

EXHIBIT 41

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

AMERICAN SOCIETY FOR)
TESTING AND MATERIALS,)
d/b/a ASTM INTERNATIONAL;) Civil Action No.
NATIONAL FIRE PROTECTION) 1:13-cv-01215-TSC
ASSOCIATION, INC.; and)
AMERICAN SOCIETY OF)
HEATING, REFRIGERATION AND)
AIR CONDITIONING ENGINEERS,)
Plaintiffs and)
Counter-Defendants,)
vs.)
PUBLIC.RESOURCE.ORG, INC.,)
Defendant and)
Counter-Plaintiff.

VIDEOTAPED 30(b)(6) DEPOSITION OF NATIONAL
FIRE PROTECTION ASSOCIATION, INC., BY
CHRISTIAN DUBAY, before Jeanette N. Maracas,
Registered Professional Reporter and Notary
Public in and for the Commonwealth of
Massachusetts, at 42 Chauncy Street, Boston,
Massachusetts, on Wednesday, April 1, 2015,
commencing at 10:00 a.m.

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 Inc (via telephone)
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 22
 23
 24
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1	MR. BRIDGES: Yes.	10:01:12
2	THE WITNESS: Yes.	10:01:12
3	MR. REHN: Yes.	10:01:13
4	MR. FEE: Yes.	10:01:13
5	VIDEOGRAPHER: At this time will	10:01:15
6	counsel and all present identify themselves	10:01:17
7	for the record, after which our court	10:01:17
8	reporter will swear in the witness and we	10:01:18
9	can proceed.	10:01:19
10	MR. BRIDGES: This is Andrew Bridges	10:01:20
11	from Fenwick & West, representing the	10:01:23
12	defendant, Public.Resource.org. With me	10:01:26
13	is Mitch Stoltz from Electronic Frontier	10:01:31
14	Foundation, also representing	10:01:32
15	Public.Resource.org. I believe that we	10:01:35
16	have listening in only on the telephone	10:01:36
17	Carl Malamud of Public.Resource.org.	10:01:39
18	MR. MALAMUD: Yes, I'm here. Thank	10:01:43
19	you.	10:01:45
20	MR. REHN: I'm Thane Rehn from	10:01:45
21	Munger, Tolles & Olson, representing the	10:01:45
22	National Fire Protection Association and the	10:01:49
23	witness.	10:01:51
24	MS. EVERETT: I'm Sally Everett,	10:01:52
25	general counsel of National Fire Protection	10:01:53

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1	PROCEEDINGS	
2	VIDEOGRAPHER: Good morning. We	
3	are now on the record at 10:00 a.m. on	10:00:18
4	April 1st, 2015. This is the video-recorded	10:00:21
5	deposition of Christian Dubay.	10:00:25
6	My name is Anthony Piccirilli, here	10:00:28
7	with our court reporter, Jeanette Maracas.	10:00:30
8	We are here from Veritext National Deposition	10:00:32
9	and Litigation Services.	10:00:35
10	This deposition is being held at	10:00:37
11	G&M Court Reporters in Boston, Massachusetts.	10:00:39
12	The caption of this case is American Society	10:00:42
13	for Testing and Materials versus	10:00:45
14	Public.Resource.org, Incorporated.	10:00:47
15	Please note that audio and video	10:00:50
16	recording will take place unless all parties	10:00:51
17	agree to go off the record. Microphones are	10:00:54
18	sensitive and may pick up whispers, private	10:00:56
19	conversations and cellular interference.	10:00:58
20	I am not authorized to administer	10:01:01
21	an oath. I am not related to any party in	10:01:02
22	this action, nor am I financially interested	10:01:05
23	in the outcome in any way. May I please have	10:01:07
24	an agreement by all parties that we can	10:01:09
25	proceed?	10:01:11

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1	Association.	10:01:56
2	MR. FEE: Kevin Fee from Morgan	10:01:56
3	Lewis, on behalf of ASTM International.	10:01:59
4	CHRISTIAN DUBAY	10:02:02
5	A witness called for examination	
6	by counsel for the Defendant and	
7	Counter-Plaintiff, having been first duly	
8	sworn, was examined and testified as follows:	
9	DIRECT EXAMINATION	
10	BY MR. BRIDGES:	10:02:09
11	Q. Good morning, Mr. Dubay.	10:02:10
12	A. Good morning.	10:02:11
13	Q. Have you ever been deposed before?	10:02:12
14	A. No.	10:02:13
15	Q. Have you ever testified under oath before?	10:02:14
16	A. No.	10:02:16
17	Q. Did you have a chance to meet with counsel	10:02:16
18	to discuss how a deposition proceeds?	10:02:20
19	A. Yes.	10:02:23
20	Q. How long did you spend either meeting with	10:02:23
21	counsel or in other conversations with	10:02:26
22	counsel talking about depositions?	10:02:28
23	A. Approximately about four hours.	10:02:31
24	Q. When did you do that?	10:02:32
25	A. Monday.	10:02:34

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1 Q. Was anyone else present at that meeting? 10:02:34
 2 A. No. 10:02:38
 3 Q. Did they explain to you how a deposition 10:02:38
 4 proceeds and how objections can be made and 10:02:45
 5 how there may be times for you to receive 10:02:48
 6 instructions from counsel? 10:02:52
 7 A. Yes. 10:02:54
 8 Q. Do you have any physical or mental reason 10:02:54
 9 why you can't testify accurately and 10:03:03
 10 truthfully today? 10:03:06
 11 A. No. 10:03:06
 12 Q. Will you please state your full name for 10:03:07
 13 the record. 10:03:13
 14 A. Sure. My name is Christian Dubay. 10:03:13
 15 Q. What's your home address? 10:03:16
 16 A. 32 Alvin Circle, Raynham, Massachusetts. 10:03:17
 17 Q. What's your work address? 10:03:22
 18 A. One Batterymarch Park, Quincy, Massachusetts. 10:03:23
 19 Q. What is your job at NFPA? 10:03:27
 20 A. I'm vice president and chief engineer. 10:03:33
 21 Q. When did you first begin working for NFPA? 10:03:36
 22 A. 1995. 10:03:42
 23 Q. What work did you have before you joined 10:03:44
 24 NFPA? 10:03:51
 25 A. I was a college student and a co-op engineer 10:03:51
 Page 10

1 with the U.S. Navy. 10:03:54
 2 Q. Please take me through your college 10:03:58
 3 education. 10:04:02
 4 A. I have a Bachelor's degree in fire protection 10:04:02
 5 engineering with a co-op distinction due to 10:04:05
 6 my work with the U.S. Navy. 10:04:09
 7 Q. Where was that university degree from? 10:04:10
 8 A. University of Maryland. 10:04:13
 9 Q. Please take me through your career at NFPA, 10:04:14
 10 and tell me what your positions have been 10:04:24
 11 since 1995. 10:04:27
 12 A. I started out as an associate engineer, 10:04:28
 13 worked through the various levels of 10:04:32
 14 engineering all the way through principal 10:04:34
 15 and ultimately vice president and chief 10:04:36
 16 engineer. 10:04:38
 17 Q. Did you receive any academic education after 10:04:40
 18 your Bachelor's degree? 10:04:51
 19 A. Not formal degree programs, but continuing 10:04:53
 20 education, management development, things 10:04:57
 21 like that. 10:05:00
 22 Q. Please take me through your areas of 10:05:01
 23 responsibility starting in 1995 till now in 10:05:07
 24 your work at NFPA. 10:05:11
 25 A. My primary role when I started was answering 10:05:13
 Page 11

1 technical questions relating to our codes and 10:05:17
 2 standards. 10:05:20
 3 Q. Then what? 10:05:25
 4 A. Then I was given responsibility for a library 10:05:25
 5 of smaller documents as a new engineer to 10:05:31
 6 handle the committee process and the 10:05:35
 7 management of our technical committees. 10:05:37
 8 Q. What did you mean by a library of smaller 10:05:39
 9 documents? 10:06:04
 10 A. As a staff liaison, I was given approximately 10:06:04
 11 on the order of maybe 10 or 12 different 10:06:09
 12 standards that I was responsible for with the 10:06:13
 13 standards process around those documents. 10:06:17
 14 Q. Did the 10 or 12 different standards that you 10:06:22
 15 were responsible for have a common theme? 10:06:27
 16 A. It was a long time ago, but the best I can 10:06:31
 17 recall, yes, mostly around commercial 10:06:34
 18 cooking, chimneys, things like that. 10:06:39
 19 Q. How long did you have that role? 10:06:51
 20 A. To the best of my recollection, I had that 10:07:06
 21 smaller set of documents for about two to 10:07:09
 22 three years and then I took on a larger role, 10:07:12
 23 handling a smaller set of standards, but 10:07:16
 24 larger documents around automatic fire 10:07:19
 25 sprinkler systems. 10:07:22
 Page 12

1 Q. What were those documents? 10:07:26
 2 A. Specifically NFPA 13, NFPA 13R, 13E, some of 10:07:31
 3 them. There's a few more. 10:07:42
 4 Q. That group had a common theme of sprinkler 10:07:47
 5 systems? 10:07:50
 6 A. All related to automatic fire sprinkler 10:07:51
 7 systems. 10:07:54
 8 Q. When did you have that role? 10:07:59
 9 A. I had that role until -- I forget the 10:08:01
 10 specific start date, but I had that role 10:08:05
 11 until 2007. 10:08:07
 12 Q. At that point how did your role at NFPA 10:08:12
 13 change? 10:08:17
 14 A. At that point I was named vice president and 10:08:18
 15 chief engineer. 10:08:20
 16 Q. You've had the same title from 2007 till now? 10:08:21
 17 A. Yes. 10:08:27
 18 Q. What have your functions been as vice 10:08:28
 19 president and chief engineer? 10:08:32
 20 A. I have primarily two responsibilities. The 10:08:33
 21 first and foremost is the overseeing of our 10:08:37
 22 codes and standards operations. My second 10:08:40
 23 role in serving as chief engineer is the 10:08:44
 24 primary technical spokesman for the 10:08:47
 25 association. 10:08:50
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1 Q. In what forums do you speak as NFPA's primary 10:09:00
 2 technical spokesman? 10:09:12
 3 A. One example is media interviews. 10:09:15
 4 Q. How else? 10:09:25
 5 A. Another example is public forums around our 10:09:26
 6 technical topics of expertise, our standards. 10:09:32
 7 Q. What type of public forums do you mean? 10:09:36
 8 A. One example is speaking at the conferences 10:09:40
 9 and training seminars and such. 10:09:47
 10 Q. What types of conferences do you speak at 10:09:49
 11 for NFPA? 10:09:52
 12 A. In my current role primarily, I guess that's 10:09:52
 13 a standards role, technically it could 10:09:57
 14 involve the topic at hand. It could be a 10:09:59
 15 trade event or an association of, say, an 10:10:01
 16 association of manufacturers or constituents 10:10:08
 17 or government, like fire marshals. 10:10:11
 18 Q. On what topics do you typically speak at 10:10:18
 19 those conferences? 10:10:23
 20 A. As broad as our scope of NFPA. 10:10:25
 21 Q. And how broad is that scope? 10:10:34
 22 A. We -- our mission is based upon safety and 10:10:36
 23 improving safety and reducing loss. And that 10:10:42
 24 covers approximately 300 codes and standards 10:10:44
 25 on a multitude of topics. 10:10:49

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1 Q. How do codes and standards improve safety 10:11:01
 2 and reduce loss? 10:11:03
 3 A. Codes and standards are designed -- part of 10:11:05
 4 them is to learn from losses, learn from 10:11:13
 5 incidents as such to ensure what protection 10:11:17
 6 needs to be in place to account for that. 10:11:20
 7 That's one of the ways. 10:11:23
 8 Q. How else do codes and standards improve 10:11:27
 9 safety and reduce losses? 10:11:30
 10 MR. REHN: I'll just object that 10:11:35
 11 these questions are outside the scope of the 10:11:36
 12 topics for which this witness was designated, 10:11:38
 13 but you can answer. 10:11:41
 14 MR. BRIDGES: I disagree, but we 10:11:42
 15 don't need to argue it. 10:11:44
 16 A. Codes and standards, at least the NFPA 10:11:46
 17 process, brings together a multitude of 10:11:48
 18 interested parties which can determine, 10:11:51
 19 through the consensus process, a best minimum 10:11:53
 20 level of safety. 10:11:58
 21 Q. Who determines what the best minimum level 10:12:14
 22 of safety is in that process? 10:12:50
 23 MR. REHN: Objection as to form. 10:12:55
 24 Q. You may answer. 10:12:58
 25 A. At NFPA our process relies upon our technical 10:12:59

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1 committee volunteers. 10:13:04
 2 Q. Is it the technical committee of volunteers 10:13:15
 3 who determine what constitutes the best 10:13:22
 4 minimum level of safety? 10:13:24
 5 MR. REHN: Objection as to form. 10:13:26
 6 A. It's a combination of -- our technical 10:13:29
 7 committee members determine the final 10:13:32
 8 technical requirements, however, that's 10:13:34
 9 balanced with extensive public review and 10:13:37
 10 comment. 10:13:39
 11 Q. I'll come back to that in a minute. How else 10:13:49
 12 do you -- in what other forums do you speak 10:14:14
 13 as primary technical spokesman for NFPA? You 10:14:17
 14 mentioned media interviews, certain public 10:14:24
 15 forums. You mentioned conferences and 10:14:27
 16 training seminars. Are there any other ways 10:14:29
 17 in which you serve as the primary technical 10:14:32
 18 spokesman for NFPA? 10:14:34
 19 A. I often give presentations relating to 10:14:35
 20 awareness of our process and awareness of how 10:14:39
 21 to get involved and how to be part of this 10:14:42
 22 public codes and standards process. 10:14:46
 23 Q. To whom do you make those presentations? 10:14:51
 24 A. Various affected parties. Again, really 10:14:55
 25 depends on the breadth of topics. So it 10:14:59

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1 varies. 10:15:04
 2 Q. What are some examples of groups to which you 10:15:04
 3 make these presentations? 10:15:08
 4 A. For example, if there's an emerging technical 10:15:09
 5 topic of safety or concern to the 10:15:13
 6 association, I may meet with fire marshals or 10:15:16
 7 local safety officials in a given 10:15:19
 8 jurisdiction or state to present what we know 10:15:22
 9 at that time. 10:15:26
 10 Q. To your knowledge, what use do they make of 10:15:30
 11 the information that you present to them? 10:15:42
 12 MR. REHN: Objection as to form. 10:15:45
 13 Calls for speculation. 10:15:47
 14 A. It would really depend on the group. 10:15:49
 15 Q. Let's say fire marshals. 10:15:56
 16 MR. REHN: Same objection. 10:15:58
 17 A. They often utilize that information as 10:16:01
 18 information to make safety decisions within 10:16:05
 19 their various jurisdictions or with the 10:16:07
 20 situations that they're facing. 10:16:11
 21 Q. What kind of safety decisions are you 10:16:12
 22 referring to? 10:16:14
 23 A. It could be, for example, how to understand a 10:16:19
 24 new technology or a new application of 10:16:27
 25 safety, a new safety standard, a new adoption 10:16:34

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1 or new application area. 10:16:37
 2 Q. When you say a new adoption, what do you 10:16:40
 3 mean? 10:16:44
 4 A. For example, if a jurisdiction is looking to 10:16:44
 5 incorporate, say, residential sprinklers in 10:16:51
 6 the jurisdiction, they may want to utilize an 10:16:54
 7 NFPA standard, an installation standard. And 10:16:57
 8 as part of their regulation, I will spend 10:17:01
 9 time with them explaining the standard, 10:17:03
 10 explain the requirements. 10:17:05
 11 Q. To whom else do you make presentations as 10:17:10
 12 NFPA's primary technical spokesman? 10:17:23
 13 A. Industry groups is another example. 10:17:26
 14 Q. Who else? 10:17:45
 15 A. Peer standards developers is another example. 10:17:46
 16 Q. Sorry? 10:17:53
 17 A. Peer standards developers, we refer to them 10:17:53
 18 as SDOs, standards development organizations. 10:17:58
 19 Q. Which ones do you have in mind when you say 10:18:01
 20 that? 10:18:03
 21 A. Again, there's a lot of them, so it depends. 10:18:03
 22 The most common example I would say is 10:18:10
 23 working with ANSI, the American National 10:18:13
 24 Standards Institute, which brings together a 10:18:16
 25 lot of standards developers. So that's the 10:18:17
 Page 18

1 best example I can give you of a place where 10:18:19
 2 we chat about standards operations. 10:18:23
 3 Q. Is ANSI a peer or an umbrella organization? 10:18:25
 4 MR. REHN: Objection as to form. 10:18:28
 5 A. ANSI is a federation of membership 10:18:30
 6 organization for standards developers as well 10:18:36
 7 as organizations that are impacted by 10:18:40
 8 standards. 10:18:42
 9 Q. Does NFPA belong to ANSI? 10:18:45
 10 MR. REHN: Objection as to form. 10:18:48
 11 Q. Is it a member of ANSI? 10:18:49
 12 A. Yes. 10:18:51
 13 Q. Do you have any position within ANSI? 10:18:51
 14 MR. REHN: Objection as to form. 10:19:01
 15 Vague and ambiguous. 10:19:02
 16 A. I am a member of a few of their equivalent, 10:19:04
 17 something like a section. I'm a member of 10:19:11
 18 their executive standards council as an 10:19:13
 19 example. 10:19:15
 20 Q. What other memberships or committees or units 10:19:16
 21 within ANSI do you have? 10:19:21
 22 A. I'm also a member of the Organizational 10:19:23
 23 Member Forum or OMF. 10:19:26
 24 Q. Anything else? 10:19:32
 25 A. I'm also a member of the National Policy 10:19:35
 Page 19

1 Committee, NPC. 10:19:38
 2 Q. What else? 10:19:42
 3 A. I'm also co-chair, private sector co-chair of 10:19:44
 4 the -- I apologize, I don't recall the exact 10:19:53
 5 document, but it's HDSCC, I believe. 10:19:54
 6 Q. What does that stand for? 10:19:59
 7 A. It's a Homeland Security working group around 10:20:00
 8 different issues that the nation is facing 10:20:06
 9 around Homeland Security and -- Homeland 10:20:11
 10 Security is the best way to describe it. 10:20:16
 11 Q. What else? 10:20:19
 12 A. To the best of my recollection, those are the 10:20:20
 13 only specific ANSI activities that I have. 10:20:26
 14 Q. How much of your time as an NFPA employee is 10:20:32
 15 spent engaged in ANSI-related activities? 10:20:37
 16 MR. REHN: Objection as to form. 10:20:43
 17 Lacks foundation. 10:20:46
 18 A. Maybe ten days per year, approximately. 10:20:47
 19 Q. Is that ten days per year where the days are 10:20:56
 20 devoted to ANSI-related activities? 10:21:04
 21 MR. REHN: Objection as to form. 10:21:06
 22 A. It depends. Some days may be a one-hour call 10:21:09
 23 or some days may be a full-day meeting. 10:21:13
 24 Q. I'm just trying to get clear, you do 10:21:17
 25 ANSI-related work on only ten days during the 10:21:21
 Page 20

1 year or ten full days per year with other 10:21:23
 2 activities? How do you divide it? How do 10:21:26
 3 you mean ten days? 10:21:30
 4 A. The way I would describe it is approximately, 10:21:31
 5 to the best of my recollection, I'm just 10:21:35
 6 thinking now, is only ten days a year. 10:21:36
 7 Not -- I don't view it as ten full days, but 10:21:40
 8 there's probably ten times per year where I'm 10:21:43
 9 involved in ANSI activities. On a couple of 10:21:45
 10 occasions, they're full-day activities. 10:21:48
 11 Q. Does that include any type of activity 10:21:52
 12 whether you're sending e-mails to people at 10:21:55
 13 ANSI and the like? 10:21:57
 14 MR. REHN: Objection as to form. 10:21:58
 15 A. Honestly, I don't keep track of each and 10:22:00
 16 every e-mail, so I wouldn't know. When you 10:22:03
 17 asked me the question, I'm estimating how 10:22:06
 18 many days that I have -- I have an ANSI day, 10:22:09
 19 there's something going on, formal. 10:22:12
 20 Q. What are your duties at NFPA as chief 10:22:22
 21 engineer, apart from being the primary 10:22:46
 22 technical spokesman? 10:22:48
 23 MR. REHN: Objection to form. Asked 10:22:53
 24 and answered. 10:22:54
 25 A. Chief engineer. That's my primary, the 10:22:59
 Page 21

1 technical aspects. 10:23:03
 2 Q. What do you do in your role as chief engineer 10:23:08
 3 internally within NFPA when you're not giving 10:23:18
 4 maybe interviews or speaking at public 10:23:25
 5 forums? 10:23:27
 6 A. The only thing I can think of is acting as 10:23:33
 7 part of the senior management team in 10:23:39
 8 day-to-day operations. 10:23:41
 9 Q. Do you provide technical input within NFPA? 10:23:47
 10 MR. REHN: Objection as to form. 10:24:03
 11 It's vague. 10:24:06
 12 A. I'm not sure I understand the question. 10:24:07
 13 Q. Do you provide technical information or 10:24:09
 14 technical assistance within NFPA as chief 10:24:14
 15 engineer? 10:24:16
 16 MR. REHN: Same objection. 10:24:19
 17 A. Could you clarify your question? To me it's 10:24:19
 18 just not connecting with providing technical 10:24:24
 19 information internally. 10:24:27
 20 Q. Are you a resource for technical information 10:24:28
 21 internally within NFPA in your role as chief 10:24:31
 22 engineer at NFPA? 10:24:35
 23 MR. REHN: Same objection. 10:24:36
 24 A. Yes, I view myself as a resource. 10:24:37
 25 Q. Who within the organization calls upon you 10:24:41
 Page 22

1 for your engineering expertise? 10:24:44
 2 MR. REHN: Object to the form. 10:24:48
 3 A. I would view the senior management team as an 10:24:52
 4 example of those that would call upon me. 10:24:59
 5 Q. Who else within the organization calls upon 10:25:01
 6 you for your technical expertise as chief 10:25:04
 7 engineer? 10:25:08
 8 MR. REHN: Same objection. 10:25:08
 9 A. The standards -- codes and standards 10:25:09
 10 operation team, which I'm responsible for. 10:25:15
 11 Q. Who else? 10:25:18
 12 MR. REHN: Same objection. 10:25:21
 13 A. At times marketing and such like that, things 10:25:27
 14 like that. 10:25:35
 15 Q. Who else? 10:25:37
 16 MR. REHN: Same objection. 10:25:39
 17 A. I really can't think of another aspect of 10:25:41
 18 that. 10:25:45
 19 Q. Do outreach public affairs personnel call 10:25:48
 20 upon you for your technical expertise? 10:25:56
 21 A. Yes, they're part of the senior management 10:25:59
 22 team. 10:26:05
 23 MR. REHN: Objection. 10:26:06
 24 Q. In what respect do they call upon you for 10:26:06
 25 your technical expertise? 10:26:12
 Page 23

1 A. Primarily around the media interviews. 10:26:12
 2 Q. Any other ways? 10:26:15
 3 A. The primary, from a public communications 10:26:21
 4 resource outreach aspect, is through media 10:26:32
 5 inquiries, media interviews and media 10:26:37
 6 responses when I'm requested. 10:26:40
 7 Q. How many media interviews have you given 10:26:41
 8 in the past year? 10:26:48
 9 A. I don't know. Approximately ten. 10:26:49
 10 Q. On what subjects? 10:27:02
 11 A. I don't recall. 10:27:06
 12 Q. You don't recall any of the subjects? 10:27:09
 13 A. Not off the top of my head, no, I do not. 10:27:19
 14 Q. You say that NFPA brings together a multitude 10:27:22
 15 of interested parties who participate in a 10:28:09
 16 consensus process to determine the best level 10:28:15
 17 of minimum safety; is that right? 10:28:18
 18 MR. REHN: Object to the form. 10:28:20
 19 A. NFPA has an open consensus standards 10:28:24
 20 development process that brings together many 10:28:27
 21 differing viewing points of interest, 10:28:32
 22 interest categories as well as the public in 10:28:35
 23 order to develop our codes and standards. 10:28:39
 24 Q. How does NFPA bring them together? 10:28:43
 25 MR. REHN: Objection as to form. 10:28:51
 Page 24

1 A. One way is through our technical committee 10:28:53
 2 meetings. 10:28:55
 3 Q. How else does NFPA bring them together? 10:29:01
 4 A. Through our annual meeting. 10:29:07
 5 Q. How else? 10:29:10
 6 A. Through special, specially called topical 10:29:17
 7 meetings. 10:29:23
 8 Q. How else? 10:29:28
 9 A. Through technical forums and summits. 10:29:29
 10 Q. How else? 10:29:40
 11 A. That's all I can think of off the top of my 10:29:41
 12 head. 10:29:57
 13 Q. And what does NFPA do to bring them together? 10:29:57
 14 MR. REHN: Object to the form. 10:30:05
 15 Vague. 10:30:07
 16 A. With respect to our technical committee 10:30:10
 17 meetings, we, through the committee, call the 10:30:12
 18 meeting and book the meeting facility and 10:30:16
 19 host the meeting. 10:30:20
 20 Q. Anything else? 10:30:30
 21 MR. REHN: Same objection. 10:30:32
 22 A. To clarify, with respect to committee 10:30:35
 23 meetings? 10:30:37
 24 Q. Yes. 10:30:38
 25 A. We publicly promote them, as all of our 10:30:39
 Page 25

1 meetings are open to anyone who wishes to 10:30:44
 2 attend. 10:30:46
 3 Q. Anything else? 10:30:46
 4 A. No. I think that covers it. 10:30:49
 5 Q. What do you mean by call the meeting, NFPA 10:30:55
 6 calls the meeting? 10:31:06
 7 A. We provide advance public notice when we call 10:31:08
 8 the meeting, including on our website, social 10:31:12
 9 media announcements to the committee members 10:31:16
 10 to make not only the committee but the public 10:31:20
 11 aware of the next meeting date, location, 10:31:22
 12 et cetera. 10:31:26
 13 Q. How does NFPA book the meeting? 10:31:29
 14 A. We have a meetings department whose 10:31:34
 15 responsibility is to book all of our 10:31:38
 16 meetings. 10:31:41
 17 Q. Does that mean to arrange the logistics, like 10:31:42
 18 the hotels and conferences rooms and things 10:31:47
 19 like that? 10:31:50
 20 A. The meetings department is responsible -- 10:31:52
 21 MR. REHN: Objection to form. 10:31:51
 22 A. The meetings department is responsible for 10:31:56
 23 taking care of finding a proper hotel, large 10:32:02
 24 enough meeting rooms, things like that. 10:32:04
 25 Whatever the size of the logistics, they 10:32:07
 Page 26

1 handle all the logistics around that meeting 10:32:09
 2 space and any required hotels. 10:32:12
 3 Q. How does NFPA host the meeting? 10:32:14
 4 MR. REHN: Objection to the form. 10:32:20
 5 Q. I should say how does NFPA host the meetings? 10:32:24
 6 MR. REHN: Same objection. 10:32:28
 7 A. I think the best approach is that because 10:32:29
 8 it's an NFPA meeting, so it's -- we're 10:32:31
 9 calling -- when I say we're calling the 10:32:36
 10 meeting, so it's our committee meeting as an 10:32:37
 11 example. 10:32:41
 12 So NFPA staff is there, technical 10:32:41
 13 staff is there facilitating and running the 10:32:46
 14 meeting along with the actual volunteer 10:32:48
 15 technical committee chair. So I think that 10:32:50
 16 should clarify what I'm implying by 10:32:54
 17 "hosting." 10:32:56
 18 Q. How does the NFPA staff facilitate and run 10:32:57
 19 the meetings along with the technical 10:33:15
 20 committee chairs? 10:33:17
 21 A. Again, just to clarify, just focusing on 10:33:20
 22 technical committee meetings? 10:33:23
 23 Q. Yes. 10:33:24
 24 A. Okay. We have a technical staff liaison 10:33:25
 25 who's assigned to each of our standards and a 10:33:30
 Page 27

1 portion of their job is to attend the 10:33:33
 2 technical committee meetings. 10:33:36
 3 Q. What do the liaisons do at those meetings 10:33:39
 4 when they attend them? 10:33:45
 5 MR. REHN: Objection to the form. 10:33:45
 6 A. Their primary responsibility is to capture 10:33:46
 7 all of the technical changes that the 10:33:51
 8 committee is making to the document they're 10:33:54
 9 working on or standard they're working on. 10:33:57
 10 Q. What do you mean by technical changes in that 10:34:02
 11 context? 10:34:24
 12 A. Our technical committees are responsible for 10:34:27
 13 developing changes to our codes and 10:34:31
 14 standards. And one of the primary 10:34:34
 15 responsibilities of the technical staff 10:34:37
 16 liaison is to capture those changes. 10:34:39
 17 Q. In what respect are those changes technical 10:34:46
 18 changes? 10:34:50
 19 A. Those changes are specific, technical being 10:34:53
 20 scientific or wording changes to our codes 10:34:57
 21 and standards which are technical documents. 10:35:01
 22 Q. How do you distinguish between scientific 10:35:08
 23 changes and wording changes to the technical 10:35:11
 24 documents? 10:35:17
 25 MR. REHN: Objection to the form. 10:35:18
 Page 28

1 Lacks foundation. Mischaracterizes the 10:35:19
 2 testimony. 10:35:22
 3 A. A technical change, in my view, would be 10:35:22
 4 changing a specific requirement. A wording 10:35:28
 5 change may be a change the committee could do 10:35:32
 6 if they have determined that the requirement 10:35:34
 7 is confusing or not clear what the specific 10:35:36
 8 requirement is, so they may adjust the 10:35:40
 9 wording to make it easier to interpret or 10:35:41
 10 understand what that actual technical 10:35:45
 11 requirement is. 10:35:46
 12 Q. Who determines what wording changes are 10:35:48
 13 appropriate in the technical committees? 10:35:52
 14 MR. REHN: Objection to the form. 10:35:55
 15 Ambiguous. 10:35:56
 16 A. It's a combination of extensive public review 10:35:58
 17 and comment, the committee's review of that 10:36:02
 18 and their expertise and with the help of our 10:36:05
 19 technical staff to land on the final wording, 10:36:09
 20 which is ultimately decided by the technical 10:36:13
 21 committee. 10:36:15
 22 Q. What criteria do the members of the technical 10:36:23
 23 committee use in choosing the wording of a 10:36:32
 24 code or standard? 10:36:38
 25 MR. REHN: Objection to the form. 10:36:39
 Page 29

<p>1 Lacks foundation. 10:36:41 2 A. Ultimately those decisions are based upon the 10:36:43 3 technical committee members' expertise and 10:36:47 4 knowledge within the field. 10:36:50 5 Q. And when you say that the technical staff 10:37:00 6 liaison has a responsibility to capture all 10:37:18 7 of the technical changes that the committee 10:37:22 8 is making to the document, what do you mean 10:37:26 9 by capture? 10:37:28 10 A. NFPA has a very robust standards development 10:37:29 11 platform that allows our committees to work 10:37:36 12 on the text within the document. And the 10:37:40 13 technical staff captures those changes in the 10:37:43 14 system so that we can then support that staff 10:37:46 15 with editorial changes and such before 10:37:51 16 publication. 10:37:54 17 Q. I still don't understand what you mean by 10:38:00 18 capture in that context. You said that the 10:38:02 19 technical staff captures those changes. What 10:38:07 20 do you mean by capture there? 10:38:12 21 MR. REHN: Object to the form. 10:38:13 22 A. The committee makes a decision. It is the 10:38:15 23 responsibility of the technical staff to not 10:38:18 24 only just record those changes, but 10:38:22 25 understand the technical context that the 10:38:25</p> <p style="text-align: right;">Page 30</p>	<p>1 development process. A piece of that is, for 10:39:45 2 example, compliance with our manual of style. 10:39:50 3 Q. What form does that support take? 10:39:57 4 MR. REHN: Object to the form. 10:40:03 5 A. It takes several forms. First and foremost 10:40:07 6 is to capture the specific text or record the 10:40:10 7 specific technical changes that occurred at 10:40:14 8 the meeting. 10:40:17 9 Q. Anything else? 10:40:17 10 A. Second is to ensure that the wording is in 10:40:26 11 compliance with our manual style. 10:40:32 12 Q. Anything else? 10:40:39 13 A. Also the technical staff is there to ensure 10:40:40 14 that the new or modified requirements align 10:40:47 15 with the remainder of the document. 10:40:51 16 Q. Anything else? 10:40:58 17 A. They also spend time reviewing those 10:41:05 18 requirements, the technical staff does, to 10:41:10 19 make sure they don't establish conflicting 10:41:12 20 requirements with other portions of that 10:41:14 21 document or other NFPA standards. 10:41:18 22 Q. Anything else? 10:41:21 23 A. Another responsibility is to come back to 10:41:25 24 NFPA to their offices and ensure that our 10:41:32 25 editorial production team has full knowledge 10:41:34</p> <p style="text-align: right;">Page 32</p>
<p>1 committee is trying to accomplish to ensure 10:38:27 2 that when those changes go out for ballot to 10:38:29 3 our technical committees, it's accurate. 10:38:32 4 Q. That it accurately reflects what the 10:38:35 5 technical committee intended to produce? 10:38:38 6 A. The primary job -- 10:38:41 7 MR. REHN: Object to the form. 10:38:43 8 A. The primary job of the technical staff 10:38:44 9 liaison is to ensure that any recorded 10:38:46 10 actions accurately reflect that intent of the 10:38:48 11 technical committee. 10:38:51 12 MR. REHN: If I can just remind the 10:38:52 13 witness to give me a chance to object after 10:38:53 14 the question is asked. Helps the court 10:38:56 15 reporter out if we're not talking over each 10:39:03 16 other. 10:39:06 17 A. Sorry. 10:39:07 18 Q. You mentioned some sort of the editorial 10:39:16 19 activity in support of the technical 10:39:30 20 committees; is that correct? 10:39:35 21 MR. REHN: Object to form. 10:39:35 22 Q. You used the word "editorial." I didn't 10:39:36 23 quite understand the context. 10:39:39 24 A. There's an extensive amount of support that 10:39:41 25 NFPA staff provides to our standards 10:39:43</p> <p style="text-align: right;">Page 31</p>	<p>1 of those changes as they modify the -- 10:41:39 2 develop the next edition of the standard. 10:41:43 3 Q. Anything else? 10:41:48 4 A. There's an extensive amount of back and forth 10:42:08 5 between the editorial and production staff 10:42:11 6 and the technical staff to finalize the 10:42:14 7 language prior to balloting. 10:42:18 8 Q. Anything else? 10:42:27 9 A. Once the language is finalized, the technical 10:42:31 10 staff works with our project administrators 10:42:37 11 to develop a technical committee ballot which 10:42:41 12 is then circulated to that technical 10:42:44 13 committee. 10:42:44 14 Q. Anything else? 10:42:51 15 A. Once the ballot is completed and approved, 10:43:16 16 the technical staff, working with the project 10:43:22 17 administrators, then circulates the ballot of 10:43:23 18 the proposed changes to that full technical 10:43:27 19 committee. 10:43:30 20 Q. Do they circulate the proposed ballot or 10:43:39 21 the actual ballot to the full technical 10:43:39 22 committee? 10:43:39 23 A. The actual ballot. The actual ballot is 10:44:03 24 submitted to the committee for formal voting. 10:44:07 25 Q. Anything else? 10:44:15</p> <p style="text-align: right;">Page 33</p>

<p>1 A. Once the initial ballot is complete, the 10:44:18 2 results are then recirculated to the 10:44:21 3 committee to ensure -- to finalize the 10:44:23 4 results. 10:44:45 5 Q. When you say the results are recirculated 10:44:45 6 to the committee, does that mean the vote 10:44:47 7 tally or the text that was the subject of the 10:44:49 8 ballot for vote? 10:44:54 9 MR. REHN: Object to form. 10:44:57 10 A. Both. 10:45:00 11 Q. So when the initial ballot is complete, the 10:45:00 12 technical committee receives a report of the 10:45:03 13 results and the presumptive final language of 10:45:07 14 the change; is that correct? 10:45:12 15 MR. REHN: Object to the form. 10:45:13 16 A. No. 10:45:17 17 Q. How is that incorrect? 10:45:19 18 A. The final text is what's being balloted. 10:45:20 19 Q. When you say the results are recirculated to 10:45:28 20 the committee to finalize the results; is 10:45:32 21 that what you said? 10:46:06 22 A. Mm-hmm. 10:46:07 23 Q. What does it mean to finalize the results? 10:46:08 24 A. We have an initial ballot. Our committee 10:46:13 25 members vote, then we provide another 10:46:16 Page 34</p>	<p>1 A. Through our online codes and standards 10:47:46 2 system. 10:47:49 3 Q. What happens after the public comment period? 10:47:55 4 A. The technical committee meets and reviews 10:48:00 5 each public comment. 10:48:05 6 Q. Then what happens? 10:48:08 7 A. The technical committee determines if any -- 10:48:24 8 excuse me. The technical committee develops 10:48:29 9 responses to each of those public comments. 10:48:31 10 Q. Then what happens? 10:48:40 11 A. The technical committee determines if any 10:48:43 12 further revisions or changes are required to 10:48:48 13 address those public comments. 10:48:52 14 Q. Then what happens when the technical 10:49:03 15 committee determines that further changes are 10:49:06 16 required? 10:49:08 17 A. They would develop a second revision. 10:49:11 18 Q. And what would happen -- what would happen 10:49:18 19 after a second revision? 10:49:22 20 MR. REHN: Objection as to form. 10:49:26 21 A. The technical staff liaison would then 10:49:28 22 capture or record that change. 10:49:31 23 Q. Then what would happen? 10:49:37 24 A. They would then -- the technical staff would 10:49:43 25 then integrate one or more changes, whatever 10:49:46 Page 36</p>
<p>1 opportunity for the committee members to see 10:46:19 2 all the votes and the reasons the committee 10:46:21 3 voted a certain way to decide if they want to 10:46:24 4 either change their vote or keep their vote 10:46:26 5 the same. 10:46:28 6 Q. And with that information is another copy of 10:46:31 7 the text that was the subject of the ballot? 10:46:37 8 A. No. 10:46:40 9 Q. They just get the results and the 10:46:43 10 descriptions of the votes? 10:46:46 11 A. Yes. 10:46:47 12 Q. Then what happens? 10:46:48 13 A. Once the ballot results are final, a first 10:46:51 14 draft report is published for public comment. 10:46:55 15 Q. Then what happens? 10:47:10 16 A. There's a period of open public comment on 10:47:12 17 that document. 10:47:17 18 Q. How long does that last? 10:47:19 19 A. It varies, but approximately ten weeks long. 10:47:20 20 Q. How does the public have access to that 10:47:28 21 comment at the time? 10:47:35 22 MR. REHN: Objection to form. 10:47:36 23 Q. How does the public have access to the 10:47:37 24 proposed changes at that time? 10:47:41 25 MR. REHN: Objection as to form. 10:47:44 Page 35</p>	<p>1 was appropriate, into the draft document. 10:49:49 2 Q. And then what happens? 10:49:57 3 A. The technical staff would then return to NFPA 10:49:59 4 and ensure that all of the technical changes 10:50:05 5 were properly captured and in compliance with 10:50:08 6 our manual style. 10:50:12 7 Q. Then what happens? 10:50:24 8 A. The technical staff would then work with the 10:50:25 9 editorial and production team to ensure all 10:50:29 10 of the proposed technical changes are 10:50:34 11 properly recorded and captured within the 10:50:37 12 draft document. 10:50:40 13 Q. Then what happens? 10:50:46 14 A. Once the editorial and production team has 10:50:56 15 finalized their work, the technical staff 10:51:01 16 liaison again reviews all the changes to 10:51:04 17 ensure that they remain an accurate 10:51:06 18 reflection of the intent and the wording that 10:51:09 19 the technical committee established. 10:51:12 20 Q. Then what happens? 10:51:15 21 A. The technical staff liaison then works with 10:51:23 22 the project administrators to develop a 10:51:26 23 ballot for the technical committee. 10:51:30 24 Q. Then does the ballot process, after that 10:51:35 25 point, follow the same process you described 10:51:37 Page 37</p>

