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EXECUTIVE SESSION
COMMITTEE ON OVERSIGHT AND
GOVERNMENT REFORM,
U.S. HOUSE OF REPRESENTATIVES,
WASHINGTON, D.C.

INTERVIEW OF: PHILIP COONEY

Monday, March 12, 2007

Washington, D.C.

The deposition in the above matter was held at B-372
Rayburn House Office Building commencing at 1:10 p.m.

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Appearances:

For Philip Cooney:

MARK H. TUOHEY
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The Willard Office Building
1455 Pennsylvania Avenue NW, Suite 600
Washington, D.C. 20004-1008

For Committee on Oversight and Government Reform:

JEFF BARAN, COUNSEL
GREGORY DOTSON, COUNSEL
MICHAEL GORDON, COUNSEL
ALEXANDRA TEITZ, ESQ., COUNSEL
ERIC JONES, ESQ., COUNSEL
JENNIFER SAFAVIAN, MINORITY CHIEF COUNSEL
A. BROOKE BENNETT, MINORITY COUNSEL
KRISTINA M. HUSAR, MINORITY PROFESSIONAL STAFF MEMBER

1 Mr. Dotson. Good afternoon, Mr. Cooney.

2 On behalf of the Committee on Oversight and Government
3 Reform, I thank you for being here today. This proceeding is
4 known as a "deposition." This deposition is part of the
5 committee's investigation into allegations of political
6 interference with government climate change work. The person
7 transcribing this proceeding is a House reporter and Notary
8 Public -- well, not a Notary Public -- authorized to
9 administer oaths. The Notary Public has arrived and will now
10 place you under oath.

11 [Witness sworn.]

12 Mr. Dotson. My name is Greg Dotson. I have been
13 designated as majority counsel for the deposition. I am
14 accompanied by Jeff Baran, and he is also designated as
15 majority counsel for the deposition. There are several other
16 majority staffers here who will now identify themselves.

17 Mr. Gordon. Michael Gordon.

18 Ms. Teitz. Alexandra Teitz.

19 Mr. Jones. Eric Jones.

20 Mr. Dotson. Would minority counsel please identify
21 themselves for the record?

22 Ms. Safavian. Jennifer Safavian.

23 Ms. Bennett. Brooke Bennett.

24 Ms. Husar. Kristina Husar.

25 Mr. Dotson. Before beginning with the questioning, I

1 would like to go over some standard instructions and
2 explanations regarding the deposition.

3 Mr. Cooney, because you have been placed under oath,
4 your testimony here today has the same force and effect as if
5 you were testifying before the committee. If you knowingly
6 provide false testimony, you could be subject to criminal
7 prosecution for perjury -- making false statements -- or
8 other related offenses. Do you understand this?

9 The Witness. I do.

10 Mr. Dotson. Is there any reason you are unable to
11 provide truthful answers to today's deposition?

12 The Witness. No.

13 Mr. Dotson. Under the committee's rules, you are
14 allowed to have an attorney present to advise you.

15 For the record, do you have an attorney, who represents
16 you, appearing with you today?

17 The Witness. I do.

18 Mr. Dotson. Would counsel for Mr. Cooney please
19 identify yourself for the record?

20 Mr. Tuohey. Yes. My name is Mark Tuohey. I am a
21 partner with Vinson & Elkins in Washington, D.C., and I
22 represent Mr. Cooney. Thank you.

23 Mr. Dotson. The deposition will proceed as follows:

24 I will ask you questions regarding the subject matter of
25 the committee's investigation for up to 1 hour. When I am

1 finished, minority counsel has the opportunity to ask you
2 questions for up to 1 hour. Additional rounds of questioning
3 alternating between the majority and the minority counsel may
4 then follow until the deposition is completed.

5 The reporter will be taking down everything you say, and
6 we will make a written record of the deposition. You need to
7 give verbal, audible answers because the reporter cannot
8 record nods or gestures.

9 Also, in order for the record to be clear, please wait
10 until I finish each question before you begin your answer,
11 and I will wait until you finish your response before asking
12 you the next question. Do you understand?

13 The Witness. Yes.

14 Mr. Dotson. If you don't hear a question or don't
15 understand a question, please say so, and we will repeat or
16 rephrase it. If I ask you about conversations or events in
17 the past and you are unable to recall the exact words or
18 details, you should testify to the substance of such
19 conversations or events to the best of your recollection. If
20 you recall only a part of a conversation or of an event, you
21 should give us your best recollection of those events or
22 parts of conversations that you do recall.

23 Do you understand?

24 The Witness. I do.

25 Mr. Dotson. This is a congressional proceeding, and as

1 such, it is different in many respects from a civil or from a
2 criminal proceeding. The rules of evidence that apply in
3 judicial proceedings, such as the rules against hearsay and
4 speculation, are not applicable in congressional proceedings.
5 Generally, the committee is entitled to obtain the
6 information it needs to fulfill its oversight and legislative
7 responsibilities unless the information is protected by a
8 constitutional privilege such as the right against
9 self-incrimination.

10 Mr. Cooney, do you have any questions before we begin
11 the deposition?

12 The Witness. I do not.

13 Mr. Tuohey. Counsel, I do have a point, if I may.

14 It is my understanding that counsel for the Council of
15 Environmental Quality has requested that he be present, and
16 it is my understanding he will not be permitted to be
17 present. I am not going to argue the merits of that.

18 My position is that I think it would be appropriate for
19 counsel to be here because of the privilege issues, but that
20 is your call. However, I did receive -- and I will give you
21 a copy -- this morning of a letter from Dinah Bear, General
22 Counsel of the Council of Environmental Quality, which in sum
23 and substance -- and I am happy to read it if you want me
24 to -- but in sum and substance, it asks that I raise
25 objections where and if necessary to protect either the

1 deliberative process privilege or the executive privilege,
2 and I will do so if I deem it imperative, because Mr. Cooney
3 is not in a position to waive the privilege. It may not be
4 necessary, but I will give you a copy of the letter for the
5 record, and I will raise objections and advise Mr. Cooney
6 appropriately if the privilege issue is implicated in any way
7 that I think it needs to be addressed.

8
9 [Exhibit No. 1
10 was marked for identification.]

11
12 Mr. Tuohey. That is the only point I wanted to make.

13 The only other point I wanted to make was that -- and I
14 made a statement earlier -- I think, in fairness and out of
15 respect for you, Mr. Cooney has a 6:05 flight back to Dallas
16 tonight, so because the understanding was this was to be a
17 3-hour interview, give or take, not exact, we intend to have
18 him take that flight, so I just want to -- I think you are
19 smart in having rounds of an hour, and I think we probably
20 will be finished long before that, but I just want to let you
21 know he has a flight at 6:05 tonight back to Dallas.

22 Ms. Safavian. Two points on what Mr. Tuohey just
23 raised: one on agent's counsel being present. I have a
24 letter that I want to have be part of the record from
25 Mr. Davis where he also asks that agency counsel be present

1 during this deposition, and I have copies that I am happy to
2 pass out to everyone.

3 Mr. Cooney, if you would like a copy.

4 [Exhibit No. 2
5 was marked for identification.]

6
7 The Witness. Thank you.

8 Ms. Safavian. Sure.

9 I wanted to make that point and put it on the record.

10 Also, with regard to the timing of this, I understand
11 that there is obviously time limitations because the witness
12 needs to catch a flight, and we are going to do rounds, so I
13 suggest perhaps, right now, that we start off with 1 hour
14 each and see what time it is and see how much more we both
15 have to do before we decide how to split the rest of the time
16 up because I understand 4:00, give or take a little bit, is
17 what you are saying.

18 Mr. Tuohey. I'm not going to pull the curtain down like
19 we have to be out of here by 4:30.

20 Ms. Safavian. Sure, and we may be done. So why don't
21 we start with that, 1-hour rounds, and then, before we start
22 our next round, we'll determine how much more time we have,
23 that the witness has, and we will divide that up equally.

24 Mr. Dotson. On a couple points, first, on the issue of
25 CEQ, CEQ, as you know, is not invited to this deposition, and

1 since this is a deposition, pursuant to the House Rules, they
2 are actually prohibited from attending under the committee
3 rules. However, Ted Boling, the Deputy General Counsel for
4 CEQ, is waiting in the room outside this door, and he is
5 available should any issues arise for which you would like to
6 consult with him in order to ensure that, to the maximum
7 extent possible, you are able to answer questions.

8 Mr. Tuohey. Okay. Fine.

9 Ms. Safavian. And just to be clear, the committee
10 rules, while they do state that, Greg, there were discussions
11 at the markup of the committee rules where it was explained
12 where there could be exceptions made to that, that it is not
13 a fast and steady rule, so I just want to make sure that that
14 is on the record also.

15 Mr. Dotson. With regard to the 1-hour rounds, I think
16 we do need to get started. We have a lot of material to
17 cover, and I think -- I agree that we'll say that we will
18 proceed in 1-hour rounds, and then we can agree to modify it
19 as appropriate.

20 Ms. Safavian. Well, certainly, if he has to leave at
21 4:30, I don't want to lose part of my time if he has to leave
22 to catch a flight. So, if we each only get an hour and a
23 half or an hour, 45 --

24 Mr. Dotson. If we haven't covered the material by the
25 time, we could continue on a subsequent day, so that is an

1 option as well.

2 Ms. Safavian. Of course.

3 Mr. Tuohey. One other point if I may.

4 There is going to be some reference in response to your
5 questions, questions that I anticipate you will be asking,
6 with respect to documents, in particular, documents of the
7 EPA report and several reports issued by various branches of
8 the Executive Branch of the Government, which I am sure you
9 have copies of -- I have glossies of those reports here if
10 need be -- so that the witness can be responsive to your
11 questions, he has made a chart, a copy of which I will show
12 you here, of different pages in the EPA report which are
13 particularly of interest and, I know, are as to the nature of
14 your questions, and he may refer to this chart from time to
15 time in his testimony, and I just want to let you know. They
16 are simply pages and paragraphs.

17 The Witness. References to pages in the
18 National Academy of Sciences' Report of June 2001.

19 Mr. Tuohey. So he will make that clear. We will make
20 it very clear what he is referring to. Okay. Thank you.

21 Mr. Dotson. Okay. Great.

22

23

EXAMINATION

24

BY MR. DOTSON:

25

Q Mr. Cooney, would you please state your full name

1 for the record.

2 A Philip Andrew Cooney.

3 Q What is your home address?

4 A [REDACTED]
5 [REDACTED]

6 Q Where are you currently employed?

7 A ExxonMobil Corporation.

8 Q What is your current position?

9 A My title is Corporate Issues Manager.

10 Q Where did you work before ExxonMobil?

11 A From June 2001 through, I think it was, June 10th,
12 2005, I worked at the White House Council on Environmental
13 Quality as the Chief of Staff, and just to be clear, I
14 believe I began on June 25th of 2001.

15 Q What were your responsibilities as Chief of Staff?

16 A Well, I will try to be concise here.

17 I had broad managerial responsibilities for the
18 preparation of budget, the implementation of budgets, hiring,
19 firing, a whole host of managerial responsibilities within
20 the Agency, but the Agency's mission really is to guide the
21 Federal Government in its compliance with the National
22 Environmental Policy Act, and it is also to serve the
23 President's Policy Development Coordination Office within the
24 White House on Energy, Environmental and Natural Resource
25 Policies, and we had -- you know, I had a staff -- maybe

1 there were 22 full-time staff, something like that, but on
2 occasion, at different times through the administration,
3 there were various interagency task forces where detailees
4 from agencies would come to the White House CEQ to work on
5 discrete matters. We had a NEPA task force that was looking
6 at reforming and improving the NEPA Program. We had a task
7 force on oceans policy and working with the Oceans Commission
8 to develop policies for the administration with respect to
9 oceans, really a huge subject area. Those are examples of
10 the types of task forces that we had at the White House. We
11 also had, you know, detailees at different points from
12 different agencies working on different reports or efforts.

13 Mr. Tuohey. The question is about your
14 responsibilities, not the whole of the Agency.

15 The Witness. Well, in a way, because I was Chief of
16 Staff, I did sort of look across the Agency, but you know,
17 every day was different. I had a lot of managerial
18 responsibility. One essential element of my job was to be
19 sure that priority issues reached the chairman's attention
20 and that our office assignments were made appropriately for
21 reviewing Federal legislation, Federal testimony through the
22 OMB review process, reviewing documents from the staff
23 secretary's office in the White House. If the President were
24 going to give a speech or issue a policy statement or issue a
25 policy book or a fact sheet, you know, all the White House

1 office generally reviewed those. So we would -- you know, I
2 would make sure that our office was -- that someone was
3 reviewing it, things like the Council of Economic Advisors.
4 The economic report of the President comes out annually.
5 That goes to all White House offices for review and
6 clearance, so I would make sure that one or two or three
7 people were reviewing it but primarily managerial. And
8 really, we had different emphases on different issues
9 throughout the 4 years, which would consume varying amounts
10 of my time. That is the best description I can give of my
11 responsibilities.

12 EXAMINATION

13 BY MR. DOTSON:

14 Q Where did you work before working at the Council on
15 Environmental Quality?

16 A I worked at the American Petroleum Institute from
17 January 1986 through, you know, June 2001 when I took the
18 position at the White House, Council on Environmental
19 Quality.

20 Q What positions did you hold there?

21 A My initial position was Junior Attorney, and that
22 was a position that I took after having worked for an
23 administrative law judge at the Department of Labor on a
24 whole host of issues -- black lung and longshoremen's
25 benefits, things like that. So, when I took this job, it was

1 in a different area with the trade association, and I really
2 didn't know what I was getting into necessarily, but I went
3 through the ranks of the Office of General Counsel there, and
4 we had about 20 lawyers in the Office of General Counsel at
5 the American Petroleum Institute, and I was a junior
6 attorney. Then I was a senior attorney, and that was
7 probably for my first 13 years there. I just worked in the
8 Office of General Counsel on a whole host of
9 regulatory/legislative issues. I cannot remember the exact
10 year, but at one point, there was a transition in API's
11 leadership. We got a new president, and there was a
12 reorganization, and I went, and I had the title of Counsel to
13 the Executive Vice President of the American Petroleum
14 Institute, but I was working on a lot of organizational
15 transitional issues maybe for a year and a half. And then,
16 in my last year, I was what they call the team leader of the
17 Climate Team at the American Petroleum Institute. And the
18 way we were organized was that, on priority issues,
19 multidisciplinary teams within the API, were assembled to
20 work on priority issues, you know, for the member companies,
21 and those teams would have scientists, economists, lobbyists,
22 communicators, press people, a team leader sort of steering
23 things, but they were advocacy teams, multidisciplinary teams
24 that were assembled to work on issues.

25 Q As team leader of the Climate Team, what were your

1 responsibilities?

2 A Well, to implement a program of advocacy for the
3 member oil companies. To the extent that they had a
4 consensus position on climate change issues, we, the team,
5 worked in different advocacy realms to advance those
6 positions, so we would undertake media outreach. We would
7 have lobbyists who would come up on the Hill. As you must
8 know, there were a whole host of hearings surrounding the
9 Kyoto Protocol at that time, and we had people cover those
10 hearings, that sort of thing really.

11 Q For the record, I am going to ask you about your
12 educational background.

13 A Yes.

14 Q Please state from where and when you earned your
15 undergraduate degrees.

16 A My undergraduate degree was earned from the
17 University of Richmond in 1981.

18 Q And what was your degree?

19 A I had a double major in Economics and Political
20 Science.

21 Q Were college-level science courses required as part
22 of these degrees?

23 A Yes, they were.

24 Q And what college-level science courses did you
25 take?

1 A Well --

2 Mr. Tuohey. Just, in general, if you remember.

3 The Witness. I believe it was physics that I took to
4 meet the requirement for the Liberal Arts degree, but I don't
5 really remember.

6

7 BY MR. DOTSON:

8 Q Have you taken any postgraduate-level science
9 courses?

10 A Well, I went -- I have a law degree --

11 Q I am going to ask you in a moment about that.

12 A Okay. So, in some cases, law courses cover
13 scientific issues, but no, I didn't take scientific courses,
14 per se, postgraduate.

15 Q You did not take postgraduate-level science
16 courses?

17 A No, but I took legal classes, obviously, that had
18 the elements --

19 Mr. Tuohey. So the answer is, no, you did not, okay?

20 The Witness. Okay. No. Okay. No.

21

22 BY MR. DOTSON:

23 Q Please state the institution from which you earned
24 a law degree and the year in which you received it.

25 A Villanova University, 1984.

1 Q Did you have an area of focus in your study of law?

2 A Not really. No, not really.

3 Q Please state the institution from which you earned
4 an advanced legal degree and the year in which you received
5 it.

6 A In 1989, I received a Master's in Legal Taxation
7 from Georgetown University.

8 Q Now I am going to ask you about your employment at
9 the American Petroleum Institute. So the record is clear, we
10 will sometimes refer to the American Petroleum Institute as
11 "API."

12 Is it accurate that, in the last position you held at
13 API, you were the API staff member, the lead API staff member
14 on the issue of climate change?

15 A I was the team leader. But API had a president and
16 other senior officials who were of higher rank than I who
17 spoke to the climate change advocacy issues.

18 Q Please describe your responsibilities in this
19 position.

20 A Again, it was to coordinate the work of a
21 multidisciplinary team on advocacy on climate change.

22 Q What were your duties comprised of on a day-to-day
23 basis?

24 A You know, there are elements of my job that I
25 remember, you know, public policy jobs.

1 Mr. Tuohey. Just give him your best recollection,
2 period. Just give him your answers.

3 The Witness. Well, on some days, we would attend a
4 hearing, and we would write up a report of the hearing, and
5 we would send it out to the members for their information.
6 On some days, we would go -- we had planned to go and meet
7 with an editorial board of a major newspaper and give
8 positions -- give the industry's positions, particularly
9 about the Kyoto Protocol, which was very controversial at the
10 time. The team would meet sometimes. You know, we would
11 communicate and put together a "to do" list that people were
12 going to do, and someone was going to draft a letter to the
13 editor on behalf of the institute, responding to some
14 editorial or column somewhere. Sometimes we would prepare
15 talking points or deliver third-party studies to committees
16 on the Hill about, say, the economic impacts of the Kyoto
17 Protocol. The lobbyists would make visits. They would plan
18 visits. They would divide responsibilities. It was just
19 general day-to-day advocacy work, and I coordinated our
20 team's implementation of those efforts.

21
22 BY MR. DOTSON:

23 Q Is it accurate to say that your job was to help
24 ensure that any governmental actions taken relating to
25 climate change were consistent with the goals of the American

1 Petroleum Institute?

2 A Yes.

3 Q Was climate change an important issue for API?

4 A It was.

5 Mr. Dotson. I would like to turn to our first document.
6 I will ask the reporter to -- I would like to ask the
7 reporter to mark the document.

8 Ms. Safavian. Do you want to mark that 3 since these
9 are 1 and 2?

10 Mr. Dotson. Ah, yes.

11 [Exhibit No. 3
12 was marked for identification.]

13

14 BY MR. DOTSON:

15 Q Exhibit 3 is an API document dated October 26th,
16 1999. It is a fax from you and David Deal of API to numerous
17 representatives of other trade associations; is that correct?

18 Mr. Tuohey. Take a look, and read it on both pages,
19 first, starting down here.

20 Do you recall the question?

21 The Witness. I don't recall the question.

22 Mr. Tuohey. Just read back the question or say it
23 again, Greg.

24

25 BY MR. DOTSON:

1 Q Exhibit 3 is an API document dated October 26th,
2 1999. It is a fax from you and David Deal of API to numerous
3 representatives of other trade associations; is that correct?

4 A Yes.

5 Q In this fax, you are inviting other trade
6 association representatives to a meeting at the API on
7 November 30th, 1999, to discuss a petition filed at EPA,
8 seeking to regulate carbon dioxide and other greenhouse
9 gases; is that correct?

10 A I am sorry. I was reading while you were speaking.
11 What is the question again?

12 Q The question is that, in this fax, you are inviting
13 other trade association representatives to a meeting at the
14 API on November 30th, 1999, to discuss a petition filed at
15 EPA, seeking to regulate carbon dioxide and other greenhouse
16 gases; is that correct?

17 A That is correct.

18 Q Did this meeting occur?

19 A In all likelihood, it occurred. If five people
20 couldn't make it, we might have rescheduled it. This is
21 something that happened 8 years ago, so I don't want to --

22 Mr. Tuohey. Do you know whether it occurred, yes or no?

23 The Witness. Certainly, an organizational meeting
24 occurred at API. I don't know if it happened on that exact
25 date. I don't know if it came off or not.

1

2

BY MR. DOTSON:

3

Q And you don't know if all of the attendees on that list attended?

4

5

A I don't know.

6

Q Do you know who did attend? Do you have a recollection of who definitely attended?

7

8

A No, I don't. I remember a big meeting room. We got a big meeting room because there were a lot of people, and I remember we hosted a meeting, but I do not remember faces and names around the room.

9

10

11

12

Q If you were to assign a rough number to the number of attendees, what would it be?

13

14

Mr. Tuohey. If you are able to recall. If you aren't, you aren't, and say so.

15

16

The Witness. Let me just pick a number, and it is arbitrary, and it is based upon -- just if I am picking a rough number like your question asked, I would say 20.

17

18

19

20

BY MR. DOTSON:

21

Q And do you recall any specific attendees at the meeting?

