

**From:** Antonio Benjamin [REDACTED]

**Subject:** Re: RES: JUDICIARY ALERT

**Date:** August 20, 2019 at 15:09

**To:** Scott Fulton [REDACTED]

**Cc:** Michael D Wilson [REDACTED]; Robinson, Prof. Nicholas A. [REDACTED]

Thanks, Scott. That's my feeling too.

Enviado do meu iPhone

Em 20 de ago de 2019, à(s) 13:42, Scott Fulton <[REDACTED]> escreveu:

Hi Folks -- We appreciate the effort to go to bat for ELI on this, but think our interests are best served at the moment by standing down. We are teaching climate science in the context of its importance to cases that are coming before judges. Therefore, it is, of course, the business of judges. ELI is engaged in providing judges the tools to do their job, in this case better information about what is known and not known about climate science. We think Judge Randolph is likely an outlier in the judicial community on this and that the reporting thus far has left him looking as such. The reporting has also left ELI in pretty good position. So, we think as things stand now, the matter is best left as it is. The one thing we don't do is to imperil the continuation of this project. We'll let you know if the tide turns such that additional voices would help. All the best, Scott

On Monday, August 19, 2019, 8:19:32 PM GMT+2, Michael D Wilson

<[REDACTED]> wrote:

Dear Antonio. This comment is being widely circulated in this country. I have had two people bring it up to me...unfortunately not as a concern, but as a question about whether judges should be involved. I agree this is what the GJIE is about. May I suggest that a response from you may be very important, or Nick...and of course I am ready to do whatever you advise. Frankly, it angers me. Aloha, mike

-----"Antonio Herman Benjamin" [REDACTED] wrote: -----

To: "Michael D Wilson" <[REDACTED]>, "Robinson, Prof. Nicholas A."

<[REDACTED]>, "Scott Fulton" [REDACTED]

From: "Antonio Herman Benjamin" [REDACTED]

Date: 08/19/2019 03:21AM

Cc: <[REDACTED]>

Subject: RES: JUDICIARY ALERT

Dear Scott and Mike,

This shows the importance of ELI work and the establishment of the Global Judicial Institute on the Environment.

The comment made by the judge ("The jurisdiction assigned to you does not include saving the planet") is entirely unwise and unsubstantiated in light of judicial history and practice. Any legal matter is part of the daily business of judges. Except if we deny that climate change is a legal issue, the comment sounds very bizarre and distant from the role of judges in any country of the world.

Warm regards,

Antonio

**De:** Michael D Wilson [[mailto:\[REDACTED\]](mailto:[REDACTED])]

**Enviada em:** segunda-feira, 19 de agosto de 2019 06:08

**Para:** Robinson, Prof. Nicholas A. <[REDACTED]>; Scott Fulton

**Cc:** Antonio Benjamin [REDACTED]; [REDACTED]

**Assunto:** Re: JUDICIARY ALERT

Dear Scott. This makes more apparent the need to give judges who wish to understand the role of the rule of law with respect to climate change a chance to become educated. Your efforts to provide education become more important with each passing day of growing carbon emissions and acceleration of global warming. Please let me know if there is anything I can do to help. A law review article responding to the notion that judges have no duty to protect the earth from climate change is one possibility, but I leave to your better judgment whether it may polarize rather than help. I have been asked by Mary Hoopes at Berkeley law school to speak at the next ELI environmental law training September 13. I look forward to our next meeting. The four conferences in 2020-- GJIE and the conference of chief justices in Honolulu, the WCEL Congress in Rio, and the GJIE participation at the IUCN congress in Marseilles-- may be the most important judicial conferences to empower judges to apply the rule of law to climate change within the remaining 10 year solution horizon. thank you for your leadership. aloha, Mike

-----"Robinson, Prof. Nicholas A." <[REDACTED]> wrote: -----

To: Antonio Benjamin <[REDACTED]>, Michael Wilson <[REDACTED]>  
From: "Robinson, Prof. Nicholas A." <[REDACTED]>  
Date: 08/16/2019 07:57AM  
Subject: JUDICIARY ALERT