<p>1 earlier? 10:51:39</p> <p>2 MR. REHN: Objection as to form. 10:51:40</p> <p>3 A. For the second draft we repeat the same 10:51:43</p> <p>4 ballot process. 10:51:46</p> <p>5 Q. After the same ballot process, is the revised 10:51:47</p> <p>6 language again laid open for public comment? 10:51:54</p> <p>7 A. After the second draft meeting and ballot, we 10:52:00</p> <p>8 produce a second draft report. 10:52:04</p> <p>9 Q. And what happens with that second draft 10:52:08</p> <p>10 report? 10:52:12</p> <p>11 A. The second draft report is open for what we 10:52:12</p> <p>12 term as NITMAM's, N I T M A M, apostrophe S. 10:52:16</p> <p>13 Q. What does that mean? 10:52:24</p> <p>14 A. It's a notice for an intent to make a motion. 10:52:28</p> <p>15 Q. What does that mean? 10:52:38</p> <p>16 A. If someone continues to or is not happy with 10:52:39</p> <p>17 the results of the process at this point, 10:52:48</p> <p>18 they can file a motion to continue the 10:52:53</p> <p>19 debate. 10:52:55</p> <p>20 Q. Who can make such a motion? 10:53:01</p> <p>21 A. It depends on the type of motion they're 10:53:04</p> <p>22 making. 10:53:11</p> <p>23 Q. What are the different types of motions? 10:53:12</p> <p>24 A. For example, one example is to overturn a 10:53:17</p> <p>25 change the committee has proposed at the 10:53:23</p> <p style="text-align: right;">Page 38</p>	<p>1 of my recollection, the only other motions 10:55:24</p> <p>2 that are available are variations of those 10:55:26</p> <p>3 main motions. 10:55:29</p> <p>4 Q. How are the motions -- how are these various 10:55:34</p> <p>5 motions you've referred to decided? 10:55:37</p> <p>6 MR. REHN: Objection as to form. 10:55:40</p> <p>7 A. It's a multistep process which starts with 10:55:42</p> <p>8 someone submitting a NITMAM, again, a notice 10:55:49</p> <p>9 of intent to make a motion. 10:55:52</p> <p>10 Q. Take me through the rest of the process, 10:55:55</p> <p>11 please. 10:55:57</p> <p>12 MR. REHN: Objection as to form, 10:55:58</p> <p>13 vague, compound. 10:56:01</p> <p>14 A. The first part of that process is that a 10:56:02</p> <p>15 person who wishes to submit a NITMAM would, 10:56:07</p> <p>16 through our online system, fill out a form 10:56:10</p> <p>17 and say what motion they wish to make. 10:56:13</p> <p>18 Q. Keep going. 10:56:16</p> <p>19 A. The next step is that motion is captured by 10:56:17</p> <p>20 our standards administration staff. 10:56:24</p> <p>21 Q. Is that all? 10:56:32</p> <p>22 A. No. 10:56:34</p> <p>23 Q. Take me through the whole process, please. 10:56:34</p> <p>24 MR. REHN: Objection as to form. 10:56:38</p> <p>25 A. The next step is our standard administration 10:56:40</p> <p style="text-align: right;">Page 40</p>
<p>1 second draft stage. In that case, anyone can 10:53:25</p> <p>2 make that motion. 10:53:31</p> <p>3 Q. What other types of motions can continue the 10:53:35</p> <p>4 debate? 10:53:51</p> <p>5 MR. REHN: Objection as to form. 10:53:51</p> <p>6 A. Another motion is to accept a public comment. 10:53:53</p> <p>7 Q. Who can make that kind of motion? 10:54:00</p> <p>8 A. The submitter of that public comment. 10:54:07</p> <p>9 Q. What other types of motions can occur after 10:54:13</p> <p>10 the second draft report? 10:54:21</p> <p>11 A. In some cases you can make a motion to return 10:54:24</p> <p>12 the entire document. 10:54:28</p> <p>13 Q. Does that mean return the entire document to 10:54:30</p> <p>14 the technical committee to start all over 10:54:38</p> <p>15 again? 10:54:40</p> <p>16 MR. REHN: Objection as to form. 10:54:41</p> <p>17 A. Returning the document is for new standards, 10:54:41</p> <p>18 and it would return it back to the technical 10:54:45</p> <p>19 committee in its entirety for further action. 10:54:48</p> <p>20 Q. What other types of motion can occur after 10:54:57</p> <p>21 the second draft report? 10:55:00</p> <p>22 A. The only other motions, and in this case I 10:55:14</p> <p>23 would rely on our regulations, 10:55:18</p> <p>24 government-committed projects, there's a 10:55:22</p> <p>25 table of motions in there, but, to the best 10:55:22</p> <p style="text-align: right;">Page 39</p>	<p>1 staff provides an initial review to make sure 10:56:46</p> <p>2 the motion is in order. 10:56:48</p> <p>3 Q. I've asked you to take me through the whole 10:56:56</p> <p>4 process. Please continue, and continue until 10:56:59</p> <p>5 the end of the process. 10:57:02</p> <p>6 MR. REHN: Objection as to form. 10:57:03</p> <p>7 It's compound. 10:57:05</p> <p>8 A. The next step of the process, after standards 10:57:07</p> <p>9 administration review, is to then provide a 10:57:11</p> <p>10 report to a motions committee of our 10:57:14</p> <p>11 standards council. 10:57:17</p> <p>12 Q. Is that your complete answer to my question? 10:57:22</p> <p>13 A. No. 10:57:24</p> <p>14 Q. Please continue your answer till you've 10:57:25</p> <p>15 answered my question. 10:57:28</p> <p>16 MR. FEE: Objection. Calls for a 10:57:30</p> <p>17 narrative. 10:57:31</p> <p>18 MR. REHN: Yes, same objection and 10:57:33</p> <p>19 it's a compound question. 10:57:34</p> <p>20 A. The next step of the process is that 10:57:37</p> <p>21 subcommittee of our standards council, the 10:57:40</p> <p>22 motions committee reviews those motions and 10:57:45</p> <p>23 determines if they're in order or not in 10:57:46</p> <p>24 order. 10:57:48</p> <p>25 Q. So that's your testimony as to what the 10:58:07</p> <p style="text-align: right;">Page 41</p>

<p>1 complete process is? 10:58:09 2 A. No. 10:58:10 3 Q. My question was please describe the complete 10:58:11 4 process. 10:58:14 5 MR. REHN: Same objection. 10:58:15 6 Q. Can you please answer my questions. 10:58:16 7 MR. REHN: It calls for a narrative 10:58:19 8 answer. It's a compound question. I'm 10:58:21 9 objecting on that basis. 10:58:22 10 MR. BRIDGES: You can make that 10:58:22 11 objection, but that's not an instruction not 10:58:23 12 to answer the question as I've asked. 10:58:25 13 Q. So I'm not sure why you have a hard time 10:58:28 14 answering the question I have given you. I'm 10:58:31 15 asking you to lay out the rest of the 10:58:33 16 complete process. 10:58:35 17 MR. REHN: Same objections. 10:58:36 18 A. The next step of the process after the 10:58:39 19 motions committee reviews it, there is a vote 10:58:42 20 of the motions committee to determine what 10:58:44 21 motions are in order or not in order and a 10:58:47 22 motions committee report is published. 10:58:50 23 Q. Do you have anything further to say in answer 10:58:54 24 to the question? 10:58:57 25 MR. REHN: Same objection. It's 10:58:58</p> <p style="text-align: right;">Page 42</p>	<p>1 there's many, many steps. Each one has 11:00:23 2 multiple points. 11:00:25 3 Q. Please take me through it. 11:00:28 4 MR. REHN: Same objections. 11:00:30 5 Q. Please tell me what the steps are and the 11:00:31 6 multiple points are in that process and tell 11:00:35 7 me when your answer is complete. 11:00:37 8 MR. REHN: Same objections. 11:00:38 9 Compound question. 11:00:39 10 A. For clarification, I'd like you to state 11:00:41 11 where you would like me to start. 11:00:44 12 Q. Where you left off. 11:00:45 13 A. After the appeal process, if there's none, 11:00:48 14 then that would be the motions committee 11:00:57 15 report, which would be the agenda for our 11:00:59 16 technical committee session. 11:01:01 17 Q. Tell me when you're answer is complete. 11:01:14 18 MR. REHN: Objection as to form. If 11:01:17 19 there's a specific question pending -- 11:01:20 20 MR. BRIDGES: There is a specific 11:01:25 21 question pending. 11:01:25 22 MR. REHN: The question is extremely 11:01:25 23 broad. It's calling for a long narrative 11:01:28 24 answer and it's compound. It's vague. And 11:01:31 25 he's answering the question. 11:01:33</p> <p style="text-align: right;">Page 44</p>
<p>1 vague now, in addition. 10:59:01 2 A. To the point that we have come to in the 10:59:06 3 process, my answer is complete. 10:59:08 4 Q. I'm asking you to tell me about the complete 10:59:09 5 process. For some reason you're resisting 10:59:12 6 giving an answer to the question I've made. 10:59:14 7 I'm asking you for a complete answer to 10:59:17 8 describe the entire process. 10:59:19 9 MR. REHN: Objection as to form. 10:59:21 10 Argumentative, calls for a compound. It's a 10:59:22 11 compound question, calls for a narrative. 10:59:25 12 You're now pretty vague about what we're even 10:59:27 13 talking about. 10:59:30 14 Q. You may answer. 10:59:33 15 A. Once the motions committee report is 10:59:37 16 published, there is an opportunity for appeal 10:59:40 17 or challenge of that motions committee 10:59:43 18 report. 10:59:47 19 Q. So is your answer now complete? 10:59:50 20 A. No. 10:59:52 21 Q. Tell me when your answer is complete, please. 10:59:52 22 MR. REHN: Objection as to form. 11:00:06 23 Argumentative. It's a compound question. 11:00:07 24 A. I would ask that you restate the question 11:00:15 25 because our process is a long process and 11:00:19</p> <p style="text-align: right;">Page 43</p>	<p>1 MR. BRIDGES: Your objections are 11:01:35 2 noted. 11:01:36 3 MR. REHN: Is there a question 11:01:37 4 pending? 11:01:38 5 MR. BRIDGES: Yes, there is. 11:01:39 6 MR. REHN: I'm not aware of it. 11:01:40 7 A. Can you please restate the question for me. 11:01:44 8 Q. Please tell me what the steps are and the 11:01:52 9 multiple points that are in that process and 11:02:03 10 tell me when your answer is complete. 11:02:07 11 A. Again, for clarification. 11:02:11 12 MR. REHN: Objection as to form. 11:02:13 13 It's clearly a compound question, and I 11:02:15 14 object on that basis in addition to the form 11:02:19 15 of the question and the other objections that 11:02:23 16 we've noted. 11:02:27 17 A. Again, for clarification, you picked one 11:02:29 18 point in our process and my answer is not 11:02:34 19 complete. If you have a specific question 11:02:40 20 related to our process, I'd be happy to 11:02:41 21 answer that. 11:02:45 22 Q. I want you to complete describing the process 11:02:45 23 that I asked you about. I asked you to take 11:02:48 24 me through the whole process and the multiple 11:02:51 25 points. I'm asking you to give a complete 11:02:54</p> <p style="text-align: right;">Page 45</p>

<p>1 description. 11:02:58</p> <p>2 MR. REHN: Same objection. 11:03:00</p> <p>3 Q. That's a fair question and if you're refusing 11:03:01</p> <p>4 to answer, that's fine. Are you saying 11:03:03</p> <p>5 you're refusing to answer my question? 11:03:05</p> <p>6 MR. REHN: Same objection. 11:03:07</p> <p>7 Argumentative. Mischaracterizes what the 11:03:08</p> <p>8 witness has said. And if you have a specific 11:03:12</p> <p>9 question about the process, please ask that 11:03:16</p> <p>10 question. 11:03:18</p> <p>11 MR. BRIDGES: No, I have a general 11:03:18</p> <p>12 question about the process that I'm asking 11:03:20</p> <p>13 him to give me a complete answer to. 11:03:22</p> <p>14 Q. So please keep going. 11:03:23</p> <p>15 MR. REHN: We registered our 11:03:24</p> <p>16 objections to that question. 11:03:26</p> <p>17 MR. BRIDGES: Many times. 11:03:26</p> <p>18 MR. REHN: It's vague. It's 11:03:27</p> <p>19 compound. 11:03:28</p> <p>20 MR. BRIDGES: And you've not 11:03:28</p> <p>21 instructed him not to answer. 11:03:30</p> <p>22 MR. FEE: It's obvious the witness 11:03:31</p> <p>23 doesn't understand what you're asking. 11:03:33</p> <p>24 MR. BRIDGES: No, he understands 11:03:34</p> <p>25 what I'm asking. 11:03:35</p> <p style="text-align: right;">Page 46</p>	<p>1 all you want. And if he's not answering, 11:04:20</p> <p>2 the record will show that. We can take a 11:04:22</p> <p>3 break. If he wants to look back through the 11:04:23</p> <p>4 transcript and understand what the question 11:04:25</p> <p>5 is, fine. Let's go off the record. 11:04:26</p> <p>6 MR. REHN: Okay. We can go off the 11:04:29</p> <p>7 record. 11:04:31</p> <p>8 VIDEOGRAPHER: The time is 11:04. 11:04:31</p> <p>9 We are now off the record. 11:04:33</p> <p>10 (Break taken) 11:04:34</p> <p>11 VIDEOGRAPHER: The time is 11:14. 11:14:13</p> <p>12 We are now back on the record. 11:14:26</p> <p>13 (Exhibit 1227 marked for 11:14:32</p> <p>14 identification.) 11:14:32</p> <p>15 BY MR. BRIDGES: 11:14:36</p> <p>16 Q. Mr. Dubay, I've handed you Exhibit 1227, I 11:14:36</p> <p>17 believe that is. What is that document? 11:14:42</p> <p>18 A. To me it appears to be a portion of our 11:14:45</p> <p>19 regulations governing committee projects, our 11:14:51</p> <p>20 actual standards directory. 11:14:55</p> <p>21 Q. You say it's a portion of the regulations? 11:14:57</p> <p>22 A. I'll correct that slightly, that I believe 11:14:59</p> <p>23 it's a portion of our directory which 11:15:02</p> <p>24 includes our regulations. And it appears to 11:15:04</p> <p>25 be, to the best of my quick review, a set of 11:15:09</p> <p style="text-align: right;">Page 48</p>
<p>1 Q. Please proceed. 11:03:36</p> <p>2 MR. REHN: Please proceed? Is there 11:03:38</p> <p>3 a question pending? Can you please ask a 11:03:40</p> <p>4 question. 11:03:42</p> <p>5 MR. BRIDGES: The question is 11:03:42</p> <p>6 pending. 11:03:43</p> <p>7 MR. REHN: Can you repeat the 11:03:45</p> <p>8 question. 11:03:46</p> <p>9 MR. BRIDGES: We'll go off the 11:03:46</p> <p>10 record and then I can repeat it to him and 11:03:48</p> <p>11 let him soak it in as long as he wants, but 11:03:51</p> <p>12 he's wasted so much time in this fashion 11:03:55</p> <p>13 and you've wasted time with the objections. 11:03:56</p> <p>14 I'm trying to get a straightforward answer 11:03:58</p> <p>15 about the process. Let's go off the record 11:04:01</p> <p>16 and he can -- 11:04:02</p> <p>17 MR. REHN: Andrew, we're not going 11:04:02</p> <p>18 off the record quite yet. Your points are 11:04:03</p> <p>19 poorly taken. Your question is improper, and 11:04:06</p> <p>20 you're the one wasting time by not asking 11:04:08</p> <p>21 specific questions to invoke specific answers 11:04:11</p> <p>22 rather than improper, general, compound and 11:04:14</p> <p>23 vague questions. 11:04:16</p> <p>24 MR. BRIDGES: They're not 11:04:16</p> <p>25 objectionable. You can make your objections 11:04:17</p> <p style="text-align: right;">Page 47</p>	<p>1 our current regulations. 11:15:11</p> <p>2 Q. This is a complete set of the current 11:15:13</p> <p>3 regulations, correct? 11:15:15</p> <p>4 A. The best I can tell just flipping through, it 11:15:17</p> <p>5 looks complete. 11:15:20</p> <p>6 Q. These are the regulations that set forth 11:15:21</p> <p>7 the process that we were discussing before 11:15:23</p> <p>8 the break in the deposition; is that correct? 11:15:24</p> <p>9 A. Yes. 11:15:27</p> <p>10 MR. REHN: Objection as to form. 11:15:28</p> <p>11 Q. Do they contain a complete set of the 11:15:29</p> <p>12 procedures used in the development of NFPA 11:15:35</p> <p>13 standards? 11:15:41</p> <p>14 A. Yes, these are our regulations which define 11:15:43</p> <p>15 how our standards process works. 11:15:46</p> <p>16 Q. And it defines the various entities such as 11:15:48</p> <p>17 committees and councils that participate in 11:15:54</p> <p>18 that process; is that correct? 11:15:57</p> <p>19 MR. REHN: Objection as to form. 11:16:01</p> <p>20 A. The regulations actually cover our operations 11:16:03</p> <p>21 from our standards council through the 11:16:08</p> <p>22 committees, through the development of the 11:16:10</p> <p>23 standards as well as through such things as 11:16:12</p> <p>24 tentative interim amendments and formal 11:16:16</p> <p>25 interpretations. 11:16:18</p> <p style="text-align: right;">Page 49</p>

1 Q. Is there anything about the development of 11:16:19
 2 standards that the regulations do not cover? 11:16:21
 3 A. Our regulations cover the specific accredited 11:16:27
 4 rules and hence, its regulations. We also 11:16:33
 5 have our committee officers guide which 11:16:35
 6 provides guidance to our technical committee 11:16:37
 7 members as well as our chairs and our manual 11:16:41
 8 style. 11:16:46
 9 Q. What other documents govern or regulate the 11:16:46
 10 development of standards within NFPA? 11:17:44
 11 A. Off the top of my head I can't think of 11:17:56
 12 anything else. 11:17:59
 13 Q. Who participates in -- strike that. 11:18:09
 14 Who are the members, generally 11:18:17
 15 speaking, the category of NFPA's technical 11:18:20
 16 committees? 11:18:26
 17 A. Just for clarification, the representation or 11:18:29
 18 are they members of NFPA? We have 11:18:36
 19 categories -- we have interest categories of 11:18:39
 20 our committee members. 11:18:43
 21 Q. Who -- what persons are entitled to be 11:18:43
 22 members of NFPA's technical committees? 11:18:48
 23 MR. REHN: Objection as to form. 11:18:51
 24 A. Anyone can apply to be a member of an NFPA 11:18:55
 25 technical committee, and based upon their 11:18:59
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1 expertise and their background, they're 11:19:01
 2 evaluated through a process that ultimately 11:19:04
 3 involves standards council appointing them 11:19:07
 4 to, or not appointing, depending on their 11:19:10
 5 credentials, to the various technical 11:19:12
 6 committees. 11:19:14
 7 Q. So the standards council determines who gains 11:19:17
 8 admission to membership in the technical 11:19:21
 9 committees? 11:19:23
 10 A. That's correct. 11:19:24
 11 Q. What criteria does the standards council 11:19:27
 12 apply in determining who should gain 11:19:35
 13 membership to the technical committees? 11:19:39
 14 MR. REHN: Objection as to form. 11:19:42
 15 A. It's a multipart criteria. First is 11:19:46
 16 technical expertise within that subject 11:19:51
 17 matter. Second is balance; is the committee 11:19:54
 18 an appropriate balance. And third is the 11:20:01
 19 ability to participate. 11:20:02
 20 Q. What do you mean by balance? 11:20:06
 21 A. By our regulations, NFPA technical committees 11:20:12
 22 are required to have a balance of interest 11:20:16
 23 categories to ensure that no one party or one 11:20:18
 24 interest category can dominate the process. 11:20:21
 25 Q. What are the interest categories? 11:20:24
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1 A. There are, I believe, nine interest 11:20:27
 2 categories, including -- one example is 11:20:31
 3 research and testing is an example. Another 11:20:37
 4 example is enforcer, which includes 11:20:40
 5 government officials, both, sometimes federal 11:20:44
 6 but state and local jurisdictions, as well as 11:20:48
 7 special expert, which is consultants as an 11:20:52
 8 example. 11:20:56
 9 Users, installer maintainers which 11:20:56
 10 are those who install the systems, consumers, 11:21:02
 11 and that's all I can think of. I'm not sure 11:21:13
 12 if I said it, but consumer is another one 11:21:30
 13 that can represent a special -- have a 11:21:34
 14 specific slot. Oh, I'm sorry, one other slot 11:21:35
 15 is labor, is another slot. 11:21:38
 16 Q. Thank you. Are all NFPA employees members of 11:21:51
 17 the technical committees? 11:22:16
 18 MR. REHN: Objection as to form. 11:22:20
 19 A. NFPA employees are not -- cannot be members 11:22:23
 20 of our technical committees. However, as I 11:22:27
 21 stated previously, it's important -- there's 11:22:30
 22 an important role that NFPA staff plays in 11:22:32
 23 guiding, advising the committee, coordinating 11:22:35
 24 the activities and providing their technical 11:22:37
 25 expertise, especially technical staff liaison 11:22:40
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1 into this committee process. But they do not 11:22:43
 2 have -- they're not members of the committee, 11:22:46
 3 and they do not carry a vote in the decisions 11:22:48
 4 of the committees. 11:22:51
 5 Q. Who constitutes by category of employment 11:23:01
 6 is -- strike that. 11:23:08
 7 By category of employment, who 11:23:09
 8 constitutes the members of the standards 11:23:11
 9 council? 11:23:15
 10 MR. REHN: Objection as to form. 11:23:15
 11 It's vague. 11:23:17
 12 A. I'd like to provide just a quick comment to 11:23:19
 13 help you clarify the question from my 11:23:26
 14 understanding. Oftentimes our council 11:23:27
 15 members and our committee members are not 11:23:29
 16 appointed based upon employment. It's based 11:23:31
 17 upon the interest category they represent. 11:23:33
 18 Q. Thank you, yes. By interest category -- 11:23:37
 19 strike that. 11:23:43
 20 You mentioned interest categories 11:23:44
 21 for technical committee membership, correct? 11:23:47
 22 A. Yes. 11:23:49
 23 Q. Do the same interest categories apply for 11:23:49
 24 appointments or election to -- strike that. 11:23:53
 25 How is the standards council -- strike that. 11:23:58
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<p>1 How are persons chosen to serve on 11:24:06 2 the standards council? 11:24:08 3 MR. REHN: Object to the form. 11:24:12 4 A. Because the standards council is the 11:24:15 5 overarching body over our entire standards 11:24:18 6 development process, they are appointed 11:24:21 7 through a process that involves the NFPA 11:24:24 8 president making recommendations to the NFPA 11:24:27 9 board of directors. Ultimately the standards 11:24:29 10 council members are appointed by our board of 11:24:33 11 directors. 11:24:35 12 Q. Are any NFPA employees members of the 11:24:40 13 standards council? 11:24:43 14 MR. REHN: Objection as to form. 11:24:45 15 A. Specifically, no. However, similar to the 11:24:49 16 technical committees, there is staff assigned 11:24:51 17 to support the standards council, their 11:24:55 18 activities and their decisions. 11:24:58 19 Q. I'd like to go back for a moment to the 11:25:11 20 process after the technical committee has 11:25:19 21 decided on changes to a standard. 11:25:26 22 And you say that a staff 11:25:31 23 representative, NFPA staff representative 11:25:38 24 will capture those changes from the technical 11:25:41 25 committee, correct? 11:25:44</p> <p style="text-align: right;">Page 54</p>	<p>1 It's ambiguous. 11:26:54 2 A. The final decision is accomplished through 11:26:56 3 that ballot of the technical committee, but 11:26:58 4 the wording itself is that combination of the 11:27:01 5 technical staff and the committee working to 11:27:05 6 capture the requirement and get it worded 11:27:07 7 properly in the right context, in the right 11:27:09 8 order within a document so that when the 11:27:12 9 final specific words are balloted, the 11:27:14 10 committee has it in context of the whole 11:27:18 11 standards and they can make that decision, 11:27:20 12 seeing it within the body of the standard. 11:27:22 13 Q. When the text is balloted, is there any 11:27:24 14 indication to the members of the committee 11:27:27 15 what variations have occurred as a 11:27:32 16 consequence of staff input from the text that 11:27:38 17 the committee itself was proposing? 11:27:43 18 MR. REHN: Objection as to form. 11:27:47 19 Vague. Lacks foundation. Assumes facts not 11:27:48 20 in evidence. 11:27:51 21 A. There are really two types of changes the 11:27:53 22 committee is balloted on. One is the -- a 11:27:57 23 plain first revision or second revision, 11:28:01 24 which may have been edited to comply with our 11:28:04 25 manual style, get the wording right. That is 11:28:07</p> <p style="text-align: right;">Page 56</p>
<p>1 MR. REHN: Object to the form. 11:25:48 2 A. The NFPA technical staff that serves as, the 11:25:50 3 term we use is a staff liaison to a technical 11:25:54 4 committee, they do more than just capture the 11:25:56 5 specific wordings. 11:26:00 6 What they do is they are each 11:26:01 7 technical experts in their field and they not 11:26:03 8 only capture or record those changes, but 11:26:06 9 they provide their expertise to the 11:26:09 10 committee, their field experience, what they 11:26:11 11 have, the information that they're bringing 11:26:14 12 in through questions on the standards and 11:26:16 13 such. 11:26:18 14 And they provide that technical 11:26:19 15 expertise to the committee so the committee 11:26:21 16 can utilize that, a complete combination with 11:26:24 17 all the public input or comments, to land on 11:26:27 18 a final set of proposed language. In 11:26:32 19 summary, it's more than just recording. 11:26:37 20 They're not really recording secretaries, per 11:26:39 21 se. 11:26:43 22 Q. But who ultimately determines the language of 11:26:43 23 the technical committee's proposed changes to 11:26:47 24 a code or standard? 11:26:51 25 MR. REHN: Objection as to form. 11:26:53</p> <p style="text-align: right;">Page 55</p>	<p>1 connected directly to the work of the 11:28:09 2 committee. The second is a revision that's 11:28:11 3 tied to a pure editorial change. 11:28:15 4 Q. Do either of these sets of revisions get 11:28:19 5 identified to technical committee members so 11:28:24 6 that they can understand what input or 11:28:28 7 changes, if any, the technical committee 11:28:31 8 staff contributed? 11:28:35 9 MR. REHN: Objection as to form. 11:28:41 10 A. Yes, they all do. All changes are indicated 11:28:44 11 to the technical committees for balloting. 11:28:48 12 And if there is, in the sense of an editorial 11:28:50 13 revision, it's indicated that this was 11:28:54 14 identified by staff as a potential editorial 11:28:57 15 revision. The committee can then, in their 11:29:01 16 voting, decide whether that change moves 11:29:05 17 forward or not. 11:29:10 18 Q. Where in the records of the development of 11:29:10 19 each standard does one find the indications 11:29:12 20 of those changes? 11:29:17 21 MR. REHN: Objection to the form. 11:29:21 22 A. They are part of the first draft report or, 11:29:25 23 and/or, depending, the second draft report. 11:29:29 24 Both those reports consolidate the whole 11:29:33 25 record. 11:29:35</p> <p style="text-align: right;">Page 57</p>

<p>1 Q. Where does one find the first draft report 11:29:36 2 and the second draft report? 11:29:38 3 A. On our document information pages. We call 11:29:40 4 them doc info pages. It's our website. 11:29:46 5 Q. Are any of the -- those changes identified in 11:29:52 6 any publicly available document? 11:30:05 7 A. Our process is completely open to the public. 11:30:14 8 All of those changes, documents, reports are 11:30:18 9 publicly available to anyone on our website. 11:30:21 10 Q. So I can go find the first draft report and 11:30:25 11 the second draft of any code or standard on 11:30:27 12 an NFPA's website? 11:30:30 13 MR. REHN: Object to the form. It's 11:30:34 14 vague as to time. 11:30:37 15 A. I would say provided there is a first or 11:30:40 16 second draft report. Some documents at the 11:30:43 17 stage may not have one. So if there's a 11:30:46 18 document in a revision cycle or there is a 11:30:49 19 first or second report, it would be 11:30:51 20 available, absolutely. 11:30:53 21 Q. Are the first or second draft reports 11:30:54 22 publicly available of the 2008 NEC? 11:30:57 23 MR. REHN: Objection as to form. 11:31:04 24 A. The 2008 NEC was published under our old, 11:31:07 25 excuse me, our old standards development 11:31:14 Page 58</p>	<p>1 MR. REHN: Same objection. 11:32:34 2 A. What I can say about when you look at the 11:32:36 3 wording of a standard, what's been added or 11:32:39 4 worked on by technical staff is, any changes, 11:32:42 5 any text that has been modified in the 11:32:45 6 document has been worked on by technical 11:32:47 7 staff, has been modified, been adjusted to 11:32:49 8 fit the form of our manual style as well as 11:32:54 9 to be consistently worded with the technical 11:32:57 10 body of the standard. 11:32:59 11 So each and every change has been 11:33:01 12 clarified or worked on by technical staff to 11:33:06 13 get it ready for committee ballot. So 11:33:09 14 there's an extensive amount of time. The NEC 11:33:11 15 is an excellent example of the NFPA staff get 11:33:15 16 it worded correctly and in proper format, 11:33:18 17 style and technical comments to be balloted 11:33:23 18 by the technical committee. 11:33:28 19 Q. Where can one detect what changes -- you used 11:33:28 20 the word "worked on," for example. That's a 11:33:33 21 little vague in this context. I would like 11:33:36 22 to know how one can identify any text 11:33:38 23 contributed by technical committee staff 11:33:42 24 liaison in any NFPA code or standard. 11:33:48 25 MR. REHN: Objection as to form. 11:33:54 Page 60</p>
<p>1 system, so there would not be a first or 11:31:14 2 second draft report. There would be a report 11:31:17 3 on proposals and a report on comments. 11:31:23 4 Q. Does either of those reports show what 11:31:26 5 changes in text may have been contributed by 11:31:30 6 technical staff, technical committee 11:31:33 7 liaisons? 11:31:38 8 A. All of the changes in our old system were 11:31:41 9 contained within the proposals and action on 11:31:45 10 proposals and comment and actions on 11:31:48 11 comments, so, in some cases, they may have 11:31:50 12 been called out on the report and in some 11:31:53 13 cases not. 11:31:56 14 Ultimately, all of them had been 11:31:57 15 balloted through the technical committees. 11:31:58 16 Whatever you see in the report on proposals 11:32:01 17 are comments that had gone through the 11:32:03 18 committee process. 11:32:05 19 Q. I'm trying to understand how one can 11:32:05 20 ascertain what, if any, text in any code or 11:32:08 21 standard has been contributed by NFPA 11:32:17 22 technical staff. 11:32:21 23 MR. REHN: Objection as to form, and 11:32:26 24 the compound nature of the question. 11:32:29 25 Q. Please tell me how one can ascertain that. 11:32:31 Page 59</p>	<p>1 It's ambiguous. It's compound. 11:33:55 2 A. Because -- how can I explain. Because 11:34:03 3 ultimately the final text, the changes are 11:34:06 4 balloted by the technical committee, 11:34:10 5 oftentimes the staff's work on that text is 11:34:12 6 contained within the same wording that's 11:34:15 7 being balloted, the ultimate wording that's 11:34:17 8 balloted by the committee. 11:34:20 9 So in our old system, that was 11:34:21 10 all -- when you see a change in the document, 11:34:22 11 you can know, and that's why I had my 11:34:24 12 previous answer, that staff was involved in 11:34:26 13 that process. 11:34:28 14 In the new process that happens with 11:34:30 15 every revision, every revision staff is 11:34:31 16 involved in and worked on and more or less 11:34:35 17 touched, modified, cleaned up to get it ready 11:34:37 18 for balloting. 11:34:40 19 There's also an additional level in 11:34:41 20 our new process of editorial revisions so 11:34:42 21 that it's clear to the committee that this is 11:34:47 22 something that is not directly tied but it is 11:34:48 23 because of another technical change. So it's 11:34:52 24 just slightly different. 11:34:54 25 But I can say clearly, if you see a 11:34:56 Page 61</p>

<p>1 revision to the document or a change, for 11:34:57 2 example, to the 2008 NEC, that text has been 11:35:00 3 worked on by editorial production, technical 11:35:05 4 expertise of the staff liaisons on that 11:35:07 5 project. That's their job. 11:35:11 6 Q. But I'm not asking about what the technical 11:35:14 7 staff have worked on because they may have 11:35:16 8 worked on language that may have come from 11:35:20 9 the 2005 NEC that has survived into the 2008, 11:35:22 10 2011, 2014. I'm asking how does one identify 11:35:29 11 any text contributed by a technical committee 11:35:34 12 staff liaison in any code or standard of NEC? 11:35:41 13 MR. REHN: Objection as to form. 11:35:45 14 That's ambiguous. It's compound. 11:35:48 15 A. Again, to further try to clarify this is if 11:35:52 16 the text was in a previous edition of the 11:35:57 17 document and moved forward, it would not 11:36:00 18 show an indication of being modified. But 11:36:03 19 wherever there is new text added, deleted 11:36:06 20 or modified, there's an indication in the 11:36:09 21 margin or shading, in the case of NEC, that 11:36:11 22 shows that text has been modified, worked 11:36:15 23 on, whatever. 11:36:18 24 And those words can come from lots 11:36:18 25 of places. And the technical staff is 11:36:20</p> <p style="text-align: right;">Page 62</p>	<p>1 understanding in the process all goes around 11:37:37 2 NFPA's intellectual property, around working 11:37:40 3 through developing a standard that ultimately 11:37:43 4 is an NFPA document. 11:37:46 5 MR. BRIDGES: Move to strike to the 11:37:49 6 extent he lacks competence and draws legal 11:37:50 7 conclusions. 11:37:55 8 Q. My question is what -- you've mentioned that 11:37:58 9 comments and proposals may show proposed 11:38:07 10 language, correct? 11:38:12 11 MR. REHN: Objection as to form. 11:38:16 12 A. You mentioned comments and proposals, which 11:38:20 13 again, is our old system, and in that case, 11:38:22 14 based upon your previous question, one method 11:38:24 15 to understand where the text came from would 11:38:28 16 be to review each and every proposal and 11:38:31 17 comments that is submitted into our standard 11:38:33 18 development system to see what language was 11:38:36 19 submitted by the person or persons or 11:38:38 20 organizations submitting public comments or 11:38:40 21 proposals, which is part of our copyright and 11:38:42 22 transfer to the committee. 11:38:46 23 MR. BRIDGES: Move to strike the 11:38:50 24 self-serving legal statement. 11:38:51 25 Q. So that tells us what suggestions and text 11:38:55</p> <p style="text-align: right;">Page 64</p>
<p>1 involved through the committee meeting as 11:36:24 2 well as the public, in the case of the ROP 11:36:27 3 proposals, comments or public input or 11:36:32 4 public comments, which is all developed 11:36:33 5 ultimately to be balloted by the technical 11:36:35 6 committee. 11:36:37 7 Q. So my question is, when all of these changes 11:36:38 8 are highlighted, how do we know which changes 11:36:41 9 came from the technical committee staff 11:36:45 10 liaison or other NFPA staff as opposed to 11:36:49 11 from the technical committee members or the 11:36:55 12 public? 11:36:58 13 MR. REHN: Same objections as to 11:36:59 14 the form. It's ambiguous. It's compound. 11:37:01 15 A. One way to determine that is you could review 11:37:07 16 each and every of our proposal and comment 11:37:13 17 forms where the material is submitted and 11:37:17 18 copyright is signed over to us as NFPA and 11:37:19 19 our committees act from that. 11:37:22 20 So you could review each and every 11:37:24 21 one of those, see what words were submitted, 11:37:26 22 what words were developed by the committee, 11:37:28 23 ultimately compare that to the final balloted 11:37:31 24 text. 11:37:34 25 But ultimately in the end, the 11:37:34</p> <p style="text-align: right;">Page 63</p>	<p>1 came from non-NFPA staff members, correct? 11:39:01 2 MR. REHN: Objection as to form. 11:39:08 3 Mischaracterizes. Ambiguous. 11:39:10 4 Q. Let me ask you this: Do NFPA staff members 11:39:15 5 submit forms with their proposed changes 11:39:19 6 apart from the proposed changes that come 11:39:23 7 through the technical committee process? 11:39:28 8 MR. REHN: Objection as to form. 11:39:36 9 Ambiguous. May call for speculation. 11:39:38 10 A. NFPA staff are prohibited from submitting 11:39:43 11 forms, public proposals, comments in the old 11:39:48 12 system, public input, public comments into 11:39:53 13 the new system. 11:39:54 14 Q. Why are they prohibited from doing so? 11:39:57 15 MR. REHN: Objection as to form. 11:40:01 16 A. Because the reason NFPA staff are prohibited 11:40:06 17 from participation at that level of our 11:40:10 18 process is to ensure that they are acting as 11:40:12 19 neutral facilitators as well as focusing on 11:40:16 20 capturing and working with the committee and 11:40:19 21 using their expertise to accomplish the goals 11:40:21 22 of the technical committee. 11:40:23 23 Q. So if you need to identify language that NFPA 11:40:28 24 staff members on their own contributed to any 11:40:39 25 NFPA codes or standards, where would you 11:40:48</p> <p style="text-align: right;">Page 65</p>