22

23

A I just don't have the strength of recollection to see faces around the room. There were meetings about this topic, but I do not remember one from the other or who. I

24

25

1 just don't remember a face in the room.

2 Q In your mind, what was the purpose of this meeting?

3 Mr. Tuohey. "This meeting" meaning the October 26
4 meeting? Excuse me, the November 30th? Do you remember a
5 meeting on November 30th, that day?

6 The Witness. Well, as I said, I don't remember that it
7 specifically occurred that day.

8 Mr. Dotson. But he recalls the existence of a meeting,
9 whether or not it was precisely on that date.

10 Mr. Tuohey. Yes, he said there were a number of
11 meetings on the issue.

12 The Witness. Sort of a preliminary meeting. In this
13 memorandum, I state our view that this is a development of
14 potential importance in the climate change area, and I think
15 what we were trying to gauge -- and I really am speculating,
16 so maybe I should stop.

17 Mr. Tuohey. Then don't speculate.

18 The Witness. I will not speculate.

19

20 BY MR. DOTSON:

21 Q You have no recollection of what the purpose of
22 this meeting was?

23 A It was to -- my recollection is as follows: It was
24 to share and collect the judgments of how other people
25 reviewed the importance of this petition.

1 Q I believe the fax talks about the potential of
2 responding on a joint or on an individual basis.

3 Was there a discussion about responding on a joint or on
4 an individual basis?

5 A I don't recall anything specifically. I think our
6 initial objective was to see if people cared. Did people see
7 this as an important development on the policy of global
8 climate change? So I do not recall whether we got to the
9 next steps or anything like that.

10 Q Did you think it was an important development?

11 A I did.

12 Q Was it part of your job as an employee of API to
13 organize a response of the other trade associations to this
14 development?

15 A Not necessarily and not so literally. My job at
16 the API was to reflect the policy guidance that I received
17 from my members on things, and so I didn't have an
18 independent -- so I didn't necessarily have an independent,
19 immediate responsibility to respond. I had to know what my
20 members thought.

21 Q Do you recall if organizing this meeting was your
22 idea, or did someone at API direct you to do it?

23 A I do not recall.

24 Q Okay. We are finished with that exhibit.

25 A I was --

1 Mr. Tuohey. You've answered the question, Phil.

2 Excuse me a second.

3 Mr. Dotson. I will ask the reporter to mark this
4 exhibit.

5 [Exhibit No. 4
6 was marked for identification.]

7

8 BY MR. DOTSON:

9 Q Exhibit 4 is a document summarizing an agenda item
10 for a meeting of the API Climate Change Steering Group; is
11 that correct?

12 Mr. Tuohey. Let him take a look at the document if you
13 are going to ask him about the substance of it.

14 Mr. Dotson. I am.

15 The Witness. November 10th.

16 Mr. Tuohey. Finished?

17 The Witness. I am finished.

18 Mr. Tuohey. What was your question?

19

20 BY MR. DOTSON:

21 Q This is an API document summarizing an agenda item
22 for the meeting of the API Climate Change Steering Group; is
23 that correct?

24 A It appears to be what you describe.

25 Q The committee has reason to believe that you

1 prepared this document. Did you prepare this document?

2 A I don't -- I don't recall preparing it.

3 Q Would you have been the API staff member to have
4 prepared this document for a November 10th, 1999, meeting?

5 A It would have been likely, but as you know, the
6 Assistant General Counsel, David Deal, was on that initial
7 invitation, and I just can't really recall who held the pen
8 to draft up this action item issue paper, whether I wrote it
9 or whether someone else wrote it. I don't -- I don't
10 remember writing it.

11 Q Whether or not you wrote this document, you would
12 have reviewed this document and approved it; is that correct?

13 A I would have approved it to send out to our members
14 along with an agenda.

15 Q And you would have presented this at the meeting;
16 is that correct?

17 A Not necessarily. David Deal could have presented
18 it to the members. I do not recall who presented it.

19 Q Are there other API staff who could have presented
20 it?

21 A Well, we had a legal office, and we had lawyers
22 assigned to work -- assigned to provide time to the Climate
23 Team, and so this is primarily a legal proceeding, so someone
24 in the Office of General Counsel could very well have managed
25 this element of the agenda.

1 Q Ultimately, the preparation and review and approval
2 of this document was your responsibility?

3 Mr. Tuohey. Is that a question or a statement?

4 Mr. Dotson. That is a question.

5
6 BY MR. DOTSON:

7 Q Is that correct?

8 A Ultimately -- just say the statement again.

9 Q Ultimately, the preparation, review and approval of
10 this document was your responsibility; is that correct?

11 A Yes, I believe so.

12 Q As you can see at the bottom of this document,
13 there is a line that reads "Recommendation: Endorse plan to
14 coordinate joint industry response."

15 Was that your recommendation at the time?

16 A I think it was, but I do not specifically recall.
17 This is --

18 Q Is there another person whose recommendation it
19 could have been?

20 A Well, the team met once a week, and the team would
21 often come to conclusions for preferred courses of action,
22 and so --

23 Q You would have approved of this recommendation even
24 if you hadn't initially created the recommendation; is that
25 correct?

1 A I would have approved its being sent to the member
2 companies as part of an agenda for the meeting, and I likely
3 endorsed the plan, but I don't specifically recall.

4 Q According to this exhibit, one aspect of a joint
5 industry response would be to demonstrate, quote, "industry's
6 unity and resolve opposing the petition," unquote.

7 Why would API want to demonstrate that?

8 Mr. Tuohey. If you know.

9 The Witness. Because we did not -- we did not generally
10 support an expansive view of EPA's jurisdiction under the
11 Clean Air Act, and this clearly would have broadened it
12 substantially and may have brought harmful policies to the
13 country. We thought the Kyoto Protocol was a harmful policy.

14

15 BY MR. DOTSON:

16 Q Who attended this API Climate Change Steering Group
17 meeting?

18 A I do not recall.

19 Q Do you recall what the outcome of discussion was on
20 this agenda item?

21 A I do not recall the outcome of the discussion. I
22 can say that a joint effort did unfold to oppose the
23 petition.

24 Q For the record, did API believe that carbon dioxide
25 was a pollutant under the Clean Air Act?

1 Mr. Tuohey. If you recall.

2 The Witness. I think it was -- I don't think API had a
3 preexisting petition. I think the petition --

4

5 BY MR. DOTSON:

6 Q Do you mean "position"?

7 A Oh, excuse me. The position on whether carbon
8 dioxide was covered by the Clean Air Act. I think we were in
9 the midst of formulating a position in response to the
10 petition that had been filed. I don't know that we had
11 thought hard about the question before the petition was
12 filed.

13 Q As a lawyer, did you believe that carbon dioxide
14 was a pollutant under the Clean Air Act?

15 A I didn't have an opinion because my role was as the
16 team leader. And we had a lawyer on the team, and the lawyer
17 was supposed to make the hard legal analysis of whether it
18 was or was not. I was the team leader coordinating advocacy
19 in a general sense.

20 Mr. Dotson. Okay. We are finished with that exhibit.
21 Okay. I will ask the reporter to mark this exhibit.

22

[Exhibit No. 5

23

was marked for identification.]

24

25

BY MR. DOTSON:

1 Q Exhibit 5 is a letter to Fred Smith of the
2 Competitive Enterprise Institute, or CEI, from the API; is
3 that correct?

4 Mr. Tuohey. Can I just clarify the question?

5 It is unsigned. Do you mean, is it a draft, or is it a
6 copy of a letter that was sent? There is no signature on it.

7 Mr. Dotson. There is no signature on it. There is no
8 signature on the letter.

9 The Witness. Or letterhead.

10 Mr. Dotson. That is true.

11 Mr. Tuohey. Are you asking whether he wrote this
12 letter? Because, if you are not, I'm not sure -- you had
13 better ask him if he is familiar with it. I don't know
14 whether he knows what this is.

15 Mr. Dotson. I will let him review the letter first.

16 Mr. Tuohey. Okay. Sure.

17 The Witness. I have reviewed the letter. What is your
18 question?

19
20 BY MR. DOTSON:

21 Q We believe that this is a letter to Fred Smith of
22 the Competitive Enterprise Institute, or CEI, from the API;
23 is that correct?

24 A It appears to be, but it IS unsigned, and there is
25 no letterhead, so I really can't speak to its authenticity.

1 Q The committee has reason to believe that you
2 drafted this letter. Did you draft this letter?

3 A I do not recall drafting this letter, and what I
4 would say in addition is that I did not go to Buenos Aires,
5 so I wouldn't have hoped to run into this CEI contingent at
6 that time.

7 Q Did you ever draft letters for Bill O'Keefe in your
8 position at API?

9 A I did. I did.

10 Q Do you believe that you drafted this letter for
11 Bill O'Keefe at API?

12 A I do not know.

13 Q Did Bill O'Keefe attend Buenos Aires in that year?

14 A I believe -- I remember he went to Kyoto. I just
15 can't remember if he went to Buenos Aires. I think he did,
16 but I don't specifically remember. It was 1998, so it was a
17 long time ago.

18 Q Is this letter typical of the kind of letter that
19 you would draft for Bill O'Keefe?

20 A I did a lot of miscellaneous letters, and this
21 could have been typical of one that I would have written for
22 him.

23 Q Would it have been typical for API to have provided
24 \$10,000 to CEI so that CEI could attend a United Nations
25 conference on climate change?

1 A Well, you know, I really can't speak to what was
2 typical at that time. I was counsel to Bill O'Keefe, but
3 we -- at the time that I was serving, I was working on a lot
4 of projects. We cut our staff from 600 to 300. We changed
5 offices. We did a lot of things that were organizational.
6 We had an early retirement program I remember working on. I
7 worked on a lot of miscellaneous aspects of a major
8 reorganization at API during the transition to Red Cavaney as
9 the president, and so I was counsel to Bill O'Keefe. But I
10 was working on a lot of organizational issues. I did work
11 from time to time on little things for Bill that would relate
12 to climate, but I worked on a whole host of random
13 organizational issues. I was an assistant to a senior
14 executive, and he had a big portfolio of things. There was a
15 separate Climate Program, a team at that time, and I was not
16 on the team. I don't know what the program was. I don't
17 believe I had joined that team in 1998. So there was climate
18 change activity at API and a program and, perhaps, funding
19 for CEI, but I did a lot of miscellaneous things when I was
20 counsel to the executive vice president, to Bill O'Keefe, and
21 I was not -- there were people who were integral in working
22 on climate change all the time, and I really was not at that
23 time. I would come in contact with it and do little things,
24 but there were a lot of people working hard on the issue.

25 Mr. Tuohey. Excuse me.

1

2

BY MR. DOTSON:

3

Q More generally, was it typical for API to fund think tanks or advocacy groups to do work on climate change?

5

A Yes, API did that.

6

Q And how much money would you estimate API provided to these groups in any given year?

8

Mr. Tuohey. For climate change?

9

10

BY MR. DOTSON:

11

Q For climate change.

12

A I really do not recall specifically whether the budget was for grant funding for third-party groups. I just don't not recall specifically.

15

Q Do you recall any specific groups that received funding?

17

A I do.

18

Q Would you list them for us?

19

A There was funding to the Heartland Institute.

20

There was funding to Reason Organization. There was funding

21

to the CEI, the Competitive Enterprise Institute. There was

22

funding to the Acton Institute. Oh, there was funding to the

23

American Council on Capital Formation.

24

Q What did API hope to accomplish by providing

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funding to these groups?

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BY MR. DOTSON:

Q Exhibit 6 is an internal API document prepared during API's budget review in 1999; is that correct?

Mr. Tuohey. Let him take a look at the document. Review it.

The Witness. What year is it? 1999, you said?

BY MR. DOTSON:

Q 1999.

A And it is a budget?

Q It is an internal API document prepare during API's budget review in 1999.

A Okay.

Mr. Tuohey. Is there a question pending, Greg, on this? What is the question?

Mr. Dotson. I am asking him if that is correct.

Mr. Tuohey. Oh, if that is correct?

Mr. Dotson. Yes.

Mr. Tuohey. Okay. I take it your question is asking him whether he knows whether that's the case as opposed to reading the document and asking if that is what it sounds like. I mean, there is no foundation if he is familiar with the document. Are you going to ask him whether he has ever seen it, or whether he knows what it is?

1 Mr. Dotson. We will be talking about that, yes.

2 Mr. Tuohey. Okay. Okay.

3 The Witness. Okay. What's your question? I'm sorry.

4

5 BY MR. DOTSON:

6 Q Is that an API internal document prepared during
7 API's budget review in 1999?

8 Mr. Tuohey. Do you know what it is?

9 The Witness. Well, it is talking about the proposed
10 2000 program budget of \$3.8 million, so it seems to be
11 getting into -- I mean, I don't -- it appears to be that, and
12 reading it, it rings bells.

13

14 BY MR. DOTSON:

15 Q It seems familiar to you?

16 A It seems familiar to me now that I look at it. I
17 haven't thought of it since, but it is familiar.

18 Q Nothing in the document makes you have doubts about
19 its authenticity; is that correct?

20 A That is correct.

21 Q The committee has reason to believe that Russell
22 Jones prepared this document and that you reviewed it.

23 Have you seen this document before?

24 A I believe I have seen the document before. I do
25 not recall who reviewed or approved it.

1 Q Can you recall under what circumstance you saw the
2 document?

3 A Under what circumstance I saw it?

4 Q What situation you were in.

5 A Well, there is a budget preparation process on
6 individual issues that occurs at API, and I just don't
7 remember at what point in the process this document was
8 developed, but it appears to have been developed during that
9 process.

10 Q Okay. I would like to direct your attention to the
11 first page, to text beginning on the seventh line of the
12 document. It reads, "Climate is at the center of industry's
13 business interests. Policies limiting carbon emissions
14 reduce petroleum product use. That is why it is API's
15 highest priority issue and defined as 'strategic.'"

16 A API was concerned about the issue of climate change
17 because they did not want this country or other countries to
18 reduce petroleum product use; is that correct?

19 A Someone wrote that reason on this sheet. API had a
20 number of policy concerns relating to climate that went
21 beyond the narrow potential of reduced petroleum use. I
22 think that there was a genuine and well-founded and consensus
23 view among the membership that the Kyoto Protocol would have
24 been harmful for the American economy and the world economy
25 and was bad public policy and that we, as an industry, along

1 with other industries and other voices in society should step
2 up and oppose harmful public policies, but I don't deny that
3 there was a parochial interest to the industry based upon
4 these words that are on this sheet.

5 Q So it is accurate to say that the industry did not
6 want to reduce carbon emissions, one of the reasons being
7 that they did not want to reduce petroleum product use?

8 Mr. Tuohey. Are you asking him whether he agrees with
9 that statement?

10 Mr. Dotson. Yes.

11 Mr. Tuohey. Do you agree with that statement?

12 The Witness. I'm sorry. I don't mean to overthink, but
13 I don't think that they wanted to risk a reduced reliance on
14 petroleum based upon provisional science, emerging science or
15 based upon harmful public policies. So it is just a broader
16 concern than merely less petroleum use.

17

18 BY MR. DOTSON:

19 Q So, to summarize, I believe what you are saying is
20 they did not believe the science yet justified reducing
21 petroleum product use?

22 Mr. Tuohey. Is that what you're saying or not?

23 The Witness. I think there was a concern that the
24 science was not sufficiently well understood to justify
25 legally mandated reductions in energy use.

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BY MR. DOTSON:

Q In going back to your previous statements, when you worked on climate change, you were working to represent API's position, correct?

A Correct.

Q And so your efforts would be reflected in -- or the goals of your efforts would be reflected in these kinds of concerns; is that correct?

Mr. Tuohey. In which kinds of concerns?

Mr. Dotson. Concerns about reduced petroleum product use.

BY MR. DOTSON:

Q That was a concern of your member companies, and therefore, it was your concern since you were head of the Climate Team; is that correct?

A Yes.

Mr. Tuohey. Excuse me a second.

Mr. Dotson. I will just note for the record that counsel is -- that Mr. Cooney's counsel is consulting with him.

Mr. Tuohey. Yes, I am advising him, not consulting him. He is not consulting with me. I am advising him.

1 BY MR. DOTSON:

2 Q You have mentioned several times that API was very
3 concerned about the Kyoto Protocol, and part of your job was
4 to oppose the Kyoto Protocol; is that correct?

5 A Yes.

6 Q Can I ask you to turn to Page 3 of the document in
7 front of you?

8 On this page, it envisioned a \$2 million external
9 expenditure program on climate that is discussed. At the
10 bottom of the page, it says that \$100,000 could be provided
11 for climate science and science uncertainty research.

12 Please describe what API envisioned accomplishing with
13 these funds.

14 Mr. Tuohey. Do you understand the question?

15 The Witness. Could you ask the question again?

16

17 BY MR. DOTSON:

18 Q Under the last bullet of the page, Strategy 3.

19 A Yes.

20 Q It discusses an expenditure of \$100,000 for climate
21 science and science uncertainty research, and I am asking
22 what API envisioned accomplishing with these funds.

23 A I don't really recall. It cites the National
24 Environmental Policy Institute and the CATO Institute, and I
25 do not recall what they were doing on those -- on that set of

1 issues that would have warranted a contribution.

2 Q Are those organizations typically thought of as
3 scientific institutes?

4 A I can't really speak to how they are characterized.

5 Q Do you --

6 A In general, people have different views of them.

7 Q Do you think that this \$100,000 would be used for
8 hard research or for more advocacy work on the issue of
9 research?

10 Mr. Tuohey. If you know.

11 The Witness. I don't know.

12

13 BY MR. DOTSON:

14 Q ON the last two lines of the page, \$100,000 is
15 described as being provided for health research to address
16 vector-borne disease claims. Please describe what API
17 envisioned accomplishing with these funds.

18 A I do not recall. I do not recall.

19 Q At this time, you may recall that the issue of
20 vector-borne disease and its connection with climate change
21 was something that was being debated in the media within
22 Congress elsewhere. Does that help refresh your memory at
23 all about what these funds could have been used for?

24 A I just don't remember specifically.

25 Q Could you make a general statement of what you

1 think they might have been used for?

2 Mr. Tuohey. I mean, that calls for speculation. He
3 said he doesn't know.

4 Mr. Dotson. Well, speculation is not an objection that
5 applies in this proceeding.

6 Mr. Tuohey. Well, I'm not sure I agree with that
7 statement at all. If it calls for speculation, I am not
8 going to let him speculate.

9 Mr. Dotson. Well, what I am asking him is based on his
10 experience at API. He has a very clear understanding of what
11 API was doing on a day-to-day basis. He is familiar with
12 these issues. We certainly see that in his edits of EPA
13 reports, of Climate Change Science Program reports. This is
14 not an abstract issue.

15

16 BY MR. DOTSON:

17 Q This is an issue that you have demonstrated
18 familiarity with in the documents we have reviewed, and I am
19 guessing that you can make a general statement about what you
20 think API would be funding with \$100,000 in vector-borne
21 research in connection with climate.

22 Mr. Tuohey. That is a fair question, and if he is able
23 to answer it, he can.

24 Can you answer it?

25 The Witness. What I remember when I became the team

1 leader was that we had funded Carnegie Mellon for several
2 years, and I think it was Granger Morgan at Carnegie Mellon
3 for several years, and it was sort of a -- it was not a
4 standing grant, but we had confidence in their research, and
5 I would merely add that Granger Morgan and his views on
6 climate change science and health impacts varied over the
7 years. They were not constant, but I recall that we had
8 funded Carnegie Mellon, and I sort of inherited that. I was
9 sort of told when I was team leader that that is something we
10 fund, and so it is in the budget there, and I don't really --
11 you know, we had scientists on the Multidisciplinary Team.
12 So we had people who had the relationship with Carnegie
13 Mellon who knew what it was about, but I didn't really ever
14 get involved. I don't believe I ever met Mr. Morgan. He
15 didn't come and report to me on the work he was doing at
16 Carnegie Mellon. We had a Multidisciplinary Team. The
17 scientists on the team may have met with Carnegie Mellon and
18 understood, but I was running, as you can see, a fairly broad
19 program, and I really was not directly involved with the
20 knowledge of the work that was being funded there.

21 Mr. Dotson. Okay. We are done with that document, with
22 that exhibit, and that is the end of the first hour.

23 EXAMINATION

24 BY MS. SAFAVIAN:

25 Q Mr. Cooney, just to reintroduce myself, my name is

1 Jennifer Safavian. I would like to take you back a little
2 bit with how we started with when you started at CEQ.

3 Were you the first Chief of Staff at CEQ under the
4 Bush administration? You said you started on June 25th. Do
5 I have that right?

6 A I did. I started on June 25th and, the chairman
7 began, I think, a week or two before I had. We had carried
8 over, though, the Clinton administration Chief of Staff,
9 Judy -- I cannot remember her last name -- but she stayed and
10 acted and continued to serve as Chief of Staff of the council
11 through May, I believe, so we had some holdovers at CEQ from
12 the prior administration. Ian Bowles was another person who
13 was held over from the administration and continued to work
14 at CEQ for several months under the new administration.

15 Q So you were Chairman Connaughton's first chief of
16 staff?

17 A I was Chairman Connaughton's first chief of staff,
18 yes.

19 Q Okay. Great.

20 I know you kind of already generally described what your
21 job responsibilities were, but who directed you? Who told
22 you what your job responsibilities were going to be?

