EXHIBIT 45
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- THOMAS B. O'BRIEN, JR., Vice President and General Counsel, ASTM International
- CARL MALAMUD, PUBLIC.RESOURCE.ORG (via telecon)
- CHRIS SOMO, Legal Videographer

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**FOR THE PLAINTIFFS:**
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  2. 1111 Pennsylvania Avenue NW
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**WASHINGTON, D.C., WEDNESDAY, MARCH 4, 2015; 9:20 A.M.**

**THE VIDEOGRAPHER:** Good morning. My name is Chris Somo from Veritext National Deposition Services. The date today is March 4, 2015, and the time on the video monitor is 9:20. This deposition is being held at Veritext, Washington, D.C., located at 1250 I Street, Northwest, Washington, D.C. The caption of this case is American Society for Testing and Materials, et al., v Public Resource O-r-z (sic), Inc. This case is filed in the United States District Court for the District of Columbia, Case No. 1:13-CV-01215-EGS. The name of the witness is Jeffrey Grove. At this time the attorneys present in the room and attending remotely, will you please identify yourselves for the record?

**MR. BRIDGES:** This is Andrew Bridges and Matthew Becker of Fenwick & West representing the defendant, Public Resource Org, and listening in on the telephone is Carl Malamud. **MR. FEE:** Kevin Fee from Morgan Lewis on behalf of ASTM, and I'm joined with Tom O'Brien from ASTM. **THE VIDEOGRAPHER:** Would the court reporter?
1 Nancy Martin, please swear in the witness, and we can begin. 09:22:27
2
3 THE WITNESS: I don't have any criteria. 09:24:56
4
5 2 Just I thought it would be a good idea to review 09:24:58
6 annual reports and that type of publicly available 09:25:02
7 information about ASTM. 09:25:04
8
9 BY MR. BRIDGES: 09:25:08
10
11 Q. What else did you review among the documents? 09:25:08
12 MR. FEE: Objection. Are you asking about 09:25:11
13 the ones he selected on his own or the ones -- 09:25:12
14 MR. BRIDGES: No -- 09:25:14
15 MR. FEE: Well, I'm going to instruct you not 09:25:14
16 to disclose the documents that you reviewed at the 09:25:16
17 request or direction of counsel. You can disclose any 09:25:18
18 other documents you reviewed. 09:25:21
19
20 MR. BRIDGES: I think I'm entitled to know 09:25:22
21 what documents he reviewed to prepare for the 09:25:23
22 deposition. It might reveal attorney work product if 09:25:27
23 he told us what documents were discussed with counsel, 09:25:31
24 but I'm entitled to know which documents he reviewed 09:25:36
25 in general. 09:25:39
26
27 MR. FEE: I disagree. 09:25:41
28 You should follow my instruction. 09:25:43
29
30 THE WITNESS: I have no other documents that 09:25:44
31 I can recall to disclose. 09:25:46
32
33 BY MR. BRIDGES: 09:25:47
34
35 Q. So you're saying that all the documents -- of 09:25:47
36 Page 16
37
38 all the documents you reviewed, only annual reports 09:25:52
39 are those that you thought to review on your own? 09:25:55
40 A. Right. I think the exception to that would 09:25:56
41 be standardization news. I contributed some articles 09:26:01
42 that I thought I should refresh my memory with. 09:26:03
43 Q. What did those articles concern? 09:26:08
44 A. Discussed generally ASTM's mission and work 09:26:13
45 we do to promote ASTM's mission and its important role 09:26:20
46 in protecting everyday citizens due to the development 09:26:24
47 of standards that protect the environment, health, and 09:26:26
48 safety. 09:26:31
49
50 MR. BRIDGES: One thing occurred to me. We 09:26:35
51 may need a short break. I forgot, you know, I was 09:26:37
52 supposed to have real time. Can we get real time? 09:26:39
53 REPORTER MARTIN: Yes, sir. I'm working on 09:26:43
54 it right now. 09:26:43
55
56 MR. BRIDGES: Thanks. 09:26:43
57 MR. BECKER: We also have an email from Thane 09:26:48
58 stating he'd like to listen in. So perhaps we should 09:26:49
59 take a break and set up real-time. 09:26:51
60
61 MR. BRIDGES: I think we've got a separate 09:26:55
62 bridge. I think Carl dialed in directly. So we're 09:26:57
63 going to have to drop him and set up a bridge. 09:26:59
64 Sorry about this, but let's go off the record 09:27:01
65 for a few minutes. 09:27:03
66
67 Page 17

Veritext Legal Solutions
866 299-5127
THE VIDEOGRAPHER: We're now going off the record at 9:26

A: That's all I recall.

Q. What else did you recall on your own initiative apart from annual reports and standardization news?

A. I do not.

Q. Apart from conversations specifically with attorneys, did you discuss the topics of today's conversation -- of today's deposition with anyone else in preparation for your deposition today?

A. I made a phone call to our vice president of sales and publications.

Q. Who is that?

A. John Pace.

THE WITNESS: I did ask -- I wanted to learn what I knew about revenues so I was prepared to review ASTM's financials and revenues so I was prepared to review with him what I knew about ASTM in preparation for your deposition today?

A. My original job title was Washington representative. My second title was director of government and industry affairs, and my current title is vice president of global policy and industry affairs. The majority of ASTM members under our system of private sector-led public/private collaboration come from industry. So I recall.

Q. In that job title, what does the word "industry" refer to?

A. Generally, yes.

Q. Did those figures he gave you accord with your expectations?

A. Generally, yes.

Q. Did that revenue trend strike you as unusual or unexpected in any respects?

A. Yes.

Q. What did you discuss with him?

A. Just over 10 years. Was that revenue trend consistent with your expectations?

A. Generally, yes.

Q. Any changes in revenue to ASTM from publications you reviewed on your own initiative apart from annual reports and standardization news?

A. Not that I can produce or recall.

Q. Did you attach any significance to that figure?

A. That's all I recall.

Q. Did you attach any significance to that figure?

A. That's all I recall.

Q. Did you attach any significance to that figure?

A. That's all I recall.

Q. Did you attach any significance to that figure?

A. That's all I recall.

Q. Did you attach any significance to that figure?

A. That's all I recall.

Q. Did you attach any significance to that figure?

A. That's all I recall.

Q. Did you attach any significance to that figure?

A. That's all I recall.

Q. Did you attach any significance to that figure?

A. That's all I recall.

Q. Did you attach any significance to that figure?

A. That's all I recall.

Q. Did you attach any significance to that figure?

A. That's all I recall.

Q. Did you attach any significance to that figure?

A. That's all I recall.

Q. Did you attach any significance to that figure?

A. That's all I recall.

Q. Did you attach any significance to that figure?

A. That's all I recall.

Q. Did you attach any significance to that figure?

A. That's all I recall.

Q. Did you attach any significance to that figure?

A. That's all I recall.

Q. Did you attach any significance to that figure?

A. That's all I recall.

Q. Did you attach any significance to that figure?
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<td>Q. What was your undergraduate degree? 09:44:40</td>
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<td>A. My undergraduate degree is in -- I'm a double 09:44:44</td>
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<tr>
<td>22</td>
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<td>major in political science and public administration 09:44:47</td>
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<td>Q. What employment did you have before ASTM that 09:45:05</td>
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<td>22</td>
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<td>equipped you for your job at ASTM? 09:45:15</td>
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<td>MR. FEE: Objection. 09:45:20</td>
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<td>THE WITNESS: From 1993 to 2000 I worked for 09:45:21</td>
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<td>the U.S. House of Representatives in different 09:45:29</td>
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<td>positions 09:45:32</td>
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<td>Q. What else? 09:45:33</td>
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<td>A. From 2001 to 2004 I worked for the 09:45:37</td>
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<td>Association for Computing Machinery here in 09:45:42</td>
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<td>Q. What else? 09:45:47</td>
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<td>A. 2004, I was hired by ASTM. 09:45:48</td>
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<td>Q. Did you receive any training as an engineer? 09:46:07</td>
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<td>A. I'm not an engineer, no. 09:46:11</td>
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<td>Q. Did you receive any scientific technical 09:46:13</td>
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<td>training? 09:46:16</td>
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<td>MR. FEE: Objection. Vague and compound. 09:46:17</td>
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<td>THE WITNESS: No. Science and technology 09:46:20</td>
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<td>policy I was involved in, but not a scientist. 09:46:22</td>
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<td>BY MR. BRIDGES: 09:46:58</td>
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<td>Q. In the time you have worked for ASTM, have 09:46:58</td>
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<td>you held any type of position in any other the 09:47:01</td>
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<td>organization? 09:47:02</td>
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<td>&quot;organization.&quot; 09:47:07</td>
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<td>BY MR. BRIDGES: 09:47:08</td>
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<td>23</td>
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<td>Q. Well, another association or industry group. 09:47:08</td>
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<td>A. Okay. 09:47:16</td>
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<td>Q. Any other entity that you've had a title in. 09:47:16</td>
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<td>A. Okay. 09:47:19</td>
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<td>Q. Have you ever heard of an informal 09:49:22</td>
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<td>organization called coalition for SDO awareness? 09:49:25</td>
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<td>A. I'm not familiar with that title. 09:49:34</td>
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<td>Q. Are you familiar with an organization that 09:49:37</td>
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<td>10</td>
<td>BY MR. BRIDGES: 09:49:48</td>
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<td>24</td>
<td>11</td>
<td>Q. Are you familiar with the domain name or 09:49:54</td>
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<td>24</td>
<td>12</td>
<td>website SDOAWARENESS.ORG? 09:49:57</td>
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<td>24</td>
<td>13</td>
<td>A. Okay. So I can't speak with certainty, but 09:50:00</td>
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<td>24</td>
<td>14</td>
<td>that could be referring to work that ASTM and FPA and 09:50:06</td>
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<td>24</td>
<td>15</td>
<td>ASME undertook together to educate the public about 09:50:10</td>
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<td>24</td>
<td>16</td>
<td>standards back in 2012. 09:50:14</td>
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<td>24</td>
<td>17</td>
<td>MR. FEE: I'll just remind you to answer 09:50:20</td>
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<td>24</td>
<td>18</td>
<td>about your knowledge. Don't speculate. 09:50:21</td>
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<td>24</td>
<td>19</td>
<td>THE WITNESS: Thank you. 09:50:26</td>
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<td>24</td>
<td>20</td>
<td>BY MR. BRIDGES: 09:50:37</td>
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<td>24</td>
<td>21</td>
<td>Q. Did you understand the work that ASTM and FPA 09:50:37</td>
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<td>24</td>
<td>22</td>
<td>and ASME undertook together to be as part of some 09:50:40</td>
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<td>24</td>
<td>23</td>
<td>informal coalition? 09:50:44</td>
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<tr>
<td>24</td>
<td>24</td>
<td>MR. FEE: Objection. Vague. 09:50:46</td>
</tr>
<tr>
<td>24</td>
<td>25</td>
<td>THE WITNESS: Informal coalition would be my 09:50:49</td>
</tr>
</tbody>
</table>
24 project. 09:51:43
23 an organization called APCO on a public awareness 09:51:10
22 THE WITNESS: I'm aware that we worked with 09:51:10
21 speculation. 09:51:09
20 MR. FEE: Objection. Lack of foundation. 09:51:11
19 Calls for speculation. 09:51:12
18 FPA and ASME with respect to APCO? 09:51:28
17 Q. Are you aware of its work with respect to 09:51:30
16 participation relating to APCO? 09:51:40
15 activities we'd like to undertake together. 09:51:44
14 BY MR. BRIDGES: 09:51:46
13 THE WITNESS: I'm aware that we worked with 09:51:38
12 organization called APCO on a public awareness 09:51:40
11 project. 09:51:43
10 Calls for speculation. 09:51:12
9 THE WITNESS: ASTM does not lobby. So I'm 09:51:14
8 not aware that we retained a lobbyist for that 09:51:16
7 BY MR. BRIDGES: 09:51:23
6 Q. Are you aware of any of the work of an 09:51:25
5 organization called APCO? 09:51:28
4 A. Yes, I'm aware. 09:51:29
3 Q. Are you aware of its work with respect to 09:51:30
2 standards development organizations? 09:51:32
1 A. Yes, I'm aware. 09:51:04
24 project. 09:51:43
23 an organization called APCO on a public awareness 09:51:40
22 THE WITNESS: I'm aware that we worked with 09:51:38
21 speculation. 09:51:35
19 respective organizations? 09:54:03
18 belief it was Megan Housewright. 09:53:54
17 representative named Robert Grains, and for NFPA I 09:53:48
16 A. At the time, for ASME, it was a 09:54:44
15 representatives for ASME and for NFPA. 09:53:32
14 Q. Who are those counterparts? 09:53:40
13 A. My counterparts, being Washington 09:53:30
12 who else participated in the informal group? 09:53:27
11 participated. 09:53:26
10 Q. Do you recall their titles at their 09:54:01
9 respective organizations? 09:54:03
8 A. I don't. I do not. 09:54:04
7 Q. How did you first come to hear about the 09:54:09
6 possibility of these companies working with APCO? 09:54:13
5 Q. Do you recall the titles of their 09:54:26
4 A. I don't recall exactly how I came to be aware 09:54:30
3 of it. 09:54:30
2 Q. Why do you not know? 09:53:07
1 THE WITNESS: I don't know why -- how the 09:53:15
2 organization was formed. 09:53:18
3 MR. FEE: Objection. Vague. Calls for 09:53:09
4 speculation. 09:53:11
5 THE WITNESS: I don't know why -- how the 09:53:15
6 organization was formed. 09:53:18
7 BY MR. BRIDGES: 09:53:19
8 Q. Did you participate in the organization? 09:53:19
9 A. And, again, I wouldn't call it an 09:53:21
10 organization. It's an informal group. But, yes, I 09:53:23
11 participated. 09:53:26
12 Q. Who else participated in the informal group? 09:53:27
13 A. My counterparts, being Washington 09:53:30
14 representatives for ASME and for NFPA. 09:53:32
15 Q. Who are those counterparts? 09:53:40
16 A. At the time, for ASME, it was a 09:54:44
17 representative named Robert Grains, and for NFPA I 09:53:48
18 believe it was Megan Housewright. 09:53:54
19 Q. Do you recall their titles at their 09:54:01
20 respective organizations? 09:54:03
21 A. I don't. I do not. 09:54:04
22 Q. How did you first come to hear about the 09:54:09
23 possibility of these companies working with APCO? 09:54:13
24 A. I don't recall exactly how I came to be aware 09:54:26
25 of it. 09:54:30

1 Q. When you said, "we" in the last answer, who 09:51:46
2 are you referring to? 09:51:48
3 A. That was jointly undertaken between FPA and 09:51:50
4 FPA and ASME 09:51:55
5 Q. Did ASTM contribute to the payments to APCO? 09:51:55
6 A. We did, yes 09:52:02
7 Q. You mentioned ASTM and FPA and ASME as part 09:52:17
8 of the group; is that correct? 09:52:23
9 MR FEE: Objection Mischaracterizes his 09:52:24
10 testimony and vague 09:52:25
11 THE WITNESS: My recollection is those are 09:52:33
12 the three organizations, correct 09:52:35
13 BY MR. BRIDGES: 09:52:38
14 Q. Do you recall whether any other organization 09:52:38
15 participated with those three and the activities 09:52:41
16 relating to APCO? 09:52:44
17 A. I do not recall any other organizations 09:52:46
18 participating 09:52:48
19 Q. Who organized the joint effort of ASTM and 09:52:49
20 FPA and ASME with respect to APCO? 09:52:52
21 MR FEE: Objection Lack of foundation 09:52:56
22 THE WITNESS: I wouldn't be able to answer 09:53:01
23 that I believe it -- 09:53:02
24 MR FEE: If you don't know, you don't know 09:53:04
25 THE WITNESS: I don't know 09:53:07

1 BY MR. BRIDGES: 09:53:07
2 Q. Why do you not know? 09:53:07
3 MR. FEE: Objection. Vague. Calls for 09:53:09
4 speculation. 09:53:11
5 THE WITNESS: I don't know why -- how the 09:53:15
6 organization was formed. 09:53:18
7 BY MR. BRIDGES: 09:53:19
8 Q. Did you participate in the organization? 09:53:19
9 A. And, again, I wouldn't call it an 09:53:21
10 organization. It's an informal group. But, yes, I 09:53:23
11 participated. 09:53:26
12 Q. Who else participated in the informal group? 09:53:27
13 A. My counterparts, being Washington 09:53:30
14 representatives for ASME and for NFPA. 09:53:32
15 Q. Who are those counterparts? 09:53:40
16 A. At the time, for ASME, it was a 09:54:44
17 representative named Robert Grains, and for NFPA I 09:53:48
18 believe it was Megan Housewright. 09:53:54
19 Q. Do you recall their titles at their 09:54:01
20 respective organizations? 09:54:03
21 A. I don't. I do not. 09:54:04
22 Q. How did you first come to hear about the 09:54:09
23 possibility of these companies working with APCO? 09:54:13
24 A. I don't recall exactly how I came to be aware 09:54:26
25 of it. 09:54:30

1 Q. What's the first activity that you recall you 09:54:31
2 engaged in with respect to that group? 09:54:37
3 A. I believe that we -- the representatives of 09:54:41
4 the organizations recognized that there was a need to 09:54:48
5 raise a greater awareness about the benefits the U.S. 09:54:52
6 Standards System with our key stakeholders in 09:54:58
7 Washington, D.C. and beyond. So I believe we got -- 09:55:01
8 had that discussion and decided the best way to do 09:55:06
9 that would be to work with a firm that's more familiar 09:55:10
10 with public affairs capabilities and attributes. 09:55:15
11 Q. What was the first activity that you recall 09:55:26
12 you engaged in with respect to that group? 09:55:30
13 MR. FEE: Objection. Asked and answered. 09:55:32
14 THE WITNESS: Identifying what -- some of the 09:55:40
15 activities we'd like to undertake together. 09:55:43
16 BY MR. BRIDGES: 09:55:52
17 Q. How did you first -- did you propose that 09:55:52
18 these three organizations work together in this 09:55:57
19 fashion? 09:56:07
20 A. I don't recall how these three organizations 09:56:07
21 were the ones that worked together. 09:56:09
22 Q. Do you recall -- did somebody take the 09:56:15
23 initiative to convene this group with respect to 09:56:22
24 retaining a firm like APCO? 09:56:24
25 MR. FEE: Objection. Vague. 09:56:26
The Witness: Right. So I believe we identified the objectives, and I believe the next step was to formulate a request for proposal that we wanted to put out to a public affairs firm.

By Mr. Bridges:

Q. Do you recall any interactions with Lorraine Carli of NFPA?

A. I do recall Lorraine Carli.

Q. With respect to this initiative?

A. I believe Lorraine is the vice president for public affairs and communications in Battery Park, Massachusetts. So I do believe she was involved in this now that you mention it.

By Mr. Bridges:

Q. How was she involved?

A. I recall that I reviewed it. I don't recall A. Right. I believe it was 2011.

Q. When in 2011?

A. I'm sorry. I don't know -- recall the month.

Q. Did this activity arise because of concerns about political policy issues relating to incorporation of standards by reference?

A. That would be Tom O'Brien, our vice president.

Q. Was it Megan Housewright?

A. I don't think it was me.

Q. Was it you?

A. I'm sorry. I don't know -- recall the month.

Q. When in 2011?

A. I believe Lorraine is the vice president for public affairs and communications in Battery Park, Massachusetts. So I do believe she was involved in this now that you mention it.

By Mr. Bridges:

Q. Who else provided input for that RFP?

A. I do recall Lorraine Carli perhaps drafted -- helped to draft the RFP.

By Mr. Bridges:

Q. And did they provide input? who else provided input for that RFP?

A. I do recall Lorraine Carli some of the issues that this informal group would want to work with the public affairs firm to assist us, and that would be Tom O'Brien, our vice president. Some of the issues that this informal group would want to work with the public affairs firm to assist us, and perhaps that would be Tom O'Brien, our vice president.

By Mr. Bridges:

Q. How was she involved?

A. I do recall Lorraine Carli.

Q. With respect to this initiative?

A. I believe Lorraine is the vice president for public affairs and communications in Battery Park, Massachusetts. So I do believe she was involved in this now that you mention it.

By Mr. Bridges:

Q. How was she involved?

A. I recall that I reviewed it. I don't recall A. Right. I believe it was 2011.

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Q. Was it Megan Housewright?

A. I don't think it was me.

Q. Was it you?

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A. I don't think it was me.

Q. Was it you?

A. I'm sorry. I don't know -- recall the month.

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Q. Did this activity arise because of concerns about political policy issues relating to incorporation of standards by reference?

A. That would be Tom O'Brien, our vice president.
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<tr>
<td>1. stakeholders in Washington, D.C.?</td>
<td>1. Q  And were these all stakeholders with whom</td>
<td>10:04:49</td>
</tr>
<tr>
<td>2. MR. FEE: Objection to the extent that it</td>
<td>2. this informal group communicated with respect to the</td>
<td>10:04:51</td>
</tr>
<tr>
<td>3. isn't an exact quote of what he said.</td>
<td>3. topics for which the group retained APCO?</td>
<td>10:04:57</td>
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<tr>
<td>4. You can answer, if you know.</td>
<td>4. MR FEE: Objection Vague Calls for</td>
<td>10:05:02</td>
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<tr>
<td>5. THE WITNESS: Okay. I believe that our key</td>
<td>5. speculation</td>
<td>10:05:04</td>
</tr>
<tr>
<td>6. stakeholders in Washington, D.C., the business</td>
<td>6. THE WITNESS: Generally, this would be the</td>
<td>10:05:07</td>
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<tr>
<td>7. community that's active on shaping and forming</td>
<td>7. audience that we'd be trying to inform about the</td>
<td>10:05:07</td>
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<tr>
<td>8. Washington. So that would include organizations like</td>
<td>8. importance of the U.S Standards System</td>
<td>10:05:12</td>
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<tr>
<td>9. the National Association of Manufacturers.</td>
<td>9. BY MR BRIDGES:</td>
<td>10:05:15</td>
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<td>10. BY MR BRIDGES:</td>
<td>10. Q  Is this the same audience you would wish to</td>
<td>10:05:15</td>
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<tr>
<td>11. Q  Who else do you include within the scope of</td>
<td>11. raise the policy issues surrounding incorporation by</td>
<td>10:05:18</td>
</tr>
<tr>
<td>15. A  Consumer representatives, such as the</td>
<td>15. corporation by reference I don't believe there was</td>
<td>10:05:29</td>
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<tr>
<td>16. Consumer Federation of America.</td>
<td>16. any legislation or any significant reason to raise</td>
<td>10:05:31</td>
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<tr>
<td>17. Q  Who else?</td>
<td>17. IBR</td>
<td>10:05:37</td>
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<tr>
<td>18. A  The U.S. Public Interest Research Group,</td>
<td>18. BY MR BRIDGES:</td>
<td>10:05:44</td>
</tr>
<tr>
<td>19. known as U.S. PIRG.</td>
<td>19. Q  When did it become significant, in your view?</td>
<td>10:05:44</td>
</tr>
<tr>
<td>21. A  Environmental advocacy groups. To name one,</td>
<td>21. speculation</td>
<td>10:05:48</td>
</tr>
<tr>
<td>22. Friend of the Earth.</td>
<td>22. THE WITNESS: In the course of our meetings</td>
<td>10:05:49</td>
</tr>
<tr>
<td>23. Q  Who else?</td>
<td>23. and raising a greater awareness about the U.S</td>
<td>10:05:50</td>
</tr>
<tr>
<td>24. A  Important research organizations and think</td>
<td>24. Standards System, we would be asked questions about</td>
<td>10:05:54</td>
</tr>
<tr>
<td>25. tanks, such as the National Academies of Science.</td>
<td>25. how organizations like ASTM and FPA and ASME sustained</td>
<td>10:05:57</td>
</tr>
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</table>

1. Q  I'm asking you to recall any specific source | 2. MR. FEE: Same objections | 10:04:03 |
2. A  The Transportation Resource Board. | 3. Q  Who asked those questions? | 10:06:08 |
3. Q  Keep going. | 4. A  That could be any of the stakeholders that we | 10:06:09 |
4. A  I believe think tanks such as the Brookings | 5. interacted with | 10:06:12 |
5. Institute. | 6. Q  I'm asking you to recall any specific source | 10:06:12 |
6. Q  Keep going? | 7. of that question | 10:06:14 |
7. A  The Council for Competitiveness. | 8. A  I believe during the course of this time, | 10:06:22 |
8. Q  Keep going. | 9. Office of Management and Budget was having a review of | 10:06:24 |
9. A  The American Enterprise Institute. | 10. the U.S Standards System and asked specific questions | 10:06:28 |
10. Q  Keep going. | 11. about the effectiveness of the U.S Standards System | 10:06:35 |
11. A  That might close the business and consumer | 12. and how the Standard System works | 10:06:37 |
12. groups stakeholder category. | 13. Q  What did you understand to be the reason that | 10:06:39 |
14. A  Another category, then, would be policy | 15. MR FEE: Objection | 10:06:47 |
16. Q  And please list them. | 17. Q  -- you may have been privy to the exact | 10:06:47 |
17. A  That could include Congressional staff or the | 18. reason, but what did you, at the time, understand to | 10:06:49 |
18. U.S. House of Representatives, the U.S. Senate. | 19. be the reason? | 10:06:52 |
19. Q  Yes. | 20. MR FEE: Objection Compound Calls for | 10:06:54 |
20. A  That would include executive branch | 21. speculation | 10:06:56 |
21. officials, such as the Office of Management and Budget | 22. THE WITNESS: I wouldn't know specifically | 10:06:56 |
22. and specific agencies. | 23. BY MR BRIDGES: | 10:06:59 |
23. Q  Yes. | 24. Q  You have no idea? | 10:06:59 |
24. A  I believe that's all I can recall at the | 25. MR FEE: Same objections | 10:07:00 |
25. moment. |  |  

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<td>1</td>
<td>THE WITNESS: I wouldn't be able to give you a precise date, but I believe it was 2012.</td>
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<tr>
<td>2</td>
<td>BY MR. BRIDGES: 10:08:26</td>
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<tr>
<td>3</td>
<td>Q. Exactly what were they?</td>
</tr>
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<td>4</td>
<td>A. In Washington speak, I believe they were just talking about the benefits of the U.S. System, the independence of our standards development system, the independence of our standards development process, and the like.</td>
</tr>
<tr>
<td>5</td>
<td>BY MR. BRIDGES: 10:11:35</td>
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<tr>
<td>6</td>
<td>Q. How many copies were distributed?</td>
</tr>
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<td>7</td>
<td>A. I don't know. I don't have any reason to believe we provided any copies.</td>
</tr>
<tr>
<td>8</td>
<td>BY MR. BRIDGES: 10:11:40</td>
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<tr>
<td>9</td>
<td>Q. How many distinct literature pieces were there?</td>
</tr>
<tr>
<td>10</td>
<td>A. In Washington speak, they're just called &quot;lit pieces.&quot;</td>
</tr>
<tr>
<td>11</td>
<td>BY MR. BRIDGES: 10:11:42</td>
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<tr>
<td>12</td>
<td>Q. What are the materials that were distributed?</td>
</tr>
<tr>
<td>13</td>
<td>A. A literature piece. Just a one-pager that you prepare that discusses your relevance to participation low by providing our standards, like ours, maintain our independence and keep barriers to participation low by providing our standards, like ours.</td>
</tr>
<tr>
<td>14</td>
<td>BY MR. BRIDGES: 10:11:43</td>
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<tr>
<td>15</td>
<td>Q. When did ASTM start discussing Carl Malamud with its key stakeholders in Washington, D.C.?</td>
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<tr>
<td>16</td>
<td>A. I'm not sure.</td>
</tr>
<tr>
<td>17</td>
<td>BY MR. BRIDGES: 10:08:40</td>
</tr>
<tr>
<td>18</td>
<td>Q. How many?</td>
</tr>
<tr>
<td>19</td>
<td>A. I'm familiar with more than two.</td>
</tr>
<tr>
<td>20</td>
<td>BY MR. BRIDGES: 10:12:02</td>
</tr>
<tr>
<td>21</td>
<td>Q. Did ASTM have any written communications regarding public resource regarding Carl Malamud or the benefits of the U.S. Standards stakeholders, including the groups that you mentioned, D.C.?</td>
</tr>
<tr>
<td>22</td>
<td>A. No, I don't have any. Why OMB?</td>
</tr>
<tr>
<td>23</td>
<td>BY MR. BRIDGES: 10:07:44</td>
</tr>
<tr>
<td>24</td>
<td>Q. Is that the first awareness strike that OMB was?</td>
</tr>
<tr>
<td>25</td>
<td>A. I'm not sure.</td>
</tr>
<tr>
<td>26</td>
<td>BY MR. BRIDGES: 10:08:48</td>
</tr>
<tr>
<td>27</td>
<td>Q. Did ASTM have any written communications regarding incorporation by reference with any of the following: Consumer Federation, U.S. public interest groups, Friends of the Earth, Brookings Institute?</td>
</tr>
<tr>
<td>28</td>
<td>A. Let me object.</td>
</tr>
<tr>
<td>29</td>
<td>BY MR. BRIDGES: 10:07:47</td>
</tr>
<tr>
<td>30</td>
<td>Q. Is that the first time that ASTM discussed Carl Malamud with its key stakeholders in Washington, D.C.?</td>
</tr>
<tr>
<td>31</td>
<td>A. I don't know.</td>
</tr>
<tr>
<td>32</td>
<td>BY MR. BRIDGES: 10:12:02</td>
</tr>
<tr>
<td>33</td>
<td>Q. And you have no idea of any particular reason why OMB was?</td>
</tr>
<tr>
<td>34</td>
<td>A. I'm not sure.</td>
</tr>
<tr>
<td>35</td>
<td>BY MR. BRIDGES: 10:08:49</td>
</tr>
<tr>
<td>36</td>
<td>Q. When did ASTM start discussing Carl Malamud with its key stakeholders in Washington, D.C.?</td>
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<td>37</td>
<td>A. I'm not sure.</td>
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<td>38</td>
<td>BY MR. BRIDGES: 10:08:40</td>
</tr>
<tr>
<td>39</td>
<td>Q. How many distinct literature pieces were distributed?</td>
</tr>
<tr>
<td>40</td>
<td>A. More than two.</td>
</tr>
<tr>
<td>41</td>
<td>BY MR. BRIDGES: 10:12:24</td>
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<td>1</td>
<td>Objection. Calls for speculation.</td>
</tr>
<tr>
<td>2</td>
<td>10:15:09</td>
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<tr>
<td>3</td>
<td>This is clearly outside the scope of his designation.</td>
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<td>4</td>
<td>10:16:46</td>
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<td>5</td>
<td>But to the extent you know, you can answer.</td>
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<td>6</td>
<td>10:16:48</td>
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<td>7</td>
<td>THE WITNESS: Well, I would -- so I'm not</td>
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<td>8</td>
<td>involved in the litigation directly, but --</td>
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<td>9</td>
<td>10:16:54</td>
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<td>10</td>
<td>MR. FEE: Hold on. Let me also make sure you</td>
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<td>11</td>
<td>10:16:59</td>
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<td>12</td>
<td>don't disclose any communications or actions that were</td>
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<td>14</td>
<td>taken at the direction of counsel in connection with</td>
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<td>this matter.</td>
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<td>10:17:10</td>
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<td>18</td>
<td>THE WITNESS: Right. So any other activity</td>
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<td>would have been between -- would have involved</td>
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<td>10:17:12</td>
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<td>litigation.</td>
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<td>23</td>
<td>10:17:16</td>
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<td>24</td>
<td>BY MR. BRIDGES:</td>
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<td>25</td>
<td>10:17:23</td>
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<tr>
<td>26</td>
<td>Q. What public relations outreach has ASTM</td>
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<td>28</td>
<td>engaged in relating to the litigation?</td>
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<td>31</td>
<td>10:17:31</td>
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<td>32</td>
<td>are you saying not at the direction of counsel and</td>
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<td>10:17:34</td>
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<td>34</td>
<td>publicly available?</td>
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<td>35</td>
<td>10:17:38</td>
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<td>36</td>
<td>BY MR. BRIDGES:</td>
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<td>10:17:40</td>
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<td>38</td>
<td>Q. I mean outreach meaning communications</td>
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<td>10:17:40</td>
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<td>40</td>
<td>outside of ASTM and outside the plaintiffs in this</td>
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<td>41</td>
<td>10:17:43</td>
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<td>42</td>
<td>case.</td>
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<td>43</td>
<td>10:17:46</td>
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<tr>
<td>44</td>
<td>MR. FEE: Okay. Well, I will instruct you</td>
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<td>45</td>
<td>10:17:47</td>
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<tr>
<td>46</td>
<td>not to answer to the extent those communications are</td>
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<td>47</td>
<td>10:17:48</td>
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<tr>
<td>48</td>
<td>not publicly made available and at the direction of</td>
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<tr>
<td>49</td>
<td>10:17:50</td>
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25 or engaged in any communication to persons or entities
outside the plaintiffs in this case and their counsel,
I would like to know what those communications were
24 or engaged in any communication to persons or entities
outside ASTM. I recall that in August
23 preparing to revise their circular, but it hadn't come
22 the Office of Management and Budget was still
21 involved an update on funding for the National
20 Institute of Standards and Technology, an update that
19 responding to questions from others?
18 that wasn't made publicly to persons other
17 relevant topics with a number of other
16 Washington-related topics in which I
15 lawsuit
14 by "outreach," I mean communications
12 update as to the status of the lawsuit
11 American National Standards Institute, there were
10 doing was ASTM engaged in relating to the
9 serving on the National Policy Committee of ANSI,
8 than the person receiving the communication from ASTM
7 reasons and furthering their public relations outreach.
6 that was made to the public -- I'm not asking for legal discussions that
5 you could disclose any communications along those
4 is you could disclose any communications along those
3 You don't recall any instance where ASTM
2 responding to questions from others?
1 initiating a communication on what you call "relevant
10 that we had a meeting in Canada
9 topics" without being requested to do so?
8 that's correct. 10:30:44
7 THE WITNESS: Thank you. 10:30:44
6 BY MR. BRIDGES: 10:30:45
5 Why don't I go
4 THE WITNESS: Okay I recall that in August
3 MR. FEE: Same instruction, of course, with
2 MR. BRIDGES: Okay. I think that's an
1 So you recall only instances where ASTM was