<p>1 go -- strike that. 11:40:50 2 If you needed to identify the 11:40:53 3 language that NFPA employees contributed to 11:40:55 4 NFPA codes and standards, how would you 11:41:05 5 determine that language? 11:41:07 6 MR. REHN: Objection as to form. 11:41:10 7 It's vague and compound. 11:41:11 8 A. What we could determine is the language the 11:41:15 9 technical committee at the end of the day 11:41:19 10 approved. Into -- each individual word and 11:41:21 11 such would be difficult, if not impossible, 11:41:25 12 because of ultimately the technical staff 11:41:30 13 provides that content to the committee which 11:41:33 14 then approves those words. 11:41:35 15 Q. You said the technical staff provides the 11:41:37 16 content to the committee? The technical 11:41:44 17 staff doesn't draft the standards, correct? 11:41:47 18 MR. REHN: Objection as to form. 11:41:51 19 Mischaracterizes. 11:41:53 20 A. In many cases the technical staff in the room 11:41:59 21 is drafting the text. 11:42:02 22 Q. Is proposing new text? 11:42:04 23 A. In some cases yes, to accomplish what the 11:42:10 24 committee is trying to accomplish. The 11:42:13 25 technical staff of NFPA are experts in their 11:42:15</p> <p style="text-align: right;">Page 66</p>	<p>1 that the text of the technical committee is 11:43:16 2 balloted? 11:43:19 3 MR. REHN: Objection as to form. 11:43:20 4 Ambiguous. Compound. 11:43:22 5 A. The text can evolve and by evolve, you mean 11:43:25 6 created and included? Is that what you're 11:43:28 7 saying? 11:43:31 8 Q. I think so. 11:43:32 9 A. So in a few ways. One is it can be submitted 11:43:33 10 through a proposal form or public input form 11:43:37 11 or a public comment form. The language can 11:43:45 12 come from that. It can come from the 11:43:49 13 expertise of the technical committee members 11:43:53 14 who are sitting on the committee, or it can 11:43:55 15 come from technical staff providing that to 11:43:58 16 the committee as their work progresses along. 11:44:01 17 Ultimately that evolution is the 11:44:06 18 staff liaison synthesizes all that with the 11:44:08 19 direction of the committee to land on the 11:44:13 20 final technical language that is balloted. 11:44:15 21 Q. With the direction of the committee, meaning 11:44:18 22 with the approval of the committee members? 11:44:29 23 MR. REHN: Objection as to form. 11:44:31 24 Mischaracterizes the testimony. 11:44:34 25 Q. What do you mean by with the direction of the 11:44:36</p> <p style="text-align: right;">Page 68</p>
<p>1 field, and the committee may want to 11:42:20 2 establish a requirement for X and the 11:42:23 3 technical staff is there saying, well, we can 11:42:24 4 word it this way and that way, does this meet 11:42:27 5 your intent, how about we do this, I can 11:42:29 6 research some information, get back to you at 11:42:30 7 the next meeting. 11:42:32 8 The technical staff provides a vital 11:42:33 9 role in helping the technical committee 11:42:35 10 accomplish their mission of developing those 11:42:38 11 words that become ultimately the final words 11:42:40 12 of the standard. 11:42:43 13 Q. Who makes the decision about the words in a 11:42:44 14 standard? 11:42:46 15 MR. REHN: Objection as to form. 11:42:46 16 Ambiguous. 11:42:48 17 A. The final decision is -- and to summarize, 11:42:49 18 it's a two-part decision. A committee 11:42:54 19 ballots on it, the ballot's on the final 11:42:55 20 word, the committee approves it. At the 11:42:58 21 end of the day our standards council issues 11:43:00 22 that document, but the committee ballot 11:43:03 23 establishes the position of the type of 11:43:03 24 committee at that time. 11:43:07 25 Q. And how does the text evolve up to the point 11:43:07</p> <p style="text-align: right;">Page 67</p>	<p>1 committee? 11:44:38 2 A. So a committee could want to establish a 11:44:40 3 requirement again for X for something and 11:44:45 4 they may say, we want the requirement to read 11:44:48 5 12 and the staff liaison would have to put 11:44:51 6 text around that to get it to read in context 11:44:55 7 of the document. Or they may say we want to 11:44:57 8 have a draft chapter on something, technical 11:45:00 9 staff can you do research, pull together 11:45:03 10 drafting of documents to present to the 11:45:12 11 committee to consider. 11:45:14 12 In the end the committee will agree 11:45:16 13 through a meeting vote what text is going to 11:45:19 14 move forward towards ballot. Then the 11:45:21 15 staff's job is to turn that into a ballot and 11:45:24 16 make sure it fits to our manual style and 11:45:28 17 ballot with the technical committee on the 11:45:28 18 final language. 11:45:31 19 Q. What criteria do technical committees use 11:45:31 20 to determine what text moves forward to a 11:45:34 21 ballot? 11:45:37 22 MR. REHN: Objection as to form. 11:45:38 23 A. It's their expertise. It's their 11:45:42 24 professional opinion in a balanced way 11:45:46 25 through a meeting vote of what they believe 11:45:48</p> <p style="text-align: right;">Page 69</p>

1 will move forward. There's motions we 11:45:50
 2 follow, Robert's Rules of Order, and when 11:45:53
 3 there's a motion and it carries by a meeting 11:45:55
 4 vote, which is 50 percent plus one, that 11:45:57
 5 proposed change is then approved to move 11:46:00
 6 forward to ballot, to letter ballot, excuse 11:46:02
 7 me. 11:46:08
 8 Q. Your answer focused on the process. I'm 11:46:08
 9 asking what criteria the technical committee 11:46:10
 10 members use to decide what text to move 11:46:15
 11 forward to a ballot. 11:46:18
 12 MR. REHN: Objection as to form. 11:46:20
 13 A. I would think the criteria would depend on 11:46:24
 14 each individual member of the technical 11:46:26
 15 committee and their expertise and what bar 11:46:28
 16 they believe needs to be crossed or what 11:46:31
 17 things they need to have answered 11:46:32
 18 professionally to make a decision to modify 11:46:34
 19 the standard. 11:46:36
 20 Q. What criteria in your role as the person in 11:46:36
 21 charge of standards development at NFPA -- 11:46:42
 22 strike that. 11:46:46
 23 In your role as the person in charge 11:46:46
 24 of standards development at NFPA, what do you 11:46:49
 25 understand the most typical criteria to be by 11:46:52

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1 which technical committees determine what 11:46:59
 2 text to move forward to a ballot? 11:47:02
 3 MR. REHN: Objection as to form. 11:47:04
 4 It's vague. 11:47:06
 5 A. I don't think there's a single answer to 11:47:09
 6 that, and that's why we rely on a consensus 11:47:11
 7 ballot that requires two-thirds of our 11:47:15
 8 technical committee to move anything forward. 11:47:16
 9 That's part of the open consensus process in 11:47:20
 10 that you need two-thirds of a balanced 11:47:22
 11 committee to agree on a technical change to 11:47:26
 12 move it forward. 11:47:28
 13 Each party is going to have a 11:47:29
 14 different motivation for how they want to 11:47:31
 15 vote or how they want things to go forward or 11:47:32
 16 not. 11:47:35
 17 Q. Tell me and enumerate for me some of the 11:47:35
 18 criteria that you understand them to apply in 11:47:38
 19 determining what text to move forward to a 11:47:42
 20 ballot. 11:47:44
 21 MR. REHN: Same objection. 11:47:44
 22 A. Some criteria could include what's the loss 11:47:49
 23 data associated with this issue that we're 11:47:54
 24 facing, fire loss data, injuries, deaths and 11:47:57
 25 such. Some can include economic gain. It's 11:48:00

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1 cheaper, easier to accomplish things, 11:48:04
 2 accomplishes a higher level of safety. Those 11:48:07
 3 are a few examples. 11:48:10
 4 Q. Please give me more examples of criteria that 11:48:12
 5 technical committee members would use in 11:48:16
 6 deciding what text to move forward to ballot. 11:48:18
 7 MR. REHN: Same objection. 11:48:20
 8 A. Other the examples could include research, 11:48:23
 9 data. Such things -- another example could 11:48:30
 10 be loss reports. For example, there's been a 11:48:37
 11 large fire somewhere, a large chemical hazard 11:48:41
 12 or something. There's often an investigative 11:48:43
 13 report that NTSB or CSB or local fire marshal 11:48:45
 14 has done. And the committee would look at 11:48:50
 15 that and say we may have a safety issue that 11:48:52
 16 needs to be addressed. 11:48:54
 17 Q. So you've mentioned information that they 11:48:56
 18 may -- that may motivate them, but I think 11:48:59
 19 your answers are focusing less on what 11:49:06
 20 criteria they apply to determining what text 11:49:09
 21 would move forward. 11:49:11
 22 I'd like for you to tell me the 11:49:12
 23 different criteria that technical committee 11:49:14
 24 members apply, to your knowledge, in deciding 11:49:17
 25 what text to move forward to a ballot. 11:49:20

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1 MR. REHN: Same objection. 11:49:23
 2 A. Again, I think it would be difficult, without 11:49:25
 3 speculating, I'm not sure what each person 11:49:29
 4 would use for criteria, and that's why my 11:49:31
 5 answer previously focused on having a 11:49:34
 6 balanced committee of different experts, 11:49:36
 7 topical experts in that area, will each bring 11:49:39
 8 a different set of personal criteria, 11:49:39
 9 personal decisionmaking that will decide 11:49:43
 10 what's going to move forward. 11:49:45
 11 Q. I'd like for you to tell me what some of 11:49:47
 12 those personal criteria are that you were 11:49:49
 13 aware of, based on your interactions with 11:49:52
 14 technical committee members at NFPA. 11:49:55
 15 MR. REHN: Objection as to form. 11:50:00
 16 A. I think many of those things I stated, like 11:50:01
 17 data, research reports, information combined 11:50:03
 18 is one of the main reasons, information is 11:50:09
 19 one of the main things, data, facts are 11:50:11
 20 important criteria for our committee members. 11:50:14
 21 I think the other thing that's very 11:50:17
 22 important to our committee members and to our 11:50:18
 23 process is their extensive experience in the 11:50:20
 24 field and seeing results of different 11:50:24
 25 approaches. 11:50:27

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1 Q. Let me rephrase it differently because I'm 11:50:27
 2 not sure you're responding to my question 11:50:29
 3 about criteria. What are the different 11:50:31
 4 reasons, not what background information are 11:50:34
 5 they acting on, but what are the different 11:50:38
 6 goals that, to your knowledge, technical 11:50:40
 7 committee members have in deciding whether to 11:50:45
 8 progress certain text to a ballot? 11:50:49
 9 MR. REHN: Objection as to form. 11:50:54
 10 A. I think the biggest overarching goal is the 11:50:55
 11 accomplishment of the NFPA mission. They 11:51:03
 12 want to ultimately reduce life loss, injury, 11:51:04
 13 property loss, economic loss due to fire and 11:51:09
 14 other related hazards. 11:51:11
 15 Q. How do decisions regarding progressing 11:51:13
 16 certain text to a ballot touch upon that 11:51:17
 17 mission? 11:51:24
 18 MR. REHN: Objection as to form. 11:51:26
 19 A. Fundamentally does it progress towards 11:51:30
 20 accomplishing that mission? Does the 11:51:33
 21 institution of a new technology or a new 11:51:37
 22 requirement or modifying an existing 11:51:39
 23 requirement lead to better life safety, 11:51:42
 24 better fire protection, better electrical 11:51:46
 25 safety, better protection of our nation's 11:51:48

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1 first responders? Does it accomplish the 11:51:51
 2 mission? So that's the best way. 11:51:53
 3 Q. Does it -- would you say that a general 11:51:59
 4 question that technical committees address in 11:52:05
 5 deciding whether to progress certain text to 11:52:18
 6 a ballot is whether the proposed change will 11:52:22
 7 improve outcomes? 11:52:29
 8 MR. REHN: Object to the form of the 11:52:34
 9 question. 11:52:37
 10 A. I would speculate that each decision would be 11:52:41
 11 in guidance or in alignment with improving 11:52:47
 12 safety. And those would be the outcomes, 11:52:53
 13 improving safety, reducing loss, preventing 11:52:53
 14 incidents from happening again that resulted 11:52:57
 15 in life loss injuries, property loss, 11:52:59
 16 et cetera. 11:53:04
 17 Q. Who pays for members of the technical 11:53:11
 18 committees to participate in their work? 11:53:15
 19 A. Again, a lot of my answers are it depends. 11:53:23
 20 In this case, you have everything from 11:53:26
 21 companies to people's own time, people taking 11:53:30
 22 vacation time and in some cases, NFPA 11:53:34
 23 reimburses participation through our enforcer 11:53:37
 24 fund to get public safety officials like fire 11:53:41
 25 marshals, electrical inspectors, and other, 11:53:44

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1 we call them enforcers, to attend our 11:53:46
 2 committee meetings. 11:53:48
 3 Q. Do any -- does NFPA pay any persons for their 11:53:50
 4 time in participation in the technical 11:53:57
 5 committee work? 11:54:02
 6 A. NFPA does not pay for time, but what we do 11:54:06
 7 for public sector officials who we classify 11:54:09
 8 as enforcers, we have an enforcer fund which 11:54:12
 9 we pay 80 percent of their associated travel 11:54:15
 10 to a committee meeting, including hotel, 11:54:15
 11 airfare, et cetera. 11:54:20
 12 Q. What is the motivation of persons, as you 11:54:20
 13 understand it, to participate in technical 11:54:23
 14 committees? 11:54:28
 15 MR. REHN: Object to the form. 11:54:29
 16 A. I think there's lots of motivations. I think 11:54:32
 17 overwhelmingly the number one motivation, in 11:54:35
 18 my opinion and my years of service, is the 11:54:37
 19 overarching mission of NFPA. Our mission of 11:54:40
 20 safety is very attractive to many people. 11:54:44
 21 Many of our volunteers not only 11:54:47
 22 volunteer to participate in the NFPA process 11:54:49
 23 but also volunteer their time to do so, and 11:54:51
 24 that's a strong indication to me that that's 11:54:54
 25 the primary motivation. 11:54:56

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1 Q. Are you aware of any person whose primary 11:55:02
 2 motivation is to receive some financial 11:55:05
 3 reward for participation in the technical 11:55:10
 4 committee process? 11:55:13
 5 A. I'm not aware of an individual, per se, but I 11:55:21
 6 would speculate that these people are experts 11:55:26
 7 in their fields, and there's professional 11:55:28
 8 recognition and acknowledgment for being on 11:55:32
 9 an NFPA technical committee. 11:55:36
 10 MR. BRIDGES: Why don't we take a 11:55:46
 11 break. We've been going for a while. What 11:55:47
 12 time is it? 11:55:51
 13 VIDEOGRAPHER: 11:55. 11:55:51
 14 MR. BRIDGES: We'll keep going. 11:55:52
 15 VIDEOGRAPHER: There's another 11:55:54
 16 15 minutes on the tape. 11:55:55
 17 MR. BRIDGES: We'll keep going 11:55:56
 18 another 15 minutes. 11:55:58
 19 Q. How can the public gain access without 11:56:15
 20 payment to NFPA's codes and standards? 11:56:33
 21 A. NFPA provides free read-only access to all of 11:56:37
 22 our codes and standards to ensure that 11:56:42
 23 anyone, public or private sector or citizen 11:56:46
 24 consumer, has the ability to read and 11:56:49
 25 understand the requirements of any of our 11:56:52

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<p>1 standards, while, at the same time, balancing 11:56:53 2 our need to protect our intellectual 11:56:55 3 property, revenue and ultimately, the 11:56:58 4 advancement of our mission. 11:57:00 5 Q. Have you talked to anybody about Mr. Mullen's 11:57:04 6 deposition yesterday? 11:57:09 7 A. Just briefly to say, how did it go and that 11:57:13 8 was it. 11:57:17 9 Q. What did you hear about it? 11:57:18 10 A. That it went fine, it went late. That's all 11:57:20 11 I know. 11:57:23 12 Q. Did you discuss any of the topics of the 11:57:23 13 deposition? 11:57:25 14 A. No. 11:57:27 15 Q. Was there any discussion about any of the 11:57:27 16 questions at that deposition? 11:57:31 17 A. No. 11:57:33 18 Q. With whom did you discuss Mr. Mullen's 11:57:33 19 deposition? 11:58:04 20 A. With counsel. 11:58:06 21 Q. Anybody else? 11:58:11 22 A. No. 11:58:14 23 Q. Let me ask you to look at Exhibit 1223. 11:58:14 24 A. (Witness examines document) 11:58:45 25 Q. Do you recognize Exhibit 1223? 11:59:00 Page 78</p>	<p>1 A. NFPA 70 is our National Electrical Code. 12:00:42 2 Q. That's the largest code that NFPA publishes, 12:00:45 3 correct? 12:00:51 4 MR. REHN: Objection as to form. 12:00:51 5 Ambiguous. 12:00:54 6 A. I believe it is the largest page count 12:00:55 7 document, yeah. 12:01:04 8 Q. You have been designated by NFPA as its 12:01:04 9 corporate representative on the topic of the 12:01:18 10 terms, including, but not limited to 12:01:21 11 financial terms, other requirements, 12:01:25 12 conditions, restrictions, limitations, 12:01:27 13 exclusions and exceptions of access to the 12:01:29 14 standards that NFPA claims to own for 12:01:34 15 reading, study, research, commentary, 12:01:41 16 evaluation, criticism, bookmarking, other 12:01:43 17 annotation, reproduction, personal use, place 12:01:48 18 shifting, space shifting, data mining and 12:01:52 19 comparison to other versions, standards and 12:01:55 20 documents by the public. Are you aware of 12:01:58 21 that? 12:02:03 22 A. Yes. 12:02:03 23 Q. And in that role, are you aware that these 12:02:06 24 are terms that the public must accept in 12:02:12 25 order to have free read-only online access 12:02:15 Page 80</p>
<p>1 A. The only thing I recognize is it's from our 11:59:02 2 website. 11:59:08 3 Q. Have you seen this language before that's in 11:59:11 4 the smaller window in the middle of both 11:59:17 5 pages of Exhibit 1223? 11:59:23 6 A. I can't say specifically. It looks like 11:59:31 7 something associated with our publications, 11:59:33 8 but I can't specifically say I've seen this 11:59:36 9 actual wording. 11:59:38 10 Q. Do you recognize that these are terms that 11:59:40 11 the public must accept in order to gain the 11:59:46 12 read-only access for free to NFPA's codes and 11:59:58 13 standards? 12:00:02 14 MR. REHN: Object to form. 12:00:03 15 A. I can see their terms. I'm not sure what 12:00:06 16 they're terms for. But I can see "accept 12:00:10 17 terms" is the first statement on the top of 12:00:13 18 the first page and second page. 12:00:15 19 Q. I think the language there says, "accept 12:00:18 20 terms for: 2014 edition of NFPA 70." Can 12:00:21 21 you make that out? 12:00:30 22 A. Yeah, accept terms for 2014 edition. I can't 12:00:31 23 tell if it's NFPA 70 or 79. Unfortunately, 12:00:35 24 they're both standards. 12:00:38 25 Q. What is an NFPA 70? 12:00:39 Page 79</p>	<p>1 to NFPA 70? 12:02:20 2 A. It's my understanding and my knowledge that 12:02:24 3 you access our standards in various formats, 12:02:28 4 whether it's our codes online or free access, 12:02:30 5 and that the user must agree to some terms 12:02:33 6 and conditions. 12:02:36 7 Q. Are you referring to terms and conditions of 12:02:37 8 the website? 12:02:38 9 A. From my perspective, there are terms and 12:02:41 10 conditions for a lot of our platforms and 12:02:47 11 different things. And it's my understanding 12:02:49 12 that with free access, with codes online, 12:02:51 13 that the user must agree to terms and 12:02:55 14 conditions. 12:02:57 15 Q. I'm representing that these are terms and 12:02:59 16 conditions that appeared very recently with 12:03:03 17 respect to the public read-only access of the 12:03:10 18 2014 edition of NFPA 70. 12:03:13 19 Do the terms and conditions that you 12:03:17 20 see on both pages of 1223 accord with your 12:03:18 21 understanding of what the terms and 12:03:21 22 conditions are for the public free read-only 12:03:23 23 access to NFPA 70? 12:03:29 24 A. I can't speak to the specific terms 12:03:36 25 themselves, the words within the terms. It 12:03:39 Page 81</p>

1 is -- in my area of expertise, I understand 12:03:42
 2 that users must agree to a set of terms and 12:03:44
 3 conditions. 12:03:46
 4 Q. What are the terms and conditions that users 12:03:46
 5 must agree to? 12:03:49
 6 MR. REHN: Objection as to form. 12:03:51
 7 and we did produce the terms and conditions. 12:03:53
 8 It's not clear when this document was 12:03:56
 9 produced, but the witness may answer. 12:03:57
 10 A. I'm not sure what those specific terms are. 12:04:02
 11 MR. REHN: The terms speak for 12:04:05
 12 themselves. 12:04:06
 13 Q. Tell me all the terms and conditions that you 12:04:06
 14 are aware of that the public must accept in 12:04:11
 15 order to have the free access to read-only 12:04:15
 16 codes and standards of NFPA on NFPA's 12:04:20
 17 website. 12:04:26
 18 MR. REHN: Objection to form. We 12:04:26
 19 produced the terms and conditions. 12:04:27
 20 MR. BRIDGES: He's the 30(b)(6) 12:04:30
 21 witness on this very topic, and I'm entitled 12:04:31
 22 to get his testimony and to get him to 12:04:33
 23 authenticate a document from NFPA's website. 12:04:36
 24 I'm absolutely entitled to that. 12:04:39
 25 MR. REHN: The objection stands. 12:04:41
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1 The witness may answer. 12:04:42
 2 A. Specifically, what I understand and my 12:04:44
 3 knowledge of the terms and conditions is that 12:04:46
 4 users are required to agree to a set of terms 12:04:48
 5 and conditions as shown on our website when 12:04:52
 6 they register to view the free codes. 12:04:55
 7 The extent to which -- the terms and 12:04:58
 8 words, I have no specific knowledge or 12:05:01
 9 experience in the actual terms. 12:05:05
 10 Q. Are you aware that in order to get free 12:05:09
 11 access to the read-only codes and standards 12:05:14
 12 on NFPA's website, that a user must enter 12:05:17
 13 into a contract, a binding contract with 12:05:25
 14 NFPA? 12:05:29
 15 MR. REHN: Objection as to form. 12:05:30
 16 Calls for a legal opinion, and the terms 12:05:31
 17 speak for themselves. 12:05:34
 18 A. To restate, what I am aware of is that users 12:05:37
 19 must agree to a set of terms and conditions. 12:05:41
 20 That is the extent of my knowledge. 12:05:45
 21 Q. Do you understand whether -- do you have any 12:05:47
 22 understanding one way or the other as to 12:05:50
 23 whether users must enter into a binding 12:05:53
 24 contract in accepting those terms and 12:05:58
 25 conditions? 12:06:01
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1 MR. REHN: Same objection. 12:06:01
 2 MR. BRIDGES: I'll withdraw the 12:06:02
 3 question. It was badly formed. 12:06:03
 4 Q. Do you have an understanding as to whether, 12:06:04
 5 by accepting those terms and conditions, 12:06:06
 6 users enter into a binding contract with 12:06:09
 7 NFPA? 12:06:12
 8 MR. REHN: Same objection. Calls 12:06:13
 9 for a legal opinion. Terms speak for 12:06:14
 10 themselves. 12:06:16
 11 A. I have no knowledge of that, on how to 12:06:19
 12 interpret that. 12:06:22
 13 Q. Do you know that in order to gain access for 12:06:23
 14 free to the read-only codes and standards on 12:06:32
 15 NFPA's website, a member of the public must 12:06:35
 16 agree to waive objection to venue in a court 12:06:44
 17 of competent jurisdiction in the State of 12:06:58
 18 Massachusetts for disputes arising out of the 12:07:02
 19 terms and conditions? 12:07:06
 20 MR. REHN: Objection as to form. 12:07:08
 21 The terms speak for themselves. If you want 12:07:10
 22 to direct him to language in the terms, and 12:07:12
 23 ask if he's aware of that language. 12:07:14
 24 Q. Sure. Let me ask you to look at the last two 12:07:16
 25 paragraphs on the second page of 12:07:18
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1 Exhibit 1223. 12:07:21
 2 A. I'm there. 12:07:26
 3 Q. Have you read those two paragraphs? 12:07:28
 4 MR. REHN: Take your time and go 12:07:30
 5 ahead and read them. 12:07:32
 6 A. (Witness examines document) 12:07:32
 7 VIDEOGRAPHER: There are five 12:07:38
 8 minutes remaining on the videotape. 12:07:39
 9 A. I've read them. 12:08:05
 10 Q. Before today, were you aware that those were 12:08:06
 11 terms and conditions that a consumer or -- 12:08:10
 12 strike that. 12:08:12
 13 Before today, were you aware that 12:08:14
 14 those two paragraphs are among the terms and 12:08:16
 15 conditions that a member of the public must 12:08:19
 16 agree to in order to have free access to 12:08:22
 17 read-only versions of NFPA's codes and 12:08:25
 18 standards? 12:08:27
 19 MR. REHN: Object to the form. 12:08:28
 20 Lacks foundation. 12:08:30
 21 A. Before today, I had not read these. 12:08:32
 22 Q. Before today, had you known that these were 12:08:34
 23 among the terms and conditions that the 12:08:37
 24 public must accept in order to have free 12:08:39
 25 access to the read-only versions of NFPA's 12:08:42
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<p>1 codes and standards? 12:08:45 2 MR. REHN: Object to the form. 12:08:46 3 A. Before today, as previously stated, my 12:08:47 4 understanding wholly was that a user had to 12:08:50 5 agree to some terms and conditions in order 12:08:54 6 to gain free read-only access to our codes 12:08:56 7 and standards. 12:08:59 8 Q. You're not answering my question. It's a yes 12:08:59 9 or no question. Before today, were you aware 12:09:01 10 that the last two paragraphs that you've just 12:09:05 11 read were among those terms and conditions? 12:09:07 12 MR. REHN: Object to the form. And 12:09:10 13 the witness doesn't have to answer the way 12:09:10 14 that you want him to answer. This question 12:09:12 15 has been asked and answered. 12:09:14 16 Q. It's a yes or no. 12:09:16 17 MR. REHN: Again, the witness can 12:09:17 18 answer the question in the most accurate way 12:09:18 19 they can. 12:09:22 20 MR. BRIDGES: Don't coach the 12:09:22 21 witness. That's, believe me, coaching. 12:09:23 22 Q. Yes or no. Did you know these two paragraphs 12:09:25 23 were among the terms and conditions that the 12:09:27 24 public had to accept in order to have free 12:09:28 25 access to the read-only versions of NFPA's 12:09:30</p> <p style="text-align: right;">Page 86</p>	<p>1 Q. Have you known that the substance of these 12:10:40 2 two paragraphs were among the terms and 12:10:42 3 conditions before today? 12:10:44 4 MR. REHN: Objection as to form. 12:10:46 5 A. As I previously stated and I stand by my 12:10:47 6 testimony that I was not aware of any of the 12:10:52 7 terms and conditions, only that a user had to 12:10:54 8 agree to terms and conditions in order to 12:10:57 9 gain free access to our codes and standards. 12:10:59 10 MR. BRIDGES: I think it's time for 12:11:03 11 a break. 12:11:04 12 VIDEOGRAPHER: The time is 12:11. 12:11:04 13 This is the end of Tape No. 1, and we are now 12:11:07 14 off the record. 12:11:09 15 (Break taken) 12:11:12 16 VIDEOGRAPHER: The time is 12:20. 12:21:00 17 This is the beginning of Tape No. 2, and we 12:21:05 18 are now back on the record. 12:21:07 19 MR. BRIDGES: 12:21:08 20 Q. Mr. Dubai, in order to prepare for today's 12:21:09 21 deposition, what did you do to become 12:21:16 22 familiar with the terms and conditions for 12:21:18 23 public access to the read-only versions of 12:21:24 24 NFPA's codes and standards? 12:21:29 25 MR. REHN: I instruct the witness to 12:21:32</p> <p style="text-align: right;">Page 88</p>
<p>1 codes and standards? 12:09:34 2 MR. REHN: Same objection as to 12:09:34 3 form. And you may answer the question in the 12:09:36 4 most accurate way that you can. 12:09:39 5 MR. BRIDGES: The most accurate way 12:09:41 6 is yes or no. 12:09:42 7 MR. REHN: Objection and move to 12:09:43 8 strike that. Same objection as before. 12:09:45 9 Q. Please proceed. 12:09:48 10 A. As I previously stated, the first time I read 12:09:49 11 those words, those last two paragraphs was 12:09:52 12 just now. 12:09:54 13 Q. Were you aware of the terms in the last two 12:09:55 14 paragraphs of the text on Exhibit 1223 before 12:10:01 15 you read them? 12:10:12 16 MR. REHN: Object as to form. 12:10:14 17 A. No, I was only aware of terms and conditions. 12:10:18 18 Q. Of the existence of terms and conditions? 12:10:21 19 A. Yes. 12:10:23 20 Q. You were not aware of these two paragraphs as 12:10:24 21 part of those terms and conditions? 12:10:26 22 MR. REHN: Object as to form. 12:10:28 23 A. Again, assuming that these are accurate from 12:10:30 24 our website, I have not read these paragraphs 12:10:35 25 until just now when you asked me to. 12:10:38</p> <p style="text-align: right;">Page 87</p>	<p>1 exclude from his answer anything that would 12:21:33 2 reveal the substance of communications with 12:21:35 3 legal counsel. 12:21:37 4 A. I didn't do anything to prepare. 12:21:40 5 Q. What documents did you review in connection 12:21:44 6 with preparing to testify at today's 12:21:46 7 deposition? 12:21:49 8 MR. REHN: If you remember any 12:21:53 9 specific documents, you may answer. 12:21:54 10 MR. BRIDGES: That's coaching, that 12:21:56 11 statement, if ever I've heard one. 12:21:58 12 A. None. 12:22:01 13 Q. Is it true that before the public can access 12:22:02 14 NFPA's codes and standards in their read-only 12:22:19 15 versions for free on NFPA's website, a member 12:22:24 16 of the public must register and provide 12:22:27 17 information and an e-mail address to NFPA? 12:22:34 18 A. It's my understanding that in order to gain 12:22:42 19 read-only access, that you do need to 12:22:45 20 register and agree to terms and conditions. 12:22:48 21 Q. And registering includes providing an e-mail 12:22:50 22 address? 12:22:53 23 A. I believe that's the case. I'm sure it has 12:22:55 24 to be e-mail. 12:22:59 25 Q. And one must register before one can even 12:23:00</p> <p style="text-align: right;">Page 89</p>

<p>1 review the terms and conditions in order to 12:23:02 2 decide whether to accept or to decline the 12:23:04 3 terms and conditions? Are you aware of that? 12:23:07 4 A. No, I'm not. 12:23:11 5 Q. Are you aware that if someone declines the 12:23:12 6 terms and conditions, one is unable to gain 12:23:18 7 free access to the read-only versions of 12:23:23 8 NFPA's codes and standards? 12:23:25 9 A. My understanding is that you have to agree to 12:23:30 10 the terms and conditions before you're 12:23:32 11 granted free read-only access. 12:23:34 12 Q. Do you understand that NFPA adds the e-mail 12:23:39 13 addresses that people furnish in the 12:23:46 14 registration process to e-mail lists that it 12:23:48 15 uses for marketing purposes? 12:23:55 16 MR. REHN: Object as to form. 12:23:56 17 Outside the scope. 12:23:58 18 A. I don't have first-hand knowledge of what 12:24:01 19 happens with the registrants to our free 12:24:04 20 access. 12:24:06 21 Q. What information does NFPA collect about 12:24:08 22 persons who visit NFPA's website to gain free 12:24:12 23 access to the read-only versions of NFPA's 12:24:17 24 codes and standards? 12:24:20 25 MR. REHN: Same objections as to 12:24:22 Page 90</p>	<p>1 MR. REHN: I'll object as to the 12:26:08 2 form of this question. 12:26:10 3 Q. You may answer. 12:26:13 4 A. My understanding is that you must register 12:26:17 5 and agree to some terms and conditions to 12:26:21 6 gain access to the free read-only of all of 12:26:23 7 our codes and standards. 12:26:27 8 Q. And that's all you know about it? 12:26:28 9 A. That's the extent of my knowledge of what's 12:26:30 10 involved in the process, yes. 12:26:32 11 Q. Are you familiar with the fact that in order 12:26:33 12 to gain free access to the read-only versions 12:26:51 13 of NFPA's codes and standards, a member of 12:26:58 14 the public must enter into an acknowledgment 12:27:02 15 that NFPA owns copyright on all the codes and 12:27:08 16 standards? 12:27:13 17 MR. REHN: Object to the form. 12:27:14 18 Lacks foundation. To the extent this is a 12:27:15 19 question about the terms of access, the terms 12:27:18 20 speak for themselves, and this may call for a 12:27:20 21 legal opinion. 12:27:20 22 A. My understanding of the process is that you 12:27:26 23 register and agree to terms and conditions. 12:27:30 24 That is the extent of my knowledge. 12:27:32 25 Q. And you're unable to say whether the terms 12:27:38 Page 92</p>
<p>1 form and to the scope of the designated 12:24:23 2 topics. 12:24:25 3 A. Can you restate the question. I'm sorry. 12:24:29 4 MR. BRIDGES: I'll ask the court 12:24:35 5 reporter to re-read it. 12:24:36 6 (Question read) 12:24:37 7 MR. REHN: And the same objection as 12:24:55 8 to form and the scope of the designated 12:24:56 9 topics. But if the witness has personal 12:24:58 10 knowledge of this question, he may answer. 12:25:02 11 A. I don't have personal knowledge of what we 12:25:04 12 request, and it resides outside of my area. 12:25:06 13 Q. You're unfamiliar with what other 12:25:10 14 requirements apply to the public in order for 12:25:22 15 the public to gain free access to the 12:25:29 16 read-only versions of NFPA's codes and 12:25:32 17 standards other than the fact that they must 12:25:34 18 agree to some terms and conditions; is that 12:25:43 19 correct? 12:25:48 20 MR. REHN: Was that -- was that the 12:25:48 21 prior question? Is that the same question? 12:25:49 22 Q. You may answer. 12:25:58 23 MR. REHN: Hold on one second. 12:26:00 24 MR. BRIDGES: If you want to object, 12:26:03 25 then object. 12:26:05 Page 91</p>	<p>1 and conditions on Exhibit 1223 are the terms 12:27:41 2 and conditions that a user has to agree to in 12:27:45 3 order to have free access to the read-only 12:27:49 4 versions of NFPA's codes and standards? 12:27:51 5 MR. REHN: Object to the form. 12:27:54 6 Q. Is that correct? 12:27:56 7 A. What I can say is this document that you've 12:27:57 8 handed me appears to be from our website and 12:28:01 9 it appears to be terms and conditions. I 12:28:03 10 can't comment whether these are the actual 12:28:06 11 current terms and conditions or whether they 12:28:08 12 were previous terms and conditions because as 12:28:10 13 I previously stated, I just read the last two 12:28:12 14 paragraphs just now or just a few moments 12:28:15 15 ago. 12:28:18 16 (Exhibit 1228 marked for 12:28:45 17 identification.) 12:28:57 18 Q. I hand you Exhibit 1228. Please tell me if 12:28:57 19 you recognize this document and if so, tell 12:29:04 20 me what it is. 12:29:07 21 A. It looks like a page from our website and the 12:29:10 22 title of it is "Terms of Use." 12:29:20 23 Q. Are these, in fact, the terms of use of 12:29:23 24 NFPA's website? 12:29:26 25 A. Again, I can't comment on whether these are 12:29:36 Page 93</p>

<p>1 the actual terms of use on our website as I 12:29:38</p> <p>2 don't have any involvement in determining 12:29:42</p> <p>3 these or viewing them or establishing the 12:29:44</p> <p>4 content of them. 12:29:46</p> <p>5 (Exhibit 1229 marked for 12:30:04</p> <p>6 identification.) 12:30:04</p> <p>7 Q. I hand you Exhibit 1229. Please tell me if 12:30:07</p> <p>8 you recognize it, and if so, tell me what it 12:30:13</p> <p>9 is. 12:30:15</p> <p>10 A. Again, it appears to be a page from our 12:30:19</p> <p>11 website around our disclaimers, and I 12:30:23</p> <p>12 recognize some of these statements around 12:30:26</p> <p>13 our standards process. 12:30:29</p> <p>14 Without getting into it 12:30:33</p> <p>15 accurately worded throughout, they look like 12:30:34</p> <p>16 some of our standard statements that we use 12:30:37</p> <p>17 within our standards process. 12:30:41</p> <p>18 Q. Are you in a position to say whether the 12:30:47</p> <p>19 terms of use in Exhibit 1228 and the 12:30:49</p> <p>20 disclaimers in Exhibit 1229 apply to the 12:30:52</p> <p>21 public's access to the read-only versions 12:31:03</p> <p>22 of NFPA's codes and standards? 12:31:07</p> <p>23 MR. REHN: Object to the form. 12:31:10</p> <p>24 Calls for a legal opinion. 12:31:12</p> <p>25 A. I don't believe I'm in the position to do 12:31:14</p> <p style="text-align: right;">Page 94</p>	<p>1 if so, identify it. 12:34:17</p> <p>2 A. Just give me one moment here. 12:34:19</p> <p>3 MR. REHN: Take your time. Make 12:34:25</p> <p>4 sure you review the document in its entirety. 12:34:28</p> <p>5 A. (Witness examines document) Exhibit 1230 12:34:32</p> <p>6 appears to be a view, screen captured from 12:34:43</p> <p>7 our standards development site relating to 12:34:47</p> <p>8 the public comment stage associated with NFPA 12:34:50</p> <p>9 70E. 12:34:54</p> <p>10 Q. Did you participate in the design of these 12:35:02</p> <p>11 pages? 12:35:06</p> <p>12 MR. REHN: There is some handwritten 12:35:07</p> <p>13 annotation on one page. It appears to be 12:35:09</p> <p>14 part of the copy. 12:35:14</p> <p>15 MR. BRIDGES: I'm sorry. There is 12:35:17</p> <p>16 that handwritten -- right. 12:35:21</p> <p>17 Q. Please disregard the handwriting on -- 12:35:29</p> <p>18 MR. REHN: It's your understanding 12:35:34</p> <p>19 that handwritten annotation does not appear 12:35:36</p> <p>20 on the NFPA's website? 12:35:38</p> <p>21 A. No, the handwritten annotations can't appear 12:35:40</p> <p>22 on our website. So I would assume -- my 12:35:43</p> <p>23 assumption is that that was someone's notes 12:35:46</p> <p>24 before photocopy. 12:35:48</p> <p>25 Q. That's right. I apologize for that, but 12:35:49</p> <p style="text-align: right;">Page 96</p>
<p>1 that. In my normal course of work, I would 12:31:16</p> <p>2 rely on our general counsel to provide 12:31:19</p> <p>3 guidance on how these apply. 12:31:22</p> <p>4 Q. Do you have any reason to believe that 12:31:27</p> <p>5 Exhibits 1223, 1228 and 1229 do not 12:31:34</p> <p>6 accurately depict terms of use and 12:31:43</p> <p>7 disclaimers on NFPA's website? 12:31:52</p> <p>8 A. With the assumption that you have accurately 12:32:04</p> <p>9 replicated them from our website, they appear 12:32:09</p> <p>10 to be from our website. They appear to be, 12:32:11</p> <p>11 based upon logo, formatting and such, appear 12:32:13</p> <p>12 to be part of our content. 12:32:16</p> <p>13 Q. So does that mean you don't have any reason 12:32:18</p> <p>14 to believe that they do not accurately depict 12:32:22</p> <p>15 the terms of use and disclaimers on NFPA's 12:32:25</p> <p>16 website? 12:32:29</p> <p>17 A. Personally, I don't, but I would rely on 12:32:31</p> <p>18 legal counsel to confirm those things 12:32:34</p> <p>19 because, again, I don't have first-hand 12:32:38</p> <p>20 knowledge of these. These are not within my 12:32:41</p> <p>21 area of responsibility. 12:32:43</p> <p>22 (Exhibit 1230 marked for 12:33:42</p> <p>23 identification.) 12:33:54</p> <p>24 Q. Mr. Dubay, I've handed you Exhibit 1230. Can 12:34:07</p> <p>25 you please tell me whether you recognize and 12:34:13</p> <p style="text-align: right;">Page 95</p>	<p>1 apart from that handwriting, you understand 12:35:52</p> <p>2 this to be a form that's used for public 12:35:54</p> <p>3 comment? 12:35:59</p> <p>4 A. Yes, in part it's the view of the website 12:35:59</p> <p>5 and then it looks like it's the steps through 12:36:07</p> <p>6 submitting a public comment, so yes. 12:36:07</p> <p>7 Q. Let me ask you to turn to the page that has a 12:36:07</p> <p>8 stamping at the bottom that ends with 38502. 12:36:12</p> <p>9 A. I'm there. 12:36:22</p> <p>10 Q. It says in the middle, "Note, due to 12:36:29</p> <p>11 copyright considerations, NFPA is unable to 12:36:32</p> <p>12 accept these submissions electronically at 12:36:35</p> <p>13 this time." What does that mean? 12:36:38</p> <p>14 A. At this point in the process you are stating 12:36:45</p> <p>15 what the reason is for your public comment, 12:36:52</p> <p>16 why you're submitting it, and at times 12:36:55</p> <p>17 submitters desire to attach reports, 12:36:57</p> <p>18 publications and such. 12:37:01</p> <p>19 And we have a very strict policy on 12:37:04</p> <p>20 copyright and protection of intellectual 12:37:07</p> <p>21 property, not only of ours, but of others and 12:37:09</p> <p>22 at times, submitters from the public will 12:37:12</p> <p>23 want to submit a document as supporting, we 12:37:14</p> <p>24 call it supporting material, and we require 12:37:18</p> <p>25 them to send us a hard copy so that we can -- 12:37:21</p> <p style="text-align: right;">Page 97</p>

