

# EXHIBIT 45

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UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

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AMERICAN SOCIETY FOR TESTING AND ) Case No.  
MATERIALS d/b/a ASTM INTERNATIONAL;) 1:13-cv-01215-EGS  
)  
NATIONAL FIRE PROTECTION )  
ASSOCIATION, INC.; and )  
)  
AMERICAN SOCIETY OF HEATING, )  
REFRIGERATING, AND )  
AIR-CONDITIONING ENGINEERS, INC., )  
)  
Plaintiffs, )  
vs. )  
)  
PUBLIC.RESOURCE.ORG, INC., )  
)  
Defendant. )  
-----)  
AND RELATED COUNTERCLAIMS. )  
-----)

RULE 30(B)(6) VIDEOTAPED DEPOSITION OF AMERICAN  
STANDARDS SOCIETY FOR TESTING AND MATERIALS, BY AND  
THROUGH ITS DESIGNEE,  
JEFFREY GROVE  
WASHINGTON, D.C.  
WEDNESDAY, MARCH 4, 2015

Reported by:  
NANCY J. MARTIN, CSR No. 9504, RMR  
Job No. 2010158  
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<p>1 UNITED STATES DISTRICT COURT 2 FOR THE DISTRICT OF COLUMBIA 3 ----- 4 AMERICAN SOCIETY FOR TESTING AND ) Case No 5 MATERIALS d/b/a ASTM INTERNATIONAL;) 1:13-cv-01215-EGS 6 ) 7 NATIONAL FIRE PROTECTION ) 8 ASSOCIATION, INC ; and ) 9 ) 10 AMERICAN SOCIETY OF HEATING, ) 11 REFRIGERATING, AND ) 12 AIR-CONDITIONING ENGINEERS, INC , ) 13 ) 14 Plaintiffs, ) 15 vs ) 16 ) 17 PUBLIC RESOURCE ORG, INC , ) 18 ) 19 Defendant ) 20 ----- 21 AND RELATED COUNTERCLAIMS ) 22 ----- 23 ) 24 ) 25 Rule 30(B)(6) videotaped deposition of American Standards Society for Testing and Materials, by and through its designee, JEFFREY GROVE taken at Veritext Legal Solutions, 1250 Eye Street NW, Suite 1201, Washington, D C commencing at 9:20 A M , Wednesday, March 4, 2015, before Nancy J Martin, CSR 9504 RMR</p>	<p>1 APPEARANCES OF COUNSEL: (CONTINUED) 2 3 MUNGER, TOLLES &amp; OLSON LLP (VIA TELECON) 4 BY: THANE REHN, ESQ. 5 560 Mission Street 6 27th Floor 7 San Francisco, California 94105 8 (415) 512-4073 9 thane.rehn@mto.com 10 11 12 ALSO PRESENT: 13 THOMAS B. O'BRIEN, JR., Vice President and 14 General Counsel, ASTM International 15 16 CARL MALAMUD, PUBLIC.RESOURCE.ORG (via telecon) 17 18 CHRIS SOMO, Legal Videographer 19 20 21 22 23 24 25</p>
Page 2	Page 4
<p>1 APPEARANCES OF COUNSEL: 2 3 FOR THE PLAINTIFFS: 4 MORGAN LEWIS &amp; BOCKIUS LLP 5 BY: J. KEVIN FEE, ESQ. 6 1111 Pennsylvania Avenue NW 7 Washington, D.C. 20004 8 (202) 739-5353 9 JKFEE@MORGANLEWIS.COM 10 11 FOR THE DEFENDANT: 12 FENWICK &amp; WEST LLP 13 BY: ANDREW P. BRIDGES, ESQ. 14 MATTHEW BECKER, ESQ. 15 555 California Street 16 12th Floor 17 San Francisco, California 94104 18 (415) 875-2389 19 abridges@fenwick.com 20 mbecker@fenwick.com 21 22 23 24 25</p>	<p>1 I N D E X 2 TESTIMONY OF: JEFFREY GROVE 3 BY MR. BRIDGES.....14 4 5 - - - 6 E X H I B I T S 7 - - - 8 NUMBER DESCRIPTION MARKED 9 Exhibit 1022 Amended Notice of Deposition, 53 10 8 pages 11 Exhibit 1023 Return of Organization Exempt 56 12 from Income Tax, 2012, 13 43 pages 14 Exhibit 1024 Email string, ASTM015659 - 57 15 -15660, 2 pages 16 Exhibit 1025 Comments of ASTM International, 57 17 ASTM015661 - -15667, 7 pages 18 Exhibit 1026 Email string, ASTM030644 - 58 19 -30647, 4 pages 20 Exhibit 1027 Email string, ASTM015779 - 61 21 -15780, 2 pages 22 Exhibit 1028 Email string, ASTM015828 - 63 23 -15830, 3 pages 24 25</p>
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21	2 pages		
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5	Exhibit 1036 Memo from Jeff to ASTM Senior	84	
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5	Exhibit 1053 Email string, ASTM098310 -	205	
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21	-001815, 2 pages		
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4	NUMBER	DESCRIPTION	MARKED	4	Page Line
5	Exhibit 1061	ASTM License Agreement,	230	5	
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8	Exhibit 1062	Email string, ASTM097943 -	232	8	REQUEST FOR PRODUCTION OF DOCUMENTS:
9		-097945, 3 pages		9	Page Line
10	Exhibit 1063	Email string, ASTM097980,	233	10	
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12	Exhibit 1064	Email dated July 21, 2011,	238	12	
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22	Exhibit 1069	Email string, ASTM092006 -	257	22	
23		-092009, 4 pages		23	
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1	---			1	WASHINGTON, D C , WEDNESDAY, MARCH 4, 2015; 9:20 A M 09:11:47
2	E X H I B I T S			2	-OoO- 09:11:47
3	---			3	THE VIDEOGRAPHER: Good morning My name is 09:20:59
4	NUMBER	DESCRIPTION	MARKED	4	Chris Somo from Veritext National Deposition Services 09:21:00
5	Exhibit 1070	Email string, ASTM095373 -	258	5	The date today is March 4, 2015, and the time on the 09:21:06
6		ASTM95376, 4 pages		6	video monitor is 9:20 This deposition is being held 09:21:09
7	Exhibit 1071	Email string, ASTM019650 -	258	7	at Veritext, Washington, D C located at 09:21:15
8		-19653, 4 pages		8	1250 I Street, Northwest, Washington, D C The 09:21:18
9	Exhibit 1072	Form and Style for ASTM	268	9	caption of this case is American Society for Testing 09:21:21
10		Standards, January 2015,		10	and Materials, et al , v Public Resource O-r-z (sic), 09:21:24
11		80 pages		11	Inc This case is filed in the United States District 09:21:30
12	Exhibit 1073	Incorporation by Reference	269	12	Court for the District of Columbia, Case 09:21:33
13		Public Workshop, July 13,		13	No 1:13-CV-01215-EGS The name of the witness is 09:21:36
14		2012, 15 pages		14	Jeffrey Grove 09:21:47
15	Exhibit 1074	Email string, ASTM005399 -	270	15	At this time the attorneys present in the 09:21:48
16		-5400, 2 pages		16	room and attending remotely, will you please identify 09:21:51
17	Exhibit 1075	Email dated August 20, 2014,	271	17	yourselves for the record 09:21:55
18		ASTM003314 - -003315,		18	MR BRIDGES: This is Andrew Bridges and 09:21:58
19		2 pages		19	Matthew Becker of Fenwick & West representing the 09:21:59
20				20	defendant, Public Resource Org, and listening in on 09:22:04
21				21	the telephone is Carl Malamud, M-a-l-a-m-u-d 09:22:08
22				22	MR FEE: Kevin Fee from Morgan Lewis on 09:22:10
23				23	behalf of ASTM, and I'm joined with -- by Tom O'Brien 09:22:17
24				24	from ASTM 09:22:20
25				25	THE VIDEOGRAPHER: Would the court reporter, 09:22:24
			Page 11		Page 13

1 Nancy Martin, please swear in the witness, and we can 2 begin. 3 JEFFREY GROVE, 4 having been first duly sworn, 5 and testified as follows: 6 7 EXAMINATION 8 BY MR. BRIDGES: 9 Q. Good morning, Mr. Grove. 10 A. Good morning. 11 Q. Have you ever been deposed before? 12 A. I have not. 13 Q. Have you had a chance to meet with ASTM 14 attorneys to prepare you for this deposition? 15 A. I did. 16 Q. When did you meet with them? 17 A. I met with our attorneys over a period of 18 three days. The last two days, and once in December. 19 A total of 15 hours. 20 Q. With whom did you meet? 21 A. I met with Kevin Fee and with Jordana Rubel, 22 and with our corporate attorney, Tom O'Brien. 23 Q. You understand that you are testifying today 24 as a representative of ASTM? 25 A. Yes.	09:22:25 09:22:27 09:22:36 09:22:40 09:22:40 09:22:40 09:22:40 09:22:40 09:22:41 09:22:45 09:22:46 09:22:49 09:22:51 09:22:57 09:22:57 09:22:58 09:23:01 09:23:06 09:23:12 09:23:13 09:23:19 09:23:32 09:23:34 09:23:38
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1 Q. And you understand that you are testifying as 2 a representative of ASTM with respect to certain 3 subject matters? 4 A. Yes. 5 Q. What did you do to educate yourself about 6 those subjects? 7 A. In addition to the meetings, I reviewed a lot 8 of documents. 9 Q. And when did you review the documents? 10 A. Over the last few days and in my own personal 11 time before then. 12 Q. How much time did you spend reviewing 13 documents outside of meetings with attorneys? 14 A. Probably 8 to 10 hours. 15 Q. Did you select those documents, or did the 16 lawyers select the documents? 17 A. Personal knowledge, I selected them. 18 Q. What determined which documents you selected 19 to review? 20 MR. FEE: Objection. To the extent that 21 legal counsel or their guidance provided any basis for 22 your determination, I'm going to instruct you not to 23 disclose that. If you have some independent review 24 criteria that you can share with the other side, 25 that's fine.	09:23:40 09:23:46 09:23:48 09:23:49 09:23:49 09:23:52 09:23:53 09:23:56 09:24:01 09:24:03 09:24:07 09:24:11 09:24:13 09:24:16 09:24:23 09:24:25 09:24:26 09:24:38 09:24:41 09:24:42 09:24:43 09:24:48 09:24:50 09:24:53 09:24:55
Page 15	Page 17
1 THE WITNESS: I don't have any criteria. 2 Just I thought it would be a good idea to review 3 annual reports and that type of publicly available 4 information about ASTM. 5 BY MR. BRIDGES: 6 Q. What else did you review among the documents? 7 MR. FEE: Objection. Are you asking about 8 the ones he selected on his own or the ones -- 9 MR. BRIDGES: No -- 10 MR. FEE: Well, I'm going to instruct you not 11 to disclose the documents that you reviewed at the 12 request or direction of counsel. You can disclose any 13 other documents you reviewed. 14 MR. BRIDGES: I think I'm entitled to know 15 what documents he reviewed to prepare for the 16 deposition. It might reveal attorney work product if 17 he told us what documents were discussed with counsel, 18 but I'm entitled to know which documents he reviewed 19 in general. 20 MR. FEE: I disagree. 21 You should follow my instruction. 22 THE WITNESS: I have no other documents that 23 I can recall to disclose. 24 BY MR. BRIDGES: 25 Q. So you're saying that all the documents -- of	09:24:56 09:24:58 09:25:02 09:25:04 09:25:08 09:25:08 09:25:11 09:25:12 09:25:14 09:25:14 09:25:16 09:25:18 09:25:21 09:25:22 09:25:23 09:25:27 09:25:31 09:25:36 09:25:39 09:25:41 09:25:43 09:25:44 09:25:46 09:25:47 09:25:47
	09:25:52 09:25:55 09:25:56 09:26:01 09:26:03 09:26:08 09:26:13 09:26:20 09:26:24 09:26:26 09:26:31 09:26:35 09:26:37 09:26:39 09:26:43 09:26:43 09:26:48 09:26:49 09:26:51 09:26:55 09:26:57 09:26:59 09:27:01 09:27:03

1 THE VIDEOGRAPHER: We're now going off the 09:27:05	1 Q. Did you attach any significance to that 09:41:21
2 record at 9:26 09:27:05	2 figure? 09:41:23
3 (A recess was taken from 9:26 a m 09:34:30	3 MR. FEE: Objection. Vague. 09:41:25
4 to 9:37 a m ) 09:38:32	4 THE WITNESS: No. 09:41:28
5 THE VIDEOGRAPHER: And we're back on the 09:38:33	5 BY MR. BRIDGES: 09:41:30
6 record at 9:37 09:38:34	6 Q. Did it strike you as unusual or unexpected in 09:41:30
7 BY MR. BRIDGES: 09:38:48	7 any -- 09:41:33
8 Q Do you recall any other documents that you 09:38:48	8 MR. FEE: Objection. Vague and compound. 09:41:34
9 reviewed on your own initiative apart from annual 09:38:50	9 THE WITNESS: It did not. 09:41:40
10 reports and standardization news? 09:38:53	10 BY MR. BRIDGES: 09:41:43
11 A I do not 09:38:59	11 Q. Did those figures he gave you accord with 09:41:43
12 Q Apart from conversations specifically with 09:39:01	12 your expectations? 09:41:45
13 attorneys, did you discuss the topics of today's 09:39:06	13 A. Generally, yes. 09:41:51
14 conversation -- of today's deposition with anyone else 09:39:12	14 Q. Did that revenue trend -- strike that. 09:41:56
15 in preparation for your deposition today? 09:39:18	15 Was that revenue trend consistent with 09:42:03
16 A I made a phone call to our vice president of 09:39:21	16 revenue trends over previous years? 09:42:05
17 sales and publications 09:39:24	17 MR. FEE: Objection. Vague. 09:42:09
18 Q Who is that? 09:39:28	18 THE WITNESS: I don't know. 09:42:14
19 A John Pace 09:39:31	19 BY MR. BRIDGES: 09:42:15
20 Q What did you discuss with him? 09:39:31	20 Q. Do you know anything about revenue trends 09:42:15
21 A Wanted to review ASTM's financials and 09:39:38	21 before three years ago? 09:42:17
22 revenues so I was prepared 09:39:42	22 MR. FEE: Same objection. 09:42:19
23 Q What did you learn from him? 09:39:46	23 THE WITNESS: Not that I can produce or 09:42:26
24 A Not much To be honest, I think I have a 09:39:47	24 recall. 09:42:27
25 good understanding 09:39:52	25 BY MR. BRIDGES: 09:42:32
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1 Q. What did you ask him about? 09:39:55	1 Q. What else did you discuss with Mr. Pace? 09:42:32
2 A. I wanted to review with him what I knew about 09:39:59	2 A. That's all I recall. 09:42:39
3 sources of ASTM's revenue from the sale publications. 09:40:07	3 Q. Did you have conversations with anyone else 09:42:40
4 Q. What else did you ask him about? 09:40:12	4 to prepare for your testimony today? 09:42:43
5 A. That's all I recall. 09:40:15	5 MR. FEE: I assume you're excluding 09:42:49
6 Q. Did you review -- did you discuss with him 09:40:20	6 conversations with counsel for purposes -- 09:42:50
7 any changes in revenue to ASTM from publications? 09:40:25	7 MR. BRIDGES: Yes. 09:42:52
8 MR. FEE: Objection. Form. 09:40:30	8 MR. FEE: -- of that question? 09:42:52
9 THE WITNESS: Not that I recall. 09:40:34	9 MR. BRIDGES: Yes. 09:42:54
10 BY MR. BRIDGES: 09:40:37	10 THE WITNESS: Not that I recall. 09:42:55
11 Q. And did you discuss with him any trends with 09:40:37	11 BY MR. BRIDGES: 09:43:04
12 respect to revenue that ASTM gains from publications? 09:40:42	12 Q. How long have you worked for ASTM? 09:43:04
13 MR. FEE: Objection to form. 09:40:45	13 A. Just over 10 years. 09:43:07
14 Go ahead. 09:40:47	14 Q. What have your job titles been? 09:43:11
15 THE WITNESS: I did ask -- I wanted to learn 09:40:48	15 A. My original job title was Washington 09:43:13
16 over the last couple of years, roughly, what increase 09:40:53	16 representative. My second title was director of 09:43:15
17 in sales we've been experiencing. 09:40:56	17 government and industry affairs, and my current title 09:43:21
18 BY MR. BRIDGES: 09:41:01	18 is vice president of global policy and industry 09:43:25
19 Q. What else? 09:41:01	19 affairs. 09:43:29
20 A. That's all I recall. 09:41:02	20 Q. In that job title, what does the word 09:43:39
21 Q. What did you learn about the increase in 09:41:05	21 "industry" refer to? 09:43:41
22 sales that ASTM has been experiencing? 09:41:07	22 MR. FEE: Objection. Vague. 09:43:43
23 A. That there has been a very slight 2 to 3 to 5 09:41:10	23 THE WITNESS: Well, the majority of ASTM 09:43:48
24 percent increase over the last two to three years. 09:41:15	24 members under our system of private sector led 09:43:51
25 Revenue from sales of publications. 09:41:18	25 public/private collaboration come from industry. So I 09:43:56
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1 work with industry to make them aware of ASTM and to 09:43:59	1 curiosity, but the question is broad enough that it 09:47:29
2 try to get them engaged in our process 09:44:03	2 might call for that 09:47:31
3 BY MR BRIDGES: 09:44:12	3 MR FEE: Objection to form 09:47:33
4 Q So "industry" in that title doesn't refer to 09:44:12	4 BY MR BRIDGES: 09:47:34
5 industry that ASTM is in Instead, it refers to the 09:44:15	5 Q You may answer 09:47:34
6 industries of its members -- 09:44:20	6 A So I've been appointed to work for the 09:47:40
7 MR FEE: Objection to form 09:44:22	7 Department of Commerce, Environmental Technology Trade 09:47:42
8 BY MR BRIDGES: 09:44:28	8 Advisory Committee where for the last four years I've 09:47:46
9 Q -- is that correct? 09:44:28	9 served as the vice chairman of regulation, 09:47:55
10 A Yes 09:44:28	10 certification, and standards I'm sorry Vice 09:48:01
11 Q What was your undergraduate degree? 09:44:40	11 chairman, yes 09:48:03
12 A My undergraduate degree is in -- I'm a double 09:44:44	12 Q Is that a USTR committee? 09:48:06
13 major in political science and public administration 09:44:47	13 A It's a U S Department of Commerce 09:48:08
14 Q What employment did you have before ASTM that 09:45 05	14 Congressionally chartered committee 09:48:11
15 equipped you for your job at ASTM? 09:45:15	15 Q What other positions have you held? 09:48:22
16 MR FEE: Objection Vague 09:45:20	16 A There is an organization called the American 09:48:27
17 THE WITNESS: From 1993 to 2000 I worked for 09:45:21	17 National Standards Institute, and I serve on the 09:48:28
18 the U S House of Representatives in different 09:45:29	18 National Policy Committee 09:48:32
19 positions 09:45:32	19 Q What else? 09:48:40
20 BY MR BRIDGES: 09:45:33	20 A In 2009 I served the State Department -- U S 09:48:44
21 Q What else? 09:45:33	21 State Department as a delegate to the -- I want to 09:48:50
22 A From 2001 to 2004 I worked for the 09:45:37	22 make sure I get it right Asia-Pacific Economic 09:48:55
23 Association for Computing Machinery here in 09:45:42	23 Council APEC It involved meetings in Singapore 09:49:00
24 Washington 09:45:44	24 Q What else? 09:49:11
25 Q What else? 09:45:47	25 A That's all I recall 09:49:20
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1 A. 2004, I was hired by ASTM. 09:45:48	1 Q. Have you ever heard of an informal 09:49:22
2 Q. Did you receive any training as an engineer? 09:46:07	2 organization called coalition for SDO awareness? 09:49:25
3 A. I'm not an engineer, no. 09:46:11	3 A. I'm not familiar with that title. 09:49:34
4 Q. Did you receive any scientific technical 09:46:13	4 Q. Are you familiar with an organization that 09:49:37
5 training? 09:46:16	5 that title suggests? 09:49:47
6 MR. FEE: Objection. Vague and compound. 09:46:17	6 MR. FEE: Objection. Vague. Calls for 09:49:47
7 THE WITNESS: No. Science and technology 09:46:20	7 speculation. 09:49:47
8 policy I was involved in, but not a scientist. 09:46:22	8 THE WITNESS: I'm not aware of that 09:49:47
9 BY MR. BRIDGES: 09:46:58	9 organization. 09:49:48
10 Q. In the time you have worked for ASTM, have 09:46:58	10 BY MR. BRIDGES: 09:49:48
11 you held any type of position in any other the 09:47:01	11 Q. Are you familiar with the domain name or 09:49:54
12 organization? 09:47:02	12 website SDOAWARENESS.ORG? 09:49:57
13 MR. FEE: Objection. Vague. 09:47:03	13 A. Okay. So I can't speak with certainty, but 09:50:00
14 THE WITNESS: Could you help define 09:47:05	14 that could be referring to work that ASTM and FPA and 09:50:06
15 "organization." 09:47:07	15 ASME undertook together to educate the public about 09:50:10
16 BY MR. BRIDGES: 09:47:08	16 standards back in 2012. 09:50:14
17 Q. Well, another association or industry group. 09:47:08	17 MR. FEE: I'll just remind you to answer 09:50:20
18 A. Okay. 09:47:16	18 about your knowledge. Don't speculate. 09:50:21
19 Q. Any other entity that you've had a title in. 09:47:16	19 THE WITNESS: Thank you. 09:50:26
20 A. Okay. 09:47:19	20 BY MR. BRIDGES: 09:50:37
21 MR. FEE: Objection. Are you asking about 09:47:20	21 Q. Did you understand the work that ASTM and FPA 09:50:37
22 his personal capacity too? Do you want to know what 09:47:21	22 and ASME undertook together to be as part of some 09:50:40
23 church he belongs to, et cetera, or just as an ASTM 09:47:24	23 informal coalition? 09:50:44
24 employee? 09:47:27	24 MR. FEE: Objection. Vague. 09:50:46
25 MR. BRIDGES: Well, that's not a focus of my 09:47:28	25 THE WITNESS: Informal coalition would be my 09:50:49
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1 recollection of this group. 09:50:52	1 BY MR. BRIDGES: 09:53:07
2 BY MR. BRIDGES: 09:50:56	2 Q. Why do you not know? 09:53:07
3 Q. Do you recall any other name for that 09:50:56	3 MR. FEE: Objection. Vague. Calls for 09:53:09
4 informal coalition than the name I used a few 09:50:57	4 speculation. 09:53:11
5 questions ago? 09:51:00	5 THE WITNESS: I don't know why -- how the 09:53:15
6 A. I do not. 09:51:09	6 organization was formed. 09:53:18
7 Q. Are you aware that that informal coalition 09:51:10	7 BY MR. BRIDGES: 09:53:19
8 retained a lobbyist in Washington? 09:51:10	8 Q. Did you participate in the organization? 09:53:19
9 MR. FEE: Objection. Lack of foundation. 09:51:11	9 A. And, again, I wouldn't call it an 09:53:21
10 Calls for speculation. 09:51:12	10 organization. It's an informal group. But, yes, I 09:53:23
11 THE WITNESS: ASTM does not lobby. So I'm 09:51:14	11 participated. 09:53:26
12 not aware that we retained a lobbyist for that 09:51:16	12 Q. Who else participated in the informal group? 09:53:27
13 coalition. 09:51:23	13 A. My counterparts, being Washington 09:53:30
14 BY MR. BRIDGES: 09:51:25	14 representatives for ASME and for NFPA. 09:53:32
15 Q. Are you aware of any of the work of an 09:51:25	15 Q. Who are those counterparts? 09:53:40
16 organization called APCO? 09:51:28	16 A. At the time, for ASME, it was a 09:53:44
17 A. Yes, I'm aware. 09:51:29	17 representative named Robert Grains, and for NFPA I 09:53:48
18 Q. Are you aware of its work with respect to 09:51:30	18 believe it was Megan Housewright. 09:53:54
19 standards development organizations? 09:51:32	19 Q. Do you recall their titles at their 09:54:01
20 MR. FEE: Objection. Vague. Calls for 09:51:32	20 respective organizations? 09:54:03
21 speculation. 09:51:35	21 A. I don't. I do not. 09:54:04
22 THE WITNESS: I'm aware that we worked with 09:51:38	22 Q. How did you first come to hear about the 09:54:09
23 an organization called APCO on a public awareness 09:51:40	23 possibility of these companies working with APCO? 09:54:13
24 project. 09:51:43	24 A. I don't recall exactly how I came to be aware 09:54:26
25 BY MR. BRIDGES: 09:51:46	25 of it. 09:54:30
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1 Q. When you said, "we" in the last answer, who 09:51:46	1 Q. What's the first activity that you recall you 09:54:31
2 are you referring to? 09:51:48	2 engaged in with respect to that group? 09:54:37
3 A. That was jointly undertaken between FPA and 09:51:50	3 A. I believe that we -- the representatives of 09:54:41
4 FPA and ASME 09:51:55	4 the organizations recognized that there was a need to 09:54:48
5 Q. Did ASTM contribute to the payments to APCO? 09:51:55	5 raise a greater awareness about the benefits the U.S. 09:54:52
6 A. We did, yes 09:52:02	6 Standards System with our key stakeholders in 09:54:58
7 Q. You mentioned ASTM and FPA and ASME as part 09:52:17	7 Washington, D.C. and beyond. So I believe we got -- 09:55:01
8 of the group; is that correct? 09:52:23	8 had that discussion and decided the best way to do 09:55:06
9 MR. FEE: Objection. Mischaracterizes his 09:52:24	9 that would be to work with a firm that's more familiar 09:55:10
10 testimony and vague 09:52:25	10 with public affairs capabilities and attributes. 09:55:15
11 THE WITNESS: My recollection is those are 09:52:33	11 Q. What was the first activity that you recall 09:55:26
12 the three organizations, correct 09:52:35	12 you engaged in with respect to that group? 09:55:30
13 BY MR. BRIDGES: 09:52:38	13 MR. FEE: Objection. Asked and answered. 09:55:32
14 Q. Do you recall whether any other organization 09:52:38	14 THE WITNESS: Identifying what -- some of the 09:55:40
15 participated with those three and the activities 09:52:41	15 activities we'd like to undertake together. 09:55:43
16 relating to APCO? 09:52:44	16 BY MR. BRIDGES: 09:55:52
17 A. I do not recall any other organizations 09:52:46	17 Q. How did you first -- did you propose that 09:55:52
18 participating 09:52:48	18 these three organizations work together in this 09:55:57
19 Q. Who organized the joint effort of ASTM and 09:52:49	19 fashion? 09:56:07
20 FPA and ASME with respect to APCO? 09:52:52	20 A. I don't recall how these three organizations 09:56:07
21 MR. FEE: Objection. Lack of foundation 09:52:56	21 were the ones that worked together. 09:56:09
22 THE WITNESS: I wouldn't be able to answer 09:53:01	22 Q. Do you recall -- did somebody take the 09:56:15
23 that I believe it -- 09:53:02	23 initiative to convene this group with respect to 09:56:22
24 MR. FEE: If you don't know, you don't know 09:53:04	24 retaining a firm like APCO? 09:56:24
25 THE WITNESS: I don't know 09:53:07	25 MR. FEE: Objection. Vague. 09:56:26
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1 THE WITNESS: Right. So I believe we 09:56:29	1 BY MR BRIDGES: 09:58:47
2 identified the objectives, and I believe the next step 09:56:33	2 Q Do you recall any interactions with Lorraine 09:58:47
3 was to formulate a request for proposal that we wanted 09:56:36	3 Carli of NFPA? 09:58:49
4 to put out to a public affairs firm. 09:56:40	4 A I do recall Lorraine Carli 09:58:52
5 BY MR. BRIDGES: 09:56:46	5 Q With respect to this initiative? 09:58:53
6 Q. Who first brought the idea of this activity 09:56:46	6 MR FEE: Objection Vague 09:58:55
7 to the attention of the others within this group? 09:56:49	7 THE WITNESS: I believe Lorraine is the vice 09:58:57
8 MR. FEE: Objection. Vague. 09:56:51	8 president for public affairs and communications in 09:59:00
9 THE WITNESS: I just don't recall. 09:56:52	9 Battery Park, Massachusetts So I do believe she was 09:59:06
10 BY MR. BRIDGES: 09:56:54	10 involved in this now that you mention it 09:59:09
11 Q. Was it you? 09:56:54	11 BY MR BRIDGES: 09:59:12
12 A. I don't think it was me. 09:56:55	12 Q How was she involved? 09:59:12
13 Q. Was it Megan Housewright? 09:57:02	13 MR FEE: Objection Calls for speculation 09:59:14
14 MR. FEE: Objection. Calls for speculation. 09:57:04	14 THE WITNESS: I believe she helped to frame 09:59:16
15 THE WITNESS: Yeah, I don't know. 09:57:05	15 some of the issues that this informal group would want 09:59:19
16 BY MR. BRIDGES: 09:57:12	16 to work with the public affairs firm to assist us, and 09:59:23
17 Q. Do you know on what occasion the idea these 09:57:12	17 perhaps drafted -- helped to draft the RFP 09:59:29
18 three entities working together in this fashion came 09:57:25	18 BY MR BRIDGES: 09:59:46
19 about? 09:57:27	19 Q Who else provided input for that RFP? 09:59:46
20 MR. FEE: Objection. Vague. Calls for 09:57:28	20 MR FEE: Objection Calls for speculation 09:59:49
21 speculation. 09:57:30	21 THE WITNESS: I believe both ASTM and ASME 09:59:50
22 THE WITNESS: Could you restate the question, 09:57:32	22 had an opportunity to provide input 09:59:53
23 please? 09:57:33	23 BY MR BRIDGES: 09:59:59
24 BY MR. BRIDGES: 09:57:33	24 Q And did they provide input? 09:59:59
25 Q. Do you know on what occasion the idea of 09:57:33	25 MR FEE: Objection Calls for speculation 10:00:01
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1 these three entities working together came about? 09:57:35	1 THE WITNESS: I don't recall. 10:00:02
2 MR. FEE: Same objections. 09:57:38	2 BY MR. BRIDGES: 10:00:03
3 THE WITNESS: I don't recall the occasion. 09:57:46	3 Q. Did you provide input? 10:00:03
4 BY MR. BRIDGES: 09:57:46	4 A. I recall that I reviewed it. I don't recall 10:00:04
5 Q. Do you recall when the idea of these three 09:57:46	5 if I commented specifically and requested any changes. 10:00:06
6 entities working together arose? 09:57:49	6 Q. Did anybody else from ASTM review it? 10:00:15
7 A. Right. I believe it was 2011. 09:57:49	7 MR. FEE: Objection. Calls for speculation. 10:00:19
8 Q. When in 2011? 09:57:52	8 THE WITNESS: I probably made our attorney 10:00:22
9 A. I'm sorry. I don't know -- recall the month. 09:57:54	9 aware of and asked for legal counsel advice. 10:00:24
10 Q. Did this activity arise because of concerns 09:58:12	10 BY MR. BRIDGES: 10:00:29
11 about political policy issues relating to 09:58:16	11 Q. Which attorney? 10:00:29
12 incorporation of standards by reference? 09:58:20	12 A. That would be Tom O'Brien, our vice president 10:00:30
13 MR. FEE: Objection. Vague. Calls for 09:58:21	13 and general counsel. 10:00:32
14 speculation. 09:58:23	14 Q. Who's sitting here in the deposition today? 10:00:33
15 THE WITNESS: I don't recall there being one 09:58:25	15 A. Correct. 10:00:35
16 single reason why -- that motivated the formation of 09:58:26	16 Q. Did anybody else at ASTM review it? 10:00:40
17 this informal group. 09:58:30	17 MR. FEE: Objection. Calls for speculation. 10:00:44
18 BY MR. BRIDGES: 09:58:32	18 THE WITNESS: I don't recall. 10:00:49
19 Q. Was that a reason? 09:58:32	19 BY MR. BRIDGES: 10:01:12
20 MR. FEE: Same objections. 09:58:34	20 Q. A few questions ago you said that the 10:01:12
21 THE WITNESS: It could have been one reason. 09:58:35	21 representatives of the organizations recognized that 10:01:14
22 BY MR. BRIDGES: 09:58:36	22 there was a need to raise a greater awareness about 10:01:17
23 Q. It could have been or it was? 09:58:36	23 the benefits of the U.S. Standards System with our key 10:01:22
24 MR. FEE: Objection. Calls for speculation. 09:58:38	24 stakeholders in Washington, D.C. and beyond. Whom 10:01:27
25 THE WITNESS: I don't recall whether it was. 09:58:42	25 were you referring to when you referred to "our key 10:01:33
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1 stakeholders in Washington, D.C."?	10:01:37	1 Q And were these all stakeholders with whom	10:04:49
2 MR. FEE: Objection to the extent that it	10:01:40	2 this informal group communicated with respect to the	10:04:51
3 isn't an exact quote of what he said.	10:01:40	3 topics for which the group retained APCO?	10:04:57
4 You can answer, if you know.	10:01:43	4 MR FEE: Objection Vague Calls for	10:05:02
5 THE WITNESS: Okay. I believe that our key	10:01:45	5 speculation	10:05:04
6 stakeholders in Washington, D.C., the business	10:01:46	6 THE WITNESS: Generally, this would be the	10:05:07
7 community that's active on shaping and forming	10:01:50	7 audience that we'd be trying to inform about the	10:05:07
8 Washington. So that would include organizations like	10:01:57	8 importance of the U S Standards System	10:05:12
9 the National Association of Manufacturers.	10:02:00	9 BY MR BRIDGES:	10:05:15
10 BY MR. BRIDGES:	10:02:11	10 Q Is this the same audience you would wish to	10:05:15
11 Q. Who else do you include within the scope of	10:02:11	11 raise the policy issues surrounding incorporation by	10:05:18
12 "our key stakeholders in Washington, D.C."?	10:02:14	12 reference with?	10:05:25
13 A. The U.S. Chamber of Commerce.	10:02:17	13 MR FEE: Same objection	10:05:27
14 Q. Who else?	10:02:24	14 THE WITNESS: I don't recall that in 2011 a	10:05:28
15 A. Consumer representatives, such as the	10:02:26	15 corporation by reference I don't believe there was	10:05:29
16 Consumer Federation of America.	10:02:27	16 any legislation or any significant reason to raise	10:05:31
17 Q. Who else?	10:02:34	17 IBR	10:05:37
18 A. The U.S. Public Interest Research Group,	10:02:36	18 BY MR BRIDGES:	10:05:44
19 known as U.S. PIRG.	10:02:40	19 Q When did it become significant, in your view?	10:05:44
20 Q. Who else?	10:02:40	20 MR FEE: Objection Vague Calls for	10:05:46
21 A. Environmental advocacy groups. To name one,	10:02:47	21 speculation	10:05:48
22 Friend of the Earth.	10:02:52	22 THE WITNESS: In the course of our meetings	10:05:49
23 Q. Who else?	10:02:59	23 and raising a greater awareness about the U S	10:05:50
24 A. Important research organizations and think	10:03:03	24 Standards System, we would be asked questions about	10:05:54
25 tanks, such as the National Academies of Science.	10:03:04	25 how organizations like ASTM and FPA and ASME sustained	10:05:57
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1 Q. Who else?	10:03:12	1 their funding model	10:06:03
2 A. The Transportation Resource Board.	10:03:13	2 BY MR BRIDGES:	10:06:08
3 Q. Keep going.	10:03:17	3 Q Who asked those questions?	10:06:08
4 A. I believe think tanks such as the Brookings	10:03:25	4 A That could be any of the stakeholders that we	10:06:09
5 Institute.	10:03:28	5 interacted with	10:06:12
6 Q. Keep going?	10:03:35	6 Q I'm asking you to recall any specific source	10:06:12
7 A. The Council for Competitiveness.	10:03:36	7 of that question	10:06:14
8 Q. Keep going.	10:03:39	8 A I believe during the course of this time,	10:06:22
9 A. The American Enterprise Institute.	10:03:39	9 Office of Management and Budget was having a review of	10:06:24
10 Q. Keep going.	10:03:44	10 the U S Standards System and asked specific questions	10:06:28
11 A. That might close the business and consumer	10:03:54	11 about the effectiveness of the U S Standards System	10:06:35
12 groups stakeholder category.	10:03:56	12 and how the Standard System works	10:06:37
13 Q. Keep going with more stakeholders.	10:03:59	13 Q What did you understand to be the reason that	10:06:39
14 A. Another category, then, would be policy	10:04:01	14 prompted OMB's review? I understand --	10:06:43
15 makers in Washington, D.C.	10:04:03	15 MR FEE: Objection	10:06:47
16 Q. And please list them.	10:04:09	16 BY MR BRIDGES:	10:06:47
17 A. That could include Congressional staff or the	10:04:10	17 Q -- you may have been privy to the exact	10:06:47
18 U.S. House of Representatives, the U.S. Senate.	10:04:12	18 reason, but what did you, at the time, understand to	10:06:49
19 Q. Yes.	10:04:18	19 be the reason?	10:06:52
20 A. That would include executive branch	10:04:18	20 MR FEE: Objection Compound Calls for	10:06:54
21 officials, such as the Office of Management and Budget	10:04:21	21 speculation	10:06:56
22 and specific agencies.	10:04:23	22 THE WITNESS: I wouldn't know specifically	10:06:56
23 Q. Yes.	10:04:32	23 BY MR BRIDGES:	10:06:59
24 A. I believe that's all I can recall at the	10:04:42	24 Q You have no idea?	10:06:59
25 moment.	10:04:44	25 MR FEE: Same objections	10:07:00
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1 THE WITNESS: Right I believe it hadn't 10:07:01	1 Q. Did ASTM have any written communications 10:10:03
2 been revised in 10 years The OMB circular, which 10:07:02	2 with -- strike that. 10:10:11
3 provides key important information for federal 10:07:07	3 Did ASTM have written communications 10:10:18
4 agencies, informing them that they should work with 10:07:10	4 regarding public resource regarding Carl Malamud or 10:10:21
5 voluntary consensus standards organizations and use 10:07:11	5 regarding incorporation by reference with any of the 10:10:26
6 voluntary consensus standards to the extent that it's 10:07:13	6 following: Consumer Federation, U.S. public interest 10:10:30
7 relevant to their mission That specific OMB circular 10:07:16	7 groups, Friends of the Earth, Brookings Institute? 10:10:36
8 had not been revised for a period of 10 years So 10:07:21	8 MR. FEE: Objection. Compound. Calls for 10:10:53
9 there was a fresh look in the new administration, the 10:07:24	9 speculation. 10:10:54
10 Obama administration which had come to Washington 10:07:29	10 THE WITNESS: I believe we produced some 10:10:55
11 BY MR BRIDGES: 10:07:33	11 materials which were distributed broadly to our 10:10:57
12 Q And you have no idea of any particular reason 10:07:33	12 stakeholders, including the groups that you mentioned, 10:10:59
13 apart from general updating -- 10:07:35	13 that discussed the benefits of the U.S. Standards 10:11:01
14 MR FEE: Objection 10:07:38	14 System, the independence of our standards development 10:11:04
15 BY MR BRIDGES: 10:07:40	15 enterprise, and the process by which organizations 10:11:09
16 Q -- OMB was -- 10:07:40	16 like ours maintain our independence and keep barriers 10:11:11
17 A I'm not -- 10:07:42	17 to participation low by providing our standards, 10:11:16
18 MR FEE: Let me object 10:07:43	18 making them widely available at a very reasonable and 10:11:19
19 Objection Calls for speculation 10:07:44	19 flexible basis. 10:11:19
20 THE WITNESS: No, I don't have any, why OMB 10:07:47	20 BY MR. BRIDGES: 10:11:19
21 conducted their review 10:07:55	21 Q. What were the materials that were 10:11:24
22 BY MR BRIDGES: 10:08:09	22 distributed? 10:11:26
23 Q When did ASTM start discussing Carl Malamud 10:08:09	23 MR. FEE: Same objections. 10:11:27
24 with its key stakeholders in Washington, D C ? 10:08:18	24 THE WITNESS: One-pager or two-pager of 10:11:31
25 MR FEE: Objection Foundation Vague 10:08:23	25 printed materials. 10:11:33
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1 THE WITNESS: I wouldn't be able to give you 10:08:25	1 BY MR. BRIDGES: 10:11:35
2 the exact date, but I believe it was 2012 10:08:26	2 Q. Exactly what were they? 10:11:35
3 BY MR BRIDGES: 10:08:29	3 A. In Washington speak, I believe they're just 10:11:38
4 Q What caused ASTM to discuss Carl Malamud with 10:08:29	4 called "lit pieces." 10:11:40
5 its key stakeholders in Washington, D C ? 10:08:36	5 Q. They're called what? 10:11:42
6 MR FEE: Objection Vague 10:08:39	6 A. A literature piece. Just a one-pager that 10:11:43
7 THE WITNESS: I believe there was an event 10:08:40	7 you prepare that discusses your relevance. 10:11:51
8 where there was a number of ASTM copyrighted standards 10:08:42	8 Q. How many distinct literature pieces were 10:11:55
9 which were provided to various officials in 10:08:48	9 distributed? 10:12:02
10 Washington, D C 10:08:51	10 MR. FEE: Objection. Vague. 10:12:05
11 BY MR BRIDGES: 10:08:57	11 THE WITNESS: I wouldn't be able to answer. 10:12:08
12 Q Is that the first awareness -- strike that 10:08:57	12 BY MR. BRIDGES: 10:12:09
13 Is that the first time that ASTM discussed 10:08:59	13 Q. I don't mean how many copies were circulated. 10:12:09
14 Carl Malamud with its key stakeholders in Washington, 10:09:12	14 I mean how many different literature pieces did ASTM, 10:12:11
15 D C ? 10:09:16	15 either alone or with these other organizations, 10:12:15
16 MR FEE: Objection Vague 10:09:16	16 generate for use with the key stakeholders? 10:12:18
17 THE WITNESS: That's when I recall the 10:09:18	17 MR. FEE: Objection to form. 10:12:24
18 Washington office becoming aware of it 10:09:19	18 THE WITNESS: Yeah. I'm familiar with more 10:12:25
19 BY MR BRIDGES: 10:09:26	19 than two. 10:12:27
20 Q That wasn't exactly an answer to my question 10:09:26	20 BY MR. BRIDGES: 10:12:28
21 Is that the first time that ASTM discussed Carl 10 09:31	21 Q. How many? 10:12:28
22 Malamud with its key stakeholders in Washington, D C ? 10:09:35	22 MR. FEE: Objection. Asked and answered. 10:12:29
23 MR FEE: Same objections 10:09:40	23 BY MR. BRIDGES: 10:12:33
24 THE WITNESS: To the best of my knowledge 10:09:41	24 Q. How many? 10:12:33
25 BY MR BRIDGES: 10:10:03	25 MR. FEE: Objection. 10:12:34
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<p>1 THE WITNESS: I don't have an exact number. 10:12:35</p> <p>2 BY MR. BRIDGES: 10:12:36</p> <p>3 Q. What's your best estimate? 10:12:36</p> <p>4 MR. FEE: Objection. 10:12:37</p> <p>5 I instruct you not to speculate. If you have 10:12:38</p> <p>6 an estimate beyond what you've said, then you can go 10:12:42</p> <p>7 ahead and give it. 10:12:44</p> <p>8 THE WITNESS: I'd say three. 10:12:46</p> <p>9 BY MR. BRIDGES: 10:12:46</p> <p>10 Q. Who drafted them? 10:12:46</p> <p>11 MR. FEE: Objection. Calls for speculation. 10:12:48</p> <p>12 THE WITNESS: It would be an iterative 10:12:50</p> <p>13 process. Our public affairs firm would be informed by 10:12:52</p> <p>14 the interests and comments that we would make to help 10:12:56</p> <p>15 shape them to reflect more accurately the operations 10:13:01</p> <p>16 of our organizations. 10:13:05</p> <p>17 BY MR. BRIDGES: 10:13:08</p> <p>18 Q. Are you saying that only the public affairs 10:13:08</p> <p>19 firm drafted those pieces? 10:13:12</p> <p>20 MR. FEE: Objection. Vague. Compound. 10:13:17</p> <p>21 THE WITNESS: I believe you're asking about 10:13:19</p> <p>22 this APCO related effort. 10:13:20</p> <p>23 BY MR. BRIDGES: 10:13:20</p> <p>24 Q. I'm referring to whatever public relations 10:13:22</p> <p>25 firm you just referred to. 10:13:23</p> <p style="text-align: right;">Page 42</p>	<p>1 to APCO? 10:15:09</p> <p>2 MR. FEE: Objection. Vague. Asked and 10:15:10</p> <p>3 answered. 10:15:13</p> <p>4 THE WITNESS: No further information. 10:15:14</p> <p>5 BY MR. BRIDGES: 10:15:15</p> <p>6 Q. What other public relations or government 10:15:15</p> <p>7 relations firm -- firms did ASTM work with where the 10:15:18</p> <p>8 work related in any way to standards incorporated by 10:15:31</p> <p>9 reference? 10:15:37</p> <p>10 MR. FEE: Objection. Lack of foundation. 10:15:38</p> <p>11 THE WITNESS: No other public affairs firms 10:15:41</p> <p>12 or other firms that I'm aware of for this type of 10:15:44</p> <p>13 activity. 10:15:48</p> <p>14 BY MR. BRIDGES: 10:15:52</p> <p>15 Q. What other -- strike that. 10:15:52</p> <p>16 Did ASTM engage, during the same period of 10:16:01</p> <p>17 time, any public relations firms to engage in any 10:16:08</p> <p>18 other types of public relations from the period 2011 10:16:15</p> <p>19 to today? 10:16:20</p> <p>20 MR. FEE: Objection. Calls for speculation. 10:16:21</p> <p>21 MR. BRIDGES: I'm going to change the 10:16:24</p> <p>22 question because it's inconsistent. 10:16:25</p> <p>23 BY MR. BRIDGES: 10:16:38</p> <p>24 Q. What other public relations firms has ASTM 10:16:39</p> <p>25 retained since 2011 to today? 10:16:45</p> <p style="text-align: right;">Page 44</p>
<p>1 A Yes 10:13:25</p> <p>2 Q No one else, to your knowledge, drafted the 10:13:25</p> <p>3 literature pieces you referred to? 10:13:34</p> <p>4 MR FEE: Objection Vague Compound 10:13:36</p> <p>5 THE WITNESS: Not that I recall 10:13:38</p> <p>6 BY MR BRIDGES: 10:13:46</p> <p>7 Q Was the public affairs firm -- you said it 10:13:46</p> <p>8 was an iterative process and that the public affairs 10:13:49</p> <p>9 firm would be informed by the information and comments 10:13:53</p> <p>10 that were provided Who, to your knowledge, provided 10:14:00</p> <p>11 the information and comments? 10:14:05</p> <p>12 A For ASTM, that would be me 10:14:06</p> <p>13 Q Anybody else from ASTM? 10:14:10</p> <p>14 MR FEE: Objection Calls for speculation 10:14:13</p> <p>15 THE WITNESS: No I think I was the person 10:14:16</p> <p>16 that directly commented for ASTM on those types of 10:14:19</p> <p>17 materials 10:14:27</p> <p>18 BY MR BRIDGES: 10:14:28</p> <p>19 Q How much did ASTM pay to APCO in the course 10:14:28</p> <p>20 of the engagement? 10:14:31</p> <p>21 A So I believe that we engaged APCO for a 10:14:35</p> <p>22 period of between 12 months and 18 months, and I 10:14:37</p> <p>23 believe the billings were between \$15- to \$20,000 per 10:14:45</p> <p>24 month divided by the three organizations equally 10:14:49</p> <p>25 Q Any further information on how much ASTM paid 10:15:05</p> <p style="text-align: right;">Page 43</p>	<p>1 MR. FEE: Objection. Calls for speculation. 10:16:45</p> <p>2 This is clearly outside the scope of his designation. 10:16:46</p> <p>3 But to the extent you know, you can answer. 10:16:48</p> <p>4 THE WITNESS: Well, I would -- so I'm not 10:16:50</p> <p>5 involved in the litigation directly, but -- 10:16:54</p> <p>6 MR. FEE: Hold on. Let me also make sure you 10:16:59</p> <p>7 don't disclose any communications or actions that were 10:17:01</p> <p>8 taken at the direction of counsel in connection with 10:17:05</p> <p>9 this matter. 10:17:10</p> <p>10 THE WITNESS: Right. So any other activity 10:17:10</p> <p>11 would have been between -- would have involved 10:17:12</p> <p>12 litigation. 10:17:16</p> <p>13 BY MR. BRIDGES: 10:17:23</p> <p>14 Q. What public relations outreach has ASTM 10:17:23</p> <p>15 engaged in relating to the litigation? 10:17:28</p> <p>16 MR. FEE: Objection. Vague. By "outreach," 10:17:31</p> <p>17 are you saying not at the direction of counsel and 10:17:34</p> <p>18 publicly available? 10:17:38</p> <p>19 BY MR. BRIDGES: 10:17:40</p> <p>20 Q. I mean outreach meaning communications 10:17:40</p> <p>21 outside of ASTM and outside the plaintiffs in this 10:17:43</p> <p>22 case. 10:17:46</p> <p>23 MR. FEE: Okay. Well, I will instruct you 10:17:47</p> <p>24 not to answer to the extent those communications are 10:17:48</p> <p>25 not publicly made available and at the direction of 10:17:50</p> <p style="text-align: right;">Page 45</p>