1 not disseminated to the public generally. 10:27:34
2 improper instruction because if a statement was made
3 to the public -- I'm not asking why it was made to the
4 was made about what to make to the public --
5 you are not disagreeing with
6 that.
7 MR. BRIDGES: Let me make my record, please.
8 But if a statement was made to the public,
9 I'm entitled to know whether it was at the direction
10 of counsel or not. If it was to people outside the
11 plaintiff group, I'm entitled to know.
12 MR. FEE: You're arguing with me about
13 something I'm not instructing him to refuse to answer.
14 If a statement was made to the public that's
15 responsive to that, feel free to answer it.
16 MR. BRIDGES: No. No. That's not my
17 question.
18 My question is if a statement was made to any
19 person or entity outside the plaintiff's group and the
20 plaintiff's group counsel, then I would like to know
21 what -- strike that.
22 If ASTM caused any communication to be made
23 or engaged in any communication to persons or entities
24 out yet. That there may have been other actions of
25 communications made at the direction of counsel that
23 preparing to revise their circular, but it hadn't come
22 the Office of Management and Budget was still
21 Institute of Standards and Technology, an update that
20 involved an update on funding for the National
19 believe my comments on my panel
18 referring to the standards community. I believe the
17 answering the question of the
16 relevant topics with a number of other
15 the Standards Engineering Society where you discussed
14 relevant topics with other representatives. What were
13 was asked and questioned about the status of the
12 update as to the status of the lawsuit
11 American National Standards Institute, there were
10 doing was ASTM engaged in relating to the
9 serving on the National Policy Committee of ANSI,
8 doing was ASTM engaged in relating to the
7 doing was ASTM engaged in relating to the
6 that was made to the public -- I'm not asking for legal discussions that
5 you could disclose any communications along those
4 is you could disclose any communications along those
3 You don't recall any instance where ASTM
2 responding to questions from others?
1 initiating a communication on what you call "relevant
10 that we had a meeting in Canada
9 topics" without being requested to do so?
8 that's correct. 10:30:44
7 THE WITNESS: Thank you. 10:30:44
6 BY MR. BRIDGES: 10:30:45
5 Why don't I go
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2 MR. BRIDGES: Okay. I think that's an
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3 to the public -- I'm not asking why it was made to the
4 was made about what to make to the public --
5 you are not disagreeing with
6 that.
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9 I'm entitled to know whether it was at the direction
10 of counsel or not. If it was to people outside the
11 plaintiff group, I'm entitled to know.
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14 If a statement was made to the public that's
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16 MR. BRIDGES: No. No. That's not my
17 question.
18 My question is if a statement was made to any
19 person or entity outside the plaintiff's group and the
20 plaintiff's group counsel, then I would like to know
21 what -- strike that.
22 If ASTM caused any communication to be made
23 or engaged in any communication to persons or entities
24 out yet. That there may have been other actions of
25 communications made at the direction of counsel that
23 preparing to revise their circular, but it hadn't come
22 the Office of Management and Budget was still
21 Institute of Standards and Technology, an update that
20 involved an update on funding for the National
19 believe my comments on my panel
18 referring to the standards community. I believe the
BY MR. BRIDGES:

Q. Which of these topics are you prepared to relate to this litigation? 10:33:28

A. I do not. 10:33:35


MR. BRIDGES: Mr. Grove, I'd ask you to look at Exhibit 1022. 10:36:44

Q. Do you recognize this as an amended deposition notice with topics for examination for your deposition today? 10:36:55

A. Yes, I do. 10:36:56

Q. Which of these topics are you prepared to testify on? 10:36:59

MR. FEE: I'll answer that question. He's our designee with respect to all the topics except for identification. 10:36:41

THE WITNESS: As I previously stated, I was asked for an update about the status of the lawsuit, 10:33:44

MR. FEE: Objection. Asked and answered. 10:33:06

Q. Do you recall what organization that person was from? 10:33:00

A. I do not. 10:33:02

Q. Who is on the policy committee of ANSI? 10:35:14

MR. FEE: Objection. Foundation. Calls for speculation. Vague as to time. 10:35:19

THE WITNESS: It's currently chaired by Sharon Stanford from the American Dental Association 10:35:31

in Chicago, Illinois. 10:35:35

BY MR. BRIDGES:

Q. Is she the only person on the committee? I asked who was on the committee. 10:35:37

A. In addition, myself. There's a representative from the Underwriters Laboratories. 10:35:39

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There's actually many representatives. There's probably 25 to 30 voting members. 10:35:49

So that they were relevant to this litigation. They were relevant to the presentation. 10:33:22

MR. BRIDGES: Well, my question was about this litigation. 10:33:28

MR. FEE: Objection. Mischaracterizes his previous testimony. 10:33:07

MR. BRIDGES: Mr. Grove, I'd ask you to look at Exhibit 1022. 10:36:44

Q. Do you recognize this as an amended deposition notice with topics for examination for your deposition today? 10:36:55

A. Yes, I do. 10:36:56

Q. Which of these topics are you prepared to testify on? 10:36:59

MR. FEE: I'll answer that question. He's our designee with respect to all the topics except for identification. 10:36:41

THE WITNESS: As I previously stated, I was asked for an update about the status of the lawsuit, 10:33:44

Q. Who is that? 10:34:04

A. He's with the Canadian standards organization. Doug Morton. 10:34:08

Q. And in referring to that Canadian meeting, 10:34:10

you also mentioned "other representatives" in your answer. 10:34:21

A. Uh-huh. 10:34:21

Q. Who are the "other representatives" you're referring to? 10:34:24

A. On the panel that I was a panelist with was the American National Standards Institute. Someone from their New York office. I don't recall her name. 10:34:29

Myself. And I'd be speculating to name the other participant. 10:34:45

person. And Doug Morton was the moderator 10:34:47

THE WITNESS: I do not. 10:34:57

MR. FEE: Objection. Asked and answered. 10:34:56

THE WITNESS: I do not. 10:34:57

BY MR. BRIDGES:

Q. Do you recall what organization that person was from? 10:35:00

A. I do not. 10:35:02

Q. Who is on the policy committee of ANSI? 10:35:14

MR. FEE: Objection. Foundation. Calls for speculation. Vague as to time. 10:35:19

THE WITNESS: It's currently chaired by Sharon Stanford from the American Dental Association 10:35:31

in Chicago, Illinois. 10:35:35

BY MR. BRIDGES:

Q. Is she the only person on the committee? I asked who was on the committee. 10:35:37

A. In addition, myself. There's a representative from the Underwriters Laboratories. 10:35:39

25
1 Q. Who at ASTM has the most information about 10:37:34
questions of copyright -- strike that 10:37:39
2 Who at ASTM do you understand have the most 10:37:49
information about the efforts by ASTM to have 10:37:52
3 participants in the standards writing process transfer 10:38:06
6 copyrights in their work to ASTM? 10:38:14
7 MR FEE: Objection. Calls for speculation. 10:38:18
8 It's beyond the scope of his designation? 10:38:28
9 MR BRIDGES: I'm asking him, and he can 10:38:32
answer based on his personal knowledge 10:38:39
10 answer based on his personal knowledge? 10:38:45
11 MR FEE: Calls for a legal conclusion to the 10:38:48
12 extent it implies that an assignment is required 10:38:52
13 You can answer if you know 10:38:56
14 THE WITNESS: Our copyright policy is very 10:38:59
speculation. Asked and answered 10:39:01

15 be responsible for that 10:39:06
16 BY MR BRIDGES: 10:39:10
17 Q. Who else would have knowledge of those facts? 10:39:18
18 MR FEE: Same objection 10:39:38
19 THE WITNESS: I guess I wouldn't know 10:39:46
20 specifically 10:39:50
21 BY MR BRIDGES: 10:39:56
22 Q. Would you know generally? 10:39:61
24 speculation. Asked and answered 10:39:71
25 THE WITNESS: Our copyright policy is very 10:39:74

1 well known amongst staff. So it wouldn't surprise me 10:39:06
2 if many members of the ASTM staff are very familiar 10:39:13
3 with the copyright policies that are part of our 10:39:20
4 standards development at enterprise. 10:39:24
5 BY MR BRIDGES: 10:39:32
6 Q. I'm not asking, actually, about copyright 10:39:38
7 policies. I'm asking about actual actions of persons 10:39:46
8 who contribute to the writing of standards to assign 10:39:52
9 their rights to ASTM. 10:39:57
10 MR FEE: Objection. 10:39:63
11 BY MR BRIDGES: 10:39:69
12 Q. Who would have knowledge of that? 10:39:74
14 speculation. Beyond the scope of his designation. 10:39:85
15 THE WITNESS: I'm not able to answer that. 10:39:91
16 BY MR BRIDGES: 10:39:97
17 Q. Who is in charge of receiving and acting on 10:40:03
18 membership applications? 10:40:10
19 MR FEE: Objection. Calls for speculation. 10:40:16
20 Beyond the scope of his designation. 10:40:22
21 THE WITNESS: We have a membership function 10:40:27
22 at ASTM where there are staff that work closely with 10:40:33
23 our Technical Committee Operations that would be most 10:40:39
24 familiar with membership. 10:40:45
25 BY MR BRIDGES: 10:40:51

Page 54

1 Q. What person who have that membership function 10:40:34
would have most information about the receiving of 10:40:41
3 membership applications? 10:40:48
4 MR FEE: Objection. Calls for speculation. 10:40:54
5 Outside the scope of his designation. 10:40:58
6 You can answer if you know. 10:41:08
7 THE WITNESS: Our membership department 10:41:14
8 reports to our vice president for Technical Committee 10:41:20
9 Operations, Daniel Smith. 10:41:23
10 BY MR BRIDGES: 10:41:27
11 Q. And who is the senior most person in the 10:41:33
12 membership department who reports to him? 10:41:37
13 MR FEE: Objection. Beyond the scope of his 10:41:41
14 designation. 10:41:47
15 You can answer if you know. 10:41:49
16 THE WITNESS: Ilane Smith who is not -- no 10:42:11
17 relation, to my knowledge. 10:42:15
18 BY MR BRIDGES: 10:42:21
19 Q. Who within the membership department has most 10:42:25
20 knowledge about the receipt by ASTM of membership 10:42:31
21 renewals? 10:42:35
22 MR FEE: Objection. Calls for speculation. 10:42:39
23 It's beyond the scope of his designation. 10:42:43
24 THE WITNESS: That, I wouldn't know. 10:42:47
25 (Deposition Exhibit 1023 was marked for 10:42:51
Page 55

1 identification.) 10:42:55
2 MR BRIDGES: Mr. Grove, I've handed you 10:42:59
3 Exhibit 1023. 10:43:05
4 Q. Do you recognize this as a copy of ASTM's 10:43:11
5 Form 990 filed with the Internal Revenue Service? 10:43:15
6 MR FEE: Take a look at the document before 10:43:21
7 you answer that question. 10:43:25
8 (The witness reviewed Exhibit 1024.) 10:43:31
9 THE WITNESS: Yes, it appears to be our 990 10:43:35
10 forms. 10:43:41
11 (Deposition Exhibit 1024 was marked for 10:43:45
12 identification.) 10:43:49
13 MR BRIDGES: Mr. Grove, I've handed you 10:43:53
14 Exhibit 1024. 10:43:57
15 Q. This is an E-mail exchange between you and 10:43:59
16 James Thomas; correct? 10:44:03
17 A. Yes, it appears to be an E-mail. 10:44:07
18 Q. Who is Mr. Thomas? 10:44:11
19 A. In this instance, Jim Thomas is the president 10:44:15
20 of ASTM International. 10:44:21
21 (Deposition Exhibit 1025 was marked for 10:44:25
22 identification.) 10:44:31
23 MR BRIDGES: Mr. Grove. I've handed you 10:44:35
24 Exhibit 1025. 10:44:41
25 Q. Is this a copy of the comments that ASTM made 10:44:45
Page 56

15 (Pages 54 - 57)
Q. Who is Kate McClung?

A. Her final title at ASTM was regulatory operations and Kate McClung's supervisor. February 11 was her last date.

Q. How recently did she leave?

A. She did, correct.

Q. Sarah Petre recently left ASTM; correct?

A. He does. Her name is Sara Gobbi, G-o-b-b-i.

Q. And who is that person?

A. Anthony Quinn works in the Washington office. His title is director of public policy, international trade.

Q. And who is Anthony Quinn?

A. At the time of this E-mail, Dan Smith was the vice president for Technical Committee Operations. He's been promoted to be vice president of TCO, Technical Committee Operations.

Q. Who is Dan Smith?

A. Operations division.

Q. Who is Dan Smith?

A. TCO, Technical Committee Operations.

Q. To whom does he report?

A. The Washington office, I'm responsible for corporate communications. So we have a team of five people at our headquarters in Conshohocken, Pennsylvania that report to me, and that's it for direct reports of ASTM.

Q. Does he report to you?

A. A. He reports to our executive vice president, Katherine Morgan.

Q. Who else reports to you?

A. We do. To OMB in connection with the OMB activities you provided in the form of an attorney. Kate McClung is an attorney to see what functions, if any, she was directly to OMB in connection with the OMB activities you provided in the form of an attorney. Beyond the scope of his designation.

Q. Who is Dan Smith?

A. Dan Smith.

Q. Do any outside consultants report to you?

A. To whom does he report?

Q. To whom does he report?

A. A. He reports to our executive vice president, Katherine Morgan.

Q. Who is Dan Smith?

A. TCO, Technical Committee Operations.

Q. To whom does he report?

A. Anthony Quinn works in the Washington office. His title is director of public policy, international trade.

Q. And who is Anthony Quinn?

A. At the time of this E-mail, Dan Smith was the vice president for Technical Committee Operations. He's been promoted to be vice president of TCO, Technical Committee Operations.

Q. Who is Dan Smith?

A. Operations division.

Q. Who is Dan Smith?

A. TCO, Technical Committee Operations.

Q. To whom does he report?

A. The Washington office, I'm responsible for corporate communications. So we have a team of five people at our headquarters in Conshohocken, Pennsylvania that report to me, and that's it for direct reports of ASTM.

Q. Does he report to you?

A. A. He does.

Q. Who else reports to you?

A. We do. To OMB in connection with the OMB activities you provided in the form of an attorney. Kate McClung is an attorney to see what functions, if any, she was directly to OMB in connection with the OMB activities you provided in the form of an attorney. Beyond the scope of his designation.

Q. Who is Dan Smith?

A. Dan Smith.

Q. Do any outside consultants report to you?

A. To whom does he report?

Q. To whom does he report?

A. A. He reports to our executive vice president, Katherine Morgan.

Q. Who else reports to you?

A. We do. To OMB in connection with the OMB activities you provided in the form of an attorney. Kate McClung is an attorney to see what functions, if any, she was directly to OMB in connection with the OMB activities you provided in the form of an attorney. Beyond the scope of his designation.

Q. Who is Dan Smith?

A. Dan Smith.

Q. Do any outside consultants report to you?
1 this before.  
2 BY MR. BRIDGES:  
3 Q. In your capacity as a representative of ASTM,  
4 is it your understanding that this document is a  
5 response by Mr. Thomas, whom you identified earlier,  
6 to communication from a Boeing representative?  
7 MR. FEE: Objection. Calls for speculation.  
8 He is not designated as to this document.  
9 But you can answer if you have an answer in  
10 the capacity individually.  
11 THE WITNESS: Right. Laura Hitchcock serves  
12 many roles in the standards community. So I'm not  
13 certain as to what capacity this E-mail is being  
14 written to Jim Thomas, but Laura is involved in a  
15 number of different standards organizations.  
16 BY MR. BRIDGES:  
17 Q. I'm wanting to focus on Mr. Thomas's  
18 response. Does this response in Exhibit 1027 appear  
19 consistent with your understanding of views that ASTM  
20 or Mr. Thomas had at about the time of this -- strike  
21 that.  
22 Does this response in Exhibit -27 appear  
23 consistent with communications that ASTM had outside  
24 the organization at approximately the time of this  
25 E-mail?  

1 Q. Do you recognize this document?  
2 A I do, yes  
3 Q What is it?  
4 A It is an E-mail from Anthony Quinn to myself  
5 and Jim Thomas  
6 Q What was the ACUS chambered event that is  
7 mentioned in the E-mail?  
8 A Well, I believe the ACUS is the  
9 administrative council of the United States In  
10 working with the U.S. Chamber of Commerce, they had an  
11 event highlighting some of the recommendations and  
12 discussing the recommendations that came out of ACUS  
13 in 2011 on incorporation by reference and  
14 international regulatory cooperation  
15 (Deposition Exhibit 1029 was marked for  
16 identification )  
17 MR BRIDGES: Mr Grove, Exhibit 1029 is an  
18 E-mail that is produced to us by ASTM, and you're  
19 copied on it, it appears  
20 Q Is it correct this is an E-mail from Maureen  
21 Brodoff at NFPA to you and others?  
22 A Yes, it appears to be  
23 Q She was forwarding an E-mail from Jonathan  
24 Gregory of APCO worldwide; is that correct?  
25 MR FEE: Did you say this was directed to  

1 Jeff Grove?  
2 MR BRIDGES: Yes, I did  
3 MR FEE: Oh, I'm sorry I missed it My  
4 apologies  
5 THE WITNESS: It appears that there is  
6 something from Jonathan Gregory that's being  
7 forwarded, yes  
8 BY MR BRIDGES:  
9 Q Does this relate to the efforts that ASTM and  
10 FPA and ASME were engaged in together with respect to  
11 APCO?  
12 MR FEE: Objection Vague Calls for  
13 speculation  
14 THE WITNESS: Yes It appears to be an  
15 agenda for a conference call  
16 (Deposition Exhibit 1030 was marked for  
17 identification )  
18 MR BRIDGES: I'll hand you Exhibit 1030  
19 which is produced to us by ASTM in this litigation  
20 This appears to be a letter from ASME regarding the  
21 OMB process that you described earlier in your  
22 testimony  
23 Q Is that your understanding?  
24 MR FEE: Objection Vague Calls for  
25 speculation It's beyond the scope of his designation  

17 (Pages 62 - 65)
1 He wasn't designated to describe ASME documents 11:01:42
2 (The witness reviewed Exhibit 1030) 11:01:48
3 THE WITNESS: It appears there's a response 11:01:49
4 by ASME to various questions posed by OMB on federal 11:01:50
5 participation in the development and use of voluntary 11:01:54
6 consents of standards 11:01:55
7 BY MR BRIDGES: 11:01:55
8 Q And it is correct that ASTM, NFPA, and ASME 11:01:56
9 shared with each other their drafts of their 11:02:00
10 respective letters to OMB regarding the OMB circular; 11:02:05
11 is that right? 11:02:09
12 MR FEE: Objection Lack of foundation 11:02:09
13 Calls for speculation 11:02:11
14 BY MR BRIDGES: 11:02:14
15 Q You don't have any recollection of that? 11:02:15
16 MR FEE: Objection Asked and answered 11:02:17
17 THE WITNESS: I don't recall sharing drafts 11:02:24
18 BY MR BRIDGES: 11:02:29
19 Q Do you recall seeing this letter before? 11:02:29
20 A I would be that Jeff. 11:02:31
21 Q I know I read a number of submissions by 11:02:33
22 various organizations as it's a topic I'm very 11:02:35
23 interested in. So it's quite likely I've read this 11:02:38
24 before I don't believe this is a draft. This is 11:02:48
25 their submission 11:02:48

1 Q That's right. Do you recall this as being 11:02:48
2 their submission? 11:02:49
3 MR FEE: Objection Calls for speculation 11:02:51
4 BY THE WITNESS: It appears to be their 11:02:51
5 submission 11:03:02
6 (Deposition Exhibit 1031 was marked for 11:03:54
7 identification) 11:03:54
8 MR BRIDGES: I've handed you Exhibit 1031 11:03:54
9 This appears to be an E-mail between Mr. Thomas, 11:03:59
10 ASTM's president, and Mary McKiel at the Environmental 11:04 04
11 Protection Agency 11:04:09
12 Q Have you seen this document before? 11:04:10
13 (The witness reviewed Exhibit 1031) 11:04:36
14 THE WITNESS: No, I'm not familiar with this 11:04:36
15 specific document 11:04:37
16 BY MR BRIDGES: 11:04:39
17 Q This is not one of the documents you reviewed 11:04:39
18 to prepare for this deposition? 11:04:41
19 A I could have. I just don't recall this 11:04:43
20 Q Do you recall what the event was that is 11:04:46
21 referred to in the document? 11:04:49
22 MR FEE: Objection Calls for speculation 11:04:56
23 THE WITNESS: I believe it's referring to a 11:04:58
24 senior staff executive committee of the board retreat 11:05:01

1 BY MR BRIDGES: 11:05:09
2 Q Which board? 11:05:09
3 A The board of ASTM international, and the 11:05:11
4 senior staff of ASTM. 11:05:13
5 Q You were at that meeting; correct? 11:05:16
6 A Correct. 11:05:18
7 Q And you're the "Jeff" that's referred to 11:05:19
8 in -- I've lost where it is. In the last sentence of 11:05:22
9 the first paragraph for Ms. McKiel? 11:05:42
10 MR FEE: Objection. Calls for speculation. 11:05:44
11 THE WITNESS: I'm sorry. I don't see that. 11:05:49
12 Can I -- 11:05:50
13 BY MR BRIDGES: 11:05:51
14 Q First paragraph of Exhibit 1031. 11:05:51
15 A First paragraph? 11:05:55
16 Q Right. Last sentence. "Brian and Jeff did a 11:05:56
17 great job with the exercise." 11:05:58
18 A That's correct. 11:06:00
19 Q Are you that Jeff that -- 11:06:02
20 A I would be that Jeff. 11:06:03
21 MR FEE: Objection. Same objection. 11:06:04
22 BY MR BRIDGES: 11:06:05
23 Q And you did an exercise with someone named 11:06:05
24 Brian? 11:06:08
25 A We did. We put the board through a branding 11:06:08

1 workshop 11:06:11
2 Q What was that branding workshop? 11:06:15
3 A It was -- it was a very iterative process 11:06:17
4 where we asked the board to consider ASTM's brand and 11:06:22
5 ASTM's logo and to reflect on its attributes and its 11:06:30
6 strengths and discuss whether or not it was time to 11:06:37
7 revise our brand and revise our logo 11:06:42
8 Q What was the outcome of that discussion? 11:06:49
9 A Well, I believe the executive staff -- the 11:06:53
10 executive committee of the board was excited about the 11:06:56
11 idea of updating or refreshing ASTM's logo and coming 11:06:59
12 out with a strong brand purpose and core purpose as an 11:07:06
13 organization 11:07:12
14 Q What steps has ASTM taken to do that? 11:07:17
15 MR FEE: Objection Lack of foundation 11:07:23
16 BY MR BRIDGES: 11:07:25
17 Q If any 11:07:29
18 A We've launched a new brand as of October 1 of 11:07:31
19 last year. We've got a new tag line and a new logo, 11:07:32
20 which just is a -- is a -- it's an evolution over time 11:07:32
21 of ASTM's mission 11:07:49
22 Q Please describe that evolution over time of 11:07:51
23 ASTM's mission 11:07:53
24 A Well, so our core purpose is helping our 11:07:57
25 world work better because we believe that's an 11:07:58
THE WITNESS: I'm not familiar with the term "adopted."

BY MR. BRIDGES:

Q. Not at all?

A. Adopted by reference, no. Adopted as a national standard around the world? That's a different context. I've heard that context before.

Q. You've never heard "adopted by reference" as a term in the standards community?

A. Yes

THE WITNESS: And, again, the term "incorporated" isn't the term of art that we would use in the standards community. I would be speculating as to what that might mean.

BY MR. BRIDGES:

Q. Have you ever -- are you familiar -- strike that.

A. Yes

Q. Have you ever -- are you familiar -- strike that. 

MR. FEE: Objection. Vague.

THE WITNESS: And, again, the term "incorporated" isn't the term of art that we would use in the standards community. I would be speculating as to what that might mean.

MR. BRIDGES: Let me withdraw that.

BY MR. BRIDGES:

Q. Are you familiar with whether any government around the world has incorporated any ASTM standard by reference?

A. We've got a volume of 12,700 or so standards on environmental and chemical safety. I'm familiar with in the standards community. It's not a term of art that I would use to comment whether that implies it's law.

THE WITNESS: That's not a term of art that I would use to comment whether that implies it's law.

MR. FEE: Objection. Calls for speculation.

BY MR. BRIDGES:

Q. How many of those are incorporated by reference of ASTM standards? To pick one, I would express the view as to whether an ASTM standard has the force of law because they have been adopted by some government?

A. We've got a volume of 12,700 or so standards on environmental and chemical safety. I'm familiar with in the standards community. It's not a term of art that I would use to comment whether that implies it's law.

Q. How many of those standards have the force of law?

A. Sure. Well, just looking around this room, the water that we're drinking out of these bottles, the coffee cups that become compostable and recyclable. The air that we're breathing is probably impacted by a number of ASTM standards.

Q. -- expressing the view as to whether an ASTM standard has the force of law?

A. Adopted by reference, no. Adopted as a term in the standards community?

Q. What governments have incorporated that standard into law because they have been adopted by some government?

A. The U.S. government, I believe, has adopted ASTM standards as its law or as its regulation. I'm familiar with in the standards community.

MR. FEE: Objection. Asked and answered.

THE WITNESS: That's not a term of art that I would use to comment whether that implies it's law.

BY MR. BRIDGES:

Q. You've never heard "adopted by reference" as a term in the standards community?

A. Yes

THE WITNESS: And, again, the term "incorporated" isn't the term of art that we would use in the standards community. I would be speculating as to what that might mean.

BY MR. BRIDGES:

Q. Have you ever -- are you familiar -- strike that.

A. Yes

Q. Have you ever -- are you familiar -- strike that.

MR. FEE: Objection. Vague.

THE WITNESS: And, again, the term "incorporated" isn't the term of art that we would use in the standards community. I would be speculating as to what that might mean.

MR. BRIDGES: Let me withdraw that.

BY MR. BRIDGES:

Q. Are you familiar with whether any government has incorporated ASTM standards by reference into law or regulation?

A. Yes

Q. Are you familiar with any government having incorporated ASTM standards by reference?

A. Sure. Well, just looking around this room, the water that we're drinking out of these bottles, the coffee cups that become compostable and recyclable. The air that we're breathing is probably impacted by a number of ASTM standards.

Q. How many of those are incorporated by reference?

A. We've got a volume of 12,700 or so standards on environmental and chemical safety. I'm familiar with in the standards community. It's not a term of art that I would use to comment whether that implies it's law.

Q. How many of those standards have the force of law?

A. Sure. Well, just looking around this room, the water that we're drinking out of these bottles, the coffee cups that become compostable and recyclable. The air that we're breathing is probably impacted by a number of ASTM standards.

Q. How many of those standards have the force of law?

A. Sure. Well, just looking around this room, the water that we're drinking out of these bottles, the coffee cups that become compostable and recyclable. The air that we're breathing is probably impacted by a number of ASTM standards.
Q.  What do you understand the Code of Federal Regulations that's related to consumer product safety, and it's my understanding that they indicate that F963 is one standard that's incorporated by reference into?

A.  That would be correct.

Q.  What did the Consumer Product Safety Council incorporate F963 into?

A.  Then I'll fix that.

MR. BRIDGES:  Then I'll fix that.

Q.  Well, my question was do you have an independent understanding as to what the Code of Federal Regulations that's related to consumer product safety, and it's my understanding that they indicate that F963 is one standard that's incorporated by reference?

MR. BRIDGES:  Then I'll fix that.

Q.  Well, if you're ignorant of what the CFR contains, that's all right. There's nothing wrong with that. Nothing to be embarrassed about.

MR. FEE:  I'm instructing him not to answer with that. Nothing to be embarrassed about.

MR. FEE:  Objection.  Lack of foundation. It was to in your reference to a pathway speaking with certainty.

THE WITNESS:  Yeah.  I wouldn't be able to call for now, I think, a foreign legal conclusion.

MR. BRIDGES:  I'm not accusing him of being an ignorant person, but if he's ignorant of what it contains, that's all right. There's nothing wrong with that. Nothing to be embarrassed about.

MR. FEE:  Objection. Calls for speculation.

To the extent your understanding is based on your own organization, and we're not involved in determining what's -- we don't decide how our standards are known as EN 71, or the ISO standard known as ISO 8124, 11:13:48

8 Singapore having a consumer product safety policy that contains a variety of different information, including types of supplemental information that's related to consumer product safety, and it's my understanding that they indicate that F963 is one standard that's incorporated by reference.

18 consumer product safety, and it's my understanding that they indicate that F963 is one standard that's incorporated by reference.

10 safety ministry has determined constitutes whether or not a product is deemed to be safe and enter into the marketplace in that country or in those two countries.

11 those, but if you have an independent understanding, you can disclose that. If you have an independent understanding, you can disclose that. If you have an independent understanding, you can disclose that.