<p>1 via mail so that we can verify that they 12:37:24 2 truly retain the copyright and can give us 12:37:27 3 permission to post that or that we can reach 12:37:29 4 out specifically to the owner of said 12:37:31 5 copyright to determine whether a copyright 12:37:34 6 would be -- a reproduction, posting, 12:37:37 7 et cetera, would be allowed, permitted by 12:37:39 8 them. 12:37:41 9 Q. Does NFPA have a policy regarding fair use in 12:37:42 10 copyright? 12:37:46 11 MR. REHN: Object to the form to 12:37:47 12 the extent it calls for a legal opinion. 12:37:48 13 A. It's my general understanding in dealing with 12:37:52 14 legal counsel, yes, we do. 12:37:54 15 Q. What is NFPA's fair use policy? 12:37:57 16 MR. REHN: Again, I'll object to 12:38:00 17 the extent it calls for legal opinion or it 12:38:02 18 calls for the substance of any privileged 12:38:04 19 communications. But you can answer to the 12:38:05 20 extent you know. 12:38:07 21 A. I don't know the specifics of it. I just 12:38:08 22 know that when we request to utilize our 12:38:11 23 intellectual property, that legal counsel 12:38:13 24 discusses the term "fair use" with me and 12:38:17 25 discusses it in their decisionmaking. I'm 12:38:20 Page 98</p>	<p>1 that just for convenience in making screen 12:39:56 2 prints of these documents for purposes of 12:40:01 3 production in litigation, or does she 12:40:05 4 actually make submissions and execute these 12:40:08 5 forms? 12:40:14 6 MR. REHN: Object to the form. It 12:40:14 7 may call for attorney-client privilege. It 12:40:18 8 may call for speculation. 12:40:22 9 MR. BRIDGES: You may want to 12:40:23 10 stipulate that this was just done as a mockup 12:40:24 11 for purposes of production which I suspect is 12:40:28 12 the case. 12:40:30 13 MR. REHN: We can stipulate to that. 12:40:31 14 This was a way to make sure we got all the 12:40:34 15 screen shots. 12:40:35 16 Q. So this, to your understanding, Mr. Dubay, 12:40:36 17 this document contains the fields and 12:40:40 18 headings and text that the public normally 12:40:49 19 encounters when the public submits comments 12:40:53 20 in the course of NFPA's standards 12:40:58 21 development; is that correct? 12:41:00 22 A. Correct. To the best of my knowledge, it 12:41:02 23 appears that it's captured all of the various 12:41:05 24 steps of submitting a comment from the 12:41:08 25 origination of selecting the text through the 12:41:11 Page 100</p>
<p>1 not aware of a specific policy, per se, but 12:38:22 2 it's often brought up. 12:38:26 3 Q. Do you have any understanding about the 12:38:28 4 concept of fair use and copyright law? 12:38:34 5 MR. REHN: Objection. Calls for 12:38:36 6 legal opinion. 12:38:38 7 A. My only understanding of that is that from a 12:38:41 8 general concept of that small uses of our 12:38:46 9 intellectual property in certain ways are 12:38:52 10 permitted through the term called "fair use." 12:38:53 11 My professional background, I don't have the 12:38:56 12 specifics of that. That's my understanding. 12:38:58 13 Q. So looking at Exhibit 1230 again, this 12:39:02 14 appears to be a page directed at somebody by 12:39:06 15 the name of Debra Baio, is that correct? 12:39:14 16 MR. FEE: Which page? 12:39:21 17 Q. The first page, I believe it's B A I O, but 12:39:22 18 maybe it's B A I O I. Is that a name you 12:39:30 19 recognize? 12:39:34 20 A. Yes, she works in our codes and standards 12:39:35 21 division responsible for our system, and she 12:39:37 22 develops training content and such around our 12:39:41 23 platform. 12:39:43 24 Q. So this document has her name in several 12:39:45 25 places as though she's the submitter. Is 12:39:51 Page 99</p>	<p>1 copyright assignment at the end, yes, it 12:41:14 2 appears that way. 12:41:17 3 Q. This mockup appears to be specific to one 12:41:18 4 standard and one section of a standard, 12:41:25 5 namely NFPA 70E and informative NXX; is that 12:41:27 6 correct? 12:41:42 7 A. What it contains is the public comment view 12:41:43 8 of NFPA 70 and then -- 70E, excuse me, and 12:41:45 9 the selection process through that. 12:41:48 10 Q. The selection process through that, meaning 12:41:51 11 what a public commenter would follow to reach 12:41:54 12 a certain point to comment on a certain 12:41:58 13 aspect of the standard; is that correct? 12:42:00 14 A. This is an example of a public, proposed 12:42:12 15 public comment or training material around 12:42:16 16 NFPA 70 on the second draft of, excuse me, on 12:42:20 17 the first draft of NFPA 70. 12:42:24 18 Q. And it's specifically focusing in on one part 12:42:27 19 of that draft, namely informative NXX, 12:42:29 20 general categories of electrical hazards; is 12:42:33 21 that correct? 12:42:39 22 A. It appears that the person Debbie, or whoever 12:42:39 23 put this together, did select NXX. It's just 12:42:43 24 kind of blurry, but I believe it looks like 12:42:47 25 she selected NXX as the example. 12:42:50 Page 101</p>

<p>1 Q. And there is on the third page of the 12:42:55 2 exhibit, which ends in No. 38500, near the 12:42:58 3 top of the field inside the browser window, 12:43:07 4 it says Public Comment No. 15-SF, looks like 12:43:10 5 DEM, D E M,-PC-2015; is that correct? 12:43:17 6 A. I believe it says 15-5F, I think, DEM PC 215 12:43:25 7 or SF. 12:43:32 8 Q. How are those numbers assigned? 12:43:34 9 A. Those numbers are assigned based upon when 12:43:40 10 you submit a comment on the document. I 12:43:42 11 believe this is a demonstration file, so 12:43:47 12 you're seeing the DEM in there versus 15-70E 12:43:49 13 or 15 dash the document. They're all related 12:43:56 14 in order, numerical order based upon the 12:43:59 15 document. 12:44:04 16 Q. And then on pages that end in 38506 and 12:44:05 17 38507, there are headings for copyright 12:44:24 18 assignment and signature (required) and then 12:44:32 19 alternative copyright assignment and 12:44:38 20 signature (required). Do you see those? 12:44:41 21 A. Yes, I see them. 12:44:48 22 Q. It appears that the alternative copyright 12:44:49 23 assignment signature shown on the second of 12:44:56 24 those pages is what one reaches by clicking, 12:44:58 25 when you "click here" line on the first of 12:45:03 Page 102</p>	<p>1 Q. And this is a form that's got some 12:46:51 2 information that's put in here I assume for 12:46:54 3 dummy purposes under applicant's personal 12:46:56 4 info, correct? 12:47:00 5 A. It appears that way, that it's just sample 12:47:07 6 information again. 12:47:10 7 MR. REHN: I can stipulate to that. 12:47:11 8 This is to enable us to produce this 12:47:15 9 document. 12:47:17 10 Q. Okay. And there's a, what appears to be a 12:47:18 11 pull-down menu for principal member category. 12:47:26 12 Do you see that? 12:47:32 13 A. Yes, I see the pull-down menu. 12:47:35 14 Q. Do those member categories correspond to 12:47:37 15 the -- I forgot what you referred to them, 12:47:42 16 interest groups or interest -- to the 12:47:44 17 interest groups you referred to earlier? 12:47:48 18 A. That relates to are you applying as a 12:47:51 19 principal member or an alternate member. 12:47:53 20 Q. Okay. That referred to membership on the 12:47:56 21 committee, not the type of member of NFPA? 12:48:00 22 A. Not the interest category. 12:48:04 23 Q. Is there any place on here for somebody to 12:48:18 24 indicate what interest category they fall 12:48:21 25 into? 12:48:27 Page 104</p>
<p>1 those two pages in the middle of the field, 12:45:04 2 is that correct? 12:45:07 3 A. The alternate copyright statement comes up 12:45:13 4 when you -- if you are not the author of all 12:45:17 5 of the content that you're submitting and 12:45:22 6 then we ask you to click here, and I'm pretty 12:45:24 7 sure that the next page is the alternate. It 12:45:28 8 replaces the current copyright with the 12:45:31 9 alternate copyright statement. 12:45:35 10 Q. So it's your understanding that the "click 12:45:35 11 here" link on the page ending 38506 takes 12:45:35 12 somebody to the page 38507 in order to 12:45:39 13 execute a different form of -- or to execute 12:45:42 14 what's referred to as an alternative 12:45:47 15 copyright assignment and signature; is that 12:45:50 16 correct? 12:45:52 17 A. That is my understanding. 12:45:52 18 (Exhibit 1231 marked for 12:46:22 19 identification.) 12:46:23 20 Q. Mr. Dubay, can you please identify 12:46:24 21 Exhibit 1231. 12:46:26 22 A. This appears to be our online committee 12:46:37 23 member application process, first part of the 12:46:43 24 form that you would fill out to apply for 12:46:47 25 technical committee membership. 12:46:49 Page 103</p>	<p>1 A. No. There's no place on our form to indicate 12:48:27 2 what category you are applying to. That's 12:48:46 3 ultimately the decision of our standards 12:48:50 4 council. 12:48:52 5 Q. Do you see on the third page of Exhibit 1231, 12:48:52 6 the page ending 38520, there's no assigned -- 12:48:59 7 copyright assignment language on this, 12:49:10 8 correct? 12:49:14 9 MR. REHN: Object to the form. 12:49:15 10 Mischaracterizes the document. Calls for a 12:49:17 11 legal opinion. 12:49:19 12 A. Each and every committee member participates 12:49:23 13 in the NFPA process with the full 12:49:26 14 understanding that the material that they're 12:49:28 15 developing is the intellectual property of 12:49:30 16 NFPA. And that has been that way for as long 12:49:33 17 as I've been involved in NFPA and as part of 12:49:36 18 the application process as well as we have a 12:49:38 19 policy that we verify each and every public 12:49:42 20 input public comment proposal that comes in 12:49:44 21 that that has happened. 12:49:47 22 Q. Do you understand what a work-made-for-hire 12:49:51 23 is? 12:49:55 24 MR. REHN: Object to the form. 12:49:55 25 Calls for a legal opinion. 12:49:56 Page 105</p>

<p>1 A. Not specifically. 12:49:58 2 Q. Do you have any general understanding of what 12:50:05 3 a work-made-for-hire is? 12:50:08 4 MR. REHN: Same objection. Calls 12:50:10 5 for a legal opinion. 12:50:11 6 A. My understanding of this agreement as well as 12:50:12 7 the wording that we utilize on our public 12:50:16 8 input and public comments is that we do this 12:50:19 9 to establish our intellectual property at the 12:50:22 10 same time we utilize our general counsel and 12:50:24 11 legal review and they establish how to 12:50:26 12 properly word these. I don't have any 12:50:28 13 specific general knowledge. 12:50:30 14 Q. I understand what the purpose may be for the 12:50:32 15 language. I'm just asking if whether you, 12:50:35 16 sitting here today, understand what a 12:50:37 17 work-made-for-hire is? 12:50:38 18 MR. REHN: Same objection. Calls 12:50:40 19 for legal opinion. 12:50:41 20 A. My response is based upon I don't necessarily 12:50:43 21 understand what a work-made-for-hire is. 12:50:47 22 Q. Do you know when language relating to 12:50:49 23 works-made-for-hire first came into the forms 12:50:57 24 that NFPA required of those participating in 12:51:01 25 the NFPA standards development process? 12:51:04 Page 106</p>	<p>1 MR. REHN: Same objection. The 12:52:14 2 documents speak for themselves. 12:52:16 3 A. My understanding is based upon our process, 12:52:17 4 where, over the years, when there's a need to 12:52:22 5 update those forms, that is done at the 12:52:25 6 request of legal and my team's responsibility 12:52:27 7 is to ensure that those are signed off and 12:52:31 8 the forms are updated as appropriate. 12:52:34 9 And the process in my team remains 12:52:37 10 the same. We don't get into the wording. We 12:52:39 11 verify that it's been acknowledged. 12:52:41 12 Q. What different formulations of the 12:52:43 13 intellectual property language have there 12:52:47 14 been in the NFPA standards development 12:52:56 15 documents that participants are required to 12:52:59 16 sign? 12:53:01 17 MR. REHN: Same objection. Lacks 12:53:01 18 foundation. The documents speak for 12:53:03 19 themselves. 12:53:05 20 A. At this point I can't diagram each one. I'd 12:53:07 21 have to review each edition of those 12:53:16 22 documents over the course of time. 12:53:18 23 Q. Have you reviewed the different types of 12:53:20 24 documents to prepare for today's deposition? 12:53:23 25 A. No. 12:53:26 Page 108</p>
<p>1 MR. REHN: Object to the form. 12:51:06 2 A. No. 12:51:10 3 Q. Do you know whether work-made-for-hire 12:51:13 4 language was in NFPA documents before 2012? 12:51:16 5 MR. REHN: Object to the form. If 12:51:26 6 you have documents to show the witness, you 12:51:27 7 can show them to him. 12:51:29 8 A. In my opinion, in my tenure at NFPA in the 12:51:32 9 20 years, my knowledge is that there's always 12:51:36 10 been a release and sign-off associated with 12:51:38 11 the committee application as well as 12:51:41 12 submission of proposal and comments. When 12:51:43 13 those modifications came into place, I don't 12:51:45 14 know. 12:51:47 15 Q. Do you know what modifications there have 12:51:47 16 been to the intellectual property language in 12:51:50 17 the various documents that participants in 12:51:54 18 the standards development processes must 12:51:58 19 execute? 12:52:00 20 MR. REHN: Object to the form. The 12:52:00 21 documents speak for themselves. 12:52:02 22 A. Not specifically. 12:52:06 23 Q. Generally, what do you understand to have 12:52:08 24 been modifications in the intellectual 12:52:10 25 property language in those documents? 12:52:13 Page 107</p>	<p>1 Q. What different formulations of the 12:53:26 2 intellectual property language do you recall? 12:53:30 3 MR. REHN: Object to the form. The 12:53:34 4 documents speak for themselves. 12:53:37 5 A. From my position, the way I recall it is that 12:53:40 6 we enforce the current version of the text, 12:53:43 7 which has been provided to us, on each and 12:53:46 8 every proposal, comment, public input 12:53:48 9 committee application. 12:53:51 10 Q. What different formulations of the 12:53:56 11 intellectual property language do you recall? 12:53:58 12 MR. REHN: Same objection. The 12:54:00 13 documents speak for themselves. We produced 12:54:02 14 forms in connection with every standard at 12:54:05 15 issue in this case. If you want to show him 12:54:07 16 those forms, you can, but the documents speak 12:54:09 17 for themselves. 12:54:12 18 MR. BRIDGES: Will you stipulate 12:54:12 19 that I can get through every form that I 12:54:13 20 would like for him to authenticate? 12:54:16 21 MR. REHN: You can start showing him 12:54:18 22 some forms. 12:54:19 23 MR. BRIDGES: Will you stipulate 12:54:20 24 that you'll allow him to testify about every 12:54:21 25 single form I want him to authenticate? 12:54:23 Page 109</p>

<p>1 MR. REHN: I'll stipulate that you 12:54:25 2 can fill your seven hours however you choose. 12:54:27 3 Q. The question remains what different 12:54:31 4 formulations of the intellectual property 12:54:37 5 language do you recall as you sit here today? 12:54:39 6 MR. REHN: I'll object. At this 12:54:41 7 point this question has been asked and 12:54:42 8 answered multiple times. Same objection as 12:54:43 9 to the documents speaking for themselves. 12:54:46 10 MR. BRIDGES: It's not been 12:54:49 11 answered. 12:54:50 12 Q. You may proceed. 12:54:51 13 A. I don't specifically recall individual 12:54:51 14 versions of the document. 12:54:53 15 Q. You don't recall any form of the intellectual 12:54:55 16 property language that participants must sign 12:54:57 17 in order to participate in the NFPA standards 12:55:01 18 development process? 12:55:04 19 MR. REHN: Object to the form. 12:55:04 20 Mischaracterizes the testimony. 12:55:06 21 Argumentative. 12:55:08 22 A. No, I do not. I rely on our policy and our 12:55:09 23 team meeting with legal counsel and 12:55:12 24 establishing that wording in accordance with 12:55:14 25 their directions. 12:55:16 Page 110</p>	<p>1 the 30(b)(6) notice? 12:57:20 2 MR. REHN: Our representation -- 12:57:22 3 those Bates numbers represent assignment 12:57:26 4 forms that we produced in this litigation and 12:57:29 5 including assignment forms pertaining to each 12:57:32 6 of the standards at issue. 12:57:34 7 MR. BRIDGES: That's a different 12:57:38 8 thing. 12:57:39 9 Q. Mr. Dubay, are you able to identify by Bates 12:57:39 10 number, which is a term lawyers use for 12:57:45 11 document production number, one instance of 12:57:48 12 each of the different forms of assignment by 12:57:51 13 which NFPA claims that it received 12:57:57 14 assignments of copyrights in this action? 12:57:59 15 MR. REHN: Same objection as to 12:58:02 16 form. It's an improper question. The 12:58:03 17 witness can answer if he knows. 12:58:06 18 A. What I can tell you, I'm not sure if it 12:58:08 19 answers your question, my team reviews tens 12:58:11 20 of thousands of forms a year to verify 12:58:13 21 copyright signing, checking the box, signing 12:58:16 22 the forms and submitting them. 12:58:20 23 Q. How many different versions of the blank 12:58:22 24 forms has NFPA created? 12:58:25 25 A. I don't recall how many versions, but we do 12:58:28 Page 112</p>
<p>1 Q. Do you have the document production numbers, 12:55:33 2 which we call Bates numbers, of at least one 12:55:44 3 instance of every form of assignment that -- 12:55:48 4 with which NFPA claims that a person 12:55:52 5 participating in the NFPA standards 12:55:57 6 development process has signed? 12:55:59 7 MR. REHN: Object to the form. It's 12:56:04 8 an improper question for a deposition, and 12:56:07 9 I'll represent for the record that I provided 12:56:10 10 Bates numbers for the assignment forms to 12:56:13 11 opposing counsel on the telephone on Friday. 12:56:15 12 MR. BRIDGES: One Bates number for 12:56:23 13 each of the different forms? 12:56:24 14 MR. REHN: We provided the Bates 12:56:25 15 numbers that represent the assignment forms 12:56:27 16 that we have produced. 12:56:29 17 MR. BRIDGES: And that was how 12:56:30 18 many -- how many documents were in the range 12:56:33 19 that you indicated? 12:56:34 20 MR. REHN: I don't remember the 12:56:35 21 number. 12:56:36 22 Q. You gave numbers 38,556 to 97,870. Is it 12:56:53 23 your representation that there were over 12:57:05 24 50,000 different instances of every form of 12:57:08 25 assignment in compliance with Topic No. 35 of 12:57:13 Page 111</p>	<p>1 have one single version now that we use on 12:58:34 2 our online system that verifies that each and 12:58:37 3 every submission has the same appropriate 12:58:39 4 material in it. 12:58:44 5 Q. And have you seen that form today? 12:58:53 6 MR. REHN: Objection as to form. 12:58:58 7 It's vague and ambiguous. 12:59:00 8 A. I believe I've seen the screen shot of our 12:59:04 9 comment view from NFPA 70E sample document, 12:59:09 10 Exhibit 1230. 12:59:15 11 Q. Does that have the form of assignment 12:59:18 12 language that is required universally by NFPA 12:59:20 13 at this point? 12:59:25 14 MR. REHN: Objection as to form. 12:59:31 15 It's ambiguous. 12:59:33 16 A. It appears that you've -- if the copy and the 12:59:39 17 screen shots are correct, you've copied one 12:59:44 18 version of our copyright assignment 12:59:46 19 associated with our comment system. 12:59:50 20 Q. How do other forms of copyright assignment 12:59:54 21 differ from that -- strike that. 01:00:04 22 How do the other forms of copyright 01:00:08 23 assignment that NFPA requires differ from the 01:00:10 24 one in that -- the ones in that exhibit? 01:00:14 25 MR. REHN: Objection as to form. 01:00:18 Page 113</p>

1 Assumes facts. 01:00:19
 2 A. We have primarily three areas. One is our 01:00:22
 3 public input. For each and every public 01:00:27
 4 input, I'm not positive if the wording is the 01:00:30
 5 same or not, public comment. And the next 01:00:33
 6 area is each and every committee member, 01:00:36
 7 through our application process, has an 01:00:39
 8 appropriate assignment form. 01:00:42
 9 Q. And was that the assignment form you just 01:00:45
 10 referred to the same form that is shown in 01:00:49
 11 Exhibit 1231? 01:00:55
 12 A. With the same caveat that assuming that the 01:01:09
 13 form has been properly duplicated from the 01:01:11
 14 website, it appears so, with the knowledge 01:01:15
 15 that we had a paper system prior to this for 01:01:16
 16 both of these systems. 01:01:18
 17 Q. I'll represent that we didn't get this from 01:01:19
 18 your website. I'll represent that NFPA's 01:01:22
 19 counsel produced this in document production 01:01:24
 20 in this case. 01:01:26
 21 MR. REHN: That's correct. 01:01:27
 22 Q. So you said there were three different forms 01:01:52
 23 of assignment, did you say one was for public 01:01:54
 24 input, one was for committee members? What 01:01:56
 25 was the third? 01:02:00

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1 A. There are three primary versions of 01:02:01
 2 assignment that I can think of right now and 01:02:04
 3 one is public input, any and all public 01:02:08
 4 inputs; one is public comment; and one is 01:02:11
 5 committee membership. 01:02:14
 6 Q. So committee membership I think you said was 01:02:21
 7 Exhibit 1231. That's the form for that, 01:02:26
 8 correct? 01:02:28
 9 A. Exhibit 1231 does appear to be our online 01:02:33
 10 committee application tool. 01:02:35
 11 Q. With the agreement and certification 01:02:36
 12 regarding copyright at the end, correct? 01:02:44
 13 MR. REHN: Objection as to form. 01:02:47
 14 The document speaks for itself. 01:02:48
 15 A. It appears that the agreement certification 01:02:51
 16 is on page ending in 520. 01:02:55
 17 Q. And then Exhibit 1230 is the form for public 01:03:00
 18 comment that includes near the end either a 01:03:03
 19 copyright assignment and signature or an 01:03:06
 20 alternative copyright assignment -- 01:03:08
 21 (Interruption) 01:03:18
 22 MR. REHN: Can we strike the 01:03:35
 23 question that was interrupted by that 01:03:38
 24 interruption. 01:03:39
 25 Q. Exhibit 1230 -- just to be clear, 01:03:41

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1 Exhibit 1230 has at the end a copyright 01:03:43
 2 assignment and signature, and it has an 01:03:52
 3 alternative copyright assignment and 01:03:56
 4 signature. 01:03:59
 5 Are those the forms you're referring 01:04:00
 6 to that NFPA requires with respect to 01:04:02
 7 copyright for public comments? 01:04:04
 8 A. NFPA has a policy to require copyright 01:04:10
 9 sign-off for all public comments, and 01:04:13
 10 Exhibit 1230 appears to have both the primary 01:04:16
 11 copyright assignment as well as the 01:04:20
 12 alternative copyright statement on 506 and 01:04:23
 13 507 of that exhibit. 01:04:29
 14 Q. What other form does the public have for what 01:04:30
 15 you call public input as opposed to public 01:04:33
 16 comment? 01:04:37
 17 A. To clarify, did you say forum or form? 01:04:39
 18 Q. Form, F O R M. 01:04:46
 19 A. The public input form looks very similar to 01:04:49
 20 the public comment form. The document is 01:04:53
 21 based upon the current edition of the 01:04:57
 22 standard, so very similar process. 01:04:59
 23 Q. Does it have the same or very similar 01:05:02
 24 copyright assignment language as 01:05:05
 25 Exhibit 1230? 01:05:07

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1 A. My understanding is it's very similar. 01:05:14
 2 However, with public inputs, where we use the 01:05:19
 3 term "public comment" within the exhibit 01:05:21
 4 you've given me, that would be shifted to 01:05:23
 5 "public input." 01:05:26
 6 Q. Otherwise, they'd be the same? 01:05:27
 7 A. Otherwise, it is my opinion that they would 01:05:29
 8 be the same. 01:05:31
 9 (Exhibit 1232 marked for 01:05:53
 10 identification.) 01:05:57
 11 Q. I hand you an exhibit marked 1232. I'll 01:06:01
 12 represent it's been produced to us by NFPA's 01:06:04
 13 counsel. I just want to confirm that this is 01:06:08
 14 an organization chart of NFPA's management 01:06:25
 15 and staff as of October 2014; is that 01:06:32
 16 correct? 01:06:43
 17 A. To the best of my knowledge it appears 01:06:45
 18 accurate with one exception. James Pauley on 01:06:47
 19 Page 1 is president of NFPA and my direct 01:06:51
 20 supervisor. 01:06:55
 21 Q. I guess it's indicated that way on the later 01:07:00
 22 papers of the exhibit, just not on the first 01:07:06
 23 page; is that correct? 01:07:08
 24 A. It appears so, yes. 01:07:15
 25 Q. Are you the number two ranking member of the 01:07:19

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<p>1 NFPA staff? 01:07:25 2 A. I'm one of several vice presidents. 01:07:30 3 Q. Are you familiar with litigation that NFPA 01:08:06 4 was in against International Code Council? 01:08:17 5 MR. REHN: Object to the question 01:08:30 6 insofar as it's outside the scope of any 01:08:30 7 topics, I believe any notice topics, period, 01:08:30 8 but certainly topics for which this witness 01:08:31 9 was designated. But the witness may answer 01:08:34 10 it in his personal knowledge. 01:08:36 11 A. I was aware of it, but no specific knowledge 01:08:38 12 at all. 01:08:46 13 Q. Did you ever review any of the documents or 01:08:46 14 pleadings in that case? 01:08:49 15 MR. REHN: Same objection as to 01:08:52 16 scope. 01:08:53 17 A. No. 01:08:55 18 Q. Were you aware of any of the arguments that 01:08:56 19 NFPA made in defense of copyright claims by 01:08:59 20 ICC? 01:09:03 21 A. No. 01:09:07 22 MR. REHN: Same objection as to 01:09:07 23 scope. 01:09:08 24 Q. What protocols and procedures does NFPA have 01:09:41 25 regarding granting licenses or permissions 01:09:45 Page 118</p>	<p>1 access that allows anyone to read and 01:11:14 2 understands the requirements while at the 01:11:15 3 same time balancing our need to protect our 01:11:17 4 intellectual property, our revenue and 01:11:19 5 ultimately the advancement of our safety 01:11:21 6 mission. 01:11:23 7 Q. How does read-only access allow NFPA to 01:11:26 8 protect its revenue and to protect the 01:11:33 9 advancement of its safety mission? 01:11:36 10 A. NFPA relies on the sale of our intellectual 01:11:43 11 property to fund our mission, to move forward 01:11:47 12 on our mission while at the same time 01:11:50 13 balancing that against providing free 01:11:53 14 read-only access to all of our documents so 01:11:54 15 that anyone who's potentially impacted by 01:11:57 16 them has the ability to read and understands 01:11:59 17 those requirements. 01:12:01 18 Q. What do you mean by NFPA's intellectual 01:12:02 19 property in that answer? 01:12:05 20 MR. REHN: Object to form. May call 01:12:06 21 for a legal opinion. 01:12:08 22 MR. BRIDGES: I'm asking what he 01:12:10 23 meant by it. 01:12:11 24 A. What I meant by our intellectual property is 01:12:15 25 our codes and standards that are developed 01:12:18 Page 120</p>
<p>1 for any third party to use NFPA's codes and 01:09:49 2 standards? 01:09:51 3 MR. REHN: Objection as to scope. 01:09:53 4 This witness was not designated on that 01:09:55 5 topic, but the witness may answer to the 01:09:57 6 extent he has personal knowledge. 01:09:59 7 A. I have very little personal knowledge of how 01:10:03 8 the licensing agreements work other than it 01:10:07 9 involves our product and marketing team as 01:10:10 10 well as our legal team. 01:10:14 11 Q. Do you know why NFPA decided to provide free 01:10:15 12 access to read-only versions of NFPA's codes 01:10:23 13 and standards? 01:10:26 14 A. To the best of my knowledge, we believe that 01:10:30 15 by providing free access, read-only access to 01:10:32 16 all of our codes and standards that we can 01:10:36 17 ensure that anyone, including the public, is 01:10:38 18 able to read and understand the requirements 01:10:41 19 of all of our standards at any time. 01:10:43 20 Q. And is it your -- strike that. 01:10:50 21 Is it NFPA's belief that read-only 01:10:55 22 access facilitates understanding of the 01:11:05 23 standards? 01:11:06 24 MR. REHN: Object as to form. 01:11:08 25 A. We believe that by providing free read-only 01:11:10 Page 119</p>	<p>1 through the NFPA standards development 01:12:19 2 process and our other publications. 01:12:21 3 Q. How easy is it for somebody to read and 01:12:35 4 understand the National Electrical Code 01:12:59 5 through read-only access on NFPA's website? 01:13:03 6 MR. REHN: Objection to form. Vague 01:13:08 7 and ambiguous. 01:13:10 8 A. Based on my personal experience, I've never 01:13:13 9 had any complaints about it and, in fact, 01:13:16 10 I've had several requests from states and 01:13:19 11 other jurisdictions to provide access to 01:13:21 12 their jurisdictions through widgets and on 01:13:23 13 the web links to give their constituents free 01:13:27 14 read-only access to it. 01:13:36 15 Q. So my question is, how easy is it for 01:13:38 16 somebody to read and understand the National 01:13:41 17 Electrical Code through read-only access on 01:13:43 18 NFPA's website? 01:13:45 19 MR. REHN: Same objections. Asked 01:13:47 20 and answered. 01:13:49 21 A. My response remains the same. I've had no 01:13:54 22 complaints about any difficulty at all. I 01:13:56 23 would assume, in my personal opinion, that 01:14:00 24 it's very easy. 01:14:01 25 Q. You just assume it's easy? 01:14:03 Page 121</p>

1 MR. REHN: Objection. 01:14:04
 2 Argumentative. 01:14:05
 3 A. My previous answer stands. 01:14:08
 4 Q. You assume that it's easy? 01:14:09
 5 MR. REHN: Same objection. 01:14:11
 6 A. Yes. 01:14:12
 7 MR. REHN: Asked and answered. 01:14:13
 8 Q. You may answer. 01:14:14
 9 A. My previous answer stands. 01:14:16
 10 Q. You have nothing more to add to your answer, 01:14:19
 11 I gather, in response to my question? 01:14:22
 12 MR. REHN: Objection to form. 01:14:25
 13 Q. That's your complete answer, that's fine. 01:14:26
 14 A. No. 01:14:28
 15 Q. No, that is your complete answer or no, that 01:14:29
 16 is not your complete answer? 01:14:38
 17 A. I have nothing further to add. 01:14:39
 18 Q. How much text can somebody read without 01:14:43
 19 scrolling in NFPA's read-only access on its 01:14:55
 20 website? 01:15:03
 21 MR. REHN: Objection to form. 01:15:06
 22 Assumes facts. 01:15:08
 23 A. If I recall correctly, the last time I was on 01:15:10
 24 the site, it was one page. 01:15:13
 25 Q. It was one full page of the code? 01:15:19
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1 A. I believe so. 01:15:24
 2 Q. And NFPA designs the website to preclude 01:15:24
 3 anybody from being able to cut and paste text 01:15:27
 4 from the read-only access, correct? 01:15:33
 5 MR. REHN: Objection as to form. 01:15:39
 6 Assumes facts. 01:15:40
 7 A. NFPA's policy is to provide free read-only 01:15:43
 8 access to all of our codes and standards. 01:15:47
 9 Q. Its policy is not to facilitate cutting and 01:15:50
 10 pasting of the text from the read-only access 01:15:53
 11 versions of the codes and standards, correct? 01:15:56
 12 A. Our policy is to provide read-only. 01:15:59
 13 Q. And nothing more? 01:16:03
 14 MR. REHN: Objection as to form. 01:16:05
 15 A. NFPA provides access to our codes and 01:16:07
 16 standards in a multitude of ways and multiple 01:16:11
 17 platforms and various aspects. One way is 01:16:13
 18 through free read-only access to all of our 01:16:16
 19 codes and standards. 01:16:18
 20 Q. Does NFPA provide those who access the 01:16:19
 21 read-only standard the ability to cut and 01:16:22
 22 paste text from those standards, yes or no? 01:16:24
 23 MR. REHN: Objection as to form. 01:16:29
 24 The witness may answer it, but he's not 01:16:32
 25 limited in his answer. 01:16:34
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1 A. We provide read-only access, and that's 01:16:36
 2 the limit of the term of free read-only. 01:16:39
 3 There are not other features to that 01:16:41
 4 platform. 01:16:43
 5 MR. BRIDGES: If it's all right, 01:17:10
 6 why don't we go ahead and take our lunch 01:17:12
 7 break now. If we can convene in one hour, 01:17:14
 8 I'd appreciate it. 01:17:17
 9 VIDEOGRAPHER: The time is 1:17. 01:17:17
 10 We are now off the record. 01:17:19
 11 (Lunch break) 01:17:47
 12 01:17:47
 13 01:17:47
 14
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1 AFTERNOON SESSION 01:17:51
 2 VIDEOGRAPHER: The time is 2:22. 02:21:55
 3 We are now back on the record. 02:22:33
 4 BY MR. BRIDGES: 02:22:35
 5 Q. Mr. Dubai, your counsel furnished to us 02:22:44
 6 tens of thousands of pages of documents that 02:22:50
 7 purport to claim, purport to be assignments 02:22:57
 8 of rights to NFPA as part of the standards 02:23:02
 9 development process. I'm going to show you 02:23:06
 10 a number of these documents. 02:23:08
 11 I basically need from you a yes or 02:23:09
 12 no from you for each one as to whether, based 02:23:12
 13 on this representation, based on the document 02:23:14
 14 as you see it, you believe that they are 02:23:18
 15 indeed documents that NFPA possesses as part 02:23:22
 16 of that process. The first one is 02:23:27
 17 Exhibit 1233. 02:23:30
 18 (Exhibit 1233 marked for 02:23:36
 19 identification.) 02:23:53
 20 Q. Does this appear to you to be a record that 02:23:53
 21 NFPA maintains in the ordinary course of its 02:23:57
 22 business as preserving the documentation 02:24:00
 23 for participants for participation in the 02:24:06
 24 standards development process? 02:24:11
 25 A. In this case, the best of my knowledge, it 02:24:12
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<p>1 does. However, I should note that I didn't 02:24:16 2 start at NFPA till 1995, so I wouldn't have 02:24:19 3 had knowledge of the specific forms, but it 02:24:23 4 looks like a typical NFPA historical form. 02:24:25 5 Q. Does the language at the bottom of that page 02:24:26 6 resemble language that you recall in NFPA 02:24:30 7 forms? 02:24:32 8 A. Yes, it looks familiar to me. 02:24:45 9 (Exhibit 1234 marked for 02:25:15 10 identification.) 02:25:19 11 Q. Same question with respect to Exhibit 1234. 02:25:19 12 Does this appear to be a document from NFPA's 02:25:33 13 records of the standards development process 02:25:35 14 that it keeps in its ordinary course of 02:25:38 15 business? 02:25:40 16 A. Yes, it looks like the right format, however, 02:25:58 17 with the caveat that "I hereby grant NAPA" 02:26:01 18 at the bottom. It's not NFPA. I'm not sure 02:26:05 19 where that typo came from. 02:26:09 20 Q. The second acronym in that paragraph is NFPA, 02:26:11 21 correct? 02:26:16 22 A. That is correct. 02:26:16 23 Q. To the best of your knowledge, is this a 02:26:17 24 document from NFPA's records? I'll represent 02:26:20 25 it was produced by NFPA. 02:26:24</p> <p style="text-align: right;">Page 126</p>	<p>1 (Exhibit 1237 marked for 02:29:25 2 identification.) 02:29:25 3 Q. Same questions with respect to Exhibit 1237. 02:29:25 4 Do you believe that this is a document that 02:29:28 5 NFPA maintains in the ordinary course of its 02:29:31 6 business that it received as part of the 02:29:34 7 standards development process? 02:29:37 8 A. (Witness examines document) Yes, this would 02:29:39 9 also seem typical. 02:29:53 10 (Exhibit 1238 marked for 02:29:55 11 identification.) 02:30:19 12 Q. Same questions with respect to Exhibit 1238. 02:30:19 13 A. (Witness examines document) Yes, this also 02:30:38 14 seems typical. 02:30:44 15 (Exhibit 1239 marked for 02:30:52 16 identification.) 02:31:11 17 Q. Do you believe Exhibit 1239 is a document 02:31:11 18 that NFPA has maintained in its records in 02:31:23 19 the ordinary course of business as part of 02:31:26 20 the standards development process and is a 02:31:30 21 document that it requires of participants in 02:31:34 22 that process? 02:31:36 23 MR. REHN: Object to the form of the 02:31:39 24 that question. Compound. 02:31:40 25 A. My answer would be with respect to this form, 02:31:45</p> <p style="text-align: right;">Page 128</p>
<p>1 A. To the best of my knowledge -- excuse me. To 02:26:26 2 the best of my knowledge, it does look 02:26:29 3 typical for them. 02:26:30 4 (Exhibit 1235 marked for 02:26:51 5 identification.) 02:27:02 6 Q. Same questions with respect to Exhibit 1235. 02:27:02 7 A. (Witness examines document) Yes, it appears 02:27:23 8 to be typical of what I would expect. 02:27:26 9 (Exhibit 1236 marked for 02:28:06 10 identification.) 02:28:08 11 Q. Same questions with respect to 1236. You 02:28:08 12 believe these to be -- do you believe this to 02:28:13 13 be a copy of a document that NFPA has 02:28:17 14 maintained in the ordinary course of business 02:28:21 15 in its standards development process? 02:28:25 16 A. (Witness examines document) Yes, this as 02:28:29 17 well, Exhibit 1236 does also look typical. 02:28:39 18 Q. Has the same language at the bottom of the 02:28:44 19 page as at least some of the earlier 02:28:47 20 exhibits? 02:28:51 21 MR. REHN: Object to the form of 02:28:59 22 the question. It's vague. 02:29:01 23 A. It does look similar to some of the other 02:29:10 24 forms. 02:29:15 25 02:29:15</p> <p style="text-align: right;">Page 127</p>	<p>1 it looks like a typical proposal form versus 02:31:47 2 something a participant in the process would 02:31:50 3 fill out. But as a public proposal form, it 02:31:53 4 looks typical. 02:31:56 5 Q. As a public proposal form, what do you mean 02:31:59 6 distinguishing that from somebody who's a 02:32:03 7 participant in the process? 02:32:05 8 A. I understand participants to be committee 02:32:07 9 members as well as public submitters, so I 02:32:12 10 just -- our committee members have different 02:32:16 11 forms to utilize, so I just want to clarify 02:32:18 12 that point. 02:32:22 13 Q. What forms do the committee members provide? 02:32:32 14 A. They have a committee member application 02:32:37 15 form, so you -- that we covered earlier, they 02:32:40 16 fill out a committee member application. 02:32:46 17 This is a form on a public proposal or 02:32:46 18 public comment which is the public open, 02:32:47 19 public process. 02:32:52 20 Q. So do the committee members use any forms 02:32:53 21 for suggesting language changes for the code 02:32:55 22 or standards? 02:33:01 23 MR. REHN: Object to the form. 02:33:04 24 Foundation. 02:33:04 25 A. No. If they wanted to submit them as a 02:33:07</p> <p style="text-align: right;">Page 129</p>

