

From: [REDACTED]
To: [Robie, Ron](#)
Cc: ["Sandra Nichols Thiam"](#); ["John Doherty"](#); ["Jarrod Page"](#); ["Jared Mummert"](#)
Subject: Meeting of the CJP Curriculum Advisory Committee
Date: Monday, December 4, 2023 1:18:14 PM

Dear Justice Robie,

We were sorry you couldn't join us for the Climate Judiciary Project's Advisory Committee meeting last month. To keep you informed about the state of the Project and its future direction, we wanted to share with you some of the major takeaways from it.

The meeting included a visit with Smithsonian Institution Secretary Lonnie G. Bunch III and Under Secretary Ellen Stofan, who spoke about the Smithsonian's attention to doing science for policy and impact. The Secretary outlined the Institution's environmental justice efforts, including co-developing a community museum in Washington, D.C., and its role in launching a satellite to collect high-resolution air pollution data. The importance of partnership, and cultivating allies to achieve common objectives, was a key theme throughout the meeting. Toward the end, the Secretary invited us to further discuss how we might collaborate with the Smithsonian.

Professor Michael Oppenheimer opened the sessions at the Cosmos Club with a summary of the IPCC's Sixth Assessment Report, which provided context for the rest of the day. Oppenheimer talked about projections of future climate, noting two uncertainties: emissions decisions—something we humans have a say in—and climate sensitivity (i.e., the response of climate to the greenhouse effect)—something that we don't have a say in. Oppenheimer and Professor Kris Ebi then shared comments about some of society's most pressing climate challenges, including sea-level rise, extreme heat, food security, and extreme weather events. Ebi noted that scientific research responsible for attributing extreme heat, and its impacts on human health, to climate change is already driving litigation.

Professor Michael Gerrard then offered remarks about the state of climate litigation in the courts. Noting 70% of the climate cases are domestic, Gerrard paid particularly close attention to US courts, for which a plurality of cases involve NEPA claims. Gerrard then defined three additional categories of domestic cases. The first, lawsuits against fossil fuel companies, often leverage nuisance-type claims and allege responsibility for damages associated with climate change. Common factual disputes include the level of emissions for which a company is responsible, the resulting effects of those emissions on climate change and its impacts, and where in the supply chain liability can be attached (e.g., can liability be attached to a gas station or a car driver?). The second

category of cases involve the public trust doctrine. Here, plaintiffs seek to extend the government's obligations under that doctrine to the atmosphere and limit emissions. Most of these cases have been dismissed. Third are cases brought under state environmental rights amendments, such as *Held v. Montana*, where youth plaintiffs successfully argued that Montana's policy of excluding greenhouse gas emissions and climate impacts when assessing environmental impacts of energy projects was in violation of the state-constitutional right to a clean and healthful environment. Another case brought on the grounds of environmental rights in Hawai'i, *Navahine F. v. Hawai'i Department of Transportation*, is scheduled to go to trial next summer. Gerrard then discussed a few high-profile international cases, as well as a new California law that requires most companies to report scope 1, 2, and 3 emissions, which is likely to drive future litigation in the state.

Science Fellow Dr. John Doherty closed out the morning with a presentation on a research project he led about judicial engagement with climate science in U.S. state courts. Doherty concluded that judges rely heavily upon climate science for deciding cases that involve environmental rights amendments and for deciding cases that involve claims under state laws about mitigation and adaptation.

ELI Vice President Sandy Thiam and I opened the afternoon session, which focused on the progress of the Project to date, some obstacles we've encountered with it, and our future aims. One item that we spent time discussing had to do with the recent misrepresentation of the Project in a few highly partisan media outlets, which inaccurately alleged that our judicial education programs on climate science are an attempt to bias the courts. While we had not responded to these outlets directly, a story in E&E News, which included excerpts from an interview with Thiam, clarified our non-partisanship and the non-advocacy nature of the Project. Committee members present for the meeting agreed that this was an appropriate course of action.

Staff Attorney Jarryd Page then presented an overview of our Curriculum on Climate Science and Law for Judges, now fully available on our new resource website (<https://cjp.eli.org/>), and solicited recommendations for future additions to it. We were advised to explore ways to incorporate new and upcoming reports, including the Fifth National Climate Assessment and the recent update to the National Academies report on accelerating decarbonization. There was also support for producing new curriculum content focusing on the energy transition, public health, environmental impact assessments, and IPCC methodologies.

In the final part of the afternoon session, committee members were invited to share feedback and advice. As the Project has begun contemplating pathways for international

expansion, a concern of "parachuting" was raised, and it was recommended to involve local players as much as possible, particularly in India—one region that we are actively exploring for future judicial education programs.

Another major piece of this discussion involved access to and dissemination of our curriculum materials. As it stood then, our curriculum was exclusively available on our closed website, which requires an account to access. Committee members noted that this was likely limiting the reach of our materials and since then we have removed such restrictions. The possibility of reaching clerks with our educational materials was discussed, with suggestions that the best ways to approach them would be through judges, or through official orientation programs such as the federal judicial clerkship orientation. Gerrard agreed to distribute our materials to his students and legal-academic network and Judge Jeremy Fogel kindly offered to advertise to his judicial network.

As the meeting ended, two questions were posed to committee members: 1) who else might we consider for membership of the advisory committee, and 2) what additional funding sources—particularly conservative-leaning sources, which would help us to combat allegations of bias—might we seek. While we were sorry that you could not be with us in person, we would very much appreciate any insights you might have about our work and any responses to these two open questions.

As always, thank you very much for continuing to advise the Project.

With all good wishes for the Holiday season,

Paul

Paul A. Hanle, PhD
Visiting Scholar and Founder
Climate Judiciary Project
Environmental Law Institute
<https://cjp.eli.org>