<p>1 counsel 10:17:52</p> <p>2 MR BRIDGES: Now, I want to be very clear 10:17:54</p> <p>3 what we mean "publicly made available " In my view, 10:17:56</p> <p>4 it's fair game for me to get an answer regarding any 10:17:59</p> <p>5 communication that was not a privileged communication 10:18:02</p> <p>6 MR FEE: Yeah That's fair Why don't I go 10:18:05</p> <p>7 outside I'm going to discuss this with him and see 10:18:07</p> <p>8 if there's really anything to worry about 10:18:10</p> <p>9 MR BRIDGES: Okay We'll go off the record 10:18:12</p> <p>10 THE VIDEOGRAPHER: We are off the record at 10:18:15</p> <p>11 10:17 10:18:18</p> <p>12 (A recess was taken from 10:17 a m 10:26:54</p> <p>13 to 10:26 a m ) 10:26:54</p> <p>14 THE VIDEOGRAPHER: We are back on the record 10:26:54</p> <p>15 at 10:26 a m 10:26:55</p> <p>16 BY MR BRIDGES: 10:27:04</p> <p>17 Q There was a pending question, I think, when 10:27:04</p> <p>18 we broke The question I had was what public 10:27:06</p> <p>19 relations outreach was ASTM engaged in relating to the 10:27:12</p> <p>20 litigation And by "outreach," I mean communications 10:27:16</p> <p>21 with persons outside ASTM and outside the plaintiff 10:27:19</p> <p>22 group in this case 10:27:23</p> <p>23 MR FEE: Okay I would object 10:27:27</p> <p>24 And instruct you not to disclose any 10:27:29</p> <p>25 communications made at the direction of counsel that 10:27:31</p> <p style="text-align: right;">Page 46</p>	<p>1 outside the plaintiffs in this case and their counsel, 10:28:48</p> <p>2 I would like to know what those communications were 10:28:54</p> <p>3 MR FEE: My instruction with respect to that 10:28:57</p> <p>4 is you could disclose any communications along those 10:28:58</p> <p>5 lines except communications at the direction of 10:29:02</p> <p>6 counsel that were not made publicly to persons other 10:29:05</p> <p>7 than the person receiving the communication from ASTM 10:29:09</p> <p>8 or its counsel 10:29:12</p> <p>9 THE WITNESS: Okay I recall that in August 10:29:22</p> <p>10 of 2013 I was invited to be on a panel by the 10:29:23</p> <p>11 Standards Engineering Society in Ottawa, Canada, to 10:29:26</p> <p>12 discuss relevant topics with a number of other 10:29:28</p> <p>13 representatives Washington-related topics in which I 10:29:33</p> <p>14 was asked and questioned about the status of the 10:29:41</p> <p>15 lawsuit 10:29:46</p> <p>16 BY MR BRIDGES: 10:29:52</p> <p>17 Q What else? 10:29:52</p> <p>18 A I recall that on two occasions in 2013, while 10:29:54</p> <p>19 serving on the National Policy Committee of ANSI, 10:29:59</p> <p>20 American National Standards Institute, there were 10:30:03</p> <p>21 questions about the lawsuit, and again, I gave an 10:30:08</p> <p>22 update as to the status of the lawsuit 10:30:15</p> <p>23 Q What else? 10:30:21</p> <p>24 A That's all that I specifically recall 10:30:23</p> <p>25 Q So you recall only instances where ASTM was 10:30:26</p> <p style="text-align: right;">Page 48</p>
<p>1 were not disseminated to the public generally. 10:27:34</p> <p>2 MR. BRIDGES: Okay. I think that's an 10:27:36</p> <p>3 improper instruction because if a statement was made 10:27:37</p> <p>4 to the public -- I'm not asking why it was made to the 10:27:41</p> <p>5 public. I'm not asking for legal discussions that 10:27:45</p> <p>6 were made about what to make to the public -- 10:27:48</p> <p>7 MR. FEE: And we're not disagreeing with 10:27:54</p> <p>8 that. 10:27:54</p> <p>9 MR. BRIDGES: Let me make my record, please. 10:27:56</p> <p>10 But if a statement was made to the public, 10:28:00</p> <p>11 I'm entitled to know whether it was at the direction 10:28:02</p> <p>12 of counsel or not. If it was to people outside the 10:28:04</p> <p>13 plaintiff group, I'm entitled to know. 10:28:07</p> <p>14 MR. FEE: You're arguing with me about 10:28:10</p> <p>15 something I'm not instructing him to refuse to answer. 10:28:12</p> <p>16 If a statement was made to the public that's 10:28:14</p> <p>17 responsive to that, feel free to answer it. 10:28:14</p> <p>18 MR. BRIDGES: No. No. That's not my 10:28:16</p> <p>19 question. 10:28:17</p> <p>20 My question is if a statement was made to any 10:28:17</p> <p>21 person or entity outside the plaintiff's group and the 10:28:22</p> <p>22 plaintiff's group counsel, then I would like to know 10:28:27</p> <p>23 what -- strike that. 10:28:33</p> <p>24 If ASTM caused any communication to be made 10:28:35</p> <p>25 or engaged in any communication to persons or entities 10:28:43</p> <p style="text-align: right;">Page 47</p>	<p>1 responding to questions from others? 10:30:30</p> <p>2 MR. FEE: Same instruction, of course, with 10:30:40</p> <p>3 respect to privilege. 10:30:43</p> <p>4 THE WITNESS: Thank you. 10:30:44</p> <p>5 That's correct. 10:30:44</p> <p>6 BY MR. BRIDGES: 10:30:45</p> <p>7 Q. You don't recall any instance where ASTM 10:30:45</p> <p>8 initiated a communication on what you call "relevant 10:30:49</p> <p>9 topics" without being requested to do so? 10:30:55</p> <p>10 MR. FEE: Objection. Vague as to "relevant 10:31:00</p> <p>11 topics." 10:31:02</p> <p>12 THE WITNESS: I don't recall. 10:31:07</p> <p>13 BY MR. BRIDGES: 10:31:11</p> <p>14 Q. You said that you were invited to a panel by 10:31:11</p> <p>15 the Standards Engineering Society where you discussed 10:31:12</p> <p>16 relevant topics with other representatives. What were 10:31:17</p> <p>17 the "relevant topics" you were referring to in that 10:31:21</p> <p>18 answer? 10:31:23</p> <p>19 A. Yeah. I believe my comments on my panel 10:31:24</p> <p>20 involved an update on funding for the National 10:31:28</p> <p>21 Institute of Standards and Technology, an update that 10:31:35</p> <p>22 the Office of Management and Budget was still 10:31:36</p> <p>23 preparing to revise their circular, but it hadn't come 10:31:41</p> <p>24 out yet. That there may have been other actions of 10:31:45</p> <p>25 interest to the standards community. I believe the 10:31:51</p> <p style="text-align: right;">Page 49</p>

1 National Archives and Records Administration, Office 10:31:55	1 A. On the panel that I was a panelist with was 10:34:29
2 of Federal Register had come out with some additional 10:31:59	2 the American National Standards Institute. Someone 10:34:30
3 findings and information. 10:32:02	3 from their New York office. I don't recall her name. 10:34:32
4 So those are the other kinds of things that I 10:32:04	4 Myself. And I'd be speculating to name the other 10:34:37
5 reported on. 10:32:08	5 person. And Doug Morton was the moderator 10:34:45
6 Q. What else apart from those? 10:32:09	6 participant. 10:34:47
7 A. Transatlantic Trade Investment Partnership. 10:32:18	7 Q. You have no memory of who that other person 10:34:51
8 The U.S. Free Trade Agreement that's being negotiated 10:32:20	8 was? 10:34:52
9 with the European commission is of key interest to 10:32:24	9 MR. FEE: Objection. Asked and answered. 10:34:56
10 standards developers. 10:32:28	10 THE WITNESS: I do not. 10:34:57
11 Q. And you consider that to be a relevant topic? 10:32:38	11 BY MR. BRIDGES: 10:34:58
12 MR. FEE: Objection. Vague as to "relevant 10:32:40	12 Q. Do you recall what organization that person 10:34:58
13 topic." 10:32:41	13 was from? 10:35:00
14 THE WITNESS: I do because there's a 10:32:42	14 A. I do not. 10:35:02
15 standards technical barriers to trade chapter to the 10:32:45	15 Q. Who is on the policy committee of ANSI? 10:35:14
16 trade agreement, which many standards developers are 10:32:50	16 MR. FEE: Objection. Foundation. Calls for 10:35:17
17 quite concerned about. 10:32:53	17 speculation. Vague as to time. 10:35:19
18 BY MR. BRIDGES: 10:32:54	18 THE WITNESS: It's currently chaired by 10:35:28
19 Q. That's a relevant topic with respect to this 10:32:55	19 Sharon Stanford from the American Dental Association 10:35:31
20 case? 10:33:06	20 in Chicago, Illinois. 10:35:35
21 MR. FEE: Objection. Mischaracterizes his 10:33:06	21 BY MR. BRIDGES: 10:35:35
22 previous testimony. 10:33:07	22 Q. Is she the only person on the committee? I 10:35:35
23 MR. BRIDGES: Well, my question was 10:33:08	23 asked who was on the committee. 10:35:37
24 originally about public relations outreach relating to 10:33:10	24 A. In addition, myself. There's a 10:35:39
25 this litigation. 10:33:13	25 representative from the Underwriters Laboratories. 10:35:43
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1 MR. FEE: And he said that he testified about 10:33:15	1 There's actually many representatives. There's 10:35:49
2 numerous relevant topics at a presentation. He didn't 10:33:16	2 probably 25 to 30 voting members. 10:35:52
3 say that they were relevant to this litigation. They 10:33:22	3 REPORTER MARTIN: 35 to -- how many? 10:36:41
4 were relevant to the presentation. 10:33:24	4 THE WITNESS: I said 25 to 30. 10:36:41
5 MR. BRIDGES: Well, my question was about 10:33:24	5 (Deposition Exhibit 1022 was marked for 10:36:41
6 relating to this litigation. 10:33:28	6 identification.) 10:36:41
7 Q. So what discussions at the Canada meeting 10:33:30	7 MR. BRIDGES: Mr. Grove, I'd ask you to look 10:36:41
8 related to this litigation? 10:33:35	8 at Exhibit 1022. 10:36:44
9 MR. FEE: Objection. Asked and answered. 10:33:42	9 Q. Do you recognize this as an amended 10:36:46
10 THE WITNESS: As I previously stated, I was 10:33:44	10 deposition notice with topics for examination for your 10:36:49
11 asked for an update about the status of the lawsuit, 10:33:47	11 deposition today? 10:36:55
12 and I provided it. 10:33:52	12 A. Yes, I do. 10:36:56
13 BY MR. BRIDGES: 10:33:54	13 Q. Which of these topics are you prepared to 10:36:57
14 Q. Who asked you for the update? 10:33:54	14 testify on? 10:36:59
15 A. I believe one of the -- the moderator or the 10:33:56	15 MR. FEE: I'll answer that question. He's 10:37:03
16 session chair for the panel that I was presenting on. 10:34:01	16 our designee with respect to all the topics except for 10:37:04
17 Q. Who is that? 10:34:04	17 Topics 2, 3, and 24. 10:37:08
18 A. He's with the Canadian standards 10:34:04	18 BY MR. BRIDGES: 10:37:15
19 organization. Doug Morton. 10:34:08	19 Q. Do you adopt your counsel's response? 10:37:15
20 Q. And in referring to that Canadian meeting, 10:34:10	20 MR. FEE: Counsel, could you repeat which 10:37:18
21 you also mentioned "other representatives" in your 10:34:16	21 sections I'm not responding -- 10:37:20
22 answer. 10:34:21	22 MR. FEE: 2, 3, and 24, I believe are the 10:37:22
23 A. Uh-huh. 10:34:21	23 ones. 10:37:25
24 Q. Who are the "other representatives" you're 10:34:21	24 THE WITNESS: Yes, I do. 10:37:33
25 referring to? 10:34:24	25 BY MR. BRIDGES: 10:37:34
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1 Q Who at ASTM has the most information about 10:37:34	1 Q. What person who have that membership function 10:40:38
2 questions of copyright -- strike that 10:37:39	2 would have most information about the receiving of 10:40:45
3 Who at ASTM do you understand have the most 10:37:49	3 membership applications? 10:40:51
4 information about the efforts by ASTM to have 10:37:52	4 MR. FEE: Objection. Calls for speculation. 10:40:52
5 participants in the standards writing process transfer 10:38:06	5 Outside the scope of his designation. 10:40:55
6 copyrights in their work to ASTM? 10:38:14	6 You can answer if you know. 10:40:58
7 MR FEE: Objection Calls for speculation 10:38:18	7 THE WITNESS: Our membership department 10:41:00
8 It's beyond the scope of his designation 10:38:18	8 reports to our vice president for Technical Committee 10:41:02
9 MR BRIDGES: I'm asking him, and he can 10:38:23	9 Operations, Daniel Smith. 10:41:05
10 answer based on his personal knowledge 10:38:25	10 BY MR. BRIDGES: 10:41:13
11 MR FEE: Calls for a legal conclusion to the 10:38:27	11 Q. And who is the senior most person in the 10:41:13
12 extent it implies that an assignment is required 10:38:28	12 membership department who reports to him? 10:41:16
13 You can answer if you know 10:38:32	13 MR. FEE: Objection. Beyond the scope of his 10:41:19
14 THE WITNESS: General counsel for ASTM would 10:38:39	14 designation. 10:41:21
15 be responsible for that 10:38:42	15 You can answer if you know. 10:41:23
16 BY MR BRIDGES: 10:38:43	16 THE WITNESS: Ileana Smith who is not -- no 10:41:26
17 Q Who else would have knowledge of those facts? 10:38:43	17 relation, to my knowledge. 10:41:28
18 MR FEE: Same objection 10:38:45	18 BY MR. BRIDGES: 10:41:33
19 THE WITNESS: I guess I wouldn't know 10:38:48	19 Q. Who within the membership department has most 10:41:33
20 specifically 10:38:50	20 knowledge about the receipt by ASTM of membership 10:41:37
21 BY MR BRIDGES: 10:38:52	21 renewals? 10:41:44
22 Q Would you know generally? 10:38:52	22 MR. FEE: Objection. Calls for speculation. 10:41:45
23 MR FEE: Objection Vague Calls for 10:38:53	23 It's beyond the scope of his designation. 10:41:48
24 speculation Asked and answered 10:38:55	24 THE WITNESS: That, I wouldn't know. 10:41:50
25 THE WITNESS: Our copyright policy is very 10:38:59	25 (Deposition Exhibit 1023 was marked for 10:42:39
Page 54	Page 56
1 well known amongst staff. So it wouldn't surprise me 10:39:01	1 identification.) 10:42:39
2 if many members of the ASTM staff are very familiar 10:39:05	2 MR. BRIDGES: Mr. Grove, I've handed you 10:42:39
3 with the copyright policies that are part of our 10:39:10	3 Exhibit 1023. 10:42:42
4 standards development at enterprise. 10:39:18	4 Q. Do you recognize this as a copy of ASTM's 10:42:43
5 BY MR. BRIDGES: 10:39:20	5 Form 990 filed with the Internal Revenue Service? 10:42:45
6 Q. I'm not asking, actually, about copyright 10:39:20	6 MR. FEE: Take a look at the document before 10:42:52
7 policies. I'm asking about actual actions of persons 10:39:23	7 you answer that question. 10:42:54
8 who contribute to the writing of standards to assign 10:39:30	8 (The witness reviewed Exhibit 1024.) 10:43:36
9 their rights to ASTM. 10:39:37	9 THE WITNESS: Yes, it appears to be our 990 10:43:36
10 MR. FEE: Objection. 10:39:39	10 forms. 10:43:42
11 BY MR. BRIDGES: 10:39:39	11 (Deposition Exhibit 1024 was marked for 10:44:02
12 Q. Who would have knowledge of that? 10:39:39	12 identification.) 10:44:02
13 MR. FEE: Objection. Vague. Calls for 10:39:40	13 MR. BRIDGES: Mr. Grove, I've handed you 10:44:14
14 speculation. Beyond the scope of his designation. 10:39:41	14 Exhibit 1024. 10:44:16
15 THE WITNESS: I'm not able to answer that. 10:39:46	15 Q. This is an E-mail exchange between you and 10:44:17
16 BY MR. BRIDGES: 10:40:04	16 James Thomas; correct? 10:44:19
17 Q. Who is in charge of receiving and acting on 10:40:04	17 A. Yes, it appears to be an E-mail. 10:44:39
18 membership applications? 10:40:14	18 Q. Who is Mr. Thomas? 10:44:42
19 MR. FEE: Objection. Calls for speculation. 10:40:17	19 A. In this instance, Jim Thomas is the president 10:44:44
20 Beyond the scope of his designation. 10:40:20	20 of ASTM International. 10:44:46
21 THE WITNESS: We have a membership function 10:40:25	21 (Deposition Exhibit 1025 was marked for 10:44:48
22 at ASTM where there are staff that work closely with 10:40:26	22 identification.) 10:45:11
23 our Technical Committee Operations that would be most 10:40:33	23 MR. BRIDGES: Mr. Grove. I've handed you 10:45:11
24 familiar with membership. 10:40:36	24 Exhibit 1025. 10:45:13
25 BY MR. BRIDGES: 10:40:38	25 Q. Is this a copy of the comments that ASTM made 10:45:14
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1 to OMB in connection with the OMB activities you 10:45:19	1 A. Kate McClung is a staff manager for technical 10:48:31
2 described earlier in your testimony? 10:45:23	2 committees within ASTM's Technical Committee 10:48:34
3 MR. FEE: Please read that carefully before 10:45:29	3 Operations division. 10:48:39
4 you answer the question. 10:45:31	4 Q. Who is Dan Smith? 10:48:42
5 THE WITNESS: Okay. 10:45:32	5 A. At the time of this E-mail, Dan Smith was the 10:48:46
6 (The witness reviewed Exhibit 1025.) 10:45:55	6 associate vice president for Technical Committee 10:48:50
7 THE WITNESS: It appears to be, yes. 10:45:55	7 Operations and Kate McClung's supervisor. 10:48:53
8 (Deposition Exhibit 1026 was marked for 10:46:18	8 Q. What is Mr. Smith's role now? 10:48:57
9 identification.) 10:46:18	9 A. He's been promoted to be vice president of 10:49:00
10 MR. BRIDGES: Mr. Grove, I've handed you 10:46:18	10 TCO, Technical Committee Operations. 10:49:08
11 Exhibit 1026. 10:46:20	11 Q. To whom does he report? 10:49:08
12 Q. This is an exchange of E-mails between you 10:46:21	12 A. He reports to our executive vice president, 10:49:10
13 and Sarah Petre, and also, Kate McClung; is that 10:46:33	13 Katherine Morgan. 10:49:15
14 correct? 10:46:36	14 Q. And who is Anthony Quinn? 10:49:20
15 (The witness reviewed Exhibit 1026 for 10:46:36	15 A. Anthony Quinn works in the Washington office. 10:49:24
16 identification.) 10:47:14	16 His title is director of public policy, international 10:49:26
17 THE WITNESS: Yes. It's an E-mail exchange 10:47:14	17 trade. 10:49:32
18 between myself and Sarah and Kate McClung. 10:47:15	18 Q. Does he report to you? 10:49:32
19 BY MR. BRIDGES: 10:47:17	19 A. He does. 10:49:33
20 Q. Sarah Petre recently left ASTM; correct? 10:47:17	20 Q. Who else reports to you? 10:49:36
21 A. She did, correct. 10:47:22	21 A. At ASTM I'm responsible for -- in addition to 10:49:39
22 Q. How recently did she leave? 10:47:22	22 the Washington office, I'm responsible for corporate 10:49:42
23 A. February 11 was her last date. 10:47:24	23 communications. So we have a team of five people at 10:49:44
24 Q. And what was her job title at ASTM? 10:47:26	24 our headquarters in Conshohocken, Pennsylvania that 10:49:48
25 A. Her final title at ASTM was regulatory 10:47:30	25 report to me, and that's it for direct reports of ASTM 10:49:52
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1 counsel. 10:47:35	1 employees. 10:49:58
2 Q. Was she functioning as an attorney or as a 10:47:35	2 Q. Sarah Petre used to report to you directly? 10:49:59
3 government affairs person? 10:47:37	3 A. That's correct. 10:50:02
4 MR. FEE: Objection. Calls for speculation. 10:47:39	4 Q. Do any outside vendors report to you 10:50:03
5 Beyond the scope of his designation. 10:47:41	5 directly? 10:50:05
6 THE WITNESS: I'd have to consult with our 10:47:45	6 MR. FEE: Objection. Vague. 10:50:06
7 attorney to see what functions, if any, she was 10:47:47	7 THE WITNESS: Not that I can think of. No, 10:50:15
8 providing in the form of an attorney. 10:47:51	8 they do not. 10:50:16
9 BY MR. BRIDGES: 10:47:55	9 BY MR. BRIDGES: 10:50:17
10 Q. Insofar as you interacted with her, was she, 10:47:55	10 Q. Do any outside consultants report to you 10:50:17
11 to your understanding, functioning as an attorney for 10:47:57	11 directly? 10:50:19
12 the organization, or is it a government affairs 10:48:00	12 MR. FEE: Objection. Vague. 10:50:20
13 representative? 10:48:03	13 THE WITNESS: I'm sorry. I did forget one. 10:50:21
14 MR. FEE: Objection. Calls for a legal 10:48:04	14 We do -- I have a consultant that reports to me in 10:50:23
15 conclusion. 10:48:05	15 Brussels. We have an office of -- office of European 10:50:26
16 BY MR. BRIDGES: 10:48:06	16 affairs in Brussels, Belgium. 10:50:29
17 Q. I'm asking for your understanding. 10:48:06	17 BY MR. BRIDGES: 10:50:33
18 MR. FEE: Same objection. 10:48:09	18 Q. And who is that person? 10:50:33
19 THE WITNESS: She was providing analysis of 10:48:14	19 A. Her name is Sara Gobbi, G-o-b-b-i. 10:50:34
20 rules and regulations to help inform our decision 10:48:15	20 (Deposition Exhibit 1027 was marked for 10:50:36
21 making. So... 10:48:21	21 identification.) 10:51:20
22 BY MR. BRIDGES: 10:48:26	22 MR. BRIDGES: I'm handing you Exhibit 1027. 10:51:21
23 Q. Does she report to you? 10:48:27	23 I'd ask you if you've seen that before. 10:51:23
24 A. She does, correct. 10:48:27	24 (The witness reviewed Exhibit 1027.) 10:51:35
25 Q. Who is Kate McClung? 10:48:28	25 THE WITNESS: I don't recall if I've seen 10:52:05
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1 this before. 10:52:06	1 Q Do you recognize this document? 10:56:14
2 BY MR. BRIDGES: 10:52:07	2 A I do, yes 10:56:15
3 Q. In your capacity as a representative of ASTM, 10:52:07	3 Q What is it? 10:56:15
4 is it your understanding that this document is a 10:52:11	4 A It is an E-mail from Anthony Quinn to myself 10:56:16
5 response by Mr. Thomas, whom you identified earlier, 10:52:15	5 and Jim Thomas 10:56:16
6 to communication from a Boeing representative? 10:52:18	6 Q What was the ACUS chambered event that is 10:56:16
7 MR. FEE: Objection. Calls for speculation. 10:52:21	7 mentioned in the E-mail? 10:56:24
8 He is not designated as to this document. 10:52:24	8 A Well, I believe the ACUS is the 10:56:25
9 But you can answer if you have an answer in 10:52:28	9 administrative council of the United States In 10:56:28
10 the capacity individually. 10:52:30	10 working with the U S Chamber of Commerce, they had an 10:56:31
11 THE WITNESS: Right. Laura Hitchcock serves 10:52:32	11 event highlighting some of the recommendations and 10:56:33
12 many roles in the standards community. So I'm not 10:52:35	12 discussing the recommendations that came out of ACUS 10:56:37
13 certain as to what capacity this E-mail is being 10:52:38	13 in 2011 on incorporation by reference and 10:56:40
14 written to Jim Thomas, but Laura is involved in a 10:52:42	14 international regulatory cooperation 10:56:46
15 number of different standards organizations. 10:52:49	15 (Deposition Exhibit 1029 was marked for 10:56:52
16 BY MR. BRIDGES: 10:52:55	16 identification ) 10:56:52
17 Q. I'm wanting to focus on Mr. Thomas's 10:52:55	17 MR BRIDGES: Mr Grove, Exhibit 1029 is an 10:58:03
18 response. Does this response in Exhibit 1027 appear 10:52:58	18 E-mail that is produced to us by ASTM, and you're 10:58 06
19 consistent with your understanding of views that ASTM 10:53:03	19 copied on it, it appears 10:58:16
20 or Mr. Thomas had at about the time of this -- strike 10:53:08	20 Q Is it correct this is an E-mail from Maureen 10:58:18
21 that. 10:53:13	21 Brodoff at NFPA to you and others? 10:58:21
22 Does this response in Exhibit -27 appear 10:53:14	22 A Yes, it appears to be 10:58:30
23 consistent with communications that ASTM had outside 10:53:16	23 Q She was forwarding an E-mail from Jonathan 10:58:31
24 the organization at approximately the time of this 10:53:23	24 Gregory of APCO worldwide; is that correct? 10:58:34
25 E-mail? 10:53:26	25 MR FEE: Did you say this was directed to 10:58:38
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1 MR. FEE: Objection. Vague. Calls for 10:53:27	1 Jeff Grove? 10:58:44
2 speculation. Beyond the scope of his designation. 10:53:28	2 MR BRIDGES: Yes, I did 10:58:46
3 THE WITNESS: This may be the first time that 10:53:36	3 MR FEE: Oh, I'm sorry I missed it My 10:58:47
4 I became aware of who Carl Malamud is. 10:53:40	4 apologies 10:58:49
5 BY MR. BRIDGES: 10:53:47	5 THE WITNESS: It appears that there is 10:58:50
6 Q. This E-mail may be? 10:53:47	6 something from Jonathan Gregory that's being 10:58:51
7 A. Yes. 10:53:49	7 forwarded, yes 10:58:53
8 Q. Do you know if she got bcc'd on this? 10:53:50	8 BY MR BRIDGES: 10:58:54
9 A. I do not believe -- I do not believe that I 10:53:53	9 Q Does this relate to the efforts that ASTM and 10:58:54
10 was, no. 10:53:55	10 FPA and ASME were engaged in together with respect to 10:58:58
11 Q. Then how would this be the first time you 10:53:56	11 APCO? 10:59:02
12 became aware of Carl Malamud? 10:53:58	12 MR FEE: Objection Vague Calls for 10:59:03
13 A. Well, we were referring to the E-mail here, 10:54:00	13 speculation 10:59:06
14 and I'm thinking of the event that this E-mail 10:54:01	14 THE WITNESS: Yes It appears to be an 10:59:08
15 pertains to. 10:54:04	15 agenda for a conference call 10:59:11
16 (Deposition Exhibit 1028 was marked for 10:54:58	16 (Deposition Exhibit 1030 was marked for 11:00:56
17 identification.) 10:54:58	17 identification ) 11 00:56
18 BY MR. BRIDGES: 10:55:00	18 MR BRIDGES: I'll hand you Exhibit 1030 11:00:56
19 Q. Mr. Grove, do you recognize this document? 10:55:00	19 which is produced to us by ASTM in this litigation 11:01:00
20 MR. FEE: Take your time to read it. 10:55:05	20 This appears to be a letter from ASME regarding the 11:01:06
21 THE WITNESS: Okay. 10:55:07	21 OMB process that you described earlier in your 11:01:14
22 (The witness reviewed Exhibit 1028.) 10:56:08	22 testimony 11:01:17
23 THE WITNESS: Would you please repeat the 10:56:08	23 Q Is that your understanding? 11:01:18
24 question now that I've reviewed it. 10:56:12	24 MR FEE: Objection Vague Calls for 11:01:19
25 BY MR. BRIDGES: 10:56:14	25 speculation It's beyond the scope of his designation 11:01:21
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1 He wasn't designated to describe ASME documents 11:01:42	1 BY MR. BRIDGES: 11:05:09
2 (The witness reviewed Exhibit 1030 ) 11:01:48	2 Q. Which board? 11:05:09
3 THE WITNESS: It appears there's a response 11:01:49	3 A. The board of ASTM international, and the 11:05:11
4 by ASME to various questions posed by OMB on federal 11 01:50	4 senior staff of ASTM. 11:05:13
5 participation in the development and use of voluntary 11:01:54	5 Q. You were at that meeting; correct? 11:05:16
6 consents of standards 11:01:55	6 A. Correct. 11:05:18
7 BY MR BRIDGES: 11:01:55	7 Q. And you're the "Jeff" that's referred to 11:05:19
8 Q And it is correct that ASTM, NFPA, and ASME 11:01:56	8 in -- I've lost where it is. In the last sentence of 11:05:22
9 shared with each other their drafts of their 11:02:00	9 the first paragraph for Ms. McKiel? 11:05:42
10 respective letters to OMB regarding the OMB circular; 11:02:05	10 MR. FEE: Objection. Calls for speculation. 11:05:44
11 is that right? 11:02:09	11 THE WITNESS: I'm sorry. I don't see that. 11:05:49
12 MR FEE: Objection Lack of foundation 11:02:09	12 Can I -- 11:05:50
13 Calls for speculation 11:02:11	13 BY MR. BRIDGES: 11:05:51
14 THE WITNESS: I don't recall sharing drafts 11:02:14	14 Q. First paragraph of Exhibit 1031. 11:05:51
15 BY MR BRIDGES: 11:02:15	15 A. First paragraph? 11:05:55
16 Q You don't have any recollection of that? 11 02:15	16 Q. Right. Last sentence. "Brian and Jeff did a 11:05:56
17 MR FEE: Objection Asked and answered 11:02:17	17 great job with the exercise." 11:05:58
18 THE WITNESS: I don't recall sharing drafts 11:02:24	18 A. That's correct. 11:06:00
19 BY MR BRIDGES: 11:02:29	19 Q. Are you that Jeff that -- 11:06:02
20 Q Do you recall seeing this letter before? 11:02:29	20 A. I would be that Jeff. 11:06:03
21 A I know I read a number of submissions by 11:02:31	21 MR. FEE: Objection. Same objection. 11:06:04
22 various organizations as it's a topic I'm very 11 02:33	22 BY MR. BRIDGES: 11:06:05
23 interested in So it's quite likely I've read this 11:02:35	23 Q. And you did an exercise with someone named 11:06:05
24 before I don't believe this is a draft This is 11:02:38	24 Brian? 11:06:08
25 their submission 11:02:48	25 A. We did. We put the board through a branding 11:06:08
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1 Q That's right Do you recall this as being 11:02:48	1 workshop 11:06:11
2 their submission? 11:02:49	2 Q What was that branding workshop? 11:06:15
3 MR FEE: Objection Calls for speculation 11:02:51	3 A It was -- it was a very iterative process 11:06:17
4 Beyond the scope of his designation 11:02:51	4 where we asked the board to consider ASTM's brand and 11:06:22
5 THE WITNESS: It appears to be their 11:03:00	5 ASTM's logo and to reflect on its attributes and its 11:06:30
6 submission 11:03:02	6 strengths and discuss whether or not it was time to 11:06:37
7 (Deposition Exhibit 1031 was marked for 11:03:54	7 revise our brand and revise our logo 11:06:42
8 identification ) 11 03:54	8 Q What was the outcome of that discussion? 11:06:49
9 MR BRIDGES: I've handed you Exhibit 1031 11:03:54	9 A Well, I believe the executive staff -- the 11:06:53
10 This appears to be an E-mail between Mr Thomas, 11:03:59	10 executive committee of the board was excited about the 11 06:56
11 ASTM's president, and Mary McKiel at the Environmental 11:04 04	11 idea of updating or refreshing ASTM's logo and coming 11:06:59
12 Protection Agency 11:04:09	12 out with a strong brand purpose and core purpose as an 11:07:06
13 Q Have you seen this document before? 11:04:10	13 organization 11:07:12
14 (The witness reviewed Exhibit 1031 ) 11:04:36	14 Q What steps has ASTM taken to do that? 11:07:17
15 THE WITNESS: No, I'm not familiar with this 11:04:36	15 MR FEE: Objection Lack of foundation 11:07:23
16 specific document 11 04:37	16 BY MR BRIDGES: 11:07:25
17 BY MR BRIDGES: 11:04:39	17 Q If any 11:07:25
18 Q This is not one of the documents you reviewed 11:04:39	18 A We've launched a new brand as of October 1 of 11 07:27
19 to prepare for this deposition? 11:04:41	19 last year We've got a new tag line and a new logo, 11:07:31
20 A I could have I just don't recall this 11:04:43	20 which just is a -- is a -- it's an evolution over time 11:07:38
21 Q Do you recall what the event was that is 11:04:46	21 of ASTM's mission 11:07:49
22 referred to in the document? 11:04:49	22 Q Please describe that evolution over time of 11:07:51
23 MR FEE: Objection Calls for speculation 11:04:56	23 ASTM's mission 11:07:53
24 THE WITNESS: I believe it's referring to a 11:04:58	24 A Well, so our core purpose is helping our 11:07:57
25 senior staff executive committee of the board retreat 11:05:01	25 world work better because we believe that's an 11:07:58
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<p>1 impactful statement that summarizes ASTM's activities 11:08:03</p> <p>2 to develop 13,000 standards which improve the lives of 11:08:09</p> <p>3 people every day in countless ways 11:08:11</p> <p>4 Q What are some of the main ways in which those 11:08:13</p> <p>5 standards improve the lives of people every day? 11:08:16</p> <p>6 A Sure Well, just looking around this room, 11:08:18</p> <p>7 the water that we're drinking out of these bottles, 11:08:22</p> <p>8 the coffee cups that become compostable and 11:08:25</p> <p>9 recyclable The air that we're breathing is probably 11:08:28</p> <p>10 impacted by a number of ASTM standards It's 11:08:34</p> <p>11 difficult to quantify the extent to which ASTM's 11:08:41</p> <p>12 standards are being used as we speak 11:08:43</p> <p>13 Q Pick a standard, and explain to me how it -- 11:08:47</p> <p>14 how many standards did you say ASTM has? 11:08:55</p> <p>15 A We've got a volume of 12,700 or so 11:08:58</p> <p>16 Q How many of those are incorporated by 11:09:01</p> <p>17 reference? 11:09:03</p> <p>18 MR FEE: Objection Calls for speculation 11:09:03</p> <p>19 Vague 11:09:05</p> <p>20 MR BRIDGES: Let me withdraw that 11:09:13</p> <p>21 Q How many of those standards have the force of 11:09:13</p> <p>22 law because they have been adopted by some government? 11:09:15</p> <p>23 MR FEE: Objection Calls for a legal 11:09:18</p> <p>24 conclusion Vague as to "adopted " Calls for 11:09:19</p> <p>25 speculation 11:09:21</p> <p style="text-align: right;">Page 70</p>	<p>1 THE WITNESS: I'm not familiar with the term 11:10:22</p> <p>2 "adopted." 11:10:24</p> <p>3 BY MR. BRIDGES: 11:10:25</p> <p>4 Q. Not at all? 11:10:25</p> <p>5 MR. FEE: Objection. Asked and answered. 11:10:25</p> <p>6 THE WITNESS: That's not a term of art that 11:10:28</p> <p>7 I'm familiar with in the standards community. 11:10:30</p> <p>8 BY MR. BRIDGES: 11:10:34</p> <p>9 Q. You've never heard "adopted by reference" as 11:10:34</p> <p>10 a term in the standards community? 11:10:36</p> <p>11 A. Adopted by reference, no. Adopted as a 11:10:38</p> <p>12 national standard around the world? That's a 11:10:40</p> <p>13 different context. I've heard that context before. 11:10:43</p> <p>14 Q. Are you familiar with any ASTM standards 11:10:55</p> <p>15 being incorporated into law or regulation? 11:10:57</p> <p>16 MR. FEE: Objection. Vague. 11:11:00</p> <p>17 THE WITNESS: And, again, the term 11:11:08</p> <p>18 "incorporated" isn't the term of art that we would use 11:11:10</p> <p>19 in the standards community. I would be speculating as 11:11:12</p> <p>20 to what that might mean. 11:11:16</p> <p>21 BY MR. BRIDGES: 11:11:17</p> <p>22 Q. Have you ever -- are you familiar -- strike 11:11:17</p> <p>23 that. 11:11:22</p> <p>24 Are you familiar with whether any government 11:11:23</p> <p>25 has incorporated ASTM standards by reference into law 11:11:26</p> <p style="text-align: right;">Page 72</p>
<p>1 THE WITNESS: I'm not an attorney. So I 11:09:22</p> <p>2 wouldn't be able to comment on whether they had the 11:09:24</p> <p>3 force of law. 11:09:27</p> <p>4 BY MR. BRIDGES: 11:09:28</p> <p>5 Q. Have you ever expressed the view as to 11:09:28</p> <p>6 whether any ASTM standard has the force of law? 11:09:30</p> <p>7 MR. FEE: Objection. Calls for speculation. 11:09:36</p> <p>8 Calls for a legal conclusion. 11:09:38</p> <p>9 THE WITNESS: I'm not familiar -- I don't 11:09:39</p> <p>10 recall expressing that position. 11:09:41</p> <p>11 BY MR. BRIDGES: 11:09:43</p> <p>12 Q. You don't recall once -- 11:09:43</p> <p>13 MR. FEE: Objection. Asked and answered. 11:09:45</p> <p>14 BY MR. BRIDGES: 11:09:46</p> <p>15 Q. -- expressing the view as to whether an ASTM 11:09:46</p> <p>16 standard has the force of law? 11:09:49</p> <p>17 MR. FEE: Same objection. 11:09:51</p> <p>18 THE WITNESS: Per my previous answer, no. 11:09:52</p> <p>19 BY MR. BRIDGES: 11:09:59</p> <p>20 Q. Are you familiar with whether any government 11:09:59</p> <p>21 has adopted ASTM standards as its law or as its 11:10:03</p> <p>22 regulation? 11:10:13</p> <p>23 MR. FEE: Objection. Calls for a legal 11:10:14</p> <p>24 conclusion. Vague as to "adopted." Calls for 11:10:15</p> <p>25 speculation. 11:10:21</p> <p style="text-align: right;">Page 71</p>	<p>1 or regulation? 11:11:34</p> <p>2 MR FEE: Objection Calls for a legal 11:11:42</p> <p>3 conclusion 11:11:42</p> <p>4 THE WITNESS: I'm familiar with the term 11:11:43</p> <p>5 "incorporation by reference " I wouldn't be able to 11:11:44</p> <p>6 comment whether that implies it's law 11:11:47</p> <p>7 BY MR BRIDGES: 11:11:52</p> <p>8 Q Are you familiar with any government having 11:11:52</p> <p>9 incorporated ASTM standards by reference? 11:11:56</p> <p>10 A Yes 11:12:04</p> <p>11 Q What did the government -- please give me any 11:12:05</p> <p>12 instance that you're aware of where a government has 11:12:11</p> <p>13 incorporated any ASTM standard by reference 11:12:13</p> <p>14 A Okay There's actually many incorporation by 11:12:20</p> <p>15 reference of ASTM standards To pick one, I would 11:12:25</p> <p>16 pick a specific ASTM standard related to toy safety 11:12:33</p> <p>17 known as ASTM F963 11:12:36</p> <p>18 Q What governments have incorporated that 11:12:57</p> <p>19 standard by reference? 11:12:58</p> <p>20 MR FEE: Objection Calls for speculation 11:12:59</p> <p>21 THE WITNESS: I'm aware that the U S 11:13:00</p> <p>22 Consumer Product Safety Commission has incorporated by 11:13:02</p> <p>23 reference F963, and I'm also aware that other 11:13:05</p> <p>24 governments around the world have incorporated, by 11:13:10</p> <p>25 reference, F963 as one pathway towards -- as one of 11:13:14</p> <p style="text-align: right;">Page 73</p>

<p>1 other standards that they reference for toy safety 11:13:23</p> <p>2 BY MR. BRIDGES: 11:13:31</p> <p>3 Q You started to refer to it as "one pathway " 11:13:31</p> <p>4 Pathway to what? 11:13:35</p> <p>5 A Well, I'm familiar with Hong Kong and 11:13:36</p> <p>6 Singapore having a consumer product safety policy that 11:13:38</p> <p>7 if a toy meets either ASTM F963, the European norm 11:13:42</p> <p>8 known as EN 71, or the ISO standard known as ISO 8124, 11:13:48</p> <p>9 that is the mechanism that their consumer product 11:13:55</p> <p>10 safety ministry has determined constitutes whether or 11:13:58</p> <p>11 not a product is deemed to be safe and enter into the 11:14:01</p> <p>12 marketplace in that country or in those two countries 11:14:04</p> <p>13 Q So I still don't understand what the pathway 11:14:07</p> <p>14 was to in your reference to a pathway 11:14:11</p> <p>15 MR. FEE: Objection Asked and answered 11:14:14</p> <p>16 THE WITNESS: Right The government has 11:14:18</p> <p>17 indicated, as stated in an incorporation by 11:14:19</p> <p>18 reference-type manner, that the ASTM F963 is one 11:14:23</p> <p>19 mechanism that they recognize as a pathway to selling 11:14:28</p> <p>20 their product in their marketplace 11:14:33</p> <p>21 BY MR. BRIDGES: 11:14:36</p> <p>22 Q As a pathway to a governmental permission? 11:14:36</p> <p>23 MR. FEE: Objection Lack of foundation It 11:14:38</p> <p>24 calls for now, I think, a foreign legal conclusion 11:14:39</p> <p>25 THE WITNESS: Yeah I wouldn't be able to 11:14:44</p> <p style="text-align: right;">Page 74</p>	<p>1 MR. FEE: Objection. Calls for speculation. 11:15:45</p> <p>2 To the extent your understanding is based on your 11:15:47</p> <p>3 communications with counsel, I'd advise you not to 11:15:49</p> <p>4 disclose that. If you have an independent 11:15:51</p> <p>5 understanding, you can disclose that. 11:15:53</p> <p>6 BY MR. BRIDGES: 11:15:57</p> <p>7 Q. Well, if you're ignorant of what the CFR 11:15:58</p> <p>8 contains on your own, then go ahead and say that. 11:16:00</p> <p>9 MR. FEE: Objection. If you keep up with 11:16:03</p> <p>10 that, we'll have to take a break here. 11:16:04</p> <p>11 But you could answer the prior question. 11:16:05</p> <p>12 Ignore the "ignorant" question. He's not answering a 11:16:10</p> <p>13 question as "ignorant." 11:16:14</p> <p>14 MR. BRIDGES: I'm not accusing him of being 11:16:15</p> <p>15 an ignorant person, but if he's ignorant of what it 11:16:17</p> <p>16 contains, that's all right. There's nothing wrong 11:16:19</p> <p>17 with that. Nothing to be embarrassed about. 11:16:21</p> <p>18 MR. FEE: I'm instructing him not to answer 11:16:23</p> <p>19 the question with "ignorant" in it. If you have 11:16:23</p> <p>20 another question you want him to answer, you could ask 11:16:26</p> <p>21 it. 11:16:28</p> <p>22 BY MR. BRIDGES: 11:16:29</p> <p>23 Q. What do you understand the Code of Federal 11:16:29</p> <p>24 Regulations to contain? 11:16:33</p> <p>25 MR. FEE: Objection. 11:16:34</p> <p style="text-align: right;">Page 76</p>
<p>1 speak with certainty. 11:14:46</p> <p>2 BY MR. BRIDGES: 11:14:47</p> <p>3 Q. So what did the Consumer Product Safety 11:14:47</p> <p>4 Council incorporate F963 into? 11:14:50</p> <p>5 MR. FEE: Objection. Lack of foundation. 11:14:54</p> <p>6 Vague as to "incorporate." 11:14:56</p> <p>7 BY MR. BRIDGES: 11:15:01</p> <p>8 Q. I'm asking for your understanding. 11:15:01</p> <p>9 A. Sure. 11:15:03</p> <p>10 Q. You used the term "incorporation by 11:15:03</p> <p>11 reference." So I'm trying to figure out -- 11:15:05</p> <p>12 MR. FEE: Your question did not have "by 11:15:07</p> <p>13 reference." That was the basis for my objection. 11:15:08</p> <p>14 MR. BRIDGES: Then I'll fix that. 11:15:10</p> <p>15 Q. What did the Consumer Product Safety Council 11:15:12</p> <p>16 incorporate F963 by reference into? 11:15:14</p> <p>17 A. So the Consumer Product Safety Commission has 11:15:17</p> <p>18 the Code of Federal Regulations that's related to 11:15:22</p> <p>19 consumer product safety, and it's my understanding 11:15:26</p> <p>20 that they indicate that F963 is one standard that's 11:15:30</p> <p>21 incorporated by reference. 11:15:34</p> <p>22 Q. Into the Code of Federal Regulations? 11:15:37</p> <p>23 A. That would be correct. 11:15:39</p> <p>24 Q. What do you understand the Code of Federal 11:15:41</p> <p>25 Regulations to contain? 11:15:45</p> <p style="text-align: right;">Page 75</p>	<p>1 To the extent your understanding is based on 11:16:34</p> <p>2 communications with counsel, you should not disclose 11:16:36</p> <p>3 those, but if you have an independent understanding, 11:16:38</p> <p>4 you can go ahead and answer 11:16:39</p> <p>5 THE WITNESS: I mean I've seen the Code of 11:16:46</p> <p>6 Federal Regulations before There's a lot of 11:16:49</p> <p>7 information in it Sometimes it includes reference -- 11:16:52</p> <p>8 incorporation by reference to specific ASTM standards 11:16:57</p> <p>9 that I'm aware of But I'm not -- ASTM is a nonprofit 11:17:01</p> <p>10 organization, and we're not involved in determining 11:17:05</p> <p>11 what's -- we don't decide how our standards are 11:17:11</p> <p>12 applied in the marketplace 11:17:15</p> <p>13 BY MR. BRIDGES: 11:17:17</p> <p>14 Q Well, my question was do you have an 11:17:17</p> <p>15 understanding as to what the Code of Federal 11:17:18</p> <p>16 Regulations contains? 11:17:21</p> <p>17 MR. FEE: Objection Asked and answered, 11:17:22</p> <p>18 plus all my previous objections 11:17:23</p> <p>19 THE WITNESS: I believe I answered that It 11:17:25</p> <p>20 contains a variety of different information, including 11:17:28</p> <p>21 it may reference -- incorporate by reference specific 11:17:33</p> <p>22 ASTM document numbers in addition to numerous other 11:17:38</p> <p>23 types of supplemental information 11:17:41</p> <p>24 BY MR. BRIDGES: 11:17:44</p> <p>25 Q What else are you aware that the Code of 11:17:45</p> <p style="text-align: right;">Page 77</p>