1 member of the public, they can do that 02:33:08
 2 through utilizing these forms or they can 02:33:09
 3 just do it verbally or through working 02:33:11
 4 documents at the committee meeting. 02:33:13
 5 (Exhibit 1240 marked for 02:34:24
 6 identification.) 02:34:33
 7 Q. Handing you Exhibit 1240. Do you believe 02:34:33
 8 this to be a copy of a document that NFPA has 02:34:41
 9 maintained in the ordinary course of business 02:34:45
 10 reflecting a proposal received regarding the 02:34:49
 11 1999 National Electrical Code? 02:34:52
 12 A. It does appear to be a proposal form, and it 02:35:02
 13 does look -- the edition is cut off, but I 02:35:05
 14 believe it does look like the 1999 National 02:35:09
 15 Electrical Code. The top half of that is cut 02:35:13
 16 off. 02:35:15
 17 (Exhibit 1241 marked for 02:36:03
 18 identification.) 02:36:10
 19 Q. I've handed you Exhibit 1241. Does this 02:36:10
 20 also appear to be a document that NFPA has 02:36:24
 21 maintained in the ordinary course of business 02:36:27
 22 consisting of a record from its standards 02:36:31
 23 development process? 02:36:34
 24 A. (Witness examines document) Yes, it appears 02:36:38
 25 to be consistent. 02:36:42

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1 (Exhibit 1242 marked for 02:36:46
 2 identification.) 02:39:02
 3 Q. I just handed you, I think that's 02:39:02
 4 Exhibit 1242. Do you recognize this as a 02:39:19
 5 document that NFPA maintains in its records 02:39:27
 6 in the ordinary course of business as part 02:39:30
 7 of the standards development process 02:39:33
 8 recordkeeping? 02:39:36
 9 A. (Witness examines document) Yes, I recognize 02:39:38
 10 this. 02:39:43
 11 Q. Do you know who Richard Owen is? 02:39:46
 12 A. Yes. 02:39:49
 13 Q. Who is Richard Owen? 02:39:50
 14 A. He is a retired electrical inspector who 02:39:52
 15 served on our technical committee panels for 02:39:58
 16 the National Electrical Code. 02:40:01
 17 Q. Does this document reflect a proposal by 02:40:03
 18 participants in the standards development 02:40:17
 19 process? 02:40:19
 20 MR. REHN: Object to the form. 02:40:22
 21 A. No. It appears to be a comment, not a 02:40:26
 22 proposal. 02:40:29
 23 Q. And so this -- this -- that's right. This is 02:40:33
 24 a form for comments, not a form for 02:40:37
 25 proposals. Sorry. And who authored this 02:40:39

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1 comment? 02:40:41
 2 MR. REHN: Object to the form. May 02:40:43
 3 call for speculation. 02:40:46
 4 A. Based upon the form, I would speculate that 02:40:47
 5 Richard Owen... 02:41:03
 6 Q. He was employed at the time by the City of 02:41:07
 7 St. Paul, based upon this document, it 02:41:21
 8 appears; is that correct? 02:41:22
 9 MR. REHN: Object to the form. 02:41:26
 10 A. Based upon reviewing the form, it does appear 02:41:31
 11 that he was still employed by the City of 02:41:34
 12 St. Paul. 02:41:37
 13 Q. Does this comment reflect the comment that 02:41:38
 14 Mr. Owen has relayed from the 02:41:45
 15 Panel 3/Panel 16 Task Group? 02:41:49
 16 MR. REHN: Object to the form. 02:41:57
 17 (Pause) 02:41:57
 18 MR. REHN: I think there's a 02:42:24
 19 question pending. 02:42:24
 20 A. Is there -- I apologize. Is there a 02:42:26
 21 question? I heard you make a statement. 02:42:27
 22 Q. Does this comment reflect -- strike that. 02:42:30
 23 Does this form -- strike that. 02:42:33
 24 Does Exhibit 1242 reflect a comment 02:42:36
 25 that Mr. Owen relayed from the 02:42:38

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1 Panel 3/Panel 16 Task Group referred to in 02:42:41
 2 the document which has reference also to 02:42:46
 3 members of those panels at the bottom of the 02:42:51
 4 first page and top of the second page of the 02:42:56
 5 exhibit? 02:42:58
 6 MR. REHN: And I'll object to the 02:43:00
 7 form. 02:43:01
 8 A. Based upon my review of this specific form 02:43:04
 9 here, it appears that Mr. Owen who, as I 02:43:07
 10 stated, was a longstanding committee member, 02:43:11
 11 did submit something on behalf of a task 02:43:15
 12 group, and that's based upon that first line. 02:43:17
 13 Q. Are those groups also committee members? Are 02:43:20
 14 group members committee members? 02:43:25
 15 MR. REHN: Objection. 02:43:27
 16 Q. Strike that. 02:43:27
 17 Are the group members in those task 02:43:28
 18 groups also technical committee members -- 02:43:29
 19 MR. REHN: Objection as to form. 02:43:32
 20 Q. -- or were they at the time? 02:43:33
 21 MR. REHN: Compound. 02:43:35
 22 A. Without seeing this specific committee list, 02:43:37
 23 I couldn't tell you. I see from the wording 02:43:45
 24 he references from panel such and such for 02:43:48
 25 some of them, but without reviewing the 02:43:51

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<p>1 committee list at the time, I can't tell you 02:43:55 2 for certain. 02:43:56 3 Q. Based upon the -- do you have any reason to 02:43:57 4 disbelieve any of the statements he made in 02:44:05 5 that document? 02:44:07 6 A. With respect to the names that he identifies 02:44:18 7 as panel members or himself as a panel chair, 02:44:22 8 I have no reason to specifically agree or 02:44:28 9 disagree with that because I don't have the 02:44:31 10 full record in front of me. 02:44:32 11 (Exhibit 1243 marked for 02:44:44 12 identification.) 02:44:52 13 Q. I handed you Exhibit 1243. This looks 02:44:52 14 freshly typed in some respect, but does this 02:45:00 15 appear to be substantially the correct form 02:45:06 16 for a form for proposals in 1995, to your 02:45:15 17 knowledge? 02:45:21 18 MR. REHN: Object to the form. 02:45:21 19 A. To the best of my knowledge, it looks like as 02:45:27 20 the wording from a typical proposal form. 02:45:32 21 However, in past history over the years, as 02:45:36 22 you've noted from the record, there's many 02:45:38 23 different versions of our forms and ways of 02:45:40 24 submission. So it looks like it's freshly 02:45:42 25 typed, as you said. 02:45:47</p> <p style="text-align: right;">Page 134</p>	<p>1 Q. How did the five to ten different forms vary 02:47:25 2 from each other? 02:47:32 3 A. Most often, based upon my recollection of my 02:47:38 4 20 years, the forms most often differed based 02:47:42 5 upon the submission method. We get tens of 02:47:45 6 thousands of these forms every year or we 02:47:50 7 used to, now they're all electronic. And 02:47:53 8 when we got those, people would submit those 02:47:55 9 via PDF as attachments, consolidated word 02:47:57 10 documents as well as paper faxes, FedEx. And 02:48:01 11 so, depending how they were submitted and 02:48:06 12 received, they might have a slightly 02:48:07 13 different look to them. 02:48:09 14 Q. You mentioned slightly different look. How 02:48:10 15 many different forms have there been during 02:48:12 16 this period since 1995 in the sense that they 02:48:13 17 have had different wording? 02:48:19 18 MR. REHN: Object to the form. 02:48:22 19 A. I would say, based upon my experience since 02:48:33 20 1995, I would -- overall wording changes, I 02:48:36 21 would have to estimate five or six, at most. 02:48:41 22 Q. What have some of those wording changes been? 02:48:45 23 MR. REHN: Object to the form. The 02:48:51 24 documents speaks for themselves. 02:48:53 25 A. The wording forms are changed -- our forms 02:49:00</p> <p style="text-align: right;">Page 136</p>
<p>1 Q. So how many different versions of the forms 02:45:47 2 have there been? 02:45:50 3 A. I can't -- I would be speculating. I'm not 02:45:51 4 quite sure how many over the years. 02:45:55 5 Q. What is your best estimate? 02:45:58 6 A. The reason I'm thinking about this is going 02:46:02 7 back to 1896, I would imagine there was on 02:46:13 8 the order of a large magnitude of different 02:46:16 9 forms. I'm just not quite sure how to 02:46:20 10 capture that many years of history. 02:46:26 11 Q. So during your -- let me ask you, since 1995, 02:46:30 12 how many different forms are you aware of 02:46:32 13 that NFPA has had, how many different 02:46:35 14 versions of forms for proposals has NFPA had 02:46:42 15 since 1995? 02:46:46 16 A. We've probably had different -- we have two 02:46:50 17 aspects. One is ways of submissions and 02:46:57 18 forms. Historically there was paper and 02:47:00 19 online electronic via PDFs and now it's all 02:47:02 20 online. So those on the order of five to 02:47:07 21 ten, depending on the project. 02:47:10 22 For example, the National Electrical 02:47:13 23 Code had its own unique title on their forms, 02:47:14 24 so it was known that it went to the National 02:47:17 25 Electrical Code. 02:47:25</p> <p style="text-align: right;">Page 135</p>	<p>1 change to reflect terminology within our 02:49:03 2 standards development system as our 02:49:05 3 regulations changed, section versus article, 02:49:07 4 annex versus appendix and such, as well as 02:49:10 5 any updates to any legal disclaimers or 02:49:13 6 copyright releases during our normal update 02:49:17 7 process. So those are some of the ways I can 02:49:21 8 think they might have changed. 02:49:25 9 Q. I think you identified three different 02:49:32 10 changes in the answer just now, one change 02:49:37 11 relating to the words, section and article; 02:49:43 12 is that correct? 02:49:49 13 A. That is correct, section versus article. 02:49:51 14 Q. Which word replaced the other? 02:49:53 15 A. They coexist, actually, section and article 02:49:56 16 coexist. Our standards, exclusive of our 02:50:00 17 electrical suite of standards, rely on the 02:50:02 18 term "section" while as the National 02:50:05 19 Electrical Code and a few other of our 02:50:07 20 electrical standards rely on the term 02:50:10 21 "article." 02:50:11 22 Q. What's the reason for that distinction? 02:50:11 23 A. We have two style manuals, NFPA style manual, 02:50:16 24 which applies to the broad library of our 02:50:20 25 codes and standards; and our national or 02:50:23</p> <p style="text-align: right;">Page 137</p>

1 electrical style manual, which applies to our 02:50:24
 2 electrical documents. 02:50:27
 3 Q. Do the terms "annex" and "appendix" coexist 02:50:37
 4 in NFPA's forms today? 02:50:45
 5 MR. REHN: Object to the form. 02:50:48
 6 Lacks foundation. 02:50:54
 7 A. We updated our manual style in, I believe it 02:50:56
 8 was year 2000, and we changed the term 02:51:02
 9 "appendix" to "annex" at that time to be 02:51:05
 10 consistent with other standards developers 02:51:09
 11 terminology. 02:51:12
 12 And so it's my opinion that most, if 02:51:14
 13 not all, of our documents, many of our 02:51:17
 14 documents have gone through the process of a 02:51:21
 15 full revision where that is changed from 02:51:23
 16 appendix to annex. 02:51:26
 17 Q. You said NFPA made the change to be 02:51:29
 18 consistent with other standards development 02:51:33
 19 organizations' terminology; is that correct? 02:51:35
 20 A. That's correct. 02:51:39
 21 Q. Is there a general style manual for standards 02:51:41
 22 developers terminology? 02:51:46
 23 A. Not that I'm aware of. 02:51:53
 24 Q. Do the different standards developers tend to 02:51:55
 25 converge around using words in similar 02:51:58
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1 fashion? 02:52:01
 2 MR. REHN: Object to the form. 02:52:03
 3 A. In my opinion I would say standard developers 02:52:08
 4 converge around terminology and format that 02:52:13
 5 works for their constituents that utilize 02:52:15
 6 their standards. 02:52:18
 7 Q. Does that lead to some convergence among the 02:52:20
 8 practices of various standards development 02:52:23
 9 organizations? 02:52:26
 10 MR. REHN: Object to the form. May 02:52:33
 11 call for speculation. 02:52:34
 12 A. I would -- from my personal opinion, I view 02:52:37
 13 it as a usability and we want to make it as 02:52:41
 14 easy and as possible for users to understand 02:52:45
 15 the structure of the standard and the 02:52:49
 16 requirements and the layout of the documents, 02:52:51
 17 so often those changes may end up in a common 02:52:53
 18 format to make it easier to understand. 02:52:57
 19 Q. A common format with some other standards 02:52:59
 20 developers organizations? 02:53:01
 21 MR. REHN: Object to the form. 02:53:05
 22 Vague. 02:53:06
 23 A. In my view, yes. For example, a given set 02:53:06
 24 chapter where all the definitions are 02:53:13
 25 contained is a good example. 02:53:14
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1 Q. Another example is changing the word appendix 02:53:17
 2 to annex, correct? 02:53:20
 3 A. To the best of my recollection, that's an 02:53:22
 4 example that I could think of why we shifted 02:53:25
 5 there, but the best example I can give you is 02:53:28
 6 a single chapter where all the definitions 02:53:30
 7 are included. 02:53:33
 8 Q. Then you mentioned that there were updates to 02:53:36
 9 disclaimers and copyright releases; is that 02:53:40
 10 correct? 02:53:47
 11 A. That is correct. Over my 20 years, I'm aware 02:53:48
 12 that updates were added to the forms or just 02:53:51
 13 to the forms on a -- not on a specific basis, 02:53:57
 14 but as needed. 02:54:00
 15 Q. What updates were needed to the disclaimers 02:54:02
 16 and copyright releases? 02:54:06
 17 MR. REHN: Object to the form. May 02:54:08
 18 call for a legal opinion. Ambiguous with 02:54:10
 19 respect to the terms used in the question. 02:54:14
 20 A. From my perspective, my team's perspective, 02:54:17
 21 we never got into the details of those. It 02:54:22
 22 was often our legal team would ask us to 02:54:24
 23 update our forms, and we would accomplish 02:54:27
 24 that through our process. 02:54:29
 25 Q. What were some of the changes to the forms 02:54:31
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1 that you recall as part of those updates? 02:54:35
 2 MR. REHN: Objection. Documents 02:54:38
 3 speak for themselves. 02:54:40
 4 A. I think some of the major changes are 02:54:43
 5 consistent format. If you notice 02:54:46
 6 historically, there was lots of different 02:54:49
 7 formattings and layouts. Having consistent 02:54:49
 8 format, consistent titles, consistent look 02:54:51
 9 and feel is probably the biggest ones that I 02:54:55
 10 was -- that I'm aware of and was involved in. 02:54:59
 11 Q. My question was specifically to the updates 02:55:02
 12 of disclaimers and copyright releases. What 02:55:05
 13 updates do you recall to the text of the 02:55:09
 14 disclaimers and copyright releases? 02:55:12
 15 MR. REHN: Object to the form. 02:55:15
 16 A. That was not, again, not part of my 02:55:18
 17 responsibility. Oftentimes we were given a 02:55:21
 18 set of text to insert as that part of the 02:55:23
 19 form and we didn't do a line by line 02:55:26
 20 comparison. That was -- our job was to 02:55:29
 21 implement the appropriate disclaimers, which 02:55:31
 22 was legal's responsibility to provide to us 02:55:33
 23 and ensure that it got in there. 02:55:35
 24 Q. What are some of the changes that you recall? 02:55:37
 25 MR. REHN: Objection. Asked and 02:55:40
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<p>1 answered. 02:55:41</p> <p>2 A. I don't recall specific wording changes. 02:55:43</p> <p>3 Q. Do you recall generally any wording changes? 02:55:45</p> <p>4 MR. REHN: Same objection. 02:55:50</p> <p>5 A. I only recall changes to the general form and 02:55:51</p> <p>6 I understand you're asking about the 02:55:54</p> <p>7 disclaimer. I don't recall any specific ones 02:55:55</p> <p>8 or copyright release or disclaimers or 02:55:57</p> <p>9 transfers. 02:55:59</p> <p>10 Q. You don't recall anything about changes in 02:56:01</p> <p>11 text of disclaimers or copyright language? 02:56:04</p> <p>12 MR. REHN: Object to the form. The 02:56:09</p> <p>13 documents speak for themselves. The question 02:56:10</p> <p>14 has been answered. 02:56:14</p> <p>15 A. No, I do not. 02:56:16</p> <p>16 (Exhibit 1244 marked for 02:56:52</p> <p>17 identification.) 02:57:05</p> <p>18 Q. Mr. Dubay, do you recognize Exhibit 1244 as 02:57:05</p> <p>19 another document from -- that NFPA maintains 02:57:14</p> <p>20 in the ordinary course of business as part of 02:57:18</p> <p>21 the standards development process? 02:57:23</p> <p>22 A. Yes. Again, this seems like another 02:57:26</p> <p>23 typical -- Exhibit 1244 seems like another 02:57:29</p> <p>24 typical form. 02:57:32</p> <p>25 Q. Is this typical for content of types of 02:57:33</p> <p style="text-align: right;">Page 142</p>	<p>1 Q. That's a yes, then? 03:00:28</p> <p>2 A. Yes, it does look typical. 03:00:29</p> <p>3 Q. It appears that this document lacks a 03:00:39</p> <p>4 signature. I gather that NFPA would accept 03:00:42</p> <p>5 proposals like this that lacked signatures; 03:00:46</p> <p>6 is that correct? 03:00:50</p> <p>7 MR. REHN: Object to the form. 03:00:50</p> <p>8 A. We have a policy in place to not accept any 03:00:52</p> <p>9 proposals, comments, public inputs or public 03:00:54</p> <p>10 comments in our new process without the 03:00:57</p> <p>11 appropriate copyright transfer. In my 03:00:59</p> <p>12 personal opinion, I note that it's an -- it 03:01:02</p> <p>13 appears to be a Word file and many times we 03:01:04</p> <p>14 would get individuals would submit large 03:01:07</p> <p>15 numbers of proposals and comments with a 03:01:10</p> <p>16 cover sheet having a signature applying to 03:01:13</p> <p>17 all of them. 03:01:15</p> <p>18 And this may be that case, but I'm 03:01:18</p> <p>19 speculating on that point. But we have a 03:01:20</p> <p>20 strict policy in place to review each policy 03:01:22</p> <p>21 for signature. 03:01:26</p> <p>22 Q. Because it's important to NFPA to get a 03:01:26</p> <p>23 signature to Point 5 on this document; is 03:01:29</p> <p>24 that correct? 03:01:34</p> <p>25 MR. REHN: Object to the form. 03:01:34</p> <p style="text-align: right;">Page 144</p>
<p>1 proposals that NFPA receives? 02:57:41</p> <p>2 A. In general I think it's one example. We 02:57:49</p> <p>3 receive many different types and formats. 02:57:52</p> <p>4 Q. I understand that. 02:57:55</p> <p>5 (Exhibit 1245 marked for 02:57:58</p> <p>6 identification.) 02:58:19</p> <p>7 Q. Same question with respect to Exhibit 1245. 02:58:19</p> <p>8 Do you recognize this as a document that NFPA 02:58:33</p> <p>9 maintains in the ordinary course of business 02:58:37</p> <p>10 as part of its standards development process? 02:58:39</p> <p>11 A. Yes, it also -- Exhibit 1245 also looks 02:58:46</p> <p>12 typical. 02:58:49</p> <p>13 Q. By the way, do you know who Stan Kaufman is? 02:58:52</p> <p>14 A. I don't know Stan personally, but I know his 02:58:58</p> <p>15 name. I know of him, I should say. 02:59:01</p> <p>16 Q. Is he a member of any technical committee, or 02:59:16</p> <p>17 has he ever been? 02:59:20</p> <p>18 A. Off the top of my head, I don't recall. 02:59:25</p> <p>19 (Exhibit 1246 marked for 02:59:30</p> <p>20 identification.) 03:00:03</p> <p>21 Q. I've handed you Exhibit 1246. Do you 03:00:03</p> <p>22 recognize this as a document that NFPA has 03:00:08</p> <p>23 maintained in the ordinary course of business 03:00:11</p> <p>24 as part of the standards development process? 03:00:14</p> <p>25 A. Exhibit 1246 does look typical. 03:00:22</p> <p style="text-align: right;">Page 143</p>	<p>1 A. We have a policy in place, and the importance 03:01:39</p> <p>2 of that policy is to verify each and every 03:01:42</p> <p>3 public input, public comment and under the 03:01:45</p> <p>4 old system, proposal that a signature was 03:01:48</p> <p>5 provided on any and all submissions. 03:01:51</p> <p>6 Q. My question was whether it was important to 03:01:54</p> <p>7 get that for Paragraph 5? 03:01:56</p> <p>8 MR. REHN: Object to the form. 03:02:00</p> <p>9 Asked and answered. 03:02:03</p> <p>10 A. Historically, for my team, it was important 03:02:05</p> <p>11 because we had a policy in place to the point 03:02:11</p> <p>12 that we had full-time staff assigned to that 03:02:13</p> <p>13 one task. And during times of heavy volumes, 03:02:15</p> <p>14 we would assign multiple staff to that 03:02:18</p> <p>15 specific task. 03:02:21</p> <p>16 (Exhibit 1247 marked for 03:03:06</p> <p>17 identification.) 03:03:41</p> <p>18 Q. I've handed you Exhibit 1247. Do you 03:03:41</p> <p>19 recognize this as a document that NFPA 03:03:53</p> <p>20 maintains in the ordinary course of business 03:03:55</p> <p>21 as part of the standard development process? 03:04:00</p> <p>22 A. Yes, this form does look typical, 03:04:08</p> <p>23 Exhibit 1247. 03:04:11</p> <p>24 Q. This was a non-electrical form, but the 03:04:11</p> <p>25 sender indicated it was for the National 03:04:14</p> <p style="text-align: right;">Page 145</p>

<p>1 Electrical Code; is that correct? 03:04:18 2 MR. REHN: Objection as to form. 03:04:21 3 A. It appears based on Line Item 1A that the 03:04:26 4 document the person was submitting it on was 03:04:29 5 to the National Electrical Code. 03:04:32 6 Q. There was normally -- didn't you say there 03:04:34 7 was normally a different type of form for 03:04:36 8 submissions for the National Electrical Code? 03:04:39 9 A. If we look at some of the forms you've 03:04:45 10 submitted to me, some of them had the title. 03:04:47 11 The title was different, said form for the X 03:04:49 12 edition of the National Electrical Code, and 03:04:51 13 so we didn't prohibit you from using any 03:04:53 14 standard form. 03:04:57 15 (Exhibit 1248 marked for 03:05:30 16 identification.) 03:06:03 17 (Pause) 03:06:05 18 Q. Do you recognize Exhibit 1248 as a form for 03:06:05 19 proposal that NFPA has maintained in the 03:06:44 20 ordinary course of business as part of its 03:06:47 21 standards development process? 03:06:50 22 A. Yes, Exhibit 1248 does look typical. 03:06:53 23 (Exhibit 1249 marked for 03:07:33 24 identification.) 03:07:41 25 Q. Do you recognize Exhibit 1249 as a form for 03:07:41 Page 146</p>	<p>1 Exhibit 1250. 03:10:40 2 Q. Do you know Mr. Belke, James C. Belke? 03:10:41 3 A. No, sir. 03:10:46 4 Q. Do you know whether he's a member of any 03:10:46 5 technical committee? 03:10:50 6 A. Not off the top of my head. 03:10:55 7 Q. Do you know what the annotations in 03:10:56 8 handwriting various places in the form 03:11:05 9 indicate? There's a checkmark in several 03:11:14 10 different places. There's some asterisks, 03:11:21 11 there's a pound sign A, pound sign B, pound 03:11:32 12 sign C. 03:11:36 13 MR. REHN: Is that the question? 03:11:46 14 MR. BRIDGES: Yes. 03:11:48 15 MR. REHN: Objection that it's 03:11:49 16 compound. 03:11:50 17 A. So let me first answer the first part and we 03:11:57 18 can follow up if we need to. Each change 03:12:00 19 that came in was processed, again, by 03:12:03 20 full-time staff to verify signatures and 03:12:06 21 copyright concerns. And if you notice on 03:12:09 22 the first page under Proposals, not original 03:12:11 23 material, there's supporting material which 03:12:15 24 has an attached CSB report. 03:12:16 25 And it appears that someone wrote 03:12:26 Page 148</p>
<p>1 proposal that NFPA has maintained in the 03:07:53 2 ordinary course of business in its standards 03:07:58 3 development process? 03:08:04 4 A. Yes, Exhibit 1249 does look typical. 03:08:13 5 Q. And some persons might suggest proposals with 03:08:21 6 attachments where they can't fit the text of 03:08:27 7 the proposal in the lines on the form. And 03:08:33 8 this exhibit reflects an attachment on the 03:08:36 9 reverse page of Exhibit 1249; is that 03:08:42 10 correct? 03:08:45 11 A. Based upon my review of the statement of 03:08:47 12 Item 4 and the proposed text on the back, it 03:09:02 13 appears to be consistent that the two pages 03:09:06 14 were copied correctly. 03:09:08 15 (Exhibit 1250 marked for 03:09:26 16 identification.) 03:09:41 17 Q. I've handed you Exhibit 1250. Do you 03:09:46 18 recognize this as a form for proposals that 03:10:01 19 NFPA has maintained in the ordinary course of 03:10:09 20 business in its standards development 03:10:13 21 process? 03:10:17 22 A. (Witness examines document) Based upon my 03:10:18 23 review, it appears that this is typical. 03:10:33 24 Q. So that's a yes? 03:10:36 25 A. That's a yes. It appears to be typical, 03:10:37 Page 147</p>	<p>1 down that it was not being submitted as 03:12:29 2 change but as supporting material to support 03:12:31 3 a change. 03:12:35 4 Q. Go ahead. 03:12:41 5 A. The checkmarks, each of these changes had to 03:12:42 6 be keyed manually by the staff who verified 03:12:45 7 all the text, editorial and production staff, 03:12:47 8 and oftentimes they would check the forms as 03:12:51 9 they worked through them to ensure they had 03:12:53 10 captured everything. That -- in this case it 03:12:55 11 would be speculation on my part that that's 03:12:57 12 what those checkmarks are there for. 03:12:59 13 (Exhibit 1251 marked for 03:13:22 14 identification.) 03:13:30 15 Q. Does Exhibit -- strike that. 03:13:30 16 Do you recognize 1251 as a document 03:13:46 17 that NFPA maintains in the ordinary course of 03:13:49 18 business in the standards development 03:13:52 19 process? 03:13:53 20 A. Exhibit 1251 does look typical for a proposal 03:13:54 21 form. 03:13:58 22 Q. So the answer is yes? 03:13:59 23 MR. REHN: Object to the form. 03:14:01 24 A. Yes, Exhibit 1251 does look typical. 03:14:05 25 03:14:30 Page 149</p>

<p>1 (Exhibit 1252 marked for 03:14:30 2 identification.) 03:14:44 3 Q. Do you recognize Exhibit 1252 as a document 03:14:44 4 that NFPA has maintained in the ordinary 03:15:00 5 course of business in its standards 03:15:02 6 development process? 03:15:05 7 A. Exhibit 1252 does look typical for a proposal 03:15:10 8 form. 03:15:14 9 VIDEOGRAPHER: There are ten minutes 03:15:44 10 remaining on the videotape. 03:15:45 11 Q. So I guess if I asked if you recognized 1252 03:15:58 12 as a document NFPA had maintained in 03:15:58 13 the ordinary course of business in its 03:15:58 14 standards development process, your answer 03:16:06 15 was Exhibit 1252 does look typical for a 03:16:06 16 proposal form. So is the answer yes? 03:16:09 17 MR. REHN: Object to the form. 03:16:13 18 A. Yes, 1252 does look typical. 03:16:17 19 (Exhibit 1253 marked for 03:17:10 20 identification.) 03:17:25 21 Q. Do you recognize Exhibit 1253 as a form for 03:17:25 22 proposals that NFPA has maintained in the 03:17:39 23 ordinary course of business in its standards 03:17:43 24 development process? 03:17:46 25 MR. REHN: Objection. Seems to 03:17:55 Page 150</p>	<p>1 the ordinary course of business? 03:20:46 2 A. This appears to be a typical record. 03:20:48 3 (Exhibit 1255 marked for 03:21:44 4 identification.) 03:22:10 5 Q. Do you recognize Exhibit 1255 as a form that 03:22:10 6 NFPA has maintained in its records in the 03:22:30 7 ordinary course of business? 03:22:34 8 A. This appears to be a partial electronic 03:22:42 9 comment form, so Exhibit 1255 seems to be a 03:22:46 10 portion of a record. 03:22:50 11 Q. Do you recognize the name Jim Pauley? 03:22:55 12 A. Jim Pauley is the president and CEO of NFPA. 03:23:02 13 Q. At the time of this document, September 15, 03:23:07 14 1997, he was not president of NFPA, correct? 03:23:11 15 A. That is correct. Jim Pauley was not 03:23:17 16 president at that time. 03:23:20 17 Q. He was employed by Square D Company? 03:23:22 18 A. Based upon this comment form, it appears so. 03:23:30 19 Q. And his comments related to some proposal 03:23:34 20 involving deleted text based on Items 1 and 03:23:49 21 2; is that correct? 03:23:55 22 A. Based upon my reading of Statement No. 4, it 03:24:04 23 does appear that Mr. Pauley states the 03:24:17 24 deletion of this text will clear up much of 03:24:19 25 this confusion and make it clear as to what 03:24:22 Page 152</p>
<p>1 misstate the document. 03:17:56 2 A. (Witness examines document) I recognize this 03:18:00 3 as an electronic submission of numerous -- 03:18:06 4 excuse me, I recognize Exhibit 1253 as an 03:18:09 5 electronic submission of numerous proposed 03:18:12 6 changes by one submitter. 03:18:16 7 Q. Okay. And NFPA maintains these in the 03:18:19 8 ordinary course of business in its standards 03:18:24 9 development process, correct? 03:18:26 10 A. We maintain all submissions, whether they're 03:18:30 11 submitted electronically, paper, via fax or 03:18:32 12 in any other means to keep the record 03:18:35 13 together. 03:18:36 14 (Exhibit 1254 marked for 03:19:36 15 identification.) 03:19:45 16 Q. Do you recognize Exhibit 1254 as a copy of a 03:19:45 17 form for proposals and a transmittal form 03:20:07 18 that NFPA has maintained in the ordinary 03:20:13 19 course of business in connection with the 03:20:17 20 standards development process of the National 03:20:21 21 Electrical Code? 03:20:29 22 A. Based upon my review, it appears that 03:20:29 23 Exhibit 1254 is an electronic submission of a 03:20:37 24 typical form for proposals. 03:20:39 25 Q. NFPA has maintained it in its records during 03:20:39 Page 151</p>	<p>1 rules apply. So it does appear he's 03:24:24 2 commenting on a proposal with deleted text. 03:24:26 3 VIDEOGRAPHER: Mr. Bridges, there's 03:25:25 4 less than one minute remaining. 03:25:27 5 MR. BRIDGES: Why don't we go off 03:25:30 6 the record, then. 03:25:32 7 VIDEOGRAPHER: The time is 3:25. 03:25:33 8 This is the end of Tape No. 2, and we are now 03:25:35 9 off the record. 03:25:37 10 (Break taken) 03:25:41 11 VIDEOGRAPHER: The time is 3:36. 03:36:05 12 This is the beginning of Tape No. 3. We are 03:36:16 13 now back on the record. 03:36:19 14 (Exhibit 1256 marked for 03:36:35 15 identification.) 03:36:47 16 BY MR. BRIDGES: 03:36:47 17 Q. Mr. Dubay, do you recognize Exhibit 1256 03:36:47 18 as a group of forms for comments with a 03:37:02 19 transmittal page attached that NFPA has 03:37:08 20 maintained in the ordinary course of business 03:37:12 21 in the course of its standards development 03:37:15 22 process? 03:37:17 23 A. (Witness examines document) Exhibit 1256 03:37:23 24 does appear to be a form of an electronic 03:37:34 25 submission process with numerous comments on 03:37:38 Page 153</p>

1 the National Electrical Code. 03:37:42
 2 Q. Do you recognize this as a document that 03:37:43
 3 NFPA has maintained, given the language at 03:37:48
 4 the bottom that says "comments for submittal 03:37:54
 5 to NFPA as of 12/23/97" (sic) and with date 03:37:56
 6 stamps and numbers written on them? 03:38:02
 7 MR. REHN: I think it says "comments 03:38:12
 8 for submittal to NFPA as of 10/23/97." 03:38:14
 9 MR. BRIDGES: What did I say? 03:38:17
 10 MR. REHN: I think you said 12. 03:38:18
 11 MR. BRIDGES: Sorry. Correct that. 03:38:22
 12 10/23/97. 03:38:36
 13 A. So just to be clear, is the question is this 03:38:36
 14 a typical submission? 03:38:39
 15 Q. No. The question is, do you recognize this 03:38:40
 16 as a document that NFPA has maintained as 03:38:42
 17 part of its standards development process? 03:38:46
 18 A. Yes. It appears to be a typical document 03:38:50
 19 from our archives. 03:38:52
 20 Q. Do you know who Roger Witt is? 03:38:53
 21 A. No, I do not. 03:38:57
 22 Q. How did the uses differ between -- as between 03:38:58
 23 forms for proposals and forms for comments? 03:39:14
 24 You may have touched on it earlier, but I 03:39:16
 25 didn't quite understand it. 03:39:19
 Page 154

1 MR. REHN: Object to the form of the 03:39:21
 2 question as vague. 03:39:23
 3 A. If you could help me clarify, please, do you 03:39:27
 4 mean the use of the proposal form and the 03:39:30
 5 comment form or how it plays out in our 03:39:31
 6 process? 03:39:35
 7 Q. Both. 03:39:35
 8 MR. REHN: I'll object to the 03:39:37
 9 question as being compound. 03:39:39
 10 A. At a high level, proposals in our old system, 03:39:41
 11 public inputs in our new systems are 03:39:56
 12 recommended changes to the existing edition 03:39:59
 13 of a standard. Comments in both the old and 03:40:01
 14 the new system are public comments on the 03:40:05
 15 actions that the committee has taken to 03:40:09
 16 modify that standard. 03:40:11
 17 Q. So all comments would follow some kind of 03:40:16
 18 technical committee action on that standard; 03:40:25
 19 is that correct? 03:40:28
 20 A. All comments would be related to something 03:40:31
 21 that committee has done. It could be 03:40:34
 22 specific to the change or it could be saying 03:40:38
 23 you did this here, you should also do it over 03:40:39
 24 here. 03:40:43
 25 Q. Thank you. 03:40:43
 Page 155

1 (Exhibit 1257 marked for 03:40:43
 2 identification.) 03:43:31
 3 Q. Mr. Dubay, do you recognize Exhibit 1257 as 03:43:31
 4 a comment that NFPA has maintained in the 03:43:54
 5 ordinary course of its standards development 03:43:58
 6 process? I'll note that it's a two-sided 03:44:00
 7 document. 03:44:07
 8 A. Exhibit 1257 does look typical for comments 03:44:08
 9 we've received. 03:44:14
 10 Q. And do you recognize this as a document from 03:44:15
 11 NFPA's archives? 03:44:17
 12 A. Yes, it does look familiar, not specifically, 03:44:19
 13 but in general form. 03:44:22
 14 (Exhibit 1258 marked for 03:45:00
 15 identification.) 03:45:08
 16 Q. Do you recognize Exhibit 1258 as a comment 03:45:08
 17 from the NFPA archives that it maintains in 03:45:19
 18 the ordinary course of business in connection 03:45:28
 19 with its standards development process? 03:45:28
 20 A. Yes, this document, Exhibit 1258, looks 03:45:33
 21 typical and is consistent with the forms. 03:45:35
 22 Q. You understand it to be from NFPA archives? 03:45:40
 23 A. Yes, it seems consistent. 03:45:44
 24 Q. Are you familiar with Marcelo Hirschler? 03:45:59
 25 A. Yes. 03:46:32
 Page 156