FYI

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**From:** [REDACTED] <[REDACTED]>  
**Date:** Friday, August 16, 2019 at 1:50 PM  
**To:** Kathleen Barron <[REDACTED]>, "Ruth Ann Castro" <[REDACTED]>, Jim Colopy <[REDACTED]>, Beth Deane <[REDACTED]>, Pam Giblin <[REDACTED]>, Alan Horowitz <[REDACTED]>, "Jacobson, Rachel" <[REDACTED]>, Rob Kirsch <[REDACTED]>, Elliott Laws <[REDACTED]>, "Lovenburg, John D" <[REDACTED]>, Michael Mahoney <[REDACTED]>, Brenda Mallory <[REDACTED]>, Martha Marrapese <[REDACTED]>, Roger Martella <[REDACTED]>, Brad Marten <[REDACTED]>, Bill Meadows <[REDACTED]>, Granta Nakayama <[REDACTED]>, Vickie Patton <[REDACTED]>, "L" <[REDACTED]>, Steve Rahaim <[REDACTED]>, Chris Toyota <[REDACTED]>, "Robinson, Prof. Nicholas A." <[REDACTED]>, Margaret Spring <[REDACTED]>, Lucinda Starrett <[REDACTED]>, Katie Thomson <[REDACTED]>, "Tompkins, Hilary" <[REDACTED]>, 魏魏 <[REDACTED]>, Benjamin Wilson <[REDACTED]>, Hongjun Zhang <[REDACTED]>  
**Cc:** Loretta Reinersmann <[REDACTED]>, Melodie DeMulling <[REDACTED]>, Sandra Nichols Thiam <[REDACTED]>, Rachel Jean-Baptiste <[REDACTED]>  
**Subject:** Board Alert

To The ELI Board — As some of you may have heard, our Climate Judiciary Project got caught up in a story in the Washington Post about an email spat between two federal judges regarding their potential participation in the exploratory phase of our project. I am quite sure that they never intended their exchange to find its way to the public; but it did. If you haven't seen it, you can find the article here:

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As we have discussed with the Board, ELI has been careful to assure that this project focuses on the science, including the levels of uncertainty in the science. ELI worked very closely with the American Association for the Advancement of Science to assure the science was presented appropriately. ELI also worked closely with the Federal Judicial Center to assure that the program fully met the federal judiciary's strict standards for educational programs. As noted in the article, the program was approved by a board chaired by the Chief Justice of the US.

As it happens, my Closing Statement in next issue of The Environmental Forum describes the Climate Judiciary Project, our interests in it, and our intentions relative to it. That piece will become public when the Forum is published next week, but I am attaching it here for your edification and for your use in responding to any inquiries about this that may come your way.

Best regards,

Scott

[attachment "FULTON\_Closing\_FORUM\_2019\_sept.pdf" removed by Michael D Wilson/Users/Judiciary]



**From:** Michael D Wilson [redacted]  
**Subject:** Re: RES: JUDICIARY ALERT  
**Date:** August 20, 2019 at 07:20  
**To:** Scott Fulton [redacted]  
**Cc:** Antonio Herman Benjamin [redacted], Michael D Wilson [redacted],  
Robinson, Prof. Nicholas A. [redacted]; [redacted]

---

Great Scott. Thx. Mike

-----Scott Fulton [redacted] wrote: -----

=====  
To: Antonio Herman Benjamin [redacted], Michael D Wilson <[redacted]>  
From: Scott Fulton [redacted]  
Date: 08/20/2019 06:42AM  
Cc: "Robinson, Prof. Nicholas A." <[redacted]>, [redacted]  
Subject: Re: RES: JUDICIARY ALERT  
=====

Hi Folks -- We appreciate the effort to go to bat for ELI on this, but think our interests are best served at the moment by standing down. We are teaching climate science in the context of its importance to cases that are coming before judges. Therefore, it is, of course, the business of judges. ELI is engaged in providing judges the tools to do their job, in this case better information about what is known and not known about climate science. We think Judge Randolph is likely an outlier in the judicial community on this and that the reporting thus far has left him looking as such. The reporting has also left ELI in pretty good position. So, we think as things stand now, the matter is best left as it is. The one thing we don't to do is to imperil the continuation of this project. We'll let you know if the tide turns such that additional voices would help. All the best, Scott On Monday, August 19, 2019, 8:19:32 PM GMT+2, Michael D Wilson <[redacted]> wrote:

