MR. RICHARD SAHLI: Greetings from Columbus, Ohio. A pleasure to be here today with the Permanent Peoples' Tribunal.

My name is Richard Sahli. I am an attorney. I've been practicing environmental law in Ohio since 1980. So I think that's 38-years. I've been in my own private practice since 1995 and I've only represented citizen groups all the way from the smallest grass-roots groups which, frankly, are most of the fracking activists in Ohio all the way up to national groups. That is both in state and federal court.

My presentation today is going to be in two parts. This will be one hour and then we'll break for lunch and I'll be talking about the two pre-tribunals that we did in Ohio last year and also discuss the 40-page report that came out of that, talk about some of the very specific testimony that we received, also some of the unique issues in Ohio and, frankly, in the United States in general trying to deal with fracking.

And I'll try to hold a few questions, time for
a few questions at the end of that. And then we'll have a hour and a half for lunch and then when we come back I'll have individual interviews with some of the witnesses who testified at the tribunal last year. I'll be showing several items from their testimony to give you a sense of what it's truly like, day-to-day, in the state of Ohio when it comes to fracking.

Hopefully also my discussion will give other groups who are thinking about doing tribunals some background, how to do the report and how to approach pre-tribunals.

So on that score let me start the formal part of my presentation by saying that these pre-tribunals were very important to the people in Ohio. It was very good for us to do this. And that is because people affected by fracking have had very, very few opportunities to get their story out.

And when fracking started in Ohio in 2011 Ohio was still in the grips of the terrible recession that began in this country in 2008. And our political class has always been very close to the oil and gas industry, as they were to the coal industry before that, absolutely embraced fracking with a passion as a potential way out to get some new economic development going.
To the extent that the newspapers have covered the stories at all they've only covered it in the sense that so much new investments coming in, so many more millions of dollars and here's the gross numbers on the amount of oil or natural gas that Ohio is now producing due to fracking.

Another reason that the people who testified thought it was so important is about a very important aspect of the Ohio fracking story and that is all of the fracking production wells, a quarter of all the fracking waste water injection wells, is located in eastern and southeastern Ohio, in an area we call Appalachian Ohio.

Now the Appalachian Mountains is a large mountain range in the central part of the eastern United States. Covers quite a few states and historically that mountain range has been a difficult weight on economic development. As a result Appalachian counties are the poorest, they're the most economically disadvantaged where all the fracking production is occurring.

In Ohio that's normally in the Utica shale, although there is also some production out of the Marcellus shale which is where the earlier production in Pennsylvania started.

So our state's government has been controlled by republicans most of the last 20-years who are very
anti-environmental. And our regulator is an entity called the Ohio Department of Natural Resources, ODNR. They are the exclusive oversight body for the oil and gas industry in Ohio.

We have an Ohio EPA but their authority over oil and gas has been stripped away and given to ODNR. And ODNR is a notorious captive regulator, has been for 40-years by the coal industry and it has been for the oil and gas industry almost as long. They're notably hostile to citizens, dependable allies of the oil and gas industry.

So when I say that the tribunals were very much welcomed it's because this was the first time so many people had an opportunity to tell their story. And a lot of tears were shed as soon as people got up from the table to testify because of the relief and the pouring out of anxiety that they'd had for years not being able to tell what's been happening to them.

We had two days of testimony. One of them was in Athens County, Ohio. That is in the southeastern part of the state close to the Ohio River and close to the state of West Virginia. Seventeen people testified there, including two experts, a hydrogeologist and an attorney.

The second tribunal was in the larger city of
Youngstown, Ohio, northeast Ohio, what we call the rust belt. Was a great steel town but has been on hard times for 30-years since the steel industry pretty much left there country. It's close to the Pennsylvania border and it's where an additional 12 people testified, including one expert geologist.

While the majority of people testified about their personal experience, that is living by fracking operations, both production and also the injection well disposal system, others testified as to the deficiencies of Ohio's public participation process which, frankly, does next to nothing for the public.

So our report spent a lot of time talking about the problems with public participation. There's virtually no advanced notice of the hearings. There's no hearing that is given to the public to speak on these items and the state is very tight-fisted when it comes to giving up public records about fracking.