1 Q. Who is he? 03:46:32
 2 A. He's a -- both a technical committee member 03:46:34
 3 on several of our standards as well as an 03:46:40
 4 active participant in the NFPA standards 03:46:43
 5 development process. 03:46:46
 6 (Exhibit 1259 marked for 03:47:15
 7 identification.) 03:47:26
 8 Q. Do you recognize Exhibit 1259 as a collection 03:47:26
 9 of proposals from NFPA's archives from 03:47:44
 10 Mr. Hirschler with respect to the National 03:47:53
 11 Electrical Code? 03:48:15
 12 A. (Witness examines document) 03:48:15
 13 MR. REHN: Object to the question. 03:48:22
 14 It clearly misrepresents the document. 03:48:24
 15 A. Based upon my review just now, it appears to 03:48:50
 16 be a mix of proposals and comments, generally 03:48:53
 17 all of which have been submitted 03:48:58
 18 electronically. And based upon a few 03:48:59
 19 minutes' review here, it does appear that 03:49:03
 20 they're all from Mr. Hirschler. It's a mix 03:49:05
 21 of materials. 03:49:10
 22 Q. Is it your understanding that these -- that 03:49:12
 23 NFPA maintains these documents in its 03:49:16
 24 archives of the standards development 03:49:19
 25 process? 03:49:21
 Page 157

<p>1 A. Yes, these all appear to be typical from -- 03:49:23 2 from the archives. 03:49:26 3 (Exhibit 1260 marked for 03:50:32 4 identification.) 03:50:46 5 Q. Do you recognize Exhibit 1260 as a collection 03:50:46 6 of comments from Jim Pauley that NFPA has 03:51:05 7 maintained in its archives relating to the 03:51:10 8 standards development process? 03:51:13 9 A. Exhibit 1260 appears to be a collection of 03:51:21 10 electronically submitted comments from 03:51:27 11 Jim Pauley, based upon the forms. 03:51:30 12 Q. Do you know whether he submitted these 03:51:33 13 comments as a member of a technical 03:51:35 14 committee? 03:51:38 15 A. He -- what I can say is that he was an active 03:51:42 16 member of the code-making panels which is -- 03:51:57 17 or member of the code-making panels of the 03:52:06 18 National Electric Code as a committee member, 03:52:08 19 but I can't speculate what he submitted it 03:52:11 20 for or what intention he had. 03:52:14 21 Q. I ask you to turn your attention to the page 03:52:32 22 that ends with the numbers 110 and 111 at 03:53:03 23 the bottom, those two pages. 03:53:10 24 A. 110? 03:53:12 25 Q. Right. You'll note at the bottom there's a 03:53:13 Page 158</p>	<p>1 comments from anyone. 03:55:30 2 Q. Including proposals and comments relating 03:55:30 3 to style, correct? 03:55:32 4 A. We accept proposals and comments and public 03:55:37 5 inputs relating to any aspect of the 03:55:41 6 document. 03:55:43 7 Q. And any aspects, as you've just answered, 03:55:44 8 includes style, correct? 03:55:46 9 MR. REHN: Objection. Asked and 03:55:48 10 answered. 03:55:50 11 A. We do accept proposals and comments relating 03:55:51 12 to style manual issues. 03:55:54 13 Q. Mr. Dubay, the most recent version of the 03:55:55 14 National Electrical Code is the 2014 version; 03:58:12 15 is that correct? 03:58:16 16 MR. REHN: Object to the form. 03:58:19 17 A. Yes, the current version of the National 03:58:22 18 Electrical Code is the 2014 edition. 03:58:25 19 Q. Do you know when the first time was that any 03:58:26 20 of the language in that code appeared in any 03:58:32 21 of the earlier versions of the code? 03:58:37 22 MR. REHN: Object to the form. 03:58:40 23 Extremely compound. 03:58:45 24 A. I would say that our handling of the National 03:58:55 25 Electrical Code goes back to, I believe, 1896 03:59:03 Page 160</p>
<p>1 statement of problem and substantiation for 03:53:26 2 comment. This appears to address compliance 03:53:30 3 with the style manual, it says; is that 03:53:41 4 correct? 03:53:53 5 A. He does note in his statement that the 03:53:53 6 exceptions, I'm assuming the exceptions in 03:53:55 7 the proposal, do not comply with the style 03:53:58 8 manual, yes. 03:54:01 9 Q. So a number of participants and technical 03:54:02 10 committees and code-making panels and even 03:54:10 11 some public commenters may make proposals 03:54:15 12 that relate to the conformance of text to 03:54:23 13 the NFPA's style manual, correct? 03:54:32 14 MR. REHN: Object to the form. 03:54:35 15 Lacks foundation. 03:54:36 16 A. NFPA publishes and makes publicly available 03:54:40 17 both our NFPA style manual and our NEC style 03:54:43 18 manual. So in some cases, submissions will 03:54:47 19 come in to address any discrepancies between 03:54:50 20 the style manual and the published document. 03:54:53 21 Q. And those submissions may come in from 03:55:04 22 technical committee members or code-making 03:55:08 23 panel members or the public, correct? 03:55:11 24 MR. REHN: Object to the form. 03:55:17 25 A. NFPA accepts public proposals, public input, 03:55:19 Page 159</p>	<p>1 or 1898. Without doing analysis, I couldn't 03:59:06 2 tell you what words have remained for the 03:59:11 3 last hundred-plus years, but NFPA's published 03:59:14 4 the National Electrical Code for that period 03:59:17 5 of time. 03:59:20 6 Q. Has there been any point where the National 03:59:20 7 Electrical Code was so completely overhauled 03:59:32 8 that NFPA started a new version or a new 03:59:35 9 edition of the code from scratch? 03:59:39 10 MR. REHN: Object to the form. It's 03:59:42 11 ambiguous. 03:59:46 12 A. Not to my knowledge. 03:59:55 13 Q. Does NFPA have any way of determining when 04:00:00 14 any particular wording in the code, in the 04:00:18 15 current edition of the code, first appeared 04:00:24 16 in any edition of the code? 04:00:26 17 MR. REHN: Object to the form. 04:00:30 18 Q. I'm referring to the NEC. 04:00:34 19 MR. REHN: It's the same objection. 04:00:38 20 A. We maintain archives by edition of each 04:00:40 21 document, and our records go back to the 04:00:45 22 original document. Historically, over time 04:00:47 23 the records become better and better, but we 04:00:52 24 have archives all the way back. 04:00:55 25 Q. Does NEC -- strike that. 04:01:01 Page 161</p>

<p>1 Does NFPA at any point index the 04:01:06 2 original source of any of the changes that 04:01:14 3 have become incorporated into the code over 04:01:25 4 the course of multiple editions? 04:01:30 5 MR. REHN: Object to the form. 04:01:35 6 Vague and ambiguous. 04:01:37 7 A. Clarifying question from my perspective, what 04:01:39 8 do you mean by index? 04:01:42 9 Q. Keep track of the -- to be able to identify 04:01:44 10 for any particular language, without looking 04:01:52 11 through every code, when that language first 04:01:56 12 came into some edition of the code. 04:02:00 13 MR. REHN: Same objections. 04:02:05 14 A. In general, no. At a high level, we keep 04:02:07 15 track of major technical changes from edition 04:02:11 16 to edition to support our regional field 04:02:14 17 team. 04:02:18 18 Q. What do you mean by major technical changes? 04:02:20 19 A. For example, when arc fault circuit 04:02:28 20 interruption technology was introduced into 04:02:31 21 the NEC, we put together, changed documents 04:02:34 22 and technical information to support our 04:02:38 23 regional staff around the country. 04:02:40 24 Q. Is that because they needed to know that 04:02:48 25 there was a new technical aspect to the code 04:02:50 Page 162</p>	<p>1 the Code should contain a particular 04:05:51 2 requirement relating to the installation of 04:05:54 3 arc fault circuit interrupters? Is that your 04:05:57 4 interpretation of this? 04:06:00 5 A. Based upon the form, it is a comment directly 04:06:05 6 related to Proposal 2-105 and whatever that 04:06:08 7 was trying to accomplish, remove, add. I 04:06:13 8 don't have that part of the record in front 04:06:17 9 of me. 04:06:18 10 (Exhibit 1262 marked for 04:07:25 11 identification.) 04:07:42 12 Q. Mr. Dubay, do you recognize Exhibit 1262 as 04:07:42 13 a comment that NFPA has maintained in its 04:08:09 14 archives as part of its standards development 04:08:19 15 process? 04:08:22 16 A. Yes, Exhibit 1262 appears to be typical and 04:08:28 17 something from our archives. 04:08:39 18 Q. I have a question. What confidential 04:08:40 19 information is in this document? 04:08:44 20 MR. REHN: I'll object to the extent 04:09:05 21 it calls for a legal opinion. The witness 04:09:07 22 can answer, based on his knowledge. 04:09:14 23 A. Based upon my knowledge, all of our proposals 04:09:19 24 and comments are publicly available when 04:09:21 25 submitted. So I'm not sure relating to -- 04:09:25 Page 164</p>
<p>1 that had not been there before? 04:02:57 2 MR. REHN: Object to the form. 04:03:03 3 A. The primary reason that we keep track of 04:03:06 4 major technical changes is to develop 04:03:09 5 training and education materials so that 04:03:11 6 users can understand those requirements. 04:03:14 7 (Exhibit 1261 marked for 04:04:16 8 identification.) 04:04:22 9 Q. Mr. Dubay, I've handed you Exhibit 1261. Do 04:04:22 10 you recognize this as a comment that NFPA has 04:04:39 11 maintained in its archives in connection with 04:04:45 12 the standards development process? 04:04:47 13 A. (Witness examines document) Yes, it appears 04:04:51 14 that Exhibit 1261 is a typical archived, 04:04:56 15 looks like a comment on the 2008 NEC. 04:04:58 16 Q. This comment related to some requirement 04:05:04 17 pertaining to arc fault circuit interrupters 04:05:15 18 in the National Electrical Code, correct? 04:05:22 19 MR. REHN: Object to the form. 04:05:29 20 Lacks foundation. Assumes facts. 04:05:30 21 A. My answer is based upon Item 4 where the 04:05:35 22 submitter, Mr. Walls, says that -- discusses 04:05:38 23 the installation of arc fault circuit 04:05:41 24 interrupters. 04:05:44 25 Q. This is a comment about the -- about whether 04:05:45 Page 163</p>	<p>1 I'm assuming you're referring to the footer. 04:09:29 2 Q. Yes. 04:09:31 3 A. I have no knowledge of that. 04:09:31 4 Q. Right. Do you see where this submitter 04:09:32 5 checked Box B under copyright assignment? 04:09:54 6 A. Yes, in Item 6 I see they selected Item B. 04:10:04 7 Q. Does NFPA reject comments and proposals that 04:10:08 8 derive from non-original -- strike that. 04:10:14 9 Does NFPA reject comments and 04:10:20 10 proposals from persons who indicate that they 04:10:23 11 did not author the text or other materials in 04:10:26 12 the comments? 04:10:33 13 A. No. We have a strict policy of reviewing 04:10:35 14 each and every submission. And in this case, 04:10:38 15 the example you've provided me, Exhibit 1262, 04:10:41 16 Mr. Hammer does not actually provide any 04:10:44 17 proposed changes or text to the document. 04:10:46 18 Q. Why do you believe there's a reference to 04:10:52 19 American Petroleum Institute in this 04:10:59 20 document? 04:11:04 21 MR. REHN: Object to the form. It 04:11:07 22 may call for speculation. 04:11:09 23 A. In my personal opinion, he indicates right 04:11:10 24 above Line No. 1 that he represents the 04:11:14 25 American Petroleum Institute. Therefore, it 04:11:16 Page 165</p>

<p>1 is my assumption that he submitted this on 04:11:20 2 behalf of the American Petroleum Institute. 04:11:22 3 Q. Does NFPA ask for permission from the 04:11:30 4 American Petroleum Institute to copy and 04:11:37 5 circulate comments submitted on its behalf? 04:11:40 6 A. We have a policy of reviewing each and every 04:11:53 7 one of these when they're submitted. And in 04:11:56 8 the event there was copyrighted material 04:11:59 9 being distributed, we would, as general 04:12:01 10 practice in our policies, contact to seek 04:12:04 11 permission before distributing that. 04:12:05 12 And, again, to support my past 04:12:08 13 statement, there doesn't appear to be any 04:12:11 14 proposed text. 04:12:13 15 Q. Well, what -- there's a reference here, isn't 04:12:15 16 there, to copyright in this comment? 04:12:21 17 MR. REHN: Object to the question, 04:12:29 18 to the form of the question. 04:12:33 19 Mischaracterizes the document. 04:12:34 20 Q. It says, "I hereby grant and assign to the 04:12:36 21 NFPA all and full rights and copyright in 04:12:39 22 this comment." Isn't that what it says? 04:12:41 23 A. Similar to our proposal forms and our comment 04:12:58 24 forms, when someone submits specific text 04:13:02 25 changes, we require the signature. 04:13:05</p> <p style="text-align: right;">Page 166</p>	<p>1 grant and assign to the NFPA all and full 04:14:22 2 rights and copyright in the comment, and NFPA 04:14:24 3 makes the comments publicly available, I 04:14:29 4 think you said, correct? 04:14:33 5 MR. REHN: Object to the form. 04:14:34 6 A. NFPA, in the old process, makes all of the 04:14:40 7 proposals and comments publicly available via 04:14:44 8 the publication of a report on proposals and 04:14:47 9 report on comments. 04:14:50 10 Q. And this -- you don't understand this 04:15:14 11 language at the bottom to be a grant and 04:15:22 12 assignment of copyrights in the comment 04:15:25 13 itself? 04:15:28 14 MR. REHN: Object to the form. The 04:15:29 15 language speaks for itself. 04:15:31 16 Q. I'm just asking what you understand as the 04:15:33 17 person in charge of the standards development 04:15:35 18 process at NFPA. 04:15:37 19 A. My understanding -- 04:15:39 20 MR. REHN: Object to the form of 04:15:40 21 that question as well. 04:15:41 22 A. My understanding is that the forms require a 04:15:42 23 signature, one, for archives and; two, to 04:15:45 24 address the intellectual property rights 04:15:48 25 associated with changes in the text within 04:15:50</p> <p style="text-align: right;">Page 168</p>
<p>1 In this case it appears the 04:13:09 2 Exhibit 1262 that you've chosen, Mr. Hammer 04:13:12 3 has just recommended that a proposal from the 04:13:20 4 ROP portion of our cycle be accepted with no 04:13:20 5 proposed text. 04:13:21 6 Q. It doesn't say, "I grant and assign to the 04:13:24 7 NFPA all and full rights and copyright to 04:13:29 8 proposed text changes," it says, "I hereby 04:13:30 9 grant and assign to the NFPA all and full 04:13:33 10 rights and copyright in this comment." 04:13:36 11 Does it say anything in there about 04:13:42 12 copyright and proposed changes? 04:13:44 13 MR. REHN: Object to the form and 04:13:47 14 object on the basis that it calls for a legal 04:13:50 15 opinion. 04:13:52 16 Q. I'm just asking for your understanding. 04:13:54 17 A. My understanding is they are completely 04:13:56 18 disconnected. A proposal that recommends 04:13:57 19 text and a comment that recommends action on 04:14:01 20 a proposal is the choice of the submitter to 04:14:04 21 either recommend text or not. 04:14:07 22 But in either case our policy is 04:14:09 23 that any public comments in any public 04:14:11 24 proposals require a signature. 04:14:14 25 Q. And it requires a signature saying that you 04:14:20</p> <p style="text-align: right;">Page 167</p>	<p>1 our document. 04:15:52 2 Q. That's your interpretation of the italicized 04:15:54 3 language above the signature on this page? 04:15:58 4 MR. REHN: Object to the form. 04:16:00 5 Mischaracterizes the testimony. Calls for 04:16:01 6 legal opinion. Document speaks for itself. 04:16:04 7 A. I can't specifically comment on each 04:16:11 8 individual word and how it relates, but my 04:16:13 9 policy is enforcing that each and every one 04:16:17 10 of these submissions requires the sign-off by 04:16:21 11 the submitter to ensure that it is 04:16:23 12 appropriate for us to move forward with the 04:16:25 13 use of that material. 04:16:28 14 Q. And you have no other interpretation of the 04:16:32 15 italicized language above the signature on 04:16:35 16 Exhibit 1262? 04:16:38 17 MR. REHN: Same objection. 04:16:39 18 Q. Is that your testimony? 04:16:40 19 MR. REHN: Same objections, and 04:16:41 20 asked and answered at this point as well. 04:16:44 21 A. I have no other interpretation. 04:16:47 22 (Exhibit 1263 marked for 04:17:46 23 identification.) 04:18:15 24 Q. Mr. Dubay, what is Exhibit 1263? 04:18:15 25 A. Exhibit 1263 appears to be a comment from 04:18:33</p> <p style="text-align: right;">Page 169</p>

1 Mr. Skweres on the 2014 National Electrical 04:18:38
 2 Code. 04:18:53
 3 Q. Is it your understanding that the material 04:18:53
 4 inside the box under Item 4 is proposed new 04:19:10
 5 wording? 04:19:16
 6 A. Based upon my review, it's difficult to tell 04:19:30
 7 without seeing the proposal of record being 04:19:33
 8 2-132, because the submitter did not use 04:19:36
 9 legislative text. So a portion of that may 04:19:40
 10 or may not have been included already in 04:19:43
 11 Proposal 2-132. 04:19:45
 12 Q. Legislative text in that context means a 04:19:48
 13 format for determining what has been added or 04:19:51
 14 deleted; is that correct? 04:19:54
 15 A. Yes, in general, strike through where you're 04:19:58
 16 deleting text and underline where you're 04:20:01
 17 adding text. 04:20:03
 18 Q. But it's not legislative text that one might 04:20:03
 19 see from a legislature that says things like 04:20:06
 20 "be it resolved" or fancy language of the 04:20:08
 21 legislature? That's not what legislative 04:20:14
 22 language means in this text, correct? 04:20:16
 23 MR. REHN: Object to form. 04:20:17
 24 A. It's legislative format as we give an example 04:20:19
 25 under Item 4. 04:20:20

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1 Q. There's a box that says "new text" that's 04:20:23
 2 been checked on this, correct? 04:20:31
 3 A. Based upon my review Line Item 3, yes, the 04:20:36
 4 box for new text has been checked. 04:20:39
 5 Q. Does the text in the box under Item 4, 04:20:41
 6 conform to NFPA's manual of style? 04:20:45
 7 A. I can say in general it appears that it does. 04:21:01
 8 However, I would rely, because it's a 04:21:04
 9 National Electrical Code, on our editorial 04:21:05
 10 team and our actual NEC manual style to see 04:21:09
 11 if it's completely compliant. 04:21:12
 12 (Exhibit 1264 marked for 04:22:02
 13 identification.) 04:22:27
 14 Q. Can you please identify Exhibit 1264. 04:22:27
 15 A. Exhibit 1264 appears to be an archival of a 04:22:47
 16 comment on the 2014 National Electrical Code. 04:22:56
 17 Q. Do you see on Page 2 of the exhibit Option B 04:23:03
 18 has been checked under Copyright Assignment? 04:23:21
 19 A. I do see Item 6, Copyright Assignment B has 04:23:32
 20 been checked. 04:23:35
 21 Q. There's a reference to UL white book and UL 04:23:36
 22 guide information? 04:23:39
 23 A. That appears to be the statement. 04:23:45
 24 Q. And so that appears to be the source of some 04:23:46
 25 of the material that Ms. Dwyer has provided 04:23:50

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1 in her comment. Is that your interpretation 04:23:56
 2 of it? 04:23:59
 3 MR. REHN: Object to the form. 04:24:02
 4 A. My interpretation when I read Item 5 is I see 04:24:03
 5 direct references to the UL guidebook and 04:24:07
 6 it's subsequent to the UL guide information. 04:24:11
 7 Q. She provided those references as 04:24:16
 8 substantiation for the comment that she makes 04:24:22
 9 above in Section 4, correct? 04:24:26
 10 A. Based upon her submission, it does appear 04:24:34
 11 that the UL materials, only indicated in her 04:24:36
 12 statement of the problem, were 04:24:39
 13 substantiation. 04:24:40
 14 Q. Do you know whether anyone at NFPA has 04:24:51
 15 checked the references to the UL white book 04:24:54
 16 and UL guide information to determine whether 04:24:57
 17 any of the language in the comment has come 04:25:00
 18 from one of those sources? 04:25:02
 19 A. I can't speak specifically to this one 04:25:13
 20 comment, but our policy is that, in this case 04:25:15
 21 where Item B has been selected, our staff 04:25:18
 22 would have contacted the submitter to get a 04:25:21
 23 clear picture of what the intent was and what 04:25:24
 24 they were submitting to be considered in 04:25:27
 25 front of the committee, especially since it 04:25:31

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1 appears that Ms. Dwyer or Mr. Dryer works for 04:25:33
 2 Wells Fargo and not UL. 04:25:38
 3 Q. Does NFPA frequently get copyright permission 04:25:44
 4 from other organizations for the text that it 04:25:48
 5 incorporates in the National Electrical Code? 04:25:51
 6 MR. REHN: Object to the form and to 04:25:55
 7 the extent the question calls for legal 04:25:56
 8 opinion. 04:25:58
 9 Q. Actually, I will withdraw the question. 04:25:58
 10 Does NFPA ever get copyright 04:26:00
 11 permission from other organizations for the 04:26:02
 12 text that it incorporates in the National 04:26:05
 13 Electrical Code? 04:26:08
 14 MR. REHN: Again, I'll object to 04:26:08
 15 the form of the question and also object to 04:26:09
 16 the extent it calls for legal opinion. 04:26:11
 17 A. I just need a clarification, please. Are you 04:26:14
 18 asking me do we get requests from other 04:26:17
 19 organizations to use the contents from the 04:26:19
 20 National Electrical Code, or are you asking 04:26:21
 21 do we seek permission to use their contents 04:26:23
 22 in the National Electrical Code? 04:26:26
 23 Q. The second. 04:26:27
 24 A. I'm not aware of ever having a request to 04:26:35
 25 include another organization's language 04:26:37

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1 within the NEC. Specifically, across all of 04:26:42
 2 our standards, we either, as a general common 04:26:44
 3 understanding that and accepted across our 04:26:47
 4 committees and submitters, that when they 04:26:51
 5 propose new text within our process, that it 04:26:53
 6 becomes part of NFPA's intellectual property, 04:26:55
 7 it becomes part of our published standards 04:26:59
 8 and I don't believe I've had that request. 04:27:01
 9 Q. So even if the language originated with 04:27:05
 10 another organization, it's your statement 04:27:09
 11 that it becomes part of the NFPA's 04:27:12
 12 intellectual property by being submitted into 04:27:14
 13 the standards development process? 04:27:18
 14 MR. REHN: Object to the form. 04:27:20
 15 Mischaracterizes the testimony. May call for 04:27:22
 16 a legal opinion. May call for speculation. 04:27:25
 17 A. In my personal opinion, I would say no. We 04:27:31
 18 would contact an organization as soon as we 04:27:34
 19 identified any potential copyright text being 04:27:37
 20 submitted as well as the submitter, knowing 04:27:40
 21 that they didn't have the authority to 04:27:42
 22 release copyright of said material. 04:27:45
 23 Q. How often in your tenure at NFPA has NFPA 04:27:48
 24 contacted any other organizations regarding 04:27:56
 25 potential copyright text that has come into 04:28:04
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1 the process of developing a particular 04:28:06
 2 standard? 04:28:19
 3 MR. REHN: Object to the form. 04:28:26
 4 A. I can't speak to a specific number, but given 04:28:33
 5 that we get tens of thousands of proposed 04:28:35
 6 changes every year and any time there's 04:28:38
 7 attached supporting material or there's 04:28:41
 8 references to copyright material or there are 04:28:44
 9 references to selecting the alternative 04:28:46
 10 copyright statement, it is our policy that 04:28:50
 11 each and every one of those submitters be 04:28:52
 12 contacted to determine whether NFPA has the 04:28:54
 13 authority or not to utilize that material, 04:28:58
 14 even in the distribution of our technical 04:29:01
 15 committees. 04:29:03
 16 Q. How many times in your tenure at NFPA has 04:29:03
 17 NFPA contacted the sources of that material 04:29:07
 18 for permission to include any of that 04:29:16
 19 material in NFPA's codes and standards? 04:29:18
 20 MR. REHN: Object to the form. 04:29:26
 21 A. Again, a number is very difficult. To the 04:29:28
 22 best of my knowledge, it's our policy that 04:29:33
 23 each and every time we contact that source, 04:29:35
 24 especially where it's clearly identifiable 04:29:38
 25 via copyright statements or statements within 04:29:41
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1 those public records. 04:29:43
 2 Q. So how many times is your best estimate that 04:29:46
 3 NFPA has contacted the owners of copyrighted 04:29:48
 4 material that the people have contributed to 04:29:53
 5 the NFPA standards development process? 04:29:58
 6 MR. REHN: Same objection. Asked 04:30:00
 7 and answered as well. 04:30:02
 8 A. I would -- speculation on my part in my 04:30:07
 9 tenure, I would say nothing shy of tens of 04:30:11
 10 thousands of times. 04:30:14
 11 Q. What records does NFPA have of its contacts 04:30:16
 12 to owners of copyrighted material that 04:30:22
 13 persons have proposed for incorporation in 04:30:27
 14 NFPA's codes and standards? 04:30:32
 15 MR. REHN: Object to the form. 04:30:36
 16 There's some embedded legal conclusions in 04:30:38
 17 these questions. The witness can answer to 04:30:40
 18 the extent he understands. 04:30:43
 19 A. The best way I can answer that question is 04:30:49
 20 that currently and in recent history, as we 04:30:52
 21 identify those documents, we attach a chain 04:30:55
 22 of information. It could be an e-mail, a 04:31:01
 23 letter correspondence with the originator to 04:31:03
 24 say what we can and can't do with that 04:31:06
 25 material. Historically, I cannot speak to 04:31:07
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1 going back. 04:31:11
 2 Q. Where does NFPA maintain that chain of events 04:31:16
 3 in its records? 04:31:23
 4 A. We maintain that chain of information, to the 04:31:26
 5 best of my knowledge, in our original 04:31:32
 6 documentation that's behind each cycle, so 04:31:34
 7 our archive information. So, for example, a 04:31:38
 8 public input that had a reference to a 04:31:44
 9 copyrighted report, that report will be part 04:31:47
 10 of the record for that individual proposed 04:31:48
 11 change. 04:31:52
 12 Q. When you say "that report," you mean that 04:31:55
 13 copyrighted report would be part of the 04:31:56
 14 record? 04:31:58
 15 A. Any material that required permission before 04:32:01
 16 we either posted it to our website, 04:32:03
 17 distributed to our committee or made it 04:32:06
 18 publicly available. 04:32:09
 19 Q. Where does NFPA maintain the documents 04:32:09
 20 relating to the permissions it has received 04:32:13
 21 in that process? 04:32:19
 22 A. Within our revision archive for each edition 04:32:24
 23 of the document. 04:32:28
 24 Q. And who maintains the revision archives? 04:32:31
 25 A. Our codes and standards administration 04:32:40
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<p>1 department. 04:32:42 2 Q. Who, within the codes and standards 04:32:42 3 administration department, is in charge of 04:32:46 4 maintaining those records? 04:32:47 5 A. There's actually a team of people called our 04:32:49 6 project administrators. 04:32:54 7 Q. Who's in charge of the project 04:32:58 8 administrators? 04:33:01 9 A. The manager of that group is Patrick Foley. 04:33:02 10 Q. Approximately how many permissions from other 04:33:06 11 copyright holders did NFPA obtain for 04:33:09 12 material contained in the current edition of 04:33:13 13 NFPA's National Electrical Code? 04:33:16 14 MR. REHN: I'll object to the form 04:33:23 15 again here and some of the embedded legal 04:33:24 16 conclusions. But, again, the witness may 04:33:26 17 answer the question. 04:33:29 18 A. To the best of my knowledge, I'm not aware of 04:33:30 19 any permissions that were required for the 04:33:32 20 text within the National Electrical Code 04:33:35 21 other than those normal releases on our 04:33:38 22 proposals and comment forms. 04:33:41 23 Q. So it's your testimony that within the entire 04:33:42 24 National Electrical Code, no text had as its 04:33:46 25 source some copyright owner other than 04:33:54 Page 178</p>	<p>1 and of persons submitting proposals and 04:35:34 2 comments? 04:35:37 3 MR. REHN: Object to the form. 04:35:38 4 Ambiguous. 04:35:39 5 A. Given our policy of reviewing each and every, 04:35:44 6 speaking of the National Electrical Code, 04:35:48 7 5 to 7,000 proposals and comments each cycle 04:35:50 8 and verifying the copyright requirements 04:35:53 9 within those proposals and comments, I'm not 04:35:56 10 aware of any. 04:35:58 11 Q. By the way, have you ever been made aware of 04:36:15 12 any typographical errors in 04:37:19 13 published comments -- strike that. 04:37:20 14 Have you ever been made aware of any 04:37:24 15 typographical errors in published editions of 04:37:26 16 the National Electrical Code? 04:37:30 17 MR. REHN: I believe this is outside 04:37:37 18 the scope of the notice topics, but the 04:37:39 19 witness can answer if he knows as an 04:37:41 20 individual. 04:37:43 21 A. I'm aware at times when we publish documents, 04:37:46 22 we do make publication errors and we, in 04:37:49 23 those cases, publish erratas. 04:37:51 24 Q. Where does the NFPA publish the errata? 04:37:54 25 MR. REHN: Same objection as to the 04:37:59 Page 180</p>
<p>1 persons who participated in the standards 04:34:04 2 development process or made proposals or 04:34:09 3 comments and signed the copyright language 04:34:14 4 that NFPA furnishes them. Is that your 04:34:18 5 testimony? 04:34:21 6 MR. REHN: Object to the form. 04:34:21 7 Mischaracterizes the testimony. 04:34:24 8 A. To the best of my knowledge, I'm not aware of 04:34:28 9 any text within the current edition of the 04:34:30 10 National Electrical Code that is -- has its 04:34:33 11 copyright held by another organization. 04:34:36 12 Q. I'm not asking about copyright held by other 04:34:38 13 organizations, just text that comes from 04:34:42 14 another copyright owner. 04:34:44 15 MR. REHN: Again, object to the 04:34:46 16 form. It's vague. 04:34:48 17 A. I'm not aware of any text in the current 04:34:55 18 edition of the National Electrical Code where 04:34:57 19 the copyright is held by anyone but the 04:35:00 20 National Fire Protection Association. 04:35:06 21 Q. Are you aware of any text in the National 04:35:07 22 Electrical Code that has come from any 04:35:10 23 ultimate source other than someone who has 04:35:17 24 signed the copyright documentation that NFPA 04:35:25 25 requires of the technical committee members 04:35:30 Page 179</p>	<p>1 scope of the topics, but you can answer if 04:38:00 2 you have an understanding. 04:38:04 3 A. We post those on our doc info pages as well 04:38:05 4 as integrate those erratas into the next 04:38:09 5 production run of the National Electrical 04:38:12 6 Code. 04:38:16 7 Q. What, if anything, does NFPA do to notify 04:38:18 8 earlier purchasers of its codes and standards 04:38:22 9 about the existence of the errata? 04:38:27 10 MR. REHN: Same objection as to 04:38:33 11 scope. 04:38:34 12 A. We have two mechanisms of notifying. Number 04:38:39 13 one is through our website where we post 04:38:42 14 information on our doc info pages and every 04:38:45 15 user has the ability to sign up for an "alert 04:38:49 16 me" which gives them an automatic notice of 04:38:52 17 changes relating to whatever document they've 04:38:54 18 signed up on. 04:38:56 19 And each and every purchase of a 04:38:57 20 document, part of the invoice includes 04:39:00 21 notices of where to do that, to sign up for 04:39:02 22 those alerts as well as other information on 04:39:05 23 those documents, where to obtain that 04:39:09 24 material. 04:39:12 25 Q. Why do you notify people of the errata? 04:39:14 Page 181</p>

<p>1 MR. REHN: Object to the form of the 04:39:18 2 question. 04:39:20 3 Q. Strike that. 04:39:20 4 Why does NFPA notify persons about 04:39:21 5 the errata in its codes and standards? 04:39:24 6 MR. REHN: I'll object to the form 04:39:27 7 of the question and again, I'll object as to 04:39:28 8 the scope is outside the scope of the notice 04:39:32 9 topics. The witness can answer if he knows. 04:39:34 10 A. I believe it relates to our same decision 04:39:36 11 around providing free access to all of our 04:39:43 12 codes and standard. 04:39:45 13 We want anyone who's impacted by our 04:39:46 14 codes and standards to be aware of the 04:39:48 15 requirements and be able to understand them. 04:39:51 16 And in the event of an errata, we want to 04:39:55 17 make sure they are aware of that as well. 04:39:58 18 Q. Do you know how many errata there have been 04:39:58 19 in the National Electrical Code? 04:40:01 20 MR. REHN: Same objection as to 04:40:04 21 scope. 04:40:05 22 A. No. 04:40:07 23 Q. Do you have an estimate? 04:40:07 24 MR. REHN: Same objection. 04:40:10 25 A. No. 04:40:11</p> <p style="text-align: right;">Page 182</p>	<p>1 there are typographical errors which we do 04:41:53 2 issue erratas to correct them as soon as 04:41:56 3 we're aware of them. 04:41:59 4 Q. Have you become aware of any errata in the 04:42:00 5 postings of NFPA's standards that have been 04:42:04 6 incorporated into law by the defendant in 04:42:09 7 this case? 04:42:13 8 MR. REHN: Objection as to the 04:42:14 9 questioning outside the scope of any topics 04:42:17 10 for which this witness was referred, for 04:42:19 11 which this witness was designated. But the 04:42:22 12 witness may answer if he knows the answer. 04:42:24 13 A. No, not specifically. 04:42:27 14 Q. I think I misspoke, so I'm going to re-ask 04:42:33 15 the question a little differently. 04:42:35 16 Have you become aware of any errors 04:42:37 17 in the postings of NFPA's standards that have 04:42:39 18 been incorporated into law by the defendant 04:42:43 19 in this case? 04:42:45 20 MR. REHN: Same objection as to the 04:42:46 21 scope of this topic. There's also some 04:42:47 22 embedded legal conclusions in this 04:42:50 23 connection. The witness may answer if he 04:42:52 24 knows. 04:42:54 25 A. To the best of my knowledge, I believe we did 04:42:54</p> <p style="text-align: right;">Page 184</p>
<p>1 Q. Is it a number that is important to you? 04:40:12 2 MR. REHN: Same objection as to 04:40:19 3 scope. Argumentative. Vague. 04:40:20 4 A. No, the number is not important. 04:40:32 5 Q. Have there been errors in NFPA's -- strike 04:40:34 6 that. 04:40:43 7 Have there been typographical errors 04:40:44 8 in NFPA's other codes and standards, apart 04:40:47 9 from the National Electrical Code? 04:40:55 10 MR. REHN: Same objection as to the 04:40:57 11 scope of the topics. Witness can answer. 04:41:00 12 A. The same answer applies. 04:41:04 13 Q. As to my earlier questions about the National 04:41:11 14 Electrical Code? 04:41:16 15 MR. REHN: Objection as to form. 04:41:16 16 It's ambiguous. 04:41:19 17 A. Yes, the errata process applies to all of our 04:41:21 18 standards. 04:41:25 19 Q. And there have been errata in other standards 04:41:31 20 of -- strike that. 04:41:35 21 And there have been typographical 04:41:37 22 errors in NFPA's other codes and standards? 04:41:38 23 MR. REHN: Objection as to form. 04:41:41 24 Compound. 04:41:43 25 A. Through our publication process, at times 04:41:50</p> <p style="text-align: right;">Page 183</p>	<p>1 issue an errata relating to the 2014 edition 04:42:56 2 of the NEC. 04:43:00 3 Q. Actually, I'm asking a different question and 04:43:04 4 that is, focusing on the defendant's postings 04:43:10 5 in this case, are you aware of any errors in 04:43:14 6 the documents -- strike that. I'll withdraw 04:43:23 7 the question. 04:43:35 8 (Exhibit 1265 marked for 04:43:35 9 identification.) 04:44:05 10 Q. Mr. Dubay, can you please identify 04:44:05 11 Exhibit 1265. 04:44:17 12 A. Exhibit 1265 appears to be a public comment 04:44:19 13 on the 2014 National Electrical Code. 04:44:29 14 Q. This comment included some proposed new text; 04:44:32 15 is that correct? 04:44:38 16 A. Based upon Mr. Baclawski's comments and his 04:44:41 17 indication of the new text check box on 04:44:51 18 No. 3, it appears that he's applying some new 04:44:53 19 text to his recommendation. 04:44:56 20 (Exhibit 1266 marked for 04:47:03 21 identification.) 04:47:14 22 Q. Mr. Dubay, I ask you to look at Exhibit 1266. 04:47:14 23 Can you please identify it. 04:47:34 24 A. Exhibit 1266 appears to be a public comment 04:47:39 25 from our archives. 04:47:44</p> <p style="text-align: right;">Page 185</p>

<p>1 Q. Do you see the proposed new text in the 04:47:49 2 comment in Box 4? 04:48:18 3 A. Assuming the underlying text is new text, 04:48:23 4 then yes. 04:48:31 5 Q. Do you know what the IEC of Greater 04:48:32 6 Cincinnati is? 04:48:40 7 A. I'm assuming that it's the Independent 04:48:45 8 Electrical Contractors Association. 04:48:48 9 Q. Do you see where it says, "Please indicate 04:48:59 10 organization represented, if any," it says 04:49:03 11 "IEC"? 04:49:05 12 A. Yes. 04:49:08 13 Q. What information does NFPA have about 04:49:08 14 Mr. Hittinger's role in IEC? 04:49:13 15 MR. REHN: Object to the form. May 04:49:17 16 call for speculation. 04:49:21 17 A. To my knowledge, I don't have specific 04:49:23 18 knowledge personally, but I believe he's also 04:49:27 19 a panel member, committee member of the 04:49:29 20 National Electrical Code. So we would have 04:49:32 21 an application on file if that is the case, 04:49:35 22 if I remember correctly. 04:49:37 23 Q. Is he a member or is the Independent 04:49:40 24 Electrical Contractors a member of NFPA? 04:49:43 25 A. We do not have organizational members of our 04:49:51 Page 186</p>	<p>1 note that it appears this fax was only two 04:54:29 2 pages. On the second page, the page appears 04:54:37 3 to be 2 of 2, so I'm not sure what -- if 04:54:37 4 that was an actual additional attachment or 04:54:43 5 the item was just to communicate this one 04:54:46 6 attachment. That's to the best of my 04:54:49 7 knowledge from looking at this exhibit you've 04:54:51 8 handed me. 04:54:56 9 Q. Well, do you consider the reverse of 04:54:57 10 Exhibit 1267 to be a comment? 04:55:03 11 A. In my opinion, I don't view this as a 04:55:16 12 comment. My opinion is that it was to 04:55:22 13 communicate this agreement. Again, that is 04:55:25 14 my opinion, based upon the records I have 04:55:28 15 before me. 04:55:30 16 Q. Do you know whether the Life Safety Code 04:55:31 17 incorporates any text that the American 04:55:37 18 Forest & Paper Association proposed? 04:55:44 19 A. Based upon my first-hand knowledge, I can't 04:55:53 20 answer that. 04:55:57 21 Q. How would one determine that fact? 04:55:58 22 A. You would have to review the record, 04:56:07 23 determine what was submitted by the American 04:56:10 24 Forest & Paper Association, what material was 04:56:13 25 copyrighted by them and then ultimately 04:56:18 Page 188</p>
<p>1 technical committees. They may represent an 04:49:53 2 organization, but the individual itself holds 04:49:55 3 the seat. 04:49:57 4 (Exhibit 1267 marked for 04:52:35 5 identification.) 04:52:36 6 Q. Can you please identify Exhibit 1267. 04:52:50 7 A. (Witness examines document) You want me to 04:53:06 8 identify both sides? 04:53:14 9 Q. Yes, please. 04:53:16 10 A. Side 1, I guess it's Log No. 607, it appears 04:53:17 11 to be a form for comments on NFPA's report on 04:53:24 12 proposals with a signature and some notes on 04:53:29 13 seeing attached agreement. On Side 2, being 04:53:32 14 Page 608, appears to be a substitute 04:53:35 15 agreement on copyright language material 04:53:41 16 between the American Forest & Paper 04:53:45 17 Association and our associate general 04:53:49 18 counsel, Dennis Berry. 04:53:51 19 Q. Unfortunately, I don't think we received in 04:53:56 20 the document production the attachments to 04:53:58 21 this that are referred to in Items 4 and 5 04:54:01 22 on the front page, but it does indicate in 04:54:04 23 Item 3 that there was a recommendation of 04:54:07 24 new text. Do you see that? 04:54:08 25 A. I do see what you're referring to, but I also 04:54:19 Page 187</p>	<p>1 accept it and integrate into the standard 04:56:21 2 throughout our entire standards process. 04:56:24 3 Q. If someone asked you to determine that, how 04:56:26 4 would you determine it? 04:56:30 5 A. We would review the concern on the text of 04:56:31 6 the standard, and we'd go back through our 04:56:43 7 archives and produce a history of that 04:56:45 8 specific portion of the document. 04:56:47 9 Q. Has NFPA ever produced such a history during 04:56:51 10 your tenure regarding any person or entity's 04:56:57 11 proposals or comments? 04:57:03 12 MR. REHN: Object to the form. 04:57:05 13 Vague. 04:57:06 14 A. No. I want to make sure I answer completely 04:57:08 15 accurate on that. I was assuming that you 04:57:33 16 were referring -- with reference to 04:57:36 17 copyrighted material, therefore, my answer 04:57:37 18 was no. 04:57:41 19 Q. Even regarding any text other than what 04:57:46 20 you're referring to as copyrighted material, 04:57:52 21 has NFPA ever produced such a history during 04:57:55 22 your tenure regarding proposals or comments 04:57:58 23 from any person or entity? 04:58:00 24 MR. REHN: Same objection. 04:58:02 25 A. Sometimes NFPA gets requests to produce a 04:58:04 Page 189</p>