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From: "Antonio Herman Benjamin" [redacted]  
Date: 08/19/2019 03:21AM  
Cc: <[redacted]>  
Subject: RES: JUDICIARY ALERT

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This shows the importance of ELI work and the establishment of the Global Judicial Institute on the Environment.

The comment made by the judge ("The jurisdiction assigned to you does not include saving the planet") is entirely unwise and unsubstantiated in light of judicial history and practice. Any legal matter is part of the daily business of judges. Except if we deny that climate change is a legal issue, the comment sounds very bizarre and distant from the role of judges in any country of the world.

Warm regards,

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De: Michael D Wilson [mailto:[redacted]]  
Enviada em: segunda-feira, 19 de agosto de 2019 06:08  
Para: Robinson, Prof. Nicholas A. <[redacted]>; Scott Fulton <[redacted]>  
Cc: Antonio Benjamin [redacted]; [redacted]  
Assunto: Re: JUDICIARY ALERT

Dear Scott. This makes more apparent the need to give judges who wish to understand the role of the rule of law with respect to climate change a chance to become educated. Your efforts to provide education become more important with each passing day of growing carbon emissions and acceleration of global warming. Please let me know if there is anything I can do to help. A law review article responding to the notion that judges have no duty to protect the earth from climate change is one possibility, but I leave to your better judgment whether it may polarize rather than help. I have been asked by Mary Hoopes at Berkeley law school to speak at the next ELI environmental law training September 12. I look forward to a recent meeting. The first conference in 2009. CUE and the conference of chief justices in



Best regards,

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**Date:** August 20, 2019 at 06:42

**To:** Antonio Herman Benjamin [REDACTED], Michael D Wilson [REDACTED]

**Cc:** Robinson, Prof. Nicholas A. [REDACTED], [REDACTED]

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From: "Antonio Herman Benjamin" [REDACTED]

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**Enviada em:** segunda-feira, 19 de agosto de 2019 06:08

**Para:** Robinson, Prof. Nicholas A. [REDACTED]; Scott Fulton

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**Cc:** Antonio Benjamin [REDACTED]; [REDACTED]

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Date: 08/16/2019 07:57AM  
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**Date:** Friday, August 16, 2019 at 1:50 PM  
**To:** Kathleen Barron <[REDACTED]>, [REDACTED]" <[REDACTED]>, "Ruth Ann Castro" <[REDACTED]>, [REDACTED]" <[REDACTED]>, Jim Colopy <[REDACTED]>, Beth Deane <[REDACTED]>, Pam Giblin <[REDACTED]>, Alan Horowitz <[REDACTED]>, "Jacobson, Rachel" <[REDACTED]>, Rob Kirsch <[REDACTED]>, Elliott Laws <[REDACTED]>, "Lovenburg, John D" <[REDACTED]>, Michael Mahoney <[REDACTED]>, Brenda Mallory <[REDACTED]>, Martha Marrapese <[REDACTED]>, Roger Martella <[REDACTED]>, Brad Marten <[REDACTED]>, Bill Meadows <[REDACTED]>, Granta Nakayama <[REDACTED]>, Vickie Patton <[REDACTED]>, Steve Rahaim <[REDACTED]>, Chris Toyota <[REDACTED]>, "Robinson, Prof. Nicholas A." <[REDACTED]>, Margaret Spring <[REDACTED]>, Lucinda Starrett <[REDACTED]>, Katie Thomson <[REDACTED]>, "Tompkins, Hilary" <[REDACTED]>, 魏巍 <[REDACTED]>, Benjamin Wilson <[REDACTED]>, Hongjun Zhang <[REDACTED]>  
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**From:** Michael D Wilson [REDACTED]