23 A Well, Mr. Connaughton was my boss, and he was the
24 chairman.

25 Q So the two of you together kind of determined what

1 your role and responsibilities and duties would include?

2 A It became that way, but initially, I did what the
3 chairman asked me to do, and I was assigned work by the
4 chairman, and I -- you know, it was a new job. I wanted the
5 chairman to be happy. I was his chief of staff, and I was
6 trying to be very attuned to exactly what he wanted in terms
7 of setting up the office, having issues covered. You know, I
8 was very linked to him in the initial few months. He later
9 gained confidence in me to prepare budgets and things like
10 that, and I did that, and I did not consult with him until it
11 was at the end of the process, so -- but at the beginning, we
12 worked very closely, and I was assigned work by the chairman.

13 Q Okay. Can you explain to me, when you first
14 started, how -- because you mentioned earlier that part of
15 your role or CEQ's responsibility was the policy, the
16 President's climate change policy. So, when you first
17 started and even throughout your tenure there, how did you
18 know what the President's climate change policy was?

19 A Well, fortunately, for me, particularly, the
20 President gave a major speech on the climate change policy in
21 the Rose Garden with his Cabinet-level review group with
22 which he had been meeting for several months to devise a
23 policy, and he gave the policy speech on June 11th, 2001, and
24 in conjunction -- so that is on the White House Web site.
25 And in conjunction with giving the speech, the administration

1 issued a very broad policy book.

2 Mr. Tuohey. Let the record reflect the witness is
3 holding a copy of the Climate Change Review Initial Report of
4 the President, June 11th, 2001, which is a public document.
5 I assume counsel has it.

6 The Witness. And this issue of climate change was
7 obviously a huge priority for the new administration in the
8 spring of 2001. The President assembled a Cabinet-level
9 review. I think there were ten Cabinet Secretaries. I think
10 they met seven or eight times and had economists and
11 scientists and other people brief them as they considered
12 policy.

13

14 BY MS. SAFAVIAN:

15 Q But you were not involved in that process because
16 you hadn't started yet?

17 A No, I had not started yet. That is exactly right.

18 So, when I came in -- and I would just add additionally
19 that assembled at CEQ was one of these interagency ad hoc
20 teams, maybe 15 people, from the different Federal agencies
21 who were advising on the President's policy speech that he
22 gave on June 11th and were helping to prepare and vet the
23 elements of this policy book that he issued on June 11th.
24 They went back to their agencies, you know, right before I
25 arrived, but when I arrived, this was on my desk. Here is

1 the President's policy, and --

2 Mr. Tuohey. You don't need it. I mean, if you want to
3 refer to it --

4 The Witness. There is one thing I would refer to
5 because I think it is relevant, and I would just offer it
6 about -- and that is that Chapter 3 of the policy book talked
7 about advancing the science of climate change, and it
8 reflected in great detail the findings of a National Academy
9 of Sciences' Report that the President's Cabinet-level review
10 committee had requested, which was delivered to the
11 President, you know, I think at the end of May or early June,
12 but if you read Chapter 3 of the policy book, it describes
13 and itemizes very specifically -- maybe there are 50 specific
14 quotes from the National Academy of Sciences, itemizing
15 priority research areas and fundamental -- in the words of
16 the National Academy of Sciences, fundamental scientific
17 uncertainties relating to climate change, and the President
18 embraced those findings in this policy book, and as you will
19 see, had many specific quotes from the National Academy
20 Report, and he committed to address those uncertainties that
21 were identified in that report in June 2001, and again, this
22 all preceded my coming, but when I came, the table was fairly
23 well set as to the President's policy on science, and his
24 priorities on climate change science were pretty well set.

25

1 BY MS. SAFAVIAN:

2 Q So, to familiarize yourself with what the
3 President's policy was, you referred to the climate change
4 review --

5 A Yes, the initial review report and the speech that
6 he gave in the Rose Garden where he spoke at length of the
7 climate change science.

8 Q And the National Academy of Sciences' 2001 Report?

9 A Yes.

10 Q So, through your tenure at CEQ, those documents
11 that we just mentioned, were those ones you continued to rely
12 on and go back to, or did other reports come out? Did things
13 change? If you could, kind of, you know, educate us on that.

14 A Some things changed and evolved because there is
15 always new scientific information emerging, but I would say
16 that these documents and the policies set forth in these
17 documents were foundational to the administration.

18 Q So no large, substantive changes to those
19 documents?

20 A No.

21 Q Okay.

22 A These were foundational guidance for our work in
23 the White House policy shop to make sure that all future
24 efforts of the administration that we were called upon to
25 review were aligned with the President's stated priorities.

1 Q Okay.

2 Mr. Tuohey. Let the record reflect the witness has also
3 referred to a second document, which is the Climate Change
4 Science of the National Academy of Sciences. That is the
5 second document he has referred to together with the Climate
6 Change Review. Thank you.

7 BY MS. SAFAVIAN:

8 Q Okay. Can you explain to me -- because I've got to
9 tell you that I have had a little trouble understanding CEQ
10 and all of the different entities or agencies that the
11 President relies on for his climate change policy and the
12 science.

13 Is there some way you could kind of walk me through who
14 everybody was, where CEQ fit in that, and if it is helpful at
15 all -- and I don't know if it is -- I have got this chart,
16 this diagram --

17 A Yes.

18 Q -- which you can refer to, and maybe it will help
19 you answer all of the questions, but if it doesn't, feel free
20 to ignore it, and I can pass that out.

21 Mr. Tuohey. Let the record further reflect that the
22 diagram of the document presented to the witness is a chart
23 entitled Office of the President with subdivision
24 designations for the Committee on Climate Change Science and
25 Technology and other related working groups in the Climate

1 Change Science Program.

2 Ms. Safavian. And, if we could, we will go ahead and
3 mark that as Exhibit 7.

4 [Exhibit No. 7
5 was marked for identification.]

6

7 BY MS. SAFAVIAN:

8 Q So that is a broad question I am asking you, but
9 I'm trying to understand maybe where CEQ fits within the
10 administration when it comes to the President's climate
11 change policy and these other organizations.

12 A Well, CEQ, after the President issued his June 11th
13 policy, was assigned a major responsibility to address the
14 issue of greenhouse gas mitigation. If you read the
15 President's policy of June 11th, it talked a lot about
16 scientific initiatives. It talked a lot about technology
17 initiatives. It talked a lot about certain principles for
18 reducing greenhouse gas emissions, but it was not specific on
19 a roadmap for reducing greenhouse gas emissions in the
20 United States, and when Mr. Connaughton came in, he was named
21 the Coordinator, the Continuing Coordinator, for the
22 Cabinet-level review process, and everyone recognized -- I
23 don't know -- that there was an additional element of
24 policymaking that needed to be developed within the
25 administration, and that was "what is our route to reducing

1 greenhouse gas emissions"? Chairman Connaughton led that
2 effort with Cabinet members and supported by his staff a
3 policymaking effort that culminated in the President on
4 February 14th, 2002, delivering his second major speech on
5 global climate change, and that was the speech in which he
6 articulated a national goal for the American economy to
7 reduce the greenhouse gas intensity by 18 percent within a
8 decade, and if that --

9 Q Let me say, just with regard to that, who all -- I
10 mean, CEQ was obviously involved in that, and then you said
11 there were how many other agencies or departments?

12 A The Cabinet-level review that the President had
13 convened in the spring of 2001 remained in place, and Jim
14 Connaughton, the chairman of CEQ, was the policy coordinator
15 for this element of remaining policymaking, and so what he
16 would do would be to go and visit individual Cabinet
17 Secretaries and solicit their input on emerging ideas,
18 policymaking that we were undertaking, to reduce -- to have a
19 plan to reduce greenhouse gas emissions, and it was very
20 labor-intensive on his part, and it was -- you know, it was a
21 huge effort.

22 After that, on February 25th, after the President gave
23 his speech on February 14th, which was another big policy
24 book articulating the 18-percent greenhouse gas reduction
25 intensity goal, but it also laid out a whole host of

1 mechanisms for achieving that national goal, so it had a lot
2 of policymaking in the policy book as well on mitigation.

3 I believe, on February 25th, Chairman Connaughton issued
4 this organizational chart to the members of the Cabinet-level
5 review. There is a cover memorandum which is not here today,
6 but it was approved at a Cabinet-level meeting, I believe, at
7 the end of January 2002, that this would be the
8 organizational chart for managing climate change policy
9 within the administration, and Chairman Connaughton issued
10 this organizational chart at the end of February 2002, and at
11 the top, it still has the "Office of the President" and sort
12 of a placeholder for the Cabinet-level review which had been
13 coordinated by different offices, but then it set out, you
14 know --

15 Mr. Tuohey. The chart speaks for itself.

16 The Witness. Yes, the chart speaks for itself. I think
17 it does anyway, but CEQ, obviously, is represented in a
18 number of the boxes with leadership positions, and --

19
20 BY MS. SAFAVIAN:

21 Q Yes, I do see that, but I don't see CEQ listed in
22 each box.

23 A They are not. CEQ, importantly, was listed on the
24 top box, the Committee on Climate Change Science and
25 Technology Integration. The CEQ chairman participates on

1 that along with Cabinet Secretaries, and then the Interagency
2 Working Group on Climate Change Science and Technology also
3 had deputy and undersecretary level people in various Cabinet
4 departments with CEQ also represented in that group, and that
5 group was really the higher level working group that would
6 guide the implementation of the Climate Change Science
7 Program and the Climate Change Technology Programs that the
8 President had announced on June 11th, 2001.

9 Q So, to get it to be the President's policy, it
10 would kind of work its way -- after this was initiated, this
11 chart, it would work its way up through the chart so that the
12 Committee on Climate Change Science and Technology
13 Integration were really the core group of people who would
14 make those decisions?

15 A You know, I would say that 90 percent of the work
16 was done, actually, at the Deputy Secretary level. Although,
17 when it comes to a whole host of reports about climate
18 change, whether it is the Our Changing Planet Report or the
19 10-year Strategic Plan, those documents were signed by the
20 Secretaries of Energy, Commerce and the President's White
21 House Science Advisor, and so, you know, they were
22 transmitted to Congress with a cover letter from the
23 Secretary and the President's Science Advisor.

24 Q Okay. You referenced the February 25th, 2002,
25 policy or you stated that that was like the President's next

1 large policy initiative.

2 A Yes.

3 Q What was that called, do you remember?

4 A I have that policy book right here as well, and it
5 is available on the White House Web site, both the
6 President's speech that he gave at NOAA that day and his
7 policy book entitled, U.S. Climate Change Strategy, a New
8 Approach, and it was issued February 14th, 2002, but it is a
9 speech in which we issued a lot of elements of mitigation
10 policy to achieve the President's national goal of reducing
11 greenhouse gas intensity of the American economy by 18
12 percent by 2012.

13 Q Okay. Can you tell me, when it came to large
14 documents -- like you mentioned the strategic plan, the
15 10-year Strategic Plan or Our Changing Planet or the draft
16 report on the environment by EPA; when we're talking about
17 those major documents, can you tell us, if you know, what the
18 process was as far as the review, like, you know, the
19 timeline or the -- explain for us how that came to be
20 developed, and then, who would review it? When did CEQ get
21 involved? Do you understand what I'm asking? I just want to
22 know from you if you would explain to us -- and we can start
23 with the strategic plan because it may be different for each
24 one if that is a good one to start with.

25 A Yes.

1 Q For the strategic plan, can you kind of explain?
2 Now that was CCSP's 10-year plan.

3 A Yes.

4 Q So I know they've got their own box here and their
5 own people within that box.

6 A Yes.

7 Q So maybe -- I will just let you, actually, tell me.
8 Do you know how that started and how that came to be?

9 A I think -- you know, I do not recall specifically,
10 but Dr. Mahoney probably announced it to the blue box, the
11 interagency core group, that he was probably going to
12 undertake a 10-year strategic plan.

13 Mr. Tuohey. Let me just interrupt for a second.

14 We are talking about the strategic plan -- let the
15 record reflect that we are talking about the strategic plan
16 for the U.S. Climate Change Science Program, a report by the
17 Climate Change Science Program, CCSP referred to by Counsel,
18 and the Subcommittee on Global Change and Research. That is
19 the plan that is being referred to, and the date is July of
20 2003.

21 The Witness. Correct.

22 Mr. Tuohey. Okay. Your question, Counsel, is for the
23 witness to explain what process was used to review this plan
24 or to come up with this plan?

25 Ms. Safavian. Right, because we have seen many

1 versions, draft versions, of this plan --

2 The Witness. Yes.

3 Ms. Safavian. -- with several, you know, different
4 dates.

5 The Witness. Right.

6

7 BY MS. SAFAVIAN:

8 Q So I am curious. How does it get to that stage?
9 How does it get to you also? I want to go back. You
10 mentioned the blue box, and I have seen that referred to, and
11 I didn't know what that meant before --

12 A Right.

13 Q -- but now, based on Exhibit 7, you are saying the
14 blue-shaded box on this?

15 A Yes. It became within the administration known as
16 the "blue box," and it is a box that met every 6 weeks or 2
17 months to go through a whole host of issues related to global
18 climate change.

19 Mr. Tuohey. Let the record reflect again that, on
20 Exhibit Number 7, the blue box is referred to as the
21 Interagency Working Group on Climate Change Science and
22 Technology. That is the box with a number of organizations
23 referred to therein.

24 Is that what you're talking about? Is that what you're
25 talking about?

1 The Witness. Yes.

2 Mr. Tuohey. Okay. Thank you.

3 Thank you, Counsel.

4 Ms. Safavian. Sure.

5 The Witness. On the 10-year Strategic Plan, I think
6 that there was -- I recall, you know, a very elaborate
7 process of review, particularly of public review. The plan
8 was -- elements of the draft plan were posted on a Web site
9 in November of 2002, and a major international workshop was
10 held in December of 2002 here in Washington, D.C., at which
11 1,300 scientists from 36 countries attended to provide
12 comments on our draft, so it was a very transparent process.

13 Also, the draft plan was sent to the National Academy of
14 Sciences for its review, and they issued their opinion of the
15 draft in February of 2003. So, through the spring of 2003, I
16 think that the office and Dr. Mahoney and his people were
17 working very hard to respond to the guidance that they had
18 requested and received from the National Academy of Sciences
19 and the 1,300 public comments that were offered at this
20 workshop; 1,300 participants participated in this workshop,
21 but there was a huge volume of comments on the draft
22 strategic plan, public comments.

23 There was then a narrower level of review that took
24 place sometime later in the spring of 2003, that Dr. Mahoney
25 initiated, which preceded what we called the "formal OMB

1 review." When OMB takes a document, it is generally at its
2 final stage. They circulate it out to any agency affected,
3 really, by the contents of the document. So, in this case,
4 it was probably sent out to 17 agencies for their formal
5 review and comments on the plan, and at the same time, was
6 sent to probably 5 separate White House offices and other
7 White House staff, but it was sent out very broadly by OMB
8 for comment. OMB collected the comments from all of these
9 individuals and, from what I understand, gave a synthesized
10 summary of all of the comments that had been received in
11 interagency review to Dr. Mahoney, who was the Assistant
12 Secretary of Commerce for Oceans and Atmosphere and in charge
13 of the Climate Change Science Program, and Dr. Mahoney took
14 those comments, and he either accepted changes or did not
15 accept changes, but he made the final resolution on the
16 content of the plan with the benefit of the comments that he
17 had received from the agencies and the White House offices,
18 and in the case of the strategic plan, actually, because it
19 was a very high-profile document and one had not been done in
20 a long time even though the statute called for it, he
21 required of the agencies that they formally sign a
22 concurrence sheet in the final report before it was issued in
23 July of 2003, and you know, I have been reviewing the
24 documents that you have in your possession that CEQ has given
25 you, and I see that I formally concurred for CEQ on the

1 issuance of the final report in July 2003, but CEQ, along
2 with a host of affected Federal agencies and other White
3 House offices, provided comments sort of throughout the
4 process. It was like a year-long process from beginning to
5 end -- the public workshops, the public comments, the
6 National Academy of Sciences' review, and then another round
7 of internal reviews before it was finally published -- but
8 that was our process.

9

10 BY MS. SAFAVIAN:

11 Q So were you responsible at CEQ for reviewing this
12 document?

13 A I shared responsibility with Bryan Hannegan, who
14 joined our staff in the spring of 2003. He, himself, was a
15 Ph.D. I think he has his Ph.D. in Atmospheric Chemistry or
16 something like that, but he is, you know, a climate scientist
17 in every sense, and he and I both commented on the strategic
18 plan, and we coordinated our comments back to OMB.

19 Q So, when you say the two of you worked on it and
20 you coordinated your comments, did you put them together and
21 send them off or did yours go up on your own and his went up
22 under his name?

23 A In some cases, I see that he sent up individual
24 comments, and I sent up individual comments at different
25 stages in the process, but at other stages, you will see

1 joint typed comments that synthesized both of our comments,
2 and I think -- my recollection is that he kindly typed them
3 and prepared them. He took my comments and his and made them
4 into one and gave them back to the agency, to the OMB.

5 Q And when did CEQ or you and Mr. Hannegan first get
6 involved with the strategic plan? At what stage did you
7 first receive it to provide your comments?

8 A I can't really remember the exact dates. In the
9 spring of 2003.

10 Q So it was after the public comments?

11 A Yes. There were a whole round -- there was a whole
12 round of interagency review after the public workshop and the
13 National Academy of Sciences review. There were a couple of
14 drafts that evolved in the spring of 2003 on which we both
15 worked. What I am trying to recall is whether CEQ commented
16 on the initial draft strategic plan in the fall of 2002, and
17 I cannot remember if we did or not.

18 Q You can't remember what the first draft was that
19 you saw of it?

20 A Yes, I don't exactly remember.

21 Q How quickly did the National Academy of Sciences
22 get back their comments?

23 A They got them back pretty quickly if our -- if the
24 draft plan was posted on the Web site in November of 2002 and
25 the National Academy of Sciences -- I think they gave a

1 recommendation -- they gave their feedback on the draft in
2 February 2003, and then --

3 Q I'm sorry. Were they specific details, I mean
4 comments, or was it just a general recommendation? I mean,
5 can you just explain?

6 A Oh, no. It was quite detailed from the National
7 Academy of Sciences. You know, as I recall, they
8 commented -- the document, itself, was very long, and they
9 commented on many dimensions and aspects of the draft plan,
10 and you know, I think that the program tried very hard to
11 respond to the National Academy of Sciences' feedback, and in
12 the end, the National Academy of Sciences welcomed the final
13 plan that was issued in July of 2003. They supported the
14 final plan, so they took a review of the final plan as well
15 and essentially endorsed it.

16 Q And, after, you said OMB would send around -- when
17 it got closer to the final version of this plan, they would
18 send it back around to everybody who was affected by it for
19 comments.

20 A Yes.

21 Q Then those comments were sent back to OMB or to
22 Dr. Mahoney?

23 A They were sent back to OMB, and then, I think, OMB
24 transmitted them to Dr. Mahoney for his final review and the
25 decision as to whether to include comments or to not include

1 comments.

2 Q So the final say on whether a comment was going to
3 be included or an edit was going to be made was
4 Dr. Mahoney's?

5 A It was because he was the Director of the Climate
6 Change Science Program in this bottom organizational box that
7 I am holding up. You know, it is the same organizational
8 chart that we've been talking about, but he was the Director
9 of the program. He, himself, of course, is an eminent
10 scientist, and he had the final decision-making on the
11 content of the plan.

12 Now, as I said, in this case, he did ask every agency
13 for a formal concurrence, and I assume, because the plan was
14 issued, that he got the formal concurrence from every agency.
15 He got it from our agency.

16 Q And would that be every agency listed in this box,
17 the Climate Change Science Program box on Exhibit 7?

18 A You know, I think it would be -- I think it would
19 be even more agencies than that --

20 Q Oh.

21 A -- because, really, the 10-year Strategic Plan
22 establishes research priorities for a whole host of agencies
23 and subagencies, and so, I think -- I believe that it was a
24 broader review than just these agencies in this box. I think
25 a lot of agencies were affected by this plan and would have

1 reviewed it.

2 Q Okay. Keeping with the strategic plan, I think
3 what I would like to show you right now, this is Exhibit 8.

4 [Exhibit No. 8
5 was marked for identification.]

6

7 BY MS. SAFAVIAN:

8 Q Mr. Cooney, what this is -- as you can see from the
9 cover of it, it is a memo from Rick Piltz, dated June 1st,
10 2005, to the U.S. Climate Change Science Program agency
11 principals.

12 A Yes.

13 Q Let me just start by asking you: Have you ever
14 seen this document before?

15 A I think I have. I think I read it once.

16 Q Okay. Was that because it was sent to you
17 initially? Because I do not see your name on here, so --

18 A No, it was not sent to me.

19 Mr. Tuohey. Do you want to ask him when he first saw
20 it?

21 Ms. Safavian. Sure.

22

23 BY MS. SAFAVIAN:

24 Q When did you first see it?

25 A It was in the summer of 2005. I think it was on a

1 Web site or something.

2 Q We are not going to go over this whole thing, so
3 I'm not going to ask you to read the whole thing, but if you
4 would start with, on Page 10, I'm just going to look at a few
5 of the paragraphs, and we will go over just a couple of the
6 paragraphs, and it is starting on Page 10, the second
7 paragraph. Are you there?