10 organization, and we're not involved in determining what's -- we don't decide how our standards are known as EN 71, or the ISO standard known as ISO 8124, 11:13:48

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18 consumer product safety, and it's my understanding that they indicate that F963 is one standard that's incorporated by reference.
Q. You couldn't comment beyond expectations?  11:20:08

THE WITNESS: My knowledge of the Code of Federal Regulations is -- I'm not an attorney. So it's limited.  11:18:04

Q. There's so many different regulations, I wouldn't be able to comment.  11:18:01

THE WITNESS: I think you'd have to --  11:18:00

MR. FEE: Objection. Vague.  11:19:55

Q. What do you understand the -- well, what purpose do you understand a regulation to serve in the context that you just cited?  11:19:09

THE WITNESS: I'm not an attorney. I can't give you a general answer. I would be speculating.  11:20:23

Q. Federal Regulations contains? Are you aware it contains federal regulations?  11:17:49

THE WITNESS: No problem.  11:18:20

BY MR. BRIDGES:  11:18:21

MR. BRIDGES: No. I'm in the middle of a question.  11:18:09

Q. Do you have any understanding as to what a federal regulation is?  11:18:24

MR. FEE: Objection. Calls for speculation and a legal conclusion.  11:20:32

Q. And what were your jobs on the Hill?  11:20:48

A. About eight years.  11:20:47

Q. In each of those jobs, to whom did you report?  11:21:02

THE WITNESS: Prior to that, it would have been Congressman Jim Sensenbrenner from Wisconsin. I worked as a staff assistant, a legislative assistant, a legislative director, a committee staff assistant, a legislative director, a committee staff person.  11:21:09

Q. You wouldn't know? How many years did you spend on the Hill?  11:20:39

A. Sure, I'd be happy to go ahead and answer it.  11:18:35

THE WITNESS: Sure. My independent conclusion.  11:18:36

Q. So please continue backwards --  11:21:43

THE WITNESS: It was the House Committee on the Budget.  11:21:14

BY MR. BRIDGES:  11:21:16

Q. What committees did you work for?  11:22:16

THE WITNESS: Prior to that, it would have been Congressman Jim Sensenbrenner from Wisconsin. I worked as a staff assistant, a legislative assistant, a legislative director, a committee staff person.  11:21:09

Q. And what committees did you work for?  11:22:16

BY MR. BRIDGES:  11:22:18

Q. Do federal regulations impose requirements on anybody?  11:20:27

THE WITNESS: I'm not an attorney.  11:20:36

Q. You wouldn't know? How many years did you spend on the Hill?  11:20:39

MR. FEE: Objection. Compound.  11:21:04

THE WITNESS: It would -- I would have to state many different individuals, but I guess ultimately, the members of Congress.  11:21:12

BY MR. BRIDGES:  11:21:16

Q. Keep going. I thought you were working backwards.  11:21:40

A. Sure. I'd be happy to go ahead and answer it.  11:21:48

THE WITNESS: It was the House Committee on the Budget.  11:21:48

MR. FEE: Objection. Compound.  11:22:16

THE WITNESS: I'm not an attorney.  11:20:36

Q. You couldn't comment beyond expectations?  11:20:08

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BY MR. BRIDGES:  11:20:05

Q. You wouldn't know? How many years did you spend on the Hill?  11:20:39

A. About eight years.  11:20:47

THE WITNESS: In each of those jobs, to whom did you report?  11:21:02

BY MR. BRIDGES:  11:21:04

THE WITNESS: That's the only committee.  11:22:26

Q. What committees did you work for?  11:22:16

THE WITNESS: It was the House Committee on the Budget.  11:22:19

Q. Do federal regulations impose requirements on anybody?  11:20:27

Q. And what committees did you work for?  11:22:16

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BY MR. BRIDGES:  11:21:04

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THE WITNESS: I'm not an attorney.  11:20:36

Q. You wouldn't know? How many years did you spend on the Hill?  11:20:39

A. About eight years.  11:20:47

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BY MR. BRIDGES:  11:21:04

THE WITNESS: That's the only committee.  11:22:26

Q. What committees did you work for?  11:22:16

THE WITNESS: It was the House Committee on the Budget.  11:22:19

Q. Do federal regulations impose requirements on anybody?  11:20:27
| Page 82 | 1 | 1 Q.  Is that correct? | 11:46:19 |
|         | 2 | A.  Correct, that is.  | 11:52:20 |
|         | 3 | Q.  Whom does "ASTM senior staff" in this memo refer to? | 11:52:21 |
|         | 4 | A.  It is.  | 11:46:52 |
|         | 5 | A.  So at ASTM we have a number of staff that are responsible for the various divisions. That's | 11:52:30 |
|         | 6 | vice presidents and associate vice presidents. That's who senior staff is. | 11:52:40 |
|         | 7 | Q.  Tell me who the persons were that you intended that to refer to? | 11:52:51 |
|         | 8 | A.  Sure. That would be Jim Thomas, our president. Tom O'Brien, our general counsel. Katherine Morgan, our vice president for technical committees at the time. Tim Brook, vice president for certification programs. Phil Lively, president for information technology. That would include our treasurer, Margaret Cassidy. And that may include two others that aren't part of senior staff because of a vice president title. They might be senior enough at a level. That would have been Dan Smith and possibly | 11:52:36 |
|         | 9 | Jim S. Thomas. | 11:53:52 |
|         | 11 | A.  That would be correct. Associate vice president for marketing and sales. | 11:54:03 |
|         | 12 | THE WITNESS:  My recollection is I did, yes. | 11:44:27 |
|         | 13 | MR  BRIDGES:  Mr. Grove, Exhibit 1035 is a couple of E-mails from Sarah Petre to you during the time she reported to you. | 11:48:40 |
|         | 14 | THE WITNESS:  That is correct. | 11:48:10 |
|         | 15 | (The witness reviewed Exhibit 1035 for identification.) | 11:49:02 |
|         | 16 | THE WITNESS:  Yes, it is. | 11:49:25 |
|         | 17 | (The witness reviewed Exhibit 1034.) | 11:49:25 |
|         | 18 | THE WITNESS:  That is correct. | 11:48:10 |
|         | 19 | (Deposition Exhibit 1035 was marked for identification.) | 11:48:40 |
|         | 20 | (The witness reviewed Exhibit 1035.) | 11:49:25 |
|         | 21 | THE WITNESS:  Yes, it is. | 11:49:25 |
|         | 22 | (Deposition Exhibit 1036 for identification.) | 11:51:16 |
|         | 23 | THE WITNESS:  That is correct. | 11:51:19 |
|         | 24 | (Deposition Exhibit 1036.) | 11:52:18 |
|         | 25 | THE WITNESS:  Yes, I recognize the document | 11:44:07 |
|         | 26 | THE WITNESS:  Yes, I recognize the document | 11:44:07 |
|         | 27 | THE WITNESS:  My recollection is I did, yes. | 11:44:27 |
|         | 28 | THE WITNESS:  My recollection is I did, yes. | 11:44:27 |
|         | 29 | THE WITNESS:  My recollection is I did, yes. | 11:44:27 |
|         | 30 | THE WITNESS:  My recollection is I did, yes. | 11:44:27 |
|         | 31 | THE WITNESS:  Yes, I recognize the document. | 11:44:07 |
|         | 32 | (The witness reviewed Exhibit 1032.) | 11:44:07 |
|         | 33 | THE WITNESS:  Yes, I recognize the document | 11:44:07 |
|         | 34 | THE WITNESS:  Yes, I recognize the document | 11:44:07 |
|         | 35 | THE WITNESS:  Yes, I recognize the document | 11:44:07 |
|         | 36 | THE WITNESS:  Yes, I recognize the document | 11:44:07 |
|         | 37 | THE WITNESS:  Yes, I recognize the document | 11:44:07 |
|         | 38 | THE WITNESS:  Yes, I recognize the document | 11:44:07 |
|         | 39 | THE WITNESS:  Yes, I recognize the document | 11:44:07 |
|         | 40 | THE WITNESS:  Yes, I recognize the document | 11:44:07 |
|         | 41 | THE WITNESS:  Yes, I recognize the document | 11:44:07 |
|         | 42 | THE WITNESS:  Yes, I recognize the document | 11:44:07 |
|         | 43 | THE WITNESS:  Yes, I recognize the document | 11:44:07 |
|         | 44 | THE WITNESS:  Yes, I recognize the document | 11:44:07 |
|         | 45 | THE WITNESS:  Yes, I recognize the document | 11:44:07 |
|         | 46 | THE WITNESS:  Yes, I recognize the document | 11:44:07 |
|         | 47 | THE WITNESS:  Yes, I recognize the document | 11:44:07 |
|         | 48 | THE WITNESS:  Yes, I recognize the document | 11:44:07 |
|         | 49 | THE WITNESS:  Yes, I recognize the document | 11:44:07 |
|         | 50 | THE WITNESS:  Yes, I recognize the document | 11:44:07 |
|         | 51 | THE WITNESS:  Yes, I recognize the document | 11:44:07 |
|         | 52 | THE WITNESS:  Yes, I recognize the document | 11:44:07 |
|         | 53 | THE WITNESS:  Yes, I recognize the document | 11:44:07 |
|         | 54 | THE WITNESS:  Yes, I recognize the document | 11:44:07 |
|         | 55 | THE WITNESS:  Yes, I recognize the document | 11:44:07 |
|         | 56 | THE WITNESS:  Yes, I recognize the document | 11:44:07 |
|         | 57 | THE WITNESS:  Yes, I recognize the document | 11:44:07 |
|         | 58 | THE WITNESS:  Yes, I recognize the document | 11:44:07 |
|         | 59 | THE WITNESS:  Yes, I recognize the document | 11:44:07 |
|         | 60 | THE WITNESS:  Yes, I recognize the document | 11:44:07 |
|         | 61 | THE WITNESS:  Yes, I recognize the document | 11:44:07 |
|         | 62 | THE WITNESS:  Yes, I recognize the document | 11:44:07 |
|         | 63 | THE WITNESS:  Yes, I recognize the document | 11:44:07 |
|         | 64 | THE WITNESS:  Yes, I recognize the document | 11:44:07 |
|         | 65 | THE WITNESS:  Yes, I recognize the document | 11:44:07 |
|         | 66 | THE WITNESS:  Yes, I recognize the document | 11:44:07 |
|         | 67 | THE WITNESS:  Yes, I recognize the document | 11:44:07 |
|         | 68 | THE WITNESS:  Yes, I recognize the document | 11:44:07 |
|         | 69 | THE WITNESS:  Yes, I recognize the document | 11:44:07 |
|         | 70 | THE WITNESS:  Yes, I recognize the document | 11:44:07 |
|         | 71 | THE WITNESS:  Yes, I recognize the document | 11:44:07 |
|         | 72 | THE WITNESS:  Yes, I recognize the document | 11:44:07 |
|         | 73 | THE WITNESS:  Yes, I recognize the document | 11:44:07 |
|         | 74 | THE WITNESS:  Yes, I recognize the document | 11:44:07 |
|         | 75 | THE WITNESS:  Yes, I recognize the document | 11:44:07 |
|         | 76 | THE WITNESS:  Yes, I recognize the document | 11:44:07 |
|         | 77 | THE WITNESS:  Yes, I recognize the document | 11:44:07 |
|         | 78 | THE WITNESS:  Yes, I recognize the document | 11:44:07 |
|         | 79 | THE WITNESS:  Yes, I recognize the document | 11:44:07 |
|         | 80 | THE WITNESS:  Yes, I recognize the document | 11:44:07 |
|         | 81 | THE WITNESS:  Yes, I recognize the document | 11:44:07 |
|         | 82 | THE WITNESS:  Yes, I recognize the document | 11:44:07 |
|         | 83 | THE WITNESS:  Yes, I recognize the document | 11:44:07 |
|         | 84 | THE WITNESS:  Yes, I recognize the document | 11:44:07 |
|         | 85 | THE WITNESS:  Yes, I recognize the document | 11:44:07 |
Q. Does he still work for ASTM?  
A. He does.  

(QDeposition Exhibit 1037 was marked for identification.)

BY MR. BRIDGES:

Q. Mr. Grove, Exhibit 1037 is an exchange of correspondence between you and John Pace; correct?
A. Yes.

9. And the post that you're referring to is indicated at the URL down below at the bottom of that document; is that correct?
A. That's correct.

10. indicated at the URL down below at the bottom of that document; is that correct?
A. Yes.

BY MR. BRIDGES:

Q. And what standards community events do you have in mind? Strike that.
A. I recall there were some subsequent ACUS standards workshop, and ANSI sponsored events, the NIST standards workshop in May of 2012. I know I've seen her at other occasions at ANSI related events, ANSI sponsors world standards week where there's a number of different opportunities for meetings and topical discussions. So those would be the -- some of the instances where I may have seen her.

Q. What other occasions have you seen her apart from ACUS public stakeholders, the NIST standards workshop, and ANSI sponsored events?
A. I think that represents most of my interactions or times I've seen her in Washington. I believe I spoke also on a panel there. Oh, and the week every year there's four or five days in October where each day there's a -- one or more events, such as the organizational member form of ANSI, where as the organizational member form of ANSI can come and -- for a program. There's the consumer interest forum.

Q. What were the ANSI sponsored events to which you referred?
A. I recall there was one at the national -- I'm sorry. It's at the consumer electronics association in Arlington, Virginia. A panel where Peter Strauss, Emily spoke, and now that you've refreshed my memory, I believe I spoke also on a panel there. Oh, and the week every year there's four or five days in October where each day there's a -- one or more events, such as the organizational member form of ANSI, where organizations that are members of ANSI can come and -- for a program. There's the consumer interest forum or consumer groups that are members of ANSI speak.

A. I recall I've seen her at some ANSI events during that week. I belong to, during that week.

Q. And the post that you're referring to is indicated at the URL down below at the bottom of that document; is that correct?
A. Yeah. Thanks for the opportunity to clarify.

Q. What interactions did you have with Emily Bremer?
A. He does.

Q. You said you met with her only once.
A. I'd say at least a dozen. At least 10 to 12 times.

Q. And the post that you're referring to is indicated at the URL down below at the bottom of that document; is that correct?
A. I forget the time line. It was probably in 2011 but Emily Bremer was the lead investigator of the United States review and potential recommendations on incorporation by reference, and we met on one occasion at my office at her request.

Q. Did you meet with her only once?
A. Only once professionally. I see her at various standards community events in Washington quite a bit.

Q. Are those nonprofessional events? I don't quite understand the --
A. A bit. 11:56:09

MR. FEE: Objection.

BY MR. BRIDGES:

Q. Have you ever met with her alone on any occasion other than the one time you said you were interviewed?
A. A. I don't recall, no. I don't believe I have ever met with her besides the one time.

Q. How many times have you seen her at standards community events?
A. I'd say at least a dozen. At least 10 to 12 times.

Q. And what standards community events do you recall?
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BY MR. BRIDGES:

Q. Have you ever met with her alone on any occasion other than the one time you said you were interviewed?
A. A. I don't recall, no. I don't believe I have ever met with her besides the one time.
1  A  Not that I recall 12:00:51
2  Q  Where is your office? 12:01:08
3  A  The ASTM Washington office 12:01:10
4  Q  Where you work? 12:01:15
5  A  Yeah  It's at 1850 M Street, Northwest, 12:01:16
6  Suite 1030 12:01:16
7  Q  Who else works in ASTM’s office there? 12:01:19
8  A  Currently, Anthony Quinn, our director of 12:01:25
9  public policy and international trade, and we have a 12:01:27
10  vacancy at the moment  So just the two of us 12:01:32
11  Q  What's the vacancy? 12:01:34
12  A  It will be for a manager of global policy and 12:01:36
13  industry affairs when we fill it 12:01:41
14  REPORTER MARTIN:  What was the last -- 12:01:56
15  THE WITNESS:  I'm sorry  Global policy and 12:02:01
16  industry affairs 12:02:01
17  REPORTER MARTIN:  And you said something 12:02:01
18  towards the end 12:02:01
19  THE WITNESS:  When we fill it 12:02:01
20  BY MR. BRIDGES: 12:02:01
21  Q  Do you recall that the Consumer Electronics 12:02:01
22  Associates panel you're on -- I think you said you 12:02:04
23  were on a panel with Ms. Bremer; is that correct? 12:02:11
24  A  I don't think we were on the same panel, but 12:02:13
25  we spoke the same day at the same event 12:02:15

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1  Q  Do you recall being on a panel called 12:02:17
2  "Towards Greater Government and Industry Cooperation"? 12:02:19
3  A  That sounds like the panel I was on, yes 12:02:23
4  Q  Who else was on that panel? 12:02:25
5  A  I believe Gordon Gillerman from the National 12:02:29
6  Institute of Standards and Technology I believe 12:02:34
7  Scott Cooper from the American National Standards 12:02:37
8  Institute 12:02:39
9  just can't recall 12:02:46
10  Q  What was the greater government industry 12:02:47
11  cooperation that you were using? 12:02:49
12  MR FEE:  Objection  Lack of foundation 12:02:55
13  BY MR BRIDGES: 12:02:56
14  Q  Were you urging greater government in 12:02:56
15  industry cooperation? 12:02:58
16  MR FEE:  Objection  Vague 12:02:59
17  THE WITNESS:  Yeah  I think -- I don't have 12:03:01
18  my -- I don't recall the specifics of my presentation, 12:03:04
19  but I believe we were outlying ways to make the 12:03:06
20  public/private collaboration in standards development 12:03:10
21  more effective, in our experience 12:03:13
22  BY MR BRIDGES: 12:03:17
23  Q  And government cooperation was part of the 12:03:17
24  public/private collaboration to which you just 12:03:22
25  referred? 12:03:24

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1  A  Government cooperation, you said? I'm sorry. 12:03:26
2  Could you repeat the question. 12:03:28
3  Q  Yes.  Was government cooperation part of the 12:03:31
4  public/private collaboration to which you just 12:03:34
5  referred? 12:03:36
6  A  Yes. 12:03:37
7  Q  What government cooperation, if any, did you 12:03:40
8  suggest would be beneficial when you were on that 12:03:48
9  panel? 12:03:55
10  A  I assume I presented some of the best 12:03:56
11  practices that we've observed in the ASTM system for 12:04:00
12  ensuring all diverse stakeholders that work in our 12:04:04
13  open balance and transparent standards development 12:04:07
14  process that results in voluntary consensus standards 12:04:10
15  have a seat at the table, including the U.S. 12:04:14
16  government. 12:04:17
17  Q  So for government cooperation, then, you're 12:04:20
18  suggesting government participation in the standards 12:04:25
19  development process? Is that what you're referring 12:04:27
20  to? 12:04:30
21  MR. FEE: Objection. Vague. 12:04:31
22  THE WITNESS: Yeah, including the government 12:04:32
23  representatives in the process would be included, yes. 12:04:33
24  BY MR. BRIDGES: 12:04:39
25  Q  In the process for developing standards? 12:04:39

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1  A  Correct. 12:04:41
2  MR. FEE: Objection. Vague. 12:04:41
3  BY MR. BRIDGES: 12:04:53
4  Q  Do you recall that this was a panel moderated 12:04:53
5  by Scott Cooper, that panelists were Gordon Gillerman 12:04:58
6  from NIST, Emily Bremer, John Card from EchoStar 12:05:02
7  Technologies, and you? 12:05:08
8  A  Thank you for pointing that out. I did not 12:05:10
9  recall that Emily was on the same panel but... 12:05:12
10  Q  Does that refresh your recollection? 12:05:14
11  A  That does. 12:05:15
12  Q  Do you recall that one of the questions 12:05:16
13  identified in the agenda published to the attendees 12:05:22
14  was as follows: "What factors should government 12:05:27
15  agencies take into consideration when examining 12:05:30
16  industry standards for regulatory purposes?" 12:05:35
17  MR. FEE: Objection. Calls for speculation. 12:05:39
18  To the extent that mischaracterizes the document 12:05:43
19  you're reading, object that you don't give him the 12:05:44
20  document that you're reading. If you're asking him to 12:05:49
21  remember a quote -- and he certainly hasn't been 12:05:52
22  designated as an ASTM witness on quotes from 12:05:54
23  particular slides of presentations. 12:05:57
24  But you can answer if you know. 12:06:01
25  THE WITNESS: Okay. That sounds like 12:06:05

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BY MR. BRIDGES: 12:06:06
3 Q. So what factors should government agencies take into consideration when examining industry standards for regulatory purposes? 12:06:08
4 A. Well, one of the most important factors that we believe is important to maintain the robust, viable system of standardization that we have in the U.S. is looking to see if standards development organizations meet the world trade organizations, technical barriers to trade, and other regulatory agendas and regulatory needs.
5 Q. What effect does the presence of government employees have on the industry standards? 12:06:10
6 THE WITNESS: Generally, I believe the EPA participates in our committees have different needs and different expectations and different motivations for participating in our processes. 12:06:12
7 MR. FEE: Objection. Calls for speculation. 12:06:14
8 Q. Do you understand what regulatory purposes agencies examining industry standards for regulatory purposes have that causes them to examine industry standards? 12:06:16
9 A. Yes, I understand government agencies to have when they're looking at participating in standards development, what do you think the regulatory purposes are. 12:06:18
10 Q. So beyond that, you can't give your testimony as to what you think the government regulatory purposes that in your interactions with government on behalf of ASTM, you believe government agencies have when they examine industry standards? So I'm asking what do you think the regulatory purposes are. 12:06:20
11 MR. FEE: Same objections. 12:06:22
12 THE WITNESS: Yeah. And I don't believe there's any one answer to that. Each agency that we're aware of that we interact with or that promote it as widely as possible.
13 Q. In using or in examining ASTM's standards. 12:06:24
14 A. Yes, I think you could assume that government agencies have that causes them to examine industry standards? 12:06:26
16 Q. How would the government employees affect --. 12:06:30
17 THE WITNESS: Sure. And I'm not an attorney, but my understanding is the National Technology Transfer and Advancement Act of 1995 combined with the OMB circular A119 lays out criteria or further guidance for federal agencies for them to consider.
18 BY MR. BRIDGES: 12:06:32
19 MR. BRIDGES: That's all right. It's so easy.
20 THE WITNESS: Yeah. I think we discussed early federal agencies do incorporate, by reference, standards from voluntary consensus standards bodies earlier federal agencies do incorporate, by reference, like ASTM. So that could be one potential -- one potential factor.
21 MR. FEE: Same objections. 12:06:34
22 MR. FEE: Same objections. 12:06:36
23 BY MR. BRIDGES: 12:06:38
24 Q. When they're looking at participating in standards development activities and utilizing voluntary consensus standards in support of their agency's mission. 12:06:40
25 MR. FEE: Same objections. 12:06:42
26 THE WITNESS: Yeah. I think we discussed earlier federal agencies do incorporate, by reference, standards from voluntary consensus standards bodies. 12:06:44
27 MR. FEE: Same objections. 12:06:46
28 MR. FEE: Same objections. 12:06:48
29 BY MR. BRIDGES: 12:06:50
30 MR. BRIDGES: That's all right. It's so easy.
31 THE WITNESS: Yeah. I think we discussed earlier federal agencies do incorporate, by reference, standards from voluntary consensus standards bodies. 12:06:52
32 MR. FEE: Objection. Vague. What agenda --. 12:06:54
33 Q. I'm unclear as to what agenda you're referring to. 12:06:56
34 THE WITNESS: I don't have an answer for that. I think you could assume that government employees have when they're looking at participating in standards development, what do you think the regulatory purposes are. 12:06:58
35 Q. In using or in examining ASTM's standards.
36 A. Yes, I think you could assume that government agencies have that causes them to examine industry standards? 12:07:00
37 THE WITNESS: Again, I'm not an attorney, but my understanding is the National Technology Transfer and Advancement Act of 1995 combined with the OMB circular A119 lays out criteria or further guidance for federal agencies for them to consider.
38 MR. FEE: Objection. Vague. What agenda --. 12:07:03
39 Q. In using or in examining ASTM's standards. 12:07:05
40 A. Yes, I think you could assume that government agencies have that causes them to examine industry standards? 12:07:07
41 Q. In using or in examining ASTM's standards. 12:07:09
42 A. Yes, I think you could assume that government agencies have that causes them to examine industry standards? 12:07:11
43 Q. But my understanding is the National Technology Transfer and Advancement Act of 1995 combined with the OMB circular A119 lays out criteria or further guidance for federal agencies for them to consider.
45 Q. Do you understand what regulatory purposes agencies examining industry standards for regulatory purposes have that causes them to examine industry standards? 12:07:15
46 THE WITNESS: I don't have an answer for that. I think you could assume that government employees have when they're looking at participating in standards development, what do you think the regulatory purposes are. 12:07:17
47 Q. So beyond that, you can't give your testimony as to what you think the government regulatory purposes that in your interactions with government on behalf of ASTM, you believe government agencies have when they examine industry standards? So I'm asking what do you think the regulatory purposes are.
48 MR. FEE: Same objections. 12:07:19
49 BY MR. BRIDGES: 12:07:21
50 MR. BRIDGES: That's all right. It's so easy.
51 THE WITNESS: Yeah. I think we discussed earlier federal agencies do incorporate, by reference, standards from voluntary consensus standards bodies. 12:07:23
52 MR. BRIDGES: That's all right. It's so easy.
53 Q. In using or in examining ASTM's standards. 12:07:25
54 THE WITNESS: Again, I'm not an attorney, but my understanding is the National Technology Transfer and Advancement Act of 1995 combined with the OMB circular A119 lays out criteria or further guidance for federal agencies for them to consider.
56 Q. I'm unclear as to what agenda you're referring to. 12:07:29
57 THE WITNESS: I don't have an answer for that. I think you could assume that government employees have when they're looking at participating in standards development, what do you think the regulatory purposes are. 12:07:31
58 Q. In using or in examining ASTM's standards. 12:07:33
59 A. Yes, I think you could assume that government agencies have that causes them to examine industry standards? 12:07:35
60 THE WITNESS: Again, I'm not an attorney, but my understanding is the National Technology Transfer and Advancement Act of 1995 combined with the OMB circular A119 lays out criteria or further guidance for federal agencies for them to consider.
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employees have in the standards development process at
ASTM? 12:11:36
2  MR. FEE: Objection. Vague. 12:11:37
3  THE WITNESS: In my experience, federal 12:11:43
4  government participation in standards development 12:11:45
5  helps to make a more effective public/private 12:11:47
6  collaboration in our process. 12:11:50
7  BY MR. BRIDGES: 12:11:51
8  A. It would be expanding her responsibilities. 12:12:05
9  Q. Who are two or three people at ASTM you think would be in a best position to answer the question of 12:12:19
10  what effect the presence of government employees has 12:12:33
11  BY MR. BRIDGES: 12:12:37
12  A. Brooke, as does Teresa Cendrowska, as does Tim Phil Lively, as does Katherine Morgan, who 12:16:35
13  in the creation of standards? 12:12:38
14  MR. FEE: Objection. Calls for speculation. 12:12:40
15  THE WITNESS: Well, other than me, I would say probably Katherine Morgan, who 12:12:44
16  in the old box that said Kathie Morgan, I would put Brooke, and a new box would need to be created -- or 12:12:48
17  Vague. 12:12:50
18  THE WITNESS: Right. We have 140 different 12:12:55
19  technical committees and over 1,000 individual 12:12:57
20  subcommittees. So each agency's participation and 12:12:59
21  what role they play in the drafting of standards, I believe was your term, that would vary significantly. 12:12:63
22  BY MR. BRIDGES: 12:12:67
23  A. Yeah. I actually wouldn't be able to explain why we have it displayed that way. 12:13:00
25  A. Page 6 of 11. So Kathie has been promoted, and Dan has taken Kathie's old job, if that helps. 12:13:07
Page 98
1 A I had previously mentioned an office in Brussels, Belgium where we have a contractor 12:18:34
2 2 Q. Who else? 12:18:39
3 3 A. We operated for many years an office in Mexico City. That office, our representative, 12:18:40
4 4 unfortunately, recently passed away. So we are 12:18:44
5 5 re-evaluating what we're going to be doing in Mexico City. 12:18:47
6 6 Q. City. But I believe we will still have an office 12:18:51
7 7 there for the time being. 12:18:54
8 8 Q. Any other offices? 12:18:59
9 9 A. We do. So we worked in collaboration with an 12:19:01
10 10 organization called the American Association of State 12:19:04
11 11 Highway Transportation Officials. It's known as 12:19:09
12 12 AASHTO, and AASHTO and ASTM work together in a 12:19:12
13 13 facility in Buckeystown, Maryland, which is -- we do 12:19:16
14 14 cement and concrete reference, related laboratory 12:19:22
15 15 inspections. To my knowledge, that's the scope of 12:19:30
16 16 ASTM's offices. 12:19:35
17 17 Q. How often do you visit the corporate 12:19:44
18 18 headquarters in the course of a year? 12:19:47
19 19 A. In 2013 I made approximately 24 trips to 12:19:50
20 20 ASTM's headquarters. 12:19:55
21 21 Q. How often do you speak to Emily Bremer on the 12:20:38
22 22 telephone? 12:20:41
23 23 A. I honestly don't recall speaking with Emily 12:20:46
24 24 telephone? 12:20:48
1 1 working with senior staff because of an interest that 12:25:01
2 2 I have in striking the right balance between providing 12:25:05
3 3 the public with access to ASTM standards that become 12:25:09
4 4 incorporated by reference in various laws and 12:25:12
5 5 regulations while maintaining our ability to sustain 12:25:17
6 6 our organization through the distribution of our 12:25:25
7 7 standards under the model that served us so well for 12:25:27
8 8 118 years. 12:25:30
9 9 BY MR. BRIDGES: 12:25:42
10 10 Q. How did you come by such an interest? 12:25:45
11 11 A. Well, working in Washington for ASTM for as 12:25:48
12 12 long as I have, I've begun to hear and see the 12:25:50
13 13 emerging interest in striking this delicate balance, 12:25:56
14 14 began to see efforts that other organizations were 12:26:04
15 15 taking, such as the NFPA, which, going back all the 12:26:06
16 16 way to 2004, started to provide some of their key code 12:26:10
17 17 documents on their website. And I've heard some 12:26:15
18 18 interesting testimony and ideas expressed by people 12:26:21
19 19 like Peter Strauss, who is a law professor, I believe, 12:26:23
20 20 and other people associated with ACUS who served on 12:26:31
21 21 ACUS committees. So those are some of the factors and 12:26:35
22 22 things that have influenced my thinking on this 12:26:42
23 23 reading room. 12:26:44
24 24 Q. I understand the factors that influenced your 12:26:47
25 25 thinking, but how did you come to have such an 12:26:50
1 interest to begin with? 12:26:52
2 MR. FEE: Objection. Asked and answered. 12:26:54
3 THE WITNESS: Yeah. I guess I don't know the 12:26:58
4 difference in your question. ASTM is a nonprofit 12:26:59
5 organization that serves society in a number of 12:27:07
6 different ways. We're excited about our documents and 12:27:10
7 what they can do, and the idea that we could strike a 12:27:12
8 balance that would allow more access to some of those 12:27:18
9 documents was something that we thought would be a -- 12:27:21
10 very good for ASTM's standing in the community, as 12:27:25
11 well as for the public. 12:27:28
12 BY MR. BRIDGES: 12:27:31
13 Q. Do you have any background in archives 12:27:34
14 before coming to ASTM? 12:27:38
15 A. No. 12:27:55
16 Q. Did you have any background in libraries 12:27:59
17 before coming to ASTM? 12:27:59
18 A. No. 12:27:59
19 Q. Did you have any background in archives 12:27:59
20 before coming to ASTM? 12:27:59
21 A. No. 12:27:59
22 Q. Did you have any background in educational 12:28:01
23 policy before coming to ASTM? 12:28:05
24 MR. FEE: Objection. Vague. 12:28:08
25 THE WITNESS: Yeah, it would depend what you 12:28:10
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1 the development or for the funded research, that the 12:29:14
2 resulting publications should be available to the 12:29:22
3 public for a reasonable amount of time before they 12:29:25
4 were exclusively put into commercial journals and put 12:29:32
5 under that type of control. 12:29:39
6 BY MR. BRIDGES: 12:29:46
7 Q. When were you first aware of NFPA's actions 12:29:46
8 in giving some public access to its standards? 12:29:52
9 MR. FEE: Objection. Vague. This is also 12:29:59
10 beyond the scope of his designation. 12:30:01
11 THE WITNESS: I would -- I actually wouldn't 12:30:07
12 be able to give you an exact date, but I would 12:30:09
13 reasonably assume it's been within the last five 12:30:13
15 BY MR. BRIDGES: 12:30:19
16 Q. Because you pointed out in your answer 12:30:19
17 earlier how long NFPA had provided public access to 12:30:24
18 some of the standards. I think you said going back 12:30:35
19 all the way to 2004. Is that your understanding? 12:30:38
20 A. That's based on what the NFPA representatives 12:30:41
21 told me, which was very informational to me once we 12:30:44
22 began to start working with them or start exchanging 12:30:49
23 information about some of the things happening in 12:30:54
24 Washington. And I learned suddenly that they've 12:30:56
25 already been addressing this issue through some of 12:31:00
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1 BY MR. BRIDGES: 12:32:29
2 Q.  And did your interest in providing a reading 12:32:31
3 room arise about the same time as the APCO engagement 12:32:32
4 arose?  12:32:38
5 A.  Similar time line I believe it began to -- 12:32:40
6 I began to introduce the idea and socialize it before 12:32:43
7 then  Maybe a year or so before then 12:32:45
8 Q.  You introduced the idea of a reading room?  12:32:48
9 A.  The idea of figuring out a way to strike the 12:32:51
10 right balance I think another idea we had at the 12:32:53
11 time that I introduced was perhaps figuring out if 12:32:57
12 there was a way we could provide better summaries of 12:33:01
13 our standards to the public rather than relying on 12:33:04
14 abstracts So there was various ideas that I began to 12:33:07
15 socialize with ASTM staff about how to strike this 12:33:13
16 delicate balance between providing the public with 12:33:17
17 greater access to our documents while still preserving 12:33:20
18 what we need to preserve in order to meet -- continue 12:33:25
19 the enterprise of developing standards, keeping the 12:33:28
20 barriers to participation low, and ensuring that would 12:33:31
21 continue to provide the important value that we do in 12:33:33
22 high-quality market-relevant standards that protect 12:33:39
23 the public 12:33:42
24 Q.  How did you introduce the idea of providing a 12:33:44
25 reading room in the discussion you were referring to?  12:33:46