1 Federal Regulations contains? Are you aware it 11:17:48	1 MR. FEE: Objection. Asked and answered. 11:20:10
2 contains federal regulations? 11:17:49	2 THE WITNESS: No, I can't give you a general 11:20:21
3 MR. FEE: Objection. Compound. 11:17:51	3 answer. I would be speculating. 11:20:23
4 THE WITNESS: My knowledge of the Code of 11:17:58	4 BY MR. BRIDGES: 11:20:27
5 Federal Regulations is -- I'm not an attorney. So 11:18:01	5 Q. Do federal regulations impose requirements on 11:20:27
6 it's limited. 11:18:04	6 anybody? 11:20:32
7 Since I've answered that question, this might 11:18:05	7 MR. FEE: Objection. Calls for speculation 11:20:32
8 be a nice time. Could I take a short break? 11:18:06	8 and a legal conclusion. 11:20:34
9 MR. BRIDGES: No. I'm in the middle of a 11:18:09	9 THE WITNESS: I'm not an attorney. I 11:20:36
10 course of questions. We'll finish my course of 11:18:10	10 wouldn't know. 11:20:37
11 questions, and then we can take a break for your 11:18:12	11 BY MR. BRIDGES: 11:20:39
12 convenience. 11:18:15	12 Q. You wouldn't know? How many years did you 11:20:39
13 MR. FEE: You can take a break as soon as you 11:18:16	13 spend on the Hill? 11:20:43
14 finish answering these questions. 11:18:17	14 A. About eight years. 11:20:47
15 THE WITNESS: No problem. 11:18:20	15 Q. And what were your jobs on the Hill? 11:20:48
16 BY MR. BRIDGES: 11:18:21	16 A. I worked as a staff assistant, a legislative 11:20:51
17 Q. Do you have any understanding as to what a 11:18:21	17 assistant, a legislative director, a committee staff 11:20:54
18 federal regulation is? 11:18:24	18 person. 11:20:58
19 MR. FEE: Objection. Calls for a legal 11:18:27	19 Q. In each of those jobs, to whom did you 11:21:00
20 conclusion. 11:18:28	20 report? 11:21:02
21 You shouldn't disclose communications with 11:18:30	21 MR. FEE: Objection. Compound. 11:21:04
22 counsel, but if you have an independent understanding, 11:18:32	22 THE WITNESS: It would -- I would have to 11:21:07
23 go ahead and answer it. 11:18:35	23 state many different individuals, but I guess 11:21:09
24 THE WITNESS: Sure. My independent 11:18:36	24 ultimately, the members of Congress. 11:21:12
25 understanding would be the federal agency would come 11:18:37	25 BY MR. BRIDGES: 11:21:16
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1 out with the notice of proposed rulemaking within the 11:18:41	1 Q Whom were your direct superiors in each of 11:21:16
2 areas that they're -- their mission of their agency is 11:18:47	2 those positions? 11:21:19
3 responsible for. It would inform the public that they 11:18:51	3 MR FEE: Objection Compound 11:21:21
4 intend to enact the following regulation and invite 11:18:54	4 THE WITNESS: So working backwards from my 11:21:24
5 the public to comment on that regulation. 11:18:57	5 most recent employment on the Hill, chairperson was 11:21:27
6 BY MR. BRIDGES: 11:19:00	6 Congresswoman Connie Morella from Maryland 11:21:32
7 Q. What do you understand the -- well, what 11:19:01	7 BY MR BRIDGES: 11:21:40
8 purpose do you understand a regulation to serve in 11:19:04	8 Q Keep going I thought you were working 11:21:40
9 that context that you just cited? 11:19:09	9 backwards 11:21:43
10 MR. FEE: Could you read that question back 11:19:11	10 A Sure 11:21:43
11 for me, please. 11:19:13	11 Q So please continue backwards -- 11:21:43
12 (Record read.) 11:19:30	12 A Sure I'd be happy to 11:21:48
13 MR. FEE: Objection. Vague, and calls for 11:19:31	13 MR FEE: Objection Compound 11:21:48
14 speculation. 11:19:33	14 Go ahead 11:21:50
15 THE WITNESS: It's an action by an agency 11:19:39	15 THE WITNESS: Prior to that, it would have 11:21:54
16 describing their expectations for the areas that 11:19:47	16 been Congressman Jim Sensenbrenner from Wisconsin 11:21:56
17 they're responsible for. 11:19:50	17 Prior to that, it would be Congressman Steven 11:22:00
18 BY MR. BRIDGES: 11:19:53	18 Gunderson from Wisconsin And that would conclude the 11:22:03
19 Q. Expectations only? 11:19:53	19 three bosses that I served while I was on 11:22:10
20 MR. FEE: Objection. Vague. 11:19:55	20 Capitol Hill 11:22:14
21 THE WITNESS: I think you'd have to -- 11:20:00	21 BY MR BRIDGES: 11:22:16
22 there's so many different regulations, I wouldn't be 11:20:03	22 Q And what committees did you work for? 11:22:16
23 able to comment. 11:20:05	23 MR FEE: Same objection Compound 11:22:18
24 BY MR. BRIDGES: 11:20:08	24 THE WITNESS: It was the house committee on 11:22:19
25 Q. You couldn't comment beyond expectations? 11:20:08	25 science and technology That's the only committee 11:22:26
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1	MR BRIDGES: We can take a break now	11:22:28	1	beginning?	11:46:52
2	THE WITNESS: Okay	11:22:31	2	A. That would be Jim Thomas, our president.	11:46:52
3	THE VIDEOGRAPHER: We're off the record at	11:22:32	3	Q. And this is a document you prepared; correct?	11:46:54
4	11:31	11:22:34	4	A. It is. Correct.	11:46:56
5	(A recess was taken from 11:31 a m	11:41:41	5	(Deposition Exhibit 1034 for identification.)	11:47:43
6	to 11:40 a m )	11:41:41	6	MR. BRIDGES: Mr. Grove, Exhibit 1034 is an	11:47:44
7	THE VIDEOGRAPHER: We're now back on the	11:41:41	7	exchange of -- it's an E-mail thread where you're	11:47:51
8	record at 11:40	11:41:42	8	either the author or the recipient of each of the	11:47:57
9	(Deposition Exhibit 1032 was marked for	11:41:58	9	E-mails.	11:48:00
10	identification )	11:41:58	10	Q. Is this correct?	11:48:02
11	MR BRIDGES: Mr Grove, I've handed you	11:41:58	11	(The witness reviewed Exhibit 1034.)	11:48:10
12	Exhibit 1032 It's double sided flipping up along the	11:42:06	12	THE WITNESS: That is correct.	11:48:10
13	side	11:42:12	13	(Deposition Exhibit 1035 was marked for	11:48:40
14	Q Do you recognize this as a document you	11:42:19	14	identification.)	11:48:40
15	prepared?	11:42:21	15	MR. BRIDGES: Mr. Grove, Exhibit 1035 is a	11:48:40
16	MR FEE: Remember to review it first	11:42:22	16	couple of E-mails from Sarah Petre to you during the	11:48:48
17	(The witness reviewed Exhibit 1032 )	11:44:07	17	time she reported to you.	11:48:59
18	THE WITNESS: Yes, I recognize the document	11:44:07	18	Q. Is that correct?	11:49:02
19	BY MR BRIDGES:	11:44:09	19	(The witness reviewed Exhibit 1035.)	11:49:25
20	Q Do you recognize this as a document that you	11:44:09	20	THE WITNESS: Yes, it is.	11:49:25
21	prepared?	11:44:11	21	(Deposition Exhibit 1036 for identification.)	11:51:16
22	A Yes	11:44:13	22	MR. BRIDGES: Mr. Grove, Exhibit 1036 is a	11:51:16
23	Q Did you show this document at a presentation?	11:44:19	23	memo from you to ASTM senior staff; is that correct?	11:51:19
24	MR FEE: Objection Vague	11:44:25	24	(The witness reviewed Exhibit 1036.)	11:52:18
25	THE WITNESS: My recollection is I did, yes	11:44:27	25	BY MR. BRIDGES:	11:52:19
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1	BY MR BRIDGES:	11:44:32	1	Q. Is that correct?	11:52:19
2	Q Was it at a program referred to on the first	11:44:32	2	A. Correct, that is.	11:52:20
3	page of Exhibit 1032?	11:44:34	3	Q. Whom does "ASTM senior staff" in this memo	11:52:21
4	A Correct	11:44:37	4	refer to?	11:52:25
5	Q When was the presentation?	11:44:42	5	A. So at ASTM we have a number of staff that are	11:52:30
6	A I wouldn't be able to give you an exact date	11:44:43	6	responsible for the various divisions. That would be	11:52:37
7	I want to say 2008 or -9	11:44:45	7	vice presidents and associate vice presidents. That's	11:52:40
8	(Deposition Exhibit 1033 was marked for	11:45:26	8	who senior staff is.	11:52:49
9	identification )	11:45:29	9	Q. Tell me who the persons were that you	11:52:49
10	MR BRIDGES: I'm handing you Exhibit 1033	11:45:29	10	intended that to refer to?	11:52:51
11	I'm sorry I gave you two copies Please hand one	11:45:30	11	A. Sure. That would be Jim Thomas, our	11:52:53
12	copy to your counsel	11:45:33	12	president. Tom O'Brien, our general counsel.	11:52:57
13	Please tell me what that document is	11:45:34	13	Katherine Morgan, our vice president for technical	11:53:02
14	(The witness reviewed Exhibit 1033 )	11:46:05	14	committees at the time. Tim Brook, vice president for	11:53:04
15	BY MR BRIDGES:	11:46:05	15	certification programs. Phil Lively, president for	11:53:13
16	Q Do you recognize the document?	11:46:05	16	information technology. That would include our	11:53:23
17	(The witness further reviewed Exhibit 1033 )	11:46:12	17	treasurer, Margaret Cassidy. And that may include two	11:53:29
18	THE WITNESS: I do recognize the document	11:46:13	18	others that aren't part of senior staff because of a	11:53:36
19	BY MR BRIDGES:	11:46:31	19	vice president title. They might be senior enough at	11:53:40
20	Q What is it?	11:46:31	20	associate vice president or assistant vice president	11:53:44
21	A I believe it's a statement that my supervisor	11:46:32	21	level. That would have been Dan Smith and possibly	11:53:47
22	asked me for, summarizing some of the accomplishments	11:46:35	22	Jim S. Thomas.	11:53:52
23	of my previous year of employment, 2012	11:46:39	23	Q. Is Jim S. Thomas James Thomas's son?	11:53:57
24	accomplishments, and identifies some goals for 2013	11:46:46	24	A. That would be correct. Associate vice	11:54:00
25	Q Who is the "Jim" that it refers to at the	11:46:49	25	president for marketing and sales.	11:54:03
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1 Q. Does he still work for ASTM? 11:54:10	1 Q. How many times have you seen her at standards 11:57:24
2 A. He does. 11:54:12	2 community events? 11:57:25
3 (Deposition Exhibit 1037 was marked for 11:54:56	3 A. I'd say at least a dozen. At least 10 to 12 11:57:31
4 identification.) 11:54:56	4 times. 11:57:34
5 BY MR. BRIDGES: 11:54:57	5 Q. And what standards community events do you 11:57:35
6 Q. Mr. Grove, Exhibit 1037 is an exchange of 11:54:57	6 have in mind? Strike that. 11:57:40
7 correspondence between you and John Pace; correct? 11:55:01	7 What standards community events do you 11:57:44
8 A. Yes. 11:55:11	8 recall? 11:57:46
9 Q. And the post that you're referring to is 11:55:12	9 A. I recall there were some subsequent ACUS 11:57:47
10 indicated at the URL down below at the bottom of that 11:55:17	10 public stakeholder opportunities for stakeholders to 11:57:50
11 document; is that correct? 11:55:20	11 come to ACUS events. I recall that Emily was at the 11:57:56
12 A. That's correct. 11:55:22	12 NIST standards workshop in May of 2012. I know I've 11:58:03
13 Q. What interactions did you have with Emily 11:55:24	13 seen her on other occasions at ANSI related events, 11:58:11
14 Bremer? 11:55:26	14 ANSI sponsors world standards week where there's a 11:58:17
15 A. I forget the time line. It was probably in 11:55:28	15 number of different opportunities for meetings and 11:58:22
16 2011 but Emily Bremer was the lead investigator or 11:55:31	16 topical discussions. So those would be the -- some of 11:58:27
17 counsel that was working on the administrative counsel 11:55:36	17 the instances where I may have seen her. 11:58:34
18 of the United States review and potential 11:55:39	18 Q. What other occasions have you seen her apart 11:58:36
19 recommendations on incorporation by reference, and we 11:55:44	19 from ACUS public stakeholders events, the NIST 11:58:39
20 met on one occasion at my office at her request. 11:55:49	20 standards workshop, and ANSI sponsored events? 11:58:42
21 Q. Did you meet with her only once? 11:55:55	21 A. I think that represents most of my 11:58:51
22 A. Only once professionally. I see her at 11:55:56	22 interactions or times I've seen her in Washington. 11:58:55
23 various standards community events in Washington quite 11:55:59	23 Q. I understand maybe most. I want to try to 11:58:58
24 a bit. 11:56:04	24 understand every single one that you recall. 11:59:01
25 Q. Are those nonprofessional events? I don't 11:56:06	25 A. Right. That's all I recall. 11:59:03
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1 quite understand the -- 11:56:09	1 Q. What were the ANSI sponsored events to which 11:59:07
2 MR. FEE: Objection. 11:56:14	2 you referred? 11:59:09
3 BY MR. BRIDGES: 11:56:15	3 A. I recall there was one at the national -- I'm 11:59:10
4 Q. You said you met with her only once 11:56:15	4 sorry. It's at the consumer electronics association 11:59:15
5 professionally, and then you see her at various 11:56:17	5 in Arlington, Virginia. A panel where Peter Strauss, 11:59:20
6 standards community events in Washington quite a bit. 11:56:19	6 Emily spoke, and now that you've refreshed my memory, 11:59:24
7 A. Yeah. Thanks for the opportunity to clarify. 11:56:25	7 I believe I spoke also on a panel there. Oh, and the 11:59:28
8 MR. FEE: Objection. Vague. 11:56:25	8 ANSI events, the question. During world standards 11:59:38
9 THE WITNESS: So I only met in an official 11:56:29	9 week every year there's four or five days in October 11:59:41
10 capacity to be interviewed to represent ASTM's views 11:56:32	10 where each day there's a -- one or more events, such 11:59:45
11 once with Emily, but from time to time since then I 11:56:37	11 as the organizational member form of ANSI, where 11:59:53
12 see her at standards related events and quite possibly 11:56:40	12 organizations that are members of ANSI can come and -- 11:59:57
13 would say, "Hi" or "Hello," or "What are you working 11:56:45	13 for a program. There's the consumer interest forum or 12:00:02
14 on" type of networking discussions. 11:56:48	14 consumer groups that are members of ANSI speak. 12:00:07
15 BY MR. BRIDGES: 11:56:53	15 There's a legal issues forum where members 12:00:13
16 Q. What networking would be going on in those 11:56:53	16 from the standards community might go to discuss legal 12:00:20
17 networking discussions? 11:56:56	17 issues. And, occasionally, there's official committee 12:00:24
18 A. Just in the course of normal relationship, 11:56:57	18 meetings, such as the national policy committee, which 12:00:29
19 discussions that one might have with a colleague from 11:57:04	19 I belong to, during that week. 12:00:31
20 another organization. 11:57:07	20 Q. And did she attend all of those? 12:00:34
21 Q. Have you ever met with her alone on any 11:57:11	21 A. I recall I've seen her at some ANSI events 12:00:36
22 occasion other than the one time you said you were 11:57:14	22 before, but I wouldn't be able to tell you which ones 12:00:38
23 interviewed? 11:57:17	23 with any certainty. 12:00:41
24 A. I don't recall, no. I don't believe I have 11:57:20	24 Q. Are there any other instances that you recall 12:00:43
25 ever met with her besides the one time. 11:57:21	25 being with her at an event? 12:00:46
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1	A	Not that I recall	12:00:51	1	A.	Government cooperation, you said? I'm sorry.	12:03:26
2	Q	Where is your office?	12:01:08	2		Could you repeat the question.	12:03:28
3	A	The ASTM Washington office	12:01:10	3	Q.	Yes. Was government cooperation part of the	12:03:31
4	Q	Where you work?	12:01:15	4		public/private collaboration to which you just	12:03:34
5	A	Yeah It's at 1850 M Street, Northwest,	12:01:16	5		referred?	12:03:36
6		Suite 1030	12:01:16	6	A.	Yes.	12:03:37
7	Q	Who else works in ASTM's office there?	12:01:19	7	Q.	What government cooperation, if any, did you	12:03:40
8	A	Currently, Anthony Quinn, our director of	12:01:25	8		suggest would be beneficial when you were on that	12:03:48
9		public policy and international trade, and we have a	12:01:27	9		panel?	12:03:55
10		vacancy at the moment So just the two of us	12:01:32	10	A.	I assume I presented some of the best	12:03:56
11	Q	What's the vacancy?	12:01:34	11		practices that we've observed in the ASTM system for	12:04:00
12	A	It will be for a manager of global policy and	12:01:36	12		ensuring all diverse stakeholders that work in our	12:04:04
13		industry affairs when we fill it	12:01:41	13		open balance and transparent standards development	12:04:07
14		REPORTER MARTIN: What was the last --	12:01:56	14		process that results in voluntary consensus standards	12:04:10
15		THE WITNESS: I'm sorry Global policy and	12:02:01	15		have a seat at the table, including the U.S.	12:04:14
16		industry affairs	12:02:01	16		government.	12:04:17
17		REPORTER MARTIN: And you said something	12:02:01	17	Q.	So for government cooperation, then, you're	12:04:20
18		towards the end	12:02:01	18		suggesting government participation in the standards	12:04:25
19		THE WITNESS: When we fill it	12:02:01	19		development process? Is that what you're referring	12:04:27
20	BY MR	BRIDGES:	12:02:01	20		to?	12:04:30
21	Q	Do you recall that the Consumer Electronics	12:02:01	21	MR. FEE:	Objection. Vague.	12:04:31
22		Associates panel you're on -- I think you said you	12:02:04	22	THE WITNESS:	Yeah, including the government	12:04:32
23		were on a panel with Ms Bremer; is that correct?	12:02:11	23		representatives in the process would be included, yes.	12:04:33
24	A	I don't think we were on the same panel, but	12:02:13	24	BY MR. BRIDGES:		12:04:39
25		we spoke the same day at the same event	12:02:15	25	Q.	In the process for developing standards?	12:04:39
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1	Q	Do you recall being on a panel called	12:02:17	1	A.	Correct.	12:04:41
2		"Towards Greater Government and Industry Cooperation"?	12:02:19	2	MR. FEE:	Objection. Vague.	12:04:41
3	A	That sounds like the panel I was on, yes	12:02:23	3	BY MR. BRIDGES:		12:04:53
4	Q	Who else was on that panel?	12:02:25	4	Q.	Do you recall that this was a panel moderated	12:04:53
5	A	I believe Gordon Gillerman from the National	12:02:29	5		by Scott Cooper, that panelists were Gordon Gillerman	12:04:58
6		Institute of Standards and Technology I believe	12:02:34	6		from NIST, Emily Bremer, John Card from EchoStar	12:05:02
7		Scott Cooper from the American National Standards	12:02:37	7		Technologies, and you?	12:05:08
8		Institute There's probably one more I'm sorry I	12:02:39	8	A.	Thank you for pointing that out. I did not	12:05:10
9		just can't recall	12:02:46	9		recall that Emily was on the same panel but...	12:05:12
10	Q	What was the greater government industry	12:02:47	10	Q.	Does that refresh your recollection?	12:05:14
11		cooperation that you were urging?	12:02:49	11	A.	That does.	12:05:15
12	MR FEE:	Objection Lack of foundation	12:02:55	12	Q.	Do you recall that one of the questions	12:05:16
13	BY MR BRIDGES:		12:02:56	13		identified in the agenda published to the attendees	12:05:22
14	Q	Were you urging greater government in	12:02:56	14		was as follows: "What factors should government	12:05:27
15		industry cooperation?	12:02:58	15		agencies take into consideration when examining	12:05:30
16	MR FEE:	Objection Vague	12:02:59	16		industry standards for regulatory purposes"?	12:05:35
17	THE WITNESS:	Yeah I think -- I don't have	12:03:01	17	MR. FEE:	Objection. Calls for speculation.	12:05:39
18		my -- I don't recall the specifics of my presentation,	12:03:04	18		To the extent that mischaracterizes the document	12:05:43
19		but I believe we were outlying ways to make the	12:03:06	19		you're reading, object that you don't give him the	12:05:44
20		public/private collaboration in standards development	12:03:10	20		document that you're reading. If you're asking him to	12:05:49
21		more effective, in our experience	12:03:13	21		remember a quote -- and he certainly hasn't been	12:05:52
22	BY MR BRIDGES:		12:03:17	22		designated as an ASTM witness on quotes from	12:05:54
23	Q	And government cooperation was part of the	12:03:17	23		particular slides of presentations.	12:05:57
24		public/private collaboration to which you just	12:03:22	24		But you can answer if you know.	12:06:01
25		referred?	12:03:24	25	THE WITNESS:	Okay. That sounds like	12:06:05
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1 something that I would speak about. 12:06:06	1 when they're looking at participating in standards 12:08:53
2 BY MR. BRIDGES: 12:06:08	2 development activities and utilizing voluntary 12:08:57
3 Q. So what factors should government agencies 12:06:08	3 consensus standards in support of their agency's 12:09:01
4 take into consideration when examining industry 12:06:08	4 mission. 12:09:03
5 standards for regulatory purposes? 12:06:10	5 BY MR. BRIDGES: 12:09:11
6 A. Well, one of the most important factors that 12:06:13	6 Q. So my question is what are the regulatory 12:09:11
7 we believe is important to maintain the robust, viable 12:06:15	7 purposes that in your interactions with government on 12:09:16
8 system of standardization that we have in the U.S. is 12:06:24	8 behalf of ASTM, you believe government agencies have 12:09:20
9 looking to see if standards development organizations 12:06:26	9 when they examine industry standards? So I'm asking 12:09:25
10 meet the world trade organizations, technical barriers 12:06:28	10 what do you think the regulatory purposes are. 12:09:29
11 to trade agreement principles for international 12:06:31	11 MR. FEE: Same objections, plus compound. 12:09:31
12 standardization. It's a message that we believe 12:06:34	12 THE WITNESS: Yeah. And I don't believe 12:09:33
13 strongly in at ASTM, we've invested heavily in, and we 12:06:37	13 there's any one answer to that. Each agency that 12:09:34
14 promote it as widely as possible. 12:06:41	14 we're aware of that we interact with or that 12:09:38
15 Q. What regulatory purposes do you anticipate 12:06:49	15 participate in our committees have different needs and 12:09:40
16 government agencies have that causes them to examine 12:06:54	16 different expectations and different motivations for 12:09:42
17 industry standards? 12:07:01	17 participating in our process. 12:09:46
18 MR. FEE: Read that back, please. 12:07:03	18 BY MR. BRIDGES: 12:09:48
19 (Record read.) 12:07:13	19 Q. So beyond that, you can't give your testimony 12:09:48
20 MR. FEE: Objection. Calls for speculation. 12:07:14	20 as to what you think the government regulatory 12:09:51
21 It's beyond the scope of his designation. 12:07:15	21 purposes are on a general basis? 12:09:54
22 THE WITNESS: I don't have an answer for 12:07:23	22 MR. FEE: Same objections. 12:09:57
23 that. I think you could assume that government 12:07:24	23 BY MR. BRIDGES: 12:10:00
24 participants in the standardization process bring 12:07:30	24 Q. In using or in examining ASTM's standards. 12:10:00
25 knowledge of regulatory agendas and regulatory needs 12:07:32	25 MR. FEE: Same objections. 12:10:05
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1 of agencies to the voluntary consensus standards 12:07:37	1 THE WITNESS: Yeah. I think we discussed 12:10:09
2 community of which ASTM is one member amongst 225 12:07:40	2 earlier federal agencies do incorporate, by reference, 12:10:11
3 others 12:07:45	3 standards from voluntary consensus standards bodies 12:10:16
4 BY MR BRIDGES: 12:07:50	4 like ASTM. So that could be one potential -- one 12:10:19
5 Q This agenda item referred to government 12:07:50	5 potential factor. 12:10:24
6 agencies examining industry standards for regulatory 12:07:52	6 BY MR. BRIDGES: 12:10:28
7 purposes 12:07:56	7 Q. Do you understand what regulatory purposes 12:10:28
8 MR FEE: Objection Vague What agenda -- 12:07:57	8 federal agencies may have in incorporating ASTM 12:10:33
9 I'm unclear as to what agenda you're referring 12:08:00	9 standards by reference into CFR? 12:10:36
10 There's no agenda in front of him 12:08:04	10 MR. FEE: Objection. Calls for speculation. 12:10:41
11 MR BRIDGES: That's all right It's so 12:08:07	11 It's also beyond the scope of his designation. 12:10:42
12 short, I can read it to him 12:08:08	12 You can answer if you know. 12:10:44
13 Q So my question is what regulatory purposes do 12:08:10	13 THE WITNESS: Generally, I believe the EPA 12:10:46
14 you understand government agencies to have when they 12:08:16	14 would look to -- has a mission of helping to keep the 12:10:48
15 examine industry standards? 12:08:20	15 air we breathe, the water we drink and the ground that 12:10:53
16 MR FEE: Objection He's not been 12:08:22	16 we habitate on as safe and as clean and sustainable as 12:10:56
17 designated as to speculation as to government 12:08:24	17 possible. So they might look to organizations like 12:11:02
18 regulatory motivations, but to the extent you have an 12:08:26	18 ASTM and many others to see what work we're doing in 12:11:05
19 understanding individually, you can try to answer 12:08:31	19 many of these areas and ensure that their employees 12:11:08
20 that 12:08:34	20 are participating in our standards development process 12:11:10
21 THE WITNESS: Sure And I'm not an attorney, 12:08:35	21 to reflect the agency's mission. 12:11:12
22 but my understanding is the National Technology 12:08:36	22 BY MR. BRIDGES: 12:11:17
23 Transfer and Advancement Act of 1995 combined with the 12:08:38	23 Q. How would the government employees affect -- 12:11:17
24 OMB circular A119 lays out criteria or further 12:08:41	24 strike that. 12:11:22
25 guidance for federal agencies for them to consider 12:08:50	25 What effect does the presence of government 12:11:26
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1 employees have in the standards development process at 12:11:30	1 Q. Have you seen Exhibit 1038 before? 12:14:55
2 ASTM? 12:11:36	2 (The witness reviewed Exhibit 1038.) 12:15:20
3 MR. FEE: Objection. Vague. 12:11:37	3 THE WITNESS: Yes, I have. 12:15:20
4 THE WITNESS: In my experience, federal 12:11:43	4 BY MR. BRIDGES: 12:15:21
5 government participation in standards development 12:11:45	5 Q. Is this an organizational chart as of 12:15:22
6 helps to make a more effective public/private 12:11:47	6 July 21, 2014? 12:15:23
7 collaboration in our process. 12:11:50	7 A. I believe it is, yes. 12:15:25
8 BY MR. BRIDGES: 12:11:51	8 Q. Have you seen a more recent organizational 12:15:27
9 Q. How does it help in the drafting of 12:11:52	9 chart of ASTM? 12:15:29
10 standards? 12:11:53	10 A. I have not, but I believe that this is just 12:15:31
11 MR. FEE: Objection. Lack of foundation. 12:11:54	11 slightly out of date. 12:15:35
12 THE WITNESS: In the area of drafting 12:11:58	12 Q. What changes are necessary to make it 12:15:36
13 standards, I wouldn't have specific knowledge. 12:11:59	13 current? 12:15:40
14 BY MR. BRIDGES: 12:12:03	14 A. Under the direct line from Jim Thomas, that 12:15:46
15 Q. Who would? 12:12:03	15 would be a new box that would say, "Kathie Morgan, 12:15:51
16 MR. FEE: Objection. Calls for speculation. 12:12:04	16 Executive Vice President," and then a number of 12:15:57
17 THE WITNESS: Right. We have 140 different 12:12:07	17 departments would be reporting up through Kathie. 12:16:01
18 technical committees and over 1,000 individual 12:12:09	18 This is as of just a few weeks ago. 12:16:04
19 subcommittees. So each agency's participation and 12:12:12	19 Q. I see that she is almost directly under 12:16:10
20 what role they play in the drafting of standards, I 12:12:15	20 Mr. Thomas in what looks like a direct report as vice 12:16:11
21 believe was your term, that would vary significantly. 12:12:20	21 president of Technical Committee Operations. Would 12:16:16
22 BY MR. BRIDGES: 12:12:23	22 that be simply changing the title in that box? 12:16:18
23 Q. Who are two or three people at ASTM you think 12:12:23	23 A. It would be expanding her responsibilities. 12:16:23
24 would be in a best position to answer the question of 12:12:25	24 For instance, now I report to Kathie Morgan, as does 12:16:25
25 what effect the presence of government employees has 12:12:32	25 Phil Lively, as does Teresa Cendrowska, as does Tim 12:16:30
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1 in the creation of standards? 12:12:38	1 Brooke, and a new box would need to be created -- or 12:16:38
2 MR. FEE: Objection. Calls for speculation. 12:12:43	2 in the old box that said Kathie Morgan, I would put 12:16:48
3 Vague. 12:12:44	3 Daniel G. Smith. 12:16:51
4 THE WITNESS: Well, other than me, I would 12:12:49	4 Q. That's on Page 5 of 11 of the document? 12:16:53
5 say I'm one. Beyond that, you know, ASTM, it's a 12:12:50	5 A. Page 6 of 11. So Kathie has been promoted, 12:16:56
6 decentralized process. So it would really vary again 12:13:01	6 and Dan has taken Kathie's old job, if that helps. 12:17:12
7 by the individual committees and the actions by the 12:13:05	7 Q. All right. In the standards development but 12:17:16
8 committee officers. So if I had to give you another 12:13:08	8 not Technical Committee Operations? Page 5 of 11 is 12:17:17
9 name, I would say probably Katherine Morgan, who 12:13:14	9 Technical Committee Operations. Page 6 of 11 is 12:17:24
10 formerly led our Technical Committee Operations. 12:13:17	10 standards development? 12:17:29
11 BY MR. BRIDGES: 12:13:23	11 A. Yeah. I actually wouldn't be able to explain 12:17:30
12 Q. What is her current post? 12:13:23	12 the difference between Technical Committee Operations 12:17:32
13 A. She's the executive vice president. 12:13:25	13 and standards development, and in fact -- I would be 12:17:34
14 Q. What are her duties? 12:13:27	14 able to tell you why we have it displayed that way. 12:17:48
15 MR. FEE: Objection. Calls for speculation. 12:13:28	15 We think of them together. 12:17:48
16 Beyond the scope of his designation. 12:13:31	16 Q. Where is Ms. Morgan's office? 12:17:57
17 THE WITNESS: Actually, I'm not certain what 12:13:35	17 A. Kathie is based at our corporate headquarters 12:17:59
18 her new duties are. She just assumed them in 12:13:36	18 in Conshohocken, Pennsylvania. 12:18:02
19 February. But I would assume she's serving as our -- 12:13:39	19 Q. What offices does ASTM have apart from the 12:18:11
20 she'll be serving as our president within the next two 12:13:48	20 Pennsylvania office you just referred to and 12:18:14
21 to three years. So she's broad supervisory 12:13:51	21 Washington, D.C.? 12:18:18
22 responsibility. 12:13:54	22 A. Well, we have an office in Ottawa, Canada, 12:18:24
23 (Deposition Exhibit 1038 was marked for 12:14:54	23 but I believe the person that works for us there is a 12:18:26
24 identification.) 12:14:54	24 contractor. 12:18:32
25 BY MR. BRIDGES: 12:14:55	25 Q. Any other offices? 12:18:33
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1 A I had previously mentioned an office in 12:18:34	1 an interview with Emily that appeared in our magazine. 12:22:11
2 Brussels, Belgium where we have a contractor 12:18:35	2 (Deposition Exhibit 1040 was marked for 12:23:27
3 Q Who else? 12:18:39	3 identification.) 12:23:27
4 A We operated for many years an office in 12:18:40	4 BY MR. BRIDGES: 12:23:27
5 Mexico City That office, our representative, 12:18:44	5 Q. Mr. Grove, have you seen Exhibit 1040 before? 12:23:27
6 unfortunately, recently passed away So we are 12:18:47	6 MR. FEE: Read it first. 12:23:34
7 re-evaluating what we're going to be doing in Mexico 12:18:51	7 MR. BRIDGES: It's pretty short. It's pretty 12:23:35
8 City But I believe we will still have an office 12:18:54	8 obvious. 12:23:37
9 there for the time being 12:18:58	9 (The witness reviewed Exhibit 1040.) 12:24:02
10 Q Any other offices? 12:18:59	10 THE WITNESS: Yes, I'm familiar -- I am on 12:24:07
11 A We do So we worked in collaboration with an 12:19:01	11 this E-mail, yes. 12:24:09
12 organization called the American Association of State 12:19:04	12 BY MR. BRIDGES: 12:24:12
13 Highway Transportation Officials It's known as 12:19:09	13 Q. All right. And did you get -- did you see at 12:24:12
14 AASHTO, and AASHTO and ASTM work together in a 12:19:12	14 any point the segment from John Pace to James Thomas 12:24:18
15 facility in Buckeystown, Maryland, which is -- we do 12:19:16	15 up top? 12:24:22
16 cement and concrete reference, related laboratory 12:19:22	16 A. Yes. 12:24:27
17 inspections To my knowledge, that's the scope of 12:19:30	17 Q. Is the "Jeff" in the middle of the large 12:24:30
18 ASTM's offices 12:19:35	18 paragraph at the top, do you understand that to be a 12:24:34
19 Q How often do you visit the corporate 12:19:44	19 reference to you? 12:24:37
20 headquarters in the course of a year? 12:19:47	20 A. I believe it is as I'm responsible for the 12:24:39
21 A In 2013 I made approximately 24 trips to 12:19:50	21 ASTM's reading room. 12:24:41
22 ASTM's headquarters 12:19:55	22 Q. Why are you responsible for the reading room? 12:24:54
23 Q How often do you speak to Emily Bremer on the 12:20:38	23 MR. FEE: Objection. Vague. Calls for 12:24:57
24 telephone? 12:20:41	24 speculation. 12:24:59
25 A I honestly don't recall speaking with Emily 12:20:46	25 THE WITNESS: For many years I've been 12:25:01
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1 Bremer since 2012 on the telephone. 12:20:48	1 working with senior staff because of an interest that 12:25:01
2 Q. What about your staff? Do you know how often 12:20:50	2 I have in striking the right balance between providing 12:25:05
3 they speak to Emily Bremer on the telephone? 12:20:53	3 the public with access to ASTM standards that become 12:25:09
4 MR. FEE: Objection. Calls for speculation. 12:20:56	4 incorporated by reference in various laws and 12:25:12
5 Beyond the scope of his designation. 12:20:57	5 regulations while maintaining our ability to sustain 12:25:17
6 THE WITNESS: I believe my staff would inform 12:21:00	6 our organization through the distribution of our 12:25:25
7 me if they spoke with Emily, and I don't recall them 12:21:01	7 standards under the model that served us so well for 12:25:27
8 speaking with her by phone. 12:21:08	8 118 years. 12:25:30
9 MR. BRIDGES: I'll hand you Exhibit 1039. 12:21:14	9 BY MR. BRIDGES: 12:25:42
10 (Deposition Exhibit 1039 was marked for 12:21:25	10 Q. How did you come by such an interest? 12:25:42
11 identification.) 12:21:25	11 A. Well, working in Washington for ASTM for as 12:25:45
12 BY MR. BRIDGES: 12:21:25	12 long as I have, I've begun to hear and see the 12:25:48
13 Q. Do you recognize this as an E-mail to you 12:21:25	13 emerging interest in striking this delicate balance, 12:25:56
14 from Cicely Enright? And who is Cicely Enright? 12:21:26	14 began to see efforts that other organizations were 12:26:04
15 MR. FEE: Objection. Compound. 12:21:46	15 taking, such as the NFPA, which, going back all the 12:26:06
16 THE WITNESS: Yes. I recognize this is an 12:21:50	16 way to 2004, started to provide some of their key code 12:26:10
17 E-mail from Cicely Enright. Cicely works as an 12:21:51	17 documents on their website. And I've heard some 12:26:15
18 associate editor of our ASTM magazine known as 12:21:54	18 interesting testimony and ideas expressed by people 12:26:21
19 Standardization News. 12:21:58	19 like Peter Strauss, who is a law professor, I believe, 12:26:23
20 BY MR. BRIDGES: 12:22:00	20 and other people associated with ACUS who served on 12:26:31
21 Q. Does this E-mail concern an article to be 12:22:00	21 ACUS committees. So those are some of the factors and 12:26:35
22 published in that newsletter? 12:22:03	22 things that have influenced my thinking on this 12:26:42
23 MR. FEE: Objection. Beyond the scope of his 12:22:05	23 reading room. 12:26:44
24 designation. 12:22:07	24 Q. I understand the factors that influenced your 12:26:47
25 THE WITNESS: It appears as if it does. It's 12:22:08	25 thinking, but how did you come to have such an 12:26:50
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1 interest to begin with? 12:26:52	1 the development or for the funded research, that the 12:29:14
2 MR. FEE: Objection. Asked and answered. 12:26:54	2 resulting publications should be available to the 12:29:22
3 THE WITNESS: Yeah. I guess I don't know the 12:26:58	3 public for a reasonable amount of time before they 12:29:25
4 difference in your question. ASTM is a nonprofit 12:26:59	4 were exclusively put into commercial journals and put 12:29:32
5 organization that serves society in a number of 12:27:07	5 under that type of control. 12:29:39
6 different ways. We're excited about our documents and 12:27:10	6 BY MR. BRIDGES: 12:29:46
7 what they can do, and the idea that we could strike a 12:27:12	7 Q. When were you first aware of NFPA's actions 12:29:46
8 balance that would allow more access to some of those 12:27:18	8 in giving some public access to its standards? 12:29:52
9 documents was something that we thought would be a -- 12:27:21	9 MR. FEE: Objection. Vague. This is also 12:29:59
10 very good for ASTM's standing in the community, as 12:27:25	10 beyond the scope of his designation. 12:30:01
11 well as for the public. 12:27:28	11 THE WITNESS: I would -- I actually wouldn't 12:30:07
12 BY MR. BRIDGES: 12:27:31	12 be able to give you an exact date, but I would 12:30:09
13 Q. Do you have any background in publications 12:27:31	13 reasonably assume it's been within the last five 12:30:13
14 before coming to ASTM? 12:27:34	14 years. Probably 2009, 2010. 12:30:16
15 A. I do not. 12:27:37	15 BY MR. BRIDGES: 12:30:19
16 Q. Do you have any background in libraries 12:27:38	16 Q. Because you pointed out in your answer 12:30:19
17 before coming to ASTM? 12:27:53	17 earlier how long NFPA had provided public access to 12:30:24
18 A. No. 12:27:55	18 some of the standards. I think you said going back 12:30:35
19 Q. Did you have any background in archives 12:27:55	19 all the way to 2004. Is that your understanding? 12:30:38
20 before coming to ASTM? 12:27:57	20 A. That's based on what the NFPA representatives 12:30:41
21 A. No. 12:27:59	21 told me, which was very informational to me once we 12:30:44
22 Q. Did you have any background in educational 12:28:01	22 began to start working with them or start exchanging 12:30:49
23 policy before coming to ASTM? 12:28:05	23 information about some of the things happening in 12:30:54
24 MR. FEE: Objection. Vague. 12:28:08	24 Washington. And I learned suddenly that they've 12:30:56
25 THE WITNESS: Yeah, it would depend what you 12:28:10	25 already been addressing this issue through some of 12:31:00
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1 mean by "educational policy " 12:28:12	1 their codes, and I wouldn't be able to tell you what 12:31:09
2 BY MR BRIDGES: 12:28:15	2 codes, but I believe it goes all the way back to 2004, 12:31:11
3 Q Did you have any background in promoting 12:28:15	3 2005 12:31:18
4 education, widespread education before coming to ASTM? 12:28:18	4 Q In the answer you just gave, you referred to 12:31:19
5 MR FEE: Objection Vague 12:28:24	5 when you started working with NFPA and exchanged 12:31:23
6 THE WITNESS: No 12:28:25	6 information with them When do you date that? 12:31:23
7 BY MR BRIDGES: 12:28:26	7 A That would be, I think I've met -- the 12:31:25
8 Q Did you have any background in public access 12:28:26	8 standards community in Washington is a small 12:31:31
9 to government sponsored documents before coming to 12:28:31	9 community So I've met the various Washington 12:31:34
10 ASTM? 12:28:37	10 representatives for agencies Excuse me For SDO's, 12:31:35
11 MR FEE: Objection Vague as to "government 12:28:38	11 standards development organizations, many times in my 12:31:39
12 sponsored documents " 12:28:40	12 career And I would say I've worked cooperatively and 12:31:41
13 THE WITNESS: I was aware, during my time on 12:28:41	13 individually whenever necessary throughout my career 12:31:45
14 Capitol Hill, there was interest in what was called at 12:28:45	14 at ASTM So 12:31:48
15 the time "public access to science," which was mostly 12:28:48	15 Q Well, I think that doesn't quite answer my 12:31:56
16 about academic journals funded by the National 12:28:56	16 question I think you said you developed this 12:31:59
17 Institute and others, and National Science Foundation 12:28:58	17 interest when you began to hear -- sorry When you 12:32:02
18 BY MR BRIDGES: 12:28:59	18 began to -- when you started working with them on 12:32:06
19 Q And what did you understand the interest in 12:28:59	19 exchanging information I'm just trying to find out 12:32:10
20 public access to mean? 12:29:00	20 what year you're referring to when you said that 12:32:12
21 MR FEE: Objection This is beyond the 12:29:04	21 MR FEE: Objection Mischaracterizes his 12:32:14
22 scope of his designation 12:29:05	22 testimony 12:32:15
23 You can answer individually 12:29:07	23 THE WITNESS: I wouldn't be able to give you 12:32:19
24 THE WITNESS: My recollection was that there 12:29:09	24 an exact year except for I know when we began the APCO 12:32:20
25 was an idea that if the federal government paid for 12:29:12	25 related work, that was 2011 time frame 12:32:25
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<p>1 BY MR BRIDGES: 12:32:29</p> <p>2 Q And did your interest in providing a reading 12:32:31</p> <p>3 room arise about the same time as the APCO engagement 12:32:32</p> <p>4 arose? 12:32:38</p> <p>5 A Similar time line I believe it began to -- 12:32:40</p> <p>6 I began to introduce the idea and socialize it before 12:32:43</p> <p>7 then Maybe a year or so before then 12:32:45</p> <p>8 Q You introduced the idea of a reading room? 12:32:48</p> <p>9 A The idea of figuring out a way to strike the 12:32:51</p> <p>10 right balance I think another idea we had at the 12:32:53</p> <p>11 time that I introduced was perhaps figuring out if 12:32:57</p> <p>12 there was a way we could provide better summaries of 12:33:01</p> <p>13 our standards to the public rather than relying on 12:33:04</p> <p>14 abstracts So there was various ideas that I began to 12:33:07</p> <p>15 socialize with ASTM staff about how to strike this 12:33:13</p> <p>16 delicate balance between providing the public with 12:33:17</p> <p>17 greater access to our documents while still preserving 12:33:20</p> <p>18 what we need to preserve in order to meet -- continue 12:33:25</p> <p>19 the enterprise of developing standards, keeping the 12:33:28</p> <p>20 barriers to participation low, and ensuring that would 12:33:31</p> <p>21 continue to provide the important value that we do in 12:33:35</p> <p>22 high-quality market-relevant standards that protect 12:33:39</p> <p>23 the public 12:33:42</p> <p>24 Q How did you introduce the idea of providing a 12:33:44</p> <p>25 reading room in the discussion you were referring to? 12:33:46</p> <p style="text-align: right;">Page 110</p>	<p>1 notice -- 12:35:38</p> <p>2 MR FEE: Objection Calls for -- 12:35:38</p> <p>3 BY MR BRIDGES: 12:35:38</p> <p>4 Q -- from 2004 to 2011? 12:35:38</p> <p>5 MR FEE: Lack of foundation Calls for 12:35:41</p> <p>6 speculation This is beyond his designation as a 12:35:42</p> <p>7 witness on behalf of ASTM 12:35:44</p> <p>8 You can answer if you know 12:35:46</p> <p>9 THE WITNESS: Yeah In my opinion, access 12:35:47</p> <p>10 just wasn't an issue that people were bringing to 12:35:50</p> <p>11 standards development organizations From ASTM's 12:35:54</p> <p>12 standpoint, we just were not hearing from the public 12:35:57</p> <p>13 or from agencies that access to ASTM standards at the 12:36:01</p> <p>14 reasonable and flexible, widely available way that we 12:36:05</p> <p>15 provided them, why that wasn't good enough So this 12:36:10</p> <p>16 was all informational to me and was significant in the 12:36:14</p> <p>17 fact that NFPA was doing this 12:36:19</p> <p>18 BY MR BRIDGES: 12:36:36</p> <p>19 Q How did you establish priorities in 12:36:36</p> <p>20 determining what standards ASTM would make available 12:36:40</p> <p>21 on its reading room? 12:36:45</p> <p>22 MR FEE: Objection Vague 12:36:47</p> <p>23 THE WITNESS: I believe there was some 12:36:51</p> <p>24 discussion initially about there was a provision 12:36:51</p> <p>25 introduced in legislation on the Hill that could 12:36:58</p> <p style="text-align: right;">Page 112</p>
<p>1 A. Right. It would be as simple as talking to 12:33:52</p> <p>2 other staff at ASTM about looking at solutions that 12:34:01</p> <p>3 other organizations are considering or have posted 12:34:04</p> <p>4 towards providing greater access. 12:34:09</p> <p>5 Q. What other organizations did you mean just 12:34:17</p> <p>6 now? 12:34:19</p> <p>7 A. I believe the NFPA would be one. The 12:34:19</p> <p>8 American Petroleum Institute is a trade association 12:34:23</p> <p>9 that also develops standards, and I believe that they 12:34:25</p> <p>10 took some steps to provide greater access to their 12:34:30</p> <p>11 documents that I can recall caught my attention. 12:34:32</p> <p>12 Q. What other organizations? 12:34:39</p> <p>13 A. There's probably others, but those are the 12:34:50</p> <p>14 two I can think of that are what I would call "thought 12:34:51</p> <p>15 leaders." 12:34:56</p> <p>16 Q. What made NFPA a thought leader with respect 12:34:58</p> <p>17 to a reading room? 12:35:03</p> <p>18 A. The fact that they were making some of their 12:35:05</p> <p>19 core documents available to the public at no cost to 12:35:07</p> <p>20 first responders and those that they deemed needed 12:35:11</p> <p>21 access to them, positioned them in a way that was 12:35:15</p> <p>22 beyond the norm for standards developers and caught my 12:35:19</p> <p>23 notice. 12:35:22</p> <p>24 Q. Can you explain why it took approximately 12:35:24</p> <p>25 seven years for NFPA's reading room to catch your 12:35:27</p> <p style="text-align: right;">Page 111</p>	<p>1 potentially put ASTM in the position that if we did 12:37:03</p> <p>2 not provide public access at no cost to a few specific 12:37:08</p> <p>3 standards, that an agency would be precluded from 12:37:11</p> <p>4 utilizing such standards in future rulemakings, and 12:37:16</p> <p>5 that was a difficult position for ASTM to be put in. 12:37:20</p> <p>6 BY MR. BRIDGES: 12:37:25</p> <p>7 Q. My question was how did you establish 12:37:25</p> <p>8 priorities in determining what standards ASTM would 12:37:27</p> <p>9 make available on its reading room? 12:37:29</p> <p>10 MR. FEE: Same objections. 12:37:32</p> <p>11 THE WITNESS: So that same legislation that I 12:37:33</p> <p>12 referenced was very specific to an organization called 12:37:38</p> <p>13 FIMSA or PIMSA, which deals with -- it's a division 12:37:40</p> <p>14 within the Department of Transportation, which 12:37:43</p> <p>15 regulates the safety and the safe operation of 12:37:45</p> <p>16 pipelines and hazardous substances, and particularly 12:37:49</p> <p>17 for pipelines, this provision that I referred to 12:37:52</p> <p>18 earlier would have caused this potential barrier on 12:37:56</p> <p>19 the use of ASTM standards. 12:38:01</p> <p>20 So we began -- I began to look at which 12:38:03</p> <p>21 standards would be impacted by this potential 12:38:06</p> <p>22 legislation and what steps would ASTM possibly take to 12:38:08</p> <p>23 address this, either through legislation or through 12:38:15</p> <p>24 the fact that we make a decision that we'll go ahead 12:38:18</p> <p>25 and put it up for the public to review. 12:38:24</p> <p style="text-align: right;">Page 113</p>