Now this testimony was all recorded on video, the web by the Buckeye Environmental Network. That is an oversight group for grassroots groups across Ohio. It's on the youtube page and Facebook page of the Buckeye Environmental Network. It's also summarized in our report. That report is available on the PPT web site.
In addition we had a panel of what we call jurors listening to the testimony. And the role of the jurors was to ask questions, cross-examine the witnesses, to fill in any gaps in the information chain.

And they also made the determination afterwards whether, and which, human rights and the environment had been violated shown by the testimony. And they also made a recommendation for action. Our report was published last December and it's 39-pages long.

So let me get into the some of the key parts of our report. The introduction had really two things that it principally focused on. The first we noticed that a key feature in the fracking story, and not just in Ohio but in the United States as a whole, is that it's come about at the point in time in our nation's history when American government at all levels, national, oh my god certainly the state, and also even at the local level, is virtually incapable of effective regulation due to the massive amounts of corporate money that's now funding American political campaigns.

I think this is probably pretty well-known internationally at this point but our governments are much, much closer to the corporations that pay for their
campaigns than they are to our citizens.

But not only is that a fundamental feature of the Ohio fracking story but the second major factor is that the oil and gas industry in the United States is the only industry that isn't regulated by a comprehensive federal program. All the other industries are regulated and the federal law supplies a minimum level of safeguards, of technical requirements and the minimum level of public participation.

That's not the case with oil and gas, not controlled by a federal program except for a small component of the injection well program.

So what we have is the state of Ohio and the people here being dependent upon our industry friendly legislature, captive state regulator, to give them the only protections they've got.

And due to those two factors we close our introduction by making the main point that because of these factors the question is very forcefully presented in the United States, whether Americans are getting the minimum level of internationally recognized human rights by the industry.

Next our report went into some background. We wanted this to be a stand alone report. We thought if we just had the witnesses testifying out of the blue...
that folks couldn't feel grounded in the context of what
their lives had come into contact with. So we had a
history of Ohio's oil and gas industry.

And you may not believe this but in the 1880s
the state of Ohio was the world's leading oil producer,
1880s. That was when Standard Oil Corporation, that was
John Rockefeller's big corporation that later became the
Standard Oil Trust, it was founded. It was founded in
Cleveland, Ohio, Ohio's largest city.

Then it went into discussions how Ohio's
always had a boom and a bust cycle when it comes to oil
production and gas production, in which Ohio had three
distinct booms, the fracking being the fourth.

They started in 1884, 1961, 1978 in which
there were investments in oil and gas, a lot of removal
of oil and gas. But each of those collapsed within a
few years to a bust, what we call an economic bust, the
economic floor comes out of the industry and all the
corporations that had come here to exploit our natural
resources wound up in massive bankruptcies and they left
thousands of plugged and abandoned wells, thousands of
abandoned waste pits that had waste fluids from the oil
and gas industry were simply left here and all the
profits were taken out of state.

Now we believe this history leaves a very
strong inference to the readers of our report that the current boom in fracking will likely be no different except that the breadth of potential of environmental harm, particularly that from the toxic chemicals involved, are greater.

Now Ohio fracking began in 2011. As of last month, the latest number, we have 2,338 producing horizontal fracked wells. All of these are in the traditionally poor Appalachian counties, the most politically vulnerable counties in our state, and worse than that they're highly concentrated in just seven of Ohio's 88 counties. The counties are our political subdivisions and they divided them in to 88 of them.

In addition to those existing 2300 some wells currently drilled the state has already issued an additional 500 permits for wells that simply haven't been drilled yet. The industry is waiting for the price of oil to go back up which is, frankly, now starting, at least in this country.

And also Ohio's being crisscrossed by three new pipelines, federally regulated pipelines, that the state has no say in. And when those pipelines open we expect a lot of those additional 500 wells to come on-line. So we're going to have 3,000 horizontally fracked wells now pretty much guaranteed.
So our history section then goes into separately about the unique problems Ohio has with the injection disposal wells. I trust you're familiar with injection disposal wells. They take all the highly contaminated waste water that comes back up out of these wells when the injection of fluids ends, they're heavily contaminated with the toxic chemicals involved in the fracking process, and they're simply reinjected back down a mile or more where the theory is that this is going to stay there until the end of time.