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1 A.  Right.  It would be as simple as talking to 12:33:52
2 other staff at ASTM about looking at solutions that 12:34:01
3 other organizations are considering or have posted 12:34:04
4 towards providing greater access.  12:34:09
5 Q. What other organizations did you mean just now?  12:34:17
6 A. I believe the NFPA would be one.  The 12:34:19
7 American Petroleum Institute is a trade association 12:34:23
8 that also develops standards, and I believe that they 12:34:25
9 took some steps to provide greater access to their 12:34:30
10 documents that I can recall caught my attention. 12:34:32
11 Q. What other organizations?  12:34:39
12 A. There's probably others, but those are the 12:34:50
13 two I can think of that are what I would call "thought 12:34:51
14 leaders."  12:34:56
15 Q. What made NFPA a thought leader with respect to 12:34:58
16 A. The fact that they were making some of their 12:35:03
17 core documents available to the public at no cost to 12:35:07
18 first responders and those that they deemed needed 12:35:11
19 access to them, positioned them in a way that was 12:35:15
20 beyond the norm for standards developers and caught my 12:35:18
21 notice.  12:35:22
22 Q. Can you explain why it took approximately 12:35:24
23 seven years for NFPA's reading room to catch your 12:35:27
24 notice -- 12:35:38
25 Q -- from 2004 to 2011?  12:35:38

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1 potentially put ASTM in the position that if we did 12:37:03
2 not provide public access at no cost to a few specific 12:37:08
3 standards, that an agency would be precluded from 12:37:11
4 utilizing such standards in future rulemakings, and 12:37:16
5 that was a difficult position for ASTM to be put in. 12:37:20
6 BY MR. BRIDGES: 12:37:25
7 Q. My question was how did you establish priorities in 12:37:25
8 determining what standards ASTM would make available 12:37:27
9 on its reading room?  12:37:29
10 MR. FEE: Objection Vague 12:37:32
11 THE WITNESS: I believe there was some 12:37:33
12 MR. FEE: Objection Calls for -- 12:37:38
13 THE WITNESS: So that same legislation that I 12:37:38
14 referenced was very specific to an organization called 12:37:38
15 FIMSA or PIMSA, which deals with -- it's a division 12:37:40
16 within the Department of Transportation, which 12:37:43
17 regulates the safety and the safe operation of 12:37:45
18 pipelines and hazardous substances, and particularly 12:37:49
19 for pipelines, this provision that I referred to 12:37:52
20 earlier would have caused this potential barrier on 12:37:56
21 the use of ASTM standards. 12:38:01
22 MR. FEE: Objection Calls for -- 12:38:08
23 THE WITNESS: So we began -- I began to look at which 12:38:15
24 standards would be impacted by this potential 12:38:18
25 legislation and what steps would ASTM possibly take to 12:38:24
26 address this, either through legislation or through 12:38:27
27 the fact that we make a decision that we'll go ahead 12:38:30
28 and put it up for the public to review.  12:38:33

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1 notice -- 12:35:38
2 MR. FEE: Objection Calls for -- 12:35:38
3 BY MR. BRIDGES: 12:35:38
4 Q -- from 2004 to 2011?  12:35:38
5 MR. FEE: Lack of foundation Calls for 12:35:41
6 speculation This is beyond his designation as a 12:35:42
7 witness on behalf of ASTM 12:35:44
8 You can answer if you know 12:35:46
9 THE WITNESS: Yeah In my opinion, access 12:35:47
10 just wasn't an issue that people were bringing to 12:35:50
11 standards development organizations From ASTM's 12:35:54
12 standpoint, we just were not hearing from the public 12:35:57
13 or from agencies that access to ASTM standards at the 12:36:01
14 reasonable and flexible, widely available way that we 12:36:05
15 provided them, why that wasn't good enough So this 12:36:10
16 was all informational to me and was significant in the 12:36:14
17 fact that NFPA was doing this 12:36:19
18 BY MR. BRIDGES: 12:36:36
19 Q How did you establish priorities in 12:36:36
20 determining what standards ASTM would make available 12:36:40
21 on its reading room?  12:36:45
22 MR. FEE: Objection Vague 12:36:47
23 THE WITNESS: I believe there was some 12:36:51
24 discussion initially about there was a provision 12:36:51
25 introduced in legislation on the Hill that could 12:36:58

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<tr>
<td>1 BY MR. BRIDGES: 12:38:36</td>
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<tr>
<td>2 Q In your last answer you said, &quot;I began to 12:38:36</td>
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<tr>
<td>3 look at which standards would be impacted by this 12:38:39</td>
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<td>4 potential legislation and what steps would ASTM 12:38:41</td>
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<td>5 possibly take to address this &quot; What did you mean by 12:38:46</td>
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<td>6 &quot;to address this&quot; in that answer? 12:38:51</td>
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<td>7 A Well, personally, I felt that there was a 12:38:54</td>
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<td>8 real dilemma for ASTM because, on one hand, we work 12:38:56</td>
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<td>9 with stakeholders who come to ASTM with the 12:39:00</td>
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<td>10 expectation at times that we are going to be the 12:39:04</td>
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<td>11 foremost developer of information and standards that 12:39:07</td>
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<td>12 will help to benefit their industry or protect and 12:39:12</td>
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<td>13 ensure their industry is operating safely So on one 12:39:18</td>
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<td>14 hand we have that commitment to our stakeholders to 12:39:21</td>
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<td>15 demonstrate our significance, and then on the other 12:39:24</td>
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<td>16 hand we had the situation where an agency may be told 12:39:28</td>
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<td>17 that they can no longer utilize ASTM standards if ASTM 12:39:32</td>
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<td>18 does not make such standards available to the public 12:39:37</td>
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<td>19 for free at no cost on an Internet website So you'd 12:39:39</td>
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<td>20 have to read back your question if I failed to answer 12:39:47</td>
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<td>21 that 12:39:49</td>
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<tr>
<td>22 Q Thank you Yeah, I'm not sure you did I 12:39:49</td>
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<tr>
<td>23 was asking what you meant by &quot;to address this&quot; when 12:39:52</td>
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<td>24 you were referring to the discussions around the FIMSA 12:39:55</td>
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<td>25 legislation I'm just trying to find out -- 12:40:01</td>
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<tr>
<td>1 A Sure 12:40:07</td>
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<tr>
<td>2 Q -- what you meant by &quot;to address this,&quot; what 12:40:07</td>
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<td>3 the &quot;this&quot; is and what it meant to address -- 12:40:12</td>
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<td>4 MR FEE: Objection to form 12:40:16</td>
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<td>5 Go ahead 12:40:17</td>
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<td>6 THE WITNESS: I was thinking ahead I 12:40:18</td>
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<td>7 believe it's my role to anticipate what changes could 12:40:20</td>
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<td>8 be coming from Washington, and the fact that this 12:40:22</td>
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<td>9 legislation was being considered, I thought was 12:40:28</td>
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<td>10 significant enough that we should do some internal 12:40:30</td>
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<td>11 planning and have some socialization of the issue 12:40:33</td>
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<td>12 amongst ASTM's management staff to ensure that we were 12:40:38</td>
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<td>13 taking steps to address it should it either be forced 12:40:43</td>
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<td>14 upon us or should we decide it's something that we 12:40:47</td>
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<td>15 want to do independent of any legislative or 12:40:50</td>
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<td>16 government directive 12:40:53</td>
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<td>17 BY MR. BRIDGES: 12:40:57</td>
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<tr>
<td>18 Q And you testified earlier that you began to 12:40:58</td>
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<td>19 look at what steps ASTM would possibly take to address 12:41:00</td>
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<td>20 this either through legislation or through the fact 12:41:04</td>
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<td>21 that we make a decision that we'll go ahead and put it 12:41:08</td>
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<td>22 up for the public to review What did you mean by 12:41:11</td>
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<td>23 &quot;taking steps to address this through legislation&quot;? 12:41:14</td>
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<td>24 Did that mean opposing the provisions relating to 12:41:20</td>
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<td>25 public access in the FIMSA legislation? 12:41:22</td>
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1 in this reading room? | 12:46:36 |
2 A. Well, on or about that time, I believe that | 12:46:39 |
3 was when scholars, such as Peter Strauss and ACUS was | 12:46:43 |
4 beginning to -- and OMB was beginning to discuss or | 12:46:48 |
5 review how the public currently has access to | 12:46:53 |
6 standards that are incorporated by reference and what | 12:46:57 |
7 "reasonably available" meant, and a lot of interesting | 12:47:01 |
8 discussion was undergoing in Washington. So I think | 12:47:05 |
9 it's fair to say that when discussing what documents | 12:47:09 |
10 would have a priority that would -- ASTM would put up | 12:47:16 |
11 for public access, we would look at some of the | 12:47:20 |
12 standards that have been identified to us as having | 12:47:24 |
13 been incorporated by reference, by federal agencies. | 12:47:27 |
14 BY MR. BRIDGES: | 12:47:32 |
15 Q. Do you know where to go to find a publicly | 12:47:32 |
16 available list of standards that the federal | 12:47:38 |
17 government has incorporated by reference? | 12:47:43 |
18 MR. FEE: Objection. Vague as to time. | 12:47:45 |
19 THE WITNESS: The resource that I'm most | 12:47:51 |
20 familiar with that is almost exclusively I've looked | 12:47:52 |
21 at is called STANDARDS.GOV. It's a website that's | 12:47:55 |
22 operated by the National Institute of Standards and | 12:48:00 |
23 Technology and includes a database that they provide | 12:48:03 |
24 to the public as to which standards are incorporated | 12:48:07 |
1 By Mr. Bridges: 12:48:17
2 Q. How many ASTM standards do you understand are 12:48:17
3 listed at that location? 12:48:21
4 Mr. Fee: Objection Vague as to time 12:48:23
5 THE WITNESS: So there's -- if I'm answering 12:48:34
6 your question exactly as you phrased it to me, how 12:48:35
7 many standards, I believe there's 885 or so ASTM 12:48:38
8 standards that are incorporated in the NIST database 12:48:41
9 By Mr. Bridges: 12:48:50
10 Q. How many of those standards are currently 12:48:52
11 available at ASTM's reading room? 12:49:04
12 A. Well, if it's in the NIST database, we built 12:49:06
13 the ASTM reading room using the NIST database as a 12:49:16
14 baseline, and we added in other versions of those same 12:49:21
15 885 ASTM standards that have been also incorporated by 12:49:24
16 reference, just an agency, for instance, might 12:49:26
17 reference the same ASTM standard but reference two 12:49:31
18 different versions of the standard 12:49:35
19 So we counted them in the reading room as 12:49:40
20 well, and I believe our reading room has a volume of 12:49:45
21 to 13- to 1,400 ASTM standards that are available to the 12:49:47
22 public at no cost on our website for their review 12:49:50
23 Q. Are every one of the 885 standards from the 12:49:54
24 NIST database available in the reading room? 12:49:58
25 A. I wouldn't be able to answer that. 12:49:59

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1 of working with agencies during the notice of proposed 12:50:46
2 rule-making process 12:50:50
3 Any agency that comes to us and asks us to 12:50:53
4 put a standard up for public review during the public 12:51:00
5 review period of a rule, we work with them to make 12:51:05
6 that possible So at times we know that a certain 12:51:09
7 number of ASTM standards have been in a notice to 12:51:14
8 proposed rulemaking and that the new rule's expected 12:51:18
9 to come out, so we can look for it 12:51:22
10 Q. Does ASTM provide assistance to the 12:51:26
11 government in any way when the government is 12:51:30
12 considering whether to incorporate an ASTM standard by 12:51:35
13 reference? 12:51:40
14 Mr. Fee: Objection Vague 12:51:44
15 The WITNESS: So we do -- I'm familiar with a 12:51:48
16 couple things that either I do or a member of my staff 12:51:52
17 does. We look to see -- when we're aware that an ASTM 12:51:56
18 standard is going to be used and incorporated by 12:51:59
19 reference in some type of an action, we look to see 12:52:03
20 what version of the standard and what designation of 12:52:07
21 the standard is being used, and I believe on occasion 12:52:11
22 if they're using -- proposing to use an outdated 12:52:15
23 version of a standard, or, quite frankly, we've seen 12:52:19
24 errors where they've attempted to use an ASTM biofuel 12:52:23
25 and, rather than referencing D6751 they've 12:52:27

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866 299-5127
1 THE WITNESS: It's my understanding that 12:54:31
2 state governments act on a parallel system of 12:54:32
3 incorporation by reference and that many states may in 12:54:37
4 fact reference ASTM standards in various state 12:54:41
5 regulations. 12:54:45
6 BY MR. BRIDGES: 12:54:47
7 Q. When a state or municipal government 12:54:47
8 incorporates an ASTM standard by reference -- strike 12:54:53
9 that. 12:54:58
10 Are you aware of any ASTM standards that a 12:55:00
11 state or municipal government has incorporated by 12:55:04
12 reference that the federal government has not 12:55:06
14 MR. FEE: Objection to form. 12:55:12
15 THE WITNESS: That's a very difficult one for 12:55:16
16 us because, to my knowledge, there's nothing that 12:55:17
17 parallels the NIST database for states. It would -- 12:55:20
18 to my knowledge, it would require someone to search 50 12:55:24
19 different states and perhaps use vendors and pay for a 12:55:29
20 service to track that. So I don't have direct 12:55:33
21 knowledge. From time to time we do get letters from 12:55:36
22 states about proposed rule-making, saying about their 12:55:40
23 interest in referencing standards. So I would be more 12:55:43
24 familiar with that. 12:55:46
25 BY MR. BRIDGES: 12:55:49

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1 Q. I guess my question is are you aware of any 12:55:49
2 ASTM standards that a state or municipal government 12:55:52
3 has incorporated by reference that the federal 12:55:56
4 government has not incorporated by reference? 12:55:58
5 MR. FEE: Objection to form. 12:56:00
6 THE WITNESS: I'm not aware of any. 12:56:06
7 BY MR. BRIDGES: 12:56:09
8 Q. You're not aware of a single one? 12:56:09
9 A. I'm not aware of any. 12:56:11
10 Q. I want to go back and continue the thread of 12:56:31
11 questions about priorities and determining what 12:56:33
12 standards to put in the reading room. 12:56:39
13 A. Before you ask the next question, I would 12:56:41
14 like to notice you that I would like to take a break 12:56:43
15 at the appropriate point here. 12:56:49
16 Q. Okay. Give me a few more minutes, and we'll 12:56:49
17 take a break for lunch. 12:56:51
18 A. That's fine. 12:56:56
19 Q. I just want to go back to the topic of 12:56:56
20 priorities you have in determining what standards to 12:56:58
21 place in ASTM's reading room. Are there any other 12:57:00
22 priorities that you have not discussed? 12:57:03
23 MR. FEE: Objection. Vague. 12:57:05
24 THE WITNESS: No, not that I'm aware of. Not 12:57:11
25 that I can think of. 12:57:14

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1 MR. BRIDGES: Why don't we take our break 12:57:17
2 now 12:57:18
3 MR FEE: Okay Great 12:57:19
4 THE VIDEOGRAPHER: Going off the record at 12:57:20
5 12:56 12:57:21
6 (A recess was taken from 12:56 p.m 13:52:05
7 to 1:59 p.m ) 14:00:46
8 THE VIDEOGRAPHER: We are back on the record 14:00:46
9 at 13:59 14:00:47
10 (Deposition Exhibit 1041 was marked for 14:01:06
11 identification ) 14:01:06
12 MR. BRIDGES: Mr. Grover, I'm handing you 14:01:06
13 Exhibit 1041. This is an E-mail exchange between you 14:01:08
14 and Jeff Grove; is that correct? Sorry This is an 14:01:19
15 E-mail exchange -- strike that 14:01:22
16 Q Exhibit 1041 is an E-mail exchange between 14:01:24
17 you and John Pace; is that correct? 14:01:26
18 (The witness reviewed Exhibit 1041 ) 14:01:57
19 THE WITNESS: Yes 14:01:58
20 BY MR. BRIDGES: 14:01:58
21 Q And Mr Pace is head of publications for 14:01:58
22 ASTM; is that correct? 14:02:02
23 A That's correct 14:02:02
24 (Deposition Exhibit 1042 was marked for 14:02:33
25 identification ) 14:02:33
1. **relations firms that ASTM uses?**
2. **A** I think that would be in the scope of
3. attorney-client discussions
4. **Q** No, that would not
5. **MR FEE:** Actually, it might We need to go outside for that 14:04:45
6. **THE VIDEOPHOTHER:** We're going back on the record at 14:07:49
7. **MR BRIDGES:** Going off the record 14:04:52
8. **THE VIDEOPHOTHER:** Going off the record at 14:04:53
9. 2:04 14:04:57
10. (A recess was taken from 2:04 p.m. 14:06:30
11. to 2:06 p.m.) 14:07:47
12. **THE VIDEOPHOTHER:** We're going back on the record at 14:06 14:07:50
13. **MR FEE:** I'm going to instruct the witness 14:07:53
14. to 2:06 p.m.) 14:07:47
15. **MR BRIDGES:** I do have a couple of voir dire questions on this 14:08:15
16. **MR FEE:** Yes 14:08:13
17. **MR BRIDGES:** I do have a couple of voir dire questions on this 14:08:17
18. **Q** Does HF -- is that a mistake for "FH"? 14:08:18
19. **MR FEE:** Objection. 14:08:21

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1. **I'm going to instruct you not to answer that** 14:08:21
2. **question. I instruct you not to answer.** 14:08:23
3. **THE WITNESS:** Okay. 14:08:29
4. **MR. BRIDGES:** Mr. Fee, did ASTM provide in 14:08:31
5. any privilege log, any records of communications with 14:08:38
6. Fleishman Hillard? 14:08:42
7. **MR. FEE:** I have no idea. 14:08:43
8. **MR. BRIDGES:** If it wishes to protect 14:08:45
9. information about communications regarding Fleishman 14:08:50
10. Hillard, we would expect to see that on a privilege 14:08:54
11. log. 14:08:56
12. **MR. FEE:** Well, we'll certainly give you a 14:08:56
13. privilege log at least for this document. 14:08:57
14. **MR. BRIDGES:** Well, I'm asking for a 14:08:59
15. privilege log because it strikes me as though -- this 14:09:00
16. suggests to me that there are relevant and responsive 14:09:03
17. communications in discovery in this case with 14:09:06
18. non-lawyers as to which I'm hearing some work product 14:09:15
19. claims are being asserted, and it appears to me that 14:09:19
20. those communications in which the client participated 14:09:25
21. should be on a privilege log. 14:09:36
22. **Q.** Mr. Grove, has ASTM ever retained the firm of 14:09:42
23. Fleishman Hillard? 14:09:48
24. **MR. FEE:** Objection. 14:09:50
25. **I'll instruct you not to answer to the extent** 14:09:51

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1. **THE WITNESS:** I don't. 14:11:36
2. **BY MR. BRIDGES:** 14:11:40
3. **Q.** Does this document pertain to incorporations 14:11:40
4. by reference? 14:11:42
5. **MR. FEE:** Read the document to answer that 14:11:48
6. question. 14:11:49
7. (The witness further reviewed Exhibit 1043.) 14:12:04
8. **BY MR. BRIDGES:** 14:13:07
9. **Q.** Do you need more time to determine if this 14:13:07
10. relates to incorporation -- 14:13:09
11. A. Just about finished. 14:13:11
12. (The witness further reviewed Exhibit 1043.) 14:13:14
13. **THE WITNESS:** Great. I'm sorry. Could you 14:13:14
15. **BY MR. BRIDGES:** 14:13:21
16. **Q.** Does this document pertain -- strike that. 14:13:21
17. **The witness further reviewed Exhibit 1043.** 14:13:24
20. speaks for itself. 14:13:30
21. **THE WITNESS:** My understanding of the 14:13:37
22. article, it's about the relationship between building 14:13:38
23. codes and standards. So I don't consider that 14:13:43
24. incorporation by reference. 14:13:47
25. **BY MR. BRIDGES:** 14:14:02

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<table>
<thead>
<tr>
<th></th>
<th>Q. Do you know who the author of that document is?</th>
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<th>THE WITNESS: That would relate to --</th>
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<tr>
<td>2</td>
<td>A. I do not.</td>
<td>3</td>
<td>MR. FEE: I instruct you not to answer that question.</td>
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<td>4</td>
<td>Q. Do you know what the publication is that's indicated at the bottom?</td>
<td>5</td>
<td>MR. BRIDGES: Can I get a representation from counsel that this document was in anticipation of litigation against Public Resource?</td>
</tr>
<tr>
<td>6</td>
<td>A. I'd speculate that it's an architectural magazine based on the name.</td>
<td>7</td>
<td>MR. FEE: I'd have to see what's underneath there to be able to say anything.</td>
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<td>8</td>
<td>(Deposition Exhibit 1044 was marked for identification.)</td>
<td>9</td>
<td>MR. BRIDGES: Someone on your team redacted, and I'd like an answer to that at our next break, please.</td>
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<td>10</td>
<td>MR. BRIDGES: I'm handing you Exhibit 1044.</td>
<td>11</td>
<td>MR. BRIDGES: That's not going to happen.</td>
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<tr>
<td>12</td>
<td>Q. Do you recognize this document?</td>
<td>13</td>
<td>MR. BRIDGES: Well, then we're going to reserve the right to recall Mr. Grove back for further question because this appears to be a wrongful redaction to me at first blush.</td>
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<td>14</td>
<td>BY MR. BRIDGES: (The witness reviewed Exhibit 1044.)</td>
<td>15</td>
<td>MR. FEE: It doesn't appear that way to me but...</td>
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<tr>
<td>16</td>
<td>Q. What material is blacked out at the top of Page 1044?</td>
<td>17</td>
<td>MR. BRIDGES:</td>
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<tr>
<td>18</td>
<td>MR. FEE: Objection. Calls for speculation.</td>
<td>19</td>
<td>BY MR. BRIDGES:</td>
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<td>20</td>
<td>To the extent that would require you to disclose any privileged information, I would instruct you not to answer that.</td>
<td>21</td>
<td>Q. Mr. Grove, the underlying E-mails from Emily Bremer, she's someone we discussed earlier who worked for the administrative conference of the United States; correct?</td>
</tr>
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<td>22</td>
<td>THE WITNESS: And I don't know.</td>
<td>23</td>
<td>MR. FEE: Objection. Calls for speculation.</td>
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<td>24</td>
<td>Q. So I have to say I'm curious as to why something was blacked out because this is an E-mail between you and people at three other organizations;</td>
<td>25</td>
<td>THE WITNESS: Yes.</td>
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<th>correct? Maureen Brodoff, Lorraine Carli and Joseph Wendler are not within ASTM's organization; is that correct?</th>
<th></th>
<th>By Mr. Bridges</th>
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</thead>
<tbody>
<tr>
<td>2</td>
<td>Wendler are not within ASTM's organization; is that correct?</td>
<td>3</td>
<td>Q. What would you put in a cover E-mail to persons at other organizations in July 21, 2011 that would require a redaction in this case? Do you know?</td>
</tr>
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<td>6</td>
<td>THE WITNESS: Correct.</td>
<td>6</td>
<td>To the extent your answer to that question would require you to disclose any communications in anticipation of litigation or attorney-client communications, I would instruct you not to answer.</td>
</tr>
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<td>7</td>
<td>BY MR. BRIDGES:</td>
<td>8</td>
<td>If you have an answer otherwise, you can go ahead and answer.</td>
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<td>9</td>
<td>Q. And none of them was an attorney for ASTM; is that correct?</td>
<td>10</td>
<td>14:18:38</td>
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<td>12</td>
<td>THE WITNESS: My understanding is that Maureen Brodoff is an attorney and acts as an attorney for ASME -- excuse me, for NFPA.</td>
<td>13</td>
<td>Deposition Exhibit 1045 was marked for identification.</td>
</tr>
<tr>
<td>14</td>
<td>BY MR. BRIDGES:</td>
<td>15</td>
<td>By Mr. Bridges</td>
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<td>15</td>
<td>Q. No. I'm asking did any of those three persons, Ms. Brodoff, Ms. Carli, and Mr. Wendler act as a lawyer for ASTM, to your knowledge?</td>
<td>16</td>
<td>Q. Mr. Grove, have you seen Exhibit 1045 before?</td>
</tr>
<tr>
<td>17</td>
<td>MR. FEE: Same objections.</td>
<td>18</td>
<td>A. I'm familiar with parts of the E-mail that I was -- sent to me.</td>
</tr>
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<td>19</td>
<td>THE WITNESS: Not to my knowledge.</td>
<td>20</td>
<td>Q. You see in the middle Mr. Thomas sent a message saying, &quot;Dear exec members,&quot; and the addressees of that E-mail are above the squiggly line in the middle of the page. Do you see that?</td>
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<td>21</td>
<td>BY MR. BRIDGES:</td>
<td>22</td>
<td>A. I do.</td>
</tr>
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<td>22</td>
<td>Q. On July 21, 2011, was ASTM considering filing a lawsuit against Public Resource or Carl Malamud?</td>
<td>23</td>
<td>14:20:03</td>
</tr>
<tr>
<td>23</td>
<td>MR. FEE: I instruct you not to answer that question.</td>
<td>24</td>
<td>Q. Seeing that, do you understand what Mr. -- what the reference to &quot;exec members&quot; meant?</td>
</tr>
<tr>
<td>25</td>
<td>MR. BRIDGES:</td>
<td>25</td>
<td>Page 137</td>
</tr>
</tbody>
</table>
14:20:13
1 MR. FEE: Objection. Calls for speculation.
2 THE WITNESS: I'd speculate that he's...
3 referring to members of our board of directors that...
4 served on the executive committee.
5 BY MR. BRIDGES: 14:20:26
6 Q. And do you recognize the names in the "To" field of that E-mail in the middle of the page as members of ASTM's board of directors? 14:20:32
7 A. At that time, yes.
8 Q. And was Mary McKiel at the time on the board of directors of ASTM?
9 A. Yes.
10 Q. Mr. Thomas referred in his E-mail to being involved in discussions with DIN regarding strategy and next steps in 14:20:54
11 and next steps. Do you see that?
12 A. I see that.
13 Q. What is DIN?
14 MR. FEE: Objection. Calls for speculation.
15 THE WITNESS: I believe that that would refer to the national standards body of Germany, known as DIN.
16 BY MR. BRIDGES: 14:21:16
17 Q. What interest does ASTM have in being involved in discussions with DIN regarding strategy and next steps in body of Germany regarding strategy and next steps in
18 relation to Carl Malamud? 14:21:31
19 Q. Well, I'm also asking you in your role as a representative of ASTM for purposes of this deposition, to answer to the extent you know and have on legal issues, and I work on government relations issues that I'm familiar with.
20 A. It's not a government relations issue in that reference.
21 Q. Are you saying it refers to a DIN legal issue, and I work on government relations issues apart from legal issues?
22 A. At that time, yes.
23 Q. Does Mr. O'Brien work in the field of government relations? 14:23:10
24 MR. FEE: Objection. Calls for speculation.
26 BY MR. BRIDGES: 14:23:30
27 Q. Who else would be familiar with whether it is a government relations issue?
28 MR. FEE: Objection. Calls for speculation.
29 THE WITNESS: To my knowledge, no. Tom works.
31 THE WITNESS: For purposes of this deposition.
32 BY MR. BRIDGES: 14:23:53
33 Q. Ms. McKiel, at the top of the E-mail thread says, "I believe the ASTM strategy to this point has proven best." What do you understand "the ASTM strategy" in the context of this E-mail thread, to have been?
34 MR. FEE: Objection. Calls for speculation.
35 THE WITNESS: To the extent you have an understanding of the strategy based on legal communications, I'm.
36 Instruction you not to disclose those If you have an independent understanding of an ASTM strategy and have some idea what Ms. McKiel is referencing here, you can answer.
37 MR. FEE: Which topic do you think this relates to?
38 BY MR. BRIDGES: 14:24:05
39 Q. Well, I'm also asking you in your role as a representative of ASTM for purposes of this deposition.
40 MR. FEE: Okay. Well, I --
41 MR. BRIDGES: I'm not going to take deposition time to go through it.
42 MR. FEE: I think it's beyond the scope of his deposition.
43 MR. FEE: My deposition.
44 MR. BRIDGES: 14:24:47
45 Q. And was Mary McKiel at the time on the board of directors of ASTM?
46 A. Yes.
47 Q. What is DIN?
48 MR. FEE: Objection. Calls for speculation.
49 THE WITNESS: Our attorney, Tom O'Brien.
50 BY MR. BRIDGES: 14:24:54
51 Q. Mr. Thomas referred in his E-mail to being involved in discussions with DIN regarding strategy and next steps in body of Germany regarding strategy and next steps in relation to Carl Malamud? 14:25:10
52 MR. FEE: Objection. Calls for speculation.
53 THE WITNESS: Our attorney, Tom O'Brien.
54 BY MR. BRIDGES: 14:25:31
<table>
<thead>
<tr>
<th>Q.</th>
<th>A.</th>
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<tr>
<td>Who at ASTiM would have the most knowledge about the content on the front page of Exhibit 1046?</td>
<td>Recollection of being involved in this.</td>
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<tr>
<td>Tom O'Brien.</td>
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<td>about the content on the front page of Exhibit 1046?</td>
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<td>THE WITNESS: I don't.</td>
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<td>Confusion in business execution issues due to the fact that some of our standards are now available outside the public domain has caused a drag on revenue.</td>
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<td>What else do you know other than direct knowledge?</td>
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<td>THE WITNESS: Well, my understanding is that</td>
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<td>THE WITNESS: So the world justice project, the origination of the E-mail, which I received, yes, I believe I reviewed that document. But from beyond</td>
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<td>THE WITNESS: I would speculate that it would be Rob Steele, who's the secretary general of ISO at this time.</td>
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<td>14:26:38</td>
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<td>THE WITNESS: I can't.</td>
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<td>14:27:01</td>
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<td>THE WITNESS: I mean, once again, I'm not in</td>
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<td>MR. FEE: Objection. Calls for speculation.</td>
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<td>14:27:04</td>
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<td>MR. BRIDGES:</td>
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<td>14:27:19</td>
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<td>14:27:30</td>
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<td>John Pace; is that correct?</td>
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<td>14:27:35</td>
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<td>THE WITNESS: I would speculate that it would be Rob Steele, who's the secretary general of ISO at this time.</td>
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<td>THE WITNESS:</td>
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<td>14:27:52</td>
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<td>THE WITNESS: So to date, I'm aware, based on conversations with our vice president for sales and publications, that the act of putting our standards into the public domain has caused a drag on revenue.</td>
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<td>14:27:54</td>
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<td>14:28:00</td>
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<td>To date, all of Carl's posting have not had a measurable impact on our finances.</td>
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<td>14:28:04</td>
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<td>June 2013. I'm not sure that we did an analysis that would be able to comment on based on that point of time.</td>
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<td>14:28:14</td>
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<tr>
<td>THE WITNESS: I would speculate that it would be Rob Steele, who's the secretary general of ISO at this time.</td>
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<td>THE WITNESS:</td>
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<td>14:29:06</td>
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<td>THE WITNESS: I wouldn't be able to answer that.</td>
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<td>14:29:11</td>
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<td>THE WITNESS:</td>
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<td>14:29:18</td>
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</table>
1. A. I wouldn't be able to give you a specific
2. date, but I understand that that's been the impact to
3. date just through communications and just generally
4. being a member of senior staff at ASTM
5. Q. When is the first time you learned of a drag
6. on revenue for ASTM caused by either Mr. Malamud or a
7. Public Resource?
8. MR FEE: Objection. Asked and answered
9. Vague
10. THE WITNESS: The first time I've learned of
11. it is probably in the last year
12. BY MR BRIDGES: 14:32:49
13. Q. How did you learn of it?
14. A. Well, I was aware that there was -- some
15. number of our standards have been put into the public
16. domain, I've heard from -- reports from John Pace
17. that this was beginning to have an impact on ASTM, and
18. I just can't recall exactly when that was and in what
19. setting, but it was general knowledge at that point
20. Q. "General knowledge"?
21. A. My general knowledge
22. Q. Who else had that general knowledge within
23. ASTM?
24. MR FEE: Objection. Vague
25. THE WITNESS: I would assume Jim Thomas

1. Q. Why not?
2. MR FEE: Same objection. Calls for expert testimony.
3. Q. Why is it hard to quantify?
4. THE WITNESS: It's hard to quantify.
5. BY MR BRIDGES: 14:33:52
6. Q. Why is it hard to quantify?
7. MR FEE: Same objection.
8. THE WITNESS: You'd be speculating based on
9. lost sales.
10. BY MR BRIDGES: 14:34:00
11. Q. Okay. That's the evidence of lost sales?
12. MR. FEE: Same objection.
13. THE WITNESS: So based on my conversation
14. with John Pace, the time that's spent in executing
15. business with customers and with members of the public
16. who are confused or misled to believe that those are
17. the official ASTM standards that are available causes
18. a drag in a time on him and his staff from being able
19. to execute the types of distribution in sales
20. agreements that allow us to fund our enterprise.
21. BY MR BRIDGES: 14:34:42
22. Q. It sounds as though what Mr. Pace described
23. to you was an investment of time dealing with members
24. of the public who were confused or misled. Is that
25. one component of the harm that ASTM has suffered?