<p>1 BY MR BRIDGES: 12:38:36</p> <p>2 Q In your last answer you said, "I began to 12:38:36</p> <p>3 look at which standards would be impacted by this 12:38:39</p> <p>4 potential legislation and what steps would ASTM 12:38:41</p> <p>5 possibly take to address this " What did you mean by 12:38:46</p> <p>6 "to address this" in that answer? 12:38:51</p> <p>7 A Well, personally, I felt that there was a 12:38:54</p> <p>8 real dilemma for ASTM because, on one hand, we work 12:38:56</p> <p>9 with stakeholders who come to ASTM with the 12:39:00</p> <p>10 expectation at times that we are going to be the 12:39:04</p> <p>11 foremost developer of information and standards that 12:39:07</p> <p>12 will help to benefit their industry or protect and 12:39:12</p> <p>13 ensure their industry is operating safely So on one 12:39:18</p> <p>14 hand we have that commitment to our stakeholders to 12:39:21</p> <p>15 demonstrate our significance, and then on the other 12:39:24</p> <p>16 hand we had the situation where an agency may be told 12:39:28</p> <p>17 that they can no longer utilize ASTM standards if ASTM 12:39:32</p> <p>18 does not make such standards available to the public 12:39:37</p> <p>19 for free at no cost on an Internet website So you'd 12:39:39</p> <p>20 have to read back your question if I failed to answer 12:39:47</p> <p>21 that 12:39:49</p> <p>22 Q Thank you Yeah, I'm not sure you did I 12:39:49</p> <p>23 was asking what you meant by "to address this" when 12:39:52</p> <p>24 you were referring to the discussions around the FIMSA 12:39:55</p> <p>25 legislation I'm just trying to find out -- 12:40:01</p> <p style="text-align: right;">Page 114</p>	<p>1 MR. FEE: Objection to form. 12:41:25</p> <p>2 THE WITNESS: That's not what I intended in 12:41:26</p> <p>3 my answer to your question. Taking steps to me, what 12:41:27</p> <p>4 I was implying there was that we were taking steps as 12:41:32</p> <p>5 an organization to implement this directive that might 12:41:34</p> <p>6 be passed by Congress. 12:41:39</p> <p>7 BY MR. BRIDGES: 12:41:41</p> <p>8 Q. Did, in fact, ASTM argue against the public 12:41:42</p> <p>9 access provisions in the FIMSA legislation? 12:41:48</p> <p>10 MR. FEE: Objection. Vague. 12:41:50</p> <p>11 THE WITNESS: Right. So I don't recall that 12:41:52</p> <p>12 we took any official position, wrote any official 12:41:54</p> <p>13 letters or signed any specific documents, but I do 12:41:57</p> <p>14 know that we did engage with Congressional staff on 12:42:02</p> <p>15 this issue to discuss what we thought would be the 12:42:05</p> <p>16 unintended consequences of this approach on 12:42:09</p> <p>17 organizations like ASTM and our model of standards 12:42:15</p> <p>18 development. And I should say we may have signed a 12:42:18</p> <p>19 letter. I just don't recall. I know there was a 12:42:22</p> <p>20 letter from SDOs that went to Capitol Hill. 12:42:25</p> <p>21 BY MR. BRIDGES: 12:42:29</p> <p>22 Q. So my question was a straightforward 12:42:30</p> <p>23 question. Did, in fact, ASTM argue against the public 12:42:31</p> <p>24 access provisions in the FIMSA legislation? 12:42:34</p> <p>25 MR. FEE: Objection. Asked and answered now. 12:42:38</p> <p style="text-align: right;">Page 116</p>
<p>1 A Sure 12:40:07</p> <p>2 Q -- what you meant by "to address this," what 12:40:07</p> <p>3 the "this" is and what it meant to address -- 12:40:12</p> <p>4 MR FEE: Objection to form 12:40:16</p> <p>5 Go ahead 12:40:17</p> <p>6 THE WITNESS: I was thinking ahead I 12:40:18</p> <p>7 believe it's my role to anticipate what changes could 12:40:20</p> <p>8 be coming from Washington, and the fact that this 12:40:22</p> <p>9 legislation was being considered, I thought was 12:40:28</p> <p>10 significant enough that we should do some internal 12:40:30</p> <p>11 planning and have some socialization of the issue 12:40:33</p> <p>12 amongst ASTM's management staff to ensure that we were 12:40:38</p> <p>13 taking steps to address it should it either be forced 12:40:43</p> <p>14 upon us or should we decide it's something that we 12:40:47</p> <p>15 want to do independent of any legislative or 12:40:50</p> <p>16 government directive 12:40:53</p> <p>17 BY MR BRIDGES: 12:40:57</p> <p>18 Q And you testified earlier that you began to 12:40:58</p> <p>19 look at what steps ASTM would possibly take to address 12:41:00</p> <p>20 this either through legislation or through the fact 12:41:04</p> <p>21 that we make a decision that we'll go ahead and put it 12:41:08</p> <p>22 up for the public to review What did you mean by 12:41:11</p> <p>23 "taking steps to address this through legislation"? 12:41:14</p> <p>24 Did that mean opposing the provisions relating to 12:41:20</p> <p>25 public access in the FIMSA legislation? 12:41:22</p> <p style="text-align: right;">Page 115</p>	<p>1 The problem is your vague question is "argue." He 12:42:41</p> <p>2 answered it. 12:42:45</p> <p>3 But if you have something more to add, go 12:42:45</p> <p>4 ahead. 12:42:47</p> <p>5 THE WITNESS: We engaged Congressional staff 12:42:47</p> <p>6 and discussed with them the potential impacts, made 12:42:50</p> <p>7 them aware on what impacts could be on ASTM. 12:42:54</p> <p>8 BY MR. BRIDGES: 12:42:59</p> <p>9 Q. Well, "engage" is a very bland word. 12:42:59</p> <p>10 A. Sure. 12:43:00</p> <p>11 Q. In that engagement did you express criticisms 12:43:00</p> <p>12 of those provisions of the legislation? 12:43:04</p> <p>13 MR. FEE: Objection. Vague. 12:43:06</p> <p>14 THE WITNESS: Yeah. I recall that I asked 12:43:07</p> <p>15 what the motivation was because I understood that 12:43:08</p> <p>16 there was this perception that the consumers or the 12:43:14</p> <p>17 general public would somehow glean some technical 12:43:16</p> <p>18 knowledge out of our standards that would help them 12:43:24</p> <p>19 understand better how pipelines could be made more 12:43:26</p> <p>20 safely in their communities, and I wanted to -- in 12:43:31</p> <p>21 fact, at that meeting I believe I brought a copy of an 12:43:35</p> <p>22 ASTM standard that they were particularly interested 12:43:39</p> <p>23 in to show them the technical nature of the standard 12:43:44</p> <p>24 because I felt they were misinformed if that was their 12:43:48</p> <p>25 perception. 12:43:51</p> <p style="text-align: right;">Page 117</p>

1 BY MR. BRIDGES: 12:44:04	1 Q -- did ASTM criticize the public access 12:45:20
2 Q. Did your answer mean to imply that ASTM did 12:44:04	2 provisions of the FIMSA legislation? 12:45:23
3 not criticize the public access provisions of the 12:44:09	3 MR FEE: You can answer that question 12:45:25
4 legislation? Because your answer avoided my word 12:44:11	4 however you deem appropriate 12:45:26
5 "criticism" by substituting other words and other 12:44:15	5 BY MR BRIDGES: 12:45:28
6 activities. 12:44:18	6 Q Yes or no? 12:45:28
7 MR. FEE: Objection. Asked and answered. 12:44:19	7 A My previous answer I explained the unintended 12:45:34
8 Vague. He doesn't have to adopt your wording. He 12:44:20	8 potential and its consequences and explored the 12:45:41
9 just has to respond substantively to your question. 12:44:22	9 motivation for why they were interested in this 12:45:41
10 MR. BRIDGES: He has to answer my question, 12:44:26	10 legislation 12:45:43
11 that's exactly right, and that's all I'm asking him to 12:44:28	11 Q Yes or no? 12:45:48
12 do. 12:44:28	12 MR FEE: Objection Asked and answered 12:45:54
13 MR. FEE: You can do it again if you have 12:44:28	13 THE WITNESS: I have nothing to add 12:45:56
14 something more to add. 12:44:30	14 BY MR BRIDGES: 12:46:02
15 THE WITNESS: I would add that I did not 12:44:31	15 Q So what other priorities have you had in 12:46:02
16 indicate that ASTM supports their legislation. 12:44:32	16 determining what standards ASTM should make available 12:46:05
17 BY MR. BRIDGES: 12:44:37	17 for public access? 12:46:13
18 Q. Did my question have the word "support" in? 12:44:37	18 MR FEE: Can you read that question back, 12:46:15
19 MR. FEE: He doesn't have to mock your 12:44:39	19 please 12:46:16
20 questions. That's his answer. If you don't like it, 12:44:41	20 (Record read ) 12:46:25
21 then too bad. 12:44:44	21 MR FEE: Objection Vague as to "public 12:46:25
22 MR. BRIDGES: It's not an answer to my 12:44:46	22 access " 12:46:27
23 question did ASTM criticize the public access 12:44:46	23 MR BRIDGES: I'll rephrase that 12:46:31
24 provisions of the legislation. 12:44:49	24 Q What other priorities have you had in 12:46:32
25 MR. FEE: Objection. Asked and answered. 12:44:52	25 determining what standards ASTM should make available 12:46:33
Page 118	Page 120
1 MR. BRIDGES: It's a yes or no. 12:44:52	1 in this reading room? 12:46:36
2 MR. FEE: No, it's not a yes or no. 12:44:54	2 A. Well, on or about that time, I believe that 12:46:39
3 Answer however you deem appropriate. 12:44:55	3 was when scholars, such as Peter Strauss and ACUS was 12:46:41
4 THE WITNESS: I believe I've answered the 12:44:57	4 beginning to -- and OMB was beginning to discuss or 12:46:48
5 question. 12:44:58	5 review how the public currently has access to 12:46:53
6 BY MR. BRIDGES: 12:44:58	6 standards that are incorporated by reference and what 12:46:57
7 Q. You're not going to answer this question? 12:44:58	7 "reasonably available" meant, and a lot of interesting 12:47:01
8 MR. FEE: He's already answered it twice. 12:45:01	8 discussion was undergoing in Washington. So I think 12:47:05
9 MR. BRIDGES: I need a yes or no. 12:45:03	9 it's fair to say that when discussing what documents 12:47:09
10 MR. FEE: No, you don't. You're not getting 12:45:06	10 would have a priority that would -- ASTM would put up 12:47:16
11 a yes or no unless that's all you have to say. You 12:45:07	11 for public access, we would look at some of the 12:47:20
12 answer the question however you like. 12:45:08	12 standards that have been identified to us as having 12:47:24
13 THE WITNESS: I believe I've answered the 12:45:09	13 been incorporated by reference, by federal agencies. 12:47:27
14 question. 12:45:09	14 BY MR. BRIDGES: 12:47:32
15 BY MR. BRIDGES: 12:45:09	15 Q. Do you know where to go to find a publicly 12:47:32
16 Q. Are you taking your lawyer's instruction not 12:45:09	16 available list of standards that the federal 12:47:38
17 to give a further answer? 12:45:14	17 government has incorporated by reference? 12:47:43
18 MR. FEE: I did not instruct him to do that. 12:45:16	18 MR. FEE: Objection. Vague as to time. 12:47:45
19 MR. BRIDGES: It sounded like it to me. 12:45:17	19 THE WITNESS: The resource that I'm most 12:47:51
20 MR. FEE: He's already answered that three 12:45:17	20 familiar with that is almost exclusively I've looked 12:47:52
21 times now. 12:45:18	21 at is called STANDARDS.GOV. It's a website that's 12:47:55
22 BY MR. BRIDGES: 12:45:19	22 operated by the National Institute of Standards and 12:48:00
23 Q. Yes or no -- 12:45:19	23 Technology and includes a database that they provide 12:48:03
24 MR. FEE: No. 12:45:20	24 to the public as to which standards are incorporated 12:48:07
25 BY MR. BRIDGES: 12:45:20	25 by reference in the U.S. Code of Federal Regulations. 12:48:12
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<p>1 BY MR BRIDGES: 12:48:17</p> <p>2 Q How many ASTM standards do you understand are 12:48:17</p> <p>3 listed at that location? 12:48:21</p> <p>4 MR FEE: Objection Vague as to time 12:48:23</p> <p>5 THE WITNESS: So there's -- if I'm answering 12:48:34</p> <p>6 your question exactly as you phrased it to me, how 12:48:35</p> <p>7 many standards, I believe there's 885 or so ASTM 12:48:38</p> <p>8 standards that are incorporated in the NIST database 12:48:41</p> <p>9 BY MR BRIDGES: 12:48:50</p> <p>10 Q How many of those standards are currently 12:48:50</p> <p>11 available at ASTM's reading room? 12:48:52</p> <p>12 A Well, if it's in the NIST database, we built 12:48:55</p> <p>13 the ASTM reading room using the NIST database as a 12:49:02</p> <p>14 baseline, and we added in other versions of those same 12:49:06</p> <p>15 885 ASTM standards that have been also incorporated by 12:49:10</p> <p>16 reference, just an agency, for instance, might 12:49:17</p> <p>17 reference the same ASTM standard but reference two 12:49:21</p> <p>18 different versions of the standard 12:49:25</p> <p>19 So we counted them in the reading room as 12:49:27</p> <p>20 well, and I believe our reading room has a volume of 12:49:30</p> <p>21 13- to 1,400 ASTM standards that are available to the 12:49:32</p> <p>22 public at no cost on our website for their review 12:49:36</p> <p>23 Q Are every one of the 885 standards from the 12:49:41</p> <p>24 NIST database available in the reading room? 12:49:45</p> <p>25 A I wouldn't be able to answer that 12:49:51</p> <p style="text-align: right;">Page 122</p>	<p>1 of working with agencies during the notice of proposed 12:51:41</p> <p>2 rule-making process 12:51:45</p> <p>3 Any agency that comes to us and asks us to 12:51:46</p> <p>4 put a standard up for public review during the public 12:51:50</p> <p>5 review period of a rule, we work with them to make 12:51:53</p> <p>6 that possible So at times we know that a certain 12:51:57</p> <p>7 number of ASTM standards have been in a notice to 12:52:01</p> <p>8 proposed rulemaking and that the new rule's expected 12:52:04</p> <p>9 to come out, so we can look for it 12:52:08</p> <p>10 Q Does ASTM provide assistance to the 12:52:16</p> <p>11 government in any way when the government is 12:52:18</p> <p>12 considering whether to incorporate an ASTM standard by 12:52:20</p> <p>13 reference? 12:52:23</p> <p>14 MR FEE: Objection Vague 12:52:24</p> <p>15 THE WITNESS: So we do -- I'm familiar with a 12:52:29</p> <p>16 couple things that either I do or a member of my staff 12:52:31</p> <p>17 does We look to see -- when we're aware that an ASTM 12:52:34</p> <p>18 standard is going to be used and incorporated by 12:52:39</p> <p>19 reference in some type of an action, we look to see 12:52:43</p> <p>20 what version of the standard and what designation of 12:52:46</p> <p>21 the standard is being used, and I believe on occasion 12:52:50</p> <p>22 if they're using -- proposing to use an outdated 12:52:54</p> <p>23 version of a standard, or, quite frankly, we've seen 12:52:59</p> <p>24 errors where they've attempted to use an ASTM biofuel 12:53:02</p> <p>25 standard, and rather than referencing D6751 they've 12:53:06</p> <p style="text-align: right;">Page 124</p>
<p>1 specifically. Using the NIST database as a guideline, 12:49:53</p> <p>2 we've incorporated, you know, as much of that as 12:50:02</p> <p>3 possible in the reading room. At times I believe we 12:50:04</p> <p>4 also tried to add a little bit more intelligence to it 12:50:06</p> <p>5 to determine if an agency was undertaking a subsequent 12:50:09</p> <p>6 rule-making, and we became aware that the agency had 12:50:18</p> <p>7 published a new final rule which either changed the 12:50:24</p> <p>8 reference to an ASTM standard that we had placed in 12:50:27</p> <p>9 the reading room or added a new ASTM standard to the 12:50:31</p> <p>10 reading room. 12:50:38</p> <p>11 Then we took steps to add that to the reading 12:50:39</p> <p>12 room. It's not an exact science. We don't pay a 12:50:42</p> <p>13 vendor to perform the service for us. We rely either 12:50:48</p> <p>14 exclusively on the NIST database or we -- it's based 12:50:55</p> <p>15 on intelligence that we've gathered about new 12:50:58</p> <p>16 rulemakings. 12:51:01</p> <p>17 Q. How do you gather intelligence about 12:51:03</p> <p>18 incorporations of ASTM standards by reference? 12:51:08</p> <p>19 A. Well, as much as possible we read the federal 12:51:14</p> <p>20 register. I'd like to think we read it on a regular 12:51:17</p> <p>21 basis, but sometimes it's more infrequent than that. 12:51:20</p> <p>22 So we will search key terms in the federal register to 12:51:24</p> <p>23 see if it's mentioning ASTM and if there's a rule that 12:51:30</p> <p>24 has resulted in the publication of standards. And 12:51:34</p> <p>25 sometimes we're ahead of it because ASTM has a policy 12:51:38</p> <p style="text-align: right;">Page 123</p>	<p>1 referenced D56571, gotten the numbers wrong, we will 12:53:09</p> <p>2 engage with an agency and either make them aware 12:53:14</p> <p>3 there's a more recent version or make them aware that 12:53:16</p> <p>4 what they are trying to reference doesn't make a lot 12:53:20</p> <p>5 of sense 12:53:22</p> <p>6 BY MR BRIDGES: 12:53:23</p> <p>7 Q Does ASTM bring standards to the attention of 12:53:26</p> <p>8 the federal government with some sort of 12:53:36</p> <p>9 recommendation that the federal government incorporate 12:53:38</p> <p>10 the standard by reference? 12:53:41</p> <p>11 MR FEE: Objection Vague 12:53:43</p> <p>12 THE WITNESS: That's not part of what we call 12:53:45</p> <p>13 engaging federal agencies in Congress What we will 12:53:49</p> <p>14 do is work with agencies and work with Congress to 12:53:53</p> <p>15 make them aware of the voluntary consensus standards 12:53:56</p> <p>16 that we're developing in any given area that they 12:53:59</p> <p>17 might have an interest But the ultimate decision of 12:54:02</p> <p>18 whether or not to utilize and reference those 12:54:07</p> <p>19 standards we rarely take positions on, and I can't 12:54:08</p> <p>20 give you a specific example of a time that we have 12:54:14</p> <p>21 taken an example on -- taken a position on 12:54:17</p> <p>22 BY MR BRIDGES: 12:54:23</p> <p>23 Q Do any state governments or municipal 12:54:23</p> <p>24 governments incorporate ASTM standards by reference? 12:54:26</p> <p>25 MR FEE: Objection to form 12:54:30</p> <p style="text-align: right;">Page 125</p>

1 THE WITNESS: It's my understanding that 12:54:31	1 MR BRIDGES: Why don't we take our break 12:57:17
2 state governments act on a parallel system of 12:54:32	2 now 12:57:18
3 incorporation by reference and that many states may in 12:54:37	3 MR FEE: Okay Great 12:57:19
4 fact reference ASTM standards in various state 12:54:41	4 THE VIDEOGRAPHER: Going off the record at 12:57:20
5 regulations. 12:54:45	5 12:56 12:57:21
6 BY MR. BRIDGES: 12:54:47	6 (A recess was taken from 12:56 p m 13:52:05
7 Q. When a state or municipal government 12:54:47	7 to 1:59 p m ) 14:00:46
8 incorporates an ASTM standard by reference -- strike 12:54:53	8 THE VIDEOGRAPHER: We are back on the record 14:00:46
9 that. 12:54:58	9 at 13:59 14:00:47
10 Are you aware of any ASTM standards that a 12:55:00	10 (Deposition Exhibit 1041 was marked for 14:01:06
11 state or municipal government has incorporated by 12:55:04	11 identification ) 14 01:06
12 reference that the federal government has not 12:55:06	12 MR BRIDGES: Mr Grover, I'm handing you 14:01:06
13 incorporated by reference? 12:55:11	13 Exhibit 1041 This is an E-mail exchange between you 14 01:08
14 MR. FEE: Objection to form. 12:55:12	14 and Jeff Grove; is that correct? Sorry This is an 14:01:19
15 THE WITNESS: That's a very difficult one for 12:55:16	15 E-mail exchange -- strike that 14:01:22
16 us because, to my knowledge, there's nothing that 12:55:17	16 Q Exhibit 1041 is an E-mail exchange between 14:01:24
17 parallels the NIST database for states. It would -- 12:55:20	17 you and John Pace; is that correct? 14:01:26
18 to my knowledge, it would require someone to search 50 12:55:24	18 (The witness reviewed Exhibit 1041 ) 14:01:57
19 different states and perhaps use vendors and pay for a 12:55:29	19 THE WITNESS: Yes 14:01:58
20 service to track that. So I don't have direct 12:55:33	20 BY MR BRIDGES: 14:01:58
21 knowledge. From time to time we do get letters from 12:55:36	21 Q And Mr Pace is head of publications for 14:01:58
22 states about proposed rule-making, saying about their 12:55:40	22 ASTM; is that correct? 14:02:02
23 interest in referencing standards. So I would be more 12:55:43	23 A That's correct 14:02:02
24 familiar with that. 12:55:46	24 (Deposition Exhibit 1042 was marked for 14:02:33
25 BY MR. BRIDGES: 12:55:49	25 identification ) 14 02:33
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1 Q. I guess my question is are you aware of any 12:55:49	1 MR. BRIDGES: I'm handing you Exhibit 1042. 14:02:33
2 ASTM standards that a state or municipal government 12:55:52	2 This is an E-mail from you to Sarah Petre, 14:02:41
3 has incorporated by reference that the federal 12:55:56	3 who reported to you; is that correct? 14:02:43
4 government has not incorporated by reference? 12:55:58	4 (The witness reviewed Exhibit 1042.) 14:03:26
5 MR. FEE: Objection to form. 12:56:00	5 THE WITNESS: Yes. 14:03:26
6 THE WITNESS: I'm not aware of any. 12:56:06	6 BY MR. BRIDGES: 14:03:27
7 BY MR. BRIDGES: 12:56:09	7 Q. What does "HF" refer to in Exhibit 1042? 14:03:27
8 Q. You're not aware of a single one? 12:56:09	8 MR. FEE: Objection. Calls for speculation. 14:03:35
9 A. I'm not aware of any. 12:56:11	9 THE WITNESS: I'd be speculating. I don't 14:03:41
10 Q. I want to go back and continue the thread of 12:56:31	10 have a guess. 14:03:43
11 questions about priorities and determining what 12:56:33	11 BY MR. BRIDGES: 14:03:43
12 standards to put in the reading room. 12:56:39	12 Q. You'd have no idea? 14:03:43
13 A. Before you ask the next question, I would 12:56:41	13 MR. FEE: Same objection. 14:03:46
14 like to notice you that I would like to take a break 12:56:43	14 THE WITNESS: I don't. 14:03:48
15 at the appropriate point here. 12:56:49	15 BY MR. BRIDGES: 14:03:51
16 Q. Okay. Give me a few more minutes, and we'll 12:56:49	16 Q. Did you discuss with anybody at ASTM in 14:03:51
17 take a break for lunch. 12:56:51	17 preparation for your -- strike that. 14:03:55
18 A. That's fine. 12:56:56	18 Did you review this E-mail in preparation for 14:03:58
19 Q. I just want to go back to the topic of 12:56:56	19 your testimony today? 14:04:00
20 priorities you have in determining what standards to 12:56:58	20 A. I don't recall, no. I don't think I 14:04:05
21 place in ASTM's reading room. Are there any other 12:57:00	21 discussed this, no. 14:04:07
22 priorities that you have not discussed? 12:57:03	22 Q. I asked if you reviewed the E-mail in 14:04:12
23 MR. FEE: Objection. Vague. 12:57:05	23 preparation for your testimony today. 14:04:14
24 THE WITNESS: No, not that I'm aware of. Not 12:57:11	24 A. I did not. I just reviewed it now. 14:04:16
25 that I can think of. 12:57:14	25 Q. Does HF, as an acronym, apply to any public 14:04:19
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1 relations firms that ASTM uses? 14:04:32	1 that your answer would reveal any retention of any 14:09:53
2 A I think that would be in the scope of 14:04:42	2 firm that was at the direction of counsel in 14:09:56
3 attorney-client discussions 14:04:43	3 connection with litigation. Excluding those 14:09:58
4 Q No, that would not 14:04:45	4 retentions, you can disclose any others. 14:10:02
5 MR FEE: Actually, it might We need to go 14:04:46	5 THE WITNESS: Based on that direction, I'm 14:10:07
6 outside for that 14 04:48	6 unable to answer your question. 14:10:09
7 MR BRIDGES: Going off the record 14:04:52	7 BY MR. BRIDGES: 14:10:12
8 THE VIDEOGRAPHER: Going off the record at 14:04:53	8 Q. Do you know whether American Petroleum 14:10:12
9 2:04 14:04:57	9 Institute had retained Fleishman Hillard? 14:10:14
10 (A recess was taken from 2:04 p m 14:06:30	10 MR. FEE: Objection. Calls for speculation. 14:10:17
11 to 2:06 p m ) 14:07:47	11 THE WITNESS: I don't know. 14:10:19
12 THE VIDEOGRAPHER: We're going back on the 14:07:49	12 (Deposition Exhibit 1043 was marked for 14:11:05
13 record at 14:06 14:07:50	13 identification.) 14:11:05
14 MR FEE: I'm going to instruct the witness 14:07:53	14 BY MR. BRIDGES: 14:11:05
15 not to answer any questions regarding what's referred 14:07:54	15 Q. Mr. Grove, do you recall having seen 14:11:05
16 to here as "HF call," and we're going to claw back 14:07:56	16 Exhibit 1043 before? 14:11:08
17 ASTM102361, and we'll replace it with a redacted 14:08:00	17 (The witness reviewed Exhibit 1043.) 14:11:17
18 version that keeps Item No 2 of this E-mail 14:08:04	18 THE WITNESS: This is not a document that 14:11:17
19 unredacted 14:08:10	19 I've seen that I recall. 14:11:18
20 MR BRIDGES: It keeps No 2 unredacted? 14:08:11	20 BY MR. BRIDGES: 14:11:21
21 MR FEE: Yes 14:08:13	21 Q. It was produced to us by ASTM. Do you know 14:11:21
22 MR BRIDGES: I do have a couple of voir dire 14:08:15	22 the circumstances in which ASTM possessed this 14:11:26
23 questions on this 14:08:17	23 document? 14:11:31
24 Q Does HF -- is that a mistake for "FH"? 14:08:18	24 MR. FEE: Objection. Calls for speculation. 14:11:32
25 MR FEE: Objection 14:08:21	25 It's beyond the scope of his designation. 14:11:34
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1 I'm going to instruct you not to answer that 14:08:21	1 THE WITNESS: I don't. 14:11:36
2 question. I instruct you not to answer. 14:08:23	2 BY MR. BRIDGES: 14:11:40
3 THE WITNESS: Okay. 14:08:29	3 Q. Does this document pertain to incorporations 14:11:40
4 MR. BRIDGES: Mr. Fee, did ASTM provide in 14:08:31	4 by reference? 14:11:42
5 any privilege log, any records of communications with 14:08:38	5 MR. FEE: Read the document to answer that 14:11:48
6 Fleishman Hillard? 14:08:42	6 question. 14:11:49
7 MR. FEE: I have no idea. 14:08:43	7 (The witness further reviewed Exhibit 1043.) 14:12:04
8 MR. BRIDGES: If it wishes to protect 14:08:45	8 BY MR. BRIDGES: 14:13:07
9 information about communications regarding Fleishman 14:08:50	9 Q. Do you need more time to determine if this 14:13:07
10 Hillard, we would expect to see that on a privilege 14:08:54	10 relates to incorporation -- 14:13:09
11 log. 14:08:56	11 A. Just about finished. 14:13:11
12 MR. FEE: Well, we'll certainly give you a 14:08:56	12 (The witness further reviewed Exhibit 1043.) 14:13:14
13 privilege log at least for this document. 14:08:57	13 THE WITNESS: Great. I'm sorry. Could you 14:13:14
14 MR. BRIDGES: Well, I'm asking for a 14:08:59	14 repeat it? 14:13:19
15 privilege log because it strikes me as though -- this 14:09:00	15 BY MR. BRIDGES: 14:13:21
16 suggests to me that there are relevant and responsive 14:09:03	16 Q. Does this document pertain -- strike that. 14:13:21
17 communications in discovery in this case with 14:09:06	17 Does this document pertain to incorporation 14:13:24
18 non-lawyers as to which I'm hearing some work product 14:09:15	18 by reference? 14:13:26
19 claims are being asserted, and it appears to me that 14:09:19	19 MR. FEE: Objection. Vague. The document 14:13:27
20 those communications in which the client participated 14:09:25	20 speaks for itself. 14:13:30
21 should be on a privilege log. 14:09:36	21 THE WITNESS: My understanding of the 14:13:37
22 Q. Mr. Grove, has ASTM ever retained the firm of 14:09:42	22 article, it's about the relationship between building 14:13:38
23 Fleishman Hillard? 14:09:48	23 codes and standards. So I don't consider that 14:13:43
24 MR. FEE: Objection. 14:09:50	24 incorporation by reference. 14:13:47
25 I'll instruct you not to answer to the extent 14:09:51	25 BY MR. BRIDGES: 14:14:02
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1 Q. Do you know who the author of that document 14:14:02	1 THE WITNESS: That would relate to -- 14:17:13
2 is? 14:14:04	2 MR. FEE: I instruct you not to answer that 14:17:15
3 A. I do not. 14:14:06	3 question. 14:17:16
4 Q. Do you know what the publication is that's 14:14:07	4 MR. BRIDGES: Can I get a representation from 14:17:17
5 indicated at the bottom? 14:14:09	5 counsel that this document was in anticipation of 14:17:19
6 A. I'd speculate that it's an architectural 14:14:13	6 litigation against Public Resource? 14:17:22
7 magazine based on the name. 14:14:23	7 MR. FEE: I'd have to see what's underneath 14:17:24
8 (Deposition Exhibit 1044 was marked for 14:14:58	8 there to be able to say anything. 14:17:26
9 identification.) 14:14:58	9 MR. BRIDGES: Someone on your team redacted, 14:17:29
10 MR. BRIDGES: I'm handing you Exhibit 1044. 14:14:59	10 and I'd like an answer to that at our next break, 14:17:31
11 Q. Do you recognize this document? 14:15:15	11 please. 14:17:32
12 (The witness reviewed Exhibit 1044.) 14:15:38	12 MR. FEE: That's not going to happen. 14:17:32
13 THE WITNESS: I do. 14:15:38	13 MR. BRIDGES: Well, then we're going to 14:17:33
14 BY MR. BRIDGES: 14:15:38	14 reserve the right to recall Mr. Grove back for further 14:17:34
15 Q. What material is blacked out at the top of 14:15:39	15 question because this appears to be a wrongful 14:17:37
16 Page 1044? 14:15:43	16 redaction to me at first blush. 14:17:40
17 MR. FEE: Objection. Calls for speculation. 14:15:44	17 MR. FEE: It doesn't appear that way to me 14:17:42
18 To the extent that would require you to 14:15:46	18 but... 14:17:47
19 disclose any privileged information, I would instruct 14:15:47	19 BY MR. BRIDGES: 14:17:52
20 you not to answer that. 14:15:49	20 Q. Mr. Grove, the underlying E-mails from Emily 14:17:52
21 THE WITNESS: And I don't know. 14:15:54	21 Bremer, she's someone we discussed earlier who worked 14:17:57
22 BY MR. BRIDGES: 14:15:57	22 for the administrative conference of the 14:18:00
23 Q. So I have to say I'm curious as to why 14:15:57	23 United States; correct? 14:18:03
24 something was blacked out because this is an E-mail 14:15:59	24 MR. FEE: Objection. Calls for speculation. 14:18:05
25 between you and people at three other organizations; 14:16:05	25 THE WITNESS: Yes. 14:18:08
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1 correct? Maureen Brodoff, Lorraine Carli and Joseph 14:16:13	1 BY MR. BRIDGES 14:18:12
2 Wendler are not within ASTM's organization; is that 14:16:14	2 Q. What would you put in a cover E-mail to 14:18:12
3 correct? 14:16:18	3 persons at other organizations in July 21, 2011 that 14:18:14
4 MR. FEE: Objection. Vague. Compound. 14:16:18	4 would require a redaction in this case? Do you know? 14:18:22
5 THE WITNESS: Correct. 14:16:22	5 MR. FEE: Objection. Calls for speculation. 14:18:25
6 BY MR. BRIDGES: 14:16:23	6 To the extent your answer to that question 14:18:25
7 Q. And none of them was an attorney for ASTM; is 14:16:23	7 would require you to disclose any communications in 14:18:28
8 that correct? 14:16:26	8 anticipation of litigation or attorney-client 14:18:31
9 MR. FEE: Objection. Calls for a legal 14:16:27	9 communications, I would instruct you not to answer. 14:18:33
10 conclusion. Calls for speculation. Beyond the scope 14:16:28	10 If you have an answer otherwise, you can go ahead and 14:18:35
11 of his designation. 14:16:32	11 answer. 14:18:38
12 THE WITNESS: My understanding is that 14:16:36	12 THE WITNESS: And I don't recall. 14:18:40
13 Maureen Brodoff is an attorney and acts as an attorney 14:16:38	13 (Deposition Exhibit 1045 was marked for 14:19:29
14 for ASME -- excuse me, for NFPA. 14:16:42	14 identification.) 14:19:29
15 BY MR. BRIDGES: 14:16:46	15 BY MR. BRIDGES: 14:19:30
16 Q. No. I'm asking did any of those three 14:16:46	16 Q. Mr. Grove, have you seen Exhibit 1045 before? 14:19:30
17 persons, Ms. Brodoff, Ms. Carli, and Mr. Wendler act 14:16:48	17 A. I'm familiar with parts of the E-mail that I 14:19:41
18 as a lawyer for ASTM, to your knowledge? 14:16:51	18 was -- sent to me. 14:19:44
19 MR. FEE: Same objections. 14:16:54	19 Q. You see in the middle Mr. Thomas sent a 14:19:46
20 THE WITNESS: Not to my knowledge. 14:16:56	20 message saying, "Dear exec members," and the 14:19:50
21 BY MR. BRIDGES: 14:16:57	21 addressees of that E-mail are above the squiggly line 14:19:53
22 Q. On July 21, 2011, was ASTM considering filing 14:16:57	22 in the middle of the page. Do you see that? 14:20:00
23 a lawsuit against Public Resource or Carl Malamud? 14:17:04	23 A. I do. 14:20:03
24 MR. FEE: Objection. I instruct you not to 14:17:10	24 Q. Seeing that, do you understand what Mr. -- 14:20:04
25 answer that question. 14:17:11	25 what the reference to "exec members" meant? 14:20:08
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1 MR. FEE: Objection. Calls for speculation. 14:20:13	1 not to disclose that portion of your -- of the answer 14:22:47
2 THE WITNESS: I'd speculate that he's 14:20:16	2 But anything else, you could disclose 14:22:50
3 referring to members of our board of directors that 14:20:18	3 THE WITNESS: That would fall outside of my 14:22:53
4 served on the executive committee. 14:20:22	4 scope of government relations and would be more of a 14:22:55
5 BY MR. BRIDGES: 14:20:26	5 legal issue 14:22:57
6 Q. And do you recognize the names in the "To" 14:20:26	6 BY MR BRIDGES: 14:23:01
7 field of that E-mail in the middle of the page as 14:20:28	7 Q Are you saying that this is a legal issue and 14:23:01
8 members of ASTM's board of directors? 14:20:32	8 not a government relations issue in that reference? 14:23:03
9 A. At that time, yes. 14:20:38	9 MR FEE: Objection Calls for speculation 14:23:06
10 Q. And was Mary McKiel at the time on the board 14:20:40	10 THE WITNESS: It's not a government relations 14:23:09
11 of directors of ASTM? 14:20:43	11 issue that I'm familiar with 14:23:10
12 A. Yes. 14:20:46	12 BY MR BRIDGES: 14:23:14
13 Q. Mr. Thomas referred in his E-mail to being 14:20:50	13 Q Who else would be familiar with whether it is 14:23:14
14 involved in discussions with DIN regarding strategy 14:20:54	14 a government relations issue? 14:23:16
15 and next steps. Do you see that? 14:20:58	15 MR FEE: Objection Calls for speculation 14:23:18
16 A. I see that. 14:21:02	16 THE WITNESS: Our attorney, Tom O'Brien 14:23:27
17 Q. What is DIN? 14:21:03	17 BY MR BRIDGES: 14:23:30
18 MR. FEE: Objection. Calls for speculation. 14:21:06	18 Q Does Mr O'Brien work in the field of 14:23:30
19 THE WITNESS: I believe that that would refer 14:21:10	19 government relations apart from legal issues? 14:23:36
20 to the national standards body of Germany, known as 14:21:12	20 MR FEE: Objection Calls for speculation 14:23:39
21 DIN. 14:21:16	21 It's beyond the scope of his designation as well 14:23:41
22 BY MR. BRIDGES: 14:21:16	22 THE WITNESS: To my knowledge, no Tom works 14:23:45
23 Q. What interest does ASTM have in being 14:21:18	23 on legal issues, and I work on government relations 14:23:47
24 involved in discussions with the national standards 14:21:21	24 issues 14:23:51
25 body of Germany regarding strategy and next steps in 14:21:24	25 BY MR BRIDGES: 14:23:53
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1 relation to Carl Malamud? 14:21:31	1 Q Ms McKiel, at the top of the E-mail thread 14:23:53
2 MR. FEE: Objection. Calls for speculation. 14:21:33	2 says, "I believe the ASTM strategy to this point has 14:23:58
3 Vague. Ambiguous. 14:21:39	3 proven best " What do you understand "the ASTM 14:24:05
4 BY MR. BRIDGES: 14:21:42	4 strategy" in the context of this E-mail thread, to 14:24:09
5 Q. If any. 14:21:42	5 have been? 14:24:14
6 A. I would -- I would think that that involves a 14:21:46	6 MR FEE: Objection Calls for speculation 14:24:16
7 legal issue. It's the only -- I'm not aware of 14:21:48	7 To the extent you have an understanding of 14:24:17
8 consulting with DIN on strategy. 14:21:54	8 the strategy based on legal communications, I'm 14:24:18
9 Q. Are you saying it refers to a DIN legal 14:21:57	9 instructing you not to disclose those If you have an 14:24:21
10 issue? 14:22:00	10 independent understanding of an ASTM strategy and have 14:24:24
11 A. It could. 14:22:03	11 some idea what Ms McKiel is referencing here, you can 14:24:27
12 Q. It does? 14:22:04	12 answer 14:24:30
13 MR. FEE: Objection. Calls for speculation. 14:22:06	13 BY MR BRIDGES: 14:24:31
14 THE WITNESS: I'm just not certain. 14:22:09	14 Q Well, I'm also asking you in your role as a 14:24:31
15 BY MR. BRIDGES: 14:22:11	15 representative of ASTM for purposes of this 14:24:34
16 Q. Are you aware that DIN has filed a lawsuit 14:22:11	16 deposition 14:24:34
17 against Mr. Malamud's organization? 14:22:13	17 MR FEE: Which topic do you think this 14:24:34
18 A. I'm not aware of that. 14:22:19	18 relates to? 14:24:37
19 Q. In your government relations role, what 14:22:24	19 MR BRIDGES: I'll show you during a break 14:24:38
20 understanding do you have about discussions of ASTM 14:22:29	20 MR FEE: Okay Well, I -- 14:24:41
21 with DIN regarding strategy as mentioned in this 14:22:35	21 MR BRIDGES: I'm not going to take 14:24:41
22 E-mail? 14:22:40	22 deposition time to go through it 14:24:42
23 MR. FEE: Objection. 14:22:41	23 MR FEE: I think it's beyond the scope of 14:24:44
24 To the extent your understanding is based 14:22:42	24 his deposition 14:24:46
25 upon counsel -- legal counsel, I would instruct you 14:22:45	25 But you can answer to the extent you know and 14:24:47
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1 won't disclose privileged communications. 14:24:48	1 of Mr. Thomas' statement in that sentence? 14:28:32
2 THE WITNESS: I mean, once again, I'm not in 14:24:52	2 MR. FEE: Objection. Calls for speculation. 14:28:35
3 this communication chain between Jim and the executive 14:24:52	3 THE WITNESS: I understand that there's been 14:28:37
4 committee, and it's not a government relations issue 14:24:56	4 an impact and a drag on ASTM's revenues due to 14:28:39
5 I'm working on. 14:24:59	5 confusion in business execution issues due to the fact 14:28:44
6 BY MR. BRIDGES: 14:25:00	6 that some of our standards are now available outside 14:28:49
7 Q. So you did not interpret the ASTM strategy 14:25:00	7 of our licensed distributors and outside of being 14:28:53
8 that's mentioned in that E-mail to be a government 14:25:03	8 directly available from ASTM. 14:28:58
9 relations strategy? 14:25:06	9 Q. So Mr. Thomas was lying in that statement? 14:29:02
10 MR. FEE: Objection. Calls for speculation. 14:25:08	10 MR. FEE: Objection. Mischaracterizes his 14:29:07
11 THE WITNESS: I don't. 14:25:10	11 testimony. 14:29:07
12 (Deposition Exhibit 1046 was marked for 14:25:58	12 MR. BRIDGES: I'll withdraw it. 14:29:08
13 identification.) 14:25:58	13 Q. You didn't answer my question, Mr. Grove. 14:29:08
14 MR. BRIDGES: I'll show you Exhibit 1046. 14:25:59	14 A. Okay. 14:29:10
15 Q. Have you seen this document before? 14:26:03	15 Q. My question is what do you understand to have 14:29:11
16 (The witness reviewed Exhibit 1046.) 14:26:25	16 been the basis of Mr. Thomas' statement in that 14:29:14
17 THE WITNESS: So the world justice project, 14:26:25	17 sentence? 14:29:17
18 the origination of the E-mail, which I received, yes, 14:26:27	18 MR. FEE: Objection. Calls for speculation. 14:29:17
19 I believe I reviewed that document. But from beyond 14:26:30	19 THE WITNESS: I wouldn't be able to answer 14:29:20
20 that point in the E-mail chain, I do not have 14:26:35	20 that. I apologize. 14:29:20
21 recollection of being involved in this. 14:26:38	21 BY MR. BRIDGES: 14:29:24
22 BY MR. BRIDGES: 14:26:41	22 Q. When did ASTM first notice a measurable 14:29:24
23 Q. Did you review this document in preparation 14:26:41	23 impact on its finances from the activities of 14:29:27
24 to testify today? 14:26:44	24 Mr. Malamud and Public Resource? 14:29:30
25 A. I did not. 14:26:50	25 MR. FEE: Objection. Vague. 14:29:32
Page 142	Page 144
1 Q. Who at ASTM would have the most knowledge 14:26:53	1 THE WITNESS: Again, I don't have direct 14:29:39
2 about the content on the front page of Exhibit 1046? 14:26:56	2 knowledge of such impact 14:29:42
3 MR. FEE: Objection. Vague. Calls for 14:27:01	3 BY MR BRIDGES: 14:29:48
4 speculation. 14:27:04	4 Q What other knowledge do you have other than 14:29:48
5 THE WITNESS: Well, my understanding is that 14:27:13	5 direct knowledge? 14:29:51
6 this mentions litigation and copyright. I would think 14:27:15	6 MR FEE: Same objection 14:29:52
7 it would be legal counsel, Tom O'Brien. 14:27:19	7 THE WITNESS: So to date, I'm aware, based on 14:29:53
8 BY MR. BRIDGES: 14:27:26	8 conversations with our vice president for sales and 14:29:57
9 Q. Who is the Steele, S-t-e-e-l-e, that the 14:27:26	9 publications, that the act of putting our standards 14:29:59
10 first line refers to? 14:27:30	10 into the public domain has caused a drag on revenue 14:30:04
11 MR. FEE: Objection. Calls for speculation. 14:27:32	11 for ASTM, which has complicated business execution, 14:30:08
12 THE WITNESS: I would speculate that it would 14:27:35	12 which has produced some harm to ASTM 14:30:14
13 be Rob Steele, who's the secretary general of ISO at 14:27:37	13 BY MR BRIDGES: 14:30:25
14 this time. 14:27:42	14 Q The vice president of sales and publications 14:30:25
15 BY MR. BRIDGES: 14:27:50	15 is John Pace; is that correct? 14:30:26
16 Q. On the third line of Mr. Thomas' E-mail is 14:27:50	16 A That's correct 14:30:28
17 the sentence, "To date, all of Carl's posting have not 14:27:54	17 Q Tell me everything you remember about those 14:30:28
18 had a measurable impact on our finances." Do you see 14:27:58	18 conversations When did you have those conversations? 14:30:31
19 that? 14:28:04	19 A Yesterday 14:30:37
20 A. I do see that. 14:28:04	20 Q Did you have any conversations before 14:30:43
21 Q. Was that your understanding at the time? 14:28:05	21 yesterday on that topic? 14:30:45
22 A. January 2013. I'm not aware that we did an 14:28:14	22 A Not that I recall 14:30:49
23 analysis that I would be able to comment on based at 14:28:20	23 Q When is the first time you learned of a drag 14:30:54
24 that point of time. 14:28:26	24 on revenue for ASTM caused by either Mr Malamud or a 14:30:58
25 Q. What do you understand to have been the basis 14:28:30	25 Public Resource? Was it yesterday? 14:31:05
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1	A	I wouldn't be able to give you a specific	14:31:16
2		date, but I understand that that's been the impact to	14:31:18
3		date just through communications and just generally	14:31:20
4		being a member of senior staff at ASTM	14:31:25
5	Q	When is the first time you learned of a drag	14:31:29
6		on revenue for ASTM caused by either Mr. Malamud or a	14:31:31
7		Public Resource?	14:31:37
8	MR. FEE:	Objection. Asked and answered	14:31:38
9	Vague		14:31:41
10	THE WITNESS:	The first time I've learned of	14:31:53
11		it is probably in the last year	14:31:54
12	BY MR. BRIDGES:		14:31:58
13	Q	How did you learn of it?	14:31:58
14	A	Well, I was aware that there was -- some	14:32:03
15		number of our standards have been put into the public	14:32:06
16		domain. I've heard from -- reports from John Pace	14:32:12
17		that this was beginning to have an impact on ASTM, and	14:32:18
18		I just can't recall exactly when that was and in what	14:32:24
19		setting, but it was general knowledge at that point	14:32:27
20	Q	"General knowledge"?	14:32:30
21	A	My general knowledge	14:32:31
22	Q	Who else had that general knowledge within	14:32:33
23		ASTM?	14:32:35
24	MR. FEE:	Objection. Vague	14:32:36
25	THE WITNESS:	I would assume Jim Thomas	14:32:41
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1	BY MR. BRIDGES:		14:32:47
2	Q	Who else?	14:32:47
3	A	I would assume Tom O'Brien.	14:32:49
4	Q	Who else?	14:32:52
5	A	I'd be purely speculating beyond that.	14:32:57
6	Q	Whom did you consult with to prepare yourself	14:33:00
7		for testimony today about the harms to ASTM from the	14:33:03
8		defendant's activities?	14:33:06
9	MR. FEE:	Objection. Asked and answered.	14:33:08
10	THE WITNESS:	As I stated earlier, John Pace.	14:33:10
11	BY MR. BRIDGES:		14:33:15
12	Q	Anybody else?	14:33:15
13	A	Tom O'Brien was there, or has been involved.	14:33:16
14	Q	Did he furnish you information for your	14:33:18
15		testimony today?	14:33:20
16	A	No.	14:33:21
17	Q	Who else?	14:33:22
18	A	That would be it.	14:33:25
19	Q	How many dollars has ASTM lost because of the	14:33:31
20		activities of defendants?	14:33:33
21	MR. FEE:	Objection. Calls for expert	14:33:34
22		testimony.	14:33:37
23	THE WITNESS:	At this time, to my knowledge,	14:33:39
24		we're not able to quantify the loss.	14:33:40
25	BY MR. BRIDGES:		14:33:44
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1	Q	Why not?	14:33:44
2	MR. FEE:	Same objection. Calls for expert	14:33:47
3		testimony.	14:33:48
4	THE WITNESS:	It's hard to quantify.	14:33:50
5	BY MR. BRIDGES:		14:33:52
6	Q	Why is it hard to quantify?	14:33:52
7	MR. FEE:	Same objection.	14:33:56
8	THE WITNESS:	You'd be speculating based on	14:33:57
9		lost sales.	14:33:58
10	BY MR. BRIDGES:		14:34:00
11	Q	Okay. What's the evidence of lost sales?	14:34:00
12	MR. FEE:	Same objection.	14:34:03
13	THE WITNESS:	So based on my conversation	14:34:06
14		with John Pace, the time that's spent in executing	14:34:08
15		business with customers and with members of the public	14:34:12
16		who are confused or misled to believe that these are	14:34:15
17		the official ASTM standards that are available causes	14:34:18
18		a drag in a time on him and his staff from being able	14:34:27
19		to execute the types of distribution in sales	14:34:31
20		agreements that allow us to fund our enterprise.	14:34:37
21	BY MR. BRIDGES:		14:34:42
22	Q	It sounds as though what Mr. Pace described	14:34:42
23		to you was an investment of time dealing with members	14:34:44
24		of the public who were confused or misled. Is that	14:34:58
25		one component of the harm that ASTM has suffered?	14:35:05
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1	MR. FEE:	Objection. Calls for expert	14:35:08
2		testimony. Mischaracterizes his testimony	14:35:09
3	BY MR. BRIDGES:		14:35:13
4	Q	I'm just asking to explore the testimony	14:35:13
5	A	That might be one. Correct	14:35:16
6	Q	Well, what sales does ASTM believe did not	14:35:21
7		occur because of the activities of defendants in this	14:35:28
8		case?	14:35:32
9	MR. FEE:	Objection. Calls for expert	14:35:33
10		testimony	14:35:34
11	THE WITNESS:	It's my understanding that	14:35:35
12		something like 88,500 accesses have been made to some	14:35:38
13		of the documents that have been put in the public	14:35:43
14		domain, and my conversations with John Pace indicate	14:35:48
15		that it's reasonable to assume that some of those	14:35:52
16		88,500 downloads of information that's in the public	14:35:55
17		domain would have been captured by ASTM under our	14:36:06
18		distribution and sales possibilities	14:36:11
19	BY MR. BRIDGES:		14:36:14
20	Q	What information does ASTM have about lost	14:36:14
21		sales apart from the number of accesses to the	14:36:17
22		defendant's website and to the Internet archive?	14:36:21
23	MR. FEE:	Objection. Asked and answered	14:36:26
24		Subject of expert testimony	14:36:29
25	Sorry	Go ahead	14:36:32
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1 THE WITNESS: I don't have anything 14:36:33	1 failed to perform the way that they expected them to. 14:39:04
2 additional. 14:36:35	2 BY MR. BRIDGES: 14:39:12
3 BY MR. BRIDGES: 14:36:36	3 Q. What other harms? 14:39:12
4 Q. And you're here as a corporate representative 14:36:36	4 MR. FEE: Same objections. 14:39:15
5 of ASTM to provide the information available to ASTM 14:36:37	5 THE WITNESS: Well, I would be concerned -- I 14:39:19
6 on that topic; correct? 14:36:37	6 know the important role our standards play in health, 14:39:21
7 MR. FEE: Objection. He's here to provide 14:36:39	7 life, and safety. I would certainly be concerned if 14:39:23
8 testimony regarding all the topics we identified 14:36:42	8 some of these documents that contain factual and other 14:39:25
9 earlier today. Of course, we'll have expert testimony 14:36:42	9 errors contributed in any way to property damage, 14:39:30
10 on this subject as well. 14:36:45	10 injury or loss of life because of the sensitive, 14:39:33
11 You can answer. 14:36:47	11 important role that our standards play in protecting 14:39:37
12 THE WITNESS: Yes. 14:36:50	12 people in society. 14:39:40
13 BY MR. BRIDGES: 14:36:55	13 BY MR. BRIDGES: 14:39:45
14 Q. So I need to know every other fact you're 14:36:55	14 Q. What other harms to ASTM? 14:39:45
15 aware of that pertains to harms that ASTM has suffered 14:36:57	15 MR. FEE: Same objections. 14:39:47
16 from the defendants. So, please, I'll take as much 14:37:06	16 THE WITNESS: I can't think of additional 14:39:58
17 time as we need. Tell me every other fact that you're 14:37:08	17 harms at this time. 14:40:00
18 aware of that pertains to the harm that ASTM has 14:37:11	18 BY MR. BRIDGES: 14:40:05
19 suffered as a consequence of the defendants. 14:37:15	19 Q. Has ASTM heard from any customers that said, 14:40:05
20 MR. FEE: Objection to form. Objection. 14:37:18	20 "I didn't buy the standard I was planning to buy 14:40:08
21 Calls for expert testimony. Objection to the extent 14:37:19	21 because I could find it for free on the Internet from 14:40:10
22 it calls for a narrative. Objection as to vague. 14:37:21	22 Public Resource or the Internet archive"? 14:40:13
23 Now, we're talking about harms as opposed to financial 14:37:28	23 MR. FEE: Objection to form. 14:40:16
24 harms? That's how I understand the question. 14:37:30	24 THE WITNESS: I don't have knowledge of that. 14:40:20
25 Can you read that back just to make sure I 14:37:34	25 BY MR. BRIDGES: 14:40:22
Page 150	Page 152
1 don't miss anything? 14:37:34	1 Q. Does anybody at ASTM have knowledge of that 14:40:22
2 (Record read.) 14:37:34	2 type of communication? 14:40:24
3 MR. BRIDGES: I'm sorry. Why do we need 14:38:01	3 MR. FEE: Objection. Calls for speculation. 14:40:27
4 to -- just if you got objections, go ahead and state 14:38:02	4 MR. BRIDGES: I'm asking him as a corporate 14:40:31
5 them. 14:38:02	5 representative. 14:40:32
6 MR. FEE: Oh, I don't want to hear the 14:38:02	6 MR. FEE: Same objection. 14:40:34
7 objections. 14:38:02	7 THE WITNESS: So based on my conversations 14:40:35
8 (Record read.) 14:38:02	8 with John Pace, he -- it's my understanding that there 14:40:36
9 MR. FEE: I think that's it. Okay. 14:38:02	9 is this confusion with certain customers and certain 14:40:43
10 THE WITNESS: Well, ASTM is known globally 14:38:03	10 members of the public that has caused this inability 14:40:47
11 for the quality and technical excellence of its 14:38:05	11 to execute sales on a timely basis. 14:40:51
12 documents because we have a very robust standards 14:38:08	12 BY MR. BRIDGES: 14:40:54
13 development and quality control process. My 14:38:14	13 Q. Well, what customers? 14:40:54
14 understanding, and based on my direct knowledge of 14:38:19	14 A. I'm not able to answer that at this time. 14:40:59
15 viewing certain documents that have been put in the 14:38:21	15 Q. What members of the public? 14:41:06
16 public domain, these documents contain errors. I've 14:38:22	16 A. I'm not able to answer that at this time. 14:41:09
17 seen standards where tables have been upside down. 14:38:29	17 Q. Did Mr. Pace put a dollar amount on his 14:41:17
18 I've seen tables and columns and rows that don't align 14:38:34	18 estimate of lost revenues to ASTM as a consequence of 14:41:19
19 properly. 14:38:39	19 the defendants' actions? 14:41:23
20 So if there's a real risk to ASTM's 14:38:41	20 MR. FEE: Objection to the extent that calls 14:41:25
21 reputation and to ASTM's standing in the global 14:38:44	21 for expert testimony. 14:41:26
22 economy, if customers or the public or other 14:38:48	22 THE WITNESS: In my communications with him, 14:41:29
23 stakeholders utilize these documents with the 14:38:52	23 no. 14:41:31
24 expectation and understanding that these were the 14:38:58	24 BY MR. BRIDGES: 14:41:33
25 official ASTM documents, and products and materials 14:39:00	25 Q. As a representative of ASTM at this 14:41:33
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<p>1 deposition, does ASTM have any estimate of the dollar 14:41:37</p> <p>2 amount of lost revenues to it as a consequence of the 14:41:42</p> <p>3 defendants' actions? 14:41:45</p> <p>4 MR. FEE: Objection. Calls for expert 14:41:46</p> <p>5 testimony. Let me see if that's really a topic that 14:41:48</p> <p>6 he's been designated on. 14:41:52</p> <p>7 MR. BRIDGES: He may answer. 14:41:59</p> <p>8 MR. FEE: Hold on. I'm waiting to see if 14:42:00</p> <p>9 that's actually a topic he's been designated on. 14:42:01</p> <p>10 MR. BRIDGES: Make the objections, and if 14:42:08</p> <p>11 it's superfluous and he hasn't been designated on. 14:42:11</p> <p>12 I'd like to go ahead and get an answer. 14:42:11</p> <p>13 MR. FEE: No. If you want to take off the 14:42:12</p> <p>14 prelude to your question there, then I'm happy to have 14:42:14</p> <p>15 his answer without the prelude, but if you're going to 14:42:16</p> <p>16 have -- 14:42:16</p> <p>17 MR. BRIDGES: Okay. Sure. 14:42:16</p> <p>18 Q. Does ASTM have any estimate of the dollar 14:42:17</p> <p>19 amount of lost revenues to it as a consequence of 14:42:20</p> <p>20 defendants' actions? 14:42:23</p> <p>21 MR. FEE: Objection. Calls for expert 14:42:25</p> <p>22 testimony. 14:42:26</p> <p>23 THE WITNESS: Not to my knowledge. 14:42:27</p> <p>24 BY MR. BRIDGES: 14:42:30</p> <p>25 Q. Does ASTM have any facts in its possession 14:42:30</p> <p style="text-align: right;">Page 154</p>	<p>1 MR. FEE: Same objections 14:44:04</p> <p>2 THE WITNESS: I'm not sure 14:44:08</p> <p>3 MR. FEE: It's beyond the scope his 14:44:08</p> <p>4 designation as well 14:44:10</p> <p>5 Go ahead 14:44:11</p> <p>6 THE WITNESS: I'm not sure, no 14:44:12</p> <p>7 BY MR. BRIDGES: 14:44:13</p> <p>8 Q Was it more than three years ago? 14:44:13</p> <p>9 MR. FEE: Same objections 14:44:16</p> <p>10 THE WITNESS: I'm not sure 14:44:17</p> <p>11 BY MR. BRIDGES: 14:44:18</p> <p>12 Q Was it more than two weeks ago? 14:44:18</p> <p>13 MR. FEE: Same objection 14:44:21</p> <p>14 THE WITNESS: I'm not sure 14:44:22</p> <p>15 BY MR. BRIDGES: 14:44:23</p> <p>16 Q Do you know whether ASTM had any knowledge of 14:44:23</p> <p>17 errors in connection with defendants posting of ASTM 14:44:26</p> <p>18 standards more than a week ago? 14:44:31</p> <p>19 MR. FEE: Same objection -- objections, I 14:44:35</p> <p>20 should say 14:44:36</p> <p>21 THE WITNESS: More than a week ago, I believe 14:44:38</p> <p>22 so, yes 14:44:39</p> <p>23 BY MR. BRIDGES: 14:44:40</p> <p>24 Q When did you first learn of any errors in 14:44:40</p> <p>25 defendants' posting of ASTM standards? 14:44:46</p> <p style="text-align: right;">Page 156</p>
<p>1 that suggest to ASTM that it has lost money as a 14:42:39</p> <p>2 consequence of defendants' actions? 14:42:46</p> <p>3 MR. FEE: Objection. Asked and answered. 14:42:50</p> <p>4 Calls for expert testimony. Vague. 14:42:51</p> <p>5 THE WITNESS: Not that I'm aware of. 14:42:57</p> <p>6 BY MR. BRIDGES: 14:43:05</p> <p>7 Q. Is ASTM aware of any property damage, injury, 14:43:05</p> <p>8 or loss of life that has occurred because of the 14:43:10</p> <p>9 defendants' actions? 14:43:15</p> <p>10 MR. FEE: Objection. Calls for expert 14:43:17</p> <p>11 testimony and speculation. 14:43:19</p> <p>12 THE WITNESS: Fortunately, not at this time. 14:43:22</p> <p>13 BY MR. BRIDGES: 14:43:26</p> <p>14 Q. When did you first -- sorry. 14:43:26</p> <p>15 When did ASTM first become aware of any 14:43:27</p> <p>16 errors in connection with the posting of ASTM 14:43:31</p> <p>17 standards by the defendant? 14:43:36</p> <p>18 A. I'm just not able to give you a time line. 14:43:51</p> <p>19 I'm not certain. 14:43:53</p> <p>20 Q. How long ago was it, to your best estimate? 14:43:55</p> <p>21 MR. FEE: Objection. Asked and answered. 14:43:57</p> <p>22 Calls for speculation. 14:43:58</p> <p>23 THE WITNESS: I'm not certain. 14:44:00</p> <p>24 BY MR. BRIDGES: 14:44:02</p> <p>25 Q. Was it more than a year ago? 14:44:02</p> <p style="text-align: right;">Page 155</p>	<p>1 A. I first learned of it by hearing of it in the 14:44:51</p> <p>2 last year. I first viewed it yesterday. 14:44:53</p> <p>3 Q. How many standards posted by defendants 14:44:56</p> <p>4 contain errors? 14:45:00</p> <p>5 MR. FEE: Objection. Beyond the scope of his 14:45:01</p> <p>6 designation. Calls for speculation. 14:45:03</p> <p>7 THE WITNESS: My understanding is that it 14:45:08</p> <p>8 would be extremely difficult to do a complete 14:45:10</p> <p>9 analysis, but based on quick analysis, we found 14:45:14</p> <p>10 significant errors. 14:45:21</p> <p>11 BY MR. BRIDGES: 14:45:28</p> <p>12 Q. What are the significant ones? 14:45:28</p> <p>13 A. To industries that rely on quality 14:45:30</p> <p>14 information, yes, I would say so. 14:45:32</p> <p>15 Q. Tell me some of the most significant ones. 14:45:34</p> <p>16 A. Well, if a table and a chart don't align 14:45:38</p> <p>17 correctly, the variables, it is displaying false 14:45:42</p> <p>18 information. That seems like that could be an error. 14:45:44</p> <p>19 Q. What other errors are really significant in 14:45:49</p> <p>20 your mind? 14:45:52</p> <p>21 A. I'm not certain. 14:45:53</p> <p>22 Q. Can you think of any other significant errors 14:45:54</p> <p>23 in defendants posting of standards? 14:45:56</p> <p>24 MR. FEE: Objection. This is beyond the 14:45:58</p> <p>25 scope of his designation. 14:45:59</p> <p style="text-align: right;">Page 157</p>