But between the start of fracking in 2011 and today the number of these injection wells in Ohio has increased from 144 to 239. The amount of the waste water disposed in those wells increased by 240%. It's now over 30 million gallons a year that is reported.

Now why this is significant in Ohio is that our neighboring states of Pennsylvania and West Virginia, both of them have extensive and certainly in Pennsylvania a very mature fracking industry. Each of them have about two dozen injection wells for disposal. Meaning that much of their waste is being trucked here for disposal.

So we have the phenomenon in Ohio of clusters of injection wells close to the state borders, close to our largest highways, taking an endless number of tanker
trucks every day bringing fracking waste water, highly 
toxic fracking waste water, to these clusters of 
injection wells.

And in Youngstown that is close to the 
Pennsylvania border they have a lot of injection wells. 
Athens County, which is the leading county in the state 
for taking injected disposal waste, it doesn't have a 
single production well in that county. Utica shale does 
not extend that far but they are the No. 1 recipient of 
the waste water, much of which comes from West Virginia.

So we had one person testify that they spent 
24-straight hours in front of their house watching 
tanker trucks go by. One went by on the average of 13 
minutes all night and all day.

Now a section that I think is particularly 
useful is the next one which talks about the history of 
the regulatory program of oil and gas. And it really 
builds a story that so much of the testimony supported, 
which is how these regulators have become hopelessly 
compromised by the oil and gas industry itself.

Ohio's program, oil and gas, started itself in 
the second of our booms in 1961. This happened in an 
area about 50 miles north of where I am now in Columbus 
and there was a large pool of oil and just as soon as 
one of those new oil wells found some oil immediately 5,
6, 10, 12 additional wells would be drilled within just a couple hundred feet of the first well, sometimes in every back yard of a neighborhood.

And there's pictures from that time showing every backyard in some neighborhoods having wells. And they're just stealing oil from someone else's well. But as a result of that the legislature adopted spacing regulations. And to enforce those spacing regulations there had to be a state program. So that's how our state program came together at the behest of the oil and gas industry itself.

Now the industry allows some language in there that kind of referred to the environmental issues. It didn't talk about so much keeping the oil out of the water or off of the land. It said that you should not waste the resource. We want to make sure that the profits are maximized. So the prohibition is not on pollution. It was on wasting the resource. And that was the only environmental protection in the program and, frankly, it's pretty much still the operative language in our state law today.

When our next boom started in the 1970's this program just had 27,000 -- I'm sorry, 27 employees for the entire state. And at that time there were close to 50,000 old wells that those 27 people had to oversee.
So already it was a terribly underresourced program. Some of these wells wouldn't be inspected for decades. But with the next boom that started in 1978 is when Ohio had its last environmentally sympathetic governor. He was elected in 1981. He expanded the program by 1986, the height of that boom, to 124 employees. And to the great dismay of the industry the program then had an enforcement office specifically with 8 special investigators just to do enforcement cases.

It also had three dedicated prosecutors to bring cases into court about oil and gas companies violating their requirements. But there was an underlying danger in this expansion.

Before the program had been funded by what we call general revenue funds. That's money from the state income tax, state sales tax, comes from all Ohioans. When the expansion was done all that general revenue was taken away and instead the expansion was funded by fees on the industry. Permit fees were increased significantly. But also there was, for the first time, a severance tax put on oil and natural gas.

For instance for every barrel of oil taken out of Ohio there was a 10 cent, 1/10th of one American dollar, severance tax had to be paid.

So from that point on successes of the industry
became necessary to fund the program and the two programs, probably from that point on, had a serious conflict of interest that led the program to be closer and closer to the industry as a way to ensuring that their salaries would ever been paid.

So when the bust in production occurred for the boom that started in 1978 most of the funding for the state program disappeared overnight.

At the industry's urging legislature did nothing to address this funding shortfall. Staff of 124 in 1986 dropped to just 35 by 2007. The first cut in staffing happened in 1991 just as soon as the first republican replaced our last environmentally sympathetic governor.

1991 a 42% cut in staffing. And that enforcement office I talked about was the first thing cut. It has never been replaced. There hasn't even been an enforcement coordinator position since and ever since fracking started not a single case has been referred for prosecution in one of our state courts. And that's after we've had plenty of spills, plenty of fracking fluid spills in the waterways. We've had explosions and none of this has lead to either a civil or criminal enforcement type action. In fact our state has not even published and publicly released statistics
on its enforcement efforts.

