practical interest to judges presiding over these cases. Our purpose is not to influence outcomes of specific court cases. The project is solely in aid of science-informed decision-making and intended to contribute to sound judicial processes and therefore good governance.

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