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

For Philip Cooney:

MARK H. TUOHEY
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1455 Pennsylvania Avenue NW, Suite 600
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For Committee on Oversight and Government Reform:

JEFF BARAN, COUNSEL
GREGORY DOTSON, COUNSEL
MICHAEL GORDON, COUNSEL
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ERIC JONES, ESQ., COUNSEL
JENNIFER SAFAVIAN, MINORITY CHIEF COUNSEL
A. BROOKE BENNETT, MINORITY COUNSEL
KRISTINA M. HUSAR, MINORITY PROFESSIONAL STAFF MEMBER
Mr. Dotson. Good afternoon, Mr. Cooney.

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

[Witness sworn.]

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

Mr. Gordon. Michael Gordon.

Ms. Teitz. Alexandra Teitz.

Mr. Jones. Eric Jones.

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


Ms. Bennett. Brooke Bennett.


Mr. Dotson. Before beginning with the questioning, I
would like to go over some standard instructions and explanations regarding the deposition.

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

The Witness. I do.

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

The Witness. No.

Mr. Dotson. Under the committee's rules, you are allowed to have an attorney present to advise you. For the record, do you have an attorney, who represents you, appearing with you today?

The Witness. I do.

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

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

Mr. Dotson. The deposition will proceed as follows: I will ask you questions regarding the subject matter of the committee's investigation for up to 1 hour. When I am
finished, minority counsel has the opportunity to ask you questions for up to 1 hour. Additional rounds of questioning alternating between the majority and the minority counsel may then follow until the deposition is completed.

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

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

The Witness. Yes.

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

Do you understand?

The Witness. I do.

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

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

The Witness. I do not.

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

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

My position is that I think it would be appropriate for
counsel to be here because of the privilege issues, but that
is your call. However, I did receive -- and I will give you
a copy -- this morning of a letter from Dinah Bear, General
Counsel of the Council of Environmental Quality, which in sum
and substance -- and I am happy to read it if you want me
to -- but in sum and substance, it asks that I raise
objections where and if necessary to protect either the
deliberative process privilege or the executive privilege, and I will do so if I deem it imperative, because Mr. Cooney is not in a position to waive the privilege. It may not be necessary, but I will give you a copy of the letter for the record, and I will raise objections and advise Mr. Cooney appropriately if the privilege issue is implicated in any way that I think it needs to be addressed.

[Exhibit No. 1 was marked for identification.]

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

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

Ms. Safavian. Two points on what Mr. Tuohey just raised: one on agent's counsel being present. I have a letter that I want to have be part of the record from Mr. Davis where he also asks that agency counsel be present
during this deposition, and I have copies that I am happy to
pass out to everyone.

Mr. Cooney, if you would like a copy.

[Exhibit No. 2
was marked for identification.]

The Witness. Thank you.

Ms. Safavian. Sure.

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

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

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

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

Mr. Dotson. On a couple points, first, on the issue of
CEQ, CEQ, as you know, is not invited to this deposition, and
since this is a deposition, pursuant to the House Rules, they are actually prohibited from attending under the committee rules. However, Ted Boling, the Deputy General Counsel for CEQ, is waiting in the room outside this door, and he is available should any issues arise for which you would like to consult with him in order to ensure that, to the maximum extent possible, you are able to answer questions.

Mr. Tuohey. Okay. Fine.

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

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

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

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

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

A Philip Andrew Cooney.

Q What is your home address?

A

Q Where are you currently employed?

A ExxonMobil Corporation.

Q What is your current position?

A My title is Corporate Issues Manager.

Q Where did you work before ExxonMobil?

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

Q What were your responsibilities as Chief of Staff?

A Well, I will try to be concise here. I had broad managerial responsibilities for the preparation of budget, the implementation of budgets, hiring, firing, a whole host of managerial responsibilities within the Agency, but the Agency's mission really is to guide the Federal Government in its compliance with the National Environmental Policy Act, and it is also to serve the President's Policy Development Coordination Office within the White House on Energy, Environmental and Natural Resource Policies, and we had -- you know, I had a staff -- maybe
there were 22 full-time staff, something like that, but on
occasion, at different times through the administration,
there were various interagency task forces where detailees
from agencies would come to the White House CEQ to work on
discrete matters. We had a NEPA task force that was looking
at reforming and improving the NEPA Program. We had a task
force on oceans policy and working with the Oceans Commission
to develop policies for the administration with respect to
oceans, really a huge subject area. Those are examples of
the types of task forces that we had at the White House. We
also had, you know, detailees at different points from
different agencies working on different reports or efforts.

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

The Witness. Well, in a way, because I was Chief of
Staff, I did sort of look across the Agency, but you know,
every day was different. I had a lot of managerial
responsibility. One essential element of my job was to be
sure that priority issues reached the chairman's attention
and that our office assignments were made appropriately for
reviewing Federal legislation, Federal testimony through the
OMB review process, reviewing documents from the staff
secretary's office in the White House. If the President were
going to give a speech or issue a policy statement or issue a
policy book or a fact sheet, you know, all the White House
office generally reviewed those. So we would -- you know, I
would make sure that our office was -- that someone was
reviewing it, things like the Council of Economic Advisors.
The economic report of the President comes out annually.
That goes to all White House offices for review and
clearance, so I would make sure that one or two or three
people were reviewing it but primarily managerial. And
really, we had different emphases on different issues
throughout the 4 years, which would consume varying amounts
of my time. That is the best description I can give of my
responsibilities.

EXAMINATION

BY MR. DOTSON:

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

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

Q What positions did you hold there?

A My initial position was Junior Attorney, and that
was a position that I took after having worked for an
administrative law judge at the Department of Labor on a
whole host of issues -- black lung and longshoremen's
benefits, things like that. So, when I took this job, it was
in a different area with the trade association, and I really
didn't know what I was getting into necessarily, but I went
through the ranks of the Office of General Counsel there, and
we had about 20 lawyers in the Office of General Counsel at
the American Petroleum Institute, and I was a junior
attorney. Then I was a senior attorney, and that was
probably for my first 13 years there. I just worked in the
Office of General Counsel on a whole host of
regulatory/legislative issues. I cannot remember the exact
year, but at one point, there was a transition in API's
leadership. We got a new president, and there was a
reorganization, and I went, and I had the title of Counsel to
the Executive Vice President of the American Petroleum
Institute, but I was working on a lot of organizational
transitional issues maybe for a year and a half. And then,
in my last year, I was what they call the team leader of the
Climate Team at the American Petroleum Institute. And the
way we were organized was that, on priority issues,
multidisciplinary teams within the API, were assembled to
work on priority issues, you know, for the member companies,
and those teams would have scientists, economists, lobbyists,
communicators, press people, a team leader sort of steering
things, but they were advocacy teams, multidisciplinary teams
that were assembled to work on issues.

Q: As team leader of the Climate Team, what were your
responsibilities?

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

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

A Yes.

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

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

Q And what was your degree?

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

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

A Yes, they were.

Q And what college-level science courses did you take?
A Well --
Mr. Tuohey. Just, in general, if you remember.
The Witness. I believe it was physics that I took to
meet the requirement for the Liberal Arts degree, but I don't
really remember.

BY MR. DOTSON:
Q Have you taken any postgraduate-level science
courses?
A Well, I went -- I have a law degree --
Q I am going to ask you in a moment about that.
A Okay. So, in some cases, law courses cover
scientific issues, but no, I didn't take scientific courses,
per se, postgraduate.
Q You did not take postgraduate-level science
courses?
A No, but I took legal classes, obviously, that had
the elements --
Mr. Tuohey. So the answer is, no, you did not, okay?

BY MR. DOTSON:
Q Please state the institution from which you earned
a law degree and the year in which you received it.
A Villanova University, 1984.
Q: Did you have an area of focus in your study of law?
A: Not really. No, not really.

Q: Please state the institution from which you earned an advanced legal degree and the year in which you received it.
A: In 1989, I received a Master's in Legal Taxation from Georgetown University.

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

Is it accurate that, in the last position you held at API, you were the API staff member, the lead API staff member on the issue of climate change?
A: I was the team leader. But API had a president and other senior officials who were of higher rank than I who spoke to the climate change advocacy issues.

Q: Please describe your responsibilities in this position.
A: Again, it was to coordinate the work of a multidisciplinary team on advocacy on climate change.

Q: What were your duties comprised of on a day-to-day basis?
A: You know, there are elements of my job that I remember, you know, public policy jobs.
Mr. Tuohey. Just give him your best recollection, period. Just give him your answers.

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

BY MR. DOTSON:

Q. Is it accurate to say that your job was to help ensure that any governmental actions taken relating to climate change were consistent with the goals of the American
Petroleum Institute?
A Yes.
Q Was climate change an important issue for API?
A It was.

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

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

Mr. Dotson. Ah, yes.

[Exhibit No. 3 was marked for identification.]

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

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

Do you recall the question?

The Witness. I don't recall the question.

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

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

Q In this fax, you are inviting other trade association representatives to a meeting at the API on November 30th, 1999, to discuss a petition filed at EPA, seeking to regulate carbon dioxide and other greenhouse gases; is that correct?
A I am sorry. I was reading while you were speaking. What is the question again?

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

Q Did this meeting occur?
A In all likelihood, it occurred. If five people couldn't make it, we might have rescheduled it. This is something that happened 8 years ago, so I don't want to --

Mr. Tuohy. Do you know whether it occurred, yes or no?
The Witness. Certainly, an organizational meeting occurred at API. I don't know if it happened on that exact date. I don't know if it came off or not.
BY MR. DOTSON:

Q And you don't know if all of the attendees on that list attended?
A I don't know.
Q Do you know who did attend? Do you have a recollection of who definitely attended?
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.
Q If you were to assign a rough number to the number of attendees, what would it be?

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

BY MR. DOTSON:

Q And do you recall any specific attendees at the meeting?
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
just don't remember a face in the room.

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

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

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

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

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

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

Mr. Tuohey. Then don't speculate.

The Witness. I will not speculate.

BY MR. DOTSON:

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

A It was to -- my recollection is as follows: It was to share and collect the judgments of how other people reviewed the importance of this petition.
Q I believe the fax talks about the potential of responding on a joint or on an individual basis. Was there a discussion about responding on a joint or on an individual basis?

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

Q Did you think it was an important development?

A I did.

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

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

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

A I do not recall.

Q Okay. We are finished with that exhibit.

A I was --
Mr. Tuohey. You've answered the question, Phil.

Excuse me a second.

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

[Exhibit No. 4 was marked for identification.]

BY MR. DOTSON:

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

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

Mr. Dotson. I am.


Mr. Tuohey. Finished?

The Witness. I am finished.

Mr. Tuohey. What was your question?

BY MR. DOTSON:

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

A It appears to be what you describe.

Q The committee has reason to believe that you
prepared this document. Did you prepare this document?

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

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

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

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

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

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

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

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

A Well, we had a legal office, and we had lawyers assigned to work -- assigned to provide time to the Climate Team, and so this is primarily a legal proceeding, so someone in the Office of General Counsel could very well have managed this element of the agenda.
Ultimately, the preparation and review and approval of this document was your responsibility?

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

Mr. Dotson. That is a question.

BY MR. DOTSON:

Q Is that correct?

A Ultimately -- just say the statement again.

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

A Yes, I believe so.

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

Was that your recommendation at the time?

A I think it was, but I do not specifically recall.

This is --

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

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

Q You would have approved of this recommendation even if you hadn't initially created the recommendation; is that correct?
I would have approved its being sent to the member companies as part of an agenda for the meeting, and I likely endorsed the plan, but I don't specifically recall.

Q According to this exhibit, one aspect of a joint industry response would be to demonstrate, quote, "industry's unity and resolve opposing the petition," unquote. Why would API want to demonstrate that?