This was also part of the real estrangement between the people of the state and the oil and gas program.

The 1978 boom put a lot of the wells in suburban areas, especially in the politically powerful areas around Cleveland and Akron, a lot of wells showed up in suburban areas. And ODNR which, at that time, had just 14 inspectors through most of that period was not able to deal with all these complaints that came forward. It lost all public confidence, suffered withering criticism in the media and the gulf between the agency and the public just became enormous. The program at ODNR has never attempted to bridge this gap since and have a good meaningful program between it and the public.

So because there is no leadership, no protection on the state level our local governments, our cities, our villages, began to draft their own laws regulating oil and gas wells where they could be placed, the amount of protection they had to have. But in 2004 oil and gas industry went to our legislature and got it to pass a state law that prohibits the local governments in this state from having any controls on oil and gas wells.

TREMAINE & CLEMENS, INC. EUGENE, OREGON (541)343-8833
We have zoning laws that say where you can have your industry, where you can have your residential areas. You have agricultural areas that have traditionally been the main determinant of land use in Ohio but oil and gas is completely cut out of that and it could go wherever the company filed an application to locate their well.

So when fracking began in 2011 its program only had 14 inspectors. At that time it had 63,000 active vertical wells all ready to address. Even that tiny underresourced program was, by law, the exclusive regulator of oil and gas here.

Now with the new production from fracking, permit fees increased, severance tax got collected, some more staff came in. By 2012 we had doubled it to 30 inspectors. Even with that doubling of inspectors they were only able to inspect less than 20% of all the producing wells annually.

ODNR announced that it was going to have to increase the severance tax. The governor proposed it. They said they needed 90 inspectors to properly run the program with fracking. The severance tax increase was thrown out of the legislature but reintroduced twice since. Each time the industry has blocked it with their friends in our legislature.
So currently the severance tax is .20 cents a barrel and that is one of the lowest in the country. And those resources obviously aren't sufficient to do the job. The program is definitely struggling to make even a pretense of good regulation.

In 2014, here I think is an important indicator, the program itself identified 20 areas that needed to identify regulations or it had to have regulations to implement existing law.

In 2014 we need 20 new major regulatory developments. We only adopted one as of this date. That was done in 2015. Still no public outreach program and the program is extremely late in providing public records.

In the United States our public records law says the records are the people's and it's got to be supplied upon request and done so promptly. If you just want one or two records you should expect to have that record in one or two days. So ODNR takes months and months to produce public records.

It uses just a simple two page application. That is all it requires on production wells, fracking production well, a two page application. It approves those permits in just a week or two and we have yet to see a single fracking production well permit denied.
I have yet to see a single injection permit denied. I want to spend a little bit time also talking about the injection well program that is so important in Ohio. There is a small federal component who regulate wells injection in the United States. It comes out of the Federal Safe Drinking Water Act. It was adopted in the 1970s. All injection wells have to meet that law's requirements. And they have five different classes of wells. And Class II wells are the oil and gas waste wells. So the ones that are of concern to us here.

Well the US EPA first adopted the standard regulatory program. Very specific regulations that address permitting requirements, technical requirements, engineering requirements, public participation requirements. A very full standard regulatory program in the American sense.

Ah, but later, the Class II oil and gas wells were exempted and they had their own program, something called the Section 1425 Program, where as long as the US EPA considered any state program effective in regulation it could be approved and handled its own injection wastes. And no regulations have ever been adopted by US EPA establishing any requirements for this program.