1	But go ahead.	14:46:00	1	Q. Where has ASTM collected all of the errors	14:48:14
2	THE WITNESS: A table or chart appearing	14:46:02	2	because Mr. Malamud in Public Resource would like to	14:48:17
3	upside down. If someone is flipping through and	14:46:03	3	know them as soon as possible? Has ASTM collected all	14:48:20
4	reading it or displaying it, that's significant to me.	14:46:05	4	of the errors in any place so that it can act on them	14:48:23
5	BY MR. BRIDGES:	14:46:11	5	right away?	14:48:26
6	Q. That's a significant error?	14:46:11	6	MR. FEE: Objection. Calls for speculation.	14:48:27
7	A. Yes.	14:46:12	7	Beyond the scope of his designation.	14:48:28
8	Q. Is that error going to lead to death or	14:46:12	8	THE WITNESS: Not to my knowledge, no.	14:48:32
9	injury to property?	14:46:14	9	BY MR. BRIDGES:	14:48:33
10	MR. FEE: Objection. Calls for speculation.	14:46:16	10	Q. Because I commit to you that Public Resource	14:48:33
11	Beyond the scope of his designation as well.	14:46:18	11	will immediately make any changes that ASTM calls to	14:48:35
12	THE WITNESS: I don't know.	14:46:21	12	its attention. Is that clear to you?	14:48:39
13	BY MR. BRIDGES:	14:46:32	13	A. Thank you.	14:48:43
14	Q. And is ASTM really concerned about death or	14:46:32	14	Q. Is that clear to you?	14:48:44
15	injury to property resulting from the defendants	14:46:36	15	MR. FEE: Objection. Vague.	14:48:45
16	posting of standards?	14:46:39	16	THE WITNESS: Yes.	14:48:48
17	MR. FEE: Objection. Vague. Beyond the	14:46:41	17	BY MR. BRIDGES:	14:48:50
18	scope of his designation. Calls for speculation.	14:46:42	18	Q. Do you think that Public Resource has an	14:48:50
19	THE WITNESS: I'm concerned about it.	14:46:56	19	interest in posting standards to the Internet in a way	14:48:52
20	BY MR. BRIDGES:	14:46:58	20	that will cause death and injury and loss of property?	14:48:57
21	Q. Are you really concerned about it?	14:46:58	21	MR. FEE: Objection.	14:49:01
22	MR. FEE: Objection. Asked and answered.	14:46:59	22	BY MR. BRIDGES:	14:49:02
23	THE WITNESS: Yes.	14:47:02	23	Q. Is that ASTM's view of Public Resource?	14:49:02
24	BY MR. BRIDGES:	14:47:02	24	MR. FEE: Objection. Form. Calls for	14:49:06
25	Q. Does it frighten you?	14:47:02	25	speculation. Beyond the scope of his designation.	14:49:08
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1	MR. FEE: Objection. Asked and answered.	14:47:05	1	THE WITNESS: I'd be concerned about	14:49:11
2	THE WITNESS: Frighten? It could.	14:47:10	2	unintended consequences of posting documents that	14:49:11
3	BY MR. BRIDGES:	14:47:17	3	aren't technically correct. I don't believe that	14:49:16
4	Q. Did it frighten you so much to ensure that	14:47:17	4	there's a deliberate attempt to harm the public.	14:49:19
5	somebody notified defendant that these errors needed	14:47:20	5	BY MR. BRIDGES:	14:49:22
6	immediate correction to preserve life and safety of	14:47:23	6	Q. And what steps do you know of that ASTM has	14:49:22
7	property?	14:47:26	7	taken to protect the public by notifying Public	14:49:26
8	MR. FEE: Objection. Beyond the scope of his	14:47:27	8	Resource of errors in its transcription of standards?	14:49:32
9	designation. Calls for speculation as to whether or	14:47:29	9	A. I'm not certain.	14:49:38
10	not that actually has happened.	14:47:32	10	Q. Who would know the most about that at ASTM?	14:49:41
11	THE WITNESS: No.	14:47:38	11	MR. FEE: Objection. Calls for speculation.	14:49:43
12	MR. FEE: You can consider this notice now.	14:47:40	12	Beyond the scope of his designation.	14:49:44
13	You guys should check all of your standards that were	14:47:42	13	THE WITNESS: It's a legal matter. So I'd	14:49:47
14	reproduced and make sure they're correct because it	14:47:45	14	refer to counsel.	14:49:49
15	may be dangerous.	14:47:48	15	BY MR. BRIDGES:	14:49:59
16	MR. BRIDGES: I'm sorry. Are you becoming a	14:47:50	16	Q. Does ASTM ever make any errors in its	14:49:59
17	witness now?	14:47:51	17	standards?	14:50:03
18	MR. FEE: No. No. In case you weren't clear	14:47:52	18	MR. FEE: Objection. Beyond the scope of his	14:50:03
19	about that from the deposition of Mr. Malamud, these	14:47:54	19	designation. Calls for speculation.	14:50:04
20	are important standards, you've now heard. You're now	14:47:56	20	THE WITNESS: I'm aware that ASTM has a very	14:50:09
21	on notice, if you weren't on notice before, that you	14:47:59	21	rigorous quality control process. I'm not aware of	14:50:11
22	should go back and make sure they're actually right.	14:48:01	22	any errors, but it wouldn't surprise me to hear that	14:50:15
23	MR. BRIDGES: You know something? We will.	14:48:06	23	there might be one.	14:50:18
24	MR. FEE: I bet you will.	14:48:07	24	BY MR. BRIDGES:	14:50:19
25	MR. BRIDGES: And that's a really good point.	14:48:09	25	Q. One? Would it surprise you if there were	14:50:20
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1 more than one error in the ASTM standards? 14:50:24	1 THE WITNESS: I'm not familiar with the term 14:53:06
2 MR. FEE: Same objections. 14:50:28	2 "errata." 14:53:07
3 THE WITNESS: I'd be speculating. 14:50:31	3 BY MR. BRIDGES: 14:53:08
4 BY MR. BRIDGES: 14:50:34	4 Q. Does ASTM ever issue corrigenda to its 14:53:08
5 Q. Well, you have testified as to what would 14:50:34	5 standards? 14:53:13
6 surprise you. I'd like to know what would surprise 14:50:34	6 MR. FEE: Objection. Vague. Beyond the 14:53:14
7 you. 14:50:35	7 scope of his designation. 14:53:15
8 MR. FEE: Same objections. 14:50:37	8 THE WITNESS: I'm not certain. 14:53:20
9 THE WITNESS: I'm aware of ASTM's rigorous 14:50:37	9 BY MR. BRIDGES: 14:53:21
10 quality control process and the value of bringing 14:50:40	10 Q. Does ASTM ever issue a notice of errors in 14:53:21
11 people together under an open, transparent process and 14:50:42	11 any of its standards? 14:53:28
12 the important role that ASTM staff plays in helping to 14:50:47	12 MR. FEE: Same objections. 14:53:31
13 ensure the quality of our documents. And I would be 14:50:49	13 THE WITNESS: I'm not certain. 14:53:32
14 skeptical that that could be replicated if any steps 14:50:54	14 BY MR. BRIDGES: 14:53:34
15 were bypassed. So -- 14:50:59	15 Q. What happens if ASTM publishes and 14:53:34
16 BY MR. BRIDGES: 14:51:03	16 distributes a standard that's widely held by persons 14:53:37
17 Q. Would it surprise you for an ASTM standard to 14:51:03	17 and then discovers that there is a mistake in the 14:53:40
18 have three or more errors in it? 14:51:05	18 standard? How does ASTM notify the public? 14:53:42
19 MR. FEE: Same objections. 14:51:08	19 MR. FEE: Objection. Calls for speculation. 14:53:45
20 THE WITNESS: Would it surprise me? Yes. 14:51:13	20 It's beyond the scope of his designation, and 14:53:47
21 BY MR. BRIDGES: 14:51:16	21 compound. 14:53:50
22 Q. Are you aware of any ASTM standards with 14:51:16	22 THE WITNESS: I'm not able to explain that 14:53:52
23 three or more errors? 14:51:19	23 process. 14:53:53
24 MR. FEE: Same objections. Just give me a 14:51:21	24 BY MR. BRIDGES: 14:53:55
25 second to object. 14:51:23	25 Q. Would it harm ASTM's reputation to issue a 14:53:55
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1 THE WITNESS: I'm not personally, no 14:51:25	1 standard with mistakes? 14:53:58
2 BY MR. BRIDGES: 14:51:27	2 MR. FEE: Objection. Calls for expert 14:53:59
3 Q. Are you aware of how ASTM standards are 14:51:27	3 testimony. It's beyond the scope of his designation 14:54:01
4 proofread? 14:51:44	4 THE WITNESS: I'm not certain 14:54:07
5 MR. FEE: Objection. Vague 14:51:47	5 BY MR. BRIDGES: 14:54:09
6 THE WITNESS: Yes, generally 14:51:51	6 Q. How has ASTM's reputation suffered from the 14:54:09
7 BY MR. BRIDGES: 14:51:53	7 activities of the defendants? 14:54:15
8 Q. How? 14:51:53	8 MR. FEE: Objection. Calls for expert 14:54:24
9 A. There's a rigorous process under which at 14:51:54	9 testimony 14:54:25
10 every point in the standards development process 14:51:58	10 THE WITNESS: I'm not certain 14:54:28
11 there's peer review of the standard and of the 14:52:00	11 BY MR. BRIDGES: 14:54:29
12 document, and as it goes through the process, as it 14:52:05	12 Q. Have you noticed an effect on ASTM's 14:54:29
13 works through the ASTM process, which involves many 14:52:09	13 reputation as a consequence of the defendants' 14:54:32
14 steps, at the end there's an editor, an ASTM staff 14:52:13	14 activities? 14:54:35
15 that reviews the standard and insures that the 14:52:21	15 A. I have not 14:54:37
16 document purports to be what the committee intended it 14:52:26	16 Q. What instances is ASTM aware of, of people 14:54:44
17 for -- for it to be 14:52:29	17 being confused about the relationship between ASTM and 14:54:50
18 Q. And do ASTM editors catch every mistake? 14:52:32	18 the defendant? 14:54:57
19 MR. FEE: Objection. Calls for speculation 14:52:36	19 MR. FEE: Objection. Vague. Asked and 14:54:59
20 THE WITNESS: I'm not aware of errors, but it 14:52:44	20 answered 14:55:02
21 wouldn't surprise me if there were some 14:52:47	21 THE WITNESS: Based on communications with 14:55:04
22 BY MR. BRIDGES: 14:52:49	22 our sales and publications vice president 14:55:06
23 Q. Does ASTM ever issue errata to its standards? 14:52:49	23 BY MR. BRIDGES: 14:55:09
24 MR. FEE: Objection. Vague. I think that's 14:52:55	24 Q. What did those communications convey to you? 14:55:09
25 also beyond the scope of his designation 14:52:59	25 A. That there was some level of confusion in the 14:55:14
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1 marketplace which was impacting business execution. 14:55:18	1 MR. FEE: Objection. Calls for expert 14:58:15
2 Q. What was the confusion in the marketplace? 14:55:26	2 testimony. Vague. 14:58:17
3 A. Potential customers thought they would no 14:55:32	3 THE WITNESS: Yes. 14:58:22
4 longer need to access documents through ASTM if they 14:55:38	4 BY MR. BRIDGES: 14:58:24
5 were provided at a different place. 14:55:43	5 Q. What harm does it cause? 14:58:24
6 Q. Who were those "potential customers"? 14:55:46	6 A. It creates the impression that this is the 14:58:28
7 MR. FEE: Objection. Asked and answered. 14:55:49	7 official ASTM standard when, in fact, it may not be, 14:58:30
8 THE WITNESS: I don't know. 14:55:51	8 may contain errors, or it may be a different version 14:58:35
9 BY MR. BRIDGES: 14:55:59	9 than the version that ASTM is currently maintained. 14:58:40
10 Q. Is it -- did Mr. Pace identify them to you 14:55:59	10 Q. What harm -- explain to me, please, the facts 14:59:04
11 and you've forgotten them? 14:56:02	11 of the kinds of harm that ASTM suffers if the ASTM 14:59:11
12 A. I don't recall. I don't think so. 14:56:08	12 logo is on an older version than the current version 14:59:22
13 Q. Do you recall Mr. Pace identifying any of 14:56:10	13 of an ASTM standard and it is posted to the Internet 14:59:30
14 those potential customers? 14:56:17	14 by Public Resource. 14:59:37
15 MR. FEE: Objection. Asked and answered. 14:56:19	15 MR. FEE: Objection. May call for expert 14:59:39
16 THE WITNESS: I don't recall. 14:56:21	16 testimony. To form as well. 14:59:41
17 BY MR. BRIDGES: 14:56:22	17 Go ahead. 14:59:44
18 Q. Did Mr. Pace tell you how many potential 14:56:23	18 BY MR. BRIDGES: 14:59:48
19 customers had that experience? 14:56:25	19 Q. And to be clear, I want to know what harm 14:59:48
20 A. No. 14:56:30	20 ASTM suffers from the presence of the logo on that 14:59:49
21 Q. Did Mr. Pace explain to you any 14:56:30	21 older version that Public Resource has posted. 14:59:53
22 characteristics of the potential customers who had 14:56:34	22 MR. FEE: Same objections. 14:59:57
23 that experience? 14:56:36	23 THE WITNESS: Well, by going to a source 15:00:00
24 MR. FEE: Objection to form. 14:56:37	24 other than ASTM for a document such as this that 15:00:01
25 THE WITNESS: No. 14:56:40	25 contains ASTM's logo, I would be concerned that the 15:00:05
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1 BY MR BRIDGES: 14:56:41	1 public isn't accessing the most recent version of a 15:00:15
2 Q Did Mr Pace give you any kind of description 14:56:41	2 standard which may have been revised to address new 15:00:18
3 of the potential customers who had that experience? 14:56:43	3 hazards in the marketplace or state of the artistry 15:00:21
4 MR FEE: Objection to form 14:56:46	4 practice that needs to be captured. 15:00:24
5 THE WITNESS: No 14:56:49	5 BY MR. BRIDGES: 15:00:34
6 BY MR BRIDGES: 14:56:52	6 Q. Do you understand that Public Resource 15:00:34
7 Q Are you aware of any documents in ASTM's 14:56:52	7 intends to post to the Internet only those ASTM 15:00:38
8 possession that identify the potential customers who 14:56:55	8 standards that have been incorporated by reference? 15:00:43
9 had that experience? 14:57:00	9 MR. FEE: Objection. Calls for speculation 15:00:45
10 A No 14:57:04	10 as to Public Resource's intention. 15:00:48
11 Q Are you aware -- strike that 14:57:05	11 THE WITNESS: I don't fully understand the 15:00:55
12 You mentioned potential customers thought 14:57:13	12 strategy. 15:00:59
13 that they would no longer need to access documents 14:57:15	13 BY MR. BRIDGES: 15:01:00
14 through ASTM if they were provided with it at a 14:57:18	14 Q. Do you understand that it is Public 15:01:00
15 different place Apart from that, what other 14:57:21	15 Resource's practice to post standards only if they are 15:01:01
16 confusion are you aware of, or is ASTM aware of, in 14:57:25	16 incorporated by reference? 15:01:04
17 the marketplace that impacted business execution? 14:57:29	17 MR. FEE: Objection. Lack of foundation. 15:01:06
18 MR FEE: Objection to form 14:57:33	18 Calls for speculation. 15:01:08
19 THE WITNESS: I can't think of any at the 14:57:40	19 THE WITNESS: Based on the documents I've 15:01:14
20 moment 14:57:41	20 seen that have been posted, it's my understanding that 15:01:16
21 BY MR BRIDGES: 14:57:52	21 they have been incorporated by reference, yes. 15:01:18
22 Q Does the presence of the ASTM logo and 14:57:52	22 BY MR. BRIDGES: 15:01:21
23 trademarks on documents posted to the Internet by 14:57:57	23 Q. Is it misleading, in your view, to provide to 15:01:21
24 Public Resource cause any harm to ASTM from ASTM's 14:58:06	24 the public an older version of a standard -- of an 15:01:25
25 knowledge? 14:58:15	25 ASTM standard where that older version is incorporated 15:01:43
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1 by reference? 15:01:47	1 than the dated issue. 15:04:36
2 MR. FEE: Objection. Vague as to whether or 15:01:48	2 BY MR. BRIDGES: 15:04:38
3 not that older version is authentic. 15:01:51	3 Q. The authenticity of the standard didn't come 15:04:38
4 THE WITNESS: Yeah. I'm sorry. Could you 15:01:54	4 into your answer until you heard counsel's objection. 15:04:41
5 just repeat that? 15:01:55	5 MR. FEE: That's absolutely false. You 15:04:41
6 BY MR. BRIDGES: 15:01:57	6 should read the transcript when you get done with 15:04:43
7 Q. Is it misleading, in your view, to have the 15:01:57	7 this. 15:04:47
8 ASTM logo on an older version of an ASTM standard 15:02:01	8 BY MR. BRIDGES: 15:04:49
9 where the older version has been incorporated by 15:02:07	9 Q. Would it harm ASTM less if defendant took the 15:04:49
10 reference? 15:02:09	10 ASTM logo off the standards that it -- sorry, that it 15:04:53
11 MR. FEE: Same objection as to the vagueness. 15:02:11	11 posts? 15:04:58
12 THE WITNESS: My concern would be that to get 15:02:16	12 MR. FEE: Objection. Calls for speculation, 15:04:59
13 the most recent version of any document, you more than 15:02:19	13 and a hypothetical. 15:05:01
14 likely need to come to ASTM or one of our licensed 15:02:27	14 MR. BRIDGES: I'd like to know what ASTM -- 15:05:05
15 distributors. 15:02:31	15 MR. FEE: Calls for an expert opinion, 15:05:08
16 BY MR. BRIDGES: 15:02:32	16 perhaps, as well. 15:05:09
17 Q. But if somebody is interested in, let's say, 15:02:32	17 THE WITNESS: I'm not able to answer that 15:05:10
18 a 2008 standard because the 2008 standard has been 15:02:39	18 question. 15:05:12
19 incorporated by reference but a more recent standard 15:02:42	19 BY MR. BRIDGES: 15:05:14
20 has not been, what is the harm to ASTM from the 15:02:44	20 Q. Would ASTM -- well, would you find it 15:05:14
21 inclusion of the ASTM logo on that 2008 standard 15:02:49	21 problematic -- I'm just curious. Which would you find 15:05:18
22 posted by Public Resource? 15:02:55	22 to be more of a problem to ASTM, for Public Resource 15:05:21
23 MR. FEE: Objection. Calls for speculation. 15:02:58	23 to public -- strike that. 15:05:27
24 THE WITNESS: Since I'm not an attorney and 15:03:01	24 What would ASTM, in your view, find to be 15:05:37
25 I'm not familiar with the regulatory -- the connection 15:03:04	25 more of a problem, for Public Resource to post the 15:05:41
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1 between regulations and law, I will share my 15:03:09	1 ASTM standards it posts with the ASTM logo or for 15:05:49
2 observation -- 15:03:12	2 Public Resource to publish them without the ASTM logo? 15:05:56
3 BY MR. BRIDGES: 15:03:14	3 MR FEE: Objection To the extent that 15:06:02
4 Q. Please do. 15:03:14	4 you're asking for what would be more problematic from 15:06:03
5 A. -- that just because a version of a standard 15:03:15	5 a legal perspective -- 15:06:06
6 that's in the law might be outdated, that doesn't seem 15:03:18	6 MR BRIDGES: Just please state the basis for 15:06:08
7 to stop industry from wanting to use the most recent 15:03:26	7 your objection instead of -- 15:06:10
8 version of the standard. 15:03:30	8 MR FEE: Andrew, do you forget how your 15:06:11
9 Q. And is it ASTM's view that it's misleading to 15:03:35	9 deposition objections went? Do you remember your 15:06:12
10 have the ASTM logo on anything that's currently 15:03:39	10 deposition objections the other day? They were much 15:06:14
11 available -- strike that. 15:03:43	11 more talkative than this 15:06:16
12 Is it ASTM's view that it is misleading to 15:03:48	12 MR BRIDGES: Not so 15:06:18
13 display the ASTM logo on standards currently available 15:03:54	13 MR FEE: I'm going to make my objections 15:06:19
14 on the Internet when the standards are not the most 15:04:03	14 To the extent you're asking for a legal 15:06:21
15 recent versions? 15:04:09	15 conclusion with respect to "problematic," I object on 15:06:22
16 MR. FEE: Objection. To the extent you're 15:04:11	16 that basis I object because it calls for 15:06:25
17 using "misleading" as a legal term, I object on that 15:04:13	17 speculation, and it's a hypothetical question 15:06:28
18 ground. I also object to the vagueness of that 15:04:15	18 BY MR BRIDGES: 15:06:35
19 because it's not clear whether or not the standards 15:04:18	19 Q You may answer 15:06:35
20 you're referencing are authentic or not. 15:04:21	20 MR FEE: Hold on I'm not done objecting 15:06:36
21 MR. BRIDGES: That's coaching the witness, 15:04:23	21 yet And objection to form 15:06:38
22 Mr. Fee. 15:04:24	22 THE WITNESS: And I'm not able to answer that 15:06:49
23 THE WITNESS: Well, that's exactly the point 15:04:25	23 question 15:06:50
24 I thought I was making. I don't -- it's the 15:04:26	24 BY MR BRIDGES: 15:06:53
25 authenticity of the standard as much as the -- more 15:04:31	25 Q In your position at ASTM, does it make a 15:06:53
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1 difference to you whether the ASTM logo is or is not 15:06:58	1 the presence of the ASTM logo and trademarks on the 15:09:22
2 on the standards, the ASTM standards that defendant 15:07:04	2 ASTM standards that defendant has posted to the 15:09:26
3 has posted to the Internet? 15:07:10	3 Internet harms ASTM? 15:09:30
4 MR. FEE: Are you asking him personally now 15:07:13	4 MR FEE: Objection Asked and answered 15:09:35
5 for his opinion? 15:07:14	5 Calls for expert testimony 15 09:37
6 MR. BRIDGES: In his position at ASTM. 15:07:15	6 THE WITNESS: It creates the perception, 15:09:42
7 MR. FEE: Then it's beyond the scope of his 15:07:18	7 problem that's been identified by John Pace as a drag 15:09:45
8 designation. I object on that basis. All the other 15:07:19	8 on business execution 15:09:48
9 objections as last time, as well. 15:07:22	9 I'd also like to notice we've been going for 15:09:53
10 And to the extent that your position is based 15:07:23	10 over an hour So at an appropriate time 15:09:56
11 on legal counsel, I would instruct you not to disclose 15:07:26	11 MR BRIDGES: We can take a break if you 15:10:02
12 anything based on legal counsel. If you have an 15:07:29	12 want We can do it now 15:10:02
13 answer still, you can go ahead and answer. 15:07:33	13 THE WITNESS: All right 15:10:06
14 THE WITNESS: My position would be based on 15:07:36	14 THE VIDEOGRAPHER: We're going off the record 15:10 07
15 legal counsel. 15:07:37	15 at 15:09 15:10:08
16 MR. BRIDGES: There's a misunderstanding. I 15:07:41	16 (A recess was taken from 3:09 p m 15:26:01
17 wasn't asking what your position was. I said, "in 15:07:44	17 to 3:26 p m ) 15:26 01
18 your position." 15:07:47	18 THE VIDEOGRAPHER: Back on the record at 15:26:02
19 Q. In your position at ASTM, does it make a 15:07:47	19 3:26 p m 15:26:05
20 difference to you whether the ASTM logo is or is not 15:07:49	20 BY MR BRIDGES: 15:26:07
21 on the ASTM standards the defendant has posted to the 15:07:52	21 Q Mr Grove, let me direct your attention back 15:26:07
22 Internet? 15:07:55	22 to Exhibit 1044 for a minute It's one with the 15:26:10
23 MR. FEE: I'll make all the same objections, 15:07:57	23 redacted band across the top Does this document 15:26:15
24 and to the extent whether or not something makes a 15:07:59	24 refresh your recollection as to whether, roughly, 15:26:22
25 difference to you is based upon your understanding 15:08:03	25 around the time of that document or before the 15:26:24
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1 from legal counsel, I would instruct you not to 15:08:05	1 document you had received a notice internally to 15:26:25
2 disclose at least that difference. 15:08:11	2 preserve all documents for litigation in this case? 15:26:30
3 If you have some other difference -- 15:08:13	3 A. No, it does not. 15:26:36
4 THE WITNESS: I don't. This gets into an 15:08:15	4 Q. Did you ever receive such a notice to hold 15:26:37
5 area of legal matters that I don't have an opinion. 15:08:16	5 documents for litigation? 15:26:43
6 BY MR. BRIDGES: 15:08:20	6 MR. FEE: Hold on a second. Actually, if 15:26:44
7 Q. Well, I'm not asking for legal positions. 15:08:20	7 you'll agree that that's not a waiver of anything, 15:26:46
8 I'm not asking for legal theories. I'm asking for the 15:08:22	8 I'll let him answer that. 15:26:49
9 facts that are available to you. What facts are you 15:08:24	9 MR. BRIDGES: Correct. 15:26:51
10 aware of that suggests that the presence of the ASTM 15:08:28	10 THE WITNESS: Can you just restate that one 15:26:54
11 logo and trademarks on the ASTM standards that 15:08:35	11 more time? I got lost. 15:26:56
12 defendant has posted to the Internet -- 15:08:44	12 BY MR. BRIDGES: 15:26:57
13 A. Uh-huh. 15:08:49	13 Q. Did you ever receive such a notice to hold 15:26:57
14 Q. -- harms ASTM? 15:08:49	14 documents for this litigation? 15:26:59
15 MR. FEE: Objection. Asked and answered. 15:08:51	15 A. Could you define "hold." 15:27:01
16 Calls for expert testimony. 15:08:54	16 Q. To preserve documents against disposal or 15:27:03
17 THE WITNESS: I believe I answered the 15:08:58	17 destruction for the purposes of this litigation. 15:27:05
18 question to the best of my ability. 15:08:59	18 A. Yes. 15:27:08
19 BY MR. BRIDGES: 15:09:04	19 Q. Do you know when you received that notice? 15:27:09
20 Q. I'm asking you -- I asked different questions 15:09:04	20 A. I don't recall. 15:27:12
21 earlier. I'm asking for what the facts are that 15:09:07	21 Q. Do you know how long ago it was? 15:27:13
22 you're aware of now. 15:09:10	22 A. I don't recall specifically, no. 15:27:20
23 MR. FEE: Hold on. Is that a new question? 15:09:17	23 Q. Do you recall what year it was? 15:27:21
24 BY MR. BRIDGES: 15:09:19	24 A. Fall of 2013. 15:27:29
25 Q. What facts are you aware of that suggest that 15:09:19	25 Q. Okay. Were you aware of the filing of this 15:27:32
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1 lawsuit being pushed back several months from its 15:27:38	1 A. We did, in January of 2013. 15:30:14
2 originally intended timing? 15:27:40	2 Q. And what do you mean by "going live" with the 15:30:17
3 MR. FEE: Objection. 15:27:43	3 reading room? 15:30:21
4 To the extent that it would require you to 15:27:43	4 MR. FEE: Objection. Lack of foundation. 15:30:22
5 disclose communication with counsel, I instruct you 15:27:46	5 THE WITNESS: It took a lot of work and 15:30:25
6 not to answer that. If you became aware otherwise, 15:27:47	6 resources to build the ASTM reading room, and the 15:30:27
7 you can go ahead. 15:27:50	7 executive committee, or in this case the chairman of 15:30:34
8 THE WITNESS: That would involve 15:27:51	8 the board, or whatever capacity Mary McKiel may have 15:30:40
9 communication with counsel. 15:27:52	9 been at that time. Jim was communicating to her that 15:30:44
10 BY MR. BRIDGES: 15:27:55	10 I believe -- I'm speculating what Jim is 15:30:46
11 Q. Are you aware that plaintiffs relayed that 15:27:55	11 communicating, but I believe he was saying the reading 15:30:50
12 fact to persons outside the plaintiff group? 15:28:01	12 room is up and running. 15:30:52
13 MR. FEE: Objection. Lack of foundation. 15:28:04	13 BY MR. BRIDGES: 15:30:55
14 THE WITNESS: I'm not aware of that. 15:28:08	14 Q. So when you say that ASTM went live with the 15:30:55
15 MR. BRIDGES: Let me turn back to 15:28:15	15 reading room, what you meant was that ASTM's reading 15:30:59
16 Exhibit 1046. 15:28:16	16 room was available for public access; is that correct? 15:31:03
17 Mr. Fee, I think it would be uncontroversial, 15:28:17	17 MR. FEE: Objection. Vague. 15:31:11
18 does ASTM stipulate to the authenticity of 15:28:20	18 THE WITNESS: Yes. 15:31:12
19 Exhibit 1036? 15:28:24	19 BY MR. BRIDGES: 15:31:13
20 MR. FEE: 1046? 15:28:27	20 Q. And that happened in January 2013? 15:31:13
21 MR. BRIDGES: Sorry. 1046, you're right. 15:28:28	21 A. Some documents went up before January, but 15:31:16
22 It's a document that ASTM produced with a Bates 15:28:29	22 January of 2013 was when we had set a goal working 15:31:20
23 022620. 15:28:37	23 with IT to try to get these documents on-line. 15:31:27
24 MR. FEE: I'm hesitant to do that without 15:28:37	24 Q. How many documents were on-line at the ASTM 15:31:30
25 knowing more about it, but I would imagine that both 15:28:40	25 reading room in January 2013? 15:31:32
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1 parties would agree to the authenticity of most, if 15:28:43	1 A I believe close to the full collection So 15:31:36
2 not all, the E-mails they produced I'd be happy to 15:28:46	2 as many as 1,300 ASTM documents 15:31:38
3 talk about this or a broader discussion on that topic 15:28:53	3 Q What announcements to the press did ASTM make 15:31:43
4 MR BRIDGES: Okay But for present 15:28:53	4 about its reading room going live? 15:31:48
5 purposes, I needed to ask him questions about this 15:28:54	5 A I don't recall if we made a lot of 15:31:54
6 MR FEE: Well, you're welcome to ask him 15:28:55	6 announcements when it went live in January I believe 15:31:55
7 whatever questions you want about this I don't want 15:28:56	7 we were concerned about if it would function and work, 15:31:58
8 to do that without examining the issue a little bit 15:28:59	8 and I think we wanted to get a little experience with 15:32:05
9 MR BRIDGES: Okay 15:29:04	9 it before we broadcast it too widely 15:32:08
10 Q This document -- do you see where Mr Thomas 15:29:10	10 Q Did ASTM ever make announcements to the press 15:32:12
11 said at the top of the page, "We are now live with our 15:29:12	11 about the availability of its reading room? 15:32:15
12 reading room"? 15:29:14	12 MR FEE: Objection Vague 15:32:17
13 A I do 15:29:24	13 THE WITNESS: Yes Through our flagship 15:32:19
14 Q What do you understand that statement to 15:29:26	14 communication, Standardization News, which we 15:32:21
15 mean? 15:29:29	15 delivered to all of our members and stakeholders I 15:32:25
16 A I'd be speculating 15:29:37	16 believe 30,000 individuals receive it six times a 15:32:27
17 Q Go ahead 15:29:46	17 year Mention of it was made in the magazine 15:32:33
18 MR FEE: Objection Lack of foundation 15:29:50	18 BY MR BRIDGES: 15:32:36
19 THE WITNESS: I believe he's announcing the 15:29:53	19 Q When was that? 15:32:36
20 fact that we went live with our reading room, which is 15:29:55	20 A I'm sorry I don't know specifically 15:32:37
21 the place on ASTM's website where we place all ASTM 15:30:00	21 Q How long after the launch of the reading room 15:32:39
22 standards that we're aware of that are incorporated by 15:30:06	22 did that occur? 15:32:45
23 reference 15:30:08	23 A I'm sorry I don't recall It was in 2013 15:32:53
24 BY MR BRIDGES: 15:30:09	24 Q Did ASTM ever make an announcement to the 15:32:59
25 Q Did ASTM go live with its reading room? 15:30:09	25 press about the availability of its reading room 15:33:03
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<p>1 beyond the announcement in Standardization News? 15:33:08</p> <p>2 MR FEE: Objection to form 15:33:13</p> <p>3 THE WITNESS: I believe it was also announced 15:33:15</p> <p>4 at the ASTM annual business meeting in 2013 15:33:16</p> <p>5 BY MR BRIDGES: 15:33:22</p> <p>6 Q The "ASTM business meeting" being a meeting 15:33:22</p> <p>7 of ASTM members and stakeholders? 15:33:25</p> <p>8 A Yes 15:33:28</p> <p>9 Q What other public announcements did ASTM make 15:33:32</p> <p>10 about the availability of its reading room beyond 15:33:36</p> <p>11 announcements to its own members and stakeholders? 15:33:40</p> <p>12 A I also believe that there was a reference to 15:33:44</p> <p>13 it in the ASTM annual report in 2013, which was 15:33:46</p> <p>14 published in 2014 15:33:50</p> <p>15 Q What else? 15:33:52</p> <p>16 A I make it part of my message, when I'm 15:33:58</p> <p>17 visiting with stakeholders that I interact with, that 15:34:01</p> <p>18 ASTM has this reading room 15:34:05</p> <p>19 Q What else? 15:34:07</p> <p>20 A Jim Thomas, our president, mentions it in his 15:34:08</p> <p>21 interactions on a worldwide basis 15:34:12</p> <p>22 Q With whom? 15:34:16</p> <p>23 A Jim Thomas is a popular figure in the 15:34:19</p> <p>24 standards community, a well-known expert, and he 15:34:22</p> <p>25 speaks to many groups So I wouldn't be able to give 15:34:25</p> <p style="text-align: right;">Page 182</p>	<p>1 Records Administration 15:36:09</p> <p>2 Q What else? 15:36:10</p> <p>3 A And I'm sorry I believe that concludes all 15:36:12</p> <p>4 that I can recall 15:36:15</p> <p>5 Q How many of those audiences did not already 15:36:16</p> <p>6 have -- strike that 15:36:27</p> <p>7 Were there any announcements to the general 15:36:41</p> <p>8 public apart from what you would call NFPA members and 15:36:45</p> <p>9 stakeholders? 15:36:53</p> <p>10 MR FEE: I think you misspoke You said 15:36:54</p> <p>11 "NFPA"? 15:36:56</p> <p>12 MR BRIDGES: Yes Excuse me Thank you 15:36:57</p> <p>13 I'm still stuck in yesterday 15:36:58</p> <p>14 Q Was there any -- were there any announcements 15:37:01</p> <p>15 by ASTM of the availability of the reading room to the 15:37:05</p> <p>16 general public apart from those whom you would call 15:37:11</p> <p>17 ASTM members and stakeholders? 15:37:18</p> <p>18 MR FEE: Objection Vague 15:37:21</p> <p>19 THE WITNESS: Yeah I can recall at least on 15:37:23</p> <p>20 one occasion when -- we don't get a lot of inquiries 15:37:24</p> <p>21 from the media on this issue, on public access issues, 15:37:27</p> <p>22 but I do recall Jim Thomas, our CEO, mentioned it to a 15:37:31</p> <p>23 reporter that was asking us about public access 15:37:38</p> <p>24 BY MR BRIDGES: 15:37:43</p> <p>25 Q Which reporter was that? 15:37:43</p> <p style="text-align: right;">Page 184</p>
<p>1 you specifics without reviewing his calendar. 15:34:30</p> <p>2 Q. What else? 15:34:34</p> <p>3 A. ASTM has an electronic newsletter. I believe 15:34:40</p> <p>4 we mentioned it in the newsletter in 2013. 15:34:45</p> <p>5 Q. To ASTM's members and stakeholders? 15:34:49</p> <p>6 A. Yes. To anyone interested in subscribing. 15:34:52</p> <p>7 Q. What else? 15:34:54</p> <p>8 A. We previously discussed some efforts to 15:35:02</p> <p>9 educate policy makers and stakeholders in Washington 15:35:07</p> <p>10 through an APCO public relations campaign. I believe 15:35:10</p> <p>11 the reading room was part of that messaging as well in 15:35:14</p> <p>12 2013. 15:35:17</p> <p>13 Q. What else? 15:35:19</p> <p>14 A. That's all I can recall at this time. It had 15:35:28</p> <p>15 a place on our website as well. 15:35:34</p> <p>16 Q. Of all the persons who had access to -- 15:35:40</p> <p>17 sorry. Were you about to mention another? 15:35:43</p> <p>18 A. I'm sorry. We also sent a few letters to 15:35:46</p> <p>19 agencies informing them of the creation of the reading 15:35:49</p> <p>20 room. 15:35:54</p> <p>21 Q. By "agencies," do you mean government 15:35:57</p> <p>22 agencies? 15:35:58</p> <p>23 A. To government agencies, to the office of 15:35:58</p> <p>24 management and budget, and to the office of the 15:36:01</p> <p>25 federal register at NARA, the National Archives 15:36:04</p> <p style="text-align: right;">Page 183</p>	<p>1 A I'm sorry I don't recall 15:37:44</p> <p>2 Q Was it a reporter for the New Republic? 15:37:45</p> <p>3 A Yeah I'm sorry I don't recall 15:37:51</p> <p>4 Q Was it a reporter writing an article about 15:37:53</p> <p>5 this litigation? 15:37:55</p> <p>6 A Could have been 15:37:59</p> <p>7 Q It was; right? 15:38:00</p> <p>8 MR FEE: Objection Asked and answered 15:38:01</p> <p>9 BY MR BRIDGES: 15:38:05</p> <p>10 Q To the best of your knowledge, it was? 15:38:05</p> <p>11 MR FEE: Same answer -- or same objection 15:38:07</p> <p>12 Sorry 15:38:09</p> <p>13 THE WITNESS: Yes I think that was the 15:38:09</p> <p>14 interest 15:38:10</p> <p>15 BY MR BRIDGES: 15:38:11</p> <p>16 Q So apart from that, what announcements did 15:38:11</p> <p>17 ASTM make to the general public beyond its members and 15:38:18</p> <p>18 stakeholders about the availability of its standards 15:38:22</p> <p>19 on its reading room? 15:38:25</p> <p>20 MR FEE: Objection Vague 15:38:27</p> <p>21 THE WITNESS: I'm very proud of the reading 15:38:29</p> <p>22 room It's something that we worked very hard to do 15:38:30</p> <p>23 to strike this balance I believe it's an excellent 15:38:33</p> <p>24 policy, and we've received a lot of accolades for it 15:38:38</p> <p>25 So we speak about it freely to anyone that wants to 15:38:45</p> <p style="text-align: right;">Page 185</p>