1. Q. Who else? 14:32:47
2. A. I would assume Tom O'Brien.
3. Q. Who else?
4. A. I'd be purely speculating beyond that.
5. Q. When did you consult with to prepare yourself
6. for testimony today about the harms to ASTM from the
7. defendant's activities?
9. THE WITNESS: As I stated earlier, John Pace.
10. BY MR BRIDGES: 14:33:10
11. Q. Anybody else? 14:33:15
12. A. Tom O'Brien was there, or has been involved.
13. Q. Did he furnish you information for your
14. testimony today?
15. A. No.
16. Q. Who else?
17. A. That would be it.
18. Q. How many dollars has ASTM lost because of the
19. activities of defendants?
21. THE WITNESS: At this time, to my knowledge,
22. we're not able to quantify the loss.
23. BY MR BRIDGES: 14:33:44

2. Q. Mischaracterizes his testimony
3. BY MR BRIDGES: 14:35:13
4. Q. I'm just asking to explore the testimony
5. A. That might be one Correct
6. Q. Well, what sales does ASTM believe did not
7. occur because of the activities of defendants in this
8. case?
10. THE WITNESS: It's my understanding that
11. something like 88,500 accesses have been made to some
12. of the documents that have been put in the public
13. domain, and my conversations with John Pace indicate
14. that it's reasonable to assume that some of those
15. 88,500 downloads of information that's in the public
16. domain would have been captured by ASTM under our
17. distribution and sales possibilities
18. BY MR BRIDGES: 14:36:14
19. Q. What information does ASTM have about lost
20. sales apart from the number of accesses to the
21. defendant's website and to the Internet archive?
22. MR FEE: Objection. Asked and answered
23. THE WITNESS: Subject of expert testimony
24. Sorry. Go ahead
14:36:33 THE WITNESS: I don't have anything.

14:36:35 additional.

14:36:36 BY MR. BRIDGES:

14:36:36 Q. And you're here as a corporate representative.

14:36:37 of ASTM to provide the information available to ASTM.

14:36:38 on that topic; correct?

14:36:39 MR. FEE: Objection. He's here to provide.

14:36:40 testimony regarding all the topics we identified.

14:36:42 earlier today. Of course, we'll have expert testimony.

14:36:42 on this subject as well.

14:36:47 You can answer.

14:36:50 THE WITNESS: Yes.

14:36:55 BY MR. BRIDGES:

14:36:55 Q. So I need to know every other fact you're aware of that pertains to harms that ASTM has suffered from the defendants. So, please, I'll take as much time as we need. Tell me every other fact that you're aware of that pertains to the harm that ASTM has suffered as a consequence of the defendants.


14:37:21 it calls for a narrative. Objection as to vague.

14:37:28 Now, we're talking about harms as opposed to financial harms. That's how I understand the question.

14:37:30 Can you read that back just to make sure I didn't miss anything?

14:37:34 (Record read.)

14:37:35 MR. FEE: I'm sorry. Why do we need to -- just if you got objections, go ahead and state them.

14:38:02 MR. FEE: Oh, I don't want to hear the objections.

14:38:02 (Record read.)

14:38:02 MR. FEE: I think that's it. Okay.

14:38:02 THE WITNESS: Well, ASTM is known globally for the quality and technical excellence of its documents because we have a very robust standards development and quality control process. My understanding, and based on my direct knowledge of viewing certain documents that have been put in the public domain, these documents contain errors. I've seen standards where tables have been upside down. I've seen tables and columns and rows that don't align properly.

14:38:39 So if there's a real risk to ASTM's reputation and to ASTM's standing in the global economy, if customers or the public or other stakeholders utilize these documents with the expectation and understanding that these were the official ASTM documents, and products and materials that the defendants' actions contributed in any way to property damage, errors contributed in any way to property damage, injury or loss of life because of the sensitive, important role that our standards play in protecting life, and safety.


14:39:47 THE WITNESS: I can't think of additional harms at this time.

14:40:00 MR. FEE: Objection to form. Objection.

14:40:20 "I didn't buy the standard I was planning to buy because I could find it for free on the Internet from Public Resource or the Internet archive?"

14:40:31 MR. FEE: Objection to form.

14:40:54 THE WITNESS: I don't have knowledge of that.

14:40:58 Byron because I could find it for free on the Internet from Public Resource or the Internet archive?

14:41:00 MR. FEE: Objection to form.

14:41:26 THE WITNESS: Well, I would be concerned -- I know the important role our standards play in health, life, and safety. I would certainly be concerned if some of these documents that contain factual and other errors contributed in any way to property damage, injury or loss of life because of the sensitive, important role that our standards play in protecting life, and safety.

14:41:26 THE WITNESS: I don't have knowledge of that.

14:41:30 MR. FEE: Objection to form.

14:41:31 MR. BRIDGES:

14:41:31 Q. What other harms to ASTM?


14:41:58 THE WITNESS: I don't have knowledge of that.

14:42:14 MR. BRIDGES:

14:42:14 Q. Has ASTM heard from any customers that said, "I didn't buy the standard I was planning to buy because I could find it for free on the Internet from Public Resource or the Internet archive?"

14:42:31 MR. FEE: Objection to form.

14:42:31 MR. BRIDGES:

14:42:31 Q. What other harms to ASTM?

14:42:34 THE WITNESS: I can't think of additional harms.

14:43:00 MR. FEE: Objection to form.

14:43:15 THE WITNESS: I didn't have the standard I was planning to buy because I could find it for free on the Internet from Public Resource or the Internet archive?

14:43:37 Call for expert testimony. Objection to the extent.

14:43:47 MR. FEE: Same objections.

14:44:19 THE WITNESS: So based on my conversations with John Pace, he -- it's my understanding that there is this confusion with certain customers and certain members of the public that has caused this inability to execute sales on a timely basis.

14:44:37 THE WITNESS: I don't have knowledge of that.

14:44:51 MR. BRIDGES:

14:44:51 Q. Does anybody at ASTM have knowledge of that?

14:45:04 type of communication?

14:45:15 MR. BRIDGES: I'm asking him as a corporate representative.

14:45:32 MR. FEE: Objection to form.

14:45:32 MR. BRIDGES: I'm asking him as a corporate representative.

14:46:01 MR. FEE: Calls for speculation.

14:46:01 MR. BRIDGES: I'm asking him as a corporate representative.

14:46:24 MR. FEE: Same objection.

14:46:34 THE WITNESS: I don't have knowledge of that.

14:46:52 THE WITNESS: I can't think of additional.

14:47:15 MR. FEE: Same objections.

14:47:26 THE WITNESS: I don't have knowledge of that.

14:47:47 MR. FEE: Same objections.

14:48:17 Q. Did Mr. Pace put a dollar amount on his estimate of lost revenues to ASTM as a consequence of the defendants' actions?


14:49:09 A. I'm not able to answer that at this time.

14:49:16 Q. What members of the public?

14:49:35 A. I'm not able to answer that at this time.

14:49:56 THE WITNESS: Well, I would be concerned -- I know the important role our standards play in health, life, and safety. I would certainly be concerned if some of these documents that contain factual and other errors contributed in any way to property damage, injury or loss of life because of the sensitive, important role that our standards play in protecting life, and safety.

14:50:19 Call for expert testimony. Objection to the extent.

14:50:32 MR. FEE: Objection to form.

14:50:32 MR. BRIDGES:

14:50:32 Q. As a representative of ASTM at this time.
| 25 | Q.  Was it more than a year ago? | 14:44:02 |
| 24 | BY MR. BRIDGES: | 14:44:30 |
| 23 | THE WITNESS: | 14:43:28 |
| 22 | MR. FEE: | 14:43:26 |
| 21 | THE WITNESS: | 14:44:33 |
| 20 | THE WITNESS: | 14:44:31 |
| 19 | THE WITNESS: | 14:44:29 |
| 18 | THE WITNESS: | 14:44:27 |
| 17 | THE WITNESS: | 14:44:25 |
| 16 | THE WITNESS: | 14:44:23 |
| 15 | THE WITNESS: | 14:44:21 |
| 14 | THE WITNESS: | 14:44:19 |
| 13 | THE WITNESS: | 14:44:17 |
| 12 | THE WITNESS: | 14:44:15 |
| 11 | THE WITNESS: | 14:44:13 |
| 10 | THE WITNESS: | 14:44:11 |
| 9 | THE WITNESS: | 14:44:09 |
| 8 | THE WITNESS: | 14:44:07 |
| 7 | THE WITNESS: | 14:44:05 |
| 6 | THE WITNESS: | 14:44:03 |
| 5 | THE WITNESS: | 14:44:01 |
| 4 | THE WITNESS: | 14:44:00 |
| 3 | MR. FEE: | 14:44:08 |
| 2 | THE WITNESS: | 14:44:06 |
| 1 | MR FEE: | 14:44:04 |

1. deposition, does ASTM have any estimate of the dollar amount of lost revenues to it as a consequence of the defendants' actions?  
2. MR. FEE: Objection. Calls for expert testimony. Let me see if that's really a topic that he's been designated on.  
3. MR. FEE: Hold on. I'm waiting to see if that's actually a topic he's been designated on.  
4. MR. BRIDGES: He may answer.  
5. MR. BRIDGES: Make the objections, and if it's superfluous and he hasn't been designated on.  
6. I'd like to go ahead and get an answer.  
7. THE WITNESS: More than a week ago, I believe.  
8. So, yes.  
9. THE WITNESS: Not to my knowledge.  
10. THE WITNESS: I'm not sure.  
11. MR. FEE: Same objection -- objections, I think.  
12. THE WITNESS: I'm not sure.  
13. MR. FEE: Same objection.  
14. THE WITNESS: I'm not sure.  
15. MR. BRIDGES:  
16. Q. Do you know whether ASTM had any knowledge of errors in connection with defendants posting of ASTM standards more than a week ago?  
17. MR. FEE: It's beyond the scope of his designation as well.  
18. Q. Was it more than two weeks ago?  
20. MR. BRIDGES: He may answer.  
21. THE WITNESS: I'm not sure.  
22. MR. FEE: Hold on. I'm waiting to see if that's really a topic that he's been designated on.  
23. MR. BRIDGES: He may answer.  
24. THE WITNESS: Not to my knowledge.  
25. MR. BRIDGES:  

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22. MR. FEE: Hold on. I'm waiting to see if that's really a topic that he's been designated on.  
23. MR. BRIDGES: He may answer.  
24. THE WITNESS: Not to my knowledge.  
25. MR. BRIDGES:
Q. Does it frighten you?

Q. Is that error going to lead to death or injury to property?

Q. And is ASTM really concerned about death or injury to property resulting from the defendants posting of standards?

Q. Is that clear to you?

Q. One? Would it surprise you if there were really just one?

A. Yes.

A. Thank you.

A. That's a legal matter. So I'd refer to counsel.

A. I'm not certain.

A. I'm not certain.

A. I'm not certain.

A. I'm sorry. Are you becoming a witness now?

A. I'm not certain.

A. I'm not certain.

A. I'm not certain.

A. I'm not certain.

A. I'm not certain.

A. I'm not certain.
1 THE WITNESS: I'm not personally no 14:51:25
2 MR. BRIDGES: 14:51:27
3 Q. Are you aware of how ASTM standards are 14:51:27
4 proofread? 14:51:44
5 MR FEE: Objection Vague 14:51:47
6 THE WITNESS: Yes, generally 14:51:51
7 BY MR BRIDGES: 14:51:53
8 Q. How? 14:51:53
9 A. There's a rigorous process under which at 14:51:54
10 every point in the standards development process 14:51:58
11 there's peer review of the standard and of the 14:52:00
12 document, and as it goes through the process, as it 14:52:05
13 works through the ASTM process, which involves many 14:52:09
14 steps, at the end there's an editor, an ASTM staff 14:52:13
15 that reviews the standard and insures that the 14:52:21
16 document purports to be what the committee intended it 14:52:26
17 for -- for it to be 14:52:29
18 Q. And do ASTM editors catch every mistake? 14:52:32
19 MR FEE: Objection Calls for speculation 14:52:36
20 THE WITNESS: I'm not aware of errors, but it 14:52:44
21 wouldn't surprise me if there were some 14:52:47
22 BY MR BRIDGES: 14:52:49
23 Q. Does ASTM ever issue errata to its standards? 14:52:49
24 MR FEE: Objection Vague I think that's 14:52:55
25 also beyond the scope of his designation 14:52:59

1 more than one error in the ASTM standards? 14:50:24
2 MR. FEE: Same objections. 14:50:28
3 THE WITNESS: I'd be speculating. 14:50:31
4 BY MR. BRIDGES: 14:50:34
5 Q. Well, you have testified as to what would 14:50:34
6 surprise you. I'd like to know what would surprise 14:50:34
7 you. 14:50:35
8 MR. FEE: Same objections. 14:50:37
9 THE WITNESS: I'm aware of ASTM's rigorous 14:50:37
10 quality control process and the value of bringing 14:50:40
11 people together under an open, transparent process and 14:50:42
12 the important role that ASTM staff plays in helping to 14:50:47
13 ensure the quality of our documents. And I would be 14:50:49
14 skeptical that that could be replicated if any steps 14:50:54
15 were bypassed. So -- 14:50:59
16 BY MR. BRIDGES: 14:51:03
17 Q. Would it surprise you for an ASTM standard to 14:51:03
18 have three or more errors in it? 14:51:05
19 MR. FEE: Same objections. 14:51:08
20 THE WITNESS: Would it surprise me? Yes. 14:51:13
21 BY MR. BRIDGES: 14:51:16
22 Q. Are you aware of any ASTM standards with 14:51:16
23 three or more errors? 14:51:19
24 MR. FEE: Same objections. Just give me a 14:51:21
25 second to object. 14:51:23

1 THE WITNESS: I'm not familiar with the term 14:53:06
2 "errata." 14:53:07
3 BY MR. BRIDGES: 14:53:08
4 Q. Does ASTM ever issue corrigenda to its 14:53:08
5 standards? 14:53:13
7 scope of his designation. 14:53:15
8 THE WITNESS: I'm not certain. 14:53:20
9 BY MR. BRIDGES: 14:53:21
10 Q. Does ASTM ever issue a notice of errors in 14:53:21
11 any of its standards? 14:53:28
12 MR. FEE: Same objections. 14:53:31
13 THE WITNESS: I'm not certain. 14:53:32
14 BY MR. BRIDGES: 14:53:34
15 Q. What happens if ASTM publishes and 14:53:34
16 distributes a standard that's widely held by persons 14:53:37
17 and then discovers that there is a mistake in the 14:53:40
18 standard? How does ASTM notify the public? 14:53:42
19 MR. FEE: Objection. Calls for speculation. 14:53:45
20 It's beyond the scope of his designation, and 14:53:47
21 compound. 14:53:50
22 THE WITNESS: I'm not able to explain that 14:53:52
23 process. 14:53:53
24 BY MR. BRIDGES: 14:53:55
25 Q. Would it harm ASTM's reputation to issue a 14:53:55

1 standard with mistakes? 14:53:58
2 MR. FEE: Objection Calls for expert 14:53:59
3 testimony It's beyond the scope of his designation 14:54:01
4 THE WITNESS: I'm not certain 14:54:07
5 BY MR BRIDGES: 14:54:09
6 Q. How has ASTM's reputation suffered from the 14:54:09
7 activities of the defendants? 14:54:15
8 MR FEE: Objection Calls for expert 14:54:24
9 testimony 14:54:25
10 THE WITNESS: I'm not certain 14:54:28
11 BY MR BRIDGES: 14:54:29
12 Q. Have you noticed an effect on ASTM's 14:54:29
13 reputation as a consequence of the defendants' 14:54:32
14 activities? 14:54:35
15 A. I have not 14:54:37
16 Q. What instances are ASTM aware of, of people 14:54:44
17 being confused about the relationship between ASTM and 14:54:50
18 the defendant? 14:54:57
19 MR FEE: Objection Vague Asked and 14:54:59
20 answered 14:55:02
21 THE WITNESS: Based on communications with 14:55:04
22 our sales and publications vice president 14:55:06
23 BY MR BRIDGES: 14:55:09
24 Q. What did those communications convey to you? 14:55:09
25 A. That there was some level of confusion in the 14:55:14
1 marketplace which was impacting business execution. 14:55:18
2 Q. What was the confusion in the marketplace? 14:55:26
3 A. Potential customers thought they would no 14:55:32
4 longer need to access documents through ASTM if they 14:55:38
5 were provided at a different place. 14:55:43
6 Q. Who were those "potential customers"? 14:55:46
7 MR. FEE: Objection. Asked and answered. 14:55:49
8 THE WITNESS: I don't know. 14:55:51
9 BY MR. BRIDGES: 14:55:59
10 Q. Is it -- did Mr. Pace identify them to you 14:55:59
11 and you've forgotten them? 14:56:02
12 A. I don't recall. I don't think so. 14:56:08
13 Q. Do you recall Mr. Pace identifying any of 14:56:10
14 those potential customers? 14:56:17
15 MR. FEE: Objection. Asked and answered. 14:56:19
16 THE WITNESS: I don't recall. 14:56:21
17 BY MR. BRIDGES: 14:56:22
18 Q. Did Mr. Pace tell you how many potential 14:56:23
19 customers had that experience? 14:56:25
20 A. No. 14:56:30
21 Q. Did Mr. Pace explain to you any 14:56:30
22 characteristics of the potential customers who had 14:56:34
23 that experience? 14:56:36
24 MR. FEE: Objection to form. 14:56:37
25 THE WITNESS: No. 14:56:40
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1 MR. FEE: Objection. Calls for expert 14:58:15
2 testimony. Vague. 14:58:17
3 THE WITNESS: Yes. 14:58:22
4 BY MR. BRIDGES: 14:58:24
5 Q. What harm does it cause? 14:58:24
6 A. It creates the impression that this is the 14:58:28
7 official ASTM standard when, in fact, it may not be, 14:58:30
8 may contain errors, or it may be a different version 14:58:35
9 than the version that ASTM is currently maintained. 14:58:40
10 Q. What harm -- explain to me, please, the facts 14:59:04
11 of the kinds of harm that ASTM suffers if the ASTM 14:59:11
12 logo is on an older version than the current version 14:59:22
13 of an ASTM standard and it is posted to the Internet 14:59:30
14 by Public Resource. 14:59:37
15 MR. FEE: Objection. May call for expert 14:59:39
16 testimony. To form as well. 14:59:41
17 Go ahead. 14:59:44
18 BY MR. BRIDGES: 14:59:48
19 Q. What harm does it cause? 14:59:48
20 A. It creates the impression that this is the 14:59:49
21 official ASTM standard when, in fact, it may not be, 14:59:53
22 MR. FEE: Same objections. 14:59:57
23 THE WITNESS: Well, by going to a source 15:00:00
24 other than ASTM for a document such as this that 15:00:01
25 contains ASTM's logo, I would be concerned that the 15:00:05
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1 public isn't accessing the most recent version of a 15:00:15
2 standard which may have been revised to address new 15:00:18
3 hazards in the marketplace or state of the artistry 15:00:21
4 practice that needs to be captured. 15:00:24
5 BY MR. BRIDGES: 15:00:34
6 Q. Do you understand that Public Resource 15:00:34
7 intends to post to the Internet only those ASTM 15:00:38
8 standards that have been incorporated by reference? 15:00:43
9 MR. FEE: Objection. Calls for speculation 15:00:45
10 as to Public Resource's intention. 15:00:48
11 THE WITNESS: I don't fully understand the 15:00:55
12 strategy. 15:00:59
13 BY MR. BRIDGES: 15:01:00
14 Q. Do you understand that it is Public 15:01:00
15 Resource's practice to post standards only if they are 15:01:01
16 incorporated by reference? 15:01:04
17 MR. FEE: Objection. Lack of foundation. 15:01:06
18 Calls for speculation. 15:01:08
19 THE WITNESS: Based on the documents I've 15:01:14
20 seen that have been posted, it's my understanding that 15:01:16
21 they have been incorporated by reference, yes. 15:01:18
22 BY MR. BRIDGES: 15:01:21
23 Q. Is it misleading, in your view, to provide to 15:01:21
24 the public an older version of a standard -- of an 15:01:25
25 ASTM standard where that older version is incorporated 15:01:43
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1 by reference?  15:01:47
2 MR. FEE: Objection. Vague as to whether or not that older version is authentic. 15:01:51
4 BY MR. BRIDGES:  15:01:57
5 Q. Is it misleading, in your view, to have the ASTM logo on an older version of an ASTM standard? 15:02:09
6 where the older version has been incorporated by reference? 15:02:07
7 ASTM logo on an older version of an ASTM standard 15:02:01
8 9 where the older version has been incorporated by reference? 15:02:07
10 THE WITNESS: My concern would be that to get the most current version of any document, you more than likely need to come to ASTM or one of our licensed distributors. 15:02:31
11 12 BY MR. BRIDGES:  15:02:32
13 Q. But if somebody is interested in, let's say, a 2008 standard because the 2008 standard has been incorporated by reference but a more recent standard has not been, what is the harm to ASTM from the inclusion of the ASTM logo on that 2008 standard? 15:02:49
14 posted by Public Resource? 15:02:55
15 MR. FEE: Objection. Calls for speculation. 15:02:58
16 THE WITNESS: Since I'm not an attorney and I'm not familiar with the regulatory -- the connection between regulations and law, I will share my observations. 15:03:06
17 BY MR. BRIDGES:  15:03:12
18 Q. And if somebody is interested in, let's say, a 2008 standard because the 2008 standard has been incorporated by reference but a more recent standard has not been, what is the harm to ASTM from the inclusion of the ASTM logo on that 2008 standard? 15:02:49
19 Q. Is it misleading, in your view, to have the ASTM logo on an older version of an ASTM standard? 15:03:04
20 to public -- strike that. 15:03:43
21 Is it ASTM's view that it's misleading to display the ASTM logo on standards currently available on the Internet when the standards are not the most recent versions? 15:03:54
22 using "misleading" as a legal term, I object on that ground. I also object to the vagueness of that conclusion with respect to "problematic," I object on a legal perspective -- just repeat that? 15:03:18
23 7 to stop industry from wanting to use the most recent version of the standard. 15:03:26
24 Q. And is it ASTM's view that it's misleading to display the ASTM logo on standards currently available on the Internet when the standards are not the most recent versions? 15:03:54
25 THE WITNESS: That's a legal perspective -- just repeat that. 15:03:43
1 difference to you whether the ASTM logo is or is not 15:06:58
2 on the standards, the ASTM standards that defendant 15:07:04
3 has posted to the Internet? 15:07:10
4 MR. FEE: Are you asking him personally now 15:07:13
5 for his opinion? 15:07:14
6 MR. BRIDGES: In his position at ASTM. 15:07:15
7 MR. FEE: Then it's beyond the scope of his 15:07:18
8 designation. I object on that basis. All the other 15:07:19
9 objections as last time, as well. 15:07:22
10 And to the extent that your position is based 15:07:23
11 on legal counsel, I would instruct you not to disclose 15:07:26
12 anything based on legal counsel. If you have an 15:07:29
13 answer still, you can go ahead and answer. 15:07:33
14 THE WITNESS: My position would be based on 15:07:36
15 legal counsel. 15:07:37
16 MR. BRIDGES: There's a misunderstanding. I 15:07:41
17 wasn't asking what your position was. I said, "in 15:07:44
18 your position." 15:07:47
19 Q. In your position at ASTM, does it make a 15:07:47
20 difference to you whether the ASTM logo is or is not 15:07:49
21 on the ASTM standards the defendant has posted to the 15:07:52
22 Internet? 15:07:55
23 MR. FEE: I'll make all the same objections, 15:07:57
24 and to the extent whether or not something makes a 15:07:59
25 difference to you is based upon your understanding 15:08:03
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1 document you had received a notice internally to 15:26:25
2 preserve all documents for litigation in this case? 15:26:30
3 A. No, it does not. 15:26:36
4 Q. Did you ever receive such a notice to hold 15:26:37
5 documents for litigation? 15:26:43
6 MR. FEE: Hold on a second. Actually, if 15:26:44
7 you'll agree that that's not a waiver of anything, 15:26:46
8 I'll let him answer that. 15:26:49
9 MR. BRIDGES: Correct. 15:26:51
10 THE WITNESS: Can you just restate that one 15:26:54
11 more time? I got lost. 15:26:56
12 BY MR. BRIDGES: 15:26:57
13 Q. Did you ever receive such a notice to hold 15:26:57
14 documents for this litigation? 15:26:59
15 A. Could you define "hold." 15:27:01
16 Q. To preserve documents against disposal or 15:27:03
17 destruction for the purposes of this litigation. 15:27:05
18 A. Yes. 15:27:08
19 Q. Do you know when you received that notice? 15:27:09
20 A. I don't recall. 15:27:12
21 Q. Do you know how long ago it was? 15:27:13
22 A. I don't recall specifically, no. 15:27:20
23 Q. Do you recall what year it was? 15:27:21
24 A. Fall of 2013. 15:27:29
25 Q. Okay. Were you aware of the filing of this 15:27:32
Page 175
1 the presence of the ASTM logo and trademarks on the 15:09:22
2 ASTM standards that defendant has posted to the 15:09:26
3 Internet harms ASTM? 15:09:30
4 MR. FEE: Objection Asked and answered 15:09:35
5 Calls for expert testimony 15:09:37
6 THE WITNESS: It creates the perception, 15:09:42
7 problem that's been identified by John Pace as a drag 15:09:45
8 on business execution 15:09:48
9 I'd also like to notice we've been going for 15:09:53
10 over an hour So at an appropriate time 15:09:56
11 MR BRIDGES: We can take a break if you 15:10:02
12 want We can do it now 15:10:02
13 THE WITNESS: All right 15:10:06
14 THE VIDEOGRAPHER: We're going off the record 15:10:07
15 at 15:09 15:10:08
16 (A recess was taken from 3:09 p.m 15:26:01
17 to 3:26 p.m) 15:26:01
18 THE VIDEOGRAPHER: Back on the record at 15:26:02
19 3:26 p.m 15:26:05
20 BY MR. BRIDGES: 15:26:07
21 Q Mr Grove, let me direct your attention back 15:26:07
22 to Exhibit 1044 for a minute It's one with the 15:26:10
23 redacted band across the top Does this document 15:26:15
24 refresh your recollection as to whether, roughly, 15:26:22
25 around the time of that document or before the 15:26:24
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45 (Pages 174 - 177)
1 lawsuit being pushed back several months from its original intended timing?  
2 To the extent that it would require you to disclose communication with counsel, I instruct you not to answer that. If you became aware otherwise, you can go ahead. 
3 THE WITNESS: That would involve communication with counsel. 
4 BY MR. BRIDGES: 
5 Q. Are you aware that plaintiffs relayed that fact to persons outside the plaintiff group? 
6 THE WITNESS: I'm not aware of that. 
7 A. I'm sorry, I don't recall. It was in 2013. 
8 THE WITNESS: I believe he's announcing the reading room in January 2013? 
9 A. Some documents went up before January, but 
10 do that without examining the issue a little bit. 
11 Q. So when you say that ASTM went live with the reading room, what you meant was that ASTM's reading room was available for public access, is that correct? 
12 THE WITNESS: Yes. 
13 A. Some documents went up before January, but we were concerned about if it would function and work, and I think we wanted to get a little experience with it before we broadcast it too widely. 
14 Q. And that happened in January 2013? 
15 A. Some documents went up before January, but we were concerned about if it would function and work, and I think we wanted to get a little experience with it before we broadcast it too widely. 
16 A. Some documents went up before January, but we were concerned about if it would function and work, and I think we wanted to get a little experience with it before we broadcast it too widely. 
17 THE WITNESS: I believe he's announcing the reading room in January 2013? 
18 Q. And that happened in January 2013? 
19 A. Some documents went up before January, but we were concerned about if it would function and work, and I think we wanted to get a little experience with it before we broadcast it too widely. 
20 Q. And that happened in January 2013? 
21 A. Some documents went up before January, but we were concerned about if it would function and work, and I think we wanted to get a little experience with it before we broadcast it too widely. 
22 Q. And that happened in January 2013? 
23 A. Some documents went up before January, but we were concerned about if it would function and work, and I think we wanted to get a little experience with it before we broadcast it too widely. 
24 Q. And that happened in January 2013? 
25 A. Some documents went up before January, but we were concerned about if it would function and work, and I think we wanted to get a little experience with it before we broadcast it too widely.
19 agencies informing them of the creation of the reading room was part of that messaging as well in 2013.

18 to government agencies, to the office of Records Administration and to the office of the national records to national archives.

17 A. I'm sorry. I believe that concludes all

16 that I can recall

15 A. Yes. Could have been

14 Q. What was the reporter that was asking us about public access issues?

13 MR FEE: I think you misspoke. You said "NFPA"?

12 MR BRIDGES: Yes. Excuse me. Thank you.

11 Q. Was there any -- were there any announcements to the general public apart from those whom you would call stakeholders?

10 ASTM members and stakeholders?

9 stakeholders?

8 public apart from what you would call NFPA members and

7 were any announcements to the general public apart from those whom you would call

6 have -- strike that

5 Q. How many of those audiences did not already know there was a reading room?

4 that I can recall

3 A. And I'm sorry. I believe that concludes all

2 Q. What else?

1 this litigation?
Q. And if you’re very proud of it, you would possibly? Is that right?

MR. FEE: Objection. This is beyond the scope of his designation, among other things.

THE WITNESS: I don't have our press releases. I know we issued 350 press releases a year.

MR. FEE: Objection. Vague. The WITNESS: I have no concerns with anyone knowing about it.

Q. Did ASTM investigate the sources of Google funding?

MR. FEE: Same objection. Vague and beyond the scope of his designation. Among other things.

THE WITNESS: Again, I have no concerns. I'm not sure. Yes, I would.

1. hear about it.
2. BY MR. BRIDGES: 15:38:47
3. Q. And if you’re very proud of it, you would possibly? Is that right?
4. want to make sure that as many people hear about it as possible.
5. BUT YOU CAN ANSWER.
6. MR. FEE: Objection. This is beyond the scope of his designation, among other things.
7. scope of his designation, among other things.
8. But you can answer.
9. THE WITNESS: I have no concerns with anyone knowing about it.
10. BY MR. BRIDGES: 15:39:03
11. Q. And would you want as many people as possible to know about it?
12. MR. FEE: Same objection. It's vague and beyond the scope of his designation, among other things.
13. asked and answered.
14. THE WITNESS: Again, I have no concerns.
15. Yes, I would.
16. BY MR. BRIDGES: 15:39:16
17. Q. So did ASTM issue any broad press releases to the general American public about the availability of any of its standards on its reading room?
18. MR. FEE: Objection. Beyond the scope of his designation. Among other things.
19. THE WITNESS: I don't have our press releases. I know we issued 350 press releases a year.
20. So I'm not certain if we announced it through a press release. BUT YOU CAN ANSWER.