**Subject:** Re: RES: JUDICIARY ALERT

**Date:** August 19, 2019 at 08:19

**To:** Antonio Herman Benjamin [REDACTED]

**Cc:** Robinson, Prof. Nicholas A. [REDACTED], Scott Fulton [REDACTED], [REDACTED]

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**From:** Michael D Wilson [REDACTED]  
**Subject:** Re: JUDICIARY ALERT  
**Date:** August 18, 2019 at 23:07  
**To:** Robinson, Prof. Nicholas A. [REDACTED], Scott Fultor [REDACTED]  
**Cc:** Antonio Benjamin [REDACTED], [REDACTED]



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As we have discussed with the Board, ELI has been careful to assure that this project focuses on the science, including the levels of uncertainty in the science. ELI worked very closely with the American Association for the Advancement of Science to assure the science was presented appropriately. ELI also worked closely with the Federal Judicial Center to assure that the program fully met the federal judiciary's strict standards for educational programs. As noted in the article, the program was approved by a board chaired by the Chief Justice of the US.

As it happens, my Closing Statement in next issue of The Environmental Forum describes the Climate Judiciary Project, our interests in it, and our intentions relative to it. That piece will become public when the Forum is published next week, but I am attaching it here for you edification and for your use in responding to any inquiries about this that may come your way.

Best regards,

Scott

[attachment "FULTON\_Closing\_FORUM\_2019\_sept.pdf" removed by Michael D Wilson/Users/Judiciary]



From: Robinson, Prof. Nicholas A. [REDACTED]

Subject: JUDICIARY ALERT

Date: August 16, 2019 at 07:57

To: Antonio Benjamin [REDACTED], [REDACTED] Michael Wilson [REDACTED]



FYI

From: "[REDACTED]" <[REDACTED]>

Date: Friday, August 16, 2019 at 1:50 PM

To: Kathleen Barron <[REDACTED]>, "[REDACTED]" <[REDACTED]>, "Ruth Ann Castro" <[REDACTED]>, "Jim Colopy" <[REDACTED]>, Beth Deane <[REDACTED]>, Pam Giblin <[REDACTED]>, Alan Horowitz <[REDACTED]>, "Jacobson, Rachel" <[REDACTED]>, "Rob Kirsch" <[REDACTED]>, Elliott Laws <[REDACTED]>, "Lovenburg, John D" <[REDACTED]>, Michael Mahoney <[REDACTED]>, Brenda Mallory <[REDACTED]>, Martha Marrapese <[REDACTED]>, Roger Martella <[REDACTED]>, Brad Marten <[REDACTED]>, Bill Meadows <[REDACTED]>, Granta Nakayama <[REDACTED]>, Vickie Patton <[REDACTED]>, Steve Rahaim <[REDACTED]>, Chris Toyota <[REDACTED]>, "Robinson, Prof. Nicholas A." <[REDACTED]>, Margaret Spring <[REDACTED]>, Lucinda Starrett <[REDACTED]>, Katie Thomson <[REDACTED]>, "Tompkins, Hilary" <[REDACTED]>, 魏巍 <[REDACTED]>, Benjamin Wilson <[REDACTED]>, Hongjun Zhang <[REDACTED]>

Cc: Loretta Reinersmann <[REDACTED]>, Melodie DeMulling <[REDACTED]>, Sandra Nichols Thiam <[REDACTED]>, Rachel Jean-Baptiste <[REDACTED]>, "[REDACTED]" <[REDACTED]>

Subject: Board Alert

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**ELI REPORT**

### Closing Statement

## Educating Judges for the Climate Litigation of Today and Tomorrow

**S**ome months back, I received a visit from two leaders in the climate science and sustainable energy arena: the former president of Climate Central, Paul Hanle, and David van Hoogstraten, who had just left his position as director of federal environmental regulatory affairs at BP America

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Closing Statement

# Educating Judges for the Climate Litigation of Today and Tomorrow

Some months back, I received a visit from two leaders in the climate science and sustainable energy arena: the former president of Climate Central, Paul Hanle, and David van Hoogstraten, who had just left his position as director of federal environmental regulatory affairs at BP America.