Mr. Tuohy. If you know.

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

BY MR. DOTSON:

Q Who attended this API Climate Change Steering Group meeting?

A I do not recall.

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

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

Q For the record, did API believe that carbon dioxide was a pollutant under the Clean Air Act?
Mr. Tuohey. If you recall.

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

BY MR. DOTSON:

Q Do you mean "position"?

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

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

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

Mr. Dotson. Okay. We are finished with that exhibit.

Okay. I will ask the reporter to mark this exhibit.

[Exhibit No. 5 was marked for identification.]

BY MR. DOTSON:
Q Exhibit 5 is a letter to Fred Smith of the Competitive Enterprise Institute, or CEI, from the API; is that correct?

Mr. Tuohey. Can I just clarify the question?

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

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

The Witness. Or letterhead.

Mr. Dotson. That is true.

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

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

Mr. Tuohey. Okay. Sure.

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

BY MR. DOTSON:

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

A It appears to be, but it IS unsigned, and there is no letterhead, so I really can't speak to its authenticity.
Q The committee has reason to believe that you drafted this letter. Did you draft this letter?
A I do not recall drafting this letter, and what I would say in addition is that I did not go to Buenos Aires, so I wouldn't have hoped to run into this CEI contingent at that time.

Q Did you ever draft letters for Bill O'Keefe in your position at API?
A I did. I did.

Q Do you believe that you drafted this letter for Bill O'Keefe at API?
A I do not know.

Q Did Bill O'Keefe attend Buenos Aires in that year?
A I believe -- I remember he went to Kyoto. I just can't remember if he went to Buenos Aires. I think he did, but I don't specifically remember. It was 1998, so it was a long time ago.

Q Is this letter typical of the kind of letter that you would draft for Bill O'Keefe?
A I did a lot of miscellaneous letters, and this could have been typical of one that I would have written for him.

Q Would it have been typical for API to have provided $10,000 to CEI so that CEI could attend a United Nations conference on climate change?
Well, you know, I really can't speak to what was typical at that time. I was counsel to Bill O'Keefe, but we -- at the time that I was serving, I was working on a lot of projects. We cut our staff from 600 to 300. We changed offices. We did a lot of things that were organizational. We had an early retirement program I remember working on. I worked on a lot of miscellaneous aspects of a major reorganization at API during the transition to Red Cavaney as the president, and so I was counsel to Bill O'Keefe. But I was working on a lot of organizational issues. I did work from time to time on little things for Bill that would relate to climate, but I worked on a whole host of random organizational issues. I was an assistant to a senior executive, and he had a big portfolio of things. There was a separate Climate Program, a team at that time, and I was not on the team. I don't know what the program was. I don't believe I had joined that team in 1998. So there was climate change activity at API and a program and, perhaps, funding for CEI, but I did a lot of miscellaneous things when I was counsel to the executive vice president, to Bill O'Keefe, and I was not -- there were people who were integral in working on climate change all the time, and I really was not at that time. I would come in contact with it and do little things, but there were a lot of people working hard on the issue.

Mr. Tuohey. Excuse me.
BY MR. DOTSON:

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

A Yes, API did that.

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

Mr. Tuohey. For climate change?

BY MR. DOTSON:

Q For climate change.

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.

Q Do you recall any specific groups that received funding?

A I do.

Q Would you list them for us?

A There was funding to the Heartland Institute. There was funding to Reason Organization. There was funding to the CEI, the Competitive Enterprise Institute. There was funding to the Acton Institute. Oh, there was funding to the American Council on Capital Formation.

Q What did API hope to accomplish by providing funding to these groups?
The promotion of free market principles. That was the essential philosophy of those groups.

Was there any climate change specific goal that API hoped to achieve by funding these groups?

These groups were opposed publicly to the Kyoto Protocol, and from time to time, they would analyze or write about the negative impacts of the Kyoto Protocol and would advocate against it, testify before Congress.

Okay. We are done with that exhibit.

Can you tell me who Russell Jones is?

I can. He is -- well, I think now he is a senior economist at the American Petroleum Institute. He is -- that's who he is.

When you were last in the position you held at API, what was your relationship to Russell Jones?

Russell had preceded me as the team leader - Climate Team, and when I became the team leader, because they rotated these things, he served as one of the economists on the team, but we had several economists on the team.

Okay. I will ask the reporter to mark this exhibit.

[Exhibit No. 6 was marked for identification.]

Take your time and read it.
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 prepared 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?
BY MR. DOTSON:

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

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

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

A That is correct.

Q The committee has reason to believe that Russell Jones prepared this document and that you reviewed it. Have you seen this document before?

A I believe I have seen the document before. I do not recall who reviewed or approved it.
Q Can you recall under what circumstance you saw the document?
A Under what circumstance I saw it?
Q What situation you were in.
A Well, there is a budget preparation process on individual issues that occurs at API, and I just don't remember at what point in the process this document was developed, but it appears to have been developed during that process.
Q Okay. I would like to direct your attention to the first page, to text beginning on the seventh line of the document. It reads, "Climate is at the center of industry's business interests. Policies limiting carbon emissions reduce petroleum product use. That is why it is API's highest priority issue and defined as 'strategic.'"

API was concerned about the issue of climate change because they did not want this country or other countries to reduce petroleum product use; is that correct?
A Someone wrote that reason on this sheet. API had a number of policy concerns relating to climate that went beyond the narrow potential of reduced petroleum use. I think that there was a genuine and well-founded and consensus view among the membership that the Kyoto Protocol would have been harmful for the American economy and the world economy and was bad public policy and that we, as an industry, along
with other industries and other voices in society should step up and oppose harmful public policies, but I don't deny that there was a parochial interest to the industry based upon these words that are on this sheet.

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

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

Mr. Dotson. Yes.

Mr. Tuohey. Do you agree with that statement?

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

BY MR. DOTSON:

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

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

The Witness. I think there was a concern that the science was not sufficiently well understood to justify legally mandated reductions in energy use.
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.
BY MR. DOTSON:

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

A Yes.

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

On this page, it envisioned a $2 million external expenditure program on climate that is discussed. At the bottom of the page, it says that $100,000 could be provided for climate science and science uncertainty research. Please describe what API envisioned accomplishing with these funds.

Mr. Tuohey. Do you understand the question?

The Witness. Could you ask the question again?

BY MR. DOTSON:

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

A Yes.

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

A I don't really recall. It cites the National Environmental Policy Institute and the CATO Institute, and I do not recall what they were doing on those -- on that set of
issues that would have warranted a contribution.

Q Are those organizations typically thought of as scientific institutes?

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

Q Do you --

A In general, people have different views of them.

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

Mr. Tuohey. If you know.

The Witness. I don't know.

BY MR. DOTSON:

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

A I do not recall. I do not recall.

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

A I just don't remember specifically.

Q Could you make a general statement of what you
think they might have been used for?

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

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

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

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

BY MR. DOTSON:

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

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

Can you answer it?

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

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

EXAMINATION

BY MS. SAFAVIAN:

Q Mr. Cooney, just to reintroduce myself, my name is
Jennifer Safavian. I would like to take you back a little bit with how we started with when you started at CEQ.

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

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

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

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

Q Okay. Great.

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

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

Q So the two of you together kind of determined what
your role and responsibilities and duties would include?

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

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

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

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

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

BY MS. SAFAVIAN:

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

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

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

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

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

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

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

Q And the National Academy of Sciences' 2001 Report?

A Yes.

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

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

Q So no large, substantive changes to those
documents?

A No.

Q Okay.

A These were foundational guidance for our work in
the White House policy shop to make sure that all future
efforts of the administration that we were called upon to
review were aligned with the President's stated priorities.
Mr. Tuohey. Let the record reflect the witness has also referred to a second document, which is the Climate Change Science of the National Academy of Sciences. That is the second document he has referred to together with the Climate Change Review. Thank you.

BY MS. SAFAVIAN:

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

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

A Yes.

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

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

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

A Well, CEQ, after the President issued his June 11th policy, was assigned a major responsibility to address the issue of greenhouse gas mitigation. If you read the President's policy of June 11th, it talked a lot about scientific initiatives. It talked a lot about technology initiatives. It talked a lot about certain principles for reducing greenhouse gas emissions, but it was not specific on a roadmap for reducing greenhouse gas emissions in the United States, and when Mr. Connaughton came in, he was named the Coordinator, the Continuing Coordinator, for the Cabinet-level review process, and everyone recognized -- I don't know -- that there was an additional element of policymaking that needed to be developed within the administration, and that was "what is our route to reducing
greenhouse gas emissions"? Chairman Connaughton led that effort with Cabinet members and supported by his staff a policymaking effort that culminated in the President on February 14th, 2002, delivering his second major speech on global climate change, and that was the speech in which he articulated a national goal for the American economy to reduce the greenhouse gas intensity by 18 percent within a decade, and if that --

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

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

After that, on February 25th, after the President gave his speech on February 14th, which was another big policy book articulating the 18-percent greenhouse gas reduction intensity goal, but it also laid out a whole host of
mechanisms for achieving that national goal, so it had a lot of policymaking in the policy book as well on mitigation.

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

Mr. Tuohey. The chart speaks for itself.

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

BY MS. SAFAVIAN:

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

A They are not. CEQ, importantly, was listed on the top box, the Committee on Climate Change Science and Technology Integration. The CEQ chairman participates on
that along with Cabinet Secretaries, and then the Interagency Working Group on Climate Change Science and Technology also had deputy and undersecretary level people in various Cabinet departments with CEQ also represented in that group, and that group was really the higher level working group that would guide the implementation of the Climate Change Science Program and the Climate Change Technology Programs that the President had announced on June 11th, 2001.

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

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

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

A Yes.

Q What was that called, do you remember?

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

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

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

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

Q  So maybe -- I will just let you, actually, tell me. Do you know how that started and how that came to be?
A  I think -- you know, I do not recall specifically, but Dr. Mahoney probably announced it to the blue box, the interagency core group, that he was probably going to undertake a 10-year strategic plan.

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

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

The Witness. Correct.

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

Ms. Safavian. Right, because we have seen many
versions, draft versions, of this plan --

The Witness. Yes.

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

The Witness. Right.

BY MS. SAFAVIAN:

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

A Right.

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

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

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

Is that what you're talking about? Is that what you're
talking about?
The Witness. Yes.

Mr. Tuohey. Okay. Thank you.

Thank you, Counsel.

Ms. Safavian. Sure.

The Witness. On the 10-year Strategic Plan, I think that there was -- I recall, you know, a very elaborate process of review, particularly of public review. The plan was -- elements of the draft plan were posted on a Web site in November of 2002, and a major international workshop was held in December of 2002 here in Washington, D.C., at which 1,300 scientists from 36 countries attended to provide comments on our draft, so it was a very transparent process. Also, the draft plan was sent to the National Academy of Sciences for its review, and they issued their opinion of the draft in February of 2003. So, through the spring of 2003, I think that the office and Dr. Mahoney and his people were working very hard to respond to the guidance that they had requested and received from the National Academy of Sciences and the 1,300 public comments that were offered at this workshop; 1,300 participants participated in this workshop, but there was a huge volume of comments on the draft strategic plan, public comments.