The only thing that was done was a simple and very vague guidance document was adopted by US EPA when
1 Ronald Reagan was president in 1983 as for this
2 standard. And that guidance document has not been
3 amended in the 35-years since.
4
5 In addition Ohio was given authority to do
6 its injection wells on the basis of what's called a
7 simple Memorandum Of Understanding that is 12 pages
8 long. That was adopted also in 1983. That has never
9 been amended since.
10
11 So injection wells are controlled by a 35-
12 year old program that has not been improved a bit since
13 and critically no improvements were made to it after
14 fracking started in the United States. There is some US
15 EPA oversight but it's the weakest oversight of any
16 program that US EPA oversees.
17
18 In 2010 the Department of Natural Resources
19 was able to update to the US EPA its program statistics
20 by submitting one and one-half pages of information to
21 them. That information did not include the fact
22 anywhere that there were only three staff members
23 dedicated to the injection well program in the state of
24 Ohio at that time.
25
26 US EPA does what they call audits of the
27 program. And when I first got involved with this I got
28 the two most recent audits, 2005 and 2009. They were
29 fairly brief. What was really sad was that there not
much detail, very vague. And comparing the two it became apparent the 2009 audit was a simple cut and paste tool from the 2005 audit. Over 95% of the wording was identical between the 2005 and the 2009 audits. This is all talked about in reports and we have links that you can see in the report to get you to that data.

So we concluded this whole section on regulatory capture, our history section, we concluded with a section on regulatory capture. I don't know if you have that term where you're from but in the United States it means a situation when the government regulator is actually captured by the industry it's supposed to regulate. And the two work hand-in-hand and keep the public out of the loop.

And that has been a great concern of so many of the people who have testified at our tribunal. And we have hard documentary proof that has occurred in Ohio.

Let me tell you this little story. 2014 we had our public records request to the Department Of Natural Resources. And they gave to us about a 15-page document which is what was called a press strategy that had been done by the very highest end of the agency.

The press strategy is right at the top in our agencies.

The legislature the year before had passed
legislation to allow fracking in our state parks and our
state forests. This strategy is how the state was going
to "encourage and support that program" to allow for
fracking into our state forests.

And the ODNR listed what it called a group of
"allied groups" that they would work with cooperatively
in this effort. And the people identified were the
Halliburton Corporation which you may know as one of the
key people promoting fracking globally. The Ohio Oil
and Gas Alliance which is the lobbying arm and mouth
piece of Ohio's oil and gas industry. Natural Gas
Alliance which is the national mouth piece for the oil
and gas industry.

So this was the industry itself they said
would be their allied groups and they delegated an
explicit role to the frackers and that was to "minimize
public concern" about the practice of fracking.

So as revealing as that was even more
revealing is what they said about us on the
environmental group side. They described environmental
groups as "adversaries." They also called them
"eco-left pressure groups." Here is my favorite quote,
"zealous environmental activist opponents who are still
the propogandists that would react emotionally and
attempt to create public panic over fracking's potential
health risks."

As a result of all this propaganda this press strategy said the state would use a Crisis Readiness Program so that they could respond within hours of any press, any public release of information, about problems with fracking in state forests.

So this was, to us, proof positive that fracking -- that this was a captured regulator and that they held themselves close with industry and they were dead set against, not only the environmental groups themselves, but also against anybody who would be opposing the industry out in the field.

I think this discussion of regulatory capture was important and hopefully other states can also cite some concrete evidence like this. It was important because a lot of the testimony at the hearing was about how little the ODNR seemed to concern itself with the public's concerns about fracking.

And so you heard a lot of complaining about ODNR. Unless you had some background like this I don't think the anecdotal information would have the same impact.

So now if you would go through the video tapes of the testimony and see person after person talking about the hostility they received from ODNR I think it's
something that will have a little more bite now because
of that section.

So the next part of our report dealt with the
issue of international law. I don't know how things are
in your country but in ours very few people study UN
conventions and covenants and these types of things. So
we knew that we had to let people know what these things
were. And it turned out that they were quite surprised
to hear that these situations were addressed by global
entities and that their state government was falling so
far short of meeting those obligations.

We did have one problem and that, of course,
is the fact that of all these various conventions only
one of them has ever been ratified by the United States
Senate. That was the 1966 Covenant on Civil and
Political Rights and that wasn't ratified by the US
Senate until 1992.

Now because of that ratification the covenant
has treaty status. It has some legal significance under
American law. But since none of the other covenants,
and that would include the Covenant On Economic, Social
and Cultural Rights and the Environmental Declarations
of Stockholm, Rio and Aarhus, none of them have been
approved by the US Senate. So their formal status is
rather questionable in this country.
I didn't want to spend a lot of time on that and the way I dealt with that issue and the way I think is an effective way for other groups to consider it in their doing their reports, would be to explain these covenants more in the terms of setting moral and ethical standards set by the global community as a whole.