8 A Yes.

9 Q Okay. It starts with, "the Executive Office of the
10 President." Do you see that?

11 A Yes.

12 Q Okay. I mean, if you want, why don't you go ahead
13 and just read that paragraph real quick.

14 A Okay: Starting in 2002 --

15 Mr. Tuohey. To yourself.

16 The Witness. Do you want me to read all of the
17 paragraphs or just that one paragraph?

18

19 BY MS. SAFAVIAN:

20 Q We will just do it paragraph by paragraph.

21 A Yes.

22 Q So, with regard to this first paragraph --

23 A Yes.

24 Q -- first of all, do you know who Rick Piltz is or
25 was at the time?

1 A I do. We were in many meetings together or in a
2 number of meetings.

3 Mr. Tuohey. They asked who he was, not what you did
4 with him. Who was he?

5

6 BY MS. SAFAVIAN:

7 Q Do you know who he was back in this time of June of
8 2005?

9 A He had resigned from Federal service by then.

10 Q And before he resigned, where was he?

11 A He was in the Climate Change Science Program
12 Office.

13 Q As what?

14 A I don't really know what his exact title was, but I
15 know that he had principal -- I understood he had principal
16 responsibility for preparing the annual budget report, Our
17 Changing Planet.

18 Q And do you know beyond that what his
19 responsibilities included?

20 A I don't.

21 Q Okay. Do you know who he reported to?

22 A I believe he reported to Richard Moss, who was the
23 director of the office, and Richard Moss, in turn, reported
24 to Dr. Mahoney. The office reported to Dr. Mahoney.

25 Q Okay. Back to this first paragraph that I asked

1 you to read, it says in here that it is referring to you,
2 that you were placed at the table at CCSP principal meetings
3 as the CEQ liaison.

4 Were you at such meetings? I'm not even sure what he
5 means by "principals meetings." Do you know what he is
6 referring to?

7 Mr. Tuohey. Read the first sentence of that document.
8 Read the first sentence of that paragraph. Yes.

9 The Witness. The Executive Office -

10 Mr. Tuohey. No, to yourself. Read it to yourself, and
11 then answer the question.

12 The Witness. Okay.

13 Mr. Tuohey. Your question, Counsel, was what was this
14 table at which CCSP principals met?

15 Ms. Safavian. Right.

16
17 BY MS. SAFAVIAN:

18 Q I am curious, Mr. Cooney, first of all, what he is
19 referring to when Mr. Piltz says, "CCSP principals meetings."

20 A I do. There were -- from the agencies, I would say
21 every 2 months, there was -- I mean, this is my recollection.
22 There was a meeting of principals to discuss the Science
23 Program at the Climate Change Science Program Office on
24 Pennsylvania Avenue.

25 Q And would these include the members -- again,

1 referring back to the chart, the org chart, the principals
2 are the ones from the members of these different departments?

3 A Yes. People would come from those departments, and
4 they would also come from, you know, White House offices.

5 Q And so were you present at these meetings?

6 A I was at a few.

7 Q But not routinely?

8 A I think, when Bryan Hannegan joined our staff in, I
9 think it was, the spring of 2003, he began to routinely
10 attend those meetings, and I did not anymore.

11 Q Why is that?

12 A Well, he had a great interest, first of all, and
13 he, himself, you know, had a very strong background on
14 climate change science, so it was natural for him to be
15 interested and to want to attend those meetings, and I was
16 glad to be -- I was glad that he attended.

17 Q Could you say how many times you actually attended
18 these types of meetings?

19 A I don't really recall the exact number, but
20 maybe -- I just don't recall the exact number, but they were
21 occasional, and sometimes I would go and sometimes I would
22 not. I don't really remember.

23 Q And continuing on with that paragraph, he,
24 Mr. Piltz, says in here that the CEQ Chief of Staff, meaning
25 you, removed your name from the masthead of CCSP publications

1 as of the last edition of Our Changing Planet and designated
2 a new CEQ liaison to the principals committee.

3 A That just goes to the inside cover, but here is an
4 Our Changing Planet Report and who is named from the agencies
5 on the inside cover, and since Bryan Hannegan was attending
6 the meetings, his name went on the inside cover of the report
7 because he was the one who was attending the meetings and
8 really working in a detailed way with the program by that
9 point.

10 Q You said he started attending those meetings in
11 2003, right?

12 A Yes.

13 Q And this report was published in 2004 according to
14 Mr. Piltz?

15 A I guess, but you prepared the budget for 2004 and
16 2003, so I am not exactly sure of the chronology, but Our
17 Changing Planet is a budgetary -- it a supplement to the
18 submission of the administration's budget for climate change
19 research.

20 Q Then he goes on to say, "However, he," meaning
21 you -- again, this is reporting back to Mr. Piltz' memo --
22 "remains engaged with the program, and CEQ continues to play
23 an important role as a White House agent in CCSP governance."

24 Is that an accurate description of CEQ's role of CCSP?

25 A I think it is his opinion.

1 Q Well, what was CEQ's role with CCSP? How did the
2 two of you interrelate?

3 A The primary role of CEQ in these meetings was in
4 ensuring that the budget implications of what was being
5 planned were understood and accurate and agreed to. OMB was
6 there, so we wanted to be sending up accurate budgets to
7 Capitol Hill that accurately reflected the program.

8 Also, we would deal with, you know, just very ordinary
9 types of management issues like, when do we think we're going
10 to be able to publish the Our Changing Planet Report. One
11 year, for example, they combined reports because we were
12 preparing the 10-year Strategic Plan, so we submitted a
13 2-year report, but they were decisions like that -- managing
14 the development and the scheduling of products, and when are
15 we going to have the workshop.

16 Another agenda item I remember was should we bring in
17 the National Academy of Sciences to formally review the
18 10-year plan. Everyone agreed that we should. Those kinds
19 of questions would come up at these meetings.

20 Q Okay. If you will, take a look at the next
21 paragraph of Mr. Piltz' memo, starting with number 1, that
22 paragraph, please.

23 A Page 10?

24 Q Yes, we're still on Page 10. If you will, just
25 read that quickly to yourself.

1 A Okay.

2 Mr. Tuohey. While he is reading that, Counsel, are you
3 going to show him this memo dated October 28th or not?

4 Ms. Safavian. I will.

5 Mr. Tuohey. Okay. Have you read it?

6 The Witness. What is your question?

7 Ms. Safavian. I haven't asked you one yet. I just
8 wanted to give you a chance to read it.

9 Mr. Tuohey. Have you read it?

10 The Witness. Yes.

11 Ms. Safavian. Let me at the same time pass out what I
12 guess is Number 9, Exhibit 9.

13 [Exhibit No. 9

14 was marked for identification.]

15

16 BY MS. SAFAVIAN:

17 Q Mr. Cooney, the Exhibit 9 that I just handed you
18 has a fax cover sheet that is from you to Erin -- help me
19 pronounce her name.

20 A Wuchte.

21 Q Wuchte at OMB?

22 A Yes.

23 Q It says that you have attached CEQ's comments on
24 the strategic plan. Would you just take a very quick look at
25 this, and tell me, is this your handwriting that we see on

1 this document?

2 A It is.

3 Q And does this refresh your recollection that you
4 had seen a draft of the strategic plan --

5 A Yes.

6 Q -- earlier than, I think, you originally had
7 thought you had?

8 A Yes. Yes. It reflects that I reviewed it before
9 the draft was released in November.

10 Q And do you know --

11 Mr. Tuohey. November of what year?

12 The Witness. 2002.

13 Mr. Tuohey. All right.

14

15 BY MS. SAFAVIAN:

16 Q And do you know what version this would have been?
17 In other words, is this the initial plan that was being
18 passed around to everybody? Was this before the public
19 comments? Do you have any idea what version this is?
20 Because I know there are many versions of this.

21 A It says on the cover letter CEQ's comments on a
22 draft. The formal draft was posted on the Web site at the
23 end of November 2002, so it would have been a month before
24 the formal draft was posted for the public workshop we had.
25 The formal drafts were published on Web sites for reviewers

1 in November 2002, and the workshop was in December 2002.

2 Q Okay.

3 A So what I am puzzling over is why I sent my
4 comments to Erin Wuchte at OMB. I don't know if OMB had a
5 process at that time for review. I don't know if this was an
6 interagency, a formal interagency, review that was occurring
7 at that time.

8 Q Well, if you will turn to the next page, we have
9 this double -- or your copy is --

10 A Yes.

11 Q It looks like it was sent to you --

12 A Okay.

13 Q -- from Dr. Mahoney.

14 A Okay. It was sent to, yes, the three White House
15 offices. Yes.

16 Q So does this help --

17 A Yeah.

18 Q -- you understand --

19 A Okay.

20 Q -- why you were receiving this at this point?

21 A Yes, it does. Maybe Erin Wuchte was collecting
22 comments for all three White House offices. I just couldn't
23 figure out why I sent the comments to her, but --

24 Q As we kind of just flip through this, you know, you
25 do have edits on many of the pages here. I mean some pages

1 have more edits than others, and we can go through a couple
2 of those. I am not going to go through every edit in this
3 document or we would be here until tomorrow, but going back
4 to Mr. Piltz' memo, you know, he is claiming that you had
5 about 200 text changes, and a lot of them related to the
6 questions of climate science and that you were altering the
7 draft as it had been developed by the Federal Science Program
8 professionals, and I am just reading from his memo.

9 He is also saying, "Taken in the aggregate, the changes
10 had a cumulative effect of shifting the tone and content of
11 an already quite cautiously worded draft to create an
12 enhanced sense of scientific uncertainty about climate change
13 and its implications."

14 Mr. Cooney --

15 Mr. Tuohey. You were reading from Subparagraph 1 on
16 Page 10 --

17 Ms. Safavian. Yes.

18 Mr. Tuohey. -- of Exhibit Number 9?

19 Ms. Safavian. 8.

20 Mr. Tuohey. 9.

21 Ms. Safavian. 8.

22 Mr. Tuohey. No. It's Number 9.

23 Ms. Safavian. This is 8.

24 Mr. Tuohey. I'm reading from Document Number 9.

25 Ms. Safavian. This is 8.

1 Mr. Tuohey. I apologize. I had this marked as
2 Exhibit 8.

3 Ms. Safavian. Yes.

4 Mr. Tuohey. Exhibit 8, Page 10, Subparagraph 1.
5 Thank you. I apologize. That is what you're reading from?

6 Ms. Safavian. Correct.

7 Mr. Tuohey. Okay.

8 Ms. Safavian. I am reading just from that.

9

10 BY MS. SAFAVIAN:

11 Q So, Mr. Cooney, my question to you is:

12 Is that accurate? Was that your intention when you were
13 reviewing this draft which is Exhibit 9?

14 A No.

15 Q What was your intention when you were reviewing
16 this draft?

17 A It was to engage Dr. Mahoney as he requested our
18 comments, to engage him in our view of the draft with the
19 hope that he might consider our view. In many cases, I was
20 trying to align the draft with the President's own reliance
21 on the National Academy of Sciences' Report in June of 2001
22 and with the specific uncertainties that were identified in
23 that report and with many of the uncertainties that were
24 itemized in the policy book that was issued on June 11th,
25 2001.

1 Q Just, so I'm clear, are you trying to say that you
2 were reviewing this with an eye towards ensuring that it
3 conformed to the National Academy of Sciences' Report and the
4 President's Climate Change -- I forget the name of it.

5 A Yes.

6 Mr. Tuohey. Climate Change Strategy.

7 The Witness. I learned -- you know, not every comment
8 ties back to the National Academy. Some are just my own
9 thoughts and questions of Dr. Mahoney, but they were offered
10 in good faith, and I don't know how he resolved them. He
11 resolved them in one way or another.

12
13 BY MS. SAFAVIAN:

14 Q So you do not know -- when you sent these comments
15 off, you do not know in the end what happened with your edits
16 or with your suggestions?

17 A I did not -- I do not recall sort of tracking it
18 all the way through to see whether it was reflected in the
19 final draft that they had the workshops on.

20 Q Did Dr. Mahoney or anyone from OMB come back to you
21 and question any of your edits or ask you to further explain
22 them?

23 A Dr. Mahoney and I would talk on occasion, and so --
24 but I don't specifically recall a conversation where he
25 called me about these comments, but we would talk.

1 Q But your edits, these comments, Dr. Mahoney could
2 have taken or not?

3 A Correct.

4 Q Going back to Mr. Piltz' memo, he is trying to say
5 that what you were trying to do and what others were trying
6 to do is emphasize scientific uncertainties. Is that what
7 you were trying to do with your edits in this document?

8 A Well, what Mr. Piltz has written are his opinions.
9 I wasn't --

10 Mr. Tuohey. The question was were you trying to
11 emphasize scientific uncertainty.

12 The Witness. Only to the extent that it had been
13 emphasized by the National Academy of Sciences, itself.

14

15 BY MS. SAFAVIAN:

16 Q And then towards the end of this paragraph,
17 Mr. Piltz says, to his knowledge, "this CEQ markup," this
18 document that we are talking about, "was not shared with or
19 vetted by CCSP principals or CCSP agency science program
20 managers." Is that your understanding?

21 A I don't know whether it was. If you look at the
22 cover letter, Dr. Mahoney is asking for the views of a few
23 offices, and he is not sending it out. He doesn't appear to
24 be sending it out for a wider review, so --

25 Q But even though your cover letter to this is going

1 to OMB, it is your understanding that these edits went to
2 CCSP or went to Dr. Mahoney?

3 A They went back to Dr. Mahoney because he is the one
4 who had requested them. Yes.

5 Q I think maybe we might look at just a couple of
6 your edits in Exhibit 9.

7 A Okay.

8 Q If you'll look on what, I guess, is at the bottom
9 -- numbered Page 4; it is really the first page.

10 Mr. Tuohey. The page numbered 4 or the fourth page?

11 Ms. Safavian. It says "Page Number 4" on the bottom,
12 but it is not the fourth page. It is the first page of what
13 looks like the plan.

14 Mr. Tuohey. Right.

15

16 BY MS. SAFAVIAN:

17 Q If you will look on the bottom off to the side, you
18 say, "The NRC elaborated on this point," and you've got in
19 brackets, "see A, next page," and it looks like on the next
20 page you've got something that looks like "A insert."

21 Can you explain this to us, please?

22 A Yes. I thought it was important that when the
23 program talked about the connection between the observed
24 warming in this century and human activities that it fully
25 cover what the National Academy had said on it, and you know,

1 there is one sentence in this draft that I thought was very
2 important. The insert that I was offering was a very
3 important element of the National Academy's Report, which
4 said that a causal connection between the observed warming in
5 this century and human activities cannot be unequivocally
6 established because we don't understand with enough
7 confidence the range of natural variability in climate, and
8 if we are going to have a 10-year strategic research plan, I
9 thought it important to have the full view of the National
10 Academy on that critical point if we are going to be setting
11 the tone for the program for the next 10 years, and I think
12 it -- I will leave it at that.

13 Q Okay, and so this insert -- this is directly from
14 the National Academy of Sciences' Report?

15 A It is direct. Yes, it a direct copy from the
16 National Academy of Sciences, and it is under the caption, as
17 you can see, of, The Effect of Human Activities. That is
18 where they take on -- they purport to take on specifically
19 the linkage between observed warming and human activities,
20 and I thought it was important that the plan reflect their
21 full view on that point.

22 Q And do you know whether or not this was
23 incorporated into the strategic plan?

24 A I don't.

25 Q If you then will flip to what is labeled at the

1 bottom, Page 20 --

2 A Okay.

3 Q -- do you see that?

4 A Yes.

5 Q There is in the middle of the page a paragraph
6 where you have cross-outs starting on line 17.

7 Do you see that?

8 A Yes.

9 Q If you will, just take a quick look at that because
10 I would like you to explain --

11 Mr. Tuohey. Would you like him to read the sentence he
12 crossed out?

13 Ms. Safavian. Yes, and then, of course, his comments on
14 the side so he can explain that.

15 Mr. Tuohey. Go on.

16 The Witness. Okay.

17 Mr. Tuohey. Have you read it?

18 The Witness. I've read it.

19 Mr. Tuohey. Jennifer, is there a question?

20 Ms. Safavian. Yes.

21 Mr. Tuohey. Okay.

22

23 BY MS. SAFAVIAN:

24 Q Could you explain why you crossed out these couple
25 sentences and your comments on the side there?

1 A Yes. If you read the sentences that remain in the
2 paragraph that were not crossed out and the next section,
3 which identifies five specific research needs with respect to
4 the impact of climate change in the Arctic, they speak to the
5 need for fundamental scientific research before we can speak
6 definitively to impacts that will occur. So, if you read
7 that whole paragraph and read the research needs, the
8 language that remains is what you would expect in a research
9 plan. These are the fundamental things -- ice thickness,
10 reducing the uncertainties, and the current understanding of
11 the relationships between climate and Arctic hydrology is
12 critical for evaluating potential impacts of climate change,
13 for example. I'm just reading the language that was left.
14 There were fundamental, basic research needs that needed to
15 be undertaken before you could speak definitively to impacts,
16 but they began the sentences by saying there will be
17 significant shifts that will have significant impacts on
18 native populations. They spoke to impacts that they then
19 subsequently said they really needed to study before they
20 could understand, and it just seemed to me they were
21 concluding in an unequivocal way what the localized impacts
22 would be before they had done the fundamental research that
23 they identified as appropriate to understanding what the
24 impacts would be.

25 Q But -- and please correct me if I'm wrong here.

1 Was this written by scientists who had been studying
2 this issue, this matter, and were they not aware at that time
3 of what the current impact was?

4 A I did not think they were aware because they
5 identified these basic research needs as being needed to be
6 undertaken before they could understand localized impacts. I
7 don't -- to your question, I don't know who drafted the
8 paragraph.

9 Q And do you know whether or not this edit of yours
10 or this suggestion about removing this -- was that taken into
11 account in the final version of the strategic plan?

12 A I don't know.

13 Q Before I run out of time, which I have just a few
14 minutes left --

15 Mr. Tuohey. Excuse me.

16 Ms. Safavian. Sure.

17 Mr. Dotson. Just for the record, Mr. Cooney conferred
18 with his counsel.

19
20 BY MS. SAFAVIAN:

21 Q If you would turn to what is numbered Page 115 of
22 that document.

23 A Yes.

24 Q I am interested in -- you have got the word
25 "potential" twice in two different locations on that page in

1 two different paragraphs. Can you explain why you wanted to
2 add the word "potential"?

3 Mr. Tuohey. And let the record reflect on that question
4 that the word "potential" is inserted a number of times
5 throughout the report, so his answer here will apply to all
6 of them. Go ahead.

7 Ms. Safavian. We will see if he agrees with that.

8 Mr. Tuohey. Yes. Should we take them one at a time?

9 Ms. Safavian. Sure.

10 Mr. Tuohey. Take the first one.

11 The Witness. There is, in this area, a difference
12 between observed changes and changes that are projected on a
13 localized level from models, and the National Academy of
14 Sciences' Report, for example, said that any connection
15 between human health and global climate change is a study in
16 its infancy, that much remains to be understood about it. It
17 had a lot of language about the limitations of models,
18 particularly in their ability to reliably inform policymakers
19 about localized impacts, and so, when discussions of future
20 localized impacts occur, I think that there is a lot in the
21 National Academy of Sciences' June 2001 Report that would
22 counsel caution. These are from modeled projections which
23 are imperfect, the National Academy told us particularly on a
24 regionalized and localized scale, particularly with respect
25 to human health impacts, and that would have been a reason I

1 would have inserted the word "potential."

2

3 BY MS. SAFAVIAN:

4 Q Okay. How about in the second sentence, the same
5 thing?

6 A That would apply for both.

7 Q Okay. So that is just going back to your
8 understanding of what the National Academy of Sciences'
9 Report stated?

10 A Yes.

11 Q And your counsel mentioned that you did use the
12 word "potential" or "potentially" throughout this draft.

13 A Yes.

14 Q Without going to each one of them, are you able to
15 explain to us why you kept throwing in that word? Does it go
16 back to the National Academy of Sciences, your explanation
17 that you just gave us?

18 A No, I can't say it does with respect to each
19 change, but there was a hesitation there, and Dr. Mahoney in
20 many cases overruled me. I know that materials have been
21 sent up to the CEQ in the past several weeks which I was able
22 to review on Thursday and Friday. In some cases, they would
23 provide markups back to the Agency of changes that had been
24 accepted and not accepted, and in many cases, he did not
25 accept my changes, and he had the final word.

1 Assessment for the Potential Consequence of the Climate
2 Variability and Change?

3 A Yes.

4 Q Can you tell us briefly how the National Assessment
5 was prepared?

6 A It was prepared, I think, by a Federal advisory
7 committee predominantly in the late 1990s. Although,
8 portions of the National Assessment continued to come out
9 through 2003.

10 Q In your view, what was the purpose of the National
11 Assessment?

12 A Well, its stated view was to comply with the legal
13 requirement under the Global Change Research Act. To provide
14 a National Assessment, the way it was organized, it purported
15 to describe and predict the regional impacts of global
16 climate change in various regions of the United States and in
17 several sectors like agriculture, health and some other
18 sectors.

19 Q Where were you employed when you first learned that
20 the National Assessment was being developed?

21 A At the American Petroleum Institute.

22 Q Was API interested in the National Assessment?

23 A Yes.

24 Q Why?

25 A Because of a concern that it had been designed and

1 was being developed with a political objective that appeared
2 to go beyond what science could tell us reliably about
3 regional impacts of global climate change.