There was then a narrower level of review that took place sometime later in the spring of 2003, that Dr. Mahoney initiated, which preceded what we called the "formal OMB
review." When OMB takes a document, it is generally at its final stage. They circulate it out to any agency affected, really, by the contents of the document. So, in this case, it was probably sent out to 17 agencies for their formal review and comments on the plan, and at the same time, was sent to probably 5 separate White House offices and other White House staff, but it was sent out very broadly by OMB for comment. OMB collected the comments from all of these individuals and, from what I understand, gave a synthesized summary of all of the comments that had been received in interagency review to Dr. Mahoney, who was the Assistant Secretary of Commerce for Oceans and Atmosphere and in charge of the Climate Change Science Program, and Dr. Mahoney took those comments, and he either accepted changes or did not accept changes, but he made the final resolution on the content of the plan with the benefit of the comments that he had received from the agencies and the White House offices, and in the case of the strategic plan, actually, because it was a very high-profile document and one had not been done in a long time even though the statute called for it, he required of the agencies that they formally sign a concurrence sheet in the final report before it was issued in July of 2003, and you know, I have been reviewing the documents that you have in your possession that CEQ has given you, and I see that I formally concurred for CEQ on the
issuance of the final report in July 2003, but CEQ, along with a host of affected Federal agencies and other White House offices, provided comments sort of throughout the process. It was like a year-long process from beginning to end -- the public workshops, the public comments, the National Academy of Sciences' review, and then another round of internal reviews before it was finally published -- but that was our process.

BY MS. SAFAVIAN:

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

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

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

A In some cases, I see that he sent up individual comments, and I sent up individual comments at different stages in the process, but at other stages, you will see
joint typed comments that synthesized both of our comments, and I think -- my recollection is that he kindly typed them and prepared them. He took my comments and his and made them into one and gave them back to the agency, to the OMB.

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

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

Q So it was after the public comments?

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

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

A Yes, I don't exactly remember.

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

A They got them back pretty quickly if our -- if the draft plan was posted on the Web site in November of 2002 and the National Academy of Sciences -- I think they gave a
recommendation -- they gave their feedback on the draft in
February 2003, and then --

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

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

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

A Yes.

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

A They were sent back to OMB, and then, I think, OMB
transmitted them to Dr. Mahoney for his final review and the
decision as to whether to include comments or to not include
So the final say on whether a comment was going to be included or an edit was going to be made was Dr. Mahoney's?

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

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

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

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

Q Oh.

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

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

[Exhibit No. 8 was marked for identification.]

BY MS. SAFAVIAN:

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

A Yes.

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

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

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

A No, it was not sent to me.

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

Ms. Safavian. Sure.

BY MS. SAFAVIAN:

Q When did you first see it?

A It was in the summer of 2005. I think it was on a
Q   We are not going to go over this whole thing, so I'm not going to ask you to read the whole thing, but if you would start with, on Page 10, I'm just going to look at a few of the paragraphs, and we will go over just a couple of the paragraphs, and it is starting on Page 10, the second paragraph. Are you there?
A   Yes.
Q   Okay. It starts with, "the Executive Office of the President." Do you see that?
A   Yes.
Q   Okay. I mean, if you want, why don't you go ahead and just read that paragraph real quick.
A   Okay: Starting in 2002 --
Mr. Tuohy. To yourself.
The Witness. Do you want me to read all of the paragraphs or just that one paragraph?

BY MS. SAFAVIAN:
 Q   We will just do it paragraph by paragraph.
A   Yes.
Q   So, with regard to this first paragraph --
A   Yes.
Q   -- first of all, do you know who Rick Piltz is or was at the time?
I do. We were in many meetings together or in a number of meetings.

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

BY MS. SAFAVIAN:

Q Do you know who he was back in this time of June of 2005?
A He had resigned from Federal service by then.
Q And before he resigned, where was he?
A He was in the Climate Change Science Program Office.
Q As what?
A I don't really know what his exact title was, but I know that he had principal -- I understood he had principal responsibility for preparing the annual budget report, Our Changing Planet.
Q And do you know beyond that what his responsibilities included?
A I don't.
Q Okay. Do you know who he reported to?
A I believe he reported to Richard Moss, who was the director of the office, and Richard Moss, in turn, reported to Dr. Mahoney. The office reported to Dr. Mahoney.
Q Okay. Back to this first paragraph that I asked
you to read, it says in here that it is referring to you, that you were placed at the table at CCSP principal meetings as the CEQ liaison.

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

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

The Witness. The Executive Office -

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

The Witness. Okay.

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

Ms. Safavian. Right.

BY MS. SAFAVIAN:

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

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

Q And would these include the members -- again,
referring back to the chart, the org chart, the principals are the ones from the members of these different departments?

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

Q And so were you present at these meetings?

A I was at a few.

Q But not routinely?

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

Q Why is that?

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

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

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

Q And continuing on with that paragraph, he, Mr. Piltz, says in here that the CEQ Chief of Staff, meaning you, removed your name from the masthead of CCSP publications
as of the last edition of Our Changing Planet and designated a new CEQ liaison to the principals committee.

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

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

A Yes.

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

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

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

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

A I think it is his opinion.
Q Well, what was CEQ's role with CCSP? How did the two of you interrelate?

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

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

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

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

A Page 10?

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

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

Ms. Safavian. I will.

Mr. Tuohey. Okay. Have you read it?

The Witness. What is your question?

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

Mr. Tuohey. Have you read it?

The Witness. Yes.

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

[Exhibit No. 9 was marked for identification.]

BY MS. SAFAVIAN:

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

A Wuchte.

Q Wuchte at OMB?

A Yes.

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

A It is.

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

A Yes.

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

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

Q And do you know --

Mr. Tuohey. November of what year?


Mr. Tuohey. All right.

BY MS. SAFAVIAN:

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

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

Q Okay.

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

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

A Yes.

Q It looks like it was sent to you --

A Okay.

Q -- from Dr. Mahoney.

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

Q So does this help --

A Yeah.

Q -- you understand --

A Okay.

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

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

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

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

Mr. Cooney --

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

Ms. Safavian. Yes.

Mr. Tuohey. -- of Exhibit Number 9?

Ms. Safavian. 8.

Mr. Tuohey. 9.

Ms. Safavian. 8.

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

Ms. Safavian. This is 8.

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

Ms. Safavian. This is 8.
Mr. Tuohey. I apologize. I had this marked as Exhibit 8.

Ms. Safavian. Yes.

Mr. Tuohey. Exhibit 8, Page 10, Subparagraph 1.

Thank you. I apologize. That is what you're reading from?

Ms. Safavian. Correct.

Mr. Tuohey. Okay.

Ms. Safavian. I am reading just from that.

BY MS. SAFAVIAN:

Q So, Mr. Cooney, my question to you is: Is that accurate? Was that your intention when you were reviewing this draft which is Exhibit 9?

A No.

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

A It was to engage Dr. Mahoney as he requested our comments, to engage him in our view of the draft with the hope that he might consider our view. In many cases, I was trying to align the draft with the President's own reliance on the National Academy of Sciences' Report in June of 2001 and with the specific uncertainties that were identified in that report and with many of the uncertainties that were itemized in the policy book that was issued on June 11th, 2001.
Q  Just, so I'm clear, are you trying to say that you
were reviewing this with an eye towards ensuring that it
conformed to the National Academy of Sciences' Report and the
President's Climate Change -- I forget the name of it.
A  Yes.
Mr. Tuohey.  Climate Change Strategy.
The Witness.  I learned -- you know, not every comment
ties back to the National Academy.  Some are just my own
thoughts and questions of Dr. Mahoney, but they were offered
in good faith, and I don't know how he resolved them.  He
resolved them in one way or another.

BY MS. SAFAVIAN:
Q  So you do not know -- when you sent these comments
off, you do not know in the end what happened with your edits
or with your suggestions?
A  I did not -- I do not recall sort of tracking it
all the way through to see whether it was reflected in the
final draft that they had the workshops on.
Q  Did Dr. Mahoney or anyone from OMB come back to you
and question any of your edits or ask you to further explain
them?
A  Dr. Mahoney and I would talk on occasion, and so --
but I don't specifically recall a conversation where he
called me about these comments, but we would talk.
Q But your edits, these comments, Dr. Mahoney could have taken or not?

A Correct.

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

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

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

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

BY MS. SAFAVIAN:

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

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

Q But even though your cover letter to this is going
to OMB, it is your understanding that these edits went to
CCSP or went to Dr. Mahoney?
A  They went back to Dr. Mahoney because he is the one
who had requested them. Yes.
Q  I think maybe we might look at just a couple of
your edits in Exhibit 9.
A  Okay.
Q  If you'll look on what, I guess, is at the bottom
-- numbered Page 4; it is really the first page.
Mr. Tuohey. The page numbered 4 or the fourth page?
Ms. Safavian. It says "Page Number 4" on the bottom,
but it is not the fourth page. It is the first page of what
looks like the plan.
Mr. Tuohey. Right.

BY MS. SAFAVIAN:
Q  If you will look on the bottom off to the side, you
say, "The NRC elaborated on this point," and you've got in
brackets, "see A, next page," and it looks like on the next
page you've got something that looks like "A insert."
Can you explain this to us, please?
A  Yes. I thought it was important that when the
program talked about the connection between the observed
warming in this century and human activities that it fully
cover what the National Academy had said on it, and you know,
there is one sentence in this draft that I thought was very important. The insert that I was offering was a very important element of the National Academy's Report, which said that a causal connection between the observed warming in this century and human activities cannot be unequivocally established because we don't understand with enough confidence the range of natural variability in climate, and if we are going to have a 10-year strategic research plan, I thought it important to have the full view of the National Academy on that critical point if we are going to be setting the tone for the program for the next 10 years, and I think it -- I will leave it at that.

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

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

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

A I don't.

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

-- do you see that?

Yes.

There is in the middle of the page a paragraph where you have cross-outs starting on line 17. Do you see that?

Yes.

If you will, just take a quick look at that because I would like you to explain -- Mr. Tuohey. Would you like him to read the sentence he crossed out?

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

Mr. Tuohey. Go on.

Okay.

Have you read it?

I've read it.

Jennifer, is there a question?

Yes.

Okay.

BY MS. SAFAVIAN:

Could you explain why you crossed out these couple sentences and your comments on the side there?
A Yes. If you read the sentences that remain in the paragraph that were not crossed out and the next section, which identifies five specific research needs with respect to the impact of climate change in the Arctic, they speak to the need for fundamental scientific research before we can speak definitively to impacts that will occur. So, if you read that whole paragraph and read the research needs, the language that remains is what you would expect in a research plan. These are the fundamental things -- ice thickness, reducing the uncertainties, and the current understanding of the relationships between climate and Arctic hydrology is critical for evaluating potential impacts of climate change, for example. I'm just reading the language that was left. There were fundamental, basic research needs that needed to be undertaken before you could speak definitively to impacts, but they began the sentences by saying there will be significant shifts that will have significant impacts on native populations. They spoke to impacts that they then subsequently said they really needed to study before they could understand, and it just seemed to me they were concluding in an unequivocal way what the localized impacts would be before they had done the fundamental research that they identified as appropriate to understanding what the impacts would be.

Q But -- and please correct me if I'm wrong here.
Was this written by scientists who had been studying this issue, this matter, and were they not aware at that time of what the current impact was?

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

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

A I don't know.

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

Mr. Tuohey. Excuse me.

Ms. Safavian. Sure.

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

BY MS. SAFAVIAN:

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

A Yes.

Q I am interested in -- you have got the word "potential" twice in two different locations on that page in
two different paragraphs. Can you explain why you wanted to add the word "potential"?

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

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

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

Ms. Safavian. Sure.

Mr. Tuohey. Take the first one.

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

BY MS. SAFAVIAN:

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

A That would apply for both.

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

A Yes.

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

A Yes.

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

A No, I can't say it does with respect to each change, but there was a hesitation there, and Dr. Mahoney in many cases overruled me. I know that materials have been sent up to the CEQ in the past several weeks which I was able to review on Thursday and Friday. In some cases, they would provide markups back to the Agency of changes that had been accepted and not accepted, and in many cases, he did not accept my changes, and he had the final word.
Mr. Tuohey. That wasn't the question. The question was, did you have the same mindset or thought process in putting "potential" in throughout the report?