1. connection with this litigation at the request of counsel, I instruct you not to disclose that. If you did something at the direction of doctrine covers. You see any protection here. But you can answer. THE WITNESS: That's not what the work product scope covers.
2. about privilege issues with respect to this line of counsel in connection with this litigation, I instruct you not to disclose that. If you did something at the direction of doctrine covers. You see any protection here. But you can answer. THE WITNESS: That's not what the work product scope covers.
3. to which I said, "No." That would have been a legal matter.
4. BUT YOU CAN ANSWER.
5. BY MR. BRIDGES: 15:41:05
6. Q. I said have you no knowledge of communicating with David Carmel at International Code Council about what you know about Public Resource's funding?
7. MR. FEE: Same instruction. If it requires you to disclose something you learned through -- at the request of counsel, you should not answer it.
8. THE WITNESS: I'm sorry. I'm just asking about a disclosure. You're introducing the concept of how he may have learned about something. But if he's communicating something to a non-party, then I don't see any protection here.
9. You to disclose something you learned through -- at the request of counsel, you should not answer it.
10. MR. BRIDGES: I'm sorry. I'm just asking about a disclosure. You're introducing the concept of how he may have learned about something. But if he's communicating something to a non-party, then I don't see any protection here.
11. MR. FEE: Same instruction with respect to David Carmel at International Code Council about what you know about Public Resource's funding?
12. MR. FEE: Same instruction with respect to David Carmel at International Code Council about what you know about Public Resource's funding?
13. THE WITNESS: I may have.
14. BY MR. BRIDGES: 15:43:18
15. Q. Why may you have? What would be your purpose in doing that?
16. MR. FEE: To the extent that you are doing it at the direction of counsel, you should not disclose those communications.
17. THE WITNESS: I'm not sure.
18. BY MR. BRIDGES: 15:43:35
19. Q. Has ASTM, to your knowledge, ever had a contract or an agreement with International Code Council regarding this litigation?
20. MR. FEE: Objection. Let me talk to you about privilege issues with respect to this line of questioning. Let's take a break.
21. THE WITNESS: I may have.
22. BY MR. BRIDGES: 15:44:00
23. Q. You have no knowledge of communicating with David Carmel at International Code Council about what you know about Public Resource's funding?
24. MR. FEE: Objection. Let me talk to you about privilege issues with respect to this line of questioning. Let's take a break.
25. THE WITNESS: I have no knowledge of that.
26. BY MR. BRIDGES: 15:42:04
27. Q. You have no knowledge of communicating with David Carmel at International Code Council about what you know about Public Resource's funding?
28. MR. FEE: Same instruction. If it requires you to disclose something you learned through -- at the request of counsel, you should not answer it.
29. THE WITNESS: I'm sorry. I'm just asking about a disclosure. You're introducing the concept of how he may have learned about something. But if he's communicating something to a non-party, then I don't see any protection here.
30. You to disclose something you learned through -- at the request of counsel, you should not answer it.
31. MR. BRIDGES: I'm sorry. I'm just asking about a disclosure. You're introducing the concept of how he may have learned about something. But if he's communicating something to a non-party, then I don't see any protection here.
32. MR. FEE: Same instruction with respect to David Carmel at International Code Council about what you know about Public Resource's funding?
33. MR. FEE: Same instruction with respect to David Carmel at International Code Council about what you know about Public Resource's funding?
34. THE WITNESS: I may have.
35. BY MR. BRIDGES: 15:43:18
36. Q. Why may you have? What would be your purpose in doing that?
37. MR. FEE: To the extent that you are doing it at the direction of counsel, you should not disclose those communications.
38. THE WITNESS: I'm not sure.
39. BY MR. BRIDGES: 15:43:35
40. Q. Has ASTM, to your knowledge, ever had a contract or an agreement with International Code Council regarding this litigation?
41. MR. FEE: Objection. Let me talk to you about privilege issues with respect to this line of questioning. Let's take a break.
42. THE WITNESS: I have no knowledge of that.
43. BY MR. BRIDGES: 15:42:04
44. Q. You have no knowledge of communicating with David Carmel at International Code Council about what you know about Public Resource's funding?
45. MR. FEE: Same instruction. If it requires you to disclose something you learned through -- at the request of counsel, you should not answer it.
46. THE WITNESS: I'm sorry. I'm just asking about a disclosure. You're introducing the concept of how he may have learned about something. But if he's communicating something to a non-party, then I don't see any protection here.
47. You to disclose something you learned through -- at the request of counsel, you should not answer it.
48. MR. BRIDGES: I'm sorry. I'm just asking about a disclosure. You're introducing the concept of how he may have learned about something. But if he's communicating something to a non-party, then I don't see any protection here.
49. MR. FEE: Same instruction with respect to David Carmel at International Code Council about what you know about Public Resource's funding?
50. MR. FEE: Same instruction with respect to David Carmel at International Code Council about what you know about Public Resource's funding?
Q. Well, my curiosity is twice now you've used a word or a name that I've never used. 15:48:00
A. Right. 15:48:06
Q. And that name is "Google." And you used it just now. And I had asked you if ASTM had investigated the sources of Public Resource's funding, 15:48:07
6 and you said, "I have no knowledge of that." So what causes you to associate Google with Public Resource in 15:48:12
9 your testimony today? 15:48:25
MR. FEE: Hold on. 15:48:31
THE WITNESS: Oh, sorry. 15:48:36
MR. FEE: Objection. Vague. It's beyond the scope of his designation. 15:48:37
The WITNESS: To the extent that your association is because of communications with counsel, I'd instruct 15:48:39
16 you not to disclose those. If you have some other 15:48:43
17 basis for an association, you can go ahead and answer. 15:48:48
18 THE WITNESS: Okay. So my recollection is based on information -- privileged information with 15:48:53
19 counsel. 15:49:00
20 BY MR. BRIDGES: 15:49:10
22 Q. What else -- well, I think we've got a serious waiver issue because I've got a document that 15:49:14
24 shows him communicating information from -- 15:49:16
25 MR. FEE: Well, show him the document. 15:49:19

THE WITNESS: Okay. Was there a 1047. 15:50:07
MR. BRIDGES: I'm going to hand the witness exhibit 15:50:11
19 International Code Council about what you knew about 15:50:12
20 Public Resource's funding, and my question was have 15:50:13
21 you no knowledge of communicating to David Carmel at 15:50:14
22 Public Resource's funding. Do you recall my asking 15:50:15
23 that question? 15:50:16
24 A. Could I ask you to go one question before 15:50:17
25 that? 15:50:18
Q. Before that was "Did ASTM investigate the sources of Public Resource's funding?" 15:50:22
A. Okay. 15:50:27
MR. FEE: He didn't ask you a question. Let him get to his question. 15:50:30
What is your question? 15:50:31
THE WITNESS: Is there no way I can answer that question? 15:50:32
MR. FEE: Objection. Vague. It's beyond the scope of his designation. 15:50:37
To the extent that your association is because of communications with counsel, I'd instruct you not to disclose those. If you have some other basis for an association, you can go ahead and answer. THE WITNESS: Okay. So my recollection is based on information -- privileged information with counsel. BY MR. BRIDGES: Q. What else -- well, I think we've got a serious waiver issue because I've got a document that shows him communicating information from --

THE WITNESS: Okay. Was there a 1047. MR. BRIDGES: I'm going to hand the witness exhibit 19 International Code Council about what you knew about Public Resource's funding, and my question was have you no knowledge of communicating to David Carmel at Public Resource's funding. Do you recall my asking that question? A. Could I ask you to go one question before that? Q. Before that was "Did ASTM investigate the sources of Public Resource's funding?" A. Okay. MR. FEE: He didn't ask you a question. Let him get to his question. What is your question? THE WITNESS: Is there no way I can answer that? MR. FEE: Objection. Vague. It's beyond the scope of his designation. THE WITNESS: Okay. So my recollection is based on information -- privileged information with counsel.

THE WITNESS: Okay. Was there a 1047. MR. BRIDGES: I'm going to hand the witness exhibit 19 International Code Council about what you knew about Public Resource's funding, and my question was have you no knowledge of communicating to David Carmel at Public Resource's funding. Do you recall my asking that question? A. Could I ask you to go one question before that? Q. Before that was "Did ASTM investigate the sources of Public Resource's funding?" A. Okay.
1   THE WITNESS: Yes, it appears to be an E-mail  15:54:50
2   from Sarah Petre.  15:54:52
3   BY MR. BRIDGES:  15:54:55
4   Q. Does ASTM have a more up-to-date document  15:54:55
5   listing the errors in defendants' work that ASTM is  15:55:01
6   aware of?  15:55:08
7   MR. FEE: Objection to the extent any list  15:55:09
8   was compiled at the direction of counsel in connection  15:55:11
9   with this litigation.  15:55:13
10  I would instruct you not to disclose that.  15:55:15
11  You could answer otherwise.  15:55:17
12  THE WITNESS: I'm not aware of it, no.  15:55:19
13  BY MR. BRIDGES:  15:55:22
14  Q. As you sit here today, what errors, other  15:55:22
15  than the errors you've mentioned earlier and any  15:55:24
16  alleged errors in this document, are you aware of in  15:55:27
17  defendants' activities with respect to ASTM standards?  15:55:32
18  A. I have not done that analysis. I'm not aware  15:55:39
19  of those errors.  15:55:42
20  MR. FEE: Objection. This is beyond the  15:55:44
21  scope of his designation.  15:55:45
22  MR. BRIDGES: I think it's within the scope  15:55:46
23  of the designation.  15:55:47
24  Q. Are you aware, on behalf of ASTM, of anything  15:55:49

1   MR. FEE: Same objection.  15:55:54
2   THE WITNESS: Aware of errors? Could you  15:56:02
3   repeat the question, please.  15:56:04
4   BY MR. BRIDGES:  15:56:10
5   Q. Are you aware, on behalf of ASTM, of any  15:56:10
6   errors other than the errors you mentioned earlier  15:56:16
7   today, alleged errors --  15:56:22
8   MR. FEE: Objection.  15:56:25
9   BY MR. BRIDGES:  15:56:26
10  Q. -- in 1048 --  15:56:26
11  My question was interrupted. So I'll restate  15:56:37
12  it.  15:56:40
13  On behalf of ASTM, are you aware of any  15:56:41
14  errors, other than the errors you've testified to  15:56:46
15  earlier today and alleged errors mentioned in  15:56:50
16  Exhibit 1048 and the activities of defendants in  15:56:55
17  connection with defendants' posting of ASTM standards  15:57:07
18  to the Internet?  15:57:14
19  MR. FEE: Objection to form. Objection.  15:57:15
20  Calls for speculation, and beyond the scope of his  15:57:17
21  designation.  15:57:20
22  You can answer.  15:57:22
23  THE WITNESS: No, I'm not.  15:57:23
24  BY MR. BRIDGES:  15:57:29
25  Q. On behalf of ASTM, are you aware of any  15:57:29

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1 deliberation of ASTM as to whether to inform 15:57:36
2 Mr. Malamud or Public Resource of any errors in the 15:57:40
3 documents that they posted to the Internet? 15:57:45
4 MR. FEE: Objection to form. Beyond the 15:57:49
5 scope of his designation. Calls for speculation. 15:57:53
6 To the extent that you were involved in any 15:57:57
7 discussions amongst counsel regarding that subject, 15:57:59
8 you shouldn't disclose those, but if there are other 15:58:02
9 deliberations as the questioner asked, you can 15:58:05
10 identify those. 15:58:08
11 THE WITNESS: I'm reviewing the document. I 15:58:11
12 see that it was being referred to Tom. So that would 15:58:12
13 be a legal issue, and I was not involved in any 15:58:16
14 further discussion. 15:58:20
15 BY MR. BRIDGES: 15:58:35
16 Q. Is your response to that question limited by 15:58:36
17 the instruction or objection by counsel? 15:58:37
18 A. Yeah, it may involve attorney-client work. 15:58:37
19 Q. So there's other information that you would 15:58:38
20 furnish in response to that question except that 15:58:41
21 you're omitting it because you believe it falls within 15:58:43
22 attorney-client privilege or attorney work product? 15:58:47
23 MR. FEE: Objection. I instruct you not to 15:58:49
24 answer that question. 15:58:50
25 MR. BRIDGES: I'm entitled to know whether 15:58:54
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1 ASTM027093 to -097 Do you recognize that document? 16:02:03
2 (The witness reviewed Exhibit 1050 ) 16:02:20
3 THE WITNESS: I recognize the document, yes 16:02:21
4 BY MR BRIDGES: 16:02:22
5 Q And you received the E-mail on the exhibit? 16:02:22
6 A Attached -- based on the E-mail saying it was 16:02:29
7 attached, I believe I did, yes 16:02:32
8 Q And this was part of the joint effort that 16:02:35
9 ASTM engaged in with NFPA and -- with the NFPA; 16:02:40
10 correct? Regarding APCO, is that correct? 16:02:49
11 A Hold on 16:03:01
12 (Pause in proceedings ) 16:03:20
13 BY MR BRIDGES: 16:03:21
14 Q Is that correct? 16:03:21
15 MR FEE: Hold on I'm reviewing this 16:03:22
16 document to figure out if I need to instruct him 16:03:23
17 (The witness further reviewed Exhibit 1050 ) 16:03:30
18 MR FEE: I need to talk to the witness about 16:03:30
19 this document, about privilege issues 16:03:31
20 MR BRIDGES: We have numerous instances of 16:03:35
21 it in the production 16:03:36
22 THE VIDEOGRAPHER: We're off the record at 16:03:38
23 16:02 16:03:40
24 (A recess was taken from 4:02 p m 16:09:01
25 to 4:08 p m ) 16:09:01
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1 THE VIDEOGRAPHER: We are back on the record 16:09:01
2 at 16:08 16:09:02
3 MR FEE: Would you read back the question, 16:09:05
4 please 16:09:07
5 MR BRIDGES: I will start a new question 16:09:12
6 Q Mr. Grove, I've shown you Exhibit 1050 , and I 16:09:14
7 think you identified this as an E-mail from Lorraine 16:09:18
8 Carli of NFPA to you and others This pertains to 16:09:22
9 soliciting work that ended up being work performed by 16:09:29
10 APCO; is that correct? 16:09:36
11 MR FEE: Objection Beyond the scope of his 16:09:39
12 designation 16:09:40
13 THE WITNESS: No The time line of this 16:09:43
14 doesn't correspond with our selection of APCO 16:09:44
15 BY MR BRIDGES: 16:09:49
16 Q What does this correspond to? 16:09:49
17 MR FEE: Objection Vague Beyond the 16:09:51
18 scope of his designation 16:09:52
19 THE WITNESS: This was a separate RFP for 16:09:57
20 some continuing work 16:09:59
21 BY MR BRIDGES: 16:10:02
22 Q What work was it continuing? 16:10:02
23 MR FEE: Objection Beyond the scope of his 16:10:06
24 designation 16:10:08
25 THE WITNESS: We were anticipating a lot of 16:10:09
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51 (Pages 198 - 201)
| 1          | Actually, you can answer that question yes or no. | 16:17:04 |
| 2          | no if you're aware.                               | 16:17:07 |
| 3          | THE WITNESS: To my knowledge, no.                | 16:17:10 |
| 4          | BY MR. BRIDGES:                                  | 16:17:11 |
| 5          | Q. Okay. What did you understand to be a reason  | 16:17:11 |
| 6          | for Underwriters Laboratories being included in  | 16:17:22 |
| 7          | E-mail -- strike that.                           | 16:17:27 |
| 8          | What was your reason for including someone       | 16:17:29 |
| 9          | from Underwriters Laboratories in your E-mail?   | 16:17:31 |
| 10         | MR. FEE: Objection.                              | 16:17:34 |
| 11         | I'm going to instruct you not to answer that     | 16:17:34 |
| 12         | question. We have a common interest agreement    | 16:17:36 |
| 13         | Underwriters Laboratory, and this is a privileged| 16:17:39 |
| 14         | communication.                                   | 16:17:41 |
| 15         | BY MR. BRIDGES:                                  | 16:17:49 |
| 16         | Q. You did send this E-mail, Exhibit 1052, to   | 16:17:49 |
| 17         | the addressees indicated in the header; is that  | 16:17:53 |
| 18         | correct?                                        | 16:17:57 |
| 19         | MR. FEE: You can answer yes or no.               | 16:17:58 |
| 20         | THE WITNESS: I didn't personally. So I don't     | 16:18:03 |
| 21         | have knowledge if this was sent. I'm sorry.      | 16:18:06 |
| 22         | Could you restate that?                         | 16:18:11 |
| 23         | BY MR. BRIDGES:                                  | 16:18:12 |
| 24         | Q. You did send this E-mail, Exhibit 1052, to   | 16:18:13 |
| 25         | the addressees indicated in the header; is that  | 16:18:16 |

| 1          | public interest in the interest of public access.| 16:10:11 |
| 2          | BY MR. BRIDGES:                                  | 16:10:17 |
| 3          | Q. Are you reading from the document?           | 16:10:17 |
| 4          | A. Oh, no. I just have it in front of me. We    | 16:10:19 |
| 5          | were anticipating a lot of public interest in the| 16:10:22 |
| 6          | issue of public access. So we were again discussing| 16:10:24 |
| 7          | whether it was necessary to retain a firm to help| 16:10:28 |
| 8          | Q. Did ASTM or any of these companies that       | 16:10:34 |
| 9          | you're aware of retain a firm to help in that effort? | 16:10:38 |
| 10         | MR. FEE: Objection. Calls for speculation.      | 16:10:41 |
| 11         | It's beyond the scope of his designation.       | 16:10:42 |
| 12         | THE WITNESS: Yes.                               | 16:10:47 |
| 13         | BY MR. BRIDGES:                                 | 16:10:49 |
| 14         | Q. What firm did you retain?                    | 16:10:49 |
| 15         | A. I don't believe this was the final RFP, but  | 16:10:55 |
| 16         | we ultimately retained Fleishman Hillard.       | 16:10:58 |
| 17         | Q. Do you know who prepared the draft request   | 16:11:04 |
| 18         | for proposals in Exhibit 1050?                   | 16:11:06 |
| 19         | MR. FEE: Objection. Beyond the scope of his     | 16:11:10 |
| 20         | designation. Calls for speculation.             | 16:11:11 |
| 21         | THE WITNESS: I don't know with certainty who    | 16:11:23 |
| 22         | prepared it.                                    | 16:11:25 |
| 23         | BY MR. BRIDGES:                                 | 16:11:25 |
| 24         | Q. You received it from Lorraine Carli --       | 16:11:25 |
| 25         | A. Correct.                                     | 16:11:30 |

| 1          | (Deposition Exhibit 1051 was marked for         | 16:12:31 |
| 2          | identification.)                                | 16:12:31 |
| 3          | BY MR. BRIDGES:                                 | 16:12:32 |
| 4          | Q. Exhibit 1051 is an E-mail that you sent to   | 16:12:32 |
| 5          | James Thomas at ASTM; correct?                 | 16:12:34 |
| 6          | A. Yes, it appears to be.                       | 16:12:49 |
| 7          | Q. Did you draft the text of the E-mail?       | 16:12:50 |
| 8          | A. To the best of my recollection, I did.      | 16:13:00 |
| 9          | (Deposition Exhibit 1052 was marked for         | 16:16:21 |
| 10         | identification.)                                | 16:16:21 |
| 11         | MR. BRIDGES: Mr. Grove, I've handed you         | 16:16:21 |
| 12         | Exhibit 1052.                                   | 16:16:25 |
| 13         | MR. FEE: Objection. I'm going to claw this      | 16:16:26 |
| 14         | document back. It expressly references legal    | 16:16:29 |
| 15         | communications in the first sentence. I'm going to| 16:16:32 |
| 16         | instruct the witness not to answer any questions, at| 16:16:34 |
| 17         | least about the top portion of this E-mail.     | 16:16:36 |
| 18         | BY MR. BRIDGES:                                 | 16:16:42 |
| 19         | Q. Has Underwriters Laboratories ever been --   | 16:16:42 |
| 20         | strike that.                                    | 16:16:49 |
| 21         | To your knowledge, has ASTM ever had an        | 16:16:50 |
| 22         | agreement with Underwriters Laboratories to keep| 16:16:52 |
| 23         | communications about potential litigation       | 16:16:57 |
| 24         | confidential?                                   | 16:16:59 |
| 25         | MR. FEE: Objection.                             | 16:17:00 |

| 1          | 20 recess was taken from 4:17 p.m.              | 16:19:34 |
| 10         | to 4:18 p.m.                                   | 16:19:34 |
| 12         | THE VIDEOGRAPHER: We're back on the record      | 16:19:35 |
| 13         | at 16:18                                       | 16:19:37 |
| 14         | (Deposition Exhibit 1053 was marked for         | 16:20:33 |
| 15         | identification)                                | 16:20:33 |
| 16         | MR. BRIDGES: Mr. Grove, I've handed you --      | 16:20:34 |
| 17         | MR. FEE: Can I get a copy of the exhibit,      | 16:20:36 |
| 18         | please                                        | 16:20:38 |
| 19         | MR. BRIDGES: Mr. Grove, I've handed you a       | 16:20:40 |
| 20         | copy of Exhibit 1053                         | 16:20:42 |
| 21         | Q. I'd like to know if you've seen this document| 16:20:43 |
| 22         | before                                        | 16:20:45 |
| 23         | A. Yes, I believe I have                     | 16:21:01 |
| 24         | Q. And this is an E-mail from Mr. Thomas, the  | 16:21:07 |
| 25         | president of ASTM, to Roger Stoller; is that correct? | 16:21:10 |
Q. Who is Mr. Stoller?

A. Yes.

Q. At the time of this E-mail, I believe Roger Stoller was the incoming chairman of our board of directors.

Q. What government agency -- strike that.

Q. He was at Oakridge National Laboratory; is that correct?

A. Yes.

Q. And was a government employee; is that correct?

A. Yes.

Q. Mr. Fee: Same objections.

Q. Was that an accurate representation of the company's position?

A. Yes.

Q. Q. And was a government employee; is that correct?

A. Yes.

Q. Did you understand him to be a government employee?

A. The witness reviewed Exhibit 1055.

Q. What government agency -- strike that.

Q. He was at Oakridge National Laboratory; is that correct?

A. Yes.

Q. Do you recognize Exhibit 1054 as a cover identification?

A. Yes.

Q. The witness reviewed Exhibit 1055.

Q. What government agency -- strike that.

Q. He was at Oakridge National Laboratory; is that correct?

A. Yes.

Q. Did you understand him to be a government employee?

A. The witness reviewed Exhibit 1055.

Q. The witness reviewed Exhibit 1055.

Q. The witness reviewed Exhibit 1055.

Q. The witness reviewed Exhibit 1055.

Q. The witness reviewed Exhibit 1055.

Q. The witness reviewed Exhibit 1055.

Q. The witness reviewed Exhibit 1055.

Q. The witness reviewed Exhibit 1055.

Q. The witness reviewed Exhibit 1055.

Q. The witness reviewed Exhibit 1055.
1. THE WITNESS: It's a little out of context. 16:32:42
2. BY MR. BRIDGES: 16:32:45
3. Q. What would be necessary to add to that 16:32:45
4. statement in order to supply the context? 16:32:50
5. MR. FEE: Same objections. 16:32:55
6. THE WITNESS: Looking at standards on an 16:33:12
7. individual basis devalues the real value that ASTM 16:33:14
8. standards have as a collection of a whole. 16:33:14
9. BY MR. BRIDGES: 16:33:17
10. Q. What is the real value that ASTM standards 16:33:17
11. have as a collection? 16:33:19
12. A. Customers in the public benefit from getting 16:33:25
13. a collection of standards at a very affordable price 16:33:27
14. point, which allows them to access numerous standards 16:33:32
15. rather than looking at them as individual standards 16:33:39
16. purchased separately. 16:33:42
17. Q. Is there anything else about the context -- 16:33:48
18. appropriate context for that statement? 16:33:54
19. MR. FEE: Objection. Lack of foundation. 16:33:56
20. Calls for speculation. It's beyond the scope of his 16:33:59
21. designation. 16:34:01
22. THE WITNESS: No. 16:34:14
23. (Deposition Exhibit 1056 was marked for 16:34:40
24. identification.) 16:34:40
25. THE WITNESS: It's a little out of context. 16:35:42
26. A. I'd be speculating. 16:35:48
27. MR. FEE: Same objections. 16:35:55
28. THE WITNESS: It's a little out of context. 16:35:58
29. Q. What would be necessary to add to that 16:35:60
30. statement in order to supply the context? 16:35:65
31. MR. FEE: Objection. Lack of foundation. 16:35:72
32. THE WITNESS: I'd infer from this that John 16:35:83
33. was explaining I'm not the IT guy. So I didn't know 16:35:86
34. how difficult this task would be. 16:35:91
35. Q. Did you have in mind providing summaries as 16:36:00
36. opposed to the standards themselves in the reading 16:36:04
37. room? 16:36:10
38. MR. FEE: Objection. Are you asking him his 16:36:56
39. personal opinion in this question? 16:36:59
40. MR. BRIDGES: I'm asking him what his state 16:37:02
41. of mind was at the time. 16:37:03
42. MR. FEE: It's beyond the scope of his 16:37:04
43. designation. 16:37:06
44. BUT YOU CAN ANSWER. 16:37:07
45. THE WITNESS: In our efforts to strike the 16:37:08
46. right balance between providing the public with public 16:38:10
47. access to standards incorporated by reference and 16:38:12
48. maintaining our viability of our standards development 16:38:14
49. enterprise, I was recommending that we review a lot of 16:38:18
50. options. One of which was this summaries idea. 16:38:22
51. BY MR. BRIDGES: 16:38:26
52. Q. Was it the idea of providing summaries as 16:38:26
53. opposed to the text of the standards themselves? 16:38:29
54. MR. FEE: Same objection. 16:38:33
55. THE WITNESS: I don't recall. 16:38:36
56. BY MR. BRIDGES: 16:38:41
57. Q. Does someone -- are you familiar with the 16:38:41
58. operation of the reading room for ASTM today? 16:38:44
59. A. Yes. 16:38:47
60. Q. Does one have to register to gain access to 16:38:47
61. the reading room? 16:38:50
62. A. Yes. 16:38:51
63. Q. What does one have to do to register to get 16:38:52
64. access to the reading room? 16:38:55
65. A. Enter a name and E-mail address. 16:38:56
66. Q. What's the purpose of that? 16:39:00
67. A. Well, to ensure that it wasn't -- again, I'm 16:39:02
68. not an IT person, but I believe there's some concerns 16:39:08
69. that bots and other types of automatic -- that perhaps 16:39:10
70. machines could access our system and pull information 16:39:19
71. in ways that perhaps we weren't intending by providing 16:39:22
72. Veritext Legal Solutions
73. 866 299-5127
74. Page 211
1. Do you recall requiring that people agree to acknowledge ASTM's copyrights from the standards in order to get access?

2. That sounds familiar, yes.

3. And so somebody had an argument that for some reason these standards were not subject to copyright, that person has to, in your understanding, give up that view in order to get access to the documents in the reading room?

4. The witness: I'm not an attorney, but I believe that it's clear that -- what's intended, that someone could access the information and read the information but is made aware of the fact that ASTM owns the copyright.

5. To the extent it does, he's not designated for any legal opinions.

6. The witness: I'm not an attorney, but I think it makes very clear that copyright policy on the U.S. Treasury as such.

7. I don't have knowledge what exactly he's saying.

8. Yes, it's not only made aware of it. They're forced to agree that ASTM owns a copyright.

9. So you have to scroll?

10. To the extent it calls for a legal conclusion, you can answer if you know.

11. To the extent it calls for a legal conclusion, you can answer if you know.

12. THE WITNESS: I'm not an attorney, but I believe that it's clear that -- what's intended.

13. The witness: I'm not an attorney, but I believe that it makes very clear that copyright policy on the U.S. Treasury as such.

14. For someone to have access to U.S. citizens, and we discussed that makes it -- we have to take reasonable steps to prevent technical information from going to whatever country is designated by the U.S. Department of Treasury as such.

15. To my knowledge, yes.

16. Yes, and so somebody had an argument that for some reason these standards were not subject to copyright, that person has to, in your understanding, give up that view in order to get access to the documents in the reading room?

17. Mr. Fee: Objection. Calls for a legal conclusion. To the extent it does, he's not designated for any legal opinions.

18. THE WITNESS: I'm not an attorney, but I believe that it makes very clear that copyright policy on the U.S. Treasury as such.

19. The witness: Again, I'd speculate that that means you have to "scroll"?

20. The witness: I'm not an attorney, but I believe that it's clear that -- what's intended.

21. It's not only made aware of it. They're forced to agree that ASTM owns a copyright.

22. THE WITNESS: I'm not an attorney, but I believe that it makes very clear that copyright policy on the U.S. Treasury as such.

23. THE WITNESS: I'm not an attorney, but I believe that it makes very clear that copyright policy on the U.S. Treasury as such.

24. THE WITNESS: I'm not an attorney, but I believe that it's clear that -- what's intended.

25. THE WITNESS: I'm not an attorney, but I believe that it makes very clear that copyright policy on the U.S. Treasury as such.
<table>
<thead>
<tr>
<th>Line</th>
<th>Text</th>
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<tbody>
<tr>
<td>1</td>
<td>read the documents. So we're -- I'm pleased that our 16:44:34</td>
</tr>
<tr>
<td>2</td>
<td>reading room gives them the ability to do that. 16:44:39</td>
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<tr>
<td>3</td>
<td>BY MR. BRIDGES: 16:44:41</td>
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<tr>
<td>4</td>
<td>Q. Were you proud of having a design that would 16:44:41</td>
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<td>5</td>
<td>require people to scroll to read an entire page? Were 16:44:44</td>
</tr>
<tr>
<td>6</td>
<td>you pleased about that? 16:44:48</td>
</tr>
<tr>
<td>7</td>
<td>A. We received a lot of accolades for it, and so 16:44:48</td>
</tr>
<tr>
<td>8</td>
<td>to that -- to the fact that the reading room exists. 16:44:53</td>
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<td>9</td>
<td>So I haven't heard complaints beyond what's been 16:44:56</td>
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<td>10</td>
<td>discussed here today. 16:44:59</td>
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<tr>
<td>11</td>
<td>Q. Does that feature appear to you to be a user 16:45:00</td>
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<td>12</td>
<td>friendly feature to design into the reading room? 16:45:04</td>
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<td>13</td>
<td>MR. FEE: Objection. Vague. May call for 16:45:07</td>
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<td>14</td>
<td>expert testimony. 16:45:09</td>
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<td>15</td>
<td>THE WITNESS: And I'm not an expert, but I've 16:45:12</td>
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<td>16</td>
<td>used the reading room and I've read standards through 16:45:14</td>
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<tr>
<td>17</td>
<td>it without any problem. 16:45:16</td>
</tr>
<tr>
<td>18</td>
<td>BY MR. BRIDGES: 16:45:24</td>
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<tr>
<td>19</td>
<td>Q. The second paragraph of Mr. Pace's E-mail 16:45:24</td>
</tr>
<tr>
<td>20</td>
<td>says, &quot;I haven't chatted with Jim yet.&quot; Does &quot;Jim&quot; 16:45:29</td>
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<tr>
<td>21</td>
<td>refer to James Thomas, the president of ASTM? 16:45:34</td>
</tr>
<tr>
<td>22</td>
<td>A. In this context, I believe it does. 16:45:44</td>
</tr>
<tr>
<td>23</td>
<td>Q. And a couple of paragraphs down, it says, &quot;On 16:45:47</td>
</tr>
<tr>
<td>24</td>
<td>the four bullet points above, I know Phil might think 16:45:50</td>
</tr>
<tr>
<td>25</td>
<td>I'm overdoing it a bit.&quot; Whom did you understand 16:45:54</td>
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Q. What just happened, that comes from your E-mail?
A. It's what it sounds like — it's our sales staff testimony verbatim to this E-mail.

Q. Is it your testimony that ASTM put 31 standards on the development, delivery of standards that differed according to whether an ASTM standard was incorporated by reference or not?
A. I'm afraid I don't know the answer to that.

Q. Were these standards that had been in existence at that time?
A. Because of the relationship we had with DHS, we were allowing the public to come to this website — come to happiness which we've done for 115 years of our existence.

Q. I'm not certain as to exactly what the portal that may have existed at this site, but at this time in 2012 my understanding was, yes.
A. That because 90 percent of the revenue we get from exchange for putting 31 standards up for unlimited print and use. This was a deep, discounted price that was incorporated by reference or not?

Q. What did you mean by "the sale of standards"?
A. It's our sales staff and DHS.

Q. What did you mean by "the sale of standards"?
A. What I know about what this could mean. It could mean that we have a contract with the Department of Homeland Security, or we did at this time, in which exchange for putting 31 standards up for unlimited print and use. My question was I assume that ASTM makes 90 percent of ASTM's revenue comes from standards that were viewed as playing an important role in helping first responders carry out their important mission, and DHS came to ASTM and we figured out a very flexible and reasonable agreement to allow that to happen, which we've done for 115 years of our existence.

Q. Was this a deep, discounted price?
A. My question was I assume that ASTM makes 90 percent of ASTM's revenue comes from standards that were viewed as playing an important role in helping first responders carry out their important mission, and DHS came to ASTM and we figured out a very flexible and reasonable agreement to allow that to happen, which we've done for 115 years of our existence.