4 Q Did API monitor action on the National Assessment?

5 A API provided public comment on drafts of the
6 National Assessment. Our economists and scientists provided
7 individual, line-by-line comments on certain sections of the
8 National Assessment. We also provided thematic comments on
9 the National Assessment, public comments to the Government.

10 Q Did API take any other actions based on the fact
11 that the National Assessment was being developed?

12 A I recall that there was once sort of a public
13 hearing on the National Assessment, and we participated in
14 that public hearing.

15 Q Was the development of the National Assessment
16 something that you were professionally focused on?

17 A Yes, because the Climate Team was focused on it as
18 it was being developed, and as solicitations for public
19 comment emerged, we did comment. Also, the press was
20 reporting on it. The New York Times was reporting on it.
21 The Wall Street journal was reporting on its development. It
22 was a prominent development relating to climate change that
23 was emerging in the late 1990s.

24 Q What was your specific role at API with regard to
25 the National Assessment?

1 A It was to be sure that our Multidisciplinary Team
2 was performing in such a way as to advocate effectively our
3 concerns about the National Assessment.

4 Q In 1999, Congress enacted as part of the FY 2000
5 appropriations cycle language that addressed the National
6 Assessment. Did you work on this language as part of your
7 employment?

8 A I do not remember if I worked on the language.

9 Q Would you have been the staff member there to work
10 on the language?

11 A Not necessarily. As I said, we had lawyers and we
12 had lobbyists -- people who covered Capitol Hill -- who may
13 have drafted language for the team. I just don't remember
14 who -- I do not remember if API even drafted the language. I
15 don't really recall, but it wouldn't necessarily have been my
16 role to do so.

17 Q The National Assessment has been described as,
18 quote, "the most comprehensive and authoritative
19 scientifically based assessment of potential consequences of
20 climate change for the United States," end quote.

21 Do you think this is an accurate description?

22 A Let me just look at something if I may. I want to
23 look at the 10-year Strategic Plan, which I believe has --
24 well, Page 111 of the 10-year Strategic Plan says that the
25 largest assessment program previously undertaken by the

1 USGCRP was the National Assessment initiated in 1998, which
2 produced an overview of reports in late 2000 and a series of
3 specialty reports in the period 2001 to 2003." So the
4 10-year plan refers to it.

5 Q Well, that is slightly different from my question.
6 Let me repeat my question.

7 The National Assessment has been described as the most
8 comprehensive and authoritative scientifically based
9 assessment of potential consequences of climate change for
10 the United States. Do you, personally, think this is an
11 accurate description?

12 Mr. Tuohey. May I just ask a question? Can you cite
13 the source of that comment?

14 Mr. Baran. I believe Rick Piltz gave that quote.

15 Mr. Tuohey. Okay. Thank you.

16 Mr. Baran. Yes.

17 The Witness. It is the only National Assessment, so to
18 say that it is the most authoritative, the Act, the Global
19 Change Research Act, requires a National Assessment be
20 prepared every 4 years, and one was not. The act was enacted
21 in 1990, and the first National Assessment, most of it, was
22 published in November 2000. So, to say it is the most
23 authoritative, it is the only assessment that was performed.
24 The Clinton administration did not do a National Assessment
25 until -- and publish it until 2000.

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BY MR. BARAN:

Q Do you think the National Assessment was based on solid science?

A My view is really a derivative view, and it derives from a lot of the commentary that Federal scientists, themselves, offered as part of the Federal advisory committee proceedings that were developing the National Assessment, and they are part of the record, and I have some of those citations with me, but Joel Scheraga and Mike Slimak at EPA, in a Wall Street Journal article, called it alarmist. Kevin Trenberth at the National Center for Atmospheric Research severely criticized the selection of the models that they used in the National Assessment and the premise of the National Assessment that models were sufficiently reliable to predict impacts of climate change at the local level because the IPCC and a whole host of other authorities had said in the second report in 1995, in their special report on local impacts in 1998 and in their third assessment report in 2001 that the models are incapable of reliably predicting impacts at the local level. A symptom of the model's unreliability was the fact that the two models used in the National Assessment contradicted each other repeatedly on basic things like precipitation. In various regions of the country, one model would say precipitation will be greater. In the same

1 regions, the other model would say precipitation will be much
2 lower, and the fact that they were contradictory was
3 symptomatic of the inability of models to reliably project
4 regional impacts at a localized level. Yet, that was the
5 foundation for the regional reports, and you will find a
6 whole host of Federal scientists who complained and
7 criticized the foundation, this foundation of the National
8 Assessment, this element of the foundation of the National
9 Assessment. They were very critical of it. In the
10 New York Times' article that Andy Revkin wrote in July of
11 2000, he cited a Federal scientist who said this was all
12 being rushed out and driven by the election, a Federal
13 scientist who, himself, purported to -- you know, who was
14 very concerned about climate change and the serious threat
15 that it poses.

16 So I have given you a very basic sampling of the fact
17 that this was very controversial during its development,
18 severely criticized by Members of Congress. In fact, Members
19 of Congress initiated litigation against the administration's
20 publication of the National Assessment, sitting Members of
21 Congress. Congresswoman Emerson, Congressman Knollenberg,
22 Senator Inhofe, and various other groups initiated this
23 litigation, so it was very controversial. My own view is
24 derivative, though. I didn't have an independent view.

25 Q Is it fair, based on the views of the scientists

1 that you were basing your own view on, that you had concerns
2 about the substance of the National Assessment?

3 A Yes.

4 Q On October 5th, 2000, the Competitive Enterprise
5 Institute, or CEI, announced a lawsuit against the
6 administration regarding the National Assessment, claiming
7 that it had been unlawfully produced. Were you aware of this
8 lawsuit at the time it was filed?

9 A I was.

10 Q Did you or any other API employee communicate with
11 CEI regarding this lawsuit prior to its initiation?

12 A I do not recall.

13 Q Was API engaged in any way with the decision to
14 file this lawsuit or with the development of this lawsuit?

15 A I just don't recall.

16 Q Did API have any financial relationship with CEI at
17 the time the lawsuit was filed?

18 A What do you mean by "financial relationship"?

19 Q It could be any financial relationship.

20 Was API, for example, funding CEI in any respect?

21 A Yes.

22 Q Can you describe the relationship, the extent of
23 the funding?

24 Mr. Tuohey. Meaning beyond what he has done? He has
25 talked about it. Do you want him to go beyond that?

1 The Witness. I do not recall how much money we were
2 providing at that time.

3

4 BY MR. BARAN:

5 Q Did you communicate with CEI regarding this lawsuit
6 after the lawsuit had been initiated?

7 A Probably.

8 Q Do you recall the nature of your communications?

9 A No.

10 Q You have no recollection at all of any specific --
11 Mr. Tuohey. Do you mean -- let me understand because I
12 think there may be a disconnect here.

13 We all know there were memos back -- there was a
14 conversation of a memo. Do you mean any time afterwards, of
15 the filing of the lawsuit? I mean, the discussions with
16 Ebell, you're going to get to that. Let's just jump ahead
17 here. Do you include that? Your question was after the
18 lawsuit was filed --

19 Mr. Baran. I'll rephrase my question.

20 Mr. Tuohey. Okay.

21

22 BY MR. BARAN:

23 Q During the pendency of the lawsuit but after it was
24 filed, do you recall having any communications with CEI?

25 A Not specifically.

1 Q Okay. Do you believe any API funding supported the
2 CEI litigation?

3 A It could have. I don't know. The litigation
4 included a number of, from my recollection, other free
5 enterprise, nongovernmental organizations and also Members of
6 Congress, and I think they were all coplaintiffs, and I don't
7 know who was -- how it was being paid for.

8 Q Would it surprise you if API had funded this
9 litigation?

10 A It wouldn't surprise me that API funded CEI. We
11 did. Whether our funds that we gave -- they had a lot of
12 funders. Whether they were traceable specifically to the
13 litigation, you know, I don't know. We were a funder of CEI.

14 Q CEI's lawsuit was settled with the administration
15 on September 12th, 2001. Were you involved with the
16 administration's response to or defense of this lawsuit?

17 A Rosina Bierbaum wrote a letter, I believe, dated
18 September -- well, I have it here. It is right here, so -- I
19 thought this would come up. She dated a letter
20 September 6th, 2001, to Chris Horner, and I did not have
21 anything to do -- I do not recall being involved with her
22 development of that letter.

23 Q Okay. I understand the letter, but were you
24 involved in any way with the administration's response to or
25 defense of this lawsuit?

1 A I vaguely remember, at one point, White House
2 counsel asked me about it, and I don't really remember what I
3 said or what I thought. It was right after I got there.

4 Q Do you remember who you spoke with about this?

5 A Yes.

6 Q Who was it?

7 A His name was Noel Francisco.

8 Q What is your understanding of how this case was
9 resolved?

10 Mr. Tuohey. Excuse me a second. Let me interrupt you
11 for a second.

12 I promised you I would check, and I have. There is a
13 flight that leaves Reagan at 7:30. I am willing to have him
14 take that flight. We can keep going for another couple of
15 hours, okay?

16 Mr. Baran. That would be great.

17 Ms. Safavian. That is a problem for me.

18 Mr. Dotson. Well, you have until 5:30.

19 Ms. Safavian. You'd better make it 5:20 so I can get my
20 keys, get to the garage and run out.

21 Mr. Tuohey. Can we resolve this in a way that
22 accomplishes both? Because we can't come back, and I am
23 willing to extend this until 6:00. It leaves at 7:30. I
24 think we can go until 6:20, 6:15.

25 Ms. Safavian. If you will let me take all my time up

1 front, and then you all end with the time, that might work.

2 Mr. Dotson. Yes. You'll get a copy of the deposition.
3 That would be agreeable. We'll finish this half-hour round.
4 We'll move to you to use your balance of time, and then we
5 will take the rest of it.

6 Ms. Safavian. Does that work for you?

7 Mr. Tuohey. Say that again. Sorry.

8 Ms. Safavian. I said, I am fine with that as long as I
9 can use all my time up front, and then they will end.

10 Mr. Tuohey. Fine. We're okay with that. Yes.

11 Mr. Baran. That's agreeable to everyone?

12 We want to make it clear, however, that that may or may
13 not end our needs in terms of the deposition, but we
14 certainly will get a lot further along.

15 Mr. Tuohey. I don't want to get into that because I'm
16 telling you there will be no more depositions. You can't
17 compel it. You know you can't compel it, and we had an
18 agreement.

19 Mr. Dotson. I think where we're moving now is everyone
20 is in good faith, and we're moving in the same direction.

21 Mr. Tuohey. I want to help you guys. I've said that
22 from the beginning, but I can't keep having things change on
23 me. I'm willing to do this, so I'll make arrangements.

24 Go ahead. I'm willing to help you out. Keep talking,
25 and I'll just keep going.

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BY MR. BARAN:

Q Let me repeat the last question.

What is your understanding of how this case was resolved?

A I understand that the OSTP Acting Director, Rosina Bierbaum, wrote the letter that she did on September 6th and that the plaintiffs, in exchange, in reliance on that letter, dismissed -- or dropped the lawsuit, did not pursue it any further.

BY MR. BARAN:

Q What is your understanding of the commitment made by the administration with respect to the National Assessment?

A That it would not be relied upon for policymaking, that, as Ms. Bierbaum's letter says, the June 2001 report of the National Academy of Sciences on climate change and the climate change Cabinet-level review which existed in 2001, quote, "will form the basis of Government decision-making on the important issue of global climate change."

So, Ms. Bierbaum, who had been in the Clinton administration and remained in the Bush administration, said that we will be relying upon the June 2001 report of the National Academy of Sciences for policymaking, and we will

1 not be relying on the National Assessment for policymaking.

2 Q Was that your understanding when you worked in the
3 White House?

4 A That was my understanding.

5 Q Under the settlement agreement, did you believe
6 that the administration had agreed to refrain from mentioning
7 the National Assessment in all government reports and
8 publications?

9 A No, because, in the Climate Action Report that was
10 released in June 2002, which was a submission from the State
11 Department to the United Nations under the frame of
12 conventional climate change, Chapter 6 of that report
13 summarized information from the National Assessment in that
14 report. Also, in July of 2002, the administration -- I
15 coordinated with the Agriculture Department to release the
16 agriculture sector report of the National Assessment, so the
17 National Assessment was still emergent in some reports in an
18 informational sense, but it was not being used for
19 policymaking and relied upon for policymaking pursuant to the
20 legal agreement.

21 Mr. Tuohey. Let the record reflect the witness was
22 holding a document called the Potential Consequences of
23 Climate Variability and Change, a report for the U.S. Global
24 Change Research Program in 2002. Thank you.

25

1 BY MR. BARAN:

2 Q Did you believe that the administration was legally
3 prohibited from mentioning the National Assessment in the
4 Climate Change Science Program Strategic Plan?

5 A I thought that was part of the legal agreement that
6 we should not -- that the 10-year plan was a policy document
7 and that this was a forward-looking 10-year Strategic Plan,
8 obviously called for under the statute, and we were issuing
9 it in July of 2003 which was supposed to take us through
10 2013, and so it is a forward-looking document, and it was a
11 policy document in that it was -- and for that reason, it was
12 inappropriate to be citing to the National Assessment.

13 Q So, in your view, any mention of the National
14 Assessment in the strategic plan violated the settlement
15 agreement?

16 A I was concerned that it did.

17 Q Did you believe that the administration was legally
18 prohibited from mentioning the National Assessment in Our
19 Changing Planet?

20 A Yes, because that is a policy document as well of
21 the administration. Certain policy positions are put
22 forward.

23 Q Did you or anyone at the White House direct the
24 Climate Change Science Program to delete references to the
25 National Assessment from the strategic plan or Our Changing

1 Planet?

2 A Well, you used the word "direct," and what I did in
3 reviewing --

4 Mr. Tuohey. Answer "yes" or "no" first, and then
5 explain. Did you direct anyone?

6 The Witness. I did not direct anyone. I made comments
7 in interagency review processes, recommending that references
8 to the National Assessment be deleted, but as I have pointed
9 out, I was overruled on that point by Dr. Mahoney, and the
10 final plan in which I formally concurred does refer to the
11 National Assessment.

12

13 BY MR. BARAN:

14 Q Who decided to make the comments, or as you refer
15 to them, recommendations, in this regard to the strategic
16 plan? Was that your decision?

17 Mr. Tuohey. I am just going to ask. Do you mean the
18 comments attributed to him in the document?

19 Mr. Baran. I originally asked whether he or anyone at
20 the White House directed the Climate Change Science Program
21 to delete references to the National Assessment from the
22 strategic plan or Our Changing Planet. He responded by
23 saying it wasn't a direction, and now I am asking who decided
24 to make the recommendation.

25 Mr. Tuohey. Any recommendations or the ones that are

1 noted in here? I am just asking you to clarify. That's all.
2 Any recommendation whatsoever?

3 Mr. Baran. Well, deleted references to the National
4 Assessment.

5 Mr. Tuohey. Okay.

6 The Witness. In reviewing documents over the past 4
7 days, I see places where I recommended that references to the
8 National Assessment in the 10-year Strategic Plan be deleted.

9

10 BY MR. BARAN:

11 Q Did anyone tell you to make that recommendation?

12 A No.

13 Q Did you consult the Department of Justice to
14 determine if that was an appropriate course of action?

15 A I did not.

16 Mr. Baran. Okay. I will ask the reporter to mark the
17 next exhibit.

18

[Exhibit No. 10

19

was marked for identification.]

20

21 BY MR. BARAN:

22 Q Exhibit 10 is a stipulation dated September 12th,
23 2001, and a memorandum in support of the stipulation; is that
24 correct?

25 A I don't know. Let me look at it.

1 Q Sure.

2 Mr. Tuohey. What was your question?

3 Mr. Baran. Exhibit 10 is a stipulation dated
4 September 12th, 2001, and a memorandum in support of the
5 stipulation; is that correct?

6 Mr. Tuohey. The document speaks for itself.

7 You can answer yes. You can answer yes.

8 Mr. Baran. Well, please don't direct the witness how to
9 answer.

10 Mr. Tuohey. Well, it's a legal question. You're asking
11 him what the document is. It's a legal document. It speaks
12 for itself.

13 Mr. Baran. I'm asking him whether that's correct.

14 Mr. Tuohey. And I'm advising him he can answer yes.
15 I'm advising him he can answer yes. It's a legal document.
16 He is not familiar with it.

17 Mr. Baran. Excuse me. It is not appropriate for you to
18 advise him on how to answer specific questions.

19 Mr. Tuohey. Then don't ask him a question where the
20 document speaks for itself.

21 Mr. Baran. This is a deposition. I will ask the
22 questions. He is going to answer them.

23 Mr. Tuohey. He can answer the question. Go ahead.

24 Don't read this. That's not part of it. Read the first
25 two pages.

1 The Witness. This document is entitled Joint
2 Stipulation of Dismissal without Prejudice.

3
4 BY MR. BARAN:

5 Q The stipulation dismisses CEI's lawsuit against the
6 administration regarding the National Assessment. Have you
7 seen this stipulation and memorandum before?

8 A I do not recall. I might have, but I do not
9 recall.

10 Q Did you communicate with anyone about the contents
11 of this stipulation or memorandum prior to its execution by
12 the court?

13 A I do not recall.

14 Q Is it your assessment as a lawyer that mentioning
15 the National Assessment in a government publication is
16 inconsistent with the terms of this stipulation?

17 Mr. Tuohey. If you know. If you can answer the
18 question.

19 The Witness. I just don't have a legal judgment on this
20 document. I just don't. I don't really recognize it. I
21 don't really know what it absolutely requires and absolutely
22 doesn't. I don't have a view.

23
24 BY MR. BARAN:

25 Q When you were making edits to the strategic plan

1 and the edits involved the National Assessment, you were
2 basing your edits on what understanding of this settlement?

3 A I made them based upon an understanding that the
4 lawsuit had been withdrawn because the administration had
5 communicated that it would not rely on the National
6 Assessment for policy purposes.

7 Q Do you know where your understanding of this
8 agreement came from?

9 A Let me say that I don't want to answer the question
10 directly. Well, the direct answer is, no, but there is --
11 when the administration issued the Climate Action Report in
12 2002, in June of 2002, CEI and a lot of its colitigants
13 asserted that the administration had violated its agreement
14 on the National Assessment by including information on the
15 National Assessment in Chapter 6, and so I knew that they
16 were asserting that their agreement had been violated, so
17 that might have -- yes, I just don't know what I relied on.
18 I just walked around with the knowledge that there had been a
19 settlement agreement that we wouldn't use this for policy
20 purposes.

21 Q Okay, but just to clarify, you are not sure whether
22 or not you actually read the settlement agreement or spoke
23 with the White House Counsel or spoke with the Department of
24 Justice about it?

25 A About this agreement right here?

1 Q Yes.

2 A I did not speak to the Justice Department about it.
3 I do not recall. I just think -- I really think it went to
4 OSTP, and they handled it with White House counsel. I don't
5 think I had any meaningful role in how this was resolved in
6 2001, September 2001.

7 Q Do you think that deleting references to the
8 National Assessment in the strategic plan and in Our Changing
9 Planet increased or decreased public and congressional
10 awareness of the threat posed by global warming?

11 Mr. Tuohey. Do you understand the question?

12 The Witness. Sort of.

13 Mr. Tuohey. Then restate the question, please.

14 Mr. Baran. Let me repeat it first, and then if I need
15 to restate it, I will.

16

17 BY MR. BARAN:

18 Q Do you think deleting references to the National
19 Assessment in the strategic plan and in Our Changing Planet
20 increased or decreased public and congressional awareness of
21 the threat posed by global warming?

22 A My own view is that the deletions, if you'll look
23 at them, were immaterial and that the documents -- the
24 strategic plan and the Our Changing Planet Report reinforced
25 the seriousness with which the administration addressed

1 global climate change, global climate change science research
2 priorities, so I don't think it diminished concern. I think
3 those documents reflected a serious concern on the part of
4 the administration and commitment to responsibly address
5 climate change.

6 Q Just to close out this section of questioning, it
7 is your view that the deletions to the references to the
8 National Assessment in the strategic plan and in Our Changing
9 Planet had no effect on the document's ability to communicate
10 the threat of global warming?

11 A The deletions were to citations to the National
12 Assessment. They weren't to paragraphs from the National
13 Assessment. They were deletions to citations, three little
14 words, "see National Assessment," and so, when you delete a
15 formal citation, I don't think that that is cutting
16 materially into the meaning of the overall report.

17 Mr. Baran. Thank you. I think I have gone a little
18 over my time, so I am going to turn it over to the minority.

19 Mr. Dotson. Can I just discuss a housekeeping matter?

20 It is now 4:16. We have approximately 2 hours left of
21 questioning. We took a half an hour, so you have a half hour
22 coming, which leaves approximately an hour and 45 minutes
23 that we are going to split, I mean at least 45 minutes that
24 we are going to split -- an hour and a half that we're going
25 to split.

1 Mr. Baran. So you'll have a half an hour plus an
2 additional 45 minutes -- that will frontload you -- and then
3 after that, we'll have 45 minutes.

4 Mr. Tuohey. I don't think you're talking about an hour
5 and a half. He has got to leave here at 6:30 for a 7:30
6 flight, so maybe 6:40, 6:45, but no more than that.