The Witness. I would say I probably came to it with that view, and it was from a cumulative understanding of what the National Academy of Sciences had told us.

Ms. Safavian. Okay. Thank you. My time is up.

Mr. Tuohey. And I will say that counsel for the majority has been generous on that one. I understand we will take that into account.

Mr. Dotson. Well, can I suggest that we take a 5-minute break if that is something that would be of interest to you, Mr. Cooney?

The Witness. Thank you.

Mr. Tuohey. Thank you.

Mr. Dotson. Great.

[Recess.]

Mr. Baran. Back on the record.

We are going to go in half-an-hour rounds.

Mr. Tuohey. Okay.

EXAMINATION

BY MR. BARAN:

Q My name is Jeff Baran. Let's dive right in given the time constraints.

Mr. Cooney, are you familiar with the National
Assessment for the Potential Consequence of the Climate Variability and Change?

A Yes.

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

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

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

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

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

A At the American Petroleum Institute.

Q Was API interested in the National Assessment?

A Yes.

Q Why?

A Because of a concern that it had been designed and
was being developed with a political objective that appeared
to go beyond what science could tell us reliably about
regional impacts of global climate change.

Q Did API monitor action on the National Assessment?

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

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

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

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

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

Q What was your specific role at API with regard to
the National Assessment?
A It was to be sure that our Multidisciplinary Team was performing in such a way as to advocate effectively our concerns about the National Assessment.

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

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

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

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

Q The National Assessment has been described as, quote, "the most comprehensive and authoritative scientifically based assessment of potential consequences of climate change for the United States," end quote. Do you think this is an accurate description?

A Let me just look at something if I may. I want to look at the 10-year Strategic Plan, which I believe has -- well, Page 111 of the 10-year Strategic Plan says that the largest assessment program previously undertaken by the
USGCRP was the National Assessment initiated in 1998, which produced an overview of reports in late 2000 and a series of specialty reports in the period 2001 to 2003." So the 10-year plan refers to it.

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

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

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

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

Mr. Tuohey. Okay. Thank you.

Mr. Baran. Yes.

The Witness. It is the only National Assessment, so to say that it is the most authoritative, the Act, the Global Change Research Act, requires a National Assessment be prepared every 4 years, and one was not. The act was enacted in 1990, and the first National Assessment, most of it, was published in November 2000. So, to say it is the most authoritative, it is the only assessment that was performed. The Clinton administration did not do a National Assessment until -- and publish it until 2000.
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
regions, the other model would say precipitation will be much
lower, and the fact that they were contradictory was
symptomatic of the inability of models to reliably project
regional impacts at a localized level. Yet, that was the
foundation for the regional reports, and you will find a
whole host of Federal scientists who complained and
criticized the foundation, this foundation of the National
Assessment, this element of the foundation of the National
Assessment. They were very critical of it. In the
New York Times' article that Andy Revkin wrote in July of
2000, he cited a Federal scientist who said this was all
being rushed out and driven by the election, a Federal
scientist who, himself, purported to -- you know, who was
very concerned about climate change and the serious threat
that it poses.

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

Q Is it fair, based on the views of the scientists
that you were basing your own view on, that you had concerns about the substance of the National Assessment?

A Yes.

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

A I was.

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

A I do not recall.

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

A I just don't recall.

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

A What do you mean by "financial relationship"?

Q It could be any financial relationship. Was API, for example, funding CEI in any respect?

A Yes.

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

Mr. Tuohey. Meaning beyond what he has done? He has talked about it. Do you want him to go beyond that?
The Witness. I do not recall how much money we were providing at that time.

BY MR. BARAN:

Q Did you communicate with CEI regarding this lawsuit after the lawsuit had been initiated?
A Probably.

Q Do you recall the nature of your communications?
A No.

Q You have no recollection at all of any specific --

Mr. Tuohey. Do you mean -- let me understand because I think there may be a disconnect here.

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

Mr. Baran. I'll rephrase my question.

Mr. Tuohey. Okay.

BY MR. BARAN:

Q During the pendency of the lawsuit but after it was filed, do you recall having any communications with CEI?
A Not specifically.
Q  Okay. Do you believe any API funding supported the CEI litigation?

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

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

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

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

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

Q  Okay. I understand the letter, but were you involved in any way with the administration's response to or defense of this lawsuit?
I vaguely remember, at one point, White House counsel asked me about it, and I don't really remember what I said or what I thought. It was right after I got there.

Q: Do you remember who you spoke with about this?
A: Yes.

Q: Who was it?
A: His name was Noel Francisco.

Q: What is your understanding of how this case was resolved?
Mr. Tuohey: Excuse me a second. Let me interrupt you for a second.

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

Mr. Baran: That would be great.

Ms. Safavian: That is a problem for me.

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

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

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

Ms. Safavian: If you will let me take all my time up
front, and then you all end with the time, that might work.

Mr. Dotson. Yes. You'll get a copy of the deposition.

That would be agreeable. We'll finish this half-hour round.

We'll move to you to use your balance of time, and then we
will take the rest of it.

Ms. Safavian. Does that work for you?

Mr. Tuohey. Say that again. Sorry.

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

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

Mr. Baran. That's agreeable to everyone?

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

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

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

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

Go ahead. I'm willing to help you out. Keep talking,
and I'll just keep going.
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
not be relying on the National Assessment for policymaking.

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

That was my understanding.

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

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

Mr. Tuohy. Let the record reflect the witness was holding a document called the Potential Consequences of Climate Variability and Change, a report for the U.S. Global Change Research Program in 2002. Thank you.
Q Did you believe that the administration was legally prohibited from mentioning the National Assessment in the Climate Change Science Program Strategic Plan?

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

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

A I was concerned that it did.

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

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

Q Did you or anyone at the White House direct the Climate Change Science Program to delete references to the National Assessment from the strategic plan or Our Changing
Well, you used the word "direct." and what I did in reviewing --

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

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

BY MR. BARAN:

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

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

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

Mr. Tuohey. Any recommendations or the ones that are
noted in here? I am just asking you to clarify. That's all.
Any recommendation whatsoever?
Mr. Baran. Well, deleted references to the National Assessment.
Mr. Tuohey. Okay.
The Witness. In reviewing documents over the past 4 days, I see places where I recommended that references to the National Assessment in the 10-year Strategic Plan be deleted.

BY MR. BARAN:
Q Did anyone tell you to make that recommendation?
A No.
Q Did you consult the Department of Justice to determine if that was an appropriate course of action?
A I did not.
Mr. Baran. Okay. I will ask the reporter to mark the next exhibit.
[Exhibit No. 10 was marked for identification.]

BY MR. BARAN:
Q Exhibit 10 is a stipulation dated September 12th, 2001, and a memorandum in support of the stipulation; is that correct?
A I don't know. Let me look at it.
Q  Sure.

Mr. Tuohey. What was your question?

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

Mr. Tuohey. The document speaks for itself.

You can answer yes. You can answer yes.

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

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

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

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

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

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

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

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

Don't read this. That's not part of it. Read the first two pages.
BY MR. BARAN:

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

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

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

A I do not recall.

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

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

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

BY MR. BARAN:

Q When you were making edits to the strategic plan
and the edits involved the National Assessment, you were basing your edits on what understanding of this settlement?

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

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

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

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

A About this agreement right here?
Q Yes.

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

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

Mr. Tuohey. Do you understand the question?

The Witness. Sort of.

Mr. Tuohey. Then restate the question, please.

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

BY MR. BARAN:

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

A My own view is that the deletions, if you'll look at them, were immaterial and that the documents -- the strategic plan and the Our Changing Planet Report reinforced the seriousness with which the administration addressed
global climate change, global climate change science research priorities, so I don't think it diminished concern. I think those documents reflected a serious concern on the part of the administration and commitment to responsibly address climate change.

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

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

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

Mr. Dotson. Can I just discuss a housekeeping matter? It is now 4:16. We have approximately 2 hours left of questioning. We took a half an hour, so you have a half hour coming, which leaves approximately an hour and 45 minutes that we are going to split, I mean at least 45 minutes that we are going to split -- an hour and a half that we're going to split.
Mr. Baran. So you'll have a half an hour plus an additional 45 minutes -- that will frontload you -- and then after that, we'll have 45 minutes.

Mr. Tuohey. I don't think you're talking about an hour and a half. He has got to leave here at 6:30 for a 7:30 flight, so maybe 6:40, 6:45, but no more than that. You've got to check bags; 6:30 to be safe. So I think you've got an hour and 15 minutes.

Mr. Baran. Two hours and 10 minutes then?

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

Ms. Safavian. So what do I have?

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

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

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

The Witness. Yes.

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

Mr. Dotson. Okay. I think that still works, 2 hours. That still works for us.
Mr. Baran. So, to be clear, Jennifer, you now have 1 hour and 15 minutes.

Ms. Safavian. So I have until about 5:30?

Mr. Baran. That's correct, and then we'll have 45 minutes after that, and he'll still get out of here on time.

Ms. Safavian. What I might do is I might save 10 minutes of it so that I can make it out on time.

Mr. Tuohey. You may need it.

Ms. Safavian. I may not, but if I need it, I will have Brooke finish our final round with the last 10 minutes. Okay. Sorry.

EXAMINATION

BY MS. SAFAVIAN:

Q A quick question for you. Can you tell me what the National Academy of Sciences' 2001 Report says about the ability of models to predict regional changes? Do you know?

A There are a number of citations in the National Academy Report about -- sorry.

Well, at Page 19, for example, there is a sentence on the regional scale, and in the longer term, there is much more uncertainty, and that is all in a discussion about the National Assessment. There is that definitive statement.

Q That there is uncertainty?
A  Uncertainty particularly at the regional scale and in the longer term. On Page 21, it says, "Whereas all models project global warming and global increases in precipitation, the sign of the precipitation projections varies among models for regions. The range of models' sensitivities and the challenge of projecting the sign of the precipitation changes for some regions represent a substantial limitation in assessing climate impacts."

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

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

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

BY MS. SAFAVIAN:

Q  And we were on Page 10.

A  Okay.

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

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

A Yes.

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

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

Ms. Safavian. Yes, please.

Mr. Tuohey. Okay.


BY MS. SAFAVIAN:

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

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

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


The Witness. I believe, at this point, that Bryan Hannegan and I were both making comments and that they were
combined in one document, and we split up the chapters and made different comments.

BY MS. SAFAVIAN:

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

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

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

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

On that basis, I would make a recommendation in my comments on proposals that I thought risked overstating human health impacts, because the National Academy had told us that it is a study in its infancy, and the impacts are poorly
And did Mr. Hannegan agree with you on that?
I do not remember specifically.
But did you end up sending back one document that had both of your comments included in it, or did you each send up your own edits?
What I think I recall from having reviewed the documents in the past 4 days is that there was a joint set of comments, CEQ, that reflected both his and my views, and I think he typed it, and then we sent it back. I could be mistaken, but I think that is what he did.
And you think that that is regarding this draft?
Yes, because he was there by then.
Do we have a copy of this draft?
I do not. Do you have a copy of it?
Does counsel for the majority have a copy of the June 2nd, 2003 draft?
This is, Our Changing Planet?
No, of our strategic plan. We have the copy here that you presented from October 2002, and if there are going to be questions about the June 2, 2003 draft, it would be helpful to have that draft in front of us.
My questions are more general.
Yes, I know they are.
Should we enter this?
Ms. Safavian. Why don't you just put it in so he has it in case he --

Mr. Dotson. Can we make it an exhibit?

Ms. Safavian. If you want.

Mr. Tuohey. No objection from us.


[Exhibit No. 11 was marked for identification.]

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

BY MS. SAFAVIAN:

Q Is it your handwriting?