1 hear about it. 15:38:47	1 connection with this litigation at the request of 15:41:49
2 BY MR. BRIDGES: 15:38:50	2 counsel, I'd instruct you not to disclose that. If 15:41:50
3 Q. And if you're very proud of it, you would 15:38:50	3 you're aware of some other investigation, you can 15:41:54
4 want to make sure that as many people hear about it as 15:38:52	4 answer it, although, also, it's beyond the scope of 15:41:56
5 possible; is that right? 15:38:54	5 your designation in this case. 15:41:59
6 MR. FEE: Objection. This is beyond the 15:38:55	6 THE WITNESS: I have no knowledge of that. 15:42:03
7 scope of his designation, among other things. 15:38:57	7 BY MR. BRIDGES: 15:42:04
8 But you can answer. 15:38:59	8 Q. You have no knowledge of communicating with 15:42:04
9 THE WITNESS: I have no concerns with anyone 15:39:01	9 David Carmel at International Code Council about what 15:42:06
10 knowing about it. 15:39:03	10 you knew about Public Resource's funding? 15:42:10
11 BY MR. BRIDGES: 15:39:06	11 MR. FEE: Same instruction. If it requires 15:42:14
12 Q. And would you want as many people as possible 15:39:06	12 you to disclose something you learned through -- at 15:42:22
13 to know about it? 15:39:08	13 the request of counsel, you should not answer it. 15:42:22
14 MR. FEE: Same objection. It's vague and 15:39:10	14 MR. BRIDGES: I'm sorry. I'm just asking 15:42:23
15 asked and answered. 15:39:11	15 about a disclosure. You're introducing the concept of 15:42:24
16 THE WITNESS: Again, I have no concerns. 15:39:15	16 how he may have learned about something. But if he's 15:42:30
17 Yes, I would. 15:39:16	17 communicating something to a non-party, then I don't 15:42:33
18 BY MR. BRIDGES: 15:39:18	18 see any protection here. 15:42:37
19 Q. So did ASTM issue any broad press releases to 15:39:18	19 MR. FEE: That's not what the work product 15:42:41
20 the general American public about the availability of 15:39:25	20 doctrine covers. 15:42:43
21 any of its standards on its reading room? 15:39:27	21 If you did something at the direction of 15:42:46
22 MR. FEE: Objection. Vague. 15:39:31	22 counsel in connection with this litigation, I instruct 15:42:48
23 THE WITNESS: I don't have our press 15:39:36	23 you not to disclose it in connection with answering 15:42:49
24 releases. I know we issued 350 press releases a year. 15:39:37	24 that question. If you did it otherwise, you can 15:42:52
25 So I'm not certain if we announced it through a press 15:39:40	25 answer it. 15:42:54
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1 release. 15:39:44	1 THE WITNESS: Right. I thought the question 15:42:55
2 BY MR. BRIDGES: 15:39:47	2 was did ASTM investigate the sources of Google funding 15:42:56
3 Q. How many press releases has ASTM issued, to 15:39:47	3 to which I said, "No." That would have been a legal 15:43:00
4 the best of your knowledge, from January 1, 2013 until 15:39:52	4 matter. 15:43:03
5 now? 15:39:56	5 BY MR. BRIDGES: 15:43:05
6 MR. FEE: Objection. Beyond the scope of his 15:39:57	6 Q. I said have you no knowledge of communicating 15:43:05
7 designation. Calls for speculation. 15:39:59	7 to David Carmel at International Code Council about 15:43:07
8 THE WITNESS: I'd be speculating, but our 15:40:05	8 what you knew about Public Resource's funding? 15:43:09
9 ASTM press releases cover member recognition and 15:40:11	9 MR. FEE: Same instruction with respect to 15:43:13
10 awards in a variety of things. So I wouldn't be 15:40:17	10 that. 15:43:14
11 surprised if it was a couple hundred. 15:40:20	11 THE WITNESS: I may have. 15:43:18
12 BY MR. BRIDGES: 15:40:23	12 BY MR. BRIDGES: 15:43:21
13 Q. And how many press releases do you recall 15:40:23	13 Q. Why may you have? What would be your purpose 15:43:21
14 announced to the general public the availability of 15:40:27	14 in doing that? 15:43:25
15 ASTM standards on ASTM's reading room? 15:40:30	15 MR. FEE: To the extent that you are doing it 15:43:26
16 MR. FEE: Objection. Beyond the scope of his 15:40:33	16 at the direction of counsel, you should not disclose 15:43:27
17 designation. 15:40:34	17 those communications. 15:43:30
18 You can answer in your personal capacity if 15:40:35	18 THE WITNESS: I'm not sure. 15:43:35
19 you have an answer. 15:40:38	19 BY MR. BRIDGES: 15:43:44
20 THE WITNESS: I don't have a number. 15:40:40	20 Q. Has ASTM, to your knowledge, ever had a 15:43:44
21 BY MR. BRIDGES: 15:41:41	21 contract or an agreement with International Code 15:43:50
22 Q. Did ASTM investigate the sources of Public 15:41:41	22 Council regarding this litigation? 15:43:52
23 Resource's funding? 15:41:45	23 MR. FEE: Objection. Let me talk to you 15:43:54
24 MR. FEE: Objection. Vague. 15:41:45	24 about privilege issues with respect to this line of 15:43:58
25 To the extent that investigation was done in 15:41:46	25 questioning. Let's take a break. 15:44:00
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1 THE WITNESS: Okay 15:44:02	1 Q. Well, my curiosity is twice now you've used a 15:48:00
2 THE VIDEOGRAPHER: We're now off the record 15:44:02	2 word or a name that I've never used. 15:48:04
3 at 15:43 15:44:03	3 A. Right. 15:48:06
4 (A recess was taken from 3:43 p m 15:45:10	4 Q. And that name is "Google." And you used it 15:48:07
5 to 3:44 p m ) 15:45:10	5 just now. And I had asked you if ASTM had 15:48:12
6 THE VIDEOGRAPHER: We're back on the record 15:45:10	6 investigated the sources of Public Resource's funding, 15:48:21
7 at 15:44 15:45:51	7 and you said, "I have no knowledge of that." So what 15:48:25
8 MR. FEE: Can you read back the question, 15:45:52	8 causes you to associate Google with Public Resource in 15:48:28
9 please 15:45:53	9 your testimony today? 15:48:31
10 (Record read ) 15:46:09	10 MR. FEE: Hold on. 15:48:34
11 MR. FEE: I think you can just go ahead and 15:46:09	11 THE WITNESS: Oh, sorry. 15:48:36
12 answer that question 15:46:11	12 MR. FEE: Objection. Vague. It's beyond the 15:48:36
13 THE WITNESS: To my knowledge, no, we've had 15:46:12	13 scope of his designation. 15:48:37
14 no contact No 15:46:16	14 To the extent that your association is 15:48:39
15 BY MR. BRIDGES: 15:46:20	15 because of communications with counsel, I'd instruct 15:48:41
16 Q So a few minutes ago, right before the break, 15:46:20	16 you not to disclose those. If you have some other 15:48:43
17 I was asking you a question about what you knew about 15:46:24	17 basis for an association, you can go ahead and answer. 15:48:48
18 Public Resource's funding, and my question was have 15:46:33	18 THE WITNESS: Okay. So my recollection is 15:48:53
19 you no knowledge of communicating to David Carmel at 15:46:35	19 based on information -- privileged information with 15:48:55
20 International Code Council about what you knew about 15:46:40	20 counsel. 15:49:00
21 Public Resource's funding Do you recall my asking 15:46:42	21 BY MR. BRIDGES: 15:49:10
22 that question? 15:46:44	22 Q. What else -- well, I think we've got a 15:49:10
23 A Could I ask you to go one question before 15:46:45	23 serious waiver issue because I've got a document that 15:49:14
24 that? 15:46:48	24 shows him communicating information from -- 15:49:16
25 Q Before that was "Did ASTM investigate the 15:46:54	25 MR. FEE: Well, show him the document. 15:49:19
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1 sources of Public Resource's funding?" 15:46:57	1 MR. BRIDGES: I don't need to show him the 15:49:20
2 A. Okay. 15:47:01	2 document. 15:49:21
3 MR. FEE: He didn't ask you a question. Let 15:47:04	3 MR. FEE: Then you're not going to be able to 15:49:22
4 him get to his question. 15:47:05	4 show there's a waiver. 15:49:24
5 What is your question? 15:47:08	5 MR. BRIDGES: I can because I can show the 15:49:26
6 THE WITNESS: Is there no way I can answer 15:47:15	6 document outside of the context of this deposition. 15:49:28
7 that? 15:47:15	7 MR. FEE: All right. Well, if you don't want 15:49:30
8 MR. FEE: Was something -- 15:47:15	8 to ask him about it, then don't ask him about it. 15:49:30
9 THE WITNESS: I think I said something out of 15:47:15	9 MR. BRIDGES: It will get to the broader 15:49:30
10 sequence here to these questions. 15:47:17	10 issues of waiver because it will require a much more 15:49:30
11 MR. FEE: It's up to him if he wants to 15:47:19	11 radical effect than just this deposition. 15:49:32
12 clarify. 15:47:21	12 MR. FEE: Well, whatever document you're 15:49:41
13 BY MR. BRIDGES: 15:47:22	13 referencing, if it's -- we may want to claw it back 15:49:42
14 Q. So, anyway, I had asked you about did ASTM 15:47:22	14 depending on what it is. But I can't claw it back 15:49:48
15 investigate the sources of Public Resource's funding. 15:47:30	15 if -- 15:49:51
16 There was an objection, and you said, "I have no 15:47:38	16 MR. BRIDGES: I'll go ahead and do it. 15:49:51
17 knowledge of that." 15:47:39	17 I'm just going to mark as Exhibit 1048 a 15:49:53
18 A. And I'm sorry. I inadvertently said -- what 15:47:41	18 document for the record. 15:49:59
19 I should have said was I did not investigate the 15:47:43	19 THE WITNESS: I'm sorry. Was there a 1047. 15:50:07
20 funding of Google. I'm sorry. Of wherever we're 15:47:46	20 (Pause in proceedings.) 15:50:51
21 going with this, but I was aware -- 15:47:50	21 MR. BRIDGES: I'm going to hand the witness 15:50:51
22 MR. FEE: Remember, don't disclose any 15:47:52	22 Exhibit 1047, and I have a quick yes or no answer. 15:50:55
23 instruction you had from counsel. 15:47:54	23 Q. Is this an E-mail that you sent to David 15:51:02
24 THE WITNESS: Okay. 15:47:56	24 Carmel? 15:51:04
25 BY MR. BRIDGES: 15:48:00	25 (Deposition Exhibit 1047 was marked for 15:51:08
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1	identification.)	15:51:08	1	THE WITNESS: Yes, it appears to be an E-mail	15:54:50
2	(The witness reviewed Exhibit 1047.)	15:51:13	2	from Sarah Petre.	15:54:52
3	BY MR. BRIDGES:	15:51:13	3	BY MR. BRIDGES:	15:54:55
4	Q. What's the answer, Mr. Grove?	15:51:13	4	Q. Does ASTM have a more up-to-date document	15:54:55
5	A. I am trying to understand this E-mail.	15:51:15	5	listing the errors in defendants' work that ASTM is	15:55:01
6	(The witness further reviewed Exhibit 1047.)	15:51:18	6	aware of?	15:55:08
7	MR. REHN: This is Thane Rehn, counsel for	15:51:18	7	MR. FEE: Objection to the extent any list	15:55:09
8	NFPA. For the record, will you please read the Bates	15:51:30	8	was compiled at the direction of counsel in connection	15:55:11
9	number.	15:51:30	9	with this litigation.	15:55:13
10	MR. BRIDGES: Yes. ASTM030712.	15:51:30	10	I would instruct you not to disclose that.	15:55:15
11	And for the court reporter, Thane Rehn, for	15:51:30	11	You could answer otherwise.	15:55:17
12	the record, "Can I get a Bates number for this	15:51:32	12	THE WITNESS: I'm not aware of it, no.	15:55:19
13	document."	15:51:33	13	BY MR. BRIDGES:	15:55:22
14	THE WITNESS: Yes. This appears to be an	15:51:38	14	Q. As you sit here today, what errors, other	15:55:22
15	E-mail from myself to David Carmel.	15:51:39	15	than the errors you've mentioned earlier and any	15:55:24
16	BY MR. BRIDGES:	15:51:42	16	alleged errors in this document, are you aware of in	15:55:27
17	Q. And were you giving him information that you	15:51:42	17	defendants' activities with respect to ASTM standards?	15:55:32
18	had received from ASTM's counsel?	15:51:44	18	A. I have not done that analysis. I'm not aware	15:55:39
19	A. In this case, no, I am not.	15:51:47	19	of those errors.	15:55:42
20	Q. What was the source of your information on	15:51:50	20	MR. FEE: Objection. This is beyond the	15:55:44
21	that E-mail?	15:51:53	21	scope of his designation.	15:55:45
22	A. It looks as if there was a Twitter posting by	15:51:54	22	MR. BRIDGES: I think it's within the scope	15:55:46
23	Carl Malamud that was picked up by other members of	15:51:59	23	of the designation.	15:55:47
24	the standards, including -- that was forwarded to my	15:52:05	24	Q. Are you aware, on behalf of ASTM, of anything	15:55:49
25	attention.	15:52:08	25	else?	15:55:53
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1	Q. You were giving Mr. Carmel, at the top line	15:52:33	1	MR. FEE: Same objection.	15:55:54
2	of this E-mail, the same information that you believe	15:52:36	2	THE WITNESS: Aware of errors? Could you	15:56:02
3	was in Twitter at the bottom of this E-mail. Is that	15:52:39	3	repeat the question, please.	15:56:04
4	your testimony?	15:52:42	4	BY MR. BRIDGES:	15:56:10
5	A. Without seeing the Twitter post, I'm unable	15:52:47	5	Q. Are you aware, on behalf of ASTM, of any	15:56:10
6	to answer that.	15:52:53	6	errors other than the errors you mentioned earlier	15:56:16
7	Q. So you're unable to answer whether that	15:52:54	7	today, alleged errors --	15:56:22
8	Twitter post said the Google foundation grant was	15:52:56	8	MR. FEE: Objection.	15:56:25
9	expired and not extended or renewed?	15:53:01	9	BY MR. BRIDGES:	15:56:26
10	A. Yeah. I don't recall what that Twitter post	15:53:03	10	Q. -- in 1048 --	15:56:26
11	said.	15:53:06	11	My question was interrupted. So I'll restate	15:56:37
12	Q. So do you now recall whether that Twitter	15:53:07	12	it.	15:56:40
13	post was the source of the information you gave to	15:53:09	13	On behalf of ASTM, are you aware of any	15:56:41
14	Mr. Carmel?	15:53:11	14	errors, other than the errors you've testified to	15:56:46
15	A. I don't recall.	15:53:15	15	earlier today and alleged errors mentioned in	15:56:50
16	Q. So do you know what the source of information	15:53:16	16	Exhibit 1048 and the activities of defendants in	15:56:55
17	was, as you sit here, of that statement -- of your	15:53:18	17	connection with defendants' posting of ASTM standards	15:57:07
18	statement to Mr. Carmel?	15:53:21	18	to the Internet?	15:57:14
19	A. No. I would be speculating.	15:53:25	19	MR. FEE: Objection to form. Objection.	15:57:15
20	(Deposition Exhibit 1048 was marked for	15:53:46	20	Calls for speculation, and beyond the scope of his	15:57:17
21	identification.)	15:53:46	21	designation.	15:57:20
22	MR. BRIDGES: I've handed you Exhibit 1048.	15:53:48	22	You can answer.	15:57:22
23	Q. Is this an E-mail that you received from	15:53:49	23	THE WITNESS: No, I'm not.	15:57:23
24	Sarah Petre?	15:53:51	24	BY MR. BRIDGES:	15:57:29
25	(The witness reviewed Exhibit 1048.)	15:54:50	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	1 ASTM027093 to -097 Do you recognize that document? 16:02:03
2 Mr. Malamud or Public Resource of any errors in the 15:57:40	2 (The witness reviewed Exhibit 1050 ) 16:02:20
3 documents that they posted to the Internet? 15:57:45	3 THE WITNESS: I recognize the document, yes 16:02:21
4 MR. FEE: Objection to form. Beyond the 15:57:49	4 BY MR BRIDGES: 16:02:22
5 scope of his designation. Calls for speculation. 15:57:53	5 Q And you received the E-mail on the exhibit? 16:02:22
6 To the extent that you were involved in any 15:57:57	6 A Attached -- based on the E-mail saying it was 16:02:29
7 discussions amongst counsel regarding that subject, 15:57:59	7 attached, I believe I did, yes 16:02:32
8 you shouldn't disclose those, but if there are other 15:58:02	8 Q And this was part of the joint effort that 16:02:35
9 deliberations as the questioner asked, you can 15:58:05	9 ASTM engaged in with NFPA and -- with the NFPA; 16:02:40
10 identify those. 15:58:08	10 correct? Regarding APCO; is that correct? 16:02:49
11 THE WITNESS: I'm reviewing the document. I 15:58:11	11 A Hold on 16:03:01
12 see that it was being referred to Tom. So that would 15:58:12	12 (Pause in proceedings ) 16:03:20
13 be a legal issue, and I was not involved in any 15:58:16	13 BY MR BRIDGES: 16:03:21
14 further discussion. 15:58:20	14 Q Is that correct? 16:03:21
15 BY MR. BRIDGES: 15:58:35	15 MR FEE: Hold on I'm reviewing this 16:03:22
16 Q. Is your response to that question limited by 15:58:36	16 document to figure out if I need to instruct him 16:03:23
17 the instruction or objection by counsel? 15:58:37	17 (The witness further reviewed Exhibit 1050 ) 16 03:30
18 A. Yeah, it may involve attorney-client work. 15:58:37	18 MR FEE: I need to talk to the witness about 16:03:30
19 Q. So there's other information that you would 15:58:38	19 this document, about privilege issues 16:03:31
20 furnish in response to that question except that 15:58:41	20 MR BRIDGES: We have numerous instances of 16:03:35
21 you're omitting it because you believe it falls within 15:58:43	21 it in the production 16:03:36
22 attorney-client privilege or attorney work product? 15:58:47	22 THE VIDEOGRAPHER: We're off the record at 16:03:38
23 MR. FEE: Objection. I instruct you not to 15:58:49	23 16:02 16:03:40
24 answer that question. 15:58:50	24 (A recess was taken from 4:02 p m 16:09:01
25 MR. BRIDGES: I'm entitled to know whether 15:58:54	25 to 4:08 p m ) 16:09 01
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1 that instruction has an effect on his answer. 15:58:55	1 THE VIDEOGRAPHER: We are back on the record 16:09:01
2 MR. FEE: Answering that question would 15:58:58	2 at 16:08 16:09:02
3 disclose the substance of communications that he's 15:59:00	3 MR FEE: Would you read back the question, 16:09:05
4 aware of that are privileged. 15:59:02	4 please 16:09:07
5 BY MR. BRIDGES: 15:59:08	5 MR BRIDGES: I will start a new question 16:09:12
6 Q. Are you taking your lawyer's instruction? 15:59:08	6 Q Mr Grove, I've shown you Exhibit 1050, and I 16:09:14
7 A. I am. 15:59:11	7 think you identified this as an E-mail from Lorraine 16:09:18
8 (Deposition Exhibit 1049 was marked for 15:59:54	8 Carli of NFPA to you and others This pertains to 16:09:22
9 identification.) 15:59:54	9 soliciting work that ended up being work performed by 16:09:29
10 BY MR. BRIDGES: 15:59:54	10 APCO; is that correct? 16:09:36
11 Q. Mr. Grove, do you recognize Exhibit 1049 as 15:59:54	11 MR FEE: Objection Beyond the scope of his 16:09:39
12 including an E-mail that you sent to James Thomas in 16:00:10	12 designation 16:09:40
13 the middle? 16:00:17	13 THE WITNESS: No The time line of this 16:09:43
14 MR. FEE: Objection. Vague. 16:00:26	14 doesn't correspond with our selection of APCO 16:09:44
15 THE WITNESS: Yes. 16:00:32	15 BY MR BRIDGES: 16:09:49
16 (Deposition Exhibit 1050 was marked for 16:01:20	16 Q What does this correspond to? 16:09:49
17 identification.) 16:01:20	17 MR FEE: Objection Vague Beyond the 16:09:51
18 MR. BRIDGES: We'll need a clip or staple, 16:01:20	18 scope of his designation 16:09:52
19 but the next two documents together are Exhibit 1050. 16:01:22	19 THE WITNESS: This was a separate RFP for 16:09:57
20 MR. FEE: Which one are you putting first? 16:01:36	20 some continuing work 16:09:59
21 MR. BRIDGES: The E-mail. The cover E-mail. 16:01:40	21 BY MR BRIDGES: 16:10:02
22 MR. FEE: Okay. 16:01:46	22 Q What work was it continuing? 16:10:02
23 MR. BRIDGES: Exhibit 1050 is an E-mail from 16:01:49	23 MR FEE: Objection Beyond the scope of his 16:10:06
24 Lorraine Carli of NFPA to you, among others, attaching 16:01:51	24 designation 16:10:08
25 a draft request for proposals. This is produced as 16:01:55	25 THE WITNESS: We were anticipating a lot of 16:10:09
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<p>1 public interest in the interest of public access. 16:10:11</p> <p>2 BY MR. BRIDGES: 16:10:17</p> <p>3 Q. Are you reading from the document? 16:10:17</p> <p>4 A. Oh, no. I just have it in front of me. We 16:10:19</p> <p>5 were anticipating a lot of public interest in the 16:10:22</p> <p>6 issue of public access. So we were again discussing 16:10:24</p> <p>7 whether it was necessary to retain a firm to help us. 16:10:28</p> <p>8 Q. Did ASTM or any of these companies that 16:10:34</p> <p>9 you're aware of retain a firm to help in that effort? 16:10:38</p> <p>10 MR. FEE: Objection. Calls for speculation. 16:10:41</p> <p>11 It's beyond the scope of his designation. 16:10:42</p> <p>12 THE WITNESS: Yes. 16:10:47</p> <p>13 BY MR. BRIDGES: 16:10:49</p> <p>14 Q. What firm did you retain? 16:10:49</p> <p>15 A. I don't believe this was the final RFP, but 16:10:55</p> <p>16 we ultimately retained Fleishman Hillard. 16:10:58</p> <p>17 Q. Do you know who prepared the draft request 16:11:04</p> <p>18 for proposals in Exhibit 1050? 16:11:06</p> <p>19 MR. FEE: Objection. Beyond the scope of his 16:11:10</p> <p>20 designation. Calls for speculation. 16:11:11</p> <p>21 THE WITNESS: I don't know with certainty who 16:11:23</p> <p>22 prepared it. 16:11:25</p> <p>23 BY MR. BRIDGES: 16:11:25</p> <p>24 Q. You received it from Lorraine Carli -- 16:11:25</p> <p>25 A. Correct. 16:11:30</p> <p style="text-align: right;">Page 202</p>	<p>1 Actually, you can answer that question yes or 16:17:04</p> <p>2 no if you're aware. 16:17:07</p> <p>3 THE WITNESS: To my knowledge, no. 16:17:10</p> <p>4 BY MR. BRIDGES: 16:17:11</p> <p>5 Q. Okay. What did you understand to be a reason 16:17:11</p> <p>6 for Underwriters Laboratories being included in your 16:17:22</p> <p>7 E-mail -- strike that. 16:17:27</p> <p>8 What was your reason for including someone 16:17:29</p> <p>9 from Underwriters Laboratories in your E-mail? 16:17:31</p> <p>10 MR. FEE: Objection. 16:17:34</p> <p>11 I'm going to instruct you not to answer that 16:17:34</p> <p>12 question. We have a common interest agreement with 16:17:36</p> <p>13 Underwriters Laboratory, and this is a privileged 16:17:39</p> <p>14 communication. 16:17:41</p> <p>15 BY MR. BRIDGES: 16:17:49</p> <p>16 Q. You did send this E-mail, Exhibit 1052, to 16:17:49</p> <p>17 the addressees indicated in the header; is that 16:17:53</p> <p>18 correct? 16:17:57</p> <p>19 MR. FEE: You can answer yes or no. 16:17:58</p> <p>20 THE WITNESS: I didn't personally. So I 16:18:03</p> <p>21 don't have knowledge if this was sent. I'm sorry. 16:18:06</p> <p>22 Could you restate that? 16:18:11</p> <p>23 BY MR. BRIDGES: 16:18:12</p> <p>24 Q. You did send this E-mail, Exhibit 1052, to 16:18:13</p> <p>25 the addressees indicated in the header; is that 16:18:16</p> <p style="text-align: right;">Page 204</p>
<p>1 (Deposition Exhibit 1051 was marked for 16:12:31</p> <p>2 identification.) 16:12:31</p> <p>3 BY MR. BRIDGES: 16:12:32</p> <p>4 Q. Exhibit 1051 is an E-mail that you sent to 16:12:32</p> <p>5 James Thomas at ASTM; correct? 16:12:34</p> <p>6 A. Yes, it appears to be. 16:12:49</p> <p>7 Q. Did you draft the text of the E-mail? 16:12:50</p> <p>8 A. To the best of my recollection, I did. 16:13:00</p> <p>9 (Deposition Exhibit 1052 was marked for 16:16:21</p> <p>10 identification.) 16:16:21</p> <p>11 MR. BRIDGES: Mr. Grove, I've handed you 16:16:21</p> <p>12 Exhibit 1052. 16:16:25</p> <p>13 MR. FEE: Objection. I'm going to claw this 16:16:26</p> <p>14 document back. It expressly references legal 16:16:29</p> <p>15 communications in the first sentence. I'm going to 16:16:32</p> <p>16 instruct the witness not to answer any questions, at 16:16:34</p> <p>17 least about the top portion of this E-mail. 16:16:36</p> <p>18 BY MR. BRIDGES: 16:16:42</p> <p>19 Q. Has Underwriters Laboratories ever been -- 16:16:42</p> <p>20 strike that. 16:16:49</p> <p>21 To your knowledge, has ASTM ever had an 16:16:50</p> <p>22 agreement with Underwriters Laboratories to keep 16:16:52</p> <p>23 communications about potential litigation 16:16:57</p> <p>24 confidential? 16:16:59</p> <p>25 MR. FEE: Objection. 16:17:00</p> <p style="text-align: right;">Page 203</p>	<p>1 correct? 16:18:18</p> <p>2 A I'm sorry Yes, I did Correct 16:18:18</p> <p>3 MR BRIDGES: We need to take a short break 16:18:26</p> <p>4 because, for some reason, my real time is about to run 16:18:28</p> <p>5 out of battery, but I need it to be very short because 16:18:32</p> <p>6 we've been taking a lot of breaks If we can go off 16:18:34</p> <p>7 the record briefly, I would appreciate it 16:18:37</p> <p>8 THE VIDEOGRAPHER: We're going off the record 16:18:38</p> <p>9 at 16:17 16:18:38</p> <p>10 (A recess was taken from 4:17 p m 16:19:34</p> <p>11 to 4:18 p m ) 16:19:34</p> <p>12 THE VIDEOGRAPHER: We're back on the record 16:19:35</p> <p>13 at 16:18 16:19:37</p> <p>14 (Deposition Exhibit 1053 was marked for 16:20:33</p> <p>15 identification ) 16:20:33</p> <p>16 MR BRIDGES: Mr Grove, I've handed you -- 16:20:34</p> <p>17 MR FEE: Can I get a copy of the exhibit, 16:20:36</p> <p>18 please 16:20:38</p> <p>19 MR BRIDGES: Mr Grove, I've handed you a 16:20:40</p> <p>20 copy of Exhibit 1053 16:20:42</p> <p>21 Q I'd like to know if you've seen this document 16:20:43</p> <p>22 before 16:20:45</p> <p>23 A Yes, I believe I have 16:21:01</p> <p>24 Q And this is an E-mail from Mr Thomas, the 16:21:07</p> <p>25 president of ASTM, to Roger Stoller; is that correct? 16:21:10</p> <p style="text-align: right;">Page 205</p>