And so we make our case in fracking that our country is not meeting its moral duties, its ethical duties to its people when it fails to meet the standards set by these covenants.

The section ends with our stating 10 different rights that we felt were directly affected by fracking in Ohio.

So that's the background part of the report that's probably news for a lot of you and we think that gives context to the testimony.

The next section of the report, which is the longest section of the report, just summarizes the testimony and refers folks to where they can see the full video tape if they want. Those video tapes also include the cross-examination of the witnesses done by the jurors.

We divided the testimony into two parts. The first was the testimony on the direct physical effects of fracking on the people who live beside those.
operations. And the second dealt with the public participation problems of Ohio law.

We think that the second item needed to be specifically singled out because, on the ground here in Ohio, the state's suppression of fracking information is a major problem and we think, especially in light of the language of Principle 10 of the Rio Declaration, the voting affected the public participation of Aarhus Convention discussion of governance by disclosure, since those things were so strong we really wanted to give focus to that and show the people of Ohio how their government is failing to meet anything close to those requirements.

Now both testimony sections, you know, fracking is a technical area and research on fracking has been exploding in the last years and rather than take a lot of time in that we just cited relevant portions of a document that I trust you're familiar with, a Compendium of Scientific, Medical and Media Findings Demonstrating Risk and Harms Of Fracking. This is produced by the Health Professionals of New York. This was used to support their moratorium on fracking. Also by the Physicians Of Social Responsibility. This gets updated, I think, every year.

So we put this into evidence and then really
focused from that point on on the personal stories
rather than on the technical data.

Now the witness statements I am not going to
go through them in anything specific. Here again we'll
have three of them in the second half of our
presentation today. A lot of commonalities came out
that I wanted to share with you. I think a lot of these
are not going to be very surprising.

The main commonality, of course, was how fully
the presence of a nearby fracking operations disrupted
people's enjoyment of their home and property and caused
great anxiety about the potential impacts on their
health.

The testimony was consistent on the following:
Being impacted by strong and noxious odors, loud
disruptive noises day and night, very strong vibrations
from the ground, frequent episodes of burning eyes,
burning lungs, frequent episodes of headaches and mental
confusion, even tremors, hand tremors, feelings of
vertigo, frequent skin rashes and odd metallic tastes in
people's mouths. Also extremely bright lights night and
day.

In Youngstown there is a trailer park of
several hundred people right beside a fracking
production well that has very bright lights upon its
production towers that even at midnight at night that
trailor park is as bright as the noon sun, night and
day.

Lots of episodes of people having increases in
their blood pressure which they believe was triggered by
stress living in these conditions.

A lot about earthquakes. Earthquakes are
almost unknown in Ohio but then fracking started and now
we have several thousand a year.

One of the witness statements will be a
geologist that will give you a lot of detail on that.
Earthquakes are particularly happenng in the Youngstown,
Ohio area in the northeast part of our state. They also
are almost everywhere where we have fracking.

The problems of fires and explosions at
fracking sites compounded by the fact that the emergency
responders to these fires have no current information,
either on what chemicals are on site or where the
chemicals are located on the site as they go in to fight
those fires.

There is also pervasive problems that almost
everyone testified about that they often have to simply
remain indoors to avoid these impacts. They're
essentially prisoners in their own homes. Children
can't go outside to play. The pets can't even go out.
Also there is a consistent theme about a drop in property values which are -- a consistent number put forth was about a 60% drop in property values if you're within a couple thousand yards of a fracking operation. So those are the general consistent comments that people made.

But also there was some specific focused presentations on some unique topics. One of them was the impact of fracking on forests. A lot of the southeast part of Ohio where fracking occurs is heavily forested. Our only federal national forest is in that area called the Wayne National Forest. And our US government, particularly under the current administration, is moving very quickly to open up that forest to fracking.

Also a lot of concern about impact on farmland. Farms are down there. A lot of these wells are isolated locations. Their only neighbors are farms and a lot of the testimony came from farmers who have to go outside day to day to work their farms when smell is virtually overpowering.