7 You've got to check bags; 6:30 to be safe. So I think
8 you've got an hour and 15 minutes.

9 Mr. Baran. Two hours and 10 minutes then?

10 Mr. Tuohey. Yes, 2 hours and 10 minutes. Yes, I'm
11 sorry. Just around 6:30. I mean, I want to be sure about
12 traffic and stuff. We'll try to plan on that. We'll be
13 all right.

14 Ms. Safavian. So what do I have?

15 Mr. Dotson. So you have -- if you take --

16 Mr. Baran. So you have 30 minutes followed by an
17 additional 45 minutes, and then we'll have 45 minutes.

18 Mr. Tuohey. Let me just say, 7:30 -- I don't want you
19 panicking while you're testifying here, so let's say -- you
20 have to check a bag?

21 The Witness. Yes.

22 Mr. Tuohey. And you have to get a new ticket issued.
23 We'd better say, to be safe, 20 after.

24 Mr. Dotson. Okay. I think that still works, 2 hours.
25 That still works for us.

1 A Uncertainty particularly at the regional scale and
2 in the longer term. On Page 21, it says, "Whereas all models
3 project global warming and global increases in precipitation,
4 the sign of the precipitation projections varies among models
5 for regions. The range of models' sensitivities and the
6 challenge of projecting the sign of the precipitation changes
7 for some regions represent a substantial limitation in
8 assessing climate impacts."

9 So that is a pretty direct quote. It says the models
10 are contradictory on the basic question of whether there will
11 be more precipitation or less precipitation in a certain
12 region, and that severely handicaps the understanding of what
13 regional consequences might be from global climate change.

14 Q Okay. I just want to finish up with where I
15 stopped with my last round of questioning, looking at Rick
16 Piltz' memo. Do you still have that in front of you?

17 Mr. Tuohey. No. We've got it over here. It should be
18 over here.

19
20 BY MS. SAFAVIAN:

21 Q And we were on Page 10.

22 A Okay.

23 Q We had already pretty much gone over the October
24 28th, 2002 draft version of the strategic plan.

25 A Yeah.

1 Q I'm not going to go over that any further, but if
2 you'll look at the next paragraph which starts with the
3 Number 2.

4 A Yes.

5 Q He's saying that, in the final review of the
6 revised strategic plan dated June 2nd, 2003, CEQ made about
7 450 comments throughout the document, and you can feel free
8 to read this paragraph if you want.

9 Mr. Tuohey. Do you want him to read the paragraph to
10 himself?

11 Ms. Safavian. Yes, please.

12 Mr. Tuohey. Okay.

13 The Witness. Okay. Okay.

14
15 BY MS. SAFAVIAN:

16 Q And I don't have this version, so I can't give it
17 to you to show you, but here is my question, and see if you
18 can do this just by reading what was in this paragraph.

19 Do you recall or do you have a recollection of making
20 edits to this -- you know, to this degree for this draft for
21 your final review of this plan?

22 Mr. Tuohey. This is the June 2nd draft?

23 Ms. Safavian. Yes, of 2003.

24 The Witness. I believe, at this point, that Bryan
25 Hannegan and I were both making comments and that they were

1 combined in one document, and we split up the chapters and
2 made different comments.

3
4 BY MS. SAFAVIAN:

5 Q So what Mr. Piltz has in this paragraph sounds
6 familiar to you as some of the comments or edits you made?

7 A They are really his characterizations, his
8 opinions, of the impact of our comments. I don't really
9 agree with a lot of the way he characterizes our comments.

10 Q Did you intend to alter and delete references to
11 the potential public health impacts?

12 A Well, if you'll go again to the National Academy of
13 Sciences at Page 20, you know, I was guided by what they
14 said, which is that, quote, "much of the United States
15 appears to be protected against many different health
16 outcomes related to climate change by a strong public health
17 system, relatively high levels of public awareness and a high
18 standard of living." It goes on to say, "The understanding
19 of the relationships between weather/climate and human health
20 is in its infancy, and therefore, the health consequences of
21 climate change are poorly understood."

22 On that basis, I would make a recommendation in my
23 comments on proposals that I thought risked overstating human
24 health impacts, because the National Academy had told us that
25 it is a study in its infancy, and the impacts are poorly

1 understood.

2 Q And did Mr. Hannegan agree with you on that?

3 A I do not remember specifically.

4 Q But did you end up sending back one document that
5 had both of your comments included in it, or did you each
6 send up your own edits?

7 A What I think I recall from having reviewed the
8 documents in the past 4 days is that there was a joint set of
9 comments, CEQ, that reflected both his and my views, and I
10 think he typed it, and then we sent it back. I could be
11 mistaken, but I think that is what he did.

12 Q And you think that that is regarding this draft?

13 A Yes, because he was there by then.

14 Mr. Tuohey. Do we have a copy of this draft?

15 Ms. Safavian. I do not. Do you have a copy of it?

16 Mr. Tuohey. Does counsel for the majority have a copy
17 of the June 2nd, 2003 draft?

18 Mr. Dotson. This is, Our Changing Planet?

19 Mr. Tuohey. No, of our strategic plan. We have the
20 copy here that you presented from October 2002, and if there
21 are going to be questions about the June 2, 2003 draft, it
22 would be helpful to have that draft in front of us.

23 Ms. Safavian. My questions are more general.

24 Mr. Tuohey. Yes, I know they are.

25 Mr. Dotson. Should we enter this?

1 Ms. Safavian. Why don't you just put it in so he has it
2 in case he --

3 Mr. Dotson. Can we make it an exhibit?

4 Ms. Safavian. If you want.

5 Mr. Tuohey. No objection from us.

6 Ms. Safavian. Yes. Exhibit 11. That's fine.

7 [Exhibit No. 11
8 was marked for identification.]

9

10 The Witness. So this here appears to be -- again, this
11 is not joint comments. These appear to be handwritten
12 individual comments. I don't know if they are --

13

14 BY MS. SAFAVIAN:

15 Q Is it your handwriting?

16 A Well, I just looked at a page that I believe is
17 Mr. Hannegan's.

18 Q Ah, okay. So maybe they do encompass both of your
19 comments.

20 A I think these are Mr. Hannegan's handwriting, and I
21 am looking just at these couple pages right here.

22 Q Do you see any that is your handwriting?

23 A We sort of write alike, but so far, I see
24 Mr. Hannegan's handwriting, and you will see, of course, that
25 99.9 percent of the document has no comments on it.

1 Q I do see that, yes. There are a lot of blank
2 pages.

3 A So what I have seen so far are Mr. Hannegan's --
4 appear to be Mr. Hannegan's comments, Dr. Hannegan. I do not
5 see any of my comments at this point.

6 Q You do recall reviewing this draft version of the
7 plan and making comments?

8 A Not necessarily. I don't know. You know, I think
9 we reviewed versions together in the spring of 2003, but
10 these comments that I am now looking at as this exhibit
11 appear to be his comments.

12 Q And would either you or Mr. Hannegan -- I know you
13 said maybe he compiled both sets of comments?

14 A Yes.

15 Q Where did you all send those edits or comments to?

16 A I think, in this case, they would have gone back to
17 OMB because we were back to the formal interagency review
18 process that OMB facilitates at the end of -- toward the end
19 of the documents.

20 Q And, when you would send it to OMB, did you just
21 send it to OMB or did you also send it to Dr. Mahoney?

22 A I don't really remember. It would be ordinary to
23 just send them back to OMB.

24 Q Okay.

25 A They were compiling comments of all of the

1 agencies.

2 Q Okay. Then referring back to Mr. Piltz' memo, at
3 the top of Page 11, he says that he believes that this
4 markup, CEQ's markup of this, was never shared with or vetted
5 by CCSP agency principals or agency science program managers.

6 Is that your understanding?

7 A I'm sorry. Which paragraph are you looking at?

8 Q At the very top of Page 11?

9 A In late June, CEQ comments --

10 Mr. Tuohey. The question is whether the statement is
11 made that comments here -- forget about that for a minute --
12 whether comments here were not shared with CCSP.

13 Is that your understanding?

14 The Witness. Yes, because it would have gone to OMB.
15 OMB was compiling all of the agencies' comments. The CCSP,
16 themselves, were commenting.

17

18 BY MS. SAFAVIAN:

19 Q Okay. So they sent their comments to OMB?

20 A Yes, everyone. OMB is collecting everyone's
21 comments at the end of a process, and then OMB distills what
22 it has and sends it to Dr. Mahoney for his final
23 decision-making.

24 Q But even though OMB compiles everything, they still
25 send it back to CCSP, Dr. Mahoney, who has the final review

1 and edit and whatever. He is the final say on --

2 A That is my understanding.

3 Q Okay.

4 A Yes, and he said so in written letters to the
5 Senate in July of 2005. He answered written questions from
6 the Senate and described this whole process.

7 Mr. Tuohey. Well, just as a point of clarification, let
8 me ask, if I may: Counsel just asked a question of whether
9 CCSP or its representatives saw these comments. You first
10 said no, and then you said Dr. Mahoney saw them.

11 Did they or did they not see the comments?

12 The Witness. Well, Dr. Mahoney was the head of CCSP.

13 Mr. Tuohey. Right.

14 The Witness. So --

15 Mr. Tuohey. In that capacity, did he see the comments?

16 The Witness. He saw the comments, and he was the
17 director, in that lower box, of our organizational chart, so
18 they went back to him.

19

20 BY MS. SAFAVIAN:

21 Q Right. So they did, though, go back to CCSP, and
22 it was vetted in a sense?

23 A Maybe it didn't go back to staff, but it went back
24 to Dr. Mahoney as the director of the program.

25 Q Okay. Then if you'll go -- looking on Page 11 of

1 Mr. Piltz' memo, look at Number 3, the paragraph that starts
2 with Number 3. If you can, just quickly read that.

3 Mr. Tuohey. Do you mean on page -- oh, Page 11, next
4 page, Page 11.

5 Ms. Safavian. Yes.

6 Mr. Tuohey. Thank you.

7 The Witness. Yes, I see that paragraph.

8
9 BY MS. SAFAVIAN:

10 Q And you have already had a lengthy discussion about
11 the National Assessment and the lawsuit and the settlement.

12 Did you play a lead role in any of that?

13 A In the settlement of the National Assessment
14 litigation?

15 Q Yes.

16 A I did not play a lead role. I did not -- I did not
17 play a lead role.

18 Mr. Tuohey. A lead role in what?

19 The Witness. In the settlement of the National
20 Assessment.

21 Mr. Tuohey. Is that what your question was?

22 Ms. Safavian. Yes.

23
24 BY MS. SAFAVIAN:

25 Q Did you play a lead role in enforcing the

1 suppression of the National Assessment --

2 A That is his --

3 Q -- of the --

4 A That is his description. I have just spoken to
5 edits that I made on the 10-year Strategic Plan where I
6 recommended the deletion of references to the National
7 Assessment in a policy document as being inconsistent with
8 the legal resolution of the case.

9 Mr. Tuohey. Would you read the question back.

10 Listen to the question.

11 I thought your question was, did you play a lead role,
12 quote, in enforcing the suppression of the National
13 Assessment?

14 Ms. Safavian. That is the question.

15

16 BY MS. SAFAVIAN:

17 Q Did you or didn't you?

18 A No, I don't agree with --

19 Q I mean, I understand what you said before. When
20 you were reviewing documents, you would cross off -- and I
21 have seen this where you've crossed out the National
22 Assessment, reference to the National Assessment because of
23 the settlement that was not to be used for policy decisions;
24 correct?

25 A Yes.

1 Q Did you inform others? Did you require others in
2 some -- I will use the word "suppression" because that is the
3 word that Mr. Piltz uses, but were you openly out there in
4 trying to prevent other people from referring to the National
5 Assessment?

6 A No. In fact, the record shows that, when we were
7 dealing with documents that were not of a policy nature like
8 the Climate Action Report of June 2002, Chapter 6 of it
9 relied on portions and a summary of the National Assessment.
10 Also, I held up this document from July 2002, the agriculture
11 report of the National Assessment which the U.S. Department
12 of Agriculture people coordinated the release, told the White
13 House they were going to release it, and they released it.

14 Beyond that, I would say that the National Assessment
15 remained on a government Web site throughout this time
16 period, www.nacc.usgcrp.gov, something like that, but it was
17 always available.

18 Q Okay. Further within that same paragraph, he
19 writes, "Public disclosure of the CEQ Chief of Staff's
20 communications with the Competitive Enterprise Institute
21 suggests joint political strategizing," and this is not --

22 A He is speaking about an e-mail that received a
23 lot --

24 Mr. Tuohey. Let her ask the question.

25 The Witness. Oh, I'm sorry. I'm sorry.

1 Mr. Tuohey. There is no question.

2 Ms. Safavian. Well, you're actually getting to where I
3 was going because I was going to say I don't want to discuss
4 the lawsuit that was already brought up by the majority
5 counsel, regarding CEI's lawsuit, but what I do want to ask
6 you about, because I think he was referring to this document
7 -- and let me show you.

8 This will be Exhibit 12.

9 [Exhibit No. 12
10 was marked for identification.]

11

12 Mr. Tuohey. Do you want him to read it, counsel?

13 Ms. Safavian. Yes, please.

14

15 BY MS. SAFAVIAN:

16 Q Have you finished reading?

17 A Yes.

18 Q Okay. Mr. Cooney, this appears to be an e-mail
19 addressed to you from Myron Ebell at CEI. Can you tell us
20 who Myron Ebell was or is?

21 A I guess he was a longtime employee at CEI who has
22 worked on climate change policy.

23 Q First of all, have you seen this before?

24 A Yes, I have.

25 Q Okay. Did you receive it?

1 A I did receive it as an e-mail.

2 Q As an e-mail, and it starts with, "Dear Phil,
3 thanks for calling and asking for our help."

4 Can you explain that to us?

5 A I did not ask for his help. Actually, we had, I
6 would say, an active disagreement. I did call him earlier in
7 the day and asked him to read the Climate Action Report
8 before making a judgment about it, before merely accepting
9 what The New York Times and everyone else was saying that day
10 about it. He had already begun to be very critical, and
11 there were a lot of voices that day. I mean, the media on
12 both sides were taking up this issue of this Climate Action
13 Report. If you go back and look, it was very controversial,
14 but you know, CEI particularly was outraged, furious about
15 the report, and I told him that it was my view that the
16 report in the New York Times was incorrect. It didn't
17 characterize the Climate Action Report properly. I told him
18 further that I had participated in and was confident in the
19 interagency process that developed the Climate Action Report,
20 and so I was asking him to read the report before he
21 criticized it.

22 Q What was so controversial about the Climate Action
23 Report?

24 A It was controversial because Chapter 6 of the
25 report, which spoke to climate change impacts, relied, in

1 part, on summaries of materials from the National Assessment,
2 and obviously, the conservative groups in CEI had very strong
3 feelings about the National Assessment and were very critical
4 of the administration for including material in this report
5 to the United Nations that relied on information from the
6 National Assessment.

7 Q What was the purpose of the Climate Action Report?

8 A That is a very good question.

9 The Climate Action Report, as I understood it, working
10 with the State Department, which really had the lead on it,
11 is, every 4 years, under the United Nations' framework
12 convention on climate change, countries are supposed to or
13 are expected to or are obliged to submit what they call a
14 "national communication" to the convention that describes a
15 whole host of statistics relating to population, geography,
16 greenhouse gas emissions in a country. One of the
17 requirements also is that you address impacts of climate
18 change, and we made the decision -- these reports are a
19 snapshot in time, and the information we had on impacts was
20 from the National Assessment, and we had some caveats in the
21 report about the uncertainties of regional projections of
22 climate change, but we did include -- the administration
23 included information from the National Assessment in the
24 report.

25 Q And when did the Climate Action Report come out?

1 A Well, it was filed like at the end of May 2002, but
2 The New York Times ran a front-page story on this date of
3 June 3rd, 2002, and that is when a lot of the media on both
4 sides, conservative and liberal media, if you will allow
5 those terms, in the United States were very focused on
6 commenting on this report.

7 Q And so this came out after the settlement was
8 reached with CEI on the National Assessment, the use of the
9 National Assessment; is that correct?

10 A Yes.

11 Q So why was this permitted -- why was this report,
12 the Climate Action Report --

13 A I did not see it as a policy document.

14 Q Did you review it? Were you involved in any way
15 with the Climate Action Report?

16 A I was.

17 Q Okay. What was your involvement?

18 A I was sort of the CEQ representative for the
19 interagency review of the document. As I said, the EPA and
20 the State Department, if you look at the document, it is
21 filed by the State Department with the framework convention,
22 but I was involved in --

23 Q So you may have added --

24 A -- reviewing the report.

25 Q -- suggestions to it?

1 A Yes.

2 Q And you saw the reference to National Assessment in
3 it, and yet, you didn't delete that?

4 A No, I did not because I saw the report not as a
5 policy report but as meeting a legal obligation that we file
6 a national communication that had the following elements in
7 it, and one element was impacts, and that was the information
8 that was available to the U.S. Government at that time. The
9 Bush administration had not undertaken a different
10 assessment, and so the judgment was made to use the
11 information that had been developed in the National
12 Assessment and to try to caution -- to put in language that
13 cautioned about the limitations of regional impacts but to
14 include it so that we would be in legal compliance under the
15 framework convention, which is a ratified treaty of the
16 United States, with our reporting requirements, and so it was
17 a reporting document; it wasn't a policy document.

18 Q Okay. I understand.

19 So you called Myron Ebell on June 3rd?

20 A Yes.

21 Q I'm sorry. Was that because he had previously
22 contacted you or because of the New York Times' piece?

23 A I cannot remember except I heard that he was taking
24 a very high profile and criticizing the filing of the Climate
25 Action Report, and I wanted to explain to him -- actually, I

1 wanted to ask him to read the report before rendering
2 judgment on it.

3 Q How long would you -- do you recall how long your
4 conversation was with him?

5 A It was 5 minutes. It was not agreeable.

6 Q It was not agreeable?

7 A We were in a disagreement. He was furious, and I
8 was asking him to read the report.

9 Q So he had not read the report when you had talked
10 to him?

11 A Well, that was my view that he could not have read
12 the report if -- that was my view that it was unlikely he had
13 read the report. It was a big, thick report, as you can see,
14 that they mobilized very quickly to be very critical of the
15 report, but I was not confident that they had read it
16 thoroughly.

17 Q So they had already put out like a press release or
18 something?

19 A I cannot remember. Something like that.

20 Q But you already knew at that time that they were
21 critical of this?

22 A Yes. I mean, I just don't want to speculate on how
23 I knew, but I just -- because I can't really remember, but
24 you all have been in situations in your jobs, you know, where
25 people say, "Downtown's upset about something," or "So-and-So

1 doesn't like this thing." I don't really remember, but I
2 understood that they were quite angry about the Climate
3 Action Report.

4 Q And did you ask him or CEI for any help or
5 assistance?

6 A I asked him to read the report because I thought,
7 if he read the report, he might -- his expressed opinion
8 might be better informed.

9 Q But you didn't ask for CEI to do anything for the
10 administration?

11 A No. No. In fact, if you look at all of this
12 report -- this e-mail -- in context, all he does is --
13 really, "before this one little disaster, we could all lock
14 arms with this administration" --

15 Mr. Tuohey. Just answer the question.

16 The Witness. He was very mad, and he was not going to
17 do anything to be helpful. In fact, he said he was going to
18 call for Governor Whitman to be fired the next day. He was
19 going to continue to be very critical of the administration
20 for this report.

21

22 BY MS. SAFAVIAN:

23 Q Further down in the e-mail, he talks about the
24 references to the National Assessment, and he considers it to
25 be very hurtful. I guess, based on that, it looks like he

1 did view that as being the policy or the Climate Action
2 Report as putting forth policy.

3 A Yes.

4 Q After you got this e-mail and you read it, did you
5 have any further follow-up conversations with Mr. Ebell?

6 A No, not that I recall.

7 Q Did you e-mail him back and respond or anything?

8 A No, I did not e-mail him back. That would have
9 been disclosed in the Freedom of Information Act. I searched
10 it and produced this document. I did not write him back.

11 Q Did you think it was important at the time -- this
12 is going back several years -- you know, recognizing that he
13 put in here, "thanks for calling and asking for our help," if
14 you hadn't asked him for anything, did you feel it was
15 necessary to correct that?

16 A I did not feel it necessary to correct that
17 because, at that moment in time, I was pretty well done with
18 him. We were in an argument, and I was not going to continue
19 to engage with him.

20 Q And what did CEI do, if anything, about the Climate
21 Action Report?

22 A They filed Data Quality Petitions under a newly
23 enacted law at four separate agencies -- at the EPA, the
24 Commerce Department, the State Department and with the White
25 House Office of Science and Technology Policy -- and I

1 participated in the decision, in the coordinated decision, by
2 all of those agencies to deny CEI's Data Quality Petitions.
3 They wanted all references to the Climate Action Report
4 pulled off of Web sites at those respective agencies, and in
5 working with counsel from all of those agencies, you know,
6 you wanted the responses to be consistent and rationales to
7 be consistent, but there was a process in which I
8 participated which resulted in CEI's Data Quality Petitions
9 being denied, and it was only -- well, I will just leave it
10 at that. That is something, though, that Senator Lieberman
11 had written to Jim Connaughton about this whole e-mail thing
12 that I had received from CEI, and other people had asked
13 about what this meant. The Attorney General of Connecticut,
14 the Attorney General of Maine, Senator Lieberman, and the
15 White House did respond to Senator Lieberman. Their
16 response, you know, was not up on the Web site, but they
17 responded, and they described my active role in denying -- in
18 the coordinating process to deny CEI's Data Quality Petitions
19 on this report. So the opposite -- I can say in a very
20 general sense that what was thought to have occurred and
21 reported to have occurred between CEI and I, some conspiracy,
22 that the exact opposite was the case.