Q. And you said it was $25,000 in funding in 2012.
A. And I don't know the answer to that.

Q. Does this go to the fact that we wanted to get our standards incorporated by reference or not?
A. 90 percent of the revenue we get from exchange for putting 31 standards up for unlimited print and use. By "unlimited," did you mean unlimited into the future?

Q. What did you mean by "unlimited," did you mean unlimited into the future?
A. It's what it sounds like — it's our sales staff and DHS.

Q. What interest did you understand DHS to have for public access to the standards that it paid the
A. It's what it sounds like — it's our sales staff and DHS.

Q. Was this a deep, discounted price that was incorporated by reference or not?
A. My question was I assume that ASTM makes 90 percent of ASTM's revenue comes from standards that were viewed as playing an important role in helping first responders carry out their important mission, and DHS came to ASTM and we figured out a very flexible and reasonable agreement to allow that to happen, which we've done for 115 years of our existence.

Q. And you said it was $25,000 in funding in 2012.
A. And I don't know the answer to that.

Q. Does this go to the fact that we wanted to get our standards incorporated by reference or not?
A. 90 percent of the revenue we get from exchange for putting 31 standards up for unlimited print and use. By "unlimited," did you mean unlimited into the future?

Q. What did you mean by "unlimited," did you mean unlimited into the future?
A. It's what it sounds like — it's our sales staff and DHS.

Q. What interest did you understand DHS to have for public access to the standards that it paid the
A. It's what it sounds like — it's our sales staff and DHS.
1. working with customers, and it's our distributors, our 16:56:15
2. licensed distributors working with customers on a 16:56:17
3. worldwide basis to negotiate payment for the access to 16:56:20
4. our standards. 16:56:24
5. Q. I'm afraid I don't think you answered my 16:56:29
6. question. I said what did you mean by "the sale of 16:56:31
7. standards"? 16:56:35
8. MR. FEE: Objection. Asked and answered. 16:56:36
9. BY MR. BRIDGES: 16:56:41
10. Q. And you say, "our sales staff, the public 16:56:41
11. coming to our website." Those don't seem like answers 16:56:44
12. to my question. What do you mean by "sales of 16:56:46
13. standards"? 16:56:50
14. MR. FEE: Objection. Asked and answered. 16:56:51
15. THE WITNESS: I'm trying to meet you here. I 16:56:57
16. believe it's providing a document in exchange for 16:56:57
17. remuneration. 16:57:06
18. BY MR. BRIDGES: 16:57:07
19. Q. What are the different ways in which ASTM 16:57:07
20. provides documents in exchange for remuneration? 16:57:13
21. A. Well, someone may come to our website, search 16:57:19
22. for a standard, find it in a variety of different 16:57:25
23. formats, and indicate that they'd like to purchase it 16:57:30
24. in one of those formats at the agreed upon price 16:57:35
25. point. 16:57:37

1. Q. Now, previously you said that you were 16:57:40
2. unaware of any price differential according to whether 16:57:43
3. a standard was incorporated by reference or not; 16:57:47
4. correct? 16:57:51
5. A. Correct. 16:57:52
6. Q. ASTM engages in some licensing agreements, 16:57:53
7. does it not, with other parties regarding the license 16:57:56
8. of access to the standards; correct? 16:58:01
9. A. That's correct. 16:58:05
10. Q. I'm just talking as a commercial matter -- 16:58:06
11. A. Right. 16:58:08
12. Q. -- are you aware of any significant 16:58:08
13. differences in the language of the licenses that ASTM 16:58:10
14. offers for the license of standards incorporated by 16:58:18
15. reference and the language of the licenses that ASTM 16:58:24
16. offers for the license of standards that are not 16:58:30
17. incorporated by reference? 16:58:33
18. MR. FEE: Objection. Vague. To the extent 16:58:34
19. it calls for a legal conclusion. 16:58:37
20. THE WITNESS: No, I'm not aware of that. 16:58:39
21. MR. FEE: Do you want to take a break soon? 16:59:05
22. THE WITNESS: It's been -- yeah. I've been 16:59:07
23. looking at my watch. I think now would be a good 16:59:09
24. time. 16:59:11
25. THE VIDEOGRAPHER: Now off the record at 16:59:12

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1. 2:58 16:59:13
2. (A recess was taken from 4:58 p.m 17:08:49
3. to 5:07 p.m ) 17:08:49
4. THE VIDEOGRAPHER: We're now back on the 17:08:50
5. record at 17:07 17:08:51
6. (Deposition Exhibit 1058 was marked for 17:09:04
7. identification ) 17:09:04
8. BY MR BRIDGES: 17:09:04
9. Q Mr. Grove, Exhibit 1058 is a series of 17:09:04
10. E-mails that you are -- appear to be part of -- 17:09:11
11. intermittently; is that correct? 17:09:24
12. MR FEE: Objection Vague 17:09:26
13. THE WITNESS: Yes 17:09:30
14. BY MR BRIDGES: 17:09:36
15. Q Did ASTM put the wrong version of one of its 17:09:36
16. standards up that PHMSA wanted to reference? 17:09:41
17. being spelled P-H-M-S-A 17:09:46
18. A I mean there's -- 17:09:51
19. MR FEE: Objection Beyond the scope of his 17:09:53
20. designation 17:09:55
21. THE WITNESS: That's not what most of these 17:10:12
22. E-mails refer to I'm not sure what the context is of 17:10:13
23. that E-mail from Phil to me 17:10:15
24. BY MR BRIDGES: 17:10:22
25. Q Well, there's context in your response to 17:10:22

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1. Phil at the top -- 17:10:23
2. A Right 17:10:26
3. Q -- saying, "Yes That is the version that 17:10:26
4. PHMSA wants to reference I suppose that Malamud will 17:10:26
5. hit us for that too " 17:10:31
6. A Right 17:10:32
7. Q What was the context of your response? 17:10:33
8. MR FEE: Objection Again, beyond the scope 17:10:34
9. of his designation 17:10:37
10. THE WITNESS: It could be that I'd be 17:10:38
11. speculating, but it could be that you're right, that 17:10:40
12. possibly we put the wrong version up when, in fact, 17:10:43
13. NITSA -- excuse me, FIMSA wanted us to reference the 17:10:47
14. '06 version 17:10:50
15. (Deposition Exhibit 1059 was marked for 17:11:47
16. identification ) 17:11:47
17. BY MR BRIDGES: 17:11:47
18. Q Exhibit 1059 consists of two E-mails from 17:11:47
19. Sarah Petre at ASTM to someone at the Federal Trade 17:11:52
20. Commission; is that correct? 17:11:55
21. A Yes 17:12:25
22. (Deposition Exhibit 1060 was marked for 17:15:20
23. identification ) 17:15:20
24. MR BRIDGES: I'll show you Exhibit 1060, a 17:15:20
25. two-page exhibit 17:15:23

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58 (Pages 226 - 229)
1 Q. This is the agreement that a member of the 17:15:26
2 public must agree to in order to gain access to ASTM 17:15:28
3 incorporated by reference standards in the reading 17:15:36
4 room; correct? 17:15:40
5 A. It appears to be, yes. 17:15:48
6 Q. And the only standards available through this 17:15:49
7 reading room are standards that have been incorporated 17:15:51
8 by reference, I believe you said; correct? 17:15:53
9 A. To the best of my knowledge, yes. 17:15:57
10 (Deposition Exhibit 1061 was marked for 17:16:32
11 identification.) 17:16:32
12 BY MR. BRIDGES: 17:16:32
13 Q. Mr. Grove, what is Exhibit 1061? 17:16:32
14 (The witness reviewed Exhibit 1061.) 17:17:09
15 THE WITNESS: It appears to be a licensing 17:17:09
16 agreement. 17:17:11
17 BY MR. BRIDGES: 17:17:12
18 Q. For what? 17:17:12
19 A. For ASTM's copyright protected information. 17:17:13
20 Q. In what circumstances must somebody enter 17:17:22
21 into this license agreement with ASTM? 17:17:24
22 MR. FEE: Objection. Vague. 17:17:28
23 THE WITNESS: It's my understanding that a 17:17:33
24 user purchaser of ASTM standards would need to agree 17:17:35
25 to a license agreement which authorizes the specific 17:17:40
26 Page 230

1 ways in which the information may be used and 17:17:44
2 identifies a number of ways that the information 17:17:48
3 should not be used. 17:17:50
4 BY MR. BRIDGES: 17:17:57
5 Q. Does this apply to all purchases of ASTM 17:17:57
6 standards? 17:18:01
7 MR. FEE: Objection. Calls for speculation. 17:18:04
8 THE WITNESS: Well, it looks pretty basic to 17:18:11
9 me. So within my knowledge, I'd say yes. 17:18:13
10 BY MR. BRIDGES: 17:18:21
11 Q. Does this apply also to the purchase of paper 17:18:21
12 copies of ASTM standards? 17:18:25
13 MR. FEE: Same objection. 17:18:27
14 THE WITNESS: I'm not sure what distinctions 17:18:29
15 are made between our policy for paper versus other 17:18:31
16 formats. 17:18:36
17 BY MR. BRIDGES: 17:18:38
18 Q. Does this license agreement apply to both the 17:18:38
19 purchase of standards incorporated by reference and 17:18:43
20 other standards not incorporated by reference? 17:18:47
21 MR. FEE: Hold on a second. 17:18:51
22 (Pause in proceedings.) 17:19:00
23 MR. FEE: Same objection. 17:19:00
24 You can answer. 17:19:01
25 THE WITNESS: Yeah. I'm not aware that we 17:19:02
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1 have separate policies for standards incorporated by 17:19:03
2 reference versus purchasing standards that are not 17:19:04
3 incorporated by reference. 17:19:06
4 (Deposition Exhibit 1062 was marked for 17:20:35
5 identification.) 17:20:35
6 BY MR. BRIDGES: 17:20:36
7 Q. Mr. Grove, Exhibit 1062 is an exchange of 17:20:36
8 E-mails between you and Mary McKiel with earlier 17:20:51
9 E-mails in the thread; is that correct? 17:20:59
10 A. Yes, it is. 17:21:29
11 Q. Does this discussion in the middle of the 17:21:31
12 first page of Exhibit 1062 refer to some EPA 17:21:35
13 incorporations by reference of certain ASTM standards? 17:21:49
15 speaks for itself. 17:21:58
16 THE WITNESS: Yeah. This was a project I was 17:21:59
17 excited to be part of. We worked with the EPA and the 17:22:00
18 National Institute of Standards and Technology to 17:22:03
19 remove mercury from thermometers that are used in the 17:22:05
20 United States because of a threat that they posed to 17:22:08
21 children if they were broken or to those in the lab 17:22:10
22 environment. The difficulty was the use of these 17:22:13
23 standards was mandated by reference. Excuse me. The 17:22:17
24 use of these types of measurement devices containing 17:22:20
25 mercury were referenced in standards that were 17:22:24
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1 that they must be -- they have to be referred to as 17:24:32
2 "musts," and this would have the voluntary consensus 17:24:35
3 standards process This isn't the intention when 17:24:39
4 people come together to work in a voluntary consensus 17:24:43
5 standard environment They want the words to mean 17:24:47
6 what they carefully craft them to mean in the process, 17:24:49
7 and when -- so I believe that's what I was referring 17:24:52
8 to in this 17:24:55
9 BY MR BRIDGES: 17:25:00
10 Q  Well, Mr Miller was not saying that the 17:25:00
11 government was changing the standard The government 17:25:02
12 was proposing to change the law; correct? 17:25:07
13 MR FEE: Objection The document speaks for 17:25:11
14 itself Calls for speculation 17:25:13
15 THE WITNESS: I guess I would be speculating, 17:25:22
16 but that was my interpretation of what this means 17:25:24
17 BY MR BRIDGES: 17:25:29
18 Q  That the government would be changing the law 17:25:29
19 as the law interprets the standard? 17:25:31
20 MR FEE: Same objections And vague 17:25:36
21 THE WITNESS: Yeah That the government was 17:25:41
22 interpreting a standard in a way that the voluntary 17:25:43
23 consensus standard group didn't necessarily intend it 17:25:46
24 to without coming back to the organization and working 17:25:50
25 with them 17:25:57

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1 BY MR BRIDGES: 17:27:38
2 Q  Mr Grove, does ASTM encourage any 17:27:38
3 governments to incorporate its standards by reference? 17:27:46
4 MR FEE: Objection Vague 17:27:49
5 THE WITNESS: As a matter of policy, we make 17:27:54
6 organizations -- sorry -- governments aware of our 17:27:58
7 standards and point out and connect with agency 17:28:04
8 missions But in the end, we respect that agencies 17:28:07
9 should be the ones that determine whether or not our 17:28:09
10 standards are incorporated or not 17:28:12
11 BY MR BRIDGES: 17:28:13
12 Q  Is ASTM generally pleased when governments 17:28:13
13 incorporate its standards by reference? 17:28:20
14 MR FEE: Objection Vague 17:28:22
15 THE WITNESS: So I think it speaks to the 17:28:28
16 significance of ASTM and to the breadth of ASTM when 17:28:29
17 you see ASTM standards become incorporated by 17:28:34
18 reference because it does signify that they are widely 17:28:37
19 respected for their technical excellence I believe 17:28:42
20 that it signifies that the government -- it couldn't 17:28:46
21 do what we've done with the same effectiveness So 17:28:52
22 they're looking to a voluntary consensus standards 17:28:54
23 group in utilizing those standards 17:28:57
24 So in some ways I might take pride in the 17:29:00
25 fact that ASTM standards are relied upon by all of our 17:29:04

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1 stakeholders because the government is a very 17:29:07
2 important member. 17:29:09
3 BY MR BRIDGES: 17:29:11
4 Q  So is the answer to my question "yes"? 17:29:11
5 MR FEE: Objection. 17:29:13
6 You can answer it however you'd like. 17:29:14
7 MR BRIDGES: He already has. 17:29:17
8 Q  I'm now asking him is the answer to my 17:29:18
9 question "yes." 17:29:20
10 MR FEE: Same objection. Asked and 17:29:21
11 answered. 17:29:22
12 THE WITNESS: Speaking for Jeff Grove, yes. 17:29:23
13 BY MR BRIDGES: 17:29:26
14 Q  What about speaking for ASTM? 17:29:26
16 THE WITNESS: I don't believe ASTM would have 17:29:29
17 an official position. 17:29:31
18 BY MR BRIDGES: 17:29:35
19 Q  You don't think that ASTM has a view as to 17:29:35
20 whether it is pleased when governments incorporate its 17:29:39
21 standards by reference? 17:29:43
22 MR FEE: Objection. Vague and asked and 17:29:44
23 answered. 17:29:46
24 THE WITNESS: It's never been a performance 17:29:49
25 metric for me. So no. 17:29:50

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1 BY MR BRIDGES: 17:29:58
2 Q  Does ASTM have views about things that are 17:29:58
3 not performance metrics? 17:30:01
4 MR FEE: Objection. Beyond the scope of his 17:30:05
5 designation. Vague. 17:30:06
6 THE WITNESS: It could. 17:30:11
7 BY MR BRIDGES: 17:30:14
8 Q  What performance metrics do you have? 17:30:14
9 MR FEE: Objection. Beyond the scope of his 17:30:16
10 designation. 17:30:20
11 THE WITNESS: Generally, my performance is 17:30:23
12 based on the job I've done in removing worldwide 17:30:24
13 barriers to the acceptance and use of ASTM standards. 17:30:27
14 BY MR BRIDGES: 17:30:36
15 Q  Is your -- do your performance reviews ever 17:30:36
16 mention the degree of adoption of ASTM standards by 17:30:39
17 reference -- strike that. 17:30:44
18 Do your performance reviews ever mention the 17:30:46
19 degree of incorporation of ASTM standards by 17:30:48
20 reference? 17:30:50
21 MR FEE: Objection. Beyond the scope of his 17:30:51
22 designation. 17:30:55
23 THE WITNESS: I believe over the years I 17:30:56
24 might have pointed out to my superiors that a standard 17:30:57
25 has become incorporated as something significant. 17:31:00

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Veritext Legal Solutions
866 299-5127
25 outreach?

17:35:55

24 and NFPA had with APCO for government relations 17:35:50

23 Q. Does this relate to the engagement that ASTM 17:35:41

22 MR. BRIDGES: 17:35:41

21 THE WITNESS: Yeah, it appears as if it did. 17:35:36

20 Q. Does this pertain to the retention of APCO, 17:35:26

19 in testimony? 17:35:29

18 which we referred to -- which you referred earlier 17:35:24

17 Q. Does this pertain to the retention of APCO, 17:35:22

16 A. Yes, I do. 17:35:23

15 attachments from Lorraine Carli at NFPA? 17:35:18

14 Q. Do you recall receiving this E-mail and the 17:35:17

13 by Mr. Fee. 17:35:17

12 THE WITNESS: Is there a question? I'm 17:35:14

11 sorry. 17:35:15

10 MR. FEE: Okay. 17:35:09

9 attachment is one of these phantom attachments. 17:35:06

8 I'll represent to Mr. Fee that the last 17:34:56

7 at this time are you aware of whether ASTM 17:34:40

6 was contemplating litigation against Public Resource? 17:34:42

5 MR. FEE: Objection. To the extent your 17:34:46

4 was contemplating litigation against Public Resource? 17:34:42

3 MR. FEE: Okay. Sorry. 17:34:42

2 MR. BRIDGES: 17:34:40

1 THE WITNESS: I don't know 17:34:37

25 Exhibit 1064 consists of an E-mail to you from 17:33:27

24 (The witness reviewed Exhibit 1064 ) 17:33:21

23 were produced by ASTM I just want to verify that 17:33:23

22 potential litigation? 17:33:21

21 enter into any agreement with ASTM regarding 17:33:10

20 Q. Has ASMA -- has ASME, to your knowledge, 17:33:05

19 MR. BRIDGES: 17:33:05

18 what was redacted. 17:33:04

17 THE WITNESS: Yeah. I don't have knowledge 17:33:02

16 MR. FEE: Objection. Calls for speculation. 17:33:01

15 THE WITNESS: 17:33:00

14 BY MR. BRIDGES: 17:33:00

13 -099360 17:33:34

12 more to the document It's going to be ASTM099269 to 17:33:03

11 (The witness reviewed Exhibit 1065.) 17:33:02

10 (Deposition Exhibit 1065 was marked for 17:32:30

9 attachment is one of these phantom attachments. 17:32:25

8 (The witness reviewed Exhibit 1064 ) 17:32:21

7 Power Point Presentation." 17:32:19

6 called an "SDO Proposal," and the other is called "SDO 17:32:17

5 Carli of NFPA, including two attachments. One's 17:32:15

4 -- an E-mail to you by Lorraine 17:32:13

3 I'll represent to Mr. Fee that the last 17:32:12

2 THE WITNESS: Who are the organizations you 17:32:10

1 I don't know 17:31:58

2 THE WITNESS: I don't know 17:31:05

3 MR. FEE: Same objection Whatever document 17:31:07

4 that you're referencing will speak for itself as 17:31:13

5 THE WITNESS: It could 17:31:26

6 (Deposition Exhibit 1064 was marked for 17:32:20

7 identification.) 17:32:20

8 MR. BRIDGES: I'll hand you an exhibit marked 17:32:05

9 1064 It consists of Pages ASTM099269 to ASTM099335 17:32:22

10 (The witness reviewed Exhibit 1064 ) 17:33:02

11 Mr. Bridges: And, actually, I'm going to add 17:33:03

12 more to the document It's going to be ASTM099269 to 17:33:04

13 ASTM099360 17:33:34

14 (Pause in proceedings ) 17:33:51

15 BY MR. BRIDGES: 17:33:51

16 Q. How many pieces of paper did I give you? 17:33:51

17 A. Just the cover sheet and this (indicating) 17:33:53

18 Q. Okay Here's the rest of the exhibit 17:33:56

19 A. Okay 17:34:03

20 (The witness reviewed Exhibit 1064 ) 17:34:21

21 BY MR. BRIDGES: 17:34:21

22 Q. I just want to verify, Mr. Grove, that these 17:34:21

23 were produced by ASTM I just want to verify that 17:34:23

24 Exhibit 1064 consists of an E-mail to you from 17:34:27

25 Lorraine Carli at NFPA -- 17:34:31

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1 SDOs, including NFPA and ASME, know that I had the opportunity to speak with Ms Bremer, and Mr. Bridges responded, "Wear sunscreen and have fun." I believe the best way to spur innovation and the creativity that's involved in the innovation process comes into play. Mr. Bridges wrote down below, "Not much here." I hope this is level of enthusiasm he generates. I believe it's based on a voluntary consensus standards environment, open, transparent, with a lot of openness, transparency, and calls for a legal conclusion. Len Morrissey is a staff manager that works with our consumer products safety related committees. A. Len Morrissey is a staff manager that works with that statement. Ms Bremer? With that statement.

2 with our consumer products safety related committees. (Deposition Exhibit 1067 was marked for identification.) MR  FEE: Objection. Beyond the scope of his designation.

3 (Deposition Exhibit 1067 was marked for identification.) Q. Was there something secret about your conversations with those organizations about innovation and the creativity that's involved in the innovation process comes into play.

4 identification.) MR  FEE: Objection. Beyond the scope of his designation. Q. Was it your understanding that Carl Malamud misperception about the -- what's contained in the standards. I believe the best way to spur innovation is to -- using standards, is to work in the voluntary consensus standards environment, open, transparent, with a lot of openness, transparency, and calls for a legal conclusion. Len Morrissey? A. Len Morrissey is a staff manager that works with that statement. Ms Bremer? With that statement.

5 with that statement. Q. Was it your understanding that Carl Malamud criticized the consensus process of developing the standards? A. I don't recall the specifics, but I believe something like if the standard was available -- more widely available, that would allow others that aren't members of committees to comment and reiterate on the existing standard outside of the normal process of. MR  FEE: Objection. Beyond the scope of his designation. Q. Was it your understanding that Carl Malamud misperception about the -- what's contained in the standards. I believe the best way to spur innovation is to -- using standards, is to work in the voluntary consensus standards environment, open, transparent, with a lot of openness, transparency, and calls for a legal conclusion. Len Morrissey? A. Len Morrissey is a staff manager that works with that statement.

6 with that statement. A. Len Morrissey is a staff manager that works with that statement. Ms Bremer? With that statement.

7 A. Len Morrissey is a staff manager that works with that statement. Q. Was there something secret about your conversations with those organizations about innovation and the creativity that's involved in the innovation process comes into play. Ms Bremer? With that statement.

8 A. Len Morrissey is a staff manager that works with that statement. Q. Was there something secret about your conversations with those organizations about innovation and the creativity that's involved in the innovation process comes into play. Q. Was it your understanding that Carl Malamud misperception about the -- what's contained in the standards. A. I don't recall the specifics, but I believe something like if the standard was available -- more widely available, that would allow others that aren't members of committees to comment and reiterate on the existing standard outside of the normal process of.

9 A. Len Morrissey is a staff manager that works with that statement. Q. Was there something secret about your conversations with those organizations about innovation and the creativity that's involved in the innovation process comes into play. Q. Was it your understanding that Carl Malamud misperception about the -- what's contained in the standards. A. I don't recall the specifics, but I believe something like if the standard was available -- more widely available, that would allow others that aren't members of committees to comment and reiterate on the existing standard outside of the normal process of.

10 A. Len Morrissey is a staff manager that works with that statement. Q. Was there something secret about your conversations with those organizations about innovation and the creativity that's involved in the innovation process comes into play. Q. Was it your understanding that Carl Malamud misperception about the -- what's contained in the standards. A. I don't recall the specifics, but I believe something like if the standard was available -- more widely available, that would allow others that aren't members of committees to comment and reiterate on the existing standard outside of the normal process of.
1 You can answer. 17:46:44
2 THE WITNESS: We would welcome them to 17:46:47
3 participate in the standards development process and 17:46:51
4 share their ideas freely with their colleagues to 17:46:53
5 contribute to the development of an appropriate 17:46:57
6 standard. 17:46:59
7 BY MR. BRIDGES: 17:47:02
8 Q. But not as a member of the public? 17:47:02
9 MR. FEE: Objection. Vague. It's also, I 17:47:04
10 think, beyond the scope of his designation. 17:47:08
11 To the extent you understand the question. 17:47:11
12 THE WITNESS: So I believe members of the 17:47:13
13 public do, from time to time, comment on ASTM 17:47:14
14 standards and share information with technical 17:47:17
15 committees. So there's already avenues available to 17:47:20
16 them to work with voluntary consensus standards 17:47:25
17 bodies. 17:47:29
18 BY MR. BRIDGES: 17:47:31
19 Q. So I didn't hear any of your answers just now 17:47:31
20 referring to the fact that Mr. Malamud had thought 17:47:32
21 that the public should have access to the published 17:47:35
22 standards for free when those standards have been 17:47:37
23 incorporated by reference. Do you believe that 17:47:41
24 Mr. Malamud's belief that the public should have free 17:47:46
25 and unfettered access to ASTM standards that have been 17:47:50
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1 incorporated by reference by the federal government is 17:47:56
2 harmful? 17:48:04
4 speculation. Beyond the scope of his designation. I 17:48:08
5 object also to the factual statements before the 17:48:16
6 question. 17:48:19
7 But you can answer. 17:48:20
8 THE WITNESS: Obviously, I find that it would 17:48:22
9 be in the best interests of ASTM to strike a balance 17:48:27
10 in providing the public with some access so they can 17:48:32
11 read standards that are incorporated by reference, and 17:48:35
12 that's why I've worked on this project for years, to 17:48:37
13 get the reading room up and running. So I don't 17:48:40
14 disagree on that aspect of what you just put in front 17:48:45
15 of me. 17:48:47
16 BY MR. BRIDGES: 17:48:51
17 Q. You don't disagree with the statement of free 17:48:51
18 and unfettered access by the public to ASTM standards 17:48:57
19 that have been incorporated by reference by the 17:49:02
20 federal government -- 17:49:05
21 A. Is harmful. 17:49:21
22 Q. No. The transcription here didn't make 17:49:23
23 sense. So I need to start again. 17:49:28
24 Is it your view -- sorry. Is it ASTM's view 17:49:30
25 that free and unfettered access by the public to 17:49:37
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1 Q. My question is is it ASTM's view that free 17:50:46
2 and unfettered access by the public to ASTM's 17:50:50
3 standards that have been incorporated by reference by 17:50:56
4 the federal government would be harmful to ASTM? 17:50:58
5 MR. FEE: Objection. Vague and ambiguous. 17:51:04
6 BY MR. BRIDGES: 17:51:12
7 Q. And I'd like a "yes" or "no" to that, please. 17:51:12
8 MR. FEE: No. You will get whatever answer 17:51:15
9 he wants. 17:51:18
10 Asked and answered, and form. 17:51:28
11 BY MR. BRIDGES: 17:51:29
12 Q. Yes or no? 17:51:29
13 MR. FEE: No. Answer how you feel is 17:51:30
14 appropriate. 17:51:32
15 THE WITNESS: Free and unfettered access at 17:51:33
16 this time, we don't understand what the 17:51:35
17 consequences -- unintended consequences might be on 17:51:37
18 our ability to fund our standards development 17:51:42
19 enterprise. So I would be concerned. 17:51:47
20 BY MR. BRIDGES: 17:51:50
21 Q. As Tim would be concerned. 17:51:50
22 MR. FEE: Same objection. 17:51:53
23 THE WITNESS: Yes. 17:51:54
24 BY MR. BRIDGES: 17:51:55
25 Q. ASTM is afraid? 17:51:55
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Q. What conversations have you had with such experts on the sale of standards? The impacts on conversations with folks like John Pace and other experts on the sale of standards. The impacts on ASTM's business model.

THE WITNESS: And my facts would be based on answer? was what facts are available to ASTM? What's your concern, but my question was different. My question to relate to a associated with standards development. which helps to offset all the various costs that are in order to fund our standards development enterprise that free and unfettered access by the public to the consensus standards developed by the Internet. engineering task force? 17:56:01

THE WITNESS: Okay And I would answer it could be if it undermined our ability to continue to develop standards under the model we have for 118 years, which allows participation of all key stakeholder groups by keeping the barriers low.

