

ATHENS, OHIO

YOUNGSTOWN, OHIO

PRE-TRIBUNAL BRIEFS, PART I

MAY 14, 2018 11:00-12:00

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

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

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

18 And when fracking started in Ohio in 2011 Ohio
19 was still in the grips of the terrible recession that
20 began in this country in 2008. And our political class
21 has always been very close to the oil and gas industry,
22 as they were to the coal industry before that,
23 absolutely embraced fracking with a passion as a
24 potential way out to get some new economic development
25 going.

1 To the extent that the newspapers have covered
2 the stories at all they've only covered it in the sense
3 that so much new investments coming in, so many more
4 millions of dollars and here's the gross numbers on the
5 amount of oil or natural gas that Ohio is now producing
6 due to fracking.

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

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

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

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

5 We have an Ohio EPA but their authority over
6 oil and gas has been stripped away and given to ODNR.
7 And ODNR is a notorious captive regulator, has been for
8 40-years by the coal industry and it has been for the
9 oil and gas industry almost as long. They're notably
10 hostile to citizens, dependable allies of the oil and
11 gas industry.

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

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

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

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

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

19 Now this testimony was all recorded on video,
20 the web by the Buckeye Environmental Network. That is
21 an oversight group for grassroots groups across Ohio.
22 It's on the youtube page and Facebook page of the
23 Buckeye Environmental Network. It's also summarized in
24 our report. That report is available on the PPT web
25 site.

1 In addition we had a panel of what we call
2 jurors listening to the testimony. And the role of the
3 jurors was to ask questions, cross-examine the
4 witnesses, to fill in any gaps in the information
5 chain.

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

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

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

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

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

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

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

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

4 And you may not believe this but in the 1880s
5 the state of Ohio was the world's leading oil producer,
6 1880s. That was when Standard Oil Corporation, that was
7 John Rockefeller's big corporation that later became the
8 Standard Oil Trust, it was founded. It was founded in
9 Cleveland, Ohio, Ohio's largest city.

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

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

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

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

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

20 And also Ohio's being crisscrossed by three
21 new pipelines, federally regulated pipelines, that the
22 state has no say in. And when those pipelines open we
23 expect a lot of those additional 500 wells to come
24 on-line. So we're going to have 3,000 horizontally
25 fracked wells now pretty much guaranteed.

1 So our history section then goes into
2 separately about the unique problems Ohio has with the
3 injection disposal wells. I trust you're familiar with
4 injection disposal wells. They take all the highly
5 contaminated waste water that comes back up out of these
6 wells when the injection of fluids ends, they're heavily
7 contaminated with the toxic chemicals involved in the
8 fracking process, and they're simply reinjected back
9 down a mile or more where the theory is that this is
10 going to stay there until the end of time.

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

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

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

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

11 So we had one person testify that they spent
12 24-straight hours in front of their house watching
13 tanker trucks go by. One went by on the average of 13
14 minutes all night and all day.

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

21 Ohio's program, oil and gas, started itself in
22 the second of our booms in 1961. This happened in an
23 area about 50 miles north of where I am now in Columbus
24 and there was a large pool of oil and just as soon as
25 one of those new oil wells found some oil immediately 5,
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1 6, 10, 12 additional wells would be drilled within just
2 a couple hundred feet of the first well, sometimes in
3 every back yard of a neighborhood.

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

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

22 When our next boom started in the 1970's this
23 program just had 27,000 -- I'm sorry, 27 employees for
24 the entire state. And at that time there were close to
25 50,000 old wells that those 27 people had to oversee.
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1 So already it was a terribly underresourced program.
2 Some of these wells wouldn't be inspected for decades.

3 But with the next boom that started in 1978 is
4 when Ohio had its last environmentally sympathetic
5 governor. He was elected in 1981. He expanded the
6 program by 1986, the height of that boom, to 124
7 employees. And to the great dismay of the industry the
8 program then had an enforcement office specifically with
9 8 special investigators just to do enforcement cases.

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

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

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

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

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

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

15 1991 a 42% cut in staffing. And that
16 enforcement office I talked about was the first thing
17 cut. It has never been replaced. There hasn't even
18 been an enforcement coordinator position since and ever
19 since fracking started not a single case has been
20 referred for prosecution in one of our state courts.
21 And that's after we've had plenty of spills, plenty of
22 fracking fluid spills in the waterways. We've had
23 explosions and none of this has lead to either a civil
24 or criminal enforcement type action. In fact our state
25 has not even published and publicly released statistics
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1 on its enforcement efforts.

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

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

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

1 We have zoning laws that says where you can
2 have your industry, where you can have your residential
3 areas. You have agricultural areas that have
4 traditionally been the main determinant of land use in
5 Ohio but oil and gas is completely cut out of that and
6 it could go wherever the company filed an application to
7 locate their well.

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

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

19 ODNR announced that it was going to have to
20 increase the severance tax. The governor proposed it.
21 They said they needed 90 inspectors to properly run the
22 program with fracking. The severance tax increase was
23 thrown out of the legislature but reintroduced twice
24 since. Each time the industry has blocked it with their
25 friends in our legislature.

1 So currently the severance tax is .20 cents a
2 barrel and that is one of the lowest in the country.
3 And those resources obviously aren't sufficient to do
4 the job. The program is definitely struggling to make
5 even a pretense of good regulation.

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

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

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

21 It uses just a simple two page application.
22 That is all it requires on production wells, fracking
23 production well, a two page application. It approves
24 those permits in just a week or two and we have yet to
25 see a single fracking production well permit denied. We
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1 have yet to see a single injection permit denied.