1 A. Yes. 16:21:15	1 Q. And you understand it went from her to all 16:25:47
2 Q. Who is Mr. Stoller? 16:21:20	2 the persons identified in this E-mail? 16:25:49
3 A. At the time of this E-mail, I believe Roger 16:21:25	3 MR. FEE: Objection. Calls for speculation. 16:25:52
4 Stoller was the incoming chairman of our board of 16:21:29	4 It's beyond the scope of his designation. 16:25:57
5 directors. 16:21:32	5 THE WITNESS: Yes. 16:25:59
6 Q. What government agency -- strike that. 16:21:33	6 (Deposition Exhibit 1055 was marked for 16:26:06
7 He was at Oakridge National Laboratory; is 16:21:39	7 identification.) 16:28:08
8 that correct? 16:21:43	8 BY MR. BRIDGES: 16:28:09
9 A. Yes. 16:21:44	9 Q. Exhibit 1055 is a series of E-mails between 16:28:09
10 Q. And was a government employee; is that 16:21:44	10 you and a number of persons, including Katherine 16:28:15
11 correct? 16:21:46	11 Morgan; is that correct? 16:28:18
12 MR. FEE: Objection. Calls for a legal 16:21:46	12 MR. FEE: Excuse me for one second. 16:28:21
13 conclusion and speculation. It's beyond the scope of 16:21:48	13 (The witness reviewed Exhibit 1055.) 16:29:08
14 his designation. 16:21:50	14 THE WITNESS: Yes. 16:29:08
15 THE WITNESS: I'm not certain of that. 16:21:52	15 BY MR. BRIDGES: 16:29:37
16 BY MR. BRIDGES: 16:21:53	16 Q. At the bottom of the second page there's an 16:29:37
17 Q. Did you understand him to be a government 16:21:53	17 E-mail from Phil Lively to you; correct? 16:29:39
18 employee? 16:21:55	18 A. From Phil to Jeff, yes. 16:30:03
19 MR. FEE: Same objections. 16:21:56	19 Q. What's Mr. Lively's role within ASTM? 16:30:04
20 THE WITNESS: Yes. 16:21:58	20 A. Phil is the vice president of information 16:30:08
21 (Deposition Exhibit 1054 was marked for 16:23:28	21 technology. 16:30:10
22 identification.) 16:23:28	22 Q. And does this exchange of E-mails refer to 16:30:31
23 MR. BRIDGES: Please look at Exhibit 1054. 16:23:28	23 steps that ASTM took towards creating a reading room 16:30:32
24 Q. That is an E-mail from Maureen Houck to a 16:23:35	24 for public access to ASTM standards? 16:30:37
25 number of persons, and you are included in the 16:23:38	25 MR. FEE: Objection. The document speaks for 16:30:41
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1 addressee list; is that correct? 16:23:46	1 itself Form 16:30:42
2 A Yes, that's correct 16:24:05	2 THE WITNESS: Yes 16:30:53
3 MR BRIDGES: I'm going to add, as additional 16:24:06	3 BY MR BRIDGES: 16:31:09
4 pages to this, Exhibit ASTM103025 to -103032 Let's 16:24:08	4 Q That E-mail follows on E-mails that you sent 16:31:09
5 make that a continuation exhibit, please 16:24:17	5 to some members of ASTM senior management regarding 16:31:12
6 Q And the pages I've just added were the 16:24:24	6 recommendations by the administrative conference of 16:31:20
7 attachment to the E-mail on Exhibit 1054; right? 16:24:26	7 the United States as ascribed in the two underlying 16:31:23
8 MR FEE: Objection It looks like there 16:24:33	8 E-mails in this thread; is that correct? 16:31:29
9 were two attachments to this E-mail Are you saying 16:24:34	9 MR FEE: Objection The document speaks for 16:31:31
10 this is all the attachments? 16:24:37	10 itself Vague 16:31:33
11 MR BRIDGES: No I'm omitting an attachment 16:24:54	11 THE WITNESS: Yes 16:31:36
12 written by Carl Malamud that was 16:24:56	12 BY MR BRIDGES: 16:31:42
13 MALAMUDOMB_GOV_201404111 PDF 16:24:58	13 Q At the bottom of the page with Bates 16:31:42
14 MR FEE: Okay We object to the use of an 16:25:05	14 No -101185, there's a reference to a quotation in the 16:31:45
15 exhibit that's incomplete 16:25:08	15 ACUS report There's a sentence starting the final 16:31:52
16 BY MR BRIDGES: 16:25:14	16 line, carrying over to the next page, "Moreover, ASTM 16:31:58
17 Q Do you recognize Exhibit 1054 as a cover 16:25:15	17 explained that only a small percentage of its 16:32:01
18 E-mail with one of its attachments being the draft 16:25:17	18 standards are truly profitable and many lose money or 16:32:04
19 records of ASTM to OMB regarding Circular A-119? 16:25:23	19 simply break even " Do you see that? 16:32:11
20 MR FEE: Same objection 16:25:29	20 A I do 16:32:16
21 THE WITNESS: Yes 16:25:30	21 Q Was that an accurate representation of ASTM's 16:32:16
22 BY MR BRIDGES: 16:25:34	22 statement? 16:32:19
23 Q Who is Maureen Houck? 16:25:34	23 MR FEE: Objection Lack of foundation 16:32:21
24 A Maureen Houck is the executive assistant to 16:25:38	24 Calls for speculation It's beyond the scope of his 16:32:25
25 our president, Jim Thomas 16:25:40	25 designation 16:32:27
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1 THE WITNESS: It's a little out of context. 16:32:42	1 Q. What were you suggesting in addition to a 16:36:38
2 BY MR. BRIDGES: 16:32:45	2 reading room? 16:36:40
3 Q. What would be necessary to add to that 16:32:45	3 A. I see that I was recommending that we 16:36:41
4 statement in order to supply the context? 16:32:50	4 consider beefing up -- excuse me -- making our 16:36:42
5 MR. FEE: Same objections. 16:32:55	5 summaries, which the abstracts which we provide to our 16:36:47
6 THE WITNESS: Looking at standards on an 16:33:12	6 standards, considering whether those abstracts could 16:36:53
7 individual basis devalues the real value that ASTM 16:33:14	7 be converted to something that's more of a summary. 16:36:57
8 standards have as a collection of a whole. 16:33:14	8 Q. Was that in addition to doing a reading room 16:37:08
9 BY MR. BRIDGES: 16:33:17	9 or instead of doing a reading room? 16:37:10
10 Q. What is the real value that ASTM standards 16:33:17	10 A. Obviously, John was thinking I was suggesting 16:37:20
11 have as a collection? 16:33:19	11 it as an addition, and I'm not sure if I was or not. 16:37:21
12 A. Customers in the public benefit from getting 16:33:25	12 I was explaining I'm not the IT guy. So I didn't know 16:37:40
13 a collection of standards at a very affordable price 16:33:27	13 how difficult this task would be. 16:37:45
14 point, which allows them to access numerous standards 16:33:32	14 Q. Did you have in mind providing summaries as 16:37:48
15 rather than looking at them as individual standards 16:33:39	15 opposed to the standards themselves in the reading 16:37:53
16 purchased separately. 16:33:42	16 room? 16:37:55
17 Q. Is there anything else about the context -- 16:33:48	17 MR. FEE: Objection. Are you asking him his 16:37:56
18 sorry. Anything else necessary to supply an 16:33:52	18 personal opinion in this question? 16:37:59
19 appropriate context for that statement? 16:33:54	19 MR. BRIDGES: I'm asking him what his state 16:38:02
20 MR. FEE: Objection. Lack of foundation. 16:33:56	20 of mind was at the time. 16:38:03
21 Calls for speculation. It's beyond the scope of his 16:33:59	21 MR. FEE: It's beyond the scope of his 16:38:04
22 designation. 16:34:01	22 designation. 16:38:06
23 THE WITNESS: No. 16:34:14	23 But you can answer. 16:38:07
24 (Deposition Exhibit 1056 was marked for 16:34:40	24 THE WITNESS: In our efforts to strike the 16:38:08
25 identification.) 16:34:40	25 right balance between providing the public with public 16:38:10
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1 BY MR. BRIDGES: 16:34:41	1 access to standards incorporated by reference and 16:38:12
2 Q. Exhibit 1056 consists of a series of E-mails 16:34:41	2 maintaining our viability of our standards development 16:38:14
3 in which you and John Pace were either authors or 16:34:54	3 enterprise, I was recommending that we review a lot of 16:38:18
4 recipients; correct? 16:35:04	4 options. One of which was this summaries idea. 16:38:22
5 (The witness reviewed Exhibit 1056.) 16:35:28	5 BY MR. BRIDGES: 16:38:26
6 THE WITNESS: Yes, that's correct. 16:35:28	6 Q. Was it the idea of providing summaries as 16:38:26
7 BY MR. BRIDGES: 16:35:29	7 opposed to the text of the standards themselves? 16:38:29
8 Q. What did you understand Mr. Pace to mean in 16:35:29	8 MR. FEE: Same objection. 16:38:33
9 the first sentence about "sticking to our guns and 16:35:34	9 THE WITNESS: I don't recall. 16:38:36
10 doing the reading room exactly as how we have all 16:35:39	10 BY MR. BRIDGES: 16:38:41
11 agreed to date"? 16:35:43	11 Q. Does someone -- are you familiar with the 16:38:41
12 A. I'd be speculating. 16:35:48	12 operation of the reading room for ASTM today? 16:38:44
13 Q. Well, you were a recipient -- the sole 16:35:52	13 A. Yes. 16:38:47
14 recipient of that E-mail. So please tell me what your 16:35:56	14 Q. Does one have to register to gain access to 16:38:47
15 understanding was. 16:35:58	15 the reading room? 16:38:50
16 MR. FEE: Objection. Lack of foundation. 16:35:59	16 A. Yes. 16:38:51
17 Beyond the scope of his designation as well. 16:36:07	17 Q. What does one have to do to register to get 16:38:52
18 THE WITNESS: I'd infer from this that John 16:36:10	18 access to the reading room? 16:38:55
19 Pace was raising concerns that we had already 16:36:12	19 A. Enter a name and E-mail address. 16:38:56
20 committed to building a reading room and committed 16:36:15	20 Q. What's the purpose of that? 16:39:00
21 extensive resources of his employees' time to help in 16:36:21	21 A. Well, to ensure that it wasn't -- again, I'm 16:39:02
22 compiling the reading room, and now I was suggesting 16:36:26	22 not an IT person, but I believe there's some concerns 16:39:08
23 that, in addition to the reading room, we might want 16:36:28	23 that bots and other types of automatic -- that perhaps 16:39:10
24 to consider other things as well. 16:36:32	24 machines could access our system and pull information 16:39:19
25 BY MR. BRIDGES: 16:36:38	25 in ways that perhaps we weren't intending by providing 16:39:22
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1 this information to the public. 16:39:25	1 BY MR. BRIDGES: 16:41:49
2 Q. Is that the only reason for requiring a name 16:39:29	2 Q. Do you recall requiring that people agree to 16:41:49
3 and E-mail address? 16:39:31	3 acknowledge ASTM's copyrights from the standards in 16:41:52
4 A. At one point we discussed -- my goal was to 16:39:31	4 order to get access? 16:41:56
5 provide access to U.S. citizens, and we discussed 16:39:35	5 A. That sounds familiar, yes. 16:41:58
6 whether or not it should be available to the others in 16:39:43	6 Q. And so somebody had an argument that for some 16:42:00
7 addition to the U.S. So providing an E-mail address 16:39:48	7 reason these standards were not subject to copyright, 16:42:03
8 just might have given us some additional information 16:39:52	8 would that person have to, in your understanding, give 16:42:10
9 about who was coming to our website for what purpose. 16:39:54	9 up that view in order to get access to the documents 16:42:13
10 Q. Is that so that you could keep certain 16:40:00	10 in the reading room? 16:42:17
11 persons out of the reading room if they were not from 16:40:02	11 MR. FEE: Objection. Calls for a legal 16:42:19
12 the U.S.? 16:40:05	12 conclusion. To the extent it does, he's not 16:42:20
13 A. Actually, I'm aware that we have some 16:40:06	13 designated for any legal opinions. 16:42:22
14 restrictions due to the U.S. Treasury Departments OFAC 16:40:09	14 THE WITNESS: I'm not an attorney, but I 16:42:26
15 that makes it -- we have to take reasonable steps to 16:40:12	15 believe that it's clear that -- what's intended. 16:42:27
16 prevent technical information from going to whatever 16:40:17	16 Someone could access the information and read the 16:42:34
17 countries are designated by the U.S. Department of 16:40:20	17 information but is made aware of the fact that ASTM 16:42:36
18 Treasury as such. 16:40:23	18 owns the copyright. 16:42:42
19 Q. What about apart from those restrictions. 16:40:25	19 BY MR. BRIDGES: 16:42:44
20 Was there an interest in keeping persons from other 16:40:28	20 Q. It's not only made aware of it. They're 16:42:44
21 countries out of the reading room? 16:40:32	21 forced to agree that ASTM owns a copyright. Is that 16:42:46
22 MR. FEE: Objection. Vague. 16:40:35	22 not the case? 16:42:51
23 THE WITNESS: I don't recall. 16:40:37	23 MR. FEE: Same objections. 16:42:53
24 BY MR. BRIDGES: 16:40:39	24 THE WITNESS: It could be, yes. 16:42:54
25 Q. What else does one have to do to register for 16:40:39	25 BY MR. BRIDGES: 16:42:55
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1 access to the reading room apart from furnishing an 16:40:42	1 Q. And do you see the third bullet in Mr. Pace's 16:42:55
2 E-mail address? 16:40:44	2 message to you at the top of Exhibit 1056. It says, 16:43:01
3 MR. FEE: My recollection is you have to 16:40:47	3 "Reading pane is 5-by-7. So you have to scroll." Do 16:43:06
4 agree to our policies on the use of the information. 16:40:49	4 you see that? 16:43:13
5 BY MR. BRIDGES: 16:40:55	5 A. I see that in the E-mail. 16:43:15
6 Q. Does that require entering into an 16:40:55	6 Q. Does 5-by-7 mean 5-by-7 inches? 16:43:17
7 enforceable contract with ASTM? 16:40:57	7 A. I don't have knowledge what exactly he's 16:43:28
8 MR. FEE: Objection. Calls for a legal 16:41:00	8 referring to. 16:43:30
9 conclusion. Beyond the scope of his designation. To 16:41:01	9 Q. Do you understand what it means that one has 16:43:31
10 the extent it calls for a legal conclusion, you can 16:41:04	10 to "scroll"? 16:43:33
11 answer if you know. 16:41:07	11 A. Again, I'd speculate that that means you have 16:43:38
12 THE WITNESS: I'm not an attorney, but I 16:41:09	12 to navigate your monitor to see it. 16:43:41
13 believe it makes very clear that copyright policy on 16:41:11	13 Q. It means that one would have to scroll down 16:43:46
14 the documents. 16:41:14	14 to get a full page of a standard. To read a full page 16:43:50
15 BY MR. BRIDGES: 16:41:16	15 of the standard, one couldn't read a full page and one 16:43:53
16 Q. Does somebody have to agree to terms of 16:41:16	16 go without scrolling; correct? 16:43:57
17 service in order to get access to the reading room? 16:41:19	17 MR. FEE: Objection. Vague. Calls for 16:43:59
18 A. To my knowledge, yes. 16:41:26	18 speculation. May call for expert testimony as well. 16:44:01
19 Q. And does somebody have to agree about the 16:41:27	19 THE WITNESS: That may certainly be possible. 16:44:04
20 location of any lawsuit that would be filed for 16:41:29	20 BY MR. BRIDGES: 16:44:08
21 violation of terms of service? 16:41:33	21 Q. Do you know why that would be a feature of a 16:44:08
22 A. I'm not certain of that provision. 16:41:38	22 reading room design? 16:44:21
23 Q. Do you recall seeing something like that? 16:41:40	23 MR. FEE: Objection. Vague. 16:44:25
24 MR. FEE: Objection. Asked and answered. 16:41:43	24 THE WITNESS: Again, the purpose of the 16:44:31
25 THE WITNESS: No. 16:41:45	25 reading room is to provide the public with access to 16:44:32
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1 read the documents. So we're -- I'm pleased that our 16:44:34	1 have today. 16:48:28
2 reading room gives them the ability to do that. 16:44:39	2 BY MR. BRIDGES: 16:48:31
3 BY MR. BRIDGES: 16:44:41	3 Q. Does ASTM have any actual facts causing it to 16:48:31
4 Q. Were you proud of having a design that would 16:44:41	4 believe that putting more standards in its reading 16:48:36
5 require people to scroll to read an entire page? Were 16:44:44	5 room would affect its viability as a standards 16:48:42
6 you pleased about that? 16:44:48	6 developer, or is this conclusion based on speculation? 16:48:46
7 A. We received a lot of accolades for it, and so 16:44:48	7 MR. FEE: Objection to form. Vague. May 16:48:50
8 to that -- to the fact that the reading room exists. 16:44:53	8 call for expert testimony. Beyond the scope of his 16:48:54
9 So I haven't heard complaints beyond what's been 16:44:56	9 designation, and speculation. 16:48:59
10 discussed here today. 16:44:59	10 THE WITNESS: I'm just aware that for 115 16:49:05
11 Q. Does that feature appear to you to be a user 16:45:00	11 years this is the way our model has operated, and it's 16:49:07
12 friendly feature to design into the reading room? 16:45:04	12 served society well with very little complaints from 16:49:11
13 MR. FEE: Objection. Vague. May call for 16:45:07	13 our stakeholders. In fact, this is the first case 16:49:14
14 expert testimony. 16:45:09	14 where this has become an issue. So that's my answer. 16:49:16
15 THE WITNESS: And I'm not an expert, but I've 16:45:12	15 (Deposition Exhibit 1057 was marked for 16:49:50
16 used the reading room and I've read standards through 16:45:14	16 identification.) 16:49:50
17 it without any problem. 16:45:16	17 BY MR. BRIDGES: 16:49:51
18 BY MR. BRIDGES: 16:45:24	18 Q. Exhibit 1057 is an E-mail from John Pace to 16:49:51
19 Q. The second paragraph of Mr. Pace's E-mail 16:45:24	19 you with earlier E-mails in which you both 16:49:54
20 says, "I haven't chatted with Jim yet." Does "Jim" 16:45:29	20 participate; is that correct? 16:50:02
21 refer to James Thomas, the president of ASTM? 16:45:34	21 (The witness reviewed Exhibit 1057.) 16:50:15
22 A. In this context, I believe it does. 16:45:44	22 THE WITNESS: Yes. 16:50:15
23 Q. And a couple of paragraphs down, it says, "On 16:45:47	23 BY MR. BRIDGES: 16:50:22
24 the four bullet points above, I know Phil might think 16:45:50	24 Q. At the end of that top E-mail Mr. Pace says, 16:50:22
25 I'm overdoing it a bit." Whom did you understand 16:45:54	25 "We're getting big bucks annually from DHS." Do you 16:50:26
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1 "Phil" to refer to? Is that Phil Lively? 16:46:00	1 see that? 16:50:30
2 A. I believe it would be Phil Lively. 16:46:02	2 A I do 16:50:31
3 Q. Who's Bob Dreyfus? 16:46:06	3 Q What did you understand that to refer to? 16:50:32
4 A. My understanding is Bob Dreyfus is a 16:46:10	4 A I have great respect for John Pace and his 16:50:39
5 consultant that works on various IT projects for ASTM. 16:46:12	5 experience in -- 16:50:41
6 Q. What other IT projects does he work on? 16:46:16	6 MR BRIDGES: I move to strike That's not 16:50:42
7 A. I'm afraid I don't have knowledge of that. 16:46:20	7 my question 16:50:43
8 It's outside of my area. 16:46:22	8 Q I'm asking what -- 16:50:46
9 Q. Does ASTM make available on its reading room 16:47:21	9 MR FEE: Don't cut him off 16:50:47
10 for public access any of its thousands of standards 16:47:25	10 Answer your question 16:50:47
11 that have not been incorporated by reference? 16:47:30	11 BY MR BRIDGES: 16:50:47
12 A. To the best of my knowledge, no. 16:47:38	12 Q -- does "We're getting big bucks annually 16:50:47
13 Q. Why not? 16:47:42	13 from DHS" refer to? 16:50:47
14 MR. FEE: Objection. Calls for speculation. 16:47:45	14 MR FEE: Answer your question as you were 16:50:50
15 That's also beyond the scope of his designation. 16:47:48	15 going to answer it 16:50:51
16 THE WITNESS: ASTM, we're very proud of the 16:47:53	16 THE WITNESS: I was going to just describe 16:50:52
17 role we've played in society for 115 years in 16:47:55	17 John Pace as a colorful character that's involved in 16:50:54
18 developing high quality, market relevant standards 16:47:59	18 sales, and he's describing the fact that he's very 16:50:58
19 that are open, balanced, transparent process, and 16:48:01	19 pleased with the relationship that we have with the 16:51:02
20 putting more documents up in the reading room beyond 16:48:05	20 Department of Homeland Security where we provide 31 16:51:05
21 what's incorporated by reference could have unintended 16:48:11	21 ASTM standards to the public where they can access 16:51:09
22 consequences on our ability to maintain our viability 16:48:15	22 print standards, particularly for first responders, at 16:51:12
23 as a standards developer and ensure that the proper 16:48:18	23 a reasonable price point 16:51:21
24 stakeholders have access to participating in the ASTM 16:48:21	24 BY MR BRIDGES: 16:51:24
25 standards process under the expectations that they 16:48:25	25 Q And what you just said was, in fact, in your 16:51:24
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1 E-mail to him in the middle; right? 16:51:26	1 money for? 16:53:57
2 MR. FEE: You want him to compare his 16:51:32	2 MR FEE: Objection Lack of foundation 16:53:57
3 testimony verbatim to this E-mail? 16:51:33	3 Beyond the scope of his designation Calls for 16:53:59
4 BY MR. BRIDGES: 16:51:36	4 speculation 16:54:03
5 Q. What you just said, that comes from your 16:51:36	5 THE WITNESS: I would speculate that these 16:54:04
6 E-mail to him. I was asking him about his E-mail to 16:51:37	6 standards were viewed as playing an important role in 16:54:06
7 you and specifically what you understood him to mean 16:51:40	7 helping first responders carry out their important 16:54:09
8 by the statement "We're getting big bucks annually 16:51:43	8 mission, and DHS came to ASTM and we figured out a 16:54:12
9 from DHS." What did you understand that to mean? 16:51:46	9 very flexible and reasonable agreement to allow that 16:54:19
10 MR. FEE: Objection. Asked and answered. 16:51:50	10 to happen, which we've done for 115 years of our 16:54:21
11 THE WITNESS: You know, I'm happy to answer 16:51:53	11 existence 16:54:25
12 what I know about what this could mean. It could mean 16:51:54	12 BY MR BRIDGES: 16:54:26
13 that we have a contract with the Department of 16:51:57	13 Q Were these standards that had been 16:54:26
14 Homeland Security, or we did at this time, in which 16:52:00	14 incorporated by reference? 16:54:28
15 ASTM received, I believe, \$25,000 in funding in 16:52:03	15 A I'm afraid I don't know the answer to that 16:54:31
16 exchange for putting 31 standards up for unlimited 16:52:08	16 Q Do you know whether ASTM had different 16:54:34
17 print and use. This was a deep, discounted price that 16:52:11	17 licensing practices or prices according to whether 16:54:38
18 John was very -- this was a deep, discounted price, 16:52:14	18 standards were incorporated by reference or not? 16:54:41
19 and this went to the fact that we wanted to get our 16:52:23	19 MR FEE: Objection to form 16:54:45
20 standards in the hands of Homeland Security -- I'm 16:52:26	20 THE WITNESS: I am not aware of any pricing 16:54:48
21 sorry -- of first responders in a way that still 16:52:28	21 differential, whether or not an ASTM standard is 16:54:50
22 allowed us to recoup some of the cost and expense that 16:52:31	22 incorporated by reference or not 16:54:54
23 ASTM incurs on the development, delivery of standards. 16:52:35	23 BY MR BRIDGES: 16:54:55
24 BY MR. BRIDGES: 16:52:38	24 Q Are you aware of any other terms of licenses 16:54:55
25 Q. Is it your testimony that ASTM put 31 16:52:38	25 that differed according to whether an ASTM standard 16:55:00
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1 standards up for unlimited print and use by the 16:52:41	1 was incorporated by reference or not? 16:55:04
2 public? 16:52:43	2 MR FEE: Objection Vague To the extent 16:55:06
3 MR. FEE: Objection. Vague. 16:52:44	3 that calls for a legal conclusion 16:55:08
4 THE WITNESS: I'm not certain as to exactly 16:52:46	4 THE WITNESS: And I'm sorry You're asking 16:55:13
5 what the portal that may have existed at this site, 16:52:47	5 me if under a purchasing agreement with ASTM for a 16:55:14
6 but at this time in 2012 my understanding was, yes. 16:52:51	6 standard? What's the context of the question? 16:55:19
7 Because of the relationship we had with DHS, we were 16:52:57	7 BY MR BRIDGES 16:55:21
8 allowing the public to come to this website -- come to 16:53:00	8 Q Well, I assume that ASTM makes money off of 16:55:21
9 this portal and access and print, save, and E-mail our 16:53:03	9 standards in a variety of ways; correct? 16:55:24
10 standards. I'm not sure if that was the exact 16:53:11	10 MR FEE: Objection Vague 16:55:26
11 functionality that was provided, but that was my 16:53:13	11 THE WITNESS: 90 percent of ASTM's revenue 16:55:31
12 understanding. 16:53:15	12 comes from -- 80 percent of ASTM's revenue comes from 16:55:33
13 BY MR. BRIDGES: 16:53:16	13 the sale of publications of which 90 percent comes 16:55:38
14 Q. And you said it was \$25,000 in funding in 16:53:16	14 from the sale of standards 16:55:41
15 exchange for putting 31 standards up for unlimited 16:53:19	15 BY MR BRIDGES: 16:55:43
16 print and use. By "unlimited," did you mean unlimited 16:53:23	16 Q My question was I assume that ASTM makes 16:55:43
17 into the future? 16:53:27	17 money off standards in a variety of ways; correct? 16:55:46
18 MR. FEE: Objection. Vague. 16:53:33	18 MR FEE: Asked and answered 16:55:52
19 THE WITNESS: And I don't know the 16:53:34	19 THE WITNESS: Yeah I'm not agreeing with 16:55:53
20 particulars of the contractual relationship or the 16:53:35	20 that because 90 percent of the revenue we get from 16:55:55
21 subscription that was negotiated between our sales 16:53:37	21 standards is due to the sale of standards 16:55:59
22 staff and DHS. 16:53:39	22 BY MR BRIDGES: 16:56:02
23 BY MR. BRIDGES: 16:53:51	23 Q What did you mean by "the sale of standards"? 16:56:02
24 Q. What interest did you understand DHS to have 16:53:51	24 A It's what it sounds -- it's our sales staff 16:56:09
25 for public access to the standards that it paid the 16:53:53	25 The public coming to our website Our sales staff 16:56:11
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1 working with customers, and it's our distributors, our 16:56:15	1 2:58 16:59:13
2 licensed distributors working with customers on a 16:56:17	2 (A recess was taken from 4:58 p m 17:08:49
3 worldwide basis to negotiate payment for the access to 16:56:20	3 to 5:07 p m ) 17:08:49
4 our standards. 16:56:24	4 THE VIDEOGRAPHER: We're now back on the 17:08:50
5 Q. I'm afraid I don't think you answered my 16:56:29	5 record at 17:07 17:08:51
6 question. I said what did you mean by "the sale of 16:56:31	6 (Deposition Exhibit 1058 was marked for 17:09:04
7 standards"? 16:56:35	7 identification ) 17 09:04
8 MR. FEE: Objection. Asked and answered. 16:56:36	8 BY MR BRIDGES: 17:09:04
9 BY MR. BRIDGES: 16:56:41	9 Q Mr Grove, Exhibit 1058 is a series of 17:09:04
10 Q. And you say, "our sales staff, the public 16:56:41	10 E-mails that you are -- appear to be part of -- 17:09:11
11 coming to our website." Those don't seem like answers 16:56:44	11 intermittently; is that correct? 17:09:24
12 to my question. What do you mean by "sales of 16:56:46	12 MR FEE: Objection Vague 17:09:26
13 standards"? 16:56:50	13 THE WITNESS: Yes 17:09:30
14 MR. FEE: Objection. Asked and answered. 16:56:51	14 BY MR BRIDGES: 17:09:36
15 THE WITNESS: I'm trying to meet you here. I 16:56:57	15 Q Did ASTM put the wrong version of one of its 17 09:36
16 believe it's providing a document in exchange for 16:56:57	16 standards up that PHMSA wanted to reference? PHMSA 17:09:41
17 remuneration. 16:57:06	17 being spelled P-H-M-S-A 17:09:46
18 BY MR. BRIDGES: 16:57:07	18 A I mean there's -- 17:09:51
19 Q. What are the different ways in which ASTM 16:57:07	19 MR FEE: Objection Beyond the scope of his 17:09:53
20 provides documents in exchange for remuneration? 16:57:13	20 designation 17:09:55
21 A. Well, someone may come to our website, search 16:57:19	21 THE WITNESS: That's not what most of these 17:10:12
22 for a standard, find it in a variety of different 16:57:25	22 E-mails refer to I'm not sure what the context is of 17:10:13
23 formats, and indicate that they'd like to purchase it 16:57:30	23 that E-mail from Phil to me 17:10:15
24 in one of those formats at the agreed upon price 16:57:35	24 BY MR BRIDGES: 17:10:22
25 point. 16:57:37	25 Q Well, there's context in your response to 17:10:22
Page 226	Page 228
1 Q. Now, previously you said that you were 16:57:40	1 Phil at the top -- 17:10:23
2 unaware of any price differential according to whether 16:57:43	2 A Right 17:10:26
3 a standard was incorporated by reference or not; 16:57:47	3 Q -- saying, "Yes That is the version that 17:10:26
4 correct? 16:57:51	4 PHMSA wants to reference I suppose that Malamud will 17:10:26
5 A. Correct. 16:57:52	5 hit us for that too " 17:10:31
6 Q. ASTM engages in some licensing agreements, 16:57:53	6 A Right 17:10:32
7 does it not, with other parties regarding the license 16:57:56	7 Q What was the context of your response? 17:10:33
8 of access to the standards; correct? 16:58:01	8 MR FEE: Objection Again, beyond the scope 17:10:34
9 A. That's correct. 16:58:05	9 of his designation 17:10:37
10 Q. I'm just talking as a commercial matter -- 16:58:06	10 THE WITNESS: It could be that I'd be 17:10:38
11 A. Right. 16:58:08	11 speculating, but it could be that you're right, that 17:10:40
12 Q. -- are you aware of any significant 16:58:08	12 possibly we put the wrong version up when, in fact, 17:10:43
13 differences in the language of the licenses that ASTM 16:58:10	13 NITSA -- excuse me, FIMSA wanted us to reference the 17:10:47
14 offers for the license of standards incorporated by 16:58:18	14 '06 version 17:10:50
15 reference and the language of the licenses that ASTM 16:58:24	15 (Deposition Exhibit 1059 was marked for 17:11:47
16 orders for the license of standards that are not 16:58:30	16 identification ) 17:11:47
17 incorporated by reference? 16:58:33	17 BY MR BRIDGES: 17:11:47
18 MR. FEE: Objection. Vague. To the extent 16:58:34	18 Q Exhibit 1059 consists of two E-mails from 17:11:47
19 it calls for a legal conclusion. 16:58:37	19 Sarah Petre at ASTM to someone at the Federal Trade 17:11:52
20 THE WITNESS: No, I'm not aware of that. 16:58:39	20 Commission; is that correct? 17:11:55
21 MR. FEE: Do you want to take a break soon? 16:59:05	21 A Yes 17:12:25
22 THE WITNESS: It's been -- yeah. I've been 16:59:07	22 (Deposition Exhibit 1060 was marked for 17:15:20
23 looking at my watch. I think now would be a good 16:59:09	23 identification ) 17:15:20
24 time. 16:59:11	24 MR BRIDGES: I'll show you Exhibit 1060, a 17:15:20
25 THE VIDEOGRAPHER: Now off the record at 16:59:12	25 two-page exhibit 17:15:23
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1 Q. This is the agreement that a member of the 17:15:26	1 have separate policies for standards incorporated by 17:19:03
2 public must agree to in order to gain access to ASTM 17:15:28	2 reference versus purchasing standards that are not 17:19:04
3 incorporated by reference standards in the reading 17:15:36	3 incorporated by reference. 17:19:06
4 room; correct? 17:15:40	4 (Deposition Exhibit 1062 was marked for 17:20:35
5 A. It appears to be, yes. 17:15:48	5 identification.) 17:20:35
6 Q. And the only standards available through this 17:15:49	6 BY MR. BRIDGES: 17:20:36
7 reading room are standards that have been incorporated 17:15:51	7 Q. Mr. Grove, Exhibit 1062 is an exchange of 17:20:36
8 by reference, I believe you said; correct? 17:15:53	8 E-mails between you and Mary McKiel with earlier 17:20:51
9 A. To the best of my knowledge, yes. 17:15:57	9 E-mails in the thread; is that correct? 17:20:59
10 (Deposition Exhibit 1061 was marked for 17:16:32	10 A. Yes, it is. 17:21:29
11 identification.) 17:16:32	11 Q. Does this discussion in the middle of the 17:21:31
12 BY MR. BRIDGES: 17:16:32	12 first page of Exhibit 1062 refer to some EPA 17:21:35
13 Q. Mr. Grove, what is Exhibit 1061? 17:16:32	13 incorporations by reference of certain ASTM standards? 17:21:49
14 (The witness reviewed Exhibit 1061.) 17:17:09	14 MR. FEE: Objection. Vague. The document 17:21:53
15 THE WITNESS: It appears to be a licensing 17:17:09	15 speaks for itself. 17:21:58
16 agreement. 17:17:11	16 THE WITNESS: Yeah. This was a project I was 17:21:59
17 BY MR. BRIDGES: 17:17:12	17 excited to be part of. We worked with the EPA and the 17:22:00
18 Q. For what? 17:17:12	18 National Institute of Standards and Technology to 17:22:03
19 A. For ASTM's copyright protected information. 17:17:13	19 remove mercury from thermometers that are used in the 17:22:05
20 Q. In what circumstances must somebody enter 17:17:22	20 United States because of a threat that they posed to 17:22:08
21 into this license agreement with ASTM? 17:17:24	21 children if they were broken or to those in the lab 17:22:10
22 MR. FEE: Objection. Vague. 17:17:28	22 environment. The difficulty was the use of these 17:22:13
23 THE WITNESS: It's my understanding that a 17:17:33	23 standards was mandated by reference. Excuse me. The 17:22:17
24 user purchaser of ASTM standards would need to agree 17:17:35	24 use of these types of measurement devices containing 17:22:20
25 to a license agreement which authorizes the specific 17:17:40	25 mercury were referenced in standards that were 17:22:24
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1 ways in which the information may be used and 17:17:44	1 incorporated by reference in the U.S. code. 17:22:26
2 identifies a number of ways that the information 17:17:48	2 (Deposition Exhibit 1063 was marked for 17:23:23
3 should not be used. 17:17:50	3 identification.) 17:23:23
4 BY MR. BRIDGES: 17:17:57	4 BY MR. BRIDGES: 17:23:25
5 Q. Does this apply to all purchases of ASTM 17:17:57	5 Q. Exhibit 1063 is an E-mail from you to your 17:23:25
6 standards? 17:18:01	6 colleague, Anthony Quinn; correct? 17:23:28
7 MR. FEE: Objection. Calls for speculation. 17:18:04	7 A. Yes. Correct. 17:23:41
8 THE WITNESS: Well, it looks pretty basic to 17:18:11	8 Q. And you were commenting upon the information 17:23:44
9 me. So within my knowledge, I'd say yes. 17:18:13	9 relayed to you from Mr. Miller, and before that, from 17:23:48
10 BY MR. BRIDGES: 17:18:21	10 Scott Cooper; is that correct? 17:23:53
11 Q. Does this apply also to the purchase of paper 17:18:21	11 MR. FEE: Objection. The document speaks for 17:23:58
12 copies of ASTM standards? 17:18:25	12 itself. 17:23:59
13 MR. FEE: Same objection. 17:18:27	13 THE WITNESS: Right. I don't think that -- 17:24:01
14 THE WITNESS: I'm not sure what distinctions 17:18:29	14 MR. BRIDGES: Can we stipulate that the 17:24:01
15 are made between our policy for paper versus other 17:18:31	15 document speaks for itself? 17:24:03
16 formats. 17:18:36	16 MR. FEE: The document says what it says. 17:24:04
17 BY MR. BRIDGES: 17:18:38	17 What do you need my stipulation for? 17:24:06
18 Q. Does this license agreement apply to both the 17:18:38	18 MR. BRIDGES: Well, then I need to ask the 17:24:10
19 purchase of standards incorporated by reference and 17:18:43	19 witness some questions. 17:24:11
20 other standards not incorporated by reference? 17:18:47	20 MR. FEE: You're welcome to ask him. 17:24:13
21 MR. FEE: Hold on a second. 17:18:51	21 THE WITNESS: I would actually like to answer 17:24:16
22 (Pause in proceedings.) 17:19:00	22 that because I believe I'm replying to David Miller's 17:24:17
23 MR. FEE: Same objection. 17:19:00	23 interpretation that this means that language in our 17:24:22
24 You can answer. 17:19:01	24 standards that implies some things are "shoulds" and 17:24:24
25 THE WITNESS: Yeah. I'm not aware that we 17:19:02	25 "shall." This particular agency was going to say 17:24:28
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<p>1 that they must be -- they have to be referred to as 17:24:32</p> <p>2 "musts," and this would have the voluntary consensus 17:24:35</p> <p>3 standards process This isn't the intention when 17:24:39</p> <p>4 people come together to work in a voluntary consensus 17:24:43</p> <p>5 standard environment They want the words to mean 17:24:47</p> <p>6 what they carefully craft them to mean in the process, 17:24:49</p> <p>7 and when -- so I believe that's what I was referring 17:24:52</p> <p>8 to in this 17:24:55</p> <p>9 BY MR BRIDGES: 17:25:00</p> <p>10 Q Well, Mr Miller was not saying that the 17:25:00</p> <p>11 government was changing the standard The government 17:25:02</p> <p>12 was proposing to change the law; correct? 17:25:07</p> <p>13 MR FEE: Objection The document speaks for 17:25:11</p> <p>14 itself Calls for speculation 17:25:13</p> <p>15 THE WITNESS: I guess I would be speculating, 17:25:22</p> <p>16 but that was my interpretation of what this means 17:25:24</p> <p>17 BY MR BRIDGES: 17:25:29</p> <p>18 Q That the government would be changing the law 17:25:29</p> <p>19 as the law interprets the standard? 17:25:31</p> <p>20 MR FEE: Same objections And vague 17:25:36</p> <p>21 THE WITNESS: Yeah That the government was 17:25:41</p> <p>22 interpreting a standard in a way that the voluntary 17:25:43</p> <p>23 consensus standard group didn't necessarily intend it 17:25:46</p> <p>24 to without coming back to the organization and working 17:25:50</p> <p>25 with them 17:25:57</p> <p style="text-align: right;">Page 234</p>	<p>1 stakeholders because the government is a very 17:29:07</p> <p>2 important member. 17:29:09</p> <p>3 BY MR. BRIDGES: 17:29:11</p> <p>4 Q. So is the answer to my question "yes"? 17:29:11</p> <p>5 MR. FEE: Objection. 17:29:13</p> <p>6 You can answer it however you'd like. 17:29:14</p> <p>7 MR. BRIDGES: He already has. 17:29:17</p> <p>8 Q. I'm now asking him is the answer to my 17:29:18</p> <p>9 question "yes." 17:29:20</p> <p>10 MR. FEE: Same objection. Asked and 17:29:21</p> <p>11 answered. 17:29:22</p> <p>12 THE WITNESS: Speaking for Jeff Grove, yes. 17:29:23</p> <p>13 BY MR. BRIDGES: 17:29:26</p> <p>14 Q. What about speaking for ASTM? 17:29:26</p> <p>15 MR. FEE: Objection. Asked and answered. 17:29:28</p> <p>16 THE WITNESS: I don't believe ASTM would have 17:29:29</p> <p>17 an official position. 17:29:31</p> <p>18 BY MR. BRIDGES: 17:29:35</p> <p>19 Q. You don't think that ASTM has a view as to 17:29:35</p> <p>20 whether it is pleased when governments incorporate its 17:29:39</p> <p>21 standards by reference? 17:29:43</p> <p>22 MR. FEE: Objection. Vague and asked and 17:29:44</p> <p>23 answered. 17:29:46</p> <p>24 THE WITNESS: It's never been a performance 17:29:49</p> <p>25 metric for me. So no. 17:29:50</p> <p style="text-align: right;">Page 236</p>
<p>1 BY MR BRIDGES: 17:27:38</p> <p>2 Q Mr Grove, does ASTM encourage any 17:27:38</p> <p>3 governments to incorporate its standards by reference? 17:27:46</p> <p>4 MR FEE: Objection Vague 17:27:49</p> <p>5 THE WITNESS: As a matter of policy, we make 17:27:54</p> <p>6 organizations -- sorry -- governments aware of our 17:27:58</p> <p>7 standards and point out and connect with agency 17:28:04</p> <p>8 missions But in the end, we respect that agencies 17:28:07</p> <p>9 should be the ones that determine whether or not our 17:28:09</p> <p>10 standards are incorporated or not 17:28:12</p> <p>11 BY MR BRIDGES: 17:28:13</p> <p>12 Q Is ASTM generally pleased when governments 17:28:13</p> <p>13 incorporate its standards by reference? 17:28:20</p> <p>14 MR FEE: Objection Vague 17:28:22</p> <p>15 THE WITNESS: So I think it speaks to the 17:28:28</p> <p>16 significance of ASTM and to the breadth of ASTM when 17:28:29</p> <p>17 you see ASTM standards become incorporated by 17:28:34</p> <p>18 reference because it does signify that they are widely 17:28:37</p> <p>19 respected for their technical excellence I believe 17:28:42</p> <p>20 that it signifies that the government -- it couldn't 17:28:46</p> <p>21 do what we've done with the same effectiveness So 17:28:52</p> <p>22 they're looking to a voluntary consensus standards 17:28:54</p> <p>23 group in utilizing those standards 17:28:57</p> <p>24 So in some ways I might take pride in the 17:29:00</p> <p>25 fact that ASTM standards are relied upon by all of our 17:29:04</p> <p style="text-align: right;">Page 235</p>	<p>1 BY MR. BRIDGES: 17:29:58</p> <p>2 Q. Does ASTM have views about things that are 17:29:58</p> <p>3 not performance metrics? 17:30:01</p> <p>4 MR. FEE: Objection. Beyond the scope of his 17:30:05</p> <p>5 designation. Vague. 17:30:06</p> <p>6 THE WITNESS: It could. 17:30:11</p> <p>7 BY MR. BRIDGES: 17:30:14</p> <p>8 Q. What performance metrics do you have? 17:30:14</p> <p>9 MR. FEE: Objection. Beyond the scope of his 17:30:16</p> <p>10 designation. 17:30:20</p> <p>11 THE WITNESS: Generally, my performance is 17:30:23</p> <p>12 based on the job I've done in removing worldwide 17:30:24</p> <p>13 barriers to the acceptance and use of ASTM standards. 17:30:27</p> <p>14 BY MR. BRIDGES: 17:30:36</p> <p>15 Q. Is your -- do your performance reviews ever 17:30:36</p> <p>16 mention the degree of adoption of ASTM standards by 17:30:39</p> <p>17 reference -- strike that. 17:30:44</p> <p>18 Do your performance reviews ever mention the 17:30:46</p> <p>19 degree of incorporation of ASTM standards by 17:30:48</p> <p>20 reference? 17:30:50</p> <p>21 MR. FEE: Objection. Beyond the scope of his 17:30:51</p> <p>22 designation. 17:30:55</p> <p>23 THE WITNESS: I believe over the years I 17:30:56</p> <p>24 might have pointed out to my superiors that a standard 17:30:57</p> <p>25 has become incorporated as something significant. 17:31:00</p> <p style="text-align: right;">Page 237</p>

<p>1 BY MR BRIDGES: 17:31:05</p> <p>2 Q As something pertaining to your performance? 17:31:05</p> <p>3 MR FEE: Same objection Whatever document 17:31 07</p> <p>4 that you're referencing will speak for itself as well 17:31:13</p> <p>5 THE WITNESS: It could 17:31:26</p> <p>6 (Deposition Exhibit 1064 was marked for 17:32:20</p> <p>7 identification ) 17:32:20</p> <p>8 MR BRIDGES: I'll hand you an exhibit marked 17:32:20</p> <p>9 1064 It consists of Pages ASTM099269 to ASTM099335 17:32:22</p> <p>10 (The witness reviewed Exhibit 1064 ) 17:33:02</p> <p>11 MR BRIDGES: And, actually, I'm going to add 17:33:03</p> <p>12 more to the document It's going to be ASTM099269 to 17:33:04</p> <p>13 -099360 17:33:34</p> <p>14 (Pause in proceedings ) 17:33:51</p> <p>15 BY MR BRIDGES: 17:33:51</p> <p>16 Q How many pieces of paper did I give you? 17:33:51</p> <p>17 A Just the cover sheet and this (indicating) 17:33:53</p> <p>18 Q Okay Here's the rest of the exhibit 17:33:56</p> <p>19 A Okay 17:34 03</p> <p>20 (The witness reviewed Exhibit 1064 ) 17:34:21</p> <p>21 BY MR BRIDGES: 17:34:21</p> <p>22 Q I just want to verify, Mr Grove, that these 17:34:21</p> <p>23 were produced by ASTM I just want to verify that 17:34:23</p> <p>24 Exhibit 1064 consists of an E-mail to you from 17:34:27</p> <p>25 Lorraine Carli at NFPA -- 17:34:31</p> <p style="text-align: right;">Page 238</p>	<p>1 MR. FEE: Objection. Vague. 17:35:58</p> <p>2 THE WITNESS: Who are the organizations you 17:36:07</p> <p>3 mentioned? 17:36:09</p> <p>4 BY MR. BRIDGES: 17:36:09</p> <p>5 Q. I just mentioned ASTM and NFPA. 17:36:09</p> <p>6 A. Yes. 17:36:13</p> <p>7 (Deposition Exhibit 1065 was marked for 17:37:17</p> <p>8 identification.) 17:37:17</p> <p>9 MR. BRIDGES: I've handed you Exhibit 1065. 17:37:17</p> <p>10 Q. Do you recognize this exhibit? 17:37:20</p> <p>11 (The witness reviewed Exhibit 1065.) 17:37:30</p> <p>12 THE WITNESS: Yes. 17:37:43</p> <p>13 BY MR. BRIDGES: 17:37:44</p> <p>14 Q. What was redacted from the first page and a 17:37:44</p> <p>15 half of Exhibit 1065? 17:37:48</p> <p>16 MR. FEE: Objection. Calls for speculation. 17:37:50</p> <p>17 THE WITNESS: Yeah. I don't have knowledge 17:37:52</p> <p>18 what was redacted. 17:37:55</p> <p>19 BY MR. BRIDGES: 17:38:05</p> <p>20 Q. Has ASMA -- has ASME, to your knowledge, 17:38:05</p> <p>21 entered into any agreement with ASTM regarding 17:38:10</p> <p>22 potential litigation? 17:38:15</p> <p>23 MR. FEE: Hold on one second. 17:38:18</p> <p>24 (Pause in proceedings.) 17:38:30</p> <p>25 MR. FEE: You can answer that yes or no. 17:38:31</p> <p style="text-align: right;">Page 240</p>
<p>1 MR. FEE: Is this 1065, did you say? 17:34:37</p> <p>2 MR. BRIDGES: 1064. 17:34:40</p> <p>3 MR. FEE: Okay. Sorry. 17:34:42</p> <p>4 MR. BRIDGES: -- an E-mail to you by Lorraine 17:34:43</p> <p>5 Carli of NFPA, including two attachments. One's 17:34:47</p> <p>6 called an "SDO Proposal," and the other is called "SDO 17:34:49</p> <p>7 Power Point Presentation." 17:34:53</p> <p>8 I'll represent to Mr. Fee that the last 17:34:56</p> <p>9 attachment is one of these phantom attachments. 17:35:01</p> <p>10 MR. FEE: Okay. 17:35:09</p> <p>11 THE WITNESS: Is there a question? I'm 17:35:14</p> <p>12 sorry. 17:35:15</p> <p>13 BY MR. BRIDGES: 17:35:17</p> <p>14 Q. Do you recall receiving this E-mail and the 17:35:17</p> <p>15 attachments from Lorraine Carli at NFPA? 17:35:18</p> <p>16 A. Yes, I do. 17:35:23</p> <p>17 Q. Does this pertain to the retention of APCO, 17:35:24</p> <p>18 which we referred to -- which you referred to earlier 17:35:26</p> <p>19 in testimony? 17:35:29</p> <p>20 MR. FEE: Objection. Vague. Form. 17:35:30</p> <p>21 THE WITNESS: Yeah, it appears as if it did. 17:35:36</p> <p>22 BY MR. BRIDGES: 17:35:41</p> <p>23 Q. Does this relate to the engagement that ASTM 17:35:41</p> <p>24 and NFPA had with APCO for government relations 17:35:50</p> <p>25 outreach? 17:35:55</p> <p style="text-align: right;">Page 239</p>	<p>1 THE WITNESS: I don't know 17:38:38</p> <p>2 BY MR BRIDGES: 17:38:40</p> <p>3 Q At this time are you aware of whether ASTM 17:38:40</p> <p>4 was contemplating litigation against Public Resource? 17:38:42</p> <p>5 MR FEE: Objection To the extent your 17:38:46</p> <p>6 awareness would be as a result of any communications 17:38:49</p> <p>7 from counsel, I'd instruct you not to answer If you 17:38:51</p> <p>8 have an awareness otherwise, you can answer 17:38:53</p> <p>9 THE WITNESS: I don't recall 17:39:05</p> <p>10 BY MR BRIDGES: 17:39:07</p> <p>11 Q Do you recall what discussions you had with 17:39 07</p> <p>12 personnel at NFTA or ASME about Emily Bremer? 17:39:11</p> <p>13 A I'd be speculating, but I believe it's -- I 17:39:26</p> <p>14 see that Scott Cooper -- she asked Scott Cooper from 17:39:32</p> <p>15 ANSI if she would introduce -- "I'd very much 17:39:36</p> <p>16 appreciate it if you would introduce some of the SDO 17:39:41</p> <p>17 folks He introduced me " And that's the extent of 17:39:43</p> <p>18 the E-mail I see in front of me 17:39:53</p> <p>19 Q What's the extent of your knowledge? I'm 17:39:56</p> <p>20 asking you apart from that document What discussions 17:39:59</p> <p>21 did ASTM have with personnel at NFPA and ASME about 17:40:02</p> <p>22 Emily Bremer? 17:40:11</p> <p>23 MR FEE: Objection Beyond the scope of his 17:40:12</p> <p>24 designation and calls for speculation 17:40:14</p> <p>25 THE WITNESS: Yeah I may have let other 17:40:16</p> <p style="text-align: right;">Page 241</p>