THE WITNESS: ASTM would be concerned to the public on a free and unfettered basis? 17:55:31


THE WITNESS: I'm not aware of case studies 17:55:47

20 such as you've suggested. 17:55:49

BY MR. BRIDGES: 17:55:51

Q. Is ASTM aware of standards -- voluntary consensus standards developed by the Internet 17:55:56

BY MR. BRIDGES: 17:55:57

19 THE WITNESS: I know about IETF is 17:55:51


18 speculation. Beyond the scope of his designation. 17:55:37

17 May call for expert testimony. 17:55:43


15 THE WITNESS: Beyond the scope of his designation. 17:55:37

14 voluntary consensus standards have been made available 17:55:21

13 to the public on a free and unfettered basis? 17:55:31

12 topic of discussion with John Pace and I. 17:55:07

11 A. I can't recall a number, but it's a frequent 17:55:05

10 it devalues the collection of standards, the volumes 17:53:58

9 of standards that we sell to our commercial customers 17:54:01

8 development process to the extent it has done so in 17:53:43

7 the past? 17:53:47

6 THE WITNESS: And one concern would be that it devalues the collection of standards, the volumes.

5 Lack of foundation. Calls for expert testimony. 17:53:49

4 IF you know individually, you can answer. 17:56:11

3 company. 17:56:10

2 the extent you're asking him to speak on behalf of the 17:56:08

1 THE WITNESS: I've heard of the IETF, but we don't study their policies. 17:56:19

17 don't study their policies. 17:56:19

16 have no interactions with them that I'm aware of. 17:56:16

15 THE WITNESS: I've heard of the IETF, but we have no interactions with them that I'm aware of. 17:56:13

14 that they're a voluntary -- I'm not aware that they develop voluntary consensus standards under an ANSI 17:56:34

13 THE WITNESS: What I know about IETF is 17:56:30

12 speculation. Beyond the scope of his designation. 17:56:30


10 development of voluntary consensus standards? 17:56:26

9 THE WITNESS: I'm aware of case studies 17:55:47

8 BY MR. BRIDGES: 17:55:51

7 such as you've suggested. 17:55:49

6 MR. FEE: Objection. This is beyond the scope of his designation. 17:56:03


4 THE WITNESS: I can't recall. 17:54:53

3 BY MR. BRIDGES: 17:54:55

2 MR. FEE: Objection. Vague. 17:54:48

1 THE WITNESS: What conversations have you had with such experts other than John Pace? 17:54:46

1 experts other than John Pace? 17:54:46

Q. You can't recall any? 17:54:55

MR. FEE: Same objection. 17:54:56

THE WITNESS: No. 17:54:58

BY MR. BRIDGES: 17:55:01

Q. Can you recall how many conversations of that sort you've had? 17:55:02

A. I can't recall a number, but it's a frequent 17:55:05

BY MR. BRIDGES: 17:55:01

Q. You can't recall any? 17:54:55

MR. FEE: Same objection. 17:54:56

THE WITNESS: No. 17:54:58

BY MR. BRIDGES: 17:55:01

Q. Can you recall how many conversations of that sort you've had? 17:55:02

A. I can't recall a number, but it's a frequent 17:55:05

BY MR. BRIDGES: 17:55:01

Q. You can't recall any? 17:54:55

MR. FEE: Same objection. 17:54:56
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<td>15 Q. I believe you said that Mr. Malamud's view 17:58:18</td>
<td>15 MR FEE: Why don't we take a break, and 18:02:24</td>
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<td>16 that grated on your nerves was based on a 17:58:27</td>
<td>16 I'll sort out how much time we have left 18:02:26</td>
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<td>17 misunderstanding of what's in the standards. Do you 17:58:31</td>
<td>17 THE VIDEOGRAPHER: Off the record at 18:02:29</td>
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<td>18 recall that testimony? 17:58:33</td>
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<td>21 THE WITNESS: Now that I hear that read back 17:58:44</td>
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<td>22 to me, I had a poor choice of words. 17:58:47</td>
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| 1 MR. FEE: Just so we're clear, you didn't 17:59:01 | 1 permission; is that correct? 18:15:01 |
| 2 actually read an answer back to him; right? 17:59:03 | 2 (Deposition Exhibit 1068 was marked for 18:15:06 |
| 3 MR. BRIDGES: No. 17:59:06 | 3 identification.) 18:15:06 |
| 5 have it read back? 17:59:10 | 5 (Deposition Exhibit 1069 was marked for 18:15:25 |
| 6 (Record read.) 18:00:15 | 6 identification.) 18:15:25 |
| 7 BY MR. BRIDGES: 18:00:15 | 7 BY MR. BRIDGES: 18:15:25 |
| 8 Q. What was the "misperception" that you 18:00:15 | 8 Q. I ask you to look at Exhibit 1069. This is a 18:15:25 |
| 9 referred to in that answer? 18:00:17 | 9 discussion within ASTM with an underlying E-mail 18:15:31 |
| 10 A. So it would depend on the specific standard, 18:00:21 | 10 thread regarding a request for permission to use 18:15:35 |
| 11 and I don't recall which ones or -- may have been 18:00:23 | 11 material from an ASTM standard; is that correct? 18:15:47 |
| 12 mentioned in the business week article that this 18:00:28 | 12 MR. FEE: Objection. Calls for speculation. 18:15:51 |
| 13 discussion was relating to. But the idea that -- as 18:00:30 | 13 Beyond the scope of his designation. 18:15:53 |
| 14 we discussed earlier, the idea that, outside of a 18:00:38 | 14 BY MR. BRIDGES: 18:15:55 |
| 15 standards development process, there could be 18:00:41 | 15 Q. I think it's within the scope of his 18:15:55 |
| 16 innovation around a standard to me raises -- is a 18:00:44 | 16 designation. That's why I'm asking him about it. 18:15:57 |
| 17 misperception because it will just create more 18:00:51 | 17 MR. FEE: We can agree to disagree on that. 18:16:01 |
| 18 confusion in the marketplace where there will be 18:00:53 | 18 THE WITNESS: I'm sorry. What was the 18:16:25 |
| 19 conflicting standards developed by somebody or some 18:00:56 | 19 question I'm saying "yes" or "no" to? 18:16:26 |
| 20 group of people who didn't operate under a consensus 18:01:00 | 20 BY MR. BRIDGES: 18:16:30 |
| 21 based accredited process to develop rigorous quality 18:01:05 | 21 Q. This is an internal ASTM E-mail; correct? 18:16:30 |
| 22 based standards. 18:01:10 | 22 MR. FEE: Objection. Lack of foundation. 18:16:35 |
| 23 And that's where I believe ASTM standards 18:01:11 | 23 THE WITNESS: Correct. 18:16:37 |
| 24 empower innovation and creativity. 18:01:14 | 24 BY MR. BRIDGES: 18:16:38 |
| 25 Q. Does ASTM believe that only its process and 18:01:19 | 25 Q. Who is Ms. Hooper? 18:16:38 |

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<td>2 legislation; is that correct?  18:18:54</td>
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<td>4 itself.  18:18:57</td>
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<td>6 and now it's being referred to the Senate, and Sarah  18:19:11</td>
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<td>7 Petre recognized that there's references to ASTM  18:19:16</td>
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<td>8 standards which are out of date, and she wanted to  18:19:18</td>
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<td>9 contact the staffer to make him aware of that fact.  18:19:22</td>
<td></td>
</tr>
<tr>
<td>10 BY MR. BRIDGES:  18:19:26</td>
<td></td>
</tr>
<tr>
<td>11 Q. Was this a discussion about incorporation by  18:19:26</td>
<td></td>
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<tr>
<td>12 reference?  18:19:28</td>
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<tr>
<td>13 MR. FEE: Same objection.  18:19:29</td>
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<tr>
<td>14 THE WITNESS: It's a discussion about  18:19:35</td>
<td></td>
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<tr>
<td>15 Congressional intent to use the most recent standard,  18:19:37</td>
<td></td>
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<tr>
<td>16 I believe.  18:19:40</td>
<td></td>
</tr>
<tr>
<td>17 BY MR. BRIDGES:  18:19:41</td>
<td></td>
</tr>
<tr>
<td>18 Q. Is that for Congress' use in making an  18:19:41</td>
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<tr>
<td>19 incorporation by reference into a federal law of an  18:19:48</td>
<td></td>
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<tr>
<td>20 ASTM standard?  18:19:52</td>
<td></td>
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<tr>
<td>21 MR. FEE: Same objection.  18:19:54</td>
<td></td>
</tr>
<tr>
<td>22 THE WITNESS: It appears, yes.  18:19:55</td>
<td></td>
</tr>
<tr>
<td>23 BY MR. BRIDGES:  18:20:01</td>
<td></td>
</tr>
<tr>
<td>24 Q. Does ASTM have a view as to which versions of  18:20:01</td>
<td></td>
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<tr>
<td>25 its standard Congress should include in its  18:20:07</td>
<td></td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>Page 259</th>
<th>1 legislation that causes an incorporation by reference?  18:20:11</th>
</tr>
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<tbody>
<tr>
<td>2 MR. FEE: Can you read that back to me,  18:20:19</td>
<td></td>
</tr>
<tr>
<td>3 please.  18:20:20</td>
<td></td>
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<tr>
<td>4 (Record read.)  18:20:38</td>
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<td>5 MR. FEE: Objection to form. Beyond the  18:20:39</td>
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<td>6 scope of his designation. Calls for speculation.  18:20:40</td>
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<tr>
<td>7 BY MR. BRIDGES:  18:20:48</td>
<td></td>
</tr>
<tr>
<td>8 Q. You may answer.  18:20:48</td>
<td></td>
</tr>
<tr>
<td>9 MR. FEE: Hold on.  18:20:49</td>
<td></td>
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<tr>
<td>10 Lack of foundation.  18:20:53</td>
<td></td>
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<tr>
<td>11 Go ahead.  18:20:55</td>
<td></td>
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<tr>
<td>12 THE WITNESS: Yeah. So I think we think --  18:20:55</td>
<td></td>
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<tr>
<td>13 we want to make sure that Congress is aware of the  18:20:59</td>
<td></td>
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<tr>
<td>14 fact there may be a more recent version because  18:21:02</td>
<td></td>
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<tr>
<td>15 oftentimes it may be unintended that they're not using  18:21:05</td>
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<tr>
<td>16 the most recent version.  18:21:08</td>
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<tr>
<td>17 BY MR. BRIDGES:  18:21:12</td>
<td></td>
</tr>
<tr>
<td>18 Q. Ms. Petre asked you whether ASTM should  18:21:12</td>
<td></td>
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<tr>
<td>19 request that Congress use the language. Does ASTM  18:21:17</td>
<td></td>
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<td>20 ever request Congress to use particular language  18:21:21</td>
<td></td>
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<tr>
<td>21 regarding ASTM standards?  18:21:25</td>
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<tr>
<td>22 MR. FEE: Objection. Beyond the scope of his  18:21:32</td>
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<tr>
<td>23 designation.  18:21:36</td>
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<tr>
<td>24 You can answer.  18:21:36</td>
<td></td>
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<tr>
<td>Page 262</td>
<td>Page 264</td>
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<td>---</td>
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</tr>
<tr>
<td>1 Congress or a federal agency not to incorporate any of its standards by reference? 18:23:00</td>
<td>1 don't think it happens very often, but I believe it 18:25:33</td>
</tr>
<tr>
<td>2 its standards by reference? 18:23:04</td>
<td>2 has happened in the last 10 years since I've been at 18:25:35</td>
</tr>
<tr>
<td>3 MR FEE: Objection Beyond the scope of his designation 18:23:07</td>
<td>3 ASTM 18:25:38</td>
</tr>
<tr>
<td>5 THE WITNESS: To my knowledge, no I believe it's possible that there's been reasons why committees haven't wanted to see standards incorporated by reference, but I can't recall an instance 18:23:15</td>
<td>5 Q Are you saying that there has to be a consensus process in order to cooperate with a federal government in incorporating standards by reference? 18:25:42</td>
</tr>
<tr>
<td>6 it's possible that there's been reasons why committees haven't wanted to see standards incorporated by reference, but I can't recall an instance 18:23:21</td>
<td>6 government in incorporating standards by reference? 18:25:46</td>
</tr>
<tr>
<td>7 haven't wanted to see standards incorporated by 18:23:24</td>
<td>8 MR FEE: Objection Mischaracterizes his testimony Vague 18:25:52</td>
</tr>
<tr>
<td>8 reference, but I can't recall an instance 18:23:26</td>
<td>9</td>
</tr>
<tr>
<td>9 BY MR BRIDGES: 18:23:31</td>
<td>10 You can answer 18:25:58</td>
</tr>
<tr>
<td>10 Q Has ASTM ever imposed conditions on whether the federal government may incorporate its standards by reference? 18:23:37</td>
<td>11 THE WITNESS: No, that's not what I'm saying 18:26:00</td>
</tr>
<tr>
<td>12 by reference? 18:23:42</td>
<td>13 Q Do you know whether any federal official has taken advantage of the reading room that ASTM provides 18:26:17</td>
</tr>
<tr>
<td>13 MR FEE: Same objection Vague as well 18:23:44</td>
<td>14 federal government in each of the last five years? 18:26:19</td>
</tr>
<tr>
<td>14 THE WITNESS: I don't have direct knowledge 18:23:52</td>
<td>15 the public? 18:26:22</td>
</tr>
<tr>
<td>15 It was before my time at ASTM, but I understand at one point in time there was a concern that Congress was perhaps taking ASTM -- taking key content from an ASTM standard and placing it in a piece of legislation and that ASTM would be concerned about that 18:23:54</td>
<td>16 MR FEE: Objection Vague 18:26:23</td>
</tr>
<tr>
<td>16 BY MR BRIDGES: 18:24:16</td>
<td>17 THE WITNESS: I don't know specifically whether they have I do know I've received accolades 18:26:30</td>
</tr>
<tr>
<td>17 Q Why would ASTM be concerned about that? 18:24:16</td>
<td>18 federal government in each of the last five years? 18:26:40</td>
</tr>
<tr>
<td>19 Q Are you saying that there has to be a consensus process in order to cooperate with a federal government in incorporating standards by reference? 18:24:22</td>
<td>20 federal government in each of the last five years? 18:26:49</td>
</tr>
<tr>
<td>21 foundation 18:24:24</td>
<td>25 THE WITNESS: Well, I believe we've received anywhere from $650,000 to $900,000 per year over the last five years from the federal government. 18:27:00</td>
</tr>
<tr>
<td>22 THE WITNESS: It would be taking the standard 18:24:26</td>
<td>22 BY MR BRIDGES: 18:27:04</td>
</tr>
<tr>
<td>23 out of context from what the voluntary consensus 18:24:27</td>
<td>23 last five years from the federal government. 18:27:11</td>
</tr>
<tr>
<td>24 process encompassed in ASTM standards development 18:24:31</td>
<td>24 Q. Were some of that money provided by the federal government in order to facilitate the standards development process? 18:27:22</td>
</tr>
<tr>
<td>25 enterprises wanted to see represented in the standard 18:24:35</td>
<td>26 THE WITNESS: To my knowledge, none of it was. 18:27:31</td>
</tr>
<tr>
<td>28 THE WITNESS: To my knowledge, none of it is. 18:24:47</td>
<td>29 THE WITNESS: To my knowledge, none of it was. 18:27:32</td>
</tr>
<tr>
<td>30 Q Do you recall a particular -- any instance? 18:24:57</td>
<td>31 THE WITNESS: I don't know specifically whether they have I do know I've received accolades 18:27:36</td>
</tr>
<tr>
<td>31 THE WITNESS: I don't recall a particular 18:24:59</td>
<td>32 federal government in each of the last five years? 18:27:40</td>
</tr>
<tr>
<td>33 BY MR BRIDGES: 18:25:01</td>
<td>34 Vague. 18:27:41</td>
</tr>
<tr>
<td>34 Q Do you have an estimate as to the number of times it's occurred? 18:25:06</td>
<td>35 THE WITNESS: I can think of -- that we would 18:27:45</td>
</tr>
<tr>
<td>35 MR FEE: Objection Lack of foundation 18:25:08</td>
<td>36 THE WITNESS: I can think of -- that we would have 18:27:53</td>
</tr>
<tr>
<td>36 Beyond the scope of his designation Calls for speculation 18:25:11</td>
<td>37 sell standards to federal agencies. That would be one 18:27:56</td>
</tr>
<tr>
<td>37 THE WITNESS: It's -- there's a process that 18:25:13</td>
<td>38 source of revenue. 18:28:00</td>
</tr>
<tr>
<td>38 our committees would have to follow They would have 18:25:17</td>
<td>39 MR FEE: Same objection, plus form. 18:28:01</td>
</tr>
<tr>
<td>39 to -- the executive committee of a committee would 18:25:19</td>
<td>40 THE WITNESS: I can think of -- that we would be 18:28:01</td>
</tr>
<tr>
<td>40 have to reach a consensus that they want to see an 18:25:24</td>
<td>41 sell standards to federal agencies. That would be one 18:28:01</td>
</tr>
<tr>
<td>41 ASTM standard included in a regulation And so I 18:25:28</td>
<td>42 source of revenue. 18:28:01</td>
</tr>
<tr>
<td>Employees that participate in ASTM as full voting</td>
<td>18:28:06</td>
</tr>
<tr>
<td>2 members. So they would pay a $75-per-year fee to be a 18:28:09</td>
<td></td>
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<tr>
<td>member of ASTM.</td>
<td>18:28:14</td>
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<tr>
<td>Q. And you're counting that in the figures that</td>
<td>18:28:16</td>
</tr>
<tr>
<td>you gave me earlier?</td>
<td>18:28:18</td>
</tr>
<tr>
<td>A. Yes.</td>
<td>18:28:19</td>
</tr>
<tr>
<td>Q. What other sources of funds from the federal</td>
<td>18:28:20</td>
</tr>
<tr>
<td>government have there been for ASTM?</td>
<td>18:28:23</td>
</tr>
<tr>
<td>A. Right. That's all I'm aware of. That's all</td>
<td>18:28:27</td>
</tr>
<tr>
<td>10 I'm aware of. We also have certification and training</td>
<td>18:28:33</td>
</tr>
<tr>
<td>11 programs, which I don't believe the federal government</td>
<td>18:28:41</td>
</tr>
<tr>
<td>12 is too involved in, but we receive a small stipend</td>
<td>18:28:44</td>
</tr>
<tr>
<td>13 from the U.S. Department of Agriculture to assist them</td>
<td>18:28:49</td>
</tr>
<tr>
<td>14 in running a -- the U.S. bio preferred program.</td>
<td>18:28:53</td>
</tr>
<tr>
<td>Q. Anything else?</td>
<td>18:29:00</td>
</tr>
<tr>
<td>A. We run a proficiency testing program, which</td>
<td>18:29:06</td>
</tr>
<tr>
<td>the U.S. Department of Defense participates in. So</td>
<td>18:29:08</td>
</tr>
<tr>
<td>it's not related to standards, but it's another source</td>
<td>18:29:14</td>
</tr>
<tr>
<td>of revenue from the federal government.</td>
<td>18:29:18</td>
</tr>
<tr>
<td>Q. Does ASTM have any means of identifying who</td>
<td>18:29:22</td>
</tr>
<tr>
<td>the originator was of any particular language in its</td>
<td>18:29:26</td>
</tr>
<tr>
<td>standards?</td>
<td>18:29:33</td>
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<tr>
<td>the extent it calls for a legal conclusion, I'd also</td>
<td>18:29:43</td>
</tr>
<tr>
<td>object on that basis.</td>
<td>18:29:46</td>
</tr>
</tbody>
</table>

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| Go ahead. | 18:29:47 |
| THE WITNESS: To the extent those are legal | 18:29:51 |
| terms, I'm aware of an ASTM standards development | 18:29:52 |
| process. I'm not aware of a way to trace origins back | 18:29:56 |
| to a specific individual. | 18:30:02 |
| BY MR. BRIDGES: | 18:30:06 |
| Q. Is there any -- strike that. | 18:30:06 |
| How many individuals provide language or | 18:30:11 |
| edits to the ASTM standards that have been | 18:30:19 |
| incorporated by reference? | 18:30:24 |
| MR. FEE: Objection. Vague. Compound. | 18:30:25 |
| THE WITNESS: That would be very difficult to | 18:30:37 |
| calculate. I need to ask are you referring to | 18:30:39 |
| standards that have already been incorporated by | 18:30:41 |
| reference? | 18:30:43 |
| BY MR. BRIDGES: | 18:30:44 |
| Q. Yes. | 18:30:44 |
| A. Presumably, if those standards are being | 18:30:47 |
| revised by ASTM or re-approved for use, it will have | 18:30:49 |
| to go through a technical committee. It has to, | 18:30:55 |
| That's the process for re-approving or revising | 18:30:58 |
| standards at ASTM. So it would depend on how many | 18:31:00 |
| people are on that committee and what percentage | 18:31:05 |
| voted. | 18:31:07 |
| Q. How many individuals have provided language | 18:31:11 |

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<p>| follow in participating in the drafting and revision | 18:33:38 |
| process of ASTM standards? | 18:33:40 |
| MR. FEE: Objection. Vague. | 18:33:42 |
| THE WITNESS: Generally, yes. | 18:33:44 |
| MR. BRIDGES: Where are we on time? | 18:34:06 |
| THE VIDEOGRAPHER: 18 minutes left. | 18:34:10 |
| MR. BRIDGES: 18 minutes left. | 18:34:13 |
| (Deposition Exhibit 1073 was marked for | 18:35:00 |
| identification.) | 18:35:00 |
| BY MR. BRIDGES: | 18:35:00 |
| Q. Mr. Grove, do you recognize Exhibit 1073? | 18:35:00 |
| A. I do. | 18:35:13 |
| Q. Does it represent the views of both ASTM and | 18:35:16 |
| ANSI? | 18:35:20 |
| speculation. Beyond the scope of his designation. | 18:35:25 |
| THE WITNESS: I believe this is an error. | 18:35:30 |
| No. I'm not familiar why this page would be stapled | 18:35:32 |
| to a presentation. This is a speaker that came before | 18:35:36 |
| me on a panel followed by -- who probably didn't | 18:35:39 |
| provide a written presentation, which happens to be | 18:35:44 |
| stapled to a presentation which begins with the title | 18:35:47 |
| page on a presentation that I gave. | 18:35:51 |
| BY MR. BRIDGES: | 18:35:54 |
| Q. Okay. So starting -- okay. So there's a | 18:35:54 |</p>
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<thead>
<tr>
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<tbody>
<tr>
<td>1</td>
<td>A. Yes, it is. 18:38:26</td>
</tr>
<tr>
<td>2</td>
<td>MR. FEE: While I'm thinking of it, I'm going 18:39:08</td>
</tr>
<tr>
<td>3</td>
<td>to reserve the right to read and sign. 18:39:12</td>
</tr>
<tr>
<td>4</td>
<td>(Deposition Exhibit 1075 was marked for 18:39:29</td>
</tr>
<tr>
<td>5</td>
<td>identification.) 18:39:29</td>
</tr>
<tr>
<td>6</td>
<td>MR. BRIDGES: I'm handing you an exhibit 18:39:29</td>
</tr>
<tr>
<td>7</td>
<td>marked 1075 that consists of pages ASTM003314 to 18:39:31</td>
</tr>
<tr>
<td>8</td>
<td>ASTM003315. 18:39:37</td>
</tr>
<tr>
<td>9</td>
<td>(The witness reviewed Exhibit 1075.) 18:40:02</td>
</tr>
<tr>
<td>10</td>
<td>BY MR. BRIDGES: 18:40:02</td>
</tr>
<tr>
<td>11</td>
<td>Q. Do you recognize this document? 18:40:02</td>
</tr>
<tr>
<td>12</td>
<td>A. I do, yes. 18:40:22</td>
</tr>
<tr>
<td>13</td>
<td>Q. This is an E-mail from Maureen Houck to a 18:40:29</td>
</tr>
<tr>
<td>14</td>
<td>number of senior staff at ASTM; is that correct? 18:40:32</td>
</tr>
<tr>
<td>15</td>
<td>A. It is correct. 18:40:37</td>
</tr>
<tr>
<td>17</td>
<td>A. I believe it's short for the Information 18:40:45</td>
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<tr>
<td>18</td>
<td>Technology Management Committee. 18:40:50</td>
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<tr>
<td>19</td>
<td>Q. And -- 18:40:54</td>
</tr>
<tr>
<td>20</td>
<td>MR. FEE: I'm going to object. This appears 18:40:56</td>
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<tr>
<td>21</td>
<td>to be just one of many attachments to Exhibit 1075. 18:40:58</td>
</tr>
<tr>
<td>22</td>
<td>MR. BRIDGES: You know, I'm glad you 18:41:01</td>
</tr>
<tr>
<td>23</td>
<td>mentioned that because I don't think we got the other 18:41:02</td>
</tr>
<tr>
<td>24</td>
<td>attachments, and I'd like to get them, please. 18:41:04</td>
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<tr>
<td>25</td>
<td>MR. FEE: I don't know if that's true or not. 18:41:06</td>
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<tr>
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<tbody>
<tr>
<td>1</td>
<td>MR. BRIDGES: I will check, but if we don't 18:41:09</td>
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<tr>
<td>2</td>
<td>have them, we expect to get them. 18:41:10</td>
</tr>
<tr>
<td>3</td>
<td>Q. Can you please explain to me what the purpose 18:41:16</td>
</tr>
<tr>
<td>4</td>
<td>was or what you understood to be the purpose of the 18:41:20</td>
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<tr>
<td>5</td>
<td>page with the Bates number ending in -3315? 18:41:23</td>
</tr>
<tr>
<td>6</td>
<td>MR. FEE: Objection. It's beyond the scope 18:41:33</td>
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<tr>
<td>7</td>
<td>of the designation. Calls for speculation. 18:41:34</td>
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<tr>
<td>8</td>
<td>THE WITNESS: This represents a project that 18:41:39</td>
</tr>
<tr>
<td>9</td>
<td>ASTM staff is undertaking throughout the course of 18:41:42</td>
</tr>
<tr>
<td>10</td>
<td>2015 and -- I'm sorry. 2014 and 2015. These would be 18:41:47</td>
</tr>
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<td>11</td>
<td>the items that are contained in the project. 18:41:53</td>
</tr>
<tr>
<td>12</td>
<td>BY MR. BRIDGES: 18:41:58</td>
</tr>
<tr>
<td>13</td>
<td>Q. Has the project been approved? 18:41:58</td>
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<tr>
<td>15</td>
<td>scope of his designation. 18:42:03</td>
</tr>
<tr>
<td>16</td>
<td>THE WITNESS: Project been approved? 18:42:06</td>
</tr>
<tr>
<td>17</td>
<td>MR. BRIDGES: Strike that. 18:42:08</td>
</tr>
<tr>
<td>18</td>
<td>Q. Is the project underway? 18:42:09</td>
</tr>
<tr>
<td>19</td>
<td>MR. FEE: Objection. Beyond the scope of his 18:42:11</td>
</tr>
<tr>
<td>20</td>
<td>designation. 18:42:13</td>
</tr>
<tr>
<td>21</td>
<td>THE WITNESS: So some of these activities may 18:42:16</td>
</tr>
<tr>
<td>22</td>
<td>be underway, but we don't believe that we are actively 18:42:18</td>
</tr>
<tr>
<td>23</td>
<td>pursuing all of them. 18:42:21</td>
</tr>
<tr>
<td>24</td>
<td>BY MR. BRIDGES: 18:42:23</td>
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<tr>
<td>25</td>
<td>Q. Which ones is ASTM not actively pursuing? 18:42:26</td>
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<tbody>
<tr>
<td>1</td>
<td>MR. FEE: Same objection. 18:42:31</td>
</tr>
<tr>
<td>2</td>
<td>THE WITNESS: Well, we're taking an 18:42:38</td>
</tr>
<tr>
<td>3</td>
<td>inventory. We don't have great information about the 18:42:40</td>
</tr>
<tr>
<td>4</td>
<td>full extent of government participation. So we're 18:42:45</td>
</tr>
<tr>
<td>5</td>
<td>taking an inventory of how many government reps are 18:42:50</td>
</tr>
<tr>
<td>6</td>
<td>participating in ASTM technical committees and where. 18:42:52</td>
</tr>
<tr>
<td>7</td>
<td>We're trying to find out more about how federal 18:42:56</td>
</tr>
<tr>
<td>8</td>
<td>agencies use ASTM standards. 18:42:58</td>
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<td>MR. FEE: Can you read the question back. 18:43:03</td>
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<td>MR. BRIDGES: Not when he's in the middle of 18:43:10</td>
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<td>11</td>
<td>his answer, please. Afterwards, you can do that. 18:43:12</td>
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<td>MR. FEE: He's answering the wrong question. 18:43:14</td>
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<td>13</td>
<td>MR. BRIDGES: Well, let him finish. 18:43:16</td>
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<td>MR. FEE: Read the question back. 18:43:19</td>
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<td>15</td>
<td>MR. BRIDGES: No. No. 18:43:21</td>
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<td>16</td>
<td>MR. FEE: Yes. 18:43:21</td>
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<td>17</td>
<td>MR. BRIDGES: You stopped your witness from 18:43:22</td>
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<td>18</td>
<td>speaking. That's ridiculous. That's improper. 18:43:24</td>
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<td>19</td>
<td>MR. FEE: Wait until she reads the question 18:43:28</td>
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<td>20</td>
<td>back. 18:43:30</td>
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<td>21</td>
<td>(Record read.) 18:43:48</td>
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<td>22</td>
<td>THE WITNESS: It's really hard to say because 18:43:48</td>
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<td>23</td>
<td>we're very early in the process of working on this, 18:43:49</td>
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<td>but I can tell you it's been scaled back. This is a 18:43:53</td>
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<td>pretty ambitious activity. I believe the last two 18:43:55</td>
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1 bullet points are things that we're not going to be able to accomplish or pursue.  
2 By Mr. Bridges.  
3 Q. What standards development activities -- strike that.  
4 What activities has ASTM had to scale back to date as a consequence of the actions of the defendants?  
5 Mr. Fee: Objection. Beyond the scope of the designation. May call for expert testimony. Vague and ambiguous.  
6 The witness: Yeah. I wouldn't be able to answer what specific activities we've scaled back.  
7 By Mr. Bridges:  
8 Q. Have any activities been scaled back by ASTM as a consequence of the actions of the defendants?  
9 Mr. Fee: Same objections.  
10 Q. What standards development activities -- for the purposes of this litigation?  
11 Mr. Fee: Objection. Beyond the scope of his designation. Calls for speculation.  
12 Q. Have you ever participated in something called the "Corner Bakery Group"?  
13 Mr. Fee: Objection. Vague.  
14 The witness: I don't know who created it. I wouldn't be able to answer that question, I instruct you not to disclose that.  
15 Q. Would you like to speculate?  
16 Mr. Fee: Same objection.  
17 Q. Do you know how many times ASTM or its agents have accessed Public Resource's website --  
18 Mr. Fee: Objection.  
19 Q. It involves meetings at a restaurant called "the Corner Bakery Cafe; correct?  
20 Mr. Fee: Objection. Beyond the scope of his designation.  
21 Q. Where is it located in relation to ASTM's Washington office?  
22 Mr. Fee: Objection. Vague.  
23 A. That's correct.

24 By Mr. Bridges:  
25 Q. What topics other than Public Resource are most frequently discussed?  
26 Mr. Fee: Objection. Lack of foundation.”
1 Misleading. 18:48:40
2 THE WITNESS: Funding for NIST, the National 18:48:42
3 Institute of Standards and Technology. I recall OFAC, 18:48:45
4 the Treasury Department's restrictions on sharing 18:48:48
5 standards with certain countries. Congress's interest 18:48:52
6 in energy and dependence. It's just a way for the 18:48:59
7 Washington representatives of standards organizations 18:49:06
8 to exchange information about what's happening in 18:49:08
9 Washington. 18:49:10
10 BY MR. BRIDGES: 18:49:12
11 Q. Who participates in the Corner Bakery group? 18:49:12
12 A. Most often it was Sarah Petre. 18:49:34
13 Q. Who else from ASTM participated? 18:49:39
14 A. Well, I recall as -- 18:49:42
15 MR. FEE: Objection. Vague. 18:49:47
16 THE WITNESS: I rarely participate. It's 18:49:51
17 mostly lower level. Each organization usually assigns 18:49:23
18 the lowest person in their Washington office to 18:49:26
19 attend. 18:49:29
20 BY MR. BRIDGES: 18:49:30
21 Q. Who attends for ASTM? 18:49:30
22 A. I cannot recall any government employee 18:50:07
23 attending. 18:50:09
24 Q. Whom do you most frequently interact with at 18:50:21
25 NFPA? 18:50:25
26 MR. FEE: Objection. Beyond the scope of his 18:50:26
27 designation. Are you asking him personally or as 18:50:28
28 ASTM? 18:50:31
29 BY MR. BRIDGES: 18:50:32
30 Q. Him personally. 18:50:32
31 A. I would say Megan Housewright in their 18:50:34
32 Washington office. 18:50:36
33 Q. Whom do you interact with most frequently at 18:50:39
34 ASHRAE? 18:50:42
35 MR. FEE: Objection. Beyond the scope. 18:50:44
36 THE WITNESS: I'm struggling with his name. 18:50:50
37 His name is Mark. He's in their Washington office. I 18:50:51
38 don't have a lot of interaction with him at all. 18:50:55
39 BY MR. BRIDGES: 18:51:02
40 Q. Who do you interact with most frequently at 18:51:02
41 ANSI? 18:51:04
42 MR. FEE: Same objection. 18:51:06
43 THE WITNESS: Well, I'm involved in a lot of 18:51:07
44 activities for ASTM that -- so my -- probably someone 18:51:08
45 responsible for their global policy, which would be 18:51:15
46 Steve -- I'm sorry Joe Tretler 18:51:18
47 Q. Who is Steve Kramer? Do you know Mr Kramer? 18:51:27
48 A. I do Steve Kramer was a member of the board 18:51:30
49 of directors for a period of three years from the 18:51:34
50 University of Wisconsin 18:51:36
51 Q. Have you discussed this litigation with him? 18:51:37
52 MR. FEE: Objection 18:51:40
53 To the extent you had discussed litigation 18:51:41
54 with him at the request of counsel, I would instruct 18:51:43
55 you not to disclose that, but you can answer 18:51:48
56 otherwise 18:51:50
57 THE WITNESS: I have not discussed litigation 18:51:50
58 with Steve Kramer 18:51:52
59 BY MR BRIDGES: 18:51:53
60 Q Have you discussed Public Resource with Steve 18:51:53
61 Kramer? 18:51:56
62 MR. FEE: Same instruction 18:51:56
63 This is also beyond the scope of his 18:51:57
64 designation 18:51:58
65 THE WITNESS: Yes, I might have 18:52:02
66 BY MR BRIDGES: 18:52:03
67 Q. In what context? 18:52:03
68 MR. FEE: Same instruction with respect to 18:52:06
69 privileged communications. 18:52:07
70 And, again, this is beyond the scope of his 18:52:08
71 designation. 18:52:11
72 THE WITNESS: Yeah. I can't think of a 18:52:13
73 specific instance, but it's possible I've prepared 18:52:14
74 materials for the board that might have referenced the 18:52:17
75 organization you mentioned. 18:52:21
76 BY MR. BRIDGES: 18:52:24
77 Q. Who is Randy Jennings? 18:52:24
78 A. Randy Jennings is a former member of the ASTM 18:52:27
79 board of directors. 18:52:32
80 MR. FEE: We're now at the seven-minute time 18:52:32
81 limit; right? 18:52:34
82 THE VIDEOGRAPHER: (Nods head.) 18:52:35
83 MR. FEE: Last time you said you'd give 18:52:38
84 ASHRAE two more questions. So I'll do the same 18:52:40
85 courtesy to you. 18:52:43
86 MR. BRIDGES: That's fine. Thank you very 18:52:50
87 much, Mr. Grove. 18:52:52
88 THE WITNESS: Thank you. 18:52:54
89 MR. FEE: I have no questions. 18:53:00
90 Thane, do you have any questions? 18:53:02
91 MR. REHN: No questions. 18:53:03
THE VIDEOGRAPHER: This is the end of the deposition of Mr. Jeffrey Grove. We are off the record at 18:52. (Witness excused.) (Deposition concluded at 6:52 p.m.)

CER T I F I C A T E

I do hereby certify that the aforesaid testimony was taken before me, pursuant to notice, at the time and place indicated; that said deponent was by me duly sworn to tell the truth, the whole truth, and nothing but the truth; that the testimony of said deponent was correctly recorded in machine shorthand by me and thereafter transcribed under my supervision with computer-aided transcription; that the deposition is a true and correct record of the testimony given by the witness; and that I am neither of counsel nor kin to any party in said action, nor interested in the outcome thereof.

Nancy J. Martin, RMR, CSR
Dated: March 18, 2015
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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.