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

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

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

Q Do you see any that is your handwriting?

A We sort of write alike, but so far, I see Mr. Hannegan's handwriting, and you will see, of course, that 99.9 percent of the document has no comments on it.
Q I do see that, yes. There are a lot of blank pages.

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

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

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

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

A Yes.

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

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

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

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

Q Okay.

A They were compiling comments of all of the
agencies.

Q  Okay. Then referring back to Mr. Piltz' memo, at
the top of Page 11, he says that he believes that this
markup, CEQ's markup of this, was never shared with or vetted
by CCSP agency principals or agency science program managers.
Is that your understanding?
A  I'm sorry. Which paragraph are you looking at?
Q  At the very top of Page 11?
A  In late June, CEQ comments --
Mr. Tuohey. The question is whether the statement is
made that comments here -- forget about that for a minute --
whether comments here were not shared with CCSP.
Is that your understanding?
The Witness. Yes, because it would have gone to OMB.
OMB was compiling all of the agencies' comments. The CCSP,
themselves, were commenting.

BY MS. SAFAVIAN:
Q  Okay. So they sent their comments to OMB?
A  Yes, everyone. OMB is collecting everyone's
comments at the end of a process, and then OMB distills what
it has and sends it to Dr. Mahoney for his final
decision-making.
Q  But even though OMB compiles everything, they still
send it back to CCSP, Dr. Mahoney, who has the final review
and edit and whatever. He is the final say on --

A That is my understanding.

Q Okay.

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

Mr. Tuohy. Well, just as a point of clarification, let me ask, if I may: Counsel just asked a question of whether CCSP or its representatives saw these comments. You first said no, and then you said Dr. Mahoney saw them. Did they or did they not see the comments?

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

Mr. Tuohy. Right.

The Witness. So --

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

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

BY MS. SAFAVIAN:

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

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

Q Okay. Then if you'll go -- looking on Page 11 of
Mr. Piltz' memo, look at Number 3, the paragraph that starts with Number 3. If you can, just quickly read that.

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

Ms. Safavian. Yes.

Mr. Tuohey. Thank you.

The Witness. Yes, I see that paragraph.

BY MS. SAFAVIAN:

Q And you have already had a lengthy discussion about the National Assessment and the lawsuit and the settlement. Did you play a lead role in any of that?

A In the settlement of the National Assessment litigation?

Q Yes.

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

Mr. Tuohey. A lead role in what?

The Witness. In the settlement of the National Assessment.

Mr. Tuohey. Is that what your question was?

Ms. Safavian. Yes.

BY MS. SAFAVIAN:

Q Did you play a lead role in enforcing the
suppression of the National Assessment --

A That is his --

Q -- of the --

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

Mr. Tuohey. Would you read the question back. Listen to the question.

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

Ms. Safavian. That is the question.

BY MS. SAFAVIAN:

Q Did you or didn't you?

A No, I don't agree with --

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

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

A No. In fact, the record shows that, when we were dealing with documents that were not of a policy nature like the Climate Action Report of June 2002, Chapter 6 of it relied on portions and a summary of the National Assessment. Also, I held up this document from July 2002, the agriculture report of the National Assessment which the U.S. Department of Agriculture people coordinated the release, told the White House they were going to release it, and they released it. Beyond that, I would say that the National Assessment remained on a government Web site throughout this time period, www.nacc.usgcrp.gov, something like that, but it was always available.

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

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

Mr. Tuohey. Let her ask the question.

The Witness. Oh, I'm sorry. I'm sorry.
Mr. Tuohey. There is no question.

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

This will be Exhibit 12.

[Exhibit No. 12 was marked for identification.]

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

Ms. Safavian. Yes, please.

BY MS. SAFAVIAN:

Q Have you finished reading?

A Yes.

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

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

Q First of all, have you seen this before?

A Yes, I have.

Q Okay. Did you receive it?
A I did receive it as an e-mail.
Q As an e-mail, and it starts with, "Dear Phil, thanks for calling and asking for our help."
A Can you explain that to us?
Q I did not ask for his help. Actually, we had, I would say, an active disagreement. I did call him earlier in the day and asked him to read the Climate Action Report before making a judgment about it, before merely accepting what The New York Times and everyone else was saying that day about it. He had already begun to be very critical, and there were a lot of voices that day. I mean, the media on both sides were taking up this issue of this Climate Action Report. If you go back and look, it was very controversial. but you know, CEI particularly was outraged, furious about the report, and I told him that it was my view that the report in the New York Times was incorrect. It didn't characterize the Climate Action Report properly. I told him further that I had participated in and was confident in the interagency process that developed the Climate Action Report, and so I was asking him to read the report before he criticized it.
Q What was so controversial about the Climate Action Report?
A It was controversial because Chapter 6 of the report, which spoke to climate change impacts, relied in
part, on summaries of materials from the National Assessment, and obviously, the conservative groups in CEI had very strong feelings about the National Assessment and were very critical of the administration for including material in this report to the United Nations that relied on information from the National Assessment.

Q What was the purpose of the Climate Action Report?

A That is a very good question.

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

Q And when did the Climate Action Report come out?
A Well, it was filed like at the end of May 2002, but The New York Times ran a front-page story on this date of June 3rd, 2002, and that is when a lot of the media on both sides, conservative and liberal media, if you will allow those terms, in the United States were very focused on commenting on this report.

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

A Yes.

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

A I did not see it as a policy document.

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

A I was.

Q Okay. What was your involvement?

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

Q So you may have added --

A -- reviewing the report.

Q -- suggestions to it?
A Yes.

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

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

Q Okay. I understand.

So you called Myron Ebell on June 3rd?

A Yes.

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

A I cannot remember except I heard that he was taking a very high profile and criticizing the filing of the Climate Action Report, and I wanted to explain to him -- actually, I
wanted to ask him to read the report before rendering
judgment on it.

Q How long would you -- do you recall how long your
conversation was with him?
A It was 5 minutes. It was not agreeable.

Q It was not agreeable?
A We were in a disagreement. He was furious, and I
was asking him to read the report.

Q So he had not read the report when you had talked
to him?
A Well, that was my view that he could not have read
the report if -- that was my view that it was unlikely he had
read the report. It was a big, thick report, as you can see,
that they mobilized very quickly to be very critical of the
report, but I was not confident that they had read it
thoroughly.

Q So they had already put out like a press release or
something?
A I cannot remember. Something like that.

Q But you already knew at that time that they were
critical of this?
A Yes. I mean, I just don't want to speculate on how
I knew, but I just -- because I can't really remember, but
you all have been in situations in your jobs, you know, where
people say, "Downtown's upset about something," or "So-and-So
doesn't like this thing." I don't really remember, but I understood that they were quite angry about the Climate Action Report.

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

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

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

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

Mr. Tuohey. Just answer the question.

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

BY MS. SAFAVIAN:

Q Further down in the e-mail, he talks about the references to the National Assessment, and he considers it to be very hurtful. I guess, based on that, it looks like he
did view that as being the policy or the Climate Action Report as putting forth policy.

A Yes.

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

A No, not that I recall.

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

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

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

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

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

A They filed Data Quality Petitions under a newly enacted law at four separate agencies -- at the EPA, the Commerce Department, the State Department and with the White House Office of Science and Technology Policy -- and I
participated in the decision, in the coordinated decision, by
all of those agencies to deny CEI's Data Quality Petitions.
They wanted all references to the Climate Action Report
pulled off of Web sites at those respective agencies, and in
working with counsel from all of those agencies, you know,
you wanted the responses to be consistent and rationales to
be consistent, but there was a process in which I
participated which resulted in CEI's Data Quality Petitions
being denied, and it was only -- well, I will just leave it
at that. That is something, though, that Senator Lieberman
had written to Jim Connaughton about this whole e-mail thing
that I had received from CEI, and other people had asked
about what this meant. The Attorney General of Connecticut,
the Attorney General of Maine, Senator Lieberman, and the
White House did respond to Senator Lieberman. Their
response, you know, was not up on the Web site, but they
responded, and they described my active role in denying -- in
the coordinating process to deny CEI's Data Quality Petitions
on this report. So the opposite -- I can say in a very
general sense that what was thought to have occurred and
reported to have occurred between CEI and I, some conspiracy,
that the exact opposite was the case.

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

A It is all documented, all of the lawyers who
participated in all of the deliberations to turn down those 
Data Quality Petitions. I was in the room and participated 
in the meetings and was very comfortable with turning them 
down, and Jim Connaughton said so in his letter back to 
Senator Lieberman.

Q What was your involvement in reviewing Our Changing 
Planet?

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

Q You were tasked --

A And so to get to your question --
Q -- with this issue --
A Yes. I got on the review list as the CEQ representative who reviewed the Our Changing Planet Report when OMB would send it out for interagency review, and I think -- you know, there were a lot of people on those reviews, 50, 60 people. I was one.
Q And was anybody else at CEQ also involved in reviewing that, like Mr. Hannegan?
A Yes. Mr. Hannegan, after he came, really, really in large part took over the whole science portfolio. He took over a lot of the work on climate change. You know, we were drafting voluntary emissions reporting guidelines. At DOE, that was a huge project. He worked on that. He worked on the science stuff. He had the background and the interest, and he was a very competent person, and he took over a lot of the climate change work when he came to the council.
Q And when did he -- I'm sorry. Tell me again. When did he --
A I think it was in the spring of 2003. I don't remember the exact date.
Q Of 2003?
A I believe so.
Q So was Our Changing Planet sort of like the strategic plan in that there are many drafts of it?
A Not as many as the strategic plan. The strategic
plan was really a very important document because it set the
tone of the administration's research priorities for a
10-year period, and a lot of people were invested in it, and
we included the National Academy of Sciences in its formal
review, and we had the big international workshop, so the
review process on the 10-year Strategic Plan was a lot more
elaborate than the review process on the annual Our Changing
Planet Report. The Our Changing Planet Report was just
routinely transmitted and sent to and accepted by Congress.
It is a report that accompanies our submission of the budget,
and we were requesting between $1.6 billion and $2 billion a
year for climate change research, and it itemized what
agencies would be doing what work under our budget. It is a
budget report.

Q And it was prepared by CCSP?

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

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

A I don't remember specifically, but I would just say
that Dr. Mahoney and I had a very cordial and respectful
working relationship, and if he had a question about it or about a recommendation I had made, he would pick up the phone or I would do the same, but he held the pen at the end of the process, and he said so in his statements to Congress.

[Exhibit No. 13 was marked for identification.]

BY MS. SAFAVIAN:

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

A Yes.

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

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

Q You don't?

A No.

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

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

A Yes.

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

A Yes.

Q -- or you know, "take that out" or whatever. Do you recall having direct conversations with Dr. Mahoney about, you know, their suggestions and whether you agreed with them or didn't agree with them?

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

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

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

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

A No.

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

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

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

A No. No. It was -- it is puzzling to me that we did participate in a number of meetings together, and I now
understand he had strong views about my role, but he didn't
speak to me about it.

Q Did Dr. Mahoney or anybody else on his behalf, perhaps, ever address any of these issues with you?
A Rick Piltz' issues?
Q Yes.
A No. Dr. Mahoney just -- he just did his job. We talked about -- we talked occasionally. We talked things through, and it was very respectful.

Q I would like to talk about the --
A He didn't tell me Mr. Piltz had a problem. I did not know that.

Q You did not know that until you later saw a copy of his memo?
A Yes, and a lot of other things.

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

Q Can you tell me what was your role, if any, with regard to that report?
A Well, again, I was a reviewer. Although, that was a big report, and there were a lot of dimensions to the report -- air quality, water quality, Federal land, Super Fund cleanups. It was a big, enormous report, so a lot of people reviewed it.
Within CEQ?  
Within the -- throughout the Federal Government.