David and Paul had been following the trends in climate-related lawsuits and, through communications with the judicial community, had been advised that judges often feel insufficiently grounded in climate science. They had in mind a project that they saw as uniquely suited to ELI's identity as a nonpartisan, nonadvocacy institute, with a deep base of experience educating judges — to develop a judicial education program on the basics of climate science.

Over the last several years, the number of lawsuits related to effects of climate change has grown from a few major cases about a decade ago to scores of cases ranging from tort-based actions to challenges to administrative decisions within which climate implications are imbedded. For decisions to be rationally based, they will increasingly need to reflect assessment and awareness of a changing climate.

Reasons for this acceleration in climate activity in the courts include, among others, growing public concern about climate change, the scaling back of the executive branch's approach, and the absence of congressional action on the issue. The nub is that in the absence of movement by the executive and legislative branches, action surrounding the climate question is shifting to the courts. This is made all the more challenging by the fact that the science that underpins climate litigation is itself developing rapidly.

With the body of climate suits grow-

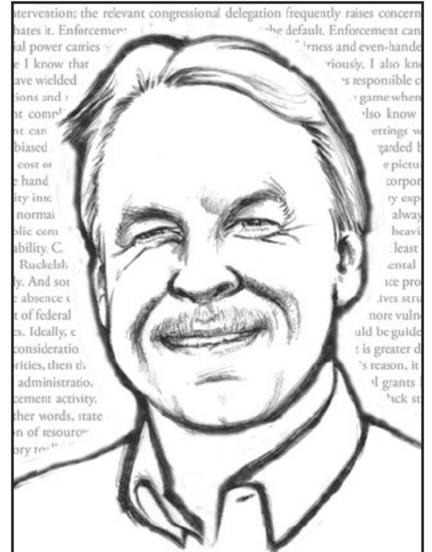
ing, and with judges increasingly being called on to work with science questions in this context, the time for such a program seemed to be now. After discussing the concept with our board, we decided to move forward with the Climate Judiciary Project. With development of a suitable climate science curriculum for judges being the longer term plan, the project is proceeding the ELI Way.

First, we have done extensive consultation with practitioners and organizations on all sides of the political spectrum. Second, we have partnered in the endeavor with two other nonpartisan entities — the American Association for the Advancement of Science and the Federal Judicial Center — that share both our sense of the need for and potential value of judicial education in this area and our goal of providing such knowledge impartially and without ideological tilt. Third, we are proceeding incrementally.

We are starting with a series of seminars on climate science for judges drawn from a broad range of philosophical backgrounds, testing various formats and approaches. Our first two events took place at the law schools of Columbia University and George Washington University and featured leading climate scientists Radley Horton of Columbia and Stephen Pacala of Princeton, Michael Gerrard of Columbia law, and moderators ELI Associate Vice President Sandra Thiam and Judge Jeremy Fogel, now of University of California at Berkeley.

The events were up-to-the-minute climate science seminars for the judges, including what is known, what is evolving or uncertain, and how this science has or is likely to come to bear in litigation. They also included as a key feature a feedback discussion with attendees.

Additional sessions of this kind are



**Scott Fulton**  
President

planned over the coming months for San Francisco, Chicago, and Atlanta. After this initial series, we will review with our partners what we have learned about judicial needs and education methodology for purposes of guiding further curriculum development and related activities.

The positive response from participants thus far has already resulted in requests for more — more programs of this kind, more on the science, more on how to manage scientific evidence in climate litigation — from other judges and judicial institutions.

Because of the political atmosphere surrounding climate change, we know that to succeed in this effort we will have to remain true to the non-partisanship that defines who we are, drawing heavily on ELI's commitment to high-end, straight-up content. Our partners likewise have rock-solid reputations for excellence and impartiality, and are at the top of their fields in science and federal judicial education.

Our shared vision is to make available to federal, state, and local judges the basic science they need in order to adjudicate the climate litigation over which they preside. If such an endeavor can be built and sustained, as we believe it can, ours is the team to do it.