<p>1 history of a section so that the user, 04:58:06 2 whoever is requesting that, can understand 04:58:09 3 why technical changes were made to the 04:58:11 4 document and the reasoning or substantiation 04:58:13 5 behind them. Often our library produces that 04:58:16 6 function for us. 04:58:20 7 Q. From whom do those types of requests come? 04:58:21 8 MR. REHN: I think we've now, we've 04:58:27 9 moved outside of the scope of the notice 04:58:29 10 topics, but if the witness knows the answer, 04:58:32 11 he can answer. 04:58:34 12 A. I've personally received requests from 04:58:35 13 users of our standards, authorities having 04:58:38 14 jurisdiction as well as media and consumers. 04:58:41 15 Q. Approximately how many times has NFPA 04:58:45 16 provided persons with those types of 04:58:48 17 histories during your tenure? 04:58:52 18 MR. REHN: The transcript says as 04:58:57 19 well as -- did you say as media and 04:58:59 20 consumers? 04:58:59 21 THE WITNESS: Media requests and 04:59:01 22 consumer requests. 04:59:03 23 MR. REHN: I just wanted to clarify 04:59:05 24 that. 04:59:06 25 A. Again, I couldn't speculate on a number 04:59:11 Page 190</p>	<p>1 Mr. Williams signed the copyright assignment 05:02:26 2 at the bottom, he owned the copyright in the 05:02:30 3 word "separate"? 05:02:36 4 MR. REHN: Object to the form of the 05:02:39 5 question. It may call for speculation. 05:02:41 6 Appears to call for a legal opinion. 05:02:43 7 A. There's many possibilities here. "Separate" 05:02:49 8 could have appeared in the current edition 05:02:55 9 and have been deleted by the proposal. He 05:02:57 10 could be proposing to put it back in as one 05:03:00 11 example. 05:03:03 12 (Exhibit 1269 marked for 05:03:48 13 identification.) 05:04:19 14 Q. Mr. Dubay, can you please identify 05:04:19 15 Exhibit 1269. 05:04:21 16 A. (Witness examines document) Exhibit 1269 05:04:23 17 appears to be a comment on a report on 05:04:28 18 proposals from the National Electrical Code 05:04:38 19 from our archives. 05:04:41 20 Q. Do you understand this comment to be 05:04:43 21 proposing revision of text to add the word 05:04:45 22 "copper" and the words "not smaller than 12," 05:04:52 23 I think that's "AGW;" is that correct? 05:04:58 24 A. To your latter point, AGW would be consistent 05:05:05 25 with the National Electrical Code. 05:05:08 Page 192</p>
<p>1 because of the breadth of our standards and 04:59:13 2 the length of time. 04:59:15 3 Q. What's your best estimate? 04:59:17 4 A. I'd say again, completely speculating, 04:59:28 5 thinking across our library in my tenure at 04:59:30 6 NFPA, on the order of hundreds. 04:59:34 7 MR. REHN: I'll note again, this 04:59:37 8 line of questioning is beyond the scope of 04:59:38 9 the notice topics. 04:59:41 10 (Exhibit 1268 marked for 05:00:46 11 identification.) 05:01:01 12 Q. Mr. Dubay, can you please identify 05:01:01 13 Exhibit 1268. 05:01:17 14 A. (Witness examines document) Exhibit 1268 05:01:19 15 appears to be a public comment from our 05:01:28 16 archives in the National Electrical Code. 05:01:31 17 Q. And this comment proposes the -- apparently 05:01:39 18 proposes the addition of one word, the word 05:01:44 19 "separate;" is that correct? 05:01:51 20 A. Based upon my review of Mr. Williams' 05:01:58 21 comments, it appears that he wants to make a 05:02:10 22 proposal or a proposed change to the NEC and 05:02:14 23 add the word "separate" to some -- in some 05:02:17 24 portion of that text. 05:02:20 25 Q. Is it your understanding that until 05:02:23 Page 191</p>	<p>1 Q. Is it your understanding that this comment 05:05:10 2 was suggesting the revision of text by adding 05:05:13 3 "copper" and then the other phrase? 05:05:18 4 A. Assuming that he copied the remaining text 05:05:24 5 correctly, then yes, it appears that he's 05:05:28 6 adding those words. 05:05:34 7 Q. Do you know who crafted the language in the 05:05:34 8 form under Point 5, "statement of problem" 05:05:51 9 and "substantiation for comment" with 05:05:54 10 language in the parentheses after that? 05:05:58 11 A. No, I do not. 05:06:05 12 Q. Was that language in the forms for comments 05:06:06 13 and forms for proposals of NFPA when you 05:06:10 14 arrived? 05:06:15 15 MR. REHN: Object to the form. The 05:06:16 16 documents speak for themselves. 05:06:18 17 A. Without researching all the way back to 1995, 05:06:22 18 to the best of my knowledge, it seems 05:06:26 19 similar. 05:06:27 20 Q. So this or something similar to this was in 05:06:29 21 it when you arrived at NFPA? 05:06:31 22 A. NFPA has always, as far as I can recall, 05:06:33 23 required a statement of problem or 05:06:37 24 substantiation for any of the proposals or 05:06:39 25 comments. 05:06:42 Page 193</p>

<p>1 Q. What is meant on this form by "statement of 05:06:43 2 problem"? 05:06:47 3 MR. REHN: Object to the form. 05:06:51 4 A. In my opinion, it's what is the submitter 05:06:55 5 hoping to solve. 05:06:58 6 Q. Why is that a requirement on forms for 05:07:03 7 comments and forms for proposals? 05:07:07 8 A. NFPA's regulations governing committee 05:07:09 9 projects require that each and every proposal 05:07:18 10 and comment or public input into the system 05:07:20 11 be responded to in technical aspects. 05:07:23 12 And so this is important for the 05:07:27 13 committee to understand what the person was 05:07:29 14 intending and why so they can provide a 05:07:30 15 proper response to that public comment or 05:07:33 16 public input. 05:07:35 17 Q. And what substantiation does NFPA require for 05:07:41 18 comments or proposals? 05:07:46 19 A. NFPA does not require a specific set of 05:07:52 20 requirements for substantiation or problem. 05:07:58 21 It is up to the submitter to determine what 05:08:01 22 is warranted for their recommendation or 05:08:03 23 their proposed change. 05:08:05 24 Q. NFPA suggests three possible bases for 05:08:10 25 substantiation for comment on this form, 05:08:23 Page 194</p>	<p>1 Q. Can you please identify Exhibit 1270. 05:10:44 2 A. (Witness examines document) Exhibit 1270 05:10:58 3 appears to be an archival copy of a comment 05:11:07 4 on the report on proposals. 05:11:09 5 Q. And the comment was from an employee of the 05:11:11 6 U.S. Consumer Product Safety Commission; is 05:11:14 7 that correct? 05:11:21 8 A. Based upon what he's indicated here, I would 05:11:21 9 agree with that. 05:11:25 10 Q. Do you know who Doug Lee is? 05:11:25 11 A. I do recognize his name, but I'm not certain 05:11:34 12 if it's tied to the Consumer Product Safety 05:11:36 13 Commission. 05:11:39 14 Q. Have you ever in your recollection -- strike 05:11:42 15 that. 05:12:08 16 Do you recall ever seeing a form 05:12:09 17 like this for where the submitter has struck 05:12:10 18 the copyright assignment language? 05:12:18 19 A. The only time I recall was a previous exhibit 05:12:30 20 you showed me from the American Forest 05:12:35 21 Products Association. 05:12:36 22 Q. Do you recall ever seeing this form before? 05:12:39 23 A. No, I do not. 05:12:43 24 Q. Do you recall ever seeing a statement by a 05:12:48 25 federal employee like the one at the top of 05:12:54 Page 196</p>
<p>1 namely, copies of tests, research papers and 05:08:27 2 fire experience, correct? 05:08:31 3 MR. REHN: Object to the form. 05:08:35 4 A. NFPA provides a few examples there, but in my 05:08:38 5 experience, the list is endless of what an 05:08:43 6 individual will utilize to substantiate their 05:08:47 7 proposed changes. 05:08:50 8 Q. What are some other common sources of 05:08:51 9 substantiation for proposed changes? 05:08:54 10 A. One example you mentioned, the style manual. 05:09:00 11 Another example could be a specific incident 05:09:04 12 that occurred in a jurisdiction or somewhere. 05:09:09 13 Q. What others come to mind? 05:09:13 14 A. Improvements in overall safety as well as 05:09:19 15 economic savings. 05:09:27 16 Q. Anything else? 05:09:32 17 A. I think the last one I can think of off the 05:09:40 18 top of my head is consistency across the 05:09:46 19 document. The standard may have made a 05:09:48 20 change in one cycle in one area, and they're 05:09:50 21 realizing that they need to make a 05:09:52 22 substantive initial change to be consistent 05:09:54 23 across the requirements. 05:09:55 24 (Exhibit 1270 marked for 05:10:28 25 identification.) 05:10:44 Page 195</p>	<p>1 the second page of Exhibit 1270? 05:12:59 2 A. No, I do not. This is the first time I've 05:13:05 3 seen this. 05:13:07 4 Q. Have you ever been aware that works created 05:13:08 5 by U.S. government employees in the course of 05:13:25 6 their employment are not subject to 05:13:27 7 copyright? 05:13:29 8 MR. REHN: Object to the form. 05:13:30 9 Calls for a legal opinion. 05:13:31 10 A. Based upon my experience, I guess I would say 05:13:36 11 anecdotal knowledge around copyright of 05:13:40 12 federally produced materials and things like 05:13:43 13 that. 05:13:47 14 Q. What is that anecdotal knowledge? 05:13:47 15 MR. REHN: Same objection. Calls 05:13:50 16 for a legal opinion. 05:13:53 17 A. My knowledge is that it may or may not be 05:13:54 18 available and there are policies that, even 05:13:58 19 with general knowledge that I have, that my 05:14:02 20 team is required to verify copyright and 05:14:05 21 copyright permissions associated with any 05:14:08 22 material from the federal government or 05:14:11 23 employees of the federal government just like 05:14:14 24 we would do with any other material. 05:14:16 25 Q. Is it your understanding that NFPA asserts 05:14:17 Page 197</p>

<p>1 copyright over contributions to its codes and 05:14:22 2 standards that federal government employees 05:14:29 3 have made? 05:14:34 4 MR. REHN: Object to the form. 05:14:35 5 Calls for a legal opinion. 05:14:37 6 A. It's my position that the NFPA asserts 05:14:43 7 copyright over the final text of our codes 05:14:45 8 and standards so that text that ends up in 05:14:48 9 the documents is where our copyright remains. 05:14:51 10 Q. In its entirety? 05:14:55 11 MR. REHN: Object to the form. 05:14:59 12 Calls for legal opinion. 05:15:00 13 A. I'm not sure how to answer that question, so 05:15:03 14 I will say in the standards themselves, what 05:15:05 15 we publish is what we copyright. 05:15:08 16 Q. How does NFPA copyright its standards? 05:15:16 17 MR. REHN: Object to the form. 05:15:21 18 Vague and ambiguous. Calls for a legal 05:15:23 19 conclusion. 05:15:27 20 A. I have no specific knowledge of how that 05:15:27 21 process happens other than my team ensures 05:15:29 22 that the appropriate statements and such are 05:15:32 23 in the material in the front matter of each 05:15:34 24 and every standard we publish. 05:15:37 25 Q. What statements are you referring to in 05:15:46 Page 198</p>	<p>1 MR. REHN: Object to the form. 05:16:51 2 Calls for a legal opinion. Assumes facts. 05:16:52 3 A. In my 20 years of experience in working 05:17:00 4 through our committee as a liaison and now 05:17:03 5 as vice president, I've never had a question 05:17:12 6 or a challenge around the copyright from our 05:17:14 7 participants or from those who submit public 05:17:17 8 input, public comment proposals. 05:17:20 9 Q. In your 20 years of experience at NFPA, has 05:17:24 10 NFPA ever sued anybody for copyright 05:17:29 11 infringement before? 05:17:32 12 MR. REHN: Object to the form. I 05:17:33 13 think this is outside the scope of any of 05:17:35 14 the notice topics. It also may call for 05:17:37 15 interpretation of legal documents and 05:17:40 16 pleadings. The witness may answer to the 05:17:42 17 extent he has knowledge of that question. 05:17:46 18 A. The question I have is potential discussions 05:17:49 19 with counsel. Should we spend a minute 05:17:52 20 discussing it or? 05:17:55 21 Q. No. I'm asking you what knowledge you have 05:17:56 22 as to whether -- I'm asking you whether, to 05:18:00 23 your knowledge, NFPA has ever sued anybody 05:18:03 24 for copyright infringement before? 05:18:05 25 MR. REHN: If you can answer that 05:18:07 Page 200</p>
<p>1 that answer? 05:15:48 2 MR. REHN: Same objection to the 05:15:50 3 extent this calls for legal opinion. 05:15:51 4 A. For example, copyright National Fire 05:15:54 5 Protection Association, 2012. 05:15:57 6 Q. In other words, a copyright notice in the 05:16:02 7 publication itself? 05:16:05 8 MR. REHN: Same objection. Calls 05:16:06 9 for a legal opinion. 05:16:09 10 A. If that's the case, but I'm referring to the 05:16:09 11 statement that we put in the front of the 05:16:12 12 documents. 05:16:14 13 Q. How else do you understand the NFPA obtains 05:16:14 14 copyright rights in its codes and standards? 05:16:18 15 MR. REHN: Object to the form. It's 05:16:21 16 compound. Calls for a legal opinion. 05:16:23 17 A. We have a policy for each and every 05:16:26 18 submission into our standards development 05:16:29 19 process as well as through our committee 05:16:31 20 member applications and appointment process 05:16:33 21 to verify that those signatures and those 05:16:36 22 rights have been obtained through that 05:16:38 23 process. 05:16:40 24 Q. And that includes rights to the material in 05:16:42 25 Exhibit 1270; is that correct? 05:16:49 Page 199</p>	<p>1 question without revealing the substance of 05:18:08 2 advice you received from legal counsel, you 05:18:12 3 may do so. Again, I'll assert the objections 05:18:14 4 I've already asserted to the question as 05:18:18 5 well. 05:18:20 6 A. To the best of my knowledge, yes. 05:18:22 7 Q. NFPA has sued others for copyright 05:18:26 8 infringement? 05:18:29 9 MR. REHN: Same objections. And you 05:18:30 10 may answer it to the extent you can answer 05:18:32 11 without disclosing the substance of advice 05:18:34 12 you received from legal counsel. 05:18:37 13 A. To the best of my knowledge, relating to the 05:18:38 14 ICC lawsuit that you mentioned, but I have no 05:18:40 15 specific knowledge. 05:18:44 16 Q. Do you know whether NFPA sued ICC for 05:18:46 17 copyright infringement or for trademark 05:18:52 18 infringement? 05:18:54 19 MR. REHN: Same objections, and 05:18:55 20 exactly the same objections as before. 05:18:59 21 A. I have no first-hand knowledge of any of the 05:19:01 22 details of that. 05:19:04 23 Q. Apart from that, are you aware of any 05:19:05 24 copyright lawsuit that NFPA has brought 05:19:07 25 against anyone before this case? 05:19:09 Page 201</p>

1 MR. REHN: Same objections. 05:19:12
 2 Question straightforwardly asks for 05:19:14
 3 interpretation of legal documents and 05:19:15
 4 pleadings. It's outside the scope of the 05:19:17
 5 notice topics. And to the extent the witness 05:19:21
 6 has knowledge that would not reveal the 05:19:23
 7 substance of communications with legal 05:19:26
 8 counsel, you may answer. 05:19:28
 9 A. I have no knowledge. 05:19:29
 10 Q. What, if anything, did staff members of NFPA 05:19:39
 11 do to verify whether Doug Lee had authority 05:19:55
 12 to propose text that would go into NFPA's 05:20:02
 13 copyrighted code? 05:20:11
 14 MR. REHN: Object to the form. 05:20:13
 15 Mischaracterizes the document. Assumes there 05:20:15
 16 are legal conclusions embedded in the 05:20:18
 17 question. It assumes facts not in evidence. 05:20:21
 18 A. Based upon our policy of verifying each and 05:20:29
 19 every -- and reviewing each and every 05:20:33
 20 submission, it is my assumption that they 05:20:35
 21 would have contacted Mr. Lee to determine 05:20:37
 22 what authority he has or what was 05:20:41
 23 appropriate. But that's based upon our 05:20:42
 24 policy of reviewing each and every one that's 05:20:45
 25 submitted. 05:20:48

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1 (Exhibit 1271 marked for 05:23:18
 2 identification.) 05:23:21
 3 Q. Can you please identify Exhibit 1271. 05:23:21
 4 A. (Witness examines document) Exhibit 1271 05:23:39
 5 appears to be three public proposals on the 05:23:55
 6 2011 National Electrical Code from the same 05:23:58
 7 individual. 05:24:02
 8 Q. Do you know how people use these forms for 05:24:07
 9 proposal in connection with the standards 05:24:15
 10 development process? 05:24:23
 11 MR. REHN: Object to form. Question 05:24:24
 12 is ambiguous. May call for speculation. 05:24:25
 13 A. I would ask that you clarify "how," please. 05:24:32
 14 Q. What's the process that NFPA envisions when 05:24:35
 15 people use these forms for proposals? 05:24:39
 16 MR. REHN: Object to the form. 05:24:44
 17 Question is ambiguous. Compound. 05:24:48
 18 A. That would be an easy mechanism for the 05:24:51
 19 members of the public or whoever wishes to 05:24:55
 20 submit proposed changes could document 05:24:56
 21 recommended changes to the documents, the 05:25:00
 22 reasons for them and ensure that we have a 05:25:02
 23 copy on record for ANSI process or ANSI 05:25:05
 24 accreditation and to submit to the technical 05:25:08
 25 committee for review. 05:25:10

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1 Q. These would be for proposals that various 05:25:12
 2 persons might identify as proposals that they 05:25:16
 3 want to make to the text of the codes or 05:25:20
 4 standards? 05:25:28
 5 MR. REHN: Object to the form. 05:25:31
 6 Calls for speculation. 05:25:33
 7 A. I would say the most common reason people 05:25:35
 8 use the proposal forms is to propose new 05:25:38
 9 changes to documents. Sometimes it's to 05:25:40
 10 propose major changes, minor changes, but to 05:25:42
 11 propose changes to our standards. 05:25:45
 12 Q. In those contexts, whose idea is it usually 05:25:50
 13 for the individuals to make the proposals? 05:25:54
 14 MR. REHN: Object to the form. It's 05:26:00
 15 ambiguous. Calls for speculation. 05:26:04
 16 Q. Much of the time does the individual say, 05:26:08
 17 I've got an idea, I want to submit that for 05:26:10
 18 consideration? Is that how the process 05:26:13
 19 works, at least in part? 05:26:15
 20 MR. REHN: Same objections. 05:26:17
 21 A. I would say in the vast majority of cases, 05:26:21
 22 individuals submit changes to our process and 05:26:26
 23 they realize they're using the document and 05:26:30
 24 they have an idea that they would like to 05:26:36
 25 submit and they can submit it through a 05:26:38

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1 submission of a form or our new online system 05:26:40
 2 now. 05:26:42
 3 Q. To what extent does NFPA commission members 05:26:46
 4 of the general public to draft proposals for 05:26:51
 5 its codes and standards? 05:26:58
 6 MR. REHN: Object to the form. 05:27:01
 7 Calls for a legal opinion. 05:27:02
 8 A. One of the primary roles of NFPA staff is to 05:27:07
 9 act as facilitators for the process. And 05:27:13
 10 when we do receive questions on the standards 05:27:15
 11 or people call us and have difficulties with 05:27:17
 12 the standard, we advice them that they can 05:27:20
 13 also participate in the open process and we 05:27:22
 14 are there to guide them and help them to 05:27:25
 15 ensure that their voices are heard. 05:27:27
 16 Q. If they wish to participate, they can do so 05:27:29
 17 by submitting a proposal or a comment. Is 05:27:31
 18 that the process? 05:27:35
 19 A. To participate, you can submit proposals, 05:27:36
 20 comments. You can apply to be on the 05:27:39
 21 committee meeting. You can attend the 05:27:41
 22 committee meetings themselves as a member 05:27:43
 23 of the committee or as a member of the 05:27:45
 24 public. 05:27:47
 25 VIDEOGRAPHER: There are ten minutes 05:27:54

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<p>1 remaining on the video. 05:27:54 2 Q. Do you see the language in italics on the 05:27:57 3 bottom of the first page of Exhibit 1271? 05:27:59 4 A. Yes, I see the italics at the bottom of the 05:28:04 5 page. 05:28:15 6 Q. What do you understand that sentence to mean? 05:28:15 7 MR. REHN: Object to the form. 05:28:21 8 Which sentence are you referring to? 05:28:23 9 Q. The first sentence in the italics at the 05:28:26 10 bottom of the page. 05:28:29 11 MR. REHN: Object to the form. 05:28:30 12 Calls for a legal opinion. Document speaks 05:28:32 13 for itself. 05:28:35 14 A. It appears to be part of the -- a form of our 05:28:38 15 sign-off text provided by legal. 05:28:49 16 Q. Do you have any understanding as to what the 05:28:51 17 first sentence of that italicized portion 05:28:57 18 means? 05:29:01 19 MR. REHN: Object to the form. 05:29:01 20 Calls for a legal opinion. Document speaks 05:29:02 21 for itself. 05:29:04 22 A. No, I do not. 05:29:07 23 Q. This is the form that was used for proposals 05:29:08 24 for the 2011 National Electrical Code; is 05:29:31 25 that correct? 05:29:40</p> <p style="text-align: right;">Page 206</p>	<p>1 to my earlier representation about that 05:31:06 2 process. 05:31:08 3 MR. BRIDGES: I think there's been 05:31:09 4 no protective order on this issue. 05:31:10 5 A. I guess my response is it's my understanding 05:31:22 6 that we have provided, for example, 2011 05:31:26 7 National Electrical Code copies of all the 05:31:31 8 forms. 05:31:33 9 Q. How many different versions of the forms are 05:31:38 10 there? 05:31:43 11 MR. REHN: Object to the form. 05:31:45 12 Document speaks for itself. 05:31:46 13 A. My previous answer stands. 05:31:50 14 Q. And can you identify -- have you seen today 05:31:53 15 all of the different text variations that 05:31:58 16 NFPA has had in its assignment, in its 05:32:04 17 copyright forms? 05:32:12 18 MR. REHN: Object to the form. 05:32:14 19 Documents speak for themselves. 05:32:15 20 A. Given the magnitude of the number of forms 05:32:18 21 that we get on the order of tens of thousands 05:32:20 22 per year, I'm unable at this time to comment 05:32:23 23 on that. 05:32:27 24 (Exhibit 1272 marked for 05:33:04 25 identification.) 05:33:07</p> <p style="text-align: right;">Page 208</p>
<p>1 MR. REHN: Object to the form. 05:29:40 2 A. What I can say is this is the statement that 05:29:43 3 was on this particular version of the form. 05:29:45 4 That's the best I can tell you, given that 05:29:48 5 this is what I have in front of me. 05:29:50 6 Q. How many versions were there of forms for 05:29:51 7 proposals for the 2011 National Electrical 05:29:53 8 Code? 05:29:57 9 MR. REHN: Object to the form. 05:29:57 10 Assumes facts. 05:29:59 11 A. As previously discussed, it's difficult to 05:30:06 12 say because we accept them in multiple ways 05:30:10 13 and through multiple platforms. So as we 05:30:12 14 look through the record, the only way to 05:30:16 15 determine that would be to look at each 05:30:21 16 individual proposal. 05:30:25 17 Q. You're not prepared here today on behalf of 05:30:27 18 NFPA to furnish document numbers of at least 05:30:31 19 one instance of each of the different forms 05:30:36 20 that NFPA claims the benefit of as having 05:30:43 21 received assignments from participants in the 05:30:51 22 standards and development process, correct? 05:30:54 23 MR. REHN: Object to the form. It's 05:30:57 24 an improper question. We've met and 05:30:59 25 conferred about these questions, and I refer 05:31:03</p> <p style="text-align: right;">Page 207</p>	<p>1 Q. Mr. Dubay, please identify Exhibit 1272. 05:33:07 2 A. (Witness examines document) This appears to 05:33:32 3 be a proposal form from our archives relating 05:33:41 4 to the 2014 National Electrical Code. 05:33:44 5 Q. This is a proposal that NFPA has maintained 05:33:46 6 in its archives in the ordinary course of 05:33:52 7 business? 05:33:55 8 A. It appears so. 05:33:56 9 Q. What is the reference to ISA in the box 05:33:57 10 under Heading No. 4? 05:34:15 11 A. ISA, it's my understanding ISA is a standards 05:34:21 12 organization, and he's referencing a newer 05:34:35 13 edition of that standard. I don't know the 05:34:37 14 specific acronym of ISA, what it stands for, 05:34:39 15 however. 05:34:46 16 Q. Do you recognize any differences between 05:34:55 17 the italicized language at the bottom of 05:34:57 18 Exhibit 1272 and the italicized language at 05:35:01 19 the bottom of Exhibit 1271? 05:35:05 20 A. Yes. 05:35:12 21 Q. What is the difference? 05:35:19 22 MR. REHN: Object to the form. The 05:35:22 23 documents speak for themselves. 05:35:24 24 A. Without doing a word-by-word comparison, it 05:35:28 25 just appears that there's difference in 05:35:35</p> <p style="text-align: right;">Page 209</p>

1 length and some initial discussions around 05:35:37
 2 the term "technical committee." 05:35:40
 3 Q. Is that all? 05:35:43
 4 MR. REHN: Object to the form. The 05:35:45
 5 documents speak for themselves. 05:35:46
 6 A. No. 05:35:48
 7 Q. What else? 05:35:48
 8 MR. REHN: Same objections. 05:35:54
 9 A. Again, for example, the term starts out "I 05:36:00
 10 agree" versus "I hereby." 05:36:05
 11 Q. Do you see any reference to the phrase, 05:36:08
 12 "works-made-for-hire" in Exhibit 1272? 05:36:17
 13 MR. REHN: Object to the form. 05:36:22
 14 Document speaks for itself. 05:36:24
 15 A. If you're referring to the italicized text, 05:36:26
 16 I don't see the term "works-for-hire" at the 05:36:33
 17 bottom of Exhibit 1272. 05:36:35
 18 Q. Were you aware of the change in the 05:36:37
 19 italicized text in the forms for proposal 05:36:42
 20 between the 2011 National Electrical Code and 05:36:46
 21 the 2014 National Electrical Code? 05:36:49
 22 MR. REHN: Object to the form. 05:36:52
 23 Assumes facts. 05:36:54
 24 A. As I previously stated, there were changes 05:36:57
 25 made throughout my tenure at NFPA, and I'm 05:37:05
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1 not aware of specific changes, how they were 05:37:08
 2 made, but the record before me shows two 05:37:11
 3 versions. 05:37:14
 4 Q. Were you aware of these changes before 05:37:15
 5 today? 05:37:23
 6 A. I was aware before today that we had 05:37:23
 7 different versions. I was not aware of 05:37:32
 8 specific versions related to specific time 05:37:35
 9 frames as shown here. 05:37:37
 10 Q. Do you have any understanding as to the 05:37:40
 11 reason for the change in the italicized 05:37:42
 12 language at the bottom of Exhibits 1271 and 05:37:47
 13 1272? 05:37:51
 14 MR. REHN: Object to the form. 05:37:51
 15 The question appears to call for a legal 05:37:53
 16 opinion. As a precautionary measure, I'll 05:37:57
 17 instruct the witness to exclude from his 05:37:57
 18 answer anything that was revealed in 05:37:57
 19 substance through communications with legal 05:38:00
 20 counsel. 05:38:01
 21 A. Can you read back the question, please? 05:38:08
 22 Q. I'll restate it. 05:38:10
 23 VIDEOGRAPHER: Could we change the 05:38:14
 24 tape? 05:38:15
 25 MR. BRIDGES: We'll go off, we'll go 05:38:15
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1 off the record. 05:38:17
 2 VIDEOGRAPHER: The time is 5:38. 05:38:17
 3 This is the end of Tape No. 3, and we are now 05:38:19
 4 off the record. 05:38:22
 5 (Break taken) 05:38:25
 6 VIDEOGRAPHER: The time is 5:53. 05:53:03
 7 This is the beginning of Tape No. 4, and we 05:53:15
 8 are now back on the record. 05:53:17
 9 BY MR. BRIDGES: 05:53:20
 10 Q. Mr. Dubay, you mentioned earlier that NFPA's 05:53:20
 11 staff check each of these proposal and 05:53:26
 12 comment forms when they are submitted to look 05:53:34
 13 for signatures on the copyright language and 05:53:42
 14 indications as to whether the material is 05:53:46
 15 original or comes from another source; is 05:53:48
 16 that correct? 05:53:52
 17 A. We have a policy that each and every 05:53:53
 18 proposal, public input or comment is reviewed 05:53:57
 19 for completeness being signature, copyright 05:53:59
 20 release as well as any attached materials for 05:54:03
 21 potential copyright with those as well. 05:54:08
 22 Q. How many proposals, communications with 05:54:11
 23 public input or comments, falling in the 05:54:20
 24 categories you just mentioned, does NFPA 05:54:26
 25 receive each year? 05:54:29
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1 A. I would approximate if you combine all of our 05:54:36
 2 documents in a given year on the magnitude of 05:54:40
 3 public input or comments because that's all 05:54:43
 4 we accept now, is on the order of 05:54:47
 5 approximately 10,000, on average. 05:54:49
 6 Q. So has that average been consistent over the 05:54:54
 7 course of your tenure at NFPA? 05:55:01
 8 A. The average depends. For example, on one 05:55:07
 9 year on one document, we got 15,000 public 05:55:11
 10 comments. 05:55:14
 11 Q. What document and year was that? 05:55:17
 12 A. I'm not sure of the year. It was NFPA 1,500. 05:55:19
 13 Q. What is that document? 05:55:23
 14 A. I believe the title is Occupation Safety and 05:55:25
 15 Health For Firefighters. But the best of my 05:55:32
 16 recollection, I don't think that's the exact 05:55:36
 17 title. 05:55:37
 18 Q. So over the course of your tenure at NFPA, 05:55:38
 19 what do you believe the average number of 05:55:46
 20 comments and proposals to have been in one 05:55:49
 21 year? 05:55:57
 22 A. I would speculate that over the course of 05:55:57
 23 the time, it's in the 10s, 10,000-ish per 05:55:59
 24 year depending on what documents are in 05:56:04
 25 cycle. 05:56:09
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1 Q. How many persons check those proposals and 05:56:09
 2 submissions for signatures and for the 05:56:15
 3 copyright language? 05:56:17
 4 MR. REHN: Objection as to form. 05:56:19
 5 It's vague as to time. 05:56:21
 6 A. Currently our process is that it happens 05:56:25
 7 at least in two ways. It's automatic with 05:56:30
 8 our online submission system that you have 05:56:33
 9 to check the appropriate releases and provide 05:56:35
 10 an electronic signature before you submit. 05:56:38
 11 And then secondly, where there's attached 05:56:42
 12 materials or the alternative copyright, then 05:56:45
 13 there's a human intervention. 05:56:48
 14 Q. How many people perform that task in any 05:56:51
 15 given year? 05:56:54
 16 MR. REHN: Same objection. 05:56:57
 17 Ambiguous as to time. 05:56:58
 18 A. Currently we have a department of eight 05:57:00
 19 full-time project administrators and one 05:57:05
 20 additional manager. And in times of high 05:57:09
 21 volume, we may bring in additional staff 05:57:12
 22 resources to assist with that process. 05:57:15
 23 Q. What's the largest number of persons you've 05:57:20
 24 had engaged in that process at any one time? 05:57:22
 25 A. I don't have direct first-hand knowledge of 05:57:27
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1 that because the team scales up as they need 05:57:35
 2 to and utilize staff from other portions of 05:57:41
 3 my department to get the job done. 05:57:41
 4 Q. What's your understanding as to the largest 05:57:46
 5 number of persons participating in that 05:57:46
 6 process at any one time? 05:57:49
 7 A. Again, I would say -- I would have to go with 05:57:50
 8 an average and on average, it's that eight to 05:57:58
 9 ten, the nine, the eight full-time project 05:58:01
 10 administrators, the manager and an additional 05:58:03
 11 administrative assistant as needed. 05:58:06
 12 Q. Was the number larger when there was no 05:58:09
 13 automatic online submission form? 05:58:15
 14 A. Yes. 05:58:21
 15 Q. How many persons in a given year before the 05:58:21
 16 automatic online submission form that 05:58:29
 17 reviewed these submissions for signatures and 05:58:33
 18 copyright language? 05:58:35
 19 A. Historically we've used, utilized a different 05:58:39
 20 staffing model where we had more individual 05:58:42
 21 one-on-one review of each paper submission. 05:58:45
 22 And in that case, there was approximately, 05:58:48
 23 date depended, approximately an additional 10 05:58:52
 24 to 13 additional individuals. 05:58:54
 25 Q. So in addition to the eight to ten number you 05:59:02
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1 gave me now, you had another 10 to 13, so 05:59:06
 2 you're looking at somewhere between 18 and 23 05:59:09
 3 persons checking signatures and copyright 05:59:14
 4 language before the automated submission 05:59:17
 5 process went into effect? 05:59:21
 6 A. With our old system, our paper system, those 05:59:25
 7 18 to 20 people did the same jobs that our 05:59:29
 8 project administrators do, which includes 05:59:32
 9 reviewing for copyright but also preparing 05:59:35
 10 ballots, mailings to committees, committee 05:59:37
 11 notices and such. So those assignments, with 05:59:40
 12 the old process, were much more manually 05:59:43
 13 intensive. 05:59:45
 14 Q. But you had how many persons doing the review 05:59:46
 15 during the manual process in total? 05:59:51
 16 MR. REHN: Objection. Asked and 05:59:55
 17 answered. 05:59:56
 18 A. So to ensure that it's a clear answer, they 05:59:57
 19 were not solely doing review. It's 06:00:01
 20 supporting the committee process. We had an 06:00:03
 21 approximately, I would say, 15 to 20 06:00:05
 22 administrative staff in that process. 06:00:08
 23 Q. And on average before the new automated 06:00:12
 24 online submission system, what percentage of 06:00:18
 25 their time did the 15 to 20 administrative 06:00:21
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1 staff spend checking for signatures and 06:00:24
 2 copyright information on the submissions? 06:00:33
 3 A. I can't speculate on what percentage of the 06:00:45
 4 time, but what I can say is the vast majority 06:00:47
 5 of their time was spent preparing the 06:00:50
 6 material for the committee process, which 06:00:52
 7 included keying those changes, verifying 06:00:54
 8 copyright, making sure the agendas were 06:00:57
 9 ready, supporting the standard system. 06:01:00
 10 Q. So I'm asking your best estimate as to what 06:01:02
 11 percentage of the time they spent checking 06:01:05
 12 for signatures, verifying the copyright 06:01:07
 13 information. 06:01:10
 14 A. If I was to speculate, I would say at least 06:01:16
 15 50 percent of their time was related to the 06:01:20
 16 establishment of the agendas for the 06:01:25
 17 committee meetings, which included the 06:01:28
 18 proposals, comments, verifying materials, all 06:01:30
 19 complete, consolidating all that data and 06:01:32
 20 information for preparation for the committee 06:01:36
 21 meeting. 06:01:38
 22 Q. But that wasn't answering my question. My 06:01:38
 23 question was about the percentage of time 06:01:40
 24 spent checking for signatures and copyright 06:01:42
 25 information. Please answer that question. 06:01:44
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1 MR. REHN: Object to the form. 06:01:45
 2 Argumentative. Question has been asked and 06:01:46
 3 answered. 06:01:49
 4 A. And my response remains the same that I can't 06:01:50
 5 speculate specifically to that level of 06:01:52
 6 detail of their day-to-day tasks. 06:01:54
 7 Q. You can speculate as to specific detail about 06:01:57
 8 other tasks, but not about these tasks? 06:02:00
 9 MR. REHN: Objection. 06:02:02
 10 Argumentative. Mischaracterizes the 06:02:03
 11 testimony. 06:02:05
 12 Q. Why are you not answering the question I've 06:02:05
 13 asked, which is, what's your best estimate of 06:02:07
 14 the time, of the percentage of time those 06:02:10
 15 persons spent on checking for signatures and 06:02:12
 16 copyright information in the submissions? 06:02:17
 17 MR. REHN: Objection. 06:02:20
 18 Argumentative. Asked and answered. 06:02:21
 19 A. I can speculate on their total workload, 06:02:24
 20 their tasks they took -- 06:02:27
 21 Q. That wasn't my question. My question is, 06:02:29
 22 what percentage applied to checking for 06:02:30
 23 signatures and copyright information? That's 06:02:33
 24 my question. Is it clear? 06:02:37
 25 MR. REHN: Objection. 06:02:39