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

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

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

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

A lot. I would say a number of people. In fact, we had at that time a detailee from EPA named Alan Hecht who was really -- he was at CEQ, but he was working with EPA on the development and -- the interagency development and review
of the state of the environment report, and CEQ, itself, had for many years under the authority that it has under NEPA -- issued a report on environmental indicators, but in this case, an agreement was made that EPA would undertake an effort like that, and so we had a detailee at CEQ, Alan Hecht, who really managed this, and he would walk the draft around to different people in CEQ and get comments, collect them and send them back to the Agency.

Q  So would you have given him your comments?
A  Yes.

Q  And how many do you recall? How many drafts? Do you recall how many versions of this report you would have looked at?
A  You know, it was -- in this case, there were a lot of different drafts. It was not -- its development really was not smooth in the interagency process, not only on the climate change issue, but in general, it was not really smooth, so there were a number of drafts.

Q  And do you recall -- and I don't have the document, so this is only what your recollection is.
Do you recall what type of edits or suggestions, maybe the themes, that you would have made comments on or edited to this report? Do you recall any of them?
A  Yes, I do recall some of the edits that I suggested.
Q What are the ones that you recall?
A I recall -- God, there are so many reports.
Q I know.
A I recall there was this opening, Global Climate
Changes Implications, Global Implications for Human Health
and the Environment or something. It was the opening
statement, and I thought -- is that correct or --

Ms. Bennett. Go ahead. I don't recall off the top of
my head.

The Witness. Well, it seemed a sweeping statement, to
me, relative to what the National Academy of Sciences has
said about how poorly understood any impacts on human health
would be. I also recommended an insertion to what was a new
report, the report by Soon and Baliunas, on proxy data the
past 1,000 years and what it said about the temperature
record for the past 1,000 years, and I recommended a citation
to that report which had come out in the spring of 2003 and
was a federally funded report -- although, API, I understood,
contributed a minimal amount -- but as a new report, it had
gained a lot of attention, and it was prepared by Willy Soon
and Sally Baliunas, who are both scientists at the Harvard
Smithsonian Center for Astrophysics, and I thought it was
material because it spoke to the question of whether the
20th Century was, in fact, the warmest in the past
millennium. It was new. It was current, and I recommended
it be inserted, so I realized that that has been controversial in Mr. Piltz' view. So I looked at a couple of the comments that I had made on drafts. There were different drafts, though, that evolved, and I think there was a view. There was an experience that EPA was not very receptive to comments and recommendations that other agencies were making on its drafts. I think there was frustration. I think there was a view -- if you look at documents that were sent up to the committee that I reviewed last week that were sent to the Council of Economic Advisors, the Office of Science and Technology Policy, the Office of Management and Budget, the Department of Energy, they were all concerned and stated their concern that the EPA 5-page draft on climate change lacked balance, and that was the view that we shared, so there was back and forth on that element of the report.

Q "Back and forth" meaning you were involved in that, or do you mean "back and forth" among the different agencies?

A I gave my comments to Alan Hecht, who was the detailee, and he said -- you know, he really took the comments back to EPA, and then we'd get a new draft a month later, and we would say, "Why haven't any of our comments been addressed"? So there was some frustration, I think, but Alan was the interface between the Environmental Protection Agency and our office and a lot of other agencies. He was the sort of the detailee guy who was pulling this report
together, leading it, leading its development in being pulled
together. So, in CEQ, a number of us gave comments to Alan,
and he took them back to EPA for their consideration.

Q Did you have any conversations with anyone at EPA
about your edits or suggestions?

A With EPA?

Q Yes.

A Well, Alan himself was an EPA employee, and he was
detailed at the White House, so I only spoke to him. I
didn't speak to anyone at the EPA, you know, to my
recolletion.

Ms. Safavian. Okay. Let me show you this document
which is Exhibit 14.

[Exhibit No. 14
was marked for identification.]

BY MS. SAFAVIAN:

Q And I will just ask you to take a quicker view of
it.

A I have seen this portion of it. I haven't seen the
third page.

Q Well, I'm only going to focus on the first two
pages. So you have seen this before, and when did you see
it?

A I do not remember. After -- you know, after the
State of the Environment Report was released, I believe, in June 2003, there was a lot of media attention about the fact that there was not a climate chapter in the report. I think I saw this memoranda, but it was only after the report was issued, and --

Mr. Dotson. Can I interrupt and ask a question?

This document, this exhibit, is different than the memo that we received from CEQ in the same matter. I was just wondering. I am just trying to figure out where this came from. It seems to have come from a textbook, but that was in the last tranche of documents that we received in the -- take your time. I was just wondering if we should include that along with the --

Ms. Safavian. Not until I've had a chance to review it.

BY MS. SAFAVIAN:

Okay. I'm sorry. You said you were saying that you --

That I became aware of this memorandum after the report was released and the media covered the report.

Did you know prior to seeing this that there was some concern on EPA's part about CEQ and OMB's edits and comments to the report?

You know, I recall Alan Hecht saying, "We're getting some pushback from EPA, but I'll handle it," but he
was the front -- he was the interface, and he -- I remember
his saying something like that, you know, and so --

Q But you don't recall beyond that any other
controversy about the White House's edits to the report?

A I recall that there was a resolution process at the
end of the process for disagreements, and that was between
Governor Whitman and Chairman Connaughton, and I understood
that Governor Whitman made the decision to remove the 5-page
summary on climate change science and, instead, decided to
insert a reference, a Web site reference, to the 10-year
Strategic Plan and to the USGCRP Web site for the Our
Changing Planet Report.

I might just say further that Dr. Marburger, the White
House Science Advisor, issued a public statement on this in
2004 in response to a report from the Union of Concerned
Scientists about this whole issue, and he has taken it upon
himself to explain the White House Science Office's view of
this issue, and so I don't know if you have his statement,
but it is an important it's consistent.

Q You mentioned that you knew that there was a
dialogue between Mr. Connaughton and Christine Todd Whitman.

Do you know when that occurred?

A I don't.

Q Were you present during the meeting?

A I was not.
Q Okay. How do you even know about it then?

A I can't really remember.

Q Do you think it was something Mr. Connaughton would have informed you about?

A He may have come into my office and said, you know, "They're going to publish this report next week. We really - we had a good conversation, and we have a path forward," or something. I shouldn't even say things like that. I don't remember anything that he said. I don't know how I knew that they had a conversation, but his office was right next to mine, so he might have told me that he had spoken to her.

Q Well, then, how do you know that it was Ms. Whitman who made the decision to just remove those 5 pages and make other references?

A You know, I could be incorrect on this point, but I believe that the EPA public statements in the media after the report was published said that the EPA has decided to remove the climate change 5-page summary in favor of a reference to the strategic plan, which came out, as you know, a month later and was a much fuller exposition of the science of climate change and what we were going to be addressing than the 5-page summary that the EPA had developed was.

Sorry for the long answer.

Q That's okay.

So, beyond, maybe, what you read in the press, do you
recall having any further recollection of anybody else discussing this matter with you, the concerns that EPA may have had about the White House's edits to their report?

A No. I would just volunteer something, I guess, I have already said. My lawyer doesn't want me to volunteer anything, but we were sort of mystified that, as we commented on various drafts, that the comments didn't seem to be -- they were not addressed, and so a lot of people were saying, you know, "Why isn't the EPA responding to the comments it's receiving on the report on a whole range of issues"?

Q Do you mean referring just to CEQ's comments or --

A Everybody's. Everybody's. All of the other agencies were.

Q They had the same complaint?

A Yes. You know, the natural resource agencies in the Department of the Interior collect a lot of data on western lands and grazing and endangered species and things like that, and there was, I think, a level of concern among a number of agencies that the EPA was not being responsive to input that it was receiving, but Alan Hecht, again, is the interface at our office.

Ms. Safavian. At this time, what I am going to do is I think I will hold and reserve our remaining 13, 14 minutes, and at the end, if you all would just save that time, Brooke may have a few follow-up questions just to wrap things up.
Mr. Baran. Sure.

Ms. Safavian. Does that work? I think we have about 13 minutes; is that right? So, if you will, just save those 13 minutes.

I apologize, Mr. Cooney, but I do have to leave now. Thank you very much for being here today and answering our questions.

The Witness. Thank you.

Mr. Dotson. Can we take one moment for the reporters to switch?

[Recess.]
Mr. Baran. I am Jeff Baran, and I will be doing the next set of questioning.

EXAMINATION

BY MR. BARAN:

Q I would like to return to Exhibit Number 9. Exhibit Number 9 is an October 28, 2002, fax cover sheet attached to a number of pages from the October 21, 2002, draft of the strategic plan. You prepared this fax, correct?

A Yes. My writing on the cover sheet.

Q There are a number of handwritten edits and comments to this draft. Did you personally make these edits and comments?

A Yes. I haven't looked at every page, but I expect I did.

Q Take a moment to review it.

Mr. Tuohey. Your question is comprehensive, all the changes?

Mr. Baran. Yes.

The Witness. Okay. These appear to be all of my comments, yes.

Mr. Baran. We are done with that document.

I will ask the reporter to mark this exhibit Exhibit 15,
May 30, 2003, fax cover sheet attached to a two-page document and a number of pages from the May 28, 2003, draft of the strategic plan.

[Exhibit No. 15 was marked for identification.]

BY MR. BARAN:

Q You prepared this fax, correct?

A Yes. That is my handwriting on the cover letter.

Q The fax sheet refers to red flags. What did you mean by "red flags"?

A Well, that was Dr. Mahoney's term when he sent out these drafts to Mr. Connaughton, Dr. Marburger and others. He called it a red-flag review. And it was, you know, an informal process for reviewing the draft at that time.

Q Did a red flag signify that it was an edit of significance, particular significance?

Mr. Tuohey. If you know.

The Witness. It was -- it was his term. I guess if you put -- if you hand-wrote the words "red flag," it is like can we talk about this one? You know, the other stuff may have been editorial, but if you put "red flag," it would imply let's talk about this one.

Q So if there were topics that you had serious concerns about, you would red flag those?

A Well, it was a red-flag review. Sometimes you
would write the word "red flag" and imply -- I guess it would imply that you're serious about the comment, and you want to talk about it.

Q When you used the term "red flag," did you expect that that edit would be accepted?

A No, because Dr. Mahoney made all final decisions. I was just --

Q So when you did your editing at CEQ, did you generally use the term "red flag" in this way?

A My editing at CEQ at large? I don't understand your question.

Q Let me rephrase the question. With respect to the strategic plan, when you used the term "red flag," did you use it in the way you just described?

A Again, I would say that the terminology "red flag review" was in the caption line of what Dr. Mahoney sent out. But, yes, I generally describe that I -- if I was red-flagging something, I thought it was an important issue.

Q In your experience, when you raised a red flag, would your concern be addressed by Dr. Mahoney?

A I generally didn't do a reconciliation between whether I had made a comment and whether it was accepted.

Q The next two pages of the document are comments by chapter. The top of the page says, "Comments from Bryan Hannegan (CEQ)." Is this a list of Bryan Hannegan's edits?
A I assume so.

Q Take a look at the edits for a moment. Do those look like edits that Bryan Hannegan would make?

A Some do. I wouldn't make a comment like -- I don't think I would make a comment like, "Thawing permafrost may not necessarily lead to emissions of methane," because I don't know anything about that. So he would more likely have made that comment than I.

Q On the remaining pages there are a number of handwritten comments and edits to this draft. Take a moment to review those. Are all of these edits and comments yours?

A Yes. These comments appear to be my comments.

Q Thank you. We are finished with that exhibit.

Mr. Baran. I ask the reporter to mark this exhibit Exhibit 16.

[Exhibit No. 16 was marked for identification.]