1 SDOs, including NFPA and ASME, know that I had the 17:40:18	1 standards free, will spur investment and integration 17:44:22
2 opportunity to speak with Ms Bremer 17:40:25	2 that really grated on you? 17:44:27
3 BY MR BRIDGES: 17:40:30	3 MR. FEE: Objection. Beyond the scope of his 17:44:28
4 Q Was there something secret about your 17:40:30	4 designation. 17:44:30
5 conversations with those organizations about 17:40:31	5 THE WITNESS: I would fundamentally disagree 17:44:32
6 Ms Bremer? 17:40:33	6 with that statement. 17:44:34
7 MR FEE: Objection Vague Beyond the 17:40:34	7 BY MR. BRIDGES: 17:44:38
8 scope of his designation 17:40:37	8 Q. What's the factual basis for your 17:44:38
9 THE WITNESS: Not that I recall 17:40:39	9 disagreement? 17:44:41
10 BY MR BRIDGES: 17:40:41	10 MR. FEE: Objection. Beyond the scope of his 17:44:41
11 Q Is there anything confidential -- 17:40:41	11 designation. 17:44:43
12 MR FEE: Same objections 17:40:44	12 THE WITNESS: I believe it's based on a 17:44:45
13 BY MR BRIDGES: 17:40:45	13 misperception about the -- what's contained in the 17:44:47
14 Q -- about your interactions with Ms Bremer? 17:40:45	14 standards. 17:44:57
15 MR FEE: Same objection, plus potentially 17:40:51	15 BY MR. BRIDGES: 17:45:00
16 calls for a legal conclusion 17:40:52	16 Q. You think that setting standards for you 17:45:00
17 THE WITNESS: Not that I recall 17:41:05	17 would not spur investment and innovation? 17:45:03
18 (Deposition Exhibit 1066 was marked for 17:41:36	18 MR. FEE: Same objection. 17:45:07
19 identification ) 17:41:36	19 THE WITNESS: I believe the best way to spur 17:45:09
20 MR BRIDGES: Mr Grove, I've shown you 17:41:37	20 innovation is to -- using standards, is to work in the 17:45:11
21 Exhibit 1066 17:41:38	21 voluntary consensus standards environment, open, 17:45:16
22 Q And I ask is this an E-mail that you received 17:41:40	22 transparent, with a lot of openness, transparency, and 17:45:20
23 from Len Morrissey? 17:41:45	23 due process where you can work with your peers from 17:45:25
24 A Yes 17:41:49	24 all different stakeholder communities to reach a 17:45:28
25 Q Who is Len Morrissey? 17:41:51	25 consensus decision. That's where I believe the 17:45:31
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1 A. Len Morrissey is a staff manager that works 17:41:53	1 innovation and the creativity that's involved in the 17:45:34
2 with our consumer products safety related committees. 17:41:56	2 innovation process comes into play. 17:45:37
3 (Deposition Exhibit 1067 was marked for 17:43:26	3 BY MR. BRIDGES: 17:45:41
4 identification.) 17:43:26	4 Q. Was it your understanding that Carl Malamud 17:45:41
5 BY MR. BRIDGES: 17:43:26	5 criticized the consensus process of developing the 17:45:48
6 Q. Do you -- strike that. 17:43:26	6 standards? 17:45:52
7 Is Exhibit 1067 an exchange of E-mail 17:43:27	7 A. I don't recall the specifics, but I believe 17:45:55
8 correspondence between James Thomas and you? 17:43:31	8 something like if the standard was available -- more 17:45:57
9 (The witness reviewed Exhibit 1067.) 17:43:37	9 widely available, that would allow others that aren't 17:46:01
10 THE WITNESS: Yes, it is. 17:43:37	10 members of committees to comment and reiterate on the 17:46:07
11 BY MR. BRIDGES: 17:43:42	11 existing standard outside of the normal process of 17:46:14
12 Q. Mr. Thomas wrote down below, "Not much here. 17:43:42	12 standards development. 17:46:17
13 I hope this is level of enthusiasm he generates." Did 17:43:45	13 Q. And you think that would be a bad idea? 17:46:18
14 you understand what he meant by "not much here"? 17:43:50	14 MR. FEE: Objection. This is beyond the 17:46:21
15 MR. FEE: Objection. Calls for speculation. 17:43:55	15 scope of his designation again. 17:46:22
16 It's beyond the scope of his designation. 17:43:56	16 But you can answer. 17:46:23
17 THE WITNESS: I don't know what he meant. 17:44:01	17 THE WITNESS: I do. I believe the best place 17:46:25
18 BY MR. BRIDGES: 17:44:04	18 to do that is an environment based on consensus, not 17:46:26
19 Q. Where were you at the time that he said to 17:44:04	19 one person acting independently. 17:46:30
20 you, "Wear sunscreen and have fun"? 17:44:07	20 BY MR. BRIDGES: 17:46:31
21 A. Well, I believe -- I said, "I'll be coaching 17:44:10	21 Q. Well, what about other people making comments 17:46:32
22 Little League this weekend." 17:44:15	22 based on their awareness of standards that they had 17:46:34
23 And he replied, "Wear sunscreen and have 17:44:16	23 not previously been aware of? 17:46:38
24 fun." 17:44:18	24 MR. FEE: Objection. Again, beyond the scope 17:46:40
25 Q. What is it about the argument about setting 17:44:20	25 of his designation. 17:46:42
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1	You can answer.	17:46:44	1	ASTM's standards that have been incorporated by	17:49:41
2	THE WITNESS: We would welcome them to	17:46:47	2	reference by the federal government would be harmful	17:49:44
3	participate in the standards development process and	17:46:51	3	to ASTM?	17:49:51
4	share their ideas freely with their colleagues to	17:46:53	4	MR. FEE: Objection. Asked and answered.	17:49:54
5	contribute to the development of an appropriate	17:46:57	5	Form. Vague.	17:49:59
6	standard.	17:46:59	6	Go ahead.	17:50:07
7	BY MR. BRIDGES:	17:47:02	7	THE WITNESS: I think that the reading room	17:50:07
8	Q. But not as a member of the public?	17:47:02	8	that we've crafted represented a lot of internal	17:50:08
9	MR. FEE: Objection. Vague. It's also, I	17:47:04	9	debate and represented the position that the ASTM	17:50:12
10	think, beyond the scope of his designation.	17:47:08	10	board of directors felt comfortable with as our	17:50:16
11	To the extent you understand the question.	17:47:11	11	solution to providing the public with access to the	17:50:20
12	THE WITNESS: So I believe members of the	17:47:13	12	standards incorporated by reference while retaining	17:50:23
13	public do, from time to time, comment on ASTM	17:47:14	13	our ability to protect the viability of ASTM as a	17:50:26
14	standards and share information with technical	17:47:17	14	standards development enterprise, to meet our future	17:50:30
15	committees. So there's already avenues available to	17:47:20	15	commitments to our stakeholders.	17:50:33
16	them to work with voluntary consensus standards	17:47:25	16	BY MR. BRIDGES:	17:50:35
17	bodies.	17:47:29	17	Q. So your answer to my question is "yes"?	17:50:35
18	BY MR. BRIDGES:	17:47:31	18	MR. FEE: Objection. Mischaracterizes his	17:50:37
19	Q. So I didn't hear any of your answers just now	17:47:31	19	testimony.	17:50:38
20	referring to the fact that Mr. Malamud had thought	17:47:32	20	BY MR. BRIDGES:	17:50:40
21	that the public should have access to the published	17:47:35	21	Q. Well, you're making a speech. I'm asking you	17:50:40
22	standards for free when those standards have been	17:47:37	22	to answer my question, please.	17:50:42
23	incorporated by reference. Do you believe that	17:47:41	23	MR. FEE: Objection. Asked and answered.	17:50:44
24	Mr. Malamud's belief that the public should have free	17:47:46	24	He's done that.	17:50:44
25	and unfettered access to ASTM standards that have been	17:47:50	25	BY MR. BRIDGES:	17:50:46
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1	incorporated by reference by the federal government is	17:47:56	1	Q. My question is is it ASTM's view that free	17:50:46
2	harmful?	17:48:04	2	and unfettered access by the public to ASTM's	17:50:50
3	MR. FEE: Objection. Vague. Calls for	17:48:06	3	standards that have been incorporated by reference by	17:50:56
4	speculation. Beyond the scope of his designation. I	17:48:08	4	the federal government would be harmful to ASTM?	17:50:58
5	object also to the factual statements before the	17:48:16	5	MR. FEE: Objection. Vague and ambiguous.	17:51:04
6	question.	17:48:19	6	BY MR. BRIDGES:	17:51:12
7	But you can answer.	17:48:20	7	Q. And I'd like a "yes" or "no" to that, please.	17:51:12
8	THE WITNESS: Obviously, I find that it would	17:48:22	8	MR. FEE: No. You will get whatever answer	17:51:15
9	be in the best interests of ASTM to strike a balance	17:48:27	9	he wants.	17:51:18
10	in providing the public with some access so they can	17:48:32	10	Asked and answered, and form.	17:51:28
11	read standards that are incorporated by reference, and	17:48:35	11	BY MR. BRIDGES:	17:51:29
12	that's why I've worked on this project for years, to	17:48:37	12	Q. Yes or no?	17:51:29
13	get the reading room up and running. So I don't	17:48:40	13	MR. FEE: No. Answer how you feel is	17:51:30
14	disagree on that aspect of what you just put in front	17:48:45	14	appropriate.	17:51:32
15	of me.	17:48:47	15	THE WITNESS: Free and unfettered access at	17:51:33
16	BY MR. BRIDGES:	17:48:51	16	this time, we don't understand what the	17:51:35
17	Q. You don't disagree with the statement of free	17:48:51	17	consequences -- unintended consequences might be on	17:51:37
18	and unfettered access by the public to ASTM standards	17:48:57	18	our ability to fund our standards development	17:51:42
19	that have been incorporated by reference by the	17:49:02	19	enterprise. So I would be concerned.	17:51:47
20	federal government --	17:49:05	20	BY MR. BRIDGES:	17:51:50
21	A. Is harmful.	17:49:21	21	Q. As Tim would be concerned.	17:51:50
22	Q. No. The transcription here didn't make	17:49:23	22	MR. FEE: Same objection.	17:51:53
23	sense. So I need to start again.	17:49:28	23	THE WITNESS: Yes.	17:51:54
24	Is it your view -- sorry. Is it ASTM's view	17:49:30	24	BY MR. BRIDGES:	17:51:55
25	that free and unfettered access by the public to	17:49:37	25	Q. ASTM is afraid?	17:51:55
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1	MR FEE: Objection Vague This is beyond	17:51:57	1	experts other than John Pace?	17:54:46
2	the scope of his designation Calls for speculation	17:52:02	2	MR. FEE: Objection. Vague.	17:54:48
3	You can answer if you know how ASTM feels	17:52:09	3	THE WITNESS: I can't recall.	17:54:53
4	THE WITNESS: ASTM would be concerned	17:52:16	4	BY MR. BRIDGES:	17:54:55
5	BY MR BRIDGES:	17:52:19	5	Q. You can't recall any?	17:54:55
6	Q Is it ASTM's view that free and unfettered	17:52:19	6	MR. FEE: Same objection.	17:54:56
7	access by the public to ASTM's standards that have	17:52:22	7	THE WITNESS: No.	17:54:58
8	been incorporated by reference by the federal	17:52:27	8	BY MR. BRIDGES:	17:55:01
9	government would be harmful to the public?	17:52:29	9	Q. Can you recall how many conversations of that	17:55:01
10	MR FEE: Objection Vague and ambiguous I	17:52:35	10	sort you've had?	17:55:02
11	think it might be beyond the scope of his designations	17:52:40	11	A. I can't recall a number, but it's a frequent	17:55:05
12	too Well, to the extent it's beyond the scope of his	17:52:45	12	topic of discussion with John Pace and I.	17:55:07
13	designation, I'll object on that and --	17:52:52	13	Q. Are you aware of any case studies where other	17:55:12
14	THE WITNESS: Okay And I would answer it	17:52:56	14	voluntary consensus standards have been made available	17:55:21
15	could be if it undermined our ability to continue to	17:52:57	15	to the public on a free and unfettered basis?	17:55:31
16	develop standards under the model we have for 118	17:53:00	16	MR. FEE: Objection. Vague. Calls for	17:55:35
17	years, which allows participation of all key	17:53:02	17	speculation. Beyond the scope of his designation.	17:55:37
18	stakeholder groups by keeping the barriers low	17:53:02	18	May call for expert testimony.	17:55:43
19	BY MR BRIDGES:	17:53:07	19	THE WITNESS: I'm not aware of case studies	17:55:47
20	Q What facts are available to you -- strike	17:53:07	20	such as you've suggested.	17:55:49
21	that	17:53:11	21	BY MR. BRIDGES:	17:55:51
22	What facts are available to ASTM to indicate	17:53:11	22	Q. Is ASTM aware of standards -- voluntary	17:55:51
23	that free and unfettered access by the public to the	17:53:17	23	consensus standards developed by the Internet	17:55:56
24	ASTM standards that have been incorporated by	17:53:24	24	engineering task force?	17:56:01
25	reference by the federal government would cause ASTM	17:53:28	25	MR. FEE: Objection. This is beyond the	17:56:03
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1	to lose the ability to continue its standards	17:53:35	1	scope of his designation. Calls for speculation to	17:56:04
2	development process to the extent it has done so in	17:53:43	2	the extent you're asking him to speak on behalf of the	17:56:08
3	the past?	17:53:47	3	company.	17:56:10
4	MR. FEE: Objection. Vague and ambiguous.	17:53:48	4	If you know individually, you can answer.	17:56:11
5	Lack of foundation. Calls for expert testimony.	17:53:49	5	THE WITNESS: I've heard of the IETF, but we	17:56:13
6	Form.	17:53:54	6	have no interactions with them that I'm aware of. I	17:56:16
7	THE WITNESS: And one concern would be that	17:53:57	7	don't study their policies.	17:56:19
8	it devalues the collection of standards, the volumes	17:53:58	8	BY MR. BRIDGES:	17:56:23
9	of standards that we sell to our commercial customers	17:54:01	9	Q. You're aware that IETF engages in the	17:56:23
10	in order to fund our standards development enterprise	17:54:05	10	development of voluntary consensus standards?	17:56:26
11	which helps to offset all the various costs that are	17:54:10	11	MR. FEE: Objection. Vague. Calls for	17:56:29
12	associated with standards development.	17:54:13	12	speculation. Beyond the scope of his designation.	17:56:30
13	BY MR. BRIDGES:	17:54:17	13	THE WITNESS: What I know about IETF is	17:56:34
14	Q. I understand your answer to relate to a	17:54:17	14	that they're a voluntary -- I'm not aware that they	17:56:37
15	concern, but my question was different. My question	17:54:19	15	develop voluntary consensus standards under an ANSI	17:56:39
16	was what facts are available to ASTM? What's your	17:54:22	16	accredited process. I believe they might develop	17:56:42
17	answer?	17:54:28	17	consortia or other types of specifications. We	17:56:45
18	MR. FEE: Same objections, plus asked and	17:54:29	18	wouldn't consider those to be voluntary consensus	17:56:49
19	answered.	17:54:31	19	standards.	17:56:52
20	THE WITNESS: And my facts would be based on	17:54:32	20	BY MR. BRIDGES:	17:56:56
21	conversations with folks like John Pace and other	17:54:34	21	Q. Are you aware of any shortcomings in the	17:56:56
22	experts on the sale of standards. The impacts on	17:54:35	22	process by which the Internet engineering task force	17:56:58
23	ASTM's business model.	17:54:42	23	develops standards?	17:57:03
24	BY MR. BRIDGES:	17:54:44	24	MR. FEE: Objection. Calls for speculation.	17:57:04
25	Q. What conversations have you had with such	17:54:44	25	It's beyond the scope of his designation.	17:57:06
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1	MR. BRIDGES: Strike that.	17:57:10	1	standards empower and promote creativity?	18:01:23
2	Q. Is ASTM aware of any shortcomings in the	17:57:12	2	MR FEE: Objection Beyond the scope of his	18:01:26
3	process by which engineering task force develops	17:57:15	3	designation Calls for speculation Vague and	18:01:29
4	standards?	17:57:19	4	ambiguous	18:01:35
5	MR. FEE: Objection. Calls for speculation.	17:57:19	5	THE WITNESS: No, I can think of another	18:01:39
6	It's beyond the scope of his designation. May call	17:57:21	6	BY MR BRIDGES:	18:01:42
7	for expert testimony.	17:57:23	7	Q Do you think it's possible that some new	18:01:42
8	To the extent you know personally, you can	17:57:25	8	modes of standards development might compete with ASTM	18 01:45
9	answer.	17:57:26	9	in the formulation of standards appropriate for	18:01:51
10	THE WITNESS: Not to my knowledge.	17:57:27	10	governments to incorporate by reference?	18:01:58
11	BY MR. BRIDGES:	17:57:28	11	MR FEE: Objection Beyond the scope of his	18:02:01
12	Q. A while back -- excuse me.	17:57:28	12	designation Calls for speculation Vague and	18:02:02
13	(Pause in proceedings.)	17:58:18	13	ambiguous and hypothetical	18:02 06
14	BY MR. BRIDGES:	17:58:18	14	THE WITNESS: It's possible	18:02:12
15	Q. I believe you said that Mr. Malamud's view	17:58:18	15	MR BRIDGES: Why don't we take a break, and	18:02:24
16	that grated on your nerves was based on a	17:58:27	16	I'll sort out how much time we have left	18:02:26
17	misunderstanding of what's in the standards. Do you	17:58:31	17	THE VIDEOGRAPHER: Off the record at 18:01	18:02:29
18	recall that testimony?	17:58:33	18	(A recess was taken from 6:01 p m	18:14:27
19	MR. FEE: Objection. Mischaracterizes his	17:58:34	19	to 6:13 p m )	18:14:27
20	testimony. Beyond the scope of his designation.	17:58:36	20	THE VIDEOGRAPHER: Back on the record here at	18:14:27
21	THE WITNESS: Now that I hear that read back	17:58:44	21	18:13	18:14:29
22	to me, I had a poor choice of words.	17:58:47	22	MR BRIDGES: Mr Grove, I've shown you	18:14:38
23	BY MR. BRIDGES:	17:58:50	23	Exhibit 1068, which is a document produced by ASTM	18:14:43
24	Q. What should you have said?	17:58:50	24	This is an E-mail from ASTM to someone regarding	18:14:47
25	A. I was --	17:58:56	25	ASTM's policies in response to a request for	18:14:55
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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
4	THE WITNESS: Could I refresh my memory or	17:59:08	4	THE WITNESS: It appears to be.	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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1 A. Kathe Hooper is responsible for permissions 18:16:38	1 legislation that causes an incorporation by reference? 18:20:11
2 at ASTM. 18:16:47	2 MR. FEE: Can you read that back to me, 18:20:19
3 Q. Who is Joe Koury? 18:16:49	3 please. 18:20:20
4 A. Joe Koury is a staff manager that works with 18:16:51	4 (Record read.) 18:20:38
5 technical committees. 18:16:53	5 MR. FEE: Objection to form. Beyond the 18:20:39
6 (Deposition Exhibit 1070 was marked for 18:17:06	6 scope of his designation. Calls for speculation. 18:20:40
7 identification.) 18:17:06	7 BY MR. BRIDGES: 18:20:48
8 MR. BRIDGES: I'm showing you Exhibit 1070. 18:17:06	8 Q. You may answer. 18:20:48
9 Q. This is an E-mail from Ms. Hooper responding 18:17:12	9 MR. FEE: Hold on. 18:20:49
10 to a permission request; is that correct? 18:17:17	10 Lack of foundation. 18:20:53
11 (The witness reviewed Exhibit 1070.) 18:17:58	11 Go ahead. 18:20:55
12 THE WITNESS: Yes. 18:17:59	12 THE WITNESS: Yeah. So I think we think -- 18:20:55
13 (Deposition Exhibit 1071 was marked for 18:18:11	13 we want to make sure that Congress is aware of the 18:20:59
14 identification.) 18:18:11	14 fact there may be a more recent version because 18:21:02
15 BY MR. BRIDGES: 18:18:12	15 oftentimes it may be unintended that they're not using 18:21:05
16 Q. Exhibit 1071 is an E-mail from Sarah Petre to 18:18:12	16 the most recent version. 18:21:08
17 you and others; is that correct? 18:18:16	17 BY MR. BRIDGES: 18:21:12
18 (The witness reviewed Exhibit 1071.) 18:18:26	18 Q. Ms. Petre asked you whether ASTM should 18:21:12
19 MR. FEE: Objection. Lack of foundation -- 18:18:26	19 request that Congress use the language. Does ASTM 18:21:17
20 strike that. No objection. 18:18:27	20 ever request Congress to use particular language 18:21:21
21 THE WITNESS: So it's an E-mail between ASTM 18:18:42	21 regarding ASTM standards? 18:21:25
22 and Congressional staff and then ASTM staff, correct. 18:18:44	22 MR. FEE: Objection. Beyond the scope of his 18:21:32
23 BY MR. BRIDGES: 18:18:48	23 designation. 18:21:36
24 Q. And within the ASTM -- 18:18:48	24 You can answer. 18:21:36
25 A. Correct. 18:18:51	25 THE WITNESS: Okay. I can think of instances 18:21:38
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1 Q. And it's discussing Congressional 18:18:51	1 like this where Congress -- what's happening here is 18:21:40
2 legislation; is that correct? 18:18:54	2 this is incorporation by reference by Congress and not 18:21:45
3 MR. FEE: Objection. The document speaks for 18:18:56	3 by an agency, and the concern that's expressed at 18:21:48
4 itself. 18:18:57	4 times by our committee members is if Congress acts to 18:21:52
5 THE WITNESS: Legislation passed the House 18:19:10	5 designate a specific standard in legislation that 18:21:57
6 and now it's being referred to the Senate, and Sarah 18:19:11	6 freezes that piece of -- that reference in statute for 18:22:02
7 Petre recognized that there's references to ASTM 18:19:16	7 years to come and agencies -- since it's something 18:22:06
8 standards which are out of date, and she wanted to 18:19:18	8 that Congress said, agencies will simply say, "Hey, 18:22:12
9 contact the staffer to make him aware of that fact. 18:19:22	9 talk to Congress, not to agencies about it." 18:22:16
10 BY MR. BRIDGES: 18:19:26	10 So that's a concern that I'm familiar with, 18:22:19
11 Q. Was this a discussion about incorporation by 18:19:26	11 and I can't tell if that -- I don't recall the 18:22:21
12 reference? 18:19:28	12 circumstances of this here, but that's the most 18:22:26
13 MR. FEE: Same objection. 18:19:29	13 current version language. That's why we're interested 18:22:29
14 THE WITNESS: It's a discussion about 18:19:35	14 in making sure Congress is aware as a more current 18:22:32
15 Congressional intent to use the most recent standard, 18:19:37	15 version. 18:22:36
16 I believe. 18:19:40	16 BY MR. BRIDGES: 18:22:38
17 BY MR. BRIDGES: 18:19:41	17 Q. Mr. Grove, again, you didn't answer my 18:22:38
18 Q. Is that for Congress's use in making an 18:19:41	18 question. My question is does ASTM ever request 18:22:40
19 incorporation by reference into a federal law of an 18:19:48	19 Congress to use particular language regarding ASTM 18:22:43
20 ASTM standard? 18:19:52	20 standards? 18:22:46
21 MR. FEE: Same objection. 18:19:54	21 MR. FEE: Same objections. Plus asked and 18:22:47
22 THE WITNESS: It appears, yes. 18:19:55	22 answered. 18:22:50
23 BY MR. BRIDGES: 18:20:01	23 THE WITNESS: Yes. 18:22:52
24 Q. Does ASTM have a view as to which versions of 18:20:01	24 BY MR. BRIDGES: 18:22:55
25 its standard Congress should include in its 18:20:07	25 Q. To your knowledge, has ASTM ever asked 18:22:55
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<p>1 Congress or a federal agency not to incorporate any of 18:23:00</p> <p>2 its standards by reference? 18:23:04</p> <p>3 MR FEE: Objection Beyond the scope of his 18:23:07</p> <p>4 designation 18:23:09</p> <p>5 THE WITNESS: To my knowledge, no I believe 18:23:15</p> <p>6 it's possible that there's been reasons why committees 18:23:21</p> <p>7 haven't wanted to see standards incorporated by 18:23:24</p> <p>8 reference, but I can't recall an instance 18:23:26</p> <p>9 BY MR BRIDGES: 18:23:31</p> <p>10 Q Has ASTM ever imposed conditions on whether 18:23:31</p> <p>11 the federal government may incorporate its standards 18:23:37</p> <p>12 by reference? 18:23:42</p> <p>13 MR FEE: Same objection Vague as well 18:23:44</p> <p>14 THE WITNESS: I don't have direct knowledge 18:23:52</p> <p>15 It was before my time at ASTM, but I understand at one 18:23:54</p> <p>16 point in time there was a concern that Congress was 18:23:58</p> <p>17 perhaps taking ASTM -- taking key content from an ASTM 18:24:03</p> <p>18 standard and placing it in a piece of legislation and 18:24:09</p> <p>19 that ASTM would be concerned about that 18:24:13</p> <p>20 BY MR BRIDGES: 18:24:16</p> <p>21 Q Why would ASTM be concerned about that? 18:24:16</p> <p>22 MR FEE: Objection Beyond the scope of his 18:24:20</p> <p>23 designation Calls for speculation Lack of 18:24:22</p> <p>24 foundation 18:24:24</p> <p>25 THE WITNESS: It would be taking the standard 18:24:26</p> <p style="text-align: right;">Page 262</p>	<p>1 don't think it happens very often, but I believe it 18:25:33</p> <p>2 has happened in the last 10 years since I've been at 18:25:35</p> <p>3 ASTM 18:25:38</p> <p>4 BY MR BRIDGES: 18:25:40</p> <p>5 Q Are you saying that there has to be a 18:25:40</p> <p>6 consensus process in order to cooperate with a federal 18:25:42</p> <p>7 government in incorporating standards by reference? 18:25:46</p> <p>8 MR FEE: Objection Mischaracterizes his 18:25:52</p> <p>9 testimony Vague 18:25:54</p> <p>10 You can answer 18:25:58</p> <p>11 THE WITNESS: No, that's not what I'm saying 18:26:00</p> <p>12 BY MR BRIDGES: 18:26:14</p> <p>13 Q Do you know whether any federal official has 18:26:14</p> <p>14 taken advantage of the reading room that ASTM provides 18:26:17</p> <p>15 the public? 18:26:22</p> <p>16 MR FEE: Objection Vague 18:26:23</p> <p>17 THE WITNESS: I don't know specifically 18:26:30</p> <p>18 whether they have I do know I've received accolades 18:26:31</p> <p>19 from federal agencies, the fact that it exists So I 18:26:34</p> <p>20 would presume that they have 18:26:40</p> <p>21 BY MR BRIDGES: 18:26:44</p> <p>22 Q How much money has ASTM received from the 18:26:44</p> <p>23 federal government in each of the last five years? 18:26:49</p> <p>24 MR FEE: Objection Vague 18:26:58</p> <p>25 THE WITNESS: Well, I believe we've received 18:27:00</p> <p style="text-align: right;">Page 264</p>
<p>1 out of context from what the voluntary consensus 18:24:27</p> <p>2 process encompassed in ASTM standards development 18:24:31</p> <p>3 enterprises wanted to see represented in the standard 18:24:35</p> <p>4 BY MR BRIDGES: 18:24:43</p> <p>5 Q Has ASTM ever asked an agency to use specific 18:24:43</p> <p>6 language in a regulation? 18:24:47</p> <p>7 MR FEE: Objection Beyond the scope of his 18:24:50</p> <p>8 designation 18:24:52</p> <p>9 THE WITNESS: It's possible that we have 18:24:54</p> <p>10 BY MR BRIDGES: 18:24:55</p> <p>11 Q Do you recall a particular -- any instance? 18:24:55</p> <p>12 MR FEE: Same objection 18:24:57</p> <p>13 THE WITNESS: I don't recall a particular 18:24:59</p> <p>14 time 18:24:59</p> <p>15 BY MR BRIDGES: 18:25:01</p> <p>16 Q Do you have an estimate as to the number of 18:25:01</p> <p>17 times it's occurred? 18:25:06</p> <p>18 MR FEE: Objection Lack of foundation 18:25:08</p> <p>19 Beyond the scope of his designation Calls for 18:25:09</p> <p>20 speculation 18:25:11</p> <p>21 THE WITNESS: It's -- there's a process that 18:25:13</p> <p>22 our committees would have to follow They would have 18:25:17</p> <p>23 to -- the executive committee of a committee would 18:25:19</p> <p>24 have to reach a consensus that they want to see an 18:25:24</p> <p>25 ASTM standard included in a regulation And so I 18:25:28</p> <p style="text-align: right;">Page 263</p>	<p>1 anywhere from \$650,000 to \$900,000 per year over the 18:27:04</p> <p>2 last five years from the federal government. 18:27:11</p> <p>3 BY MR. BRIDGES: 18:27:17</p> <p>4 Q. Were some of that money provided by the 18:27:17</p> <p>5 federal government in order to facilitate the 18:27:22</p> <p>6 standards development process? 18:27:25</p> <p>7 MR. FEE: Objection. Calls for speculation. 18:27:27</p> <p>8 Vague. 18:27:29</p> <p>9 THE WITNESS: To my knowledge, none of it 18:27:31</p> <p>10 was. 18:27:32</p> <p>11 BY MR. BRIDGES: 18:27:37</p> <p>12 Q. What were the main categories of payments by 18:27:37</p> <p>13 the federal government to ASTM over the last five 18:27:41</p> <p>14 years? 18:27:46</p> <p>15 MR. FEE: Objection. Vague. 18:27:47</p> <p>16 BY MR. BRIDGES: 18:27:48</p> <p>17 Q. In other words, what were the payments for 18:27:48</p> <p>18 ASTM to do? 18:27:50</p> <p>19 MR. FEE: Same objection, plus form. 18:27:52</p> <p>20 THE WITNESS: I can think of -- that we would 18:27:53</p> <p>21 sell standards to federal agencies. That would be one 18:27:56</p> <p>22 source of revenue. 18:28:00</p> <p>23 BY MR. BRIDGES: 18:28:01</p> <p>24 Q. What other sources of revenue? 18:28:01</p> <p>25 A. I believe that we have a number of federal 18:28:03</p> <p style="text-align: right;">Page 265</p>


1 employees that participate in ASTM as full voting 18:28:06	1 or edits to any version of ASTM standards where the 18:31:13
2 members. So they would pay a \$75-per-year fee to be a 18:28:09	2 current ASTM standards have been incorporated by 18:31:25
3 member of ASTM. 18:28:14	3 reference? 18:31:33
4 Q. And you're counting that in the figures that 18:28:16	4 MR FEE: Objection It's beyond the scope 18:31:34
5 you gave me earlier? 18:28:18	5 of his designation Compound Vague 18:31:35
6 A. Yes. 18:28:19	6 THE WITNESS: Because of the openness and 18:31:45
7 Q. What other sources of funds from the federal 18:28:20	7 transparency and iterative innovative process that 18:31:49
8 government have there been for ASTM? 18:28:23	8 ASTM encapsulates, I wouldn't know how to answer that 18:31:53
9 A. Right. That's all I'm aware of. That's all 18:28:27	9 question, give you a number 18:31:56
10 I'm aware of. We also have certification and training 18:28:33	10 MR BRIDGES: There's one more exhibit I want 18:32:08
11 programs, which I don't believe the federal government 18:28:41	11 to find 18:32:10
12 is too involved in, but we receive a small stipend 18:28:44	12 (Deposition Exhibit 1072 was marked for 18:32:35
13 from the U.S. Department of Agriculture to assist them 18:28:49	13 identification ) 18:32:35
14 in running a -- the U.S. bio preferred program. 18:28:53	14 MR BRIDGES: Mr Grove, I've handed you 18:32:35
15 Q. Anything else? 18:29:00	15 Exhibit 1072 18:32:37
16 A. We run a proficiency testing program, which 18:29:06	16 Q What is this document? 18:32:39
17 the U.S. Department of Defense participates in. So 18:29:08	17 A It appears as if this is the ASTM form and 18:32:53
18 it's not related to standards, but it's another source 18:29:14	18 style book for how ASTM standards are displayed 18:32:57
19 of revenue from the federal government. 18:29:18	19 Q Does that create standards that persons must 18:33:07
20 Q. Does ASTM have any means of identifying who 18:29:22	20 follow in participating in the drafting and revision 18:33:15
21 the originator was of any particular language in its 18:29:26	21 process of ASTM standards? 18:33:18
22 standards? 18:29:33	22 MR FEE: Objection Vague Compound 18:33:22
23 MR. FEE: Objection. Vague. Compound. To 18:29:34	23 THE WITNESS: No 18:33:31
24 the extent it calls for a legal conclusion, I'd also 18:29:43	24 BY MR BRIDGES: 18:33:34
25 object on that basis. 18:29:46	25 Q Does that provide rules that persons must 18:33:34
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1 Go ahead. 18:29:47	1 follow in participating in the drafting and revision 18:33:38
2 THE WITNESS: To the extent those are legal 18:29:51	2 process of ASTM standards? 18:33:40
3 terms, I'm aware of an ASTM standards development 18:29:52	3 MR. FEE: Objection. Vague. 18:33:42
4 process. I'm not aware of a way to trace origins back 18:29:56	4 THE WITNESS: Generally, yes. 18:33:44
5 to a specific individual. 18:30:02	5 MR. BRIDGES: Where are we on time? 18:34:06
6 BY MR. BRIDGES: 18:30:06	6 THE VIDEOGRAPHER: 18 minutes left. 18:34:10
7 Q. Is there any -- strike that. 18:30:06	7 MR. BRIDGES: 18 minutes left. 18:34:13
8 How many individuals provide language or 18:30:11	8 (Deposition Exhibit 1073 was marked for 18:35:00
9 edits to the ASTM standards that have been 18:30:19	9 identification.) 18:35:00
10 incorporated by reference? 18:30:24	10 BY MR. BRIDGES: 18:35:00
11 MR. FEE: Objection. Vague. Compound. 18:30:25	11 Q. Mr. Grove, do you recognize Exhibit 1073? 18:35:00
12 THE WITNESS: That would be very difficult to 18:30:37	12 A. I do. 18:35:13
13 calculate. I need to ask are you referring to 18:30:39	13 Q. Does it represent the views of both ASTM and 18:35:16
14 standards that have already been incorporated by 18:30:41	14 ANSI? 18:35:20
15 reference? 18:30:43	15 MR. FEE: Objection. Compound. Calls for 18:35:23
16 BY MR. BRIDGES: 18:30:44	16 speculation. Beyond the scope of his designation. 18:35:25
17 Q. Yes. 18:30:44	17 THE WITNESS: I believe this is an error. 18:35:30
18 A. Presumably, if those standards are being 18:30:47	18 No. I'm not familiar why this page would be stapled 18:35:32
19 revised by ASTM or re-approved for use, it will have 18:30:49	19 to a presentation. This is a speaker that came before 18:35:36
20 to go through a technical committee. It has to. 18:30:55	20 me on a panel followed by -- who probably didn't 18:35:39
21 That's the process for re-approving or revising 18:30:58	21 provide a written presentation, which happens to be 18:35:44
22 standards at ASTM. So it would depend on how many 18:31:01	22 stapled to a presentation which begins with the title 18:35:47
23 people are on that committee and what percentage 18:31:05	23 page on a presentation that I gave. 18:35:51
24 voted. 18:31:07	24 BY MR. BRIDGES: 18:35:54
25 Q. How many individuals have provided language 18:31:11	25 Q. Okay. So starting -- okay. So there's a 18:35:54
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1 general workshop That's reflected on the first page 18:35:56	1 MR. BRIDGES: I will check, but if we don't 18:41:09
2 And then there's a listing of Scott Cooper Then 18:36:00	2 have them, we expect to get them. 18:41:10
3 there's your name, and then what follows in the 18:36:03	3 Q. Can you please explain to me what the purpose 18:41:16
4 exhibit is a presentation solely by you and not by 18:36:03	4 was or what you understood to be the purpose of the 18:41:20
5 Mr. Cooper; is that correct? 18:36:11	5 page with the Bates number ending in -3315? 18:41:23
6 A That would be my recollection of events, yes 18:36:13	6 MR. FEE: Objection. It's beyond the scope 18:41:33
7 Q And then does that remaining portion starting 18:36:17	7 of the designation. Calls for speculation. 18:41:34
8 after your name reflect the views of ASTM at the time 18:36:20	8 THE WITNESS: This represents a project that 18:41:39
9 of your presentation? 18:36:22	9 ASTM staff is undertaking throughout the course of 18:41:42
10 MR. FEE: Objection Calls for speculation 18:36:24	10 2015 and -- I'm sorry. 2014 and 2015. These would be 18:41:47
11 Beyond the scope of his designation Compound as 18:36:26	11 the items that are contained in the project. 18:41:53
12 well 18:36:29	12 BY MR. BRIDGES: 18:41:58
13 You should read the whole thing if he's 18:36:38	13 Q. Has the project been approved? 18:41:58
14 asking you to verify all the use of ASTM 18:36:39	14 MR. FEE: Objection. Vague. Beyond the 18:41:59
15 (The witness reviewed Exhibit 1073 ) 18:37:01	15 scope of his designation. 18:42:03
16 THE WITNESS: Yes I believe this, to the 18:37:01	16 THE WITNESS: Project been approved? 18:42:06
17 best of my recollection, was the general views that 18:37:05	17 MR. BRIDGES: Strike that. 18:42:08
18 ASTM would have on this issue at the time of this 18:37:07	18 Q. Is the project underway? 18:42:09
19 presentation 18:37:09	19 MR. FEE: Objection. Beyond the scope of his 18:42:11
20 (Deposition Exhibit 1074 was marked for 18:38:01	20 designation. 18:42:13
21 identification ) 18:38:01	21 THE WITNESS: So some of these activities may 18:42:16
22 BY MR. BRIDGES: 18:38:01	22 be underway, but we don't believe that we are actively 18:42:18
23 Q Mr. Grove, Exhibit 1074 is a series of 18:38:01	23 pursuing all of them. 18:42:21
24 E-mails among you and Katherine Morgan, Len Morrissey 18:38:07	24 BY MR. BRIDGES: 18:42:23
25 and John Pace; is that correct? 18:38:15	25 Q. Which ones is ASTM not actively pursuing? 18:42:26
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1 A. Yes, it is. 18:38:26	1 MR. FEE: Same objection. 18:42:31
2 MR. FEE: While I'm thinking of it, I'm going 18:39:08	2 THE WITNESS: Well, we're taking an 18:42:38
3 to reserve the right to read and sign. 18:39:12	3 inventory. We don't have great information about the 18:42:40
4 (Deposition Exhibit 1075 was marked for 18:39:29	4 full extent of government participation. So we're 18:42:45
5 identification.) 18:39:29	5 taking an inventory of how many government reps are 18:42:50
6 MR. BRIDGES: I'm handing you an exhibit 18:39:29	6 participating in ASTM technical committees and where. 18:42:52
7 marked 1075 that consists of pages ASTM003314 to 18:39:31	7 We're trying to find out more about how federal 18:42:56
8 ASTM003315. 18:39:37	8 agencies use ASTM standards. 18:42:58
9 (The witness reviewed Exhibit 1075.) 18:40:02	9 MR. FEE: Can you read the question back. 18:43:03
10 BY MR. BRIDGES: 18:40:02	10 MR. BRIDGES: Not when he's in the middle of 18:43:10
11 Q. Do you recognize this document? 18:40:02	11 his answer, please. Afterwards, you can do that. 18:43:12
12 A. I do, yes. 18:40:22	12 MR. FEE: He's answering the wrong question. 18:43:14
13 Q. This is an E-mail from Maureen Houck to a 18:40:29	13 MR. BRIDGES: Well, let him finish. 18:43:16
14 number of senior staff at ASTM; is that correct? 18:40:32	14 MR. FEE: Read the question back. 18:43:19
15 A. It is correct. 18:40:37	15 MR. BRIDGES: No. No. 18:43:21
16 Q. What does ITC -- sorry. "ITMC" mean? 18:40:39	16 MR. FEE: Yes. 18:43:21
17 A. I believe it's short for the Information 18:40:45	17 MR. BRIDGES: You stopped your witness from 18:43:22
18 Technology Management Committee. 18:40:50	18 speaking. That's ridiculous. That's improper. 18:43:24
19 Q. And -- 18:40:54	19 MR. FEE: Wait until she reads the question 18:43:28
20 MR. FEE: I'm going to object. This appears 18:40:56	20 back. 18:43:30
21 to be just one of many attachments to Exhibit 1075. 18:40:58	21 (Record read.) 18:43:48
22 MR. BRIDGES: You know, I'm glad you 18:41:01	22 THE WITNESS: It's really hard to say because 18:43:48
23 mentioned that because I don't think we got the other 18:41:02	23 we're very early in the process of working on this, 18:43:49
24 attachments, and I'd like to get them, please. 18:41:04	24 but I can tell you it's been scaled back. This is a 18:43:53
25 MR. FEE: I don't know if that's true or not. 18:41:06	25 pretty ambitious activity. I believe the last two 18:43:55
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1 bullet points are things that we're not going to be 18:44:04	1 MR. FEE: Objection. Beyond the scope of his 18:46:23
2 able to accomplish or pursue. 18:44:07	2 designation. 18:46:25
3 BY MR. BRIDGES: 18:44:13	3 THE WITNESS: At least once. 18:46:26
4 Q. What standards development activities -- 18:44:13	4 BY MR. BRIDGES: 18:46:30
5 strike that. 18:44:16	5 Q. More than five times? 18:46:30
6 What activities has ASTM had to scale back to 18:44:16	6 MR. FEE: Same objection. 18:46:32
7 date as a consequence of the actions of the 18:44:22	7 THE WITNESS: I wouldn't be able to give you 18:46:33
8 defendants? 18:44:27	8 a number. I would say less than five times. 18:46:35
9 MR. FEE: Objection. Beyond the scope of the 18:44:29	9 BY MR. BRIDGES: 18:46:37
10 designation. May call for expert testimony. Vague 18:44:33	10 Q. How many times did Ms. Petre go to the Public 18:46:38
11 and ambiguous. 18:44:38	11 Resource website? 18:46:41
12 THE WITNESS: Yeah. I wouldn't be able to 18:44:41	12 MR. FEE: Objection. Beyond the scope of his 18:46:41
13 answer what specific activities we've scaled back. 18:44:43	13 designation. Calls for speculation. 18:46:43
14 BY MR. BRIDGES: 18:44:46	14 THE WITNESS: I wouldn't be able to answer 18:46:45
15 Q. Have any activities been scaled back by ASTM 18:44:46	15 that. I don't know. 18:46:46
16 as a consequence of the actions of the defendants? 18:44:49	16 BY MR. BRIDGES: 18:46:49
17 MR. FEE: Same objections. 18:44:51	17 Q. Do you know how many times ASTM or its agents 18:46:49
18 BY MR. BRIDGES: 18:44:52	18 have accessed Public Resource's website -- 18:46:53
19 Q. Of the defendant, I should say. 18:44:52	19 MR. FEE: Objection. 18:46:59
20 A. To the best of my knowledge, no. 18:44:59	20 BY MR. BRIDGES: 18:47:01
21 Q. Has ASTM changed its standards development 18:45:05	21 Q. -- for the purposes of this litigation? 18:47:01
22 process in any way because of the activities of 18:45:11	22 MR. FEE: Objection. Calls for speculation. 18:47:03
23 defendant? 18:45:18	23 Beyond the scope of his designation. 18:47:05
24 MR. FEE: Objection. To the extent that 18:45:19	24 To the extent that work was done at the 18:47:07
25 changes were made at the direction of counsel -- let 18:45:21	25 direction or by counsel, that would be responsive to 18:47:09
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1 me think about that. Hold on one second. 18:45:24	1 that question, I instruct you not to disclose that. 18:47:13
2 (Pause in proceedings.) 18:45:33	2 You could otherwise answer. 18:47:17
3 MR. FEE: I'm going to object and instruct 18:45:33	3 THE WITNESS: I don't know. 18:47:20
4 you not to answer to the extent that activities were 18:45:34	4 BY MR. BRIDGES: 18:47:49
5 changed at the direction of counsel because of 18:45:38	5 Q. Have you ever participated in something 18:47:49
6 activities of the defendant. 18:45:40	6 called the "Corner Bakery Group"? 18:47:54
7 If there is something done because of 18:45:43	7 A. Yes, I have. 18:47:55
8 defendant, not at the direction of counsel, you can 18:45:44	8 Q. Did you create it? 18:47:56
9 answer that. 18:45:46	9 MR. FEE: Objection. Vague. 18:47:58
10 THE WITNESS: I'm not aware of changes. 18:45:47	10 THE WITNESS: I don't know who created it. I 18:47:59
11 BY MR. BRIDGES: 18:45:56	11 could have. I could have. 18:48:01
12 Q. Have you gone to the Public Resource website 18:45:56	12 BY MR. BRIDGES: 18:48:04
13 to find ASTM standards? 18:46:01	13 Q. It involves meetings at a restaurant called 18:48:04
14 A. I have. 18:46:08	14 the Corner Bakery Cafe; correct? 18:48:06
15 Q. Have other persons at ASTM? 18:46:08	15 A. That's correct. 18:48:08
16 MR. FEE: Objection. Beyond the scope of his 18:46:11	16 Q. Where is it located in relation to ASTM's 18:48:08
17 designation. Calls for speculation. 18:46:13	17 Washington office? 18:48:12
18 THE WITNESS: I'm aware of at least one 18:46:14	18 A. About two blocks. 18:48:13
19 person. 18:46:16	19 Q. What is the most frequent topic of discussion 18:48:19
20 BY MR. BRIDGES: 18:46:16	20 at the Corner Bakery group meetings? 18:48:23
21 Q. Who is that? 18:46:16	21 A. It would depend. It varies from month to 18:48:26
22 A. That would be Sarah Petre, formerly of our 18:46:17	22 month. I wouldn't be able to give you an answer. 18:48:28
23 staff. 18:46:19	23 Q. What topics other than Public Resource are 18:48:34
24 Q. How many times have you visited the Public 18:46:20	24 most frequently discussed? 18:48:37
25 Resource website? 18:46:22	25 MR. FEE: Objection. Lack of foundation. 18:48:38
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1 Misleading. 18:48:40	1 THE WITNESS: Well, I'm involved in a lot of 18:51:07
2 THE WITNESS: Funding for NIST, the National 18:48:42	2 activities for ASTM that -- so my -- probably someone 18:51:08
3 Institute of Standards and Technology. I recall OFAC, 18:48:45	3 responsible for their global policy, which would be 18:51:15
4 the Treasury Department's restrictions on sharing 18:48:48	4 Steve -- I'm sorry Joe Tretler 18:51:18
5 standards with certain countries. Congress's interest 18:48:52	5 BY MR BRIDGES: 18:51:21
6 in energy and dependence. It's just a way for the 18:48:59	6 Q Who is Steve Kramer? Do you know Mr Kramer? 18:51:27
7 Washington representatives of standards organizations 18:49:06	7 A I do Steve Kramer was a member of the board 18:51:30
8 to exchange information about what's happening in 18:49:08	8 of directors for a period of three years from the 18:51:34
9 Washington. 18:49:10	9 University of Wisconsin 18:51:36
10 BY MR. BRIDGES: 18:49:12	10 Q Have you discussed this litigation with him? 18:51:37
11 Q. Who participates in the Corner Bakery group? 18:49:12	11 MR FEE: Objection 18:51:40
12 MR. FEE: Objection. Vague. 18:49:17	12 To the extent you had discussed litigation 18:51:41
13 Remember to give me a second. Go ahead. 18:49:18	13 with him at the request of counsel, I would instruct 18:51:43
14 THE WITNESS: I rarely participate. It's 18:49:21	14 you not to disclose that, but you can answer 18:51:48
15 mostly lower level. Each organization usually assigns 18:49:23	15 otherwise 18:51:50
16 the lowest person in their Washington office to 18:49:26	16 THE WITNESS: I have not discussed litigation 18:51:50
17 attend. 18:49:29	17 with Steve Kramer 18:51:52
18 BY MR. BRIDGES: 18:49:30	18 BY MR BRIDGES: 18:51:53
19 Q. Who attends for ASTM? 18:49:30	19 Q Have you discussed Public Resource with Steve 18:51:53
20 A. Most often it was Sarah Petre. 18:49:34	20 Kramer? 18:51:56
21 Q. Who else from ASTM participated? 18:49:39	21 MR FEE: Same instruction 18:51:56
22 A. Well, I recall -- 18:49:42	22 This is also beyond the scope of his 18:51:57
23 MR. FEE: Objection. Vague. 18:49:42	23 designation 18:51:58
24 THE WITNESS: I recall attending two or three 18:49:44	24 THE WITNESS: Yes, I might have 18:52:02
25 meetings in the last 15 months. And perhaps Anthony 18:49:49	25 BY MR BRIDGES: 18:52:03
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1 Quinn from ASTM would attend some months. 18:49:52	1 Q. In what context? 18:52:03
2 BY MR. BRIDGES: 18:49:58	2 MR. FEE: Same instruction with respect to 18:52:06
3 Q. Are you aware of any government employees 18:49:58	3 privileged communications. 18:52:07
4 ever attending a meeting of the Corner Bakery group? 18:50:00	4 And, again, this is beyond the scope of his 18:52:08
5 A. I cannot recall any government employee 18:50:07	5 designation. 18:52:11
6 attending. 18:50:09	6 THE WITNESS: Yeah. I can't think of a 18:52:13
7 Q. Whom do you most frequently interact with at 18:50:21	7 specific instance, but it's possible I've prepared 18:52:14
8 NFPA? 18:50:25	8 materials for the board that might have referenced the 18:52:17
9 MR. FEE: Objection. Beyond the scope of his 18:50:26	9 organization you mentioned. 18:52:21
10 designation. Are you asking him personally or as 18:50:28	10 BY MR. BRIDGES: 18:52:24
11 ASTM? 18:50:31	11 Q. Who is Randy Jennings? 18:52:24
12 BY MR. BRIDGES: 18:50:32	12 A. Randy Jennings is a former member of the ASTM 18:52:27
13 Q. Him personally. 18:50:32	13 board of directors. 18:52:32
14 A. I would say Megan Housewright in their 18:50:34	14 MR. FEE: We're now at the seven-minute time 18:52:32
15 Washington office. 18:50:36	15 limit; right? 18:52:34
16 Q. Whom do you interact with most frequently at 18:50:39	16 THE VIDEOGRAPHER: (Nods head.) 18:52:35
17 ASHRAE? 18:50:42	17 MR. FEE: Last time you said you'd give 18:52:38
18 MR. FEE: Objection. Beyond the scope. 18:50:44	18 ASHRAE two more questions. So I'll do the same 18:52:40
19 THE WITNESS: I'm struggling with his name. 18:50:50	19 courtesy to you. 18:52:43
20 His name is Mark. He's in their Washington office. I 18:50:51	20 MR. BRIDGES: That's fine. Thank you very 18:52:50
21 don't have a lot of interaction with him at all. 18:50:55	21 much, Mr. Grove. 18:52:52
22 BY MR. BRIDGES: 18:51:02	22 THE WITNESS: Thank you. 18:52:54
23 Q. Who do you interact with most frequently at 18:51:02	23 MR. FEE: I have no questions. 18:53:00
24 ANSI? 18:51:04	24 Thane, do you have any questions? 18:53:02
25 MR. FEE: Same objection. 18:51:06	25 MR. REHN: No questions. 18:53:03
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<p>1 THE VIDEOGRAPHER: This is the end of the 18:53:06</p> <p>2 deposition of Mr. Jeffrey Grove. We are off the 18:53:08</p> <p>3 record at 18:52. 18:53:13</p> <p>4 (Witness excused.) 18:53:16</p> <p>5 (Deposition concluded at 6:52 p.m.) 18:53:16</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p style="text-align: right;">Page 282</p>	<p>1 ACKNOWLEDGMENT OF DEPONENT</p> <p>2</p> <p>3 I, JEFFREY GROVE, do hereby certify that I</p> <p>4 have read the foregoing pages, _____ to _____,</p> <p>5 and that the same is a correct transcription of the</p> <p>6 answers given by me to the questions therein</p> <p>7 propounded, except for the corrections or changes in</p> <p>8 form or substance, if any, noted in the attached</p> <p>9 Errata Sheet.</p> <p>10</p> <p>11 _____</p> <p>12 DATE SIGNATURE</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p style="text-align: right;">Page 284</p>
<p>1 C E R T I F I C A T E</p> <p>2 I do hereby certify that the aforesaid</p> <p>3 testimony was taken before me, pursuant to</p> <p>4 notice, at the time and place indicated; that</p> <p>5 said deponent was by me duly sworn to tell</p> <p>6 the truth, the whole truth, and nothing but</p> <p>7 the truth; that the testimony of said</p> <p>8 deponent was correctly recorded in machine</p> <p>9 shorthand by me and thereafter transcribed</p> <p>10 under my supervision with computer-aided</p> <p>11 transcription; that the deposition is a true</p> <p>12 and correct record of the testimony given by</p> <p>13 the witness; and that I am neither of counsel</p> <p>14 nor kin to any party in said action, nor</p> <p>15 interested in the outcome thereof.</p> <p>16</p> <p>17</p> <p>18</p> <p>19  Nancy J. Martin, KMR, CSR</p> <p>20</p> <p>21</p> <p>22 Dated: March 18, 2015</p> <p>23</p> <p>24</p> <p>25</p> <p style="text-align: right;">Page 283</p>	

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[downloads - environment]

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[highlighting - independence]

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[introducing - knowledge]

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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.