23 Q And is that documented? You said you were able to
24 respond to --

25 A It is all documented, all of the lawyers who

1 participated in all of the deliberations to turn down those
2 Data Quality Petitions. I was in the room and participated
3 in the meetings and was very comfortable with turning them
4 down, and Jim Connaughton said so in his letter back to
5 Senator Lieberman.

6 Q What was your involvement in reviewing Our Changing
7 Planet?

8 A You know, I think it was just ordinary. I think
9 the Our Changing Planet Report would come through the OMB
10 process to -- as I said, you know, it's the OMB process, 17
11 affected agencies. The Our Changing Planet Report is called
12 for -- its preparation is called for in the Global Change
13 Research Act, but you know, I want to take one step sideways
14 for 10 seconds. The Global Change Research Act -- you know,
15 I do have it here, and you all have it, too, because it was
16 sent out as part of the documents last week, but Section 102
17 gives CEQ a role in all of the interagency process regarding
18 the preparation of documents under the Act, including the Our
19 Changing Planet Report, including the 10-year Strategic Plan,
20 and it says that a high-ranking official from each of these
21 agencies is supposed to be the one who is reviewing these
22 documents and coordinating them and reporting them, and I was
23 the high-ranking official at that agency, and so --

24 Q You were tasked --

25 A And so to get to your question --

1 Q -- with this issue --

2 A Yes. I got on the review list as the CEQ
3 representative who reviewed the Our Changing Planet Report
4 when OMB would send it out for interagency review, and I
5 think -- you know, there were a lot of people on those
6 reviews, 50, 60 people. I was one.

7 Q And was anybody else at CEQ also involved in
8 reviewing that, like Mr. Hannegan?

9 A Yes. Mr. Hannegan, after he came, really, really
10 in large part took over the whole science portfolio. He took
11 over a lot of the work on climate change. You know, we were
12 drafting voluntary emissions reporting guidelines. At DOE,
13 that was a huge project. He worked on that. He worked on
14 the science stuff. He had the background and the interest,
15 and he was a very competent person, and he took over a lot of
16 the climate change work when he came to the council.

17 Q And when did he -- I'm sorry. Tell me again. When
18 did he --

19 A I think it was in the spring of 2003. I don't
20 remember the exact date.

21 Q Of 2003?

22 A I believe so.

23 Q So was Our Changing Planet sort of like the
24 strategic plan in that there are many drafts of it?

25 A Not as many as the strategic plan. The strategic

1 plan was really a very important document because it set the
2 tone of the administration's research priorities for a
3 10-year period, and a lot of people were invested in it, and
4 we included the National Academy of Sciences in its formal
5 review, and we had the big international workshop, so the
6 review process on the 10-year Strategic Plan was a lot more
7 elaborate than the review process on the annual Our Changing
8 Planet Report. The Our Changing Planet Report was just
9 routinely transmitted and sent to and accepted by Congress.
10 It is a report that accompanies our submission of the budget,
11 and we were requesting between \$1.6 billion and \$2 billion a
12 year for climate change research, and it itemized what
13 agencies would be doing what work under our budget. It is a
14 budget report.

15 Q And it was prepared by CCSP?

16 A It was initially drafted -- Mr. Piltz testified at
17 the hearing in January that he was the person who drafted the
18 Our Changing Planet Report. I didn't really know who drafted
19 it, but he said he drafted it, and then it would be sent to
20 OMB for interagency review, and I would comment along with
21 many others.

22 Q So did you deal with Dr. Mahoney again with regard
23 to your comments on this?

24 A I don't remember specifically, but I would just say
25 that Dr. Mahoney and I had a very cordial and respectful

1 working relationship, and if he had a question about it or
2 about a recommendation I had made, he would pick up the phone
3 or I would do the same, but he held the pen at the end of the
4 process, and he said so in his statements to Congress.

5 [Exhibit No. 13

6 was marked for identification.]

7

8

BY MS. SAFAVIAN:

9 Q Let me just show you a document on this matter, and
10 if you will, just take a quick look through this. I am not
11 going to ask you about everything in here, but it's just to
12 refresh your recollection about this document.

13

A Yes.

14

Q Are these your edits, your handwriting edits, on
15 these pages that we see?

16

A They are. You know, it is my handwriting, but I am
17 not sure what I did with this document when I wrote on it. I
18 may have -- I don't know if I sent it back to Dr. Mahoney or
19 whether I called him and said, you know, after a day or two
20 thinking about it and said, you know, "I have got one or two
21 big comments on this." I do not remember formally sending
22 this back to him.

23

Q You don't?

24

A No.

25

Q Because it looks like --

1 A I may have called him or I may have said -- I may
2 have thought about it overnight and said, "Gee, maybe I'm
3 making a mountain out of a molehill. I've just got two
4 things that really matter to me. They're trying to publish
5 this report. They're trying to have this public workshop."
6 So I might have called him and said, you know, "What's this
7 point on a 'certain page'"? I do not remember sending this
8 back with my hard, you know, written comments. These might
9 have been just my notes to myself, and I may have called him.

10 Q So you have no recollection of either sending this
11 back or having any conversation with Dr. Mahoney? Because,
12 as to some of your comments on the side, it looks like
13 they're proposing a revision to your initial comment, and
14 sometimes --

15 A Yes.

16 Q -- you have on the side "no" or "okay" --

17 A Yes.

18 Q -- or you know, "take that out" or whatever.

19 Do you recall having direct conversations with
20 Dr. Mahoney about, you know, their suggestions and whether
21 you agreed with them or didn't agree with them?

22 A I just don't remember specifically. It is
23 November 2002, so that was just -- I just don't remember a
24 day where we talked about this.

25 Q Let me ask you this, though.

1 Dr. Mahoney is sending this back to you with a revision
2 of your initial comment. Would you have been in a position
3 to either send this back or to call him and say, "Sorry,
4 Dr. Mahoney. No, you cannot change my comment"?

5 A He was of a much higher rank than I in the
6 administration. He was the Senate-confirmed Assistant
7 Secretary of the Department of Commerce, and so it would -- I
8 understood he had a higher rank, and it was he. Not only
9 that, he had responsibility as the Director of the Climate
10 Change Science Program Office to have the final word on
11 content. So, you know, I could have said, "Why not"? I
12 could have argued, but he always had the final judgment and
13 decision.

14 Q So you couldn't demand that he take one of your
15 comments if he did not want to?

16 A No.

17 Q Okay. Did you ever meet -- you said earlier you
18 met Mr. Piltz because you were in some meetings with him.

19 A Yes. I would see him at meetings, yes. So I might
20 say "hi" to him, and he would say "hi" to me.

21 Q Did Mr. Piltz ever directly confront you about his
22 concerns that he has put in this memo that we have been
23 talking about? Did he ever address this with you?

24 A No. No. It was -- it is puzzling to me that we
25 did participate in a number of meetings together, and I now

1 understand he had strong views about my role, but he didn't
2 speak to me about it.

3 Q Did Dr. Mahoney or anybody else on his behalf,
4 perhaps, ever address any of these issues with you?

5 A Rick Piltz' issues?

6 Q Yes.

7 A No. Dr. Mahoney just -- he just did his job. We
8 talked about -- we talked occasionally. We talked things
9 through, and it was very respectful.

10 Q I would like to talk about the --

11 A He didn't tell me Mr. Piltz had a problem. I did
12 not know that.

13 Q You did not know that until you later saw a copy of
14 his memo?

15 A Yes, and a lot of other things.

16 Q I would like to talk now about the EPA's draft
17 report on the environment.

18 A Yes.

19 Q Can you tell me what was your role, if any, with
20 regard to that report?

21 A Well, again, I was a reviewer. Although, that was
22 a big report, and there were a lot of dimensions to the
23 report -- air quality, water quality, Federal land,
24 Super Fund cleanups. It was a big, enormous report, so a lot
25 of people reviewed it.

1 Q Within CEQ?

2 A Within the -- throughout the Federal Government.
3 Thirty agencies participated in the interagency review on
4 that, something like that. A lot of people participated in
5 the review because it was about environmental indicators, and
6 so I -- but I did comment on a very short, I think it was, 4-
7 or 5-page climate section that they had drafted.

8 Q I'm sorry. Just so I understand, your only role in
9 reviewing that document was the short section on climate
10 change?

11 A Not really, because I do recall at some point
12 looking at some of the air quality chapters although there
13 were people in CEQ who were experts about air quality, so
14 they would have reviewed it, but I do remember looking at
15 other elements of the report and looking at it in its
16 totality because it was an important report on environmental
17 indicators, but narrowly, I did look at the climate change --
18 well, the 5-page summary that they had drafted for inclusion
19 in the report on global climate change.

20 Q So who else besides yourself at CEQ -- I mean how
21 many other people at CEQ looked at this report also?

22 A A lot. I would say a number of people. In fact,
23 we had at that time a detailee from EPA named Alan Hecht who
24 was really -- he was at CEQ, but he was working with EPA on
25 the development and -- the interagency development and review

1 of the state of the environment report, and CEQ, itself, had
2 for many years under the authority that it has under NEPA --
3 issued a report on environmental indicators, but in this
4 case, an agreement was made that EPA would undertake an
5 effort like that, and so we had a detailee at CEQ, Alan
6 Hecht, who really managed this, and he would walk the draft
7 around to different people in CEQ and get comments, collect
8 them and send them back to the Agency.

9 Q So would you have given him your comments?

10 A Yes.

11 Q And how many do you recall? How many drafts? Do
12 you recall how many versions of this report you would have
13 looked at?

14 A You know, it was -- in this case, there were a lot
15 of different drafts. It was not -- its development really
16 was not smooth in the interagency process, not only on the
17 climate change issue, but in general, it was not really
18 smooth, so there were a number of drafts.

19 Q And do you recall -- and I don't have the document,
20 so this is only what your recollection is.

21 Do you recall what type of edits or suggestions, maybe
22 the themes, that you would have made comments on or edited to
23 this report? Do you recall any of them?

24 A Yes, I do recall some of the edits that I
25 suggested.

1 Q What are the ones that you recall?

2 A I recall -- God, there are so many reports.

3 Q I know.

4 A I recall there was this opening, Global Climate
5 Changes Implications, Global Implications for Human Health
6 and the Environment or something. It was the opening
7 statement, and I thought -- is that correct or --

8 Ms. Bennett. Go ahead. I don't recall off the top of
9 my head.

10 The Witness. Well, it seemed a sweeping statement, to
11 me, relative to what the National Academy of Sciences has
12 said about how poorly understood any impacts on human health
13 would be. I also recommended an insertion to what was a new
14 report, the report by Soon and Baliunas, on proxy data the
15 past 1,000 years and what it said about the temperature
16 record for the past 1,000 years, and I recommended a citation
17 to that report which had come out in the spring of 2003 and
18 was a federally funded report -- although, API, I understood,
19 contributed a minimal amount -- but as a new report, it had
20 gained a lot of attention, and it was prepared by Willy Soon
21 and Sally Baliunas, who are both scientists at the Harvard
22 Smithsonian Center for Astrophysics, and I thought it was
23 material because it spoke to the question of whether the
24 20th Century was, in fact, the warmest in the past
25 millennium. It was new. It was current, and I recommended

1 it be inserted, so I realized that that has been
2 controversial in Mr. Piltz' view. So I looked at a couple of
3 the comments that I had made on drafts. There were different
4 drafts, though, that evolved, and I think there was a view.
5 There was an experience that EPA was not very receptive to
6 comments and recommendations that other agencies were making
7 on its drafts. I think there was frustration. I think there
8 was a view -- if you look at documents that were sent up to
9 the committee that I reviewed last week that were sent to the
10 Council of Economic Advisors, the Office of Science and
11 Technology Policy, the Office of Management and Budget, the
12 Department of Energy, they were all concerned and stated
13 their concern that the EPA 5-page draft on climate change
14 lacked balance, and that was the view that we shared, so
15 there was back and forth on that element of the report.

16 Q "Back and forth" meaning you were involved in that,
17 or do you mean "back and forth" among the different agencies?

18 A I gave my comments to Alan Hecht, who was the
19 detailee, and he said -- you know, he really took the
20 comments back to EPA, and then we'd get a new draft a month
21 later, and we would say, "Why haven't any of our comments
22 been addressed"? So there was some frustration, I think, but
23 Alan was the interface between the Environmental Protection
24 Agency and our office and a lot of other agencies. He was
25 the sort of the detailee guy who was pulling this report

1 together, leading it, leading its development in being pulled
2 together. So, in CEQ, a number of us gave comments to Alan,
3 and he took them back to EPA for their consideration.

4 Q Did you have any conversations with anyone at EPA
5 about your edits or suggestions?

6 A With EPA?

7 Q Yes.

8 A Well, Alan himself was an EPA employee, and he was
9 detailed at the White House, so I only spoke to him. I
10 didn't speak to anyone at the EPA, you know, to my
11 recollection.

12 Ms. Safavian. Okay. Let me show you this document
13 which is Exhibit 14.

14 [Exhibit No. 14
15 was marked for identification.]

16

17 BY MS. SAFAVIAN:

18 Q And I will just ask you to take a quicker view of
19 it.

20 A I have seen this portion of it. I haven't seen the
21 third page.

22 Q Well, I'm only going to focus on the first two
23 pages. So you have seen this before, and when did you see
24 it?

25 A I do not remember. After -- you know, after the

1 State of the Environment Report was released, I believe, in
2 June 2003, there was a lot of media attention about the fact
3 that there was not a climate chapter in the report. I think
4 I saw this memoranda, but it was only after the report was
5 issued, and --

6 Mr. Dotson. Can I interrupt and ask a question?

7 This document, this exhibit, is different than the memo
8 that we received from CEQ in the same matter. I was just
9 wondering. I am just trying to figure out where this came
10 from. It seems to have come from a textbook, but that was in
11 the last tranche of documents that we received in the -- take
12 your time. I was just wondering if we should include that
13 along with the --

14 Ms. Safavian. Not until I've had a chance to review it.

15
16 BY MS. SAFAVIAN:

17 Q Okay. I'm sorry. You said you were saying that
18 you --

19 A That I became aware of this memorandum after the
20 report was released and the media covered the report.

21 Q Did you know prior to seeing this that there was
22 some concern on EPA's part about CEQ and OMB's edits and
23 comments to the report?

24 A You know, I recall Alan Hecht saying, "We're
25 getting some pushback from EPA, but I'll handle it," but he

1 was the front -- he was the interface, and he -- I remember
2 his saying something like that, you know, and so --

3 Q But you don't recall beyond that any other
4 controversy about the White House's edits to the report?

5 A I recall that there was a resolution process at the
6 end of the process for disagreements, and that was between
7 Governor Whitman and Chairman Connaughton, and I understood
8 that Governor Whitman made the decision to remove the 5-page
9 summary on climate change science and, instead, decided to
10 insert a reference, a Web site reference, to the 10-year
11 Strategic Plan and to the USGCRP Web site for the Our
12 Changing Planet Report.

13 I might just say further that Dr. Marburger, the White
14 House Science Advisor, issued a public statement on this in
15 2004 in response to a report from the Union of Concerned
16 Scientists about this whole issue, and he has taken it upon
17 himself to explain the White House Science Office's view of
18 this issue, and so I don't know if you have his statement,
19 but it is an important it's consistent.

20 Q You mentioned that you knew that there was a
21 dialogue between Mr. Connaughton and Christine Todd Whitman.

22 Do you know when that occurred?

23 A I don't.

24 Q Were you present during the meeting?

25 A I was not.

1 Q Okay. How do you even know about it then?

2 A I can't really remember.

3 Q Do you think it was something Mr. Connaughton would
4 have informed you about?

5 A He may have come into my office and said, you know,
6 "They're going to publish this report next week. We really -
7 we had a good conversation, and we have a path forward," or
8 something. I shouldn't even say things like that. I don't
9 remember anything that he said. I don't know how I knew that
10 they had a conversation, but his office was right next to
11 mine, so he might have told me that he had spoken to her.

12 Q Well, then, how do you know that it was Ms. Whitman
13 who made the decision to just remove those 5 pages and make
14 other references?

15 A You know, I could be incorrect on this point, but I
16 believe that the EPA public statements in the media after the
17 report was published said that the EPA has decided to remove
18 the climate change 5-page summary in favor of a reference to
19 the strategic plan, which came out, as you know, a month
20 later and was a much fuller exposition of the science of
21 climate change and what we were going to be addressing than
22 the 5-page summary that the EPA had developed was.

23 Sorry for the long answer.

24 Q That's okay.

25 So, beyond, maybe, what you read in the press, do you

1 recall having any further recollection of anybody else
2 discussing this matter with you, the concerns that EPA may
3 have had about the White House's edits to their report?

4 A No. I would just volunteer something, I guess, I
5 have already said. My lawyer doesn't want me to volunteer
6 anything, but we were sort of mystified that, as we commented
7 on various drafts, that the comments didn't seem to be --
8 they were not addressed, and so a lot of people were saying,
9 you know, "Why isn't the EPA responding to the comments it's
10 receiving on the report on a whole range of issues"?

11 Q Do you mean referring just to CEQ's comments or --

12 A Everybody's. Everybody's. All of the other
13 agencies were.

14 Q They had the same complaint?

15 A Yes. You know, the natural resource agencies in
16 the Department of the Interior collect a lot of data on
17 western lands and grazing and endangered species and things
18 like that, and there was, I think, a level of concern among a
19 number of agencies that the EPA was not being responsive to
20 input that it was receiving, but Alan Hecht, again, is the
21 interface at our office.

22 Ms. Safavian. At this time, what I am going to do is I
23 think I will hold and reserve our remaining 13, 14 minutes,
24 and at the end, if you all would just save that time, Brooke
25 may have a few follow-up questions just to wrap things up.

1 Mr. Baran. Sure.

2 Ms. Safavian. Does that work? I think we have about 13
3 minutes; is that right? So, if you will, just save those 13
4 minutes.

5 I apologize, Mr. Cooney, but I do have to leave now.
6 Thank you very much for being here today and answering our
7 questions.

8 The Witness. Thank you.

9 Mr. Dotson. Can we take one moment for the reporters to
10 switch?

11 [Recess.]

12

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1 RPTS BINGHAM

2 DCMN HERZFELD

3 [5:18 p.m.]

4 Mr. Baran. I am Jeff Baran, and I will be doing the
5 next set of questioning.

6 EXAMINATION

7 BY MR. BARAN:

8 Q I would like to return to Exhibit Number 9.
9 Exhibit Number 9 is an October 28, 2002, fax cover sheet
10 attached to a number of pages from the October 21, 2002,
11 draft of the strategic plan. You prepared this fax, correct?

12 A Yes. My writing on the cover sheet.

13 Q There are a number of handwritten edits and
14 comments to this draft. Did you personally make these edits
15 and comments?

16 A Yes. I haven't looked at every page, but I expect
17 I did.

18 Q Take a moment to review it.

19 Mr. Tuohey. Your question is comprehensive, all the
20 changes?

21 Mr. Baran. Yes.

22 The Witness. Okay. These appear to be all of my
23 comments, yes.

24 Mr. Baran. We are done with that document.

25 I will ask the reporter to mark this exhibit Exhibit 15,

1 May 30, 2003, fax cover sheet attached to a two-page document
2 and a number of pages from the May 28, 2003, draft of the
3 strategic plan.

4 [Exhibit No. 15
5 was marked for identification.]

6 BY MR. BARAN:

7 Q You prepared this fax, correct?

8 A Yes. That is my handwriting on the cover letter.

9 Q The fax sheet refers to red flags. What did you
10 mean by "red flags"?

11 A Well, that was Dr. Mahoney's term when he sent out
12 these drafts to Mr. Connaughton, Dr. Marburger and others.
13 He called it a red-flag review. And it was, you know, an
14 informal process for reviewing the draft at that time.

15 Q Did a red flag signify that it was an edit of
16 significance, particular significance?

17 Mr. Tuohey. If you know.

18 The Witness. It was -- it was his term. I guess if you
19 put -- if you hand-wrote the words "red flag," it is like can
20 we talk about this one? You know, the other stuff may have
21 been editorial, but if you put "red flag," it would imply
22 let's talk about this one.

23 Q So if there were topics that you had serious
24 concerns about, you would red flag those?

25 A Well, it was a red-flag review. Sometimes you

1 would write the word "red flag" and imply -- I guess it would
2 imply that you're serious about the comment, and you want to
3 talk about it.

4 Q When you used the term "red flag," did you expect
5 that that edit would be accepted?

6 A No, because Dr. Mahoney made all final decisions.
7 I was just --

8 Q So when you did your editing at CEQ, did you
9 generally use the term "red flag" in this way?

10 A My editing at CEQ at large? I don't understand
11 your question.

12 Q Let me rephrase the question. With respect to the
13 strategic plan, when you used the term "red flag," did you
14 use it in the way you just described?

15 A Again, I would say that the terminology "red flag
16 review" was in the caption line of what Dr. Mahoney sent out.
17 But, yes, I generally describe that I -- if I was
18 red-flagging something, I thought it was an important issue.