BY MR. BARAN:

Q Exhibit 16 is a June 2nd, 2003, fax cover sheet attached to a number of pages from the May 29th, 2003, draft of the strategic plan. You prepared this fax, correct?

A You said from a May 29th, 2003 --

Q Draft of the strategic plan.

A These are my comments.

Q So, you prepared that fax?
A Um-hum. Yes.

Mr. Tuohey. You have to answer yes or no.

The Witness. Yes.

BY MR. BARAN:

Q And the handwritten edits and comments on that draft were yours?

A Yes.

Q Thank you. We are done with that exhibit.

Mr. Baran. I will ask the reporter to mark this exhibit.

[Exhibit No. 17 was marked for identification.]

BY MR. BARAN:

Q Exhibit 17 is a list of CEQ edits and comments to the strategic plan. It is dated June 16th, 2003; is that correct?

A Yes.

Q Are these your edits and comments?

A The document itself says BH and PC, so they appear to be both of our comments integrated into one document.

Q At several points in the document, there are comments that have an explanation associated with them. For example, on this first page, when you see the reference to page 6, line 38 to 40, there is an edit there followed by, in brackets, "Explanation," and then an explanation is given.
Mr. Tuohey. The one that says, "Let's be judged by our products."

Mr. Baran. Correct.

BY MR. BARAN:

Q Can you tell us whether explanations like those were yours?

A I can't.

Q Let's look at the next page, page 22, the reference to page 22, line 44 to 45. See, there is an explanation there: "Explanation: Wasn't it all 'internal' processes in the historic record? What was the source of any 'external' forcing?"

Do you know if that was your explanation in edit?

A I do not.

Q Let's turn to next page, the reference to page 27, line 39 to 41. There is an explanation there: "Legal considerations preclude mentioning the National Assessment."

Do you know whether that is your edit and comment?

A I really do not know whether it is mine.

Q So you just don't have a recollection of whether any specific edit or comment on this list was yours or Bryan Hannegan's?

A If I went one by one, he, obviously, is a trained scientist and would give comments that I would recognize as his if they were very inherently scientific.
Do you have a sense with this round of edits how many edits you made in comparison to how many edits Bryan Hannegan made?

I don't recall.

Mr. Baran. I think we are done with that exhibit.

I ask the reporter to mark this exhibit Exhibit 18.

[Exhibit No. 18 was marked for identification.]

BY MR. BARAN:

Exhibit 18 is a number of pages from the Agency's concurrence draft of the strategic plan. There are a number of handwritten edits to this draft. Did you personally make these edits?

Mr. Tuohey. Take your time.

The Witness. Actually I would say that, yes, I recognize this as my handwriting. And on page 216, this appears to be where I make a recommendation to delete a reference to the National Assessment. As I pointed out before, that was a recommendation that was not accepted by Dr. Mahoney as the final report. Page 111 contains this sentence.

BY MR. BARAN:

But these were your edits?

I believe so.

Thank you. We are done with that exhibit.
Mr. Baran. I will ask the reporter to mark this exhibit.

[Exhibit No. 19 was marked for identification.]

BY MR. BARAN:

Q Exhibit 19 is a June 5, 2003, fax cover sheet attached to a number of pages from the June 4, 2003, draft of the executive summary of the strategic plan. You prepared this fax, correct?

A Yes.

Q There are a number of handwritten edits and comments to this draft. Please take a moment to look at the document. Are all of these edits and comments yours?

A They are.

Q Thank you. We are finished with that exhibit.

Mr. Baran. I ask the reporter to mark this exhibit.

[Exhibit No. 20 was marked for identification.]

BY MR. BARAN:

Q Exhibit 20 has a number of pages from the June 5th, 2003, draft of the executive summary of the strategic plan. There are a number of handwritten edits to this draft. Did you personally make these edits?

A This is my handwriting. You refer to them as edits, though, and these are recommendations. That was not
in a final --

Q  Suggested.
A  Suggested.

Mr. Tuohey. And that would be true for all of the
documents you have shown him today with regard to the
strategic plan.

BY MR. BARAN:

Q  Is that your view in each case?
A  That's true. They were recommendations, comments.
A lot of them were posed as questions, in fact.

Mr. Baran. We are done with that document.

I will ask the reporter to mark this exhibit.

[Exhibit No. 21
was marked for identification.]

BY MR. BARAN:

Q  Exhibit 21 is a July 3rd, 2003, e-mail attached to
a number of pages of a July 24th, '03, draft of the Climate
Change Science Program revision document.

Mr. Tuohey. Do you know what this is? Look at the
third page.

The Witness. Yes. I guess, this is this --

Mr. Baran. I haven't asked a question yet.

BY MR. BARAN:

Q  In the upper right-hand corner of the e-mail, there
is a note which reads, "Discussed with Jim Mahoney 7/9/03.
He will consider these suggested final edits. PC.

Did you write this note?

A Yes. It is my writing.

Q Describe the conversation with Dr. Mahoney to which this note refers.

A I really don't have any specific recollection of the conversation.

Q There are a number of handwritten edits to this draft. Did you personally make these edits?

Mr. Tuohey. Take your time. Go through the draft. It is a lengthy document.

The Witness. They appear to be my edits, except on this one page where I really can't see what the comment is. It just doesn't copy here.

Mr. Tuohey. Jeff, that page there is no number, but it is the page that --

The Witness. Just can't see what the comment is.

Ms. Bennett. -- starts with "Global carbon cycle."

Mr. Tuohey. "Global carbon cycle" is in the upper left-hand corner.

BY MR. BARAN:

Q I believe the comment reads, "Sequestration opportunities or alternative responsibilities options."

Sure, maybe mine is a little bit better.

A Yes. That would be correct.
Q We are through with that document.

Exhibit 22.

[Exhibit No. 22 was marked for identification.]

BY MR. BARAN:

Q Exhibit 22 is a fax cover sheet attached to a number of pages from the June 20, 2003, draft of the Climate Change Science Program's vision document. You prepared this fax, correct?

A Yes.

Q There are a number of handwritten edits and comments to this draft. And can you tell us whether these edits and comments are yours?

Mr. Tuohey. While he is looking at that, I assume that this was a document produced by the CEQ?

Mr. Baran. That's correct.

Mr. Tuohey. Okay.

The Witness. This appears to be my handwriting. These would reflect comments. But there is -- there are a number of things going on. This is comments, but also you have comments, "Leave," "Good," and so they seem to reflect a reconciliation or discussion of comments as well as initial comments.

Mr. Tuohey. And is that your language, your writing?

The Witness. It looks like my writing, sort of.
BY MR. BARAN:

Q Just to clarify, the base comments are the ones that are yours; is that correct?

A Well, distinguishing the base from the reconciliation comments --

Mr. Tuohey. He first asked about the base comments.

The base comments are yours?

The Witness. You can't tell what are the base versus the reconciliation comments, so it is just a little bit confusing. Like there's "good" in this margin. I don't know whether it is good because I was satisfied with the way they were going to handle it, or I thought it was a good comment. I just don't know.

BY MR. BARAN:

Q Just to be clear, was it all your handwriting, or did it look like one set of comments was done by you, and another set of comments, the reconciliation, was done by someone else?

Mr. Tuohey. Some of it is hard to see, hard to read.

The Witness. It is my judgment that they are both probably my handwriting, but I don't -- there are words I look at that don't necessarily look like my handwriting.

BY MR. BARAN:

Q Fair enough. Thank you.

Mr. Baran. I ask the reporter to mark this exhibit.
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.
and final approval of the report.

Q  So your sense is that this strategic plan could
have been issued without White House approval?

Mr. Tuohey. You're equating his signature with White
House approval?

Mr. Baran. Yes.

The Witness. Approval connotes something that looks
like this, some hard-edged, tangible "we approve."

Never really got to that on these reports. In this case
I think Dr. Mahoney was looking for assurance that everybody
was on board. It was an important report to the
administration. And I think he was confident that he would
get a 100 percent response rate that everyone agreed to the
report. Even though everyone's comments weren't accepted,
and he rejected a lot of comments, he wanted to know that
everyone concurred in the report as a team effort across the
administration. He had made the final judgments, but he
wanted everyone's concurrence.

But generally with these documents, there wasn't a hard
approval. The comment process was respectful and iterative,
often in the form of questions, and so we didn't get to
legalistic hard approvals.

BY MR. BARAN:

Q  Let me ask this: Do you believe that the Climate
Change Science Program thought they could release the
strategic plan without your signature on that form?

A I think they think -- I think they could have released it without my signature. I think they might have taken half a day to appeal to the Chairman and say, your guy has a problem with this, I would like to discuss it with you, but everyone else supports it. But again, it is a very hypothetical question. I concurred in the report.

Mr. Tuohey. That wasn't the question.

The Witness. I am sorry. I am sorry. I just -- I don't know the answer to your question.

I don't think -- I think that the report would have been published. It was the culmination of a very public, year-long effort.

BY MR. BARAN:

Q Just not to belabor it, but just to make sure you understood my question, do you think that the CCSP folks had the same understanding that you did?

A CCSP folks were not distinguishable from Dr. Mahoney. Dr. Mahoney ran the CCSP, and he had the most important understanding. And I think that he felt that he had authority to publish the report.

Q Okay. We are done with that exhibit.

Mr. Baran. I ask the reporter to mark this exhibit.

Exhibit is 24 marked.

[Exhibit No. 24]
BY MR. BARAN:

Q Exhibit 24 is a copy, a sheet of paper that was attached to your edits to EPA's draft report on the environment.

Do you recognize the document; is that correct?

A Which month of comments? There were -- it was a cover sheet to which set of comments? There were a number of sets of comments.

Q Let me rephrase the question. Do you recognize this exhibit to be a copy of a sheet of paper attached to a set of comments to the draft report on the environment?

A I recognize that as my handwriting. And I recognize the response back is from Alan Hecht.

Q And Alan Hecht was the --

A EPA.

Q Detailee --

A Detailee at CEQ who was coordinating our feedback on this report.

Q The exhibit reads, that top comment, "Alan, these changes must be made. Thanks. Phil."

Is that your comment?

A That was my comment.

Q And as the Chief of Staff of the White House CEQ, you were given an order here, weren't you?
A No. I mean, the language is mandatory, but the comment process within the executive branch is very collegial and respectful. And I wouldn't read it as an order. I think my recollection is that I wrote this comment after we had received back from EPA a few additional drafts that did not reflect that they had considered comments that had been provided by our Agency. Yet we were receiving at the same time a message from EPA, through Alan Hecht, that Governor Whitman wanted to publish the report soon, that she wants to publish, you know, soon; I can't remember the exact time, but within a certain time frame. And my recollection is that I wrote this sort of in response to that pressure. If they want to publish, they need to respond, to engage in our comments.

And so it was my way of getting Alan Hecht something to go back to the Agency with and say, you have got to engage their comments. You can't just continue to disregard them. But it was -- it wasn't -- it just was not an order. It was not an order, which was your question.

Q Do you expect that Alan Hecht took this comment to EPA and told them that the changes you made had to be made?
Mr. Tuohey. If you know. If you know.
The Witness. I don't know. I really don't know how he used it.

BY MR. BARAN:
Q  Did you have a discussion with Alan Hecht about this note so that you knew he had the same understanding of the note that you did?

A  I don't recall. Alan and I would talk occasionally, and he would -- he was very confident as a capable interface in leading this project and in getting our comments back to the EPA. And so I just don't have a specific recollection of a conversation, but we would talk. He would say, getting pushback, or, I have got it under control.

Q  We are done with that exhibit.

The committee has learned that executive branch agencies would sometimes contact CEQ regarding specific press requests to interview specific scientists. Please explain how this practice was established.

A  I don't know enough about it really.