A lot of concern particularly from organic farmers. Organic farmers in this country are certified with that status. That status is very valuable to them financially. As the air continues to deposit chemicals
on their farm land there is a great deal of concern that
they will lose that certification.

    There's testimony on, of course, climate
change impacts and the special dangers of pipelines.
Pipelines are criscrossing our state. And there is a
special problem with something called compressor
stations.

    Periodically along a pipeline there is a
turbine that pressurizes the gas in the line to continue
to shoot it on its way. There is a lot of air pollution
problems that have been associated with these
facilities. A lot of bad gas odors and, frankly, a lot
of leaks.

    Now the second section on testimony addressed
the public participation problems. So I address those
briefly.

    There is virtually no effective public
participation in Ohio on the fracking production wells
where there is no federal program of any kind. There is
no advanced notice given to the public that a production
well has been applied for at the ODNR.

    If it was in an urban setting the concerns
that came out in the 1970 boom with all the suburban
areas in northern Ohio got fracking wells, there is a
new category of well in Ohio called an urbanized well.
And it depends on how many people around it. Those wells have some advanced notice but all the fracking wells are rural wells, no advanced notice. Now for the injection wells, because of the federal overlay, there is some notice. Requires just a newspaper notice that normally appears in the legal notices section of the newspapers which very few people read. Also it's to be published in a local newspaper general circulation and a lot of these rural counties don't have many newspapers so ODNR will pick a paper in the neighboring county and most of the people in that county actually get a newspaper from the big city 60-miles away. They never have any notice of a fracking well. Even if they have gotten notice there is a public comment period of only two weeks, just 14 days, that the ODNR will make let them make public comment. You can imagine these are very complicated in engineering how you're going to engineer safely an injection well. Also the geology, particularly in southeastern Ohio, there is very little of a data base on geologic information, especially after the first 100 to 200 feet from the surface of the ground. These wells go 9,000 to 12,000 feet down.
be had let alone something that can be assembled, get your expert together and have comments in this two week period.

Also there is no requirement for public hearings on these wells where people can ask questions. Early on in fracking ODNR had something that they called information meetings. These were something of their own creation and were very tightly controlled. Normally in a public hearing a person can get up, testify on the record, sometimes have their questions responded to and the whole audience hears these things.

At these information meetings, however, there are a dozen different stations and different tables in a large room. People are spread out to go to these different tables and asked individual questions about individual aspects of it. There is no time where the community comes together and can be addressed.

Also the police presence at these information meetings was large and very intimidating. There were even police dogs brought into one of these information meetings on fracking on the very last one held by ODNR.

ODNR, I mentioned this before to give you some detail, they're constantly in violation of the state's public records law. They're required to respond within a reasonable time. And reasonable is to be determined
by what's being asked for. Therefore, if you ask for a
lot of records, normally the courts say two weeks is
fine to respond in that time. If it's just one or two
documents you may have to supply them that day to
someone who requests them.

ODNR typically takes at a minimum of 10 weeks
to respond to a public records request. And this is a
situation where the appeal deadline on an injection well
permit where there are no appeals allowed for production
wells. For an injection well permit you have a 30 day
time limit. They don't publish the date of the
publication of the injection well permits so how are you
going to find out about it, get a copy of the permit,
get it to an attorney so that an appeal can be filed
within 30 days when it takes ten weeks to respond to a
public records request.

I've sued the ODNR at least four times now
because they were late in responding to records. Every
time the state has admitted to the violation, admitted
that it was much too late and paid the full fine that
Ohio law provides. That is $1,000.00. Whether it's one
document or 150 documents still the same $1,000.00
fine.

And ODNR is happy to pay that slap on the
wrist fine rather than go through the ordeal of
overhauling its public records program to make it responsive to the public.

I see we're kind of getting close to our time so I'll jump ahead to the report's Conclusion Section where our jurors made recommendations and it's stated on the very last page of the report.

Based on all the testimony they indeed found that violations of international law guaranteed rights had occurred. They recommended an immediate moratorium on all fracking activities in Ohio until a "full industry-independent, publicly funded, evidence-led-human rights impact assessment has been developed and published in Ohio."

And the jurors also found that because the evidence of impacts from fracking is so clear in Ohio and so strong they urged that such a study be undertaken immediately. Again, we put this report out in December and no such effort has been undertaken so far.