19 Q In your experience, when you raised a red flag,
20 would your concern be addressed by Dr. Mahoney?

21 A I generally didn't do a reconciliation between
22 whether I had made a comment and whether it was accepted.

23 Q The next two pages of the document are comments by
24 chapter. The top of the page says, "Comments from Bryan
25 Hannegan (CEQ)." Is this a list of Bryan Hannegan's edits?

1 A I assume so.

2 Q Take a look at the edits for a moment. Do those
3 look like edits that Bryan Hannegan would make?

4 A Some do. I wouldn't make a comment like -- I don't
5 think I would make a comment like, "Thawing permafrost may
6 not necessarily lead to emissions of methane," because I
7 don't know anything about that. So he would more likely have
8 made that comment than I.

9 Q On the remaining pages there are a number of
10 handwritten comments and edits to this draft. Take a moment
11 to review those. Are all of these edits and comments yours?

12 A Yes. These comments appear to be my comments.

13 Q Thank you. We are finished with that exhibit.

14 Mr. Baran. I ask the reporter to mark this exhibit
15 Exhibit 16.

16 [Exhibit No. 16
17 was marked for identification.]

18 BY MR. BARAN:

19 Q Exhibit 16 is a June 2nd, 2003, fax cover sheet
20 attached to a number of pages from the May 29th, 2003, draft
21 of the strategic plan. You prepared this fax, correct?

22 A You said from a May 29th, 2003 --

23 Q Draft of the strategic plan.

24 A These are my comments.

25 Q So, you prepared that fax?

1 A Um-hum. Yes.

2 Mr. Tuohey. You have to answer yes or no.

3 The Witness. Yes.

4 BY MR. BARAN:

5 Q And the handwritten edits and comments on that
6 draft were yours?

7 A Yes.

8 Q Thank you. We are done with that exhibit.

9 Mr. Baran. I will ask the reporter to mark this
10 exhibit.

11 [Exhibit No. 17

12 was marked for identification.]

13 BY MR. BARAN:

14 Q Exhibit 17 is a list of CEQ edits and comments to
15 the strategic plan. It is dated June 16th, 2003; is that
16 correct?

17 A Yes.

18 Q Are these your edits and comments?

19 A The document itself says BH and PC, so they appear
20 to be both of our comments integrated into one document.

21 Q At several points in the document, there are
22 comments that have an explanation associated with them. For
23 example, on this first page, when you see the reference to
24 page 6, line 38 to 40, there is an edit there followed by, in
25 brackets, "Explanation," and then an explanation is given.

1 Mr. Tuohey. The one that says, "Let's be judged by our
2 products."

3 Mr. Baran. Correct.

4 BY MR. BARAN:

5 Q Can you tell us whether explanations like those
6 were yours?

7 A I can't.

8 Q Let's look at the next page, page 22, the reference
9 to page 22, line 44 to 45. See, there is an explanation
10 there: "Explanation: Wasn't it all 'internal' processes in
11 the historic record? What was the source of any 'external'
12 forcing?"

13 Do you know if that was your explanation in edit?

14 A I do not.

15 Q Let's turn to next page, the reference to page 27,
16 line 39 to 41. There is an explanation there: "Legal
17 considerations preclude mentioning the National Assessment."

18 Do you know whether that is your edit and comment?

19 A I really do not know whether it is mine.

20 Q So you just don't have a recollection of whether
21 any specific edit or comment on this list was yours or Bryan
22 Hannegan's?

23 A If I went one by one, he, obviously, is a trained
24 scientist and would give comments that I would recognize as
25 his if they were very inherently scientific.

1 Q Do you have a sense with this round of edits how
2 many edits you made in comparison to how many edits Bryan
3 Hannegan made?

4 A I don't recall.

5 Mr. Baran. I think we are done with that exhibit.

6 I ask the reporter to mark this exhibit Exhibit 18.

7 [Exhibit No. 18

8 was marked for identification.]

9 BY MR. BARAN:

10 Q Exhibit 18 is a number of pages from the Agency's
11 concurrence draft of the strategic plan. There are a number
12 of handwritten edits to this draft. Did you personally make
13 these edits?

14 Mr. Tuohey. Take your time.

15 The Witness. Actually I would say that, yes, I
16 recognize this as my handwriting. And on page 216, this
17 appears to be where I make a recommendation to delete a
18 reference to the National Assessment. As I pointed out
19 before, that was a recommendation that was not accepted by
20 Dr. Mahoney as the final report. Page 111 contains this
21 sentence.

22 BY MR. BARAN:

23 Q But these were your edits?

24 A I believe so.

25 Q Thank you. We are done with that exhibit.

1 Mr. Baran. I will ask the reporter to mark this
2 exhibit.

3 [Exhibit No. 19
4 was marked for identification.]

5 BY MR. BARAN:

6 Q Exhibit 19 is a June 5, 2003, fax cover sheet
7 attached to a number of pages from the June 4, 2003, draft of
8 the executive summary of the strategic plan. You prepared
9 this fax, correct?

10 A Yes.

11 Q There are a number of handwritten edits and
12 comments to this draft. Please take a moment to look at the
13 document. Are all of these edits and comments yours?

14 A They are.

15 Q Thank you. We are finished with that exhibit.

16 Mr. Baran. I ask the reporter to mark this exhibit.

17 [Exhibit No. 20
18 was marked for identification.]

19 BY MR. BARAN:

20 Q Exhibit 20 has a number of pages from the June 5th,
21 2003, draft of the executive summary of the strategic plan.
22 There are a number of handwritten edits to this draft. Did
23 you personally make these edits?

24 A This is my handwriting. You refer to them as
25 edits, though, and these are recommendations. That was not

1 in a final --

2 Q Suggested.

3 A Suggested.

4 Mr. Tuohey. And that would be true for all of the
5 documents you have shown him today with regard to the
6 strategic plan.

7 BY MR. BARAN:

8 Q Is that your view in each case?

9 A That's true. They were recommendations, comments.
10 A lot of them were posed as questions, in fact.

11 Mr. Baran. We are done with that document.

12 I will ask the reporter to mark this exhibit.

13 [Exhibit No. 21

14 was marked for identification.]

15 BY MR. BARAN:

16 Q Exhibit 21 is a July 3rd, 2003, e-mail attached to
17 a number of pages of a July 24th, '03, draft of the Climate
18 Change Science Program revision document.

19 Mr. Tuohey. Do you know what this is? Look at the
20 third page.

21 The Witness. Yes. I guess, this is this --

22 Mr. Baran. I haven't asked a question yet.

23 BY MR. BARAN:

24 Q In the upper right-hand corner of the e-mail, there
25 is a note which reads, "Discussed with Jim Mahoney 7/9/03.

1 He will consider these suggested final edits. PC."

2 Did you write this note?

3 A Yes. It is my writing.

4 Q Describe the conversation with Dr. Mahoney to which
5 this note refers.

6 A I really don't have any specific recollection of
7 the conversation.

8 Q There are a number of handwritten edits to this
9 draft. Did you personally make these edits?

10 Mr. Tuohey. Take your time. Go through the draft. It
11 is a lengthy document.

12 The Witness. They appear to be my edits, except on this
13 one page where I really can't see what the comment is. It
14 just doesn't copy here.

15 Mr. Tuohey. Jeff, that page there is no number, but it
16 is the page that --

17 The Witness. Just can't see what the comment is.

18 Ms. Bennett. -- starts with "Global carbon cycle."

19 Mr. Tuohey. "Global carbon cycle" is in the upper
20 left-hand corner.

21 BY MR. BARAN:

22 Q I believe the comment reads, "Sequestration
23 opportunities or alternative responsibilities options."
24 Sure, maybe mine is a little bit better.

25 A Yes. That would be correct.

1 Q We are through with that document.

2 Exhibit 22.

3 [Exhibit No. 22
4 was marked for identification.]

5 BY MR. BARAN:

6 Q Exhibit 22 is a fax cover sheet attached to a
7 number of pages from the June 20, 2003, draft of the Climate
8 Change Science Program's vision document. You prepared this
9 fax, correct?

10 A Yes.

11 Q There are a number of handwritten edits and
12 comments to this draft. And can you tell us whether these
13 edits and comments are yours?

14 Mr. Tuohey. While he is looking at that, I assume that
15 this was a document produced by the CEQ?

16 Mr. Baran. That's correct.

17 Mr. Tuohey. Okay.

18 The Witness. This appears to be my handwriting. These
19 would reflect comments. But there is -- there are a number
20 of things going on. This is comments, but also you have
21 comments, "Leave," "Good," and so they seem to reflect a
22 reconciliation or discussion of comments as well as initial
23 comments.

24 Mr. Tuohey. And is that your language, your writing?

25 The Witness. It looks like my writing, sort of.

1 BY MR. BARAN:

2 Q Just to clarify, the base comments are the ones
3 that are yours; is that correct?

4 A Well, distinguishing the base from the
5 reconciliation comments --

6 Mr. Tuohey. He first asked about the base comments.
7 The base comments are yours?

8 The Witness. You can't tell what are the base versus
9 the reconciliation comments, so it is just a little bit
10 confusing. Like there's "good" in this margin. I don't know
11 whether it is good because I was satisfied with the way they
12 were going to handle it, or I thought it was a good comment.
13 I just don't know.

14 BY MR. BARAN:

15 Q Just to be clear, was it all your handwriting, or
16 did it look like one set of comments was done by you, and
17 another set of comments, the reconciliation, was done by
18 someone else?

19 Mr. Tuohey. Some of it is hard to see, hard to read.

20 The Witness. It is my judgment that they are both
21 probably my handwriting, but I don't -- there are words I
22 look at that don't necessarily look like my handwriting.

23 BY MR. BARAN:

24 Q Fair enough. Thank you.

25 Mr. Baran. I ask the reporter to mark this exhibit.

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[Exhibit No. 23
was marked for identification.]

BY MR. BARAN:

Q Exhibit 23 is the approval form for the strategic plan for the Climate Change Science Program. Your signature appears on the form, and there is a checkmark next to, "I approve of the attached report." You did sign this form, correct?

A I did.

Q If you refused to clear the strategic plan, would it have been issued?

A It is -- I expect it would have. I don't think -- you know, this was unusual to have a concurrence form. I think Dr. Mahoney wanted an assurance that every agency that had worked on this project for a year, through multiple drafts, had an affirmative signature with his office that they endorsed the plan.

And I can't really answer your question, if I had said no, would it have been -- not have gone. I think he was looking for this, for assurance, and everyone gave him the assurance, and everyone had a lot of confidence in him. And I gave him the assurance, and I concurred. I can't really speak to what the consequence would have been if I had not. I doubt though that it would have stopped the publication of the report, because Dr. Mahoney had control over final edits

1 and final approval of the report.

2 Q So your sense is that this strategic plan could
3 have been issued without White House approval?

4 Mr. Tuohey. You're equating his signature with White
5 House approval?

6 Mr. Baran. Yes.

7 The Witness. Approval connotes something that looks
8 like this, some hard-edged, tangible "we approve."

9 Never really got to that on these reports. In this case
10 I think Dr. Mahoney was looking for assurance that everybody
11 was on board. It was an important report to the
12 administration. And I think he was confident that he would
13 get a 100 percent response rate that everyone agreed to the
14 report. Even though everyone's comments weren't accepted,
15 and he rejected a lot of comments, he wanted to know that
16 everyone concurred in the report as a team effort across the
17 administration. He had made the final judgments, but he
18 wanted everyone's concurrence.

19 But generally with these documents, there wasn't a hard
20 approval. The comment process was respectful and iterative,
21 often in the form of questions, and so we didn't get to
22 legalistic hard approvals.

23 BY MR. BARAN:

24 Q Let me ask this: Do you believe that the Climate
25 Change Science Program thought they could release the

1 strategic plan without your signature on that form?

2 A I think they think -- I think they could have
3 released it without my signature. I think they might have
4 taken half a day to appeal to the Chairman and say, your guy
5 has a problem with this, I would like to discuss it with you,
6 but everyone else supports it. But again, it is a very
7 hypothetical question. I concurred in the report.

8 Mr. Tuohey. That wasn't the question.

9 The Witness. I am sorry. I am sorry. I just -- I
10 don't know the answer to your question.

11 I don't think -- I think that the report would have been
12 published. It was the culmination of a very public,
13 year-long effort.

14 BY MR. BARAN:

15 Q Just not to belabor it, but just to make sure you
16 understood my question, do you think that the CCSP folks had
17 the same understanding that you did?

18 A CCSP folks were not distinguishable from
19 Dr. Mahoney. Dr. Mahoney ran the CCSP, and he had the most
20 important understanding. And I think that he felt that he
21 had authority to publish the report.

22 Q Okay. We are done with that exhibit.

23 Mr. Baran. I ask the reporter to mark this exhibit.
24 Exhibit is 24 marked.

25

[Exhibit No. 24

1 A No. I mean, the language is mandatory, but the
2 comment process within the executive branch is very collegial
3 and respectful. And I wouldn't read it as an order. I think
4 my recollection is that I wrote this comment after we had
5 received back from EPA a few additional drafts that did not
6 reflect that they had considered comments that had been
7 provided by our Agency. Yet we were receiving at the same
8 time a message from EPA, through Alan Hecht, that Governor
9 Whitman wanted to publish the report soon, that she wants to
10 publish, you know, soon; I can't remember the exact time, but
11 within a certain time frame. And my recollection is that I
12 wrote this sort of in response to that pressure. If they
13 want to publish, they need to respond, to engage in our
14 comments.

15 And so it was my way of getting Alan Hecht something to
16 go back to the Agency with and say, you have got to engage
17 their comments. You can't just continue to disregard them.
18 But it was -- it wasn't -- it just was not an order. It was
19 not an order, which was your question.

20 Q Do you expect that Alan Hecht took this comment to
21 EPA and told them that the changes you made had to be made?

22 Mr. Tuohey. If you know. If you know.

23 The Witness. I don't know. I really don't know how he
24 used it.

25 BY MR. BARAN:

1 Q Did you have a discussion with Alan Hecht about
2 this note so that you knew he had the same understanding of
3 the note that you did?

4 A I don't recall. Alan and I would talk
5 occasionally, and he would -- he was very confident as a
6 capable interface in leading this project and in getting our
7 comments back to the EPA. And so I just don't have a
8 specific recollection of a conversation, but we would talk.
9 He would say, getting pushback, or, I have got it under
10 control.

11 Q We are done with that exhibit.

12 The committee has learned that executive branch agencies
13 would sometimes contact CEQ regarding specific press requests
14 to interview specific scientists. Please explain how this
15 practice was established.

16 A I don't know enough about it really.

17 Q Were you involved in this process of signing off on
18 specific requests by media to interview government
19 scientists?

20 A I was -- may have been involved. What happened was
21 communications people who handle press calls all the time
22 know each other. They meet. They go to lunch. And if a
23 call came in to an agency, and they weren't quite sure what
24 to do about it, sometimes they would ask their own
25 management, how do we handle this? Or a call would come in

1 to both the White House and an agency, and we would say, who
2 is going to return the call? And so communications people
3 would figure out how to respond to media requests.

4 Sometimes they came both to the White House and the
5 agency, and so they coordinated. And on occasion, although I
6 don't have any specific recollection of a conversation, our
7 communications office person could come into my office and
8 say, I got a call from the NOAA guy, I got a call from this
9 guy, I handled it this way. They may have talked to me about
10 it. It was -- communications people had their own network,
11 and they handled media and --

12 Q Could CEQ approve or disapprove press requests?

13 A I think that is too hard a word, approve or
14 disapprove. Our communications people would render a view as
15 to whether someone should give an interview or not or who it
16 should be. In the White House, you know, that is what they
17 did, communicating with various communications offices. But,
18 again, it was iterative. It wasn't in our nature to be
19 giving sharp orders really. It was, who is going to handle
20 the call? How are we doing to handle this? And
21 communications people did that among themselves generally.
22 If they wanted to interview the Chairman, then they would
23 talk to the Chairman about it.

24 Q The committee has learned that in 2005 the National
25 Oceanic -- NOAA contacted Michele St. Martin at CEQ about a

1 pending media request to interview a NOAA scientist. Can you
2 explain how Ms. St. Martin would have assessed and responded
3 to this request?

4 A I just don't know enough about that specific
5 request. She, like me, got 150 e-mails a day, 25 calls. I
6 don't know how she would have handled that request.

7 Q Ms. St. Martin told NOAA to monitor the press calls
8 and report back to CEQ. Were you aware of this practice?

9 A No, not that I recall.

10 Q So you never gave an instruction to Ms. St. Martin
11 or anyone else to have agencies report back on press calls,
12 press interviews with government scientists?

13 A Not that I recall.

14 Q On August 28, 2003, EPA denied a petition to
15 regulate greenhouse gas emissions from motor vehicles. Are
16 you familiar with this decision?

17 A I am.

18 Q Did you monitor this Agency action while serving as
19 the CEQ Chief of Staff?

20 A No. I spoke to our general counsel when this was
21 emerging for decisionmaking, a very early point, and said
22 that I was uncomfortable -- because I had taken such a
23 position in opposing the petition in my prior job, I was
24 uncomfortable having anything to do with EPA's
25 decisionmaking. And she said to me, as I recall, well, there

1 is no formal bar to your participation, but you can
2 voluntarily recuse yourself from all decisionmaking on the
3 petition. And I did.

4 Q So you were concerned that it would give the
5 appearance of impropriety or conflict of interest if you were
6 involved?

7 A Yes. It made me feel uncomfortable to be involved.
8 And I thought it improper because I had taken such a public
9 advocacy position against the petition before I joined
10 government.

11 Q Were there any other matters while you were at CEQ
12 on which you recused yourself?

13 A Yes.

14 Q Can you describe those for us?

15 A To the best of my ability, after the election in
16 2004, I had pretty well reached a conclusion that I was ready
17 to look for work outside of government, and I interviewed
18 with some law and lobbying firms, and there are formal
19 recusals in place with our general counsel for any matters
20 that -- in which they were implicated.

21 But through the spring of '05, as it became increasingly
22 clear to me that I was going to be leaving, and I really did
23 not know where I was going to go, I was sort of struggling
24 with it every night. And I had another opportunity inside
25 the administration that I was also considering. I backed off

1 quite a bit on policymaking. The Asia Pacific Partnership,
2 for example, was being developed in the spring of 2005, and I
3 made it clear to my colleague, Ken Peal, and to others that I
4 felt uncomfortable; the knowledge that I would be leaving the
5 administration soon, I didn't want to be deeply involved in
6 the development of that initiative. And I do recall sending
7 e-mails to colleagues and EOP notifying them that I had
8 formal recusals in place, so not to bring to my attention
9 priority matters on energy and environmental issues.

10 I was continuing to manage the Agency budget, hiring,
11 firing, and making sure that all documents coming in were
12 being responded to, but I was backing away from an active
13 policy role. And I was very affirmative about it and
14 consulted very closely with our general counsel about those
15 matters.

16 Q Was there a formal recusal form for the EPA
17 petition to regulate greenhouse gases?

18 A There is no formal form, but my practice was -- it
19 was I informally recused myself, and I did not work on the
20 decisionmaking. There were meetings that were called. And I
21 did not participate in the decisionmaking on that.

22 Q But in all other cases there were formal recusals?

23 A Well, when it came to potential future employment,
24 I would file a formal recusal. But in this case, it was a
25 practice that I had discussed with our general counsel, and

1 she understood that I was not going to be involved, and my
2 colleagues understood that I was not going to be involved.

3 Q Do you know how many formal recusals were filed by
4 you?

5 A I believe I filed four formal recusals during my
6 time at the White House. Two were with respect to law firms.
7 One was with respect to another company, and one was with
8 respect to ExxonMobil.

9 Mr. Baran. Okay. My questioning time is up.

10 Ms. Bennett. The Minority would like to take the last
11 13 minutes of questions.

12 EXAMINATION

13 BY MS. BENNETT:

14 Q Just to repeat, I am Brooke Bennett, Minority
15 counsel. I had a just a couple of questions for you.

16 Going back to Exhibit 23, and, if I recall correctly, I
17 believe it was -- the Majority counsel's question was
18 something along the lines of if you had refused to clear the
19 report, would the report not have been issued? Could you
20 just read through the options that are presented on this form
21 and let me know whether or not there is one that specifically
22 asks for an option, provides you an option to refuse the
23 report?

24 A That is a very good question. There is not an
25 option for refusing concurrence.

1 Q I just wanted to clarify that.

2 Also going back to Exhibit 22, and I just want to be
3 double clear on this because, looking at the handwriting, if
4 you could just have another quick look at some of the
5 documents or some of the comments on there and let me give
6 you a copy --

7 Mr. Tuohey. To be specific, do you include the front
8 page?

9 Ms. Bennett. I will.

10 BY MS. BENNETT:

11 Q The copy that was provided to you by Majority
12 counsel is a bit light.

13 Ms. Bennett. So with your agreement would you mind if I
14 give him the same one that we had prepared? But it is
15 slightly darker, so you can see the comments slightly better.

16 Mr. Tuohey. What page?

17 Ms. Bennett. If you go, for example, to page 14.

18 Mr. Tuohey. Page 14.

19 BY MS. BENNETT:

20 Q And look at the word "good" on page 14. If you
21 look on page 15 --

22 Mr. Tuohey. "Good" on 14.

23 BY MS. BENNETT:

24 Q Do you mind just double-checking that and make sure
25 it is or is not your handwriting? And you can probably