Q  Were you involved in this process of signing off on specific requests by media to interview government scientists?

A  I was -- may have been involved. What happened was communications people who handle press calls all the time know each other. They meet. They go to lunch. And if a call came in to an agency, and they weren't quite sure what to do about it, sometimes they would ask their own management, how do we handle this? Or a call would come in
to both the White House and an agency, and we would say, who
is going to return the call? And so communications people
would figure out how to respond to media requests.

Sometimes they came both to the White House and the
agency, and so they coordinated. And on occasion, although I
don't have any specific recollection of a conversation, our
communications office person could come into my office and
say, I got a call from the NOAA guy, I got a call from this
guy, I handled it this way. They may have talked to me about
it. It was -- communications people had their own network,
and they handled media and --

Q  Could CEQ approve or disapprove press requests?
A  I think that is too hard a word, approve or
disapprove. Our communications people would render a view as
to whether someone should give an interview or not or who it
should be. In the White House, you know, that is what they
did, communicating with various communications offices. But,
again, it was iterative. It wasn't in our nature to be
giving sharp orders really. It was, who is going to handle
the call? How are we doing to handle this? And
communications people did that among themselves generally.
If they wanted to interview the Chairman, then they would
talk to the Chairman about it.

Q The committee has learned that in 2005 the National
Oceanic -- NOAA contacted Michele St. Martin at CEQ about a
pending media request to interview a NOAA scientist. Can you explain how Ms. St. Martin would have assessed and responded to this request?

A I just don't know enough about that specific request. She, like me, got 150 e-mails a day, 25 calls. I don't know how she would have handled that request.

Q Ms. St. Martin told NOAA to monitor the press calls and report back to CEQ. Were you aware of this practice?

A No, not that I recall.

Q So you never gave an instruction to Ms. St. Martin or anyone else to have agencies report back on press calls, press interviews with government scientists?

A Not that I recall.

Q On August 28, 2003, EPA denied a petition to regulate greenhouse gas emissions from motor vehicles. Are you familiar with this decision?

A I am.

Q Did you monitor this Agency action while serving as the CEQ Chief of Staff?

A No. I spoke to our general counsel when this was emerging for decisionmaking, a very early point, and said that I was uncomfortable -- because I had taken such a position in opposing the petition in my prior job, I was uncomfortable having anything to do with EPA's decisionmaking. And she said to me, as I recall, well, there
is no formal bar to your participation, but you can
voluntarily recuse yourself from all decisionmaking on the
petition. And I did.

Q So you were concerned that it would give the
appearance of impropriety or conflict of interest if you were
involved?

A Yes. It made me feel uncomfortable to be involved.
And I thought it improper because I had taken such a public
advocacy position against the petition before I joined
government.

Q Were there any other matters while you were at CEQ
on which you recused yourself?

A Yes.

Q Can you describe those for us?

A To the best of my ability, after the election in
2004, I had pretty well reached a conclusion that I was ready
to look for work outside of government, and I interviewed
with some law and lobbying firms, and there are formal
recusals in place with our general counsel for any matters
that -- in which they were implicated.

But through the spring of '05, as it became increasingly
clear to me that I was going to be leaving, and I really did
not know where I was going to go, I was sort of struggling
with it every night. And I had another opportunity inside
the administration that I was also considering. I backed off
quite a bit on policymaking. The Asia Pacific Partnership, for example, was being developed in the spring of 2005, and I made it clear to my colleague, Ken Peal, and to others that I felt uncomfortable; the knowledge that I would be leaving the administration soon, I didn't want to be deeply involved in the development of that initiative. And I do recall sending e-mails to colleagues and EOP notifying them that I had formal recusals in place, so not to bring to my attention priority matters on energy and environmental issues.

I was continuing to manage the Agency budget, hiring, firing, and making sure that all documents coming in were being responded to, but I was backing away from an active policy role. And I was very affirmative about it and consulted very closely with our general counsel about those matters.

Q Was there a formal recusal form for the EPA petition to regulate greenhouse gases?

A There is no formal form, but my practice was -- it was I informally recused myself, and I did not work on the decisionmaking. There were meetings that were called. And I did not participate in the decisionmaking on that.

Q But in all other cases there were formal recusals?

A Well, when it came to potential future employment, I would file a formal recusal. But in this case, it was a practice that I had discussed with our general counsel, and
she understood that I was not going to be involved, and my colleagues understood that I was not going to be involved.

Q Do you know how many formal recusals were filed by you?

A I believe I filed four formal recusals during my time at the White House. Two were with respect to law firms. One was with respect to another company, and one was with respect to ExxonMobil.

Mr. Baran. Okay. My questioning time is up.

Ms. Bennett. The Minority would like to take the last 13 minutes of questions.

EXAMINATION

BY MS. BENNETT:

Q Just to repeat, I am Brooke Bennett, Minority counsel. I had a just a couple of questions for you.

Going back to Exhibit 23, and, if I recall correctly, I believe it was -- the Majority counsel's question was something along the lines of if you had refused to clear the report, would the report not have been issued? Could you just read through the options that are presented on this form and let me know whether or not there is one that specifically asks for an option, provides you an option to refuse the report?

A That is a very good question. There is not an option for refusing concurrence.
Q I just wanted to clarify that.

Also going back to Exhibit 22, and I just want to be double clear on this because, looking at the handwriting, if you could just have another quick look at some of the documents or some of the comments on there and let me give you a copy --

Mr. Tuohey. To be specific, do you include the front page?

Ms. Bennett. I will.

BY MS. BENNETT:

Q The copy that was provided to you by Majority counsel is a bit light.

Ms. Bennett. So with your agreement would you mind if I give him the same one that we had prepared? But it is slightly darker, so you can see the comments slightly better.

Mr. Tuohey. What page?

Ms. Bennett. If you go, for example, to page 14.

Mr. Tuohey. Page 14.

BY MS. BENNETT:

Q And look at the word "good" on page 14. If you look on page 15 --

Mr. Tuohey. "Good" on 14.

BY MS. BENNETT:

Q Do you mind just double-checking that and make sure it is or is not your handwriting? And you can probably
compare it to 15.

Mr. Tuohey. "Good" 15.

The Witness. They both look like my handwriting.

BY MS. BENNETT:

Q They both look like your handwriting?

A If I was writing fast.

Q And at the bottom of page 18, also that "good"?

A Yes.

Q All right. I just wanted to double-check.

Mr. Baran. For the record, let's switch these documents so we have the better copy for the record.

Mr. Tuohey. Fine.

Mr. Baran. We will mark this 22.

Mr. Tuohey. Makes sense.

BY MS. BENNETT:

Q If you go back to Exhibit 20, I was just curious if maybe you could explain something to me.

Mr. Tuohey. Exhibit 20.

BY MS. BENNETT:

Q On top of Exhibit 20 --

Mr. Tuohey. This is the science plan.

BY MS. BENNETT:

Q CCSP strategic plan. And the first page is listed the executive summary, and it is final technical review, dated 5 June, 2003. I was curious as to why "strategic" is
scratched out and it says "science." Do you recall?

   A I don't recall.

   Q Also going back to Exhibit 17, can you tell me whose handwriting is on the top of Exhibit 17? Where it says -- Exhibit 17 is the CEQ review and comment of science plan for the CCSP, and it is a list of edits, those edits down on the panel. And at the top it says, "6/16/03. BH plus PC." Do you know --

   A That looks like Bryan Hannegan's handwriting to me.

   Q That is not your handwriting, you don't believe?

   A No.

   Q Something you mentioned a moment ago talking about the point at which you started backing away from policy decisions, making policy decisions. What was the time frame again that you gave on that, to the best of your recollection?

   A Well, it was in the spring 2005. I had interviewed with one law firm, I think it was in December 2004 after the election. And so I was concerned about being involved in policymaking.

   You know the formal recusal was only with respect to matters concerning that law firm that were pending that would happen to come before me. So the formal recusal was over any material matter in which that law firm or a client of that firm was involved. But still, I had a general and increasing
unease about continuing to be deeply involved in policy when
I knew that I was -- that I was planning to leave. I didn't
don't know what the heck I was going to do, but I was
planning to take a next step with my career.

Q Okay. That is fine. One last question for you
actually, and going back to the organizational chart that we
had distributed toward the very beginning, and I am going to
have to the dig to find it here. It is Exhibit 7, which is
an organizational chart that discusses the climate change
activity.

With regard to the Climate Change Science Program, the
person who was responsible for the final product, after a
fashion, in terms of putting it together and taking in the
Agency comments, et cetera, that was who?

A That was Dr. Mahoney, the Assistant Secretary of
Science for Oceans and Atmosphere.

Q Who had the same role for Our Changing Planet?

A Doctor Mahoney again, because the Our Changing
Planet was a product of the Climate Change Science Program.
So any program -- any product of the program, Dr. Mahoney is
the director of the program, and he had defined it.

Q What about the Climate Action Report?

A Climate Action Report, which was the report filed
with the United Nations in June 2002, was filed by the State
Department, if you look at the inside cover of that report,
and that makes sense because it is a treaty obligation to
file the report, and the State Department filed that report.

Q And the Draft Report on the Environment?

A EPA had the final decision because it was their
product.

Q Okay. And -- but CEQ didn't have any final say on
any of these documents?

A No. We had a role in ordinary interagency review
comments, and we participated along with all the other
agencies, White House offices.

Q So when, for example -- and I don't have it in
front of me, I apologize -- but when there would be an e-mail
or a draft distributed by Dr. Mahoney to the CCSP, it was an
entire group of different agencies, 30 or -- I think
previously you said there was 30 or so different agencies who
were involved in --

A Potentially.

Q -- some of this draftmaking? And so the comments
would be coming from all the other agencies back into
Dr. Mahoney?

A Yes. Initially when drafts were initiated, they
get a lot of stuff from all the agencies, and then the CCSPO
office would put it together. But when it went through OMB
review again, it would be sent out to all those same agencies
again for final, you know, review and comment.
Q Okay. And then what -- just out of curiosity, what role did the Office of Science and Technology Policy play? Were they part of this interagency?
A They played a very, very prominent role. Kathie Olson was a Senate-confirmed Director for science -- the Office of Science and Technology Policy. She was the representative to the blue box, if you will. But she was a valued colleague, Ph.D. scientist, and she had a very active role. All of OSTP did, Dr. Marburger and other OSTP personnel.
Q And then the other -- I notice going back to Exhibit 23, which is the comments needed, which is the National Science and Technology concurrent sheet, could you tell us the --
A Yes.
Q The National Science and Technology Council as well?

Mr. Tuohey. What is your question?

BY MS. BENNETT:

Q Why would this role -- why would this concurrent sheet be sent to the National Science and Technology Council? Do you know? Do you know what their role was?
A I used to know all this stuff, and I don't know. I don't know exactly. It is a high-level committee. It had existed in the prior administration on this formally
constituted -- and why it is captioned NSTC, I just can't
remember exactly why they were different from other groups.

Q But this was another --
A High-level group.

Q Nonetheless, the bottom line is that the final
product rested with Dr. Mahoney in terms of collecting all
the finalized --
A Yes.
Q All right.

Ms. Bennett. I don't have any more questions.

Mr. Dotson. Well, thank you so much for your
flexibility --

Mr. Tuohey. Thank you.

Mr. Dotson. -- and participating in these depositions.

And this concludes the deposition.

[Whereupon, at 6:10 p.m., the interview was concluded.]
Certificate of Deponent/Interviewee

I have read the foregoing ___ pages, which contain the correct transcript of the answers made by me to the questions therein recorded.

[Signature]

Witness Name
## ERRATA SHEET

**FOR DEPOSITION OF PHILIP A. COONEY**

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/Philip A. Cooney/

/Mark H. Tuohey III/