So that concludes my overview of the report and filling you in on what we're dealing with here in the State of Ohio in the USA.

I see that it's just like five minutes until we're done, even with the extra ten minutes that we were given, so if one has any questions I will be happy to address those or we can just break for lunch now and
gets back together at 1:00 Pacific time.

Any questions?

MR. LOUIS KOTZE: Rick, if I could jump in. And thank you for your presentation and also for the very detailed report which I have read. It's obvious that a huge amount of effort has gone into that and I do want to congratulate you on all of the efforts so far.

I've got two questions and they are probably related. When I read your report and what I hear from what you're saying here is that the issue is not only about government enforcement and industry compliance but there's also seemingly, to me, a real issue about access to courts and to judicial recourse.

So why has there not been litigation on this issue, as you said?

Is it because people could not access courts?

Is it because the laws prevented them actively?

Is it because they have little knowledge of judicial processes?

No money to litigate?

No proper counsel?

And it seems to me to be a very issue since, if people have adequate access to adequate judicial recourse, they already would have had an opportunity to
voice their concerns in these forums on these matters.

My second related question, if I may, is that in South Africa we know the term "state capture" very well although with the previous Jacob Zuma administration it was closely connected to the issue of corruption. The state being captured by corrupt forces.

Now our courts have played a hugely important role in confronting state capture to the point where it almost overstepped the sacred line of the separation of powers. So it seems to me that the US courts should and could have an equally important role in addressing regulatory capture, especially if one were to assume, as one should, that courts would play an important oversight role in keeping governments to account and making sure that they execute their duties diligently and according to the law.

So the question is, is why haven't the courts stepped up to this important duty?

Because they have not been asked to?

Because they are somehow powerless, which I doubt is the case.

Because they have not allowed such claims to become before them?

Thank you.

MR. RICK SAHLI: Yes, thank you, Louis.
You definitely got to the heart of the issue.

One of the main problems is what we are talking about a lot here which is these wells, the offenses against human rights, are occurring in the poorest, most politically vulnerable communities in the state of Ohio. These folks do not have funding to bring in attorneys, first level.

Second level. There is only two of us attorneys who have brought these cases in Ohio. There are hundreds and thousands of industry lawyers in Ohio. You can count the number of people who have ever represented an environmental group in Ohio on the fingers of a single hand.

There are legal impediments as well. For production wells there is a single permit required and historically that permit could be appealed to an administrative body called the Ohio Oil And Gas Commission, which has five members appointed the by governor who would hear that appeal.

But at the beginning of the fracking case, before any of us had really heard about it, in 2010 industry got an initial bill in that talked about well stimulation was authorized. That turned out to be fracking. But they used this comfortable phrase of well stimulation. That bill stripped away the ability to
appeal production well permits from the Oil and Gas Commission.

Now I can tell you that the people appointed to these things are as bad as can be. They're political folk. Several people from the industry itself. There is a member of the commission now whose main job is an oil and gas services company he's the guy who gets their clients. He's the guy who goes out and has dinner with folks and wants to hire their company. And, wow, what a nice calling card to say he's also the person who you may have to talk to to consider any action brought against them.

I brought some actions on injection well permits. Lost those on procedural grounds.

Big problem here again is we have only 30 days by statute to get that permit appealed to the Oil And Gas Commission. There is no publication of the permit when issued and even then half of the permit is considered to be the same type of permit that isn't liable to be appealed to this Oil And Gas Commission. That determination is what I lost my last appeal on.

Parts of the permit are going to divide this permit in two and say that parts that you're concerned about is not appealable.
Court, they're very close to industry. You normally look at those administrative tribunals as just a place to make your factual records and take it into the court system and have your errors of law ruled on. Our courts are getting caught up just as bad as our politicians are.

So that is the short answer. We're still looking for solutions to that. A lot more resources have to be made available, both to bring legal services to these communities but also to have a constant watch dog role over this agency to be able to access when these permits are issued.

So often I talk to folks and that 30-days has already gone and there's nothing left to be done. That 30-days is a jurisdictional requirement.

With that I think I've exhausted my time and I'll exhaust Tom Kerns if I don't stop.

MR. LOUIS KOTZE: Thank you.

MR. RICK SAHLI: Thank you Louis.