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1 Argumentative. 06:02:39
 2 Q. Is the question clear? 06:02:41
 3 A. No. 06:02:43
 4 Q. What's unclear about it? Do you understand 06:02:44
 5 what checking for signatures means in looking 06:02:47
 6 at the assignment for copyright forms? Do 06:02:51
 7 you understand? 06:02:58
 8 MR. REHN: Objection. 06:02:58
 9 Argumentative. 06:02:59
 10 A. I understand that we have a policy that each 06:03:00
 11 and every proposal and comment is checked for 06:03:02
 12 copyright and any associated submitted 06:03:04
 13 material is also checked. I have a team, a 06:03:07
 14 full-time staff that that is one of their 06:03:09
 15 primary tasks to do each and every day. 06:03:11
 16 Q. Great. I'm glad to know about the policy. 06:03:14
 17 Now my question is, what percentage of their 06:03:18
 18 time do you estimate, your best estimate, 06:03:23
 19 that they spend carrying out that policy? 06:03:27
 20 MR. REHN: Objection. Asked and 06:03:30
 21 answered. 06:03:31
 22 A. I would restate that, due to all the 06:03:34
 23 variables and the amount of variations that 06:03:37
 24 happen each year, I cannot speculate on that 06:03:39
 25 specific singular task. 06:03:42

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1 Q. You can't give any estimate at all? 06:03:44
 2 A. No. 06:03:46
 3 Q. Were you ever aware of how much time they 06:03:46
 4 spent on the task? 06:03:54
 5 A. I'm aware of the full-time resources that it 06:03:57
 6 takes to accomplish our process of supporting 06:04:00
 7 our technical committees. 06:04:03
 8 Q. But you're unaware of how much time they 06:04:08
 9 spend carrying out the policy that you 06:04:10
 10 described? 06:04:14
 11 MR. REHN: Objection. 06:04:14
 12 Argumentative. 06:04:14
 13 A. I believe I've answered your question. 06:04:17
 14 Q. What verification -- strike that. 06:04:19
 15 What efforts did NFPA make to obtain 06:04:34
 16 assignments from the companies that employed 06:04:38
 17 individuals who submitted proposals or 06:04:48
 18 comments for NFPA's codes and standards? 06:04:53
 19 MR. REHN: Object to the form. It's 06:04:58
 20 ambiguous. It assumes facts. There's some 06:05:00
 21 embedded legal conclusions. 06:05:04
 22 A. NFPA verifies through our policy the 06:05:07
 23 submission from the individual. We do not go 06:05:11
 24 to their companies to verify authority of 06:05:16
 25 their signature. 06:05:18

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1 Q. And how does NFPA verify submissions from the 06:05:20
 2 individuals? 06:05:30
 3 MR. REHN: Objection. I think this 06:05:36
 4 topic has been extensively asked and answered 06:05:38
 5 at this point. 06:05:40
 6 A. Several ways, one of which includes verifying 06:05:43
 7 that the submitter has signed the release 06:05:46
 8 form indicating it is their right or their 06:05:48
 9 authority to release it. 06:05:53
 10 Q. What else does NFPA do to verify the 06:05:54
 11 submission from the individual? 06:06:06
 12 MR. REHN: Same objection. 06:06:08
 13 A. Another example is if we review the material 06:06:10
 14 and there's an obvious copyright statement 06:06:14
 15 that is not of that individual who submitted 06:06:18
 16 it, we then contact them and if possible, we 06:06:21
 17 contact the owner of the copyright of the 06:06:24
 18 statement that's within that attached 06:06:27
 19 material. 06:06:28
 20 Q. What else does NFPA do to verify the 06:06:31
 21 submission from the individual? 06:06:35
 22 MR. REHN: Same objection. 06:06:37
 23 A. That's -- to the best of my recollection, 06:06:44
 24 that's the direct way we do it to the person 06:06:48
 25 who submitted it. 06:06:50

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1 Q. Do you recall anything else that NFPA does to 06:06:51
 2 verify the submission from the individual? 06:06:54
 3 MR. REHN: Same objection. Asked 06:06:57
 4 and answered. 06:06:58
 5 A. No. 06:06:59
 6 Q. Does NFPA have any documents setting out the 06:07:00
 7 verification process that you've described? 06:07:31
 8 A. I believe that our codes and standards 06:07:41
 9 department has a best practices document on 06:07:47
 10 how to process each review. 06:07:51
 11 Q. Who wrote that best practices document? 06:07:52
 12 A. I don't know. 06:07:56
 13 Q. Do you know whether the best practices 06:07:58
 14 document says anything about getting 06:08:04
 15 assignments or copyright releases from 06:08:05
 16 employers of individuals who have submitted 06:08:09
 17 proposals or comments? 06:08:13
 18 A. Without reviewing that document in 06:08:15
 19 specificity, I can't comment to that. 06:08:18
 20 Q. Do you know whether that document was 06:08:21
 21 produced in this litigation? 06:08:27
 22 A. I do not know. 06:08:31
 23 (Exhibit 1273 marked for 06:08:34
 24 identification.) 06:08:43
 25 Q. Can you please identify Exhibit 1273. 06:08:43
 Page 222

1 A. (Witness examines document) Looks like an 06:08:47
 2 archival version of a form proposals on one 06:09:04
 3 of our documents, looks like the National 06:09:07
 4 Electrical Code. 06:09:10
 5 Q. This is from -- NFPA maintained this like the 06:09:10
 6 other documents in the ordinary course of 06:09:15
 7 business as part of the standards development 06:09:17
 8 process? 06:09:19
 9 A. Yes. This document appears to be one from 06:09:19
 10 our standards archive. 06:09:21
 11 (Exhibit 1274 marked for 06:09:38
 12 identification.) 06:09:50
 13 Q. Can you please identify Exhibit 1274. 06:09:50
 14 A. (Witness examines document) This appears to 06:10:06
 15 be an archival from our archives of the 2008 06:10:14
 16 National Electrical Code proposal. 06:10:21
 17 Q. Proposal from Doug Lee of the Consumer 06:10:24
 18 Products Safety Commission? 06:10:28
 19 A. Yes. 06:10:28
 20 Q. Down below you see Item 5 has been marked 06:10:28
 21 with an X? 06:10:37
 22 A. Yup. 06:10:38
 23 Q. It says, "This proposal is original material" 06:10:40
 24 and then there's language after that, "NA" 06:10:42
 25 within parentheses. Do you see that? 06:10:50
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1 A. Language within parentheses, what I see is 06:10:53
 2 the note original material. Is that what 06:11:01
 3 you're referring to? 06:11:04
 4 Q. Right. 06:11:05
 5 A. Okay. 06:11:05
 6 Q. Was that language -- that language was in a 06:11:06
 7 number of NFPA's forms, correct? 06:11:11
 8 MR. REHN: Objection. The documents 06:11:16
 9 speak for themselves. 06:11:17
 10 A. Based upon my knowledge and review today, it 06:11:23
 11 appears similar to other statements I've 06:11:30
 12 seen. 06:11:32
 13 Q. In other forms provided by NFPA for comments 06:11:32
 14 or proposals, correct? 06:11:36
 15 A. It appears consistent to the proposal form. 06:11:39
 16 (Exhibit 1275 marked for 06:12:08
 17 identification.) 06:12:27
 18 Q. Please identify Exhibit 1275. 06:12:27
 19 A. (Witness examines document) Exhibit 1275 06:12:34
 20 appears to be a proposal form on NFPA 101 06:12:39
 21 from our archives. 06:12:44
 22 Q. And this appears to be a proposal from a 06:12:47
 23 Robert DiAngelo of the U.S. Army Corps of 06:12:53
 24 Engineers; is that right? 06:12:56
 25 A. Based upon the form, yes, it appears to be 06:13:00
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1 correct from Mr. DiAngelo. 06:13:03
 2 Q. Based on your position at NFPA, what 06:13:04
 3 verification would you expect the project 06:13:09
 4 administrators to conduct with respect to 06:13:12
 5 this proposal? 06:13:18
 6 A. I would anticipate that they would review the 06:13:28
 7 form and ensure that it's been completed, 06:13:31
 8 it's appropriate on the edition of the 06:13:35
 9 document, that the appropriate checks box has 06:13:37
 10 been selected and that it is signed by the 06:13:40
 11 submitter. 06:13:43
 12 Q. And what makes it -- how does one determine 06:13:43
 13 the appropriate check box? 06:13:47
 14 A. There's a box checked in this case, the 06:13:49
 15 original material is checked, so there's a 06:13:52
 16 selection and there's a signature. 06:13:55
 17 Q. Has it been the practice of anyone at NFPA to 06:13:58
 18 contact the company listed on these forms, 06:14:03
 19 here, the U.S. Army Corps of Engineers, to 06:14:07
 20 confirm the authority of the submitter to 06:14:11
 21 submit a proposal like this? 06:14:16
 22 MR. REHN: Object to the form. 06:14:17
 23 A. Again, based upon my 20 years of experience, 06:14:21
 24 this type of form, this type of signature and 06:14:26
 25 original material signature has never been 06:14:28
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1 questioned, challenged or brought into 06:14:30
 2 consideration on the authority aspect. It's 06:14:35
 3 the understanding that the person's 06:14:36
 4 submitting it to the NFPA codes and standards 06:14:38
 5 process. 06:14:41
 6 Q. It's the understanding that the person 06:14:42
 7 submitting to the NFPA code and standards 06:14:49
 8 process does what? 06:14:52
 9 MR. REHN: I believe what he said 06:14:54
 10 was the person is submitting it to the NFPA 06:14:55
 11 code and standard. Is that what you said? 06:14:58
 12 THE WITNESS: Yes. 06:15:02
 13 MR. REHN: I think the transcript 06:15:04
 14 didn't catch the "is." 06:15:05
 15 Q. Mr. DiAngelo gives a company and a business 06:15:08
 16 address on this form, does he not? 06:15:15
 17 A. Yes, it appears so. 06:15:23
 18 (Exhibit 1276 marked for 06:15:46
 19 identification.) 06:15:57
 20 Q. Can you please identify Exhibit 1276. 06:15:57
 21 A. (Witness examines document) This appears to 06:16:00
 22 be an -- Exhibit 1276 appears to be a 06:16:18
 23 proposal NFPA 13 from our archives. 06:16:22
 24 Q. And the submitter indicates his company and 06:16:42
 25 his apparent business address; is that 06:16:54
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1 correct? 06:17:02
 2 MR. REHN: Object to the form. 06:17:02
 3 A. Based upon my review of Exhibit 1276, it does 06:17:04
 4 appear that he states a company and street 06:17:08
 5 address. 06:17:10
 6 Q. The company -- you understand that to be the 06:17:19
 7 company's street address? 06:17:20
 8 MR. REHN: Object to the form. 06:17:22
 9 Calls for speculation. 06:17:23
 10 A. I have no way to confirm that at this time. 06:17:27
 11 (Exhibit 1277 marked for 06:17:45
 12 identification.) 06:18:22
 13 Q. Please identify Exhibit 1277. 06:18:22
 14 A. (Witness examines document) Exhibit 1277 06:18:27
 15 appears to be a proposal on NFPA 10 from our 06:18:39
 16 archive. 06:18:43
 17 Q. Do you recall -- strike that. 06:18:47
 18 What verification of this submission 06:19:02
 19 would you expect project administrators to 06:19:05
 20 have performed on this document? 06:19:09
 21 A. Based upon my review, there's two things that 06:19:21
 22 stands out to me. One is Mr. Burns has not 06:19:26
 23 indicated how he wants us to communicate with 06:19:29
 24 him because we ensure that we respond to each 06:19:31
 25 and every proposal. So there's an indication 06:19:34
 Page 227

1 at the top he's not completed. 06:19:36
 2 And secondly, Item 5 he said this is 06:19:38
 3 not his original material, so I wouldn't 06:19:40
 4 assume that, based upon our policy, this 06:19:43
 5 would not have been project administrators at 06:19:46
 6 this time, it would have been the admin staff 06:19:48
 7 back in 2000 would have contacted Mr. Burns 06:19:49
 8 to find out the relationship to Mr. Houston 06:19:53
 9 and act accordingly, based upon what they 06:19:56
 10 found out. 06:19:59
 11 Q. So in your view, it's possible that this 06:20:02
 12 proposal might have been rejected on 06:20:03
 13 formality grounds? 06:20:06
 14 MR. REHN: Object to the form. 06:20:08
 15 A. I have no knowledge of what the final result 06:20:10
 16 was on this proposal. 06:20:15
 17 Q. Is that a possibility? 06:20:16
 18 MR. REHN: Same objection. 06:20:17
 19 A. That is a possibility. It's also a 06:20:21
 20 possibility that Mr. Burns, or Mr. Houston 06:20:23
 21 could have submitted it on his own and 06:20:25
 22 provided a statement to supplement the 06:20:27
 23 record. 06:20:52
 24 (Exhibit 1278 marked for 06:20:52
 25 identification.) 06:20:59
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1 Q. Please identify Exhibit 1278. 06:20:59
 2 A. (Witness examines document) Exhibit 1278 06:21:02
 3 appears to be a proposal form on NFPA 10 from 06:21:18
 4 our archives. 06:21:22
 5 (Exhibit 1279 marked for 06:21:39
 6 identification.) 06:21:50
 7 Q. Please identify Exhibit 1279. 06:21:50
 8 A. (Witness examines document) Exhibit 1279 06:21:57
 9 appears to be a proposal on NFPA 12 from our 06:22:13
 10 archives. 06:22:18
 11 Q. It's also indicated that the proposal is not 06:22:21
 12 original material, correct? 06:22:29
 13 A. Based upon my review, it appears that the 06:22:35
 14 submitter, Mr. Kennedy, is looking to update 06:22:38
 15 a reference to a document not published by 06:22:40
 16 NFPA. 06:22:43
 17 Q. Was he looking to update a reference or to 06:22:44
 18 correct an error? 06:22:48
 19 MR. REHN: Object to the form. 06:22:49
 20 Q. Do you see where he says the ASME code 06:22:55
 21 is referenced incorrectly? 06:22:58
 22 A. Based upon my experience in NFPA standards 06:23:14
 23 development process, our documents could also 06:23:22
 24 be referred to as ANSI, NFPA. Those are 06:23:25
 25 ANSI-accredited standards. In this case it 06:23:31
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1 appears that this gentleman is looking to 06:23:31
 2 delete the ANSI term in front of ASME. But 06:23:33
 3 based upon my experience, ASME 31.1 is an 06:23:37
 4 ANSI-accredited standard. 06:23:42
 5 Q. ANSI-accredited? 06:23:45
 6 A. Yes, sir. 06:23:47
 7 Q. Does that mean issued by ANSI? 06:23:47
 8 MR. REHN: Object to the form. May 06:23:51
 9 call for speculation. Outside the scope. 06:23:52
 10 A. No. 06:23:54
 11 Q. Does that mean that -- so is it permissible 06:23:55
 12 for persons to refer to NFPA codes that are 06:24:04
 13 ANSI-accredited as ANSI codes? 06:24:08
 14 MR. REHN: Object to the form. 06:24:13
 15 Ambiguous. Confusing. Outside the scope. 06:24:15
 16 A. It would be appropriate to refer to NFPA 06:24:21
 17 standards as ANSI-accredited standards. 06:24:24
 18 Q. Is it appropriate to refer to them as -- is 06:24:27
 19 it appropriate to refer -- strike that. 06:24:30
 20 Is it NFPA 70 ANSI-accredited? 06:24:33
 21 MR. REHN: Outside the scope. The 06:24:37
 22 witness may answer if he knows. 06:24:39
 23 A. Yes. It's processed through our 06:24:41
 24 ANSI-accredited standards development system. 06:24:48
 25 Q. And is it appropriate to refer to it as 06:24:50
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1 ANSI 70? 06:24:57
 2 MR. REHN: Objection as to form. 06:24:57
 3 Vague. 06:25:00
 4 A. No. 06:25:03
 5 Q. Why not? 06:25:03
 6 A. Because it's NFPA 70. 06:25:04
 7 Q. To your knowledge, is ASME B31.1 also known 06:25:16
 8 as ANSI ASME B31.1? 06:25:44
 9 A. Historically, yes. 06:25:55
 10 Q. Is it also known as ANSI B31.1? 06:25:57
 11 A. Not to my knowledge. 06:26:04
 12 Q. Historically has NFPA 70 ever been referred 06:26:05
 13 to ANSI NFPA 70? 06:26:10
 14 MR. REHN: I'll object to this 06:26:16
 15 question as to being outside the scope. The 06:26:19
 16 witness can answer if he knows. 06:26:21
 17 A. Not to my knowledge. 06:26:22
 18 Q. Would it ever be appropriate to refer to 06:26:24
 19 NFPA 70 as ANSI 70? 06:26:27
 20 MR. REHN: Same objection to scope 06:26:31
 21 and objection to the form of the question. 06:26:33
 22 A. No. 06:26:35
 23 (Exhibit 1280 marked for 06:26:38
 24 identification.) 06:26:47
 25 Q. Please identify Exhibit 1280. 06:26:47
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1 A. (Witness examines document) This appears to 06:26:49
 2 be a proposal form with its attached 06:27:00
 3 documents to NFPA 101 from our archives. 06:27:03
 4 (Exhibit 1281 marked for 06:27:35
 5 identification.) 06:27:44
 6 Q. Please identify Exhibit 1281. 06:27:44
 7 A. (Witness examines document) It appears to 06:27:48
 8 be a proposal from our archives relating to 06:28:18
 9 NFPA 70. 06:28:22
 10 (Exhibit 1282 marked for 06:28:31
 11 identification.) 06:28:53
 12 Q. Please identify Exhibit 1282. 06:28:53
 13 A. (Witness examines document) Exhibit 1282 06:29:05
 14 appears to be a proposal from our archives 06:29:16
 15 on NFPA 70. 06:29:20
 16 (Exhibit 1283 marked for 06:29:49
 17 identification.) 06:29:59
 18 Q. Please identify Exhibit 1283. 06:29:59
 19 A. (Witness examines document) It appears to 06:30:05
 20 be a recommendation from the Department of 06:30:44
 21 the Army for a change to our Life Safety 06:30:46
 22 Code. 06:30:53
 23 Q. Would it have been a policy of NFPA's to 06:30:53
 24 reject this recommendation for failure to 06:30:57
 25 include copyright language? 06:31:02
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1 A. Our policy is not to reject a submission on 06:31:05
 2 the basis of it just initially lacking the 06:31:09
 3 form. Our policy would be to follow up as 06:31:11
 4 requested by a Lieutenant Colonel 06:31:14
 5 Everette Horne with Mr. Prediger to determine 06:31:18
 6 if they wished to submit a formal 06:31:25
 7 recommendation through the process and to 06:31:27
 8 help them through that process. 06:31:29
 9 Q. Would NFPA require a signature on a copyright 06:31:31
 10 form in order to consider recommendation for 06:31:36
 11 a change by the Department of the Army? 06:31:39
 12 A. Our policy would say that if they're 06:31:45
 13 submitting a formal recommendation through 06:31:48
 14 our public process, yes. However, if they 06:31:50
 15 wish to attend the committee meeting to 06:31:53
 16 discuss a change with the committee or 06:31:55
 17 present material to the committee, we have 06:31:58
 18 open meetings and we would allow that. 06:32:00
 19 Q. There are persons permitted to attend 06:32:03
 20 committee meetings and to make suggestions at 06:32:07
 21 committee meetings without signing documents 06:32:10
 22 that yield all copyright rights and their 06:32:14
 23 contributions to NFPA? 06:32:19
 24 MR. REHN: Objection to form. Calls 06:32:21
 25 for a legal opinion. 06:32:22
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<p>1 A. Members of the public or whoever, I guess 06:32:25 2 private sector or public sector, are 06:32:28 3 permitted to attend our committee meetings 06:32:31 4 and discuss issues with our technical 06:32:32 5 committee. 06:32:34 6 Ultimately in the committee meeting, 06:32:34 7 our technical committee members are 06:32:36 8 responsible for developing any text or 06:32:39 9 changes to the document in coordination with 06:32:41 10 staff. 06:32:43 11 Q. Are members of the public who attend the open 06:32:44 12 technical committee meetings permitted to 06:32:46 13 suggest textural revisions or additions? 06:32:50 14 MR. REHN: Objection to form. 06:32:57 15 A. We do not limit the statements on the public. 06:32:58 16 MR. BRIDGES: Let's go off the 06:33:04 17 record, if we may, briefly. What I'm going 06:33:06 18 to ask him to do when we come back is to 06:33:09 19 authenticate a bunch of the codes. 06:33:11 20 VIDEOGRAPHER: The time is 6:33. We 06:33:14 21 are now off the record. 06:33:17 22 (Break taken) 06:33:20 23 VIDEOGRAPHER: The time is 6:47, and 06:47:26 24 we are now back on the record. 06:47:32 25 MR. BRIDGES: Thank you. As we went 06:47:33 Page 234</p>	<p>1 we'll stipulate to true and correct copies of 06:48:53 2 the standards at issue in this case. 06:48:55 3 MR. BRIDGES: You'll stipulate to 06:48:57 4 the fact that they are true and correct 06:48:58 5 copies if they were produced? 06:48:59 6 MR. REHN: Sure. 06:49:00 7 MR. BRIDGES: Okay. Thanks. 06:49:01 8 BY MR. BRIDGES: 06:49:01 9 Q. I'm not marking this as an exhibit, but I'm 06:49:04 10 referring to it by the numbers stamped at 06:49:06 11 the bottom. Can you please identify the 06:49:11 12 document that starts at 17535, ends at 18417. 06:49:17 13 I'm not asking you to look through 06:49:28 14 every page, but I assume that this is a copy 06:49:30 15 of the 2011 edition of the National 06:49:33 16 Electrical Code. Does that seem correct to 06:49:38 17 you? 06:49:41 18 A. Based upon what I have in front of me, it 06:49:42 19 appears to be a copy of the 2011 National 06:49:44 20 Electrical Code. 06:49:49 21 Q. There are some items within this document 06:49:49 22 that have some shading. I don't know if 06:49:53 23 they're in color on other instances of it, 06:49:56 24 but let me ask you to refer to the page with 06:50:00 25 Bates No. 17729, for example. 06:50:03 Page 236</p>
<p>1 off the record, I was discussing a desire to 06:47:37 2 authenticate a number of the NFPA codes and 06:47:40 3 standards at issue in the case. 06:47:43 4 I think we have an agreement; I'd 06:47:45 5 just like to get a stipulation on the record 06:47:46 6 that rather than authenticating a bunch of 06:47:48 7 big documents, counsel will agree that NFPA 06:47:53 8 counsel will furnish us Bates ranges of the 06:47:58 9 standards at issue in the lawsuit and that we 06:48:06 10 can rely upon copies of those documents with 06:48:09 11 those Bates numbers as produced as authentic 06:48:12 12 copies of the relevant codes and standards. 06:48:15 13 Is that agreeable? 06:48:17 14 MR. REHN: We will -- yeah, we'll 06:48:18 15 stipulate that we will agree to a method of 06:48:22 16 identifying the standards at issue in the 06:48:26 17 case. We're amenable to Bates numbers, but 06:48:28 18 we'll take it under advisement as to the most 06:48:34 19 efficient way to do that. 06:48:36 20 MR. BRIDGES: Can we get that 06:48:37 21 information within 15 days? 06:48:38 22 MR. REHN: Sure, and we'll be happy 06:48:40 23 to meet further to hammer out the details. 06:48:41 24 But with respect to the standards at issue in 06:48:44 25 this case, we are going to be objecting -- 06:48:46 Page 235</p>	<p>1 A. 17729? 06:50:07 2 Q. Right. Do you see shading at several points 06:50:17 3 on that page? 06:50:20 4 A. Yes, I do see shading. 06:50:23 5 Q. I'm not referring to the shading around the 06:50:25 6 article titles. What does the other shading 06:50:28 7 on the page indicate? 06:50:31 8 A. Shading within the NEC indicates locations 06:50:35 9 where changes have occurred between editions. 06:50:39 10 Q. How many times -- through how many editions 06:50:42 11 was this a means of indicating changes from 06:50:47 12 earlier editions? 06:50:49 13 A. To the best of my knowledge, with respect to 06:50:53 14 the NEC, which is one of the few documents we 06:50:58 15 use shading, it was for the 2011 and 2014. I 06:51:01 16 do not recall if it was prior to that. 06:51:06 17 Q. So in the 2014, if there's shading, it means 06:51:08 18 something changed there compared to the 2011 06:51:12 19 edition, correct? 06:51:14 20 A. Correct. 06:51:15 21 Q. And the 2011 edition, if there's shading, 06:51:16 22 that indicates that there's something changed 06:51:19 23 there from the 2008 edition. Is that a fair 06:51:21 24 inference? 06:51:27 25 A. If you refer to Page 17559 -- 06:51:36 Page 237</p>

<p>1 Q. Yes. 06:51:42 2 A. Top left-hand paragraph below the bold 06:51:52 3 discusses what we used to indicate changes 06:51:57 4 including shaded or bulleting, like a dot. 06:51:59 5 Q. It says, "Changes other than editorial are 06:52:07 6 highlighted with gray shading." Do you see 06:52:13 7 that? 06:52:15 8 A. Yes. 06:52:15 9 Q. What's an example of some editorial changes 06:52:16 10 that would have occurred between editions of 06:52:19 11 the NEC? 06:52:22 12 A. Sample could be a spelling error. 06:52:23 13 Q. Anything else? 06:52:34 14 A. The only thing I can think of is occasionally 06:52:36 15 documents, paragraphs roll into each other, 06:52:46 16 so spacing, things like that. 06:52:50 17 Q. The document contains lists of persons 06:52:52 18 starting at Page 17547 up through Page 17558, 06:53:07 19 correct? 06:53:18 20 MR. FEE: Could you repeat that. 06:53:25 21 What was the question? 06:53:30 22 Q. The document contains lists of persons 06:53:31 23 starting at Page 17547 up through Page 17558, 06:53:34 24 correct? 06:53:39 25 A. Just to make sure I understand your question, 06:53:41 Page 238</p>	<p>1 correlation across the entire standard 06:54:56 2 itself. 06:54:59 3 Q. And these pages identify various code-making 06:55:05 4 panels and then they indicate which portions 06:55:12 5 of the National Electrical Code they were 06:55:16 6 responsible for; is that correct? 06:55:18 7 MR. REHN: Object to the form of the 06:55:25 8 question. 06:55:26 9 A. That is my understanding. 06:55:27 10 Q. And it indicates the -- and this list 06:55:29 11 indicates both the names and the affiliations 06:55:34 12 of those persons who participated in the work 06:55:41 13 that's reflected in this edition; is that 06:55:45 14 correct? 06:55:50 15 MR. REHN: Object to the form. 06:55:50 16 A. Our committee lists indicate the name of the 06:55:51 17 individual who holds the seat, whether 06:55:56 18 they're a principal or alternate, what 06:55:59 19 company they work for and, if any, 06:56:01 20 representation if they do have a 06:56:03 21 representation. 06:56:05 22 Q. So let's say in the case of Page 17551 -- 06:56:08 23 A. 551. 06:56:20 24 Q. There's a reference to John Ray of Duke 06:56:22 25 Energy Corporation and it says, "Rep, 06:56:28 Page 240</p>
<p>1 you just indicated there is a list of 06:53:49 2 persons? 06:53:50 3 Q. Right. 06:53:51 4 A. Those pages appear to contain lists of 06:53:54 5 technical committee members as well as NFPA 06:53:57 6 staff, where appropriate. 06:54:00 7 Q. And I think you testified earlier but just 06:54:02 8 for the sake of clarification, committees 06:54:04 9 that are called technical committees for 06:54:09 10 other codes and standards are called 06:54:11 11 code-making panels when it comes to the 06:54:13 12 National Electrical Code; is that correct? 06:54:15 13 A. That is partially correct. There are two 06:54:18 14 ways we address the National Electrical Code. 06:54:21 15 There are code-making panels and their work 06:54:24 16 is overseen by a technical correlating 06:54:26 17 committee. 06:54:30 18 Q. What is the work of the technical correlating 06:54:31 19 committee? 06:54:35 20 A. The technical correlating committee is 06:54:37 21 responsible for correlation across the entire 06:54:42 22 document to ensure that the code-making 06:54:45 23 panels are aware of potential conflicting 06:54:49 24 requirements between their portions of the 06:54:52 25 document and also consistency. It's 06:54:53 Page 239</p>	<p>1 Electric Light and Power Group." What does 06:56:29 2 that mean? 06:56:33 3 A. Before I answer the question, I'm just having 06:56:38 4 trouble finding John's name. Is he on the 06:56:41 5 one on Code-Making Panel 7? 06:56:43 6 Q. Panel 7, left column, four from the bottom. 06:56:46 7 A. So in that case it appears Mr. Ray, the 06:56:55 8 company he works for is Duke Engineering 06:57:00 9 Corporation. He represents a utility, and 06:57:02 10 his representation of the committee is 06:57:04 11 Electrical Light and Power Group, EEI. 06:57:06 12 Q. And the letters in brackets after the names, 06:57:13 13 employers and states indicate the -- what do 06:57:23 14 you call it? Not the interest group. The 06:57:29 15 interest section? 06:57:32 16 A. It's the interest category. 06:57:34 17 Q. The interest category. So the letters within 06:57:37 18 brackets at the end of the line on which the 06:57:39 19 names of the individuals are found is a code 06:57:43 20 for the interest category; is that correct? 06:57:45 21 A. That is correct. 06:57:47 22 Q. M is manufacturer; is that right? M stands 06:57:48 23 for manufacturer? 06:58:00 24 A. Yes, M is for manufacturer. 06:58:00 25 Q. E stands for enforcer; is that correct? 06:58:02 Page 241</p>

<p>1 A. Correct. The Es could represent federal 06:58:05 2 government, state and local government as 06:58:14 3 well as state fire officials, local fire 06:58:17 4 officials. 06:58:20 5 Q. I notice on the front page of this there's a 06:58:21 6 section near the bottom right of the page 06:58:42 7 that says "Order redline PDF." Do you see 06:58:45 8 that? 06:58:48 9 A. Yes. 06:58:48 10 Q. That redline PDF is a different document. 06:58:49 11 This is not the redline, correct? 06:58:52 12 A. Based upon my review here, it appears to be 06:58:57 13 the, quote, unquote, normal version with the 06:59:01 14 shading to track changes and not a full track 06:59:04 15 changes redline version. 06:59:07 16 Q. And if one orders the redline PDF, does that 06:59:08 17 show the text that was deleted which might 06:59:11 18 not appear in this version? 06:59:14 19 A. That is my understanding, but I have not seen 06:59:17 20 the redline version of this document. 06:59:21 21 Q. Let me ask you to turn to Page 17538. 06:59:23 22 A. 17538. 06:59:53 23 Q. Does the language on that page appear 06:59:57 24 correct, to your knowledge? 07:00:02 25 MR. REHN: You're referring to the 07:00:11 Page 242</p>	<p>1 Vague and ambiguous. 07:01:33 2 A. Yes. We had a major rewrite of our 07:01:36 3 regulations in approximately 2007, 2008 time 07:01:40 4 frame we started that process. 07:01:48 5 Q. Has there been any significant change 07:01:50 6 since -- strike that. 07:01:53 7 You said that's when the process 07:01:54 8 started. When did that process end? 07:01:56 9 A. The rewrite to our regulations ended, to the 07:01:57 10 best of my knowledge, in approximately 2009, 07:02:06 11 2010. 07:02:09 12 Q. Have there been any other, in your mind, 07:02:13 13 significant changes to the standards 07:02:16 14 development process since 2010? 07:02:18 15 A. No. 07:02:22 16 Q. Do you, in preparing and overseeing the 07:02:22 17 development of codes and standards, strive to 07:02:48 18 make them suitable for governments to adopt 07:02:53 19 for purposes of enforcement? 07:02:59 20 MR. REHN: Object to the form. It's 07:03:05 21 vague. May call for a legal opinion. 07:03:07 22 A. Part of our committee officers guide is a 07:03:15 23 guidance document that is to address 07:03:19 24 usability, adoptability and enforceability. 07:03:22 25 It's guidance to our committees to 07:03:27 Page 244</p>
<p>1 whole language on the page? 07:00:13 2 MR. BRIDGES: Right. 07:00:15 3 MR. REHN: Objection as to form. 07:00:15 4 A. To the best of my knowledge, it appears like 07:00:21 5 our opening issuing statement, our history 07:00:23 6 and development of the National Electrical 07:00:27 7 Code as well as our copyright statements, to 07:00:29 8 the best of my knowledge. 07:00:34 9 Q. So it's correct, to the best of your 07:00:34 10 knowledge? 07:00:37 11 A. It appears correct. 07:00:37 12 Q. What about the language on Page 17536? 07:00:40 13 A. 536. 07:00:45 14 MR. REHN: Object to the form and 07:00:52 15 to the extent the question calls for the 07:00:53 16 witness to render a legal opinion. 07:00:55 17 MR. BRIDGES: I'm just asking if 07:01:01 18 it's correct to the best of his knowledge. 07:01:03 19 A. To the best of my knowledge, this appears 07:01:08 20 correct and typical of our front matter 07:01:11 21 within our standards. 07:01:14 22 Q. A couple broad questions: Has the standards 07:01:20 23 development process changed in any material 07:01:23 24 way since you arrived at NFPA? 07:01:25 25 MR. REHN: Object to the form. 07:01:33 Page 243</p>	<p>1 ensure that they write clear and not vague 07:03:29 2 requirements that are understandable and 07:03:31 3 concise. 07:03:33 4 Q. You said usability, adoptability and 07:03:34 5 enforceability; is that right? 07:03:38 6 A. Yes. 07:03:40 7 Q. Does adoptability include within that concept 07:03:41 8 the ease of adoption by governments of codes 07:03:50 9 as enforceable law? 07:04:01 10 MR. REHN: Object to the form. May 07:04:03 11 call for a legal opinion. 07:04:07 12 A. I can't comment on the ease of the adoption. 07:04:11 13 What I can comment on is my view of that is 07:04:15 14 that our standards need to contain, for 07:04:19 15 example, mandatory language if they're going 07:04:22 16 to be a standard and enforceable and, I would 07:04:26 17 assume, adoptable. 07:04:29 18 Q. That makes -- the mandatory language makes 07:04:31 19 them suitable for a government to adopt the 07:04:34 20 codes and standards as law? 07:04:35 21 MR. REHN: Object to the form. 07:04:37 22 Assumes facts. May call for a legal opinion. 07:04:40 23 A. That's partly my understanding but also the 07:04:45 24 mandatory language ensures that private 07:04:50 25 entities, private organizations can also 07:04:52 Page 245</p>

<p>1 utilize them in their facilities and 07:04:54 2 applications. 07:04:57 3 VIDEOGRAPHER: We've reached the 07:04:59 4 seven hours. 07:05:01 5 MR. BRIDGES: Thank you very much. 07:05:01 6 CROSS EXAMINATION 07:05:01 7 BY MR. REHN: 07:05:01 8 Q. Mr. Dubay, I have a couple of questions for 07:05:05 9 you just to clear up some issues that arose 07:05:07 10 earlier I think in response to my own perhaps 07:05:10 11 confusing instruction. 07:05:14 12 Do you recall being asked whether 07:05:17 13 you reviewed any documents in preparation for 07:05:18 14 this deposition? 07:05:20 15 A. Yes. 07:05:21 16 Q. Do you recall that before you answered 07:05:21 17 that question, I instructed you to answer to 07:05:24 18 the extent you remembered any specific 07:05:26 19 documents? 07:05:27 20 A. Yes. 07:05:29 21 Q. And do you recall that your answer to that 07:05:29 22 question was "no" after I've given you that 07:05:31 23 instruction? 07:05:35 24 A. Yes. 07:05:35 25 Q. So I'd like to just ask that question again. 07:05:35 Page 246</p>	<p>1 This is the end of Tape No. 4 as well as 07:06:35 2 the deposition, and we are now off the 07:06:37 3 record. 07:06:39 4 (Whereupon the deposition was 07:06:39 5 concluded at 7:06 p m.) 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 Page 248</p>
<p>1 In preparation for this deposition, did 07:05:38 2 you review any documents, excluding 07:05:40 3 identifying any specific documents, but 07:05:43 4 did you review any documents in preparation 07:05:45 5 for today? 07:05:45 6 A. The only documents I reviewed were the 07:05:47 7 several that I reviewed with counsel. 07:05:49 8 Q. Thank you. 07:05:53 9 MR. REHN: No further questions. 07:05:53 10 MR. BRIDGES: I have a follow-up. 07:05:55 11 What were the documents -- 07:05:55 12 MR. FEE: Hold on. I have no 07:05:55 13 questions. 07:05:59 14 REDIRECT EXAMINATION 07:05:59 15 BY MR. BRIDGES: 07:05:59 16 Q. What were the documents that you reviewed 07:05:59 17 with counsel? 07:06:00 18 MR. REHN: I will instruct the 07:06:01 19 witness not to answer that question on the 07:06:02 20 ground of attorney-client privilege. 07:06:04 21 Q. And do you intend to follow your counsel's 07:06:17 22 instruction? 07:06:24 23 A. Yes. 07:06:27 24 Q. Okay. 07:06:29 25 VIDEOGRAPHER: The time is 7:06. 07:06:31 Page 247</p>	<p>1 I declare under penalty of perjury 2 under the laws that the foregoing is 3 true and correct. 4 5 Executed on _____, 20____, 6 at _____, _____. 7 8 9 10 11 _____ 12 Christian Dubay 13 14 15 16 17 18 19 20 21 22 23 24 25 Page 249</p>

1 COMMONWEALTH OF MASSACHUSETTS)
2 SUFFOLK, SS)
3
4

5 I, Jeanette Maracas, Registered
6 Professional Reporter and Notary Public in
7 and for the Commonwealth of Massachusetts, do
8 hereby certify that there came before me on
9 the 1st day of April, 2015, at 10:00 a m ,
10 the person hereinbefore named, who was by me
11 duly sworn to testify to the truth and
12 nothing but the truth of his knowledge
13 touching and concerning the matters in
14 controversy in this cause; that he was
15 thereupon examined upon his oath, and his
16 examination reduced to typewriting under my
17 direction; and that the deposition is a true
18 record of the testimony given by the witness

19 I further certify that I am neither
20 attorney or counsel for, nor related to or
21 employed by, any attorney or counsel employed
22 by the parties hereto or financially
23 interested in the action

24 In witness whereof, I have hereunto
25 set my hand this 8th day of April, 2015

26 Notary Public
27 My commission expires 8/14/20

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Federal Rules of Civil Procedure

Rule 30

(e) Review By the Witness; Changes.

(1) Review; Statement of Changes. On request by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which:

(A) to review the transcript or recording; and

(B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.

(2) Changes Indicated in the Officer's Certificate. The officer must note in the certificate prescribed by Rule 30(f)(1) whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period.

DISCLAIMER: THE FOREGOING FEDERAL PROCEDURE RULES ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY.

THE ABOVE RULES ARE CURRENT AS OF SEPTEMBER 1, 2014. PLEASE REFER TO THE APPLICABLE FEDERAL RULES OF CIVIL PROCEDURE FOR UP-TO-DATE INFORMATION.