2 I want to spend a little bit time also talking
3 about the injection well program that is so important in
4 Ohio. There is a small federal component who regulate
5 wells injection in the United States. It comes out of
6 the Federal Safe Drinking Water Act. It was adopted in
7 the 1970s. All injection wells have to meet that law's
8 requirements. And they have five different classes of
9 wells. And Class II wells are the oil and gas waste
10 wells. So the ones that are of concern to us here.

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

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

24 The only thing that was done was a simple and
25 very vague guidance document was adopted by US EPA when
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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 In addition Ohio was given authority to do
5 it's injection wells on the basis of what's called a
6 simple Memorandum Of Understanding that is 12 pages
7 long. That was adopted also in 1983. That has never
8 been amended since.

9 So injection wells are controlled by a 35-
10 year old program that has not been improved a bit since
11 and critically no improvements were made to it after
12 fracking started in the United States. There is some US
13 EPA oversight but it's the weakest oversight of any
14 program that US EPA oversees.

15 In 2010 the Department of Natural Resources
16 was able to update to the US EPA its program statistics
17 by submitting one and one-half pages of information to
18 them. That information did not include the fact
19 anywhere that there were only three staff members
20 dedicated to the injection well program in the state of
21 Ohio at that time.

22 US EPA does what they call audits of the
23 program. And when I first got involved with this I got
24 the two most recent audits, 2005 and 2009. They were
25 fairly brief. What was really sad was that there not
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1 much detail, very vague. And comparing the two it
2 became apparent the 2009 audit was a simple cut and
3 paste tool from the 2005 audit. Over 95% of the wording
4 was identical between the 2005 and the 2009 audits. This
5 is all talked about in reports and we have links that
6 you can see in the report to get you to that data.

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

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

19 Let me tell you this little story. 2014 we
20 had our public records request to the Department Of
21 Natural Resources. And they gave to us about a 15-page
22 document which is what was called a press strategy that
23 had been done by the very highest end of the agency.
24 The press strategy is right at the top in our agencies.

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

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

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

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

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

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

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

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

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

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

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

18 Now because of that ratification the covenant
19 has treaty status. It has some legal significance under
20 American law. But since none of the other covenants,
21 and that would include the Covenant On Economic, Social
22 and Cultural Rights and the Environmental Declarations
23 of Stockholm, Rio and Aarhus, none of them have been
24 approved by the US Senate. So their formal status is
25 rather questionable in this country.

1 I didn't want to spend a lot of time on that
2 and the way I dealt with that issue and the way I think
3 is an effective way for other groups to consider it in
4 their doing their reports, would be to explain these
5 covenants more in the terms of setting moral and ethical
6 standards set by the global community as a whole.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21 There is also pervasive problems that almost
22 everyone testified about that they often have to simply
23 remain indoors to avoid these impacts. They're
24 essentially prisoners in their own homes. Children
25 can't go outside to play. The pets can't even go out.

1 Also there is a consistent theme about a drop
2 in property values which are -- a consistent number put
3 forth was about a 60% drop in property values if you're
4 within a couple thousand yards of a fracking operation.
5 So those are the general consistent comments that people
6 made.

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

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

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

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

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

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

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

22 If it was in an urban setting the concerns
23 that came out in the 1970 boom with all the suburban
24 areas in northern Ohio got fracking wells, there is a
25 new category of well in Ohio called an urbanized well.
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1 And it depends on how many people around it.

2 Those wells have some advanced notice but all
3 the fracking wells are rural wells, no advanced notice.

4 Now for the injection wells, because of the
5 federal overlay, there is some notice. Requires just a
6 newspaper notice that normally appears in the legal
7 notices section of the newspapers which very few people
8 read. Also it's to be published in a local newspaper
9 general circulation and a lot of these rural counties
10 don't have many newspapers so ODNR will pick a paper in
11 the neighboring county and most of the people in that
12 county actually get a newspaper from the big city 60-
13 miles away. They never have any notice of a fracking
14 well.

15 Even if they have gotten notice there is a
16 public comment period of only two weeks, just 14 days,
17 that the ODNR will make let them make public comment.

18 You can imagine these are very complicated in
19 engineering how you're going to engineer safely an
20 injection well. Also the geology, particularly in
21 southeastern Ohio, there is very little of a data base
22 on geologic information, especially after the first 100
23 to 200 feet from the surface of the ground.

24 These wells go 9,000 to 12,000 feet down.

25 There is virtually no meaningful geologic data that can
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1 be had let alone something that can be assembled, get
2 your expert together and have comments in this two week
3 period.

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

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

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

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

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

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

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

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

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

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

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

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

2 Any questions?

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

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

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

16 Is it because people could not access courts?

17 Is it because the laws prevented them
18 actively?

19 Is it because they have little knowledge of
20 judicial processes?

21 No money to litigate?

22 No proper counsel?

23 And it seems to me to be a very issue since,
24 if people have adequate access to adequate judicial

25 recourse, they already would have had an opportunity to
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1 voice their concerns in these forums on these matters.

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

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

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

19 Because they have not been asked to?

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

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

24 Thank you.

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

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

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

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

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

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

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

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

22 Parts of the permit are going to divide this
23 permit in two and say that parts that you're concerned
24 about is not appealable.

25 Our courts, particularly our Ohio Supreme
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1 Court, they're very close to industry. You normally
2 look at those administrative tribunals as just a place
3 to make your factual records and take it into the court
4 system and have your errors of law ruled on. Our courts
5 are getting caught up just as bad as our politicians
6 are.

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

13 So often I talk to folks and that 30-days has
14 already gone and there's nothing left to be done. That
15 30-days is a jurisdictional requirement.

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

18 MR. LOUIS KOTZE: Thank you.

19 MR. RICK SAHLI: Thank you Louis.

20

21 [youtube.com/watch?v=Kv14ZBXn_WQ]

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24

25